VOL
59
ISS
1
126
JL
1
994
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7-1-94
Vol. 59 No. 126

Federal Register

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****
A FR UMISE3
UMI SERIALS A
300 N ZEEB RD
PO BOX 1346
ANN ARBOR

7–1–94
Vol. 59 No. 126

federal register

Friday
July 1, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481

A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106

VOL
59
ISS
1
26
JL
1
994
UMI

7-1-94
Vol. 59 No. 126
Pages 33897-34342

7–1–94
Vol. 59 No. 126
Pages 33897–34342

Friday
July 1, 1994

federal register

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche — **202–512–1800**

Assistance with public subscriptions — **512–1806**

Online:

Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions — **202–512–1530**

Single copies/back copies:

Paper or fiche — **512–1800**

Assistance with public single copies — **512–1803**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche — **523–5243**

Assistance with Federal agency subscriptions — **523–5243**

For other telephone numbers, see the Reader Aids section at the end of this issue.

Printed on recycled paper containing 100% post consumer waste

Contents

Agricultural Marketing Service
RULES
Cotton research and promotion:
Imported cotton-containing products a
33903
Nectarines and peaches grown in Califor
Papayas grown in Hawaii, 33898–33900
Potatoes (Irish) grown in—
Oregon and California, 33900–33901
PROPOSED RULES
Milk marketing orders:
Eastern Ohio-Western Pennsylvania, 3

Agricultural Stabilization and Conservat
NOTICES
Marketing quotas and penalty rates:
Tobacco, 33949

Agriculture Department
See Agricultural Marketing Service
See Agricultural Stabilization and Conser
See Federal Grain Inspection Service

Army Department
See Engineers Corps

Arts and Humanities, National Foundatio
See National Foundation on the Arts and

Blind or Severely Disabled, Committee f
People Who Are
See Committee for Purchase From People
Severely Disabled

Centers for Disease Control and Prevent
NOTICES
Meetings:
Hanford Thyroid Morbidity Study Advi
33975

Coast Guard
RULES
Pollution:
Financial responsibility of vessels for w
34210–34267

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Ad

Committee for Purchase From People Wh
Severely Disabled
NOTICES
Procurement list; additions and deletions,

Consumer Product Safety Commission
PROPOSED RULES
Hazardous substances:
Choking hazards—
Marbles, small balls, latex balloons, et
choking incidents, 33925–33928
Multiple tube mine and shell fireworks
risk, 33928–33932

Contents

Federal Register
Vol. 59, No. 126
Friday, July 1, 1994

Agricultural Marketing Service
RULES
Cotton research and promotion:
Imported cotton-containing products assessment, 33901–33903
Nectarines and peaches grown in California, 33897–33898
Papayas grown in Hawaii, 33898–33900
Potatoes (Irish) grown in—
Oregon and California, 33900–33901
PROPOSED RULES
Milk marketing orders:
Eastern Ohio-Western Pennsylvania, 33922–33923

Agricultural Stabilization and Conservation Service
NOTICES
Marketing quotas and penalty rates:
Tobacco, 33949

Agriculture Department
See Agricultural Marketing Service
See Agricultural Stabilization and Conservation Service
See Federal Grain Inspection Service

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
Hanford Thyroid Morbidity Study Advisory Committee, 33975

Coast Guard
RULES
Pollution:
Financial responsibility of vessels for water pollution, 34210–34267

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 33957–33958

Consumer Product Safety Commission
PROPOSED RULES
Hazardous substances:
Choking hazards—
Marbles, small balls, latex balloons, etc.; reporting choking incidents, 33925–33928
Multiple tube mine and shell fireworks devices; injury risk, 33928–33932
Toys and games labeling and small balls ban for children under age three, 33932–33939
NOTICES
Agency information collection activities under OMB review, 33958–33959

Defense Department
See Defense Logistics Agency
See Engineers Corps

Defense Logistics Agency
NOTICES
Senior Executive Service:
Performance Review Board; membership, 33959

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Pearson, Lynn L., M.D., 33984–33985

Education Department
RULES
Postsecondary education:
Faculty development fellowship program, 34198–34207
Federal direct student loan program, 34278–34291
NOTICES
Agency information collection activities under OMB review, 33959–33960
Grants and cooperative agreements; availability, etc.:
Faculty development fellowship program, 34208
School-to-work and urban/rural opportunities program; technical amendment, 33988
Meetings:
National Assessment Governing Board, 33960

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
School-to-work and urban/rural opportunities program; technical amendment, 33988

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 33987–33988

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements, 33961–33962
Meetings:
Environmental Management Site Specific Advisory Board—
Idaho National Engineering Laboratory, 33960–33961

Savannah River Site, 33961

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 33962

Engineers Corps
PROPOSED RULES
Danger zones and restricted areas:
Key West Naval Air Station, FL, 33939–33940

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines; and motor vehicle fuel economy:
Light-duty vehicles and trucks, short test emission regulations, etc.; and NAFTA corporate average fuel economy calculations; correction, 33912–33914
Air quality implementation plans; approval and promulgation; various States:
Oregon, 33914–33920
Drinking water:
National primary drinking water regulations—
Synthetic organic chemicals and inorganic chemicals; unregulated contaminants monitoring, 34320–34325
Water pollution control:
Oil pollution prevention—
Non-transportation-related onshore facilities, 34070–34136
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Oregon, 33941
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Captan, etc., 33941–33946
Water pollution; effluent guidelines
Correction, 33940–33941
NOTICES
Drinking water:
Public water supply supervision program—
Maine, 33968–33969
Oregon and Idaho, 33968
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 33969
Weekly receipts, 33969–33970
Meetings:
Environmental Cooperation Commission, 33970
Privacy Act:
Systems of records, 33971–33972
Superfund; response and remedial actions; proposed settlements, etc.:
Southern Illinois Power Cooperative, Inc., 33972–33973

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
PROPOSED RULES
Terminal areas, 34192–34195

Federal Communications Commission
PROPOSED RULES
Common carrier services:
0+ interLATA calls; billed party preference, 33947

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Atlantic City Electric Co. et al., 33963–33964
Continental Power Exchange, Inc., et al., 33964
Environmental statements; availability, etc.:
Swift Creek Power Co., 33965
Natural gas certificate filings:
Colorado Interstate Gas Co. et al., 33965–33968
Preliminary permits surrender:
North Adams, MA, 33961

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Arizona, 33949–33950
Arkansas et al., 33950
Minnesota et al., 33950–33951
North Dakota, 33951

Federal Highway Administration
RULES
Engineering and traffic operations:
Traffic surveillance and control, 33909–33910

Federal Reserve System
PROPOSED RULES
Credit by brokers and dealers (Regulation T):
Amendments, 33923–33925
NOTICES
Agency information collection activities under OMB review, 33973–33974
Applications, hearings, determinations, etc.:
First Ozaukee Capital Corp., 33974
Maine Bank Corp. et al., 33974–33975
Thompson, Sharon E., et al., 33975

Federal Trade Commission
RULES
Appliances, consumer; energy costs and consumption information in labeling and advertising, 34014–34067

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds; annual list, 34138–34189

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Endangered Species Act activities; interagency cooperative policy statements—
Ecosystems approach, 34273–34274
Information standards, 34271
Peer review, 34270
Recovery plan, 34272–34273
Section 9 prohibitions, 34272
State agencies, 34274–34275
Recovery plans—
Smooth coneflower, 33982–33983

Endangered and threatened species
33983

Food and Drug Administration
RULES
Animal drugs, feeds, and related pr
Praziquantel, etc., 33908–33909
Sponsor name and address chang
Global Pharmaceutical Corp., 3
NOTICES
Animal drugs, feeds, and related pr
Salmonella contamination of ani
animal by-products for feeds
guides revocation, 33975–339
Food for human consumption:
Identity standards deviation; mar
White chocolate, 33976

Government Ethics Office
NOTICES
Agency information collection activ
review, 33989–33991

Health and Human Services Depar
See Centers for Disease Control and
See Food and Drug Administration
See Social Security Administration

Housing and Urban Development D
RULES
Manufactured home construction an
Wind standards
Interpretative bulletin and certa
34294–34297
PROPOSED RULES
Residential antidisplacement and re
plan, 34300–34317
NOTICES
Grants and cooperative agreements;
Facilities to assist homeless—
Excess and surplus Federal proj

Immigration and Naturalization Ser
RULES
Immigration:
Direct mail program; expansion, 3
NOTICES
Immigration:
Direct mail pilot program impleme
District Office, 33985–33986

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Grain-oriented electrical steel from
Italy, 33952–33955
Antidumping and countervailing dut
Administrative review requests, 33
Antidumping duty orders and findin
Intent to revoke, 33955
Cheese quota; foreign government su
Quarterly update, 33955–33956

Endangered and threatened species permit applications, 33983

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Praziquantel, etc., 33908–33909
Sponsor name and address changes—
Global Pharmaceutical Corp., 33908
NOTICES
Animal drugs, feeds, and related products:
Salmonella contamination of animal feed and ingredients; animal by-products for feeds; compliance policy guides revocation, 33975–33976
Food for human consumption:
Identity standards deviation; market testing permits—
White chocolate, 33976

Government Ethics Office
NOTICES
Agency information collection activities under OMB review, 33989–33991

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Social Security Administration

Housing and Urban Development Department
RULES
Manufactured home construction and safety standards:
Wind standards
Interpretative bulletin and certain requirements waiver, 34294–34297
PROPOSED RULES
Residential antidisplacement and relocation assistance plan, 34300–34317
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 33977–33981

Immigration and Naturalization Service
RULES
Immigration:
Direct mail program; expansion, 33903–33906
NOTICES
Immigration:
Direct mail pilot program implementation; Baltimore District Office, 33985–33986

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Grain-oriented electrical steel from—
Italy, 33952–33955
Antidumping and countervailing duties:
Administrative review requests, 33951–33952
Antidumping duty orders and findings:
Intent to revoke, 33955
Cheese quota; foreign government subsidies:
Quarterly update, 33955–33956
Export trade certificates of review, 33956–33957

International Trade Commission
NOTICES
Meetings; Sunshine Act, 34010–34011

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Consolidated Rail Corp., 33983–33984

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service
See National Institute of Justice

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Arizona, 33981
Arizona; correction, 33981
California, 33981
Idaho, 33981–33982
Survey plat filings:
Colorado, 33982

National Archives and Records Administration
NOTICES
Agency information collection activities under OMB review, 33988

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Presenting and Commissioning Advisory Panel, 33988–33989
Meetings; Sunshine Act, 34011

National Institute of Justice
NOTICES
Grants and cooperative agreements; availability, etc.:
Youth, firearms, and violence interagency demonstration, 33986

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 34010

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 33920–33921
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico stone crab, 33947–33948
NOTICES
Endangered and threatened species:
Endangered Species Act activities; interagency cooperative policy statements—
Ecosystems approach, 34273–34274
Information standards, 34271
Peer review, 34270
Recovery plan, 34272–34273

Section 9 prohibitions, 34272
State agencies, 34274–34275
Permits:
Marine mammals, 33957

Nuclear Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
Reactor Safeguards Advisory Committee, 33989

Occupational Safety and Health Administration
RULES
Safety and health standards:
Personal protective equipment for general industry
Correction, 33910–33911

Postal Service
RULES
Domestic Mail Manual:
Preferred postage rates; second and third class mail; changes
Correction, 33911–33912

Presidential Documents
PROCLAMATIONS
Generalized System of Preferences; amendments (Proc. 6704), 34329–34340
ADMINISTRATIVE ORDERS
Generalized System of Preferences; amendments (Memorandum of June 30, 1994), 34341–34342

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 33991–33992
Cincinnati Stock Exchange, Inc., 33992–33994
Government Securities Clearing Corp., 33994–33996
Midwest Securities Trust Co., 33996
National Securities Clearing Corp. et al., 33996–33998
Philadelphia Stock Exchange, Inc., 33998–34001
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 33991
Pacific Stock Exchange, Inc., 33998
Philadelphia Stock Exchange, Inc., 33999–34000
Applications, hearings, determinations, etc.:
American National Insurance Co. et al., 34006–34007
SAFECO Advisor Series Trust et al., 34001–34006

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
Brunnemer & Co., 34007–34008
Seacoast Capital Partners L.P., 34008

Social Security Administration
RULES
Supplemental security income:
Aged, blind, and disabled—
Income; clarification, 33906–33907
NOTICES
Agency information collection activities under OMB review, 33976–33977

State Department
RULES
South Africa and fair labor standards; repeal of regulations, 33909

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Mahalo Air, Inc., 34008–34009

Treasury Department
See Fiscal Service
NOTICES
Agency information collection activities under OMB review, 34009

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 34010

Separate Parts In This Issue

Part II
Federal Trade Commission, 34014–34067

Part III
Environmental Protection Agency, 34070–34136

Part IV
Department of the Treasury, Fiscal Service, 34138–34189

Part V
Department of Transportation, Federal Aviation Administration, 34192–34195

Part VI
Department of Education, 34198–34208

Part VII
Department of Transportation, Coast Guard, 34210–34267

Part VIII
Department of the Interior, Fish and Wildlife Service;
Department of Commerce, National Oceanic and Atmospheric Administration, 34270–34275

Part IX
Department of Education, 34278–34291

Part X
Department of Housing and Urban Development, 34294–34297

Part XI
Department of Housing and Urban Develop
34317

Part XII
Environmental Protection Agency, 34320–3

Part XIII
The President, 34327–34342

Part XI
Department of Housing and Urban Development, 34300-34317

Part XII
Environmental Protection Agency, 34320–34325

Part XIII
The President, 34327–34342

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275-1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandums:
June 30, 1994 34341
Proclamations:
(See Proc. 6704) 34329
6704 34329
7 CFR
916 33897
917 33897
928 33898
947 33900
1205 33901
Proposed Rules:
1036 33922
8 CFR
103 33903
245 33903
245a 33903
264 33903
274a 33903
12 CFR
Proposed Rules:
220 33923
14 CFR
Proposed Rules:
71 34192
93 34192
16 CFR
305 34014
Proposed Rules:
1117 33925
1500 (2 documents) 33928, 33932
20 CFR
416 33906
21 CFR
510 33908
520 33908
22 CFR
60 33909
61 33909
62 33909
63 33909
64 33909
65 33909
23 CFR
655 33909
24 CFR
3280 34294
Proposed Rules:
43 34300
92 34300
570 34300
29 CFR
1910 33910
33 CFR
4 34210
130 34210
131 34210
132 34210
137 34210
138 34210
Proposed Rules:
334 33939
34 CFR
641 34198
685 34278
39 CFR
111 33911
40 CFR
9 (2 documents) 33912, 34070
52 33914
85 33912
86 33912
112 34070
141 34320
142 34320
600 33912
Proposed Rules:
Ch. I 33940
52 33941
185 33941
47 CFR
Proposed Rules:
61 33947
64 33947
69 33947
50 CFR
675 33920
Proposed Rules:
654 33947

Rules and Regulation

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV94–916–31FR]

Nectarines and Fresh Peaches Grown in California; Expenses and Assessment Rates for the 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes assessment rates for the Nectarine Administrative Committee and the Peach Commodity Committee (Committees) under M.O. Nos. 916 and 917 for the 1994–95 fiscal year. Authorization of these budgets enable the Committees to incur expenses that are reasonable and necessary to administer their programs. Funds to administer these programs are derived from assessments on handlers.

DATES: Effective beginning March 1, 1994, through February 28, 1995. Comments received by August 1, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, or by Facsimile (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O.

Rules and Regulations

Federal Register
Vol. 59, No. 126
Friday, July 1, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV94–916–31FR]

Nectarines and Fresh Peaches Grown in California; Expenses and Assessment Rates for the 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes assessment rates for the Nectarine Administrative Committee and the Peach Commodity Committee (Committees) under M.O. Nos. 916 and 917 for the 1994–95 fiscal year. Authorization of these budgets enable the Committees to incur expenses that are reasonable and necessary to administer their programs. Funds to administer these programs are derived from assessments on handlers.

DATES: Effective beginning March 1, 1994, through February 28, 1995. Comments received by August 1, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, or by Facsimile (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 916 (7 CFR part 916) regulating the handling of nectarines grown in California and Marketing Agreement and Order No. 917 (7 CFR part 917) regulating the handling of fresh peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable nectarines and peaches handled during the 1994–95 fiscal year, which began March 1, 1994, through February 28, 1995. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 handlers of nectarines and peaches regulated under the marketing orders each season and approximately 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The nectarine and peach marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable nectarines and peaches handled from the beginning of such year. Annual budgets of expenses are prepared by the Committees, the agencies responsible for local administration of their respective marketing order, and submitted to the Department for approval. The members of the Committees are nectarine and peach handlers and producers. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committees' budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing the anticipated expenses by expected shipments of nectarines and

peaches. Because these rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the Committees' expected expenses.

The Nectarine Administrative Committee met on May 4, 1994, and unanimously recommended total expenses of $3,844,635 for the 1994–95 fiscal year. In comparison, the 1993–94 fiscal year expenses amount was $3,804,962, representing a $39,673 increase in expenses from the 1993–94 fiscal year.

The Committee also unanimously recommended an assessment rate of $0.1825 per 25-pound container or equivalent for the 1994–95 fiscal year, which is the same assessment rate that was approved for the 1993–94 fiscal year. The assessment rate, when applied to anticipated shipments of 18,144,000 25-pound containers or equivalent of nectarines would yield $3,311,280 in assessment income. Adequate funds exist in the Committee's reserve to cover additional expenses.

Major expense categories for the 1994–95 nectarine budget include $447,118 for salaries and benefits, $1,402,000 for domestic market development, and $1,000,000 for inspection. Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $363,483, will be within the maximum permitted by the order of one fiscal year's expenses.

The Peach Commodity Committee also met May 4, 1994, and unanimously recommended total expenses of $3,967,335, for the 1994–95 fiscal year. In comparison, this is $113,790 more than the $3,853,545 expense amount that was recommended for the 1993–94 fiscal year.

The Committee also unanimously recommended an assessment rate of $0.19 per 25-pound container or equivalent for the 1994–95 fiscal year, which is the same assessment rate that was approved for the previous fiscal year. The assessment rate, when applied to anticipated shipments of 17,571,000 25-pound containers or equivalent of peaches, would yield $3,338,490 in assessment income. Adequate funds exist in the Committee's reserve fund to cover additional expenses.

Major expense categories for the 1994–95 fiscal period are $447,118 in salaries and benefits, $1,402,000 for domestic market development, and $950,000 for inspection. Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $578,639, will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committees and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the fiscal year for the Committees began March 1, 1994, and the marketing orders require that the rates of assessment for the fiscal year apply to all assessable nectarines and peaches handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committees at public meetings and which are similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Pears, Peaches, Reporting and recordkeeping requirements.

For the reason set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. A new § 916.232 is added to read as follows:

§ 916.232 Expenses and assessment rate.

Expenses of $3,844,635 by the Nectarine Administrative Committee are authorized and an assessment rate of $0.1825 per 25-pound container or equivalent on assessable nectarines is established for the fiscal year ending February 28, 1995. Unexpended funds may be carried over as a reserve.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

3. A new § 917.256 is added to read as follows:

§ 917.256 Expenses and assessment rate.

Expenses of $3,967,355 by the Peach Commodity Committee are authorized and an assessment rate of $0.19 per 25-pound container or equivalent on assessable peaches is established for the fiscal year ending February 28, 1995. Unexpended funds may be carried over as a reserve.

Dated: June 27, 1994

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–16062 Filed 6–30–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Part 928

[Docket No. FV94–928–1IFR]

Papayas Grown in Hawaii; Expenses and Assessment Rate for 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Papaya Administrative Committee (Committee) under M.O. No. 928 for the 1994–95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning July 1, 1994, through June 30, 1995. Comments received by August 1, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule.

Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523–S, Washington, DC 20090–6456; Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Martin Engler, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 928 (7 CFR part 928), regulating the handling of papayas grown in Hawaii. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable papayas handled during the 1994–95 fiscal year, beginning July 1, 1994, through June 30, 1995. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any

Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523–S, Washington, DC 20090–6456; Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Martin Engler, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 928 (7 CFR part 928), regulating the handling of papayas grown in Hawaii. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable papayas handled during the 1994–95 fiscal year, beginning July 1, 1994, through June 30, 1995. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 handlers of papayas regulated under the marketing order each season and approximately 400 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable papayas handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Hawaii papayas. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of papayas. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Papaya Administrative Committee met on April 22, 1994, and unanimously recommended expenses totaling $589,200 for its 1994–95 budget. This is a $3,260 reduction in expenses compared to the 1993–94 budget of $592,460.

The Committee also unanimously recommended an assessment rate of $.0089 per pound for the 1994–95 fiscal year, which is a $.0024 increase in the assessment rate from the $.0065 per pound that was approved for the 1993–94 fiscal year. The assessment rate, when applied to anticipated shipments of 48 million pounds, would yield $427,200 in assessment income. Other sources of program income include $60,000 from the Hawaii Department of Agriculture, $57,000 from the USDA's Foreign Agricultural Service, $25,000 from the GACC, $7,800 from the Japanese Inspection program, $7,200 in interest income, and $5,000 from the County of Hawaii. Income from all sources will be adequate to cover estimated expenses.

Major expense categories for the 1994 fiscal year include $240,000 for the market expansion program, $68,000 for research and development, and $78,600 for salaries. Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $37,356 will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the

Committee begins July 1, 1994, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable papayas handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committee at a public meeting; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR Part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. A new § 928.224 is added to read as follows:

§ 928.224 Expenses and assessment rate.

Expenses of $589,200 by the Papaya Administrative Committee are authorized and an assessment rate of $.0089 per pound of assessable papayas is established for the fiscal year ending June 30, 1995. Unexpended funds may be carried over as a reserve.

Dated: June 27, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–16060 Filed 6–30–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Part 947

[Docket No. FV94–947–21FR]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 947 for the 1994–95 fiscal period. Authorization of this budget enables the Oregon-California Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1994, through June 30, 1995. Comments received by August 1, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect Oregon-California potato handlers are subject to assessments. Funds to administer the Oregon-California potato order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1994–95 fiscal period, which begins July 1, 1994, and ends June 30, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 550 producers of Oregon-California potatoes under this marketing order, and approximately 40 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the Oregon-California Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected

shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must b established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee unanimously recommended a budget of $45,100, $1,500 more than last season. Increas in expenditures, which include $150 the Committee's annual report, $50 fo the Committee's audit, $1,000 for inspection fees, $500 for investigation and compliance, and $50 for miscellaneous, will be partially offset a decrease of $250 in staff travel. Maj expense items include $24,000 for the Oregon Potato Commission contract agreement, $4,500 for Committee expense, $3,000 each for investigation and compliance and staff travel, $2,00 for inspection fees, $1,500 for telephone, $1,400 for the annual repo $1,250 for postage, and $1,000 each fo Committee compensation and office supplies. The Commission provides certain services to the Committee as specified in a memorandum of understanding.

The Committee also unanimously recommended an assessment rate of $0.006 per hundredweight, $0.001 mo than last season. This rate, when applied to anticipated shipments of 7,500,000 hundredweight, will yield $45,000 in assessment income. This, along with $100 from the Committee's authorized reserve, will be adequate t cover budgeted expenses. Funds in th reserve at the beginning of the 1994–9 fiscal period, estimated at $6,561, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additiona costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation o the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby foun that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good caus that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting

shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee unanimously recommended a budget of $45,100, $1,500 more than last season. Increases in expenditures, which include $150 for the Committee's annual report, $50 for the Committee's audit, $1,000 for inspection fees, $500 for investigation and compliance, and $50 for miscellaneous, will be partially offset by a decrease of $250 in staff travel. Major expense items include $24,000 for the Oregon Potato Commission contract agreement, $4,500 for Committee expense, $3,000 each for investigation and compliance and staff travel, $2,000 for inspection fees, $1,500 for telephone, $1,400 for the annual report, $1,250 for postage, and $1,000 each for Committee compensation and office supplies. The Commission provides certain services to the Committee as specified in a memorandum of understanding.

The Committee also unanimously recommended an assessment rate of $0.006 per hundredweight, $0.001 more than last season. This rate, when applied to anticipated shipments of 7,500,000 hundredweight, will yield $45,000 in assessment income. This, along with $100 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1994–95 fiscal period, estimated at $6,561, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on July 1, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and confirmed by a mail vote and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 947.245 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 947.245 Expenses and assessment rate.

Expenses of $45,100 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.006 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1995. Unexpended funds may be carried over as a reserve.

Dated: June 27, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–16058 Filed 6–30–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1205

[CN–94–006]

RIN 0581–AB29

Amendment to Cotton Research and Promotion Regulations Regarding Assessment of Imported Cotton-Containing Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations to allow for the continuation of collections on renumbered imported cotton-containing products as long as no change in the product's Harmonized Tariff Schedule (HTS) description occurs. Since renumbering of products by the U.S. Customs Service occurs rather frequently, providing for a continuation of assessment collection will prevent unnecessary and costly interruptions of the program.

DATES: This rule is effective upon publication. Comments received by August 1, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to Craig Shackelford, Cotton Division, AMS, USDA, P.O. Box 96456, Room 2641–S Washington D.C. 20090–6456, or by facsimile (202) 690–1718. Three copies of all written materials shall be submitted, and they will be made available for public inspection in the office of the Cotton Division, Washington D.C., during regular business hours. All comments should reference docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, Chief, Cotton Research and Promotion Staff, Cotton Division, AMS, USDA, P.O. Box 96456, Room 2641–S, Washington, D.C. 20090–6456; or telephone: (202) 720–2259.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with

this rule. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry or the ruling.

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order 7 U.S.C. 2101–2118. This rule will affect importers of cotton and products containing cotton. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This rule will help ensure the uninterrupted collection of assessments on products already subject to assessment.

The AMS Administrator has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection and recordkeeping requirements contained in this subpart have been previously approved by OMB and assigned control number 0581–0093.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of action until 30 days after publication in the **Federal Register** because: (1) it would be disruptive, costly, and inefficient to permit a substantial interruption in assessment collections; and (2) this interim final rule provides for a 30-day comment period, and all comments will be considered prior to finalization of this action.

In July of 1992, the Department of Agriculture (USDA) finalized rules and regulations for the authority to collect assessments on cotton and cotton-containing products as authorized in the 1990 Farm Bill. In order to designate specific imported products subject to assessment, AMS published, within the implementing regulations, a table of approximately 700 HTS numbers and individual assessment rates for each. Collections began on August 1, 1992. Soon after, the Department of Commerce changed certain HTS numbers that USDA had identified as subject to the assessment. During the first 17 months of import assessments, AMS has found that the Department of Commerce may revise HTS numbers as a result of presidential proclamation, congressional actions, statistical tracking requirements, etc. Often, these changed numbers are merely replacements of previous numbers and have no impact on the physical properties, description or cotton content of the product it represents.

The U.S. Customs Service informed USDA prior to the publishing of this rule that several HTS numbers listed in the Import Assessment Table contained in 7 CFR 1205.510 would no longer be valid as of January 1, 1994, because of recent statistical changes made by the Department of Commerce. These statistical changes to the HTS numbers were made for reasons associated with the implementation of the North American Free Trade Agreement.

In order to collect cotton research and promotion assessments on imported products containing cotton, HTS numbers listed in the Assessment Table in 7 CFR 1205.510 must correspond to numbers listed in the Harmonized Tariff Schedule. USDA has found that frequent rulemaking is necessary in order to maintain an up-to-date list of HTS numbers in the regulations which provide the U.S. Customs Service the authority to collect cotton research and promotion assessments on imported cotton and products containing cotton.

Changes made to HTS numbers during calendar year 1993 have resulted in reduced collections by U.S. Customs under the import assessment program averaging over $30,000 per month.

USDA has reason to believe that changes in HTS numbering and the resulting impact on the Cotton Research and Promotion Program will continue. U.S. international trade agreements such as NAFTA, GATT, and changes in most favored nation trading status for certain textile producing countries will, according to the U.S. Customs Service, generate changes in HTS headings on a continuing basis. The Cotton Research and Promotion Program would in this environment experience an unpredictable loss of revenue.

With the number and frequency of HTS number changes USDA expects, updating the list of HTS numbers through rulemaking is an impractical solution to minimizing interruptions in assessment collections. Therefore, this rule provides for the continued collection of assessments when HTS numbers are changed so long as such changes have no impact on the physical properties, description, or cotton content of the products involved.

It is important to note that Commerce does renumber HTS headings where an actual change in the product occurs. This rule would not address this type of renumbering. USDA would continue to suspend assessments in these situations until the cotton content and a revised assessment rate could be determined and the assessment table revised.

Based on discussions with importers and U.S. Customs Service officials, USDA has determined that the import community supports continuing to pay assessments on products when numbers have changed but the product remains the same. In fact, suspending collections on HTS headings that undergo mere renumbering is causing confusion for importers and Customs. Customs officials have informed USDA that they can program their automated computer collection system to continue collecting assessments when HTS headings undergo renumbering.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for Part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.510, paragraph (b)(3) is revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(3) The following table contains Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the following table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed.

(i) Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein is less than $220.99 will not be subject to assessments as described in this section.

(ii) In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the physical properties, description, or cotton content of the product involved, assessments will continue to be collected based on the new number.

* * * * *

Dated: June 27, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–16061 Filed 6–30–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 245, 245a, 264, and 274a

[INS No. 1660–94]

RIN 1115–AD73

Expansion of the Direct Mail Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Immigration and Naturalization Service (Service) is expanding its Direct Mail Program, under which certain applications or petitions for immigration benefits can be mailed directly to a service center for processing. This interim rule amends the regulations to allow those types of applications designated for Direct Mail to be filed with service center directors. This change will reduce processing time and in-person visits to local Service offices.

DATES: This interim rule is effective July 1, 1994. Written comments must be submitted on or before August 30, 1994.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307,

assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed.

(i) Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein is less than $220.99 will not be subject to assessments as described in this section.

(ii) In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the physical properties, description, or cotton content of the product involved, assessments will continue to be collected based on the new number.

* * * * * *

Dated: June 27, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–16061 Filed 6–30–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 245, 245a, 264, and 274a

[INS No. 1660–94]

RIN 1115–AD73

Expansion of the Direct Mail Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Immigration and Naturalization Service (Service) is expanding its Direct Mail Program, under which certain applications or petitions for immigration benefits can be mailed directly to a service center for processing. This interim rule amends the regulations to allow those types of applications designated for Direct Mail to be filed with service center directors. This change will reduce processing time and in-person visits to local Service offices.

DATES: This interim rule is effective July 1, 1994. Written comments must be submitted on or before August 30, 1994.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1660–94 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Pearl Chang, Senior Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service is amending § 103.2 governing the filing of applications/petitions for benefits under 8 CFR parts 103, 245, 245a, 264, and 274a, by providing service center directors the authority to accept and process applications/petitions being designated for Direct Mail. The existing regulations provide that applications for certain benefits be filed with the district director having jurisdiction over the applicant's place of residence. This amendment will give the Service the flexibility to shift filings to the service centers as it continues to expand the Direct Mail Program.

Most applications/petitions are filed by mail directly to a service center. The service centers receipt the cases, handle preliminary processing, and either issue a decision or forward the case to a local Service office for an interview, field review or investigation based on an analysis of individual facts and profiles. The Service's strategic plan is to have the service centers absorb additional workload by eventually adding more types of petitions/applications that can be accepted by service centers under the Direct Mail Program.

Background

Traditionally, most Service customer had to make several trips to a Service office to obtain forms, information, and to actually file applications. To improve service to its customers, in 1985 the Service developed a three-phase strategic plan called the Direct Mail Program. The objective was to facilitate and improve service by gradually automating and streamlining the adjudication process.

Direct Mail Program—Phases I and II

In the first two phases of the Direct Mail Program, the public began mailing a variety of applications/petitions directly to one of the four service centers instead of submitting these applications in person at the Service field offices. Currently, almost 60 percent of all applications and petitions filed with the Service are processed at one of these four service centers thereby alleviating the severe overcrowding that occurs in Service offices if the workload had to be processed locally. It has also improved consistency, productivity, and timeliness of application processing, and has provided more information about case status through receipt and other notices. As a result, the Direct Mail Program enjoys broad public support.

An important reason the service centers have been able to absorb the additional workload can be attributed to the development and use of automated technology such as the Computer Linked Application Information Management System (CLAIMS). This system is used to track applications and petitions and to process and issue notices and decisions on all filed cases. Encouraged by these positive results, the Service is embarking on the third and final phase of the Direct Mail Program.

Direct Mail Program—Phase III

Phase III of the Direct Mail Program is intended to further alleviate adjudication burdens of local Service offices, thereby enabling the Service offices to provide more intensive contact services with the public, such as responding to inquiries, conducting interviews, and performing field examinations.

Planned Procedure Changes

During the next several years, the Service plans the expansion of the Direct Mail Program through two complementary strategies as follows:

1. Continued Form-by-Form Nationwide Conversion

In terms of plans for future nationwide implementation, the Service plans the following conversions.

a. Application for an Employment Authorization Document (EAD)—Form I–765

Currently about one-half of all EAD applications are filed and processed through Direct Mail. This conversion has improved inventory control, data integrity, and overall service. It has also meant the employment authorization data is available sooner for verification purposes.

During the next 12 months, the Service plans to shift almost all remaining EAD applications to Direct Mail as a new production system becomes available in the service centers and the capacity is developed to assimilate the workload into the service centers. On an interim basis, two types of applications will continue to be filed locally so they can be pre-screened before being sent to the service center for processing. These are:

i. Applications with eligibility based on an alien being in proceedings before an immigration judge; and

ii. Applications with eligibility based on a separate application for adjustment of status under section 245 of the Act that was filed and is pending at the local office.

It should be noted that the proposed changes in filing procedures for EADs will require applicants to initially submit their applications with two (2) color photos and, until a new application form containing a fingerprint block and revised filing instructions is available, a completed signature card to a local INS office. Applicants may also be asked to appear at a local office to pick up their first EADs as a means of verifying their identity. After this one-time visit to the local INS office, the Service will be able to electronically verify the applicant's identity when future applications are filed.

After reviewing the comments to this rulemaking, the Service proposes to revise the filing instructions on Form I–765 to reflect the procedures outlined above and then publish the new instructions in the **Federal Register**.

b. Application for Alien Registration Card—Forms I–90, I–90A, and Application To Adjust Status From Temporary to Permanent Resident I–698

The Service also plans to convert all applications for an alien registration card to a single Direct Mail process. Manufacturing of a card requires that persons first have had their right index fingerprint and signature recorded on a secure document so they can be incorporated into the card. Currently some of these types of applications are filed by Direct Mail and the person then is instructed to appear for this process to be done. In other instances, the person must take his or her application to a local office for this process. The local office then forwards the application to the service center for receipting and processing.

The Service plans to convert Forms I–90, I–90A, and I–698 to Direct Mail, first by requiring that these applications be accompanied by a completed fingerprint card, FD–258, and then by revising the application forms to capture the right index fingerprint. This will standardize the collection of fingerprints and signatures and enable the Service to electronically capture and store this data for future verification. Although controls will have to be introduced to ensure the appropriate fingerprint and photo are submitted, ultimately an applicant will not normally have to appear at the local INS office for these processes.

After reviewing the comments to these planned changes, the Service will revise the filing instructions on Form I–90 to reflect the procedures outlined above and then publish the new instructions in the **Federal Register**.

c. Application To Adjust Status—Form I–485

The Service also plans to convert adjustment of status applications to Direct Mail over the next several years. This conversion will be done incrementally by type of eligibility for adjustment—for example, shifting all applications for adjustment of status based on having asylee status for a year.

The Service is also considering shifting the processing of completing the transition of refugees to permanent resident status to Direct Mail. However, this would require the introduction of a formal application process.

2. Office-by-Office Implementation of Direct Mail

Effective July 1, 1994, the Baltimore District Office will serve as the pilot site for the installation of CLAIMS and conversion to Direct Mail. (See the Notice published elsewhere in this issue of **Federal Register** by the Immigration and Naturalization Service.) Beginning in Baltimore, CLAIMS will be installed in local INS offices on an incremental basis. The installation of CLAIMS at any district office will permit a shift of most casework to Direct Mail for that district. This office-by-office conversion will take place in tandem with the nationwide form-by-form conversion until the Direct Mail Program is complete.

It should be noted that the Service plans to continue to accept and process certain applications locally even after Phase III is implemented. Petitions for orphans will still be filed and processed locally, as will applications for waivers of grounds of excludability discovered during an interview. Applications for border crossing cards and waivers when applying for admission will continue to be filed and processed at Ports-of-Entry.

Where to File

1. 8 CFR 103.2(a) requires that an application, petition, and/or other document submitted to the Service be executed and filed in accordance with the instructions on the application form, as stipulated by the particular section of the regulations requiring its submission. These instructions always provide information on where an application or petition should be filed, including the mailing address. In a direct mail environment, an applicant should file his or her application or petition with either the district director or the service center director having jurisdiction over the applicant's place of residence, as directed by the instructions on the form, to avoid processing delays.

2. Prior to the Direct Mail Program, Service regulations typically required that applications or petitions be filed with the district director having jurisdiction over the applicant's place of residence. Since the inception of Direct Mail, the Service has been gradually amending its regulations by replacing the "district director" with "director" to apply to both district directors and service center directors. Most of these amendments were made when the Service made rules to implement the Immigration Act of 1990. However, certain sections in 8 CFR parts 245, 245a, 264, and 274a still require that the form be filed with the "district director" having jurisdiction over the alien's place of residence. This interim rule amends the pertinent sections by removing the remaining references to "district director" and replacing them with "director" to conform with the Direct Mail policy.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the "good cause" exception found at 5 U.S.C. 553 (a)(2) and (d)(3). This regulation relates to agency management as it expands the scope of the service center directors to accept and process certain types of applications/petitions under the Direct Mail Program. This change will provide flexibility to transfer filings to service centers as the Direct Mail Program is expanded, thereby alleviating the severe overcrowding that occurs in Service offices if the workload had to be processed locally. It will also improve consistency, productivity, and timeliness of application processing, and will provide more information about case status through receipt and other notices.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is merely administrative in nature and expands the scope of Service officers.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will enhance family well-being by reducing the processing time for aliens applying for certain immigration benefits.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 245

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245a

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 264

Aliens, Registration and fingerprinting, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will enhance family well-being by reducing the processing time for aliens applying for certain immigration benefits.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 245

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245a

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 264

Aliens, Registration and fingerprinting, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.2, paragraph (a)(1) is revised to read as follows:

§ 103.2 Applications, petitions, and other documents.

(a) *Filing.* (1) *General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions, which include where an application or petition should be filed, being hereby incorporated into the particular section of the regulations requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7. Such fees are non-refundable and, except as otherwise provided in this chapter, must be paid when the application or petition is filed.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; and 8 CFR part 2.

§ 245.2 [Amended]

4. Section 245.2 is amended by revising the term "the district director" to read "the director" whenever it appears in the following paragraphs:

(a)(1)

(a)(5)(i)

(a)(5)(ii)

(a)(5)(iii)

(b)

(c)

§ 245.3 [Amended]

5. Section 245.3 is amended by revising the term "the district director" to read "the director" in the first sentence.

§ 245.7 [Amended]

6. In § 245.7, paragraph (a) is amended by revising the term "the district director" to read "the director" in the first sentence.

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUBLIC LAW 99–603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUBLIC LAW 100–204, SECTION 902

7. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

8. Section 245a.3 is amended by revising paragraph (d)(1) to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

* * * * *

(d) * * *

(1) The application must be filed on Form I–698. Form I–698 must be accompanied by the correct fee and documents specified in the instructions. The application will be mailed to the director having jurisdiction over the applicant's place of residence.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

9. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305.

§ 264.5 [Amended]

10. In § 264.5, paragraph (e)(2)(i) is amended in the first sentence by revising the phrase ", in person, at" to read "with".

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

11. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, 8 CFR part 2.

§ 274a.13 [Amended]

12. Section 274a.13 is amended by revising the term "district director" to read "director" whenever it appears in paragraphs (a) and (d).

13. Section 274a.13 is further amended in paragraph (d) by revising the term "district director's" to read "director's" in the last sentence.

Dated: June 24, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–16037 Filed 6–30–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

RIN 0960–AB09

20 CFR Part 416

Supplemental Security Income for the Aged, Blind, and Disabled; What Is Not Income

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules revise the regulations as to what is considered not to be income under the supplemental security income (SSI) program in the following instance. The final rules conform SSI policy to a number of court rulings that have required the Social Security Administration (SSA) to consider Department of Veterans Affairs (DVA) payments resulting from unusual medical expenses not to be income for SSI purposes. Previously, DVA payments resulting from unusual medical expenses were considered needs-based pension or compensation payments and, therefore, income for SSI purposes except in the Ninth Circuit where SSA's Acquiescence Ruling 86–1(9) applies and in the Eleventh Circuit and the State of Indiana where courts have invalidated SSI policy. These regulations implement on a national basis a treatment of DVA payments resulting from unusual medical expenses that generally will be more advantageous to recipients than current national policy.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8470.

SUPPLEMENTARY INFORMATION: These regulations affect the SSI program under title XVI of the Social Security Act (the Act), as amended and the Medicaid program under title XIX of the Act to the extent that Medicaid eligibility is based on title XVI eligibility. The purpose of the SSI program is to provide a minimum income level for aged, blind, and disabled people who do not have income or resources above levels specified in the Act. The regulations change what is considered not to be income under the SSI program.

The DVA considers veterans' unusual medical expenses by deducting them from any countable income when computing some needs-based pension and compensation payments. (Unusual medical expenses are unreimbursed medical expenditures that exceed 5 percent of the applicable maximum annual DVA basic payment rate. This rate does not include an aid and attendance component.) Unusual medical expenses may result in a higher monthly DVA payment, an extra payment, or an increase in a payment. These DVA payments were treated as needs-based pension or compensation payments and, under § 416.1121(a), as income for SSI purposes.

In the case of *Summy v. Schweiker*, 688 F.2d 1233 (1982), the Ninth Circuit Court of Appeals held that these additional DVA payments represented reimbursement for medical expenses, and, therefore, were not income for SSI purposes under § 416.1109(a). This section, which exempted third-party reimbursement for medical expenses from income, was subsequently revised and now appears at § 416.1103(a). We are adding § 416.1103(a)(7), which refers to DVA payments resulting from unusual medical expenses, to the list of medical care or services that are excluded from the definition of income. By doing this, we are recognizing that the nature of such payments is analogous to that of other forms of medical care or services that are currently not income under § 416.1103(a).

SSA published Acquiescence Ruling 86–1(9) to apply the *Summy* holding within the Ninth Circuit. Upon publication of these regulations, Acquiescence Ruling 86–1(9) will be withdrawn. While the regulatory change will generally benefit SSI recipients, it may result in reduced benefits or ineligibility for a small number of SSI recipients. Under section 1614(f) of the Act, the income and resources of spouses and parents who are not eligible for SSI are considered to the extent determined by the Secretary as the income and resources of their spouses and children who live with them and are eligible for SSI benefits. This is known as deeming. We do not count any of the income of an ineligible spouse or parent who receives payments from a needs-based public income maintenance program because to do so would defeat the purpose of such a program.

Presently, DVA payments resulting from unusual medical expenses are considered needs-based public income maintenance payments, and we do not count under SSI deeming rules any income of an ineligible spouse or parent which was counted or excluded in figuring these payments (see § 416.1161(a)(2)). Under these final regulations, DVA payments resulting from unusual medical expenses will be considered reimbursement for medical expenses and not needs-based pension or compensation payments. For an individual who receives only such payments, receipt of such payments will no longer preclude our counting as income to the SSI recipient part of the income of an ineligible spouse or parent used in computing such payment.

Example: Jenny, a disabled child who is eligible for SSI benefits, lives with her father, Mr. Morton, who received both a DVA pension based on need and a title II Social Security benefit. In determining how much income to deem to the child, none of Mr. Morton's title II benefit was considered income deemable to Jenny because the DVA had already counted Mr. Morton's title II benefit in figuring the amount of his DVA needs-based pension payment. In January 1992, Mr. Morton reported an increase in his title II benefit to the DVA and the amount of the increase precluded him from receiving further DVA pension payments. Because no DVA needs-based pension payment was being made, Mr. Morton's title II benefit was deemable as income to Jenny, resulting in a reduction of her SSI payment. In December 1992, Mr. Morton filed an annual report with the DVA reflecting both his title II income and evidence of his payment of unusual medical expenses. The DVA recomputed his income for the period January 1992 through December 1992 based on the evidence of unusual medical expenses and issued him a one-time payment. Under the prior policy, we would recalculate Jenny's SSI payment for the period January 1992 through December 1992 in order not to deem to Jenny any of Mr. Morton's title II benefit used by the DVA in determining a needs-based pension payment. However, under these final regulations, for deeming purposes, we will not recalculate Jenny's SSI benefit and will continue to consider Mr. Morton's title II benefit for the period January 1992 through December 1992 as income available to Jenny. The DVA payment resulting from unusual medical expenses will no longer be considered a public income-maintenance payment so we will not exclude any income used in calculati it, but instead we will consider the

payment reimbursement for medical expenses and not income.

The above example describes how we will apply the *Summy* decision nationwide under the SSI program. This change in the treatment of DVA payments for unusual medical expenses also affects how income is determined under the Medicaid program under title XIX of the Act.

We published a notice of proposed rulemaking (NPRM) on August 24, 1988 (53 FR 32252). That NPRM included proposed SSA and Health Care Financing Administration (HCFA) regulations on the treatment of DVA payments for unusual medical expenses under the SSI program as well as under the Medicaid program under title XIX of the Act. SSA coordinated and combined the NPRM with HCFA because, generally, the Medicaid statute uses the methodologies and treatment of income of the cash assistance programs such as SSI as the baseline for determining eligibility for Medicaid. Thus, in defining income for Medicaid eligibility purposes, the SSI treatment of DVA payments for unusual medical expenses would usually be applied.

Based on the public comments and subsequent court decisions, the Medicaid portion of the final regulations required further consideration. As a result, SSA decided to proceed separately with the SSI portion of the final regulations. We based this decision on the need to provide uniform national policy in this area. These changes in SSI income rules will affect the Medicaid program in those States which use SSI income rules in their Medicaid program.

Comments Received Following Publication of the NPRM

When these regulations were published as an NPRM, interested parties were given 60 days to submit comments. We received 13 letters: 3 from State or local governmental entities, 4 from special interest organizations, and 6 from individuals. Several commenters wrote merely to support the proposed regulations; one indicated that the proposed regulations are unnecessary; and others, while supporting the proposed regulations, suggested changes. Many of the commenters addressed issues regarding the Medicaid aspects of the NPRM. The issues raised by those commenters are not within the purview of these final SSI regulations and have been referred to HCFA for appropriate response. We have summarized the SSI issues raised by the commenters and responded to these comments below.

Comment: One commenter suggested that the phrase "pension or

compens
appropri
payment
preambl
Depende
Compens
increase
Respo
"pensio
to more
payment
emphasi
based on
"pensio
pension
descripti
preambl
Comm
the Medi
the purp
support
referred
Federal
provides
"Where
payments
this type
other gov
effect, nu
of those o
In refe
Register
stated th
prohibiti
benefits
be violat
the DVA
medical
as incom
determir
contribu
Respo
statemen
referred
SSI prog
program
program
funds to
clothing,
or social
express
to revise
count ce
determir
amount
extent th
Medicai
been refe
response
explaine
regulatio
regulatio
Regulate
Executiv
The O
has revie
determin

payment reimbursement for medical expenses and not income.

The above example describes how we will apply the *Summy* decision nationwide under the SSI program. This change in the treatment of DVA payments for unusual medical expenses also affects how income is determined under the Medicaid program under title XIX of the Act.

We published a notice of proposed rulemaking (NPRM) on August 24, 1988 (53 FR 32252). That NPRM included proposed SSA and Health Care Financing Administration (HCFA) regulations on the treatment of DVA payments for unusual medical expenses under the SSI program as well as under the Medicaid program under title XIX of the Act. SSA coordinated and combined the NPRM with HCFA because, generally, the Medicaid statute uses the methodologies and treatment of income of the cash assistance programs such as SSI as the baseline for determining eligibility for Medicaid. Thus, in defining income for Medicaid eligibility purposes, the SSI treatment of DVA payments for unusual medical expenses would usually be applied.

Based on the public comments and subsequent court decisions, the Medicaid portion of the final regulations required further consideration. As a result, SSA decided to proceed separately with the SSI portion of the final regulations. We based this decision on the need to provide uniform national policy in this area. These changes in SSI income rules will affect the Medicaid program in those States which use SSI income rules in their Medicaid program.

Comments Received Following Publication of the NPRM

When these regulations were published as an NPRM, interested parties were given 60 days to submit comments. We received 13 letters: 3 from State or local governmental entities, 4 from special interest organizations, and 6 from individuals. Several commenters wrote merely to support the proposed regulations; one indicated that the proposed regulations are unnecessary; and others, while supporting the proposed regulations, suggested changes. Many of the commenters addressed issues regarding the Medicaid aspects of the NPRM. The issues raised by those commenters are not within the purview of these final SSI regulations and have been referred to HCFA for appropriate response. We have summarized the SSI issues raised by the commenters and responded to these comments below.

Comment: One commenter suggested that the phrase "pension or compensation payments" is more appropriate than the phrase "pension payments" which we used in the preamble to the NPRM, because DVA Dependency and Indemnity Compensation payments are also increased for unusual medical expenses.

Response: We agree that the phrase "pension payments" should be clarified to more accurately describe DVA payments. In addition, we have emphasized that these payments are based on need by replacing the word "pension" with the phrase "needs-based pension or compensation" in the description of the rule change in this preamble.

Comment: One commenter stated that the Medicaid regulations would defeat the purpose of the DVA payments. In support of this statement the commenter referred to a September 14, 1978, **Federal Register** document which provides:

> "Where the SSI program reduces its payments to take into account assistance of this type (medical or social) furnished under other governmental programs, SSI is, in effect, nullifying or frustrating achievement of those other programs' purposes."

In referring to the above **Federal Register** statement, the commenter stated that "this longstanding principle prohibiting the nullification of other benefits available to a recipient would be violated (for Medicaid purposes) if the DVA reimbursement for unusual medical expenses were to be included as income in the post-eligibility determination of the recipients' contribution to cost of care."

Response: The **Federal Register** statement to which the commenter has referred was made in the context of the SSI program and not the Medicaid program. In the context of the SSI program, the SSI program provides funds to meet an individual's food, clothing, and shelter needs, not medical or social service needs. One of the express purposes of these final rules is to revise SSI regulations so as not to count certain DVA payments in determining eligibility for and the amount of the SSI payments. To the extent the commenter is referencing the Medicaid program, this comment has been referred to HCFA for appropriate response. Other than the change explained above to the preamble to the regulations, we are adopting these SSI regulations as proposed.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget has reviewed these rules and determined they do not meet the criteria for a significant regulatory action under E.O. 12866.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

These regulations impose no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance: Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental security income.

Dated: August 18, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: August 30, 1993.

Dona E. Shalala,

Secretary of Health and Human Services.

Note: This document was received by the Office of the Federal Register on June 28, 1994.

For the reasons set out in the preamble, part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. In § 416.1103, a new paragraph (a)(7) is added to read as follows:

§ 416.1103 What is not income.

* * * * *

(a) * * *

(7) Payments from the Department of Veterans Affairs resulting from unusual medical expenses.

* * * * *

[FR Doc. 94–16050 Filed 6–30–94; 8:45 am]

BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three new animal drug applications (NADA's) from Richlyn Laboratories, Inc., to Global Pharmaceutical Corp.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Richlyn Laboratories, Inc., Castor and Kensington Aves., Philadelphia, PA 19124, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA's 65–065 (Tetracycline Hydrochloride), 92–151 (N-Butyl Chloride Capsules, and 138–900 (Dichlorophene and Toluene Capsules) to Global Pharmaceutical Corp., Castor and Kensington Aves., Philadelphia, PA 19124.

Accordingly, the agency is amending the regulations in 21 CFR parts 510.600(c)(1) and (c)(2) to reflect the change of sponsor. The drug labeler code assigned to Richlyn Laboratories, Inc., is being retained as the drug labeler code for Global Pharmaceutical Corp.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Richlyn Laboratories, Inc." and by alphabetically adding a new entry for "Global Pharmaceutical Corp., Castor and Kensington Aves., Philadelphia, PA 19124 . . . . 000115" and in the table in paragraph (c)(2) in the entry for "000115" by removing the sponsor name "Richlyn Laboratories, Inc." and adding in its place "Global Pharmaceutical Corp."

Dated: June 24, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–16093 Filed 6–30–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Praziquantel, Pyrantel Pamoate, and Febantel Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Miles, Inc. The NADA provides for the oral use in dogs of either of two tablets containing different concentrations of praziquantel, pyrantel pamoate, and febantel for the removal of tapeworms, hookworms, ascarids, and whipworms.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Miles, Inc., Agriculture Division, Animal Health Products, P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 141–007 that provides for the oral use in small dogs (up to 11.4 kilograms (kg) or 25 pounds (lb) of a tablet containing 22.7 milligrams (mg) of praziquantel, 22.7 mg of pyrantel (as pyrantel pamoate), and 113.4 mg of febantel for the removal of certain tapeworms, hookworms, ascarids, and whipworms. The NADA also provides for the use in medium and large dogs (11.8 kg and or over 26 lb and over) of a tablet containing three times the preceding concentrations. The NADA is approved as of May 19, 1994, and the regulations are amended in part 520 (21 CFR part 520) by adding new § 520.1872 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for nonfood producing animals qualifies for 3 years of marketing exclusivity beginning May 19, 1994, because the application contains reports of new clinical or field investigations (other than bioequivalence studies) essential to the approval of the application and conducted or sponsored by the applicant.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food And Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.1872 is added to read as follows:

§ 520.1872 Praziquantel, pyrantel pamoate, and febantel tablets.

(a) *Specifications.* Each tablet contains either:

(1) Tablet No. 1: 22.7 milligrams praziquantel, 22.7 milligrams pyrantel base, and 113.4 milligrams febantel; or

(2) Tablet No. 2: 68 milligrams praziquantel, 68 milligrams pyrantel base, and 340.2 milligrams febantel.

Kilograms
0.9 to 1.8
2.3 to 3.2
3.6 to 5.4
5.9 to 8.2
8.6 to 11.4
11.8 to 13.6
14.1 to 20.0
20.4 to 27.2
27.7 to 33.6
34.0 to 40.9
41.3 to 47.2
47.7 to 54.5

(ii) *Indications for use.* For the removal of tapeworms (*Dipylidium caninum, Taenia pisiformis, Echinococcus granulosus*); hookworms (*Ancylostoma caninum, Uncinaria stenocephala*); ascarids (*Toxocara canis, Toxascaris leonina*); and whipworms (*Trichuris vulpis*) in dogs.

(iii) *Limitations.* Do not use in pregnant animals. Do not use in dogs weighing less than 0.9 kilogram (2 pounds) or puppies less than 3 weeks of age. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 21, 1994.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 94–16090 Filed 6–30–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Chapter I, Subchapter G, and Parts 60 through 65

[Public Notice 2025]

Repeal of South Africa and Fair Labor Standards Regulations

AGENCY: Bureau of African Affairs, Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is repealing the South Africa and Fair Labor Standards Regulations to reflect the repeal of code of conduct requirements of the Comprehensive Anti-Apartheid Act of 1986 as of the date on which the President certified to the Congress that an interim government, elected on a nonracial basis through free and fair elections, has taken office in South Africa. The repeal

(2) Tablet No. 2: 68 milligrams praziquantel, 68 milligrams pyrantel base, and 340.2 milligrams febantel.

(b) *Sponsor.* See 000859 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Administer as a single dose directly by mouth or in a small amount of food as follows:

Weight of animal		Number of tablets per dose	
Kilograms	Pounds	Tablet no. 1	Tablet no. 2
0.9 to 1.8	2 to 4	1/2	
2.3 to 3.2	5 to 7	1	
3.6 to 5.4	8 to 12	1 1/2	
5.9 to 8.2	13 to 18	2	
8.6 to 11.4	19 to 25	2 1/2	
11.8 to 13.6	26 to 30		1
14.1 to 20.0	31 to 44		1 1/2
20.4 to 27.2	45 to 60		2
27.7 to 33.6	61 to 74		2 1/2
34.0 to 40.9	75 to 90		3
41.3 to 47.2	91 to 104		3 1/2
47.7 to 54.5	105 to 120		4

(ii) *Indications for use.* For the removal of tapeworms (*Dipylidium caninum, Taenia pisiformis, Echinococcus granulosus*); hookworms (*Ancylostoma caninum, Uncinaria stenocephala*); ascarids (*Toxocara canis, Toxascaris leonina*); and whipworms (*Trichuris vulpis*) in dogs.

(iii) *Limitations.* Do not use in pregnant animals. Do not use in dogs weighing less than 0.9 kilogram (2 pounds) or puppies less than 3 weeks of age. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 21, 1994.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 94–16090 Filed 6–30–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Chapter I, Subchapter G, and Parts 60 through 65

[Public Notice 2025]

Repeal of South Africa and Fair Labor Standards Regulations

AGENCY: Bureau of African Affairs, Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is repealing the South Africa and Fair Labor Standards Regulations to reflect the repeal of code of conduct requirements of the Comprehensive Anti-Apartheid Act of 1986 as of the date on which the President certified to the Congress that an interim government, elected on a nonracial basis through free and fair elections, has taken office in South Africa. The repeal of the code of conduct requirements is provided for in section 4(a)(2) of the South African Democratic Transition Support Act of 1993. The certification was made to Congress on June 8, 1994.

The last annual report regarding implementation of the registration and reporting requirements established in 22 CFR part 63 will cover calendar year 1993.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Robert Bruce, Office of Southern African Affairs (202) 647–9866, or George Taft, Office of the Legal Adviser, (202) 647–4110.

SUPPLEMENTARY INFORMATION: The repeal of the regulations involves a foreign affairs function of the United States and thus is excluded from 5 U.S.C. 553 and 554 and from analysis under the Regulatory Flexibility Act of 1980. The repeal of the regulations is excluded from Executive Order 12866, but has been reviewed to ensure consistency with its overall policies and purposes. This final rule does not contain a new or amended information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects

22 CFR Parts 60, 61, and 64

Equal employment opportunity, South Africa, United States investments abroad.

22 CFR Parts 62 and 63

Equal employment opportunity, Reporting and recordkeeping requirements, South Africa, United States investments abroad.

22 CFR Part 65

Equal employment opportunity, Penalties, South Africa, United States investments abroad.

Accordingly, under the authority of 22 U.S.C. 5001 Note, Pub. L. 103–149, chapter I of title 22 of the Code of Federal Regulations is amended as set forth below:

PARTS 60, 61, 62, 63, 64, 65—[REMOVED]

1. Parts 60 through 65 are removed.

Appendix to Subchapter G [Removed]

2. The appendix to subchapter G is removed.

SUBCHAPTER G—[REMOVED AND RESERVED]

3. Subchapter G is removed and reserved.

Dated: June 10, 1994.

George E. Moose,

Assistant Secretary for African Affairs.

[FR Doc. 94–16054 Filed 6–30–94; 8:45 am]

BILLING CODE 4710–26–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

RIN 2125–AD36

Traffic Surveillance and Control; Technical Amendment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document makes a minor technical amendment in nomenclature under the section on traffic engineering analysis to more accurately reflect the plan's content as being that of implementation rather than of operations. This change will serve to assist the States and other operating agencies which utilize Federal funds for their systems by clarifying the terminology used in the regulation.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Morris Oliver, HTV-31, Office of Traffic Management and IVHS, (202)366-2251, or Ms. Grace Reidy, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for Federal legal holidays.

List of Subjects in 23 CFR Part 655

Grant programs—transportation, Highways and roads, Signs and symbols, Traffic regulations.

The FHWA hereby amends 23 CFR 655, subpart D as set forth below:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 49 CFR 1.48(b).

§ 655.409 [Amended]

2. Section 655.409(f) is amended by removing the words "operations plan" in each of the two places they appear and replacing them with the words "implementation plan."

Issued on: June 24, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94-16071 Filed 6-30-94; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-060]

RIN 1218-AA71

Personal Protective Equipment for General Industry

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule; corrections.

SUMMARY: This document makes corrections to the final rule on Personal Protective Equipment for General Industry, which was published in the **Federal Register** on April 6, 1994 at 59 FR 16334.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 219-8151.

SUPPLEMENTARY INFORMATION: This document contains corrections to the final rule for Personal Protective Equipment for General Industry, which was published on April 6, 1994 (59 FR 16334). As published, the final rule contains typographical errors as well as language that does not clearly express OSHA's intent. As explained below, this document is necessary to correct the identified errors and to indicate clearly what the Agency intended when it promulgated the final rule.

Amendments to 29 CFR 1910.132 (General Requirements)

OSHA has received many comments concerning the applicability of the general requirements contained in § 1910.132. In the preamble to the final rule (59 FR 16334), OSHA stated:

> The provisions of existing §§ 1910.134 and 1910.137 (which cover respiratory protection and electrical protective devices, respectively) are the subjects of separate rulemaking actions and are not addressed by this rulemaking.

The comments to OSHA indicated that, although OSHA stated that §§ 1910.134 and 1910.137 were not being addressed by this rulemaking (April 6, 1994), it was still unclear whether the Agency intended for the new requirements of § 1910.132 to apply to §§ 1910.134 and 1910.137.

The intent of OSHA was that paragraph (d), hazard assessment, and paragraph (f), training, would apply only to §§ 1910.133, 1910.135, 1910.136, and 1910.138. Therefore, OSHA is amending the final rule by adding a new paragraph, (g), to § 1910.132 that explains the applicability of the requirements for hazard assessments and training.

Amendments to 29 CFR 1910.133 (Eye and Face Protection)

On page 16361, the table: "Filter Lenses for Protection Against Radiant Energy" contains a typographical error. The column heading "Electric Size 1/32 in." should read, "Electrode Size 1/32 in."

Amendments to 29 CFR 1910.136 (Foot Protection)

On page 16362, paragraph (a) reads, in part:

> *General requirements.* Each affected employee shall wear protective footwear when working in areas where there is a danger of foot injuries due to falling *and* rolling objects * * * (emphasis added).

It has come to OSHA's attention that the word "and" between the words, "falling" and "rolling objects" could be interpreted to mean that both types of hazard must be present before the use of protective footwear is required.

The intent of OSHA was that the use of protective footwear is required when either of these hazards are present. OSHA inadvertently used the word, "and" instead of the word, "or", and is amending paragraph (a) of § 1910.136 of the final rule to clarify its intent.

Amendments to 29 CFR 1910.138 (Hand Protection)

In the final rule, OSHA added a new section (§ 1910.138) to Subpart I to address hand hazards. However, the Agency, inadvertently, failed to explain what would happen to the existing § 1910.138, "Effective dates."

It was the intent of OSHA to remove the existing § 1910.138, and replace it with a new § 1910.138 that would contain the requirements for hand protection. Accordingly, the Agency is amending the final rule to clarify that existing § 1910.138 is removed and is replaced with a new § 1910.138 for hand protection.

Authority: This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 27th day of June, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

Accordingly, the publication on April 6, 1994 of Subpart I which was the subject of FR Doc 94-7581 is hereby corrected as set forth below.

§ 1910.132 [Corrected]

1. On page 16360, in the first column, the amendatory instruction number 2 is corrected to read:

"2. New paragraphs (d) through (g) are added to read as follows:".

2. On page 16360, in the first column, § 1910.132 is corrected by adding a new paragraph (g), to read as follows:

> (g) Paragraphs (d) and (f) of this section apply only to §§ 1910.133, 1910.135, 1910.136, and 1910.138. Paragraphs (d) and (f) of this section do not apply to §§ 1910.134 and 1910.137.

§ 1910.133 [Corrected]

3. On page 16361, in the table: "Filter Lenses for Protection Against Radiant Energy", the column heading "Electric Size 1/32 in." is corrected to read, "Electrode Size 1/32 in."

§ 1910.136 [Corrected]

4. On page 16362, in the first column, on line 5 in paragraph (a) of § 1910.136, the word "and" between the words "falling" and "rolling" is corrected to read, "or".

§ 1910.138 [Corrected]

5. On page 16362, in the second column, amendatory instruction number 5 is corrected to read:

"5. Section 1910.138 is revised to read as follows:".

[FR Doc. 94-16014 Filed 6-30-94; 8:45 am]

BILLING CODE 4510-26-M

POSTAL SERVICE

39 CFR Part 111

Changes in Preferred Postage Rates—Second- and Third-Class Mail

AGENCY: Postal Service.

J1 .....
J3 .....
J5 .....
K1 .....
K2 .....
K3 .....

* * * * *

3.0 Special Nonprofit Rates $0
3.1 Pound Rates *
Pound rates are:

G .....
H3 .....
H5 .....
I1 .....
I2 .....
I3 .....

* * * * *

4.0 Classroom Rates $0
4.1 Pound Rates *
Pound rates are:

(f) of this section do not apply to §§ 1910.134 and 1910.137.

§ 1910.133 [Corrected]

3. On page 16361, in the table: "Filter Lenses for Protection Against Radiant Energy", the column heading "Electric Size 1/32 in." is corrected to read, "Electrode Size 1/32 in."

§ 1910.136 [Corrected]

4. On page 16362, in the first column, on line 5 in paragraph (a) of § 1910.136, the word "and" between the words "falling" and "rolling" is corrected to read, "or".

§ 1910.138 [Corrected]

5. On page 16362, in the second column, amendatory instruction number 5 is corrected to read:

"5. Section 1910.138 is revised to read as follows:".

[FR Doc. 94–16014 Filed 6–30–94; 8:45 am]
BILLING CODE 4510–26–M

POSTAL SERVICE

39 CFR Part 111

Changes in Preferred Postage Rates—Second- and Third-Class Mail

AGENCY: Postal Service.

ACTION: Postage rate changes; correction.

SUMMARY: This document contains two postage rates that were omitted from the **Federal Register** (59 FR 32335–32336) published on June 23, 1994.

EFFECTIVE DATE: October 2, 1994.

FOR FURTHER INFORMATION CONTACT: Ernest J. Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: The omitted rates were the nonadvertising per-pound rate for classroom and special rate publications, and the in-county level K2 per-piece rate. This notice also corrects the in-county level J1 rate for ZIP+4 barcoded flat-size second-class mail. All postage rates that will be effective October 2, 1994, are published below.

The Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

Effective October 2, 1994, the Domestic Mail Manual is amended as follows:

2. Sections R200 and R300 are revised to include the new postage rates for second- and third-class mail.

Module R—Rates and Fees

* * * * *

R200 Second-Class Mail

* * * * *

2.0 In-County Rates

2.1 Pound Rates

Per pound or fraction:

Zone	Rate
Delivery Office	$0.108
All Others	.118

* * * * *

2.2 Piece Rates

Per addressed piece:

Level	Regular	ZIP+4 (letter-size)	Barcoded (letter-size)	ZIP+4 barcoded (flat-size)
J1	$0.078	0.078	$0.078	$0.078
J3	.078	.074	.074	.063
J5	.078	.074	.061	.063
K1	.041	.....	.....	.....
K2	.036	.....	.....	.....
K3	.034	.....	.....	.....

* * * * *

3.0 Special Nonprofit Rates

3.1 Pound Rates

Pound rates are:

For the nonadvertising portion—$0.109 per pound or fraction.

* * * * *

3.2 Piece Rates

Per addressed piece:

Level	Regular	ZIP+4 (letter-size)	Barcoded (letter-size)	ZIP+4 barcoded (flat-size)
G	$0.174	$0.167	$0.157	$0.151
H3	.131	.127	.121	.116
H5	.131	.127	.114	.116
I1	.093	.....	.....	.....
I2	.091	.....	.....	.....
I3	.086			

* * * * *

4.0 Classroom Rates

4.1 Pound Rates

Pound rates are:

For the nonadvertising portion—$0.109 per pound or fraction.

* * * * *

4.2 Piece Rates

Per addressed piece:

Level	Regular	ZIP+4 (letter-size)	Barcoded (letter-size)	ZIP+4 barcoded (flat-size)
G	$0.174	$0.167	$0.157	$0.151
H3	.131	.127	.121	.116
H5	.131	.127	.114	.116
I1	.093	.....	.....	.....
I2	.091	.....	.....	.....
I3	.086	.....	.....	.....

* * * * *

R300 Third-Class Mail

* * * * *

6.0 Special Bulk Third-Class Letter-Size Minimum Per Piece Rates—Pieces 0.2085 Lb. (3.3363 Oz.) or Less

Entry discount	Nonautomation rates		Carrier route	Saturation W–S
	Basic	3/5		
None	$0.116	$0.103	$0.079	$0.076
BMC	.104	.091	.067	.064
SCF	.099	.086	.062	.059
Delivery Unit	.....	.....	.057	.054

Entry discount	Basic ZIP+4	Automation rates		3-Digit barcoded	5-Digit barcoded
		3/5 ZIP+4	Basic barcoded		
None	$0.109	$0.099	$0.099	$0.093	$0.086
BMC	.097	.087	.087	.081	.074
SCF	.092	.082	.082	.076	.069
Delivery Unit	.....	.....	.....	.....	.....

A transmittal letter making these changes in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–15998 Filed 6–30–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 85, 86, and 600

[FRL–5005–9]

Short Test Emission Regulations for 1996 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks and Revised Performance Warranty Regulations, and Revisions to Corporate Average Fuel Economy (CAFE) Calculations Pursuant to the North American Free Trade Agreement Implementation Act of 1993; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to two final regulations which were published Monday, November 1, 1993, and on January 6, 1994. While these regulations are unrelated, this action makes necessary corrections to both in the same document for the sake of expediency. The November 1, 1993, regulations added new "short test" requirements to previously existing regulations for certification, Selective Enforcement Audit, and recall of new gasoline-fueled light-duty vehicles and light-duty trucks and replaced all six of the previously-existing steady-state performance warranty tests. The January 6, 1994, regulations pertained to changes to the Corporate Average Fuel Economy calculations required by the North American Free Trade Agreement Implementation Act of 1993. Various errors occurred in those two final rules, relating to headings, paragraph references, omissions, and other inaccuracies; this action will correct those errors.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mary E. Walsh, Certification Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 668–4205.

SUPPLEMENTARY INFORMATION:

Background

In its November 1, 1993, rulemaking (58 FR 58382), the Agency promulgated regulations setting forth new "short test" standards and procedures, known as the Certification Short Test, to be added to previously existing regulations for certification, Selective Enforcement Audit, and recall of new gasoline-fueled light-duty vehicles and light-duty trucks, effective beginning with the 1996 model year. In addition, that rule replaced all six of the previously-existing steady-state test procedures used in inspection and maintenance programs for performance warranty purposes. The rule also contained certain minor technical amendments concerning changes to quality control checks and information collected in conjunction with testing that reflect changes that have occurred in laboratory test program needs.

In its January 6, 1994, rulemaking (59 FR 677), the Agency promulgated changes to its fuel economy calculation regulations to conform to changes in the Motor Vehicle Information & Cost Savings Act, 15 U.S.C. 2003(b)(2), made

by section 371 of the North American Free Trade Agreement Implementation Act of 1993, Public Law 103–182 (December 8, 1993).

Both of these rules contained inadvertent errors in its regulatory text, requiring that this action be initiated to rectify them.

The Agency finds there is good cause to make this correction effective immediately, because it merely corrects minor technical errors in the originally promulgated rule, and does not impose any independent requirements.

Need for Correction

As published, the final regulations contained errors which may prove to be misleading and are in need of clarification. Corrections made in this action address those errors as follows:

Corrections made to tables in §§ 9.1 and 85.2225 clarify the proper placement of elements in tables.

The headings for part 85 and for §§ 86.708–94 and 86.708–94 were incorrectly given in the November 1, 1993 rule; no changes to those headings were intended. This action restores the original headings.

In § 85.2233, the figure 5,000 is revised to 4,000 to match changes made in correcting amendments dated November 9, 1993 (58 FR 59366) to the November 5, 1992 final rule (57 FR 52950) upon which the text in § 85.2233(d) is based.

In § 86.096–21, paragraphs (j) and (k) identified six Certification Short Test procedures as being described in § 86.1439; at present, there are only five such procedures. The word "six" is therefore deleted in both paragraphs.

In § 86.116–90, a "0" was mistakenly inserted in place of a "4" in the section title. Since 1994 is the initial year of applicability intended, the suffix is corrected.

In § 86.1406, the reference to the location of fuel specifications inadvertently omitted § 86.216; in this action, that section is added to the references.

Certain corrections made in §§ 86.1430 and 86.1439 rectify erroneous paragraph references.

In § 86.1430, text referring to the first chance portion of a Certification Short Test is deleted because there is no first chance portion to any Certification Short Test.

Section 86.1430 indicates that more information on loaded preconditioning, to be run between the speeds of 30 and 50 mph, can be found in §§ 86.1437(c) and 86.1438(c). While § 86.1438(c) does address loaded preconditioning, § 86.1437(c) does not. Moreover, § 86.1438 prescribes a minimum speed

by section 371 of the North American Free Trade Agreement Implementation Act of 1993, Public Law 103–182 (December 8, 1993).

Both of these rules contained inadvertent errors in its regulatory text, requiring that this action be initiated to rectify them.

The Agency finds there is good cause to make this correction effective immediately, because it merely corrects minor technical errors in the originally promulgated rule, and does not impose any independent requirements.

Need for Correction

As published, the final regulations contained errors which may prove to be misleading and are in need of clarification. Corrections made in this action address those errors as follows:

Corrections made to tables in §§ 9.1 and 85.2225 clarify the proper placement of elements in tables.

The headings for part 85 and for §§ 86.708–94 and 86.708–94 were incorrectly given in the November 1, 1993 rule; no changes to those headings were intended. This action restores the original headings.

In § 85.2233, the figure 5,000 is revised to 4,000 to match changes made in correcting amendments dated November 9, 1993 (58 FR 59366) to the November 5, 1992 final rule (57 FR 52950) upon which the text in § 85.2233(d) is based.

In § 86.096–21, paragraphs (j) and (k) identified six Certification Short Test procedures as being described in § 86.1439; at present, there are only five such procedures. The word "six" is therefore deleted in both paragraphs.

In § 86.116–90, a "0" was mistakenly inserted in place of a "4" in the section title. Since 1994 is the initial year of applicability intended, the suffix is corrected.

In § 86.1406, the reference to the location of fuel specifications inadvertently omitted § 86.216; in this action, that section is added to the references.

Certain corrections made in §§ 86.1430 and 86.1439 rectify erroneous paragraph references.

In § 86.1430, text referring to the first chance portion of a Certification Short Test is deleted because there is no first chance portion to any Certification Short Test.

Section 86.1430 indicates that more information on loaded preconditioning, to be run between the speeds of 30 and 50 mph, can be found in §§ 86.1437(c) and 86.1438(c). While § 86.1438(c) does address loaded preconditioning, § 86.1437(c) does not. Moreover, § 86.1438 prescribes a minimum speed of 30 mph but neglected to give the previously-mentioned maximum speed of 50 mph. To clarify the existing requirements, these inconsistencies are corrected.

In § 86.1439, paragraph (d) describes the CST—Loaded Test, which includes a loaded driving mode on the dynamometer. A manufacturer brought it to EPA's attention that the point at which the gear is shifted into "drive" for initiating the loaded mode and then back into "neutral" afterwards was omitted; appropriate text is added to clarify the procedure. Also in this section, paragraph (f)(1)(ii)(A) was mistakenly published with text transposed from another paragraph in that section; the correction restores the intended test procedure indicated in the NPRM published on January 8, 1993 (58 FR 3380).

In §§ 600.502–81 and 600.511–80, inadvertent errors that occurred in the regulatory text that incorrectly reference other paragraphs of regulatory text are corrected.

Correction of Publication

Accordingly, the publication on November 1, 1993, and the publication on January 6, 1994, of the final regulations which were the subject of 58 FR 58382 and 59 FR 677, respectively, are corrected as follows:

§ 9.1 (Corrected)

1. On page 58400, in the first column, in § 9.1, the notation "* * * * *" is added immediately under the heading "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures".

Part 85 (Corrected)

2. On page 58400, in the second column, the heading "Control of Air Pollution From Motor Vehicles and New and In-Use Motor Vehicle Engines" is corrected to read "Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines".

§ 85.2225 (Corrected)

3. On page 58413, in § 85.2225, paragraph (c)(1), in the table at the bottom of the page, in the first column, in line one, the words "HC, ppm" is corrected to read "HC, as hexane", and on the second line, the words "as hexane" are deleted.

§ 85.2233 (Corrected)

4. On page 58415, in the second column, in § 85.2233, paragraph (d), in lines four and six, the figure "5,000" is corrected twice to read "4,000".

§ 86.096–21 (Corrected)

5. On page 58417, in the third column, in § 86.096–21, paragraph (j), in line four, and in paragraph (k), in line four, the word "six" is removed.

§ 86.116–90 (Corrected)

6. On page 58422, in the first column, in instruction 41 and in the section heading, "§ 86.116–90" is corrected to read "§ 86.116–94".

§ 86.708–94 (Corrected)

7. On page 58424, in the second column, in § 86.708–94, in the second line of the heading, the words "light duty" are corrected to read "light-duty".

§ 86.708–88 (Corrected)

8. On page 58424, in the third column, in § 86.708–98, in the second line of the heading, the words "light duty" are corrected to read "light-duty".

§ 86.1406 (Corrected)

9. On page 58427, in the second column, in § 86.1406, paragraph (b), in line three, the words " §§ 86.113 and 86.1413" are corrected to read "§ 86.113, 86.213, and 86.1413".

§ 86.1430 (Corrected)

10. On page 58432, in the third column, in § 86.1430, paragraph (a)(7)(ii), in lines two and three, the words "the first chance test of" are removed.

11. On page 58435, in the first column, in § 86.1430, paragraph (c)(3)(ii), in line five, the words "in § 86.1438" are corrected to read "in §§ 86.1438 and 86.1439".

§ 86.1437 (Corrected)

12. On page 58436, in the first column, in § 86.1437, paragraph (c), in line four, the words "or, optionally, the vehicle will undergo loaded operation for a minimum of 30 seconds between the speeds of 30 and 50 mph (48 to 80 kph)" are added to the end of the first sentence, and in lines seven and ten, the words "or speed" are added before the word "range".

§ 86.1438 (Corrected)

13. On page 58437, in the second column, in § 86.1438, paragraph (c), in lines seven and eight, the words "at a minimum speed of 30 mph (48 kph)" are replaced by the words "between the speeds of 30 and 50 mph (48 to 80 kph)".

§ 86.1439 (Corrected)

14. On page 58439, in the first column, in § 86.1439, paragraph (d), in line six, the phrase ", and the gear selector is in 'drive' for automatic transmissions, or in second gear (or

third gear if more appropriate) for manual transmissions" is added after the words "are met".

15. On page 58439, in the first column, in § 86.1439, paragraph (d)(1)(i), in line twelve, the words "(d)(1)(iii) (A) through (C)" are corrected to read "(d)(1)(ii) (A) and (B)".

16. On page 58439, in the first column, in § 86.1439, paragraph (d)(1)(ii)(B), in line two, the words "the mode is terminated" are corrected to read "the test is terminated".

17. On page 58439, in the first column, in § 86.1439, paragraph (d)(2)(i), in line three, the phrase "and the gear selector is in 'park' or 'neutral' " is added after the words 'has reached zero', and in line six, the reference "(d)(2)(iii)" is corrected to read "(d)(2)(ii)".

18. On page 58439, in the third column, in § 86.1439, paragraph (f)(1)(ii)(A) is corrected to read as follows:

§ 86.1439 Certification short test emission test procedures—EPA.

* * * * *

(f) * * *

(i) * * *

(ii) * * *

(A) The vehicle passes the high-speed mode and the mode is terminated at an elapsed time of 90 seconds (mt=90) if any measured values are less than or equal to the applicable short test standards as described in § 86.1438(d).

* * * * *

§ 600.502–81 (Corrected)

19. In the Federal Register published on January 6, 1994, on page 678, in the third column, in § 600.502–81, paragraph (a)(1)(iii), in lines two and three, the reference "paragraph (b)(3) of this section" is corrected to read "§ 600.511–80(b)(3)".

§ 600.511–80 (Corrected)

20. In the Federal Register published on January 6, 1994, on page 679, in the first column, in § 600.511–80, paragraph (a)(1), in line ten, the reference "§ 600.511–80(b)(3)" is corrected to read "paragraph (b)(3) of this section".

Dated: June 24, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–15981 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[OR–11–1–5527a; FRL–4891–9]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving a revision to the state implementation plan (SIP) submitted by the State of Oregon for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable moderate nonattainment area PM–10 SIP for La Grande, Oregon.

EFFECTIVE DATE: This action will be effective on August 30, 1994 unless adverse or critical comments are received by August 1, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to: Montel Livingston, EPA, 1200 Sixth Avenue, AT–082, Seattle, WA 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460. Copies of the State's request and other information are available for inspection during normal business hours at the following locations: EPA, 1200 Sixth Avenue, Seattle, WA 98101, and the State of Oregon Department of Environmental Quality, 811 SW., Sixth Avenue, Portland, OR 97204–1390.

FOR FURTHER INFORMATION CONTACT: Stephen Fry, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101 (206) 553–2575.

SUPPLEMENTARY INFORMATION:

1. Background

The Union County, La Grande, Oregon, Urban Growth Boundary (UGB), was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (CAA), upon enactment of the Clean Air Act Amendments (CAAA) of 1990[1] (see 56 FR 56694 (November 6, 1991) and 40 CFR § 81.338). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of Title I of the Act.[2] EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this proposal and the supporting rationale. In this rulemaking action on the State of Oregon's moderate PM–10 SIP for the La Grande nonattainment area, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above. EPA will consider any timely submitted comments before taking final action on this proposal.

Those States containing initial moderate PM–10 nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994: and

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

4. Provisions to assure that the control quirements applicable to major ationary sources of PM–10 also apply major stationary sources of PM–10 recursors except where the dministrator determines that such ources do not contribute significantly PM–10 levels which exceed the AAQS in the area see sections 172(c), 88, and 189 of the Act).

Additional provisions are due at a ter date. States with initial moderate M–10 nonattainment areas were quired to submit a permit program for e construction and operation of new nd modified major stationary sources PM–10 by June 30, 1992 (see section 89(a)). Such States also were required submit contingency measures by ovember 15, 1993, which become ffective without further action by the tate or EPA, upon a determination by PA that the area has failed to achieve FP or to attain the PM–10 NAAQS by e applicable statutory deadline (see ection 172(c)(9) and 57 FR 13543–3544).

. This Action

Section 110(k) of the Act sets out rovisions governing EPA's review of IP submittals (see 57 FR 13565–13566). this action, EPA is granting approval f the plan revision submitted to EPA n November 15, 1991. EPA has etermined that the submittal meets all f the applicable requirements of the ct due on November 15, 1991, with espect to moderate area PM–10 ubmittals. In addition, as described in arts II.7 and II.5 below, EPA is pproving the SIP revision submitted on ovember 15, 1991, as meeting the equirement for contingency measures or the La Grande, Oregon moderate M–10 nonattainment area and is ranting the exclusion from PM–10 ontrol requirements authorized under ection 189(e) of the Act.

nalysis of State Submission

Procedural Background

The Act requires States to observe ertain procedural requirements in eveloping implementation plans and lan revisions for submission to EPA. ection 110(a)(2) of the Act provides hat each implementation plan ubmitted by a State must be adopted fter reasonable notice and public earing.[3] Section 110(l) of the Act milarly provides that each revision to n implementation plan submitted by a tate under the Act must be adopted by

[3] Also Section 172(c)(7) of the Act requires that an provisions for nonattainment areas meet the pplicable provisions of section 110(a)(2).

such Stat public he

EPA al submittal warrants (see secti EPA's co submittal appendix complete days of re However, complete complete by EPA si submissio

The Cit hearings on July 17 adopted t The State public he 10 SIP on and Portla was modi comments adopted N modified Novembe revision t

The SIP EPA to de after its su the compl CFR part April 27, Director o Environm indicating submittal in the revi approves SIP submi nonattainm comment

2. Accura

Section that nonat include a current in from all so the nonatt inventory comprehe inventory area. Beca inventorie attainmen demonstra practicabl inventorie attainmen demonstra 13539).

The base (1986) dev

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area see sections 172(c), 188, and 189 of the Act).

Additional provisions are due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Such States also were required to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–13544).

I. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). In this action, EPA is granting approval of the plan revision submitted to EPA on November 15, 1991. EPA has determined that the submittal meets all of the applicable requirements of the Act due on November 15, 1991, with respect to moderate area PM–10 submittals. In addition, as described in parts II.7 and II.5 below, EPA is approving the SIP revision submitted on November 15, 1991, as meeting the requirement for contingency measures for the La Grande, Oregon moderate PM–10 nonattainment area and is granting the exclusion from PM–10 control requirements authorized under section 189(e) of the Act.

II. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The City of La Grande held public hearings on the La Grande PM–10 plan on July 17 and August 1, 1991 and adopted the plan on August 7, 1991. The State of Oregon subsequently held public hearings on the La Grande PM–10 SIP on October 1, 1991 in La Grande and Portland, Oregon, and after the plan was modified in response to public comments, the control strategy was adopted November 8, 1991. The modified plan was submitted to EPA on November 15, 1991 as a proposed revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. A letter dated April 27, 1992 was forwarded to the Director of the Oregon Department of Environmental Quality (ODEQ) indicating the completeness of the submittal and the next steps to be taken in the review process. In this action EPA approves the State of Oregon's PM–10 SIP submittal for the La Grande PM–10 nonattainment area and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the attainment/nonattainment demonstration submission (see 57 FR 13539).

The base year emission inventory (1986) developed for the La Grande UGB identified the major sources of PM–10 concentrations during 24-hour worst case winter periods as residential wood combustion (60%), fugitive dust (31%), industrial emissions (5%) and other sources, including but not limited to, transportation, and commercial space heating (4%). Annual emissions for 1986 were residential wood combustion (48%), fugitive dust (36%), industrial emissions (10%), transportation (5%) and other sources (1%).

EPA is approving the emissions inventory because it generally appears to be accurate, comprehensive and current, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act.[4] For further details see the Technical Support Document (TSD).

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

Attainment of the 24-hour and annual standards is based on five main control strategies designed to reduce woodsmoke, fugitive dust and industrial point source emissions. The available control measures to be implemented in the La Grande nonattainment area include the following:

a. Voluntary Wood Combustion Curtailment Program

The City of La Grande administers the voluntary wood combustion curtailment program. The City Planning Department makes the daily advisory calls, conducts compliance surveys, and the La Grande Air Quality Advisory Committee (LGAQAC) operates an extensive public education program in conjunction with the ODEQ.

The voluntary curtailment program for the La Grande nonattainment area includes a public education program that describes the need for the public's cooperation, the health, safety, energy, economic benefits to individuals and

[3] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[4] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline*. The guidance provided in this document appears to be consistent with the amended Act; therefore, EPA may continue to rely on this guidance. See section 193 of the Act.

the community, and steps individuals can take to help reduce emissions.

Key elements of the voluntary curtailment program and public information program include: home weatherization, firewood seasoning, cleaner burning practices, proper stove installation and sizing, maintenance of woodburning systems and curtailment of woodburning during poor ventilation episodes.

Woodburning advisories are made and issued daily by 10:15 a.m. from November 1 through March 1. An empirical formula (based on the previous 12-hour ODEQ nephelometer readings and the last 3 hours of meteorological conditions) is used to predict the present day's PM–10 level. The predicted PM–10 level determines the green/yellow/red advisory day status (described below). The advisory is provided daily on a telephone answering machine. The advisory is also printed in the local daily newspaper, and aired by the local radio stations and cable television channel. Also, in many cases, the advisory is made part of the weather forecast on the local news.

Woodburning curtailment advisories are issued at three levels: (1) A green advisory is made when the ambient concentration is expected to be 50 μg/m^3 or less, (2) a yellow advisory is made when the concentration is expected to be greater than 50 μg/m^3 but less than or equal to 95 μg/m^3, (3) a red advisory is made when the ambient concentration is expected to be greater than 95 μg/m^3.

A green advisory allows for wood burning in stoves and fireplaces, but these fires should be fueled with dry, well-seasoned wood. It is also requested that citizens build small, hot fires and do not damper down their stoves during a green advisory. During a yellow advisory all residents, except those persons using wood as a sole source of heat, wood pellet stoves and ODEQ or EPA certified woodstoves, are asked to curtail wood burning for the next 24 hours and outdoor burning is banned. During a red advisory all residents, except those using wood as a sole source of heat or those using pellet stoves, are asked to curtail wood burning for the next 24 hours and outdoor burning is banned.

Compliance with the advisories is determined through day and nighttime surveys of woodburning activity during green, yellow and red curtailment periods. Green days are surveyed to determine a base from which to judge compliance with a curtailment call. Data from the surveys are used to direct the public education program, evaluate progress toward achieving program goals and evaluate trends in PM–10 concentrations.

ODEQ requests a 30 percent emission reduction credit for its voluntary curtailment program in the La Grande UGB during 24-hour worst case periods. The 30 percent credit is greater than the 10 percent generally suggested by EPA. The recommended 10 percent credit is viewed by EPA as a "starting point in assessing the effectiveness of residential wood combustion control programs". However, final judgment of the amount of credit to be granted is determined by EPA's regional offices based on the program features outlined in EPA's *Guidance Document for Residential Wood Combustion Emission Control Measures*. When data are available, credit higher than 10 percent may be granted based on the program's effectiveness.

During the 1992/1993 wood heating season, La Grande conducted compliance surveys in the voluntary curtailment area during green, yellow and red advisories. The results of these surveys indicate that 7 percent and 54 percent of the woodburners comply on yellow and red advisory days, respectively. The observed 54 percent compliance rate on red advisory days easily exceeds the 30 percent compliance rate that the ODEQ is claiming for La Grande. Based on these results and EPA's review of the remaining curtailment program elements, also considering public education and La Grande's and ODEQ's experience in managing curtailment programs, EPA accepts the 30 percent credit claimed for this control measure. Further description of this program and justification for this action is set out in the TSD.

b. Woodstove Certification

In 1983, the Oregon Legislature directed ODEQ to require that all new woodstoves sold in the state be certified through laboratory testing. As a result, stoves sold after July 1986 were required to emit particles at a rate of 50 percent less than conventional woodstoves. After July 1988, new woodstoves were required to emit 70 percent less than conventional woodstoves.

The Oregon Environmental Quality Commission adopted on March 2, 1990, and submitted to EPA on March 15, 1990, revisions to Oregon's Woodstove Certification Program making it consistent with EPA's New Source Performance Standards (NSPS) for Residential Wood Heaters, in 40 CFR part 60, subpart AAA. Currently, all woodstoves sold in the State of Oregon must be both ODEQ and EPA certified. This SIP revision was approved by EPA as part of the Oregon SIP on June 8, 1992 (57 FR 24373).

ODEQ estimates that the woodstove certification program will provide a 24 percent credit against baseline 1986 woodstove emissions by 1994.[5] Oregon has historically pursued an aggressive woodstove certification program. Oregon was the first state in the nation to adopt, implement and enforce a program of this type (1984). EPA promulgated the NSPS on February 26, 1988, modeled, in significant part, after Oregon's program.

The projected emission reductions, in conjunction with a statewide ban (OAR 340–34–010) on the sale of used uncertified stoves, a ban on the installation of used uncertified stoves, and Oregon's model woodstove certification program supports EPA's acceptance of Oregon's woodstove certification credit claim.

c. Woodstove Replacement and Weatherization Programs

ODEQ requests a 2 percent credit on a 24-hour basis for the $325,000 woodstove replacement and weatherization program. This State of Oregon Community Block Grant was available to low and moderate income residents.

As of September 1993, 53 uncertified woodstoves have been removed from residential dwellings due to the program. These uncertified woodstoves were replaced with 37 natural gas furnaces, 12 phase II certified woodstoves and 4 pellet stoves. According to EPA calculations, the elimination of these 53 uncertified woodstoves equals a 2 percent credit (when compared against the 2,270 homes utilizing uncertified woodstoves in base year 1986; and using 99 percent, 90 percent and 70 percent emission reduction credits for replacing uncertified woodstoves with natural gas furnaces, pellet stoves and phase II certified woodstoves, respectively). Therefore, even without the home weatherization that also was done, the 2 percent credit achieved equals the 2 percent credit claimed by ODEQ for the program. Because of the demonstrated success of this program, EPA accepts the 2 percent credit requested by the ODEQ. Further description of the program and justification for EPA's action is set out in the TSD.

[5] This estimate uses a 1986 baseline inventory and assumes or relies on: (1) a 1% annual growth in firewood consumed by woodstoves, (2) a 2% annual decline in firewood consumed by fireplaces, (3) a useful stove life of 20 years, and (4) the fact that the typical certified woodstove and pelletstove emits 50% and 90% less, respectively, than a conventional stove. EPA believes this is an accurate portrayal of the situation in La Grande.

d. Industrial Controls

On November 8, 1991, the Oregon Environmental Quality Commission adopted changes to its Industrial Rules (OAR 340–30–200 to 230) for La Grande. EPA published a Final Rulemaking on February 23, 1993 (58 FR 10972) with an April 26, 1993 effective date, which detailed its approval of these regulations. These industrial rules impose new emission limits for existing wood-waste boilers (heating-input capacity of greater than 35 million BTU/Hr), wood particle dryers at particleboard plants, air conveying systems and fugitive emissions (for any large sawmill, plywood mill, veneer manufacturing plant, particleboard plant, hardboard plant or charcoal manufacturing plant that is located in the La Grande Urban Growth Area). Because of the current PM–10 source mix in the area, only the wood-waste boiler and fugitive control plan requirements are presently being implemented in the La Grande PM–10 nonattainment area.

The overall reduction in area-wide industrial PM–10 emissions, due to the implementation of the new industrial rules and replacement of 11 wood-waste boilers with three significantly cleaner natural gas-fired boilers, between 1986 and 1994 is conservatively projected to be 30 percent.

Based on EPA's interpretation of the RACT requirement, as set out in the General Preamble and the April 2, 1991, memorandum entitled "PM–10 Moderate Area SIP Guidance: Final Staff Work Product," EPA has determined that the industrial source control measures satisfy the RACT requirement for stationary sources in the La Grande moderate PM–10 nonattainment area.

EPA believes that the emission limits imposed on the board products industries, supported by their enforceability, will achieve the estimated industrial source emission reductions of 30 percent. Therefore, EPA accepts the 30 percent credit requested by ODEQ. For further details the reader is referred to the Technical Support Document (TSD) corresponding with this action, which is available at the address indicated above.

e. Winter Road Sanding Control Program

Winter road sanding has been shown to adversely affect PM–10 levels throughout the western United States, including La Grande, in areas that experience measurable snowfall. The silt-laden, friable sand is placed on roads by local and state highway departments to provide vehicles with

d. Industrial Controls

On November 8, 1991, the Oregon Environmental Quality Commission adopted changes to its Industrial Rules (OAR 340–30–200 to 230) for La Grande. EPA published a Final Rulemaking on February 23, 1993 (58 FR 10972) with an April 26, 1993 effective date, which detailed its approval of these regulations. These industrial rules impose new emission limits for existing wood-waste boilers (heating-input capacity of greater than 35 million BTU/Hr), wood particle dryers at particleboard plants, air conveying systems and fugitive emissions (for any large sawmill, plywood mill, veneer manufacturing plant, particleboard plant, hardboard plant or charcoal manufacturing plant that is located in the La Grande Urban Growth Area). Because of the current PM–10 source mix in the area, only the wood-waste boiler and fugitive control plan requirements are presently being implemented in the La Grande PM–10 nonattainment area.

The overall reduction in area-wide industrial PM–10 emissions, due to the implementation of the new industrial rules and replacement of 11 wood-waste boilers with three significantly cleaner natural gas-fired boilers, between 1986 and 1994 is conservatively projected to be 30 percent.

Based on EPA's interpretation of the RACT requirement, as set out in the General Preamble and the April 2, 1991, memorandum entitled "PM–10 Moderate Area SIP Guidance: Final Staff Work Product," EPA has determined that the industrial source control measures satisfy the RACT requirement for stationary sources in the La Grande moderate PM–10 nonattainment area.

EPA believes that the emission limits imposed on the board products industries, supported by their enforceability, will achieve the estimated industrial source emission reductions of 30 percent. Therefore, EPA accepts the 30 percent credit requested by ODEQ. For further details the reader is referred to the Technical Support Document (TSD) corresponding with this action, which is available at the address indicated above.

e. Winter Road Sanding Control Program

Winter road sanding has been shown to adversely affect PM–10 levels throughout the western United States, including La Grande, in areas that experience measurable snowfall. The silt-laden, friable sand is placed on roads by local and state highway departments to provide vehicles with better traction on snow and ice. However, once the snow has melted and the roads have dried out, the remaining dry, silty road sand is easily resuspended by moving vehicular traffic.

The La Grande emission inventory identifies road sanding dust as a 14 percent contributor to worst case day PM–10 levels in both base year 1986 and attainment year 1994, without control strategies. To address the winter road sanding problem the City of La Grande obtained a written commitment, in a letter dated October 28, 1991, from the Oregon Department of Transportation (ODOT) to reduce sanding application rates and to cleanup sanding materials from roadways as soon as practically possible.

ODOT and ODEQ project a 30 percent (436 lbs/day) reduction in PM–10 will be accomplished on worst case days in 1994, due to the winter road sanding control program. This emission reduction value was determined from ODOT's projection that the new application rates and cleanup policies alone will reduce the amount of fugitive dust from sanding by 36 percent. ODEQ then determined that 84 percent of the PM–10 produced as the result of road sanding was created on ODOT roads. Therefore, 84 percent of 36 percent is the 30 percent emission reduction value credited to the winter road sanding program.

In addition to the aforementioned commitments, the ODOT began utilizing road sand with a lower silt content in November 1991; thus, this road material is less likely to become airborne as PM–10. However, the ODEQ did not take emission reduction credit for this measure. Therefore, EPA approves the utilization of this cleaner sanding material as a SIP strengthening measure.

There are a number of fugitive dust control measures that the City of La Grande and State of Oregon require in the La Grande PM–10 nonattainment area. The measures include: paving/stabilizing access streets to industrial or commercial sites; cleaning and securing construction vehicle loads to prevent trackout; requiring haul trucks to be covered; utilization of dust suppressants to control PM–10 emissions from haul roads greater than 50 feet in length; paving or chemically stabilizing unpaved roads; paving all off-street parking areas, including driveways and truck loading areas; stabilizing material storage piles through use of dust palliatives, water, compacting or other methods; and prohibiting the disturbance or removal of soil cover from any area larger than 5,000 sq. ft. (unless a dust control plan has been approved by the City). Nonetheless ODEQ declined to take credit for these fugitive dust control measures because the emissions were difficult to inventory and these reductions were also unnecessary to demonstrate attainment of the PM–10 standard. Instead these measures strengthen the SIP and help further assure that these fugitive dust sources will not contribute to a future exceedance of the PM–10 NAAQS.

EPA has determined that the existing ordinances, programs, and regulations either submitted with the La Grande PM–10 SIP submission or else currently contained in the federally approved Oregon SIP meet the RACM requirement. EPA also accepts ODEQ's projection that the road sanding measures will reduce PM–10 emissions from winter road sanding by 30 percent. The lower silt content sand, in conjunction with the other fugitive dust control measures, will also help ensure that sanding and other fugitive dust sources will be adequately controlled. While the SIP is not relying on these strategies to attain the PM–10 standard, EPA is approving these measures as strengthening the SIP.

f. Other Sources

Where sources of PM–10 contribute insignificantly to the PM–10 problem in the area, EPA's policy is that RACM does not require the implementation of potentially available control measures (57 FR 13540).

ODEQ has determined through its analysis of the nonattainment area emissions data that prescribed burning, open burning and transportation were not significant sources of PM–10 emissions (less than 4 percent on a worst case days). Nevertheless, control measures addressing sources of prescribed and open burning are currently required by ODEQ, Union County, and the City of La Grande. While the implementation of all available prescribed and open burning measures would not significantly expedite attainment in the area, these measures as currently required should help to ensure on-going maintenance of the PM–10 NAAQS in the area and EPA is therefore approving them as strengthening the SIP. The following is a list of adopted control measures regulating open burning and prescribed burning contained in the plan:

(1) A mandatory field burning smoke management program was adopted on June 5, 1991, by Union County (Ordinance 1991–6) in response to the Class I area visibility protection provisions of the Clean Air Act (Section 169A), and was implemented during the summer of 1991. The ordinance requires

that agricultural burning be prohibited when smoke can impact either the Eagle Cap Wilderness or the La Grande PM–10 nonattainment area. The ordinance is enforced by Union County.

(2) The city of La Grande's Air Quality Program (Resolution 4122, Series 1991) includes a prohibition on open burning and the use of burn barrels on "Yellow" or "Red" woodburning curtailment days. Open burning is prohibited at all times other than during the months of April, May, October and November under Section 8 of the City's Uniform Fire Code.

EPA has reviewed ODEQ's submittals and associated documentation and has concluded that they adequately justify the control measures to be implemented. EPA believes that implementation of the La Grande PM–10 nonattainment plan control strategy will result in the attainment of the PM–10 NAAQS as expeditiously as practicable and no later than December 31, 1994. By this notice, EPA is approving ODEQ's control strategy as satisfying the RACM (including RACT) requirement.

4. Demonstration

Moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (57 FR 13539). Alternatively, the state must show attainment by December 31, 1994, is impracticable. The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR section 50.6). The annual PM–10 NAAQS is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$ (id.).

As indicated in the General Preamble, 57 FR at 13539, EPA has developed a supplemental attainment demonstration policy for initial PM–10 nonattainment areas. This supplemental policy provides additional flexibility in meeting the PM–10 attainment demonstration requirements. An earlier April 2, 1991, memorandum titled, "PM–10 Moderate Area SIP Guidance: Final Staff Work Product" contained "Attachment 5" which described the same policy.

ODEQ conducted an attainment demonstration based upon receptor modeling (Chemical Mass Balance (CMB) version 7.0) and proportional emission inventory roll-back analysis in the La Grande nonattainment area. Both approaches were in close agreement in identifying the major sources of PM–10 on exceedance days (local woodsmoke = 61 percent and 60 percent, and soil dust = 38 percent and 32 percent for CMB and roll-back methods, respectively).

This demonstration indicates that La Grande will attain both the 24-hour and annual PM–10 NAAQS, with the maximum 24-hour concentration predicted to be 148 $\mu g/m^3$ and an annual arithmetic average concentration projected to be 47 $\mu g/m^3$ in 1994. The demonstration also showed that the PM–10 NAAQS will be maintained in future years by predicting a 24-hour worst day design concentration of 139 $\mu g/m^3$ for the year 2000, and projecting an annual average for the year 2000 of 48 $\mu g/m^3$. The control strategy used to achieve these design concentrations is summarized in the section titled "RACM (including RACT)." A more detailed description of the attainment demonstration is contained in the TSD accompanying this notice.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539–13540 and 13541–13542).

The filter analyses (chemical mass balance) indicated that on average, only 1 percent and 4 percent of the PM–10 mass was comprised of secondary particulate on high concentration days and annually, respectively. EPA believes that this is an insignificant portion and, therefore, is granting the exclusion from control requirements authorized under section 189(e) for major stationary sources of PM–10 precursors.

Note that while EPA has made a general finding for this area, this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Enforceability Issues

All measures and other elements in the SIP must be enforceable by ODEQ and EPA (See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et. al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply to the types of activities identified in that discussion including, for example, existing large, wood-fired boilers with a heat input capacity greater than 35 million BTU/Hr, and woodstoves and other wood burning activities. The SIP provides that the control measures for the affected activities apply throughout the entire nonattainment area.

During its review, EPA determined that the Oregon Revised Statute Chapter 468, as amended in 1991, failed to provide sufficient authority to ensure that the industrial source control measures contained in the La Grande PM–10 SIP could be adequately enforced. Specifically, ORS 468.126(1) provided that penalties could not be assessed against a source for permit violations unless the state first provided notice of the violation to the source, and further, if within five days, the source came into compliance or provided an adequate schedule to come into compliance in the future, no penalties could be assessed. EPA informed the Oregon Department of Environmental Quality that this provision was unacceptable to the extent it applied to permit limits which were relied on to attain, maintain or demonstrate attainment with a NAAQS.

On September 3, 1993, the Governor of Oregon signed into law new legislation correcting this deficiency. The new law provides that the five-day advance notice provision required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from federal approval or delegation (see Oregon Senate Bill 86, 1993 Session, § 3 (1993) to be codified at ORS 468.126(2)(e)). Because the notice provision bars civil penalties from being imposed for certain permit violations, application of 468.126(1) fails to provide the adequate

enforcement authority that a state must demonstrate to obtain SIP approval (see, e.g., sections 110 and 172(c) of the Clean Air Act and 40 CFR 51.230). Accordingly, the notice requirement would disqualify this PM–10 program from federal approval. Thus, the state has acknowledged, by a letter dated November 5, 1993, that, pursuant to ORS 468.126(2)(e), the notice provision in ORS 468.126(1) will not apply to violations of SIP requirements contained in permits, including permits containing industrial source control requirements, relied upon to attain, maintain or demonstrate attainment with a NAAQS.

In regards to a separate enforceability issue, the following is a summary of the city and county ordinances which EPA approves as part of the SIP as either a required control measure or SIP strengthening measure. The content of the two ordinances and their relationship to the SIP control strategies are discussed in more detail in the TSD.

a. City of La Grande Air Quality Improvement Resolution 4122, Series 1991, August 7, 1991. This ordinance delineates the City of La Grande's control of smoke and fugitive dust (control measure).

b. Union County Ordinance No. 1991–6. This ordinance controls and manages field burning in Union County, Oregon and creates a Union County smoke management program (SIP strengthening measure).

The SIP requires that all affected activities must be in full compliance with the applicable SIP provisions by December 10, 1993. In addition to the applicable control measures, this includes the applicable recordkeeping requirements which are addressed in the supporting technical information.

ODEQ's submittals and the TSD contain further information on enforceable requirements including enforceable emission limitations; a description of the rules contained in the SIP and the source types subject to them; test methods and compliance schedules; averaging times for compliance test methods; correctly cited references of incorporated methods/rules; and reporting and recordkeeping requirements.

ODEQ also has a program that will ensure that the control measures contained in the La Grande PM–10 SIP are adequately enforced. The TSD contains a discussion of the personnel and funding intended to support effective implementation of the control measures.

enforcement authority that a state must demonstrate to obtain SIP approval (see, e.g., sections 110 and 172(c) of the Clean Air Act and 40 CFR 51.230). Accordingly, the notice requirement would disqualify this PM–10 program from federal approval. Thus, the state has acknowledged, by a letter dated November 5, 1993, that, pursuant to ORS 468.126(2)(e), the notice provision in ORS 468.126(1) will not apply to violations of SIP requirements contained in permits, including permits containing industrial source control requirements, relied upon to attain, maintain or demonstrate attainment with a NAAQS.

In regards to a separate enforceability issue, the following is a summary of the city and county ordinances which EPA approves as part of the SIP as either a required control measure or SIP strengthening measure. The content of the two ordinances and their relationship to the SIP control strategies are discussed in more detail in the TSD.

a. City of La Grande Air Quality Improvement Resolution 4122, Series 1991, August 7, 1991. This ordinance delineates the City of La Grande's control of smoke and fugitive dust (control measure).

b. Union County Ordinance No. 1991–6. This ordinance controls and manages field burning in Union County, Oregon and creates a Union County smoke management program (SIP strengthening measure).

The SIP requires that all affected activities must be in full compliance with the applicable SIP provisions by December 10, 1993. In addition to the applicable control measures, this includes the applicable recordkeeping requirements which are addressed in the supporting technical information.

ODEQ's submittals and the TSD contain further information on enforceable requirements including enforceable emission limitations; a description of the rules contained in the SIP and the source types subject to them; test methods and compliance schedules; averaging times for compliance test methods; correctly cited references of incorporated methods/rules; and reporting and recordkeeping requirements.

ODEQ also has a program that will ensure that the control measures contained in the La Grande PM–10 SIP are adequately enforced. The TSD contains a discussion of the personnel and funding intended to support effective implementation of the control measures.

7. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate PM–10 nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13543–13544). These measures must have been submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's attainment control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make reasonable further progress (RFP) or attain the PM–10 NAAQS by the applicable statutory deadline. The La Grande nonattainment area SIP contains the following contingency measures:

a. A mandatory woodsmoke curtailment program that is to take effect if the EPA determines that the area fails to attain the NAAQS by December 31, 1994. ODEQ has the authority to implement and enforce a mandatory curtailment program, upon notification by EPA that the area has failed to attain the NAAQS, should the City of La Grande or the County of Union fail to implement one. EPA approved these rules (OAR 340–34–150 through 175) as part of the Oregon SIP on June 9, 1992 (57 FR 24373).

b. Removal of uncertified woodstoves upon home sale for any area that fails to meet the PM–10 SIP attainment date of December 31, 1994. These stoves would have to be removed and destroyed prior to sale of the home. EPA approved these rules (OAR 340–34–200 through 215) as part of the Oregon SIP on June 9, 1992 (57 FR 24373).

c. The continuation of the woodstove certification program (after December 31, 1994) will provide a net reduction in residential wood burning emissions between the years 1994 and 2000, and on into the future.

d. The application of BACT emission controls to industrial sources in La Grande will result in further reductions of PM–10 emissions. Oregon state regulations (OAR 340–21–200 through 245) also contain additional industrial contingency measures that would apply to Oregon's PM–10 nonattainment areas should an area not attain the standard by the applicable CAA deadline. These rules were approved by EPA as part of the Oregon SIP on August 19, 1992 (57 FR 37468). The rules became effective on October 19, 1992.

The expected emission reductions to be achieved by implementation of the contingency measures after the December 31, 1994 attainment date, is estimated to be at least 90 tons per year. This represents at least a 58 percent reduction when compared with the 156 tons per year emission reduction in the attainment plan, which is greater than the 25 percent reduction value suggested in the General Preamble (57 FR 13543–13544).

The SIP provides that the mandatory woodsmoke curtailment program, removal of uncertified woodstoves and application of BACT emission controls to industrial sources in La Grande can take affect without further action by the state or EPA, should EPA determine that the La Grande nonattainment area has failed to achieve RFP or attain the PM–10 standard by the statutory attainment date of December 31, 1994. The net reduction in woodstove emissions due to the continuation of the woodstove certification program will occur regardless of whether or not the PM–10 standard is attained by December 31, 1994.

EPA is approving the La Grande nonattainment area contingency measures.

III. Implications of This Action

EPA is approving this plan revision submitted to EPA for the La Grande nonattainment area. Among other things, ODEQ has demonstrated that the La Grande moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994. Note that this action includes approval of the contingency measures for the La Grande nonattainment area.

IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for two years. The EPA submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continued in effect under Executive Order 12866 which revoked Executive Order 12291 on September 30, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future

request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on August 30, 1994 unless adverse comments are received by August 1, 1994. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule (please see short informational document published, simultaneously, in the proposal section of this **Federal Register**).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. section 7607(b)(2).

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact or entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: May 25, 1994.

Chuck Clarke,

Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of the Federal Register on July 1, 1982.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(107) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(107) On November 15, 1991, the ODEQ submitted a PM–10 nonattainment area SIP for La Grande, Oregon.

(i) Incorporation by reference.

(A) November 15, 1991 letter from ODEQ to EPA Region 10 submitting the PM–10 nonattainment area SIP for La Grande, Oregon.

(B) PM–10 Control Strategy for Particulate Matter, October 1991, La Grande, Oregon Nonattainment Area, as adopted by the Environmental Quality Commission on November 8, 1991.

[FR Doc. 94–16000 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 931100–4043; I.D. 062494B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Recision of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific ocean perch in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 4, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Pacific ocean perch TAC for the AI was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) and later augmented from the reserve (59 FR 21673, April 26, 1994) to a total of 10,900 metric tons (mt). The directed fishery for Pacific ocean perch was closed on April 4, 1994 (59 FR 16570, April 7, 1994). NMFS has determined that as of June 11, 1994 2,150 mt remain unharvested.

The Regional Director, Alaska Region, NMFS, has determined that the 1994 TAC for Pacific ocean perch in the AI has not been reached. Therefore, NMFS is rescinding the April 4, 1994, closure and is reopening directed fishing for Pacific ocean perch in the AI, effective at 12 noon, A.l.t., July 4, 1994.

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

The Regional Director, Alaska Region, NMFS, has determined that the 1994 TAC for Pacific ocean perch in the AI has not been reached. Therefore, NMFS is rescinding the April 4, 1994, closure and is reopening directed fishing for Pacific ocean perch in the AI, effective at 12 noon, A.l.t., July 4, 1994.

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 1994.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16068 Filed 6–30–94; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 126
Friday, July 1, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

[DA-94-14]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Proposed Revision of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rule

SUMMARY: This document invites written comments on a proposal to lower the percentage of a cooperative's milk that must be delivered to fluid milk plants to qualify a reserve processing plant operated by the cooperative as a pool plant under the Eastern Ohio-Western Pennsylvania Federal milk order. The applicable percentage would be reduced by 10 percentage points, from 35 percent to 25 percent.

DATES: Comments are due no later than August 1, 1994.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1036.7(f) of the order, the revision of certain provisions of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is being considered for the period September 1, 1994, through December 31, 1995.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 30th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provision proposed for revision is the delivery percentage required of a cooperative association operating a reserve processing pool plant pursuant to section 1036.7(d) of the Eastern Ohio-Western Pennsylvania order (Order 36). As proposed, the percentage of a cooperative's producer milk that must be delivered to fluid milk plants if the cooperative's plant is to be considered a pool plant would be decreased by the maximum allowable 10 percentage points, from 35 percent to 25 percent, for the months of September 1994 through December 1995.

Section 1036.7(f) allows the Director of the Dairy Division to reduce or increase a cooperative's minimum delivery requirement by up to 10 percentage points to prevent uneconomic milk shipments or to assure an adequate supply of milk for fluid use. The order also provides that the minimum pooling standard may be met on the basis of deliveries in the current month or during the preceding 12 months.

Milk Marketing Inc. (MMI), a dairy farmer cooperative that supplies milk to Order 36 fluid milk plants, requested that an earlier reduction of the delivery requirement be continued. The cooperative states that milk production pooled under the order has increased markedly in recent months, while Class I use has declined. According to the cooperative, increases in production without corresponding increases in Class I usage create a greater-than-normal need to move reserve supplies of milk to manufacturing facilities. MMI points out that this problem has been exacerbated by the reduction in Class I use, creating a tremendous burden on the cooperative to maintain cooperative supply plant status under the order.

In view of the current supply and demand relationship, it may be necessary to continue the reduction in delivery requirements for cooperative associations operating reserve processing plants under Order 36 as quickly as possible, as proposed, to provide for the efficient and economic marketing of milk during the period September 1, 1994 through December 31, 1995.

List of Subjects in 7 CFR Part 1036

Milk marketing orders.

The authority citation for 7 CFR Part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

Dated: June 27, 1994.

Silvio Capponi, Jr.,

Acting Director, Dairy Division.

[FR Doc. 94–16057 Filed 6–30–94; 8:45 am]

BILLING CODE 3410-02-P

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R–0840]

Credit by Brokers and Dealers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: As part of its review of Regulation T, the Board is proposing three substantive amendments to two areas of the regulation. One proposal specifies that customers must meet initial margin calls or make full cash payment for securities purchased at a broker-dealer within two business days of the standard settlement period and includes related technical amendments. The other amendments would exempt certain brokers and transactions involving U.S. government securities from the regulation.

DATES: Comments should be received on or before August 15, 1994.

ADDRESSES: Comments, which should refer to Docket R–0840, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room B–1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney or Angela Desmond, Senior Attorney, Division of Banking Supervision and Regulation (202) 452–2781; for the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

List of Subjects in 7 CFR Part 1036

Milk marketing orders.

The authority citation for 7 CFR Part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

Dated: June 27, 1994.

Silvio Capponi, Jr.,

Acting Director, Dairy Division.

[FR Doc. 94–16057 Filed 6–30–94; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R–0840]

Credit by Brokers and Dealers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: As part of its review of Regulation T, the Board is proposing three substantive amendments to two areas of the regulation. One proposal specifies that customers must meet initial margin calls or make full cash payment for securities purchased at a broker-dealer within two business days of the standard settlement period and includes related technical amendments. The other amendments would exempt certain brokers and transactions involving U.S. government securities from the regulation.

DATES: Comments should be received on or before August 15, 1994.

ADDRESSES: Comments, which should refer to Docket R–0840, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room B–1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney or Angela Desmond, Senior Attorney, Division of Banking Supervision and Regulation (202) 452–2781; for the hearing impaired *only,* Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: On August 18, 1992, the Board published an advance notice of proposed rulemaking (Advance Notice) requesting public comment in connection with a general review of Regulation T.[1] The review is not yet complete, but the Board believes that certain developments since the publication of the Advance Notice warrant the publication of three proposed amendments in two areas.

I. Three Day Settlement (T+3).

In light of the adoption by the Securities and Exchange Commission (SEC) of a rule shortening the standard settlement period for securities transactions from five to three business days (T+3), the Board proposes to shorten the time periods specified in Regulation T for customers to meet margin calls or make full cash payment by a corresponding two days. Related amendments would raise the de minimis amount below which liquidation of unpaid transactions is not required from $500 to $1000, require brokers seeking extensions of the payment periods to obtain them from their designated examining authority ("DEA"), and clarify that foreign settlement periods are used to calculate when restrictions in the cash account are applied to foreign securities.

Regulation T has always required cash payment for securities purchases within seven business days of trade date. The seven day period was initially chosen for the cash account because it was felt that a customer should have no obligation to pay for securities before they were delivered. The two days permitted beyond settlement date provide a short period of time for resolution of problems before the broker is required to act under Regulation T, i.e. either obtain an extension on the customer's behalf (if it is determined that a valid reason exists) or sell out the customer's position.

The Board's Advance Notice was issued before the SEC proposed its rule adopting a T+3 settlement period. The Advance Notice mentioned the Group of Thirty's recommendation of a world-wide settlement standard of T+3 and said the Board "may consider shortening the time for customer payment once the settlement period is shortened from the current five days." The Board supported the SEC when it proposed requiring T+3 settlement, calling the proposal "an important and achievable step" to reduce potential systemic disturbances to financial markets and to the economy. The SEC also received several comment letters stating that the implementation of T+3 settlement will require the Federal Reserve to address the possible shortening of its Regulation T payment periods. Those letters were forwarded to Board staff for consideration in the context of the ongoing Regulation T review.

The Board proposes to reword Regulation T to specifically incorporate the standard settlement cycle and the current two day cushion. Instead of requiring payment within "seven business days," the regulation would require payment within "one payment period," with "payment period" being defined as the standard settlement period in the United States plus two business days. This will not change the operation of the rule at this time, but once the new language is put into place the conversion to T+3 next year will automatically result in a reduction in the amount of time brokers can give their customers to pay for securities or meet initial margin calls. Future changes in settlement periods by the SEC will similarly be automatically reflected in the Board's rule without the necessity of further amendment.

The payment periods in Regulation T can be extended for exceptional circumstances if the broker applies to a self-regulatory organization (SRO) for an extension. In 1988, the New York Stock Exchange (NYSE) sought SEC approval of a rule that would require a broker seeking a Regulation T extension to obtain the extension from the NYSE if the NYSE is the broker's DEA. The proposal was noted by the Board in the Advance Notice, as was a suggestion by the Credit Division of the Securities Industry Association that brokers be permitted to grant customer extensions without approval of an SRO. The SEC approved the NYSE rule filing in May 1994.[2] In its approval order, the SEC stated that it does not agree with assertions that the objectives of the Securities Exchange Act of 1934 (the "Act") could be better met by implementing a uniform system of sharing extension information. As to the other objections raised by commenters (and also raised with the Board pursuant to the Advance Notice), the SEC found that "the regulatory benefits from the NYSE rule outweigh any competitive concerns raised by the commenters." Finally, the SEC said it does not agree with those commenters who argue that broker-dealers should not be required to submit requests for extensions of time to either their DEA or

[1] Docket No. R–0772, 57 FR 37109, August 18, 1992.

[2] 59 FR 26826, May 24, 1994; Securities Exchange Act Release 34073, May 17, 1994.

any SRO. The Board believes, along with the SEC, that a good case has been made to restore to the broker's DEA sole responsibility for granting and monitoring extensions of time and the language proposed by the Board today reflects this conclusion.

II. Government Securities

In light of the recent enactment of the Government Securities Act Amendments of 1993, the Board proposes to exempt most transactions involving government securities from the restrictions of Regulation T. This would be accomplished with two separate but related actions. First, Regulation T would exclude government securities brokers and dealers who register with the SEC under section 15C of the Securities Exchange Act of 1934 (the "Act") from the definition of "creditor" in Regulation T. Second, general broker-dealers effecting customer transactions that could be effected by a section 15C broker-dealer would be able to record the transactions in a new government securities account in which the other restrictions in Regulation T would not apply.

Before the enactment of the Government Securities Act of 1986, brokers-dealers who limited themselves to transactions in government securities were not subject to a comprehensive regulatory scheme and were not required to be registered with the SEC. Although such brokers were within the definition of "creditor," there was no practical way to enforce Regulation T for them. The Government Securities Act of 1986 required SEC registration of all nonbank government securities brokers and dealers under a new section 15C of the Act. The Government Securities Act of 1986 also added the term "government securities" to the Act.

The Advance Notice invited comment on two areas involving government securities: repurchase agreements ("Repos") and the borrowing and lending of securities. The Advance Notice explained that the Board has not specified the exact treatment of repurchase agreements while noting that repos of government securities do not raise credit issues under Regulation T because the good faith loan value of such securities is often close to 100 percent of their current market value. Many of the commenters suggested that the Board create a new account for exempted securities that could be used for transactions such as Repos and forward transactions. Most of the commenters supported exempting government securities from § 220.16 of Regulation T. This would allow loans of government securities without the current requirement that a broker document that the reason for the borrowing stems from a short sale or failure to receive securities required for delivery.

Under today's proposal, whenever a general broker-dealer effects a transaction for a customer that could be effected by a section 15C broker, the transaction could be recorded in a new government securities account. The account would allow these transactions to be effected without regard to other restrictions in Regulation T. The account would be permissive; brokers could continue to let customers who wish to use the cash or margin account for transactions involving government securities do so. It would allow institutional customers who cannot or will not use a margin account to engage in government securities transactions not specifically authorized in the cash account. For example, the government securities account could be used to effect purchases of government securities on credit or for cash as well as repurchase and reverse repurchase agreements. Borrowing and lending of government securities could also be effected in the proposed account without being subject to the "permitted purpose" requirement in § 220.16 of Regulation T that requires brokers to limit and document the reasons for their securities borrowings. The account would also permit net settlement of offsetting purchases and sales of government securities. Government securities purchased or deposited in a margin account would still be subject to the current Regulation T rules and would therefore still be available to finance the purchase of other securities in a margin account.

The Board is not proposing to include additional types of exempted securities, such as municipal securities, in the proposed government securities account. Government securities constitute an unusually deep and liquid market and are subject to a unique scheme of regulation, as evidenced by the Government Securities Act of 1986

Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

Paperwork Reduction Act

No additional reporting requirements or modification to existing reporting requirements are proposed.

List of Subjects in 12 CFR Part 220

Banks, banking, Bonds, Brokers, Commodity futures, Credit, Federal Reserve System, Investment companies, Investments, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Part 220 as follows:

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

1. The authority citation for Part 220 is revised to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

§ 220.1 [Amended]

2. In § 220.1 the word "seven" in the first sentence of paragraph (b)(1) is revised to read "eight".

3. Section 220.2 is amended as follows:

a. A new sentence is added to the end of paragraph (b).

b. Paragraph (h) is revised.

c. Paragraphs (w) through (aa) are redesignated as paragraphs (x) through (bb) and new paragraph (w) is added.

The additions and revisions read as follows:

§ 220.2 Definitions.

* * * * *

(b) * * * *Creditor* does not include a broker or dealer registered only under section 15C of the act.

* * * * *

(h) *Examining authority* means:

(1) The national securities exchange or national securities association of which a creditor is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

* * * * *

(w) *Payment period* means the number of business days in the standard securities settlement cycle in the United States plus two business days.

* * * * *

4. In § 220.4, the figure "$500" in paragraph (d) is revised to read "$1000" and paragraph (c)(3) is revised to read as follows:

§ 220.4 Margin account.

* * * * *

(c) * * *

(3) *Time limits.* (i) A margin call shall be satisfied within one payment period after the margin deficiency was created or increased.

(ii) The payment period may be extended for one or more limited periods upon application by the creditor to its examining authority unless the examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the payment period or the expiration of any subsequent extension.

* * * * *

5. In § 220.8, the figure "$500" in paragraph (b)(4) is revised to read "$1000" and paragraphs (b)(1)(i) introductory text, (b)(1)(ii), (b)(3), (c)(2)(i), and (d) are revised to read as follows:

§ 220.8 Cash account.

* * * * *

(b) * * *

(1) * * *

(i) Within one payment period of the date:

* * * * *

(ii) In the case of the purchase of a foreign security, within one payment period of the trade date or the date on which settlement is required to occur by the rules of the foreign securities market, provided this period does not exceed the maximum time permitted by this part for delivery against payment transactions.

* * * * *

(3) *Shipment of securities, extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the payment period by the number of days required for shipment, but by not more than one additional payment period.

* * * * *

(c) * * *

(2) * * *

(i) Within one payment period of the trade date, or in the case of the purchase of a foreign security, within the period specified in paragraph (b)(1)(ii) of this section, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or

* * * * *

(d) *Extension of time periods; transfers.* (1) Unless the creditor's examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the

periods upon application by the creditor to its examining authority unless the examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the payment period or the expiration of any subsequent extension.

* * * * *

5. In § 220.8, the figure "$500" in paragraph (b)(4) is revised to read "$1000" and paragraphs (b)(1)(i) introductory text, (b)(1)(ii), (b)(3), (c)(2)(i), and (d) are revised to read as follows:

§ 220.8 Cash account.

* * * * *

(b) * * *

(1) * * *

(i) Within one payment period of the date:

* * * * *

(ii) In the case of the purchase of a foreign security, within one payment period of the trade date or the date on which settlement is required to occur by the rules of the foreign securities market, provided this period does not exceed the maximum time permitted by this part for delivery against payment transactions.

* * * * *

(3) *Shipment of securities, extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the payment period by the number of days required for shipment, but by not more than one additional payment period.

* * * * *

(c) * * *

(2) * * *

(i) Within one payment period of the trade date, or in the case of the purchase of a foreign security, within the period specified in paragraph (b)(1)(ii) of this section, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or

* * * * *

(d) *Extension of time periods; transfers.* (1) Unless the creditor's examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) Grant a waiver from the 90 day freeze.

(2) Applications shall be filed and acted upon prior to the end of the payment period, or in the case of the purchase of a foreign security within the period specified in paragraph (b)(1)(ii) of this section, or the expiration of any subsequent extension.

6. Section 220.18 is redesignated as § 220.19 and new § 220.18 is added to read as follows:

§ 220.18 Government securities account.

In a government securities account, a creditor may effect and finance transactions involving government securities, provided the transaction would be permissible for a broker or dealer registered under section 15C of the act.

By order of the Board of Governors of the Federal Reserve System, June 27, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–16033 Filed 6–30–94; 8:45 am]

BILLING CODE 6210–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1117

Proposed Rule; Requirements for Reporting Choking Incidents to the Consumer Product Safety Commission Pursuant to the Child Safety Protection Act

AGENCY: Consumer Product Safety Commission (CPSC).

ACTION: Proposed rule.

SUMMARY: The "Child Safety Protection Act" requires manufacturers, distributors, retailers, and importers of marbles, small balls, latex balloons, and toys or games that contain such items or other small parts, to report to the Commission when they learn of certain choking incidents involving such products. The Commission is proposing a rule to implement this reporting requirement.

DATES: Written comments in response to this notice must be received by the Commission no later than September 14, 1994.

ADDRESSES: Comments, preferably in five (5) copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, telephone (301) 504–0800, or delivered to room 502, East West Towers Building, 4330 East West Highway, Bethesda, MD. 20814.

FOR FURTHER INFORMATION CONTACT: Eric L. Stone, Office of Compliance and Enforcement, at the above address, telephone (301) 504–0626, extension 1350.

SUPPLEMENTARY INFORMATION:

A. Background

Section 101 of the Child Safety Protection Act, (Pub. L. No. 103–267) (June 17, 1994) (the Act) adds a new Section 24 to the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1277, to be codified at 15 U.S.C. 1278. Section 24 of the FHSA requires the labeling of certain toys. The Commission's proposed amendments of 16 CFR Part 1500 implementing those labeling requirements are published elsewhere in this issue of the **Federal Register**. Section 102 of the Child Safety Protection Act also added a new reporting requirement:

Each manufacturer, distributor, retailer and importer of a marble, small ball, or latex balloon, or a toy or game that contains a marble, small ball, latex balloon or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that—

(A) an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game and

(B) as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

(The full text of section 102 is published in the Appendix to this proposal because the language will not be codified in the United States Code.)

Under the Act, a failure to report is a prohibited act under section 19(a)(3) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2068(a)(3), punishable by a civil penalty under section 20 of the CPSA, 15 U.S.C. 2069. The Act provides a high degree of confidentiality for such reports. In addition, the Act states that reports shall not be interpreted as admissions of liability or of the truth of the information in the reports.

Several terms are not defined by the Act, and the text of the Act leaves other issues unresolved. For example, the Act does not say how soon a firm must report after it obtains reportable information. The Act is also silent as to

what information must be reported. Applying the legislative history of the Act and the expertise developed over the last twenty years enforcing section 15(b) of the CPSA (15 U.S.C. 2064(b)), the Commission proposes these regulations to implement the new reporting provision.

The Act provides that "[f]or purposes of section 19(a)(3) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(3)), the requirement to report information under this subsection is deemed to be a requirement under such Act." Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to require manufacturers, private labelers and distributors to make reports and provide information reasonably required for the purposes of implementing the CPSA. A failure to make reports or provide information under section 16(b) of the CPSA (15 U.S.C. 2065(b)) is a prohibited act under section 190(a)(3) of the CPSA (15 U.S.C. 2068(a)(3)). The Commission proposes this rule under section 102 of the Act and section 16(b) of the CPSA (15 U.S.C. 2065(b)). The proposed rule specifies the information that should trigger a report, the timeframe for reporting, and the content of reports. Violations of this rule are prohibited acts under the CPSA. Since the statutory reporting obligation became effective on June 17, 1994 when the bill was signed into law, subject firms may use this proposal for guidance as to how to comply with their reporting obligation in the statute.

Section 30(d) of the CPSA (15 U.S.C. 2079(d)) provides that "[a] risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated under this Act only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this Act." Such a finding is unnecessary for this rule because it does not regulate a risk of injury, but merely requires firms to report information about consumer products.

B. Section by Section Discussion

Section 1117.3 of the proposed rule emphasizes that subject firms must report whenever they obtain sufficient information to put a reasonable firm on notice of a reportable choking incident. The reporting provision originated in the Senate, and The Report of the Senate Committee on Commerce, Science and Transportation states this provision requires subject firms to "report to the CPSC any information obtained that supports the conclusion that an incident occurred in which a child, regardless of age, choked on such a product and, as a result of such coking incident, the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional." (S. Rep. No. 195, 103d Cong., 2d Sess. 10 (1993).)

The rule is intended to require firms to report incident information obtained after June 17, 1994, the effective date of the Child Safety Protection Act. The Commission has placed no limitations on the age of the child involved in the incident or on the intended ages for the toy or game involved. This approach is consistent with the Senate committee report which said "reports are to be made regardless of the age of the child who chokes and regardless of the ages of the child for which the toy was intended." (S. Rep. No. 195, 103d Cong., 2d Sess. 10 (1993)).

Section 1117.4 of the proposal requires firms to report within 24 hours of obtaining information about a reportable choking incident. Since the statute does not provide a time frame for reporting, the Commission believes the intent was that firms report as soon as they obtain "information that supports the conclusion that an incident occurred." (S. Rep. No. 195, 103d Cong., 2d Sess. 10 (1993)). Moreover, immediate reporting is important to help the Commission prevent additional choking incidents to children.

Proposed § 1117.5 describes the information that firms must report. The Commission has limited the reporting requirements to information necessary to give the Commission staff sufficient information to understand the nature of, and the context for, the choking incident and to determine whether corrective measures may be necessary. Because these reports are limited to reduce the burden on reporting firms, the Commission anticipated that in some cases the staff may need to investigate further.

Section 1117.6 of the proposed rule explains that this reporting provision is in addition to, but not a substitute for, the reporting requirements of section 15(b) of the CPSA (15 U.S.C. 2064(b)). Even if a report of a choking hazard is not required by the proposed rule, a report may be necessary under section 15(b) of the CPSA (15 U.S.C. 2064(b)) and 16 CFR Part 1115.

The remaining provisions of this proposed regulation set forth the confidentiality, liability ad penalty provisions that would apply to reporting in accordance with the proposed regulation published below.

C. Impact on Small Businesses

In accordance with section 3(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities if issued on a final basis. Any obligations imposed upon such entities arise under the express provisions of section 102 of the Child Protection Safety Act, Pub. L. No. 103–267, June 17, 1994. The proposed regulation simply implements the obligations imposed by that law. The regulation itself will not have a significant economic impact on small businesses, either beneficial or negative, beyond that which results from the statutory provisions.

D. Environmental Considerations

The proposed rule fall within the provisions of 16 CFR 1021.5(c), which designates categories of actions conducted by the Consumer Product Safety Commission that normally have little or no potential for affecting the human environment. The Commission does not believe that the rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstance in which the rule proposed below may produce such effects.

For this reason, neither an environmental assessment nor an environmental impact statement is required.

E. Proposed Effective Date

This regulation is proposed to become effective 30 days after publication of the final regulation in the **Federal Register**. Subject firms should be aware, however, that the Child Safety Protection Act required reporting as of June 17, 1994. Firms may use this proposal for guidance as to how to comply with the law.

List of Subjects in 16 CFR Part 1117

Administrative practice and procedure, Business and industry, Consumer Protection, Toy Safety, Penalties, Reporting and recordkeeping requirements, and Small Parts.

Conclusion

Therefore, pursuant to the authority of the Child Safety Protection Act (Pub. L. 103–267), section 16(b) of the CPSA (15 U.S.C. 2065(b)), and 5 U.S.C. 553, the CPSC proposes to amend Title 16 of the Code of Federal Regulations, Chapter II, Subchapter B by adding a new Part 1117 to read as follows:

PART 1117—REPORTING OF CHOKING INCIDENTS INVOLVING MARBLES, SMALL BALLS, LATEX BALLOONS AND OTHER SMALL PARTS.

Sec.

1117.1 Purpose.
1117.2 Definitions.
1117.3 Reportable information.
1117.4 Time for filing a report.
1117.5 Information that must be reported and to whom.
1117.6 Relation to section 15(b) of the CPSA.
1117.7 Confidentiality of reports
1117.8 Effect of reports on liability.
1117.9 Prohibited acts and sanctions.
Appendix to Part 1117—Sec. 102 of the Child Safety Reporting Act

Authority: Section 102 of the Child Safety Protection Act (Pub. L. No. 103–267), section 16(b), 15 U.S.C. 2065(b), and 5 U.S.C. 553.

§ 1117.1 Purpose.

The purpose of this part is to set forth the Commission's regulations for reports of choking incidents required by the Child Safety Protection Act. The statute requires that each manufacturer, distributor, retailer, and importer of a marble, small ball, or latex balloon, or a toy or a game that contains a marble, small ball, latex balloon, or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game and, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

§ 1117.2 Definitions.

(a) *Small part* means any component of a toy or game which, when tested in accordance with the procedures in 16 CFR 1501.4(a) and 1501.4(b)(1), fits entirely within the cylinder shown in Figure 1 appended to 16 CFR 1501.

(b) *Small ball* means any ball with a diameter of 1.75 inches (4.445 cm) or less when measured in the manner set forth in 16 CFR 1500.18(a)(17)(iii) & (iv). For purposes of this designation, the term "ball" includes any spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, or bounced, and is either not permanently attached to another toy or article, or is attached to such toy or article by means of a string, elastic cord, or similar tether. The term "ball" includes any multi-sided object formed by connecting planes into a generally

PART 1117—REPORTING OF CHOKING INCIDENTS INVOLVING MARBLES, SMALL BALLS, LATEX BALLOONS AND OTHER SMALL PARTS.

Sec.
1117.1 Purpose.
1117.2 Definitions.
1117.3 Reportable information.
1117.4 Time for filing a report.
1117.5 Information that must be reported and to whom.
1117.6 Relation to section 15(b) of the CPSA.
1117.7 Confidentiality of reports
1117.8 Effect of reports on liability.
1117.9 Prohibited acts and sanctions.
Appendix to Part 1117—Sec. 102 of the Child Safety Reporting Act

Authority: Section 102 of the Child Safety Protection Act (Pub. L. No. 103–267), section 16(b), 15 U.S.C. 2065(b), and 5 U.S.C. 553.

§ 1117.1 Purpose.

The purpose of this part is to set forth the Commission's regulations for reports of choking incidents required by the Child Safety Protection Act. The statute requires that each manufacturer, distributor, retailer, and importer of a marble, small ball, or latex balloon, or a toy or a game that contains a marble, small ball, latex balloon, or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game and, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

§ 1117.2 Definitions.

(a) *Small part* means any component of a toy or game which, when tested in accordance with the procedures in 16 CFR 1501.4(a) and 1501.4(b)(1), fits entirely within the cylinder shown in Figure 1 appended to 16 CFR 1501.

(b) *Small ball* means any ball with a diameter of 1.75 inches (4.445 cm) or less when measured in the manner set forth in 16 CFR 1500.18(a)(17)(iii) & (iv). For purposes of this designation, the term "ball" includes any spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, or bounced, and is either not permanently attached to another toy or article, or is attached to such toy or article by means of a string, elastic cord, or similar tether. The term "ball" includes any multi-sided object formed by connecting planes into a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball.

(c) *Choked* means suffered an obstruction of the airways.

(d) A *latex balloon* is a toy or decorative item consisting of a latex bag that is designed to be inflated by air or gas. The term does not include inflatable children's toys that are used in aquatic activities, such as rafts, water wings, life rings, etc.

(e) A *marble* is a ball made of a hard material, such as glass, agate, marble or plastic, that is used in various children's games, generally as a playing piece or marker.

(f) *Serious injury* includes not only the concept of "grievous bodily injury" defined in the Commission's rule for Substantial Hazard Reports at 16 CFR 1115.12(d), but also any other significant injury. Injuries necessitating hospitalization which require actual medical or surgical treatment, fractures, lacerations requiring sutures, concussions, injuries to the eye, ear, or internal organs requiring medical treatment, and injuries necessitating absence from school or work or more than one day are examples of situations in which the Commission shall presume that such a serious injury has occurred.

(g) *Subject firm* means any manufacturer, distributor, retailer or importer of marbles, small balls, latex balloons, or a toy or game that contains a marble, small ball, latex balloon, or other small part.

§ 1117.3 Reportable information.

A subject firm shall report any information it obtains which reasonably supports the conclusion that a reportable incident occurred. Generally, firms should report any information provided to the company, orally or in writing, which states that a child choked on a marble, small ball, latex balloon, or on a marble, small ball, latex balloon or other small part contained in a toy or game and, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional. Subject firms must not wait until they have investigated the incident or conclusively resolved whether the information is accurate or whether their product was involved in the incident. Firms shall not wait to determine conclusively the cause of the death, injury, cessation of breathing or necessity for treatment. An allegation that such a result followed the choking incident is sufficient to require a report.

§ 1117.4 Time for filing a report.

A subject firm must report within 24 hours of obtaining information which reasonably supports the conclusion that an incident occurred in which a child (regardless of age) choked on a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in a toy or game and, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional. Section 1117.5 sets forth the information that must be reported.

§ 1117.5 Information that must be reported and to whom.

(a) Reports shall be directed to the Division of Corrective Actions, Consumer Products Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814 (Mailing Address: Washington, D.C. 20207) (Phone: 301–504–0608, facsimile: 301–504–0359).

(b) Subject firms must report as much of the following information as is known when the report is made:

(1) The name, address, and title of the person submitting the report to the Commission,

(2) The name and address of the subject firm,

(3) The name and address of the child who choked and the person(s) who notified the subject firm of the choking incident,

(4) Identification of the product involved including the date(s) of distribution, model or style number, a description of the product (including any labeling and warnings), a description of the marble, small ball, latex balloon or other small part involved, and pictures or sample if available,

(5) A description of the choking incident and any injuries that resulted or medical treatment that was necessary,

(6) Copies of any information obtained about the choking incident,

(7) Any information about changes made to the product or its labeling or warnings with the intention of avoiding such choking incidents, including, but no limited to, the date(s) of the change and its implementation, and a description of the change. Copies of any engineering drawings or product and label samples that depict the change(s).

(8) The details of any public notice or other corrective action planned by the firm,

(9) Such other information as appropriate.

(c) Subject firms must immediately supplement their reports when they obtain further information specified in section (b).

§ 1117.6 Relation to section 15(b) of the CPSA.

Section 15(b) of the CPSA requires subject firms to report when they obtain information which reasonably supports the conclusion that products they distributed in commerce fail to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, contain a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death. The Commission's rules interpreting this provision are set forth at 16 CFR 1115. The requirements of section 102 of the CPSA and this Part are in addition to, but not to the exclusion of, the requirements in section 15(b) and Part 1115. To comply with section 15(b), subject firms must continue to evaluate safety information they obtain about their products. Subject firms may have an obligation to report under section 15(b) of the CPSA whether or not they obtain information about choking incidents. Firms must also comply with the lawsuit reporting provisions of section 37 of the CPSA, interpreted at 16 CFR 1116.

§ 1117.7 Confidentiality of reports.

The confidentiality provisions of section 6 of the CPSA, 15 U.S.C. 2055, apply to reports submitted under this Part. The Commission shall afford information submitted under this Part the protection afforded to information submitted under section 15(b), in accordance with section 6(b)(5) of the CPSA and subpart G of Part 1101 of Title 16 of the CFR.

§ 1117.8 Effect of reports on liability.

A report by a manufacturer, distributor, retailer, or importer under this Part shall not be interpreted, for any purpose, as an admission of liability or of the truth of the information contained in the report.

§ 1117.9 Prohibited acts and sanctions.

(a) Whoever knowingly and willfully falsifies or conceals a material fact in a report submitted under this Part is subject to criminal penalties under 18 U.S.C. 1001.

(b) A failure to report to the Commission in a timely fashion as required by this Part is a prohibited act under section 19(a)(3) of the CPSA, 15 U.S.C. 2068(a)(3).

(c) A subject firm that knowingly fails to report is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069. "Knowing" means the having of actual knowledge or the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. Section 20(d) of the CPSA, 15 U.S.C. 2069(d).

(d) Any person who knowingly and willfully violates section 19 of this Act after having received notice of noncompliance from the Commission may be subject to criminal penalties under section 21 of the CPSA, 15 U.S.C. 2070.

Appendix to Part 1117—Sec. 102 of the Child Safety Reporting Act

§ 102 Reporting Requirements.

(a) Reports to Consumer Product Safety Commission.—

(1) Requirement to Report.—Each manufacturer, distributor, retailer, and importer of a marble, small ball, or latex balloon, or a toy or game that contains a marble, small ball, latex balloon, or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that—

(A) an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game; and

(B) as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

(2) Treatment Under CPSA.—For purposes of section 19(a)(3) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(3)), the requirement to report information under this subsection is deemed to be a requirement under such Act.

(3) Effect on Liability.—A report by a manufacturer, distributor, retailer, or importer under paragraph (1) shall not be interpreted, for any purpose, as an admission of liability or of the truth of the information contained in the report.

(b) Confidentiality Protections.—The confidentiality protections of section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)) apply to any information reported to the Commission under subsection (a) of this section. For purposes of section 6(b)(5) of such Act, information so reported shall be treated as information submitted pursuant to section 15(b) of such Act respecting a consumer product.

Dated: June 28, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–16083 Filed 6–30–94; 8:45 am]

BILLING CODE 6355–01–M

16 CFR Part 1500

Multiple Tube Mine and Shell Fireworks Devices: Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: Based on currently available information, the Commission has reason to believe that an unreasonable risk of injury may be associated with multiple tube mine and shell fireworks devices. Requirements currently enforced by the Commission may not adequately address the risk of serious injury posed by these fireworks devices. The Commission is issuing this advance notice of proposed rulemaking ("ANPR") under the Federal Hazardous Substances Act to initiate the process of amending its fireworks regulations for all multiple tube mine and shell fireworks devices. This action applies to all multiple tube mine and shell devices which fire sequentially into the air.

The ANPR addresses the issue of how to reduce the risk of injury associated with multiple tube mine and shell devices. One possible outcome of the proceeding would be to amend existing requirements for fireworks devices to ban all multiple tube mine and shell devices, or to ban specific multiple tube mine and shell devices found to present an unreasonable risk of injury. Alternatively, the Commission is also considering whether to amend the fireworks regulations to reduce the risk of injury by (1) requiring additional labeling on these particular devices, or (2) setting design or performance criteria for these devices (by banning devices not in compliance). A final alternative is for the Commission to refrain from issuing a mandatory requirement and encourage the development of a voluntary standard.

The Commission solicits written comments from interested persons concerning the risk of injury and the regulatory alternatives discussed in this notice, as well as other possible methods to reduce or eliminate these risks.

DATES: Written comments in response to this notice must be received by the Commission no later than August 30, 1994.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–6800.

FOR FURTHER INFORMATION CONTACT: Linda Smith, Project Officer, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0470.

SUPPLEMENTARY INFORMATION:

A. Background

Multiple tube mine and shell fireworks devices are a non-reloadable type of multiple shot device designed to fire aerial shells and/or comets and produce visual or audible effects in the air. Mines are fireworks devices intended to produce a low altitude aerial effect. Shells are aerial devices designed to be propelled into the air where a small explosive charge breaks the shell and creates a display of stars, reports, and other effects. Mines and shells may have different propellant limits but are generally combined into a single unit and in most cases it is difficult to distinguish between a mine and a shell.

The products referenced in this proceeding generally contain both mines and shells and will be referred to as multiple tube mine and shell devices. These devices are manufactured domestically and are also imported.

Multiple tube mine and shell devices are comprised of several vertical tubes with a common fuse, either with or without a horizontal base. Because these devices are designed to fire shots sequentially, there is a danger that after the first shot or few shots the device may become unstable and tip over. The other shots then may fire horizontally or at an angle and may hit the operator or spectators. The Commission is aware of two deaths and two burn injuries to spectators involving multiple tube mine and shell devices in this scenario. Because of the severe nature of injuries involved, the Commission is taking action to initiate this rulemaking proceeding.

The Commission regulates fireworks devices pursuant to the provisions of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Under current regulations, the Commission has declared certain specified fireworks devices to be "banned hazardous

Commission no later than August 30, 1994.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–6800.

FOR FURTHER INFORMATION CONTACT: Linda Smith, Project Officer, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0470.

SUPPLEMENTARY INFORMATION:

A. Background

Multiple tube mine and shell fireworks devices are a non-reloadable type of multiple shot device designed to fire aerial shells and/or comets and produce visual or audible effects in the air. Mines are fireworks devices intended to produce a low altitude aerial effect. Shells are aerial devices designed to be propelled into the air where a small explosive charge breaks the shell and creates a display of stars, reports, and other effects. Mines and shells may have different propellant limits but are generally combined into a single unit and in most cases it is difficult to distinguish between a mine and a shell.

The products referenced in this proceeding generally contain both mines and shells and will be referred to as multiple tube mine and shell devices. These devices are manufactured domestically and are also imported.

Multiple tube mine and shell devices are comprised of several vertical tubes with a common fuse, either with or without a horizontal base. Because these devices are designed to fire shots sequentially, there is a danger that after the first shot or few shots the device may become unstable and tip over. The other shots then may fire horizontally or at an angle and may hit the operator or spectators. The Commission is aware of two deaths and two burn injuries to spectators involving multiple tube mine and shell devices in this scenario. Because of the severe nature of injuries involved, the Commission is taking action to initiate this rulemaking proceeding.

The Commission regulates fireworks devices pursuant to the provisions of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.* Under current regulations, the Commission has declared certain specified fireworks devices to be "banned hazardous substances." 16 CFR 1500.17(a)(3), (8), and (9).

Additional regulations prescribe the requirements that fireworks devices not specifically listed as banned must meet to avoid being classified as banned hazardous substances. 16 CFR Part 1507. These include a requirement that fuses burn 3 to 6 seconds, resist side ignition, and remain securely attached to the device; a base-to-height ratio requirement for base stability; a requirement to prevent blowout of the tube; and a limit on audible "reports" to 2 grains of powder. *Id.* at Part 1507. Finally, additional Commission regulations prescribe specific warnings required on various legal fireworks devices, *Id.* at 1500.14(b)(7), and designate the size and location of these warnings. *Id.* at 1500.121.

Large multiple tube mine and shells, also called display racks or multiple tube aerial display devices, were first produced by domestic manufacturers around 1986. In July 1991 the first of two known deaths to a spectator, a 3 year old boy, resulted from the tip-over of a large multiple tube mine and shell device. The Commission staff investigated the incident and determined that the device involved in the incident presented a substantial product hazard under the Consumer Product Safety Act (15 U.S.C. 2064(b)) because it posed a risk of serious injury or death. Commission testing of this multiple tube mine and shell device indicated that it complied with Commission regulations regarding base to height ratios (sometimes referred to as static stability), but that it tipped over when functioning, posing a hazard to users. The manufacturer of the device then issued a recall of the 11,900 units distributed to retail stores and fireworks stands nationwide.

The Commission informed the fireworks industry, including the American Pyrotechnics Association (APA) and the American Fireworks Standards Laboratory (AFSL), of the potential for death and serious injury that large multiple tube mine and shell devices presented. In October 1991, several domestic manufacturers of multiple tube mine and shell devices began developing a performance test (sometimes referred to as a dynamic stability test) to test the tip-over-while-functioning hazard of large multiple tube mine and shells. This test utilized a two inch thick block of medium density (2 pounds per cubic foot) polyurethane upholstery foam to simulate the function of the device when used on grassy or other uneven surfaces. AFSL also began work to revise its voluntary standard for these devices to address the dynamic stability problems they presented. AFSL issued an interim revised voluntary standard for mines and shells in January 1993.

In addition, the Commission collected samples of large multiple tube mine and shell devices manufactured domestically, and tested the devices in accordance with FHSA requirements. The Commission also tested the devices for the tip-over-while-functioning hazard using the industry dynamic stability test. While the devices complied with FHSA requirements, dynamic stability testing on a foam surface revealed product tip overs while functioning. Therefore, the Commission staff preliminarily determined that the products presented substantial product hazards under the CPSA. As a result, in June and July 1992 four different domestic manufacturers of large multiple tube mine and shell devices recalled six different devices totaling approximately 16,600 units.

In July 1992 the Commission became aware of a death to a 65 year old woman from injuries received when a large multiple tube mine and shell device with a base tipped over while functioning. The device fired an aerial shell horizontally, striking the victim in the left temple and eye. The Commission determined that the description of the device was similar to the multiple tube mine and shell device involved in a similar death in July 1991.

The Commission continued to investigate this safety problem. In June 1993, another domestic manufacturer of three different large multiple tube mine and shell devices initiated a recall of approximately 150,000 units after the Commission staff preliminarily determined that the devices presented a substantial hazard because they tipped over when tested on foam.

The Commission also learned that large multiple tube mine and shell devices without bases were being manufactured and imported from China. The Commission collected samples of these devices and tested them for compliance with FHSA requirements and using the dynamic stability foam test described earlier. The Commission determined that while the devices complied with FHSA requirements, they tipped over while functioning on a foam surface, posing a substantial product hazard which could result in serious injury or death. In June 1993, in response to the Commission tests, three different importers recalled six different multiple tube mine and shell devices without bases, totaling 20,450 units. The Commission also informed APA and AFSL of the recalls, and they informed their members. As a result, several

additional importers ceased distribution of thousands of incoming units.

Under the Commission's existing regulations, multiple tube mine and shell devices that comply with applicable FHSA requirements are not banned hazardous substances. However, the Commission staff has information from which it could be concluded that these devices may pose an unreasonable risk of injury. As noted above, devices that complied with the base stability requirement did tip over while functioning. Thus, the existing regulations do not adequately address dynamic stability or stability-while-functioning-hazards posed by these devices. No other changes to the existing fireworks regulations are within the scope of this ANPR

B. Statutory Authority

This proceeding is conducted under provisions of the FHSA, 15 U.S.C. 1261 *et seq.* Fireworks are "hazardous substances" within the meaning of section 2(f)(1)(A) of the FHSA—they are flammable or combustible substances, or they generate pressure through decomposition, heat, or other means, and they "may cause substantial personal injury * * * during or as a proximate result of any customary or reasonably foreseeable handling or use." * * *" 15 U.S.C. 1261(f)(1)(A).

Under section 2(q)(1)(B) of the FHSA, the Commission may classify as a "banned hazardous substance" any hazardous substance intended for household use which, notwithstanding the precautionary labeling required by the FHSA, presents such a hazard that keeping the substance out of interstate commerce is the only adequate means of protecting the public. 15 U.S.C. 1261(q)(1)(B). A proceeding to promulgate a regulation classifying a substance as a banned hazardous substance under section 2(q)(1) of the FHSA is governed by the requirements in sections 3(f)-(i) of the FHSA, and by the provisions of section 701(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. 371(e); *See also* section 2(q)(2) of the FHSA, 15 U.S.C. 1261(q)(2).

The process to classify a product as a banned hazardous substance is initiated by publication of an advance notice of proposed rulemaking ("ANPR") as provided in section 3(f) of the FHSA. 15 U.S.C. 1262(f). The Commission must review and consider comments received in response to the ANPR including any voluntary standards submitted in response to its invitation. If the Commission then decides to continue the rulemaking proceeding, it must publish the text of the proposed rule along with a preliminary regulatory analysis that includes a preliminary description of potential costs and benefits of the proposal and reasonable alternatives to the proposed regulation 15 U.S.C. 1262(g) & (h).

After reviewing any comments on the proposed rule, the Commission would then decide whether to issue a final rule. If the Commission decided to proceed, it would publish the text of the final rule and a final regulatory analysis that includes a description of potential costs and benefits, a description of alternatives considered, and a summary of significant issues raised by comments submitted in response to the proposal 15 U.S.C. 1262(i)(1). In addition, in order to issue a final regulation, the Commission must make findings concerning voluntary standards, the relationship of the costs and benefits of the rule and the burden imposed by regulation. 15 U.S.C. 1262(i)(2).

If the Commission ultimately decided to finalize the rule, procedures established under section 701(e) of the FDCA would govern. 15 U.S.C. 1261(q)(2). These procedures provide that once the Commission issues a final rule (called a final order), interested persons have a period of thirty (30) days in which to file objections stating reasonable grounds therefor, and to request a public hearing on those objections. If no objections are filed, the order becomes effective on the last day for objections. The filing of objections stays the implementation of those provisions to which objections are directed. After the hearing, the presiding officer would issue an order based upon substantial evidence. 21 U.S.C. 371(e); 16 CFR Part 1502.

C. The Product

Multiple tube mine and shell fireworks are Department of Transportation ("DOT") 1.4G explosive devices (formerly Class C common fireworks devices) available to consumers that may be used at or near households. Commission regulations require that multiple tube mine and shell devices bear the following conspicuous label:

WARNING (OR CAUTION) EMITS SHOWERS OR SPARKS (OR SHOOTS FLAMING BALLS, IF MORE DESCRIPTIVE)
Use only under [close] adult supervision
For outdoor use only.
Place on a hard smooth surface (or place upright on level ground, if more descriptive).
Do not hold in hand.
Light fuse and get away.
16 CFR 1500.14(b)(7)(ix)

As discussed below, there are different types of multiple tube mine and shell devices:

Large multiple tube mine and shell devices: These devices contain multiple tubes of greater than one inch in inside diameter and fire large aerial shells or comets producing visual and audible effects more than 100 feet in the air. In domestically manufactured devices these large multiple tubes may be individually labeled and configured separately on a plastic or wooden base or they may be grouped together on a wooden base with a single label surrounding them. The base upon which the discharge tube is mounted can have a variety of different dimensions and the tubes themselves can vary in number and size. The effects also can vary. All of these devices have a single ignition fuse that ignites a charge in each tube and sets off separate sequential aerial displays. These devices are sometimes referred to as display racks.

Imported large multiple tube mine and shell devices consist of several tubes greater than one inch in inside diameter that are grouped together with or without a wooden or plastic base. These tubes are fused in series to fire large shells and/or comets which produce visual and audible effects sequentially. Some of these devices have a single label surrounding the grouped tubes, and all feature a single fuse for ignition. These imported multiple tube mine and shells may be sold as is to the consumer or may be used by domestic manufacturers as inserts in other display devices. Manufacturers insert the entire imported device inside a single cardboard tube with a manufacturer's label, and attach the insert in the larger tube to a wooden or plastic base.

The large multiple tube mine and shell devices, whether or not they contain a base, range in retail price from $30 to $130 each.

Small multiple tube mine and shell devices: These devices contain multiple tubes of one inch or less in inside diameter. Some devices are referred to as "cakes" and may contain as many as 100 small multiple tubes in a single device. They are generally imported and may or may not contain a horizontal base. The shells fired from these small devices may explode, releasing effects at a height of 20 feet or greater, and are ignited by a single fuse. These devices range in retail price from $5 to $30 each.

Because the shots from small and large multiple tube mine and shell devices fire sequentially and there is no dynamic stability requirement, there is a danger that the force from one of the earlier shots could upset the device and cause it to fall to a horizontal position. One of the subsequent shots could discharge while the device is in a horizontal position or as it is falling. As a result, there is a risk that one of the projectiles could strike the operator or spectators and cause serious injury. The severity of injury would depend on both the part of the body the projectile strikes and the kinetic energy of the projectile. Death could and has resulted from a projectile striking someone's head.

The propensity of a multiple tube mine and shell device to tip-over varies depending upon such factors as shell weights, energy produced by the lift charge, the geometric design of the device, and the surface on which the device is fired.

The Commission identified domestically manufactured large multiple tube mine and shell devices secured to a base that have a high likelihood of tip-over and, therefore, pose a high degree of risk. These devices, which were recalled, fire 3 or more shots sequentially. They consist of a wooden base upon which 3 or more vertical mortar tubes are mounted. The displays are propelled one hundred feet or more into the air. Different styles of these devices provide different aerial displays but otherwise are substantially similar.

The Commission has also identified the tip-over-while-functioning hazard in imported large multiple tube mine and shell devices containing no base. Small and large multiple tube mine and shell devices are manufactured domestically or imported and are distributed to consumers nationwide. The retail markup price of these products from wholesale is approximately 200 to 400 percent per unit.

D. Risk of Injury

As explained above, because these multiple tube mine and shell devices fire sequentially they pose a hazard of tipping over while firing. And, if the projectile were to strike the operator or a spectator, serious injury could result. The Commission has noted two deaths directly attributable to large multiple tube mine and shell devices. The two deaths occurred during operation of similar devices. In both incidents, the device tipped over while functioning and the projectile from the device struck the victims, both spectators, in the head. The victims were a 3 year-old boy and a 65 year-old woman. Based on the Commission's testing and reports of two deaths involving tip-over of similar devices, the Commission believes that the large multiple tube mine and shell devices present a serious risk of injury.

earlier shots could upset the device and cause it to fall to a horizontal position. One of the subsequent shots could discharge while the device is in a horizontal position or as it is falling. As a result, there is a risk that one of the projectiles could strike the operator or spectators and cause serious injury. The severity of injury would depend on both the part of the body the projectile strikes and the kinetic energy of the projectile. Death could and has resulted from a projectile striking someone's head.

The propensity of a multiple tube mine and shell device to tip-over varies depending upon such factors as shell weights, energy produced by the lift charge, the geometric design of the device, and the surface on which the device is fired.

The Commission identified domestically manufactured large multiple tube mine and shell devices secured to a base that have a high likelihood of tip-over and, therefore, pose a high degree of risk. These devices, which were recalled, fire 3 or more shots sequentially. They consist of a wooden base upon which 3 or more vertical mortar tubes are mounted. The displays are propelled one hundred feet or more into the air. Different styles of these devices provide different aerial displays but otherwise are substantially similar.

The Commission has also identified the tip-over-while-functioning hazard in imported large multiple tube mine and shell devices containing no base. Small and large multiple tube mine and shell devices are manufactured domestically or imported and are distributed to consumers nationwide. The retail markup price of these products from wholesale is approximately 200 to 400 percent per unit.

D. Risk of Injury

As explained above, because these multiple tube mine and shell devices fire sequentially they pose a hazard of tipping over while firing. And, if the projectile were to strike the operator or a spectator, serious injury could result. The Commission has noted two deaths directly attributable to large multiple tube mine and shell devices. The two deaths occurred during operation of similar devices. In both incidents, the device tipped over while functioning and the projectile from the device struck the victims, both spectators, in the head. The victims were a 3 year-old boy and a 65 year-old woman. Based on the Commission's testing and reports of two deaths involving tip-over of similar devices, the Commission believes that the large multiple tube mine and shell devices present a serious risk of injury.

In addition, the Commission has received information about two non-fatal burn injuries received when multiple tube mine and shell devices tipped over while functioning and the shots traveled horizontally and struck the victims, both of whom were spectators. In one case, a three year old victim received a burn injury when the small mine and shell device travelled 40 feet and hit the victim in the lap. In the other case, a thirty-one year old victim received second degree thermal burns when fireworks device fired 8 to 10 shots before tipping over and the last shot traveled horizontally 20 to 30 feet and hit the victim on the leg.

The Commission estimates, that 150 burn injuries from tip-over from multiple tube mine and shells were treated in hospital emergency rooms nationwide in 1992. This estimate is based on a nationwide projection of the two documented burn injuries from hospitals in the Commission's National Electronic Injury Surveillance System (NEISS). The Neiss system utilizes a national probability sample of injuries treated in hospital emergency rooms to project injuries nationwide. The cases identified do not represent the total number of incidents which may have occurred.

The Commission has conducted limited tests on selected samples of large and small multiple tube mine and shell devices. Both large and small multiple tube mine and shell devices raise concerns because of the instability they exhibited during testing. Under CPSC's testing, some of these devices demonstrated a pattern of tip-overs. Some large devices repeatedly tipped over while functioning when the Commission laboratory staff tested the devices on 2-inch polyurethane foam, as specified by an industry voluntary standard, as well as on a grass covered surface.

Several devices were tested by the Commission's laboratory staff using a dynamic stability test set forth in the American Fireworks Standard Laboratory's Interim Voluntary Standard for Mines and Shells (AFSL 20,21). Under the AFSL standard, all multiple tube devices with inside tube diameter of greater than one inch, (e.g., the display rack devices), must remain stable when shot on a 2-inch thick medium density polyurethane foam pad. The purpose of the foam is to simulate grass or other uneven surfaces.

The Commission's laboratory staff also reviewed testing data on the occurrence of tip-over among small size multiple tube mine and shell devices. The staff observed that some devices tipped over while functioning. In 1992, 1.5 percent of all small mine and shell samples that they tested exhibited tip-over-while-functioning on gravel. In 1993, the percentage of tip-over was 3.5 percent.

E. Regulatory Alternatives Considered

The Commission is considering several alternatives to reduce the injuries and deaths caused by multiple tube mine and shell devices.. Alternatives currently under consideration include: (1) ban all multiple tube mine and shell devices; (2) ban multiple tube mine and shell devices with a inside tube diameter of greater than one inch; (3) require additional labeling on all multiple tube mine and shell devices; (4) establish performance or design criteria to modify the multiple tube mine and shell devices (devices that do not meet the criteria would be banned); (5) pursue individual product recalls; and (6) take no mandatory action, but encourage the development of a voluntary standard. Some combination of these alternatives is also possible.

The Commission may also consider not issuing any new mandatory requirement applicable to these devices. Under this alternative, the only stability requirements for these devices would be the Commission's mandatory base to height requirement and the AFSL voluntary standard. As explained in greater detail in section F below, however, the Commission believes that the level of conformance with this aspect of the voluntary standard is not sufficiently high to adequately reduce the risk of injury associated with these devices.

F. Existing Standards

Regulations promulgated under the FHSA concerning fireworks devices apply to the multiple tube mine and shell devices at issue here. A brief overview of these fireworks regulations is provided in section A of this notice.

One of the requirements under these regulations is a base-to-height ratio, which applies to devices operated in a standing upright position. It requires that the minimum horizontal dimension or the diameter of the base of such a device must be at least one-third of the height of the device. 16 CFR § 1507.4. This is a non-dynamic stability test. That is, the purpose of the required ratio is to assure that the device does not tip over. However, it is a static test and does not measure the stability of a device while it is being fired. In 1976, when this requirement was issued, no device like the large multiple tube mine and shell devices discussed in this notice was available to the consumer.

CPSC testing demonstrates that many multiple tube mine and shell devices that comply with the Commission's base-to-height ratio requirement are likely to tip over when used as intended.

AFSL is an industry-sponsored organization established to develop voluntary standards for fireworks and to test fireworks devices. AFSL has developed an interim voluntary standard for small and large multiple tube mines and shells. One part of that standard is a dynamic stability test that assesses the stability of multiple tube devices while they are functioning. Under the voluntary standard, a device with inside tube diameter of greater than one inch must remain stable while functioning on 2-inch thick medium density polyurethane foam pad. The voluntary standard also provides that a device with inside tube diameter of one inch or less must remain stable while functioning on a 1-inch thick medium density polyurethane foam pad. According to the AFSL standard, any instance of tip-over (unless it is the last shot) during a test is a basis to reject all items of that specific design.

The AFSL standard also prescribes a label, which incorporates the Commission's required labeling. This suggested label states:

WARNING SHOOTS FLAMING BALLS AND REPORTS
USE ONLY UNDER CLOSE ADULT SUPERVISION.
FOR OUTDOOR USE ONLY
DO NOT HOLD IN HAND.
NEVER HAVE ANY PART OF YOUR BODY OVER THE DEVICE WHEN LIGHTING THE FUSE.
LIGHT FUSE AND GET AWAY
NEVER RELIGHT A FUSE WHICH FAILS TO IGNITE THE DEVICE. THIS ITEM SHOULD BE PLACED UPRIGHT AND USED ONLY ON CONCRETE, ASPHALT, OR OTHER HARD, LEVEL SURFACE.
THIS ITEM MAY TIP OVER IF USED ON GRASS OR OTHER UNEVEN SURFACE AND SERIOUS INJURY COULD RESULT.

The AFSL standard also sets limits on the amount of allowable propellant and pyrotechnic composition.

The Commission preliminarily concludes that this voluntary standard may not adequately reduce the risk of injury because of a lack of industry conformance and lack of correlation with typical surfaces on which the devices might be fired. As explained above, the Commission's testing of multiple tube mine and shell devices on foam surfaces, utilizing the AFSL standard, indicated failures. Although CPSC has tried to encourage conformance with the voluntary standard, the Commission cannot enforce the standard if an importer or manufacturer does not abide by it.

G. Solicitation of Information and Comments

This ANPR is the first step of a proceeding to regulate multiple tube mine and shell fireworks devices. All interested persons are invited to submit to the Commission their comments or on any issues or information relevant to the regulatory alternatives discussed above. Specifically, in accordance with section 3(f) of the FHSA, the Commission solicits:

(1) Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

(2) Any existing standard or portion of a standard which could be issued as a proposed regulation.

(3) A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan to do so.

These comments may address issues including, but not limited to, the feasibility of testing to determine a correlation between the surfaces used and the functioning of these devices; economic information concerning the marketing of large and small multiple tube mine and shell devices and the cost of a performance test; and the level of conformance to the AFSL voluntary standard, including the percentage of the multiple tube mine and shell industry that conforms to the AFSL interim voluntary standard. The Commission is also concerned with the amount of force associated with the projectiles fired from these devices. Therefore, in considering the development of a standard, the Commission requests information relative to the establishment of maximum kinetic energy or force limitations for the projectiles of multiple tube mine and shell fireworks devices which would prevent them from causing critical injury or death in the event of an accident. All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814, and received no later than August 30, 1994.

Dated: June 27, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–15987 Filed 6–30–94; 8:45 am]

BILLING CODE 6355–01–P

---

16 CFR Part 1500

Proposed Rule To Ban Small Balls Intended for Children Younger Than Three Years of Age and To Require Labeling of Certain Toys and Games

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Child Safety Protection Act of 1994 (CSPA) amended the Federal Hazardous Substances Act (FHSA) by adding a new section 24, which imposes labeling requirements on balls, balloons, marbles, and certain toys and games intended for use by children three years of age and older. The amendment also bans certain balls intended for use by children younger than three years of age and requires that choking incidents involving small balls, balloons, marbles, and toys or games containing such articles or other small parts must be reported to the Consumer Product Safety Commission (the Commission). The ban of small balls and the labeling provisions are enforced under the authority of the FHSA; the reporting requirements are enforced under the authority of the Consumer Product Safety Act.

Although the requirements imposed by the amendments are generally self-executing, the Commission is proposing these regulations to incorporate the requirements of the CSPA into the Code of Federal Regulations (CFR) and to interpret or clarify certain provisions of that legislation.

DATES: Written comments in response to this proposed rule must be received by the Commission no later than September 14, 1994.

ADDRESSES: Comments, preferable in five (5) copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, telephone (301) 504–0800, or delivered to Room 502, East-West Towers Building, 4330 East West Highway, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Michael J. Gidding, Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207–0001; telephone (301) 504–0626, ext. 1344.

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the Commission issued regulations to ban toys and other articles which are intended for children younger than three years of age and which present an aspiration, ingestion, or choking hazard because of small parts. The small parts regulations are codified at 16 CFR 1500.18(a)(9) and Part 1501. Toys and children's articles subject to the regulations must be placed in a truncated cylinder with a diameter of 1.25 inches (31.7 mm.) and a depth ranging from 1 to 2.25 inches (25.4 mm to 57.1 mm). If the product or any independent or detachable component of the product fits entirely within the cylinder, it is banned. Additionally, a toy or children's article is banned if any component or piece of such a product becomes detached during "use and abuse" testing. The "use and abuse" tests are codified at 16 CFR 1500.51 and 1500.52.

The small parts regulations apply only to toys and articles intended for use by children younger than three years of age. Some products, including balloons, are excluded from the scope of these regulations because they cannot be manufactured to function as intended and still comply with the requirements of the regulations.

Previously, the Commission received information indicating that an average of seven children a year choke to death on balloons or parts of balloons. The agency also received reports of children younger than three choking on small toys or games, or the parts of such products, which were intended for children three years of age and older. For example, small balls and marbles are generally considered to be intended for such older children, but have been associated with choking fatalities involving children under three.

In some cases, choking incidents involving children younger than three years of age occurred after an adult purchased a product labeled to indicate that the article was suitable for children three years and older, but gave the article to a child younger than three. In such cases, it is possible that the purchaser believed that the labeling statement was not a safety message, but instead referred to the age at which the child could use or enjoy the product.

In 1990, the Commission published four advance notices of proposed rulemaking to require precautionary labeling warning of the choking hazards associated, respectively, with balloons, small balls, marbles, and toys with small parts intended for children three years of age and older. In 1992, after

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the Commission issued regulations to ban toys and other articles which are intended for children younger than three years of age and which present an aspiration, ingestion, or choking hazard because of small parts. The small parts regulations are codified at 16 CFR 1500.18(a)(9) and Part 1501. Toys and children's articles subject to the regulations must be placed in a truncated cylinder with a diameter of 1.25 inches (31.7 mm.) and a depth ranging from 1 to 2.25 inches (25.4 mm to 57.1 mm). If the product or any independent or detachable component of the product fits entirely within the cylinder, it is banned. Additionally, a toy or children's article is banned if any component or piece of such a product becomes detached during "use and abuse" testing. The "use and abuse" tests are codified at 16 CFR 1500.51 and 1500.52.

The small parts regulations apply only to toys and articles intended for use by children younger than three years of age. Some products, including balloons, are excluded from the scope of these regulations because they cannot be manufactured to function as intended and still comply with the requirements of the regulations.

Previously, the Commission received information indicating that an average of seven children a year choke to death on balloons or parts of balloons. The agency also received reports of children younger than three choking on small toys or games, or the parts of such products, which were intended for children three years of age and older. For example, small balls and marbles are generally considered to be intended for such older children, but have been associated with choking fatalities involving children under three.

In some cases, choking incidents involving children younger than three years of age occurred after an adult purchased a product labeled to indicate that the article was suitable for children three years and older, but gave the article to a child younger than three. In such cases, it is possible that the purchaser believed that the labeling statement was not a safety message, but instead referred to the age at which the child could use or enjoy the product.

In 1990, the Commission published four advance notices of proposed rulemaking to require precautionary labeling warning of the choking hazards associated, respectively, with balloons, small balls, marbles, and toys with small parts intended for children three years of age and older. In 1992, after consideration of the records prepared by the Commission staff, the Commission voted to withdraw all four notices.

B. The New Legislation

To provide additional protection for young children from the hazards of choking, ingestion, or aspiration associated with small objects, Congress amended the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 *et seq.*, by enacting the Child Safety Protection Act of 1994 (CSPA), Public Law 103–267. The CSPA establishes a new section 24 to the FHSA (15 U.S.C. 1278) that requires precautionary labeling for certain latex balloons, marbles, small balls, and certain toys and games that contain such items or other small parts. The labeling is designed to warn purchasers that such products can choke children younger than three years of age or, in the case of balloons, younger than eight years of age. Products subject to section 24 that do not bear the required cautionary labeling are misbranded hazardous substances under section 2(p) of the FHSA (15 U.S.C. 1261(p)). The new statute also bans any ball with a diameter of 1.75 inches or less intended for children younger than three years of age.

The CSPA directs the Commission to promulgate regulations in accordance with 5 U.S.C. 553 to implement the ban of small balls and the labeling requirements. In addition, with respect to toys or games intended for children between the ages of three and six years, the section 24(a) of the FHSA authorizes the Commission to set an upper age no lower than five years, and to define the term "small part."

C. Proposed Regulation

To implement section 24 of the FHSA and the other requirements of the new CSPA, the Commission proposes this regulation for public comment. The purpose of the proposed regulation is to incorporate the ban of certain small balls and the labeling requirements imposed by the CSPA into the Code of Federal Regulations (CFR). Additionally, the Commission has determined that some provisions of the CSPA require interpretation or clarification. Accordingly, the proposed regulation defines terms such as "ball," "small ball," "small part," and "descriptive material"; establishes criteria for determining the age of children for which a toy or game is intended; and clarifies the applicability of the type size, placement and conspicuousness requirements of the regulation codified at 16 CFR 1500.121 to, *inter alia*, the packaging of and descriptive literature that accompanies products subject to the new labeling requirements. The following is a brief discussion of the principal provisions of the proposed regulation.

1. Balls and Small Balls

The CSPA bans any ball with a diameter of 1.75 inches or less that is intended for use by children younger than three years of age. The CSPA also adds a new section 24 of the FHSA, which requires that such balls must be labeled if they are intended for older children. The CSPA does not, however, define the term "ball". The Commission believes the choking hazard that Congress intended to address is associated with balls typically used in children's games or play, such as board games, "jacks," paddle ball, or catch, rather than with rounded or spherical objects (such as the heads of figurines) produced during the molding of toys. However, the Commission believes that Congress did not intend to apply the term "ball" exclusively to spherical objects. Thus, the term "ball" includes spherical objects (such as balls for jacks and miniature soccer balls); ellipsoidal objects (such as miniature footballs); multi-sided objects (sometimes referred to as "crazy balls") that are formed by connecting planar surfaces and are designated or intended for use as balls; and novelty items (such as balls with facial characteristics molded on them) that are designated or intended for use as balls.

The Commission proposes to define the term "ball" to include any spherical, ovoid, or ellipsoidal object that is intended to be thrown, hit, kicked, rolled, or bounced. The definition includes balls attached to such a toy or article by a string, elastic cord, or similar material. The term also includes any multi-sided object formed by connecting planes into a generally spherical, ovoid, or ellipsoidal shape that is designated or intended for use as a ball and any novelty item designated or intended for use as a ball.

Dice and similar items would not be included in the proposed definition of "ball" because they are not generally viewed as being balls in the traditional sense of the term. The proposed rule excludes from the definition of the term "ball" any ball that is permanently enclosed in a pinball machines, maze, or similar outer container.

A "small ball" is a ball with a diameter of 1.75 inches or less. The regulation includes a procedure for determining the diameter of a ball.

2. Small Part

A test procedure for determining whether an article is a small part is included in the regulation banning toys and other articles intended for use by children younger than three years of age which present choking, aspiration, or ingestion hazards because of small parts. (16 CFR 1501.4) That procedure specifies that the article shall be placed, without compressing it, into a cylinder of specified dimensions. If the article fits entirely within the cylinder in any orientation, it is classified as a small part. The regulation also specifies that an article which does not fit entirely within the cylinder shall be subjected to the appropriate "use and abuse" tests (codified at 16 CFR 1500.51 and 1500.52) to determine whether components or pieces become detached. Any such component or piece is also evaluated using the "small parts" cylinder.

The tests for small parts described above are designed to reduce risks of injury to children under three years of age, and are based on anthrompometric data and human experience. Section 24 of the FHSA is also designed to address the risk of injury to children younger than three years of age. The Commission therefore believes that the test procedures used to evaluate toys or other articles intended for such children are also appropriate for evaluating toys and games, and components of such games or toys (such as game pieces or accessories intended to be detached or removed from a toy or game), which are intended for use by children between three and six years of age. Accordingly, the Commission has defined the term "small part" by incorporating by reference in this proposed rule the test procedures of 16 CFR 1501.4(a) and 1501.4(b)(1) used to evaluate toys or other articles intended for use by children younger than three years of age.

In adopting this approach, the Commission has not included a general requirement that all such toys, games, or components be subjected to "use and abuse" tests if these articles otherwise do not meet the definition of a small part. The legislation, as drafted, applies only to toys or games that "include" a small part, indicating that Congress was primarily concerned with small components of such games or toys rather than pieces that may break off or become detached from such articles during foreseeable use or abuse. Although the term "include" could be interpreted to encompass pieces resulting from use and abuse as well, the legislative history of the CSPA is silent on this issue. At this time, the Commission lacks sufficient information to establish the need to apply "use and abuse" tests to all toys and games intended for use by children between three and six years of age and on the costs associated with imposing such testing requirements. In the absence of such information and in the interest of providing immediate guidance to manufacturers affected by the new legislation, the Commission, at this time, has decided not to propose "use and abuse" testing requirements for toys or games intended for children between the ages of three and six years.

3. Toys and Games Intended for Use by Children Who Are at Least Three Years Old But Not Older Than Six Years

Section 24 of the FHSA establishes labeling requirements for any toy or game that includes a small part and is "intended for use by children who are at least 3 years old but not older than 6 years." However, section 24 does not specify how the age of the intended user of a game or toy is to be determined. The provisions of 16 CFR 1501.2 set forth the criteria the Commission uses to determine whether a toy or article is intended for use by children younger than three years of age. These criteria include: the manufacturer's stated intent (such as the age stated on a label) if it is a reasonable one; the advertising, promotion, and marketing of the article; and whether the article is commonly recognized as being intended for children in this specified age group. Additionally, the provisions of 16 CFR 1501.5 afford a firm whose products may be the subject of an enforcement action the opportunity to present arguments and evidence that the products are not violative before the Commission initiates such an action.

The Commission believes that similar criteria and enforcement procedures are appropriate to evaluate whether products are intended for children between the ages of three and six years. Accordingly, the Commission has included provisions in the proposed regulation similar to those codified at 16 CFR 1501.2 and 1501.5.

4. Upper Age Limit

Section 24 of the FHSA permits the Commission to establish an alternative age to the upper limit of six years specified in the law for toys or games required to be labeled because they contain small parts and are intended for use by children at least three years of age. The alternative limit may not be less than five years of age. For the following reasons, the Commission does not propose to adopt a limit different from six years at this time.

From 1990 through 1993, the Commission staff conducted research on the issue of requiring precautionary labeling on packages of toys and games intended for children older and three years of age. As part of this activity, the Commission staff reviewed literature on child development, the play interests of different age groups of children, and early childhood education and practice. The Commission also contracted with outside experts to assist in evaluating the appropriate upper age limit for such labeling.

The staff research confirms that three and four year old children have similar motor skills, cognitive and emotional development, and play interests. However, the skills, levels of development, and play interests of such children differ significantly from those of children five years and older. Accordingly, the staff originally recommended to the Commission that labeling should be required on toys and games intended for three and four year old children (those from 36 months of age up to, but not including, 60 months of age). The staff believed that this age range would provide a reasonable degree of protection to children younger than three years of age and would reflect a break between the preschool and school years that could be easily understood by parents. (Options on Choking Hazards Briefing Package, December 30, 1991, TAB C, Memorandum from Shelley Waters Deppa, EPHF, to Marilyn Wind, Ph.D., entitled "Transmittal of Report on Choking Hazard Labels for Toys," August 31, 1991.)

However, section 24 of the FHSA prohibits the Commission from establishing an alternative age that is less than five years. Although the data relied on by the staff in its original recommendation supports labeling for toys and games intended for three and four years olds, it does not in itself provide a basis for specifying an upper age limit for product labeling that is less than the six years specified in the legislation. Thus, at this time, the Commission declines to propose an upper age limit different from the one specified in section 24 of the FHSA.

The Commission recognizes that products intended for children of a specified age are generally recognized as being suitable for all children in that age group. For example, a toy labeled for use by children six years old is typically viewed as being appropriate for children who have just turned six, as well as for those approaching their seventh birthday. Accordingly, the Commission proposes that the labeling provisions for toys and games that contain small parts shall apply to those toys or games intended for children three years of age and older, but younger than seven years of age. This approach is also consistent with the Commission's Guidelines for Relating Children's Ages to Toy Characteristics, which the Commission staff uses to evaluate toys and other articles intended for use by children.

*5. "Manufacture for Sale" * * * "Distribution in Commerce"*

The various products enumerated in the CSPA are subject to the labeling requirements of section 24 of the FHSA if they are "manufactured for sale, offered for sale, or distributed in commerce in the United States." Items which fail to comply with the requirements are misbranded hazardous substances under section 2(p) of the FHSA (15 U.S.C. 1261(p)).

Section 4 of the FHSA (15 U.S.C. 1263) identifies several transactions involving the manufacture, sale, and distribution of misbranded hazardous substances as "prohibited acts". The term "distributed in commerce" in section 24 of the FHSA is arguably broader than the transactions described as prohibited acts in section 4 of the FHSA. However, the initiation of an enforcement action for violation of section 24 of the FHSA will still hinge on whether the Commission has evidence to support the conclusion that a manufacturer has violated section 4 (a), (b), (c), or (g) of the FHSA. In other words, it is theoretically possible for a product in violation of the labeling requirements to be "distributed in commerce" as specified in section 24 of the FHSA without being involved in any transaction prohibited by the literal text of section 4. To avoid confusion and in recognition of the substantial overlap between the acts prohibited by section 4 of the FHSA and the "manufacture, sale, and distribution" language of section 24, the Commission has not included reference to the latter in text of the proposed rule.

6. Descriptive Material

Section 24 of the FHSA requires that descriptive material that accompanies any product subject to its labeling provisions must also bear the required labeling. This proposed regulation defines the term "descriptive material" as follows. The term encompasses any instruction for use (whether written or otherwise) of a product subject to these labeling requirements, any depiction of the product, and any promotional material, advertisement, or other written literature that describes any function,

proposes that the labeling provisions for toys and games that contain small parts shall apply to those toys or games intended for children three years of age and older, but younger than seven years of age. This approach is also consistent with the Commission's Guidelines for Relating Children's Ages to Toy Characteristics, which the Commission staff uses to evaluate toys and other articles intended for use by children.

*5. "Manufacture for Sale" * * * "Distribution in Commerce"*

The various products enumerated in the CSPA are subject to the labeling requirements of section 24 of the FHSA if they are "manufactured for sale, offered for sale, or distributed in commerce in the United States." Items which fail to comply with the requirements are misbranded hazardous substances under section 2(p) of the FHSA (15 U.S.C. 1261(p)).

Section 4 of the FHSA (15 U.S.C. 1263) identifies several transactions involving the manufacture, sale, and distribution of misbranded hazardous substances as "prohibited acts". The term "distributed in commerce" in section 24 of the FHSA is arguably broader than the transactions described as prohibited acts in section 4 of the FHSA. However, the initiation of an enforcement action for violation of section 24 of the FHSA will still hinge on whether the Commission has evidence to support the conclusion that a manufacturer has violated section 4 (a), (b), (c), or (g) of the FHSA. In other words, it is theoretically possible for a product in violation of the labeling requirements to be "distributed in commerce" as specified in section 24 of the FHSA without being involved in any transaction prohibited by the literal text of section 4. To avoid confusion and in recognition of the substantial overlap between the acts prohibited by section 4 of the FHSA and the "manufacture, sale, and distribution" language of section 24, the Commission has not included reference to the latter in text of the proposed rule.

6. Descriptive Material

Section 24 of the FHSA requires that descriptive material that accompanies any product subject to its labeling provisions must also bear the required labeling. This proposed regulation defines the term "descriptive material" as follows. The term encompasses any instruction for use (whether written or otherwise) of a product subject to these labeling requirements, any depiction of the product, and any promotional material, advertisement, or other written literature that describes any function, use, warnings, user population, design or material specification, or other characteristic of the product, including its suitability for use with or relation to other games, products, or toys. Descriptive material "accompanies" a product subject to the labeling requirements when it is packaged with the product, or when it is intended to be distributed with the product at the time of sale or delivery to the purchaser.

7. Prominence and Conspicuousness of Labeling

Section 24 of the FHSA requires generally that any cautionary statement mandated by the Child Safety Protection Act of 1994 appear on the principal display panel of the package of a regulated product. Section 24 requires further that such statements be displayed in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed material on the package of a product, on descriptive material that accompanies the product, and, if such a product is sold unpackaged, on any bin, container, or vending machine from which the product is sold or dispensed. The required labeling statements "shall be displayed * * * in a manner consistent with part 1500 of title 16, Code of Federal Regulations." Section 24 also makes some exceptions to these general requirements for specific products.

The Commission previously codified at 16 CFR 1500.121 an interpretative rule containing general labeling policies. The commission views these policies as satisfying the general requirements of section 2(p)(2) of the FHSA relating to the prominence and conspicuousness of precautionary labeling statements for hazardous substances. Because the language of section 24 of the FHSA is substantially the same as that of section 2(p)(2), the Commission believes it appropriate to incorporate by reference the interpretations and policies contained in 16 CFR 1500.121 in the rule proposed below, with some modifications.

Under 16 CFR 1500.121(b)(2)(ii), all items required to appear on the principal display panel of a package must be blocked together in a square or rectangular area with or without a border. The color of that area is not specified in the regulation. The packages of products subject to the CSPA, however, generally contain many visual messages in the form of printed product descriptions and depictions and in see-through features that permit the actual products to be displayed. As a result, even if a labeling statement required by the CSPA technically complies with the existing requirements of 16 CFR 1500.121(b)(2)(ii), the messages provided by that statement often may be obscured by the other visual messages on the display panel. To assure that the precautionary labeling prescribed by the CSPA effectively alerts the public to potential hazards, the Commission proposes that the color of the square or rectangular area in which the precautionary labeling appears be in sharp contrast to the background color of the area of the package on which it appears, to the color of any printed matter in proximity to the required labeling statement, and, if the package is a see-through package, to the color of the article contained in the package. The color of the required cautionary labeling statements shall be in sharp contrast to background color of the square or rectangular area. This approach is consistent with the current principles of the American National Standards Institute (ANSI) Z535.4–1991 Standard for Product Safety Signs and Labels. The Commission solicits comment on this approach and suggestions for other alternatives to assure that the labeling statements required by the CSPA are conspicuous.

Since 16 CFR 1500.121 contains no provisions applicable to the triangle symbol required by the legislation, the Commission proposes the following provisions for such symbols. The triangle shall be an equilateral triangle to assure that the conspicuousness of the triangle is not negated by the use of an elongated figure. With respect to the size of the triangles, the proposed rule says the height of the triangle shall be at least the height of the letters in the accompanying signal word "WARNING". These provisions are consistent with the approach taken in ANSI Standard Z552.4–1991 and in the legislation itself, which depicts triangles larger than the signal word. The height of the exclamation point inside the triangle shall be half the height of the triangle, and the exclamation point shall be centered vertically in the triangle. In all other respects, the triangles with exclamation points shall conform generally to the provisions of 16 CFR 1500.121 relating to signal words. However, to assure that it is conspicuous, the triangle shall be separated from the signal word by a distance at least equal to the space occupied by the first two letters of the signal word. The Commission solicits comments on this approach, as well as recommendations for alternative approaches.

With respect to the various labeling statements required by section 24 of the FHSA, the word "WARNING" shall be

regarded as a signal word, and the statement of the principal hazard associated with the products subject to the proposed regulation. The remaining statements required by the legislation shall be regarded as "other cautionary material" as that term is defined in 16 CFR 1500.121(a)(2)(viii). However, because section 24 requires that all of the labeling statements mandated by the law must appear on the principal display panel, the provision of 16 CFR 1500.121(b)(3) allowing "other cautionary labeling" to be placed on a display panel other than the principal display panel shall not apply, except as provided for by section 24(c)(3) which establishes alternative rules for small packages containing multi-lingual warnings. In the latter case, the requirements of 16 CFR 1500.121 relating to the placement on the principal display panel and type size of statements or indicators directing attention to other cautionary labeling that appear on another display panel shall apply.

The proposed rule requires a space between the signal word and the remainder of the message. It also provides that multiple messages, such as the different statements in the warning for balloons, should be provided with sufficient space between them, when feasible, to prevent them from visually blending together. This provision is consistent with section 6.5.1 of ANSI Z535.4–1991.

Additionally, the type size requirements of Table 1 of 16 CFR 1500.121(c)(2) are primarily designed to cover labeling for hazardous household chemicals. Accordingly, the correlation between display panel size and type size stops display panels with an area in excess of 30 square inches. In the case of toys and games, however, the packages in which such articles are sold or stored are often in excess of 100 square inches. Limiting the minimum type size for precautionary labeling on such packages to that required for packages with a display panel of greater than 30 square inches could well result in the labeling statements becoming inconspicuous. Accordingly, based in part on type size requirements found in the regulation establishing labeling standards for electrical toys, 16 CFR 1505.3(d)(2), the Commission has included in this regulation type size requirements for large packages, vending machines, and other large containers.

The term "packages refer to the package in which a product subject to labeling under section 24 of the FHSA is sold at retail or is intended to be stored, as well as to any outer container or wrapping. A package with a principal display panel with an area of 100 square inches up to, but not including, 400 square inches shall have a signal word at least ¼ of an inch in height. The accompanying statement of hazard shall be at least 5/32 of an inch in height, and the other cautionary statements shall be at least 7/64 of an inch in height. With respect to a package with a principal display panel of 400 square inches or more, the signal word, statement of hazard and other cautionary labeling shall be ½ inch, ¼ inch, and 5/32 inch in height, respectively.

Descriptive material that accompanies a product subject to the labeling requirements shall comply with the requirements of 16 CFR 1500.121(c)(6) relating to literature containing instructions for use which accompanies a hazardous substance. If the descriptive material contains instructions for use, the required precautionary labeling shall be in reasonable proximity to such instructions or directions ad shall be placed together within the same general area (see 16 CFR 1500.121(c)(6)).

D. Proposed Effective Date

The Commission proposes that this regulation become effective on January 1, 1995, and shall apply only to products entered into commerce on or after the effective date. The term "entered into commerce" refers to products manufactured in or imported into the United States after the effective date.

E. Impact on Small Businesses

In accordance with section 3(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. Any obligations imposed upon such entities arise under the express provisions of section 24 of the FHSA. This regulation simply clarifies the obligations imposed by that law on certain toys, games, balloons, marbles, and balls. The regulation itself therefore will have no significant economic impact on small businesses, either beneficial or negative, beyond that which results from the statutory provisions.

F. Environmental Considerations

The proposed rule falls within the provisions of 16 CFR 1021.5(c) which designates categories of actions conducted by the Consumer Product Safety Commission that normally have little or no potential for affecting the human environment. The Commission does not believe that the rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstance in which the rule proposed below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

G. Preemption of State and Local Requirements

Section 101(e) of the CSPA contains provisions which prohibit any state or political subdivision of a state from enacting or enforcing any requirement relating to cautionary labeling of small parts hazards or choking hazards associated with any toy, game, marble, small ball, or balloon intended or suitable for use by children unless the state or local requirement is identical to a requirement established by section 24 of the FHSA or by regulation promulgated by the Commission. Section 101(e) allows a state or political subdivision of a state to enforce a non-identical requirement relating to cautionary labeling to warn of small parts hazards or choking hazards associated with any toy subject to the provisions of section 24 until January 1, 1995, if the non-identical requirement was in effect on October 2, 1993. The preemptive provisions of section 101(e) of the CSPA have been included in the text of the regulation proposed below.

List of Subjects in 16 CFR Part 1500.19

Business and industry, Consumer protection, Hazardous materials, Infants and children, Labeling, Packaging and containers.

Conclusion

Therefore, pursuant to the authority of the Child Safety Protection Act of 1994 (Pub. L. 103–267), sections 10(a) and 24(c) of the Federal Hazardous Substances Act, (15 U.S.C. 1269(a) and 1278(c)), and 5 U.S.C. 553, the Consumer Product Safety Commission proposes to amend Title 16 of the Code of Federal Regulations, Chapter II, Subchapter C, Part 1500 as set forth below.

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for Part 1500 is amended to read as follows:

Authority: 15 U.S.C. 1261–1278, 2079.

2. Section 1500.18 is amended by revising paragraph (a) introductory text and by adding paragraph (a)(17) to read as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) Toys and other articles presenting mechanical hazards. Under the authority of sections 2(f)(1)(D) and 24 of the act and pursuant to the provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

* * * * *

(17) Any ball intended for children under three years of age that, under the influence of its own weight, passes, in any orientation, entirely through a circular hole with a diameter of 1.75 inches (4.445 cm) in a rigid template. In testing to evaluate compliance with this regulation, the diameter of opening in the Commission's test template shall be no greater than 1.75 inches (4.445 cm).

(i) For the purposes of this paragraph, the term "ball" includes any spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, or bounced. The term "ball" includes any spherical, ovoid, or ellipsoidal object that is attached to such a toy or article by means of a string, elastic cord, or similar tether. The term "ball" also includes any multi-sided object formed by connecting planes into a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball.

(ii) The term "ball" does not include dice, or balls permanently enclosed inside pinball machines, mazes, or similar outer containers.

(iii) In determining whether such a ball is intended for use by children under three years of age, the criteria specified in 16 CFR 1501.2(b) and the enforcement procedure established by 16 CFR 1501.5 shall apply.

* * * * *

3. A new section 1500.19 is added, to read as follows:

§ 1500.19 Misbranded toys and other articles intended for use by children.

(a) Definitions. For the purposes of this section, the following definitions shall apply.

(1) *Ball* means a spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, or bounced. The term "ball"

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) Toys and other articles presenting mechanical hazards. Under the authority of sections 2(f)(1)(D) and 24 of the act and pursuant to the provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

* * * * *

(17) Any ball intended for children under three years of age that, under the influence of its own weight, passes, in any orientation, entirely through a circular hole with a diameter of 1.75 inches (4.445 cm) in a rigid template. In testing to evaluate compliance with this regulation, the diameter of opening in the Commission's test template shall be no greater than 1.75 inches (4.445 cm).

(i) For the purposes of this paragraph, the term "ball" includes any spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, or bounced. The term "ball" includes any spherical, ovoid, or ellipsoidal object that is attached to such a toy or article by means of a string, elastic cord, or similar tether. The term "ball" also includes any multi-sided object formed by connecting planes into a generally, spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball.

(ii) The term "ball" does not include dice, or balls permanently enclosed inside pinball machines, mazes, or similar outer containers.

(iii) In determining whether such a ball is intended for use by children under three years of age, the criteria specified in 16 CFR 1501.2(b) and the enforcement procedure established by 16 CFR 1501.5 shall apply.

* * * * *

3. A new section 1500.19 is added, to read as follows:

§ 1500.19 Misbranded toys and other articles intended for use by children.

(a) Definitions. For the purposes of this section, the following definitions shall apply.

(1) *Ball* means a spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, or bounced. The term "ball" includes any spherical, ovoid, or ellipsoidal object that is attached to such a toy or article by means of a string, elastic cord, or similar tether. The term "ball" also includes any multi-sided object formed by connecting planes into a generally, spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball. The term "ball" does not include dice, or balls permanently enclosed inside pinball machines, mazes, or similar outer containers.

(2) *Small ball* means a ball that, under the influence of its own weight, passes, in any orientation, entirely through a circular hole with a diameter of 1.75 inches (4.445 cm) in a rigid template. In testing to evaluate compliance with this regulation, the diameter of opening in the Commission's test template shall be no greater than 1.75 inches (4.445 cm).

(3) *Latex balloon* means a toy or decorative item consisting of a latex bag that is designed to be inflated by air or gas. The term does not include inflatable children's toys that are used in aquatic activities such as rafts, water wings, life rings, or other similar items.

(4) *Marble* means a ball made of a hard material, such as glass, agate, marble or plastic, that is used in various children's games, generally as a playing piece or marker.

(5) *Small part* means any object which, when tested in accordance with the procedures contained in 16 CFR 1501.4(a) and 1501.4(b)(1), fits entirely within the cylinder shown in Figure 1 appended to 16 CFR 1501.

(6) *Package* or "packaging" refers to the immediate package in which a product subject to labeling under section 24 is sold or is intended to be stored, as well as to any outer container or wrapping.

(7) *Descriptive material* means any instruction (whether written or otherwise) for the use of a product subject to these labeling requirements, any depiction of the product, and any promotional material, advertisement, or other written literature that describes any function, use, warnings, user population, design or material specification, or other characteristic of the product, including its suitability for use with or its relationship to other games, products, or toys. Descriptive material "accompanies" a product subject to the labeling requirements when it is packaged with the product or when it is intended to be distributed with the product at the time of sale or delivery to the purchaser.

(b) Misbranded toys and children's articles. Pursuant to sections 2(p) and 24 of the FHSA, the following articles are misbranded hazardous substances if their packaging, any descriptive material that accompanies them, and, if unpackaged, any bin in which they are held for sale, any container in which they are held for retail display, or any vending machine from which they are dispensed fails to bear the labeling statements required below, or if such labeling statements fail to comply with the prominence and conspicuousness requirements of paragraph (d) of this section.

(1) Any toy or game that is intended for use by children who are at least three years old but less than seven years of age shall bear or contain the following cautionary statement if the toy or game includes a small part:

BILLING CODE 6355-01-M

⚠ **WARNING:**

CHOKING HAZARD -Small parts
Not for children under 3 years

BILLING CODE 6355-01-C

(2) Any latex balloon, or toy or game that contains a latex balloon, shall bear the following cautionary statement:

BILLING CODE 6355-01-M

⚠ **WARNING:**

CHOKING HAZARD-- Children under eight yrs. can choke or suffocate on uninflated or broken balloons.
Adult supervision required.
Keep uninflated balloons from children
Discard broken balloons at once.

BILLING CODE 6355-01-C

(3)(i) Any small ball intended for children three years or older shall bear the following cautionary statement:

BILLING CODE 6355-01-M

⚠ **WARNING:**

CHOKING HAZARD--This toy is a small ball.
Not for children under 3 yrs.

BILLING CODE 6355-01-C

(ii) Any toy or game intended for children three years or older that contains a small ball shall bear the following cautionary statement:

BILLING CODE 6355-01-M

⚠ **WARNING:**

CHOKING HAZARD--Toy contains a small ball.
Not for children under 3 yrs.

BILLING CODE 6355-01-C

(4)(i) Any marble intended for children three years of age or older shall bear the following cautionary statement:

BILLING CODE 6355-01-M

⚠ WARNING:

CHOKING HAZARD--This toy is a marble.
Not for children under 3 yrs.

BILLING CODE 6355-01-C

(ii) Any toy or game intended for children three years of age or older that contains a marble shall bear the following cautionary statement:

BILLING CODE 6355-01-M

⚠ WARNING:

CHOKING HAZARD--Toy contains a marble.
Not for children under 3 yrs.

BILLING CODE 6355-01-C

(c) Age of intended user. In determining the ages of the children for which any toy or article subject to this subsection is intended, the following factors are relevant: the manufacturer's stated intent (such as the age stated on a label) if it is reasonable; the advertising, marketing, and promotion of the article; and whether the article is commonly recognized as being intended for children in this age group. In enforcing this provision, the Commission will follow the procedures set forth in 16 CFR 1501.5.

(d) Prominence and conspicuousness of labeling statements. The requirements of 16 CFR 1500.121 relating to the prominence and conspicuousness of precautionary labeling statements for hazardous substances shall apply to any labeling statement required under section 1500.19, with the following clarifications and modifications.

(1) All labeling statements required by section 1500.19 shall be in the English language, and shall appear in the same format and layout as the statements depicted in paragraphs (b) and (e) appear. The statements shall be blocked together within a square or rectangular area, with or without a border. The color of the square or rectangular area within which the precautionary labeling appears shall be in sharp contrast to:

(i) the background color of the area of the package on which it appears,

(ii) to the color of any printed matter in proximity to the required labeling statements, and,

(iii) if the package is a see-through package, to the primary color of the article contained in the package. The color of the required cautionary labeling statements shall be in sharp contrast to background color of the square or rectangular area in which the labeling appears.

(2) The words "WARNING" or "SAFETY WARNING" required by section 24 of the FHSA shall be regarded as signal words;

(3) The statement "CHOKING HAZARD" shall be regarded as a statement of the principal hazard associated with the products subject to the regulation;

(4) All other remaining statements required by this subsection shall be regarded as "other cautionary material" as that term is defined in 16 CFR 1500.121(a)(2)(viii);

(5) The principal display panel for a bin, container for retail display, or vending machine shall be the side or surface designed to be most prominently displayed, shown, or presented to, or examined by prospective purchasers. Any other side or surface of such a bin, container for retail sale, or vending machine that bears information, such as price or product description, for examination by purchasers shall be deemed to be a principal display panel;

(6) All of the labeling statements required by this subsection, including those classified as "other cautionary material," must appear on the principal display panel of the product, except as provided for by section 1500.19(e). Any signal word shall appear on the same line and in close proximity to the triangle required by section 24. Any statement of hazard shall appear below the triangle and signal word and shall be separated from the triangle and signal word by a distance equal to the height of the signal word. Multiple messages should be provided with sufficient space between them, when feasible, to prevent them from visually blending together;

(7) All labeling statements required by this subsection shall comply with the type size requirements of Table 1 of 16 CFR 1500.121(c)(2) except as follows:

(i) If the principal display panel has an area of 100 square inches up to, but not including, 400 square inches, the signal word shall be at least ¼ of an inch in height. The accompanying statement of hazard shall be at least 5/32 of an inch in height, and the other cautionary statements shall be at least 7/64 of an inch in height;

(ii) If the principal display panel is 400 square inches or more, the signal word, statement of hazard and other cautionary labeling shall be at least ½ of an inch in height. The accompanying statement of hazard shall be at least ¼ of an inch in height, and the other cautionary statements shall be at least 5/32 of an inch in height.

(8) Labeling required by this subsection that appears on a bin, container for retail display, or vending machine shall be in reasonable proximity to any pricing or product information contained on the principal display panel, or, if such information is not present, in close proximity to the article that is subject to the labeling requirements.

(9) Descriptive material that accompanies a product subject to the labeling requirements, including accompanying material subject to the alternative allowed by section 1500.19(f), shall comply with the requirements of 16 CFR 1500.121(c)(6) relating to literature containing instructions for use which accompanies a hazardous substance. If the descriptive material contains instructions for use, the required precautionary labeling shall be in reasonable proximity to such instructions or directions and shall be placed together within the same general area (see 16 CFR 1500.121(c)(6)).

(10) In the case of any alternative labeling statement permitted under section 1500.19(e), the requirements of 16 CFR 1500.121(b)(3) and 1500.121(c)(2)(iii) shall apply to statements or indicators on the principal display panel directing attention to the complete cautionary labeling that appears on another display panel.

(11) Any triangle required by this subsection shall be an equilateral triangle. The height of such a triangle shall be equal to or exceed the height of the letters of the signal word "WARNING". The height of the exclamation point inside the triangle shall be at least half the height of the triangle, and the exclamation point shall be centered vertically in the triangle. The triangle shall be separated from the signal word by a distance at least equal to the space occupied by the first two letters of the signal word. In all other respects, the triangles with exclamation points shall confirm generally to the provisions of 16 CFR 1500.121 relating to signal words.

(e) Alternative labeling statements for small packages. Any cautionary statement required by section 1500.19(b) may be displayed on a display panel of the package of a product subject to the labeling requirement other than the principal display panel only if:

(1) the package has a principal display panel of 15 square inches or less,

(2) the full labeling statement required by paragraph (b) of this section is displayed in three or more languages on another display panel of the package of the product, and

(3)(i) In the case of a toy or game subject to section 1500.19(b)(1), a small ball subject to section 1500.19(b)(3), a marble subject to section 1500.19(b)(4), or a toy or game containing such a ball or marble, the principal display panel of the package bears the statement:

BILLING CODE 6355-01-M

⚠ SAFETY WARNING:

BILLING CODE 6355-01-C

and bears an arrow or other indicator pointing toward or directing the purchaser's attention to the display panel on the package where the full labeling statement appears, or

(ii) In the case of a balloon subject to section 1500.19(b)(2) or a toy or game containing such a balloon, the principal display panel bears the statement:

BILLING CODE 6355-01-M

⚠ WARNING:--CHOKING HAZARD

BILLING CODE 6355-01-C

and bears an arrow or other indicator pointing toward or directing the purchaser's attention to the display panel on the package where the full labeling statement appears.

(f) Alternative for Products Manufactured Outside the United States. In the case of a product subject to the labeling requirements of section 1500.19(b) which is manufactured outside the United States and is directly shipped from the manufacturer to the consumer by United States mail or other delivery service in an immediate package that contains descriptive material, the descriptive material inside the immediate package of the product need not bear the required labeling statements only if the shipping container of the product contains other accompanying material that bears the required statements displayed in a prominent and conspicuous manner.

(g) Preemption. Section 101(e) of the Child Safety Protection Act of 1994 prohibits any state or political subdivision of a state from enacting or enforcing any requirement relating to cautionary labeling addressing small parts hazards or choking hazards associated with any toy, game, marble, small ball, or balloon intended or suitable for use by children unless the state or local requirement is identical to a requirement established by section 24 of the FHSA or by 16 CFR 1500.19. Section 101(e) allows a state or political subdivision of a state to enforce a non-identical requirement relating to cautionary labeling warning of small parts hazards or choking hazards

ball subject to section 1500.19(b)(3), a marble subject to section 1500.19(b)(4), or a toy or game containing such a ball or marble, the principal display panel of the package bears the statement:

BILLING CODE 6355-01-M

⚠ SAFETY WARNING:

BILLING CODE 6355-01-C

and bears an arrow or other indicator pointing toward or directing the purchaser's attention to the display panel on the package where the full labeling statement appears, or

(ii) In the case of a balloon subject to section 1500.19(b)(2) or a toy or game containing such a balloon, the principal display panel bears the statement:

BILLING CODE 6355-01-M

⚠ WARNING: --CHOKING HAZARD

BILLING CODE 6355-01-C

and bears an arrow or other indicator pointing toward or directing the purchaser's attention to the display panel on the package where the full labeling statement appears.

(f) Alternative for Products Manufactured Outside the United States. In the case of a product subject to the labeling requirements of section 1500.19(b) which is manufactured outside the United States and is directly shipped from the manufacturer to the consumer by United States mail or other delivery service in an immediate package that contains descriptive material, the descriptive material inside the immediate package of the product need not bear the required labeling statements only if the shipping container of the product contains other accompanying material that bears the required statements displayed in a prominent and conspicuous manner.

(g) Preemption. Section 101(e) of the Child Safety Protection Act of 1994 prohibits any state or political subdivision of a state from enacting or enforcing any requirement relating to cautionary labeling addressing small parts hazards or choking hazards associated with any toy, game, marble, small ball, or balloon intended or suitable for use by children unless the state or local requirement is identical to a requirement established by section 24 of the FHSA or by 16 CFR 1500.19. Section 101(e) allows a state or political subdivision of a state to enforce a non-identical requirement relating to cautionary labeling warning of small parts hazards or choking hazards associated with any toy subject to the provisions of section 24 until January 1, 1995, if the non-identical requirement was in effect on October 2, 1993.

Dated: June 28, 1994

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94-16082 Filed 6-30-94; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted areas and danger zone, Key West Harbor, Key West Naval Air Station, Florida

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Army Corps of Engineers proposes to modify an existing restricted area offshore of Boco Chica Key and to revise the regulations to prohibit entry into a portion of a previously established restricted area offshore of the Key West Naval Air Station, Harry S. Truman Annex. The restricted area offshore of Boca Chica Key is also redesignated as a danger zone as defined in 33 CFR 334.2. The danger zone is needed to protect the public from the dangers associated with the possibility of an errant round from an existing pistol range impacting into the water. The establishment of the danger zone will reduce the size of the previous restricted area.

DATES: Written comments must be submitted on or before August 1, 1994.

ADDRESSES: HQUSACE, Attn: CECW-OR, Washington, D.C. 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Lonnie Shepardson at (904) 232-1677 or Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Key West Naval Air Station, Key West, Florida has requested that the Corps amend the regulations in 33 CFR 334.610(b)(iv) which establishes a restricted area in the waters offshore of the Key West Naval Air Station, Harry S. Truman Annex. The restricted area affects those waters within 100 yards of the westerly shoreline of the Harry S. Truman Annex, including a portion of the Truman Annex Harbor entrance. Pursuant to the existing regulations in § 334.610(b)(iv) vessels may enter that portion of restricted area number 2 (§ 334.610(a)(2)), between Truman Annex Mole and the Key West Harbor Range Channel, extending into the northeasterly corner of the Truman Annex Mole and then further northeasterly to the corner of the restricted area. The restricted area was established in this configuration because the Navy did not have a reasonably definable boundary to enforce the desired "no transit" area. The Navy has recently constructed a breakwater perpendicular to the shoreline at the terminus of the existing restricted area. The breakwater is a physical boundary which forms the northeasterly limit of the restricted area in the Truman Annex Harbor and the expanded no transit area. The restricted area is not enlarged. This amendment is needed to "close" the triangular area adjacent to the breakwater to protect Navy divers using the area and to provide added security for Government property. This amendment will not affect the transit of vessels in the area between Truman Annex Mole and the Key West Harbor Range Channel.

The Navy also requests that the restricted area in § 334.610(a)(6) be amended. This is an area currently designated as a restricted area, but due to its purpose, which is to protect the public from the hazards associated with a small arms firing range onshore, the area is redesignated as a danger zone in accordance with definitions in 33 CFR 334.2 published by the Corps on July 12, 1993, (58 FR 37607-37609). The existing restricted area encompasses approximately 150,000 square yards, extending 150 yards out from the shore for approximately 1,000 yards. This proposed revision will extend the distance offshore to 325 yards, move the area slightly to the north and west and reduce the overall area by approximately one-half to 74,000 square yards. This additional distance offshore is in accordance with the Military Handbook 1027/3B dated November 30, 1992. We are also making the following editorial changes to the regulations. (1) Remove the word "existing" from § 334.610(a)(3). This is an unnecessary word in the regulation, which has no bearing on the description of the area. (2) The regulations in § 334.610(b)(1) are amended to more clearly show which of the areas are closed to transit by the public and those areas or portions of those areas that can be transited within the other restricted areas. These editorial changes will not change the size or configuration of these restricted areas. The Corps proposes to amend the regulations in 33 CFR 334.610 pursuant

to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (33 U.S.C. 1) and Section XIX of the Army Appropriations Act of 1919 (33 U.S.C. 3).

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and accordingly, the provisions of Executive Order 12866 do not apply. These rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small governmental jurisdictions). These regulations, if approved, could have a minimal impact on individuals fishing in the area. However, in view of the abundance of high quality fishing areas available outside of these congested areas, the impact will be negligible. In addition, by these amendments a portion of one area previously closed to the public will be reopened. This proposal will not result in any increase in costs to sports fishermen or commercial fisheries in the area. Accordingly, the preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps proposes to amend Part 334 of Title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.610 is amended by revising paragraphs (a)(3), (a)(6) and (b)(1) through (b)(4) and (c) to read as follows:

§ 334.610 Key West Harbor, at U. Naval Base, Key West, Fla.; naval restricted area.

(a) The areas. * * *

(3) All waters within 100 yards of the Coast Guard Station and the westerly end of Trumbo Point Annex beginning at the shore at Latitude 24°33′47.6″ N., Longitude 81°47′55.6″ W.; thence westerly to Latitude 24°33′48″ N., Longitude 81°48′00.9″ W.; thence due south to Latitude 24°33′45.8″ N., Longitude 81°48′00.9″ W.; thence westerly to Latitude 24°33′47″ N., Longitude 81°48′12″ W ; thence northerly to Latitude 24°34′06.2″ N., Longitude 81°48′10″ W.; thence easterly to a point joining the restricted area around Fleming Key at Latitude 24°34′03.3″ N., Longitude 81°47′55″ W. (Area #3).

* * * * *

(6) *Danger zone.* All waters within an area along the northeast side of the Naval Air Station on Boca Chica Key defined by a line beginning at Latitude 24°35′27.2″ N., Longitude 81°41′48.6″ W.; thence proceed in a northerly direction to a point at Latitude 24°35′48″ N., Longitude 81°41′49″ W.; thence proceed westerly to a point on the shore at Latitude 24°35′49.1″ N., Longitude 81°42′03″ W. (Area #6).

(b) *The Regulations:* (1) Entering or crossing Restricted Areas #1 and #4 and the Danger Zone (Area #6) described in Paragraph (a) of this section is prohibited.

(2) Privately owned vessels, properly registered and bearing identification in accordance with Federal and/or State laws and regulations may transit the following portions of restricted areas #2, #3 and #5: NOTE: All vessels entering the areas at night must display lights as required by Federal laws and Coast Guard regulations or, if no constant lights are required, then the vessel must display a bright white light showing all around the horizon.

(i) The channel, approximately 75 yards in width, extending from the northwest corner of Pier D–3 of Trumbo Point Annex, eastward beneath the Fleming Key bridge and along the north shore of Trumbo Point Annex (area #3).

(ii) A channel 150-feet in-width which extends easterly from the main ship channel into Key West Bight, the northerly edge of which channel passes 25-feet south of the Trumbo Point Annex piers on the north side of the Bight. While the legitimate access of privately owned vessels to facilities of Key West Bight is unimpeded, it is prohibited to moor, anchor, or fish within 50 feet of any U.S. Government-owned pier or craft (area #3).

(iii) The dredged portion of Boca Chica channel from its seaward end to a point due south of the east end of the Boca Chica Bridge (area #5).

(iv) All of the portion of Restricted Area No. 2 that lies between the Truman Annex Mole and the Key West Harbor Range Channel. The transit zone extends to the northeasterly corner of the Truman Annex Mole, thence to the northwesterly end of the breakwater at Latitude 24°33′21.3″ N., Longitude 81°48′32.7″ W.

(3) Stopping or landing by other than government-owned vessels and specifically authorized private craft in any of the restricted areas described in paragraph (a) of this section is prohibited.

(4) Vessels using the restricted channel areas described in paragraph (b)(2)(i), (ii), (iii), and (iv) of this section shall proceed at speeds commensurate with minimum wake.

(c) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station, Key West, Florida, and such agencies as he/she may designate.

Date: June 14, 1944.

Approved:

James D. Craig,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 94–15447 Filed 6–30–94; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–5005–1]

RIN 2040–AC90

Effluent Guidelines Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed effluent guidelines plan; correction.

SUMMARY: EPA published a Notice of Proposed Effluent Guidelines Plan on May 18, 1994 (59 FR 25859). This document corrects a typographical error contained in the May 18, 1994 document

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Engineering and Analysis Division (4303), EPA, 401 M Street, SW., Washington, DC 20460; telephone 202–260–7150.

SUPPLEMENTARY INFORMATION: On May 18, 1994, EPA published a Notice of Proposed Effluent Guidelines Plan (59 FR 25859). The notice contained a typographical error in section IV.B.2, "Selection of Categories for Future Rulemaking" (59 FR 25864, column 1, lines 19–26). The error resulted in an incomplete description of the portion of the Pulp, Paper and Paperboard category that the Agency is considering for additional rulemaking. The corrected text is as follows:

The seventh is comprised of six non-bleaching subcategories of the Pulp, Paper and Paperboard category. (The subcategories are: G. Mechanical Pulp, H. Non-Wood Chemical Pulp; I. Secondary Fiber Deink; J. Secondary Fiber Non-Deink; K. Fine and Lightweight Papers from Purchased Pulp; and L. Tissue, Filter, Non-Woven, and Paper from Purchased Pulp.) The recent proposed rule for the Pulp, Paper and Paperboard Category included BPT, BCT and NSPS for conventional pollutants for these subcategories, but did not address toxic and nonconventional pollutant discharges (40 CFR part 430; 58 FR 66104, December 17, 1993).

Dated: June 23, 1994.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 94–15986 Filed 6–30–94; 8:45 am]

BILLING CODE 3560–50–F

---

40 CFR Part 52

[OR–11–1–5527b; FRL –4892–1]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revision submitted by the State of Oregon for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the state to satisfy certain Federal requirements for an approvable moderate nonattainment area PM–10 SIP for La Grande, Oregon. In the Final rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this notice.

DATES: Comments must be received by August 1, 1994.

ADDRESSES: Written comments should be addressed to: Montel Livingston, EPA, 1200 6th Avenue, AT–082, Seattle, Washington 98101.

Fiber Non-Deink; K. Fine and Lightweight Papers from Purchased Pulp; and L. Tissue, Filter, Non-Woven, and Paper from Purchased Pulp.) The recent proposed rule for the Pulp, Paper and Paperboard Category included BPT, BCT and NSPS for conventional pollutants for these subcategories, but did not address toxic and nonconventional pollutant discharges (40 CFR part 430; 58 FR 66104, December 17, 1993).

Dated: June 23, 1994.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 94–15986 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–60–F

---

40 CFR Part 52

[OR–11–1–5527b; FRL –4892–1]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revision submitted by the State of Oregon for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the state to satisfy certain Federal requirements for an approvable moderate nonattainment area PM–10 SIP for La Grande, Oregon. In the Final rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this notice.

DATES: Comments must be received by August 1, 1994.

ADDRESSES: Written comments should be addressed to: Montel Livingston, EPA, 1200 6th Avenue, AT–082, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460. Copies of the State's request and other information are available for inspection during normal business hours at the following locations: EPA, 1200 6th Avenue, Seattle, WA 98101, and the State of Oregon Department of Environmental Quality, 811 SW. 6th Avenue, Portland, OR 97104–1390.

FOR FURTHER INFORMATION CONTACT: Stephen Fry, Air and Radiation Branch, EPA, 1200 6th Avenue, AT–082, Seattle, WA 98101 (206/553–2575).

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the final rules section of this **Federal Register**.

Dated: May 25, 1994.

Chuck Clarke,

Regional Administrator.

[FR Doc. 94–15999 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR PART 185

[OPP–300335; FRL–4770–3]

RIN 2070–AC18

Pesticides; Proposed Rule Revoking Certain Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke certain food additive regulations for several pesticides which EPA has determined "induce cancer" within the meaning of the Delaney Clause of section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). The food additive regulations being proposed for revocation include captan, ethylene oxide, mancozeb, oxyfluorfen, propargite, propylene oxide, and simazine. As a result of a 1992 court decision regarding the Delaney Clause, EPA recently revoked food additive regulations for four pesticides found to "induce cancer" that were subject to the litigation. This proposal continues a series of actions revoking food additive regulations for additional pesticides found to "induce cancer" within the meaning of the Delaney Clause.

DATES: Written comments, identified by the document control number, [OPP-300335], must be received on or before September 29, 1994.

ADDRESSES: By mail, submit comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: OPP Docket, Public Information Branch, Field Operations Division, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The telephone number for the OPP docket is (703)-305-5805.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (or CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2 and in section 10 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). For questions related to disclosure of materials, contact the OPP Docket at the telephone number given above. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in the OPP Docket, Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Station #1, 2800 Crystal Drive, Arlington, VA. Telephone 703-308-8028.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Background

The Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq.) authorizes the establishment of maximum permissible levels of pesticides in foods, which are referred to as "tolerances" (21 U.S.C. 346(a), 348). Without such a tolerance or an exemption from a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce (21 U.S.C. 342). Monitoring and enforcement of pesticide residues are carried out by the U.S. Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA).

The FFDCA governs tolerances for raw agricultural commodities (RACs) and processed foods separately. For pesticide residues in or on RAC's, EPA establishes tolerances, or exemptions

from tolerances when appropriate, under section 408 of the FFDCA. In processed foods, food additive regulations setting maximum permissible levels of pesticide residues are established under section 409 of the FFDCA. Section 409 tolerances are required, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, no section 409 tolerance is required if the pesticide residue in a processed food, when ready to eat, is equal to or below the tolerance for that pesticide in or on the RAC from which it was derived. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to the processed food form. Thus, a section 409 tolerance is only necessary to prevent foods from being deemed adulterated when the concentration of the pesticide residue in a processed food is greater than the tolerance prescribed for the raw agricultural commodity, or if the processed food itself is treated or comes in contact with a pesticide.

If a food additive regulation must be established, section 409 of the FFDCA requires that the use of the pesticide will be "safe" (21 U.S.C. 348(c)(3)). Relevant factors in this safety determination include: (1) the probable consumption of the pesticide or its metabolites; (2) the cumulative effect of the pesticide in the diet of man or animals, taking into account any related substances in the diet; and (3) appropriate safety factors to relate the animal data to the human risk evaluation. Section 409 also contains the Delaney Clause, which specifically provides that "no additive shall be deemed safe if it has been found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer when ingested by man or animal." (21 U.S.C.348(c)(3)).

B. Regulatory Background

On May 25, 1989, the State of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO, and several individuals filed a petition requesting that EPA revoke several food additive regulations and challenging EPA's *de minimis* interpretation of the Delaney Clause. The petition, which sought a "zero-risk" interpretation of the Delaney Clause, requested that EPA revoke certain food additive regulations. The petitioners argued that these food additive regulations should be revoked because they are carcinogens and therefore violate the Delaney Clause.

EPA responded to the petition by revoking certain food additive regulations, but retained several others on the grounds that the Delaney Clause provides an exception for pesticide residues posing *de minimis* risk, and EPA denied the petition for the food additive regulations determined to fall under this exception.

EPA's response was challenged by the petitioners in the U.S. Court of Appeals, Ninth Circuit. On July 8, 1992, the court ruled in *Les v. Reilly*, 968 F.2d 985 (9th Cir.), *cert. denied*, 113 S.Ct. 1361 (1993), that the Delaney Clause barred the establishment of a food additive regulation for pesticides which "induce cancer" no matter how infinitesimal the risk.

On July 14, 1993, EPA issued a revised response to the petition taking into account the court's ruling. That revised response granted the original petition and revoked the food additive regulations named in the petition. Published elsewhere in this issue of the **Federal Register**, EPA is issuing an Order denying all objections to the revocation. Although the court's ruling dealt only with the pesticides named in the lawsuit, EPA is proceeding with the revocation of other food additive regulations for pesticides which EPA has determined "induce cancer."

In implementing the court's decision in *Les v. Reilly*, EPA has taken steps to identify and revoke all section 409 tolerances for pesticides which have been found to "induce cancer." In February 1993, EPA issued two lists of pesticide uses which would likely be affected by the court's decision. The first list contains affected food and feed additive regulations, and the second identifies pesticide uses where data show a food or feed additive regulation must be established, but cannot because the pesticide has been found to "induce cancer." Both lists are updated regularly to reflect changes in data reviews and other regulatory actions.

II. Proposed Revocation of the Subject Section 409 Tolerances Which are Inconsistent with the Delance Clause

EPA intends to revoke all food and feed additive regulations which it finds are inconsistent with the Delaney Clause. To ensure an orderly revocation, EPA will proceed in a phased manner. This document proposes revocation of food additive regulations established for pesticides classified as a Group "B" (probable human) carcinogens and those Group "C" (possible human) carcinogens quantified by a linear low-dose extrapolation model and found to "induce cancer" within the meaning of the Delaney Clause. In the near future, EPA will be proposing revocations of other section 409 tolerances affected by the court's ruling.

A. Basis for Proposing Revocation

As a result of the court's 1992 decision, the only issue to be considered for these proposed revocations is whether, under the Delaney Clause, a pesticide chemical induces cancer in man or animals. If EPA makes this determination, the Delaney Clause prohibits the food additive regulation.

In construing the "induce cancer" standard as to animals, EPA follows a weight- of-the-evidence approach, which is guided, where appropriate, by the principles in EPA's Cancer Assessment Guidelines. As regards animal carcinogenicity, EPA, in general, agrees with FDA's explanation of the term "induce cancer":

> The carcinogenicity of a substance in animals is established when administration in adequately designed and conducted studies results in an increase in the incidence of one or more types of malignant (or, where appropriate, a combination of benign and malignant) neoplasms in treated animals compared to untreated animals maintained under identical conditions except for exposure to the test compound. Determination that the incidence of neoplasms increases as the result of exposure to the test compound requires a full biological, pathological, and statistical evaluation. Statistics assist in evaluating the biological conclusion, but a biological conclusion is not determined by the statistical results.

(52 FR 49577, Dec. 31, 1987). Each of the pesticides subject to this proposal qualifies as an animal carcinogen under this test.

Summarized below is the information supporting EPA's determination. EPA has determined that each of these pesticides "induces cancer" in animals within the meaning of the Delaney Clause. Full copies of each of these reviews, as well as other references in this section, are available in the OPP Docket, the location of which is given under "ADDRESSES" above in this document.

Captan

Based on several rodent studies, EPA has concluded that exposure to captan results in an increased incidence of malignant tumors of the small intestines in mice. The carcinogenic potential of captan is supported by the increased incidence of other tumor types found outside of historical control range. The direct-acting genotoxicity and reactivity of captan support EPA's finding that captan "induces cancer" within the meaning of the Delaney Clause.

Three mouse studies demonstrated positive carcinogenic results. In one study, captan was fed to CD-1 male and female mice. Initial dosing of 0, 2,000, 6,000 and 10,000 parts per million (ppm) was administered, but was increased after 4 weeks to 0, 6,000, 10,000 and 16,000 ppm. Marked increases in adenomas and carcinomas of the small intestine were found by pair-wise comparison between all dose groups and controls. A positive dose-related trend for carcinomas, the malignant component of the induced tumors, was found in both sexes. While the highest dose tested (HDT) appears excessive, it does not diminish the biological significance of the tumors which were seen at lower doses and which continued to increase at the HDT. In another 2-year study, B6C3F1 mice were fed 0, 6,000, and 16,000 ppm of captan for 80 weeks. At the HDT, the combined incidence of adenomas/polyps and carcinomas was increased by pairwise comparison with control animals in male mice; no compound-related increase in tumors occurred in female mice. A special study was performed in CD-1 mice (at 0 or 600 ppm for 3, 6, 9, 12, or 18 to 20 months) to examine the relationship between the hyperplastic and neoplastic epithelial lesions produced by captan in the small intestine. The fact that a significant increase in tumors was seen during the recovery period following captan administration supports the decision that, although intestinal hyperplasia may regress after removal of captan, the potential for progression to benign and malignant neoplasia remains.

In a 2-year male and female CR CD rat study at 0, 500, 2,000, or 5,000 ppm, a dose-related trend for combined renal tubular cell adenomas/carcinomas was found for male rats. The combined incidence of tumors induced by captan exceeded the testing laboratory's historical control range. In another study, male and female Wistar Cpb : WU rats were fed captan at 0, 125, 500 or 2,000 ppm for 30 months. The incidence of uterine sarcomas was increased by pair-wise comparison to the HDT with control animals in female rats, but no compound-related increase in tumors was observed in male rats.

A range of studies demonstrate that captan is a genotoxic agent. It is positive in almost all *in vitro* studies for gene mutations, structural chromosomal aberrations, and induction of DNA repair.

The direct acting genotoxicity and reactivity of captan would suggest a likely mechanism for carcinogenicity. Structural analogues closely related to captan are also carcinogenic and induce

Three mouse studies demonstrated positive carcinogenic results. In one study, captan was fed to CD-1 male and female mice. Initial dosing of 0, 2,000, 6,000 and 10,000 parts per million (ppm) was administered, but was increased after 4 weeks to 0, 6,000, 10,000 and 16,000 ppm. Marked increases in adenomas and carcinomas of the small intestine were found by pair-wise comparison between all dose groups and controls. A positive dose-related trend for carcinomas, the malignant component of the induced tumors, was found in both sexes. While the highest dose tested (HDT) appears excessive, it does not diminish the biological significance of the tumors which were seen at lower doses and which continued to increase at the HDT. In another 2-year study, B6C3F1 mice were fed 0, 6,000, and 16,000 ppm of captan for 80 weeks. At the HDT, the combined incidence of adenomas/polyps and carcinomas was increased by pairwise comparison with control animals in male mice; no compound-related increase in tumors occurred in female mice. A special study was performed in CD-1 mice (at 0 or 600 ppm for 3, 6, 9, 12, or 18 to 20 months) to examine the relationship between the hyperplastic and neoplastic epithelial lesions produced by captan in the small intestine. The fact that a significant increase in tumors was seen during the recovery period following captan administration supports the decision that, although intestinal hyperplasia may regress after removal of captan, the potential for progression to benign and malignant neoplasia remains.

In a 2-year male and female CR CD rat study at 0, 500, 2,000, or 5,000 ppm, a dose-related trend for combined renal tubular cell adenomas/carcinomas was found for male rats. The combined incidence of tumors induced by captan exceeded the testing laboratory's historical control range. In another study, male and female Wistar Cpb : WU rats were fed captan at 0, 125, 500 or 2,000 ppm for 30 months. The incidence of uterine sarcomas was increased by pair-wise comparison to the HDT with control animals in female rats, but no compound-related increase in tumors was observed in male rats.

A range of studies demonstrate that captan is a genotoxic agent. It is positive in almost all *in vitro* studies for gene mutations, structural chromosomal aberrations, and induction of DNA repair.

The direct acting genotoxicity and reactivity of captan would suggest a likely mechanism for carcinogenicity. Structural analogues closely related to captan are also carcinogenic and induce cancer at similar sites as captan (small intestine and renal cells). Based on these results, EPA has determined that captan induces cancer in animals. Additional information is included in the December 5, 1988 HED Peer Review document.

Ethylene Oxide (EtO)

Based on several rodent studies, EPA has concluded that exposure to EtO results in the induction of benign and malignant tumors in multiple sites in both sexes of test animals. The carcinogenicity of EtO is supported by its DNA reactivity, genotoxic properties, and structural relation to other carcinogenic compounds. Two studies administered by the inhalation route to Fischer 344 rats demonstrate positive carcinogenic results. In the first 2-year bioassay administered as 0, 10, 33, or 100 ppm EtO vapor, six types of carcinogenic responses were considered treatment related. There were statistically significant increases in mononuclear cell leukemia (spleen) in females at the HDT and tumors of the pancreas (males at the HDT), skin (males at the HDT), and brain (both sexes at the HDT and also in males at the middle dose). There were also treatment-related increases in the peritoneal mesothelioma (males in all treatment groups) and pituitary gland adenomas (males at the highest two doses). In a second 2-year study using male Fischer 344 rats at 0, 50, or 100 ppm EtO vapor, there were dose-related increases in the incidences of peritoneal mesotheliomas and brain tumors, which were statistically significant at the HDT A significantly increased incidence of mononuclear cell leukemia was seen at the low dose; the absence of a dose-related effect was attributed to mortality at the HDT. Although both rat tests were disrupted by non-treatment related infections, these infections do not appear to have affected the tumor induction described above.

Carcinogenic effects were also induced during tests when B6C3F1 mice were exposed by inhalation to EtO (at 0, 50 or 100 ppm EtO vapor). The incidences of alveolar/bronchiolar adenomas, carcinomas, and combined adenomas/carcinomas in the HDT for each sex (except for adenomas in male mice) were significantly greater than in control mice. There were also significant positive trends in lung tumors in each sex. Malignant lymphomas of the hematopoietic system occurred with a positive trend in female mice with the incidence at the HDT higher than in controls. The incidence of mammary gland adenocarcinomas or adenosqamous carcinomas (combined) in low-dose females was greater than that in controls. The incidence of hepatocellular adenomas in low dose females was also greater than that in controls.

In addition to the inhalation studies, there is a gavage study which showed forestomach tumors (primarily squamous cell carcinomas) and a subcutaneous study in mice which showed tumors at the site of injection Other studies show induction of gene mutations in bacteria, fungi, higher plants and *Drosophila*. EtO has been shown to be a direct-acting mutagen, inducing dominant lethal effects and heritable translocation in rodents and chromosomal aberrations in both higher plants and rodents.

Although the majority of carcinogenicity studies involved routes of exposure other than ingestion, because tumors were produced distant from the site of administration, e.g., brain tumors, the data show that ethylene oxide has tumor-inducing potential independent of the route of exposure, and thus EPA concludes that these tests are appropriate for evaluating the safety of ethylene oxide in the diet. EPA also considered the gavage study in making the decision that ethylene oxide induces cancer. A more complete evaluation of the carcinogenicity of EtO may be found in EPA's Office of Research and Development document entitled "Health Assessment Document for Ethylene Oxide" (EPA/600/8-84/009F, 1985). Also, the National Toxicology Program has published a Technical Report (No. 326, 1987) on its inhalation study in mice, which is described above. Although the Office of Pesticide Programs has not conducted a Peer Review on the carcinogenicity of EtO, the program agrees with the analyses found in these documents and has determined that EtO induces cancer in animals.

Mancozeb

As made clear in an Order published in the **Federal Register** on June 30, 1994, EPA has previously determined that mancozeb induces cancer in animals within the meaning of the Delaney Clause. Information relevant to that determination is laid out below Any commenter who seeks reconsideration of that determination must submit new evidence demonstrating that reconsideration of the previous determination is warranted or otherwise explain why reconsideration is appropriate.

EPA has concluded that exposure to mancozeb results in an increased incidence of cancer in animals, namely benign and malignant thyroid tumors in

rodents. In a study using male Sprague-Dawley rats, the incidences of thyroid follicular cell adenomas, carcinomas, and combined adenomas/carcinomas at the HDT was significantly increased in pair-wise comparison to controls; female rats had a significant increase for combined thyroid tumors. Mancozeb was also associated with increasing trends in thyroid follicular cell adenomas, carcinomas and combined adenomas/carcinomas. A study in mice was also conducted; however, the HDT was considered inadequate to assess carcinogenic potential.

EPA also has concluded that mancozeb is carcinogenic because of the presence of ethylene thiourea (ETU), a metabolite, contaminant and degradation product present in mancozeb products. A 2-year bioassay in mice showed statistically significant increases in combined hepatocellular liver adenomas/carcinomas in both sexes at two doses, as well as significant positive (increasing) trends in tumors. EPA believes that summing of adenomas and carcinomas is appropriate for this type of tumor, but notes the study also showed that hepatocellular liver carcinomas alone were statistically increased at both doses in females and at the high dose in males. This study also showed increased incidences of thyroid follicular cell adenomas and carcinomas. In rat studies, exposure to ETU was related to increased incidences of thyroid follicular cell adenomas and carcinomas in both sexes (note the same tumor type as the mancozeb studies).

Oxyfluorfen

EPA has concluded that exposure to oxyfluorfen results in an increased incidence of hepatocellular adenomas and carcinomas in mice. In a 20-month study, CD-1 mice were fed oxyfluorfen with doses ranging from 0 (as well as an additional control group fed ethanol) to 200 ppm. During weeks 57 and 58 of the testing, the HDT was increased to 800 ppm. Upon final examination of the mice, there were significant positive dose-related trends for hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in males. The incidences of these tumors exceeded the historical controls for carcinomas at the two highest doses tested and for adenomas at the HDT. There were no compound-related increases in tumors observed in the female mice. The HDT was assessed to be inadequate for maximal dosing to assess the full carcinogenic potential of oxyfluorfen. A rat study was also conducted; however, errors during the test resulted in a dose range deemed insufficient to assess the carcinogenicity of oxyfluorfen.

Oxyfluorfen is structurally related to four other diphenyl ether herbicides that have also induced the tumors types similar to those noted in the oxyfluorfen mouse study (liver tumors). Several studies provide evidence that oxyfluorfen has mutagenic activity, namely gene mutations in Salmonella and mouse lymphoma assays.

In 1989, an EPA Carcinogenicity Peer Review convened to assess the carcinogenicity studies of oxyfluorfen. Although the mouse test may not have achieved the maximum tolerated dose for a full assessment of carcinogenicity, the liver tumors observed were dose related. The occurrence of these tumors was not significant by pair-wise comparison to concurrent controls; however, the Peer Review committee noted that if a maximum dose actually had been administered, the incidences of both benign and malignant tumors would have likely been statistically significant. In addition, the incidences, even at less than maximal appropriate dose, exceeded the historical control range. The supporting evidence on oxyfluorfen's mutagenicity and structural similarity to other chemicals which also induce liver tumors has led EPA to conclude that oxyfluorfen induces cancer in animals. The Peer Review committee's document (dated September 29, 1989) contains more discussion on the studies and supporting evidence.

Propargite

EPA has concluded that exposure to propargite results in an increased incidence of undifferentiated sarcoma of the jejunum (a tumor in the gastrointestinal tract) in both sexes of rats. Male and female Sprague-Dawley rats were fed 0, 50, 80, 400, or 800 ppm of propargite for 2-years. Both sexes had a significant increasing trend for this malignant tumor type with dose increments of propargite as well as a pair-wise difference from controls. Undifferentiated sarcoma of the gastrointestinal tract is a rare tumor in rats. In the historical control data, no tumors of the jejunum were noted. Propylene oxide, a known carcinogen, was used as a stabilizer in early batches of propargite. However, EPA has concluded that since the tumors were mesodermal in origin, they were unlikely to have been due to the presence of propylene oxide. In another study male and female mice were fed 0, 50, 160, 500, or 1,000 ppm propargite for 18 months. There were no apparent increases in tumors associated with increases in the dose level of propargite. These tests, however, were considered to be inadequate for judging carcinogenicity since the dose levels were too low owing to lack of systemic effects and to the older age of the mice at the time dosing was initiated.

Propargite was demonstrated to be mutagenic in a Chinese hamster ovary cell gene mutation study in the absence of metabolic activation, which indicates that propargite is a direct-acting mutagen. Overall these data provide evidence for a mutagenicity concern that would support a carcinogenicity concern.

Exposure to propargite results in an increased incidence of undifferentiated sarcoma of the jejunum in both sexes of Sprague-Dawley rats. This malignant tumor was produced with a high incidence at an unusual site. Based on these results, EPA has determined that propargite induces cancer in animals. Full details and references can be found in the report from the February 12, 1992 Peer Review Committee meeting.

Propylene Oxide

EPA has concluded that exposure to propylene oxide results in the induction of benign and malignant tumors in the nasal cavity of mice and rats. In a 2-year inhalation study at 0, 200, or 400 ppm using B6C3F1 mice, hemangiomas and hemangiosarcomas of the nasal cavity were statistically increased both individually and when the two tumor types were combined in male mice at the HDT. In addition there were significant positive (increasing) trends for both benign and malignant tumors of this type. In female mice, the incidence of combined hemangiomas/hemangiosarcomas was also statistically significant at the HDT. The female mice also showed a significant dose-related trend of mammary gland adenocarcinomas relative to controls. In a 2-year inhalation study, Cpb:WU Wistar rats were exposed to propylene oxide at doses of 0, 30, 100, or 300 ppm. A statistically significant increase in mammary gland fibroadenomas and adenocarcinomas was found in the high-dose females when compared to controls. The number of mammary tumors per rat was also significantly increased. While there was no increase in tumors of the nasal cavity, a statistically significant increase in nonneoplastic alterations (degenerative changes and hyperplasia) of the olfactory and respiratory epithelium was observed in each sex in each exposure group. In addition to the inhalation studies, there is a gavage study, which showed forestomach tumors (primarily squamous cell carcinomas), and a subcutaneous study in mice, which showed tumors at the site of injection.

Like other epoxides, propylene oxide is DNA-reactive. It is a direct-acting mutagen with positive results in bacterial, yeast, *Drosophila*, and cultured mammalian cells. Propylene oxide is a clear alkylating agent and is mutagenic.

Although the majority of carcinogenicity studies involved routes of exposure other than ingestion, because tumors were produced distant from the site of administration (e.g., mammary gland tumors), the data shows that propylene oxide has tumor-inducing potential independent of the route of exposure and thus EPA concludes that these tests are appropriate for evaluating the safety of propylene oxide in the diet. (EPA also considered the gavage study in making its induce cancer call.) Details on the studies related to the carcinogenicity and supporting information can be found in EPA's Integrated Risk Information System (IRIS) prepared by the Agency's Carcinogenicity Risk Assessment Verification Endeavor (CRAVE) group. Based on the positive response in the carcinogenicity studies, propylene oxide's structural similarity to other known animal carcinogens (epichlorohydrin and ethylene oxide), and its genotoxic potential, EPA has determined that in appropriate tests propylene oxide induces cancer in animals.

Simazine

EPA has concluded that exposure to simazine results in increased incidents of malignant mammary gland carcinomas and malignant pituitary gland carcinomas in female Sprague-Dawley rats at the HDT. Male and female Sprague-Dawley rats were fed simazine for 2 years at doses of 0 ppm (as controls), 10 ppm, 100 ppm, or 1,000 ppm. Due to excessive mortality and significant decreased weight gain in female rats at the HDT (1,000 ppm), this dose appeared excessive for testing carcinogenicity. However, when the shortened lifespan in the females was considered in the statistical analysis, the incidence of malignant mammary gland carcinoma at both the 100 and 1,000 ppm doses was statistically significant compared to controls. There was a statistically significant increase in the combined mammary gland adenoma/carcinoma compared to control incidence as well. These and other dose-related trends suggest that the mammary gland carcinomas contributed to the increased mortality at the HDT. There were no dose-related adverse effects seen in the male rats tested.

Male and female CD-1 mice were fed simazine for 95 weeks at levels ranging

Like other epoxides, propylene oxide is DNA-reactive. It is a direct-acting mutagen with positive results in bacterial, yeast, *Drosophila*, and cultured mammalian cells. Propylene oxide is a clear alkylating agent and is mutagenic.

Although the majority of carcinogenicity studies involved routes of exposure other than ingestion, because tumors were produced distant from the site of administration (e.g., mammary gland tumors), the data shows that propylene oxide has tumor-inducing potential independent of the route of exposure and thus EPA concludes that these tests are appropriate for evaluating the safety of propylene oxide in the diet. (EPA also considered the gavage study in making its induce cancer call.) Details on the studies related to the carcinogenicity and supporting information can be found in EPA's Integrated Risk Information System (IRIS) prepared by the Agency's Carcinogenicity Risk Assessment Verification Endeavor (CRAVE) group. Based on the positive response in the carcinogenicity studies, propylene oxide's structural similarity to other known animal carcinogens (epichlorohydrin and ethylene oxide), and its genotoxic potential, EPA has determined that in appropriate tests propylene oxide induces cancer in animals.

Simazine

EPA has concluded that exposure to simazine results in increased incidents of malignant mammary gland carcinomas and malignant pituitary gland carcinomas in female Sprague-Dawley rats at the HDT. Male and female Sprague-Dawley rats were fed simazine for 2 years at doses of 0 ppm (as controls), 10 ppm, 100 ppm, or 1,000 ppm. Due to excessive mortality and significant decreased weight gain in female rats at the HDT (1,000 ppm), this dose appeared excessive for testing carcinogenicity. However, when the shortened lifespan in the females was considered in the statistical analysis, the incidence of malignant mammary gland carcinoma at both the 100 and 1,000 ppm doses was statistically significant compared to controls. There was a statistically significant increase in the combined mammary gland adenoma/carcinoma compared to control incidence as well. These and other dose-related trends suggest that the mammary gland carcinomas contributed to the increased mortality at the HDT. There were no dose-related adverse effects seen in the male rats tested.

Male and female CD-1 mice were fed simazine for 95-weeks at levels ranging from 0 to 4000 ppm. There was no increased incidence of tumors associated with simazine exposure.

Simazine is structurally related to other S-triazine herbicides. Studies involving several of these compounds show that exposure leads to an increased incidence of mammary gland tumors. Simazine was found to be negative for gene mutations in the *Salmonella* assay, but positive in the mouse lymphoma assay, the *Drosophila* assay and plant cytogenic assays.

Studies showing statistically significant increases in malignant mammary gland tumors and pituitary gland carcinomas, together with the structural similarity with other S-triazine compounds, lead EPA to conclude that simazine induces cancer in female rats. Discussions of the various studies on the carcinogenicity of simazine can be found in the Health Effects Division (HED) Peer Review of simazine (July 31, 1989).

B. Proposed Food Additive Revocations

Captan

EPA is proposing to revoke the food additive regulation for the fungicide captan (or N-trichloromethylmercapto-4-cyclohexene-1,2-dicarboximide) in or on washed raisins. This food additive regulation, set at 50 ppm, is codified at 40 CFR 185.500. EPA is proposing revocation of this regulation because the Agency has determined that captan induces cancer in animals. Thus the regulation violates the Delaney Clause in section 409 of the FFDCA.

Ethylene Oxide

EPA is proposing to revoke the food additive regulations permitting the direct application of ethylene oxide to ground spices. This food additive regulation is codified at 40 CFR 185.2850. EPA is proposing revocation of this food additive regulation because, based on tests which are appropriate for the evaluation of the safety of food additives, ethylene oxide has been found to induce cancer in animals. Thus the regulation violates the Delaney Clause in section 409 of the FFDCA.

The American Spice Trade Association (ASTA) has submitted a letter challenging the applicability of the inhalation studies described in section II. A of this notice to the conclusion that EtO induces cancer within the meaning of the Delaney Clause. ASTA refers to section 409, which prohibits the approval of a food additive (including pesticide residues) if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of food additives, to induce cancer in man or animals. ASTA does not believe that the inhalation studies are appropriate for assessing whether EtO induces cancer when ingested. A copy of this letter is available for inspection and comment through the OPP docket at the location and telephone number listed under "ADDRESSES" above in this document

Mancozeb

EPA is proposing to revoke the food additive regulations for mancozeb (expressed as the coordination product of zinc ion and maneb (or manganous ethylenebisdithiocarbamate)) for residues in the brans of barley, oats, and rye (20 ppm) and in the flours of barley, oats, rye, and wheat (1 ppm). These food additive regulations are codified at 40 CFR 185.6300. EPA is proposing to revoke this food additive regulation because the Agency has determined that mancozeb induces cancer in animals. Thus the regulation violates the Delaney Clause in section 409 of the FFDCA.

Oxyfluorfen

EPA is proposing to revoke the food additive regulations for residues of oxyfluorfen on cottonseed oil, peppermint oil, spearmint oil, and soybean oil. These food additive regulations, set at 0.25 ppm, are codified at 40 CFR 185.4600. EPA is proposing to revoke these food additive regulations because the Agency has determined that oxyfluorfen induces cancer in animals. Thus the regulation violates the Delaney clause in section 409 of the FFDCA.

Propargite

EPA is proposing to revoke the food additive regulations for residues of propargite on dried figs (9 ppm), raisins (25 ppm), and dried tea (10 ppm), which are codified at 40 CFR 185.5000. EPA is proposing to revoke these food additive regulations because the Agency has determined that propargite induces cancer in animals. Thus the regulation violates the Delaney Clause in section 409 of the FFDCA.

It should be noted that this proposed revocation of the section 409 tolerances for propargite does not affect hops. EPA recently announced a change in its policy with respect to the classification of dried hops under the Federal Food, Drug and Cosmetic Act (FFDCA) (PR Notice 93-12, December 23, 1993). Under this revision, hops are considered for regulatory purposes as a raw agricultural commodity in both the fresh (green) and dried forms. EPA has reclassified dried hops as a raw agricultural commodity consistent with

recent legislative directives on this subject.

Propylene Oxide

EPA is proposing to revoke the food additive regulations for residues of propylene oxide on cocoa (300 ppm), glace fruit (700 ppm), gums (300 ppm), processed nutmeats (except peanuts) (300 ppm), dried prunes (700 ppm), processed spices (300 ppm), and starch (300 ppm). The food additive regulations are codified at 40 CFR 185.5150. EPA is proposing revocation since the Agency has determined that propylene oxide induces cancer in animals and induces cancer in tests appropriate for the evaluation of the safety of food additives. Thus the regulation violates the Delaney Clause in section 409 of the FFDCA.

Simazine

EPA is proposing to revoke the food additive regulations for simazine, codified at CFR 185.5350, for residues on sugarcane molasses (1 ppm), potable water (0.01 ppm) and sugarcane syrup (1 ppm). EPA is proposing revocation of the food additive regulations because EPA has determined that Simazine induces cancer in animals. Thus the regulation violates the Delaney Clause in section 409 of the FFDCA.

TABLE 1—FOOD ADDITIVE REGULATIONS PROPOSED FOR REVOCATION

Pesticide	CFR Citation	Commodity and food additive regulation level (ppm)
Captan	185.500	Raisins (50.0)
Ethylene oxide.	185.2850	Ground spices (50.0)
Mancozeb ..	185.5300	Bran of oats, barley, rye (20); flours of oats, barley, rye, wheat (1.0)
Oxyfluorfen .	185.4600	Peppermint, spearmint, soybean, and cottonseed oils (0.25)
Propargite ..	185.5000	Dried tea (10), raisins (25), and dried figs (9)

TABLE 1—FOOD ADDITIVE REGULATIONS PROPOSED FOR REVOCATION—Continued

Pesticide	CFR Citation	Commodity and food additive regulation level (ppm)
Propylene oxide.	185.5150	Glace fruit (700), cocoa (300), gums (300), processed nutmeats (except peanuts) (300), dried prunes (700), starch (300), processed spices (300)
Simazine	185.5350	Sugarcane molasses (1.0), potable water (0.1), sugarcane syrup (1.0)

C. Consideration of Comments

Any interested person may submit comments on this proposed action on or before September 29, 1994 at the address given in the section entitled "ADDRESSES." Before issuing final actions, EPA will consider all relevant comments, which should be limited only to the pesticides and food additive regulations subject to this proposed notice, as well as comments that have already been submitted in response to a February 5, 1993 notice which asked for comments on various EPA, FDA, and USDA policies for regulating pesticide residues in foods and feeds (58 FR 7470). That notice requested comments on the following areas: coordination of section 408 and 409; concentration of residues; classification of foods as "ready-to-eat"; the fate of affected FIFRA registrations; the DES proviso; section 18 emergency exemptions; and regulatory impacts.

III. Executive Order 12866

The Agency has not completed an evaluation of the economic impacts of this regulatory action because an evaluation of benefits is irrelevant to action under the Delaney Clause. The Agency is compelled to take this action without regard to the cost-benefit relationship. However, the Agency welcomes any comments and information which would contribute to an analysis of the impacts of this action and similar future actions.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.) requires EPA to analyze regulatory options to assess the economic impact on small businesses, small governments, and small organizations. As explained above, the Agency is compelled to take this action without regard to the economic impacts. Again, EPA welcomes any information on impacts to small businesses, governments, and organizations.

V. Paperwork Reduction Act

This order does not contain any information collection requirements subject to review by Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 185

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirments.

Dated: June 18, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 185 be amended as follows:

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.500 [Removed]

2. By removing § 185.500 *Captan.*

§ 185.2850 [Removed]

3. By removing § 185.2850 *Ethylene oxide.*

§ 185.4600 [Removed]

4. By removing § 185.4600 *Oxyfluorfen.*

§ 185.5000 [Amended]

5. By amending § 185.5000 *Propargite* by removing from the table therein the entries for dried tea, raisins, and dried figs.

§ 185.5150 [Removed]

6. By removing § 185.5150 *Propylene oxide.*

§ 185.5350 [Removed]

7. By removing § 185.5350 *Simazine.*

[FR Doc. 94–15925 Filed 6–28–94; 4:15 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 64 and 69

[CC Docket No. 92–77, DA 94–703]

Billed Party Preference for 0+ InterLATA Calls

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of proposed rulemaking; extension of time.

SUMMARY: The Policy and Program Planning Division of the Common Carrier Bureau of the Federal Communications Commission released an order extending the time in which to file comments and replies in response to its Further Notice of Proposed Rulemaking. On June 6, 1994, Competitive Telecommunications Association (CompTel), Bell Atlantic, Teleport Communications, American Public Communications Council, and MFS Communications filed a motion for extension of the filing deadline on the grounds that extra time was needed for the assembly of price and cost data and studies as well as analysis. The Commission granted this request in substantial part.

DATES: Comments must be filed on or before August 1, 1994, and replies must be filed on or before August 31, 1994.

ADDRESSES: Federal Communications Commission, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mark S. Nadel, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–1301.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of: Billed Party Preference for 0+ InterLATA Calls.

Adopted: June 24, 1994.

Released: June 24, 1994.

By the Chief, Policy and Program Planning Division, Common Carrier Bureau:

1. On June 6, 1994, Competitive Telecommunications Association (CompTel), Bell Atlantic, Teleport Communications, American Public Communications Council, and MFS Communications (hereinafter Joint Parties) filed a motion for extension of time to file comments in response to the *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.[1] Comments are scheduled to be filed by

[1] Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92–77, FCC 94–117 (released June 6, 1994), 59 F.R. 30754 (June 15, 1994).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 64 and 69

[CC Docket No. 92-77, DA 94-703]

Billed Party Preference for 0+ InterLATA Calls

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of proposed rulemaking; extension of time.

SUMMARY: The Policy and Program Planning Division of the Common Carrier Bureau of the Federal Communications Commission released an order extending the time in which to file comments and replies in response to its Further Notice of Proposed Rulemaking. On June 6, 1994, Competitive Telecommunications Association (CompTel), Bell Atlantic, Teleport Communications, American Public Communications Council, and MFS Communications filed a motion for extension of the filing deadline on the grounds that extra time was needed for the assembly of price and cost data and studies as well as analysis. The Commission granted this request in substantial part.

DATES: Comments must be filed on or before August 1, 1994, and replies must be filed on or before August 31, 1994.

ADDRESSES: Federal Communications Commission, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mark S. Nadel, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-1301.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of: Billed Party Preference for 0+ InterLATA Calls.

Adopted: June 24, 1994.

Released: June 24, 1994.

By the Chief, Policy and Program Planning Division, Common Carrier Bureau:

1. On June 6, 1994, Competitive Telecommunications Association (CompTel), Bell Atlantic, Teleport Communications, American Public Communications Council, and MFS Communications (hereinafter Joint Parties) filed a motion for extension of time to file comments in response to the *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.[1] Comments are scheduled to be filed by July 8, 1994 and replies by July 29, 1994. Joint Parties seek an extension until August 8, 1994 for comments and September 12, 1994 for replies.

2. The Joint Parties give three reasons for their request. First, they argue that the Commission seeks comment on many issues and that a number of these require the assembly of price and cost data and studies as well as detailed analysis. The Joint Parties assert that, given the large amount of information requested, the thoroughness and usefulness of the record will be enhanced immeasurably if an additional month is provided for comments and a total of five weeks is provided for reply comments. Second, the Joint Parties argue that an extension of time will help minimize the likelihood that a multitude of detailed *ex parte* filings will be made after the comment cycle has ended. They state that an extension will allow all parties to develop more fully the substantive data and analysis requested in their initial comments, thereby permitting parties to make their primary reply thereto within the scheduled comment cycle. Third, the Joint Parties ask that deadlines be extended so as to accommodate the vacation schedules of key personnel for the July 4th and Labor Day weekends.

3. We do not routinely grant extensions of time.[2] In this case, however, we are aware that the data we seek includes a significant amount of empirical information that may not be easy to collect quickly. We also observe that no party has opposed this extension of time and that the Joint Parties state that both AT&T and BellSouth have reviewed this request for extension and that both have indicated that they have no objection to it. Therefore, in the interests of allowing all parties to develop more fully the substantive data and analysis requested in their initial comments and permitting thorough responses to those data to be made in reply comments, thereby enhancing the completeness of the record for evaluating BPP, we are willing to grant parties an extension of time in which to file comments and replies. We believe, however, that the comment and reply dates proposed by the Joint Parties would result in excessive delay, the need for which is not clearly demonstrated in their petition. Therefore, we grant all parties an extension of time for the filing of comments from July 8, 1994 to August 1, 1994 and for the filing of reply comments from July 29, 1994 to August 31, 1994.

4. Accordingly, it is ordered that the Joint Parties Request for Extension of Time is granted to the extent provided herein, and otherwise is denied.[3]

Federal Communications Commission.

James D. Schlichting,

Chief, Policy and Program Planning Division, Common Carrier Bureau.

[FR Doc. 94-15990 Filed 6-30-94; 8:45 am]

BILLING CODE 6712-01-M

[1] Billed Party Preference for 0+ InterLATA Calls. CC Docket No. 92-77, FCC 94-117 (released June 6, 1994), 59 F.R. 30754 (June 15, 1994).

[2] 47 CFR 1.46(a).

[3] This action is taken pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[Docket No. 940686-4186; I.D. 062094B]

Stone Crab Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a proposed moratorium.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council has proposed, as part of Amendment 5 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP), a 4-year moratorium on the issuance of Federal numbers and color codes for use in the Gulf of Mexico stone crab fishery. If approved, the moratorium will be effective July 1, 1994. This document is intended to discourage entry into the fishery based on economic speculation while the Secretary of Commerce (Secretary) considers whether to approve, disapprove, or partially disapprove Amendment 5.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813-893-3722.

SUPPLEMENTARY INFORMATION: The stone crab fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 654 under the authority of the Magnuson Fishery Conservation and Management Act. The management measures applicable to the EEZ portion of the fishery generally conform to the management measures applicable to waters managed by Florida.

The Council was requested by its industry advisory panel in 1985 to identify alternative limited access systems for the stone crab fishery for review and comment by the industry. In anticipation of developing a limited access system for the stone crab fishery in the EEZ, the Council established a control date of January 15, 1986, as a possible basis for determining who may participate in the fishery (51 FR 5714; February 18, 1986). Subsequently, Council efforts to develop limited access system alternatives for industry review and comment were delayed. Since 1992, members of the industry have initiated new discussions regarding the need for a limited access system for this fishery and have requested legislation by Florida to establish a moratorium on new entrants in the fishery in state waters.

The fishery currently has more participants and stone crab traps than are necessary to harvest the optimum yield (OY) from the fishery. The number of commercial vessels has increased by 261 percent and number of traps by 257 percent since the 1977–78 season. Currently, there are more than 690,000 traps deployed in the fishery. Through the mid-1980's, the fishery was characterized as an expanding fishery with yield (landings) increasing in a direct linear fashion with effort (number of traps). Thereafter, the yield to effort ratio has fluctuated.

Since the current fishing fleet is capable of harvesting the entire stone crab OY, additional fishing effort would lead to harvesting inefficiencies, more management constraints, and increased conservation risks. Accordingly, Florida has proposed a moratorium on additional permits to participate in the fishery in state waters while the industry formulates an effort limitation program. The Council and industry are developing additional controls on fishing effort in the EEZ. Such controls may include limited access to the stone crab resource. Amendment 5 to the FMP, currently being prepared for submission to the Secretary, proposes a 4-year moratorium on the issuance of Federal numbers and color codes, commencing July 1, 1994, as a complement to Florida's proposed action, while additional long term controls are considered. This document advises current or prospective participants in the stone crab fishery of the proposed effective date of the 4-year moratorium in the event that the Secretary approves that part of Amendment 5 regarding the 4-year moratorium.

The regulations at 50 CFR 654.4(c) provide that a person who cannot obtain a Florida stone crab permit may obtain from the Director, Southeast Region, NMFS (Regional Director), a Federal number and color code for use in marking his or her gear and vessel when fishing for stone crabs in the EEZ. The Regional Director has not issued a single number/color code under this provision, i.e., all numbers and color codes used in the stone crab fishery in both the EEZ and Florida's waters have been obtained from Florida. If Amendment 5 is approved by the Secretary and implemented through final regulations, the Regional Director would no longer be authorized to issue Federal numbers and color codes, and any such numbers or codes issued between July 1, 1994, and the effective date of the regulations would no longer be valid.

Classification

This proposed rule is not subject to review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 27, 1994.

Henry R. Beasly,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–16067 Filed 6–28–94; 2:34 pm]

BILLING CODE 3510–22–F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

RIN 0560–AD81

1994–1995 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination.

SUMMARY: This notice sets forth the determination of the 1994–1995 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael D. Thompson, Agricultural Program Specialist, Tobacco and Peanuts Division, United States Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, DC 20013–2415, phone 202–720–4281.

SUPPLEMENTARY INFORMATION:

Executive Order 12886

This action has been determined to be not-significant for purposes of Executive Order 12886 and therefore has not been reviewed by the Office of Management and Budget.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this notice applies are:

Notices

Federal Register

Vol. 59, No. 126

Friday, July 1, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

RIN 0560–AD81

1994–1995 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination.

SUMMARY: This notice sets forth the determination of the 1994–1995 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael D. Thompson, Agricultural Program Specialist, Tobacco and Peanuts Division, United States Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, DC 20013–2415, phone 202–720–4281.

SUPPLEMENTARY INFORMATION:

Executive Order 12886

This action has been determined to be not-significant for purposes of Executive Order 12886 and therefore has not been reviewed by the Office of Management and Budget.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this notice applies are: Commodity Loan and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

Executive Order 12778 is not applicable to this notice.

Discussion

Section 314 of the Agricultural Adjustment Act of 1938, as amended, provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year.

For all kinds of tobacco subject to marketing quotas, except Puerto Rico (type 46) tobacco, The Agricultural Statistics Board, National Agricultural Statistical Service, United States Department of Agriculture determines and announces annually the average market prices for each type of tobacco. The penalty rates are determined on the basis of this information.

The national marketing quota for Puerto Rico (type 46) tobacco for the immediately preceding marketing year was "0" pounds. There is no record of any such tobacco being marketed. Consequently, the penalty rate for the 1994–1995 marketing year cannot be determined based on seventy-five (75) percent of the average market price for the immediately preceding year. Therefore, the penalty rate for Puerto Rico (type 46) tobacco for the 1994–1995 marketing year shall be the same as the penalty rate determined for the 1989–1990 marketing year, the last year in which marketing information is available.

Since the determination of the 1994–1995 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Determination

Accordingly, it is determined the 1994–1995 marketing year rates of penalty for kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY

[1994–1995 Marketing Year]

Kinds of tobacco	Cents per pound
Flue-Cured	1.26
Burley	1.36
Fire-Cured (Type 21)	1.29
Fire-Cured (Types 22 and 23)	1.65
Dark Air-Cured (Types 35 and 36)	1.29
Virginia Sun-Cured (Type 37)	1.14
Cigar-Filler and Binder (Types 42, 43, 44, 54, and 55)	1.07
Puerto Rico Cigar-Filler (Type 46)	.57

Signed at Washington, DC on June 24, 1994.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service

[FR Doc. 94–16056 Filed 6–30–94; 8:45 am]

BILLING CODE 3410–05–P

Federal Grain Inspection Service

Opportunity for Designation in Maricopa, Pinal, and Yuma Counties Arizona

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), authorizes FGIS' Administrator to designate persons to provide official services in specified areas. FGIS is requesting persons interested in providing official services in Maricopa, Pinal, and Yuma Counties Arizona to submit an application for designation.

DATES: Applications must be postmarked on or sent by telecopier (FAX) by August 1, 1994.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division,

FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act, authorizes FGIS' Administrator, after determining that there is a need for official services, to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS has given Farwell Grain Inspection, Inc. (Farwell), and the California Department of Food and Agriculture (California) authority to provide official services in certain counties in Arizona for a period ending September 1994.

Farwell subsequently advised FGIS that they believe there is sufficient need for official inspection services to warrant establishing a permanent office in Arizona. Accordingly, FGIS is requesting persons interested in providing official services in Arizona to submit an application for designation.

The Counties in Arizona, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation are Maricopa, Pinal, and Yuma.

Interested persons are hereby given an opportunity to apply for designation under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. Designation in the Arizona Counties is for a period not to exceed 3 years beginning about January 1, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated after the FGIS determines that there is a need for official services in the Arizona Counties.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 21, 1994

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–15574 Filed 6–30–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity to Comment on the Applicants for the Little Rock (AR), Los Angeles (CA), and Ohio Valley (IN) Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS is requesting comments on the applicants for designation to provide official services in the geographic areas currently assigned to Little Rock Grain Exchange Trust (Little Rock), Los Angeles Grain Inspection Service, Inc. (Los Angeles), and Ohio Valley Grain Inspection, Inc. (Ohio Valley).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by August 1, 1994.

ADDRESSES: Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore the Executive Order and Departmental Regulation do not apply to this action.

In the May 3, 1994, **Federal Register** (59 FR 22816), FGIS asked persons interested in providing official services in the geographic areas assigned to Little Rock, Los Angeles, and Ohio Valley to submit an application for designation. Applications were due by May 31, 1994. Little Rock, Los Angeles, and Ohio Valley, the only applicants, each applied for designation to serve the entire area currently assigned to them.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision.

FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 21, 1994

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–15573 Filed 6–30–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the States of Minnesota and Mississippi

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of the Minnesota Department of Agriculture (Minnesota), and the Mississippi Department of Agriculture and Commerce (Mississippi), will end December 31, 1994, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before August 1, 1994.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Minnesota, main office located in Saint Paul, Minnesota, and Mississippi, main office located in Jackson, Mississippi, to provide inspection and Class X and Class Y weighing services under the Act on January 1, 1992.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Minnesota and Mississippi end on December 31, 1994.

The geographic area presently assigned to Minnesota, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Minnesota, except those export port locations within the State.

The geographic area presently assigned to Mississippi, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Mississippi, except those export port locations within the State.

Interested persons, including Minnesota and Mississippi, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning January 1, 1995, and ending December 31, 1997. Persons wishing to apply for designation should contact the

original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Minnesota, main office located in Saint Paul, Minnesota, and Mississippi, main office located in Jackson, Mississippi, to provide inspection and Class X and Class Y weighing services under the Act on January 1, 1992.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Minnesota and Mississippi end on December 31, 1994.

The geographic area presently assigned to Minnesota, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Minnesota, except those export port locations within the State.

The geographic area presently assigned to Mississippi, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Mississippi, except those export port locations within the State.

Interested persons, including Minnesota and Mississippi, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning January 1, 1995, and ending December 31, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 21, 1994

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–15572 Filed 6–30–94; 8:45 am]

BILLING CODE 3410–EN–F

Designation of Grain Inspection, Inc (ND)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Grain Inspection, Inc (Jamestown), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: August 1, 1994

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the February 1, 1994, Federal Register (59 FR 4678), FGIS announced that the designation of Jamestown ends on July 31, 1994, and asked persons interested in providing official services within the specified geographic area to submit an application for designation. Applications were due by March 2, 1994. Jamestown, the only applicant applied for designation in the entire area currently assigned to them.

FGIS requested comments on the applicant in the April 1, 1994, Federal Register (59 FR 15370). Comments were due by May 2, 1994. FGIS received no comments by the deadline. FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Jamestown is able to provide official services in the geographic area for which they applied.

Effective August 1, 1994, and ending July 31, 1997, Jamestown is designated to provide official inspection services in the geographic area specified in the February 1, 1994, Federal Register.

Official services may be obtained by contacting Jamestown at 701–252–1290.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 21, 1994

Neil E. Porter

Director, Compliance Division

[FR Doc. 94–15571 Filed 6–30–94; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce

ACTION: Notice of Opportunity To Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or § 355.22 of the Commerce Regulations (19 CFR 353.22/355.22 (1993)), that the Department of Commerce (the Department) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than July 31, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping duty proceedings:	
Armenia: Solid Urea, (A–831–801)	7/01/93–06/30/94
Azerbaijan: Solid Urea, (A–832–801)	7/01/93–06/30/94
Belarus-Baltic: Solid Urea, (A–822–801)	7/01/93–06/30/94
Brazil: Industrial Nitrocellulose, (A–351–804)	7/01/93–06/30/94
Brazil: Silicon Metal (A–351–806)	7/01/93–06/30/94
Estonia-Baltic: Solid Urea, (A–447–801)	7/01/93–06/30/94
Georgia: Solid Urea, (A–833–801)	7/01/93–06/30/94
Germany: Industrial Nitrocellulose, (A–428–803)	7/01/93–06/30/94
Germany: Solid Urea, (A–428–605)	7/01/93–06/30/94
Iran: Certain In-Shell Pistachios, (A–507–502)	7/01/93–06/30/94
Japan: Professional Electric Cutting Tools, (A–588–823)	01/04/93–06/30/94
Japan: Industrial Nitrocellulose, (A–588–815)	7/01/93–06/30/94
Japan: Malleable Cast-Iron Pipe Fittings, (A–588–605)	7/01/93–06/30/94
Japan: High Power Microwave Amplifiers and Components Thereof, (A–588–005)	7/01/93–06/30/94
Japan: Fabric Expanded Neoprene Laminate, (A–588–404)	7/01/93–06/30/94
Japan: Synthetic Methionine, (A–588–041)	7/01/93–06/30/94
Kazakhstan: Solid Urea, (A–834–801)	7/01/93–06/30/94
Kyrgzstan: Solid Urea, (A–835–801)	7/01/93–06/30/94
Latvia-Baltic: Solid Urea, (A–449–801)	7/01/93–06/30/94
Lithuania: Solid Urea, (A–451–801)	7/01/93–06/30/94
Moldova: Solid Urea, (A–841–801)	7/01/93–06/30/94
Romania: Solid Urea, (A–485–601)	7/01/93–06/30/94
Russia: Solid Urea, (A–821–801)	7/01/93–06/30/94
Tajikistan: Solid Urea, (A–842–801)	7/01/93–06/30/94
Thailand: Carbon Steel Butt-Weld Pipe Fittings, (A–549–807)	7/01/93–06/30/94
The People's Republic of China: Carbon Steel Butt-Weld Pipe Fittings, (A–570–814)	7/01/93–06/30/94
The People's Republic of China: Industrial Nitrocellulose, (A–570–802)	7/01/93–06/30/94
The Republic of Korea: Industrial Nitrocellulose, (A–580–805)	7/01/93–06/30/94
The United Kingdom: Industrial Nitrocellulose, (A–412–803)	7/01/93–06/30/94
Turkmenistan: Solid Urea, (A–843–801)	7/01/93–06/30/94
Ukraine: Solid Urea, (A–823–801)	7/01/93–06/30/94
Uzbekistan: Solid Urea, (A–844–801)	7/01/93–06/30/94
Suspension Agreements:	
Brazil: Certain Forged Steel Crankshafts, (C–351–609)	01/01/93–12/31/93
Countervailing Duty Proceedings:	
Canada: Certain Softwood Lumber Products, (C–122–816)	04/01/93–03/31/94
European Economic Community: Sugar (C–408–046)	01/01/93–12/31/93
Uruguay: Leather Wearing Apparel, (C–355–001)	01/01/93–12/31/93

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country or origin, and each country of orgin is subject to a separate order, then the interested party must state specificially which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with § 353.31(g) or § 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by July 31, 1994.

If the Department does not receive, by July 31, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: June 23, 1994.

Holly A. Kuga,

Acting, Deputy Assistant Secretary for Compliance.

[FR Doc. 94–16086 Filed 6–30–94; 8:45 am]

BILLING CODE 3510–DS–M

[A-475–811]

Notice of Final Determination of Sales at Less Than Fair Value: Grain-Oriented Electrical Steel From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Katt or Lori Way, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0498 and 482–0656, respectively.

Final Determination

The Department of Commerce (the Department) determines that grain-oriented electrical steel (GOES) from Italy is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of the preliminary determination and postponement of the final determination on February 2, 1994 (59 FR 5991, February 9, 1994), the following events have occurred:

We conducted verification of the respondents' (ILVA S.p.A. and Acciai Speciali Terni, S.r.l. (collectively Terni)) sales and cost questionnaire responses in Italy and the United States in May 1994.

Terni and the petitioners in this investigation (Allegheny Ludlum Corp., Armco, Inc., The United Steelworkers of America, Butler Armco Independent Union and Zanesville Armco Independent Union) submitted case briefs on June 10, 1994, and rebuttal briefs on June 15, 1994. No public hearing was requested.

On June 20, 1994, a meeting took place where representatives from the Italian government expressed their concerns regarding our findings at verification.

Scope of Investigation

The product covered by this investigation is grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.56 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) under item numbers 7225.10.0030, 7226.10.1030, 7226.10.5015 and 7226.10.5065. Although the HTSUS subheadings are provided for convenience and customs purposes, our

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0498 and 482–0656, respectively.

Final Determination

The Department of Commerce (the Department) determines that grain-oriented electrical steel (GOES) from Italy is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of the preliminary determination and postponement of the final determination on February 2, 1994 (59 FR 5991, February 9, 1994), the following events have occurred:

We conducted verification of the respondents' (ILVA S.p.A. and Acciai Speciali Terni, S.r.l. (collectively Terni)) sales and cost questionnaire responses in Italy and the United States in May 1994.

Terni and the petitioners in this investigation (Allegheny Ludlum Corp., Armco, Inc., The United Steelworkers of America, Butler Armco Independent Union and Zanesville Armco Independent Union) submitted case briefs on June 10, 1994, and rebuttal briefs on June 15, 1994. No public hearing was requested.

On June 20, 1994, a meeting took place where representatives from the Italian government expressed their concerns regarding our findings at verification.

Scope of Investigation

The product covered by this investigation is grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.56 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) under item numbers 7225.10.0030, 7226.10.1030, 7226.10.5015 and 7226.10.5065. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is March 1, 1993, through August 31, 1993.

Such or Similar Comparisons

We have determined that the merchandise subject to this investigation constitutes a single category of such or similar merchandise.

Best Information Available (BIA)

We were unable to verify Terni's submitted cost of production (COP) and constructed value (CV) information because the company did not provide adequate source documentation at verification to substantiate the accuracy and completeness of its submitted costs. Section 776(b) of the Act provides that if the Department is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted, it shall use BIA as the basis for its determination. Consequently, we have based this determination on BIA. For a detailed discussion of the problems encountered in attempting to verify Terni's cost information, see our response to Comment One under the "Interested Party Comments" section of this notice.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department may assign lower rates for those respondents who cooperated in an investigation and rates based on more adverse assumptions for those respondents found to be uncooperative in an investigation (See, *Final Determination of Sales At Less Than Fair Value: Certain Hot-Rolled and Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Steel Plate from Belgium*, 58 FR 37082, July 9, 1993).

As detailed in the DOC position to Comment One below, we consider Terni to have been cooperative. When a company cooperates with our requests for information but fails to provide that information in a timely manner or in the form required, it is the Department's practice to use as BIA the higher of: 1) the average of margins in the petition; or 2) the calculated margin for another firm for the same class or kind of merchandise from the same country. Since there was only one less than fair value margin alleged in the petition and there was no other respondent in this case, we have applied, as BIA, the single rate alleged in the petition.

Fair Value Comparisons

To determine whether sales of subject merchandise from Italy to the United States were made at less than fair value, we compared United States price (USP) to foreign market value (FMV). USP and FMV were based on information contained in the petition, as fully described in the notice of initiation of this investigation (58 FR 49017, September 21, 1993).

Interested Party Comments

Comment 1: Terni argues that the Department should amend its cost verification report to "correct and clarify numerous misstatements and fundamental inaccuracies contained therein." Terni asserts that the cost verification report incorrectly casts the company's actions at verification as uncooperative. Terni further asserts that its conduct at the cost verification and throughout this investigation has been cooperative for the following reasons: (1) Terni provided complete and timely responses to the Department's requests for information; (2) Terni completed two successful sales verifications immediately following the cost verification; and (3) the cost verification was conducted at an inopportune time for Terni.

Petitioners argue that Terni has been uncooperative and has significantly impeded this investigation by failing to prepare for, or cooperatively participate in, the cost verification. Therefore, under the Department's two-tiered BIA methodology, petitioners assert that Terni should be assigned the highest margin alleged in the petition as BIA.

DOC Position: We disagree with Terni's statement regarding the accuracy of the cost verification report. At verification we found that Terni: (a) was unprepared and unable to provide source documents in a timely manner, which impeded the testing that was performed and limited the amount of testing which could be completed, (b) did not prepare a reconciliation between cost and financial systems or provide an explanation of these systems, (c) was unable to support that all necessary variances were reported, (d) provided differing labor amounts in the general (or financial) accounting system and the cost (or the analytical) system and the cost of goods sold calculation prepared at verification, and was unable to reconcile these discrepancies, (e) did not provide audited financial statements, and did not reconcile information to its unaudited statements, and (f) caused delays in other areas which did not allow the reported amounts for general & administrative

expenses, interest expense, and profit to be examined. For a more detailed discussion of each of the major problems encountered at verification and the areas where Terni challenges the accuracy of the Department's verification report see the cost verification report, dated June 3, 1994 and the calculation memorandum dated June 16, 1994, which are both on file in room B–099 of the Main Commerce Building.

Regarding petitioners' contention that Terni was an uncooperative respondent, we disagree. Although Terni's cost information was unverifiable, this failure does not change the fact that its level of participation throughout this investigation clearly indicates that it cooperated. Terni provided all information requested in the questionnaire, permitted verification of its data, and successfully completed verification of its sales information.

Comment 2: Terni argues that the Department should use its submitted costs rather than resort to BIA. However, in the event the Department determines it is justified in using BIA, Terni argues that the best information available is Terni's data, not information contained in the petition, because the petition contains numerous errors in the calculations of COP and CV. Finally, Terni asserts that if the Department rejects its cost response, the Department could still use Terni's reported U.S. sales data in making its final determination because this information was "successfully" verified.

Petitioners argue that Terni's submitted costs should not be relied upon because Terni failed every aspect of the cost verification. In addition, petitioners contend that the Department should reject Terni's entire response, including its verified U.S. sales data, and base the final determination on information provided in the petition.

DOC Position: As discussed in the "Best Information Available" section above, during the verification of the cost response, the Department encountered serious and pervasive problems in its efforts to verify the information submitted by Terni. Consequently, in accordance with Section 776(b) of the Act, the Department was compelled to use BIA.

While we were able to verify Terni's submitted sales data, we were unable to verify its cost information. Without verified COP/CV data we do not have a basis to calculate an appropriate FMV, and thus cannot perform sales comparisons. Even if the Department were to contemplate using Terni's verified U.S. sales data, there is insufficient CV information available in the petition to adequately cover the sale of all products sold by Terni in the United States. Specifically, the CV specified in the petition covers a single product which differs in physical characteristics from certain of Terni's U.S. sales. Additionally, the petition does not provide adequate cost information on which to base difference in merchandise adjustments. Under such circumstances, the use of verified U.S. sales data is inappropriate.

The rejection of a respondent's questionnaire responses in toto and use of BIA is appropriate and consistent with past practice in instances where a respondent has failed to provide verifiable COP information. (See *e.g., Final Determination of Sales At Less Than Fair Value: Certain Forged Stainless Steel Flanges* from Taiwan, 58 FR 68859, December 29, 1993); and *Final Determination of Sales At Less Than Fair Value: Certain Hot-Rolled Lead & Bismuth Carbon Steel Products* from France, 58 FR 6203, January 27, 1993.)

Moreover, if the Department were to accept verified sales information when a respondent's cost information (a substantial part of the response) does not verify, respondents would be in a position to manipulate margin calculations by permitting the Department to verify only that information which the respondent wishes the Department to use in its margin calculation. Therefore, as described in the "Best Information Available" section above, we have based Terni's margin for the final determination on BIA. As permitted by Section 776(b) of the Act, the Department is using, as BIA, information contained in the petition.

Terni's four comments pertaining to certain errors in the petition hold no merit. The first comment alleging a mathematical error in petitioner's calculation of the cost of production is incorrect. Stage by stage yield factors are missing from petitioner's worksheet but have obviously been included in their analysis. Petitioners have recognized the importance of yields by listing at the bottom of the worksheet the overall yield for each product. This yield factor, however, is an average yield factor for all stages of the production process and, therefore cannot be used exclusively for purposes of recalculating costs on a stage by stage basis. The remaining three comments concern methodologies used by the petitioners in the calculation of the yield rate and depreciation and the reliance upon petitioner's costs as a proxy for Terni's costs. The Department determined that these methodologies were appropriate for purposes of initiation and continues to find them reasonable for purposes of calculating CV. Consequently, these methodologies are appropriate for use as BIA.

Other Comments

Terni made additional comments on various charges and adjustments contained in its home market and U.S sales listings. However, since we are basing our final determination on BIA, those comments are now moot. Accordingly, no response on behalf of the Department is required.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Margin percentage
All Companies	60.79

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act; we have notified the ITC of our determination. The ITC will now determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist with respect to the subject merchandise, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise from Italy entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility, pursuant to 19 CFR 353.34(d), concerning the return or destruction of proprietary information disclosed under APO. Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 24, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16085 Filed 6–30–94; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Antidumping Duty Orders And Findings

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Orders and Findings.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty orders and findings listed below. Domestic interested parties who object to these revocations must submit their comments in writing no later than the last day of July 1994.

EFFECTIVE DATE: July 1, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Duty Proceeding

Armenia

Solid Urea, 52 FR 26366, July 14, 1987, A–831–801
Contact: Thomas Barlow at (202) 482–5256

Azerbaijan

Solid Urea, 52 FR 26366. July 14, 1987, A–832–801
Contact: Thomas Barlow at (202) 482–5256

Belarus

Solid Urea, 52 FR 26366, July 14, 1987, A–822–801
Contact: Thomas Barlow at (202) 482–5256

destruction of proprietary information disclosed under APO. Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 24, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16085 Filed 6–30–94; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Antidumping Duty Orders And Findings

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Orders and Findings.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty orders and findings listed below. Domestic interested parties who object to these revocations must submit their comments in writing no later than the last day of July 1994.

EFFECTIVE DATE: July 1, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Duty Proceeding

Armenia

Solid Urea, 52 FR 26366, July 14, 1987, A–831–801
Contact: Thomas Barlow at (202) 482–5256

Azerbaijan

Solid Urea, 52 FR 26366. July 14, 1987, A–832–801
Contact: Thomas Barlow at (202) 482–5256

Belarus

Solid Urea, 52 FR 26366, July 14, 1987, A–822–801
Contact: Thomas Barlow at (202) 482–5256

Georgia

Solid Urea, 52 FR 26366, July 14, 1987, A–833–801
Contact: Thomas Barlow at (202) 482–5256

Iran

In–Shell Pistachio Nuts, 51 FR 25922, July 17, 1986, A–507–502
Contact: Valerie Turoscy at (202) 482–0145

Japan

Neoprene Laminate, 50 FR 29466, July 19, 1985, A–588–404
Contact: Sally Hastings at (202) 482–4366

Japan

Cast Iron Pipe Fittings, 52 FR 25281, July 6, 1987, A–588–605
Contact: Sheila Forbes at (202) 482–5253

Kazakhstan

Solid Urea, 52 FR 26366, July 14, 1987, A–834–801
Contact:Thomas Barlow at (202) 482–5256

Kyrgyzstan

Solid Urea, 52 FR 26366, July 14, 1987, A–835–801
Contact: Thomas Barlow at (202) 482–5256

Latvia

Solid Urea, 52 FR 26366, July 14, 1987, A–449–801
Contact: Thomas Barlow at (202) 482–5256

Lithuania

Solid Urea, 52 FR 26366, July 14, 1987, A–451–801
Contact: Thomas Barlow at (202) 482–5256

Moldova

Solid Urea, 52 FR 26366, July 14, 1987, A–841–801
Contact: Thomas Barlow at (202) 482–5256

Russia

Solid Urea, 52 FR 26366, July 14, 1987, A–821–801
Contact: Thomas Barlow at (202) 482–5256

Tajikistan

Solid Urea, 52 FR 26366, July 14, 1987, A–842–801
Contact: Thomas Barlow at (202) 482–5256

Turkmenistan

Solid Urea, 52 FR 26366, July 14, 1987, A–843–801
Contact: Thomas Barlow at (202) 482–5256

Ukraine

Solid Urea, 52 FR 26366, July 14, 1987, A–823–801
Contact: Thomas Barlow at (202) 482–5256

Uzbekistan

Solid Urea, 52 FR 26366, July 14, 1987, A–844–801
Contact: Thomas Barlow at (202) 482–5256

Japan

Synthetic Methionine, 38 FR 18382, July 10, 1973, A–588–041
Contact: Dennis Askey at (202) 482–0367.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, and domestic interested parties do not object to the Department's intent to revoke pursuant to this notice, we shall conclude that the antidumping duty orders and findings are no longer of interest to interested parties and shall proceed with the revocation. However, if interested parties do request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or domestic interested parties do object to the Department's intent to revoke pursuant to this notice, the Department will continue the duty order or finding without further notice to the public.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings by the last day of July 1994. Any submission objecting to a revocation must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include pertinent certification(s) in accordance with §§ 353.31(g) and 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 28, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–16172 Filed 6–30–94; 8:45 am]

BILLING CODE 3510–DS–P

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of

foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Karn Goff, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA.

Dated: June 27, 1994

Susan G. Esserman,

Assistant Secretary for Import Administration.

Appendix

QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (¢/lb.)	Net [2] subsidy (¢/lb.)
Austria	Export Restitution Payments	226.2	226.2
Belgium	European Community (EC) Restitution Payments	36.8	36.8
Canada	Export Assistance on Certain Types of Cheese	25.1	25.1
Denmark	EC Restitution Payments	50.1	.1
Finland	Export Subsidy	90.1	90.1
France	EC Restitution Payments	52.3	52.3
Germany	EC Restitution Payments	58.6	58.6
Greece	EC Restitution Payments	.0	.0
Ireland	EC Restitution Payments	45.1	45.1
Italy	EC Restitution Payments	75.3	75.3
Luxembourg	EC Restitution Payments	36.8	36.8
Netherlands	EC Restitution Payments	33.6	33.6
Norway	Indirect (Milk) Subsidy	16.6	16.6
	Consumer Subsidy	36.8	36.8
	Total	53.4	53.4
Portugal	EC Restitution Payments	36.1	36.1
Spain	EC Restitution Payments	45.0	45.0
Switzerland	Deficiency Payments	151.0	151.0
U.K	EC Restitution Payments	36.3	36.3

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 94–16203 Filed 6–30–94; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 85–3A015.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to California Dried Fruit Export Trading Company ("CDFETC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register.** Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice bring an action in any appropriate district court of the United States to set aside the determination on the grounds that the determination is erroneous.

Description of Amended Certificate: CDFETC's Export Trade Certificate of Review has been amended to include the following change:

The following company has been added as a "Member" of the Certificate: "Mariani Raisin Co., Inc."

Pursuant to Section 304(a)(2) of the ETC Act, 15 USC Section 4014(a)(2), and 15 CFR 325.7, the amended Certificate is effective from April 28, 1994, the date on which the application for an amendment was deemed submitted.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 27, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–16081 Filed 6–30–94; 8:45 am]
BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 062194H]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P8G).

SUMMARY: Notice is hereby given that the Naval Command Control and Ocean Surveillance Center, (Principal Investigators, Donald A. Carder and Sam H. Ridgway), RDT&E Division 5107, 49620 Beluga Road, Room 200, San Diego, CA 92152, has applied in due form for a permit to take several species of large and small cetaceans and sea turtles for purposes of scientific research.

DATES: Written comments must be received on or before August 1, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301) 713–2289;

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508) 281–9200;

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310) 980–4016;

Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702 (813) 893–3141;

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98155 (206) 526–6150; and

Pursuant to Section 304(a)(2) of the ETC Act, 15 USC Section 4014(a)(2), and 15 CFR 325.7, the amended Certificate is effective from April 28, 1994, the date on which the application for an amendment was deemed submitted.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 27, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–16081 Filed 6–30–94; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 062194H]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P8G).

SUMMARY: Notice is hereby given that the Naval Command Control and Ocean Surveillance Center, (Principal Investigators, Donald A. Carder and Sam H. Ridgway), RDT&E Division 5107, 49620 Beluga Road, Room 200, San Diego, CA 92152, has applied in due form for a permit to take several species of large and small cetaceans and sea turtles for purposes of scientific research.

DATES: Written comments must be received on or before August 1, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301) 713–2289;

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508) 281–9200;

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310) 980–4016;

Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702 (813) 893–3141;

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98155 (206) 526–6150; and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–0070 (907) 586–7221.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Species and Wildlife (50 CFR part 222).

The applicant proposes to harass several species of large whales and sea turtles, which become accidentally entrapped or stranded in U.S. waters, with a low frequency (40 Hz) sound source and to monitor the physiological responses of the animals. Additionally, prior to the audiometric assessment, the veterinary staff will first assess the condition of each animal(s) and provide health care for those animals who are ill or injured in order to improve their probability of survival following release from stranding or entrapment. The applicant is studying the auditory capabilities of cetaceans and sea turtles and wishes to obtain audiometric data including the effects of age, illness and other factors on hearing, that may be used in assessing the potential impact of noise pollution on these species. The study period will be from September 1994 to September 1999, and the sample size would be a maximum of fifteen of any one species of cetacean and sea turtle.

Dated: June 23, 1994.

Ann D. Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–16020 Filed 6–30–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 1, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Clam Clip
7510–00–NIB–0078 (Large Dispenser)
7510–00–NIB–0079 (Large Refill)
7510–00–NIB–0080 (Small Dispenser)
7510–00–NIB–0081 (Small Refill)
NPA: San Antonio Lighthouse, San Antonio, Texas.

Services

Food Service Attendant, Naval Air Station Galley, Building 201, New Brunswick, Maine, NPA: Pathways Inc., Auburn, Maine.
Grounds Maintenance, District Ranger Office Building & Wahweap Housing Units, Glen Canyon National Recreation Area, Page, Arizona, NPA: Lake Powell Institute, Inc., Page, Arizona.
Grounds Maintenance, U.S. Army Reserve Center, San Jose, California, NPA: Social Vocational Services, Torrance, California.
Janitorial/Custodial, Military Traffic Management Command, 1312th Medium Port Command, Compton, California, NPA: Harbor Foundation for the Retarded, Harbor City, California.
Janitorial/Custodial, Naval Air Station, Building 2739, Whidbey Island, Washington, NPA: New Leaf, Inc., Oak Harbor, Washington.
Janitorial/Grounds Maintenance, U.S. Army Reserve Center, Mt. View, California, NPA: Social Vocational Services, Torrance, California.
Storage, Repackaging and Distribution of Lighting Supplies, Defense General Supply Center, Richmond, Virginia, NPA: Arizona Industries for the Blind, Phoenix, Arizona, Industries of the Blind, Inc., Greensboro, North Carolina.

Beverly L. Milkman,
Executive Director.
[FR Doc. 94–16048 Filed 6–30–94; 8:45 am]
BILLING CODE 6820–33–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.
EFFECTIVE DATE: July 25, 1994.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.
FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.
SUPPLEMENTARY INFORMATION: On April 22, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 F.R. 19164) of proposed addition to the Procurement List.

Comments were received from the current contractor for this service. The contractor alleged that loss of the contract would have a devastating impact on the company by removing a substantial part of its sales. The contractor claimed that it is currently a year and a half into a contract for this service which, if all options are exercised, will last three years. The contractor asked the Committee not to take its contract at this point and to take it only through winning a competition against the company.

The percentage of the contractor's sales which this service represents and the fact that the contractor has only performed the service for 18 months led the Committee to conclude that the addition of the service will not have a severe adverse impact on the contractor. The addition of the service to the Procurement List will not affect the contractor's current contract. However, the Committee has been informed by the contracting activity that the contract does not have option provisions allowing it to be extended for a total period of three years, so the contract will expire at the end of the current contract period regardless of whether or not the Committee adds the service to the Procurement List.

The purpose of the Committee's program is to create employment for people with severe disabilities by requiring Government agencies to go to nonprofit agencies employing these people when they purchase certain commodities and services. Once these items are added to the Procurement List, the commenting contractor and others are not able to compete against the nonprofit agencies. There is no requirement that the nonprofit agency win a competition against the current contractor before a commodity or service can be added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the service.
3. The action will result in authorizing small entities to furnish the service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, Federal Building, 100 Bluestone Road, Mount Hope, West Virginia.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 94–16047 Filed 6–30–94; 8:45 am]
BILLING CODE 6820–33–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of a Collection of Information—Labeling of Charcoal

AGENCY: Consumer Product Safety Commission.
ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval, through December 31, 1994, of a collection of information in the form of a study to determine the effectiveness of labels to communicate hazards of carbon monoxide poisoning associated with burning charcoal indoors.

A regulation codified at 16 CFR 1500.14(b)(6) requires labeling of bags of charcoal intended for household use to warn that burning charcoal produces toxic fumes and should not be used indoors without proper ventilation. The Commission has received reports of 137 incidents during the years 1986 through 1993 in which persons suffered carbon monoxide poisoning after burning charcoal inside a house, tent, van, or other enclosed area. In 92 cases, the poisoning victim died. In many cases, reports of the incidents indicated that the poisoning victims did not speak English.

In 1992, the Commission granted a petition which requested amendment of the charcoal labeling regulation. The petition sought the addition to the required label of an explicit statement that burning charcoal produces carbon monoxide, and that carbon monoxide has no odor. At the time the Commission granted this petition, the agency also decided to propose revision of that portion of the regulation which requires a labeling statement concerning the indoor use of charcoal.

In conjunction with the rulemaking proceeding to amend the labeling regulation for bags of charcoal, the Commission proposes to study the effectiveness of a label incorporating a pictogram to communicate the risk of carbon monoxide poisoning associated with burning charcoal indoors. About 50 persons who do not read English will be asked to view a pictogram intended to depict hazards of burning charcoal indoors and to describe the message, if any, communicated by the pictogram.

The Commission will use the results of this study to determine if the addition of a pictogram or symbol to the label currently required for bags of charcoal would improve the label's usefulness to persons who do not read English.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207

Title of information collection: Collection of Information to Test Pictograms to Warn of the Hazard of Burning Charcoal in Homes, Tents, and Vehicles.

Type of request: New collection.

Frequency of collection: One-time for each respondent.

General description of respondents: Persons who do not read English.

labels to communicate hazards of carbon monoxide poisoning associated with burning charcoal indoors.

A regulation codified at 16 CFR 1500.14(b)(6) requires labeling of bags of charcoal intended for household use to warn that burning charcoal produces toxic fumes and should not be used indoors without proper ventilation. The Commission has received reports of 137 incidents during the years 1986 through 1993 in which persons suffered carbon monoxide poisoning after burning charcoal inside a house, tent, van, or other enclosed area. In 92 cases, the poisoning victim died. In many cases, reports of the incidents indicated that the poisoning victims did not speak English.

In 1992, the Commission granted a petition which requested amendment of the charcoal labeling regulation. The petition sought the addition to the required label of an explicit statement that burning charcoal produces carbon monoxide, and that carbon monoxide has no odor. At the time the Commission granted this petition, the agency also decided to propose revision of that portion of the regulation which requires a labeling statement concerning the indoor use of charcoal.

In conjunction with the rulemaking proceeding to amend the labeling regulation for bags of charcoal, the Commission proposes to study the effectiveness of a label incorporating a pictogram to communicate the risk of carbon monoxide poisoning associated with burning charcoal indoors. About 50 persons who do not read English will be asked to view a pictogram intended to depict hazards of burning charcoal indoors and to describe the message, if any, communicated by the pictogram.

The Commission will use the results of this study to determine if the addition of a pictogram or symbol to the label currently required for bags of charcoal would improve the label's usefulness to persons who do not read English.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207

Title of information collection: Collection of Information to Test Pictograms to Warn of the Hazard of Burning Charcoal in Homes, Tents, and Vehicles.

Type of request: New collection.

Frequency of collection: One-time for each respondent.

General description of respondents: Persons who do not read English.

Estimated number of respondents: 50 to 100.

Estimated average number of hours per respondent: 0.05.

Estimated number of hours for all respondents: 7.5 to 15.

Comments: Comments on the request for approval of this collection of information should be addressed to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: June 27, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–15988 Filed 6–30–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice of membership of the DLA PRBs.

SUMMARY: This notice announces the appointment of the members of the PRBs of the Defense Logistics Agency. The publication of the PRB is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Directors, Defense Logistics Agency.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra M. Miller, Assistant Executive Director, Workforce Effectiveness and Development Group, Human Resources, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (703) 274–6049 or 274–6039.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the PRBs. They will serve a 1-year renewable term, effective upon publication of this notice.

Initial PRB

—A. C. Ressler, Executive Director, Human Resources
—Marilyn Barnett, Executive Director, Acquisition
—Roger Roy, Deputy Executive Director, Distribution

2nd Level Review

—Robert P. Scott, Executive Director, Contract Management
—Christine Gallo, Executive Director, Strategic Programming and Contingency Operations
—James J. Grady, Deputy Executive Director, Supply Management

A.C. Ressler,

Executive Director, (Human Resources).

[FR Doc. 94–16096 Filed 6–30–94; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 1, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested

Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 27, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Revision.
Title: Report of Financial Need and Certification for the Jacob K. Javits Fellowship Program.
Frequency: Annually.
Affected Public: Individuals or households; Non-profit institutions.
Reporting Burden: Responses: 100; Burden Hours: 500.
Recordkeeping Burden: Recordkeepers: 100; Burden Hours: 500.
Abstract: The report is designed to collect required information from institutions of higher education regarding graduate participants of the Jacob K. Javits Fellowship Program. The data collected is required in order that continued funding may be requested for the fellows.

[FR Doc. 94–16011 Filed 6–30–94; 8:45 am]
BILLING CODE 4000–01–M

National Assessment Governing Board; Teleconference

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference of the Executive Committee of the National Assessment Governing Board (NAGB or Board). This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: July 12, 1994.

TIME: 11:00 A.M. (E.D.T.) to completion of business.

LOCATION: 800 North Capitol Street, NW., Suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 USC 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet via teleconference on July 12, 1994 from 11:00 A.M. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. These facilities will be provided in the location listed in the portion of this notice titled "Location".

The Committee will convene at 11:00 A.M. Following roll call and introductory remarks, there will be discussion of the following items: (1) review and approval of the Agenda for the August 4–6 NAGB meeting; (2) review and approval of the proposed budget for fiscal years 1995 and 1996; (3) a report on the July 8 meeting on hierarchical linear modeling; and (4) news on reauthorization and Board appointments.

The public is being given less than fifteen days' notice of this teleconference because of problems encountered in scheduling.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 A.M. to 5:00 P.M.

Dated: June 28, 1994.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94–16055 Filed 6–30–94; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Idaho National Engineering Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Idaho National Engineering Laboratory.

DATES: Monday, July 11, 1994: 8:30 a.m.–5 p.m.

ADDRESSES: Holiday Inn-Westbank, 475 River Parkway, Idaho Falls, ID.

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7633.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Monday, July 11, 1994

8:00 a.m.—Sign-in and Registration
8:30 a.m.—Facilitator introduction; Housekeeping items
8:45 a.m.—General discussion on SSAB reference materials received/required; Identify SSAB Recommendation deadlines from DOE–ID; Budget Committee presentation on the revised SSAB Budget
9:30 a.m.—Break
9:40 a.m.—Continue revised SSAB Budget discussion; Approve proposed SSAB Budget; Deliver proposed budget to DOE–ID Ex Officio
10:30 a.m.—Break
10:40 a.m.—Discussion on SSAB Statement of Procedures; Adopt SSAB Statement of Procedures
11:30 a.m.—Lunch Break
12:30 p.m.—"Value Building" exercise
1:30 p.m.—Break
1:40 p.m.—Continue "Value Building" exercise; Develop "Value Building" point to be discussed at the next SSAB meeting
2:20 p.m.—Break
2:30 p.m.—Presentation on "Radiation Basics" "Radiation Basics" Questions and Answers
3:20 p.m.—Break
3:30 p.m.—Presentation on "Spent Nuclear Fuel"; "Spent Nuclear Fuel" Questions and Answers
4:30 p.m.—Determine next meeting date(s) and location; Develop draft agenda items for next meeting;
5:00 p.m.—Public Coment Session (5-minute rule)
6:00 p.m.—Adjourn

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the Federal Register notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC on June 28, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–16102 Filed 6–30–94; 8:45 am]
BILLING CODE 6450–01–M

SSAB Budget; Deliver proposed budget to DOE–ID Ex Officio
10:30 a.m.—Break
10:40 a.m.—Discussion on SSAB Statement of Procedures; Adopt SSAB Statement of Procedures
11:30 a.m.—Lunch Break
12:30 p.m.—"Value Building" exercise
1:30 p.m.—Break
1:40 p.m.—Continue "Value Building" exercise; Develop "Value Building" point to be discussed at the next SSAB meeting
2:20 p.m.—Break
2:30 p.m.—Presentation on "Radiation Basics" "Radiation Basics" Questions and Answers
3:20 p.m.—Break
3:30 p.m.—Presentation on "Spent Nuclear Fuel"; "Spent Nuclear Fuel" Questions and Answers
4:30 p.m.—Determine next meeting date(s) and location; Develop draft agenda items for next meeting;
5:00 p.m.—Public Coment Session (5-minute rule)
6:00 p.m.—Adjourn

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the Federal Register notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC on June 28, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–16102 Filed 6–30–94; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site

DATES: Monday, July 25, 1994: 6:00 p.m.–7:00 p.m. (public comment session) Tuesday, July 26, 1994: 8:30 a.m.–4:00 p.m.

ADDRESSES: Aiken Conference Center 215 The Alley, Aiken, S.C.

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue, SW Washington, DC 20585, (202) 586–7633.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda:

Monday, July 25, 1994

6:00 p.m. Public Comment Session (5-minute rule)
7:00 p.m. Adjourn

Tuesday, July 26, 1994

8:00 a.m. Coffee
8:30 a.m. Technical Briefings on Environmental Restoration and Waste Management
3:30 p.m. Public Comment Session (5-minute rule)
4:00 p.m. Adjourn

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting Monday, July 25, 1994.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the Federal Register notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803)-725–8074.

Issued at Washington, DC on June 28, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer, Environmental Management Site Specific Advisory Board, Savannah River Site.

[FR Doc. 94–16103 Filed 6–30–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 11306–001 Massachusetts]

City of North Adams; Notice of Surrender of Preliminary Permit

June 27, 1994.

Take notice that the City of North Adams, permittee for the Eclipse Dam Project No. 11306, located on the North Branch of Hoosic River, Berkshire County, Massachusetts, has requested that its preliminiary permit be terminated. The preliminary permit was issued on November 12, 1992, and would have expired on October 31, 1995. The permittee states that the project would be economically infeasible.

The permittee filed the request on December 5, 1993, and the preliminary permit for Project No. 11306 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16018 Filed 6–30–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42

U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the delivery of 146 kilograms of fissile plutonium from France to the Federal Republic of Germany for use in the fabrication of mixed uranium-plutonium oxide (MOX) fuel for use as power reactor fuel within the European Community. This fissile plutonium, which is subject to United States consent rights, will be used to repay the loan of plutonium from Seimans, KWU in the Federal Republic of Germany to Switzerland of an equivalent amount of fissile plutonium which was not subject to United States consent rights. The United States will consent to the use of this plutonium within the European Community for the above-mentioned propose.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Issued in Washington, DC on June 27, 1994.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 94–16101 Filed 6–30–94; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the transfer of 360 kilograms of plutonium from France to Belgonucleaire, Dessel, Belgium for fabrication of mixed uranium-plutonium oxide fuel and subsequent retransfer of the fuel to Switzerland for use at the Gosgen power reactor. Retransfer documents RTD/SD(EU)–68 and 69 have been assigned to this subsequent arrangement.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

Issued in Washington, DC on June 27, 1994.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 94–16100 Filed 6–30–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board; Meetings

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: State Energy Advisory Board.

Date and Time: July 18, 1994, 9 a.m.–5 p.m.; July 19, 1994, 9 a.m.–12 p.m.

Place: The Westin Hotel, 1900 Fifth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Technical and Financial Assistance (EE–50), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION: Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda: Briefings and discussions of:

- Discussion of the strategic plan of the Office of Energy Efficiency and Renewable Energy.
- Review of STEAB committee activities.
- Outline of current Annual Report.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 28, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–16104 Filed 6–30–94; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER94–970–000, et al.]

Atlantic City Electric Company, et al.; Electric Rate and Corporate Regulation Filings

June 23, 1994.

Take notice that the following filings have been made with the Commission:

1. Atlantic City Electric Company

[Docket No. ER94–970–000]

Take notice that on June 13, 1994, Atlantic City Electric Company (ACE) tendered for filing an amendment to the Agreement to sell power to Delmarva Power & Light Company (DPL) filed in Docket No. ER94–970–000 on February 14, 1994.

ACE states that a copy of the filing has been sent to DPL, the Delaware Public Service Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the New Jersey Board of Regulatory Commissioners.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Atlantic City Electric Company

[Docket No. ER94–992–000]

Take notice that on June 13, 1994, Atlantic City Electric Company (ACE) tendered for filing an amendment to the Agreement to sell power to PECO Energy Company (PECO) filed in Docket No. ER94–992–000 on February 25, 1994.

ACE states that a copy of the filing has been sent to PECO, the New Jersey Board of Regulatory Commissioners and the Pennsylvania Public Utility Commission.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER94–1044–000]

Take notice that on June 13, 1994, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utility Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively, the Entergy Operating Companies), tendered for filing, pursuant to the Transmission Service Tariff conditionally accepted for filing in Docket No. ER91–569–000 (Tariff), amendments to the rates submitted on March 15, 1994 in accordance with the Tariff. Entergy Services states that the filing was made

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER94–970–000, et al.]

Atlantic City Electric Company, et al.; Electric Rate and Corporate Regulation Filings

June 23, 1994.

Take notice that the following filings have been made with the Commission:

1. Atlantic City Electric Company

[Docket No. ER94–970–000]

Take notice that on June 13, 1994, Atlantic City Electric Company (ACE) tendered for filing an amendment to the Agreement to sell power to Delmarva Power & Light Company (DPL) filed in Docket No. ER94–970–000 on February 14, 1994.

ACE states that a copy of the filing has been sent to DPL, the Delaware Public Service Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the New Jersey Board of Regulatory Commissioners.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Atlantic City Electric Company

[Docket No. ER94–992–000]

Take notice that on June 13, 1994, Atlantic City Electric Company (ACE) tendered for filing an amendment to the Agreement to sell power to PECO Energy Company (PECO) filed in Docket No. ER94–992–000 on February 25, 1994.

ACE states that a copy of the filing has been sent to PECO, the New Jersey Board of Regulatory Commissioners and the Pennsylvania Public Utility Commission.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER94–1044–000]

Take notice that on June 13, 1994, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utility Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively, the Entergy Operating Companies), tendered for filing, pursuant to the Transmission Service Tariff conditionally accepted for filing in Docket No. ER91–569–000 (Tariff), amendments to the rates submitted on March 15, 1994 in accordance with the Tariff. Entergy Services states that the filing was made to conform the March 15, 1994 filing with data included in 1993 FERC Form 1 Reports of certain of the Entergy Operating Companies.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company

[Docket No. ER94–1346–000]

Take notice that on June 13, 1994, Interstate Power Company (IPW) tendered for filing Revised Exhibits to the Agreement for integrated Transmission Area between Central Iowa Power Cooperative and Company.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER94–1348–000]

Take notice that on June 13, 1994, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed the Short-Term Non-Firm Transmission Service Tariff of Southern Companies. Under the Tariff, Southern Companies will provide point to point, non-firm transmission service for periods ranging from one hour to one year. Southern Companies submitted informational schedules and workpapers in support of the Tariff.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Oklahoma Gas and Electric Company

[Docket No. ER94–1349–000]

Take notice that on June 13, 1994, Oklahoma Gas and Electric Company (OG&E) tendered for filing a Letter of confirmation with the Oklahoma Municipal Power Authority (OMPA) regarding the installation of facilities for the use and benefit of OMPA.

Copies of this filing have been sent to OMPA, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. R.J. Dahnke & Associates

[Docket No. ER94–1352–000]

Take notice that on June 13, 1994, R.J. Dahnke & Associates (Dahnke) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waiver and blanket approvals under various regulation of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Dahnke intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Dahnke sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Dahnke is not in the business of generating transmitting, or distributing electric power.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. The Montana Power Company

[Docket No. ER94–1356–000]

Take notice that on June 14, 1994, The Montana Power Company (Montana) tendered for filing a revised Appendix 1 as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96–501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

A copy of the filing has been served upon BPA.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Maine Public Service Company

[Docket No. ER94–1357–000]

Take notice that on June 13, 1994, Maine Public Service Company (Maine Public) filed executed Service Agreements with Commonwealth Electric Company and Cambridge Electric Light Company. Maine Public states that the service agreements are being submitted pursuant to its tariff provision pertaining to the short-term non-firm sale of capacity and energy which establishes a ceiling rate at Maine Public's cost of service for the units available for sale.

Maine Public has requested that the service agreements become effective on June 1, 1994 and requests waiver of the Commission's regulations regarding filing.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Midway-Sunset Cogeneration Company

[Docket No. QF86-433-003]

On June 16, 1994, Midway-Sunset Cogeneration Company (Applicant), of 3466 West Crocker Springs Road, P.O. Box 457, Fellows, California 93224-0457, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility is located in Kern County, California. The facility consists of three combustion turbine generators, three waste heat recovery boilers, and an approximately 19-mile 230 kV transmission line. Thermal energy recovered from the facility is used in enhanced oil recovery operations by Arco Western Energy. The primary energy source is natural gas. The maximum net electric power production capacity of the facility is 219 MW.

The certification of the facility was originally issued to Sun Cogeneration Limited Partnership on March 24, 1987 (38 FERC ¶ 62,303 (1987)), and the recertification issued to Midway Sunset Cogeneration Company on May 25, 1989 (47 FERC ¶ 61,273 (1989)). The instant recertification is requested by the applicant to report a recent reallocation of payments under contracts between the applicant and its partners or their affiliates. All other facility characteristics remain unchanged as described in the previous certification and recertification.

Comment date: August 1, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. San Joaquin Valley Energy Partners IV, L.P., and BioConversion Partners, L.P.

[Docket No. QF87-336-002]

On June 14, 1994, San Joaquin Valley Energy Partners IV, L.P. (San Joaquin), and BioConversion Partners, L.P. (BioConversion), (collectively, Applicants) tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining primarily to the ownership, use of natural gas and the maximum net electrical capacity of the small power production facility.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16064 Filed 6-30-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER94-1156-000, et al.]

Continental Power Exchange, Inc. on behalf of Central Illinois Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

June 24, 1994.

Take notice that the following filings have been made with the Commission:

1. Continental Power Exchange, Inc. on behalf of Central Illinois Public Service Company

Docket No. ER94-1156-000

Take notice that on June 17, 1994, Continental Power Exchange, Inc. (CPE) on behalf of Central Illinois Public Service Company (CIPS), tendered for filing an amendment in the above referenced docket.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power and Light Co.

[Docket No. ER94-1331-000]

Take notice that on June 7, 1994, Wisconsin Power and Light Company (WPL) tendered for filing a Wholesale Power Agreement dated June 1, 1994, between Wisconsin Public Power, Inc. System and WPL. WPL states that this new Wholesale Power Agreement revises the previous agreement between the two parties which was dated July 2, 1993, and designated Rate Schedule No. 132 by the Commission.

The purpose of this new agreement is to revise the points of service. Terms of service for this customer will be on a similar basis to the terms of service for other W-3 wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to Wisconsin Public Power, Inc. System and Wisconsin Service Commission.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Electric and Gas Co.

Docket No. ER94-1369-000

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on June 16, 1994 tendered for filing an Agreement for the sale and purchase of Capacity and Energy between PSE&G and the Borough of Milltown, New Jersey (Milltown). Pursuant to the Agreement, PSE&G proposes to begin selling power effective June 10, 1994 in an effort to provide economic benefit to Milltown.

PSE&G requests the Commission to waive its notice requirements under Section 35.3 of its Regulations and such other waives as may be necessary in order to permit the Capacity and Energy Sale and Purchase Agreement to become effective within forty-eight (48) hours following its filing with the Commission.

Copies of the filing have been served upon Milltown and the New Jersey Board of Regulatory Commissioners.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16065 Filed 6-30-94; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 1651-013 Wyoming]

Swift Creek Power Co.; Notice of Availability of Draft Environmental Assessment

June 27, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new minor license for the existing Swift Creek Project, located on the Swift Creek, near the town of Afton, in Lincoln County, Wyoming, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigation and enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. For further information, contact Michael Spencer, Environmental Coordinator, at (202) 219-2846.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16017 Filed 6-30-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-604-000, et al.]

Colorado Interstate Gas Company, et al., Natural Gas Certificate Filings

June 24, 1994.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP94-604-000]

Take notice that on June 15, 1994, Colorado Gas Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP94-604-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct a new delivery facility pursuant to CIG's

[Project No. 1651–013 Wyoming]

Swift Creek Power Co.; Notice of Availability of Draft Environmental Assessment

June 27, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new minor license for the existing Swift Creek Project, located on the Swift Creek, near the town of Afton, in Lincoln County, Wyoming, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigation and enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. For further information, contact Michael Spencer, Environmental Coordinator, at (202) 219–2846.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16017 Filed 6–30–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–604–000, et al.]

Colorado Interstate Gas Company, et al., Natural Gas Certificate Filings

June 24, 1994.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP94–604–000]

Take notice that on June 15, 1994, Colorado Gas Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP94–604–000 a request pursuant to § § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct a new delivery facility pursuant to CIG's blanket certificate issued in Docket No. CP83–21–000 to implement an interruptible transportation service for Meridan Oil, Inc. (Meridan), pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes a new delivery facility to be located in Las Animas County, Colorado. CIG states the facility will consist of a two-inch meter run and facilities appurtenant thereto for the delivery of fuel gas to Meridan for the start up of a compressor station. CIG indicates it will transport approximately 200 Mcf per day on an interruptible basis for Meridian under its Part 284 blanket certificate.

CIG indicates its tariff does not prohibit the addition of new delivery points. Further, CIG states the proposed facility will not have an impact on its peak day or annual deliveries.

Comment date: August 8, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. NorAm Gas Transmission Company

[Docket No. CP94–612–000]

Take notice that on June 17, 1994, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–612–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and § § 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission to abandon a firm transportation service for Arkansas Western Gas Company, (Arkansas Western), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGT states that it proposes to abandon a transportation service originally authorized by Commission order issued October 23, 1956, in Docket No. G–10591. NGT indicates that under the arrangement with Arkansas Western, NGT would provide for transportation for Arkansas Western from a point on Texas Gas Transmission Corporation (Texas Gas) lines near Lynchburg, Mississippi, to a point near Turrell, Arkansas, and exchange of gas during temporary periods of emergency. By letter dated March 30, 1994, both parties have agreed to the termination of the agreement. NGT indicates that no facilities are to be abandoned.

Comment date: July 15, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket Nos. CP93–613–001]

Take notice that on June 14, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–613–001, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, an amendment to its August 2, 1993 application in Docket No. CP93–613–000. This amendment revises facilities proposed to be constructed and operated to provide 102,000 Dth equivalent per day of new long-term, firm transportation service to Northwest Natural Gas Company (Northwest Natural) from Stanfield, Oregon to various delivery points on Northwest's Grants Pass Lateral, all as more fully set forth in the amendment which is on file with the Commission and open for public inspection.

Northwest says the facilities originally proposed to provide this new service now have been redesigned to reflect:

(1) elimination of 11.3 miles of 30-inch mainline loop and associated cross-over taps because of the availability of additional existing capacity for this project resulting from the upcoming termination of a firm transportation agreement with Columbia Power Associates, LP (Columbia Power).

(2) addition of a new pipeline loop on the Grants Pass Lateral as a result of correcting an error in the existing pipeline specifications used in the original flow studies; and

(3) various refinements to the scope of work originally proposed for the remaining segments of the project which were identified during the on-going detailed design process.

Northwest now amends its application to request certificate authority to construct and operate the following facilities:

- 5,700 horsepower of additional compression, with appurtenances, at one existing compressor station;
- 13.2 miles of 20-inch pipeline loop, on new right-of-way (deviating from the existing Grants Pass Lateral), near Gresham, Oregon;
- 1.3 miles of 20-inch pipeline loop on the Grants Pass Lateral near Salem, Oregon;
- one new meter station and one cross-over tap to an existing meter station on the new Gresham Loop; and
- upgrades of six existing meter stations on the Grants Pass Lateral.

Northwest also requests abandonment approval for certain existing facilities proposed to be replaced by upgraded facilities at the aforementioned six meter stations on the Grants Pass Lateral.

Northwest says the estimated cost of the Northwest Natural Expansion Project has been revised and reduced from the original $45.0 million estimate to $42.7 million. Northwest further says that the revised estimate includes an $8.6 million cost increase for the Gresham Loop attributable to a reassessment of the extensive right-of-way, environmental and construction complications associated with installing this loop.

Northwest estimates that it will cost approximately $152,000 to remove the metering facilities proposed to be abandoned. Northwest further estimates that the total cost of the facilities proposed to be abandoned is $59,204 with an estimated salvage value of $2,400.

Northwest requests any waivers of the "Right-of-First-Refusal; Posting of Pipeline Capacity" procedures set forth in Section 25 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, which may be necessary to allow the capacity made available by the expiration of the Columbia Power agreement to be reserved and used for the Northwest Natural Expansion Project.

Northwest proposes to finance the construction cost of this expansion with short-term bank borrowings. Northwest proposes to convert the short-term bank borrowings to an appropriate mix of long-term debt and equity which will provide an overall corporate capital structure of approximately 45% long-term debt and 55% equity.

Northwest submits that, in recognition of the benefits of the proposed Northwest Natural Expansion Project to its existing system and to facilitate prompt resolution of the rate issues pertinent to this proceeding, it no longer requests either conditional approval of alternative initial rates or preapproval of specific future rate case treatment for this project.

Northwest says the Northwest Natural Expansion Agreement is subject to Northwest's open-access Rate Schedule TF–1 and will be implemented under Northwest's blanket transportation certificate and Subpart G of Part 284. Northwest requests approval for initial rates under the Northwest Natural Expansion Agreement to be its maximum Rate Schedule TF–1 rates, including applicable surcharges and fuel reimbursement in-kind percentages, which are in effect at the time service commences under the agreement.

Northwest avers that any issues which may be raised concerning the potential rate impact of this project and the appropriate future rate design for service under the Northwest Natural Expansion Agreement should be deferred for consideration in the first rate proceeding where Northwest files to include its expansion project costs in rates. Northwest further states that in the first general rate proceeding in which Northwest seeks to include the costs of the Northwest Natural Expansion Project in rates, Northwest intends to revise its rolled-in system rate to reflect the additional costs and billing determinants resulting from this project.

Comment date: July 15, 1994, in accordance with with the first paragraph of Standard Paragraph F at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP94–617–000]

Take notice that on June 20, 1994, NorAm Gas Transmission Company (NGT), 1600 Smith St., Houston, Texas 77002, filed in Docket No. CP94–617–000 a request pursuant to §§ 157.205, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.212) for authorization to construct and operate certain facilities in Louisiana under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to construct and operate a new 2-inch commercial tap for deliveries to Arkansas Louisiana Gas Company's (ALG) new customer, Winford Company, Inc., in Bienville Parish, Louisiana. The volume of gas to be delivered through this tap is approximately 27,900 Mcf annually and 900 Mcf on a peak day. The construction cost is estimated at $2,000 and will be reimbursed by ALG.

Comment date: August 8, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gulf Transmission Co.

[Docket No. CP94–620–000]

Take notice that on June 21, 1994, Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue, S. E., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–620–000 a request pursuant to § 157.205 of the Commission's Regulations to abandon by sale to Stingray Pipeline Company (Stingray) certain offshore facilities in West Cameron Block 146, offshore Louisiana (Block 146) under Columbia Gulf's blanket certificate issued in Docket No. CP83–496–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gulf proposes to abandon 950 feet (0.18 mile) of 6-inch pipeline extending from Block 146 "A" platform to a subsea valve on National Gas Pipeline Company of America's pipeline, which Stingray currently leases, in Block 146; a 6-inch riser; and a dual 4-inch meter station and appurtenant facilities on the Block 146 "A" platform. Columbia Gulf states that Stingray would acquire the facilities under its blanket certificate in Docket No. CP91–1505–000 at a purchase cost of $126,500. Columbia Gulf states that Elf Exploration, Inc. and Phillips Petroleum Company, the sole producers/shippers on these facilities have consented to the abandonment by sale to Stingray.

Comment date: August 8, 1994, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP93–673–001]

Take notice that on June 15, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–673–001, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, an amendment to its August 18, 1993 application in Docket No. CP93–673–000. This amendment reflects the downsizing of Northwest's originally proposed $228.6 million, 258,488 Dth per day equivalent system Expansion II Project to a $67.7 million, 62,175 Dth per day equivalent project, all as more fully set forth in the amendment which is on file with the Commission and open for public inspection.

Northwest amends its application to request certificate authority to construct and operate, as its primary design case, the following facilities in the states of Washington, Oregon, and Idaho to implement its downsized project for an additional 62,175 Dth per day of new firm mainline expansion:

- 19.2 miles of 24-inch loop pipeline in three segments on Northwest's mainline in Idaho and Wyoming;
- 12.9 miles of new 20-inch loop pipeline in three segments;
- 13.2 miles of new 30-inch pipeline loop in place of the 20-inch loop (Gresham Loop) previously proposed in the Northwest Natural Expansion Project, Docket No. CP93–613–000;
- two new customer-specific delivery laterals: 8.1 miles of 12-inch and 16-inch pipeline for the Weyerhaeuser Lateral and 0.2 mile of 12-inch pipeline for the Springfield Lateral;
- a total of 9,120 standard sea-level horsepower of additional compression at three existing compressor stations;
- modifications or upgrades of appurtenant facilities at 11 existing compressor stations;
- three new meter stations; and
- crossover taps to new loop lines for three existing meter stations.

Northwest also requests abandonment approval for certain existing facilities proposed to be replaced by upgraded facilities at six existing compressor stations and one meter station.

Northwest says the certificate authority requested in this Northwest Expansion II Project assumes Northwest has received Commission approval to construct and operate the prerequisite facilities proposed in the Northwest Natural Expansion Project, in Docket No. CP93–613. If Northwest does not receive approval to construct the Northwest Natural Expansion Project in conjunction with or before the expansion project herein, Northwest alternatively requests that the proposed certificate authorization reflect the following changes from the primary design case facilities:

- eliminate 5,700 standard sea-level horsepower of additional compression proposed at one existing compressor station;
- add a crossover tap from an existing meter station to the Gresham Loop;
- install 13.2 mile 24-inch pipeline segment, instead of upgrading a loop (Gresham Loop) from 20-inch to 30-inch; and
- an additional 1.3 miles of 20-inch pipeline loop on the Grants Pass Lateral.

Northwest estimates the revised total cost for this primary design Northwest System Expansion II Project to be $67.7 million. Northwest further estimates that it will cost approximately $105,300 to remove the facilities proposed to be abandoned. Northwest estimates that the total original cost of the facilities proposed to be abandoned is $604,641 with an estimated salvage value of $6,000. Northwest says about $10.9 million of costs for the Weyerhaeuser and Springfield Utility Board Laterals will be paid for incrementally by specific shippers.

Northwest says it has requested, as part of its proposal in the Northwest Expansion II Project in Docket No. CP93–673, to upgrade the 20-inch Gresham loop, requested in the Northwest Natural Expansion Project (Docket No. CP93–613), to a 30-inch pipeline loop. Northwest further says, if the Commission approves the upgrade from 20-inch to 30-inch and approves the construction of all facilities in both projects concurrently, it will allocate to

• a total of 9,120 standard sea-level horsepower of additional compression at three existing compressor stations;
• modifications or upgrades of appurtenant facilities at 11 existing compressor stations;
• three new meter stations; and
• crossover taps to new loop lines for three existing meter stations.

Northwest also requests abandonment approval for certain existing facilities proposed to be replaced by upgraded facilities at six existing compressor stations and one meter station.

Northwest says the certificate authority requested in this Northwest Expansion II Project assumes Northwest has received Commission approval to construct and operate the prerequisite facilities proposed in the Northwest Natural Expansion Project, in Docket No. CP93–613. If Northwest does not receive approval to construct the Northwest Natural Expansion Project in conjunction with or before the expansion project herein, Northwest alternatively requests that the proposed certificate authorization reflect the following changes from the primary design case facilities:

• eliminate 5,700 standard sea-level horsepower of additional compression proposed at one existing compressor station;
• add a crossover tap from an existing meter station to the Gresham Loop;
• install 13.2 mile 24-inch pipeline segment, instead of upgrading a loop (Gresham Loop) from 20-inch to 30-inch; and
• an additional 1.3 miles of 20-inch pipeline loop on the Grants Pass Lateral.

Northwest estimates the revised total cost for this primary design Northwest System Expansion II Project to be $67.7 million. Northwest further estimates that it will cost approximately $105,300 to remove the facilities proposed to be abandoned. Northwest estimates that the total original cost of the facilities proposed to be abandoned is $604,641 with an estimated salvage value of $6,000. Northwest says about $10.9 million of costs for the Weyerhaeuser and Springfield Utility Board Laterals will be paid for incrementally by specific shippers.

Northwest says it has requested, as part of its proposal in the Northwest Expansion II Project in Docket No. CP93–673, to upgrade the 20-inch Gresham loop, requested in the Northwest Natural Expansion Project (Docket No. CP93–613), to a 30-inch pipeline loop. Northwest further says, if the Commission approves the upgrade from 20-inch to 30-inch and approves the construction of all facilities in both projects concurrently, it will allocate to the Northwest Natural Expansion Project those costs attributable to constructing a 20-inch loop, and the Northwest Expansion II Project will be allocated costs attributable to increasing the pipe diameter from 20-inch to 30-inch.

Northwest indicates that the net estimated cost of the alternative facility case (no prerequisite Northwest Natural Expansion Project and excluding the Weyerhaeuser and Springfield Utility Board Laterals) is $70.2 million.

Northwest proposes to finance the construction cost of this expansion with short-term bank borrowings. Northwest further proposes to convert the short-term bank borrowings to an appropriate mix of long-term debt and equity which will provide an overall corporate capital structure of approximately 45% long-term debt and 55% equity.

Northwest says it originally requested authorization in Docket No. CP93–673–000 to construct facilities necessary to expand its mainline and various laterals to accommodate 258,488 Dth per day of new firm service under 31 long-term agreements with 26 shippers. Northwest further says, as a result of a one-time contract termination/reduction option provided to the expansion shippers, coupled with an open season to solicit replacement shippers, 19 contracts for a total of 134,063 Dth per day were terminated, 8 contracts were amended to reduce contract demands by a total of 62,500 Dth per day, 4 contracts did not change, and one new contract was executed for 250 Dth per day.

Northwest says it now has 13 long-term firm contracts (primary term of 15 years from the in-service date and year to year thereafter) under Northwest's TF–1 Rate Schedule with 12 expansion shippers for a total of 62,175 Dth per day in mainline contract demand.

Northwest submits that, in recognition of the benefits of this proposed Northwest Expansion II Project to its existing system and to facilitate prompt resolution of the rate issues pertinent to this proceeding, it no longer requests pre-approval of specific future rate case treatment for this project.

Northwest says its Expansion II Agreements with the shippers are subject to Northwest's open-access Rate Schedule TF–1 and will be implemented under Northwest's blanket transportation certificate and Subpart G of Part 284. Northwest requests approval for initial rates for mainline service under the expansion agreements to be its maximum Rate Schedule TF–1 rates, including applicable surcharges and fuel reimbursement in-kind percentages, which are in effect at the time service commences under the agreements.

Northwest avers that any issues which may be raised concerning the potential rate impact of this project and the appropriate future rate design for service under the Expansion II Agreements should be deferred for consideration in the first rate proceeding where Northwest files to include its expansion project costs in rates. Northwest says it intends to revise its rolled-in system rate to reflect the additional costs and billing determinants resulting from this project in the first general rate proceeding in which Northwest seeks to include the costs of this expansion in rate base.

In addition to using existing Rate Schedule TF–1 rolled-in rates as its initial rates for the Expansion II mainline services, Northwest requests approval to incrementally recover the costs of the two proposed, customer-specific delivery laterals by assessing Facilities Cost-of-Service charges to the applicable shippers in accordance with the Facilities Reimbursement provisions of its tariff. Northwest proposes to initially charge Weyerhaeuser Company and Longview Cogeneration Company, affiliate and assignee of Mission Energy, $115,936 per month each for service on the proposed Weyerhaeuser Lateral and to initially charge Springfield Utility Board $5,140 per month for service on the Springfield Utility Board Lateral.

Comment date: July 15, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission

by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16066 Filed 6–30–94; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5006–2]

Public Water Supply Supervision Program; Program Revisions for the States of Oregon and Idaho

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Oregon and the State of Idaho are revising their approved State Public Water Supply Supervision Primacy Programs. Both States have adopted drinking water regulations for certain volatile organic chemicals, synthetic organic chemicals and inorganic chemicals (known as the Phase V contaminants). EPA has determined that these two sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve both States' program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted August 1, 1994 to the Regional Administrator at the EPA address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by August 1, 1994, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective August 1, 1994.

Any request for a public hearing shall include the following: (1) the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to these determinations are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, as follows:

For the State of Oregon:

Drinking Water Section, Oregon Health Division, 800 NE Oregon Street, Portland, Oregon 97232;

For the State of Idaho:

Department of Health & Welfare, Division of Environmental Quality, 1410 North Hilton Street, Boise, Idaho 83706;

For either state:

Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA, Region 10, Ground Water and Drinking Water Branch, 1200 Sixth Avenue, WD–132, Seattle, Washington 98101; telephone (206) 553–1890.

Dated: June 14, 1994.

Chuck Clarke,

Regional Administrator.

[FR Doc. 94–16077 Filed 6–30–94; 8:45 am]

BILLING CODE 6560-50-P

[FRL–5002–9]

Public Water Supervision Program: Program Revision for the State of Maine

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Maine is revising it's approved State Public Water Supervision Primacy Program. Maine has adopted drinking water regulations for: (1) total coliforms (including fecal coliforms and E. Coli) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. Coli) promulgated by EPA on June 29, 1989 (54 FR 27544) and (2) for filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria requirements promulgated on June 29, 1989 (54 FR 27486). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by August 1, 1994 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by August 1, 1994, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective August 1, 1994.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request: or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Drinking Water Program, Division of Health Engineering, Maine Department of Human Services, 157 Capitol Street, Augusta, ME 04333
and
U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, One Congress Street—11th Floor, Boston, MA 02203

FOR FURTHER INFORMATION CONTACT: Christopher Ryan, U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3609.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: June 10, 1994.

John P. DeVillars,

Regional Administrator.

[FR Doc. 94–15316 Filed 6–30–94; 8:45 am]

BILLING CODE 6560-50-P

[ER–FRL–4712–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 13, 1994 Through June 17, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 08, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–L65226–ID Rating EC2, Elk Creek Integrated Resource Management Project, Implementation, Boise National Forest, Mountain Home Ranger District, Elmore County, ID.

Summary: EPA expressed environmental concerns about impacts on water quality from timber harvest and road construction. EPA requests

signature of the individual making the request: or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Drinking Water Program, Division of Health Engineering, Maine Department of Human Services, 157 Capitol Street, Augusta, ME 04333
and
U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, One Congress Street—11th Floor, Boston, MA 02203

FOR FURTHER INFORMATION CONTACT: Christopher Ryan, U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3609.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: June 10, 1994.

John P. DeVillars,

Regional Administrator.

[FR Doc. 94–15316 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–60–P

[ER–FRL–4712–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 13, 1994 Through June 17, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 08, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–L65226–ID Rating EC2, Elk Creek Integrated Resource Management Project, Implementation, Boise National Forest, Mountain Home Ranger District, Elmore County, ID.

Summary: EPA expressed environmental concerns about impacts on water quality from timber harvest and road construction. EPA requests monitoring information from these impacts be included in the final EIS.

ERP No. D–BLM–K67022–NV Rating EC2, Robinson Mining Project, Construction, Operation and Expansion, Plan of Operation Approval, White Pine, Elko and Eureka Counties, NV.

Summary: EPA expressed environmental concerns for potential project impacts to water quality and wildlife, and BLM's preferred reclamation measures, as well as the need for additional information in the final EIS on mitigation, monitoring and emergency response planning.

ERP No. D–COE–L39036–WA Rating EC2, Lower Snake River Biological Drawdown Test on Anadromous Fish and Wildlife, Implementation, Lower Granite Reservoir, WA.

Summary: EPA had environmental concerns with the resource impacts and stressed the necessity for biological monitoring and additional monitoring of water quality and sediment parameters. EPA also requested additional information about juvenile salmon dam passage mortality factors, possible dredging activities, wastewater discharge remedial measures, and the extent of wetland impacts.

ERP No. D–DOE–L09804–00 Rating LO, Delivery of the Canadian Entitlement by the United States Entity of Power Benefits, Implementation, WA, OR, ID, MI, WY, CA, NV, AZ and British Columbia.

Summary: EPA had no objections to the draft programmatic EIS.

ERP No. DS–USN–L11013–WA Rating LO, US West Coast Homeporting Program for Fast Combat Support Ships (AOE–6 Class), Updated Information, for the Pier D Project at Puget Sound Naval Shipyard, Implementation, Sinclair Inlet, Bremerton, WA.

Summary: EPA believed that adverse effects to water quality and aquatic resources would be avoided provided that the mitigation measures specified in the draft SEIS are fully implemented.

Final EISs

ERP No. F–AFS–L65213–ID, Savant Sage Resource Area, Land and Resource Management Plan, Implementation, Idaho Panhandle National Forests, Fernan Ranger District, Bonner and Kootenai Counties, ID.

Summary: EPA had no objections to the preferred alternative described in the EIS.

ERP No. F–FHW–J40122–WY, Snake River Canyon Highway, Improvement, US 26/89 between Alpine Junction to Hoback Junction, Funding and COE 404 Permit, Teton and Lincoln Counties, WY.

Summary: EPA believed it may be possible to further reduce impacts through speed reduction and additional reductions of clear zones and shoulder width.

ERP No. FS–AFS–K65136–CA, CASA—Guard Timber Sale, Timber Harvesting, Updated Information concerning Impacts on the California Spotted Owl and Fish Creek Watershed and Reforestation, Sequoia National Forest, Cannell Meadow Ranger District, Tulare County, CA.

Summary: Review of the Final EIS was not deemed necessary. No comment letter was sent to the preparing agency.

ERP No. FS–AFS–K65137–CA, Cottonwood and Golf Timber Sales, Timber Harvesting in the Breckenridge Compartment, Updated Information concerning Withdrawal of the Golf Timber Sale and Impacts on the California Spotted Owl and Reforestation for the Cottonwood Timber Sale, Sequoia National Forest, Greenhorn Ranger District, Kern County, CA.

Summary: Review of the Final EIS was not deemed necessary. No comment letter was sent to the preparing agency.

Dated: June 28, 1994.

Anne Norton Miller,

Director, Federal Liaison Division, Office Of Federal Activities.

[FR Doc. 94–16079 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–60–U

[ER-FRL–4712–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed June 20, 1994 Through June 24, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940241, Draft EIS, AFS, MT, Beaverhead National Forests Oil and Gas Leasing, Exploration, Development and Land Acquisition, Beaverhead, Madison, Silver Bow, Deer Lodge and Gallatin Counties, MT, Due: August 15, 1994, Contact: Peri Suenram (406) 683–3900.

EIS No. 940242, Final EIS, COE, FL, Central and Southern Florida (Canal 111 (C–111)) Project, for Flood Control and other Purposes, Implementation, South Dade County, FL, Due: August 01, 1994, Contact: Stephen T. Sutterfield (904) 232–1104.

EIS No. 940243, Final EIS, BLM, ID, Twin Falls County Solid Waste Landfill Facility Construction and

Operation, Land Acquisition, Twin Falls County, ID, Due: August 05, 1994, Contact: Gary R. Barkett (208) 734–4888.

EIS No. 940244, Draft EIS, FHW, WI, WI–16 Oconomowoc West Bypass (Rock River to WI–67) Project, Improvement, Funding and COE Section 404 Permit, City of Oconomowoc, Jefferson and Waukesha Counties, WI, Due: August 23, 1994, Contact: James R. Zavoral (608) 264–5944.

EIS No. 940245, Final EIS, FAA, AR, Northwest Arkansas Regional Airport, Construction of Replacement Airport for Drake Field in Fayetteville, Funding, Land Acquisition and Airport Layout Plan, City of Fayetteville, AR, Due: August 01, 1994, Contact: Brad Kutchins (817) 222–5661.

EIS No. 940246, Final Supplement, COE, CA, Oakland Outer and Inner Harbors, Deep Draft Navigation Improvements, Updated Information, Alcatraz Dredge Material Disposal Site Changed Conditions, Implementation, Alameda County, CA, Due: August 01, 1994, Contact: Roger Golden (415) 744–3344.

EIS No. 940247, Draft EIS, NOA, Deep Seabed Hard Mining Exploration Project, License Issuance for the former Kenecott Mining Site (USA–4) to Ocean Minerals Mining, Pacific Ocean, Central America to HI, Due: August 29, 1994, Contact: M. Karl Jugel (301) 713–3159.

EIS No. 940248, Final EIS, NPS, CO, Bent's Old Fort Historic Site, Comprehensive General Management Plan and Development Concept Plan, Implementation, Santa Fe Trail, Otero County, CO, Due: August 01, 1994, Contact: Donald C. Hill (303) 293–1695.

EIS No. 940249, Draft EIS, BLM, CA, Caliente Land and Resource Management Plan, Implementation, Kern, Tulare, King, San Luis, Obispo, Santa Barbara and Ventura Counties, CA, Due: September 28, 1994, Contact: Steve Larson (805) 391–6099.

EIS No. 940250, Draft EIS, DOE, ID, CA, WA, NV, Programmatic National Spent Nuclear Fuel Management Program and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Program, Implementation, Site Specific, Due: September 30, 1994, Contact: Carol Borgstrom (202) 586–4600.

EIS No. 940251, Final EIS, UAF, CO, Lowry Air Force Base (AFB) Disposal and Reuse, Implementation, Denver County, CO, Due: August 01, 1994, Contact: Ltc. Gary Baumgartel (210) 536–3869.

Dated: June 28, 1994

Anne Norton Miller,

Director, Federal Agency Liaison Division Office of Federal Activities.

[FR Doc. 94–16080 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–50–U

[FRC 5006–4]

Public Meeting of the Commission for Environmental Cooperation Established Under the North American Agreement on Environmental Cooperation; Meeting Agenda

INTRODUCTION: The Commission for Environmental Cooperation (the "Commission") was established pursuant to the North American Agreement on Environmental Cooperation and the NAFTA Implementation Act, 19 U.S.C. section 3301 *et seq.*, to promote cooperation on trade related environmental issues between the United States, Canada and Mexico, and to provide sustainable development, encourage improved pollution prevention policies, and enhance compliance with applicable laws and regulations. The governing body of the Commission, the Council, comprised of the environmental ministers of the three NAFTA countries (Deputy Prime Minister and Environmental Minister Sheila Copps for Canada; SEDESOL Secretary Carlos Rojas for Mexico; and Environmental Protection Agency Administrator Carol M. Browner for the U.S.) have agreed to hold the first Regular Session Council meeting in Washington, D.C. on July 26, 1994.

TIME, PLACE AND PURPOSE: The Council of the Commission for Environment Cooperation will hold its first Regular Session meetings on Tuesday, July 26, 1994. The afternoon meeting will be open to the public. The public meeting will take place at the U.S. Department of State, Loy Henderson Room, "C" Street, N.W., Washington, D.C., and will run from 2:30 p.m. to 6:30 p.m.

This meeting will afford the public an opportunity to present to the Council their ideas and expectations related to the work to be accomplished by the Commission. The Council for its part will share decisions made by the Council on: the selection of Executive Director, the selection of members of the Joint Public Advisory Committee (JPAC), initial priorities of the Council and expected funding levels for the Commission. The proposed agenda for the public session is as follows:

2:30–3:00 Official Opening of Public Meeting of the Commission, Loy Henderson Room.

3:00–4:00 Remarks by Commission Members.

4:00–4:30 Administration Issues/ Introduction of the Executive Director/ Presentation by JPAC Chairperson.

4:30–6:00 Public Discussion.

6:00–6:30 Press Conference.

PUBLIC PARTICIPATION: The meeting will be open to the public on Tuesday, July 26 from 2:30 p.m. to 6:30 p.m. All persons desiring to attend need to inform the Executive Director of the CEC Secretariat at the address or telefax number listed below no later than 5:00 p.m. on Wednesday, July 20. There will be limited seating for interested members of the public, which will be available on a first-come, first-served basis to those who make that request of the CEC Secretariat Executive Director.

Ninety minutes will be set aside to provide the public an opportunity to make oral statements regarding their views of the work to be accomplished by the Commission. Members of the public who wish to make oral statements should request the opportunity to do so by contacting the CEC Secretariat Executive Director in writing. The CEC Secretariat Executive Director must have received the requests at the address or telefax number listed below no later than 5:00 p.m. on Wednesday, July 20. Persons seeking to make oral presentations should specify the subjects in their request the subject they wish to address. Oral statements will be limited to five minutes. If it is not possible to meet all requests, the Council will select presenters to represent as broad a range of views as possible.

FOR REQUESTS TO MAKE ORAL STATEMENTS OR TO ATTEND THE PUBLIC SESSION ON JULY 26, CONTACT: Victor Lichtinger, Executive Director, North American Commission for Environmental Cooperation. 10 Wellington Street, Hull, Quebec, Canada, K1A–OH3. Telephone: (819) 953–9416; Telefax: (819) 953–2115.

FOR FURTHER INFORMATION CONTACT; Jorge G. Rangel, Jr., NAFTA Task Force; Mail Code 7777, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone: (202) 260–6161; telefax (202) 260–9459.

Dated: June 28, 1994.

Jorge G. Rangel, Jr.,

NAFTA Task Force.

[FR Doc. 94–16078 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5006–3]

Privacy Act of 1974; System of Records

ACTION: Notice of amendment to existing Privacy Act system of records.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend its Privacy Act system of records, "Invention Reports Submitted to the Environmental Protection Agency," previously published at 50 FR 50227 (December 9, 1985). The primary purpose of this amendment is to clarify existing and add new routine uses, to add a new category of individuals covered by the system, to reflect changes required by the adoption of a computer tracking system for covered records, to more accurately describe the sources of records in the system, and to add new data elements by which information may be retrieved from the system. All other changes to the system are of a minor nature.

EFFECTIVE DATE: This amendment shall become effective without further notice forty (40) days after publication unless comments are received which dictate a contrary determination.

ADDRESSES: Comments should be addressed to Patent Counsel, U.S. EPA, Office of General Counsel, General and Information Law Division (2379), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Thomas W. Gorman, Patent Counsel, U.S. EPA, Office of General Counsel, General and Information Law Division (2379), 401 M Street SW., Washington, DC 20460. Tel. (202) 260–1339.

SUPPLEMENTARY INFORMATION: EPA is amending a system of records, "Invention Reports Submitted to the Environmental Protection Agency–EPA/OGC/Grants–16," as follows:

First, EPA is adding new routine uses and revising existing routine uses in a manner that is compatible with the purpose for which the records were collected. Routine uses 1, 3, 4, 6, 7 in the notice (formerly published as numbers 2, 4, 5, 7, and 8, respectively) have been reorganized but not altered. Routine use 2 (formerly 3) has been revised to clarify that contract patent counsel are engaged by EPA to prepare and prosecute patent applications as well as to search patents. Routine use 5 (formerly 6) has been amended to reflect disclosures of files in connection with EPA's implementation of the Federal Technology Transfer Act of 1986. Routine use 8 has been added to enable EPA to disclose records to Government contractors, other than contract patent counsel covered in a separate routine

[FRL–5006–3]

Privacy Act of 1974; System of Records

ACTION: Notice of amendment to existing Privacy Act system of records.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend its Privacy Act system of records, "Invention Reports Submitted to the Environmental Protection Agency," previously published at 50 FR 50227 (December 9, 1985). The primary purpose of this amendment is to clarify existing and add new routine uses, to add a new category of individuals covered by the system, to reflect changes required by the adoption of a computer tracking system for covered records, to more accurately describe the sources of records in the system, and to add new data elements by which information may be retrieved from the system. All other changes to the system are of a minor nature.

EFFECTIVE DATE: This amendment shall become effective without further notice forty (40) days after publication unless comments are received which dictate a contrary determination.

ADDRESSES: Comments should be addressed to Patent Counsel, U.S. EPA, Office of General Counsel, General and Information Law Division (2379), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Thomas W. Gorman, Patent Counsel, U.S. EPA, Office of General Counsel, General and Information Law Division (2379), 401 M Street SW., Washington, DC 20460. Tel. (202) 260–1339.

SUPPLEMENTARY INFORMATION: EPA is amending a system of records, "Invention Reports Submitted to the Environmental Protection Agency–EPA/OGC/Grants–16," as follows:

First, EPA is adding new routine uses and revising existing routine uses in a manner that is compatible with the purpose for which the records were collected. Routine uses 1, 3, 4, 6, 7 in the notice (formerly published as numbers 2, 4, 5, 7, and 8, respectively) have been reorganized but not altered. Routine use 2 (formerly 3) has been revised to clarify that contract patent counsel are engaged by EPA to prepare and prosecute patent applications as well as to search patents. Routine use 5 (formerly 6) has been amended to reflect disclosures of files in connection with EPA's implementation of the Federal Technology Transfer Act of 1986. Routine use 8 has been added to enable EPA to disclose records to Government contractors, other than contract patent counsel covered in a separate routine use, who are engaged to perform duties on behalf of the Government. Routine use 9 has been added to permit disclosures of records in the system to the Department of Justice when EPA is a party to or has an interest in litigation. In addition, a list of five general routine uses currently applicable to this system of records, but published in a separate **Federal Register** notice (40 FR 43194, September 18, 1975), has been amended and republished as routine uses 10 through 14 in this notice. These routine uses have been revised to provide more accurate and precise descriptions of the permitted disclosures, which include disclosures to Congress at an individual's request; for law enforcement purposes; in connection with judicial and administrative litigation; and in connection with employment, contract and benefit entitlement decisions.

Second, EPA has developed a computer system which indexes and tracks information contained in this system of records. The sections of this notice describing "Storage," "Retrievability," and "Safeguards" have been revised to reflect the changes resulting from adoption of the computer tracking system.

Third, the "Record Source Categories" section has been revised to include U.S. and foreign patent offices, which were inadvertently omitted from the prior publication of this notice.

Fourth, the section on "Categories of Individuals Covered by this System" is being revised to include a new category of individuals: Parties to cooperative research and development agreements under the Federal Technology Transfer Act of 1986.

Fifth, the "Retrievability" section of the notice is being revised to indicate that information in the system may also be retrieved by patent application number and/or patent number.

The remaining revisions to this system of records are editorial in nature or clarify and update the existing notice to reflect administrative, organizational, and statutory revisions which have occurred since the previous publication of the notice in the **Federal Register**.

The report on significantly altered systems of records required by 5 U.S.C. 552a(r) has been submitted to Congress and the Office of Management and Budget.

Dated: June 16, 1994.

Jonathan Cannon,

Assistant Administrator for Administration and Resources Management.

EPA–16

SYSTEM NAME:

Invention Reports Submitted to the EPA.

SYSTEM LOCATION:

U.S. Environmental Protection Agency, Office of General Counsel, General and Information Law Division (2379), 401 M Street SW., Washington, DC 20460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EPA employees and employees of contractors, subcontractors, grantees, cooperative agreement recipients (40 CFR part 30), and parties to cooperative research and development agreements (15 U.S.C. 3710a) who have submitted invention reports to EPA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Invention reports, patent applications, patents, patent assignments, licenses, procurement requests, Government purchase orders, and other documents relevant to inventions made under EPA sponsorship.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 9865, E.O. 10096, 35 U.S.C. Ch. 18 (Patent Rights in Inventions Made with Federal Assistance), 37 CFR parts 101 and 404, 40 CFR part 30, 48 CFR parts 27 and 52.

PURPOSE(S):

Records are maintained for the purpose of documenting inventions made under EPA sponsorship, including filing patent applications, determining rights to inventions, licensing inventions, and ascertaining inventorship and priority of invention.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed routinely:

1. To scientific personnel who possess the expertise to understand the invention and evaluate its importance to the Government and/or the public.

2. To contract patent counsel and their employees retained by the Agency for patent searching, preparation and prosecution of United States and foreign patent applications.

3. To Government agencies whom we contact regarding possible use, interest in or ownership rights in our inventions.

4. To the National Technical Information Service of the Department

of Commerce for inclusion in their invention licensing program.

5. To technology assistance personnel, technology evaluators, technology finders and prospective licensees who may further make the invention available to the public through evaluation, promotion, sale, use or publication.

6. To parties, such as supervisors of inventors, whom we contact to determine ownership rights, and to those parties contacting us to determine the Government's ownership.

7. To the United States and foreign Patent and Trademark Offices when we file U.S. and foreign patent applications.

8. To Federal Government contractors, grantees, or volunteers who have been engaged to assist the Federal Government in the performance of a contract, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients are required to maintain the records in accordance with the requirements of the Privacy Act.

9. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest; (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

10. In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include, but are not limited to, those made in the course of presenting evidence, conducting settlement negotiations, and responding to requests for discovery.

11. To a Member of Congress or a congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

12. To a Federal agency which has requested information relevant to its decision in connection with the firing or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

13. To a Federal, State or local agency where necessary to enable EPA to obtain information relevant to an EPA decision concerning the hiring or retention of an employee; the letting of a contract; or the issuance of a security clearance, license, grant or other benefit.

14. To an appropriate Federal, State, local or foreign agency responsible for investigation, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Individual file folders in file cabinets and indexed on computer tracking system.

RETRIEVABILITY:

Indexed and retrieved by inventor's name, by case identification number, and by patent application number or patent number.

SAFEGUARDS:

Access is limited to EPA personnel with an official need to know. During non-business hours, the files are kept in a locked room in a building with controlled access. In addition, access to the computerized index is limited to EPA personnel with an official need to know and an authorized password.

RETENTION AND DISPOSAL:

The records are maintained for seventeen years after completion or termination of action on the disclosed invention, such as issuance of a patent. The records are maintained at EPA for approximately three to eight years and are then sent to a Federal Records Center for the remainder of the applicable retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel, General and Information Law Division (2379), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Notification procedure:

Written inquiries should be directed to the System Manager at the address listed above. The System Manager will provide additional information or requirements if necessary.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure. In addition, individuals seeking access should reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedure. In addition, individuals contesting records should reasonably identify the record and specify the information being contested. The corrective action being sought and supporting justification for that action should be provided.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from invention report submitters covered by this system, their supervisors, other persons with knowledge of the invention or expertise in the particular area of the invention, EPA Patent Counsel, EPA contractors who have searched the invention, prepared a patent application on the invention and/or otherwise performed work relating to a patent application, and the United States and foreign patent offices.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–16075 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5006–1]

Proposed Settlement; Acid Rain Allowance Allocations and Reserves Rule Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement of *Southern Illinois Power Cooperative, Inc.* v. *Environmental Protection Agency*, No. 93–2263 (7th Cir.).

This case involves a challenge to the final rule, entitled "Acid Rain Allowance Allocations and Reserves," which, *inter alia*, allocated sulfur dioxide emission allowances to Marion [Illinois] Power Station Units 1, 2, and 3. 58 FR 15634, 15662 (March 23, 1993).

For a period of thirty (30) days following the date of publication of this notice, the Environmental Protection Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, (202) 260–7606. Written comments should be sent to Jon Averback at the above address and must be submitted on or before August 1, 1994.

Dated: June 27, 1994.

Jean C. Nelson,

General Counsel.

[FR Doc. 94–16016 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

Background:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork

Report
FR 2900
FR 2950/2951
FR 2000 FR 2001

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. §§ 248(a), 461, 603, 615, and 1305(b)(2)] and is given confidential treatment [5 U.S.C. § 552b(4)].

This package of reports collects information on: deposits and related items from depository institutions that have transaction accounts or nonpersonal time deposits and that are

For a period of thirty (30) days following the date of publication of this notice, the Environmental Protection Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, (202) 260–7606. Written comments should be sent to Jon Averback at the above address and must be submitted on or before August 1, 1994.

Dated: June 27, 1994.

Jean C. Nelson,

General Counsel.

[FR Doc. 94–16016 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

Background:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before August 1, 1994.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room B–1122 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TTD) Dorothea Thompson (202–452–3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Proposal to approve under OMB delegated authority the extension with revisions, of the following reports:

1. *Report title:* Report of Transaction Accounts, Other Deposits and Vault Cash; Reports of Certain Eurocurrency Transactions; and Advance Reports of Deposits

Agency form number: FR 2900; FR 2950/51; and FR 2000/2001

OMB Docket number: 7100–0087

Frequency: Weekly, Quarterly, Daily—dependent upon request

Reporters: Depository institutions

Annual reporting hours: 1,767,743

Report	Estimated Number of Respondents	Estimated Hours Per Response
FR 2900	8,764 (weekly)	1 to 12 (3.50 avg.)
	4,934 (quarterly)	1 to 12 (3.50 avg.)
FR 2950/2951	693 (weekly)	.2 to 5 (1.00 avg.)
	1 (quarterly)	.2 to 5 (1.00 avg.)
FR 2000	186	.3 to 2.4 (.84 avg.)
FR 2001	540	.3 to 3 (.96 avg.)

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. §§ 248(a), 461, 603, 615, and 1305(b)(2)] and is given confidential treatment [5 U.S.C. § 552b(4)].

This package of reports collects information on: deposits and related items from depository institutions that have transaction accounts or nonpersonal time deposits and that are not fully exempt from reserve requirements ("nonexempt institutions") (FR 2900); Eurocurrency transactions from depository institutions that obtain funds from foreign (non-U.S.) sources or that maintain foreign branches (FR 2950, FR 2951); and selected items on the FR 2900 in advance from samples of commercial banks on a daily basis (FR 2000) and on a weekly basis (FR 2001).

The Federal Reserve proposes that the single deposit cutoff ($44.8 million) (and one of two determinants of deposits reporting category) be replaced by two separate deposit cutoffs ($44.8 million and $55.0 million). The higher cutoff would be applied to nonexempt reporters, resulting in a shift of over 1,000 reporters from weekly to quarterly FR 2900 reporting and a significant reduction in annual reporting burden.

The lower cutoff would continue to apply to fully-exempt institutions (see Item 1 below). In the future, both cutoffs would be indexed annually. Also, the Federal Reserve proposes to broaden the entity coverage of the daily FR 2000 to include large thrift institutions, and recommends that eighteen thrifts be added to the reporting panel. No revisions to the content of any of the reports are proposed. Information provided by these reports is used for administering Regulation D—Reserve Requirements of Depository Institutions; or for constructing, analyzing, and controlling the monetary and reserves aggregates; or both.

Proposal to approve under OMB delegated authority the extension without revisions, of the following reports:

1. *Report title:* Quarterly Report of Selected Deposits, Vault Cash and Reservable Liabilities; and Annual Report of Total Deposits and Reservable Liabilities.
Agency form number: FR 2910q; FR 2910a.
OMB Docket number: 7100–0175.
Frequency: Quarterly; Annually.
Reporters: Depository institutions.
Annual reporting hours: 7,194.

Report	Estimated Number of respondents	Estimated Average Hours Per Response
FR 2910q	534	2.00
FR 2910a	6,377	.50

Small businesses are affected.
General description of reports: This information collection is mandatory [12 U.S.C. §§ 248(a) and 461] and is given confidential treatment [5 U.S.C. § 552b(4)].
These reports collect information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and agreement corporations) that are fully exempt from reserve requirements under the Garn-St Germain Depository Institutions Act of 1982. Information provided by these reports is used to construct and analyze the monetary aggregates and to ensure compliance with Regulation D—Reserve Requirements of Depository Institutions. No changes are proposed for these reports.
2. *Report title:* Allocation of Low Reserve Tranche and Reservable Liabilities Exemption.
Agency form number: FR 2930 FR 2930a.
OMB Docket number: 7100–0088.
Frequency: Annually, and on occasion.
Reporters: Depository institutions.
Annual reporting hours: 126.
Estimated average hours per response: .25.
Estimated number of respondents: 502.
Small businesses are affected.
General description of reports: This information collection is mandatory [12 U.S.C. §§ 248(a) and 461] and is given confidential treatment [5 U.S.C. § 552b(4)].
This report provides information on the allocation of the low reserve tranche and reservable liabilities exemption for depository institutions having offices (or groups of offices) that submit separate FR 2900 deposits reports. The data collected by these reports are needed for the calculation of required reserves. No changes are proposed for these reports.

By order of the Board of Governors of the Federal Reserve System, June 27, 1994.
William W. Wiles,
Secretary of the Board.
[FR Doc. 94–16028 Filed 6–30–94; 8:45 am]
BILLING CODE 6210–01–P

First Ozaukee Capital Corp.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.
The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.
Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 1994.
A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:
1. First Ozaukee Capital Corp., Cedarburg, Wisconsin, to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 27, 1994.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 94–16030 Filed 6–30–94; 8:45 am]
BILLING CODE 6210–01–F

Maine Bank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).
Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.
Unless otherwise noted, comments regarding each of these applications must be received not later than July 25, 1994.
A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:
1. Maine Bank Corp., Portland, Maine, to become a bank holding company by acquiring 100 percent of the voting shares of Maine Bank & Trust Company, Portland, Maine.
B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:
1. First Ozaukee Capital Corp., Cedarburg, Wisconsin, to become a bank holding company by acquiring 100 percent of the voting shares of First Ozaukee Savings Bank, Cedarburg, Wisconsin.
C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:
1. New Independent Bancshares, Inc., New Washington, Indiana, to become a bank holding company by acquiring 100 percent of the voting shares of The New Washington State Bank, New Washington, Indiana.
D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:
1. GHB, Inc., Colorado City, Colorado, to become a bank holding company by acquiring 100 percent of the voting shares of Greenhorn Valley Bank, Colorado City, Colorado.
2. First Capital Corporation, Fort Scott, Kansas, to become a bank holding company by acquiring 100 percent of the voting shares of Kincaid Banc Agency, Inc., Kincaid, Kansas, and thereby indirectly acquire Bank of Kincaid, Kincaid, Kansas.

Board of Governors of the Federal Reserve System, June 27, 1994.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 94–16032 Filed 6–30–94; 8:45 am]
BILLING CODE 6210–01–F

Sharon E. Thompson, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).
The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available

Atlantic Avenue, Boston, Massachusetts 02106:

1. Maine Bank Corp., Portland, Maine, to become a bank holding company by acquiring 100 percent of the voting shares of Maine Bank & Trust Company, Portland, Maine.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Ozaukee Capital Corp., Cedarburg, Wisconsin, to become a bank holding company by acquiring 100 percent of the voting shares of First Ozaukee Savings Bank, Cedarburg, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. New Independent Bancshares, Inc., New Washington, Indiana, to become a bank holding company by acquiring 100 percent of the voting shares of The New Washington State Bank, New Washington, Indiana.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. GHB, Inc., Colorado City, Colorado, to become a bank holding company by acquiring 100 percent of the voting shares of Greenhorn Valley Bank, Colorado City, Colorado.

2. First Capital Corporation, Fort Scott, Kansas, to become a bank holding company by acquiring 100 percent of the voting shares of Kincaid Banc Agency, Inc., Kincaid, Kansas, and thereby indirectly acquire Bank of Kincaid, Kincaid, Kansas.

Board of Governors of the Federal Reserve System, June 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16032 Filed 6–30–94; 8:45 am]

BILLING CODE 6210–01–F

Sharon E. Thompson, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 21, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Sharon E. Thompson, Mindenmines, Missouri and Joyce L. Draper (personally and as co-trustee of the Jon A. Simoncic Trust), Pittsburg, Kansas, to acquire an additional 22.72 percent, for a total of 44.49 percent of the voting shares of S.T.D. Investments, Inc., Mindenmines, Missouri, and thereby indirectly acquire Bank of Minden, Mindenmines, Missouri.

2. James H. Vincent and Mildred M. Vincent, Yuma, Colorado, to acquire an additional 3.72, for a total of 12.16 percent of the voting shares of Washington Investment Company, Otis, Colorado, and thereby indirectly acquire First National Bank of Akron, Akron, Colorado, First National Bank of Otis, Otis, Colorado, and First National Bank of Yuma, Yuma, Colorado.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Michael Evans Montgomery, Dallas, Texas, to acquire 19.81, for a total of 35.06 percent of the voting shares of Metroplex Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Bent Tree National Bank, Addison, Texas.

Board of Governors of the Federal Reserve System, June 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16031 Filed 6–30–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Hanford Thyroid Morbidity Study Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Time and Date: 8:30 a.m.–5 p.m., July 18, 1994. 7 p.m.–9 p.m., July 18, 1994.

Place: Cavanaugh's River Inn, North 700 Division Street, Spokane, Washington 99202.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study. The committee will review development of the study protocol and recommend changes of scientific merit to CDC, advise on the conduct of the pilot study using the approved protocol, and assist in determining the feasibility of a full-scale epidemiologic study. If the full-scale epidemiologic study is carried out, the committee will advise CDC on the design and conduct of the study and analysis of the results.

Matters To Be Discussed: The Handford Thyroid Morbidity Study Advisory Committee will meet to: (1) Discuss updates of the status of various components of the Hanford Thyroid Disease Study and (2) conduct a public meeting for open discussion and inform the public on the progress of the pilot study being conducted by the Fred Hutchinson Cancer Research Center. Specifically, the discussions will focus on scientific rationale, clinical updates, tribal activities and plans, public involvement, confidentially assurance, and status reports on the conduct of the pilot study. On July 18 at 7 p.m., the meeting will continue in order to allow more time for public input and comment.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 404/488–7040.

Dated: June 28, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16153 Filed 6–30–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94D–0134]

Salmonella Contamination of Animal Feed and Animal Feed Ingredients; Animal By-Products for Feeds—Salmonella Contamination Compliance Policy Guides; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking Compliance Policy Guide (CPG) 7126.07 entitled "*Salmonella* Contamination of Animal Feed and Animal Feed

Ingredients" and CPG 7126.13 entitled "Animal By-Products For Feeds—*Salmonella* Contamination." This action is being taken because the guides no longer reflect FDA policy.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Daniel G. McChesney or Linda A. Grassie, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1728.

SUPPLEMENTARY INFORMATION: In September 1990, in a speech given by FDA's Center for Veterinary Medicine (CVM) entitled "Symposium on Feed Quality Assurance, a System-wide Approach," FDA announced its goal of *Salmonella*-negative animal feed and feed ingredients. FDA has published a transcript of this symposium in a volume by the same title, which is available from CVM under Department of Health and Human Services (DHHS) publication number [FDA] 91–6050. Copies are available from Linda A. Grassie (above address).

To achieve this goal of *Salmonella*-negative feed and feed ingredients, CVM is working with the U.S. Animal Health Association, academia, and industry to develop and implement the hazard analysis of critical control points (HACCP) quality assurance programs within the feed industry and to develop sampling plans for *Salmonella* based on risk. Effective July 1, 1994, FDA is revoking CPG's 7126.07 and 7126.13 because they no longer reflect FDA policy. The policy guidance in CPG 7126.07 was that FDA would not routinely inspect or sample animal feed or animal feed ingredients of either domestic or import origin for *Salmonella* contamination. CPG 7126.07 provided guidance criteria for recommending legal action for *Salmonella* contamination in animal by-products for feed.

Under section 402(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)) animal feed, feed ingredients, and pet food containing *Salmonella* are adulterated and are subject to regulatory action. Reports of *Salmonella* contamination will be reviewed on a case-by-case basis. Decisions on regulatory action will be based on sample results, the risk associated with the product, and the firm's actions to remedy production and handling problems that may have caused the *Salmonella* contamination.

Dated: June 27, 1994.

Gary Dykstra,

Acting Associate Commisioner for Regulatory Affairs.

[FR Doc. 94–16091 Filed 6–30–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94P–0157]

White Chocolate Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Kraft General Foods, Inc., to market test a product identified as "white chocolate" that deviates from the U.S. standards of identity for chocolate products, e.g., chocolate liquor, sweet chocolate, milk chocolate, buttermilk chocolate, skim milk chocolate, and mixed dairy product chocolates, in that it is prepared without the nonfat components of the ground cacao nibs but contains the fat (cacao butter) expressed from the cacao nibs. The test product may also contain antioxidants. The purpose of the temporary permit is to allow the applicant to collect data on consumer acceptance of the product in support of establishing a standard of identity for white chocolate.

DATES: The permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Kraft General Foods, Inc., 250 North St., White Plains, NY 10625. The permit covers limited interstate market testing of a product identified as "white chocolate" that deviates from the U.S. standards of identity for chocolate products, e.g., chocolate liquor (21 CFR 163.111), sweet chocolate (21 CFR 163.123), milk chocolate (21 CFR 163.130), buttermilk chocolate (21 CFR 163.135), skim milk chocolate (21 CFR 163.140), and mixed dairy product chocolates (21 CFR 163.145).

For the purposes of this permit, white chocolate is the solid or semi-plastic food prepared by intimately mixing and grinding cocoa butter with one or more nutritive carbohydrate sweeteners and one or more dairy ingredients. It contains not less than 20 percent of cocoa butter, not less than 14 percent of total milk solids, not less than 3.5 percent of milkfat, not more than 55 percent of nutritive carbohydrate sweetener, and not more than 1.0 percent hydroxylated lecithin or lecithin. White chocolate may also contain spices, natural and artificial flavorings (not imitating chocolate, milk, or butter), other seasonings, and antioxidants approved for food use; but it contains no added coloring.

The test product will bear the name "Premium White Chocolate Baking Squares." The test product differs from the standardized chocolate products described in 21 CFR part 163 in that it is prepared without the nonfat components of the ground cacao nibs but contains the fat (cocoa butter) expressed from the ground cacao nibs and it may also contain antioxidants.

This permit provides for the temporary marketing of 237,000 kilograms (522,000 pounds) of the test product. The test product will be manufactured by Kraft General Foods Canada, Inc., 795 90th Ave., Ville LaSalle, Quebec, Canada H8R 3A4. The product will be distributed nationwide. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food will be declared on the label as required by the applicable sections of 21 CFR part 101.

This permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than September 29, 1994.

Dated: June 21, 1994.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–16092 Filed 6–30–94; 8:45 am]

BILLING CODE 4160–01–F

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, May 27, 1994.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Certification by a Religious Group—0960–0093. The information on form SSA–1458 is used by the Social Security Administration to determine whether or not the members of a specific religious group can be exempted from paying self-employment

Number of Respondents	
Frequency of Response	
Average Burden Per Response	
Estimated Annual Burden	

4. Medical History and Disability Report—0960–0504. The information on form SSA–3820 is used by the Social Security Administration to help make determinations in claims for disabled child's benefits. The respondents are claimants who file for those benefits.

Number of Respondents	453,000
Frequency of Response	1
Average Burden Per Response	20 minutes.
Estimated Annual Burden	151,000 hours.

5. Social Security Request for Information—0960–NEW. The information on form SSA–6231 will be used by the Social Security Administration to complete or clarify data previously provided by representative payees on forms SSA–623 or SSA–6230. The respondents will be payees who furnished incomplete or unclear information.

Number of Respondents	100,000
Frequency of Response	1
Average Burden Per Response	15 minutes.
Estimated Annual Burden	25,000 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503.

have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, May 27, 1994.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Certification by a Religious Group—0960–0093. The information on form SSA–1458 is used by the Social Security Administration to determine whether or not the members of a specific religious group can be exempted from paying self-employment tax. The respondents are members of such groups.

Number of Respondents	180
Frequency of Response	1
Average Burden Per Response	15 minutes.
Estimated Annual Burden	45 hours.

2. SSA–2765 (Request for Self-Employment Information), SSA–3365 (Request for Employment Information), SSA–4002 (Request for Employer Information)—0960–0508. The information on these forms is used by the Social Security Administration to determine who reported earnings belong to. The respondents are workers or employers who are requested to complete one of these forms regarding certain unidentifiable earnings.

Number of Respondents	3,000,000
Frequency of Response	1
Average Burden Per Response	10 minutes.
Estimated Annual Burden	500,000 hours.

3. Disability Report; Vocational Report—0960–0141. The information on forms SSA–3368 and SSA–3369 is used by the Social Security Administration to help develop complete disability and vocational information in claims for disability benefits. The respondents are claimants for those benefits.

	SSA–3368	SSA–3369
Number of Respondents	2,264,000	1,000,000
Frequency of Response	1	1
Average Burden Per Response	45 mins	30 mins.
Estimated Annual Burden	1,698,000 hours.	500,000 hours.

4. Medical History and Disability Report—0960–0504. The information on form SSA–3820 is used by the Social Security Administration to help make determinations in claims for disabled child's benefits. The respondents are claimants who file for those benefits.

Number of Respondents	453,000
Frequency of Response	1
Average Burden Per Response	20 minutes.
Estimated Annual Burden	151,000 hours.

5. Social Security Request for Information—0960–NEW. The information on form SSA–6231 will be used by the Social Security Administration to complete or clarify data previously provided by representative payees on forms SSA–623 or SSA–6230. The respondents will be payees who furnished incomplete or unclear information.

Number of Respondents	100,000
Frequency of Response	1
Average Burden Per Response	15 minutes.
Estimated Annual Burden	25,000 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503.

Date: June 23, 1994.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 94–15755 Filed 6–30–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–90]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer

be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., Rm. 4133, Washington, DC 20314–1000; (202) 272–0520; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (These are not toll-free numbers).

Dated: June 24, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program, Federal Register Report for 07/01/94

Suitable/Available Properties

Buildings (by State)

California

3 Educational Facilities
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420113
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 13230–24580 sq. ft., 1–2 story, needs rehab, incs. instruction bldgs., ed/training, Bldgs. 101, 133, 75 A&B, possible asbestos/lead paint, scheduled to be vacated 9/96.

5 Offices
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420114
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 960–21522 sq. ft., 1 story, poss. asbestos/lead paint, incs. admin. & transp. offices, personnel support detachment, #519 sits bet. two earthquake fault lines, sched to be vac. 9/96.

2 Maintenance Facilities
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420115
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 196/1790 sq. ft., needs rehab, poss. asbestos/lead paint, do not meet seismic codes, incs. transp. maint. shop, grounds maint., Bldgs. 112, 20 A&B, scheduled to be vacated 9/96.

2 Stores
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420116
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 2200/39492 sq. ft., 1–2 story, needs rehab, do not meet seismic codes, poss. asbestos/lead paint, includes exchange retail store & mini mart, scheduled to be vacated 9/96.

4 Recreational Facilities
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420117
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 1587–9160 sq. ft., 1 story, needs rehab, includes racquetball courts, swimming pool, amusement center, picnic shelter, do not meet seismic codes, scheduled to be vacated 9/96.

2 Bachelor Quarters
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420118
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 13230–13360 sq. ft., 1 story, possible asbestos/lead paint, needs rehab, do not meet seismic codes, incs. #'s 69 A&B, 66 A&B, scheduled to be vacated 9/96.

2 Garages
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420119
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 644–5600 sq. ft., 1 story, needs rehab, do not meet seismic codes, includes detached garages, scheduled to be vacated 9/96.

2 Security Facilities
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420120
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 2020/15300 sq. ft., 1–2 story, possible asbestos/lead paint, needs rehab, do not meet seismic codes, scheduled to be vacated 9/96.

6 Medical Buildings
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420121
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 1148–459576 sq. ft., 1–9 story, needs rehab, poss. asbestos/lead paint, do not meet seismic codes, incs. hospital, dental clinic, alcohol rehab center, etc, to be vacated 9/96.

6 Miscellaneous Facilities
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420122
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 22–775 sq. ft., 1 story, some need repairs, poss. asbestos/lead paint, do not meet seismic codes, incs. pumphouse, water treatment, household vacuum, sched. to be vacated 9/96.

Bldgs. 63 A & B
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420123
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 13230 sq. ft., 1 story, possible asbestos/lead paint, do not meet seismic codes, includes medical repair/facilities mngmt scheduled to be vacated 9/96.

Bldg. 18
Naval Medical Center
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number 789420124
Status: Pryor Amendment
Base closure Number of Units: 1
Comments: 43476 sq. ft., 2 story, needs rehab, possible asbestos/lead paint, includes consolidated offices/enlisted club mess, scheduled to be vacated 9/96.

Bldg. 501
Naval Medical Center
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number 789420125
Status: Pryor Amendment
Base closure Number of Units: 1
Comments: 56298 sq. ft., 3 story, possible asbestos/lead paint, does not meet seismic codes, includes barracks, scheduled to be vacated 9/96.

Bldg. 505
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number 789420126
Status: Pryor Amendment
Base closure Number of Units: 1
Comments: 36900 sq. ft., 1 story, does not meet seismic codes, incs. cold storage warehouse, scheduled to be vacated 9/96.

2 Gate Sentry House
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number 789420127
Status: Pryor Amendment
Base closure Number of Units: 2
Comments: 46/106 sq. ft., 1 story, do not meet seismic codes, possible asbestos/lead paint, #'s 506, 508, scheduled to be vacated 9/96.

2 Lab Facilities
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number 789420128
Status: Pryor Amendment
Base closure Number of Units: 2
Comments: 140/13230 sq. ft., 1 story, do not meet seismic codes, poss. asbetos/lead paint, includes lab & lab blower bldgs. # 65 & 218, scheduled to be vacated 9/96.

Base closure Number of Units: 6
Comment: 22–775 sq. ft., 1 story, some need repairs, poss. asbestos/lead paint, do not meet seismic codes, incs. pumphouse, water treatment, household vacuum, sched. to be vacated 9/96.

Bldgs. 63 A & B
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420123
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 13230 sq. ft., 1 story, possible asbestos/lead paint, do not meet seismic codes, includes medical repair/facilities mngmt scheduled to be vacated 9/96.

Bldg. 18
Naval Medical Center
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number 789420124
Status: Pryor Amendment
Base closure Number of Units: 1
Comments: 43476 sq. ft., 2 story, needs rehab, possible asbestos/lead paint, includes consolidated offices/enlisted club mess, scheduled to be vacated 9/96.

Bldg. 501
Naval Medical Center
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number 789420125
Status: Pryor Amendment
Base closure Number of Units: 1
Comments: 56298 sq. ft., 3 story, possible asbestos/lead paint, does not meet seismic codes, includes barracks, scheduled to be vacated 9/96.

Bldg. 505
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number 789420126
Status: Pryor Amendment
Base closure Number of Units: 1
Comments: 36900 sq. ft., 1 story, does not meet seismic codes, incs. cold storage warehouse, scheduled to be vacated 9/96.

2 Gate Sentry House
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number 789420127
Status: Pryor Amendment
Base closure Number of Units: 2
Comments: 46/106 sq. ft., 1 story, do not meet seismic codes, possible asbestos/lead paint, #'s 506, 508, scheduled to be vacated 9/96.

2 Lab Facilities
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number 789420128
Status: Pryor Amendment
Base closure Number of Units: 2
Comments: 140/13230 sq. ft., 1 story, do not meet seismic codes, poss. asbetos/lead paint, includes lab & lab blower bldgs. # 65 & 218, scheduled to be vacated 9/96.

6 Storage Facilities
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number 789420129
Status: Pryor Amendment
Base closure Number of Units: 6
Comments: 273–3528 sq. ft., 1 story, do not meet seismic codes, poss. asbestos/lead paint, limited utilities, incs. sheds, auto vehicle maint, personnel support, sched. to be vacated 9/96.

Illinois

Parcel J2—Ash Family Housing
Chanute Air Force Base
Rantoul Co: Champaign IL 61866–
Location: Northeast Corner of Chanute AFB
Landholding Agency: Air Force-BC
Property Number 199420105
Status: Pryor Amendment
Base closure Number of Units: 50
Comments: 50 duplex buildings w/100 residential units on 21.8 acres, 1660 sq. ft. ea., 3 bedrooms, wood frame w/vinyl siding.

Maryland

Bldg. 142, USARC Gaithersbury
Gaithersburg Co: Montgomery MD 20879–1624
Landholding Agency: COE–BC
Property Number 329420025
Status: Pryor Amendment
Base closure Number of Units: 1
Comments: 1-story, most recent use—admin., needs rehab, presence of asbestos, scheduled to be vacated 9/94.

Bldg. 144, USARC Gaithersburg
Gaithersburg Co: Montgomery MD 20879–1624
Landholding Agency: COE–BC
Property Number 329420026
Status: Pryor Amendment
Base closure Number of Units: 1
Comments: 1-story, most recent use—barracks, needs rehab, presence of asbestos, scheduled to be vacated 9/94.

Bldg. 305, Fort Holabird
Baltimore Co: Baltimore MD 21203–
Landholding Agency: COE–BC
Property Number 329420027
Status: Pryor Amendment
Base closure Number of Units: 1
Comments: 1-story, wood frame, most recent use—admin., needs rehab, possible asbestos, sceduled to be vacated 9/95.

Bldg. 306, Fort Holabird
Baltimore Co: Baltimore MD 21203–
Landholding Agency: COE–BC
Property Number 329420028
Status: Pryor Amendment
Base closure Number of Units: 1
Comments: 1-story, wood frame, most recent use—storage, needs rehab, possible asbestos, scheduled to be vacated 9/95.

Bldg. 307, Fort Holabird
Baltimore Co: Baltimore MD 21203–
Landholding Agency: COE–BC
Property Number 329420029
Status: Pryor Amendment
Base closure Number of Units: 1
Comments: 1-story, wood frame, most recent use—storage, needs rehab, possible asbestos, scheduled to be vacated 9/95.

Massachusetts

3 Housing Facilities
US Army Material Technology Laboratory
Arsenal Street, Bldgs. 117, 111, 118
Watertown Co: Middlesex MA 02172–
Landholding Agency: COE–BC
Property Number: 329420016
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: Various sq. ft., brick/masonry, most recent use—housing, presence of asbestos, scheduled to be vacated 9/95.

4 Administrative Facilities
US Army Material Technology Laboratory
Arsenal Street, Bldgs. 97, 292, 131, 39
Watertown Co: Middlesex MA 02172–
Landholding Agency: COE–BC
Property Number: 329420017
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 8800–16150 sq. ft., most recent use—office/research, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 36
US Army Material Technology Laboratory
Arsenal Street
Watertown Co: Middlesex MA 02172–
Landholding Agency: COE–BC
Property Number: 329420018
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 30000 sq. ft., most recent use—library, admin., auditorium cafeteria, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 312
US Army Material Technology Laboratory
Arsenal Street
Watertown Co: Middlesex MA 02172–
Landholding Agency: COE–BC
Property Number: 329420019
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 30000 sq. ft., most recent use—mixed ofc., machine shop, and research facilities, presence of asbestos, on Natl. Register as a Hist. Landmark, scheduled to be vacated 9/95.

Bldg. 313
US Army Material Technology Laboratory
Arsenal Street
Watertown Co: Middlesex MA 02172–
Landholding Agency: COE–BC
Property Number: 329420020
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 32500 sq. ft., most recent use—mixed ofc., research and small foundry, presence of asbestos, on Natl. Register as a Hist. Landmark, scheduled to be vacated 9/95.

Bldg. 43
US Army Material Technology Laboratory
Arsenal Street
Watertown Co: Middlesex MA 02172–
Landholding Agency: COE–BC
Property Number: 329420021
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 19000 sq. ft., most recent use—high bay foundry/presses, presence of asbestos, on Natl. Register as a Hist. Landmark, scheduled to be vacated 9/95.

Bldg. 311
US Army Material Technology Laboratory

Arsenal Street
Watertown Co: Middlesex MA 02172–
Landholding Agency: COE–BC
Property Number: 329420022
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 130000 sq. ft., most recent use—machine shop, supply/storage, and research, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 37
US Army Material Technology Laboratory
Arsenal Street
Watertown Co: Middlesex MA 02172–
Landholding Agency: COE–BC
Property Number: 329420023
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 29500 sq. ft., most recent use—motor pool, FE shops, presence of asbestos, on Natl. Register as a Hist. Landmark, scheduled to be vacated 9/95.

Bldg. 60
US Army Material Technology Laboratory
Arsenal Street
Watertown Co: Middlesex MA 02172–
Landholding Agency: COE–BC
Property Number: 329420024
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 12300 sq. ft., most recent use—boiler plant, presence of asbestos, scheduled to be vacated 9/95.

New Jersey

Bldgs. 9002, 9003
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE–BC
Property Number: 329420030
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 3840 sq. ft. each, 2-story family housing, presence of asbestos, scheduled to be vacated 9/97.

Bldg. B–9031
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE–BC
Property Number: 329420031
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 2406 sq. ft., 1-story, most recent use—fire station, presence of asbestos, scheduled to be vacated 9/97.

28 Administrative Facilities
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE–BC
Property Number: 329420032
Status: Pryor Amendment
Base closure Number of Units: 28
Comment: various sq. ft., presence of asbestos, scheduled to be vacated 9/97.

5 Maintenance Facilities
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE—BC
Property Number: 329420033
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: various sq. ft., presence of asbestos, scheduled to be vacated 9/97.

14 Laboratory Facilities
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE—BC
Property Number: 329420034
Status: Pryor Amendment
Base closure Number of Units: 14
Comment: various sq. ft., most recent use—lab general purpose, presence of asbestos, scheduled to be vacated 9/97.

29 Storage Facilities
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE—BC
Property Number: 329420035
Status: Pryor Amendment
Base closure Number of Units: 29
Comment: various sq. ft., 1-story, scheduled to be vacated 9/97.

Bldg. 9093
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE—BC
Property Number: 329420036
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: various sq. ft., most recent use—guard bldg., scheduled to be vacated 9/97.

Bldgs. 9111, 9113
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE—BC
Property Number: 329420037
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 2000 & 1126 sq. ft., most recent use—range house, presence of asbestos, scheduled to be vacated 9/97.

Bldgs. B–9084, B–9085
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE—BC
Property Number: 329420038
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 1600 & 1800 sq. ft., most recent use—warehouses, presence of asbestos, scheduled to be vacated 9/97.

Bldgs. B–9345
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE—BC
Property Number: 329420039
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 800 sq. ft., 1-story, most recent use—machine shop, presence of asbestos, scheduled to be vacated 9/97.

Bldgs. B–9043
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE—BC
Property Number: 329420040
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 7148 sq. ft., 1-story, most recent use—elect. calibration facility, presence of asbestos, scheduled to be vacated 9/97.

Bldgs. B–9059 Facilities
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE—BC
Property Number: 329420041
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 2778 sq. ft., 1-story, most recent use—tele. exchange bldg., presence of asbestos, scheduled to be vacated 9/97.

Land (by State)

New Jersey

Land
Fort Monmouth, Evans Area
Wall Co: Monmouth NJ 07719–
Landholding Agency: COE—BC
Property Number: 329420042
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 218 acres, will be part of clean-up program, scheduled to be vacated 9/97.

Unsuitable Properties

Buildings (by State)

California

Bldg. 37
Naval Hospital
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420105
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration

Bldg. 85
Naval Hospital
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420106
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration

Bldg. 88
Naval Hospital
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420107
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration

Bldg. 107
Naval Hospital
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420108
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration

Structure 141
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420109
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration

Bldg. 507
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420110
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Detached Latrine

Structure 116
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420111
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration

2 Storage Sheds (#'s 215/216)
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420112
Status: Pryor Amendment
Base closure Number of Units: 2
Reason: Extensive deterioration

[FR Doc. 94–15844 Filed 6–30–94; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–4–4210–05; AZA–28638]

Notice of Realty Action Noncompetitive Sale of Public Lands in Maricopa County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Noncompetitive Sale.

SUMMARY: The following public lands have been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at not less than the estimated fair market value to be established by appraisal. The land will not be offered for sale for at least 60 days after the date of publication of this notice.

Gila and Salt River Meridian, Arizona

Township 1 South, Range 5 West
Sec. 3, S½N½.

Consisting of 160.00 acres.

The land described is hereby segregated from appropriation under the public land laws pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The conveyance document, when issued, will contain certain reservations to the United States and will be subject to any existing rights-of-way and any other valid existing rights. Detailed information concerning this sale is available for review at the Lower Gila Resource Area Office, Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the Area Manager, Lower Gila Resource Area, at the above address. In the absence of timely objections, this proposal shall become

Landholding Agency: Navy Base Close
Property Number: 789420111
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration

2 Storage Sheds (#'s 215/216)
Naval Medical Center
8750 Mountain Blvd.
Oakland Co: Alameda CA 94627–
Landholding Agency: Navy Base Close
Property Number: 789420112
Status: Pryor Amendment
Base closure Number of Units: 2
Reason: Extensive deterioration

[FR Doc. 94–15844 Filed 6–30–94; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–4–4210–05; AZA–28638]

Notice of Realty Action Noncompetitive Sale of Public Lands in Maricopa County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Noncompetitive Sale.

SUMMARY: The following public lands have been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at not less than the estimated fair market value to be established by appraisal. The land will not be offered for sale for at least 60 days after the date of publication of this notice.

Gila and Salt River Meridian, Arizona

Township 1 South, Range 5 West
Sec. 3, S½N½.

Consisting of 160.00 acres.

The land described is hereby segregated from appropriation under the public land laws pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The conveyance document, when issued, will contain certain reservations to the United States and will be subject to any existing rights-of-way and any other valid existing rights. Detailed information concerning this sale is available for review at the Lower Gila Resource Area Office, Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Lower Gila Resource Area, at the above address. In the absence of timely objections, this proposal shall become the determination of the Department of the Interior.

Dated: June 24, 1994.

David J. Miller,

Associate District Manager.

[FR Doc. 94–15992 Filed 6–30–94; 8:45 am]
BILLING CODE 4310–32–M

[AZ–055–04–4210–04; AZA 26476]

Arizona, Realty Action, Land Exchange, Yuma District; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document on page 22170 in the issue of Friday, April 29, 1994, make the following corrections:

1. Delete entire paragraph entitled **ADDRESSES.**
2. Insert the following paragraph after the last paragraph of the original notice.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Yuma Resource Area, at the above address.

Dated: June 13, 1994.

Judith I. Reed,

District Manager.

[FR Doc. 94–15991 Filed 6–30–94; 8:45 am]
BILLING CODE 4310–32–M

[CA–010–4210–04, CACA 34312]

Realty Action; Direct Sale of Public Land, Placer County, CA, Amendment

Notice document 94–14656 beginning on page 30947 in the issue of Thursday, June 16, 1994, the last paragraph in the third column is hereby amended with the statement that timber will be reserved by the United States.

D.K. Swickard,

Area Manager.

[FR Doc. 94–15993 Filed 6–30–94; 8:45 am]
BILLING CODE 4310–40–M

[ID–020–406A–02; IDI–29559]

Action, Amendment of Twin Falls Management Framework Plan/Notice of Realty Action, Direct Sale of Public Land in Twin Falls County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of Twin Falls Management Framework Plan/Direct Sale of Public Land in Twin Falls County.

SUMMARY: Pursuant to Bureau of Land Management (BLM) planning regulations (43 CFR 1600) the Burley District Office, BLM, proposes to amend the Twin Falls Management Framework Plan (MFP) and offer the following described lands for direct public sale. The lands have been examined and determined to be suitable for disposal by direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, at no less than the appraised fair market value of $119,000. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Boise Meridian

T. 11 S., R. 17 E.,
Sec. 31, SE¼SW¼SE¼, S½SE¼SE¼.
Sec. 32, W½, SW¼SW¼SE¼.
T. 12 S., R. 17 E., Boise Meridian
Sec. 5, Lots 3, 4, 6, W½SW¼NE¼, S½NW¼, SW¼, W½W½SE¼.
Sec. 6, Lots 1, 8, E½SW¼NE¼, SE¼NE¼, E½W½SE¼, E½SE¼.
Sec. 7, N½NE¼NE¼, NE¼NW¼NE¼.
Sec. 8, NW¼NW¼NE¼, N½N½NW¼.

The area described contains 1083.77 acres, more or less, in Twin Falls County.

The patent, when issued, will contain a reservation to the United States for ditches and canals, oil and gas, and geothermal resources. It will also be issued subject to any existing rights-of-way of record.

DATES: On or before July 1, 1994, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Scott Barker, Realty Specialist, at the address shown above or at (208)678–5514.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to Twin Falls County based on their need to construct a new state of the art sanitary landfill.

It has been determined that the subject parcel contains no locatable mineral values; therefore, mineral interests, with the exception of oil and gas and geothermal, will be conveyed simultaneously. The excepted leasables will be reserved in the patent.

Any party that participated in the plan amendment and is adversely affected by the amendment may protest

this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the State Director on or before August 5, 1994.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Burley District, at the above address. Any adverse comments will be reviewed by the District Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review of the State Director who may sustain, vacate, or modify this realty action. In the absence of any planning protests or objections regarding the sale, this realty action will become the final determination of the Department of the Interior and the planning amendment will be effective.

Dated: June 17, 1994.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 94–15368 Filed 6–30–94; 8:45 am]

BILLING CODE 4310–GG–P

[CO–942–94–4730–02]

Colorado: Filing of Plats of Survey

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., June 7, 1994.

The plat, representing the dependent resurvey of portions of the east boundary, subdivisional lines, and certain mineral claims, T. 1 N., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 875, was accepted May 3, 1994.

The supplemental plat, correcting the duplicated lotting errors in the NE¼ and SE¼ of section 20, T. 5 S., R. 76 W., Sixth Principal Meridian, Colorado, was accepted April 18, 1994.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat (in two sheets), representing the dependent resurvey of portions of the subdivisional lines and certain tract lines, the subdivision of certain sections and the metes-and-bounds survey of the Paonia Reservoir boundary, T. 13 S., R. 89 W., Sixth Principal Meridian, Colorado, Group No. 1027, was accepted April 28, 1994.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, the subdivision of sections 28 and 33 and a metes-and-bounds survey of Paonia Reservoir boundary, T. 12 S., R. 89 W., Sixth Principal Meridian, Colorado, Group No. 1027, was accepted April 28, 1994.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Darryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 94–15904 Filed 6–30–94; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for Smooth Coneflower for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a technical/agency draft recovery plan for smooth coneflower (*Echinacea laevigata*). This rare perennial herb grows in open woods, cedar barrens, roadsides, clearcuts, dry limestone bluffs, utility line rights-of-way, and other sunny to semi-sunny situations, usually on magnesium- and calcium-rich soils, in Virginia, North Carolina, South Carolina, and Georgia. Formerly, it probably occurred in prairielike habitats or post oak-blackjack oak savannas maintained by fires caused by lightning or set by native Americans. Loss of this open habitat to fire suppression and urbanization has resulted in the decline of the species and its reduction to marginal and very vulnerable sites. Historically, 61 populations were reported from eight states. The species now survives at only 23 of those locations, in four states. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 30, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (Telephone 704/665–1195). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the address and telephone number shown above (Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The areas of emphasis for recovery actions for smooth coneflower (*Echinacea laevigata*) are the Piedmont of North Carolina (Durham, Granville, and Rockingham Counties), Virginia (Alleghany, Pulaski, Montgomery, Campbell, and Franklin Counties), South Carolina (Oconee and Anderson Counties), and Georgia (Stephens County). Three additional populations in South Carolina (Aiken and Allendale Counties) are believed by some authorities to have been introduced. Habitat protection and management, reintroduction, and preservation of genetic material are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 24, 1994.

Brian P. Cole,

Field Supervisor.

[FR Doc. 94–16088 Filed 6–30–94; 8:45 a.m.]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; Endangered and Threatened Species Permits.

SUMMARY: The Southeastern Regional Office of the Fish and Wildlife Service (Service) is providing notice of issued permits which incidentally take threatened and endangered species pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531–1536) and the Service's implementing regulations governing listed fish, wildlife, and plant permits (50 CFR Parts 13 and 17).

Issuance of these permits, as required by the Act, was based on findings that such permits: (1) were applied for in good faith, (2) will not operate to the disadvantage of the listed species which are the subject of the permit, and (3) are consistent with the purposes and policies set forth in Section 2 of the Act. Each permit issued was also found in compliance with, and is subject to, Parts 13 and 17 of Title 50 CFR, the Service's regulations governing listed species permits.

ADDRESSES: Specific applications of incidental take, the mandatory Habitat Conservation Plan the authorizing permit, and supporting documentation are available for review by interested persons (by appointment during regular business hours) at the Service's Southeast Regional Office, Atlanta, Georgia.

U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch at the address noted above, telephone: 404/679–7110.

SUPPLEMENTARY INFORMATION: The following is a listing of issued permits. Each entry identifies the permit number, the applicant's name, the species for which incidental taking was sought, the

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 24, 1994.

Brian P. Cole,

Field Supervisor.

[FR Doc. 94–16088 Filed 6–30–94; 8:45 a.m.]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; Endangered and Threatened Species Permits.

SUMMARY: The Southeastern Regional Office of the Fish and Wildlife Service (Service) is providing notice of issued permits which incidentally take threatened and endangered species pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531–1536) and the Service's implementing regulations governing listed fish, wildlife, and plant permits (50 CFR Parts 13 and 17).

Issuance of these permits, as required by the Act, was based on findings that such permits: (1) were applied for in good faith, (2) will not operate to the disadvantage of the listed species which are the subject of the permit, and (3) are consistent with the purposes and policies set forth in Section 2 of the Act. Each permit issued was also found in compliance with, and is subject to, Parts 13 and 17 of Title 50 CFR, the Service's regulations governing listed species permits.

ADDRESSES: Specific applications of incidental take, the mandatory Habitat Conservation Plan the authorizing permit, and supporting documentation are available for review by interested persons (by appointment during regular business hours) at the Service's Southeast Regional Office, Atlanta, Georgia.

U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch at the address noted above, telephone: 404/679–7110.

SUPPLEMENTARY INFORMATION: The following is a listing of issued permits. Each entry identifies the permit number, the applicant's name, the species for which incidental taking was sought, the location of the activity, and the date the permit was issued.

Permit Number: 774703.
Applicant: WalMart Stores, Incorporated.
Species: Florida scrub jay, Eastern indigo snake, Sand skink, Blue-tailed mole skink, Five species of listed plants.
Project Location: City of Sebring, Highlands County, Florida.
Date Issued: March 11, 1993.

Permit Number: 780914.
Applicant: International Paper Company, Limited.
Species: Red-hills salamander.
Project Location: Conecuh and Monroe Counties, Alabama.
Date Issued: October 19, 1993.

Permit Number: 784126.
Applicant: Sea Mist, Incorporated.
Species: Alabama beach mouse.
Project Location: City of Gulf Shores, Baldwin County, Alabama.
Date Issued: December 27, 1993

Permit Number: 787172.
Applicant: D&E Investments, Limited.
Species: Alabama beach mouse.
Project Location: City of Gulf Shores, Baldwin County, Alabama.
Date Issued: May 3, 1994.

Permit Number: 787698.
Applicant: Fel-Kran Heating and Plumbing Company, Incorporated.
Species: Perdido Key beach mouse.
Project Location: Baldwin County, Alabama.
Date Issued: May 9, 1994.

Permit Number: 787965.
Applicant: Ocean Ridge, Limited.
Species: Florida scrub jay.
Project Location: Brevard County, Florida.
Date Issued: June 1, 1994.

Permit Number: 789188.
Applicant: Mr. Harry Presley.
Species: Florida scrub jay.
Project Location: City of Malabar, Brevard County, Florida.
Date Issued: June 10, 1994.

Dated: June 23, 1994.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 94–16019 Filed 6–30–94; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1140X)]

Consolidated Rail Corporation—Abandonment Exemption—In Orange County, NY

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately a 2.7± mile line of railroad between milepost 66.2± and milepost 68.9±, in Middletown, Orange County, NY.

Conrail has certified that: (1) no local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 31, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 11, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 21, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert S.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 6, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 22, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16063 Filed 6–30–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 92–68]

Lynn L. Pearson, M.D., Denial of Application

On June 23, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lynn L. Pearson, M.D. (Respondent), of Jasper, Texas, proposing to deny his application for registration as a practitioner on grounds that his registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f). The Order to Show Cause alleged that in May 1986, the Respondent was convicted of two felony counts of violating 21 U.S.C. 841(a)(1), for the unlawful dispensing of the Schedule II controlled substances Percodan, Dilaudid, and Dolophine, and was sentenced to eight years imprisonment; that the Respondent's previous DEA Certificate of Registration was revoked in July 1987; that in February 1988, the Texas State Board of Medical Examiners (Board) revoked his license to practice medicine, stayed the revocation, and placed his license on ten years probation; and that in May 1991, the California Medical Board revoked the Respondent's medical license.

Respondent, through counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, the parties waived personal appearances, and agreed to submit matters upon affidavit and documentary evidence. On February 1, 1994, in her opinion and recommended ruling, findings of fact, conclusions of law and decision, the administrative law judge recommended that the Respondent's application for a DEA Certificate of Registration be granted subject to certain conditions. The Government filed exceptions to Judge Bittner's opinion. On March 11, 1994, the administrative law judge transmitted the record to the Acting Administrator. The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Respondent is a Board certified orthopedic surgeon licensed to practice medicine in the State of Texas. On May 22, 1986, before the United States District Court for the Southern District of Texas, the Respondent was convicted of two felony counts of a violation of 21 U.S.C. 841(a)(1), for the unlawful dispensing of Percodan, Dilaudid, and Dolophine, all Schedule II controlled substances. The conviction was affirmed on appeal. In its decision, the Court of Appeals noted that two of the Respondent's patients had testified that Respondent prescribed them Dilaudid for $10.00 per pill, and that Respondent had prescribed 8,920 dosage units of Dilaudid and 650 dosage units of Percodan for these two patients. On October 20, 1986, as a result of these convictions, the DEA issued an Order to Show Cause proposing to revoke Respondent's previous registration. On July 31, 1987, pursuant to a Memorandum of Agreement between the Respondent and DEA, Respondent's DEA registration was revoked.

The administrative law judge found that on February 8, 1988, the Texas State Board of Medical Examiners (Board) ordered that Respondent's medical license be revoked, stayed that revocation, and placed his license to practice medicine on probation for ten years. The terms of this probation limited the Respondent to practicing medicine without pay at a local community health center and prohibited Respondent from possessing, dispensing or prescribing any controlled substance.

The administrative law judge found that in May 1990, the United States District Court discharged the Respondent from any further sentence, noting his service as a volunteer physician, the esteem accorded him by his patients and peers, and the supervision of the Board. In June 1990, the Board modified its previous order, permitting the Respondent to apply for State and DEA controlled substance registrations in Schedules II through V. Respondent was issued a Texas State controlled substance registration in February 1992.

The administrative law judge found that in an affidavit submitted by Respondent, Respondent expressed remorse for his past treatment of one of his patients and indicated that he had treated more than 50,000 patients in the community health center over the past several years. Respondent requested registration in Schedules III through V and "to have in-house prescribing capabilities" for Schedules II through V. The chief of staff of the local area hospital submitted an affidavit stating that Respondent was honest, maintained an active orthopedic practice, and was an outstanding member of the hospital staff. The administrator of the same hospital filed a letter stating that for a period of time, the Respondent was the only full time physician at the local community health center, was on call 24 hours a day, treated many indigent patients, and saw at least sixty patients per day. He further indicated that Respondent was serving as Chief of Surgery at the hospital and had the highest respect of his peers. Other health care professionals submitted letters or affidavits stating that they were unaware of any incidents of mis-prescribing of medications and that the Respondent kept appropriate medical records, complied with hospital rules and regulations, and was aware of the responsibilities of prescribing controlled substances.

The Deputy Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors shall be considered:

(1) The recommendation of the appropriate State licensing board of professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlling substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

The administrative law judge found that the first four factors were relevant in determining whether the application should be granted. As to the first factor, the Deputy Administrator finds that the Texas Board permitted the Respondent to apply for a DEA Certificate of Registration in Schedules II through V, and granted Respondent a State Controlled Dangerous Substances registration in February 1992. As to the second factor, the Deputy Administrator finds that in 1981, the Respondent illegally dispensed, for personal gain, significant quantities of Schedule II controlled substances. Regarding the third factor, the Deputy Administrator finds that in 1986, the Respondent was convicted of two felony counts of illegally dispensing controlled substances, and finally, as to the fourth factor, the Deputy Administrator finds that in 1981, the Respondent violated both State and Federal laws relating to controlled substances.

The administrative law judge concurred with the Government's contention that the Respondent has not demonstrated that he is fully cognizant of his responsibilities as a DEA registrant. The administrative law judge recommended that the Respondent's application be granted in Schedule III through V with a restriction that he be authorized only to prescribe these medications, and to order or administer them to hospitalized patients, but that he not be authorized to maintain a supply for dispensing to outpatients. The administrative law judge further recommended that upon a showing by Respondent that he has completed a course in handling controlled substances, approved by the Board for continuing medical education credit, he be granted the authority to handle Schedule II controlled substances, subject to the same restrictions outlined above.

The Government filed exceptions to the recommendation of the administrative law judge contending

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlling substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

The administrative law judge found that the first four factors were relevant in determining whether the application should be granted. As to the first factor, the Deputy Administrator finds that the Texas Board permitted the Respondent to apply for a DEA Certificate of Registration in Schedules II through V, and granted Respondent a State Controlled Dangerous Substances registration in February 1992. As to the second factor, the Deputy Administrator finds that in 1981, the Respondent illegally dispensed, for personal gain, significant quantities of Schedule II controlled substances. Regarding the third factor, the Deputy Administrator finds that in 1986, the Respondent was convicted of two felony counts of illegally dispensing controlled substances, and finally, as to the fourth factor, the Deputy Administrator finds that in 1981, the Respondent violated both State and Federal laws relating to controlled substances.

The administrative law judge concurred with the Government's contention that the Respondent has not demonstrated that he is fully cognizant of his responsibilities as a DEA registrant. The administrative law judge recommended that the Respondent's application be granted in Schedule III through V with a restriction that he be authorized only to prescribe these medications, and to order or administer them to hospitalized patients, but that he not be authorized to maintain a supply for dispensing to outpatients. The administrative law judge further recommended that upon a showing by Respondent that he has completed a course in handling controlled substances, approved by the Board for continuing medical education credit, he be granted the authority to handle Schedule II controlled substances, subject to the same restrictions outlined above.

The Government filed exceptions to the recommendation of the administrative law judge contending that Judge Bittner gave undue weight to the affidavits submitted by Respondent and failed to give appropriate weight to the Government's evidence. The Government noted that the Board stayed the revocation of Respondent's medical license only if Respondent would engage in voluntary unpaid practice, and that his criminal sentence was reduced in light of this community service. The Government also argued that it has established a prima facie case for denial of registration under 21 U.S.C. 823(f).

The Deputy Administrator concurs with the administrative law judge's findings of fact and conclusions of law, except as herein noted. The Deputy Administrator finds that the Government has made a prima facie showing in support of denial of Respondent's application. The Deputy Administrator finds that, in light of the Government having met its burden of proof, the Respondent has not adequately shown that the public interest would be protected, particularly with regard to Schedule II controlled substances, and further, that the Respondent's past illegal activities outweight his affidavit evidence of character and rehabilitation offered in mitigation.

The Deputy Administrator declines to adopt the administrative law judge's conclusion that the Respondent's registration, even with certain restrictions in place, would be in the public interest. The Deputy Administrator concludes that the Respondent's registration at this time would not be in the public interest. The Deputy Administrator further finds that, if, after a period of one year from the date of this order, the Respondent presents additional evidence of educational improvements with regard to handling controlled substances, and continued rehabilitative efforts to indicate that he is cognizant of his responsibilities as a DEA registrant, a new application for at least partial registration will be given favorable consideration.

The Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that the application of Lynn L. Pearson, M.D., for registration as a practitioner, be, and it hereby is, denied. This order is effective July 1, 1994.

Dated: June 24, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–15996 Filed 6–30–94; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1660N–94]

Pilot Direct Mail Program for the Baltimore District Office

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of implementation of a Direct Mail Pilot Program for the Baltimore District Office.

SUMMARY: The Immigration and Naturalization Service (INS or Service) is implementing a pilot Direct Mail Program (the Program) in the Baltimore District Office. Under the pilot program, certain designated applications and petitions will be directly mailed to the Eastern Service Center for processing. This pilot Program is set up as a way of testing the Direct Mail process to ensure that it achieves the intended results of improving public service and reducing burdensome procedures at local field offices.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Pearl Chang, Senior Examiner, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW., Room 3214, Washington, DC 20536. Telephone: (202) 514–3240.

ADDRESSES: Implementation of this Pilot Program is a critical step towards the implementation of Phase III of the Direct Mail Program, which is aimed at improving the Service's ability to service its customers in an expedient manner. The Service welcomes comments about this Pilot Program and will make appropriate changes before adopting it nationwide.

Please submit any written comments you may have concerning the pilot program, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307. Washington, DC 20536. To ensure proper handling, please reference INS No. 1660N–94 on your correspondence.

SUPPLEMENTARY INFORMATION:

Background

The Immigration and Naturalization Service is expanding its Direct Mail Program to allow more applications and petitions to be filed directly with an INS Service Center. The Service is soliciting comments about the implementation of Direct Mail Phase III through the publication of an interim rule, which is published elsewhere in this issue of **Federal Register**. Concurrent with the publication of that interim rule, the Service is publishing this notice to

announce the implementation of the Direct Mail Pilot Program in the Baltimore District July 1, 1994, and to solicit public comments.

This notice is to pilot this conversion on a limited scale in the Baltimore District Office. Since this is a pilot program, not all the procedural and filing changes discussed in the interim rule will be required at this time. In addition, due to the current resource limitations, the Service is unable to convert all Baltimore filings to Direct Mail.

Conversion to Direct Mail in the Baltimore District

Filing With the Eastern Service Center

As of July 1, 1994, all applications and petitions except those listed below that would normally be filed with the Baltimore District Office will instead be mailed to the following address: USINS Eastern Service Center, 75 Lower Welden Street, St. Albans, VT 05479–0001.

Filing With the Baltimore District Office

The following applications and petitions will continue to be filed with the Baltimore District Office.

a. Form I–90, Application to Replace an Alien Registration Card, which applicants will continue to file in person at the Baltimore office for pre-screening. Thereafter, the local office will forward the applications on a nightly basis to the Eastern Service Center for receipting and processing.

b. Form I–600, Petition to Classify Orphan as an Immediate Relative.

c. Form I–600A, Application for Advance Processing of an Orphan Petition.

d. Form I–765, Application for an Employment Authorization Document (EAD), where the basis of eligibility is either:

1. That the person is in proceedings before an immigration judge; or

2. That the person is an applicant for adjustment of status under section 245 of the Act and that the application was filed, or is already pending, at the Baltimore District Office.

These EAD applications will be pre-screened at the Baltimore District Office to verify the pending proceeding upon which eligibility is based and to verify identity, and then forwarded on a nightly basis to the Eastern Service Center for receipting and processing. All other EAD applications previously filed at the Baltimore Office should be mailed to the Eastern Service Center. In addition to the fee and the documentation currently required, each EAD application mailed to the Eastern Service Center must include:

1. two (2) ADIT color photographs meeting the specifications in the instruction to the application, and

2. a completed signature card (distributed with applications and available at the Baltimore District Office).

e. Applications for a waiver of grounds of excludability discovered during an interview conducted in the Baltimore District Office in connection with another pending application or filed at time of application for admission.

f. Form N–400, Application for Naturalization. (The Service plans to convert this application to Direct Mail as resources become available at the Eastern Service Center.)

Transition

During the first thirty days following the publication of this notice, the Baltimore District Office will forward to the Eastern Service Center applications which are designed for Direct Mail and are inadvertently filed with the Baltimore District Office. When the applications forwarded from the Baltimore District Office arrive at the Eastern Service Center, they will be receipted and filed there.

Dated June 24, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–16036 Filed 6–30–94; 8:45 am]

BILLING CODE 4410–10–M

Office of Justice Programs

National Institute of Justice

Solicitation for an Interagency Demonstration on Youth, Firearms, and Violence

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of solicitation of proposals.

SUMMARY: Notice is hereby given of solicitation of proposals for an Interagency Demonstration on Youth, Firearms, and Violence, sponsored jointly by the National Institute of Justice; the Office of Juvenile Justice and Delinquency Prevention; and the National Center for Injury Prevention and Control, of the Centers for Disease Control and Prevention.

DATES: The deadline for receipt of proposals is close of business on August 15, 1994.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

To obtain copies of the Solicitation, Interagency Demonstration on Youth, Firearms, and Violence, call the National Criminal Justice Reference Service, 1-800-851-3420, Box 6000, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Lois Mock, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 307-0693.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority: This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201-03, as amended, 42 U.S.C. 3721-23 (1988).

Background

The unacceptably high levels of violent crimes, injuries, and deaths in the United States among our Nation's youth are creating a generation of victims and undermining the economic and communal fabric of society. Firearms are a central part of the problem—for young people 10 to 34 years of age, firearms are the second leading cause of death. In 1990, more teenagers died from firearm-related injuries than from all natural diseases combined.

The National Institute of Justice, in partnership with the Office of Juvenile Justice and Delinquency Prevention and with the Centers for Disease Control and Prevention's National Center for Injury Prevention and Control, seeks to develop a strategy for preventing and controlling youth violence. From this partnership has come a solicitation requesting proposals to design and implement a demonstration utilizing a problem-solving approach to understand, prevent and control youth violence. The proposed demonstration project would involve a partnership among the juvenile justice system, a public health agency, and a law enforcement or criminal justice agency within a target community.

For a copy of the solicitation, Interagency Demonstration on Youth, Firearms, and Violence, call the National Criminal Justice Reference Service, 1-800-851-3420, Box 6000, Rockville, MD 20850.

Carol Petrie,

Acting Director, National Institute of Justice

[FR Doc. 94–15997 Filed 6-30-94; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume V

Arkansas
AR940045 (Jul. 1, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

New York
NY940003 (Feb. 11, 1994)
NY940008 (Feb. 11, 1994)
NY940012 (Feb. 11, 1994)
NY940013 (Feb. 11, 1994)
NY940020 (Feb. 11, 1994)
NY940037 (Feb. 11, 1994)

Volume II:

None

Volume III:

Tennessee
TN940002 (Feb. 11, 1994)

Volume IV:

None

Volume V:

Iowa
IA940002 (Feb. 11, 1994)
IA940003 (Feb. 11, 1994)
IA940004 (Feb. 11, 1994)
IA940005 (Feb. 11, 1994)
IA940013 (Feb. 11, 1994)
IA940014 (Feb. 11, 1994)
IA940018 (Feb. 11, 1994)
IA940024 (Feb. 11, 1994)
IA940028 (Feb. 11, 1994)

Texas
TX940037 (Feb. 11, 1994)
TX940063 (Feb. 11, 1994)
TX940064 (Feb. 11, 1994)
TX940069 (Feb. 11, 1994)
TX940081 (Feb. 11, 1994)
TX940085 (Feb. 11, 1994)

Volume VI:

Alaska
AK940001 (Feb. 11, 1994)

Arizona
AZ940012 (Feb. 11, 1994)
AZ940013 (Feb. 11, 1994)

Idaho
ID940001 (Feb. 11, 1994)
ID940002 (Feb. 11, 1994)

Oregon
OR940001 (Feb. 11, 1994)
OR940004 (Feb. 11, 1994)

Washington
WA940001 (Feb. 11, 1994)
WA940002 (Feb. 11, 1994)
WA940003 (Feb. 11, 1994)
WA940007 (Feb. 11, 1994)
WA940011 (Feb. 11, 1994)
WA940013 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current

general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 24th day of June 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–15775 Filed 6–30–94; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Job Training Partnership Act; School-to-Work Opportunities; Urban/Rural Opportunities Grants; Application Procedures; Technical Amendment

AGENCY: Employment and Training Administration, Labor, and Office of Vocational and Adult Education, Education.

ACTION: Technical Amendment.

SUMMARY: In notice document 94–14804 beginning on page 31854 in the issue of Monday, June 20, 1994, make the following amendment:

On page 31854 in the first column, the closing date for receipt of applications was previously listed as "(60 days from date of publication) at 2 p.m. (Eastern Time)." This should be changed to read, "The closing date for receipt of applications is August 23, 1994, at 2 p.m. (Eastern Time)."

On page 31855 in the second column in category 5., "Period of Performance," the period of performance was previously published as "twelve (12) months from the date of award by the Department of Labor." This should be changed to read, "The period of performance is twelve (12) months from the date of award."

Dated: June 28, 1994

Doug Ross,

Assistant Secretary for Employment and Training, Department of Labor.

Augusta Souza Kappner,

Assistant Secretary for Vocational and Adult Education, Department of Education.

[FR Doc. 94–16106 Filed 6–30–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Notice of submission of proposed information collections to OMB

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collections submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is giving notice that the proposed collections of information described in this notice have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320. Public comment is invited on these collections.

DATES: Comments should be submitted by August 1, 1994.

ADDRESSES: Copies of the proposed information collections and supporting documentation can be obtained from the Policy and Program Analysis Division (NAA), Room 3200, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone requests may be made to (301) 713–6730.

Written comments should be sent to Acting Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713–6730.

The following proposed information collections have been submitted to OMB:

Voluntary Customer Surveys to Implement E.O. 12862 in NARA

Description: NARA will develop a number of survey questionnaires and focus groups to measure customer satisfaction in fiscal years 1994, 1995, and 1996. The public to be surveyed includes archival and records center researchers, workshop users, and museum visitors.

Purpose: The information will be used to measure customer satisfaction and improve customer service.

Frequency of response: One-time.

Number of respondents: Up to 35,323 respondents may be surveyed.

Reporting hours per response: The response time varies according to the survey instrument, from 3 to 4 minutes for a simple questionnaire to 2 hours for a focus group.

Annual reporting burden hours: The total burden will be 4,334 hours over the three fiscal years.

Dated: June 23, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–16087 Filed 6–30–94; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Consolidated Application Pilot for Presenters Section) to the National Council on the Arts will be held on July 14–15, 1994. The panel will meet from 9:00 a.m. to 5:30 p.m. on July 14 and from 9:00 a.m to 6:00 p.m. on July 15 in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:00 p.m. to 6:00 p.m. on July 15 for Discussion of Policy and Guidelines.

The remaining portions of this meeting from 9:00 a.m. to 5:30 p.m. on July 14 and from 9:00 a.m. to 3:00 p.m. on July 15 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: June 27, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–16015 Filed 6–30–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Call For Nominations For Advisory Committee on Reactor Safeguards

AGENCY: Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) requests nominations of qualified candidates to consider for appointment to its Advisory Committee on Reactor Safeguards (ACRS). Currently, there is one opening on the Committee and another vacancy is anticipated within the next several months.

ADDRESSES: Submit nominations to: Ms. Jude Himmelberg, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Ms. Jude Himmelberg at 1–800–368–5642 or in the Washington, DC area, 301–415–7119 (after July 8, 1994).

SUPPLEMENTARY INFORMATION: The ACRS was established by Congress to provide the Commission with independent expert advice on matters related to regulatory policy and the safety of existing and proposed nuclear power plants. The Committee work currently emphasizes safety issues associated with the operation of the more than 100 nuclear units in the United States and technical and policy issues related to evolutionary and passive standard plant designs.

Traditionally, the membership of the ACRS has included individuals from national laboratories, academic and research institutions, industry, and consulting engineering firms having specific technical expertise along with a broad perspective in addressing systems concerns.

The members of the ACRS are selected from a variety of engineering and scientific disciplines. Candidates are being sought with experience in

TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: June 27, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–16015 Filed 6–30–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Call For Nominations For Advisory Committee on Reactor Safeguards

AGENCY: Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) requests nominations of qualified candidates to consider for appointment to its Advisory Committee on Reactor Safeguards (ACRS). Currently, there is one opening on the Committee and another vacancy is anticipated within the next several months.

ADDRESSES: Submit nominations to: Ms. Jude Himmelberg, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Ms. Jude Himmelberg at 1–800–368–5642 or in the Washington, DC area, 301–415–7119 (after July 8, 1994).

SUPPLEMENTARY INFORMATION: The ACRS was established by Congress to provide the Commission with independent expert advice on matters related to regulatory policy and the safety of existing and proposed nuclear power plants. The Committee work currently emphasizes safety issues associated with the operation of the more than 100 nuclear units in the United States and technical and policy issues related to evolutionary and passive standard plant designs.

Traditionally, the membership of the ACRS has included individuals from national laboratories, academic and research institutions, industry, and consulting engineering firms having specific technical expertise along with a broad perspective in addressing systems concerns.

The members of the ACRS are selected from a variety of engineering and scientific disciplines. Candidates are being sought with experience in such fields as nuclear power plant operations, nuclear engineering, mechanical engineering, electrical engineering, electronics, metallurgical engineering, materials science, structural engineering, chemical engineering, process control systems, and related fields. The Commission has expressed particular interest in candidates with specific expertise in the areas of reactor accident analysis, digital instrumentation and control, or advanced computer applications. Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear safety matters, and the ability to apply one's skills to problems outside of one's specific area of expertise. Additionally, the Commission considers the need for specific expertise in relationship to the tasks that lie ahead, availability of candidates to serve, and possible conflicts of interest. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with varying views on reactor safety issues.

Because members actively involved in the regulated aspects of the nuclear industry might be of limited use to the Committee, the degree and nature of any such involvement will be considered. Each qualified nominee's financial interests must be reconciled with applicable federal and NRC rules and regulations prior to final appointment to the Committee. This may result in the candidate being required to divest himself or herself of securities issued by nuclear industry entities, discontinue research projects, and/or limit involvement in certain types of contracts, based on a determination of possible conflict of interest.

Copies of a résumé describing the educational and professional background of the nominee, including any special accomplishments, professional references, current address, and telephone number should be provided. All qualified nominees will receive full consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or handicapping condition. Nominees must be citizens of the United States and be able to devote approximately 50–100 days per year to Committee business. We will be accepting applications until August 31, 1994.

Dated: June 22, 1994.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94–16084 Filed 6–30–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF GOVERNMENT ETHICS

Submission for OMB Approval of a Proposed Information Collection Report Form Concerning Payments to Charitable Organizations in Lieu of Honoraria

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted to the Office of Management and Budget (OMB) for review and approval, in accordance with the Paperwork Reduction Act a proposed OGE form entitled "Executive Branch Personnel Confidential Report of Payments to Charitable Organizations in Lieu of Honoraria" that will collect information from certain current and former employees of the executive branch of the Federal Government. The new form will collect the information identified in an OGE interim rule, which is not yet effective (and the renewal of whose paperwork clearance likewise is being sought), promulgated under the Ethics in Government Act.

DATES: Comments on this proposal should be received by August 1, 1994.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503; telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: William E. Gressman or Robert W. Cobb, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917; telephone 202–523–5757, FAX 202- 523–6325. A copy of OGE's request for approval from OMB, including the proposed new form, may be obtained by contacting Mr. Gressman or Mr. Cobb.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics proposes to sponsor a new OGE Form 205 entitled "Executive Branch Personnel Confidential Report of Payments to Charitable Organizations in Lieu of Honoraria" and is seeking Paperwork Reduction Act approval from the Office of Management and Budget for it. The new form will collect pertinent financial information from current officers and employees in the executive branch (other than special Government employees) who are required to file annual public financial disclosure reports (SF 278s) under title I of the Ethics in Government Act of 1978 (the Ethics Act), as amended, and the OGE regulations at 5 CFR part 2634 as well

as from departing and former such filers on whose behalf payments in lieu of honoraria are donated to charitable organizations during or based on the period of their Government service. This is necessary in order to provide a form to collect certain information required by the financial disclosure provisions of section 102(a)(1)(A) of the Ethics Act, as amended by the 1989 Ethics Reform Act, 5 U.S.C. app.

Under 5 U.S.C. app. 501(c), an honorarium that could otherwise be accepted by a Government employee is deemed not to be received by the employee if instead it is paid on the employee's behalf to a charitable organization described in 26 U.S.C. 170(c). (The related honorarium prohibition at 5 U.S.C. app. 501(b) has been held in abeyance pending the outcome of ongoing litigation, see *U.S. v. National Treasury Employees Union*, No. 93–1170, Supreme Court petition for certiorari granted April 18, 1994 from 990 F.2d 1271 (D.C. Cir. 1993).) See also 5 CFR part 2636 of the OGE executive branch-wide regulations, as published at 56 FR 1721–1730 (January 17, 1991) and amended at 57 FR 601–602 (January 8, 1992). For purposes of a qualifying in lieu of honoraria payment, an employee is not permitted, however, to first receive the payment and then pass it along or donate it to an eligible charitable organization. Further, no such payment may exceed $2,000, be made to a charitable organization from which the employee or his or her parent, sibling, spouse, child, or dependent relative derives a financial benefit, or be taken as a tax deduction. See 5 CFR 2636.204. In addition, the OGE executive branch Standards of Ethical Conduct generally prohibit any payment for an appearance, speech or article that relates to an employee's official duties. See 5 CFR 2635.807.

Officers and employees who file the executive branch Standard Form (SF) 278 "Executive Branch Personnel Public Financial Disclosure Report" under title I of the Ethics Act, which report requires information on the amount, date and source of any payments to charitable organizations in lieu of honoraria from a source totaling more than $200, will also have to file pursuant to the final part of 5 U.S.C. app. 102(a)(1)(A) a supplemental confidential report containing additional information concerning such payments, including the name of the recipient of the payment. This separate confidential reporting requirement of public financial disclosure report (SF 278) filers is not yet effective as to the executive branch pending issuance by OGE of an OMB-approved supplemental report form to collect the information. See 56 FR 21589 (May 10, 1991), 56 FR 51319 (October 11, 1991), and 57 FR 5369 (February 14, 1992) (since then, OGE has decided to make the new report an OGE, not a standard, form; thus, General Services Administration clearance will not be needed). Moreover, OGE has now determined that filers of the confidential financial disclosure report forms (Standard Form 450s) should not be included in this supplemental in lieu of honoraria reporting requirement; 5 CFR 2636.205 will be amended accordingly prior to its effective date.

Once this new form is approved and OGE makes the underlying regulatory provision, as modified, effective, public annual and termination SF 278 filers will have to separately file the confidential payments in lieu of honoraria form, but only if they have any such payments to report. In other words, negative (or "None") reports of charitable payments in lieu of honoraria are not required. Furthermore, new entrants and nominees are not subject to reporting under the OGE rule as the statutory provisions only apply to employees during their term of Government service.

The reporting period for an annual report for payments in lieu of honoraria will be the preceding calendar year or, in the case of a filer who entered Government during the prior year, that portion of the preceding calendar year beginning with the filer's date of entry on duty (if the filer's Government service exceeded 60 days in the previous year). The reporting period for a termination report of a public SF 278 filer will be the portion of the calendar year of termination to the date the filer left the Government and, if the filer has not already filed an annual report covering the period, the preceding calendar year or other period required for that report.

The Office of Government Ethics anticipates that this supplemental reporting requirement will become effective around January 1995 covering both terminees and annual filers (the first annual reports will cover calendar year 1994, the regular due date for which is May 15, 1995). Further, if a public SF 278 filer leaves Government service (or a reportable position) before the future effective date of this new supplemental reporting requirement, no supplemental in lieu of honoraria charitable payments report will be due when this new requirement finally does take effect. Once OMB approval is obtained for the new form, OGE will distribute it to all executive branch departments and agencies for local reproduction.

The information to be reported on the OGE Form 205 will consist of, in addition to the amount of the payment(s) in lieu of an honorarium totaling more than $200 from any one source and the name and status (or charitable purpose) of the charitable organization(s) to which the payment(s) was donated on the employee's behalf, the date of the payment(s), the date on which the employee made an underlying appearance or speech or on which an underlying article was submitted for publication, the name of the entity making the payment to the charitable recipient, and the subject matter of the speech or article or the reason for the appearance. Terminee SF 278 filers will also have to separately report any such charitable payments contemplated, but not yet made, for appearances, speeches, or articles made before termination of their Government service.

These reports are to be filed with the employing executive branch departments and agencies which, under the law and regulation, are to transmit them each year to OGE (which in turn reviews the reports of Senate-confirmed Presidential appointees.) This information will be reviewed by Government officials at the employing agencies and OGE to determine compliance with applicable laws and regulations. This confidential report will not be disclosed to any requesting person unless otherwise authorized by law. See also the form notice and the OGE/GOVT–2 Privacy Act Government-wide executive branch system of records (which will be revised to additionally cover these new reports) for an explanation of the routine uses of this information on the form.

As this is a new reporting requirement with no prior data as to the number of forms being filed annually, the total number of forms to be filed annually and those to be filed by terminees who have already left the Government by the time they fill out their reports (i.e., private citizens) must of necessity be very approximate estimates.

Given a potential estimated reporting population of about 19,300 annual and terminee public SF 278 filers each year in the executive branch (based on an OGE 1993 agency survey) and based on a 1993 sampling of some 200 SF 278 reports (which failed to reveal any in lieu of honoraria charitable payments), OGE currently contemplates that less than 0.5% of SF 278 filers will have payments on their behalf to charitable organizations in lieu of honoraria to report. This means that no more than 97 such reports are expected to be filed annually. Of those 97 report forms, OGE believes that approximately 8%, a total of some eight each year, will be filed by non-Government employee filers (public SF 278 filer terminees having in lieu of honoraria payments to report who are no longer Federal employees when they file). Normally, OMB Paperwork Reduction Act approval is required for a nonstatistical collection of information only if it affects 10 or more private persons each year (not counting Federal employees for information collections within the scope of their employment). However, pursuant to 5 CFR 1320.7(s)(1), an information collection contained in a rule of general applicability such as 5 CFR 2636.205 of OGE's regulations is deemed to affect 10 or more such persons annually. Thus, OGE is submitting this new form for OMB paperwork approval (and is seeking paperwork renewal for the as-yet not effective underlying regulation, which was initially approved under the Paperwork Reduction Act by OMB on April 10, 1991).

The average response time for completion of the proposed report form is estimated to be one-half hour. Thus, the estimated actual reporting burden on the public will be four hours, eight report forms (just counting those filed by private citizens) times one-half hour per form. However, using the § 1320.7(s)(1) regulatory minimum of 10 private citizen filers, the estimated burden will come to five hours. This is a significant reduction in the estimated burden from 1991 (200 hours) when OGE submitted the underlying regulation (again, not yet effective) for OMB paperwork clearance. As noted, this reduction results primarily from OGE's recent decision to exclude the large body of confidential SF 450 filers from this future supplemental reporting requirement as well as the lowered estimate of the percentage of public SF 278 filers who will have in lieu of honoraria charitable payments to report.

Approved: June 24, 1994.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 94–16094 Filed 6–30–94; 8:45 am]

BILLING CODE 6345–01–U

such reports are expected to be filed annually. Of those 97 report forms, OGE believes that approximately 8%, a total of some eight each year, will be filed by non-Government employee filers (public SF 278 filer terminees having in lieu of honoraria payments to report who are no longer Federal employees when they file). Normally, OMB Paperwork Reduction Act approval is required for a nonstatistical collection of information only if it affects 10 or more private persons each year (not counting Federal employees for information collections within the scope of their employment). However, pursuant to 5 CFR 1320.7(s)(1), an information collection contained in a rule of general applicability such as 5 CFR 2636.205 of OGE's regulations is deemed to affect 10 or more such persons annually. Thus, OGE is submitting this new form for OMB paperwork approval (and is seeking paperwork renewal for the as-yet not effective underlying regulation, which was initially approved under the Paperwork Reduction Act by OMB on April 10, 1991).

The average response time for completion of the proposed report form is estimated to be one-half hour. Thus, the estimated actual reporting burden on the public will be four hours, eight report forms (just counting those filed by private citizens) times one-half hour per form. However, using the § 1320.7(s)(1) regulatory minimum of 10 private citizen filers, the estimated burden will come to five hours. This is a significant reduction in the estimated burden from 1991 (200 hours) when OGE submitted the underlying regulation (again, not yet effective) for OMB paperwork clearance. As noted, this reduction results primarily from OGE's recent decision to exclude the large body of confidential SF 450 filers from this future supplemental reporting requirement as well as the lowered estimate of the percentage of public SF 278 filers who will have in lieu of honoraria charitable payments to report.

Approved: June 24, 1994.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 94–16094 Filed 6–30–94; 8:45 am]

BILLING CODE 6345–01–U

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

June 27, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

India Find, Inc.
Common Stock, $.001 Par Value (File No. 7–12570)
Mikasa, Inc.
Common Stock, $.01 Par Value (File No. 7–12571)
Morgan Stanley India Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12572)
Tele Dannark A/S
American Depository Shares, 10 DKK (File No. 7–12573)
Emphesys Financial Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12574)
Joy Technologies, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–12575)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 19, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16045 Filed 6–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34262; File No. SR–CBOE–94–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Firm Quote Responsibilities

June 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On June 17, 1994, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The Exchange is proposing to increase from 10 to 100 the firm quote contract size minimum applicable to Designated Primary Market Makers ("DPMs") in classes of interest rate options for which Public Automated Routing System ("PAR") workstations are available.

The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] In Amendment No. 1, the CBOE states that the reference to "public customer orders" in its proposal is synonymous with, and should be understood to mean, "non-broker-dealer customer orders." *See* Letter from Dan W. Schneider, Schiff Hardin & Waite, to Thomas McManus, Division of Market Regulation, Commission, dated June 16, 1994.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance depth and liquidity in the Exchange's market for interest rate options by requiring DPMs using PAR workstations to provide quotes that are firm for up to 100 contracts on non-broker-dealer customer orders. This quote size minimum, which is substantially higher than the 10-contract minimum otherwise applicable to DPMs under CBOE Rule 8.51 and previously-issued Regulatory Circulars, will be operative initially only in "TBY" (30-year bond) interest rate options, since this is the first class in which a PAR workstation will be assigned to the DPM.[4] The Exchange expects that the 100-contract minimum will be extended gradually to other classes of interest rate options, as the use of PAR workstations expands to these classes.

The Exchange believes that this change in DPM quote commitment levels will enhance depth and liquidity in the Exchange's markets in interest rate options. Currently, much of the trading in interest rate derivatives is done in markets where quoted or negotiated prices can be obtained in transaction sizes larger than is assured at the CBOE. By increasing the firm quote size minimum at the CBOE, the Exchange believes that this rule change should enable the Exchange to compete more effectively for order flow and trading activity in interest rate options.

The Exchange also believes that the DPMs affected by the rule change will be able to meet the higher commitment levels without incurring undue financial risk because of the efficiencies available through the PAR workstations. A PAR workstation is a newly-developed, automated, computer-based workstation that provides users with the ability to enter or revise quotes, execute trades, transmit trade reports, and enter other data and commands at the touch of a screen, thereby eliminating the delay inherent in a keyboard-based system. This workstation will enable DPMs to change their published quotes almost instantaneously in response to changed market conditions, which in turn should permit them to manage the risk of quoting 100-contract markets.

As indicated above, under this proposed rule change and in accordance with CBOE Rule 8.51, affected DPMs will be obligated to provide firm quotes for up to 100 contracts on non-broker-dealer customer orders only. As is the case with respect to any option traded on the Exchange, under CBOE Rules 8.51 and 6.6, the firm quote size minimum will not apply whenever a "fast market" is declared, and may be suspended for any class or series on a case by case basis as determined by the CBOE's Market Performance Committee.

The CBOE believes that the proposed rule change will enhance market making efficiency in interest rate options. The CBOE further believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and Section 6(b)(5) in particular, by providing rules that perfect the mechanisms of a free and open market and that protect investors and the public interest.

(b) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-94-17 and should be submitted by July 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 94-16040 Filed 6-30-94; 8:45 am]

BILLING CODE 8010-01-M

---

[4] The applicability of CBOE Rule 8.51 to DPMs is provided for in Regulatory Circular 93-31 (May 7, 1993).

[5] 17 CFR 200.30-3(a)(12)(1993).

[Release No. 34-34258; File No. SR-CSE-94-06]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend and Extend the Pilot Program on the Floor of the Exchange Relating to the Preferencing of Public Agency Market and Marketable Limit Orders by Approved Dealers and Other Proprietary Members

June 24, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 24, 1994, the Cincinnati Stock Exchange, Incorporated ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through May 18, 1995, its pilot program which governs preferenced trading. The Commission originally approved this pilot on February 7, 1991.[1] In connection with this extension of the pilot, the Exchange is also proposing certain changes to its rules.

[1] See Securities Exchange Act Release No. 28866 (Feb. 13, 1991), 56 FR 5854.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed new rule is to extend through May 18, 1995, the Exchange's pilot program which governs preferenced trading. The Commission originally approved this pilot in February, 1991,[2] and subsequently extended the pilot several times.[3] The pilot is currently approved through August 6, 1994. The Commission's staff has requested that the Exchange seek a further extension up to the expiration of the recently-approved pilot preferencing program of the Boston Stock Exchange ("BSE")[4] so that the Commission can consolidate its future review of the preferencing programs of the various exchanges. The CSE requests no change at this time in the conditions under which its pilot currently operates.[5]

As part of a recent analysis of its preferencing program, the Exchange has reviewed the five recommendations of the Division of Market Regulation in Market 2000: An Examination of Current Equity Market Developments.[6] In order to support the Division's

[2] See Id.

[3] See Securities Exchange Act Release Nos. 29524 (Aug. 5, 1991), 56 FR 38160; 30353 (Feb. 7, 1992), 57 FR 5918; 31011 (Aug. 7, 1992), 57 FR 36704; 32280 (May 7, 1993), 58 FR 28422; and 33975 (April 28, 1994), 59 FR 23243.

[4] See Securities Exchange Act Release No. 34083 (May 18, 1994), 59 FR 36229.

[5] These conditions limit the number of issues in which a preferencing dealer may be registered; require the Exchange provide certain information to the Commission; prohibit preference trading for index arbitrage purposes when "circuit breakers" are in effect; and prohibit the preferencing of any order which the preferencing dealer has purchased from the customer for a direct cash payment. With respect to the furnishing of information to the Commission, the Exchange has agreed to certain new requirements described herein.

[6] See Division of Market Regulation, Securities and Exchange Commission, Market 2000: An Examination of Current Equity Market Developments ("Market 2000"), Study III, p. 14 (Jan. 1994).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed new rule is to extend through May 18, 1995, the Exchange's pilot program which governs preferenced trading. The Commission originally approved this pilot in February, 1991,[2] and subsequently extended the pilot several times.[3] The pilot is currently approved through August 6, 1994. The Commission's staff has requested that the Exchange seek a further extension up to the expiration of the recently-approved pilot preferencing program of the Boston Stock Exchange ("BSE")[4] so that the Commission can consolidate its future review of the preferencing programs of the various exchanges. The CSE requests no change at this time in the conditions under which its pilot currently operates.[5]

As part of a recent analysis of its preferencing program, the Exchange has reviewed the five recommendations of the Division of Market Regulation in Market 2000: An Examination of Current Equity Market Developments.[6] In order to support the Division's efforts, the Exchange proposes to codify the Division's recommendations by adopting the rule changes described below.

The first recommendation in Study III of Market 2000 is that dealers should expose customer limit orders that are priced better than the existing Intermarket Trading System ("ITS") best bid or offer, unless a customer expressly requests that the order not be exposed. With respect to this recommendation, the Exchange proposes to add the following interpretive language to CSE Rule 12.10,[7] the Exchange's "best execution" rule:

> As part of a member's fiduciary obligation to provide best execution for its customer orders, the member shall expose to the national market system all or a representative portion of any limit order which is priced either on or between the national best bid and offer, unless (1) such order is immediately executed, or (2) the customer expressly requests that the order not be exposed.

The above language goes beyond the Division's recommendation by requiring that orders priced at the national best bid or offer ("NBBO") be exposed in addition to any orders priced between the NBBO. Moreover, in order to encourage all members to place public agency limit orders on the CSE book, the Exchange also proposes to amend CSE Rule 11.10(e)[8] to eliminate the transaction charge on public agency limit orders.

Second, the Division recommends that dealers should not trade ahead of customer limit orders. This recommendation is currently codified in CSE Rule 12.6,[9] the Exchange's "customer priority" rule. This rule provides that no member may buy or sell a security for its own account when it holds an unexecuted customer market or like-priced limit order in that security.

Third, the Division recommends that, if a dealer holds a customer buy order and a customer sell order that can be crossed, the dealer should cross those orders without interposing itself as dealer. The CSE has historically interpreted its Rule 12.6 to require the crossing of like-priced customer buy and sell orders. This requirement is a logical extension of the prohibition against trading ahead of customer orders contained in Rule 12.6. In order to remove any doubt, however, the CSE proposes to codify the Division's recommendation by adding the following interpretive language to Rule 12.6:

> If a Designated Dealer holds for execution a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interposing itself as dealer.

Fourth, the Division recommends that dealers establish and adhere to fixed standards for queuing and executing customer orders. The Exchange has historically interpreted language in Chapter III—Rules of Fair Practice[10] and Chapter V—Supervision[11] of its rules to require such standards. Chapters III and V impose a wide range of obligations on members, specifically, Rule 3.6—Fair Dealing with Customers, mandates that all members have a responsibility for fair dealing with customers and Rule 5.1—Written Procedures, requires that members establish and enforce written procedures so that they can adequately supervise their employees and assure their compliance with applicable laws and regulations. Again, however, to remove any doubt on the subject, the Exchange proposes to codify the Division's recommendation by adding the following interpretive language to Rule 3.6:

> Designated Dealers who handle customer orders on the Exchange shall establish and enforce fixed standards for queuing and executing customer orders.

Fifth, the Division recommends that dealers should not trade at a price outside the ITS best bid or offer without satisfying the market interest at that price, in accordance with ITS trade-through and block policies. This recommendation is automatically enforced today by the Exchange's National Securities Trading System ("NSTS").

Finally, in order to gauge the impact of the preferencing program on the CSE and on the national market system, the Exchange agrees to provide the Commission with quarterly reports similar to those required of the BSE as part of its preferencing program pilot. These reports will provide the following information:

(1) A list indicating how many preferencing specialists are on the exchange and the issues in which they make markets.

(2) The volume of preferenced trades and shares and the percentage of total CSE trade and share volume that preferenced activity represents.

(3) The CSE's volume attributable to ITS commitments sent by other ITS participants

---

[2] See Id.

[3] See Securities Exchange Act Release Nos. 29524 (Aug. 5, 1991), 56 FR 38160; 30353 (Feb. 7, 1992), 57 FR 5918; 31011 (Aug. 7, 1992), 57 FR 38704; 32280 (May 7, 1993), 58 FR 28422; and 33975 (April 28, 1994), 59 FR 23243.

[4] See Securities Exchange Act Release No. 34083 (May 18, 1994), 59 FR 36229.

[5] These conditions limit the number of issues in which a preferencing dealer may be registered; require the Exchange provide certain information to the Commission; prohibit preference trading for index arbitrage purposes when "circuit breakers" are in effect; and prohibit the preferencing of any order which the preferencing dealer has purchased from the customer for a direct cash payment. With respect to the furnishing of information to the Commission, the Exchange has agreed to certain new requirements described herein.

[6] See Division of Market Regulation, Securities and Exchange Commission, Market 2000: An Examination of Current Equity Market Developments ("Market 2000"), Study III, p. 14 (Jan. 1994).

[7] Rules of the Cincinnati Stock Exchange, Rule 12.10.

[8] Rules of the Cincinnati Stock Exchange, Rule 11.10(e).

[9] Rules of the Cincinnati Stock Exchange, Rule 12.6.

[10] Rules of the Cincinnati Stock Exchange, Chapter III.

[11] Rules of the Cincinnati Stock Exchange, Chapter V.

and the percentage of such commitments which are in issues which have preferencing specialists.

(4) The number of preferenced orders effected against the NSTS limit order book.

(5) The percentage of time that the CSE improves and matches the NBBO, and the percentage of time that the CSE achieves price improvement for customer orders when the market is wider than ⅛th point.

(6) The CSE's share of Consolidated Tape trade reports, as compared to its share on the commencement date of this extension.

Although the BSE is not currently required to provide NBBO and price improvement data, the CSE is offering to provide this additional data because it believes that such data would be helpful to the Commission in accurately assessing the contribution of preferencing to the national market system.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it promotes just and equitable principals of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The CSE solicited comments on the original filing regarding its preferencing pilot program from the ITS participants. See File No. SR–CSE–90–06. The CSE has not solicited comment with regard to the additional changes set forth herein.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–94–06 and should be submitted by July 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16038 Filed 6–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34260; File No. SR–GSCC–94–5]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to GSCC's Fee Structure

June 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 22, 1994, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies GSCC's fee schedule to establish fees for new services provided in connection with GSCC's auction takedown proposal and for certain services for which GSCC does not currently charge.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

After a review of its fee structure, GSCC has determined that modifications are necessary and appropriate in order to establish fees for: (1) New services that will be provided in connection with GSCC's "auction takedown proposal" and (2) certain current services for which GSCC does not currently charge. This rule filing provides for these fee structure modifications, which will become effective on August 1, 1994. A discussion of the new fees that are being established and the reasons for them follows:

1. New Fees in Connection With the Auction Takedown Proposal

Earlier this year, GSCC received approval from the Commission of a proposed rule change (File No. SR–GSCC–94–1) that with regard to Treasury security purchases made at auction by members of GSCC's Netting System ("netting members") authorizes GSCC to: (1) Accept and report data on such purchases through GSCC's Comparison System; (2) net the purchases with when-issued trades of such members in the same securities through the Netting System; and (3) assume responsibility for the delivery of the purchased securities.

One aspect of this proposal (known as the "auction takedown" proposal) has GSCC provide a mechanism for ensuring timely delivery of needed auction purchases to a member that believes that by virtue of its secondary market trading it will have on issue date a net short or flat position or a long position that is smaller than the amount of auction purchases that it requires in a particular CUSIP. To accomplish this, each such member is able to request (a "priority auction delivery request") on a CUSIP-by-CUSIP basis that GSCC deliver to it needed auction purchases immediately after GSCC has received the securities from the Federal Reserve Banks on issue date.

By this rule filing, GSCC establishes a fee of $1.00 for the making by a member of a priority auction delivery request. This fee is the same as GSCC's fee for the netting of one side of a trade.

The rule filing authorizing GSCC to implement the auction takedown proposal also authorizes GSCC more generally to establish a mechanism for taking in data on members' activities in eligible securities from sources such as exchanges and other clearing corporations and to treat such data under its rules as compared trades to the same extent as if the data had been compared through the matching by GSCC of data submitted by two members.

By this rule filing, GSCC establishes a member fee of $.50 for the processing and reporting of data on one side of a trade received from a locked-in trade source on a locked-in basis. This fee is the same as GSCC's lowest fee for the entry by a member of one side of a trade for comparison processing and reporting.

2. Fees for Current Services

GSCC has determined that it is now appropriate that the costs incurred by GSCC in providing services that GSCC has provided to members to date without charge be covered by direct charges. Each of these services and charges is discussed below.

a. *Modifications and cancels.* GSCC currently charges for the entry by a member of one side of a transaction in an eligible security for comparison processing and production of reports. In addition to the direct entry of trade data by a member, each member also has the ability to input to GSCC a modification and/or cancellation of previously-transmitted data. (Generally, a modification to or cancellation of trade data can be done unilaterally by a member only if the trade has not already been compared.)

GSCC has not to date charged for such modifications and cancellations even though it incurs costs in processing and reporting those requests. The lowest charge to a member for the entry of trade data (*i.e.*, trade data entry involving computer-to-computer input and output) is $.50 per side. While the costs of processing modifications and cancellation messages are roughly equivalent to those associated with the creation of a transaction, in order to

[1] 15 U.S.C. 78s(b)(1) (1988).

member is able to request (a "priority auction delivery request") on a CUSIP-by-CUSIP basis that GSCC deliver to it needed auction purchases immediately after GSCC has received the securities from the Federal Reserve Banks on issue date.

By this rule filing, GSCC establishes a fee of $1.00 for the making by a member of a priority auction delivery request. This fee is the same as GSCC's fee for the netting of one side of a trade.

The rule filing authorizing GSCC to implement the auction takedown proposal also authorizes GSCC more generally to establish a mechanism for taking in data on members' activities in eligible securities from sources such as exchanges and other clearing corporations and to treat such data under its rules as compared trades to the same extent as if the data had been compared through the matching by GSCC of data submitted by two members.

By this rule filing, GSCC establishes a member fee of $.50 for the processing and reporting of data on one side of a trade received from a locked-in trade source on a locked-in basis. This fee is the same as GSCC's lowest fee for the entry by a member of one side of a trade for comparison processing and reporting.

2. Fees for Current Services

GSCC has determined that it is now appropriate that the costs incurred by GSCC in providing services that GSCC has provided to members to date without charge be covered by direct charges. Each of these services and charges is discussed below.

a. *Modifications and cancels.* GSCC currently charges for the entry by a member of one side of a transaction in an eligible security for comparison processing and production of reports. In addition to the direct entry of trade data by a member, each member also has the ability to input to GSCC a modification and/or cancellation of previously-transmitted data. (Generally, a modification to or cancellation of trade data can be done unilaterally by a member only if the trade has not already been compared.)

GSCC has not to date charged for such modifications and cancellations even though it incurs costs in processing and reporting those requests. The lowest charge to a member for the entry of trade data (*i.e.*, trade data entry involving computer-to-computer input and output) is $.50 per side. While the costs of processing modifications and cancellation messages are roughly equivalent to those associated with the creation of a transaction, in order to encourage members to submit modifications and cancellations to existing trade data, GSCC is setting the fee for the modification to or cancellation of one side of a trade at $.25 per such modification or cancellation.

b. *Terminal access fee.* GSCC currently provides without charge terminal access to its automated system to a growing number of its members. In order to offset the costs associated with the provision of terminal access, which include purchase and maintenance of hardware equipment and telephone lines, communication engineering support, and other charges imposed by the Securities Industry Association Corporation ("SIAC") (GSCC's facilities manager), as well as the costs of training participants and of the monitoring of their terminal use, GSCC is imposing a charge for access to GSCC's system of $150 per month per terminal.

c. *Bulk data communication connection fee.* GSCC also currently provides to members without charge bulk data communication access to its automated system. In order to offset the costs associated with the provision of such access, which are similar to but generally greater than those costs associated with the provision of terminal access, GSCC is imposing the following charges for differing types of bulk communication connections to its system: (i) The charge for a bulk communication connection via a shared hunt group is $150 per month; (ii) the charge for a bulk communication connection via a dedicated dial port or leased line is $450 per month per port or line; and (iii) the charge for a bulk communication connection to GSCC via a dedicated digital leased line is $600 per month per line.

It should be noted that certain GSCC members already pay GSCC's affiliate, the National Securities Clearing Corporation, which also uses SIAC as its facilities manager, a bulk data communication connection fee. GSCC will not impose a duplicative fee on such members.

(b) The proposed rule change will fairly reflect the costs incurred in GSCC in providing certain services to its members and, thus, is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.[2]

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule change, and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Securities Exchange Act Rule 19b–4 in that the proposed rule change establishes or changes a due, fee, or other charge imposed by GSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–94–5 and should be submitted by July 22, 1994.

[2] 15 U.S.C. 78q–1 (1988).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16042 Filed 6–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34253; File No. SR–MSTC–94–05]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Definition of Pledged Position

June 24, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 18, 1994, Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MSTC–94–05) as described in Items I, II, and III below, which Items have been prepared primarily by MSTC. MSTC supplemented the proposal with an explanatory letter dated June 6, 1994.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change makes a technical correction to the definition of "pledged position" in Article I, Rule 1 of MSTC's Rules.

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, MSTD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(1) (1988).

[2] Letter from David T. Rusoff, Attorney, Foley & Lardner, to Thomas C. Etter, Attorney, Division of Market Regulation, Commission (June 6, 1994).

(A) Self-Regulatory Organizations Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to make a technical revision to MSTC's definition of "pledged position." The technical correction is needed to conform the definition of pledged position to changes approved in File Nos. SR–MSTC–90–01[3] and SR–MSTC–90–08.[4] File No. SR–MSTC–90–01 provided the basic definition of pledged position, and File No. SR–MSTC–90–08 added to that definition in connection with MSTC's Same Day Funds Settlement Service. Inadvertently, however, the earlier language of the rule was never modified to reflect the new text of File No. SR–MSTC–90–08, and the new text was never added to the MSTC rulebook. This filing corrects those past oversights.

MSTC believes that the proposed rule change is consistent with Section 17A(b)(3)(A) and (F) of the Act[5] in that it facilitates and promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organizations Statement on Burden on Competition

MSTC believes that the proposed rule change will not place any burden on competition.

(C) Self-Regulatory Organizations Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MSTC has neither solicited nor received any written comments on the proposed rule change.

IIII. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[6] and subparagraph (e)(1) of Rule 19b–4 thereunder[7] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] Securities Exchange Act Release No. 28877, (February 12, 1991), 56 FR 6892 (order approving proposed rule change relating to changes to MSTC's operating system).

[4] Securities Exchange Act Release No. 32300 (May 12, 1993), 58 FR 29438 (order approving proposed rule change implementing a pilot program for same-day funds settlement service).

[5] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[6] 15 U.S.C. 78s(b)(3)(A)(i) (1988).

[7] 17 CFR 240.19b–4(e)(1) (1993).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 350 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File Number SR–MSTC–94–05 and should be submitted by July 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16010 Filed 6–30–94; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[Release No. 34–34261; File Nos. SR–NSCC–94–09, SR–MCC–94–06, and SR–SCCP–94–02]

Self-Regulatory Organizations; National Securities Clearing Corporation, Midwest Clearing Corporation, and Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Temporary Approval on an Accelerated Basis of Proposed Rule Changes Relating to the Guarantee of Trades in Continuous Net Settlement Systems

June 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that National Securities Clearing Corporation ("NSCC"), Midwest Clearing Corporation ("MCC"), and Stock Clearing Corporation of Philadelphia ("SCCP") (collectively referred to as "Clearing Corporations") filed with the Securities and Exchange Commission ("Commission") on June 15, 1994, June 12, 1994, and June 24, 1994, respectively, the proposed rule changes as described in Items I and II below. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule changes.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposals seek a one year extension, through June 30, 1995, of the Commission's order that authorizes the Clearing Corporations: (1) To guarantee at an earlier time the settlement of participant trades in their Continuous Net Settlement ("CNS") systems and (2) to use revised clearing fund calculations to protect against any increased risk caused by such earlier guarantees.[2]

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Clearing Corporations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Clearing Corporations have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to extend through June 30, 1995, the Commission's approval of

[2] The Commission has approved these proposals on a temporary basis on five previous occasions in Securities Exchange Act Release Nos. 27192 (August 29, 1989), 54 FR 37010 (approving File Nos. SR–NSCC–87–04, SR–MCC–87–03, and SR–SCCP–87–03 until December 31, 1990); 28728 (December 31, 1990), 56 FR 717 (approving File Nos. SR–NSCC–90–25, SR–MCC–90–08, and SR–SCCP–90–03 until June 30, 1991); 29388 (June 28, 1992), 56 FR 30951 (approving File Nos. SR–NSCC–91–06, SR–MCC–91–03, and SR–SCCP–91–03 through June 30, 1992); 30879 (July 1, 1992), 57 FR 30279 (approving File Nos. SR–NSCC–92–04, SR–MCC–92–07, and SR–SCCP–92–02 through June 30, 1993); and 32547 (June 29, 1993), 58 FR 36491 (approving File Nos. SR–NSCC–93–04, SR–MCC–93–02, and SR–SCCP–93–02 through June 30, 1994).

Corporation ("MCC"), and Stock Clearing Corporation of Philadelphia ("SCCP") (collectively referred to as "Clearing Corporations") filed with the Securities and Exchange Commission ("Commission") on June 15, 1994, June 12, 1994, and June 24, 1994, respectively, the proposed rule changes as described in Items I and II below. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule changes.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposals seek a one year extension, through June 30, 1995, of the Commission's order that authorizes the Clearing Corporations: (1) To guarantee at an earlier time the settlement of participant trades in their Continuous Net Settlement ("CNS") systems and (2) to use revised clearing fund calculations to protect against any increased risk caused by such earlier guarantees.[2]

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Clearing Corporations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Clearing Corporations have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to extend through June 30, 1995, the Commission's approval of NSCC's, MCC's, and SCCP's procedures whereby the settlement of all pending CNS trades are guaranteed as of midnight on the day after the trade date for locked-in or automatically compared trades and as of midnight on the day trades are reported to members as compared for all other trades. The proposed rule changes also seek extension through June 30, 1995, of the Commission's approval of the Clearing Corporations' revisions to the CNS portions of their clearing fund formulas. These revisions are designed to protect against increased risk associated with earlier guarantees.[3]

The Clearing Corporations represent that the proposed rule changes are consistent with the Act and particularly with Section 17A of the Act because it will help the Clearing Corporations to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible.[4]

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Clearing Corporations believe that the proposed rule changes will impose no burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The Clearing Corporations have neither solicited nor received any comments.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Commission believes the Clearing Corporations' proposals to continue providing earlier guarantees for CNS trades along with revised formulas for calculating clearing fund contributions are consistent with the Act and particularly with Section 17A of the Act.[5] Section 17A(b)(3)(F) of the Act[6] requires that the rules of clearing agencies be designed to assure the safeguarding of securities and funds that are in the custody or control of the clearing agencies or for which the clearing agencies are responsible and be designed to remove impediments to and perfect the national system for the clearance and settlement of securities transactions.

The Commission believes that these proposals promote the perfection of the national system by providing increased certainty as to settlement of securities transactions by reducing the time that clearing members are exposed to the risk of counterparty default. The Commission further believes that these proposals achieve that goal without compromising the safeguarding of securities and funds in the Clearing Corporations' custody or control or for which they are responsible.

The Clearing Corporations have requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filings in the **Federal Register**. Accelerated approval will permit NSCC, MCC, and SCCP to continue to provide their participants with earlier trade guarantees and to continue to base clearing fund assessments on the revised formulas without any needless disruptions to the program. During the proposals' temporary approval periods, the Commission and the Clearing Corporations have continued to examine the Clearing Corporations' procedures and safeguards applicable to earlier guarantees of CNS trades and the revised formulas for calculating CNS clearing fund contributions. To date, the earlier guarantee procedures and revised clearing fund formulas have functioned adequately. Therefore, the Commission believes there is good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing.

The Commission will continue to monitor the adequacy of NSCC's, MCC's, and SCCP's procedures and safeguards applicable to earlier guarantees of CNS trades and the revised clearing fund formulas. The Clearing Corporations remain under a continuing obligation to provide data to the Commission pertaining to earlier trade guarantees and the ability of the revised CNS clearing formulas to guard against any increased risks posed by earlier guarantees.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the

[2] The Commission has approved these proposals on a temporary basis on five previous occasions in Securities Exchange Act Release Nos. 27192 (August 29, 1989), 54 FR 37010 (approving File Nos. SR–NSCC–87–04, SR–MCC–87–03, and SR–SCCP–87–03 until December 31, 1990); 28728 (December 31, 1990), 56 FR 717 (approving File Nos. SR–NSCC–90–25, SR–MCC–90–08, and SR–SCCP–90–03 until June 30, 1991); 29388 (June 28, 1992), 56 FR 30951 (approving File Nos. SR–NSCC–91–06, SR–MCC–91–03, and SR–SCCP–91–03 through June 30, 1992); 30879 (July 1, 1992), 57 FR 30279 (approving File Nos. SR–NSCC–92–04, SR–MCC–92–07, and SR–SCCP–92–02 through June 30, 1993); and 32547 (June 29, 1993), 58 FR 36491 (approving File Nos. SR–NSCC–93–04, SR–MCC–93–02, and SR–SCCP–93–02 through June 30, 1994).

[3] For a more detailed discussion of the proposals, refer to Securities Exchange Act Release Nos. 32547, 30379, 29388, 27828, and 27192 and the accompanying rule filings, *supra* note 2.

[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] The Commission reserves the right to amend the data request during the ensuing temporary approval for any of the Clearing Corporations in order to obtain the most useful and accurate information available.

submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the Clearing Corporations. All submissions should refer to File Nos. SR–NSCC–94–09, SR–MCC–94–06, and SR–SCCP–94–02 and should be submitted by July 22, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [8] that the above-mentioned proposed rule changes (File Nos. SR–NSCC–94–09, SR–MCC–94–06, and SR–SCCP–94–02) be, and hereby are, approved through June 30, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16043 Filed 6–30–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Incorporated

June 27, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Allwaste, Inc.
Common Stock, $.01 Par Value (File No. 7–12576)
Automated Security Holdings Plc
American Depositary Shares (File No. 7–12577)
Bairnco Corp
Common Stock, $.01 Par Value (File No. 7–12578)
Bombay Co.
Common Stock, $1.00 Par Value (File No. 7–12579)
Chart House Enterprises, Inc.
Common Stock, $.01 Par Value (File No. 7–12580)
Debartolo Realty
Common Stock, No Par Value (File No. 7–12581)
Glamis Gold Ltd.
Common Stock, No Par Value (File No. 7–12582)
Jacobs Engineering Group, Inc
Common Stock, $1.00 Par Value (File No. 7–12583)
Japan Equity Fund, Inc.
Rights (File No. 7–12584)
Mauna Loa Macadamia
Class A Depositary Units, No Par Value (File No. 7–12585)
McDonald's Corporation
Common Stock, No Par Value (File No. 7–12586)
Reader's Digest Association, Inc.
Class B Common Stock, $.01 Par Value (File No. 7–12587)
Chemed Corp.
Common Stock, $1.00 Par Value (File No. 7–12588)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 19, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

[FR Doc. 94–16046 Filed 6–30–94; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b) (1988).

[9] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34255; File No. SR–Phlx–92–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Amending Options Floor Procedure Advice A–2 and Rule 1066

June 24, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On January 6, 1993,[3] June 19, 1993,[4] and June 23, 1994,[5] the Exchange filed Amendment Nos. 1, 2, and 3, respectively, to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Phlx Options Floor Procedure Advice ("OFPA") A–2. In connection with the changes proposed to OFPA A–2, the Exchange proposes to amend Phlx Rule 1066 ("Rule 1066"). The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to existing Exchange OFPA A–2 relates to the acceptance of contingency orders by Exchange specialists ("Specialists"). The changes to part (ii) of OFPA A–2 would permit Specialists to accept contingency orders currently forwarded through the Automated Options Market System (also known as "AUTOM") without the requirement of approval by an Exchange floor official ("Floor Official"). Such contingency orders would include those currently set forth in Rule 1066, as well as additional types of contingency orders that the Exchange is proposing to add to those currently set forth in Rule 1066. The Exchange also is proposing to make changes to the fine schedule for OFPA A–2.

Currently, a Specialist is prohibited by OFPA A–2 from accepting contingency orders, other than stop (stop-loss) and stop-limit orders, without the express approval of a Floor Official.[6] The proposed changes would make permissible the acceptance of contingency orders by Specialists without the approval of a Floor Official.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] Amendment No. 1 is intended to clarify that an Exchange specialist may accept or refuse contingency orders for placement on the Exchange order book, except that Exchange floor official approval is required to refuse to accept a customer contingency order. See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated January 5, 1993.

[4] In Amendment No. 2, the Exchange notified the Commission of its intention to withdraw File No. SR–Phlx–92–37, because proposed changes to Phlx Rule 1066(c) contained therein, which would clarify the definitions of stop-limit and stop (stop-loss) orders and add definitions of all-or-none, opening-only-market, market-on-close, and cancel-replacement orders, would have duplicated the changes proposed by the Exchange in this File No. SR–Phlx–92–03. See Securities Exchange Act Release No. 32380 (May 28, 1993), 58 FR 31765 (June 4, 1993). Also in Amendment No. 2, the Exchange proposed that Exchange specialists be permitted to accept spread, straddle, and combination orders, in addition to contingency orders, without the prior approval of an Exchange floor official. Amendment No. 2 added that Exchange specialists would not be permitted to refuse to accept customer contingency, spread, straddle, or combination orders without the prior approval of two Exchange floor officials. See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Michael Walinskas, Staff Attorney, Division of Market Regulation, Commission, dated June 17, 1993.

[5] In Amendment No. 3, the Exchange deleted from its proposal its request that Exchange specialists be permitted to accept spread, straddle, and/or combination orders without the prior approval of an Exchange floor official. See Letter from Gerald D. O'Connell, First Vice President, Phlx, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated June 23, 1994.

[6] In addition, a Specialist may not accept option orders consisting of two or more option series (*i.e.*, spread, straddle, and/or combination orders) without a Floor Official's approval.

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Phlx Options Floor Procedure Advice ("OFPA") A–2. In connection with the changes proposed to OFPA A–2, the Exchange proposes to amend Phlx Rule 1066 ("Rule 1066"). The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to existing Exchange OFPA A–2 relates to the acceptance of contingency orders by Exchange specialists ("Specialists"). The changes to part (ii) of OFPA A–2 would permit Specialists to accept contingency orders currently forwarded through the Automated Options Market System (also known as "AUTOM") without the requirement of approval by an Exchange floor official ("Floor Official"). Such contingency orders would include those currently set forth in Rule 1066, as well as additional types of contingency orders that the Exchange is proposing to add to those currently set forth in Rule 1066. The Exchange also is proposing to make changes to the fine schedule for OFPA A–2.

Currently, a Specialist is prohibited by OFPA A–2 from accepting contingency orders, other than stop (stop-loss) and stop-limit orders, without the express approval of a Floor Official.[6] The proposed changes would make permissible the acceptance of contingency orders by Specialists without the approval of a Floor Official. The change would extend this allowance beyond the currently permitted acceptance of stop (stop-loss) and stop-limit orders to include contingency orders as defined as such in paragraph (c) of Rule 1066, and will apply to both customer and broker-dealer accounts. Furthermore, a Specialist would be able to refuse to accept contingency orders, but may only refuse to accept contingency orders from customer accounts upon the prior approval of two Floor Officials.

Accordingly, the Exchange is proposing that new subparagraphs (c)(5)–(8) be added to Rule 1066, which sets forth types of orders. The new text would expand the existing list of types of contingency orders and specifically define each contingency order permitted. Included would be the following: all-or-none orders, opening-only-market orders, market-on-close orders, and cancel-replacement orders. The Exchange believes that these definitions will ensure standardization on the floor with respect to the handling and execution of these orders. Changes to the fine schedule for OFPA A–2 provide for increased penalties for an infraction of those guidelines applicable to Specialists.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and with Section 6(b)(5)[7] in particular, in that it is designed to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–92–03 and should be submitted by July 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16009 Filed 6–30–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 27, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Jalate, Ltd.
Common Stock, $.01 Par Value (File No. 7–12597)
ViaCom, Inc.
Five Year Warrant to Purchase Class B Common Stock, $70 Per Share (File No. 7–12598)
Energy Ventures, Inc.

[6] In addition, a Specialist may not accept option orders consisting of two or more option series (*i.e.*, spread, straddle, and/or combination orders) without a Floor Official's approval.

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] 17 CFR 200.30–3(a)(12) (1993).

Common Stock, $1.00 Par Value (File No. 7–12599)
Uniflex, Inc.
Common Stock, $.10 Par Value (File No. 7–12600)
Chad Therapeutics, Inc.
Common Stock, $.01 Par Value (File No. 7–12601)
Essex Property Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–12602)
Conagra, Inc.
Series B Adjustable Rate Cum. Pfd. Securities (File No. 7–12603)
Highwoods Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12604)
ViaCom, Inc.
Three Year Warrant to Purchase Class B Common Stock, $60 Per Share (File No. 7–12606)
Kenneth Cole Productions, Inc.
Common Stock, $.01 Par Value (File No. 7–12606)
Pre-Paid Legal Services, Inc.
$2.40 Cum. Conv. Pfd. Stock, $1.00 Par Value (File No. 7–12607)
Pre-Paid Legal Services, Inc.
Warrants Expiring June 8, 1999 (File No. 7–12608)
Pre-Paid Legal Services, Inc.
Common Stock, $.01 Par Value (File No. 7–12609)
Chemical Banking Corporation
Adj. Rate Cum. Pfd. Stock, $1 Par Value (File No. 7–12610)
First USA, Inc.
6¼ Pc Cum. Pfd. Stock, $.01 Par Value (File No. 7–12611)
Gerrity Oil & Gas Corporation
Dep. Shares each representing ⅛ of a share of $12,000 Cv. Pfd. Stock $.01 Par Value (File No. 7–12612)
Liberty Property Trust
Common Shares of Beneficial Interest, $.001 Par Value (File No. 7–12613)
Kaydon Corporation
Common Stock, $0.10 Par Value (File No. 7–12614)
HS Resources, Inc.
Common Stock, $.001 Par Value (File No. 7–12615)

Interested persons are invited to submit on or before July 19, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16044 Filed 6–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34259; File No. SR–Phlx–92–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Regarding Trading the Quote Spread on PACE

June 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 10, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On April 14, 1994, the Phlx submitted Amendment No. 1 to the proposal.[1] On June 6, 1994, the Phlx submitted Amendment No. 2 to the proposal.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to adopt Commentary .18 to Phlx Rule 229[3] to prohibit the use of the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") volume execution guarantees with offsetting orders in low-volatility, high volume stocks in order to "trade the quote spread." Specifically, Commentary .18 would read as follows:

Any established pattern of trading via PACE generating short-term trading profits by unjustly exploiting PACE volume execution guarantees is prohibited. Specifically, it is deemed an unjust use of PACE to place an order to buy at the primary market's bid price and simultaneously or shortly thereafter place an order to sell for a related account at the primary market's offer price, or vice-versa, with the intent to capitalize on the expectation that transactions on the primary market at the respective limit prices will elect the limit orders on the Phlx requiring their execution and thus generate a short-term trading profit without the need for a change in the quoted price of the issue on the primary market. Three such occurrences in the same security within a one-month period will constitute an established pattern in violation of this provision.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PACE is the Exchange's automated order routing, delivery and execution system for equity's securities. Pursuant to Phlx Rule 229, customer orders entered through PACE are entitled to certain execution guarantees.[4] The Phlx proposes to adopt Commentary .18 to Phlx Rule 229 to address the practice of customers using PACE volume execution guarantees with offsetting limit orders in low-volatility, high-volume stocks in order to "trade the quote spread."

Specifically, this practice is encountered when orders are placed through PACE to buy on the bid and sell on the offer, with the expectation that each of the orders will be executed when the required volume trades on the primary market. As a result, a profit may be realized on the quote spread without any quote change in the stock.

There are currently many Exchange-traded stocks with low-volatility, high-volume trading characteristics. The bid-ask spread for these stocks is often narrow and static. Because of PACE volume guarantees, limit orders to buy less than 600 shares of those stocks at a price equal to the primary market's bid as well as to sell at a price equal to the primary market's offer can often receive automatic executions on the Exchange.[5]

Specifically, these smaller-sized orders are executed when 1,000 shares or more of that security trade on the primary market at the order's limit price. In this regard, proposed Commentary .18 is designed to address the practice of customers "trading the quote spread" by depending on the aforementioned PACE volume execution guarantees to generate short term trading profits by using offsetting limit orders in low-volatility, high-volume stocks.

For example, an order may be placed through PACE to buy on the bid while another order in that stock for the same or related account is sent through PACE to sell the same number of shares on the offer. The expectation is that each of the orders will be executed at their respective limit prices when the required volume trades on the primary market. When both orders are filled due to volume guarantees, a profit is locked-in, equal to the amount of shares multiplied by the spread between the bid and offer less commissions. This profit can occur within minutes after the orders are placed and without any quote change in the stock. Utilizing PACE to trade the quote spread in this manner disadvantages other market participants, including other PACE orders on the Phlx book, and serves to create an erroneous impression as to the level of bona fide investment activity in the subject stocks.

The Exchange notes that this practice is exploitative of the PACE volume execution guarantees and is unfair to both the specialist and to the other PACE orders on the specialist book.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act, in general, and Section 6(b)(5) in particular, in that it is designed to prevent manipulative acts and practices and to prevent discrimination between customers, issuers, and brokers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

---

[1] See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated April 14, 1994. The Phlx amended the language of the rule to clarify what level of activity will constitute a violation of the rule. Specifically, the Exchange proposes that three occurrences within one month will constitute such a violation.

[2] In Amendment No. 2 the Exchange (a) clarified that the three occurrences referred to in the proposed commentary are meant to be in the same stock, and (b) changed the word "may" to "will" constitute a violation. See letter from Gerald D. O'Connell, Vice President, Phlx, to Sharon Lawson, Assistant Director, Commission, dated June 1, 1994.

[3] PACE is the Phlx's small order entry and execution system and Rule 229 details the execution guarantees due a PACE order. See Philadelphia Stock Exchange Rules, Rule 229.

[4] See Phlx Rule 229, Commentary .10.

[5] See Phlx Rule 229, Commentary .10.

volume trading characteristics. The bid-ask spread for these stocks is often narrow and static. Because of PACE volume guarantees, limit orders to buy less than 600 shares of those stocks at a price equal to the primary market's bid as well as to sell at a price equal to the primary market's offer can often receive automatic executions on the Exchange.[5]

Specifically, these smaller-sized orders are executed when 1,000 shares or more of that security trade on the primary market at the order's limit price. In this regard, proposed Commentary .18 is designed to address the practice of customers "trading the quote spread" by depending on the aforementioned PACE volume execution guarantees to generate short term trading profits by using offsetting limit orders in low-volatility, high-volume stocks.

For example, an order may be placed through PACE to buy on the bid while another order in that stock for the same or related account is sent through PACE to sell the same number of shares on the offer. The expectation is that each of the orders will be executed at their respective limit prices when the required volume trades on the primary market. When both orders are filled due to volume guarantees, a profit is locked-in, equal to the amount of shares multiplied by the spread between the bid and offer less commissions. This profit can occur within minutes after the orders are placed and without any quote change in the stock. Utilizing PACE to trade the quote spread in this manner disadvantages other market participants, including other PACE orders on the Phlx book, and serves to create an erroneous impression as to the level of bona fide investment activity in the subject stocks.

The Exchange notes that this practice is exploitative of the PACE volume execution guarantees and is unfair to both the specialist and to the other PACE orders on the specialist book.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act, in general, and Section 6(b)(5) in particular, in that it is designed to prevent manipulative acts and practices and to prevent discrimination between customers, issuers, and brokers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

[5] See Phlx Rule 229, Commentary .10.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Phlx has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–92–09 and should be submitted by July 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16039 Filed 6–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20375; 812–8926]

SAFECO Advisor Series Trust, et al.; Notice of Application

June 27, 1994.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act".

APPLICANTS: SAFECO Advisor Series Trust (the "Trust"), SAFECO Asset Management Company ("SAM"), and SAFECO Securities, Inc. ("SAFECO Securities").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) granting an exemption from sections 1(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d), and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting applicants to issue multiple classes of shares representing interests in the same portfolio of securities, and to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares. Applicants request that any relief granted pursuant to the application also apply to future investment companies (a) for which SAM or any person controlling, controlled by, or under common control with SAM serves as investment adviser, and/or SAFECO Securities or any person controlling, controlled by, or under common control with SAFECO Securities serves as principal underwriter; and (b) that issue and sell classes of shares on a basis identical in all material respects to that described in the application.

FILING DATES: The application was filed on April 7, 1994, and amended on June 15, 1994. By letter dated June 24, 1994, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 22, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's

interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, SAFECO Plaza, Seattle, Washington 98185.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 942–0578, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Delaware business trust and an open-end diversified management investment company registered under the Act. The Trust has established the following investment portfolios: SAFECO Advisor Equity Fund, SAFECO Advisor Northwest Fund, SAFECO Advisor Intermediate-Term Treasury Fund, SAFECO Advisor U.S. Government Fund, SAFECO Advisor GNMA Fund, SAFECO Advisor Municipal Bond Fund, SAFECO Advisor Intermediate-Term Municipal Bond Fund, and SAFECO Advisor Washington Municipal Bond Fund (together with any future investment companies that rely on the requested order, the "Funds"). None of the Funds has commenced offering shares.

2. SAM or a person controlling, controlled by, or under common control with SAM will be the investment manager and administrator for each of the Funds. SAFECO Securities or a person controlling, controlled by, or under common control with SAFECO Securities will serve as the distributor of the shares of each Fund (the "Distributor"). Shares of the Funds will be available through financial intermediaries that have entered into agreements with the Distributor to sell shares.

A. The Multiple Class System

3. Applicants propose that each Fund be permitted to create an unlimited number of classes (the "Multiple Class System"), which would allow each Fund to offer investors the option of purchasing shares (a) in connection with a plan or plans adopted pursuant to rule 12b–1 under the Act (a "Distribution Plan"); (b) in connection with a non-rule 12b–1 shareholder services plan or plans (a "Shareholder Services Plan"); (c) in connection with the allocation of certain expenses that are directly atttributable only to a particular class; (d) without any Distribution Plan or Shareholder Services Plan (collectively, the "Plans"); (e) subject to varying front-end sales charges; (f) subject to varying CDSCs; and/or (g) subject to certain conversion features.

4. With respect to each class, each Fund could enter into one or more Distribution Plan agreements and/or Shareholder Services Plan agreements (collectively "Plan Agreements") with SAM, the Distributor, and/or other groups, organizations or institutions concerning the provision of certain services to shareholders of that class. The expense of payments under a Plan Agreement ("Plan Payments") would be borne entirely by the beneficial owners of the class of the Fund to which the Plan Agreement relates.

5. The provision of distribution services and shareholder services under the Plans will complement (and not be duplicative of) the services to be provided to each Fund by its manager, investment adviser(s), and/or distributor, and by the parties that provide custody, transfer agency, and administrative services to each Fund. When a class is subject to both a Distribution Plan and a Shareholder Services Plan, the provision of services under one Plan will complement (and not be duplicative of) the services provided under the other Plan. The Funds will comply with Article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ["NASD"] with respect to fees under a Plan.

6. The expenses of the Trust that cannot be attributed directly to any one Fund ("Trust Expenses") generally will be allocated to each Fund based on the relative net assets of the Funds. Certain expenses that may be attributable to a particular Fund, but not a particular class ("Fund Expenses"), will be allocated to each class based upon the relative net assets of the classes. Certain expenses may be attributable to a particular class of a Fund ("Class Expenses"). All such Class Expenses incurred by a class will be charged directly to the net assets of that particular class, and thus will be borne on a *pro rata* basis by the outstanding shares of such class.

7. SAM may choose to reimburse or waive Class Expenses on certain classes of a Fund on a voluntary, temporary basis. Class Expenses are by their nature specific to a given class and obviously expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or waive Class Expenses at different levels for different classes of the same Fund.

8. In addition, SAM may waive or reimburse Trust Expenses and/or Fund Expenses (with or without a waiver or reimbursement of Class Expenses), but only if the same proportionate amount of Trust Expenses and/or Fund Expenses are waived or reimbursed for each class of the Fund. Thus, any Trust Expenses that are waived or reimbursed would be credited to each class of a Fund based on the relative net assets of the classes. Similarly, any Fund Expenses that are waived or reimbursed would be credited to each class of that Fund according to the relative net assets of the classes.

9. Because Plan Payments and other Class Expenses will be borne exclusively by the class to which they are attributable, the net income of (and dividends payable to) each class within a Fund may be different. Dividends paid to each class of shares in a Fund, however, will be declared and paid on the same days and at the same times, and, except with respect to Plan Payments and Class Expenses, will be determined in the same manner and paid in the same amounts.

10. Shares of one or more classes subject to a CDSC ("Convertible CDSC Shares") may automatically convert to shares of a class not subject to a CDSC ("Non-CDSC Shares") after a prescribed period of time, and thereafter be subject to lower Plan Payments, if any, applicable to the Non-CDSC Shares. It is expected that Convertible CDSC Shares will convert to Non-CDSC Shares after approximately eight years from the purchase date. Non-CDSC Shares will in all cases be subject to lower aggregate Plan Payments, if any, and other ongoing Class Expenses than Convertible CDSC Shares.

11. The conversion will be on the basis of the relative net asset values of the two classes, without the imposition of any sales or other charge except that any asset-based sales or other charge applicable to the Non-CDSC Shares would thereafter be applied to the converted shares. Convertible CDSC Shares in a shareholder's account that were purchased through the reinvestment of dividends and other distributions paid in respect of Convertible CDSC Shares will be considered to be held in a separate sub-account. Each time any Convertible CDSC Shares in the shareholder's account convert to Non-CDSC Shares, a *pro rata* portion of the Convertible CDSC Shares then in the sub-account will also convert to Non-CDSC Shares.

12. The conversion of Convertible CDSC Shares into Non-CDSC Shares would be subject to the availability of an opinion by counsel or an Internal Revenue Service private letter ruling to the effect that the conversion does not constitute a taxable event under federal income tax law. The proposed conversion may be suspended if such a ruling or opinion is not available. In that event, no further conversions would occur and the Convertible CDSC Shares might be subject to higher Plan Payments for an indefinite period.

13. Different classes within a Fund will have different exchange privileges. Shares may be exchanged at net asset value for shares of the corresponding class of certain other Funds. Exchange privileges will comply with rule 11a–3 under the Act.

B. The CDSC

14. Applicants request that the Funds be permitted to assess a CDSC on certain classes of shares. In no event would the CDSC exceed 6% of the aggregate purchase payments made by an investor in a CDSC class. The CDSC of any particular Fund may be lower than 6%. The amount of the CDSC to be imposed in any given instance will depend on the number of years elapsed since the investor purchased the shares being redeemed, as set forth in the Fund's prospectus. The amount of the CDSC and the timing of its imposition may vary among the Funds. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption. The CDSC will comply, to the extent applicable, with the requirements of Article III, Section 26(d) of the Rules of Fair Practice of the NASD.

15. The CDSC will not be imposed on redemptions of shares that were purchased more than six years prior to the redemptions (the "CDSC Period"), or on shares derived from reinvestment of dividends or distributions. No CDSC will be imposed on an amount that represents an increase in the value of a shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions, then of shares held by the shareholder for a period equal to

CDSC Shares then in the sub-account will also convert to Non-CDSC Shares.

12. The conversion of Convertible CDSC Shares into Non-CDSC Shares would be subject to the availability of an opinion by counsel or an Internal Revenue Service private letter ruling to the effect that the conversion does not constitute a taxable event under federal income tax law. The proposed conversion may be suspended if such a ruling or opinion is not available. In that event, no further conversions would occur and the Convertible CDSC Shares might be subject to higher Plan Payments for an indefinite period.

13. Different classes within a Fund will have different exchange privileges. Shares may be exchanged at net asset value for shares of the corresponding class of certain other Funds. Exchange privileges will comply with rule 11a–3 under the Act.

B. The CDSC

14. Applicants request that the Funds be permitted to assess a CDSC on certain classes of shares. In no event would the CDSC exceed 6% of the aggregate purchase payments made by an investor in a CDSC class. The CDSC of any particular Fund may be lower than 6%. The amount of the CDSC to be imposed in any given instance will depend on the number of years elapsed since the investor purchased the shares being redeemed, as set forth in the Fund's prospectus. The amount of the CDSC and the timing of its imposition may vary among the Funds. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption. The CDSC will comply, to the extent applicable, with the requirements of Article III, Section 26(d) of the Rules of Fair Practice of the NASD.

15. The CDSC will not be imposed on redemptions of shares that were purchased more than six years prior to the redemptions (the "CDSC Period"), or on shares derived from reinvestment of dividends or distributions. No CDSC will be imposed on an amount that represents an increase in the value of a shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions, then of shares held by the shareholder for a period equal to or greater than the CDSC Period, and finally of other shares held by the shareholder for the longest period of time. This will result in a charge, if any, imposed at the lowest possible rate. No CDSC will be imposed on any shares issued prior to the date of the order granting exemptive relief.

16. Applicants request the ability to waive or reduce the CDSC: (a) On redemptions following death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder if redemption is made within one year after death or disability of a shareholder; (b) in connection with distributions from an individual retirement account ("IRA"), or other qualified retirement plan, in the limited circumstances described in the application; (c) in connection with redemptions of shares purchased by current or retired officers, directors or trustees, and current or retired employees of the Trust or any other investment company relying on the request order, SAFECO Corporation or affiliated companies, and by the members of the immediate families of such persons; (d) in connection with redemptions made by registered representatives or full time employees of brokers and dealers and other financial institutions which have entered into dealer agreements with the Distributor, and the children, siblings, and parents of such representatives and employees; (e) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (f) in connection with redemptions by large accountholders of a Fund's shares; (g) in connection with redemptions effected by advisory accounts managed by SAM or any affiliated company; (h) in connection with redemptions by tax-exempt employee benefit plans, in the limited circumstances described in the application; (i) on redemptions effected pursuant to each Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the effective minimum account size; (j) in connection with redemptions by banks, trust companies, registered investment advisers, and other financial institutions with trust powers which use trust funds to purchase shares of a Fund, in the limited circumstances described in the application; (k) redemptions made in connection with participant-directed exchange between options in an employer-sponsored benefit plan; (l) redemptions made for the purpose of providing cash to fund a loan to a participant in a tax-qualified retirement plan; (m) redemptions made in connection with a distribution from any retirement plan or account that involves the return of an excess deferral amount pursuant to section 401(k)(8) or section 402(g)(2) of the Code or the return of excess aggregate contributions pursuant to section 401(m)(6) of the Code, any other distribution of excess funds permitted to be made without penalty under the Code, and any redemption made in connection with a distribution (from a qualified profit-sharing or stock bonus plan described in section 401(k) of the Code) to a participant or beneficiary under section 401(k)(2)(B)(IV) of the Code upon hardship of the covered employee; (n) redemptions made on behalf of accounts as to which a financial institution or broker-dealer charges an account management fee, where the financial institution or broker-dealer has entered into an agreement with the Distributor regarding such accounts; (o) redemptions made by or for the benefit of states, counties or cities, or any instrumentalities, departments or authorities thereof, in the limited circumstances described in the application; and (p) redemptions made by any company affiliated with SAFECO Corporation.

17. If a Fund waives or reduces the CDSC, such waiver or reduction will be uniformly applied to all offerees of the particular class of the Fund's shares. In waiving or reducing the CDSC, the Funds will comply with the requirements of rule 22d–1 under the Act. The CDSC will be waived or reduced as provided in a Fund's prospectus at the time the investor purchased the shares.

18. Applicants also request the ability to provide a *pro rata* credit of any CDSC paid in connection with a redemption followed by a reinvestment effected within a specified period not exceeding 365 days from the redemption. Such credit will be paid by the Distributor.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act providing an exemption from section 18(f)(1), 18(g), and 18(i) to the extent that the proposed Multiple Class System may be deemed to (a) result in a "senior security" within the meaning of section 18(g) and to be prohibited by section 18(f)(1); and/or (b) violate the equal voting provisions of section 18(i). Applicants also request an order pursuant to section 6(c) providing an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder, to the extent necessary to permit the

imposition of a CDSC on certain redemptions of shares, and the waiver or reduction of the CDSC in certain circumstances.

2. Applicants state that the Multiple Class System has been developed to provide investors with the option within the same Fund of choosing to purchase Shares with varying sales load and distribution structures. Applicants assert that by implementing the Multiple Class System, the Funds may be able to achieve added flexibility in meeting the service and investment needs of shareholders and future investors.

3. Applicants believe that the proposed allocation of expenses and voting rights in the manner described in the application is equitable and would not discriminate against any group of shareholders. Although investors purchasing shares offered in connection with a Plan and/or bearing particular Class Expenses would bear the costs associated with the related services, they would also enjoy the benefits of those services and the exclusive shareholder voting rights with respect to matters affecting the applicable Plan. Conversely, investors purchasing shares that are not covered by a Plan or not bearing Class Expenses would not be burdened with such expenses or enjoy such voting rights.

4. Applicants state that because the rights and privileges of classes with respect to any Fund would be substantially identical, the possibility that their interests would ever conflict is remote. The proposed arrangement described in the application does not involve borrowings and does not affect the Funds' assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a Fund, because all shares will participate in all of the Fund's appreciation, income, and expenses. No class of shares will have any preference or priority over any other class in a Fund in the usual sense (that is, no class will have distribution or liquidation preferences with respect to particular assets and no class will be protected by any reserve or other account).

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order granting the requested relief:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund will relate solely to one or more of the following: (a) Expenses assessed to a class pursuant to a Plan, if any, with respect to such class; (b) the impact of Class Expenses, which will be limited to any or all of the following: (i) transfer agent fees identified as being attributable to a specific class of Shares, (ii) stationery, printing, postage, and delivery expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class, (iii) Blue Sky registration fees incurred by a class of shares, (iv) Commission registration fees incurred by a class of shares, (v) expenses of administrative personnel and services as required to support the shareholders of a specific class, (vi) Trustees' fees or expenses incurred as a result of issues relating to one class of shares, (vii) accounting expenses relating solely to one class of shares, (viii) auditors fees, litigation expenses, and legal fees and expenses relating to a class of shares, (ix) expenses incurred in connection with shareholders meetings as a result of issues relating to one class of shares, and (x) any other incremental expenses subsequently identified which should be properly allocated to a particular class of shares and which, as such, are approved by the Commission pursuant to an amended order; (c) the fact that the classes will vote separately with respect to matters relating to the Fund's Distribution Plan, if any, or any other matters appropriately limited to such class(es), except as provided in condition 15 below; (d) the different exchange privileges of the classes of shares, if any; (e) the designation of each class of shares of a Fund; and (f) certain conversion features offered by some of the classes.

2. The Trustees, including a majority of the Trustees who are not interested persons of the Trust ("Independent Trustees"), will have approved the Multiple Class System with respect to a particular Fund prior to the implementation of the system by that Fund. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multiple Class System will reflect in detail the reasons for the determination by the Trustees that the proposed Multiple Class System is in the best interests of each Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. If any class will be subject to a Shareholder Services Plan, the Plan(s) will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

5. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund, as applicable, for the existence of any material conflicts among the interests of the classes of its shares, if there is more than one class. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Fund's investment manager and/or Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If such a conflict arises, the Fund's investment manager and/or Distributor, at their own expense, will take such actions as are necessary to remedy such conflict, including establishing a new registered management investment company, if necessary.

6. The Trustees of the Trust will receive quarterly and annual statements concerning the amounts expended under the Plans complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any fee for services charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties.

7. Dividends and other distributions paid by a Fund with respect to each class of its shares, to the extent any dividends and other distributions are paid, will be declared and paid on the same day and at the same time, and will be determined in the same manner and will be in the same amount, except that the amount of the dividends and other distributions declared and paid by a particular class may be different from that of another class because Plan Payments made by a class under a Plan and other Class Expenses will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and other distributions of the classes and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the Commission, stating that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon written request to the Funds for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, and any Regional Administrators or Associate or Assistant Administrators. The initial report of the Expert is a report on the "Design of a System," including policies and procedures related thereto to be placed into operation, as defined and described in Statement of Auditing Standards ("SAS") No. 70 of the American Institute of Certified Public Accountants ("AICPA") and the ongoing reports will be "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness" as defined and described in SAS No. 70, of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and other distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition

particular class may be different from that of another class because Plan Payments made by a class under a Plan and other Class Expenses will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and other distributions of the classes and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the Commission, stating that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon written request to the Funds for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, and any Regional Administrators or Associate or Assistant Administrators. The initial report of the Expert is a report on the "Design of a System," including policies and procedures related thereto to be placed into operation, as defined and described in Statement of Auditing Standards ("SAS") No. 70 of the American Institute of Certified Public Accountants ("AICPA") and the ongoing reports will be "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness" as defined and described in SAS No. 70, of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and other distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 8 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants will take immediate corrective action if the Expert or appropriate substitute Expert does not so concur in the ongoing reports.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Multiple Class System will be set forth in guidelines that will be furnished to the Trustees.

11. Each of the Funds will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, conversion features, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through such prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares separately.

12. The prospectus of each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different levels of compensation with respect to one particular class of shares over another in the Fund.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval of, authorization of, or acquiescence in any particular level of payments that any Fund may make pursuant to a Plan in reliance on the exemptive order.

14. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to a Distribution Plan (or, if presented to shareholders, adopts or implements any amendment of a Shareholder Services Plan) that would increase materially the amount that may be borne by the Non-CDSC Shares under the Plan, then existing CDSC Shares will stop converting into the Non-CDSC Shares unless the holders of a majority of Convertible CDSC Shares, as defined in the Act, voting separately as a class, approve the amendment. The Trustees shall take such action as is necessary to ensure that existing Convertible CDSC Shares are exchanged or converted into a new Class of Shares ("New Non-CDSC Shares"), identical in all material respects to Non-CDSC Shares as they existed prior to implementation of the amendment, no later than the date such shares previously were scheduled to convert into Non-CDSC Shares. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Convertible CDSC Shares for a new class ("New Convertible CDSC Shares") of shares, identical to existing Convertible CDSC Shares in all material respects except that the New Convertible CDSC Shares will convert into the New Non-CDSC Shares. The New Non-CDSC Shares and New Convertible CDSC Shares may be created without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 5, any additional cost associated with the creation, exchange, or conversion of the Non-CDSC Shares or New Convertible CDSC Shares shall be borne solely by the Fund's investment manager or Distributor. Convertible CDSC Shares sold after the implementation of the amendment may convert into Non-CDSC Shares subject to the higher maximum payment, provided that the material features of the Non-CDSC Shares plan and the relationship of such plan to the Convertible CDSC Shares are disclosed in an effective registration statement.

16. The Distributor will adopt compliance standards as to when each class of shares may be sold to particular

investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

17. Applicants will comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16169 (November 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16041 Filed 6–30–94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–20374; 812–8832]

American National Insurance Company, et al.

June 24, 1994.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: American National Insurance Company ("American National"), American National Variable Annuity Separate Account (the "Separate Account") and Securities Management and Research, Inc. ("SM&R").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order amending a prior order to the extent necessary to permit the deduction from the assets of the Separate Account of mortality and expense risk charges imposed under certain individual and group deferred variable annuity contracts and individual single premium immediate annuity contracts and the distribution expense charge imposed under the individual deferred annuity contracts.

FILING DATE: The application was filed on February 10, 1994 and amended on March 22, 1994 and May 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549. Applicants, c/o Gregory S. Garrison, Esq., Greer, Herz and Adams, L.L.P., One Moody Plaza, 18th Floor, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. American National is a stock life insurance company organized under the laws of the State of Texas. SM&R is a broker-dealer registered under the Securities Exchange Act of 1934 and is the principal underwriter for the Contracts.

2. American National established the Separate Account on July 30, 1991 pursuant to the insurance laws of the State of Texas. The Contracts provide for accumulation of contract values except for immediate annuity contracts) and payment of annuity benefits on a fixed and/or variable basis. The variable portion of the Contracts will be funded initially through twelve subaccounts of the Separate Account. Each Subaccount invests its assets in the shares of one of twelve currently available portfolios of certain open-end, management investment companies.

3. The Contracts are available for retirement plans which do not qualify for the special federal tax advantages available under the Internal Revenue Code and for retirement plans which do qualify for the federal tax advantages available under the Internal Revenue Code. Purchase payments under the Contracts may be made to the general account of American National, the Separate Account or allocated between them. The Minimum initial purchase payment is $2,000 and the minimum subsequent payment is $100 for an unallocated group contract. The minimum initial and subsequent purchase payment for qualified and non-qualified individual deferred annuity contracts is $100. The minimum payment for an immediate annuity contract is $2,000.

4. During the accumulation period of the deferred annuity contracts, amounts allocated to the Separate Account may be transferred among the subaccounts and/or to the general account. A transfer fee of $10 is assessed on the fifth and each subsequent transfer (other than transfers resulting from policy loans) within the contract year. The transfer fee is imposed to compensate American National for the cost of effecting the transfer. American National does not expect to profit from such charge.

5. American National assesses an annual contract fee against each deferred annuity contract. For non-qualified individual deferred annuity contracts the fee is $25. For qualified individual deferred contracts the fee is $30. American National assesses a $300 annual fee against unallocated group deferred annuity contracts. American National assesses a one-time contract fee of $100 against immediate annuity contracts. The annual contract fee is charged at the end of each contract year to cover American National's fixed cost of administering the Contracts. In addition, an administrative asset fee is charged daily to each subaccount to cover the varying costs of administering the Contracts. The fee is 0.10% annually for qualified and non-qualified individual deferred annuity contracts and 0.20% annually for unallocated group deferred annuity contracts. These charges are designed only to reimburse American National for the cost of administration and are not intended to produce a profit.

6. American National assesses a contingent deferred sales charge on withdrawals of that portion of a Contract's accumulation value representing purchase payments. The surrender charge, which is based upon the number of contract years since the contract year in which a purchase payment was made, declines at a rate of 1% per year from 8% in the first year to 0% of the amount withdrawn after eight contract years.

7. If an annuitant under a deferred annuity contract (other than an unallocated group contract) dies during the accumulation period, a death benefit will be payable to the beneficiary. The death benefit is equal to the greater of: (1) The accumulation value (less any policy debt) at the end of the valuation period during which due proof of death is received by American National; or (2) the total dollar amount of purchase payments, minus the sum of: (a) The total amount of any partial withdrawals; and (b) any policy debt. The death benefit under a group unallocated contract will be determined by the applicable plan.

8. Annuity payments will not be affected by the mortality experience of persons receiving such payments or of the general population. The annuity rates cannot be changed under the Contracts. For (1) assuming the risk that the life of annuitant will be greater than that assumed in the guaranteed annuity purchase rates, and (2) providing the death benefits prior to the annuity date, American National deducts a mortality risk charge from the Separate Account. The charge is deducted from each subaccount during each valuation period at an annual rate of 0.80% of the net asset value of each subaccount.

9. American National also bears the risk that the administration charges will be insufficient to cover the costs of administering the Contracts. For assuming this expense risk, American National deducts an expense risk charge from the Separate Account. The charge is deducted from each Subaccount during each valuation period at an annual rate of 0.45% of the net asset value of the Subaccount.

10. American National also bears the risk that the surrender charges will be insufficient to cover the costs of distributing the Contracts. For assuming this risk, American National deducts a distribution expense charge from the Separate Account. The charge is deducted from each subaccount during each valuation period at an annual rate of 0.25% of the net asset value of the subaccount.

11. A Commission Order was issued on December 29, 1993 (Investment Company Act Release No. 19985, the "Prior Order"), granting exemptions from the provisions of Sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit the deduction from the assets of the Separate Account of the mortality and expense risk charges imposed under the Contracts. The contingent deferred sales charge described in the notice of application for the Prior Order began at 8.5% for certain of the Contracts and declined over twelve contract years. Applicants now seek an order amending the Prior Order to include relief for the distribution expense charge and recognizing certain changes made to the contingent deferred sales charge.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities, or transactions from any provision of the

benefit under a group unallocated contract will be determined by the applicable plan.

6. Annuity payments will not be affected by the mortality experience of persons receiving such payments or of the general population. The annuity rates cannot be changed under the Contracts. For (1) assuming the risk that the life of annuitant will be greater than that assumed in the guaranteed annuity purchase rates, and (2) providing the death benefits prior to the annuity date, American National deducts a mortality risk charge from the Separate Account. The charge is deducted from each subaccount during each valuation period at an annual rate of 0.80% of the net asset value of each subaccount.

9. American National also bears the risk that the administration charges will be insufficient to cover the costs of administering the Contracts. For assuming this expense risk, American National deducts an expense risk charge from the Separate Account. The charge is deducted from each Subaccount during each valuation period at an annual rate of 0.45% of the net asset value of the Subaccount.

10. American National also bears the risk that the surrender charges will be insufficient to cover the costs of distributing the Contracts. For assuming this risk, American National deducts a distribution expense charge from the Separate Account. The charge is deducted from each subaccount during each valuation period at an annual rate of 0.25% of the net asset value of the subaccount.

11. A Commission Order was issued on December 29, 1993 (Investment Company Act Release No. 19985, the "Prior Order"), granting exemptions from the provisions of Sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit the deduction from the assets of the Separate Account of the mortality and expense risk charges imposed under the Contracts. The contingent deferred sales charge described in the notice of application for the Prior Order began at 8.5% for certain of the Contracts and declined over twelve contract years. Applicants now seek an order amending the Prior Order to include relief for the distribution expense charge and recognizing certain changes made to the contingent deferred sales charge.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities, or transactions from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 27(c)(2) of the 1940 Act prohibits the issuer of a periodic payment plan certificate, and any depositor or underwriter for such issuer, from selling such periodic payment plan certificate unless proceeds of payments on such certificates (other than sales loads) are held under an indenture or agreement containing specified provisions. Section 26(a)(2) and the Rules thereunder do not permit a deduction from the assets of a separate account for mortality and expense risk charges or distribution expense charges.

3. Applicants represent that the mortality risk is assumed by virtue of the annuity rates and the death benefit guaranteed in the Contracts. Applicants also represent that the Contract administration charges will not increase regardless of the actual costs incurred. According to the Applicants, if the mortality or expense risk charges or the distribution expense charges are insufficient to cover the actual costs, American National will bear the loss. To the extent that the charges are in excess of actual costs, American National may use the excess at its discretion to offset losses when the charges are not sufficient to cover expenses or to pay other expenses, including distribution expenses.

4. Applicants assert that the mortality and expense risk charge of 1.25% is reasonable in relation to the risks assumed by American National under the Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that these determinations are based on their analysis of publicly available information about similar industry practices, and by taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. American National undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making these determinations.

5. Applicants represent that the amount of any surrender charge imposed, when added to any distribution expense charge previously paid, will not exceed 9% of purchase payments and that American National will monitor each Contract owner's account for the purpose of ensuring that this limitation is not exceeded. Applicants also undertake to include a statement in the Contracts' prospectus describing the purpose of the distribution expense charge and stating that the staff of the Securities and Exchange Commission deems such distribution expense charge to constitute a deferred sales charge.

6. Applicants represent that American National has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. American National represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion. American National further represents that the assets of the Separate Account will be invested only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the Act, to have such plan formulated and approved by their board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applicants submit that the exemptive relief requested in the application is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16008 Filed 6–30–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 99000124]

Brunnemer & Company; Application for A License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Brunnemer & Company, 6337 Morrison Boulevard, Charlotte, North Carolina 28211 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1993).

The officers, directors and sole shareholder of the Applicant are as follows:

Name and address	Title and/or relationship	Percent of ownership of the applicant
H. Keith Brunnemer, 809 Edgehill Road, South Charlotte, NC 28207–1881	President, Treasurer, Director	100
Edward S. Goode, 1408 Baltimore Drive, Charlotte, North Carolina 28207	Director	
Kate W. Hendrix, 1218 Hunting Ridge Drive, Belmont, North Carolina 28012	Secretary, Assistant Treasurer, Director	
Carolinas Capital Investment Corporation, 6337 Morrison Boulevard, Charlotte, North Carolina 28211	Manager	

The Applicant will be managed by Carolinas Capital Investment Corporation, which is a venture capital management company founded by Mr. H. Keith Brunnemer and Mr. Edward S. Goode.

The Applicant, a North Carolina Corporation will begin operations with $2,500,000 in private capital. The Applicant will conduct its activities primarily in North Carolina and South Carolina but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to Associate Administrator for Investment, Small Business Administration, 409 3rd Street, S.W., 6th Floor, Washington, D.C. 20416.

A copy of the Notice shall be published in a newspaper of general circulation in Charlotte, North Carolina.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: June 21, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–16098 Filed 6–30–94; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000113]

Seacoast Capital Partners L.P.; Filing of an Application for a License To operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Seacoast Capital Partners Limited Partnership, 55 Ferncroft Road, Danvers, Massachusetts, 01923, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et seq.), and the Rules and Regulations promulgated thereunder. Seacoast Capital Partners Limited Partnership is a Delaware Limited Partnership.

Seacoast Capital Partners Limited Partnership will be managed by Signal Capital Corporation, located at the same address as the applicant. Itel Corporation, 2 North Riverside Plaza, Chicago, Illinois 60606, is the sole beneficial owner of Signal Capital Corporation and Seacoast Capital Partners Limited Partnership. The officers and management of Seacoast Capital Partners limited Partnership are:

Name and Title

Eben S. Moulton—President and Secretary
Walter Leonard—VP Finance, Signal Capital
Gregory Hulecki—Investment Manager
Paul Giovacchini—Investment Manager

Seacoast Capital Corporation, the general partner, is a wholly owned subsidiary of Signal Capital Corporation and owns 99% of the applicant. Seacoast Capital Corporation II, also a wholly owned subsidiary of Signal Capital Corporation, owns the remaining 1% limited partnership interest. One investor beneficially owns more than 10 percent of the applicant through his investments in the Itel Corporation he is: Samuel Zell, Itel Corporation, 2 North Riverside Plaza, Chicago Illinois, 60606.

The applicant will begin operations with capitalization of approximately $5 million and will be a source of debt and equity financing for qualified small business concerns. The applicant will conduct its operations primarily in the Commonwealth of Massachusetts but will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Danvers, Massachusetts.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: June 24, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–16097 Filed 6–30–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Mahalo Air, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 94–6–39) Docket 49087.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Mahalo Air, Inc., fit, willing, and able and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than July 8, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 49087 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division, X–56, Room 6401, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2343.

Dated: June 28, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–16072 Filed 6–30–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 24, 1994

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0113.
Form Number: CF 1002.
Type of Review: Extension.
Title: Certificate of Payment of Tonnage Tax.
Description: The Certificate of Payment of Tonnage Tax is generated by U.S. Customs upon payment of tonnage tax and light money by master of the vessel. It is presented to Customs upon each entry of the vessel during the tonnage year to ensure against overpayment of tonnage taxes.
Respondents: Businesses or other for-profit.

it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than July 8, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 49087 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division, X–56, Room 6401, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2343.

Dated: June 28, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–16072 Filed 6–30–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 24, 1994

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0113.
Form Number: CF 1002.
Type of Review: Extension.
Title: Certificate of Payment of Tonnage Tax.
Description: The Certificate of Payment of Tonnage Tax is generated by U.S. Customs upon payment of tonnage tax and light money by master of the vessel. It is presented to Customs upon each entry of the vessel during the tonnage year to ensure against overpayment of tonnage taxes.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 133,839.
Estimated Burden Hours Per Recordkeeper: 1 minute.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 3,905 hours.

Clearance Officer: LaVerne Williams (202) 927–1555, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, N.W., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–16004 Filed 6–30–94; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

June 24, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0022.
Form Number: IRS Form 712.
Type of Review: Extension.
Title: Life Insurance Statement.
Description: Form 712 is used to establish the value of life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 60,000.
Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—18 hours, 25 minutes; Preparing the form—18 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 1,122,600 hours.
OMB Number: 1545–0025.
Form Number: IRS Form 851.
Type of Review: Extension.
Title: Affiliations Schedule.
Description: Form 851 is filed by the parent corporation for itself and the affiliated corporations in the affiliated group of corporations that files a consolidated return (Form 1120). Form 851 is attached to the 1120. This information is used to identify the members of the affiliated group, the tax paid by each, and to determine that each corporation qualifies as a member of the affiliated group as defined in section 1504.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 4,000.
Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—8 hours, 51 minutes; Learning about the law or the form—35 minutes; Preparing and sending the form to the IRS—45 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 40,840 hours.
OMB Number: 1545–1091.
Form Number: IRS Form 8810.
Type of Review: Revision.
Title: Corporate Passive Activity Loss and Credit Limitations.
Description: Under section 469, losses and credits from passive activities, to the extent they exceed passive income (or in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 100,000
Estimated Burden Hours Per Respondent/Recordkeeper: Recordkeeping—26 hours, 19 minutes; Learning about the law or the form—5 hours, 22 minutes; Preparing and sending the form to the IRS—6 hours, 2 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 3,770,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–3176, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–16005 Filed 6–30–94; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 126
Friday, July 1, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 11 a.m., Wednesday, July 6, 1994.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 273-1940.

Dated: Washington, DC, June 28, 1994.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 94-16171 Filed 6-29-94; 1:13 pm]

BILLING CODE 7545-01-M

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, July 7, 1994, 9:15 a.m.-5:00 p.m.

LOCATION: First Floor Conference Room, 1550 M Street, NW., Washington, DC 20005.

STATUS: (Open Session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98-525.

AGENDA: Approval of Minutes of the Sixty-fifth Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Selection of Spring Cycle of Unsolicited Grants; Selection of 1995 Solicited Grant Topic.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: (202) 457-1700.

Dated: June 29, 1994.

Charles E. Nelson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 94-16170 Filed 6-29-94; 1:12 pm]

BILLING CODE 3155-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-25]

TIME AND DATE: July 29, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification list.
4. Inv. No. 731-TA-659 (Final) (Grain Oriented Silicon Electrical Steel from Italy)—briefing and vote.
5. Outstanding action jacket: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: June 23, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-16126 Filed 6-28-94; 5:04 pm]

BILLING CODE 7020-02-P-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-24]

TIME AND DATES: July 20, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification list.
4. Inv. No. 731-TA-706 (Preliminary) (Pineapple from Thailand)—briefing and vote.
5. Outstanding action jacket: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: June 23, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-16125 Filed 6-28-94; 5:04 pm]

BILLING CODE 7020-02-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-23]

TIME AND DATE: July 12, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification list
4. Inv. No. 731-TA-702 (Preliminary) (Ferrovanadium from Russia)—briefing and vote
5. Inv. Nos. 731-TA-703-705 (Preliminary) (Furfuryl Alcohol from China, South Africa, and Thailand)—briefing and vote
6. Outstanding action jackets:
   1. GC-94-067; **Federal Register** notice in Inv. No. 337-TA-360 (Certain Devices for Connecting Computers via Telephone Lines)
   2. OP-94-002; Inv. No. 332-344 (The Economic Effects of Anti-dumping and Countervailing Duty Orders and Suspension Agreements)

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary (202) 205-2000.

Issued: June 23, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-16124 Filed 6-28-94; 5:04 pm]

BILLING CODE 7020-02-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-22]

TIME AND DATE: July 8, 1994 at 4:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification list
4. Inv. No. 22-54 (Wheat, Wheat Flour, and Semolina)—briefing and vote.
5. Outstanding action jackets:
   1. GC-94-065; A matter concerning Inv. No. 337-TA-333 (Certain Woodworking Accessories) (Ancillary Proceedings)

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: June 23, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-16123 Filed 6-28-94; 5:04 pm]

BILLING CODE 7020-02-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

INSTITUTE OF MUSEUM SERVICES

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: June 23, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16123 Filed 6–28–94; 5:04 pm]

BILLING CODE 7020–02–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

INSTITUTE OF MUSEUM SERVICES

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME/DATE: 9:00 a.m. to 3 p.m.—Friday—July 22, 1994.

STATUS: Open.

ADDRESS: Nancy Hanks Center at the Old Post Office Pavilion, 1100 Pennsylvania Avenue, NW., Room 527, Washington, DC 20506, 202/606–8536.

FOR FURTHER INFORMATION CONTACT: Elsa Mezvinsky, Special Assistant to the Director, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506—(202) 606–8536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Friday, July 22, 1994 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

NATIONAL MUSEUM SERVICES BOARD:

July 22, 1994—Meeting Agenda

I. NMSB Chairman's Report and Approval of Minutes from April 21, 1994 Meeting
II. Guest Address to the Board
III. Agency Director's Report
IV. Agency Agenda Reports: Programs
V. Agency Agenda Reports: Appropriations/ Reauthorization
VI. Agency Agenda Reports: Legislative Other/Public Affairs

Dated: June 21, 1994.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and the Humanities, Institute of Museum Services.

[FR Doc. 94–16122 Filed 6–28–94; 5:03 pm]

BILLING CODE 7036–01–M

UMI
1994
JL
1
6
ISS
1
2
VOL
5 9

Schedule

federal register

Friday
July 1, 1994

Part II

Federal Trade Commission

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy Act; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") announces amendments to 16 CFR Part 305, hereinafter referred to as "the Appliance Labeling Rule" or "the Rule". The Commission initiated this rulemaking to address issues raised by Commission staff and interested parties during the course of rule enforcement since 1980. Some amendments are to the format of the required EnergyGuide labels. Other amendments will require product-specific labels on furnaces; give furnace manufacturers the option of disclosing additional energy usage information on fact sheets or in an industry directory; modify the sub-categories used in connection with the ranges of comparability for certain products; require the disclosure of different energy usage descriptors for some product categories; change the specifications for label adhesion strength; and modify the Rule in certain other minor respects.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Enforcement Division, FTC, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 5, 1993, the Commission published a Notice of Proposed Rulemaking ("the 1993 NPR") proposing changes to the Rule.[1] Some of the Commission's proposals in the 1993 NPR were based on comments submitted in response to an earlier Notice of Proposed Rulemaking published on June 13, 1988 ("the 1988 NPR"), proposing changes to the Rule.[2] The Commission initiated this rulemaking in 1988 because various interested persons had asked the Commission to consider modifications to the Rule since it became effective on May 19, 1980.[3] The 1988 NPR invited comment on a number of suggestions interested persons had proposed, including the effect of the National Appliance Energy Conservation Act ("NAECA 87")[4] appliance efficiency standards, and a proposal to exempt from coverage certain unvented space heaters.

The 1993 NPR addressed certain issues and proposed amendments that had not been raised in the 1988 NPR, such as changes in the form and substance of the EnergyGuide labels, proposals to update the Rule in light of changes in related Department of Energy ("DOE") regulations, and changes in the energy efficiency descriptor nomenclature. The Commission also allowed comment on the other proposed amendments that had been subject to prior comment. The Commission requested in the 1993 NPR that any such additional comments be in the nature of rebuttal comments identifying analytical flaws or misunderstandings, rather than repetitions of earlier comments. Finally, in accordance with a statutory directive, the Commission invited comment on whether metric terms should be included in certain Rule provisions.

Parts III and IV, below, discuss the issues on which comments were sought, the comments the Commission received, and the responsive amendments the Commission has adopted. Part V discusses new issues raised by the most recent round of comments; Part VI addresses the comments on the use of metric terms in connection with certain of the Rule's requirements; and Parts VII and VIII discuss the requirements of the Regulatory Flexibility Act and the Paperwork Reduction Act, respectively. The amended Rule sections appear in "Text of Amendments."

II. Background

The Energy Policy and Conservation Act of 1975 ("EPCA"),[5] as amended, requires the Commission to prescribe labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for the following products: (1) Refrigerators, refrigerator-freezers, and freezers; (2) room air conditioners; (3) central air conditioners and heat pumps; (4) water heaters; (5) furnaces; (6) dishwashers; (7) clothes washers; (8) clothes dryers; (9) direct heating equipment; (10) kitchen ranges and ovens; (11) pool heaters; (12) television sets; (13) fluorescent lamp ballasts; (14) specified lamp products; (15) showerheads, except safety shower showerheads; (16) faucets; (17) water closets; (18) urinals; and (19) any other type of product that the Department of Energy ("DOE") classifies as a covered product. 42 U.S.C. 6292(a); 6294(a)(1), (2)(A–E). For products in categories (1) through (12) and (19), the Commission is not required to prescribe labeling rules until DOE has prescribed test procedures to measure the energy use of a particular covered product. 42 U.S.C. 6294(b)(3). Moreover, the Commission may exempt from the Rule products in categories:

(a) 1, 2, 4, 6 and 8 through 12 if it determines that labeling is not technologically or economically feasible, 42 U.S.C. 6294(a)(1); and,

(b) 3, 5 and 7 if labeling is not technologically or economically feasible or not likely to assist consumers in making purchasing decisions, 42 U.S.C. 6294(a)(2)(A).[6]

With regard to products in categories (1) through (12) and (19), EPCA states that the Commission must require the labels to disclose the estimated annual operating cost of such products, as determined by DOE test procedures, unless DOE determines that disclosure of estimated annual operating costs is not technologically feasible, or the Commission determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. If DOE or the Commission makes these determinations, then the Commission must require disclosure of a different useful measure of energy consumption, as determined in accordance with DOE test procedures. 42 U.S.C. 6294(c).

On November 19, 1979 the Commission issued a final Rule covering seven appliance categories then covered by DOE test procedures: refrigerators and refrigerator freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces.[7] The Rule subsequently was amended to cover central air conditioners and air conditioning heat pumps, fluorescent lamp ballasts, plumbing products, and lamps.[8] For most product categories, the Rule requires that annual operating costs in dollars and related information be disclosed on labels, called EnergyGuides, and in retail sales catalogs. For three categories (room air conditioners, furnaces, and central air conditioners (including heat pumps)), in which usage cycles depend on disparate climate conditions across the U.S. and an "average" energy cost would be irrelevant to many consumers (and therefore not likely to assist in making purchasing decisions), the required disclosure is the energy efficiency rating ("EER").[9] For room and central air conditioners, the EERs must be disclosed on labels; for furnaces, the EERs must be disclosed on fact sheets.[10] Corresponding cost information must be disclosed on the label for room air conditioners, on fact sheets for furnaces, and on fact sheets or in an industry directory for central air conditioners.[11]

---

[1] 58 FR 12818. The Commission's Rule is codified at 16 CFR Part 305.

[2] 53 FR 22106.

[3] The Commission also had received comments during the review of the Rule under the Regulatory Flexibility Act regarding ways to modify the Rule. The Commission announced the completion of the review of the Rule under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) in the **Federal Register** on June 13, 1988, at 53 FR 22022.

[4] The National Appliance Energy Conservation Act ("NAECA 87"), Pub. L. 100–12, 101 Stat. 103 (1987).

[5] Pub. L. 94–163, 89 Stat. 871 (1975), as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3258, (1978), the National Appliance Energy Conservation Act, Pub. L. 100–12, 101 Stat 103 (1987), the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100–357, 102 Stat. 671 (1988), and the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992), 42 U.S.C. 6291 *et seq.* The Commission is currently considering whether to include pool heaters as covered products under the Rule. 58 FR 7852 (Feb. 9, 1993). The products in categories (14)–(18) were recently added to the list of covered products in EPCA by the Energy Policy Act of 1992. 42 U.S.C.A. 6292(a)(14)–(18) (West Supp. 1993).

The Commission amended the Rule to address products in categories (15)–(18) on October 25, 1993 (58 FR 54955) and products in category (14) on May 13, 1994 (58 FR 25176).

[6] There is an additional exemption provision for lamps that is not pertinent to this analysis. See 42 U.S.C.A. 6294(a)(2)(C)(ii) (West Supp. 1993).

[7] 16 CFR Part 305. The Statement of Basis and Purpose ("SBP") for the Rule describes why the Commission exempted the other categories: 44 FR at 66467–69.

[8] 52 FR 46888 (Dec. 10, 1987) (air conditioners and heat pumps); 54 FR 28031 (July 5, 1989) (lamp ballasts; pursuant to the National Appliance Energy Conservation Amendments of 1988, the Rule requires these products to bear a capital letter "E" to show that they meet the statute's minimum energy efficiency standards, rather than the information the Rule requires for other product categories); 58 FR 54955 (Oct. 25, 1993) (showerheads, faucets, water closets and urinals; water usage, rather than energy usage, must be disclosed for these products); 58 FR 25176 (May 13, 1994) (general service incandescent lamps including incandescent reflector lamps, compact fluorescent lamps, and general service fluorescent lamps).

[9] When promulgating the test procedures, DOE, as required by EPCA, developed two measures of energy consumption for each appliance category: (1) estimated dollar cost of operation, and (2) the energy factor, a measure of the useful output of an appliance's services divided by the energy input. For climate control equipment, under the Rule, the energy factor currently must be referred to as the "EER" (energy efficiency rating). As discussed in Part IV.B.3., below, however, the Commission is amending the Rule so that the acronyms used in the DOE tests and by the industry ("SEER," AFUE," "HSPF," etc.) instead must be used in advertising as well as on fact sheets and labels.

[10] As discussed in Part IV.A.2., below, however, the Commission is amending the Rule to require labels for furnaces to disclose product-specific information and a range of energy usage for all furnaces using the same fuel as the labeled model.

[11] As discussed in Part IV.A.2., below, the Commission is amending the Rule to permit manufacturers of furnaces, like manufacturers of

then covered by DOE test procedures: refrigerators and refrigerator freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces.[7] The Rule subsequently was amended to cover central air conditioners and air conditioning heat pumps, fluorescent lamp ballasts, plumbing products, and lamps.[8] For most product categories, the Rule requires that annual operating costs in dollars and related information be disclosed on labels, called EnergyGuides, and in retail sales catalogs. For three categories (room air conditioners, furnaces, and central air conditioners (including heat pumps)), in which usage cycles depend on disparate climate conditions across the U.S. and an "average" energy cost would be irrelevant to many consumers (and therefore not likely to assist in making purchasing decisions), the required disclosure is the energy efficiency rating ("EER").[9] For room and central air conditioners, the EERs must be disclosed on labels; for furnaces, the EERs must be disclosed on fact sheets.[10] Corresponding cost information must be disclosed on the label for room air conditioners, on fact sheets for furnaces, and on fact sheets or in an industry directory for central air conditioners.[11]

In addition, certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information.

III. Issues Discussed in the 1993 NPR

The 1993 NPR solicited comments on two sets of issues. The first set included proposals on which the Commission had sought comment in the 1988 NPR and about which the Commission had reached tentative conclusions. The 1993 NPR summarized the comments received in response to the 1988 NPR and explained the Commission's tentative conclusions. For these proposals, listed below, the 1993 NPR solicited only limited rebuttal comments:

(1) The effect of the implementation of NAECA 87 on the Rule;

(2) Proposed amendments to the requirements for furnaces;

(3) Proposed amendments to the requirements for central air conditioners;

(4) Proposed amendments to change the sub-categories on which ranges of comparability are based for room air conditioners;

(5) Proposed amendments to change the sub-categories on which ranges of comparability are based for certain other products;

(6) Proposed amendments to change the energy usage descriptor for several products from dollars to an alternate descriptor;

(7) Proposed changes to the label adhesion strength requirements;

(8) An industry suggestion to label only display models in retail outlets;

(9) A proposal to extend the "directory option" to manufacturers of water heaters; and,

(10) A proposal to label certain unvented heaters.

The 1993 NPR also solicited comments on a second group of proposals, listed below, that had not been previously discussed in the 1988 NPR:

(1) An industry proposal to exempt central air conditioners from labeling requirements;

(2) Minor revisions to update and improve the Rule;

(3) Using, in lieu of the term "EER," the industry terms "AFUE," "SEER," and "HSPF" as the required descriptors of the energy usage of climate control products; and,

(4) Changing the format of the required EnergyGuide labels.

The 1993 NPR also solicited comment on whether the Commission should require metric measurements. Finally, to obtain information relating to the Regulatory Flexibility Act and Paperwork Reduction Act, the 1993 NPR asked about the effect of the proposed amendments on small businesses and the burden of the Rule's reporting and recordkeeping provisions.

In accordance with 42 U.S.C. 6306(a), the 1993 NPR afforded interested persons the opportunity to present their views in writing and orally at a public hearing. The Presiding Officer did not receive any requests for an oral presentation, so no hearing was held. During the comment period, which extended from March 5 through May 20, 1993, the Commission received 34 comments.[12] These comments were from five appliance manufacturers, three appliance industry trade associations, nineteen public utilities, two utilities trade associations, two state energy offices, one federal agency, one city and one consumer group.[13]

---

[7] 16 CFR Part 305. The Statement of Basis and Purpose ("SBP") for the Rule describes why the Commission exempted the other categories: 44 FR at 66467–69.

[8] 52 FR 46888 (Dec. 10, 1987) (air conditioners and heat pumps); 54 FR 28031 (July 5, 1989) (lamp ballasts; pursuant to the National Appliance Energy Conservation Amendments of 1988, the Rule requires these products to bear a capital letter "E" to show that they meet the statute's minimum energy efficiency standards, rather than the information the Rule requires for other product categories); 58 FR 54955 (Oct. 25, 1993) (showerheads, faucets, water closets and urinals; water usage, rather than energy usage, must be disclosed for these products); 58 FR 25176 (May 13, 1994) (general service incandescent lamps including incandescent reflector lamps, compact fluorescent lamps, and general service fluorescent lamps).

[9] When promulgating the test procedures, DOE, as required by EPCA, developed two measures of energy consumption for each appliance category: (1) estimated dollar cost of operation, and (2) the energy factor, a measure of the useful output of an appliance's services divided by the energy input. For climate control equipment, under the Rule, the energy factor currently must be referred to as the "EER" (energy efficiency rating). As discussed in Part IV.B.3., below, however, the Commission is amending the Rule so that the acronyms used in the DOE tests and by the industry ("SEER," AFUE," "HSPF," etc.) instead must be used in advertising as well as on fact sheets and labels.

[10] As discussed in Part IV.A.2., below, however, the Commission is amending the Rule to require labels for furnaces to disclose product-specific information and a range of energy usage for all furnaces using the same fuel as the labeled model.

[11] As discussed in Part IV.A.2., below, the Commission is amending the Rule to permit manufacturers of furnaces, like manufacturers of central air conditioners, to disclose the additional information in an industry directory.

[12] The comments are found on the Public Record at the Federal Trade Commission in Washington, DC under Rulemaking Record Number R611004 (Appliance Labeling Rule). They are grouped under Category D (Comprehensive Review—Industry Comments) and Category DD (Comprehensive Review—Comments from Other Sources). Other material submitted to the Public Record in this proceeding can be found under Category A (Public Notices and Petitions) and Category B (Miscellaneous Staff Materials Assembled Prior to the Initiation of the Rulemaking Proceeding).

[13] The commenters were: Amana, D–1 and D–2 (references will be to D–1, which is the later version); Whirlpool Corporation ("Whirlpool"), D–3; Maytag, D–4; The Association of Home Appliance Manufacturers ("AHAM"), D–5; The Air Conditioning and Refrigeration Institute ("ARI"), D–6; New Harmony Systems Corporation ("New Harmony"), D–7; Speed Queen, D–8; The Gas Appliance Manufacturers Association ("GAMA"), D–9; Public Service Company of North Carolina, Inc. ("PSCNC"), DD–1; Brooklyn Union Gas ("Brooklyn Gas"), DD–2; The Peoples Gas Light and Coke Company ("Peoples Gas"), DD–3; Mississippi Valley Gas Company ("Mississippi Gas"), DD–4; Pennsylvania Gas and Water Company ("PG&W"), DD–5; Atlanta Gas Light Company ("Atlanta Gas"), DD–6; Piedmont Natural Gas Company ("Piedmont Gas"), DD–7; The American Council for an Energy Efficient Economy ("ACEEE"), DD–8; The Washington State Energy Office ("WSEO"), DD–9, Elizabethtown Gas Company ("Elizabethtown Gas"), DD–10; Covington Gas Company ("Covington Gas"), DD–11; The U. S. Environmental Protection Agency ("USEPA"), DD–12; Gibson County Utility District ("Gibson County Utility"), DD–13; Mountain Fuel Supply Company ("Mountain Fuel"), DD–14; Texas Gas Transmission Corporation ("Texas Gas"), DD–15; City of Palmdale ("Palmdale"), DD–16; Oklahoma Natural Gas Company ("Oklahoma Gas"), DD–17; Memphis Light, Gas and Water Division ("Memphis Electric and Gas"), DD–18; Louisville Gas and Electric Company ("LG&E"), DD–19; Laclede Gas Company ("Laclede Gas"), DD–20; The Electric & Gas Industries Association ("EGIA"), DD–21; The American Gas Association ("AGA"), DD–22; The California Energy Commission ("CEC"), DD–23; ENTEX, a Division of ARKLA, Inc. ("ENTEX"), DD–24; Consolidated Natural Gas Company ("CNG"), DD–25; UGI Utilities, Inc. ("UGI") DD–26

IV. Discussion of Comments and Disposition of Issues

A. 1988 NPR Issues on Which Limited Comment Was Solicited

1. The Effect of the Implementation of NAECA 87 on the Rule

NAECA 87 established minimum efficiency standards for many appliances covered by the Rule, which became effective at staggered intervals between January 1, 1988, and January 1, 1993.[14] DOE has adopted rules implementing the standards requirements (hereinafter "DOE's Minimum Efficiency Standards Rule").[15] The 1988 NPR asked whether these standards would narrow the energy usage ranges of comparable products to the point that labeling would no longer be useful and whether, for this reason, the Rule should be modified.[16] In the 1993 NPR, the Commission tentatively concluded that the 1988 NPR record did not support eliminating any product categories because of the new NAECA 87 product standards.[17]

Two comments addressed the Commission's tentative 1993 NPR conclusion. CEC agreed with the Commission that the record does not support eliminating any product categories.[18] AHAM recommended that the Commission continue the Rule, but monitor the effect of the new energy standards on the products being offered for sale.[19] Accordingly, the Commission concludes that the current comments do not support any modification of its earlier tentative decision not to eliminate any specific product category from coverage because of the NAECA 87 minimum efficiency standards.

2. Furnace Labeling Requirements

a. Current furnace labeling requirements. Currently, furnaces (which are defined to include boilers) must bear a label containing only general energy-saving tips and referring the consumer to a fact sheet that retailers must make available to consumers. 305.3(g); 305.11(a)(5)(ii) and Figure 3; 305.11(b)(1)(ii).[20] The fact sheets show the combinations of components available and the overall efficiency of any set of component combinations.[21] In addition, the fact sheets provide costs grids for estimating what the "system" would cost the consumer to operate, depending on geographic location and utility rate structures. 305.11(b)(3)(viii).

b. The Directory option and product-specific label amendments. The 1988 NPR proposed to require that the furnace labels disclose (a) the specific product's energy factor, identified as the EER, (b) a "generic" range of EER's for all furnaces that use the same fuel as the labeled unit, and, (c) stronger language directing consumers to *either* fact sheets *or* a directory for detailed cost information.

The 1993 NPR analyzed the comments and proposed amending the Rule to require each furnace to bear a label that discloses product-specific information showing the unit's annual fuel utilization efficiency ("AFUE") and a generic range based on the sub-categories in DOE's Minimum Efficiency Standards Rule. The Commission also proposed permitting manufacturers that are members of an industry trade association with a certification program and a directory to make the required efficiency and cost disclosures through the directory instead of preparing fact sheets, provided that the directory met the Rule's criteria.[22]

Five comments esponded to the 1993 NPR's request for comments on the above proposals. Amana stated that most central furnace dealers also sell central air conditioning products, so allowing furnace manufacturers the option of being listed in an industry directory in lieu of providing facts sheets would standardize the labeling protocol for these very similar product classes.[23] Amana stated, however, that product-specific furnace labels are of minimal value to consumers for the reasons previously given by GAMA.[24] GAMA again opposed a product-specific furnace label requirement, but supported the directory option. It noted that the proposed distribution requirements for directories are reasonable.[25]

CEC stated that product-specific information on individual products is helpful both to CEC's own standards program and the State's utility incentive programs.[26] A building code inspector also commented that his job is made easier and quicker when there are product-specific labels on appliances. Otherwise, it is time-consuming for inspectors to track down the information needed to approve a new or replacement installation of equipment.[27]

Laclede Gas suggested that if product-specific labels are required, they should show detailed cost information as well as the AFUE.[28]

Based on these comments, the Commission has determined to adopt its proposed amendments. GAMA's reasons for opposing furnace labeling continue to be unpersuasive to the Commission.[29] Similarly, the Commission continues to believe that requiring cost information on furnace labels (as suggested by Laclede Gas) is not advisable, for the reasons discussed in the Rule's Statement of Basis and Purpose.[30] Therefore, the Commission is amending the requirements for furnaces as proposed in the 1993 NPR. See sections 305.11(a)(5) and .11(c) of the amended Rule in "Text of Amendments," below.

c. New sub-categories for furnaces.

The 1988 NPR proposed that the ranges of comparability for furnaces be reduced from the 70 currently required ranges to a single "generic" range for each fuel type (gas, oil, and electric).[31] The 1993 NPR proposed instead to adopt as the Rule's ranges of comparability for furnaces the nine sub-categories for furnaces listed in NAECA 87 and used in DOE's Minimum Efficiency Standards Rule, which include a sub-category for both forced-air furnaces and boilers of each fuel type and separate sub-categories for small gas furnaces, mobile home furnaces, and gas steam boilers.[32]

Three comments addressed this issue. Amana commented that the NAECA 87 categories would improve consumers' ability to compare products.[33] GAMA and CEC also supported the proposal, but recommended against establishing a separate category for "Small Furnaces."[34] GAMA stated that all warm-air furnaces (other than mobile home furnaces) have to meet the same standard and that the NAECA standards, as GAMA believes they will be amended, will not make a distinction between "furnaces" and "small

---

[14] *See* 42 U.S.C. 6295. After the effective date of a standard, the manufacture of non-complying products is prohibited. *See* 42 U.S.C. 6302(a)(5).

[15] 10 CFR Part 430, Subpart C.

[16] Manufacturers annually submit to the Commission energy usage data for their various appliance models. The Commission analyzes these data and publishes "ranges" consisting of the highest and lowest energy use figures for certain appliance categories. The manufacturers disclose the industry-wide ranges on their EnergyGuide labels by means of a bar scale, with a mark indicating where their appliances fall on the bar. For example, the 1992 range for standard size dishwashers was from $46.00 to $82.00 (when using electrically heated water) and from $25.00 to $46.00 (when heating water with gas). Some manufacturers suggested that, once efficiency standards are implemented, the range for a given product could be so limited (for example, from $39 to $41) that providing range information would not be useful.

[17] *See* 58 FR 12819–20 (March 5, 1993).

[18] CEC, DD–23, 3.

[19] AHAM, D–5, 3.

[20] The Commission's reasons for the current label and fact sheet disclosure requirements for furnaces are discussed in the SBP at 44 FR 66470–71.

[21] For example, whether the furnace would be available with a vent damper, standby pilot, automatic ignition, etc.

[22] *See* the discussion in the 1993 NPR at 58 FR 12820–23. In addition to these product-specific label and directory option modifications to the Rule, the Commission proposed the following specific requirements to accommodate several potential difficulties with product-specific labels that some comments raised (*see* the discussion at 58 FR 12822–23):

(1) When the working units of boilers (or furnaces) are shipped separately from the outer jackets, the units would have to be labeled with hang-tag labels that also have adhesive backing, so the installer could affix the label to the outside of the jacket after the unit is installed;

(2) When boilers are shipped with more than one input nozzle, they would have to be labeled to show the AFUE of the unit when it is set up with the highest firing rate; and,

(3) Boilers that may be set up as either steam or hot water units would have to be labeled with the hot water AFUE.

The Commission did not receive comment on these 1993 NPR proposals, and has incorporated them into the Rule. *See* section 305.11(a)(5)(ii)(J)–(L) of the amended Rule in "Text of Amendments," below.

[23] Amana, D–1, 1.

[24] Amana, D–1, 2. GAMA's reasons for opposing product-specific furnace labels are detailed in the 1993 NPR at 58 FR 12821. *See* also GAMA's comment (D–9) at page 1.

[25] GAMA, D–9, 1–2.

[26] CEC, DD–23, 4, CEC stated that it is often difficult to identify the precise model from the model numbers contained in reported information alone, and that it is very useful to have the energy usage on the label attached to the model itself.

[27] City of Palmdale, DD–16, 1.

[28] Laclede Gas, DD–20, 5.

[29] *See* the discussion at 58 FR 12821–22.

[30] *See* 44 FR 66466 at 66470–71. The differences in regional climate and consumer use patterns make it impractical to disclose estimated annual operating cost as the primary energy usage disclosure for these products.

[31] The 70 currently required ranges consist of fourteen ranges, according to capacity rating (in Btu's of input per hour), for each of the three fuel types, with furnaces and boilers fueled by natural gas and oil broken out separately. A "generic range" would encompass all sizes within a fuel type (i.e., one range, rather than fourteen ranges based on capacity groupings, for electric furnaces). See 53 FR 22109.

[32] 58 FR 12823; 12839–46 (Proposed Appendices G1–G9 to the Rule). The Commission's reasons for proposing the NAECA 87 sub-categories for furnaces were as follows:

Using the DOE sub-categories would result in consistency between the ranges required by the Rule and DOE's minimum efficiency standards for these sub-categories and thus help manufacturers. These sub-categories also would help consumers in their shopping efforts. For example, for non-gas-steam boilers, the lowest efficiency permitted by the standards is 80% (75% for gas-steam boilers). The low end of a single range for all gas-fueled boilers (as proposed in the [1988] NPR) would be 75%. Using that figure as an end point on the range would inaccurately suggest to a shopper looking for a gas/hot water boiler that a model with an efficiency of 75% would be available, when the least efficient model of that sub-category permitted by the standards would be 80% efficient. Under the system proposed today, with separate ranges for each sub-category, the ranges for boilers (except gas-steam) would show the bottom end of the efficiency range to be at the pertinent minimum efficiency standard of 80%.

Id. at 12823.

[33] Amana, D–1, 1.

[34] GAMA, D–9, 2; CEC, DD–23, 4–5.

the requirements for furnaces as proposed in the 1993 NPR. See sections 305.11(a)(5) and .11(c) of the amended Rule in "Text of Amendments," below.

c. *New sub-categories for furnaces.*

The 1988 NPR proposed that the ranges of comparability for furnaces be reduced from the 70 currently required ranges to a single "generic" range for each fuel type (gas, oil, and electric).[31] The 1993 NPR proposed instead to adopt as the Rule's ranges of comparability for furnaces the nine sub-categories for furnaces listed in NAECA 87 and used in DOE's Minimum Efficiency Standards Rule, which include a sub-category for both forced-air furnaces and boilers of each fuel type and separate sub-categories for small gas furnaces, mobile home furnaces, and gas steam boilers.[32]

Three comments addressed this issue. Amana commented that the NAECA 87 categories would improve consumers' ability to compare products.[33] GAMA and CEC also supported the proposal, but recommended against establishing a separate category for "Small Furnaces."[34] GAMA stated that all warm-air furnaces (other than mobile home furnaces) have to meet the same standard and that the NAECA standards, as GAMA believes they will be amended, will not make a distinction between "furnaces" and "small furnaces."[35] CEC showed, on the basis of energy usage figures relating to furnaces marketed in California and received by CEC in connection with its own minimum efficiency standards program, that the ranges of comparability of Gas Furnaces and Small Gas Furnaces are identical at the low end (the minimum efficiency standard) and virtually the same at the high end. CEC also suggested minor nomenclature revisions for purposes of clarification.[36]

Based on these comments, the Commission is amending Appendix G to the Rule (pertaining to furnaces) in general accordance with the 1993 NPR proposal. The Commission is persuaded by the GAMA and CEC comments, however, that adoption of the proposed sub-category "Appendix G2 to Part 305—Small Furnaces—Gas (Under 45,000 Btu's/hr. Input)" would not provide consumers with significantly different efficiency information from what the Furnaces—Gas sub-category (Appendix G1) will provide. See the amendments to Appendix G in "Text of Amendments," below.

3. Central Air Conditioner and Heat Pump Amendments to Require Range Information on Fact Sheets or in Directories (as Well as on Labels)

Currently, for central air conditioners and heat pumps, the Rule requires that range information appear only on the label.[37] In the 1988 NPR, the Commission sought comment on a proposal to amend the Rule to require that the EER and range information appear in fact sheets or directories as well as on the labels. This proposal was expected to assist consumers who might not see the labeled units because they are shopping for these products through directories or fact sheets.[38]

In the 1993 NPR, noting that no comment was received on this issue in response to the 1988 NPR, the Commission tentatively concluded that adoption of this requirement would be in the public interest. The Commission also noted that ARI's current practice was (as it still is) to include the ranges in its Directory.[39] Amana supported this proposal without giving any specific reasons.[40]

The Commission has determined to amend the Rule as proposed to require that the EER and range information appear on fact sheets or in directories as well as on labels, for the reasons expressed in the 1988 NPR. This amendment parallels the requirements being announced today for furnaces. See sections 305.11(b)(3)(vi) and .11(c)(3)(vi) of the amended Rule in "Text of Amendments," below.

4. Proposed Amendments to Modify Room Air Conditioner Range Sub-categories

Currently, Appendix E to the Rule contains 37 ranges for room air conditioners. The energy efficiency range information the Commission published prior to 1988 indicated that the range of efficiencies of room air conditioners was virtually the same for each of the capacity groupings. Accordingly, reducing the number of ranges from 37 to one was expected to decrease the industry's labeling burden without affecting the information provided to consumers, and the 1988 NPR proposed amending this provision to establish a single generic range.[41]

The comments in response to the 1988 NPR on this proposal, however, persuaded the Commission that, because products in the different sub-categories have different features and applications and were required to meet (as of January 1, 1990) different minimum efficiency standards, consumer confusion could result if there were only a single product category range. Further, because NAECA 87 and the DOE's Minimum Efficiency Standards Rule set five different minimum EER's among the ten different capacity groupings, different capacity grouping also seemed justified.[42] Therefore, the 1993 NPR proposed amending the Rule to include the sub-categories and capacity groupings for room air conditioners appearing in DOE's Minimum Efficiency Standards Rule (which were derived from NAECA 87).

Four comments addressed this issue. Whirlpool unequivocally supported adoption of the proposed NAECA 87/DOE sub-categories.[43] AHAM stated that, although there was no consensus among its membership as to how to

---

[31] The 70 currently required ranges consist of fourteen ranges, according to capacity rating (in Btu's of input per hour), for each of the three fuel types, with furnaces and boilers fueled by natural gas and oil broken out separately. A "generic range" would encompass all sizes within a fuel type (i.e., one range, rather than fourteen ranges based on capacity groupings, for electric furnaces). See 53 FR 22109.

[32] 58 FR 12823; 12839–46 (Proposed Appendices G1–G9 to the Rule). The Commission's reasons for proposing the NAECA 87 sub-categories for furnaces were as follows:

Using the DOE sub-categories would result in consistency between the ranges required by the Rule and DOE's minimum efficiency standards for these sub-categories and thus help manufacturers. These sub-categories also would help consumers in their shopping efforts. For example, for non-gas-steam boilers, the lowest efficiency permitted by the standards is 80% (75% for gas-steam boilers). The low end of a single range for all gas-fueled boilers (as proposed in the [1988] NPR) would be 75%. Using that figure as an end point on the range would inaccurately suggest to a shopper looking for a gas/hot water boiler that a model with an efficiency of 75% would be available, when the least efficient model of that sub-category permitted by the standards would be 80% efficient. Under the system proposed today, with separate ranges for each sub-category, the ranges for boilers (except gas-steam) would show the bottom end of the efficiency range to be at the pertinent minimum efficiency standard of 80%.

Id. at 12823.

[33] Amana, D–1, 1.

[34] GAMA, D–9, 2; CEC, DD–23, 4–5.

[35] GAMA, D–9, 2. The DOE minimum efficiency standards for both of these sub-categories are the same (78% AFUE). *See* 10 CFR 430.32(e) (1992).

[36] For example, renaming the categories other than "Mobile Home Furnaces" to indicate that they do not include mobile home furnaces, and changing "Boilers-Gas (except gas/steam)" to "Boilers-Gas (except steam)" for consistency. CEC, DD–23, 5. The Commission believes that following this suggestion could result in confusion because of the resultant difference in nomenclature between DOE's furnace sub-categories and the Commission's. Therefore, the Commission is not adopting CEC's suggestion.

[37] 305.11(a)(5)(iii)(D) and (E).

[38] 53 FR 22109, note 17.

[39] *See* 58 FR 12823–24.

[40] Amana, D–1, 2.

[41] *See* 53 FR 22109.

[42] *See* 42 U.S.C. 6295(c) and 54 FR 6062, at 6077 (Feb. 7, 1989).

[43] Whirlpool, D–3, 4.

group the products, all agree the existing 37 sub-categories are too many.[44] Amana agreed with reducing and reorganizing the subcategories, but suggested its own groupings, which are somewhat more detailed than those proposed in the 1993 NPR.[45] CEC stated that it is not necessary for the Commission to use divisions for ranges of comparability that DOE uses for setting standards.[46] CEC, therefore, suggested instead two sub-categories: "Non-heat-pumps" (broken down into three capacity groupings) and "Heat Pumps" (in one all-inclusive capacity grouping.)[47]

CEC's more inclusive sub-categories may frustrate consumers looking for the most efficient product with particular features because they group together room air conditioners with many different features.[48] On the other hand, Amana did not explain sufficiently why its numerous sub-categories are preferable. The Commission finds that the sub-categories proposed in the 1993 NPR are sufficiently detailed to help consumers select the most efficient product with the features they want Accordingly, Appendix E of the amended Rule in "Text of Amendments," below, reflects the groupings proposed in the 1993 NPR.

5. Other Products—Proposals to Change Sub-categories

a. *Refrigerators, Refrigerator-freezers and Freezers.* Under the current Rule, there is one range category for refrigerators, one for refrigerator-freezers, and one for freezers.[49] In response to the 1988 NPR, four comments recommended that the Commission adopt new range categories that parallel the sub-categories established by NAECA 87 and prescribed in DOE's Minimum Efficiency Standards Rule.[50]

In the 1993 NPR, the Commission proposed adopting the NAECA 87 refrigerator, refrigerator-freezer and freezer sub-categories. The Commission stated that the NAECA 87 sub-categories would enable a consumer who has decided on a product with certain features and a specific door configuration to see a cost range on the label that includes only models with the same features as the labeled unit. The 1993 NPR also proposed adding a sub-category for "All-Refrigerators with Automatic Defrost" (meaning a single-door refrigerator, with automatic defrost, that has a small compartment for ice trays but no compartment for frozen food storage), noting that a separate range would be useful to those consumers who are looking only for such a product.[51] In addition, the Commission proposed changing the span of the capacity groupings within the sub-categories from two cubic feet to four cubic feet.[52] This would result in fewer (and larger) groupings within each of the 11 sub-categories, with more models within each group for consumers to compare.

Four comments addressed these proposals. Amana, Whirlpool and AHAM supported adoption of the NAECA 87 sub-categories.[53] Amana also supported changing from two- to four-cubic-foot increments,[54] but Whirlpool and AHAM opposed this change. Whirlpool contended that such increments would depict larger units in a given category as being less efficient, which would be inaccurate, since "a higher kWh/year does not mean the unit is less efficient."[55] AHAM said four-cubic-foot increments would make it harder for consumers to compare the energy efficiency of similarly sized products.[56]

CEC disagreed with the 1993 NPR's proposed sub-categories, critiquing some assumptions and definitions upon which they were based.[57] In addition, CEC opposed the Commission's proposal to adopt a sub-category for "All-refrigerators with Automatic Defrost," noting that the term "All-refrigerator" is not used in DOE's Minimum Efficiency Standards Rule, and is defined only in the DOE test procedure for refrigerators, refrigerator-freezers and freezers.[58]

CEC proposed sub-categories very similar to those currently provided in the Rule. The CEC proposal is based on an analysis of different possible sub-category combinations using the actual number of these products in the State of California.[59] The recommended sub-categories were: Refrigerators; Refrigerator-freezers; and Freezers (with a further breakout into Upright and Chest). Capacity groupings were in four-cubic-foot increments, as proposed in the 1993 NPR. However, CEC's proposal still differs from the current requirements in its breakout of Freezers into Upright and Chest.

The Commission is not persuaded by CEC's comments that the NAECA 87 sub-categories are inappropriate. The NAECA 87 sub-categories are based on features and door configurations; they will benefit consumers because these features are of major significance to them when shopping.[60] Therefore, the amended Rule adopts the NAECA 87 sub-categories for refrigerators, refrigerator-freezers and freezers. See Appendices A1–A8 and B1–B3 in "Text of Amendments," below.

After analyzing the distribution of models among the capacity groupings, however, the Commission has determined to retain the two-cubic foot increments currently required in the ranges of comparability for these products. There are enough models available in the more popular size groupings so that two-cubic-foot increments will provide consumers with meaningful selections among these products within the new sub-categories. Moreover, the Commission agrees with AHAM that consumers could find it more difficult to use the ranges of comparability to compare similar models if the capacity groupings were broken into four-cubic-foot increments. The number of different models in some of the four-foot groupings would be so large as to inhibit the consumer selection process. For example, consider a consumer looking for a 19-cubic-foot refrigerator-freezer with automatic defrost and top-mounted freezer and without through-the-door ice service. If the appropriate subcategory were divided into two-cubic-foot increments (18.5 cu. ft. to 20.4 cu. ft.), the consumer would be comparing the labeled model with 180 other models. The use of four-cubic-foot increments would result in the addition of another 215 models, most of which would be sufficiently larger than the desired 19-cubic-foot model (they would be from 20.5 to 22.4 cu. ft.) that the information would be superfluous and likely confusing. Accordingly, the Commission finds that two-cubic-foot increments would be more likely to assist consumer selection efforts than four-cubic-foot increments.

In response to CEC's comments on the proposed "All-Refrigerator with Automatic Defrost" sub-category, the Commission has changed the designation of Appendix A1 from the previously proposed "All-Refrigerators with Automatic Defrost" to "Refrigerators with Automatic Defrost," and is including a definition of "all-refrigerator" within the definition of "electric refrigerator."[61] See Appendix A1 and section 305.3(a)(1) of the amended Rule in "Text of Amendments," below.

b. Clothes washers and dishwashers. The 1988 NPR solicited comment on whether the Commission should adopt different sub-categories for other products. The current Rule prescribes for dishwashers and clothes washers two sub-categories each ("Standard" and "Compact").[62] In response to the 1988 NPR, one comment suggested revising the current two sub-categories for dishwashers based on the internal

---

[44] AHAM, D–5, 3–4

[45] Amana, D–1, 2. Attachment. Beyond stating that the proposal does not "accurately group similar products," however, Amana did not explain why its suggested groupings would be preferable to those proposed in the NPR.

[46] CEC, DD–23, 6.

[47] *Id.* at 8. The comment contained sample ranges of comparability charts based on CEC's recommended sub-categories. CEC derived the sample range charts using energy usage data on room air conditioners sold in California that had been submitted to CEC in connection with CEC's minimum efficiency standards program. CEC also provided figures showing the number of each model type in each grouping that was marketed in the State of California.

[48] For example, louvered room air conditioners cannot be used for through-the-wall installation, so consumers looking for a built-in product would find efficiency information for the louvered products superfluous.

[49] See Appendices A–1, A–2 and B

[50] See the discussion in the 1993 NPR at 58 FR 12824–25. NAECA 87 divides refrigerators and refrigerator-freezers into seven sub-categories, based on the configuration of the doors to the two compartments and whether the defrost systems are manual or automatic. It divides freezers into three sub-categories: two for upright (depending on type of defrost system) and one for chest and all other types of freezers; DOE has adopted these sub-categories in its Minimum Efficiency Standards Rule. See 10 CFR 430.32(a).

[51] The DOE test procedure for refrigerators and refrigerator-freezers defines "all-refrigerator" as "an electric refrigerator which does not include a compartment for the freezing and long time storage of food at temperatures below 32 degrees F (0.0 degrees C). It may include a compartment of 0.50 cubic capacity (14.2 liters) or less for the freezing and storage of ice." 10 CFR Part 430, Subpart B, Appendix A–1, 1.4 (1992).

[52] For example, instead of grouping products in increments of two cubic feet, such as: 5.5 to 7.4, 7.5 to 9.4, *etc.*, the amended appendices would group them in four-cubic-foot increments, such as: 5.5 to 9.4, 9.5 to 13.4, *etc.*

[53] Amana, D–1, 1; Whirlpool, D–3, 4; AHAM, D–5, 4–5.

[54] Amana, D–1, 1.

[55] Whirlpool, D–3, 4.

[56] AHAM, D–5, 4–5.

[57] CEC, DD–23, 9–19.

[58] *Id.* at 11. A footnote in the table setting out the minimum efficiency standards for refrigerators, refrigerator-freezers and freezers in DOE's Minimum Efficiency Standards Rule refers to "all refrigerators with automatic defrost," without a hyphen between "all" and "refrigerators." CEC contends that this simply means "all refrigerators," which could just as easily be written "refrigerators."

[59] *Id.* at 12–19.

[60] See the discussion in the NPR at 58 FR 12825.

[61] CEC also stated that refrigerator-freezers with internal freezers are not mentioned in DOE's or the Commission's regulations but should be covered by the Rule. DD–24 at 12. In fact, these products are already covered by the definition of refrigerator-freezer in section 305.3(a)(2) of the Rule. Finally, CEC expressed dissatisfaction with the fact that refrigerators combined with other appliances (usually stoves) are not covered by the Rule. Such coverage is not possible, however, because there is at this time no DOE test to measure their energy use.

[62] See Appendix C (Dishwashers) and Appendix F (Clothes washers).

products within the new sub-categories. Moreover, the Commission agrees with AHAM that consumers could find it more difficult to use the ranges of comparability to compare similar models if the capacity groupings were broken into four-cubic-foot increments. The number of different models in some of the four-foot groupings would be so large as to inhibit the consumer selection process. For example, consider a consumer looking for a 19-cubic-foot refrigerator-freezer with automatic defrost and top-mounted freezer and without through-the-door ice service. If the appropriate subcategory were divided into two-cubic-foot increments (18.5 cu. ft. to 20.4 cu. ft.), the consumer would be comparing the labeled model with 180 other models. The use of four-cubic-foot increments would result in the addition of another 215 models, most of which would be sufficiently larger than the desired 19-cubic-foot model (they would be from 20.5 to 22.4 cu. ft.) that the information would be superfluous and likely confusing. Accordingly, the Commission finds that two-cubic-foot increments would be more likely to assist consumer selection efforts than four-cubic-foot increments.

In response to CEC's comments on the proposed "All-Refrigerator with Automatic Defrost" sub-category, the Commission has changed the designation of Appendix A1 from the previously proposed "All-Refrigerators with Automatic Defrost" to "Refrigerators with Automatic Defrost," and is including a definition of "all-refrigerator" within the definition of "electric refrigerator."[61] See Appendix A1 and section 305.3(a)(1) of the amended Rule in "Text of Amendments," below.

b. Clothes washers and dishwashers. The 1988 NPR solicited comment on whether the Commission should adopt different sub-categories for other products. The current Rule prescribes for dishwashers and clothes washers two sub-categories each ("Standard" and "Compact").[62] In response to the 1988 NPR, one comment suggested revising the current two sub-categories for dishwashers based on the internal water-heating feature for some dishwashers and the two sub-categories for clothes washers based on tub capacity, door configuration, and other features.[63] In the 1993 NPR, the Commission proposed to retain the existing sub-categories for dishwashers and clothes washers, noting that NAECA 87 did not create new sub-categories for these two products.[64] At that time, the standards for the products in DOE's Minimum Efficiency Standards Rule involved only the mandatory inclusion of an energy-saving feature consisting of an option to dry without heat for dishwashers and an unheated wash option for clothes washers.[65] The Commission noted, however, that if future revisions to the DOE standards appeared to warrant a change in the categories for these products, the Commission would consider the issue at that time.

Five comments addressed this issue. All five supported retaining the current sub-categories for dishwashers.[66] Four comments, however, suggested changing the sub-categories for clothes washers by adding two further subdivisions—horizontal axis and vertical axis.[67] In support, AHAM stated that the technologies of the two proposed subdivisions are different and that consumers interested in the horizontal axis market niche should be able to compare products within that subdivision.[68]

Horizontal axis clothes washers (which are generally front-loading) are significantly more energy-efficient than vertical axis washers (generally top-loading). Because the typical door configurations for these products are different, consumers may shop for only one configuration, and information respecting the energy usage of products having the other configuration may not be useful. For example, consumers wanting to stack a clothes dryer on top of their washer to conserve space would only be interested in a front loading washer.

The Commission finds, therefore, that separate ranges of comparability for these products would benefit consumers. Accordingly, the Commission is retaining the current sub-categories for dishwashers but amending the sub-categories for clothes washers to reflect a further subdivision into top-loading and front-loading models. See Appendix F—Clothes Washers, in "Text of Amendments," below.

6. Energy Cost Descriptor—Proposals to Change From Estimated Annual Operating Cost to an Alternative Descriptor for Some Products

For five appliance categories (refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers and water heaters), the Rule requires that labels reflect the estimated annual dollar cost of operation for the product and the applicable range of comparable products. This cost information is calculated by using the National Average Representative Unit Costs ("NARUCs") for energy that DOE develops and publishes annually in the **Federal Register**.[69] The Commission publishes revised ranges of comparability annually in the **Federal Register** if the upper or lower limits change by 15% or more from the previously published ranges. If the ranges do not change, the Commission publishes a notice that the prior range is still applicable for the next year.

The 1988 NPR solicited comment on using alternate energy descriptors that would remain constant, rather than dollar descriptors. It proposed that the labels disclose energy usage in kilowatt-hours for electrically fueled products, therms for natural gas products, and gallons for oil-fueled water heaters. In the alternative, the 1988 NPR proposed using an energy factor similar to the EER for furnaces, room air conditioners, and central air conditioners.[70] The comments submitted in response to the 1988 proposal generally favored the elimination of dollar energy usage descriptors in favor of an energy consumption descriptor on labels for refrigerators, refrigerator-freezers and freezers, clothes washers, and dishwashers. In contrast, the comments generally favored either retention of dollar cost or use of an energy factor on labels for water heaters.[71]

In the 1993 NPR, the Commission noted that most appliance models

---

[61] CEC also stated that refrigerator-freezers with internal freezers are not mentioned in DOE's or the Commission's regulations but should be covered by the Rule. DD–24 at 12. In fact, these products are already covered by the definition of refrigerator-freezer in section 305.3(a)(2) of the Rule. Finally, CEC expressed dissatisfaction with the fact that refrigerators combined with other appliances (usually stoves) are not covered by the Rule. Such coverage is not possible, however, because there is at this time no DOE test to measure their energy use.

[62] *See* Appendix C (Dishwashers) and Appendix F (Clothes washers).

[63] *See* 58 FR 12825 (March 5, 1993).

[64] *Id.*

[65] See 54 FR 6062, 6077 (Feb. 7, 1989). Both standards were prescribed earlier in NAECA 87, however, and became effective on January 1, 1988.

[66] Whirlpool, D–3, 4; AHAM, D–5, 5; New Harmony, D–D–7, 1–3 and Attachment; Speed Queen, D–8, 2; CEC, DD–23, 20 (CEC also supported the proposal not to change the sub-categories for clothes washers).

[67] Whirlpool, D–3, 4; AHAM, D–5, 5; New Harmony, D–D–7, 1–3 and Attachment; Speed Queen, D–8, 2. New Harmony suggested modifying the definition for "energy factor" to include the subdivisions, and Speed Queen suggested that front loaders (usually horizontal axis) should not be included in the same sub-categories with top loaders (usually vertical axis.)

[68] AHAM, D–5, 5.

[69] *See* 42 U.S.C. 6293(b)(4). These energy cost figures are incorporated into § 305.9 of the Commission's Rule.

[70] *See* 53 FR 22109–10.

[71] *See* 58 FR 12826–28.

change about every three years, whereas the DOE energy costs change annually because of fuel cost changes. If energy cost changes affect the upper or lower limits of the ranges of comparability by 15% or more, new labels are required. As a result, a floor model on display for a lengthy time may show an operating cost that is different from the cost shown on an identical, newer unit delivered to a consumer's home because the Commission has required new labels, not because of any change in the product's efficiency. For the same reason, two identical floor models, manufactured in different years, may display different operating costs. Also, models with different features can have labels based on different DOE cost figures, making it unlikely that average consumers can accurately compare their energy usage. As a result, many consumers who are familiar with energy cost information may question the accuracy of cost information on labels.[72]

Pursuant to EPCA, labels may disclose an alternate energy use figure, determined in accordance with DOE tests, if the Commission determines that estimated annual operating cost is not likely to assist consumers in making purchasing decisions or is not economically feasible.[73] For the reasons set forth in the 1993 NPR, the Commission concludes that use of a dollar figure as the primary descriptor of energy usage is not likely to assist consumers in making purchasing decisions regarding refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters. Providing such label information may adversely affect the value of the labeling program.[74] Below, the Commission discusses the specific alternative disclosures to be made for each product category.

a. Refrigerators, refrigerator-freezers and freezers. In the 1993 NPR, the Commission proposed using kilowatt-hours per year ("kWh/year") as the primary energy usage descriptor instead of a dollar cost on labels for refrigerators, refrigerator-freezers and freezers.[75] The Commission stated that, although a kWh/year energy usage descriptor is more technical, its use would minimize label changes. The Commission said that those consumers who want to use a dollar cost figure can use the cost grid on the label that was proposed to supplement the kWh/year energy usage descriptor.

[72] *See* 58 FR 12827 at note 85.

[73] 42 U.S.C. 6294(c)(1)(A)(ii).

[74] *See* 58 FR 12827.

[75] *Id.*

The eight comments that addressed the proposal strongly supported it.[76] Several noted that this type of disclosure is advantageous because it is the same disclosure that Canada requires on its EnerGuide labels for appliances.[77] Two suggested that labels include definitions of kWh/year.[78] Therefore, the Commission has determined to require the disclosure of kWh/year as the energy usage descriptor for refrigerators, refrigerator-freezers and freezers. The Commission also is requiring that a definition for kWh/year be used on the labels.

Because the kWh/year figures can easily be multiplied by an appropriate cost per year for electricity to provide an estimated annual operating cost for the labeled product and the ranges of comparability, the Commission has determined to no longer require that the labels for refrigerators, refrigerator-freezers and freezers contain a cost grid. However, the primary kWh/year disclosure will be supplemented by a single disclosure of estimated annual operating cost in the form of a statement at the bottom of the label. This statement will show the operating cost for the labeled product derived using the DOE annual average cost for electricity. The statement will identify the specific costs per unit for electricity and the year DOE published it.[79] Because the cost figure in the statement will be supplemental information, rather than the primary basis for product comparisons, the cost figure only need be revised whenever a general revision of labels is occasioned by a change of more than 15% in the kWh/year ranges of comparability.[80] This approach will enable consumers to compare generally the energy usage of products expressed as an operating cost. This figure supplements the main energy usage descriptor by giving consumers some sense at a glance of how energy usage differences are translated into dollars and cents. This should be helpful for those consumers who do not know their local utility rates. See § 305.11(a)(5)(i)(E) and the Sample Label for refrigerator-freezers in the Amended Rule in "Text of Amendments," below.

b. Clothes washers and dishwashers. The Rule currently requires labels for clothes washers and dishwashers to contain two energy descriptors—one to show the cost of operation for each water-heating method (electricity or gas).[81] The 1988 NPR proposed replacing the two dollar operating cost disclosures with disclosures of kWh/year and therms per year.[82] Specifically, the Commission proposed that one disclosure would show kWh per cycle (to run the machine and heat the water) when an electric water heater is used. The other would show kWh per cycle (to run the machine) and therms of gas per cycle (to heat the water) when the product is used with a gas water heater. This approach would require two sets of ranges, as well—one under each disclosure.

In the 1993 NPR, the Commission reiterated that use of a dollar cost disclosure for these products is unlikely to assist consumers in making purchase decisions, and that simplified labels that used alternative energy usage descriptors would be better. The Commission further stated that disclosing the energy used per cycle, as proposed in the 1988 NPR, would require two disclosures that would clutter the label and possibly confuse consumers.[83]

In the 1993 NPR, the Commission therefore proposed using an energy factor as the alternative descriptor because it would result in a label with only one energy usage descriptor and range disclosure, as on labels for all other products. As discussed in note nine, above, an energy factor is a numerical measure of the useful output of an appliance's services divided by the energy input. The DOE test procedures assume, for purposes of calculating the energy factor, that the water used by the appliances is electrically heated. Accordingly, the procedures yield a single energy factor for a dishwasher or clothes washer disclosure, instead of two. The Commission also proposed

[76] Amana, D–1, 2–3; Whirlpool, D–3, 2; Maytag, D–4, 1–2; AHAM, D–5, 6–10; ACEEE, DD–8, 1; WSEO, DD–9, 2; EGIA, DD–21, 1–2; CEC, DD–23, 20.

[77] Amana, D–1, 3; Maytag, D–4, 3–4; AHAM, D–5, 8–9.

[78] ACEEE, DD–8, 1: "A kilowatt-hour is a measure of electricity use;" ACEEE also suggested making clear that the lower the kWh/year, the better the efficiency of the product; WSEO, DD–9, 2: "Energy efficient freezers use fewer Kilowatt-hours per year and cost less to run. A Kilowatt-hour is a measure of electricity."

[79] *See* discussion of the operating cost statement in connection with the elimination of cost grids in Part IV.B.4.b., below.

[80] The operating cost statement will not include a range of operating costs.

[81] *See* Sample Labels for clothes washers and dishwashers in Appendix K of the Rule. Although the motors that power clothes washers and dishwashers run on electricity, the source of the energy used to heat the water they use could be either natural gas or electricity. When these products use water heated with natural gas, heating the water accounts for fifty percent of the energy consumed during testing. When they use electrically heated water, eighty percent of the energy used by the product is consumed in heating the water.

[82] *See* 53 FR 22110 at note 22.

[83] *See* 58 FR 12827.

retaining the two cost grids that are on the labels: one showing various annual costs of operation with electrically heated water (calculated using various costs for electricity), and one for gas-heated water (using various costs for gas). The Commission suggested that this labeling approach would permit easier comparisons among similar models and that the two cost grids would enable consumers to calculate annual operating costs and compare models on the basis of how their water is heated.

Eighteen comments addressed this proposal.[84] Four supported the proposal.[85] ACEEE preferred energy factor to EER,[86] and WSEO supported use of an energy factor because "it is consistent with past practice, industry terminology and the DOE test procedures."[87] CEC noted that "there is no easily understood way of describing the efficiency of a dishwasher, clothes washer, or water heater. Thus, the best we can hope for is to have an energy factor which the consumer recognizes as a measure of efficiency and that the consumer recognizes that a high [energy] factor means high efficiency."[88]

Fourteen comments opposed the proposal.[89] These comments contended that an energy factor is too complicated and confusing and will mean nothing to consumers.[90] Five suggested changing

[84] Comments from the appliance industry, the state agencies, and the consumer group were specifically related either to both dishwashers and clothes washers, or clothes washers only (New Harmony, D–7, 1–3, and Speed Queen, D–8, 1). Comments from gas utilities generally encompassed dishwashers, clothes washers, and water heaters, with a clear emphasis on water heaters. Some utilities rejected use of an energy factor without mentioning any specific product category (*see*, Brooklyn Gas, DD–2, 1; Mississippi Gas, DD–4, 1–2, 4; PG&W, DD–5, 1; Memphis Electric and Gas, DD–18, 1–2).

[85] ACEEE, DD–8, 1; WSEO, DD–9, 1–2; CEC, DD–23, 20; New Harmony did not specifically endorse the use of an energy factor, but did suggest a specific definition for the term, thus implying acceptance of it. D–7, 1–3.

[86] ACEEE, DD–8, 1. The comment was in response to a question in the 1993 NPR (*see* Question 1. a., at 58 FR 12830).

[87] WSEO, DD–9, 2.

[88] CEC, DD–23, 23.

[89] Whirlpool, D–3, 2; Maytag, D–4, 1–2; AHAM, D–5, 6–7, 9–10; Speed Queen, D–8, 1; PSCNC, DD–1, 2; Brooklyn Gas, DD–2, 1; Peoples Gas, DD–3, 1; Mississippi Gas, DD–4, 1–2, 4; PG&W, DD–5, 1; Memphis Electric and Gas, DD–18, 1–2; LG&E, DD–19, 3–4; EGIA, DD–21, 2; AGA, DD–22, 2–4; ENTEX, DD–24, 2–3.

[90] *See*, for example, Whirlpool, D–3, 3 (energy factors have meaning to engineers, but not to consumers); Maytag, D–4, 1–2 (energy factors would be very difficult and even overwhelming to consumers and retail salespeople). Mississippi Gas suggested that the use of an energy factor could discriminate against minority and low income households and attached the results of a consumer survey in support of its contention. DD–4, 1–2.

retaining the two cost grids that are on the labels: one showing various annual costs of operation with electrically heated water (calculated using various costs for electricity), and one for gas-heated water (using various costs for gas). The Commission suggested that this labeling approach would permit easier comparisons among similar models and that the two cost grids would enable consumers to calculate annual operating costs and compare models on the basis of how their water is heated.

Eighteen comments addressed this proposal.[84] Four supported the proposal.[85] ACEEE preferred energy factor to EER,[86] and WSEO supported use of an energy factor because "it is consistent with past practice, industry terminology and the DOE test procedures."[87] CEC noted that "there is no easily understood way of describing the efficiency of a dishwasher, clothes washer, or water heater. Thus, the best we can hope for is to have an energy factor which the consumer recognizes as a measure of efficiency and that the consumer recognizes that a high [energy] factor means high efficiency."[88]

Fourteen comments opposed the proposal.[89] These comments contended that an energy factor is too complicated and confusing and will mean nothing to consumers.[90] Five suggested changing to an energy consumption disclosure, such as kilowatts per cycle or per year.[91] Nine recommended retaining the estimated annual operating cost.[92]

Two of the comments favoring estimated annual operating cost included consumer survey results in support of their position. ENTEX attached consumer survey results indicating that 80% of 200 consumers surveyed preferred the current label when asked to compare the 1993 NPR Sample 4 dishwasher label with the current (estimated annual operating cost) dishwasher label.[93] Mississippi Gas's results of a similar consumer survey indicated that 48.5% of 200 mall intercept consumers[94] preferred an estimated annual operating cost disclosure, as did nine out of ten consumers interviewed on videotape.[95]

Some of the comments supporting a cost disclosure contended that an energy factor disclosure actually would mislead consumers.[96] Several referred to the 1979 Statement of Basis and Purpose, in which the Commission concluded that, for appliances other than climate control equipment, any alternative to the estimated annual operating cost disclosure predicated on the DOE tests (including the most often cited alternative—the energy factor) would not be likely to assist consumers in making purchasing decisions.[97]

The five comments favoring an energy consumption disclosure recommended the use of kilowatt-hours—four suggesting kilowatt-hour use per cycle (kWh/cycle)[98] and one suggesting kWh/cycle or kilowatt-hour use per year (kWh/year).[99] Whirlpool, Maytag, and AHAM commented that consumers are familiar with kilowatt-hours because they see them every month on their electric bills.[100] Whirlpool contended that, with a disclosure of kWh/cycle, dual disclosures and cost grids would not be necessary, since consumers would have all they need to make a comparative purchasing decision. Whirlpool suggested that those few consumers who would want to know the estimated annual operating cost of their appliance with a gas water heater could probably obtain the information from the manufacturer.[101] AHAM recommended disclosing kWh/cycle as the main disclosure and disclosing additionally the percentage reduction in operating cost if a gas water heater is used.[102] AHAM and Speed Queen pointed out that a kilowatt-hour disclosure would be consistent with the requirements of the Canadian Energuide labels for these products, with Speed Queen specifically mentioning kWh/year, rather than kWh/cycle.[103]

In the 1993 NPR, the Commission explained its reasons for proposing not to require the disclosure of estimated annual operating cost as the primary energy usage disclosure on labels. Those reasons are summarized in Part IV.A.6., immediately above.[104] The comments favoring the continued use of estimated annual operating cost on labels for these products have not provided any new information that would support a change in the Commission's tentative conclusion about this issue. The Commission rejects, therefore, the suggestions that operating cost be retained as the primary descriptor on dishwasher and clothes washer labels, and reiterates its conclusion that estimated annual operating cost as the primary energy usage disclosure is not likely to assist consumers in making purchasing decisions with respect to these products.

The comments supporting the Commission's proposed use of energy factor did not elaborate on why they believed this descriptor would be appropriate.[105] In contrast, the comments opposing the use of energy factor were unanimous in the specific criticism that the term would mean nothing to consumers and would confuse them.[106] For example, Maytag stated that it was difficult to explain energy factor sufficiently to Maytag employees, even when the person

---

[84] Comments from the appliance industry, the state agencies, and the consumer group were specifically related either to both dishwashers and clothes washers, or clothes washers only (New Harmony, D–7, 1–3, and Speed Queen, D–8, 1). Comments from gas utilities generally encompassed dishwashers, clothes washers, and water heaters, with a clear emphasis on water heaters. Some utilities rejected use of an energy factor without mentioning any specific product category (*see*, Brooklyn Gas, DD–2, 1; Mississippi Gas, DD–4, 1–2, 4; PG&W, DD–5, 1; Memphis Electric and Gas, DD–18, 1–2).

[85] ACEEE, DD–8, 1; WSEO, DD–9, 1–2; CEC, DD–23, 20; New Harmony did not specifically endorse the use of an energy factor, but did suggest a specific definition for the term, thus implying acceptance of it. D–7, 1–3.

[86] ACEEE, DD–8, 1. The comment was in response to a question in the 1993 NPR (*see* Question 1. a., at 58 FR 12830).

[87] WSEO, DD–9, 2.

[88] CEC, DD–23, 23.

[89] Whirlpool, D–3, 2; Maytag, D–4, 1–2; AHAM, D–5, 6–7, 9–10; Speed Queen, D–8, 1; PSCNC, DD–1, 2; Brooklyn Gas, DD–2, 1; Peoples Gas, DD–3, 1; Mississippi Gas, DD–4, 1–2, 4; PG&W, DD–5, 1; Memphis Electric and Gas, DD–18, 1–2; LG&E, DD–19, 3–4; EGIA, DD–21, 2; AGA, DD–22, 2–4; ENTEX, DD–24, 2–3.

[90] *See*, for example, Whirlpool, D–3, 3 (energy factors have meaning to engineers, but not to consumers); Maytag, D–4, 1–2 (energy factors would be very difficult and even overwhelming to consumers and retail salespeople). Mississippi Gas suggested that the use of an energy factor could discriminate against minority and low income households and attached the results of a consumer survey in support of its contention. DD–4, 1–2.

[91] Whirlpool, D–3, 2; Maytag, D–4, 1–2; AHAM, D–5, 6–7, 9–10; Speed Queen, D–8, 1; EGIA, DD–21, 2.

[92] PSCNC, DD–1, 2; Brooklyn Gas, DD–2, 1; Peoples Gas, DD–3, 1; Mississippi Gas, DD–4, 1–2, 4; PG&W, DD–5, 1; Memphis Electric and Gas, DD–18, 1–2; LG&E, DD–19, 3–4; AGA, DD–22, 2–4; ENTEX, DD–24, 2–3.

[93] DD–24, 4, Attachment, 16.

[94] DD–4, 3, Attachment, 17–18.

[95] DD–4, Attachment, 30.

[96] This argument pertains only to water heaters, however, as discussed in Part IV. A. 6. c., below.

[97] The reference is to 44 FR 66478 (Nov. 19, 1979). *See* Brooklyn Gas, DD–2, 1; LG&E, DD–19, 2; AGA, DD–22, 2–3.

[98] Whirlpool, D–3, 2; Maytag, D–4, 1–2; AHAM, D–5, 6–7, 9–10; EGIA, DD–21, 2.

[99] Speed Queen, D–8, 1.

[100] Whirlpool, D–3, 3; Maytag, D–4, 2; AHAM, 10.

[101] Whirlpool, D–3, 3.

[102] AHAM, D–5, 6–7, 9–10.

[103] AHAM, D–5, 8–9; Speed Queen, D–8, 1.

[104] *See* 58 FR 12826–27.

[105] ACEEE supported its use without elaboration. ACEEE,DD–8, 1. WSEO favored energy factor, because its use would be consistent with the DOE test and with "industry terminology and past practice," (presumably a reference to its use in the GAMA Directory for water heaters, because the current labels for clothes washers and dishwashers require the disclosure of estimated annual operating cost, not an energy factor.) WSEO, DD–9, 2. CEC acknowledged that communication of energy usage for these two product categories is difficult to accomplish, and that an energy factor is the best one could hope for. CEC, DD–23, 23.

[106] *See* note 89, above.

explaining the term thoroughly understood the concept. Maytag also contended that consumers seeing energy factors would be confused by the association of higher numbers with higher efficiency. For operating cost descriptors for clothes washers and dishwashers, "smaller is better."[107] The Commission is therefore persuaded by the comments that the energy factor proposed in the 1993 NPR is not the most appropriate alternative to operating cost as an energy usage descriptor for these two product categories.

The Commission concludes that an energy consumption descriptor in terms of kilowatt-hours of electricity consumed per year (kWh/year) would be the best alternative disclosure of energy usage for clothes washers and dishwashers. As several comments pointed out, consumers are familiar with kilowatt-hours from their utility bills, so kilowatt-hour use will be more familiar than an energy factor.[108] The required disclosure will be in terms of electricity consumed using an electric water heater alone, without showing energy consumption for use of the product with both an electric and gas water heater. By comparing the kWh/year of one product to another, consumers will be able to see how the products use energy relative to one another.[109] This fulfills the EnergyGuide program's purpose of providing consumers with comparative energy usage information for making purchasing decisions.

The Commission agrees with Whirlpool that use of a kilowatt-hour usage descriptor eliminates the need for a cost grid because those consumers who so wish may multiply the kWh figure by a cost per kWh for electricity and convert the descriptor into a cost-per-year figure.[110] However, as with labels for refrigerators, refrigerator-freezers and freezers, water heaters, and room air conditioners, the primary kWh/year disclosure will be supplemented by an estimated annual operating cost disclosure in the form of a statement at the bottom of the label. For clothes washers and dishwashers, this statement will show two operating costs for the labeled product—one calculated on the basis of its use with an electric water heater, and one with a gas water heater—both derived using the DOE annual average cost for electricity and gas. (As in the case of the current labels, the cost for operation with an oil-fired water heater is not included because these products account for less than one percent of all residential water heater sales.) The statement will identify the specific costs per unit for the two fuels and the year DOE published them.[111] This supplemental disclosure will enable consumers to obtain a sense of the magnitude of the monetary difference in operating costs between different models, without requiring that they make their own mathematical calculation.

The Commission is amending the Rule to require a disclosure of kWh/year on labels for these products, rather than adopting a kWh/cycle descriptor, as several comments suggested.[112] A kWh/year disclosure, because it provides a larger spread of figures than would a kWh/cycle, discloses differences in energy usage that will be easier for consumers to perceive. Obviously, much more electricity is consumed during a year than during one cycle of operation. Thus, kWh/year will show larger figures and greater intervals between the figures for different models and, therefore, will illustrate more clearly the magnitude of the efficiency difference. Moreover, a kWh/year disclosure will be consistent with the amended disclosure requirements for the other non-climate-control products and with the Canadian EnerGuide program's required disclosures for these two products (as well as the other products covered by the Canadian program.) Accordingly, the final amended Rule requires that labels for dishwashers and clothes washers disclose the products' energy usage in terms of kilowatt-hours used per year. See section 305.11(a)(5)(i)(E) through (J), Appendices C and F, and Sample Labels for dishwashers and clothes washers in "Text of Amendments," below.

c. *Water heaters.* As discussed in the 1993 NPR, the comments responding to the proposal to change from a cost disclosure to energy factor or kWh, therms (of gas), or gallons (of oil) per year for water heaters were divided between keeping the estimated annual operating cost and switching to the energy factor.[113] Citing its reasoning in the 1988 NPR, the Commission tentatively concluded in the 1993 NPR that, as a primary disclosure of energy cost, a dollar disclosure is not likely to assist consumers in making purchasing decisions.[114] Because the energy factor is already in use within the industry and is easily converted to estimated annual operating cost, the Commission proposed to require it for water heaters, even though it could make accurate cross-fuel comparisons difficult.[115]

Of the 23 comments on this proposal,[116] only three favored replacing estimated annual operating cost with an energy factor for water heaters.[117] ACEEE and WSEO favored the use of energy factor with little elaboration.[118] As with dishwashers and clothes washers, CEC supported the energy factor as the best way to communicate the efficiency of water heaters.[119] CEC noted that federal standards and enforcement actions and incentive payments from utilities are all based on efficiency values, rather than dollar values, which can cause confusion by changing annually for the same basic design.[120]

Almost all 20 comments opposing the replacement of estimated annual operating cost with the energy factor disclosure stated that energy factors would be much more confusing to consumers, who understand and are used to dollar cost disclosures. Many argued that an energy factor disclosure could mislead consumers because the range of energy factors is from approximately .55 to .65 for gas water heaters and from .86 to .95 for electric water heaters. They suggested that this could lead consumers to conclude erroneously that electric water heaters would be less costly to run.[121] Some stated that requiring energy factors would make it difficult for consumers to compare water heaters using different fuels.[122]

Several comments also stated that energy factors do not take into consideration the total system efficiency of the energy source fueling the water heater.[123] The implication is that electricity is considerably more expensive and energy-intensive to produce than natural gas. For example, Laclede Gas contended that from extraction to point of end use, 91% of the energy content of natural gas is delivered to customers, whereas for electricity, 27% of the energy content is delivered.[124]

Eight comments contended that consumers are frequently in a position to judge energy cost before making their selection because they have increasing opportunities to see water heaters before purchase in building supply stores, retail outlets and in new homes.[125] They concluded that such consumers, therefore, should be provided with estimated annual operating cost on labels. Several comments quoted with approval the Commission's conclusion in the 1979 Statement of Basis and Purpose that any alternative to the estimated annual operating cost disclosure predicated on the DOE tests (including the most often cited alternative—the energy factor) would not be likely to assist consumers in making purchasing decisions.[126]

As with dishwashers and clothes washers, the Commission explained in the 1993 NPR why it proposed changing from requiring an estimated annual operating cost disclosure as the primary energy usage descriptor on labels for water heaters.[127] Those reasons are summarized in Part IV.A.6., above.[128] As with clothes washers and dishwashers, the comments favoring the continued use of estimated annual operating cost on labels for water heaters have not provided any new information that would support a change in the Commission's tentative decision on this issue. The Commission rejects, therefore, the suggestions that operating

---

[107] Maytag, D–4, 1.

[108] Whirlpool, D–3, 3; Maytag, D–4, 2; AHAM, 10.

[109] The range of comparability scale will, as before, provide information as to how the labeled product compares in energy usage to all other similarly sized products.

[110] Whirlpool, D–3, 3. See the discussion of elimination of cost grids on all labels in Part IV.B.4.b., below.

[111] See discussion of the operating cost statement in connection with the elimination of cost grids in Part IV.B.4.b., below.

[112] See Whirlpool, D–3, 2; Maytag, D–4, 1–2; AHAM, D–5, 6–7, 9–10; EGIA, DD–21, 2.

[113] See discussion at 58 FR 12827–28.

[114] See 53 FR 22109–10. See also 42 U.S.C. 6294(c)(1)(A)(ii).

[115] The Commission noted that consumers who wished to, could use the cost grids at the bottom of the labels to make cross-fuel comparisons.

[116] PSCNC, DD–1, 2; Brooklyn Gas, DD–2, 1; Peoples Gas, DD–3, 1; Mississippi Gas, DD–4, 1–2, 4; PG&W, DD–5, 1; Atlanta Gas, DD–6, 1; Piedmont Gas, DD–7, 1–2; ACEEE, DD–8, 1; WSEO, DD–9, 1–2; Elizabethtown Gas, DD–10, 1–2; Covington Gas, DD–11, 1; Gibson County Utility, D–13, 1; Mountain Fuel, DD–14, 1–2; Texas Gas, DD–15, 3–4; Oklahoma Gas, DD–17, 1–2; Memphis Electric and Gas, DD–18, 1–2; LG&E, DD–19, 3–4; Laclede Gas, DD–20, 1–5; AGA, DD–22, 2–4; CEC, DD–23, 20, 23; ENTEX, DD–24, 2–3; Consolidated Natural Gas, DD–25, 1–4; UGI, DD–26, 1–2.

[117] ACEEE, DD–8, 1, WSEO, DD–9, 1–2, and CEC, DD–23, 20.

[118] ACEEE, DD–8, 1, WSEO, DD–9, 2.

[119] CEC, DD–23, 23.

[120] *Id.* at 20.

[121] *See, e.g.*, Peoples Gas, DD–3, 1; Piedmont Gas, DD–7, 1–2; Elizabethtown Gas, DD–10, 1–2; Mountain Fuel, DD–14, 1–2; Texas Gas, DD–15, 3–4; Oklahoma Gas, DD–17, 1–2; LG&E, DD–19, 3–4; Laclede Gas, DD–20, 1–5; ENTEX, DD–24, 2–3. The current ranges of estimated annual operating costs for all sizes of water heaters are from $122 to $216 for gas water heaters and from $377 to $464 for electric water heaters. 56 FR 46534 (Sept. 13, 1991).

[122] *See, e.g.*, Brooklyn Gas, DD–2, 1; PG&W, DD–5, 1; Consolidated Gas, DD–25, 3.

[123] *See, e.g.*, Peoples Gas, DD–3; Mississippi Gas, DD–4, 4; Laclede Gas, DD–20, 3.

[124] Laclede Gas, DD–20, 3.

[125] Peoples Gas, DD–3, 1; Elizabethtown Gas, DD–10, 1–2; Covington Gas, DD–11, 1; Gibson County Utility, D–13, 1; Texas Gas, DD–15, 4; AGA, DD–22, 3; Consolidated Gas, DD–25, 1–2; UGI, DD–26, 2.

[126] See note 97, above.

[127] See 58 FR 12828.

[128] See 58 FR 12826–27.

stated that requiring energy factors would make it difficult for consumers to compare water heaters using different fuels.[122]

Several comments also stated that energy factors do not take into consideration the total system efficiency of the energy source fueling the water heater.[123] The implication is that electricity is considerably more expensive and energy-intensive to produce than natural gas. For example, Laclede Gas contended that from extraction to point of end use, 91% of the energy content of natural gas is delivered to customers, whereas for electricity, 27% of the energy content is delivered.[124]

Eight comments contended that consumers are frequently in a position to judge energy cost before making their selection because they have increasing opportunities to see water heaters before purchase in building supply stores, retail outlets and in new homes.[125] They concluded that such consumers, therefore, should be provided with estimated annual operating cost on labels. Several comments quoted with approval the Commission's conclusion in the 1979 Statement of Basis and Purpose that any alternative to the estimated annual operating cost disclosure predicated on the DOE tests (including the most often cited alternative—the energy factor) would not be likely to assist consumers in making purchasing decisions.[126]

As with dishwashers and clothes washers, the Commission explained in the 1993 NPR why it proposed changing from requiring an estimated annual operating cost disclosure as the primary energy usage descriptor on labels for water heaters.[127] Those reasons are summarized in Part IV.A.6., above.[128] As with clothes washers and dishwashers, the comments favoring the continued use of estimated annual operating cost on labels for water heaters have not provided any new information that would support a change in the Commission's tentative decision on this issue. The Commission rejects, therefore, the suggestions that operating cost be retained as the primary disclosure of energy usage on water heater labels, and reiterates its conclusion that estimated annual operating cost as a primary energy usage descriptor is not likely to assist consumers in making purchasing decisions with respect to these products.

As in the case of clothes washers and dishwashers, the comments supporting the Commission's proposed use of energy factor for water heaters did not elaborate on why they believed this descriptor would be appropriate. ACEEE supported its use without further comment.[129] WSEO favored energy factor because its use would be consistent with the DOE test and with "industry terminology and past practice," which is presumably a reference to its use in the GAMA Directory for water heaters.[130] CEC acknowledged that communication of energy usage for water heaters is difficult to accomplish, and that an energy factor is the best that could be hoped for.[131] The Commission is persuaded by the comments that the energy factor is not the best energy usage descriptor for water heaters.

The Commission has determined to amend the Rule instead to require that labels for water heaters disclose the products' energy usage in terms of kilowatt-hours used per year (for electric water heaters), therms of natural gas used per year (for natural gas-fueled water heaters), and gallons used per year (for propane-gas-fueled and oil-fueled water heaters), as proposed in the 1988 NPR.[132] As in the case of dishwashers and clothes washers, this disclosure has the advantage of obviating the need for cost grids on the labels by providing consumers with the option of determining cost by multiplying the labeled value by the appropriate cost per unit of the applicable fuel, which will also be disclosed (see below). This calculation will facilitate consumers' ability to make cross-fuel comparisons, if they wish to do so. Moreover, it provides a disclosure in terms that will be familiar to consumers because they see kWh, therms or gallons on their fuel bills. Finally, it maintains consistency among all the labels for non-climate-control products covered by the Rule.

This primary disclosure will be supplemented by an estimated annual operating cost disclosure in the form of a statement at the bottom of the label. This statement will show the operating cost for the labeled product derived using the DOE annual average cost for electricity, gas, or oil, as appropriate. The statement will identify the specific cost per unit for the applicable fuel and the year DOE published it.[133] This statement will provide a basis for making cross-fuel comparisons. The additional advantages of retaining operating cost as supplemental information have been discussed in Part IV.A.6.a. and b., above.[134] See Amended Rule sections 305.11(a)(5)(i)(E) through (J), Appendices D1 through D3, and the Sample Labels for water heaters in "Text of Amendments," below.

7. Proposed Changes In Label Adhesion Strength Requirement

Section 305.11(a)(4)(i) of the Rule specifies the paper stock and minimum peel adhesion capacity of labels for covered products. In addition to requiring that adhesive labels be applied "so they can be easily removed without use of tools or liquids, other than water," this section requires that the label adhesive must have "a minimum peel adhesion capacity of 24 ounces per inch width." Prior to the 1988 NPR, the Commission received requests to amend this provision to make the labels easier for consumers to remove. The 1988 NPR sought comment on whether to lower the minimum peel adhesion capacity and on whether a performance standard should be adopted instead.[135]

In the 1993 NPR, the Commission discussed the comments responding to the 1988 NPR, which favored an amendment that would make it easier to remove labels. The Commission concluded that the current standard can result in labels sticking to products with excessive tenacity and proposed a specific performance standard. To provide the industry with guidance as to an acceptable minimum adhesion capacity sufficient to meet the performance standard, the Commission also proposed changing the minimum peel adhesion capacity in the Rule from 24 to 12 ounces and changing it from a requirement to a suggestion.[136]

Four comments addressed this issue. One supported the proposal, saying that excessive label tenacity has been an annoying problem.[137] Three others

---

for gas water heaters and from $377 to $464 for electric water heaters. 56 FR 46534 (Sept. 13, 1991).

[122] *See, e.g.*, Brooklyn Gas, DD–2, 1; PG&W, DD–5, 1; Consolidated Gas, DD–25, 3.

[123] *See, e.g.*, Peoples Gas, DD–3; Mississippi Gas, DD–4, 4; Laclede Gas, DD–20, 3.

[124] Laclede Gas, DD–20, 3.

[125] Peoples Gas, DD–3, 1; Elizabethtown Gas, DD–10, 1–2; Covington Gas, DD–11, 1; Gibson County Utility, D–13, 1; Texas Gas, DD–15, 4; AGA, DD–22, 3; Consolidated Gas, DD–25, 1–2; UGI, DD–26, 2.

[126] *See* note 97, above.

[127] *See* 58 FR 12828.

[128] *See* 58 FR 12826–27

[129] ACEEE, DD–8, 1.

[130] WSEO, DD–9, 2.

[131] CEC, DD–23, 23.

[132] *See* 53 FR 22110, note 22.

[133] *See* discussion of the operating cost statement in connection with the elimination of cost grids in Part IV.B.4.b., below.

[134] *See also* the discussion of the elimination of cost grids in Part IV.B.4.b., below.

[135] *See* 53 FR 22111.

[136] *See* 58 FR 12825–26 and 12835 (proposed section 305.11(a)(4)(i)).

[137] Amana, D–1, 2.

supported the proposal, but emphasized that the Rule should not require any specific adhesion capacity.[138]

The Commission concludes that the record supports revising the Rule to state a performance standard for label adhesion capacity without *requiring* any specific adhesion capacity number. The Rule will state, for guidance only, an adhesion capacity number (12 ounces) that the Commission deems adequate to comply with the performance standard. See section 305.11(a)(4)(i) of the Amended Rule in "Text of Amendments," below.

8. Suggestion To Label Only Display Models In Retail Outlets

The 1988 NPR also requested comment on a manufacturer's suggestion that the Rule permit manufacturers to label only display models in retail outlets to reduce labeling cost while still providing information to the public. Because the Commission interprets EPCA as requiring a label on all models of covered products,[139] the 1988 NPR sought comment on whether the Commission should submit a special report to Congress recommending a change in EPCA to allow the Commission to amend the Rule in this regard.[140]

The six comments responding to the discussion of this issue in the 1988 NPR opposed the proposal to label only display models. In the 1993 NPR, therefore, the Commission stated that it intended to take no action on it.[141] The one comment on the proposal to label only display models supported the Commission's 1993 NPR tentative decision to take no action on the proposal.[142] The Commission, therefore, will not submit a special report to Congress recommending such a change.

9. Directory Option for Water Heaters

The 1988 NPR solicited comment on a proposal from GAMA to repeal the current product-specific labeling requirements for water heaters and, instead, to allow manufacturers to provide required energy usage information in an industry directory and to label their products with labels that provide no energy usage information or limited information. Of the six comments addressing this proposal, only one favored it and the Commission decided to leave the current water heater labeling requirements unchanged. The Commission noted that GAMA's Directory can be a useful voluntary supplement to the labels for those consumers and industry members who choose to use it.[143]

Four comments addressed this issue.[144] No new evidence or arguments were raised. GAMA reiterated its previous position that furnaces and water heaters typically are purchased from contractor-installers and are not seen on display by consumers before their purchase and installation and, therefore, should not be subject to mandatory labeling requirements.[145] Atlanta Gas supported, without specific reasons, the Commission's position to continue requiring product-specific labels for water heaters instead of requiring only that they be listed in a directory.[146] A comment from a building code inspector stated that labels on products reduce building code inspection delays and make inspections easier.[147] CEC reported that the major manufacturers use so many manufacturers' names, trade names, and model numbers that it is often very difficult to determine with any degree of certainty what data in a directory, either GAMA's or CEC's, pertain to any specific unit.[148]

Eight other comments bear on this issue; all of these were received from members of the natural gas industry who opposed requiring energy factors on labels for water heaters, clothes washers, and dishwashers. They commented that appliances, including water heaters, increasingly are on display in stores, building supply outlets, and new homes. They concluded that consumers can therefore make purchasing decisions that consider the information on labels attached to the products.[149]

Accordingly, the Commission is retaining the product-specific labeling requirements for water heaters.

10. Proposal to Label Certain Unvented Heaters

The Commission in 1979 exempted electric unvented heaters, or "space heaters," from the Rule.[150] In 1984, DOE published a final test procedure for "unvented heaters" that use natural gas, propane and kerosene.[151] Consequently, in the 1988 NPR, the Commission sought comment on whether to label these other unvented heaters.[152]

In the 1993 NPR, after analyzing the comments on the issue, the Commission tentatively concluded that unvented heaters fueled by natural gas, propane and kerosene should be exempted from the Rule because all models are 100% efficient. They are not vented to the outside and, therefore, all the heat produced remains in the area being heated. In addition, compared to the other products covered by the Rule, they consume minor amounts of energy. The Commission found there is no significant difference in operating cost among similarly sized models and, therefore, that labels disclosing costs would not help consumers make purchasing decisions.[153] The Commission tentatively concluded that requiring the labeling of these products would not be economically feasible unless the cost of labeling were offset by some significant benefit to consumers.

Two comments addressed this issue. GAMA favored exempting these products.[154] CEC opposed an exemption, stating that the fact that there is no real difference in efficiency among these unvented space heaters is in itself an important piece of information that should be communicated to consumers.[155]

[138] Whirlpool, D–3, 5; AHAM, D–5, 6; ARI, D–6, 2.

[139] Section 324(c)(1) (42 U.S.C. 6294(c)(1)) states that "* * * a rule prescribed under this section shall require that *each* covered product in the type or class of covered products to which the rule applies bear a label which discloses * * *." (emphasis added).

[140] This procedure is permitted under Section 6(f) of the FTC Act (15 U.S.C. 46(f)).

[141] *See* 58 FR 12826.

[142] CEC, DD–23, 20.

[143] *See* 58 FR 12826.

[144] GAMA, D–9, 1; Atlanta Gas, DD–6, 2; Palmdale, DD–16, 1; CEC, DD–23, 20.

[145] GAMA, D–9, 1.

[146] Atlanta Gas, DD–6, 2.

[147] Palmdale, DD–16, 1.

[148] CEC, DD–23, 20.

[149] Peoples Gas, DD–3, 1; Elizabethtown Gas, DD–10, 1–2; Covington Gas, DD–11, 1; Gibson County Utility, D–13, 1; Texas Gas, DD–15, 4; AGA, DD–22, 3; Consolidated Gas, DD–25, 1–2: "Market trends suggest that labels do indeed assist a large number of consumers in purchases of appliances such as water heaters. The fact that most water heaters are purchased either as emergency replacement of leaking water heaters or in connection with the purchase of a new home does not necessarily lead one to conclude that consumers do not take the time to look at the labels on appliances that they are planning to purchase. In the case of new homes, it is similarly difficult to conclude that the consumer/homebuyer never actually takes the time to at least casually inspect the water heater and thus see the water heater label."; UGI, DD–26, 2.

[150] The Commission found that, because all these products operate with virtually the same efficiency, the cost that would be incurred by industry in implementing label disclosures could not be economically justified. The Commission determined that the cost of testing and labeling would be substantial and would increase the products' cost by about 3%. The evidence also did not indicate that labeling would enable consumers to make more informed purchasing decisions because these products are all essentially 100% efficient in producing heat and operate with little variation in energy costs. 44 FR 66466, at 66468 (Nov. 19, 1979).

[151] 49 FR 12148 (March 28, 1984).

[152] *See* 53 FR 22111.

[153] The Commission assumed that consumers understand that models that provide more heat cost more to operate. *See* 58 FR 12828.

[154] GAMA, D–9, 2.

[155] CEC, DD–23, 21.

information that should be communicated to consumers.[155]

The Commission has the discretion to exempt unvented heaters from labeling if labeling would not be technologically or economically feasible.[156] The Commission finds that the cost of labeling would exceed whatever benefit that consumers may obtain from learning that all competing models of a product are about equal in efficiency. The Commission concludes, therefore, that a labeling requirement is not economically feasible, and exempts these products from the Rule.

B. Issues Not Raised in the 1988 NPR

1. Industry Proposal To Exempt Central Air Conditioners From Labeling Requirements

In responding to the 1988 NPR, one manufacturer requested that the Commission repeal the recently adopted requirement for product-specific labels on central air conditioners. In discussing this comment in the 1993 NPR, the Commission stated that its reasoning for requiring product-specific labels for central air conditioners is described in the Statement of Basis and Purpose published with the central air conditioner amendments,[157] and that the comment did not contain any new information to justify reconsidering the Rule's requirements in this regard.[158]

Three comments addressed this issue. ARI favored repealing the labeling requirement, contending that consumers do not use labels in their purchasing decisions and that all that is needed is a directory listing and a generic label referring consumers to it.[159] CEC opposed repealing the labeling requirement because the label information is useful to consumers, to utilities with incentive rebate programs for installation of efficient equipment, and to enforcement officials.[160] Palmdale also described how labels on heating and cooling equipment are useful to building code inspectors.[161]

The ARI comment does not provide any new information to justify repealing the central air conditioner labeling requirements. In contrast, the CEC and Palmdale comments strongly suggest that the information on central air conditioner labels is used by the public. The Commission therefore concludes that the record supports retaining the

[154] GAMA, D–9, 2.

[155] CEC, DD–23, 21.

[156] 42 U.S.C. 6294(a)(1) and 6294(b)(5).

[157] 52 FR 46888, 46891–2 (Dec. 10, 1987).

[158] *See* the discussion of Carrier's comment at 58 FR 12828.

[159] ARI, D–6, 1.

[160] CEC, DD–23, 21.

information that should be communicated to consumers.[155]

The Commission has the discretion to exempt unvented heaters from labeling if labeling would not be technologically or economically feasible.[156] The Commission finds that the cost of labeling would exceed whatever benefit that consumers may obtain from learning that all competing models of a product are about equal in efficiency. The Commission concludes, therefore, that a labeling requirement is not economically feasible, and exempts these products from the Rule.

B. Issues Not Raised in the 1988 NPR

1. Industry Proposal To Exempt Central Air Conditioners From Labeling Requirements

In responding to the 1988 NPR, one manufacturer requested that the Commission repeal the recently adopted requirement for product-specific labels on central air conditioners. In discussing this comment in the 1993 NPR, the Commission stated that its reasoning for requiring product-specific labels for central air conditioners is described in the Statement of Basis and Purpose published with the central air conditioner amendments,[157] and that the comment did not contain any new information to justify reconsidering the Rule's requirements in this regard.[158]

Three comments addressed this issue. ARI favored repealing the labeling requirement, contending that consumers do not use labels in their purchasing decisions and that all that is needed is a directory listing and a generic label referring consumers to it.[159] CEC opposed repealing the labeling requirement because the label information is useful to consumers, to utilities with incentive rebate programs for installation of efficient equipment, and to enforcement officials.[160] Palmdale also described how labels on heating and cooling equipment are useful to building code inspectors.[161]

The ARI comment does not provide any new information to justify repealing the central air conditioner labeling requirements. In contrast, the CEC and Palmdale comments strongly suggest that the information on central air conditioner labels is used by the public. The Commission therefore concludes that the record supports retaining the labeling requirement for central air conditioners.

2. Minor Revisions to the Rule

a. Descriptions of covered products. In the 1993 NPR, the Commission stated that new definitions for certain products appear in NAECA 87, and that the DOE test procedure product definitions, from which the definitions in the Rule are derived, have been amended over the years. As a result, some of the definitions of covered products in section 305.3 of the Rule are no longer up-to-date.[162] In addition, DOE has approved test procedures for new product categories and has adopted minimum efficiency standards pursuant to NAECA 87.[163] Because the Commission's Rule and DOE's test procedures and standards work in tandem to regulate the products enumerated in EPCA, the Commission proposed to revise the Rule's definitions to establish as much consistency as possible with DOE's test procedures and standards to avoid confusion.

Two comments generally supported these proposed amendments to the Rule.[164] No comments opposed them. The Commission, therefore, has amended the definitions in accordance with the proposals in the 1993 NPR. The amended sections of the Rule describing covered products are contained in "Text of Amendments," below, at sections 305.3 (a), (b), and (e) through (i).

b. Determinations of energy usage. Section 305.5 of the Rule refers to the DOE test procedures that manufacturers must follow in determining the energy usage figures to be used in complying with the required disclosures. In the 1993 NPR, the Commission proposed amending section 305.5 to reflect that the primary disclosure of energy usage on labels for products that had disclosed estimated annual operating cost would be in terms of either kilowatt-hour use per year or energy factor, instead of estimated annual operating cost.[165] Only CEC commented on this, and it supported it.[166]

The Commission is amending section 305.5 of the Rule. The section will now refer to kilowatt-hours per year, therms per year, or gallons per year because the Commission has decided to require the disclosure of energy consumption descriptors rather than energy factors. See section 305.5 in "Text of Amendments," below.

c. Determinations of capacity. Section 305.7 of the Rule establishes the methodology for determining the capacity, or size, of covered products. This is accomplished by a general definition of capacity for each product followed by a reference to the specific section of the DOE test that contains the procedure for determining the capacity of the product. Because the DOE tests have been modified since these references were published in the Rule, many references are now incorrect. The Commission proposed, in the 1993 NPR, correcting the references in section 305.7.

Two comments supported these proposed amendments and none opposed them.[167] Accordingly, the Commission has amended the references as proposed in the 1993 NPR. See section 305.7 in "Text of Amendments," below.

d. Past effective dates. Since the Rule was first published in 1979, section 305.18 has itemized the effective dates for the Rule's various requirements for all the covered product categories. The effective dates for the Rule's particular reporting requirements also have appeared separately in § 305.8(a). Because of various amendments to the Rule over the years, § 305.18 and, to a lesser extent, § 305.8(a) now list many different effective dates.

In the 1993 NPR, the Commission proposed deleting § 305.18 entirely and eliminating the effective dates provisions in § 305.8(a). The Commission tentatively found that their continued inclusion in the codified version of the Rule is of questionable value, that inclusion of all these effective dates in the Code of Federal Regulations version of the Rule is optional, and that deleting them will have no substantive effect on the Rule. The actual effective dates, if of historical interest, can be found in the relevant **Federal Register** notices. Finally, deletion of this information will simplify the Rule and reduce printing costs. The only comment on this issue supported the proposal.[168] Accordingly, for the reasons previously set forth, the Commission is amending the Rule by deleting § 305.18 entirely and by eliminating the effective dates in § 305.8(a). See §§ 305.8(a), 305.18 and 305.19 (which will be renumbered 305.18) in "Text of Amendments," below.

---

[154] GAMA, D–9, 2.

[155] CEC, DD–23, 21.

[156] 42 U.S.C. 6294(a)(1) and 6294(b)(5).

[157] 52 FR 46888, 46891–2 (Dec. 10, 1987).

[158] *See* the discussion of Carrier's comment at 58 FR 12828.

[159] ARI, D–6, 1.

[160] CEC, DD–23, 21.

[162] *See* 58 FR 12828–29.

[163] For example, DOE developed a test procedure for a new product category added by NAECA 87 (pool heaters) and test procedures for two new types of water heaters (instantaneous water heaters and heat pump water heaters.) Those products are being addressed in a separate proceeding.

[164] ARI, D–6, 2; CEC, DD–23, 3, 21.

[165] *See* 58 FR 12829.

[166] CEC, DD–23, 3, 21.

[167] ARI, D–6, 2; CEC, DD–23, 3, 21.

[168] CEC, DD–23, 25.

3. Energy Efficiency Descriptors

Currently, the Rule requires the use of the term "Energy Efficiency Rating (EER)" to describe the energy usage of room air conditioners, central air conditioners (including heat pumps), and furnaces.[169] The Commission adopted this single term so consumers could learn to recognize and associate it with energy efficiency measurement. The industry, however, describes the same rating with several terms based on the product category: *e.g.*, "Energy Efficiency Ratio (EER)" for room air conditioners, "Annual Fuel Utilization Efficiency (AFUE)" for furnaces, "Seasonal Energy Efficiency Ratio (SEER)" for central air conditioners and the cooling side of heat pumps, and "Heating Seasonal Performance Factor (HSPF)" for the heating side of heat pumps. These terms also are found in the DOE test procedures.

During the 1988 NPR comment period, several comments proposed changing the Rule's use of the single term, "EER," to the terms the industry uses for each product category. The comments noted that, although the term "EER" is used on labels, fact sheets and in catalogs, the industry still uses the other terms extensively and most consumers understand them.

In the 1993 NPR, the Commission proposed amending section 305.2(i) of the Rule to permit disclosure of the descriptors that are commonly used by the industry and referenced in the DOE tests. Eight comments addressed the proposal. Five supported it.[170] CEC also urged that the Commission not just *allow* use of the industry terms, but *require* their use.[171] Two comments said average consumers would not understand the industry terms.[172]

The Commission is not persuaded that average consumers will be unable to understand the industry terms. In light of the general support for this proposal, the Commission has decided to adopt these instead of the term "EER." Further, the Commission has decided to follow CEC's suggestion and to mandate the use of these terms in required disclosures. This will make the Rule consistent with DOE's Minimum Efficiency Standards Rule and industry practice. See section 305.2(i) in "Text of Amendments," below.

[169] Section 305.2(i).

[170] Amana, D–1, 3; ARI, D–6, 2; WSEO, DD–9, 1; Palmdale, DD–16, 1. In supporting the proposal, GAMA opined that the industry descriptors could always have been used and that the Rule only needs to be modified to reflect this fact more clearly. GAMA, D–9, 2.

[171] CEC, DD–23, 21–22.

[172] PSCNC, DD–1, 2; Mississippi Gas, DD–4, 2.

4. New EnergyGuide Label Format

As discussed in Part IV.A.6., above, the 1993 NPR sought comment on possible alternatives to dollar energy usage figures on labels, such as energy factor or kilowatt-hour, therm, or gallon usage. In preparing proposed sample labels displaying the new descriptors for public comment, the Commission's staff determined that additional changes to the labels were necessary. Specifically, the Commission needed to add explanatory language for such terms as "energy factor" and "kilowatt-hours per year," and needed to adjust the labels' design to accommodate the disclosures proposed for clothes washers and dishwashers. Finally, consumer research conducted by DOE in 1984 and 1985 had suggested that the current label format could benefit from simplification.[173]

The Commission, therefore, prepared simplified labels that were intended to be more "user-friendly." In consultation with DOE's Office of Codes and Standards, the Commission prepared three different prototype dishwasher labels—a vertical graph, a bar graph, and one that used the current horizontal graph configuration. The 1993 NPR also included a fourth label that showed the bar graph against a grid background, with the high end bar occupying the full height of the graph and with the low end bar coming up only to the first line in the grid.

The Commission conducted consumer research involving 120 shopping mall consumers on the proposed alternative labels. The study showed consumers preferred the bar graph format over the other two (as well as over the current, dual-disclosure label). The Commission placed the results of the study on the rulemaking record to aid the public in commenting on the proposed labels.[174]

In an effort to understand better how consumers perceive, understand and use information on energy efficiency, the 1993 NPR asked: how would "energy factor" and "kilowatt-hour use per year" be perceived and understood by consumers; what fuel cost figures and what fuel cost figure intervals would be appropriate in the cost grids on labels for certain appliances; how easy is it for consumers to use the cost grids to compare the relative costs of alternative products; and, would the costs to industry of newly designed labels be justified by the improvement in communication. The Commission also asked whether the Rule's dimension requirements for labels should be changed and for other suggestions for improving label design.

[173] See DOE materials at B–1 through B–3

[174] See B–4

The Commission has divided the discussion of the format of EnergyGuide labels into two issues: format of the primary disclosure, and cost grids.

a. Format of the primary disclosure. Eleven comments addressed the format change issue. Five comments indicated a preference for one or another of the proposed sample formats, thereby implicitly supporting change from the current format.[175] Six advocated keeping the format of required labels the same or essentially the same.[176]

All of the comments that expressed a preference for any of the proposed sample labels favored Sample 4 (the bar graph with grids).[177] Speed Queen preferred the overall format of Sample 4, but suggested that the lower half of Sample 3 was preferable because it emphasized the definition of "energy factor."[178] ACEEE and WSEO preferred Sample 4 and suggested minor improvements.[179] WSEO also commented that the proposed changes to the labels are necessary to improve their usefulness, and that the costs of the improvements will probably be low compared to the benefits.[180] USEPA preferred Sample 4 because of the cross grids behind the bar graph and found it the easiest to read and understand.[181]

Whirlpool commented that the present horizontal format has been in use for the past 13 years with no adverse consumer feedback that would indicate misunderstanding or confusion about the ranges of comparability. It further noted that maintaining consistency with the present format would reduce costs to manufacturers and, ultimately, to consumers. It also would reduce confusion and the need for reeducation among retail salespeople and consumers.[182] Whirlpool, Maytag and AHAM asked that the EnergyGuide format be consistent with the Canadian EnerGuide label format.[183]

AHAM opposed any format changes except to the extent necessary to accommodate new energy usage descriptors because consumers have become accustomed to reading the existing EnergyGuide labels.[184] AHAM suggested, however, as did Whirlpool, that the format be changed slightly to allow for flexibility in size so labels could range between 5.25 and 5.50 inches in width, which would include the presently required 5⁵⁄₁₆" width specification. According to Whirlpool, this would provide some latitude to allow for minor variations in printing operations.[185]

Speed Queen asked that labels not become larger, because the present size specifications optimize the number of labels that can be printed from a sheet of paper stock.[186] Amana, Maytag, and AHAM requested that the final label format be printable with manufacturers' existing printing systems.[187] ARI and GAMA commented that, if labels are to be required, they should remain the same because none of the proposed new formats would provide any significant, cost-justifiable benefits.[188]

The Commission has determined not to make major changes in the format of the primary energy usage disclosure on EnergyGuides except those that are necessary because the Commission is amending the Rule to require the use of new energy usage descriptors. The Commission also is eliminating cost grids from labels for refrigerators, refrigerator-freezers, freezers, water heaters, clothes washers, dishwashers, and room air conditioners. *See* the discussions in Parts IV.A.6. b. and c., above and IV.B.4.b., below. Consumers are familiar with the current horizontal bar format, which has been in use for twelve years. The Commission also has concluded that the record is inconclusive about the need for and advantages of a different format for presentation of the primary energy usage disclosure.[189] Finally, retaining

[175] Amana, D–1, 3; Speed Queen, D–8, 2; ACEEE, DD–8, 1; WSEO, DD–9, 1–2; USEPA, DD–12, 1.

[176] Whirlpool, D–3, 5; AHAM, D–5, 10–11; ARI, D–6, 2; GAMA, D–9, 2; Mississippi Gas, DD–4, 4; Texas Gas, DD–15, 5–6.

[177] Amana, D–1, 3 ("no objection to the Sample 4"); Speed Queen, D–8, 2; ACEEE, DD–8, 1; WSEO, DD–9, 1–2; USEPA, DD–12, 1.

[178] Speed Queen, D–8, 2 (the comment noted that the definition would not be necessary if kWh/cycle were used instead of energy factor).

[179] ACEEE appeared to recommend omitting the definition of "energy factor" from the bar graph box. DD–8, 2. WSEO suggested rearrangement of some of the wording on the label and use of "kilowatt-hour," rather than "kilowatt." DD–9, 2–3.

[180] WSEO DD–9, 3.

[181] USEPA, DD–12, 1.

[182] Whirlpool, D–3, 5

[183] Whirlpool, D–3, 5; Maytag, D–4, 4–5; AHAM, D–5, 11–12. The Canadian label, which was provided in Attachments to both Maytag's and AHAM's comments, is based on a horizontal scale similar to the current EnergyGuide label.

[184] AHAM, D–5, 11.

[185] AHAM, D–5, 10–11; Whirlpool, D–3, 5.

[186] Speed Queen, D–8, 2.

[187] Amana, D–1, 3; Maytag, D–4, 3; AHAM, D–5, 12. None of these comments, however, provided any specific information on how to assure this.

[188] ARI, D–6, 2; GAMA, D–9, 2.

[189] *See* comments of PSCNC, who questioned making decisions on the basis of such a small consumer survey (DD–1, 1–2) and Mississippi Gas, whose own consumer study suggests that the Commission should conduct further study in its development of an effective energy label (DD–4, 4).

format be consistent with the Canadian EnerGuide label format.[183]

AHAM opposed any format changes except to the extent necessary to accommodate new energy usage descriptors because consumers have become accustomed to reading the existing EnergyGuide labels.[184] AHAM suggested, however, as did Whirlpool, that the format be changed slightly to allow for flexibility in size so labels could range between 5.25 and 5.50 inches in width, which would include the presently required 5⁵⁄₁₆" width specification. According to Whirlpool, this would provide some latitude to allow for minor variations in printing operations.[185]

Speed Queen asked that labels not become larger, because the present size specifications optimize the number of labels that can be printed from a sheet of paper stock.[186] Amana, Maytag, and AHAM requested that the final label format be printable with manufacturers' existing printing systems.[187] ARI and GAMA commented that, if labels are to be required, they should remain the same because none of the proposed new formats would provide any significant, cost-justifiable benefits.[188]

The Commission has determined not to make major changes in the format of the primary energy usage disclosure on EnergyGuides except those that are necessary because the Commission is amending the Rule to require the use of new energy usage descriptors. The Commission also is eliminating cost grids from labels for refrigerators, refrigerator-freezers, freezers, water heaters, clothes washers, dishwashers, and room air conditioners. *See* the discussions in Parts IV.A.6. b. and c., above and IV.B.4.b., below. Consumers are familiar with the current horizontal bar format, which has been in use for twelve years. The Commission also has concluded that the record is inconclusive about the need for and advantages of a different format for presentation of the primary energy usage disclosure.[189] Finally, retaining the existing horizontal format of the primary disclosure has the advantage of continued consistency with Canada's EnerGuide labels.[190]

Within the context of the existing horizontal bar format, however, the Commission is making certain changes to make the labels simpler and more "user-friendly." The Commission proposed many of these changes as part of the Sample Labels in the 1993 NPR.[191]

Specifically, to simplify the appearance of the labels overall, the Commission has removed all text from the labels above the "EnergyGuide" logo and moved the phrase "Based on standard U.S. Government tests" from its present location under the horizontal bar so it appears as the only text immediately below the EnergyGuide logo. The Commission has increased the size of the type of this phrase so consumers can clearly see that the energy usage information is based on government standards.[192] The Commission also has changed the arrangement of the text on the labels somewhat to maximize the use of the free space resulting from the elimination of the cost grids and the references to cost calculation that accompanied them (discussed in Part IV.B.4.b., below.)

In addition, to emphasize to consumers that the information on the labels is for use in comparative shopping (rather than to provide exact energy usage of the appliance in the home), the Commission has added the headline "Compare the [Energy Use or Energy Efficiency] of this [Product] with Others Before You Buy."

The Commission recognizes that, at least at first, the energy consumption descriptors on the amended labels may not be as familiar to consumers as the estimated annual dollar operating cost figures on the current labels have been, and that the product-specific efficiency descriptors may also seem unfamiliar. For each energy consumption descriptor (kWh/year, therms per year, and gallons per year) and energy efficiency descriptor (EER, SEER, AFUE, and HSPF), therefore, the Commission will require that the labels include a simple definition.

Finally, the Commission also is amending slightly the size requirements for the labels in section 305.11(a)(1) of the Rule to permit some flexibility in the label's width, as requested by AHAM and Whirlpool. This accommodates the needs of the industry and will have a *de minimis* effect on label size consistency.

The above-described modifications are reflected in the amended Sample Labels in "Text of Amendments," below.

b. *Cost grids.* Labels for refrigerators, refrigerator-freezers and freezers, dishwashers, clothes washers, water heaters, and room air conditioners currently contain cost grids to enable consumers to estimate the annual operating cost of the product based on their own utility rates. In the 1993 NPR, the Commission proposed that the amended labels contain similar, although simpler, cost grids. One element of these cost grids would be a range of costs for the fuel used by the product (electricity, natural gas, etc.). The Commission asked what cost figures and what intervals between the cost figures would be appropriate. The Commission asked in particular how easy it is for consumers to use the cost grid to compare the relative costs of alternative products. Although the Commission did not propose eliminating cost grids from the labels, the Commission asked for suggestions for improving the design of the proposed labels.

Ten comments addressed these questions. Four supported the continued use of cost grids, some suggesting minor modifications.[193] The

---

[183] Whirlpool, D–3, 5; Maytag, D–4, 4–5; AHAM, D–5, 11–12. The Canadian label, which was provided in Attachments to both Maytag's and AHAM's comments, is based on a horizontal scale similar to the current EnergyGuide label.

[184] AHAM, D–5, 11.

[185] AHAM, D–5, 10–11; Whirlpool, D–3, 5.

[186] Speed Queen, D–8, 2.

[187] Amana, D–1, 3; Maytag, D–4, 3; AHAM, D–5, 12. None of these comments, however, provided any specific information on how to assure this.

[188] ARI, D–6, 2; GAMA, D–9, 2.

[189] *See* comments of PSCNC, who questioned making decisions on the basis of such a small consumer survey (DD–1, 1–2) and Mississippi Gas, whose own consumer study suggests that the Commission should conduct further study in its development of an effective energy label (DD–4, 4).

[190] *See* comments on this subject from Amana, D–1, 3; Whirlpool, D–3, 5; Maytag, D–4, 3–4; AHAM, D–5, 2, 8–9; ARI, D–6, 3; Speed Queen, D–8, 2; GAMA, D–9, 3. With their comments, AHAM and Maytag provided copies of a marketing research study conducted by the Canadian Government's Ministry of Energy, Mines and Resources ("EMR") summarizing and discussing focus group interviews used to test consumer comprehension of alternative energy label formats. EMR conducted the study in connection with revisions to Canada's "EnerGuide" labels for appliances. Consumers were exposed to alternative formats of labels disclosing three measures of energy usage—energy efficiency, operating cost, or energy consumption.

The study indicated that a simple and clear disclosure of energy consumption, in the form of kilowatt-hours per year, was the easiest for consumers to understand. Labels disclosing estimated annual operating cost or energy efficiency seemed to be more confusing. The study also showed consumer preference for energy usage disclosure on a scale measuring from "low" on the left to "high" on the right.

The revised label format that will be issued for final comment by EMR discloses energy usage in the form of estimated annual energy consumption (in kWh/yr.) over a horizontal bar showing the energy usage range, with color shading increases in intensity from left to right as energy consumption increases. The energy consumption of the labeled appliance is indicated with a pointer located at the appropriate position on the scale.

[191] *See* proposed Sample Labels 1–4 at 58 FR 12847–50.

[192] One of the findings in the DOE-sponsored assessment of DOE's Appliance Labeling Rule consumer education program was that labels must display more clearly the government's role in the tests for the labeling program to have more credibility. B–3, 35.

[193] ACEEE, DD–8, 1–2; WSEO, DD–9, 2; Texas Gas, DD–15, 4; CEC, DD–23, 24.

other six ranged from questioning the need for cost grids to recommending that they be eliminated from all labels.[194]

ACEEE commented that the cost grids, as shown on Sample Labels 1–4, are well-designed and useful to the consumer. The comment, however, suggested standardizing the ranges of costs for electricity and gas on labels for all products, so every label would show the same fuel cost numbers (and intervals between them) on the grids.[195] WSEO said the grids are helpful and simple and agreed with the cost figures and the intervals between them.[196] Texas Gas commented that the cost grids are most useful for making cross-fuel comparisons and that the grids on water heater labels should be expanded to show annual energy costs for operation of the water heater on electricity, gas, and oil, regardless of what fuel the labeled product actually uses.[197] CEC stated that the 1993 NPR cost grids are adequate.[198]

Amana commented that cost grids are inappropriate for climate control products because of the complexity of calculating heating and cooling loads. Amana was concerned that large increments in energy cost values on cost grids, caused by label space constraints, could confuse consumers who have trouble calculating the costs. Amana stated that Canada's energy label for refrigerators has for years disclosed kWh/year with no cost grids.[199]

Whirlpool stated that the grids only approximate annual operating cost, while kWh/cycle or kWh/year, in conjunction with local rates, would provide precise cost figures. It recommended replacing the grids with instructions on how to consult with a local utility company and to calculate the annual operating cost based on kWh/cycle or kWh/year.[200] Maytag also recommended eliminating cost grids from all labels, contending that they complicate the message of the label and make it less likely to be used by consumers. Also, according to Maytag, the grids are redundant because it is obvious that the more kilowatt-hours of energy consumed, the more costly the operation of the product will be.[201]

AHAM, while supporting the existing EnergyGuide format in general, encouraged the Commission to eliminate cost grids from the labels. AHAM cited a DOE study referenced in the 1993 NPR indicating that consumers rarely use cost grids and often consider them to contain extraneous information.[202] AHAM also contended that eliminating the grids would further harmonize the Commission's EnergyGuide labels with Canada's EnerGuides.[203]

EGIA commented that the cost grids are confusing to customers and, therefore, confusing to salespeople.[204] Laclede Gas, in opposing the use of energy factors on water heater labels, noted that the inclusion of simplified cost grids would not be sufficient to overcome the distorted information provided by the energy factor disclosure.[205]

The Commission's authority to require cost grids is derived from section 324(c)(5) of EPCA.[206] This section permits, but does not direct, the Commission to require additional information on labels relating to energy consumption if the Commission determines that such information would assist consumers in making purchasing decisions and would not be unduly burdensome to manufacturers. Therefore, the Commission has the authority to eliminate cost grids from labels if it no longer believes that they will assist consumers in making purchasing decisions.

Some industry members contended that consumers often find that the cost grids are confusing and detract from the basic message of the labels.[207] As explained earlier, other amendments the Commission is adopting will provide consumers with energy consumption information that can be readily converted to provide the labeled product's operating cost. Specifically, the Commission's adoption of estimated annual energy consumption disclosures for refrigerators, refrigerator-freezers, freezers, water heaters, clothes washers, and dishwashers makes cost grids on labels for those products unnecessary because the information they provide will now be available by multiplying the energy consumption figure by an appropriate cost per kWh, therm or gallon.[208] Accordingly, the Commission has determined to eliminate cost grids from labels for these products.

The Commission believes, however, that consumers may want and benefit from a simplified direct disclosure of estimated annual operating cost. Therefore, the Commission will now require, on labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters, a statement that shows the operating costs for the labeled product derived using the DOE annual average cost for electricity, natural gas, propane, or heating oil, as appropriate. This will provide consumers with an estimate, for purposes of comparison, of the product's energy usage expressed as an operating cost. The statement will identify the specific costs per unit for the appropriate fuel and the year DOE published it. Because the statement will not include operating cost ranges of comparability, however, the Commission will require updating of these cost figures only in connection with label changes occasioned by the publication of revisions to the energy consumption ranges that must appear with the primary energy consumption disclosure. The statement will read as follows:

[Products] using more energy cost more to operate. This model's estimated yearly operating cost is:

[Cost figure will be boxed] Based on a [Year] U.S. Government national average cost of $_____ per [kWh, therm, or gallon] for [electricity, natural gas, propane, or oil]. Your actual operating cost will vary depending on your local utility rates and your use of the product.[209]

The primary energy usage disclosure on the current labels for room air conditioners is an energy efficiency figure identified as an "energy efficiency ratio (EER)" in the industry.[210] The labels also must disclose a cost grid based on different costs per kWh for electricity and different hours of use per year of the product. Like the cost grids on current labels for the products just discussed, these cost grids are complicated and occupy a significant amount of label space. Although they are not being amended to disclose an energy consumption descriptor like the amended labels for these other products, the Commission believes that, as with the other labels, room air conditioner labels would benefit by replacement of the cost grids with the operating cost statement, and is amending the Rule to that effect. The space on all these labels that was previously occupied by the cost grids and text references to cost will be available for the remaining text of the labels, which will be presented in a cleaner, more readable format.[211]

To implement the elimination of cost grids from labels, the Commission is amending the Sample Labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners. The Commission also is amending the Appendices that pertain to these categories to delete the cost grid materials there contained (see Appendices A1–F in "Text of Amendments," below) as well as the section of the Rule that requires cost grids to be on labels for these products (see section 305.11(a)(5)(i)(H) in "Text of Amendments," below.)

V. Miscellaneous Issues

Several comments submitted in response to the 1993 NPR raised issues that the Commission has not identified for comment, or were related only indirectly to the proposals in the NPR. These issues are discussed below.

A. Effective Date

AHAM and ARI requested, without elaboration, that the Commission allow six months until the amendments become effective.[212] Section 324 of EPCA provides that a labeling rule must take effect not later than three months after the date it is prescribed, except that the effective date can be extended to six months if the Commission determines that such extension is necessary to allow adequate time for compliance.[213] Because of the nature and extent of the amendments being

---

[194] Amana, D–1, 3; Whirlpool, D–3, 4; Maytag, D–4, 3; AHAM, D–5, 11; Laclede Gas, DD–20, 1–5; EGIA, DD–21, 2.

[195] ACEEE, DD–8, 1–2.

[196] WSEO, DD–9, 2. WSEO noted, however, that the cost grids are not the most important part of the label.

[197] Texas Gas, DD–15, 4.

[198] CEC, DD–23, 24.

[199] Amana, D–1, 3. Canada's soon-to-be-revised Energuide labels are not likely to require cost grids on labels for any covered product categories. *See* Attachments to comments from Maytag and AHAM.

[200] Whirlpool, D–3, 4.

[201] Maytag, D–4, 2.

[202] *See* the 1993 NPR at 58 FR 12829 and B–2, 38–39. The same discussion in the DOE study also includes the opinions of some consumers who favored the cost grids.

[203] AHAM, D–5, 11.

[204] EGIA, DD–21, 2.

[205] Laclede Gas, DD–20, 4. The comment was in opposition to the proposal to require energy factors on water heater labels, supplemented by a cost grid to enable consumers to estimate the annual operating cost of the products based on local utility rates.

[206] 42 U.S.C. 6294(c)(5).

[207] *See* Maytag, D–4, 2; AHAM, D–5, 11; EGIA, DD–21/ 2.

[208] *See* Parts IV.A.6.a., b., and c., above.

[209] For clothes washers and dishwashers, the statement will read: [Product]s using more energy cost more to operate. This model's estimated yearly operating cost is:

[Electric cost figure will be boxed] when used with an electric water heater

[Gas cost figure will be boxed] when used with a natural gas water heater

Based on a [Year] U.S. Government national average cost of $_____ per kWh for electricity, and $_____ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

[210] *See* the discussion of the Commission's adoption of industry terms for required energy efficiency descriptors in Part IV.B.3., above.

[211] *See* the discussion of the text of the labels in Part IV.B.4.a., above.

[212] AHAM, D–5, 14; ARI, D–6, 3.

[213] 42 U.S.C. 6294(b)(4).

industry.[210] The labels also must disclose a cost grid based on different costs per kWh for electricity and different hours of use per year of the product. Like the cost grids on current labels for the products just discussed, these cost grids are complicated and occupy a significant amount of label space. Although they are not being amended to disclose an energy consumption descriptor like the amended labels for these other products, the Commission believes that, as with the other labels, room air conditioner labels would benefit by replacement of the cost grids with the operating cost statement, and is amending the Rule to that effect. The space on all these labels that was previously occupied by the cost grids and text references to cost will be available for the remaining text of the labels, which will be presented in a cleaner, more readable format.[211]

To implement the elimination of cost grids from labels, the Commission is amending the Sample Labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners. The Commission also is amending the Appendices that pertain to these categories to delete the cost grid materials there contained (see Appendices A1–F in "Text of Amendments," below) as well as the section of the Rule that requires cost grids to be on labels for these products (see section 305.11(a)(5)(i)(H) in "Text of Amendments," below.)

V. Miscellaneous Issues

Several comments submitted in response to the 1993 NPR raised issues that the Commission has not identified for comment, or were related only indirectly to the proposals in the NPR. These issues are discussed below.

A. Effective Date

AHAM and ARI requested, without elaboration, that the Commission allow six months until the amendments become effective.[212] Section 324 of EPCA provides that a labeling rule must take effect not later than three months after the date it is prescribed, except that the effective date can be extended to six months if the Commission determines that such extension is necessary to allow adequate time for compliance.[213] Because of the nature and extent of the amendments being announced today, and in view of the request by the two trade associations, the Commission finds that the six-month period is necessary to allow those who are subject to the Rule to come into compliance with the amendments. The effective date of these amendments, therefore, will be six months from the date of their publication in the **Federal Register**.

B. Central Air Conditioner Labeling

ARI requested that the Commission amend the Rule to require manufacturers of split-system central air conditioners and the evaporator coils (sometimes sold separately) that are a part of them to base their representations of energy usage on the DOE test procedures.[214] ARI also suggested that certain disclosures on central air conditioner labels be amended.[215] The Commission believes that soliciting public comment on the proposal in the **Federal Register** may be required before imposing such an amendment.[216] The Commission will take these suggestions under advisement for future amendments.

C. Cost Grids and Furnace Labeling

ACEEE made several suggestions pertaining to figures and disclosures for use on cost grids.[217] Because the Commission is eliminating cost grids from labels on refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners, these suggestions are no longer relevant. ACEEE also provided an alternative Heat Loss Table for use with the Appendices pertaining to furnaces.[218] The Commission cannot modify the Heat Loss Tables, however, because they are provided by DOE as a part of the test procedure for furnaces.[219]

D. Water Use Disclosures

USEPA suggested that the Rule be expanded to include a disclosure of the water-use efficiency of appliances that use water.[220] Because EPCA does not give the Commission the authority to require such disclosures, the Commission cannot expand the Rule as USEPA requests. In a related matter, however, the Commission recently has amended the Rule to require disclosure of the water use of certain plumbing products, in accordance with a directive in the Energy Policy Act of 1992.[221]

E. Data Submissions, Ranges of Comparability, and Testing

CEC suggested specific revisions to three sections of the Rule. First, CEC suggested that section 305.8 be amended so required submissions of data could be made to the Commission "or its designated representative."[222] Second, CEC requested adding language to section 305.9 that would give the Commission the authority to change the ranges of comparability in circumstances other than when the range limits change by more than 15%.[223] Third, CEC proposed several changes to section 305.16, which relates to required testing by designated laboratories for enforcement purposes. CEC stated that the section should clarify whether "no more than two" samples must be tested and should provide for verification testing without the notice and reverification procedures currently in the section, and that the Commission should not pay for the tests when they are required.[224]

The Commission appreciates CEC's suggestions. However, before adopting any such amendments, the Commission would need to solicit public comment on them. The Commission will take these suggestions under advisement for possible future amendment proceedings.

VI. Metric Usage

Section 205b of the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, states that the metric measurement system is the preferred system of weights and measures in the United States.[225] It also requires federal agencies to use the metric system in all procurements, grants and other business-related activities (which include rulemakings), except to the extent that such use is impractical or is likely to cause

---

[210] *See* the discussion of the Commission's adoption of industry terms for required energy efficiency descriptors in Part IV.B.3., above.

[211] *See* the discussion of the text of the labels in Part IV.B.4.a., above.

[212] AHAM, D–5, 14; ARI, D–6, 3.

[213] 42 U.S.C. 6294(b)(4).

[214] ARI, D–6, 3–4. Split system central air conditioners consist of a condensing unit, which is usually installed outside, and an evaporator coil, which is installed in the duct work inside the house. These two parts can be purchased from the same manufacturer or from two different manufacturers.

[215] ARI asked that the text on central air conditioner labels be changed to eliminate, from the following statement, the assertion that ratings may vary "slightly": "This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions." ARI also asked that the statement suggest that consumers contact dealers for the actual efficiency rating of the purchased combination.

[216] 42 U.S.C. 6306(a)(1).

[217] ACEEE, DD–8, 1–3. For example, ACEEE suggested a map showing regional zones for room air conditioners similar to the map used for central air conditioners.

[218] *Id.*, at 3.

[219] 42 U.S.C. 324(c)(1).

[220] USEPA, DD–12, 1–2.

[221] See 58 FR 54955 (Oct. 25, 1993).

[222] CEC, DD–23, 27–28.

[223] *Id.*, 28.

[224] *Id.*, 28–30.

[225] 15 U.S.C. 205b.

significant inefficiencies or loss of markets to United States firms. Because of its general support of the policy stated in the Omnibus Trade and Competitiveness Act, the Commission solicited comment, in the 1993 NPR, on three areas of the Rule (described below) with a potential for the use of metric terms—either in place of or in addition to inch-pound measurements.

First, the Commission asked whether section 305.11(a) of the Rule should specify the dimensions of the required EnergyGuides in metric or dual terms, or remain unchanged. Second, the Commission solicited comment on whether the Rule should require that the capacity descriptors for covered products be expressed in metric or dual terms.[226] Manufacturers must annually submit to the Commission energy efficiency data on their products, based on DOE tests, that are categorized on the basis of these capacity descriptors. These data then form the basis for the ranges of comparability on the EnergyGuides. See section 305.8 of the Rule. The Commission asked whether to leave the present requirements unchanged, or to require the reports to the Commission and/or the disclosures on the EnergyGuides to be in metric or in dual terms. Third, the cost grids currently required on EnergyGuides for clothes washers, dishwashers, and water heaters show, as one factor of the grid, a fuel cost expressed in terms of kilowatt-hours for electricity, therms for natural gas, and gallons for heating oil. None of these is a completely metric term. See Appendices C, D, and F. The Commission solicited comment on whether to require metric or dual disclosures, or to leave the present requirements unchanged.

Ten comments addressed the issue of metric usage.[227] Only CEC supported adopting metric or dual measurements in any of the Rule's requirements. The others recommended leaving the Rule unchanged.

CEC recommended that the dimension specifications for the labels and the capacity descriptors on labels be specified in dual terms. CEC stated that the Rule should continue to allow that submissions be made in inch-pound units because Commission staff could make the conversion to metric units more easily after preparing ranges of comparability. On cost grids, CEC recommended keeping kWh without inch-pound equivalents, and requiring that therms and gallons be disclosed with their metric equivalents.[228]

Amana, Speed Queen and Texas Gas opposed amending the label dimension specifications.[229] Amana contended that there is no benefit to metric dimensioning, and Speed Queen stated that metric or dual dimensions would most likely conflict with printing industry standards for type font sizing and spacing.[230]

Most of the comments that opposed requiring label disclosures in metric or dual units stated that the labels with metric or dual disclosures would be cluttered and complicated,[231] would confuse consumers,[232] and would be less "consumer-friendly," contrary to the Commission's goals in revising label format.[233] GAMA contended that consumers would not understand metric terms and that the DOE tests do not use them. GAMA further stated that a dual disclosure requirement would make the already full GAMA Directory confusing and unwieldy.[234] ACEEE stated that dual or metric disclosures would educate consumers as to metric measurements but confuse them as to energy usage and complicate the labels.[235]

Four comments contended that requirements to submit or disclose capacities in metric or dual terms would be place a burden on the industry, although none quantified the burden.[236] AHAM and Texas Gas declared that a change to metric or dual disclosures would be burdensome, and Amana predicted that the use of dual terms would add time to the preparation of data submissions.[237] ARI stated that requiring submissions in metric terms would defeat the purpose of permitting industry efficiency descriptors (such as "AFUE" and "SEER"), and that showing information on labels in metric terms would be a burden on industry that would not benefit consumers.[238]

The Commission has determined that requiring manufacturers to disclose label information in metric terms could cause significant inefficiencies by confusing consumers. As ACEEE stated, such a requirement may raise consumers' awareness of metric terms, but at the expense of the basic purpose of the labeling program—effective communication of energy usage of labeled products. The Commission also has concluded that dual disclosures would unacceptably complicate labels. Because the Rule will not require metric or dual disclosures on labels, the Commission is not requiring submissions in those terms.

To support the policy articulated in the Metric Conversion Act, the Commission is amending section 305.11(a)(1) of the Rule to have it express the dimensions of the labels in inch-pound and metric units. The Commission is leaving unchanged the font, type-point-size and pica specifications in the sample labels that show them, however, because they are for use only by the printing industry in setting up and producing the labels and because there are no direct metric equivalents for them.[239]

VII. Regulatory Flexibility Act

In the 1988 NPR, the Commission concluded, on a preliminary basis, that an initial regulatory flexibility analysis was not necessary for the proposed amendments to the Rule because the amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities.[240] The Commission stated that its conclusion was based on information presently available and requested comment on the subject. No comments were received on this issue.

In the 1993 NPR, the Commission again sought comment on this issue. No comments were received. Accordingly, the Commission has no reason to believe that the amendments it is adopting will have a significant economic impact on a substantial number of small entities.

First, the amendments relating to energy usage disclosures for furnaces will not have a significant impact because the two proposed changes are likely to offset each other in terms of cost and burden. To the extent that manufacturers will have to prepare the product-specific labels, instead of the labels presently required, they will incur somewhat greater administrative and printing expenses. This will be offset, to some extent, because they will be able to disclose required information in an industry directory instead of preparing fact sheets. Overall, the Commission expects that most firms, regardless of size, will experience a reduction of expense primarily because of lower printing costs.

Second, the amendments relating to the creation of new range sub-categories for furnaces, room air conditioners, clothes washers, refrigerators, refrigerator-freezers, and freezers will not have a significant economic impact. The amendments will impose few, if any, additional costs. In addition, these products would now be categorized in accordance with the subdivisions in DOE's minimum efficiency standards program, making it administratively easier for the affected organizations, which will no longer be required to comply with two sets of similar, but inconsistent, regulations.

Finally, the amendments relating to the use of a different label format and different energy usage descriptors on labels will not have a significant economic impact. Although there will be a small initial cost in changing current labels, the cost is likely to be offset in future years because fewer annual label changes are likely to be required with the use of the new descriptors which, unlike current dollar descriptors, will not be subject to annual changes.

Because it appears, on the basis of evidence presently available, that these changes will not be likely to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act and its implementing regulation, the Commission concludes that a final regulatory flexibility analysis is unnecessary. In light of the above, the Commission certifies, under the provisions of Section 5 of the Regulatory Flexibility Act, that the amendments it is adopting today will not have a significant economic impact on a substantial number of small entities.[241]

VIII. Paperwork Reduction Act

In the 1988 NPR, the Commission stated that the Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 C.F.R. 1320.7(c), the regulation that

---

[226] Currently, section 305.7 of the Rule requires that the capacity descriptors for some products be in inch-pound measurements: cubic feet for refrigerators, refrigerator-freezers and freezers, Btu's for climate control products, and first hour rating in gallons for water heaters.

[227] Amana, D–1, 4; Whirlpool, D–3, 6; AHAM, D–5, 12–13; ARI, D–6, 2–3; Speed Queen, D–8, 1; GAMA, D–9, 2–3; ACEEE, DD–8, 2; Texas Gas, DD–15, 5–6; Laclede Gas, DD–20, 6; CEC, DD–23, 25–26.

[228] CEC, DD–23, 25–26.

[229] Amana, D–1, 4; Speed Queen, D–8, 1; Texas Gas, DD–15,5–6.

[230] Amana, D–1, 4; Speed Queen, D–8, 1.

[231] ARI, D–6, 2; ACEEE, DD–8, 2; Texas Gas, DD–15, 5–6; Laclede Gas, DD–20, 6.

[232] ARI, D–6, 2; Speed Queen, D–8, 1; ACEEE, DD–8, 2; Laclede Gas, DD–20, 6.

[233] Whirlpool, D–3, 6; Speed Queen, D–8, 1; ACEEE, DD–8, 2.

[234] GAMA, D–9, 2–3.

[235] ACEEE, DD–8, 2.

[236] Amana, D–1, 4; AHAM, D–5, 13; ARI, D–6, 2–3; Texas Gas, DD–15, 5.

[237] AHAM, D–5, 13; Texas Gas, DD–15, 5; Amana, D–1, 4.

[238] ARI, D–6, 2–3. *See* discussion of industry efficiency descriptors at Part IV.B.3., above.

[239] The Commission could require that the dimensions of the printed areas of the labels and the type size specifications be expressed in millimeters.

[240] *See* Regulatory Flexibility Act, 5 U.S.C. 603–605; *see also* 53 FR 22113.

[241] 5 U.S.C. 605(b).

cost and burden. To the extent that manufacturers will have to prepare the product-specific labels, instead of the labels presently required, they will incur somewhat greater administrative and printing expenses. This will be offset, to some extent, because they will be able to disclose required information in an industry directory instead of preparing fact sheets. Overall, the Commission expects that most firms, regardless of size, will experience a reduction of expense primarily because of lower printing costs.

Second, the amendments relating to the creation of new range sub-categories for furnaces, room air conditioners, clothes washers, refrigerators, refrigerator-freezers, and freezers will not have a significant economic impact. The amendments will impose few, if any, additional costs. In addition, these products would now be categorized in accordance with the subdivisions in DOE's minimum efficiency standards program, making it administratively easier for the affected organizations, which will no longer be required to comply with two sets of similar, but inconsistent, regulations.

Finally, the amendments relating to the use of a different label format and different energy usage descriptors on labels will not have a significant economic impact. Although there will be a small initial cost in changing current labels, the cost is likely to be offset in future years because fewer annual label changes are likely to be required with the use of the new descriptors which, unlike current dollar descriptors, will not be subject to annual changes.

Because it appears, on the basis of evidence presently available, that these changes will not be likely to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act and its implementing regulation, the Commission concludes that a final regulatory flexibility analysis is unnecessary. In light of the above, the Commission certifies, under the provisions of Section 5 of the Regulatory Flexibility Act, that the amendments it is adopting today will not have a significant economic impact on a substantial number of small entities.[241]

VIII. Paperwork Reduction Act

In the 1988 NPR, the Commission stated that the Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 C.F.R. 1320.7(c), the regulation that implements the Paperwork Reduction Act ("PRA").[242] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget ("OMB") and assigned OMB Control No. 3084–0068. Since the 1988 NPR was published, the Supreme Court has determined that agency regulations requiring disclosures to third parties are not subject to the PRA.[243] OMB has again reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until February 28, 1996. The amendments now being adopted do not alter the recordkeeping or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Incorporation by reference, Labeling, Reporting and recordkeeping requirements, Water conservation.

For the reasons set forth in the preamble, 16 CFR is amended as follows:

Text of Amendments

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

1. Part 305 is amended by revising the heading to read as set forth above.

2. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

3. Sections 305.2 (h) through (j) are revised to read as follows:

§ 305.2 Definitions.

* * * * *

(h) *Estimated annual energy consumption* and *estimated annual operating cost.* (1) *Estimated annual energy consumption* means the energy or (for products described in sections 305.3(k)–(n)) water that is likely to be consumed annually in representative use of a consumer product, as determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

(i) *Kilowatt-hour use per year*, or *kWh/yr.*, means estimated annual energy consumption expressed in kilowatt-hours of electricity.

(ii) *Therm use per year*, or *therms/yr.*, means estimated annual energy consumption expressed in therms of natural gas.

(iii) *Gallon use per year*, or *gallons/yr.*, means estimated annual energy consumption expressed in gallons of propane or No. 2 heating oil.

(2) *Estimated annual operating cost* means the aggregate retail cost of the energy that is likely to be consumed annually in representative use of a consumer product, as determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

(i) *Energy efficiency rating* means the following product-specific energy usage descriptors: "annual fuel utilization efficiency (AFUE)" for furnaces; "energy efficiency ratio (EER)" for room air conditioners; "seasonal energy efficiency ratio (SEER)" for the cooling function of central air conditioners and heat pumps; and, "heating seasonal performance factor (HSPF)" for the heating function of heat pumps, as all four descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage descriptors shall be used in satisfying all the requirements of this part.

(j) *Range of estimated annual energy consumption* means the range of estimated annual energy consumption per year of all models within a designated range of comparability.

* * * * *

4. Sections 305.3 (a) and (b) are revised to read as follows:

§ 305.3 Description of covered products to which this part applies.

(a) *Refrigerators and refrigerator-freezers.* (1) *Electric refrigerator* means a cabinet designed for the refrigerated storage of food at temperatures above 32 °F., and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 °F., but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F. An "all-refrigerator" is an electric refrigerator which does not include a compartment for the freezing and long time storage of food at temperatures below 32 °F (0.0 °C). An "all-refrigerator" may include a compartment of 0.50 cubic capacity (14.2 liters) or less for the freezing and storage of ice.

(2) *Electric refrigerator-freezer* means a cabinet which consists of two or more compartments with at least one of the compartments designed for the

---

[241] 5 U.S.C. 605(b).

[242] 44 U.S.C. 3501–3520.

[243] *Dole v. United Steelworkers of America*, 494 U.S. 26 (1990).

refrigerated storage of food at temperatures above 32 °F. and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8 °F. which may be adjusted by the user to a temperature of 0 °F. or below. The source of refrigeration requires single phase, alternating current electric energy input only.

(b) *Freezer* means a cabinet designed as a unit for the freezing and storage of food at temperatures of 0 °F. or below, and having a source of refrigeration requiring single phase, alternating current electric energy input only.

* * * * *

5. Section 305.3 is amended by adding paragraph (c)(1) and reserving paragraph (c)(2) to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(c) * * *

(1) *Water Heating Dishwasher* means a dishwasher which is designed for heating cold inlet water (nominal 50 °F.) or a dishwasher for which the manufacturer recommends operation with a nominal inlet water temperature of 120 °F. and may operate at either of these inlet water temperatures by providing internal water heating to above 120 °F. in at least one wash phase of the normal cycle.

6. Section 305.3(e) is revised to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(e) *Room air conditioner* means a consumer product, other than a packaged terminal air conditioner, which is powered by a single phase electric current and which is an encased assembly designed as a unit for mounting in a window or through the wall for the purpose of providing delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include a means for ventilating and heating.

* * * * *

7. Section 305.3(f) introductory text is revised to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(f) *Clothes washer* means a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement, and must be one of the following classes: automatic clothes washers, semi-automatic clothes washers, and other clothes washers.

* * * * *

8. Section 305.3(g) is revised to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(g) *Furnaces.* (1) *Furnace* means a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(i) Is designed to be the principal heating sources for the living space of a residence;

(ii) Is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(iii) Is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(iv) Has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

(2) *Electric central furnace* means a furnace designed to supply heat through a system of ducts with air as the heating medium, in which heat is generated by one or more electric resistance heating elements and the heated air is circulated by means of a fan or blower.

(3) *Forced air central furnace* means a gas or oil burning furnace designed to supply heat through a system of ducts with air as the heating medium. The heat generated by combustion of gas or oil is transferred to the air within a casing by conduction through heat exchange surfaces and is circulated through the duct system by means of a fan or blower.

(4) *Gravity central furnace* means a gas fueled furnace which depends primarily on natural convection for circulation of heated air and which is designed to be used in conjunction with a system of ducts.

(5) *Electric boiler* means an electrically powered furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 pounds per square inch gauge (psig) steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F. water temperature.

(6) *Low pressure steam or hot water boiler* means an electric, gas or oil burning furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 pounds psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F. water temperature.

(7) *Outdoor furnace or boiler* is a furnace or boiler normally intended for installation out-of-doors or in an unheated space (such as an attic or a crawl space).

(8) *Weatherized warm air furnace or boiler* means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

* * * * *

9. Section 305.3(h) introductory text and paragraph (h)(3) are revised, and paragraphs (h) (4) and (5) are added, to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(h) *Central air conditioner* means a product, other than a packaged terminal air conditioner, which is powered by single phase electric current, air cooled, rated below 65,000 Btu per hour, not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu per hour, and is a heat pump or a cooling only unit.

* * * * *

(3) *Evaporator coil* means a component of a central air conditioner which is designed to absorb heat from an enclosed space and transfer the heat to a refrigerant.

(4) *Single package unit* means any central air conditioner in which all the major assemblies are enclosed in one cabinet.

(5) *Split system* means any central air conditioner in which one or more of the major assemblies are separate from the others.

* * * * *

10. Section 305.3(i) is revised to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(i) *Heat pump* means a product, other than a packaged terminal heat pump, which consists of one or more assemblies, powered by single phase electric current, rated below 65,000 Btu per hour, utilizing an indoor conditioning coil, compressor, and refrigerant-to-outdoor air heat exchanger to provide air heating, and may also provide air cooling, dehumidifying, humidifying, circulating, and air cleaning.

* * * * *

11. The section heading and the introductory text of paragraph (a) of § 305.5 are revised to read as follows:

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate.

(a) Procedures for determining the estimated annual energy consumption, the estimated annual operating costs, the energy efficiency ratings and the efficacy factors of covered products are those found in 10 CFR Part 430, Subpart B, in the following sections:

* * * * *

12. Section 305.7 is revised to read as follows:

§ 305.7 Determinations of capacity.

The capacity of covered products shall be determined as follows:

(a) *Refrigerators and refrigerator-freezers.* The capacity shall be the total refrigerated volume (VT) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to Appendix A1 to 10 CFR Part 430, Subpart B.

(b) *Freezers.* The capacity shall be the total refrigerated volume (VT) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to Appendix B1 to 10 CFR Part 430, Subpart B.

(c) *Dishwashers.* The capacity shall be the place-setting capacity, determined according to Appendix C to 10 CFR Part 430, Subpart B.

(d) *Water heaters.* The capacity shall be the first hour rating, as determined according to Appendix E to 10 CFR Part 430, Subpart B.

(e) *Room air conditioners.* The capacity shall be the cooling capacity in Btu's per hour, as determined according to Appendix F to 10 CFR Part 430, Subpart B, but rounded to the nearest value ending in hundreds that will satisfy the relationship that the value of EER used in representations equals the rounded value of capacity divided by the value of input power in watts. If a value ending in hundreds will not satisfy this relationship, the capacity may be rounded to the nearest value ending in 50 that will.

(f) *Clothes washers.* The capacity shall be the tub capacity, rounded to the nearest gallon, as determined according to Appendix J to 10 CFR Part 430, Subpart B, in the terms "standard" or "compact" as defined in Appendix J.

(g) *Furnaces.* The capacity shall be the heating capacity in Btu's per hour, rounded to the nearest 1,000 Btu's per hour, as determined according to Appendix N to 10 CFR Part 430, Subpart B

11. The section heading and the introductory text of paragraph (a) of § 305.5 are revised to read as follows:

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate.

(a) Procedures for determining the estimated annual energy consumption, the estimated annual operating costs, the energy efficiency ratings and the efficacy factors of covered products are those found in 10 CFR Part 430, Subpart B, in the following sections:

* * * * *

12. Section 305.7 is revised to read as follows:

§ 305.7 Determinations of capacity.

The capacity of covered products shall be determined as follows:

(a) *Refrigerators and refrigerator-freezers.* The capacity shall be the total refrigerated volume (VT) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to Appendix A1 to 10 CFR Part 430, Subpart B.

(b) *Freezers.* The capacity shall be the total refrigerated volume (VT) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to Appendix B1 to 10 CFR Part 430, Subpart B.

(c) *Dishwashers.* The capacity shall be the place-setting capacity, determined according to Appendix C to 10 CFR Part 430, Subpart B.

(d) *Water heaters.* The capacity shall be the first hour rating, as determined according to Appendix E to 10 CFR Part 430, Subpart B.

(e) *Room air conditioners.* The capacity shall be the cooling capacity in Btu's per hour, as determined according to Appendix F to 10 CFR Part 430, Subpart B, but rounded to the nearest value ending in hundreds that will satisfy the relationship that the value of EER used in representations equals the rounded value of capacity divided by the value of input power in watts. If a value ending in hundreds will not satisfy this relationship, the capacity may be rounded to the nearest value ending in 50 that will.

(f) *Clothes washers.* The capacity shall be the tub capacity, rounded to the nearest gallon, as determined according to Appendix J to 10 CFR Part 430, Subpart B, in the terms "standard" or "compact" as defined in Appendix J.

(g) *Furnaces.* The capacity shall be the heating capacity in Btu's per hour, rounded to the nearest 1,000 Btu's per hour, as determined according to Appendix N to 10 CFR Part 430, Subpart B

(h) *Central air conditioners, cooling.* The capacity shall be the cooling capacity in Btu's per hour, as determined according to Appendix M to 10 CFR Part 430, Subpart B, rounded to the nearest 100 Btu's per hour for capacities less than 20,000 Btu's per hour; to the nearest 200 Btu's per hour for capacities between 20,000 and 37,999 Btu's per hour; and to the nearest 500 Btu's per hour for capacities between 38,000 and 64,999 Btu's per hour.

(i) *Central air conditioners, heating.* The capacity shall be the heating capacity in Btu's per hour, as determined according to Appendix M to 10 CFR Part 430, Subpart B, rounded to the nearest 100 Btu's per hour for capacities less than 20,000 Btu's per hour; to the nearest 200 Btu's per hour for capacities between 20,000 and 37,999 Btu's per hour; and to the nearest 500 Btu's per hour for capacities between 38,000 and 64,999 Btu's per hour.

(j) *Fluorescent lamp ballasts.* The capacity shall be the ballast input voltage, as determined according to Appendix Q to 10 CFR Part 430, Subpart B.

13. Section 305.8(a)(1) is revised to read as follows:

§ 305.8 Submission of data.

(a)(1) Each manufacturer of a covered product (except manufacturers of fluorescent lamp ballasts, showerheads, faucets, water closets or urinals) shall submit annually to the Commission a report listing the estimated annual energy consumption (for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps and furnaces) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: the model numbers for each basic model; the total energy consumption, determined in accordance with § 305.5, used to calculate the estimated annual energy consumption or energy efficiency rating; the number of tests performed; and, its capacity, determined in accordance with § 305.7. For those models that use more than one energy source or more than one cycle, each separate amount of energy consumption or energy cost, measured in accordance with § 305.5, shall be listed in the report. Appendix J illustrates a suggested reporting format. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced on the market.

* * * * *

§ 305.9 [Amended]

14. Section 305.9(b) is amended by removing the second sentence.

15. Section 305.10 is revised to read as follows:

§ 305.10 Ranges of estimated annual energy consumption and energy efficiency ratings.

(a) The range of estimated annual energy consumption or energy efficiency ratings for each covered product (except fluorescent lamp ballasts, showerheads, faucets, water closets or urinals) shall be taken from the appropriate appendix to this rule in effect at the time the labels are affixed to the product. The Commission shall publish revised ranges annually in the **Federal Register**, if appropriate, or a statement that the specific prior ranges are still applicable for the new year. Ranges will be changed if the estimated annual energy consumption or energy efficiency ratings of the products within the range change in a way that would alter the upper or lower estimated annual energy consumption or energy efficiency rating limits of the range by 15% or more from that previously published. When a range is revised, all information disseminated after 90 days following the publication of the revision shall conform to the revised range. Products that have been labeled prior to the effective date of a modification under this section need not be relabeled.

(b) When the estimated annual energy consumption or energy efficiency rating of a given model of a covered product falls outside the limits of the current range for that product, which could result from the introduction of a new or changed model, the manufacturer shall

(1) Omit placement of such product on the scale, and

(2) Add one of the two sentences below, as appropriate, in the space just below the scale, as follows:

The estimated annual energy consumption of this model was not available at the time the range was published.

The energy efficiency rating of this model was not available at the time the range was published.

16. In § 305.11, paragraphs (a)(1), (2), (3) and (4)(i) are revised to read as follows:

§ 305.11 Labeling for covered products.

(a) *Labels for covered products other than fluorescent lamp ballasts, showerheads, faucets, water closets and urinals*—(1) *Layout.* All energy labels

for each category of covered product shall use one size, similar colors and typefaces with consistent positioning of headline, copy and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for all labels shall be as follows: width must be between 5¼ inches and 5½ inches (13.34 cm. and 13.97 cm.); length must be 7⅜ inches (18.73 cm.). Copy is to be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype labels appearing at the end of this part illustrating the basis layout. All positioning, spacing, type sizes and line widths should be similar to and consistent with the prototype labels.

(2) *Type style and setting.* The Helvetica Condensed series typeface or equivalent shall be used exclusively on the label. Specific sizes and faces to be used are indicated in the prototype labels. No hyphenation should be used in setting headline or copy text. Positioning and spacing should follow the prototypes closely. Generally, text must be set flush left with two points leading except where otherwise indicated. Helvetica Condensed Regular shall be used for all copy except the large number indicating the estimated annual energy consumption or energy efficiency rating, which shall be in Helvetica Condensed Black, and all other numerals and letters used in immediate connection with the Energy Efficiency Scale, which shall be in Helvetica Condensed Bold. See the prototype labels for specific directions.

(3) *Colors.* The basic colors of all labels shall be process yellow or equivalent and process black. The label shall be printed full bleed process yellow. All type and graphics shall be print process black.

(4) *Paper stock*—(i) *Adhesive labels.* All adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25" x 38") or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard. The pressure-sensitive adhesive shall be applied in no fewer than two strips not less than 0.5 inches (1.27 cm.) wide. The strips shall be within 0.25 inches (.64 cm.) of the opposite edges of the label. For a "flap-tag" label, the pressure-sensitive adhesive shall be applied in one strip not less that 0.5 inches (1.27 cm.) wide. The strip shall be within 0.25 inches (.64 cm.) of the top edge of the label.

* * * * *

§ 305.11 [Amended]

17. Section 305.11(a)(5)(i)(A) is amended by removing the second sentence.

18. In § 305.11, paragraphs (a)(5)(i)(E) through (H) and (J) are revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(5) * * *

(i) * * *

(E) Estimated annual energy consumption for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers and water heaters and energy efficiency ratings for room air conditioners are as determined in accordance with § 305.5.

(F) Ranges of comparability and of estimated annual energy consumption and energy efficiency ratings, as applicable, are found in the appropriate appendices accompanying this part.

(G) Placement of the labeled product on the scale shall be proportionate to the lowest and highest estimated annual energy consumption or energy efficiency ratings forming the scale.

(H) Labels must contain a statement disclosing the product's estimated annual operating cost derived using the DOE National Average Representative Unit Cost for the appropriate fuel that was current when the label was printed: The statement must disclose the specific cost per unit for the fuel and the year DOE published it.

(*1*) For refrigerators, refrigerator-freezers, freezers, and water heaters, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the year, and the energy cost figures):

[Refrigerators, or Freezers, or Water Heaters] using more energy cost more to operate.

This model's estimated yearly operating cost is: [Cost figure will be boxed] Based on a [Year] U.S. Government national average cost of $_____ per [kWh, therm, or gallon] for [electricity, natural gas, propane, or oil]. Your actual operating cost will vary depending on your local utility rates and your use of the product.

(*2*) For clothes washers and dishwashers, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the number of loads per week, the year, and the energy cost figures):

[Clothes Washers, or Dishwashers] using more energy cost more to operate.

This model's estimated yearly operating cost is: [Electric cost figure will be boxed] when used with an electric water heater [Gas cost figure will be boxed] when used with a natural gas water heater.

Based on [6 washloads a week for dishwashers, or 8 washloads a week for clothes washers], a [Year] U.S. Government national average cost of $_____ per kWh for electricity, and $_____ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

(*3*) For room air conditioners, the statement will read as follows (fill in the blanks with the appropriate operating cost, the year, and the energy cost figures):

More efficient air conditioners cost less to operate.

This model's estimated yearly operating cost is: [Cost figure will be boxed] Based on a [Year] U.S. Government national average cost of $_____ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

* * * * *

(J) A statement that the estimated annual energy consumption and energy efficiency ratings, as applicable, are based on U.S. Government standard tests is required on all labels, as indicated in the prototype labels.

* * * * *

19. In § 305.11, paragraphs (a)(5)(ii)(C) through (E) are revised and paragraphs (a)(5)(ii)(F) through (L) are added to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(5) * * *

(ii) * * *

(C) The annual fuel utilization efficiency for furnaces is determined in accordance with § 305.5.

(D) Each furnace label shall contain a generic range consisting of the lowest and highest annual fuel utilization efficiencies for all furnaces that utilize the same energy source.

(E) Placement of the labeled product on the scale shall be proportionate to the lowest and highest annual fuel utilization efficiency ratings forming the scale.

(F) The following statement shall appear on the label beneath the range(s) in bold print:

Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information regarding the efficiency and operating cost of this equipment. Ask for this information.

(G) A statement that the annual fuel utilization efficiency ratings are based on U.S. Government standard tests is required on all labels.

(H) The following statement shall appear at the bottom of the label:

IMPORTANT: REMOVAL OF THIS LABEL BEFORE CONSUMER PURCHASE IS A VIOLATION OF FEDERAL LAW (42 U.S.C. 6302).

(I) No marks or information other than specified in this part shall appear on or directly adjoining this label except for a part or publication number identification, as desired by the manufacturer. The identification number shall be in the lower right-hand corner of the label, and characters shall be in 6 point type or smaller.

(J) Manufacturers of boilers that are shipped without jackets must label their products with hang-tags that also have adhesive backing on them that complies with the specifications contained in § 305.11(a)(4).

(K) Manufacturers of boilers shipped with more than one input nozzle to be installed in the field must label such boilers with the AFUE of the system when it is set up with the nozzle that results in the lowest annual fuel utilization efficiency rating.

(L) Manufacturers that ship out boilers that may be set up as either steam or hot water units must label the boilers with the AFUE rating derived by conducting the required test on the boiler as a hot water unit.

* * * * *

20. The first two sentences of § 305.11(a)(5)(iii)(C) introductory text are revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(5) * * *

(iii) * * *

(C) The seasonal energy efficiency ratio for the cooling function of central air conditioners is determined in accordance with § 305.5. For the heating function, the heating seasonal performance factor shall be calculated for heating Region IV for the standardized design heating requirement nearest the capacity measured in the High Temperature Test in accordance with § 305.5. * * *

* * * * *

21. Section 305.11(a)(5)(iii)(D) is revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(5) * * *

(iii) * * *

(D)(*1*) Each cooling only central air conditioner label shall contain a generic

(G) A statement that the annual fuel utilization efficiency ratings are based on U.S. Government standard tests is required on all labels.

(H) The following statement shall appear at the bottom of the label:

IMPORTANT: REMOVAL OF THIS LABEL BEFORE CONSUMER PURCHASE IS A VIOLATION OF FEDERAL LAW (42 U.S.C. 6302).

(I) No marks or information other than specified in this part shall appear on or directly adjoining this label except for a part or publication number identification, as desired by the manufacturer. The identification number shall be in the lower right-hand corner of the label, and characters shall be in 6 point type or smaller.

(J) Manufacturers of boilers that are shipped without jackets must label their products with hang-tags that also have adhesive backing on them that complies with the specifications contained in § 305.11(a)(4).

(K) Manufacturers of boilers shipped with more than one input nozzle to be installed in the field must label such boilers with the AFUE of the system when it is set up with the nozzle that results in the lowest annual fuel utilization efficiency rating.

(L) Manufacturers that ship out boilers that may be set up as either steam or hot water units must label the boilers with the AFUE rating derived by conducting the required test on the boiler as a hot water unit.

* * * * *

20. The first two sentences of § 305.11(a)(5)(iii)(C) introductory text are revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(5) * * *

(iii) * * *

(C) The seasonal energy efficiency ratio for the cooling function of central air conditioners is determined in accordance with § 305.5. For the heating function, the heating seasonal performance factor shall be calculated for heating Region IV for the standardized design heating requirement nearest the capacity measured in the High Temperature Test in accordance with § 305.5. * * *

* * * * *

21. Section 305.11(a)(5)(iii)(D) is revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(5) * * *

(iii) * * *

(D)(*1*) Each cooling only central air conditioner label shall contain a generic range consisting of the lowest and highest seasonal energy efficiency ratios for all cooling only central air conditioners.

(*2*) Each heat pump label, except as noted in paragraph (a)(5)(iii)(D)(*3*) of this section, shall contain two generic ranges. The first range shall consist of the lowest and highest seasonal energy efficiency ratios for the cooling side of all heat pumps. The second range shall consist of the lowest and highest heating seasonal performance factors for the heating side of all heat pumps.

(*3*) Each heating only heat pump label shall contain a generic range consisting of the lowest and highest heating seasonal performance factors for all heating only heat pumps.

* * * * *

22. Sections 305.11(a)(5)(iii)(G) (*1*) through (*3*) are revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(5) * * *

(iii) * * *

(G) * * *

(*1*) For labels disclosing the seasonal energy efficiency ratio for cooling, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.

(*2*) For labels disclosing both the seasonal energy efficiency ratio for cooling and the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

(*3*) For labels disclosing the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

Central air conditioner labels disclosing the efficiency ratings for specific condenser/coil combinations do not have to contain any of the above three statements. They must contain only the general disclosure that the energy costs and efficiency ratings are based on U.S. Government tests.

* * * * *

23. Section 305.11(b)(3)(vi) is revised to read as follows:

§ 305.11 Labeling for covered products.

* * * * *

(b) * * *

(3) * * *

(vi) Ranges of comparability and of energy efficiency ratings are found in section 1 of the appropriate appendices accompanying this part.

* * * * *

24. Sections 305.11(b)(3)(x) (A) through (C) are revised to read as follows:

§ 305.11 Labeling for covered products.

* * * * *

(b) * * *

(3) * * *

(x) * * *

(A) For fact sheets disclosing the seasonal energy efficiency ratio for cooling, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.

(B) For fact sheets disclosing both the seasonal energy efficiency ratio for cooling and the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

(C) For fact sheets disclosing the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

* * * * *

25. In § 305.11, paragraphs (c) introductory text and (c)(1) are revised, and paragraph (c)(3)(vi) is added to read as follows:

§ 305.11 Labeling for covered products.

* * * * *

(c) Manufacturers of furnaces and central air conditioners may elect to disseminate information regarding the efficiencies and costs of operation of their products by means of a directory or similar publication, rather than on fact sheets, provided the publication meets the following criteria:

(1) *Distribution.*

(i) It must be distributed to substantially all retailers and assemblers of central air conditioners and furnaces selling or assembling models listed in the directory.

(ii) It must be made available at cost to all other interested parties.

* * * * *

(3) *Contents.* * * *

(vi) Ranges of comparability and of energy efficiency ratings are found in Section 1 of the appropriate appendices accompanying this part.

* * * * *

26. Section 305.13 is revised to read as follows:

§ 305.13 Promotional material displayed or distributed at point of sale.

(a)(1) Any manufacturer, distributor, retailer or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product (except fluorescent lamp ballasts, showerheads, faucets, water closets or urinals) shall include in such printed material the following required disclosure:

Before purchasing this appliance, read important information about its estimated annual energy consumption or energy efficiency rating that is available from your retailer.

(2) Any manufacturer, distributor, retailer or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product that is a fluorescent lamp ballast to which standards are applicable under section 325 of the Act, shall disclose conspicuously in such printed material, in each description of such fluorescent lamp ballast, an encircled capital letter "E".

(3) Any manufacturer, distributor, retailer or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product that is a showerhead, faucet, water closet, or urinal shall clearly and conspicuously include in such printed material the product's water use, expressed in gallons and liters per minute (gpm/Lpm) or per cycle (gpc/Lpc) or gallons and liters per flush (gpf/Lpf), as specified in § 305.11(e).

(b) This section shall not apply to:

(1) Written warranties.

(2) Use and care manuals, installation instructions, or other printed material containing primarily post-purchase information for the purchaser.

(3) Printed material containing only the identification of a covered product, pricing information and/or non-energy related representations concerning that product.

(4) Any printed material distributed prior to the effective date listed in § 305.4(e).

27. Section 305.14 is revised to read as follows:

§ 305.14 Catalogs.

(a) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog a covered product (except fluorescent lamp ballasts, showerheads, faucets, water closets or urinals) shall include in such catalog, on each page that lists the covered product, the following information required to be disclosed on the label:

(1) The capacity of the model.

(2) The estimated annual energy consumption for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers and water heaters.

(3) The energy efficiency rating for room air conditioners, central air conditioners, and furnaces.

(4) The range of estimated annual energy consumption or energy efficiency ratings, which shall be those that are current at the closing date for printing or the printing deadline of the catalog.

(b) Any manufacturer, distributor, retailer, or private labeler who advertises fluorescent lamp ballasts that are "covered products," as defined in § 305.2(o), and to which standards are applicable under section 325 of the Act, in a catalog, from which they may be purchased by cash, charge account or credit terms, shall disclose conspicuously in such catalog, in each description of such fluorescent lamp ballasts, a capital letter "E" printed within a circle.

(c) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product that is a showerhead, faucet, water closet or urinal in a catalog, from which it may be purchased, shall include in such catalog, on each page that lists the covered product, the product's water use, expressed in gallons and liters per minute (gpm/Lpm) or per cycle (gpc/Lpc) or gallons and liters per flush (gpf/Lpf) as specified in § 305.11(e).

28. Section 305.16 is revised to read as follows:

§ 305.16 Required testing by designated laboratory.

Upon notification by the Commission or its designated representative, a manufacturer of a covered product shall supply, at the manufacturer's expense, no more than two of each model of each product to a laboratory, which will be identified by the Commission or its designated representative in the notice, for the purpose of ascertaining whether the estimated annual energy consumption, the estimated annual operating cost, or the energy efficiency rating disclosed on the label or fact sheet or in an industry directory, or, as required in a catalog, or the representation made by the label that the product is in compliance with applicable standards in section 325 of the Act, 42 U.S.C. 6295, is accurate. Such a procedure will only be followed after the Commission or its staff has examined the underlying test data provided by the manufacturer as required by § 305.15(b) and after the manufacturer has been afforded the opportunity to reverify test results from which the estimated annual energy consumption, the estimated annual operating cost, or the energy efficiency rating for each basic model was derived. A representative designated by the Commission shall be permitted to observe any reverification procedures required by this part, and to inspect the results of such reverification. The Commission will pay the charges for testing by designated laboratories.

§ 305.18 [Removed]

29. Section 305.18 is removed.

§ 305.19 [Redesignated as § 305.18]

30. Section 305.19 is redesignated as § 305.18.

31. Appendices A1 and A2 to part 305 are revised; Appendices A3 through A8 are added; Appendix B is removed; and Appendices B1 through B3 are added, to read as follows:

APPENDIX A1 TO

Manufacturer's rated total

Less than 2.5
2.5 to 4.4
4.5 to 6.4
6.5 to 8.4
8.5 to 10.4
10.5 to 12.4
12.5 to 14.4
14.5 to 16.4
16.5 and over

APPENDIX A2 to PART 305—R

Manufacturer's rated total

Less than 2.5
2.5 to 4.4
4.5 to 6.4
6.5 to 8.4
8.5 to 10.4
10.5 to 12.4
12.5 to 14.4
14.5 to 16.4
16.5 to 18.4
18.5 to 20.4
20.5 to 22.4
22.5 to 24.4
24.5 to 26.4
26.5 to 28.4
28.5 and over

APPENDIX A3 TO PART 30

Manufacturer's rated total

Less than 10.5
10.5 to 12.4
12.5 to 14.4
14.5 to 16.4
16.5 to 18.4
18.5 to 20.4
20.5 to 22.4
22.5 to 24.4
24.5 to 26.4
26.5 to 28.4
28.5 and over

APPENDIX A4 TO PART 305—REFRIGE
W

Manufacturer's rated total

Less than 10.5
10.5 to 12.4

APPENDIX A1 TO PART 305—REFRIGERATORS WITH AUTOMATIC DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 2.5		
2.5 to 4.4		
4.5 to 6.4		
6.5 to 8.4		
8.5 to 10.4		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 and over		

APPENDIX A2 to PART 305—REFRIGERATORS AND REFRIGERATOR-FREEZERS WITH MANUAL DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 2.5		
2.5 to 4.4		
4.5 to 6.4		
6.5 to 8.4		
8.5 to 10.4		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

APPENDIX A3 TO PART 305—REFRIGERATOR-FREEZERS WITH PARTIAL AUTOMATIC DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

APPENDIX A4 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH TOP-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5		
10.5 to 12.4		

APPENDIX A4 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH TOP-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE—Continued

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

APPENDIX A5 to Part 305—Refrigerator-Freezers With Automatic Defrost With Side-Mounted Freezer Without Through-the-Door Ice Service

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

APPENDIX A6 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH BOTTOM-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

APPENDIX A7 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH TOP-MOUNTED FREEZER WITH THROUGH-THE-DOOR ICE SERVICE

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5		
10.5 to 12.4		
12.5 to 14.4		

APPENDIX A7 TO PART 305—REFRIGERA
THR

Manufacturer's rated total
14.5 to 16.4
16.5 to 18.4
18.5 to 20.4
20.5 to 22.4
22.5 to 24.4
24.5 to 26.4
26.5 to 28.4
28.5 and over

APPENDIX A8 TO PART 305—REFRIGE

Manufacturer's rated total
Less than 10.5
10.5 to 12.4
12.5 to 14.4
14.5 to 16.4
16.5 to 18.4
18.5 to 20.4
20.5 to 22.4
22.5 to 24.4
24.5 to 26.4
26.5 to 28.4
28.5 and over

APPENDIX B1 TO

Manufacturer's rated total r
Less than 5.5
5.5 to 7.4
7.5 to 9.4
9.5 to 11.4
11.5 to 13.4
13.5 to 15.4
15.5 to 17.4
17.5 to 19.4
19.5 to 21.4
21.5 to 23.4
23.5 to 25.4
25.5 to 27.4
27.5 to 29.4
29.5 and over.

APPENDIX B2 TO PA

Manufacturer's rated total re
Less than 5.5
5.5 to 7.4
7.5 to 9.4

APPENDIX A7 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH TOP-MOUNTED FREEZER WITH THROUGH-THE-DOOR ICE SERVICE—Continued

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

APPENDIX A8 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH SIDE-MOUNTED FREEZER WITH THROUGH-THE-DOOR ICE SERVICE

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 10.5		
10.5 to 12.4		
12.5 to 14.4		
14.5 to 16.4		
16.5 to 18.4		
18.5 to 20.4		
20.5 to 22.4		
22.5 to 24.4		
24.5 to 26.4		
26.5 to 28.4		
28.5 and over		

APPENDIX B1 TO PART 305—UPRIGHT FREEZERS WITH MANUAL DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5		
5.5 to 7.4		
7.5 to 9.4		
9.5 to 11.4		
11.5 to 13.4		
13.5 to 15.4		
15.5 to 17.4		
17.5 to 19.4		
19.5 to 21.4		
21.5 to 23.4		
23.5 to 25.4		
25.5 to 27.4		
27.5 to 29.4		
29.5 and over.		

APPENDIX B2 TO PART 305—UPRIGHT FREEZERS WITH AUTOMATIC DEFROST

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5		
5.5 to 7.4		
7.5 to 9.4		

APPENDIX B2 TO PART 305—UPRIGHT FREEZERS WITH AUTOMATIC DEFROST—Continued

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
9.5 to 11.4		
11.5 to 13.4		
13.5 to 15.4		
15.5 to 17.4		
17.5 to 19.4		
19.5 to 21.4		
21.5 to 23.4		
23.5 to 25.4		
25.5 to 27.4		
27.5 to 29.4		
29.5 and over		

APPENDIX B3 TO PART 305—CHEST FREEZERS AND ALL OTHER FREEZERS

[Range Information]

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Less than 5.5		
5.5 to 7.4		
7.5 to 9.4		
9.5 to 11.4		
11.5 to 13.4		
13.5 to 15.4		
15.5 to 17.4		
17.5 to 19.4		
19.5 to 21.4		
21.5 to 23.4		
23.5 to 25.4		
25.5 to 27.4		
27.5 to 29.4		
29.5 and over		

32. Appendix C to part 305 is revised to read as follows:

Appendix C to Part 305—Dishwashers

Range Information

"Compact" includes countertop dishwasher models with a capacity of fewer than eight (8) place settings.

"Standard" includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings.

Place settings shall be in accordance with Appendix C to 10 CFR Part 430, Subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact		
Standard		

33. Appendices D1–D3 to Part 305 are revised to read as follows:

APPEND

Ca

First h

Less than 21	
21 to 24	
25 to 29	
30 to 34	
35 to 40	
41 to 47	
48 to 55	
56 to 64	
65 to 74	
75 to 86	
87 to 99	
100 to 114	
115 to 131	
Over 131	

APPENDIX D

Capa

First hou

Less than 21	
21 to 24	
25 to 29	
30 to 34	
35 to 40	
41 to 47	
48 to 55	
56 to 64	
65 to 74	
75 to 86	
87 to 99	
100 to 114	
115 to 131	
Over 131	

APPENDIX

Capa

First hour

Less than 65	
65 to 74	
75 to 86	
87 to 99	
100 to 114	
115 to 131	
Over 131	

34. Appendix E to Part 305 is revised to re

APPENDIX D1 TO PART 305—WATER HEATER—GAS

[Range Information]

Capacity	Range of estimated annual energy consumption (therms/yr. and gallons/yr.)			
	Natural gas therms/yr.		Propane gallons/yr.	
First hour rating	Low	High	Low	High
Less than 21				
21 to 24				
25 to 29				
30 to 34				
35 to 40				
41 to 47				
48 to 55				
56 to 64				
65 to 74				
75 to 86				
87 to 99				
100 to 114				
115 to 131				
Over 131				

APPENDIX D2 TO PART 305—WATER HEATER—ELECTRIC

[Range Information]

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
First hour rating	Low	High
Less than 21		
21 to 24		
25 to 29		
30 to 34		
35 to 40		
41 to 47		
48 to 55		
56 to 64		
65 to 74		
75 to 86		
87 to 99		
100 to 114		
115 to 131		
Over 131		

APPENDIX D3 TO PART 305—WATER HEATER—OIL

[Range Information]

Capacity	Range of estimated annual energy consumption (gallons/yr.)	
First hour rating	Low	High
Less than 65		
65 to 74		
75 to 86		
87 to 99		
100 to 114		
115 to 131		
Over 131		

34. Appendix E to Part 305 is revised to read as follows:

APPENDIX E TO PART 305—ROOM AIR CONDITIONERS

[Range Information]

Manufacturer's rated cooling capacity in Btu's/hr.	Range of energy efficiency ratios (EERs)	
	Low	High
Without Reverse Cycle and with Louvered Sides:		
Less than 6,000 Btu		
6,000 to 7,999 Btu		
8,000 to 13,999 Btu		
14,000 to 19,999 Btu		
20,000 and more Btu		
Without Reverse Cycle and without Louvered Sides:		
Less than 6,000 Btu		
6,000 to 7,999 Btu		
8,000 to 13,999 Btu		
14,000 to 19,999 Btu		
20,000 and more Btu		
With Reverse Cycle and with Louvered Sides.		
With Reverse Cycle, without Louvered Sides.		

35. Appendix F to part 305 is revised to read as follows:

Appendix F to Part 305—Clothes Washers

Range Information

"Compact" includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

"Standard" includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact:		
Top Loading		
Front Loading		
Standard:		
Top Loading		
Front Loading		

36. Appendices G1 through G5 of Part 305 are revised, and Appendices G6 through G8 are added to read as follows:

APPENDIX to Part 305—FURNACES—GAS

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities		

[2. Yearly Cost Information: Cost Gnd]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.

c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50

The following table shows the heat los

Manufacturers rated heat output o
5,000 to 10,000
11,000 to 16,000
17,000 to 25,000
26,000 to 42,000
43,000 to 59,000
60,000 to 76,000
77,000 to 93,000
94,000 to 110,000
111,000 to 127,000
128,000 to 144,000
145,000 to 161,000
162,000 to 178,000
179,000 to 195,000
196,000 and over

Beside each cost in the cost grid, an
the cost estimate for the model being la
the heat loss values in place of the design h

APPEND

Manufacturer's rated he
All Capacities

4¢
6¢
8¢
10¢
12¢
14¢

[1] For charts on natural gas, oil and propane gas,
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢,
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢

The following table shows the heat loss

Manufacturers' rated heat output of
5,000 to 10,000
11,000 to 16,000
17,000 to 25,000
26,000 to 42,000

c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

APPENDIX G2 TO PART 305—FURNACES—ELECTRIC

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Ranges of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities		

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

APPENDIX G3 TO PART 305—FURNACES—OIL

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities		

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour[1]	Btu heat loss of home (see chart below)
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120

Manufacturers' rated heat outpu

162,000 to 178,000	
179,000 to 195,000	
196,000 and over	

Beside each cost in the cost grid, a
the cost estimate for the model being
the heat loss values in place of the desig

APPEN

Manufacturer's rated

All Capacities....

4~
6~
8~
10~
12~
14~

[1] For charts on natural gas, oil and propane ga
a. Cost per therm—10~, 20~, 30~, 40~, 50~, 6
b. Cost per gallon (oil)—76~, 79~, 82~, 85~, 8
c. Cost per gallon (propane)—35~, 40~, 45~, 5

The following table shows the heat los

Manufacturers' rated heat output

5,000 to 10,000	
5,000 to 10,000	
11,000 to 16,000	
17,000 to 25,000	
26,000 to 42,000	
43,000 to 59,000	
60,000 to 76,000	
77,000 to 93,000	
94,000 to 110,000	
111,000 to 127,000	
128,000 to 144,000	
145,000 to 161,000	
162,000 to 178,000	
179,000 to 195,000	
196,000 and over	

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

APPENDIX G4 TO PART 305—MOBILE HOME FURNACES

1. [Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities		

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4~	
6~	
8~	
10~	
12~	
14~	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10~, 20~, 30~, 40~, 50~, 60~.
b. Cost per gallon (oil)—76~, 79~, 82~, 85~, 88~, 91~, 94~, 97~, $1.00.
c. Cost per gallon (propane)—35~, 40~, 45~, 50~, 55~, 60~.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

APPENDIX G5 TO PART 305—BOILERS—GAS (EXCEPT STEAM)

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities		

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour[1]	Btu heat loss of home (see chart below)
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

APPENDIX G6 TO PART 305—BOILERS—GAS (STEAM)

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All capacities		

4¢
6¢
8¢
10¢
12¢
14¢

[1] For charts on natural gas, oil and propane ga
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 5

The following table shows the heat los

Manufacturers' rated heat output

5,000 to 10,000
11,000 to 16,000
17,000 to 25,000
26,000 to 42,000
43,000 to 59,000
60,000 to 76,000
77,000 to 93,000
94,000 to 110,000
111,000 to 127,000
128,000 to 144,000
145,000 to 161,000
162,000 to 178,000
179,000 to 195,000
196,000 and over

Beside each cost in the cost grid, an
the cost estimate for the model being la
the heat loss values in place of the design

APP

Manufacturer's rated he

All Capacities

4¢
6¢
8¢
10¢
12¢
14¢

[1] For charts on natural gas, oil and propane gas.
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢,¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

APPENDIX G7 TO PART 305—BOILERS—OIL

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities		

[2. Yearly Cost Information. Cost Grid]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.

b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000) Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

APPENDIX G8 TO PART 305—BOILERS—ELECTRIC

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities		

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour[1]	Btu heat loss of home (see chart below)
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000) Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15

Manufacturers' rated heat output o

26,000 to 42,000	
43,000 to 59,000	
60,000 to 76,000	
77,000 to 93,000	
94,000 to 110,000	
111,000 to 127,000	
128,000 to 144,000	
145,000 to 161,000	
162,000 to 178,000	
179,000 to 195,000	
196,000 and over	

Beside each cost in the cost grid, and
the cost estimate for the model being la
the heat loss values in place of the design h
37. Page 1 of the Sample Fact Sheet in A

Appendix H to Part 305-

BILLING CODE 6750-01-P

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000) Btu's per hour)
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

37. Page 1 of the Sample Fact Sheet in Appendix H to Part 305 is revised as follows:

Appendix H to Part 305—Cooling Performance and Cost for Central Air Conditioners

* * * * *

BILLING CODE 6750-01-P

[An example of a fact sheet for central air conditioners or for only the cooling function of heat pumps]

ENERGYGUIDE

Split System Central Air Conditioner (Cooling Only)

Cooling Capacity:

Models		
	XXX/C1	31,000 BTU/hr
	XXX/C2	31,400 BTU/hr
	YYY/C3	29,000 BTU/hr
	YYY/C6	29,400 BTU/hr

Cooling Performance:

Model XXX/C1
12.7 SEER

Energy efficiency range of all similar models

Least Efficient Model 10.0 — **Most Efficient Model** 16.0

Model XXX/C2
12.6 SEER

Energy efficiency range of all similar models

Least Efficient Model 10.0 — **Most Efficient Model** 16.9

Model YYY/C3
13.0 SEER

Energy efficiency range of all similar models

Least Efficient Model 10.0 — **Most Efficient Model** 16.9

Model YYY/C6
12.9 SEER

Energy efficiency range of all similar models

Least Efficient Model 10.0 — **Most Efficient Model** 16.9

This (or these) energy rating(s) is (or are) based on U.S. Government standard tests of this (or these) condenser model(s) combined with the most common coil(s). The ratings may vary slightly with different coils.

[This is Page 1 of Sample Fact Sheet]

* * * * *

BILLING CODE 6750-01-P

38. Page 1 of the Sample Fact Sheet i
COST TABLE ($ PER YEAR)") is revised a

Appendix I to Part 305

BILLING CODE 6750-01-P

38. Page 1 of the Sample Fact Sheet in Appendix I to Part 305 (down to "NATIONAL AVERAGE ANNUAL HEATING COST TABLE ($ PER YEAR)") is revised as follows:

Appendix I to Part 305—Heating Performance and Cost for Central Air Conditioners

* * * * * *

BILLING CODE 6750-01-P

[An example of a fact sheet showing only the heating function for heat pumps]

ENERGYGUIDE

Heating Capacity:

Models		
	XXX/C1	33,000 BTU/hr
	XXX/C2	35,000 BTU/hr

Heating Performance for Region IV

Model XXX/C1
7.9 HSPF

Energy efficiency range of all similar models

Least Efficient Model	Most Efficient Model
6.8	10.2

Model XXX/C2
8.9 HSPF

Energy efficiency range of all similar models

Least Efficient Model	Most Efficient Model
5.8	10.2

This (or these) energy rating(s) is (or are) based on U.S. Government standard tests of this (or these) condenser model(s) combined with the most common coil(s). The ratings will vary slightly with different coils and in different geographic regions.

* * * * *

[This is Page 1 of Sample Fact Sheet]

* * * * *

BILLING CODE 6750-01-C

39. Section 8. of Appendix J to Part 305

Appendi

8. Estimated Annual Energy Consumpti

40. Appendix K to Part 305 is revised a

A

BILLING CODE 6750-01-P

39. Section 8. of Appendix J to Part 305 is revised to read as follows:

Appendix J Part 305—Suggested Data Reporting Format

8. Estimated Annual Energy Consumption or Energy Efficiency Rating

* * * * *

40. Appendix K to Part 305 is revised as follows:

Appendix K to Part 305—Sample Labels

BILLING CODE 6750–01–P

All copy Helvetica Condensed Regular or Black

All copy x 28 pi.

10/12 Helv. Cond. Reg.

Based on standard U.S. Government tests

ENERGYGUIDE

10/12 Helv. Cond. Reg.

Refrigerator-Freezer
With Automatic Defrost
With Side-Mounted Freezer
Without Through-the-Door-Ice Service

XYZ Corporation
Model ABC-W
Capacity: 23 Cubic Feet

10/12 Helv. Cond. Reg.

Compare the Energy Use of this Refrigerator with Others Before You Buy.

20/22 Helv. Cond. Black

14/14 Helv. Cond. Black Reg.

This Model Uses
776 kWh/year

10' Helv. Cond. Reg.

.5 pt. rule

20 pt. rule

Energy use (kWh/year) range of all similar models

14' Helv. Cond. Black

Uses Least Energy	Uses Most Energy
776	1467

14/14 Helv. Cond. Black

10/12 Helv. Cond. Reg. Use Helv. Cond. Black where indicated

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 22.5 to 24.4 cubic feet and the above features are used in this scale.

.5 pt. rule

Refrigerators using more energy cost more to operate. This model's estimated yearly operating cost is:

14/14 Helv. Cond. Black

18' Helv. Cond. Black

$64

Box: 24 ' tall

10/12 Helv. Cond. Reg.

Based on a 1992 U.S. Government national average cost of 8.25¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

6' Helv. Cond. Reg.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Prototype Label 1

All copy Helvetica Condensed

10/12 Helv. Cond. Reg.

Based on standard U.S

ENE

10/12 Helv. Cond. Reg.

Clothes Washer
Capacity: Standard
Top Loading

Compare the
wi

Numeral: 14' Helv. Cond.

.5 pt. rule

20 pt. rule

Energy use

Uses Least Energy 267

10/12 Helv. Cond. Reg. Use Helv. Cond. Black where indicated

kWh/year (kilowatt-ho
Your utility company u
clothes washers are us

.5 pt. rule

Clothes washer
This model's es

18' Helv. Cond. Black

$72

10/12 Helv. Cond. Reg.

when used with an electric

10/12 Helv. Cond. Reg.

Based on eight loads of
of 8.25¢ per kWh for ele
cost will vary depending

6' Helv. Cond. Reg.

Important: Removal of this label befor

All copy Helvetica Condensed Regular or Black

All copy x 28 pi.

10/12 Helv. Cond. Reg.

Based on standard U.S. Government tests

ENERGYGUIDE

10/12 Helv. Cond. Reg.

Clothes Washer
Capacity: Standard
Top Loading

XYZ Corporation
Model(s) MR328, XL12, NAA83

10/12 Helv. Cond. Reg.

Compare the Energy Use of this Clothes Washer with Others Before You Buy.

20/22 Helv. Cond. Black

14/14 Helv. Cond. Black

This Model Uses

Numeral: 14' Helv. Cond.

873 kWh/year

10' Helv. Cond. Reg.

.5 pt. rule

20 pt. rule

Energy use (kWh/year) range of all similar models

14' Helv. Cond. Black

Uses Least Energy	Uses Most Energy
267	1818

14/14 Helv. Cond. Black

10/12 Helv. Cond. Reg. Use Helv. Cond. Black where indicated

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size, top loading clothes washers are used in this scale.

.5 pt. rule

Clothes washers using more energy cost more to operate. This model's estimated yearly operating cost is:

14/14 Helv. Cond. Black

18' Helv. Cond. Black

$72 when used with an electric water heater

$28 when used with a natural gas water heater

Box: 24 ' tall

10/12 Helv. Cond. Reg.

Based on eight loads of clothes a week and a 1992 U.S. Government national average cost of 8.25¢ per kWh for electricity and 58¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

10/12 Helv. Cond. Reg.

6' Helv. Cond. Reg.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Prototype Label 2

All copy Helvetica Condensed Regular or Black

All copy x 28 pi.

10/12 Helv. Cond. Reg.

Based on standard U.S. Government tests

ENERGYGUIDE

10/12 Helv. Cond. Reg.

Water Heater—Natural Gas
Capacity (first hour rating):
60 gallons

XYZ Corporation
Model(s) RP23, RP 38

10/12 Helv. Cond. Reg.

Compare the Energy Use of this Water Heater with Others Before You Buy.

20/22 Helv. Cond. Black

14/14 Helv. Cond. Black

This Model Uses
240 therms/year

10' Helv. Cond. Reg.

.5 pt. rule

20 pt. rule

Energy use (therms/year) range of all similar models

10/12 Helv. Cond. Reg.

Uses Least Energy	Uses Most Energy
245	295

14/14 Helv. Cond. black

The Estimated Annual Energy Consumption of this model was not available at the time the range was published.

10/12 Helv. Cond. Black

10/12 Helv. Cond. Reg. Use Helv. Cond. Black where indicated

Therms/year is a measure of energy use. Your utility company uses it to compute your bill. Only models with first hour ratings of 56 to 64 gallons are used in this scale.

.5 pt. rule

Natural gas water heaters that use fewer therms/year cost less to operate. This model's estimated yearly operating cost is:

14/14 Helv. Cond. Black

18' Helv. Cond. Black

$140

Box: 24' tall

10/12 Helv. Cond. Reg.

Based on a 1992 U.S. Government national average cost of $0.58 per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

6' Helv. Cond. Reg.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Prototype Label 3

All copy Helvetica Condensed

10/12 Helv. Cond. Reg.

Based on standard U.S

ENE

10/12 Helv. Cond. Reg.

Central Air Conditioner
Cooling Only
Split System

Compar Air Conditi

.5 pt. rule

Th 11

20 pt. rule

Energy e

Least Efficient
10.0

10/12 Helv. Cond. Reg. Use Helv. Cond. Black where indicated

SEER, the Seasonal Ene central air conditioners.

.5 pt. rule

Central air cond energy efficient

Bullets: 7'

- This energy rating is base combined with the most
- Federal law requires the directory giving further in Ask for this information.

6' Helv. Cond. Reg.

Important. Removal of this label before

All copy Helvetica Condensed Regular or Black

All copy x 28 pi.

10/12 Helv. Cond. Reg.

Based on standard U.S. Government tests

ENERGYGUIDE

10/12 Helv. Cond. Reg.

Central Air Conditioner
Cooling Only
Split System

XYZ Corporation
Model 122345

10/12 Helv. Cond. Reg.

20/22 Helv. Cond. Black

Compare the Energy Efficiency of this Air Conditioner with Others Before You Buy.

14/14 Helv. Cond. Black

This Model's Efficiency
11.5 SEER

.5 pt. rule

20 pt. rule

Energy efficiency range of all similar models

14' Helv. Cond. Black

Least Efficient	Most Efficient
10.0	16.9

14/14 Helv. Cond. Black

10/12 Helv. Cond. Reg. Use Helv. Cond. Black where indicated

SEER, the Seasonal Energy Efficiency Ratio, is the measure of energy efficiency for central air conditioners.

.5 pt. rule

14/14 Helv. Cond. Black

Central air conditioners with higher SEERs are more energy efficient.

Bullets: 7'

- This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

10/12 Helv. Cond. Reg.

6' Helv. Cond. Reg.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Prototype Label 4

All copy Helvetica Condensed Regular or Black

All copy x 28 pi.

10/12 Helv. Cond. Reg.

Based on standard U.S. Government tests

ENERGYGUIDE

10/12 Helv. Cond. Reg.

Heat Pump
Cooling and Heating
Split System

XYZ Corporation
Model 12345

10/12 Helv. Cond. Reg.

Compare the Energy Efficiency of this Heat Pump with Others Before You Buy.

18/20 Helv. Cond. Black

10/10 Helv. Cond. Black

This Model (Cooling)
12.0 SEER

10' Helv. Cond. Reg.

14' rule

Energy efficiency range of all similar models

11' Helv. Cond. Black

.5' rule

Least Efficient	Most Efficient
10.0	16.4

10/10 Helv. Cond. Black

10/10 Helv. Cond. Reg. Use Helv. Cond. Black where indicated

The **SEER**, Seasonal Energy Efficiency Ratio, is the seasonal measure of energy efficiency for heat pumps when cooling.

This Model (Heating)
7.5 HSPF

Energy efficiency range of all similar models

Least Efficient	Most Efficient
6.8	10.2

The **HSPF**, Heating Seasonal Performance Factor, is the seasonal measure of energy efficiency for heat pumps when heating.

Heat pumps with higher SEERs and HSPFs are more energy efficient.

13/14 Helv. Cond. Black

Bullets: 7'

- These energy ratings are based on U.S. Government standard tests of this condenser model combined with the most common coil. The ratings will vary slightly with different coils and in different geographic regions.
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

10/12 Helv. Cond. Reg.

6' Helv. Cond. Reg.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Prototype Label 5

Based on standard

ENE

Refrigerator-Freeze
With Automatic Def
With Side-Mounted
Without Through-th

Compare

w

This Model U
776 kWh/year

Energy us

Uses Least
Energy
776

kWh/year (kilowatt-
Your utility company
cubic feet and the ab

Refrigerators
This model's e

Based on a 1992 U.S
electricity. Your actua
and your use of the p

Important: Removal of this label be

Based on standard U.S. Government tests

ENERGYGUIDE

Refrigerator-Freezer
With Automatic Defrost
With Side-Mounted Freezer
Without Through-the-Door-Ice Service

XYZ Corporation
Model ABC-W
Capacity: 23 Cubic Feet

Compare the Energy Use of this Refrigerator with Others Before You Buy.

This Model Uses
776 kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy	Uses Most Energy
776	1467

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 22.5 to 24.4 cubic feet and the above features are used in this scale.

Refrigerators using more energy cost more to operate. This model's estimated yearly operating cost is:

$64

Based on a 1992 U.S. Government national average cost of 8.25¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Sample Label 1

Based on standard U.S. Government tests

ENERGYGUIDE

Freezer
Upright Type
With Manual Defrost

XYZ Corporation
Model(s) MR328, XL 12, NA83
Capacity: 21.2 Cubic Feet

Compare the Energy Use of this Freezer with Others Before You Buy.

This Model Uses
764 kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy	Uses Most Energy
630	1079

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 19.5 to 21.4 cubic feet with the above features are used in this scale.

Freezers using more energy cost more to operate. This model's estimated yearly operating cost is:

$63

Based on a 1992 U.S. Government national average cost of 8.25¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Sample Label 2

Based on standard U

ENE

Clothes Washer
Capacity: Standard
Top Loading

Compare th
w

Energy us

Uses Least Energy
267

kWh/year (kilowatt-h
Your utility company
clothes washers are u

Clothes washe
This model's es

$72

when used with an electri

Based on eight loads of
of 8.25¢ per kWh for ele
cost will vary depending

Important: Removal of this label befo

Based on standard U.S. Government tests

ENERGYGUIDE

Clothes Washer
Capacity: Standard
Top Loading

XYZ Corporation
Model(s) MR328, XL12, NAA83

Compare the Energy Use of this Clothes Washer with Others Before You Buy.

This Model Uses
873 kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy
267

Uses Most Energy
1818

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size, top loading clothes washers are used in this scale.

Clothes washers using more energy cost more to operate. This model's estimated yearly operating cost is:

$72
when used with an electric water heater

$28
when used with a natural gas water heater

Based on eight loads of clothes a week and a 1992 U.S. Government national average cost of 8.25¢ per kWh for electricity and 58¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Sample Label 3

Based on standard U.S. Government tests

ENERGYGUIDE

Dishwasher
Capacity: Standard

XYZ Corporation
Model(s) MR328, XL12, NAA83

Compare the Energy Use of this Dishwasher with Others Before You Buy.

This Model Uses
860 kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy
558

Uses Most Energy
994

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size dishwashers are used in this scale.

Dishwashers using more energy cost more to operate. This model's estimated yearly operating cost is:

$71 when used with an electric water heater

$39 when used with a natural gas water heater

Based on six washloads a week and a 1992 U.S. Government national average cost of 8.25¢ per kWh for electricity and 58¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Sample Label 4

Based on standard U.

ENE

Water Heater—Natura
Capacity (first hour ra
60 gallons

Compare th
wi

This Model U
240 therms/year

Energy use

Uses Least Energy
245

The Estimate
ava

Therms/year is a mea
your bill. Only models
scale.

Natural gas wa
less to operate
cost is:

Based on a 1992 U.S.
natural gas. Your actu
and your use of the pr

Important: Removal of this label bef

Based on standard U.S. Government tests

ENERGYGUIDE

Water Heater—Natural Gas
Capacity (first hour rating):
60 gallons

XYZ Corporation
Model(s) RP23,
RP 38

Compare the Energy Use of this Water Heater with Others Before You Buy.

This Model Uses
240 therms/year

Energy use (therms/year) range of all similar models

Uses Least Energy	Uses Most Energy
245	295

The Estimated Annual Energy Consumption of this model was not available at the time the range was published.

Therms/year is a measure of energy use. Your utility company uses it to compute your bill. Only models with first hour ratings of 56 to 64 gallons are used in this scale.

Natural gas water heaters that use fewer therms/year cost less to operate. This model's estimated yearly operating cost is:

$140

Based on a 1992 U.S. Government national average cost of $0.58 per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Sample Label 5

Based on standard U.S. Government tests

ENERGYGUIDE

Room Air Conditioner
Without Reverse Cycle
With Louvered Sides

XYZ Corporation
Model 122345
Capacity: 13,000 BTUs

Compare the Energy Efficiency of this Air Conditioner with Others Before You Buy.

This Model's Efficiency
10.0 EER

Energy efficiency range of all similar models

Least Efficient	Most Efficient
9.0	11.0

EER, the Energy Efficiency Ratio, is the measure of energy efficiency for room air conditioners. Only models between 8,000 and 13,000 BTUs with the above features are used in this scale.

More efficient air conditioners cost less to operate. This model's estimated yearly operating cost is:

$80

Based on a 1992 U.S. Government national average cost of 8.25¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Sample Label 6

Based on standard U

EN

Furnace—Natural Ga

Compa
Furnac

This Mo
80.7 AFU

Energy

Least Efficient
78.0

The AFUE, Annual Fu
furnaces and boilers.

Natural gas fu
energy efficie

Federal law requires the
directory giving further i
Ask for this information.

Important: Removal of this label be

Based on standard U.S. Government tests

ENERGYGUIDE

Furnace—Natural Gas

XYZ Corporation
Model 2345X

Compare the Energy Efficiency of this Furnace with Others Before You Buy.

This Model's Efficiency
80.7AFUE

Energy efficiency range of all similar models

Least Efficient	Most Efficient
78.0	97.0

The **AFUE**, Annual Fuel Utilization Efficiency, is the measure of energy efficiency for furnaces and boilers. Only furnaces fueled by natural gas are used in this scale.

Natural gas furnaces that have higher AFUEs are more energy efficient.

Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Sample Label 7

Based on standard U.S. Government tests

ENERGYGUIDE

Central Air Conditioner
Cooling Only
Split System

XYZ Corporation
Model 122345

Compare the Energy Efficiency of this Air Conditioner with Others Before You Buy.

This Model's Efficiency
11.5 SEER

Energy efficiency range of all similar models

Least Efficient	Most Efficient
10.0	16.9

SEER, the Seasonal Energy Efficiency Ratio, is the measure of energy efficiency for central air conditioners.

Central air conditioners with higher SEERs are more energy efficient.

- This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Sample Label 8

Based on standard U

ENE

Heat Pump
Cooling and Heating
Split System

Compare th

En
Least Efficient
10.0

The **SEER**, Seasonal
efficiency for heat pu

En
Least Efficient
6.8

The **HSPF**, Heating S
efficiency for heat pu

Heat pumps with

- These energy ratings
Government standard
model combined with
coil. The ratings will va
ent coils and in differe

Important: Removal of this label be

By direction of the Commission.
Donald S. Clark,
Secretary.
[FR Doc. 94–15792 Filed 6–30–94; 8:45 am]
BILLING CODE 6750–01–C

Based on standard U.S. Government tests

ENERGYGUIDE

Heat Pump
Cooling and Heating
Split System

XYZ Corporation
Model 12345

Compare the Energy Efficiency of this Heat Pump with Others Before You Buy.

This Model (Cooling)
12.0 SEER

Energy efficiency range of all similar models

Least Efficient	Most Efficient
10.0	16.4

The **SEER**, Seasonal Energy Efficiency Ratio, is the seasonal measure of energy efficiency for heat pumps when cooling.

This Model (Heating)
7.5 HSPF

Energy efficiency range of all similar models

Least Efficient	Most Efficient
6.8	10.2

The **HSPF**, Heating Seasonal Performance Factor, is the seasonal measure of energy efficiency for heat pumps when heating.

Heat pumps with higher SEERs and HSPFs are more energy efficient.

- These energy ratings are based on U.S. Government standard tests of this condenser model combined with the most common coil. The ratings will vary slightly with different coils and in different geographic regions.
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

Sample Label 9

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–15792 Filed 6–30–94; 8:45 am]

BILLING CODE 6750–01–C

ISSN 0194-9942
JL
1
1 2
6
VOL
5 9

Educational

federal register

Friday
July 1, 1994

Part III

Environmental Protection Agency

40 CFR Parts 9 and 112
Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 112

[SW H–FRL 5002–6]

RIN 2050–AD30

Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the Oil Pollution Prevention regulation, promulgated under the Clean Water Act for transportation-related onshore and offshore facilities. The revision incorporates new requirements added by the Oil Pollution Act of 1990 that direct certain facility owners and operators to prepare plans for responding to a worst case discharge of oil and to a substantial threat of such a discharge. Requirements to plan for a small and medium discharge of oil, as appropriate, are also added by this revision.

EFFECTIVE DATE: August 30, 1994.

ADDRESSES: The official record for this rulemaking is located in the Superfund Docket, Room M2615 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 [Docket Number SPCC–2P]. The docket is available for inspection between 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 202–260–3046. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, a charge of 15 cents will be incurred for each additional page, plus a $25.00 administrative fee.

FOR FURTHER INFORMATION CONTACT: Bobbie Lively-Diebold, Oil Pollution Response and Abatement Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at 703–356–8774; the ERNS/SPCC Information line at 202–260–2342; or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, 703–412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, 703–412–3323).

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. The Oil Pollution Act of 1990
  C. Background of the Rulemaking
II. Summary of Revisions to the Oil Pollution Prevention Regulation
  A. Summary of Approach to Implementing Facility Response Plan Requirements
  B. Response to Major Issues Raised by Commenters
  C. Section-by-Section Analysis
III. Regulatory Analyses
  A. Executive Order 12866
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
  D. Display of OMB Control Numbers

I. Introduction

A. Statutory Authority

Section 4202(a)(6) of the Oil Pollution Act of 1990 (OPA), Public Law 101–380, amends section 311(j) of the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), and under CWA section 311(j)(5) (See 33 U.S.C. 1321(j)(5)) directs the President to issue regulations that require owners or operators of tank vessels, offshore facilities, and certain onshore facilities to prepare and submit to the President plans for, among other things, responding, to the maximum extent practicable, to a worst case discharge of oil and to a substantial threat of such a discharge.

Section 311(j)(1)(C) of the CWA authorizes the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. (See 33 U.S.C. 1321(j)(1)(C).) The President has delegated the authority to regulate non-transportation-related onshore facilities under sections 311(j)(1)(C) and 311(j)(5) of the CWA to the U.S. Environmental Protection Agency (EPA or the Agency). (See Executive Order (E.O.) 12777, section 2(b)(1), 56 FR 54757 (October 22, 1991), superseding E.O. 11735, 38 FR 21243.) By this same E.O., the President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT), and authority over other offshore facilities, including associated pipelines, to the U.S. Department of the Interior (DOI). A Memorandum of Understanding (MOU) among EPA, DOI, and DOT effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA. (See E.O. 12777 § 2(i) regarding authority to redelegate.) The MOU is included as Appendix B to 40 CFR part 112. An MOU between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971 (36 FR 24080, December 18, 1971), establishes the definitions of non-transportation-related facilities and transportation-related facilities. The definitions from the MOU are currently included in Appendix A to 40 CFR part 112.

B. The Oil Pollution Act of 1990

The OPA (Public Law 101–380, 104 Stat. 484) was enacted to expand prevention and preparedness activities, improve response capabilities, ensure that shippers and oil companies pay the costs of spills that do occur, provide an additional economic incentive to prevent spills through increased penalties and enhanced enforcement, establish an expanded research and development program, and establish a new Oil Spill Liability Trust Fund, administered by the U.S. Coast Guard (USCG). As provided in sections 2002(b), 2003, and 2004 of the OPA, the new Fund replaces the fund originally established under section 311(k) of the CWA and other oil pollution funds.

Section 4202(a) of the OPA amends CWA section 311(j) to require regulations for owners or operators of facilities to prepare and submit "a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance." This requirement applies to all offshore facilities and any onshore facility that, "because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone" ("substantial harm facilities"). As stated in the February 17, 1993 proposed rule (58 FR 8824), this rulemaking addresses only plans for responding to discharges of oil.

Under CWA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the United States has developed a National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and has established Area Committees to develop Area Contingency Plans (ACPs) as elements of a comprehensive oil and hazardous substance spill response system. As amended by the OPA, CWA section 311(j)(5)(C) sets forth certain

minimum requirements for facility response plans. The plans must:

- Be consistent with the requirements of the NCP and ACPs;
- Identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing removal personnel and equipment;
- Identify and ensure by contract or other approved means the availability of private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;
- Describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the facility, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent a discharge or the substantial threat of a discharge; and
- Be updated periodically.

Under section 311(j)(5)(D), additional review and approval provisions apply to response plans prepared for offshore facilities and for onshore facilities that, because of their location, "could reasonably be expected to cause *significant and* substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone" (emphasis added) ("significant and substantial harm facilities"). Under authority delegated in E.O. 12777, EPA is responsible for the following activities for each of these response plans at non-transportation-related onshore facilities:

- Promptly reviewing the response plan;
- Requiring amendments to any plan that does not meet the section 311(j)(5) requirements;
- Approving any plan that meets these requirements; and
- Reviewing each plan periodically thereafter.

The CWA and the OPA require that owners or operators of "substantial harm facilities" submit their response plans to EPA (as delegated by the President in E.O. 12777) by February 18, 1993, or stop handling, storing, or transporting oil. In addition, under CWA section 311(j)(5) and OPA section 4202(b)(4), a facility required to prepare and submit a response plan under the OPA may not handle, store, or transport oil after August 18, 1993 unless: (1) in the case of a facility for which a plan is reviewed by EPA, the plan has been approved by EPA; and (2) the facility is

minimum requirements for facility response plans. The plans must:

- Be consistent with the requirements of the NCP and ACPs;
- Identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing removal personnel and equipment;
- Identify and ensure by contract or other approved means the availability of private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;
- Describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the facility, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent a discharge or the substantial threat of a discharge; and
- Be updated periodically.

Under section 311(j)(5)(D), additional review and approval provisions apply to response plans prepared for offshore facilities and for onshore facilities that, because of their location, "could reasonably be expected to cause *significant and* substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone" (emphasis added) ("significant and substantial harm facilities"). Under authority delegated in E.O. 12777, EPA is responsible for the following activities for each of these response plans at non-transportation-related onshore facilities:

- Promptly reviewing the response plan;
- Requiring amendments to any plan that does not meet the section 311(j)(5) requirements;
- Approving any plan that meets these requirements; and
- Reviewing each plan periodically thereafter.

The CWA and the OPA require that owners or operators of "substantial harm facilities" submit their response plans to EPA (as delegated by the President in E.O. 12777) by February 18, 1993, or stop handling, storing, or transporting oil. In addition, under CWA section 311(j)(5) and OPA section 4202(b)(4), a facility required to prepare and submit a response plan under the OPA may not handle, store, or transport oil after August 18, 1993 unless: (1) in the case of a facility for which a plan is reviewed by EPA, the plan has been approved by EPA; and (2) the facility is operating in compliance with the plan. The statute provides that a "significant and substantial harm facility" may be allowed to operate without an approved response plan for up to two years after the facility submits a plan for review (no later than February 18, 1995), if the owner or operator certifies that he or she has ensured by contract or other approved means the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge of oil, or a substantial threat of such a discharge. Owners or operators of "substantial harm facilities" are not required to have their plans approved by EPA, but, are required to operate in compliance with their plans after August 18, 1993.

Under the OPA, facility owners or operators who fail to comply with section 311(j) requirements are subject to new administrative penalties and more stringent judicial penalties than those imposed previously under the CWA. Section 4301(b) of the OPA amends CWA section 311(b) to authorize a civil judicial penalty of $25,000 per day of violation for failure to comply with regulations under CWA section 311(j). In addition to these civil penalties, OPA section 4301(b) amends CWA section 311(b) to authorize administrative penalties for failure to comply with section 311(j) regulations of up to $10,000 per violation, not to exceed $25,000 for Class I penalties, and up to $10,000 per day per violation, not to exceed $125,000 for Class II penalties. The differences between "Class I" and "Class II" administrative penalties are the amounts of the potential penalties and the hearing procedures used (for instance, Class II procedures will generally ensure the owner or operator a more extensive opportunity to be heard through the proceedings). These revised penalty provisions are applicable to violations occurring after the August 18, 1990, enactment of the OPA. Violations occurring before enactment of the OPA remain subject to penalty provisions originally set forth in CWA section 311.

C. Background of the Rulemaking

Jurisdictional Issues

Although the issue was not raised specifically in the proposed rule, the question of clarifying jurisdiction is a pervasive issue in this rulemaking, because there are a number of regulatory agencies with OPA authority over the same or similar entities.

By E.O. 12777, the President delegated certain OPA authorities to EPA, DOI, and DOT. By terms of the E.O., EPA must develop response plan regulations for onshore non-transportation-related facilities, while the Minerals Management Service (MMS) in DOI is granted similar authority for offshore non-transportation-related facilities. The USCG must develop requirements for vessels and offshore transportation-related facilities, and the Research and Special Programs Administration (RSPA) has responsibility for onshore pipelines and rolling stock. (The USCG and RSPA are agencies in DOT.)

As it applies to the CWA, the term "offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel. (See CWA section 311(a)(ii).) The combined effect of this definition and the delegations under E.O. 12777 gives DOI (MMS) responsibility for non-transportation-related fixed offshore facilities in inland lakes and rivers. (See E.O. § 2(b)(3).)

However, EPA, DOI-MMS, and DOT have agreed that EPA responsibility should extend to these non-transportation-related fixed offshore facilities in inland lakes and rivers, because EPA has the expertise to provide oversight of facility functions, and because the maintenance of continuity in oversight will facilitate compliance for the regulated community. Under § 2(i) of E.O. 12777, the President authorized EPA, DOI, and DOT to redelegate any of their responsibilities under the OPA to the head of any Executive department or agency with the consent of the agency head. The Secretaries of DOI and DOT, and the Administrator of EPA signed an MOU on February 3, 1994, that gives to EPA jurisdiction all non-transportation-related fixed facilities located landward of the "coast line." For purposes of the MOU, the term "coast line" is defined as in the Submerged Land Act (43 U.S.C. 1301(c)) to mean "the line of ordinary low water along that portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters." MMS has prepared detailed charts that reflect the position of the "coast line" and can be contacted for additional information on the status of a particular facility.

EPA does not address response plan requirements for non-transportation-related fixed offshore facilities in this final rule, but will do so under a separate rulemaking. However, because EPA now has jurisdictional responsibility over such facilities,

response plans for these facilities must be submitted to EPA rather than to MMS. Until EPA promulgates a rule for non-transportation-related fixed offshore facilities formerly under MMS authority, the Agency will review response plans for these facilities under the OPA statutory criteria. Until such a rule is promulgated, these facilities should look to this final rule as guidance.

Coordination with Other Federal Programs

Federal and State Government Coordination Efforts. EPA and other Federal agencies with jurisdiction under the OPA and E.O. 12777 (including the USCG, the Office of Pipeline Safety in RSPA, and MMS) met during the development of this rule to create an implementation strategy that minimizes duplication wherever practicable and recognizes State oil pollution prevention and response programs. The Agency also participated in a workgroup with representatives from the National Oceanic and Atmospheric Administration (NOAA), the Fish and Wildlife Service, the National Park Service, and other Federal agencies. These meetings and workgroup sessions were held to develop a consistent approach among Federal agencies and between Federal and State governments for oil response planning, and to develop guidelines and evaluation criteria for drills/exercises and training conducted to meet the OPA requirements and for identification of "environmentally sensitive areas" (now "fish and wildlife and sensitive environments").[1] These meetings were held at various times from January 1993 to January 1994.

One of the critical outgrowths of these efforts was the development of a consistent approach to regulate "complexes." (A complex is a facility with a combination of transportation-related and non-transportation-related components, e.g., a marine transfer facility with aboveground storage tanks.) A complex is subject to the jurisdiction of more than one Federal agency under the President's delegation implementing section 311(j) of the CWA. Among the ways EPA has reduced the complexity of planning requirements for these facilities is to better align EPA's Appendix E (Appendix F in the proposed rule renamed in this final rule as "Determination and Evaluation of Required Response Resources for Facility Response Plans") with USCG response resource rules developed for marine transfer facilities (February 5, 1993, 58 FR 7330). (A complete discussion of Appendix E appears later in this preamble.) For non-transportation-related facilities that handle or store non-petroleum oils, EPA also has adopted an approach similar to the USCG's regulatory approach for response equipment strategies (58 FR 7362).

The coordination efforts resulted in several key decisions which are described below and discussed in greater depth later in this preamble. A common theme of discussion among agency representatives was the need to facilitate the regulated community's efforts to implement multiple sets of response planning requirements. EPA emphasizes that it will accept a response plan prepared to meet State or other Federal requirements as long as the plan meets the requirements of this final rule and is appropriately cross-referenced. In response to the need to provide owners or operators with additional direction on conducting drills/exercises to meet the OPA requirements, the National Preparedness for Response Exercise Program (PREP) was developed through a joint effort of the Federal agencies implementing OPA response plan regulations with involvement from other Federal representatives (e.g., natural resource trustees), State agencies, members of the regulated community, and oil spill response organizations. These efforts resulted in the creation of guidelines to assist owners or operators in following the PREP. EPA references, as guidance, PREP guidelines at § 112.21 of today's final rule. The PREP draft guidelines are available from Petty Officer Daniel Caras at (202) 267–6570 or fax 267–4085/4065. (See Appendix E to this part, section 10, for availability). The USCG has developed similar guidance for training, and EPA references these training guidelines at § 112.21 of today's final rule, indicating that following these guidelines (or demonstrating a comparable program) is an acceptable means to satisfy the OPA requirement to describe training.

Another interagency effort that resulted in a coordinated approach to develop response plan requirements involved the identification of fish and wildlife and sensitive environments. The Federal agencies implementing OPA regulations contributed to the development of a guidance document prepared by the natural resource trustees to assist owners or operators in identifying fish and wildlife and sensitive environments for the evaluation of the substantial harm criteria and for the development of a response plan, if required. Although EPA has removed the proposed Appendix D that covered this subject, facility owners and operators still must consider fish and wildlife and sensitive environments. EPA refers facility owners or operators to Appendices I, II, and III of the "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" published by NOAA within the Department of Commerce (DOC) in the **Federal Register** at 59 FR 14714, March 29, 1994. This document will provide guidance on fish and wildlife and sensitive environments until geographic-specific annexes of ACPs are fully developed. (See the discussion of ACPs later in this preamble.) Owners or operators are encouraged to contact the appropriate Area Committee, EPA Regional office (inland areas), USCG Captain of the Port (coastal areas), or natural resource agencies listed in the DOC/NOAA Guidance for information on fish and wildlife and sensitive environments as it becomes available.

A final critical area where Federal agencies implementing the OPA reached agreement was the review of response plans. For response purposes, the NCP divides the United States into inland and coastal zones, with EPA responsible for providing On-Scene Coordinators (OSCs) for the inland zone, and the USCG responsible for providing OSCs for the coastal zone. EPA will provide an opportunity for designated USCG OSCs to review and comment on response plans for non-transportation-related onshore facilities subject to 40 CFR part 112, and geographically located in the coastal zone. For facilities subject to 40 CFR part 112, EPA will maintain the responsibility for final approval of the response plan; however, the Regional Administrator (RA) will consider any USCG OSC objection to a response plan and attempt to resolve any issues through interagency discussions.

The NCP and ACPs. Section 311(j)(5)(C) of the CWA requires that facility response plans be consistent with the requirements of the NCP and ACPs. The NCP provides the general organizational structure and procedures for addressing discharges of oil and hazardous substances under the CWA, as well as releases of hazardous substances, pollutants, and contaminants under CERCLA. Among other things, the NCP specifies

[1] The term "environmentally sensitive areas" has been changed to the term "fish and wildlife and sensitive environments" throughout this preamble and the final rule to be consistent with the terminology used in proposed revisions to the NCP (See 58 FR 54702) that implement OPA requirements. The terms have the same meaning and the change is not meant to imply an expansion in the types of areas identified for protection under the OPA.

responsibilities among Federal, State, and local governments; describes resources available for response; summarizes State and local emergency planning requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA or SARA Title III); and establishes procedures for undertaking removal actions under the CWA. Until a revised NCP is published, as mandated under OPA section 4201(c), facility response plans should be consistent with the current NCP and, if necessary, revised to be consistent with the pending NCP revisions when they are promulgated. (Revisions to the NCP were proposed on October 22, 1993, at 58 FR 54702.)

ACPs are mandated under CWA section 311(j)(4) and prepared by Area Committees comprised of members appointed by the President from qualified personnel of Federal, State, and local agencies. When implemented in conjunction with other elements of the NCP, ACPs must be adequate to remove a worst case discharge from a facility operating in or near the area covered by the plan. ACPs cover discharges affecting all U.S. waters and adjoining shorelines. EPA and the USCG are responsible for establishing Area Committees for the inland and coastal zones, respectively. In the inland Regions, ACPs have been completed and approved by EPA. The ACP process, however, is dynamic, and Area Committees will continue to refine the ACPs to provide more detailed information on protection priorities, develop protection strategies, and identify appropriate cleanup strategies for inland areas. Area Committees have the option to further subdivide their areas into smaller, geographically distinct subareas and develop geographic-specific annexes for these subareas. Members of the public may contribute to the ACP refinement process through involvement with Area Committees in the development of geographic-specific annexes.

Resource Conservation and Recovery Act (RCRA). EPA regulations in Subpart D of 40 CFR part 264, and Subpart D of 40 CFR part 265 promulgated under RCRA, require owners and operators of hazardous waste facilities to develop facility-specific contingency plans. The plans must include response procedures; a list of each person qualified to act as a facility emergency coordinator; a list of all emergency equipment and, when required, decontamination equipment at the facility; evacuation plans, when evacuation could be necessary; and arrangements agreed to by local police departments, fire departments,

responsibilities among Federal, State, and local governments; describes resources available for response; summarizes State and local emergency planning requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA or SARA Title III); and establishes procedures for undertaking removal actions under the CWA. Until a revised NCP is published, as mandated under OPA section 4201(c), facility response plans should be consistent with the current NCP and, if necessary, revised to be consistent with the pending NCP revisions when they are promulgated. (Revisions to the NCP were proposed on October 22, 1993, at 58 FR 54702.)

ACPs are mandated under CWA section 311(j)(4) and prepared by Area Committees comprised of members appointed by the President from qualified personnel of Federal, State, and local agencies. When implemented in conjunction with other elements of the NCP, ACPs must be adequate to remove a worst case discharge from a facility operating in or near the area covered by the plan. ACPs cover discharges affecting all U.S. waters and adjoining shorelines. EPA and the USCG are responsible for establishing Area Committees for the inland and coastal zones, respectively. In the inland Regions, ACPs have been completed and approved by EPA. The ACP process, however, is dynamic, and Area Committees will continue to refine the ACPs to provide more detailed information on protection priorities, develop protection strategies, and identify appropriate cleanup strategies for inland areas. Area Committees have the option to further subdivide their areas into smaller, geographically distinct subareas and develop geographic-specific annexes for these subareas. Members of the public may contribute to the ACP refinement process through involvement with Area Committees in the development of geographic-specific annexes.

Resource Conservation and Recovery Act (RCRA). EPA regulations in Subpart D of 40 CFR part 264, and Subpart D of 40 CFR part 265 promulgated under RCRA, require owners and operators of hazardous waste facilities to develop facility-specific contingency plans. The plans must include response procedures; a list of each person qualified to act as a facility emergency coordinator; a list of all emergency equipment and, when required, decontamination equipment at the facility; evacuation plans, when evacuation could be necessary; and arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services. In addition, newly promulgated 40 CFR part 279 establishes facility-specific contingency planning and emergency procedure requirements for used oil at reprocessing and refining facilities. To avoid duplication of effort, owners or operators of facilities subject to the regulations in 40 CFR parts 264, 265, and 279 may incorporate these RCRA provisions and the response planning requirements of other applicable Federal regulations into their facility response plans.

EPCRA. Among other things, EPCRA requires local emergency planning committees (LEPCs) to develop local emergency response plans for their community and review them at least annually. Under EPCRA, the owner or operator of a facility where a listed "extremely hazardous substance" is present in an amount in excess of the threshold planning quantity must notify the State emergency response commission (SERC). In addition, upon request of the LEPC, the owner or operator must provide the LEPC with any information necessary to develop and implement the local emergency response plan. Because of the requirement that certain facilities participate in emergency planning under EPCRA, some overlap may exist with response plan requirements outlined in today's rule.

The OPA Conference Report states that OPA facility response plans should be consistent with plans prepared under other programs, and that any information developed under section 311(j) should be made available to SERCs and LEPCs. (See OPA Conference Report, H.R. Rep. No. 101–653, 101st Cong., 2d Sess. 1990 at p. 151.) Therefore, a facility response plan should be consistent with the local emergency response plan for the community in which the facility is located, and to ensure such consistency, facility owners or operators should review the appropriate local emergency response plan. In addition, upon request of the LEPC or SERC, the facility should provide a copy of the facility response plan.

Clean Air Act. Under section 112(r) of the Clean Air Act (CAA), as amended in 1990, EPA is to promulgate risk management program regulations for the prevention and detection of accidental releases and for responses to such releases, including requirements for a risk management plan (RMP) for chemical accidental release prevention. The regulation listing the covered chemicals and threshold quantities was published in the **Federal Register** on January 31, 1994 (59 FR 4478). The proposed rule for the risk management program was published in the **Federal Register** on October 20, 1993 (58 FR 54190).

Regulated facilities are required to do three things: register with EPA; develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program; and develop and submit an RMP to the Chemical Safety and Hazard Investigation Board, the implementing agency, the SERC, and the LEPC. The RMP is to be made available to the public.

EPA anticipates that facilities affected by both regulations can prepare one response plan that meets the Oil Pollution Act requirements for oil and the CAA requirements for chemicals.

Prevention Technical Requirements

EPA's proposed rule for the facility response plan rulemaking contained certain provisions related to aspects of 40 CFR part 112 that did not address the OPA facility response plan requirements. EPA has decided not to include these provisions in today's final rule. These provisions are more closely related to the 40 CFR part 112 revisions proposed on October 22, 1991 (56 FR 54612), and will be finalized when that proposal is finalized. The proposed provisions not included in today's final rule are as follows:

- § 112.1(d)(4)—Reiterating that Underground Storage Tanks are to be Marked on Diagrams;
- § 112.1(g)—Regional Administrator Authority to Require SPCC Plan Preparation;
- § 112.2—Definitions of "Alteration" and "Repair";
- § 112.4(d)—Amendment of SPCC Plan by Regional Administrator;
- § 112.7(a)(2)—Submission of SPCC Plans for Waiver of Technical Requirements;
- § 112.7(d)—Requirement to Prepare a Contingency Plan When the Installation of Secondary Containment Structures is not Practicable;
- § 112.7(f)—Prevention Training; and
- § 112.7(i)/Appendix H—Ensuring Against Brittle Fracture.

Only proposed changes to §§ 112.2 (except for the definitions of "alteration" and "repair") and 112.20, and the addition of § 112.21 are included in today's final rule. The content of § 112.21 is adapted from § 112.7 of the proposed rule which addressed training and drills/exercises for both prevention and response.

II. Summary of Revisions to the Oil Pollution Prevention Regulation

This section provides a summary of the response planning provisions included in today's final rule. Section II.A provides a brief summary of the overall approach to implementation of response plan requirements. In Section II.B, EPA summarizes and responds to major issues raised by the public during the comment period. Finally, Section II.C provides a section-by-section discussion of changes from the proposed rule to the final rule.

A. Summary of Approach to Implementing Facility Response Plan Requirements

EPA is finalizing an approach for identifying facilities subject to response planning requirements similar to that outlined in the proposed rule. Only owners or operators of "substantial harm facilities" are required to prepare and submit plans. EPA will approve only those plans submitted for "significant and substantial harm facilities." Risk-based factors for evaluating the potential to cause substantial harm and significant and substantial harm are established in § 112.20(f) of today's rule and include: type of transfer operation; oil storage capacity; lack of secondary containment; proximity to fish and wildlife and sensitive environments (described as "environmentally sensitive areas" in the proposal), navigable waters, and drinking water intakes; spill history; age of oil storage tanks; and other facility-specific and Region-specific information.

There are two methods by which an onshore facility may be determined to be a "substantial harm facility." The first involves the use of substantial harm criteria provided in § 112.20(f)(1) and in the flowchart in Appendix C to 40 CFR part 112 by owners or operators to identify "substantial harm facilities." The second provides each RA the authority to determine whether any facility subject to the Oil Pollution Prevention regulation is a "substantial harm facility" based on the specific criteria in § 112.20(f)(1), the factors in § 112.20(f)(2)(A)–(F), or other site-specific characteristics and environmental factors that may be relevant under § 112.20(f)(2)(G). In applying these factors, the RA may seek input on specific facilities from other agencies such as the USCG and natural resource trustee agencies. The RA also may consider petitions from the public to determine whether a facility is a "substantial harm facility."

To determine whether an onshore facility could be a "significant and substantial harm facility," the RA will consider the substantial harm criteria in § 112.20(f)(2) as well as additional factors in § 112.20(f)(3), including site-specific information such as local impacts on public health.

In today's final rule, facility owners or operators are provided with a process to appeal the substantial harm and significant and substantial harm determinations or the RA's decision not to approve a response plan for which approval is required.

Finally, under § 112.20(e), owners or operators who are not required to submit plans must maintain onsite at the facility a signed certification form, which indicates that the facility has been determined by the facility owner or operator not to meet the criteria in § 112.20(f)(1).

Discussion of Response Plans

Those facility owners or operators who submit plans must include a signed response plan cover sheet (as provided in 40 CFR part 112, Appendix F, Attachment F–1), which indicates that the information contained in the plan is accurate, and that gives a basic summary of facility information, including the results of the substantial harm determination.

The required elements for response planning in § 112.20(h) of this rule are designed to direct a facility owner or operator in gathering the information needed to prepare a response plan. The response plan elements address requirements under CWA section 311(j)(5) (as amended by the OPA), including requirements for response training and participation in response drills/exercises. Appendix F to the rule includes a model response plan that further describes the required elements in § 112.20(h). The majority of elements in the model plan are taken directly from § 112.20(h) or are logical extensions of the general requirements in § 112.20(h) and are therefore requirements prefaced by use of the word "must" or "shall." EPA recognizes that certain other elements may not be applicable in all cases. To provide flexibility for facilities with unique circumstances, certain elements are prefaced by use of the words "shall, as appropriate" or are modified by use of the words "or an equivalent." Finally, other elements are presented as recommendations and are prefaced by use of the word "may."

As discussed previously in this preamble, the requirements in § 112.20(h) and the model response plan in Appendix F do not preclude the use of a preexisting response plan. Owners or operators may submit a plan prepared to meet other Federal or State requirements, as long as the elements in § 112.20 are addressed (including the requirement for an emergency response action plan), and a cross-reference to the model response plan is provided.

Under today's rule, owners or operators of "substantial harm facilities" must prepare plans to respond to a worst case discharge, and small and medium discharges as appropriate. Such response planning by facilities will help ensure protection of public health and welfare and the environment by facilitating effective response to discharges to navigable waters or adjoining shorelines. The requirement to plan for several different spill sizes is consistent with other agencies' (such as the USCG's) implementation of OPA response planning requirements. For example, the average most probable discharge and the maximum most probable discharge under the USCG interim final rule set out the same values in barrels as EPA sets out in gallons for small and medium spills (58 FR 7358, February 5, 1993). EPA is authorized to require owners or operators to plan for small and medium discharges by § 311(j)(1)(C) of the CWA.

OPA section 4201(b) (CWA section 311(a)(24)) defines "worst case discharge" for a facility as the largest foreseeable discharge in adverse weather conditions. The OPA Conference Report indicates that facility owners or operators are expected to prepare plans for responding to discharges that are worse than either the largest spill to date at the facility or the maximum probable spill for that facility type. (See H.R. Rep. No. 101–653, 101st Cong., 2d Sess. 1990 at pp. 149–150.) Today, EPA finalizes a requirement for a facility's worst case discharge planning amount based on the capacity of the largest single tank within a secondary containment area, or the combined capacity of a group of aboveground tanks permanently manifolded together within a common secondary containment area lacking internal subdivisions, whichever is greater; plus an additional quantity based on lack of secondary containment, as appropriate. (For facilities that lack secondary containment for all tanks, the worst case discharge would be the total storage capacity at the facility.) Production facilities would also need to consider production volumes. Single tank facilities are allowed to reduce the worst case discharge volume for the presence of adequate secondary containment.

EPA has provided worksheets in Appendix D, which owners or operators of storage and production facilities are required to use in the calculation of worst case discharge amounts. For complexes, the worst case discharge volume is the larger of the amounts calculated for each component of the facility regulated by a different agency using procedures contained in the respective regulations. EPA requires that owners or operators of complexes (a complex is a facility with a combination of transportation-related and non-transportation-related components, e.g., a marine transfer facility with aboveground storage tanks) plan for the single largest worst case discharge at the facility. To facilitate this process, EPA has modified Appendix E as described in Section II.B of this preamble to be consistent with the USCG's "Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans."

In addition to planning for a worst case discharge, under proposed § 112.20, facility owners and operators are required to plan for (1) a small spill, defined as any spill volume less than or equal to 2,100 gallons, provided that this amount is less than the worst case discharge amount; and (2) a medium spill, defined as any spill volume greater than 2,100 gallons, and less than or equal to 36,000 gallons or 10 percent of the capacity of the largest tank at the facility, whichever is less, provided that this amount is less than the worst case discharge amount. For facilities where the worst case discharge is a medium spill, the owner or operator is required to plan for two amounts, a worst case spill and a small spill. For facilities where the worst case discharge is a small spill, the owner or operator must plan only for a worst case discharge.

For medium spills at complexes, the owner or operator must first determine a medium spill volume for the transportation-related and non-transportation-related components at the facility. (The USCG's term "maximum most probable discharge" is generally equivalent to a medium spill. See 58 FR 7354.) The owner or operator must then compare the medium planning amounts for each component of the facility. Following this comparison, the owner or operator must select the larger of the quantities as the medium planning amount for the overall facility. A similar procedure must be followed for a small spill. (The USCG's term "average most probable discharge" is generally equivalent to a small spill. See 58 FR 7353.) EPA requires that owners or operators of complexes plan for a single small and

EPA has provided worksheets in Appendix D, which owners or operators of storage and production facilities are required to use in the calculation of worst case discharge amounts. For complexes, the worst case discharge volume is the larger of the amounts calculated for each component of the facility regulated by a different agency using procedures contained in the respective regulations. EPA requires that owners or operators of complexes (a complex is a facility with a combination of transportation-related and non-transportation-related components, e.g., a marine transfer facility with aboveground storage tanks) plan for the single largest worst case discharge at the facility. To facilitate this process, EPA has modified Appendix E as described in Section II.B of this preamble to be consistent with the USCG's "Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans."

In addition to planning for a worst case discharge, under proposed § 112.20, facility owners and operators are required to plan for (1) a small spill, defined as any spill volume less than or equal to 2,100 gallons, provided that this amount is less than the worst case discharge amount; and (2) a medium spill, defined as any spill volume greater than 2,100 gallons, and less than or equal to 36,000 gallons or 10 percent of the capacity of the largest tank at the facility, whichever is less, provided that this amount is less than the worst case discharge amount. For facilities where the worst case discharge is a medium spill, the owner or operator is required to plan for two amounts, a worst case spill and a small spill. For facilities where the worst case discharge is a small spill, the owner or operator must plan only for a worst case discharge.

For medium spills at complexes, the owner or operator must first determine a medium spill volume for the transportation-related and non-transportation-related components at the facility. (The USCG's term "maximum most probable discharge" is generally equivalent to a medium spill. See 58 FR 7354.) The owner or operator must then compare the medium planning amounts for each component of the facility. Following this comparison, the owner or operator must select the larger of the quantities as the medium planning amount for the overall facility. A similar procedure must be followed for a small spill. (The USCG's term "average most probable discharge" is generally equivalent to a small spill. See 58 FR 7353.) EPA requires that owners or operators of complexes plan for a single small and medium spill at the facility in accordance with the requirements in Appendix E.

Equipment Requirements

In Appendix E to today's rule, EPA establishes requirements to determine for planning purposes the quantity of resources and response times necessary to respond to the "maximum extent practicable" to a worst case discharge, and to other discharges, as appropriate. The requirements were adapted from similar requirements developed by the USCG for vessel response plans and facility response plans for marine transportation-related onshore facilities. These procedures recognize practical and technical limits on response capabilities that an individual facility owner or operator can provide in advance and on response times for resources to arrive on scene. To address these limitations, Appendix E establishes operability criteria for oil response resources and caps on response resources that facility owners or operators must identify and ensure the availability of, through contract or other approved means. The caps reflect an estimate of the response capability at a given facility that is considered a practical target to be met by 1993 and beyond.

Appendix E (Appendix F in the proposed rule) has been renamed "Determination and Evaluation of Required Response Resources for Facility Response Plans." EPA made this change to clarify that facility owners and operators must use this appendix to determine whether they have appropriate and adequate amounts of resources to meet the planning requirements in this final rule. In this appendix, EPA has substituted the words "shall" or "shall, as appropriate" for the word "should" to clarify whether the requirements are mandatory, regardless of the circumstances. The phrase "shall, as appropriate" is consistent with EPA's intent in the proposal to provide owners or operators flexibility for facilities with unique circumstances. As required at § 112.20(h)(3)(i), in cases where it is not appropriate to follow part of Appendix E to identify response resources to meet the facility response plan requirements, owners or operators must clearly demonstrate in the plan why use of Appendix E is not appropriate at the facility and make comparable arrangements for response resources.

Section 311(j)(5)(C)(iii) of the CWA requires the facility response plan to identify and ensure the availability, by contracts or other means approved by the President (as delegated to EPA), of private personnel and equipment necessary to respond to the maximum extent practicable, to a worst case discharge. For the purposes of today's rule, "contract or other approved means" is defined in § 112.2 of today's final rule as:

- A written contractual agreement with an Oil Spill Removal Organization (OSRO(s)). The agreement must identify and ensure the availability of the necessary personnel and equipment within appropriate response times; and/or
- Written certification that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or
- Active membership in a local or regional OSRO(s), which has identified and ensures adequate access, through membership, to necessary personnel and equipment within appropriate response times in the specified geographic areas; and/or
- Other specific arrangements approved by the RA upon request of the owner or operator.

If the owner or operator plans to rely on facility-owned equipment to satisfy the requirement at § 112.20(h)(3) to identify and ensure the availability of response resources, then equipment inventories must be provided. When relying on other arrangements, evidence of contracts or approved means must be included in the response plan so that the availability of resources can be verified during plan review. It is not necessary to list specific quantities of equipment in the facility response plan when listing a USCG-classified OSRO(s) that has sufficient removal capacity to recover up to the rate indicated by the associated caps. (See Section II.B of this preamble for additional discussion on this issue.)

Final Rule Application to Affected Facilities

The following paragraphs present EPA's approach to implement the response plan requirements of OPA and of this final rule. Section 112.20(a) of the rule has been revised to reflect this approach.

The Agency proposed in the February 17, 1993 **Federal Register** (58 FR 8824) its facility response plan rule for non-transportation-related onshore facilities under its jurisdiction. Before this publication, EPA made available outreach materials describing its basic approach for implementation of the OPA response plan requirements to allow facility owners or operators the opportunity to prepare and submit

response plans by the February 18, 1993, OPA deadline. EPA received over 4,500 plans from owners or operators of facilities that met the criteria to be a "substantial harm facility." EPA Regional personnel have identified the subset of "significant and substantial harm facilities" from those facilities that submitted response plans by February 18, 1993 and, as appropriate, issued authorizations to these facilities to continue to operate after August 18, 1993, based on a review of a facility's certification of response resources. These plans will be reviewed and, if appropriate, approved under the OPA statutory requirements by February 18, 1995. For *inadequate plans* submitted before the February 18, 1993 statutory deadline, RAs may notify facility owners or operators that additional information or plan revisions are necessary in advance of February 18, 1995, for plan approval.

To recognize the compliance efforts of owners or operators of those facilities in existence on or before February 18, 1993 who submitted response plans to meet the OPA requirements by the statutory deadline, EPA will allow them until February 18, 1995 to revise their response plan, if necessary, to satisfy the requirements of this rule and resubmit their plans (or updated portions) to the RA. (See § 112.20(a)(1)(i).) The revised plans for "significant and substantial harm facilities" will be reviewed periodically thereafter on a schedule established by the RA provided that the period between plan reviews does not exceed five years. (See § 112.20(c)(4).) RAs may institute a process by which such plan reviews are staggered so that not all plans will need to be reapproved in the same year.

Owners or operators of existing facilities that were in operation on or before February 18, 1993 who failed to submit a facility response plan to meet the OPA requirements by February 18, 1993 must submit a response plan that meets the requirements of this rule to the RA by the effective date of the final rule. (See § 112.20(a)(1)(ii).) EPA recognizes that such facilities may have prepared and submitted to the RA some form of a response plan after the statutory deadline. Owners or operators may submit revised portions of the plan to bring the plan into compliance with the final rule requirements. Plans for "significant and substantial harm facilities" will be reviewed for initial approval by RAs within a reasonable time. Such plans will be reviewed periodically thereafter on a schedule established by the RA provided that the period between plan reviews does not exceed five years. RAs may choose to stagger such plan reviews.

Owners or operators of facilities that commenced operations after February 18, 1993 but before the effective date of this final rule must submit a response plan that meets the requirements of this final rule to the RA by its effective date. EPA recognizes that such facilities may have prepared and submitted some form of a response plan to the RA prior to the publication of this rule. Owners or operator may submit revised portions of the plan to bring the plan into compliance with the final rule requirements. (See § 112.20(a)(2)(i).) RAs will review plans for "significant and substantial harm facilities" for initial approval within a reasonable time. The plans will then be placed on the Region's review cycle as described in the preceding paragraphs.

The Agency recognizes that identification of "substantial harm facilities" will continue to occur as new facilities come on-line and existing facilities newly meet the criteria for substantial harm as a result of a change in operations or site characteristics. EPA is requiring in § 112.20(a)(2)(ii) and (iii) that: (1) newly constructed facilities (facilities that come into existence after the effective date of the final rule) that meet the applicability criteria must prepare and submit a response plan in accordance with the final rule prior to the start of operations (adjustments to the response plan to reflect changes that occur at the facility during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days); and (2) existing facilities that become subject to the response plan requirements as the result of a planned change in operations (after the effective date of the final rule) must prepare and submit a response plan in accordance with the final rule prior to the implementation of changes at the facility. RAs will review plans submitted for such newly designated "substantial harm facilities" to determine if a facility is a "significant and substantial harm facility." RAs will review for approval plans for "significant and substantial harm facilities" within a reasonable time and then place the plans on the Region's review cycle as discussed previously.

An existing facility, however, may become subject to the response plan requirements through one or a combination of unplanned events, such as a reportable spill or the identification of fish and wildlife and sensitive environments adjacent to the site during the ACP refinement process. In the event of such an unplanned change, the owner or operator is required to prepare and submit a response plan to the RA within six months of when the change occurs (See § 112.20(a)(2)(iv).) The Agency believes that allowing six months from when a change caused by an unplanned event occurs to prepare and submit a plan is reasonable.

Under § 112.20(g)(2), facility owners or operators are required to review appropriate sections of the NCP and ACP annually and revise their response plans accordingly. In addition, § 112.20(d)(1) requires the owner or operator of a facility for which a response plan is required to resubmit relevant portions of the plan within 60 days of each material change in the plan. For "substantial harm facilities," Regions will review such changes to determine if the facility should be reclassified as a "significant and substantial harm facility." For "significant and substantial harm facilities," the Regions will review such changes for approval as described in § 112.20(d)(4).

B. Response to Major Issues Raised by Commenters

A total of 1282 comments were received on the proposed rule. The majority of these comments were one-page form letters from members of, and on behalf of, numerous environmental professional groups and addressed the issue of whether certification of response plans by an independent party was appropriate. A document entitled "Response to Comments Document for the Facility Response Plan Rulemaking" that summarizes and provides responses to all comments received on the proposed rule is available in the public docket. The major issues raised by the commenters and the Agency's responses are described in this section.

Option One vs. Option Two

In the preamble to the proposed rule, the Agency discussed two options for identifying facilities subject to facility response plan requirements under this rulemaking. In the proposed rule, EPA proposed the first option, but requested comment on the merits of both options. The two alternatives are outlined briefly in the next paragraph.

Under Option 1, EPA proposed to require under CWA sections 311(j)(5) and 311(j)(1)(C) that: (1) the owner or operator of a "substantial harm facility" prepare and submit a response plan, and (2) "significant and substantial harm facilities" have their plans promptly reviewed for approval by EPA. Criteria provided in § 112.20(f)(1) coupled with RA determinations would be used to identify "substantial harm facilities" and a subset of "significant and substantial harm facilities."

EPA's second approach was also based on the authority contained in CWA sections 311(j) (1) and (5). Under Option 2, all facilities regulated under 40 CFR part 112 would be required to prepare facility response plans; certain small, low-risk facilities with secondary containment structures would be allowed to prepare an abridged version of a response plan. Only "substantial harm facilities" would only be required to submit plans to EPA. "Significant and substantial harm facilities" would submit plans to EPA and have their plans reviewed and approved.

The Agency received numerous comments on the two options, with the vast majority favoring Option 1. Supporters of Option 1 stated that Option 2 would create too great a burden on facilities and EPA, in relation to the relatively low environmental benefits derived from planning. Commenters representing small, lower-risk facilities expressed concern that being required to prepare response plans would impose unnecessary financial burdens. In addition, commenters felt that 40 CFR part 112 was sufficiently protective of the environment for non-substantial-harm facilities. A small number of commenters representing both industry and environmental groups supported Option 2, stating that it most closely reflected the mandates of the OPA and that it would provide a more comprehensive emergency response planning network.

In today's final rule, EPA finalizes Option 1. The Agency believes that this option targets high-risk facilities in a cost effective manner that is nevertheless protective of the environment. Owners or operators of facilities covered by the Oil Pollution Prevention regulation must evaluate their facilities against a series of substantial harm screening criteria. Although EPA encourages all oil storage facilities under its jurisdiction to prepare oil spill response plans, owners or operators of those facilities not meeting the criteria provided in § 112.20(f)(1) are only required to prepare a facility response plan if the RA independently determines that the facility is a "substantial harm facility." Because of the size and diversity of the regulated community under EPA's jurisdiction pursuant to the OPA and the tight timeframe established by the OPA, EPA is implementing a substantial harm selection process with two components (i.e., published criteria and an RA determination). The published criteria are designed to capture the vast

and a subset of "significant and substantial harm facilities."

EPA's second approach was also based on the authority contained in CWA sections 311(j) (1) and (5). Under Option 2, all facilities regulated under 40 CFR part 112 would be required to prepare facility response plans; certain small, low-risk facilities with secondary containment structures would be allowed to prepare an abridged version of a response plan. Only "substantial harm facilities" would only be required to submit plans to EPA. "Significant and substantial harm facilities" would submit plans to EPA and have their plans reviewed and approved.

The Agency received numerous comments on the two options, with the vast majority favoring Option 1. Supporters of Option 1 stated that Option 2 would create too great a burden on facilities and EPA, in relation to the relatively low environmental benefits derived from planning. Commenters representing small, lower-risk facilities expressed concern that being required to prepare response plans would impose unnecessary financial burdens. In addition, commenters felt that 40 CFR part 112 was sufficiently protective of the environment for non-substantial-harm facilities. A small number of commenters representing both industry and environmental groups supported Option 2, stating that it most closely reflected the mandates of the OPA and that it would provide a more comprehensive emergency response planning network.

In today's final rule, EPA finalizes Option 1. The Agency believes that this option targets high-risk facilities in a cost effective manner that is nevertheless protective of the environment. Owners or operators of facilities covered by the Oil Pollution Prevention regulation must evaluate their facilities against a series of substantial harm screening criteria. Although EPA encourages all oil storage facilities under its jurisdiction to prepare oil spill response plans, owners or operators of those facilities not meeting the criteria provided in § 112.20(f)(1) are only required to prepare a facility response plan if the RA independently determines that the facility is a "substantial harm facility." Because of the size and diversity of the regulated community under EPA's jurisdiction pursuant to the OPA and the tight timeframe established by the OPA, EPA is implementing a substantial harm selection process with two components (i.e., published criteria and an RA determination). The published criteria are designed to capture the vast majority of "substantial harm facilities." To simplify the process, EPA developed specific selection criteria to be applied in a consistent manner by all owners and operators. Nevertheless, EPA believes that there are facilities that do not meet the criteria in § 112.20(f)(1), but may, due to facility-specific or location-specific circumstances, pose sufficient risk to the environment to be designated as "substantial harm facilities." Accordingly, RAs, as the designated representatives of EPA, are granted authority to designate a facility on a case-by-case basis as a "substantial harm facility."

Substantial Harm Criteria

As required by § 112.20(f)(1) and the flowchart in Appendix C to 40 CFR part 112, a facility is a "substantial harm facility" if either of the following two criteria are met:

(1) The facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or

(2) The facility's total oil storage capacity is greater than or equal to 1 million gallons, and one or more of the following is true:

- The facility does not have secondary containment for each aboveground storage area sufficiently large to contain the capacity of the largest aboveground storage tank within each storage area plus sufficient freeboard to allow for precipitation;
- The facility is located at a distance (as calculated using the appropriate formula in Appendix C or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments;
- The facility is located at a distance (as calculated using the appropriate formula in Appendix C or a comparable formula) such that a discharge from the facility would shut down operations at a public drinking water intake; or
- The facility has had a reportable spill greater than or equal to 10,000 gallons within the last 5 years.

A number of commenters suggested that EPA is attempting to regulate transportation-related facilities that are covered by USCG regulations. Several of these commenters stated that EPA's approach would result in redundant and conflicting regulations for such facilities.

The Agency considered these comments and decided to retain the over-water transfers criterion (§ 112.20(f)(1)(i)). The criterion was designed to identify as posing a risk of substantial harm to the environment those facilities that store oil above a certain quantity located in close proximity to navigable waters. EPA is not attempting to regulate marine transfer operations. In 40 CFR 112.1, EPA clearly explains which facilities fall under its authority. The section states that EPA jurisdiction does not extend to transportation-related facilities. The Agency has the authority, however, to regulate the non-transportation-related storage component of facilities that may have a marine transfer component.

Several commenters indicated that the 42,000 gallon cutoff for transfers over-water is appropriate. Other commenters questioned the potential of a 42,000 gallon spill to cause substantial harm to the environment.

EPA has decided that non-transportation-related storage components of complexes should be regulated at a lower capacity threshold than storage facilities without an over-water transfer component (i.e., 42,000 gallons versus 1 million gallons), because the location of over-water transfer facilities poses a higher risk to navigable waters. Spills at such facilities are more likely to reach navigable waters than spills from facilities located further from navigable waters. Also, it is likely that a higher percentage of the total amount released will reach navigable waters at a facility directly adjacent to navigable waters than at a facility located further away. Data indicate that for oil discharges above 42,000 gallons, the number of incidents with reported effects including fishkills, wildlife damage, or fire is greater than for oil discharges below 42,000 gallons. At the 0.01 level of significance, the size of the release is related to the occurrence of reported effects. For certain release size thresholds other than 42,000 gallons, however, a similar statistically significant relationship could not be shown.[2]

EPA requested comment in the proposed rule on the appropriateness of the use of a proposed 1 million gallon or a 200,000 gallon size cut-off for total storage capacity to determine a threshold for substantial harm. (See § 112.20(f)(1)(ii).)

The Agency received numerous comments suggesting that the 1 million gallon cutoff was appropriate. A smaller number of commenters including other Federal government agencies and environmental associations, indicated that the size cut-off for substantial harm should be 200,000 gallons or lower.

[2] Study prepared for EPA titled "Analysis of Data Relating to Facility Size, Oil Discharges, and Environmental Effects." Available for inspection in the Superfund Docket, Room M2615, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Advocates for a lower cut-off contended that small facilities with a high throughput may have a higher potential to cause substantial harm than large facilities with low throughput. These commenters also suggested that the OPA Conference Report indicated that the requirement to prepare and submit response plans should be applied broadly, because even small discharges from an onshore facility could result in substantial harm under certain circumstances.

Although EPA recognizes that large storage capacity is a substantial harm risk factor, the Agency also recognizes that the intent of OPA was not to exclude certain smaller facilities, such as those near public drinking water intakes or fish and wildlife and sensitive environments, from consideration as having the potential to cause substantial harm. EPA intends that the RA determination process be used to identify additional high-risk facilities that do not meet the criteria in § 112.20(f)(1) although nonetheless pose substantial harm.

The Agency decided to identify certain high-risk facilities that pose a threat of substantial harm because of their size in combination with facility-specific characteristics (i.e., secondary containment and spill history) or location-specific (i.e., proximity to fish and wildlife and sensitive environments and public drinking water intakes). The largest oil spills, which could pose the greatest risk to the environment, occur at large facilities. Data on the effects of spills from aboveground storage tanks indicate that when larger quantities of oil are discharged, fish and wildlife damage, off-site soil pollution, and property damage are greater than for smaller discharges.[3] The Agency believes that regulatory coverage and protection of the environment will be ensured, since facilities that are smaller than 1 million gallons, but that could cause substantial harm because of their proximity to navigable waters or fish and wildlife and sensitive environments, could be selected under the RA's authority to require a facility to submit a response plan, regardless of whether the facility meets the criteria in § 112.20(f)(1) (although the RA considers these factors as part of the determination).

In addition, several commenters suggested that the average oil storage inventory of a facility should be used instead of capacity to determine the oil storage threshold for substantial harm. Commenters indicated that the normal amount of oil stored at a facility is often less than the total capacity, because facilities are overdesigned to meet seasonal demands. Commenters also contended that tanks dedicated for standby service and tanks not in service should not be counted in determining a facility's capacity, and that certification methods could be employed to ensure that excess capacity is not being used.

In today's final rule, EPA retains capacity rather than inventory as the basis for assessing risk to the environment. The decision was based largely on the fact that substantial harm determinations using inventory would be difficult or impossible to enforce and might not accurately reflect the true worst case for the facility. EPA would be unable to inspect facilities often enough to ensure that their inventory is actually below the substantial harm threshold. Moreover, owners or operators would likely find it difficult to constantly track inventory to ensure that changes in inventory did not trigger additional regulatory requirements and at some time the tank could be filled to capacity. In addition, there is a need to maintain consistency in the Oil Pollution Prevention regulation, and the original regulation uses storage capacity for threshold determinations instead of using inventory. However, EPA has proposed in a separate rulemaking published on October 22, 1991 (58 FR 54612), to allow owners or operators to exclude permanently closed tanks (as defined in § 112.2 of the proposed rule published on October 22, 1991) from the total capacity of the facility for the purposes of the Oil Pollution Prevention regulation. If these changes are finalized, permanently closed tanks would not have to be considered in the substantial harm evaluation.

Several commenters argued that the 10,000 gallon reportable spill criterion (proposed at § 112.20(f)(ii)(D), 58 FR 8849) should be modified to allow a facility owner the opportunity to petition the RA for exclusion based upon modifications to the facility or to its spill prevention procedures made after the release.

EPA agrees that continuous improvements in spill prevention procedures are important and that owners and operators that have significantly upgraded their facility within five years of a spill greater than or equal to 10,000 gallons (by replacing tanks or adding secondary containment, for example) should be allowed to request exclusion from the substantial harm category.

The Agency includes a two-stage appeals process in § 112.20(i) of today's rule. The appeals process allows an owner or operator to petition the RA to remove a facility from the category of substantial harm because of improvements at the facility that lead to greatly reduced risk to the environment. The appeals process is discussed in greater detail in the "Appeals Process" section of this preamble. Of course, even if a facility obtains relief through appeal, the RA still retains authority to require a Plan, under § 112.20(b) should the circumstances on which the relief was granted change in the future.

In the proposed rule, EPA provided formulas in Appendix C for owners or operators to determine appropriate distances to fish and wildlife and sensitive environments and drinking water intakes for purposes of evaluating the substantial harm criterion. EPA also proposed to allow the use of an alternative formula acceptable to the RA. EPA solicited data and comments on the appropriateness of the distance calculations in Appendix C for inland areas.

Several commenters supported the overall approach of using a calculated distance to define proximity. However, numerous commenters indicated that the formulas used to calculate the planning distances in Appendix C are too complex, cumbersome, or impracticable for general use.

The Agency does not agree. The planning distance formulas proposed in Appendix C are appropriate based on an evaluation of engineering principles and input from an interagency technical workgroup that included representatives from the Natural Resource Trustee agencies, as well the agencies responsible for measuring river height and flow. The Agency's primary goal was to provide a series of formulas that were technically supportable. EPA has provided the least complex formulas that are still technically supportable. Moreover, EPA allows owners or operators to use comparable formulas to calculate appropriate distances provided that the formula is acceptable to the RA and they send supporting documentation on the reliability and analytical soundness of the formulas (see § 112.20(a)(3)).

Several commenters noted that the formulas proposed in Appendix C did not account for tides, currents, wind direction, and other weather-dependent flow rates. One commenter recommended that EPA use the USCG planning distances for discharges into tidal waters. To more accurately account for the range of movement of spilled oil in certain aquatic environments, EPA includes in Appendix C of today's final rule a section on oil transport in tidal influence areas as a separate type of calculation. EPA adopts the tidal

[3] Ibid.

influence area criteria from the USCG's interim final rule for Marine Transportation-Related (MTR) Facilities (58 FR 7358, February 5, 1993).

Some commenters stated that the proposed response times in Table 3 of Appendix C for calculating the planning distances were inappropriate and would overpredict the area of the spill. Some commenters noted that actual response times could be considerably faster than those proposed because some facilities have their own response resources. Conversely, one commenter expressed concern that the response times are too short and do not account for adverse weather conditions or phased planning required for certain discharges. Other commenters noted that the proposed response times in Table 3 of Appendix C were inconsistent with the response times listed in Appendix F of the proposed rule for determining response resources for a worst case discharge and should be changed. No data were provided by commenters to support alternative response times for use in the distance calculations.

In today's rule, to clarify the information presented, EPA reformats Table 3 of Appendix C. EPA used the same geographic areas for facility location (i.e., higher volume port area, Great Lakes, and all other river and canal, inland, and nearshore areas) as those specified in the equipment appendix (Appendix E) to maintain consistency between different sections of the regulation and because the facility location directly impacts the arrival time of response resources.

The specified-time intervals in Table 3 of Appendix C are to be used only to aid in the determination of whether a facility is a "substantial harm facility." Once it is determined that a plan must be developed for the facility, the owner or operator would consult Appendix E to determine appropriate resource levels and response times. The specified time intervals in Table 3 of Appendix C are less than the Tier 1 response times specified in Appendix E for the corresponding operating areas, because EPA assumes that, for purposes of determining whether a facility is a "substantial harm facility," no response planning has been done. This conservative assumption is only used for screening purposes and is not used for other aspects of the rulemaking. Owners or operators are reminded that EPA has included at § 112.20(i) of the final rule an appeals process for, among other things, the determination of substantial harm.

EPA believes that these times accurately estimate the times needed to respond to spills from EPA-regulated

influence area criteria from the USCG's interim final rule for Marine Transportation-Related (MTR) Facilities (58 FR 7358, February 5, 1993).

Some commenters stated that the proposed response times in Table 3 of Appendix C for calculating the planning distances were inappropriate and would overpredict the area of the spill. Some commenters noted that actual response times could be considerably faster than those proposed because some facilities have their own response resources. Conversely, one commenter expressed concern that the response times are too short and do not account for adverse weather conditions or phased planning required for certain discharges. Other commenters noted that the proposed response times in Table 3 of Appendix C were inconsistent with the response times listed in Appendix F of the proposed rule for determining response resources for a worst case discharge and should be changed. No data were provided by commenters to support alternative response times for use in the distance calculations.

In today's rule, to clarify the information presented, EPA reformats Table 3 of Appendix C. EPA used the same geographic areas for facility location (i.e., higher volume port area, Great Lakes, and all other river and canal, inland, and nearshore areas) as those specified in the equipment appendix (Appendix E) to maintain consistency between different sections of the regulation and because the facility location directly impacts the arrival time of response resources.

The specified-time intervals in Table 3 of Appendix C are to be used only to aid in the determination of whether a facility is a "substantial harm facility." Once it is determined that a plan must be developed for the facility, the owner or operator would consult Appendix E to determine appropriate resource levels and response times. The specified time intervals in Table 3 of Appendix C are less than the Tier 1 response times specified in Appendix E for the corresponding operating areas, because EPA assumes that, for purposes of determining whether a facility is a "substantial harm facility," no response planning has been done. This conservative assumption is only used for screening purposes and is not used for other aspects of the rulemaking. Owners or operators are reminded that EPA has included at § 112.20(i) of the final rule an appeals process for, among other things, the determination of substantial harm.

EPA believes that these times accurately estimate the times needed to respond to spills from EPA-regulated facilities that have not pre-planned their response to spills (i.e., a facility owner or operator who has not pre-planned response activities would be able to contact a local spill response company, coordinate response actions, and deploy resources within 15 or 27 hours following discovery of the spill, depending on facility location). In general, facilities located in higher volume port areas have a higher density of response contractors and resources nearby. Therefore, EPA estimated a shorter time interval for these facilities compared with facilities located in all other operating areas.

One commenter noted an inaccuracy in the formula proposed in Attachment C–III of Appendix C of the proposed rule, Oil Transport on Still Water, (which converts an oil discharge volume into a surface area), when the volume of the spilled oil is converted to units other than cubic meters. In Attachment C–III of Appendix C of today's rule, EPA incorporates a conversion factor into the formula to address the inaccuracy by allowing facility owners and operators to directly input the worst case discharge volume in gallons and to obtain a spill surface area in square feet.

EPA requested comment on the appropriateness of using specified distances to environmentally sensitive areas (fish and wildlife and sensitive environments) in the substantial harm criterion. Many commenters suggested that EPA allow a facility owner or operator to use alternative methods or set distances to determine the appropriate distance from the facility for screening purposes. In today's rule, the Agency allows the use of formulas comparable to the Appendix C formula to calculate the planning distance to fish and wildlife and sensitive environments or public drinking water intakes (see § 112.20(a)(3) and § 112.20(f)(i) (B) and (C)), provided that facility owners and operators attach documentation to the response plan cover sheet on the reliability and analytical soundness of the comparable formula. EPA believes that calculating a planning distance using the formulas in Appendix C is more appropriate than using set distances to fish and wildlife and sensitive environments, because of the wide variety of site-specific conditions that may surround a particular facility and the various flow characteristics of water bodies.

In § 112.2 of the proposed rule, EPA defined "injury" as "a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil, or exposure to a product of reactions resulting from a discharge of oil." This definition is adopted from the Natural Resource Damage Assessments (NRDA) rule at 43 CFR 11.14(v) to assist facility owners and operators and RAs to determine whether a facility is located at a distance from fish and wildlife and sensitive environments such that an oil spill will cause "injury." The Agency requested comment on the appropriateness of defining "injury" in such a manner.

Several commenters stated that the definition of "injury" was so broad that it would include almost every facility that stores greater than or equal to one million gallons of oil and would result in excessive regulation, economic burden, and unnecessary lawsuits. Several commenters stated that EPA should limit the definition of "injury" so that facility owners and operators would only have to consider the potential to cause substantial harm, rather than the potential to cause any harm. Some commenters supported EPA's choice to incorporate a definition of "injury" that was already promulgated under other regulatory programs.

The Agency carefully considered comments on the definition of "injury" and consulted with NOAA and other Natural Resource Trustees agencies as to the merits of using an alternative definition. EPA maintains that the definition of "injury" is appropriate to assess substantial harm based on the extensive experience of Natural Resource Trustees in conducting evaluations of oil spill impacts on natural resources. Federal officials authorized by the President and the authorized representatives of Indian tribes and State and foreign governments act as public trustees to recover damages to natural resources under their trusteeship. Under the NCP, each trustee has responsibilities for protection of resources; mitigation and assessment of damage; and restoration, rehabilitation, replacement, or acquisition of resources equivalent to those affected. Because of the need to maintain consistency with the NCP, the Agency believes it is appropriate to use the definition of injury as established by the Natural Resource Trustees for this rule. In the preamble to the NRDA final rule (51 FR 27706), DOI indicates that the injury definition does not measure insignificant changes and that the definition relies on changes that have been demonstrated to adversely impact the resources in question, or services provided by those resources. EPA notes that there is nothing in the definition of "injury" that refers to the term harm (or

substantial harm), and that the term "injury" is not equivalent to these terms. The potential for a spill to cause any injury to a fish and wildlife and sensitive environment coupled with a total oil storage capacity of greater than or equal to 1 million gallons forms one of the substantial harm criteria. The criterion is designed as an indicator of the potential for a discharge from a facility to cause substantial harm to the environment.

The Agency requested comment on whether private drinking water supplies should be included in the criteria for determination of substantial harm. Some commenters supported the same treatment for private water intakes as for public water supplies if the private drinking water supplies are surface water intakes rather than groundwater wells. One commenter recommended that the RA consider private drinking water intakes in the determination of significant and substantial harm. Conversely, several commenters opposed the use of proximity to private drinking water intakes as a criterion for the substantial harm determination because most private drinking water intakes use groundwater. These commenters stated that such private intakes would be difficult to identify and locate. Two commenters suggested that EPA should define public drinking water intakes based on the definition of "public water systems" at 40 CFR 143.2(c) which excludes private water intakes.

EPA agrees with the commenters that most private drinking water intakes are difficult to identify and that most use groundwater. In today's rule, EPA does not include proximity to private drinking water intakes as a criterion for use by owners or operators to identify whether their facility is a "substantial harm facility." The RA, however, may consider a facility's proximity to private drinking water intakes in the determination of substantial harm or significant and substantial harm. In Appendix C to today's rule, EPA clarifies that public drinking water intakes are analogous to "public water systems" as defined at 40 CFR 143.2.

Several commenters opposed the requirements to calculate a planning distance to determine substantial harm if a facility has adequate secondary containment. Some commenters stated that the planning distance calculations should reflect the presence of secondary and tertiary containment and give credit for flow reduction measures and inspection programs. The Conference Report states that in defining a worst case discharge as the largest foreseeable discharge at a facility, Congress intended to describe a spill that is worse than either the largest spill to date or the maximum probable spill for the facility type. (Conference Report No. 101–653, p. 147.) EPA interprets this language to mean that facility response plans should address cases where prevention measures could fail. Indeed, as detailed in the Technical Background Document[4] supporting this rulemaking, in some cases, containment systems fail resulting in the discharge of oil to surface waters. Therefore, EPA maintains that proximity to fish and wildlife and sensitive environments and drinking water intakes must be considered despite the presence of secondary containment. This is an example of EPA's long established policy set forth in § 112.1(d)(1)(i), that the determination of proximity "shall be based solely upon a consideration of the geographical, locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and shall exclude consideration of manmade features such as dikes . . ." It is also consistent with the statutory definition of worst case discharge for vessels, which includes the entire cargo tank capacity, whether or not the vessel has a double hull or other spill prevention measures.

RA Determination

Several commenters indicated their support for the provision in the proposed rule that states factors that the RA may use (§ 112.20(f)(2)) to determine whether a facility is a "substantial harm facility" irrespective of the substantial harm criteria in § 112.20(f)(1). One of these commenters suggested that this authority provides a system of checks and balances that should ensure that all facilities subject to the regulation will be required to comply. Other commenters expressed concern that the authority granted to the RA in § 112.20(b)(1) provides the RA with too much discretion in determining whether a facility is a "substantial harm facility." Some of these commenters suggested that the criteria used by the RA should be objective and consistent with the criteria used by owners or operators, and expressed confusion about the RA's authority to use "other site-specific characteristics or environmental factors" to select facilities. One commenter indicated that, as proposed, the RA would not be required to look at the relationship of the specified criteria provided in § 112.20(f)(1) (*e.g.*, the RA may consider that one criterion is enough to require a response plan to be submitted). One commenter felt that there is insufficient justification in the proposed rule for allowing the RA to select facilities that do not meet the criteria in § 112.20(f)(1).

EPA recognizes that RAs possess unique knowledge of Region-specific considerations that may have a bearing on whether to identify a facility as a "substantial harm facility." This RA authority is necessary, because the OPA through E.O. 12777 directs EPA ultimately to determine which facilities are "substantial harm facilities" and "significant and substantial harm facilities." As such, EPA retains the RA determination component of substantial harm selection in the final rule. In § 112.20(b)(1), EPA clarifies that if such a determination is made, the Regional Administrator shall notify the facility owner or operator in writing and shall provide a basis for the determination. Further, EPA notes that an appeals process is included to allow owners or operators the opportunity to challenge the RA's determination.

EPA is developing a guidance document to assist the RA with the identification of "substantial harm facilities." This guidance would outline specific screening procedures for use by RAs and will foster consistency in the way the substantial harm factors are applied. Further, RAs may use "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and information from the ACPs, when available, to identify fish and wildlife and sensitive environments as part of the substantial harm determination process.

Public Petitions

Section 112.20(f)(2)(ii) allows any person who believes that a facility may be a "substantial harm facility" to provide information to the RA through a petition for his or her use in determining whether the facility should be required to prepare and submit a response plan. This petition must include a discussion of how the substantial harm factors in § 112.20(f)(2)(i) apply to the facility.

Commenters in favor of allowing the public to have input in the determination of whether a facility is a "substantial harm facility" argued that the public should play a larger role in the selection and review process. However, many of these commenters argued that the proposed procedures are too burdensome for petitioners and that the facility owner or operator should have the responsibility to provide the necessary information. Commenters against allowing public petitions felt that the public petition process would be burdensome to EPA and the regulated community. Some commenters argued that the public does not have enough information to participate in the process.

In today's final rule, EPA establishes a process to allow the public the opportunity to provide input on a voluntary basis and welcomes such involvement. The Agency has decided to broaden the language in § 112.20(f)(2)(ii) from the proposed rule to clarify that other government agencies in addition to the public may provide information to RAs for the determination of substantial harm and that the RA shall consider such petitions and respond in an appropriate amount of time. The Agency believes that information provided by the public and other government agencies will assist rather than burden the RA. However, reviewing non-transportation-related facilities' response plans for approval is a governmental function delegated to EPA.

EPA wishes to clarify that it is not necessary for petitioners to determine quantitatively whether the facility meets one of the specific criteria in § 112.20(f)(1), but rather to provide a reasonable basis, from the factors in § 112.20(f)(2)(i), for asserting that the facility may pose a risk to the environment. A petition that fails to document the reasons why a facility should be classified as a "substantial harm facility" (*e.g.*, the facility is near a drinking water supply or a priority sensitive environment listed in an ACP, the facility has a history of frequent spills or poor maintenance, etc.) may not be considered by the RA. However, petitioners would not have to provide detailed analyses and calculations. Other avenues of participation for the public in the response planning process include involvement in the ACP development process or participation in the LEPC.

Determination of Significant and Substantial Harm

As discussed in Section II.A of this preamble, RAs will review submitted plans to identify facilities that are "significant and substantial harm facilities" using the substantial harm factors set out in § 112.20(f)(2), and additional significant and substantial harm factors in § 112.20(f)(3).

Several commenters supported the proposed factors to determine

[4] The Technical Background Document to Support the Implementation of the OPA Response Plan Requirements, U.S. EPA, February 1993. Available for inspection in the Superfund Docket, room M2615, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

too burdensome for petitioners and that the facility owner or operator should have the responsibility to provide the necessary information. Commenters against allowing public petitions felt that the public petition process would be burdensome to EPA and the regulated community. Some commenters argued that the public does not have enough information to participate in the process.

In today's final rule, EPA establishes a process to allow the public the opportunity to provide input on a voluntary basis and welcomes such involvement. The Agency has decided to broaden the language in § 112.20(f)(2)(ii) from the proposed rule to clarify that other government agencies in addition to the public may provide information to RAs for the determination of substantial harm and that the RA shall consider such petitions and respond in an appropriate amount of time. The Agency believes that information provided by the public and other government agencies will assist rather than burden the RA. However, reviewing non-transportation-related facilities' response plans for approval is a governmental function delegated to EPA.

EPA wishes to clarify that it is not necessary for petitioners to determine quantitatively whether the facility meets one of the specific criteria in § 112.20(f)(1), but rather to provide a reasonable basis, from the factors in § 112.20(f)(2)(i), for asserting that the facility may pose a risk to the environment. A petition that fails to document the reasons why a facility should be classified as a "substantial harm facility" (*e.g.*, the facility is near a drinking water supply or a priority sensitive environment listed in an ACP, the facility has a history of frequent spills or poor maintenance, etc.) may not be considered by the RA. However, petitioners would not have to provide detailed analyses and calculations. Other avenues of participation for the public in the response planning process include involvement in the ACP development process or participation in the LEPC.

Determination of Significant and Substantial Harm

As discussed in Section II.A of this preamble, RAs will review submitted plans to identify facilities that are "significant and substantial harm facilities" using the substantial harm factors set out in § 112.20(f)(2), and additional significant and substantial harm factors in § 112.20(f)(3).

Several commenters supported the proposed factors to determine significant and substantial harm, indicating that EPA's use of risk-based screening criteria for substantial harm and significant and substantial harm determinations would reduce the prospect of excessive regulation for those facilities that do not pose a significant risk. Others indicated that EPA should define more clearly the criteria that the RA would use to determine significant and substantial harm to help ensure consistent application of the criteria both within an EPA Region and across EPA Regions. Several commenters suggested that EPA develop a screening mechanism that would provide the RA with some concrete guidelines to follow but still allow some latitude to exercise his or her expert judgment.

EPA Headquarters has provided written guidance [5] to Regional personnel to assist them to determine which facilities are "significant and substantial harm facilities." The guidance provides a series of screens and instructions on how to evaluate the risk factors included at § 112.20(f)(3) of today's rule. In general, the screens provide various combinations of the risk factors that indicate increased levels of risk posed by a particular facility. For example, a facility that has an oil storage capacity greater than 1 million gallons and meets more than one of the risk-based criteria described in § 112.20(f)(1)(ii) (A) through (D) would be a "significant and substantial harm facility." The guidance document will help ensure a greater degree of consistency in Regional determinations of "significant and substantial harm facilities," but preserves the RA's ability to make case-by-case determinations based on unique facility- or location-specific concerns.

One commenter noted that EPA and the USCG chose different approaches for separating "substantial harm facilities" and "significant and substantial harm facilities." The commenter said that EPA's case-by-case determination of significant and substantial harm is more subjective than the USCG's, and has the potential for treating facility owners unequally.

EPA believes that its approach to determine substantial harm and significant and substantial harm is consistent with the OPA and does not diverge from the USCG's approach. The agencies' approaches are parallel in that each accounts for the higher risk of harm associated with transfers of high volumes of oil over water (i.e., at locations adjacent to navigable waters). Because EPA regulates a larger and more diverse universe of facilities than the USCG, it would be difficult to publish a few general criteria that include the majority of high-risk facilities without also including many low-risk facilities. Therefore, as discussed previously, EPA decided to implement a substantial harm selection process with two components (i.e., published criteria and an RA determination). The OPA Conference Report explicitly states that significant and substantial harm criteria should include, at a minimum, oil storage capacity, location of fish and wildlife and sensitive environments, and location of potable water supplies. (H.R. Rep. No. 101–653, 101st Cong., 2d Sess. 1991 at p. 150.) These criteria are among the elements the RAs may consider, as set forth in §§ 112.20(f) (1) and (2) in making the significant and substantial harm determination. Further, where the Conference Report states that the criteria should not result in selection of facilities based solely on the size or age of storage tanks (See H.R. Rep. No. 101–653, 101st Cong., 2d Sess. 1990 at p. 150), it implies that these may be among the criteria. EPA does not agree that its case-by-case approach to identify a "significant and substantial harm facility" is overly subjective. As previously discussed, EPA has provided written guidance to Regions on the determination of significant and substantial harm to promote a more objective and consistent approach across all EPA Regions.

As the President's designee for regulating non-transportation-related onshore facilities, EPA has decided that Region-specific and facility-specific information is relevant in the determination of significant and substantial harm, because these elements may vary materially between Regions and facilities. For example, some facilities may be located on karst or unstable terrain because of the presence of underground streams or fault lines while other facilities are situated on more stable terrain where the risk of discharge may be lower.

Some commenters argued that the RA should review and approve plans submitted by "substantial harm facilities." They indicated that without such approval, these plans are likely to vary widely in their capacity to assure adequate response, and may even propose inappropriate use of dispersants or other treatment technologies.

EPA agrees that a review of plans from "substantial harm facilities" may be desirable. The OPA legislative

[5] "Interim Guidance for the Determination of Significant and Substantial Harm," U.S. EPA, June 15, 1993. Available for inspection in the Superfund Docket, Room M2615, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

history indicates that criteria should be developed to select for review and approval plans for onshore facilities that could cause both significant and substantial harm. (See H.R. Rep. No. 101–653, 101st Cong., 2d Sess. 1990 at p. 150.) Congress expected that only some proportion of all submitted onshore facility response plans would be reviewed and approved. The highest priority for EPA's use of limited resources must be directed to those facilities on which Congress has focused. The Agency has and will continue to undertake a limited review of all plans to identify "significant and substantial harm facilities."

Submission and Resubmission Process

In §§ 112.20(a)(2)(ii) and (iii) of the proposed rule, EPA proposed that newly constructed or modified facilities, which become subject to the response plan requirements, must prepare and submit a response plan prior to the start of operations of the new facility or modified portions of the facility. For unplanned changes that result in a facility meeting the substantial harm screening criteria, EPA proposed to allow the facility owner or operator six months to prepare and submit a response plan. Several commenters urged EPA to give owners and operators time following completion of construction or modification to prepare and submit a response plan to EPA (implying that operations should be allowed to proceed before submission of the response plan). Most commenters felt that the six-month time period was sufficient for submitting a facility response plan after unplanned changes.

EPA does not require owners or operators to prepare and submit a plan before beginning or completing construction, but prior to the handling, storing, or transporting of oil. An owner or operator can prepare a plan during the construction phase, and complete and submit it before the facility is ready to come on line. EPA recognizes that changes to a facility's operations are common during the start-up phase of a new facility or new component of a facility. As stated in the proposed rule preamble (58 FR 8829), adjustments to the response plan can be made and submitted to the Agency after an operational trial period of 60 days. In today's final rule, the Agency adds this recommendation as a requirement at § 112.20(a)(2)(ii) and (iii) (§ 112.20(a)(2)(i)(B) and (C) of the proposed rule) and clarifies that adjustments to the plan to reflect changes that occur at the facility during the start-up phase must be submitted after an operational trial period of 60 days. EPA believes that this revision will ensure that the information contained in the plan is reflective of the normal operating conditions at the facility.

Section 311(j)(5)(C) of the CWA states that facility response plans must be updated periodically, and under section 311(j)(5)(D), EPA (as the President's delegatee) is required to review periodically, and, if appropriate, approve each plan for a "significant and substantial harm facility." In § 112.20(g), the proposed rule provided that owners or operators must review relevant portions of the NCP and applicable ACP annually and revise the response plan to ensure consistency with these plans. Section 112.20(g) of the proposed rule also proposed to require owners or operators to update their plans periodically when changes at the facility warrant such updates. In § 112.20(c), the proposed rule stated that the RA would review periodically response plans for "significant and substantial harm facilities." No other specific time periods for plan review were proposed, but in the preamble EPA solicited comments on how frequently the RA should review approved response plans.

Several commenters suggested that the rule should provide definite time periods for plan review, and some supported annual plan review by each facility. Many commenters had an opinion about the frequency of review of approved plans by the RA. Some supported a three-year time period, but the majority preferred five years. A few commenters expressed concern that specific reevaluation and reapproval intervals were not part of the proposed rule.

As described in the proposed rule, the owner or operator of a "substantial harm facility" must review the NCP and the ACP annually and revise the plan, if necessary, to be consistent with these documents. (See § 112.20(g)(2).) To clarify other review requirements, EPA has reorganized § 112.20(g) by removing the requirement for periodic review and update of the plan from paragraph (g)(1) and moving it to new paragraph (g)(3). In § 112.20(c) of the final rule, EPA revises paragraph (c)(4) to indicate that approved plans will be reviewed by the RA periodically on a schedule established by the RA provided that the period between plan reviews does not exceed five years. As discussed previously, RAs may choose to stagger such reviews to facilitate the review process. This five-year time period is consistent with the USCG interim final rule for MTR facilities. (See 33 CFR part 154.) Within the five-year period, EPA will undertake a full reevaluation of the plan and, if necessary, require amendments. With regard to commenters' concerns that specific review intervals were not identified in the proposal, periodic review is expressly required by OPA, and EPA requested comment on what review interval would be appropriate (See 58 FR 8828).

Proposed § 112.20(d) would require owners or operators of "significant and substantial harm facilities" to revise and resubmit the plan for approval within 60 days of each material change at the facility. EPA revises § 112.20(d)(1) to indicate that owners or operators of all facilities for which a response plan is required ("substantial harm facilities" and "significant and substantial harm facilities") must revise the plan (and resubmit relevant portions to the RA) when there are facility changes that materially may affect the response to a worst case discharge. This change is necessary to ensure that EPA receives the necessary information to determine if "substantial harm facilities" undergo changes that could lead to their being designated as "significant and substantial harm facilities." The requirement for the RA to review for approval changes to plans for "significant and substantial harm facilities" that was proposed at § 112.20(d)(1) has been moved to new § 112.20(d)(4). Some commenters supported the 60-day time period, some thought it was too short, and others thought it was too long. One commenter pointed out that proposed § 112.20(d)(2) implied that material changes must be approved prior to being made. A few commenters requested clarification on which material changes trigger resubmission, and two commenters opposed resubmitting the entire plan, rather than a plan amendment. EPA requested comments on the proposal in § 112.20(d)(2) that owners and operators must submit changes to the emergency notification list to the RA as these changes occur, without resubmitting the plan for approval. Some commenters supported the proposal and others opposed it as an unnecessary burden.

As stated in the preamble to the proposed rule, a material change is one that could affect the adequacy of a facility's response capabilities. The material changes listed in the final rule are not inclusive, but are similar to those in the USCG regulations at 33 CFR 154.1065 for revisions that must be submitted by a MTR facility for inclusion in an existing plan or for approval. Because of the scope of facilities that EPA regulates, it is difficult to provide a definitive list of all material changes that would be appropriate for regulated facilities under all circumstances. EPA's intent in including those changes listed in § 112.20(d)(1)(i) through (iv) is to describe those types of changes that are so significant in nature that they should trigger revision of the response plan and submission of the new information to EPA for review.

EPA clarifies in § 112.20(d) (1) and (2) that a change in the identity of an OSRO(s) is a material change requiring approval only if it results in a material change in support capabilities. However, a copy of any such change must be provided to the RA. Paragraph (d)(1)(v) specifies that any other changes that materially affect implementation of the response plan would trigger submission. This requirement allows the RA discretion to determine on a site-specific basis what changes may require submission because they materially affect implementation of the facility's response plan. The purpose of proposed § 112.20(d)(2) was to clarify that certain changes, such as revised names or telephone numbers, do not require RA approval but must be included in updating the plan. To avoid confusion, the word "prior" has been removed in the final rule. EPA does not intend minor changes to facility operations (e.g., small fluctuations in the number of product transfers) or response planning procedures (e.g., changes in the internal alerting procedures) to trigger submission.

The 60-day time period for submitting revised portions of the plan as a result of a material change is retained in the final rule. EPA believes the 60-day time period is reasonable and is consistent with the intent of the OPA, while giving facility owners or operators flexibility to comply with the response plan requirements in a timely manner. Furthermore, to ease the burden on facility owners or operators, EPA revises § 112.20(d)(1) in the final rule to indicate that the owner or operator must submit only relevant portions of the plan (i.e., those portions that were revised to reflect the material change) and not the entire response plan. This change will facilitate the process to revise and submit required information within 60 days of the change. RAs will review submitted information for approval and notify owners or operators within a reasonable time if the plan amendments are unacceptable.

Appeals Process

In the proposed rule, the Agency requested comment on allowing the owner or operator to participate in and appeal the RA's determination of

material changes that would be appropriate for regulated facilities under all circumstances. EPA's intent in including those changes listed in § 112.20(d)(1)(i) through (iv) is to describe those types of changes that are so significant in nature that they should trigger revision of the response plan and submission of the new information to EPA for review.

EPA clarifies in § 112.20(d) (1) and (2) that a change in the identity of an OSRO(s) is a material change requiring approval only if it results in a material change in support capabilities. However, a copy of any such change must be provided to the RA. Paragraph (d)(1)(v) specifies that any other changes that materially affect implementation of the response plan would trigger submission. This requirement allows the RA discretion to determine on a site-specific basis what changes may require submission because they materially affect implementation of the facility's response plan. The purpose of proposed § 112.20(d)(2) was to clarify that certain changes, such as revised names or telephone numbers, do not require RA approval but must be included in updating the plan. To avoid confusion, the word "prior" has been removed in the final rule. EPA does not intend minor changes to facility operations (e.g., small fluctuations in the number of product transfers) or response planning procedures (e.g., changes in the internal alerting procedures) to trigger submission.

The 60-day time period for submitting revised portions of the plan as a result of a material change is retained in the final rule. EPA believes the 60-day time period is reasonable and is consistent with the intent of the OPA, while giving facility owners or operators flexibility to comply with the response plan requirements in a timely manner. Furthermore, to ease the burden on facility owners or operators, EPA revises § 112.20(d)(1) in the final rule to indicate that the owner or operator must submit only relevant portions of the plan (i.e., those portions that were revised to reflect the material change) and not the entire response plan. This change will facilitate the process to revise and submit required information within 60 days of the change. RAs will review submitted information for approval and notify owners or operators within a reasonable time if the plan amendments are unacceptable.

Appeals Process

In the proposed rule, the Agency requested comment on allowing the owner or operator to participate in and appeal the RA's determination of substantial harm and significant and substantial harm, and the disapproval of a facility response plan.

Several commenters were concerned that lack of an appeals process would deprive facility owners or operators of their due process. Many commenters supported a formal appeals process, while others stated that an exchange of information before an appeal would assist the RA in making a final determination. Others preferred a combined appeals process, with the first stage of an appeal involving an informal exchange of information followed, if necessary, by a formal appeals process (such as described in § 112.4(f)) to ensure due process. Several commenters requested a process by which a facility could be removed from the category of substantial harm or significant and substantial harm because of improvements at the facility that lead to reduced risk to the environment.

EPA recognizes the importance of allowing facility owner or operators to present relevant information, and therefore includes in § 112.20(i) of today's final rule a two-part appeals process. The first stage allows a facility owner or operator to submit to the RA a request for reconsideration that includes information and data to support the request. The RA would evaluate the submitted information and reach a decision on the facility's risk classification or the status of plan approval (including whether changes to a facility's worst case discharge planning volume are necessary for approval) as rapidly as possible. EPA expects that the request for reconsideration process will be the primary mechanism to address disputes over EPA decisions. However, a follow-up process will also be available for appeal of the RA's determination to the Administrator of EPA using procedures similar to those in § 112.4(f).

The appeals processes described in the preceding paragraph are also available to owners or operators of facilities that have been classified as substantial harm or significant and substantial harm for some time and who believe that, because of an unplanned event (e.g., a significant change to the ACP's list of protection priorities) or improvements at the facility (e.g., construction of adequate secondary containment or an improved spill history), the facility now poses a lower risk of harm to the environment.

Certification of Non-Substantial Harm

EPA proposed in § 112.20(e) to require that owners or operators of those regulated facilities not submitting response plans complete and maintain at the facility, with the SPCC Plan, a certification form that indicates that the facility was determined by the owner or operator not to be a "substantial harm facility" as indicated by the flowchart contained in Appendix C.

Several commenters supported EPA's proposal to allow facilities to self-certify when they do not meet the criteria for substantial harm and agreed that submission of the form to EPA was unnecessary. However, other commenters were concerned that there is no outside review or verification of a facility owner's or operator's evaluation of the substantial harm criteria. Those commenters suggested that the rule be amended to require officials from EPA or some other agency (e.g., the State water pollution control agency, the SERC, the LEPCs, or the natural resource management agencies) review determinations and calculations made by facility owners or operators who have not submitted facility response plans. Others requested that EPA provide more assistance to ensure that certification is done properly (e.g., a hotline or guidance manual). Several commenters indicated that completing the form was burdensome, especially to small facilities, and questioned the benefits of completing and maintaining the form.

Today, EPA finalizes at § 112.20(e) the requirement to complete and maintain a certification form as it was proposed in the proposed rule. EPA maintains that it is not necessary to submit the form to the RA or other government officials. EPA believes that the certification form does not involve a major effort to complete and has value as an enforcement tool and as a record of awareness of response planning requirements. Facility owners or operators can, if necessary, consult with appropriate Regional personnel or the SPCC Information Line (202–260–2342) for additional information on evaluating the criteria in § 112.20(f)(1) and completing accompanying certification form.

Agency agrees that verification of a facility's determination may sometimes be appropriate. EPA anticipates that during facility inspections, Regional personnel will review the certification form and other information for facilities without a response plan.

Model Response Plan

Today, EPA finalizes the model response plan in Appendix F (which has been relabeled from the proposed rule where it was called Appendix G) with a series of minor changes. These changes are to clarify certain provisions, improve the organization of the model

plan, and ensure greater consistency with the response plan rules of other Federal agencies.

In the proposed rule, EPA proposed that owners or operators identify and describe the duties of the facility's "emergency response coordinator" in the facility response plan. This person was to be the "qualified individual" required by section 311(j) of the CWA, and would have full authority, including contracting authority, to implement removal actions. Proposed § 112.20(h)(3)(ix) set out the duties of the emergency response coordinator. The USCG's interim final rule (58 FR 7330, February 5, 1993) requires the owner or operator to name a "qualified individual" who has the duties of EPA's "emergency response coordinator." Several commenters suggested EPA and the USCG adopt uniform terms in their final rules for identifying this individual. One commenter specifically suggested that EPA replace "emergency response coordinator" with the USCG's term, "qualified individual."

EPA agrees, and has changed the term "emergency response coordinator" wherever it appears in today's rule to "qualified individual." Although EPA is not amending the necessary qualifications or description of duties for the qualified individual, the Agency stresses that the qualified individual should be able to respond immediately (i.e., within 2 hours) to a spill at the facility.

In section 1.1 of Appendix G of the proposed rule (Appendix F in the final rule), the Agency indicated the Emergency Response Action Plan (ERAP) shall include a description of immediate actions, and referenced section 1.7 of the model plan. Several commenters requested clarification on what should be described in this section. To clarify what constitutes a description of immediate actions, EPA has changed the reference for immediate actions to section 1.7.1, which focuses on the implementation of response actions. For the purpose of the ERAP, immediate actions include, at a minimum: (1) Stopping the flow of spilled material (e.g., securing pumps, closing valves); (2) warning personnel; (3) shutting off ignition sources (e.g., motors, electrical circuits, open flames); (4) initiating containment; (5) notifying the National Response Center; and (6) notifying appropriate State and local officials. A sample form for describing immediate actions in the plan is also included in Appendix F.

In § 112.20(h)(3)(vii) of the proposed rule, EPA proposed to require facility owners or operators to include plans for evacuation of facilities and surrounding communities to ensure the safety of individuals that are at high risk in the event of a spill or other release (this information was also to be included in the emergency response action plan). Several commenters stated that requiring facilities to assume primary responsibility for the development of evacuation plans for the surrounding community is unreasonable. These commenters stated that Federal, State, and local agencies, which have expertise in emergency evacuation, are responsible for the preparation and implementation of community evacuation plans.

EPA does not intend for facilities to develop community evacuation plans, but any plans affecting the area surrounding the facility must be referenced in the response plan. Sections 112.20 (h)(1)(vi) and (h)(3)(vii) are revised to clarify the requirement to reference community evacuation plans. Facility owners or operators should contact the Fire Department and LEPC to assure coordination with existing community evacuation plans.

In section 1.4.3 of proposed Appendix G (Appendix F in this final rule), EPA recommended that facility owners or operators complete a quantitative analysis of spill potential to aid in developing discharge scenarios and response techniques, and consider factors such as tank age, spill history, horizontal range of a potential spill, and vulnerability to natural disasters. Several commenters stated that the analysis was unnecessary and burdensome, and requested guidance about the level of effort the Agency expects to be expended to analyze a facility's spill potential (e.g., tank by tank evaluation, general site study).

In response to commenters' concerns, EPA has reworded section 1.4.3 of the appendix by deleting the word "quantitative" from the description of the spill probability analysis. This should decrease the burden on the regulated community by giving facility owners and operators the flexibility to determine what factors to consider and allowing them to perform a more general analysis, including quantitative and/or qualitative factors, using the information in section 1.4.3 of the model plan as a guide.

In section 1.8 of Appendix G of the proposed rule, EPA proposed to require facilities to maintain training and meeting logs in the response plan to aid facility owners, operators, and employees in spill prevention awareness and response requirements. Several commenters stated that including logs within the response plan would detract from their effectiveness. In response to these commenters' concerns, the Agency indicates in § 112.20(h)(8)(iv) and in Appendix F of the final rule that logs may be included in the facility response plan or kept as an annex to the plan.

To facilitate the review of response plans for complexes, EPA requires in today's final rule that the owner or operator of a complex identify, on the facility diagram submitted with the response plan, the interface between portions of the complex that are regulated by different agencies. (See section 1.9 of Appendix F.) EPA requires this interface to be consistent with the USCG's interim final rule for MTR facilities.

Facility Response Plan Certification

In Section III.G of the preamble to the proposed rule, EPA requested comment on a requirement for certification by a Registered Professional Engineer (PE) for certain portions of the response plan, such as determination of worst case discharge. EPA also solicited comment on which professions may be suitable to evaluate and certify the contents of the response plan if EPA determines a certification requirement is appropriate. In particular, the Agency requested comment on the suitability of Certified Hazardous Materials Managers to perform the plan certification function.

The Agency received many comments on the issue of certification of response plans. In general, commenters expressed support for the rulemaking effort and the certification provision, and sought EPA's consideration on the suitability of different professions to review and approve response plans. Among the remaining commenters (those not affiliated with an environmental professional organization), almost two-thirds felt that certification was unnecessary and cited cost, PE's unfamiliarity with the facility, and EPA review as the major reasons for their opposition. Some commenters indicated that, at most, certification should be limited to construction or structural aspects of the facility described in the response plan, because oil spill response training and knowledge is not widespread among many environmental professionals. Others said they would favor certification only if an in-house employee could perform the function. In addition, many commenters who supported the certification provision requested that EPA develop uniform standards for certifying, ranking, and approving the use of different types of environmental professionals.

The Agency considered these comments and has decided not to require plan certification by an outside professional in the final rule. Facility response plans from "significant and substantial harm facilities" are already subject to review and approval by EPA. In addition, facility owners and operators are required to certify (on the cover sheet in Appendix F) that the information contained in the plan is accurate. EPA believes that this certification will be sufficient to ensure accurate and comprehensive implementation of the response plan requirements and that additional certification would be unnecessary and burdensome to the regulated community. This approach is consistent with the approaches taken by RSPA and the USCG in implementing facility response plan requirements.

Contract or Other Approved Means

In § 112.2 of the proposed rule, EPA defined "contracts or other approved means" to include written contractual agreements with an OSRO(s), written certifications, active membership in an OSRO, and other specific arrangements approved by the RA. EPA's intent in including the fourth option was to allow the RA discretion to accept alternate arrangements not covered by the first three mechanisms that would also satisfy the OPA requirement to ensure the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge.

The comments addressing this issue were mixed. Commenters, in general, requested that EPA's definition more closely mirror the definition used in the USCG's interim final rule for MTR facilities. (See 33 CFR 154.1028.) Some commenters requested that EPA adopt, in addition to the proposed language, several additional methods that the USCG included in its definition. One method provides an alternative for use by all MTR facilities to ensure the availability of response resources. The method requires a document that identifies the resources of the OSRO(s) capable of being provided within stipulated response times in the specific geographic area; includes the parties' acknowledgement that the OSRO(s) will commit the resources in the event of a required response; allows the USCG to verify the availability of documented resources; and is referenced in the response plan. Another USCG method, acceptable for "substantial harm facilities" and MTR facilities that handle, store, or transport Group 5 persistent oils and non-petroleum oils, permits the identification of an OSRO(s) and resources willing to respond within stipulated response times in the specified geographic area. This method

professional in the final rule. Facility response plans from "significant and substantial harm facilities" are already subject to review and approval by EPA. In addition, facility owners and operators are required to certify (on the cover sheet in Appendix F) that the information contained in the plan is accurate. EPA believes that this certification will be sufficient to ensure accurate and comprehensive implementation of the response plan requirements and that additional certification would be unnecessary and burdensome to the regulated community. This approach is consistent with the approaches taken by RSPA and the USCG in implementing facility response plan requirements.

Contract or Other Approved Means

In § 112.2 of the proposed rule, EPA defined "contracts or other approved means" to include written contractual agreements with an OSRO(s), written certifications, active membership in an OSRO, and other specific arrangements approved by the RA. EPA's intent in including the fourth option was to allow the RA discretion to accept alternate arrangements not covered by the first three mechanisms that would also satisfy the OPA requirement to ensure the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge.

The comments addressing this issue were mixed. Commenters, in general, requested that EPA's definition more closely mirror the definition used in the USCG's interim final rule for MTR facilities. (See 33 CFR 154.1028.) Some commenters requested that EPA adopt, in addition to the proposed language, several additional methods that the USCG included in its definition. One method provides an alternative for use by all MTR facilities to ensure the availability of response resources. The method requires a document that identifies the resources of the OSRO(s) capable of being provided within stipulated response times in the specific geographic area; includes the parties' acknowledgement that the OSRO(s) will commit the resources in the event of a required response; allows the USCG to verify the availability of documented resources; and is referenced in the response plan. Another USCG method, acceptable for "substantial harm facilities" and MTR facilities that handle, store, or transport Group 5 persistent oils and non-petroleum oils, permits the identification of an OSRO(s) and resources willing to respond within stipulated response times in the specified geographic area. This method does not require a contract between the facility and OSRO(s), but requires the OSRO(s) to supply a letter to the facility stating its willingness to respond to a discharge at the facility and that it has the specified resources. Commenters explained their preference for these two methods to ensure consistency with the USCG's interim final rule for MTR facilities, avoid different procedures for complexes, address small contractor financial concerns, and reduce confusion among the regulatory agencies reviewing plans to ensure response contractor capabilities.

Several commenters supported EPA's proposed definition citing its greater simplicity and flexibility; however, these commenters stressed that the RA be granted broad flexibility in exercising his or her authority to determine appropriate "other approved means."

In today's final rule, the definition of "contract or other approved means" has been revised to replace the term "response contractor" with the term "oil spill removal organization(s)" to match the USCG's language. For clarification, EPA also adds a definition for "oil spill removal organization" in § 112.2 of today's rule. The definition is similar to that used in the USCG's interim final rule for MTR facilities. An OSRO is defined as an entity that provides response resources, and includes any for-profit or not-for-profit contractor, cooperative, or in-house response resources that have been established in a geographic area to provide required response resources. These changes do not alter the meaning of the term "contract or other approved means" as originally proposed. The EPA definition includes four means that owners or operators can use to ensure the availability of required response resources. The first is a written contract with an OSRO(s) (i.e., a response contractor). The second is for the facility owner or operator to provide and operate facility-owned equipment. The third is active membership in an OSRO(s) (i.e., a local or Regional oil spill response cooperative).

Finally, EPA's fourth means has the flexibility inherent in the USCG's previously referenced methods in that it allows all regulated facilities to propose other means of demonstrating adequate response capability, subject to approval by the appropriate RA. Among the kinds of instruments which an RA might find a sufficient means of ensuring availability of required resources is a document that incorporates the elements set out in the USCG's interim final rule for MTR facilities at 33 CFR 154.1028(a)(4) (i) through (iii). For example, an RA might find a document sufficient to ensure availability if it identified the response resources being provided by the OSRO(s); set out the parties' acknowledgement that the OSRO(s) intends to commit the resources in the event of a response; permitted EPA to verify the availability of resources through tests, inspection, and drills/exercises; and is referenced in the response plan.

Maximum Extent Practicable

The OPA requires that a facility response plan be developed to respond to the maximum extent practicable, to a worst case discharge of oil. The Conference Report states that to determine maximum extent practicable, the President should "consider the technological limitations associated with oil spill removal, and the practical and technical limits of the spill response capabilities of individual owners and operators." (H.R. Rep. No. 101–653, 101st Cong., 2d Sess. 1991 at p. 150.)

In § 112.2 of the proposed rule, EPA proposed to define "maximum extent practicable" as "the limitations used to determine oil spill planning resources and response times for on-water recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. The appropriate limitations for such planning are available technology and the practical and technical limits on an individual facility owner or operator."

Numerous commenters objected to EPA's definition. Many of the commenters argued that EPA did not consider economic limits in defining maximum extent practicable, and that Congress intended for EPA to evaluate costs and other economic considerations in defining the term. Two commenters suggested that EPA amend the term to include the word "economic." Another commenter stated that Congress intended for the Agency to apply the concept based on what is technologically and economically feasible for an individual owner or operator, and EPA was remiss in failing to engage the industry in a discussion of costs from the industry's perspective. This last point, they argued, was compounding the USCG's failure to engage the industry in a "full-blown discussion of costs" during its Negotiated Rulemaking on the vessel oil response plan rule. The commenter argued further that in determining "maximum extent practicable" for owners and operators, EPA was required to factor in public response resources.

One commenter said that there are so few oil spill response organizations

available that the demand for their services to meet worst case discharge planning volumes would place an undue financial burden on facility owners and operators who must procure those services. Another commenter suggested a revision to the definition to delegate authority to the RA to decide what "maximum extent practicable" means. Some said that EPA should revise the definition to make it more consistent with the USCG's.

EPA has factored costs into the definition of maximum extent practicable through procedures contained in Appendix E to today's rule to be used by owners or operators to determine appropriate levels of response resources. (As discussed later in this preamble, the requirements in Appendix E were prepared from a similar set of instructions developed by the USCG.) For example, in determining what is "practicable," Appendix E sets caps for the facility on the amount of response resources for which a facility owner or operator must contract or ensure by other approved means. These caps reflect the limits of currently available technology and private removal capabilities, and will be adjusted upward to reflect anticipated increases in private removal capabilities through the year 2003. Appendix E also includes tiered arrival times for response resources so that a facility owner or operator does not have to plan for all required resources to be located at the facility or in its immediate area.

With regard to the involvement of Federal response resources in determining maximum extent practicable, EPA notes that a major objective of the OPA amendments to section 311(j)(5) of the CWA is to create a system in which private parties supply the bulk of response resources needed for an oil spill response in a given area. A worst case discharge will likely require the use of both public and private resources. However, section 311(j)(5)(C)(iii) states specifically that a facility owner or operator must identify and ensure by contract or other approved means the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge. EPA cannot, in defining "maximum extent practicable," abrogate this statutory requirement.

In response to the comment that the rule will benefit response contractors at great cost to owners and operators, EPA notes that the statute requires owners and operators to ensure the availability of private resources. In setting out four ways to ensure availability (only one of which is a written contractual agreement), EPA has attempted to give private parties the maximum possible flexibility to construct arrangements to meet this statutory objective.

EPA agrees with the commenters who suggested that the definition of maximum extent practicable be made more consistent with the USCG's and that the RA have the ability to evaluate "maximum extent practicable" in a given Region. Therefore, in § 112.2 of the final rule, the definition of "maximum extent practicable" is revised to be more consistent with the USCG's and to include a provision on RA authority.

Other Definitional Changes

Commenters suggested that EPA and the USCG should better coordinate certain parts of their respective regulations to allow complexes to follow a single set of requirements. As discussed in Section I.C of this preamble, EPA and the USCG participated in a series of cross-agency meetings to facilitate consistency in response plan requirements. In today's final rule, EPA has revised the definitions of "adverse weather" and "contracts or other approved means" in § 112.2 of the rule; added a definition of "oil spill removal organization" in § 112.2 of the rule; and revised "Great Lakes," "higher volume port area," and "inland area" in Appendix C of the rule to more closely follow the USCG's definitions in its interim final rule for MTR facilities. In addition, EPA adds to Appendix E definitions for the terms "nearshore," "ocean," "operating area," and "operating environment," also adopted from the USCG's interim final rule for MTR facilities. These revisions are conforming changes and are for the most part non-substantive. A summary of the changes follows. (The definitions of "contracts or other approved means" and "oil spill removal organization" are discussed elsewhere in this preamble.)

- The definition of "adverse weather" is revised to include references to weather conditions such as wave height, ice conditions, temperatures, weather-related visibility, and currents within the area in which the equipment is to function. These changes result in an expanded definition of "adverse weather" that is as consistent as possible with the USCG definition of the same term, that incorporates relevant weather conditions which contribute to adverse weather, and that maintains a standard against which to evaluate weather conditions.
- A definition of "oil spill removal organization" (OSRO) has been added, because this term is included in the definition of "contract or other approved means."
- The definition of "Great Lakes" is revised to match the USCG's definition.
- The definition of "higher volume port area" was revised to add several port areas contained in the USCG's definition.
- The definition of "inland area" was changed to remove rivers and canals from the water bodies that are excluded in the USCG's definition.
- The definition of "nearshore" was added to ensure greater consistency with the USCG's interim final rule for MTR facilities and facilitate the use of Appendix E.
- The definition of "ocean" as it applies to facilities in EPA's jurisdiction was added to be consistent with the USCG's interim final rule for MTR facilities and facilitate the use of Appendix E. "Ocean" describes the operating environment normally found in nearshore areas.
- The definition of "operating area" was added to be consistent with the USCG's interim final rule for MTR facilities and facilitate the use of Appendix E. "Operating area" means the geographic location in which a facility is handling, storing, or transporting oil. The four operating areas applicable to EPA's jurisdiction are Rivers and Canals, Inland Areas, Nearshore, and Great Lakes. The operating area classification may not be changed by the OSC and the boundaries of each area are specified in their definition.
- The definition of "operating environment" was added to be consistent with the USCG's interim final rule for MTR facilities and facilitate the use of Appendix E. "Operating environment" means the conditions in which the response equipment is designed to function. The four operating environments are Rivers and Canals, Inland Areas, Great Lakes, and Oceans. The OSC may reclassify a specific body of water in the ACP to better reflect conditions expected to be encountered in an operating area during response activities.[6]

[6] The conditions present in each operating environment (i.e., significant wave height and sea state) are listed in Table 1 of Appendix E and will normally be conditions present in each corresponding operating area. For example, an owner or operator whose facility is located on a river (i.e., the Rivers and Canals operating area) will normally have to plan to respond to a spill using equipment capable of functioning in the Rivers and Canals operating environment, (i.e., the conditions described by a significant wave height of less than or equal to 1 foot or a sea state of 1). The Ocean operating environment normally describes the conditions present in the Nearshore operating area (i.e., significant wave height of less than or equal to 6 feet and a sea state between 3 and 4). While the OSC can not change the operating area, he or she may change the operating environment for a given location if it is determined that the new operating environment better describes the conditions present at that location. Any reclassification of a specific location must be done in the appropriate ACP.

These changes should eliminate confusion on the part of owners or operators of complexes in complying with the response plan requirements contained in today's rule, and facilitate the development of a single plan with separate sections addressing each component of a complex regulated by more than one agency.

Equipment Requirements

In Appendix F to the proposed rule (Appendix E in this final rule), EPA provided methodologies to assist facility owners and operators in determining the types and amounts of equipment and response times that are needed to respond to spills of a given size. As discussed previously, the methodologies were prepared from similar instructions developed by the USCG and adapted to reflect the type and location of facilities that EPA regulates. The Agency requested comment on the procedures contained in Appendix F of the proposed rule for the determination and evaluation of required response resources. In addition, EPA solicited comment on whether the methodologies are appropriate for planning for inland spills by owners or operators of non-transportation-related onshore facilities.

Numerous comments were received on proposed Appendix F (Appendix E in this final rule). In general, commenters requested that EPA and the USCG work toward facilitating a greater degree of consistency in their respective sets of equipment requirements. As discussed previously, a series of cross-agency meetings were conducted to resolve differences between the approaches taken by the various Federal agencies implementing OPA requirements.

For reasons discussed earlier in this preamble, proposed Appendix F has been renamed and relettered as Appendix E of today's final rule and the mandatory nature of certain requirements has been clarified while preserving flexibility for facilities with unique circumstances. Other changes (including the definitional changes already discussed) have been made to ensure consistency with Appendix C of the USCG's interim final rule for MTR facilities. Consistency between the rulemakings will help the regulated community to develop and implement response plans efficiently. A discussion of the major issues raised by

These changes should eliminate confusion on the part of owners or operators of complexes in complying with the response plan requirements contained in today's rule, and facilitate the development of a single plan with separate sections addressing each component of a complex regulated by more than one agency.

Equipment Requirements

In Appendix F to the proposed rule (Appendix E in this final rule), EPA provided methodologies to assist facility owners and operators in determining the types and amounts of equipment and response times that are needed to respond to spills of a given size. As discussed previously, the methodologies were prepared from similar instructions developed by the USCG and adapted to reflect the type and location of facilities that EPA regulates. The Agency requested comment on the procedures contained in Appendix F of the proposed rule for the determination and evaluation of required response resources. In addition, EPA solicited comment on whether the methodologies are appropriate for planning for inland spills by owners or operators of non-transportation-related onshore facilities.

Numerous comments were received on proposed Appendix F (Appendix E in this final rule). In general, commenters requested that EPA and the USCG work toward facilitating a greater degree of consistency in their respective sets of equipment requirements. As discussed previously, a series of cross-agency meetings were conducted to resolve differences between the approaches taken by the various Federal agencies implementing OPA requirements.

For reasons discussed earlier in this preamble, proposed Appendix F has been renamed and relettered as Appendix E of today's final rule and the mandatory nature of certain requirements has been clarified while preserving flexibility for facilities with unique circumstances. Other changes (including the definitional changes already discussed) have been made to ensure consistency with Appendix C of the USCG's interim final rule for MTR facilities. Consistency between the rulemakings will help the regulated community to develop and implement response plans efficiently. A discussion of the major issues raised by commenters on the equipment appendix follows.

In the table in section 5.3 of the appendix, tiered response times for facilities in the Great Lakes operating area were grouped with the response times for the Higher Volume Port operating areas. Commenters stated that EPA's tiered response times should match those used by the USCG. To maintain consistency with the USCG, EPA has changed the Table in section 5.3 of Appendix E. The Great Lakes have been grouped with all other rivers, inland, and nearshore areas into Tiers 1, 2, and 3 with response times of 12, 36, and 60 hours, respectively. Conforming changes are also included in section 7.2.3 of Appendix E.

Because of the frequency of spills to shallow waters and the need for specialized recovery devices in these environments, EPA adds section 5.6 to Appendix E. This section was adopted from the USCG's interim final rule for MTR facilities and requires facility owners or operators to ensure that resources are available for shallow water response activities. The provisions indicate that at least 20 percent of the on-water response equipment should be identified for operating in water 6 feet deep or less.

In the proposed rule, EPA proposed that owners or operators consider four groups of oil (the heavier oils were included in the Group 4 oils) when evaluating response resources. Commenters stated that EPA should adopt a separate category for oils with a specific gravity greater than or equal to 1.0 and provide appropriate guidelines to determine response resources for discharges of such oils. In today's rule, EPA adds a category for Group 5 oils to the definition of "persistent oils." Group 5 oils are oils with a specific gravity of greater than or equal to 1.0. Because Group 5 oils sink or remain suspended beneath the water's surface, the resources and techniques that needed to respond to discharges of these types of oils are different from those used to respond to discharges of oils that float on water. Response resource requirements and the specific conditions that owners and operators need to consider when planning to respond to discharges of Group 5 oils are added in section 7.6 of Appendix E. To ensure adequate response resource planning, EPA clarifies in section 7.2.2 of Appendix E that, in order to identify the required amount of response equipment, facilities handling, storing, or transporting some combination of Group 1 through 4 oils (e.g., a Group 1 oil and a Group 3 oil) must do separate calculations using the worksheet in Attachment E–1 for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total storage capacity at the facility. Owners or operators must then select the oil group that results in the largest on-water recovery volume to plan for the amount of response resources for a worst case discharge. (Group 5 oils should be addressed separately using the separate procedures to determine response resources that are contained in Appendix E.)

In the proposed rule, EPA proposed that owners or operators of facilities that handle, store, or transport, non-petroleum oils calculate an amount of response equipment by grouping all non-petroleum oils as Group 4 oils and using the associated emulsification factors and other parameters listed in the tables of Appendix F of the proposed rule. Some commenters suggested that EPA establish separate response plan requirements and selection criteria for owners or operators of facilities that handle, store, or transport non-petroleum oils. These commenters argued that fundamental chemical and physical differences between petroleum and non-petroleum oils indicate the necessity for different response techniques and equipment. Two of the commenters stated that USCG regulations create separate response plan development and evaluation criteria for non-petroleum oils, and one commenter recommended that EPA adopt the USCG criteria. Some commenters stated that for the purposes of this rulemaking, the term "oil" should exclude non-petroleum oils.

EPA has determined that for the purposes of section 311(j) planning, the OPA includes non-petroleum oils. The Agency notes that the definition of "oil" in the Clean Water Act includes oil of any kind, and that EPA uses this broad definition in 40 CFR part 110, Discharge of Oil.

EPA agrees with commenters that certain equipment and strategies used for petroleum oil spills may be inappropriate for non-petroleum oil. The Agency further agrees that making its regulations match the USCG's as nearly as practicable will reduce the prospects for confusion among facility owners or operators—especially owners or operators of complexes. Reducing confusion, in turn, increases compliance at the least possible cost and expedites the development of a national oil response planning program. Therefore, the Agency has decided to adapt for non-transportation-related facilities under EPA jurisdiction, the USCG

---

the OSC can not change the operating area, he or she may change the operating environment for a given location if it is determined that the new operating environment better describes the conditions present at that location. Any reclassification of a specific location must be done in the appropriate ACP.

approach to determine response resources for non-petroleum oils.

This adaptation means that in calculating required response resources for non-petroleum facilities, an owner or operator will not use emulsification or evaporation factors in Table 3 of Appendix E. Rather, these facility owners or operators must: (1) Show procedures and strategies for responding to the maximum extent practicable to a worst case discharge; (2) show sources of equipment and supplies necessary to locate, recover, and mitigate discharges; (3) demonstrate that the equipment identified will work in the conditions expected in the relevant geographic areas, and respond within the required times (according to Table 1 of Appendix E); and (4) ensure the availability of required resources by contract or other approved means. At such time as there are results from research on such factors as emulsification or evaporation of non-petroleum oil, additional changes may be made to the rule for response resources for response planning for non-petroleum oil facilities. Section 7.7 has been added to Appendix E to reflect these changes.

Several commenters noted that the statutory definition of oil includes a wide variety of oils, such as petroleum oils and non-petroleum oils that can affect the environment by a variety of mechanisms. Response strategies associated with non-petroleum oils may differ from those associated with petroleum oils. Therefore, EPA is providing these definitions to assist owners or operators in distinguishing between oil types.

- Petroleum oil means petroleum in any form including crude oil, fuel oil, mineral oil, sludge, oil refuse, and refined products.
- Non-petroleum oil means oil of any kind that is not petroleum-based. It includes animal fat, vegetable oil, and other non-petroleum oil.
- Animal fat means a non-petroleum oil, fat, or grease derived from animal oils not specifically identified elsewhere.
- Vegetable oil means a non-petroleum oil or fat derived from plant seeds, nuts, kernels or fruits not specifically identified elsewhere.
- Other non-petroleum oil means a non-petroleum oil of any kind that is not generally an animal fat or vegetable oil.

Additional changes made to the equipment requirements to match the USCG's requirements are as follows:

- Section 2.3.1 is added. This section indicates that the RA may require owners or operators to identify in the facility response plan boom that meets the boom criteria in Table 1 of Appendix E. If documentation that the boom meets the Table 1 criteria is unavailable, the RA may require that the boom be tested in accordance with ASTM standards.
- The on-water speed for determining the travel time to the site of the discharge was adjusted from 10 knots to 5 knots in section 2.6 of Appendix E.
- A provision was added to section 3.3.1 of Appendix E for complexes with a marine transfer component to provide an amount of boom that is equal to two times the length of the largest vessel that transfers oil at the facility or 1,000 feet, whichever is greater. For complexes, the non-transportation-related portion of the facility response plan need not include reference to boom length if it is already referenced in the MTR portion of the facility response plan.
- Language was added to section 5.4 of Appendix E to indicate that facility owners or operators whose planning volume exceeds the caps in Table 5 of Appendix E must identify sources of additional equipment; and clarify that facility owners or operators who have identified USCG-classified OSROs are not required to list specific quantities of available equipment in their response plan.
- A provision was added to section 6.2 of Appendix E to allow the RA to assign lower efficiency factors to equipment when warranted.
- A provision was added to section 6.3 of Appendix E to allow the facility owner or operator to use equivalent tests of effective daily recovery rates when approved by EPA.
- Section 6.4 has been renumbered to 6.3.2 and provisions added for RA determination of acceptable alternative efficiency factors and effective daily recovery capacity.
- Sections 7.4, 7.6.3, and 7.7.5 are added to clarify that owners or operators must identify firefighting resources in addressing response resources under the plan.
- Criteria for containment boom in the ocean operating environment were added to Table 1 of Appendix E.

EPA considered whether to adopt language in Appendix E to address the use of dispersants and in-situ burning. Some commenters suggested that the Agency address these response measures using Section 8 of the USCG's Appendix C as a model. In today's final rule, EPA has included some information from Section 8 of the USCG's Appendix C to address the use of dispersants listed on the NCP Product Schedule. Use of dispersants during spill response will be based on the provisions of the NCP[7] and applicable ACP. The USCG permits a limited offset against required response resources if the use of dispersants or in-situ burning is part of the response strategy. EPA will not include such an offset for non-transportation-related facilities for two reasons. To date, the ACPs do not allow use of dispersants in inland waters and a facility under EPA jurisdiction in a coastal area cannot use dispersants given the shallow water depth.

Verification of Response Capability

In the preamble to the proposed rule, EPA stated that it may use various methods (including an OSRO certification or approval program) during the plan review process to evaluate the availability and adequacy of personnel and equipment to respond to a worst case discharge, to the maximum extent practicable. The Agency has reviewed the USCG OSRO classification process. This is a voluntary process whereby OSROs can submit a description of their resources and capabilities to the USCG National Strike Force Coordination Center and be evaluated for classification according to their capabilities. This process assists vessel and facility owners trying to locate appropriate resources, and simplifies the planning process by allowing these owners (who identify an OSRO(s) to meet response resource requirements) simply to list the OSRO(s) and its classification in the response plan, rather than list equipment recovery, containment, and storage resources in the plan. The Agency specifically requested comments on the criteria to evaluate OSRO agreements, a mechanism for approving OSROs, and the advisability of establishing an OSRO approval process.

Most commenters agreed that EPA should establish its own OSRO classification process or use the USCG's classification process to streamline the development of facility response plans. Many of these commenters agreed that EPA should coordinate with the USCG in planning such a program, if it is to be different from the USCG's classification process. Several commenters specifically mentioned that details of response resources should not be required within the response plans. These commenters felt that this information would distract from the emergency purpose of the document. A few commenters offered additional criteria to be used in the evaluation of response resources. In dissent, some commenters requested a "standardization approach" using performance criteria instead of a classification process.

EPA is not implementing a new OSRO classification program at this time. Facility owners or operators can rely on the USCG OSRO classification process or other appropriate OSRO evaluation programs in place at the State level for defined geographic areas (e.g., State of Washington) to identify in the plan resources to respond to a worst case discharge, to the maximum extent practicable. However, where the provider of response resources is not a USCG-classified OSRO (or State-evaluated OSRO), RAs have the option to perform their own evaluation or verification to ensure that equipment is available and is in proper condition. In this evaluation, the RA may consider several factors including: the proximity of response resources to the facility; the adequacy of equipment and personnel resources; the OSRO's past performance and safety record; the number of additional facilities the OSRO has agreed to support; knowledge of state-of-the-art response techniques; knowledge of local fish and wildlife and sensitive environments and the ACP; the adequacy of the incident command structure; record-keeping practices for personnel safety equipment; and proficiency in spill management. This evaluation may involve visiting such organizations to determine whether equipment is available and in good working order. Facility owners or operators also should consider such factors when they evaluate the capabilities of an OSRO(s) to be listed in the response plan. RAs also may evaluate an OSRO's capabilities (including the facility owner's equipment and response resources when this is the case) during PREP area drills/exercises. EPA chose not to adopt a specific classification program of its own to avoid an additional step in the process to prepare and review facility response plans.

Fish and Wildlife and Sensitive Environments

EPA has identified proximity to fish and wildlife and sensitive environments as a factor in the substantial harm determination. EPA intended for owners or operators to use Appendix D of the proposed rule as interim guidance for the identification of environmentally sensitive areas until ACPs were available. Several commenters urged EPA to allow facility owners or operators to use the NCP or ACPs for the identification of environmentally sensitive areas. Other commenters

[7] Facility owners or operators may call the NCP Hotline at 202 260–2343 for information on the current NCP Product Schedule.

commenters requested a "standardization approach" using performance criteria instead of a classification process.

EPA is not implementing a new OSRO classification program at this time. Facility owners or operators can rely on the USCG OSRO classification process or other appropriate OSRO evaluation programs in place at the State level for defined geographic areas (e.g., State of Washington) to identify in the plan resources to respond to a worst case discharge, to the maximum extent practicable. However, where the provider of response resources is not a USCG-classified OSRO (or State-evaluated OSRO), RAs have the option to perform their own evaluation or verification to ensure that equipment is available and is in proper condition. In this evaluation, the RA may consider several factors including: the proximity of response resources to the facility; the adequacy of equipment and personnel resources; the OSRO's past performance and safety record; the number of additional facilities the OSRO has agreed to support; knowledge of state-of-the-art response techniques; knowledge of local fish and wildlife and sensitive environments and the ACP; the adequacy of the incident command structure; record-keeping practices for personnel safety equipment; and proficiency in spill management. This evaluation may involve visiting such organizations to determine whether equipment is available and in good working order. Facility owners or operators also should consider such factors when they evaluate the capabilities of an OSRO(s) to be listed in the response plan. RAs also may evaluate an OSRO's capabilities (including the facility owner's equipment and response resources when this is the case) during PREP area drills/exercises. EPA chose not to adopt a specific classification program of its own to avoid an additional step in the process to prepare and review facility response plans.

Fish and Wildlife and Sensitive Environments

EPA has identified proximity to fish and wildlife and sensitive environments as a factor in the substantial harm determination. EPA intended for owners or operators to use Appendix D of the proposed rule as interim guidance for the identification of environmentally sensitive areas until ACPs were available. Several commenters urged EPA to allow facility owners or operators to use the NCP or ACPs for the identification of environmentally sensitive areas. Other commenters stated that the definition of "environmentally sensitive areas" was too broad, making it difficult to use in the determination of substantial harm. Some commenters objected to the listing of particular areas (e.g., wetlands, national monuments) as sensitive, while others requested that additional areas (e.g., water intakes for electric utilities and municipalities, National and State parks, and National forests) be included in the definition of sensitive environments.

As discussed previously, EPA does not include proposed Appendix D in this final rule. To serve the purpose of proposed Appendix D (i.e., to guide owners or operators in identifying fish and wildlife and sensitive environments), EPA adds a general definition of "fish and wildlife and sensitive environments" at § 112.2 of the final rule and references certain documents for further information. The definition, adapted from the text of proposed Appendix D, reads as follows: "areas that may be identified by either their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinators spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered/threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archeological sites and parks. These areas may also include unique habitats such as: aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats." To help facility owners or operators better address required fish and wildlife and sensitive environments concerns, EPA contributed to a governmental committee formed by various Federal agencies to develop a consistent definition of fish and wildlife and sensitive environments. The committee was made up of representatives from various Natural Resource Trustee agencies and from the agencies with OPA response plan authority. After considering comments on the EPA's proposed rule, the committee developed an interagency guidance document based on the information contained in Appendix D of the proposed rule. The introductory text has been expanded to explain in more detail some environmental sensitivity issues, and address the substance of the public comments that EPA and the USCG received on this subject. To ensure more comprehensive response planning and to better protect fish and wildlife and sensitive environments, Attachment D–IV ("Vulnerability of Aquatic Ecosystems") and Attachment D–V ("Vulnerability Scale of Aquatic Habitats Impacted by Oil Spills") of proposed Appendix D have been replaced by Appendix IV ("Sensitive Biological and Human-Use Resources") and Appendix V ("Ranking of Shoreline Habitats Impacted by Oil Spills"), respectively in the DOC/NOAA guidance.

In addition, other environmental areas were added to those listed in Appendix D, Attachment D–I ("Responsible Federal Agencies for Specific Environmental Resources"), such as the National Forest System, Areas of Critical Environmental Concern, and cultural resources. This guidance also contains additional mailing addresses and phone numbers of government offices where facility owners or operators may obtain additional information. The document titled, "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments," was published in the **Federal Register** by DOC/NOAA at 59 FR 14714, March 29, 1994. In today's rule, EPA has removed the Environmentally Sensitive Areas appendix that was proposed in the proposed rule and references to the appendix contained in proposed § 112.20. EPA refers facility owners and operators to Appendices I, II, and III of DOC/NOAA's guidance for guidance to identify fish and wildlife and sensitive environments until geographic-specific annexes to the ACPs are refined to the point where they address fish and wildlife and sensitive environments concerns in detail. As discussed previously, in the inland zone (as defined in 40 CFR 300.5), ACPs have been developed and will undergo continuous refinement. Facility owners or operators may contact the appropriate Regional office for fish and wildlife and sensitive environments information as it becomes available.

Worst Case Discharge

Under § 112.20(h)(5) of the proposed rule, owners or operators who must prepare a facility response plan under § 112.20 must calculate a worst case discharge quantity as described in proposed Appendix E. (Appendix E has been relabeled as Appendix D in today's final rule.) This worst case discharge

scenario, in turn, directly influences the quantity of spill response resources that must be available to the facility, as outlined in Appendix D. In the proposed rule, the determination of the worst case discharge volume is based on the facility's oil storage capacity, with additional factors taken into account for multiple-tank facilities with secondary containment or adjacent to navigable waters. EPA requested comments on allowing a reduction in the worst case discharge planning amount for facilities with adequate secondary containment in place.

One commenter stated that no reduction should be allowed for secondary containment, because oil spills frequently occur during transfer operations that take place outside of secondary containment. The commenter added that, even for those spills that occur within contained areas, a worst case discharge scenario should assume some failure of containment systems (as has happened historically in spills from facilities with secondary containment). Numerous commenters requested that EPA grant credit for secondary containment in the formula to calculate a facility's worst case discharge, thereby reducing the amount of response resources for which the facility would need to plan. Many of these commenters generally supported credit for secondary containment, because containment will reduce the quantity of a spill that escapes from the facility and impacts the environment. Other commenters argued that credit for secondary containment would provide an incentive to the regulated community to enhance facility spill prevention systems, while others contended that the probability of both the tank and its secondary containment failing simultaneously is extremely small.

In response to commenters' concerns, EPA has modified Appendix D to allow a 20 percent reduction in the worst case discharge amount at single-tank facilities for the presence of adequate secondary containment (i.e., containment equal to 100 percent of tank capacity plus sufficient freeboard for precipitation). The amount of this percentage reduction is based on an analysis of the percentage of released oil reaching navigable waters in the historical spill record from EPA's Emergency Response Notification System database.[8] EPA believes that the data do not support granting a larger credit, nor do they show that a smaller credit should be established. Historical data illustrate that secondary containment is not always completely effective, due to wave effects, breaches in containment walls, or operator error (such as an open secondary containment drainage valve).

With respect to multiple-tank facilities, EPA notes that it is finalizing the proposed credit for secondary containment at these facilities. As in the proposed rule, the calculation method in the final rule focuses on the oil storage capacity of the largest tank within a secondary containment area or a group of tanks permanently manifolded together within a common secondary containment area as a planning amount for the worst case discharge. This amount reflects a credit for secondary containment resulting in a lesser planning amount than the capacity of all tanks within secondary containment or the capacity of all tanks at the facility. Facilities that lack secondary containment would therefore be required to include the capacity of all storage tanks without secondary containment in their worst case discharge volume, while those facilities with credit for secondary containment would only need to consider the capacity of the largest tank or group of tanks within a single secondary containment area. As such, the presence of secondary containment leads to a significant credit that reduces the worst case discharge planning amount and the associated response resource requirements.

Numerous commenters requested that EPA grant credit for facility spill prevention measures and practices (other than secondary containment) in the calculation of the worst case discharge. Specific preventive measures mentioned by commenters include tertiary containment, conformance with American Petroleum Institute tank standards, automatic shutdown systems, high-level alarms, corrosion protection, and hydrostatic testing. Many commenters generally supported credit for specific preventive measures because of the capacity of such measures to reduce spill size or spill migration. Many commenters also argued that credit for other spill prevention measures would provide incentives to the regulated community to enhance spill prevention systems. Owners or operators would implement such measures to decrease the worst case discharge volume, and thus, decrease necessary expenditures for planning and response resources.

In today's final rule, EPA retains the credit for secondary containment at the facility, but does not provide additional credits to facilities for the presence of such preventive measures in the calculation of the worst case discharge. Although EPA encourages facilities to implement additional preventive measures such as those cited by the commenters, the Agency believes that the effects of these measures on the size and impact of a potential spill are not readily quantifiable, nor as easily supported with historical spill evidence, as those of secondary containment. In addition, the Agency believes that granting credit for these prevention measures likely would require a more detailed verification and inspection process than would granting credit for secondary containment. Further, Congress' intent was that planning reflect the worst case discharge, and that the private sector be encouraged to increase its spill response capability.

In the calculation of a worst case discharge, EPA proposed to require multiple-tank facilities with secondary containment for which the nearest opportunity for discharge (i.e., storage tank, piping, or flowline) is adjacent to navigable water, to incorporate an additional 10 percent factor in the calculation of the worst case discharge quantity. (See Parts A3 and B3 of Appendix E of the proposed rule.) The Agency proposed the 10 percent distinction in the calculation of a worst case discharge volume between multiple-tank facilities adjacent to navigable waters and those not adjacent to navigable waters as a safety factor to address the potential for releases from multiple tanks.

Many commenters opposed the use of a 110 percent planning volume for facilities located adjacent to navigable water, because a facility could not discharge more than 100 percent of its capacity. Some commenters apparently did not realize that the provision only applied to multiple-tank facilities, and argued that the 110 percent planning volume factor should be eliminated because it is impossible for a single tank to discharge more than 100 percent of its capacity.

EPA has considered these comments and has decided to eliminate consideration of a facility's location adjacent to navigable waters from the calculation of the worst case discharge. Adding an additional 10 percent to the planning volume is unnecessary, because the emulsification table in Appendix E will account for removing material in excess of tank capacity for all petroleum facilities for which an owner or operator must plan under this rule. There is no need to impose an additional cost burden on multiple-tank facility owners and operators for proximity to navigable waters. In Appendix D of today's final rule, the worksheets have been changed accordingly; this change will simplify the calculation and reduce confusion in the regulated community.

Several commenters requested that EPA clarify its definition of "permanently manifolded tanks" used in the calculation of a worst case discharge volume. Several commenters expressed confusion about whether permanently manifolded tanks connected by piping systems with valves that are normally shut, and permanently manifolded tanks that are separated by internal divisions in the secondary containment area, are considered separate tanks for purposes of the worst case discharge calculation.

The proposed definition of "permanently manifolded tanks" indicated that such systems were to be considered as separate tanks for the worst case discharge calculation. However, to better clarify EPA's intent, the definition of "permanently manifolded tanks" has been modified slightly in Appendix D of the final rule. The changes make it clear that within a common secondary containment area, interconnected tanks are considered to be single tanks if one or more of the manifolded tanks functions as an overflow container for another tank (i.e., is connected by piping at the top). In this case, individual manifolded tank volumes are not combined when calculating the worst case discharge planning volume. The owner or operator must provide evidence in the response plan that tanks with common piping or piping systems are not operated as one unit.

EPA recognizes that failures associated with multiple tanks that are hydraulically connected could result in the discharge of a greater volume of oil than the capacity of any one of the tanks. The definition of "permanently manifolded tanks" adequately accounts for this possibility. The owner or operator of a facility with permanently manifolded tanks would combine the capacities of all tanks manifolded together to calculate the worst case discharge planning volume for the facility.

Owners or operators of onshore production facilities must consider both storage capacity and production activities in the determination of a worst case discharge planning volume. In the proposed rule, EPA defined production volume for production wells (producing by pumping) as the pumping rate of the highest output well at the facility, multiplied by 1.5 times the number of

[8] The Technical Background Document to Support the Implementation of the OPA Response Plan Requirements, U.S. EPA, February 1993. Available for inspection in the Superfund Docket, room M2615, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

facility owners and operators for proximity to navigable waters. In Appendix D of today's final rule, the worksheets have been changed accordingly; this change will simplify the calculation and reduce confusion in the regulated community.

Several commenters requested that EPA clarify its definition of "permanently manifolded tanks" used in the calculation of a worst case discharge volume. Several commenters expressed confusion about whether permanently manifolded tanks connected by piping systems with valves that are normally shut, and permanently manifolded tanks that are separated by internal divisions in the secondary containment area, are considered separate tanks for purposes of the worst case discharge calculation.

The proposed definition of "permanently manifolded tanks" indicated that such systems were to be considered as separate tanks for the worst case discharge calculation. However, to better clarify EPA's intent, the definition of "permanently manifolded tanks" has been modified slightly in Appendix D of the final rule. The changes make it clear that within a common secondary containment area, interconnected tanks are considered to be single tanks if one or more of the manifolded tanks functions as an overflow container for another tank (i.e., is connected by piping at the top). In this case, individual manifolded tank volumes are not combined when calculating the worst case discharge planning volume. The owner or operator must provide evidence in the response plan that tanks with common piping or piping systems are not operated as one unit.

EPA recognizes that failures associated with multiple tanks that are hydraulically connected could result in the discharge of a greater volume of oil than the capacity of any one of the tanks. The definition of "permanently manifolded tanks" adequately accounts for this possibility. The owner or operator of a facility with permanently manifolded tanks would combine the capacities of all tanks manifolded together to calculate the worst case discharge planning volume for the facility.

Owners or operators of onshore production facilities must consider both storage capacity and production activities in the determination of a worst case discharge planning volume. In the proposed rule, EPA defined production volume for production wells (producing by pumping) as the pumping rate of the highest output well at the facility, multiplied by 1.5 times the number of days the facility is unattended (Appendix E, Part B). Several commenters stated that EPA had not provided sufficient justification for requiring the calculation of the worst case discharge planning volume to include use of the 1.5 multiplier. Commenters believed that the pumping rate of the highest rate well could easily be determined and should not be artificially inflated, and suggested that the multiplier be used only when the rate of the highest rate well is unknown.

In response to commenters' concerns, EPA revised the worst case discharge calculation in Appendix D of the final rule to require facility owners or operators to use the 1.5 multiplier only if the rate of the well with the highest output or the number of days the facility is unattended cannot be estimated with certainty. EPA believes that the use of the 1.5 multiplier is appropriate in these instances because it provides a conservative basis upon which to incorporate these uncertain estimates of discharge potential in the calculation of a worst case discharge. If the facility owner or operator knows the rate of the well with the highest output and can predict the number of days that the facility will be unattended, then the production volume for each production well (producing by pumping) is equal to the pumping rate of the well, multiplied by the greatest number of days the facility will be unattended. If the actual pumping rate will exceed the planned pumping rate, or the facility will be unattended for longer than the time indicated in the facility response plan, then the owner or operator must amend the facility response plan to reflect this operational change at the facility. The owner or operator must resubmit the appropriate sections of the plan in accordance with § 112.20(d)(1).

In Appendix E of the proposed rule, the proposed worst case discharge planning volume for facilities with exploratory wells or production wells producing under pressure was the forecasted production volume for the highest output well at the facility plus the appropriate oil storage capacity component. The proposed rate for exploratory wells and production wells producing under pressure was the maximum 30-day forecasted well rate for wells 10,000 feet deep or less, or the maximum 45-day forecasted well rate for wells more than 10,000 feet deep. Several commenters from the oil industry stated that the forecasted well rates were unwarranted because cleanup procedures will begin before the entire volume of the discharge reaches the environment. Commenters suggested that EPA consider inspection frequency or time intervals equal to the appropriate response tier as factors to determine the worst case discharge planning volume. In considering revisions to the proposed worst case discharge planning volume calculation, EPA also solicited input from MMS, which is in the process of promulgating response plan regulations for certain offshore production facilities.

EPA compared the response efforts required and damage resulting from discharges from production wells producing under pressure or exploratory wells to the response efforts required and damage resulting from discharges from storage tanks or production wells producing by pumping. Because discharges from storage tanks or production wells are discrete events, the volume of oil that is discharged is not influenced by response actions after they have been discovered. For production wells producing under pressure and exploratory wells, response efforts can mitigate the effects of the discharge during the time it takes response personnel to stop the flow of oil. For these reasons, EPA has revised the calculations for worst case discharge planning volume for facilities with exploratory wells or production wells producing under pressure.

The final version of the appendix (Appendix D in the final rule) requires the facility owner or operator to compare the forecasted rate of the highest output well to the capacity of response equipment and personnel to recover the volume of oil that could be discharged to calculate the production volume. If the well rate would overwhelm the response efforts, the worst case discharge planning volume would be calculated in a manner similar to that described in the proposed rule. (See Method A of Attachment D–1.) If the emergency response effort would match or exceed the forecasted rate of the highest output well, then the facility owner or operator would calculate the production volume based on the sum of: 1) the volume of oil discharge from the well between the time of the blowout and the expected time the response resources are on scene and recovering oil; and 2) the volume of oil discharged after the response resources begin operating until the spill is stopped (adjusted for the amount of oil recovered). (See Part B of Attachment D–2.) As in the case of production facilities with wells producing by pumping, Part B of Appendix D requires that the appropriate storage oil capacity also be added to the production volume to determine the worst case discharge planning volume. EPA describes these methods to calculate the production

volume for production facilities with wells producing under pressure or exploratory wells in Attachment D–1, "Methods to Calculate the Production Volumes for Production Facilities with Exploratory Wells or Production Wells Producing Under Pressure," to Appendix D.

Response Planning Levels

As part of the response planning requirements, EPA proposed in § 112.20(h)(5) that "substantial harm facilities" must evaluate smaller, more probable discharge quantities for their facility response plan in addition to the worst case discharge specified by the OPA. As proposed, the owner or operator of a facility would plan for small (2,100 gallons or less) and medium (between 2,100 gallons and 36,000 gallons, or ten percent of the capacity of the largest tank, whichever is less) discharge quantities, provided that these amounts are less than the worst case discharge amount.

EPA received comments both in support of, and opposed to, the concept of planning for various response levels. Some commenters indicated that the establishment of such additional planning requirements was beyond the OPA mandate. Other commenters argued that planning for smaller spills will be encompassed in planning for a worst case discharge, that planning for smaller spills is a function of good management practices and should not be regulated, or that pre-existing SPCC Plans adequately address smaller spills.

EPA has considered these comments and decided to retain the planning approach outlined in the proposed rule. Although planning for several discharge amounts is not mandated specifically under OPA, EPA has broad and ample regulatory authority under CWA section 311(j)(1)(C) for such a requirement. The Agency believes that discharges less severe than a worst case scenario may pose a serious threat to navigable waters, especially from the cumulative effects of several discharges, and that preparation to respond to smaller spills could lead to better overall protection of the nation's navigable waters. In addition, this three-level approach is consistent with the USCG's implementation of planning scenarios under OPA and some State response plan rulemakings.

Various sizes of discharges can require different types and amounts of equipment, products, and personnel, and must therefore be addressed separately. For example, a facility may want to hire a contractor to support response to a worst case discharge scenario, but handle smaller, operational spills using its own personnel and equipment. To the extent that facility personnel are better able to address immediate actions associated with smaller spills, they will be better prepared to initiate a response to a worst case discharge until back-up resources arrive on-scene. Increased proficiency in handling the initial stages of a discharge can result in significant reductions in the extent of spill movement and associated impacts to the environment.

As many commenters recognized, planning for responses to more commonly occurring discharges may be more beneficial to facilities than planning for a worst case discharge that has a lower probability of occurrence—nevertheless, EPA continues to recognize that this planning approach may not be appropriate for all facilities, including those where the range of possible spill scenarios is small. Under today's final rule, as in the proposed rule, large facilities would still need to plan for three discharge amounts, but a small facility may only need to plan for two scenarios or a single scenario if its worst case discharge falls within one of the specified ranges.

To address the planning requirements, the owner or operator must consider the different types of facility-specific scenarios that may result in discharges at the facility. To the extent possible, the scenarios should account for the range of different operations that take place at the facility. Appendix F of the rule contains guidance on the development of such scenarios including a list of areas of operation to consider (e.g., oil storage tanks, piping, vehicle refueling areas, and tank car and tank truck loading and unloading areas), and a list of factors that may affect response efforts at the facility (e.g., direction of spill pathways, weather conditions, and available response equipment). As part of this process, owners or operators shall describe the threat posed by mobile facilities operating on site, especially during loading or unloading operations where the risk of a discharge is increased. Also, owners or operators of large facilities that handle, store, or transport oil at more than one geographically distinct location (e.g., oil storage areas at opposite ends of a single, continuous parcel of property) shall, as appropriate, develop separate sections of the response plans for each area where oil is stored, used, or distributed.

Several commenters expressed confusion between the tiered planning amounts described in proposed § 112.20(h)(5) and the response tiers in proposed Appendix F for mobilizing resources in response to a worst case discharge. To avoid confusion in the final rule, EPA replaces the term "tiered planning scenarios" with "response planning levels" to describe small, medium, and worst case response planning amounts.

Drills/Exercises and Training

The proposed rule contained general requirements for response training and drills/exercises, but did not specify what the training and drills/exercises should entail. Specifically, proposed § 112.7(f)(1)(iii) required that all personnel involved in oil-handling activities participate in unannounced drills/exercises, at least annually. Proposed § 112.20(h)(8)(ii) required that the facility response plan contain a description and record of training courses and periodic unannounced drills/exercises to be carried out under the response plan.

Some commenters suggested that training should be required only for employees of "substantial harm facilities" and that only response personnel should be required to participate in drills/exercises. EPA notes that a general training program is required at 40 CFR 112.7(e)(10) for all facilities subject to the rule. However, the final rule limits the requirement for response training and drills/exercises to facilities that must prepare a response plan.

One commenter argued that the OPA does not mandate employee training. EPA notes that the OPA added CWA section 311(j)(5)(C) to specify that the response plan must describe training and periodic unannounced drills/exercises to be carried out under the plan. The Agency interprets this requirement to mean that Congress intended for facilities to conduct a program of training and drills/exercises for response to oil spills.

EPA has moved some subject matter on response training and drills/exercises from proposed § 112.7 to a new § 112.21 so that all requirements relevant to implementation of the OPA (i.e., requirements for response training) are addressed in this final rule. Requirements for oil spill prevention training that are not necessary for the OPA implementation will remain in proposed § 112.7(f) and will be addressed in a separate rulemaking.

To provide additional direction to the regulated community on what constitutes an acceptable training program, EPA expands the discussion of training in today's final rule. As set forth at § 112.21, response training must be functional in nature and

commensurate with the specific duties of each type of facility personnel with responsibilities under the plan. A facility's training program can be based on the USCG's Training Elements for Oil Spill Response, to the extent applicable to facility operations, or another response training program acceptable to the RA. The training elements are available from Petty Officer Daniel Caras at (202) 267–6570 or fax 267–4085/4065.

As set forth in the OPA, drills/exercises are evolutions that are designed to periodically test the ability of response personnel to ensure the safety of the facility and to mitigate or prevent discharges of oil. A drill/exercise program is comprised of facility drills/exercises, including tabletop and deployment exercises, both announced and unannounced, as well as participation in larger area drills/exercises and evaluation of these drills/exercises. The requirement to develop a drill/exercise program is included at § 112.21. This section references the National PREP. As described in Section I.C of this preamble, PREP is a joint industry/government effort to establish recognized national guidelines for conducting drills/exercises to meet the OPA requirements. Following the PREP guidelines (see Appendix E to this part, section 10, for availability) would satisfy a facility's requirements for drills/exercises under this final rule. Alternately, under § 112.21(c), a facility owner or operator may develop a program that is not based on the PREP guidelines. Such a program is subject to approval by the RA based on the description of the program provided in the response plan.

Descriptions of training and drills/exercises for facility personnel engaged in oil spill response must be provided in the plan as stated in § 112.20(h)(8). To satisfy this requirement, facilities must describe conformance with the PREP guidelines as part of their response plan or provide a detailed description of an alternative drill/exercise program. Lessons learned from the facility owner's or operator's evaluation of response drills/exercises may help identify other relevant subject areas for training. As part of the PREP development process, the USCG, with assistance from other Federal agencies, OSROs, and the regulated community, is preparing a reference document to assist facility owners and operators in the evaluation of their drills/exercises.

As described in Section II.B of this preamble, some commenters objected to including logs for training and drills/exercises in the response plan. EPA will not require training records and records of drills/exercises to be included in the

commensurate with the specific duties of each type of facility personnel with responsibilities under the plan. A facility's training program can be based on the USCG's Training Elements for Oil Spill Response, to the extent applicable to facility operations, or another response training program acceptable to the RA. The training elements are available from Petty Officer Daniel Caras at (202) 267–6570 or fax 267–4085/4065.

As set forth in the OPA, drills/exercises are evolutions that are designed to periodically test the ability of response personnel to ensure the safety of the facility and to mitigate or prevent discharges of oil. A drill/exercise program is comprised of facility drills/exercises, including tabletop and deployment exercises, both announced and unannounced, as well as participation in larger area drills/exercises and evaluation of these drills/exercises. The requirement to develop a drill/exercise program is included at § 112.21. This section references the National PREP. As described in Section I.C of this preamble, PREP is a joint industry/government effort to establish recognized national guidelines for conducting drills/exercises to meet the OPA requirements. Following the PREP guidelines (see Appendix E to this part, section 10, for availability) would satisfy a facility's requirements for drills/exercises under this final rule. Alternately, under § 112.21(c), a facility owner or operator may develop a program that is not based on the PREP guidelines. Such a program is subject to approval by the RA based on the description of the program provided in the response plan.

Descriptions of training and drills/exercises for facility personnel engaged in oil spill response must be provided in the plan as stated in § 112.20(h)(8). To satisfy this requirement, facilities must describe conformance with the PREP guidelines as part of their response plan or provide a detailed description of an alternative drill/exercise program. Lessons learned from the facility owner's or operator's evaluation of response drills/exercises may help identify other relevant subject areas for training. As part of the PREP development process, the USCG, with assistance from other Federal agencies, OSROs, and the regulated community, is preparing a reference document to assist facility owners and operators in the evaluation of their drills/exercises.

As described in Section II.B of this preamble, some commenters objected to including logs for training and drills/exercises in the response plan. EPA will not require training records and records of drills/exercises to be included in the response plan, because that is impracticable without constantly revising the plan. Section 112.20(h)(8)(iv) of the final rule makes it clear that the logs may be included in the response plan or maintained as an annex to the response plan.

C. Section-by-Section Analysis

This section lists sequentially the major changes from the proposed rule that have been incorporated into today's final rule. The revisions listed below result from consideration of public comments on the proposed rule (as previously discussed, the Response to Comments Document for the Facility Response Plan Rulemaking maintained at the docket contains detailed summaries of, and responses to, all comments received on the proposed rule) and from efforts to coordinate EPA and other Federal agencies' requirements for implementing response plan regulations under the OPA. A detailed discussion of the reasoning behind most of these changes can be found in Section I.C or II.B of this preamble. In addition to the major changes detailed below, EPA has also made a series of minor editorial changes to correct typographical and grammatical errors, to conform more closely with language from different sections of today's rule and language from the USCG's interim final rule for MTR facilities, and to improve the clarity of the requirements.

As discussed in Section I of this preamble, EPA will defer finalizing changes to certain sections of the regulation as proposed in the proposed rule. EPA plans to address these changes in a subsequent rulemaking. Changes to the following paragraphs from the proposed rule are not included in today's final rule: paragraphs (d)(4) and (g) of § 112.1 (General Applicability and Notification); paragraph (d) of § 112.4 (Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator); and paragraphs (a)(2), (d), (f), (i), and (j) of § 112.7 (Spill Prevention, Control, and Countermeasure Plan general requirements). Also, Appendix H (Brittle Fracture Considerations in API Standard 653) as proposed at 58 FR 8824 is not included in today's final rule.

Section 112.2 Definitions

In § 112.2, the definitions of "adverse weather," "contract or other approved means," "maximum extent practicable," and "worst case discharge" are revised; the definitions of "alteration" and "repair" from the proposed rule are not included; and definitions of "fish and wildlife and sensitive environments" and "oil spill removal organization" are added.

Section 112.20 Facility Response Plans

Throughout § 112.20, the term "emergency response coordinator" is replaced with the term "qualified individual," and the term "environmentally sensitive areas" is replaced with the term "fish and wildlife and sensitive environments."

Paragraph (a) is reorganized and revised to specify EPA's approach to implement the facility response plan requirements of OPA and of this final rule.

Paragraphs (a)(2)(ii) and (iii) (paragraphs (a)(2)(ii) and (iii) from the proposed rule) are expanded to specify that for new facilities and facilities undergoing a planned change in operations, adjustments to the response plan to reflect changes that occur at the facility during the start-up phase of operations must be submitted to the RA after an operational trial period of 60 days.

Paragraph (b)(1) is revised to clarify that if the RA makes a determination of substantial harm then he or she shall notify the facility owner or operator in writing and shall provide a basis for the determination.

Paragraph (c)(4) is revised to specify, for plans to be reviewed by the RA, that the RA will review plans periodically on a schedule established by the RA provided that the period between plan reviews does not exceed five years.

Paragraph (d)(1) is revised to extend its applicability to all facilities for which a response plan is required and to clarify that only revised portions of a response plan need to be resubmitted for approval and inclusion in the existing plan. The requirement for the RA to review for approval changes to plans for "significant and substantial harm facilities" that was proposed at § 112.20(d)(1) has been moved to new § 112.20(d)(4).

Paragraphs (d)(1)(iii) and (d)(2) are revised to clarify that a change in the identity of an OSRO(s) that does not result in a material change in support capabilities is not a material change requiring approval but that a copy of such a change must be provided to the RA.

Paragraph (d)(2) is revised to state that certain amendments do not require "approval" by the RA, rather than "prior approval."

Paragraph (d)(3) is added to indicate that the EPA-issued facility identification number (where one has been assigned) must accompany any

changes to the plan that are submitted to the RA. This number is issued when the plan was received and is included on all EPA correspondences to the facility. Including this number on all subsequent submissions by the facility to EPA will ensure proper tracking and handling of information.

Paragraph (f)(1)(i) is revised to clarify that total oil storage capacity and not total storage capacity is the criteria to be evaluated.

Paragraph (f)(1)(ii)(A) is revised to clarify that adequate secondary containment must account for precipitation as required by § 112.7(e)(2)(ii).

Paragraph (f)(1)(ii)(D) is revised to clarify it addresses reportable oil spills.

Paragraphs (f)(1)(ii)(B) and (f)(2)(i)(D) are revised to remove reference to Appendix D, to add a reference to the "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the appropriate ACP, and to clarify that use of an alternative formula does not require prior approval by the RA but that the formula must be comparable to the appropriate formula in Appendix C to this part. Conforming edits are made to paragraphs (a)(3) and (e).

Paragraph (f)(2)(ii) is revised to clarify that "any person" includes representatives from other government agencies in addition to the public, to more accurately describe the contents of paragraph (f)(2)(i) as factors not criteria, and to clarify that the RA shall consider petitions and respond in an appropriate amount of time.

Paragraph (f)(3)(i) is removed to reflect the deletion of Appendix D and because the RA already has authority under paragraph (f)(2) to consider proximity to other areas determined to possess ecological value. The remainder of paragraph (f)(3) is renumbered accordingly.

Paragraph (g) is reorganized by removing the requirement for periodic review and update of the plan from paragraph (g)(1) and moving it to new paragraph (g)(3).

Paragraph (h) is revised to clarify the mandatory nature of Appendix F.

Paragraphs (h)(1)(vi) and (h)(3)(vii) are revised to clarify that facility owners or operators need only reference but not include community evacuation plans in the response plan.

Paragraph (h)(1)(vii) is revised to clarify that securing the source of the discharge is among the immediate measures that must be described in the plan.

Paragraph (h)(2) is revised to clarify that a brief description of the type of facility (i.e., SIC Code) must be provided as part of the basic facility information.

Paragraph (h)(3)(x) is removed and paragraph (h)(3)(i) is revised to clarify the mandatory nature of Appendix E and allow under certain circumstances owners or operators to make comparable arrangements for response resources.

Paragraph (h)(5) is revised to replace the reference to tiered response planning with a reference to response planning levels. Conforming edits are made to Appendix F.

Paragraph (h)(5)(ii) is revised to clarify that for complexes, the small planning quantity shall be the larger of the amounts calculated for each component of the facility.

Paragraph (h)(8) is revised to clarify the requirements to describe programs for drills/exercises and response training, and indicate that logs may be kept as an annex to the response plan.

Paragraph (h)(11) is added to cross-reference the requirement at § 112.20(a)(2) to complete a response plan cover sheet provided in Section 2.0 of Appendix F.

New § 112.20(i) is added to allow owners or operators to request reconsideration of or appeal certain decisions by the RA.

Section 112.21 Facility Response Training and Drills

New § 112.21 is added to describe requirements for facility response training and drills/exercises. The requirements for annual drills/exercises in proposed § 112.7(f)(1)(iii) are replaced by a requirement to follow the PREP guidelines or an alternative program acceptable to the RA. Provisions related to spill prevention training in § 112.7(f) will be finalized in a future rulemaking.

Appendix B—Memorandum of Understanding Among DOI, DOT, and EPA

The Memorandum of Understanding Among the Secretary of the Interior, Secretary of Transportation, and Administrator of the Environmental Protection Agency signed on February 3, 1994 is added at Appendix B to 40 CFR part 112.

Appendix C—Substantial Harm Criteria

The title of the Appendix was changed from "Determination of Substantial Harm" to "Substantial Harm Criteria."

Throughout Appendix C, the term "environmentally sensitive areas" is replaced with the term "fish and wildlife and sensitive environments," the term "drinking water intake" is replaced with the term "public drinking water intake," the language is clarified to indicate which provisions are required, and "alternative" is changed to "comparable."

For response time estimation purposes, in section 1.1, the definitions of "Great Lakes," "Higher Volume Port Area," and "Inland Area" are revised.

The list of the substantial harm criteria in section 2.0 is removed to eliminate redundancy with § 112.20(f)(1) and the flowchart in Attachment C–I to Appendix C. Section 2.1 is renamed section 2.0.

In new section 2.0, the language is clarified to indicate that the term "public drinking water intake" is analogous to the term "public water system" at 40 CFR 143.2(c) as described at 40 CFR part 110. Footnotes clarifying that public drinking water intakes are analogous to public water systems as described at 40 CFR 143.2(c) are added to this section and Attachment C–II. The definition of "injury" is removed from this section to eliminate redundancy with the definition in § 112.2.

In section 3.0, the last sentence is revised to clarify that for facilities that do not meet the substantial harm criteria using a comparable formula to calculate the planning distance, documentation of the comparable formula must not only be maintained at the facility but must be made available to EPA if requested. The first sentence in the oil transport on moving navigable waters in Attachment C–III is revised to include "or a comparable formula as described in § 112.20(a)(3)" and "for oil transport on moving navigable water." The section describing oil transport on moving navigable waters in Attachment C–III is clarified to indicated that adverse weather conditions shall be considered.

In Attachment C–III, a section describing a method to determine a planning distance for tidal-influenced navigable water is added and the appropriate cross-reference is provided. A paragraph is added to indicate that if a facility owner or operator determines that more than one type of navigable water applies, the planning distance calculation must be performed for each navigable water type, and the greatest distance must be used in the substantial harm evaluation. The third paragraph is revised to provide an example of an instance where it would not be necessary to calculate a planning distance for screening purposes. The fourth paragraph of Attachment C–III is revised to include a reference to the example for determining the planning distance for the two types of navigable waters. The format of Table 3 is revised and further explanation of how the time intervals in Table 3 should be used to calculate a baseline planning distance is added. A conversion constant is added to the formula for calculating the surface area covered by an oil spill on still water. Conforming changes are made to the description of the formula and the sample calculation. Clarifying language is added to the description of the section on oil transport over land. Also, language is added to clarify the term "close proximity" for purposes of calculating the planning distance. Section 4.0 "References" is added to Appendix C.

Environmentally Sensitive Areas (Appendix D in the Proposed Rule)

The Environmentally Sensitive Areas appendix from the proposed rule is removed. Instead, EPA refers owners or operators to Appendices I, II, and III of the "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments," (see Appendix E to this part, section 10, for availability) and to the appropriate ACP for guidance in identifying fish and wildlife and sensitive environments.

Appendix D—Determination of a Worst Case Discharge (Appendix E in the Proposed Rule)

Throughout Appendix D, the language is clarified to indicate which provisions are required and which are provided only as guidance. The last sentence of the first paragraph of the instructions is revised to remove "and its proximity to navigable waters."

Parts A1 and B1 of the instructions for the determination of the worst case discharge at single-tank facilities are revised to reflect credit for adequate secondary containment.

Parts A3 and B3 of the instructions are removed and Parts A2 and B2 and explanatory notes revised to reflect elimination of the additional 10 percent factor for proximity to navigable waters and clarification of the terms "permanently manifolded tanks" and "adequate secondary containment."

Part B of the instructions for the determination of the worst case discharge for production facilities is revised to reflect changes in the calculations for production wells producing by pumping. Part B is also revised to reflect changes in the calculations for exploratory wells and production wells producing under pressure. Attachment D–I is added to describe these changes.

and further explanation of how the time intervals in Table 3 should be used to calculate a baseline planning distance is added. A conversion constant is added to the formula for calculating the surface area covered by an oil spill on still water. Conforming changes are made to the description of the formula and the sample calculation. Clarifying language is added to the description of the section on oil transport over land. Also, language is added to clarify the term "close proximity" for purposes of calculating the planning distance. Section 4.0 "References" is added to Appendix C.

Environmentally Sensitive Areas (Appendix D in the Proposed Rule)

The Environmentally Sensitive Areas appendix from the proposed rule is removed. Instead, EPA refers owners or operators to Appendices I, II, and III of the "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments," (see Appendix E to this part, section 10, for availability) and to the appropriate ACP for guidance in identifying fish and wildlife and sensitive environments.

Appendix D—Determination of a Worst Case Discharge (Appendix E in the Proposed Rule)

Throughout Appendix D, the language is clarified to indicate which provisions are required and which are provided only as guidance. The last sentence of the first paragraph of the instructions is revised to remove "and its proximity to navigable waters."

Parts A1 and B1 of the instructions for the determination of the worst case discharge at single-tank facilities are revised to reflect credit for adequate secondary containment.

Parts A3 and B3 of the instructions are removed and Parts A2 and B2 and explanatory notes revised to reflect elimination of the additional 10 percent factor for proximity to navigable waters and clarification of the terms "permanently manifolded tanks" and "adequate secondary containment."

Part B of the instructions for the determination of the worst case discharge for production facilities is revised to reflect changes in the calculations for production wells producing by pumping. Part B is also revised to reflect changes in the calculations for exploratory wells and production wells producing under pressure. Attachment D–I is added to describe these changes.

Appendix E—Determination and Evaluation of Required Response Resources for Facility Response Plans (Appendix F in the Proposed Rule)

The title of the Appendix was changed from "Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans" to "Determination and Evaluation of Required Response Resources for Facility Response Plans."

Throughout Appendix E, the term "environmentally sensitive areas" is replaced with the term "fish and wildlife and sensitive environments" as defined at § 112.2 and references to former Appendix D replaced with references to the Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments published by DOC/NOAA in the Federal Register on March 29, 1994 and to the appropriate ACP. The language is clarified to indicate which provisions are required. Section 1.1 is revised to specify that this appendix shall be used by facility owners and operators to determine resources for the response plan and by the RA in the review of facility response plans.

Section 1.2 is added to Appendix E, and the definitions of non-persistent and persistent oils and non-petroleum oils from Attachment F–2 of the proposed rule are moved into section 1.2 of Appendix E. Group 5 oils are added to the definition of persistent oils to account for oils that have specific gravities that are equal to or greater than 1.0. The definitions of "nearshore," "ocean," "operating area," and "operating environment" are added to section 1.2 of Appendix E. Section 1.2.8 is added to reference other definitions.

Sections 3.2 and 4.2 are revised to replace "synonymous with" with "that corresponds to."

Section 5.6 is revised to indicate that at least 20 percent of the on-water response equipment must be capable of operating in shallow water.

A reference to section 7.6 which describes the procedures for non-petroleum oils is added to section 7.1.

Section 7.4 is revised to remove the 110 percent factor from the example worst case discharge calculation. The resulting tier values are revised accordingly.

References to the definitions and response resource considerations for Group 5 and non-petroleum oils were added to Tables 2 and 3.

As described in Section II.B of this preamble, a series of changes to the remaining sections of Appendix E (e.g., the addition of separate procedures for non-petroleum oils) are made to ensure greater consistency with the equipment instructions contained in the USCG's interim final rule for MTR facilities.

Appendix F—Model Facility-Specific Response Plan (Appendix G in the Proposed Rule)

The title of Appendix G, "Standard Facility-Specific Response Plan," is changed to "Model Facility-Specific Response Plan" in the final rule.

Throughout Appendix F, the term "emergency response coordinator" is replaced with the term "qualified individual," the term "environmentally sensitive areas" is replaced with the term "fish and wildlife and sensitive environments," the language is clarified to indicate which provisions are required, and the language is clarified to indicate "oil storage capacity," "oil storage tanks," and "aboveground oil storage tanks" where appropriate.

Section 1.0 is revised to specify that owners or operators of large facilities that handle, store, or transport oil at more than one geographically distinct location shall, as appropriate, develop separate sections of the response plan for each storage area. The reference for immediate actions is changed from "(Section 1.7) condensed" to "(Section 1.7.1) complete."

Section 1.2 is revised to indicate that the home and work address of the qualified individual(s) shall be listed in the response plan. The list of States with EPA-approved wellhead protection programs is replaced with an information number for the SDWA Hotline and a definition of "wellhead protection area" is added.

Paragraph 4 (now paragraph 5) of the introduction to section 1.3, Emergency Response Information, is revised to clarify which types of emergency response personnel should be included on the personnel lists. Section 1.3.1 is revised to include the phone number of the Regional Response Center, to specify that the Federal OSC should be contacted, and to remove the item requiring notification of the Area Committee from the list. Section 1.3.2 is split into sections 1.3.2 and 1.3.3 and the remainder of section 1.3 is renumbered accordingly. Also, section 1.3.2 is revised to improve clarity and to indicate that the facility owner or operator must follow appropriate procedures contained in the NCP and ACP to obtain approval for the use of dispersants. New section 1.3.3 is revised to include a log for basic information on equipment testing (from section 1.3.2 of the proposed rule) and deployment drills (from the results of required drills/exercises). Section 1.3.3 (now 1.3.4) is revised by reordering the lists

and adding "pager number" to the facility response team list. Section 1.3.4 (now 1.3.5) is revised to clarify that facilities must, as appropriate, reference existing community evacuation plans.

The language in section 1.4 is revised to clarify the mandatory nature of the hazard evaluation provisions. A definition of surface impoundment is added to section 1.4.1. In section 1.4.2, examples of areas of economic importance are added. Section 1.4.3 is revised to remove the word "quantitative."

Section 1.5.2 is revised to remove details on the calculation of worst case discharge planning volume to avoid redundancy with Appendix D.

A form detailing recommended immediate actions is added to section 1.7.1.

Section 1.8 is revised to clarify the requirements to describe the facility's drill/exercise and training programs and to reflect that logs may be included in the response plan or kept as an annex to the plan. Conforming changes are made to the sample logs throughout the appendix.

Section 1.9 is revised to add provision L, that requires the owner or operator of a complex to identify the interface between portions of the facility that are regulated by different agencies. EPA believes that this will help reinforce owners or operators understanding of jurisdictional issues at certain facilities.

The response plan cover sheet is revised to a fill-in-the-blank form. A footnote is added to explain where to locate Dun & Bradstreet and SIC code information. Conforming changes are made to Section 2.0.

The acronyms DOC, MMS, PREP, RRC, and RSPA are added to section 3.0.

III. Regulatory Analyses

A. Executive Order 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the E.O. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Pursuant to the terms of E.O. 12866, it has been determined that this rule is a "significant regulatory action" because it will have an annual effect on the economy of more than $100 million. An economic analysis performed by the Agency, available for inspection in Room M2615 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, shows that this rule would result in estimated costs to affected facilities of greater than $100 million in the first year. As such, this action was submitted to OMB for review as required by E.O. 12866. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The analysis shows that the action will result in costs to the regulated community of approximately $107.2 million during the first year that the rule is in effect and approximately $41.6 million in each subsequent year. The first-year, subsequent-year, and annualized costs of the revisions to affected facilities are presented in Table 1.

TABLE 1.—TOTAL COST TO AFFECTED FACILITIES OF THE FINAL RULE

[In millions of dollars]

Requirement	First-year costs	Subsequent-year costs	Annualized value of total costs
Rule Familiarization	12.2	0	1.7
Facility Response Plan	95.0	41.6	48.7
Total	107.2	41.6	50.4

EPA is also expected to incur costs estimated at $1.3 million in the first year and $1.2 million in the second year to implement the program.

The Regulatory Impact Analysis (RIA) prepared in support of this rule also includes an assessment of the environmental benefits associated with the proposed revisions. This quantified benefit estimate includes only the benefits of avoided clean-up costs, value of lost product, avoided natural resource damages, and avoided property damages as a result of the mitigation of the severity of spills that occur. Other damages caused by oil spills that are not included in the quantitative estimate, include lost profit by business, public health risks, and foregone existence/option value. Assuming that response plans effectively reduce oil spill damage by 30 percent, benefits that have been quantified in the RIA are estimated to range from $20.3 million to $40.6 million depending on assumptions regarding the volume of discharged oil that escapes secondary containment systems.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–611) requires that a Regulatory Flexibility Analysis be preformed for all rules that are likely to have a "significant impact on a substantial number of small entities." The results of a preliminary analysis indicate that this rule will not have significant adverse impacts on small businesses because small businesses are unlikely to meet the criteria to prepare and submit a response plan and are therefore unlikely to be affected by the facility response planning requirements, which account for virtually all of the total costs of the final rulemaking (see the "Regulatory Impact Analysis of Revisions to the Oil Pollution Prevention Regulation to Implement the Facility Response Planning Requirements of the Oil Pollution Act of 1990," Appendix F, March 1994, available for inspection in Room M2615 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460). Therefore, EPA certifies that this proposed rule is not expected to have a significant impact on small entities, and therefore that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2050–0135.

Preparation of a response plan has an estimated first-year reporting burden ranging from 131.75 hours to 350 hours per respondent, averaging 194.5 hours, and an estimated first-year recordkeeping burden ranging from 13.5 hours to 34 hours per respondent, averaging 21.5 hours. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Maintaining, reviewing, and updating a response plan have an estimated annual reporting burden in subsequent years ranging from 52 hours to 161 hours per respondent, averaging 83 hours, and an estimated annual recordkeeping burden in subsequent years ranging from two to ten hours per respondent, averaging 4.75 hours. Facilities regulated under the Oil Pollution Prevention rule that are not required to prepare response plans have an estimated reporting burden ranging from 0.25 to 6.5 hours per respondent, averaging less than one hour.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2050–0135.

Preparation of a response plan has an estimated first-year reporting burden ranging from 131.75 hours to 350 hours per respondent, averaging 194.5 hours, and an estimated first-year recordkeeping burden ranging from 13.5 hours to 34 hours per respondent, averaging 21.5 hours. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Maintaining, reviewing, and updating a response plan have an estimated annual reporting burden in subsequent years ranging from 52 hours to 161 hours per respondent, averaging 83 hours, and an estimated annual recordkeeping burden in subsequent years ranging from two to ten hours per respondent, averaging 4.75 hours. Facilities regulated under the Oil Pollution Prevention rule that are not required to prepare response plans have an estimated reporting burden ranging from 0.25 to 6.5 hours per respondent, averaging less than one hour.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 112

Environmental protection, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill response, Penalties, Petroleum, Reporting and recordkeeping requirements, Tanks, Water pollution control, Water resources.

Dated: June 15, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR Parts 9 and 112 are amended as follows:

PART 9—OMB APPROVAL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a centerheading and entry to the table in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities 112.20	2050–0135
* * * * *	

PART 112—OIL POLLUTION PREVENTION

3. The authority citation for part 112 is revised to read as follows:

Authority: 33 U.S.C. 1321 and 1361; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

4. Section 112.2 is amended by removing the paragraph designations (a) through (l), placing definitions in alphabetical order, and adding the following new definitions in alphabetical order, to read as follows:

§ 112.2 Definitions.

* * * * *

Adverse weather means the weather conditions that make it difficult for response equipment and personnel to cleanup or remove spilled oil, and that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in Appendix E to this part, as appropriate, ice conditions, temperatures, weather-related visibility, and currents within the area in which the systems or equipment are intended to function.

Complex means a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.

Contract or other approved means: (1) A written contractual agreement with an oil spill removal organization(s) that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times; and/or

(2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or

(3) Active membership in a local or regional oil spill removal organization(s) that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic areas; and/or

(4) Other specific arrangements approved by the Regional Administrator upon request of the owner or operator.

* * * * *

Fish and wildlife and sensitive environments means areas that may be identified by either their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered/threatened species, wilderness and natural resource areas, marine

sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archeological sites and parks. These areas may also include unique habitats such as: aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

Injury means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil, or exposure to a product of reactions resulting from a discharge of oil.

Maximum extent practicable means the limitations used to determine oil spill planning resources and response times for on-water recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. It considers the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the requirements in § 112.20 or in a specific plan approved by the Regional Administrator.

* * * * *

Oil Spill Removal Organization means an entity that provides oil spill response resources, and includes any for-profit or not-for-profit contractor, cooperative, or in-house response resources that have been established in a geographic area to provide required response resources.

* * * * *

Worst case discharge for an onshore non-transportation-related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

5. Sections 112.20 and 112.21 are added to read as follows:

§ 112.20 Facility response plans.

(a) The owner or operator of any non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines shall prepare and submit a facility response plan to the Regional Administrator, according to the following provisions:

(1) For the owner or operator of a facility in operation on or before February 18, 1993 who is required to prepare and submit a response plan under 33 U.S.C. 1321(j)(5), the Oil Pollution Act of 1990 (Pub. L. 101–380, 33 U.S.C. 2701 *et seq.*) requires the submission of a response plan that satisfies the requirements of 33 U.S.C. 1321(j)(5) no later than February 18, 1993.

(i) The owner or operator of an existing facility that was in operation on or before February 18, 1993 who submitted a response plan by February 18, 1993 shall revise the response plan to satisfy the requirements of this section and resubmit the response plan or updated portions of the response plan to the Regional Administrator by February 18, 1995.

(ii) The owner or operator of an existing facility in operation on or before February 18, 1993 who failed to submit a response plan by February 18, 1993 shall prepare and submit a response plan that satisfies the requirements of this section to the Regional Administrator before August 30, 1994.

(2) The owner or operator of a facility in operation on or after August 30, 1994 that satisfies the criteria in paragraph (f)(1) of this section or that is notified by the Regional Administrator pursuant to paragraph (b) of this section shall prepare and submit a facility response plan that satisfies the requirements of this section to the Regional Administrator.

(i) For a facility that commenced operations after February 18, 1993 but prior to August 30, 1994, and is required to prepare and submit a response plan based on the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan or updated portions of the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this part, to the Regional Administrator prior to August 30, 1994.

(ii) For a newly constructed facility that commences operation after August 30, 1994, and is required to prepare and submit a response plan based on the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this part, to the Regional Administrator prior to the start of operations (adjustments to the response plan to reflect changes that occur at the facility during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days).

(iii) For a facility required to prepare and submit a response plan after August 30, 1994, as a result of a planned change in design, construction, operation, or maintenance that renders the facility subject to the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this part, to the Regional Administrator before the portion of the facility undergoing change commences operations (adjustments to the response plan to reflect changes that occur at the facility during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days).

(iv) For a facility required to prepare and submit a response plan after August 30, 1994, as a result of an unplanned event or change in facility characteristics that renders the facility subject to the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this part, to the Regional Administrator within six months of the unplanned event or change.

(3) In the event the owner or operator of a facility that is required to prepare and submit a response plan uses an alternative formula that is comparable to one contained in Appendix C to this part to evaluate the criterion in paragraph (f)(1)(ii)(B) or (f)(1)(ii)(C) of this section, the owner or operator shall attach documentation to the response plan cover sheet contained in Appendix F to this part that demonstrates the reliability and analytical soundness of the alternative formula.

(b)(1) The Regional Administrator may at any time require the owner or operator of any non-transportation-related onshore facility to prepare and submit a facility response plan under this section after considering the factors in paragraph (f)(2) of this section. If such a determination is made, the Regional Administrator shall notify the facility owner or operator in writing and shall provide a basis for the determination. If the Regional Administrator notifies the owner or operator in writing of the requirement to prepare and submit a response plan under this section, the owner or operator of the facility shall submit the response plan to the Regional Administrator within six months of receipt of such written notification.

(2) The Regional Administrator shall review plans submitted by such facilities to determine whether the facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines.

(c) The Regional Administrator shall determine whether a facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, based on the factors in paragraph (f)(3) of this section. If such a determination is made, the Regional Administrator shall notify the owner or operator of the facility in writing and:

(1) Promptly review the facility response plan;

(2) Require amendments to any response plan that does not meet the requirements of this section;

(3) Approve any response plan that meets the requirements of this section; and

(4) Review each response plan periodically thereafter on a schedule established by the Regional Administrator provided that the period between plan reviews does not exceed five years.

(d)(1) The owner or operator of a facility for which a response plan is required under this part shall revise and resubmit revised portions of the response plan within 60 days of each facility change that materially may affect the response to a worst case discharge, including:

(i) A change in the facility's configuration that materially alters the information included in the response plan;

(ii) A change in the type of oil handled, stored, or transferred that materially alters the required response resources;

(iii) A material change in capabilities of the oil spill removal organization(s) that provide equipment and personnel to respond to discharges of oil described in paragraph (h)(5) of this section;

(iv) A material change in the facility's spill prevention and response equipment or emergency response procedures; and

(v) Any other changes that materially affect the implementation of the response plan.

(2) Except as provided in paragraph (d)(1) of this section, amendments to personnel and telephone number lists included in the response plan and a change in the oil spill removal organization(s) that does not result in a material change in support capabilities do not require approval by the Regional Administrator. Facility owners or operators shall provide a copy of such changes to the Regional Administrator as the revisions occur.

environment by discharging oil into or on the navigable waters or adjoining shorelines.

(c) The Regional Administrator shall determine whether a facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, based on the factors in paragraph (f)(3) of this section. If such a determination is made, the Regional Administrator shall notify the owner or operator of the facility in writing and:

(1) Promptly review the facility response plan;

(2) Require amendments to any response plan that does not meet the requirements of this section;

(3) Approve any response plan that meets the requirements of this section; and

(4) Review each response plan periodically thereafter on a schedule established by the Regional Administrator provided that the period between plan reviews does not exceed five years.

(d)(1) The owner or operator of a facility for which a response plan is required under this part shall revise and resubmit revised portions of the response plan within 60 days of each facility change that materially may affect the response to a worst case discharge, including:

(i) A change in the facility's configuration that materially alters the information included in the response plan;

(ii) A change in the type of oil handled, stored, or transferred that materially alters the required response resources;

(iii) A material change in capabilities of the oil spill removal organization(s) that provide equipment and personnel to respond to discharges of oil described in paragraph (h)(5) of this section;

(iv) A material change in the facility's spill prevention and response equipment or emergency response procedures; and

(v) Any other changes that materially affect the implementation of the response plan.

(2) Except as provided in paragraph (d)(1) of this section, amendments to personnel and telephone number lists included in the response plan and a change in the oil spill removal organization(s) that does not result in a material change in support capabilities do not require approval by the Regional Administrator. Facility owners or operators shall provide a copy of such changes to the Regional Administrator as the revisions occur.

(3) The owner or operator of a facility that submits changes to a response plan as provided in paragraph (d)(1) or (d)(2) of this section shall provide the EPA-issued facility identification number (where one has been assigned) with the changes.

(4) The Regional Administrator shall review for approval changes to a response plan submitted pursuant to paragraph (d)(1) of this section for a facility determined pursuant to paragraph (f)(3) of this section to have the potential to cause significant and substantial harm to the environment.

(e) If the owner or operator of a facility determines pursuant to paragraph (a)(2) of this section that the facility could not, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, the owner or operator shall complete and maintain at the facility the certification form contained in Appendix C to this part and, in the event an alternative formula that is comparable to one contained in Appendix C to this part is used to evaluate the criterion in paragraph (f)(1)(ii)(B) or (f)(1)(ii)(C) of this section, the owner or operator shall attach documentation to the certification form that demonstrates the reliability and analytical soundness of the comparable formula and shall notify the Regional Administrator in writing that an alternative formula was used.

(f)(1) A facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines pursuant to paragraph (a)(2) of this section, if it meets any of the following criteria applied in accordance with the flowchart contained in Attachment C-I to Appendix C to this part:

(i) The facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or

(ii) The facility's total oil storage capacity is greater than or equal to 1 million gallons, and one of the following is true:

(A) The facility does not have secondary containment for each aboveground storage area sufficiently large to contain the capacity of the largest aboveground oil storage tank within each storage area plus sufficient freeboard to allow for precipitation;

(B) The facility is located at a distance (as calculated using the appropriate formula in Appendix C to this part or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III of the "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable Area Contingency Plan prepared pursuant to section 311(j)(4) of the Clean Water Act;

(C) The facility is located at a distance (as calculated using the appropriate formula in Appendix C to this part or a comparable formula) such that a discharge from the facility would shut down a public drinking water intake; or

(D) The facility has had a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last 5 years.

(2)(i) To determine whether a facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines pursuant to paragraph (b) of this section, the Regional Administrator shall consider the following:

(A) Type of transfer operation;

(B) Oil storage capacity;

(C) Lack of secondary containment;

(D) Proximity to fish and wildlife and sensitive environments and other areas determined by the Regional Administrator to possess ecological value;

(E) Proximity to drinking water intakes;

(F) Spill history; and

(G) Other site-specific characteristics and environmental factors that the Regional Administrator determines to be relevant to protecting the environment from harm by discharges of oil into or on navigable waters or adjoining shorelines.

(ii) Any person, including a member of the public or any representative from a Federal, State, or local agency who believes that a facility subject to this section could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines may petition the Regional Administrator to determine whether the facility meets the criteria in paragraph (f)(2)(i) of this section. Such petition shall include a discussion of how the factors in paragraph (f)(2)(i) of this section apply to the facility in question. The RA shall consider such petitions and respond in an appropriate amount of time.

(3) To determine whether a facility could, because of its location,

reasonably be expected to cause significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, the Regional Administrator may consider the factors in paragraph (f)(2) of this section as well as the following:

(i) Frequency of past spills;

(ii) Proximity to navigable waters;

(iii) Age of oil storage tanks; and

(iv) Other facility-specific and Region-specific information, including local impacts on public health.

(g)(1) All facility response plans shall be consistent with the requirements of the National Oil and Hazardous Substance Pollution Contingency Plan (40 CFR part 300) and applicable Area Contingency Plans prepared pursuant to section 311(j)(4) of the Clean Water Act. The facility response plan should be coordinated with the local emergency response plan developed by the local emergency planning committee under section 303 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 11001 et seq.). Upon request, the owner or operator should provide a copy of the facility response plan to the local emergency planning committee or State emergency response commission.

(2) The owner or operator shall review relevant portions of the National Oil and Hazardous Substances Pollution Contingency Plan and applicable Area Contingency Plan annually and, if necessary, revise the facility response plan to ensure consistency with these plans.

(3) The owner or operator shall review and update the facility response plan periodically to reflect changes at the facility.

(h) A response plan shall follow the format of the model facility-specific response plan included in Appendix F to this part, unless an equivalent response plan has been prepared to meet State or other Federal requirements. A response plan that does not follow the specified format in Appendix F to this part shall have an emergency response action plan as specified in paragraphs (h)(1) of this section and be supplemented with a cross-reference section to identify the location of the elements listed in paragraphs (h)(2) through (h)(10) of this section. To meet the requirements of this part, a response plan shall address the following elements, as further described in Appendix F to this part:

(1) *Emergency response action plan.* The response plan shall include an emergency response action plan in the format specified in paragraphs (h)(1)(i) through (viii) of this section that is maintained in the front of the response plan, or as a separate document accompanying the response plan, and that includes the following information:

(i) The identity and telephone number of a qualified individual having full authority, including contracting authority, to implement removal actions;

(ii) The identity of individuals or organizations to be contacted in the event of a discharge so that immediate communications between the qualified individual identified in paragraph (h)(1) of this section and the appropriate Federal officials and the persons providing response personnel and equipment can be ensured;

(iii) A description of information to pass to response personnel in the event of a reportable spill;

(iv) A description of the facility's response equipment and its location;

(v) A description of response personnel capabilities, including the duties of persons at the facility during a response action and their response times and qualifications;

(vi) Plans for evacuation of the facility and a reference to community evacuation plans, as appropriate;

(vii) A description of immediate measures to secure the source of the discharge, and to provide adequate containment and drainage of spilled oil; and

(viii) A diagram of the facility.

(2) *Facility information.* The response plan shall identify and discuss the location and type of the facility, the identity and tenure of the present owner and operator, and the identity of the qualified individual identified in paragraph (h)(1) of this section.

(3) *Information about emergency response.* The response plan shall include:

(i) The identity of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge and other discharges of oil described in paragraph (h)(5) of this section, and to mitigate or prevent a substantial threat of a worst case discharge (To identify response resources to meet the facility response plan requirements of this section, owners or operators shall follow Appendix E to this part or, where not appropriate, shall clearly demonstrate in the response plan why use of Appendix E of this part is not appropriate at the facility and make comparable arrangements for response resources);

(ii) Evidence of contracts or other approved means for ensuring the availability of such personnel and equipment;

(iii) The identity and the telephone number of individuals or organizations to be contacted in the event of a discharge so that immediate communications between the qualified individual identified in paragraph (h)(1) of this section and the appropriate Federal official and the persons providing response personnel and equipment can be ensured;

(iv) A description of information to pass to response personnel in the event of a reportable spill;

(v) A description of response personnel capabilities, including the duties of persons at the facility during a response action and their response times and qualifications;

(vi) A description of the facility's response equipment, the location of the equipment, and equipment testing;

(vii) Plans for evacuation of the facility and a reference to community evacuation plans, as appropriate;

(viii) A diagram of evacuation routes; and

(ix) A description of the duties of the qualified individual identified in paragraph (h)(1) of this section, that include:

(A) Activate internal alarms and hazard communication systems to notify all facility personnel;

(B) Notify all response personnel, as needed;

(C) Identify the character, exact source, amount, and extent of the release, as well as the other items needed for notification;

(D) Notify and provide necessary information to the appropriate Federal, State, and local authorities with designated response roles, including the National Response Center, State Emergency Response Commission, and Local Emergency Planning Committee;

(E) Assess the interaction of the spilled substance with water and/or other substances stored at the facility and notify response personnel at the scene of that assessment;

(F) Assess the possible hazards to human health and the environment due to the release. This assessment must consider both the direct and indirect effects of the release (i.e., the effects of any toxic, irritating, or asphyxiating gases that may be generated, or the effects of any hazardous surface water runoffs from water or chemical agents used to control fire and heat-induced explosion);

(G) Assess and implement prompt removal actions to contain and remove the substance released;

(H) Coordinate rescue and response actions as previously arranged with all response personnel;

(I) Use authority to immediately access company funding to initiate cleanup activities; and

(J) Direct cleanup activities until properly relieved of this responsibility.

(4) *Hazard evaluation.* The response plan shall discuss the facility's known or reasonably identifiable history of discharges reportable under 40 CFR part 110 for the entire life of the facility and shall identify areas within the facility where discharges could occur and what the potential effects of the discharges would be on the affected environment. To assess the range of areas potentially affected, owners or operators shall, where appropriate, consider the distance calculated in paragraph (f)(1)(ii) of this section to determine whether a facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines.

(5) *Response planning levels.* The response plan shall include discussion of specific planning scenarios for:

(i) A worst case discharge, as calculated using the appropriate worksheet in Appendix D to this part. In cases where the Regional Administrator determines that the worst case discharge volume calculated by the facility is not appropriate, the Regional Administrator may specify the worst case discharge amount to be used for response planning at the facility. For complexes, the worst case planning quantity shall be the larger of the amounts calculated for each component of the facility;

(ii) A discharge of 2,100 gallons or less, provided that this amount is less than the worst case discharge amount. For complexes, this planning quantity shall be the larger of the amounts calculated for each component of the facility; and

(iii) A discharge greater than 2,100 gallons and less than or equal to 36,000 gallons or 10 percent of the capacity of the largest tank at the facility, whichever is less, provided that this amount is less than the worst case discharge amount. For complexes, this planning quantity shall be the larger of the amounts calculated for each component of the facility.

(6) *Discharge detection systems.* The response plan shall describe the procedures and equipment used to detect discharges.

(7) *Plan implementation.* The response plan shall describe:

(i) Response actions to be carried out by facility personnel or contracted personnel under the response plan to ensure the safety of the facility and to

(I) Use authority to immediately access company funding to initiate cleanup activities; and

(J) Direct cleanup activities until properly relieved of this responsibility.

(4) *Hazard evaluation.* The response plan shall discuss the facility's known or reasonably identifiable history of discharges reportable under 40 CFR part 110 for the entire life of the facility and shall identify areas within the facility where discharges could occur and what the potential effects of the discharges would be on the affected environment. To assess the range of areas potentially affected, owners or operators shall, where appropriate, consider the distance calculated in paragraph (f)(1)(ii) of this section to determine whether a facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines.

(5) *Response planning levels.* The response plan shall include discussion of specific planning scenarios for:

(i) A worst case discharge, as calculated using the appropriate worksheet in Appendix D to this part. In cases where the Regional Administrator determines that the worst case discharge volume calculated by the facility is not appropriate, the Regional Administrator may specify the worst case discharge amount to be used for response planning at the facility. For complexes, the worst case planning quantity shall be the larger of the amounts calculated for each component of the facility;

(ii) A discharge of 2,100 gallons or less, provided that this amount is less than the worst case discharge amount. For complexes, this planning quantity shall be the larger of the amounts calculated for each component of the facility; and

(iii) A discharge greater than 2,100 gallons and less than or equal to 36,000 gallons or 10 percent of the capacity of the largest tank at the facility, whichever is less, provided that this amount is less than the worst case discharge amount. For complexes, this planning quantity shall be the larger of the amounts calculated for each component of the facility.

(6) *Discharge detection systems.* The response plan shall describe the procedures and equipment used to detect discharges.

(7) *Plan implementation.* The response plan shall describe:

(i) Response actions to be carried out by facility personnel or contracted personnel under the response plan to ensure the safety of the facility and to mitigate or prevent discharges described in paragraph (h)(5) of this section or the substantial threat of such discharges;

(ii) A description of the equipment to be used for each scenario;

(iii) Plans to dispose of contaminated cleanup materials; and

(iv) Measures to provide adequate containment and drainage of spilled oil.

(8) *Self-inspection, drills/exercises, and response training.* The response plan shall include:

(i) A checklist and record of inspections for tanks, secondary containment, and response equipment;

(ii) A description of the drill/exercise program to be carried out under the response plan as described in § 112.21;

(iii) A description of the training program to be carried out under the response plan as described in § 112.21; and

(iv) Logs of discharge prevention meetings, training sessions, and drills/exercises. These logs may be maintained as an annex to the response plan.

(9) *Diagrams.* The response plan shall include site plan and drainage plan diagrams.

(10) *Security systems.* The response plan shall include a description of facility security systems.

(11) *Response plan cover sheet.* The response plan shall include a completed response plan cover sheet provided in Section 2.0 of Appendix F to this part.

(i)(1) In the event the owner or operator of a facility does not agree with the Regional Administrator's determination that the facility could, because of its location, reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, or that amendments to the facility response plan are necessary prior to approval, such as changes to the worst case discharge planning volume, the owner or operator may submit a request for reconsideration to the Regional Administrator and provide additional information and data in writing to support the request. The request and accompanying information must be submitted to the Regional Administrator within 60 days of receipt of notice of the Regional Administrator's original decision. The Regional Administrator shall consider the request and render a decision as rapidly as practicable.

(2) In the event the owner or operator of a facility believes a change in the facility's classification status is warranted because of an unplanned event or change in the facility's characteristics (i.e., substantial harm or significant and substantial harm), the owner or operator may submit a request for reconsideration to the Regional Administrator and provide additional information and data in writing to support the request. The Regional Administrator shall consider the request and render a decision as rapidly as practicable.

(3) After a request for reconsideration under paragraph (i)(1) or (i)(2) of this section has been denied by the Regional Administrator, an owner or operator may appeal a determination made by the Regional Administrator. The appeal shall be made to the EPA Administrator and shall be made in writing within 60 days of receipt of the decision from the Regional Administrator that the request for reconsideration was denied. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It also may contain additional information from the owner or operator, or from any other person. The EPA Administrator may request additional information from the owner or operator, or from any other person. The EPA Administrator shall render a decision as rapidly as practicable and shall notify the owner or operator of the decision.

§ 112.21 Facility response training and drills/exercises.

(a) The owner or operator of any facility required to prepare a facility response plan under § 112.20 shall develop and implement a facility response training program and a drill/exercise program that satisfy the requirements of this section. The owner or operator shall describe the programs in the response plan as provided in § 112.20(h)(8).

(b) The facility owner or operator shall develop a facility response training program to train those personnel involved in oil spill response activities. It is recommended that the training program be based on the USCG's Training Elements for Oil Spill Response, as applicable to facility operations. An alternative program can also be acceptable subject to approval by the Regional Administrator.

(1) The owner or operator shall be responsible for the proper instruction of facility personnel in the procedures to respond to discharges of oil and in applicable oil spill response laws, rules, and regulations.

(2) Training shall be functional in nature according to job tasks for both supervisory and non-supervisory operational personnel.

(3) Trainers shall develop specific lesson plans on subject areas relevant to facility personnel involved in oil spill response and cleanup.

(c) The facility owner or operator shall develop a program of facility response drills/exercises, including evaluation procedures. A program that follows the National Preparedness for Response Exercise Program (PREP) (see Appendix E to this part, section 10, for availability) will be deemed satisfactory for purposes of this section. An alternative program can also be acceptable subject to approval by the Regional Administrator.

6. Part 112 is amended by redesignating the appendix to Part 112 titled "Memorandum of Understanding Between the Secretary of Transportation and the Administrator of the Environmental Protection Agency" as Appendix A to Part 112.

Appendices B Through F Part 112 [Added]

7. Part 112 is amended by adding Appendices B through F to read as follows:

Appendix B to Part 112—Memorandum of Understanding Among the Secretary of the Interior, Secretary of Transportation, and Administrator of the Environmental Protection Agency

Purpose

This Memorandum of Understanding (MOU) establishes the jurisdictional responsibilities for offshore facilities, including pipelines, pursuant to section 311 (j)(1)(c), (j)(5), and (j)(6)(A) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (Public Law 101–380). The Secretary of the Department of the Interior (DOI), Secretary of the Department of Transportation (DOT), and Administrator of the Environmental Protection Agency (EPA) agree to the division of responsibilities set forth below for spill prevention and control, response planning, and equipment inspection activities pursuant to those provisions.

Background

Executive Order (E.O.) 12777 (56 FR 54757) delegates to DOI, DOT, and EPA various responsibilities identified in section 311(j) of the CWA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 assigned to DOI spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Section 311(a)(11) defines the term "offshore facility" to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities on the Outer Continental Shelf is expanded by E.O. 12777 to include inland lakes, rivers, streams, and any other inland waters.

Responsibilities

Pursuant to section 2(i) of E.O. 12777, DOI redelegates, and EPA and DOT agree to assume, the functions vested in DOI by sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 as set forth below. For purposes of this MOU, the term "coast line" shall be defined as in the Submerged Lands Act (43 U.S.C. 1301(c)) to mean "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

1. To EPA, DOI redelegates responsibility for non-transportation-related offshore facilities located landward of the coast line.

2. To DOT, DOI redelegates responsibility for transportation-related facilities, including pipelines, located landward of the coast line. The DOT retains jurisdiction for deepwater ports and their associated seaward pipelines, as delegated by E.O. 12777.

3. The DOI retains jurisdiction over facilities, including pipelines, located seaward of the coast line, except for deepwater ports and associated seaward pipelines delegated by E.O. 12777 to DOT.

Effective Date

This MOU is effective on the date of the final execution by the indicated signatories.

Limitations

1. The DOI, DOT, and EPA may agree in writing to exceptions to this MOU on a facility-specific basis. Affected parties will receive notification of the exceptions.

2. Nothing in this MOU is intended to replace, supersede, or modify any existing agreements between or among DOI, DOT, or EPA.

Modification and Termination

Any party to this agreement may propose modifications by submitting them in writing to the heads of the other agency/department. No modification may be adopted except with the consent of all parties. All parties shall indicate their consent to or disagreement with any proposed modification within 60 days of receipt. Upon the request of any party, representatives of all parties shall meet for the purpose of considering exceptions or modifications to this agreement. This MOU may be terminated only with the mutual consent of all parties.

Dated: November 8, 1993.

Bruce Babbitt,

Secretary of the Interior.

Dated: December 14, 1993.

Federico Peña,

Secretary of Transportation.

Dated: February 3, 1994.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Appendix C to Part 112—Substantial Harm Criteria

1.0 Introduction

The flowchart provided in Attachment C–I to this appendix shows the decision tree with the criteria to identify whether a facility "could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines." In addition, the Regional Administrator has the discretion to identify facilities that must prepare and submit facility-specific response plans to EPA.

1.1 Definitions

1.1.1 *Great Lakes* means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

1.1.2 Higher Volume Port Areas include

(1) Boston, MA;
(2) New York, NY;
(3) Delaware Bay and River to Philadelphia, PA;
(4) St. Croix, VI;
(5) Pascagoula, MS;
(6) Mississippi River from Southwest Pass, LA to Baton Rouge, LA;
(7) Louisiana Offshore Oil Port (LOOP), LA;
(8) Lake Charles, LA;
(9) Sabine-Neches River, TX;
(10) Galveston Bay and Houston Ship Channel, TX;
(11) Corpus Christi, TX;
(12) Los Angeles/Long Beach Harbor, CA;
(13) San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay to Antioch, CA;
(14) Straits of Juan de Fuca from Port Angeles, WA to and including Puget Sound, WA;
(15) Prince William Sound, AK; and
(16) Others as specified by the Regional Administrator for any EPA Region.

1.1.3 Inland Area means the area shoreward of the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines as defined in 33 CFR 80.740—80.850). The inland area does not include the Great Lakes.

1.1.4 Rivers and Canals means a body of water confined within the inland area, including the Intracoastal Waterways and other waterways artificially created for navigating that have project depths of 12 feet or less.

2.0 Description of Screening Criteria for the Substantial Harm Flowchart

A facility that has the potential to cause substantial harm to the environment in the event of a discharge must prepare and submit a facility-specific response plan to EPA in accordance with Appendix F to this part. A description of the screening criteria for the substantial harm flowchart is provided below:

2.1 *Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfers of Oil.* A non-transportation-related facility with a total oil storage capacity greater than 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. Daily oil transfer operations at these types of facilities occur between barges and vessels and onshore bulk storage tanks over open water. These facilities are located adjacent to navigable water.

2.2 *Lack of Adequate Secondary Containment at Facilities With a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons.* Any facility with a total oil storage capacity greater than or equal to 1 million gallons without secondary containment sufficiently large to contain the capacity of the largest aboveground oil storage tank within each area plus sufficient freeboard to allow for precipitation must submit a response plan to EPA. Secondary containment structures that meet the standard of good engineering practice for the purposes of this part include berms, dikes, retaining walls, curbing, culverts, gutters, or other drainage systems.

2.3 *Proximity to Fish and Wildlife and Sensitive Environments at Facilities With a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons.* A facility with a total oil storage capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility could cause injury (as defined at 40 CFR 112.2) to fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable Area

2.2 *Lack of Adequate Secondary Containment at Facilities With a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons.* Any facility with a total oil storage capacity greater than or equal to 1 million gallons without secondary containment sufficiently large to contain the capacity of the largest aboveground oil storage tank within each area plus sufficient freeboard to allow for precipitation must submit a response plan to EPA. Secondary containment structures that meet the standard of good engineering practice for the purposes of this part include berms, dikes, retaining walls, curbing, culverts, gutters, or other drainage systems.

2.3 *Proximity to Fish and Wildlife and Sensitive Environments at Facilities With a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons.* A facility with a total oil storage capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility could cause injury (as defined at 40 CFR 112.2) to fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable Area Contingency Plan. Facility owners or operators must determine the distance at which an oil spill could cause injury to fish and wildlife and sensitive environments using the appropriate formula presented in Attachment C–III to this appendix or a comparable formula.

2.4 *Proximity to Public Drinking Water Intakes at Facilities with a Total Storage Oil Capacity Greater Than or Equal to 1 Million Gallons.* A facility with a total storage capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility would shut down a public drinking water intake, which is analogous to a public water system as described at 40 CFR 143.2(c). The distance at which an oil spill from an SPCC-regulated facility would shut down a public drinking water intake shall be calculated using the appropriate formula presented in Attachment C–III to this appendix or a comparable formula.

2.5 *Facilities That Have Experienced Reportable Oil Spills in an Amount Greater Than or Equal to 10,000 Gallons Within the Past 5 Years and That Have a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons.* A facility's oil spill history within the past 5 years shall be considered in the evaluation for substantial harm. Any facility with a total oil storage capacity greater than or equal to 1 million gallons that has experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the past 5 years must submit a response plan to EPA.

3.0 Certification for Facilities That Do Not Pose Substantial Harm

If the facility does not meet the substantial harm criteria listed in Attachment C–I to this appendix, the owner or operator shall complete and maintain at the facility the certification form contained in Attachment C–II to this appendix. In the event an alternative formula that is comparable to the one in this appendix is used to evaluate the substantial harm criteria, the owner or operator shall attach documentation to the certification form that demonstrates the reliability and analytical soundness of the comparable formula and shall notify the Regional Administrator in writing that an alternative formula was used

4.0 References

Chow, V.T. 1959. Open Channel Hydraulics. McGraw Hill.

USCG IFR (58 FR 7353, February 5, 1993) This document is available through EPA's rulemaking docket as noted in Appendix E to this part, section 10.

Attachments to Appendix C

6560-50-P

Attachment C - I

Flowchart of Criteria for Substantial Harm

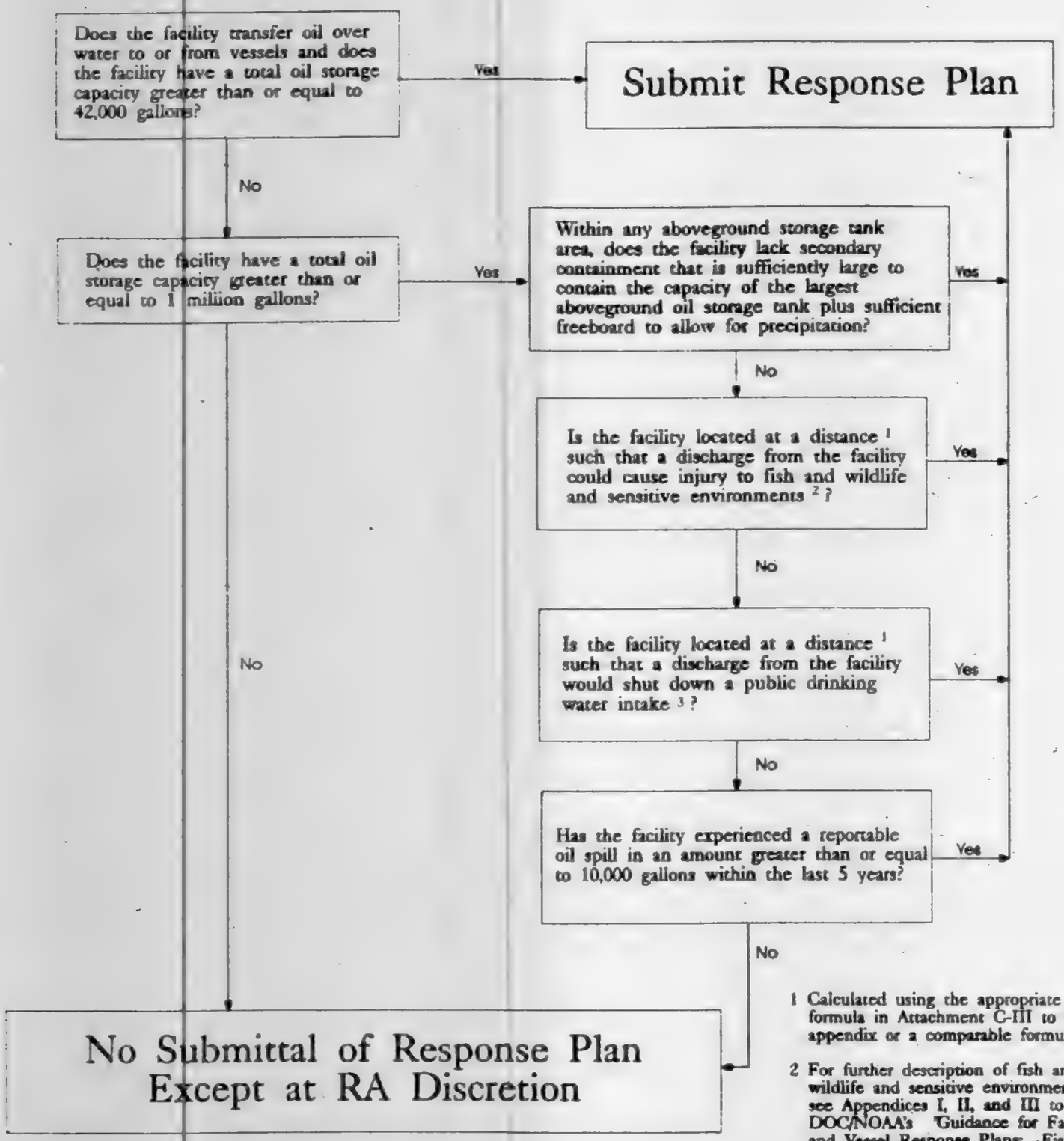

1 Calculated using the appropriate formula in Attachment C-III to this appendix or a comparable formula.

2 For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (59 FR 14713, March 29, 1994) and the applicable Area Contingency Plan.

3 Public drinking water intakes are analogous to public water systems as described at 40 CFR 143.2(c).

BILLING CODE 6560-50-C

Attachment C–II—Certification of the Applicability of the Substantial Harm Criteria

Facility Name: _____
Facility Addresses: _____

1. Does the facility transfer oil over water to or from vessels and does the facility have a total oil storage capacity greater than or equal to 42,000 gallons?
Yes _____ No _____

2. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and does the facility lack secondary containment that is sufficiently large to contain the capacity of the largest aboveground oil storage tank plus sufficient freeboard to allow for precipitation within any aboveground oil storage tank area?
Yes _____ No _____

3. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance (as calculated using the appropriate formula in Attachment C–III to this appendix or a comparable formula [1]) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments? For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable Area Contingency Plan.
Yes _____ No _____

4. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance (as calculated using the appropriate formula in Attachment C-III to this appendix or a comparable formula [1]) such that a discharge from the facility would shut down a public drinking water intake [2]?
Yes _____ No _____

5. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and has the facility experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last 5 years?
Yes _____ No _____

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete.

Signature _____

Name (please type or print) _____

Title _____

[1] If a comparable formula is used documentation of the reliability and analytical soundness of the comparable formula must be attached to this form.

[2] For the purposes of 40 CFR part 112, public drinking water intakes are analogous to public water systems as described at 40 CFR 143.2(c).

Attachment C–II—Certification of the Applicability of the Substantial Harm Criteria

Facility Name: _____
Facility Addresses: _____

1. Does the facility transfer oil over water to or from vessels and does the facility have a total oil storage capacity greater than or equal to 42,000 gallons?

Yes _____ No _____

2. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and does the facility lack secondary containment that is sufficiently large to contain the capacity of the largest aboveground oil storage tank plus sufficient freeboard to allow for precipitation within any aboveground oil storage tank area?

Yes _____ No _____

3. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance (as calculated using the appropriate formula in Attachment C–III to this appendix or a comparable formula [1]) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments? For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable Area Contingency Plan.

Yes _____ No _____

4. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance (as calculated using the appropriate formula in Attachment C-III to this appendix or a comparable formula [1]) such that a discharge from the facility would shut down a public drinking water intake [2]?

Yes _____ No _____

5. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and has the facility experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last 5 years?

Yes _____ No _____

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete.

_____
Signature

_____
Name (please type or print)

_____
Title

_____
Date

[1] If a comparable formula is used documentation of the reliability and analytical soundness of the comparable formula must be attached to this form.

[2] For the purposes of 40 CFR part 112, public drinking water intakes are analogous to public water systems as described at 40 CFR 143.2(c).

Attachment C-III—Calculation of the Planning Distance

1.0 Introduction

1.1 The facility owner or operator must evaluate whether the facility is located at a distance such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments or disrupt operations at a public drinking water intake. To quantify that distance, EPA considered oil transport mechanisms over land and on still, tidal influence, and moving navigable waters. EPA has determined that the primary concern for calculation of a planning distance is the transport of oil in navigable waters during adverse weather conditions. Therefore, two formulas have been developed to determine distances for planning purposes from the point of discharge at the facility to the potential site of impact on moving and still waters, respectively. The formula for oil transport on moving navigable water is based on the velocity of the water body and the time interval for arrival of response resources. The still water formula accounts for the spread of discharged oil over the surface of the water. The method to determine oil transport on tidal influence areas is based on the type of oil spilled and the distance down current during ebb tide and up current during flood tide to the point of maximum tidal influence.

1.2 EPA's formulas were designed to be simple to use. However, facility owners or operators may calculate planning distances using more sophisticated formulas, which take into account broader scientific or engineering principles, or local conditions. Such comparable formulas may result in different planning distances than EPA's formulas. In the event that an alternative formula that is comparable to one contained in this appendix is used to evaluate the criterion in 40 CFR 112.20(f)(1)(ii)(B) or (f)(1)(ii)(C), the owner or operator shall attach documentation to the response plan cover sheet contained in Appendix F to this part that demonstrates the reliability and analytical soundness of the alternative formula and shall notify the Regional Administrator in writing that an alternative formula was used.[1]

1.3 A regulated facility may meet the criteria for the potential to cause substantial harm to the environment without having to perform a planning distance calculation. For facilities that meet the substantial harm criteria because of inadequate secondary containment or oil spill history, as listed in the flowchart in Attachment C–I to this appendix, calculation of the planning distance is unnecessary. For facilities that do not meet the substantial harm criteria for secondary containment or oil spill history as listed in the flowchart, calculation of a planning distance for proximity to fish and wildlife and sensitive environments and public drinking water intakes is required, unless it is clear without performing the calculation (e.g., the facility is located in a wetland) that these areas would be impacted.

1.4 A facility owner or operator who must perform a planning distance calculation on navigable water is only required to do so for the type of navigable water conditions (i.e., moving water, still water, or tidal- influenced water) applicable to the facility. If a facility owner or operator determines that more than one type of navigable water condition applies, then the facility owner or operator is required to perform a planning distance calculation for each navigable water type to determine the greatest single distance that oil may be transported. As a result, the final planning distance for oil transport on water shall be the greatest individual distance rather than a summation of each calculated planning distance.

1.5 The planning distance formula for transport on moving waterways contains three variables: the velocity of the navigable water (v), the response time interval (t), and a conversion factor (c). The velocity, v, is determined by using the Chezy-Manning equation, which, in this case, models the flood flow rate of water in open channels. The Chezy-Manning equation contains three variables which must be determined by facility owners or operators. Manning's Roughness Coefficient (for flood flow rates), n, can be determined from Table 1 of this attachment. The hydraulic radius, r, can be estimated using the average mid-channel depth from charts provided by the sources listed in Table 2 of this attachment. The average slope of the river, s, can be determined using topographic maps that can be ordered from the U.S. Geological Survey, as listed in Table 2 of this attachment.

1.6 Table 3 of this attachment contains specified time intervals for estimating the arrival of response resources at the scene of a discharge. Assuming no prior planning, response resources should be able to arrive at the discharge site within 12 hours of the discovery of any oil discharge in Higher Volume Port Areas and within 24 hours in Great Lakes and all other river, canal, inland, and nearshore areas. The specified time intervals in Table 3 of Appendix C are to be used only to aid in the identification of whether a facility could cause substantial harm to the environment. Once it is determined that a plan must be developed for the facility, the owner or operator shall reference Appendix E to this part to determine appropriate resource levels and response times. The specified time intervals of this appendix include a 3-hour time period for deployment of boom and other response equipment. The Regional Administrator may identify additional areas as appropriate.

[1] For persistent oils or non-persistent oils, a worst case trajectory model (i.e., an alternative formula) may be substituted for the distance formulas described in still, moving, and tidal waters, subject to Regional Administrator's review of the model. An example of an alternative formula that is comparable to the one contained in this appendix would be a worst case trajectory calculation based on credible adverse winds, currents, and/or river stages, over a range of seasons, weather conditions, and river stages. Based on historical information or a spill trajectory model, the Agency may require that additional fish and wildlife and sensitive environments or public drinking water intakes also be protected.

2.0 Oil Transport on Moving Navigable Waters

2.1 The facility owner or operator must use the following formula or a comparable formula as described in § 112.20(a)(3) to calculate the planning distance for oil transport on moving navigable water:

d=v x t x c; where

d: the distance downstream from a facility within which fish and wildlife and sensitive environments could be injured or a public drinking water intake would be shut down in the event of an oil discharge (in miles);

v: the velocity of the river/navigable water of concern (in ft/sec) as determined by Chezy-Manning's equation (see below and Tables 1 and 2 of this attachment);

t: the time interval specified in Table 3 based upon the type of water body and location (in hours); and

c: constant conversion factor 0.68 sec•mile/hr•ft (3600 sec/hr ÷ 5280 ft/mile).

2.2 Chezy-Manning's equation is used to determine velocity:

$v=1.5/n \times r^{2/3} \times s^{1/2}$; where

v=the velocity of the river of concern (in ft/sec);

n=Manning's Roughness Coefficient from Table 1 of this attachment;

r=the hydraulic radius; the hydraulic radius can be approximated for parabolic channels by multiplying the average mid-channel depth of the river (in feet) by 0.667 (sources for obtaining the mid-channel depth are listed in Table 2 of this attachment); and

s=the average slope of the river (unitless) obtained from U.S. Geological Survey topographic maps at the address listed in Table 2 of this attachment.

TABLE 1.—MANNING'S ROUGHNESS COEFFICIENT FOR NATURAL STREAMS

[NOTE: Coefficients are presented for high flow rates at or near flood stage.]

Stream description	Roughness coefficient (n)
Minor Streams (Top Width <100 ft.)	
Clean:	
Straight	0.03
Winding	.04
Sluggish (Weedy, deep pools):	
No trees or brush	.06
Trees and/or brush	.10
Major Streams (Top Width >100 ft.)	
Regular section:	
(No boulders/brush)	.035
Irregular section:	
(Brush)	.05

TABLE 2.—SOURCES OF R AND S FOR THE CHEZY-MANNING EQUATION

All of the charts and related publications for navigational waters may be ordered from:
Distribution Branch
(N/CG33)
National Ocean Service
Riverdale, Maryland 20737–1199
Phone: (301) 436–6990
There will be a charge for materials ordered and a VISA or Mastercard will be accepted.

The mid-channel depth to be used in the calculation of the hydraulic radius (r) can be obtained directly from the following sources:

Charts of Canadian Coastal and Great Lakes Waters:
Canadian Hydrographic Service
Department of Fisheries and Oceans Institute
P.O. Box 8080
1675 Russell Road
Ottawa, Ontario KIG 3H6
Canada
Phone: (613) 998–4931

Charts and Maps of Lower Mississippi River
(Gulf of Mexico to Ohio River and St. Francis, White, Big Sunflower, Atchafalaya, and other rivers):
U.S. Army Corps of Engineers
Vicksburg District
P.O. Box 60
Vicksburg, Mississippi 39180
Phone: (601) 634–5000

Charts of Upper Mississippi River and Illinois Waterway to Lake Michigan:
U.S. Army Corps of Engineers
Rock Island District
P.O. Box 2004
Rock Island, Illinois 61204
Phone: (309) 794–5552

Charts of Missouri River:
U.S. Army Corps of Engineers
Omaha District
6014 U.S. Post Office and Courthouse
Omaha, Nebraska 68102
Phone: (402) 221–3900

Charts of Ohio River:
U.S. Army Corps of Engineers
Ohio River Division
P.O. Box 1159
Cincinnati, Ohio 45201
Phone: (513) 684–3002

Charts of Tennessee Valley Authority Reservoirs, Tennessee River and Tributaries:
Tennessee Valley Authority
Maps and Engineering Section
416 Union Avenue
Knoxville, Tennessee 37902
Phone: (615) 632–2921

Charts of Black Warrior River, Alabama River, Tombigbee River, Apalachicola River and Pearl River:
U.S. Army Corps of Engineers
Mobile District
P.O. Box 2288
Mobile, Alabama 36628–0001
Phone: (205) 690–2511

The average slope of the river (s) may be obtained from topographic maps:
U.S. Geological Survey
Map Distribution
Federal Center
Bldg. 41
Box 25286
Denver, Colorado 80225

Additional information can be obtained from the following sources:
1. The State's Department of Natural Resources (DNR) or the State's Aids to Navigation office;
2. A knowledgeable local marina operator; or
3. A knowledgeable local water authority (e.g., State water commission)

2.3 The average slope of the river (s) can be determined from the topographic maps using the following steps:

(1) Locate the facility on the map.

(2) Find the Normal Pool Elevation at the point of discharge from the facility into the water (A).

(3) Find the Normal Pool Elevation of the public drinking water intake or fish and wildlife and sensitive environment located downstream (B) (Note: The owner or operator should use a minimum of 20 miles downstream as a cutoff to obtain the average slope if the location of a specific public drinking water intake or fish and wildlife and sensitive environment is unknown).

(4) If the Normal Pool Elevation is not available, the elevation contours can be used to find the slope. Determine elevation of the water at the point of discharge from the facility (A). Determine the elevation of the water at the appropriate distance downstream (B). The formula presented below can be used to calculate the slope.

(5) Determine the distance (in miles) between the facility and the public drinking water intake or fish and wildlife and sensitive environments (C).

(6) Use the following formula to find the slope, which will be a unitless value:

Average Slope=[(A—B) (ft)/C (miles)] x [1 mile/5280 feet]

2.4 If it is not feasible to determine the slope and mid-channel depth by the Chezy-Manning equation, then the river velocity can be approximated on- site. A specific length, such as 100 feet, can be marked off along the shoreline. A float can be dropped into the stream above the mark, and the time required for the float to travel the distance can be used to determine the velocity in feet per second. However, this method will not yield an average velocity for the length of the stream, but a velocity only for the specific location of measurement. In addition, the flow rate will vary depending on weather conditions such as wind and rainfall. It is recommended that facility owners or operators repeat the measurement under a variety of conditions to obtain the most accurate estimate of the surface water velocity under adverse weather conditions.

2.5 The planning distance calculations for moving and still navigable waters are based on worst case discharges of persistent oils. Persistent oils are of concern because they can remain in the water for significant periods of time and can potentially exist in large quantities downstream. Owners or operators of facilities that store persistent as well as non-persistent oils may use a comparable formula. The volume of oil discharged is not included as part of the planning distance calculation for moving navigable waters. Facilities that will meet this substantial harm criterion are those with facility capacities greater than or equal to 1 million gallons. It is assumed that these facilities are capable of having an oil discharge of sufficient quantity to cause injury to fish and wildlife and sensitive environments or shut down a public drinking water intake. While owners or operators of transfer facilities that store greater than or equal to 42,000 gallons are not required to use a planning distance formula for purposes of the substantial harm criteria, they should use a planning distance calculation in the development of facility-specific response plans.

TABLE 3.—SPECIFIED TIME INTERVALS

Operating areas	Substantial harm planning time (hrs)
Higher volume port area	12 hour arrival+3 hour deployment=15 hours.
Great Lakes.	24 hour arrival+3 hour deployment=27 hours.
All other rivers and canals, inland, and near-shore areas.	24 hour arrival+3 hour deployment=27 hours.

2.6 *Example of the Planning Distance Calculation for Oil Transport on Moving Navigable Waters.* The following example provides a sample calculation using the planning distance formula for a facility discharging oil into the Monongahela River:

(1) Solve for v by evaluating n, r, and s for the Chezy-Manning equation:

Find the roughness coefficient, n, on Table 1 of this attachment for a regular section of a major stream with a top width greater than 100 feet. The top width of the river can be found from the topographic map.

n=0.035.

Find slope, s, where A=727 feet, B=710 feet, and C=25 miles.

Solving:

$s=[(727 \text{ ft}—710 \text{ ft})/25 \text{ miles}] \times [1 \text{ mile}/5280 \text{ feet}]=1.3\times10^{-4}$

The average mid-channel depth is found by averaging the mid-channel depth for each mile along the length of the river between the facility and the public drinking water intake or the fish or wildlife or sensitive environment (or 20 miles downstream if applicable). This value is multiplied by 0.667 to obtain the hydraulic radius. The mid-channel depth is found by obtaining values for r and s from the sources shown in Table 2 for the Monongahela River.

Solving:

$r=0.667\times20 \text{ feet}=13.33 \text{ feet}$

Solve for v using:

$v=1.5/n\times r^{2/3}\times s^{1/2}$:

$v=[1.5/0.035]\times(13.33)^{2/3}\times(1.3\times10^{-4})^{1/2}$

v=2.73 feet/second

comparable formula. The volume of oil discharged is not included as part of the planning distance calculation for moving navigable waters. Facilities that will meet this substantial harm criterion are those with facility capacities greater than or equal to 1 million gallons. It is assumed that these facilities are capable of having an oil discharge of sufficient quantity to cause injury to fish and wildlife and sensitive environments or shut down a public drinking water intake. While owners or operators of transfer facilities that store greater than or equal to 42,000 gallons are not required to use a planning distance formula for purposes of the substantial harm criteria, they should use a planning distance calculation in the development of facility-specific response plans.

TABLE 3.—SPECIFIED TIME INTERVALS

Operating areas	Substantial harm planning time (hrs)
Higher volume port area.	12 hour arrival+3 hour deployment=15 hours.
Great Lakes.	24 hour arrival+3 hour deployment=27 hours.
All other rivers and canals, inland, and near-shore areas.	24 hour arrival+3 hour deployment=27 hours.

2.6 *Example of the Planning Distance Calculation for Oil Transport on Moving Navigable Waters.* The following example provides a sample calculation using the planning distance formula for a facility discharging oil into the Monongahela River:

(1) Solve for v by evaluating n, r, and s for the Chezy-Manning equation:

Find the roughness coefficient, n, on Table 1 of this attachment for a regular section of a major stream with a top width greater than 100 feet. The top width of the river can be found from the topographic map.

n=0.035.

Find slope, s, where A=727 feet, B=710 feet, and C=25 miles.

Solving:

$s=[(727\ ft-710\ ft)/25\ miles] \times [1\ mile/5280\ feet]=1.3\times10^{-4}$

The average mid-channel depth is found by averaging the mid-channel depth for each mile along the length of the river between the facility and the public drinking water intake or the fish or wildlife or sensitive environment (or 20 miles downstream if applicable). This value is multiplied by 0.667 to obtain the hydraulic radius. The mid-channel depth is found by obtaining values for r and s from the sources shown in Table 2 for the Monongahela River.

Solving:

$r=0.667\times20\ feet=13.33\ feet$

Solve for v using:

$v=1.5/n\times r^{2/3}\times s^{1/2}$:

$v=[1.5/0.035]\times(13.33)^{2/3}\times(1.3\times10^{-4})^{1/2}$

$v=2.73$ feet/second

(2) Find t from Table 3 of this attachment. The Monongahela River's resource response time is 27 hours.

(3) Solve for planning distance, d:

$d=v \times t \times c$

$d=(2.73\ ft/sec)\times(27\ hours)\times(0.68\ sec\cdot mile/hr\cdot ft)$

$d=50$ miles

Therefore, 50 miles downstream is the appropriate planning distance for this facility.

3.0 Oil Transport on Still Water

3.1 For bodies of water including lakes or ponds that do not have a measurable velocity, the spreading of the oil over the surface must be considered. Owners or operators of facilities located next to still water bodies may use a comparable means of calculating the planning distance. If a comparable formula is used, documentation of the reliability and analytical soundness of the comparable calculation must be attached to the response plan cover sheet.

3.2 *Example of the Planning Distance Calculation for Oil Transport on Still Water.* To assist those facilities which could potentially discharge into a still body of water, the following analysis was performed to provide an example of the type of formula that may be used to calculate the planning distance. For this example, a worst case discharge of 2,000,000 gallons is used.

(1) The surface area in square feet covered by an oil spill on still water, A1, can be determined by the following formula,[2] where V is the volume of the spill in gallons and C is a constant conversion factor:

$A_1=10^5\times V^{3/4}\times C$

$C=0.1643$

$A_1=10^5\times(2{,}000{,}000\ gallons)^{3/4}\times(0.1643)$

$A_1=8.74\times10^8\ ft^2$

(2) The spreading formula is based on the theoretical condition that the oil will spread uniformly in all directions forming a circle. In reality, the outfall of the discharge will direct the oil to the surface of the water where it intersects the shoreline. Although the oil will not spread uniformly in all directions, it is assumed that the discharge will spread from the shoreline into a semi-circle (this assumption does not account for winds or wave action).

(3) The area of a circle=πr^2

(4) To account for the assumption that oil will spread in a semi-circular shape, the area of a circle is divided by 2 and is designated as A_2.

$A_2=(\pi r^2)/2$

Solving for the radius, r, using the relationship $A_1=A_2$: $8.74\times10^8\ ft^2=(\pi r^2)/2$

Therefore, r=23,586 ft

r=23,586 ft+5,280 ft/mile=4.5 miles

Assuming a 20 knot wind under storm conditions:

1 knot=1.15 miles/hour

20 knots×1.15 miles/hour/knot=23 miles/hr

Assuming that the oil slick moves at 3 percent of the wind's speed:[3]

23 miles/hour×0.03=0.69 miles/hour

(5) To estimate the distance that the oil will travel, use the times required for response resources to arrive at different geographic locations as shown in Table 3 of this attachment.

For example:

For Higher Volume Port Areas: 15 hrs×0.69 miles/hr=10.4 miles

For Great Lakes and all other areas: 27 hrs×0.69 miles/hr=18.6 miles

(6) The total distance that the oil will travel from the point of discharge, including the distance due to spreading, is calculated as follows:

Higher Volume Port Areas: d=10.4+4.5 miles or approximately 15 miles

Great Lakes and all other areas: d=18.6+4.5 miles or approximately 23 miles

4.0 Oil Transport on Tidal-Influence Areas

4.1 The planning distance method for tidal influence navigable water is based on worst case discharges of persistent and non-persistent oils. Persistent oils are of primary concern because they can potentially cause harm over a greater distance. For persistent oils discharged into tidal waters, the planning distance is 15 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 15 miles, whichever is less, during flood tide.

4.2 For non-persistent oils discharged into tidal waters, the planning distance is 5 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 5 miles, whichever is less, during flood tide.

4.3 *Example of Determining the Planning Distance for Two Types of Navigable Water Conditions.* Below is an example of how to determine the proper planning distance when a facility could impact two types of navigable water conditions: moving water and tidal water.

(1) Facility X stores persistent oil and is located downstream from locks along a slow moving river which is affected by tides. The river velocity, v, is determined to be 0.5 feet/second from the Chezy-Manning equation used to calculate oil transport on moving navigable waters. The specified time interval, t, obtained from Table 3 of this attachment for river areas is 27 hours. Therefore, solving for the planning distance, d:

$d=v \times t \times c$

$d=(0.5\ ft/sec) \times (27\ hours) \times (0.68\ sec\cdot mile/hr\cdot ft)$

$d=9.18$ miles.

(2) However, the planning distance for maximum tidal influence down current during ebb tide is 15 miles, which is greater than the calculated 9.18 miles. Therefore, 15 miles downstream is the appropriate planning distance for this facility.

5.0 Oil Transport Over Land

5.1 Facility owners or operators must evaluate the potential for oil to be

[2] Huang, J.C. and Monastero, F.C., 1982. *Review of the State-of-the-Art of Oil Pollution Models.* Final report submitted to the American Petroleum Institute by Raytheon Ocean Systems, Co., East Providence, Rhode Island.

[3] *Oil Spill Prevention & Control.* National Spill Control School, Corpus Christi State University, Thirteenth Edition, May 1990.

transported over land to navigable waters of the United States. The owner or operator must evaluate the likelihood that portions of a worst case discharge would reach navigable waters via open channel flow or from sheet flow across the land, or be prevented from reaching navigable waters when trapped in natural or man-made depressions excluding secondary containment structures.

5.2 As discharged oil travels over land, it may enter a storm drain or open concrete channel intended for drainage. It is assumed that once oil reaches such an inlet, it will flow into the receiving navigable water. During a storm event, it is highly probable that the oil will either flow into the drainage structures or follow the natural contours of the land and flow into the navigable water. Expected minimum and maximum velocities are provided as examples of open concrete channel and pipe flow. The ranges listed below reflect minimum and maximum velocities used as design criteria.[4] The calculation below demonstrates that the time required for oil to travel through a storm drain or open concrete channel to navigable water is negligible and can be considered instantaneous. The velocities are:
For open concrete channels:
maximum velocity=25 feet per second
minimum velocity=3 feet per second
For storm drains:
maximum velocity=25 feet per second
minimum velocity=2 feet per second

5.3 Assuming a length of 0.5 mile from the point of discharge through an open concrete channel or concrete storm drain to a navigable water, the travel times (distance/velocity) are:

1.8 minutes at a velocity of 25 feet per second
14.7 minutes at a velocity of 3 feet per second
22.0 minutes for at a velocity of 2 feet per second

5.4 The distances that shall be considered to determine the planning distance are illustrated in Figure C-I of this attachment. The relevant distances can be described as follows:

D1=Distance from the nearest opportunity for discharge, X_1, to a storm drain or an open concrete channel leading to navigable water.
D2=Distance through the storm drain or open concrete channel to navigable water.
D3=Distance downstream from the outfall within which fish and wildlife and sensitive environments could be injured or a public drinking water intake would be shut down as determined by the planning distance formula.
D4=Distance from the nearest opportunity for discharge, X_2, to fish and wildlife and sensitive environments not bordering navigable water.

5.5 A facility owner or operator whose nearest opportunity for discharge is located within 0.5 mile of a navigable water must complete the planning distance calculation (D3) for the type of navigable water near the facility or use a comparable formula.

5.6 A facility that is located at a distance greater than 0.5 mile from a navigable water must also calculate a planning distance (D3) if it is in close proximity (i.e., D1 is less than 0.5 mile and other factors are conducive to oil travel over land) to storm drains that flow to navigable waters. Factors to be considered in assessing oil transport over land to storm drains shall include the topography of the surrounding area, drainage patterns, man-made barriers (excluding secondary containment structures), and soil distribution and porosity. Storm drains or concrete drainage channels that are located in close proximity to the facility can provide a direct pathway to navigable waters, regardless of the length of the drainage pipe. If D1 is less than or equal to 0.5 mile, a discharge from the facility could pose substantial harm because the time to travel the distance from the storm drain to the navigable water (D2) is virtually instantaneous.

5.7 A facility's proximity to fish and wildlife and sensitive environments not bordering a navigable water, as depicted as D4 in Figure C–I of this attachment, must also be considered, regardless of the distance from the facility to navigable waters. Factors to be considered in assessing oil transport over land to fish and wildlife and sensitive environments should include the topography of the surrounding area, drainage patterns, man-made barriers (excluding secondary containment structures), and soil distribution and porosity.

5.8 If a facility is not found to pose substantial harm to fish and wildlife and sensitive environments not bordering navigable waters via oil transport on land, then supporting documentation should be maintained at the facility. However, such documentation should be submitted with the response plan if a facility is found to pose substantial harm.

BILLING CODE 6560-50-P

[4] The design velocities were obtained from Howard County, Maryland Department of Public Works' Storm Drainage Design Manual.

Figure C - I

To Determine the Planning Distance

Distances that Shall Be Considered to D

Top View

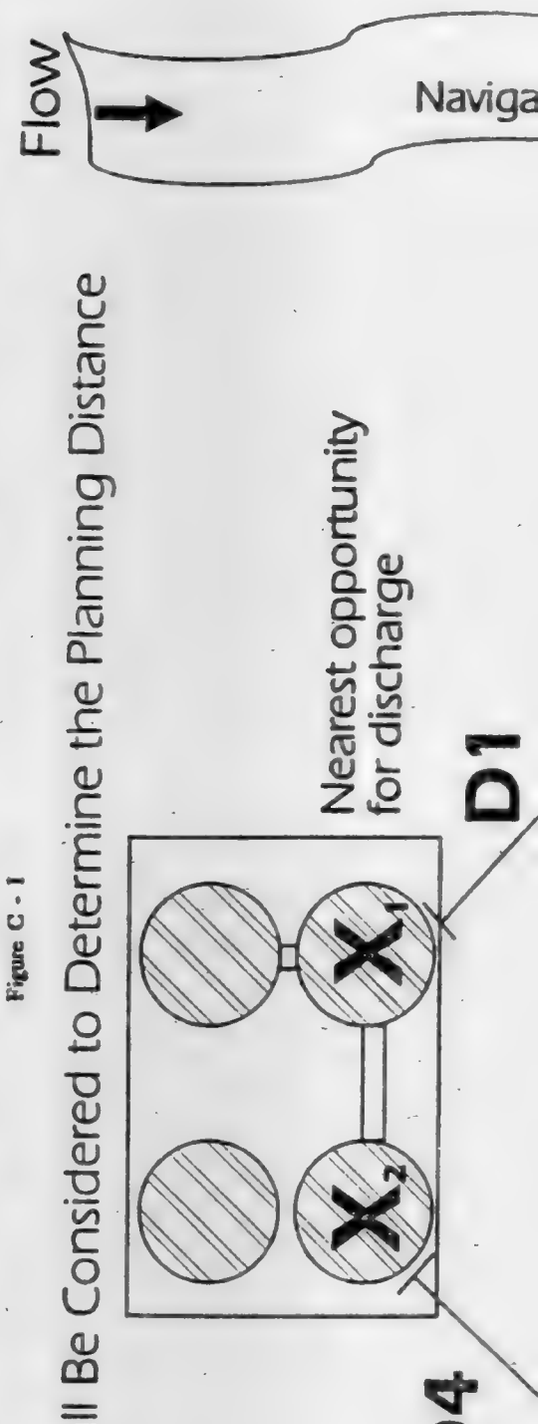

Figure C - 1

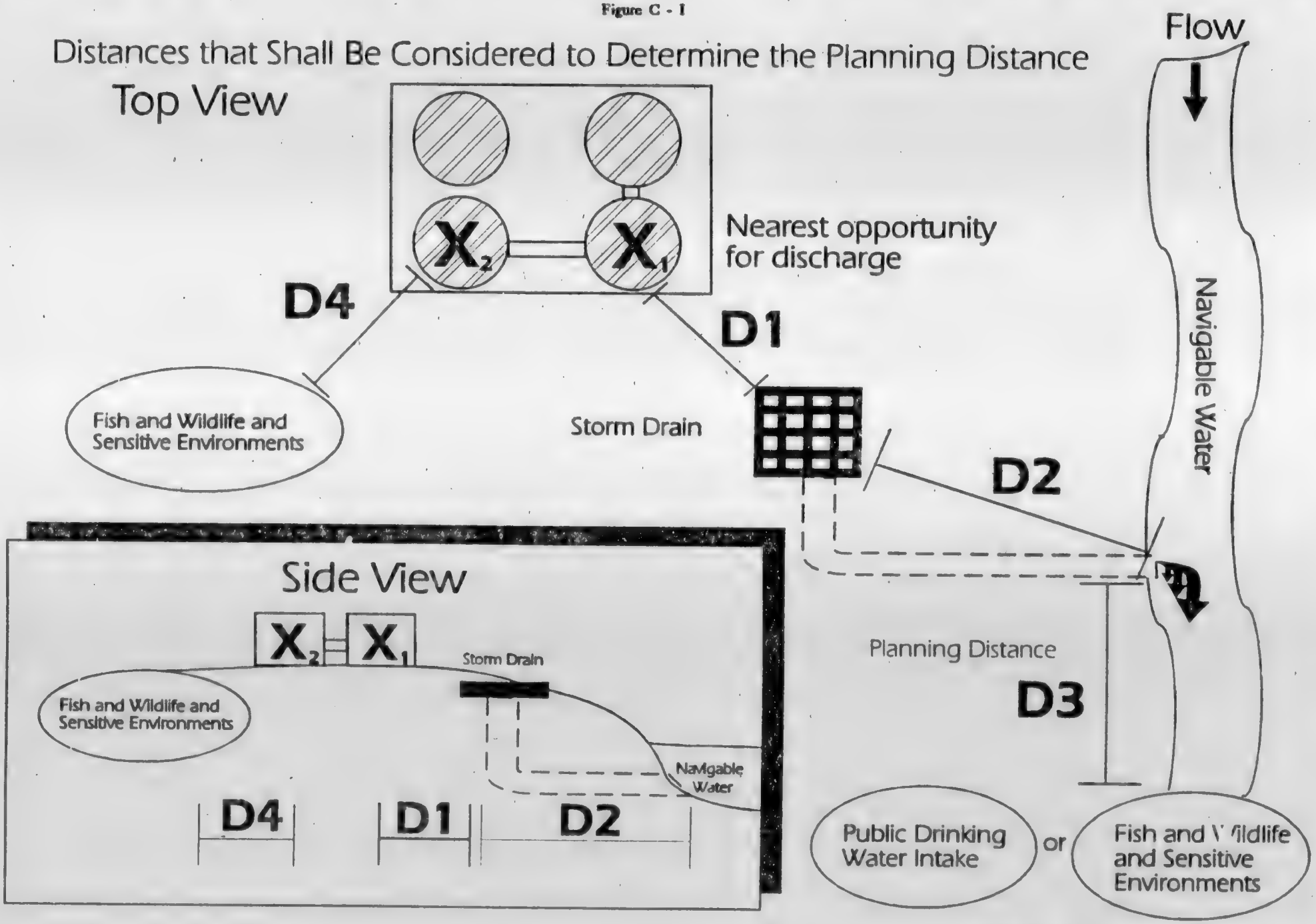

** Not to scale **

Appendix D to Part 112—Determination of a Worst Case Discharge Planning Volume

1.0 Instructions

1.1 An owner or operator is required to complete this worksheet if the facility meets the criteria, as presented in Appendix C to this part, or it is determined by the RA that the facility could cause substantial harm to the environment. The calculation of a worst case discharge planning volume is used for emergency planning purposes, and is required in 40 CFR 112.20 for facility owners or operators who must prepare a response plan. When planning for the amount of resources and equipment necessary to respond to the worst case discharge planning volume, adverse weather conditions must be taken into consideration. An owner or operator is required to determine the facility's worst case discharge planning volume from either Part A of this appendix for an onshore storage facility, or Part B of this appendix for an onshore production facility. The worksheet considers the provision of adequate secondary containment at a facility.

1.2 For onshore storage facilities and production facilities, permanently manifolded oil storage tanks are defined as tanks that are designed, installed, and/or operated in such a manner that the multiple tanks function as one storage unit (i.e., multiple tank volumes are equalized). In a worst case discharge scenario, a single failure could cause the discharge of the contents of more than one tank. The owner or operator must provide evidence in the response plan that tanks with common piping or piping systems are not operated as one unit. If such evidence is provided and is acceptable to the RA, the worst case discharge planning volume would be based on the capacity of the largest oil storage tank within a common secondary containment area or the largest oil storage tank within a single secondary containment area, whichever is greater. For permanently manifolded tanks that function as one oil storage unit, the worst case discharge planning volume would be based on the combined oil storage capacity of all manifolded tanks or the capacity of the largest single oil storage tank within a secondary containment area, whichever is greater. For purposes of this rule, permanently manifolded tanks that are separated by internal divisions for each tank are considered to be single tanks and individual manifolded tank volumes are not combined.

1.3 For production facilities, the presence of exploratory wells, production wells, and oil storage tanks must be considered in the calculation. Part B of this appendix takes these additional factors into consideration and provides steps for their inclusion in the total worst case discharge planning volume. Onshore oil production facilities may include all wells, flowlines, separation equipment, storage facilities, gathering lines, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator. Although a potential worst case discharge planning volume is calculated within each section of the worksheet, the final worst case amount depends on the risk parameter that results in the greatest volume.

1.4 Marine transportation-related transfer facilities that contain fixed aboveground onshore structures used for bulk oil storage are jointly regulated by EPA and the U.S. Coast Guard (USCG), and are termed "complexes." Because the USCG also requires response plans from transportation-related facilities to address a worst case discharge of oil, a separate calculation for the worst case discharge planning volume for USCG-related facilities is included in the USCG IFR (see Appendix E to this part, section 10, for availability). All complexes that are jointly regulated by EPA and the USCG must compare both calculations for worst case discharge planning volume derived by using the EPA and USCG methodologies and plan for whichever volume is greater.

PART A: WORST CASE DISCHARGE PLANNING VOLUME CALCULATION FOR ONSHORE STORAGE FACILITIES [1]

Part A of this worksheet is to be completed by the owner or operator of an SPCC-regulated facility (excluding oil production facilities) if the facility meets the criteria as presented in Appendix C to this part, or if it is determined by the RA that the facility could cause substantial harm to the environment. If you are the owner or operator of a production facility, please proceed to Part B of this worksheet.

A.1 SINGLE-TANK FACILITIES

For facilities containing only one aboveground oil storage tank, the worst case discharge planning volume equals the capacity of the oil storage tank. If adequate secondary containment (sufficiently large to contain the capacity of the aboveground oil storage tank plus sufficient freeboard to allow for precipitation) exists for the oil storage tank, multiply the capacity of the tank by 0.8.

(1) FINAL WORST CASE VOLUME: _____ GAL

(2) Do not proceed further.

A.2 SECONDARY CONTAINMENT—MULTIPLE-TANK FACILITIES

Are *all* aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility *without* adequate secondary containment? [2]

_____ (Y/N)

A.2.1 If the answer is yes, the final worst case discharge planning volume equals the *total aboveground oil storage capacity at the facility.*

(1) FINAL WORST CASE VOLUME: _____ GAL

(2) Do not proceed further.

A.2.2 If the answer is no, calculate the total aboveground oil storage capacity of tanks without adequate secondary containment. If *all* aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility have adequate secondary containment, ENTER "0" (zero).

_____ GAL

A.2.3 Calculate the capacity of the largest single aboveground oil storage tank within an adequate secondary containment area or the combined capacity of a group of aboveground oil storage tanks permanently manifolded together, whichever is greater, PLUS THE VOLUME FROM QUESTION A2(b).

FINAL WORST CASE VOLUME: [3] _____ GAL

PART B: WORST CASE DISCHARGE PLANNING VOLUME CALCULATION FOR ONSHORE PRODUCTION FACILITIES

Part B of this worksheet is to be completed by the owner or operator of an SPCC-regulated oil production facility if the facility meets the criteria presented in Appendix C to this part, or if it is determined by the RA that the facility could cause substantial harm. A production facility consists of all wells (producing and exploratory) and related equipment in a single geographical oil or gas field operated by a single operator.

B.1 SINGLE-TANK FACILITIES

B.1.1 For facilities containing only one aboveground oil storage tank, the worst case discharge planning volume equals the capacity of the aboveground oil storage tank plus the production volume of the well with the highest output at the facility. If adequate secondary containment (sufficiently large to contain the capacity of the aboveground oil storage tank plus sufficient freeboard to allow for precipitation) exists for the storage tank, multiply the capacity of the tank by 0.8.

B.1.2 For facilities with production wells producing by pumping, if the rate of the well with the highest output is known and the number of days the facility is unattended can be predicted, then the production volume is equal to the pumping rate of the well multiplied by the greatest number of days the facility is unattended.

B.1.3 If the pumping rate of the well with the highest output is estimated or the maximum number of days the facility is unattended is estimated, then the production volume is determined from the pumping rate of the well multiplied by 1.5 times the greatest number of days that the facility has been or is expected to be unattended.

B.1.4 Attachment D–1 to this appendix provides methods for calculating the production volume for exploratory wells and production wells producing under pressure.

(1) FINAL WORST CASE VOLUME: _____ GAL

(2) Do not proceed further.

B.2 SECONDARY CONTAINMENT—MULTIPLE-TANK FACILITIES

Are *all* aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility *without* adequate secondary containment?

_____ (Y/N)

B.2.1 If the answer is yes, the final worst case volume equals the total aboveground oil storage capacity without adequate secondary containment plus the production volume of the well with the highest output at the facility.

(1) For facilities with production wells producing by pumping, if the rate of the well with the highest output is known and the number of days the facility is unattended can be predicted, then the production volume is equal to the pumping rate of the well multiplied by the greatest number of days the facility is unattended.

(2) If the pumping rate of the well with the highest output is estimated or the maximum number of days the facility is unattended is estimated, then the production volume is determined from the pumping rate of the well multiplied by 1.5 times the greatest number of days that the facility has been or is expected to be unattended.

(3) Attachment D–1 to this appendix provides methods for calculating the production volumes for exploratory wells and production wells producing under pressure.

(A) FINAL WORST CASE VOLUME _____ GAL

(B) Do not proceed further.

B.2.2 If the answer is no, calculate the total aboveground oil storage capacity of tanks without adequate secondary containment. If *all* aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility have adequate secondary containment, ENTER "0" (zero).

_____ GAL

B.2.3 Calculate the capacity of the largest single aboveground oil storage tank within an adequate secondary containment area or the combined capacity of a group of aboveground oil storage tanks permanently manifolded together, whichever is greater, plus the production volume of the well with the highest output, PLUS THE VOLUME FROM QUESTION B2(b). Attachment D–1 provides methods for calculating the production volumes for exploratory wells and production wells producing under pressure

(1) FINAL WORST CASE VOLUME: [4] _____ GAL

(2) Do not proceed further.

Attachments to Appendix D

Attachment D–I—Methods to Calculate Production Volumes for Production Facilities With Exploratory Wells or Production Wells Producing Under Pressure

1.0. Introduction

The owner or operator of a production facility with exploratory wells or production wells producing under pressure shall compare the well rate of the highest output well (rate of well), in barrels per day, to the ability of response equipment and personnel to recover the volume of oil that could be discharged (rate of recovery), in barrels per

[1] "Storage facilities" represent all facilities subject to this part, excluding oil production facilities.

[2] Secondary containment is defined in 40 CFR 112.7(e)(2). Acceptable methods and structures for containment are also given in 40 CFR 112.7(c)(1).

[3] All complexes that are jointly regulated by EPA and the USCG must also calculate the worst case discharge planning volume for the transportation-related portions of the facility and plan for whichever volume is greater.

[4] All complexes that are jointly regulated by EPA and the USCG must also calculate the worst case discharge planning volume for the transportation-related portions of the facility and plan for whichever volume is greater

_____ (Y/N)

B.2.1 If the answer is yes, the final worst case volume equals the total aboveground oil storage capacity without adequate secondary containment plus the production volume of the well with the highest output at the facility.

(1) For facilities with production wells producing by pumping, if the rate of the well with the highest output is known and the number of days the facility is unattended can be predicted, then the production volume is equal to the pumping rate of the well multiplied by the greatest number of days the facility is unattended.

(2) If the pumping rate of the well with the highest output is estimated or the maximum number of days the facility is unattended is estimated, then the production volume is determined from the pumping rate of the well multiplied by 1.5 times the greatest number of days that the facility has been or is expected to be unattended.

(3) Attachment D–1 to this appendix provides methods for calculating the production volumes for exploratory wells and production wells producing under pressure.

(A) FINAL WORST CASE VOLUME

_____ GAL

(B) Do not proceed further.

B.2.2 If the answer is no, calculate the total aboveground oil storage capacity of tanks without adequate secondary containment. If *all* aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility have adequate secondary containment, ENTER "0" (zero).

_____ GAL

B.2.3 Calculate the capacity of the largest single aboveground oil storage tank within an adequate secondary containment area or the combined capacity of a group of aboveground oil storage tanks permanently manifolded together, whichever is greater, plus the production volume of the well with the highest output, PLUS THE VOLUME FROM QUESTION B2(b). Attachment D–1 provides methods for calculating the production volumes for exploratory wells and production wells producing under pressure

(1) FINAL WORST CASE VOLUME: [4]

_____ GAL

(2) Do not proceed further.

Attachments to Appendix D

Attachment D–I—Methods to Calculate Production Volumes for Production Facilities With Exploratory Wells or Production Wells Producing Under Pressure

1.0 Introduction

The owner or operator of a production facility with exploratory wells or production wells producing under pressure shall compare the well rate of the highest output well (rate of well), in barrels per day, to the ability of response equipment and personnel to recover the volume of oil that could be discharged (rate of recovery), in barrels per day. The result of this comparison will determine the method used to calculate the production volume for the production facility. This production volume is to be used to calculate the worst case discharge planning volume in Part B of this appendix

2.0 Description of Methods

2.1 Method A

If the well rate would overwhelm the response efforts (i.e., rate of well/rate of recovery ≥ 1), then the production volume would be the 30-day forecasted well rate for a well 10,000 feet deep or less, or the 45-day forecasted well rate for a well deeper than 10,000 feet.

(1) For wells 10,000 feet deep or less:
Production volume=30 days × rate of well

(2) For wells deeper than 10,000 feet:
Production volume=45 days × rate of well.

2.2 Method B

2.2.1 If the rate of recovery would be greater than the well rate (i.e., rate of well/rate of recovery <1), then the production volume would equal the sum of two terms:

Production volume=discharge volume$_1$ + discharge volume$_2$

2.2.2 The first term represents the volume of the oil discharged from the well between the time of the blowout and the time the response resources are on scene and recovering oil (discharge volume$_1$).

Discharge volume$_1$=(days unattended+days to respond) × (rate of well)

2.2.3 The second term represents the volume of oil discharged from the well after the response resources begin operating until the spill is stopped, adjusted for the recovery rate of the response resources (discharge volume$_2$).

(1) For wells 10,000 feet deep or less:
Discharge volume$_2$=[30 days—(days unattended + days to respond)] × (rate of well) × (rate of well/rate of recovery)

(2) For wells deeper than 10,000 feet:
Discharge volume$_2$=[45 days—(days unattended + days to respond)] × (rate of well) × (rate of well/rate of recovery)

3.0 Example

3.1 A facility consists of two production wells producing under pressure, which are both less than 10,000 feet deep. The well rate of well A is 5 barrels per day, and the well rate of well B is 10 barrels per day. The facility is unattended for a maximum of 7 days. The facility operator estimates that it will take 2 days to have response equipment and personnel on scene and responding to a blowout, and that the projected rate of recovery will be 20 barrels per day.

(1) First, the facility operator determines that the highest output well is well B. The facility operator calculates the ratio of the rate of well to the rate of recovery:

10 barrels per day/20 barrels per day=0.5

Because the ratio is less than one, the facility operator will use Method B to calculate the production volume.

(2) The first term of the equation is:

Discharge volume$_1$=(7 days + 2 days) × (10 barrels per day)=90 barrels

(3) The second term of the equation is:

Discharge volume$_2$=[30 days—(7 days + 2 days)] × (10 barrels per day) × (0.5)=105 barrels

(4) Therefore, the production volume is:

Production volume=90 barrels + 105 barrels=195 barrels

3.2 If the recovery rate was 5 barrels per day, the ratio of rate of well to rate of recovery would be 2, so the facility operator would use Method A. The production volume would have been:

30 days × 10 barrels per day=300 barrels

Appendix E to Part 112—Determination and Evaluation of Required Response Resources for Facility Response Plans

1.0 Purpose and Definitions

1.1 The purpose of this appendix is to describe the procedures to identify response resources to meet the requirements of § 112.20. To identify response resources to meet the facility response plan requirements of 40 CFR 112.20(h), owners or operators shall follow this appendix or, where not appropriate, shall clearly demonstrate in the response plan why use of this appendix is not appropriate at the facility and make comparable arrangements for response resources.

1.2 Definitions.

1.2.1 *Nearshore* is an operating area defined as extending seaward 12 miles from the boundary lines defined in 46 CFR part 7 except in the Gulf of Mexico. In the Gulf of Mexico, it means the area extending 12 miles from the line of demarcation (COLREG lines) defined in 49 CFR 80.740 and 80.850.

1.2.2 *Non-persistent oils* or *Group 1 oils* include:

(1) A petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions:

(A) At least 50 percent of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and

(B) At least 95 percent of which by volume, distill at a temperature of 370 degrees C (700 degrees F); and

(2) A non-petroleum oil with a specific gravity less than 0.8.

1.2.3 *Non-petroleum oil* is oil of any kind that is not petroleum-based. It includes, but is not limited to, animal and vegetable oils.

1.2.4 *Ocean* means the nearshore area.

1.2.5 *Operating area* means Rivers and Canals, Inland, Nearshore, and Great Lakes geographic location(s) in which a facility is handling, storing, or transporting oil.

1.2.6 *Operating environment* means Rivers and Canals, Inland, Great Lakes, or Ocean. These terms are used to define the conditions in which response equipment is designed to function.

1.2.7 *Persistent oils* include:

[4] All complexes that are jointly regulated by EPA and the USCG must also calculate the worst case discharge planning volume for the transportation-related portions of the facility and plan for whichever volume is greater

(1) A petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. Persistent oils are further classified based on specific gravity as follows:

(A) Group 2—specific gravity less than 0.85;

(B) Group 3—specific gravity equal to or greater than 0.85 and less than 0.95;

(C) Group 4—specific gravity equal to or greater than 0.95 and less than 1.0; or

(D) Group 5—specific gravity equal to or greater than 1.0.

(2) A non-petroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(A) Group 2—specific gravity equal to or greater than 0.8 and less than 0.85;

(B) Group 3—specific gravity equal to or greater than 0.85 and less than 0.95;

(C) Group 4—specific gravity equal to or greater than 0.95 and less than 1.0; or

(D) Group 5—specific gravity equal to or greater than 1.0.

1.2.8 Other definitions are included in § 112.2, section 1.2 of Appendices C and E, and section 3.0 of Appendix F.

2.0 Equipment Operability and Readiness

2.1 All equipment identified in a response plan must be designed to operate in the conditions expected in the facility's geographic area (i.e., operating environment). These conditions vary widely based on location and season. Therefore, it is difficult to identify a single stockpile of response equipment that will function effectively in each geographic location (i.e., operating area).

2.2 Facilities handling, storing, or transporting oil in more than one operating environment as indicated in Table 1 of this appendix must identify equipment capable of successfully functioning in each operating environment.

2.3 When identifying equipment for the response plan (based on the use of this appendix), a facility owner or operator must consider the inherent limitations of the operability of equipment components and response systems. The criteria in Table 1 of this appendix shall be used to evaluate the operability in a given environment. These criteria reflect the general conditions in certain operating environments.

2.3.1 The Regional Administrator may require documentation that the boom identified in a facility response plan meets the criteria in Table 1 of this appendix. Absent acceptable documentation, the Regional Administrator may require that the boom be tested to demonstrate that it meets the criteria in Table 1 of this appendix. Testing must be in accordance with ASTM F 715, ASTM F 989, or other tests approved by EPA as deemed appropriate (see Appendix E to this part, section 10, for general availability of documents).

2.4 Table 1 of this appendix lists criteria for oil recovery devices and boom. All other equipment necessary to sustain or support response operations in an operating environment must be designed to function in the same conditions. For example, boats that deploy or support skimmers or boom must be capable of being safely operated in the significant wave heights listed for the applicable operating environment.

2.5 A facility owner or operator shall refer to the applicable Area Contingency Plan (ACP), where available, to determine if ice, debris, and weather-related visibility are significant factors to evaluate the operability of equipment. The ACP may also identify the average temperature ranges expected in the facility's operating area. All equipment identified in a response plan must be designed to operate within those conditions or ranges.

2.6 This appendix provides information on response resource mobilization and response times. The distance of the facility from the storage location of the response resources must be used to determine whether the resources can arrive on-scene within the stated time. A facility owner or operator shall include the time for notification, mobilization, and travel of resources identified to meet the medium and Tier 1 worst case discharge requirements identified in section 4.3 of this appendix (for medium discharges) and section 5.3 of this appendix (for worst case discharges). The facility owner or operator must plan for notification and mobilization of Tier 2 and 3 response resources as necessary to meet the requirements for arrival on-scene in accordance with section 5.3 of this appendix. An on-water speed of 5 knots and a land speed of 35 miles per hour is assumed, unless the facility owner or operator can demonstrate otherwise.

2.7 In identifying equipment, the facility owner or operator shall list the storage location, quantity, and manufacturer's make and model. For oil recovery devices, the effective daily recovery capacity, as determined using section 6 of this appendix, must be included. For boom, the overall boom height (draft and freeboard) shall be included. A facility owner or operator is responsible for ensuring that the identified boom has compatible connectors.

3.0 Determining Response Resources Required for Small Discharges

3.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a small discharge. A small discharge is defined as any discharge volume less than or equal to 2,100 gallons, but not to exceed the calculated worst case discharge. The equipment must be designed to function in the operating environment at the point of expected use.

3.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the transportation-related transfer portion of the facility. The USCG planning level that corresponds to EPA's "small discharge" is termed "the average most probable discharge." The USCG revisions to 33 CFR part 154 define "the average most probable discharge" as a discharge of 50 barrels (2,100 gallons). Owners or operators of complexes must compare oil spill volumes for a small discharge and an average most probable discharge and plan for whichever quantity is greater.

3.3 The response resources shall, as appropriate, include:

3.3.1 One thousand feet of containment boom (or, for complexes with marine transfer components, 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater), and a means of deploying it within 1 hour of the discovery of a spill;

3.3.2 Oil recovery devices with an effective daily recovery capacity equal to the amount of oil discharged in a small discharge or greater which is available at the facility within 2 hours of the detection of an oil discharge; and

3.3.3 Oil storage capacity for recovered oily material indicated in section 9.2 of this appendix.

4.0 Determining Response Resources Required for Medium Discharges

4.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a medium discharge of oil for that facility. This will require response resources capable of containing and collecting up to 36,000 gallons of oil or 10 percent of the worst case discharge, whichever is less. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1 of this appendix.

4.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the transportation-related transfer portion of the facility. The USCG planning level that corresponds to EPA's "medium discharge" is termed "the maximum most probable discharge." The USCG revisions to 33 CFR part 154 define "the maximum most probable discharge" as a discharge of 1,200 barrels (50,400 gallons) or 10 percent of the worst case discharge, whichever is less. Owners or operators of complexes must compare spill volumes for a medium discharge and a maximum most probable discharge and plan for whichever quantity is greater.

4.3 Oil recovery devices identified to meet the applicable medium discharge volume planning criteria must be located such that they are capable of arriving on-scene within 6 hours in higher volume port areas and the Great Lakes and within 12 hours in all other areas. Higher volume port areas and Great Lakes areas are defined in section 1.2 of Appendix C to this part.

4.4 Because rapid control, containment, and removal of oil are critical to reduce spill impact, the owner or operator must determine response resources using an effective daily recovery capacity for oil recovery devices equal to 50 percent of the planning volume applicable for the facility as determined in section 4.1 of this appendix. The effective daily recovery capacity for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

4.5 In addition to oil recovery capacity, the plan shall, as appropriate, identify sufficient quantity of containment boom available, by contract or other approved means as described in § 112.2, to arrive within the required response times for oil collection and containment and for protection of fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable ACP. While the regulation does not set required quantities of boom for oil collection and containment, the response plan shall identify and ensure, by contract or other approved means as described in § 112.2, the availability of the quantity of boom identified in the plan for this purpose.

4.6 The plan must indicate the availability of temporary storage capacity to meet section 9.2 of this appendix. If available storage capacity is insufficient to meet this level, then the effective daily recovery capacity must be derated (downgraded) to the limits of the available storage capacity.

4.7 The following is an example of a medium discharge volume planning calculation for equipment identification in a higher volume port area: The facility's largest aboveground storage tank volume is 840,000 gallons. Ten percent of this capacity is 84,000 gallons. Because 10 percent of the facility's largest tank, or 84,000 gallons, is greater than 36,000 gallons, 36,000 gallons is used as the planning volume. The effective daily recovery capacity is 50 percent of the planning volume, or 18,000 gallons per day. The ability of oil recovery devices to meet this capacity must be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on-scene must equal twice the daily recovery capacity as indicated in section 9.2 of this appendix, or 36,000 gallons per day. This is the information the facility owner or operator must use to identify and ensure the availability of the required response resources, by contract or other approved means as described in § 112.2. The facility owner shall also identify how much boom is available for use.

5.0 Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.1 A facility owner or operator shall identify and ensure the availability of, by contract or other approved means as described in § 112.2, sufficient response resources to respond to the worst case discharge of oil to the maximum extent practicable. Section 7 of this appendix describes the method to determine the necessary response resources. A worksheet is provided as Attachment E–1 at the end of this appendix to simplify the procedures involved in calculating the planning volume for response resources for the worst case discharge.

5.2 Complexes that are regulated by EPA and the USCG must also consider planning for the worst case discharge at the transportation-related portion of the facility. The USCG requires that transportation-related facility owners or operators use a different calculation for the worst case discharge in the revisions to 33 CFR part 154.

within the required response times for oil collection and containment and for protection of fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable ACP. While the regulation does not set required quantities of boom for oil collection and containment, the response plan shall identify and ensure, by contract or other approved means as described in § 112.2, the availability of the quantity of boom identified in the plan for this purpose.

4.6 The plan must indicate the availability of temporary storage capacity to meet section 9.2 of this appendix. If available storage capacity is insufficient to meet this level, then the effective daily recovery capacity must be derated (downgraded) to the limits of the available storage capacity.

4.7 The following is an example of a medium discharge volume planning calculation for equipment identification in a higher volume port area: The facility's largest aboveground storage tank volume is 840,000 gallons. Ten percent of this capacity is 84,000 gallons. Because 10 percent of the facility's largest tank, or 84,000 gallons, is greater than 36,000 gallons, 36,000 gallons is used as the planning volume. The effective daily recovery capacity is 50 percent of the planning volume, or 18,000 gallons per day. The ability of oil recovery devices to meet this capacity must be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on-scene must equal twice the daily recovery capacity as indicated in section 9.2 of this appendix, or 36,000 gallons per day. This is the information the facility owner or operator must use to identify and ensure the availability of the required response resources, by contract or other approved means as described in § 112.2. The facility owner shall also identify how much boom is available for use.

5.0 Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.1 A facility owner or operator shall identify and ensure the availability of, by contract or other approved means as described in § 112.2, sufficient response resources to respond to the worst case discharge of oil to the maximum extent practicable. Section 7 of this appendix describes the method to determine the necessary response resources. A worksheet is provided as Attachment E–1 at the end of this appendix to simplify the procedures involved in calculating the planning volume for response resources for the worst case discharge.

5.2 Complexes that are regulated by EPA and the USCG must also consider planning for the worst case discharge at the transportation-related portion of the facility. The USCG requires that transportation-related facility owners or operators use a different calculation for the worst case discharge in the revisions to 33 CFR part 154. Owners or operators of complex facilities that are regulated by EPA and the USCG must compare both calculations of worst case discharge derived by EPA and the USCG and plan for whichever volume is greater.

5.3 Oil spill response resources identified in the response plan and available, by contract or other approved means as described in § 112.2, to meet the applicable worst case discharge planning volume must be located such that they are capable of arriving at the scene of a discharge within the times specified for the applicable response tier listed below:

	Tier 1	Tier 2	Tier 3
Higher volume port areas	6 hrs	30 hrs	54 hrs
Great Lakes	12 hrs	36 hrs	60 hrs
All other river and canal, inland, and near-shore areas	12 hrs	36 hrs	60 hrs

The three levels of response tiers apply to the amount of time in which facility owners or operators must plan for response resources to arrive at the scene of a spill to respond to the worst case discharge planning volume. For example, at a worst case discharge in an inland area, the first tier of response resources (i.e., that amount of on-water and shoreline cleanup capacity necessary to respond to the fraction of the worst case discharge as indicated through the series of steps described in sections 7.2 and 7.3 of this appendix) would arrive at the scene of the discharge within 12 hours; the second tier of response resources would arrive within 36 hours; and the third tier of response resources would arrive within 60 hours.

5.4 The effective daily recovery capacity for oil recovery devices identified in the response plan must be determined using the criteria in section 6 of this appendix. A facility owner or operator shall identify the storage locations of all response resources used for each tier. The owner or operator of a facility whose required daily recovery capacity exceeds the applicable contracting caps in Table 5 of this appendix shall, as appropriate, identify sources of additional equipment, their location, and the arrangements made to obtain this equipment during a response. The owner or operator of a facility whose calculated planning volume exceeds the applicable contracting caps in Table 5 of this appendix shall, as appropriate, identify sources of additional equipment equal to twice the cap listed in Tier 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The resources identified above the cap shall be capable of arriving on-scene not later than the Tier 3 response times in section 5.3 of this appendix. No contract is required. While general listings of available response equipment may be used to identify additional sources (i.e., "public" resources vs. "private" resources), the response plan shall identify the specific sources, locations, and quantities of equipment that a facility owner or operator has considered in his or her planning. When listing USCG-classified oil spill removal organization(s) that have sufficient removal capacity to recover the volume above the response capacity cap for the specific facility, as specified in Table 5 of this appendix, it is not necessary to list specific quantities of equipment.

5.5 A facility owner or operator shall identify the availability of temporary storage capacity to meet section 9.2 of this appendix. If available storage capacity is insufficient, then the effective daily recovery capacity must be derated (downgraded) to the limits of the available storage capacity.

5.6 When selecting response resources necessary to meet the response plan requirements, the facility owner or operator shall, as appropriate, ensure that a portion of those resources is capable of being used in close-to-shore response activities in shallow water. For any EPA-regulated facility that is required to plan for response in shallow water, at least 20 percent of the on-water response equipment identified for the applicable operating area shall, as appropriate, be capable of operating in water of 6 feet or less depth.

5.7 In addition to oil spill recovery devices, a facility owner or operator shall identify sufficient quantities of boom that are available, by contract or other approved means as described in § 112.2, to arrive on-scene within the specified response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the facility-specific information and response strategies employed. A facility owner or operator shall, as appropriate, also identify sufficient quantities of oil containment boom to protect fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability), and the applicable ACP. Refer to this guidance document for the number of days and geographic areas (i.e., operating environments) specified in Table 2 of this appendix.

5.8 A facility owner or operator shall also identify, by contract or other approved means as described in § 112.2, the availability of an oil spill removal organization(s) (as described in § 112.2) capable of responding to a shoreline cleanup operation involving the calculated volume of oil and emulsified oil that might impact the affected shoreline. The volume of oil that shall, as appropriate, be planned for is calculated through the application of factors contained in Tables 2 and 3 of this appendix. The volume calculated from these tables is intended to assist the facility owner or operator to identify an oil spill removal organization with sufficient resources and expertise.

6.0 Determining Effective Daily Recovery Capacity for Oil Recovery Devices

6.1 Oil recovery devices identified by a facility owner or operator must be identified by the manufacturer, model, and effective daily recovery capacity. These capacities must be used to determine whether there is sufficient capacity to meet the applicable planning criteria for a small discharge, a medium discharge, and a worst case discharge to the maximum extent practicable.

6.2 To determine the effective daily recovery capacity of oil recovery devices, the formula listed in section 6.2.1 of this appendix shall be used. This formula considers potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material. The RA may assign a lower efficiency factor to equipment listed in a response plan if it is determined that such a reduction is warranted.

6.2.1 The following formula shall be used to calculate the effective daily recovery capacity:

$R = T \times 24 \text{ hours} \times E$

where:

R—Effective daily recovery capacity;
T—Throughput rate in barrels per hour (nameplate capacity); and
E—20 percent efficiency factor (or lower factor as determined by the Regional Administrator).

6.2.2 For those devices in which the pump limits the throughput of liquid, throughput rate shall be calculated using the pump capacity.

6.2.3 For belt or moptype devices, the throughput rate shall be calculated using the speed of the belt or mop through the device, assumed thickness of oil adhering to or collected by the device, and surface area of the belt or mop. For purposes of this calculation, the assumed thickness of oil will be ¼ inch.

6.2.4 Facility owners or operators that include oil recovery devices whose throughput is not measurable using a pump capacity or belt/mop speed may provide information to support an alternative method of calculation. This information must be submitted following the procedures in section 6.3.2 of this appendix.

6.3 As an alternative to section 6.2 of this appendix, a facility owner or operator may submit adequate evidence that a different effective daily recovery capacity should be applied for a specific oil recovery device. Adequate evidence is actual verified performance data in spill conditions or tests using American Society of Testing and Materials (ASTM) Standard F 631–80, F 808–83 (1988), or an equivalent test approved by EPA as deemed appropriate (see Appendix E to this part, section 10, for general availability of documents).

6.3.1 The following formula must be used to calculate the effective daily recovery capacity under this alternative:

$R = D \times U$

where:

R—Effective daily recovery capacity;
D—Average Oil Recovery Rate in barrels per hour (Item 26 in F 808–83; Item 13.1.15 in F 631–80; or actual performance data); and
U—Hours per day that equipment can operate under spill conditions. Ten hours per day must be used unless a facility owner or operator can demonstrate that the recovery operation can be sustained for longer periods.

6.3.2 A facility owner or operator submitting a response plan shall provide data that supports the effective daily recovery capacities for the oil recovery devices listed. The following is an example of these calculations:

(1) A weir skimmer identified in a response plan has a manufacturer's rated throughput at the pump of 267 gallons per minute (gpm).

267 gpm=381 barrels per hour (bph)
R=381 bph×24 hr/day×0.2=1,829 barrels per day

(2) After testing using ASTM procedures, the skimmer's oil recovery rate is determined to be 220 gpm. The facility owner or operator identifies sufficient resources available to support operations for 12 hours per day.

220 gpm=314 bph
R=314 bph×12 hr/day=3,768 barrels per day

(3) The facility owner or operator will be able to use the higher capacity if sufficient temporary oil storage capacity is available. Determination of alternative efficiency factors under section 6.2 of this appendix or the acceptability of an alternative effective daily recovery capacity under section 6.3 of this appendix will be made by the Regional Administrator as deemed appropriate.

7.0 Calculating Planning Volumes for a Worst Case Discharge

7.1 A facility owner or operator shall plan for a response to the facility's worst case discharge. The planning for on-water oil recovery must take into account a loss of some oil to the environment due to evaporative and natural dissipation, potential increases in volume due to emulsification, and the potential for deposition of oil on the shoreline. The procedures for non-petroleum oils are discussed in section 7.7 of this appendix.

7.2 The following procedures must be used by a facility owner or operator in determining the required on-water oil recovery capacity:

7.2.1 The following must be determined: the worst case discharge volume of oil in the facility; the appropriate group(s) for the types of oil handled, stored, or transported at the facility [persistent (Groups 2, 3, 4, 5) or non-persistent (Group 1)]; and the facility's specific operating area. See sections 1.2.2 and 1.2.7 of this appendix for the definitions of non-persistent and persistent oils, respectively. Facilities that handle, store, or transport oil from different oil groups must calculate each group separately, unless the oil group constitutes 10 percent or less by volume of the facility's total oil storage capacity. This information is to be used with Table 2 of this appendix to determine the percentages of the total volume to be used for removal capacity planning. Table 2 of this appendix divides the volume into three categories: oil lost to the environment; oil deposited on the shoreline; and oil available for on-water recovery.

7.2.2 The on-water oil recovery volume shall, as appropriate, be adjusted using the appropriate emulsification factor found in Table 3 of this appendix. Facilities that handle, store, or transport oil from different petroleum groups must compare the on-water recovery volume for each oil group (unless the oil group constitutes 10 percent or less by volume of the facility's total storage capacity) and use the calculation that results in the largest on-water oil recovery volume to plan for the amount of response resources for a worst case discharge.

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization factor found in Table 4 of this appendix from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted to arrive on-scene within the applicable time for each response tier. Three tiers are specified. For higher volume port areas, the contracted tiers of resources must be located such that they are capable of arriving on-scene within 6 hours for Tier 1, 30 hours for Tier 2, and 54 hours for Tier 3 of the discovery of an oil discharge. For all other rivers and canals, inland, nearshore areas, and the Great Lakes, these tiers are 12, 36, and 60 hours.

7.2.4 The resulting on-water oil recovery capacity in barrels per day for each tier is used to identify response resources necessary to sustain operations in the applicable operating area. The equipment shall be capable of sustaining operations for the time period specified in Table 2 of this appendix. The facility owner or operator shall identify and ensure the availability, by contract or other approved means as described in § 112.2, of sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap specified in Table 5 of this appendix, then a facility owner or operator shall ensure, by contract or other approved means as described in § 112.2, only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in section 5.4 of this appendix. The owner or operator of a facility whose planning volume exceeded the cap in 1993 must make arrangements to identify and ensure the availability, by contract or other approved means as described in § 112.2, for additional capacity to be under contract by 1998 or 2003, as appropriate. For a facility that handles multiple groups of oil, the required effective daily recovery capacity for each oil group is calculated before applying the cap. The oil group calculation resulting in the largest on-water recovery volume must be used to plan for the amount of response resources for a worst case discharge, unless the oil group comprises 10 percent or less by volume of the facility's total oil storage capacity.

7.3 The procedures discussed in sections 7.3.1–7.3.3 of this appendix must be used to calculate the planning volume for identifying shoreline cleanup capacity (for Groups 1 through Group 4 oils).

7.3.1 The following must be determined: the worst case discharge volume of oil for the facility; the appropriate group(s) for the type of oil handled, stored, or transported at the facility [persistent (Groups 2, 3, or 4) or non-persistent (Group 1)]; and the geographic area(s) in which the facility operates (*i.e.*, operating areas). For a facility handling, storing, or transporting oil from different groups, each group must be calculated separately. Using this information, Table 2 of this appendix must be used to determine the percentages of the total volume to be used for shoreline cleanup resource planning.

7.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 7.2.2 of this appendix.

7.3.3 The resulting volume shall be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

7.4 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility for a facility that handles, stores, or transports Group 1 through Group 4 oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. It is recommended that the facility owner or operator ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual located at the facility to work with the fire department for Group 1 through Group 4 oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

7.5 The following is an example of the procedure described above in sections 7.2 and 7.3 of this appendix: A facility with a 270,000 barrel (11.3 million gallons) capacity for #6 oil (specific gravity 0.96) is located in a higher volume port area. The facility is on a peninsula and has docks on both the ocean and bay sides. The facility has four aboveground oil storage tanks with a combined total capacity of 80,000 barrels (3.36 million gallons) and no secondary containment. The remaining facility tanks are inside secondary containment structures. The largest aboveground oil storage tank (90,000 barrels or 3.78 million gallons) has its own secondary containment. Two 50,000 barrel (2.1 million gallon) tanks (that are not connected by a manifold) are within a common secondary containment tank area, which is capable of holding 100,000 barrels (4.2 million gallons) plus sufficient freeboard.

7.5.1 The worst case discharge for the facility is calculated by adding the capacity of all aboveground oil storage tanks without secondary containment (80,000 barrels) plus the capacity of the largest aboveground oil storage tank inside secondary containment. The resulting worst case discharge volume is 170,000 barrels or 7.14 million gallons.

7.3.1 The following must be determined: the worst case discharge volume of oil for the facility; the appropriate group(s) for the types of oil handled, stored, or transported at the facility [persistent (Groups 2, 3, or 4) or non-persistent (Group 1)]; and the geographic area(s) in which the facility operates (*i.e.*, operating areas). For a facility handling, storing, or transporting oil from different groups, each group must be calculated separately. Using this information, Table 2 of this appendix must be used to determine the percentages of the total volume to be used for shoreline cleanup resource planning.

7.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 7.2.2 of this appendix.

7.3.3 The resulting volume shall be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

7.4 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility for a facility that handles, stores, or transports Group 1 through Group 4 oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. It is recommended that the facility owner or operator ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual located at the facility to work with the fire department for Group 1 through Group 4 oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

7.5 The following is an example of the procedure described above in sections 7.2 and 7.3 of this appendix: A facility with a 270,000 barrel (11.3 million gallons) capacity for #6 oil (specific gravity 0.96) is located in a higher volume port area. The facility is on a peninsula and has docks on both the ocean and bay sides. The facility has four aboveground oil storage tanks with a combined total capacity of 80,000 barrels (3.36 million gallons) and no secondary containment. The remaining facility tanks are inside secondary containment structures. The largest aboveground oil storage tank (90,000 barrels or 3.78 million gallons) has its own secondary containment. Two 50,000 barrel (2.1 million gallon) tanks (that are not connected by a manifold) are within a common secondary containment tank area, which is capable of holding 100,000 barrels (4.2 million gallons) plus sufficient freeboard.

7.5.1 The worst case discharge for the facility is calculated by adding the capacity of all aboveground oil storage tanks without secondary containment (80,000 barrels) plus the capacity of the largest aboveground oil storage tank inside secondary containment. The resulting worst case discharge volume is 170,000 barrels or 7.14 million gallons.

7.5.2 Because the requirements for Tiers 1, 2, and 3 for inland and nearshore exceed the caps identified in Table 5 of this appendix, the facility owner will contract for a response to 10,000 barrels per day (bpd) for Tier 1, 20,000 bpd for Tier 2, and 40,000 bpd for Tier 3. Resources for the remaining 7,850 bpd for Tier 1, 9,750 bpd for Tier 2, and 7,600 bpd for Tier 3 shall be identified but need not be contracted for in advance. The facility owner or operator shall, as appropriate, also identify or contract for quantities of boom identified in their response plan for the protection of fish and wildlife and sensitive environments within the area potentially impacted by a worst case discharge from the facility. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments," (see Appendix E to this part, section 10, for availability) and the applicable ACP. Attachment C–III to Appendix C provides a method for calculating a planning distance to fish and wildlife and sensitive environments and public drinking water intakes that may be impacted in the event of a worst case discharge.

7.6 The procedures discussed in sections 7.6.1—7.6.3 of this appendix must be used to determine appropriate response resources for facilities with Group 5 oils.

7.6.1 The owner or operator of a facility that handles, stores, or transports Group 5 oils shall, as appropriate, identify the response resources available by contract or other approved means, as described in § 112.2. The equipment identified in a response plan shall, as appropriate, include:

(1) Sonar, sampling equipment, or other methods for locating the oil on the bottom or suspended in the water column;

(2) Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;

(3) Dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline;

(4) Equipment necessary to assess the impact of such discharges; and

(5) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.

7.6.2 Response resources identified in a response plan for a facility that handles, stores, or transports Group 5 oils under section 7.6.1 of this appendix shall be capable of being deployed (on site) within 24 hours of discovery of a discharge to the area where the facility is operating.

7.6.3 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports Group 5 oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. It is recommended that the owner or operator ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan shall also identify an individual located at the facility to work with the fire department for Group 5 oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to respond to a worst case discharge. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility

7.7 The procedures described in sections 7.7.1–7.7.5 of this appendix must be used to determine appropriate response plan development and evaluation criteria for facilities that handle, store, or transport non-petroleum oils. Refer to section 8 of this appendix for information on the limitations on the use of dispersants for inland and nearshore areas.

7.7.1 An owner or operator of a facility that handles, stores, or transports non-petroleum oil must provide information in his or her plan that identifies:

(1) Procedures and strategies for responding to a worst case discharge of non-petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

7.7.2 An owner or operator of a facility that handles, stores, or transports non-petroleum oil must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) (i.e., operating environments) in which the facility operates using the criteria in Table 1 of this appendix. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the appropriate ACPs, including:

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

7.7.3 The owner or operator of a facility that handles, stores, or transports non-petroleum oil must identify the response resources that are available by contract or other approved means, as described in § 112.2. The equipment described in the response plan shall, as appropriate, include:

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of non-petroleum oil carried; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of oil carried.

7.7.4 Response resources identified in a response plan according to section 7.7.3 of this appendix must be capable of commencing an effective on-scene response within the applicable tier response times in section 5.3 of this appendix.

7.7.5 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports non-petroleum oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. It is recommended that

the owner or operator ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual located at the facility to work with the fire department for non-petroleum fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

8.0 Determining the Availability of Alternative Response Methods

8.1 For dispersants to be identified in a response plan, they must be on the NCP Product Schedule that is maintained by EPA. (Some States have a list of approved dispersants for use within State waters. These State-approved dispersants are listed on the NCP Product Schedule.)

8.2 Identification of dispersant application in the plan does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable ACP. To date, dispersant application has not been approved by ACPs for inland areas or shallow nearshore areas.

9.0 Additional Equipment Necessary to Sustain Response Operations

9.1 A facility owner or operator shall, as appropriate, ensure that sufficient numbers of trained personnel and boats, aerial spotting aircraft, containment boom, sorbent materials, boom anchoring materials, and other supplies are available to sustain response operations to completion. All such equipment must be suitable for use with the primary equipment identified in the response plan. A facility owner or operator is not required to list these resources, but shall certify their availability.

9.2 A facility owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from equipment identified in the plan. Because of the inefficiencies of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery capacity required on-scene. This temporary storage capacity may be reduced if a facility owner or operator can demonstrate by waste stream analysis that the efficiencies of the oil recovery devices, ability to decant waste, or the availability of alternative temporary storage or disposal locations will reduce the overall volume of oily material storage requirement.

9.3 A facility owner or operator shall ensure that his or her planning includes the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable ACP.

10.0 References and Availability

10.1 All materials listed in this section are part of EPA's rulemaking docket, and are located in the Superfund Docket, Room M2615, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number SPCC–2P). The docket is available for inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 202–260–3046. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, a charge of 15 cents will be incurred for each additional page, plus a $25.00 administrative fee. Charges for copies and docket hours are subject to change.

10.2 The docket will mail copies of materials to requestors who are outside the Washington D.C. metro area. Materials may be available from other sources, as noted in this section. The ERNS/SPOC Information line at 202–260–2342 or the RCRA/Superfund Hotline at 800–424–9346 may also provide additional information on where to obtain documents. To contact the RCRA/Superfund Hotline in the Washington, DC metropolitan area, dial 703–412–9810. The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672, or, in the Washington, DC metropolitan area, 703–412–3323.

10.3 Documents Referenced

(1) National Preparedness for Response Exercise Program (PREP). The PREP draft guidelines are available from United States Coast Guard Headquarters (G–MEP–4), 2100 Second Street, SW., Washington, DC 20593. (See 58 FR 53990, October 19, 1993, Notice of Availability of PREP Guidelines).

(2) "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (published in the **Federal Register** by DOC/NOAA at 59 FR 14713, March 29, 1994). The guidance is available in the Superfund Docket (see sections 10.1 and 10.2 of this appendix):

(3) ASTM Standards. ASTM F 715, ASTM F 989, ASTM F 631–80, ASTM F 808–83 (1988). The ASTM standards are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103–1187.

TABLE 1 TO APPENDIX E—RESPONSE RESOURCE OPERATING CRITERIA

Oil Recovery Devices

Operating environment	Significant wave height [1]	Sea state
Rivers and Canals	≤ 1 foot	1
Inland	≤ 3 feet	2
Great Lakes	≤ 4 feet	2–3
Ocean	≤ 6 feet	3–4

Boom

Boom property	Use			
	Rivers and canals	Inland	Great Lakes	Ocean
Significant Wave Height [1]	≤ 1	≤ 3	≤ 4	≤ 6
Sea State	1	2	2–3	3–4
Boom height—inches (draft plus freeboard)	6–18	18–42	18–42	≥ 42
Reserve Buoyancy to Weight Ratio	2:1	2:1	2:1	3:1 to 4:1
Total Tensile Strength—pounds	4,500	15,000–20,000.	15,000–20,000.	≥ 20,000
Skirt Fabric Tensile Strength—pounds	200	300	300	500
Skirt Fabric Tear Strength—pounds	100	100	100	125

[1] Oil recovery devices and boom *shall* be at least capable of operating in wave heights up to and including the values listed in Table 1 for each operating environment.

TABLE 2 TO

Spill location	Sustainability of on-water oil recovery
Oil group [1]	
1. Non-persistent oils	
2. Light crudes	
3. Medium crudes and fuels	
4. Heavy crudes and fuels	

Group 5 oils are defined in section 1.2.7 of this

[1] Non-petroleum oils are defined in section 1.2 pendix.

TABLE 3 TO APPENDIX E—EMULSIFICATION FACTORS FOR PETROLEUM OIL GROUPS [1]

Non-Persistent Oil:	
Group 1	1.0
Persistent Oil:	
Group 2	1.8
Group 3	2.0
Group 4	1.4

TABLE 5 TO APPEN

February 18, 1993:	
All except Rivers & Canals, Great Lakes	
Great Lakes	
Rivers & Canals	
February 18, 1998:	
All except Rivers & Canals, Great Lakes	
Great Lakes	
Rivers & Canals	
February 18, 2003:	
All except Rivers & Canals, Great Lakes	
Great Lakes	
Rivers & Canals	

Note: The caps show cumulative overall effectiv TBD=To Be Determined.

Attachments to Appendix E

BILLING CODE 6560–50–P

TABLE 2 TO APPENDIX E—REMOVAL CAPACITY PLANNING TABLE

Spill location	Rivers and canals			Nearshore/inland Great Lakes		
Sustainability of on-water oil recovery	3 days			4 days		
Oil group [1]	Percent natural dissipation	Percent recovered floating oil	Percent oil onshore	Percent natural dissipation	Percent recovered floating oil	Percent oil Onshore
1. Non-persistent oils	80	10	10	80	20	10
2. Light crudes	40	15	45	50	50	30
3. Medium crudes and fuels	20	15	65	30	50	50
4. Heavy crudes and fuels	5	20	75	10	50	70

Group 5 oils are defined in section 1.2.7 of this appendix; the response resource considerations are outlined in section 7.6 of this appendix.

[1] Non-petroleum oils are defined in section 1.2.3 of this appendix; the response resource considerations are outlined in section 7.7 of this appendix.

TABLE 3 TO APPENDIX E—EMULSIFICATION FACTORS FOR PETROLEUM OIL GROUPS [1]

Non-Persistent Oil:	
Group 1	1.0
Persistent Oil:	
Group 2	1.8
Group 3	2.0
Group 4	1.4

TABLE 3 TO APPENDIX E—EMULSIFICATION FACTORS FOR PETROLEUM OIL GROUPS [1]—Continued

Group 5 oils are defined in section 1.2.7 of this appendix; the response resource considerations are outlined in section 7.6 of this appendix.

[1] See sections 1.2.2 and 1.2.7 of this appendix for group designations for non-persistent and persistent oils, respectively.

TABLE 4 TO APPENDIX E—ON-WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS

Operating area	Tier 1	Tier 2	Tier 3
Rivers and Canals	0.30	0.40	0.60
Inland/Nearshore Great Lakes	0.15	0.25	0.40

Note: These mobilization factors are for total resources mobilized, not incremental response resources.

TABLE 5 TO APPENDIX E—RESPONSE CAPABILITY CAPS BY OPERATING AREA

	Tier 1	Tier 2	Tier 3
February 18, 1993:			
All except Rivers & Canals, Great Lakes	10K bbls/day	20K bbls/day	40K bbls/day.
Great Lakes	5K bbls/day	10K bbls/day	20K bbls/day.
Rivers & Canals	1.5K bbls/day	3.0K bbls/day	6.0K bbls/day.
February 18, 1998:			
All except Rivers & Canals, Great Lakes	12.5K bbls/day	25K bbls/day	50K bbls/day.
Great Lakes	6.35K bbls/day	12.3K bbls/day	25K bbls/day.
Rivers & Canals	1.875K bbls/day	3.75K bbls/day	7.5K bbls/day.
February 18, 2003:			
All except Rivers & Canals, Great Lakes	TBD	TBD	TBD.
Great Lakes	TBD	TBD	TBD.
Rivers & Canals	TBD	TBD	TBD.

Note: The caps show cumulative overall effective daily recovery capacity, not incremental increases.
TBD=To Be Determined.

Attachments to Appendix E

BILLING CODE 6560-50-P

ATTACHMENT E-1 --
WORKSHEET TO PLAN VOLUME OF RESPONSE RESOURCES
FOR WORST CASE DISCHARGE

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) [ ] (A)

Step (B) Oil Group[1] (Table 3 and section 1.2 of this appendix) [ ]

Step (C) Operating Area (choose one) . . . . . [ ] Nearshore/Inland [ ] or Rivers and Canals
Great Lakes

Step (D) Percentages of Oil (Table 2 of this appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
[ ] (D1)	[ ] (D2)	[ ] (D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step (D2) x Step (A)}}{100}$ [ ] (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3) x Step (A)}}{100}$ . . [ ] (E2)

Step (F) Emulsification Factor
(Table 3 of this appendix) . . . . . [ ] (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor
(Table 4 of this appendix)

Tier 1	Tier 2	Tier 3
[ ] (G1)	[ ] (G2)	[ ] (G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

ATTA
WORKSHEET TO
PO

Part II On-Water Oil Recovery

Tier 1

[ ]

Step (E1) x Step (F) x
Step (G1)

Part III Shoreline Cleanup V

Part IV On-Water Response Cap
(Table 5 of this appendix)
(Amount needed to be contract

Tier 1

[ ]

(J1)

Part V On-Water Amount Needed
Advance (barrels/day)

Tier 1

[ ]

Part II Tier 1 - Step (J1)

NOTE: To convert from barrel
Parts II through V by 42 gall

ATTACHMENT E-1 (CONTINUED) --
WORKSHEET TO PLAN VOLUME OF RESPONSE RESOURCES
FOR WORST CASE DISCHARGE

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) . . . . . | | Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

ATTACHMENT E-1 EXAMPLE --
WORKSHEET TO PLAN VOLUME OF RESPONSE RESOURCES
FOR WORST CASE DISCHARGE

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D): 170,000 (A)

Step (B) Oil Group[1] (Table 3 and section 1.2 of this appendix): 4

Step (C) Operating Area (choose one) . . . . . [X] Nearshore/Inland [ ] or Rivers and Great Lakes and Canals

Step (D) Percentages of Oil (Table 2 of this appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
10 (D1)	50 (D2)	70 (D3)

Step (E1) On-Water Oil Recovery: Step (D2) x Step (A) / 100 = 85,000 (E1)

Step (E2) Shoreline Recovery: Step (D3) x Step (A) / 100 . . = 119,000 (E2)

Step (F) Emulsification Factor (Table 3 of this appendix) . . . . . 1.4 (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor (Table 4 of this appendix)

Tier 1	Tier 2	Tier 3
0.15 (G1)	0.25 (G2)	0.40 (G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

ATTACH
WORKSHEET T

Part II On-Water Oil Recove

Tier 1: 17,850

Step (E1) x Step (F) x Step (G1)

Part III Shoreline Cleanup

Part IV On-Water Response Ca
(Table 5 of this appendix)
(Amount needed to be contrac

Tier 1: 10,000 (J1)

Part V On-Water Amount Neede
Advance (barrels/day)

Tier 1: 7,850

Part II Tier 1 - Step (J1)

NOTE: To convert from barre
Parts II through V by 42 ga

BILLING CODE 6560-50-C

ATTACHMENT E-1 EXAMPLE (CONTINUED) --
WORKSHEET TO PLAN VOLUME OF RESPONSE RESOURCES
FOR WORST CASE DISCHARGE

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
17,850	29,750	47,600
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) 166,600

Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
10,000	20,000	40,000
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
7,850	9,750	7,600
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

BILLING CODE 6560-50-C

Appendix F To Part 112—Facility-Specific Response Plan

Table of Contents

1.0 Model Facility-Specific Response Plan
1.1 Emergency Response Action Plan
1.2 Facility Information
1.3 Emergency Response Information
1.3.1 Notification
1.3.2 Response Equipment List
1.3.3 Response Equipment Testing/ Deployment
1.3.4 Personnel
1.3.5 Evacuation Plans
1.3.6 Qualified Individual's Duties
1.4 Hazard Evaluation
1.4.1 Hazard Identification
1.4.2 Vulnerability Analysis
1.4.3 Analysis of the Potential for an Oil Spill
1.4.4 Facility Reportable Oil Spill History
1.5 Discharge Scenarios
1.5.1 Small and Medium Discharges
1.5.2 Worst Case Discharge
1.6 Discharge Detection Systems
1.6.1 Discharge Detection By Personnel
1.6.2 Automated Discharge Detection
1.7 Plan Implementation
1.7.1 Response Resources for Small, Medium, and Worst Case Spills
1.7.2 Disposal Plans
1.7.3 Containment and Drainage Planning
1.8 Self-Inspection, Drills/Exercises, and Response Training
1.8.1 Facility Self-Inspection
1.8.1.1 Tank Inspection
1.8.1.2 Response Equipment Inspection
1.8.1.3 Secondary Containment Inspection
1.8.2 Facility Drills/Exercises
1.8.2.1 Qualified Individual Notification Drill Logs
1.8.2.2 Spill Management Team Tabletop Exercise Logs
1.8.3 Response Training
1.8.3.1 Personnel Response Training Logs
1.8.3.2 Discharge Prevention Meeting Logs
1.9 Diagrams
1.10 Security
2.0 Response Plan Cover Sheet
3.0 Acronyms
4.0 References

1.0 Model Facility-Specific Response Plan

(A) Owners or operators of facilities regulated under this part which pose a threat of substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines are required to prepare and submit facility-specific response plans to EPA in accordance with the provisions in this appendix. This appendix further describes the required elements in § 112.20(h).

(B) Response plans must be sent to the appropriate EPA Regional office. Figure F–1 of this Appendix lists each EPA Regional office and the address where owners or operators must submit their response plans. Those facilities deemed by the Regional Administrator (RA) to pose a threat of significant and substantial harm to the environment will have their plans reviewed and approved by EPA. In certain cases, information required in the model response plan is similar to information currently maintained in the facility's Spill Prevention, Control, and Countermeasures (SPCC) Plan as required by 40 CFR 112.3. In these cases, owners or operators may reproduce the information and include a photocopy in the response plan.

(C) A complex may develop a single response plan with a set of core elements for all regulating agencies and separate sections for the non-transportation-related and transportation-related components, as described in § 112.20(h). Owners or operators of large facilities that handle, store, or transport oil at more than one geographically distinct location (e.g., oil storage areas at opposite ends of a single, continuous parcel of property) shall, as appropriate, develop separate sections of the response plan for each storage area.

BILLING CODE 6560-60-F

Figure F-1

EPA REGIONAL OFFICES FOR RESPONSE PLAN SUBMITTAL

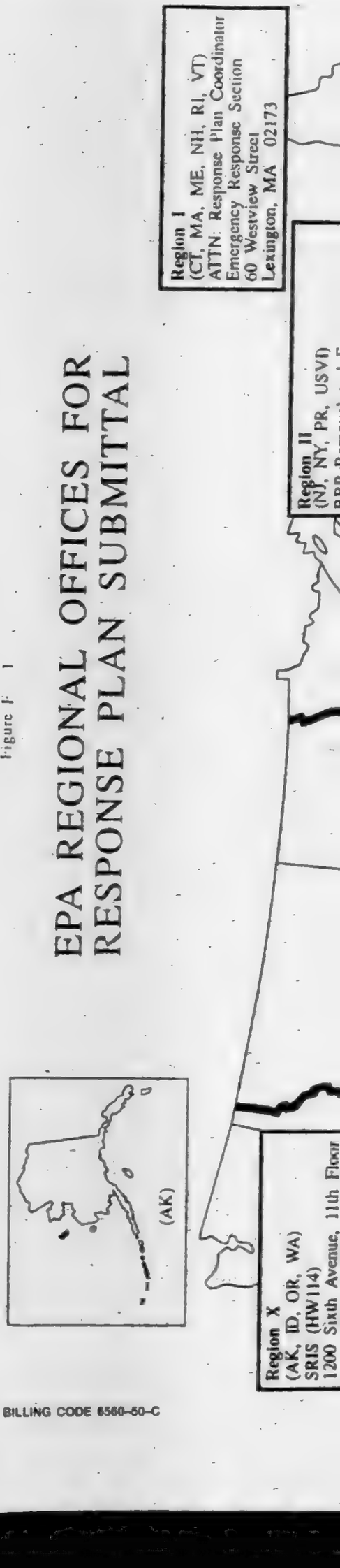

BILLING CODE 6560-50-C

Figure F- 1

EPA REGIONAL OFFICES FOR RESPONSE PLAN SUBMITTAL

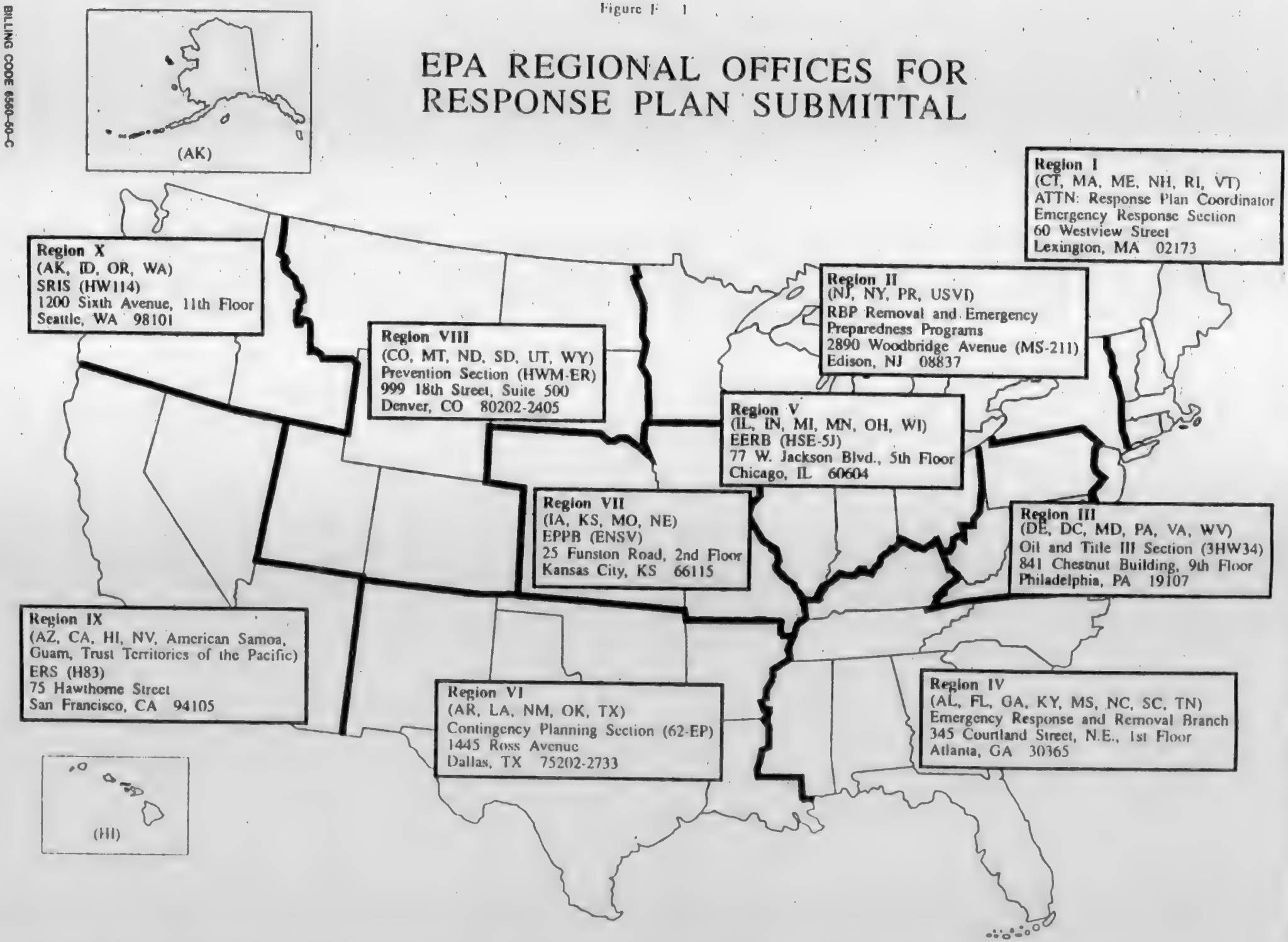

Region I
(CT, MA, ME, NH, RI, VT)
ATTN: Response Plan Coordinator
Emergency Response Section
60 Westview Street
Lexington, MA 02173

Region II
(NJ, NY, PR, USVI)
RBP Removal and Emergency Preparedness Programs
2890 Woodbridge Avenue (MS-211)
Edison, NJ 08837

Region III
(DE, DC, MD, PA, VA, WV)
Oil and Title III Section (3HW34)
841 Chestnut Building, 9th Floor
Philadelphia, PA 19107

Region IV
(AL, FL, GA, KY, MS, NC, SC, TN)
Emergency Response and Removal Branch
345 Courtland Street, N.E., 1st Floor
Atlanta, GA 30365

Region V
(IL, IN, MI, MN, OH, WI)
EERB (HSE-5J)
77 W. Jackson Blvd., 5th Floor
Chicago, IL 60604

Region VI
(AR, LA, NM, OK, TX)
Contingency Planning Section (62-EP)
1445 Ross Avenue
Dallas, TX 75202-2733

Region VII
(IA, KS, MO, NE)
EPPB (ENSV)
25 Funston Road, 2nd Floor
Kansas City, KS 66115

Region VIII
(CO, MT, ND, SD, UT, WY)
Prevention Section (HWM-ER)
999 18th Street, Suite 500
Denver, CO 80202-2405

Region IX
(AZ, CA, HI, NV, American Samoa, Guam, Trust Territories of the Pacific)
ERS (H83)
75 Hawthorne Street
San Francisco, CA 94105

Region X
(AK, ID, OR, WA)
SRIS (HW114)
1200 Sixth Avenue, 11th Floor
Seattle, WA 98101

BILLING CODE 6560-50-C

1.1 Emergency Response Action Plan

Several sections of the response plan shall be co-located for easy access by response personnel during an actual emergency or oil spill. This collection of sections shall be called the Emergency Response Action Plan. The Agency intends that the Action Plan contain only as much information as is necessary to combat the spill and be arranged so response actions are not delayed. The Action Plan may be arranged in a number of ways. For example, the sections of the Emergency Response Action Plan may be photocopies or condensed versions of the forms included in the associated sections of the response plan. Each Emergency Response Action Plan section may be tabbed for quick reference. The Action Plan shall be maintained in the front of the same binder that contains the complete response plan or it shall be contained in a separate binder. In the latter case, both binders shall be kept together so that the entire plan can be accessed by the qualified individual and appropriate spill response personnel. The Emergency Response Action Plan shall be made up of the following sections:

1. Qualified Individual Information (Section 1.2) partial
2. Emergency Notification Phone List (Section 1.3.1) complete
3. Spill Response Notification Form (Section 1.3.1) complete
4. Response Equipment List and Location (Section 1.3.2) complete
5. Response Equipment Testing and Deployment (Section 1.3.3) complete
6. Facility Response Team (Section 1.3.4) partial
7. Evacuation Plan (Section 1.3.5) condensed
8. Immediate Actions (Section 1.7.1) complete
9. Facility Diagram (Section 1.9) complete

1.2 Facility Information

The facility information form is designed to provide an overview of the site and a description of past activities at the facility. Much of the information required by this section may be obtained from the facility's existing SPCC Plan.

1.2.1 *Facility name and location:* Enter facility name and street address. Enter the address of corporate headquarters only if corporate headquarters are physically located at the facility. Include city, county, state, zip code, and phone number.

1.2.2 *Latitude and Longitude:* Enter the latitude and longitude of the facility. Include degrees, minutes, and seconds of the main entrance of the facility.

1.2.3 *Wellhead Protection Area:* Indicate if the facility is located in or drains into a wellhead protection area as defined by the Safe Drinking Water Act of 1986 (SDWA).[1] The response plan requirements in the Wellhead Protection Program are outlined by the State or Territory in which the facility resides.

1.2.4 *Owner/operator:* Write the name of the company or person operating the facility and the name of the person or company that owns the facility, if the two are different. List the address of the owner, if the two are different.

1.2.5 *Qualified Individual:* Write the name of the qualified individual for the entire facility. If more than one person is listed, each individual indicated in this section shall have full authority to implement the facility response plan. For each individual, list: name, position, home and work addresses (street addresses, not P.O. boxes), emergency phone number, and specific response training experience.

1.2.6 *Date of Oil Storage Start-up:* Enter the year which the present facility first started storing oil.

1.2.7 *Current Operation:* Briefly describe the facility's operations and include the Standard Industry Classification (SIC) code.

1.2.8 *Dates and Type of Substantial Expansion:* Include information on expansions that have occurred at the facility. Examples of such expansions include, but are not limited to: Throughput expansion, addition of a product line, change of a product line, and installation of additional oil storage capacity. The data provided shall include all facility historical information and detail the expansion of the facility. An example of substantial expansion is any material alteration of the facility which causes the owner or operator of the facility to re-evaluate and increase the response equipment necessary to adequately respond to a worst case discharge from the facility.

Date of Last Update: _____

Facility Information Form

Facility Name: _____
Location (Street Address): _____
City: _____ State: _____ Zip: _____
County: _____ Phone Number: ( ) _____
Latitude: _____ Degrees _____ Minutes _____ Seconds
Longitude: _____ Degrees _____ Minutes _____ Seconds
Wellhead Protection Area: _____
Owner: _____
Owner Location (Street Address): _____
(if different from Facility Address)
City: _____ State: _____ Zip: _____
County: _____ Phone Number: ( ) _____
Operator (if not Owner): _____
Qualified Individual(s): (attach additional sheets if more than one)
Name: _____
Position: _____
Work Address: _____
Home Address: _____
Emergency Phone Number: ( ) _____
Date of Oil Storage Start-up: _____
Current Operations: _____
_____
_____
Date(s) and Type(s) of Substantial Expansion(s): _____
_____
(Attach additional sheets if necessary)

1.3 Emergency Response Information

(A) The information provided in this section shall describe what will be needed in an actual emergency involving the discharge of oil or a combination of hazardous substances and oil discharge. The Emergency Response Information section of the plan must include the following components:

(1) The information provided in the Emergency Notification Phone List in section 1.3.1 identifies and prioritizes the names and phone numbers of the organizations and personnel that need to be notified immediately in the event of an emergency. This section shall include all the appropriate phone numbers for the facility. These numbers must be verified each time the plan is updated. The contact list must be accessible to all facility employees to ensure that, in case of a discharge, any employee on site could immediately notify the appropriate parties.

(2) The Spill Response Notification Form in section 1.3.1 creates a checklist of information that shall be provided to the National Response Center (NRC) and other response personnel. All information on this checklist must be known at the time of notification, or be in the process of being collected. This notification form is based on a similar form used by the NRC. Note: Do not delay spill notification to collect the information on the list.

(3) Section 1.3.2 provides a description of the facility's list of emergency response equipment and location of the response equipment. When appropriate, the amount of oil that emergency response equipment can handle and any limitations (e.g., launching sites) must be described.

(4) Section 1.3.3 provides information regarding response equipment tests and deployment drills. Response equipment deployment exercises shall be conducted to ensure that response equipment is operational and the personnel who would operate the equipment in a spill response are capable of deploying and operating it. Only a representative sample of each type of response equipment needs to be deployed and operated, as long as the remainder is properly maintained. If appropriate, testing of response equipment may be conducted while it is being deployed. Facilities without facility-owned response equipment must ensure that the oil spill removal organization that is identified in the response plan to provide this response equipment certifies that the deployment exercises have been met. Refer to the National Preparedness for Response Exercise Program (PREP) Guidelines (see Appendix E to this part, section 10, for availability), which satisfy Oil Pollution Act (OPA) response exercise requirements.

(5) Section 1.3.4 lists the facility response personnel, including those employed by the facility and those under contract to the facility for response activities, the amount of time needed for personnel to respond, their responsibility in the case of an emergency, and their level of response training. Three different forms are included in this section. The Emergency Response Personnel List shall be composed of all personnel employed by the facility whose duties involve

[1] A wellhead protection area is defined as the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. For further information regarding State and territory protection programs, facility owners or operators may contact the SDWA Hotline at 1–800–426–4791.

responding to emergencies, including oil spills, even when they are not physically present at the site. An example of this type of person would be the Building Engineer-in-Charge or Plant Fire Chief. The second form is a list of the Emergency Response Contractors (both primary and secondary) retained by the facility. Any changes in contractor status must be reflected in updates to the response plan. Evidence of contracts with response contractors shall be included in this section so that the availability of resources can be verified. The last form is the Facility Response Team List, which shall be composed of both emergency response personnel (referenced by job title/position) and emergency response contractors, included in one of the two lists described above, that will respond immediately upon discovery of an oil spill or other emergency (i.e., the first people to respond). These are to be persons normally on the facility premises or primary response contractors. Examples of these personnel would be the Facility Hazardous Materials (HAZMAT) Spill Team 1, Facility Fire Engine Company 1, Production Supervisor, or Transfer Supervisor. Company personnel must be able to respond immediately and adequately if contractor support is not available.

(6) Section 1.3.5 lists factors that must, as appropriate, be considered when preparing an evacuation plan.

(7) Section 1.3.6 references the responsibilities of the qualified individual for the facility in the event of an emergency.

(B) The information provided in the emergency response section will aid in the assessment of the facility's ability to respond to a worst case discharge and will identify additional assistance that may be needed. In addition, the facility owner or operator may want to produce a wallet-size card containing a checklist of the immediate response and notification steps to be taken in the event of an oil discharge.

1.3.1 Notification

Date of Last Update: _____

Emergency Notification Phone List Whom To Notify

Reporter's Name: _____
Date: _____
Facility Name: _____
Owner Name: _____
Facility Identification Number: _____
Date and Time of Each NRC Notification: _____

CHRIS Code	Discharged quantity

Response Action

Actions Taken to Correct, Control or Mitigate Incident:
_____

responding to emergencies, including oil spills, even when they are not physically present at the site. An example of this type of person would be the Building Engineer-in-Charge or Plant Fire Chief. The second form is a list of the Emergency Response Contractors (both primary and secondary) retained by the facility. Any changes in contractor status must be reflected in updates to the response plan. Evidence of contracts with response contractors shall be included in this section so that the availability of resources can be verified. The last form is the Facility Response Team List, which shall be composed of both emergency response personnel (referenced by job title/position) and emergency response contractors, included in one of the two lists described above, that will respond immediately upon discovery of an oil spill or other emergency (i.e., the first people to respond). These are to be persons normally on the facility premises or primary response contractors. Examples of these personnel would be the Facility Hazardous Materials (HAZMAT) Spill Team 1, Facility Fire Engine Company 1, Production Supervisor, or Transfer Supervisor. Company personnel must be able to respond immediately and adequately if contractor support is not available.

(6) Section 1.3.5 lists factors that must, as appropriate, be considered when preparing an evacuation plan.

(7) Section 1.3.6 references the responsibilities of the qualified individual for the facility in the event of an emergency.

(B) The information provided in the emergency response section will aid in the assessment of the facility's ability to respond to a worst case discharge and will identify additional assistance that may be needed. In addition, the facility owner or operator may want to produce a wallet-size card containing a checklist of the immediate response and notification steps to be taken in the event of an oil discharge.

1.3.1 Notification

Date of Last Update: _____

Emergency Notification Phone List Whom To Notify

Reporter's Name: _____
Date: _____
Facility Name: _____
Owner Name: _____
Facility Identification Number: _____
Date and Time of Each NRC Notification: —

Organization	Phone No.
1. National Response Center (NRC):	1–800–424–8802
2. Qualified Individual:	_____
Evening Phone:	_____
3. Company Response Team:	_____
Evening Phone:	_____
4. Federal On-Scene Coordinator (OSC) and/or Regional Response Center (RRC):	_____
Evening Phone(s):	_____
Pager Number(s):	_____
5. Local Response Team (Fire Dept./Cooperatives):	_____
6. Fire Marshall:	_____
Evening Phone:	_____
7. State Emergency Response Commission (SERC):	_____
Evening Phone:	_____
8. State Police:	_____
9. Local Emergency Planning Committee (LEPC):	_____
10. Local Water Supply System:	_____
Evening Phone:	_____
11. Weather Report:	_____
12. Local Television/ Radio Station for Evacuation Notification:	_____

Organization	Phone No.
13. Hospitals:	_____

Spill Response Notification Form

Reporter's Last Name: _____
First: _____
M.I.: _____
Position: _____
Phone Numbers:
Day ( ) –
Evening ( ) –
Company: _____
Organization Type: _____
Address: _____
_____
City: _____
State: _____
Zip: _____
Were Materials Discharged? _____ (Y/N)
Confidential? _____ (Y/N)
Meeting Federal Obligations to Report? _____ (Y/N) Date Called: _____
Calling for Responsible Party? _____ (Y/N)
Time Called: _____

Incident Description

Source and/or Cause of Incident: _____
_____
_____
_____
_____
Date of Incident: _____
Time of Incident: _____ AM/PM
Incident Address/Location: _____
_____
Nearest City: _____ State: _____
County: _____ Zip: _____
Distance from City: _____ Units of Measure: _____ Direction from City: _____
Section: _____ Township: _____ Range: _____ Borough: _____
Container Type: _____ Tank Oil Storage Capacity: _____ Units of Measure: _____
Facility Oil Storage Capacity: _____ Units of Measure: _____
Facility Latitude: _____ Degrees _____ Minutes _____ Seconds
Facility Longitude: _____ Degrees _____ Minutes _____ Seconds

Material

CHRIS Code	Discharged quantity	Unit of measure	Material Discharged in water	Quantity	Unit of measure

Response Action

Actions Taken to Correct, Control or Mitigate Incident: _____
_____
_____
_____

Impact

Number of Injuries: _____ Number of Deaths: _____

Were there Evacuations? _____ (Y/N)
Number Evacuated: _____
Was there any Damage? _____ (Y/N)
Damage in Dollars (approximate): _____
Medium Affected: _____
Description: _____
More Information about Medium: _____

Additional Information

Any information about the incident not recorded elsewhere in the report:

Caller Notifications

EPA? _____ (Y/N) USCG? _____ (Y/N)
State? _____ (Y/N)
Other? _____ (Y/N) Describe: _____

1.3.2 Response Equipment List

Date of Last Update:_____

Facility Response Equipment List

1. Skimmers/Pumps—Operational Status: _____
Type, Model, and Year: _____
Type Model Year
Number: _____
Capacity: _____ gal./min.
Daily Effective Recovery Rate: _____
Storage Location(s): _____
Date Fuel Last Changed: _____
2. Boom—Operational Status: _____
Type, Model, and Year: _____
Type Model Year
Number: _____
Size (length): _____ ft.
Containment Area: _____ sq. ft.
Storage Location: _____
3. Chemicals Stored (Dispersants listed on EPA's NCP Product Schedule)

Type	Amount	Date purchased	Treatment capacity	Storage location

Were appropriate procedures used to receive approval for use of dispersants in accordance with the NCP (40 CFR 300.910) and the Area Contingency Plan (ACP), where applicable?_____ (Y/N).
Name and State of On-Scene Coordinator (OSC) authorizing use: _____.
Date Authorized: _____.
4. Dispersant Dispensing Equipment—Operational Status: _____.

Type and year	Capacity	Storage location	Response time (minutes)

5. Sorbents—Operational Status: _____
Type and Year Purchased: _____
Amount: _____
Absorption Capacity (gal.): _____
Storage Location(s): _____
6. Hand Tools—Operational Status: _____

Type and year	Quantity	Storage location

7. Communication Equipment (include operating frequency and channel and/or cellular phone numbers)—Operational Status: _____

Type and year	Quantity	Storage location/number

8. Fire Fighting and Personnel Protective Equipment—Operational Status: _____

Type and year	Quantity	Storage location

9. Other (e.g., Heavy Equipment, Boats and Motors)—Operational Status: _____

Type and year	Quantity	Storage location

1.3.3 Response Equipment Testing/ Deployment

Date of Last Update:_____

Response Equipment Testing and Deployment Drill Log

Last Inspection or Response Equipment Test Date: _____
Inspection Frequency: _____
Last Deployment Drill Date: _____
Deployment Frequency: _____
Oil Spill Removal Organization Certification (if applicable): _____

1.3.4 Personnel

Date of Last Update:_____

Name	Phone [1]	R
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

[1] Phone number to be used when person is not

Contractor	Phone	Re
1.		
2.		
3.		
4.		

[1] Include evidence of contracts/agreements with

Team member

Qualified Individual: _____

EMERGENCY RESPONSE PERSONNEL

Company Personnel

Name	Phone [1]	Response time	Responsibility during response action	Response training type/date
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				

[1] Phone number to be used when person is not on-site.

EMERGENCY RESPONSE CONTRACTORS

Date of Last Update: _____

Contractor	Phone	Response time	Contract responsibility [1]
1.			
2.			
3.			
4.			

[1] Include evidence of contracts/agreements with response contractors to ensure the availability of personnel and response equipment.

FACILITY RESPONSE TEAM

Date of Last Update: _____

Team member	Response time (minutes)	Phone or pager number (day/evening)
Qualified Individual:		/
		/
		/
		/
		/
		/

FACILITY RESPONSE TEAM—Continued

Date of Last Update: _____

Team member	Response time (minutes)	Phone or pager number (day/evening)
		/
		/
		/
		/
		/
		/
		/
		/
		/
		/
		/
		/

Note: If the facility uses contracted help in an emergency response situation, the owner or operator must provide the contractors' names and review the contractors' capacities to provide adequate personnel and response equipment.

1.3.5 Evacuation Plans

1.3.5.1 Based on the analysis of the facility, as discussed elsewhere in the plan, a facility-wide evacuation plan shall be developed. In addition, plans to evacuate parts of the facility that are at a high risk of exposure in the event of a spill or other release must be developed. Evacuation routes must be shown on a diagram of the facility (see section 1.9 of this appendix). When developing evacuation plans, consideration must be given to the following factors, as appropriate:

(1) Location of stored materials;
(2) Hazard imposed by spilled material;
(3) Spill flow direction;
(4) Prevailing wind direction and speed;
(5) Water currents, tides, or wave conditions (if applicable);
(6) Arrival route of emergency response personnel and response equipment;
(7) Evacuation routes;
(8) Alternative routes of evacuation;
(9) Transportation of injured personnel to nearest emergency medical facility;
(10) Location of alarm/notification systems;
(11) The need for a centralized check-in area for evacuation validation (roll call);
(12) Selection of a mitigation command center; and
(13) Location of shelter at the facility as an alternative to evacuation.

1.3.5.2 One resource that may be helpful to owners or operators in preparing this section of the response plan is The *Handbook of Chemical Hazard Analysis Procedures* by the Federal Emergency Management Agency (FEMA), Department of Transportation (DOT), and EPA. *The Handbook of Chemical Hazard Analysis Procedures* is available from: FEMA , Publication Office, 500 C. Street, S.W., Washington, DC 20472, (202) 646–3484.

1.3.5.3 As specified in § 112.20(h)(1)(vi), the facility owner or operator must reference existing community evacuation plans, as appropriate.

1.3.6 Qualified Individual's Duties

The duties of the designated qualified individual are specified in § 112.20(h)(3)(ix). The qualified individual's duties must be described and be consistent with the minimum requirements in § 112.20(h)(3)(ix). In addition, the qualified individual must be identified with the Facility Information in section 1.2 of the response plan.

1.4 Hazard Evaluation

This section requires the facility owner or operator to examine the facility's operations closely and to predict where discharges could occur. Hazard evaluation is a widely used industry practice that allows facility owners or operators to develop a complete understanding of potential hazards and the response actions necessary to address these hazards. *The Handbook of Chemical Hazard Analysis Procedures*, prepared by the EPA, DOT, and the FEMA and the *Hazardous Materials Emergency Planning Guide* (NRT–1), prepared by the National Response Team are good references for conducting a hazard analysis. Hazard identification and evaluation will assist facility owners or operators in planning for potential discharges, thereby reducing the severity of discharge impacts that may occur in the future. The evaluation also may help the operator identify and correct potential sources of discharges. In addition, special hazards to workers and emergency response personnel's health and safety shall be evaluated, as well as the facility's oil spill history.

1.4.1 Hazard Identification

The Tank and Surface Impoundment (SI) forms, or their equivalent, that are part of this section must be completed according to the directions below. ("Surface Impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a seepage facility.) Similar worksheets, or their equivalent, must be developed for any other type of storage containers.

(1) List each tank at the facility with a separate and distinct identifier. Begin aboveground tank identifiers with an "A" and belowground tank identifiers with a "B", or submit multiple sheets with the aboveground tanks and belowground tanks on separate sheets.

(2) Use gallons for the maximum capacity of a tank; and use square feet for the area.

(3) Using the appropriate identifiers and the following instructions, fill in the appropriate forms:

(a) Tank or SI number—Using the aforementioned identifiers (A or B) or multiple reporting sheets, identify each tank or SI at the facility that stores oil or hazardous materials.

(b) Substance Stored—For each tank or SI identified, record the material that is stored therein. If the tank or SI is used to store more than one material, list all of the stored materials.

(c) Quantity Stored—For each material stored in each tank or SI, report the average volume of material stored on any given day.

(d) Tank Type or Surface Area/Year—For each tank, report the type of tank (e.g., floating top), and the year the tank was originally installed. If the tank has been refabricated, the year that the latest refabrication was completed must be recorded in parentheses next to the year installed. For each SI, record the surface area

of the impoundment and the year it went into service.

(e) Maximum Capacity—Record the operational maximum capacity for each tank and SI. If the maximum capacity varies with the season, record the upper and lower limits.

(f) Failure/Cause—Record the cause and date of any tank or SI failure which has resulted in a loss of tank or SI contents.

(4) Using the numbers from the tank and SI forms, label a schematic drawing of the facility. This drawing shall be identical to any schematic drawings included in the SPCC Plan.

(5) Using knowledge of the facility and its operations, describe the following in writing:

Tank No.	Substance Stored (Oil and Hazardous Substance)

[1] Tank = any container that stores oil.
Attach as many sheets as necessary.

HAZARD

SI No.	Substance Stored

Attach as many sheets as necessary.

of the impoundment and the year it went into service.

(e) Maximum Capacity—Record the operational maximum capacity for each tank and SI. If the maximum capacity varies with the season, record the upper and lower limits.

(f) Failure/Cause—Record the cause and date of any tank or SI failure which has resulted in a loss of tank or SI contents.

(4) Using the numbers from the tank and SI forms, label a schematic drawing of the facility. This drawing shall be identical to any schematic drawings included in the SPCC Plan.

(5) Using knowledge of the facility and its operations, describe the following in writing:

(a) The loading and unloading of transportation vehicles that risk the discharge of oil or release of hazardous substances during transport processes. These operations may include loading and unloading of trucks, railroad cars, or vessels. Estimate the volume of material involved in transfer operations, if the exact volume cannot be determined.

(b) Day-to-day operations that may present a risk of discharging oil or releasing a hazardous substance. These activities include scheduled venting, piping repair or replacement, valve maintenance, transfer of tank contents from one tank to another, etc. (not including transportation-related activities). Estimate the volume of material involved in these operations, if the exact volume cannot be determined.

(c) The secondary containment volume associated with each tank and/or transfer point at the facility. The numbering scheme developed on the tables, or an equivalent system, must be used to identify each containment area. Capacities must be listed for each individual unit (tanks, slumps, drainage traps, and ponds), as well as the facility total.

(d) Normal daily throughput for the facility and any effect on potential discharge volumes that a negative or positive change in that throughput may cause.

HAZARD IDENTIFICATION TANKS [1]

Date of Last Update: _____

Tank No.	Substance Stored (Oil and Hazardous Substance)	Quantity Stored (gallons)	Tank Type/Year	Maximum Capacity (gallons)	Failure/Cause

[1] Tank = any container that stores oil.
Attach as many sheets as necessary.

HAZARD IDENTIFICATION SURFACE IMPOUNDMENTS (SIS)

Date of Last Update: _____

SI No.	Substance Stored	Quantity Stored (gallons)	Surface Area/Year	Maximum Capacity (gallons)	Failure/Cause

Attach as many sheets as necessary.

1.4.2 Vulnerability Analysis

The vulnerability analysis shall address the potential effects (i.e., to human health, property, or the environment) of an oil spill. Attachment G–III to Appendix C to this part provides a method that owners or operators shall use to determine appropriate distances from the facility to fish and wildlife and sensitive environments. Owners or operators can use a comparable formula that is considered acceptable by the RA. If a comparable formula is used, documentation of the reliability and analytical soundness of the formula must be attached to the response plan cover sheet. This analysis must be prepared for each facility and, as appropriate, must discuss the vulnerability of:

(1) Water intakes (drinking, cooling, or other);

(2) Schools;

(3) Medical facilities;

(4) Residential areas;

(5) Businesses;

(6) Wetlands or other sensitive environments; [2]

(7) Fish and wildlife;

(8) Lakes and streams;

(9) Endangered flora and fauna;

(10) Recreational areas;

(11) Transportation routes (air, land, and water);

(12) Utilities; and

(13) Other areas of economic importance (e.g., beaches, marinas) including terrestrially sensitive environments, aquatic environments, and unique habitats.

1.4.3 Analysis of the Potential for an Oil Spill

Each owner or operator shall analyze the probability of a spill occurring at the facility. This analysis shall incorporate factors such as oil spill history, horizontal range of a potential spill, and vulnerability to natural disaster, and shall, as appropriate, incorporate other factors such as tank age. This analysis will provide information for developing discharge scenarios for a worst case discharge and small and medium discharges and aid in the development of techniques to reduce the size and frequency of spills. The owner or operator may need to research the age of the tanks and the oil spill history at the facility.

[2] Refer to the DOC/NOAA "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (See appendix E to this part, section 10, for availability).

1.4.4 Facility Reportable Oil Spill History

Briefly describe the facility's reportable oil spill [3] history for the entire life of the facility to the extent that such information is reasonably identifiable, including:

(1) Date of discharge(s);

(2) List of discharge causes;

(3) Material(s) discharged;

(4) Amount discharged in gallons;

(5) Amount of discharge that reached navigable waters, if applicable;

(6) Effectiveness and capacity of secondary containment;

(7) Clean-up actions taken;

(8) Steps taken to reduce possibility of recurrence;

(9) Total oil storage capacity of the tank(s) or impoundment(s) from which the material discharged;

(10) Enforcement actions;

(11) Effectiveness of monitoring equipment; and

(12) Description(s) of how each oil spill was detected.

The information solicited in this section may be similar to requirements in 40 CFR 112.4(a). Any duplicate information required by § 112.4(a) may be photocopied and inserted.

1.5 Discharge Scenarios

In this section, the owner or operator is required to provide a description of the facility's worst case discharge, as well as a small and medium spill, as appropriate. A multi-level planning approach has been chosen because the response actions to a spill (i.e., necessary response equipment, products, and personnel) are dependent on the magnitude of the spill. Planning for lesser discharges is necessary because the nature of the response may be qualitatively different depending on the quantity of the discharge. The facility owner or operator shall discuss the potential direction of the spill pathway.

1.5.1 Small and Medium Discharges

1.5.1.1 To address multi-level planning requirements, the owner or operator must consider types of facility-specific spill scenarios that may contribute to a small or medium spill. The scenarios shall account for all the operations that take place at the facility, including but not limited to:

(1) Loading and unloading of surface transportation;

(2) Facility maintenance;

(3) Facility piping;

(4) Pumping stations and sumps;

(5) Oil storage tanks;

(6) Vehicle refueling; and

(7) Age and condition of facility and components.

1.5.1.2 The scenarios shall also consider factors that affect the response efforts required by the facility. These include but are not limited to:

(1) Size of the spill;

(2) Proximity to downgradient wells, waterways, and drinking water intakes;

(3) Proximity to fish and wildlife and sensitive environments;

(4) Likelihood that the discharge will travel offsite (i.e., topography, drainage) ;

(5) Location of the material spilled (i.e., on a concrete pad or directly on the soil);

(6) Material discharged;

(7) Weather or aquatic conditions (i.e., river flow);

(8) Available remediation equipment;

(9) Probability of a chain reaction of failures; and

(10) Direction of spill pathway.

1.5.2 Worst Case Discharge

1.5.2.1 In this section, the owner or operator must identify the worst case discharge volume at the facility. Worksheets for production and non-production facility owners or operators to use when calculating worst case discharge are presented in Appendix D to this part. When planning for the worst case discharge response, all of the aforementioned factors listed in the small and medium discharge section of the response plan shall be addressed.

1.5.2.2 For onshore storage facilities and production facilities, permanently manifolded oil storage tanks are defined as tanks that are designed, installed, and/or operated in such a manner that the multiple tanks function as one storage unit (i.e., multiple tank volumes are equalized). In this section of the response plan, owners or operators must provide evidence that oil storage tanks with common piping or piping systems are not operated as one unit. If such evidence is provided and is acceptable to the RA, the worst case discharge volume shall be based on the combined oil storage capacity of all manifold tanks or the oil storage capacity of the largest single oil storage tank within the secondary containment area, whichever is greater. For permanently manifolded oil storage tanks that function as one storage unit, the worst case discharge shall be based on the combined oil storage capacity of all manifolded tanks or the oil storage capacity of the largest single tank within a secondary containment area, whichever is greater. For purposes of the worst case discharge calculation, permanently manifolded oil storage tanks that are separated by internal divisions for each tank are considered to be single tanks and individual manifolded tank volumes are not combined.

[3] As described in 40 CFR part 110, reportable oil spills are those that: (a) violate applicable water quality standards, or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

1.6 Discharge Detection Systems

In this section, the facility owner or operator shall provide a detailed description of the procedures and equipment used to detect discharges. A section on spill detection by personnel and a discussion of automated spill detection, if applicable, shall be included for both regular operations and after hours operations. In addition, the facility owner or operator shall discuss how the reliability of any automated system will be checked and how frequently the system will be inspected.

1.6.1 Discharge Detection by Personnel

In this section, facility owners or operators shall describe the procedures and personnel that will detect any spill or uncontrolled discharge of oil or release of a hazardous substance. A thorough discussion of facility inspections must be included. In addition, a description of initial response actions shall be addressed. This section shall reference section 1.3.1 of the response plan for emergency response information.

1.6.2 Automated Discharge Detection

In this section, facility owners or operators must describe any automated spill detection equipment that the facility has in place. This section shall include a discussion of overfill alarms, secondary containment sensors, etc. A discussion of the plans to verify an automated alarm and the actions to be taken once verified must also be included.

Mate

1.

2.

3.

4.

1.7.3 Containment and Drainage Planning

A proper plan to contain and control a spill through drainage may limit the threat of harm to human health and the environment. This section shall describe how to contain and control a spill through drainage, including:

containment area, whichever is greater. For purposes of the worst case discharge calculation, permanently manifolded oil storage tanks that are separated by internal divisions for each tank are considered to be single tanks and individual manifolded tank volumes are not combined.

1.6 Discharge Detection Systems

In this section, the facility owner or operator shall provide a detailed description of the procedures and equipment used to detect discharges. A section on spill detection by personnel and a discussion of automated spill detection, if applicable, shall be included for both regular operations and after hours operations. In addition, the facility owner or operator shall discuss how the reliability of any automated system will be checked and how frequently the system will be inspected.

1.6.1 Discharge Detection by Personnel

In this section, facility owners or operators shall describe the procedures and personnel that will detect any spill or uncontrolled discharge of oil or release of a hazardous substance. A thorough discussion of facility inspections must be included. In addition, a description of initial response actions shall be addressed. This section shall reference section 1.3.1 of the response plan for emergency response information.

1.6.2 Automated Discharge Detection

In this section, facility owners or operators must describe any automated spill detection equipment that the facility has in place. This section shall include a discussion of overfill alarms, secondary containment sensors, etc. A discussion of the plans to verify an automated alarm and the actions to be taken once verified must also be included.

1.7 Plan Implementation

In this section, facility owners or operators must explain in detail how to implement the facility's emergency response plan by describing response actions to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent discharges described in section 1.5 of the response plan. This section shall include the identification of response resources for small, medium, and worst case spills; disposal plans; and containment and drainage planning. A list of those personnel who would be involved in the cleanup shall be identified. Procedures that the facility will use, where appropriate or necessary, to update their plan after an oil spill event and the time frame to update the plan must be described.

1.7.1 Response Resources for Small, Medium, and Worst Case Spills

1.7.1.1 Once the spill scenarios have been identified in section 1.5 of the response plan, the facility owner or operator shall identify and describe implementation of the response actions. The facility owner or operator shall demonstrate accessibility to the proper response personnel and equipment to effectively respond to all of the identified spill scenarios. The determination and demonstration of adequate response capability are presented in Appendix E to this part. In addition, steps to expedite the cleanup of oil spills must be discussed. At a minimum, the following items must be addressed:

(1) Emergency plans for spill response;

(2) Additional response training;

(3) Additional contracted help;

(4) Access to additional response equipment/experts; and

(5) Ability to implement the plan including response training and practice drills.

1.7.1.2A recommended form detailing immediate actions follows.

Oil Spill Response—Immediate Actions

1. Stop the product flow.	Act quickly to secure pumps, close valves, etc.
2. Warn personnel	Enforce safety and security measures.
3. Shut off ignition sources.	Motors, electrical circuits, open flames, etc.
4. Initiate containment	Around the tank and/or in the water with oil boom.
5. Notify NRC	1–800–424–8802
6. Notify OSC	
7. Notify, as appropriate	

Source: FOSS, Oil Spill Response—Emergency Procedures, Revised December 3, 1992.

1.7.2 Disposal Plans

1.7.2.1 Facility owners or operators must describe how and where the facility intends to recover, reuse, decontaminate, or dispose of materials after a discharge has taken place. The appropriate permits required to transport or dispose of recovered materials according to local, State, and Federal requirements must be addressed. Materials that must be accounted for in the disposal plan, as appropriate, include:

(1) Recovered product;

(2) Contaminated soil;

(3) Contaminated equipment and materials, including drums, tank parts, valves, and shovels;

(4) Personnel protective equipment;

(5) Decontamination solutions;

(6) Adsorbents; and

(7) Spent chemicals.

1.7.2.2 These plans must be prepared in accordance with Federal (e.g., the Resource Conservation and Recovery Act (RCRA)), State, and local regulations, where applicable. A copy of the disposal plans from the facility's SPCC Plan may be inserted with this section, including any diagrams in those plans.

Material	Disposal facility	Location	RCRA permit/manifest
1.			
2.			
3.			
4.			

1.7.3 Containment and Drainage Planning

A proper plan to contain and control a spill through drainage may limit the threat of harm to human health and the environment. This section shall describe how to contain and control a spill through drainage, including:

(1) The available volume of containment (use the information presented in section 1.4.1 of the response plan);

(2) The route of drainage from oil storage and transfer areas;

(3) The construction materials used in drainage troughs;

(4) The type and number of valves and separators used in the drainage system;

(5) Sump pump capacities;

(6) The containment capacity of weirs and booms that might be used and their location (see section 1.3.2 of this appendix); and

(7) Other cleanup materials.

In addition, facility owners or operators must meet the inspection and monitoring requirements for drainage contained in 40 CFR 112.7(e). A copy of the containment and drainage plans that are required in 40 CFR 112.7(e) may be inserted in this section, including any diagrams in those plans.

NOTE: The general permit for stormwater drainage may contain additional requirements.

1.8 Self-Inspection, Drills/Exercises, and Response Training

The owner or operator must develop programs for facility response training and for drills/exercises according to the requirements of 40 CFR 112.21. Logs must be kept for facility drills/exercises, personnel response training, and spill prevention meetings. Much of the recordkeeping information required by this section is also contained in the SPCC Plan required by 40 CFR 112.3. These logs may be included in the facility response plan or kept as an annex to the facility response plan.

1.8.1 Facility Self-Inspection

Pursuant to 40 CFR 112.7(e)(8), each facility shall include the written procedures and records of inspections in the SPCC Plan. The inspection shall include the tanks, secondary containment, and response equipment at the facility. Records of the inspections of tanks and secondary containment required by 40 CFR 112.7(e) shall be cross-referenced in the response plan. The inspection of response equipment is a new requirement in this plan. Facility self-inspection requires two steps: (1) a checklist of things to inspect; and (2) a method of recording the actual inspection and its findings. The date of each inspection shall be noted. These records are required to be maintained for 5 years.

1.8.1.1 Tank Inspection

The tank inspection checklist presented below has been included as guidance during inspections and monitoring. Similar requirements exist in 40 CFR 112.7(e). Duplicate information from the SPCC Plan may be photocopied and inserted in this section. The inspection checklist consists of the following items:

Tank Inspection Checklist

1. Check tanks for leaks, specifically looking for:
   - A. drip marks;
   - B. discoloration of tanks;
   - C. puddles containing spilled or leaked material;
   - D. corrosion;
   - E. cracks; and
   - F. localized dead vegetation
2. Check foundation for
   - A. cracks;
   - B. discoloration;
   - C. puddles containing spilled or leaked material;
   - D. settling;
   - E. gaps between tank and foundation; and
   - F. damage caused by vegetation roots
3. Check piping for:
   - A. droplets of stored material;
   - B. discoloration;
   - C. corrosion;
   - D. bowing of pipe between supports;
   - E. evidence of stored material seepage from valves or seals; and
   - F. localized dead vegetation

TANK/SURFACE IMPOUNDMENT INSPECTION LOG

Inspector	Tank or SI#	Date	Comments

1.8.1.2 Response Equipment Inspection

Using the Emergency Response Equipment List provided in section 1.3.2 of the response plan, describe each type of response equipment, checking for the following:

Response Equipment Checklist

1. Inventory (item and quantity);
2. Storage location;
3. Accessibility (time to access and respond);
4. Operational status/condition;
5. Actual use/testing (last test date and frequency of testing); and
6. Shelf life (present age, expected replacement date).

Please note any discrepancies between this list and the available response equipment.

RESPONSE EQUIPMENT INSPECTION LOG

[Use section 1.3.2 of the response plan as a checklist]

Inspector	Date	Comments

1.8.1.3 Secondary Containment Inspection

Inspect the secondary containment (as described in sections 1.4.1 and 1.7.2 of the response plan), checking the following:

Secondary Containment Checklist

1. Dike or berm system.
   A. Level of precipitation in dike/available capacity;
   B. Operational status of drainage valves;
   C. Dike or berm permeability;
   D. Debris;
   E. Erosion;
   F. Permeability of the earthen floor of diked area; and
   G. Location/status of pipes, inlets, drainage beneath tanks, etc.
2. Secondary containment
   A. Cracks;
   B. Discoloration;
   C. Presence of spilled or leaked material (standing liquid);
   D. Corrosion; and
   E. Valve conditions.
3. Retention and drainage ponds
   A. Erosion;
   B. Available capacity;
   C. Presence of spilled or leaked material;
   D. Debris; and
   E. Stressed vegetation.

During inspection, make note of discrepancies in any of the above mentioned items, and report them immediately to the proper facility personnel. Similar requirements exist in 40 CFR 112.7(e). Duplicate information from the SPCC Plan may be photocopied and inserted in this section.

1.8.2 Facility Drills/Exercises

(A) CWA section 311(j)(5), as amended by OPA, requires the response plan to contain a description of facility drills/exercises. According to 40 CFR 112.21(c), the facility owner or operator shall develop a program of facility response drills/exercises, including evaluation procedures. Following the PREP guidelines (see Appendix E to this part, section 10, for availability) would satisfy a facility's requirements for drills/exercises under this part. Alternately, under § 112.21(c), a facility owner or operator may develop a program that is not based on the PREP guidelines. Such a program is subject to approval by the Regional Administrator based on the description of the program provided in the response plan.

(B) The PREP Guidelines specify that the facility conduct internal and external drills/exercises. The internal exercises include: qualified individual notification drills, spill management team tabletop exercises, equipment deployment exercises, and unannounced exercises. External exercises include Area Exercises. Credit for an Area or Facility-specific Exercise will be given to the facility for an actual response to a spill in the area if the plan was utilized for response to the spill and the objectives of the Exercise were met and were properly evaluated, documented and self-certified.

(C) Section 112.20(h)(8)(ii) requires the facility owner or operator to provide a description of the drill/exercise program to be carried out under the response plan. Qualified Individual Notification Drill and Spill Management Team Tabletop Drill logs shall be provided in sections 1.8.2.1 and 1.8.2.2, respectively. These logs may be included in the facility response plan or kept as an annex to the facility response plan. See section 1.3.3 of this appendix for Equipment Deployment Drill Logs.

1.8.2.1 Qualified Individual Notification Drill Logs Qualified Individual Notification Drill Log

Date: _____
Company: _____
Qualified Individual(s): _____
Emergency Scenario: _____
_____
_____
Evaluation: _____
_____
_____
_____
Changes to be Implemented: _____
_____
_____
Time Table for Implementation: _____
_____

1.8.2.2 Spill Management Team Tabletop Exercise Logs Spill Management Team Tabletop Exercise Log

Date: _____
Company: _____
Qualified Individual(s): _____
Emergency Scenario: _____
_____
_____
Evaluation: _____
_____
_____
_____
Changes to be Implemented: _____
_____
_____
Time Table for Implementation: _____
_____

1.8.3 Response Training

Section 112.21(a) requires facility owners or operators to develop programs for facility response training. Facility owners or operators are required by § 112.20(h)(8)(iii) to provide a description of the response training program to be carried out under the response plan. A facility's training program can be based on the USCG's Training Elements for Oil Spill Response, to the extent applicable to facility operations, or another response training program acceptable to the RA. The training elements are available from Petty Officer Daniel Caras at (202) 267–6570 or fax 267–4085/4065. Personnel response training logs and discharge prevention meeting logs shall be included in sections 1.8.3.1 and 1.8.3.2 of the response plan respectively. These logs may be included in the facility response plan or kept as an annex to the facility response plan.

1.8.3.1 Personnel Response Training Logs

PERSONNEL RESPONSE TRAINING LOG

Name	Response training/date and number of hours	Prevention training/date and number of hours

1.8.3.2 Discharge Prevention Meetings Logs

Discharge Prevention Meeting Log

Date: _____
Attendees: _____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Subject/issue identified	Required action	Implementation date

1.9 Diagrams

The facility-specific response plan shall include the following diagrams. Additional diagrams that would aid in the development of response plan sections may also be included.

(1) The Site Plan Diagram shall, as appropriate, include and identify:
- (A) the entire facility to scale;
- (B) above and below ground bulk oil storage tanks;
- (C) the contents and capacities of bulk oil storage tanks;
- (D) the contents and capacity of drum oil storage areas;
- (E) the contents and capacities of surface impoundments;
- (F) process buildings;
- (G) transfer areas;
- (H) secondary containment systems (location and capacity);
- (I) structures where hazardous materials are stored or handled, including materials stored and capacity of storage;
- (J) location of communication and emergency response equipment;
- (K) location of electrical equipment which contains oil; and
- (L) for complexes only, the interface(s) (i.e., valve or component) between the portion of the facility regulated by EPA and the portion(s) regulated by other Agencies. In most cases, this interface is defined as the last valve inside secondary containment before piping leaves the secondary containment area to connect to the transportation-related portion of the facility (i.e., the structure used or intended to be used to transfer oil to or from a vessel or pipeline). In the absence of secondary containment, this interface is the valve manifold adjacent to the tank nearest the transfer structure as described above. The interface may be defined differently at a specific facility if agreed to by the RA and the appropriate Federal official.

(2) The Site Drainage Plan Diagram shall, as appropriate, include:
- (A) major sanitary and storm sewers, manholes, and drains;
- (B) weirs and shut-off valves;
- (C) surface water receiving streams;
- (D) fire fighting water sources;
- (E) other utilities;
- (F) response personnel ingress and egress;
- (G) response equipment transportation routes; and
- (H) direction of spill flow from discharge points.

(3) The Site Evacuation Plan Diagram shall, as appropriate, include:
- (A) site plan diagram with evacuation route(s); and
- (B) location of evacuation regrouping areas.

1.10 Security

According to 40 CFR 112.7(é)(9), facilities are required to maintain a certain level of security, as appropriate. In this section, a description of the facility security shall be provided and include, as appropriate:

(1) emergency cut-off locations (automatic or manual valves);
(2) enclosures (e.g., fencing, etc.);
(3) guards and their duties, day and night;

1.9 Diagrams

The facility-specific response plan shall include the following diagrams. Additional diagrams that would aid in the development of response plan sections may also be included.

(1) The Site Plan Diagram shall, as appropriate, include and identify:
(A) the entire facility to scale;
(B) above and below ground bulk oil storage tanks;
(C) the contents and capacities of bulk oil storage tanks;
(D) the contents and capacity of drum oil storage areas;
(E) the contents and capacities of surface impoundments;
(F) process buildings;
(G) transfer areas;
(H) secondary containment systems (location and capacity);
(I) structures where hazardous materials are stored or handled, including materials stored and capacity of storage;
(J) location of communication and emergency response equipment;
(K) location of electrical equipment which contains oil; and
(L) for complexes only, the interface(s) (i.e., valve or component) between the portion of the facility regulated by EPA and the portion(s) regulated by other Agencies. In most cases, this interface is defined as the last valve inside secondary containment before piping leaves the secondary containment area to connect to the transportation-related portion of the facility (i.e., the structure used or intended to be used to transfer oil to or from a vessel or pipeline). In the absence of secondary containment, this interface is the valve manifold adjacent to the tank nearest the transfer structure as described above. The interface may be defined differently at a specific facility if agreed to by the RA and the appropriate Federal official.
(2) The Site Drainage Plan Diagram shall, as appropriate, include:
(A) major sanitary and storm sewers, manholes, and drains;
(B) weirs and shut-off valves;
(C) surface water receiving streams;
(D) fire fighting water sources;
(E) other utilities;
(F) response personnel ingress and egress;
(G) response equipment transportation routes; and
(H) direction of spill flow from discharge points.
(3) The Site Evacuation Plan Diagram shall, as appropriate, include:
(A) site plan diagram with evacuation route(s); and
(B) location of evacuation regrouping areas.

1.10 Security

According to 40 CFR 112.7(é)(9), facilities are required to maintain a certain level of security, as appropriate. In this section, a description of the facility security shall be provided and include, as appropriate:

(1) emergency cut-off locations (automatic or manual valves);
(2) enclosures (e.g., fencing, etc.);
(3) guards and their duties, day and night;
(4) lighting;
(5) valve and pump locks; and
(6) pipeline connection caps.

The SPCC Plan contains similar information. Duplicate information may be photocopied and inserted in this section.

2.0 Response Plan Cover Sheet

A three-page form has been developed to be completed and submitted to the RA by owners or operators who are required to prepare and submit a facility-specific response plan. The cover sheet (Attachment F–1) must accompany the response plan to provide the Agency with basic information concerning the facility. This section will describe the Response Plan Cover Sheet and provide instructions for its completion.

2.1 Page One—General Information

Owner/Operator of Facility: Enter the name of the owner of the facility (if the owner is the operator). Enter the operator of the facility if otherwise. If the owner/operator of the facility is a corporation, enter the name of the facility's principal corporate executive. Enter as much of the name as will fit in each section.

(1) *Facility Name:* Enter the proper name of the facility.

(2) *Facility Address:* Enter the street address, city, State, and zip code.

(3) *Facility Phone Number:* Enter the phone number of the facility.

(4) *Latitude and Longitude:* Enter the facility latitude and longitude in degrees, minutes, and seconds.

(5) *Dun and Bradstreet Number:* Enter the facility's Dun and Bradstreet number if available (this information may be obtained from public library resources).

(6) *Standard Industrial Classification (SIC) Code:* Enter the facility's SIC code as determined by the Office of Management and Budget (this information may be obtained from public library resources).

(7) *Largest Oil Storage Tank Capacity:* Enter the capacity in GALLONS of the largest aboveground oil storage tank at the facility.

(8) *Maximum Oil Storage Capacity:* Enter the total maximum capacity in GALLONS of all aboveground oil storage tanks at the facility.

(9) *Number of Oil Storage Tanks:* Enter the number of all aboveground oil storage tanks at the facility.

(10) *Worst Case Discharge Amount:* Using information from the worksheets in Appendix D, enter the amount of the worst case discharge in GALLONS.

(11) *Facility Distance to Navigable Waters:* Mark the appropriate line for the nearest distance between an opportunity for discharge (i.e., oil storage tank, piping, or flowline) and a navigable water.

2.2 Page Two—Applicability of Substantial Harm Criteria

Using the flowchart provided in Attachment C–I to Appendix C to this part, mark the appropriate answer to each question. Explanations of referenced terms can be found in Appendix C to this part. If a comparable formula to the ones described in Attachment C–III to Appendix C to this part is used to calculate the planning distance, documentation of the reliability and analytical soundness of the formula must be attached to the response plan cover sheet.

2.3 Page Three—Certification

Complete this block after all other questions have been answered.

3.0 Acronyms

ACP: Area Contingency Plan
ASTM: American Society of Testing Materials
bbls: Barrels
bpd: Barrels per Day
bph: Barrels per Hour
CHRIS: Chemical Hazards Response Information System
CWA: Clean Water Act
DOI: Department of Interior
DOC: Department of Commerce
DOT: Department of Transportation
EPA: Environmental Protection Agency
FEMA: Federal Emergency Management Agency
FR: Federal Register
gal: Gallons
gpm: Gallons per Minute
HAZMAT: Hazardous Materials
LEPC: Local Emergency Planning Committee
MMS: Minerals Management Service (part of DOI)
NCP: National Oil and Hazardous Substances Pollution Contingency Plan
NOAA: National Oceanic and Atmospheric Administration (part of DOC)
NRC: National Response Center
NRT: National Response Team
OPA: Oil Pollution Act of 1990
OSC: On-Scene Coordinator
PREP: National Preparedness for Response Exercise Program
RA: Regional Administrator
RCRA: Resource Conservation and Recovery Act
RRC: Regional Response Centers
RRT: Regional Response Team
RSPA: Research and Special Programs Administration
SARA: Superfund Amendments and Reauthorization Act
SERC: State Emergency Response Commission
SDWA: Safe Drinking Water Act of 1986
SI: Surface Impoundment
SIC: Standard Industrial Classification
SPCC: Spill Prevention, Control, and Countermeasures
USCG: United States Coast Guard

4.0 References

CONCAWE. 1982. Methodologies for Hazard Analysis and Risk Assessment in the Petroleum Refining and Storage Industry. Prepared by CONCAWE's Risk Assessment Ad-hoc Group.

U.S. Department of Housing and Urban Development. 1987. Siting of HUD-Assisted Projects Near Hazardous Facilities: Acceptable Separation Distances from Explosive and Flammable Hazards. Prepared by the Office of Environment and Energy, Environmental Planning Division, Department of Housing and Urban Development. Washington, DC.

U.S. DOT, FEMA and U.S. EPA. Handbook of Chemical Hazard Analysis Procedures.

U.S. DOT, FEMA and U.S. EPA. Technical Guidance for Hazards Analysis: Emergency Planning for Extremely Hazardous Substances.

The National Response Team. 1987. Hazardous Materials Emergency Planning Guide. Washington, DC.

The National Response Team. 1990. Oil Spill Contingency Planning, National Status: A Report to the President. Washington, DC: U.S. Government Printing Office.

Offshore Inspection and Enforcement Division. 1988. Minerals Management Service, Offshore Inspection Program: National Potential Incident of Noncompliance (PINC) List. Reston, VA.

Attachments to Appendix F

Attachment F–1—Response Plan Cover Sheet

This cover sheet will provide EPA with basic information concerning the facility. It must accompany a submitted facility response plan. Explanations and detailed instructions can be found in Appendix F. Please type or write legibly in blue or black ink. Public reporting burden for the collection of this information is estimated to vary from 1 hour to 270 hours per response in the first year, with an average of 5 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate of this information, including suggestions for reducing this burden to: Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington D.C. 20503.

General Information

Owner/Operator of Facility:

Facility Name: _____

Facility Address (street address or route):

_____

City, State, and U.S. Zip Code:

Facility Phone No.: _____

Latitude (Degrees: North):

_____

degrees, minutes, seconds

Dun & Bradstreet Number: [1]

_____

Largest Aboveground Oil Storage Tank Capacity (Gallons):

_____

Number of Aboveground Oil Storage Tanks:

_____

Longitude (Degrees: West):

_____

degrees, minutes, seconds _____

Standard Industrial Classification (SIC) Code: [1] _____

_____

Maximum Oil Storage Capacity (Gallons): _____

Worst Case Oil Discharge Amount (Gallons):

Facility Distance to Navigable Water. Mark the appropriate line. _____

0–¼ mile ___ ¼–½ mile ___ ½–1 mile ___ >1 mile ___

Applicability of Substantial Harm Criteria

Does the facility transfer oil over-water [2] to or from vessels and does the facility have a total oil storage capacity greater than or equal to 42,000 gallons?

Yes _____

No _____

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and, within any storage area, does the facility lack secondary containment [2] that is sufficiently large to contain the capacity of the largest aboveground oil storage tank plus sufficient freeboard to allow for precipitation?

Yes _____

No _____

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance [2] (as calculated using the appropriate formula in Appendix C or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments? [3]

Yes _____

No _____

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance [2] (as calculated using the appropriate formula in Appendix C or a comparable formula) such that a discharge from the facility would shut down a public drinking water intake? [2]

Yes _____

No _____

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and has the facility experienced a reportable oil spill [2] in an amount greater than or equal to 10,000 gallons within the last 5 years?

Yes _____

No _____

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining information, I believe that the submitted information is true, accurate, and complete.

Signature: _____

Name (Please type or print): _____

_____

Title: _____

Date: _____

[FR Doc. 94–15404 Filed 6–30–94; 8:45 am]

BILLING CODE 6560–50–P

[1] These numbers may be obtained from public library resources.

[2] Explanations of the above-referenced terms can be found in Appendix C to this part. If a comparable formula to the ones contained in Attachment C–III is used to establish the appropriate distance to fish and wildlife and sensitive environments or public drinking water intakes, documentation of the reliability and analytical soundness of the formula must be attached to this form.

[3] For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable ACP.

Federal Register

Friday
July 1, 1994

Part IV

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Notice

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circular 570; 1994 Revision]

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies

Effective July 1, 1994.

This Circular is published annually, as of July 1, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular, interim changes and other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, Washington, DC 20227, Telephone (FTS/202) 874–6850. (Effective September, 1994, the address will change to: U.S. Dept. of Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Hwy., Rm. 6F02, Hyattsville, MD 20782, Telephone number will not change.) Interim changes are published in the **Federal Register** as they occur.

For the most current list of Treasury authorized companies, all year round, 24 hours a day, free of charge, use your computer modem and dial into our Public Bulletin Board system at (FTS, 202) 874–7214.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury and are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)].

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

Important information is contained in the notes at the end of this circular. Please read the notes carefully.

BILLING CODE 4810-35-P

Acceptance Insuranc
222 South 15th Street, S
PHONE: (402) 344-8800.
$5,018,000. SURETY LICEN
MI, NE, ND, OH, TN, VA,

ACCREDITED SURETY A
BUSINESS ADDRESS: P.O. B
PHONE: (407) 841-8500.
$594,000. SURETY LICENSE
INCORPORATED IN: Florida

ACSTAR INSURANCE CO
233 Main Street, P.O. Bo
PHONE: (312) 902-5616.
$1,631,000. SURETY LICEN
DE, DC, FL, GA, ID, IL,
MN, MS, MO, MT, NE, NV,
PA, RI, SC, SD, TN, TX,
INCORPORATED IN: Illinoi

Aegis Security Insu
P.O. Box 3153, Harrisbur
(717) 657-9671. UNDERWR
SURETY LICENSES c/: AL,
KS, KY, LA, MD, MI, MS,
OH, OK, OR, PA, RI, SC,
INCORPORATED IN: Pennsyl

Aetna Casualty & Su
BUSINESS ADDRESS: 151 Fa
06156. PHONE: (203) 2
$20,414,000. SURETY LICE
DC, FL, GA, HI, ID, IL,
MN, MS, MT, NE, NV, NH,
SC, SD, TN, TX, UT, VT,
Connecticut.

Aetna Casualty and
BUSINESS ADDRESS: 151 Fa
06156. PHONE: (203) 2
$172,142,000. SURETY LIC
DE, DC, FL, GA, GU, HI,
MA, MI, MN, MS, MO, MT,
OK, OR, PA, PR, RI, SC,
WI, WY. INCORPORATED IN:

See Footnotes/Notes at en

Acceptance Insurance Company. BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102. PHONE: (402) 344-8800. UNDERWRITING LIMITATION b/: $5,018,000. SURETY LICENSES c/: AZ, AR, CO, GA, IL, IA, KY, MI, NE, ND, OH, TN, VA, WI. INCORPORATED IN: Nebraska.

ACCREDITED SURETY AND CASUALTY COMPANY, INC. BUSINESS ADDRESS: P.O. Box 568529, Orlando, FL 32856-8529. PHONE: (407) 841-8500. UNDERWRITING LIMITATION b/: $594,000. SURETY LICENSES c/: AL, FL, GA, IN, LA, MD, MS, VA. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY. BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (312) 902-5616. UNDERWRITING LIMITATION b/: $1,631,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aegis Security Insurance Company. BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657-9671. UNDERWRITING LIMITATION b/: $995,000. SURETY LICENSES c/: AL, AZ, AR, CA, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Aetna Casualty & Surety Company of America. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $20,414,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company (The). BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $172,142,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

See Footnotes/Notes at end of Circular

Aetna Casualty and Surety Company of Illinois. BUSINESS ADDRESS: 2525 Cabot Drive, SUITE: 301, Lisle, IL 60532-3629. PHONE: (708) 245-4001. UNDERWRITING LIMITATION b/: $32,903,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aetna Casualty Company of Connecticut. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $6,137,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Commercial Insurance Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $6,449,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Life and Casualty Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $433,678,000. SURETY LICENSES c/: CT, DC, PA. INCORPORATED IN: Connecticut.

Affiliated FM Insurance Company. BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919. PHONE: (401) 275-3000. UNDERWRITING LIMITATION b/: $4,856,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Alaska Pacific Assurance Company. BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (907) 263-0200. UNDERWRITING LIMITATION b/: $2,115,000. SURETY LICENSES c/: AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, OH, OR, PA, RI, SC, SD, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Alaska.

See Footnotes/Notes at end of Circular

Allegheny Mutual Cas P.O. Box 1116, Meadville, (814) 336-2521. UNDERWRI SURETY LICENSES c/: DC, F PA, TN, TX, WI. INCORPORA

Allendale Mutual Ins Post Office Box 7500, Joh (401) 275-3000. UNDERWRI SURETY LICENSES c/: AL, A GA, HI, ID, IL, IN, IA, K MO, MT, NE, NV, NH, NJ, N RI, SC, SD, TN, TX, UT, V INCORPORATED IN: Rhode Is

Alliance Assurance C BUSINESS ADDRESS: 10 East NY 10022. PHONE: (212 LIMITATION b/: $12,018,00 INCORPORATED IN: New York

Allied Mutual Insura 701 5th Avenue, Des Moine (515) 280-4211. UNDERWRI SURETY LICENSES c/: AZ, A KY, MI, MN, MO, MT, NE, N UT, WA, WI, WY. INCORPORA

Allstate Insurance C 3075 Sanders Rd., Ste H1B PHONE: (708) 402-5000. $627,428,000. SURETY LICE DE, DC, FL, GA, HI, ID, I MN, MS, MO, MT, NE, NV, N PA, PR, RI, SC, SD, TN, T INCORPORATED IN: Illinois

AMCO Insurance Compa 701 5th Avenue, Des Moines (515) 280-4211. UNDERWRI SURETY LICENSES c/: AZ, C MI, MN, MO, MT, NE, NM, N INCORPORATED IN: Iowa.

See Footnotes/Notes at end

Allegheny Mutual Casualty Company. BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION b/: $768,000. SURETY LICENSES c/: DC, FL, IL, IN, LA, MD, MI, NJ, OH, OK, PA, TN, TX, WI. INCORPORATED IN: Pennsylvania.

Allendale Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 7500, Johnston, RI 02919. PHONE: (401) 275-3000. UNDERWRITING LIMITATION b/: $69,606,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Alliance Assurance Company of America. BUSINESS ADDRESS: 10 East 50th Street, 27th Floor, New York, NY 10022. PHONE: (212) 753-8130. UNDERWRITING LIMITATION b/: $12,018,000. SURETY LICENSES c/: IN, KY, ME. INCORPORATED IN: New York.

Allied Mutual Insurance Company. BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION b/: $18,202,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

Allstate Insurance Company. BUSINESS ADDRESS: 3075 Sanders Rd., Ste H1B, Northbrook, IL 60062-7127. PHONE: (708) 402-5000. UNDERWRITING LIMITATION b/: $627,428,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

AMCO Insurance Company. BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION b/: $12,886,000. SURETY LICENSES c/: AZ, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, TN, TX, UT, WI, WY. INCORPORATED IN: Iowa.

See Footnotes/Notes at end of Circular

American Automobile Insurance Company.
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: $9,565,000. SURETY LICENSES c/: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA.
BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. PHONE: (305) 253-2244. UNDERWRITING LIMITATION b/: $4,339,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Bonding Company. BUSINESS ADDRESS: 6245 E. Broadway, SUITE: 600, Tucson, AZ 85711. PHONE: (602) 747-5555. UNDERWRITING LIMITATION b/: $1,324,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, MD, MN, MS, MO, MT, NE, NV, NM, NC, OH, OK, OR, PA, SD, TN, TX, UT, VA, WA, WV. INCORPORATED IN: Arizona.

American Casualty Company of Reading, Pennsylvania.
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $21,873,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

AMERICAN CONTRACTORS INDEMNITY COMPANY.
BUSINESS ADDRESS: 9841 Airport Blvd., SUITE: 916, Los Angeles, CA 90045. PHONE: (310) 649-0990. UNDERWRITING LIMITATION b/: $287,000. SURETY LICENSES c/: CA, NM. INCORPORATED IN: California.

American Economy Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275. PHONE: (317) 262-6262. UNDERWRITING LIMITATION b/: $38,627,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

See Footnotes/Notes at end of Circular

American Employers'
BUSINESS ADDRESS: One Be
PHONE: (617) 725-6000.
$18,125,000. SURETY LICE
DE, DC, FL, GA, HI, ID,
MI, MN, MS, MO, MT, NE,
OR, PA, RI, SC, SD, TN,
INCORPORATED IN: Massach

American Fidelity C
70 Pine Street, New York
(212) 770-7000. UNDERWR
SURETY LICENSES c/: AK,
ND, OK, RI, SD, UT, VT,

American Fire and C
136 North Third Street,
(513) 867-3000. UNDERWR
SURETY LICENSES c/: AL,
MS, NC, SC, TN, TX, VA.

American Guarantee
BUSINESS ADDRESS: 1400 A
PHONE: (708) 605-6000.
$21,362,000. SURETY LICE
DE, DC, FL, GA, ID, IL,
MN, MS, MO, MT, NE, NV,
PA, RI, SC, SD, TN, TX,
INCORPORATED IN: New Yor

American Home Assura
70 Pine Street, New York,
(212) 770-7000. UNDERWR
SURETY LICENSES c/: AL,
GA, GU, HI, ID, IL, IN,
MS, MO, MT, NE, NV, NH,
RI, SC, SD, TN, TX, UT,
INCORPORATED IN: New Yor

American Insurance C
777 San Marin Drive, Nova
(402) 498-2400. UNDERWR
SURETY LICENSES c/: AL,
FL, GA, GU, HI, ID, IL,
MN, MS, MO, MT, NE, NV,
PA, PR, RI, SC, SD, TN,
INCORPORATED IN: Nebraska

See Footnotes/Notes at end

American Employers' Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $18,125,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

American Fidelity Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $1,441,000. SURETY LICENSES c/: AK, CT, DC, IA, ME, MD, MA, MS, NE, NH, ND, OK, RI, SD, UT, VT, WV. INCORPORATED IN: Vermont.

American Fire and Casualty Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION b/: $11,078,000. SURETY LICENSES c/: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, SC, TN, TX, VA. INCORPORATED IN: Ohio.

American Guarantee and Liability Insurance Company. BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (708) 605-6000. UNDERWRITING LIMITATION b/: $21,362,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Home Assurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $133,758,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The). BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (402) 498-2400. UNDERWRITING LIMITATION b/: $40,317,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

See Footnotes/Notes at end of Circular

American Manufacturers Mutual Insurance Company. BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (708) 540-2000. UNDERWRITING LIMITATION b/: $16,296,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American Motorists Insurance Company. BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (708) 540-2000. UNDERWRITING LIMITATION b/: $24,792,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American National Fire Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: $2,016,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Re-Insurance Company. BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION b/: $107,928,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

AMERICAN ROAD INSURANCE COMPANY (THE). BUSINESS ADDRESS: The American Road, Dearborn, MI 48121-6027. PHONE: (800) 234-2722. UNDERWRITING LIMITATION b/: $38,522,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

See Footnotes/Notes at end of Circular

American States Ir 500 North Meridian Stre PHONE: (317) 262-6262. $106,844,000. SURETY LI DE, DC, FL, GA, HI, ID, MI, MN, MS, MO, MT, NE, OR, PA, RI, SC, SD, TN, INCORPORATED IN: Indian

American Surety an P. O. Box 24827, Jackso (904) 733-6661. UNDERW SURETY LICENSES c/: AL, Florida.

American Surety Co 3901 West 86th Street, 46268-0932. PHONE: (LIMITATION b/: $316,000 INCORPORATED IN: Califo

Amwest Surety Insu P.O. Box 4500, Woodland (818) 704-1111. UNDERW SURETY LICENSES c/: AL, FL, GA, GU, HI, ID, IL, MN, MS, MO, MT, NE, NV, PA, PR, RI, SC, SD, TN, INCORPORATED IN: Califo

Antilles Insurance Post Office Box 3507, O (809) 721-4900. UNDERW SURETY LICENSES c/: PR.

Argonaut Insurance 250 Middlefield Road, Me (415) 326-0900. UNDERW SURETY LICENSES c/: AL, GA, GU, HI, ID, IL, IN, MS, MO, MT, NE, NV, NH, RI, SC, SD, TN, TX, UT, INCORPORATED IN: Califor

See Footnotes/Notes at en

American States Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275. PHONE: (317) 262-6262. UNDERWRITING LIMITATION b/: $106,844,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety and Casualty Company. BUSINESS ADDRESS: P. O. Box 24827, Jacksonville, FL 32241-4827. PHONE: (904) 733-6661. UNDERWRITING LIMITATION b/: $550,000. SURETY LICENSES c/: AL, DC, FL, GA, TN. INCORPORATED IN: Florida.

American Surety Company. BUSINESS ADDRESS: 3901 West 86th Street, SUITE: 450, Indianapolis, IN 46268-0932. PHONE: (317) 875-8700. UNDERWRITING LIMITATION b/: $316,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

Amwest Surety Insurance Company. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. PHONE: (818) 704-1111. UNDERWRITING LIMITATION b/: $2,856,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Antilles Insurance Company. BUSINESS ADDRESS: Post Office Box 3507, Old San Juan, PR 00902. PHONE: (809) 721-4900. UNDERWRITING LIMITATION b/: $1,395,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Argonaut Insurance Company. BUSINESS ADDRESS: 250 Middlefield Road, Menlo Park, CA 94025-3507. PHONE: (415) 326-0900. UNDERWRITING LIMITATION b/: $52,931,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

Arkwright Mutual Insurance Company. BUSINESS ADDRESS: 225 Wyman Street, P.O. Box 9198, Waltham, MA 02254-9198. PHONE: (617) 890-9300. UNDERWRITING LIMITATION b/: $59,613,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: $3,783,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

ATLANTIC ALLIANCE FIDELITY AND SURETY COMPANY. BUSINESS ADDRESS: P.O. Box 985, Cherry Hill, NJ 08003. PHONE: (609) 795-5575. UNDERWRITING LIMITATION b/: $310,000. SURETY LICENSES c/: DE, DC, FL, MD, MA, MO, NJ, NY, PA, TX. INCORPORATED IN: New Jersey.

Atlantic Mutual Insurance Company. BUSINESS ADDRESS: 45 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION b/: $27,126,000. SURETY LICENSES c/: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Auto-Owners Insurance Company. BUSINESS ADDRESS: Post Office Box 30660, Lansing, MI 48909. PHONE: (517) 323-1200. UNDERWRITING LIMITATION b/: $97,556,000. SURETY LICENSES c/: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MO, NE, NM, NC, ND, OH, OR, SC, SD, TN, TX, VA, WI. INCORPORATED IN: Michigan.

Automobile Insurance Company of Hartford, Connecticut (The). BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $20,696,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

See Footnotes/Notes at end of Circular

BANKERS INSURANCE
P.O. Box 15707, St. Pe
(813) 823-4000. UNDER
SURETY LICENSES c/: AL
KY, LA, MS, MO, NV, NM
INCORPORATED IN: FLORI

BITUMINOUS CASUAL
320 - 18th Street, Roc
(309) 786-5401. UNDERW
SURETY LICENSES c/: AL,
GA, ID, IL, IN, IA, KS,
MT, NE, NV, NJ, NM, NY,
TN, TX, UT, VT, VA, WA,

BOND SAFEGUARD INS
246 E. Janata Blvd., Lo
(708) 495-9380. UNDERW
SURETY LICENSES c/: IL,
INCORPORATED IN: Illinc

Boston Old Colony
180 Maiden Lane, New Yo
(609) 395-2000. UNDERW
SURETY LICENSES c/: AL,
GA, HI, ID, IL, IN, IA,
MO, MT, NE, NV, NH, NJ,
RI, SC, SD, TN, TX, UT,
INCORPORATED IN: Massac

Buckeye Union Insu
BUSINESS ADDRESS: P.O.
PHONE: (609) 395-2000.
$34,420,000. SURETY LIC
KY, MD, MI, MO, NY, OH,
Ohio.

Capitol Indemnity
P.O. Box 5900, Madison,
(608) 231-4450. UNDERW
SURETY LICENSES c/: AZ,
KY, LA, MI, MN, MO, MT,
TX, UT, WA, WI, WY. INC

See Footnotes/Notes at en

BANKERS INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 15707, St. Petersburg, FL 33733. PHONE: (813) 823-4000. UNDERWRITING LIMITATION b/: $716,000. SURETY LICENSES c/: AL, AZ, AR, CA, DE, DC, FL, GA, IL, IA, KY, LA, MS, MO, NV, NM, OH, PA, SC, TN, TX, VA. INCORPORATED IN: FLORIDA.

BITUMINOUS CASUALTY CORPORATION. BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201. PHONE: (309) 786-5401. UNDERWRITING LIMITATION b/: $8,884,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY. BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. PHONE: (708) 495-9380. UNDERWRITING LIMITATION b/: $374,000. SURETY LICENSES c/: IL, IN, KS, MO, NC, OK, TN, TX. INCORPORATED IN: Illinois.

Boston Old Colony Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $1,917,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Buckeye Union Insurance Company (The). BUSINESS ADDRESS: P.O. Box 1499, Columbus, OH 43216. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $34,420,000. SURETY LICENSES c/: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

Capitol Indemnity Corporation. BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. PHONE: (608) 231-4450. UNDERWRITING LIMITATION b/: $3,942,000. SURETY LICENSES c/: AZ, AR, CO, DE, FL, ID, IL, IN, IA, KS, KY, LA, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Wisconsin.

See Footnotes/Notes at end of Circular

Centennial Insurance Company. BUSINESS ADDRESS: 45 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION b/: $12,850,000. SURETY LICENSES c/: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Century Indemnity Company. BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION b/: $1,237,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

CENTURY SURETY COMPANY. BUSINESS ADDRESS: P.O. Box 2689, Columbus, OH 43216-2689. PHONE: (614) 895-2000. UNDERWRITING LIMITATION b/: $1,466,000. SURETY LICENSES c/: AZ, IN, OH, WV, WI. INCORPORATED IN: OHIO.

Charter Oak Fire Insurance Company (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (203) 277-0111. UNDERWRITING LIMITATION b/: $11,175,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

CHRYSLER INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 5168, Southfield, MI 48086-5168. PHONE: (810) 948-3390. UNDERWRITING LIMITATION b/: $7,782,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

CHUBB INDEMNITY INSURANCE COMPANY. BUSINESS ADDRESS: 4 World Trade Center, New York, NY 10048. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $454,000. SURETY LICENSES c/: AK, AZ, CA, CT, DE, DC, GA, IL, IA, KY, LA, ME, MD, MA, MI, MN, MO, MT, NJ, NY, OH, OR, PA, RI, SC, TN, TX, VA, WA, WI. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

CIGNA Insurance Co 8755 West Higgins Rd., (312) 380-8100. UNDERW SURETY LICENSES c/: IL.

CIGNA Insurance Co 600 East Las Colinas Bl PHONE: (214) 869-8500. $2,790,000. SURETY LICE

CIGNA Insurance Co BUSINESS ADDRESS: 9200 SUITE: 303, Indianapoli (215) 761-1000. UNDERW SURETY LICENSES c/: IN.

Cincinnati Casualt P.O. Box 145496, Cincin (513) 870-2000. UNDERW SURETY LICENSES c/: AL, MD, MI, MS, MO, NE, NM, VT, VA, WV, WI, WY. INC

Cincinnati Insuran Post Office Box 145496, PHONE: (513) 870-2000. $92,411,000. SURETY LIC DE, DC, FL, GA, HI, ID, MI, MN, MS, MO, MT, NE, OR, PA, PR, RI, SC, SD, INCORPORATED IN: Ohio.

COLONIAL AMERICAN BUSINESS ADDRESS: 210 No 21201. PHONE: (410) 5 $593,000. SURETY LICENSE INCORPORATED IN: Marylan

COLONIAL SURETY COM 50 Chestnut Ridge Road, (201) 573-8788. UNDERWR SURETY LICENSES c/: DE, Pennsylvania.

Commercial Casualty BUSINESS ADDRESS: 160 Te 30092-2911. PHONE: (4 LIMITATION b/: $525,000. INCORPORATED IN: GEORGIA

See Footnotes/Notes at en

CIGNA Insurance Company of Illinois. BUSINESS ADDRESS: 8755 West Higgins Rd., Chicago, IL 60631. PHONE: (312) 380-8100. UNDERWRITING LIMITATION b/: $2,745,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois.

CIGNA Insurance Company of Texas. BUSINESS ADDRESS: 600 East Las Colinas Blvd., SUITE: 620, Irving, TX 75039. PHONE: (214) 869-8500. UNDERWRITING LIMITATION b/: $2,790,000. SURETY LICENSES c/: NM, TX. INCORPORATED IN: Texas.

CIGNA Insurance Company of the Midwest. BUSINESS ADDRESS: 9200 Keystone Crossing, P.O. Box 80995, SUITE: 303, Indianapolis, IN 46280-80995. PHONE: (215) 761-1000. UNDERWRITING LIMITATION b/: $2,128,000. SURETY LICENSES c/: IN. INCORPORATED IN: INDIANA.

Cincinnati Casualty Company (The). BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $8,500,000. SURETY LICENSES c/: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MS, MO, NE, NM, NC, OH, OK, PA, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Ohio.

Cincinnati Insurance Company (The). BUSINESS ADDRESS: Post Office Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $92,411,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY. BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (410) 539-0800. UNDERWRITING LIMITATION b/: $593,000. SURETY LICENSES c/: DC, IA, KS, MD, MO, TX, VA. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY. BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION b/: $199,000. SURETY LICENSES c/: DE, DC, MD, MA, NJ, PA. INCORPORATED IN: Pennsylvania.

Commercial Casualty Insurance Company of Georgia. BUSINESS ADDRESS: 160 Technology Parkway, Norcross, GA 30092-2911. PHONE: (404) 729-8101. UNDERWRITING LIMITATION b/: $525,000. SURETY LICENSES c/: GA. INCORPORATED IN: GEORGIA.

See Footnotes/Notes at end of Circular

Commercial Insurance Company of Newark, New Jersey. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $9,234,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

Commercial Union Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $47,873,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

CONNECTICUT INDEMNITY COMPANY (THE). BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (203) 674-6600. UNDERWRITING LIMITATION b/: $2,865,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: CONNECTICUT.

Consolidated Surety Insurance Company, Inc. 3/

Continental Casualty Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $252,331,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Continental Insurance Company (The). BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $33,767,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

CONTINENTAL INSURANCE COMPANY OF PUERTO RICO (THE). BUSINESS ADDRESS: P.O. Box 431, San Patricio Plaza, PMC, San Juan, PR 00968. PHONE: (809) 793-6111. UNDERWRITING LIMITATION b/: $14,116,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

See Footnotes/Notes at end of Circular

Continental Reinsu
180 Maiden Lane, New Yo
(215) 761-3535. UNDERW
SURETY LICENSES c/: AK,
IN, IA, LA, MI, MS, MT,
PR, TX, UT, VA, WA, WY.

Continental Wester
BUSINESS ADDRESS: P.O.
PHONE: (515) 278-3000.
$7,397,000. SURETY LICE
KS, KY, ME, MI, MN, MO,
WI, WY. INCORPORATED IN

CONTRACTORS BONDIN
BUSINESS ADDRESS: P.O.
PHONE: (206) 622-7053.
$1,665,000. SURETY LICE
DE, DC, FL, GA, HI, ID,
MI, MN, MS, MO, MT, NE,
PR, RI, SC, SD, TN, TX,
INCORPORATED IN: Washin

Cooperativa de Seg
BUSINESS ADDRESS: G.P.O
00936-3846. PHONE: (
LIMITATION b/: $8,951,0
INCORPORATED IN: Puerto

CREDIT GENERAL INSU
709 Brookpark Road, Cle
(216) 778-6920. UNDERW
SURETY LICENSES c/: AK,
IN, IA, KS, KY, LA, MD,
OH, OK, PA, SC, SD, TN,
OHIO.

CUMBERLAND CASUALTY
4311 West Waters Avenue,
PHONE: (813) 885-2112.
$600,000. SURETY LICENSE
NV, ND, SC, SD, TX, WY.

Cumberland Surety I
BUSINESS ADDRESS: 367 We
40507. PHONE: (800) 7
$533,000. SURETY LICENSE
INCORPORATED IN: Kentuck

See Footnotes/Notes at en

Continental Reinsurance Corporation. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (215) 761-3535. UNDERWRITING LIMITATION b/: $22,367,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, LA, MI, MS, MT, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PR, TX, UT, VA, WA, WY. INCORPORATED IN: California.

Continental Western Insurance Company. BUSINESS ADDRESS: P.O. Box 1594, Des Moines, IA 50306. PHONE: (515) 278-3000. UNDERWRITING LIMITATION b/: $7,397,000. SURETY LICENSES c/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, SD, UT, WI, WY. INCORPORATED IN: Iowa.

CONTRACTORS BONDING AND INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109-0271. PHONE: (206) 622-7053. UNDERWRITING LIMITATION b/: $1,665,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico. BUSINESS ADDRESS: G.P.O. Box 363846, San Juan, PR 00936-3846. PHONE: (809) 758-8585. UNDERWRITING LIMITATION b/: $8,951,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

CREDIT GENERAL INSURANCE COMPANY. BUSINESS ADDRESS: 709 Brookpark Road, Cleveland, OH 44109. PHONE: (216) 778-6920. UNDERWRITING LIMITATION b/: $1,209,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SC, SD, TN, UT, VA, WA, WV, WI. INCORPORATED IN: OHIO.

CUMBERLAND CASUALTY & SURETY COMPANY. BUSINESS ADDRESS: 4311 West Waters Avenue, SUITE: 501, Tampa, FL 33614. PHONE: (813) 885-2112. UNDERWRITING LIMITATION b/: $600,000. SURETY LICENSES c/: DE, DC, FL, ID, IN, LA, MD, MT, NV, ND, SC, SD, TX, WY. INCORPORATED IN: Texas.

Cumberland Surety Insurance Company, Inc.. BUSINESS ADDRESS: 367 West Short Street, Lexington, KY 40507. PHONE: (800) 767-8622. UNDERWRITING LIMITATION b/: $533,000. SURETY LICENSES c/: DC, IL, IN, KY, MS, OH, TN. INCORPORATED IN: Kentucky.

See Footnotes/Notes at end of Circular

CUMIS INSURANCE SOCIETY, INC. BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION b/: $15,712,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DAIRYLAND INSURANCE COMPANY. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/: $19,062,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DELTA CASUALTY COMPANY. BUSINESS ADDRESS: 4711 North Clark Street, Chicago, IL 60640. PHONE: (312) 878-8500. UNDERWRITING LIMITATION b/: $598,000. SURETY LICENSES c/: IL, IA. INCORPORATED IN: Illinois.

DEVELOPERS INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263-3300. UNDERWRITING LIMITATION b/: $528,000. SURETY LICENSES c/: AZ, CA, NV, OR, WA. INCORPORATED IN: California.

DIAMOND STATE INSURANCE COMPANY. BUSINESS ADDRESS: Three Bala Plaza, East, SUITE: 300, Bala Cynwyd, PA 19004. PHONE: (215) 664-1500. UNDERWRITING LIMITATION b/: $1,737,000. SURETY LICENSES c/: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, RI, SC, SD, TN, UT, VT, VA, WV, WY. INCORPORATED IN: INDIANA.

Empire Fire and Marine Insurance Company. BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. PHONE: (402) 341-0135. UNDERWRITING LIMITATION b/: $9,490,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Nebraska.

EMPLOYERS' FIRE INSURANCE COMPANY (THE). BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $7,390,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

See Footnotes/Notes at end of Circular

EMPLOYERS INSURANC BUSINESS ADDRESS: P.O. PHONE: (715) 845-5211. $33,376,000. SURETY LIC DE, DC, FL, GA, HI, ID, MI, MN, MS, MO, MT, NE, OR, PA, PR, RI, SC, SD, INCORPORATED IN: Wiscon

Employers Mutual C Post Office Box 712, De (515) 280-2511. UNDERW SURETY LICENSES c/: AL, GA, HI, ID, IL, IN, IA, MO, MT, NE, NV, NH, NJ, SC, SD, TN, TX, UT, VT, Iowa.

Employers Reinsura 5200 Metcalf, P.O. Box PHONE: (913) 676-5200. $136,808,000. SURETY LI DE, DC, FL, GA, ID, IL, MN, MS, MO, MT, NE, NV, PA, RI, SC, SD, TN, TX, INCORPORATED IN: Missou

Erie Insurance Com 100 Erie Insurance Plac (814) 870-2000. UNDERW SURETY LICENSES c/: DC, WV. INCORPORATED IN: Pe

EXPLORER INSURANCE P.O. Box 85563, San Die (619) 546-2400. UNDERW SURETY LICENSES c/: AZ, UT. INCORPORATED IN: Ar

FAR WEST INSURANCE P.O. Box 4500, Woodland (818) 704-1111. UNDERW SURETY LICENSES c/: AK, NV, NM, OR, PA, SD, TX,

Farmers Alliance M BUSINESS ADDRESS: 1122 67460. PHONE: (316) $5,326,000. SURETY LICE MO, MT, NE, NM, ND, OK,

See Footnotes/Notes at e

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company. BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017. PHONE: (715) 845-5211. UNDERWRITING LIMITATION b/: $33,376,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Employers Mutual Casualty Company. BUSINESS ADDRESS: Post Office Box 712, Des Moines, IA 50303-0712. PHONE: (515) 280-2511. UNDERWRITING LIMITATION b/: $27,532,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation. BUSINESS ADDRESS: 5200 Metcalf, P.O. Box 2991, Overland Park, KS 66201-1391. PHONE: (913) 676-5200. UNDERWRITING LIMITATION b/: $136,808,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Erie Insurance Company. BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. PHONE: (814) 870-2000. UNDERWRITING LIMITATION b/: $4,181,000. SURETY LICENSES c/: DC, IN, KY, MD, NY, NC, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

EXPLORER INSURANCE COMPANY (THE). BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION b/: $1,741,000. SURETY LICENSES c/: AZ, CA, ID, IL, IA, MT, NV, NM, OR, TX, UT. INCORPORATED IN: Arizona.

FAR WEST INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. PHONE: (818) 704-1111. UNDERWRITING LIMITATION b/: $479,000. SURETY LICENSES c/: AK, AZ, CA, CO, DC, ID, IN, MN, MO, MT, NV, NM, OR, PA, SD, TX, UT, WY. INCORPORATED IN: California.

Farmers Alliance Mutual Insurance Company. BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. PHONE: (316) 241-2200. UNDERWRITING LIMITATION b/: $5,326,000. SURETY LICENSES c/: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX, WY. INCORPORATED IN: Kansas.

See Footnotes/Notes at end of Circular

Farmington Casualty Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $15,903,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Farmland Mutual Insurance Company. BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. PHONE: (515) 245-8800. UNDERWRITING LIMITATION b/: $5,909,000. SURETY LICENSES c/: AR, CO, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, ND, OH, OK, OR, SD, TX, UT, WI, WY. INCORPORATED IN: Iowa.

Federal Insurance Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. PHONE: (908) 580-2000. UNDERWRITING LIMITATION b/: $165,401,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. PHONE: (507) 455-5200. UNDERWRITING LIMITATION b/: $48,364,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The). BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $13,896,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company of Maryland. BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (410) 539-0800. UNDERWRITING LIMITATION b/: $23,735,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

See Footnotes/Notes at end of Circular

FIDELITY AND GUAR
BUSINESS ADDRESS: P.O.
Baltimore, MD 21203.
UNDERWRITING LIMITATIO
AL, AK, AZ, AR, CA, CO
IA, KS, KY, LA, ME, MD
NJ, NM, NY, NC, ND, OH
VT, VA, WA, WV, WI, WY

Fidelity and Guar
BUSINESS ADDRESS: P.O.
PHONE: (410) 547-3000
$4,695,000. SURETY LIC
DE, DC, FL, GA, HI, ID
MN, MS, MO, MT, NE, NV
RI, SD, TN, TX, UT, VT

Fireman's Fund Ins
777 San Marin Drive, No
(415) 899-2000. UNDERW
SURETY LICENSES c/: AL,
FL, GA, GU, HI, ID, IL,
MN, MS, MO, MT, NE, NV
PA, PR, RI, SC, SD, TN,
INCORPORATED IN: Califo

Firemen's Insuranc
BUSINESS ADDRESS: 180 M
PHONE: (609) 395-2000.
$40,029,000. SURETY LIC
DE, DC, FL, GA, HI, ID,
MI, MN, MS, MO, MT, NE,
OR, PA, RI, SC, SD, TN,
INCORPORATED IN: New Je

First Community In
1400 N. Goodman Street,
(716) 338-8523. UNDERW
SURETY LICENSES c/: AL,
NV, NH, NJ, NY, NC, ND,
WY. INCORPORATED IN: Ne

First Financial In
401-417 Fayette Avenue,
PHONE: (919) 538-2800.
$2,553,000. SURETY LICE
DC, FL, GA, HI, ID, IL,
MT, NE, NV, NM, ND, OH,
WV, WI, WY. INCORPORATE

See Footnotes/Notes at en

FIDELITY AND GUARANTY INSURANCE COMPANY.
BUSINESS ADDRESS: P.O. Box 1138, 100 Light Street, Baltimore, MD 21203. PHONE: (410) 547-3000. UNDERWRITING LIMITATION b/: $1,426,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc..
BUSINESS ADDRESS: P.O. Box 1138, Baltimore, MD 21203. PHONE: (410) 547-3000. UNDERWRITING LIMITATION b/: $4,695,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Ohio.

Fireman's Fund Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: $171,947,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey.
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $40,029,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

First Community Insurance Company. BUSINESS ADDRESS: 1400 N. Goodman Street, Rochester, NY 14692. PHONE: (716) 338-8523. UNDERWRITING LIMITATION b/: $502,000. SURETY LICENSES c/: AL, AK, AZ, HI, ID, IL, IA, KY, MD, MT, NV, NH, NJ, NY, NC, ND, OH, OK, RI, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: New York.

First Financial Insurance Company. BUSINESS ADDRESS: 401-417 Fayette Avenue, Springfield, IL 62704-2788. PHONE: (919) 538-2800. UNDERWRITING LIMITATION b/: $2,553,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OR, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

First Insurance Company of Hawaii, Ltd..
BUSINESS ADDRESS: Post Office Box 2866, Honolulu, HI 96803. PHONE: (808) 527-7777. UNDERWRITING LIMITATION b/: $4,919,000. SURETY LICENSES c/: GU, HI. INCORPORATED IN: Hawaii.

First National Insurance Company of America.
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $6,071,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

FRONTIER INSURANCE COMPANY. 4/ BUSINESS ADDRESS: 195 Lake Louise Marie Road, Rock Hill, NY 12775-8000. PHONE: (800) 836-2100. UNDERWRITING LIMITATION b/: $10,142,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

GENERAL ACCIDENT INSURANCE COMPANY (PUERTO RICO) LIMITED.
BUSINESS ADDRESS: P.O. Box 363786, San Juan, PR 00936-3786. PHONE: (809) 765-8700. UNDERWRITING LIMITATION b/: $4,497,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA.
BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105-1109. PHONE: (215) 625-1000. UNDERWRITING LIMITATION b/: $98,242,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

General Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $55,740,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

See Footnotes/Notes at end of Circular

General Reinsuranc
P.O. Box 10350, 695 Eas
06904-2350. PHONE: (
LIMITATION b/: $383,555
CA, CO, CT, DE, DC, FL,
MA, MI, MN, MS, MO, MT,
OK, OR, PA, RI, SC, SD,
INCORPORATED IN: Delawa

Glens Falls Insura
180 Maiden Lane, New Yo
(609) 395-2000. UNDERW
SURETY LICENSES c/: AL,
GA, HI, ID, IL, IN, IA,
MO, MT, NE, NV, NH, NJ,
RI, SC, SD, TN, TX, UT,
INCORPORATED IN: Delawa

Global Surety & In
160 Kiewit Plaza, Omaha,
(402) 271-2846. UNDERW
SURETY LICENSES c/: AZ,
Nebraska.

Grain Dealers Mutua
BUSINESS ADDRESS: Post
46206. PHONE: (317)
$3,478,000. SURETY LICE
KS, KY, LA, MN, MS, MO,
TX, VA, WA, WI, WY. INC

GRAMERCY INSURANCE
110 South French Street,
PHONE: (302) 571-0525.
$206,000. SURETY LICENSE
INCORPORATED IN: Delawar

Granite State Insur
70 Pine Street, New York
(212) 770-7000. UNDERWR
SURETY LICENSES c/: AL,
IL, IN, IA, KS, KY, LA,
NV, NH, NJ, NM, NY, NC,
TX, UT, VT, VA, WA, WV,

See Footnotes/Notes at en

General Reinsurance Corporation. BUSINESS ADDRESS: P.O. Box 10350, 695 East Main Street, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION b/: $383,555,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Glens Falls Insurance Company (The). BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $2,955,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co.. BUSINESS ADDRESS: 160 Kiewit Plaza, Omaha, NE 68131. PHONE: (402) 271-2846. UNDERWRITING LIMITATION b/: $3,490,000. SURETY LICENSES c/: AZ, CA, CO, MT, NE, SD. INCORPORATED IN: Nebraska.

Grain Dealers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 1747, Indianapolis, IN 46206. PHONE: (317) 923-2453. UNDERWRITING LIMITATION b/: $3,478,000. SURETY LICENSES c/: AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

GRAMERCY INSURANCE COMPANY. BUSINESS ADDRESS: 110 South French Street, #203, Wilmington, DE 19801. PHONE: (302) 571-0525. UNDERWRITING LIMITATION b/: $206,000. SURETY LICENSES c/: DE, LA, MD, OK, TX. INCORPORATED IN: Delaware.

Granite State Insurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $1,226,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Great American Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: $64,080,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Great Northern Insurance Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $11,157,000. SURETY LICENSES c/: AL, AK, AZ, AR, DC, FL, GA, HI, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Gulf Insurance Company. BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (214) 650-2800. UNDERWRITING LIMITATION b/: $23,143,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Hamilton Mutual Insurance Company of Cincinnati, Ohio (The). BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206-1787. PHONE: (513) 221-6010. UNDERWRITING LIMITATION b/: $949,000. SURETY LICENSES c/: IN, KY, MI, OH, TN. INCORPORATED IN: Ohio.

Hanover Insurance Company (The). BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION b/: $84,629,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. PHONE: (708) 734-4100. UNDERWRITING LIMITATION b/: $3,581,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

Harleysville Mutua BUSINESS ADDRESS: 355 M 19438-2297. PHONE: (LIMITATION b/: $26,732, DC, GA, IL, IN, IA, KS, OH, PA, SC, TN, TX, UT, Pennsylvania.

Hartford Accident BUSINESS ADDRESS: Hartf PHONE: (203) 547-5000. $114,819,000. SURETY LI DE, DC, FL, GA, HI, ID, MI, MN, MS, MO, MT, NE, OR, PA, PR, RI, SC, SD, INCORPORATED IN: Connec

Hartford Casualty Hartford Plaza, Hartfor (203) 547-5000. UNDERW SURETY LICENSES c/: AL, GA, HI, ID, IL, IN, IA, MO, MT, NE, NV, NH, NJ, SC, SD, TN, TX, UT, VT, Indiana.

Hartford Fire Insu Hartford Plaza, Hartfor (203) 547-5000. UNDERW SURETY LICENSES c/: AL, GA, GU, HI, ID, IL, IN, MS, MO, MT, NE, NV, NH, PR, RI, SC, SD, TN, TX, INCORPORATED IN: Connec

Hartford Insurance BUSINESS ADDRESS: Hartf PHONE: (312) 346-6000. $28,549,000. SURETY LIC Illinois.

Hartford Insurance BUSINESS ADDRESS: Hartf PHONE: (203) 547-5000. $2,491,000. SURETY LICE DC, FL, GA, HI, ID, IL, MN, MS, MT, NE, NH, NJ, SC, SD, TN, TX, UT, VT, Indiana.

See Footnotes/Notes at en

Harleysville Mutual Insurance Company.
BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2297. PHONE: (215) 256-5000. UNDERWRITING LIMITATION b/: $26,732,000. SURETY LICENSES c/: CA, CO, DE, DC, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NJ, NM, NC, OH, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Hartford Accident and Indemnity Company.
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $114,819,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $24,536,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $331,422,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois.
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (312) 346-6000. UNDERWRITING LIMITATION b/: $28,549,000. SURETY LICENSES c/: IL, PA. INCORPORATED IN: Illinois.

Hartford Insurance Company of the Midwest.
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $2,491,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

See Footnotes/Notes at end of Circular

Hartford Insurance Company of the Southeast. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $2,206,000. SURETY LICENSES c/: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

Hartford Underwriters Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $10,095,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Heritage Mutual Insurance Company. 7/ BUSINESS ADDRESS: 2800 South Taylor Drive, P.O. Box 58, Sheboygan, WI 53082-0058. PHONE: (414) 458-9131. UNDERWRITING LIMITATION b/: $7,940,000. SURETY LICENSES c/: AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MO, NE, NV, ND, OH, OR, PA, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Highlands Insurance Company. BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555. UNDERWRITING LIMITATION b/: $18,394,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company. BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555. UNDERWRITING LIMITATION b/: $2,671,000. SURETY LICENSES c/: AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK, TX. INCORPORATED IN: Texas.

Home Indemnity Company (The). BUSINESS ADDRESS: 59 Maiden Lane, 7th Floor, New York, NY 10038. PHONE: (212) 530-7000. UNDERWRITING LIMITATION b/: $10,834,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

See Footnotes/Notes at end of Circular

Home Insurance Com
59 Maiden Lane, 7th Flo
(212) 530-7000. UNDERW
SURETY LICENSES c/: AL,
FL, GA, GU, HI, ID, IL,
MN, MS, MO, MT, NE, NV,
PA, PR, RI, SC, SD, TN,
INCORPORATED IN: New Ha

Houston General In
Post Office Box 2932, F
(817) 377-6000. UNDERW
SURETY LICENSES c/: AL,
GA, ID, IL, IN, IA, KS,
NY, NC, ND, OH, OR, PA,
INCORPORATED IN: Texas.

Illinois National
500 West Madison Street
(312) 930-5417. UNDERW
SURETY LICENSES c/: AK,
NV, NH, NM, NY, ND, OH,
INCORPORATED IN: Illino

Indemnity Company
P.O. Box 19725, Irvine,
UNDERWRITING LIMITATION
CA, NV, OR, WA. INCORPO

Indemnity Insurance
BUSINESS ADDRESS: 1601
Philadelphia, PA 19192
UNDERWRITING LIMITATION
AL, AK, AZ, AR, CA, CO,
IA, KS, KY, LA, ME, MD,
NJ, NM, NY, NC, ND, OH,
UT, VT, VA, VI, WA, WV,

Indiana Lumbermens
BUSINESS ADDRESS: P.O.
46268-1168. PHONE: (8
LIMITATION b/: $2,826,00
CA, CO, DE, DC, FL, GA,
MN, MS, MO, MT, NE, NV,
TN, TX, UT, VA, WA, WV,

Inland Insurance Co
Post Office Box 80468, I
(402) 435-4302. UNDERWR
SURETY LICENSES c/: AZ,
WY. INCORPORATED IN: Neb

See Footnotes/Notes at en

Home Insurance Company (The). BUSINESS ADDRESS: 59 Maiden Lane, 7th Floor, New York, NY 10038. PHONE: (212) 530-7000. UNDERWRITING LIMITATION b/: $60,816,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Houston General Insurance Company. BUSINESS ADDRESS: Post Office Box 2932, Fort Worth, TX 76113-2932. PHONE: (817) 377-6000. UNDERWRITING LIMITATION b/: $9,085,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Texas.

Illinois National Insurance Company. BUSINESS ADDRESS: 500 West Madison Street, Chicago, IL 60606-2511. PHONE: (312) 930-5417. UNDERWRITING LIMITATION b/: $1,622,000. SURETY LICENSES c/: AK, IL, IN, IA, KY, MD, MI, MO, MT, NE, NV, NH, NM, NY, ND, OH, RI, SD, TX, UT, VT, WV, WY. INCORPORATED IN: Illinois.

Indemnity Company of California. BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263-3300. UNDERWRITING LIMITATION b/: $737,000. SURETY LICENSES c/: AZ, CA, NV, OR, WA. INCORPORATED IN: California.

Indemnity Insurance Company of North America. BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION b/: $11,724,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Indiana Lumbermens Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268-1168. PHONE: (800) 428-1441. UNDERWRITING LIMITATION b/: $2,826,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: $3,879,000. SURETY LICENSES c/: AZ, CO, IA, KS, MN, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

See Footnotes/Notes at end of Circular

Insurance Company of North America. BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION b/: $32,845,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the State of Pennsylvania. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $32,020,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the West. BUSINESS ADDRESS: Post Office Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION b/: $10,639,000. SURETY LICENSES c/: AK, AZ, CA, CO, HI, ID, IL, IA, MD, MI, MN, MS, MO, MT, NE, NV, NM, OH, OK, OR, RI, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: California.

INTEGRAND ASSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 70128, San Juan, PR 00936-8128. PHONE: (809) 781-0707. UNDERWRITING LIMITATION b/: $3,101,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Intercargo Insurance Company. BUSINESS ADDRESS: 1450 East American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (708) 517-2510. UNDERWRITING LIMITATION b/: $1,053,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, PR, SC, SD, TN, TX, UT, VA, VI, WA, WI, WY. INCORPORATED IN: Illinois.

International Business & Mercantile REassurance Company. BUSINESS ADDRESS: 307 N. Michigan Ave., Chicago, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION b/: $10,134,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

INTERNATIONAL CREDIT OF NORTH AMERICA REINSURANCE INC.. BUSINESS ADDRESS: 1205 Franklin Avenue, Garden City, NY 11530. PHONE: (516) 746-7676. UNDERWRITING LIMITATION b/: $4,789,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

International Fide BUSINESS ADDRESS: One N 07102-5207. PHONE: (LIMITATION b/: $2,765,0 CO, CT, DE, DC, FL, GA, MA, MI, MN, MS, MO, MT, OR, PA, PR, RI, SC, SD, INCORPORATED IN: New Je

ISLAND INSURANCE C P.O. Box 1520, Honolulu, (808) 531-1311. UNDERW SURETY LICENSES c/: HI.

ITT Lyndon Property BUSINESS ADDRESS: 645 Ma 63141. PHONE: (314) $9,499,000. SURETY LICEN DE, DC, FL, GA, HI, ID, MN, MS, MO, MT, NE, NV, SC, SD, TN, TX, UT, VT, Missouri.

John Deere Insuranc 3400 80th Street, Moline (309) 765-8388. UNDERWR SURETY LICENSES c/: AL, GA, HI, ID, IL, IN, IA, MO, MT, NE, NV, NH, NJ, SC, SD, TN, TX, UT, VT, Illinois.

Kansas Bankers Sure P. O. Box 1654, Topeka, (913) 234-2631. UNDERWR SURETY LICENSES c/: AR, ND, OK, SD, TN, WI, WY.

Kansas City Fire an BUSINESS ADDRESS: 180 Ma PHONE: (609) 395-2000. $1,838,000. SURETY LICEN DE, DC, FL, GA, ID, IL, MN, MS, MO, MT, NE, NV, PA, RI, SC, SD, TN, TX, INCORPORATED IN: Missour

See Footnotes/Notes at en

International Fidelity Insurance Company. BUSINESS ADDRESS: One Newark Center, 20th Floor, Newark, NJ 07102-5207. PHONE: (201) 624-7200. UNDERWRITING LIMITATION b/: $2,765,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New Jersey.

ISLAND INSURANCE COMPANY, LIMITED. BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806. PHONE: (808) 531-1311. UNDERWRITING LIMITATION b/: $5,943,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

ITT Lyndon Property Insurance Company. BUSINESS ADDRESS: 645 Maryville Centre Drive, St. Louis, MO 63141. PHONE: (314) 542-3636. UNDERWRITING LIMITATION b/: $9,499,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

John Deere Insurance Company. BUSINESS ADDRESS: 3400 80th Street, Moline, IL 61265. PHONE: (309) 765-8388. UNDERWRITING LIMITATION b/: $9,763,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Kansas Bankers Surety Company (The). BUSINESS ADDRESS: P. O. Box 1654, Topeka, KS 66601-1654. PHONE: (913) 234-2631. UNDERWRITING LIMITATION b/: $3,319,000. SURETY LICENSES c/: AR, CO, IL, IN, IA, KS, MN, MO, MT, NE, ND, OK, SD, TN, WI, WY. INCORPORATED IN: Kansas.

Kansas City Fire and Marine Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395-2000. UNDERWRITING LIMITATION b/: $1,838,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

See Footnotes/Notes at end of Circular

KEMPER REINSURANCE COMPANY. BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049. PHONE: (708) 540-2600. UNDERWRITING LIMITATION b/: $35,784,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, OH, OK, OR, PA, RI, TN, UT, WA, WI. INCORPORATED IN: Illinois.

Lawyers Surety Corporation. BUSINESS ADDRESS: P.O.Box 569480, Dallas, TX 75356-9480. PHONE: (214) 634-1900. UNDERWRITING LIMITATION b/: $471,000. SURETY LICENSES c/: AL, AR, CA, FL, GA, KY, MS, NC, OK, SC, TN, TX. INCORPORATED IN: Texas.

Liberty Mutual Insurance Company. BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION b/: $110,177,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Lincoln General Insurance Company. BUSINESS ADDRESS: 3350 Whiteford Road, York, PA 17402. PHONE: (717) 757-0000. UNDERWRITING LIMITATION b/: $2,179,000. SURETY LICENSES c/: AL, CO, GA, ID, IN, IA, KS, KY, LA, MD, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

London Assurance of America Inc. (The). BUSINESS ADDRESS: 10 East 50th Street, 27th Floor, New York, NY 10022. PHONE: (212) 753-8130. UNDERWRITING LIMITATION b/: $17,310,000. SURETY LICENSES c/: AK, IA, ME, MI, MN, NJ, NY, ND, OH, UT, VT. INCORPORATED IN: New York.

Lumbermens Mutual Casualty Company. BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (708) 540-2000. UNDERWRITING LIMITATION b/: $114,379,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Massachusetts Bay Insurance Company. BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION b/: $1,452,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: Massachusetts.

See Footnotes/Notes at end of Circular

Merchants Bonding 2100 Grand Avenue, Des (515) 243-8171. UNDERW SURETY LICENSES c/: AL, IN, IA, KS, LA, MI, MN, PA, SC, SD, TN, TX, UT,

Michigan Millers M BUSINESS ADDRESS: Post 48909-7560. PHONE: (LIMITATION b/: $7,646,0 DC, FL, ID, IN, KS, KY, TX, UT, VA, WA, WI. INC

Mid-Century Insura Post Office Box 2478, Te 90051. PHONE: (213) $62,732,000. SURETY LIC IL, IN, IA, KS, KY, MN, OR, SD, TN, TX, UT, VA, California.

MID-CONTINENT CASUA Post Office Box 1409, Tu (918) 587-7221. UNDERWR SURETY LICENSES c/: AL, MO, MT, NE, NM, ND, OK, Oklahoma.

Mid-State Surety Co 3400 East Lafayette, Det (313) 882-7979. UNDERWR SURETY LICENSES c/: MI.

MIDWESTERN INDEMNIT 1700 Edison Drive, Milfo (313) 576-3200. UNDERWR SURETY LICENSES c/: AL, MO, NE, NC, OH, PA, TN,

Millers Mutual Fire BUSINESS ADDRESS: Post O 76113-2269. PHONE: (8 LIMITATION b/: $6,603,00 ID, IL, IN, IA, LA, MI, WY. INCORPORATED IN: Texa

See Footnotes/Notes at end

Merchants Bonding Company (Mutual). BUSINESS ADDRESS: 2100 Grand Avenue, Des Moines, IA 50312. PHONE: (515) 243-8171. UNDERWRITING LIMITATION b/: $1,085,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, LA, MI, MN, MO, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

Michigan Millers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 30060, Lansing, MI 48909-7560. PHONE: (517) 482-6211. UNDERWRITING LIMITATION b/: $7,646,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, FL, ID, IN, KS, KY, MI, MO, NE, NJ, NY, NC, OH, OK, PA, TX, UT, VA, WA, WI. INCORPORATED IN: Michigan.

Mid-Century Insurance Company. BUSINESS ADDRESS: Post Office Box 2478, Terminal Annex, Los Angeles, CA 90051. PHONE: (213) 932-3200. UNDERWRITING LIMITATION b/: $62,732,000. SURETY LICENSES c/: AZ, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, MN, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION b/: $4,402,000. SURETY LICENSES c/: AL, AZ, AR, CO, IL, IN, IA, KS, MN, MS, MO, MT, NE, NM, ND, OK, TX, UT, WA, WY. INCORPORATED IN: Oklahoma.

Mid-State Surety Corporation. BUSINESS ADDRESS: 3400 East Lafayette, Detroit, MI 48207. PHONE: (313) 882-7979. UNDERWRITING LIMITATION b/: $296,000. SURETY LICENSES c/: MI. INCORPORATED IN: Michigan.

MIDWESTERN INDEMNITY COMPANY (THE). 7/ BUSINESS ADDRESS: 1700 Edison Drive, Milford, OH 45150. PHONE: (513) 576-3200. UNDERWRITING LIMITATION b/: $6,861,000. SURETY LICENSES c/: AL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NC, OH, PA, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Millers Mutual Fire Insurance Company of Texas (The). BUSINESS ADDRESS: Post Office Box 2269, Fort Worth, TX 76113-2269. PHONE: (817) 332-7761. UNDERWRITING LIMITATION b/: $6,603,000. SURETY LICENSES c/: AZ, CA, CO, DC, ID, IL, IN, IA, LA, MI, NE, NM, OH, OK, OR, SC, TX, UT, WA, WY. INCORPORATED IN: Texas.

See Footnotes/Notes at end of Circular

Millers' Mutual Insurance Association of Illinois. BUSINESS ADDRESS: 111 East Fourth Street, P.O. Box 9006, Alton, IL 62002-9006. PHONE: (618) 463-3636. UNDERWRITING LIMITATION b/: $3,637,000. SURETY LICENSES c/: AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NC, ND, OH, SD, TN, TX, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin. BUSINESS ADDRESS: P.O. Box 463, Austin, MN 55912-0463. PHONE: (507) 437-3231. UNDERWRITING LIMITATION b/: $159,000. SURETY LICENSES c/: CO, MN, MT, ND, UT. INCORPORATED IN: Minnesota.

MOTORS INSURANCE CORPORATION. BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. PHONE: (313) 556-5000. UNDERWRITING LIMITATION b/: $79,384,000. SURETY LICENSES c/: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

MOUNTBATTEN ENVIRONMENTAL INSURANCE & SURETY COMPANY, INC.. BUSINESS ADDRESS: 33 Rockhill Road, Bala Cynwyd, PA 19004. PHONE: (215) 664-2324. UNDERWRITING LIMITATION b/: $173,000. SURETY LICENSES c/: PA. INCORPORATED IN: Pennsylvania.

Munich American Reinsurance Company. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. PHONE: (212) 310-1600. UNDERWRITING LIMITATION b/: $29,068,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New York.

Municipal Bond Investors Assurance Corporation. BUSINESS ADDRESS: 113 King Street, Armonk, NY 10504-1610. PHONE: (914) 273-4545. UNDERWRITING LIMITATION b/: $86,119,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

MUTUAL SERVICE CASUALTY INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 64035, St. Paul, MN 55164-0035. PHONE: (612) 631-7000. UNDERWRITING LIMITATION b/: $8,016,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

See Footnotes/Notes at end of Circular

NAC Reinsurance Cor P. O. Box 2568, One Gree 06836-2568. PHONE: (2 LIMITATION b/: $40,616,0 CA, CO, DE, DC, FL, ID, MN, MS, MO, MT, NE, NV, PA, PR, RI, SC, SD, TN, INCORPORATED IN: New Yor

National American I 1008 Manvel Avenue, Chan (405) 258-0804. UNDERWR SURETY LICENSES c/: AL, ID, IL, IN, IA, KS, KY, NM, NY, ND, OH, OK, OR, WV, WI, WY. INCORPORATED

National-Ben Frankl BUSINESS ADDRESS: 200 So 60606. PHONE: (312) 8 $8,872,000. SURETY LICEN MN, NY, NC, ND, RI, SD,

National Fire Insur BUSINESS ADDRESS: CNA Pl (312) 822-5000. UNDERWR SURETY LICENSES c/: AL, GA, HI, ID, IL, IN, IA, MO, MT, NE, NV, NH, NJ, RI, SC, SD, TN, TX, UT, INCORPORATED IN: Connect

National Grange Mutu BUSINESS ADDRESS: 55 West PHONE: (603) 352-4000. $12,451,000. SURETY LICEN NH, NY, NC, OH, PA, RI, INCORPORATED IN: New Hamp

National Indemnity C 3024 Harney Street, Omaha (402) 536-3000. UNDERWRI SURETY LICENSES c/: AL, GA, ID, IL, IN, IA, KS, NE, NV, NH, NM, NC, ND, UT, VT, VA, WA, WV, WI,

See Footnotes/Notes at end

NAC Reinsurance Corporation. BUSINESS ADDRESS: P. O. Box 2568, One Greenwich Plaza, Greenwich, CT 06836-2568. PHONE: (203) 622-5200. UNDERWRITING LIMITATION b/: $40,616,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, DE, DC, FL, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

National American Insurance Company. BUSINESS ADDRESS: 1008 Manvel Avenue, Chandler, OK 74834. PHONE: (405) 258-0804. UNDERWRITING LIMITATION b/: $1,842,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

National-Ben Franklin Insurance Company of Illinois. BUSINESS ADDRESS: 200 South Wacker Drive, Chicago, IL 60606. PHONE: (312) 876-5250. UNDERWRITING LIMITATION b/: $8,872,000. SURETY LICENSES c/: DC, IL, IN, IA, KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

National Fire Insurance Company of Hartford. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $39,142,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company. BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (603) 352-4000. UNDERWRITING LIMITATION b/: $12,451,000. SURETY LICENSES c/: CT, DE, DC, ME, MD, MA, MI, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company. BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. PHONE: (402) 536-3000. UNDERWRITING LIMITATION b/: $391,030,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

See Footnotes/Notes at end of Circular

NATIONAL REINSURANCE CORPORATION. BUSINESS ADDRESS: 777 Long Ridge Road, Stamford, CT 06904-2167. PHONE: (203) 329-7700. UNDERWRITING LIMITATION b/: $35,574,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NV, NJ, NY, NC, ND, OH, OK, PA, PR, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

National Surety Corporation. BUSINESS ADDRESS: 200 West Monroe Street, Chicago, IL 60606. PHONE: (312) 580-6000. UNDERWRITING LIMITATION b/: $11,285,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $88,266,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Nationwide Mutual Insurance Company. BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. PHONE: (614) 249-7111. UNDERWRITING LIMITATION b/: $129,078,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

NAVIGATORS INSURANCE COMPANY. BUSINESS ADDRESS: 123 William Street, New York, NY 10038. PHONE: (212) 406-2900. UNDERWRITING LIMITATION b/: $6,282,000. SURETY LICENSES c/: AL, AK, AZ, DE, DC, GA, HI, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NJ, NY, NC, ND, OH, OK, PA, RI, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: New York.

Netherlands Insurance Company (The). BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $1,170,000. SURETY LICENSES c/: AZ, CA, CT, DC, GA, ID, IL, IN, IA, KY, ME, MD, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

See Footnotes/Notes at end of Circular

New Hampshire Insu
70 Pine Street, New Yor
(212) 770-7000. UNDERW
SURETY LICENSES c/: AL,
GA, GU, HI, ID, IL, IN,
MS, MO, MT, NE, NV, NH,
PR, RI, SC, SD, TN, TX,
INCORPORATED IN: Pennsyl

Nobel Insurance Co
LBJ Freeway, SUITE: 300,
243-1886. UNDERWRITING
LICENSES c/: AL, AK, AZ,
ID, IL, IN, IA, KS, KY,
NE, NH, NV, NM, NY, NC,
TN, TX, UT, VT, VA, WA,

North American Rein
BUSINESS ADDRESS: 237 Pa
PHONE: (212) 907-8000.
$27,622,000. SURETY LICE
DC, FL, GA, HI, ID, IL,
MS, MO, MT, NE, NJ, NY,
TX, UT, VT, VA, WA, WI.

NORTH AMERICAN SPEC
BUSINESS ADDRESS: 650 El
03101-2524. PHONE: (6
LIMITATION b/: $3,192,00
CA, CO, CT, DE, DC, FL,
MD, MA, MI, MN, MS, MO,
OH, OK, OR, PA, RI, SC,
WY. INCORPORATED IN: New

Northbrook Property
BUSINESS ADDRESS: 3075 S
60062-7127. PHONE: (7
LIMITATION b/: $18,012,0
AR, CA, CO, CT, DE, DC,
LA, ME, MD, MI, MN, MS,
ND, OH, OK, OR, PA, PR,
WV, WI, WY. INCORPORATED

Northern Assurance
BUSINESS ADDRESS: One Bea
PHONE: (617) 725-6000.
$20,581,000. SURETY LICE
DE, DC, FL, GA, HI, ID,
MI, MN, MS, MO, MT, NE,
OR, PA, RI, SC, SD, TN,
INCORPORATED IN: Massachu

See Footnotes/Notes at end

New Hampshire Insurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $47,646,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Nobel Insurance Company. 1/ BUSINESS ADDRESS: 3010 LBJ Freeway, SUITE: 300, Dallas, TX 75234. PHONE: (214) 243-1886. UNDERWRITING LIMITATION b/: $2,542,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NV, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

North American Reinsurance Corporation. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. PHONE: (212) 907-8000. UNDERWRITING LIMITATION b/: $27,622,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY. BUSINESS ADDRESS: 650 Elm Street, 6th Floor, Manchester, NH 03101-2524. PHONE: (603) 644-6600. UNDERWRITING LIMITATION b/: $3,192,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Northbrook Property and Casualty Insurance Company. BUSINESS ADDRESS: 3075 Sanders Rd., Ste H1B, Northbrook, IL 60062-7127. PHONE: (708) 402-5000. UNDERWRITING LIMITATION b/: $18,012,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Northern Assurance Company of America (The). BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $20,581,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

See Footnotes/Notes at end of Circular

NORTHWESTERN PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (503) 221-4240. UNDERWRITING LIMITATION b/: $2,203,000. SURETY LICENSES c/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon.

Oceanic Insurance and Surety Company. BUSINESS ADDRESS: 1450 E. American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (708) 517-2510. UNDERWRITING LIMITATION b/: $392,000. SURETY LICENSES c/: IL, NM. INCORPORATED IN: Illinois.

Ohio Casualty Insurance Company (The). BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION b/: $71,357,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company. BUSINESS ADDRESS: P.O. Box 5001, Westfield Centr, OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION b/: $37,006,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Oklahoma Surety Company. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION b/: $728,000. SURETY LICENSES c/: AR, KS, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company. BUSINESS ADDRESS: Post Office Box 789, Greensburg, PA 15601-0789. PHONE: (412) 834-5000. UNDERWRITING LIMITATION b/: $28,265,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company. BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. PHONE: (414) 797-2640. UNDERWRITING LIMITATION b/: $1,183,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DC, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

See Footnotes/Notes at end of Circular

Pacific Employers
1601 Chestnut Street, P.
19192. PHONE: (215) 7
$16,781,000. SURETY LICE
DE, DC, FL, GA, HI, ID,
MI, MN, MS, MO, MT, NE,
OR, PA, PR, RI, SC, SD,
WY. INCORPORATED IN: Cal

Pacific Indemnity C
P.O. Box 1615, 15 Mounta
07061-1615. PHONE: (9
LIMITATION b/: $54,309,0
AR, CA, CO, CT, DE, DC,
LA, ME, MD, MA, MI, MN,
NC, ND, OH, OK, OR, PA,
WV, WI, WY. INCORPORATED

Pacific Insurance C
1001 Bishop Street, P.O.
PHONE: (808) 546-5700.
$27,673,000. SURETY LICE

Peerless Insurance
62 Maple Avenue, Keene,
UNDERWRITING LIMITATION
AL, AK, AZ, AR, CA, CO,
KS, KY, LA, ME, MD, MI,
NC, ND, OH, OK, OR, PA,
WV, WI, WY. INCORPORATED

Pekin Insurance Com
2505 Court Street, Pekin
(309) 346-1161. UNDERWR
SURETY LICENSES c/: IL,

Pennsylvania Genera
BUSINESS ADDRESS: 436 Wa
Philadelphia, PA 19105-
UNDERWRITING LIMITATION
AL, AZ, AR, CA, CO, CT,
MI, MN, MO, NE, NH, NJ,
WV, WI. INCORPORATED IN:

Pennsylvania Manufa
BUSINESS ADDRESS: 925 Ch
19107. PHONE: (215) 6
$15,156,000. SURETY LICE
GA, ID, IL, IN, IA, KY,
NH, NJ, NM, NY, NC, OH,
VA, WA, WV, WI. INCORPORA

See Footnotes/Notes at end

Pacific Employers Insurance Company. BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION b/: $16,781,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Indemnity Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $54,309,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Insurance Company, Limited. BUSINESS ADDRESS: 1001 Bishop Street, P.O. Box 1140, Honolulu, HI 96807. PHONE: (808) 546-5700. UNDERWRITING LIMITATION b/: $27,673,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

Peerless Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 358-3810. UNDERWRITING LIMITATION b/: $7,139,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company. BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. PHONE: (309) 346-1161. UNDERWRITING LIMITATION b/: $2,954,000. SURETY LICENSES c/: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Pennsylvania General Insurance Company. BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105-1109. PHONE: (215) 625-1000. UNDERWRITING LIMITATION b/: $14,983,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, CT, DE, DC, GA, IL, IN, KS, KY, MD, MA, MI, MN, MO, NE, NH, NJ, NM, NY, OH, PA, RI, TN, TX, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pennsylvania Manufacturers' Association Insurance Company. BUSINESS ADDRESS: 925 Chestnut Street, Philadelphia, PA 19107. PHONE: (215) 629-5124. UNDERWRITING LIMITATION b/: $15,156,000. SURETY LICENSES c/: AK, AZ, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Pennsylvania Millers Mutual Insurance Company. BUSINESS ADDRESS: 72 North Franklin Street, Wilkes-Barre, PA 18773-0016. PHONE: (717) 822-8111. UNDERWRITING LIMITATION b/: $3,374,000. SURETY LICENSES c/: AL, CT, DC, FL, GA, ID, IN, KS, ME, MD, MA, MS, MO, NH, NJ, NY, NC, ND, PA, RI, SC, TN, UT, VT, VA, WA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company. BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941. UNDERWRITING LIMITATION b/: $18,894,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Personal Service Insurance Co. (The). BUSINESS ADDRESS: P.O. BOX 1226, Columbus, OH 43216-1226. PHONE: (614) 221-5115. UNDERWRITING LIMITATION b/: $3,093,000. SURETY LICENSES c/: IN, OH. INCORPORATED IN: OHIO.

Phoenix Assurance Company of New York. BUSINESS ADDRESS: 4 World Trade Center, SUITE: 6274, New York, NY 10048. PHONE: (212) 775-1300. UNDERWRITING LIMITATION b/: $5,169,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Phoenix Insurance Company (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (203) 277-0111. UNDERWRITING LIMITATION b/: $49,304,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Pioneer General Insurance Company. BUSINESS ADDRESS: 3900 East Mexico Avenue, SUITE: 330, Denver, CO 80210. PHONE: (303) 758-8122. UNDERWRITING LIMITATION b/: $127,000. SURETY LICENSES c/: CO. INCORPORATED IN: Colorado.

PLANET INDEMNITY COMPANY. BUSINESS ADDRESS: 410 17th Street, SUITE: 1675, Denver, CO 80202. PHONE: (713) 961-1300. UNDERWRITING LIMITATION b/: $602,000. SURETY LICENSES c/: AL, CO, GA, HI, ID, IN, KS, KY, MO, MT, OR, SD, TX, WA, WV. INCORPORATED IN: Colorado.

See Footnotes/Notes at end of Circular

PREFERRED NATIONAL I P.O. Box 407003, FT Laude (305) 752-1222. UNDERWRI SURETY LICENSES c/: FL. I

Progressive Casualty BUSINESS ADDRESS: 6300 Wi OH 44143-2182. PHONE: LIMITATION b/: $8,566,000 CO, CT, DE, DC, FL, GA, G MD, MA, MI, MN, MS, MO, M OK, OR, PA, RI, SC, SD, T INCORPORATED IN: Ohio.

PROTECTION MUTUAL IN 300 S. Northwest Highway, (708) 825-4474. UNDERWRI SURETY LICENSES c/: AL, A GA, HI, ID, IL, IN, IA, K MO, MT, NE, NV, NH, NJ, N RI, SC, SD, TN, TX, UT, V INCORPORATED IN: Illinois

Protective Insurance 1099 North Meridian Stree PHONE: (317) 636-9800. $15,787,000. SURETY LICEN DE, DC, FL, GA, HI, ID, I MI, MN, MS, MO, MT, NE, N OR, PA, RI, SC, SD, TN, T INCORPORATED IN: Indiana.

Prudential Reinsuran 3 Gateway Center, Newark, (201) 802-8000. UNDERWRI SURETY LICENSES c/: AL, A GA, GU, HI, ID, IL, IN, I MO, MT, NE, NV, NH, NJ, N SC, SD, TN, TX, UT, VT, V

Reinsurance Corporati BUSINESS ADDRESS: 80 Maide PHONE: (212) 363-4440. $6,769,000. SURETY LICENSE DC, FL, GA, ID, IL, IN, IA MT, NE, NV, NJ, NM, NY, NC TN, TX, UT, VT, VA, VI, WA New York.

See Footnotes/Notes at end

PREFERRED NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 407003, FT Lauderdale, FL 33340-7003. PHONE: (305) 752-1222. UNDERWRITING LIMITATION b/: $1,009,000. SURETY LICENSES c/: FL. INCORPORATED IN: FLORIDA.

Progressive Casualty Insurance Company. BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, OH 44143-2182. PHONE: (216) 461-5000. UNDERWRITING LIMITATION b/: $8,566,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, GU, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

PROTECTION MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 300 S. Northwest Highway, Park Ridge, IL 60068. PHONE: (708) 825-4474. UNDERWRITING LIMITATION b/: $33,781,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Protective Insurance Company. BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636-9800. UNDERWRITING LIMITATION b/: $15,787,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Prudential Reinsurance Company. BUSINESS ADDRESS: 3 Gateway Center, Newark, NJ 07102-4077. PHONE: (201) 802-8000. UNDERWRITING LIMITATION b/: $41,515,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: Delaware.

Reinsurance Corporation of New York (The). BUSINESS ADDRESS: 80 Maiden Lane, New York, NY 10038. PHONE: (212) 363-4440. UNDERWRITING LIMITATION b/: $6,769,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

Reliance Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $36,560,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Reliance National Indemnity Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $6,341,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Reliance National Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $2,383,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

Republic Western Insurance Company. BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004-1120. PHONE: (602) 263-6755. UNDERWRITING LIMITATION b/: $10,806,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

Royal Indemnity Company. BUSINESS ADDRESS: 9300 Arrowpoint Blvd., P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION b/: $14,356,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, nf, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

SAFECO Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $79,599,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

See Footnotes/Notes at end of Circular

SAFECO Insurance Co SAFECO PLAZA, Seattle, UNDERWRITING LIMITATION AZ, CO, IL, KS, KY, MD, TX, UT, WI, WY. INCORPOR

SAFECO National Ins SAFECO Plaza, Seattle, UNDERWRITING LIMITATION CO, KY, MD, MO, NY, UT,

SCOR REINSURANCE CO 110 William Street, Suit PHONE: (212) 978-8200. $18,839,000. SURETY LICE MI, MS, NE, NM, NY, NC, New York.

Sea Insurance Compa BUSINESS ADDRESS: 10 Eas NY 10022. PHONE: (21 LIMITATION b/: $10,438,0 CA, CT, DE, ID, IL, IN, MT, NE, NV, NH, NJ, NM, TN, UT, VT, VA, WA, WV,

Seaboard Surety Com Burnt Mills Road and Rou PHONE: (908) 658-3500. $11,866,000. SURETY LICE DE, DC, FL, GA, GU, HI, MA, MI, MN, MS, MO, MT, OK, OR, PA, PR, RI, SC, WI, WY. INCORPORATED IN:

SECURITY INSURANCE BUSINESS ADDRESS: P.O. B PHONE: (203) 674-6600. $18,148,000. SURETY LICE DE, DC, FL, GA, HI, ID, MN, MS, MO, MT, NE, NV, SC, SD, TN, TX, UT, VT, CONNECTICUT.

Security National In Post Office Box 655028, (214) 360-8000. UNDERWRI SURETY LICENSES c/: AL, MS, MO, MT, NE, NM, OH, Texas.

See Footnotes/Notes at end

SAFECO Insurance Company of Illinois. BUSINESS ADDRESS: SAFECO PLAZA, Seattle, WA 98185. PHONE: (708) 490-2900. UNDERWRITING LIMITATION b/: $9,261,000. SURETY LICENSES c/: AZ, CO, IL, KS, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI, WY. INCORPORATED IN: Illinois.

SAFECO National Insurance Company. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION b/: $4,886,000. SURETY LICENSES c/: CO, KY, MD, MO, NY, UT, WI. INCORPORATED IN: Missouri.

SCOR REINSURANCE COMPANY. BUSINESS ADDRESS: 110 William Street, Suite 1800, New York, NY 10038. PHONE: (212) 978-8200. UNDERWRITING LIMITATION b/: $18,839,000. SURETY LICENSES c/: AL, AZ, CA, ID, IN, IA, LA, MI, MS, NE, NM, NY, NC, OH, OK, OR, PA, TX. INCORPORATED IN: New York.

Sea Insurance Company of America (The). BUSINESS ADDRESS: 10 East 50th Street, 27th Floor, New York, NY 10022. PHONE: (212) 753-8130. UNDERWRITING LIMITATION b/: $10,438,000. SURETY LICENSES c/: AK, AZ, AR, CA, CT, DE, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Seaboard Surety Company. BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. PHONE: (908) 658-3500. UNDERWRITING LIMITATION b/: $11,866,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

SECURITY INSURANCE COMPANY OF HARTFORD. BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (203) 674-6600. UNDERWRITING LIMITATION b/: $18,148,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: CONNECTICUT.

Security National Insurance Company. BUSINESS ADDRESS: Post Office Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION b/: $1,274,000. SURETY LICENSES c/: AL, AR, CA, CO, GA, ID, IL, IN, KS, KY, MS, MO, MT, NE, NM, OH, OK, OR, TX, WI, WY. INCORPORATED IN: Texas.

See Footnotes/Notes at end of Circular

Select Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221-1771. PHONE: (214) 650-2800. UNDERWRITING LIMITATION b/: $2,265,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Selective Insurance Company of America. BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. PHONE: (201) 948-3000. UNDERWRITING LIMITATION b/: $11,846,000. SURETY LICENSES c/: AL, DE, DC, FL, GA, MD, MS, NJ, NY, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey.

SENTINEL INSURANCE COMPANY, LTD.. BUSINESS ADDRESS: 1001 Bishop Street, P.O. Box 1140, Honolulu, HI 96807. PHONE: (808) 546-5700. UNDERWRITING LIMITATION b/: $1,529,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

Sentry Insurance A Mutual Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/: $95,302,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Signet Star Reinsurance Company. BUSINESS ADDRESS: 100 Campus Drive, P.O. Box 853, Florham Park, NJ 07932-0853. PHONE: (201) 301-8000. UNDERWRITING LIMITATION b/: $24,015,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

Skandia America Reinsurance Corporation. BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 978-4700. UNDERWRITING LIMITATION b/: $26,249,000. SURETY LICENSES c/: AL, AZ, CA, DE, DC, GA, ID, IL, IN, IA, MI, MS, MT, NE, NY, OH, OK, OR, PA, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Delaware.

SOREMA NORTH AMERICA REINSURANCE COMPANY. BUSINESS ADDRESS: 199 Water Street, New York, NY 10038-3526. PHONE: (212) 480-1900. UNDERWRITING LIMITATION b/: $10,531,000. SURETY LICENSES c/: AK, AZ, DC, HI, ID, IL, IA, KS, LA, MI, MN, MS, MO, MT, NE, NV, NM, NY, OH, OR, PR, RI, SD, TN, TX, UT, WA, WI. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

St. Paul Fire and BUSINESS ADDRESS: 385 55102. PHONE: (612) $112,284,000. SURETY L DE, DC, FL, GA, HI, ID MI, MN, MS, MO, MT, NE OR, PA, PR, RI, SC, SD WY. INCORPORATED IN: M

ST. PAUL GUARDIAN 385 Washington Street, (612) 221-7911. UNDERW SURETY LICENSES c/: AL, HI, ID, IL, IN, IA, KS, MT, NE, NH, NM, NY, NC, UT, VT, VA, WA, WV, WI.

St. Paul Mercury I 385 Washington Street, (612) 221-7911. UNDERW SURETY LICENSES c/: AL, GA, HI, ID, IL, IN, IA, MO, MT, NE, NV, NH, NJ, SC, SD, TN, TX, UT, VT, Minnesota.

Standard Fire Insu BUSINESS ADDRESS: 151 F 06156. PHONE: (203) $54,181,000. SURETY LIC DE, DC, FL, GA, HI, ID, MI, MN, MS, MO, MT, NE, OR, PA, PR, RI, SC, SD, WY. INCORPORATED IN: Co

Star Insurance Com 26600 Telegraph Road, S (313) 358-4020. UNDERW SURETY LICENSES c/: AK, IL, IN, IA, KS, KY, LA, NM, NY, ND, OH, OK, OR, WV, WI, WY. INCORPORATE

State Automobile M BUSINESS ADDRESS: 518 E 43215-3976. PHONE: (LIMITATION b/: $33,487, CO, FL, GA, IL, IN, IA, NC, ND, OH, PA, SC, SD, Ohio.

See Footnotes/Notes at en

St. Paul Fire and Marine Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 221-7911. UNDERWRITING LIMITATION b/: $112,284,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 221-7911. UNDERWRITING LIMITATION b/: $2,654,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 221-7911. UNDERWRITING LIMITATION b/: $5,067,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Standard Fire Insurance Company (The). BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 273-0123. UNDERWRITING LIMITATION b/: $54,181,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Star Insurance Company. BUSINESS ADDRESS: 26600 Telegraph Road, Southfield, MI 48034. PHONE: (313) 358-4020. UNDERWRITING LIMITATION b/: $2,368,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

State Automobile Mutual Insurance Company. BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215-3976. PHONE: (614) 464-5000. UNDERWRITING LIMITATION b/: $33,487,000. SURETY LICENSES c/: AL, AZ, AR, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

State Farm Fire and Casualty Company. BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. PHONE: (309) 766-2311. UNDERWRITING LIMITATION b/: $176,787,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

State Surety Company. BUSINESS ADDRESS: P.O. Box 1976, Des Moines, IA 50306. PHONE: (515) 270-0009. UNDERWRITING LIMITATION b/: $356,000. SURETY LICENSES c/: AZ, CO, DC, ID, IL, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, WI, WY. INCORPORATED IN: Iowa.

Statewide Insurance Company. BUSINESS ADDRESS: P.O. Box 799, Waukegan, IL 60079. PHONE: (708) 662-0073. UNDERWRITING LIMITATION b/: $623,000. SURETY LICENSES c/: AZ, AR, IL, IN, IA, MN, MO, NE, NV, OH, TN, WI. INCORPORATED IN: Illinois.

SUN INSURANCE COMPANY OF NEW YORK 2/

Sun Insurance Office of America Inc.. BUSINESS ADDRESS: 10 East 50th Street, 27th Floor, New York, NY 10022. PHONE: (212) 753-8130. UNDERWRITING LIMITATION b/: $11,840,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Surety Company of the Pacific. BUSINESS ADDRESS: Post Office Box 1067, Northridge, CA 91328. PHONE: (818) 894-7878. UNDERWRITING LIMITATION b/: $601,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

TEXAS PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: Diamond Shamrock Tower, 717 North Harwood, Dallas, TX 75201. PHONE: (214) 754-0777. UNDERWRITING LIMITATION b/: $666,000. SURETY LICENSES c/: AR, TX. INCORPORATED IN: Texas.

TIG Insurance Company. BUSINESS ADDRESS: P. O. Box 152870, Irving, TX 75015-8810. PHONE: (818) 596-5000. UNDERWRITING LIMITATION b/: $86,355,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

TIG Insurance Co
70 West Michigan Ave
(818) 596-5000. UND
SURETY LICENSES c/: A
SD, TX, UT, WY. INCOR

TIG Premier Insu
333 South Anita Drive
(818) 596-5000. UNDE
SURETY LICENSES c/: A
GA, GU, HI, ID, IL, I
MS, MO, MT, NE, NV, N
SD, TN, TX, UT, VT, V
California.

Titan Indemnity
P.O. Box 60007, San A
(210) 824-4546. UNDE
SURETY LICENSES c/: A
ID, IL, IN, IA, KS, K
NV, NJ, NM, NY, NC, N
VT, VA, WA, WI, WY. I

TRANSATLANTIC RE
80 Pine Street, New Y
(212) 770-2000. UNDE
SURETY LICENSES c/: C
INCORPORATED IN: New

Transcontinental
CNA Plaza, Chicago, I
UNDERWRITING LIMITATIO
AL, AK, AZ, AR, CA, C
IA, KS, KY, LA, ME, M
NJ, NM, NY, NC, ND, O
UT, VT, VA, WA, WV, W

Transportation In
CNA Plaza, Chicago, I
UNDERWRITING LIMITATIO
AL, AK, AZ, AR, CA, C
IA, KS, KY, LA, ME, MD
NJ, NM, NY, NC, ND, OH
VT, VA, WA, WI, WY. IN

See Footnotes/Notes at

TIG Insurance Company of Michigan. BUSINESS ADDRESS: 70 West Michigan Avenue, Battle Creek, MI 49017. PHONE: (818) 596-5000. UNDERWRITING LIMITATION b/: $2,489,000. SURETY LICENSES c/: AR, ID, IL, IN, IA, KS, KY, MI, MN, NY, SD, TX, UT, WY. INCORPORATED IN: Michigan.

TIG Premier Insurance Company. BUSINESS ADDRESS: 333 South Anita Drive, Orange, CA 92668. PHONE: (818) 596-5000. UNDERWRITING LIMITATION b/: $12,197,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Titan Indemnity Company. BUSINESS ADDRESS: P.O. Box 60007, San Antonio, TX 78209. PHONE: (210) 824-4546. UNDERWRITING LIMITATION b/: $3,689,000. SURETY LICENSES c/: AL, AK, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Texas.

TRANSATLANTIC REINSURANCE COMPANY. BUSINESS ADDRESS: 80 Pine Street, New York, NY 10005. PHONE: (212) 770-2000. UNDERWRITING LIMITATION b/: $30,482,000. SURETY LICENSES c/: CT, IL, IN, IA, NV, NM, NY, OH, OK, PA. INCORPORATED IN: New York.

Transcontinental Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $15,725,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Transportation Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $5,647,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Travelers Indemnity Company (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (203) 277-0111. UNDERWRITING LIMITATION b/: $147,728,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

TRAVELERS INDEMNITY COMPANY OF AMERICA (THE). BUSINESS ADDRESS: 211 Perimeter Center Parkway, Atlanta, GA 30346. PHONE: (404) 393-7598. UNDERWRITING LIMITATION b/: $8,394,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Georgia.

Travelers Indemnity Company of Illinois (The). BUSINESS ADDRESS: 184 Shuman Blvd., Naperville, IL 60563. PHONE: (708) 983-2245. UNDERWRITING LIMITATION b/: $4,032,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company of Rhode Island (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (203) 277-0111. UNDERWRITING LIMITATION b/: $21,404,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Tri-State Insurance Company of Minnesota. BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. PHONE: (507) 283-9561. UNDERWRITING LIMITATION b/: $4,439,000. SURETY LICENSES c/: IL, IN, IA, MN, MO, NE, ND, OH, SD, WI. INCORPORATED IN: Minnesota.

Trinity Universal Insurance Company. BUSINESS ADDRESS: Post Office Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION b/: $29,464,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, MT, NE, NM, OH, OK, OR, TN, TX, WA, WI, WY. INCORPORATED IN: Texas.

See Footnotes/Notes at end of Circular

Trinity Universal BUSINESS ADDRESS: P.O. PHONE: (214) 360-8000 $848,000. SURETY LICEN MS, MO, MT, NE, OH, OK Kansas.

Trumbull Insuranc Hartford Plaza, Hartfo (203) 547-5000. UNDER SURETY LICENSES c/: AL NJ, OK, PA, RI, WY. IN

Twin City Fire In Hartford Plaza, Hartfo (203) 547-5000. UNDER SURETY LICENSES c/: AL GA, HI, ID, IL, IN, IA MO, MT, NE, NV, NH, NJ SC, SD, TN, TX, UT, VT Indiana.

U.S. Capital Insu 4 West Red Oak Lane, Wh (914) 649-4757. UNDERW SURETY LICENSES c/: AL, MD, MI, MT, NE, NV, NM, WI. INCORPORATED IN: NE

ULICO CASUALTY CO 111 Massachusetts Avenu PHONE: (202) 682-0900. $5,377,000. SURETY LICE DE, DC, FL, GA, HI, ID, MN, MS, MO, MT, NE, NV, SD, TN, TX, UT, VT, VA, Delaware.

Underwriters Indem 8 Greenway Plaza, SUITE (713) 961-1300. UNDERW SURETY LICENSES c/: AL, MT, NE, NV, NM, ND, OH, WI, WY. INCORPORATED IN

UNDERWRITERS REINS P.O. Box 4030, Woodland (818) 225-1000. UNDERW SURETY LICENSES c/: AZ, NM, NY, OH, PA, RI, TX, New Hampshire.

See Footnotes/Notes at e

Trinity Universal Insurance Company of Kansas, Inc. BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION b/: $848,000. SURETY LICENSES c/: AL, AZ, CO, GA, ID, KS, KY, LA, MS, MO, MT, NE, OH, OK, OR, TX, WA, WI. INCORPORATED IN: Kansas.

Trumbull Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $1,914,000. SURETY LICENSES c/: AL, AK, CT, DE, DC, IN, MA, MN, MO, NE, NJ, OK, PA, RI, WY. INCORPORATED IN: Connecticut.

Twin City Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION b/: $8,725,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

U.S. Capital Insurance Company. BUSINESS ADDRESS: 4 West Red Oak Lane, White Plains, NY 10604-3602. PHONE: (914) 649-4757. UNDERWRITING LIMITATION b/: $914,000. SURETY LICENSES c/: AL, AZ, CA, DE, DC, FL, GA, IN, IA, LA, MD, MI, MT, NE, NV, NM, NY, ND, OH, PA, SD, TN, TX, UT, VA, WI. INCORPORATED IN: NEW YORK.

ULICO CASUALTY COMPANY. BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. PHONE: (202) 682-0900. UNDERWRITING LIMITATION b/: $5,377,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Underwriters Indemnity Company. BUSINESS ADDRESS: 8 Greenway Plaza, SUITE: 400, Houston, TX 77046. PHONE: (713) 961-1300. UNDERWRITING LIMITATION b/: $406,000. SURETY LICENSES c/: AL, GA, HI, IL, IN, KS, KY, LA, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Texas.

UNDERWRITERS REINSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 4030, Woodland Hills, CA 91365. PHONE: (818) 225-1000. UNDERWRITING LIMITATION b/: $24,772,000. SURETY LICENSES c/: AZ, CA, DE, DC, ID, IL, IA, MS, NE, NV, NM, NY, OH, PA, RI, TX, UT, WI. INCORPORATED IN: New Hampshire.

See Footnotes/Notes at end of Circular

Unigard Security Insurance Company. BUSINESS ADDRESS: 1215 Fourth Avenue, Seattle, WA 98161-0196. PHONE: (206) 292-7861. UNDERWRITING LIMITATION b/: $7,171,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Washington.

Union Insurance Company. BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501-0439. PHONE: (402) 476-7688. UNDERWRITING LIMITATION b/: $2,326,000. SURETY LICENSES c/: AR, CO, DC, ID, IA, KS, MD, MN, MS, MO, MT, NE, ND, OK, SD, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

United Capitol Insurance Company. 6/ BUSINESS ADDRESS: 1400 Lake Hearn Drive, Atlanta, GA 30319. PHONE: (404) 843-5599. UNDERWRITING LIMITATION b/: $6,568,000. SURETY LICENSES c/: AZ, WI. INCORPORATED IN: Wisconsin.

United Coastal Insurance Company. 6/ BUSINESS ADDRESS: P.O. Box 2350, 233 Main Street, New Britain, CT 06050-2350. PHONE: (203) 223-5000. UNDERWRITING LIMITATION b/: $3,716,000. SURETY LICENSES c/: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company. BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407. PHONE: (319) 399-5700. UNDERWRITING LIMITATION b/: $11,128,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: Three Bala Plaza East, SUITE: 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION b/: $8,730,000. SURETY LICENSES c/: PA. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $4,631,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $2,112,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

United States Fi
BUSINESS ADDRESS: Post
Baltimore, MD 21203.
UNDERWRITING LIMITATIO
AL, AK, AZ, AR, CA, CO
IA, KS, KY, LA, ME, MD
NJ, NM, NY, NC, ND, OH
VT, VA, VI, WA, WV, WI

UNITED STATES FIR
6 Sylvan Way, Parsippa
(201) 285-9300. UNDER
SURETY LICENSES c/: AL
GA, HI, ID, IL, IN, IA
MO, MT, NE, NV, NH, NJ
RI, SC, SD, TN, TX, UT
INCORPORATED IN: New Y

UNITED SURETY AND
P.O. Box 3432, Old San
00902-3432. PHONE:
LIMITATION b/: $222,00
INCORPORATED IN: Puert

UNIVERSAL BONDING
518 Stuyvesant Avenue,
(201) 438-7223. UNDER
SURETY LICENSES c/: NJ

UNIVERSAL INSURANC
G.P.O. Box 71338, San J
(809) 793-7202. UNDERW
SURETY LICENSES c/: PR

Universal Surety C
Post Office Box 80468,
(402) 435-4302. UNDERW
SURETY LICENSES c/: AZ,
NE, NM, ND, OH, OK, OR,
Nebraska.

Universal Surety o
P.O. Box 1068, Houston,
(713) 722-4600. UNDERW
SURETY LICENSES c/: AL,
NC, OK, SC, TN, TX. INC

See Footnotes/Notes at e

United States Fidelity and Guaranty Company. BUSINESS ADDRESS: Post Office Box 1138, 100 Light Street, Baltimore, MD 21203. PHONE: (410) 547-3000. UNDERWRITING LIMITATION b/: $97,767,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

UNITED STATES FIRE INSURANCE COMPANY. BUSINESS ADDRESS: 6 Sylvan Way, Parsippany, NJ 07054. PHONE: (201) 285-9300. UNDERWRITING LIMITATION b/: $29,885,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

UNITED SURETY AND INDEMNITY COMPANY. BUSINESS ADDRESS: P.O. Box 3432, Old San Juan Station, San Juan, PR 00902-3432. PHONE: (809) 722-8896. UNDERWRITING LIMITATION b/: $222,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

UNIVERSAL BONDING INSURANCE COMPANY. BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. PHONE: (201) 438-7223. UNDERWRITING LIMITATION b/: $805,000. SURETY LICENSES c/: NJ. INCORPORATED IN: New Jersey.

UNIVERSAL INSURANCE COMPANY. BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. PHONE: (809) 793-7202. UNDERWRITING LIMITATION b/: $4,035,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: $2,156,000. SURETY LICENSES c/: AZ, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America. BUSINESS ADDRESS: P.O. Box 1068, Houston, TX 77251-1068. PHONE: (713) 722-4600. UNDERWRITING LIMITATION b/: $628,000. SURETY LICENSES c/: AL, AR, CO, FL, GA, KS, LA, MS, MO, NM. NC, OK, SC, TN, TX. INCORPORATED IN: Texas.

See Footnotes/Notes at end of Circular

UNIVERSAL UNDERWRITERS INSURANCE COMPANY. BUSINESS ADDRESS: 6363 College Blvd., Overland Park, KS 66211. PHONE: (913) 339-1000. UNDERWRITING LIMITATION b/: $33,003,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Utica Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION b/: $19,602,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Valley Forge Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $12,569,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

VAN TOL SURETY COMPANY, INCORPORATED. BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692-6294. UNDERWRITING LIMITATION b/: $198,000. SURETY LICENSES c/: SD. INCORPORATED IN: South Dakota.

VESTA FIRE INSURANCE CORPORATION. BUSINESS ADDRESS: P.O Box 43360, Birmingham, AL 35243-3360. PHONE: (205) 970-7000. UNDERWRITING LIMITATION b/: $20,275,000. SURETY LICENSES c/: AL, AK, AZ, AR, DC, IL, IN, IA, KS, KY, MN, MO, MT, NE, NV, NJ, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Alabama.

Vigilant Insurance Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $31,776,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

Washington Inter
BUSINESS ADDRESS: 193
Schaumburg, IL 60173.
UNDERWRITING LIMITATIO
AL, AK, AZ, AR, CA, C
KY, LA, MD, MA, MI, M
OK, OR, PA, SC, SD, T
INCORPORATED IN: Arizo

West American Ins
136 North Third Street
(513) 867-3000. UNDER
SURETY LICENSES c/: A
IL, IN, IA, KS, KY, LA
NJ, NM, NY, NC, ND, OH
WV, WI, WY. INCORPORAT

Westchester Fire
Six Concourse Parkway,
PHONE: (404) 393-9955
$16,555,000. SURETY LI
CT, DE, DC, FL, GA, HI
MA, MI, MN, MS, MO, MT
OK, OR, PA, PR, RI, SC
WY. INCORPORATED IN: N

Western Surety Co
P.O. Box 5077, Sioux F
(605) 336-0850. UNDER
SURETY LICENSES c/: AL
GA, HI, ID, IL, IN, IA
MO, MT, NE, NV, NH, NJ
SC, SD, TN, TX, UT, VT
South Dakota.

Westfield Insuran
P.O. Box 5001, Westfie
(216) 887-0101. UNDERW
SURETY LICENSES c/: AL,
IL, IN, IA, KS, KY, LA,
NJ, NM, NY, NC, ND, OH,
VA, WA, WV, WI, WY. INC

Westfield National
P.O. Box 5001, Westfie
(216) 887-0101. UNDERW
SURETY LICENSES c/: CA,

See Footnotes/Notes at e

Washington International Insurance Company. BUSINESS ADDRESS: 1930 Thoreau Drive, SUITE: 101, Schaumburg, IL 60173. PHONE: (708) 490-1850. UNDERWRITING LIMITATION b/: $1,300,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Arizona.

West American Insurance Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION b/: $51,779,000. SURETY LICENSES c/: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Westchester Fire Insurance Company. BUSINESS ADDRESS: Six Concourse Parkway, SUITE: 2700, Atlanta, GA 30328-5346. PHONE: (404) 393-9955. UNDERWRITING LIMITATION b/: $16,555,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Western Surety Company. BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117-5077. PHONE: (605) 336-0850. UNDERWRITING LIMITATION b/: $3,545,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

Westfield Insurance Company. BUSINESS ADDRESS: P.O. Box 5001, Westfield Ctr., OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION b/: $20,576,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company. BUSINESS ADDRESS: P.O. Box 5001, Westfield Ctr., OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION b/: $5,642,000. SURETY LICENSES c/: CA, IA, OH. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

WINTERTHUR REINSURANCE CORPORATION OF AMERICA. BUSINESS ADDRESS: Two World Financial Center, 225 Liberty Street, 42nd Floor, New York, NY 10281. PHONE: (212) 416-5700. UNDERWRITING LIMITATION b/: $21,076,000. SURETY LICENSES c/: AL, AZ, CA, DE, DC, IL, IN, KY, MI, MN, MS, MT, NE, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: NEW YORK.

ZENITH INSURANCE COMPANY. BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. PHONE: (818) 713-1000. UNDERWRITING LIMITATION b/: $20,134,000. SURETY LICENSES c/: AZ, AR, CA, CO, HI, ID, NM, OK, OR, TX, UT. INCORPORATED IN: CALIFORNIA.

See Footnotes/Notes at end of Circular

COMPANIES HOLDING C
REINSURING COMPANI
CIRCULAR NO. 297, R

FOLKSAMERICA REI
One Liberty Plaza, 19
PHONE: (212) 312-250
$9,942,000.

Frankona America
P.O. Box 419069, Kansa
(816) 471-2200. UNDE

Generali - U.S.
One Liberty Plaza, Ne
(212) 602-7600. UNDE

GREAT LAKES REINS
BUSINESS ADDRESS: Wall
New York, NY 10005-18
UNDERWRITING LIMITATIO

Munich Reinsuranc
BUSINESS ADDRESS: 560
PHONE: (212) 310-180
$44,330,000.

Swiss Reinsurance
BUSINESS ADDRESS: 237
PHONE: (212) 907-8000
$33,891,000.

Tokio Marine and
BUSINESS ADDRESS: 101
PHONE: (212) 297-6600
$15,693,000.

Western Atlantic
BUSINESS ADDRESS: 380
PHONE: (212) 973-5800
$10,109,000.

Zurich Insurance
BUSINESS ADDRESS: 1400
PHONE: (708) 605-6000
$64,363,000.

See Footnotes/Notes at

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]

FOLKSAMERICA REINSURANCE COMPANY. BUSINESS ADDRESS: One Liberty Plaza, 19th Floor, New York, NY 10006. PHONE: (212) 312-2500. UNDERWRITING LIMITATION b/: $9,942,000.

Frankona America Reinsurance Company. BUSINESS ADDRESS: P.O. Box 419069, Kansas City, MO 64141-6069. PHONE: (816) 471-2200. UNDERWRITING LIMITATION b/: $10,798,000.

Generali - U.S. Branch. BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 602-7600. UNDERWRITING LIMITATION b/: $6,460,000.

GREAT LAKES REINSURANCE COMPANY (THE), U.S. BRANCH. BUSINESS ADDRESS: Wall Street Plaza, 88 Pine Street, New York, NY 10005-1894. PHONE: (212) 809-1061. UNDERWRITING LIMITATION b/: $5,217,000.

Munich Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 560 Lexington Ave., New York, NY 10022. PHONE: (212) 310-1800. UNDERWRITING LIMITATION b/: $44,330,000.

Swiss Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. PHONE: (212) 907-8000. UNDERWRITING LIMITATION b/: $33,891,000.

Tokio Marine and Fire Insurance Company, Limited (The), U.S. Branch. BUSINESS ADDRESS: 101 Park Avenue, New York, NY 10178. PHONE: (212) 297-6600. UNDERWRITING LIMITATION b/: $15,693,000.

Western Atlantic Reinsurance Corporation. BUSINESS ADDRESS: 380 Madison Avenue, New York, NY 10017. PHONE: (212) 973-5800. UNDERWRITING LIMITATION b/: $10,109,000.

Zurich Insurance Company, U.S. Branch. BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (708) 605-6000. UNDERWRITING LIMITATION b/: $64,363,000.

See Footnotes/Notes at end of Circular

FOOTNOTES

1/ Nobel Insurance Company changed its State of Domicile from South Carolina to Texas, effective December 17, 1993.

2/ SUN INSURANCE COMPANY OF NEW YORK changed its name to CHUBB INDEMNITY INSURANCE COMPANY, effective March 17, 1994.

3/ Consolidated Surety Insurance Company, Inc. redomesticated from New Mexico to California and changed its name to AMERICAN CONTRACTORS INDEMNITY COMPANY, effective May 23, 1994.

4/ Frontier Insurance Company is required by State law to conduct business in the States of Arkansas, Florida, Iowa, Nevada, North Dakota, Texas and Utah as Frontier Insurance Company DBA Frontier Insurance Company of New York. In Missouri, Frontier Insurance Company is required by State law to conduct business as New York Frontier Insurance Company.

5/ U.S. Capital Insurance Company is required by State law to conduct business in the State of California as MultiPlus Insurance Co.

6/ United Capitol Insurance Company and United Coastal Insurance Company are both approved surplus lines carriers in all fifty states. Such approval may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the State. Questions related to this, may be directed to the appropriate State Insurance Department.

7/ This Company has a name very similar to another company that is NOT certified by this Department. Please ensure that the name of the company and the State of Incorporation are exactly as they appear in this Circular.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a per bond basis. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk.

When Excess Risks on
protected by reinsurance
of a Federal reinsurance
45 days thereafter.
underwriting limitation
provided will govern abs

(c) A surety compa
area in which it provide
State or other area in
contract is to be perfor
31 CFR Section 223.5 (
District of Columbia, A
Virgin Islands.

License informatio
Treasury Department by
license information, you
applicable State Insura
contact the Surety Bond

(d) FEDERAL PROC
companies are required t
with 31 U.S.C. 9306 and
Where the principal re
performed; and in the
returnable or filed. No
other area where the
224.2). The name and
agent in a particular Fe
from the Clerk of the U.
appointment documents a
surety company's underwr
may not be its authorize

SERVICE OF PROCESS:
process agent appointed
whe. the appointment
absence of such agent f
agent has not been duly
or the agent is absent fr
directly on the Clerk of
31 U.S.C. 9306.

(e) Companies holdi
reinsuring companies are
on Federal bonds.

(f) Some companies
various states. Such ap
authorized to write suret
company is not licensed
may be directed to the a

[FR Doc. 94-15889 Filed 6-30-94; 8:45 am]
BILLING CODE 4810-35-P

When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. For updated license information, you may contact the company directly or the applicable State Insurance Department. For further assistance, contact the Surety Bond Branch.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved surplus lines carriers in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in the state. Questions related to this may be directed to the appropriate State Insurance Department.

[FR Doc. 94–15889 Filed 6–30–94; 8:45 am]
BILLING CODE 4810–35–P

VOL
59

ISS
1
2
6

JL
1

994

MI

Federal Register

Friday
July 1, 1994

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 93

Offshore Airspace Reconfiguration; Valparaiso, FL Terminal Area; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 93

[Docket No. 26968; Notice No. 94–23]

Offshore Airspace Reconfiguration; Valparaiso, FL Terminal Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to retain the Valparaiso, Florida Terminal Area and Special Air Traffic Rules in part 93 of the FAR; amend the Class D airspace areas for Eglin Air Force Base (AFB), Eglin AF Auxiliary No. 3 Duke Field, and Hurlburt Field; amend the Crestview Class E airspace area; and delete the Eglin Class D North-South corridor. Additionally, the FAA proposes to modify the established North-South and East-West corridors associated with the Valparaiso, Florida Terminal Area and Eglin AFB in part 93 of the FAR. The FAA is proposing this action to simplify operating procedures, airspace assignment and airspace use. The intended effect of this proposed action is to continue to provide for the safe operational mix of military and civil aircraft within the Valparaiso, Florida Terminal Area.

DATES: Comments must be submitted on or before August 15, 1994.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 26968, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26968. The official docket may be examined in the Office of the Chief Counsel, Room 915G, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP–230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comment to Docket No. 26968." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Offshore Airspace Reconfiguration Final Rule (58 FR 12128; March 2, 1993), which replaced the Valparaiso, Florida Terminal Area with the Eglin Florida Class D airspace area, became effective on December 9, 1993. This rule also amended part 71 of the FAR to revoke the Eglin AFB, Florida and the Eglin Air Force Auxiliary No. 3, Duke Field, Florida Class D airspace areas; modified the Hurlburt Field, Florida Class D airspace area and the Crestview, Florida Class E airspace area; and established the Eglin, Florida Class D North-South corridor. However, by a separate rulemaking action (58 FR 63274; November 30, 1993), this portion of the Offshore Airspace Reconfiguration Final Rule was delayed until December 8, 1994. This delay permitted the FAA and the Department of Defense (DOD) to conduct a micro-review of the effects of the airspace reclassification on this area. On December 8, 1994, the Valparaiso, Florida Terminal Area is scheduled to be replaced with the Eglin, Florida Class D airspace areas.

Need for Rulemaking

The Eglin Florida Class D airspace area, as promulgated in the Offshore Airspace Reconfiguration Final Rule, provides for one airspace area for the North-South corridor and one for the East-West corridor. If the Eglin, Florida Class D airspace area becomes effective on December 8, 1994, civil aircraft would be required to establish and maintain two-way radio communications with the Eglin Radar Control Facility (ERCF), prior to entering the Eglin, Florida Class D airspace area. The ERCF would be required to provide class D services if workload or traffic conditions permit. However, if controller workload or traffic conditions prevent immediate availability of Class D services, the ERCF controllers would be required to inform the pilot to remain outside the Class D airspace areas until services can be provided.

The joint FAA and DOD micro-review of procedures and operations was conducted to determine the amount and extent of controlled airspace necessary to contain certain air traffic control operations. The following data summarizes the results of this micro-review:

(1) In 1993, ERFC logged a traffic count of 223,627 total operations. Of this total 39% (86,137) were civilian operations. Military operations were 61% (137,490) and represented a 16% increase over the total number of operations for the preceding year.

(2) A total of 9,385 military missions were flown in Eglin's restricted areas during 1993. This is approximately a 17% increase in restricted area usage over the preceding year.

(3) During 1993, the Eglin AFB recorded 424 corridor penetrations. A corridor penetration occurs when one or more military aircraft transits the North-South or East-West corridors flying between Eglin's Special Use Airspace (SUA) areas as part of their mission profile. Consistent with the projected increases in military operations, these events are forecast to increase in 1994.

(4) If the Eglin, Florida Class D airspace area becomes effective on December 8, 1994, the requirement to establish positive air traffic control in the North-South and East-West corridors would lead to dramatic increases in air traffic and ERCF controller workload. These increases in air traffic and controller workload would increase air traffic control delays imposed on civil and military aircraft, both in the air and on the ground.

(5) Under the Valparaiso, Florida, Special Air Traffic Rules in part 93 of the FAR, access to the North-South corridor is limited during military operations, but access to the East-West corridor is not impeded. However, under the Eglin Class D airspace area, during military operations, access to the entire Class D airspace area (both the North-South and East-West corridors) will be limited.

Based on the foregoing, the FAA has determined that the Eglin, Florida Class D airspace area would not meet the airspace needs for that area. Accordingly, it is necessary to retain the Valparaiso, Florida Terminal Area and Special Air Traffic Rules contained in part 93 of the FAR to accommodate the actual and projected increase in air traffic while maintaining the same level of safety for aircraft transiting the North-South and East-West corridors.

Accordingly, to enhance safety in the immediate vicinity of the Eglin AFB, the FAA proposes to move the southern boundary of the North-South corridor from its present lateral position north of Eglin AFB to a position south to Eglin AFB coincident with latitude 30°25'01" North. The existing designation of the North-South Corridor from surface to an unlimited altitude was found to be excessive. Therefore, the FAA proposes to modify the North-South corridor airspace ceiling.

The FAA also proposes to modify the center portion of the East-West corridor to include airspace from the surface up to but not including 18,000 ft. MFL. The East-West corridor located below Restricted Areas R–2915C, R–2919B, and R–2914B, excluding the center portion, extends from the surface up to but not including 8,500 feet MSL. This effectively would divide the East-West corridor into 3 separate sections.

This proposed action would simplify operating procedures and the complex aeronautical charting of Eglin's airspace. Moreover, it would further reduce the potential hazard of VFR aircraft crossing the flight paths of high speed, high performance, and often armed military aircraft transiting to/from/between Eglin's most commonly used East (R–2914A, R–2919A) and West (R–2915A, R–2915B) ranges.

December 8, 1994, the requirement to establish positive air traffic control in the North-South and East-West corridors would lead to dramatic increases in air traffic and ERCF controller workload. These increases in air traffic and controller workload would increase air traffic control delays imposed on civil and military aircraft, both in the air and on the ground.

(5) Under the Valparaiso, Florida, Special Air Traffic Rules in part 93 of the FAR, access to the North-South corridor is limited during military operations, but access to the East-West corridor is not impeded. However, under the Eglin Class D airspace area, during military operations, access to the entire Class D airspace area (both the North-South and East-West corridors) will be limited.

Based on the foregoing, the FAA has determined that the Eglin, Florida Class D airspace area would not meet the airspace needs for that area. Accordingly, it is necessary to retain the Valparaiso, Florida Terminal Area and Special Air Traffic Rules contained in part 93 of the FAR to accommodate the actual and projected increase in air traffic while maintaining the same level of safety for aircraft transiting the North-South and East-West corridors.

Accordingly, to enhance safety in the immediate vicinity of the Eglin AFB, the FAA proposes to move the southern boundary of the North-South corridor from its present lateral position north of Eglin AFB to a position south to Eglin AFB coincident with latitude 30°25'01" North. The existing designation of the North-South Corridor from surface to an unlimited altitude was found to be excessive. Therefore, the FAA proposes to modify the North-South corridor airspace ceiling.

The FAA also proposes to modify the center portion of the East-West corridor to include airspace from the surface up to but not including 18,000 ft. MFL. The East-West corridor located below Restricted Areas R–2915C, R–2919B, and R–2914B, excluding the center portion, extends from the surface up to but not including 8,500 feet MSL. This effectively would divide the East-West corridor into 3 separate sections.

This proposed action would simplify operating procedures and the complex aeronautical charting of Eglin's airspace. Moreover, it would further reduce the potential hazard of VFR aircraft crossing the flight paths of high speed, high performance, and often armed military aircraft transiting to/from/between Eglin's most commonly used East (R–2914A, R–2919A) and West (R–2915A, R–2915B) ranges.

The Offshore Airspace Reconfiguration Final Rule discussed the Eglin Florida Class D airspace area in the preamble. The final rule, however, did not include the regulatory text for the Eglin, Florida Class D airspace area. Therefore, this action amends the intent of the FAA by rescinding the Eglin, Florida Class D airspace area.

This action amends the incorporation by reference in 14 CFR part 71.1 of FAA Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993 by: (1) revising the Eglin AFB, and the Eglin AF Auxiliary No. 3, Duke Field Florida Class D airspace areas; (2) deleting the pending amendments for the Hurlburt Field, Florida Class D airspace area, and the Crestview, Florida Class E airspace area; and (3) deleting the Eglin, Florida Class D North-South corridor.

The Proposal

The FAA proposes to retain the Valparaiso, Florida Terminal Area and Special Air Traffic Rules in part 93 of the FAR; amend the Class D airspace areas for Eglin AFB, the Eglin AF Auxiliary No. 3 Duke Field, and the Hurlburt Field; amend the Crestview Class E airspace area; and delete the Eglin Class D North-South corridor. Additionally, the FAA proposes to revise the North-South corridor airspace area by reestablishing the vertical limits of that corridor from the surface up to but not including 18,000 feet MSL and by moving the southern boundary from its present lateral position north of Eglin AFB to a position south of Eglin AFB coincident with latitude 30°25'01" North. Further, the FAA proposes to modify the center portion of the East-West corridor to include airspace from the surface up to but not including 18,000 ft MSL. This would effectively divide the East-West corridor into the following three sections:

(1) The west section would include that East-West corridor airspace area underlying Restricted Area R–2915C and extending upward from the surface to, but not including, 8,500 feet MSL.

(2) The center section would include that East-West corridor airspace areas that does not underlie any of the restricted areas associated with Eglin AFB and extends upward from the surface to, but not including 18,000 feet MSL.

(3) The east section would include that East-West corridor airspace area underlying Restricted Areas R–2919B and R–2914B extending from the surface up to, but not including, 8,500 ft MSL.

Economic Evaluation

Proposed changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) would generate benefits that justify its costs and is not "a significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses are summarized below.

Costs

The FAA has determined that there would be little or no cost associated with implementation of the proposed modification. This determination is based on the following reasons.

The proposed rule would impose no additional administrative, personnel, or equipment costs on Eglin AFB or the FAA. Any additional operations workload generated by the proposed rule would be absorbed by current personnel and equipment resources.

The cost to aircraft operators would be small delays and deviations from their current flight times and paths that may occasionally occur while Eglin ATC clears military aircraft across the southern end of the North-South corridor. However, the FAA contends that these delays would be so short and infrequent that they would impose little if any cost.

Benefits

The benefits of the proposed rule would be primarily in the form of improved ATC efficiency and enhanced safety. Improved ATC efficiency would come from lowering the ceiling of the North-South corridor. This would eliminate the need for FAA ATC and Eglin ATC to coordinate the control of civilian traffic transiting the corridor above 18,000 feet MSL. The proposed rule would also allow Eglin ATC to better separate the flow of military and

civilian aircraft in the southern part of the North-South corridor.
Enhancements to safety would come in the lowered risk of midair collisions due to the increased positive control of the airspace of Eglin AFB.

Conclusion

In view of the little or no cost of compliance versus enhancements to aviation safety and efficiency, the FAA has determined that the proposed rule would be cost-beneficial.

International Trade Impact Statement

This proposed rule would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States. This assessment is based on the fact that the proposed rule would impose little or no costs on aircraft operators or aircraft manufacturers (U.S. or foreign).

Regulatory Flexibility Determination

In accordance with the Regulatory Flexibility Act of 1980, the FAA has determined that this proposed rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. This assessment is based on the fact that the proposed rule would impose little or no cost on small entities.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with the U.S. Obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Practices (SARP) to the maximum extent practicable. For this notice, the FAA has determined that this proposal, if adopted, would not present any differences.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An Initial Regulatory Flexibility Determination and International Impact Assessment have been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

14 CFR Part 93

Air traffic control, Airports, Alaska, Federal Aviation Administration, Navigation (air), Penalties, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 71 and 93 of the Federal Aviation Regulations, (14 CFR parts 71 and 93) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71.1, of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—Class D Airspace

* * * * *

ASO FL D Eglin AF Aux No. 3 Duke Field, FL [Revised]

Eglin AF Aux No. 3 Duke Field, FL
(lat. 30°39'07" N, long. 86°31'23" W)
Bob Sikes Airport
(lat. 30°46'44" N, long. 86°31'20" W)
Eglin AFB
(lat. 30°29'13" N, long. 86°31'34" W)

That, airspace extending upward from the surface to and including 2,700 feet MSL within a 5.2-mile radius of Eglin AF Aux No. 3 Duke Field; excluding the portion north of a line connecting the 2 points of intersection with a 4.2-mile radius circle centered on Bob Sikes Airport; excluding the portion south of a line connecting the 2 points of intersection with a 5.5-mile radius circle centered on Eglin AFB. This Class D airspace area is effective during the specific days and times established in advance by a notice to Airmen The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL D Eglin AFB, FL [Revised]

Eglin AFB, FL
(lat. 30°29'13" N, long. 86°31'34" W)
Destin-Fort Walton Beach Airport
(lat. 30°24'01" N, long. 86°28'18" W)
Duke Field
(lat. 30°39'07" N, long. 86°31'23" W)
Hurlburt Field
(lat. 30°25'44" N, long. 86°41'20" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.5-mile radius of Eglin AFB and within a 4-mile radius of Destin-Fort Walton Beach Airport; excluding the portion north of a line connecting the 2 points of intersection within a 5.2-mile radius circle centered on Duke Field; excluding the portion southwest of a line connecting the 2 points of intersection within a 5.3-mile radius of Hurlburt Field.

* * * * *

Eglin Hurlburt Field, FL [Removed]

* * * * *

ASO FL D Eglin, FL North-South Corridor [Removed]

* * * * *

Paragraph 6002—Class E airspace areas designated as a surface area for an airport.

* * * * *

Crestview, FL [Removed]

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for Part 93 continues to read as follows:

Authority: 49 U.S.C. app. 1302, 1303, 1348 1354(a), 1421(a), 1424, 2451 *et seq.*; 49 U.S.C. 206(g).

2. Sections 93.81 and 93.83 are revised to read as follows:

§ 93.81 Applicability and description of area.

(a) This subpart prescribes the Valparaiso, Florida Terminal Area, and the special air rules for operating aircraft within that Area.

(b) The Valparaiso, Florida Terminal Area is designated as follows:

(1) North-South Corridor. The North-South Corridor includes the airspace extending upward from the surface up to, but not including, 18,000 feet MSL, bounded by a line beginning at:

Latitude 30°42'51" N., Longitude 86°38'02" W.; to
Latitude 30°43'18" N., Longitude 86°27'37" W.; to
Latitude 30°37'01" N., Longitude 86°27'37" W.; to
Latitude 30°37'01" N., Longitude 86°25'30" W.; to
Latitude 30°33'01" N., Longitude 86°25'30" W.; to
Latitude 30°33'01" N., Longitude 86°25'00" W.; to
Latitude 30°25'01" N., Longitude 86°25'00" W.; to
Latitude 30°25'01" N., Longitude 86°38'12" W.; to
Latitude 30°29'02" N., Longitude 86°38'02" W.; to point of beginning.

(2) East-West Corridor—The East-West Corridor is divided into three sections to accommodate the different altitudes as portions of the corridor underlie restricted areas R–2915C, R–2919B, and R–2914B.

(i) The west section would include that airspace extending upward from the surface to but not including 8,500 feet MSL, bounded by a line beginning at:

§ 93.81 Applicability and description of area.

(a) This subpart prescribes the Valparaiso, Florida Terminal Area, and the special air rules for operating aircraft within that Area.

(b) The Valparaiso, Florida Terminal Area is designated as follows:

(1) North-South Corridor. The North-South Corridor includes the airspace extending upward from the surface up to, but not including, 18,000 feet MSL, bounded by a line beginning at:

Latitude 30°42′51″ N., Longitude 86°38′02″ W.; to
Latitude 30°43′18″ N., Longitude 86°27′37″ W.; to
Latitude 30°37′01″ N., Longitude 86°27′37″ W.; to
Latitude 30°37′01″ N., Longitude 86°25′30″ W.; to
Latitude 30°33′01″ N., Longitude 86°25′30″ W.; to
Latitude 30°33′01″ N., Longitude 86°25′00″ W.; to
Latitude 30°25′01″ N., Longitude 86°25′00″ W.; to
Latitude 30°25′01″ N., Longitude 86°38′12″ W.; to
Latitude 30°29′02″ N., Longitude 86°38′02″ W.; to point of beginning.

(2) East-West Corridor—The East-West Corridor is divided into three sections to accommodate the different altitudes as portions of the corridor underlie restricted areas R–2915C, R–2919B, and R–2914B.

(i) The west section would include that airspace extending upward from the surface to but not including 8,500 feet MSL, bounded by a line beginning at:

Latitude 30°22′47″ N., Longitude 86°51′30″ W.: then along the shoreline to Latitude 30°23′46″ N., Longitude 86°38′15″ W.; to Latitude 30°20′51″ N., Longitude 86°38′50″ W.; then 3 NM from and parallel to the shoreline to Latitude 30°19′31″ N., Longitude 86°51′30″ W.; to the beginning.

(ii) The center section would include that airspace extending upward from the surface to but not including 18,000 feet MSL, bounded by a line beginning at:

Latitude 30°25′01″ N., Longitude 86°38′12″ W.; to
Latitude 30°25′01″ N., Longitude 86°25′00″ W.; to
Latitude 30°25′01″ N., Longitude 86°22′26″ W.; to
Latitude 30°19′46″ N., Longitude 86°23′45″ W.; then 3 NM from and parallel to the shoreline to Latitude 30°20′51″ N.,
Longitude 86°38′50″ W.; Latitude 30°23′46″ N.,
Longitude 86°38′15″ W.; to the beginning.

(iii) The east section would include that airspace extending upward from the surface to but not including 8,500 feet MSL, bounded by a line beginning at:

Latitude 30°25′01″ N., Longitude 86°22′26″ W.; to
Latitude 30°22′01″ N., Longitude 86°08′00″ W.; to
Latitude 30°19′16″ N., Longitude 85°56′00″ W.; to
Latitude 30°11′01″ N., Longitude 85°56′00″ W.; then 3 NM from and parallel to the shoreline to Latitude 30°19′46″ N., Longitude 86°23′45″ W.; to the beginning.

§ 93.83 Aircraft Operations.

(a) North-South Corridor. Unless otherwise authorized by ATC (including the Eglin Radar Control Facility), no person may operate an aircraft in flight within the North-South Corridor designated in § 93.81(b)(1) unless—

(1) Before operating within the corridor, that person obtains a clearance from the Eglin Radar Control Facility or an appropriate FAA ATC facility; and

(2) That person maintains two-way radio communication with the Eglin Radar Control Facility or an appropriate FAA ATC facility while within the corridor.

(b) East-West Corridor. Unless otherwise authorized by ATC (including the Eglin Radar Control Facility), no person may operate an aircraft in flight within the East-West Corridor designated in § 93.81(b)(2) unless—

(1) Before operating within the corridor, that person establishes two-way radio communications with Eglin Radar Control Facility or an appropriate FAA ATC facility and receives an ATC advisory concerning operations being conducted therein; and

(2) That person maintains two-way radio communications with the Eglin Radar Control Facility or an appropriate FAA ATC facility while within the corridor.

Issued in Washington DC, on June 21, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–15623 Filed 6–30–94; 8:45 am]
BILLING CODE 4910–13–M

VOL
5 9
ISS
1
2
6
JL
1
994
MI

federal register

Federal Register

Friday
July 1, 1994

Part VI

Department of Education

34 CFR Part 641

Faculty Development Fellowship Program; Invitation To Apply for New Awards for Fiscal Year 1994; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 641

RIN 1840–AC04

Faculty Development Fellowship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary publishes final regulations for the Faculty Development Fellowship (FDF) Program. The FDF Program provides grants to institutions of higher education, consortia of institutions, and consortia of institutions and nonprofit organizations to fund fellowships for individuals from underrepresented minority groups to enter or continue in the higher education professorate. These regulations are needed to implement the FDF Program which was enacted in the Higher Education Amendments of 1992, as amended by the Higher Education Technical Amendments of 1993. The regulations incorporate statutory requirements and provide rules for applying for and spending Federal funds under this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Karen W. Johnson. Telephone: (202) 260–3209. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: These regulations implement the Faculty Development Fellowship Program, which is authorized by Title IX, Part E of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992, Pub. L. 102–325 (1992 Amendments), and the Higher Education Technical Amendments of 1993 (Technical Amendments of 1993), Pub. L. 103–208.

The Faculty Development Fellowship Program supports the National Education Goals. Specifically, this program furthers the goal, which provides that by the year 2000, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. This program furthers this Goal by providing grant funds to allow prospective faculty members to obtain doctoral degrees that will allow them to enter the higher education professorate, and experienced faculty members to engage in doctoral study or participate in professional development programs that will enhance their skills and careers.

On April 22, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (59 FR 19280).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, six parties submitted comments on the proposed regulations. An analysis of the comments follows.

Major issues are grouped according to subject. Technical and other minor changes are not addressed.

Financial Need

Comments: One commenter suggests deleting the requirement in § 641.30(a) and § 641.4 of the regulations that an individual must have financial need to be eligible for a prospective faculty development fellowship.

The same commenter questions the use of the Title IV, Part F, needs analysis for this program. The commenter believes this needs analysis does not take into consideration the special financial responsibilities of graduate students who have homes, families, and other commitments.

Discussion: Section 951(a)(2) of the HEA requires that an individual must have financial need to be eligible for a prospective faculty development fellowship. The Secretary is not legally authorized to change this requirement.

The Secretary has applied the Title IV, Part F, needs analysis to all of the Title IX fellowship programs. The Secretary believes that this analysis takes into consideration the special financial responsibilities of graduate students. A graduate student is defined as an independent student under section 480(d)(4) of the HEA. Sections 476 and 477 of the Title IV, Part F, needs analysis have separate provisions for independent students which take into account factors such as the student's marital status and number of dependents.

Changes: None.

Cooperation Among Members of Consortium

Comments: One commenter suggests requiring that members of a consortium discuss and develop common strategies to respond to the changing needs of their institutions.

Discussion: The Secretary agrees with the commenter, but does not believe any change to the regulations is necessary to ensure that members of a consortium cooperate in carrying out the grant. If the applicant is a consortium, §§ 641.10(b)(5)(ii) and 641.11(b)(5)(ii) of the regulations require that an application for a fellowship include the terms of cooperation among the members of a consortium.

Changes: None.

Selection of One or More of the Categories of Fellowships for Absolute Funding Priority

Comments: One commenter suggests that § 641.25 be deleted from the regulations. This provision authorizes the Secretary to give an absolute priority to one or two of the categories of fellowships under this program in any given year. The commenter believes institutions should have the flexibility to apply for all three types of fellowships.

Discussion: The Secretary believes that there may be limited funds available under this program. As a result, the Secretary may wish to direct program funds to one or two of the three categories of fellowships in order to achieve the greatest results with limited resources.

Changes: None.

Repayment Obligation

Comments: Several commenters suggest eliminating the requirement in § 641.70(b) and (c) that a prospective or experienced faculty development fellow must repay the amount of his or her fellowship in the event that he or she does not obtain a teaching position within five years of completion of the degree for which fellowship assistance was awarded. One of these commenters believes it is becoming increasingly difficult to obtain teaching positions in light of the narrowing job market. This commenter believes that this is especially true in the case of experienced faculty development fellows who must find, under section 954(1) of the HEA and § 641.70(c) of the regulations, a position in a public or private nonprofit institution that has a significant minority enrollment.

Several commenters also suggest eliminating the repayment requirement for prospective and experienced faculty development fellows under § 641.70(a) when a fellow fails to complete his or her degree within the period in which the fellowship is awarded. These commenters believe it is unreasonable to expect a fellow to complete his or her degree in five years (the normal period of the fellowship) because the national average for completion of graduate degree programs is longer than five years.

Several commenters oppose the definition of "significant enrollment" of minority students in § 641.7(b) to mean an undergraduate enrollment of at least 25 percent. These commenters believe that this definition severely reduces an experienced faculty development fellow's choice of possible schools in which to fulfill his or her teaching obligation under § 641.70(c). One commenter suggests that this definition be expanded to mean an undergraduate minority enrollment of at least 25 percent or 3,000 students. Another commenter also favors adding a numerical count and offered as an example 1,000. These commenters believe that a numerical count addresses the needs of large schools with large minority populations where the minority population does not equal 25 percent.

Finally, one commenter states that professional development fellows should be required to fulfill a return of service requirement on a one-for-one basis at an institution with a significant enrollment of minority students for each term of fellowship funding.

Discussion: Section 954 of the HEA imposes the repayment requirement where a fellow fails to fulfill his or her teaching obligation within a 5-year period of completing his or her degree. The Secretary is not legally authorized to change this requirement. Section 956(a)(5) of the HEA and § 641.73(a)(6) of the regulations, however, provide that a fellow's repayment obligation is deferred during any period in which the fellow is seeking and unable to find full-time employment for a single period not to exceed 12 months.

In regard to the time-to-degree requirement in § 641.70(a), the Secretary believes that the purpose of prospective and experienced faculty development fellowships is to allow a fellow to acquire a doctoral degree. Therefore, the Secretary believes that a fellow should be required to agree to complete the doctoral degree requirement as part of his or her reciprocal obligation for receiving the fellowship. The Secretary notes, however, that § 641.74(d) of the regulations provides an exception to this requirement where the fellow is enrolled in a doctoral study program full time and is making satisfactory progress toward receiving a doctoral degree.

The definition of "significant enrollment" of minority students is consistent with the definition of

degree in five years (the normal period of the fellowship) because the national average for completion of graduate degree programs is longer than five years.

Several commenters oppose the definition of "significant enrollment" of minority students in § 641.7(b) to mean an undergraduate enrollment of at least 25 percent. These commenters believe that this definition severely reduces an experienced faculty development fellow's choice of possible schools in which to fulfill his or her teaching obligation under § 641.70(c). One commenter suggests that this definition be expanded to mean an undergraduate minority enrollment of at least 25 percent or 3,000 students. Another commenter also favors adding a numerical count and offered as an example 1,000. These commenters believe that a numerical count addresses the needs of large schools with large minority populations where the minority population does not equal 25 percent.

Finally, one commenter states that professional development fellows should be required to fulfill a return of service requirement on a one-for-one basis at an institution with a significant enrollment of minority students for each term of fellowship funding.

Discussion: Section 954 of the HEA imposes the repayment requirement where a fellow fails to fulfill his or her teaching obligation within a 5-year period of completing his or her degree. The Secretary is not legally authorized to change this requirement. Section 956(a)(5) of the HEA and § 641.73(a)(6) of the regulations, however, provide that a fellow's repayment obligation is deferred during any period in which the fellow is seeking and unable to find full-time employment for a single period not to exceed 12 months.

In regard to the time-to-degree requirement in § 641.70(a), the Secretary believes that the purpose of prospective and experienced faculty development fellowships is to allow a fellow to acquire a doctoral degree. Therefore, the Secretary believes that a fellow should be required to agree to complete the doctoral degree requirement as part of his or her reciprocal obligation for receiving the fellowship. The Secretary notes, however, that § 641.74(d) of the regulations provides an exception to this requirement where the fellow is enrolled in a doctoral study program full time and is making satisfactory progress toward receiving a doctoral degree.

The definition of "significant enrollment" of minority students is consistent with the definition of "Hispanic-serving institution" under the Hispanic-Serving Institutions (HSI) program. Section 316(b)(1) of the HEA defines an HSI to include, among other things, an institution that has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students. In addition, the Secretary believes a ratio or percentage is appropriate because, unlike a numerical count, it accounts for the proportion of minority students relative to total enrollment.

Finally, the Secretary does not believe that there is any authority for imposing a teaching obligation on professional development fellows. Section 954 of the HEA imposes a repayment obligation for prospective and experienced faculty development fellowships, but is silent on any similar repayment obligation in the case of professional development fellowships. The Secretary believes that this silence is an expression of congressional intent not to impose a repayment obligation for these fellowships. Further, given the short-term nature of the fellowships, e.g., a seminar could be as short as a week, it is impracticable to impose a teaching obligation.

Changes: None.

Obligation of Fellow to Return to Hiring Institution After Completion of Fellowship

Comments: One commenter suggests that the Secretary require an experienced faculty development fellow to return to his or her hiring (or home) institution after completion of their fellowship.

Discussion: The Secretary does not believe that there is authority to impose the type of requirement suggested by the commenter. The Secretary believes that each fellow should have the opportunity to determine at which institution he or she wishes to teach upon completion of the degree. Furthermore, if the fellow's home institution does not have a significant minority enrollment, an experienced faculty development fellow must teach at another institution that has a significant minority enrollment in order to comply with the requirements of section 954(1) of the HEA.

Changes: None.

Purpose of Faculty Professional Development Fellowships

Comments: One commenter suggests that faculty professional development fellowships be used to support study leaves, i.e., leaves of absence akin to sabbaticals, but attuned to continuing study opportunities for active faculty designed to enhance instructional methodologies and update research endeavors. If this is done, this commenter requests that funding for these study leaves equal that afforded experienced faculty development fellows even though they are for a shorter length of time.

Discussion: Professional development fellowships may not be used for study leaves or independent programs, but rather must be used for structured short-term professional development programs in which the fellow enrolls in a program of instruction, including seminars, conferences, and workshops. Section 641.5(b) of the regulations provides that funds for fellowships for professional development programs may only be used for costs of instruction and other specified expenses.

Changes: None.

Improving Instructional Methodologies

Comments: One commenter suggests requiring experienced faculty development fellows to offer instruction on effective instructional methodologies to the faculty at the degree-granting institution during the time in which they receive fellowship support.

Discussion: The Secretary does not believe that there is authority in the statute for imposing the type of requirement suggested by the commenter. The Secretary believes that this type of requirement goes beyond the repayment obligations of experienced faculty development fellows in section 954(1) of the HEA.

Changes: None.

Administrative Allowance

Comments: One commenter suggests that grantees be allowed to maintain 5 to 10 percent of each grant as an administrative allowance. This allowance would be used to track the fellows to ensure that they are making significant progress toward acquiring their degrees and that they fulfill their teaching obligations. In the event that a fellow is unable to fulfill either of these responsibilities, the allowance would also be used to ensure repayment of the amount of the fellowship received by the fellow.

Discussion: The Secretary does not believe that there is authority in the statute to permit a grantee to maintain the type of administrative allowance suggested by the commenter. All of the grant funds are to be used to support the fellowships funded under this part, and may not be used for any other purpose.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the

order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

(Catalog of Federal Domestic Assistance Number 84—271A—Faculty Development Fellowship Program)

List of Subjects in 34 CFR Part 641

College and universities, Grant program-education, Reporting and recordkeeping requirements.

Dated: June 24, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends chapter VI of title 34 of the Code of Federal Regulations by adding a new part 641 to read as follows:

PART 641—FACULTY DEVELOPMENT FELLOWSHIP PROGRAM

Subpart A—General

Sec.

641.1 What is the Faculty Development Fellowship Program?
641.2 Who is eligible for a grant to fund prospective and experienced faculty development fellowships?
641.3 Who is eligible for a grant to fund faculty professional development fellowships?
641.4 What activities may the Secretary fund?
641.5 What is included in the grant?
641.6 What regulations apply?
641.7 What definitions apply?
641.8 What is the duration of a project period?

Subpart B—How Does One Apply for a Grant?

641.10 How does an applicant apply for a grant to fund prospective and experienced faculty development fellowships?
641.11 How does an applicant apply for a grant to fund faculty professional development fellowships?

Subpart C—How Does the Secretary Make an Award?

641.20 How does the Secretary evaluate an application?
641.21 What selection criteria does the Secretary use to evaluate an application for a grant to fund prospective and experienced faculty development fellowships?
641.22 What selection criteria does the Secretary use to evaluate an application for a grant to fund faculty professional development fellowships?
641.23 What additional factors does the Secretary consider?
641.24 What priorities does the Secretary establish for grants to fund prospective and experienced faculty development fellowships?
641.25 What other priorities does the Secretary establish?

Subpart D—How Are Fellows Selected?

641.30 How does a grantee select fellows?
641.31 How does an individual apply for a fellowship?
641.32 What special rule applies to the distribution of fellowships?

Subpart E—How Does the Secretary Distribute Funds?

641.40 What is the amount of a stipend awarded to prospective and experienced faculty development fellows?

Subpart F—What Are the Administrative Responsibilities of the Grantee That Receives Funds for Prospective and Experienced Faculty Development Fellowships?

641.50 How does a grantee disburse and return funds for prospective or experienced faculty development fellowships?
641.51 What training is a grantee required to provide to prospective faculty development fellows?
641.52 What records are required from a grantee that receives grant funds for prospective or experienced faculty development fellowships?

Subpart G—What Are the Administrative Responsibilities of the Grantee That Receives Funds for Faculty Professional Development Fellowships?

641.60 How does a grantee disburse and return funds for faculty professional development fellowships?
641.61 What records are required from a grantee that receives funds for faculty professional development fellowships?

Subpart H—What Conditions Apply to Prospective and Experienced Faculty Development Fellowships?

641.70 What agreement must be made by prospective and experienced faculty development fellows?
641.71 What are the requirements for a prospective or experienced faculty development fellow to receive fellowship payments?
641.72 What are the repayment provisions for prospective and experienced faculty development fellowships?
641.73 What are grounds for deferral from the repayment schedule?
641.74 What exceptions apply to the agreement to complete the requirements for doctoral study within the period in which the fellowship is awarded?

Authority: 20 U.S.C. 1134r–1134r–6, unless otherwise noted.

Subpart A—General

§ 641.1 What is the Faculty Development Fellowship Program?

(a) The Faculty Development Fellowship Program provides grants to institutions of higher education, consortia of institutions, and consortia of institutions and nonprofit organizations to fund fellowships for individuals from underrepresented minority groups to enter or continue in the higher education professorate.

(b) Under the program, the Secretary awards grants for the following types of fellowships:

(1) Prospective faculty development fellowships, as described in § 641.4(a).

(2) Experienced faculty development fellowships, as described in § 641.4(b).

(3) Faculty professional development fellowships, as described in § 641.4(c).

(Authority: 20 U.S.C. 1134r)

§ 641.2 Who is eligible for a grant to fund prospective and experienced faculty development fellowships?

(a) The Secretary awards grants for prospective and experienced faculty development fellowships to the following:

(1) An institution with a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups.

(2) A consortium of institutions with a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups.

(3) A consortium of nonprofit organizations and institutions with a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups.

(b) A consortium has a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups if each institution in the consortium that intends to offer a program of doctoral study has a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups.

(c) An institution that intends to offer a program of doctoral study has a demonstrated record of enhancing access to graduate education if it provides evidence of the following:

(1) A social and academic environment that is supportive of the academic success of students and faculty who are members of underrepresented minority groups.

(2) Procedures to identify, recruit, and enhance the access of individuals from underrepresented minority groups to graduate education.

(3) A successful record of completion of doctoral degree programs by individuals from underrepresented minority groups.

(4) A successful record of assisting individuals from underrepresented minority groups who receive doctoral degrees enter the higher education professorate.

(d) The Secretary does not award a grant under this part for study at a school or department of divinity.

(Authority: 20 U.S.C. 1134, 1134r)

(1) Prospective faculty development fellowships, as described in § 641.4(a).

(2) Experienced faculty development fellowships, as described in § 641.4(b).

(3) Faculty professional development fellowships, as described in § 641.4(c).

(Authority: 20 U.S.C. 1134r)

§ 641.2 Who is eligible for a grant to fund prospective and experienced faculty development fellowships?

(a) The Secretary awards grants for prospective and experienced faculty development fellowships to the following:

(1) An institution with a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups.

(2) A consortium of institutions with a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups.

(3) A consortium of nonprofit organizations and institutions with a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups.

(b) A consortium has a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups if each institution in the consortium that intends to offer a program of doctoral study has a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups.

(c) An institution that intends to offer a program of doctoral study has a demonstrated record of enhancing access to graduate education if it provides evidence of the following:

(1) A social and academic environment that is supportive of the academic success of students and faculty who are members of underrepresented minority groups.

(2) Procedures to identify, recruit, and enhance the access of individuals from underrepresented minority groups to graduate education.

(3) A successful record of completion of doctoral degree programs by individuals from underrepresented minority groups.

(4) A successful record of assisting individuals from underrepresented minority groups who receive doctoral degrees enter the higher education professorate.

(d) The Secretary does not award a grant under this part for study at a school or department of divinity.

(Authority: 20 U.S.C. 1134, 1134r)

§ 641.3 Who is eligible for a grant to fund faculty professional development fellowships?

(a) The Secretary awards grants for faculty professional development fellowships to the following:

(1) An institution with a demonstrated record of enhancing the professional development of faculty from underrepresented minority groups.

(2) A consortium of institutions with a demonstrated record of enhancing the professional development of faculty from underrepresented minority groups.

(3) A consortium of nonprofit organizations and institutions with a demonstrated record of enhancing the professional development of faculty from underrepresented minority groups.

(b) A consortium has a demonstrated record of enhancing the professional development of faculty from underrepresented minority groups if each institution and nonprofit organization in the consortium that intends to offer a professional development program has a demonstrated record of enhancing the professional development of faculty from underrepresented minority groups.

(c) An institution or nonprofit organization that intends to offer a professional development program has a demonstrated record of enhancing the professional development of faculty from underrepresented minority groups if it provides evidence that it has policies or procedures for assisting faculty from underrepresented minority groups to participate in professional development programs. This evidence, includes, but is not limited to the following:

(1) An academic environment that is responsive to advancing the careers of underrepresented minorities.

(2) Programs that have been designed to provide opportunities for faculty from underrepresented minority groups to improve instructional methodology.

(3) A successful record of providing opportunities for faculty from underrepresented minority groups to attend workshops, seminars, and other professional development activities relating to their academic careers.

(d) The Secretary does not award a grant under this part for study at a school or department of divinity.

(Authority: 20 U.S.C. 1134r)

§ 641.4 What activities may the Secretary fund?

The Secretary awards grants to fund the following types of fellowships:

(a) *Prospective faculty development fellowships.* Fellowships for talented baccalaureate degree recipients from underrepresented minority groups who have financial need and who wish to obtain a doctoral degree and enter the higher education professorate.

(b) *Experienced faculty development fellowships.* Fellowships for talented faculty from underrepresented minority groups who wish to continue in the higher education professorate and obtain a doctoral degree.

(c)(1) *Faculty professional development fellowships.* Fellowships for talented faculty from underrepresented minority groups who wish to participate in short-term professional development programs, including seminars, conferences, and workshops, specifically designed to enhance their skills and careers.

(2) Grant funds for faculty professional development fellowships may not be used to fund study leading to a doctoral degree.

(Authority: 20 U.S.C. 1134r)

§ 641.5 What is included in the grant?

(a) Each grant to fund prospective and experienced faculty development fellowships consists of the stipends paid by the Secretary through the grantee to fellows. The stipend provides an allowance to a fellow for the fellow's (and his or her dependents') subsistence and other expenses.

(b)(1) Each grant to fund faculty professional development fellowships consists of the allowable costs of the fellows' participation in professional development programs.

(2) For the purposes of paragraph (b)(1) of this section, allowable costs are the following:

(i) Costs of instruction, including fees for materials and supplies.

(ii) Out-of-town travel expenses, excluding foreign travel.

(iii) Per diem expenses for food and lodging during the period of instruction.

(Authority: 20 U.S.C. 1134r, 1134r–1)

§ 641.6 What regulations apply?

The following regulations apply to the Faculty Development Fellowship Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension

(Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 85 (Drug-Free Schools and Campuses).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1134r)

§ 641.7 What definitions apply?

(a) *Definitions in EDGAR.* The following term(s) used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Department
EDGAR
Grant
Grantee
Nonprofit
Project
Project Period
Secretary

(b) *Other Definitions:* The following definitions also apply to this part:

Academic field means an area of study in an academic department within an institution of higher education other than a school or department of divinity.

Academic year means the 12-month period beginning with the fall instructional term of the institution.

Consortium of institutions of higher education means two or more institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out common objectives.

Doctoral study means a postbaccalaureate program of study leading to a degree in any academic field of graduate study that requires a dissertation.

Fellow means a recipient of a fellowship under this part.

Fellowship means an award made by a grantee to an individual under this part.

Financial need means the fellow's financial need as determined under Title IV, Part F, of the HEA for the period of the fellow's enrollment in the approved field of doctoral study for which the fellowship was awarded.

HEA means the Higher Education Act of 1965, as amended (20 U.S.C. 1070 et seq.).

Historically black colleges and universities (HBCUs) means those institutions listed in 34 CFR 608.2 (Strengthening Historically Black Colleges and Universities Program) and 34 CFR 609.2 (Strengthening Historically Black Graduate Institutions Program).

Institution of higher education (institution) means an institution of higher education, other than a school or department of divinity, as defined in section 1201(a) of the HEA.

Minority means Alaskan Native, American Indian, Asian-American, Black (African-American), Hispanic American, Native Hawaiian, or Pacific Islander.

Predominantly black colleges and universities means those institutions whose undergraduate enrollment consists of more than fifty percent black students.

Satisfactory progress means that a fellow meets or exceeds the institution's criteria and standards established for a student's continued status as a candidate for the degree in the academic field for which the fellowship was awarded.

School or department of divinity means an institution, or an academic department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation or to prepare them to teach theological subjects.

Significant enrollment means an undergraduate enrollment of at least 25 percent.

Supervised training means formal and informal training or instruction in teaching methods followed by the opportunity for a fellow to teach at the graduate or undergraduate level under the guidance and direction of senior faculty.

Temporarily totally disabled means the inability by virtue of an injury or illness to be gainfully employed during a reasonable period of recovery.

Underrepresented means proportionate representation, as measured by degree recipients, that is less than the proportionate representation in the general population—

(i) As indicated by—

(A) The most current edition of the Department's *Digest of Educational Statistics* (This document is available from U.S. Department of Education, Office of Education Research and Improvement, 555 New Jersey Avenue, NW., Washington, DC 20208–5641, Attention: Educational Statistics.);

(B) The National Research Council's *Doctorate Recipients from United States Universities* (This document is available from the National Research Council, 2101 Constitution Avenue, NW., Washington, DC 20418.); or

(C) Other standard statistical references, as announced annually in the **Federal Register** notice inviting applications for new awards under this program; or

(ii) As documented by national survey data submitted to and accepted by the Secretary on a case-by-case basis.

(Authority: 20 U.S.C. 1134r)

§ 641.8 What is the duration of a project period?

(a) The maximum duration of a grant to fund prospective or experienced faculty development fellowships is 60 months.

(b) The maximum duration of a grant to fund faculty professional development fellowships is 36 months.

(Authority: 20 U.S.C. 1134r)

Subpart B—How Does One Apply for a Grant?

§ 641.10 How does an applicant apply for a grant to fund prospective and experienced faculty development fellowships?

To apply for a grant to fund prospective and experienced faculty development fellowships, an applicant shall submit an application that—

(a) Responds to the appropriate selection criteria in § 641.21; and

(b) Contains—

(1) The applicant's plan for identifying and recruiting talented and financially needy baccalaureate degree recipients or talented faculty from underrepresented minority groups who may participate in the project;

(2) A description of the program or programs of doctoral study for which it will award fellowships;

(3) The applicant's plan for using minority faculty and other faculty as advisors, mentors, and academic resources in support of the project;

(4) A description of other resources of the applicant, including tuition waivers, assistantships, or financial aid other than loans, that the applicant shall make available to fellows;

(5) If the applicant is a consortium—

(i) The signed agreement listing the—

(A) Names of the undergraduate institutions that are historically or predominantly black colleges and universities or other institutions with significant enrollments of individuals from minority groups that have agreed to cooperate with the applicant to carry out the purposes of the project; and

(B) Names of the other institutions or nonprofit organizations included in the consortium; and

(ii) The terms of cooperation among the members of the consortium;

(6)(i) If the applicant is applying for a grant to fund prospective faculty development fellowships, assurances that the applicant will provide at least one academic term of supervised training in instruction to each fellow during the period of the fellowship; or

(ii) If the applicant is applying for a grant to fund experienced faculty development fellowships, assurances that the applicant will provide an opportunity for each fellow to improve his or her instructional methods;

(7) Assurances that the applicant will ensure that fellows are making satisfactory progress in, and devoting full time to, the doctoral study program in which they are enrolled; and

(8) Evidence that each institution that plans to offer a program of doctoral study to fellows has a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups, as required in § 641.2(c).

(Authority: 20 U.S.C. 1134r–2)

§ 641.11 How does an applicant apply for a grant to fund faculty professional development fellowships?

To apply for a grant to fund faculty professional development fellowships, an applicant shall submit an application that—

(a) Responds to the selection criteria in § 641.22; and

(b) Contains—

(1) The applicant's plan for identifying and recruiting talented faculty from underrepresented minority groups who wish to participate in professional development programs specifically designed to advance their careers;

(2) A description of the program or programs of professional development the applicant plans to offer, and the ways in which the program or programs are specifically designed to advance the careers of faculty from underrepresented minority groups;

(3) The applicant's plan for using minority and other faculty as advisors, mentors, and academic resources in support of the project;

(4) A description of other resources of the applicant that the applicant shall make available to fellows;

(5) If the applicant is a consortium—

(i) The signed agreement listing the—

(A) Names of the undergraduate institutions that are historically or predominantly black colleges and universities or other institutions with significant enrollments of individuals from minority groups that have agreed to cooperate to carry out the purposes of the project; and

(B) Names of the other institutions or nonprofit organizations included in the consortium; and

(ii) The terms of cooperation among the members of the consortium; and

(6) Evidence that each institution or nonprofit organization that plans to offer a faculty professional development

(ii) If the applicant is applying for a grant to fund experienced faculty development fellowships, assurances that the applicant will provide an opportunity for each fellow to improve his or her instructional methods;

(7) Assurances that the applicant will ensure that fellows are making satisfactory progress in, and devoting full time to, the doctoral study program in which they are enrolled; and

(8) Evidence that each institution that plans to offer a program of doctoral study to fellows has a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups, as required in § 641.2(c).

(Authority: 20 U.S.C. 1134r–2)

§ 641.11 How does an applicant apply for a grant to fund faculty professional development fellowships?

To apply for a grant to fund faculty professional development fellowships, an applicant shall submit an application that—

(a) Responds to the selection criteria in § 641.22; and

(b) Contains—

(1) The applicant's plan for identifying and recruiting talented faculty from underrepresented minority groups who wish to participate in professional development programs specifically designed to advance their careers;

(2) A description of the program or programs of professional development the applicant plans to offer, and the ways in which the program or programs are specifically designed to advance the careers of faculty from underrepresented minority groups;

(3) The applicant's plan for using minority and other faculty as advisors, mentors, and academic resources in support of the project;

(4) A description of other resources of the applicant that the applicant shall make available to fellows;

(5) If the applicant is a consortium—

(i) The signed agreement listing the—

(A) Names of the undergraduate institutions that are historically or predominantly black colleges and universities or other institutions with significant enrollments of individuals from minority groups that have agreed to cooperate to carry out the purposes of the project; and

(B) Names of the other institutions or nonprofit organizations included in the consortium; and

(ii) The terms of cooperation among the members of the consortium; and

(6) Evidence that each institution or nonprofit organization that plans to offer a faculty professional development program has a demonstrated record of enhancing the professional development of faculty from underrepresented minority groups, as required in § 641.3(c).

(Approved by the Office of Management and Budget under control number 1840–0687)

(Authority: 20 U.S.C. 1134r)

Subpart C—How Does the Secretary Make an Award?

§ 641.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant to fund prospective or experienced faculty development fellowships on the basis of the selection criteria in § 641.21, the additional considerations in § 641.23, and the priorities in § 641.24.

(b) The Secretary evaluates an application for a grant to fund faculty professional development fellowships on the basis of the selection criteria in § 641.22 and the additional considerations in § 641.23.

(c) The Secretary awards up to 100 points for the selection criteria in § 641.21 and up to 100 points for the selection criteria in § 641.22.

(d) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1134r–2)

§ 641.21 What selection criteria does the Secretary use to evaluate an application for a grant to fund prospective or experienced faculty development fellowships?

The Secretary uses the following criteria to evaluate an application for a grant to fund prospective or experienced faculty development fellowships:

(a) *Applicant's commitment.* (24 points) The Secretary reviews each application to determine the overall strength of the applicant's commitment to meet the needs of fellows, including consideration of the extent to which—

(1) The social and academic environment of each institution that plans to offer a program of doctoral study is supportive of the academic success of students and faculty who are members of underrepresented minority groups;

(2) The applicant plans to identify, recruit, and enhance the access of individuals from underrepresented minority groups to graduate education;

(3) Each institution that plans to offer a program of doctoral study has a successful record of individuals from underrepresented minority groups completing doctoral degree programs;

(4) Each institution that plans to offer a program of doctoral study has a successful record of assisting individuals from underrepresented minority groups who receive doctoral degrees to enter the higher education professorate;

(5) If the applicant is a consortium, the applicant has the commitment of institutions that are historically and predominantly black or other institutions with significant enrollments of individuals from underrepresented minority groups to cooperate with the applicant to carry out the purposes of the project; and

(6) Individuals from underrepresented minority groups are represented among the administrators and faculty of each institution that plans to offer a program of doctoral study.

(b) *Meeting the purposes of the program.* (14 points). The Secretary reviews each application to determine how well the project will meet the purposes of the program, including the extent to which—

(1) The applicant's general and specific objectives for the project are realistic and measurable; and

(2) The applicant's objectives for the project seek to increase the number of individuals from underrepresented minority groups to enter or continue in the higher education professorate.

(c) *Quality of implementation strategy.* (32 points). The Secretary reviews each application to determine—

(1) The potential effectiveness of the applicant's plan for identifying and recruiting, to participate in the project, talented—

(i) Faculty; or

(ii) Baccalaureate degree recipients (8 points);

(2) The quality of the program or programs of doctoral study that the applicant plans to offer, including—

(i) If the applicant applies for a grant to fund prospective faculty development fellowships, one academic term of supervised teaching opportunities for these fellows; or

(ii) If the applicant applies for a grant to fund experienced faculty development fellowships, opportunities for fellows to improve their instructional methods (14 points);

(3) The quality of the applicant's policies and procedures to monitor whether a fellow is making satisfactory progress towards receiving a doctoral degree (5 points); and

(4) The extent to which the policies and procedures the applicant proposes to institute for administering the project are likely to ensure efficient and effective project implementation, including assistance to and oversight of the project director (5 points).

(d) *Quality of key personnel.* (12 points).

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (3 points);

(ii) The qualifications of each of the key faculty to be used on the project (4 points);

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project (3 points); and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except pursuant to a lawful affirmative action plan (2 points).

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) The past work experiences and training of key professional personnel as directly related to the stated project purposes and objectives; and

(ii) Any other qualifications of the key professional personnel that pertain to the quality of the project.

(e) *Adequacy of resources.* (9 points). The Secretary reviews each application to determine the extent of the resources the applicant plans to make available to fellows, including—

(1) Tuition waivers, assistantships, or financial aid other than loans that will be available to fellowship recipients;

(2) Use of faculty from underrepresented minority groups and other faculty as advisors, mentors, and academic resources in support of the project; and

(3) Space and equipment.

(f) *Evaluation plan.* (9 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's evaluation methods—

(1) Relate to the specific goals and measurable objectives of the project;

(2) Include both process and product evaluation measures that are objective and designed to produce data that are quantifiable; and

(3) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis.

(Approved by the Office of Management and Budget under control number 1840–0687)

(Authority: 20 U.S.C. 1134r–2)

§ 641.22 What selection criteria does the Secretary use to evaluate an application for a grant to fund faculty professional development fellowships?

The Secretary uses the following criteria to evaluate an application for a grant to fund faculty professional development fellowships:

(a) *Meeting the purposes of the program.* (20 points). The Secretary reviews each application to determine how well the project will meet the purposes of the program, including the extent to which—

(1) The applicant proposes a project specifically designed to advance the careers of faculty from underrepresented minority groups; and

(2) The applicant's general and specific objectives for the project are realistic and measurable.

(b) *Quality of implementation strategy.* (40 points). The Secretary reviews each application to determine—

(1) The potential effectiveness of the applicant's plan for identifying and recruiting faculty from underrepresented minority groups who wish to remain in the higher education professorate and participate in a professional development program specifically designed to advance their careers (10 points);

(2) The quality of the program or programs to be offered to the faculty and the extent to which these programs are structured to advance the careers of underrepresented minorities (15 points);

(3) The extent to which the applicant plans to measure or monitor whether the faculty is benefitting from the program or programs designed to advance their careers (5 points);

(4) The extent to which the program or programs include opportunities for faculty to improve their teaching methods (5 points); and

(5) The extent to which individuals from underrepresented minority groups are represented among the administrators and faculty of the project (5 points).

(c) *Grant management.* (12 points). The Secretary reviews each application to determine the applicant's ability to provide for the overall administration of the grant award, including providing assistance to and oversight of the project director in order to achieve the stated project purposes and objectives.

(d) *Adequacy of resources.* (9 points). The Secretary reviews each application to determine the adequacy of resources the applicant plans to devote to the project, including—

(1) The use of faculty from underrepresented minority groups and other faculty as advisors, mentors, and academic resources in support of the project; and

(2) Space, materials, and equipment.

(e) *Budget.* (10 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (9 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's evaluation methods—

(1) Relate to the specific goals and measurable objectives of the project;

(2) Include both process and product evaluation measures that are objective and designed to produce data that are quantifiable; and

(3) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis.

(Approved by the Office of Management and Budget under control number 1840–0687)

(Authority: 20 U.S.C. 1134r–2)

§ 641.23 What additional factors does the Secretary consider?

In awarding grants to fund prospective faculty development fellowships, experienced faculty development fellowships, and faculty professional development fellowships, the Secretary ensures—

(a) An equitable geographic distribution of grants;

(b) That both public and private institutions are fairly represented among grantees; and

(c) That there is an equitable distribution of fellowships among underrepresented minority groups.

(Authority: 20 U.S.C. 1134r)

§ 641.24 What priorities does the Secretary establish for grants to fund prospective and experienced faculty development fellowships?

(a) In awarding grants to fund prospective and experienced faculty development fellowships, the Secretary awards 3 additional points to applicants whose applications describe projects that—

(1) Provide each fellow—

(i) A tuition waiver; and

(ii)(A) A minimum $2,000 in support beyond the stipend received by each fellow under § 641.4 (a) or (b); or

(B) Additional financial support in conjunction with teaching or research activities that are part of the fellow's doctoral program;

(2) Provide additional financial support to each fellow from non-Federal resources, either in cash or in-kind, such as contributions from the business community and civic organizations;

(3) Emphasize courses of study leading to the doctoral degrees in disciplines where minorities are underrepresented; and

(4) Describe steps to ensure that a fellow will teach at an institution where minority undergraduate students are likely to benefit from the educational experience and academic achievement of the fellow.

(b)(1) The Secretary may waive all or any portion of the requirements in paragraph (a)(1) of this section upon the request of any institution that has been designated as an eligible institution under Title III of the Act in the year in which the institution, or the consortium of which the institution is a member, is applying for a grant under this program.

(2) In the case of a consortium, the waiver in paragraph (b)(1) of this section applies only to the eligible Title III institution(s) and not to any other member of the consortium.

(Approved by the Office of Management and Budget under control number 1840–0687)

(Authority: 20 U.S.C. 1134r)

§ 641.25 What other priorities does the Secretary establish?

(a) The Secretary may give absolute priority to applications for grants to fund—

(1) Prospective faculty development fellowships;

(2) Experienced faculty development fellowships;

(3) Faculty professional development fellowships; or

(4) Two or more of the categories of fellowships listed in paragraphs (a) (1), (2), and (3) of this section.

(b) Each year, the Secretary announces the absolute priority under paragraph (a) of this section in a notice inviting applications for this program published in the **Federal Register**.

(Authority: 20 U.S.C. 1134r)

Subpart D—How are Fellows Selected?

§ 641.30 How does a grantee select fellows?

In selecting individuals to receive fellowships, a grantee shall consider only individuals who are—

(a) Identified under § 641.4; and

(b) (1) United States citizens or nationals;

(2) Permanent residents of the United States;

(3) In the United States for other than a temporary purpose and intend to become citizens or permanent residents; or

(4) Permanent residents of the Trust Territory of the Pacific Islands (Palau).

(Authority: 20 U.S.C. 1134, 1144a)

(3) Emphasize courses of study leading to the doctoral degrees in disciplines where minorities are underrepresented; and

(4) Describe steps to ensure that a fellow will teach at an institution where minority undergraduate students are likely to benefit from the educational experience and academic achievement of the fellow.

(b)(1) The Secretary may waive all or any portion of the requirements in paragraph (a)(1) of this section upon the request of any institution that has been designated as an eligible institution under Title III of the Act in the year in which the institution, or the consortium of which the institution is a member, is applying for a grant under this program.

(2) In the case of a consortium, the waiver in paragraph (b)(1) of this section applies only to the eligible Title III institution(s) and not to any other member of the consortium.

(Approved by the Office of Management and Budget under control number 1840–0687)

(Authority: 20 U.S.C. 1134r)

§ 641.25 What other priorities does the Secretary establish?

(a) The Secretary may give absolute priority to applications for grants to fund—

(1) Prospective faculty development fellowships;

(2) Experienced faculty development fellowships;

(3) Faculty professional development fellowships; or

(4) Two or more of the categories of fellowships listed in paragraphs (a) (1), (2), and (3) of this section.

(b) Each year, the Secretary announces the absolute priority under paragraph (a) of this section in a notice inviting applications for this program published in the **Federal Register**.

(Authority: 20 U.S.C. 1134r)

Subpart D—How are Fellows Selected?

§ 641.30 How does a grantee select fellows?

In selecting individuals to receive fellowships, a grantee shall consider only individuals who are—

(a) Identified under § 641.4; and

(b) (1) United States citizens or nationals;

(2) Permanent residents of the United States;

(3) In the United States for other than a temporary purpose and intend to become citizens or permanent residents; or

(4) Permanent residents of the Trust Territory of the Pacific Islands (Palau).

(Authority: 20 U.S.C. 1134, 1144a)

§ 641.31 How does an individual apply for a fellowship?

An individual shall apply directly to the grantee.

(Authority: 20 U.S.C. 1134)

§ 641.32 What special rule applies to the distribution of fellowships?

(a) Each grantee receiving a grant to fund prospective faculty development fellowships shall ensure that there is an equitable distribution of fellowships among underrepresented minority groups. For the purposes of this paragraph, an equitable distribution means the distribution of fellowships in a manner that reflects the representation of eligible individuals from underrepresented minority groups applying for prospective faculty development fellowships from each grantee.

(b) Each grantee receiving a grant to fund experienced faculty development fellowships shall ensure that there is an equitable distribution of fellowships among underrepresented minority groups. For purposes of this paragraph, an equitable distribution means the distribution of fellowships in a manner that reflects the representation of underrepresented minority groups among eligible non-doctoral degree bearing faculty applying for experienced faculty development fellowships at each institution from which fellows are selected.

(c) Each grantee receiving a grant to fund faculty professional development fellowships shall ensure that there is an equitable distribution of fellowships among underrepresented minority groups. For the purposes of this paragraph, an equitable distribution means the distribution of fellowships in a manner that reflects the representation of underrepresented minority groups among eligible members of the faculty applying for faculty professional development fellowships at each institution from which fellows are selected.

(d) Nothing in paragraphs (a), (b), or (c) of this section requires a grantee to grant preference or disparate treatment to the members of one group because the members of a group are not receiving fellowships under this part that are in proportion to their representation in any community, State, section, or other area.

(Authority: 20 U.S.C. 1134r)

Subpart E—How Does the Secretary Distribute Funds?

§ 641.40 What is the amount of a stipend awarded to prospective and experienced faculty development fellows?

(a) The grantee shall pay the fellow a stipend at a level of support equal to that provided by the National Science Foundation graduate fellowships or the fellow's demonstrated level of financial need, whichever is less.

(b) The Secretary announces the amount of the maximum stipend awarded to graduate fellowship recipients in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1134r–1)

Subpart F—What Are the Administrative Responsibilities of the Grantee That Receives Funds for Prospective and Experienced Faculty Development Fellowships?

§ 641.50 How does a grantee disburse and return funds for prospective or experienced faculty development fellowships?

(a) A grantee shall disburse a stipend to a prospective or experienced faculty development fellow in accordance with the regular payment schedule of the institution in which the fellow is enrolled, but shall not make less than one payment per academic term.

(b) If a fellow withdraws from an institution or completes his or her program of study before the completion of an academic term for which he or she received a stipend installment, the grantee may award the fellowship for the remainder of the project period to another individual who satisfies the requirements in § 641.30.

(c) If a fellowship is vacated and the grantee does not award the fellowship to another individual, the grantee shall return unexpended stipend funds to the Secretary, unless the Secretary authorizes the use of those funds for a subsequent budget period. The institution shall return the unexpended stipend funds at a time and in a manner determined by the Secretary.

(d) If a fellow withdraws from his or her program of study before the completion of the academic term for which he or she received a stipend installment, the fellow shall return a prorated portion of the stipend installment to the institution at a time and in a manner determined by the Secretary.

(Authority: 20 U.S.C. 1134r)

§ 641.51 What training is a grantee required to provide to prospective faculty development fellows?

The grantee shall provide prospective faculty development fellows at least one academic term of supervised training.

(Authority: 20 U.S.C. 1134r)

§ 641.52 What records are required from a grantee that receives grant funds for prospective or experienced faculty development fellowships?

(a) A grantee that receives funds for prospective and experienced faculty development fellowships shall keep records necessary to establish—

(1) That each fellow satisfies the eligibility requirements in § 641.30;

(2)(i) The time and amount of all disbursements; and

(ii) Return of stipend payments under § 641.50 (c) and (d); and

(3) That assurances provided in its application have been satisfied.

(b) After the completion of each academic year, a grantee shall provide to the Secretary, prior to the receipt of additional grant funds for disbursement to a prospective or experienced faculty development fellow, a certification that the fellow is enrolled in, is making satisfactory progress in, and is devoting full time to, the doctoral program in which the fellow is enrolled.

(Approved by the Office of Management and Budget under control number 1840–0687)

(Authority: 20 U.S.C. 1134r)

Subpart G—What Are the Administrative Responsibilities of the Grantee That Receives Funds for Faculty Professional Development Fellowships?

§ 641.60 How does a grantee disburse and return funds for faculty professional development fellowships?

(a) A grantee that receives grant funds for professional development fellowships shall disburse grant funds to a faculty professional development fellow in a timely manner.

(b) If a fellow withdraws from a professional development program before the completion of the program, the grantee may award the fellowship for the remainder of the project period to another individual who satisfies the requirements in § 641.30.

(c) If a fellowship is vacated and the grantee does not award the fellowship to another individual, the grantee shall return unexpended grant funds to the Secretary, unless the Secretary authorizes the use of those funds for a subsequent budget period. The institution shall return the unexpended grant funds at a time and in a manner determined by the Secretary.

(Authority: 20 U.S.C. 1134r)

§ 641.61 What records are required from a grantee that receives funds for faculty professional development fellowships?

A grantee that receives funds for faculty professional development fellowships shall keep records necessary to establish—

(a) That each fellow satisfies the eligibility requirements in § 641.30;

(b) The time and amount of all disbursements and the return of unexpended grant funds; and

(c) That all grant funds are used for allowable costs.

(Approved by the Office of Management and Budget under control number 1840–0687)

(Authority: 20 U.S.C. 1134r)

Subpart H—What Conditions Apply to Prospective and Experienced Faculty Development Fellowships?

§ 641.70 What agreement must be made by prospective and experienced faculty development fellows?

Each prospective and experienced faculty development fellow shall enter into an agreement with the grantee in which he or she agrees—

(a) To complete the requirements for a doctoral degree within the period for which the fellowship is awarded;

(b) If the fellow is a prospective faculty development fellow, to teach full time, within five years after completing the doctoral degree for which the fellowship was awarded, for a period of not less than one year for each year for which financial assistance under this program was received, in a public or private nonprofit institution of higher education;

(c) If the fellow is an experienced faculty development fellow, to teach full time, within five years after completing the doctoral degree for which the fellowship was awarded, for a period of not less than one year for each year for which financial assistance under this program was received, in a public or private nonprofit institution of higher education that has a significant minority enrollment;

(d) (1) To annually provide to the Secretary evidence that the fellow is in compliance with paragraphs (a), and (b) or (c), as appropriate, of this section.

(2) Evidence that a fellow is in compliance with his or her teaching obligation under paragraphs (b) or (c) of this section must include a certification from the institution in which the fellow is teaching certifying that the fellow is employed as a full-time teacher; and

(e) To repay the fellowship assistance received in accordance with § 641.72(a), in the event the conditions of paragraphs (a), (b) or (c), as appropriate, or (d) of this section are not complied with by the fellow.

(Authority: 20 U.S.C. 1134r-3)

§ 641.71 What are the requirements for a prospective or experienced faculty development fellow to receive fellowship payments?

The grantee shall disburse grant funds to each prospective and experienced faculty development fellow who—

(a) Is selected in accordance with the criteria established under § 641.30;

(b) Signs an agreement under § 641.70;

(c) Is enrolled as a full-time student in a program of doctoral study in an institution of higher education; and

(d) Is maintaining satisfactory progress towards a doctoral degree.

(Authority: 20 U.S.C. 1134r)

§ 641.72 What are the repayment provisions for prospective and experienced faculty development fellowships?

(a) If a fellow is found to be in noncompliance with the agreement entered into under § 641.70, the fellow shall—

(1) Repay the amount of the grant funds received, prorated according to the fraction of the teaching obligation not completed, as determined by the Secretary in accordance with paragraph (b) of this section;

(2) Pay a simple, per annum interest charge on the outstanding principal, as determined by the Secretary, in accordance with paragraph (c) of this section; and

(3) Pay all reasonable collection costs, as determined by the Secretary, in accordance with 34 CFR part 682.

(b) A fellow required by paragraph (a) of this section to repay his or her fellowship shall—

(1) Enter repayment status on the first day of the first calendar month after—

(i) The Secretary has determined that the fellow is no longer pursuing a full-time course of study leading to a doctoral degree and has not received a doctoral degree;

(ii) The date the fellow informs the grantee or the Secretary that he or she does not plan to fulfill the teaching obligation under § 641.70 (b) or (c); or

(iii) The latest date on which a fellow must have begun teaching in order to have completed his or her teaching obligation under § 641.70 (b) or (c); and

(2) Make monthly or quarterly payments to the Secretary that—

(i) Cover principal, interest, and reasonable collection costs according to a schedule established by the Secretary that calls for complete repayment within 10 years after the fellow enters repayment status, except as provided in paragraph (b)(2)(ii) of this section; and

(ii) Amount annually to no less than $1,800 or the unpaid balance, whichever is less.

(c) The interest charge referred to in paragraph (a)(2) of this section accrues from—

(1) The date of the disbursement of the initial fellowship payment if—

(i) The Secretary determines that the fellow is no longer pursuing a course of full-time study leading to a doctoral degree; or

(ii) The fellow informs the grantee or the Secretary that he or she does not plan to fulfill the teaching obligation under § 641.70(b) or (c); or

(2) The latest date on which a fellow must have begun teaching in order to have completed his or her teaching obligation within 5 years after completing the degree for which the fellowship was awarded.

(d)(1) The interest charge referred to in paragraph (a)(2) of this section is calculated annually for the program for the twelve-month period extending from July 1 of each year through June 30 of the subsequent year and is set at a rate that is the greater of the following rates established pursuant to section 427A of the HEA for the same twelve-month period:

(i) The rate charged to new borrowers under the Robert T. Stafford Federal Student Loan Program (Title IV, Part B of the HEA).

(ii) The rate charged to new borrowers under the Federal Supplemental Loans for Students and Federal PLUS Programs (section 428A and 428B of the HEA, respectively) as published in the **Federal Register**.

(2) For a fellow required to repay his or her fellowship—

(i) The interest charge applicable to the period extending from the date on which interest begins to accrue (determined in accordance with paragraph (c) of this section) until the date on which the fellow's repayment period begins (determined in accordance with paragraph (b) of this section) is adjusted annually and is set at the rate established for the program

repayment status, except as provided in paragraph (b)(2)(ii) of this section; and

(ii) Amount annually to no less than $1,800 or the unpaid balance, whichever is less.

(c) The interest charge referred to in paragraph (a)(2) of this section accrues from—

(1) The date of the disbursement of the initial fellowship payment if—

(i) The Secretary determines that the fellow is no longer pursuing a course of full-time study leading to a doctoral degree; or

(ii) The fellow informs the grantee or the Secretary that he or she does not plan to fulfill the teaching obligation under § 641.70(b) or (c); or

(2) The latest date on which a fellow must have begun teaching in order to have completed his or her teaching obligation within 5 years after completing the degree for which the fellowship was awarded.

(d)(1) The interest charge referred to in paragraph (a)(2) of this section is calculated annually for the program for the twelve-month period extending from July 1 of each year through June 30 of the subsequent year and is set at a rate that is the greater of the following rates established pursuant to section 427A of the HEA for the same twelve-month period:

(i) The rate charged to new borrowers under the Robert T. Stafford Federal Student Loan Program (Title IV, Part B of the HEA).

(ii) The rate charged to new borrowers under the Federal Supplemental Loans for Students and Federal PLUS Programs (section 428A and 428B of the HEA, respectively) as published in the **Federal Register**.

(2) For a fellow required to repay his or her fellowship—

(i) The interest charge applicable to the period extending from the date on which interest begins to accrue (determined in accordance with paragraph (c) of this section) until the date on which the fellow's repayment period begins (determined in accordance with paragraph (b) of this section) is adjusted annually and is set at the rate established for the program in accordance with paragraph (d)(1) of this section; and

(ii) The interest charge applicable during the repayment period is the rate established for the program in accordance with paragraph (d)(1) of this section that is in effect on the date on which the fellow's repayment period begins.

(e) A fellow is not required to make repayments amounting to more than $3,600 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (b)(2) of this section.

(Authority: 20 U.S.C. 1134r-4)

§ 641.73 What are grounds for deferral from the repayment schedule?

(a) A fellow is not in violation of the repayment schedule entered into under § 641.72 during any period in which the fellow is—

(1) Pursuing a full-time course of doctoral study;

(2) Serving, for a period not to exceed 3 years, as a member of the armed services of the United States;

(3) Serving as a Peace Corps volunteer, or as a volunteer under the Domestic Service Volunteer Act of 1973;

(4) Temporarily totally disabled for a period of time not to exceed 3 years as established by sworn affidavit of a qualified physician;

(5) Unable to secure employment for a period of time not to exceed 12 months because the fellow is providing care, such as continuous nursing, required by a spouse or another member of fellow's immediate family who is disabled;

(6) Seeking and unable to find full-time employment for a single period not to exceed 12 months; or

(7) Engaged in full-time employment as a teacher in a public or private nonprofit preschool, elementary or secondary school, or a public or private nonprofit preschool, education program.

(b) During the time a fellow meets any of the conditions listed in paragraph (a) of this section, he or she need not make the repayments required by § 641.72 and interest does not accrue.

(c) The Secretary extends the 10-year repayment period established under § 641.72(c)(2) by a period equal to the length of time a fellow meets any of the conditions listed in paragraph (a) of this section.

(d) A fellow shall provide a certification annually to the Secretary that he or she qualifies for one or more of the conditions for deferral listed in paragraph (a) of this section.

(e) A fellow shall be excused from repayment of any fellowship assistance received under this program if—

(1) The fellow becomes permanently totally disabled as established by sworn affidavit of a qualified physician; or

(2) The fellow has died, as established by a death certificate or other evidence conclusive under State law.

(Authority: 20 U.S.C. 1134r–5)

§ 641.74 What exceptions apply to the agreement to complete the requirements for doctoral study within the period in which the fellowship is awarded?

A prospective or an experienced faculty development fellow is not in violation of the agreement to complete the requirements for a doctoral degree during the period for which the fellowship is awarded, under § 641.70(a), if he or she is—

(a) Serving, for a period not to exceed 3 years, as a member of the armed services of the United States;

(b) Temporarily totally disabled for a period not to exceed 3 years as established by sworn affidavit of a qualified physician;

(c) Unable to continue study for a period of time not to exceed 12 months because the fellow is providing care, such as continuous nursing, required by a spouse or another member of the fellow's immediate family who is disabled; or

(d) Enrolled in a doctoral study program full-time and is making satisfactory progress towards receiving a doctoral degree.

(Authority: 20 U.S.C. 1134r–5)

[FR Doc. 94–15960 Filed 6–30–94; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.271]

Faculty Development Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program

The Faculty Development Fellowship Program provides grants to institutions of higher education, consortia of institutions, and consortia of institutions and nonprofit organizations to fund fellowships for individuals from underrepresented minority groups to enter or continue in the higher education professorate.

On March 31, 1994, the President signed into law the Goals 2000: Educate America Act (Pub. L. 103–227). The Act enunciates eight National Education Goals for the year 2000. This program addresses the National Education Goals, that the Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century. This program furthers the Goals by providing grant funds to allow prospective faculty members and experienced faculty members to engage in doctoral study or participate in professional development programs that will enhance their skills and careers.

Eligible Applicants

Institutions of higher education, consortia of institutions, and consortia of institutions and nonprofit organizations that have a demonstrated record of enhancing the access to graduate education of individuals from underrepresented minority groups.

No fellowship shall be awarded under this program for study at a school or department of divinity.

Deadline For Transmittal of Applications: August 15, 1994.

Deadline for Intergovernmental Review: September 28, 1994.

Applications Available: July 1, 1994.

Available Funds: $3.5 million.

Estimated Range of Awards: $200,000–$400,000.

Estimated Average Size of Awards: $350,000.

Estimated Number of Awards: 8–12.

Note: The Department is not bound by any estimates in this notice.

Project Period

Up to 60 months for the Experienced Faculty Development Fellowships. Up to 36 months for the Faculty Professional Development Fellowships.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b). The regulations in 34 CFR part 641 as published elsewhere in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: This program provides three types of fellowships—(1) *Prospective Faculty Development Fellowships* for talented baccalaureate degree recipients from underrepresented minority groups who have financial need and who wish to obtain a doctoral degree and enter the higher education professorate; (2) *Experienced Faculty Development Fellowships* for talented faculty from underrepresented minority groups who wish to continue in the higher education professorate and obtain a doctoral degree; and (3) *Faculty Professional Development Fellowships* for talented faculty from underrepresented minority groups who wish to participate in short-term professional development programs, including seminars, conferences, and workshops, specifically designed to enhance their skills and careers. The purpose of the program is to increase the number of doctoral degrees received by members of underrepresented minority groups in the higher education professorate and to provide professional development activities to underrepresented minority faculty. Grant funds for prospective and experienced faculty development fellowships may be used to pay stipends to the fellows. Grant funds for faculty professional development fellowships may be used to cover allowable costs specified in the program regulations.

Stripend Level

The Secretary has determined that the maximum fellowship stipend for experienced faculty development fellows for academic year 1994–1995 is $14,400, which is equal to the level of support that the National Science Foundation is providing for its graduate fellowships.

Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 641.24(a) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that meet one of these absolute priorities:

1. Experienced faculty development fellowships; or

2. Faculty professional development fellowships.

For Applications or Information Contact: Karen W. Johnson, U.S. Department of Education, 400 Maryland Avenue, SW., Portals Building, Courtyard Level C–80, Washington, DC 20202–5329. Telephone: (202) 260–3209. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED BOARD), telephone (202) 260–9950; or the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Authority: 20 U.S.C. 1134r.

Dated: June 24, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–15961 Filed 6–30–94; 8:45 am]

BILLING CODE 4000–01–M

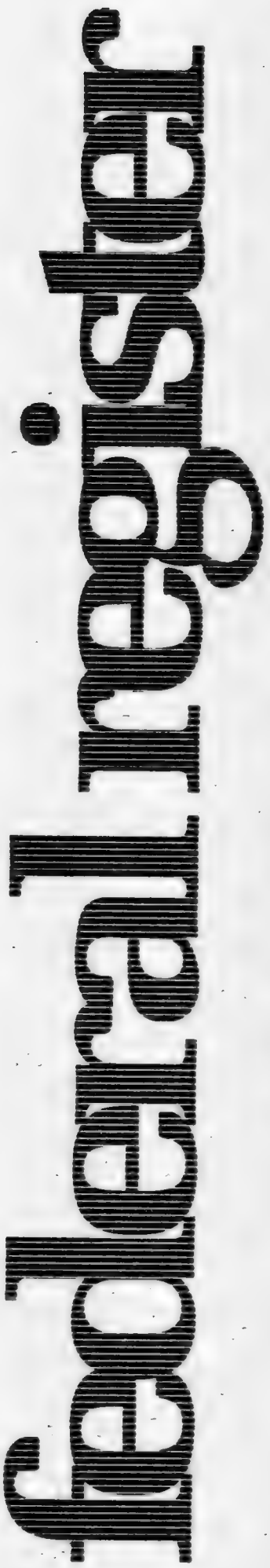

Friday
July 1, 1994

Part VII

Department of Transportation

Coast Guard

33 CFR Parts 4, 130, et al.
Financial Responsibility for Water Pollution (Vessels); Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 4, 130, 131, 132, 137, and 138

[CGD 91–005]

RIN 2115–AD76

Financial Responsibility for Water Pollution (Vessels)

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is promulgating interim regulations to implement the provisions concerning financial responsibility for vessels under the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (Acts). These provisions require owners and operators of vessels (with certain exceptions) to establish and maintain evidence of insurance or other evidence of financial responsibility sufficient to meet their potential liability under the Acts for discharges or threatened discharges of oil or hazardous substances. The regulations are administrative in nature and concern procedures for evidencing financial responsibility.

DATES: Effective Date. This rule is effective on July 1, 1994.

Comment Closing Date. Comments must be received on or before September 29, 1994.

Implementation Date. The Coast Guard will issue new Certificates of Financial Responsibility under this rule beginning December 28, 1994, following the implementation schedule described in this preamble.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–005), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Unless otherwise indicated, documents referred to in this preamble also are available in this docket.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Skall, (703) 235–4704, or Mr. Robert S. Horowitz, (703) 235–4792, National Pollution Funds Center. Procedural questions may be directed to Mr. Richard Castellano at (703) 235–4810.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written comments on the implementation schedule as well as other changes to the NPRM. Commenters are requested not to resubmit or restate comments already filed to the docket, as those comments have been considered in promulgating this rule. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–005) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Robert M. Skall, Project Manager, and Mr. Robert S. Horowitz, Project Counsel, National Pollution Funds Center.

Regulatory Information

This interim rule is being made effective on the date of publication for the reasons given in the "Implementation Schedule" section of this preamble. Therefore, the Coast Guard for good cause finds, under 5 U.S.C. 553(d)(3), that this rule should be made effective in less than 30 days after publication. An interim, rather than a final, rule is being issued to enable the public to comment on the changes that have been made to the notice of proposed rulemaking (NPRM).

Regulatory History

On September 26, 1991, the Coast Guard published an NPRM titled "Financial Responsibility for Water Pollution (Vessels)" in the **Federal Register** (56 FR 49006). The Coast Guard received over 300 letters commenting on this proposal. On July 21, 1993, the Coast Guard published a notice of availability of a Preliminary Regulatory Impact Analysis (PRIA) in the **Federal Register** (58 FR 38994). The Coast Guard received over 60 letters commenting on this PRIA.

Several of the commenters requested a public hearing. Extensive comments were provided to the public docket, both concerning the NPRM and the PRIA, during this extended comment period. In addition, on November 9, 1991, the House Subcommittee on Coast Guard and Navigation of the House Committee on Merchant Marine and Fisheries held a Congressional hearing concerning the substance of the NPRM. Certificates of Financial Responsibility Under the Oil Pollution Act: Hearing Before the Subcommittee on Coast Guard and Navigation of the House Committee on Merchant Marine and Fisheries, 102d Cong., 1st Sess. (1991). Witnesses' oral and written statements at this hearing are very similar to comments supplied to this rulemaking docket. The Coast Guard determined that a public hearing would not further illuminate the detailed comments provided to the docket or otherwise facilitate development of the rule. Accordingly, a public hearing was not held by the Coast Guard.

The Coast Guard also received about eight letters concerning this rulemaking in response to a request for comments to the regulatory review docket associated with former President Bush's regulations moratorium and review (Coast Guard Docket No. CGD 92–005 and DOT Docket No. 92–1). These comments sound the same themes as the comments to this docket (CGD 91–005). This preamble, the PRIA and the final RIA that accompanies this rule address the issues raised by these comments.

Background and Purpose

On August 18, 1990, the President signed into law the Oil Pollution Act of 1990 (Pub. L. 101–380; 33 U.S.C. 2701 *et seq.*) (OPA 90). Under Federal law before that date, several statutes dealt with the issue of oil spill liability and compensation. Each was different and narrow in scope.

To remedy this situation, OPA 90 repealed or superseded certain oil spill liability provisions under the Federal Water Pollution Control Act (33 U.S.C. 1321) (FWPCA), title III of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1814) (OCSLAA), the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653) (TAPAA), and the Deepwater Port Act of 1974 (33 U.S.C. 1517) (DPA). The financial responsibility provisions of those acts (i.e., the provisions requiring vessel owners and operators to maintain evidence of financial responsibility sufficient to meet their potential liability under each of those Acts) were replaced by a single financial responsibility regime under section 1016 of OPA 90 (33 U.S.C. 2716). This new financial responsibility regime is keyed to the broader and higher limits of liability under OPA 90.

In addition to OPA 90, which is limited to all types of oil, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*) (CERCLA or Superfund) also concerns pollution liability and compensation. CERCLA establishes a financial responsibility regime for hazardous substances other than oil. The Conference Report on OPA 90 (H. Rep. No. 653, 101st Cong., 2d Sess. 120 (1990) (Conference Report) states:

> To avoid undue administrative burdens, the regulations for financial responsibility for vessels should be consolidated, wherever possible, with those under other Federal statutes. In this manner, only one certificate would be required for vessels to meet the requirements for financial responsibility for the statutes consolidated by this Act, and other pollution laws such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

This rulemaking, therefore, consolidates financial responsibility requirements for vessels under both OPA 90 and CERCLA. It allows the issuance of a single, unified Certificate of Financial Responsibility (COFR or Certificate) for vessels, replacing the separate certificates and financial responsibility regimes under the FWPCA, OCSLAA, TAPAA, and DPA. This new, unified COFR and financial responsibility regime (under new part 138) also make it unnecessary for a separate Certificate and regime under CERCLA. In effect, this rule alleviates the need for five separate sets of regulations and certificates, as well as the accompanying paperwork burden on government and industry.

Discussion of Comments and Changes

General Issues

This rulemaking proceeding has been contentious due to a number of factors, most of which are not directly germane to the specifics of the rule itself. Many

1321) (FWPCA), title III of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1814) (OCSLAA), the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653) (TAPAA), and the Deepwater Port Act of 1974 (33 U.S.C. 1517) (DPA). The financial responsibility provisions of those acts (i.e., the provisions requiring vessel owners and operators to maintain evidence of financial responsibility sufficient to meet their potential liability under each of those Acts) were replaced by a single financial responsibility regime under section 1016 of OPA 90 (33 U.S.C. 2716). This new financial responsibility regime is keyed to the broader and higher limits of liability under OPA 90.

In addition to OPA 90, which is limited to all types of oil, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*) (CERCLA or Superfund) also concerns pollution liability and compensation. CERCLA establishes a financial responsibility regime for hazardous substances other than oil. The Conference Report on OPA 90 (H. Rep. No. 653, 101st Cong., 2d Sess. 120 (1990) (Conference Report) states:

> To avoid undue administrative burdens, the regulations for financial responsibility for vessels should be consolidated, wherever possible, with those under other Federal statutes. In this manner, only one certificate would be required for vessels to meet the requirements for financial responsibility for the statutes consolidated by this Act, and other pollution laws such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

This rulemaking, therefore, consolidates financial responsibility requirements for vessels under both OPA 90 and CERCLA. It allows the issuance of a single, unified Certificate of Financial Responsibility (COFR or Certificate) for vessels, replacing the separate certificates and financial responsibility regimes under the FWPCA, OCSLAA, TAPAA, and DPA. This new, unified COFR and financial responsibility regime (under new part 138) also make it unnecessary for a separate Certificate and regime under CERCLA. In effect, this rule alleviates the need for five separate sets of regulations and certificates, as well as the accompanying paperwork burden on government and industry.

Discussion of Comments and Changes

General Issues

This rulemaking proceeding has been contentious due to a number of factors, most of which are not directly germane to the specifics of the rule itself. Many in the maritime industry opposed title I of OPA 90 as enacted, preferring instead the international liability and compensation scheme for oil, namely the International Convention on Civil Liability for Oil Pollution Damage of 1969 (1969 CLC) and its companion International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention). (These Conventions may be replaced by 1992 Protocols, which incorporate amendments made in 1984 Protocols.) Under the 1969 CLC, insurers such as the Protection and Indemnity Clubs (P&I Clubs) provide financial responsibility guaranties on behalf of their shipowner members. These guaranties subject the Clubs to direct action by all claimants and do not allow the use of policy defenses. The lower shipowner limits of liability under the 1969 CLC are practically unbreachable compared to OPA 90. Although this is not an issue directly related to this rulemaking, it has, nevertheless, been the reason why this rulemaking has been drawn out and contentious. In short, this rulemaking has become the victim of the non-rulemaking-related opposition to OPA 90.

The U.S. Congress, after the EXXON VALDEZ catastrophe, essentially adopted the 1969 CLC's financial responsibility scheme, but rejected its unbreachable limit of liability scheme, and instead enacted OPA 90. Thus, although OPA 90's financial responsibility concept and mechanism is very similar to that of the 1969 CLC, OPA 90 potentially exposes owners and operators to far greater liabilities for removal costs and damages from oil spills. OPA 90's philosophy is that, in general, the spiller—not U.S. consumers and taxpayers—should bear the lion's share of costs and damages.

In addition, under OPA 90, owners and operators remain subject to potential unlimited liabilities under State laws as well. Adoption of the 1969 CLC would have required preemption of State laws. These issues are not matters within the Coast Guard's discretion to affect. Nevertheless, these issues have impeded drastically the course of this rulemaking.

Oceangoing shipowners and their wholly owned insurers, the P&I Clubs that are members of the International Group of P&I Clubs, objected to OPA 90's liability and compensation scheme before enactment, after enactment, and in several comments to this rulemaking docket. These commenters have emerged OPA 90's liability provisions with financial responsibility issues, complicating this rulemaking proceeding. The most serions commingling of the issues is the unsubstantiated allegation by the P&I Clubs and their principal reinsurer, Lloyd's of London, that, somehow, despite OPA 90's clear statement to the contrary, the American court system would make insurers serving as OPA 90 guarantors subject to unlimited liability. Although it is true that no insurer can survive a legal system that imposes unlimited liability on insurers, it is equally true that Congress always has been well aware of that fact and paid sufficient attention to that matter when it drafted OPA 90's provisions. No one disputes the fact that vessel owners and operators are subject to potential unlimited liability under OPA 90 (for example, when there is gross negligence), but that fact should not be confused with the alleged potential for guarantors to be liable without limit because of this rule. There simply is no support in OPA 90 or in law for the insurers' assertions.

The P&I Clubs, in particular, by stating early on that under no circumstances would they open themselves up to unlimited liability by continuing to provide 1969 CLC-type insurance guaranties to the Coast Guard, placed an understandable fear in many segments of the maritime industry. This fear was that, because the P&I Clubs have a virtual monopoly on relatively inexpensive marine pollution liability insurance, no vessel could demonstrate acceptable evidence of financial responsibility without the P&I Clubs. The obvious consequence was said to be that, if the Coast Guard adopted the NPRM, neither oil nor other commodities would move in United States trade, thereby severely disrupting the United States and global economies. In later comments to the docket, the P&I Clubs confirmed that their shipowner boards of directors would not permit the P&I Clubs to soften their stand. Thus, the main focus of the debate has been whether the P&I Clubs would, in fact, not provide these guaranties, and on the assumption that they would not, whether there are other options (obtainable commercial insurance or bonds) available to avoid this alleged economic disruption. In fact, no commenters objected to the time-tested mechanics of the proposed rule, which mechanics have been in place and worked well for 23 years in the United States, and since 1975 in the rest of the world under the 1969 CLC.

In order to explore all possible options, the Coast Guard has examined all comments carefully, and looked at the suggested alternatives to the NPRM. The PRIA, made available on July 21,

1993, and open for public comment, refined the issues and elicited several amplifying comments.

All issues now have been aired, and the Coast Guard has decided to adopt the essence of the NPRM, subject to technical changes adopting many of the commenters' suggestions and, hopefully, alleviating the comments that P&I Clubs and other guarantors could somehow become subject to unlimited liability. These changes are identified in the discussion that follows. The Coast Guard has decided on this course of action because it believes that the central objections of the commenters to the rule are objections to OPA 90 itself (for example, potential unlimited liability of vessel owners and operators), and, if necessary, should be dealt with by the Congress and not the Coast Guard. The central issue germane to this rulemaking is whether owners and operators will be able to obtain financial responsibility guaranties if the P&I Clubs, as they have declared, do not provide guaranties of insurance. From the letters submitted to the regulatory docket, the Coast Guard concludes that even if the P&I Clubs do not provide these guaranties, alternative financial responsibility sources will be available. These include commercial insurance entities and surety bond companies, as well as the potential greater use of self-insurance and financial guaranties. These alternatives are described more fully in the final regulatory impact analysis (RIA) that accompanies this rule, a summary of which appears under the heading "Regulatory Impact Analysis" in this preamble. The Coast Guard has determined that the approach in the NPRM best fulfills the intent of Congress to assure prompt and certain compensation by the polluter to victims of oil spills and hazardous substance releases. Other suggested alternatives do not satisfy that intent. Among these alternatives are: treating P&I Club membership as an asset for self-insurance purposes; treating P&I Club membership, with a provision making the Oil Spill Liability Trust Fund a "loss-payee," as a form of self-insurance; and adoption through legislation of a "Mandatory Excess Insurance Facility." These alternatives are discussed in detail in the final RIA accompanying this rule. The alternatives have not been adopted. That was the main issue in this proceeding. The other issues primarily concern specific technical aspects of each section of the rules.

Part and Section Numbers

The NPRM proposed that preexisting part 130 be replaced by a completely new part 130, that parts 131 and 132 be removed, and that subpart D of part 137 be removed and reserved. In order to phase in the new rules with the least disruption and cost to the maritime industry, an orderly compliance schedule is being adopted. This schedule allows existing Certificates for non-tank vessels to be used until their regularly scheduled expiration dates, as described in the section of this preamble labeled, "Implementation Schedule." Because of this phased approach, preexisting parts 130, 131, and 132, and subpart D of part 137, must temporarily remain effective after the effective date of this rule. Accordingly, a new part 138 has been designated for the rule that will replace preexisting parts 130, 131, and 132, and subpart D of part 137. Conforming amendments have been made to 33 CFR parts 130, 131, and 132, and subpart D of part 137. The following table shows the location in the new part 138 of the corresponding sections of the NPRM:

NPRM Part 130	Part 138
130.1(b)	138.10.
130.1(a); 130.2(b) ("vessel").	138.12.
	138.15 [new].
130.2	138.20.
130.3	138.30.
130.4	138.40.
130.5	138.50.
130.6	138.60.
130.1(c)	138.65.
130.7	138.70.
130.8	138.80.
130.9	138.90.
130.10	138.100.
130.11	138.110.
130.12	138.120.
130.13	138.130.
130.14	138.140.
130.15	138.150.
Appendix A	Appendix A.
Appendix B	Appendix B.
Appendix C	Appendix C.
Appendix D	Appendix D.
Appendix E	Appendix E.
Appendix F	Appendix F.
Appendix G	138.80(f).

Implementation Schedule

Section 1016(h) of OPA 90 (33 U.S.C. 2716(h)) states that financial responsibility regulations under acts repealed or superseded by OPA 90 remain in effect until superseded by new regulations issued under OPA 90. Therefore, the financial responsibility requirements in 33 CFR part 130 (FWPCA), 33 CFR part 131 (TAPAA), 33 CFR part 132 (OCSLAA), and 33 CFR part 137, subpart D (DPA) will remain in effect with respect to individual vessels in the manner prescribed by section 138.15 of this rule. The intent of the implementation schedule (which could also be termed a compliance schedule) is to allow for an orderly transition to part 138 by allowing, as some commenters recommended, COFRs issued under the preexisting regulations to remain valid until their expiration dates. The Coast Guard is adopting that comment, but only with respect to non-tank vessels. (As explained below, tank vessels will be required to demonstrate financial responsibility under the new part 138 on a more expedited schedule.) This phased-in transition will also enable the Coast Guard to issue new Certificates in an orderly manner utilizing existing resources. Rather than attempting to issue approximately 23,000 new COFRs by a single, mandatory date, the Coast Guard expects the future Certificate renewal cycle, applicable to Certificates issued under this rule, to result in the renewal of about one-third that number each year. No new Coast Guard resources would be required for that routine renewal cycle.

The existing operators of non-tank vessels which presently are subject to the regulations issued under one or more of the preexisting CFR parts may continue to comply with those preexisting regulations for, in some cases, three and one half years after publication of this rule in the **Federal Register**, depending upon the expiration dates of their preexisting COFRs. These operators also have the option of choosing to comply with this rule soon after its initial implementation date, which is 180 days after the publication date, i.e., "effective date".

On the other hand, self-propelled tank vessels, followed by non-self-propelled tank vessels, will be required to comply with this rule sooner than non-tank vessels because of the generally greater danger of large and possibly catastrophic spills from tank vessels. Self-propelled tank vessels will be required to submit, not later than 180 days after publication of this rule in the **Federal Register**, at least the evidence of financial responsibility required by this rule (new application forms will be required later). Non-self-propelled tank vessels (i.e., tank barges) will be required to submit, not later than one year after publication of this rule in the **Federal Register**, application forms as well as evidence of financial responsibility required by this rule.

Although this phased transition to the new rule may appear complicated it is designed to impose the least burdensome requirements on the regulated community while balancing the need of potential claimants to be assured that the vessels posing the greatest pollution threat, tank vessels, are in compliance within a reasonable time. It also accounts for the administrative needs of the Coast Guard. A reading of the actual regulation (§ 138.15) is encouraged to ensure a full understanding of the compliance deadlines.

There are three dates germane to this implementation schedule. The first is the "effective date". The other two can be termed the "initial implementation date" and the "final implementation date". The effective date, as already discussed, is the date of publication in the **Federal Register**. The initial implementation date is the date 180 days after the effective date. The final implementation date is the date three years plus 180 days after the effective date. The final implementation date is the date by which every vessel subject to OPA 90/CERCLA financial responsibility provisions is required to have an OPA 90/CERCLA COFR issued under this new part 138.

Effective Date: The effective date of this rule is the date of its publication in the **Federal Register** (see **DATES** at the beginning of this preamble), for the following reasons:

(1) The phased implementation schedule imposes both a benefit and a condition on current Certificate holders. The benefit is the ability to use, temporarily, an existing Certificate. The condition is that the Coast Guard will not accept the surrender (for the purpose of obtaining a new Certificate with an extended expiration date) of a Certificate during the 179 day period beginning on the effective date (publication date) of this rule. Otherwise, Certificate holders simply could surrender their existing Certificates and request the Coast Guard to issue new Certificates with new three-year expiration dates. Were the Coast Guard to allow this, the Coast Guard would be encouraging vessel owners and operators to unreasonably delay compliance with the law and this new rule. The likely result would be that thousands of COFRs would be surrendered with requests for reissuance with new three-year expiration dates, as would otherwise be permitted by the preexisting rules. This would be an intolerable situation—one not contemplated by Congress, and wholly inconsistent with the intent of the orderly implementation schedule now being adopted.

(2) A second reason for the immediate effective date is to enable vessel owners and operators that either are required, or wish, to carry new Certificates under the new rule on or soon after the initial implementation date, to file their

greatest pollution threat, tank vessels, are in compliance within a reasonable time. It also accounts for the administrative needs of the Coast Guard. A reading of the actual regulation (§ 138.15) is encouraged to ensure a full understanding of the compliance deadlines.

There are three dates germane to this implementation schedule. The first is the "effective date". The other two can be termed the "initial implementation date" and the "final implementation date". The effective date, as already discussed, is the date of publication in the **Federal Register**. The initial implementation date is the date 180 days after the effective date. The final implementation date is the date three years plus 180 days after the effective date. The final implementation date is the date by which every vessel subject to OPA 90/CERCLA financial responsibility provisions is required to have an OPA 90/CERCLA COFR issued under this new part 138.

Effective Date: The effective date of this rule is the date of its publication in the **Federal Register** (see **DATES** at the beginning of this preamble), for the following reasons:

(1) The phased implementation schedule imposes both a benefit and a condition on current Certificate holders. The benefit is the ability to use, temporarily, an existing Certificate. The condition is that the Coast Guard will not accept the surrender (for the purpose of obtaining a new Certificate with an extended expiration date) of a Certificate during the 179 day period beginning on the effective date (publication date) of this rule. Otherwise, Certificate holders simply could surrender their existing Certificates and request the Coast Guard to issue new Certificates with new three-year expiration dates. Were the Coast Guard to allow this, the Coast Guard would be encouraging vessel owners and operators to unreasonably delay compliance with the law and this new rule. The likely result would be that thousands of COFRs would be surrendered with requests for reissuance with new three-year expiration dates, as would otherwise be permitted by the preexisting rules. This would be an intolerable situation—one not contemplated by Congress, and wholly inconsistent with the intent of the orderly implementation schedule now being adopted.

(2) A second reason for the immediate effective date is to enable vessel owners and operators that either are required, or wish, to carry new Certificates under the new rule on or soon after the initial implementation date, to file their applications as soon as possible. For example, operators who already purchase OPA 90/CERCA liability insurance and whose insurers' agree to issue the insurance guaranty appended to this rule, may wish to apply for OPA 90/CERCLA COFRs on or shortly after the effective date of this rule. The same applies to operators who can obtain OPA 90/CERCLA surety bond or financial guaranties, or who can self-insure.

(3) Although this rule is being made effective immediately, no vessel is required to possess a new OPA 90/CERCLA COFR (part 138 COFR) until at least the initial implementation date (180 days after the effective date). Therefore, there is no burden placed upon any vessel owner or operator by making the effective date immediate. For these reasons, the Coast Guard has determined under 5 U.S.C. 553(d)(3) that good cause exists for making the rule effective in less than 30 days after publication in the **Federal Register**.

Initial and Final Implementation Dates: New § 138.15 (and the conforming new §§ 130.0, 131.0, 132.0, and 137.300 in the preexisting regulations) sets forth the effects of these dates on all vessels, including vessels having existing COFRs issued under the preexisting regulations, i.e., issued before the initial implementation date of this new rule. The discussion in this preamble under § 138.15 explains these requirements.

Upon the final implementation date, 33 CFR parts 130, 131, and 132 and subpart D of part 137 (which concern vessel financial responsibility under the FWPCA, TAPAA, OCSLAA, and DPA for water pollution) will be removed. Title 33 CFR part 138 will then be the sole rule governing vessel financial responsibility for oil spill incidents and hazardous substance releases. "Incidents" and "releases" are statutory terms with legal significance under OPA 90 and CERCLA, respectively.

Mobile Offshore Drilling Units (MODUs)

Requirements for OPA 90 COFRs for offshore facilities per se do not fall under the jurisdiction of the U.S. Coast Guard and, therefore, are not included in this rule. However, COFRs issued to vessels which are MODUs under this rule will cover not only the general (i.e., non-tank vessel) liability of MODUs (section 1004(a)(2) of OPA 90) but their tank vessel liability as well (section 1004(b)(1) of OPA 90). Specifically, MODUs, when being used as offshore facilities, are deemed by OPA 90 to be tank vessels with respect to discharges of oil on or above the surface of the water. This rule, therefore, concerns only vessel financial responsibility, not offshore facility financial responsibility. Financial responsibility requirements for offshore facilities under OPA 90 are administered by the Department of Interior's Minerals Management Service.

Some commenters observed that the delineation of responsibility between a MODU operator and an offshore leaseholder should be clarified by these rules. The Coast Guard believes there are two distinct issues here: (1) Demonstration of financial responsibility, and (2) liability in the event of an oil discharge or substantial threat of a discharge. (Clarification of what constitutes a MODU is accomplished in § 138.12(b) and in the definition of "self-elevating lift vessel". See discussion associated with §§ 138.12 and 138.20.) As to financial responsibility, since a MODU, when operating as an offshore facility, has the potential for liability as a "tank vessel", a MODU must demonstrate financial responsibility that would apply to both non-tank vessel and tank vessel situations. All of the guaranty forms provide for such all-purpose coverage.

It could be argued that questions of allocating liability lie outside the scope of this rulemaking respecting financial responsibility. However, the Coast Guard is aware of the importance to responsible parties and guarantors of assessing liability exposure in making decisions relating to the provision of coverage, and hence financial responsibility, for that exposure. Consequently, while recognizing that the courts will determine matters of liability under the provisions of OPA 90, the Coast Guard believes the following legislative history is pertinent to the determination of Congressional intent as to the scope of liability respecting MODUs operating as offshore facilities.

The enactment of title I of OPA 90 represented the culmination of the work of many Congresses on comprehensive oil pollution liability and compensation at the federal level. The text of subsection (b) of section 1004 of OPA 90, 33 U.S.C. 2704(b), which concerns the delineation of MODU owner and operator and lessee or permittee liability, derived from related provisions in bills considered by prior Congresses.

The first bills concerning comprehensive oil spill liability and compensation in which this delineation was made were H.R. 2222 and 2368, introduced and considered by the 98th Congress. Chairman Studds of the House Coast Guard and Navigation Subcommittee of the House Merchant Marine and Fisheries Committee, at a

hearing of that Subcommittee relating to those bills and H.R. 2115 held on April 20, 1983, called attention to the addition of text relating to that delineation:

> Mr. Biaggi has introduced H.R. 2115, which is identical to the bill approved by our committee in the last Congress.
>
> I have introduced H.R. 2222, which incorporates the main themes of past legislation with three significant variations. First, it incorporates the proposed change in allocating liability between oil contractors and lessees which was included in H.R. 5906 last year; * * *. Oil Pollution Liability: Hearing on H.R. 2222 (H.R. 2115, H.R. 2368), before the Subcomm. on Coast Guard and Navigation of the House Comm. on Merchant Marine and Fisheries, 98th Cong., 1st Sess. 1 (1983).

The bill referred to by Mr. Studds, H.R. 5906 (97th Cong.), as being the one in which the related change originated, passed the House of Representatives on December 13, 1982. 128 Cong. Rec. 30336 (1982). That bill would have amended title III of the Outer Continental Shelf Lands Act Amendments of 1978, the extant federal statute concerning oil pollution liability and compensation relative to vessels and facilities engaged in Outer Continental Shelf Lands Act activities. Mr. Studds, speaking on behalf of H.R. 5906, informed the House that one of the goals of that bill was:

> To reapportion the liability among the parties operating on the OCS to reflect more closely the industry practice that prevailed prior to enactment of the OCSLAA.
>
> * * * * *
>
> Finally, the reapportionment of liability mandated by H.R. 5906 will allocate the risks associated with OCS development more equitably among the participants in that development. While title III presently imposes liability solely upon the owners and operators of offshore facilities and vessels, H.R. 5906, as amended, will apportion it among the holders of leases, permits, and easements issued under the OCSLAA, as well as the owners and operators of vessels, mobile offshore drilling units and pipelines. Id. at 30334.

In the ensuing remarks during the House's consideration of H.R. 5906, those of Mr. Breaux were of special pertinence to the particular scope of the intended liability of the MODU owner or operator:

> The current statute has resulted in Coast Guard interpretations holding the drilling contractors solely responsible for all oil spills and the major oil company lessees free from liability.
>
> * * * * *
>
> Essentially, the amendment enacts into statute the preferred industry practice for the apportionment of liability. The general rule, therefore, is the imposition of liability on oil company lessee for any oil spill emanating from their lease and the oil reservoir contained therein. * * * *The Committee intends that the point of origin of an uncontrolled flow of oil determines where an oil pollution incident originates, and not where the oil and water first come into contact with one another.* For example, the Pemex Bay of Campeche oil spill originated below the surface of the water.
>
> Within this general rule, the amendment would impose liability on the drilling contractor operating on a lease for those oil spills originating on or above the surface of the water. *Our intent in dividing liability in this manner is to hold the contractor responsible only for the required petroleum and other oil that is present on the rig in order for it to conduct its operations and which are clearly under the control of the rig owner.* (Emphasis added) Id. at 30335.

A careful examination of the legislative history of the succeeding bills relating to comprehensive oil spill liability and compensation has failed to disclose any expressed alteration in Congressional intent respecting the allocation of liability for MODUs engaged in drilling operations.

This apparent Congressional intent comports with the position advocated by some commenters. Moreover, if the words "on or above the surface" were applied literally, a result certainly unintended by Congress could easily occur. That result would be to invite liability considerations to take precedence over safety and environmental protection decisions. Clearly, in this comprehensive environmental legislation, it would be unreasonable to interpret the statute in a way that could easily degrade safety and the environment. By recognizing that when the source of a discharge is below the seabed, the spill is not an above the surface spill, emergency response actions will be predicated on the best and safest means to abate the blowout, rather than on the means (e.g., shutting in the blowout preventer and risking a pressure buildup that could result in a catastrophic sub-seabed well blowout) which would shift liability without regard to safety or the environment. If the parties involved (the leaseholder and the MODU owner or operator) so choose, they can enter into indemnification agreements to allocate among themselves an apportionment of liability. The indemnification agreements cannot be used, however, to avoid completely liability to a claimant under OPA 90.

Paperless COFRs

One commenter recommended that the Fleet Certificate concept (which concerns non-tank barges) be expanded to cover tank barges as well, and that no COFR or copy be required aboard any barge on inland waters. In view of its evolving computer technology for COFR enforcement purposes, the Coast Guard may be able to adopt that recommendation in the future. However, the Coast Guard's computer network has not yet evolved to a level where this suggestion can be implemented. When it becomes possible for the Coast Guard to adopt such a system, a notice proposing this change will be published in the **Federal Register**.

Applicable Amounts of Financial Responsibility

Appendices B through F are guaranty form for evidencing financial responsibility. Each contains an "Applicable Amount Table". Appendix G of the NPRM, which also contained the Applicable Amount Table, has been moved to a new paragraph (f) of § 138.80. Section 138.80(f) and the Applicable Amount Table in each form set out the means by which applicants and guarantors calculate the amounts of financial responsibility required to be established and maintained under this rule.

The amount of financial responsibility which must be established and maintained with respect to each vessel to be covered under section 1016(a) of OPA 90 (33 U.S.C. 2716(a)) (i.e., the amount applicable to the vessel under OPA 90) is calculated by applying the appropriate formula specified in § 138.80(f)(1) (Part I of the Applicable Amount Table in the forms) in accordance with the type of vessel and its size in gross tons. The formulae set out in § 138.80(f)(1) and Part I are based upon the provisions of paragraphs (a)(1) and (a)(2) of section 1004 of OPA 90 (33 U.S.C. 2704), as mandated by section 1016(a) of OPA 90.

With respect to CERCLA, the NPRM proposed that all vessels demonstrate financial responsibility at the minimum amount of $5 million, by applying the formula specified under Part II of the Table, as proposed. The formula was derived from the provisions of section 108(a)(1) of CERCLA. In deriving the formula for Part II as proposed, the Coast Guard took cognizance of practical considerations of which Congress must be deemed to have been aware when drafting CERCLA. The term "hazardous substances" as defined for the purposes of CERCLA (42 U.S.C. 9601(14)) includes an almost limitless number of materials. In addition, there are numerous methods by which any one of those materials, especially in small amounts, may be carried as cargo aboard vessels. At the time a COFR application for a particular vessel is processed, and even after a COFR is issued, there is no known way for the Coast Guard to determine that a hazardous substance is not being carried, or will not be carried (especially in small amounts), aboard that vessel as cargo.

Consequently, in order to assure that the statutorily required amount of financial responsibility had been calculated and established and would be maintained for every subject vessel, it was considered necessary to assume that all vessels subject to the provisions of section 108(a)(1) of CERCLA carry, or might carry, hazardous substances as cargo. For this reason, the formula in part II of the Table as proposed prescribed a minimum of $5,000,000 for all vessels. Comments were encouraged regarding possible means by which a determination could be made at the time of certification that, in fact, a particular vessel is not carrying and will not carry hazardous substances as cargo.

Some commenters, however, object to having to demonstrate financial responsibility at this minimum $5 million level. They assert that this is inconsistent with CERCLA in that CERCLA recognizes that for vessels not carrying hazardous substances as cargo, the liability limit is a minimum of "(500,000 (section 108(a)(1) of CERCLA requires financial responsibility to cover the liability prescribed under section 107(a)(1), and that section in paragraph (B) establishes a minimum liability limit of $500,000 for vessels not carrying hazardous substances as cargo). One commenter states that if the Coast Guard can rely upon a declaration of a vessel owner that the vessel is a non-tank vessel, a similar declaration should be allowed for carriage of hazardous substances as cargo. Another commenter alleges that vessels carrying hazardous substances as cargo can only do so in accordance with Coast Guard safety regulations, and that it is inappropriate to assume that vessels will operate in violation of those regulations.

In adjusting this rule, the Coast Guard has adopted revisions that balance two of CERCLA's apparently contrary mandates: (1) That the Coast Guard certify that the required minimum amount of financial responsibility ($5 million) is maintained by a responsible party in the event of a release or threatened release of a hazardous substance carried as cargo; and (2) the provision in CERCLA that vessels that do not carry hazardous substances as cargo need demonstrate financial responsibility only at the greater of $500,000 or $300 per gross ton. The Coast Guard concludes that the fairest way to accommodate these two

processed, and even after a COFR is issued, there is no known way for the Coast Guard to determine that a hazardous substance is not being carried, or will not be carried (especially in small amounts), aboard that vessel as cargo.

Consequently, in order to assure that the statutorily required amount of financial responsibility had been calculated and established and would be maintained for every subject vessel, it was considered necessary to assume that all vessels subject to the provisions of section 108(a)(1) of CERCLA carry, or might carry, hazardous substances as cargo. For this reason, the formula in part II of the Table as proposed prescribed a minimum of $5,000,000 for all vessels. Comments were encouraged regarding possible means by which a determination could be made at the time of certification that, in fact, a particular vessel is not carrying and will not carry hazardous substances as cargo.

Some commenters, however, object to having to demonstrate financial responsibility at this minimum $5 million level. They assert that this is inconsistent with CERCLA in that CERCLA recognizes that for vessels not carrying hazardous substances as cargo, the liability limit is a minimum of "(500,000 (section 108(a)(1) of CERCLA requires financial responsibility to cover the liability prescribed under section 107(a)(1), and that section in paragraph (B) establishes a minimum liability limit of $500,000 for vessels not carrying hazardous substances as cargo). One commenter states that if the Coast Guard can rely upon a declaration of a vessel owner that the vessel is a non-tank vessel, a similar declaration should be allowed for carriage of hazardous substances as cargo. Another commenter alleges that vessels carrying hazardous substances as cargo can only do so in accordance with Coast Guard safety regulations, and that it is inappropriate to assume that vessels will operate in violation of those regulations.

In adjusting this rule, the Coast Guard has adopted revisions that balance two of CERCLA's apparently contrary mandates: (1) That the Coast Guard certify that the required minimum amount of financial responsibility ($5 million) is maintained by a responsible party in the event of a release or threatened release of a hazardous substance carried as cargo; and (2) the provision in CERCLA that vessels that do not carry hazardous substances as cargo need demonstrate financial responsibility only at the greater of $500,000 or $300 per gross ton. The Coast Guard concludes that the fairest way to accommodate these two opposing interests is by allowing the vessel operator and the provider of financial responsibility to decide the matter between themselves. For example, if an insurer or surety company is satisfied that its insured or principal in fact does not and will not carry hazardous substances as cargo, then the cost of the insurance or surety bond guaranty with respect to CERCLA may be priced at the $500,000/$300 per gross ton premium. The proposed and now adopted wording of the insurance and the financial guaranty forms, as well as the new wording of the surety bond guaranty, is such that, should a release occur and the facts show that a vessel was carrying a hazardous substance as cargo, the limit of the guaranty will automatically be raised to the higher amount, i.e., the greater of $300 per gross ton or $5 million. (The guaranty forms have also been amended to achieve a parallel result with respect to OPA 90 financial responsibility if the vessel is in fact a tank vessel.) This will not affect the qualifications of self-insurers or financial guarantors who, as proposed, still must demonstrate working capital and net worth according to the $300 per gross ton/$5 million formula. Only by methods such as these may the Coast Guard certify that financial responsibility requirements have been met, whether or not hazardous substances are carried as cargo. The Coast Guard has determined that this protection is necessary given the peculiar nature of hazardous substance carriage, and the inability to be assured ahead of time that no hazardous substances are being or will be carried as cargo. Section 138.80(f)(2) (Part II of the Applicable Amount Table in the forms) has been adjusted to reflect this decision.

The Coast Guard also notes that, with respect to carriage of hazardous substances, this decision only affects vessels under 16,666 gross tons. Above 16,666 gross tons, at $300 per gross ton a vessel would have to meet the $5 million minimum threshold. However, those operators of smaller vessels who can assure their financial responsibility providers that hazardous substances are not and will not be carried as cargo, may obtain a cost savings by being able to purchase guaranties of financial responsibility at the $500,000/$300 per gross ton premium level.

Section 138.80(f)(3) (Part III of the Table in the forms) is simply the addition of the amounts of financial responsibility required by paragraphs (f)(1) and (f)(2) of § 138.80 (Parts I and II of the Table in the forms). This sum is termed the "total applicable amount". The formula is derived from the provisions of section 1004 of OPA 90 and section 107(a) of CERCLA (as noted above) and reflects the fact that liability stemming from one event may arise under both Acts. In such a circumstance, and only in such a circumstance, it is necessary that two separate and distinct amounts of financial responsibility be available to meet equally separate and distinct amounts of liability under the Acts. The "total applicable amount" is not an aggregate amount applicable to a guarantor's liability under just one of the Acts.

One company commented that some of its barges are unable to carry both oil and hazardous substances at the same time, and therefore, that it should not have to establish an amount of financial responsibility reflecting both OPA and CERCLA with respect to such single-commodity barges. The Coast Guard concluded, however, that it is not in a position to issue a special tank barge COFR just for OPA 90 and a separate tank barge COFR just for CERCLA. In the first place, the Coast Guard could never be certain that a particular tank barge, which had been issued only a CERCLA COFR, was not carrying oil, or vice versa. In order to become certain that a barge's COFR matched its permissible cargo, it would be necessary to physically detain the barge, test its cargo and determine whether it was either an OPA 90-regulated oil or a CERCLA-regulated hazardous substance derivative of oil, and then match such cargo against the type of COFR being carried that particular day. The tremendous cost, delay and burden such an enforcement system would entail, both for the barge industry and the Coast Guard, would not justify separate certification and enforcement procedures.

Section-by-Section Discussion

A number of drafting changes have been made to improve readability and to specify the persons upon whom obligations are placed. These changes are considered non-substantive and are not further explained. Also, new sections have been added to add further clarity to the rule. These are: § 138.12 (applicability); § 138.15 (implementation schedule); and § 138.65 (issuance and carriage of Certificates). Only § 138.15 contains entirely new text, reflecting the compliance schedule adopted by this rule.

Section 138.10 Scope

This section addresses the general purpose of these regulations, namely that they establish the procedures for

establishing and maintaining evidence of financial responsibility under OPA 90 and CERCLA. This section is derived from proposed § 130.1(b). (Proposed § 130.1(a) is new § 138.12(a), and proposed § 130.1(b) is new § 138.65.) Section 138.10 clarifies the proposed text by adding the term "demise charterer" to the class of persons who must be covered by the evidence of financial responsibility required under this part. This clarification is being made because both OPA 90 and CERCLA define an "owner or operator" of a vessel as including any demise charterer of the vessel. Thus, if any vessel subject to this part simultaneously has an owner, a demise charterer and an "operator" (as defined in this part), all three of those entities automatically will be covered by the guaranty of insurance or other evidence of financial responsibility submitted under this part. Demise charterer, as used in this part, is synonymous with the common parlance term "bareboat charterer".

Section 130.1(d) of the NPRM, which concerned "public vessels", has been deleted. New § 138.12(d) provides that 33 CFR part 138 does not apply to any public vessel. Thus, it will not be necessary for public vessels to apply for COFRs. However, all public vessels which are not readily identifiable as such (i.e., vessels which are not naval war ships, Coast Guard cutters, etc.) and which are crewed by nongovernmental personnel, are strongly encouraged to carry appropriate government documentation indicating that the vessels are, in fact, public vessels, i.e., vessels owned or bareboat chartered by a government and not engaged in commerce. Such documentation, including a copy of any bareboat charter party, will serve to avoid misunderstandings with enforcement personnel who are not readily able to determine whether a particular vessel, especially a vessel owned and operated by private interests, and engaged in business which could be construed as commercial in nature (e.g., dredging), is or is not a public vessel.

Section 138.12 Applicability

New § 138.12 has been created to state clearly the applicability of part 138. This section is comprised of parts of proposed § 130.1(a), and of the definition of "vessel" from proposed § 130.2(b).

Paragraph (a)(1): In response to comments, this paragraph, which is derived from proposed § 130.1(a)(1), has been amended to make it clear that "vessels of any size using the waters of the exclusive economic zone to transship or lighter oil" means both delivering and receiving vessels. The term "vessel of any size" does not include the towing/pushing vessel (tug) that has custody of a barge transshipping or lightering oil within the exclusive economic zone. That is, a tug of 300 gross tons or less would not be made a tank barge (i.e., would not be made subject to the financial responsibility requirements of this rule) just because it had custody of a transshipping or lightering vessel.

Paragraph (a)(2): This paragraph is derived from proposed § 130.1(a)(2). The FWPCA excluded from the requirement to establish and maintain evidence of financial responsibility, a non-self-propelled "barge" that does not carry oil as cargo or fuel. Section 1016(a)(1) of OPA 90 excludes from that requirement a non-self-propelled "vessel" that does not carry oil as cargo or fuel. In this rule, the Coast Guard considers OPA 90's use of the term "non-self-propelled vessels" to mean non-self-propelled barges. This construction is consistent with a similar exception in CERCLA. Therefore, in § 138.12(a)(2)(ii) of this rule, the exception refers to "barges" rather than "vessels".

Paragraph (b): This paragraph concerns MODU liability and is derived from the proposed definition of the term, "vessel". Some commenters asserted that a mobile offshore drilling unit (MODU) should not be treated as a tank vessel when drilling. The Coast Guard cannot adopt this suggestion as the liability ascribed to a MODU when drilling has been fixed by Congress. Therefore, paragraph (b) of § 138.12 has been amended to make it clear that under OPA 90, when there is an "on or above the surface of the water" discharge or substantial threat of a discharge of oil from a MODU, the MODU is treated as tank vessel (for purposes of determining the limits of liability and the identity of the responsible party) (33 U.S.C. 2704(b)). Since a MODU has potential liability as a tank vessel, the MODU operator must demonstrate financial responsibility at tank vessel limits to cover the time that the MODU is operating as an offshore facility and has a spill "on or above the surface of the water."

Paragraph (c): This paragraph has been added to make it clear that CERCLA's financial responsibility provisions and this rule apply to self-propelled vessels which exceed 300 gross tons, even if they do not carry hazardous substances. Congress mandated that owners, demise charterers, and operators of all self-propelled vessels over 300 gross tons comply with CERCLA's financial responsibility provisions, without regard to whether or not the vessels actually carry hazardous substances. In this connection, the following points may be indicative of Congressional thinking: Most, if not all, self-propelled vessels over 300 gross tons carry hazardous substances in one form or another (e.g., ships' stores); and insurance coverage for liabilities concerning releases of hazardous substances from brown water vessels has never been unavailable or subject to high premiums in the United States (viz: coverage provided by the Water Quality Insurance Syndicate, New York, NY). Further, with respect to blue water (oceangoing) vessels, the International Group of P&I Clubs traditionally has provided unlimited liability coverage for releases of hazardous substances, and still does; and P&I Club premiums for this coverage (while not broken out from the total calls and premiums for P&I cover) are understood to be relatively low. Accordingly, prudent vessel operators would choose to take advantage of the available, relatively inexpensive insurance and carry such coverage as a matter of course. Whatever the reason for the Congressional mandate may have been, the Coast Guard has no rulemaking flexibility where the law is clear on its face.

Paragraph (d): This paragraph recites that 33 CFR part 138 does not apply to public vessels.

Section 138.15 Implementation Schedule

This new section sets forth the implementation schedule for vessels requiring COFRs under OPA 90 and CERCLA by specifying mandatory compliance dates for categories of vessels. As discussed earlier under "Implementation Schedule," this section establishes a phased compliance schedule, based on two categories of vessels—tank vessels (which are broken into two groups, self-propelled and non-self-propelled), and non-tank vessels. As to the latter category, this section, for the most part, allows vessels to operate with their prexisting COFRs until they expire. This section also prevents vessel owners and operators from surrendering prexisting COFRs solely for the purpose of obtaining, under the preexisting rules, new COFRs with extended expiration dates.

Paragraph (a): This paragraph governs the compliance schedule for tank vessels. Paragraph (a)(1) provides that a self-propelled tank vessel may continue to carry its preexisting COFR (or obtain one and carry it) until December 28, 1995, so long as acceptable evidence of financial responsibility has been submitted under the new part 138 by December 28, 1994. A non-self-propelled tank vessel may continue to carry its preexisting COFR (or obtain one and carry it) until July 1, 1995.

Paragraph (a)(2) concerns self-propelled tank vessels and requires that they submit evidence of financial responsibility under the new part 138 by December 28, 1994. An application form for a new COFR may be submitted at a later date. For administrative convenience, preexisting Certificates issued under 33 CFR parts 130, 131, or 132 may continue to be carried on these self-propelled tank vessels so long as the new part 138 evidence of financial responsibility has been submitted. If this new evidence of financial responsibility is not submitted by December 28, 1994, the preexisting Certificates for that vessel will be revoked on that date. By December 28, 1995, a self-propelled tank vessel must have applied for, and be carrying, a new part 138 Certificate, regardless of the expiration date on any preexisting Certificates.

Paragraph (a)(3) concerns the requirements for a self-propelled tank vessel that does not possess a preexisting COFR issued under 33 CFR part 130 before December 28, 1994. This vessel may not operate on or after that date unless it carries a new part 138 COFR. Accordingly, this vessel must apply for a new part 138 COFR following the procedures specified in §§ 138.50 and 138.60.

Paragraph (a)(4) requires a non-self-propelled tank vessel to submit evidence of financial responsibility and a new application form under this new rule at least 21 days before July 1, 1995. (The 21 days refers to a time constraint imposed by § 138.50.) By July 1, 1995, a non-self-propelled tank vessel must carry a new OPA 90/CERCLA (part 138) COFR. On that date, preexisting COFRs for non-self-propelled tank vessels will be revoked.

Paragraph (b): This paragraph governs the compliance schedule for non-tank vessels. Paragraph (b)(1) provides that a non-tank vessel must carry a part 138 Certificate no later than December 28, 1997, provided that before that date, the vessel carries a non-expired, part 130 Certificate. A part 132 Certificate, if applicable to that vessel, must also be carried. A non-tank vessel subject to part 138 may apply for a part 138 Certificate any time on or after July 1, 1994.

Paragraph (b)(2) provides that on and after December 28, 1994, and before December 28, 1997, a Certificate issued to replace an existing 33 CFR part 130

financial responsibility has been submitted under the new part 138 by December 28, 1994. A non-self-propelled tank vessel may continue to carry its preexisting COFR (or obtain one and carry it) until July 1, 1995.

Paragraph (a)(2) concerns self-propelled tank vessels and requires that they submit evidence of financial responsibility under the new part 138 by December 28, 1994. An application form for a new COFR may be submitted at a later date. For administrative convenience, preexisting Certificates issued under 33 CFR parts 130, 131, or 132 may continue to be carried on these self-propelled tank vessels so long as the new part 138 evidence of financial responsibility has been submitted. If this new evidence of financial responsibility is not submitted by December 28, 1994, the preexisting Certificates for that vessel will be revoked on that date. By December 28, 1995, a self-propelled tank vessel must have applied for, and be carrying, a new part 138 Certificate, regardless of the expiration date on any preexisting Certificates.

Paragraph (a)(3) concerns the requirements for a self-propelled tank vessel that does not possess a preexisting COFR issued under 33 CFR part 130 before December 28, 1994. This vessel may not operate on or after that date unless it carries a new part 138 COFR. Accordingly, this vessel must apply for a new part 138 COFR following the procedures specified in §§ 138.50 and 138.60.

Paragraph (a)(4) requires a non-self-propelled tank vessel to submit evidence of financial responsibility and a new application form under this new rule at least 21 days before July 1, 1995. (The 21 days refers to a time constraint imposed by § 138.50.) By July 1, 1995, a non-self-propelled tank vessel must carry a new OPA 90/CERCLA (part 138) COFR. On that date, preexisting COFRs for non-self-propelled tank vessels will be revoked.

Paragraph (b): This paragraph governs the compliance schedule for non-tank vessels. Paragraph (b)(1) provides that a non-tank vessel must carry a part 138 Certificate no later than December 28, 1997, provided that before that date, the vessel carries a non-expired, part 130 Certificate. A part 132 Certificate, if applicable to that vessel, must also be carried. A non-tank vessel subject to part 138 may apply for a part 138 Certificate any time on or after July 1, 1994.

Paragraph (b)(2) provides that on and after December 28, 1994, and before December 28, 1997, a Certificate issued to replace an existing 33 CFR part 130 or 132 Certificate for non-tank vessels will bear the same expiration date as the Certificate being replaced. The circumstances where this might occur are when a Certificate has been lost, or there is a vessel name change or operator name change. A change in legal identity is not a mere name change. This paragraph also provides that during this interval, the expiration date on a renewal Certificate issued under 33 CFR part 132 will be the same as the expiration date on the 33 CFR part 130 Certificate for that vessel.

Paragraph (b)(3) provides that a non-tank vessel holding a 33 CFR part 130 Certificate issued before December 28, 1994, may continue to operate with that Certificate until it expires.

Paragraphs (b)(4) and (b)(5) provide that new Certificates issued under 33 CFR parts 130 and 132 on or after July 1, 1994, and before December 28, 1994, will bear an expiration date three years after the date of issuance, except that a Certificate surrendered during that interval with a request for the issuance of a new Certificate for that same vessel will bear an expiration date the same as the expiration date appearing on the surrendered Certificate.

Paragraph (c): This paragraph provides that after the effective date of this rule, a vessel that is 300 gross tons or less and, therefore, does not carry a Certificate under 33 CFR part 130, need no longer carry a Certificate issued under 33 CFR part 131 (relating to TAPAA) or part 132 (relating to OCSLAA), so long as that vessel is not required by OPA 90 to obtain a Certificate because the vessel is engaged in lightering in the Exclusive Economic Zone. A vessel of this size engaged in lightering is required to maintain its part 131 or 132 Certificate until the vessel obtains a certificate under paragraph (a) or (b) of this section, as may be applicable.

Section 138.20 Definitions

Cargo: At the suggestion of one commenter, the definition of cargo has been amended to make it clear that neither hazardous substances nor oil, when carried solely for use aboard vessels (oil to power or lube onboard machinery; paints; cleaners; degreasers; etc.), are included in the definition of cargo.

Demise Charterer: A definition has been added to make it clear that this term is synonymous with the common term "bareboat charterer".

Fish tender vessel and *fishing vessel:* A definition was added for these terms in order to indicate that the terms have the same meaning as set forth in 46 U.S.C. 2101. This will aid in determining the meaning of the term "tank vessel". Section 5209 of Pub. L. 102–587 provided that each of these types of vessel is not a tank vessel. This law was enacted after the NPRM was published.

Guarantor: For the sake of convenience to persons who must comply with this rule, a definition of "guarantor", based on the definition in OPA 90 and CERCLA, was added to the rule.

Hazardous material: Some commenters observed that this term is different from "hazardous substances" as used in CERCLA, and were concerned that tank vessel liability not be ascribed to vessels carrying non-liquid hazardous substances. A definition of this term has been added to make clear that a vessel carrying *liquid* hazardous materials is a tank vessel. In the Conference Report, at page 102, Congress stated, "The term 'tank vessel' has the same meaning as that term has under section 2101 of title 46, United States Code." This 46 U.S.C. 2101 definition of tank vessel uses the term "hazardous material," which is defined in 46 U.S.C. 2101(14), and that definition of hazardous material controls.

Insurer: This definition has been amended to clarify the meaning of "insurer" or "insurers" as used in this rule (see, for example, § 138.80(b)(1) concerning insurance guaranties). The words "is a type of guarantor" have been added to make it clear that, insofar as insurers are concerned, this rule applies only to that class of insurers who choose to be guarantors.

Offshore supply vessel: A definition of this term was added to indicate that it has the same meaning as set forth in 46 U.S.C. 2101, and will assist in the determination of the term "tank vessel". Section 5209 Public Law 102–587, enacted after the NPRM was published, provided that an offshore supply vessel is not a tank vessel.

Operator: Some commenters felt this definition was confusing and some recommended that the term "responsible party" be used instead. Accordingly, the definition of operator was amended first, to narrow its scope by deleting the words "including but not limited to" and, second, to clarify its meaning by adding the words "or who agree by contract to become responsible" [for a vessel in the capacity of an operator]. The first change was made to make the definition less open ended. There are entities, such as agents, "manager", traditional time charterers and traditional voyage charterers (i.e., charterers who do not take operational responsibility for the

vessels they charter) that are not intended to be included in this definition. The second change was made for the benefit of persons, such as ship repair yards, who objected to the word "repairer" in the definition of operator. For example, one commenter stated that the owner or operator who brings a vessel to the shipyard remains absolutely the owner or operator, and there is no transfer of rights or responsibilities to the repair facility. In a case such as this, the term "operator" would not apply to repair facilities. However, in a case where a ship repair yard either is responsible under law, or for commercial reasons agrees with owners to become responsible for pollution liability in connection with a vessel under the repairer's custody, that repair facility is and has been subject to vessel financial responsibility requirements since 1971. See discussion at 43 FR 35705, August 11, 1978. In short, this rule does not transform non-liable repairers of vessels into legally liable "operators" of those vessels. Shipyards and other persons who would not otherwise be responsible for vessels are free, of course, to contract with vessel owners, as they may see fit, with respect to becoming responsible for (i.e., becoming the operators of) vessels in their custody. As always, if repairers or other person are not responsible for the non-owned vessels in their custody, this rule will not apply to them. In a case such as that, any valid COFR, issued to a vessel's owner, operator, or bareboat charterer, will remain valid and must be retained aboard the vessel while in the repairer's custody. The third change to the definition of "operator" was the addition of the word "custodian". This change was made merely to confirm that a person who is responsible for a vessel need not physically operate the vessel—move it from place to place—to be its "operator" for purposes of this rule.

Public Vessel: In accordance with a ruling by the General Counsel of the Department of Transportation interpreting the statutory definition of "public vessel", this definition has been modified by deleting the words "and operated". Accordingly, any vessel owned or bareboat chartered by the United States, or by a State or political subdivision of a State, or by a foreign nation, is a public vessel except when engaged in a commercial service. (An example of a commercial service is holding oneself out for hire to carry passengers or cargo, and the lack of profit is not necessarily determinative of a commercial service.)

Accordingly, it is no longer necessary that a vessel be physically operated by a governmental entity or under its direct day-to-day control in order to qualify as a public vessel, i.e., vessels owned or bareboat chartered by governmental agencies may be crewed by commercial entities and remain "public vessels", for the purpose of this regulation, provided the vessels engage only in governmental (noncommercial) service.

Self-elevating lift vessel: This definition was added because OPA 90 defines a "mobile offshore drilling unit" (MODU) as a vessel, other than a "self-elevating lift vessel", capable of use as an offshore facility. It has been argued that because a self-elevating lift vessel can, literally, be a type of MODU known as a jack-up drilling rig, Congress intended the term "self-elevating lift vessel" to include a jack-up drilling rig, i.e., that MODUs do not include jack-up drilling rigs. One argument to the contrary is that Congress could not have meant to exclude jack-up drilling rigs from the definition of MODUs because jack-up drilling rigs constitute the most common type of MODU; had Congress intended to exclude from the classification of MODUs the most common type of MODU (jack-up drilling rigs), it surely would have at least hinted at that result, in the law's legislative history. Another argument to the contrary is that had Congress intended to exclude jack-up drilling rigs, it would have used the term "self-elevating drilling vessel", not "self-elevating lift vessel." The Coast Guard interprets OPA 90's use of the term "self-elevating lift vessel" to mean a self-elevating, offshore work boat (or work barge) that does not engage in actual drilling operations.

Tank Vessel: This definition has been changed by deleting the proposed regulatory definition and substituting the definition in section 1001(34) of OPA 90 (33 U.S.C. 2701(34)), with three clarifications. This accords with Congressional intent expressed in the Conference Report at page 102. First, the word "liquid" has been inserted before the words "hazardous material", in accordance with the definition of hazardous material in 46 U.S.C. 2101(14) (see explanation under "hazardous material"). Second, specific exclusions to the definition of "tank vessel" have been added in accordance with section 5209 of Public Law 102–587, which was enacted after the NPRM was published. Third, in accordance with one comment, the definition has been amended to make it clear that a vessel towing or pushing, or having in its custody, a tank barge, cannot for those reasons alone, be deemed included in the definition of tank vessel. Some carriers of liquefied natural gas (LNG) argued that they should be able to demonstrate lower levels of financial responsibility than is required for oil-carrying tank vessels. Tank vessel limits are set by Congress and the Coast Guard is not empowered to lower those limits. A vessel carrying LNG clearly meets the definition of "tank vessel".

Section 138.30 General

Paragraph (a): A number of commenters were concerned that the NPRM was ambiguous, possibly multiplying the liability limit with respect to a vessel by three—that is, the owner, operator, and demise charterer would each have liability up to the specified limit, and their liabilities would be added together. That was not the intent of the NPRM. Nevertheless, potential guarantors were likewise concerned that they might be liable for three times the amount of the guaranty. The Coast Guard believes that OPA 90 and CERCLA impose only one limit of liability, per incident or release or threatened release, under each Act for a guarantor with respect to a vessel. Therefore, this subsection has been amended to clarify the fact that even though the owner, demise charterer, and operator of a vessel are jointly and severally liable, and must all be covered by the evidence of financial responsibility submitted for a COFR, the amount of that financial responsibility provided by a guarantor is for the single limit. For example, if the operator of a 40,000 gross ton tanker spills oil and the $1,200 per gross ton limit of liability is not broken, the owner, demise charterer, operator, and guarantor would be jointly and severally liable for that incident, and the guarantor's liability (without regard to whether the limit is broken) under OPA 90 should the owner, demise charterer, and operator pay nothing, cannot exceed the amount of financial responsibility provided by the guarantor, in this case $48 million ($1,200 × 40,000).

This section also has been amended to confirm that the total amount of financial responsibility provided by a guarantor is not applicable to an incident or release or threatened release of just oil or just hazardous substances—only the amount guarantied for an oil incident is available for that incident, and only the amount guarantied for a hazardous substance release or threatened release is available for that event.

Paragraph (b): As recommended by some commenters, this paragraph has been amended to state that this rule does not apply to time charterers or voyage charterers, i.e., charterers who do not assume, and do not have imposed upon them by contract or otherwise, the responsibility associated with operation of a vessel.

Paragraphs (c)–(f): Potential insurance guarantors commented that guarantors should be able to rely upon official tonnage certificates, particularly with respect to tank vessels under OPA 90. A tank vessel greater than 3,000 gross tons carries a minimum liability of ten million dollars while a tank vessel of 3,000 gross tons or less carries a minimum liability of two million dollars. Guarantors justifiably relying on tonnage set out in tonnage certificates understandably wish to avoid situations where, after incidents involving tank vessels, they could find themselves exposed in a direct action to a ten million dollar liability rather than the anticipated lower limit applicable to tank vessels of 3,000 gross tons or less.

Thus, in a case where a tank vessel's official, applicable tonnage document declares the vessel's official tonnage to be (for example) 2,990 gross tons, the Coast Guard agrees that the vessel's guarantor should be able to rely on a maximum liability under OPA 90 of $3,588,000 (2,990 tons × $1,200 per ton) even if it develops that 2,990 gross tons was a typographical error on the official, applicable tonnage certificate or the vessel was incorrectly measured, and that the vessel's true tonnage is over 3,000 gross tons. The rule has been amended in order to provide that protection to guarantors, except where a guarantor knew or should have known that the applicable tonnage certificate was incorrect. (This additional defense is reflected in the various guaranty forms appended to this rule.) Paragraphs (c), (d), and (e) have been revised slightly to clarify the appropriate tonnage to use for various vessel types and flags, and a clause has been added to each section to clarify the appropriate tonnage used for determining the limits of liability under OPA 90 CERCLA.

Section 138.50 Time to Apply

Paragraph (a): Paragraph (a) was amended at the request of one commenter, to provide that the Coast Guard may waive the requirement to file an application for a Certificate of Financial Responsibility at least 21 days before the Certificate is required. This same amendment was made in § 138.70(a), concerning applications to renew Certificates. An example of a circumstance when the 21-day requirement might be waived is when a tank vessel, not having a current COFR and not planning on entering the United States, does not have an opportunity to file an application 21 days in advance because it is redirected on short notice to call at a United States port. The Coast

otherwise, the responsibility associated with operation of a vessel.

Paragraphs (c)–(f): Potential insurance guarantors commented that guarantors should be able to rely upon official tonnage certificates, particularly with respect to tank vessels under OPA 90. A tank vessel greater than 3,000 gross tons carries a minimum liability of ten million dollars while a tank vessel of 3,000 gross tons or less carries a minimum liability of two million dollars. Guarantors justifiably relying on tonnage set out in tonnage certificates understandably wish to avoid situations where, after incidents involving tank vessels, they could find themselves exposed in a direct action to a ten million dollar liability rather than the anticipated lower limit applicable to tank vessels of 3,000 gross tons or less.

Thus, in a case where a tank vessel's official, applicable tonnage document declares the vessel's official tonnage to be (for example) 2,990 gross tons, the Coast Guard agrees that the vessel's guarantor should be able to rely on a maximum liability under OPA 90 of $3,588,000 (2,990 tons × $1,200 per ton) even if it develops that 2,990 gross tons was a typographical error on the official, applicable tonnage certificate or the vessel was incorrectly measured, and that the vessel's true tonnage is over 3,000 gross tons. The rule has been amended in order to provide that protection to guarantors, except where a guarantor knew or should have known that the applicable tonnage certificate was incorrect. (This additional defense is reflected in the various guaranty forms appended to this rule.) Paragraphs (c), (d), and (e) have been revised slightly to clarify the appropriate tonnage to use for various vessel types and flags, and a clause has been added to each section to clarify the appropriate tonnage used for determining the limits of liability under OPA 90 CERCLA.

Section 138.50 Time to Apply

Paragraph (a): Paragraph (a) was amended at the request of one commenter, to provide that the Coast Guard may waive the requirement to file an application for a Certificate of Financial Responsibility at least 21 days before the Certificate is required. This same amendment was made in § 138.70(a), concerning applications to renew Certificates. An example of a circumstance when the 21-day requirement might be waived is when a tank vessel, not having a current COFR and not planning on entering the United States, does not have an opportunity to file an application 21 days in advance because it is redirected on short notice to call at a United States port. The Coast Guard makes every attempt to accommodate unusual circumstances.

Section 138.60 Application, General Instructions

Paragraph (c): This paragraph was amended at the request of one commenter, by deleting the words "other empowered" and substituting therefore the more correct words "the chief executive officer, or any other duly authorized", to describe who may sign an application on behalf of a corporate applicant.

Paragraph (d): This paragraph was amended at the request of one commenter, to change "days" to "business days" in order to provide more time for an applicant to inform the Coast Guard of a change in the information provided in an application. For the same reason, "days" was changed to "business days" in § 138.80(b)(3)(iii)(B).

Section 138.65 Issuance and Carriages of Certificates

This new section is derived from the text of proposed § 130.1(c). It is placed more properly in a section other than "scope."

The text has been amended to make it clear that vessels are not subject to sanctions for failure to carry a valid Certificate of Financial Responsibility in cases where a COFR is removed from a vessel temporarily, at the request of U.S. law enforcement personnel.

Section 138.70 Renewal of Certificates

A new paragraph (c) was added to clarify that the first time a Certificate is required under part 138, to replace a Certificate issued under 33 CFR part 130, a new full application form, rather than a letter, is required. However, the Coast Guard is not requiring a "first time" application fee under these circumstances, recognizing that under preexisting practice, a "first time" fee is not required for a renewal application. Once a new application form has been filed for a part 138 Certificate, any additional Certificates may be applied for by letter.

Section 138.80 Financial Responsibility, How Established

A number of changes, explained under each paragraph, were made to address several comments. These changes concern use of multiple guarantors, defenses available to guarantors, and the addition of a catchall method, "other evidence of financial responsibility".

Paragraph (b)(1) (Insurance): In the proposed phrase "executed by an insurer that has been approved by * * * the Director, NPFC, for purposes of this part", the word "approved" was deleted and the words "found acceptable" were substituted. The word "acceptable" is preferred because it is used in the definition of "Insurer" in § 138.20(b). Section 138.80(b)(1) also has been amended to clarify the fact that more than one insurer may execute an insurance guaranty, and that the subscribing insurers shall be jointly and severally liable unless percentages of participation are provided on the guaranty by each subscribing insurer. For purposes of this part, and as discussed below, a percentage means a vertical percentage (rather than a horizontal layering).

One commenter recommended that the Coast Guard incorporate standards for approval of insurers, sureties, and financial guarantors. Standards for sureties are set by the Department of the Treasury, as OPA 90 requires bonding companies to be authorized to do business in the United States, a reference to Treasury-approved sureties. Financial guarantors must meet the detailed standards for self-insurers. Insurers must be acceptable to the Coast Guard, and for many years, acceptability had been determined by the Federal Maritime Commission (FMC) on a case-by-case basis. The Coast Guard has followed the criteria established by these decisions. Any insurer desiring to be recognized, as an acceptable insurer may telephone, write to, or meet with the Coast Guard to review the factors considered. The Coast Guard is evaluating the possibility of a future rulemaking adopting acceptability standards, but has decided not to develop these standards through this financial responsibility rule.

Paragraph (b)(2) (Surety bond): This paragraph was amended to clarify the fact that more than one surety may execute a surety bond guaranty form. As in the cage of insurers, sureties must state vertical percentages of participation if they wish to avoid joint and several liability.

Paragraph (b)(3) (Self-insurance): A number of commenters recommended that the Coast Guard adjust the net worth and working capital formulae by allowing worldwide assets rather than only U.S.-based assets to be counted in the asset side of the equation. The Coast Guard has not adopted this suggestion. The reasons are explained fully in the Regulatory Impact Analysis associated with this rulemaking. Paragraph (b)(3)(vi) permits the Coast Guard to waive the working capital requirement under certain circumstances. Under paragraph (b)(3)(vi)(A) the Coast Guard may waive the working capital

requirement for prospective self-insurers who are regulated public utilities, municipal or other governmental entities, or charitable, non-profit making organizations under section 501(c) of the Internal Revenue Code. One commenter stated that it is a tax-exempt, not-for-profit U.S. oil spill response corporation, that operates vessels for that purpose. It commented that it does not believe it will be able to obtain a surety bond, insurance or financial guaranty, or be able to qualify as a self-insurer under the proposed rule. It, therefore, believes that the proposed rule will hamper "reliable" response organizations and thus, undermine an essential purpose of OPA 90—a quick, effective response to oil spills. It proposes, among other things, that the section in question be amended so that the availability of the working capital waiver would not be limited to charitable organizations; i.e., that the waiver be made available to any non-profit response organization qualifying as a social welfare organization under section 501(c)(4) of the Internal Revenue Code.

This comment requesting an extension of the applicability of the working capital requirement under proposed § 130.8(b)(3)(vi)(A) apparently does not take into consideration the next paragraph (i.e., § 138.80(b)(3)(vi)(B)) of the rule which allows an alternative basis for certain organizations to apply for waivers. Accordingly, paragraph (b)(3)(vi)(A) of § 138.80 has not been amended. The Coast Guard does not believe that this rule will inhibit the commenter's ability to obtain COFRs, or otherwise undermine any essential purpose of the law. The essential purpose of OPA 90 to be implemented by this rule is to deny the use of United States waters to entities which do not have the financial capacity to meet OPA 90 and CERCLA liability, by demonstrating self-insurance capacity, or by purchasing an insurance or surety bond guaranty or by obtaining a financial guaranty.

Paragraph (b)(4) (Financial Guaranty): This paragraph was amended, consistent with the insurance and surety bond guaranty methods, to allow more than one financial guarantor to execute a financial guaranty form. Financial guarantors also must state vertical (i.e., non-layering type) percentages of participation to avoid joint and several liability.

Paragraph (b)(5) (Other evidence): This is a new paragraph which has been added to the rule as a result of the numerous comments requesting the Coast Guard to accept evidence of financial responsibility by methods other than the four proposed methods. This new paragraph will permit "other evidence of financial responsibility" if it meets the criteria set forth in this new paragraph and in expanded § 138.80(d). "Other evidence" meeting that criteria, if being submitted for the first time, must be submitted at least 45 days before a Certificate is required. The Coast Guard will not accept an "other evidence" method that merely alters or deletes a provision of one of the established methods. For example, a proposed "other evidence" guaranty form that includes a clause requiring COFRs to be renewed each year rather than every three years as provided in the rule would not be accepted. Some commenters suggested that the use of letters of credit be authorized. The use of letters of credit is discussed at the end of this section. Since commenters stated they would not utilize this method, it has not been included separately. However, it is a method that could be proposed under paragraph (b)(5). An applicant seeking approval of "other evidence" must submit a sample, proposed guaranty form.

Paragraph (c): This paragraph has been amended in response to comments that neither OPA 90 nor CERCLA specifically requires the Coast Guard to make co-subscribers to an insurance, surety bond, or financial guaranty jointly and severally liable. The Coast Guard agrees with these comments.

The gist of these comments is that if the Coast Guard would permit co-subscribers to be liable only up to their individual limits of participation on a particular bond, no individual amount of financial responsibility required by OPA 90 and CERCLA (the Total Applicable Amount) would be impossible to write. For example, a major surety broker commented that at least 32 Treasury-approved sureties have indicated to that broker an interest in writing surety bond guaranties. One of these companies is approved to write bonds in excess of $200 million, and the 32 companies have an approved, combined underwriting capacity in excess of $1 billion. Accordingly, the Coast Guard has acceded to this request and has amended proposed § 130.8(c) (new § 138.80(c)) to specifically allow limited (i.e., non-joint and several as among themselves) participation on a single bond or other guaranty.

The Coast Guard will only accept, for purposes of a guaranty, percentages of participation on a vertical, non-layered basis (tiers, one in excess of another, are not acceptable). For example, four insurers may each limit their participation to 25 percent. If a spill results in $10,000 in costs and damages, each insurer would be liable as a guarantor for $2,500. The Coast Guard will not accept a horizontal arrangement whereby one insurer subscribes to a first tier of $2,500, a second insurer to the next tier of $2,500, and so forth. Under this latter, layered arrangement, if the total costs and damages were $10,000, but the first insurer, subscribing for only the first $2,500 layer was bankrupt, the other insurers may be under no obligation to pay. The Coast Guard cannot accept this result.

In addition, the Coast Guard has limited this shared participation to no more than four guarantors executing a guaranty form. The Coast Guard believes this limitation is needed to provide a manageable process for claimants dealing with guarantors. More than four insurers or sureties, however, can still participate in a guaranty by appointing a lead underwriter or surety to act on their behalf, such as is done by Lloyd's Underwriters. Further, in order to facilitate dealing with multiple guarantors and to avoid complications that might ensue if the guarantors do not all agree on a particular action, the Coast Guard is requiring the guarantors to appoint a lead guarantor to act on behalf of, and have the authority to bind, the co-guarantors. Paragraph (c) further provides that if one or more guarantors do not specify percentages of participation, then as between or among them, they share joint and several liability for the total of the unspecified portion. Those guarantors specifying percentages will be liable only up to respective specified limits, as noted above. The Coast Guard considers this an important incentive to permit new providers of financial responsibility to become guarantors under OPA 90 and CERCLA.

Paragraph (d) (Direct action): This paragraph has been rewritten in response to comments requesting clarification of the exposure and limits of liability of guarantors under OPA 90 and CERCLA. Anything that might be considered new, e.g., a guarantor's right to limit its liability to the tonnage on an official tonnage document, has already been discussed herein, or is discussed below in connection with specific guaranty forms. It is appropriate to note in this section of the preamble, however, that a claim against an insurer or a surety in connection with an insurance or surety bond guaranty established under this part does not entitle a claimant to somehow "cut-through" the guarantor and reach the guarantor's ensuring entity. No right of direct action against a guarantor relating to financial responsibility provided under this part endows a claimant with rights against a guarantor's reinsurer. This is not to say, of course, that a guarantor and its reinsurer are in any way precluded from entering into a reinsurance arrangement that permits cut-throughs by claimants against reinsurers. Such cut-through clauses, however, are not imposed by this rule.

Letters of Credit: Section 1016(e) of OPA 90 allows the Coast Guard to consider inclusion of a letter of credit in the permissible methods of establishing financial responsibility. The use of letters of credit as evidence of financial responsibility has never been and is not now being requested by the international vessel operating industry. Years ago, lengthy, in-depth exploration of this matter was undertaken with one of the largest U.S. financial institutions in an effort to determine the value of irrevocable letters of credit as evidence of financial responsibility under direct action statutes. It was concluded by all concerned that such instruments were of little or no value for such purposes. One of the reasons for that conclusion was that, unlike insurance companies defending their own money, banks and other financial institutions that issue letters of credit generally would have no interest in providing the legal and other resources necessary to seriously investigate or defend claims against their principals' money for removal costs and economic damages.

During this rulemaking, not one financial institution came forward to state that it would be willing to issue letters of credit as OPA 90 guaranties, and no commenter explained how letters of credit could be structured so that they could become appropriate mechanisms for the financial responsibility purposes of OPA 90 and CERCLA. Nor has any vessel operator come forward to state that it would be willing to allow a bank to act as a guarantor and put at risk millions of dollars of the operator's money without a vigorous defense mechanism.

In the proposal stage of this rulemaking, it was assumed that there may be some vessel operators who did not wish to use insurance, financial or surety bond guaranties. The Coast Guard, therefore, encouraged comments on how letters of credit might be used as evidence of financial responsibility. Several commenters stated that letters of credit were not viable options for demonstrating financial responsibility.

Although no commenter stated that it would or could use a letter of credit as evidence of financial responsibility, some commenters argued that, nevertheless, the non-inclusion of letters of credit constituted a fatal flaw in the NPRM. The Coast Guard does not

rights against a guarantor's reinsurer. This is not to say, of course, that a guarantor and its reinsurer are in any way precluded from entering into a reinsurance arrangement that permits cut-throughs by claimants against reinsurers. Such cut-through clauses, however, are not imposed by this rule.

Letters of Credit: Section 1016(e) of OPA 90 allows the Coast Guard to consider inclusion of a letter of credit in the permissible methods of establishing financial responsibility. The use of letters of credit as evidence of financial responsibility has never been and is not now being requested by the international vessel operating industry. Years ago, lengthy, in-depth exploration of this matter was undertaken with one of the largest U.S. financial institutions in an effort to determine the value of irrevocable letters of credit as evidence of financial responsibility under direct action statutes. It was concluded by all concerned that such instruments were of little or no value for such purposes. One of the reasons for that conclusion was that, unlike insurance companies defending their own money, banks and other financial institutions that issue letters of credit generally would have no interest in providing the legal and other resources necessary to seriously investigate or defend claims against their principals' money for removal costs and economic damages.

During this rulemaking, not one financial institution came forward to state that it would be willing to issue letters of credit as OPA 90 guaranties, and no commenter explained how letters of credit could be structured so that they could become appropriate mechanisms for the financial responsibility purposes of OPA 90 and CERCLA. Nor has any vessel operator come forward to state that it would be willing to allow a bank to act as a guarantor and put at risk millions of dollars of the operator's money without a vigorous defense mechanism.

In the proposal stage of this rulemaking, it was assumed that there may be some vessel operators who did not wish to use insurance, financial or surety bond guaranties. The Coast Guard, therefore, encouraged comments on how letters of credit might be used as evidence of financial responsibility. Several commenters stated that letters of credit were not viable options for demonstrating financial responsibility.

Although no commenter stated that it would or could use a letter of credit as evidence of financial responsibility, some commenters argued that, nevertheless, the non-inclusion of letters of credit constituted a fatal flaw in the NPRM. The Coast Guard does not agree, given the general convergence of views among the commenters. Therefore, no change is being made, i.e., letters of credit are not being specifically included in this final rule.

No door on any financial responsibility method is being closed with finality, however. The Coast Guard has taken the advice of several commenters that an additional category, permitted by section 1016(e) of OPA 90, be included in the rule, and has added a catchall category, "other evidence of financial responsibility" (see discussion under § 138.80(b)(5)). If an applicant and bank wish to use a letter of credit, it can be proposed, in a specific situation, as "other evidence" under the guidelines established in § 138.80(b)(5).

Paragraph (f): This new paragraph has been added to incorporate the "Applicable Amount Table" that was contained in Appendix G of the NPRM. This paragraph (and the corresponding applicable amount table in each guaranty form) sets out the means by which applicants and guarantors calculate the amounts of financial responsibility required to be established and maintained under this rule. As discussed earlier, this calculation has been amended to reflect the actual limits of liability applicable to vessels under CERCLA, rather than just the limit applicable to vessels carrying hazardous substances as cargo.

Section 138.90 Individual and Fleet Certificates

Fleet Certificates

This rule will further reduce the existing burden on operators of non-tank barges that sometimes carry oily cargo or small amounts of oil or hazardous substances. Such operators currently bear the expense and paperwork burden of obtaining individual COFRs and paying certification fees for a COFR for each barge, just on the chance that one or more of those barges may technically become subject to financial responsibility requirements. Examples of such non-tank barges are deck or hopper barges that might occasionally carry a few barrels of oil, oily metal shavings or non-bulk hazardous substances. Upon request (and with the cooperation of a guarantor), a single COFR, designated as a Fleet Certificate, may now be issued to the operator of these non-tank barges. Only a certified copy of that single Fleet COFR would need to be carried on each barge, and then only when that barge had oil or hazardous substances aboard. See § 138.90(b) of this rule.

Paragraph (b): Paragraph (b) has been changed in one respect. In the proposal, only an insurance guaranty was envisioned as being an appropriate method of establishing financial responsibility for Fleet Certificates. Upon reflection, there is no reason why other types of guaranties should be excluded. This paragraph reflects this broader approach.

Paragraphs (d) and (e): Some of the notice requirements in these paragraphs have been stated more precisely by adding specific time limits.

Section 138.120 Certificates, Denial or Revocation

Some commenters recommended that this section be revised to afford more procedural protections to certificants whose Certificates are subject to revocation. Proposed § 130.12 (new § 138.120) has been redrafted to afford greater procedural protections to applicants and certificants, and to remove ambiguities from the proposed text.

Paragraph (a): This paragraph governs the circumstances under which the issuance of a Certificate may be denied. It is derived from paragraphs (a) and (b) of proposed § 130.12.

Paragraph (b): This paragraph governs the circumstances under which a Certificate may be revoked. It also is derived from paragraphs (a) and (b) of proposed § 130.12.

Paragraph (c): Paragraph (c) governs the circumstances under which a Certificate is automatically revoked, without prior notice. It is derived from paragraph (b) of proposed § 130.12(b).

Paragraph (d): This paragraph is derived from proposed § 130.12(c) and provides that before a Certificate is denied under paragraph (a) of this section or revoked under paragraph (b), the Coast Guard will advise the applicant or certificant, in writing, of the proposed denial or revocation, and the reasons therefore.

Paragraph (e): This paragraph is derived from proposed § 130.12(d) and provides that proposed revocations due to failure to file required financial statements and other information become effective within 10 days of the notice, unless the certificant demonstrates that the information has been filed.

Paragraph (f): This paragraph is derived from proposed § 130.12(e) and provides an applicant or certificant the opportunity to present information showing why a proposed denial under paragraph (a)(1) or (a)(3) of this section or revocation under paragraph (b)(1) or (b)(2) is unwarranted. A new sentence is added to clarify that a Certificate

remains valid pending a decision under this paragraph. Note that these procedures do not apply to an immediate revocation under paragraph (c) of this section.

Paragraph (g): Paragraph (g) is new, and provides an applicant or certificant the opportunity to request reconsideration of an unfavorable decision on issuance or revocation. This paragraph states the applicable procedures for filing a request for reconsideration, and also provides that a revoked certificate remains invalid pending a decision on reconsideration.

Section 138.130 Fees

A few commenters objected to the doubling of the fees charged for applications and for Certificates. The preexisting fees were instituted in 1977 to implement the general user fee statute, now codified at 31 U.S.C. 9701. Since that time the U.S. Consumer Price Index has more than doubled. Office of Management and Budget revised Circular Number A–25 provides general guidelines for calculating the proper level of fees. Applying these principles, the Coast Guard calculates that currently, average COFR revenues do not cover average COFR costs. COFR costs include salaries, rent, computers and other office equipment, travel, and supplies. Doubling the fees, as proposed, will more closely recover for the Coast Guard the costs of administering the vessel financial responsibility certification program. Accordingly, to fulfill the intent of 31 U.S.C. 9101, this rule maintains the fees at the levels proposed. Calculations showing these program costs and projected revenues from the fees are available for inspection in the docket.

The justification for the assessment of different fees for new "first-time" applications than for Certificates is based upon the amount of processing time required by vessel certification program personnel. On average, it takes twice as long to process a new application and issue a new Certificate than it does to issue additional or modified Certificates.

Although vessel certification fees must be paid, the Coast Guard has decided not to collect the application fee for an application filed to obtain a Certificate under part 138 that will replace an existing Certificate issued under 33 CFR 130. This is reflected in the first clause of § 138.130(c), which references § 138.70(c). This approach continues the scheme currently in place whereby an application fee is not paid each time a Certificate is replaced or renewed. The only fee collected in that circumstance is the certification fee.

Section 138.140 Enforcement

Some commenters believed the penalties identified in this section are unfair. This section simply restates, for the convenience of the user, the sanctions prescribed by Congress in OPA 90 and CERCLA. The Coast Guard has no discretion to alter these potential sanctions. Another commenter recommended that an appeals process be incorporated in connection with the Coast Guard's detention of a vessel. This suggestion is beyond the scope of this rulemaking, which deals with methods for demonstrating financial responsibility, and associated matters. It is noted that actions by Coast Guard enforcement personnel are governed by other regulations. For example, certain actions taken by Coast Guard Captains of the Port may be appealed according to procedures elaborated in 33 CFR part 160.

Section 138.150 Service of Process

Text has been added to this section to reflect responsibilities placed upon responsible parties and guarantors by OPA 90, such as receipt of a notice of designation of source. The additional text clarifies that the persons designated by applicants and guarantors as agents to receive service of process also may be served with notices of designations and presentations of claims under the Acts. The Application Form and guaranty forms have also been amended to reflect this clarification.

Appendix A—Application for Certificate

The application form was left basically the same as in the proposal. Substantive changes are as follows:

Part I, Question 4: This portion of the application was amended to permit United States applicants the option of appointing themselves as U.S. agents for service of process, as is currently permitted under part 130. Doing so would preclude the need for the applicant and U.S. agent to complete part IV, Concurrence of Agent. As is presently the case, Certificates will not be issued to vessel operators who have not appointed U.S. agents for service of process, with accompanying written concurrence by such agents. This is the purpose of part IV of the application form. Since 1971, each P&I Club has arranged for a blanket concurrence of agent for service of process to be maintained on file with the Coast Guard's National Pollution Funds Center. This makes it unnecessary for vessel owners and operators who are members of the P&I Clubs, or their U.S. agents for service of process, to complete part IV of the application form.

Because vessel owners and operators who are members of P&I Clubs apparently will not currently permit their Clubs to act as guarantors for purposes of this rule, it has to be further assumed that the P&I Clubs will not be permitted to continue to arrange blanket concurrences of U.S. agents for service of process for purposes of this rule. Accordingly, each applicant who is a member of a P&I Club now will have to: (1) Locate in the United States an entity willing to act as that applicant's agent for service of process and; (2) mail to that agent part IV of an application form, with a request to forward the completed, executed part IV–A to the National Pollution Funds Center (part IV–B is to be completed by the applicant before mailing to the agent). Applicants are encouraged to mail parts I, II and III, fees, and any evidence of financial responsibility directly to the National Pollution Funds Center to minimize mail handling. In most cases, guarantors are instructed by vessel operators to mail guaranties directly to the National Pollution Funds Center.

A U.S. agent for service of process who is willing to act as agent for an operator's entire fleet of vessels need complete part IV–A only once. An agent for service of process, acting solely as agent, does not incur any OPA 90/CERCLA liability for removal costs or damages. An agent's responsibilities are as agreed between itself and the vessel operator on whose behalf the agent agrees to act.

Part II, column (d): As proposed, column (d) requested an applicant to indicate a vessel's "Registration Number". As amended, column (d) requests a "Documentation Number" for U.S.-flag vessels and an "IMO Number" for non-U.S.-flag vessels. A "Registration Number" is requested if an "IMO Number" has not been assigned.

Part III, question 11: Question 11 is an addition to the proposed Part II, and was necessary to accommodate an applicant who wishes to establish evidence of financial responsibility other than by self-insurance, insurance guaranties, surety bond guaranties, or financial guaranties. If that is the case, new question 11 requests the applicant to provide, separately, all of the information required by § 138.80(b)(5) of this rule (see discussion under § 138.80(b)(5)).

Appendices B Through F

These appendices are, respectively, the insurance guaranty form, the master insurance guaranty form, the surety bond guaranty form, the financial guaranty form and the master financial guaranty form. Each of these guaranty forms has undergone numerous changes in format and wording which have no impact on meaning or content. However, each guaranty form has undergone the following common substantive amendments:

Defenses: The defenses are those enumerated in § 138.80(d). Rather than merely say that in the event of a direct action a guarantor may invoke only the rights and defenses specifically permitted by the Acts, those rights and defenses are now mentioned in more detail in each guaranty form. These statutorily permitted rights and defenses comprise defense numbers one and two of a new section in each guaranty form, which new section lists the rights and defenses available to guarantors in the event of a direct action. Right or defense number three confirms that a guarantor shall have the right to limit its OPA 90/CERCLA liability under its guaranty to the amount of that guaranty, despite the number of claimants and venues in which claims are brought against the guarantor for the same incident, release or threatened release. Number four, in this new listing of rights and defenses, provides that a guarantor shall have the right to limit its liability to the amount obtained by using the gross tonnage entered on the involved vessel's international tonnage certificate or other certificate of measurement, whichever is the vessel's official, applicable declaration of tonnage, except where the guarantor knew or should have known that the applicable tonnage certificate was incorrect. The Coast Guard intends the right to so limit liability to be available to guarantors despite any higher or different tonnage which may be listed on the COFR application form or guaranty form. Indeed, the Coast Guard intends this right of a guarantor to so limit its liability to apply even if it is determined after an incident or release that the official tonnage document is incorrect and that a vessel's correctly admeasured tonnage exceeds the tonnage listed on the incorrect tonnage document. The Coast Guard agrees with a commenter that a guarantor should be able to rely on a vessel's official tonnage document rather than find itself liable for a $10 million tank vessel liability when it accepted an exposure and a premium based on a tonnage document that indicated a substantially lesser amount of liability (see the liability minimums for tank vessels under section 1004(a) of OPA 90). This right is being extended to guarantors under the general rulemaking

bond guaranty form, the financial guaranty form and the master financial guaranty form. Each of these guaranty forms has undergone numerous changes in format and wording which have no impact on meaning or content. However, each guaranty form has undergone the following common substantive amendments:

Defenses: The defenses are those enumerated in § 138.80(d). Rather than merely say that in the event of a direct action a guarantor may invoke only the rights and defenses specifically permitted by the Acts, those rights and defenses are now mentioned in more detail in each guaranty form. These statutorily permitted rights and defenses comprise defense numbers one and two of a new section in each guaranty form, which new section lists the rights and defenses available to guarantors in the event of a direct action. Right or defense number three confirms that a guarantor shall have the right to limit its OPA 90/CERCLA liability under its guaranty to the amount of that guaranty, despite the number of claimants and venues in which claims are brought against the guarantor for the same incident, release or threatened release. Number four, in this new listing of rights and defenses, provides that a guarantor shall have the right to limit its liability to the amount obtained by using the gross tonnage entered on the involved vessel's international tonnage certificate or other certificate of measurement, whichever is the vessel's official, applicable declaration of tonnage, except where the guarantor knew or should have known that the applicable tonnage certificate was incorrect. The Coast Guard intends the right to so limit liability to be available to guarantors despite any higher or different tonnage which may be listed on the COFR application form or guaranty form. Indeed, the Coast Guard intends this right of a guarantor to so limit its liability to apply even if it is determined after an incident or release that the official tonnage document is incorrect and that a vessel's correctly admeasured tonnage exceeds the tonnage listed on the incorrect tonnage document. The Coast Guard agrees with a commenter that a guarantor should be able to rely on a vessel's official tonnage document rather than find itself liable for a $10 million tank vessel liability when it accepted an exposure and a premium based on a tonnage document that indicated a substantially lesser amount of liability (see the liability minimums for tank vessels under section 1004(a) of OPA 90). This right is being extended to guarantors under the general rulemaking authority contained in OPA 90 and CERCLA to define terms such as gross tons, and under section 1016(e) of OPA 90. Only a guarantor may invoke this right or defense. The responsible party's liability is based on the actual gross tonnage of the vessel.

Right or defense number five in the new section of the guaranty forms is that "the claim is not one made under either of the Acts." Potential guarantors were concerned that by executing the guaranty form, they would be subjecting themselves to direct action under other laws as well, whether in federal or state courts. The Coast Guard does not believe that this was the intent of Congress. Accordingly, the purpose of this defense is to ensure that guarantors are not subject to direct actions under other laws solely because they executed the OPA 90/CERCLA guaranty to the Coast Guard.

The Coast Guard does not intend, and does not believe Congress intended, that execution of a guaranty appended to or acceptable under this part in any way indicates that the guarantor is implicitly agreeing to liability in an amount or scope different than set forth in such guaranty. No guaranty accepted under and executed for purposes of this part, without more, is to be construed as subjecting the guarantor to unlimited liability in any venue for any purpose. The Coast Guard considers this defense to be absolute, and necessary to effectuate the purposes of OPA 90, in accordance with section 1016(e) of OPA 90.

Joint and several liability: The second common change to the guaranty forms is the granting of an option to co-subscribing guarantors. In the proposed rule, joint guarantors to a single guaranty form would be jointly and severally liable for the full amount of the guaranty. This second common amendment to the guaranty forms, however, permits each joint guarantor the option of limiting its liability to less than the full amount of the guaranty by specifying its particular percentage of participation in each guaranty it co-executes. However, that participation must be in a vertical, non-layered share (see discussion under § 138.80(c)). Any co-insurer not specifying a percentage of participation would be held liable for the unspecified portion of any risk. If no co-insurers specify a percentage of participation, each would be held jointly and severally liable up to the full amount of the guaranty. The Coast Guard will continue to permit acceptable market entities such as the Institute of London Underwriters and the Underwriters at Lloyd's to execute a guaranty under the signature of a lead underwriter, or underwriters, with each co-subscribing, limited-liability signatory counting as only one guarantor. Thus, for example, twenty or so Lloyd's syndicates may join together under one lead underwriter (i.e., one signature on the guaranty form) for 40 percent of a risk, with numerous Institute of London Underwriters joining together under one lead underwriter (i.e., one signature guaranty on the guaranty form) for the remaining 60 percent. This method would count as only two guarantors under this new rule. Co-guarantors must appoint and name on the form a lead guarantor, having authority to bind all co-guarantors. This will facilitate handling of claims or other activities under the Acts. The co-guarantors decide among themselves which guarantor will serve as lead, and certainly should specify among themselves how claims or other activities under the Acts will be handled.

Deletion of the sixty-day notice: The third common change made to the guaranty forms is the deletion of the proposed requirement for a sixty-days written notice of cancellation requirement in connection with laden tankers. The Coast Guard concludes that, based on 23 years experience, thirty days written notice of cancellation of a guaranty will provide adequate notice in almost all cases.

Service of process: The fourth common change is the clarification that an agent designated to receive service of process also is required to receive notices of designation or presentations of claims under the Acts.

Total Applicable Amount: The fifth and final common change made to the guaranty forms is the relaxation in the method of calculating the total applicable amount with respect to vessels carrying hazardous substances as cargo. The relaxation (with respect to guaranties) of the proposed requirement that financial responsibility always would have to be demonstrated at the minimum amount of $5 million, already has been discussed in this preamble under the heading "Applicable Amounts of Financial Responsibility."

As already discussed, a guarantor and its principal or insured may decide among themselves as to the level of premium to be paid for the cover, it being understood that the guarantor will in any case be liable for the limit of liability applicable to the type of vessel in question at the time of the incident, release or threatened release, despite the level of premium accepted by the guarantor. This concept of full coverage, regardless of the type of vessel, applies under current part 130 and was the

basis for certain language in all of the guaranty forms appended to this part. Nevertheless, in view of the relaxation of the total applicable amount calculation, all of the guaranty forms appended to this part (except the two insurance guaranty forms) have been amended to emphasize that concept of full coverage, including tank vessel liability. Thus, the surety bond guaranty form, for example, has been amended by adding the following clause:

> Principal and Surety or Sureties further agree that if at the time of an incident, release, or threatened release a covered vessel is a tank vessel or is carrying a hazardous substance as cargo, the penal sum of this surety bond guaranty automatically increases, if necessary, to the total applicable amount appropriate for such vessel as determined in accordance with the Applicable Amount Table below. In no case, however, shall the penal sum be increased to an amount greater than the total applicable amount.

This change is especially appropriate to the surety bond guaranty form (Appendix D) because of the bond guaranty's provision for showing the penal sum of the guaranty. It was believed appropriate to also amend the financial guaranty forms (Appendices E and F) in order to remind prospective financial guarantors that the amounts of working capital and/or net worth to be demonstrated (in order to qualify as financial guarantors) would be based on the minimum $5 million formula for CERCLA, and $1,200 per gross ton/$10 million for OPA 90, when calculating the total applicable amount to be guarantied.

Appendix D Surety Bond Guaranty Form

A change peculiar to the bond guaranty form is the addition of the following clause:

> If the Principal is responsible for more than one vessel covered by this guaranty, then the penal sum is the total applicable amount for the vessel having the greatest liability under the Acts.

This change was made solely to clarify the surety's limit of OPA 90/CERCLA liability under a bond guaranty, regardless of the actual penal sum indicated on the bond guaranty. This new clause, when coupled with a second new clause that has been added to the form, permits the bond guaranty automatically to cover all of the vessels for which the vessel operator-principal is responsible under the Acts, yet provides protection to the surety if any of such vessels are specifically named in other evidence of financial responsibility (on behalf of the vessel operator-principal named on the bond guaranty) applicable during an incident, release or threatened release giving rise to a claim against the surety or vessel operator-principal. This second new clause appears directly above the name of the surety's U.S. agent for service of process, and will aid in determining the specific vessels covered by a bond guaranty, should such question ever arise.

Assessment

The NPRM was classified as not "major" under former Executive Order 12291, which was revoked and replaced by Executive Order 12866 (September 30, 1993), but was considered significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because of substantial public interest. Many commenters to the NPRM stated that the proposed should be classified as major under Executive Order 12291. In fact, this rulemaking has followed most of the procedural aspects of a "major" rule, notably, the publication of the PRIA for public comment. Executive Order 12866 now governs this proceeding.

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 because it is perceived to raise novel legal and policy issues. It has been reviewed by the Office of Management and Budget under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of DOT. A Regulatory Impact Analysis ("assessment" under the new Executive Order) has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** The purpose of Executive Order 12866 (and its predecessor) is to improve the internal management of the federal government and it does not create any procedural or substantive rights or benefits enforceable at law by a party against the United States.

These regulations are promulgated under section 1016(a) of OPA 90 (33 U.S.C. 2716) and section 108(a)(1) of CERCLA (42 U.S.C. 9608(a)(1)), concerning the "establishment and maintenance" of evidence of financial responsibility for vessels. This rulemaking is intended to implement that joint statutory mandate and, therefore, primarily is limited to matter relating to "establishment and maintenance" of financial responsibility, such as how to apply for a COFR and how to establish evidence of financial responsibility.

This rule imposes no new paperwork burdens on vessel operators. The methods for applying for a COFR and establishing evidence are similar to those in the preexisting regulations under the FWPCA, TAPAA, OCSLAA, and DPA. Vessel operators will be required to complete and submit a prescribed application form for a COFR and, if other than a self-insurer, a prescribed form, completed by their guarantors, evidencing acceptable financial responsibility. A similar requirement, however, is being imposed presently under preexisting 33 CFR parts 130, 131, and 132, and subpart D of part 137. This rule not only adopts these application procedures but actually reduces the paperwork burden by requiring that only one application be submitted under OPA 90/CERCLA, rather than separate applications under the FWPCA, TAPAA, and OCSLAA, which is now the case. The implementation schedule, discussed under § 138.15, will also alleviate some burden in that, for most vessels, new COFRs will only have to be obtained at their normal renewal cycle.

This rule may affect a slightly different population of vessels than under the preexisting regulations. This difference results from section 1016(a) of OPA 90 (33 U.S.C. 2716(a)). Before OPA 90 was enacted, the most encompassing Federal statute concerning financial responsibility (the FWPCA) was limited to vessels over 300 gross tons. (TAPAA, OCSLAA, and DPA have no vessel tonnage limits, but very few vessels of 300 gross tons or less operate under those regimes.) Under section 1016(a)(2) of OPA 90, all vessels "using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States" also must meet the financial responsibility requirements. The exact number of vessels of 300 gross tons or less engaged in transshipping or lightering oil, not already subject to the preexisting regulations, is unknown. The Coast Guard requested information on the vessel population not subject to a financial responsibility regime under Federal law before enactment of OPA 90 and which must now comply with the requirements of section 1016 of OPA 90, but none was provided.

Regulatory Impact Analysis

General Issues

Due to the substantial public interest in this rulemaking, on July 21, 1993, a Preliminary Regulatory Impact Analysis was made available for public comment (58 FR 38994), in accordance with the

request of many commenters to the NPRM. Nearly 600 copies of the PRIA were distributed worldwide. The PRIA analyzed the costs and benefits of four options, namely: (1) Retain the preexisting rules; (2) adopt the NPRM; (3) amend the NPRM to accept entry in a Protection and Indemnity Club (P&I Club) as an asset for self-insurance; and (4) amend the NPRM's self-insurance formulate (i.e., eliminate the working capital requirement and/or the requirement to maintain assets in the United States by allowing worldwide assets to be measured against worldwide liabilities). The PRIA noted that these were the options (not all of which are, necessarily, legally permissible options) most often mentioned in comments to the NPRM.

Over 60 letters commenting on the PRIA were received. The comments fall into four general categories: (1) Those that support the NPRM; (2) those that support the P&I Club membership as an asset option, with an added feature of making the Oil Spill Liability Trust Fund an assignee of the member's rights under the Club policy; (3) those that oppose the NPRM altogether (primarily the P&I Clubs and Lloyd's of London); (4) and those that support enactment of legislation to create a Mandatory Excess Insurance Facility (MEIF), to address tank vessel owners' desires to be granted higher levels of insurance than appear to be available in the commercial marketplace. The MEIF then could also serve as a COFR insurance guarantor.

The central concern expressed by most vessel owners and operators is how to provide evidence of financial responsibility if their P&I Clubs do not issue insurance guaranties. The Clubs act in unison through the International Group of P&I Clubs. They have unequivocally stated in their comments that these same vessel owners and operators will not permit the Clubs to provide insurance guaranties, and that there is no rule change that could be made to induce them to do so. The reason for this position has not, in the Coast Guard's judgment, been made clear nor has it been adequately justified. Thus, the PRIA and final RIA assess the so-called "train-wreck" scenario, i.e., the unlikely scenario whereby the NPRM is adopted as a rule, the P&I Clubs remain prohibited by their shipowner members to provide insurance guaranties, and no other sources of financial responsibility exist. The final RIA takes into account all the comments and concludes that a "train-wreck" is not likely to occur because it appears that other sources of financial responsibility will develop. Even if they do not develop, there need not be a

request of many commenters to the NPRM. Nearly 600 copies of the PRIA were distributed worldwide. The PRIA analyzed the costs and benefits of four options, namely: (1) Retain the preexisting rules; (2) adopt the NPRM; (3) amend the NPRM to accept entry in a Protection and Indemnity Club (P&I Club) as an asset for self-insurance; and (4) amend the NPRM's self-insurance formulate (i.e., eliminate the working capital requirement and/or the requirement to maintain assets in the United States by allowing worldwide assets to be measured against worldwide liabilities). The PRIA noted that these were the options (not all of which are, necessarily, legally permissible options) most often mentioned in comments to the NPRM.

Over 60 letters commenting on the PRIA were received. The comments fall into four general categories: (1) Those that support the NPRM; (2) those that support the P&I Club membership as an asset option, with an added feature of making the Oil Spill Liability Trust Fund an assignee of the member's rights under the Club policy; (3) those that oppose the NPRM altogether (primarily the P&I Clubs and Lloyd's of London); (4) and those that support enactment of legislation to create a Mandatory Excess Insurance Facility (MEIF), to address tank vessel owners' desires to be granted higher levels of insurance than appear to be available in the commercial marketplace. The MEIF then could also serve as a COFR insurance guarantor.

The central concern expressed by most vessel owners and operators is how to provide evidence of financial responsibility if their P&I Clubs do not issue insurance guaranties. The Clubs act in unison through the International Group of P&I Clubs. They have unequivocally stated in their comments that these same vessel owners and operators will not permit the Clubs to provide insurance guaranties, and that there is no rule change that could be made to induce them to do so. The reason for this position has not, in the Coast Guard's judgment, been made clear nor has it been adequately justified. Thus, the PRIA and final RIA assess the so-called "train-wreck" scenario, i.e., the unlikely scenario whereby the NPRM is adopted as a rule, the P&I Clubs remain prohibited by their shipowner members to provide insurance guaranties, and no other sources of financial responsibility exist. The final RIA takes into account all the comments and concludes that a "train-wreck" is not likely to occur because it appears that other sources of financial responsibility will develop. Even if they do not develop, there need not be a "train-wreck" because the shipowners can vote to permit their Clubs to issue the guaranties. The choice of compliance with this rule is entirely up to the shipowners.

Summary of Costs and Benefits

The options have been measured against the fundamental legislative precept, namely, that the polluter should pay promptly and with assurance for removal costs and damages resulting from an oil spill or release of hazardous substances. The option that most closely fulfills this congressional objective is the approach proposed in the NPRM and adopted in this rule. It is legally defensible, it enhances claimants' rights to compensation, it does not impose undue administrative burdens, and it need not impose measurable costs on consumers. On the other hand, the other options all lack the Congressionally intended assurance that the polluter or its guarantor will pay promptly for costs and damages.

The "do nothing" approach means that financial responsibility is maintained at much lower levels than are required by OPA 90, and that CERCLA vessel financial responsibility remains unimplemented. If an oil spill or hazardous substance release occurs under this circumstance, there is serious concern whether a guarantor or the spiller will pay removal costs and damages that exceed the lower, preexisting limits of liability.

The P&I Club membership-as-an-asset approach is not supported by Generally Accepted Accounting Principles, and allows the P&I Clubs to avoid paying claims by invoking an unlimited number of policy defenses and the pay-to-be-paid rule. Under this rule, a Club only is required to "indemnify" its shipowner-member for payments actually made by the shipowner. In the case of bankruptcy, for example, where the shipowner is discharged from paying removal costs and damages, there would be no obligation for the shipowner's P&I Club to pay claimants. This option, even with the added feature of the assignment clause, offers not much greater protection to claimants because policy defenses could still be invoked. Additionally, the assignment clause would require the assent of the P&I Clubs, and there is no evidence in the record that the Clubs would provide this assent. Hence, there is no assurance that shipowners would have this method available to them, even if it could be adopted under OPA 90 and CERCLA.

The Mandatory Excess Insurance Facility (MEIF), proposed primarily to provide shipowners with very high levels of insurance, could provide assurance of payment fulfilling, on the surface, the polluter pays concept. This approach, however, requires legislation, a necessarily long-term endeavor. Its initially conceived funding mechanisms place the cost of this approach on U.S. consumers and taxpayers, but the funding mechanisms have not been fully developed. A full assessment of the MEIF, including the demands that might be placed on the public treasury, has not been possible. Even though the funding details have not been fully developed, the MEIF, overall, would be a more costly option than the NPRM approach. Its tanker owner proponents have stated that their primary objective is to address the lack of high levels of insurance to cover a shipowner's potential unlimited liability under OPA 90. Most of the MEIF's costs are attributable to the higher levels of insurance and not with OPA 90 financial responsibility requirements. For these reasons, and since there appear to be commercial alternatives to P&I Club insurance guaranties, the MEIF currently is not viewed as a timely or practical source of insurance guaranties. Nevertheless, the Coast Guard understands tankers owners' concerns regarding the lack of very high levels of oil pollution insurance in the commercial marketplace. The Coast Guard intends to continue examining the MEIF for this purpose, recognizing that this is, fundamentally, a liability issue beyond the scope of this rulemaking and one that would have to be dealt with through legislation.

The main concern about the NPRM approach is whether it will cause a "train-wreck." Representatives of two new insurance entities now being formed commented in response to the PRIA that they were developing insurance alternatives to P&I Clubs for the purpose of providing financial responsibility guaranties. Representatives of surety companies commented that surety bonds can be a source of financial responsibility guaranties. The major provider of financial responsibility backing for FWPCA COFRs for the inland and near coastal fleet, the Water Quality Insurance Syndicate, has not stated any refusal to issue OPA 90 and CERCL A financial responsibility guaranties. One domestic insurance company and one independent P&I Club voiced an interest as well, and many domestic and foreign insurance companies would be able to issue guaranties immediately, if they chose to do so. Thus, the record demonstrates that alternative sources of

financial responsibility backing are likely to be available, suggesting that the "train-wreck" will not occur.

This is not to say that if the P&I Clubs and their members maintain their refusal to issue financial responsibility guaranties this rule will not result in more costs to the shipowner. Most of those costs are likely to be passed to the end consumer, principally in a fractional increase in the cost of a gallon of refined product, such as gasoline. Assessment of costs is very difficult because, for commercial reasons, the intended insurance providers have been unwilling to submit cost estimates to the docket. On the other hand, one surety company did submit rough cost estimates. The final RIA makes a number of assumptions about possible costs, and calculates the possible range of costs. The presumed "worst-case" cost translates to less than two-fifths of one cent per gallon of refined product.

The final RIA, which is available in the docket for inspection or copying, as indicated under **ADDRESSES**, details the cost calculations and assumptions. The Coast Guard concludes that the cost of the approach taken in this rule is minimal and that the benefits to the public justify these costs. Further, since these costs need not be incurred, the Coast Guard concludes that cost is not the sole controlling factor in the decision on which option to select.

Small Entities

In the NPRM, the Coast Guard solicited comments from small businesses, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), to ascertain whether the proposed rule will have a significant economic impact on their business. One commenter, the Delta Queen Steamboat Company ("Delta"), seeks exemption from this regulation, as it believes is permitted under 5 U.S.C. 603(c)(4).

Delta states that it is a small cruise line operator, whose two overnight, passenger, paddlewheel steamboats operate on the inland rivers of the Mississippi, Ohio, Cumberland and Tennessee. The largest of those vessels, at 3,364 gross tons, requires combined OPA 90 and CERCLA financial responsibility under the NPRM of $7,018,400. Even though the company stated it currently has $500,000,000 of oil pollution insurance with a P&I Club, the Club has indicated that it will not provide a guaranty of insurance for purposes of the COFR rule. Delta also states that it cannot demonstrate financial responsibility using the other methods listed in the NPRM. Therefore, Delta requests exemption from the final COFR rule.

The Coast Guard believes that Delta will be able to demonstrate financial responsibility through alternative means, and is in no different position than any other vessel owner or operator. For example, one of the alternative insurance companies indicated that it believed the cost of insurance for non-tankers would be minimal. The amount of financial responsibility required by Delta is within the capacity of the Water Quality Insurance Syndicate, which has not declared it will not provide the guarantees of insurance, and any number of surety companies.

Title 5 U.S.C. 603(c)(4) provides that consistent with the objectives of the relevant statutes (in this case OPA 90 and CERCLA), this analysis shall discuss significant alternatives, such as an exemption from the rule for small entities. Neither OPA 90 nor CERCLA provide a basis to exempt covered vessels from the requirement to demonstrate evidence of financial responsibility. Accordingly, no provision for exemptions is provided in this rule. As noted above, no exemption is warranted in the case of Delta (or similar entities) as alternative sources of financial responsibility guaranties are expected to be available.

This rule will have minimal direct economic impact on small business. The rule retains procedures presently in effect, and through consolidation, eliminates duplication of effort on the part of the regulated industry. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted these requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The information collection requirements under this rule continue previous requirements. OMB Control Number 2115–0545 was assigned to 33 CFR parts 130, 131, 132, and 137. The collection-of-information requirements in these four parts are being consolidated into part 138. Under this rule, the need to apply for separate Certificates under separate laws is eliminated, along with the associated paperwork. Because of the phase-in provisions in this rule, the information collection requirements in 33 CFR parts 130, 131, 132, and 137 remain in effect for varying periods of time. The table in 33 part 4 is being amended to show this approval number.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612. Section 1018 of OPA 90 specifically allows states to enact their own liability laws, and many states have indeed established their own requirements. Therefore, the Coast Guard has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rulemaking is administrative in nature and has no environmental impact. This rule provides the procedure by which a vessel operator establishes evidence of financial responsibility.

A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 4

Reporting and recordkeeping requirements.

33 CFR Part 130

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 131

Alaska, Insurance, Maritime carriers, Oil pollution, Pipelines, Reporting and recordkeeping requirements.

33 CFR Part 132

Continental shelf, Insurance, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 137

Claims, Harbors, Insurance, Oil pollution, Reporting and recordkeeping requirements, Vessels.

33 CFR Part 138

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 4, 130, 131, 132, and 137, and adds a new part 138, as follows:

PART 4—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

1. The authority citation for part 4 continues to read as follows:

Authority: 44 U.S.C. 3507; 49 CFR 1.45(a).

§ 4.02 [Amended]

2. In § 4.02, add the following entries in numerical order to the table:

Part 130	2115–0545
Part 131	2115–0545
Part 132	2115–0545
Part 138	2115–0545.

PART 130—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION

3. The authority citation for part 130 is revised to read as follows:

Authority: 33 U.S.C. 2716; 49 CFR 1.46.

4. Section 130.0 is added to read as follows:

§ 130.0 Dates.

(a) A Certificate will not be issued under this part on or after December 28, 1997.

(b) A Certificate issued under this part on or after July 1, 1994, has the expiration date specified in § 138.15 of this chapter.

PART 131—FINANCIAL RESPONSIBILITY FOR OIL POLLUTION—ALASKA PIPELINE

5. The authority citation for part 131 is revised to read as follows:

Authority: 33 U.S.C. 2716; 49 CFR 1.46.

6. Section 131.0 is added to read as follows:

§ 131.0 Dates.

(a) A Certificate will not be issued under this part on or after July 1, 1995.

(b) A Certificate issued under this part on or after July 1, 1994, has the expiration date specified in § 138.15 of this chapter.

PART 132—FINANCIAL RESPONSIBILITY FOR OIL POLLUTION—OUTER CONTINENTAL SHELF

7. The authority citation for part 132 is revised to read as follows:

Authority: 33 U.S.C. 2716; 49 CFR 1.46.

8. Section 132.0 is added to read as follows:

§ 132.0 Dates.

(a) A Certificate will not be issued under this part on or after December 28, 1997.

(b) A Certificate issued under this part on or after July 1, 1994, has the

PART 4—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

1. The authority citation for part 4 continues to read as follows:

Authority: 44 U.S.C. 3507; 49 CFR 1.45(a).

§ 4.02 [Amended]

2. In § 4.02, add the following entries in numerical order to the table:

Part 130	2115–0545
Part 131	2115–0545
Part 132	2115–0545
Part 138	2115–0545.

PART 130—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION

3. The authority citation for part 130 is revised to read as follows:

Authority: 33 U.S.C. 2716; 49 CFR 1.46.

4. Section 130.0 is added to read as follows:

§ 130.0 Dates.

(a) A Certificate will not be issued under this part on or after December 28, 1997.

(b) A Certificate issued under this part on or after July 1, 1994, has the expiration date specified in § 138.15 of this chapter.

PART 131—FINANCIAL RESPONSIBILITY FOR OIL POLLUTION—ALASKA PIPELINE

5. The authority citation for part 131 is revised to read as follows:

Authority: 33 U.S.C. 2716; 49 CFR 1.46.

6. Section 131.0 is added to read as follows:

§ 131.0 Dates.

(a) A Certificate will not be issued under this part on or after July 1, 1995.

(b) A Certificate issued under this part on or after July 1, 1994, has the expiration date specified in § 138.15 of this chapter.

PART 132—FINANCIAL RESPONSIBILITY FOR OIL POLLUTION—OUTER CONTINENTAL SHELF

7. The authority citation for part 132 is revised to read as follows:

Authority: 33 U.S.C. 2716; 49 CFR 1.46.

8. Section 132.0 is added to read as follows:

§ 132.0 Dates.

(a) A Certificate will not be issued under this part on or after December 28, 1997.

(b) A Certificate issued under this part on or after July 1, 1994, has the expiration date specified in § 138.15 of this chapter.

PART 137—DEEPWATER PORT LIABILITY FUND

9. The authority citation for part 137 is revised to read as follows:

Authority: 33 U.S.C. 2716; 49 CFR 1.46.

Subparts B and C—[Removed and Reserved]

10. Subparts B and C of part 137 are removed and reserved.

Subpart D—[Amended]

11. Section 137.300 is added to subpart D to read as follows:

§ 137.300 Dates.

(a) The Fund Administrator will not accept certification of coverage of a vessel under this part on or after July 1, 1995.

(b) The Fund Administrator will only accept certification of coverage of a vessel under this part if that vessel holds a Certificate issued under part 130 of this chapter.

Note: The functions of the Fund Administrator have been assumed by the Director, National Pollution Funds Center, United States Coast Guard, 4200 Wilson Boulevard, suite 1000, Arlington, Virginia 22203–1804, attention: cv. The telephone number is 703–235–4813 and the facsimile number is 703–235–4835.

Subpart E—[Removed and Reserved]

12. Subpart E of part 137 is removed and reserved.

13. Part 138 is added to read as follows:

PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS)

Sec.

138.10 Scope.
138.12 Applicability.
138.15 Implementation schedule.
138.20 Definitions.
138.30 General.
138.40 Where to apply for and obtain forms.
138.50 Time to apply.
138.60 Applications, general instructions.
138.65 Issuance and carriage of Certificates.
138.70 Renewal of Certificates.
138.80 Financial responsibility, how established.
138.90 Individual and Fleet Certificates.
138.100 Non-owning operator's responsibility for identification.
138.110 Master Certificates.
138.120 Certificates, denial or revocation.
138.130 Fees.
138.140 Enforcement.
138.150 Service of process.
Appendix A to Part 138—Application Form.
Appendix B to Part 138—Insurance Guaranty Form
Appendix C to Part 138—Master Insurance Guaranty Form
Appendix D to Part 138—Surety Bond Guaranty Form
Appendix E to Part 138—Financial Guaranty Form
Appendix F to Part 138—Master Financial Guaranty Form

Authority: 33 U.S.C. 2716; 42 U.S.C. 9608; sec. 7(b), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 198; 49 CFR 1.46; § 138.30 also issued under the authority of 46 U.S.C. 2103; 46 U.S.C. 14302; 49 CFR 1.46.

§ 138.10 Scope.

This part sets forth the procedures by which an operator of a vessel may establish and maintain, for itself, and, where the operator is not the owner or demise charterer, for the owner and demise charterer of the vessel, evidence of financial responsibility to cover liability of the owner, operator, and demise charterer arising under—

(a) Section 1002 of the Oil Pollution Act of 1990 (OPA 90) (33 U.S.C. 2702); and

(b) Senate 107(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA) (42 U.S.C. 9607(a)(1)).

§ 138.12 Applicability.

(e) This part applies to—

(1) A tank vessel of any size, and to a foreign-flag vessel of any size, using the waters of the exclusive economic zone to transship or lighter oil (whether delivering or receiving) destined for a place subject to the jurisdiction of the United States; and

(2) A vessel using the navigable waters of the United States or any port or place subject to the jurisdiction of the United States, including an offshore facility subject to the jurisdiction of the United States, except—

(i) A vessel that is 300 gross tons or less; and

(ii) A non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.

(b) For the purposes of financial responsibility under OPA 90, a mobile offshore drilling unit is treated as a tank vessel when it is being used as an offshore facility and there is a discharge, or a substantial threat of a discharge, of oil on or above the surface of the water. A mobile offshore drilling unit is treated as a vessel other than a tank vessel when it is not being used as an offshore facility.

(c) For the purposes of financial responsibility under CERCLA, this part applies to a self-propelled vessel over

300 gross tons, even if it does not carry hazardous substances.

(d) This part does not apply to a public vessel.

§ 138.15 Implementation schedule.

(a) A tank vessel is subject to the following implementation schedule:

(1) Until December 28, 1994, a tank vessel is required to carry a Certificate issued under parts 130, 131, and 132 of this chapter, as may be applicable to that vessel. On or after that date, and until July 1, 1995, a non-self-propelled tank vessel must carry a Certificate issued under parts 130, 131, and 132 of this chapter, as may be applicable to that vessel, unless it carries a Certificate issued under this part.

(2) A self-propelled tank vessel to which this part applies and which carries a valid Certificate issued under part 130 of this chapter may not operate on or after December 28, 1994, unless the operator of that vessel has submitted to the Director, NPFC, before that date acceptable evidence of financial responsibility applicable to that vessel under this part. A self-propelled tank vessel covered by that evidence of financial responsibility before December 28, 1994, may continue to operate with the Certificate issued under part 130 of this chapter. The expiration date of the Certificate issued under part 130 of this chapter for that vessel will be deemed to be December 28, 1995, regardless of the expiration date appearing on the Certificate. Thereafter, a Certificate issued under this part is required.

(3) A self-propelled tank vessel to which this part applies, but which does not carry a valid Certificate issued under part 130 of this chapter before December 28, 1994, may not operate on or after that date unless it carries a Certificate under this part.

(4) A non-self-propelled tank vessel to which this part applies may not operate on or after July 1, 1995, without a Certificate issued under this part. A non-self-propelled tank vessel may continue to operate with a Certificate issued under parts 130, 131, and 132 of this chapter, as may be applicable to that vessel, until that date.

(b) A vessel that is not a tank vessel (non-tank vessel) is subject to the following implementation schedule:

(1) Until December 28, 1997, a non-tank vessel is required to carry a Certificate issued under parts 130 and 132 of this chapter, as may be applicable to that vessel, unless that vessel carries a Certificate issued under this part. On or after December 28, 1997, each non-tank vessel subject to this part must carry a Certificate issued under this part.

(2) A Certificate is issued, on and after December 28, 1994, and before December 28, 1997, under parts 130 and 132 of this chapter only to replace a lost Certificate or to replace a Certificate due to a vessel or operator name change (a change of legal identity, such as reincorporation or other reorganization, is not considered a name change). The expiration date that will appear on the replacement Certificate will be the same as the expiration date of the Certificate being replaced. During that three-year time period, with respect to part 132 of this chapter, the expiration date that will appear on a Certificate being replaced, or on an existing Certificate being renewed, will be adjusted to coincide with the expiration date of the Certificate, if any, for that vessel issued under part 130 of this chapter.

(3) A non-tank vessel that has a Certificate issued before December 28, 1994, under part 130 of this chapter is not required to carry a Certificate under this part until the date of expiration of the Certificate issued under part 130 of this chapter.

(4) Except as provided in paragraph (b)(5) of this section, a Certificate issued on and after July 1, 1994, and before December 28, 1994, under parts 130 and 132 of this chapter is issued with an expiration date three years from the date of issuance.

(5) If a Certificate issued under part 130 of this chapter with an expiration date of December 28, 1994, or later is surrendered, and a new Certificate is requested for the same non-tank vessel before December 28, 1994, the new Certificate will have the same expiration date as that of the surrendered Certificate.

(c) On or after July 1, 1994, a vessel that is subject to either part 131 or 132, or both, of this chapter but that is not subject to part 130 of this chapter because the vessel is 300 gross tons or less is not required to comply with part 131 or 132 of this chapter, unless that vessel is subject to this part under § 138.12(a)(1).

§ 138.20 Definitions.

(a) As used in this part (including the appendices to this part), the following terms have the same meaning as set forth in—

(1) Section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701), respecting the financial responsibility referred to in § 138.10(b)(1): *claimant, damages, discharge, exclusive economic zone, navigable waters, mobile offshore drilling unit, natural resources, offshore facility, oil, person, remove, removal, removal costs,* and *United States;* and

(2) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601), respecting the financial responsibility referred to in § 138.10(b)(2): *claimant, damages, environment, hazardous substance, navigable waters, natural resources, person, release, remove, removal,* and *United States.*

(b) As used in this part (including the appendices to this part)—

Acts means OPA 90 and CERCLA.

Applicant means an operator who has applied for a Certificate or for the renewal of a Certificate under this part.

Application means "Application for Vessel Certificate of Financial Responsibility (Water Pollution)", as illustrated in Appendix A of this part.

Cargo means goods or materials on board a vessel for purposes of transportation, whether proprietary or nonproprietary. A hazardous substance or oil carried solely for use aboard the carrying vessel is not "cargo".

CERCLA means title I of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*).

Certificant means an operator who has been issued a Certificate under this part.

Certificate means a "Vessel Certificate of Financial Responsibility (Water Pollution)" issued under this part, unless otherwise indicated.

Director, NPFC, means the head of the U.S. Coast Guard National Pollution Funds Center (NPFC).

Financial responsibility means statutorily required financial ability to meet liability under the Acts.

Fish tender vessel and fishing vessel have the same meaning as set forth in 46 U.S.C. 2101.

Fuel means any oil or hazardous substance used or capable of being used to produce heat or power by burning, including power to operate equipment.

Guarantor means any person who provides evidence of financial responsibility, under the Acts, on behalf of a vessel owner, operator, and demise charterer. A vessel operator who can qualify as a self-insurer may act as both a self-insurer of vessels it operates and as a financial guarantor of other vessels, under § 138.80(b)(4).

Hazardous material means a liquid material or substance that is—

(1) Flammable or combustible;

(2) Designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1221); or

(3) Designated a hazardous material under section 104 of the Hazardous Material Transportation Act (49 App. U.S.C. 1803).

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone.

Insurer is a type of guarantor and means one or more insurance companies, associations of underwriters, shipowners' protection and indemnity associations, or other persons, each of which must be acceptable to the Coast Guard.

Master Certificate means a Certificate issued under this part to a person acting as vessel operator in its capacity as a builder, repairer, scrapper, or seller of vessels.

Offshore supply vessel has the same meaning as set forth in 46 U.S.C. 2101.

OPA 90 means title I of the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*).

Operator means a person who is an owner, a demise charterer, or other contractor, who conducts the operation of, or who is responsible for the operation of, a vessel. A builder, repairer, scrapper, or seller who is responsible, or who agrees by contract to become responsible, for a vessel is an operator.

Owner means any person holding legal or equitable title to a vessel. In a case where a Certificate of Documentation or equivalent document has been issued, the owner is considered to be the person or persons whose name or names appear thereon as owner. For purposes of CERCLA only, "owner" does not include a person who, without participating in the management of a vessel, holds indicia of ownership primarily to protect the owner's security interest in the vessel.

Public vessel means a vessel Owned or bareboat chartered by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.

Self-elevating lift vessel means a vessel with movable legs capable of raising its hull above the surface of the sea and that is an offshore work boat (such as a work barge) that does not engage in drilling operations.

Tank vessel means a vessel (other than an offshore supply vessel, a fishing or fish tender vessel of 750 gross or less that transfers fuel without charge to a fishing vessel owned by the same person, or a towing or pushing vessel (tug) simply because it has in its custody a tank barge) that is constructed or adapted to carry, or that carries, oil

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone.

Insurer is a type of guarantor and means one or more insurance companies, associations of underwriters, shipowners' protection and indemnity associations, or other persons, each of which must be acceptable to the Coast Guard.

Master Certificate means a Certificate issued under this part to a person acting as vessel operator in its capacity as a builder, repairer, scrapper, or seller of vessels.

Offshore supply vessel has the same meaning as set forth in 46 U.S.C. 2101.

OPA 90 means title I of the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*).

Operator means a person who is an owner, a demise charterer, or other contractor, who conducts the operation of, or who is responsible for the operation of, a vessel. A builder, repairer, scrapper, or seller who is responsible, or who agrees by contract to become responsible, for a vessel is an operator.

Owner means any person holding legal or equitable title to a vessel. In a case where a Certificate of Documentation or equivalent document has been issued, the owner is considered to be the person or persons whose name or names appear thereon as owner. For purposes of CERCLA only, "owner" does not include a person who, without participating in the management of a vessel, holds indicia of ownership primarily to protect the owner's security interest in the vessel.

Public vessel means a vessel

Owned or bareboat chartered by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.

Self-elevating lift vessel means a vessel with movable legs capable of raising its hull above the surface of the sea and that is an offshore work boat (such as a work barge) that does not engage in drilling operations.

Tank vessel means a vessel (other than an offshore supply vessel, a fishing or fish tender vessel of 750 gross or less that transfers fuel without charge to a fishing vessel owned by the same person, or a towing or pushing vessel (tug) simply because it has in its custody a tank barge) that is constructed or adapted to carry, or that carries, oil or liquid hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a vessel of the United States;

(2) Operates on the navigable waters; or

(3) Transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

Total Applicable Amount means the amount determined under § 138.80(f)(3).

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

§ 138.30 General.

(a) The regulations in this part set forth the procedures whereby an operator of a vessel subject to this part can demonstrate that it and the owner and demise charterer of the vessel are financially able to meet potential liability for costs and damages in the amounts established by this part. The owner, operator, and demise charterer are strictly, jointly, and severally liable for the costs and damages resulting from an incident or a release or threatened release, but together they need only establish and maintain an amount of financial responsibility equal to the single limit of liability per incident, release, or threatened release. Only that portion of the evidence of financial responsibility under this part with respect to—

(1) OPA 90 is required to be made available by a guarantor for the costs and damages related to an incident where there is not also a release or threatened release; and

(2) CERCLA is required to be made available by a guarantor for the costs and damages related to a release or threatened release where there is not also an incident. A guarantor (or a self-insurer for whom the exceptions to limitations of liability are not applicable), therefore, is not required to apply the entire amount of financial responsibility to an incident involving oil alone or a release or threatened release involving a hazardous substance alone.

(b) Where a vessel is operated by its owner, or the owner is responsible for its operation, the owner is considered to be the operator and shall submit the application for a Certificate. In all other cases, the vessel operator shall submit the application. A time or voyage charterer that does not assume responsibility for the operation of the vessel is not considered an operator for the purposes of this part.

(c) For a United States-flag vessel, the applicable gross tons or gross tonnage, as referred to in this part, is determined as follows:

(1) *For a documented U.S. vessel measured under both 46 U.S.C. Chapters 143 (Convention Measurement) and 145 (Regulatory Measurement).* The vessel's regulatory gross tonnage is used to determine whether the vessel exceeds 300 gross tons where that threshold applies under the Acts. If the vessel's regulatory tonnage is determined under the Dual Measurement System in 46 CFR part 69, subpart D, the higher gross tonnage is the regulatory tonnage for the purposes of the 300 gross ton threshold. The vessel's gross tonnage as measured under the International Convention on Tonnage Measurement of Ships, 1969 ("Convention"), is used to determine the vessel's required amount of financial responsibility, and limit of liability under section 1004(a) of OPA 90 and under section 107(a) of CERCLA.

(2) *For all other United States vessels.* The vessel's gross tonnage under 46 CFR part 69 is used for determining both the 300 gross ton threshold, the required amount of financial responsibility, and limit of liability under section 1004(a) of OPA 90 and under section 107(a) of CERCLA. If the vessel is measured under the Dual Measurement System, the higher gross tonnage is used in all determinations.

(d) For a vessel of a foreign country that is a party to the Convention, gross tonnage, as referred to in this part, is determined as follows:

(1) *For a vessel assigned, or presently required to be assigned, gross tonnage under Annex I of the Convention.* The vessel's gross tonnage as measured under Annex I of the Convention is used for determining the 300 gross ton threshold, if applicable, the required amount of financial responsibility, and limit of liability under section 1004(a) of OPA 90 and under section 107(a) of CERCLA.

(2) *For a vessel not presently required to be assigned gross tonnage under Annex I of the Convention.* The highest gross tonnage that appears on the vessel's certificate of documentation or equivalent document and that is acceptable to the Coast Guard under 46 U.S.C. chapter 143 is used for determining the 300 gross ton threshold, if applicable, the required amount of financial responsibility, and limit of liability under section 1004(a) of OPA 90 and under section 107(a) of CERCLA. If the vessel has no document or the gross tonnage appearing on the document is not acceptable under 46 U.S.C. chapter 143, the vessel's gross tonnage is determined by applying the Convention Measurement System under 46 CFR part 69, subpart B, or if applicable, the Simplified Measurement

System under 46 CFR part 69, subpart E. The measurement standards applied are subject to applicable international agreements to which the United States Government is a party.

(e) For a vessel of a foreign country that is not a party to the Convention, gross tonnage, as referred to in this part, is determined as follows:

(1) *For a vessel measured under laws and regulations found by the Commandant to be similar to Annex I of the Convention.* The vessel's gross tonnage under the similar laws and regulations is used for determining the 300 gross ton threshold, if applicable, the required amount of financial responsibility, and limit of liability under section 1004(a) of OPA 90 and under section 107(a) of CERCLA. The measurement standards applied are subject to applicable international agreements to which the United States Government is a party.

(2) *For a vessel not measured under laws and regulations found by the Commandant to be similar to Annex I of the Convention.* The vessel's gross tonnage under 46 CFR part 69, subpart B, or, if applicable, subpart E, is used for determining the 300 gross ton threshold, if applicable, the required amount of financial responsibility, and limit of liability under section 1004(a) of OPA 90 and under section 107(a) of CERCLA. The measurement standards applied are subject to applicable international agreements to which the United States is a party.

(f) A person who agrees to act as a guarantor or a self-insurer is bound by the vessel's gross tonnage as determined under paragraphs (c), (d), or (e) of this section, regardless of what gross tonnage is specified in an application or guaranty form illustrated in the appendices to this part. Guarantors, however, may limit their liability under a guaranty of financial responsibility to the applicable gross tonnage appearing on a vessel's International Tonnage Certificate or other official, applicable certificate of measurement and shall not incur any greater liability with respect to that guaranty, except when the guarantors knew or should have known that the applicable tonnage certificate was incorrect.

§ 138.40 Where to apply for and obtain forms.

(a) An operator shall file an application for a Certificate and a renewal of a Certificate together with fees and evidence of financial responsibility, with the Coast Guard National Pollution Funds Center at the following address: U.S. Coast Guard, National Pollution Funds Center (cv), 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203–1804, telephone (703) 235–4813, Telex 248324 (Answerback CGNPFC UR), Telefax (703) 235–4835.

(b) Forms may be obtained at the address in paragraph (a) of this section, and all requests for assistance, including telephone inquiries, in completing applications should be directed to the U.S. Coast Guard at that same address.

§ 138.50 Time to apply.

(a) A vessel operator who wishes to obtain a Certificate shall file a completed application form, evidence of financial responsibility and appropriate fees at least 21 days prior to the date the Certificate is required. The Director, NPFC, may waive this 21-day requirement.

(b) The Director, NPFC, generally processes applications in the order in which they are received at the National Pollution Funds Center.

§ 138.60 Applications, general instructions.

(a) The application for a Certificate (Form CG–5585) is illustrated in Appendix A of this part. An application and all supporting documents must be in English. All monetary terms must be expressed in United States dollars.

(b) An authorized official of the applicant shall sign the application. The title of the signer must be shown in the space provided on the application.

(c) The application must be accompanied by a written statement providing authority to sign, where the signer is not disclosed as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director, chief executive officer, or any other duly authorized officer of a corporate applicant.

(d) If, before the issuance of a Certificate, the applicant becomes aware of a change in any of the facts contained in the application or supporting documentation, the applicant shall, within five business days of becoming aware of the change, notify the Director, NPFC, in writing, of the change.

§ 138.65 Issuance and carriage of Certificates.

Upon the satisfactory demonstration of financial responsibility and payment of fees, the Director, NPFC, issues a Vessel Certificate of Financial Responsibility (Water Pollution), the original of which (except as provided in §§ 138.90 (a) and (b) and 138.110(f)) is to be carried aboard the vessel covered by the Certificate. The carriage of a valid Certificate or authorized copy indicates compliance with these regulations. Failure to carry a valid Certificate or authorized copy subjects the vessel to enforcement action, except where a Certificate is removed temporarily from a vessel for inspection by a United States Government official.

§ 138.70 Renewal of Certificates.

(a) An operator shall file a written application for the renewal of a Certificate at least 21 days, but not earlier than 90 days, before the expiration date of the Certificate. Except as provided in paragraph (c) of this section, a letter may be used for this purpose. The Director, NPFC, may waive this 21-day requirement.

(b) The applicant shall identify in the renewal application any changes which have occurred since the original application for a Certificate was filed, and set forth the correct information in full.

(c) An applicant that applies for the first time for a Certificate issued under this part to replace a Certificate issued under part 130 of this chapter shall submit an application form illustrated in Appendix A of this part. An applicant is not required to pay an application fee under § 138.130(c) for this first-time application.

§ 138.80 Financial responsibility, how established.

(a) *General.* In addition to submitting an application and fees, an applicant shall submit, or cause to be submitted, evidence of financial responsibility in an amount determined under § 138.80(f). A guarantor may submit directly to the Director, NPFC, the evidence of financial responsibility.

(b) *Methods.* An applicant shall establish evidence of financial responsibility by one or more of the following methods:

(1) *Insurance.* By filing with the Director, NPFC, an insurance guaranty form CG–5586, illustrated in Appendix B of this part (or, when applying for a Master Certificate, a master insurance guaranty form CG–5586–1, illustrated in Appendix C of this part), executed by not more than four insurers that have been found acceptable by and remain acceptable to the Director, NPFC, for purposes of this part.

(2) *Surety bond.* By filing with the Director, NPFC, a surety bond guaranty form CG–5586–2, illustrated in Appendix D of this part, executed by not more than four acceptable surety companies certified by the United States Department of the Treasury with respect to the issuance of Federal bonds in the maximum penal sum of each bond to be issued under this part.

(3) *Self-insurance.* By filing the financial statements specified in paragraph (b)(3)(i) of this section for the applicant's last fiscal year preceding the date of application and by demonstrating that the applicant maintains, in the United States, working capital and net worth each in amounts equal to or greater than the total applicable amount calculated in accordance with § 138.80(f), based on a vessel carrying hazardous substances as cargo. As used in this paragraph, *working capital* means the amount of current assets located in the United States, less all current liabilities anywhere in the world; and *net worth* means the amount of all assets located in the United States, less all liabilities anywhere in the world. After the initial submission, for each of the applicant's fiscal years, the applicant or certificant shall submit statements as follows:

(i) *Initial and annual submissions.* An applicant or certificant shall submit annual, current, and audited non-consolidated financial statements with the associated notes, certified by an independent Certified Public Accountant. These financial statements must be accompanied by an additional statement from the Treasurer (or equivalent official) of the applicant or certificant certifying both the amount of current assets and the amount of total assets included in the accompanying balance sheet, which are located in the United States. If the financial statements cannot be submitted in non-consolidated form, a consolidated statement may be submitted if accompanied by an additional statement prepared by the same Certified Public Accountant, certifying to the amount by which the applicant's or certificant's—

(A) Total assets, located in the United States, exceed its total (i.e., worldwide) liabilities; and

(B) Current assets, located in the United States, exceed its total (i.e., worldwide) current liabilities. This additional statement must specifically name the applicant or certificant, indicate that the amounts so certified relate only to the applicant or certificant, apart from any other affiliated entity, and identify the consolidated financial statement to which it applies.

(ii) *Semiannual submissions.* When the applicant's or certificant's demonstrated net worth is not at least ten times the total applicable amount of financial responsibility, the applicant's or certificant's Treasurer (or equivalent official) shall file affidavits covering the first six months of the applicant's or certificant's fiscal year. The affidavits must state that neither the working

(3) *Self-insurance.* By filing the financial statements specified in paragraph (b)(3)(i) of this section for the applicant's last fiscal year preceding the date of application and by demonstrating that the applicant maintains, in the United States, working capital and net worth each in amounts equal to or greater than the total applicable amount calculated in accordance with § 138.80(f), based on a vessel carrying hazardous substances as cargo. As used in this paragraph, *working capital* means the amount of current assets located in the United States, less all current liabilities anywhere in the world; and *net worth* means the amount of all assets located in the United States, less all liabilities anywhere in the world. After the initial submission, for each of the applicant's fiscal years, the applicant or certificant shall submit statements as follows:

(i) *Initial and annual submissions.* An applicant or certificant shall submit annual, current, and audited non-consolidated financial statements with the associated notes, certified by an independent Certified Public Accountant. These financial statements must be accompanied by an additional statement from the Treasurer (or equivalent official) of the applicant or certificant certifying both the amount of current assets and the amount of total assets included in the accompanying balance sheet, which are located in the United States. If the financial statements cannot be submitted in non-consolidated form, a consolidated statement may be submitted if accompanied by an additional statement prepared by the same Certified Public Accountant, certifying to the amount by which the applicant's or certificant's—

(A) Total assets, located in the United States, exceed its total (i.e., worldwide) liabilities; and

(B) Current assets, located in the United States, exceed its total (i.e., worldwide) current liabilities. This additional statement must specifically name the applicant or certificant, indicate that the amounts so certified relate only to the applicant or certificant, apart from any other affiliated entity, and identify the consolidated financial statement to which it applies.

(ii) *Semiannual submissions.* When the applicant's or certificant's demonstrated net worth is not at least ten times the total applicable amount of financial responsibility, the applicant's or certificant's Treasurer (or equivalent official) shall file affidavits covering the first six months of the applicant's or certificant's fiscal year. The affidavits must state that neither the working capital nor the net worth have, during the first six months of the current fiscal year, fallen below the applicant's or certificant's required amount of financial responsibility as determined in accordance with this part.

(iii) *Additional submissions.* An applicant or certificant—

(A) Shall, upon request of the Director, NPFC, submit additional financial information; and

(B) Who establishes financial responsibility under paragraph (b)(3) of this section shall notify the Director, NPFC, within five business days of the date the applicant or certificant knows, or has reason to believe, that the working capital or net worth has fallen below the amounts required by this part.

(iv) *Time for submissions.* All required annual financial statements must be received by the Director, NPFC, within 90 days after the close of the applicant's or certificant's fiscal year, and all affidavits required by paragraph (b)(3)(ii) of this section within 30 days after the close of the applicable six-month period. Upon written request, the Director, NPFC, may grant an extension of the time limits for filing the annual financial statements or affidavits. An applicant or certificant that requests an extension must set forth the reason for the extension and deliver the request at least 15 days before the statements or affidavits are due. The Director, NPFC, will not consider a request for an extension of more than 60 days.

(v) *Failure to submit.* The Director, NPFC, may revoke a certificate for failure of the certificant to submit any statement, data, notification, or affidavit required by paragraph (b)(3) of this section.

(vi) *Waiver of working capital.* The Director, NPFC, may waive the working capital requirement for any applicant or certificant that—

(A) Is a regulated public utility, a municipal or higher-level governmental entity, or an entity operating solely as a charitable, non-profit making organization qualifying under section 501(c) Internal Revenue Code. The applicant or certificant must demonstrate in writing that the grant of a waiver would benefit a local public interest; or

(B) Demonstrates in writing that working capital is not a significant factor in the applicant's or certificant's financial condition. An applicant's or certificant's net worth in relation to the amount of its required amount of financial responsibility and a history of stable operations are the major elements considered by the Director, NPFC.

(4) *Financial Guaranty.* By filing with the Director, NPFC, a Financial Guaranty Form CG–5586–3, illustrated in Appendix E of this part (when applying for a Master Certificate, a Master Financial Guaranty Form CG–5586–4, illustrated in Appendix F of this part), executed by not more than four financial guarantors, such as a parent or affiliate acceptable to the Coast Guard. A financial guarantor shall comply with all of the self-insurance provisions of paragraph (b)(3) of this section. In addition, a person that is a financial guarantor for more than one applicant or certificant shall have working capital and net worth no less than the aggregate total applicable amounts of financial responsibility provided as a guarantor for each applicant or certificant, plus the amount required to be demonstrated by a self-insurer under this part, if also acting as a self-insurer.

(5) *Other evidence of financial responsibility.* The Director, NPFC, will not accept a self-insurance method other than the one described in paragraph (b)(3) of this section. An applicant may in writing request the Director, NPFC, to accept a method different from one described in paragraph (b) (1), (2), or (4) of this section to demonstrate evidence of financial responsibility. An applicant submitting a request under this paragraph shall submit the request to the Director, NPFC, at least 45 days prior to the date the Certificate is required. The applicant shall describe in detail the method proposed, the reasons why the applicant does not wish to use or is unable to use one of the methods described in paragraph (b) (1), (2), or (4) of this section, and how the proposed method assures that the applicant is able to fulfill its obligation to pay costs and damages in the event of an incident or a release or threatened release. The Director, NPFC, will not accept a method under this paragraph that merely deletes or alters a provision of one of the methods described in paragraph (b) (1), (2), or (4) of this section (for example, one that alters the termination clause of the insurance guaranty form illustrated in Appendix B of this part). An applicant that makes a request under this paragraph shall provide the Director, NPFC, a proposed guaranty form that includes all the elements described in paragraphs (c) and (d) of this section. A decision of the Director, NPFC, not to accept a method requested by an applicant under this paragraph is final agency action.

(c) *Forms*—(1) *Multiple guarantors.* Four or fewer insurers (a lead underwriter is considered to be one insurer) may jointly execute an insurance guaranty form. Four or fewer sureties (including lead sureties) may

jointly execute a surety bond guaranty form. Four or fewer financial guarantors may jointly execute a financial guaranty form. If more than one insurer, surety, or financial guarantor executes the relevant form—

(i) Each is bound for the payment of sums only in accordance with the percentage of vertical participation specified on the relevant form for that insurer, surety, or financial guarantor. Participation in the form of layering (tiers, one in excess of another) is not acceptable; only vertical participation on a percentage basis is acceptable unless none of the participants specifies a percent of participation. If no percentage of participation is specified for an insurer, surety, or financial guarantor, the liability of that insurer, surety, or financial guarantor is joint and several for the total of the unspecified portions; and

(ii) The guarantors must designate a lead guarantor having authority to bind all guarantors for actions required of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims.

(2) *Operator name.* An applicant shall ensure that each form submitted under this part sets forth in full the correct legal name of the vessel operator to whom a certificate is to be issued.

(d) *Direct Action.* (1) *Acknowledgment.* Any evidence of financial responsibility submitted under this part must contain an acknowledgment by the insurer or other guarantor that an action in court by a claimant (including a claimant by right of subrogation) for costs and damage claims arising under the provisions of the Acts, may be brought directly against the insurer or other guarantor. The evidence of financial responsibility must also provide that, in the event an action is brought under the Acts directly against the insurer or other guarantor, the insurer or other guarantor may invoke only the following rights and defenses:

(i) The incident, release, or threatened release was caused by the willful misconduct of the person for whom the guaranty is provided.

(ii) Any defense that the person for whom the guaranty is provided may raise under the Acts.

(iii) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of the guaranty with respect to an incident or with respect to a release or threatened release.

(iv) A defense relating to the amount of a claim or claims that exceeds the amount of the guaranty, which amount is based on the gross tonnage of the vessel as entered on the vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except when the guarantor knew or should have known that the applicable tonnage certificate was incorrect.

(v) The claim is not one made under either of the Acts.

(2) *Limitation on guarantor liability.* A guarantor that participates in any evidence of financial responsibility under this part shall be liable because of that participation, with respect to an incident or a release or threatened release, in any proceeding only for the amount and type of costs and damages specified in the evidence of financial responsibility. A guarantor shall not be considered to have consented to direct action under any law other than the Acts, or to unlimited liability under any law or in any venue, solely because of the guarantor's participation in providing any evidence of financial responsibility under this part. In the event of any finding that liability of a guarantor exceeds the amount of the guaranty provided under this part, that guaranty is considered null and void with respect to that excess.

(e) *Public access to data.* Financial data filed by an applicant, certificant, and any other person is considered public information to the extent required by the Freedom of Information Act (5 U.S.C. 552) and permitted by the Privacy Act (5 U.S.C. 552a).

(f) *Total applicable amount.* (1) The applicable amount under OPA 90 is determined as follows:

(i) For a tank vessel—

(A) Over 300 gross tons (and a vessel of 300 gross tons or less using the waters of the United States Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States, as specified in § 138.12(a)(1)) but not exceeding 3,000 gross tons, the greater of $2,000,000 or $1,200 per gross ton; and

(B) Over 3,000 gross tons, the greater of $10,000,000 or $1,200 per gross ton.

(ii) For a vessel other than a tank vessel, over 300 gross tons, the greater of $500,000 or $600 per gross ton.

(2) The applicable amount under CERCLA is determined as follows:

(i) For a vessel over 300 gross tons carrying a hazardous substance as cargo, the greater of $5,000,000 or $300 per gross ton.

(ii) For any other vessel over 300 gross tons, the greater of $500,000 or $300 per gross ton.

(3) The total applicable amount is the maximum applicable amount calculated under paragraph (f)(1) of this section plus maximum applicable amount calculated under paragraph (f)(2) of this section.

§ 138.90 Individual and Fleet Certificates.

(a) The Director, NPFC, issues an individual Certificate for each vessel listed on a completed application when the Director, NPFC, determines that acceptable evidence of financial responsibility has been provided and appropriate fees have been paid, except where a Fleet Certificate is issued under this section or where a Master Certificate is issued under § 138.110. Each Certificate of any type issued under this part is issued only in the name of a vessel operator and is effective for not more than three years from the date of issue, as indicated on each Certificate. An authorized official of the applicant may submit to the Director, NPFC, a letter requesting that additional vessels be added to a previously submitted application for an individual Certificate. The letter must set forth all information required in item 5 of the application form. The authorized official shall also submit or cause to be submitted acceptable evidence of financial responsibility, if required, and certification fees for these additional vessels. The certificant shall carry the original individual Certificate on the vessel named on the Certificate, except that a legible copy (certified as accurate by a notary public or other person authorized to take oaths in the United States) may be carried instead of the original if the vessel is an unmanned barge and does not have a document carrying device which the vessel operator believes would offer suitable protection for the original Certificate. If a notarized copy of an individual Certificate is carried aboard a barge, the Certificate shall retain the original in the United States and shall make it readily available for inspection by United States Government officials.

(b) An operator of two or more barges that are not tank vessels and that from time to time may be subject to this part (e.g., a hopper barge over 300 gross tons when carrying oily metal shavings or similar cargo), so long as the operator of such a fleet is a self-insurer or arranges with an acceptable guarantor to cover, automatically, all such barges for which the operator may from time to time be responsible, may apply to the Director, NPFC, for issuance of a Fleet Certificate. A legible copy of the Fleet Certificate, certified as accurate by a notary public or other person authorized to take oaths in the United States, must be carried on each barge when subject to this part. In addition, the certificant shall retain in the United States the original Fleet Certificate and shall make it readily available for inspection by United States Government officials. The original Fleet Certificate, when invalid, must be completed on the reverse side and returned immediately to the Director, NPFC, and all copies must be destroyed. When the certificant ceases to be responsible for a barge covered by a Fleet Certificate, the certificant shall immediately destroy the copy of the Fleet Certificate carried aboard that barge.

(c) A person shall not make any alteration on any Certificate issued under this part or copy of that Certificate, except the notarized certifications permitted in § 138.110(f) and paragraphs (a) and (b) of this section. A Certificate or copy containing any alteration is void.

(d) If, at any time after a Certificate has been issued, a certificant becomes aware of a change in any of the facts contained in the application or supporting documentation, the certificant shall notify the Director, NPFC, in writing within 10 days of becoming aware of the change. A vessel or operator name change or change of a guarantor shall be reported as soon as possible by telefax or other electronic means to the Director, NPFC; and followed by a written notice sent within three business days.

(e) Except as provided in § 138.90(f), at the moment a certificant ceases to be the operator of a vessel for any reason, including a vessel that is scrapped or transferred to a new operator, the individual Certificate naming the vessel, and any copies of the Certificate, are void and their further use is prohibited. In that case, the certificant shall, within 10 days of the Certificate becoming void, complete the reverse side of the original individual Certificate naming the involved vessel and return the Certificate to the Director, NPFC. If the Certificate cannot be returned because it has been lost or destroyed, the certificant shall, within three business days, submit the following information in writing to the Director, NPFC:

(1) The number of the individual Certificate and the name of the vessel.

(2) The date and reason why the certificant ceased to be the operator of the vessel.

(3) The location of the vessel on the date the certificant ceased to be the operator.

(4) The name and mailing address of the person to whom the vessel was sold or transferred.

(f) In the event of the temporary transfer of custody of an unmanned barge certificated under this part, where the certificant transferring the barge

Certificate and shall make it readily available for inspection by United States Government officials. The original Fleet Certificate, when invalid, must be completed on the reverse side and returned immediately to the Director, NPFC, and all copies must be destroyed. When the certificant ceases to be responsible for a barge covered by a Fleet Certificate, the certificant shall immediately destroy the copy of the Fleet Certificate carried aboard that barge.

(c) A person shall not make any alteration on any Certificate issued under this part or copy of that Certificate, except the notarized certifications permitted in § 138.110(f) and paragraphs (a) and (b) of this section. A Certificate or copy containing any alteration is void.

(d) If, at any time after a Certificate has been issued, a certificant becomes aware of a change in any of the facts contained in the application or supporting documentation, the certificant shall notify the Director, NPFC, in writing within 10 days of becoming aware of the change. A vessel or operator name change or change of a guarantor shall be reported as soon as possible by telefax or other electronic means to the Director, NPFC, and followed by a written notice sent within three business days.

(e) Except as provided in § 138.90(f), at the moment a certificant ceases to be the operator of a vessel for any reason, including a vessel that is scrapped or transferred to a new operator, the individual Certificate naming the vessel, and any copies of the Certificate, are void and their further use is prohibited. In that case, the certificant shall, within 10 days of the Certificate becoming void, complete the reverse side of the original individual Certificate naming the involved vessel and return the Certificate to the Director, NPFC. If the Certificate cannot be returned because it has been lost or destroyed, the certificant shall, within three business days, submit the following information in writing to the Director, NPFC:

(1) The number of the individual Certificate and the name of the vessel.

(2) The date and reason why the certificant ceased to be the operator of the vessel.

(3) The location of the vessel on the date the certificant ceased to be the operator.

(4) The name and mailing address of the person to whom the vessel was sold or transferred.

(f) In the event of the temporary transfer of custody of an unmanned barge certificated under this part, where the certificant transferring the barge continues to be liable under the Acts and continues to maintain on file with the Director, NPFC, acceptable evidence of financial responsibility with respect to the barge, the existing individual Certificate remains in effect. A temporary new individual Certificate is not required. A transferee is encouraged to require the transferring certificant to acknowledge in writing that the transferring certificant agrees to remain responsible for pollution liabilities.

§ 138.100 Non-owning operator's responsibility for identification.

(a) Each operator that is not an owner of a vessel certificated under this part, other than an unmanned barge, shall ensure that the original or a legible copy of the demise charter-party (or other written document on the owner's letterhead, signed by the vessel owner, which specifically identifies the vessel operator named on the Certificate) is maintained on board the vessel.

(b) The demise charter-party or other document required by paragraph (a) of this section must be presented, upon request, for examination to a United States Government official.

§ 138.110 Master Certificates.

(a) A contractor or other person who is responsible for a vessel in the capacity of a builder, a scrapper, or seller (including a repairer who agrees to be responsible for a vessel under its custody) may apply for a Master Certificate instead of applying for an individual Certificate for each vessel. A Master Certificate covers all of the vessels subject to this part held by the applicant solely for purposes of construction, repair, scrapping, or sale. A vessel which is being operated commercially in any business venture, including the business of building, repairing, scrapping, or selling (e.g., a slop barge used by a shipyard) cannot be covered by a Master Certificate. Any vessel for which a Certificate is required, but which is not eligible for a Master Certificate, must be covered by either an individual Certificate or a Fleet Certificate.

(b) An applicant for a Master Certificate shall submit an application form in the manner prescribed by § 138.60. An applicant shall establish evidence of financial responsibility in accordance with § 138.80, by submission, for example, of an acceptable Master Insurance Guaranty Form, Surety Bond Guaranty Form, Master Financial Guaranty Form, or acceptable self-insurance documentation. An application must be completed in full, except for Item 5. The applicant shall make the following statement in Item 5: "This is an application for a Master Certificate. The largest tank vessel to be covered by this application is [insert applicable gross tons] gross tons. The largest vessel other than a tank vessel is [insert applicable gross tons] gross tons." The dollar amount of financial responsibility evidenced by the applicant must be sufficient to meet the amount required under this part.

(c) Each Master Certificate issued by the Director, NPFC, indicates—

(1) The name of the applicant (i.e., the builder, repairer, scrapper, or seller);

(2) The date of issuance and termination, encompassing a period of not more than three years; and

(3) The gross tons of the largest tank vessel and gross tons of the largest vessel other than a tank vessel eligible for coverage by that Master Certificate. The Master Certificate does not identify the name of each vessel covered by the Certificate.

(d) Each additional vessel which does not exceed the respective tonnages indicated on the Master Certificate and which is eligible for coverage by a Master Certificate is automatically covered by that Master Certificate. Before acquiring a vessel, by any means, including conversion of an existing vessel, that would have the effect of increasing the certificant's required amount of financial responsibility (above that provided for issuance of the existing Master Certificate), the certificant shall submit to the Director, NPFC, the following:

(1) Evidence of increased financial responsibility.

(2) A new certification fee.

(3) Either a new application or a letter amending the existing application to reflect the new gross tonnage which is to be indicated on a new Master Certificate.

(e) A person to whom a Master Certificate has been issued shall submit to the Director, NPFC, every six months beginning the month after the month in which the Master Certificate is issued, a report indicating the name, previous name, type, and gross tonnage of each vessel covered by the Master Certificate during the preceding six-month reporting period and indicating which vessels, if any, are tank vessels.

(f) The certificant shall ensure that a legible copy of the Master Certificate (certified as accurate by a notary public or other person authorized to take oaths in the United States) is carried aboard each vessel covered by the Master Certificate. The certificant shall retain the original Master Certificate at a location in the United States and shall

make it readily available for inspection by United States Government officials.

(g) Upon revocation or other invalidation of the Master Certificate, the certificant shall return the original Certificate within 10 days to the Director, NPFC. The certificant shall ensure that all copies of the Certificate are destroyed.

§ 138.120 Certificates, denial or revocation.

(a) The Director, NPFC, may deny a Certificate when an applicant—

(1) Willfully or knowingly makes a false statement in connection with an application for an initial or renewal Certificate;

(2) Fails to establish acceptable evidence of financial responsibility as required by this part;

(3) Fails to pay the required application or certificate fees;

(4) Fails to comply with or respond to lawful inquiries, regulations, or orders of the Coast Guard pertaining to the activities subject to this part; or

(5) Fails to timely file required statements, data, notifications, or affidavits.

(b) The Director, NPFC, may revoke a Certificate when a certificant—

(1) Willfully or knowingly makes a false statement in connection with an application for an initial or a renewal Certificate, or in connection with any other filing required by this part;

(2) Fails to comply with or respond to lawful inquiries, regulations, or orders of the Coast Guard pertaining to the activities subject to this part; or

(3) Fails to timely file required statements, data, notifications, or affidavits.

(c) A Certificate is immediately invalid, and considered revoked, without prior notice, when the certificant—

(1) Fails to maintain acceptable evidence of financial responsibility as required by this part;

(2) Is no longer the responsible operator of the vessel in question; or

(3) Alters any Certificate or copy of a Certificate except as permitted by this part in connection with notarized certifications of copies.

(d) The Director, NPFC, advises the applicant or certificant, in writing, of the intention to deny or revoke a Certificate under paragraph (a) or (b) of this section and states the reason therefor. Written advice from the Director, NPFC, that an incomplete application will be considered withdrawn unless it is completed within a stated period, is the equivalent of a denial.

(e) If the intended revocation under paragraph (b) of this section is based on failure to timely file the required financial statements, data, notifications, or affidavits, the revocation is effective 10 days after the date of the notice of intention to revoke, unless, before revocation, the certificant demonstrates to the satisfaction of the Director, NPFC, that the required documents were timely filed or have been filed.

(f) If the intended denial is based on paragraph (a)(1) or (a)(4) of this section, or the intended revocation is based on paragraph (b)(1) or (b)(2) of this section, the applicant or certificant may request, in writing, an opportunity to present information for the purpose of showing that the applicant or certificant is in compliance with the part. The request must be received by the Director, NPFC, within 10 days after the date of the notification of intention to deny or revoke. A Certificate subject to revocation under this paragraph remains valid until the Director, NPFC, issues a written decision revoking the Certificate.

(g) An applicant or certificant whose Certificate has been denied under paragraph (a) of this section or revoked under paragraph (b) or (c) of this section may request the Director, NPFC, to reconsider the denial or revocation. The certificant shall file a request for reconsideration, in writing, to the Director, NPFC, within 20 days of the date of the denial or revocation. The certificant shall state the reasons for reconsideration. The Director, NPFC, issues a written decision on the request within 30 days of receipt, except that failure to issue a decision within 30 days shall be deemed an affirmance of a denial or revocation. Until the Director, NPFC, issues this decision, a revoked certificate remains invalid. A decision by the Director, NPFC, affirming a denial or revocation, is final agency action.

§ 138.130 Fees.

(a) The Director, NPFC, will not issue a Certificate until the fees set forth in paragraphs (c) and (d) of this section have been paid.

(b) Fees must be paid in United States currency by check, draft, or postal money order made payable to the "U.S. Coast Guard". Cash will not be accepted.

(c) Except as provided in § 138.70(c), an applicant that submits an application for the first time under this part, shall pay an initial, non-refundable application fee of $150 for each type of application (i.e., individual Certificate(s), Fleet Certificate, and Master Certificate). An applicant that submits an application for an additional (i.e., supplemental) individual Certificate, or to replace, amend or renew an existing Certificate, is not required to pay a new application fee. However, if an applicant for any reason withdraws or permits the withdrawal of an application for an individual Certificate(s) and the applicant holds no valid individual Certificate(s), in order to reapply for an individual Certificate(s) covering the same or different vessels the applicant shall submit a new application form and an application fee of $150. Similarly, an applicant shall submit a new application form and fee to obtain a new Fleet or Master Certificate following invalidation of a Fleet or Master Certificate.

(d) In addition to the application fee of $150, an applicant shall also pay a certification fee of $80 for each Certificate requested. An applicant shall submit the certification fee for each vessel listed in, or later added to, an application for an individual Certificate(s). An applicant shall submit the $80 certification fee to renew or to reissue a Certificate for any reason, including, but not limited to, a vessel or operator name change or a lost certificate.

(e) A certification fee is refunded, upon receipt of a written request, if the application is denied or withdrawn before issuance of the Certificate. Overpayments of application and certification fees are refunded, on request, only if the refund is for $50 or more. However, any overpayments not refunded will be credited, for a period of three years from the date of receipt of the monies by the Coast Guard, for the applicant's possible future use or transfer to another applicant under this part.

§ 138.140 Enforcement.

(a) Any person who fails to comply with this part with respect to evidence of financial responsibility under section 1016 of OPA 90 (33 U.S.C. 2716) is subject to a civil penalty of not more than $25,000 per day of violation, in accordance with section 4303(a) of OPA 90 (33 U.S.C. 2716a(a)). In addition, under section 4303(b) of that Act (33 U.S.C. 2716a(b)), the Attorney General may secure such relief as may be necessary to compel compliance with this part including termination of operations. Further, any person who fails to comply with this part with respect to evidence of financial responsibility under section 108(a)(1) of CERCLA (42 U.S.C. 9608(a)(1)) is subject to a Class I administrative civil penalty of not more than $25,000 per violation and a Class II administrative civil penalty or judicial penalty of $25,000 per day of violation (or $75,000 per day in the case of a second or subsequent violation), in accordance with section 109(a) of CERCLA (42 U.S.C. 9609(a)).

(b) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any vessel subject to this part that does not produce evidence of financial responsibility required by this part.

(c) The Coast Guard may deny entry to any port or place in the United States or the navigable waters of the United States, and may detain at a port or place in the United States in which it is located, any vessel subject to this part, which, upon request, does not produce evidence of financial responsibility required by this part.

(d) Any vessel subject to this part which is found in the navigable waters without the necessary evidence of financial responsibility is subject to seizure by and forfeiture to the United States.

(e) Knowingly and willfully using an invalid Certificate, or any copy thereof, is fraud.

§ 138.150 Service of process.

(a) When executing the forms required by this part, each applicant and

per day of violation (or $75,000 per day in the case of a second or subsequent violation), in accordance with section 109(a) of CERCLA (42 U.S.C. 9609(a)).

(b) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any vessel subject to this part that does not produce evidence of financial responsibility required by this part.

(c) The Coast Guard may deny entry to any port or place in the United States or the navigable waters of the United States, and may detain at a port or place in the United States in which it is located, any vessel subject to this part, which, upon request, does not produce evidence of financial responsibility required by this part.

(d) Any vessel subject to this part which is found in the navigable waters without the necessary evidence of financial responsibility is subject to seizure by and forfeiture to the United States.

(e) Knowingly and willfully using an invalid Certificate, or any copy thereof, is fraud.

§ 138.150 Service of process.

(a) When executing the forms required by this part, each applicant and guarantor shall designate thereon a person located in the United States as its agent for service of process for purposes of this part and for receipt of notices of designations and presentations of claims under the Acts (collectively referred to as "service of process"). Each designated agent shall acknowledge the designation in writing unless the agent has already furnished the Director, NPFC, with a "master" (i.e., blanket) concurrence showing that it has agreed in advance to act as the United States agent for service of process for the applicant, certificant, or guarantor in question.

(b) If any applicant, certificant, or guarantor desires, for any reason, to change any designated agent, the applicant, certificant, or guarantor shall notify the Director, NPFC, of the change and furnish the relevant information, including the new agent's acknowledgment in accordance with paragraph (a) of this section, if a "master" concurrence is not applicable. In the event of death, disability, or unavailability of a designated agent, the applicant, certificant, or guarantor shall designate another agent in accordance with paragraph (a) of this section within 10 days of knowledge of any such event. The applicant, certificant, or guarantor shall submit the new designation to the Director, NPFC. The Director, NPFC, may revoke a certificate if an applicant, certificant, or guarantor fails to designate and maintain an agent for service of process.

(c) If a designated agent can not be served because of death, disability, unavailability, or similar event and another agent has not been designated under this section, then service of process on the Director, NPFC, will constitute valid service of process. Service of process on the Director, NPFC, will not be effective unless the server—

(1) Sends the applicant, certificant, or guarantor (by registered mail, at its last known address on file with the Director, NPFC), a copy of each document served on the Director, NPFC; and

(2) Attests to this registered mailing, at the time process is served upon the Director, NPFC, indicating that the intent of the mailing is to effect service of process on the applicant, certificant, or guarantor and that service on the designated agent is not possible, stating the reason why.

BILLING CODE 4910-14-M

Appendix A to Part 138 - Application Form

(30 min. per respondent)
Approved OMB No. 2115-0545

DEPARTMENT OF TRANSPORTATION
U. S. COAST GUARD
CG-5585

APPLICATION FOR VESSEL CERTIFICATE OF FINANCIAL RESPONSIBILITY (WATER POLLUTION)

GENERAL
(PART 1 OF 4 PARTS)

INSTRUCTIONS

Please type or print and submit this application to Director, Coast Guard National Pollution Funds Center (cv), 4200 Wilson Boulevard, Suite 1000, Arlington, VA 22203-1804. The application is in four parts: Part I - General; Part II - Evidence of Financial Responsibility; Part III - Declaration; Part IV - Concurrence of Agent. Applicants must answer all applicable questions. If a question does not apply, answer "not applicable." Incomplete applications will be returned. If additional space is required, supplemental sheets may be attached. All information must be provided in the English language.

THIS SPACE FOR USE BY USCG ONLY

1. (a) Legal name of applicant (name of responsible operator of all vessels listed in Part II):

(b) English equivalent of legal name if customarily written in language other than English:

(c) Trade name, if any:

2. Is this the first time the above-named applicant is submitting application Form CG-5585?

☐ YES ☐ NO

If "NO", what Coast Guard control number was assigned to the first application Form CG-5585?

_____

3. State applicant's legal form of organization, i.e., whether operating as an individual, corporation, partnership, association, joint stock company, business trust, or other organized group of persons (whether incorporated or not) or as a receiver, trustee, or other liquidating agent and briefly describe current business activities and length of time engaged therein.

(a) If a corporation, association, or other organization, indicate:

State in the United States, or foreign country, in which incorporated or organized:	Date of incorporation or organization:

(b) If a partnership, provide name and address of each partner:

4. Name and address of applicant's United States agent or other person authorized by applicant to accept service of process and receipt of notices of designations and presentations of claims in the United States (collectively referred to as "service of process"). (See Part IV) (U. S. applicants may appoint themselves as agent, eliminating the need to complete Part IV.)

PREVIOUS EDITION IS OBSOLETE

Reverse of CG-5585

EVIDENCE OF FIN

5. List all applicant's vessels which re
column (f) indicate the number "1"
the operator is not the registered ow

NAME OF VESSEL	TYP VE (Se be
(a)	

NOTE: Designate the type of vessel by usin

CARGO VESSELS, SELF-PROPELLED

Breakbulk freighter	10
Containership *	11
Roll on-roll off	12
Barge carrier (e.g., lash, seabee)	13
Combination breakbulk containership *	14
Combination roll on-roll off containership *	15
Combination barge carrier containership *	16
Tanker	17
Dry bulk carrier	18
All other self-propelled cargo vessels	19
Oil/bulk/ore carrier (OBO)	20

* Containership categories should be as
multi-tier container deckloads.
** Passenger categories should be assign
*** Includes floating cranes, dredges, dock

5. (g) If applicant indicated "2" for any v

NAME OF VESSEL	

Reverse of CG-5585

EVIDENCE OF FINANCIAL RESPONSIBILITY (PART II OF 4 PARTS)

5. List all applicant's vessels which require Certificates of Financial Responsibility under 33 CFR 138.12. In column (f) indicate the number "1" if the operator is also the registered owner. Indicate "2" in column (f) if the operator is not the registered owner.

NAME OF VESSEL (a)	TYPE OF VESSEL *(See note below)* (b)	COUNTRY OF REGISTRY (c)	US VESSELS: Documentation Number FOREIGN VESSELS: International Maritime Organization (IMO) Number or Country of Registration Number if no IMO number has been assigned. (d)	GROSS TONS (e)	"1" or "2" (f)

NOTE: Designate the type of vessel by using a number from one of the following categories:

CARGO VESSELS, SELF-PROPELLED

- Breakbulk freighter 10
- Containership * 11
- Roll on–roll off 12
- Barge carrier *(e.g., lash, seabee)* 13
- Combination breakbulk containership * 14
- Combination roll on–roll off containership * 15
- Combination barge carrier containership * 16
- Tanker 17
- Dry bulk carrier 18
- All other self–propelled cargo vessels 19
- Oil/bulk/ore carrier (OBO) 20

PASSENGER VESSELS

- Passenger vessel * * 30
- Combination passenger/cargo vessel * * 31
- Ferry * * 22

RECREATIONAL VESSELS

- All types of pleasure craft 40

UTILITY CRAFT

- Tank barge 50
- Tug and towboat 51
- Barge and scow 52
- Mobile offshore drilling unit 53
- Fishing vessel 54
- Factory vessel 55
- Research vessel 56
- All other utility craft *** 57

MISCELLANEOUS

- Vessels not otherwise specified 60

* Containership categories should be assigned only to vessels having fixed container cells or regularly carrying multi–tier container deckloads.

** Passenger categories should be assigned only to vessels carrying more than 12 passengers for hire.

*** Includes floating cranes, dredges, docks, etc.

5. (g) If applicant indicated "2" for any vessel listed above in column 5(f), indicate:

NAME OF VESSEL	OWNER	OWNER'S MAILING ADDRESS

PART II (CONT'D)

6. Items 7 through 11 are methods of establishing financial responsibility. Check the appropriate box(es) below and answer only the item(s) which are applicable to this application:

☐ Insurance *(Answer item 7)*	☐ Surety Bond *(Answer item 8)*	☐ Financial Guaranty *(Answer item 9)*	☐ Self-Insurance *(Answer item 10)*	☐ Other evidence *(Answer item 11)*

7. Name and address of applicant's insurance guarantor *(evidence of insurance acceptable to the Director, Coast Guard National Pollution Funds Center, on Insurance Guaranty Form CG-5586 or Master Insurance Guaranty Form CG-5586-1, must be filed before a Certificate will be issued)*:

8. Total amount of surety bond guaranty.

$_____

Name and address of applicant's surety bond guarantor *(Surety Bond Guaranty Form CG-5586-2 must be filed before a Certificate will be issued)*:

9. Name and address of applicant's financial guarantor *(Financial Guaranty Form CG-5586-3, or Master Financial Guaranty Form CG-5586-4, and all required financial data must be filed before a Certificate will be issued)*:

Financial Guarantor's fiscal year:

_____ (Month) _____ (Day) to _____ (Month) _____ (Day)

10. If applicant intends to qualify as a self-insurer, attach all required financial data and indicate fiscal year:

_____ (Month) _____ (Day) to _____ (Month) _____ (Day)

11. If applicant intends to qualify through other evidence, supply all information required by 33 CFR 138.80(b)(5).

Reverse of CG-5585

DEC

12. Applicant's mailing address (street, number, po box, city, state or country. Indicate ZIP code if United States):

13. Telefax number and/or telex number and answ

I declare that I have examined th best of my knowledge and belief, it is true above is the responsible operator of all ve agent designated in item 4 of Part I above Director, Coast Guard National Pollution event, the Director, Coast Guard National signed this application in my capacity as a pursuant to the power vested in me by the

IMPORTANT

DATE	SIGNATURE OF AU

NOTE: Please be sure that Parts I, II, and III have b Part IV, attached.

NO CERTIFICAT FORM HA

COMMENTS:

Any person who knowingly and willfully makes a

Reverse of CG-5585

DECLARATION (PART III OF 4 PARTS)

12. Applicant's mailing address (street, number, post office box, city, state or country. Indicate ZIP code if in the United States):	14. Type or print in this space the name and title of the offical who is signing this application: 15. Address of principal office in the United States *(if any)*.
13. Telefax number and/or telex number and answerback:	16. Telephone no. *(area code and number)*:

I declare that I have examined this application, including any accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Furthermore, the applicant named in item 1(a) of Part I above is the responsible operator of all vessels now listed in or later added to this application. I agree that in the event the agent designated in item 4 of Part I above, or that agent's replacement as may be designated later with the approval of the Director, Coast Guard National Pollution Funds Center, cannot be served due to death, disability, unavailability, or similar event, the Director, Coast Guard National Pollution Funds Center, is considered the agent for service of process. I have signed this application in my capacity as an authorized official of the applicant, or, if acting under a power of attorney, pursuant to the power vested in me by the applicant as evidenced by the attached power of attorney.

IMPORTANT

DATE	SIGNATURE OF AUTHORIZED OFFICIAL

NOTE: Please be sure that Parts I, II, and III have been completed in full and that Part III has been dated and signed. Then proceed to Part IV, attached.

NO CERTIFICATE WILL BE ISSUED UNLESS A COMPLETED APPLICATION FORM HAS BEEN RECEIVED, PROCESSED AND APPROVED.

COMMENTS:

Any person who knowingly and willfully makes a false statement in this application is subject to the sanctions prescribed in 18 U.S.C. 1001.

CONCURRENCE OF AGENT (PART IV OF 4 PARTS)

PART IV–A must be completed by the person designated in item 4 of Part I to serve as applicant's United States agent for service of process. Part IV–B must be completed by the applicant. After Parts IV–A and IV–B are completed, Part IV should be submitted to the Director, Coast Guard National Pollution Funds Center, by the applicant or by the agent, either separately or together with Parts I, II, and III. *(Part IV need not be completed if the agent designated in item IV of Part I already has submitted to the U.S. Coast Guard an acceptable blanket Concurrence of Agent, agreeing to serve on behalf of certain applicants who designate that agent. Part IV also need not be completed if the applicant is a United States entity and has appointed itself as agent in item 4 of Part I.)*

PART IV – A

It is hereby agreed that _____

shall serve as the applicant's United States agent for service of process for purposes of 33 CFR part 138. This designation and agreement shall cease immediately in the event the applicant designates a new agent acceptable to the Director, National Pollution Funds Center.

Date: _____

Signature of person signing on behalf of agent: _____

Title: _____

Business address: _____

_____

PART IV – B *(TO BE COMPLETED BY APPLICANT)*

Name of applicant (from item I(a)): _____

Signature of authorized official signing on behalf of applicant: _____
(Person signing here should also sign in appropriate place on Part III)

Date: _____

Type or Print Name and Title: _____

Appendix B to Pa

DEPART

INSURANCE GUARANTY
RESPONSIBILITY UNDER
COMPREHENSIVE ENVIRO
LIABI

The undersigned insure
that for purposes of com
provisions of the Oil Po
Comprehensive Environmenta
Act, as amended ("CERCLA"),
the vessel owners, operat
"Assureds") of each respec
("covered vessel") are insu
damages to which the Assu
1002 of OPA 90, as limited
of CERCLA, as limited by s
an amount equal to the
accordance with the Applic
covered vessel.

The amount and scope o
Insurer is not conditioned
agreement, or understandi
Coverage hereunder is
responsibility under each
effect at the time of th
release(s) giving rise to c

_____

with offices at _____

_____

is designated as the Insure
of process for the purpos
notices of designation and
If the designated agent can
unavailability, the Directo
Center ("Center"), is the ag

The Insurer consents
claim, including any claim
damages arising under secti
1004(a), or section 107(a
107(c)(1)(A) and (B), or bo
direct action under OPA 90
incident shall not exceed t
Applicable Amount Table bel

Appendix B to Part 138 - Insurance Guaranty Form

Insurance Co. Form No. _____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5586

INSURANCE GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER THE OIL POLLUTION ACT OF 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED

The undersigned insurer or insurers ("Insurer") hereby certifies that for purposes of complying with the financial responsibility provisions of the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), (referred to collectively as the "Acts"), the vessel owners, operators, and demise charterers ("Assured" or "Assureds") of each respective vessel named in the schedules below ("covered vessel") are insured by it against liability for costs and damages to which the Assureds may be subject under either section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below, respecting each covered vessel.

The amount and scope of insurance coverage hereby provided by the Insurer is not conditioned or dependent in any way upon any contract, agreement, or understanding between an Assured and the Insurer. Coverage hereunder is for purposes of evidencing financial responsibility under each of the Acts, separately, at the levels in effect at the time of the incident(s), release(s) or threatened release(s) giving rise to claims.

_____,
(Name of Agent)

with offices at _____

_____,

is designated as the Insurer's agent in the United States for service of process for the purposes of this guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, Coast Guard National Pollution Funds Center ("Center"), is the agent for these purposes.

The Insurer consents to be sued directly with respect to any claim, including any claim by right of subrogation, for costs and damages arising under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, against any Assured. However, in any direct action under OPA 90 the Insurer's liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA,

the Insurer's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Insurer shall be entitled to invoke only the following rights and defenses in any direct action:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Assured.

(2) Any defense that the Assured may raise under the Acts.

(3) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of this guaranty with respect to an incident or with respect to a release or threatened release.

(4) A defense relating to the amount of a claim or claims that exceeds the amount of this guaranty, which amount is based on the gross tonnage of a covered vessel as entered on the vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the guarantor knew or should have known that the applicable tonnage certificate was incorrect.

(5) The claim is not one made under either of the Acts.

No more than four Insurers (including lead underwriters) may execute this guaranty. If more than one Insurer executes this guaranty, each Insurer binds itself jointly and severally for the purpose of allowing joint action or actions against any or all of the Insurers, and for all other purposes each Insurer is bound for the payment of sums only in accordance with the percentage of participation set forth opposite the name of the Insurer below. If no percentage of participation is indicated for an Insurer or Insurers, the liability of such Insurer or Insurers shall be joint and several for the total of the unspecified portions.

_____
(Name of lead guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Insurer executes this guaranty).

The insurance evidenced by this guaranty shall be applicable only in relation to each incident, release, and threatened release occurring on or after the effective date and before the termination date of this guaranty and shall be applicable only in relation to each incident, release and threatened release giving rise to claims under section 1002 of OPA 90 or section 107(a)(1) of CERCLA, or both, with respect to any of the covered vessels.

The effective date of this guaranty for each covered vessel is the date the vessel is named in or added to the schedules below. For each covered vessel, the termination date of this guaranty is 30 days

after the date of receipt
Insurer has elected to t
guaranty and has so notif
schedule below.

Termination of this g
affect the liability of th
release, or threatened r
termination becomes effecti

If, during the curren
that an additional vessel
Insurer accedes to that re
vessel is considered inclu
vessel.

Title 33 CFR part 138

Effective date of cove
guaranty:

_____

_____

_____

_____

_____

By: _____

_____

_____

[NOTE: For each additional
manner as for Insurer above.

after the date of receipt by the Center of written notice that the Insurer has elected to terminate the insurance evidenced by this guaranty and has so notified the vessel operator identified on the schedule below.

Termination of this guaranty as to any covered vessel shall not affect the liability of the Insurer in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

If, during the currency of this guaranty, an Assured requests that an additional vessel be made subject to this guaranty and if the Insurer accedes to that request and so notifies the Center, then that vessel is considered included in the schedules below as a covered vessel.

Title 33 CFR part 138 governs this guaranty.

Effective date of coverage for vessels originally named in this guaranty:

_____
(day/month/year)

_____
(Name of Insurer)

_____
(Percentage of Participation)

_____
(Mailing Address)

_____

_____

By: _____
(Signature of Official Signing
On Behalf of Insurer)

_____
(Typed Name and Title of Signer)

[NOTE: For each additional Insurer, provide information in the same manner as for Insurer above.]

APPLICABLE AMOUNT TABLE

(I) Applicable Amount Under the Oil Pollution Act of 1990

VESSEL TYPE	VESSEL'S GROSS TONS	APPLICABLE AMOUNT
Tank vessel	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of $2,000,000 or $1,200 per gross ton.
Tank vessel	Over 3,000 gross tons.	The greater of $10,000,000 or $1,200 per gross ton.
Vessel other than a tank vessel	Over 300 gross tons.	The greater of $500,000 or $600 per gross ton.

* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

VESSEL TYPE	APPLICABLE AMOUNT
Vessel over 300 gross tons carrying hazardous substance as cargo	The greater of $5,000,000 or $300 per gross ton.
Any other vessel over 300 gross tons	The greater of $500,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

CG-5586

SCHE

VESSEL

Insurance Guaranty Form CG-5586 No._____

SCHEDULE OF VESSELS

VESSEL	GROSS TONS	ASSURED OPERATOR

Insurance Guaranty Form CG-5586 No._____

SCHEDULE OF VESSELS
ADDED TO ABOVE VESSELS

VESSEL	GROSS TONS	ASSURED OPERATOR	DATE ADDED

Insurance Guaranty Form CG-5586 No._____

Appendix C to Part 138

DEPARTME
U.S

MASTER INSURANCE GUARAN
RESPONSIBILITY FOR BUILDER
VESSELS UNDER THE O
COMPREHENSIVE ENVIRONM
LIABILIT

The undersigned insu
certifies that for purpos
responsibility provisions
("OPA 90") and the Com
Compensation, and Liability
to collectively as the "Acts

_____
(Nam

and any separate demise
referred to as "Assured")
insured by it against liab
the Assured may be subject
as limited by section 1004(a
limited by sections 107(c)(
equal to the total applica
with the Applicable Amount
vessel. This guaranty is
for which either or both A
and which the Assured holds
scrapping, or sale.

The amount and scope o
by the Insurer is not condi
any contract, agreement, or
the Insurer. Coverage here
financial responsibility und
the levels in effect at the
or threatened release(s) giv

_____
(

with offices at _____

_____

is designated as the Insure
service of process for purpo
of notices of designation ar
Acts. If the designated ag

Appendix C to Part 138 - Master Insurance Guaranty Form

Insurance Co. Form No. _____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5586-1

MASTER INSURANCE GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY FOR BUILDERS, REPAIRERS, SCRAPPERS, OR SELLERS OF VESSELS UNDER THE OIL POLLUTION ACT OF 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED

The undersigned insurer or insurers ("Insurer") hereby certifies that for purposes of complying with the financial responsibility provisions of the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), (referred to collectively as the "Acts"),

_____
(Name of Assured Operator)

and any separate demise charterer and owner (collectively referred to as "Assured") of each vessel covered hereunder are insured by it against liability for costs and damages to which the Assured may be subject under either section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below, respecting each covered vessel. This guaranty is applicable in relation to any vessel for which either or both Acts require financial responsibility and which the Assured holds for purposes of construction, repair, scrapping, or sale.

The amount and scope of insurance coverage hereby provided by the Insurer is not conditioned or dependent in any way upon any contract, agreement, or understanding between the Assured and the Insurer. Coverage hereunder is for purposes of evidencing financial responsibility under each of the Acts, separately, at the levels in effect at the time of the incident(s), release(s), or threatened release(s) giving rise to claims.

_____
(Name of Agent)

with offices at _____

_____,

is designated as the Insurer's agent in the United States for service of process for purposes of this guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death,

disability, or unavailability, the Director, Coast Guard National Pollution Funds Center ("Center"), is the agent for these purposes.

The Insurer consents to be sued directly with respect to any claim, including any claim by right of subrogation, for costs and damages arising under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, against the Assured. However, in any direct action under OPA 90, the Insurer's liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA, the Insurer's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Insurer shall be entitled to invoke only the following rights and defenses in any direct action:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Assured.

(2) Any defense that the Assured may raise under the Acts.

(3) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of this guaranty with respect to an incident or with respect to a release or threatened release.

(4) A defense relating to the amount of a claim or claims that exceeds the amount of this guaranty, which amount is based on the gross tonnage of a covered vessel as entered on the vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the guarantor knew or should have known that the applicable tonnage certificate was incorrect.

(5) The claim is not one made under either of the Acts.

No more than four Insurers (including lead underwriters) may execute this guaranty. If more than one Insurer executes this guaranty, each Insurer binds itself jointly and severally for the purpose of allowing joint action or actions against any or all of the Insurers, and for all other purposes each Insurer is bound for the payment of sums only in accordance with the percentage of participation set forth opposite the name of the Insurer below. If no percentage of participation is indicated for an Insurer or Insurers, the liability of such Insurer or Insurers shall be joint and several for the total of the unspecified portions.

_____

(Name of lead guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including

but not limited to re
advertisement of a designa
claims (inapplicable if only

The insurance evidenced
only in relation to each inc
occurring on or after the
before the termination da
applicable only in relati
threatened release giving r
OPA 90 or section 107(a)(1)
any covered vessel. The t
date of receipt by the Cent
has elected to terminate the
and has so notified the abov

Termination of this gu
of the Insurer in connect
threatened release occurrin
becomes effective.

Title 33 CFR part 138 g

Effective Date: _____

_____

(

_____

(Perce

_____

_____

_____

By: _____

(Signat
On

_____

(Typed N

[NOTE: For each additional I
the same manner as for Insure

Master Insurance Guaranty Form CG-5586-1 No. ____

but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Insurer executes this guaranty).

The insurance evidenced by this guaranty shall be applicable only in relation to each incident, release, or threatened release occurring on or after the effective date of this guaranty and before the termination date of this guaranty and shall be applicable only in relation to each incident, release and threatened release giving rise to claims under section 1002 of OPA 90 or section 107(a)(1) of CERCLA, or both, with respect to any covered vessel. The termination date is 30 days after the date of receipt by the Center of written notice that the Insurer has elected to terminate the insurance evidenced by this guaranty and has so notified the above named Assured operator.

Termination of this guaranty does not affect the liability of the Insurer in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

Title 33 CFR part 138 governs this guaranty.

Effective Date: _____
(day/month/year)

_____
(Name of Insurer)

_____
(Percentage of Participation)

_____
(Mailing Address)

_____

_____

By: _____
(Signature of Official Signing
On Behalf of Insurer)

_____
(Typed Name and Title of Signer)

[NOTE: For each additional Insurer, provide information in the same manner as for Insurer above.]

Master Insurance Guaranty Form CG-5586-1 No. _____

APPLICABLE AMOUNT TABLE

(I) Applicable Amount Under the Oil Pollution Act of 1990

VESSEL TYPE	VESSEL'S GROSS TONS	APPLICABLE AMOUNT
Tank vessel	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of $2,000,000 or $1,200 per gross ton.
Tank vessel	Over 3,000 gross tons.	The greater of $10,000,000 or $1,200 per gross ton.
Vessel other than a tank vessel	Over 300 gross tons.	The greater of $500,000 or $600 per gross ton.

* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

VESSEL TYPE	APPLICABLE AMOUNT
Vessel over 300 gross tons carrying hazardous substance as cargo	The greater of $5,000,000 or $300 per gross ton.
Any other vessel over 300 gross tons	The greater of $500,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

CG-5586-1

Appendix D to Part 1

DEPARTMEN
U.S

SURETY BOND GUARANTY F
RESPONSIBILITY UNDE
AND THE COMPREHENS
COMPENSATION, AN

_____
(Nam

of _____
(Cit

("Principal"), and the unde
("Surety" or "Sureties"), e
Department of the Treasury t
an approved surety, are he
States of America and other

$_____

for costs and damages for wh
Oil Pollution Act of 199
Environmental Response, Co
amended ("CERCLA") (referre
"Principal" includes, in ad
owner and demise charterer
guaranty ("covered vessel").

The Principal has elect
Guard National Pollution Fun
guaranty as evidence of fin
the Coast Guard a Certific
Responsibility (Water Pollut
any liability for costs and
covered vessel under secti
section 1004(a), or section
sections 107(c)(1)(A) and (B

The Surety agrees that
guaranty shall be available
America or other claimants
which the Principal may be he
sum shall be the total
accordance with the Applica
payment we, the undersigne
executors, administrators, s
severally.

No more than four Sure
execute this guaranty. If t
executing this guaranty, we,
penal sum jointly and sever
joint action or actions aga

Appendix D to Part 138 - Surety Bond Guaranty Form

SURETY CO. BOND NO. _____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5586-2

SURETY BOND GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER THE OIL POLLUTION ACT OF 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED

_____
(Name of Vessel Operator)

of _____,
(City, State and Country)

("Principal"), and the undersigned surety company or companies ("Surety" or "Sureties"), each authorized by the United States Department of the Treasury to do business in the United States as an approved surety, are held and firmly bound unto the United States of America and other claimants in the penal sum of

$_____

for costs and damages for which the Principal is liable under the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") (referred to collectively as the "Acts"). "Principal" includes, in addition to the vessel operator, the owner and demise charterer of each vessel covered by this guaranty ("covered vessel").

The Principal has elected to file with the Director, Coast Guard National Pollution Funds Center ("Center") this surety bond guaranty as evidence of financial responsibility to obtain from the Coast Guard a Certificate, or Certificates, of Financial Responsibility (Water Pollution) under 33 CFR part 138, to meet any liability for costs and damages incurred in connection with a covered vessel under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both.

The Surety agrees that the penal sum of this surety bond guaranty shall be available to pay to the United States of America or other claimants under the Acts any sum or sums for which the Principal may be held liable under the Acts. The penal sum shall be the total applicable amount, determined in accordance with the Applicable Amount Table below, for which payment we, the undersigned, bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally.

No more than four Sureties (including lead Sureties) may execute this guaranty. If there is more than one surety company executing this guaranty, we, the Sureties, bind ourselves in the penal sum jointly and severally for the purpose of allowing a joint action or actions against any or all of us, and for all

other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of the percentage of the penal sum only as is set forth opposite the name of each Surety. If no percentage is indicated for a Surety or Sureties, the liability of such Surety or Sureties shall be joint and several for the total of the unspecified portions.

_____
(Name of lead guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Surety executes this guaranty).

Principal and the Surety or Sureties agree that if all or a portion of the penal sum is paid, the penal sum is considered reinstated to its full amount until 30 days after receipt from the Surety of written notice to the Director, NPFC, that the penal sum has not been reinstated. Principal and the Surety or Sureties further agree that if at the time of an incident, release, or threatened release a covered vessel is a tank vessel or is carrying a hazardous substance as cargo, the penal sum of this surety bond guaranty automatically increases, if necessary, to the total applicable amount appropriate for such vessel as determined in accordance with the Applicable Amount Table below. In no case, however, shall the penal sum be increased to an amount greater than the total applicable amount.

The penal sum is not further conditioned or dependent in any way upon any contract, agreement or understanding between the Principal and Surety. If the Principal is responsible for more than one vessel covered by this guaranty, then the penal sum is the total applicable amount for the vessel having the greatest liability under the Acts.

The liability of the Surety as guarantor under OPA or CERCLA, or both, shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments amount in the aggregate to the penal sum of this bond guaranty.

Any claim, including any claim by right of subrogation, against the Principal for costs and damages arising under either section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, may be brought directly against the Surety, and the Surety consents to suit with respect to these claims. However, in any direct action under OPA 90 the Surety's liability shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA the Surety's liability shall not exceed the amount determined under part II of the Applicable Amount Table below. In the event of a direct claim, the Surety may invoke only the following rights and defenses:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Principal.

(2) Any defens
under the Acts.

(3) A defense
claim or claims, fil
or other proceeding,
this guaranty with r
respect to a release

(4) A defense
claim or claims tha
guaranty, which amo
tonnage of the vesse
International Tonna
official, applicable
except where the sur
that the applicabl
incorrect.

(5) The claim i
the Acts.

This bond is effective
_____, 12:01 a.m., standa
first named herein, and shal
or terminated as herein p
Operator or the Surety may
guaranty by written notice
party, with a copy (showing
the other party by certi
termination is effective t
receives the written notice
be liable hereunder in conne
threatened release occurring
guaranty as herein provided,
the liability of the Suret
release, or threatened relea
termination becomes effectiv
hereunder in connection wit
vessel specifically named
responsibility, which is app
the above named Vessel Opera
file with the Center during
release giving rise to a clai

The Surety designates _____

with offices at _____

_____

as the Surety's agent in the
for the purposes of this sure
notices of designation and
Acts. If the designated ag
disability, or unavailability
Pollution Funds Center, is th

(2) Any defense that the Principal may raise under the Acts.

(3) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of this guaranty with respect to an incident or with respect to a release or threatened release.

(4) A defense relating to the amount of a claim or claims that exceeds the amount of this guaranty, which amount is based on the gross tonnage of the vessel as entered on the vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the surety knew or should have known that the applicable tonnage certificate was incorrect.

(5) The claim is not one made under either of the Acts.

This bond is effective the _____ day of _____, _____, 12:01 a.m., standard time at the address of the Surety first named herein, and shall continue in force until discharged or terminated as herein provided. The above named Vessel Operator or the Surety may at any time terminate this bond guaranty by written notice sent by certified mail to the other party, with a copy (showing that the original notice was sent to the other party by certified mail) to the Center. The termination is effective thirty (30) days after the Center receives the written notice of termination. The Surety shall not be liable hereunder in connection with an incident, release, or threatened release occurring after the termination of this bond guaranty as herein provided, but the termination shall not affect the liability of the Surety in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective. Nor shall the Surety be liable hereunder in connection with a non-covered vessel, which is a vessel specifically named in other evidence of financial responsibility, which is applicable to that vessel on behalf of the above named Vessel Operator, and which is accepted by and on file with the Center during an incident, release, or threatened release giving rise to a claim against the Surety or Principal.

The Surety designates _____
(Name of Agent)

with offices at _____

_____

as the Surety's agent in the United States for service of process for the purposes of this surety bond guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, Coast Guard National Pollution Funds Center, is the agent for these purposes.

Title 33 CFR part 138 governs this bond guaranty.

In witness whereof, the Vessel Operator, for itself and owners and demise charterers, if any, and Surety have executed this instrument on the _____ day of _____, _____.

VESSEL OPERATOR

_____ (Signature of Sole Proprietor or Partner)

_____ (Typed)

_____ (Business Address)

_____

_____ (Signature of Sole Proprietor or Partner)

_____ (Typed)

_____ (Business Address)

_____

_____ (Signature of Sole Proprietor or Partner)

_____ (Typed)

_____ (Business Address)

_____

_____

_____ (Corporation)

_____ (Business Address)

_____

(Affix Corporate Seal)

_____ (Signature)

_____ (Typed Name and Title)

_____

_____

_____ (Name)

_____ (Address)

_____

_____ (State of Incorporation)

[NOTE: For every co-Surety, manner as for Surety above.]

SURETY

(Name) _____ (Percentage of Participation) _____

(Address) _____

(Affix Corporate Seal)

_____

(Signature(s)) _____

(State of Incorporation) _____

(Typed Name(s) and Title(s)) _____

[NOTE: For every co-Surety, provide information in the same manner as for Surety above.]

APPLICABLE AMOUNT TABLE

(I) Applicable Amount Under the Oil Pollution Act of 1990

VESSEL TYPE	VESSEL'S GROSS TONS	APPLICABLE AMOUNT
Tank vessel	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of $2,000,000 or $1,200 per gross ton.
Tank vessel	Over 3,000 gross tons.	The greater of $10,000,000 or $1,200 per gross ton.
Vessel other than a tank vessel	Over 300 gross tons.	The greater of $500,000 or $600 per gross ton.

* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

VESSEL TYPE	APPLICABLE AMOUNT
Vessel over 300 gross tons carrying hazardous substance as cargo	The greater of $5,000,000 or $300 per gross ton.
Any other vessel over 300 gross tons	The greater of $500,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

CG-5586-2

Appendix E to Part

DEPARTME
U.

FINANCIAL GUARANTY FU
RESPONSIBILITY UNDER TH
COMPREHENSIVE ENVIRO
AND LIABI

1. _____

the operator of each ves
("covered vessel"), desire
responsibility for the ow
(referred to collectively
in accordance with the Oil
the Comprehensive Environ
Liability Act, as amended (
the "Acts"). The undersig
("Guarantor") hereby guar
hereof, to discharge the
each covered vessel for cos
OPA 90, as limited by sect
CERCLA, as limited by secti
an amount equal to the to
accordance with the Applica
and the Guarantor agree t
release, or threatened rele
or is carrying a hazardou
liability of the Guarant
applicable amount appropria
accordance with the Applica
and scope of the Guara
conditioned or dependent in
or understanding between t
Guarantor shall furnish wr
Guard National Pollution
judgments rendered and payme
Financial Guaranty.

2. Any claim, includi
against the Operator for co
section 1002 of OPA 90 as l
107(a)(1) of CERCLA as limi
or both, may be brought di
Guarantor consents to sui
However, in any direct ac
liability per vessel per i
determined under part I of t
in any direct action under
vessel per release or threa
amount determined under par
below. The Guarantor sha

Appendix E to Part 138 - Financial Guaranty Form

FINANCIAL GUARANTY NO. _____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5586-3

FINANCIAL GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER THE OIL POLLUTION ACT OF 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED

1. _____,
(Name of Vessel Operator)
the operator of each vessel named in the annexed schedules ("covered vessel"), desires to establish evidence of financial responsibility for the owner, operator, and demise charterer (referred to collectively as "Operator") of each covered vessel in accordance with the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") (referred to collectively as the "Acts"). The undersigned Financial Guarantor or Guarantors ("Guarantor") hereby guarantees, subject to the provisions hereof, to discharge the Operator's liability with respect to each covered vessel for costs and damages under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(B) and (A), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below. The Operator and the Guarantor agree that if at the time of an incident, release, or threatened release a covered vessel is a tank vessel or is carrying a hazardous substance as cargo, the limit of liability of the Guarantor hereunder shall be the total applicable amount appropriate for such a vessel determined in accordance with the Applicable Amount Table below. The amount and scope of the Guarantor's liability are not further conditioned or dependent in any way upon any contract, agreement, or understanding between the Operator and the Guarantor. The Guarantor shall furnish written notice to the Director, Coast Guard National Pollution Funds Center ("Center"), of all judgments rendered and payments made by the Guarantor under this Financial Guaranty.

2. Any claim, including any claim by right of subrogation, against the Operator for costs and damages arising under either section 1002 of OPA 90 as limited by section 1004(a), or section 107(a)(1) of CERCLA as limited by sections 107(c)(1)(A) and (B), or both, may be brought directly against the Guarantor and the Guarantor consents to suit with respect to these claims. However, in any direct action under OPA 90 the Guarantor's liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA the Guarantor's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Guarantor shall be entitled to invoke only the

following rights and defenses in any direct action:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Operator.

(2) Any defense that the Operator may raise under the Acts.

(3) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of this Guaranty with respect to an incident or with respect to a release or threatened release.

(4) A defense relating to the amount of a claim or claims that exceeds the amount of this Guaranty, which amount is based on the gross tonnage of the covered vessel as entered on the Vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the guarantor knew or should have known that the applicable certificate was incorrect.

(5) The claim is not one made under either of the Acts.

3. The Guarantor's liability under this Guaranty shall attach only in relation to each incident, release, or threatened release occurring on or after the effective date and before the termination date of this Guaranty. The effective date of this Guaranty for each covered vessel listed below is the date the vessel is named in or added to the schedules below. For each covered vessel, the termination date of the Guaranty is 30 days after the date of receipt by the Center of written notice that the Guarantor has elected to terminate this Guaranty, with respect to any of the covered vessels, and has so notified the vessel Operator identified above on the schedule below. Termination of this Guaranty as to any vessel does not affect the liability of the Guarantor in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

4. If, during the currency of this Guaranty, the Operator requests that a vessel become subject to this Guaranty, and if the Guarantor accedes to that request and so notifies the Center in writing, then that vessel shall be considered included in Schedule B as a covered vessel and subject to this Guaranty.

5. The Guarantor designates _____
(Name of Agent)

with offices at _____

_____

as the Guarantor's agent in the United States for service of process for purposes of this Guaranty and for receipt of notices of designation and presentations of claims under the Acts. If

the designated agent cannot unavailability, the Direc Funds Center, is the agent

6. No more than four Guaranty. If more than each Guarantor binds itself of allowing a joint action Guarantors, and for all itself, jointly and severa of the percentage of sums of the Guarantor. If no Guarantors, the liability be joint and several for th

_____

is designated as the lead guarantors for actions of but not limited to r advertisement of a design claims (inapplicable if o this guaranty).

7. Title 33 CFR part

EFFECTIVE DATE: _____

_____
(Ty

_____
(

_____

_____
(Per

By:

[NOTE: For each co-Guarant manner as for Guarantor abo

the designated agent cannot be served due to death, disability or unavailability, the Director, Coast Guard National Pollution Funds Center, is the agent for service of process.

6. No more than four Financial Guarantors may execute this Guaranty. If more than one Guarantor executes this Guaranty, each Guarantor binds itself jointly and severally for the purpose of allowing a joint action or actions against any or all of the Guarantors, and for all other purposes each Guarantor binds itself, jointly and severally with the Operator, for the payment of the percentage of sums only as is set forth opposite the name of the Guarantor. If no limit is indicated for a Guarantor or Guarantors, the liability of such Guarantor or Guarantors shall be joint and several for the total of the unspecified portions.

_____
(Name of Lead Guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Financial Guarantor executes this guaranty).

7. Title 33 CFR part 138 governs this Financial Guaranty.

EFFECTIVE DATE: _____
(Month/Day/Year and Place of Execution)

_____
(Typed Name of Guarantor)

_____
(Address of Guarantor)

_____

_____
(Percentage of Participation)

By: _____
(Signature)

_____
(Type Name and Title of Person Signing Above)

[NOTE: For each co-Guarantor, provide information in the same manner as for Guarantor above.]

CG-5586-3

APPLICABLE AMOUNT TABLE

(I) Applicable Amount Under the Oil Pollution Act of 1990

VESSEL TYPE	VESSEL'S GROSS TONS	APPLICABLE AMOUNT
Tank vessel	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of $2,000,000 or $1,200 per gross ton.
Tank vessel	Over 3,000 gross tons.	The greater of $10,000,000 or $1,200 per gross ton.
Vessel other than a tank vessel	Over 300 gross tons.	The greater of $500,000 or $600 per gross ton.

* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

VESSEL TYPE	APPLICABLE AMOUNT
Vessel over 300 gross tons carrying hazardous substance as cargo	The greater of $5,000,000 or $300 per gross ton.
Any other vessel over 300 gross tons	The greater of $500,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

CG-5586-3

SCHEDULE A

VESSE

VESSEL

G

CG-5586-3

SCHEDULE A

VESSELS INITIALLY LISTED

VESSEL	GROSS TONS	OPERATOR

SCHEDULE B

VESSELS ADDED IN ACCORDANCE WITH CLAUSE 4

VESSEL	GROSS TONS	OPERATOR	DATE ADDED

CG-5586-3

Financial Guaranty No. _____

Appendix F to Part 138

DEPARTME
U.

MASTER FINANCIAL GUA
FINANCIAL RESPONSIBILITY
OR SELLERS OF VESSELS
1990 AND THE COMPREH
COMPENSATION, AN

1. _____
(Name of Bu
is in, or from time to time
or vessels ("Vessel" or
construction, repair, sc
establish evidence of finan
owner and demise charte
"Operator") of each Vessel
Act of 1990 ("OPA 90")
Response, Compensation, and
(referred to collectively
Financial Guarantor or
guarantees, subject to the
Operator's liability with
damages under section 100
1004(a), or section 107(a)(
107(c)(1)(A) and (B), or b
applicable amount determine
Amount Table below. The Op
at the time of an inciden
covered vessel is a tank
substance as cargo, the l
hereunder shall be the tot
such vessel determined in a
Table below. The amount ar
conditioned or dependent in
or understanding between th
Guarantor shall furnish wr
Guard National Pollution
judgments rendered and payme
Financial Guaranty.

2. Any claim, includi
against the Operator for co
section 1002 of OPA 90 as l
107(a)(1) of CERCLA as limi
or both, may be brought di
Guarantor consents to sui
However, in any direct ac
liability per vessel per i

Appendix F to Part 138 - Master Financial Guaranty Form

FINANCIAL GUARANTY NO._____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5586-4

MASTER FINANCIAL GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY FOR BUILDERS, REPAIRERS, SCRAPPERS OR SELLERS OF VESSELS UNDER THE OIL POLLUTION ACT OF 1990 AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED

1. _____
(Name of Builder, Repairer, Scrapper or Seller)
is in, or from time to time may come into, possession of a vessel or vessels ("Vessel" or "Vessels") held for purposes of construction, repair, scrapping, or sale, and desires to establish evidence of financial responsibility for itself and any owner and demise charterer (collectively referred to as "Operator") of each Vessel in accordance with the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") (referred to collectively as the "Acts"). The undersigned Financial Guarantor or Guarantors ("Guarantor") hereby guarantees, subject to the provisions hereof, to discharge the Operator's liability with respect to each Vessel for costs and damages under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(A) and (B), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below. The Operator and the Guarantor agree that if at the time of an incident, release, or threatened release a covered vessel is a tank vessel or is carrying a hazardous substance as cargo, the limit of liability of the Guarantor hereunder shall be the total applicable amount appropriate for such vessel determined in accordance with the Applicable Amount Table below. The amount and scope of liability are not further conditioned or dependent in any way upon any contract, agreement or understanding between the Operator and the Guarantor. The Guarantor shall furnish written notice to the Director, Coast Guard National Pollution Funds Center ("Center"), of all judgments rendered and payments made by the Guarantor under this Financial Guaranty.

2. Any claim, including any claim by right of subrogation, against the Operator for costs and damages arising under either section 1002 of OPA 90 as limited by section 1004(a), or section 107(a)(1) of CERCLA as limited by sections 107(c)(1)(A) and (B), or both, may be brought directly against the Guarantor and the Guarantor consents to suit with respect to these claims. However, in any direct action under OPA 90 the Guarantor's liability per vessel per incident shall not exceed the amount

determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA the Guarantor's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Guarantor shall be entitled to invoke only the following rights and defenses in any direct action:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Operator.

(2) Any defense that the Operator may raise under the Acts.

(3) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of this Guaranty with respect to an incident or with respect to a release or threatened release.

(4) A defense relating to the amount of a claim or claims that exceeds the amount of this Guaranty, which amount is based on the gross tonnage of the covered vessel as entered on the Vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the guarantor knew or should have known that the applicable tonnage certificate was incorrect.

(5) The claim is not one made under either of the Acts.

3. The Guarantor's liability under this Guaranty shall attach only in relation to each incident, release, or threatened release occurring on or after the effective date and before the termination date of this Guaranty. The termination date is 30 days after the date of receipt by the Center of written notice that the Guarantor has elected to terminate this Guaranty and has so notified the Operator. Termination of this Guaranty shall not affect the liability of the Guarantor in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

4. The Guarantor designates _____,
(Name of Agent)

with offices at _____

_____,

as the Guarantor's agent in the United States for service of process for purposes of this Guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability, or unavailability, the Director, National Pollution Funds Center, is the agent for these purposes.

5. No more than four Financial Guarantors may execute this

Guaranty. If more than
each Guarantor binds itse
of allowing a joint acti
Guarantors, and for all
itself, jointly and sever
of the percentage of sums
of the Guarantor. If no
or Guarantors, the liab
shall be joint and seve
portions.

_____

is designated as the lead
guarantors for actions o
but not limited to
advertisement of a desig
claims (inapplicable if
this guaranty).

6. Title 33 CFR part 138

EFFECTIVE DATE: _____

_____
(

_____

_____
(P

By:

[NOTE: For each co-Guaran
manner as for Guarantor abo

Guaranty. If more than one Guarantor executes this Guaranty, each Guarantor binds itself jointly and severally for the purpose of allowing a joint action or actions against any or all of the Guarantors, and for all other purposes each Guarantor binds itself, jointly and severally with the Operator, for the payment of the percentage of sums only as is set forth opposite the name of the Guarantor. If no percentage is indicated for a Guarantor or Guarantors, the liability of such Guarantor or Guarantors shall be joint and several for the total of the unspecified portions.

_____
(Name of lead guarantor)

is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Financial Guarantor executes this guaranty).

6. Title 33 CFR part 138 governs this Financial Guaranty.

EFFECTIVE DATE: _____
(Month/Day/Year and Place of Execution)

_____
(Typed Name of Guarantor)

_____
(Address of Guarantor)

_____

_____
(Percentage of Participation)

By: _____
(Signature)

_____
(Type Name and Title of Person Signing Above)

[NOTE: For each co-Guarantor, provide information in the same manner as for Guarantor above.]

CG-5586-A

APPLICABLE AMOUNT TABLE

(I) Applicable Amount Under the Oil Pollution Act of 1990

VESSEL TYPE	VESSEL'S GROSS TONS	APPLICABLE AMOUNT
Tank vessel	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of $2,000,000 or $1,200 per gross ton.
Tank vessel	Over 3,000 gross tons.	The greater of $10,000,000 or $1,200 per gross ton.
Vessel other than a tank vessel	Over 300 gross tons.	The greater of $500,000 or $600 per gross ton.

* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

VESSEL TYPE	APPLICABLE AMOUNT
Vessel over 300 gross tons carrying hazardous substance as cargo	The greater of $5,000,000 or $300 per gross ton.
Any other vessel over 300 gross tons	The greater of $500,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

CG-3586-4

Dated: June 27, 1994.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 94-16034 Filed 6-30-94; 8:45 am]

BILLING CODE 4910-14-C

Dated: June 27, 1994.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 94–16034 Filed 6–30–94; 8:45 am]

BILLING CODE 4910–14–C

VOL
59
ISS
1
2
6
JUL
1
1994
MI

federal register

Friday
July 1, 1994

Part VIII

Department of the Interior
Fish and Wildlife Service

Department of Commerce
National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Policy Statements; Notices

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency policy to clarify the role of peer review in activities undertaken by the Services under authority of the Endangered Species Act of 1973 (Act), as amended, and associated regulations in Title 50 of the Code of Federal Regulations. This policy is intended to complement and not circumvent or supersede the current public review processes in the listing and recovery programs.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets, NW., Washington, D.C. 20240 (telephone 703/358–2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

The Act requires the Services to make biological decisions based upon the best scientific and commercial data available. These decisions involve listing, reclassification, and delisting of plant and animal species, critical habitat designations, and recovery planning and implementation.

The current public review process involves the active solicitation of comments on proposed listing rules and draft recovery plans by the scientific community, State and Federal agencies, Tribal governments, and other interested parties on the general information base and the assumptions upon which the Service is basing a biological decision.

The Services also make formal solicitations of expert opinions and analyses on one or more specific questions or assumptions. This solicitation process may take place during a public comment period on any proposed rule or draft recovery plan, during the status review of a species under active consideration for listing, or at any other time deemed necessary to clarify a scientific question.

Independent peer review will be solicited on listing recommendations and draft recovery plans to ensure the best biological and commercial information is being used in the decisionmaking process, as well as to ensure that reviews by recognized experts are incorporated into the review process of rulemakings and recovery plans developed in accordance with the requirements of the Act.

Policy

A. In the following endangered species activities, it is the policy of the Services to incorporate independent peer review in listing and recovery activities, during the public comment period, in the following manner:

(1) Listing

(a) Solicit the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing;

(b) Summarize in the final decision document (rule or notice of withdrawal) the opinions of all independent peer reviewers received on the species under consideration and include all such reports, opinions, and other data in the administrative record of the final decision.

(2) Recovery

(a) Utilize the expertise of and actively solicit independent peer review to obtain all available scientific and commercial information from appropriate local, State and Federal agencies; Tribal governments; academic and scientific groups and individuals; and any other party that may possess pertinent information during the development of draft recovery plans for listed animal and plant species.

(b) Document and use, where appropriate, independent peer review to review pertinent scientific data relating to the selection or implementation of specialized recovery tasks or similar topics in draft or approved recovery plans for listed species.

(c) Summarize in the final recovery plan the opinions of all independent peer reviewers asked to respond on an issue and include the reports and opinions in the administrative record of that plan.

Independent peer reviewers should be selected from the academic and scientific community, Tribal and other native American groups, Federal and State agencies, and the private sector; those selected have demonstrated expertise and specialized knowledge related to the scientific area under consideration.

B. Special Circumstances

(1) Sometimes, specific questions are raised that may require additional review prior to a final decision, (e.g. scientific disagreement to the extent that leads the Service to make a 6-month extension of the statutory rulemaking period). The Services will determine when a special independent peer review process is necessary and will select the individuals responsible for the review. Special independent peer review should only be used when it is likely to reduce or resolve the unacceptable level of scientific uncertainty.

(2) The results of any special independent peer review process will be written, entered into the permanent administrative record of the decision, and made available for public review. If the peer review is in the context of an action for which there is a formal public comment period, e.g., a listing, designation of critical habitat, or development of a recovery plan, the public will be given an opportunity to review the report and provide comment.

Scope of Policy

The scope of this policy is Servicewide for all species of fish and wildlife and plants, as defined pursuant to section 3 of the Act (16 U.S.C. 1532).

Authority

The authority for this policy is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: June 27, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: June 24, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–16021 Filed 6–30–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy on Information Standards Under the Endangered Species Act

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency policy to provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Services under the authority of the Endangered Species Act of 1973 (Act), as amended represent the best scientific and commercial data available. This policy is intended to complement the current public review processes prescribed by sections 4(b)(4)(6) and 10(a)(2)(B) of the Act and associated regulations in title 50 of the Code of Federal Regulations.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358–2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

The Act requires the Secretary of the Interior and the Secretary of Commerce to determine whether any species is endangered or threatened (16 U.S.C. 1533). When making these determinations, the Secretary is directed to use the best scientific and commercial data available.

The Services receive and use information on the biology, ecology, distribution, abundance, status, and trends of species from a wide variety of sources as part of their responsibility to implement the Act. Some of this information is anecdotal, some of it is oral, and some of it is found in written

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy on Information Standards Under the Endangered Species Act

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency policy to provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Services under the authority of the Endangered Species Act of 1973 (Act), as amended represent the best scientific and commercial data available. This policy is intended to complement the current public review processes prescribed by sections 4(b)(4)(6) and 10(a)(2)(B) of the Act and associated regulations in title 50 of the Code of Federal Regulations.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358–2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

The Act requires the Secretary of the Interior and the Secretary of Commerce to determine whether any species is endangered or threatened (16 U.S.C. 1533). When making these determinations, the Secretary is directed to use the best scientific and commercial data available.

The Services receive and use information on the biology, ecology, distribution, abundance, status, and trends of species from a wide variety of sources as part of their responsibility to implement the Act. Some of this information is anecdotal, some of it is oral, and some of it is found in written documents. These documents include status surveys, biological assessments, and other unpublished material (that is, "gray literature") from State natural resource agencies and natural heritage programs, Tribal governments, other Federal agencies, consulting firms, contractors, and individuals associated with professional organizations and higher educational institutions. The Services also use published articles from juried professional journals. The reliability of the information contained in these sources can be as variable as the sources themselves. As part of their routine activities Service biologists are required to gather, review, and evaluate information from these sources prior to undertaking listing, recovery, consultation, and permitting actions.

Policy

To assure the quality of the biological, ecological, and other information that is used by the Services in their implementation of the Act, it is the policy of the Services:

a. To require biologists to evaluate all scientific and other information that will be used to (a) determine the status of candidate species; (b) support listing actions; (c) develop or implement recovery plans; (d) monitor species that have been removed from the list of threatened and endangered species; (e) to prepare biological opinions, incidental take statements, and biological assessments; and (f) issue scientific and incidental take permits. This review will be conducted to ensure that any information used by the Services to implement the Act is reliable, credible, and represents the best scientific and commercial data available.

b. To gather and impartially evaluate biological, ecological, and other information that disputes official positions, decisions, and actions proposed or taken by the Services during their implementation of the Act.

c. To require biologists to document their evaluation of information that supports or does not support a position being proposed as an official agency position on a status review, listing action, recovery plan or action, interagency consultation, or permitting action. These evaluations will rely on the best available comprehensive, technical information regarding the status and habitat requirements for a species throughout its range.

d. To the extent consistent with sections 4, 7, and 10 of the ESA, and to the extent consistent with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to (1) place a species on the list of candidate species, (2) promulgate a regulation to add a species to the list of threatened and endangered species, (3) to remove a species from the list of threatened and endangered species, (4) designate critical habitat, (5) revise the status of a species listed as threatened or endangered, (6) make a determination of whether a Federal action is likely to jeopardize a proposed, threatened, or endangered species or destroy or adversely modify critical habitat; and (7) issue a scientific or incidental take permit. These sources shall be retained as part of the administrative record supporting an action and shall be referenced in all official **Federal Register** notices and biological opinions prepared for an action.

e. To collect, evaluate, and complete all reviews of biological, ecological, and other relevant information within the schedules established by the Act, appropriate regulations, and applicable policies.

f. To conduct management-level review of documents developed and drafted by Service biologists to verify and assure the quality of the science used to establish official positions, decisions, and actions taken by the Services during their implementation of the Act.

Scope of Policy

This policy applies Servicewide for all species of fish and wildlife and plants, as defined pursuant to section 3 of the Act (16 U.S.C. 1532), and for listing, recovery, interagency consultation, management and scientific authorities, and permitting programs as outlined in, and to the extent consistent with, the provisions of sections 4(a)(c), 4(e)(g), 7(a)(c), 8A(c), and 10(a) of the Act, respectively.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: June 27, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: June 24, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–16022 Filed 6–30–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for Endangered Species Act Section 9 Prohibitions

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency cooperative policy to establish a procedure at the time a species is listed as threatened or endangered to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Endangered Species Act of 1973 (Act), as amended, and to increase public understanding and provide as much certainty as possible regarding the prohibitions that will apply under section 9. By identifying activities likely or not likely to result in violation of section 9 at the time a species is listed, the Services intend to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358–2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to United States jurisdiction. Section 4(d) of the Act allows the promulgation of regulations that apply any or all of the prohibitions of section 9 to threatened species. Under the Act and regulations, it is illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species and most threatened fish and wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. With respect to endangered plants, analogous prohibitions make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, for endangered plants, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law.

Policy

It is the policy of the Services to identify, to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9. To the extent possible, activities that will be considered likely to result in violation also will be identified in as specific a manner as possible. For those activities whose likelihood of violation is uncertain, a contact will be identified in the final listing document to assist the public in determining whether a particular activity would constitute a prohibited act under section 9.

Scope of Policy

This policy applies for all species of fish and wildlife and plants, as defined under the Act, listed after October 1, 1994.

Authority

The authority for this policy is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: June 27, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: June 24, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–16023 Filed 6–30–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency policy relative to recovery plan participation and implementation under the Endangered Species Act of 1973, as amended. This cooperative policy is intended to minimize social and economic impacts consistent with timely recovery of species listed as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). In addition, this policy provides a Participation Plan process, which involves all appropriate agencies and affected interests in a mutually-developed strategy to implement one or more recovery actions.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358–2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

Section 4(f) of the Act directs the Secretary of the Commerce and the Secretary of Interior to develop and implement recovery plans for animal and plant species listed as endangered or threatened, unless such plans would not promote the conservation of the species. Coordination among State, Tribal or Federal agencies, academic institutions, private individuals and organizations, commercial enterprises, and other affected parties is perhaps the most essential ingredient for recovering a species.

Policy

To enhance recovery plan development and implementation, while recommending measures that accomplish the goals of a recovery plan, the Services will:

A. Diversify areas of expertise represented on a recovery team,
B. Develop multiple species plans when possible,
C. Minimize the social and economic impacts of implementing recovery actions,
D. Involve representatives of affected groups and provide stakeholders the opportunity to participate in recovery plan development, and
E. Develop recovery plans within 2 1/2 years after final listing.

(1) Recovery Plan Preparation and Process

The method to be used for recovery plan preparation shall be based on several factors, including the range or ecosystem of the species (limited vs. extensive), the complexity of the recovery actions contemplated, the number of organizations responsible for the implementation of the recovery tasks, the availability and expertise of personnel, and the availability of funds. Outside expertise in the form of recovery teams, other Federal agencies, State agency personnel, Tribal governments, private conservation organizations, and private contractors shall be used, as necessary, to develop and implement recovery plans in a timely manner that will minimize the social and economic consequences of plan implementation.

Team members should be selected for their knowledge of the species or for expertise in elements of recovery plan design or implementation (such as local planning, rural sociology, economics, forestry, etc.), rather than their professional or other affiliations. Teams are to be composed of recognized experts in their fields and are

SUPPLEMENTARY INFORMATION:

Background

Section 4(f) of the Act directs the Secretary of the Commerce and the Secretary of Interior to develop and implement recovery plans for animal and plant species listed as endangered or threatened, unless such plans would not promote the conservation of the species. Coordination among State, Tribal or Federal agencies, academic institutions, private individuals and organizations, commercial enterprises, and other affected parties is perhaps the most essential ingredient for recovering a species.

Policy

To enhance recovery plan development and implementation, while recommending measures that accomplish the goals of a recovery plan, the Services will:

A. Diversify areas of expertise represented on a recovery team,
B. Develop multiple species plans when possible,
C. Minimize the social and economic impacts of implementing recovery actions,
D. Involve representatives of affected groups and provide stakeholders the opportunity to participate in recovery plan development, and
E. Develop recovery plans within 2 1/2 years after final listing.

(1) Recovery Plan Preparation and Process

The method to be used for recovery plan preparation shall be based on several factors, including the range or ecosystem of the species (limited vs. extensive), the complexity of the recovery actions contemplated, the number of organizations responsible for the implementation of the recovery tasks, the availability and expertise of personnel, and the availability of funds. Outside expertise in the form of recovery teams, other Federal agencies, State agency personnel, Tribal governments, private conservation organizations, and private contractors shall be used, as necessary, to develop and implement recovery plans in a timely manner that will minimize the social and economic consequences of plan implementation.

Team members should be selected for their knowledge of the species or for expertise in elements of recovery plan design or implementation (such as local planning, rural sociology, economics, forestry, etc.), rather than their professional or other affiliations. Teams are to be composed of recognized experts in their fields and are encouraged to explore all avenues in arriving at solutions necessary to recover threatened or endangered species. Factors for selection of team members are (1) expertise (including current involvement, if possible), with respect to the species, closely related species, or the ecosystem in which it is or may once again become a part, (2) special knowledge of one or more threats contributing to the listed status of the species and (3) knowledge of one or more related disciplines, such as land use planning, state regulations, etc. The Services also will select team members based on special knowledge essential for the development of recovery implementation schedules, particularly development of Participation Plans that are intended to minimize the social and economic effects of recovery actions. Teams should include representatives of State, Tribal, or Federal agencies, academic institutions, private individuals and organizations, commercial enterprises, and other constituencies with an interest in the species and its recovery or the economic or social impacts of recovery.

(2) Involvement of Affected Groups

Whether a recovery plan is developed by the Service's biologists, contractors, or a recovery team, each plan will seek the best information to fulfill the intent of the Act regarding recovery planning. This information and input from affected interests will be used to develop alternatives for recovery implementation that not only meet requirements for the recovery of a species, but minimize social and economic effects of recovery actions. Representatives of affected interests that can be determined during recovery plan development will be asked to participate during plan development and implementation.

(3) Implementing Recovery Actions

Implementation of recovery plans will be accomplished through the means that will provide for timely recovery of the species while minimizing social and economic impacts. The Services will involve all affected interests in the recovery plan implementation process through the development of a Participation Plan. A Participation Plan should involve all appropriate agencies and affected interests in a mutually developed strategy to implement one of more specifically designated recovery actions. Participation Plans should ensure that a feasible strategy is developed for all affected interests while providing realistic and timely recovery of the species.

Nothing in this policy is intended to change the current policy of developing recovery plans within 2½ years after final listing of a species (18 months for draft recovery plan and a final recovery plan within an additional 12 months of the draft).

Scope of Policy

The scope of this policy is Servicewide for all species of fish and wildlife and plants, as defined pursuant to section 3 of the Act (16 U.S.C. 1532).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 5131–1544).

Dated: June 27, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: June 24, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–16024 Filed 6–30–94; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for the Ecosystem Approach to the Endangered Species Act

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency policy to incorporate ecosystem considerations in Endangered Species Act actions regarding listing, interagency cooperation, recovery and cooperative activities.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358–2171), or Russell Bellmer, Chief, Endangered Species

Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

A primary purpose of the Act (section 2(b)) is "to provide a means whereby the ecosystems upon which endangered or threatened species depend may be conserved. . . ."

Section 5(a) authorizes the establishment and implementation of a program to conserve fish, wildlife, and plants, including those which are listed as endangered or threatened. Section 6 authorizes partnerships with the States to develop cooperative programs for the conservation of endangered and threatened species. Section 7(a)(1) obligates all Federal agencies to utilize their authorities to further the purposes of the Act by carrying out programs for the conservation of endangered and threatened species. Section 8 encourages partnerships with foreign countries to provide for conservation of fish or wildlife and plants. Section 10 conservation planning provides opportunities for ecosystem-level resource protection with non-federal partners to address concerns of threatened and endangered species.

Success of ecosystem management will depend on the cooperation of partners, (federal, state, and private). Setting new internal standards for teamwork and communication between regions and other agencies will be emphasized to support an ecosystem approach to species conservation. Species will be conserved best not by a species-by-species approach but by an ecosystem conservation strategy that transcends individual species. The future for endangered and threatened species will be determined by how well the agencies integrate ecosystem conservation with the growing need for resource use.

Policy

The purpose of this cooperative policy is to promote healthy ecosystems through activities undertaken by the Services under authority of the Endangered Species Act of 1973 (Act), as amended, and associated regulations in Title 50 of the Code of Federal Regulations. In the following endangered species activities, it is the policy of the Services to incorporate ecosystem-considerations in Endangered Species Act activities in the following manner:

A. Listing

(1) Group listing decisions on a geographic, taxonomic, or ecosystem basis where possible.

(2) Develop partnerships with other Federal, State, Tribal, and private agencies to conduct comprehensive status reviews across the entire range of candidate species.

B. Interagency Cooperation

(1) Develop cooperative approaches to threatened and endangered species conservation that restore, reconstruct, or rehabilitate the structure, distribution, connectivity and function upon which those listed species depend.

C. Recovery

(1) Develop and implement recovery plans for communities or ecosystems where multiple listed and candidate species occur.

(2) Develop and implement recovery plans for threatened and endangered species in a manner that restores, reconstructs, or rehabilitates the structure, distribution, connectivity and function upon which those listed species depend. In particular, these recovery plans shall be developed and implemented in a manner that conserves the biotic diversity (including the conservation of candidate species, other rare species that may not be listed, unique biotic communities, etc.) of the ecosystems upon which the listed species depend.

(3) Expand the scope of recovery plans to address ecosystem conservation by enlisting local jurisdictions, private organizations, and affected individuals in recovery plan development and implementation.

(4) Develop and implement agreements among multiple agencies that allow for sharing of resources and decision making on recovery actions for wide-ranging species.

D. Cooperative Efforts

(1) Use the authorities of the Act to develop clear, consistent policies that integrate the mandates of Federal, State, Tribal, and local governments to prevent species endangerment by protecting, conserving, restoring, or rehabilitating ecosystems that are important for conservation of biodiversity.

(2) Integrate research and technology development on conservation of endangered and threatened species with initiatives for management of ecosystems that serve many other uses.

(3) Prioritize actions and system monitoring schemes to meet specific objectives for genetic resources, species populations, biological communities, and ecological processes through carefully designed adaptive management strategies.

(4) Integrate ecosystem-based goals of the Endangered Species Act with existing mandates under other environmental laws, such as the National Environmental Policy Act, Clean Water Act, Clean Air Act, Marine Mammal Protection Act, Magnuson Fishery Conservation and Management Act, and Fish and Wildlife Coordination Act.

Scope of Policy

The scope of this policy is Servicewide for all species of fish and wildlife and plants, as defined pursuant to section 3 under the Act (16 U.S.C. 1532) and for listing, recovery, land acquisition, interagency consultation, international cooperation, and permitting programs as outlined in, and to the extent consistent with the provisions of sections 4(a)(c), 4(e)(g), 7(a)(c), 8A(c), and 10(a) of the Act, respectively.

Authority

The authority for this policy is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: June 27, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: June 24, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–16025 Filed 6–30–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy Regarding the Role of State Agencies in Endangered Species Act Activities

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency policy to clarify the role of State agencies in activities undertaken by the Services under authority of the Endangered Species Act of 1973, as amended (Act), and associated regulations in title 50 Code of Federal Regulations.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358–2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

The Services recognizes that, in the exercise of their general governmental powers, States possess broad trustee and police powers over fish, wildlife and plants and their habitats within their borders. Unless preempted by Federal authority, States possess primary authority and responsibility for protection and management of fish, wildlife and plants and their habitats.

State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out the program authorized by the Act. The term State agency means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

Policy

In the following Endangered Species Act programs, it is the policy of the Services to:

A. Prelisting Conservation

1. Utilize the expertise and solicit the information of State agencies in determining which species should be included on the list of candidate animal and plant species.

the role of State agencies in activities undertaken by the Services under authority of the Endangered Species Act of 1973, as amended (Act), and associated regulations in title 50 Code of Federal Regulations.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th and C Streets NW., Washington, DC 20240 (telephone 703/358–2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

The Services recognizes that, in the exercise of their general governmental powers, States possess broad trustee and police powers over fish, wildlife and plants and their habitats within their borders. Unless preempted by Federal authority, States possess primary authority and responsibility for protection and management of fish, wildlife and plants and their habitats.

State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out the program authorized by the Act. The term State agency means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

Policy

In the following Endangered Species Act programs, it is the policy of the Services to:

A. Prelisting Conservation

1. Utilize the expertise and solicit the information of State agencies in determining which species should be included on the list of candidate animal and plant species.

2. Utilize the expertise and solicit the information of State agencies in conducting population status inventories and geographical distribution surveys to determine which species warrant listing.

3. Utilize the expertise of State agencies in designing and implementing prelisting stabilization actions, consistent with their authorities, for species and habitat to remove or alleviate threats so that listing priority is reduced or listing as endangered or threatened is not warranted.

4. Utilize the expertise and solicit the information of State agencies in responding to listing petitions.

B. Listing

1. Utilize the expertise and solicit the information of State agencies in preparing proposed and final rules to: (a) List species as endangered or threatened, (b) define and describe those conditions under which take should be prohibited for threatened species, (c) designate critical habitat, and (d) reclassify a species from endangered to threatened (or vice versa) or remove a species from the list.

2. Provide notification to State agencies of any proposed regulation in accordance with provisions of the Act.

C. Consultation

1. Inform State agencies of any Federal agency action that is likely to adversely affect listed or designated critical habitat; or that is likely to adversely affect proposed species or proposed critical habitat and request relevant information from them, including the results of any related studies, in analyzing the effects of the action and cumulative effects on the species and habitat.

2. Request an information update from State agencies prior to preparing the final biological opinion to ensure that the findings and recommendations are based on the best scientific and commercial data available.

3. Recommend to Federal agencies that they provide State agencies with copies of the final biological opinion unless the information related to the consultation is protected by national security classification or is confidential business information. Decisions to release such classified or confidential business information shall follow the action agency's procedures. Biological opinions, not containing such classified or confidential business information, will be provided to the State agencies by the Services, if not provided by the action agency, after 10 working days. The exception to this waiting period allows simultaneous provision of copies when there is a joint Federal-State consultation action.

D. Habitat Conservation Planning

1. Utilize the expertise and solicit the information and participation of State agencies in all aspects of the Habitat Conservation Planning (HCP) process.

E. Recovery

1. Utilize the expertise and solicit the information and participation of State agencies in all aspects of the recovery planning process for all species under their jurisdiction.

2. Utilize the expertise and solicit the information and participation of State agencies in implementing recovery plans for listed species. State agencies have the capabilities to carry out many of the actions identified in recovery plans and are in an excellent position to do so because of their close working relationships with local governments and landowners.

3. Utilize the expertise and authority of State agencies in designing and implementing monitoring programs for species that have been removed from the list of Endangered and Threatened Wildlife and Plants. Unless preempted by Federal authority, States possess primary authority and responsibility for protection and management of fish, wildlife and plants and their habitats, and are in an excellent position to provide for the conservation of these species following their removal from the list.

Scope of Policy

The scope of this policy is Servicewide.

Authority

The authority for this policy is the Endangered Species Act of 1973, as amended (16 U.S.C. 1536).

Dated: June 27, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: June 24, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–16026 Filed 6–30–94; 8:45 am]

BILLING CODE 4310–55–P

VOL
559
ISS
126
JL
1
994
MI

Federal Register

Friday
July 1, 1994

Part IX

Department of Education

34 CFR Part 685
Federal Direct Student Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC11

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Final Standards, Criteria, and Procedures.

SUMMARY: The Secretary of Education issues standards, criteria, and procedures governing the repayment and consolidation of loans under the Federal Direct Student Loan (Direct Loan) Program in the academic year beginning July 1, 1994.

These standards, criteria, and procedures apply to loans under the Federal Direct Stafford Loans Program, the Federal Direct Unsubsidized Stafford Loans Program, and the Federal Direct PLUS Program, collectively referred to as the Direct Loan Program.

EFFECTIVE DATE: July 1, 1994, with the exception of §§ 685.209, 685.213, 685.214, and 685.215. These sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education to, and approved by, the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these sections, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lynn Mahaffie, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4060, ROB–3), Washington, DC 20202–5162. Telephone: (202) 708–9069. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Loan Reform Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under the Higher Education Act of 1965, as amended (HEA). *See* Subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders. Borrowers under the Direct Loan Program are provided a range of repayment options, including an income contingent repayment plan.

The HEA directs the Secretary to consult with members of the higher education community and to publish a notice of standards, criteria, and procedures for the program's first year in lieu of issuing regulations using the Department's usual procedures. The Secretary's representatives have consulted with representatives of students, colleges, universities, proprietary schools, and educational associations, as well as representatives of the financial aid community, in developing this notice. In particular, the Secretary's representatives have had extensive consultations with the other members of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee established to develop proposed regulations for the second and subsequent years of the program. See the Secretary's announcement of his intention to establish this Committee at 58 FR 68619 (December 28, 1993).

This notice establishes the policies and procedures necessary to govern repayment of loans under the Direct Loan Program and to establish standards and procedures relating to Federal Direct Consolidation Loans for the 1994–1995 academic year.

I. Background

On September 10, 1993, the Secretary published a notice in the **Federal Register** (58 FR 47816) soliciting applications from schools for participation in the Direct Loan Program. Over 1,100 schools responded to that invitation. On December 28, 1993, the Secretary selected 104 schools, representing approximately five percent (5%) of the total Federal Family Education Loan (FFEL) Program loan volume, to participate in the Direct Loan Program for the academic year beginning July 1, 1994 (58 FR 68690). On January 4, 1994, the Secretary published a notice containing most of the standards, criteria, and procedures needed for the first-year implementation of the Direct Loan Program (59 FR 472). Cross-references in the repayment and consolidation provisions of this notice are to sections of 34 CFR Part 685 that were included in the rules published on January 4, 1994.

The repayment and consolidation rules in this notice complete the provisions needed for the first year of the program. These rules are applicable for the period beginning July 1, 1994, and ending June 30, 1995. As required by statute, program regulations for the Direct Loan Program in future years are being developed through the use of a negotiated rulemaking process to the extent practicable.

II. Summary of Contents

Section 685.204 Deferment

This section contains revisions to paragraphs (b) and (c) that clarify the deferment requirements for all Direct Loan borrowers. In addition, a new paragraph (d) states the deferment requirements for certain Direct Consolidation Loan borrowers.

Section 685.207 Obligation to Repay

This section contains provisions relating to a borrower's obligation to repay a Direct Loan that generally parallel provisions applicable to the FFEL program. On the basis of consultations with members of the higher education community, the Secretary has included clarifying provisions concerning (1) the collection costs for which a borrower is responsible (in paragraph (a)); (2) the borrower's obligations upon re-enrolling in school after a loan has entered repayment (in paragraph (b)(1)); and (3) the date on which a grace period begins for a borrower who withdraws from a correspondence program (in paragraph (d)).

Section 685.208 Repayment Plans

This section contains descriptions of the various repayment plans required to be made available to Direct Loan borrowers by section 455(d)(1) of the HEA. To simplify the administration of the program, paragraph (a)(4) requires that all Direct Loans obtained by a borrower be repaid together under the same repayment plan. The sole exception to this requirement is that Direct PLUS loans, which are the only loans that may not be repaid under the income contingent repayment plan, may be repaid separately.

The features of the standard repayment plan that is comparable to the standard repayment plan under the FFEL program are described in paragraph (b). Generally, a borrower must repay the loan by making fixed monthly payments for ten years. Under the extended repayment plan described in paragraph (c), a borrower must repay the loan by making fixed monthly payments within an extended period of time of 12 to thirty years that varies with the borrower's debt level. The repayment period under this plan is the same as the period for repayment of a consolidation loan under the FFEL program.

Under the graduated repayment plan described in paragraph (d), a borrower must repay the loan by making monthly payments at two or more levels within the same period of time as the period applicable under the extended repayment plan. The Secretary believes that this approach offers flexibility and at the same time enables a borrower to assess the relative benefits of various repayment plans with ease. As a result of consultation with members of the higher education community, this section provides that the Secretary may adjust the monthly payment amount under the standard, extended, and graduated repayment plans to reflect changes in the variable interest rate identified in § 685.202(a).

The income contingent repayment plan is summarized in paragraph (f) and described in detail in § 685.209 and Appendix B. Under this plan, a borrower may choose to repay Direct Loans in one of two ways described in § 685.209. A borrower's monthly repayment amount generally varies with the Adjusted Gross Income (AGI) reported by the borrower, the amount of the borrower's Direct Loan debt, and family size. Specific provisions in § 685.209 apply in the case of a married couple who wish to repay their Direct Loans jointly. Payments under the income contingent repayment plan increase progressively with debt to discourage excessive borrowing and to ensure that most borrowers repay their loans within the 25-year period allowed by the statute. The borrower is not required to repay any amount that remains outstanding at the end of the repayment period.

The Secretary intends to review periodically the method for calculating monthly repayment amounts under the income contingent repayment plan. However, if the Secretary amends the regulations governing that method, the regulations in effect when a borrower's first Direct Loan enters repayment determine the monthly repayment amount for all the borrower's Direct Loans unless the borrower requests otherwise.

The alternative repayment plan provisions in paragraph (g) implement the Secretary's statutory authority to provide an alternative plan, on a case-by-case basis, to a borrower who can demonstrate that none of the other available plans can accommodate the borrower's exceptional circumstances.

Section 685.209 Income Contingent Repayment Plan

This section contains provisions governing the two options available for repayment of Direct Loans under the income contingent repayment plan (ICRP). The ICRP is designed to be attractive to a broad range of borrowers. The plan provides reasonable monthly repayment amounts for borrowers with varying amounts of debt and income

repayment plan. The Secretary believes that this approach offers flexibility and at the same time enables a borrower to assess the relative benefits of various repayment plans with ease. As a result of consultation with members of the higher education community, this section provides that the Secretary may adjust the monthly payment amount under the standard, extended, and graduated repayment plans to reflect changes in the variable interest rate identified in § 685.202(a).

The income contingent repayment plan is summarized in paragraph (f) and described in detail in § 685.209 and Appendix B. Under this plan, a borrower may choose to repay Direct Loans in one of two ways described in § 685.209. A borrower's monthly repayment amount generally varies with the Adjusted Gross Income (AGI) reported by the borrower, the amount of the borrower's Direct Loan debt, and family size. Specific provisions in § 685.209 apply in the case of a married couple who wish to repay their Direct Loans jointly. Payments under the income contingent repayment plan increase progressively with debt to discourage excessive borrowing and to ensure that most borrowers repay their loans within the 25-year period allowed by the statute. The borrower is not required to repay any amount that remains outstanding at the end of the repayment period.

The Secretary intends to review periodically the method for calculating monthly repayment amounts under the income contingent repayment plan. However, if the Secretary amends the regulations governing that method, the regulations in effect when a borrower's first Direct Loan enters repayment determine the monthly repayment amount for all the borrower's Direct Loans unless the borrower requests otherwise.

The alternative repayment plan provisions in paragraph (g) implement the Secretary's statutory authority to provide an alternative plan, on a case-by-case basis, to a borrower who can demonstrate that none of the other available plans can accommodate the borrower's exceptional circumstances.

Section 685.209 Income Contingent Repayment Plan

This section contains provisions governing the two options available for repayment of Direct Loans under the income contingent repayment plan (ICRP). The ICRP is designed to be attractive to a broad range of borrowers. The plan provides reasonable monthly repayment amounts for borrowers with varying amounts of debt and income and ensures that most borrowers repay their loans in a reasonable amount of time. The plan also addresses excessive borrowing through a payback rate that rises as debt increases. Examples of the calculation of monthly repayment amounts under both options are included in Appendix B to the regulations.

Option 1. Calculation of the monthly payment under Option 1 of the ICRP is described in paragraph (b). In general, the borrower's annual repayment obligation is the borrower's AGI multiplied by a "payback rate" that is based on the borrower's debt. The monthly payment is the annual repayment obligation divided by 12, minus an adjustment for family size. The "payback rate" varies from four to 15 percent, calculated as described in paragraph (b)(2). The family size adjustment is seven dollars per dependent for up to five dependents. If the calculated monthly payment is less than $25, the borrower is not required to make a payment. When a borrower is not required to make a payment, the principal amount is unchanged and interest on the principal accrues and may be capitalized.

Option 2. Calculation of the monthly payment under Option 2 of the ICRP is described in paragraph (c). In general, under this option, a borrower's monthly payment is the same as under Option 1 except that no payment exceeds the monthly amount the borrower would repay over 12 years using standard amortization. If a borrower chooses this option: (1) The borrower's payments do not exceed the 12-year standard amortization amount regardless of the borrower's income; (2) the borrower's repayment period may be extended beyond the repayment period under Option 1 (but not beyond the 25-year maximum repayment period described in § 685.209(d)(2)(i); and (3) interest accrues throughout the repayment period and is capitalized until the limitation on capitalization of interest is reached.

Joint repayment by married borrowers. This section includes provisions for joint repayment of Direct Loans by married borrowers. A step-by-step calculation of a combined amount is included as Example 2 in Appendix B.

Repayment period. Provisions governing the repayment period under the ICRP are contained in paragraph (d)(2). The maximum period is 25 years, excluding periods of authorized deferment and forbearance under §§ 685.204 and 685.205, respectively, and periods in which the borrower made payments under another repayment plan. The Secretary believes the exclusion of repayment periods under other plans is needed to prevent abuses through which a borrower might be able to avoid repaying a portion of the loan by shifting from one plan to another as the borrower's income changed.

If a borrower repays more than one loan under the ICRP and the loans enter repayment at different times, a separate repayment period for each loan begins when the loan enters repayment. This approach ensures that no loan will be repaid under the ICRP for more than 25 years. If loans enter repayment at the same time, a single repayment period applies.

To encourage borrowers to begin repaying their loans and to limit negative amortization at the beginning of the repayment period, a borrower must make monthly payments of accrued interest until the Secretary calculates the borrower's monthly payment on the basis of the borrower's income. A borrower who is unable to make monthly payments of accrued interest or qualify for a deferment under § 685.204 may request forbearance under § 685.205.

Limit on capitalization of interest. The Secretary believes a limit on the amount of interest that is added to principal (the capitalization of interest) is desirable to prevent an excessive increase in a borrower's debt burden when the borrower's income is insufficient to cover accruing interest. Paragraph (d)(3) permits capitalization of unpaid interest until the outstanding principal amount increases to one and one-half times the original principal amount. Thereafter, unpaid interest accrues but is not capitalized.

Consent to disclosure of tax return information. In order to repay a Direct Loan under the ICRP, a borrower must consent, on a form provided by the Secretary, to the disclosure of certain tax return information by the Internal Revenue Service to agents of the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan. The information subject to disclosure is taxpayer identity information as defined in 26 U.S.C. 6103(b)(6) (including such information as name, address, and social security number), tax filing status, and AGI. Paragraph (d)(5) describes the procedures for providing written consent and requires that consent be provided for a period of five years. If a borrower selects the ICRP but fails to provide or renew consent, or withdraws consent without selecting a different repayment plan, the Secretary

designates the ten-year standard repayment plan for the borrower.

Section 685.210 Choice of Repayment Plan

This section governs a borrower's initial selection of a repayment plan and the borrower's ability to change plans thereafter. Before a Direct Loan enters repayment, the Secretary sends the borrower a description of the available repayment plans and requests the borrower to select one. If the borrower does not select a plan within 45 days, the Secretary designates the standard repayment plan for the borrower.

To accommodate the many changes in life circumstances that a borrower may experience over the life of a loan, the Secretary has placed no limit on the number of times a borrower may change plans, other than limits on a borrower who is repaying a defaulted loan under the ICRP. Such a borrower must demonstrate a consistent pattern of repayment and obtain the Secretary's approval before changing repayment plans. Under § 685.209(a)(2), a borrower may change options under the ICRP no more frequently than once a year.

A borrower may change to the ICRP at any time, but may not change to any other plan if that plan has a maximum repayment period of less than the period the loan has already been in repayment. For example, a borrower who makes payments for 12 years under the extended repayment plan may not change to the standard repayment plan, which has a ten-year repayment period. The repayment period under the new plan is calculated from the date the loan initially entered repayment, except in the case of the ICRP (see § 685.209(d)(2)). Thus, if a borrower who repays a loan under the extended repayment plan for three years and then changes to the standard repayment plan, the borrower has seven more years to repay the loan.

Section 685.211 Miscellaneous Repayment Provisions

This section governs an assortment of topics relating to the repayment of Direct Loans. Paragraph (a) permits a borrower to prepay all or part of a loan at any time and states how a prepayment is applied in the absence of a contrary request from the borrower. Paragraph (b) states how the Secretary applies a refund due to a borrower from a school. Paragraph (c) describes the effects of a borrower's default on a Direct Loan. Paragraph (d) sets out the standards by which the Secretary determines that a borrower is ineligible for some or all of a Direct Loan and describes how the Secretary seeks repayment of the loan.

Section 685.212 Discharge of a Loan Obligation

This section provides for the Secretary's discharge of the obligation of a borrower and any endorser to repay a loan if (1) the borrower (or the student on whose behalf a parent borrowed) has died; (2) the borrower has become totally and permanently disabled, as described in paragraph (b); (3) the borrower's obligation to repay is discharged in bankruptcy; (4) the borrower meets the criteria in § 685.213, relating to closed schools; or (5) the borrower meets the criteria in § 685.214, relating to false certification or unauthorized disbursement.

Section 685.213 Closed School Discharge

This section provides for the discharge of the obligation of a borrower and any endorser to repay a loan if the borrower (or student on whose behalf the parent borrowed) did not complete the program of study for which the loan was made because the school closed. The provisions of this section are modeled on provisions for the FFEL program published on April 29, 1994, in order to provide borrowers with comparable protection under both programs (see 59 FR 22462). The qualifications for discharge under this section are set out in paragraphs (c) through (e). Among other requirements, a borrower must cooperate with the Secretary in any judicial or administrative proceeding to recover for amounts discharged or to take related enforcement action, and must transfer any rights to a loan refund to the Secretary. The discharge procedures used by the Secretary are described in paragraph (f).

Section 685.214 Discharge for False Certification of Student Eligibility or Unauthorized Disbursement

This section provides for the discharge of the obligation of a borrower and any endorser to repay a loan if (1) a school falsely certifies the loan eligibility of the borrower (or the student on whose behalf a parent borrowed), or (2) the school endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer without authorization. The provisions of this section are modeled on provisions for the FFEL program published on April 29, 1994, in order to provide borrowers with comparable protection under both programs (see 59 FR 22462). Additional actions that the Secretary may take against unscrupulous schools are described in the preamble to that document.

The qualifications for discharge under this section are set out in paragraph (c) and include the requirements in § 685.213 relating to cooperation with the Secretary in enforcement actions and transfers to the Secretary of any rights to a loan refund. The discharge procedures used by the Secretary are described in paragraph (d).

Section 685.215 Consolidation

This section contains provisions governing the consolidation of certain Federal education loans into Federal Direct Consolidation Loans

Eligible loans. The types of loans that may be consolidated under this section are listed in paragraph (b) and include all loans made under the Federal Family Education Loan (FFEL) Program, the Direct Loan Program, and the National Direct Student Loan Program, as well as certain loans made under the Public Health Service Act. The Secretary has included consolidation loans made under the FFEL program to permit all FFEL borrowers to participate in the income contingent repayment plan that is available only under the Direct Loan Program.

Types of Federal Direct Consolidation Loans. There are three types of Federal Direct Consolidation Loans—subsidized, PLUS, and unsubsidized consolidation loans. The loans that may be consolidated into each type of consolidation loan are listed in paragraph (c). Subsidized consolidation loans allow borrowers to continue to be free of the obligation to pay interest during authorized periods of deferment. PLUS consolidation loans are available for all loans made to parents on behalf of students. Unsubsidized consolidation loans are available for all other eligible types of loans.

Borrower eligibility. The eligibility requirements that a borrower must meet to obtain a Federal Direct Consolidation Loan are stated in paragraph (d). Direct Loan borrowers and any FFEL borrower who is unable to obtain an FFEL consolidation loan or an FFEL consolidation loan with income sensitive repayment terms acceptable to the borrower may consolidate their loans under the Direct Loan Program if they meet the other requirements of paragraph (d). With the exception of provisions taken from statute concerning the FFEL loans that may be consolidated into a Direct Loan, most of the requirements parallel requirements for the FFEL program.

The Secretary has included provisions that prevent consolidation by (1) a borrower who is in default, unless the borrower has made satisfactory arrangements to repay the defaulted loan or agrees to repay the consolidation loan under the ICRP; and (2) a PLUS loan borrower with an adverse credit history at the time of consolidation, unless the borrower obtains an endorser or provides evidence of extenuating circumstances. Married borrowers may consolidate their loans jointly if they agree to be held jointly and severally liable on the consolidation loan and meet the other requirements of paragraph (d)(2).

Loan application and origination. A single application for one or more consolidation loans is permitted under paragraph (e). That paragraph also permits a borrower to add eligible loans upon request within 180 days after the date of the consolidation loan's origination. Provisions in paragraph (f) that govern origination of consolidation loans are taken from the FFEL program.

Interest rates. The Secretary has decided to apply to Federal Direct Consolidation Loans the same variable interest rates that apply to other Direct Loans. The Secretary believes these rates will be beneficial to most borrowers.

Repayment and refunds. As provided in paragraph (h), a borrower may repay a Federal Direct Consolidation Loan under any of the Direct Loan repayment plans, except that certain restrictions apply to defaulted borrowers, and the ICRP is not available to a PLUS consolidation loan borrower. The Secretary has included the exception for PLUS borrowers to provide consistency with the statutory prohibition against repayment of Direct Loans by parents under the ICRP. The provisions of paragraph (i) and (j), relating to repayment periods and repayment schedules, respectively, are taken from the FFEL program, as are provisions in paragraph (k), relating to a lender's obligations upon receiving a refund from a school on a loan that has been consolidated.

Joint consolidation loans. If two married borrowers obtain a joint consolidation loan, special provisions apply under paragraph (l). This paragraph provides that both borrowers must meet the requirements of the applicable section in order to obtain a deferment under § 685.204 or forbearance under § 685.205. To obtain a discharge under § 685.212, each spouse must qualify for one of the types of discharge described in that section. The Secretary discharges a portion of the loan if one spouse meets the requirements of § 685.212 (d) or (e).

borrower who is in default, unless the borrower has made satisfactory arrangements to repay the defaulted loan or agrees to repay the consolidation loan under the ICRP; and (2) a PLUS loan borrower with an adverse credit history at the time of consolidation, unless the borrower obtains an endorser or provides evidence of extenuating circumstances. Married borrowers may consolidate their loans jointly if they agree to be held jointly and severally liable on the consolidation loan and meet the other requirements of paragraph (d)(2).

Loan application and origination. A single application for one or more consolidation loans is permitted under paragraph (e). That paragraph also permits a borrower to add eligible loans upon request within 180 days after the date of the consolidation loan's origination. Provisions in paragraph (f) that govern origination of consolidation loans are taken from the FFEL program.

Interest rates. The Secretary has decided to apply to Federal Direct Consolidation Loans the same variable interest rates that apply to other Direct Loans. The Secretary believes these rates will be beneficial to most borrowers.

Repayment and refunds. As provided in paragraph (h), a borrower may repay a Federal Direct Consolidation Loan under any of the Direct Loan repayment plans, except that certain restrictions apply to defaulted borrowers, and the ICRP is not available to a PLUS consolidation loan borrower. The Secretary has included the exception for PLUS borrowers to provide consistency with the statutory prohibition against repayment of Direct Loans by parents under the ICRP. The provisions of paragraph (i) and (j), relating to repayment periods and repayment schedules, respectively, are taken from the FFEL program, as are provisions in paragraph (k), relating to a lender's obligations upon receiving a refund from a school on a loan that has been consolidated.

Joint consolidation loans. If two married borrowers obtain a joint consolidation loan, special provisions apply under paragraph (l). This paragraph provides that both borrowers must meet the requirements of the applicable section in order to obtain a deferment under § 685.204 or forbearance under § 685.205. To obtain a discharge under § 685.212, each spouse must qualify for one of the types of discharge described in that section. The Secretary discharges a portion of the loan if one spouse meets the requirements of § 685.212 (d) or (e).

III. Executive Order 12866

The contents of this notice have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of the standards, criteria, and procedures in this notice.

The potential costs associated with the contents of this notice are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these standards, criteria, and procedures, the Secretary has determined that the benefits of these standards, criteria, and procedures justify the costs.

The Secretary has also determined that the contents of this notice do not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

The contents of this notice are consistent with the requirements of the HEA and promote the President's priorities.

IV. Paperwork Reduction Act of 1980

Sections 685.209, 685.213, 685.214, and 685.215 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this notice to the Office of Management and Budget for its review (44 U.S.C. 3504(h)).

This notice affects borrowers of Federal student loans authorized by title IV of the HEA and schools that administer the Direct Loan Program. The annual public reporting burden for the required collection of information is estimated to be 12,029 hours (an average of 59 minutes for each of the estimated 12,350 individuals who provide information regarding eligibility for a Federal Direct Consolidation Loan or income contingent repayment) including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Dan Chenok.

V. Waiver of Rulemaking

It is the practice of the Secretary to offer interested parties an opportunity to comment on proposed regulations. However, Pub. L. 103–66 requires that the Secretary publish a notice in lieu of regulations for the first year of the Direct Loan Program and exempts the contents of the notice from the rulemaking requirements of section 431 of the General Education Provisions Act. In developing this notice, the Secretary's representatives have consulted extensively with the other members of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee established to develop proposed regulations for the second and subsequent years of the program, as well as other members of the higher education community. The statutory timeframe for the implementation of the program does not permit the solicitation of further public comment. A public comment period, while helpful, would seriously delay the provision of necessary guidance for the operation of the Direct Loan Program. Therefore, the Secretary finds that solicitation of public comments would be impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

List of Subjects in 34 CFR Part 685

Administrative practice or procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.268, Federal Direct Student Loan Program)

Dated: June 28, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—STANDARDS, CRITERIA, AND PROCEDURES FOR THE DIRECT LOAN PROGRAM

1. The authority citation continues to read as follows:

Authority: 20 U.S.C. 1087a et seq.

2. Section 685.204 is amended by revising paragraphs (b) and (c) and adding a new paragraph (d) to read as follows:

§ 685.204 Deferment

* * * * *

(b) Except as provided in paragraph (d) of this section, a Direct Loan borrower is eligible for a deferment during any period during which the borrower meets any of the following requirements:

(1)(i) The borrower—

(A) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending;

(B) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(C) Is pursuing a rehabilitation training program, approved by the Secretary, for individuals with disabilities; and

(ii) The borrower is not serving in a medical internship or residency program, except for a residency program in dentistry.

(2) The borrower is seeking and unable to find full-time employment.

(3)(i) The borrower has experienced or will experience an economic hardship.

(ii) For purposes of paragraph (b)(3)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to an economic hardship using the standards and procedures set forth in 34 CFR 682.210(s)(6) with references to the lender understood to mean the Secretary.

(c) No deferment under paragraphs (b)(2) or (3) of this section may exceed three years.

(d) If, at the time of consolidation, a Direct Consolidation Loan borrower has an outstanding balance on an FFEL Program loan that was made prior to July 1, 1993, the borrower is eligible for a deferment during—

(1) The periods described in paragraph (b) of this section; and

(2) The periods described in 34 CFR 682.210(b), including those periods that apply to a "new borrower" as that term is defined in 34 CFR 682.210(b)(7).

(Authority: 20 U.S.C. 1087a *et seq.*)

3. Sections 685.207 through 685.215 are added to Subpart B to read as follows:

§ 685.207 Obligation to repay.

(a) *Obligation of repayment in general.* (1) A borrower is obligated to repay the full amount of a Direct Loan, including the principal balance, fees, any collection costs charged under § 685.202(e), and any interest not subsidized by the Secretary, unless the borrower is relieved of the obligation to repay as provided in this part.

(2) The borrower's repayment of a Direct Loan may also be subject to the deferment provisions in § 685.204, the forbearance provisions in § 685.205, and the discharge provisions in § 685.212.

(b) *Federal Direct Stafford Loan repayment.* (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an "in-school" period and is not required to make payments on a Federal Direct Stafford Loan unless—

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under § 685.204(a)(1).

(2)(i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii) During a grace period, the borrower is not required to make payments on a Federal Direct Stafford Loan.

(3) A borrower is not obligated to pay interest on a Federal Direct Stafford Loan for in-school or grace periods if the borrower is not required to make payments on the loan during those periods.

(4) The repayment period for a Federal Direct Stafford Loan begins when the six-month grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(c) *Federal Direct Unsubsidized Stafford Loan repayment.* (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an "in-school" period and is not required to make payments of principal on a Federal Direct Unsubsidized Stafford Loan unless—

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under § 685.204(a)(2).

(2) (i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii) During a grace period, the borrower is not required to make any principal payments on a Federal Direct Unsubsidized Stafford Loan.

(3) A borrower is responsible for the interest that accrues on a Federal Direct Unsubsidized Stafford Loan during in-school and grace periods. Interest that accrues may be capitalized or paid by the borrower.

(4) The repayment period for a Federal Direct Unsubsidized Stafford Loan begins when the six-month grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(d) *Determining the date on which the grace period begins for students in correspondence programs.* The grace period for students enrolled in correspondence programs begins on the student's withdrawal date as determined under § 685.304(b)(3).

(e) *Federal Direct PLUS Loan repayment.* The repayment period for a Federal Direct PLUS Loan begins on the day after the loan is fully disbursed. Interest begins to accrue on the date the first installment is disbursed. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(f) *Federal Direct Consolidation Loan repayment.* The repayment period for a Federal Direct Consolidation Loan begins on the day after the loan is made. The borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.208 Repayment plans.

(a) *General.* (1) A borrower may repay a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, a Federal Direct Subsidized Consolidation Loan, or a Federal Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, or the income contingent repayment plan.

(2) A borrower may repay a Federal Direct PLUS Loan or a Federal Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, or the graduated repayment plan.

(3) The Secretary may provide an alternative repayment plan in accordance with paragraph (g) of this section.

(4) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that a borrower of a Federal Direct PLUS Loan or a Federal Direct PLUS Consolidation Loan may repay the Federal Direct PLUS Loan or the Federal Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.

(b) *Standard repayment plan.* (1) Under the standard repayment plan, a borrower shall repay a loan in full within ten years from the date the loan entered repayment by making fixed monthly payments.

(2) Periods of authorized deferment or forbearance are not included in the ten-year repayment period.

(3) A borrower's payments under the standard repayment plan are at least $50 per month, except that a borrower's final payment may be less than $50.

(4) The fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(c) *Extended repayment plan.* (1) Under the extended repayment plan, a borrower shall repay a loan in full by making fixed monthly payments within an extended period of time that varies with the total amount of the borrower's loans, as described in paragraph (e) of this section.

(2) Periods of deferment and forbearance are not included in the number of years of repayment.

(3) A borrower makes fixed monthly payments of at least $50, except that a borrower's final payment may be less than $50.

(4) The fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(d) *Graduated repayment plan.* (1) Under the graduated repayment plan, a borrower shall repay a loan in full by making payments at two or more levels within a period of time that varies with the total amount of the borrower's loans, as described in paragraph (e) of this section.

(2) The monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(3) No scheduled payment under the graduated repayment plan may be less than the amount of interest accrued on the loan between monthly payments, less than 50% of the payment amount that would be required under the standard repayment plan, or more than 150% of the payment amount that would be required under the standard repayment plan.

(e) *Repayment period for the extended and graduated plans.* Under the extended and graduated repayment plans, if the total amount of the borrower's Direct Loans is—

(1) Less than $10,000, the borrower shall repay the loans within 12 years of entering repayment;

(2) Greater than or equal to $10,000 but less than $20,000, the borrower shall repay the loans within 15 years of entering repayment;

(3) Greater than or equal to $20,000 but less than $40,000, the borrower shall repay the loans within 20 years of entering repayment;

(4) Greater than or equal to $40,000 but less than $60,000, the borrower shall repay the loans within 25 years of entering repayment; and

(5) Greater than or equal to $60,000, the borrower shall repay the loans within 30 years of entering repayment.

(f) *Income contingent repayment plan.* (1) Under the income contingent repayment plan, a borrower's monthly repayment amount is generally based on the total amount of the borrower's (and,

(Au

(c) *Extended repayment plan.* (1) Under the extended repayment plan, a borrower shall repay a loan in full by making fixed monthly payments within an extended period of time that varies with the total amount of the borrower's loans, as described in paragraph (e) of this section.

(2) Periods of deferment and forbearance are not included in the number of years of repayment.

(3) A borrower makes fixed monthly payments of at least $50, except that a borrower's final payment may be less than $50.

(4) The fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(d) *Graduated repayment plan.* (1) Under the graduated repayment plan, a borrower shall repay a loan in full by making payments at two or more levels within a period of time that varies with the total amount of the borrower's loans, as described in paragraph (e) of this section.

(2) The monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in § 685.202(a).

(3) No scheduled payment under the graduated repayment plan may be less than the amount of interest accrued on the loan between monthly payments, less than 50% of the payment amount that would be required under the standard repayment plan, or more than 150% of the payment amount that would be required under the standard repayment plan.

(e) *Repayment period for the extended and graduated plans.* Under the extended and graduated repayment plans, if the total amount of the borrower's Direct Loans is—

(1) Less than $10,000, the borrower shall repay the loans within 12 years of entering repayment;

(2) Greater than or equal to $10,000 but less than $20,000, the borrower shall repay the loans within 15 years of entering repayment;

(3) Greater than or equal to $20,000 but less than $40,000, the borrower shall repay the loans within 20 years of entering repayment;

(4) Greater than or equal to $40,000 but less than $60,000, the borrower shall repay the loans within 25 years of entering repayment; and

(5) Greater than or equal to $60,000, the borrower shall repay the loans within 30 years of entering repayment.

(f) *Income contingent repayment plan.* (1) Under the income contingent repayment plan, a borrower's monthly repayment amount is generally based on the total amount of the borrower's (and, in some circumstances, the borrower's spouse's) Direct Loans, family size, and Adjusted Gross Income (AGI) reported by the borrower for the most recent year for which the Secretary has obtained income information. In the case of a married borrower who files a joint Federal income tax return and is not repaying loans jointly with a spouse under § 685.209(a)(3), the borrower's AGI includes the income of the borrower's spouse. A borrower shall make payments on a loan until the loan is repaid in full or until the loan has been in repayment through the end of the income contingent repayment period.

(2) The regulations in effect at the time a borrower's first Direct Loan enters repayment govern the method for determining the borrower's monthly repayment amount for all of the borrower's Direct Loans, unless—

(i) The Secretary amends the regulations relating to a borrower's monthly repayment amount under the income contingent repayment plan; and

(ii) The borrower submits a written request that the amended regulations apply to the repayment of the borrower's Direct Loans.

(3) Provisions governing the income contingent repayment plan are set out in § 685.209.

(g) *Alternative repayment.* (1) The Secretary may provide an alternative repayment plan for a borrower who demonstrates to the Secretary's satisfaction that the terms and conditions of the repayment plans specified in paragraphs (b) through (f) of this section are not adequate to accommodate the borrower's exceptional circumstances.

(2) The Secretary may require a borrower to provide evidence of the borrower's exceptional circumstances before permitting the borrower to repay a loan under an alternative repayment plan.

(3) If the Secretary agrees to permit a borrower to repay a loan under an alternative repayment plan, the Secretary notifies the borrower in writing of the terms of the plan. After the borrower receives notification of the terms of the plan, the borrower may accept the plan or choose another repayment plan.

(4) If a borrower's payment under the alternative repayment plan is less than the accrued interest on the loan, the unpaid interest is added to the principal balance of the loan.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.209 Income contingent repayment plan.

(a)(1) Under the income contingent repayment plan described in § 685.208(f), a borrower may choose to repay Direct Loans in one of two ways. The borrower's options are described in paragraphs (b) and (c) of this section.

(2) A borrower may change options under the income contingent repayment plan by notifying the Secretary in writing. However, a borrower may change options no more frequently than once a year. The Secretary annually provides the borrower with estimates of monthly payment amounts under each option.

(3) The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

(4) Married borrowers may repay their loans jointly if they meet the following requirements:

(i) Each spouse is repaying a Direct Loan under the same option of the income contingent repayment plan.

(ii) The spouses filed a joint Federal income tax return for the most recent year for which the Secretary has obtained income information.

(iii) The spouses submit a written request that includes their names and social security numbers to the Secretary.

(5) Examples of the calculation of the monthly repayment amounts under both options of the income contingent repayment plan are included in Appendix B to this part.

(b) *Option 1.* (1) *General.* (i) In general, under Option 1, a borrower shall make monthly payments calculated using a percentage of the borrower's Adjusted Gross Income (AGI) called the "payback rate." The payback rate is based upon the total amount of the borrower's Direct Loans, as described under paragraph (b)(2) of this section. The minimum payback rate is four percent, and the maximum rate is 15 percent.

(ii) If a borrower provides documentation acceptable to the Secretary that the borrower has one or more dependents other than the borrower's spouse, the Secretary subtracts from the borrower's monthly payment a family size adjustment of seven dollars per dependent for up to five dependents.

(iii) A borrower's monthly payment is equal to the borrower's AGI multiplied by the payback rate, divided by 12 months, minus the family size adjustment amount. However, if the monthly repayment amount is less than

$25, the borrower is not required to make a payment.

(2) *Payback rate.* (i) A borrower's payback rate is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment and does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (a)(4) of this section. If the borrower obtains another Direct Loan, a new payback rate for all of the borrower's Direct Loans is calculated on the basis of the combined amounts of the loans when they entered repayment.

(ii) If the total amount of a borrower's Direct Loans is less than or equal to $1,000, the payback rate is four percent. If the total amount of a borrower's Direct Loans is greater than $1,000, the payback rate is four percent plus an additional percent that begins at zero and increases at a rate of 0.2 percent for each additional $1,000 borrowed up to a maximum payback rate of 15 percent.

(iii) More specifically, if the total amount of a borrower's Direct Loans is greater than $1,000, the payback rate is the lesser of 0.15 or the following: 0.04 + (debt − 1,000) (0.000002).

(3) *Exception for certain married borrowers.* The combined monthly payment amount for married borrowers who repay their loans jointly under paragraph (a)(4) of this section is the total of the individual monthly payment amounts for each borrower calculated under paragraph (b)(1)(iii) of this section. The amount of a borrower's individual monthly payment amount is applied to that borrower's debt. The payback rate for each borrower is calculated separately on the basis of the amount of the borrower's Direct Loans. For purposes of this paragraph, the Secretary assumes that the AGI for each borrower is proportionate to the relative size of the borrower's individual debt and subtracts one half of the applicable family size adjustment from each borrower's monthly payment amount. If the combined monthly repayment amount is less than $25, the borrowers are not required to make a payment.

(c) *Option 2.* (1) *General.* (i) In general, under Option 2, a borrower shall make monthly payments as calculated under Option 1, except that no monthly payment exceeds the amount the borrower would repay over 12 years using standard amortization. The Secretary calculates the 12-year standard amortization amount on the basis of the interest rate in effect when the borrower chooses Option 2. The amount a borrower would repay over 12 years using standard amortization is determined without any family size adjustment or minimum monthly repayment amount.

(ii) More specifically, if a borrower chooses Option 2 under the income contingent repayment plan—

(A) The borrower's payments do not exceed the 12-year standard amortization amount regardless of the borrower's income;

(B) The borrower's repayment period may be extended beyond the repayment period under Option 1 (but not beyond the 25-year maximum period described in § 685.209(d)(2)(i)); and

(C) Interest accrues throughout the repayment period and is capitalized until the limitation on capitalization of interest in paragraph (d)(3) of this section is reached.

(iii) *Exception for certain married borrowers.* The combined monthly payment amount for married borrowers who repay their loans jointly under paragraph (a)(4) of this section is the total of the individual monthly payment amounts for each borrower calculated under paragraph (b)(1)(iii) of this section, unless the combined amount exceeds the 12-year standard amortization amount. If the combined amount exceeds the 12-year standard amortization amount, the couple pays the 12-year standard amortization amount, and the amount applied to each borrower's debt is determined by calculating the 12-year standard amortization amount for that borrower's debt.

(d) *Other features of the income contingent repayment plan.* (1) *Alternative documentation of income.* If a borrower's AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower's monthly repayment amount.

(2) *Repayment period.* (i) The maximum repayment period under the income contingent repayment plan is 25 years.

(ii) The repayment period does not include periods in which the borrower makes payments under the standard, extended, graduated, or alternative repayment plan or periods of authorized deferment or forbearance.

(iii) If a borrower repays more than one loan under the income contingent repayment plan, a separate repayment period for each loan begins when that loan enters repayment.

(iv) If a borrower has not repaid a loan in full at the end of the 25-year repayment period under the income contingent repayment plan, the Secretary cancels the unpaid portion of the loan.

(v) At the beginning of the repayment period, a borrower shall make monthly payments of the amount of interest that accrues on the borrower's Direct Loans until the Secretary calculates the borrower's monthly repayment amount on the basis of the borrower's income.

(3) *Limitation on capitalization of interest.* If the amount of a borrower's monthly payment is less than the accrued interest, the unpaid interest is capitalized until the outstanding principal amount increases to one and one-half times the original principal amount. After the outstanding principal amount reaches one and one-half times the original amount, interest continues to accrue but is not capitalized.

(4) *Notification of terms and conditions.* When a borrower selects or is required by the Secretary to repay a loan under the income contingent repayment plan, the Secretary notifies the borrower of the terms and conditions of the plan, including—

(i) That the Internal Revenue Service will disclose certain tax return information to the Secretary or the Secretary's agents; and

(ii) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in § 685.209(a)(3), the borrower may contact the Secretary and obtain the Secretary's determination as to whether an adjustment is appropriate.

(5) *Consent to disclosure of tax return information.* (i) A borrower shall provide written consent to the disclosure of certain tax return information by the Internal Revenue Service (IRS) to agents of the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan under the income contingent repayment plan. The borrower shall provide consent by signing a consent form, developed consistent with 26 CFR 301.6103(c)–1 and provided to the borrower by the Secretary, and shall return the signed form to the Secretary.

(ii) The borrower shall consent to disclosure of the borrower's taxpayer identity information as defined in 26 U.S.C. 6103(b)(6), tax filing status, and AGI.

(iii) The borrower shall provide consent for a period of five years from the date the borrower signs the consent form. The Secretary provides the borrower a new consent form before that period expires. The IRS does not disclose tax return information after the IRS has processed a borrower's withdrawal of consent.

(iv) The Secretary designates the standard repayment plan for a borrower who selects the income contingent repayment plan but—

(A) Fails to provide the required written consent;

(B) Fails to renew written consent upon the expiration of the five-year period for consent; or

(C) Withdraws consent and does not select another repayment plan.

(v) If a borrower defaults and the Secretary designates the income contingent repayment plan for the borrower but the borrower fails to provide the required written consent, the Secretary consults with the borrower prior to establishing a repayment plan for the borrower.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.210 Choice of repayment plan.

(a) *Initial selection of a repayment plan.* (1) Before a Direct Loan enters into repayment, the Secretary provides the borrower a description of the available repayment plans and requests the borrower to select one. A borrower may select a repayment plan before the loan enters repayment by notifying the Secretary of the borrower's selection in writing.

(2) If a borrower does not select a repayment plan within 45 days after the Secretary provides the borrower with a description of available repayment plans, the Secretary designates the standard repayment plan described in § 685.208(b) for the borrower.

(b) *Changing repayment plans.* (1) A borrower may change repayment plans at any time after the loan has entered repayment by notifying the Secretary in writing. However, a borrower who is repaying a defaulted loan under the income contingent repayment plan under § 685.211(c)(3)(ii) may not change to another repayment plan unless—

(i) The borrower was required to and did make a payment under the income contingent repayment plan in each of the prior six months; and

(ii) The borrower makes and the Secretary approves a request to change plans.

(2) (i) A borrower may not change to a repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment, except that a borrower may change to the income contingent repayment plan at any time.

(ii) If a borrower changes plans, the repayment period is the period provided for under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income contingent repayment plan, the

(iv) The Secretary designates the standard repayment plan for a borrower who selects the income contingent repayment plan but—

(A) Fails to provide the required written consent;

(B) Fails to renew written consent upon the expiration of the five-year period for consent; or

(C) Withdraws consent and does not select another repayment plan.

(v) If a borrower defaults and the Secretary designates the income contingent repayment plan for the borrower but the borrower fails to provide the required written consent, the Secretary consults with the borrower prior to establishing a repayment plan for the borrower.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.210 Choice of repayment plan.

(a) *Initial selection of a repayment plan.* (1) Before a Direct Loan enters into repayment, the Secretary provides the borrower a description of the available repayment plans and requests the borrower to select one. A borrower may select a repayment plan before the loan enters repayment by notifying the Secretary of the borrower's selection in writing.

(2) If a borrower does not select a repayment plan within 45 days after the Secretary provides the borrower with a description of available repayment plans, the Secretary designates the standard repayment plan described in § 685.208(b) for the borrower.

(b) *Changing repayment plans.* (1) A borrower may change repayment plans at any time after the loan has entered repayment by notifying the Secretary in writing. However, a borrower who is repaying a defaulted loan under the income contingent repayment plan under § 685.211(c)(3)(ii) may not change to another repayment plan unless—

(i) The borrower was required to and did make a payment under the income contingent repayment plan in each of the prior six months; and

(ii) The borrower makes and the Secretary approves a request to change plans.

(2) (i) A borrower may not change to a repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment, except that a borrower may change to the income contingent repayment plan at any time.

(ii) If a borrower changes plans, the repayment period is the period provided for under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income contingent repayment plan, the repayment period is calculated as described in § 685.209(d)(2).

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.211 Miscellaneous repayment provisions.

(a) *Payment application and prepayment.* (1) The Secretary applies any payment first to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal.

(2) A borrower may prepay all or part of a loan at any time without penalty. If a borrower pays any amount in excess of the amount due, the excess amount is a prepayment.

(3) If a prepayment equals or exceeds the monthly repayment amount under the borrower's repayment plan, the Secretary—

(i) Applies the prepaid amount according to paragraph (a)(1) of this section;

(ii) Advances the due date of the next payment unless the borrower requests otherwise; and

(iii) Notifies the borrower of any revised due date for the next payment.

(4) If a prepayment is less than the monthly repayment amount, the Secretary applies the prepayment according to paragraph (a)(1) of this section.

(b) *Refunds from schools.* The Secretary applies any refund due to a borrower that the Secretary receives from a school under § 668.22 to the borrower's outstanding principal.

(c) *Default.* (1) *Acceleration.* If a borrower defaults on a Direct Loan, the entire unpaid balance and accrued interest are immediately due and payable.

(2) *Collection charges.* If a borrower defaults on a Direct Loan, the Secretary assesses collection charges in accordance with § 685.202(e).

(3) *Collection of a defaulted loan.* (i) The Secretary may take any action authorized by law to collect a defaulted Direct Loan including, but not limited to, filing a lawsuit against the borrower, reporting the default to national credit bureaus, requesting the Internal Revenue Service to offset the borrower's Federal income tax refund, and garnishing the borrower's wages.

(ii) If a borrower defaults on a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, a Federal Direct Unsubsidized Consolidation Loan or a Federal Direct Subsidized Consolidation Loan, the Secretary may designate the income contingent repayment plan for the borrower.

(d) *Ineligible borrowers.* (1) The Secretary determines that a borrower is ineligible if, at the time the loan was made and without the school's or the Secretary's knowledge, the borrower (or the student on whose behalf a parent borrowed) provided false or erroneous information or took actions that caused the borrower or student—

(i) To receive a loan for which the borrower is wholly or partially ineligible;

(ii) To receive interest benefits for which the borrower was ineligible; or

(iii) To receive loan proceeds for a period of enrollment for which the borrower was not eligible.

(2) If the Secretary makes the determination described in paragraph (d)(1) of this section, the Secretary sends an ineligible borrower a demand letter that requires the borrower to repay some or all of a loan, as appropriate. The demand letter requires that within 30 days of the borrower's receipt of the letter, the borrower repay any principal amount for which the borrower is ineligible and any accrued interest, including interest subsidized by the Secretary, through the previous quarter.

(3) If a borrower fails to comply with the demand letter described in paragraph (d)(2) of this section, the borrower is in default.

(4) A borrower may not consolidate a loan under § 685.215 for which the borrower is wholly or partially ineligible.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.212 Discharge of a loan obligation.

(a) *Death.* If the Secretary receives acceptable documentation that a borrower (or the student on whose behalf a parent borrowed) has died, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(b) *Total and permanent disability.* If the Secretary receives acceptable documentation that a borrower has become totally and permanently disabled, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan. A borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(c) *Bankruptcy.* If a borrower's obligation to repay a loan is discharged in bankruptcy, the Secretary does not require the borrower or any endorser to make any further payments on the loan.

(d) *Closed schools.* If a borrower meets the requirements in § 685.213, the Secretary discharges the obligation of

the borrower and any endorser to make any further payments on the loan.

(e) *False certification and unauthorized disbursement.* If a borrower meets the requirements in § 685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(f) *Payments received after eligibility for discharge.* The Secretary returns to the sender or, for a discharge based on death, the borrower's estate, those payments received after the requirements for discharge have been met.

(g) *Loan forgiveness demonstration program.* If funds are appropriated for the loan forgiveness demonstration program authorized by section 428J of the Act, the Secretary follows the procedures and applies the standards in 34 CFR 682.215 for borrowers under the Direct Loan Program.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.213 Closed school discharge.

(a) *General.* (1) The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if the borrower (or the student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed, as described in paragraph (c) of this section.

(2) For purposes of this section—

(i) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary; and

(ii) "School" means a school's main campus or any location or branch of the main campus.

(b) *Relief pursuant to discharge.* (1) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges or collection costs with respect to the loan.

(2) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan.

(3) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(4) The Secretary reports the discharge of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge of a loan under this section, a borrower shall submit to the Secretary a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall—

(1) State that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received the proceeds of a loan to attend a school;

(ii) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 90 days before the school closed (or longer in exceptional circumstances); and

(iii) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(2) State whether the borrower (or student) has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation; and

(3) State that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(d) *Cooperation by borrower in enforcement actions.* (1) In order to obtain a discharge under this section, a borrower shall cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover for amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower shall—

(i) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(ii) Produce any documents reasonably available to the borrower with respect to those representations; and

(iii) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(2) The Secretary denies the request for a discharge or revokes the discharge of a borrower who—

(i) Fails to provide the testimony, documents, or a sworn statement required under paragraph (d)(1) of this section; or

(ii) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(e) *Transfer to the Secretary of borrower's right of recovery against third parties.* (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this section limits or forecloses the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan.

(f) *Discharge procedures.* (1) After confirming the date of a school's closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 90 days prior to the closure date.

(2) If the borrower's current address is known, the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (f)(2) of this section.

(4) If a borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

(6) If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that determination and the reasons for the determination.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.214 Discharge for false certification of student eligibility or unauthorized payment.

(a) (1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Admitted the student on the basis of ability to benefit from its training and the student did not meet the requirements for admission described in 34 CFR Part 668 and section 484(d) of the Act, as applicable; or

(ii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization.

(2) *Unauthorized payment.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a

on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (f)(2) of this section.

(4) If a borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

(6) If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that determination and the reasons for the determination.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.214 Discharge for false certification of student eligibility or unauthorized payment.

(a) (1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Admitted the student on the basis of ability to benefit from its training and the student did not meet the requirements for admission described in 34 CFR Part 668 and section 484(d) of the Act, as applicable; or

(ii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization.

(2) *Unauthorized payment.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan if the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school.

(b) *Relief pursuant to discharge.* (1) Discharge for false certification under paragraph (a)(1) of this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges and collection costs with respect to the loan.

(2) Discharge for unauthorized payment under paragraph (a)(2) of this section relieves the borrower of the obligation to repay the amount of the payment discharged.

(3) The discharge under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the discharged loan or payment.

(4) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(5) The Secretary reports the discharge under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge under this section, the borrower shall submit to the Secretary a written request and a sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall meet the following requirements:

(1) *Ability to benefit.* In the case of a borrower requesting a discharge based on the school's defective testing of the student's ability to benefit, the borrower shall state that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received a disbursement of a loan to attend a school;

(ii) Received a Direct Loan at that school on the basis of an ability to benefit from the school's training and did not meet the eligibility requirements described in 34 CFR Part 668 and section 484(d) of the Act, as applicable; and

(iii) Either—

(A) Withdrew from the school and did not find employment in the occupation for which the training program was intended; or

(B) Completed the training program for which the loan was made, attempted to obtain employment in the occupation for which the program was intended, and was not able to find employment in that occupation or obtained employment in that occupation only after receiving additional training that was not provided by the school that certified the loan.

(2) *Unauthorized loan.* In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower shall—

(i) State that he or she did not sign the document in question or authorize the school to do so; and

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature.

(3) *Unauthorized payment.* In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, the borrower shall—

(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so;

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature;

(iii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(4) *Claim to third party.* The borrower shall state whether the borrower (or student) has made a claim with respect to the school's false certification or unauthorized payment with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation.

(5) State that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions as described in § 685.213(d) and to transfer any right to recovery against a third

party to the Secretary as described in § 685.213(e).

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary mails the borrower a disclosure application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the disclosure application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits the written request and sworn statement described in paragraph (c) of the section, the Secretary determines whether to grant a request for discharge under this section by reviewing the request and sworn statement in light of information available from the Secretary's records and from other sources, including guaranty agencies, State authorities, and cognizant accrediting associations.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

(Authority: 20 U.S.C. 1087a et seq.)

§ 685.215 Consolidation

(a) *Federal Direct Consolidation Loans.* A borrower may consolidate one or more education loans made under certain Federal programs into one or more Federal Direct Consolidation Loans. Loans consolidated into a Federal Direct Consolidation Loan are discharged when the Federal Direct Consolidation Loan is originated.

(b) *Loans eligible for consolidation.* The following loans may be consolidated into a Federal Direct Consolidation Loan:

(1) Federal Stafford Loans.

(2) Guaranteed Student Loans.

(3) Federal Insured Student Loans (FISL).

(4) Federal Direct Stafford Loans.

(5) Federal Direct Subsidized Consolidation Loans.

(6) Federal Perkins Loans.

(7) National Direct Student Loans (NDSL).

(8) National Defense Student Loans (NDSL).

(9) Federal PLUS Loans.

(10) Parent Loans for Undergraduate Students (PLUS).

(11) Federal Direct PLUS Loans.

(12) Federal Direct PLUS Consolidation Loans.

(13) Federal Unsubsidized Stafford Loans.

(14) Federal Supplemental Loans for Students (SLS).

(15) Federal Consolidation Loans.

(16) Federal Direct Unsubsidized Stafford Loans.

(17) Federal Direct Unsubsidized Consolidation Loans.

(18) Auxiliary Loans to Assist Students (ALAS).

(19) Health Professions Student Loans (HPSL).

(20) Health Education Assistance Loans (HEAL).

(21) Other loans made under subpart II of part A of title VII of the Public Health Service Act.

(c) *Types of Federal Direct Consolidation Loans.* (1) The loans identified in paragraphs (b) (1) through (8) may be consolidated into a Federal Direct Subsidized Consolidation Loan.

(2) The loans identified in paragraphs (b) (9) through (12) may be consolidated into a Federal Direct PLUS Consolidation Loan.

(3) The loans identified in paragraphs (b) (13) through (21) may be consolidated into a Federal Direct Unsubsidized Consolidation Loan.

(d) *Eligibility for a Federal Direct Consolidation Loan.* (1) A borrower may obtain a Federal Direct Consolidation Loan if, at the time the borrower applies for such a loan, the borrower meets the following requirements:

(i) The borrower either—

(A) Has an outstanding balance on a Direct Loan; or

(B) Has an outstanding balance on an FFEL loan and asserts either—

(*1*) That the borrower is unable to obtain an FFEL consolidation loan; or

(*2*) That the borrower is unable to obtain an FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower and is eligible for the income contingent repayment plan under the Direct Loan Program.

(ii) On the loans being consolidated, the borrower is—

(A) In a six-month grace period;

(B) In a repayment period but not in default;

(C) In default but has made satisfactory arrangements to repay the defaulted loan; or

(D) In default but agrees to repay the consolidation loan under the income contingent repayment plan described in § 685.208(f) and signs the consent form described in § 685.209(b)(5).

(iii) The borrower certifies that no other application to consolidate any of the borrower's loans listed in paragraph (b) of this section is pending with any other lender.

(iv) The borrower agrees to notify the Secretary of any change in address.

(v) In the case of a Federal Direct PLUS Consolidation Loan—

(A) The borrower may not have an adverse credit history as defined in § 685.200(b)(7)(ii); or

(B) If the borrower has such an adverse credit history, the borrower shall obtain an endorser for the consolidation loan who does not have an adverse credit history or provide documentation satisfactory to the Secretary that extenuating circumstances relating to the borrower's credit history exist.

(2) Two married borrowers may consolidate their loans together if they meet the following requirements:

(i) At least one spouse meets the requirements of paragraph (d)(1)(i) of this section.

(ii) Both spouses meet the requirements of paragraphs (d)(2) (ii) through (v) of this section.

(iii) Each spouse agrees to be held jointly and severally liable for the repayment of the total amount of the consolidation loan and to repay the loan regardless of any change in marital status.

(e) *Application for a Federal Direct Consolidation Loan.* To obtain a Federal Direct Consolidation Loan, a borrower or borrowers shall submit a completed application to the Secretary. A single application may be used for one or more consolidation loans. A borrower may add eligible loans to a Federal Direct Consolidation Loan by submitting a request to the Secretary within 180 days after the date on which the Federal Direct Consolidation Loan is originated.

(f) *Origination of a consolidation loan.* (1) If the Secretary approves an application for a consolidation loan, the Secretary pays to each holder of a loan selected for consolidation an amount equal to the unpaid balance, accrued interest, fees, and collection costs due on the loan.

(2) Upon receipt of the proceeds of a Federal Direct Consolidation Loan, the holder of a consolidated loan shall promptly apply the proceeds to fully discharge the borrower's obligation on

the consolidated loan. The holder of a consolidated loan must return to the borrower the promissory note marked "paid-in-full."

(3) The principal balance of a Federal Direct Consolidation Loan is equal to the sum of the amounts paid to the holders of the consolidated loans.

(4) If the amount paid by the Secretary to the holder of a consolidated loan exceeds the amount needed to discharge the borrower's obligation on the loan, the holder of the consolidated loan shall promptly refund the excess amount to the Secretary to be credited against the outstanding balance of the Federal Direct Consolidation Loan.

(5) If the amount paid by the Secretary to the holder of the consolidated loan is insufficient to discharge the borrower's obligation on the loan, the lender shall notify the Secretary in writing of the remaining amount due on the loans. The Secretary promptly pays the remaining amount due.

(g) *Interest rate.* The interest rate on a Federal Direct Subsidized Consolidation Loan or a Federal Direct Unsubsidized Consolidation Loan is the rate established for a Federal Direct Stafford Loan under § 685.202(a)(1). The interest rate on a Federal Direct PLUS Consolidation Loan is the rate established for a Federal Direct PLUS Loan under § 685.202(a)(2).

(h) *Repayment plans.* A borrower may repay a Federal Direct Consolidation Loan under any of the repayment plans described in § 685.208, except that—

(1) A borrower may not repay a Federal Direct PLUS Consolidation Loan under the income contingent repayment plan; and

(2) A borrower who became eligible to consolidate a defaulted loan under paragraph (d)(1)(ii)(D) of this section shall repay the consolidation loan under the income contingent repayment plan unless—

(i) The borrower was required to and did make a payment under the income contingent repayment plan in each of the prior six months; and

(ii) The borrower makes and the Secretary approves a request to change plans.

(i) *Repayment period.* (1) The repayment period for a Federal Direct Consolidation Loan begins on the day after the loan is disbursed.

(2) Under the extended or graduated repayment plan, the Secretary determines the repayment period under § 685.208(e) on the basis of the outstanding balances on all of the borrower's loans that are eligible for consolidation and the balances on other education loans except as provided in paragraph (i)(3) of this section.

the consolidated loan. The holder of a consolidated loan must return to the borrower the promissory note marked "paid-in-full."

(3) The principal balance of a Federal Direct Consolidation Loan is equal to the sum of the amounts paid to the holders of the consolidated loans.

(4) If the amount paid by the Secretary to the holder of a consolidated loan exceeds the amount needed to discharge the borrower's obligation on the loan, the holder of the consolidated loan shall promptly refund the excess amount to the Secretary to be credited against the outstanding balance of the Federal Direct Consolidation Loan.

(5) If the amount paid by the Secretary to the holder of the consolidated loan is insufficient to discharge the borrower's obligation on the loan, the lender shall notify the Secretary in writing of the remaining amount due on the loans. The Secretary promptly pays the remaining amount due.

(g) *Interest rate.* The interest rate on a Federal Direct Subsidized Consolidation Loan or a Federal Direct Unsubsidized Consolidation Loan is the rate established for a Federal Direct Stafford Loan under § 685.202(a)(1). The interest rate on a Federal Direct PLUS Consolidation Loan is the rate established for a Federal Direct PLUS Loan under § 685.202(a)(2).

(h) *Repayment plans.* A borrower may repay a Federal Direct Consolidation Loan under any of the repayment plans described in § 685.208, except that—

(1) A borrower may not repay a Federal Direct PLUS Consolidation Loan under the income contingent repayment plan; and

(2) A borrower who became eligible to consolidate a defaulted loan under paragraph (d)(1)(ii)(D) of this section shall repay the consolidation loan under the income contingent repayment plan unless—

(i) The borrower was required to and did make a payment under the income contingent repayment plan in each of the prior six months; and

(ii) The borrower makes and the Secretary approves a request to change plans.

(i) *Repayment period.* (1) The repayment period for a Federal Direct Consolidation Loan begins on the day after the loan is disbursed.

(2) Under the extended or graduated repayment plan, the Secretary determines the repayment period under § 685.208(e) on the basis of the outstanding balances on all of the borrower's loans that are eligible for consolidation and the balances on other education loans except as provided in paragraph (i)(3) of this section.

(3) (i) The total amount of outstanding balances on the other education loans used to determine the repayment period under the graduated or extended repayment plan may not exceed the amount of the Federal Direct Consolidation Loan.

(ii) The borrower may not be in default on the other education loan unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(iii) The lender of the other educational loan may not be an individual.

(j) *Repayment schedule.* (1) The Secretary provides a borrower of a Federal Direct Consolidation Loan a repayment schedule before the borrower's first payment is due. The repayment schedule identifies the borrower's monthly repayment amount under the repayment plan selected.

(2) If a borrower adds an eligible loan to the consolidation loan under paragraph (d)(2) of this section, the Secretary makes appropriate adjustments to the borrower's monthly repayment amount and repayment period.

(k) *Refunds received from schools.* If a lender receives a refund from a school on a loan that has been consolidated into a Federal Direct Consolidation Loan, the lender shall—

(1) Transmit the refund and an explanation of the source of the refund to the Secretary within 30 days of receipt; and

(2) Inform the borrower in writing that the lender has received the refund and transmitted it to the Secretary.

(l) *Special provisions for joint consolidation loans.* The provisions of paragraphs (l)(1) through (3) of this section apply to a Federal Direct Consolidation Loan obtained by two married borrowers.

(1) *Deferment.* To obtain a deferment on a joint Federal Direct Consolidation Loan under § 685.204, both borrowers shall meet the requirements of that section.

(2) *Forbearance.* To obtain forbearance on a joint Federal Direct Consolidation Loan under § 685.205, both borrowers shall meet the requirements of that section.

(3) *Discharge.* (i) To obtain a discharge of a joint Federal Direct Consolidation Loan under § 685.212, each borrower shall meet the requirements for one of the types of discharge described in that section.

(ii) If a borrower meets the requirements for discharge under § 685.212 (d) or (e) on a loan that was consolidated into a joint Federal Direct Consolidation Loan and the borrower's spouse does not meet the requirements for any type of discharge described in § 685.212, the Secretary discharges a portion of the consolidation loan equal to the amount of the loan that would have been eligible for discharge under the provisions of § 685.212 (d) or (e), as applicable.

(Authority: 20 U.S.C. 1078–8, 1087a et seq.)

4. A new Appendix B is added to part 685 to read as follows:

Appendix B—Income Contingent Repayment Examples of the Calculation of Monthly Repayment Amounts

Example 1. A single borrower with $12,500 of Direct Loans and an Adjusted Gross Income (AGI) of $25,000.

Step 1: Under either Option 1 or Option 2, calculate the payback rate. Because the borrower's debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii), as follows:

- Subtract $1,000 from the total amount of the borrower's Direct Loans: ($12,500 − $1,000=$11,500).
- Multiply the result by 0.000002: $11,500×0.000002=0.023).
- Add the result to 0.04: (0.04+0.023=0.063).
- The result is the payback rate.

Step 2: Compare the calculated payback rate (0.063) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the borrower's payback rate is 0.063.

Step 3: Calculate the annual repayment amount by multiplying the borrower's AGI by the payback rate: ($25,000×0.063=$1,575).

Step 4: Calculate the monthly repayment amount by dividing the annual repayment amount by 12 months: ($1,575÷12=$131.25).

Step 5: Compare the calculated monthly repayment amount ($131.25) to the $25 minimum repayment amount. Because the calculated amount is greater than the minimum amount, the borrower's monthly repayment amount is $131.25 under Option 1.

Step 6: If the borrower has chosen Option 2, compare the monthly repayment amount under Option 1 ($131.25) to the amount the borrower would repay under a 12-year standard amortization. The Secretary calculates the 12-year standard amortization amount using the interest rate in effect when the borrower chose Option 2. If the interest rate was seven percent, the 12-year standard amortization amount is approximately $10.28 for every $1,000 of debt. In this example, the 12-year standard amortization amount is approximately $128.50 ($10.28×12.5). Because the monthly payment calculated under Option 1 ($131.25) exceeds the 12-year standard amortization amount ($128.50), the borrower's monthly repayment amount is $128.50 under Option 2.

Example 2: Married borrowers with a combined Adjusted Gross Income (AGI) of $30,000. The husband has $5,000 of Direct Loans. The wife has $15,000 of Direct Loans. The couple has two dependents.

Step 1: Under either Option 1 or Option 2, calculate the husband's payback rate.

Because his debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii) as follows:

- Subtract $1,000 from the amount of the husband's loans: ($5,000 − $1,000=$4,000).
- Multiply the result by 0.000002: ($4,000×0.000002=0.008).
- Add the result to 0.04: (0.04+0.008=0.048).
- The result is the husband's payback rate.

Step 2: Compare the husband's calculated payback rate (0.048) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the husband's payback rate is 0.048.

Step 3: Calculate the husband's assumed AGI by multiplying the couple's total AGI ($30,000) by the amount of the husband's loans ($5,000), divided by the total amount of the couple's debt ($20,000): ($30,000×$5,000÷$20,000=$7,500).

Step 4: Calculate the husband's annual repayment amount by multiplying the husband's assumed AGI ($7,500) by his payback rate (0.048): ($7,500×0.048=$360).

Step 5: Divide the annual repayment amount by 12 months: ($360÷12=$30).

Step 6: Calculate the couple's total family size adjustment amount by multiplying the number of dependents (2) by $7: (2×$7=$14).

Step 7: Calculate the couple's individual family size adjustment amounts by dividing the total family size adjustment ($14) by 2: ($14÷2=$7).

Step 8: Calculate the husband's monthly repayment amount by subtracting his family size adjustment amount ($7) from the amount calculated in Step 5 ($30): ($30 − $7=$23).

Step 9: Calculate the wife's payback rate. Because her debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii) as follows:

- Subtract $1,000 from the amount of the wife's loans: ($15,000 − $1,000=$14,000).
- Multiply the result by 0.000002: ($14,000×0.000002=0.028).
- Add the result to 0.04: (0.04+0.028=0.068).
- The result is the wife's payback rate.

Step 10: Compare the wife's calculated payback rate (0.068) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the wife's payback rate is 0.068.

Step 11: Calculate the wife's assumed AGI by multiplying the couple's total AGI ($30,000) by the amount of the wife's loans ($15,000), divided by the total amount of the couple's debt ($20,000): ($30,000×$15,000÷$20,000=$22,500).

Step 12: Calculate the wife's annual repayment amount by multiplying the wife's assumed AGI ($22,500) by her payback rate (0.068): ($22,500×0.068=$1,530).

Step 13: Divide the annual repayment amount by 12 months: ($1,530÷12=$127.50).

Step 14: Calculate the wife's monthly repayment amount by subtracting her family size adjustment amount calculated in Step 7 ($7) from the amount calculated in Step 13 ($127.50): ($127.50 − $7=$120.50).

Step 15: Calculate the couple's combined monthly repayment amount by adding the husband's monthly repayment amount calculated in Step 8 ($23) and the wife's monthly repayment amount calculated in Step 14 ($120.50): ($23+$120.50=$143.50).

Step 16: Compare the couple's combined monthly repayment amount ($143.50) to the $25 minimum repayment amount. Because the calculated amount is greater than the minimum amount, the couple's combined monthly repayment amount is $143.50 under Option 1.

Step 17: If the couple has chosen Option 2, compare the combined monthly repayment amount under Option 1 ($143.50) to the amount the couple would repay under a 12-year standard amortization. The Secretary calculates the 12-year standard amortization amount using the interest rate in effect when the couple chose Option 2. If the interest rate was seven percent, the 12-year standard amortization amount is approximately $10.28 for every $1,000 of debt. In this example, the 12-year standard amortization amount is approximately $205.60 ($10.28×20). Because the monthly payment calculated under Option 1 ($143.50) does not exceed the 12-year standard amortization amount ($205.60), the couple's combined monthly repayment amount is $143.50 under Option 2.

Table—Income Contingent Repayment Plan

Note: This table will not appear in the Code of Federal Regulations.

BILLING CODE 4000-01-P

Income Contingent Repayment Plan

Sample Monthly Repayment Amounts for a Single Borrower at Various Income and Debt Levels Under Option 1

Use the table values if there are no dependents. Otherwise, subtract $7 for each dependent other than a spouse, up to 5 dependents, and if the result is less than $25 no payment is required.

Income	Initial Debt																					
	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	25	25	25	25	25	25	25
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	25	25	25	25	25	25	25
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	25	25	25	25	25	25	25
5,000	0	0	0	0	0	0	0	26	28	29	33	37	41	45	49	53	58	62	66	70	74	78	86
6,000	0	0	27	29	32	34	37	39	42	44	49	54	59	64	69	74	79	83	88	93	98	103	113
7,000	25	28	31	34	37	40	43	46	48	51	57	63	69	75	81	86	91	96	101	106	111	116	126
8,000	29	32	35	39	42	45	49	52	55	59	65	72	79	85	92	99	104	109	114	119	124	129	139
9,000	32	36	40	44	47	51	55	59	62	66	73	81	89	96	104	111	116	121	126	131	136	141	151
10,000	36	40	44	48	53	57	61	65	69	73	82	90	98	107	115	123	129	134	139	144	149	154	164
12,500	45	50	55	60	66	71	76	81	86	92	102	113	123	133	144	154	161	167	173	179	185	191	203
15,000	54	60	66	73	79	85	91	98	104	110	123	135	148	160	173	185	193	201	208	215	223	230	244
17,500	63	70	77	85	92	99	106	114	121	128	143	158	172	187	201	216	226	234	243	251	260	268	285

Income Contingent Repayment Plan

Sample Monthly Repayment Amounts for a Single Borrower at Various Income and Debt Levels Under Option 1

Use the table values if there are no dependents. Otherwise, subtract $7 for each dependent other than a spouse, up to 5 dependents, and if the result is less than $25 no payment is required.

	Initial Debt																						
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	25	25	25	25	25	25	25	25
3,000	0	0	0	0	0	0	0	0	0	0	0	27	30	32	35	37	38	38	38	38	38	38	38	38
4,000	0	0	0	0	0	0	0	26	28	29	33	36	39	43	46	49	50	50	50	50	50	50	50	50
5,000	0	0	0	0	26	28	30	33	35	37	41	45	49	53	58	62	63	63	63	63	63	63	63	63
6,000	0	0	27	29	32	34	37	39	42	44	49	54	59	64	69	74	75	75	75	75	75	75	75	75
7,000	25	28	31	34	37	40	43	46	48	51	57	63	69	75	81	86	88	88	88	88	88	88	88	88
8,000	29	32	35	39	42	45	49	52	55	59	65	72	79	85	92	99	100	100	100	100	100	100	100	100
9,000	32	36	40	44	47	51	55	59	62	66	74	81	89	96	104	111	113	113	113	113	113	113	113	113
10,000	36	40	44	48	53	57	61	65	69	73	82	90	98	107	115	123	125	125	125	125	125	125	125	125
12,500	45	50	55	60	66	71	76	81	86	92	102	113	123	133	144	154	156	156	156	156	156	156	156	156
15,000	54	60	66	73	79	85	91	98	104	110	123	135	148	160	173	185	188	188	188	188	188	188	188	188
17,500	63	70	77	85	92	99	106	114	121	128	143	158	172	187	201	216	219	219	219	219	219	219	219	219
20,000	72	80	88	97	105	113	122	130	138	147	163	180	197	213	230	247	250	250	250	250	250	250	250	250
22,500	81	90	99	109	118	128	137	146	156	165	184	203	221	240	259	278	281	281	281	281	281	281	281	281
25,000	90	100	110	121	131	142	152	163	173	183	204	225	246	267	288	308	313	313	313	313	313	313	313	313
30,000	108	120	133	145	158	170	183	195	208	220	245	270	295	320	345	370	375	375	375	375	375	375	375	375
35,000	125	140	155	169	184	198	213	228	242	257	286	315	344	373	403	432	438	438	438	438	438	438	438	438
40,000	143	160	177	193	210	227	243	260	277	293	327	360	393	427	460	493	500	500	500	500	500	500	500	500
45,000	161	180	199	218	236	255	274	293	311	330	368	405	443	480	518	555	563	563	563	563	563	563	563	563
50,000	179	200	221	242	263	283	304	325	346	367	408	450	492	533	575	617	625	625	625	625	625	625	625	625
55,000	197	220	243	266	289	312	335	358	380	403	449	495	541	587	633	678	688	688	688	688	688	688	688	688
60,000	215	240	265	290	315	340	365	390	415	440	490	540	590	640	690	740	750	750	750	750	750	750	750	750
65,000	216	260	287	314	341	368	395	423	450	477	531	585	639	693	748	802	813	813	813	813	813	813	813	813
70,000	216	280	309	338	368	397	426	455	484	513	572	630	688	747	805	863	875	875	875	875	875	875	875	875
75,000	216	300	331	363	394	425	456	488	519	550	613	675	738	800	863	925	938	938	938	938	938	938	938	938
80,000	216	320	353	387	420	453	487	520	553	587	653	720	787	853	920	987	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
85,000	216	340	375	411	446	482	517	553	588	623	694	765	836	907	978	1,048	1,063	1,063	1,063	1,063	1,063	1,063	1,063	1,063
90,000	216	360	398	435	473	510	548	585	623	660	735	810	885	960	1,035	1,110	1,125	1,125	1,125	1,125	1,125	1,125	1,125	1,125
95,000	216	380	420	459	499	538	578	618	657	697	776	855	934	1,013	1,093	1,172	1,188	1,188	1,188	1,188	1,188	1,188	1,188	1,188
100,000	216	400	442	483	525	567	608	650	692	733	817	900	983	1,067	1,150	1,233	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250

Under Option 2, the monthly repayment amount will never exceed the values in the following line:

Initial Debt																							
$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$26	$51	$77	$103	$129	$154	$180	$206	$231	$257	$309	$360	$411	$463	$514	$566	$617	$668	$720	$771	$823	$874	$926	$1,028

VOL
5 9
ISS
1
2
6
JL
1
994
UMI

Schizophrenia

Federal Register

Friday
July 1, 1994

Part X

Department of Housing and Urban Development

Office of the Assistant for Housing-Federal Housing Commissioner

24 CFR Part 3280

Interpretative Bulletin for Manufactured Home Construction and Safety Standards and Notice of Waiver of Certain Requirements; Rule

VOL 59 ISS 126 JL 1 994 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R–94–1632; FR–3380–N–06]

Interpretative Bulletin for Manufactured Home Construction and Safety Standards and Notice of Waiver of Certain Requirements

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of interpretative bulletin and waiver.

SUMMARY: HUD published a final rule amending the Federal Manufactured Home Construction and Safety Standards (FMHCSS) on January 14, 1994 (59 FR 2456) to improve the resistance of manufactured homes to wind forces in areas prone to hurricanes. An Interpretative Bulletin was issued on April 15, 1994 and published in the **Federal Register** on April 21, 1994 to clarify some aspects of the new standards that have been the subject of questions from the industry and the public. This Interpretative Bulletin addresses certain additional questions and announces the issuance of a waiver, pursuant to 24 CFR 3280.1(b), relating to certain exterior wall cladding.

DATES: Issued June 24, 1994.

FOR FURTHER INFORMATION CONTACT: David C. Nimmer, Director, Office of Manufactured Housing and Regulatory Functions, Department of Housing and Urban Development, 451 Seventh Street SW., Attn: Mailroom B–133, Washington, DC 20410–8000. Telephones: (voice) (202) 755–7410; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, the following Interpretative Bulletin, which includes the Secretary's determination that it should not be subject to notice-and-comment, has been issued by the Department.

Interpretative Bulletin to the Standards

Manufactured Home Construction and Safety Standards

24 CFR Part 3280

Under Section 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403, the Secretary of the U.S. Department of Housing and Urban Development ("HUD") is authorized to issue, amend and revoke by order appropriate Federal manufactured home construction and safety standards. On January 14, 1994 (59 FR 2456), HUD published certain changes to the Federal Manufactured Home Construction and Safety Standards for high wind areas. The effective date of the wind standards is July 13, 1994.

Since the publication of this rule, the Department received a number of questions asking for clarification of certain provisions. Those who requested the clarifications urged the Department to provide a timely response so that industry designers can move forward to revise plans and specifications well ahead of the effective date.

HUD recognized that it was imperative to respond to these requests for clarification as soon as possible to assist Primary Inspection Agencies ("PIAs"), manufacturers and State Administrative Agencies in understanding the changes to the manufactured housing standards in advance of the effective date. Therefore, on April 21, 1994, the Department published a series of technical interpretations of the rule in the **Federal Register** [59 FR 19072].

In that Interpretative Bulletin, the Department indicated that it may issue further Interpretative Bulletins to provide further assistance in the implementation of these new standards. Since the publication of those interpretations, additional requests for clarification of both rules have been received.

In addition, certain questions were raised about 24 CFR 3280.305(c)(1)(ii)(B) and Footnote 8 to the "Table of Design Wind Pressures." The questions related to the requirement that exterior wall cladding materials be fastened at 6″ on center ("o.c.") as provided in Footnote 8. The Department has been advised that the impracticability of such a fastening requirement may have a significant negative effect on the manufacturers of certain siding traditionally used in manufactured housing. The use of these specific requirements was not intended to prohibit the utilization of any material, piece of equipment, or system which cannot meet the precise specifications.

24 CFR 3280.1(b) of the Manufactured Home Construction and Safety Standards provides that where any material, piece of equipment, or system which does not meet precise specifications set out in the standard is shown, to the satisfaction of the Secretary, to meet the level of performance of a material, piece of equipment or system which meets the precise specifications, the Secretary may waive the specifications set out in the standard for that material, piece of equipment, or system. The Secretary, in granting such a waiver, may set out any limitations or other requirements with respect to how the material, piece of equipment, or system must be used, including any tests of the material, piece of equipment, or system which the Secretary determines must be carried out before it can be used.

Accordingly, this Interpretative Bulletin, in accordance with 24 CFR 3280.1(b), also announces the waiver of certain requirements of 24 CFR 3280.305(c)(1)(ii)(B) and Footnote 8 to the "Table of Design Wind Pressures" applicable to permeable exterior wall cladding materials which cannot be secured at the 6″ o.c. fastening pattern. This Interpretative Bulletin, however, sets out limitations and other requirements with respect to how the waiver applies.

Due to the need for expeditious resolution of the issue relating to air permeable exterior wall cladding materials and the need for expeditious resolution and clarification of other issues related to the wind rule, and since these clarifications do not establish a change in the position or policy of the Department but merely involved technical matters, the Secretary deems it not to be in the public interest to issue the announcement of the waiver or the clarifications for public comment in the **Federal Register** or to otherwise treat this Interpretative Bulletin as rulemaking. The Department is providing this guidance to manufacturers and PIAs so that they can proceed immediately with the redesign of their homes.

I. Waiver of Certain Requirements of 24 CFR 3280.305(c)(1)(ii)(B) and Footnote 8 to the "Table of Design Wind Pressures" Relating to Permeable Exterior Wall Cladding Materials Which Cannot Be Secured at the 6″ o.c. Fastening Pattern

The Secretary, through his duly authorized designee, finds that it may be impracticable for certain exterior cladding materials to be fastened at 6″ o.c. as provided in Footnote 8 of 24 CFR 3280.305(c)(1)(ii)(B). Accordingly, the Secretary hereby grants waiver of certain requirements of 24 CFR 3280.305(c)(1)(ii)(B) and Footnote 8 to the "Table of Design Wind Pressures" applicable to permeable exterior wall cladding materials which cannot be secured at the required fastening pattern. Because this waiver has been issued, the requirements of 24 CFR 3280.305(c)(1)(ii)(B) and Footnote 8 to the "Table of Design Wind Pressures," to which the waiver relates, may be met either by meeting the specifications set out in the standard or by meeting the following requirements:

Air permeable exterior wall cladding materials which cannot be secured at the 6″ o.c. fastening pattern due to the materials' configuration, such as vinyl lap siding, may be alternatively evaluated by testing for the design pressures specified in the "Table of Design Wind Pressures," provided that the following requirements are met:

1. The air permeable siding is intermittently secured through structural rated wall sheathing at least ⅜″ thick at a maximum spacing of 16″ o.c. to the wall framing;

2. The ⅜″ structural rated wall sheathing is secured to wall framing members (plates, studs, jamb studs, headers) at 6″ o.c. except that for vertical wall and jamb studs, the 6″ o.c. orientation is in the vertical direction;

3. The wall framing members are installed at a maximum spacing no greater than 16″ o.c.;

4. The exterior cladding materials are fastened in accordance with the manufacturer's installation instructions; and

5. For vinyl siding, the siding and fastening strip (nailing hem) is at least .035″ in thickness.

Such tests must be conducted in accordance with 24 CFR 3280.401(b) and demonstrate the adequacy of the design to resist the negative design pressures in the "Table of Design Wind Pressures" for wall corners and other areas. The entire exterior wall construction and fastenings including the exterior wall cladding (siding), ⅜″ minimum structural rated sheathing, and wall framing members must be tested for the full negative design pressures specified by the "Table of Design Wind Pressures."

While the above requirement does not meet precise specifications set out in 24 CFR 3280.305(c)(1)(ii)(b) and Footnote 8 to the "Table of Design Wind Pressures," the Secretary, through his duly authorized designee, is satisfied that compliance with this requirement will meet the level of performance sought in 24 CFR 3280.305(c)(1)(ii)(b) and Footnote 8 to the "Table of Design Wind Pressures."

II. Additional Clarifications of the Wind Standards

The requested clarifications of the Manufactured Home Construction and Safety Standards have been organized into questions and answers.

issued, the requirements of 24 CFR 3280.305(c)(1)(ii)(B) and Footnote 8 to the "Table of Design Wind Pressures," to which the waiver relates, may be met either by meeting the specifications set out in the standard or by meeting the following requirements:

Air permeable exterior wall cladding materials which cannot be secured at the 6" o.c. fastening pattern due to the materials' configuration, such as vinyl lap siding, may be alternatively evaluated by testing for the design pressures specified in the "Table of Design Wind Pressures," provided that the following requirements are met:

1. The air permeable siding is intermittently secured through structural rated wall sheathing at least ⅜" thick at a maximum spacing of 16" o.c. to the wall framing;

2. The ⅜" structural rated wall sheathing is secured to wall framing members (plates, studs, jamb studs, headers) at 6" o.c. except that for vertical wall and jamb studs, the 6" o.c. orientation is in the vertical direction;

3. The wall framing members are installed at a maximum spacing no greater than 16" o.c.;

4. The exterior cladding materials are fastened in accordance with the manufacturer's installation instructions; and

5. For vinyl siding, the siding and fastening strip (nailing hem) is at least .035" in thickness.

Such tests must be conducted in accordance with 24 CFR 3280.401(b) and demonstrate the adequacy of the design to resist the negative design pressures in the "Table of Design Wind Pressures" for wall corners and other areas. The entire exterior wall construction and fastenings including the exterior wall cladding (siding), ⅜" minimum structural rated sheathing, and wall framing members must be tested for the full negative design pressures specified by the "Table of Design Wind Pressures."

While the above requirement does not meet precise specifications set out in 24 CFR 3280.305(c)(1)(ii)(b) and Footnote 8 to the "Table of Design Wind Pressures," the Secretary, through his duly authorized designee, is satisfied that compliance with this requirement will meet the level of performance sought in 24 CFR 3280.305(c)(1)(ii)(b) and Footnote 8 to the "Table of Design Wind Pressures."

II. Additional Clarifications of the Wind Standards

The requested clarifications of the Manufactured Home Construction and Safety Standards have been organized into questions and answers.

Questions: 1. 24 CFR 3280.304—Will the Department accept the application of a 1.6 load duration factor as permitted in the 91 NDS for wind loads in designing connections which use staples?

Answer: No. However, as indicated in our response to Question 6 in the previous Interpretative Bulletin published in the **Federal Register** on April 21, 1994 [59 FR 19075], a 1.33 factor may be used in accordance with UM–25d. No additional test data or adequate technical substantiation has been provided which changes our prior clarification on this subject.

2. 24 CFR 3280.304 and 3280.306(f)(2)—Does the 1.6 load duration factor permitted by the NDS also apply to the design of interior partitions?

Answer: Yes. 24 CFR 3280.305(f)(2) as amended in the **Federal Register** on October 25, 1993 [59 FR 54975] indicates that a 1.33 factor *may be used* to increase the allowable design stress. The 1.6 factor which is permitted under the 1991 National Design Specification for Wood Products would also be acceptable for interior partition members.

3. 24 CFR 3280.305(c)(1)(i)–(a) Can the dead load of the whole roof/ceiling assembly including the trusses be subtracted from the design roof uplift loads to obtain a net uplift for test/design purposes?

(b) If so, can all of the actual dead loads be used including eave portions?

Answer: (a) Yes, the dead load may be deducted for homes designed to be located in high wind areas (Wind Zones II and III). However, the roof/ceiling dead load (including trusses) cannot be deducted from the "net" uplift load for homes designed for Wind Zone I.

(b) Yes, except for Wind Zone I as indicated in the response to 3. (a) above.

4. 24 CFR 3280.305(c)(1)(ii)–(a) Do the design prints, calculations and test reports, etc., relating to shear walls, diaphragms, ridge beams, fastenings and its components and cladding material (roof trusses, wall studs, exterior sheathing, roofing siding material exterior glazing, etc.) need to be sealed (stamped) and/or signed by a registered Professional Engineer or Architect?

(b) Can a Professional Engineer on the staff of a DAPIA, witness component tests in the capacity of a listing agency [24 CFR 3280.2(a)(14), and 24 CFR 3282.360], provide the professional certification required, and accept the certified design for clients it serves as a DAPIA without violating the conflict of interest provisions of 24 CFR 3282.359 of the Manufactured Housing Procedural and Enforcement Regulations?

Answer: (a) All of the cited documents are required to be certified by a Professional Engineer or Architect. If a Professional Engineer or Architect elects not to seal and/or sign each document, there must be an up-to-date record in the package (e.g. an index or list of all documents) which the Professional Engineer or Architect has prepared and sealed.

(b) Yes, provided a different Professional Engineer on the staff of the DAPIA who did not witness the tests and certify the design accepts the listing for any manufacturer clients it serves as a DAPIA.

5. 24 CFR 3280.305(c)(1)(ii)–(a) Do skylights need to be designed for the same wind design pressure as the roof system? What pressures would apply?

(b) Do the skylights need to be protected similar to exterior windows and sliding glass doors of homes designed to be in Wind Zones II and III?

Answer: (a) Skylights need to be designed to resist the same design pressures as "Exterior roof coverings, sheathings, and fastenings" indicated in the "Table of Design Wind Pressures". The location of the skylight in the roof would determine the specific design pressure requirements. However, it is not necessary to complete certification of skylights to the higher wind pressures until January 17, 1995.

(b) The Department believes that the subject needs further examination before a final judgment is made. The Department will issue further guidance on this question in the future.

6. 24 CFR 3280.305(c)(1)(ii)(a)—Can the wind design pressures for Wind Zones II and III be based in part on ASCE 7–88 and in part on the "Table of Design Wind Pressures"?

Answer: No. The two alternatives cannot be mixed. One of the two methods must be used to completely design the manufactured home structure and each of its wind resisting parts for the design wind pressures designated by ASCE 7–88 or the "Table".

7. 24 CFR 3280.305(c)(1)(ii)(a)—What specific design wind pressures are required to be used for homes designed for high wind areas with roof slopes less than 10 degrees or greater than 30 degrees?

Answer: The design criteria are those for Overturning, Sliding and Anchoring, Main Wind Force Resisting Systems, and Components and Cladding identified in Chapter 6., "Wind Loads" of ASCE 7–88.

8. 24 CFR 3280.305(c)(1)(ii)(b)—Additional questions regarding Footnote

8 in the "Table of Design Wind Pressures":

(a) Can air permeable exterior wall cladding materials which cannot be secured at the 6" o.c. fastening pattern due to their configuration be alternatively evaluated by testing for the design pressures specified in the "Table"?

(b) If the answer to (a) is yes, can a pressure reduction factor be applied in testing certain air permeable exterior cladding materials, such as vinyl lap siding, for the design pressures specified by the "Table"?

(c) Do the fastening requirements for structural rated sheathing to wall framing members in Footnote 8 of the Table of Design Pressures indicated in our response to Question 17, in the previous Interpretative Bulletin [59 FR 19076], also apply when the material is both a structural sheathing and an exterior covering material?

(d) Can exterior cladding materials, such as vertical steel siding, which are directly secured to wall framing members without a ⅜" rated structural sheathing be evaluated by testing for the design pressures specified in the Table?

Answer: (a) Yes, provided that there is compliance with the requirements of the waiver announced above.

(b) No.

(c) Yes, provided fasteners for any combined ⅜" minimum structural rated sheathing and exterior covering material are installed at 6" o.c. from the sheathing to wall framing members (plates, studs, jamb studs, headers). For vertical wall and jamb studs the orientation of 6" o.c. is in the vertical direction.

(d) Yes, provided the exterior covering and its fastenings are capable of resisting the full positive and negative design pressures specified in the "Table" for wall corners and other areas when tested in accordance with 24 CFR 3280.401(b) of the Standards.

9. 24 CFR 3280.305(c)(1)(ii)(b)—What uplift loads are required to be used when evaluating the field connection of ridge beams of multi-module homes?

Answer: For designs which are prepared in accordance with the "Table of Design Wind Pressures", the pressures indicated for the entry "Ridge Beams and Other Main Roof Support Beams" are to be used to design the connections (−30 PSF Wind Zone II, −36 PSF Wind Zone III).

10. 24 CFR 3280.305(c)(1)(ii)(b)—Do the higher uplift loads indicated in the Table within 3'–0" from the ridge and sidewall need to be applied to roof trusses in conjunction with the normal uplift loads when uplift tested/evaluated?

Answer: No. However, trusses are required to be doubled within 3'-0" from each end of the roof and all roof trusses are to be capable of resisting the design pressures indicated in the Table (−39 PSF for Wind Zone II; −47 PSF for Wind Zone III).

11. 24 CFR 3280.305(c)(1)(ii)(b)—(a) Do manufactured home sidewalls including header assemblies in high wind areas need to be calculated/tested for combined horizontal and uplift wind forces?

(b) If yes, what uplift pressures should be applied?

(c) If testing is used to substantiate a manufacturer's design, do the wall assemblies need to be tested under the combined loading conditions?

(d) Can the sidewalls be tested for the horizontal wind load only and calculated for the tensile load independently using accepted engineering design practices?

(e) If sidewalls are tested, can wall stud requirements for openings be evaluated separately by calculations using accepted engineering practices?

(f) Is there a minimum number of wall studs which are required to be utilized in tested assemblies?

(g) Would any testing procedure employed that applies combined loading to a sidewall test assembly require HUD approval in accordance with 24 CFR 3280.303(g)?

Answer: (a) Yes.

(b) For sidewall studs not located at openings, the design uplift pressure is −39 PSF for Wind Zone II and −47 PSF for Wind Zone III. For headers and studs at openings, the uplift design pressure is −30 PSF for Wind Zone II and −36 PSF for Wind Zone III.

(c) Yes.

(d) No.

(e) Yes.

(f) There is no minimum quantity of wall studs which must be utilized in a test assembly for a sidewall. However, there needs to be an adequate number of wall studs in the assembly to measure all wind load effects and the influence of repetitive framing members in resisting the combined lateral and uplift design wind pressures.

(g) No. The requirement for obtaining HUD approval of testing procedures pursuant to 24 CFR 3280.303(g) is not effective until October 25, 1994. However, manufacturers and DAPIAs are encouraged to submit proposed testing protocols to the Department for review and evaluation prior to the effective date.

12. For homes with end gables, does the 3'–0" measurement for doubling of roof trusses start at the extreme end of the gable or at the endwall?

Answer: All trusses within 3'–0" of the extreme end of the gable are to be doubled.

13. 24 CFR 3280.306(a)—In designing anchoring or foundation systems, can the dead load of the complete home be deducted to determine the net overturning wind design forces?

Answer: Yes, the dead load of the entire structure may be used to resist wind loading effects in all Wind Zones.

14. 24 CFR 3280.305(c)(1)(ii)(b)—If a roof truss forms or contains an eave at the sidewall, does the overhang or projection have to meet the higher eave load requirements in the "Table of Design Pressures" for Wind Zones II (−51 PSF) and III (−62 PSF)?

Answer: Yes.

15. 24 CFR 3280.305(c)(1)(ii)(b)–(a) Does Footnote 6 of the "Table of Design Pressures" require complete cementing of the underlayment of asphalt roofing shingles to a ⅜" structural rated roof sheathing or is the cement to be applied to all edges, ends, and end laps of the underlayment and other areas indicated in the Asphalt Roofing Manufacturers Association (ARMA) Residential Roofing Manual, Chapter 7, for low slope applications?

(b) If the cement application is limited to edges, ends and end laps of the underlayment, is a 6" minimum wide strip of asphalt cement acceptable for those areas and a 3" minimum wide strip of asphalt cement acceptable for top laps?

Answer: (a) The application of cement for the underlayment need only be applied to edges, ends and end laps of the underlayment. This is in addition to cementing required for the starter strip, eave flashing, and locations 24" from the inside of the exterior wall as indicated in the ARMA Residential Roofing Manual, Chapter 7, for low slope applications.

(b) Yes.

16. 24 CFR 3280.402(c)(2)—Please confirm if the roof trusses required to be uplift tested for high wind areas shall be tested in the inverted position and loads applied to the bottom chords of the roof trusses?

Answer: Roof trusses may be tested for uplift loads either in an inverted or upright position. The Department is in the process of examining research and engineering analysis to determine the proper protocol for testing trusses. Further guidance will be issued on this subject in the future.

17. Questions regarding the effective date of the new wind safety standards as related to the Department's statement in the Interpretative Bulletin published in the **Federal Register** on April 21, 1994: "Every home entering the first stage of production as of July 13, 1994 must comply with the new wind safety provisions." (59 FR 19075).

(a) Does this mean that every home entering the first stage of production before July 13, 1994 may still comply with the current wind standards?

(b) Please clarify that the first stage of production for an individual manufacturing plant is identified in the approved quality control manual for that facility?

(c) Can manufacturers produce homes to the new wind standards earlier than the effective date of July 13, 1994?

Answer: (a) Homes that enter the first stage before July 13, 1994 may not necessarily be built to the current standards. Based on our review of the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Act") and the Manufactured Home Procedural and Enforcement Regulations ("Regulations"), all homes that are *labeled* on or after the effective date of the new standards would be required to comply with those standards. Pursuant to 24 CFR 3280.8(c), and 24 CFR 3282.362(c)(2)(i)(c), the label is the certification by the manufacturer that the home "is constructed in conformance with the Federal manufactured home construction and safety standards *in effect on the date of manufacture.*"

stage of production as of July 13, 1994 must comply with the new wind safety provisions." (59 FR 19075).

(a) Does this mean that every home entering the first stage of production before July 13, 1994 may still comply with the current wind standards?

(b) Please clarify that the first stage of production for an individual manufacturing plant is identified in the approved quality control manual for that facility?

(c) Can manufacturers produce homes to the new wind standards earlier than the effective date of July 13, 1994?

Answer: (a) Homes that enter the first stage before July 13, 1994 may not necessarily be built to the current standards. Based on our review of the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Act") and the Manufactured Home Procedural and Enforcement Regulations ("Regulations"), all homes that are *labeled* on or after the effective date of the new standards would be required to comply with those standards. Pursuant to 24 CFR 3280.8(c), and 24 CFR 3282.362(c)(2)(i)(c), the label is the certification by the manufacturer that the home "is constructed in conformance with the Federal manufactured home construction and safety standards *in effect on the date of manufacture.*"

The "Date of Manufacture" is the date on which the label is affixed to the manufactured home. The label is to be affixed only at the end of the last stage of production of the manufactured home. Consequently, a manufacturer labeling a home on or after the effective date of the new standards must comply with those standards or be in violation of Section 610(a)(4) of the Act, 42 U.S.C. 5409(a)(4), even if the home entered the first stage of production before the effective date. The Department recognizes that, in one respect, the Regulations are not clear. Because of this lack of clarity, the Department, in this instance only, will take no action to enforce this requirement if it can be shown that homes entered the normal first stage of production before July 13, 1994. In the future, however, the Department will expect compliance with the standards that are in effect on the date the home is labeled.

(b) The Regulations, under 24 CFR 3282.203(c), require the DAPIA to approve the quality assurance manual which includes, among other information, "a station-by-station description of the manufacturing process." Therefore, the normal first station in the production process as identified in the quality control manual would be "the first stage of production."

(c) Yes, provided the manufacturer is completely capable of meeting all requirements of the new standards, uses the new data plate and includes a copy of the new wind zone map with each home so produced. In addition, the Department urges manufacturers to use the time before the effective date of the standards to prepare for producing homes to the new standards so that production will continue without interruption. This includes preparing designs, seeking approval for the designs ordering any necessary materials, testing, etc. For homes that are built to the current standards but sold after July 13, 1994 to be sited in an area designated as Zone II or Zone III in the new rule, the Department recommends that the consumer be informed: (1) That the home has been built to previous standards which have since been amended; and (2) that these new wind standards have been enacted to increase the safety of manufactured homes in high-wind areas.

Authority: 42 U.S.C. 5403 and 42 U.S.C. 3535(d).

Dated: June 24, 1994.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–16073 Filed 6–30–94; 8:45 am]

BILLING CODE 4210–27–P

VOL
5 9
ISS
1
2
6
JL
1
1
994
MI

federal register

Friday
July 1, 1994

Part XI

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 43 et al.
Residential Antidisplacement and Relocation Assistance Plan; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 43, 92, and 570

[Docket No. R-94-1679; FR-3449-P-01]

RIN 2501-AB52

Residential Antidisplacement and Relocation Assistance Plan

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: The Department is proposing minimum requirements for a Residential Antidisplacement and Relocation Assistance Plan (Plan). Recently enacted law requires a participating jurisdiction to certify in its Comprehensive Housing Affordability Strategy (CHAS) that it is following a Plan that provides: for the replacement of lower income housing that is demolished or converted to another use in connection with a HOME-assisted project; and relocation assistance to lower income persons displaced by such conversion or by demolition. Community Development Block Grant (CDBG) Programs are currently subject to compliance with a Plan. Conforming changes would be made to the CDBG regulations, so that all HOME and CDBG Programs would be subject to the same Plan requirements in 24 CFR part 43.

DATES: Comments must be received by August 1, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: H. J. Huecker, Director, or Mel Geffner, Deputy Director, Relocation and Real Estate Division, Office of Affordable Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–0336, or (202) 708–2565 (TDD) (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, S.W., room 10276, Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

At the end of the public comment period on this proposed rule, the Department may amend the information collection requirements set out in this rule to reflect public comments or OMB comments received concerning the information collection.

Justification for Shortened Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, under section 220(b) of the Housing and Community Development Act of 1992 (1992 Act), each HOME participating jurisdiction must certify in its Comprehensive Housing Affordability Strategy (CHAS) that it is following a residential antidisplacement and relocation assistance plan that provides the same rights in connection with a HOME project as are provided under section 104(d) of the Housing and Community Development Act of 1974 (section 104(d)) in connection with a Community Development Block Grant (CDBG) or Urban Development Action Grant (UDAG) project.

Because inherent incompatibilities make the CDBG regulations implementing section 104(d) inappropriate for adoption in the HOME program, the Department is proposing new regulations that jurisdictions could apply consistently in the applicable programs. This consolidation of requirements should simplify compliance with the requirements for those programs.

The regulation implementing the new CHAS certification requirement was published on March 12, 1993 (58 FR 13686). In order to minimize confusion and ensure uniformity with respect to the application of Plan requirements to affected programs, the Department intends to implement this proposed rule, which would establish part 43 as a single source reference for the requirements of residential antidisplacement and relocation assistance plans, as soon as possible. Therefore, the Department is shortening its usual 60-day public comment period to 30 days for this proposed rule, so that affected jurisdictions will be able to refer to the final rule when preparing their next CHAS submissions.

Background

On October 28, 1992, the President approved the Housing and Community Development Act of 1992 (Pub. L. 102–550) (1992 Act). Section 220(b) of the 1992 Act amended section 105(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)) to require a participating jurisdiction to certify as part of its Comprehensive Housing Affordability Strategy (CHAS) that it is following a Residential Antidisplacement and Relocation Assistance Plan (Plan) under its HOME Investment Partnerships Program (HOME) that is equivalent to the Plan required for the Community Development Block Grant (CDBG) Program under section 104(d) of the Housing and Community Development Act of 1974 (1974 Act).

The requirements for a Plan under the CDBG Entitlement Program, the CDBG HUD-administered Small Cities Program, the Section 108 Loan Guarantee Program, and the Urban Development Action Grant (UDAG) program are set out in 24 CFR 570.606(c). The requirements for the State CDBG Program are set out in 24 CFR 570.488(c). Under the Plan, then, a recipient of HOME or CDBG assistance must:

(1) Identify the reasonable steps it will take to minimize the displacement of families and individuals from their homes as a result of an assisted project.

(2) Replace all occupied and vacant occupiable "lower income housing" that is converted to a use other than "lower income housing" or is demolished for a project.

(3) Provide relocation assistance to lower income families and individuals displaced as a direct result of the conversion of lower income housing or the demolition of any housing for a project.

The requirement that a participating jurisdiction certify that it is following a Plan under the HOME Program has been incorporated into the CHAS regulation (24 CFR part 91) through a final rule published March 12, 1993 (58 FR 13686).

To ensure uniformity with respect to the application of Plan requirements to affected programs, the Department is proposing Part 43 as a single source reference for the requirements of residential antidisplacement and relocation assistance plans. Conforming changes would be made to 24 CFR 570.488 (State CDBG Program), 24 CFR 570.606 (CDBG Entitlement Grant Program), and 24 CFR 92.353(e) (HOME Program), to reference the applicability of the Part 43 requirements.

Terminology

The requirements of Part 43 would cover the HOME, CDBG, and UDAG programs. Terminology that is used in the regulations for these programs is not necessarily defined identically. Accordingly, to provide instructions that work under all applicable programs, Part 43 would use the following terms:

(1) *Lower income person.* The term "lower income person" (defined at § 43.5) would mean a person whose income does not exceed the Section 8 low income limit established by HUD. The term "person" would mean all occupants of the dwelling. Accordingly, a "lower income person" may be a single family, one individual living alone, two or more families living together, or any other group of related or unrelated occupants who share living arrangements. However, on a case-by-case basis, for good cause, the recipient may determine that the occupants of the dwelling unit constitute two or more persons with separate entitlements to relocation assistance, if such determination does not reduce the level of assistance to which any individual would be entitled if all occupants shared one entitlement.

Except in those special cases where the recipient determines that the household constituted two or more persons, the term "lower income person" under Part 43 would be the same as the CDBG terms "low and moderate income household" and "lower income household," as defined in the regulations at 24 CFR 570.3, and the term "low income household" under the HOME Program. The term "household" has the same meaning under both the CDBG and HOME

the demolition of any housing for a project.

The requirement that a participating jurisdiction certify that it is following a Plan under the HOME Program has been incorporated into the CHAS regulation (24 CFR part 91) through a final rule published March 12, 1993 (58 FR 13686).

To ensure uniformity with respect to the application of Plan requirements to affected programs, the Department is proposing Part 43 as a single source reference for the requirements of residential antidisplacement and relocation assistance plans. Conforming changes would be made to 24 CFR 570.488 (State CDBG Program), 24 CFR 570.606 (CDBG Entitlement Grant Program), and 24 CFR 92.353(e) (HOME Program), to reference the applicability of the Part 43 requirements.

Terminology

The requirements of Part 43 would cover the HOME, CDBG, and UDAG programs. Terminology that is used in the regulations for these programs is not necessarily defined identically. Accordingly, to provide instructions that work under all applicable programs, Part 43 would use the following terms:

(1) *Lower income person.* The term "lower income person" (defined at § 43.5) would mean a person whose income does not exceed the Section 8 low income limit established by HUD. The term "person" would mean all occupants of the dwelling. Accordingly, a "lower income person" may be a single family, one individual living alone, two or more families living together, or any other group of related or unrelated occupants who share living arrangements. However, on a case-by-case basis, for good cause, the recipient may determine that the occupants of the dwelling unit constitute two or more persons with separate entitlements to relocation assistance, if such determination does not reduce the level of assistance to which any individual would be entitled if all occupants shared one entitlement.

Except in those special cases where the recipient determines that the household constituted two or more persons, the term "lower income person" under Part 43 would be the same as the CDBG terms "low and moderate income household" and "lower income household," as defined in the regulations at 24 CFR 570.3, and the term "low income household" under the HOME Program. The term "household" has the same meaning under both the CDBG and HOME Programs, as defined in the respective program regulations.

The definition of "lower income person" controls which of the occupants in a housing unit will have their incomes aggregated for purposes of determining whether or not the group meets the eligibility threshold for relocation assistance under Part 43. *Example:* A mother, her two minor children, and two unrelated adults live together in the same housing unit. Under Part 43, these five occupants would constitute one person, which would have to meet the Section 8 income limits for a family of five in order to qualify for assistance under Part 43.

Under the current CDBG regulations, this household constitutes three families (defined in 24 CFR 570.3 as "all persons living in the same household who are related by birth, marriage or adoption"), and the income of each family is looked at separately to determine whether it meets the Section 8 test. Under the HOME Program, the number of "families" within this household may be less than three because the HOME Program regulations adopt the definition of "family" given at 24 CFR 812.2. That definition states that the term "includes but is not limited to" a certain class of single or unrelated persons that might not generally be considered part of a family. A participating jurisdiction in the HOME Program is free to adopt its own definition of "family" as long as the specified classes are included.

Defining a "person" as all members of a unit would give this term the same meaning as the historic interpretation of the term "person" for purposes of implementing the Uniform Relocation Act. But it would represent a change from the current policy for implementation of the Antidisplacement Plan in the CDBG program, which defines an eligible displaced "person" as a lower income "family" or "individual."

The proposal to define a "person," for relocation purposes under Part 43, as generally including all occupants of the housing unit is made to reflect the reality of those circumstances where the occupants living together in a dwelling unit do not have a traditional family relationship, but nevertheless, are capable of contributing to the household's monthly housing costs. Second, this change would conform CDBG Antidisplacement Plan relocation policy to Uniform Relocation Act policy.

(2) *Lower income housing.* The term "lower income housing" would be defined at § 43.5. This is a change from the term "low/moderate-income dwelling unit" currently used to implement Plan requirements in the CDBG programs. The change is made to avoid any misunderstanding that might arise from the term "moderate income," which is used to describe families with incomes from 80–95% of the median area income under the HOME program. Under the CDBG programs "moderate-income families" have incomes that do not exceed 80% of the median area income.

Also, because housing replacement requirements in this part are measured by number of bedrooms, rather than the number of dwelling units, the term "housing" is more appropriate than "dwelling unit."

Generally, under the regulations in this part, "lower income housing" would be renter-occupied, owner-occupied, or vacant housing with a "market rent" that does not exceed the applicable Fair Market Rent (FMR) established for the Section 8 Existing Housing Program. The market rent would be defined as the rent that a property would most probably command in an open market. Because property owners generally attempt to maximize profit, the market rent for a renter-occupied property is usually the same as the actual rent charged. For purposes of these regulations, the market rent would be permitted to be established by a review of rents for comparable space, carried out by a person familiar with real property values in the area. The person doing the review would not need to be a licensed appraiser.

The FMRs are established by HUD on a metropolitan-wide basis. If a community within a metropolitan area has substantially higher housing costs, HUD may establish a higher FMR as an exception that applies to that specific community. The definition of "lower income housing" would indicate that, where applicable, such a "community-wide exception FMR" would be used to determine whether a unit is lower income housing. This policy, which is a clarification to the existing Plan requirements under the CDBG Program, would be followed because the community-wide exception FMR reflects actual housing costs in the community and is the basis for the operation of HUD-assisted housing programs in the community, including the determination of Section 8 housing program subsidies.

(3) *Project.* The term "project" would be defined according to the nature of the activities involved, rather than the specific funding of the component activities. If activities are integrally related, they would be considered one

project. Examples would be given in the rule to illustrate how the requirements of Part 43 would apply.

(4) *Recipient.* The term "recipient" is defined at § 43.5. A "grantee" under the CDBG Entitlement Program, a "participating jurisdiction" under the HOME Program, a "State recipient" under the State CDBG Program and State HOME Program, and a "public entity" or "designated public agency" under the Section 108 Loan Guarantee Program, would each be considered a "recipient" under Part 43.

(5) *Recognition of eligibility.* The term "recognition of eligibility", is defined in § 43.201(c), and replaces the term "initiation of negotiations" under the current CDBG regulations. The definition indicates the action that establishes a person's eligibility for relocation assistance or, in the alternative, the person's right to continue to occupy the property under the conditions specified in the notice of displacement.

Removal of Dilapidated Housing

The current rule (applicable to the CDBG Program) requires recipients to replace vacant, dilapidated housing that is not suitable for rehabilitation if the unit was occupied at any time within the period beginning one year before the execution of the contract covering the demolition. The current rule, therefore, has the effect of preventing or delaying the demolition of run-down vacant buildings that are a danger to the public health and safety. For this reason, and because the removal of vacant, dilapidated housing that is clearly not occupiable does not diminish the available useful supply of lower income housing, the 12-month period would be reduced to three months (see § 43.101(a)(3)).

Overnight Homeless Shelters and Other Public Facilities

Section 43.101(b) describes the circumstances under which lower income housing would be considered to have been "converted" and, therefore, to trigger the requirements of the regulations in this part. Under the current policy (applicable to the CDBG Program), changing lower income housing into an overnight emergency shelter constitutes "conversion," even if the "market rent" of the shelter housing upon completion of the project does not exceed the Section 8 FMR. (To date, most overnight shelters have been developed from commercial or special purpose space, rather than existing housing, and, therefore, have not triggered a replacement requirement.)

The existing policy with regard to emergency shelters reflects an earlier HUD view that because the post-project use by the tenants of such facilities is temporary, the change from a permanent use constituted conversion. Questions have been raised about this policy and the policy applicable to changing lower income housing into nursing homes, battered spouse shelters, halfway houses, group homes and transitional housing. The Department has concluded that such facilities and emergency overnight shelters may contribute to the supply of available lower income housing, and changing conventional housing into such a use does not necessarily trigger a replacement requirement (unless the post-project "market rent" exceeds the applicable Section 8 FMR). In other words, the Department would consider the physical structure, rather than whether the tenants are permitted to remain for only a temporary period of time and must vacate to permit use by other tenants.

Owner-Occupied Units

The requirements of a Plan apply to owner-occupied, as well as tenant-occupied, housing. Displaced owner-occupants who meet the criteria of a "displaced person" (defined in § 43.11) are eligible for relocation assistance under the regulations in part 43. Owner-occupied lower income housing that is demolished must be replaced. (The unit is lower income housing if its market rent, as determined by someone who is familiar with local real estate values, does not exceed the applicable FMR.)

However, a unit that is owned and occupied by the same person before and after assisted rehabilitation would not be considered to have been "converted," regardless of its post-project market rent (see § 43.101(c)(2)(i)). Nor would any unit that, upon completion of the project, is owned and occupied by a lower income person (see § 43.101(c)(2)(ii)) be considered to be converted.

HOME-Assisted Rental Housing

As described in § 43.101(c)(2)(iii), a unit that, upon completion of the rehabilitation, meets the HOME affordability criteria at § 92.252 would not be considered to have been converted, and, therefore, the rehabilitation would not trigger the requirements of the regulations in this part. (Persons displaced by rehabilitation for an assisted project are eligible for assistance under the Uniform Relocation Act.)

Equity and Consistency in Relocation Assistance Requirements

The implementation of relocation assistance requirements in the CDBG and HOME Programs poses a special challenge for recipients. In significant part, this is because of differences between the requirements of the URA (and the government-wide implementing rule at 49 CFR part 24) and the requirements for a Plan established under section 104(d) of the 1974 Act. The CDBG and HOME programs are subject to both the Plan and the URA, each of which provides for comprehensive relocation assistance to displaced families and individuals. HUD does not have the authority to amend URA regulatory policies in 49 CFR part 24 to reflect circumstances unique to HUD programs. In addition, resolution of statutory differences would require legislative change.

However, a recipient can partially address existing inconsistencies through its authority to adopt an Optional Relocation Policy under 24 CFR 570.488(d), 570.606(d), or 92.353(d). HUD encourages recipients to consider this possibility. In particular, recipients may wish to consider adopting a policy that will ensure the same level of means-tested rental assistance to all families and individuals who are displaced as a direct result of rehabilitation, demolition, acquisition, or conversion for an assisted project. Currently, only families and individuals displaced by conversion or demolition are covered by the section 104(d) relocation assistance requirements of a Plan.

Some, but not all, housing rehabilitation results in conversion. Most conversion results when the pre-rehabilitation market rent of the unit does not exceed the Section 8 FMR, but the post-rehabilitation market rent does and there is no project-based subsidy or other provision to reduce the actual rent to the Section 8 FMR. Accordingly, the rehabilitation of a multifamily building may result in the conversion of some units, but not others. It is, in fact, possible that a very low-income family displaced by the rehabilitation of lower income multifamily housing may not qualify for assistance under the Plan (because the post-rehabilitation market rent does not exceed the Section 8 FMR—thereby limiting the person to less generous URA assistance), while a family with a higher income (but still a lower income family) displaced from lower income housing in the same building may receive the more generous section 104(d) relocation assistance under the Plan (because the post-rehabilitation market rent for the family's more desirable unit exceeds the Section 8 FMR).

Providing different levels of assistance to families in essentially similar circumstances neither would be fair nor would promote successful programs. Recipients can address this inequity by adopting an Optional Relocation Program Policy that provides the same levels of assistance to all families displaced by rehabilitation, demolition, acquisition, or conversion for an assisted project.

Standards for Computing Rental or Purchase Assistance

The level of rental or purchase assistance to be provided to a person (family or individual) under the Plan depends on the person's total income and the portion of that income that the person can be expected to contribute toward the person's monthly housing cost (rent and utilities) if the person were to rent a comparable replacement dwelling.

Part 43 would allow recipients to establish their own reasonable standards for computing the monthly gross income (defined in § 43.5) of a household. This policy increases the likelihood that a recipient can adopt standards consistent with the character of its program and its administrative capacity. The recipient may, if it chooses, determine the total income of a displaced person in accordance with the standards for the Section 8 Program (see 24 CFR 813.107), or it may follow the standards it currently uses to compute URA rental or purchase assistance.

Part 43 would also permit a recipient to establish its own reasonable standards for determining the amount that a person must contribute toward the cost of renting a dwelling. The required contribution (described in § 42.213(b)(2)) could not, however, exceed 30% of the occupant's monthly gross income, unless the occupant is a dependent. Assistance to a dependent person may be based on the monthly housing cost for the displacement dwelling.

The flexibility provided by the proposed rule would enable the recipient to establish monthly rental subsidies that are: (1) Equal to those under the URA regulations; (2) the same as the initial monthly subsidy under the Section 8 program; or (3) at a level between the URA and Section 8 standards. The latter situation would occur, for example, if the recipient established a standard that would provide one or more, but not all, of the Section 8 adjustments to income (e.g., adjustment for dependents).

rehabilitation market rent for the family's more desirable unit exceeds the Section 8 FMR).

Providing different levels of assistance to families in essentially similar circumstances neither would be fair nor would promote successful programs. Recipients can address this inequity by adopting an Optional Relocation Program Policy that provides the same levels of assistance to all families displaced by rehabilitation, demolition, acquisition, or conversion for an assisted project.

Standards for Computing Rental or Purchase Assistance

The level of rental or purchase assistance to be provided to a person (family or individual) under the Plan depends on the person's total income and the portion of that income that the person can be expected to contribute toward the person's monthly housing cost (rent and utilities) if the person were to rent a comparable replacement dwelling.

Part 43 would allow recipients to establish their own reasonable standards for computing the monthly gross income (defined in § 43.5) of a household. This policy increases the likelihood that a recipient can adopt standards consistent with the character of its program and its administrative capacity. The recipient may, if it chooses, determine the total income of a displaced person in accordance with the standards for the Section 8 Program (see 24 CFR 813.107), or it may follow the standards it currently uses to compute URA rental or purchase assistance.

Part 43 would also permit a recipient to establish its own reasonable standards for determining the amount that a person must contribute toward the cost of renting a dwelling. The required contribution (described in § 42.213(b)(2)) could not, however, exceed 30% of the occupant's monthly gross income, unless the occupant is a dependent. Assistance to a dependent person may be based on the monthly housing cost for the displacement dwelling.

The flexibility provided by the proposed rule would enable the recipient to establish monthly rental subsidies that are: (1) Equal to those under the URA regulations; (2) the same as the initial monthly subsidy under the Section 8 program; or (3) at a level between the URA and Section 8 standards. The latter situation would occur, for example, if the recipient established a standard that would provide one or more, but not all, of the Section 8 adjustments to income (e.g., adjustment for dependents).

Unlike Section 8 housing program subsidies, relocation rental subsidies are not adjusted each year (e.g., to reflect changes in income or medical expenses). Accordingly, this proposed rule would not require recipients to adopt all of the Section 8 standards for determining gross income or for making adjustments to income when determining relocation payments. Regardless of the standards adopted, however, the standards must ensure equal assistance for each class of occupants.

Standards for Moving Expense and Dislocation Allowances

A displaced person who chooses to receive relocation assistance at section 104(d) levels may elect to accept a "moving expense and dislocation allowance" as an alternative to a payment for actual reasonable moving and related expenses. Section 43.211(b) would allow a recipient to establish the schedule of moving expense and dislocation allowances that it believes is appropriate to the recipient's jurisdiction.

The allowances would have to take into account the number of rooms in the displacement dwelling, whether the displaced person owns and must move the furniture, and the types of expenses described in § 43.211. Separate schedules may be established for apartment units and one-unit buildings. A recipient could, but would not be required to, establish allowances equal to the URA allowances published periodically by the Federal Highway Administration (FHWA). The Department believes the flexibility provided by this policy is appropriate because the FHWA-established URA allowances are State-wide and, for a specific community, may be at substantial variance with local transportation and labor costs.

CDBG-Funded Code Enforcement

On February 3, 1992, HUD issued a proposed rule entitled, "Community Development Block Grant Funded Code Enforcement" (57 FR 3971). The rule proposed to amend 24 CFR part 570 to apply the Plan requirements to the conversion or demolition of lower income housing that resulted from CDBG-funded code enforcement activity. Under the proposal such housing would have to be replaced, and lower income persons displaced by the conversion or by demolition that resulted from CDBG-funded code enforcement would be entitled to relocation assistance at the section 104(d) levels, even if the actual conversion or demolition was not CDBG-assisted.

HUD specifically invited comment on the public's view of the consequences of this proposal (e.g., would localities shift to local funding of code enforcement or would there be a reduction in code enforcement). A total of 22 comments were received. All opposed adoption of the proposed requirements. Concerns cited included the increased cost and a fear that the increased cost would lead to a reduction in code enforcement and greater deterioration in the supply of housing that is available to lower income persons.

HUD's decision on whether to apply the Plan requirements to CDBG-funded code enforcement activity proposed in the February 3, 1992, **Federal Register** notice (57 FR 3971) will be included in the final rule published in connection with this rulemaking process. HUD will consider any additional public comments on this proposal that are submitted to the Rules Docket Clerk by the deadline for comments on this proposed rule.

Because there are two separate Plan components that can have a significant impact on a project—the relocation assistance requirements and the one-for-one lower income housing replacement provisions—commenters are asked to address specifically each of these two components. For example, a commenter may support the application of one component to a project, but not the other.

Effective Date of Plan Requirements Under HOME Program

The requirement to implement a Plan under the HOME Program becomes effective on the date the participating jurisdiction signs the required certification in its FY 1994 Comprehensive Housing Affordability Strategy. In accordance with Section 223 of the 1992 Act, the Plan requirements will apply to all obligations (commitments) of HOME funds made on or after that date. This would include any unobligated 1992 or 1993 HOME funds.

Other Matters

Public Reporting Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

TABULATION OF ANNUAL REPORTING BURDEN; PROPOSED RULE—RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN

[24 CFR Part 43]

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours	OMB 2506-
Requirements of Plan	43.1	435	1	435	.5	218	0102
Appeals	43.45	50	1	50	20	1,000	0102
Disclosure and submission requirements	43.105	200	1	200	20	4,000	0102
Exception to housing replacement requirements	43.107	50	1	50	40	2,000	0102
Total burden						7,218	

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule implements a residential antidisplacement and relocation assistance plan for the HOME program, as required by section 220(b) of the Housing and Community Development Act of 1992, and makes conforming amendments to similar requirements applicable to the Community Development Block Grant program.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, *Federalism*, has determined that the policies contained in this proposed rule have federalism implications, and are subject to review under the order. Specifically, the proposed rule implements a residential antidisplacement and relocation assistance plan for the HOME program that is comparable to the requirements applicable to the Community Development Block Grant (CDBG) programs. As required by section 220(b) of the Housing and Community Development Act of 1992, a participating jurisdiction under the HOME program must certify that it is following such a plan.

In order to clarify the requirements applicable to both the HOME and CDBG programs, the proposed rule also would make conforming amendments to the existing CDBG regulations. While the proposed rule would have federalism impacts, a more comprehensive review under the Executive Order 12612 is not required because the implementation of the statute leaves little discretion with the Department to lessen these impacts.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The residential antidisplacement and relocation assistance plan that would be implemented under this proposed rule would benefit families and individuals affected by projects funded under the HOME program, by further protecting their access to housing. This additional protection would provide an alternative to the assistance currently available to these families and individuals under the URA. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

Regulatory Agenda

This proposed rule was listed as Item No. 1518 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20431), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 43

Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, the Department proposes to amend title 24 of the Code of Federal Regulations by adding a new part 43, consisting of §§ 43.1 through 43.215, and by amending parts 92 and 570, as follows:

1. Part 43 would be added to read as follows:

PART 43—RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN

Subpart A—General Provisions

Sec.

43.1 Requirements of plan.
43.5 Definitions.
43.7 Comparable replacement dwelling—defined.
43.9 Decent, safe, and sanitary dwelling—defined.
43.11 Displaced person—defined.
43.14 Project—defined.
43.20 Recipient certification, HUD monitoring, and corrective action.
43.25 No duplication of payments.
43.30 Waivers and time extensions.
43.35 General requirements governing payments.
43.40 Relocation payments not considered as income.
43.45 Appeals.
43.50 Recordkeeping.

Subpart B—One-For-One Replacement of Lower Income Housing

43.101 Housing that must be replaced.
43.103 Housing that meets replacement requirements.
43.105 Disclosure and submission requirements.
43.107 Exception to housing replacement requirements.

Subpart C—Assistance to Site Occupants

43.201 Introduction.
43.203 Summary of assistance.
43.205 Timely notices.
43.207 Other advisory services.
43.209 Temporary relocation and moves within complex.
43.211 Payment for moving and related expenses.
43.213 Rental and purchase assistance.
43.215 Special requirements covering manufactured homes.

Authority: 42 U.S.C. 3535(d), 5301–5320, and 12701–12839.

Subpart A—General Provisions

§ 43.1 Requirements of plan.

In order to obtain HUD financial assistance, as defined in § 43.5, a recipient must certify that it is following a residential antidisplacement and relocation assistance plan (the Plan). (The Plan does not have to be submitted to HUD.) The regulations in this part describe the requirements of the Plan. The Plan has three components:

(a) *Minimize displacement.* Consistent with program goals and objectives, a recipient shall assure that it will take all reasonable steps to minimize the displacement of families and individuals from their homes and neighborhoods as a result of a project (defined in § 43.14). The recipient shall identify in the Plan the steps that it will take to carry out this policy.

(b) *One-for-one replacement of lower income housing.* The recipient must replace occupied and vacant occupiable lower income housing (defined in § 43.5) that is converted to a use other than lower income housing or is demolished for a project. The replacement requirements are described in subpart B of this part.

(c) *Relocation assistance.* The recipient must provide relocation assistance to lower income persons displaced as a direct result of the conversion of lower income housing or the demolition of any housing for a project. The relocation assistance requirements are described in subpart C of this part.

43.40 Relocation payments not considered as income.
43.45 Appeals.
43.50 Recordkeeping.

Subpart B—One-For-One Replacement of Lower Income Housing

43.101 Housing that must be replaced.
43.103 Housing that meets replacement requirements.
43.105 Disclosure and submission requirements.
43.107 Exception to housing replacement requirements.

Subpart C—Assistance to Site Occupants

43.201 Introduction.
43.203 Summary of assistance.
43.205 Timely notices.
43.207 Other advisory services.
43.209 Temporary relocation and moves within complex.
43.211 Payment for moving and related expenses.
43.213 Rental and purchase assistance.
43.215 Special requirements covering manufactured homes.

Authority: 42 U.S.C. 3535(d), 5301–5320, and 12701–12839.

Subpart A—General Provisions

§ 43.1 Requirements of plan.

In order to obtain HUD financial assistance, as defined in § 43.5, a recipient must certify that it is following a residential antidisplacement and relocation assistance plan (the Plan). (The Plan does not have to be submitted to HUD.) The regulations in this part describe the requirements of the Plan. The Plan has three components:

(a) *Minimize displacement.* Consistent with program goals and objectives, a recipient shall assure that it will take all reasonable steps to minimize the displacement of families and individuals from their homes and neighborhoods as a result of a project (defined in § 43.14). The recipient shall identify in the Plan the steps that it will take to carry out this policy.

(b) *One-for-one replacement of lower income housing.* The recipient must replace occupied and vacant occupiable lower income housing (defined in § 43.5) that is converted to a use other than lower income housing or is demolished for a project. The replacement requirements are described in subpart B of this part.

(c) *Relocation assistance.* The recipient must provide relocation assistance to lower income persons displaced as a direct result of the conversion of lower income housing or the demolition of any housing for a project. The relocation assistance requirements are described in subpart C of this part.

§ 43.5 Definitions.

Comparable Replacement Dwelling means, for relocation purposes under this part, a dwelling that satisfies the requirements in § 43.7.

Decent, safe and sanitary dwelling means a dwelling that meets the requirements in § 43.9.

Displaced person means a person as defined in § 43.11.

Dwelling means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house; a single family unit in a two-family, multifamily, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a manufactured housing unit; or any other residential unit.

Fair market rent (FMR) means the fair market rent as that term is defined in 24 CFR 882.102, in the regulations for the Section 8 Housing Assistance Payments Program—Existing Housing.

HA or Housing Agency means any State, county, municipal, or other governmental entity or public body (or its agency or instrumentality) that is authorized to engage in or assist in the development or operation of lower income housing. The term includes PHA (Public Housing Agency) and IHA (Indian Housing Authority).

HUD means the Department of Housing and Urban Development. "HUD Field Office" means the HUD Office with responsibility for administering the applicable requirements for the recipient's program. (The HUD office administering the relocation regulations in this part may not be the HUD office administering the one-for-one replacement requirements in subpart B of this part.)

HUD financial assistance means a grant, loan, contribution, or loan guarantee provided under any of the following HUD-assisted programs:

(1) Community Development Block Grant (CDBG) Entitlement Program (24 CFR part 570);

(2) HOME Program (24 CFR part 92). However, HOME for Indians (subpart M of 24 CFR part 92) and HOME for Insular Areas (24 CFR 92.64) are excluded.

(3) State CDBG Program (24 CFR part 570, subpart I).

(4) CDBG HUD-administered Small Cities Program (24 CFR 570.426, 570.430, or 570.435(d)).

(5) CDBG Section 108 Loan Guarantee Program (24 CFR part 570, subpart M).

(6) Urban Development Action Grant (UDAG) Program (24 CFR part 570, subpart G).

Lower income housing means renter-occupied, owner-occupied, or vacant housing for which either:

(1) The market rent plus utility costs do not exceed the applicable Fair Market Rent (FMR) for existing housing established under 24 CFR part 888 for the recipient jurisdiction (community-wide exception FMR, where applicable); or

(2) The market rent plus utility costs exceed the applicable Section 8 FMR, but there is a written agreement between the owner and a governmental body committing the owner for a substantial period of time to a monthly housing cost charge to the occupant that does not exceed the applicable Section 8 FMR. (To qualify as lower income replacement housing, that period must be at least 10 years. The commitment may be based on a project-based subsidy that has a term, including renewals, that is pre-funded or subject only to congressional appropriations.)

Lower income person means a person having an income equal to or less than the Section 8 low income limit established by HUD. The method for determining income under the Section 8 Housing Assistance Payments Program need not be used for this purpose.

Market rent means the rent that a property would most probably command in an open market, whether it is renter-occupied, owner-occupied or vacant. For purposes of this part, it shall be determined on the basis of a review of rents currently paid, and rents asked, for comparable space, carried out by a person familiar with real estate values in the area.

Monthly gross income means 1/12 of the total income of all adult members (at least 18 years old or older) of the household that is anticipated to be received for a 12-month period, as determined by the recipient. Scholarship aid used to pay costs of tuition, fees, books, equipment, supplies or transportation of student is excluded from this calculation. The recipient may determine this income in accordance with the standards for the Section 8 Existing Housing Program (described at 24 CFR 813.102), or it may establish its own standards, consistent with applicable law and this part. If the recipient adopts its own standards, it must do so in a written policy that establishes the same standards for each class of occupants.

Monthly housing cost means the actual monthly contract rent, plus an allowance for the reasonable use of required utility services not included in the contract rent. The allowance shall equal 1/12 of the estimated cost of such utilities for the next 12 months.

Required utility services include those necessary for heat, cooking, lighting, water and sewer, and air conditioning (if required by climatic conditions). Telephone and trash removal services are not covered.

Neighborhood means a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary, but does not encompass the entire area, of the unit of general local government. However, if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of the unit of general local government.

Person means all the occupants of a dwelling. The occupants may be a single family, one individual living alone, two or more families living together, or any other group of related or unrelated occupants who share living arrangements. However, on a case-by-case basis, for good cause, the recipient may determine that the occupants of the dwelling constitute two or more persons with separate entitlements to relocation assistance, if such determination does not reduce the level of assistance to which any individual would be entitled if all occupants shared one entitlement.

Project means one or more activities that meet the requirements of § 43.14.

Recipient means: (1) The "grantee" under the CDBG Entitlement Program, CDBG HUD-administered Small Cities Program, and Urban Development Action Grant (UDAG) Program.

(2) The "State recipient" under the State CDBG Program.

(3) The "public entity" or "designated public agency" under the Section 108 Loan Guarantee Program.

(4) The "participating jurisdiction" under the HOME Program, except as provided in paragraph (5) of this definition.

(5) The "State recipient" under a HOME Program when the State distributes HOME funds to a unit of general local government to carry out the program.

Recognition of eligibility. See the definition in § 43.201(c).

Section 104(d) means section 104(d) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304(d).

Standard condition has the meaning established in the recipient's Comprehensive Housing Affordability Strategy (CHAS) (24 CFR part 91). The term is defined by the recipient. For State funded programs, however, the State may establish a separate definition for sub-State areas and regions.

State has the meaning set forth in the applicable program regulation.

Substandard condition but suitable for rehabilitation has the meaning established in the recipient's Comprehensive Housing Affordability Strategy (CHAS) (24 CFR part 91). The term is defined by the recipient. For State funded programs, however, the State may establish a separate definition for sub-State areas and regions.

Tenant means a person who has the lawful temporary use and occupancy of real property owned by another.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601–4655.

Vacant occupiable housing. See the definition in § 43.101(b).

§ 43.7 Comparable replacement dwelling—defined.

For relocation purposes, a dwelling is a "comparable replacement dwelling" if it is:

(a) Decent, safe, and sanitary, as defined in § 43.9;

(b) Functionally equivalent to the displacement dwelling. The replacement dwelling must provide the same utility and be capable of contributing to a comparable style of living. A comparable replacement dwelling need not possess every feature of the displacement dwelling, but the principal features must be present. Reasonable trade-offs for specific features (e.g., basement space for garage space) may be acceptable provided the unit is equal to or better than the displacement dwelling. Generally, a comparable replacement dwelling must contain, at a minimum, approximately as much space as, and must be adaptable to the same range of purposes as, the displacement dwelling. When the displacement dwelling is dilapidated, however, a smaller decent, safe and sanitary replacement dwelling may be determined to be functionally equivalent;

(c) In an area not subject to unreasonable adverse environmental conditions from either natural or human sources;

(d) In a location that is generally not less desirable than the location of the displacement dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment;

(e) On a site with normal site improvements, including customary landscaping. A site for single-family housing shall be typical in size for residential development. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

(f) Currently available to the person. A dwelling is considered available if:

(1) It is actually on the market;

(2) The person is informed of its location;

(3) The person has sufficient time to negotiate and enter into a purchase agreement or lease for it; and

(4) Subject to reasonable safeguards, the person is assured of receiving any payments required under this part in sufficient time to complete the purchase or lease of the dwelling; and

(g) Within the financial means of the person. A displaced person's contribution toward the cost of renting a comparable replacement dwelling shall not exceed the amount established under § 43.213(b)(2).

§ 43.9 Decent, safe, and sanitary dwelling—defined.

(a) *Definition—generally.* A dwelling is "decent, safe, and sanitary" for purposes of this part if it:

(1) Meets local housing and occupancy codes and the standards listed in paragraph (b) of this section; or

(2) Is in compliance with the applicable HUD housing quality standards (HQS), if the dwelling is occupied in connection with a program that is subject to those HQS (e.g., 24 CFR 882.109).

(b) *Standards.* The dwelling shall: (1) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the person. There must be at least one bedroom or living/bedroom for each two people in the household;

(2) Be structurally sound, weathertight, and in good repair;

(3) Contain a safe electrical wiring system adequate for lighting and other devices;

(4) Have, and be capable of maintaining, a healthy thermal environment. The heating/cooling system must be safe;

(5) Have adequate sanitary facilities in a separate, well-lighted and ventilated bathroom that provides privacy to the user. The facilities are acceptable if the bathroom contains a fixed basin with a sink trap and hot and cold running water, a bathtub or shower stall with hot and cold running water, and a flush water closet, all in good working order and properly connected to a sewage drainage system. The bathroom must be in the dwelling, unless the dwelling is single-room occupancy (SRO) housing;

(6) Contain a kitchen area with a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator, unless the dwelling is not a housekeeping dwelling;

(7) Contain unobstructed egress to safe, open space at ground level;

(8) For a person with disabilities, be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling by such person. This requirement will be met if the dwelling meets pertinent standards prescribed by the American National Standards Institute, Inc. (ANSI A117.1; see Appendix II to subchapter A of 24 CFR) or the Uniform Federal Accessibility Standards (UFAS) (see Appendix A to 24 CFR part 40). This requirement will also be satisfied if the displaced person elects to relocate to a dwelling that he or she selects (a dwelling not offered by the recipient) and the displaced person determines that he or she has reasonable ingress, egress, and use of the dwelling; and

(9) Comply with the lead-based paint requirements of 24 CFR part 35.

(c) *Exceptions.* HUD may approve variations, based on local climatic or geographic conditions, from the standards in this section.

§ 43.11 Displaced person—defined.

(a) Definition—generally. The term "displaced person" means any lower income person who moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of the conversion of occupied or vacant occupiable lower income housing or of the demolition of any dwelling, when the conversion or demolition are for a project (as defined in § 43.14).

(b) *Persons who qualify.* The term "displaced person" includes, but is not limited to:

(1) A person who moves permanently from the real property after the property owner (or person in control of the site) issues a vacate notice to the person, or refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance, if the move occurs on or after:

(i) The date the applicant submits the request for assistance for the project that is later approved, if the applicant has site control; or

(ii) The date the applicant obtains site control, if that occurs after the request for assistance;

(2) Any person, including a person who moves before the date described in paragraph (b)(1) of this section, if either HUD or the recipient (or the State, if a State funds the recipient) determines that the displacement occurred as a

space and utility service connections for a stove and refrigerator, unless the dwelling is not a housekeeping dwelling;

(7) Contain unobstructed egress to safe, open space at ground level;

(8) For a person with disabilities, be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling by such person. This requirement will be met if the dwelling meets pertinent standards prescribed by the American National Standards Institute, Inc. (ANSI A117.1; see Appendix II to subchapter A of 24 CFR) or the Uniform Federal Accessibility Standards (UFAS) (see Appendix A to 24 CFR part 40). This requirement will also be satisfied if the displaced person elects to relocate to a dwelling that he or she selects (a dwelling not offered by the recipient) and the displaced person determines that he or she has reasonable ingress, egress, and use of the dwelling; and

(9) Comply with the lead-based paint requirements of 24 CFR part 35.

(c) *Exceptions.* HUD may approve variations, based on local climatic or geographic conditions, from the standards in this section.

§ 43.11 Displaced person—defined.

(a) Definition—generally. The term "displaced person" means any lower income person who moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of the conversion of occupied or vacant occupiable lower income housing or of the demolition of any dwelling, when the conversion or demolition are for a project (as defined in § 43.14).

(b) *Persons who qualify.* The term "displaced person" includes, but is not limited to:

(1) A person who moves permanently from the real property after the property owner (or person in control of the site) issues a vacate notice to the person, or refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance, if the move occurs on or after:

(i) The date the applicant submits the request for assistance for the project that is later approved, if the applicant has site control; or

(ii) The date the applicant obtains site control, if that occurs after the request for assistance;

(2) Any person, including a person who moves before the date described in paragraph (b)(1) of this section, if either HUD or the recipient (or the State, if a State funds the recipient) determines that the displacement occurred as a direct result of conversion or demolition for the project;

(3)(i) A tenant-occupant of a dwelling who moves permanently from the building/complex on or after the date of recognition of eligibility (defined in § 43.201(c)), if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Reasonable terms and conditions shall include a lease term of at least 1 year (unless the tenant agrees to a shorter term) at a monthly housing cost that does not exceed the greater of:

(A) The tenant's rent before recognition of eligibility (as defined in § 43.201(c)) and estimated utility costs; or

(B) The tenant's contribution under the recipient's financial means standards (described in § 43.213(b)(2)).

(ii) If the initial monthly housing cost is at or near the maximum permissible cost, there must be a reasonable basis for concluding at the time of the notice, that future rent increases will be reasonable.

(4) A tenant-occupant of a dwelling who is required to relocate temporarily for the project, but does not return to the building/complex, if either:

(i) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation (including the cost of moving to and from the temporarily occupied unit, increased housing costs, and incidental expenses, such as telephone and cable television reinstallation charges); or

(ii) Other conditions of the temporary relocation are not reasonable; and

(5) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another unit in the building/complex, if either:

(i) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or

(ii) Other conditions of the move are not reasonable.

(c) *Persons not eligible.* Notwithstanding the provisions of paragraphs (a) or (b) of this section, a person does not qualify as a displaced person, and is not entitled to relocation assistance, if any of the following applies:

(1) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; violation of applicable Federal, State, or local law; or other good cause, and the recipient determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew the lease or occupancy agreement must be preceded by at least 30 days written notice to the tenant specifying the grounds for the action;

(2) The person has no legal right to occupy the property under State or local law (e.g., squatter);

(3) The recipient determines that the person occupied the property for the purpose of obtaining relocation assistance and HUD concurs in that determination;

(4) The person moves into the property after the request for project assistance but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a displaced person as a result of the project;

(5) The person is an owner-occupant of the property who moves as a result of voluntary conversion or demolition (however, a tenant displaced as a direct result of the conversion or demolition is eligible);

(6) The person, after receiving a notice of eligibility for relocation assistance, is notified in writing that he or she will not be displaced for the project. Such notice shall not be issued unless the person has not moved and the recipient agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of eligibility for relocation assistance; or

(7) The recipient determines that the person was not displaced as a direct result of the conversion or demolition, and HUD concurs in that determination.

(d) *When in doubt.* The recipient may, at any time, ask HUD to determine whether a specific displacement is or would be covered by this section.

§ 43.14 Project—defined.

(a) *Definition—generally.* The term "project" means one or more activities paid for in whole or in part with HUD financial assistance, as described in this paragraph. Two or more activities that are integrally related, each essential to the other, are considered one project, whether or not all of the component activities receive HUD financial assistance. Conversion or demolition that is not paid for with HUD financial assistance will trigger the requirements

of this part if it is part of a project that includes an assisted activity.

(b) *Criteria.* In determining whether two or more activities (e.g., real property acquisition, rehabilitation, demolition, construction, or provision of services) are part of a single project, consideration shall be given to the extent to which these activities share the same:

(1) *Location;* i.e., whether the activities are located on the same site (e.g., one tract or contiguous tracts of real property in the same or related ownership) after project completion;

(2) *Developer/owner;* i.e., whether the activities are carried out by, or on behalf of, a single entity or closely related entities;

(3) *Timeframe;* i.e., whether the individual activities take place within a reasonable time frame of each other; and

(4) *Objective;* i.e., whether the activities are interdependent.

(c) *Examples of determinations.*—(1) *Rehabilitation—example.* A contract for the rehabilitation of a multifamily building is executed. HUD financial assistance is used to pay part of the cost of rehabilitating some, but not all, of the units in the building. Non-Federal financing is used to pay for the rehabilitation of the others.
Determination: All the rehabilitation is part of a single project. All "converted" units in the building must be replaced, and any persons displaced by the conversion are eligible for relocation assistance.

(2) *Construction—example.* Local funds are used to acquire and clear a site for a new housing complex. HUD funds are used to partially finance the construction of the complex.
Determination: The acquisition of the site, demolition of the improvements, and construction of the housing complex comprise a single project. All converted units on the site must be replaced and all persons occupying the site are "displaced persons" under the regulations in this part.

(3) *Acquisition—example.* A number of contiguous parcels are acquired to assemble a site for construction of a new building. HUD financial assistance is used to pay part of the cost of acquiring one parcel. Non-Federal funds are used to purchase the other parcels and demolish the improvements.
Determination: The acquisition of each of the parcels in the site, the demolition of the improvements and construction of the new building are part of a single project. The demolition of lower income housing on any of the parcels triggers the replacement requirements and any person displaced from the site is eligible for relocation assistance.

§ 43.20 Recipient certification, HUD monitoring, and corrective action.

(a) *Certification.* (1) Before an award of HUD financial assistance is made, the recipient must certify that it is following a Residential Antidisplacement and Relocation Assistance Plan that complies with the regulations in this part. (The certification for the HOME Program is made as part of the submission of the Comprehensive Housing Affordability Strategy (CHAS) in accordance with the CHAS regulation in 24 CFR 91.21.) If the recipient provides project funds to a third party, the recipient remains responsible for ensuring compliance with this part, notwithstanding the third party's contractual obligation to the recipient to comply.

(2) A recipient certification will be satisfactory to HUD, unless HUD has determined that:

(i) The recipient has not complied with the requirements of this part; or

(ii) There is evidence, not directly involving the recipient's past compliance with this part, that tends to challenge in a substantial manner the recipient's certification that it will comply with this part. If HUD makes such determination, HUD may require the recipient to submit further assurances before approving the program or project.

(b) *Monitoring and corrective action.* HUD will monitor the recipient's program or project to determine if it has been carried out in compliance with the certification and requirements contained in this part. If HUD finds that the recipient has failed to comply with a requirement, the recipient will be provided an opportunity to contest the finding in accordance with the applicable program regulations (see 24 CFR parts 92 and 570). If the recipient is unsuccessful in contesting the finding, the recipient shall undertake the corrective or remedial action specified by HUD.

(1) *Payment and housing deficiencies.* Whenever HUD determines that a person did not receive the full amount of a payment required under this part, the recipient shall ensure that the correct payment, as specified by HUD, is made promptly. Whenever a person occupies inadequate housing because required payments, housing referrals, property inspection, or other services were not offered in accordance with the requirements of this part, the recipient shall promptly take whatever steps are appropriate, and shall bear whatever reasonable costs are necessary, to:

(i) Enable the person to relocate to a comparable replacement dwelling. If the person chooses to relocate to other decent, safe, and sanitary housing, the amount of assistance may be limited to the amount necessary to obtain a comparable replacement dwelling; or

(ii) Ensure the repair or rehabilitation of the dwelling occupied by the person to the extent necessary to correct deficiencies that would not be present if the recipient had met its obligations under this part. The recipient is not required to remedy housing deficiencies that were caused through the fault or neglect of the person occupying the dwelling. A recipient may use its code enforcement powers or other programs to ensure that the owner of a tenant-occupied dwelling makes the repairs necessary to correct housing deficiencies.

(2) *Fair housing and equal opportunity violations.* HUD's Office/Division of Fair Housing and Equal Opportunity will determine whether failure to meet any of the requirements in this part violates statutory or regulatory civil rights-related program requirements or civil rights law.

(c) *Sanctions.* If the recipient does not take and complete required corrective action in a timely manner, HUD may apply sanctions in accordance with applicable program regulations (24 CFR parts 92 and 570). Examples of sanctions are the suspension or termination of all HUD financial assistance for a project and the recovery of funds expended for activities not carried out in accordance with this part. Remedial actions may also include referral to the Attorney General with a recommendation for civil action, including mandatory or injunctive relief.

(d) *Fraud, waste and mismanagement.* The recipient shall take appropriate measures to carry out these policies in a manner that minimizes fraud, waste, and mismanagement. Recipient officials shall report instances of fraud and waste to the HUD Regional Inspector General.

§ 43.25 No duplication of payments.

No person shall be provided any compensation under the regulations in this part that has substantially the same purpose and effect as other compensation the person received under Federal, State, or local law. The recipient need not conduct an exhaustive search for duplicative payments, but must avoid making a duplicative payment based on the recipient's current knowledge.

§ 43.30 Waivers and time extensions.

(a) *Time extension—granting.* On a case-by-case basis, for good cause the recipient shall extend any time limit specified for the following actions:

(1) The filing of a claim or an appeal; or

(2) Purchasing, renting, or occupying a replacement dwelling in order to qualify for a replacement housing payment.

(b) *Time extension—denial.* If the recipient denies a person's request for an extension of the time limits, the recipient shall notify the person of the basis for the recipient's determination and shall advise the person of the procedures for appealing the determination. The appeal procedures are set out in § 43.45.

(c) *Waiver by person.* A person may waive his or her right to assistance by refusing to file an application or claim for the assistance, or by signing a written waiver in a format acceptable to HUD. A written waiver must describe the specific assistance to be waived, and must cite the law or regulations under which the assistance is available.

(d) *Waiver by HUD.* On a case-by-case basis, upon a finding of good cause HUD may waive any requirement of this part that is not required by law. A recipient's request for a waiver and justification shall be submitted in writing to HUD. The HUD Field Office will forward the request, with its recommendation and comments, to HUD Headquarters. HUD will publish a notice in the **Federal Register** informing the public of the waiver of any requirement of subpart B of this part. The notice will contain all relevant information concerning the waiver. (An exception granted by the HUD Field Office under § 43.107 is not considered a waiver and will not be published in the **Federal Register**.)

§ 43.35 General requirements governing payments.

(a) *Documentation.*—(1) *General.* A claim for a payment must be supported by reasonable documentation of expenses (e.g., bids, estimates, bills, certified prices, appraisals) or income earned (e.g., tax returns, certified financial statements, employer income verification). A person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(2) *Self-moves.* If a person elects to take full responsibility for the relocation, the recipient may make a payment for the person's moving and related expenses in an amount not to exceed the lowest acceptable bid or estimate obtained by the recipient or prepared by qualified recipient staff, without requiring additional documentation from the claimant. Unless the move is low-cost or uncomplicated, the recipient shall obtain at least two bids or estimates.

(1) The filing of a claim or an appeal; or

(2) Purchasing, renting, or occupying a replacement dwelling in order to qualify for a replacement housing payment.

(b) *Time extension—denial.* If the recipient denies a person's request for an extension of the time limits, the recipient shall notify the person of the basis for the recipient's determination and shall advise the person of the procedures for appealing the determination. The appeal procedures are set out in § 43.45.

(c) *Waiver by person.* A person may waive his or her right to assistance by refusing to file an application or claim for the assistance, or by signing a written waiver in a format acceptable to HUD. A written waiver must describe the specific assistance to be waived, and must cite the law or regulations under which the assistance is available.

(d) *Waiver by HUD.* On a case-by-case basis, upon a finding of good cause HUD may waive any requirement of this part that is not required by law. A recipient's request for a waiver and justification shall be submitted in writing to HUD. The HUD Field Office will forward the request, with its recommendation and comments, to HUD Headquarters. HUD will publish a notice in the **Federal Register** informing the public of the waiver of any requirement of subpart B of this part. The notice will contain all relevant information concerning the waiver. (An exception granted by the HUD Field Office under § 43.107 is not considered a waiver and will not be published in the **Federal Register**.)

§ 43.35 General requirements governing payments.

(a) *Documentation.*—(1) *General.* A claim for a payment must be supported by reasonable documentation of expenses (e.g., bids, estimates, bills, certified prices, appraisals) or income earned (e.g., tax returns, certified financial statements, employer income verification). A person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(2) *Self-moves.* If a person elects to take full responsibility for the relocation, the recipient may make a payment for the person's moving and related expenses in an amount not to exceed the lowest acceptable bid or estimate obtained by the recipient or prepared by qualified recipient staff, without requiring additional documentation from the claimant. Unless the move is low-cost or uncomplicated, the recipient shall obtain at least two bids or estimates. Because of the savings that may be possible through a self-move, the recipient may negotiate a payment amount below the lowest acceptable bid or estimate. If the recipient and the claimant are unable to agree upon an amount to cover the self-move, full documentation, as described in paragraph (a)(1) of this section, is required.

(b) *Expeditious payment.* The recipient shall review each claim in an expeditious manner. The claimant shall be notified promptly as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payment.* If a claimant demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the recipient shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished. For example, an advance payment may be placed in escrow or paid directly to the moving contractor, new landlord, or utility company. The claimant may be required to enter into a contract committing the claimant to return any amount for which the claimant is later determined to be ineligible.

(d) *Time for filing claim.* All claims for a relocation payment shall be filed with the recipient within 18 months after the date of displacement (last day of actual move). However, the recipient shall extend this time period for good cause.

(e) *Occupants of displacement dwelling move separately.* (1) If the recipient makes a timely offer of a comparable replacement dwelling to the occupants of the displacement dwelling, but the occupants move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the recipient, of any relocation payment(s) that would have been made if the occupants moved together to the comparable replacement dwelling.

(2) If the recipient determines that the occupants of the displacement dwelling constitute two or more persons (defined in § 43.5), each person has a separate entitlement to relocation payments. However, no individual shall be provided less assistance than would be available to the individual if all occupants shared one entitlement.

(f) *Rental assistance in installments.* A cash rental assistance payment to a displaced tenant must be disbursed in periodic installments. A later change in the person's income or rent, or in the condition or location of the person's housing, is not a basis for changing the amount or duration of the cash installments issued under this part. However, the level of tenant-based rental assistance provided under an assisted housing program (e.g., Section 8 rental certificate) may be changed according to changes in the person's income or rent.

(g) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling under this part if the person purchases an interest in a housing cooperative or mutual housing association (see § 43.213(c)). (However, a displaced owner-occupant may obtain a greater level of assistance under the URA than under this part.)

(h) *Occupancy of displacement and replacement dwellings.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this part as a result of:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President or the recipient, occurring after the project is approved; or

(2) Another reason beyond the person's control, such as a delay in the construction of the replacement dwelling, military reserve duty, illness, or hospital stay, as determined by the recipient.

(i) *Notice of denial of claim.* If the recipient disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, the recipient shall promptly notify the claimant in writing of the recipient's determination, the basis for its determination, and the procedures for appealing that determination.

(j) *Set-offs from relocation payment.* (1) A relocation payment shall be paid directly to the displaced person, unless:

(i) The person consents, in writing, to the assignment of the payment to another;

(ii) A court orders otherwise; or

(iii) The person is in arrears, as determined by a court, on rent owed to the recipient or owner. A rental arrearage may be deducted from a payment, provided the deduction will not prevent the displaced person from obtaining a comparable replacement dwelling.

(2) Except as provided in paragraph (j)(1) of this section, the recipient shall not withhold any part of a relocation payment to satisfy any obligation of a person to a creditor.

(k) *Conversion of rental assistance to purchase assistance.* A displaced person who initially rents a replacement dwelling, receives rental assistance under this part and later purchases a replacement dwelling is eligible to receive purchase assistance if he or she meets the eligibility criteria for such assistance, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance that has been disbursed shall be deducted from the purchase assistance payment.

(l) *Payment after death.* A replacement housing payment issued under this part is personal to the displaced person and upon his or her death any undisbursed portion of the payment shall not be paid to heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid;

(2) The full payment shall be disbursed in any case in which a member of a displaced household dies and any other member of the household continues to occupy a replacement dwelling; and

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of the deceased person shall be disbursed to the estate.

§ 43.40 Relocation payments not considered as income.

A relocation payment provided under this part shall not be considered as income to the recipient for purposes of the Internal Revenue Code.

§ 43.45 Appeals.

(a) *Actions which may be appealed.* A person may file a written appeal with the recipient in any case in which the person believes that the recipient has failed to:

(1) Properly determine that the person has qualified, or will qualify upon moving, as a displaced person who is eligible for relocation assistance;

(2) Properly determine the amount of any required payment. A person's acceptance of a payment that is less than the full amount claimed does not limit the person's right to appeal;

(3) Provide appropriate referrals to comparable replacement dwellings or inspect the replacement dwelling in a timely manner; or

(4) Waive the time limit for:

(i) The filing of a claim or an appeal; or

(ii) Purchasing, renting or occupying a replacement dwelling.

(b) *Time limit for initiating appeal.* The recipient may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the recipient's determination on the person's claim. On a case-by-case basis, for good cause, the recipient shall extend this time limit.

(c) *Assistance in presenting appeal.* A person has a right to be represented by legal counsel or any other representative in connection with the appeal, at the person's own expense. If a person is unable to prepare a written appeal without help, the recipient shall provide the help or refer the person to an appropriate third party who will provide the help at no cost to the person (e.g., a citizen group, tenant union, neighborhood legal services, or urban league).

(d) *Review of records by person making appeal.* The recipient shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials that the recipient determines may not be disclosed to the person for reasons of confidentiality. The recipient may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(e) *Determination on appeal and notification.* The recipient shall consider a written appeal regardless of form. The official conducting the review shall be either the head of the recipient or an authorized designee who was not directly involved in any action appealed. The recipient shall consider all pertinent material submitted by the person and any other available information needed to ensure a fair review. Promptly after receipt of all this information, the recipient shall make a written determination on the appeal and furnish the person a copy, along with an explanation of the basis on which the decision was made. If the full relief requested is not granted, the recipient shall advise the person of the right to ask for a review of the recipient's determination, in accordance with paragraph (f) of this section.

(f) *Review of recipient determination.* (1) A person who is dissatisfied with the recipient's determination on the person's appeal may request a review of that decision. An appeal of a recipient's decision shall be reviewed by:

(i) HUD, if the recipient is funded by HUD; or

(ii) The State, if the recipient is funded by the State.

(2) The reviewer shall provide a copy of its determination, along with a written explanation of the basis for its decision, to the person and the recipient. If the full relief is not granted, the person shall be advised of the right to seek judicial review.

(g) *Judicial review.* Nothing in this part shall in any way preclude or limit a person from seeking judicial review of the person's appeal on its merits after the person exhausts the administrative remedies described in this section.

§ 43.50 Recordkeeping.

(a) *General.* The recipient shall maintain records in sufficient detail to demonstrate compliance with this part. These records shall include a list or lists with the name, address, and race/ethnicity of each household, and the gender of each single head of household, who:

(1) Occupies the property on the date described in § 43.11(b)(1);

(2) Moves into the property after the date described in § 43.11(b)(1), but before completion of the project; and

(3) Occupies the property upon completion of the project.

(b) *Retention period.* The records for a project shall be maintained for at least three years after the latest of:

(1) The date all relocation payments under this part and all payments for the acquisition of the real property have been issued;

(2) The date the project is completed; or

(3) The date by which all issues resulting from litigation, negotiation, audit, or other action are resolved.

(c) *Confidentiality of records.* Records maintained by the recipient to demonstrate compliance with this part are confidential. The records shall not be made available as public information, unless required by law. Only authorized staff of the recipient and HUD shall have access to these records. However, upon the written request of any occupant of the project site, the recipient shall give that person or that person's designated representative the opportunity to inspect and copy, during normal business hours, all pertinent records except material that the recipient determines must be withheld from the person for reasons of confidentiality.

Subpart B—One-For-One Replacement of Lower Income Housing

§ 43.101 Housing that must be replaced.

(a) *General.* Occupied and vacant occupiable lower income housing that is demolished or converted to a use other than as lower income housing for a project must be replaced with lower income housing in accordance with the requirements in this subpart, unless an exception is granted under § 43.107.

(b) *Vacant occupiable housing—defined.* For purposes of this subpart, the term "vacant occupiable housing" means housing that is in:

(1) Standard condition;

(2) Substandard condition, but suitable for rehabilitation; or

(3) Substandard condition not suitable for rehabilitation, but has been occupied, by a person with the legal right to occupy the property, at any time within the period beginning three months before execution of the contract for the demolition or the rehabilitation related to the conversion. This replacement requirement does not apply to the demolition or conversion of vacant housing rendered unoccupiable by a presidentially declared emergency or disaster, or by a fire or other disaster beyond the control of the owner or occupant.

(c) *Conversion—defined.* (1) Except as provided in paragraph (c)(2) of this section, lower income housing is converted to a use other than as lower income housing if, upon completion of the project, the housing unit is:

(i) Used for non-housing purposes; or

(ii) Used for housing purposes, but no longer meets the definition of lower income housing in § 43.5.

(2) A housing unit that continues to be used for housing after completion of the project is not converted if, upon completion of the project, the unit is:

(i) Owned and occupied by a person who owned and occupied the unit before the project;

(ii) Owned and occupied by a lower income person; or

(iii) Rental housing that meets the HOME affordability criteria in 24 CFR 92.252.

(d) *Reconfiguration of space.* Reconfiguration of interior space in lower income housing does not trigger a replacement requirement, unless the housing is no longer lower income housing after the reconfiguration.

(e) *Demolition or conversion at replacement housing site.* If the off-site development of replacement lower income housing to meet the requirements of this part results in the demolition or conversion of other lower income housing, that other demolition or conversion is also subject to the housing replacement and relocation requirements of this part.

§ 43.103 Housing that meets replacement requirements.

One-for-one replacement lower income housing must meet the following requirements:

(a) *Location.* At least one of the following conditions must be met:

(1) Eligible households of all races and ethnic groups will have equal and

(b) *Vacant occupiable housing—defined.* For purposes of this subpart, the term "vacant occupiable housing" means housing that is in:

(1) Standard condition;

(2) Substandard condition, but suitable for rehabilitation; or

(3) Substandard condition not suitable for rehabilitation, but has been occupied, by a person with the legal right to occupy the property, at any time within the period beginning three months before execution of the contract for the demolition or the rehabilitation related to the conversion. This replacement requirement does not apply to the demolition or conversion of vacant housing rendered unoccupiable by a presidentially declared emergency or disaster, or by a fire or other disaster beyond the control of the owner or occupant.

(c) *Conversion—defined.* (1) Except as provided in paragraph (c)(2) of this section, lower income housing is converted to a use other than as lower income housing if, upon completion of the project, the housing unit is:

(i) Used for non-housing purposes; or

(ii) Used for housing purposes, but no longer meets the definition of lower income housing in § 43.5.

(2) A housing unit that continues to be used for housing after completion of the project is not converted if, upon completion of the project, the unit is:

(i) Owned and occupied by a person who owned and occupied the unit before the project;

(ii) Owned and occupied by a lower income person; or

(iii) Rental housing that meets the HOME affordability criteria in 24 CFR 92.252.

(d) *Reconfiguration of space.* Reconfiguration of interior space in lower income housing does not trigger a replacement requirement, unless the housing is no longer lower income housing after the reconfiguration.

(e) *Demolition or conversion at replacement housing site.* If the off-site development of replacement lower income housing to meet the requirements of this part results in the demolition or conversion of other lower income housing, that other demolition or conversion is also subject to the housing replacement and relocation requirements of this part.

§ 43.103 Housing that meets replacement requirements.

One-for-one replacement lower income housing must meet the following requirements:

(a) *Location.* At least one of the following conditions must be met:

(1) Eligible households of all races and ethnic groups will have equal and meaningful access to the replacement housing;

(2) There are opportunities in the metropolitan area for assisted households to choose non-minority neighborhoods (or these opportunities are under development); or

(3) The proposed housing investment is consistent with the recipient's consolidated plan.

(b) *Size.* The replacement housing must contain at least as many bedrooms as the housing that is demolished or converted. The mix of units may vary; however, the recipient must provide the information required under § 43.105(g) in any case where it proposes to:

(1) Replace units with an appropriate number of smaller units (e.g., a 2-bedroom unit with two 1-bedroom units); or

(2) Replace efficiency units or single-room occupancy (SRO) housing with units of a different size.

(c) *Condition.* The replacement housing must be provided in standard condition. A vacant unit that has been raised to standard from substandard condition may qualify as replacement housing if:

(1) No person was displaced from the unit as a direct result of a project; and

(2) The unit was vacant for at least three months before the execution of the contract between the owner of the property and the rehabilitation contractor.

(d) *Timing.* The replacement housing must initially become available for occupancy during the period beginning one year before the recipient's submission of the information required under § 43.105 and ending three years after the commencement of the demolition or the rehabilitation related to the conversion.

(e) *Affordability.* The replacement housing must be designed to remain lower income housing for at least 10 years from the date of initial occupancy. Replacement housing may be provided by any government agency or private developer, and may include:

(1) Rental or owner-occupied housing with a market rent that does not exceed the applicable Section 8 FMR, if, based on available data and trends, the recipient determines that the market rent is likely to remain within the applicable FMR for at least 10 years; and

(2) Housing for which there is a firm commitment to reduce the actual rent for the unit to an amount that does not exceed the FMR for a period of at least 10 years (e.g., by a project-based subsidy that has a term, including renewals that are pre-funded or subject only to congressional appropriations, of at least 10 years).

§ 43.105 Disclosure and submission requirements.

(a) Before the recipient enters into an agreement committing it to provide HUD financial assistance for any project that will directly result in the demolition of lower income housing or the conversion of lower income housing to another use, the recipient must make public and, for monitoring purposes, submit to HUD or, in the case of a State-funded recipient, to the State, the following information:

(1) A description of the proposed project;

(2) The address, number of bedrooms, and location on a map of the lower income housing that will be demolished or converted to a use other than as lower income housing;

(3) A time schedule for the commencement and completion of the demolition or conversion;

(4) To the extent known, the address, number of bedrooms, and location on a map of the replacement housing that has been or will be provided. Any exception that will be sought under § 43.107 shall be identified. For tracking purposes, the information shall correlate the replacement housing with the specific converted/demolished housing it replaces and shall indicate whether the replacement housing is located in an area of minority concentration (see § 43.207(c)(4)(iv));

(5) The source of funding, and a time schedule for the provision of the replacement housing;

(6) The basis for concluding that the replacement housing will remain lower income housing for at least 10 years from the date of initial occupancy; and

(7) Information demonstrating that any proposed replacement of dwelling units with an appropriate number of smaller dwelling units, or any proposed replacement of efficiency or single-room occupancy (SRO) units with units of a different size, is appropriate and consistent with the recipient's housing needs and priorities as identified in the HUD-approved comprehensive housing affordability strategy (CHAS).

(b) To the extent that the specific location of the replacement housing and other data required by paragraphs (a)(4) through (a)(7) of this section are not known, the recipient shall identify the general location of the housing on a map and complete the disclosure and submission requirements as soon as the specific data are available.

§ 43.107 Exception to housing replacement requirements.

(a) *General.* To the extent that HUD determines, based upon objective data, that there is an adequate supply of

vacant lower income housing in standard condition available on a nondiscriminatory basis within the recipient's jurisdiction, the one-for-one replacement requirements of this subpart do not apply.

(b) *Criteria for exception.* (1) In determining the adequacy of supply, HUD will consider whether the demolition or conversion will have a material impact on the ability of lower income persons to find suitable lower income housing. HUD will consider relevant evidence of housing supply and demand including, but not limited to, the following factors: the housing vacancy rate in the jurisdiction; the amount of vacant lower income housing in the jurisdiction (excluding units that will be demolished or converted); the recipient's housing needs as described in its CHAS; the number of eligible families on waiting lists for assisted housing; and relevant past or predicted demographic changes.

(2) HUD's decision to grant an exception may take into account the supply of vacant lower income housing in standard condition in an area that is larger than the recipient's jurisdiction. This additional housing shall be considered if HUD determines that the housing is available on a nondiscriminatory basis and would be suitable to serve the needs of the lower income persons that could be served by the lower income housing that is to be demolished or converted. HUD will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

(c) *Request for exception.* A recipient shall submit its request for an exception under this section to:

(1) HUD, if the recipient is funded by HUD; or

(2) The State, if the recipient is funded by a State. After the State reviews a recipient's request and any related public comments, the State shall forward the request with its recommendation to HUD.

(d) *Public disclosure.* A request for an exception shall be made public simultaneously with its submission. The public disclosure shall identify the address of the Office (HUD or State) that will consider the request, and shall inform interested persons that they have 30 days from the date of the submission to provide that Office with additional information supporting or opposing the recipient's request.

(e) *Action pending exception.* Lower income housing for which an exception is requested shall not be demolished or converted before the exception is approved.

(f) *Displacement.* HUD's approval of an exception under this section does not relieve the recipient of the obligation to provide relocation assistance to persons displaced from the housing for which the exception was granted.

Subpart C—Assistance to Site Occupants

§ 43.201 Introduction.

(a) *Purpose of subpart.* This subpart describes the assistance that must be offered to persons occupying property undergoing demolition or conversion.

(b) *Choice of relocation assistance.* Each displaced person is entitled to choose to receive either:

(1) Relocation assistance at section 104(d) levels, as described in this subpart C; or

(2) Relocation assistance under the URA. This level of assistance is described in 49 CFR part 24, and:

(i) For the HOME program, 24 CFR 92.353;

(ii) For the State Community Development Block Grant (CDBG) program, 24 CFR 570.488; and

(iii) For other CDBG programs, the Section 108 Loan Guarantee program, and Urban Development Action Grant (UDAG) program, 24 CFR 570.606.

(c) *Recognition of eligibility—defined.* As used in this subpart and § 43.11 (Displaced person—defined), the term "recognition of eligibility" has the following meaning:

(1) For the conversion or demolition of privately owned property, unless the recipient, with the concurrence of HUD, establishes a different trigger event, the term "recognition of eligibility" means:

(i) The execution of the assistance contract between the recipient (or subrecipient) and the person carrying out the project, if the person has site control; or

(ii) The action by which site control is obtained, if site control is obtained after execution of the assistance contract; or

(2) For the conversion or demolition of property owned by a public agency, the term "recognition of eligibility" means the execution of the contract between the public agency and the rehabilitation or demolition contractor, or any earlier action that the recipient determines is appropriate.

§ 43.203 Summary of assistance.

The following assistance must be provided under this subpart:

(a) All occupants must be provided timely information notices, as described in § 43.205;

(b) All occupants must be provided other appropriate advisory services, as described in § 43.207;

(c) Persons required to relocate for a temporary period or to move within the building/complex shall be provided the assistance required by § 43.209;

(d) Displaced persons must be provided payment for moving and related expenses, as described in § 43.211; and

(e) Displaced persons must be provided rental or purchase assistance, including the cost of a security deposit, as described in § 43.213.

§ 43.205 Timely notices.

(a) *Basic policy.* Each person occupying the property that is undergoing demolition or conversion is entitled to timely notice explaining the impact of the project on the person and the applicable protections and assistance to which the person is entitled. When feasible, two or more notices required by this section may be consolidated in one timely communication.

(b) *General information notice.* (1) As soon as feasible, each person occupying the property shall be issued an appropriate advisory notice as described in paragraph (f) of this section. The notice shall explain that the project has been proposed and its possible impact on the person, if it is approved.

(2) If displacement is a possibility, the notice shall, at a minimum, include information that:

(i) Cautions the person not to move before the project is approved and the person receives a notice of eligibility for relocation assistance;

(ii) Indicates that, if the project is approved, the person may choose assistance at either the levels described in this subpart or under the URA, and generally describes the relocation payments, basic conditions of eligibility, and procedures for obtaining payment under each option;

(iii) Explains that a person to be displaced will be given reasonable relocation advisory services, including referrals to comparable and suitable replacement dwellings, assistance in filing payment claims, and other necessary assistance to help the person relocate successfully;

(iv) Explains that a person to be displaced will not be required to move from the property earlier than 90 days after referral to at least one comparable replacement dwelling (see paragraphs (d) and (e) of this section); and

(v) Describes a person's right to appeal the recipient's determination as to the person's eligibility for relocation assistance and the amount of any relocation payment.

(c) *Notice of nondisplacement or eligibility for relocation assistance.* Before or promptly after recognition of eligibility (as defined in § 43.201(c)), each person directly affected by the conversion or demolition shall be issued one of the following written notices:

(1) *Notice of nondisplacement (tenants only).* The notice of nondisplacement shall describe the reasonable terms and conditions under which the tenant may continue to occupy the property (see § 43.209(a) for temporary relocation policies). These reasonable terms and conditions shall include the opportunity to lease and occupy, upon completion of the project, a suitable, decent, safe, and sanitary dwelling in the same building/complex at a monthly housing cost that does not exceed the greater of the tenant's current monthly housing cost, or the tenant's contribution under the recipient's financial means standards (described in § 43.213(b)(2)). A tenant who moves permanently may qualify for assistance as a displaced person if the tenant is not provided a timely notice of nondisplacement or there is a violation of the provisions of the notice of nondisplacement after it is issued.

(2) *Notice of eligibility for relocation assistance.* The notice of eligibility for relocation assistance shall:

(i) Inform the person of his/her eligibility for the relocation assistance and the effective date of such eligibility; and

(ii) Describe the assistance, including the estimated amount of financial assistance, and the procedures for obtaining the assistance.

(d) *Notice of comparable replacement dwelling (persons to be displaced).* As soon as feasible, a person to be displaced shall be notified in writing of the specific representative comparable replacement dwelling and related price or rent that will be used to establish the maximum replacement housing payment for which the person may qualify. If feasible, the notice should be consolidated with the notice of eligibility for relocation assistance.

(e) *Ninety-day notice (persons to be displaced)*—(1) *Policy and timing.* No lawful occupant to be displaced shall be required to move without at least 90 days' advance written notice of the earliest date by which the move may be required. The 90-day notice shall not be given before the person is issued the notices of eligibility and comparable replacement dwelling described in paragraphs (c)(2) and (d) of this section.

(2) *Content.* The 90-day notice shall either:

(i) State the specific date by which the property must be vacated; or

(ii) Specify the earliest date by which the person may be required to move and

Before or promptly after recognition of eligibility (as defined in § 43.201(c)), each person directly affected by the conversion or demolition shall be issued one of the following written notices:

(1) *Notice of nondisplacement (tenants only).* The notice of nondisplacement shall describe the reasonable terms and conditions under which the tenant may continue to occupy the property (see § 43.209(a) for temporary relocation policies). These reasonable terms and conditions shall include the opportunity to lease and occupy, upon completion of the project, a suitable, decent, safe, and sanitary dwelling in the same building/complex at a monthly housing cost that does not exceed the greater of the tenant's current monthly housing cost, or the tenant's contribution under the recipient's financial means standards (described in § 43.213(b)(2)). A tenant who moves permanently may qualify for assistance as a displaced person if the tenant is not provided a timely notice of nondisplacement or there is a violation of the provisions of the notice of nondisplacement after it is issued.

(2) *Notice of eligibility for relocation assistance.* The notice of eligibility for relocation assistance shall:

(i) Inform the person of his/her eligibility for the relocation assistance and the effective date of such eligibility; and

(ii) Describe the assistance, including the estimated amount of financial assistance, and the procedures for obtaining the assistance.

(d) *Notice of comparable replacement dwelling (persons to be displaced).* As soon as feasible, a person to be displaced shall be notified in writing of the specific representative comparable replacement dwelling and related price or rent that will be used to establish the maximum replacement housing payment for which the person may qualify. If feasible, the notice should be consolidated with the notice of eligibility for relocation assistance.

(e) *Ninety-day notice (persons to be displaced)*—(1) *Policy and timing.* No lawful occupant to be displaced shall be required to move without at least 90 days' advance written notice of the earliest date by which the move may be required. The 90-day notice shall not be given before the person is issued the notices of eligibility and comparable replacement dwelling described in paragraphs (c)(2) and (d) of this section.

(2) *Content.* The 90-day notice shall either:

(i) State the specific date by which the property must be vacated; or

(ii) Specify the earliest date by which the person may be required to move and indicate that the person will receive a vacate notice indicating, at least 30 days in advance, the specific date by which he or she must move.

(3) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days' advance written notice if the recipient determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the recipient's determination shall be included in the case file.

(4) *Notice not required.* The 90-day notice need not be issued if:

(i) There is no structure or personal property on the real property;

(ii) The person makes an informed decision to relocate and vacates the property without prior notice; or

(iii) The person owns the property and enters into a negotiated agreement specifying delivery of possession.

(f) *Manner of notices.* (1) A notice required by this section must be personally served or sent by certified or registered first-class mail, return receipt requested, unless the project will not result in a rent increase or relocation. If the project will not result in a rent increase or require permanent or temporary relocation, a general information notice/notice of nondisplacement may be served by posting it in accessible locations and providing a copy to the tenants' representative.

(2) Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice (e.g., illiterate, foreign language, or impaired vision or other disability) must be provided with appropriate translation/communication (e.g., sign language interpreter or reader) and counseling.

(3) Each notice shall indicate the name and telephone number (including the telecommunications device for the deaf (TDD) number, if applicable) of a person who may be contacted for answers to questions or other needed help.

§ 43.207 Other advisory services.

(a) *Early consultation and coordination.* To the extent feasible, property occupants directly affected by the project shall be consulted in advance of project approval, to obtain their ideas and preferences and basic information (e.g., family size and income) needed to estimate project costs and determine project feasibility. When public meetings are held, the meeting room must be accessible to all members of the intended audience, regardless of disability. Appropriate steps shall be taken to ensure cooperation and coordination among government agencies, neighborhood groups and affected persons so that the project can proceed efficiently with minimal duplication of effort.

(b) *Advisory services—persons not to be displaced.* In addition to receiving the notices described in § 43.205, persons who will not be displaced shall:

(1) Receive an explanation of the terms and conditions of occupancy that will apply upon completion of the project, and, where applicable, the policies covering temporary relocation and moving within the building/complex.

(2) Consistent with program objectives and available resources, be provided information on available housing assistance and help in applying for such assistance, counseling, referrals to other sources of assistance (e.g., drug and alcohol treatment, welfare assistance, child care, voter registration, training) and any other help as may be appropriate.

(c) *Advisory services—persons to be displaced.*—(1) *Determine relocation needs and preferences.* The relocation needs and preferences of each person shall be determined as soon as feasible. Information necessary to select a comparable replacement dwelling and establish the maximum replacement housing payment (e.g., household size and income and dwelling characteristics) should be obtained before eligibility for relocation assistance is triggered.

(2) *Select most representative comparable replacement dwelling.* If available, at least three comparable replacement dwellings shall be inspected, internally and externally, to ensure that they meet the requirements of a comparable replacement dwelling. The maximum replacement housing payment shall be based on the cost for the comparable replacement dwelling that is most representative of the displacement dwelling. To the extent feasible, the comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling is located, or in nearby similar neighborhoods where housing costs are generally the same or higher. (In order to qualify as a comparable replacement dwelling, the housing must be currently available, as provided in § 43.7(f).)

(3) *Explain assistance available.* As soon as feasible, the recipient shall explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for

obtaining such assistance. The recipient shall explain the reasons why it selected a specific comparable replacement dwelling as most representative, and, where applicable, the expected terms and conditions of the new mortgage financing. If feasible, these explanations shall be face-to-face. Persons who are unable to understand the information shall be provided appropriate translation (e.g., sign language or bilingual presentation).

(4) *Referrals to available replacement dwellings.* The recipient shall:

(i) Provide current information on the availability, purchase prices, and rents of comparable replacement dwellings and other suitable, decent, safe, and sanitary replacement dwellings. This information shall be provided on a continuing basis until the person selects the replacement dwelling to which he or she will relocate. (See also requirement in § 43.205(d) to provide written notice of comparable replacement dwelling.)

(ii) Offer transportation to inspect the housing to which the person is referred. Transportation for persons with disabilities shall be accessible.

(iii) Supply eligible persons with appropriate information about the availability of housing assistance under Federal, State or local programs, and assist eligible persons in applying for such assistance.

(iv) Advise the person of the person's rights under the Fair Housing Act (42 U.S.C. 3601–19). Consistent with the recipient's affirmative obligation to further fair housing, the recipient shall offer replacement housing opportunities in a variety of locations. Referrals to minority persons shall include referrals to suitable replacement dwellings not located in an area of minority concentration. (Minority concentration, defined in relation to local conditions, exists when the proportion of minority residents substantially exceeds that of the jurisdiction as a whole.) This policy, however, does not require a recipient to provide a person a larger payment than is necessary to enable the person to relocate to a comparable replacement dwelling.

(5) *Inspection of replacement dwellings.* (i) Whenever feasible, the recipient shall inspect housing before providing a referral to assure that it meets the applicable standards (i.e., definitions for comparable replacement dwelling and/or decent, safe, and sanitary dwelling in §§ 43.7 and 43.9). If a full, internal and external inspection is not made before the referral, the person shall be notified of the need for the inspection before making a commitment to rent or buy the dwelling.

(ii) Before making a replacement housing payment, the recipient must ensure that a thorough internal and external inspection of the actual replacement dwelling has been made to determine that it is a decent, safe, and sanitary dwelling. If the person relocates to another community, the recipient may arrange for officials of that community to perform the inspection.

(iii) If the person elects to move to a replacement dwelling that is not decent, safe, and sanitary, the recipient must so notify HUD at least 30 days in advance of its denial of the replacement housing payment. The notification shall include an explanation of its efforts to obtain compliance with such requirements.

(6) *Other help.* The recipient shall provide counseling, referrals to other sources of assistance (e.g., welfare assistance, job training, drug or alcohol treatment, child care, voter registration), and such other help as may be appropriate to minimize hardships. In addition, the recipient shall keep each person informed as to the earliest date by which the person may have to vacate the property and assist the person in completing any claim forms that must be filed to obtain relocation payments.

(7) *Occupant of overnight shelter.* The occupant of an overnight shelter for the homeless is not considered to be the resident of a dwelling and therefore is not eligible for rental or purchase assistance under § 43.213. However, a person displaced from an overnight shelter must be provided the opportunity to occupy another overnight shelter under similar or better conditions.

§ 43.209 Temporary relocation and moves within complex.

(a) *Temporary relocation of person not to be displaced.* A tenant who will not be required to move from the building/complex permanently may need to relocate temporarily to permit the project to be carried out. All conditions of the temporary relocation, including location and period of temporary occupancy, must be reasonable. At a minimum, the tenant shall be provided:

(1) Reimbursement for all reasonable and necessary out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increase in monthly housing cost, and any incidental expenses (e.g., costs of reinstalling telephone and cable TV service); and

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The reasonable terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provision for reimbursement of out-of-pocket expenses described in paragraph (a)(1) of this section.

(b) *Person not to be displaced moves within building/complex.* If a tenant is required to move permanently to another unit in the building/complex in order to carry out the project:

(1) The tenant must be offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; and

(2) All other conditions of the relocation must be reasonable.

(c) *Emergency temporary relocation of person to be displaced.*

(1) *Emergency circumstances.* A person to be displaced may not be required to move temporarily, unless the move results from:

(i) A presidentially declared major disaster as defined in section 104(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);

(ii) A presidentially declared emergency;

(iii) Another emergency, as determined by the recipient, that requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(2) *Notification to HUD.* Whenever a person is required to make an emergency move (without prior referral to a comparable replacement dwelling), HUD shall be notified.

(3) *Basic conditions of emergency temporary relocation.* Whenever a person is required to relocate for a temporary period because of an emergency, the recipient shall:

(i) Take whatever steps are necessary to assure that the person is relocated temporarily to a decent, safe and sanitary dwelling;

(ii) Pay the actual reasonable out-of-pocket expenses incurred in moving to and from the temporarily occupied housing, any increase in monthly housing costs, and any incidental costs (e.g., costs of reinstalling telephone and cable television service); and

(iii) Inform the person in writing of the person's continuing eligibility for

relocation assistance for the permanent relocation, and, as soon as feasible, refer the person to at least one comparable replacement dwelling. For purposes of qualifying for payments, the date of displacement is the date the person moves from the temporarily occupied dwelling.

(d) *Person to be displaced elects to relocate temporarily.*

(1) Although a person to be displaced cannot be required to relocate temporarily except in emergency circumstances, he or she may elect to do so.

(2) A lower income person to be displaced from lower income housing who elects to relocate temporarily shall be eligible for temporary relocation assistance (including interim living costs), if:

(i) None of the comparable replacement dwellings to which the person has been referred qualifies as lower income housing. (A comparable replacement dwelling may have a market rent that exceeds the applicable Section 8 FMR and not be made affordable by a long term project-based subsidy. If so, the replacement dwelling does not meet the definition of lower income housing, even though it will be temporarily affordable to the displaced person through the relocation assistance); and

(ii) The person makes a commitment to relocate to lower income housing that is scheduled to become available in accordance with subpart B of this part.

(3) The assistance to be provided to an eligible lower income person shall include reimbursement for reasonable and necessary out-of-pocket costs incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increased monthly housing costs, and any incidental expenses.

§ 43.211 Payment for moving and related expenses.

(a) *Actual reasonable moving and related expenses.* A displaced person is entitled to payment of his or her actual moving and related expenses, as the recipient determines to be reasonable and necessary, including expenses for:

(1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible unless the recipient determines that relocation beyond 50 miles is justified;

(2) Packing, crating, uncrating, and unpacking of the personal property;

(3) Storage of the personal property for a period not to exceed 12 months,

relocation assistance for the permanent relocation, and, as soon as feasible, refer the person to at least one comparable replacement dwelling. For purposes of qualifying for payments, the date of displacement is the date the person moves from the temporarily occupied dwelling.

(d) *Person to be displaced elects to relocate temporarily.*

(1) Although a person to be displaced cannot be required to relocate temporarily except in emergency circumstances, he or she may elect to do so.

(2) A lower income person to be displaced from lower income housing who elects to relocate temporarily shall be eligible for temporary relocation assistance (including interim living costs), if:

(i) None of the comparable replacement dwellings to which the person has been referred qualifies as lower income housing. (A comparable replacement dwelling may have a market rent that exceeds the applicable Section 8 FMR and not be made affordable by a long term project-based subsidy. If so, the replacement dwelling does not meet the definition of lower income housing, even though it will be temporarily affordable to the displaced person through the relocation assistance); and

(ii) The person makes a commitment to relocate to lower income housing that is scheduled to become available in accordance with subpart B of this part.

(3) The assistance to be provided to an eligible lower income person shall include reimbursement for reasonable and necessary out-of-pocket costs incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increased monthly housing costs, and any incidental expenses.

§ 43.211 Payment for moving and related expenses.

(a) *Actual reasonable moving and related expenses.* A displaced person is entitled to payment of his or her actual moving and related expenses, as the recipient determines to be reasonable and necessary, including expenses for:

(1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible unless the recipient determines that relocation beyond 50 miles is justified;

(2) Packing, crating, uncrating, and unpacking of the personal property;

(3) Storage of the personal property for a period not to exceed 12 months, unless the recipient determines that a longer period is necessary;

(4) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property;

(5) Utility hookups, including reinstallation of telephone and cable television service;

(6) Insurance for the replacement value of the property in connection with the move and necessary storage;

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee), where insurance covering such loss, theft, or damage is not reasonably available;

(8) Credit checks; and

(9) Other moving-related expenses that the recipient determines to be reasonable and necessary, except the following ineligible expenses:

(i) Interest on a loan to cover moving expenses;

(ii) Personal injury;

(iii) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the recipient; and

(iv) The cost of moving any structure or other real property improvement.

(b) *Moving expense and dislocation allowance.* A displaced person may choose to receive a moving expense and dislocation allowance as an alternative to a payment for the actual reasonable moving and related expenses described in paragraph (a) of this section. The amount of the allowance shall be determined in accordance with a schedule of allowances established by the recipient. Separate schedules may be established for apartment units and single-unit buildings. The schedule of allowance shall take into account:

(1) The number of rooms in the displacement dwelling, which may include outbuildings;

(2) Whether the displaced person owns and must move the furniture; and

(3) At a minimum, the kinds of expenses described in § 43.211(a).

§ 43.213 Rental and purchase assistance.

(a) *Summary of assistance.* A displaced person is entitled to:

(1) Choose to receive either: (i) Rental assistance, as described in paragraph (b) of this section; or

(ii) Purchase assistance, as described in paragraph (c) of this section;

(2) Payment of security deposit, as described in paragraph (d) of this section.

(3) Temporary relocation assistance (i.e., interim living costs, within the meaning of section 104(d)), when required by § 43.209(d).

(b) *Rental assistance.* Each person to be displaced must be offered rental assistance in accordance with the following:

(1) *Cash assistance.* If provided in cash payments, the rental assistance shall be equal to 60 times the amount obtained by subtracting the contribution to be made by the displaced person (determined in accordance with paragraph (b)(3) of this section) from the lesser of:

(i) The monthly housing cost, as defined in § 43.5, for a comparable replacement dwelling; or

(ii) The monthly housing cost for the decent, safe and sanitary replacement dwelling to which the person relocates.

(2) *Tenant-based housing program subsidy.* (i) All or a portion of the required rental assistance may be offered through a tenant-based housing program subsidy (e.g., a Section 8 rental certificate or voucher provided through the HA, if it is available in accordance with the HA's HUD-approved tenant selection preferences and the person qualifies). If the initial monthly housing program subsidy is less than that provided under paragraph (b)(1) of this section, the tenant must be provided a cash rental supplement equal to 60 times the gap. If the term of the housing program subsidy is less than 60 months, the recipient must ensure that payments under the formula in paragraph (b) of this section will be made for the remainder of the 60-month period.

(ii) Whenever a tenant-based housing program subsidy is offered as a full or partial alternative to cash assistance, the recipient must provide referrals to comparable replacement dwellings where the owner is willing to participate in the housing program. If the person then refuses the tenant-based housing program subsidy, or rents and moves to a unit where he or she is unable to receive the housing program subsidy, the recipient shall have satisfied the rental assistance requirements under this section. (In such case, the displaced person may seek assistance pursuant to the URA.)

(3) *Financial means standards.* The recipient shall adopt a written policy available to the public that describes its standards for determining the contribution that a person is expected to make toward the monthly housing cost of a comparable replacement dwelling. This contribution shall not exceed 30 percent of the person's monthly gross income, unless the person is a displaced dependent. The contribution of a displaced dependent shall not exceed the monthly housing cost for the displacement dwelling. (A student or resident of an institution may be

assumed to be a dependent, unless the student or resident demonstrates otherwise.) The recipient's standards shall ensure equal assistance within each class of persons.

(c) *Purchase assistance.* (1) As an alternative to rental assistance under paragraph (b) of this section, a displaced person who purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe, and sanitary dwelling in the cooperative or association, is entitled to receive a lump-sum payment. This lump-sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the person's contribution, described in paragraph (b)(3) of this section, from the monthly housing cost for a comparable replacement dwelling.

(2) To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook saving deposits by a federally insured bank or savings and loan institution conducting business in the recipient jurisdiction.

(d) *Payment of security deposit.* A displaced person who rents a replacement dwelling is entitled to payment for the reasonable and necessary cost of a security deposit. The payment shall not exceed the contract rent for one month (including utilities covered by the lease), unless the recipient determines that a higher payment is justified. The person is entitled to keep any later refund of the deposit.

(e) *Occupancy requirements.* To qualify for replacement housing assistance under this section, the displaced person must rent or buy, and must occupy, a decent, safe and sanitary dwelling within one year after the date of displacement.

§ 43.215 Special requirements covering manufactured homes.

(a) *Mobile home—definition.* This section provides additional guidance covering relocation payments to a person displaced from a manufactured home or manufactured home site. As used in this section, the term "mobile home" shall have the same meaning as "manufactured home", as that term is defined in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402) and implementing regulations at 24 CFR 3280.2.

(b) *Cost of moving mobile home.* In addition to the expenses described in § 43.211(b), a displaced owner-occupant of a mobile home who relocates and reoccupies the mobile home on a replacement site is eligible for the reasonable and necessary costs of:

(1) Moving the mobile home (including packing, securing, and unpacking any items of personal property);

(2) Disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, anchoring of the unit, and utility "hook-up" charges;

(3) Repairs and modifications necessary so that the mobile home can be moved and made decent, safe, and sanitary, if the recipient determines that it would be economically feasible to do so; and

(4) A nonreturnable mobile home park entrance fee, to the extent that it does not exceed the fee at a comparable mobile home park, if:

(i) The person is displaced from a mobile home park; or

(ii) The recipient determines that payment of the fee is necessary to the relocation.

(c) *Rental/Purchase assistance based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing rental/purchase assistance. For example, the displaced person may have owned the displacement mobile home and rented the site, or may have rented the mobile home and owned the site. Similarly, a person may elect to purchase a replacement mobile home and rent a replacement site, or to rent the mobile home and purchase the site. In such cases, the total assistance shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable provisions in § 43.213.

(d) *Replacement mobile home/site not available.* The maximum rental/purchase assistance under this section shall be based on the cost of a comparable replacement mobile home and suitable site, unless they are not reasonably available. If a comparable replacement mobile home and suitable site are not reasonably available, the payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(e) *Mobile home park.* If the demolition or conversion of a portion of a mobile home park makes continued operation of the park infeasible, necessitating relocation of a mobile home located on the remainder property, the occupant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

2. The authority citation for part 92 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

3. Paragraph (c)(6) of § 92.150 would be revised to read as follows:

§ 92.150 Submission of program description and certifications.

* * * * *

(c) * * *

(6) A certification that it:

(i) Is following a Residential Antidisplacement and Relocation Assistance Plan in accordance with the requirements in 24 CFR part 43;

(ii) Will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR part 24; and

(iii) Will comply with the requirements in § 92.353.

* * * * *

4. The section heading and paragraphs (e), (h) introductory text, and (h)(1) of § 92.353 would be revised to read as follows:

§ 92.353 Relocation, acquisition, and replacement of low-income housing.

* * * * *

(e) *Residential antidisplacement and relocation assistance plan.* Each participating jurisdiction shall comply with the Residential Antidisplacement and Relocation Assistance Plan requirements in 24 CFR part 43. These requirements include one-for-one replacement of low-income housing and the provision of relocation assistance.

* * * * *

(h) *Responsibility of participating jurisdiction.* (1) The jurisdiction must certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, including the provisions on the residential antidisplacement and relocation assistance plan in paragraph (e) of this section. The jurisdiction must ensure this compliance notwithstanding any third party's contractual obligation to the jurisdiction to comply.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

5. The authority citation for part 570 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

6. Paragraph (h) of § 570.303 would be revised to read as follows:

§ 570.303 Certifications.

* * * * *

(h)(1) It is following a Residential Antidisplacement and Relocation Assistance Plan in accordance with the requirements in 24 CFR part 43, as required by section 104(d) of the Act;

(2) It will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR part 24;

(3) It will comply with the relocation requirements in § 570.606(b); and

(4) It will comply with the requirements in § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

* * * * *

7. Paragraph (c)(14)(ix)(I) of § 570.458 would be revised to read as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(14) * * *

(ix) * * *

(I)(1) A Residential Antidisplacement and Relocation Assistance Plan in accordance with the requirements of 24

§ 570.303 Certifications.

* * * * *

(h)(1) It is following a Residential Antidisplacement and Relocation Assistance Plan in accordance with the requirements in 24 CFR part 43, as required by section 104(d) of the Act;

(2) It will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR part 24;

(3) It will comply with the relocation requirements in § 570.606(b); and

(4) It will comply with the requirements in § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act.

* * * * *

7. Paragraph (c)(14)(ix)(I) of § 570.458 would be revised to read as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(14) * * *

(ix) * * *

(I)(*1*) A Residential Antidisplacement and Relocation Assistance Plan in accordance with the requirements of 24 CFR part 43 (including the requirement to certify that the grantee is following such a plan);

(*2*) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR part 24;

(*3*) The relocation requirements in § 570.606(b); and

(*4*) The requirements in § 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act; and

* * * * *

8. The section title and paragraph (c) introductory text of § 570.488 would be revised to read as follows:

§ 570.488 Relocation, acquisition, and replacement of lower income housing.

* * * * *

(c) *Residential antidisplacement and relocation assistance plan.* Each State shall ensure that each State recipient certifies to the State that the State recipient is following a Residential Antidisplacement and Relocation Assistance Plan providing one-for-one replacement of lower income housing and relocation assistance in accordance with 24 CFR part 43. Under section 106(d)(5)(A) of the Act, the State recipient must also certify to the State that the State recipient will minimize the displacement of persons as a result of assisted activities.

* * * * *

9. The section title and paragraph (c) introductory text of § 570.606 would be revised to read as follows:

§ 570.606 Relocation, acquisition, and replacement of lower income housing.

* * * * *

(c) *Residential antidisplacement and relocation assistance plan.* Each grantee shall comply with the Residential Antidisplacement and Relocation Assistance Plan requirements in 24 CFR part 43. These requirements include one-for-one replacement of lower income housing and the provision of relocation assistance.

* * * * *

Dated: June 27, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–16074 Filed 6–30–94; 8:45 am]

BILLING CODE 4210–32–P

UMI
0994
JL
1
ISS
1
2
6
VOL
5 9

Global business

federal register

Friday
July 1, 1994

Part XII

Environmental Protection Agency

40 CFR Parts 141 and 142

Drinking Water; National Primary Drinking Water, Synthetic Organic Chemicals and Inorganic Chemicals; National Primary Drinking Water Implementation; Monitoring for Unregulated Contaminants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–4838–6]

Drinking Water; National Primary Drinking Water Regulations—Synthetic Organic Chemicals and Inorganic Chemicals; National Primary Drinking Water Regulations Implementation; Monitoring for Unregulated Contaminants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: In this document, EPA is amending the National Primary Drinking Water Regulations to correct typographical errors, clarify language which was unclear, and correct mistakes where the preamble correctly indicated the Agency's intent but the language of the regulation was in error. These changes are intended to simplify implementation of the regulations by reducing confusion about Agency requirements.

EFFECTIVE DATE: These amendments are effective July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Richard Reding, Technical Support Division, Office of Ground Water and Drinking Water, Environmental Protection Agency, Cincinnati, Ohio 45268, (513) 569–7946.

SUPPLEMENTARY INFORMATION: In 1987, EPA promulgated National Primary Drinking Water Regulations for eight contaminants (Phase I). In 1991, EPA promulgated National Primary Drinking Water Regulations for 38 contaminants (Phase II). In 1992, EPA promulgated National Primary Drinking Water Regulations for 23 contaminants (Phase V). The regulations contained errors which are corrected by this document. This document also clarifies the intent of the regulatory requirements in cases where the language was confusing or contradictory with the preamble.

The Administrative Procedure Act, 5 U.S.C. 553, provides that when an Agency finds good cause, it may issue a rule without first providing notice and comment and make the rule immediately effective. This document corrects errors and omissions in 40 CFR 141 and 142. These revisions are so minor that the Agency finds that neither comment nor a delayed effective date is necessary or in the public interest. Accordingly, EPA finds that there is good cause not to solicit comment on this document and to have the revisions immediately effective.

Corrections to the Regulation

This document corrects errors in the regulatory language. These corrections are described below.

This document corrects the definition of "Initial compliance period" in § 141.2 by inserting the "§" before 141.61 and 141.62 which was mistakenly omitted. This document also corrects 141.62(b)(11)–(16) to (11)–(15), as the table only lists 15 contaminants.

§§ 141.23(d), (d)(4), (e), and (e)(3) and § 141.62(b) establish monitoring frequencies for transient non-community water systems (TWSs) for nitrate and nitrite. A definition for transient non-community water system was not included in the promulgation of the final rule. This document amends § 141.2 to include a definition of a transient non-community water system.

This document adds the effective dates for the regulations promulgated July 17, 1992, and the regulations contained in Subpart I—Control of Lead and Copper, to § 141.6, the general section on effective dates for part 141.

This document corrects a reference in § 141.6(h) from § 141(f)(16) to § 141.24(f)(16).

This document corrects errors in § 141.23(a)(1) and (2) by revising § 141.23(a)(1) and (2) and § 141.23(c)(1) by replacing the starting dates with the term "initial compliance period." The January 1, 1993 starting date listed in the current regulations will not be valid for future regulations. The "three year cycle" in the current regulations in § 141.23(c) predates the Standardized Monitoring Framework compliance cycle and needs to be explicitly consistent with it.

This document adds the Phase V inorganic contaminants (antimony, beryllium, cyanide, nickel and thallium) to paragraphs § 141.23(a)(5), § 141.23(f)(1) and § 141.23(i)(2), which refer to monitoring requirements. The Phase V **Federal Register** Notice, specifically 57 FR 31819, indicates that the monitoring requirements for these contaminants conform to those already listed for the inorganic contaminants in these paragraphs, and that the intention was to add them to these paragraphs. These additions were inadvertently omitted.

This document puts the method title "Atomic Absorption; Platform" in the table in § 141.23(a)(4)(i) to be consistent with the way Table 11 appeared on page 31798 of the preamble to the final Phase V rule (July 17, 1992). It also deletes footnote 1 which referred to Appendix A of EPA Method 200.7 since the appendix has been incorporated in the text of the method; this change is also consistent with how Table 11 appeared in the preamble.

This document clarifies that States may grant a monitoring waiver for cyanide if the State determines the system is not vulnerable by virtue of no proximity to an industrial source of cyanide. The preamble to the final rule said this clarification was contained in the final rule but it was omitted.

This document corrects a typographical error in § 141.23(c)(5)(iii). This document clarifies a statement in § 141.23(i) (1) and (2) that compliance for each contaminant is determined separately.

This document corrects a typographical error in § 141.23(i)(1) by changing the term "our" to "out."

This document eliminates the paragraph numbered § 141.23(k)(1), replaces it with the paragraph currently numbered § 141.23(k)(4), and then renumbers the remaining paragraphs. It also corrects a typographical error in a table heading in the new § 141.23(k)(1) and a typographical error in the method applicable to antimony ("Method 220.9" should be "Method 200.9").

The document corrects misspelled words in § 141.23 (q)(3) and (q)(4), which should both read "Coupled", not "Coupledd" or "Couple".

This document deletes sections describing sampling and analytical requirements (§ 141.24 (a) through (e)), which refer to endrin. Phase V amended the existing regulations for endrin by deleting the MCL for endrin from § 141.12 and adding the MCL to § 141.61(c), and by including sampling and analytical requirements for endrin in § 141.24(h). These requirements were immediately effective (August 17, 1992). Accordingly, it is clear that the provisions of 141.24 (a) through (e) were superfluous; they were unintentionally retained and are now deleted.

This document corrects a typographical error in the designation of "21" to "(21)" in § 141.24(f)(4).

This document corrects references to "approved laboratories" which should refer to "certified laboratories" in several sections.

This document corrects § 141.24(f)(7) and § 141.24(f)(10) by inserting the term "non-community" which was mistakenly omitted after the term "non-transient". NTNCWS is a defined term in the regulations (§ 141.2); "non-transient" is not a term used in NPDWRs.

This document corrects an omission in § 141.24 (f)(14)(i) and (h)(10)(i) by specifying the follow-up procedures to be taken when composite samples exceed the specified level. The paragraph currently states that, if the results of the composite sample are above specified levels, a follow-up sample from each of the composite sites must be taken within 14 days. The paragraph then needs to state that the follow-up samples need to be analyzed for the contaminants which were above specified levels. The correct follow-up language appears in § 141.23(a)(4)(i) for inorganic contaminants but was inadvertently omitted in § 141.24 on organic contaminants.

This document corrects § 141.24 (f)(14)(iii) by replacing the text with text consistent with § 141.24(h)(10)(iii), which was the original intent of the regulations, as discussed on page 31826, column 2 line 1 of the *FR*, July 17, 1992.

This document completes the citation of a manual in § 141.24(f)(16) by adding the date of publication of the manual. It also updates the toll-free telephone number cited in the paragraph.

This document deletes § 141.24(g). These paragraphs are from the Phase I rule (1987) and refer to the original eight volatile organic chemicals (VOCs). The preamble from the Phase II rule (1991) states our intention was to have identical monitoring requirements for all 18 VOCs, as discussed on page 3561, column 2, paragraph c. of the *FR*, January 30, 1991. The paragraphs in § 141.24(g) were replaced and superseded by those in § 141.24(f), but were inadvertently left in the text and are now deleted.

This document clarifies the intent of § 141.24(h)(4) to specify that monitoring begins in the "Initial compliance period." Currently, the regulations specify January 1, 1993, a date which will not be valid for the next set of regulations.

This document reinserts subparagraphs § 141.24(h)(10)(i), (ii), and (iii) which were inadvertently deleted by the Phase V *FR*, July 17, 1992, which did not state that only the introductory text was to be replaced.

This document corrects an omission in § 141.24(h)(12) to add the citation to the July 1990 methods manual, which contains the methods promulgated new with Phase V: Methods 547, 548, 549, 550, and 550.1. This document also adds a new subparagraph in § 141.24(h)(12) to cite Method 506 which was discussed in the preamble but omitted from the rule.

This document corrects § 141.32(e)(62) by replacing the number "0.004" with the correct value of "0.006", the maximum contaminant level as established by § 141.61(c).

exceed the specified level. The paragraph currently states that, if the results of the composite sample are above specified levels, a follow-up sample from each of the composite sites must be taken within 14 days. The paragraph then needs to state that the follow-up samples need to be analyzed for the contaminants which were above specified levels. The correct follow-up language appears in § 141.23(a)(4)(i) for inorganic contaminants but was inadvertently omitted in § 141.24 on organic contaminants.

This document corrects § 141.24 (f)(14)(iii) by replacing the text with text consistent with § 141.24(h)(10)(iii), which was the original intent of the regulations, as discussed on page 31626, column 2 line 1 of the *FR*, July 17, 1992.

This document completes the citation of a manual in § 141.24(f)(16) by adding the date of publication of the manual. It also updates the toll-free telephone number cited in the paragraph.

This document deletes § 141.24(g). These paragraphs are from the Phase I rule (1987) and refer to the original eight volatile organic chemicals (VOCs). The preamble from the Phase II rule (1991) states our intention was to have identical monitoring requirements for all 18 VOCs, as discussed on page 3561, column 2, paragraph c. of the *FR*, January 30, 1991. The paragraphs in § 141.24(g) were replaced and superseded by those in § 141.24(f), but were inadvertently left in the text and are now deleted.

This document clarifies the intent of § 141.24(h)(4) to specify that monitoring begins in the "Initial compliance period." Currently, the regulations specify January 1, 1993, a date which will not be valid for the next set of regulations.

This document reinserts subparagraphs § 141.24(h)(10)(i), (ii), and (iii) which were inadvertently deleted by the Phase V *FR*, July 17, 1992, which did not state that only the introductory text was to be replaced.

This document corrects an omission in § 141.24(h)(12) to add the citation to the July 1990 methods manual, which contains the methods promulgated new with Phase V: Methods 547, 548, 549, 550, and 550.1. This document also adds a new subparagraph in § 141.24(h)(12) to cite Method 506 which was discussed in the preamble but omitted from the rule.

This document corrects § 141.32(e)(62) by replacing the number "0.004" with the correct value of "0.006", the maximum contaminant level as established by § 141.61(c).

This document corrects several typographical errors in § 141.32(e) (30), (33), (35) and (41).

This document corrects the title of § 141.40 to read "contaminants" rather than "chemicals".

This document makes corrections to § 141.40(e) as "Chlorobenzene" is currently regulated as "Monochlorobenzene", and "Dibromomethane" was mistakenly omitted.

This document corrects an error in § 141.40(g) to cite the correct version of the methods manual. By deleting the specific reference to the manual in this paragraph, and referring instead to § 141.24(f)(16) where the manual is also listed, EPA reduces the chance in the future that the reference will be updated in one paragraph but not the other. The telephone number at the end of the paragraph is also updated.

This document replaces references which have been superseded by Phase II and Phase V and which should have been revised.

This document deletes 1,2,4-Trichlorobenzene from the list of unregulated contaminants in § 141.40(j). This contaminant became a regulated contaminant in regulations promulgated on July 17, 1992 (57 FR 31776) and, therefore, no longer is an unregulated contaminant. Other contaminants which had previously been listed in § 141.40(j) were deleted in the July 17, 1992, regulation but 1,2,4-Trichlorobenzene was overlooked.

This document corrects several typographical errors in the "List of Unregulated Organic Contaminants:" in § 141.40(n)(11) and adds a reference to where the manuals containing the methods can be found.

This document corrects the effective date of the regulation of endrin discussed in § 141.60(a)(3) to be consistent with the date shown in the effective date section at the beginning of the regulation.

This document corrects the table in § 141.61(b), which lists best available technology for the organic contaminants. The changes made to Table § 141.61(b) in 57 FR 31846 of July 17, 1992 should have specified by asterisks that the new table was to be added to the existing table, and was not to supersede it. The asterisks were inadvertently omitted, and consequently the rest of the table is presented as "superseded text" in the CFR 40 1993 Edition. This document merges the two tables and includes all the contaminants in both tables and the "OX" column. The word "synthetic" is removed, since the merged table will include contaminants referred to as "VOCs" (volatile organic contaminants) as well as "SOCs" (synthetic organic contaminants).

This document corrects the best available technology listing for toxaphene and toluene in § 141.61(b) to make them consistent with the listing in § 142.62(a). It also corrects a typographical error in the CAS number for glyphosate.

This document corrects the MCL for aldicarb sulfone listed in § 141.61(c).

This document corrects a typographical error in the spelling of "ultraviolet" in § 141.62(c).

This document corrects the best available technology listing for alachlor and hexachlorobenzene in § 142.62 to be consistent with the technology listed for these two contaminants in § 141.61, and corrects the spelling of "dalapon."

This document corrects typographical errors in the table headings identifying best available technologies for achieving compliance with the maximum contaminant levels for organic chemicals. Packed Tower Aeration was incorrectly abbreviated as "PAT" and Granular Activated Carbon was incorrectly abbreviated as "GAO" in § 142.62(a).

This document corrects a typographical error in the "Key to BATS in Table" in the table entitled "BAT for Inorganic Compounds Listed in Section 141.62(B)" in § 141.62(c). The table title currently has a superscript "6" rather than the word "Section."

Economic Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(a) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact on entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this rule makes only technical corrections to previous rules, it is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

Other Requirements

A. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires EPA to consider the effect of regulations on small entities (5 U.S.C. 602 *et seq.*). If there is a significant economic effect on a substantial number of small entities, the Agency must prepare a Regulatory Flexibility Analysis (RFA) describing alternatives that would minimize the impact. The impact of the requirements corrected and clarified in this rule was assessed at the time the requirements were imposed. Thus, there is no additional impact imposed by these regulations, and a Regulatory Flexibility Analysis is not required.

B. Paperwork Reduction Act

The information collection requirements contained in the Phase I, II, and V rules were approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) at the time the rules were promulgated. No additional requirements are imposed by these technical amendments.

C. Federalism Review

Executive Order 12612 requires all Federal agencies to consider legislative and regulatory proposals and other major policy actions to determine if they have substantial effects on federalism goals and principles as set forth in the Executive Order. According to EPA's *Guideline for Implementing Executive Order 12612: Federalism*, "[i]f an EPA action is mandated or the necessary means to carry it out are implied by statute, then no further federalism assessment is required." The regulations which are being corrected by today's rule were required by statute. Thus, no federalism assessment was required to support the original rules or these technical amendments.

List of Subjects in 40 CFR Parts 141 and 142

Environmental protection, Administrative practice and procedure, Chemicals, Reporting and recordkeeping requirements, Water supply.

Dated: June 21, 1994.

Robert Perciasepe,

Assistant Administrator for Water.

Parts 141 and 142 of Chapter I of Title 40 of the Code of Federal Regulations are amended as follows:

PART 141—[AMENDED]

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9.

§ 141.2 [Amended]

2. In § 141.2, in the definition of *Initial compliance period*, before "141.61" and "141.62," add "§ ". Also, change the designation "§ 141.62(b)(11)–(16)" to "§ 141.62(b)(11)–(15)".

3. § 141.2 is amended by adding, in alphabetical order, a definition for "Transient non-community water system" to read as follows:

§ 141.2 Definitions.

* * * * *

Transient non-community water system or *TWS* means a non-community water system that does not regularly serve at least 25 of the same persons over six months per year.

* * * * *

§ 141.6 [Amended]

4. In § 141.6, revise paragraph (a) to read as follows:

§ 141.6 Effective dates.

(a) Except as provided in paragraphs (a) through (h) of this section, and in § 141.80(a)(2), the regulations set forth in this part shall take effect on June 24, 1977.

* * * * *

5. In § 141.6(h), revise the reference "§ 141(f)(16)" to read "§ 141.24(f)(16)".

§ 141.23 [Amended]

6. In § 141.23 revise paragraphs (a)(1), (a)(2) including the note, and (a)(5) to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(a) * * *

(1) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point) beginning in the initial compliance period. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point) beginning in the initial compliance period. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

Note: For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.

* * * * *

(5) The frequency of monitoring for asbestos shall be in accordance with paragraph (b) of this section: the frequency of monitoring for antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium and thallium shall be in accordance with paragraph (c) of this section; the frequency of monitoring for nitrate shall be in accordance with paragraph (d) of this section; and the frequency of monitoring for nitrite shall be in accordance with paragraph (e) of this section.

* * * * *

7. In the table in § 141.23(a)(4)(i), add immediately below "Atomic Absorption; Furnace" in the third column for "Antimony" "Nickel" and "Thallium" the words "Atomic Absorption; Platform"; in the third column for "Beryllium" remove "xl" and add the words "Atomic Absorption; Platform"; remove footnote 1; and redesignate footnotes 2 through 6 as footnotes 1 through 5.

8. In § 141.23(c)(1), delete the phrase "once every three years" and substitute "during each compliance period".

9. In § 141.23, add a sentence to the end of paragraph (c)(2) to read as follows:

* * * * *

(c)* * *

(2) * * * States may grant a public water system a waiver for monitoring of cyanide, provided that the State determines that the system is not vulnerable due to lack of any industrial source of cyanide.

* * * * *

10. In § 141.23(c)(5)(iii), revise the word "prcoedures" to read "procedures".

11. In § 141.23, revise paragraph (f)(1) to read as follows:

* * * * *

(f) * * *

(1) Where the results of sampling for asbestos, antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium indicate an exceedance of the maximum contaminant level, the State may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

* * * * *

12. In § 141.23(i)(1), in the first sentence revise the phrase "and thallium" to read "or thallium" and, in the second sentence revise the word "our" to read "out".

13. In § 141.23(i)(2), revise the first sentence to read:

(i) * * *

(2) For systems which are monitoring annually, or less frequently, the system is out of compliance with the maximum contaminant levels for asbestos, antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium if the level of a contaminant at any sampling point is greater than the MCL. * * *

* * * * *

14. § 141.23 is amended by removing paragraph (k)(1) and redesignating paragraph (k)(4) as paragraph (k)(1), paragraph (k)(5) as paragraph (k)(4), and paragraph (k)(6) as paragraph (k)(5).

15. In the table headings in newly designated § 141.23(k)(1), in the second column, revise the word "Methodogy" to read "Methodology". In the table, in the third column, for Antimony, Atomic Absorption; Platform revise "220.9" to read "200.9".

16. In § 141.23(q)(3), remove the second "d" at the end of the word "Coupledd". In § 141.23(q)(4), add a "d" to the end of the word "Couple".

§ 141.24 [Amended]

17. In § 141.24, remove and reserve paragraphs (a) through (e).

18. In § 141.24(f)(4), revise the number "21" to read "(21)".

19. In § 141.24(f)(7) and (f)(10), in the first sentence after the word "non-transient", add "non-community".

20. In § 141.24(f)(20), revise the reference to "approved laboratory" to read "certified laboratory".

21. In § 141.24, revise paragraphs (f)(14)(i) and (f)(14)(iii) to read as follows:

* * * * *

(f) * * *

(14) * * *

(i) If the concentration in the composite sample is greater than or equal to 0.0005 mg/l for any contaminant listed in § 141.61(a), then a follow-up sample must be taken within 14 days at each sampling point included in the composite, and be analyzed for that contaminant.

* * * * *

(iii) If the population served by the system is > 3,300 persons, then compositing may only be permitted by the State at sampling points within a single system. In systems serving ≤ 3,300 persons, the State may permit compositing among different systems

12. In § 141.23(i)(1), in the first sentence revise the phrase "and thallium" to read "or thallium" and, in the second sentence revise the word "our" to read "out".

13. In § 141.23(i)(2), revise the first sentence to read:

(i) * * *

(2) For systems which are monitoring annually, or less frequently, the system is out of compliance with the maximum contaminant levels for asbestos, antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium if the level of a contaminant at any sampling point is greater than the MCL. * * *

* * * * *

14. § 141.23 is amended by removing paragraph (k)(1) and redesignating paragraph (k)(4) as paragraph (k)(1), paragraph (k)(5) as paragraph (k)(4), and paragraph (k)(6) as paragraph (k)(5).

15. In the table headings in newly designated § 141.23(k)(1), in the second column, revise the word "Methodogy" to read "Methodology". In the table, in the third column, for Antimony, Atomic Absorption; Platform revise "220.9" to read "200.9".

16. In § 141.23(q)(3), remove the second "d" at the end of the word "Coupledd". In § 141.23(q)(4), add a "d" to the end of the word "Couple".

§ 141.24 [Amended]

17. In § 141.24, remove and reserve paragraphs (a) through (e).

18. In § 141.24(f)(4), revise the number "21" to read "(21)".

19. In § 141.24(f)(7) and (f)(10), in the first sentence after the word "non-transient", add "non-community".

20. In § 141.24(f)(20), revise the reference to "approved laboratory" to read "certified laboratory".

21. In § 141.24, revise paragraphs (f)(14)(i) and (f)(14)(iii) to read as follows:

* * * * *

(f) * * *

(14) * * *

(i) If the concentration in the composite sample is greater than or equal to 0.0005 mg/l for any contaminant listed in § 141.61(a), then a follow-up sample must be taken within 14 days at each sampling point included in the composite, and be analyzed for that contaminant.

* * * * *

(iii) If the population served by the system is > 3,300 persons, then compositing may only be permitted by the State at sampling points within a single system. In systems serving ≤ 3,300 persons, the State may permit compositing among different systems provided the 5-sample limit is maintained.

* * * * *

22. In § 141.24(f)(16), after "EPA/600/4–88/039," add "December 1988, Revised July 1991". Also, revise the toll-free telephone number at the end of the paragraph from "800–336–4700" to read "800–553–6847".

23. In § 141.24, remove and reserve paragraph (g).

24. In § 141.24, revise paragraph (h)(4)(i) to read as follows:

* * * * *

(h) * * *

(4) * * *

(i) Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in § 141.61(c) during each compliance period beginning with the initial compliance period.

* * * * *

25. In § 141.24, add paragraphs (h)(10)(i), (h)(10)(ii), and (h)(10)(iii) to read as follows:

* * * * *

(h) * * *

(10) * * *

(i) If the concentration in the composite sample detects one or more contaminants listed in § 141.61(c), then a follow-up sample must be taken within 14 days at each sampling point included in the composite, and be analyzed for that contaminant.

(ii) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these duplicates instead of resampling. The duplicate must be analyzed and the results reported to the State within 14 days of collection.

(iii) If the population served by the system is >3,300 persons, then compositing may only be permitted by the State at sampling points within a single system. In systems serving ≤ 3,300 persons, the State may permit compositing among different systems provided the 5-sample limit is maintained.

* * * * *

26. In § 141.24, revise paragraph (h)(12) introductory text and add paragraph (h)(12)(xv) to read as follows:

* * * * *

(h) * * *

(12) Analysis for the contaminants listed in § 141.61(c) and for endrin in § 141.12(a) shall be conducted using the following EPA methods or their equivalent as approved by EPA. These methods are contained in "Methods for the Determination of Organic Compounds in Drinking Water," EPA/600/4–88/039, December 1988, Revised July 1991 and in "Methods for the Determination of Organic Compounds in Drinking Water—Supplement I", EPA/600/4–90/020, July 1990, and "Supplement II", EPA/600/R–92/129, August 1992, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268. These documents are available from the National Technical Information Service (NTIS) NTIS PB91–231480, PB91–146027 and PB92–207703, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The NTIS toll-free number is 1–800–553–6847.

* * * * *

(xv) Method 506, "Determination of Phthalate and Adipate Esters in Drinking Water by Liquid-Liquid Extraction or Liquid-Solid Extraction and Gas Chromatography with Photoionization Detection." Method 506 can be used to measure di(2-ethylhexyl) adipate and di(2-ethylhexyl) phthalate.

* * * * *

§ 141.28 [Amended]

27. In § 141.28, remove "Approved laboratories" in the heading and add "Certified laboratories", and remove "laboratory approved" in paragraph (a) and add "laboratory certified".

§ 141.32 [Amended]

28. In § 141.32(e)(30), the second sentence should be revised to read "This organic chemical is a pesticide used to control termites.".

29. In § 141.32(e)(33), the last sentence should be revised to read "Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cis-1,2-dichloroethylene.".

30. In § 141.32(e)(35), the word "runoff" in the third sentence should be revised to read "runoff".

31. In § 141.32(e)(41), the word "eposure" in the first sentence should be revised to read "exposure".

32. In § 141.32(e)(62), before the word "parts", revise the number "0.004" to read "0.006".

§ 141.40 [Amended]

33. In the title of § 141.40, revise the word "chemicals" to read "contaminants".

34. In § 141.40(e)(5), revise the word "Chlorobenzene" to read "Dibromomethane".

35. In § 141.40, revise paragraph (g) to read as follows: § 141.40 Special monitoring for inorganic and organic contaminants.

* * * * *

(g) Analysis for the organic contaminants in paragraphs (e) and (j) of

this section shall be conducted using the recommended EPA methods, or their equivalent as determined by EPA. These methods are contained in the reference at § 141.24(f)(16).

* * * * *

36. In § 141.40(h), remove "laboratories approved" and add "laboratories certified"; remove "§ 141.24(g)(11)" and add "§ 141.24(f)(17)".

37. In 141.40, remove paragraph (j)(2) and redesignate the remaining paragraphs (j)(3) through (j)(15) as paragraphs (j)(2) through (j)(14).

38. In § 141.40, revise paragraph (n)(11) to read as follows:

* * * * *

(n) * * *

(11) The listed methods are in the manuals cited at § 141.24(h)(12). List of Unregulated Organic Contaminants:

Organic contaminants	EPA analytical method
Aldicarb	531.1
Aldicarb sulfone	531.1
Aldicarb sulfoxide	531.1
Aldrin	505, 508, and 525.1
Butachlor	507, 525.1
Carbaryl	531.1
Dicamba	515.1
Dieldrin	505, 508, 525.1
3-hydroxycarbofuran	531.1
Methomyl	531.1
Metolachlor	507, 525.1
Metribuzin	507, 525.1
Propachlor	508, 525.1

* * * * *

§ 141.60 [Amended]

39. In § 141.60, revise paragraph (a)(3) to read as follows:

§ 141.60 Effective dates.

(a) * * *

(3) The effective date for paragraphs (a)(19) through (a)(21), (c)(19) through (c)(25), and (c)(27) through (c)(33) of § 141.61 is January 17, 1994. The effective date of § 141.61(c)(26) is August 17, 1992.

* * * * *

§ 141.61 [Amended]

40. In the text preceding the table in § 141.61(b), remove the word "synthetic".

41. In § 141.61(b), revise the table to read as follows:

§ 141.61 Maximum contaminant levels for organic contaminants.

* * * * *

(b) * * *

BAT FOR ORGANIC CONTAMINANTS LISTED IN § 141.61 (a) AND (c)

CAS No.	Contaminant	GAC	PTA	OX
15972-60-8	Alachlor	X	.....	.....
116-06-3	Aldicarb	X	.....	.....
1646-88-4	Aldicarb sulfone	X	.....	.....
1646-87-3	Aldicarb sulfoxide	X	.....	.....
1912-24-9	Atrazine	X	.....	.....
71-43-2	Benzene	X	X	.....
50-32-8	Benzo[a]pyrene	X	.....	.....
1563-66-2	Carbofuran	X	.....	.....
56-23-5	Carbon tetrachloride	X	X	.....
57-74-9	Chlordane	X	.....	.....
75-99-0	Dalapon	X	.....	.....
94-75-7	2,4-D	X	.....	.....
103-23-1	Di (2-ethylhexyl) adipate	X	X	.....
117-81-7	Di (2-ethylhexyl) phthalate	X	.....	.....
96-12-8	Dibromochloropropane (DBCP)	X	X	.....
95-50-1	o-Dichlorobenzene	X	X	.....
106-46-7	para-Dichlorobenzene	X	X	.....
107-06-2	1,2-Dichloroethane	X	X	.....
75-35-4	1,1-Dichloroethylene	X	X	.....
156-59-2	cis-1,2-Dichloroethylene	X	X	.....
156-60-5	trans-1,2-Dichloroethylene	X	X	.....
75-09-2	Dichloromethane	.....	X	.....
78-87-5	1,2-Dichloropropane	X	X	.....
88-85-7	Dinoseb	X	.....	.....
85-00-7	Diquat	X	.....	.....
145-73-3	Endothall	X	.....	.....
72-20-8	Endrin	X	.....	.....
100-41-4	Ethylbenzene	X	X	.....
106-93-4	Ethylene Dibromide (EDB)	X	X	.....
1071-83-6	Glyphosate	.....	.....	X
76-44-8	Heptachlor	X	.....	.....
1024-57-3	Heptachlor epoxide	X	.....	.....
118-74-1	Hexachlorobenzene	X	.....	.....
77-47-3	Hexachlorocyclopentadiene	X	X	.....
58-89-9	Lindane	X	.....	.....
72-43-5	Methoxychlor	X	.....	.....
108-90-7	Monochlorobenzene	X	X	.....
23135-22-0	Oxamyl (Vydate)	X	.....	.....
87-86-5	Pentachlorophenol	X	.....	.....
1918-02-1	Picloram	X	.....	.....
1336-36-3	Polychlorinated biphenyls (PCB)	X	.....	.....
122-34-9	Simazine	X	.....	.....
100-42-5	Styrene	X	X	.....
1746-01-6	2,3,7,8-TCDD (Dioxin)	X	.....	.....
127-18-4	Tetrachloroethylene	X	X	.....
108-88-3	Toluene	X	X	.....
8001-35-2	Toxaphene	X	.....	.....

BAT FOR ORGANI

CAS No.	
93-72-1	2,4,5-TP (Silvex)
120-82-1	1,2,4-Trichlorobe
71-55-6	1,1,1-Trichloroeth
79-00-5	1,1,2-Trichloroeth
79-01-6	Trichloroethylene
75-01-4	Vinyl chloride
1330-20-7	Xylene

* * * * *

42. In § 141.61(c), in the table, revise the number "0.003" in the MCL column for the entry "(4) 1646-87-4 Aldicarb sulfone" to read "0.002".

§ 141.62 [Amended]

43. In § 141.62(c), in key 11 under the table, revise "Ultraviolent" to read "Ultraviolet".

BAT FOR ORGANIC CONTAMINANTS LISTED IN § 141.61 (a) AND (c)—Continued

CAS No.	Contaminant	GAC	PTA	OX
93–72–1	2,4,5-TP (Silvex)	X	.....	.....
120–82–1	1,2,4-Trichlorobenzene	X	X	.....
71–55–6	1,1,1-Trichloroethane	X	X	.....
79–00–5	1,1,2-Trichloroethane	X	X	.....
79–01–6	Trichloroethylene	X	X	.....
75–01–4	Vinyl chloride	.....	X	.....
1330–20–7	Xylene	X	X	.....

* * * * *

42. In § 141.61(c), in the table, revise the number "0.003" in the MCL column for the entry "(4) 1646-87-4 Aldicarb sulfone" to read "0.002".

§ 141.62 [Amended]

43. In § 141.62(c), in key 11 under the table, revise "Ultraviolent" to read "Ultraviolet".

PART 142—[AMENDED]

44. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

§ 142.62 [Amended]

45. The table in § 142.62(a) is amended as follows:

a. In the Best available technologies subheadings, revise "PAT" to read "PTA" and revise "GAO" to read "GAC";

b. In the entry for "(19) Alachlor", remove the "X" in the "PTA" column;

c. In entry (38), in the contaminant column, revise "Dalapone" to read "Dalapon"; and

d. In the entry for "(47) Hexachlorobenzene", remove the "X" from the "OX" column and add the "X" to the "GAC" column.

[FR Doc. 94–16076 Filed 6–30–94; 8:45 am]
BILLING CODE 6560-50-P

VOL
5 9
ISS
1
2
6
JL
1
994
MI

federal register

Federal Register

Friday
July 1, 1994

Part XIII

The President

Proclamation 6704—To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

Memorandum of June 30—Actions Concerning the Generalized System of Preferences

VOL
59
ISS
126
JL
1
994
UMI

Federal Register
Vol. 59, No. 126
Friday, July 1, 1994

Title 3—

The President

Proc

To
Syst

By t

A Pr

1. Pu
(19 U
videc
as el
of Pr
ing c
2464(
of du
U.S.C
after
1974
(19 U
as le
504(c
treatm
Act, a
with
develo
from
applic
pursu
Presid
with r
of suc
is not
as the
(as de
produc

2. Pur
2461,
clature
the GS
receive
the ori
V of t
specifi
treatme
ing cou
I have
conside
Act, ar
certain
under
determi
tries sh
to certa

Federal Register
Vol. 59, No. 126
Friday, July 1, 1994

Presidential Documents

Title 3—

The President

Proclamation 6704 of June 30, 1994

To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to title V of the Trade Act of 1974, as amended ("1974 Act") (19 U.S.C. 2461 *et seq.*), the President may designate specified articles provided for in the Harmonized Tariff Schedule of the United States ("HTS") as eligible for preferential tariff treatment under the Generalized System of Preferences ("GSP") when imported from designated beneficiary developing countries. Pursuant to section 504(a)(1) of the 1974 Act (19 U.S.C. 2464(a)(1)), the President may withdraw, suspend, or limit the application of duty-free treatment accorded under section 501 of the 1974 Act (19 U.S.C. 2461) with respect to any article or with respect to any country, after considering the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2462(c)). Pursuant to section 504(c) of the 1974 Act (19 U.S.C. 2464(c)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the 1974 Act, are subject to limitations on the preferential treatment afforded under the GSP. Pursuant to section 504(c)(5) of the 1974 Act, a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of paragraph (c)(2)) during the preceding calendar year. Further, pursuant to section 504(d)(2) of the 1974 Act (19 U.S.C. 2464(d)(2), the President may disregard the limitations provided in section 504(c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount that bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

2. Pursuant to sections 501, 503(a), and 504(a) of the 1974 Act (19 U.S.C. 2461, 2463(a), and 2464(a)), in order to subdivide and amend the nomenclature of existing provisions of the HTS to modify tariff treatment under the GSP, I have determined, after taking into account information and advice received under section 503(a), that the HTS should be modified to adjust the original designation of eligible articles. In addition, pursuant to title V of the 1974 Act, I have determined that it is appropriate to designate specified articles provided for in the HTS as eligible for preferential tariff treatment under the GSP when imported from designated beneficiary developing countries, and that such treatment for other articles should be terminated. I have also determined, pursuant to section 504(a)(1) of the 1974 Act, having considered the factors set forth in sections 501 and 502(c) of the 1974 Act, and pursuant to sections 504(c)(1) and (c)(2) of the 1974 Act, that certain beneficiary countries should not receive preferential tariff treatment under the GSP with respect to certain eligible articles. Further, I have determined, pursuant to section 504(c)(5) of the 1974 Act, that certain countries should be redesignated as beneficiary developing countries with respect to certain eligible articles. These countries have been previously excluded

from benefits of the GSP with respect to such eligible articles pursuant to section 504(c)(1) of the 1974 Act. Last, I have determined that section 504(c)(1)(B) of the 1974 Act should not apply with respect to certain eligible articles pursuant to section 504(d)(2) of the 1974 Act;

3. Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement. Certain conforming changes and technical corrections to the HTS were omitted from this proclamation. I have decided that it is appropriate to modify the HTS to make such changes and corrections.

4. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to designate certain articles as eligible articles for purposes of the GSP when imported from designated beneficiary developing countries, the HTS is modified as provided in Annex I to this proclamation.

(2)(a) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any designated beneficiary developing country, the Rates of Duty 1–Special subcolumn for the HTS subheadings enumerated in Annex II(a) to this proclamation is modified by inserting in the parentheses the symbol "A" as provided in such Annex.

(b) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any designated beneficiary developing country excluding India, the Rates of Duty 1–Special subcolumn for the HTS subheading enumerated in Annex II(b) to this proclamation is modified by inserting in the parentheses the symbol "A*" as provided in such Annex.

(c) In order to terminate preferential tariff treatment under the GSP for certain articles imported from all designated beneficiary developing countries, the Rates of Duty 1–Special subcolumn for the HTS subheading in Annex II(c) to this proclamation is modified by deleting the symbol "A*" as set forth in such Annex.

(d) In order to restore preferential tariff treatment under the GSP to a country which has been excluded from the benefits of the GSP for an eligible article, the Rates of Duty 1–Special subcolumn for each of the HTS subheadings enumerated in Annex II(d) to this proclamation is modified: (i) by deleting symbol "A*" in parentheses, and (ii) by inserting in such subcolumn the symbol "A" in lieu thereof.

(e) In order to provide that one or more countries should no longer be treated as a beneficiary developing country with respect to an eligible article for purposes of the GSP, the Rates of Duty 1–Special subcolumn for each of the HTS provisions enumerated in Annex II(e) to this proclamation is modified: (i) by deleting the symbol "A" in parentheses, and (ii) by inserting in such subcolumn the symbol "A*" in lieu thereof.

(3) In order to provide that one of more countries that have not been treated as beneficiary developing countries with respect to one or more eligible articles should be redesignated as beneficiary developing countries with respect to such article for purposes of the GSP, and to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, general note 4 to the HTS is modified as provided in Annex III to this proclamation.

(4) In order to provide for the continuation of previously proclaimed staged reductions on certain Canadian goods, falling under HTS provisions modified in Annex I to this proclamation, effective with respect to goods of Canada under the terms of general note 12 to the HTS, that are entered,

Billing code 3195–01–P

or withdrawn from warehouse for consumption, on or after the dates specified in Annex IV to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1–Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in Annex IV to this proclamation is modified as provided in such Annex.

(5) In order to provide for the continuation of previously proclaimed staged reductions on certain Mexican goods, falling under HTS provisions modified in Annex I to this proclamation, effective with respect to goods of Mexico under the terms of general note 12 to the HTS, that are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex V to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1–Special subcolumn followed by the symbol "MX" in parentheses for each of the HTS subheadings enumerated in Annex V to this proclamation is modified as provided in such Annex.

(6) In order to provide for certain modifications to the GSP, the HTS is modified as set forth in Annex VII to this proclamation.

(7) In order to correct certain technical errors and to make certain conforming changes in HTS provisions, the HTS is modified as provided in Annex VI to this proclamation.

(8) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(9)(a) The modifications made by Annexes I, II, and III to this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1994.

(b) The modifications made by Annexes IV, V, VI, and VII to this proclamation shall be effective on or after the dates set forth in such Annexes.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of June, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

Billing code 3195–01–P

Annex I

Modifications to the Harmonized Tariff Schedule of the United States (HTS)

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1994.

1. Subheading 2309.90.90 is superseded by:

	[Preparations of a kind...]				
	[Other:]				
	[Other:]				
	[Other:]				
	"Other:				
2309.90.70	Preparations, with a basis of vitamin B_{12}, for supplementing animal feed.....	3%	Free (A,CA,E, IL,J,MX)	20%	
2309.90.95	Other.....	3%	Free (CA,E,IL, J,MX)	20%"	

2. Subheading 2921.49.40 is superseded and the following inserted in numerical sequence:

[Amine-function compounds:]				
[Aromatic monoamines...:]				
[Other:]				
[Other:]				
[Drugs:]				
"2921.49.38	Selegiline hydrochloride.....	8.2%	Free (A*,CA,E, IL,J,MX)	15.4¢/kg + 71.5%
2921.49.42	Other.....	8.2%	Free (CA,E,IL, J,MX)	15.4¢/kg + 71.5%"

3(a). Subheading 2933.39.37 is superseded and the following inserted in numerical sequence:

[Heterocyclic compounds with nitrogen...:]				
[Compounds containing an unfused pyridine...:]				
[Other:]				
[Other:]				
[Drugs:]				
"2933.39.34	Ethionamide.....	8%	Free (A*,CA,E, IL,J) 6.4% (MX)	15.4¢/kg + 65%
2933.39.42	Other.....	8%	Free (CA,E,IL, J) 6.4% (MX)	15.4¢/kg + 65%"

(b). Conforming change: The article description for headings 9902.29.70, 9902.29.99 and 9902.30.81 and subheading 9906.29.21 is modified by deleting "2933.39.37" and inserting "2933.39.42" in lieu thereof.

Annex I (con.)

4. Subheadings 2937.92.20, 2937.92.80 and 2937.99.80 are superseded and the following inserted in numerical sequence:

	[Hormones, natural or...:]			
	[Other hormones and their...:]			
	[Estrogens and progestins:]			
	[Other:]			
*2937.92.15	Estradiol benzoate.....	6.9%	Free (A*,CA,E, IL,J) 5.5% (MX)	15.4¢/kg + 49%
2937.92.30	Estradiol cyclopentyl-propionate (Estradiol cypionate).....	6.9%	Free (CA,E,IL, J) 5.5% (MX)	15.4¢/kg + 49%
2937.92.70	Estradiol.....	8.7%	Free (A*,CA,E, IL,J) 6.9% (MX)	15.4¢/kg + 78.5%
2937.92.90	Other.....	8.7%	Free (CA,E,IL, J) 6.9% (MX)	15.4¢/kg + 78.5%*
	[Other:]			
*2937.99.70	Trenbolone acetate.....	3.2%	Free (A*,CA,E, IL,J) 2.8% (MX)	25%
2937.99.90	Other.....	3.2%	Free (CA,E,IL, J) 2.8% (MX)	25%*

5(a). Subheading 7308.90.90 is superseded by:

	[Structures (excluding prefabricated...:]			
	[Other:]			
	*Other:			
7308.90.70	Steel grating.....	5.7%	Free (A*,E,IL,J, MX) 2.2% (CA)	45%
7308.90.95	Other.....	5.7%	Free (A,E,IL,J, MX) 2.2% (CA)	45%*

(b). Conforming change: The article description for subheading 9905.73.08 is modified by deleting "7308.90.90" and inserting "7308.90.95" in lieu thereof.

Annex I (con.)

6. Subheadings 8407.34.15 and 8407.34.45 are superseded and the following inserted in numerical sequence:

	[Spark-ignition reciprocating...:] [Reciprocating piston engines of...:] [Of a cylinder capacity exceeding 1,000 cc:] [Of a cylinder capacity not exceeding 2,000 cc:] "To be installed in vehicles of subheading 8701.20, or heading 8702, 8703 or 8704:		
8407.34.14	Used or rebuilt.....	3.1%	Free (A,B,E,IL,J, MX) 35% 1.2% (CA)
8407.34.18	Other.....	3.1%	Free (A,B,E,IL,J, MX) 35%" 1.2% (CA)
	[Of a cylinder capacity exceeding 2,000 cc:] "To be installed in vehicles of subheading 8701.20, or heading 8702, 8703 or 8704:		
8407.34.44	Used or rebuilt.....	3.1%	Free (A,B,E,IL,J, MX) 35% 1.2% (CA)
8407.34.48	Other.....	3.1%	Free (A,B,E,IL,J, MX) 35%" 1.2% (CA)

7. Subheading 8409.91.91 is superseded by:

	[Parts suitable for use solely or principally with the engines of heading 8407 or 8408:] [Other:] [Suitable for use solely or...:] [Other:] "For vehicles of subheading 8701.20, or heading 8702, 8703 or 8704:		
8409.91.30	Aluminum cylinder heads.....	3.1%	Free (A*,B,E,IL,J) 35% 1.2% (CA) 2.4% (MX)
8409.91.50	Other.....	3.1%	Free (A*,B,E,IL,J) 35%" 1.2% (CA) 2.4% (MX)

8(a). Subhe

[Tim

9106.90.70	
9106.90.95	

(b). Confor
(1) The
deleting "910
thereof.
(11) The
deleting "910

Effective with
19 6, and (ii
after July 1,

(a) For HTS su
Duty 1-Special
the symbol "A,

(b) For HTS su
insert in the
alphabetical o

(c) For HTS he
delete the sym

(d) For HTS su
1-Special subc

(e) For the fo
subcolumn, del

1301.90.40
1515.30.40
1604.15.00
2515.11.00
4203.21.20
4412.12.15
4412 19.10

Annex I (con.)

8(a). Subheading 9106.90.80 is superseded by:

	[Time of day recording...:]				
	[Other:]				
	"Other:				
9106.90.70	Apparatus for measuring, recording or otherwise indicating intervals of time, with clock or watch movements, battery powered.....	45¢ each + 7% + 2.5¢/jewel	Free (A,E,IL,J, MX) 18¢ each + 2.8% + 1¢/jewel (CA)	$4.50 each + 65% + 25¢/jewel
9106.90.95	Other.....	45¢ each + 7% + 2.5¢/jewel	Free (E,IL,J,MX) 18¢ each + 2.8% + 1¢/jewel (CA)	$4.50 each + 65% + 25¢/jewel"

(b). Conforming change:

(i) The article description for heading 9902.91.06 is modified by deleting "9106.90.80" and inserting "9106.90.70 or 9106.90.95" in lieu thereof.

(ii) The article description for subheading 9905.91.10 is modified by deleting "9106.90.80" and inserting "9106.90.95" in lieu thereof.

Annex II

Modification in the HTS of an Article's Preferential Tariff Treatment under the GSP

Effective with respect to articles both: (i) imported on or after January 1, 19 6, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1994.

(a) For HTS subheadings 0805.30.40, 8529.90.01 and 8529.90.29, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A," in alphabetical order.

(b) For HTS subheading 2902.11.00, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A*," in alphabetical order.

(c) For HTS heading 4007.00.00, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*,".

(d) For HTS subheadings 8402.20.00 and 8527.31.40, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof.

(e) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, delete the symbol "A" and insert an "A*" in lieu thereof:

1301.90.40	4412.99.10	7614.10.50
1515.30.40	4417.00.60	8104.11.00
1604.15.00	4802.60.10	8409.99.91
2515.11.00	5607.29.00	8517.30.15
4203.21.20	6905.10.00	8535.40.00
4412.12.15	7115.90.10	8544.30.00
4412 19.10	7308.20.00	8546.10.00

Annex III

Modifications to General Note 4(d) of the HTS

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1994.

General note 4(d) is modified by:

(a) deleting the following HTS provisions and the country set out opposite such provisions:

4007.00.00 Malaysia
8402.20.00 Philippines
8409.91.91 Brazil
8527.31.40 Malaysia

(b) adding in numerical sequence, the following HTS subheadings and countries set out opposite them:

1301.90.40 Brazil	4802.60.10 Brazil
1515.30.40 India	5607.29.00 Brazil
1604.15.00 Chile	6905.10.00 Venezuela
2515.11.00 Brazil	7115.90.10 Argentina
2902.11.00 India	7308.20.00 Brazil
2921.49.38 India	7308.90.70 Venezuela
2933.39.34 India	7614.10.50 Brazil
2937.92.15 India	8104.11.00 Russia
2937.92.70 India	8409.91.30 Brazil
2937.99.70 India	8409.91.50 Brazil
4203.21.20 Indonesia	8409.99.91 Brazil
4412.12.15 Brazil	8517.30.15 Israel
4412.19.10 Brazil	8535.40.00 Dominican Republic
4412.99.10 Brazil	8544.30.00 Thailand
4417.00.60 Brazil	8546.10.00 Brazil

(c) deleting the country set out opposite the following HTS subheading:

8521.10.60 Indonesia

(d) adding, in alphabetical order, the country set out opposite the following HTS subheadings:

2843.30.00 Chile	2929.10.15 Brazil
2849.10.00 Brazil	2933.40.30 Brazil
2903.19.10 Brazil	3812.20.10 Brazil
2907.23.00 Brazil	4104.10.40 Brazil
2909.44.00 Brazil	4109.00.70 Brazil
2917.32.00 Brazil	8471.92.32 Thailand
2921.12.00 Brazil	8471.92.34 Thailand

Effective with
to the HTS, en
January 1 of e

( ). For each
subcolumn is m
"CA" in parenth
subheading in
(ii) for each
followed by the
of duty are ins
specified.

HTS Subheading
7308.90.70
7308.90.95
8407.34.14
8407.34.18
8407.34.44
8407.34.48
8409.91.30
8409.91.50
9106.90.70
9106.90.95

Annex IV

Effective with respect to goods of Canada, under the terms of general note 12 to the HTS, entered, or withdrawn from warehouse for consumption, on or after January 1 of each of the years listed below.

( ). For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "CA" in parentheses and inserting the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "CA" in parentheses are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS Subheading	1995	1996	1997	1998
7308.90.70	1.7%	1.1%	0.5%	Free
7308.90.95	1.7%	1.1%	0.5%	Free
8407.34.14	0.9%	0.6%	0.3%	Free
8407.34.18	0.9%	0.6%	0.3%	Free
8407.34.44	0.9%	0.6%	0.3%	Free
8407.34.48	0.9%	0.6%	0.3%	Free
8409.91.30	0.9%	0.6%	0.3%	Free
8409.91.50	0.9%	0.6%	0.3%	Free
9106.90.70	13.5¢ each + 2.1% + 0.7¢/jewel	9¢ each + 1.4% + 0.5¢/jewel	4.5¢ each + 0.7% + 0.2¢/jewel	Free
9106.90.95	13.5¢ each + 2.1% + 0.7¢/jewel	9¢ each + 1.4% + 0.5¢/jewel	4.5¢ each + 0.7% + 0.2¢/jewel	Free

Annex V

Effective with respect to goods of Mexico, under the terms of general note 12 to the HTS, entered, or withdrawn from warehouse for consumption, on or after January 1 of each of the years listed below.

For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "MX" in parentheses and inserting the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "MX" in parentheses are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS Subheading	1995	1996	1997	1998	1999	2000	2001	2002	2003
2933.39.38	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2933.39.42	4.8%	3.2%	1.6%	Free	Free	Free	Free	Free	Free
2937.92.15	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2937.92.30	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2937.92.70	5.2%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2937.92.90	5.2%	3.4%	1.7%	Free	Free	Free	Free	Free	Free
2937.99.70	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
2937.99.90	2.5%	2.2%	1.9%	1.6%	1.2%	0.9%	0.6%	0.3%	Free
8409.91.30	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free
8409.91.50	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free

Annex VI

(a). Effective January 1, 1994.

1. For HTS subheading 2907.23.00, in the Rates of Duty 1-Special subcolumn, delete the rate "3.3¢/kg + 13.7%" preceding the symbol "MX" and insert "3.3¢/kg + 12.3%" in lieu thereof.

2. For HTS subheading 5810.92.00, in the Rates of Duty 1-General subcolumn and the Rates of Duty 2 column, delete the rate "See additional U.S. note 1" and insert "See additional U.S. note 2" in lieu thereof.

3. Additional U.S. note 4 to chapter 85 is modified by deleting references to "8529.90.56" and "8529.90.59" from such note.

4. Heading 9802.00.90 is modified by striking from the article description the words "in whole of fabrics" and by inserting in lieu thereof the phrase ", in which all fabric components were".

(a). (con.)

5. The U.S. n
the following

"27. For the
sheet" m
polyeste
a smooth
(a) a
(b) a
(c) a
(d) a
str
(e) a

(b). Effective
note 12 to the
or after Januar

For each of the
is modified (i)
parentheses and
the first dated
of the subsequ
symbol "CA" in
inserted in suc

HTS Subheading
2401.10.21
2401.10.29

Effective with r
1976, and (ii) e
after a date to
Trade Representa

(a) General not
(i) deleting
such subheadings

1301.90.40 Brazi
2515.11.00 Brazi
4412.12.15 Brazi
4412.19.10 Brazi
4412.99.10 Brazi
4417.00.60 Brazi

Annex VI (con.)

(a). (con.)

5. The U.S. notes to subchapter VI of chapter 99 are modified by inserting the following U.S. note 27 in numerical sequence:

"27. For the purposes of subheading 9906.56.01, the term "non-woven fiber sheet" means sheet comprising a highly uniform and random array of polyester fibers 1.5 to 3.0 denier, thermally bonded and calendered into a smooth surface web having--
(a) a thickness of 3.7 to 4.0 mils;
(b) a basis weight of 2.5 oz. per sq. yd.;
(c) a machine tensile strength of 30 lb per sq. in. or greater;
(d) a low cross-direction tensile (approximately 1/3 of MD tensile strength; and
(e) a Frazier air permeability of 1.0 to 1.5 cfm per sq. ft."

(b). Effective with respect to goods of Canada, under the terms of general note 12 to the HTS, entered, or withdrawn from warehouse for consumption, on or after January 1 of each of the years listed below.

For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "CA" in parentheses and inserting the rate of duty specified for such subheading in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "CA" in parentheses are deleted and the following rates of duty are inserted in such subheadings in lieu thereof on the date specified.

HTS subheading	1995	1996	1997	1998
2401.10.21	23.8¢/kg	15.8¢/kg	7.9¢/kg	Free
2401.10.29	23.8¢/kg	15.8¢/kg	7.9¢/kg	Free

Annex VII

Effective with respect to articles both: (1) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after a date to be announced in the Federal Register by the United States Trade Representative.

(a) General note 4(d) is modified by:
(i) deleting the following HTS subheadings and the country set out opposite such subheadings:

1301.90.40 Brazil
2515.11.00 Brazil
4412.12.15 Brazil
4412.19.10 Brazil
4412.99.10 Brazil
4417.00.60 Brazil
4802.60.10 Brazil
5607.29.00 Brazil
7614.10.50 Brazil
8409.91.30 Brazil
8546.10.00 Brazil

Annex VII (con.)

(a) (con.):
(ii) deleting the country set out opposite the following HTS subheadings:

2849.10.00 Brazil	2929.10.15 Brazil
2903.19.10 Brazil	2933.40.30 Brazil
2909.44.00 Brazil	3812.20.10 Brazil
2917.32.00 Brazil	4104.10.40 Brazil
2921.12.00 Brazil	4109.00.70 Brazil

(b) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof.

1301.90.40	4802.60.10
2515.11.00	5607.29.00
4412.12.15	7614.10.50
4412.19.10	8409.91.30
4412.99.10	8546.10.00
4417.00.60	

[FR Doc. 94-16278
Filed 6-30-94; 11:57 am]
Billing code 3195-01-C

Pre

Mem

Acti

Mem

Pursu
Act)
duty-
rentl
of my

Pursu
for a
2464)
it is
the G
devel

Speci
2464(
of se
from
of the
tries
and
descr
2462(
Unite
Act a
devel

VOL 59 ISS 126 JL 1 994 UMI

Presidential Documents

Memorandum of June 30, 1994

Actions Concerning the Generalized System of Preferences

Memorandum for the United States Trade Representative

Pursuant to section 504 of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2464), I am authorized and to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to such beneficiary developing countries as a result of my determinations.

Pursuant to section 504 of the 1974 Act, after considering various requests for a waiver of the application of section 504(c) of the 1974 Act (19 U.S.C. 2464)(c)) with respect to certain eligible articles, I have determined that it is appropriate to modify the application of duty-free treatment under the GSP currently being afforded to certain articles and to certain beneficiary developing countries.

Specifically, pursuant to section 504(c)(3) of the 1974 Act (19 U.S.C. 2464(c)(3)), I have determined that it is appropriate to waive the application of section 504(c) of the 1974 Act with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the United States International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)), that such waivers are in the national economic interest of the United States. The waivers of the application of section 504(c) of the 1974 Act apply to the eligible articles in the HTS subheadings and the beneficiary developing countries set opposite such HTS subheadings enumerated below.

HTS Subheadings and Countries Granted Waivers of Section 504(c) of the 1974 Act

HTS Subheading	Country
4203.21.40	Philippines
7113.19.21	Israel
8402.20.00	Philippines
8407.34.15	Brazil [1]
8407.34.45	Brazil [2]
8409.91.91	Brazil [3]
8471.20.00	Indonesia
8471.20.00	Malaysia
8471.91.00	Indonesia
8471.91.00	Malaysia
8521.10.60	Indonesia
8525.20.20	Philippines
8525.20.50	Malaysia
8525.20.50	Philippines
8527.31.40	Malaysia
8529.90.01	Indonesia
8529.90.29	Indonesia

These determinations shall be published in the Federal Register.

William J. Clinton

[1] 8407.34.1580 only.

[2] 8407.34.4580 only.

[3] Aluminum cylinder heads only.

[FR Doc. 94-16285
Filed 6-30-94; 11:47 am]
Billing code 3190-01-M

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates,
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documen

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Pub
numbers, Federal Register finding aids, and lis
documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents a
documents on public inspection are available
National Archives fax-on-demand system. You
from a fax machine. There is no charge for the
except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATE

33897–34342 1

Reader Aids

Federal Register

Vol. 59, No. 126

Friday, July 1, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342 1

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 3676/P.L. 103–268

To amend the District of Columbia Spouse Equity Act of 1988 to provide for coverage of the former spouses of judges of the District of Columbia courts. (June 28, 1994; 108 Stat. 730; 1 page)

H.R. 4205/P.L. 103–269

To amend title 11, D.C. Code, to clarify that blind individuals are eligible to serve as jurors in the Superior Court of the District of Columbia. (June 28, 1994; 108 Stat. 731; 1 page)

Last List June 21, 1994

CFR ISSUANCES 1994
January—April 1994 Editions and Projected July, 1994 Editions

This list sets out the CFR issuances for the January–April 1994 editions and projects the publication plans for the July, 1994 quarter. A projected schedule that will include the October, 1994 quarter will appear in the first Federal Register issue of October.

For pricing information on available 1993–1994 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1994 editions:

Title

CFR Index

1–2

3 (Compilation)

4

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
0–26
27–45
46–51 (Cover only)
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1939
1940–1949
1950–1999
2000–End

8

9 Parts:
1–199
200–End

10 Parts:
0–50
51–199
200–399 (Cover only)
400–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–799
800–End

16 Parts:
0–149
150–999
1000–End

Titles revised as of April 1, 1994:

Title

17 Parts:
1–199
200–239
240–End

18 Parts:
1–149
150–279
280–399
400–End

19 Parts:
1–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
0–199
200–499
500–699
700–1699
1700–End

25

26 Parts:
1 (§§ 1.0–1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599 (Cover only)
600–End

27 Parts:
1–199
200–End

Projected July 1, 1994 editions:

Title

28 Parts:
1–42
43–End

29 Parts:
0–99
100–499
500–899
900–1899
1900–1910 (§§ 1901.1–1910.999)
1910 (§§ 1910.1000–End)
1911–1925
1926
1927–End

30 Parts:
1–199
200–699
700–End

31 Parts:
0–199
200–End

32 Parts:
1–190
191–399
400–629
630–699
700–799
800–End

33 Parts:
1–124
125–199
200–End

Chs. 1–100
Ch. 101

34 Parts:
1–299
300–399
400–End

35

36 Parts:
1–199
200–End

37

38 Parts:
0–17
18–End

39

40 Parts:
1–51
52
53–59
60
61–80
81–85
86–99
100–149
150–189
190–259
260–299
300–399
400–424
425–699
700–789
790–End

41 Parts:
Chs. 102–200
Ch. 201–End

TABLE OF EFF

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in age dat cou

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION
July 1	July 18
July 5	July 20
July 6	July 21
July 7	July 22
July 8	July 25
July 11	July 26
July 12	July 27
July 13	July 28
July 14	July 29
July 15	August 1
July 18	August 2
July 19	August 3
July 20	August 4
July 21	August 5
July 22	August 8
July 25	August 9
July 26	August 10
July 27	August 11
July 28	August 12
July 29	August 15

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 1994

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 1	July 18	August 1	August 15	August 30	September 29
July 5	July 20	August 4	August 19	September 6	October 3
July 6	July 21	August 5	August 22	September 6	October 4
July 7	July 22	August 8	August 22	September 6	October 5
July 8	July 25	August 8	August 22	September 6	October 6
July 11	July 26	August 10	August 25	September 9	October 11
July 12	July 27	August 11	August 26	September 12	October 11
July 13	July 28	August 12	August 29	September 12	October 11
July 14	July 29	August 15	August 29	September 12	October 12
July 15	August 1	August 15	August 29	September 13	October 13
July 18	August 2	August 17	September 1	September 16	October 17
July 19	August 3	August 18	September 2	September 19	October 17
July 20	August 4	August 19	September 6	September 19	October 18
July 21	August 5	August 22	September 6	September 19	October 19
July 22	August 8	August 22	September 6	September 20	October 20
July 25	August 9	August 24	September 8	September 23	October 24
July 26	August 10	August 25	September 9	September 26	October 24
July 27	August 11	August 26	September 12	September 26	October 25
July 28	August 12	August 29	September 12	September 26	October 26
July 29	August 15	August 29	September 12	September 27	October 27

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before this date.

```
AFR  SMITH212J                DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before this date.

```
AFRDO  SMITH212J              DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, **please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.**

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's easy! [redacted]

To fax your orders (202) 512-2233

☐ **YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and LSA List of Code of Federal Regulations Sections Affected, at $490 ($612.50 foreign) each per year.

____ subscriptions to **Federal Register,** *daily only* (FRDO), at $444 ($555 foreign) each per year.

The total cost of my order is $_____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/94

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Pu

Pamphlet prints of public laws
laws upon enactment and ar
Legislative history references
issued irregularly upon enactr

(Individual laws also may be p
20402-9328. Prices vary. See
newly enacted laws.)

Superintendent

Order Processing Code
* 6216

☐ **YES**, enter my subscription(s) as follo

subscriptions to **PUBLIC LAWS** for t

The total cost of my order is $_____. In
postage and handling and are subject to chang

(Company or Personal Name) (Please

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other ma

Public Laws

103d Congress, 2d Session, 1994

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 2d Session, 1994.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws.)

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code
* 6216

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!

To fax your orders (202) 512-2233

subscriptions to **PUBLIC LAWS** for the 103d Congress, 2d Session, 1994 for $156 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include **regular domestic** postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

VOL
59
ISS
1
26
JL
1
994
MI

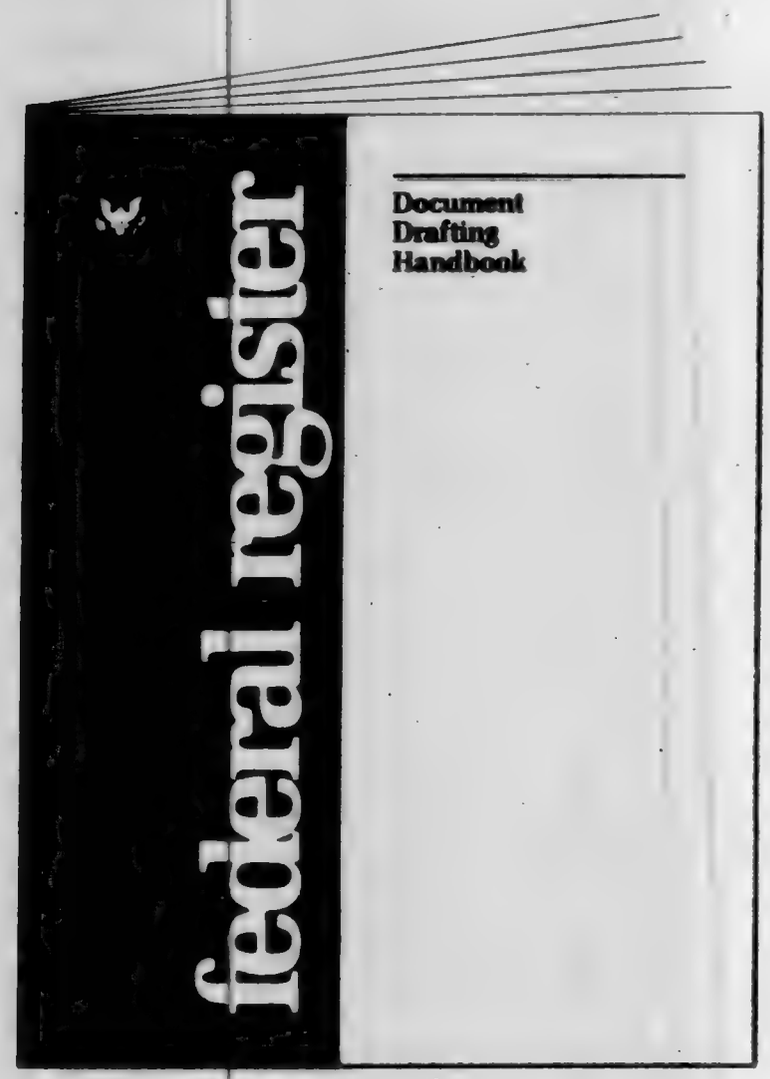

Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy!

To fax your orders and inquiries—(202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK** at $5.50 each. S/N 060-000-00037-1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%. All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature) (Rev 12/91)

4. Mail To: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954

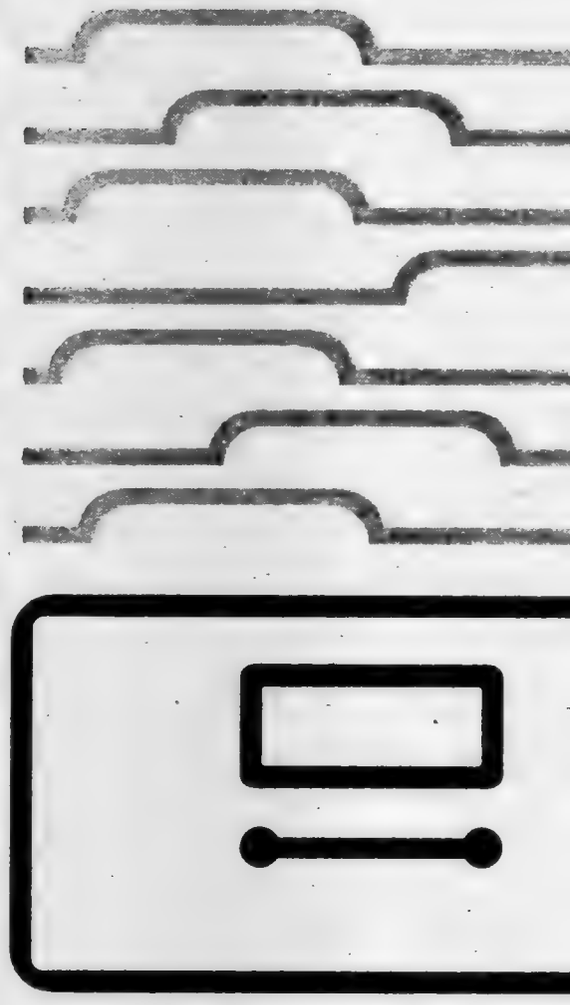

Superintendent of Documents Order Fo

Order Processing Code:
* 7296

☐ **YES,** send me ___ subscriptions to
S/N 069-000-00056-8, at $20.00 ($25.00

The total cost of my order is $ _____

_____
Company or personal name (Please t

_____
Additional address/attention line

_____
Street address

_____
City, State, Zip code

_____
Daytime phone including area code

_____
Purchase order number (optional)

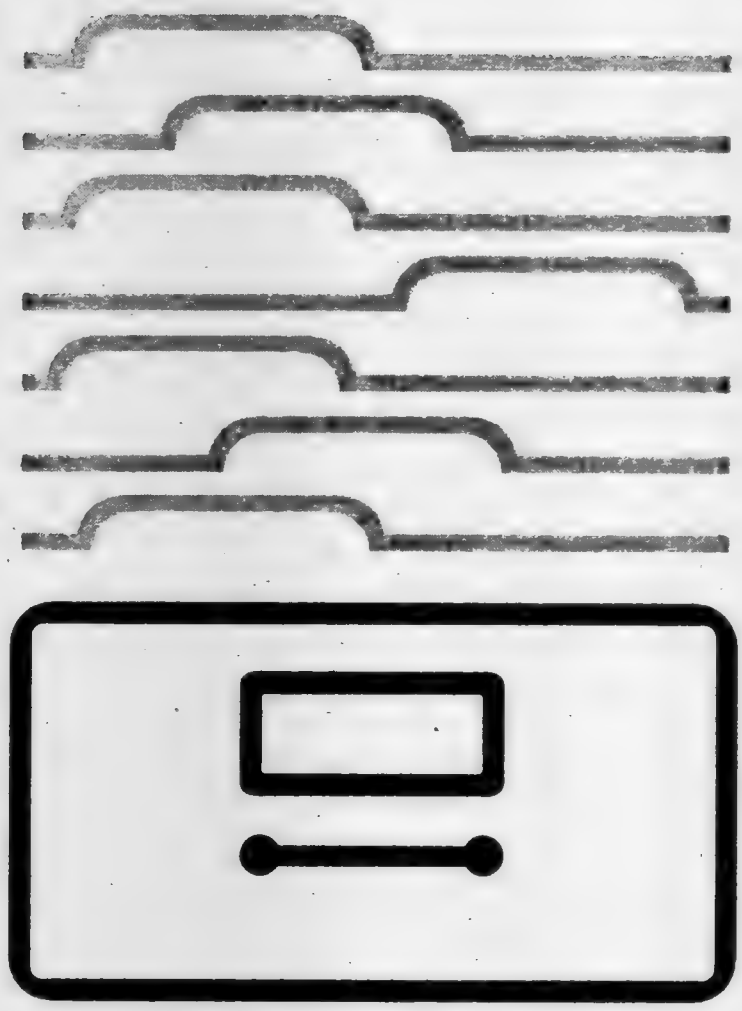

NEW EDITION

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1994

The GUIDE is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Order Form

Charge your order. It's easy!

Order Processing Code:
* **7296**

To fax your orders (202) 512–2250

❑ **YES,** send me ____ subscriptions to **1994 Guide to Record Retention Requirements in the CFR,** S/N 069–000–00056–8, at $20.00 ($25.00 foreign) each.

The total cost of my order is $ _____. **(Includes regular shipping and handling.)** Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

Check method of payment:

❑ Check payable to Superintendent of Documents

❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐

❑ VISA ❑ MasterCard ☐☐☐☐ (expiration date)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
59
ISS
1
26
JL
1
994
UMI

New Publication
List of CFR Sections Affected
1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16) $27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27) $25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41) $28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50) $25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*6962

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries–(202) 512-2250

Please Type or Print (Form is aligned for typewriter use.)
Prices include regular domestic postage and handling and are good through 12/92. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog–Bestselling Government Books	FREE	FREE
			Total for Publications	

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) *Thank you for your order!*

(Signature)

Rev 6-92

Order Now!

The United States Government Manu 1993/94

As the official handbook of the Feder the *Manual* is the best source of informa activities, functions, organization, and p of the agencies of the legislative, judicia branches. It also includes information o agencies and international organization United States participates.

Particularly helpful for those intereste and who to see about a subject of partic each agency's "Sources of Information" provides addresses and telephone numb obtaining specifics on consumer activiti grants, employment, publications and fi other areas of citizen interest. The *Manu* comprehensive name and agency/subje

Of significant historical interest is A which lists the agencies and functions Government abolished, transferred, or name subsequent to March 4, 1933.

The *Manual* is published by the Offic Register, National Archives and Records

$30.00 per copy

Superintendent o

Order Processing Code:
*6395

☐ **YES,** please send me _____ cop at $30.00 ($37.50 foreign) each.

The total cost of my order is $ _____

(Company or personal name) (Please

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

Order Now!

The United States Government Manual 1993/94

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$30.00 per copy

Superintendent of Documents **Publications** Order Form

Order Processing Code:
* **6395**

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2250

☐ **YES,** please send me _____ copies of the **The United States Government Manual, 1993/94** S/N 069–000–00053–3 at $30.00 ($37.50 foreign) each.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

Please choose method of payment:

❑ Check payable to the Superintendent of Documents

❑ GPO Deposit Account ☐☐☐☐☐☐ – ☐

❑ VISA ❑ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing signature) (Rev 9/93)

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

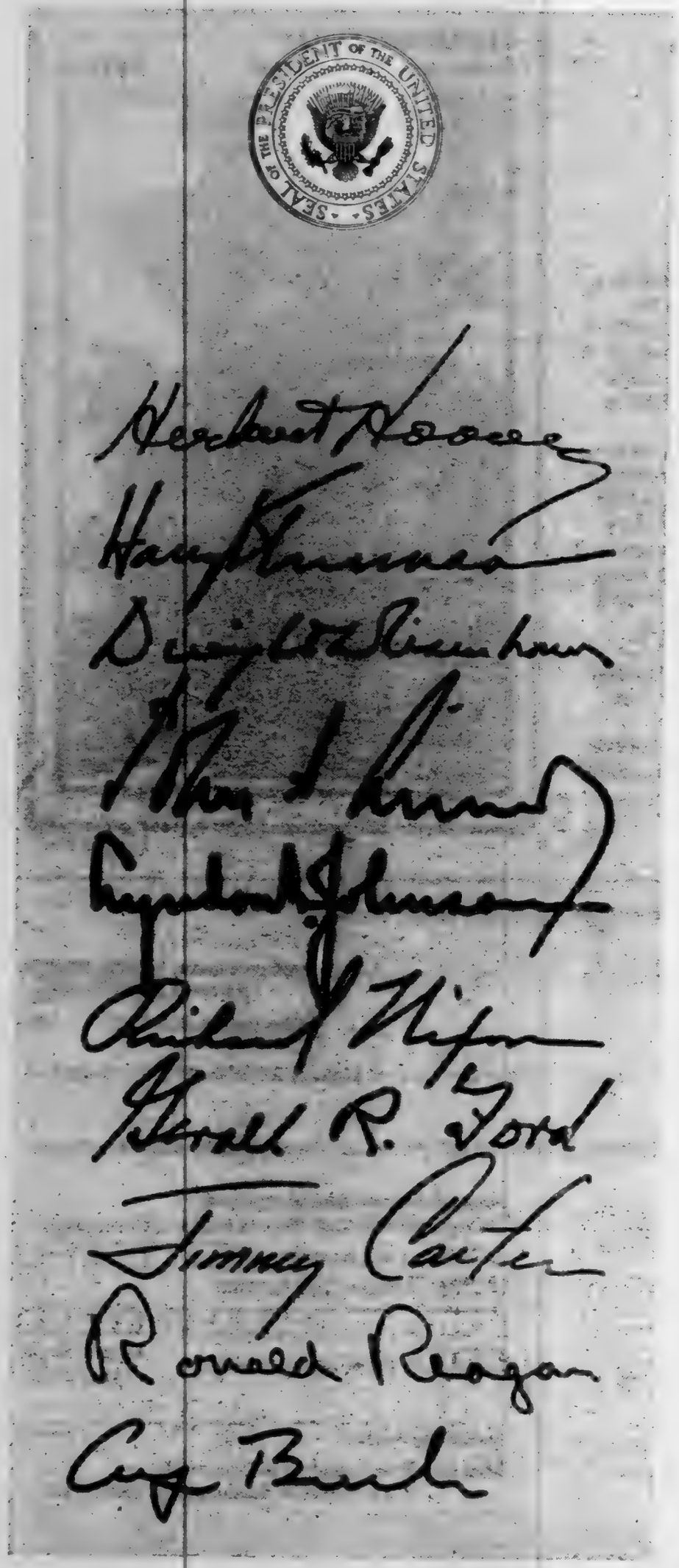

Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House

Volumes for the following years are available; other volumes not listed are out of print

Ronald Reagan

1984
(Book II) $36.00

1985
(Book I) $34.00

1985
(Book II) $30.00

1986
(Book I) $37.00

1986
(Book II) $35.00

1987
(Book I) $33.00

1987
(Book II) $35.00

1988
(Book I) $39.00

1988–89
(Book II) $38.00

George Bush

1989
(Book I) $38.00

1989
(Book II) $40.00

1990
(Book I) $41.00

1990
(Book II) $41.00

1991
(Book I) $41.00

1991
(Book II) $44.00

1992
(Book I) $47.00

1992–93
(Book II) $49.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

S

S

other

.....$38.00

.....$40.00

.....$41.00

.....$41.00

.....$41.00

.....$44.00

.....$47.00

.....$19.00

ional

nts
954

VOL
59
ISS
1
26
JL
1
994
MI

Printed on recycled paper

VOL
59
ISS
127
JL
5
994
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7–5–94
Vol. 59 No. 127

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

A FR UMIS
UMI SERIALS
300 N ZEEB
PO BOX 1346
ANN ARBOR

7–5–94
Vol. 59 No. 127

Federal Register

Tuesday
July 5, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481

A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106

VOL
59
ISS
1
2
7
JL
5
994
UMI

7-5-94
Vol. 59 No. 127
Pages 34343-34552

7–5–94
Vol. 59 No. 127
Pages 34343–34552

Tuesday
July 5, 1994

Federal Register

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents; or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806

Online:
Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.
Assistance with online subscriptions 202–512–1530

Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803

FEDERAL AGENCIES

Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Printed on recycled paper containing 100% post consumer waste

Contents

Agriculture Department
See Animal and Plant Health Inspection S
See Commodity Credit Corporation
See Food Safety and Inspection Service
See Rural Electrification Administration

Animal and Plant Health Inspection Serv
RULES
Exportation and importation of animals a products:
Ratites and hatching eggs of ratites, 343

Antitrust Division
NOTICES
Competitive impact statements and propos judgments:
Nagel Motors, Inc., et al., 34446–34451

Arts and Humanities, National Foundatio
See National Foundation on the Arts and

Bonneville Power Administration
NOTICES
Long-term intertie access policy; access fo utilities; assured delivery provisions,

Centers for Disease Control and Preventi
NOTICES
Meetings:
Prevention Centers Grant Review Comm 34444

Commerce Department
See International Trade Administration
See National Institute of Standards and Te
See National Oceanic and Atmospheric Ad
NOTICES
Agency information collection activities u review, 34408

Commodity Credit Corporation
RULES
Loan and purchase programs:
Grains and similarly handled commoditi

Commodity Futures Trading Commission
RULES
Bankruptcy:
Futures commission merchants et al.; ge disclosure statement, 34376–34382

Corporation for National and Community
NOTICES
Agency information collection activities un review, 34417–34418

Defense Department
See Navy Department
RULES
Base closure communities revitalization an assistance, 34382

Contents

Federal Register

Vol. 59, No. 127

Tuesday, July 5, 1994

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Food Safety and Inspection Service
See Rural Electrification Administration

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Ratites and hatching eggs of ratites, 34375

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Nagel Motors, Inc., et al., 34446–34451

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Bonneville Power Administration
NOTICES
Long-term intertie access policy; access for non-scheduling utilities; assured delivery provisions, 34420

Centers for Disease Control and Prevention
NOTICES
Meetings:
Prevention Centers Grant Review Committee, 34443–34444

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 34408

Commodity Credit Corporation
RULES
Loan and purchase programs:
Grains and similarly handled commodities, 34345–34353

Commodity Futures Trading Commission
RULES
Bankruptcy:
Futures commission merchants et al.; generic risk disclosure statement, 34376–34382

Corporation for National and Community Service
NOTICES
Agency information collection activities under OMB review, 34417–34418

Defense Department
See Navy Department
RULES
Base closure communities revitalization and community assistance, 34382
Organization, functions, and authority delegations:
Assistant Secretary of Defense for Production and Logistics et al.; CFR parts removed, 34382
NOTICES
Agency information collection activities under OMB review, 34418

Education Department
PROPOSED RULES
Postsecondary education:
Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee; meetings, 34398–34399
NOTICES
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Rehabilitation research and training centers, 34420

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Coastal Gas Marketing Co., 34434
OXY USA Inc., 34434
Phibro Division of Salomon Inc., 34434
Talisman Marketing (U.S.) Inc., 34434

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
New Jersey et al., 34383–34386
Superfund program:
Toxic chemical release reporting; community right-to-know—
Glycol ethers category; redefinition, 34386–34391
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 34399–34401
District of Columbia, 34401–34404
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region II, 34434–34435
Confidential business information and data transfer to contractors, 34436
Meetings:
National Air Pollution Control Techniques Advisory Committee, 34436–34437
Superfund; response and remedial actions; proposed settlements, etc.:
Peterson/Puritan, Inc. Site, RI, 34437

Water pollution control; sole source aquifer determinations,
Washington, 34468–34469

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Raytheon, 34396–34398

Federal Communications Commission
RULES
Radio stations; table of assignments:
Missouri, 34391
Texas, 34391
Television stations; table of assignments:
Washington, 34391–34392
PROPOSED RULES
Radio stations; table of assignments:
Alabama, 34404
Alaska, 34404
Arizona, 34405
Virginia, 34405
NOTICES
Agency information collection activities under OMB review, 34437–34438

Federal Energy Regulatory Commission
NOTICES
Cultural resources industry outreach training course, 34420–34421
Electric rate and corporate regulation filings:
Public Service Co. of Colorado et al., 34421–34425
Environmental statements; availability, etc.:
Avoca Natural Gas Storage, 34425–34426
Ketchikan Public Utilities, 34426
Public Utility District No. 2 of Grant County, WA, 34426
Yadkin, Inc., 34426–34427
Hydroelectric applications, 34427–34430
Natural gas certificate filings:
Transcontinental Gas Pipe Line Corp. et al., 34430–34431
Preliminary permits surrender:
Chance Pond Brook Associates, 34431–34432
Magic Irrigators, Inc., 34432
Applications, hearings, determinations, etc.:
Eclipse Energy, Inc., 34432
Equitrans, Inc., 34432
Natural Gas Pipeline Co. of America, 34432
Rainbow Energy Marketing Corp., 34433
Trunkline Gas Co., 34433
Williams Natural Gas Co., 34433

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Integrated Traffic Systems, Inc., et al., 34438

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 34465
Applications, hearings, determinations, etc.
NationsBank Corp., 34438–34439
Ross, Howard R., et al.; correction, 34439
Smith, Wiley W., et al., 34439
SouthTrust Corp. et al., 34439–34440
Western State Agency, Inc., 34440

Federal Trade Commission
NOTICES
Consent decrees, errors and omissions clauses; policy statement, 34440
Premerger notification waiting periods; early terminations, 34440–34442
Prohibited trade practices:
Arizona Automobile Dealers Association, 34442
Orkin Exterminating Co., Inc., 34442–34443
Samick Music Corp., 34443
Ticor Title Insurance Co. et al., 34443

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Interest rates:
Renegotiation Board and prompt payment rates, 34464

Food Safety and Inspection Service
RULES
Direct final rulemaking; policy statement, 34375–34376
PROPOSED RULES
Meat and poultry inspection:
Nutrition labeling—
Ground beef and hamburger, 34396

Health and Human Services Department
See Centers for Disease Control and Prevention
See National Institutes of Health
See Social Security Administration
NOTICES
Federal claims; interest rates on overdue debts, 34443

Interior Department
See National Park Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Accuracy-related penalty; hearing, 34398

International Trade Administration
NOTICES
Antidumping:
Canned pineapple fruit from—
Thailand, 34408–34409
Fresh cut roses from—
Colombia et al., 34409
Oil country tubular goods from—
Canada, 34409–34410
Countervailing duty orders:
Intent to revoke, 34410–34411
Export trade certificates of review, 34411
Applications, hearings, determinations, etc.:
West Virginia University et al., 34411–34412

International Trade Commission
NOTICES
Import investigations:
Peanut butter and peanut paste, 34446

Interstate Commerce Commission
RULES
Motor carriers:
Transportation of household goods in interstate or foreign commerce, 34392

NOTICES
Railroad operation, acquisition, construction
CSX Transportation, Inc., 34446

Justice Department
See Antitrust Division

Legal Services Corporation
NOTICES
Grant and cooperative agreement awards:
Louisiana Legal Consortium, Inc.; correct

National Foundation on the Arts and the H
NOTICES
Meetings:
Humanities Panel, 34451–34452

National Highway Traffic Safety Administr
PROPOSED RULES
Motor vehicle safety standards:
New pneumatic tires, 34405–34407

National Institute of Standards and Techn
NOTICES
Information processing standards, Federal:
Government Information Locator Service 34414
Massachusetts General Hospital Utility M
Programming System (MUMPS), 344

National Institutes of Health
NOTICES
Meetings:
Research Grants Division Behavioral and Special Emphasis Panel, 34444
Recombinant DNA molecules research:
Actions under guidelines, 34472–34494
Guidelines, 34496–34547

National Oceanic and Atmospheric Admini
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfis
NOTICES
Meetings:
South Slough National Estuarine Research management plan, 34416–34417
Permits:
Marine mammals, 34417

National Park Service
NOTICES
Environmental statements; availability, etc.:
Creve Coeur Lake Memorial Park, MO, 344
Meetings:
Federal Subsistence Board; sheep season,
Gettysburg National Military Park Advisor 34445–34446

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Marine Corps Air Station, Tustin, CA, 34

NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Transportation, Inc., 34446

Justice Department
See Antitrust Division

Legal Services Corporation
NOTICES
Grant and cooperative agreement awards:
Louisiana Legal Consortium, Inc.; correction, 34451

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 34451–34452

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
New pneumatic tires, 34405–34407

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Government Information Locator Service (GILS), 34412–34414
Massachusetts General Hospital Utility Multi-Programming System (MUMPS), 34414–34416

National Institutes of Health
NOTICES
Meetings:
Research Grants Division Behavioral and Nuerosciences Special Emphasis Panel, 34444
Recombinant DNA molecules research:
Actions under guidelines, 34472–34494
Guidelines, 34496–34547

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 34392
NOTICES
Meetings:
South Slough National Estuarine Research Reserve, OR; management plan, 34416–34417
Permits:
Marine mammals, 34417

National Park Service
NOTICES
Environmental statements; availability, etc.:
Creve Coeur Lake Memorial Park, MO, 34444–34445
Meetings:
Federal Subsistence Board; sheep season, 34445
Gettysburg National Military Park Advisory Commission, 34445–34446

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Marine Corps Air Station, Tustin, CA, 34418–34419
Meetings:
Naval Research Advisory Committee, 34419–34420

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Connecticut Yankee Atomic Power Co., 34452–34453
Applications, hearings, determinations, etc.:
GPU Nuclear Corp., 34453–34454
Nuclear Support Services, Inc., et al., 34454
Washington Public Power Supply System, 34454–34455

Personnel Management Office
PROPOSED RULES
Employment:
Recruitment and relocation bonuses and retention allowances, 34393–34396
NOTICES
Agency information collection activities under OMB review, 34455
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 34455–34457

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Petroleum, WV, 34457

Presidential Documents
PROCLAMATIONS
Special observances:
50th Anniversary of the Liberation of Guam (Proc. 6705), 34343–34344
EXECUTIVE ORDERS
Export control regulations; continuation (EO 12923), 34551–34552

Public Health Service
See Centers for Disease Control and Prevention
See National Institutes of Health

Rural Electrification Administration
RULES
Telecommunications standards and specifications:
Filled fiber optic cables; specification, 34353–34375

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 34465
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 34457–34459
Chicago Stock Exchange, Inc., 34459–34460
National Securities Clearing Corp., 34460–34461
New York Stock Exchange, Inc., 34461–34462
Pacific Stock Exchange, Inc., 34462–34464
Self-regulatory organizations; unlisted trading privileges:
Chicago Stock Exchange, Inc., 34464

Social Security Administration
NOTICES
Social security acquiescence rulings:
Rescissions—

Summy v. Schweiker; payments from Department of Veterans Affairs for unusual medical expenses not income for supplemental security income purposes, 34444

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Fiscal Service
See Internal Revenue Service
NOTICES
Meetings:
Debt Management Advisory Committee, 34464

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Active military service and discharge determinations; certification, 34382–34383

Separate Parts In This Issue

Part II
Environmental Protection Agency, 34468–34469

Part III
Department of Health and Human Services, National Institutes of Health, 34472–34494

Part IV
Department of Health and Human Services, National Institutes of Health, 34496–34547

Part V
The President, 34549–34552

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month c
Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6705 34343
Executive Orders:
12002 (See EO 12923) 34551
12214 (See EO 12923) 34551
12735 (See EO 12923) 34551
12755 (See EO 12923) 34551
12851 (See EO 12923) 34551
12923 34551

5 CFR
Proposed Rules:
575 34393

7 CFR
1421 34345
1755 34353

9 CFR
92 34375
Ch. III 34375
Proposed Rules:
317 34396

14 CFR
Proposed Rules:
39 34396

17 CFR
1 34376
33 34376
190 34376

26 CFR
Proposed Rules:
1 34398

32 CFR
90 34382
91 34382
383 34382
389 34382

34 CFR
Proposed Rules:
Ch. VI 34398

38 CFR
3 34382

40 CFR
52 34383
372 34386
Proposed Rules:
52 (2 documents) 34399, 34401

47 CFR
73 (3 documents) 34391
Proposed Rules:
73 (4 documents) 34404, 34405

49 CFR
1056 34392
Proposed Rules:
571 34405

50 CFR
675 34392

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
6705 34343

Executive Orders:
12002 (See EO 12923) 34551
12214 (See EO 12923) 34551
12735 (See EO 12923) 34551
12755 (See EO 12923) 34551
12851 (See EO 12923) 34551
12923 34551

5 CFR

Proposed Rules:
575 34393

7 CFR
1421 34345
1755 34353

9 CFR
92 34375
Ch. III 34375

Proposed Rules:
317 34396

14 CFR

Proposed Rules:
39 34396

17 CFR
1 34376
33 34376
190 34376

26 CFR

Proposed Rules:
1 34398

32 CFR
90 34382
91 34382
383 34382
389 34382

34 CFR

Proposed Rules:
Ch. VI 34398

38 CFR
3 34382

40 CFR
52 34383
372 34386

Proposed Rules:
52 (2 documents) 34399, 34401

47 CFR
73 (3 documents) 34391

Proposed Rules:
73 (4 documents) 34404, 34405

49 CFR
1056 34392

Proposed Rules:
571 34405

50 CFR
675 34392

VOL
59
ISS
1
2
7
JL
5
994
UMI

Federal Register
Vol. 59, No. 127
Tuesday, July 5, 1994

Title 3—

The President

Pr

50

By

A

Fif
55,
of
by

The
the
the
of
loc
isla
isla
the

The
dur
in
hur
offe
a c
Isla
bac
off

The
atta
wer

Chi

And
a q
the

NO
of
and
"50
to o

Federal Register
Vol. 59, No. 127
Tuesday, July 5, 1994

Presidential Documents

Title 3—

The President

Proclamation 6705 of June 30, 1994

50th Anniversary of the Liberation of Guam

By the President of the United States of America

A Proclamation

Fifty years ago, on July 21, 1944, after two and a half years of occupation, 55,000 United States Marines and soldiers stormed the small Pacific Island of Guam in an effort to bring about the liberation of a people oppressed by tyranny.

The conquest of Guam by Imperial Japanese forces had begun shortly after the attack on Pearl Harbor when Saipan-based Japanese bombers launched the first in a series of raids on the island. The small defending force consisted of a handful of military and civilian construction workers, as well as the local Guam Insular Guard and the Guam Militia. Hopes of defending the island ended in the early morning hours of December 10, 1941, when the island's governor surrendered his post and the island, thus making Guam the only American community to be occupied during World War II.

The Chamorros, the indigenous people of Guam, endured great hardships during the occupation as their captors forced them to work long hours in the fields, repair or build airfields and defense installations, and dig hundreds of Japanese shelter caves. But liberation was close at hand. Guam offered an ideal strategic position for the Allied forces, as it would provide a centralized location between the Japanese homeland and the Philippine Islands to launch long-range bomber attacks. By taking the Marianas Islands back, we would also be able to sever vital enemy supply lines, thus cutting off thousands of enemy soldiers and ending their effectiveness in the war.

The battle for Guam was fierce. Enemy forces continued to launch counter-attacks despite their lack of supplies or hope of winning. But the Americans were just as determined and went to great lengths to complete their mission.

Chief of Staff General Dwight D. Eisenhower stated it best when he said:

> "In a nation at war, teamwork by the whole people is necessary for victory. But the issue is decided on the battlefield, toward which all national effort leads. The country's fate lies in the hands of its soldier citizens; in the clash of battle is found the final test of plans, training, equipment, and—above all—the fighting spirit of units and individuals."

And it was the spirit of the Americans fighting on Guam that brought a quick end to organized resistance on the island as it was secured by the American forces on August 10, 1944.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 21, 1994, as the "50th Anniversary of the Liberation of Guam." I call upon all Americans to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of June, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-16327
Filed 6-30-94; 2:20 pm]
Billing code 3195-01-P

Rules and Regulatio

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560-AD74

General Price Support Regulations for Grain, Rice, and Oilseeds for 1993 and Subsequent Crop Years

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations with respect to the price support loan programs for grains and similarly handled commodities, including oilseeds (canola, mustard seed, rapeseed, safflower seed, soybeans, and sunflower seed), which are conducted by the Commodity Credit Corporation (CCC) in accordance with the Agricultural Act of 1949, as amended (the 1949 Act), and other acts. The amendments made by this interim rule will provide greater clarity, enhance the administration of CCC programs by providing uniformity between CCC price support programs, eliminate obsolete provisions, provide more authority to State and county committees in administering the programs, lessen the administrative actions CCC imposes on producers who violate the loan and loan deficiency payment (LDP) agreements, and correct errors.

DATES: Interim rule effective July 5, 1994. Comments must be received on or before August 4, 1994, in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), PO Box 2415, Washington, DC 20013-2415; telephone 202-720-7641.

Rules and Regulations

Federal Register
Vol. 59, No. 127
Tuesday, July 5, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AD74

General Price Support Regulations for Grain, Rice, and Oilseeds for 1993 and Subsequent Crop Years

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations with respect to the price support loan programs for grains and similarly handled commodities, including oilseeds (canola, mustard seed, rapeseed, safflower seed, soybeans, and sunflower seed), which are conducted by the Commodity Credit Corporation (CCC) in accordance with the Agricultural Act of 1949, as amended (the 1949 Act), and other acts. The amendments made by this interim rule will provide greater clarity, enhance the administration of CCC programs by providing uniformity between CCC price support programs, eliminate obsolete provisions, provide more authority to State and county committees in administering the programs, lessen the administrative actions CCC imposes on producers who violate the loan and loan deficiency payment (LDP) agreements, and correct errors.

DATES: Interim rule effective July 5, 1994. Comments must be received on or before August 4, 1994, in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), PO Box 2415, Washington, DC 20013–2415; telephone 202–720–7641. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday, except holidays, in room 3623, South Agriculture Building, USDA, 14th Street and Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Wright, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, PO Box 2415, Washington, DC 20013–2415; telephone 202–720–8481.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This interim rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this interim rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Public reporting burden for the information collections contained in this regulation with respect to price support programs is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. The information collections have previously been cleared under the current regulations by the Office of Management and Budget (OMB), and assigned OMB Nos. 0560–0087 and 0560–0129. In accordance with the provisions of 44 U.S.C. 35, the information collection requirements that are revised as a result of this rule will be resubmitted to OMB for review.

Comments

Since producers are currently making decisions regarding commodities which may be pledged as collateral for CCC price support loans, the provisions of this interim rule are effective upon publication in the **Federal Register**. Comments are requested, however, and will be taken into consideration when developing the final rule. This interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices and provide interim financing to producers to assist in the orderly marketing of eligible commodities.

This interim rule amends regulations found at 7 CFR part 1421 to provide rules for administering CCC price support programs for the 1993 and subsequent crop years.

Section 1421.1 is amended to remove the reference to soybeans. Soybeans are already included because they are defined as an oilseed in § 1421.3.

Section 1421.3 is amended to: (a) Add the reference to part 1425; (b) clarify that the definitions in this part apply if there are any conflicts with the

referenced parts; and (c) add a definition of high moisture commodities.

This interim rule amends § 1421.4(b) to add references to a receiver, guardian, or trustee which were inadvertently omitted. In addition, § 1421.4(f) is amended to remove an obsolete reference.

Section 1421.5(b)(1) is amended to clarify the application of the provision of the paragraph to loans, purchases, and LDP's and § 1421.5(b)(4)(iv) to correct the unit of measure for peanuts to tons and hundredths of a ton.

Section 110 of the 1949 Act sets forth the statutory authority for the farmer owned reserve (FOR) program for wheat and feed grains.

Producers with regular 9-month nonrecourse price support loans are eligible to enter the FOR upon maturity of the regular loan. Producers may repay regular 9-month loans and repledge the commodity pledged as collateral for such initial loan for a subsequent loan. Under current program regulations, the maturity date for the subsequent loan is the same as the maturity date for the initial 9-month loan. Section 110(b)(1) of the 1949 Act provides, in part, that "an extended loan shall only be made to a producer after the expiration of a 9-month price support loan * * *." Accordingly, under current program regulations, grain pledged as collateral for a subsequent loan is not eligible to be pledged as collateral for a FOR loan because the grain is not placed into the FOR "after the expiration of a 9-month price support loan".

This interim rule amends § 1421.5(d)(2) to provide that CCC may allow producers to extend price support loans which are less than 9 months in length because the collateral securing such loan had been previously pledged as collateral for a price support loan so that the maturity date for such subsequent loan is the last day of the ninth month following the month such subsequent loan was disbursed. This would permit producers having such a loan to enter into the FOR upon maturity if all other eligibility requirements are met.

This interim rule amends § 1421.7 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively. The weed control provisions are removed because CCC has determined that weed control laws do not affect the value of a commodity.

In addition, this interim rule amends § 1421.7(c)(1) to include rice and to remove the reference to the weed control law discounts. Section 1421.7 is also amended to redesignate paragraph (c)(3) as (c)(4) and add a new paragraph (c)(3), which was inadvertently omitted, which includes the method to determine the loan rate for rice based on the milling yield.

This interim rule amends § 1421.8(b)(2) to remove an incorrect reference to the United States Warehouse Act.

This interim rule amends § 1421.9(f)(2)(iv) by removing paragraph (G) to correct an error. Rice has not been stored identity preserved for many years.

This interim rule amends §§ 1421.9(f)(2)(xiv)(B)(5)(v) and 1421.18(b)(15)(ii)(G) to correct the terminology that the sunflower seed must pass through a $^{14}/_{64}$" round hole screen.

This interim rule amends § 1421.11(a) to correct a typographical error.

Provisions for taking administrative offsets are provided in part 3 of this title and part 1403 of this chapter. Accordingly, this interim rule removes and reserves § 1421.14.

This interim rule amends § 1421.16 (a) and (c) to include applicable references to Forms CCC–666, CCC–666 LDP, CCC–678, and CCC–709 and to remove incorrect references to Forms CCC–700 and CCC–701.

Producers who violate the loan note and security agreement by moving farm-stored loan collateral from the structures designated for the storage of such loan collateral, without prior written consent of the county committee, are subject to liquidated damages. In some cases, the collateral is moved to other structures on the farm which makes it possible for CCC to perfect its security on such collateral. CCC has determined that when such security can be established, producers should not be subject to such liquidated damages. Accordingly, this interim rule amends § 1421.16(b)(2) to clarify that unauthorized removal only includes cases where CCC cannot obtain the first lien on the collateral.

It is difficult to prove the amount of damages to CCC for loan and LDP violations committed by producers; however, 20 and 50 percent of the loan and LDP rates, as applicable, were established for first and second violations, respectively, when the county committee determined that the producer acted in good faith. CCC has determined that the liquidated damages can be reduced without affecting the administration of the loan and LDP programs. Accordingly, this interim rule amends § 1421.16 to: (a) Decrease the liquidated damages amounts; and (b) add paragraph (q) to provide that any or all of the liquidated damages may be waived under certain conditions.

In addition, under certain conditions, producers who violate loan and LDP provisions may be denied loans and LDP's on commodities stored on the farm. CCC has determined that this penalty is severe and should only be assessed when the county committee determines that such action is necessary to protect the interests of CCC. Accordingly, in § 1421.16, paragraphs (d) and (e) have been amended to remove the requirement for denial of farm-stored loans or LDP's and paragraphs (k) and (l) have been amended to clarify that producers must pay the liquidated damages assessed and such amounts cannot be repaid with a commodity certificate under the provisions of part 1470 of this chapter.

Section 1421.17 provides requirements for farm-stored commodities. Section 1421.17 is amended as follows: (a) Paragraph (a) has been amended to clarify that the reduced quantity for loan shall be the mortgaged loan quantity; (b) paragraph (c)(1) has been amended to clarify that, when farm-stored loans are transferred from the farm to warehouse storage, the warehouse-stored quantity cannot exceed 110 percent of the loan quantity transferred from the farm-stored loan; (c) paragraph (c)(3) has been amended to correct a reference; and (d) paragraph (e) has been amended to include a reference to Form CCC–709 which was omitted.

This interim rule amends § 1421.18 to correct the following errors: (a) paragraph (b)(12)(iv)(B) has been amended to correct the spelling of "green"; (b) paragraph (b)(13)(iv)(D) has been amended to correct punctuation; and (c) paragraph (b)(13)(iv)(D)(5) has been amended to correct the spelling of "inconspicuous."

This interim rule amends § 1421.19(b) to correct the spelling of "Form."

This interim rule amends § 1421.20 as follows: (a) paragraph (a)(2) to correct two references; and (b) to add paragraph (e) to provide if a producer moves a commodity from storage without prior approval on a nonworkday, the producer will not be subject to administrative actions providing the producer notifies the county office on the next workday that the commodity has been moved and such movement is approved by CCC.

Section 1421.22 provides the settlement provisions of price support loans. This interim rule amends § 1421.22 as follows: (a) Paragraph (c)(3)(i)(A) to correct the percentage of foreign material for peanuts; (b) paragraph (c)(4) to remove references to location differentials for rice because such reference is obsolete; and (c) to add

paragraphs (e) through (i) to include provisions that: (1) CCC may pay to producers the cost for hauling commodities delivered to CCC beyond the producer's normal delivery point, (2) producers may deliver commodities to CCC directly to rail cars, (3) producers will receive storage credit for commodities delivered or forfeited to CCC in advance of the loan maturity date, and (4) producers will receive credit for prepaid warehouse charges for receiving and loading out for commodities delivered or forfeited to CCC.

Section 1421.29 provides the provisions for LDP's. Section 1421.29 is amended as follows: (a) paragraph (b)(3) removes references to obsolete forms and corrects an incorrect reference; (b) paragraphs (c) and (g) adds references to rice for clarity; and (c) paragraph (h) is removed and paragraph (i) is redesignated as paragraph (h). This provision was included to allow producers delivering commodities to a buyer directly after harvest an opportunity to file for a LDP on the day such commodities were harvested and delivered. This required producers to report deliveries to the county office before the next loan repayment rate announcement. Since this provision was implemented, CCC developed a more workable procedure that allows producers to request LDP's in advance of harvest and delivery with the LDP rate based on the loan repayment rate announced and in effect on the day the commodity is delivered to the processor, buyer, warehouse, or cooperative according to redesignated § 1421.29(h). Accordingly, the provisions in removed paragraph (h) are no longer needed.

This interim rule amends § 1421.202 to add a reference to wheat which was inadvertently omitted and corrects an incorrect reference.

Section 1421.205 is amended as follows: (a) paragraphs (a) and (b) clarify that a reserve loan is approved rather than disbursed; and (b) paragraph (a)(2) clarifies the quantity for which the reserve agreement is approved.

This interim rule amends § 1421.206(b) as follows: (a) removes references to grain which grades "sample grade" because such grain is not eligible for a FOR loan; and (b) removes the provision that corn eligible for the FOR must be shelled corn. Currently, corn pledged as collateral for a FOR loan is restricted to shelled corn. CCC has determined that producers of ear corn should not be denied participation in the FOR and that the quality of the grain in the FOR would not be adversely affected if ear corn is

paragraphs (e) through (i) to include provisions that: (1) CCC may pay to producers the cost for hauling commodities delivered to CCC beyond the producer's normal delivery point, (2) producers may deliver commodities to CCC directly to rail cars, (3) producers will receive storage credit for commodities delivered or forfeited to CCC in advance of the loan maturity date, and (4) producers will receive credit for prepaid warehouse charges for receiving and loading out for commodities delivered or forfeited to CCC.

Section 1421.29 provides the provisions for LDP's. Section 1421.29 is amended as follows: (a) paragraph (b)(3) removes references to obsolete forms and corrects an incorrect reference; (b) paragraphs (c) and (g) adds references to rice for clarity; and (c) paragraph (h) is removed and paragraph (i) is redesignated as paragraph (h). This provision was included to allow producers delivering commodities to a buyer directly after harvest an opportunity to file for a LDP on the day such commodities were harvested and delivered. This required producers to report deliveries to the county office before the next loan repayment rate announcement. Since this provision was implemented, CCC developed a more workable procedure that allows producers to request LDP's in advance of harvest and delivery with the LDP rate based on the loan repayment rate announced and in effect on the day the commodity is delivered to the processor, buyer, warehouse, or cooperative according to redesignated § 1421.29(h). Accordingly, the provisions in removed paragraph (h) are no longer needed.

This interim rule amends § 1421.202 to add a reference to wheat which was inadvertently omitted and corrects an incorrect reference.

Section 1421.205 is amended as follows: (a) paragraphs (a) and (b) clarify that a reserve loan is approved rather than disbursed; and (b) paragraph (a)(2) clarifies the quantity for which the reserve agreement is approved.

This interim rule amends § 1421.206(b) as follows: (a) removes references to grain which grades "sample grade" because such grain is not eligible for a FOR loan; and (b) removes the provision that corn eligible for the FOR must be shelled corn. Currently, corn pledged as collateral for a FOR loan is restricted to shelled corn. CCC has determined that producers of ear corn should not be denied participation in the FOR and that the quality of the grain in the FOR would not be adversely affected if ear corn is permitted into the FOR. Accordingly, this interim rule removes the stipulation that corn must be shelled.

Quantities of a commodity approved for FOR that are in approved storage earn storage credit and CCC pays producers storage payments at the end of each quarterly period. Producers with commodities stored in approved warehouse storage must pay or provide for the storage charged by the warehouse before CCC will pay the FOR storage payment. This interim rule amends § 1421.207 to clarify these provisions.

Section 1421.208 has been amended to remove a typographical error.

Section 1421.210 provides the commingling and rotation provisions for FOR loans. Accordingly, § 1421.210 is amended as follows: (a) paragraph (a) clarifies the provisions that are applicable to producers who commingle a quantity of an eligible commodity with the quantity approved for FOR; (b) paragraphs (b)(2) and (b)(4) add the provision that producers may rotate FOR loan collateral by replacing such collateral with grain from existing stocks. In the past, producers were only allowed to use grain from their most recent harvest as replacement stocks for rotated FOR loan collateral. CCC has determined that this requirement was unnecessary and that CCC would be at no risk by allowing producers to use grain from their existing stocks of harvested grain from any past harvest; (c) paragraph (b)(5)(i) corrects punctuation, paragraph (b)(5)(ii) removes an incorrect reference, and paragraph (b)(5)(iv) reduces the percent of liquidated damages for failing to replace the rotated quantity; (d) paragraph (c)(1) removes the reference to new grain to conform to the changes made in paragraphs (b)(2) and (b)(4); (e) paragraph (c)(2) corrects a typographical error; (f) paragraph (c)(3) clarifies that storage shall not be earned for FOR collateral released for sale by the producer from the date of the rotation request until the replacement stocks are in place; (g) paragraph (c)(4) requires that the producer certify to the FOR quantity that the producer is requesting CCC to release for rotation that the producer intends to feed and clarifies that storage shall not be earned for such collateral released from the date of the rotation request until the replacement stocks are in place; and (h) paragraph (c)(5) removes the requirement to measure and inspect the grain to be released and the growing crop of the replacement stocks to conform to the changes made in paragraphs (b)(2) and (b)(4), and clarifies that the replacement stocks, when such stocks are already in store on the farm, must be inspected and measured before the release of the FOR collateral.

This interim rule amends § 1421.211 to clarify that producers may repay FOR loans at any time at the marketing loan repayment rate if such rate is in effect.

This interim rule amends § 1421.215 to conform to the existing provisions for loss of or damage to regular loans in § 1421.15.

This interim rule amends § 1421.320 to clarify that rice marketing certificate payments may be paid in a form other than commodity certificates, and such payments apply to that quantity of a commodity redeemed from loan or on which a LDP was made.

This interim rule amends §§ 1421.321 1421.323 and 1421.324 to correct references to the agreement with CCC for a rice marketing certificate payments and amends the heading to § 1421.323.

This interim rule amends § 1421.323(b) to clarify that rice marketing certificate payments apply to that quantity of a commodity redeemed from loan or on which a LDP was made.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c. Subpart—Rice Marketing Certificate Program is also issued under authority of 7 U.S.C 1441–2; 15 U.S.C. 714b and 714c.

2. Section 1421.1 is amended by revising paragraph (a) to read as follows:

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 1991 and subsequent crops of barley, corn, grain sorghum, oats, peanuts, rice, rye, wheat, and oilseeds as set forth in § 1421.3. These regulations set forth the terms and conditions under which price support loans and purchase agreements shall be entered into and loan deficiency payments made by the Commodity Credit Corporation (CCC). Additional terms and conditions are set forth in the note and security agreement, loan deficiency payment application, and the purchase agreement which must be executed by a producer in order to

receive price support. With respect to warehouse-stored loans for peanuts, such loans shall be made in accordance with part 1446 of this title.

* * * * *

3. Section 1421.3 is revised to read as follows:

§ 1421.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 719 of this title and parts 1413 and 1425 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Basic support rate means the price support rate established by CCC for a commodity before any adjustment for premiums and discounts.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for price support. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

High moisture commodities means barley, corn, and grain sorghum normally harvested and intended to be stored or marketed in a high moisture condition.

Loan deficiency quantity means the eligible quantity which was certified by the producer as eligible to be pledged as collateral for a price support loan, for which the producer elected to forgo obtaining price support.

Loan quantity means the quantity on which the price support loan was disbursed shown on the note and security agreement.

Oilseeds means any crop of soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by CCC.

Purchase quantity means the eligible quantity designated on Form CCC–614, Purchase Agreement for purchase by CCC.

4. Section 1421.4 is amended by revising paragraphs (b) and (f) to read as follows:

§ 1421.4 Eligible producers.

* * * * *

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. Loan, loan deficiency payment, or purchase agreement documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

* * * * *

(f) *Warehouse-stored loans to warehousemen.* Warehouse-stored loans may be made to a warehouseman who, acting on behalf and with the authorization of a producer, tenders to CCC warehouse receipts issued by such warehouseman for a commodity produced by such warehouseman only in those States where the issuance and pledge of such warehouse receipts is valid under State law.

* * * * *

5. Section 1421.5 is amended by revising paragraphs (b)(1), (b)(4)(iv), and (d)(2) to read as follows:

§ 1421.5 General eligibility requirements.

* * * * *

(b) (1) Commodities for loans, purchases, or LDP's must be tendered to CCC by an eligible producer and must be eligible and in existence when approved by CCC. For loans and purchases, commodities must also be stored in approved storage at the time of disbursement of loan or purchase agreement proceeds. The commodity must not have been sold, nor any sales option on such commodity granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the commodity to CCC as collateral for a price support loan or to obtain a loan deficiency payment. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

* * * * *

(4) * * *

(iv) Quantities of peanuts shall be in tons and hundredths of a ton;

* * * * *

(d) * * *

(2) The commodity reoffered as security for the subsequent loan shall have the same maturity date as the original loan, except that if a farmer owned reserve program is in effect in accordance with §§ 1421.200 through 1421.217, CCC may allow a producer to request that maturity date of such subsequent loan be the last day of the ninth month following the month the subsequent loan is disbursed.

* * * * *

6. Section 1421.7 is amended by:

A. Removing paragraph (b),

B. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c) respectively,

C. Revising redesignated paragraph (c)(1),

D. Redesignating redesignated paragraph (c)(3) as paragraph (c)(4), and

E. Adding a new paragraph (c)(3) to read as follows:

§ 1421.7 Adjustment of basic support rates.

* * * * *

(c) (1) With respect to all commodities except peanuts and rice, warehouse-stored loans and purchase agreement payments shall be disbursed at levels based on the basic county support rate for the county where the commodity is stored, adjusted for the schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

* * * * *

(3) With respect to rice, warehouse-stored loans and purchase agreement payments shall be disbursed at levels based on the milling yields times the whole and broken kernel loan rates, adjusted for the schedule of discounts on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

* * * * *

7. Section 1421.8 is amended by revising paragraph (b)(2) to read as follows:

§ 1421.8 Approved storage.

* * * * *

(b) * * *

(2) A warehouse operated by an approved cooperative as defined in part 1425 of this chapter.

* * * * *

8. Section 1421.9 is amended by:

A. Revising paragraphs (f)(2)(iv)(E) and (f)(2)(iv)(F),

B. Removing paragraph (f)(2)(iv)(G), and

C. Revising paragraph (f)(2)(xiv)(B)(*5*)(*v*) to read as follows:

§ 1421.9 Warehouse receipts.

* * * * *

(f) * * *

(2) * * *

(iv) * * *

(E) Milling yield; and

(F) Moisture.

* * * * *

(xiv) * * *

(B) * * *

(*5*) * * *

(*v*) Seed size passing through a 14/64" round hole screen;

* * * * *

9. Section 1421.11(a) is revised to read as follows:

§ 1421.11 Liens.

(a) The county office shall file or record, as required by State law, all security agreements which are issued with respect to commodities pledged as collateral for price support loans. The cost of filing and recording shall be paid for by CCC.

* * * * *

§ 1421.14 [Removed and Reserved]

10. Section 1421.14 is removed and reserved.

11. Section 1421.16 is amended by:

A. Revising paragraph (a)(1) introductory text and revising paragraphs (a)(1)(i), (a)(2), (a)(3), (b)(1), (b)(2), (c), (d) introductory text, and (d)(2),

B. Revising paragraphs (e), (k)(1)(ii)(C), and (k)(1)(ii)(D),

C. Adding paragraph (k)(1)(ii)(E),

D. Revising paragraphs (l)(1)(ii) and (l)(1)(iii), and

E. Adding paragraphs (l)(1)(iv) and (q) to read as follows:

§ 1421.16 Personal liability of the producers.

(a) * * *

(1) When signing Form CCC–666, Farm Stored Loan Quantity Certification, when applicable, Form CCC–677, Farm Storage Note and Security Agreement, and Form CCC–678, Warehouse Storage Note and Security Agreement, that the producer will not:

(i) Provide an incorrect certification of the quantity or make any fraudulent representation for loan, or

* * * * *

(2) When signing Form CCC–666 LDP, Loan Deficiency Payment Application and Certification, or CCC–709, Direct Loan Deficiency Payment Agreement, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purposes.

(3) That violation of the terms and conditions of the Form CCC–677, Form CCC–678, Form CCC–666 LDP, or Form CCC–709, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity which is not actually in existence or for a quantity on which the producer is not eligible.

(xiv) * * *
(B) * * *
(5) * * *
(v) Seed size passing through a 14/64" round hole screen;
* * * * *

9. Section 1421.11(a) is revised to read as follows:

§ 1421.11 Liens.

(a) The county office shall file or record, as required by State law, all security agreements which are issued with respect to commodities pledged as collateral for price support loans. The cost of filing and recording shall be paid for by CCC.
* * * * *

§ 1421.14 [Removed and Reserved]

10. Section 1421.14 is removed and reserved.

11. Section 1421.16 is amended by:

A. Revising paragraph (a)(1) introductory text and revising paragraphs (a)(1)(i), (a)(2), (a)(3), (b)(1), (b)(2), (c), (d) introductory text, and (d)(2),

B. Revising paragraphs (e), (k)(1)(ii)(C), and (k)(1)(ii)(D),

C. Adding paragraph (k)(1)(ii)(E),

D. Revising paragraphs (l)(1)(ii) and (l)(1)(iii), and

E. Adding paragraphs (l)(1)(iv) and (q) to read as follows:

§ 1421.16 Personal liability of the producers.

(a) * * *

(1) When signing Form CCC–666, Farm Stored Loan Quantity Certification, when applicable, Form CCC–677, Farm Storage Note and Security Agreement, and Form CCC–678, Warehouse Storage Note and Security Agreement, that the producer will not:

(i) Provide an incorrect certification of the quantity or make any fraudulent representation for loan, or
* * * * *

(2) When signing Form CCC–666 LDP, Loan Deficiency Payment Application and Certification, or CCC–709, Direct Loan Deficiency Payment Agreement, as applicable, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purposes.

(3) That violation of the terms and conditions of the Form CCC–677, Form CCC–678, Form CCC–666 LDP, or Form CCC–709, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity which is not actually in existence or for a quantity on which the producer is not eligible.

(b) * * *

(1) Incorrect certification is the certifying of a quantity of a commodity for the purpose of obtaining a commodity loan or a loan deficiency payment in excess of the quantity eligible for such loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments.

(2) Unauthorized removal is the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures which were designated when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written authorization from the county committee in accordance with § 1421.20, if the movement of loan collateral prevents CCC from obtaining the first lien on such collateral.
* * * * *

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for the violations in accordance with paragraph (b) of this section. Accordingly, if the county committee determines that the producer has violated the terms and conditions of Form CCC–677, Form CCC–678, Form CCC–666 LDP, or Form CCC–709, as applicable, liquidated damages shall be assessed on the quantity of the commodity which is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(d) For liquidated damages assessed in accordance with paragraph (c)(1) of this section, the county committee shall:
* * * * *

(2) If the producer fails to pay such amount within 30 days from the date of notification, call the applicable loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(e) For liquidated damages assessed in accordance with paragraph (c)(2) of this section, the county committee shall call the loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.
* * * * *

(k) (1) * * *
(ii) * * *

(C) All other costs which CCC would not have incurred but for the fraudulent representation, the unauthorized disposition or movement of the loan collateral;

(D) Interest on such amounts;

(E) Liquidated damages assessed under paragraph (c) of this section; and

(1) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts; or

(2) By repayment of such loan at the lower loan repayment rate as prescribed in § 1421.25 and may not utilize the provisions of part 1470 of this chapter with respect to such loans.
* * * * *

(l)(1) * * *
* * * * *

(l)(1) * * *

(ii) All other costs which CCC would not have incurred but for the producer's fraudulent representation;

(iii) Interest which has accrued with respect to such amounts; and

(iv) Liquidated damages assessed under paragraph (c) of this section.
* * * * *

(q) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) of this section may be waived as determined by CCC.

12. Section 1421.17 is amended by revising paragraphs (a), (c)(1), (c)(3), and (e) to read as follows:

§ 1421.17 Farm-stored commodities.

(a) The quantity of a commodity which shall be used to determine the amount of a farm-stored loan shall not exceed a percentage (the "loan percentage"), as established by the State committee which shall not exceed a percentage established by CCC, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. The quantity of a commodity pledged as security for a farm-storage loan shall be measured or certified in accordance with paragraph (e) of this section. Farm-stored loans

may be made on less than the maximum quantity eligible for loan at the producer's request. If the loan quantity is reduced by the State committee, the county committee, or by request of the producer, such reduced quantity shall be the mortgaged quantity on the note and security agreement for the commodity in a bin, crib, or lot on which the loan is made.

* * * * *

(c) * * *

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed 110 percent of the loan quantity transferred from the farm-stored loan.

* * * * *

(3) For loans extended in accordance with §§ 1421.200 through 1421.217, CCC may limit the quantity for a warehouse-stored loan to the quantity approved on the farmer owned reserve agreement loan.

* * * * *

(e) The quantity of a commodity pledged as security for a farm-stored loan or for which a loan deficiency payment is requested may be determined on the basis of the quantity of the commodity which an eligible producer certifies in writing on Form CCC–666 for a loan and Form CCC–666 LDP or CCC–709, as applicable, for a loan deficiency payment, is eligible to be pledged as collateral and is otherwise available for loan or loan deficiency payment purposes.

* * * * *

13. Section 1421.18 is amended by revising paragraphs (b)(12)(iv)(B), (b)(13)(iv)(D), (b)(13)(iv)(D)(5), and (b)(15)(ii)(G) to read as follows:

§ 1421.18 Warehouse-stored loans.

* * * * *

(b) * * *

(12) * * *

(iv) * * *

(B) For distinctly green seeds, 1.5 percent;

* * * * *

(13) * * *

(iv) * * *

(D) For admixtures:

* * * * *

(5) For inconspicuous admixtures, 5.0 percent;

* * * * *

(15) * * *

(ii) * * *

(G) The sunflower seed gross weight must be adjusted downward to reflect undersized seed, passing through a 14/64" round hole screen, dockage, and for the presence of any admixtures.

14. Section 1421.19 is amended by revising paragraph (b) to read as follows:

§ 1421.19 Liquidation of loans.

* * * * *

(b) If the producer desires to deliver eligible commodities to CCC in satisfaction of the loan, the producer must notify CCC of such intention before the loan maturity date by giving written notice to the county office which disbursed the proceeds for such loan. If the producer fails to deliver such commodities to CCC by the date specified on Form CCC–691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with part 1405 of this chapter.

* * * * *

15. Section 1421.20 is amended by:

A. Revising paragraph (a)(2), and

B. Adding paragraph (e) to read as follows:

§ 1421.20 Release of the commodity pledged as collateral for a loan.

(a) * * *

(2) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. The producer may request and CCC may approve removal of a quantity of the commodity from storage, without the payment of CCC of the loan amount, if the principal amount outstanding on such loan before such removal does not exceed the maximum loan value of the quantity of the commodity remaining in storage after such removal. When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC–681–1, Authorization for Delivery of Loan Collateral for Sale, such producer may not repay the loan at the level that is less than the loan level determined in accordance with § 1421.25(a)(1)(ii), (b)(2), or (d)(2).

* * * * *

(e) If the commodity is moved on a nonworkday from storage without obtaining prior approval to move such commodity, such removal shall constitute unauthorized removal or disposition, as applicable, of such commodity unless the producer notifies the county office the next workday that such commodity has been moved and such movement is approved by CCC.

16. Section 1421.22 is amended by:

A. Revising paragraphs (c)(3)(i)(A) and (c)(4), and

B. Adding paragraphs (e), (f), (g), (h), and (i) to read as follows:

§ 1421.22 Settlement.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 15 percent; and

* * * * *

(4) With respect to rice acquired by CCC at a location other than an approved warehouse, settlement shall be made on the basis of the class, grade, and quality entries set forth in the Federal-State inspection certificate and on the basis of the quantity set forth in the weight certificates.

* * * * *

(e) When a producer is directed by the county office to haul the commodity for a loan, except aromatic rice, a greater distance than would have been necessary to make delivery to the producer's customary delivery point, as determined by CCC, the producer will be allowed compensation, as determined by the State committee at a rate not to exceed the common carrier truck rate or the rate available from local truckers, for hauling the eligible commodity the additional distance. In determining the rate of payment for excess hauling, the State committee may establish reasonable mileage minimums below which producers will not receive compensation for hauling.

(f) (1) Producers may request trackloading for loan collateral where approved warehouse space is not available locally or where KCCO determines that it would be to the benefit of CCC. Where local weighing facilities are not available or when requested by producers, destination weights may be used for settlement purposes. All producers loading in the same car must sign an agreement stating the percentage share of the total quantity to be credited to each. When requested by producers prior to delivery of the commodity, settlement may be made on the basis of destination grades. Such destination grade determination for a car shall be applied to the entire quantity of a commodity loaded into the same car, regardless of the grade or quality of a commodity loaded into the car by any producer.

(2) A trackloading payment of 19 cents per bushel (or 31.66 cents per hundredweight in the case of sorghum, oilseeds, and rice, excluding aromatic rice) shall be made to the producer on an eligible commodity delivered to CCC under this subsection.

(g) If a farm-stored commodity is delivered in advance of the applicable loan maturity date as provided in §§ 1421.19 and 1421.21, a deduction for storage charges shall be made. The deduction shall be made for the period from the date of delivery to the applicable maturity date or expiration date for the commodity. Such deduction shall be at the rate charged by the warehouse to which the commodity was delivered. No deduction for storage charges shall be made for early delivery of a farm-stored commodity if the loan maturity date is accelerated by CCC under a general acceleration of the maturity date in a particular area.

(h) A refund of warehouse storage charges will be made by CCC to the producer if the maturity date of a warehouse storage loan is accelerated by CCC for reasons other than any wrongful act or omission on the part of the producer, and the commodity is not redeemed. The amount of the storage charges to be refunded shall be computed at the lesser of the UGSA rate or the rate prepaid by the producer for the period of unearned storage.

(i) If a warehouse charges the producer for either the receiving charges or the receiving and loading out charges on an eligible commodity in an approved warehouse, the producer shall, upon delivery to CCC of warehouse receipts representing the commodity stored in such warehouse, be reimbursed or given credit by the county office for such prepaid charges at the lesser of the UGSA rate or the rate prepaid by the producer. The producer must furnish to the county office,

approved warehouse space is not available locally or where KCCO determines that it would be to the benefit of CCC. Where local weighing facilities are not available or when requested by producers, destination weights may be used for settlement purposes. All producers loading in the same car must sign an agreement stating the percentage share of the total quantity to be credited to each. When requested by producers prior to delivery of the commodity, settlement may be made on the basis of destination grades. Such destination grade determination for a car shall be applied to the entire quantity of a commodity loaded into the same car, regardless of the grade or quality of a commodity loaded into the car by any producer.

(2) A trackloading payment of 19 cents per bushel (or 31.66 cents per hundredweight in the case of sorghum, oilseeds, and rice, excluding aromatic rice) shall be made to the producer on an eligible commodity delivered to CCC under this subsection.

(g) If a farm-stored commodity is delivered in advance of the applicable loan maturity date as provided in §§ 1421.19 and 1421.21, a deduction for storage charges shall be made. The deduction shall be made for the period from the date of delivery to the applicable maturity date or expiration date for the commodity. Such deduction shall be at the rate charged by the warehouse to which the commodity was delivered. No deduction for storage charges shall be made for early delivery of a farm-stored commodity if the loan maturity date is accelerated by CCC under a general acceleration of the maturity date in a particular area.

(h) A refund of warehouse storage charges will be made by CCC to the producer if the maturity date of a warehouse storage loan is accelerated by CCC for reasons other than any wrongful act or omission on the part of the producer, and the commodity is not redeemed. The amount of the storage charges to be refunded shall be computed at the lesser of the UGSA rate or the rate prepaid by the producer for the period of unearned storage.

(i) If a warehouse charges the producer for either the receiving charges or the receiving and loading out charges on an eligible commodity in an approved warehouse, the producer shall, upon delivery to CCC of warehouse receipts representing the commodity stored in such warehouse, be reimbursed or given credit by the county office for such prepaid charges at the lesser of the UGSA rate or the rate prepaid by the producer. The producer must furnish to the county office, written evidence signed by the warehouse operator that such charges have been paid.

17. Section 1421.29 is amended by:

A. Revising paragraphs (b)(3), (c), and (g) to read as follows,

B. Removing paragraph (h), and

C. Redesignating paragraph (i) as paragraph (h).

§ 1421.29 Loan deficiency payments.

* * * * *

(b) * * *

(3) File and request payment on Form CCC–666 LDP, unless the producer enters into an agreement according to paragraph (h) of this section, for a quantity of an eligible commodity;

* * * * *

(c) The loan deficiency payment rate for a crop shall be the amount by which the price support loan level for the crop exceeds the level at which CCC has announced that producers may repay their price support loans in accordance with § 1421.25. Such rate shall be the amount determined on the day the producer submits a completed request for a loan deficiency payment to the county office. When such request is for rice and the request provides that the loan deficiency payment rate shall be based on the date of delivery, and the documentation of delivery indicates the rice was delivered after 3 p.m. eastern time, the loan deficiency payment rate in effect after 3 p.m. eastern time of the delivery date shall be used. In all other cases for rice where the loan deficiency payment rate is based on the delivery date, the payment rate in effect at 12:00:01 a.m. eastern time of the delivery date shall be used.

* * * * *

(g) Notwithstanding any other provision of this section, on the day of the announcement of the adjusted world price, applications for loan deficiency payments for rice that specify the payment rate will not be accepted between 2 p.m. eastern time and the time of the world price announcement.

* * * * *

18. Section 1421.202 is revised to read as follows:

§ 1421.202 Length of reserve agreements.

The length of a FOR loan shall be 27 months from the maturity date of the regular price support loan. The day following the maturity date of the regular price support loan shall be the effective date of the FOR loan agreement. In order to assure that producers throughout the United States are treated in a fair and equitable manner, CCC may allow extensions of regular price support loans for wheat, corn, grain sorghum, oats, and barley which expire in or before the month following the month of the date for such commodity as specified in § 1421.201(b). The terms and conditions of such extension shall be provided through actual notice to affected producers. FOR agreements may be extended by CCC, at CCC's sole discretion, at maturity for an additional six months.

19. Section 1421.205 is amended by revising paragraph (a) introductory text and revising paragraphs (a)(2) and (b) to read as follows:

§ 1421.205 Quantity eligible for grain reserve loans.

(a) Farm-stored FOR loans shall be approved on a quantity not to exceed the lesser of:

* * * * *

(2) The quantity upon which the disbursement of the regular price support loan was based.

(b) Warehouse-stored FOR loans shall be approved on a quantity not to exceed the quantity shown on the warehouse receipt or the supplemental certificate, if applicable, which secured the regular price support loan.

20. Section 1421.206 is amended by revising paragraph (b) to read as follows:

§ 1421.206 Quality eligibility requirements of FOR loans.

* * * * *

(b) Grain which is pledged as collateral for a FOR loan must meet the quality eligibility requirements for securing a regular price support loan.

* * * * *

21. Section 1421.207 is amended by revising paragraphs (b)(1), (b)(2)(i), and (b)(2)(iii) to read as follows:

§ 1421.207 Storage rates.

* * * * *

(b) (1) Storage payments shall be paid quarterly, starting from the effective date of the FOR loan. Such payments shall be paid within 30 days after the end of each quarter in which such payments are earned. Storage payments shall not be earned when the grain which was pledged as collateral for the FOR loan is not in storage, as determined by CCC. Storage payments shall not be earned when the 5-day adjusted market price determined in accordance with § 1421.209(e) equals or exceeds 95 percent of the current year's established price for the commodity. In such instance, no storage payments shall be earned from the day the 5-day adjusted market price was equal to or exceeded 95 percent of such established price through the ninetieth day following the last day on which the 5-

day adjusted market price equalled or exceeded 95 percent of such established price.

(2) * * *

(i) A FOR agreement shall not be approved until the producer provides written evidence to CCC that at least the next year's storage, including any storage deduction applicable to the regular loan, has been paid to the warehouse or arrangements for the payment of such storage have been made with the warehouse on the FOR loan quantity.

* * * * *

(iii) The eighth quarterly storage payment shall not be made until the producer provides written evidence to CCC that storage has been paid to the warehouse or arrangements for the payment of such storage have been made with the warehouse on the FOR quantity through the FOR loan maturity date.

* * * * *

22. Section 1421.208 is revised to read as follows:

§ 1421.208 Charging interest.

FOR loans shall not accrue interest unless CCC determines that the 5-day adjusted market price determined in accordance with § 1421.209(e) for the commodity is equal to or exceeds 105 percent of the current year's established price for such commodity. In such instance, interest shall accrue from the day the 5-day adjusted market price was equal to or exceeded 105 percent of such established price and continue to accrue for the balance of the month following the last day on which the 5-day adjusted market price equaled or exceeded 105 percent of such established price through the two succeeding months. The rate of interest which shall be applicable to a FOR loan during an interest-accruing period shall be the rate applicable to the regular price support loan as determined in accordance with part 1405 of this chapter.

23. Section 1421.210 is amended by revising paragraphs (a), (b)(2), (b)(4) introductory text, (b)(4)(ii), (b)(5)(i), (b)(5)(ii), (b)(5)(iv), (c)(1) introductory text, (c)(2), (c)(3), (c)(4), and (c)(5) to read as follows:

§ 1421.210 Commingling and replacement of wheat and feed grains.

(a) In the case of farm-stored FOR loans, if an eligible quantity of a commodity has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a FOR loan unless the provisions in § 1421.17 (b)(1) or (b)(2) are met.

(b) * * *

(2) Grain which is used to replace existing FOR loan collateral must have been produced by the producer and be eligible to be pledged as collateral for a regular price support loan, except that compliance with the terms and conditions of any commodity program conducted in accordance with part 1413 of this chapter on the farm on which such replacement grain was produced is not required. Replacement loan collateral may be grain from the crop which is harvested after the date established by the State committee in accordance with paragraph (b)(1) of this section or be grain from a producer's existing stocks in CCC-approved farm storage. This grain must not have been purchased and must be free of any liens or encumbrances unless waivers that fully protect the interest of CCC are obtained. With respect to wheat, such replacement grain must be of the same class as the regular price support loan collateral.

* * * * *

(4) To protect the interest of CCC in the quantity of collateral to be released for replacement in accordance with paragraph (c)(1)(i) or (c)(1)(iii) of this section, the county committee may require producers to remit payments to the CCC before a request to replace FOR loan collateral is approved. In such cases, the amount to be remitted shall be the smaller of:

* * * * *

(ii) The product of the market price available in the county office on the date that the replacement request was made, times the quantity to be replaced, as determined by CCC.

(5) * * *

(i) The principal amount of the FOR loan and other charges plus interest from the disbursement date of such amount;

(ii) Storage payments made in accordance with the loan from the date the request for replacement was approved for CCC to the disbursement date of such payments;

* * * * *

(iv) Liquidated damages computed by multiplying the quantity not replaced by 25 percent of the loan rate applicable to the loan note.

(c) (1) A producer who files a Form CCC–687–1 or CCC–681 requesting the approval to replace existing FOR loan collateral may after approval of the request:

* * * * *

(2) A producer who delivers grain to a CCC-approved warehouse in accordance with paragraph (c)(1) of this section shall cause to be delivered to CCC a warehouse receipt issued in the name of CCC with respect to such grain. The warehouse receipt shall show that storage charges have been paid or otherwise provided for through the final date specified to complete the replacement, and CCC shall retain control of the receipt until the producer has replaced the original FOR loan collateral with eligible replacement grain. Except as provided in paragraph (b)(3) of this section, if the producer fails to replace the grain within the approved replacement period, CCC shall take title to the warehouse receipt without any further action by the producer and shall determine the value of the grain represented by the receipt. This value shall be determined in accordance with § 1421.22 and shall be credited to the amount owed by the producer as determined in accordance with paragraph (b)(5) of this section.

(3) A producer who, in accordance with paragraph (c)(1) of this section, sells the grain which is the collateral for the FOR loan shall only sell such grain to the person specified on Form CCC–681. Storage payments shall not be earned on the quantity rotated, as determined by CCC, from the date the rotation request is approved until the replacement stocks are in place. To protect the interest of CCC in the quantity of collateral to be released for replacement, the county committee may require the purchaser to make and remit to CCC a check for the full amount of the purchase. In such instances, CCC shall make these funds available to the producer upon the replacement of the original FOR loan collateral with eligible replacement grain if such replacement occurs prior to the final date of the approved replacement period. Except as provided in paragraph (b)(3) of this section; if the producer fails to replace the grain by this date, the producer shall forfeit the sales proceeds to CCC without any further action by the producer. Such sales proceeds shall be credited to the amount owed by the producer as determined in accordance with paragraph (b)(5) of this section.

(4) A producer who, in accordance with paragraph (c)(1) of this section, intends to feed such grain to the producer's own livestock, may only feed the quantity of grain which was approved by the county committee for such purposes. The producer must certify to the quantity the producer intends to use for feed during the approved rotation period. Storage payments shall not be earned on the quantity rotated, as determined by CCC, from the date the rotation request is approved until the replacement stocks are in place in CCC-approved farm storage.

(5) Any producer who files a Form CCC–687–1 or CCC–681 with the county committee shall not remove the existing FOR loan collateral until written approval has been made by the county committee. The producer shall allow a representative of the county committee to inspect and measure, at the producer's expense, the quantity of replacement grain when such replacement stocks are in place in CCC-approved farm storage. Producers who request approval to replace existing FOR loan collateral with existing stocks in CCC-approved farm storage shall not receive approval to remove the existing FOR loan collateral until the replacement stocks have been inspected and measured.

24. Section 1421.211 is revised to read as follows:

§ 1421.211 Redemption requirements and emergency call.

(a) A producer may redeem the commodity pledged as collateral for a FOR loan at any time by repaying the principal amount of the FOR loan and other charges plus interest as provided in this part or, if CCC so announces, an amount less than the principal amount of the FOR loan and other charges plus interest in accordance with § 1421.25(d)(2).

(b) Notwithstanding any other provision of this part, the Secretary may require producers to repay FOR loans prior to the maturity date of such loans if the Secretary determines that emergency conditions exist which require that the commodity which is serving as collateral for the FOR loan be made available in the market to meet urgent domestic or international needs and such determination and the reasons therefore are reported to the President, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives at least fourteen days before taking such action. Repayment shall consist of the amount in accordance with paragraph (a) of this section. If the called loan is not redeemed within the time prescribed by the Secretary, CCC may take title to the commodity without any further action by the producer.

25. Section 1421.215 is revised to read as follows:

§ 1421.215 Loss or damage to the commodity.

The producer is responsible for any and all loss in quantity or quality of the commodity pledged for a FOR loan. CCC shall not assume any loss in quantity or

are in place in CCC-approved farm storage.

(5) Any producer who files a Form CCC–687–1 or CCC–681 with the county committee shall not remove the existing FOR loan collateral until written approval has been made by the county committee. The producer shall allow a representative of the county committee to inspect and measure, at the producer's expense, the quantity of replacement grain when such replacement stocks are in place in CCC-approved farm storage. Producers who request approval to replace existing FOR loan collateral with existing stocks in CCC-approved farm storage shall not receive approval to remove the existing FOR loan collateral until the replacement stocks have been inspected and measured.

24. Section 1421.211 is revised to read as follows:

§ 1421.211 Redemption requirements and emergency call.

(a) A producer may redeem the commodity pledged as collateral for a FOR loan at any time by repaying the principal amount of the FOR loan and other charges plus interest as provided in this part or, if CCC so announces, an amount less than the principal amount of the FOR loan and other charges plus interest in accordance with § 1421.25(d)(2).

(b) Notwithstanding any other provision of this part, the Secretary may require producers to repay FOR loans prior to the maturity date of such loans if the Secretary determines that emergency conditions exist which require that the commodity which is serving as collateral for the FOR loan be made available in the market to meet urgent domestic or international needs and such determination and the reasons therefore are reported to the President, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives at least fourteen days before taking such action. Repayment shall consist of the amount in accordance with paragraph (a) of this section. If the called loan is not redeemed within the time prescribed by the Secretary, CCC may take title to the commodity without any further action by the producer.

25. Section 1421.215 is revised to read as follows:

§ 1421.215 Loss or damage to the commodity.

The producer is responsible for any and all loss in quantity or quality of the commodity pledged for a FOR loan. CCC shall not assume any loss in quantity or quality of the FOR farm-stored loan collateral.

26. Section 1421.320 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 1421.320 General provisions.

(a) This subpart sets out the terms and conditions under which the CCC shall make payments to eligible persons who have entered into an agreement with CCC to participate in the rice marketing certificate program.

* * * * *

(c) * * *

(2) With respect to eligible rice which has not been and will not be pledged as collateral for a price support loan received a loan deficiency payment in accordance with § 1421.29.

27. Section 1421.321 is amended by revising introductory text to read as follows:

§ 1421.321 Eligible persons.

For the purposes of this subpart, the following persons shall be considered to be eligible to enter into an agreement with CCC and to receive payment in accordance with this subpart:

* * * * *

28. Section 1421.323 is revised to read as follows:

§ 1421.323 Rice marketing certificate payments.

(a) Payments in accordance with this subpart shall be made available to eligible persons who have complied with the terms and conditions set forth in this subpart and who have entered into an agreement with CCC.

(b) Payments in accordance with this subpart shall be made when the producer receives a loan deficiency payment in accordance with § 1421.29 or when the producer repays a loan in accordance with § 1421.25.

29. Section 1421.324 is revised to read as follows:

§ 1421.324 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for the class of rice and the loan repayment level in effect for the loan deficiency payment or loan repayment.

Signed in Washington, DC, on June 27, 1994.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–16111 Filed 7–1–94; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1755

RIN 0572–AA57

Specification for Filled Fiber Optic Cables

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) amends its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction by rescinding REA Bulletin 345–90, REA Specification for Totally Filled Fiber Optic Cable, PE–90, and codifying the revised specification. The revised specification: Allows the use of dispersion-shifted single mode fibers; allows use of 62.5/125 micrometer multimode fibers; includes a section on self-supporting aerial fiber optic cable; and establishes end product requirements associated with the options stated above. This revised specification updates the end product performance requirements of filled fiber optic cables brought about through technological advancements made during the last seven years.

DATES: *Effective date:* August 4, 1994.

Incorporation by reference: Incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of August 4, 1994.

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Electrification Administration, room 2844, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this final rule will not:

(1) Preempt any State or local laws, regulations, or policies;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This final rule involves standards and specifications, which may increase the direct short-term costs to the REA borrower. However, the long-term direct economic costs are reduced through greater durability and lower maintenance cost over time.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, information collection and recordkeeping requirements contained in this final rule have been submitted to OMB for approval. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building (NEOB), Washington, DC 20503. When OMB has approved the information and recordkeeping requirement contained in this final rule, REA will publish an amendment to this final rule to add the OMB control number and statement to the regulatory text.

National Environmental Policy Act Certification

The Administrator of REA has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees; and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

REA issues publications titled "Bulletin" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure REA financing. REA issues standards and specifications for the construction of telephone facilities financed with REA Loan Funds. REA is rescinding Bulletin 345–90, "REA Specification for Totally Filled Fiber Optic Cable, PE–90," and codifying this specification at 7 CFR 1755.900, REA Specification for Filled Fiber Optic Cables.

Filled fiber optic cable is used in outside plant by REA telephone borrowers as a physical transport medium for voice and data. The current REA Specification PE–90 limits the type of single mode fiber to dispersion-unshifted. The limitation was established because REA borrowers' lightwave systems operate at the 1310 nanometer wavelength for which the dispersion-unshifted fiber is optimally designed. The dispersion-unshifted single mode fiber can also be used in lightwave systems operating at the 1550 nanometer wavelength window but with a degradation in signal transmission. To provide REA borrowers with a quality fiber optic cable to be used in lightwave systems operating at 1550 nanometers without signal degradation, the revised specification will include single mode dispersion-shifted fiber as an option to single mode dispersion-unshifted fiber.

The current REA Specification PE–90 limits multimode fiber to 50/125 micrometers because at the time the specification was written, it was the only diameter multimode fiber in existence. Since that time the fiber optic industry has developed several multimode fiber designs of which the 62.5/125 micrometer design has become the de facto standard. Now that 62.5/125 micrometer multimode fiber is an accepted industry standard, the revised specification will include the 62.5/125 multimode fiber as an option to the 50/125 multimode fiber.

The current REA Specification PE–90 does not include a self-supporting aerial fiber optic cable because when the specification was written, no such cable design existed. Since issuance of the current specification, fiber optic cable manufacturers have developed such cable designs. These designs have been installed in operating telephone systems and are providing satisfactory field performance. The installation cost of self-supporting aerial fiber optic cable is less than the installation cost of lashed aerial fiber optic cable. To provide REA borrowers with a less costly aerial fiber optic cable installation, the revised specification will include a section on self-supporting aerial fiber optic cable.

The current specification includes only end product requirements associated with filled fiber optic cable utilizing only dispersion-unshifted single mode fibers and 50/125 micrometers multimode fibers and lashed aerial fiber optic cables. Since the revised specification will allow dispersion-shifted single mode fibers, 62.5/125 micrometers multimode fibers, and self-supporting aerial fiber optic cables, end product requirements have been included to assure quality products for these applications.

This action establishes REA requirements for a wider range of filled fiber optic cables without affecting current designs or manufacturing techniques. This widened selection of cables will afford REA telephone borrowers the opportunity to increase subscriber services in an economical and efficient manner through enhanced cable designs brought about by technological advancements made during the past seven years.

Comments

On September 1, 1993, REA published a proposed rule (58 FR 46097) to rescind REA Bulletin 345–90, REA Specification for Totally Filled Fiber Optic Cable, PE–90, and to codify the revised specification at 7 CFR 1755.900, REA Specification for Filled Fiber Optic Cables. Comments on this proposed rule were due by October 1, 1993. Comments and recommendations were received from several companies by this due date. The comments, recommendations, and responses are summarized as follows:

One respondent commented that the language in paragraphs (a)(1)(i) through (a)(1)(iv) of 7 CFR 1755.900 should be changed to reflect fiber optic cable designs currently being used by REA borrowers.

Response: REA reviewed the proposed language submitted by the commenter and as a result of our review will change the present language in paragraphs (a)(1)(i) through (a)(1)(iv) of 7 CFR 1755.900 to the language proposed by the commenter.

One respondent commented that the language "twenty-four colors" in paragraph (a)(2) of the specification should be changed to "twelve colors" because the Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 598 Standard, Color Coding of Fiber Optic Cables, defines twelve standard colors with black and yellow striping used to expand identification up to twenty-four colors.

Response: Since the EIA/TIA 598 Standard allows for identification of twenty-four fibers using a twenty-four color coding scheme that is identical to the twenty-four color coding scheme specified in 7 CFR 1755.900, REA will not change the language "twenty-four colors" to the commenter proposed language of "twelve colors."

Three respondents commented that the issue dates of the Electronic Industries Association (EIA) and the Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) Standards referenced in paragraphs (a)(8) and (a)(9) of the specification should be changed to reflect their current issue dates.

Response: REA agrees with the commenters recommendations and will change paragraphs (a)(8) and (a)(9) of the specification to reflect the current issue dates of the EIA and EIA/TIA Standards.

One respondent commented that the mode-field diameter requirement of 7.5±1.3 micrometers for dispersion-shifted single mode fibers specified in paragraph (b)(4) of the specification will eliminate the use of their currently manufactured dispersion-shifted single mode fiber by REA borrowers.

Response: Since it is not REA's intent to eliminate the use of dispersion-shifted single mode fibers which are currently manufactured and used on non-REA telecommunication systems with satisfactory results, REA will change the mode-field diameter requirement for dispersion-shifted single mode fibers from 7.5±1.3 micrometers to 7.5+1.5 micrometers/−1.3 micrometers to allow use of the manufacturer's dispersion-shifted single mode fiber by REA borrowers.

Two commenters recommended that paragraph (b)(14) of the specification which requires that all optical fibers in any single length of cable of the same type be eliminated from the specification because it would deny REA borrowers the opportunity of purchasing hybrid cables which contain both single mode and multimode fibers.

Response: In reviewing past REA 515 Contracts containing fiber optic cables,

One respondent commented that the language "twenty-four colors" in paragraph (a)(2) of the specification should be changed to "twelve colors" because the Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 598 Standard, Color Coding of Fiber Optic Cables, defines twelve standard colors with black and yellow striping used to expand identification up to twenty-four colors.

Response: Since the EIA/TIA 598 Standard allows for identification of twenty-four fibers using a twenty-four color coding scheme that is identical to the twenty-four color coding scheme specified in 7 CFR 1755.900, REA will not change the language "twenty-four colors" to the commenter proposed language of "twelve colors."

Three respondents commented that the issue dates of the Electronic Industries Association (EIA) and the Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) Standards referenced in paragraphs (a)(8) and (a)(9) of the specification should be changed to reflect their current issue dates.

Response: REA agrees with the commenters recommendations and will change paragraphs (a)(8) and (a)(9) of the specification to reflect the current issue dates of the EIA and EIA/TIA Standards.

One respondent commented that the mode-field diameter requirement of 7.5±1.3 micrometers for dispersion-shifted single mode fibers specified in paragraph (b)(4) of the specification will eliminate the use of their currently manufactured dispersion-shifted single mode fiber by REA borrowers.

Response: Since it is not REA's intent to eliminate the use of dispersion-shifted single mode fibers which are currently manufactured and used on non-REA telecommunication systems with satisfactory results, REA will change the mode-field diameter requirement for dispersion-shifted single mode fibers from 7.5±1.3 micrometers to 7.5+1.5 micrometers/ −1.3 micrometers to allow use of the manufacturer's dispersion-shifted single mode fiber by REA borrowers.

Two commenters recommended that paragraph (b)(14) of the specification which requires that all optical fibers in any single length of cable of the same type be eliminated from the specification because it would deny REA borrowers the opportunity of purchasing hybrid cables which contain both single mode and multimode fibers.

Response: In reviewing past REA 515 Contracts containing fiber optic cables, REA borrowers never purchased hybrid cables containing both single mode and multimode optical fibers. Review of current REA 515 Contracts reveal that REA borrowers are still not purchasing these hybrid fiber optic cables. In fact REA borrowers only purchase single mode fiber optic cables. Since there is no current interest by REA borrowers in purchasing hybrid cables containing both single mode and multimode optical fibers, REA at this time will not eliminate paragraph (b)(14) from the specification as recommended by the commenters.

Two respondents commented on the shrinkback test to be performed on both loose tube and tight tube buffers. The first respondent indicated that tight tube buffers containing the optical fibers cannot meet criterion specified in the specification. The second respondent recommended that the shrinkback test be eliminated from the specification because they consider this test to be a cable component test and not a completed cable performance test.

Response: In regard to the first commenter's comment, REA has no data from other manufacturers indicating that tight tube buffers containing the optical fibers cannot comply with the shrinkback requirement of the specification. In addition the respondent did not provide test data as to what the requirement should be for tight tube buffers containing the optical fibers. Finally paragraph (c)(6) of the specification allows the manufacturer the option of removing the optical fibers from the tight tube buffers prior to performance of the shrinkback test. Since the respondent did not provide an alternative requirement and the fact that the specification allows for removal of the fibers from the buffer tubes prior to shrinkback testing, REA will not change the shrinkback requirement specified in the specification.

Regarding the second respondent's comment, REA considers the shrinkback test for loose and tight tube buffers to be a completed cable performance test because the shrinkback test provides REA with one means of assuring that the buffer tubes can withstand the rigors of the field cable splicing operation. Since REA considers the performance of the buffer tubes to be a critical requirement of the field cable splicing operation, REA will not eliminate the shrinkback test from the specification as recommended by the respondent.

One respondent recommended that the cold bend test for loose and tight tube buffers be eliminated from the specification because they consider this test to be a cable component test and not a completed cable performance test. The same respondent also recommended that if REA maintained the cold bend test that the mandrel diameter be changed from 5 times the tube diameter to 10 times the tube diameter.

Response: REA considers the cold bend test for loose and tight tube buffers to be a completed cable performance test because the cold bend test provides REA with one means of assuring that the buffer tubes can withstand the rigors of the field cable splicing operation. Since REA considers the performance of the buffer tubes to be a critical requirement of the field cable splicing operation, REA will not eliminate the cold bend test from the specification as recommended by the respondent.

In response to the commenter's recommendation for changing the size of the test mandrel diameter, REA would like to point out that mandrel diameter of 5 times the buffer tube diameter is the same mandrel diameter as specified in REA Bulletin 345–90. Since manufacturers have been performing the cold bend test using the mandrel diameter of 5 times the buffer tube diameter as specified in REA Bulletin 345–90 for more than seven years without any reported problems, REA will not change the mandrel diameter for the cold bend test specified in 7 CFR 1755.900 to the mandrel diameter recommended by the commenter.

Three respondents recommended that reference in paragraph (d)(2) of the specification for defining the color limits of the colored optical fibers be changed from EIA–359–A–1984 to EIA/ TIA–598.

Response: The reason that REA referenced the EIA–359–A–1984 copper cable standard for defining the color limits of the colored optical fibers except for rose and aqua colors in 7 CFR 1755.900 is because at the time of its writing no EIA standard existed for defining the color limits for fiber optic cables. Since EIA has now published a color coding standard solely for fiber optic cables which includes the rose color, REA will change the reference in paragraph (d)(2) of 7 CFR 1755.900 from EIA–359–A–1984 to EIA/TIA–598.

Five respondents recommended that the color limits specified in paragraph (d)(2)(i) of the specification for rose be eliminated and the aqua limits be changed to the proposed EIA limits.

Response: The reason for specifying the rose and aqua color limits in 7 CFR 1755.900 was because the EIA–359–A–1984 standard did not contain limits for these colors. Since the EIA/TIA–598 Standard specifies the rose color limits, REA will eliminate the rose color limits

from paragraph (d)(2)(i) of 7 CFR 1755.900.

Regarding the aqua color limit, EIA/TIA–598 contains a color limit for aqua but the fiber optic cable industry is dissatisfied with the limits of the EIA/TIA standard. In fact EIA/TIA is revising the current standard to reflect the new aqua limits being proposed by the industry. Therefore to assure that the aqua color limits of 7 CFR 1755.900 will coincide with the proposed aqua limits of the revised EIA/TIA–598 Standard, REA will change the aqua limits currently specified in 7 CFR 1755.900 to the aqua color limits proposed for incorporation into the revised EIA/TIA–598 Color Standard.

One respondent commented that paragraph (d)(2)(ii) of the specification which states that REA will not accept alternative coloring schemes which deviate from the color coding scheme specified in paragraph (d)(1) of 7 CFR 1755.900 be eliminated from the specification.

Response: The reason for this requirement is to provide REA borrowers with one color coding standard for identification of buffer tubes and optical fibers to facilitate the splicing of fiber optic cables in the field. If REA allowed alternative coloring schemes for identification of buffer tubes and optical fibers as recommended by the commenter, REA would be doing a disservice to our borrowers by negating the requirement's intended purpose of facilitating field splicing of fiber optic cables by REA borrowers. Since this requirement will facilitate the splicing of fiber optic cables in the field by REA borrowers, REA will not eliminate paragraph (d)(2)(ii) from the specification as recommended by the commenter.

Two respondents commented on the splicing of strength members as specified in paragraph (e)(4) of the specification. The first respondent recommended that the 1 kilometer splicing limitation for strength members be changed to 500 meters. The second respondent questioned the rationale for limiting the number of strength member splices.

Response: REA limits the number of strength member splices to 1 per kilometer in the completed cable to avoid strength member splices being in close proximity to one another which in the opinion of REA could lead to failure of the cable during installation as a result of splice breakage. Since REA borrowers have been installing fiber optic cables with the above strength member splice requirement for the past seven years without any reported installation failures, REA will not change the requirement specified in paragraph (e)(4) of 7 CFR 1755.900.

Two respondents commented that the language of paragraph (f)(3) should be modified to allow the cable manufacturer the option of using natural colored threads and tapes as core binders.

Response: REA has reviewed the suggested change in language and the reasons for the change in language presented by the commentators. Because REA agrees with the reasons for their suggested change in language, REA will modify the language in paragraph (f)(3) of the specification to allow manufacturers the option of providing natural colored threads and tapes as core binders.

One respondent commented that the language in paragraph (f)(4) of 7 CFR 1755.900 should be changed to better reflect the functional needs of fiber optic cables currently being used by REA borrowers.

Response: REA reviewed the reason for the proposed change in language submitted by the commenter and as a result of our review will change the present language in paragraph (f)(4) of 7 CFR 1755.900 to the language proposed by the commenter.

Two respondents commented on the core wrap section of 7 CFR 1755.900. The first commenter recommended that the core wrap section (paragraph (h) of the specification) be revised to more clearly indicate that the use of core wraps in the manufacture of fiber optic cable is an option. The second commenter recommended that the core wrap section be further modified to allow one or more core wraps in the manufacture of fiber optic cable.

Response: In regards to the first respondent's comment, REA has reviewed the present language of paragraph (h) and agrees with the respondent's comment that the core wrap section does not clearly indicate that the use of a core wrap in the manufacture of the cable is at the option of the manufacturer. Since REA agrees with the commenter's comment, REA will revise paragraph (h) of 7 CFR 1755.900 to clearly indicate that the use of a core wrap is at the option of the manufacturer.

Regarding the second respondent's comment, the latest issues of REA's copper cable specifications covered under 7 CFR 1755.390 and 7 CFR 1755.890 allow the use of multiple core wraps in manufacture of these type cables provided at the filling compound is applied between each core wrap layer. Since REA allows the use of multiple core wraps in the manufacture of copper cables, REA will also allow the use of multiple core wraps in the manufacture of fiber optic cables. Therefore paragraph (h) of 7 CFR 1755.900 will be modified to allow the use of multiple core wraps by fiber optic cable manufacturers. REA will also modify paragraph (h) to indicate that when multiple core wraps are used that the filling compound must be applied between each core wrap layer to prevent the ingress of water between each core wrap layer.

Two respondents commented that the testing of the inner jacket for fungus resistance as specified in paragraph (i)(3) of the specification should be eliminated because the polyethylene compounds used for the inner jackets are inherently resistant to fungus attack.

Response: The current REA Bulletin 345–90 allows fiber optic cable manufacturers the option of using any available material for producing inner jackets. To assure that these inner jacket materials would provide satisfactory field service, the bulletin required that they pass a fungus resistance test. Since 7 CFR 1755.900 now specifies that only polyethylene compounds can be used to produce inner jackets and REA knows that these compounds are inherently resistant to fungus attack, REA will eliminate the fungus resistance test, paragraph (i)(3), for inner jacket materials from 7 CFR 1755.900.

One respondent commented that paragraph (j)(2) of 7 CFR 1755.900 should be modified to indicate that a flooding compound is only required for armored cable and that jacket slip test reference in the paragraph be clarified to indicate that it only applies to flooded cable designs.

Response: In reviewing the present language of the flooding compound section, paragraphs (j)(1) through (j)(4), of 7 CFR 1755.900, paragraph (j)(1) clearly indicates that flooding compound applies only to armored fiber optic cable designs. Also the present language of the jacket slip test, paragraph (III)(3), Appendix A, clearly indicates that this test is only performed on flooded cable designs. Because the present language in both paragraphs clearly indicate the intent of the commenter's recommendation, REA will not revise paragraph (j)(2) of 7 CFR 1755.900 as recommended by the commenter.

One respondent commented that "water blocking tape" language of paragraph (j)(4) be changed to "water blocking material" to allow for the use of water blocking tapes or powders in lieu of a flooding compound.

Response: REA has allowed the use of water blocking tapes in place of flooding compounds in filled fiber optic cables for several years with satisfactory field performance, but the use of water blocking powders in place of the flooding compound is a new application for fiber optic cables with limited field experience. Until fiber optic cables using water blocking powders as replacements for flooding compounds gain more field experience to assure reliable service, REA will not change the language in paragraph (j)(4) of 7 CFR 1755.900 to the language recommended by the commenter.

One respondent recommended that armor overlap be changed from 3.0 millimeters to either 1.8 millimeters or sufficient to meet the requirements of paragraph (q) of 7 CFR 1755.900.

Response: The reason 7 CFR 1755.900 specifies a minimum armor overlap of 3.0 millimeters is to assure proper forming of the armor overlap is achieved to avoid longitudinal splitting of the jacket during installation. Since REA is concerned that armor overlaps less than 3.0 millimeters can result in longitudinal splitting of the jacket during installation because of improper forming, REA will not change the present requirement of 3.0 millimeters to the recommended comments of the respondent.

One commenter recommended that reduction in thickness of the armoring material due either to corrugating or the application process be changed from 10 percent to 5 percent.

Response: REA would like to point out that the 10 percent requirement for the reduction in armor thickness is the same requirement as specified in REA Bulletin 345–90. Since manufacturers have been meeting the 10 percent armor reduction thickness requirement as specified in REA Bulletin 345–90 for more than seven years without any reported problems, REA will not change the 10 percent armor reduction thickness requirement in 7 CFR 1755.900 to the 5 percent armor reduction thickness requirement as recommended by the commenter.

Two respondents recommended changing the present language of paragraph (k)(6) to more clearly define the intent of the requirement.

Response: REA has reviewed the proposed language submitted by both commentators and agrees that their proposed language will more clearly define the intent of the requirement. Therefore, REA will change the present language of paragraph (k)(6) specified in 7 CFR 1755.900 to the proposed language recommended by the commenters.

One respondent recommended that paragraphs (k)(8), (k)(9), and (k)(10) of the specification be eliminated from the

for several years with satisfactory field performance, but the use of water blocking powders in place of the flooding compound is a new application for fiber optic cables with limited field experience. Until fiber optic cables using water blocking powders as replacements for flooding compounds gain more field experience to assure reliable service, REA will not change the language in paragraph (j)(4) of 7 CFR 1755.900 to the language recommended by the commenter.

One respondent recommended that armor overlap be changed from 3.0 millimeters to either 1.8 millimeters or sufficient to meet the requirements of paragraph (q) of 7 CFR 1755.900.

Response: The reason 7 CFR 1755.900 specifies a minimum armor overlap of 3.0 millimeters is to assure proper forming of the armor overlap is achieved to avoid longitudinal splitting of the jacket during installation. Since REA is concerned that armor overlaps less than 3.0 millimeters can result in longitudinal splitting of the jacket during installation because of improper forming, REA will not change the present requirement of 3.0 millimeters to the recommended comments of the respondent.

One commenter recommended that reduction in thickness of the armoring material due either to corrugating or the application process be changed from 10 percent to 5 percent.

Response: REA would like to point out that the 10 percent requirement for the reduction in armor thickness is the same requirement as specified in REA Bulletin 345–90. Since manufacturers have been meeting the 10 percent armor reduction thickness requirement as specified in REA Bulletin 345–90 for more than seven years without any reported problems, REA will not change the 10 percent armor reduction thickness requirement in 7 CFR 1755.900 to the 5 percent armor reduction thickness requirement as recommended by the commenter.

Two respondents recommended changing the present language of paragraph (k)(6) to more clearly define the intent of the requirement.

Response: REA has reviewed the proposed language submitted by both commentators and agrees that their proposed language will more clearly define the intent of the requirement. Therefore, REA will change the present language of paragraph (k)(6) specified in 7 CFR 1755.900 to the proposed language recommended by the commenters.

One respondent recommended that paragraphs (k)(8), (k)(9), and (k)(10) of the specification be eliminated from the specification because they consider these tests to be cable component tests and not completed cable performance tests.

Response: REA considers the tests specified in paragraphs (k)(8), (k)(9), and (k)(10) of the specification to be completed cable performance tests because these tests provide REA with the means of assuring that the plastic coated steel armor of the cable will withstand the rigors of the installation as well as a means of assuring that the plastic coated steel armor of the cable will provide satisfactory service over the life of the completed cable. Since REA considers the performance of the plastic coated steel armor to be a critical requirement in the installation and service life of completed cables, REA will not eliminate paragraphs (k)(8), (k)(9), and (k)(10) from 7 CFR 1755.900 as recommended by the respondent.

One respondent recommended that paragraph (k)(10) of 7 CFR 1755.900 be modified to exclude from the 90 percent calculation the area of the armor under the strength members for cables containing embedded strength members in the outer jacket because these type cables can still pass the armor to jacket bond strength requirement specified in paragraph (k)(10) of the specification.

Response: A review of recent armor to jacket bond strength data for cables containing embedded strength members in the outer jacket when the area of the armor under the strength members is excluded from the 90 percent calculation revealed that these type cables can pass the requirement specified in paragraph (k)(10) of the specification without difficulty. Since test data indicate that these type cables can pass the armor to jacket bond strength requirement, REA will modify paragraph (k)(10) of 7 CFR 1755.900 to allow the exclusion of the area of the armor under the strength members for cables containing embedded strength members in the outer jacket from the 90 percent calculation.

One respondent recommended that low density polyethylene, low density ethylene copolymer, and linear low density polyethylene compounds not be allowed as outer jacket materials. The reason for their comment is that installation damage to the cable can occur as a result of the above materials becoming soft at the high temperatures experienced during hot summer weather.

Response: Low density polyethylene, low density ethylene copolymer, and linear low density polyethylene compounds have been used by REA as outer jacket materials for copper cables for over twenty years and for fiber optic cables for over seven years without any reported high temperature installation problems associated with hot summer weather. Since REA has never received complaints from borrowers installing cables using any one of the above compounds during hot summer weather, REA will not eliminate the use of low density polyethylene, low density ethylene copolymer, and linear low density polyethylene compounds as outer jacket materials from the specification as recommended by the commenter.

One respondent recommended that melt flow rate, environmental stress crack, and impact tests for jacketing materials be eliminated from the specification because they consider these tests to be cable component tests and not completed cable performance tests.

Response: REA considers the melt flow rate, environmental stress crack, and impact tests for jacketing materials to be completed cable performance tests because these tests provide REA with the means of assuring that the jacketing material of the cable will withstand the rigors of installation as well as a means of assuring that the jacketing material of the cable will provide satisfactory service over the life of the completed cable. Since REA considers the performance of jacket material to be a critical requirement in the installation and service life of completed cables, REA will not eliminate the melt flow rate, environmental stress crack, and impact tests for jacketing materials from 7 CFR 1755.900 as recommended by the respondent.

One commenter recommended replacing the ASTM D 4565–90a test method referenced for both jacket tensile strength/elongation and jacket shrinkback in 7 CFR 1755.900 with the EIA–455–89A test method for jacket tensile strength/elongation and the EIA–455–86 test method for jacket shrinkback because these test methods are the current fiber optic industry standards for these jacket properties.

Response: A review of the ASTM and EIA test methods for jacket tensile strength/elongation and jacket shrinkback properties indicates that the EIA test methods are more applicable for the testing of fiber optic cables than the ASTM test method. Since the EIA test methods are more applicable to the testing of fiber optic cables, REA will replace the reference to ASTM D 4565–90a in paragraphs (m)(5)(ii) and (m)(5)(iv) of 7 CFR 1755.900 with EIA–455–89A and EIA–455–86, respectively.

One respondent recommended that the minimum jacket thickness over the strength members for cables containing

embedded strength members in the outer jacket be changed from 0.5 millimeter to 0.9 millimeter.

Response: REA has accepted one manufacturer of fiber optic cable containing embedded strength members in the outer jacket using the 0.5 millimeter minimum jacket thickness over the embedded strength members. That manufacturer's cable has been used by REA borrowers for over four years without any reported field failures. Since REA has satisfactory field performance history on fiber optic cables with embedded strength members using the minimum 0.5 millimeter jacket thickness over the embedded strength members, REA will not change the 0.5 millimeter minimum jacket thickness specified in 7 CFR 1755.900 to the minimum jacket thickness recommended by the commenter.

One respondent recommended that the maximum tolerance limit for the web width of self-supporting cable be changed from +0.51 millimeters to +1.58 millimeters.

Response: The reason that the maximum tolerance limit for the web width of self-supporting cables is specified at +0.51 millimeters is to assure that the web of self-supporting cables can be slit by craftpersons during installation using existing slitting tools. Increasing the maximum web width tolerance to +1.58 millimeters as recommended by the commenter would require the development of special slitting tools to assure satisfactory installation of these thicker webbed self-supporting cables by craftpersons. Since it is not the intent of REA to burden craftpersons with special tools needed to install theses thicker webbed self-supporting cables, REA will not change the maximum tolerance limit for the web width of self-supporting cables specified in 7 CFR 1755.900 to the maximum tolerance limit recommended by the respondent.

One respondent recommended that the sheath slitting cord be made a mandatory component of the cable instead of an optional cable component.

Response: The reasons 7 CFR 1755.900 specifies that the sheath slitting cord is an optional component of the cable are because not all cable installers use the sheath slitting cord to open the cable jacket during installation and during extremely cold weather installation. The sheath slitting cord does not aid the installer in opening the cable jacket because of the stiffness of the jacket. Because of the above reasons, REA will not make the sheath slitting cord a mandatory cable component in 7 CFR 1755.900.

Two respondents commented that the language in paragraph (n)(2) of 7 CFR 1755.900 should be changed to better reflect the functional needs of fiber optic cables currently being used by REA borrowers and to quantify the sheath slitting cord requirement.

Response: REA reviewed the reasons for the proposed change in language submitted by the commentators and as a result of our review will change the present language in paragraph (n)(2) of 7 CFR 1755.900 to better reflect the functional needs of fiber optic cables currently being used by REA borrowers and to quantify the sheath slitting cord requirement.

One respondent recommended that the numbering sequence for re-marked cables be changed from 3,000 to 1,000.

Response: REA would like to point out that the 3,000 numbering sequence for re-marked cables specified in 7 CFR 1755.900 is the same numbering sequence for re-marked cables as specified in REA Bulletin 345–90. Since manufacturers have been using the 3,000 numbering sequence for re-marked cables as specified in REA Bulletin 345–90 for more than seven years without any reported problems, REA will not change the numbering sequence for re-marked cables specified in 7 CFR 1755.900 to the numbering sequence for re-marked cables recommended by the commenter.

One respondent recommended adding a new identification marking requirement to 7 CFR 1755.900 that requires a telephone handset symbol to be marked on the outer jacket of fiber optic cables intended for direct burial installation in accordance with Rule 350G of the 1993 National Electric Safety Code (NESC).

Response: Since the REA Form 515 Construction Contract requires that all types of construction comply with the safety requirements specified in the NESC, REA will change paragraph (o)(2) in 7 CFR 1755.900 to require that all direct buried fiber optic cables be marked with the telephone handset symbol in accordance with Rule 350G of the 1993 NESC. This change will cause existing paragraphs (o)(2) through (o)(11) to be renumbered as paragraphs (o)(3) through (o)(12) in 7 CFR 1755.900.

Two respondents commented on the attenuation requirements specified in paragraph (p)(1)(i) of 7 CFR 1755.900. The first respondent recommended deleting the reference to EIA/TIA–455–59 because this standard is used to determine point discontinuities and not attenuation. The second respondent recommended changing the attenuation values specified in 7 CFR 1755.900 for dispersion-unshifted and dispersion-shifted single mode optical fibers to 0.4 dB/km and 0.25 dB/km, respectively.

Response: With regard to the EIA/TIA–455–59 reference, REA agrees with the commenter and will eliminate the reference to EIA/TIA–455–59 in paragraph (p)(1)(i) of 7 CFR 1755.900.

In regard to the change in attenuation requirements, REA is satisfied that the 0.5 dB/km maximum attenuation requirement for both dispersion-unshifted and dispersion-shifted single mode optical fibers, although considered very loose when compared to other industry standards, will provide REA borrowers with satisfactory optical signal transmission. REA would also like to point out that the REA Form 515 Construction Contract allows REA borrowers the opportunity to specify lower attenuation values than the 0.5 dB/km maximum specification value for these type optical fibers and when such values are specified in the contract they must be met by the cable supplier to execute the contract.

Since REA is satisfied that 0.5 dB/km maximum attenuation for both dispersion-unshifted and dispersion-shifted single mode optical fibers will provide satisfactory optical transmission and the knowledge that REA borrowers can specify lower attenuation values than the specification value to successfully execute the REA Form 515 Construction Contract, REA will not change the attenuation values specified in 7 CFR 1755.900 to values recommended by the commenter.

One respondent recommended deleting the requirement to conduct attenuation measurements at the wavelength specified for the application as stated in paragraphs (p)(1)(iv) and (p)(2)(iii) of 7 CFR 1755.900. The reason for the respondent's recommendation is the possibility of REA borrowers specifying attenuation requirements at nonstandard wavelengths which would require the development of new test equipment. The development of this new equipment would in turn result in added cable costs.

Response: A review of past REA Form 515 Construction Contracts indicated that REA borrowers were specifying attenuation requirements at the accepted industry wavelengths of 850 and 1300 nanometers for multimode fibers, and 1310 and 1550 for single mode fibers. A review of present construction contracts also reveals that REA borrowers are still specifying attenuation requirements at the accepted industry wavelengths of 850 and 1300 nanometers for multimode fibers, and 1310 and 1550 for single mode fibers.

Since REA borrowers are specifying attenuation requirements at the industry accepted wavelengths and not at nonstandard wavelengths, the requirement to conduct attenuation measurements at the wavelength specified in paragraphs (p)(1)(iv) and (p)(2)(iii) of 7 CFR 1755.900 will not be deleted from the specification as recommended by the commenter.

One respondent commented that the dispersion and dispersion slope requirements of 2.7 ps/nm•km and 0.085 ps(nm²•km), respectively for dispersion-shifted single mode fibers specified in paragraph (p)(1)(vii) of the specification will eliminate the use of their currently manufactured dispersion shifted single mode fiber by REA borrowers.

Response: Since it is not REA's intent to eliminate the use of dispersion-shifted single mode fibers which are currently manufactured and used on non-REA telecommunication systems with satisfactory results, REA will change the dispersion and dispersion slope requirements for dispersion-shifted single mode fibers from 2.7 ps/nm•km and 0.085 ps(nm²•km), respectively to 3.5 ps/nm•km and 0.095 ps(nm²•km), respectively to allow use of the manufacturer's dispersion shifted single mode fiber by REA borrowers.

Three respondents recommended changing the 1250 nanometer cut-off wavelength for single mode fibers specified in paragraph (p)(1)(viii) of 7 CFR 1755.900 to the industry accepted wavelength of 1260 nanometers.

Response: If 7 CFR 1755.900 maintained the 1250 nanometer cut-off wavelength for single mode fibers, REA would force manufacturers to maintain two separate fiber optic cable inventories based solely on the different cut-off wavelength requirements. This in turn would result in higher fiber optic cable prices to REA borrowers. By changing the cut-off wavelength requirement for single mode fibers from 1250 nanometers to 1260 nanometers, REA would eliminate the need for manufacturers to maintain separate fiber optic cable inventories. This change would reduce fiber optic cable costs to REA borrowers. Therefore, REA will change the single mode fiber cut-off wavelength requirement in paragraph (p)(1)(viii) of 7 CFR 1755.900 from 1250 nanometers to 1260 nanometers.

One respondent commented on the mechanical requirements for multimode fiber optic cables specified in 7 CFR 1755.900. The first comment recommended deleting the mechanical requirements for multimode fiber optic cables specified in paragraphs (q)(1) through (q)(5) of the specification

Since REA borrowers are specifying attenuation requirements at the industry accepted wavelengths and not at nonstandard wavelengths, the requirement to conduct attenuation measurements at the wavelength specified in paragraphs (p)(1)(iv) and (p)(2)(iii) of 7 CFR 1755.900 will not be deleted from the specification as recommended by the commenter.

One respondent commented that the dispersion and dispersion slope requirements of 2.7 ps/nm•km and 0.085 ps(nm²•km), respectively for dispersion-shifted single mode fibers specified in paragraph (p)(1)(vii) of the specification will eliminate the use of their currently manufactured dispersion shifted single mode fiber by REA borrowers.

Response: Since it is not REA's intent to eliminate the use of dispersion-shifted single mode fibers which are currently manufactured and used on non-REA telecommunication systems with satisfactory results, REA will change the dispersion and dispersion slope requirements for dispersion-shifted single mode fibers from 2.7 ps/nm•km and 0.085 ps(nm²•km), respectively to 3.5 ps/nm•km and 0.095 ps(nm²•km), respectively to allow use of the manufacturer's dispersion shifted single mode fiber by REA borrowers.

Three respondents recommended changing the 1250 nanometer cut-off wavelength for single mode fibers specified in paragraph (p)(1)(viii) of 7 CFR 1755.900 to the industry accepted wavelength of 1260 nanometers.

Response: If 7 CFR 1755.900 maintained the 1250 nanometer cut-off wavelength for single mode fibers, REA would force manufacturers to maintain two separate fiber optic cable inventories based solely on the different cut-off wavelength requirements. This in turn would result in higher fiber optic cable prices to REA borrowers. By changing the cut-off wavelength requirement for single mode fibers from 1250 nanometers to 1260 nanometers, REA would eliminate the need for manufacturers to maintain separate fiber optic cable inventories. This change would reduce fiber optic cable costs to REA borrowers. Therefore, REA will change the single mode fiber cut-off wavelength requirement in paragraph (p)(1)(viii) of 7 CFR 1755.900 from 1250 nanometers to 1260 nanometers.

One respondent commented on the mechanical requirements for multimode fiber optic cables specified in 7 CFR 1755.900. The first comment recommended deleting the mechanical requirements for multimode fiber optic cables specified in paragraphs (q)(1) through (q)(5) of the specification because they feel that the qualification of single mode fiber optic cable designs to the mechanical requirements are adequate to qualify multimode fiber optic cable designs. The second comment recommended that if REA retained the mechanical requirements for multimode fiber optic cables that the allowable change in attenuation be changed from a maximum of 0.030 dB to a maximum of 0.040 dB since this is the present de facto industry requirement for multimode optical fibers.

Response: In regards to the first comment, 7 CFR 1755.900 requires both multimode and single mode fiber optic cables to be tested for the mechanical properties specified in paragraphs (q)(1) through (q)(5) of the specification to assure that both cable types will withstand the rigors of field installation and provide satisfactory service over their useful lives. REA is of the opinion that both multimode and single mode fiber optic cable designs must be tested for the mechanical requirements specified in paragraphs (q)(1) through (q)(5) of the specification to assure REA borrowers that these designs will withstand the rigors of field installation and provide satisfactory performance over their useful service lives. Therefore, REA will not eliminate the mechanical requirements for multimode fiber optic cables specified in paragraphs (q)(1) through (q)(5) of 7 CFR 1755.900.

Regarding the second comment, since it is REA's intent to use de facto industry requirements; where applicable, REA will change the maximum allowable change in attenuation for multimode fiber optic cables from 0.30 dB to 0.40 dB in paragraphs (q)(1) through (q)(5) of 7 CFR 1755.900.

Two respondents recommended that mechanical testing specified in paragraphs (q)(1) through (q)(5) of 7 CFR 1755.900 for dispersion-unshifted single mode fiber optic cables be performed at only the 1550 nanometer wavelength in place of the required testing at both 1310 and 1550 nanometer wavelengths. The reasons for their comments are based on the data indicating that testing of optical fibers at the 1550 nanometer wavelength is considered the worst case condition because the fibers are more sensitive to bends at this wavelength.

Response: 7 CFR 1755.900 requires mechanical testing of dispersion-unshifted single mode fiber optic cables at both the 1310 nanometer and 1550 nanometer wavelengths. The reason for the mechanical testing of dispersion-unshifted single mode fiber optic cables at both the 1310 and 1550 nanometer wavelengths is to assure satisfactory transmission of the optical signals at these wavelengths when specified by REA borrowers. Although REA agrees with the commentators comments, data from the REA Form 515 Construction Contracts indicate that the majority of lightwave systems installed by REA borrowers operate at the 1310 nanometer wavelength and not at the 1550 nanometer wavelength.

Since the majority of REA borrower lightwave systems operate at the 1310 nanometer wavelength, REA must require mechanical testing of dispersion-unshifted single mode fiber optic cables at the 1310 nanometer wavelength to assure that cables installed by REA borrowers with lightwave systems operating at the 1310 nanometer wavelength will provide satisfactory optical signal transmission. Therefore, REA will not eliminate the mechanical testing of dispersion-unshifted single mode fiber optic cables at the 1310 nanometer wavelength as recommended by the commenters.

One respondent recommended changing the cable bend test temperature of −46°C, Test Condition C of EIA/TIA–455–37A, specified in paragraph (q)(1)(iii) of 7 CFR 1755.900 to −30°C, Test Condition E of EIA/TIA–455–37A, because this is the de facto industry test temperature for fiber optic cables.

Response: Since it is REA's intent to use de facto industry requirements where applicable, REA will change the cable bend test temperature of −46°C, Test Condition C of EIA/TIA–455–37A, to −30°C, Test Condition E of EIA/TIA–455–37A, in paragraph (q)(1)(iii) of 7 CFR 1755.900.

Three respondents recommended replacing the cable bend test mandrel diameter of 15 times the cable diameter specified in paragraph (q)(1)(iii)(A) of 7 CFR 1755.900 with a test mandrel diameter of 20 times the cable diameter because this is the de facto industry requirement for fiber optic cables.

Response: Since it is REA's intent to use de facto industry requirements where applicable, REA will change the cable bend test mandrel diameter of 15 times the cable diameter to a test mandrel diameter of 20 times the cable diameter in paragraph (q)(1)(iii)(A) of 7 CFR 1755.900.

Two respondents recommending deleting the cable bend test requirement that the armor overlap be on the outside of the bend when bend testing armored cables in accordance with paragraph (q)(1)(iii)(C) of 7 CFR 1755.900.

Response: REA would like to point out that the cable bend test requirement stipulating that the armor overlap be on

the outside of the bend when bend testing armored cables specified in 7 CFR 1755.900 is the same requirement for armored cables as specified in REA Bulletin 345–90. Since manufacturers have been bend testing armored cables using this requirement in REA Bulletin 345–90 for more than seven years without any reported problems, REA will not delete the requirement that the armor overlap be on the outside of the bend when bend testing armored cables in 7 CFR 1755.900.

One respondent recommended that the requirement that there be no delamination of jacket bond after cable bend testing specified in paragraph (q)(1)(iv) of 7 CFR 1755.900 be deleted from the specification.

Response: REA would like to point out that the cable bend test requirement stipulating that there be no delamination of jacket bond after cable bend testing specified in 7 CFR 1755.900 is the same requirement as specified in REA Bulletin 345–90. Since manufacturers have been bend testing cables using this requirement in REA Bulletin 345–90 for more than seven years without any reported problems, REA will not delete the requirement that there be no delamination of jacket bond after cable bend testing in paragraph (q)(1)(iv) of 7 CFR 1755.900.

Two respondents commented on the cable compression test, paragraph (q)(3)(iii), of 7 CFR 1755.900. The first respondent recommended changing the rate for applying the compressive force from a nominal of 5 millimeters per minute to a range of 3 millimeters to 20 millimeters per minute to make the cable compression test of 7 CFR 1755.900 compatible with the de facto industry standard. The second respondent recommended changing holding time of the compressive force from 15 minutes to 10 minutes because the 10 minute requirement is the de facto industry requirement for fiber optic cables.

Response: Since it is REA's intent to use de facto industry requirements where applicable, REA will change the rate for applying the compressive force from a nominal of 5 millimeters per minute to a range of 3 millimeters to 20 millimeters per minute and will also change the holding time of the compressive force from 15 minutes to 10 minutes in paragraph (q)(3)(iii) of 7 CFR 1755.900.

Three respondents commented on the cable flex test requirements specified in paragraph (q)(5)(iv) of 7 CFR 1755.900. Two of the respondents recommended that a fracture length of no more than 5 millimeters be allowed on the armor after flexing since this is the de facto industry requirement for fiber optic cables. The third respondent recommended deleting the requirement that there be no delamination of jacket to armor bond in nonflooded cables after flex testing.

Response: 7 CFR 1755.900 requires that there be no visible evidence of fracture of the armor after flexing. Reason for the requirement is one means of assuring that continuity of the armor will be maintained after the rigors of installation. Maintaining the armor continuity after installation is important requirement in assuring protection of the telephone equipment and telephone company personnel against hazardous electrical currents. If REA allowed a minimum fracture length of the armor after flexing but before installation, the possibility exists that these small fracture lengths in the armor could develop into complete breaks of the armor at these fractured locations as a result of difficulties encountered during installation. These breaks in the armor would result in loss of armor continuity. The loss of armor continuity in turn would subject the telephone equipment and telephone company personnel to possible hazardous electrical currents which could result in damaged equipment or personal injury to telephone company personnel. Since REA has a responsibility to its borrowers to assure that their telephone equipment and personnel are protected against hazardous electrical currents, REA will not change the present requirement of no visible evidence of fracture of the armor after flexing specified in 7 CFR 1755.900 to the recommendation requested by the first two commenters.

In regard to the requirement that there be no delamination of jacket to armor bond in nonflooded cables after flex testing, REA specified this requirement on nonflooded cables to assure that the bond strength between the outer jacket and the plastic coated armor would be maintained after installation to assure that water could not enter nonflooded cables at the outer jacket/armor interface. If REA eliminated this requirement as recommended by the third commenter, voids at the outer jacket/armor interface could develop in nonflooded cables after installation. These voids could allow the entry of water into nonflooded cables resulting in possible degradation of the optical signal over time. Since REA has a responsibility to our borrowers to assure that optical signal of nonflooded cables will not degrade as a result of water entry, REA will not eliminate the requirement that there be no delamination of jacket to armor bond in nonflooded cables after flex testing as recommended by the third commenter.

Seven respondents recommended replacing Appendix A of 7 CFR 1755.900 with de facto industry tests to determine the long term stability of their fiber optic cables.

Response: The tests specified in Appendix A of 7 CFR 1755.900 have been used by REA for over sixteen years for determining the long term performance of copper cables with satisfactory results. Since these test have proven invaluable for determining the long term stability of copper cables, REA decided to apply these same proven tests to determine the long term stability of fiber optic cables. Therefore REA will not replace Appendix A with de facto industry tests as recommended by the commenters.

List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, REA amends chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION.

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing the entry REA Bulletin 345–90 from the table.

3. Section 1755.900 is added to read as follows:

§ 1755.900 REA specification for filled fiber optic cables.

(a) *Scope.* (1) This section covers the requirement for filled fiber optic cables intended for aerial installation either by attachment to a support strand or by an integrated self-supporting arrangement, for underground application by placement in a duct, or for buried installations either by trenching or by direct plowing.

(i) The optical waveguides are glass fibers having directly-applied protective coatings, and are called "fibers", herein. These fibers may be assembled in either loose fiber bundles with a protective core tube, encased in several protective buffer tubes, or in tight buffer tubes.

(ii) Fillers, strength members, core wraps, and bedding tapes may complete the cable core.

(iii) The core or buffer tubes containing the fibers and the interstices between the buffer tubes, fillers, and strength members in the core structure are filled with a suitable material to exclude water.

(iv) The cable structure is completed by an extruded overall plastic jacket. This jacket may have strength members embedded in it, in some designs.

(v) Buried installation requires an armor under the outer jacket.

(vi) For self-supporting cable the outer jacket may be extruded over the support messenger and cable core.

(2) The cable is fully color coded so that each fiber is distinguishable from every other fiber. A basic color scheme of twenty-four colors allows individual fiber identification. Colored tubes, binders, threads, stripings, or markings provide fiber group identification.

(3) Cable manufactured to this section must demonstrate compliance with the qualification testing requirements to ensure satisfactory end-use performance characteristics for the intended applications.

(4) Optical cable designs not specifically addressed by this section may be allowed if accepted by REA. Justification for acceptance of a modified design must be provided to substantiate product utility and long term stability and endurance.

(5) All cables sold to REA borrowers for projects involving REA loan funds under this section must be accepted by REA Technical Standards Committee "A" (Telephone). For cables manufactured to the specification of this section, all design changes to an accepted design must be submitted for acceptance. REA will be the sole authority on what constitutes a design change.

(6) The American National Standard Institute/Institute of Electrical and Electronics Engineers, Inc (ANSI/IEEE), 1993 National Electrical Safety Code (NESC) referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/IEEE 1993 NESC are available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from IEEE Service Center, 445 Hoes Lane, Piscataway, NJ 08854, telephone number 1 (800) 678–4333.

(7) American Society for Testing and Materials Specifications (ASTM) A 640–

(iii) The core or buffer tubes containing the fibers and the interstices between the buffer tubes, fillers, and strength members in the core structure are filled with a suitable material to exclude water.

(iv) The cable structure is completed by an extruded overall plastic jacket. This jacket may have strength members embedded in it, in some designs.

(v) Buried installation requires an armor under the outer jacket.

(vi) For self-supporting cable the outer jacket may be extruded over the support messenger and cable core.

(2) The cable is fully color coded so that each fiber is distinguishable from every other fiber. A basic color scheme of twenty-four colors allows individual fiber identification. Colored tubes, binders, threads, stripings, or markings provide fiber group identification.

(3) Cable manufactured to this section must demonstrate compliance with the qualification testing requirements to ensure satisfactory end-use performance characteristics for the intended applications.

(4) Optical cable designs not specifically addressed by this section may be allowed if accepted by REA. Justification for acceptance of a modified design must be provided to substantiate product utility and long term stability and endurance.

(5) All cables sold to REA borrowers for projects involving REA loan funds under this section must be accepted by REA Technical Standards Committee "A" (Telephone). For cables manufactured to the specification of this section, all design changes to an accepted design must be submitted for acceptance. REA will be the sole authority on what constitutes a design change.

(6) The American National Standard Institute/Institute of Electrical and Electronics Engineers, Inc (ANSI/IEEE), 1993 National Electrical Safety Code (NESC) referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/IEEE 1993 NESC are available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from IEEE Service Center, 445 Hoes Lane, Piscataway, NJ 08854, telephone number 1 (800) 678–4333.

(7) American Society for Testing and Materials Specifications (ASTM) A 640–91, Standard Specification for Zinc-Coated Steel Strand for Messenger Support of Figure 8 Cable; ASTM B 736–92a, Standard Specification for Aluminum, Aluminum Alloy, and Aluminum-Clad Steel Cable Shielding Stock; ASTM D 1238–90b, Standard Test Method for Flow Rates of Thermoplastics by Extrusion Plastometer; ASTM D 1248–84 (1989), Standard Specification for Polyethylene Plastic Molding and Extrusion Materials, ASTM D 1535–89, Standard Test Method for Specifying Color by the Munsell System; ASTM D 3349–86, Standard Test Method for Absorption Coefficient of Carbon Black Pigmented Ethylene Plastic; ASTM D 4565–90a, Standard Test Methods for Physical and Environmental Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; ASTM D 4566–90, Standard Test Methods for Electrical Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; ASTM D 4568–86, Standard Test Methods for Evaluating Compatibility Between Cable Filling and Flooding Compounds and Polyolefin Cable Materials; and ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, referenced in this section are incorporated by reference by REA. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM standards are available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187, telephone number (215) 299–5585.

(8) Electronic Industries Association Standards (EIA)–455–20, Measurement of Change in Optical Transmittance; EIA–455–41, Compressive Loading Resistance of Fiber Optic Cables; EIA–455–86, Fiber Optic Cable Jacket Shrinkage; EIA–455–89A, Fiber Optic Cable Jacket Elongation And Tensile Strength; and EIA–455–174, Mode Field Diameter of Single-Mode Optical Fiber by Knife-Edge Scanning in the Far Field, referenced in this section are incorporated by reference by REA. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of EIA standards are available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, telephone number (303) 792–2181.

(9) Electronic Industries Association/Telecommunications Industries Association Standards (EIA/TIA)–455–25A, Repeated Impact Testing of Fiber Optic Cables and Cable Assemblies; EIA/TIA–455–30B, Frequency Domain Measurement of Multimode Optical Fiber Information Transmission Capacity; EIA/TIA–455–31B, Fiber Tensile Proof Test Method; EIA/TIA–455–37A, Low or High Temperature Bend Test for Fiber Optic Cable; EIA/TIA–455–45B, Method for Measuring Optical Fiber Geometry Using a Laboratory Microscope; EIA/TIA–455–46A, Spectral Attenuation Measurement for Long-Length, Graded-Index Optical Fibers; EIA/TIA–455–48B, Measurement of Optical Fiber Cladding Diameter Using Laser-Based Instruments; EIA/TIA–455–51A, Pulse Distortion Measurement of Multimode Glass Optical Fiber Information Transmission Capacity; EIA/TIA–455–53A, Attenuation by Substitution Measurement for Multimode Graded-Index Optical Fibers or Fiber Assemblies Used in Long Length Communications Systems; EIA/TIA–455–55B, End-View Methods for Measuring Coating and Buffer Geometry of Optical Fibers; EIA/TIA–455–58A, Core Diameter Measurement of Graded-Index Optical Fibers; EIA/TIA–455–59, Measurement of Fiber Point Defects Using an OTDR; EIA/TIA–455–61, Measurement of Fiber or Cable Attenuation Using an OTDR; EIA/TIA–455–78A, Spectral-Attenuation Cutback Measurement for Single-Mode Optical Fibers; EIA/TIA–455–81A, Compound Flow (Drip) Test for Filled Fiber Optic Cable; EIA/TIA–455–82B, Fluid Penetration Test for Fluid-Blocked Fiber Optic Cable; EIA/TIA–455–85A, Fiber Optic Cable Twist Test; EIA/TIA–455–104A, Fiber Optic Cable Cyclic Flexing Test; EIA/TIA–455–164A, Single-Mode Fiber, Measurement of Mode Field Diameter by Far-Field Scanning; EIA/TIA–455–165A, Mode Field Diameter Measurement Near Field Scanning Technique; EIA/TIA–455–167A, Mode Field Diameter, Variable Aperture in the Far Field; EIA/TIA–455–168A, Chromatic Dispersion Measurement of Multimode Graded-Index and Single-Mode Optical Fibers by Spectral Group

Delay Measurement in the Time Domain; EIA/TIA–455–169A, Chromatic Dispersion Measurement of Single-Mode Optical Fibers by the Phase-Shift Method; EIA/TIA–455–170, Cable Cutoff Wavelength of Single-Mode Fiber by Transmitted Power; EIA/TIA–455–173, Coating Geometry Measurement for Optical Fiber Side-View Method; EIA/TIA–455–175A, Chromatic Dispersion Measurement of Single-Mode Optical Fibers by the Differential Phase Shift Method; EIA/TIA–455–176, Method for Measuring Optical Fiber Cross-Sectional Geometry by Automated Grey-Scale Analysis; EIA/TIA–455–177A, Numerical Aperture Measurement of Graded-Index Optical Fibers; EIA/TIA–455–178, Measurements of Strip Force Required for Mechanically Removing Coatings from Optical Fibers; and EIA/TIA–598, Color Coding of Fiber Optic Cables, referenced in this section are incorporated by reference by REA. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of EIA/TIA standards are available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, telephone number (303) 792–2181.

(10) REA intends that the optical fibers contained in the cables manufactured in accordance with this section have characteristics that will allow signals, having a range of wavelengths, to be carried simultaneously.

(b) *Optical fibers.* (1) The solid glass optical fibers must consist of a cylindrical core and cladding covered by either an ultraviolet-cured acrylate or other suitable coating.

(2) The optical fiber types must be one of the following:

(i) Dispersion-unshifted single mode fiber EIA Class IVa;

(ii) Dispersion-shifted single mode fiber EIA Class IVb;

(iii) 50/125 micrometer multimode fiber EIA Class Ia; or

(iv) 62.5/125 micrometer multimode fiber EIA Class Ia.

(3) The dispersion-unshifted single mode fiber core must have either a matched or depressed clad step refractive index profile with a mode-field diameter of 9.0±1.0 micrometers when measured at 1300 nanometers and 10.5+1.0 micrometers/−1.5 micrometers when measured at 1550 nanometers in accordance with any one of the following test methods:

(i) EIA/TIA–455–164A;

(ii) EIA/TIA–455–165A;

(iii) EIA/TIA–455–167A; or

(iv) EIA–455–174.

(4) The dispersion-shifted single mode fiber core must have either a segmented core design or depressed clad step refractive index profile with a mode-field diameter of 7.5+1.5 micrometers/−1.3 micrometers when measured at 1550 nanometers in accordance with any one of the test procedures specified in paragraph (b)(3) of this section.

(5) The core clad off-set of the dispersion-unshifted and dispersion-shifted single mode fibers must not be greater than 1.0 micrometer when measured in accordance with either EIA/TIA–455–45B or EIA/TIA–455–176.

(6) The multimode fiber cores must have graded (parabolic) refractive index profiles with core diameters of 50.0±3.0 micrometers or 62.5±3.0 micrometers when measured in accordance with either EIA/TIA–455–58A, or EIA/TIA–455–176.

(7) The core noncircularity of multimode fibers must not exceed 6 percent when measured in accordance with either EIA/TIA–455–45B or EIA/TIA–455–176.

(8) The outside diameter of the glass fiber for both single mode and multimode fibers must be 125±2.0 micrometers when measured in accordance with any one of the following test methods:

(i) EIA/TIA–455–45B;

(ii) EIA/TIA–455–176; or

(iii) EIA/TIA–455–48B, Methods A or B.

(9) The outside diameter of the glass fiber must be nominally concentric with the fiber core as is consistent with the best commercial practice.

(10) The individual fibers must be proof tested at a minimum tensile stress of 0.35 gigapascal for approximately one second when measured in accordance with EIA/TIA–455–31B.

(11) Factory splices of fibers are allowed provided that prior acceptance from REA is obtained for the splice technique, that all splices are documented and reported to the customer and that the spliced fiber meets all requirements of this section.

(12) The optical fiber must be coated with a suitable material to preserve the intrinsic strength of the glass having an outside diameter of 250±15 micrometers when measured in accordance with either EIA/TIA–455–55B or EIA/TIA–455–173.

(13) The maximum force required to remove 25 millimeters of protective fiber coating must not exceed 13 newtons when measured in accordance with EIA/TIA–455–178.

(14) All optical fibers in any single length of cable must be of the same type.

(c) *Buffer/coating.* (1) The optical fibers contained in a tube buffer (loose tube), an inner jacket (unit core), a channel or otherwise loosely packaged must have a clearance between the fibers and the inside of the container sufficient to allow for thermal expansions without constraining the fibers. The protective container must be manufactured from a material having a coefficient of friction sufficiently low to allow the fibers free movement.

(2) Optical fibers covered in near contact with an extrusion (tight tube) must have an intermediate soft buffer to allow for thermal expansions and minor pressures.

(3) All protective coverings in any single length of cable must be continuous and be of the same material except at splice locations.

(4) The protective coverings must be free from holes, splits, blisters, and other imperfections and must be as smooth and concentric as is consistent with the best commercial practice.

(5) Repairs to the fiber coatings are not allowed except at splice locations.

(6) Both loose tube and tight tube coverings of each color and other fiber package types removed from the finished cable must meet the following shrinkback and cold bend performance requirements. The fibers may be left in the tubes.

(i) *Shrinkback.* Testing must be conducted in accordance with ASTM D 4565–90a, paragraph 14.1, using a talc bed at a temperature of 95 °C. Shrinkback must not exceed 5 percent of the original 150 millimeter length of the specimen. The total shrinkage of the specimen must be measured.

(ii) *Cold bend.* Testing must be conducted on at least one tube from each color in the cable. Stabilize the specimen to −20±1 °C for a minimum of four hours. While holding the specimen and mandrel at the test temperature, wrap the tube in a tight helix ten times around a mandrel with a diameter not greater than five times the tube diameter. The tube must show no evidence of cracking when observed with normal or corrected-to-normal vision.

Note: Channel cores and similar slotted single component core designs need not be tested for cold bend.

(d) *Fiber and buffer tube identification.* (1) The colors designated for identification of loose buffer tubes, tight tube buffer fibers and individual fibers in multifiber tubes, slots or bundles are shown in the following table:

Buffer tube and fiber No.	Color
1	Blue.
2	Orange.
3	Green.
4	Brown.
5	Slate.
6	White.
7	Red.
8	Black.
9	Yellow.
10	Violet.
11	Rose.
12	Aqua.
13	Blue/Black Tracer.
14	Orange/Black Tracer.
15	Green/Black Tracer.
16	Brown/Black Tracer.
17	Slate/Black Tracer.
18	White/Black Tracer.
19	Red/Black Tracer.
20	Black/Yellow Tracer.
21	Yellow/Black Tracer.
22	Violet/Black Tracer.
23	Rose/Black Tracer.
24	Aqua/Black Tracer.

(2) *Standards of color.* Except for the aqua color, the colors of fibers and tubes supplied in accordance with this section are specified in terms of the Munsell Color System (ASTM D 1535–89) and must comply with the color limits as defined in EIA/TIA–598. (A visual color standard meeting these requirements and entitled "Munsell Color Charts for Color Coding," may be obtained from the Munsell Color Company, Inc., 2441 North Calvert Street, Baltimore, Maryland 21218. The latest edition of the color standard should be used.)

(i) The aqua color limits using the Munsell Color System must be as follows:

MUNSELL NOTATION

Symbol	Aqua color
Centroid	10BG 7/6
H++	5B 7/6
H− −	5BG 7/6
V++	10BG 8/4
V− −	10BG 6/6
C++	None
C− −	10BG 7/4

(ii) Other coloring schemes used for providing identification of buffer tubes and optical fibers which deviate from the requirements of paragraph (d)(1) of this section will not be accepted by REA.

(e) *Strength members.* (1) Strength members must be an integral part of the cable construction, but are not considered part of the support

fibers in multifiber tubes, slots or bundles are shown in the following table:

Buffer tube and fiber No.	Color
1	Blue.
2	Orange.
3	Green.
4	Brown.
5	Slate.
6	White.
7	Red.
8	Black.
9	Yellow.
10	Violet.
11	Rose.
12	Aqua.
13	Blue/Black Tracer.
14	Orange/Black Tracer.
15	Green/Black Tracer.
16	Brown/Black Tracer.
17	Slate/Black Tracer.
18	White/Black Tracer.
19	Red/Black Tracer.
20	Black/Yellow Tracer.
21	Yellow/Black Tracer.
22	Violet/Black Tracer.
23	Rose/Black Tracer.
24	Aqua/Black Tracer.

(2) *Standards of color.* Except for the aqua color, the colors of fibers and tubes supplied in accordance with this section are specified in terms of the Munsell Color System (ASTM D 1535–89) and must comply with the color limits as defined in EIA/TIA–598. (A visual color standard meeting these requirements and entitled "Munsell Color Charts for Color Coding," may be obtained from the Munsell Color Company, Inc., 2441 North Calvert Street, Baltimore, Maryland 21218. The latest edition of the color standard should be used.)

(i) The aqua color limits using the Munsell Color System must be as follows:

MUNSELL NOTATION

Symbol	Aqua color
Centroid	10BG 7/6
H++	5B 7/6
H– –	5BG 7/6
V++	10BG 8/4
V– –	10BG 6/6
C++	None
C– –	10BG 7/4

(ii) Other coloring schemes used for providing identification of buffer tubes and optical fibers which deviate from the requirements of paragraph (d)(1) of this section will not be accepted by REA.

(e) *Strength members.* (1) Strength members must be an integral part of the cable construction, but are not considered part of the support messenger for self-supporting optical cable.

(2) The combined strength of all the strength members must be sufficient to support the stress of installation and to protect the cable in service.

(3) Strength members may be incorporated into the core as a central support member or filler, as fillers between the fiber packages, as an annular serving over the core, as an annular serving over the intermediate jacket, embedded in the outer jacket or as a combination of any of these methods.

(4) The central support member or filler must contain no more than one splice per kilometer of cable. Individual fillers placed between the fiber packages and placed as annular servings over the core must contain no more than one splice per kilometer of cable. Cable sections having central member or filler splices must meet the same physical requirements as unspliced cable sections.

(5) Strength member materials and splicing techniques must be accepted by REA prior to their use.

(6) In each length of completed cable having a metallic central member, the dielectric strength between the armor and the metallic center member must withstand at least 15 kilovolts direct current for 3 seconds.

(f) *Forming the cable core.* (1) Protected fibers must be assembled with the optional central support member, fillers and strength members in such a way as to form a cylindrical group.

(2) The standard cylindrical group or core designs shall consist of 4, 6, 8, 10, 12, 16, 18, 20, or 24 fibers. Cylindrical groups or core designs larger than the sizes shown above must meet all the requirements of this section.

(3) When threads or tapes are used as core binders, they must be colored either white or natural and must be a nonhygroscopic and nonwicking dielectric material.

(4) When threads or tapes are used as unit binders to define optical fiber units in loose tube, tight tube, slotted, or bundled cored designs, they must be colored in accordance with the table listed below and must be a nonhygroscopic and nonwicking dielectric material or be rendered such by the filling compound. The colors of the binders must be in accordance with paragraphs (d)(2) introductory text and (d)(2)(i) of this section.

Unit No.	Binder color
1	Blue.
2	Orange.
3	Green.
4	Brown.
5	Slate.
6	White.
7	Red.
8	Black.
9	Yellow.
10	Violet.
11	Rose.
12	Aqua.
13	Blue-Black.
14	Orange-Black.
15	Green-Black.
16	Brown-Black.
17	Slate-Black.
18	White-Black.
19	Red-Black.
20	Black-Black-Yellow.
21	Yellow-Yellow-Black.
22	Violet-Black.
23	Rose-Black.
24	Aqua-Black.

(g) *Filling compound.* (1) To prevent the ingress of water into the core, a filling compound must be applied into the interior of the loose fiber tubes and into the interstices of the core. When a core wrap is used, the filling compound must also be applied to the core wrap, over the core wrap and between the core wrap and inner jacket when required.

(2) The materials must be homogeneous and uniformly mixed; free from dirt, metallic particles and other foreign matter; easily removed; nontoxic and present no dermal hazards.

(3) The individual cable manufacturer must satisfy REA that the filling compound selected for use is suitable for its intended application. The filling compound must be compatible with the cable components when tested in accordance with ASTM D 4568–86 at a temperature of 80° C.

(h) *Core wrap (optional).* (1) At the option of the manufacturer, one or more layers of nonhygroscopic and nonwicking dielectric material may be applied over the core.

(2) The core wrap(s) can be used to provide a heat barrier to prevent deformation or adhesion between the fiber tubes or can be used to contain the core.

(3) When core wraps are used, sufficient filling compound must be applied to the core wraps so that voids or air spaces existing between the core wraps and between the core the inner side of the core wrap are minimized.

(i) *Inner jacket.* (1) Inner jackets may be applied directly over the core or over the strength members.

(i) For armored cable an inner jacket is optional but recommended. The inner jacket may absorb stresses in the cable core that may be introduced by armor application or by armored cable installation.

(ii) For unarmored cable an inner jacket is optional.

(2) The inner jacket material and test requirements must be as for the outer jacket material per paragraphs (m)(3) introductory text through (m)(3)(v) of this section, except that either black or natural polyethylene may be used. In the case of natural polyethylene, the requirements for absorption coefficient and the inclusion of furnace black are waived.

(j) *Flooding compound.* (1) Sufficient flooding compound must be applied between the inner jacket and armor and between the armor and outer jacket so that voids and air spaces in these areas are minimized. The use of floodant between the armor and outer jacket is not required when uniform bonding, per paragraph (k)(10) of this section, is achieved between the plastic-clad armor and the outer jacket.

(2) The flooding compound must be compatible with the jacket when tested in accordance with ASTM D 4568–86 at a temperature of 80° C. The floodant must exhibit adhesive properties sufficient to prevent jacket slip when tested in accordance with the requirements of Appendix A, paragraph (III)(3), of this section.

(3) The individual cable manufacturer must satisfy REA that the flooding compound selected for use is acceptable for the application.

(4) In lieu of a flooding compound, water blocking tapes may be applied between the inner jacket and armor and between the armor and outer jacket to prevent water migration. The use of the water blocking tape between the armor and outer jacket is not required when uniform bonding, per paragraph (k)(10) of this section, is achieved between the plastic-clad armor and the outer jacket.

(k) *Armor.* (1) A steel armor, plastic coated on both sides, is required for direct buried cable manufactured under the provisions of this section. An armor is optional for duct and aerial cable as required by the purchaser. The plastic coated steel armor must be applied longitudinally directly over the core wrap or the intermediate jacket and have a minimum overlap of 3.0 millimeters.

(2) The uncoated steel tape must be electrolytic chrome coated steel (ECCS) with a thickness of 0.155 ± 0.015 millimeters.

(3) The reduction in thickness of the armoring material due to the corrugating or to the application process must be kept to a minimum and must not exceed 10 percent at any spot.

(4) The armor of each length of cable must be electrically continuous with no more than one joint or splice allowed per kilometer of cable. This requirement does not apply to a joint or splice made in the raw material by the raw material manufacturer.

(5) The breaking strength of any section of an armor tape, containing a factory splice joint, must not be less than 80 percent of the breaking strength of an adjacent section of the armor of equal length without a joint.

(6) For cables containing no floodant over the armor, the overlap portions of the armor tape must be bonded in cables having a flat, noncorrugated armor to meet the requirements of paragraphs (q)(1) through (q)(7)(ii) of this section. If the tape is corrugated, the overlap portions of the armor tape must be sufficiently bonded and the corrugations must be sufficiently in register to meet the requirements of paragraphs (q)(1) through (q)(7)(ii) of this section.

(7) The armor tape must be so applied as to enable the cable to pass the bend test as specified in paragraph (q)(1) of this section.

(8) The protective coating on the steel armor must meet the Bonding-to-Metal, Heat Sealability, Lap-Shear and Moisture Resistance requirements of Type I, Class 2 coated metals in accordance with ASTM B 736–92a.

(9) The ability of the plastic-clad metal to resist the flooding compound must be determined as required by ASTM D 4568–86 using a one meter length of coated steel which must be aged for 7 days at 68±1 °C. There must be no delamination of the coating from the steel at the conclusion of the test.

(10) When the jacket is bonded to the plastic coated armor, the bond between the plastic coated armor and the outer jacket must not be less than 525 newtons per meter over at least 90 percent of the cable circumference when tested in accordance with ASTM D 4565–90a. For cables with strength members embedded in the jacket, and residing directly over the armor, the area of the armor directly under the strength member is excluded from the 90 percent calculation.

(l) *Optional support messenger (aerial cable).* (1) When a self-supporting aerial cable containing an integrated support messenger is supplied, the support messenger must comply with the requirements specified in paragraphs (l)(2) introductory text through (l)(6) of this section.

(2) The fully flooded, stranded support messenger must be 6.35 millimeters diameter, 7 wire, extra high strength grade, Class A galvanized steel strand conforming to ASTM A 640–91 with exceptions and additional provisions as follows:

(i) The maximum lay of the individual wires of the strand must be 140 millimeters.

(ii) Any section of a completed strand containing a joint must have minimum tensile strength and elongation of 29,500 newtons and 3.5 percent, respectively, when tested in accordance with the procedures specified ASTM A 640–91.

(iii) The individual wires from a completed strand which contain joints must not fracture when tested according to the "Ductility of Steel" procedures specified in ASTM A 640–91 except that the mandrel diameter must be equal to 5 times the nominal diameter of the individual wires.

(3) The support strand must be completely covered with a corrosion protective floodant. The floodant must be homogeneous and uniformly mixed.

(4) The floodant must be nontoxic and present no dermal hazard.

(5) The floodant must be free from dirt, metallic particles, and other foreign matter that may interfere with the performance of the cable.

(6) The floodant must be compatible with the polyethylene outer jacket and must be acceptable to REA.

(7) Other methods of providing self-supporting cable specifically not addressed in this section may be allowed if accepted by REA. Justification for acceptance of a modified design must be provided to substantiate product utility and long term stability and endurance.

(m) *Outer jacket.* (1) The outer jacket must provide the cable with a tough, flexible, protective covering which can withstand exposure to sunlight, to atmosphere temperatures and to stresses reasonably expected in normal installation and service.

(2) The jacket must be free from holes, splits, blisters, or other imperfections and shall be as smooth and concentric as is consistent with the best commercial practice.

(3) The raw material used for the outer jacket must be one of the five types listed in paragraphs (m)(3)(i) through (m)(3)(v) of this section. The raw material must contain an antioxidant to provide long term stabilization and the materials must contain a 2.60±0.25 percent concentration of furnace black to provide ultraviolet shielding. Both the antioxidant and furnace black must be compounded into the material by the raw material supplier.

(i) Low density, high molecular weight polyethylene (LDHMW) must conform to the requirements of ASTM D 1248–84(1989), Type I, Class C, Category 4 or 5, Grade J3.

(ii) Low density, high molecular weight ethylene copolymer (LDHMW) must conform to the requirements of ASTM D 1248–84(1989), Type I, Class C, Category 4 or 5, Grade J3.

(iii) Linear low density, high molecular weight polyethylene (LLDHMW) must conform to the requirements of ASTM D 1248–

Prop
Melt Flow Rate:
Percent increase from raw material, Maximum
<0.41 (Initial Melt Index)
0.41–2.00 (Initial Melt Index)
Tensile Strength:
Minimum, Megapascals
Ultimate Elongation:
Minimum, Percent
Environmental Stress Cracking:
Maximum, Failures
Shrinkback:
Maximum, Percent
Impact:
Maximum, Failures

(5) *Testing procedures.* The procedures for testing jacket specimens for compliance with paragraph (m)(4) of this section must be as follows:

(i) *Melt flow rate.* The melt flow rate must be determined by ASTM D 1238–90b, Condition E. Jacketing material must be free from flooding and filling compound.

(ii) *Tensile strength and ultimate elongation.* Test in accordance with EIA–455–89A, using a jaw separation speed of 500 millimeters per minute for low density material and 50 millimeters per minute for high and medium density materials.

(iii) *Environmental stress cracking.* Test in accordance with ASTM D 4565–90a.

Eccentric

(B) The maximum and minimum thickness values shall be based on the average of each axial section.

(7) For jackets having embedded strength members, the jacket thickness must meet the requirements of paragraph (m)(6) of this section except that the jacket thickness over the strength members must not be less than 0.50 millimeters.

(8) The minimum jacket thickness at any point over the support messenger for self-supporting aerial cable utilizing

(ii) Low density, high molecular weight ethylene copolymer (LDHMW) must conform to the requirements of ASTM D 1248–84(1989), Type I, Class C, Category 4 or 5, Grade J3.

(iii) Linear low density, high molecular weight polyethylene (LLDHMW) must conform to the requirements of ASTM D 1248–84(1989), Type I, Class C, Category 4 or 5, Grade J3.

(iv) High density polyethylene (HD) must conform to the requirements of ASTM D 1248–84(1989), Type III, Class C, Category 4 or 5, Grade J4.

(v) Medium density polyethylene (MD) must conform to the requirements of ASTM D 1248–84(1989), Type II, Class C, Category 4 or 5, Grade J4.

(vi) Particle size of the carbon selected for use must not average greater than 20 nanometers.

(vii) Absorption coefficient must be a minimum of 400 in accordance with the procedures of ASTM D 3349–86.

(4) The outer jacketing material removed from or tested on the cable must be capable of meeting the following performance requirements:

Property	LLDHMW ethylene copolymer	LDHMW poly-ethylene	HD or MD poly-ethylene
Melt Flow Rate:			
Percent increase from raw material, Maximum			
<0.41 (Initial Melt Index)		50	50
0.41–2.00 (Initial Melt Index)	100		
Tensile Strength:		50	
Minimum, Megapascals			
Ultimate Elongation:	12	12	16.5
Minimum, Percent			
Environmental Stress Cracking:	400	400	300
Maximum, Failures			
Shrinkback:	0/10	2/10	2/10
Maximum, Percent			
Impact:	5	5	5
Maximum, Failures			
	2/10	2/10	2/10

(5) *Testing procedures.* The procedures for testing jacket specimens for compliance with paragraph (m)(4) of this section must be as follows:

(i) *Melt flow rate.* The melt flow rate must be determined by ASTM D 1238–90b, Condition E. Jacketing material must be free from flooding and filling compound.

(ii) *Tensile strength and ultimate elongation.* Test in accordance with EIA–455–89A, using a jaw separation speed of 500 millimeters per minute for low density material and 50 millimeters per minute for high and medium density materials.

(iii) *Environmental stress cracking.* Test in accordance with ASTM D 4565–90a.

(iv) *Shrinkback.* Test in accordance with the procedures specified in EIA–455–86 using a temperature of 100 ± 1° C for a 4 hour period for low density material and a test temperature of 115 ± 1° C for a 4 hour period for high and medium density materials.

(v) *Impact.* The test must be performed in accordance with ASTM D 4565–90a using an impact force of 4 newton-meters at a temperature of −20 ± 2° C. A cracked or split jacket constitutes failure.

(6) *Jacket thickness.* The nominal outer jacket thickness must not be less than 1.3 millimeters. The test method used must either be the End Sample Method (paragraph (m)(6)(i) of this section) or the Continuous Uniformity Thickness Gauge Method (paragraph (m)(6)(ii) of this section).

(i) *End sample method.* The jacket must be capable of meeting the following requirements:

Minimum Average Thickness: 90 percent (%) of nominal thickness
Minimum Spot Thickness: 70 % of nominal thickness

(ii) *Continuous uniformity thickness gauge.* (A) The jacket must be capable of meeting the following requirements:

Minimum Average Thickness: 75 % of nominal thickness
Minimum Thickness: 70 % of nominal thickness
Maximum Eccentricity: 40 % of nominal thickness

$$\text{Eccentricity} = \frac{\text{Max. Thickness} - \text{Min. Thickness}}{\text{Average Thickness}} \times 100$$

(B) The maximum and minimum thickness values shall be based on the average of each axial section.

(7) For jackets having embedded strength members, the jacket thickness must meet the requirements of paragraph (m)(6) of this section except that the jacket thickness over the strength members must not be less than 0.50 millimeters.

(8) The minimum jacket thickness at any point over the support messenger for self-supporting aerial cable utilizing such an element must be 1.1 millimeters.

(9) The web dimension for self-supporting aerial cable utilizing such a feature must be as follows:

Height: 2.29 ± 0.750 millimeters

Width: $1.52^{+0.51}_{-0.25}$ millimeters

(n) *Sheath slitting cord (optional).* (1) A sheath slitting cord is optional.

(2) When a sheath slitting cord is used it must be nonhygroscopic and nonwicking or be rendered such by the filling or flooding compound, continuous throughout a length of cable and of sufficient strength to open the sheath over at least a one meter length without breaking the cord at a temperature of 23±5 °C.

(o) *Identification marker and length marker.* (1) Each length of cable must be permanently labeled either Optical Cable, OC, Optical Fiber Cable, or OF on the outer jacket and identified as to manufacturer and year of manufacture.

(2) Each length of cable intended for direct burial installation shall be marked with a telephone handset in compliance with Rule 350G of the 1993 National Electrical Safety Code (NESC).

(3) Mark the number of fibers on the jacket.

(4) The markings must be printed on the jacket at regular intervals of not more than 2 meters.

(5) An alternative method of marking may be used if acceptable to REA.

(6) The completed cable must have sequentially numbered length markers in Meters or Feet at regular intervals of not more than 2 meters along the outside of the jacket.

(7) Continuous sequential numbering must be employed in a single length of cable.

(8) The numbers must be dimensioned and spaced to produce good legibility and must be approximately 3 millimeters in height. An occasional illegible marking is permissible if there is a legible marking located not more than 2 meters from it.

(9) The method of marking must be by means of suitable surface markings producing a clear distinguishable contrasting marking acceptable to REA. Where direct or transverse printing is employed, the characters should be indented to produce greater durability of marking. Any other method of length marking must be acceptable to REA as producing a marker suitable for the field. Size, shape and spacing of numbers, durability and overall legibility of the marker will be considered in acceptance of the method.

(10) Agreement between the actual length of the cable and the length marking on the cable jacket must be within the limits of +1 percent, −0 percent.

(11) The color of the initial marking must be white or silver. If the initial marking fails to meet the requirements of the preceding paragraphs, it will be permissible to either remove the defective marking and re-mark with the white or silver color or leave the defective marking on the cable and re-mark with yellow. No further re-marking is permitted. Any re-marking must be on a different portion of the cable circumference than any existing marking when possible and have a numbering sequence differing from any other existing marking by at least 3,000.

(12) Any reel of cable that contains more than one set of sequential markings must be labeled to indicate the color and sequence of marking to be used. The labeling must be applied to the reel and also to the cable.

(p) *Optical performance.* (1) The optical performance of the single mode fibers must be in accordance with the requirements specified in paragraphs (p)(1)(i) through (p)(1)(viii) of this section.

(i) The attenuation values of the single mode fibers within the cable must not exceed 0.5 decibel per kilometer (dB/km) for dispersion-unshifted single mode fiber at 1310 and 1550 nanometers and must not exceed 0.5 dB/km for dispersion-shifted single mode fiber at 1550 nanometers. The test method used for measuring the attenuation must be in accordance with either:

(A) EIA/TIA–455–78A; or

(B) EIA/TIA–455–61.

(ii) The attenuation values for wavelengths between 1285 and 1330 nanometers and between 1525 and 1575 nanometers for dispersion-unshifted fibers must not exceed the attenuation at 1310 and 1550 nanometers by more than 0.1 dB/km. The attenuation values for wavelengths between 1525 and 1575 nanometers for dispersion-shifted fibers must not exceed the attenuation at 1550 nanometers by more than 0.1 dB/km. The test method used for measuring the attenuation must be in accordance with any one of the methods specified in paragraph (p)(1)(i) of this section.

(iii) Attenuation discontinuities in the fiber's length must not exceed 0.1 decibel (dB) for dispersion-unshifted fiber at 1310±20 and 1550±20 nanometers and must not exceed 0.1 dB for dispersion-shifted fiber at 1550±20 nanometers when measured in accordance with EIA/TIA–455–59.

(iv) Measurement of the attenuation must be conducted at the wavelength specified for application and must be expressed in decibels per kilometer.

(v) Because the accuracy of attenuation measurements for single mode fibers becomes questionable when measured on short cable lengths, attenuation measurements are to be made utilizing characterization cable lengths. If the ship length of cable is less than one kilometer, the attenuation values measured on longer lengths of cable (characterization length of cable) before cutting to the ship lengths of cable may be applied to the ship lengths.

(vi) For dispersion-unshifted fiber the zero dispersion wavelength must be between 1300 and 1322 nanometers, and the value of the dispersion slope at the zero-dispersion wavelength must not be greater than 0.092 picosecond per nanometer squared times kilometer (ps/(nm^2•km) when measured in accordance with either:

(A) EIA/TIA–455–168A;

(B) EIA/TIA–455–169A; or

(C) EIA/TIA–455–175A.

(vii) For dispersion-shifted fiber, the dispersion over the wavelength range between 1525 and 1575 nanometers must not exceed 3.5 picosecond per nanometer times kilometer (ps/(nm^2•km)) and must have a maximum dispersion slope of 0.095 ps/(nm^2•km) at the zero dispersion wavelength when measured in accordance with any one of the test procedures specified in paragraph (p)(1)(vi) of this section.

(viii) The cut off wavelength of the dispersion-unshifted and the dispersion-shifted fibers in a cable must be less than 1260 nanometers when measured in accordance with EIA/TIA–455–170.

(2) The optical performance of the multimode fibers must be in accordance with the requirements specified in paragraphs (p)(2)(i) through (p)(2)(vi) of this section.

(i) The attenuation values of the 50/125 and 62.5/125 micrometer multimode fibers within the cable must not exceed 1.5 dB/km at 1300 nanometers when measured in accordance with either:

(A) EIA/TIA–455–46A;

(B) EIA/TIA–455–53A; or

(C) EIA/TIA–455–61.

(ii) Attenuation discontinuities in the fiber's length must not exceed 0.2 dB for both multimode fiber types at 1300±20 nanometers when measured in accordance with EIA/TIA–455–59.

(iii) Measurement of the attenuation must be conducted at the wavelength specified for application and must be expressed in decibels per kilometer.

(iv) Because the accuracy of attenuation measurements for multimode fibers becomes questionable when measured on short cable lengths, attenuation measurements are to be made utilizing characterization cable lengths. If the ship length of cable is less than one kilometer, the attenuation values measured on longer lengths of cable (characterization length of cable) before cutting to the ship lengths of cable may be applied to the ship lengths.

(v) The bandwidth of the multimode fibers at the −3 dB optical power of the optical fibers within the cable must be within the limits prescribed in the purchase order.

(vi) The test methods used to measure bandwidth must be in accordance with either EIA/TIA–455–30B or EIA/TIA–455–51A.

(3) Numerical aperture (NA) for each multimode optical fiber in the cable must be 0.20±0.015 for the 50/125 micrometer design and 0.275±0.015 for the 62.5/125 micrometer design when measured in accordance with EIA/TIA–455–177A.

(q) *Mechanical requirements*—(1) *Cable bend test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following bend test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.40 dB for multimode fibers.

(ii) Measure the attenuation of dispersion-unshifted single mode fibers at 1310±20 and 1550±20 nanometers, dispersion-shifted single mode fibers at 1550±20 nanometers and multimode fibers at 1300 20 nanometers.

(iii) After measuring the attenuation of the optical fibers, test the cable sample in accordance with EIA/TIA–455–37A, Test Condition E, Turns Test Level 3. The following detailed test conditions shall apply:

(A) Section 4.2—Mandrel diameter must be 20 times the cable diameter.

(B) Section 4.5—Measure the attenuation increase of the wound sample at the test temperature and specified wavelengths in accordance with EIA–455–20.

(C) For armored cable, the armor overlap must be on the outside of the bend.

(D) For self-supporting cable, the jacketed support messenger and connection web must be removed prior to testing.

(iv) The cable may be allowed to warm to room temperature before visual inspection. The bent area of the cable must show neither visible evidence of fracture of the jacket nor delamination of the bond at the overlap and to the outer jacket in nonflooded cable. After removal of the jacket, there must be no visible evidence of fracture of the armor, when present, and of the components in the core.

(2) *Cable impact test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following impact test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.40 dB for multimode fibers, and without cracking or splitting of the cable jacket.

(ii) Measure the attenuation of the optical fibers in accordance with paragraph (q)(1)(ii) of this section.

(iii) After measuring the attenuation of the optical fibers, test the cable in accordance with EIA/TIA–455–25A.

(3) *Cable compression test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following compressive strength test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.4 dB for

(q) *Mechanical requirements*—(1) *Cable bend test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following bend test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.40 dB for multimode fibers.

(ii) Measure the attenuation of dispersion-unshifted single mode fibers at 1310±20 and 1550±20 nanometers, dispersion-shifted single mode fibers at 1550±20 nanometers and multimode fibers at 1300 20 nanometers.

(iii) After measuring the attenuation of the optical fibers, test the cable sample in accordance with EIA/TIA–455–37A, Test Condition E, Turns Test Level 3. The following detailed test conditions shall apply:

(A) Section 4.2—Mandrel diameter must be 20 times the cable diameter.

(B) Section 4.5—Measure the attenuation increase of the wound sample at the test temperature and specified wavelengths in accordance with EIA–455–20.

(C) For armored cable, the armor overlap must be on the outside of the bend.

(D) For self-supporting cable, the jacketed support messenger and connection web must be removed prior to testing.

(iv) The cable may be allowed to warm to room temperature before visual inspection. The bent area of the cable must show neither visible evidence of fracture of the jacket nor delamination of the bond at the overlap and to the outer jacket in nonflooded cable. After removal of the jacket, there must be no visible evidence of fracture of the armor, when present, and of the components in the core.

(2) *Cable impact test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following impact test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.40 dB for multimode fibers, and without cracking or splitting of the cable jacket.

(ii) Measure the attenuation of the optical fibers in accordance with paragraph (q)(1)(ii) of this section.

(iii) After measuring the attenuation of the optical fibers, test the cable in accordance with EIA/TIA–455–25A.

(3) *Cable compression test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following compressive strength test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.4 dB for multimode and without cracking or splitting of the cable jacket when subjected to a minimum compressive load of 440 newtons per centimeter for armored cable and 220 newtons per centimeter for nonarmored cable.

(ii) Measure the attenuation of the optical fibers in accordance with paragraph (q)(1)(ii) of this section.

(iii) After measuring the attenuation of the optical fibers, test the cable in accordance with EIA–455–41 using a rate of 3 millimeters to 20 millimeters per minute and maintaining the load for 10 minutes.

(4) *Cable twist test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following twist test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.40 dB for multimode fibers, and without cracking or splitting of the cable jacket.

(ii) Measure the attenuation of the optical fibers in accordance with paragraph (q)(1)(ii) of this section.

(iii) After measuring the attenuation of the optical fibers, test the cable in accordance with EIA/TIA–455–85A, using a maximum cable twisting length of 4 meters.

(5) *Cable flex test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following flex test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.40 dB for multimode fibers.

(ii) Measure the attenuation of the optical fibers in accordance with paragraph (q)(1)(ii) of this section.

(iii) After measuring the attenuation of the optical fibers, test the cable in accordance with EIA/TIA–455–104A, Test Conditions I and II, flexed for 25 cycles using a sheave diameter not less than 20 times the cable diameter (Test condition letter B).

(iv) After completion of the test, the bent area of the cable must show neither visible evidence of fracture of the jacket nor delamination of the bond at the overlap and to the outer jacket in nonflooded cable. After removal of the jacket, there must be no visible evidence of fracture of the armor, when present, and of the components in the core.

(6) *Water penetration test.* (i) A one meter length of completed fiber optic cable must be preconditioned for 24 hours at 23±5 °C and then tested in accordance with EIA/TIA–455–82B using a one meter water head over the sample or placed under the equivalent continuous pressure for one hour.

(ii) After the one hour period, there must be no water leakage through the sheath interfaces, under the core wrap, between the cable core interstices or through the fiber buffers.

(iii) If water leakage is detected in the first sample, one additional 3 meter sample from EACH END of the same reel must be tested in accordance with paragraph (q)(6)(i) of this section. If either sample exhibits water leakage, the entire reel of cable is to be rejected. If the samples exhibit no leakage, the entire reel of cable is considered acceptable.

(7) *Compound flow test.* (i) Three 300 millimeter long test samples must be preconditioned for 24 hours at 23±5 °C and then tested in accordance with EIA/TIA–455–81A using a test temperature of 80 ± 1 °C.

(ii) The amount of filling or flooding compounds that flowed or dripped from any of the suspended cable specimens must be less than or equal to 0.5 grams of material. The measurement of an amount greater than 0.5 grams for any of the suspended cable specimens constitutes failure.

(r) *Preconnectorized cable (optional).* (1) At the option of the manufacturer and upon request by the purchaser, the cable may be factory terminated with connectors acceptable to REA.

(2) All connectors must be accepted by REA prior to their use.

(s) *Acceptance testing and extent of testing.* (1) The tests described in Appendix A of this section are intended for acceptance of cable designs and major modifications of accepted designs. What constitutes a major modification is at the discretion of REA. These tests are intended to show the inherent capability of the manufacturer to produce cable products that have satisfactory performance characteristics, long life and long-term optical stability but are not intended as field tests.

(2) For initial acceptance, the manufacturer must submit:

(i) An original signature certification that the product fully complies with each section of the specification:

(ii) Qualification Test Data, per Appendix A of this section;

(iii) A set of instructions for handling the cable;

(iv) OSHA Material Safety Data Sheets for all components;

(v) Agree to periodic plant inspections;

(vi) A certification that the product does or does not comply with the domestic origin manufacturing provisions, of the "Buy American" requirements of the Rural Electrification Act of 1938 (52 Stat. 818);

(vii) Written user testimonials concerning field performance of the product; and

(viii) Other nonproprietary data deemed necessary by the Chief, Outside Plant Branch (Telephone).

(3) For requalification acceptance, the manufacturer must submit an original signature certification that the product fully complies with each section of the specification, excluding the Qualification Section, and a certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (52 Stat. 818), for acceptance by September 30 every three years. The required data and certification must have been gathered within 90 days of the submission.

(4) Initial and requalification acceptance requests should be addressed to: Chairman, Technical Standards Committee "A" (Telephone), Telecommunications Standards Division, Rural Electrification Administration, Washington, DC 20250–1500.

(5) *Tests on 100 percent of completed cable.* (i) The armor for each length of cable must be tested for continuity using the procedures of ASTM D 4566–90.

(ii) Attenuation for each optical fiber in the cable must be measured

(iii) Optical discontinuities must be isolated and their location and amplitude recorded.

(6) *Capability tests.* Tests on a quality assurance basis must be made as frequently as is required for each manufacturer to determine and maintain compliance with:

(i) Numerical aperture and bandwidth of multimode fibers;

(ii) Cut off wavelength of single mode fibers;

(iii) Dispersion of single mode fibers;

(iv) Shrinkback and cold testing of loose tube and tight tube buffers;

(v) Adhesion properties of the protective fiber coating;

(vi) Dielectric strength between the armor and the metallic central member;

(vii) Performance requirements for the inner and outer jacketing materials;

(viii) Performance requirements for the filling and flooding compounds;

(ix) Bonding properties of the coated armoring material;

(x) Sequential marking and lettering;

(xi) Cable bend and cable impact tests;

(xii) Water penetration and compound flow tests;

(xiii) Cable twist, cable flex, and cable compression tests; and

(xiv) Performance requirements of support messenger.

(t) *Records of optical and physical tests.* (1) Each manufacturer must maintain suitable summary records for a period of at least 3 years of all optical and physical tests required on completed cable by this section as set forth in paragraphs (s)(5) and (s)(6) of this section. The test data for a particular reel must be in a form that it may be readily available to REA upon request. The optical data must be furnished to the purchaser on a suitable and easily readable form.

(2) Measurements and computed values must be rounded off to the number of places or figures specified for the requirement according to ASTM E 29–90.

(u) *Manufacturing irregularities.* (1) Repairs to the armor, when present, are not permitted in cable supplied to end users under this section.

(2) Minor defects in the inner and outer jacket (defects having a dimension of 3 millimeter or less in any direction) may be repaired by means of heat fusing in accordance with good commercial practices utilizing sheath grade compounds.

(3) Buffer tube repair is permitted only in conjunction with fiber splicing.

(v) *Packaging and preparation for shipment.* (1) The cable must be shipped on reels. The diameter of the drum must be large enough to prevent damage to the cable from reeling and unreeling. The reels must be substantial and so constructed as to prevent damage during shipment and handling.

(2) A circumferential thermal wrap or other means of protection complying with the requirements of Appendix B of this section must be secured between the outer edges of the reel flange to protect the cable against damage during storage and shipment.

(3) Cable manufactured to the requirements of this section must be sealed at the ends to prevent entrance of moisture. The method of sealing must be accepted by REA prior to its use.

(4) The end-of-pull (outer end) of the cable must be securely fastened to prevent the cable from coming loose during transit. The start-of-pull (inner end) of the cable must project through a slot in the flange of the reel, around an inner riser, or into a recess on the reel flange near the drum and fastened in such a way to prevent the cable from becoming loose during installation.

(5) Spikes, staples or other fastening devices must be used in a manner which will not result in penetration of the cable.

(6) The arbor hole must admit a spindle 63.5 millimeters in diameter without binding. Steel arbor hole liners may be used but must be accepted by REA prior to their use.

(7) Each reel must be plainly marked to indicate the direction in which it should be rolled to prevent loosening of the cable on the reel.

(8) Each reel must be stenciled or lettered with the name of the manufacturer.

(9) The following information must be either stenciled on the reel or on a tag firmly attached to the reel:

Optical Cable
Number of Fibers
Armored or Nonarmored
Year of Manufacture
Name of Cable Manufacturer
Length of Cable
Reel Number
REA 7 CFR 1755.900

Example:

Optical Cable
4 fiber
Armored
1988
XYZ Company
1050 meters
Reel Number 3
REA 7 CFR 1755.900

(10) When preconnectorized cable is shipped, the splicing modules must be protected to prevent damage during shipment and handling. The protection method must be accepted by REA prior to its use.

Appendix A to 7 CFR 1755.900 —Qualification Tests Methods

(I) The test procedures described in this appendix are for qualification of initial cable designs and major modifications of accepted designs. Included in (V) of this appendix are suggested formats that may be used in submitting test results to REA.

(II) Sample selection and preparation. (1) All testing must be performed on lengths removed sequentially from any of the same cables listed below. The cables must not have been exposed to temperatures in excess of 38°C since their initial cool downs after sheathing. The lengths specified are minimum lengths and if desirable from a laboratory testing standpoint longer lengths may be used:

(a) 12 single mode fiber jacketed cable consisting of 6 single mode dispersion-unshifted fibers and 6 single mode dispersion-shifted fibers.

(b) 12 multimode fiber jacketed cable consisting of 6 50/125 micrometer multimode fibers and 6 62.5/125 micrometer multimode fibers.

(c) 24 fiber jacketed combination cable consisting of 6 single mode dispersion-unshifted fibers; 6 single mode dispersion-shifted fibers; 6 50/125 micrometer multimode fibers; and 6 62.5/125 micrometer multimode fibers.

(2) Length A shall be a minimum of 500 meters long. Coil the sample with a diameter of 50 to 75 times its sheath diameter. Three lengths are required if only requesting acceptance for either single mode fiber cable (a), multimode fiber cable (b), or using the combination fiber cable (c). Six lengths, 3 lengths of single mode fiber cable (a), and 3 lengths of multimode fiber cable (b), are required if requesting acceptance for both single mode and multimode fiber cables.

(3) Length B shall be one meter long. Four lengths of either single mode fiber cable (a), multimode fiber cable (b) or the combination fiber cable (c) are required.

(4) Length C shall be 600 millimeters long. Four lengths of either single mode fiber cable (a), multimode fiber cable (b) or the combination fiber cable (c) are required.

(5) Data reference temperature. Unless otherwise specified, all measurement shall be made at 23±5°C.

(III) *Environmental tests*—(1) *Heat aging test.* (a) *Test samples.* Place one or two samples of length A and one sample each of lengths B and C in an oven or environmental chamber. The ends of sample A must exit from the chamber or oven for optical tests. Securely seal the oven exit holes.

(b) *Sequence of tests.* The samples are to be subjected to the following tests after conditioning:

(i) Water Penetration Test outlined in paragraph (III) (2) of this appendix; and

(ii) Jacket Slip Strength Test outlined in paragraph (III) (3) of this appendix. (For Flooded Designs Only)

(c) *Initial measurements.* (i) For sample(s) A measure the attenuation for the single mode dispersion-unshifted fibers at 1310 and 1550 nanometers, for single mode dispersion-shifted fibers at 1550 nanometers and/or for multimode fibers at 1300 nanometers at a temperature of 23±5°C. Also measure the bandwidth of the multimode fibers. Calculate the attenuation data on a per kilometer basis. Calculate the bandwidth data on a megahertz-kilometer (MHz-km) basis.

(ii) Record on suggested formats in (V) of this appendix or on other easily readable formats.

(d) *Heat conditioning.* (i) Immediately after completing the initial measurements, condition the sample(s) for 14 days at a temperature of 65±2°C.

(ii) At the end of this period note any exudation of cable filler. Measure the parameters given in paragraph (III)(1)(c) of this appendix. Record on suggested formats in (V) of this appendix or on other easily readable formats.

(e) *Overall optical deviation.* (i) Calculate the change in all parameters between the final parameters after conditioning with initial parameters in paragraph (III)(1)(c) of this appendix.

required if requesting acceptance for both single mode and multimode fiber cables.

(3) Length B shall be one meter long. Four lengths of either single mode fiber cable (a), multimode fiber cable (b) or the combination fiber cable (c) are required.

(4) Length C shall be 600 millimeters long. Four lengths of either single mode fiber cable (a), multimode fiber cable (b) or the combination fiber cable (c) are required.

(5) Data reference temperature. Unless otherwise specified, all measurement shall be made at 23±5°C.

(III) *Environmental tests*—(1) *Heat aging test.* (a) *Test samples.* Place one or two samples of length A and one sample each of lengths B and C in an oven or environmental chamber. The ends of sample A must exit from the chamber or oven for optical tests. Securely seal the oven exit holes.

(b) *Sequence of tests.* The samples are to be subjected to the following tests after conditioning:

(i) Water Penetration Test outlined in paragraph (III) (2) of this appendix; and

(ii) Jacket Slip Strength Test outlined in paragraph (III) (3) of this appendix. (For Flooded Designs Only)

(c) *Initial measurements.* (i) For sample(s) A measure the attenuation for the single mode dispersion-unshifted fibers at 1310 and 1550 nanometers, for single mode dispersion-shifted fibers at 1550 nanometers and/or for multimode fibers at 1300 nanometers at a temperature of 23±5°C. Also measure the bandwidth of the multimode fibers. Calculate the attenuation data on a per kilometer basis. Calculate the bandwidth data on a megahertz-kilometer (MHz-km) basis.

(ii) Record on suggested formats in (V) of this appendix or on other easily readable formats.

(d) *Heat conditioning.* (i) Immediately after completing the initial measurements, condition the sample(s) for 14 days at a temperature of 65±2°C.

(ii) At the end of this period note any exudation of cable filler. Measure the parameters given in paragraph (III)(1)(c) of this appendix. Record on suggested formats in (V) of this appendix or on other easily readable formats.

(e) *Overall optical deviation.* (i) Calculate the change in all parameters between the final parameters after conditioning with initial parameters in paragraph (III)(1)(c) of this appendix.

(ii) The stability of the optical parameters after completion of this test must be within the following prescribed limits:

(A) *Attenuation.* The attenuation of each multimode fiber must not change by more than 0.3 db/km and the attenuation of each single mode fiber must not change by more than 0.1 dB/km.

(B) *Bandwidth.* The bandwidth of each multimode fiber must not change by more than 15 percent from their original values.

(2) *Water penetration testing.* (a) A watertight closure must be placed over the jacket of length B from paragraph (III)(1)(a) of this appendix. The closure must not be placed over the jacket so tightly that the flow of water through pre-existing voids or air spaces is restricted. The other end of the sample must remain open.

(b) Test per Option A or Option B. (i) *Option A.* Weigh the sample and closure prior to testing. Fill the closure with water and place under a continuous pressure of 10 ± 0.7 kilopascals for one hour. Collect the water leakage from the end of the test sample during the test and weigh to the nearest 0.1 gram. Immediately after the one hour test, seal the ends of the cable with a thin layer of grease and remove all visible water from the closure, being careful not to remove water that penetrated into the core during the test. Reweigh the sample and determine the weight of water that penetrated into the core.

(ii) *Option B.* Fill the closure with a 0.2 gram sodium fluorscein per liter water solution and apply a continuous pressure of 10 ± 0.7 kilopascals for one hour. Catch and weigh any water that leaks from the end of the cable during the one hour period. If no water leaks from the sample, carefully remove the water from the closure. Then carefully remove the outer jacket, armor, if present, inner jacket, if present, and core wrap one at a time, examining with an ultraviolet light source for water penetration. After removal of the core wrap, carefully dissect the core and examine for water penetration within the core. Where water penetration is observed, measure the penetration distance.

(3) *Jacket slip strength test.* (For Flooded Design Only) (a) *Sample selection.* Test sample C from paragraph (III)(1)(a) of this appendix.

(b) *Sample preparation.* Prepare test sample in accordance with the procedures specified in ASTM D 4565–90a.

(c) *Sample conditioning and testing.* Remove the sample from the tensile tester prior to testing and condition for one hour at 50 ± 2°C. Test immediately in accordance with the procedures specified in ASTM D 4565–90a. A minimum jacket slip strength of 67 newtons is required. Record the load attained on the suggested formats in (V) of this appendix or on other easily readable formats.

(4) *Temperature and humidity exposure.* (a) Repeat paragraphs (III)(1)(a) through (III)(1)(c)(ii) of this appendix for separate set of samples A, B and C which have not been subjected to prior environmental conditioning.

(b) Immediately after completing the measurements, expose the test sample to 100 temperature cyclings. Relative humidity within the chamber shall be maintained at 90 ± 2 percent. One cycle consists of beginning at a stabilized chamber and test sample temperature of 52 ± 2°C, increasing the temperature to 57 ± 2°C, allowing the chamber and test samples to stabilize at this level, then dropping the temperature back to 52 ± 2°C.

(c) Repeat paragraphs (III)(1)(d)(ii) through (III)(3)(c) of this appendix.

(5) *Temperature cycling.* (a) Repeat paragraphs (III)(1)(a) through (III)(1)(c)(ii) of this appendix for separate set of samples A, B, and C which have not been subjected to prior environmental conditioning.

(b) Immediately after completing the measurements, subject the test sample to 10 cycles of temperature between −40°C and +60°C. The test sample must be held at each temperature extreme for a minimum of 1½ hours during each cycle of temperature. The air within the temperature cycling chamber must be circulated throughout the duration of the cycling.

(c) Repeat paragraphs (III)(1)(d)(ii) through (III)(3)(c) of this appendix.

(IV) *Control sample*—(a) *Test samples.* A separate set of lengths B and C must have been maintained at 23 ± 5°C for at least 48 hours before the testing.

(b) Repeat paragraphs (III)(2) through (III)(3)(c) of this appendix for these samples.

(V) The following suggested formats may be used in submitting the test results to REA:

HEAT AGING TEST—SINGLE MODE CABLE

Fiber No.	Attenuation—1310 nm dB/km			Attenuation—1550 nm dB/km		
	Initial	Final	Change	Initial	Final	Change
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

HEAT AGING TEST—MULTIMODE CABLE

Fiber No.	Attenuation—1300 nm dB/km			Bandwidth dB/km		
	Initial	Final	Change	Initial	Final	Change (%)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

HEAT AGING TEST—COMBINATION CABLE

Fiber No.	Attenuation—1310 nm dB/km			Attenuation—1550 nm dB/km			Bandwidth MHz-km		
	Initial	Final	Change	Initial	Final	Change	Initial	Final	Change (%)
1									
2									
3									
4									
5									
6									

HEAT AG

Fiber No.	Attenuation—1310 nm dB/km		
	Initial	Final	Cha
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

TEMPERA

Fiber No.	Attenuation—13 dB/km	
	Initial	Final
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

HEAT AGING TEST—COMBINATION CABLE—Continued

Fiber No.	Attenuation—1310 nm dB/km			Attenuation—1550 nm dB/km			Bandwidth MHz-km		
	Initial	Final	Change	Initial	Final	Change	Initial	Final	Change (%)
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									

TEMPERATURE/HUMIDITY TEST—SINGLE MODE CABLE

Fiber No.	Attenuation—1310 nm dB/km			Attenuation—1550 nm dB/km		
	Initial	Final	Change	Initial	Final	Change
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

TEMPERATURE/HUMIDITY TEST—MULTIMODE CABLE

Fiber No.		Attenuation—1300 nm dB/km			Bandwidth MHz-km		
		Initial	Final	Change	Initial	Final	Change
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

TEMPERATURE/HUMIDITY TEST—COMBINATION CABLE

Fiber No.	Attenuation—1310 nm dB/km			Attenuation—1550 nm dB/km			Bandwidth MHz-km		
	Initial	Final	Change	Initial	Final	Change	Initial	Final	Change (%)
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									

TEMPERATURE

Fiber No.	Attenuation—1310 nm dB/km		Cha
	Initial	Final	
23			
24			

TEMPER

Fiber No.	Attenuation—1 dB/km	
	Initial	Final
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

TEMI

Fiber No.	Attenuation—13 dB/km	
	Initial	Final
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

TEMPERATURE/HUMIDITY TEST—COMBINATION CABLE—Continued

Fiber No.	Attenuation—1310 nm dB/km			Attenuation—1550 nm dB/km			Bandwidth MHz-km		
	Initial	Final	Change	Initial	Final	Change	Initial	Final	Change (%)
23									
24									

TEMPERATURE CYCLING TEST—SINGLE MODE CABLE

Fiber No.	Attenuation—1310 nm dB/km			Attenuation—1550 nm dB/km		
	Initial	Final	Change	Initial	Final	Change
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

TEMPERATURE CYCLING—MULTIMODE CABLE

Fiber No.	Attenuation—1300 nm dB/km			Bandwidth MHz-km		
	Initial	Final	Change	Initial	Final	Change (%)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

TEMPERATURE CYCLING TEST COMBINATION CABLE

Fiber No.	Attenuation—1310 nm dB/km			Attenuation—1550 nm dB/km			Bandwidth MHz-km		
	Initial	Final	Change	Initial	Final	Change	Initial	Final	Change (%)
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									

WATER PENETRATION TEST

	Option A		Option B	
	End leakage grams	Weight gain grams	End leakage grams	Penetration millimeters
Control				
Heat Age				
Humidity Exposure				
Temperature Cycling				

JACKET SLIP STRENGTH @ 50°C

	Load in Newtons	Filler Exudation (grams)
Control		
Heat Age		
Humidity Exposure		
Temperature Cycling		
Heat Age		
Humidity Exposure		
Temperature Cycle		

Appendix B to 7 CFR 1755.900—Thermal Reel Wrap Qualification

(I) The test procedures described in this appendix are only for qualification of initial and subsequent changes in thermal reel wraps.

(II) *Sample selection.* All testing must be performed on two 450 millimeter lengths of cable removed sequentially from the same fiber jacketed cable. This cable must not have been exposed to temperatures in excess of 38 °C since its initial cool down after sheathing.

(III) *Test procedure.* (1) Place the two samples on an insulating material such as wood.

(2) Tape thermocouples to the jackets of each sample to measure the jacket temperature.

(3) Cover one sample with the thermal reel wrap.

(4) Expose the samples to a radiant heat source capable of heating the uncovered jacket sample to a minimum of 71 °C. A GE 600 watt photoflood lamp or an equivalent lamp having the light spectrum approximately that of the sun shall be used.

(5) The height of the lamp above the jacket shall be 380 millimeters or an equivalent height that produces the 71 °C jacket temperature on the unwrapped sample shall be used.

(6) After the samples have stabilized at the temperature, the jacket temperatures of the samples shall be recorded after one hour of exposure to the heat source.

(7) Compute the temperature difference between jackets.

(8) For the thermal reel wrap to be acceptable to REA, the temperature difference between the jacket with the thermal reel wrap and the jacket without the reel wrap shall be greater than or equal to 17 °C.

Dated: June 2, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–14104 Filed 7–1–94; 8:45 am]

BILLING CODE 3410–15–P

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93–137–2]

Importation of Ratites and Hatching Eggs of Ratites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our interim rule that required specified identification and recordkeeping for ratites and ratite hatching eggs that are intended for importation into the United States. This extension will provide interested persons with additional time in which to prepare comments on the interim rule.

DATES: Consideration will be given only to written comments on Docket No. 93–137–1 that are received on or before July 20, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–137–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5907.

(7) Compute the temperature difference between jackets.

(8) For the thermal reel wrap to be acceptable to REA, the temperature difference between the jacket with the thermal reel wrap and the jacket without the reel wrap shall be greater than or equal to 17 °C.

Dated: June 2, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–14104 Filed 7–1–94; 8:45 am]

BILLING CODE 3410–15–P

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93–137–2]

Importation of Ratites and Hatching Eggs of Ratites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our interim rule that required specified identification and recordkeeping for ratites and ratite hatching eggs that are intended for importation into the United States. This extension will provide interested persons with additional time in which to prepare comments on the interim rule.

DATES: Consideration will be given only to written comments on Docket No. 93–137–1 that are received on or before July 20, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–137–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5907.

SUPPLEMENTARY INFORMATION: On March 8, 1994, we published in the **Federal Register** (59 FR 10729–10734, Docket No. 93–137–1) an interim rule that amended the animal import regulations in 9 CFR part 92 by requiring that specified identification and recordkeeping requirements be met in the country of export for ratites and ratite hatching eggs intended for importation into the United States. Comments on the interim rule were required to be received on or before May 9, 1994.

So that we may consider comments received after that date, we are extending and reopening the public comment period until 15 days after publication of this notice. During this period, other interested persons may also submit their comments for our consideration. Therefore, in this document, we are reopening and extending the comment period on Docket No. 93–137–1, so that we may consider all written comments received on or before July 20, 1994.

Authority: 7 U.S.C. 1622, 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 29th day of June 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–16201 Filed 7–1–94; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Chapter III

[Docket No. 94–019N]

Use of Direct Final Rulemaking

AGENCY: Food Safety and Inspection Service.

ACTION: Policy statement.

SUMMARY: The Food Safety and Inspection Service is implementing a new rulemaking procedure to expedite noncontroversial changes to its regulations. Rules that the agency judges to be noncontroversial and unlikely to result in adverse comments will be published as "direct final" rules. "Adverse comments" are comments that suggest that a rule should not be adopted or suggest that a change should be made to the rule. Each direct final rule will advise the public that no adverse comments are anticipated and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**. This new policy should expedite the promulgation of routine or otherwise noncontroversial rules by reducing the time that would be required to develop, review, clear, and publish separate proposed and final rules.

FOR FURTHER INFORMATION CONTACT: Paula M. Cohen, Director, Regulations Development, Policy, Evaluation and Planning Staff, Room 3812 South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–3700; (202) 720–7164.

SUPPLEMENTARY INFORMATION: The Food Safety and Inspection Service (FSIS) is committed to improving the efficiency of our regulatory process. As such, we plan to adopt the rulemaking technique known as "direct final rulemaking," which will be used to promulgate some of FSIS' rules.

The Direct Final Rule Process

Rules that FSIS judges to be noncontroversial and unlikely to generate adverse comments will be published as direct final rules. Such direct final rules will advise the public that no adverse comments are anticipated and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**.

"Adverse comments" are comments that suggest that the rule should not be adopted or that a change should be made to the rule. A comment expressing support for the rule as published would not be considered adverse. Also, a comment suggesting that requirements in the rule should, or should not, be employed by FSIS in programs or situations outside the scope of the direct final rule would not be considered adverse.

In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), this procedure gives the public general notice of FSIS' intent to revise or adopt a new rule and gives interested persons an opportunity to participate in the rulemaking through submission of comments. The major feature of direct final rulemaking is that if FSIS receives no written adverse comments within 30 days of the publication of a direct final rule or any written notice of intent to submit adverse comments, the rule will become effective without the need to publish a separate final rule. However,

FSIS will publish notice in the **Federal Register** stating that no written adverse comments and no written notice of intent to submit adverse comments were received regarding the direct final rule, and confirming that the direct final rule is effective on the date stated in the direct final rule.

If FSIS receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the publication of a direct final rule, FSIS will publish in the **Federal Register** a notice of withdrawal of the direct final rule. If FSIS intends to proceed with the rulemaking, the direct final rule will be republished as a proposed rule, and we will proceed through the normal notice-and-comment rulemaking procedures.

Determining When To Use Direct Final Rulemaking

Not all FSIS rules are good candidates for direct final rulemaking. We intend to use the direct final procedure only for rules that we consider noncontroversial and unlikely to generate adverse comments. The decision to use direct final rulemaking for particular situations will be based on FSIS' experience with similar rules.

Done in Washington, DC., on June 27, 1994.

William J. Hudnall,

Acting Administrator

[FR Doc. 94–16109 Filed 7–1–94; 8:45 am]

BILLING CODE 3410–DM–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 33, and 190

Risk Disclosure by Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators and Commodity Trading Advisors to Customers; Bankruptcy Disclosure

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending its rules to permit registrants to deliver to customers a generic risk disclosure statement which will satisfy risk disclosure requirements applicable to domestic and foreign commodity futures and commodity option transactions subject to regulation by the Commission. The Commission also is permitting such statement to substitute for the special disclosure requirement related to futures-style margining of the options premium permitted on certain foreign exchanges. The generic statement may be used by firms subject to CFTC jurisdiction in lieu of the separate disclosure statements that will continue to be authorized by Commission rules. The statement, which was developed in cooperation with various international regulators, also is intended to satisfy the risk disclosure requirements of certain foreign jurisdictions who have implemented the language of this proposed risk disclosure statement in their jurisdictions in accordance with their domestic law.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1993, the Commodity Futures Trading Commission (Commission) approved for publication in the **Federal Register** amendments to its rules 1.55, 30.6, 33.7, 180.3, 190.06 and 190.10.[1] Among other things, the rule amendments consolidated the foreign futures and foreign commodity options risk disclosure statement required by rule 30.6 with the domestic futures risk disclosure statement required by rule 1.55.

In addition, rule 1.55 was amended to provide in paragraph (c) that the Commission may approve for use in lieu of the prescribed rule 1.55 disclosure statement a risk disclosure statement approved by one or more foreign regulatory agencies or self-regulatory organizations if the Commission determines that such statement is reasonably calculated to provide the disclosures specified by rule 1.55. Rule 1.55(c) was adopted by the Commission to permit firms doing multinational business to use the same risk disclosure statement for foreign and U.S.-based business, thereby reducing duplicative disclosure requirements without sacrificing important customer protections or obscuring any special risks of trading outside the U.S.[2]

Although initially addressed to the approval of the individual disclosure statements of a particular jurisdiction, the Commission in proposing the amendments to, among others, rule 1.55, stated that the rule contemplates a mechanism for eventually substituting a uniform disclosure format, accepted internationally, that could be used on a general basis and supplemented as warranted for particular kinds of transactions or special markets.[3]

The Commission also noted that it was considering development of a "plain language" option disclosure statement and requested comment concerning the desirability of developing a simpler options disclosure statement and other possible improvements.[4] Generally, the commenters who addressed this issue supported the development of a plain language generic options risk disclosure statement and also encouraged the Commission to consider incorporating the required options disclosure into the revised rule 1.55 statement. However, the Commission deferred taking such action pending the outcome of international efforts to develop a consolidated futures and options statement.[5]

In this connection, the Commission stated that certain international regulators were endeavoring to develop a single risk disclosure statement that would be acceptable in multiple jurisdictions for domestic and cross-border transactions in futures and options and stated that:[6]

> The Commission is monitoring developments in this area and anticipates that if a universal statement of this nature is developed, it will consider permitting the use of such a statement in lieu of the new consolidated rule 1.55 risk disclosure statement as well as the options disclosure statement required by rule 33.7.

On January 5, 1994, the Commission approved for publication in the **Federal Register** an advance notice of proposed rulemaking which requested comment on the text of a two-page generic risk disclosure statement then the subject of multilateral discussions among international regulators.[7] The proposed text was intended to meet the risk disclosure requirements for both domestic and foreign commodity futures and commodity option products subject to regulation by the CFTC and thereby substitute for the statements required by rules 1.55, 33.7 and 190.10 as well as the special disclosures related to futures-style margining of options permitted on certain foreign exchanges.[8]

Comments on Advance Notice and Related Text Modifications

The Commission received comments from the National Futures Association (NFA), the Futures Industry Association (FIA), the Chicago Mercantile Exchange (CME), the Business Law Section of the American Bar Association (ABA), and Schulte Roth & Zabel (SRZ), a law firm. All commenters generally supported the Commission's proposal for a broader consolidated risk disclosure statement. The commenters particularly supported substituting the generic risk disclosure statement for the current rule 33.7 statement for domestic exchange-traded commodity options. The commenters generally believed that consolidation of risk disclosure statements into one concise document could increase the clarity of generic disclosure to customers and make the disclosure statement a more effective customer protection mechanism by focusing customers' attention on particular risks and upon obtaining adequate information on risks.

In response to the Commission's query whether use of the generic statement should be made mandatory or discretionary, and whether any distinctions should be made with respect to the type of firm that should be permitted to use the generic statement, commenters urged the Commission not to eliminate the current risk disclosure statement(s) but rather to permit firms to choose which disclosure statement(s) to provide to customers. For example, firms may not wish to redesign and reprint disclosure statements.

The Commission, therefore, agrees that all firms (without regard to whether the firms engage in cross-border business) should have the flexibility to determine whether they distribute to

---

[1] 58 FR 17495 (April 5, 1993). On May 5, 1994, the Commission also proposed substantial revisions to the disclosure framework applicable to commodity pool operators (CPOs) and commodity trading advisors (CTAs) designed to achieve greater simplicity, focus and clarity in performance history presentation, streamlining other required disclosures and a more concise and readable format for disclosure documents. 59 FR 25351 (May 16, 1994). If adopted, these changes would substitute Part 4 disclosure for rule 1.55 disclosure in certain cases.

[2] *See* 57 FR 46101, 46103 (October 7, 1992).

[3] 57 FR 46101, 46103–46104 (October 7, 1992).

[4] 57 FR 46101, 46108 (October 7, 1992).

[5] 58 FR 17495, 17502 (April 5, 1993).

[6] 58 FR 17495, 17497 (April 5, 1993).

[7] 59 FR 1506, 1508 (January 11, 1994).

[8] *See, e.g.*, CFTC Advisory No. 90–1 [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,597 (disclosure statement relating to the deferred payment of option premiums, superseding separate disclosure addenda required by orders concerning the London International Financial Futures Exchange (54 FR 37636 (September 12, 1989)), the International Petroleum Exchange (54 FR 50356 (December 6, 1989)), and the London Futures and Options Exchange (renamed as the London Commodity Exchange) (54 FR 50348 (December 6, 1989)); and 55 FR 14238 (April 17, 1990) (Sydney Futures Exchange). The text of the generic risk disclosure statement regarding futures-style margining of the options premium is substantially similar to the language of the addenda referred to above.

to regulation by the CFTC and thereby substitute for the statements required by rules 1.55, 33.7 and 190.10 as well as the special disclosures related to futures-style margining of options permitted on certain foreign exchanges.[8]

Comments on Advance Notice and Related Text Modifications

The Commission received comments from the National Futures Association (NFA), the Futures Industry Association (FIA), the Chicago Mercantile Exchange (CME), the Business Law Section of the American Bar Association (ABA), and Schulte Roth & Zabel (SRZ), a law firm. All commenters generally supported the Commission's proposal for a broader consolidated risk disclosure statement. The commenters particularly supported substituting the generic risk disclosure statement for the current rule 33.7 statement for domestic exchange-traded commodity options. The commenters generally believed that consolidation of risk disclosure statements into one concise document could increase the clarity of generic disclosure to customers and make the disclosure statement a more effective customer protection mechanism by focusing customers' attention on particular risks and upon obtaining adequate information on risks.

In response to the Commission's query whether use of the generic statement should be made mandatory or discretionary, and whether any distinctions should be made with respect to the type of firm that should be permitted to use the generic statement, commenters urged the Commission not to eliminate the current risk disclosure statement(s) but rather to permit firms to choose which disclosure statement(s) to provide to customers. For example, firms may not wish to redesign and reprint disclosure statements.

The Commission, therefore, agrees that all firms (without regard to whether the firms engage in cross-border business) should have the flexibility to determine whether they distribute to customers the new generic disclosure statement or the existing separate risk disclosure statements referred to above.

Several commenters stated that the section on electronic execution systems needed clarification. Specifically, as published in the advance notice, paragraph 11 of the generic statement on electronic trading referred to the possibility that losses resulting from systems failure may be subject to limitations on liability. Commenters noted that liability limitations are not unique to electronic trade execution systems and may have the unintended implication that such systems are less safe than floor-based systems. They recommended that this language appear in the section on trading facilities (paragraph 10), which applies to all trading systems (floor and electronic). The Commission agrees that both floor and electronic trading venues are supported by systems for which certain types of features are beyond the control of the exchange and that liability limitations may apply to such features. As a consequence it believes that the foregoing alteration of the text is appropriate and is more satisfactory to the international regulators who are considering adoption of the generic risk disclosure statement, some of which only have electronic systems.[9] The Commission therefore has amended the language accordingly.

The advance notice of proposed rulemaking on the generic risk disclosure statement noted that an additional topic addressed in the generic statement was the risks of off-exchange trading. In particular, the informational working group drafting the generic statement concluded that such a provision, if worded appropriately, would not mislead or confuse customers in those jurisdictions which, for example, do not permit retail customers to participate in off-exchange markets. Although the Commission received no comments on this provision, in view of current public discussions related to over-the-counter derivatives, the Commission has decided to add the words "and attendant risks" at the end of paragraph 12 to enhance relevant disclosure in this regard. The Commission notes in this regard that the generic risk statement is intended to cause a customer to ask additional questions of its broker.

Some commenters raised concerns as to the reference in paragraph 1 of the proposed disclosure statement regarding the time frame for meeting margin calls. They believed the reference could be construed as overriding the terms set forth in a customer account agreement between the firm and its customer. The Commission wishes to clarify that the language of the generic risk disclosure statement is not intended to modify the terms and conditions of a firm's customer account agreement concerning the timing of margin payments (provided that these are consistent with the Commodity Exchange Act (CEA)) but to call to the customer's attention generally that failure to post margin can have significant consequences.

One commenter suggested that in order to alleviate the paperwork burden on registrants, the Commission should not require inclusion in the risk disclosure statement that is delivered to customers the Addendum that sets forth the participating jurisdictions which have adopted the generic statement and the products for which the statement may be used. Although the Commission believes that the Addendum is necessary to enable firms to ensure that use of the generic statement for a particular product is in compliance with the applicable risk disclosure requirements of various jurisdictions, the Addendum ordinarily should not be necessary for customers who should receive additional or different disclosure if the generic statement is not accepted by a particular jurisdiction or for a particular product.[10] Otherwise, although the Commission intends to publish, amend and update, as appropriate, the Addendum to the generic risk disclosure statement, the Commission agrees that apart from the limitations on its use in the U.S. to futures, options on futures and options on commodities, the Addendum listing participating jurisdictions need not be made part of the disclosure document itself. Firms may, however, elect to include the Addendum as long as it appears on a separate page after the actual risk disclosure text.

In its advance notice, the Commission noted that the elimination of a Commission mandated description of options trading and other educational material from the mandated risk

[8] *See, e.g.*, CFTC Advisory No. 90–1 [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,597 (disclosure statement relating to the deferred payment of option premiums, superseding separate disclosure addenda required by orders concerning the London International Financial Futures Exchange (54 FR 37636 (September 12, 1989)), the International Petroleum Exchange (54 FR 50356 (December 6, 1989)), and the London Futures and Options Exchange (renamed as the London Commodity Exchange) (54 FR 50348 (December 6, 1989)); and 55 FR 14238 (April 17, 1990) (Sydney Futures Exchange). The text of the generic risk disclosure statement regarding futures-style margining of the options premium is substantially similar to the language of the addenda referred to above.

[9] The international regulators currently prepared to permit the use of the generic risk disclosure statement in their jurisdictions and the products for which the statement may be used are specified in the Addendum to the statement. The Commission intends to update and amend the list periodically, as appropriate, in the **Federal Register**. In addition, the Commission notes that notwithstanding the adoption of the generic risk disclosure statement by a foreign jurisdiction, other disclosure requirements may continue in effect in such jurisdictions.

[10] It is, however, important in the U.S. that there be no possible confusion as to what disclosure is required for options on equities, which are governed by U.S. securities laws. In order to be used in the U.S., therefore, the Addendum must reflect the products for which use of the generic risk disclosure statement is permitted.

disclosure statement does not mean that firms do not have the obligation to provide all material disclosures consistent with the product traded and level of experience, sophistication and financial capacity of customers in compliance with Commission and NFA rules.[11] One commenter believed that the streamlined disclosure statement was sufficient and that if the Commission believes that additional disclosures are necessary that it provide specific guidance on this issue.

As discussed by the Commission when it adopted rule 1.55(d) (currently rule 1.55(f)), the obligations of a futures commission merchant (FCM) and introducing broker (IB) to disclose material information to customers arise under the CEA and other applicable law. The Commission further noted that the essential purpose of the rule was to confirm the existing obligations of an FCM or IB under the law and to make clear that distribution of a standard disclosure statement was not intended to alter those obligations.[12]

Because the nature and extent of the disclosure which an FCM or IB may be required to make to a customer necessarily must depend on the facts and circumstances of the particular transaction and also on the precise nature of the FCM's or IB's relationship to the customer, any attempt by the Commission to enumerate the precise scope and form of disclosure for all conceivable customer relationships, products and trading strategies would be difficult to accomplish and would diminish the impact of the generic statement which is intended to highlight the significant risks of futures and options trading and the areas where customers should seek additional particularized information.[13] These considerations continue to apply to the current rulemaking, which is intended to consolidate and improve the mandated disclosure process. Accordingly, nothing in the current rulemaking should be construed as reducing the existing obligation to make all disclosures required under applicable law.

Finally, one commenter suggested that the acknowledgement requirement should be eliminated with respect to sophisticated investors. The CFTC has determined not to address this matter at this time.

Procedure—Final Rule Amendments

When the Commission issued its advance notice concerning the proposed text of a generic disclosure statement that could be adopted by several jurisdictions regulating futures and options transactions, the Commission contemplated that a further comment process could be necessary. However, for the reasons noted below, the Commission believes that a complete rulemaking record has been compiled and that further proposal of the text of the generic risk disclosure statement is unnecessary.

Public comments received on the advance notice were unanimous in recommending the adoption of the generic risk disclosure statement (subject to minor revision), including substituting the proposed generic statement for the rule 33.7 statement for domestic exchange-traded commodity options and the statement required by rule 190.10 for non-cash deposits as margin.[14] Second, the Commission received comment on the generic risk disclosure proposal in connection with the recent amendments consolidating rules 1.55 and 30.6, which contemplated Commission approval of the substitution of a document which can be used in multiple jurisdictions.[15] Third, as provided herein, the use of the generic risk disclosure is not mandatory, *i.e.*, the language *may* be used but is not required to be substituted for the statements now required by rules 1.55, 33.7 and 190.10(c) and other disclosure requirements set forth in the advance notice.

Accordingly, the final rules amend §§ 1.55(c), 33.7 and 190.10(c) to incorporate text which permits registrants to satisfy the requirements of rules 1.55, 33.7 and 190.10(c) by substituting the generic risk disclosure statement as set forth below, which will be published in a new appendix to part 1 of the Commission's regulations. The Commission also clarifies herein that the generic risk disclosure statement may be used in lieu of the special disclosure addendum to rule 33.7 in connection with transactions on certain foreign exchanges which do not collect the full option premium.

Effect of Alternate Disclosure Statement

The Commission is hereby permitting the generic risk disclosure statement set forth herein in appendix A to rule 1.55(c) to be used in lieu of the statements required by rules 1.55 (which incorporates the risk-disclosure contained in Commission rule 30.6 for foreign futures and foreign commodity options), rule 33.7 (domestic exchange-traded commodity options) and the special bankruptcy disclosures of Commission rule 190.10(c) related to the acceptance of non-cash margin.

The approval of the generic risk disclosure statement is not intended to alter disclosure requirements other than those specifically addressed. For example, the disclosure statement would be required to be delivered prior to the opening of the account and the acknowledgement and manner of delivery of the disclosure statement (*i.e.*, as a separate written statement or in a booklet) would not be altered. The Commission also would not change the requirement that compliance with requirements related to providing customers with risk disclosure statements does not relieve an FCM or IB from any other disclosure obligation it may have under applicable law.[16] Similarly, the single signature acknowledgment procedure contained in rule 1.55(d) would continue to apply[17] as will the amendment to CFTC rule 190.10(c) eliminating the requirement that the prescribed disclosure concerning the treatment of non-cash margin in FCM bankruptcies be acknowledged.[18]

The distribution of the generic risk disclosure statement also could substitute for the special disclosure requirements related to futures-style margining of option premiums permitted on certain foreign exchanges.

The generic risk disclosure statement would not, however, alter the separate disclosure requirements concerning electronic trading systems or trading linkages between domestic and foreign futures exchanges that may be mandated by U.S. self-regulatory organizations.[19]

Finally, the Commission notes that if a firm elects to use the generic risk disclosure statement rather than the statement required by rule 190.10(c), and uses a separate subordination agreement required by Financial and Segregation Interpretation No. 12—"Deposit of Customer Funds in Foreign Depositories" for customers depositing margin in foreign depositories,[20] that statement must be separately acknowledged.[21] A separate signature also would continue to be necessary where subordination or similar consent to contractual modification of certain rights is required for other purposes, such as for participation in cross-margining programs.[22]

Separate Statement

In its previous revision of rule 1.55, the Commission included an amendment intended to clarify that the prescribed risk disclosure statement may be provided as a physically separate document or in a booklet containing other commodity interest

[11] 59 FR 1506, 1507 (January 11, 1994), *citing* Commission rule 1.55(f), which provides that: "This section [requiring distribution of a risk disclosure statement] does not relieve a futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law." *See also* NFA Compliance Rule 2–30 ("know your customer" rule).

[12] See 50 FR 5380 (February 8, 1985)

[13] The extent of these obligations is constantly being defined on a case-by-case basis in administrative and reparations proceedings and civil actions. Further, the language of the generic risk disclosure statement specifically directs the customer to elicit further information from the broker on certain issues.

[14] 59 FR 1506, 1508 (January 11, 1994). In addition to expressly inviting public comment on the draft text of the generic risk disclosure statement to substitute for current disclosures contained in rules 1.55, 33.7, 190.10 and Commission orders and Advisories regarding disclosures related to futures-style margining of options premium allowed by certain foreign exchanges, the Commission also requested comment on whether the statement would be most useful if made mandatory and whether its use should be limited to firms doing cross-border business or more broadly.

[15] 58 FR 17495, 17497 (April 5, 1993); 57 FR 46101, 46103 (October 7, 1992).

[16] In addition to clarifying that firms have an obligation to disclose all material facts, the Commission also wishes to clarify that firms must comply with the disclosure obligations imposed by other regulatory authorities, U.S. or foreign.

[17] The Commission wishes to reiterate that the single signature acknowledgment format may *not* generally be used for the endorsements required by rule 180.3 with respect to arbitration and other dispute resolution agreements *except* with respect to Qualified Eligible Participants (QEPs) as defined in rule 4.7(a)(1)(ii) and for certain persons or entities specifically within the scope of rule 4.5(a). *See* rule 180.3(b)(2) (as amended by 58 FR 17495 (April 5, 1993)). Nor would the single acknowledgment affect the obligation of an FCM or IB to obtain, by instrument separate and apart from the customer agreement, a customer's consent that the FCM may knowingly take the other side of a customer's order, or to transfer funds from a customer's segregated account to an account that is not segregated. *See* discussion in 58 FR 17495, 17499 (April 5, 1993).

[18] The Commission notes that the generic statement discloses more clearly than the statement in CFTC rule 190.10(c) that cash and non-cash margin may be subject to the same treatment in the event of a firm bankruptcy.

[19] *See* 58 FR 17495, 17496, n.7 (April 5, 1993) *citing*, for example, NFA Compliance Rule 2–28, CME rule 874 and Commodity Exchange Inc. rule 5.14 (addressing risk disclosure requirements applicable to foreign futures and options as a result of trading linkages between domestic and foreign exchanges). *See also* CME rule 577 and Chicago Board of Trade rule 9A.20 which address the risk disclosure requirements applicable to users of GLOBEX, and New York Mercantile Exchange rule 6.22 which addresses the risk disclosure requirements applicable to the users of the ACCESS electronic trading system.

[20] *See* 53 FR 46911 (November 21, 1988). The Commission stated that the subordination agreement discussed in Financial and Segregation Interpretation No. 12 may be incorporated into the rule 190.10(c) bankruptcy disclosure document or separately executed. *Id.* at 46913–46914.

[21] Separate acknowledgement of the rule 190.10(c)(2) disclosure statement in this context is a substitute for execution of a separate subordination agreement.

[22] *Id.*, *citing* "Financial and Segregation Interpretation No. 12."

disclosure concerning the treatment of non-cash margin in FCM bankruptcies be acknowledged.[18]

The distribution of the generic risk disclosure statement also could substitute for the special disclosure requirements related to futures-style margining of option premiums permitted on certain foreign exchanges.

The generic risk disclosure statement would not, however, alter the separate disclosure requirements concerning electronic trading systems or trading linkages between domestic and foreign futures exchanges that may be mandated by U.S. self-regulatory organizations.[19]

Finally, the Commission notes that if a firm elects to use the generic risk disclosure statement rather than the statement required by rule 190.10(c), and uses a separate subordination agreement required by Financial and Segregation Interpretation No. 12—"Deposit of Customer Funds in Foreign Depositories" for customers depositing margin in foreign depositories,[20] that statement must be separately acknowledged.[21] A separate signature also would continue to be necessary where subordination or similar consent to contractual modification of certain rights is required for other purposes, such as for participation in cross-margining programs.[22]

Separate Statement

In its previous revision of rule 1.55, the Commission included an amendment intended to clarify that the prescribed risk disclosure statement may be provided as a physically separate document or in a booklet containing other commodity interest account materials, as long as the rule 1.55 risk disclosure statement appears as the cover page or the first page, and is the only material on such page, by which it means the page immediately following the cover page.

As the generic statement requires approximately two pages of printed text, the statement may appear on more than one page, provided that it is the only text that appears on those pages.

Application to Rule 30.3 and 30.10 Orders

After the effective date of these rule amendments, all firms operating pursuant to confirmed rule 30.10 relief,[23] and firms complying with the terms of an outstanding order under rule 30.3 may elect to use the generic risk disclosure statement or the risk disclosure statements mandated by rules 1.55 and 33.7 and applicable Commission orders, as appropriate.[24]

Timetable for Implementation

Under the most recent disclosure revisions, the Commission stated that firms would be permitted to use existing disclosure statements (*i.e.*, either separate rule 1.55, 30.6, 33.7 and 190.10(c) documents) up to and including July 1, 1994.[25]

Although the Commission intends for the current rulemaking to take effect upon the publication of this **Federal Register** release, the Commission is permitting firms for a period not to exceed sixty days after the date herein to continue to use the separate statements contained in rules 1.55 and 30.6.

Accordingly, after the date herein, firms may use either the new generic risk disclosure statement or the revised rule 1.55 risk disclosure statement (which incorporates the rule 30.6 disclosure statement) or, for a period not to exceed sixty days after the effective date of this **Federal Register** release, the separate rule 1.55 and rule 30.6 risk disclosure statements to comply with relevant risk disclosure obligations.[26]

Amendment of CFR

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. The amendments to rules 1.55, 33.7 and 190.10 do not change the burdens associated with those rules. The groups of rules of which they are a part have the following burdens:

Rule 33.7—(3038–0007)
Average Burden Hours Per Response—50.32
Number of Respondents—190,197
Frequency of Response—Occasionally
Rule 190.10—(3038–0021)
Average Burden Hours—0.35
Number of Respondents—802
Frequency of Response—Occasionally
No additional burden is associated with the amendments to rules 33.7 and 190.10.

The burden associated with the group which encompasses rules 1.55, 180.3 and rule 1.65 is:

Rules 1.55, 180.3 and 1.65—(3038–0022)
Average Burden Hours Per Response—613.26
Number of Respondents—4295
Frequency of Response—Occasionally
No additional burden is associated with the amendments to rule 1.55.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. § 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small business. In this connection, the Commission previously has determined that FCMs and Commodity Pool Operators should not be considered small entities for purposes of the RFA.[27] With respect to IBs and Commodity Trading Advisors (CTAs), the Commission has stated that it would evaluate within the context of each proposal whether all or some IBs and CTAs should be considered small entities, and if so, that it would analyze the economic impact on them of any rule.[28] Because the proposed amendments to the Commission rules discussed herein will not result in any significant additional burdens to the above mentioned registrants and may in practice result in a reduction of certain

---

[18] The Commission notes that the generic statement discloses more clearly than the statement in CFTC rule 190.10(c) that cash and non-cash margin may be subject to the same treatment in the event of a firm bankruptcy.

[19] *See* 58 FR 17495, 17496, n.7 (April 5, 1993) *citing*, for example, NFA Compliance Rule 2–28, CME rule 874 and Commodity Exchange Inc. rule 5.14 (addressing risk disclosure requirements applicable to foreign futures and options as a result of trading linkages between domestic and foreign exchanges). *See also* CME rule 577 and Chicago Board of Trade rule 9A.20 which address the risk disclosure requirements applicable to users of GLOBEX, and New York Mercantile Exchange rule 6.22 which addresses the risk disclosure requirements applicable to the users of the ACCESS electronic trading system.

[20] *See* 53 FR 46911 (November 21, 1988). The Commission stated that the subordination agreement discussed in Financial and Segregation Interpretation No. 12 may be incorporated into the rule 190.10(c) bankruptcy disclosure document or separately executed. *Id.* at 46913–46914.

[21] Separate acknowledgement of the rule 190.10(c)(2) disclosure statement in this context is a substitute for execution of a separate subordination agreement.

[22] *Id.*, *citing* "Financial and Segregation Interpretation No. 12."

[23] Firms operating pursuant to Commission rule 30.10 relief had been permitted to comply with the risk disclosure requirements set forth in the relevant Commission orders, *i.e.*, they could continue to use the text of rule 30.6 as published prior to the 1993 revisions to Commission rules 1.55 and 30.6 (which incorporated the rule 30.6 disclosures for foreign futures into the rule 1.55 disclosures for domestic futures) (*see* 58 FR 17496 (April 5, 1993)).

[24] *See, e.g.*, CFTC Advisory No. 90–1 [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,597 (disclosure statement relating to the deferred payment of option premiums for options).

[25] *See* 58 FR 17495, 17497 (April 5, 1993).

[26] *See* no action letter of the CFTC's Division of Trading and Markets dated June 8, 1994 regarding the July 1, 1994 effective date of the revised rule 1.55 risk disclosure statement.

[27] 47 FR 18618 (April 30, 1982).

[28] *Id.* (CTAs) and 48 FR 35248, 35276 (August 3, 1983) (IBs).

existing burdens, the Commission believes that the proposed rule amendments will not have a significant economic impact on such entities. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. § 605(b), the Acting Chairman of the Commission certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 1

Commodity futures, Domestic exchange-traded commodity option transactions.

17 CFR Part 33

Commodity futures, Domestic exchange-traded commodity option transactions.

17 CFR Part 190

Bankruptcy.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1), 4b, 4d, 4f and 8a of the Act, as amended, 7 U.S.C. 2, 6b, 6d, 6f and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.55 is amended by revising paragraph (c) and by adding a new Appendix A to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

* * * * *

(c) The Commission may approve for use in lieu of the risk disclosure document required by paragraph (b) of this section a risk disclosure statement approved by one or more foreign regulatory agencies or self-regulatory organizations if the Commission determines that such risk disclosure statement is reasonably calculated to provide the disclosure required by paragraph (b) of this section. Notice of risk disclosure statements that may be used to satisfy Commission disclosure requirements, what requirements such statements meet and the jurisdictions which accept each format will be set forth in appendix A to this section.

* * * * *

Appendix A to CFTC Rule 1.55(c)—Generic Risk Disclosure Statement

Risk Disclosure Statement for Futures and Options

This brief statement does not disclose all of the risks and other significant aspects of trading in futures and options. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent of your exposure to risk. Trading in futures and options is not suitable for many members of the public. You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances.

Futures

1. Effect of 'Leverage' or 'Gearing'

Transactions in futures carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract so that transactions are 'leveraged' or 'geared'. A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit: this may work against you as well as for you. You may sustain a total loss of initial margin funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed, your position may be liquidated at a loss and you will be liable for any resulting deficit.

2. Risk-reducing orders or strategies

The placing of certain orders (e.g. 'stop-loss' orders, where permitted under local law, or 'stop-limit' orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as 'spread' and 'straddle' positions may be as risky as taking simple 'long' or 'short' positions.

Options

3. Variable degree of risk

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarize themselves with the type of option (i.e. put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options must increase for your position to become profitable, taking into account the premium and all transaction costs.

The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a future, the purchaser will acquire a futures position with associated liabilities for margin (see the section on Futures above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that the chance of such options becoming profitable ordinarily is remote.

Selling ('writing' or 'granting') an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavorably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a future, the seller will acquire a position in a future with associated liabilities for margin (see the section on Futures above). If the option is 'covered' by the seller holding a corresponding position in the underlying interest or a future or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

Additional risks common to futures and options

4. Terms and conditions of contracts

You should ask the firm with which you deal about the terms and conditions of the specific futures or options which you are trading and associated obligations (e.g. the circumstances under which you may become obligated to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

5. Suspension or restriction of trading and pricing relationships

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or "circuit breakers") may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the future, and the underlying interest and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge "fair" value.

6. Deposited cash and property

You should familiarize yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

7. Commission and other charges

Before you begin to trade, you should obtain a clear explanation of all commission, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

Additional risks common to futures and options

4. Terms and conditions of contracts

You should ask the firm with which you deal about the terms and conditions of the specific futures or options which you are trading and associated obligations (e.g. the circumstances under which you may become obligated to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

5. Suspension or restriction of trading and pricing relationships

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or "circuit breakers") may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the future, and the underlying interest and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge "fair" value.

6. Deposited cash and property

You should familiarize yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

7. Commission and other charges

Before you begin to trade, you should obtain a clear explanation of all commission, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

8. Transactions in other jurisdictions

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

9. Currency risks

The profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

10. Trading facilities

Most open-outcry and electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Your ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or member firms. Such limits may vary: you should ask the firm with which you deal for details in this respect.

11. Electronic trading

Trading on an electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instructions or is not executed at all.

12. Off-exchange transactions

In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange transactions. The firm with which you deal may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarize yourself with applicable rules and attendant risks.

I hereby acknowledge that I have received and understood this risk disclosure statement.

Date

Signature of Customer

* * * * *

[The following language should be printed on a page other than the pages containing the disclosure language above and may be omitted from the required disclosure statement]

This disclosure document meets the risk disclosure requirements in the jurisdictions identified below ONLY for those instruments which are specified.

United States: commodity futures and options on commodity futures subject to the Commodity Exchange Act

[other jurisdictions: etc.]

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

3. The authority citation for this part continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a-1, 13b, 19 and 21, unless otherwise noted.

4. Section 33.7 is amended by revising paragraph (a)(1)(i) as follows:

§ 33.7 Disclosure.

(a)(1) * * *

(i) Furnishes the option customer with a separate written disclosure statement as set forth in this section or another statement approved under § 1.55(c) of this chapter and set forth in appendix A to § 1.55 which the Commission finds satisfies this requirement, or includes either such statement in a booklet containing the customer account agreement and other disclosure statements required by Commission rules; *provided, however,* that if the statement contained in § 33.7 is used it must follow the statement required by § 1.55; and

* * * * *

PART 190—BANKRUPTCY RULES

5. The authority citation for part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23, and 24 and 11 U.S.C. 362, 546, 548, 556 and 761–766.

6. Section 190.10 is amended by revising paragraph (c)(1) as follows:

§ 190.10 General.

* * * * *

(c)(1) *Disclosure statement for non-cash margin.* (1) Except as provided in §§ 1.65, no commodity broker (other than a clearing organization) may accept property other than cash from or for the account of a customer to margin, guarantee, or secure a commodity contract unless, the commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c)(2) of this section in boldface print in at least 10 point type which may be provided as either a separate, written document or incorporated into the customer agreement, or with another statement approved under § 1.55(c) of this chapter and set forth in appendix A to § 1.55 which the Commission finds satisfies this requirement.

* * * * *

Issued in Washington, DC, on June 28, 1994 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–16119 Filed 7–1–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 90 and 91

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Interim final rule; extension of comment period.

SUMMARY: On Wednesday, April 6, 1994, the Department of Defense published an interim final rule (59 FR 16123) and a proposed rule (59 FR 16157) regarding Revitalizing Base Closure Communities. Public comments on both the interim final rule and the proposed rule were required by July 5, 1994. The comment period on the interim final rule is being extended until August 5, 1994, due to the high level of interest, the complexity of the issues raised in public comments received to date and DoD's decision to hold a public hearing before publishing the final rule. The comment period on the proposed rule is not being extended and expires on July 5, 1994.

DATES: Comments on the interim final rule must now be received by August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Kleiman or Frank Savat, telephone 703–614–5356.

Dated: June 28, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16117 Filed 7–1–94; 8:45 am]

BILLING CODE 5000–04–M

32 CFR Parts 383 and 389

Organizational Charters

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense hereby removes 32 CFR parts 383 and 389 concerning internal organizations. These parts have served the purpose for which they were intended and are no longer valid.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155 (703–697–4111).

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 383 and 389

Organization and functions (Government agencies).

PARTS 383 AND 389—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR parts 383 and 389 are removed.

Dated: June 29, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16190 Filed 7–1–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG81

Active Military Service Certified Under Section 401 of Public Law 95–202

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning persons who are included as having served on active duty. The need for this action results from recent decisions of the Secretary of the Air Force that the service of the group known as "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northwest Airlines, Who Served Overseas as a Result of Northwest Airline's Contract with the Air Transport Command during the Period December 14, 1941 through August 14, 1945," and the group known as "U.S. Civilian Female Employees of the U.S. Army Nurse Corps While Serving in the Defense of Bataan and Corregidor during the Period January 2, 1942 to February 3, 1945," constitutes active military service in the Armed Forces of the United States for purposes of all laws administered by VA. The effect of this action is to confer veteran status for VA benefit purposes on former members of these groups who were discharged under honorable conditions.

EFFECTIVE DATE: The effective date is December 13, 1993, the date on which the Secretary of the Air Force determined that such service constitutes active duty.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 401 of Public Law 95–202 authorized the Secretary of Defense to determine whether the service of members of civilian or contractual groups shall be considered active duty for the purposes of all laws administered by VA.

A notice of certification of the following group by the Secretary of the Air Force appeared in the **Federal Register** of January 4, 1994 (59 FR 297): U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northwest Airlines, Who Served Overseas as a Result of Northwest Airline's Contract with the Air Transport Command during the Period December 14, 1941 through August 14, 1945.

A notice of certification of the following group by the Secretary of the Air Force appeared in the **Federal Register** of January 4, 1994 (59 FR 298): U.S. Civilian Female Employees of the U.S. Army Nurse Corps While Serving in the Defense of Bataan and Corregidor During the Period January 2, 1942 to February 3, 1945.

VA is issuing a final rule to amend the provisions of 38 CFR 3.7(x). Because this change implements determinations

of the Secretary of the Air Force in accordance with Public Law 95–202, which are binding on VA, publication as a proposal is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. This amendment will not directly affect any small entity.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: June 10, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.7, remove the authority citation that appears after paragraph (x)(23) and insert new paragraphs (x)(27) and (x)(28) and an authority citation to read as follows:

§ 3.7 Persons included.

* * * * *

(x) *Active military service certified as such under section 401 of Pub. L. 95–202.* * * *

(27) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northwest Airlines, Who Served Overseas as a Result of Northwest Airline's Contract with the Air Transport Command during the Period December 14, 1941 through August 14, 1945.

(28) U.S. Civilian Female Employees of the U.S. Army Nurse Corps While Serving in the Defense of Bataan and Corregidor During the Period January 2, 1942 to February 3, 1945.

(Authority: Sec. 401, Pub. L. 95–202, 91 Stat. 1450)

[FR Doc. 94–16115 Filed 7–1–94; 8:45 am]

BILLING CODE 8320–01–P

of the Secretary of the Air Force in accordance with Public Law 95–202, which are binding on VA, publication as a proposal is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. This amendment will not directly affect any small entity.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: June 10, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.7, remove the authority citation that appears after paragraph (x)(23) and insert new paragraphs (x)(27) and (x)(28) and an authority citation to read as follows:

§ 3.7 Persons included.

* * * * *

(x) *Active military service certified as such under section 401 of Pub. L. 95–202.* * * *

(27) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northwest Airlines, Who Served Overseas as a Result of Northwest Airline's Contract with the Air Transport Command during the Period December 14, 1941 through August 14, 1945.

(28) U.S. Civilian Female Employees of the U.S. Army Nurse Corps While Serving in the Defense of Bataan and Corregidor During the Period January 2, 1942 to February 3, 1945.

(Authority: Sec. 401, Pub. L. 95–202, 91 Stat. 1450)

[FR Doc. 94–16115 Filed 7–1–94; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NJ12–2–6314; NY9–2–6315; PR2–2–6316; VI2–2–6317; FRL–5004–6]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Region 2 States: New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the conditional approvals to each state implementation plan (SIP) revision submitted by the States of New Jersey and the U.S. Virgin Islands, and the full approvals to each state SIP revision submitted by New York and the Commonwealth of Puerto Rico as proposed in the **Federal Register** on December 21, 1993 for the purpose of establishing State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (PROGRAMs). The implementation plans were submitted by the states to satisfy the Federal mandate of the Clean Air Act (CAA) to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA.

EFFECTIVE DATE: This action is effective on August 4, 1994.

ADDRESSES: Copies of all of the States' submittals and EPA's technical support documents are available for inspection during normal business hours at the EPA Region II Office, 26 Federal Plaza, room 505, New York, New York 10278. In addition, copies of a specific state submittal and EPA's technical support document can be found at the appropriate state office below:

New Jersey—Office of Permit Information and Assistance, New Jersey Department of Environmental Protection and Energy, 401 East State Street, Trenton, NJ 08625–0423, Attention: Chuck McCarty.

New York—Bureau of Technical Services, Air Resources Division, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12233, Attention: Virginia Rest.

Puerto Rico—Air Programs Area, Puerto Rico Environmental Quality Board, Eurobank Building, 431 Ponce de Leon Avenue, Hato Rey, PR 00910, Attention: Francisco Claudio.

The U.S. Virgin Islands—Virgin Islands Department of Planning and Natural Resources, Division of Environmental Protection, Building 111, Apartment 114, Water Gut Homes, Christiansted, St. Croix, VI 00820, Attention: Benjamin Nazario.

FOR FURTHER INFORMATION CONTACT: Steven C. Riva, Chief, Permitting and Toxics Support Section, at the above EPA address or at telephone number (212) 264–9356.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation The requirements for establishing a PROGRAM are set out in section 507 of Title V of the CAA. In February 1992, EPA issued Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments (Final Guidelines) in order to delineate the federal and state roles in meeting the new statutory provisions and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

The States of New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands have submitted SIP revisions to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the state submittal must provide for each of the following PROGRAM components: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process;

~

and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

EPA proposed to conditionally approve New Jersey's and the U.S. Virgin Islands' SIPs and fully approve New York's and Puerto Rico's SIPs for the establishment of State PROGRAMs on December 21, 1993 (58 FR 67383). A detailed discussion of each state's PROGRAM and EPA's evaluations of the PROGRAMs is contained in the above cited **Federal Register**.

In addition, a thirty day public comment period was provided in the December 21, 1993 **Federal Register**. Comments were received only on New York's PROGRAM. For New Jersey, Puerto Rico, and the U.S. Virgin Islands, no comments were received.

II. Summary of Submittals

A. New Jersey

New Jersey has met all of the requirements of section 507 of the CAA by submitting a SIP revision on January 11, 1993 that implements all required PROGRAM elements or delineates milestone dates for when any remaining PROGRAM elements will be enacted by November 15, 1994. The final plan was adopted by the New Jersey Department of Environmental Protection and Energy (DEPE) on January 11, 1993.

New Jersey has met the first PROGRAM component by locating the SBAP within DEPE's Office of Permit Information and Assistance and by committing in its SIP to meet the six requirements set forth in section 507(a) of the CAA. New Jersey has met the second PROGRAM component and the seventh requirement of section 507(a) of the CAA by designating the New Jersey Department of Commerce and Economic Development, Office of Business Advocacy, to be the Small Business Ombudsman's Office. To meet the third PROGRAM component and section 507(e) of the CAA, New Jersey will enact legislation in order to authorize the establishment of a CAP, and members to the CAP will be appointed no later than November 15, 1994.

EPA finds that New Jersey presently lacks the requisite authority to establish a CAP. Therefore, EPA is conditionally approving New Jersey's section 507 program. Full approval will be granted once authority to establish a CAP has been enacted and submitted as a SIP revision.

B. New York

New York has met all of the requirements of section 507 of the CAA by submitting a SIP revision on January 11, 1993 that implements all required PROGRAM elements or delineates milestone dates for when any remaining PROGRAM elements will be enacted by November 15, 1994. A copy of New York's adopted legislation authorizing the PROGRAM was sent as a supplement to the SIP on August 26, 1993. The final plan was adopted by the New York State Department of Environmental Conservation (DEC) on January 11, 1993.

New York has met the first PROGRAM component by locating the SBAP within the New York State Environmental Facilities Corporation (EFC) with oversight provided by DEC's Small Business Section. New York has also committed in its SIP to meet the six requirements set forth in section 507(a) of the CAA for the Small Business Assistance Program. New York has met the second PROGRAM component and the seventh requirement of section 507(a) of the CAA by designating the New York State Department of Economic Development, Division of Small Business, to be the Small Business Ombudsman's Office. To meet the third PROGRAM component and section 507(e) of the CAA, New York has enacted legislation which authorizes the duties of the CAP and the appointment of members. Because New York has met all requisite requirements and has the authority to implement all PROGRAM elements, EPA is approving New York's section 507 program. However, New York still needs to appoint members to the CAP, which must occur no later than November 15, 1994.

EPA received two comments on New York's revised SIP during the 30 day public comment period. The comments have been evaluated by EPA, and a summary of the comments and EPA's responses are set forth below.

Comment #1: The Environmental Facilities Corporation (EFC), New York's SBAP Office, commented that New York's PROGRAM could be strengthened if the following changes were made to the SIP: (1) The SBAP is evaluated by the CAP only and not by the state Ombudsman; and (2) the SBAP is able to address the CAP directly as its own representative instead of the Ombudsman acting as the representative of the SBAP before the CAP. EFC believes that in order for the PROGRAM to function most effectively, the Ombudsman and SBAP must be partners with a mutually beneficial relationship. However, this equal partnership is disturbed under New York's PROGRAM because: the Ombudsman has evaluative power over the SBAP; and the SBAP does not have the power to represent itself, its program and its efforts directly to the CAP, but is indirectly represented by a third voice, the Ombudsman.

Response: The two suggestions raised by EFC have been carefully considered by EPA and DEC, and EPA is providing the following specific responses.

With regards to the first suggestion, EPA disagrees with the concept of a state Ombudsman not evaluating the SBAP. In EPA's Final Guidelines, EPA delineates several suggested duties of an Ombudsman's office. Two of the duties include: conducting independent evaluations of all aspects of the SBAP; and periodically reviewing the work and services provided by the SBAP with trade associations and small business representatives. One of EPA's criteria in determining whether the state office chosen as Ombudsman can adequately serve in its duties is whether the Ombudsman's office has been granted sufficient independent authority to identify problems and make recommendations as they relate to the implementation of the SBAP. New York has met EPA's criteria by granting the Ombudsman the above evaluative roles. Furthermore, the Ombudsman's office, in its role as the representative of small businesses, is the place where small businesses go if they have grievances regarding the SBAP or are not getting the necessary technical assistance. The Ombudsman must, therefore, have the authority to make recommendations on how the SBAP can be more effective. Thus, EPA believes New York's SIP should not be revised to remove the Ombudsman's ability to evaluate the SBAP as such an evaluative role is imperative for the Ombudsman's Office to be a true representative of the small business community.

With regards to the second suggestion, New York had always intended that the SBAP could present itself, its program and its efforts directly to the CAP. The SIP also allows for each small business office (including the SBAP, Ombudsman, and DEC) to provide input to the CAP in the form of progress reports, pending issues and proposed actions for the CAP to use during its quarterly or semiannual meetings. Nevertheless, in order to alleviate any confusion, New York submitted a supplement to its SIP which clarifies what New York meant when stating that the "Ombudsman will serve as the representative of the SBAP to the Compliance Advisory Panel." The word "representative" in this phrase means "overall evaluator". In other words, the Ombudsman will provide the CAP with an overall evaluation of the SBAP. The word "representative" is not meant to infer that the Ombudsman will act as the agent of the SBAP before the CAP. The supplement further clarifies that the SBAP can present itself before the CAP to explain its accomplishments, make recommendations, and express any program needs.

EPA finds that the structure as provided in New York's SIP is acceptable based on section 507 of the CAA and EPA's *Final Guidelines*. Therefore, EPA is finalizing its approval of New York's PROGRAM.

Comment #2: The Erie County Environmental Compliance Services Program commented that New York's SBAP should be encouraged to utilize the services of local agencies that already provide assistance to small businesses in the State. The Erie County program, as well as several other local programs throughout New York State, already successfully provide many of the services/functions in rendering technical assistance to small businesses as proposed for the SBAP. The Erie County program endorses that local programs continue to receive state and federal funds, including funds to be supported by Title V fees, so that the local programs can work with the SBAP on technical assistance to the small business community.

Response: EPA supports Erie County's endorsement that New York use existing local infrastructures as a means to reach out to the small business community. New York also endorses the concept. One reason DEC chose EFC as the SBAP is that EFC has the ability to subcontract with local agencies. EFC fully intends to limit the size of its in-house staff working on the SBAP and will use existing local programs to perform audits and conduct other field activities where the scope and volume of those activities exceed EFC's in-house staff capacity.

C. Puerto Rico

Puerto Rico has met all of the requirements of section 507 of the CAA by submitting a SIP revision on November 16, 1992 that implements all required PROGRAM elements or delineates milestone dates for when any remaining PROGRAM elements will be enacted by November 15, 1994. Supplemental information was sent on January 14, 1993 and October 25, 1993, which included Puerto Rico's adopted legislation authorizing the PROGRAM. The final plan was adopted by the Puerto Rico Environmental Quality Board (EQB) on November 4, 1992.

Puerto Rico has met the first PROGRAM component by locating the SBAP within EQB's Planning Division and committing in its SIP to meet the

infer that the Ombudsman will act as the agent of the SBAP before the CAP. The supplement further clarifies that the SBAP can present itself before the CAP to explain its accomplishments, make recommendations, and express any program needs.

EPA finds that the structure as provided in New York's SIP is acceptable based on section 507 of the CAA and EPA's *Final Guidelines*. Therefore, EPA is finalizing its approval of New York's PROGRAM.

Comment #2: The Erie County Environmental Compliance Services Program commented that New York's SBAP should be encouraged to utilize the services of local agencies that already provide assistance to small businesses in the State. The Erie County program, as well as several other local programs throughout New York State, already successfully provide many of the services/functions in rendering technical assistance to small businesses as proposed for the SBAP. The Erie County program endorses that local programs continue to receive state and federal funds, including funds to be supported by Title V fees, so that the local programs can work with the SBAP on technical assistance to the small business community.

Response: EPA supports Erie County's endorsement that New York use existing local infrastructures as a means to reach out to the small business community. New York also endorses the concept. One reason DEC chose EFC as the SBAP is that EFC has the ability to subcontract with local agencies. EFC fully intends to limit the size of its in-house staff working on the SBAP and will use existing local programs to perform audits and conduct other field activities where the scope and volume of those activities exceed EFC's in-house staff capacity.

C. Puerto Rico

Puerto Rico has met all of the requirements of section 507 of the CAA by submitting a SIP revision on November 16, 1992 that implements all required PROGRAM elements or delineates milestone dates for when any remaining PROGRAM elements will be enacted by November 15, 1994. Supplemental information was sent on January 14, 1993 and October 25, 1993, which included Puerto Rico's adopted legislation authorizing the PROGRAM. The final plan was adopted by the Puerto Rico Environmental Quality Board (EQB) on November 4, 1992.

Puerto Rico has met the first PROGRAM component by locating the SBAP within EQB's Planning Division and committing in its SIP to meet the six requirements set forth in section 507(a) of the CAA. Puerto Rico has met the second PROGRAM component and the seventh requirement of section 507(a) of the CAA by recommending that the Governor choose the existing Citizen's Ombudsman's, the Puerto Rico Citizen's Investigating Official as Puerto Rico's Ombudsman's Office. Legislation has been enacted which provides authority for the Ombudsman's duties. To meet the third PROGRAM component and section 507(e) of the CAA, Puerto Rico has enacted legislation which authorizes the duties of the CAP and the appointment of members. Because Puerto Rico has met all the requisite requirements and has the authority to implement all PROGRAM elements, EPA is approving Puerto Rico's section 507 program. However, Puerto Rico still needs to have an Ombudsman's Office in place and appoint members to the CAP, which must occur no later than November 15, 1994.

D. The U.S. Virgin Islands

The U.S. Virgin Islands has met all of the requirements of section 507 of the CAA by submitting a SIP revision on January 15, 1993 that implements all required PROGRAM elements or delineates milestone dates for when any remaining PROGRAM elements will be enacted by November 15, 1994. The final plan was adopted by the Virgin Islands Department of Planning and Natural Resources (DPNR) on January 14, 1993.

The U.S. Virgin Islands has met the first PROGRAM component by locating the SBAP within DPNR's Division of Environmental Protection and by committing in its SIP to meet the six requirements set forth in section 507(a) of the CAA. The U.S. Virgin Islands has met the second PROGRAM component and the seventh requirement of section 507(a) of the CAA by designating the Virgin Islands Small Business Development Agency to be the Small Business Ombudsman's Office. The Ombudsman's Office will be assisted by the Small Business Development Center of the University of the Virgin Islands. To meet the third PROGRAM component and section 507(e) of the CAA, the U.S. Virgin Islands will enact legislation to authorize the establishment of a CAP, and members to the CAP will be appointed no later than November 15, 1994.

EPA finds that the U.S. Virgin Islands presently lacks the requisite authority to establish a CAP. Therefore, EPA is conditionally approving the U.S. Virgin Islands' section 507 program. Full approval will be granted once authority to establish a CAP has been enacted and submitted as a SIP revision.

III. Final Action

EPA is conditionally approving the SIP revisions submitted by the States of New Jersey and the U.S. Virgin Islands, and fully approving the SIP revisions submitted by New York and Puerto Rico. The revisions were made to satisfy the requirements of section 507 of the CAA.

Because New Jersey and the U.S. Virgin Islands have made commitments that EPA believes meet the requirements necessary for EPA to grant conditional approval, EPA is granting a conditional approval under section 110(k)(4) of the Act. New Jersey and the U.S. Virgin Islands must meet their commitment to have their programs fully operational by November 15, 1994 and submit these requirements to EPA by that date. If New Jersey or the U.S. Virgin Islands fails to adopt or submit any of these requirements to EPA within this time frame, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved New Jersey or U.S. Virgin Islands SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register**. If the state adopts and submits these requirements to EPA within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved Small Business Plan will also be removed from the SIP. If EPA approves the submittal, those newly approved rules will become a part of the SIP and will modify or replace the commitment and the Small Business Plan on which the conditional approval is based.

If the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time EPA issues the final disapproval or on the date the State fails to meet its commitment. In the latter case, EPA will notify the State by letter that the conditional approval has been converted to a disapproval and that the sanctions clock has begun. If the State does not submit and EPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval triggers

the federal implementation plan (FIP) requirement under section 110(c).

This action has been classified as a Table 3 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225) as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By today's action, EPA is conditionally or fully approving four (4) State programs created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The programs being conditionally or fully approved today do not impose any new regulatory burden on small businesses; these are programs under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's conditional or full approvals of these four programs do not impose any new regulatory requirements on small businesses, EPA certifies that this action does not have a significant economic impact on any small entities affected.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Small business assistance program.

Dated: June 10, 1994.

William J. Muszynski,

Acting Regional Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1607 is added to read as follows:

§ 52.1607 Small business technical and environmental compliance assistance program.

On January 11, 1993, the New Jersey Department of Environmental Protection and Energy submitted a plan for the establishment and implementation of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program for incorporation in the New Jersey state implementation plan. This plan satisfies the requirements of section 507 of the Clean Air Act, and New Jersey must implement the program as approved by EPA.

Subpart HH—New York

3. Section 52.1690 is added to read as follows:

§ 52.1690 Small business technical and environmental compliance assistance program.

On January 11, 1993, the New York State Department of Environmental Conservation submitted a plan for the establishment and implementation of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program for incorporation in the New York state implementation plan. This plan meets the requirements of section 507 of the Clean Air Act, and New York must implement the program as approved by EPA.

Subpart BBB—Puerto Rico

4. Section 52.2732 is added to read as follows:

§ 52.2732 Small business technical and environmental compliance assistance program.

On November 16, 1992, the Puerto Rico Environmental Quality Board submitted a plan for the establishment and implementation of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program for incorporation in the Puerto Rico state implementation plan. This plan meets the requirements of section 507 of the Clean Air Act, and Puerto Rico must implement the plan as approved by EPA.

Subpart CCC—Virgin Islands

5. Section 52.2782 is added to read as follows:

§ 52.2782 Small business technical and environmental compliance assistance program.

On January 15, 1993, the Virgin Islands Department of Planning and Natural Resources submitted a plan to establish and implement a Small Business Stationary Source Technical and Environmental Compliance Assistance Program for incorporation in the Virgin Islands state implementation plan. This plan meets the requirements of section 507 of the Clean Air Act, and the U.S. Virgin Islands must implement the program as approved by EPA.

[FR Doc. 94–16128 Filed 7–1–94; 8:45 am]

BILLING CODE 6560–60–P

---

40 CFR Part 372

[OPPTS–400073B; FRL–4864–8]

Glycol Ethers Category; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is redefining the glycol ethers category list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPA is changing the present definition of the glycol ethers category to exclude the high molecular weight glycol ethers that do not, in EPA's judgement, meet the criteria set out in EPCRA section 313(d). This redefinition of the glycol ethers category, which is based on EPA's review of available human health data on short-chain length glycol ethers, eliminates the EPCRA section 313 reporting requirements for those glycol ethers known as surfactant glycol ethers.

EFFECTIVE DATE: This rule is effective June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202–260–9592, for specific information regarding this final rule. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, Toll free TDD: 800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is issued under section 313(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023, "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added to and deleted chemicals from the original statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of

to exclude the high molecular weight glycol ethers that do not, in EPA's judgement, meet the criteria set out in EPCRA section 313(d). This redefinition of the glycol ethers category, which is based on EPA's review of available human health data on short-chain length glycol ethers, eliminates the EPCRA section 313 reporting requirements for those glycol ethers known as surfactant glycol ethers.

EFFECTIVE DATE: This rule is effective June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202–260–9592, for specific information regarding this final rule. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, Toll free TDD: 800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is issued under section 313(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023, "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added to and deleted chemicals from the original statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Effective Date

This action becomes effective immediately. Thus, the last year in which facilities had to report releases of high molecular weight glycol ethers now excluded from the list was 1993, covering releases that occurred in 1992. The effect of this category redefinition is that, since the high molecular weight glycol ethers being excluded from the category will not be on the section 313 list when facilities report in 1994 for releases that occurred in 1993, these reports and all subsequent reports need not include release data for these glycol ethers. Facilities will therefore not have to collect release information for any releases of the excluded glycol ethers that occurred during the 1993 reporting year or for any releases that occur in the future.

Section 313(d)(4) provides that "[a]ny revision [to the section 313 list] made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 and before January 1 shall take effect beginning with the calendar year following the next calendar year." The Agency interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, the Agency may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) since a deletion from the section 313 list relieves a regulatory restriction.

The Agency believes that the purpose behind the section 313(d)(4) effective date provision is to allow facilities adequate planning time to incorporate newly added chemicals to their Toxic Release Inventory (TRI) release data collection processes. A facility would not need additional planning time to not report releases of a given chemical. Thus, a reasonable construction of section 313(d)(4), given the overall purpose and structure of EPCRA — to provide the public with information about chemicals which meet the criteria for inclusion on the section 313 list — is to apply the delayed effective date requirement only to additions to the list. Where the Agency has determined, as it has with the excluded glycol ethers, that a chemical does not satisfy the criteria of section 313(d)(2)(A)–(C), no purpose is served by requiring facilities to collect release data or file release reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. Nothing in the legislative history suggests that section 313(d)(4) was intended to apply to deletions as well as additions: indeed, such a construction would be incongruous, since deleted chemicals, by definition, do not satisfy the criteria for being on the section 313 list and their deletion from that list should not be delayed in the absence of any compelling reason to the contrary. This construction of section 313(d)(4) is also consistent with previous rules deleting chemicals from the section 313 list. Indeed, the Agency has not given any of its rules deleting chemicals from the section 313 list the delayed effective dates specified in section 313(d)(4).

EPA has not deleted all glycol ethers from reporting requirements under EPCRA section 313. Reporting will still be required for those glycol ethers which meet the revised definition.

III. Description of the EPCRA Section 313 Glycol Ethers Category

In the **Federal Register** of July 6, 1993 (58 FR 36180), EPA issued a proposed rule to redefine the glycol ethers category on the EPCRA section 313 list of toxic chemicals. EPA has evaluated the current scope of the section 313 glycol ethers category and believes that it is overly broad. The existing category includes substances that traditionally have not been considered glycol ethers. Also, it is apparent that this category contains members that do not meet the EPCRA section 313(d)(2) criteria for listing. EPA has reviewed the current glycol ethers category and is redefining it to exclude the surfactant glycol ethers Surfactant glycol ethers are those glycol ethers with pendant alkyl groups which typically consist of eight or more carbon atoms (i.e., high molecular weight glycol ethers). However, EPA does not believe that the category can be more narrowly defined at this time.

EPA's revised glycol ethers category for which section 313 reporting is required, consists of those glycol ethers which meet the following definition:

Certain Glycol Ethers:

$R - (OCH_2CH_2)_n - OR'$

Where:

n = 1, 2, or 3;

R = alkyl C7 or less, or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

IV. Rationale for Redefinition

EPA's concerns for the included chemicals is based on a review of

available human health data on short-chain length glycol ethers. Specifically, EPA believes that these chemicals meet the criterion of EPCRA section 313(d)(2)(B) because the individual members of this category can be reasonably anticipated to cause one or more of the following effects: Kidney toxicity, liver toxicity, adverse blood effects, adverse central nervous system effects, reproductive effects, and developmental effects. EPA believes that the category can be redefined to exclude those glycol ethers known as surfactant glycol ethers because these high molecular weight glycol ethers do not meet the listing criteria in section 313(d)(2)(A) or (B). None of the chemicals in the current glycol ethers category meet the toxicity criterion of section 313(d)(2)(C) based on their ecotoxicity. EPA's rationale for this redefinition is detailed in the proposed rule and is based on the Agency's review of various relevant materials.

V. Response to Comments

EPA received 11 comments on the proposed rule, all in support of the proposed redefinition of the glycol ethers category. However, several of the commenters expressed the opinion that the proposed rule does not narrow the definition sufficiently, and that EPA should consider a further narrowing of the definition in the future. As discussed below, EPA does not believe that it currently has sufficient data to further narrow the category definition.

Two commenters, the Chemical Manufacturers Association (CMA), Propylene Glycol Ethers Panel, and CMA Ethylene Glycol Ethers Panel, stated that the name of the category should be changed to "certain glycol ethers" to more accurately characterize the chemicals that are within the category. EPA has incorporated this comment, since this category does not consist of all chemicals that contain the glycol ether functionality.

One commenter, General Electric, suggested that the definition should not identify reportable glycol ethers by molecular structure. Instead, the commenter recommended listing the glycol ethers of concern individually, and identifying those which must be reported on an individual basis. All remaining glycol ethers would then be reported in an aggregate form. EPA believes this approach to defining the category is inappropriate and unnecessary. EPA has identified by molecular formula a specific group of glycol ethers having a common structure that pose similar hazards. EPA currently believes that the most appropriate way to report on this group of glycol ethers is in aggregate by category. A listing of glycol ethers as proposed by the commenter may exclude from reporting certain glycol ethers within the scope of the definition in this rulemaking that meet the section 313(d)(2) criterion. Therefore, EPA is adopting the redefinition of the glycol ethers category based on a molecular structure formula. A reporting facility must make aggregate reporting threshold and estimated release determinations for all glycol ethers in the category.

The Soap and Detergent Association proposed that the revised definition exclude sulfonate in the category of OR' because "carbon sulfur bonds are not easily broken and, therefore, sulfonates are not readily hydrolyzable from surfactants." EPA proposed the inclusion of sulfonate not because of the possible reaction at the carbon sulfur bond in the sulfonate, e.g., desulfonation of aromatic sulfonates, but rather because the sulfonate ion is a reactive leaving group and thus can reasonably be anticipated to be hydrolyzed to yield a glycol ether of concern. Specifically hydrolysis of R-$(OCH_2CH_2)_nOSO_2R''$ (where R'' is any organic substituent) yields R-$(OCH_2CH_2)_nOH$ and R''SO_2OH. Therefore, EPA reaffirms its inclusion of sulfonate as an appropriate member in the category of OR'.

The Chemical Manufacturers Association stated that the category should be limited to four specific ethylene glycol ether solvents: 2-Methoxyethanol, 2-ethoxyethanol, and their acetates. As stated in the proposed rule, with respect to the glycol ethers and developmental effects, there is evidence that the toxicity is reduced going from the methyl to the butyl ether. However, data for other toxic effects on glycol ethers with pendant alkyl groups of one to seven carbons or a phenyl group do not indicate a trend towards increased toxicity based on chain length for other toxic effects. Low molecular weight ethylene glycol ethers disturb the hemopoiesis and the blood picture at low doses. Hemolysis has been reported in varying degrees for ethylene glycol ethers of one to five carbons in the alkyl chain. The optimum alkyl chain length for hemolysis is four carbons. 2-Phenoxyethanol has also been found to cause intravascular hemolysis. Therefore, the concerns for ethylene glycol ethers are not limited to the four specific compounds mentioned by the commenter.

In the proposed rule, EPA requested comment on whether the definition of R' should include only straight chained alkyl groups of seven of fewer carbons or both straight and branched alkyl groups of seven or fewer carbons. No comments on this issue were received. Therefore, the definition of R' will include both straight and branched alkyl groups of seven or fewer carbons.

Rochester Midland, Soap and Detergent Association, Henkel Corporation, and Union Carbide Corporation asked that the definition also exclude alkylated phenols containing seven or more carbon atoms. As stated in the proposed rule, 2-phenoxyethanol is known to cause hemolysis. No data have been found for alkyl substituted phenoxyethanol derivatives. Henkel Corporation stated that "[t]he C_8, C_9, and C_{12} alkyl phenol ethoxylates have also been used for many years as surfactants. There is no evidence that they present adverse human effects such as those which caused the listing of the glycol ether category or would otherwise meet the section 313 criteria." However, this commenter did not supply data to substantiate this assertion. The Soap and Detergent Corporation provided two studies to support its position (Smyth and Calandra, 1969; Dudek and Ribelin, 1988). Neither of these studies specifies the composition of the test material by number of ethylene oxide units. The commenter did provide the typical weight percent of the test substances as sold in commerce. Even if EPA assumed these typical compositions represent the test materials of these two studies, the dose levels presented in the studies would not be considered adequate to establish the lack of toxicity associated with ethylene glycol ethers with alkyl groups consisting of seven or greater carbon atoms.

Because only phenoxyethanol has been tested for systemic toxicity, change in the glycol ethers category definition which would exclude alkylphenol ethoxylates is not supportable, based on the available data. To evaluate the alkylphenol ethoxylates subcategory of the ethylene glycol ether category, EPA would require subchronic toxicity data for one or more specific members of the category (e.g., 2-nonylphenoxyethanol). In the absence of these data, the Agency believes that the glycol ethers category should continue to include these substances.

General Electric contended that individual glycol ethers should be listed in lieu of a category because EPCRA section 313 "clearly states that additions to the EPCRA section 313 list must be done on a chemical-by-chemical basis. Each statutory provision that deals with revising the section 313 list speaks only in terms of a chemical-by-chemical basis, and EPCRA is silent on the issue of regulating by chemical categories."

The Agency believes that the statutory authority to add "a chemical" to the list may be reasonably interpreted to include the authority to add groups or categories of chemicals to the list, particularly in light of the fact that the original list adopted by Congress in section 313(c) of EPCRA included 20 chemical categories. These consist mostly of metal compounds categories, but also include categories of organic chemicals, such as glycol ethers (as noted in the proposed rule, Congress listed this category without a delimiting definition).

General Electric further contended that Congress listed "glycol ethers" in addition to the two individually listed glycol ethers, "2-methoxyethanol" and "2-ethoxyethanol," to allow facilities the option of aggregating the releases of the two individually listed glycol ether chemicals and filing one TRI Form R report for "glycol ether" rather than two separate Form R reports. EPA does not accept this interpretation of Congress' intent in listing 20 chemical categories on the original EPCRA section 313(c) list of chemicals subject to TRI reporting. There is no clear statement of Congressional intent to adopt the type of "optional" reporting scheme advocated by General Electric. Indeed, the legislative history cited by General Electric supports EPA's current interpretation and implementation of EPCRA's reporting structure, i.e., persons manufacturing, processing, or otherwise using more than one member of a chemical category above the applicable reporting threshold may report the releases of all such chemicals, in the aggregate, on a single Form R report, rather than listing data separately for each chemical in the group.

Furthermore, contrary to General Electric's contention, several of the original chemical categories did not have corresponding "individual" chemicals listed on the original (CAS number specific) section 313(c) list. In their comments, General Electric acknowledged this to be the case only with regard to the polybrominated biphenyls (PBBs) category. However, there was no individual listing for any barium compounds, cadmium compounds, chromium compounds, or several other metal compounds in the original list transmitted to EPA by Congress. See 53 FR 4500; February 16, 1988. Taken to its logical conclusion, General Electric's interpretation would result in no reporting of any members of the PBBs category unless and until EPA listed individual members of that category. EPA does not believe that this would be consistent with Congress'

The Agency believes that the statutory authority to add "a chemical" to the list may be reasonably interpreted to include the authority to add groups or categories of chemicals to the list, particularly in light of the fact that the original list adopted by Congress in section 313(c) of EPCRA included 20 chemical categories. These consist mostly of metal compounds categories, but also include categories of organic chemicals, such as glycol ethers (as noted in the proposed rule, Congress listed this category without a delimiting definition).

General Electric further contended that Congress listed "glycol ethers" in addition to the two individually listed glycol ethers, "2-methoxyethanol" and "2-ethoxyethanol," to allow facilities the option of aggregating the releases of the two individually listed glycol ether chemicals and filing one TRI Form R report for "glycol ether" rather than two separate Form R reports. EPA does not accept this interpretation of Congress' intent in listing 20 chemical categories on the original EPCRA section 313(c) list of chemicals subject to TRI reporting. There is no clear statement of Congressional intent to adopt the type of "optional" reporting scheme advocated by General Electric. Indeed, the legislative history cited by General Electric supports EPA's current interpretation and implementation of EPCRA's reporting structure, i.e., persons manufacturing, processing, or otherwise using more than one member of a chemical category above the applicable reporting threshold may report the releases of all such chemicals, in the aggregate, on a single Form R report, rather than listing data separately for each chemical in the group.

Furthermore, contrary to General Electric's contention, several of the original chemical categories did not have corresponding "individual" chemicals listed on the original (CAS number specific) section 313(c) list. In their comments, General Electric acknowledged this to be the case only with regard to the polybrominated biphenyls (PBBs) category. However, there was no individual listing for any barium compounds, cadmium compounds, chromium compounds, or several other metal compounds in the original list transmitted to EPA by Congress. See 53 FR 4500; February 16, 1988. Taken to its logical conclusion, General Electric's interpretation would result in no reporting of any members of the PBBs category unless and until EPA listed individual members of that category. EPA does not believe that this would be consistent with Congress' intent in listing this category on the initial section 313(c) list. If Congress had intended to include category listings as an optional method of reporting individually listed chemicals, it could have clearly stated so in the statute. At a minimum, some members of all the listed chemical categories would have been included in the CAS number specific list. In sum, EPA believes that its interpretation of the category reporting structure is a reasonable reading of EPCRA.

General Electric objected to the continued listing of a glycol ethers category because categories are difficult for EPA to administer and/or for the public and industry to understand. In addition, the commenter contended that industry compliance with reporting and supplier notification requirements is more difficult for categories, such as glycol ethers, because facilities are not provided with discrete chemical names and Chemical Abstract Service (CAS) registry numbers. The commenter contended that these problems are magnified in the case of the glycol ethers category because the category is defined by molecular structure formula.

Since the glycol ethers category consists of chemicals that are similar chemically and in potential effect, EPA believes that this category will not be difficult for the public or industry to understand or for the Agency to administer. The Agency will work with the public and the regulated community to develop, as appropriate, any interpretations and guidance the Agency determines are necessary to facilitate accurate reporting for the "certain glycol ethers" category. The Agency does not believe that the glycol ethers category is unique in that it is defined by molecular structure formula. All of the metal compound categories are defined based on molecular structure formula, i.e., to be considered a member of a metal compound category, the compound must consist of the parent metal and at least one substituent group. Both the chlorophenols and cyanide compound categories are defined by molecular structure formulas on the EPCRA section 313 list. EPA believes that defining the category by molecular structure formula ensures that all members of the category that meet the EPCRA section 313(d)(2) criteria are included and thus reportable.

Three commenters, the Soap and Detergent Association, Proctor and Gamble Co., and Union Carbide contended that EPA should be consistent between EPCRA and TSCA on its treatment of identical materials. Union Carbide cited the TSCA section 8(b) Inventory provisions. EPA believes that the differing treatment of glycol ether species with a low degree of ethoxylation under EPCRA and TSCA is appropriate given the differing purposes and standards of TSCA section 8(b) and EPCRA section 313. TSCA is concerned with the regulation of unreasonable risks to human health and the environment posed by chemical substances and mixtures in commerce; the section 8(b) Inventory, with few exceptions, provides a list of those chemical substances and mixtures. For purposes of developing an inventory of chemical substances in commerce, it is less important to specify whether those substances consist of a discrete species, e.g., chloroform, or a species with a range of molecular weights. EPCRA's goal is to provide the general public with a broad range of information on releases of certain chemicals.

Under TSCA, for example, glycol ether surfactant "mixtures" are considered as a single entity for purposes of entry on the Inventory; however, for purposes of reviewing the potential health or environmental unreasonable risks posed by activities involving such chemical substances, the impacts of their various components would be considered. Because the intent of EPCRA section 313 is community right-to-know, EPA wants to ensure that the public has access to information on each listed toxic chemical or chemical category to which the public could be exposed, regardless of whether it is in a mixture. Therefore, where a surfactant contains species with a low degree of ethoxylation that fit the glycol ether category definition, EPA requires that those chemicals be reported.

Union Carbide also contended that "[a]s a legal matter, the current and proposed definitions exclude polymers from the category of glycol ethers. Since polymers potentially include their low molecular weight species (n = 1, 2, 3), the exemption for polymers precludes the need to report low molecular weight species under [s]ection 313."

EPA disagrees with Union Carbide's conclusion regarding species with low degrees of ethoxylation. The proposed definition being finalized today continues to exclude polymer molecules (i.e., those molecules which include at least four covalently linked subunits at least two of which are internal subunits), and to include low molecular weight glycol ethers with a low degree of ethoxylation. The change in regulatory text deleting the phrase "polymers are excluded from this category," does not change EPA's position regarding the scope of the glycol ethers category.

One commenter, the Cosmetic, Toiletry, and Fragrance Association, stated support for the proposal to change the definition of glycol ethers on other EPA lists. Today's action is not intended, and should not be inferred to affect the definition or regulatory requirements for glycol ethers under any statute or EPA program other than the Toxic Release Inventory reporting requirements under EPCRA section 313 and the Pollution Prevention Act section 6607. Specifically, the redefinition of glycol ethers on the EPCRA section 313 list does not in any way alter their definition under section 112(b) of the Clean Air Act (CAA), 42 U.S.C. section 7412(b) as amended, or, by virtue of their status as "hazardous air pollutants" (HAP) under the CAA, as "hazardous substances" under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C section 9601(14).

VI. Rulemaking Record

The record supporting this final rule is contained in the docket number OPPTS–400073B. All documents, including an index of the docket, are available for viewing and photocopying in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Section 3(f) of the Order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this final rule is not "significant" and therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

40 CFR part 372 exempts certain small businesses (specifically, those facilities with fewer than 10 full-time employees) from reporting. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. Additionally, facilities which manufacture or process less than 25,000 pounds or otherwise use less than 10,000 pounds of these chemicals annually are not required to report for these chemicals. Thus, many small facilities will not incur any regulatory costs in association with this rule. Small businesses are not expected to be adversely affected by this rule, since the rule would increase the likelihood that they would not be required to report glycol ether releases. Therefore, EPA certifies that this rule is not likely to significantly impact small entities.

C. Paperwork Reduction Act

There are no unique reporting requirements associated with this final rule because it redefines the glycol ethers category to exclude certain high molecular weight glycol ethers from reporting under section 313. Reporting of chemicals that are subject to section 313 has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has been assigned the OMB control number 2070–0093.

The public reporting burden for section 313 chemicals is estimated to average 43 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule's redefinition will reduce the number of responses required, thus reducing overall burden.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 28, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. In § 372.65(c) by amending the category, glycol ethers to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(c) * * *

Category Name	Effective Date
. . . . .	
Certain Glycol Ethers ..... R - $(OCH_2CH_2)_n$ - OR' Where: n = 1, 2, or 3; R = alkyl C7 or less; or R = phenyl or alkyl substituted phenyl; R' = H or alkyl C7 or less; or OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.	1/1/95

[FR Doc. 94–16173 Filed 6–29–94; 1:07 pm]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–99; RM–8202 and RM–8304]

Radio Broadcasting Services; Ashland, Moberly, Monroe City, Rolla, and Wheeling, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C2 for Channel 288C3 at Moberly, Missouri, and modifies the license for Station KZZT(FM) to specify operation on Channel 288C2 in response to a petition filed by FM 105, Inc. See 58 FR 25593, April 27, 1993. The coordinates for Channel 288C2 at Moberly are 39–25–45 and 92–22–49. The counterproposal filed by Sobocomo Radio, Inc. (RM–8304), proposing the substitution of Channel 291C1 for Channel 291C2, Ashland, Missouri, substitution of Channel 276C3 for Channel 292A, Rolla, Missouri, substitution of Channel 298A for Channel 292A, Monroe City, Missouri, and change of reference coordinates for Channel 290A, Wheeling, Missouri, was dismissed. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 11, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–99, adopted June 15, 1994, and released June 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Category Name	Effective Date
. . . . .	

[FR Doc. 94–16173 Filed 6–29–94; 1:07 pm]
BILLING CODE 6560–60–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–99; RM–8202 and RM–8304]

Radio Broadcasting Services; Ashland, Moberly, Monroe City, Rolla, and Wheeling, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C2 for Channel 288C3 at Moberly, Missouri, and modifies the license for Station KZZT(FM) to specify operation on Channel 288C2 in response to a petition filed by FM 105, Inc. See 58 FR 25593, April 27, 1993. The coordinates for Channel 288C2 at Moberly are 39–25–45 and 92–22–49. The counterproposal filed by Sobocomo Radio, Inc. (RM–8304), proposing the substitution of Channel 291C1 for Channel 291C2, Ashland, Missouri, substitution of Channel 276C3 for Channel 292A, Rolla, Missouri, substitution of Channel 298A for Channel 292A, Monroe City, Missouri, and change of reference coordinates for Channel 290A, Wheeling, Missouri, was dismissed. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 11, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–99, adopted June 15, 1994, and released June 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 288C3 and adding Channel 288C2 at Moberly.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16130 Filed 7–1–94; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–269; RM–8319]

Radio Broadcasting Services; Denison and Pilot Point, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Davis Family Trust, reallocates Channel 285C2 from Denison, Texas, to Pilot Point, Texas, and modifies Station KTCY–FM's construction permit to specify Pilot Point as its community of license. *See* 58 FR 58672, November 3, 1993. Channel 285C2 can be allotted to Pilot Point in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.0 kilometers (9.9 miles) north to accommodate Davis' desired site. The coordinates for Channel 285C2 at Pilot Point are North Latitude 33–32–20 and West Longitude 96–57–15. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 11, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–269, adopted June 14, 1994, and released June 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas is amended by adding Pilot Point, Channel 285C2 and removing Channel 285C2 at Denison.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16131 Filed 7–1–94; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–271; RM–8345]

Television Broadcasting Services; Walla Walla, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Spectrum Communications, Inc., substitutes VHF television Channel 9+ for vacant UHF Channel 14 – at Walla Walla, Washington, as its first local television broadcast service. See 58 FR 58672, November 3, 1993. Channel 9+ can be substituted at Walla Walla in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 9+ are North Latitude 46–04–12 and West Longitude 118–19–48. Since Walla Walla is located

within 400 kilometers (250 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been received. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 11, 1994.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–271 adopted June 15, 1994, and released June 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Washington, is amended by removing Channel 14– and adding Channel 9+ at Walla Walla.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16132 Filed 7–1–94; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

Transportation of Household Goods in Interstate or Foreign Commerce

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendments.

SUMMARY: In order to update the Interstate Commerce Commission's regulations, as set forth in Title 49, Chapter X, Part 1056, of the Code of Federal Regulations, several technical amendments are necessary, as set forth below.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Neil S. Llewellyn, (202) 927–5520, Patricia A. Burke, (202) 927–5520, (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1056

Advertising, Consumer protection, Freight, Insurance, Motor Carriers, Moving of household goods, Reporting and recordkeeping requirements.

For the reasons set forth above, Title 49, Chapter X, Part 1056 is amended as follows:

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

1. The authority citation for Part 1056 continues to read as follows:

Authority: 49 U.S.C. 10321, 11109, 11110 and 5 U.S.C. 553.

2. In Part 1056, the words, "OCP–100", "OCP–101", "Office of Consumer Protection", and "Office of Compliance and Consumer Assistance" are revised to read "OCE–100", "OCE–101", and "Office of Compliance and Enforcement" everywhere they appear.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16227 Filed 7–1–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 931100–4043; I.D. 062994A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the total allowable catch (TAC) of Atka mackerel specified for this District.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Atka mackerel TAC for the Western Aleutian District was established by the final 1994 initial specifications of groundfish for the BSAI (59 FR 7656, February 16, 1994) as 8,500 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Atka mackerel TAC specified for the Western Aleutian District soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 8,000 mt after determining that 500 mt will be taken as incidental catch in directed fishing for other species in the Western Aleutian District. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District, effective from 12 noon A.l.t., June 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 29, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16215 Filed 6–29–94; 3:39 pm]

BILLING CODE 3510–22–F

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 575

RIN 3206–AF86

Recruitment and Relocation Bonuses and Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to provide agencies with greater flexibility in paying recruitment and relocation bonuses and retention allowances (the 3 R's). The proposed regulations revise certain requirements in the current regulations to maximize agency discretion in using these flexibilities. The 3 R's were authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA).

DATES: Comments must be received on or before August 4, 1994.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Belva MacDonald or Lee Kara, (202) 606–1413.

SUPPLEMENTARY INFORMATION: On August 19, 1992, OPM published final regulations at 57 FR 37394 to authorize the payment of recruitment and relocation bonuses and retention allowances (the 3 R's) under the Federal Employees Pay Comparability Act of 1990 (FEPCA). These regulations finalized interim regulations that were published on March 28, 1991 (56 FR 12833). Overall, use of the 3 R's has been limited.

In a memorandum to the Interagency Advisory Group on October 24, 1991, OPM advised agencies to consider using the 3 R's before requesting new or

Proposed Rules

Federal Register
Vol. 59, No. 127
Tuesday, July 5, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 575

RIN 3206–AF86

Recruitment and Relocation Bonuses and Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to provide agencies with greater flexibility in paying recruitment and relocation bonuses and retention allowances (the 3 R's). The proposed regulations revise certain requirements in the current regulations to maximize agency discretion in using these flexibilities. The 3 R's were authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA).

DATES: Comments must be received on or before August 4, 1994.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Belva MacDonald or Lee Kara, (202) 606–1413.

SUPPLEMENTARY INFORMATION: On August 19, 1992, OPM published final regulations at 57 FR 37394 to authorize the payment of recruitment and relocation bonuses and retention allowances (the 3 R's) under the Federal Employees Pay Comparability Act of 1990 (FEPCA). These regulations finalized interim regulations that were published on March 28, 1991 (56 FR 12833). Overall, use of the 3 R's has been limited.

In a memorandum to the Interagency Advisory Group on October 24, 1991, OPM advised agencies to consider using the 3 R's before requesting new or increased special salary rates under 5 U.S.C. 5305. In most situations, the use of the 3 R's to solve staffing problems will be less expensive than special rates. Special rates are basic pay for such purposes as retirement benefits, premium pay, and promotions, whereas the 3 R's are not basic pay for any purposes. The 3 R's are also generally less expensive than superior qualifications appointments. Superior qualifications appointments, like special salary rates, have a lasting effect on future pay entitlements.

When necessary, the 3 R's may be used in combination with special salary rates and superior qualifications appointments. However, payment of one of the 3 R's alone may be the most appropriate solution for a staffing problem. For example, a candidate may prefer a lump-sum payment to address his or her immediate needs instead of an increase in basic pay that would be received in relatively small amounts over a long period of time.

Agencies have found it difficult to use the 3 R's and have requested changes in the current regulations. OPM also has approved variations to the requirements bonus regulations. (This is discussed below under appointments required for recruitment bonus purposes.) OPM is proposing the regulatory changes discussed below to increase agencies' discretion in administering the 3 R's.

Recruitment Bonuses

Candidate quality. In §§ 575.101, 575.104(b)(2), 575.104(c)(1) and (c)(2) (i) and (iii), and 575.108(b), the current regulations allow payment of a recruitment bonus only when, in the absence of such a bonus, agencies would encounter difficulty in filling the position with a *high quality candidate.* Same agencies' recruitment needs are not limited to high quality candidates. Therefore, they have not considered offering recruitment bonuses before requesting approval of special salary rates. (OPM approval of special rates is not dependent upon the recruitment of high quality candidates.) The proposed regulations would allow an agency to pay a recruitment bonus to any qualified candidate the agency wishes to recruit for a difficult-to-fill position. The agency would determine the level of candidate quality it needs to target.

Length of appointment and service agreement. In § 575.103, the current definition of "employee" for recruitment bonus purposes requires an appointment of at least 2 years. The proposed regulations would delete the language regarding the minimum length of appointment; however, since, in § 575.106(b), the proposed regulations require a service agreement of at least 6 months, any appointment would have to be at least that long. Currently, a minimum 12-month service agreement is required. Reducing the requirement to 6 months would give agencies more flexibility.

Break-in service. To meet the current definition of "newly appointed" in § 575.103, a candidate with prior Federal Government service must have a break in service of at least 1 year. The proposed regulations would reduce this break-in-service restriction to 90 days. This parallels the 90-day-break-in-service restriction for superior qualifications appointments in § 531.203(b)(2). It allows agencies to consider paying a recruitment bonus in more circumstances as an alternative to paying advanced in-hire rates for superior qualifications.

The proposed regulations add two authorized exceptions to the break-in-service rule in § 575.103. The first is a permanent appointment that follows a provisional appointment (as defined in § 316.403). The second is an appointment that follows a temporary appointment, provided the temporary appointment was neither full-time nor the principal employment of the candidate. This would allow agencies to pay recruitment bonuses in situations like those approved by OPM as variations to the current regulations. Under the variations, bonuses were paid to medical officers who served in temporary appointments prior to being offered permanent appointments. The medical officers did not meet the break-in-service requirement under current regulations. OPM determined that payment of recruitment bonuses was appropriate because the temporary positions were neither full-time nor the candidates' principal employment. Also, the inability of the hiring officials to take advantage of such opportunities would have resulted in lengthy recruitment efforts to find qualified candidates with the required specialized skills. (These variations were reported in former Federal Personnel Manual Bulletins 575–4, April 20, 1993; 575–5, October 25, 1993; and 575–6, November

12, 1993; and in OPM's Provisional Notice No. 575–1, May 25, 1994.)

Written determination. In § 575.104(c)(1), the current regulations for recruitment bonuses require a written determination made on a case-by-case basis for each employee. The proposed regulations would allow an agency to make a single written determination applicable to a group of candidates for positions that the agency targets as difficult to fill. This would not require OPM's prior approval.

Reporting requirement. In § 575.108(b), the current regulations for recruitment bonuses require an annual written report by each agency on its use of recruitment bonuses. The proposed regulations would remove this requirement. However, each agency would retain responsibility for monitoring its use of recruitment bonuses.

Relocation Bonuses

Candidate quality. In §§ 575.201, 575.204 (c)(1) and (c)(2) (i) and (iii), and 575.208(b), the current regulations allow payment of a relocation bonus only when, in the absence of such a bonus, difficulty would be encountered in filling the position with a "high quality candidate." As for recruitment bonuses (discussed above), payment of relocation bonuses should be considered before requesting approval of special salary rates for difficult-to-fill positions. The proposed regulations would allow an agency to pay a relocation bonus to any employee the agency wishes to relocate to a position that would otherwise be difficult to fill.

Length of appointment. In § 575.203, the current definition of "employee" for relocation bonus purposes requires an appointment of at least 2 years. The proposed regulation would allow the employee's appointment to be any length of time determined appropriate by the agency. Also, the proposed definition would make a technical change to clarify that a relocation bonus may be paid to an employee whose duty station is changed to a different commuting area permanently as well as temporarily.

Written determination. In § 575.204(d), the current regulations provide for exceptions to case-by-case approvals of relocation bonuses with prior OPM approval. The proposed regulations would allow such exceptions without prior OPM approval.

Reporting requirement. In § 575.208(b), the current regulations for relocation bonuses require an annual written report by each agency on its use of relocation bonuses. The proposed regulations would remove this requirement.

Retention Allowances

Length of appointment. In § 575.303, the current definition of "employee" for retention allowance purposes requires an appointment of at least 2 years. The proposed regulations would allow the employee's appointment to be any length of time determined appropriate by the agency.

Length of service. In § 575.304(a), the current regulations permit payment of a retention allowance only to an employee who (1) has completed 1 year of continuous service with the agency immediately prior to such payment, or (2) has completed a period of employment established under a service agreement for a recruitment or relocation bonus. the proposed regulations would allow an agency to pay a retention allowance to an employee with less than 1 year of continuous service. However, the proposed regulations continue to require that an employee under a service agreement for a recruitment or relocation bonus complete such an agreement before receiving a retention allowance.

Reason for being likely to leave. In §§ 575.304(b) and 575.305(c), the current regulations permit payment of a retention allowance to an employee only if he or she is likely to leave the Federal service for employment outside the executive, legislative, or judicial branch of the Federal Government. The proposed regulations would allow payment of a retention allowance to an employee who is likely to leave not only for employment outside the Federal Government, but for a reason other than employment, such as retirement.

Reporting requirement. In § 575.308(b), the current regulations for retention allowances require an annual written report by each agency on its use of retention allowances. The proposed regulations would remove this requirement.

Miscellaneous

In § 575.103, the definition of "commuting area" is not germane to the payment of recruitment bonuses and would be removed by the proposed regulations. (The definition would remain in § 575.203 for payment of relocation bonuses.) Finally, the proposed regulations add a new paragraph (d) in § 575.306 to clarify that a retention allowance is not pay for purposes of a lump-sum payment for annual leave under 5 U.S.C. 5551. (See Comptroller General opinion B–249816, March 8, 1993.)

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 575

Administrative practice and procedure, Government employees, Wages.

James B. King,

Director.

Accordingly, OPM is proposing to amend part 575 of title 5 of the Code of Federal Regulations as follows:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) 104 Stat. 1462 and 1466, respectively; E.O. 12748.

2. Section 575.101 is revised to read as follows:

§ 575.101 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a recruitment bonus of up to 25 percent of basic pay to a newly appointed employee or an individual to whom a written offer of employment has been made by the agency, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position.

3. In § 575.103, the definition of "commuting area" is removed, and the definitions of "employee" and "newly appointed" are revised to read as follows:

§ 575.103 Definitions.

* * * * *

Employee means an employee in or under an agency who is newly appointed or an individual who has received a written offer of employment.

* * * * *

Newly appointed refers to—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government;

(b) An appointment as an employee of the Federal Government following a break in service of at least 90 days from the candidate's last period of Federal employment other than—

(1) Employment in a cooperative work-study program under a Schedule B appointment made in accordance with § 213.3202 of this chapter;

(2) Employment under the Stay-in-School program, in accordance with § 213.3102(w) of this chapter;

(3) Employment as a law clerk trainee under § 213.3102(e) of this chapter;

(4) Employment while a student during school vacations under a short-term temporary appointing authority;

(5) Employment under a provisional appointment designated under § 316.403 if the new appointment is permanent and immediately follows the provisional appointment; or

(6) Employment under a temporary appointment that is neither full-time nor the principal employment of the candidate.

* * * * *

4. In § 575.104, paragraphs (b)(2), (c)(1), and (c)(2) (i) and (iii) are revised to read as follows:

§ 575.104 Agency recruitment bonus plans; higher level review and approval; and criteria for payment.

* * * * *

(b)(2) When necessary to make a timely offer of employment, a higher level official may establish criteria for offering recruitment bonuses in advance and authorize the recommending official to offer a recruitment bonus (in any amount within a pre-established range) to any candidate without further review or approval.

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position. Such a determination shall be made before any employee actually enters on duty in the position for which he or she was recruited. An agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future and may make the required written determination to offer a recruitment bonus on a group basis.

(2) * * *

(i) The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

* * * * *

(iii) Labor-market factors that may affect the ability of the agency to recruit candidates for similar positions now or in the future;

* * * * *

the candidate's last period of Federal employment other than—

(1) Employment in a cooperative work-study program under a Schedule B appointment made in accordance with § 213.3202 of this chapter;

(2) Employment under the Stay-in-School program, in accordance with § 213.3102(w) of this chapter;

(3) Employment as a law clerk trainee under § 213.3102(e) of this chapter;

(4) Employment while a student during school vacations under a short-term temporary appointing authority;

(5) Employment under a provisional appointment designated under § 316.403 if the new appointment is permanent and immediately follows the provisional appointment; or

(6) Employment under a temporary appointment that is neither full-time nor the principal employment of the candidate.

* * * * *

4. In § 575.104, paragraphs (b)(2), (c)(1), and (c)(2) (i) and (iii) are revised to read as follows:

§ 575.104 Agency recruitment bonus plans; higher level review and approval; and criteria for payment.

* * * * *

(b)(2) When necessary to make a timely offer of employment, a higher level official may establish criteria for offering recruitment bonuses in advance and authorize the recommending official to offer a recruitment bonus (in any amount within a pre-established range) to any candidate without further review or approval.

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position. Such a determination shall be made before any employee actually enters on duty in the position for which he or she was recruited. An agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future and may make the required written determination to offer a recruitment bonus on a group basis.

(2) * * *

(i) The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

* * * * *

(iii) Labor-market factors that may affect the ability of the agency to recruit candidates for similar positions now or in the future;

* * * * *

5. Section 575.106 is revised to read as follows:

§ 575.106 Service agreement.

(a) Before a recruitment bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified period of employment with the appointing agency (or successor agency in the event of a transfer of function).

(b) The minimum period of employment to be established under a service agreement for a recruitment bonus shall be 6 months.

6. Section 575.108 is revised to read as follows:

§ 575.108 Internal monitoring.

Each agency shall monitor the use of recruitment bonuses to ensure that its recruitment bonus plan conforms to the requirements established under this subpart and that the payment of recruitment bonuses conforms to the criteria established under this subpart.

7. Section 575.201 is revised to read as follows:

§ 575.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a relocation bonus of up to 25 percent of basic pay to an employee who must relocate to accept a position in a different commuting area, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filing the position.

8. In § 575.203, the definitions of "employee" and "service agreement" are revised to read as follows:

§ 575.203 Definitions.

* * * * *

Employee means an employee in or under an agency who is appointed to a position in a different commuting area or whose duty station is changed permanently or temporarily to a different commuting area.

* * * * *

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency at the new duty station to which relocated in return for payment of a relocation bonus.

9. In § 575.204, paragraphs (c)(1), (c)(2)(i), (c)(2)(iii), and (d) are revised to read as follows:

§ 575.204 Agency relocation bonus plans; higher level review and approval; criteria for payment; and exceptions to case-by-case approval.

* * * * *

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position. Each such determination shall be made before the employee actually enters on duty in the position to which he or she was relocated. An agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future. However, except as provided in paragraph (d) of this section, any determination to pay a bonus shall be made on a case-by-case basis for each employee.

(2) * * *

(i) The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

* * * * *

(iii) Labor market factors that may affect the ability of the agency to recruit candidates for similar positions now or in the future; and

* * * * *

(d) *Exceptions to case-by-case approval.* The head of an agency may authorize the payment of a relocation bonus to any employee whose rating of record is at least fully successful without the requirement for case-by-case approval when—

(1) The employee is a member of a specified group of employees subject to a mobility agreement, and the head of an agency determines that relocation bonuses are necessary to ensure the agency's ability to retain employees subject to such an agreement; or

(2) A major organizational unit of an agency is relocated to a different commuting area, and the head of an agency determines that relocation bonuses are necessary for specified groups of employees to ensure the continued operation of that unit without undue disruption of an activity or function that is deemed essential to the agency's mission and/or without undue disruption of service to the public.

10. Section 575.206 is revised to read as follows:

§ 575.206 Service agreement.

Before a relocation bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified period of employment with the appointing agency (or the successor agency in the event of a transfer of function) at the new duty station.

11. Section 575.208 is revised to read as follows:

§ 575.208 Internal monitoring.

Each agency shall monitor the use of relocation bonuses to ensure that its relocation bonus plan conforms to the requirements established under this subpart and that the payment of relocation bonuses conforms to the criteria established under this subpart.

12. In § 575.303, the definition of "employee" is revised to read as follows:

§ 575.303 Definitions.

* * * * *

Employee means an employee in or under an agency.

* * * * *

13. In § 575.304, paragraphs (a) and (b) are revised to read as follows:

§ 575.304 Conditions for payment.

(a) If applicable, an agency may pay a retention allowance to an employee only if the employee has completed a period of employment established under the service agreement required for payment of a recruitment bonus under subpart A of this part or a relocation bonus under subpart B of this part, whichever occurs later.

(b) An agency may pay a retention allowance to an employee if the employee is likely to leave the Federal service for any reason.

* * * * *

14. In § 575.306, a new paragraph (d) is added to read as follows:

§ 575.306 Payment of retention allowance.

* * * * *

(d) A retention allowance is not pay for purposes of a lump-sum payment for annual leave under 5 U.S.C. 5551.

15. Section 575.308 is revised to read as follows:

§ 575.308 Internal monitoring.

Each agency shall monitor the use of retention allowances to ensure that its retention allowance plan conforms to the requirements established under this subpart and that the payment of retention allowances conforms to the criteria established under this subpart.

[FR Doc. 94–16127 Filed 7–1–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 317

[Docket No. 93–030E]

RIN 0583–AB74

Nutrition Labeling of Ground Beef and Hamburger

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Extension of comment period.

SUMMARY: On May 24, 1994, the Food Safety and Inspection Service (FSIS) published a proposed rule (59 FR 26916) to amend the Federal meat inspection regulations by permitting percentage labeling for lean and fat on ground beef and hamburger, provided such product labeling contains nutrition information. FSIS has received a request to extend the comment period on the proposed rule so that additional data and information can be provided. FSIS has determined that the request should be granted and, therefore, is extending the comment period on the proposed rule for 45 days. FSIS is continuing to evaluate the effect that this extension will have on issues such as the survey for significant participation for voluntary nutrition labeling and the approval of labeling for ground beef and hamburger pending the outcome of this rulemaking.

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Submit written comments in triplicate to: Diane Moore, Docket Clerk, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 3171–S, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION: On May 24, 1994, FSIS published in the **Federal Register** a proposed rule (59 FR 26916) to amend the Federal meat inspection regulations by permitting percentage labeling for lean and fat on ground beef and hamburger, provided such product labeling contains nutrition information. The proposed rule would provide increased flexibility in the labeling of ground beef and hamburger, and would also allow consumers to readily identify and differentiate between the varying lean/fat percentages of these products.

Interested persons were given until July 8, 1994, in which to comment on the proposed rule. FSIS has received a request from a consumer interest group to extend the comment period on the proposed rule to allow additional time for consumer survey data to be gathered and submitted. FSIS noted in its proposed rule on percentage labeling for lean/fat on ground beef and hamburger (59 FR 26916) that it had not assessed whether multiple uses of the term "percent lean" might result in consumer misunderstanding that would limit informed consumer choice. The consumer survey will provide information on consumer perceptions of the terms "lean," "extra lean," "percent lean," "reduced fat," and "percent daily value." FSIS is interested in receiving such data to assist in its efforts to develop comprehensive nutrition labeling regulations that will help consumers make informed purchasing decisions. FSIS believes that it would be a disservice to consumers and industry for FSIS to deny an opportunity for further input into a decision on the labeling of ground beef and hamburger. Therefore, FSIS is extending the comment period on the proposed rule for 45 days so that any labeling decision resulting from its proposed rule reflects the greatest amount of data and information available on this important issue. FSIS is continuing to evaluate the effect that this extension will have on issues such as the survey for significant participation for voluntary nutrition labeling and the approval of labeling for ground beef and hamburger pending the outcome of this rulemaking.

Done at Washington, DC, on: June 27, 1994.

William J. Hudnall,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 94–16108 Filed 7–1–94; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–67–AD]

Airworthiness Directives; Raytheon Corporate Jets Model BAe 125–1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Corporate Jets Model BAe 125–1000A series airplanes. This proposal would require modification of the galley feeder cables and toilet services fuse. This proposal is prompted by a report that the gauge size of the existing galley feeder cable is not compatible with the rating of the currently used toilet services fuse. The actions specified by the proposed AD are intended to ensure that the subject cables are compatible with the toilet services fuse in order prevent overheating of the cables, which could result in smoke and fire in the cabin.

DATES: Comments must be received by September 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–67–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

BAe 125–1000A series airplanes. This proposal would require modification of the galley feeder cables and toilet services fuse. This proposal is prompted by a report that the gauge size of the existing galley feeder cable is not compatible with the rating of the currently used toilet services fuse. The actions specified by the proposed AD are intended to ensure that the subject cables are compatible with the toilet services fuse in order prevent overheating of the cables, which could result in smoke and fire in the cabin.

DATES: Comments must be received by September 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–67–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–67–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–67–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Raytheon Corporate Jets Model BAe 125–1000A series airplanes. The CAA advises that the gauge size of the galley feeder cables installed on these airplanes is not compatible with the rating of the toilet services fuses. In the event of a fault condition, the incompatibility of these items could result in the cables becoming overheated, which could lead to the generation of smoke and fire in the cabin. There have been no in-service incidents of such faults or consequent smoke and fire, however.

Hawker-Raytheon Corporate Jets has issued Service Bulletin SB.25–75–25A698A&B, dated February 10 1994, that describes procedures for installing Modification 25A698A&B on airplanes that were furnished with an "open plan" galley. This modification consists of changing the gauge size of the galley feeder cables (from fuses F1 and F2 on panel WFA to the left and right galley) from size 10 to size 8; changing the toilet services fuse F3 from 50A to 30A amperage; and adding a new 20A fuse to the left and right galley.

Hawker-Raytheon Corporate Jets also has issued Service Bulletin SB.25–75–25A699A, dated February 10 1994, that describes procedures for installing Modification 25A699A on airplanes that were furnished with a "traditional" galley. This modification consists of changing the gauge size of the galley feeder cables (from fuses F1 and F2 on panel WFA to the galley) from size 10 to size 8; changing the toilet services fuse F3 from 50A to 30A amperage; and adding a new 20A fuse to the galley.

The CAA classified both of these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the galley feeder cables and toilet services fuses. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,520, or $1,380 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Corporate Jets, Inc.: Docket 94–NM–67–AD.

Applicability: Model BAe 125–1000A series airplanes; as listed in Hawker-Raytheon Corporate Jets Service Bulletin SB.25–76–25A698A&B, dated February 10, 1994, and Hawker-Raytheon Corporate Jets Service Bulletin SB.25–76–25A699A, dated February 10, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke and fire in the cabin due to overheating of galley cables, accomplish the following:

(a) For airplanes listed in Hawker-Raytheon Corporate Jets Service Bulletin SB.25–76–25A698A&B, dated February 10, 1994: Within 100 hours time-in-service after the effective date of this AD, install Modification 25A698A&B in accordance with that service bulletin.

(b) For airplanes listed in Hawker-Raytheon Corporate Jets Service Bulletin SB.25–76–25A699A, dated February 10, 1994: Within 100 hours time-in-service after the effective date of this AD, install Modification 25A699A in accordance with that service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16158 Filed 7–1–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–78–93]

RIN 1545–AS58

Accuracy-Related Penalty; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of location of public hearing.

SUMMARY: This document changes the location of the public hearing on proposed regulations relating to accuracy-related penalty under chapter 1 of the Internal Revenue Code.

DATES: The public hearing is being held on Tuesday, July 12, 1994, beginning at 10 a.m.

ADDRESSES: The public hearing originally scheduled in the IRS Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC, is changed to room 3718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of public hearing appearing in the **Federal Register** on Thursday, March 17, 1994 (59 FR 12563), announced that a public hearing relating to proposed regulations under section 6662 of the Code by section 13251 of OBRA 1993 will be held Tuesday, July 12, 1994, beginning at 10 a.m. in the IRS Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC and that requests to speak and outlines of oral comments should be received by Tuesday, June 21, 1994. The proposed regulations were published in the **Federal Register** on Thursday, March 17, 1994 (59 FR 12563).

The location of the public hearing has changed. The hearing is being held in room 3718 on Tuesday, July 12, 1994, beginning at 10 a.m. The requests to speak and outlines or oral comments must have been received by Tuesday, June 21, 1994. Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

Copies of the agenda are available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 94–16217 Filed 7–1–94; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Chapter VI

Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee: Meeting

AGENCY: Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee, Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES July 7–8, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The Crystal Gateway Marriot, 1700 Jefferson Davis Highway, Arlington, VA, (703) 920–3230.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant Secretary for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4082, ROB–3), Washington, D.C. 20202–5100, Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Director Student Loan Regulations Negotiated Rulemaking Advisory Committee is established by Sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing the District Student Loan Program beginning with academic year 1995–1996. The Direct Student Loan Program is authorized by the Student Loan Reform Act of 1993. The Act authorizes the Secretary of Education to enter into agreements with selected institutions of higher education. These agreements will enable the institutions to originate loans to eligible students and eligible parents of such students.

The meeting is open to the public. The agenda will include the following:

—Initial counseling

—Late disbursements

—Service choice

—Economic hardship

—Income contingent loan repayment

This notice is being published less than 15 days in advance of the meeting because it was scheduled at the end of the June negotiating session.

Records are kept of all Committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, Room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: June 28, 1994

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–16121 Filed 7–1–94; 8:45 am]

BILLING CODE 4000–01–M

who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Director Student Loan Regulations Negotiated Rulemaking Advisory Committee is established by Sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103-66; 20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101-648, as amended; 5 U.S.C. 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing the District Student Loan Program beginning with academic year 1995-1996. The Direct Student Loan Program is authorized by the Student Loan Reform Act of 1993. The Act authorizes the Secretary of Education to enter into agreements with selected institutions of higher education. These agreements will enable the institutions to originate loans to eligible students and eligible parents of such students.

The meeting is open to the public. The agenda will include the following:

—Initial counseling

—Late disbursements

—Service choice

—Economic hardship

—Income contingent loan repayment

This notice is being published less than 15 days in advance of the meeting because it was scheduled at the end of the June negotiating session.

Records are kept of all Committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, Room 4082, ROB-3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: June 28, 1994

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94-16121 Filed 7-1-94; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS #CA21-6-6291; FRL-5007-1]

Approval and Promulgation of Implementation Plans; California

State Implementation Plan Revision; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) for ozone. The revisions concern the control of oxides of nitrogen (NO_x) from electric utilities and stack monitoring requirements for making compliance determinations in Ventura County. The intended effect of proposing approval of these rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

COMMENTS: Comments on this proposed action must be received in writing on or before August 4, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Chief, Stationary Source Rulemaking (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revision and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Stationary Source Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, Rule Development Section, 702 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Stationary Source Rulemaking, (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 Telephone: (415) 744-1202.

SUPPLEMENTARY INFORMATION:

Background:

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The air quality planning requirements for the reduction of NO_x emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement) which describes the requirements of section 182(f). The November 25, 1992, notice should be referred to for further information on the NO_x requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_x ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. Ventura County is classified as a severe nonattainment area for ozone,[1] therefore subject to the RACT requirements of section 182(b)(2), cited above.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_x CTGs issued before enactment and EPA has not issued a CTG document for any NO_x sources since enactment of the CAA. The RACT rules covering NO_x sources and submitted as SIP revisions are expected to require final installation of the actual NO_x controls by May 31, 1995 for those sources where installation by that date is practicable.

[1] Ventura County was designated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

This document addresses EPA's proposed action for Ventura County Air Pollution Control District (VCAPCD), Rule 59, Electrical Power Generating Equipment—Oxides of Nitrogen Emissions and Rule 103, Stack Monitoring. Rule 59 and Rule 103 were respectively adopted by VCAPCD on September 15, 1992 and June 4, 1991. The California Air Resources Board (CARB) submitted these revisions to EPA on November 18, 1993 and October 25, 1991, respectively. The submissions were found to be complete on December 23, 1993 (Rule 59) and December 18, 1991 (Rule 103), pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V,[2] and are being proposed for approval into the SIP.

NO_X emissions contribute to the production of ground level ozone and smog. Rule 59 limits nitrogen oxide emissions from utility boilers in Ventura County, while Rule 103 specifies stack monitoring requirements. The rules were adopted as part of Ventura County's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretations of these requirements, which form the basis for this action, appear in the NO_X Supplement and various other EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting state and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble, cited above (57 FR 55620). In the NO_X Supplement, EPA provides guidance on how RACT should be determined for major stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control techniques documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been issued by EPA to ensure that submitted NO_X RACT rules are fully enforceable and strengthen or maintain the SIP.

The current SIP-approved version of Rule 59, Electrical Power Generating Equipment—Oxides of Nitrogen Emissions, has four parts: "A" regarding emission limits; "B" regarding applicability; "D" regarding definitions (approved on June 6, 1980); and "C" regarding exceedance provisions (approved into the SIP on April 11, 1983). The significant changes in the September 15, 1992 version involve more stringent emission limits, fuel oil provisions, natural gas curtailment issues, 24-hour rolling average compliance determinations, start-up exemptions, and increments of progress provisions. In addition, new recordkeeping requirements, test methods, and definitions have been included.

Specifically, the rule limits NO_X emissions from boilers rated less than 2150 million British Thermal Units (MMBtu) to 0.20 pounds per megawatt-hour (lb/MW-hr) produced, and limits NO_X emissions from units greater than or equal to 2150 MMBtu to 0.10lb/MW-hr. Final compliance with these limits is required by June 4, 1996 and June 4, 1994, respectively. Interim NO_X limits are required for units burning natural gas as well as fuel oil. However, operation on any amount of fuel oil as of April 1, 1993 is prohibited except during system tests or a force majeure natural gas curtailment. Compliance with the hourly emission limits is determined using a 24-hour rolling average in which the 24 hourly measurements immediately preceding the current hour are used to calculate the average for that hour. Emissions and power production are required to be continuously monitored pursuant to Rule 103. For implementation by 1995, all the limits specified in Rule 59 are more stringent than RACT except for the pre-1996 limits established for units less than 2150MMBtu/hr. The pre-1996 limits for these units, however, meet RACT. Although all limits post-1996 are more stringent than the NO_X RACT limits for utility boilers specified in the NO_X Supplement, all additional reductions obtained beyond those attributable to RACT are assumed necessary for VCAPCD's attainment planning purposes.

A more detailed discussion of the sources controlled, the controls required, and the analysis of how these controls meet RACT can be found in the Technical Support Document (TSD) for Rule 59 and Rule 103, dated June 1994.

Rule 103, Stack Monitoring was originally adopted by VCAPCD on November 22, 1977. A revised version was approved into the SIP on October 16, 1985. The rule adopted on June 4, 1991 requires all large boilers, regardless of their use rate, to be monitored.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, both VCAPCD Rule 59, Electrical Power Generating Equipment—Oxides of Nitrogen Emissions and VCAPCD Rule 103, Stack Monitoring are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on affected small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410 (a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation.

OMB has exempted this action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: June 20, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–16219 Filed 7–1–94; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[SIPTRAX NO. DC11–1–6222; FRL–5006–9]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval/limited disapproval of a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision implements an oxygenated gasoline program in the District of Columbia. The intended effect of this action is to propose approval of those

---

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on affected small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410 (a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation.

OMB has exempted this action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: June 20, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–16219 Filed 7–1–94; 8:45 am]

BILLING CODE 6560-50-P

---

40 CFR Part 52

[SIPTRAX NO. DC11–1–6222; FRL–5006–9]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval/limited disapproval of a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision implements an oxygenated gasoline program in the District of Columbia. The intended effect of this action is to propose approval of those subsections of the District of Columbia Municipal Regulations (DCMR) which pertain to oxygenated gasoline for the limited purpose of strengthening the District of Columbia SIP which currently has no requirements for an oxygenated gasoline program. In addition, this action is intended to propose disapproval of those subsections of the DCMR which pertain to oxygenated gasoline for the limited purpose of allowing the District of Columbia the opportunity to correct the deficiencies in the regulation which result in its failure to meet all requirements of the Clean Air Act. This action is being taken under Section 110 of the Clean Air Act.

DATES: Comments must be received on or before August 4, 1994.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Ave, S.E., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Mrs. Kelly L. Bunker, (215) 597–4554.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the Clean Air Act, 42 U.S.C. 7401 *et seq.* (the Act), requires that various states submit revisions to their SIPs, and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months in length unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the Federal Register on October 20, 1992.[1]

In addition to the guidance on establishment of control period by area, EPA has issued additional guidance related to the oxygenated gasoline program. On October 20, 1992, EPA announced the availability of oxygenated gasoline credit program guidelines in the Federal Register.[2] Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e. an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. Where a credit program has been adopted, EPA's guidelines provide that no gallon of gasoline should contain less than 2.0% oxygen by weight.

EPA issued labeling regulations under section 211(m)(4) of the Act. These labeling regulations were published in the Federal Register on October 20, 1992.[3]

II. Background for this Action

EPA has determined that the 1988 and 1989 data for the Washington, DC area is invalid because of poor data quality and therefore inadequate to properly characterize the ambient concentrations of carbon monoxide (CO). Therefore, EPA used data from 1987 and 1988 to designate the Washington, DC area as a CO nonattainment area with a design

---

[1] *See* "Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under Section 211(m) of the Clean Air Act as Amended—Notice of Availability," 57 FR 47853 (October 20, 1992).

[2] *See* note 1. EPA was issued guidelines for credit programs under section 211(m)(5) of the Act.

[3] *See* "Notice of Final Oxygenated Fuels Labeling Regulations under Section 211(m) of the Clean Air Act as Amended—Notice of Final Rulemaking," 57 FR 47768. The labeling regulations may be found at 40 C.F.R. Part 80, section 80.35.

value of 11.4 ppm.[4] Under section 211(m) of the Act, the District of Columbia was required to submit a revised SIP under section 110 and part D of title I of the Act which includes an oxygenated gasoline program for the entire District of Columbia by November 15, 1992.[5]

On October 27, 1993, the District of Columbia Department of Consumer and Regulatory Affairs submitted a revision to its SIP for an oxygenated gasoline program. The revision included additions or amendments to 20 District of Columbia Municipal Regulations (DCMR) Chapter 1, Section 199; Chapter 5, Section 500, Subsections 500.4 and 500.5; Chapter 5, Section 502, Subsection 502.18; Chapter 9, Section 904, Subsections 904.1 and 904.2. These regulatory revisions were adopted by the District of Columbia on July 16, 1993 and became effective on September 30, 1993. EPA summarizes its analysis of the state submittal below. A more detailed analysis of the state submittal is contained in a Technical Support Document (TSD) dated February 23, 1994, which is available from the Region III office, listed in the ADDRESSES section.

III. EPA's Analysis of the District of Columbia's Oxygenated Gasoline Program

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the EPA Administrator issued guidelines for credit programs allowing the use of marketable oxygen credits. The District of Columbia has elected to adopt a regulation requiring 2.7% oxygen content for each gallon of gasoline sold in a control area. The following sections of this notice address some specific elements of the state's submittal. Parties desiring more specific information should consult the TSD.

Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. The District of Columbia has established the control period as November 1 to the last day of February control period which is consistent with the EPA guidance. The District of Columbia oxygenated gasoline regulations require oxygenated gasoline to be sold in the entire District of Columbia, consistent with the requirements of section 211(m)(2) of the Act. 20 DCMR Section 500, Subsection 500.4 requires all parties in the gasoline distribution network, including "carriers", to generate and maintain records detailing compliance. However, the definition of "carriers" is not found in Section 199, entitled Definitions and Abbreviations, or any other section of 20 DCMR. The lack of a definition for "carriers" compromises the enforceability of the regulation and is a deficiency under Section 110(a)(2) of the Act.

Transfer Documents

The District of Columbia has included requirements related to transfer documentation in its regulation. These transfer document requirements will enhance the enforcement of the oxygenated gasoline regulation, by providing a paper trail for each gasoline sample taken by state enforcement personnel.

Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states will visit at least 20% of regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

The District of Columbia's enforcement strategies and penalty provisions are found in 20 DCMR Chapter 1, Sections 100, 101, 102, 104 and 105. 20 DCMR Chapter 1, Sections 101 and 102 give the authority to inspect and issue notice of violations to the alleged violator. 20 DCMR Chapter 1, Section 104 provides the alleged violator the opportunity for a hearing. 20 DCMR Chapter 1, Section 105 provides penalties which include a fine of up to $5,000 per violation or imprisonment not to exceed 90 days, or both. The District of Columbia's enforcement and penalty provisions are acceptable.

Test Methods and Laboratory Review

EPA's sampling procedures are detailed in Appendix D of 40 C.F.R. Part 80. EPA has recommended that states adopt these sampling procedures. The District of Columbia has not adopted EPA sampling procedures or any other sampling procedure which would be acceptable to EPA. In addition, the District of Columbia has failed to include in its' regulation procedures for the calculation of oxygen content in the gasoline sampled. Both the lack of sampling procedures and oxygen content calculations compromise the enforceability of the regulation and are a deficiency under Section 110(a)(2) of the Clean Air Act.

Each state regulation must include a test method. EPA's guidelines recommend the use of the OFID test, although parties may elect to use ASTM–D4815–89 or another method, if approved by EPA. The District of Columbia has elected to use the ASTM–D4815–89 method which is consistent with EPA guidelines.

Labeling

EPA was required to issue federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the **Federal Register** on October 20, 1992,[6] required the following statement be posted for a per-gallon program or credit program with minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

The Federal regulation also specifies the appearance and placement requirements for the labels.

EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. The District of Columbia has adopted labeling regulations consistent with the federal regulation.

EPA Analysis

EPA is proposing a limited approval of the additions or amendments to 20 DCMR Chapter 1, Section 199, definitions for the terms "blending plant", "distributor", "non-oxygenated gasoline", "oxygenate", "oxygenated gasoline", "oxygenated gasoline control period", "oxygenated gasoline control area", "refiner", "refinery", "retailer", "retail outlet", "terminal", and "wholesale purchaser consumer"; Chapter 5, Section 500, Subsections 500.4 and 500.5; Chapter 5, Section 502, Subsection 502.18; Chapter 9, Section 904, Subsections 904.1 and 904.2 into the District of Columbia SIP, which was submitted on October 27, 1993. EPA is also proposing to disapprove the additions or amendments to 20 DCMR Chapter 1, Section 199, definitions for the terms "blending plant",

[4] See "Designation of Areas for Air Quality Planning Purposes," 56 FR 56694 (November 6, 1991).

[5] See credit program guidelines at 3, wherein the November 15, 1992 SIP revision due date was specified.

[6] See note 3.

"distributor", "non-oxygenated gasoline", "oxygenate", "oxygenated gasoline", "oxygenated gasoline control period", "oxygenated gasoline control area", "refiner", "refinery", "retailer", "retail outlet", "terminal", and "wholesale purchaser-consumer"; Chapter 5, Section 500, Subsections 500.4 and 500.5; Chapter 5, Section 502, Subsection 502.18; Chapter 9, Section 904, Subsections 904.1 and 904.2 for the limited purpose of allowing the District of Columbia the opportunity to correct certain deficiencies. These deficiencies are located in Section 199 (lack of definition for the term "carrier") and Section 502 (lack of sampling procedure and lack of a procedure to calculate the oxygen content of the gasoline sampled). EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action.

Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the *Addresses* section of this notice.

20 DCMR Section 500, Subsection 500.4 requires all parties in the gasoline distribution network, including "carriers", to generate and maintain records detailing compliance. However, the definition of "carriers" is not found in 20 DCMR Section 199, entitled Definitions and Abbreviations, or any other section of 20 DCMR. Therefore, EPA is proposing to disapprove both Section 199, because it lacks a definition for the term "carriers", and Subsection 500.4, because the term "carriers" which is used in this section is not defined in the subsection or any other section of 20 DCMR. The lack of a definition of "carriers" compromises the enforceability of the regulation and is a deficiency under Section 110(a)(2) of the Clean Air Act.

EPA's sampling procedures are detailed in Appendix D of 40 CFR Part 80. EPA has recommended that states adopt these sampling procedures. The District of Columbia has not adopted EPA sampling procedures or any other sampling procedure which would be acceptable to EPA. In addition, the District of Columbia has failed to include in its' regulation procedures for the calculation of oxygen content in the gasoline sampled. Both the lack of a sampling procedure and oxygen content calculation procedure compromise the enforceability of the regulation and are a deficiency under Section 110(a)(2) of the Clean Air Act. Therefore, EPA is proposing to disapprove 20 DCMR Section 502, Subsection 502.18 because it lacks both a sampling procedure and

"distributor"; "non-oxygenated gasoline", "oxygenate", "oxygenated gasoline", "oxygenated gasoline control period", "oxygenated gasoline control area", "refiner", "refinery", "retailer", "refail outlet", "terminal", and "wholesale purchaser-consumer"; Chapter 5, Section 500, Subsections 500.4 and 500.5; Chapter 5, Section 502, Subsection 502.18; Chapter 9, Section 904, Subsections 904.1 and 904.2 for the limited purpose of allowing the District of Columbia the opportunity to correct certain deficiencies. These deficiencies are located in Section 199 (lack of definition for the term "carrier") and Section 502 (lack of sampling procedure and lack of a procedure to calculate the oxygen content of the gasoline sampled). EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action.

Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the *Addresses* section of this notice.

20 DCMR Section 500, Subsection 500.4 requires all parties in the gasoline distribution network, including "carriers", to generate and maintain records detailing compliance. However, the definition of "carriers" is not found in 20 DCMR Section 199, entitled Definitions and Abbreviations, or any other section of 20 DCMR. Therefore, EPA is proposing to disapprove both Section 199, because it lacks a definition for the term "carriers", and Subsection 500.4, because the term "carriers" which is used in this section is not defined in the subsection or any other section of 20 DCMR. The lack of a definition of "carriers" compromises the enforceability of the regulation and is a deficiency under Section 110(a)(2) of the Clean Air Act.

EPA's sampling procedures are detailed in Appendix D of 40 CFR Part 80. EPA has recommended that states adopt these sampling procedures. The District of Columbia has not adopted EPA sampling procedures or any other sampling procedure which would be acceptable to EPA. In addition, the District of Columbia has failed to include in its regulation procedures for the calculation of oxygen content in the gasoline sampled. Both the lack of a sampling procedure and oxygen content calculation procedure compromise the enforceability of the regulation and are a deficiency under Section 110(a)(2) of the Clean Air Act. Therefore, EPA is proposing to disapprove 20 DCMR Section 502, Subsection 502.18 because it lacks both a sampling procedure and a procedure for calculating the oxygen content in the gasoline sampled.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 100(k)(3) and Part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the Act, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rule does not meet the section 110(a)(2) requirement because of the noted enforcement deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of the District of Columbia's submitted additions or amendments to 20 DCMR Chapter 1, Section 199; Chapter 5, Section 500, Subsections 500.4 and 500.5; Chapter 5, Section 502, Subsection 502.18; Chapter 9, Section 904, Subsections 904.1 and 904.2 under section 110(k)(3) and 301(a) of the Act.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies under section 110(a)(2) of the Act, and, as such, the rule does not fully meet the requirements of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

III. Proposed Action

For the above stated reasons, EPA is proposing a limited approval/limited disapproval of the District of Columbia's SIP for an oxygenated gasoline program. In order to correct the deficiencies in 20 DCMR Chapter 1, Section 199; Chapter 5, Section 500, Subsections 500.4 and 500.5; Chapter 5, Section 502, Subsection 502.18; Chapter 9, Section 904; Subsections 904.1 and 904.2 which EPA is proposing as a limited disapproval, the District of Columbia must include a definition for the term "carrier", include a sampling procedure, and include procedures for the calculation of oxygen content in the gasoline sampled. If the District of Columbia submits a SIP revision which is deemed administratively and technically complete and corrects the deficiencies listed above prior to the time that EPA finalizes this action, EPA will propose full approval of the October 27, 1993 submittal and the subsequent submittal which corrects the deficiencies.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, Part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not

impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. OMB has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the District of Columbia's oxygenated gasoline SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 28, 1994.

Stanley L. Laskowski,

Acting, Regional Administrator, Region III.

[FR Doc. 94–16218 Filed 7–1–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–64, RM–8453]

Radio Broadcasting Services; Ider, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Deborah M. Thompson, requesting the allotment of FM Channel 254A to Ider, Alabama, as that community's first local aural transmission service. Coordinates used for this proposal are 34–48–43 and 85–36–07.

DATES: Comments must be filed on or before August 19, 1994, and reply comments on or before September 3, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and her consultant, as follows: Deborah M. Thompson, Route 5, Box 88I, Scottsboro, AL 35768 (petitioner); and Kirk A. Tollett, Commsouth Media Associates, 4001 Highway 78 East, Jasper, AL 35501 (consultant).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–64, adopted June 14, 1994, and released June 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16133 Filed 7–1–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–62, RM–8444]

Radio Broadcasting Services; Kasilof, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of William Glynn, requesting the allotment of FM Channel 229A to Kasilof, Alaska, as that community's first local aural transmission service. Coordinates used for this proposal are 60–20–15 and 151–16–20.

DATES: Comments must be filed on or before August 19, 1994, and reply comments on or before September 3, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Benjamin Perez, Esq., Abacus Communications Company, 1801 Columbia Road, NW., suite 101, Washington, DC 20009–2031.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–62, adopted June 14, 1994, and released June 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 1460, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16134 Filed 7–1–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–60, RM–8455]

Radio Broadcasting Services; Duncan, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed on behalf of Duncan Community Radio proposing the allotment of FM Channel 264A to Duncan, Arizona, as that community's first local aural broadcast service. Coordinates for Channel 264A are 32–43–12 and 109–06–12. Duncan is located within 320 kilometers (199 miles) of the United States-Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government to this proposal.

DATES: Comments must be filed on or before August 19, 1994, and reply comments on or before September 3, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jeffrey D. Southmayd, Esq., Southmayd & Miller, 1120–19th Street NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–60, adopted June 9, 1994, and released June 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

47 CFR Part 73

[MM Docket No. 94–60, RM–8455]

Radio Broadcasting Services; Duncan, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed on behalf of Duncan Community Radio proposing the allotment of FM Channel 264A to Duncan, Arizona, as that community's first local aural broadcast service. Coordinates for Channel 264A are 32–43–12 and 109–06–12. Duncan is located within 320 kilometers (199 miles) of the United States-Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government to this proposal.

DATES: Comments must be filed on or before August 19, 1994, and reply comments on or before September 3, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jeffrey D. Southmayd, Esq., Southmayd & Miller, 1120–19th Street NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–60, adopted June 9, 1994, and released June 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 94–16135 Filed 7–1–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–63, RM–8450]

Radio Broadcasting Services; Rocky Mount and Bassett, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition file by WNLB Radio, Inc., licensee of Station WZBB–FM, Channel 260A, Rocky Mount, Virginia, seeking the substitution of Channel 260C3 for Channel 260A, the reallotment of Channel 260C3 from Rocky Mount to Bassett, Virginia, and the modification of Station WZBB–FM's license to specify Bassett as the station's community of license. Channel 260C3 can be allotted to Bassett in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.0 kilometers (6.2 miles) northwest to accommodate WNLB's desired site. The coordinates for Channel 260C3 at Bassett are 36–48–47 and 80–04–41. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 260C3 at Bassett or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before August 19, 1994, and reply comments on or before September 3, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Gutmann, Pepper & Corazzini, 1776 S Street NW., Suite 200, Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–63, adopted June 14, 1994, and released June 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16136 Filed 7–1–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–53, Notice 01]

RIN No. 2127–AF19

Federal Motor Vehicle Safety Standards (FMVSS); New Pneumatic Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document responds to a petition for rulemaking submitted by the Japan Automobile Tire Manufacturers' Association, Inc. (JATMA), and proposes to amend the labeling requirements of FMVSS No. 109, *New Pneumatic Tires*, to permit tires that

have a maximum inflation pressure of 60 pounds per square inch (psi) to be labeled "inflate to 420 kPa (60 psi)." Currently, the standard does not permit the metric unit to be on the label. The proposal would aid the international harmonization of standards. This notice also proposes to correct a typographical error in S4.3 of the standard.

DATES: *Comment closing date:* Comments on this notice must be received on or before September 6, 1994.

Proposed effective date: If adopted, the amendment proposed in this notice would become effective 30 days after publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice numbers shown above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW., Room 5109, Washington, DC 20590. Docket room hours are from 9:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Room 5307, Washington, DC 20590. Telephone: (202) 366–4803.

SUPPLEMENTARY INFORMATION: Standard 109 requires passenger car tires to be labeled with important safety information, including tire size, construction, and inflation pressure. Paragraph S4.3.5. of the standard provides that if the maximum inflation pressure of a tire is 60 psi, the words "Inflate to 60 psi" shall be molded into or onto both sidewalls of the tire in letters and numerals not less than ½ inch high.

JATMA submitted a petition to the agency suggesting an amendment to S4.3.5. The petition, submitted on behalf of Japanese tire manufacturers, suggested that S4.3.5 should require adding the words "or inflate to 420 kPa (60 psi)" after "Inflate to 60 psi." JATMA stated that the maximum inflation pressure of a "T"-type spare tire is listed as 420 kilopascals (kPa) in the Tire and Rim Association, Inc., Year Book, the JATMA Year Book, and in Japanese Industrial Standard (JIS) D4230. JATMA indicated that, if the suggested amendment were adopted by NHTSA, the amendment would simplify the manufacturing processes of Japanese tire manufacturers since they would be able to mark tires the same for both the Japanese and U.S. markets. NHTSA granted the petition by letter dated January 7, 1994.

This notice proposes to amend Standard No. 109 as requested by the petitioner. This NPRM is consistent with the requirement of § 5164 of the Omnibus Trade and Competitiveness Act (Pub. L. 100–418), which designated the metric system as the preferred system of weights and measures for U.S. trade and commerce. NHTSA believes that allowing metric units on tires would further the international harmonization of standards. Common sizing for all international markets would facilitate the manufacture of products, and could ultimately result in manufacturers selling their products at cheaper prices. NHTSA has tentatively determined that the petitioner's requested metric unit on tires would not confuse consumers or obscure the meaning of the inflation pressure information labeled on tires. Accordingly, NHTSA tentatively concludes there is no safety reason for precluding JATMA's requested metric labeling.

This notice also proposes to correct a typographical error in paragraph S4.3 of FMVSS 109. The first sentence of paragraph S4.3 provides that each tire shall have permanently molded into or onto both sidewalls the information "shown in paragraphs (a) and (g)" of S4.3. The word "and" in that phrase is incorrect. NHTSA intends that all the information specified in (a) *through* (g) be molded into or onto tires, not just (a) *and* (g). Accordingly, NHTSA proposes to substitute the word "through" for the word "and" at the end of the first sentence of paragraph S4.3. The agency notes that, notwithstanding the use of "and" in that sentence, tire manufacturers are labeling tires with the information of (a) through (g). Thus, this correction would not have any effect on how tires are currently labeled.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866. NHTSA has considered the impact of this rulemaking action and has concluded that it is not significant under the DOT's regulatory policies and procedures. This action would not change any of the substantive requirements of Standard 109. The effect on labeling costs might be to decrease such costs slightly for tire manufacturers that now convert metric units on their tires to English units, or that now convert English units on tires to metric units for sale overseas. However, NHTSA believes the costs savings, if any, would be minimal. NHTSA has concluded, therefore, that the costs of complying with the changes proposed in this notice do not warrant preparation of a preliminary regulatory evaluation.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

The agency believes that few, if any, tire manufacturers qualify as small businesses. Small businesses, small organizations and small governmental units could be affected by the proposed amendments to the extent that they may purchase new tires affected by these proposed amendments. However, NHTSA does not believe the costs of tires would be affected by this rule. Thus, these entities would not be significantly affected.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act and has determined that implementation of this action would have no significant impact on the quality of the human environment.

D. E.O. 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under § 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act), 15 U.S.C. § 1392(d), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance that is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance applicable only to vehicles procured for the state's own use. Section 105 of the Safety Act (15 U.S.C. § 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Comments

Interested persons are invited to submit comments on these proposals. It is requested but not required that any comments be submitted in 10 copies each.

Comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments, however, may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address shown above, and 7 copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in 49 CFR Part 512, the agency's confidential business information regulation.

All comments received on or before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available to the public for examination in the docket at the above address both before and after the closing date. To the extent possible, comments received after the closing date will be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for public

Comments

Interested persons are invited to submit comments on these proposals. It is requested but not required that any comments be submitted in 10 copies each.

Comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments, however, may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address shown above, and 7 copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in 49 CFR Part 512, the agency's confidential business information regulation.

All comments received on or before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available to the public for examination in the docket at the above address both before and after the closing date. To the extent possible, comments received after the closing date will be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for public inspection in the docket. NHTSA will continue to file relevant information in the docket after the closing date, and it is recommended that interested persons continue to monitor the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1397, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.109 would be amended by revising the introductory paragraph of S4.3 and the entire paragraph of S4.3.5 to read as follows:

§ 571.109 Standard No. 109, New Pneumatic Tires.

* * * * *

S4.3 *Labeling Requirements.* Except as provided in S4.3.1 and S4.3.2, each tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than 0.078 inches high, the information shown in paragraphs S4.3 (a) through (g). On at least one sidewall, the information shall be positioned in an area between the maximum section width and bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires where the maximum section width falls in that area, locate all required labeling between the bead and a point one-half the distance from the bead to the shoulder of the tire. However, in no case shall the information be positioned on the tire so that it is obstructed by the flange or any rim designated for use with that tire in Standard Nos. 109 and 110 (§ 571.109 and § 571.110 of this part).

* * * * *

S4.3.5 If the maximum inflation pressure of a tire is 420 kPa (60 psi), the tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than ½ inch high, the words "Inflate to 60 psi" or "Inflate to 420 kPa (60 psi)." On both sidewalls, the words shall be positioned in an area between the tire shoulder and the bead of the tire. However, in no case shall the words be positioned on the tire so that they are obstructed by the flange of any rim designated for use with that tire in this standard or in Standard No. 110 (§ 571.110 of this part).

* * * * *

Issued on June 28, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–16112 Filed 7–1–94; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 59, No. 127
Tuesday, July 5, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Manufacturers' Shipments, Inventories, and Orders (M3).
Form Number(s): M–3(SD).
Agency Approval Number: 0607–0008.
Type of Request: Revision of a currently approved collection.
Burden: 24,000 hours.
Number of Respondents: 6,000.
Avg Hours Per Response: 20 minutes.
Needs and Uses: The Census Bureau conducts the M3 survey, one of the principal Federal economic indicators, to collect monthly manufacturing data from a sample of firms in the manufacturing sector of the economy. The data are used to analyze short– and long–term trends in the manufacturing sector and as related to other sectors of the economy. The shipments and inventory data are essential inputs into the gross domestic product accounts, while the orders data are direct inputs into the leading economic indicator series. The survey also provides valuable and timely data for economic planning and analysis to business firms, trade associations, research and consulting agencies, and academia on the domestic manufacturing sector.
Affected Public: Businesses or other for–profit organizations, Small businesses or organizations.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 28, 1994.
Gerald Taché,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 94–16211 Filed 7–1–94; 8:45 am]
BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Survey of Income and Program Participation – 1993 Panel Wave 7.
Form Number(s): SIPP–13700.
Agency Approval Number: 0607–0759.
Type of Request: Revision of a currently approved collection.
Burden: 63,000 hours.
Number of Respondents: 42,000.
Avg Hours Per Response: 30 minutes.
Needs and Uses: The Survey of Income and Program Participation (SIPP) is a longitudinal, demographic, survey in which the Census Bureau interviews sample households in waves occurring every 4 months over about a 3 year period. The survey is molded around a central "core" of labor force and income questions that remain fixed during each wave of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are referred to as "topical modules." The topical modules for the 1993 Panel Wave 7 are the following: 1) Assets and liabilities, 2) Medical Expenses and Work Disability, and 3) Real Estate, Shelter Costs, Dependent Care, and Vehicles. Also, topical module items on Earnings and Employment, Stocks and Mutual Fund Shares, Rental Income, Mortgages, Royalties, and Other Financial Investments have been added in Sections 2 and 3 of the core. Wave 7 interviews will be conducted from February through May 1995. SIPP data on income distribution and changes over time in status and participation in welfare and transfer programs are used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer these programs to support policy and program planning.

Affected Public: Individuals or households.
Frequency: Once during the panel.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 28, 1994.
Gerald Taché,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 94–16213 Filed 7–1–94; 8:45 am]
BILLING CODE 3510–07–F

International Trade Administration

[A–549–813]

Initiation of Antidumping Duty Investigation: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen Alley or Lori Way, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5288 and 482–0656, respectively.

Initiation of Investigation

The Petition

On June 8, 1994, we received a petition filed in proper form from Maui Pineapple Company, Ltd. and the International Longshoremen's and Warehousemen's Union. Petitioners filed supplements to the petition on June 14 and 20, 1994. In accordance with 19 CFR 353.12, petitioners allege that imports of canned pineapple fruit from Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners have stated that they have standing to file the petition because they represent interested parties as defined under section 771(9)(C) and (D) of the Act, and because the petition was filed on behalf of the U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E) or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The product covered by this investigation is canned pineapple fruit (CPF). For the purposes of this investigation, CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

United States Price and Foreign Market Value

Petitioners based U.S. price (USP) on average unit values derived from U.S. Customs IM–146 import statistics. To calculate U.S. price, petitioners made deductions for foreign inland freight.

Petitioners used Thai home market delivered price quotes provided by a market researcher to calculate foreign

Initiation of Investigation

The Petition

On June 8, 1994, we received a petition filed in proper form from Maui Pineapple Company, Ltd. and the International Longshoremen's and Warehousemen's Union. Petitioners filed supplements to the petition on June 14 and 20, 1994. In accordance with 19 CFR 353.12, petitioners allege that imports of canned pineapple fruit from Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners have stated that they have standing to file the petition because they represent interested parties as defined under section 771(9)(C) and (D) of the Act, and because the petition was filed on behalf of the U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E) or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The product covered by this investigation is canned pineapple fruit (CPF). For the purposes of this investigation, CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

United States Price and Foreign Market Value

Petitioners based U.S. price (USP) on average unit values derived from U.S. Customs IM–146 import statistics. To calculate U.S. price, petitioners made deductions for foreign inland freight.

Petitioners used Thai home market delivered price quotes provided by a market researcher to calculate foreign market value (FMV). According to petitioners, there is no difference in quality between the CPF sold in the Thai and U.S. markets. To calculate FMV, petitioners deducted an amount for home market inland freight expenses, and then converted the net price to dollars using contemporaneous exchange rates from the Federal Reserve.

The margin alleged by petitioners is 138.48 percent. If it becomes necessary at a later date to consider the petition as a source of best information available (BIA) in this investigation, we may review more thoroughly all of the bases for USP and FMV in determining BIA.

Initiation of Investigation

We have examined the petition on CPF from Thailand and have found that it meets the requirements of section 732(b) of the Act and 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of CPF from Thailand are being, or are likely to be, sold in the United States at less than fair value.

International Trade Commission Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by July 25, 1994, pursuant to section 733(a)(1) of the Act, whether there is a reasonable indication that imports of CPF from Thailand are materially injuring, or threaten material injury to, a U.S. industry. Pursuant to section 733(a)(2) of the Act, a negative ITC determination will result in this investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16208 Filed 7–1–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration.

[A–301–801 and A–331–801]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Fresh Cut Roses From Colombia and Ecuador

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: James Maeder or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230, at (202) 482–3330 or (202) 482–3965.

POSTPONEMENT: On June 24, 1994, we received a letter from petitioner in these investigations requesting that the Department of Commerce postpone the preliminary determinations in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(c)(1)(A)). We find no compelling reasons to deny the request and are, accordingly, postponing the date of the preliminary determinations until September 12, 1994. The U.S. International Trade Commission is being advised of these postponements in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15 (b) and (d).

Dated: June 28, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16206 Filed 7–1–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–506]

Oil Country Tubular Goods From Canada, Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 20, 1994, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on oil country tubular goods from Canada (51 FR 21782; June 16, 1986). The review covers one manufacturer/exporter, IPSCO Inc.

(IPSCO), and the period June 1, 1992, through May 31, 1993.

We gave interested parties an opportunity to comment on the preliminary results. Since the Department received no comments, the final results remain unchanged from the preliminary results.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: David Genovese or Michael Heaney, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202)482–5254.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1993, IPSCO requested that the Department conduct an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Canada. The Department initiated the review on July 21, 1993 (58 FR 39007), covering the period June 1, 1992, through May 31, 1993. On April 20, 1994, the Department published the preliminary results of review (59 FR 18798). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review include shipments of OCTG from Canada. This includes American Petroleum Institute (API) specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus ⅛ inch for diameters less than or equal to 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests.

This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no comments. Accordingly, we have determined that a final margin of zero percent exists for IPSCO for the period June 1, 1992 through May 1, 1993.

The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for IPSCO will be zero percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the "all others" rate will be 16.65 percent, as explained below.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, 822 F. Supp. 782 (1993), decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Accordingly, the cash deposit rate for any future entries from all other manufacturers or exporters, who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firms or any previously reviewed firm, will be the "all others" rate established in the original LTFV investigation, which is 16.65 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16207 Filed 7–1–94; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Countervailing Duty Orders

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty orders.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty orders listed below. Domestic interested parties who object to these revocations must submit their comments in writing not later than the last day of July, 1994.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mercedes Fitchett or Brian Albright, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 355.25(d)(4) (19 CFR 355.25(d)(4) (1993)) of the Department's regulations, we are notifying the public of our intent to revoke the following countervailing duty orders for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Countervailing duty orders	Effective date
EC: Sugar (C–408–046)	07/31/78 43 FR 33237
Uruguay: Leather Wearing Apparel (C–355–001).	07/17/82 47 FR 31032

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if domestic interested parties (defined in section 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) do not object to the Department's intent to revoke these orders pursuant to this notice, or interested parties (defined in section 355.2(i) of the regulations) do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty orders are no longer of interest to interested parties and proceed with the revocations.

Opportunity to Object

Not later than the last day of July, 1994, domestic interested parties may object to the Department's intent to revoke these countervailing duty orders. Any submission objecting to a revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230.

Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 355.25(d)(4) (19 CFR 355.25(d)(4) (1993)) of the Department's regulations, we are notifying the public of our intent to revoke the following countervailing duty orders for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Countervailing duty orders	Effective date
EC: Sugar (C–408–046)	07/31/78 43 FR 33237
Uruguay: Leather Wearing Apparel (C–355–001).	07/17/82 47 FR 31032

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if domestic interested parties (defined in section 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) do not object to the Department's intent to revoke these orders pursuant to this notice, or interested parties (defined in section 355.2(i) of the regulations) do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty orders are no longer of interest to interested parties and proceed with the revocations.

Opportunity to Object

Not later than the last day of July, 1994, domestic interested parties may object to the Department's intent to revoke these countervailing duty orders. Any submission objecting to a revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: June 28, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–16204 Filed 7–1–94; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, application No. 85–5A018.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the U.S. Shippers Association ("USSA") on June 3, 1986. Notice of issuance of the Certificate was published in the **Federal Register** on June 9, 1986 (51 FR 20873).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

DESCRIPTION OF AMENDED CERTIFICATE: Export Trade Certificate of Review No. 85–00018 was issued to the U.S. Shippers Association ("USSA") on June 3, 1986 (51 FR 20873, June 9, 1986), and previously amended on January 16, 1990 (55 FR 2543, January 25, 1990); November 13, 1990 (55 FR 48664, November 21, 1990); and on September 22, 1993 (58 FR 51061, September 30, 1993).

USSA's Export Trade Certificate of Review has been amended to add the following company as a "Member" within the meaning of Section 325.2(l) of the Regulations (15 CFR 325.2(l) (1993)): ANGUS Chemical Company, Buffalo Grove, Illinois (Controlling entity: Alberta Natural Gas Company Ltd., Calgary, Alberta, Canada).

A Copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

Dated: June 28, 1994.

Effective Date: March 30, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–16210 Filed 7–1–94; 8:45 am]

BILLING CODE 3510–DR–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–075. *Applicant:* West Virginia University, Physics Department, G-30 Hodges Hall, Morgantown, WV 26505-6315. *Instrument:* Atom/Radical Source, Model CARS25. *Manufacturer:* Oxford Applied Research, United Kingdom. *Intended Use:* The instrument will be used in research concerning the formation of point defects during molecular beam epitaxy growth and doping of wide band gap semiconductors. *Application Accepted by Commissioner of Customs:* May 27, 1994.

Docket Number: 94–076. *Applicant:* The Georgia Institute of Technology, 225 North Avenue, NW, Atlanta, GA 30322. *Instrument:* High-Shear Mixing Bleach Reactor, Model CRS1015. *Manufacturer:* CRS Reactor Engineering, Sweden. *Intended Use:* The instrument will be used in a study to develop novel bleaching technologies, such as ECF and TCF processes, other than traditional chlorine processes. The instrument will be used for educational and research

purposes mostly by graduate students seeking advance degrees. *Application Accepted by Commissioner of Customs:* May 31, 1994.

Docket Number: 94–077. *Applicant:* The Ohio State University, Aeronautical & Astronautical Research Laboratory, 2300 West Case Road, Columbus, OH 43235. *Instrument:* High Power, High Pressure Arc Discharge Plasma Source System. *Manufacturer:* Institute of Problems of Electrophysics, UIS. *Intended Use:* The instrument will be used for research that involves the determination of arc discharge mode, energy and power transfer efficiencies, electrode and insulator damage and wear. The experiments will be conducted for various gases over a range of initial pressures and currents and will involve electrical, pressure transducer and optical measurements. In addition, the instrument will contribute to educational objectives by providing the basis for student thesis research and design projects, and by challenging students with problems related to their coursework. *Application Accepted by Commissioner of Customs:* June 3, 1994.

Docket Number: 94–078. *Applicant:* University of Pittsburgh, Chemistry Department, 350 Thackeray Hall, Pittsburgh, PA 15260. *Instrument:* Mass Spectrometer, Model VG AutoSpec. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to produce mass spectra of a wide variety of unique synthetic products and intermediate compounds (natural products, organic substrates for enzyme interaction, vitamin derivatives, and novel synthetic products) in the support of various research programs. The instrument will also be used to investigate the mechanisms of bombardment induced gas-phase ion chemistry and will involve the designing of additives to a FAB matrix that will induce specific chemical reactions within the mass spectrometer. In addition, the instrument will be used for educational purposes in the course Chemistry 2700 Graduate Research. *Application Accepted by Commissioner of Customs:* June 3, 1994.

Docket Number: 94–079. *Applicant:* Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. *Instrument:* EPR Spectrometer, Model ESP300-E-10-12. *Manufacturer:* Bruker Instruments, Germany. *Intended Use:* The instrument will be used to study photo-induced charge separation in natural photosynthetic and model photosynthetic systems. The experiments to be conducted will be both conventional electron paramagnetic resonance experiments on stable radicals and time-resolved electron paramagnetic resonance. *Application Accepted by Commissioner of Customs:* June 3, 1994.

Docket Number: 94–080. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Electron Microscope, Model JEM 2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for the study of liquid crystal polymers and thermosets. Experiments will be performed on a variety of liquid crystalline materials to investigate the effect of different preparation schemes on the structure and the resulting properties. *Application Accepted by Commissioner of Customs:* June 7, 1994.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–16209 Filed 7–1–94; 8:45 am]

BILLING CODE 3510–DS–F

National Institute of Standards and Technology

[Docket No. 940680–4180]

RIN No. 0693–AB29

Proposed Federal Information Processing Standard (FIPS) for Application Profile for the Government Information Locator Service (GILS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: This proposed Federal Information Processing Standard describes an application profile for the Government Information Locator Service (GILS). This application profile is based primarily on the American National Standard for Information Retrieval Application Service Definition and Protocol Specification for Open Systems Interconnection (ANSI/NISO Z39.50–1992), developed by the National Information Standards Organization. The Government Information Locator Service (GILS) is a decentralized collection of servers and associated information services that will be used by the public either directly or through intermediaries to find public information throughout the Federal government.

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of federal organizations, vendors, the public, and State and local governments. The purpose of this notice is to solicit such views.

The proposed FIPS contains two sections: (1) an announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard.

Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the technical specifications for this proposed FIPS for Application Profile for the Government Information Locator Service (GILS) from Standards Processing Coordinator (ADP), Computer Systems Laboratory, National Institute of Standards and Technology, Technology Building, Room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on this proposed FIPS must be received on or before October 3, 1994.

ADDRESSES: Written comments concerning the proposed FIPS should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for GILS, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Christian, U.S. Geological Survey, 802 National Center, Reston, VA 22092, telephone (703) 648–7245, fax (703) 648–7069, E–mail: echristi@usgs.gov.

Dated: June 28, 1994.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication_____

(date)

Announcing the Standard for Application Profile for the Government Information Locator Service (GILS)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Application Profile for the Government Information Locator Service (GILS).

2. Category of Standard. Software Standard, Information Interchange.

3. Explanation. This standard describes an application profile for the Government Information Locator Service (GILS). This application profile is based primarily on the American National Standard for Information Retrieval Application Service Definition and Protocol Specification for Open Systems Interconnection (ANSI/NISO Z39.50–1992), developed by the National Information Standards Organization (NISO). The Government Information Locator Service (GILS) is a decentralized collection of servers and associated information services that will be used by the public either directly or through intermediaries to find public information throughout the Federal government.

This GILS Profile specifies the use of ANSI/NISO Z39.50–1992 in information service applications and provides specifications for the overall GILS application, including the GILS Core and other aspect of a GILS server operating in the Internet environment. This GILS profile will enable GILS client systems to interconnect and to interoperate with any GILS server. This profile addresses intersystem interactions and information interchange for the GILS, but does not specify user interface requirements, the internal structure of databases that contain GILS Locator Records, or search engine functionality.

GILS servers will support search and retrieval by accepting a search query and returning a result set or diagnostic messages. GILS servers may also support browsing by accepting a well-known search query and returning a list of Locator Records in brief display format.

Some of the information resources pointed to by GILS Locator Records, as well as the GILS server itself, may be available electronically through other communications protocols including the common Internet protocols that facilitate electronic information transfer such as remote login (Telnet), File Transfer Protocol (FTP), and electronic mail. The use of SMTP and MIME protocols or other communications paths is outside the scope of the GILS Profile..

The GILS Profile was developed by a group of industry and government experts in ANSI/NISO Z39.50–1992 implementations, system implementations, and the organization

Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Application Profile for the Government Information Locator Service (GILS).

2. Category of Standard. Software Standard, Information Interchange.

3. Explanation. This standard describes an application profile for the Government Information Locator Service (GILS). This application profile is based primarily on the American National Standard for Information Retrieval Application Service Definition and Protocol Specification for Open Systems Interconnection (ANSI/NISO Z39.50–1992), developed by the National Information Standards Organization (NISO). The Government Information Locator Service (GILS) is a decentralized collection of servers and associated information services that will be used by the public either directly or through intermediaries to find public information throughout the Federal government.

This GILS Profile specifies the use of ANSI/NISO Z39.50–1992 in information service applications and provides specifications for the overall GILS application, including the GILS Core and other aspect of a GILS server operating in the Internet environment. This GILS profile will enable GILS client systems to interconnect and to interoperate with any GILS server. This profile addresses intersystem interactions and information interchange for the GILS, but does not specify user interface requirements, the internal structure of databases that contain GILS Locator Records, or search engine functionality.

GILS servers will support search and retrieval by accepting a search query and returning a result set or diagnostic messages. GILS servers may also support browsing by accepting a well-known search query and returning a list of Locator Records in brief display format.

Some of the information resources pointed to by GILS Locator Records, as well as the GILS server itself, may be available electronically through other communications protocols including the common Internet protocols that facilitate electronic information transfer such as remote login (Telnet), File Transfer Protocol (FTP), and electronic mail. The use of SMTP and MIME protocols or other communications paths is outside the scope of the GILS Profile..

The GILS Profile was developed by a group of industry and government experts in ANSI/NISO Z39.50–1992 implementations, system implementations, and the organization of information. The specifications included in the GILS Profile reflect the consensus of this group based on its work and input from a range of stakeholders.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of the Interior, United States Geological Survey (USGS).

Questions concerning this standard are to be addressed to the Maintenance Agency: GILS Program, United States Geological Survey (USGS), 802 National Center, Reston, VA 22092. Users of this standard who need to be notified or changes that occur prior to the next publication of the standard should complete the Change Request Form provided in this publication and send it to: Standards Processing Coordinator (ADP), Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. The NIST will issue Change Notices on an as-needed basis.

6. Related Documents.

a. Federal Information Resources Management Regulations (FIRMR) subpart 201–20.303, Standards and subpart 201–39–1002, Federal Standards.

b. Office of Management and Budget Bulletin 94–_____, Establishment of Government Information Locator Service.

c. American National Standard for Information Retrieval Application Service Definition and Protocol Specification for Open Systems Interconnection (ANSI/NISO Z39.50–1992).

d. A list of additional references for the Application Profile is contained in section 5, References, of the specifications.

7. Objectives. The objectives of the Application Profile for the GILS are to:

—Enable users to identify, locate, and access or acquire publicly available Federal information resources, including electronic information resources.

—Provide a uniform approach to providing information locator services to the public.

—Enable every agency to establish standards-based network-accessible locator records.

8. Applicability.

a. This standard is recommended for use by Federal agencies in the development and establishment of information locators, i.e., information resources that identify other information resources, describe the information available in those resources, and provide assistance in how to obtain the information.

b. This standard is required for use by Federal agencies in those information locators that are established and maintained as part of the Government Information Locator System (GILS) pursuant to the requirements of OMB Bulletin 94–_____ and other applicable, law, regulation, and policy.

c. The GILS Core requirements of this standard apply to those GILS locator records which:

—Describe information resources maintained by the Federal government;

—Comply with the defined GILS Core Elements;

—Are mutually accessible through interconnected electronic network facilities without charge to the direct user; and

—Are designated by the agency to be part of the Federal government GILS Core, pursuant to OMB Bulletin 94–_____.

9. Specifications. The Application Profile for the Government Information Locator System, (affixed).

10. Implementation. The implementation of this standard involves three areas of consideration: development and acquisition of GILS implementations, validation, and interpretations of the standard.

10.1 Development and Acquisition of GILS Implementations. This standard is effective _____ (6 months after approval by the Secretary of Commerce).

10.2 Validation. Validation of GILS implementations is not required at this time. Testing for conformance to this standard is at the discretion of the agency. Agencies may select the tests to be administered and the testing organizations that administer the tests.

10.3 Interpretation of this standard. Resolution of questions regarding this standard will be provided by NIST. Questions concerning the content and specifications should be addressed to: Director, Computer Systems Laboratory. Attn: FIPS for GILS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–2833.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to Section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the United States Geological Survey (USGS).) When ordering, refer to Federal Information Processing Standards Publication _____ (FIPSPUB _____), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 94–16205 Filed 7–1–94; 8:45 am]
BILLING CODE 3510–LN–M

[Docket No. 940670–4170]

RIN 0693–AB26

Proposed Revision of Federal Information Processing Standard (FIPS) 125–1, MUMPS (Massachusetts General Hospital Utility Multi-Programming System)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: This proposed revision of Federal Information Processing Standard (FIPS) 125–1, MUMPS (Massachusetts General Hospital Utility Multi-Programming System), will adopt the revised voluntary industry specifications, ANSI/MDC X11.1–199X. The American National Standard for M (also known as MUMPS, [MASSACHUSETTS GENERAL HOSPITAL UTILITY MULTI-PROGRAMMING SYSTEM]) specifies the form and establishes the interpretation of programs written in the M programming language.

Prior to the submission of this proposed revision to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and state and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the technical specifications (ANSI/MDC X11.1–199X) from the MUMPS Development Committee (MDC) Secretariat, 1738 Elton Road, Suite 205, Silver Spring, MD 20903, (301) 431–4070, FAX (301) 431–0017.

DATES: Comments on this proposed revision must be received on or before October 3, 1994.

ADDRESSES: Written comments concerning the proposed revision should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS 125–2, M, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. William H. Dashiell, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–2490.

Dated: June 27, 1994.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication 125–2 (Supersedes FIPS PUB 125–1—1993 June 10)

(date)

Announcing the Standard for M (Also Known as MUMPS [MASSACHUSETTS GENERAL HOSPITAL UTILITY MULTI-PROGRAMMING SYSTEM])

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949, as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. M (also known as MUMPS [MASSACHUSETTS GENERAL HOSPITAL UTILITY MULTI-PROGRAMMING SYSTEM]) (FIPS PUB 125–2).

2. Category of Standard. Software Standard, Programming Language.

3. Explanation. This publication announces the adoption of American National Standard for M, ANSI/MDC X11.1–199X, as a Federal Information Processing Standard (FIPS). The American National Standard for M, ANSI/MDC X11.1–199X, specifies the form and establishes the interpretation of programs written in the M programming language. The purpose of the standard is to promote portability of M programs for use on a variety of data processing systems. The standard is for use by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors; and by other computer professionals who need to know the precise syntactic and semantic rules adopted by ANSI. This publication is a revision of FIPS PUB 125–1 and supersedes that document in its entirety.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. Cross Index. American National Standard for Information System—Programming Language—M (also known as MUMPS [MASSACHUSETTS GENERAL HOSPITAL UTILITY MULTI-PROGRAMMING SYSTEM]), ANSI/MDC X11.1–199X.

7. Related Documents.*

a. Federal Information Resources Management Regulations subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

b. FIPS PUB 29–3, Interpretation Procedures for Federal Information Processing Standards for Software.

c. NBS Special Publication 500–117, Selection and Use of General-Purpose Programming Languages.

d. NIST, Validated Products List, (republished quarterly). Available by subscription from the National Technical Information Service (NTIS).

8. Objectives. Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utlilization and management of programmers by ensuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer retraining.

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems; and

—To protect the existing software assets of the Federal Government by ensuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. Applicability.

*Refers to most recent revision of FIPS PUBS.

Institute of Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. Cross Index. American National Standard for Information System—Programming Language—M (also known as MUMPS [MASSACHUSETTS GENERAL HOSPITAL UTILITY MULTI-PROGRAMMING SYSTEM]), ANSI/MDC X11.1–199X.

7. Related Documents.*

a. Federal Information Resources Management Regulations subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

b. FIPS PUB 29–3, Interpretation Procedures for Federal Information Processing Standards for Software.

c. NBS Special Publication 500–117, Selection and Use of General-Purpose Programming Languages.

d. NIST, Validated Products List, (republished quarterly). Available by subscription from the National Technical Information Service (NTIS).

8. Objectives. Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utlilization and management of programmers by ensuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer retraining.

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems; and

—To protect the existing software assets of the Federal Government by ensuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. Applicability.

a. Federal standards for high level programming languages are applicable for computer applications and programs that are either developed or acquired for government use. FIPS M is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS M is suitable for the data processing applications which include but are not limited to:

—Those involving the creation and manipulation of string-oriented or text-oriented collections of data;

—Those requiring interactive data management.

b. The use of FIPS high level programming languages applies when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.

—The program is or is likely to be used by organizations outside the Federal Government (*i.e.*, State and local governments, and others).

—The program is being used for "cooperative" processing across multiple processing platforms (e.g., desktops, servers, and mainframes).

c. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the portable features alone. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. Programmatic requirements also may be more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a M source program, then the resulting program should conform to the conditions and specifications of FIPS M.

10. Specifications. FIPS M (also known as MUMPS [MASSACHUSETTS GENERAL HOSPITAL UTILITY MULTI-PROGRAMMING SYSTEM])

a. The ANSI/MDC X11.1–199X document specifies the representation, syntax, and semantics for M programs; the representation of input and output data processed by M programs; and the restrictions and limitations imposed by an implementation of M conforming to the ANSI/MDC X11.1–199X standard.

b. The standard does not specify:

—The mechanisms by which M programs are transformed or invoked for use by a data processing system;

—The mechanisms by which input data are transformed for use by a M program or output data are transformed after being produced by a M program;

—The limits on program size or complexity except when and where applicable to an application as specified in Part 2: M Portability Requirements of ANSI/MDC X11.1–199X;

—The results when the rules of the standard fail to establish an interpretation;

—The minimal requirements of a data processing system that is capable of supporting a conforming implementation.

11. Implementation. The implementation of FIPS M involves four areas of consideration: the effective date, acquisition of M processors, interpretation of FIPS M, and validation of processors.

1.1 Effective Date. This revised standard becomes effective six (6) months after the publication in the **Federal Register** announcing approval by the Secretary of Commerce. M Processors acquired for Federal use after this date should conform to FIPS PUB 125–2.

A transition period provides time for industry to produce M language processors conforming to the standard. The transition period begins on the effective date and continues for 90 days thereafter. The provisions of FIPS PUB 125–2 apply to orders placed after the effective date of this publication. If, during the transition period, a processor conforming to FIPS PUB 125–2 is not available, a processor conforming to FIPS PUB 125–1 may be acquired for interim use during the transition period.

This transition period is intended to give implementations time to make the

*Refers to most recent revision of FIPS PUBS.

enhancements necessary to enable conformance to FIPS PUB 125–2. No further transitional period is necessary.

11.2 Acquisition of M Processors. Conformance of FIPS M should be considered whether M processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services. Recommended terminology for procurement of FIPS M is contained in the U.S. General Services Administration publication Federal ADP & Telecommunications Standards Index, Chapter 4 Part 1.

11.3 Interpretation of FIPS M. The National Institute of Standards and Technology provides for the resolution of questions (see FIPS PUB 29–3, Interpretation Procedures for FIPS Software, 29 October 1992) regarding the specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this standard should be addressed to: Director, Computer Systems Laboratory, Attn: FIPS M Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, Fax: 301–948–6213, E-mail: dashiell@ecf.ncsl.nist.gov.

11.4 Validation of M Processors. Implementations of FIPS M shall be validated in accordance with the NIST Computer Systems Laboratory (CSL) validation procedures for FIPS M. Recommended procurement terminology for validation of FIPS M is contained in the U.S. General Service Administration (GSA) publication *Federal ADP & Telecommunications Standards Index*, Chapter 4 Part 2. This GSA publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency shall select the appropriate validation option and shall specify whether a Validation Summary Report or Certificate of Validation is required. The agency shall specify appropriate time frames for validation and correction of nonconformities. The agency is advised to refer to the NIST publication *Validated Product List* for information about the validation status of M products. This information may be used to specify validation time frames that are not unduly restrictive of competition.

The agency shall specify the criteria used to determine whether a Validation Summary Report (VSR) or Certificate is applicable to the hardware/software environment of the M implementation offered. The criteria for applicability of a VSR or Certificate should be appropriate to the size and timing of the procurement. A large procurement may require that the offered version/release of the M implementation shall be validated in a specified hardware/software environment and that the validation shall be conducted with specified hardware/software features or parameter settings; e.g. the same parameter settings to be used in a performance benchmark. An agency with a single/license procurement may review the *Validated Products List* to determine the applicability of existing VSRs or Certificates to the agency's hardware/software environment.

M implementations shall be evaluated using a NIST approved test suite.

For further information contact: Director, Computer Systems Laboratory, Attn: FIPS M Validation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, Fax: 301–948–6213, E-mail: dashiell@ecf.ncsl.nist.gov.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Special Information. Agencies should consider adopting programming guidelines on the use of standard language features where determined appropriate.

It is recommended that agencies assess changes that may be forthcoming in future revisions of the ANSI/MDC X11.1–199X standard. For information on revisions to this standard, contact the M Development Committee at: M Development Committee Secretariat, 1738 Elton Road, Suite 205, Silver Spring, Maryland 20903 U.S.A., Telephone: (301) 779–6555, Fax: (301) 779–7674.

14. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 125–2 (FIPSPUB125–2), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 94–16113 Filed 7–1–94; 8:45 am]
BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

South Slough National Estuarine Research Reserve Public Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

SUMMARY: The South Slough National Estuarine Research Reserve is hosting a public meeting concerning the Reserve's 1994 revised management plan. The revised plan updates the Reserve's 1984 plan and describes goals, objectives, and tasks for Reserve operations. The public meeting is an opportunity for Reserve Commissioners and staff to meet with the public, exchanges, ideas, and discuss the Reserve's role in the local and regional community. Copies of the plan may be reviewed at NOAA Sanctuaries and Reserves Division, 1305 East West Highway, Silver Spring, Maryland, 20910; at the Reserve Interpretive Center in Charleston, Oregon; and at the North Bend, Coos Bay, Coquille, and Southwest Oregon Community College libraries in Oregon.

TIME AND PLACE: July 21, 1994 at 7:30 p.m. at the Tioga Room, Southwest Oregon Community College, 1988 Newmark, Coos Bay, Oregon.

FOR FURTHER INFORMATION CONTACT: Sue Lowry at (619) 888–5558 or Nine Garfield at (301) 713–3141.

(Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

Dated: June 28, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–16175 Filed 7–1–94; 8:45 am]
BILLING CODE 3510–08–M

[I.D. 062794A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of public display permit no. 931.

SUMMARY: Notice is hereby given that World Safari Company, Limited, 2399–1 Kushigamine, Katata, Shirahama-cho, Nishimuro-gun, Wakayama, Japan, has been issued a permit for public display purposes.

ADDRESSES: The permit is available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4016);

SUPPLEMENTARY INFORMATION: On Friday, April 29, 1994, notice was published in the **Federal Register** (59 FR 22151) that an application (P565) has been filed by World Safari Company, Limited. A public display permit was requested to

revised plan updates the Reserve's 1984 plan and describes goals, objectives, and tasks for Reserve operations. The public meeting is an opportunity for Reserve Commissioners and staff to meet with the public, exchanges, ideas, and discuss the Reserve's role in the local and regional community. Copies of the plan may be reviewed at NOAA Sanctuaries and Reserves Division, 1305 East West Highway, Silver Spring, Maryland, 20910; at the Reserve Interpretive Center in Charleston, Oregon; and at the North Bend, Coos Bay, Coquille, and Southwest Oregon Community College libraries in Oregon.

TIME AND PLACE: July 21, 1994 at 7:30 p.m. at the Tioga Room, Southwest Oregon Community College, 1988 Newmark, Coos Bay, Oregon.

FOR FURTHER INFORMATION CONTACT: Sue Lowry at (619) 888–5558 or Nine Garfield at (301) 713–3141.

(Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

Dated: June 28, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–16175 Filed 7–1–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 062794A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of public display permit no. 931.

SUMMARY: Notice is hereby given that World Safari Company, Limited, 2399–1 Kushigamine, Katata, Shirahama-cho, Nishimuro-gun, Wakayama, Japan, has been issued a permit for public display purposes.

ADDRESSES: The permit is available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4016);

SUPPLEMENTARY INFORMATION: On Friday, April 29, 1994, notice was published in the **Federal Register** (59 FR 22151) that an application (P565) has been filed by World Safari Company, Limited. A public display permit was requested to obtain the care and custody five California sea lions (*Zalophus californianus*) and two elephant seals (*Mirounga leonina*), from unreleasable beached and stranded stock. On May 17, 1994, the permit application was modified to eliminate the request for the elephant seals. The requested permit has been issued subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the conditions hereinafter set out.

Dated: June 24, 1994.

Ann D. Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–16155 Filed 7–1–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062994B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 765 (P70E).

SUMMARY: Notice is hereby given that Dr. William Watkins, has requested a modification to permit No. 765.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9328).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit No. 765, issued on February 25, 1992 (57 FR 7735) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–222)

Permit No. 765, as amended on March 17, 1994, authorizes the permit holder to: Tag up to five sperm whales (*Physeter macrocephalus*) with HF sonic and/or satellite tags (some may be double tagged); inadvertently harass up to 20 during tagging operations; and during various levels of sound playback experiments on tagged whales, inadvertently harass up to 60 additional sperm whales up to 10 times per day.

The permit holder requests authorization to: Add fin whales (*Balaenoptera physalus*) and sei whales (*B. borealis*) to the take authority for tagging. The same tag type and technique will be used to tag fin and sei whales that is authorized for tagging sperm whales. No additional numbers are requested, i.e., no more than five whales total will be tagged each year. Activities this field season will occur in international waters within 300 miles of the west coast of Iceland.

Dated: June 29, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–16264 Filed 6–30–94; 12:10 pm]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities Under OMB Review

AGENCY: The Corporation for National and Community Service (CNCS).

ACTION: Information Collection Request Submitted to the Federal Office of Management and Budget (FOMB) for Review.

SUMMARY: This notice provides information about an information proposal by CNCS, currently under review by the Office of Management and Budget (OMB).

DATES: OMB and CNCS will consider comments on the proposed collection of information and record keeping requirements received within 30 days from the date of publication. Copies of the proposed forms and supporting documents may be obtained by contacting CNCS.

ADDRESSES: Send comments to both:
David Rymph, Study Coordinator, 1100 Vermont Ave., NW., Washington, DC 20525
Steve Semenuk, Desk Officer for CNCS, Office of Management and Budget, 3002 New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Charles Helfer (202) 606–5000 ext. 248.

SUPPLEMENTARY INFORMATION:

Office of the Corporation for National and Community Service

Issuing Proposal: The Evaluation and Policy Coordination Unit.
Title of Forms: Project Director and Supervisor Evaluation Questionnaire.
Need and Use: The National and Community Service Trust Act of 1993 (PL 103–82) requires the Corporation for National and Community Service to evaluate its programs on a regular basis. This information is required for program management, planning, and required record keeping.
Type of Request: Submission of a new collection.
Respondent's Obligation to Reply: Voluntary.
Frequency of Collection: One time only.
Estimated Number of Responses: 455.
Average Burden Hours per Response: 0.35 Hours.
Estimated Annual Reporting or Disclosure Burden: 266 Hours.
Regulatory Authority: 42 U.S.C. 5056(a).

Dated: June 29, 1994.

David Rymph,

Director, Evaluation and Policy Coordination Unit.

[FR Doc. 94–16138 Filed 7–1–94; 8:45 am]
BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Applicable Form: Indebtedness of Military Personnel—Involuntary Allotments; DD Form 2653.
Type Of Request: Expedited Processing—Approval date requested: 60 days following publication in the **Federal Register**.
Number of Respondents: 91,680.
Responses per respondent: 1.
Annual Responses: 91,680.
Average Burden per Response: 15 minutes.
Annual Burden Hours: 22,920.
Needs and Uses: Public Law 103–94, "The Hatch Act Reform Amendments of 1993," directs the establishment of provisions for the involuntary allotment of the pay of a member of the uniformed services for indebtedness owed a third party as determined by the final judgment of a court, and as further determine by competent military or executive authority to be a compliance with the Soldiers' and Sailors' Civil Relief Act of 1940. These provisions must also take into consideration the absence of a member of the uniformed services from appearance in a judicial proceeding if the absence results from the exigencies of military duty. The information collected hereby, provides the DoD reviewing authority with the data necessary to act on requests from the public for assistance in the collection of debts.
Affected Public: Individuals or households; Businesses or other for profit; and Small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Office: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16118 Filed 7–1–94; 8:45 am]
BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Applicable Form: Medical Treatment Facility Incident Statement; Air Force Form 765.
Type of Request: New collection.
Number of Respondents: 13,200.
Responses per Respondent: 1.
Annual Responses: 13,200.
Average Burden per Response: 5 minutes.
Annual Burden Hours: 1,056.
Needs and Uses: The Air Force Form 765, "Medical Treatment Facility Incident Statement," is completed by hospital personnel on behalf of patients, who may be non-governmental personnel, to document adverse events or specific incidents inconsistent with routine medical treatment facility operations or patient care.
Affected Public: Individuals or households; Federal agencies or employees.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce.
Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16191 Filed 7–1–94; 8:45 am]
BILLING CODE 5000–04–M

Department of the Navy

Notice of Intent to Prepare an Environmental Impact Statement/ Environmental Impact Report For Disposal and Reuse of Marine Corps Air Station, Tustin, CA

Pursuant to the National Environmental Policy Act as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–08), and pursuant to the California Environmental Quality Act (CA Public Resources Code Sections 21000 et seq.), the U.S. Marine Corps and the City of Tustin intend to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) to evaluate the environmental effects of the disposal and reuse of Marine Corps Air Station (MCAS) Tustin. This action is being conducted in accordance with the Defense Base Closure and Realignment Act of 1990, and the specific 1993 base closure and realignment decisions approved by the Congress in September 1993.

The proposed action to be evaluated in the EIS/EIR is the disposal of land, buildings, and infrastructure of MCAS Tustin for subsequent reuse. The Marine Corps and City of Tustin intend to analyze the environmental effects of the disposal of MCAS Tustin based on the reasonable foreseeable reuse of the property, taking into account uses to be identified by the City of Tustin Base Closure Task Force.

The Task Force has developed a Specific Plan/Reuse Plan to guide the reuse of MCAS Tustin in a variety of uses, including public and private housing, commercial, light industrial, and recreation uses. Some of the existing structures and facilities, including housing, are anticipated to be reused. A number of facilities, including the airfield operation facilities, are proposed for removal. Agricultural and vacant areas on MCAS Tustin are proposed to be developed with urban uses.

Full buildout of the proposed land uses will result in a maximum of 4,601 dwelling units and about 12.3 million square feet of non-residential uses such as commercial business, light industrial, and recreational uses (about 2.1 million square feet is existing floor area on the base, and 10.2 million square feet is potential new floor area). It is also currently estimated that about 25 percent of the site would be used for public uses.

The project also will include the extension of major arterials through the base including Tustin Ranch Road to Von Karman, Warner Avenue from Red Hill to west of Jamboree Road, and creation of a secondary interior loop roadway and local roadways to facilitate local circulation. The Specific/Reuse Plan will also address possible variations to the Tustin Ranch Road and Warner Avenue extensions in the event the southerly blimp hangar is removed.

Alternatives to be addressed in the EIS/EIR can be characterized as follows:

1. Arterial Grid Pattern/High Residential—land uses are driven by a grid pattern of major arterial extensions. This alternative has the greatest number of residential units. This alternative also has no community core land use flexibility. The alternative could pose limitations in responding to market absorption and soil clean-up phasing.

(EIS/EIR) to evaluate the environmental effects of the disposal and reuse of Marine Corps Air Station (MCAS) Tustin. This action is being conducted in accordance with the Defense Base Closure and Realignment Act of 1990, and the specific 1993 base closure and realignment decisions approved by the Congress in September 1993.

The proposed action to be evaluated in the EIS/EIR is the disposal of land, buildings, and infrastructure of MCAS Tustin for subsequent reuse. The Marine Corps and City of Tustin intend to analyze the environmental effects of the disposal of MCAS Tustin based on the reasonable foreseeable reuse of the property, taking into account uses to be identified by the City of Tustin Base Closure Task Force.

The Task Force has developed a Specific Plan/Reuse Plan to guide the reuse of MCAS Tustin in a variety of uses, including public and private housing, commercial, light industrial, and recreation uses. Some of the existing structures and facilities, including housing, are anticipated to be reused. A number of facilities, including the airfield operation facilities, are proposed for removal. Agricultural and vacant areas on MCAS Tustin are proposed to be developed with urban uses.

Full buildout of the proposed land uses will result in a maximum of 4,601 dwelling units and about 12.3 million square feet of non-residential uses such as commercial business, light industrial, and recreational uses (about 2.1 million square feet is existing floor area on the base, and 10.2 million square feet is potential new floor area). It is also currently estimated that about 25 percent of the site would be used for public uses.

The project also will include the extension of major arterials through the base including Tustin Ranch Road to Von Karman, Warner Avenue from Red Hill to west of Jamboree Road, and creation of a secondary interior loop roadway and local roadways to facilitate local circulation. The Specific/Reuse Plan will also address possible variations to the Tustin Ranch Road and Warner Avenue extensions in the event the southerly blimp hangar is removed.

Alternatives to be addressed in the EIS/EIR can be characterized as follows:

1. Arterial Grid Pattern/High Residential—land uses are driven by a grid pattern of major arterial extensions. This alternative has the greatest number of residential units. This alternative also has no community core land use flexibility. The alternative could pose limitations in responding to market absorption and soil clean-up phasing.

2. Ideal Interior Loop Pattern/Low Residential—the alignment of arterial highways and the proposed looped system would be modified to show its optimum alignment if the southeast blimp hangar could not be reused, and would include possible variations to the Tustin Ranch Road and Warner Avenue extensions. This alternative would have the fewest number of residential units and would result in the highest commercial retail and office square footage, particularly at the southerly portion of the site.

3. No action—retention of the property by the Marine Corps in a caretaker status. However, because of the process mandated by the Base Closure and Realignment Act, selection of the no action alternative would be considered impracticable for the Marine Corps to implement.

Major environmental issues that will be addressed in the EIS/EIR include land use, housing, utilities, noise, transportation/circulation, public services, airfield operations, hazardous materials, water resources, air quality, biological resources, and cultural resources.

The Marine Corps and City of Tustin will initiate a scoping process to determine the extent of issues to be addressed and identifying the significant issues related to this action. The Marine Corps and City of Tustin will hold a public scoping meeting on July 20, 1994, beginning at 7:00 p.m., at the City of Tustin Community Center located in the Tustin Civic Center, 300 Centennial Way. This meeting will be advertised in area newspapers.

A brief presentation will precede the request for public comment. Marine Corps and City of Tustin representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS/EIR. In the interest of available time, each speaker will be asked to limit oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comment on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the author/speaker believes the EIS/EIR should address. Written statements and questions regarding the scoping process should be mailed to: Christine Shingleton, Assistant City Manager, City of Tustin, 300 Centennial Way, Tustin, CA 92680, telephone number (714) 573–3116. All comments must be received no later than August 5, 1994.

Dated: June 28, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN,

Federal Register Liaison Officer

[FR Doc. 94–16114 Filed 7–1–94; 8:45 am]

BILLING CODE 3810–AE–P

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.); notice is hereby given that the Naval Research Advisory Committee will meet on July 18 through 22, and July 25 through 29, 1994, at the Naval Command, Control and Ocean Surveillance Center, Research, Development, Test and Evaluation Division, San Diego, California. The sessions on July 18 through 22, and July 25 through 28, 1994, will commence at 8:00 a.m. and terminate at 5:00 p.m.; and the session on July 29, 1994, will commence at 8:30 a.m. and terminate at 11:30 a.m. All sessions of these meetings will be closed to the public.

The purpose of these meetings is to discuss basic and advanced research. All sessions of the meetings will be devoted to briefings, discussions, and technical examination of information related to Naval research and development, and modeling and simulation technology. Premature public disclosure of this information would be likely to significantly frustrate implementation of proposed policy actions by the Department of the Navy. The information involved is specifically authorized by Executive Order to be withheld from the public if the agency determines it to be in their best interest. It therefore is appropriate that all sessions of the meetings be closed to the general public. The agency-protected information to be discussed is so inextricably intertwined with unclassified matters as to preclude opening any portion of these meetings. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of these meetings be closed to the public because they will be concerned with matters listed in section 552b(c)(9)(B) of title 5, United States Code.

For further information concerning these meetings contact: Captain M. J. Brinkac, U. S. Navy, Office of Naval Research, 800 North Quincy Street,

Arlington, VA 22217-5660, Telephone Number: (703) 696-4870.

Dated: June 29, 1994

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94-16260 Filed 7-1-94; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research, Applications for a New Award Under the Rehabilitation Research and Training Centers (RRTC) for Fiscal Year (FY) 1994

Purpose: On March 16, 1994 a notice was published in the **Federal Register** at 59 FR 12268 inviting applications for a new award under the RRTC program for fiscal year 1994 on Rehabilitation in the Pacific Basin. Satisfactory applications were not received for the RRTC, and there is a continuing need for the research. The purpose of this notice is to reinvite applications for an RRTC on Rehabilitation in the Pacific Basin for fiscal year 1994.

The Rehabilitation Act Amendments of 1992 require that each applicant for a grant demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities.

Eligible Applicants: Institutions of higher education and public or private agencies and organizations collaborating with institutions of higher education, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Deadline for Transmittal of Applications: August 19, 1994.

Applications Available: July 5, 1994.

Available Funds: $650,000.

Estimated Number of Awards: 1.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Project Period: Up to 60 months.

Priority: The priority published in the **Federal Register** on October 19, 1993 at 58 FR 54004 on Rehabilitation in the Pacific Basin applies to this competition.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86; (b) The regulations for this program in 34 CFR Parts 350 and 352; and (c) the notice of final priority published in the **Federal Register** on October 19, 1993 at 58 FR 54004.

FOR FURTHER INFORMATION CONTACT: In order to obtain further information and an application package, contact Dianne Villines, U.S. Department of Education, Room 3417 Switzer Building, 400 Maryland Avenue, S.W., Washington, D.C. 20202-2704. Telephone: (202) 205-9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8887.

Program Authority: 29 U.S.C. 760-762.

Dated: June 27, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94-16160 Filed 7-1-94; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Amendment of the Assured Delivery Provisions of Bonneville Power Administration's Long-Term Intertie Access Policy (LTIAP) and Increased Assured Delivery—Access for Non-Scheduling Utilities Record of Decision (ROD)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of ROD on Amendment of the Assured Delivery Provisions of BPA's LTIAP and Increased Assured Delivery—Access for Non-Scheduling Utilities.

SUMMARY: Today's notice announces the availability of the ROD for the Amendment of the Assured Delivery Provisions of BPA's LTIAP and Increased Assured Delivery—Access for Non-Scheduling Utilities.

BPA is proceeding with these decisions to facilitate expanded Pacific Northwest-Pacific Southwest Intertie access for non-Federal parties in a manner consistent with the Energy Policy Act of 1992.

ADDRESSES: If you would like a copy of the Amendment of the Assured Delivery Provisions of BPA's LTIAP and Increased Assured Delivery—Access for Non-Scheduling Utilities ROD, please call our document request line, toll-free 800-622-4520, and ask for the Amendment of the Assured Delivery Provisions of BPA's LTIAP and Increased Assured Delivery—Access for Non-Scheduling Utilities ROD.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Ehli, Public Utilities Specialist, Bonneville Power Administration—PMT, P.O. Box 3621, Portland, Oregon 97208-3621, Telephone 503-230-5173; or the Public Involvement office voice/TTY 503-230-3478 in Portland, toll-free 800-622-4519 for the rest of the United States. Fax number 503-230-3752.

Issued in Portland, Oregon, on June 13, 1994.

John S. Robertson,

Deputy Administrator.

[FR Doc. 94-16216 Filed 7-1-94; 8:45 am]

BILLING CODE 6450-01-P-M

Federal Energy Regulatory Commission

Notice of Cultural Resources Industry Outreach Training Course

June 27, 1994.

The Office of Pipeline Regulation (OPR) will convene a cultural resources compliance training course. This course is being held so that the regulated pipeline industry and interested individuals and/or organizations can gain an understanding of:

- How the Commission gives the industry and the public an opportunity to assist in meeting FERC's responsibilities under the National Historic Preservation Act (NHPA) and other historic preservation laws and regulations; and
- What cultural resources information the industry needs to file with the Commission pre- and post-issuance of a FERC certificate.

Interested organizations and the public are urged to take advantage of this course.

Course discussion will include the following topics:

- Objectives and requirements of the Commission regarding compliance with § 106 of the NHPA and related historic preservation laws;
- Guidance for reporting on cultural resources investigations;
- Definition of cultural resources terms used by FERC in the compliance process; and
- Efficient strategies for planning and conducting cultural resources investigations.

The one-day training course will be held on August 2, 1994 at the Georgetown University Conference Center, 3800 Reservoir Road NW., Washington, DC 20057. For hotel reservations, please contact the conference center at 1-800-446-9476 by July 15, 1994 and identify yourself as a cultural resources seminar attendee. The staff of OPR and Enserch Environmental, the Commission's environmental support contractor, will conduct the training. There will be no fee for the course, but you must pre-register.

The same training course may be offered later in 1994 based on the level of interest. Western locations under consideration are Houston, Texas; San Francisco, California; or Denver, Colorado. Please comment on these or other course locations. If a second session is planned, information will be published in the **Federal Register** announcing the date and location.

If you would like to attend the Washington, DC, course or indicate your preference for another location, please call the telephone number listed below to obtain a form to complete.[1] Because space is limited, please submit the completed form within 15 days of publication of this notice by mail or fax to: Ms. Donna Connor, Enserch Environmental Corporation, 211 Congress Street, Boston, MA 02110, Phone: (617) 542-8805, FAX: (617) 695-1587.

You will receive confirmation of pre-registration and additional information before the training course.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16151 Filed 7-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-511-000, et al.]

Public Service Company of Colorado, et al.; Electric Rate and Corporate Regulation Filings

June 27, 1994.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado

[Docket No. ER94-511-000]

Take notice that on June 23, 1994, Public Service Company of Colorado (Public Service) filed with the Commission a letter agreement dated March 17, 1992, between Public Service and Intermountain Rural Electric Association, Inc. This letter agreement was inadvertently omitted from the "Transmission Interconnection Agreement Between Public Service and Intermountain Rural Electric Association" which was filed by Public Service on December 29, 1993, in Docket No. ER94-511-000.

[1] The form referenced in this notice is not being printed in the **Federal Register**. Copies of the form were sent to those receiving this notice in the mail.

July 15, 1994 and identify yourself as a cultural resources seminar attendee. The staff of OPR and Enserch Environmental, the Commission's environmental support contractor, will conduct the training. There will be no fee for the course, but you must pre-register.

The same training course may be offered later in 1994 based on the level of interest. Western locations under consideration are Houston, Texas; San Francisco, California; or Denver, Colorado. Please comment on these or other course locations. If a second session is planned, information will be published in the **Federal Register** announcing the date and location.

If you would like to attend the Washington, DC, course or indicate your preference for another location, please call the telephone number listed below to obtain a form to complete.[1] Because space is limited, please submit the completed form within 15 days of publication of this notice by mail or fax to: Ms. Donna Connor, Enserch Environmental Corporation, 211 Congress Street, Boston, MA 02110, Phone: (617) 542–8805, FAX: (617) 695–1587.

You will receive confirmation of pre-registration and additional information before the training course.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16151 Filed 7–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–511–000, et al.]

Public Service Company of Colorado, et al.; Electric Rate and Corporate Regulation Filings

June 27, 1994.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado

[Docket No. ER94–511–000]

Take notice that on June 23, 1994, Public Service Company of Colorado (Public Service) filed with the Commission a letter agreement dated March 17, 1992, between Public Service and Intermountain Rural Electric Association, Inc. This letter agreement was inadvertently omitted from the "Transmission Interconnection Agreement Between Public Service and Intermountain Rural Electric Association" which was filed by Public Service on December 29, 1993, in Docket No. ER94–511–000.

Public Service states that copies of this filing were served upon Intermountain Rural Electric Association, Inc., and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. LG&E Power Marketing Inc.

[Docket No. ER94–1188–000]

Take notice that on June 23, 1994, LG&E Power Marketing Inc, tendered for filing supplemental information to its April 26, 1994 filing in the above-referenced docket.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Company

[Docket No. ER94–1199–000]

Take notice that on June 23, 1994, Oklahoma Gas and Electric Company (OG&E) tendered for filing additional supporting information relative to its proposed Letter Agreement with AES Power, Inc. (AESPI) for the sale of capacity and energy.

Copies of this filing have been sent to AESPI, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER94–1221–000]

Take notice that Florida Power Corporation (Florida Power) on June 21, 1994 tendered for filing a substitute Revised Sheet No. 6 for New Smyrna Beach, Florida (New Smyrna Beach). The filing corrects a misstated demand charge from $1.09 per kW per month to $1.14.

Florida Power requests that the change in the corrected sheet be made effective July 1, 1994.

Florida Power states that it has served copies of its filing on the New Smyrna Beach and the service list in this proceeding.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER94–1361–000]

Take notice that on June 15, 1994, PacifiCorp, tendered for filing, in accordance with § 35.13(a)(2) of the Commission's Rules and Regulations, First Revised Sheet No. 12 and Original Sheet No. 13 to PacifiCorp's FERC Electric Tariff, First Revised Volume No. 3 (Tariff) and Service Agreements with the following customers:

Lassen Municipal Utility District
City of Redding
AES Power Inc.
Ashton Energy Corporation
Catex Vitol Electric Inc.
Chicago Energy Exchange
Citizens Energy Corporation
Citizens Power & Light Corporation
CRSS Power Marketing, Inc.
Direct Electric Inc.
Eastern Power Distribution, Inc.
Eclipse Energy Inc.
Electric Clearinghouse, Inc.
Enron Power Marketing, Inc.
Equitable Resources Marketing Company
Heartland Energy Services, Inc.
Howell Power Systems, Inc.
InterCoast Power Marketing Company
LG&E Power Inc.
Louis Dreyfus Electric Power Inc.
MG Electric Power, Inc.
National Electric Associates (L.P.)
NorAm Energy Services, Inc.
North American Energy Conservation, Inc.
PowerNet G.P.
Rainbow Energy Marketing Corporation
Torco Energy Marketing, Inc.
Vesta Energy Company
Wholesale Power Services, Inc.

The Service Agreements provide for the sale of short-term firm power and energy and non-firm energy for resale in accordance with the Tariff. Only the Service Agreement with Lassen Municipal Utility District has been executed. All of the other Service Agreements are being filed unexecuted in anticipation of future requests for service under the Tariff. PacifiCorp's filing herein is provided to add the above customers to the Tariff.

PacifiCorp respectfully requests pursuant to § 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that these Service Agreements be accepted for filing effective on June 1, 1994.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Texican Energy Ventures, Inc.

[Docket No. ER94–1362–000]

Take notice that Texican Energy Ventures, Inc. (Texican) on June 15, 1994, tendered for filing a petition for blanket approvals and waivers under various regulations of the Commission, and an order accepting its Rate

---

[1] The form referenced in this notice is not being printed in the **Federal Register**. Copies of the form were sent to those receiving this notice in the mail.

Schedule No. 1, to be made effective on August 15, 1994.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

According to Texican, it intends to engage in electric capacity and energy transactions as a marketer and a broker. In transactions in which Texican purchases power and resells such power to other purchasers, Texican will be functioning as a marketer. In Texican's marketing transactions, Texican proposes to charge rates mutually agreed upon by the parties. All sales will be at arms' length, and no sales will be made to affiliated entities. In transactions in which Texican does not take title to the electric power, Texican will be limited to the role of a broker and charge a fee for its services.

Texican further states it is not in the business of producing or transmitting electric power. Texican does not currently have or contemplate acquiring title to any electric power generation or transmission facilities.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Power & Light Company

[Docket No. ER94–1364–000]

Take notice that on June 15, 1994, Pennsylvania Power & Light Company (PP&L) tendered for filing an Electrical Output Sales Agreement (Agreement) between PP&L, and Enron Power Marketing, Inc. (EPMI) dated May 17, 1994. The Agreement provides for the sale by PP&L to EPMI of electrical output solely for EPMI's use in wholesale bulk power transactions.

PP&L has requested an effective date of August 14, 1994 for the Agreement. PP&L has not requested any notice period waivers.

PP&L states that a copy of its filing was provided to EPMI and to the Pennsylvania Public Utility Commission.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Power, Inc.

[Docket No. ER94–1366–000]

Take notice that on June 15, 1994, Entergy Power, Inc. (Entergy Power), tendered for filing Amendment No. 3 to the Interchange Agreement between Entergy Power, Inc. and East Kentucky Power Cooperative, Inc. Entergy Power states that the purpose of the Third Amendment is to amend Service Schedule LP—Limited Firm Capacity of the Interchange Agreement to specify a rate cap for capacity and associated energy sold by Entergy Power under that schedule.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER94–1367–000]

Take notice that on June 16, 1994, Public Service Company of New Mexico (PNM) submitted for filing a Capacity and Energy Services Agreement between PNM and Enron Power Marketing, Inc. (EPMI). Under the Agreement, PNM and EPMI will make capacity and energy services available to one another at rates reflecting current market conditions.

PNM requests a waiver of the Commission's notice requirements to permit the Agreement to become effective on July 1, 1994.

Copies of the filing have been served upon EPMI and the New Mexico Public Utility Commission.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER94–1368–000]

Take notice that on June 16, 1994, New York State Electric & Gas Corporation (NYSEG), tendered for filing Supplement No. 12 to its Agreement with the New York Power Authority (NYPA), designated NYSEG Rate Schedule FERC No. 112. The proposed changes would increase revenues by $137,741 based on the twelve month period ending June 30, 1995.

This rate filing, Supplement No. 12 to Rate Schedule No. 112, is made pursuant to Article No. 2 of the September 28, 1993 Facilities Agreement. The annual charges associated with other taxes, operating expenses, maintenance expenses, administration and general expenses, working capital, and associated revenue taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1993.

NYSEG requests an effective date of July 1, 1994, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the New York Power Authority and on the Public Service Commission of the State of New York.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Alabama Power Company

[Docket No. ER94–1371–000]

Take notice that on June 17, 1994, Alabama Power Company, tendered for filing a Transmission Service Delivery Point Agreement dated May 11, 1994, reflecting the addition of a delivery point to Tallapoosa River Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147). The parties request an effective date of July 20, 1994, for the addition of the delivery point to Tallapoosa River Electric Cooperative.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Alabama Power Company

[Docket No. ER94–1372–000]

Take notice that on June 15, 1994, Alabama Power Company tendered for filing, two (2) separate Transmission Service Delivery Point Agreements dated May 1, 1994 and June 1, 1994, which reflect the addition of delivery point to Central Alabama Electric Cooperative and upward revision of maximum capacity for certain deliveries to an existing delivery point to Dixie Electric Cooperative. These delivery points have been and will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147). The parties request an effective date of August 1, 1995, for the addition of a delivery point to Central Alabama Electric Cooperative, and of July 1, 1994, for the upward revision of maximum delivery point capacity power deliveries to Dixie Electric Cooperative.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER94–1373–000]

Take notice that on June 17, 1994, Southern California Edison Company tendered for filing the following amendment to Supplement No. 1 to the Power Purchase Agreement between Nevada Power Company and Edison, Rate Schedule FERC No. 286:

Amendment No. 1 (Amendment) To Supplement No. 1 to the Power Purchase Agreement Between Nevada Power Company and Southern California Edison Company

The Amendment modifies paragraph 6 and adds paragraph 7 to Supplement No. 1 to the Power Purchase Agreement Between Nevada Power Company and Southern California Edison Company.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER94–1375–000]

Take notice that on June 17, 1994, New England Power Company (NEP), tendered for filing a letter agreement with the Ashburnham (Mass.) Municipal Light Department. The agreement provides for voltage reduction and underfrequency interruption services to Ashburnham by NEP. NEP seeks an effective date of sixty days from its filing.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER94–1376–000]

Take notice that on June 17, 1994, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively, the Entergy Operating Companies) tendered for filing the Fifth Transmission Service Agreement (Fifth TSA) between Entergy Services and Entergy Power, Inc. (EXPC). The Fifth TSA sets out the terms and conditions of non-firm transmission service under the Entergy Operating Companies' Transmission Service Tariff for sales by Entergy Power to East Kentucky Power Cooperative, Inc.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

Nevada Power Company and Edison, Rate Schedule FERC No. 286:

Amendment No. 1 (Amendment) To Supplement No. 1 to the Power Purchase Agreement Between Nevada Power Company and Southern California Edison Company

The Amendment modifies paragraph 6 and adds paragraph 7 to Supplement No. 1 to the Power Purchase Agreement Between Nevada Power Company and Southern California Edison Company.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER94–1375–000]

Take notice that on June 17, 1994, New England Power Company (NEP), tendered for filing a letter agreement with the Ashburnham (Mass.) Municipal Light Department. The agreement provides for voltage reduction and underfrequency interruption services to Ashburnham by NEP. NEP seeks an effective date of sixty days from its filing.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER94–1376–000]

Take notice that on June 17, 1994, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively, the Entergy Operating Companies) tendered for filing the Fifth Transmission Service Agreement (Fifth TSA) between Entergy Services and Entergy Power, Inc. (EXPC). The Fifth TSA sets out the terms and conditions of non-firm transmission service under the Entergy Operating Companies' Transmission Service Tariff for sales by Entergy Power to East Kentucky Power Cooperative, Inc.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, West Penn Power Company (The APS Companies)

[Docket No. ER94–1378–000]

Take notice that on June 21, 1994, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (The APS Companies) filed an Emission Allowance Management Agreement. Allegheny Power Service Corporation requests waiver of notice requirements and asks the Commission to honor the proposed effective dates specified in the agreements.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Company

[Docket No. ER94–1379–000]

Take notice that on June 21, 1994, New England Power Company (NEP), tendered for filing a service agreement for system sales service under NEP's FERC Electric Tariff, Original Volume No. 5 to New York State Electric & Gas Corporation.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Delmarva Power & Light Company

[Docket No. ER94–1377–000]

Take notice that on June 20, 1994, Delmarva Power & Light Company (Delmarva) and Public Service Electric & Gas Company (PSE&G) tendered for filing a settlement agreement which resolves a contractual dispute between them regarding the conditions of PSE&G's use of the lower Delaware Valley Transmission System (LDV), including Delmarva's 500/236 kilovolt (kV) Keeney Substation, for delivery of 150 megawatts (MW) of PSE&G capacity and associated energy to Old Dominion Electric Cooperative (ODEC). Delmarva and PSE&G request that the Settlement Agreement be allowed to become effective on August 20, 1994, as a supplement to the LDV Agreement which is Delmarva Rate Schedule No. 43 and RSE&G's Rate Schedule No. 46.

Delmarva and PSE&G state that a copy of the filing has been posted as required by the Commission's regulations, and copies have been served upon each of the affected parties and upon the Public Service Commissions of the States of New Jersey, Delaware, Maryland and Virginia.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company

[Docket No. ER94–1380–000]

Take notice that on June 20, 1994, Louisville Gas and Electric Company, tendered for filing proposed changes in its FERC Electric Service Tariffs, Volume Nos. 2 and 3. The proposed changes would provide access and service to LG&E's firm and non-firm transmission customers under Rate Schedules T and CT under the same or comparable terms and conditions as those enjoyed by LG&E.

The changes were filed in response to the findings of the Federal Energy Regulatory Commission in *American Electric Power Service Corp.*, 67 FERC ¶ 61,168 (1994), and *Kansas City Power & Light Company*, 67 FERC ¶ 61,183 (1994), that an open access transmission tariff that is not unduly discriminatory or anticompetitive should offer third parties access on the same or comparable basis, and under the same or comparable terms and conditions, as the transmission provider's uses of its system.

Copies of the filing were served upon the Kentucky Public Service Commission and upon LG&E's current customers under the affected rate schedules.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. Southwest Regional Transmission Association

[Docket No. ER94–1381–000]

Take notice that on June 17, 1994, Southwest Regional Transmission Association (SWRTA) tendered for filing copies of the Bylaws of SWRTA.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

21. Arizona Public Service Company

[Docket No. ER94–1382–000]

Take notice that on June 21, 1994, Arizona Public Service Company (APS) tendered for filing an Interruptible Transmission Service Agreement (Agreement) between APS and Yuma Cogeneration Associates (YCA). This Agreement provides for interruptible transmission service for output from YCA's generating facilities to the point of delivery.

Copies of this filing have been served upon YCA and the Arizona Corporation Commission.

Comment date: July 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

22. West Texas Utilities Company

[Docket No. ER94–1386–000]

Take notice that on June 22, 1994, West Texas Utilities Company (WTU) tendered for filing an executed Service Agreement between WTU and Rio Grande Electric Cooperative, Inc. (Rio Grande) under WTU's FERC Electric Tariff TR–1.

WTU requests waiver of the notice requirements in order that the Service Agreement may become effective as of June 1, 1995.

Copies of the filing have been served on Rio Grande and the Public Utility Commission of Texas.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

23. Tampa Electric Company

[Docket No. ER94–1387–000]

Take notice that on June 22, 1994, Tampa Electric Company (Tampa Electric) tendered for filing a letter agreement between Tampa Electric and the City of Wauchula, Florida (Wauchula). The letter agreement amends an existing letter of commitment under Service Schedule D of the contract for interchange service between them, providing for the sale by Tampa Electric to Wauchula of capacity and energy from Tampa Electric's Big Bend Station.

Tampa Electric also tendered for filing an amendment to its existing partial requirements service agreement with Wauchula under Tampa Electric's FERC Electric Tariff, First Revised Volume No. 1.

Tampa Electric proposes an effective date of July 1, 1994, for the letter agreement and the amendment to the partial requirements service agreement, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Wauchula and the Florida Public Service Commission.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

24. Tampa Electric Company

[Docket No. ER94–1388–000]

Take notice that on June 22, 1994, Tampa Electric Company (Tampa Electric) tendered for filing a letter agreement between Tampa Electric and the City of Fort Meade, Florida (Fort Meade). The letter agreement amends an existing letter of commitment under Service Schedule D of the contract for interchange service between them, providing for the sale by Tampa Electric to Fort Meade of capacity and energy from Tampa Electric's Big Bend Station.

Tampa Electric also tendered for filing an amendment to its existing partial requirements service agreement with Fort Meade under Tampa Electric's FERC Electric Tariff, First Revised Volume No. 1.

Tampa Electric proposes an effective date of July 1, 1994, for the letter agreement and the amendment to the partial requirements service agreement, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Fort Meade and the Florida Public Service Commission.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

25. Northeast Utilities Service Company

[Docket No. ER94–1389–000]

Take notice that on June 22, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), and Public Service Company of New Hampshire (together, the NU System Companies), a First Amendment to System Power Sales Agreement (Amendment) with Hudson Light and Power Department (Hudson) and a Service Agreement between NUSCO and the NU System Companies for service under NUSCO's Short-Term Firm Transmission Service Tariff No. 5. The transaction provides Hudson with economic replacement power during the extended Seabrook refueling outage over the period June 12–July 6, 1994.

NUSCO requests that the rate schedule become effective on April 11, 1994. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Amendment and the affected state utility commissions.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

26. PacifiCorp

[Docket No. ER94–1390–000]

Take notice that PacifiCorp, on June 23, 1994, tendered for filing the AC Intertie Agreement, Contract No. DE–MS79–94BP94332; Midpoint-Meridian Transmission Agreement, Contract No. DE–MS79–94BP94285; and DC Intertie and Network Transmission Agreement, Contract No. DE–MS79–94BP94280, between PacifiCorp and Bonneville Power Administration.

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of June 1, 1994 be assigned. This date being the effective date of the Agreements. Such waiver will have no effect on wholesale or wheeling customers under other rate schedules.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

27. Southwestern Public Service Company

[Docket No. ER94–1391–000]

Take notice that Southwestern Public Service Company (Southwestern) on June 23, 1994, tendered for filing a proposed amendment to the Agreement for Primary Electric Service and Golden Spread Electric Cooperative, Inc. for service to Midwest Electric Cooperative, Inc. (Midwest).

The amendment reflects an additional delivery point and increase in commitment to 18,000 KVA. These changes are necessary so that Midwest may transfer loads to Southwestern.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

28. Indeck-Corinth Limited Partnership

[Docket No. QF87–422–005]

On June 23, 1994, Indeck-Corinth Limited Partnership tendered for filing an amendment to its initial filing in this docket.

The amendment pertains to the ownership structure and technical aspects of the cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16224 Filed 7–1–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–161–000]

Avoca Natural Gas Storage; Facility Design Changes for the Proposed Avoca Gas Storage Field Project and Request for Comments on Environmental Issues

June 27, 1994.

On June 3 and 17, 1994, Avoca Natural Gas Storage (Avoca) filed an updated description of its proposed Avoca Gas Storage Field Project, in Docket No. CP94–161–000. Avoca's filing contained significant design changes in the proposed storage field project. This notice updates the Federal Energy Regulatory Commission's (FERC or Commission) "Notice of Intent To Prepare An Environmental Assessment for the Proposed Avoca Gas Storage Field Project and Request for Comments on Environmental Issues" (NOI) issued February 1, 1994.

Summary of the Proposed Changes in Facility Design

Avoca proposes the following changes in the Avoca Gas Storage Field Project:

- new locations for the brine disposal wells, brine disposal pipeline, water source pipeline, and the solution-mined cavern wells;
- a change in the design of the cavern system—instead of developing 10 individual caverns, Avoca would solution-mine 5 caverns using 10 wells (2 wells per cavern); and
- Avoca proposes to increase its solution-mining rate by withdrawing up to 3 million gallons of water per day (2,000 gallons per minute), rather than limiting its withdrawal to 2 million gallons of water per day. The total leaching period for all five caverns is approximately 3 years.

Avoca has moved several of its proposed facilities. The new proposed location of these facilities is shown in appendix 1.[1] Avoca states that the proposed changes in facility locations are a result of negotiations with local landowners.

Avoca proposes the change in cavern design and the increase in leaching rate

[1]The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16224 Filed 7-1-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-161-000]

Avoca Natural Gas Storage; Facility Design Changes for the Proposed Avoca Gas Storage Field Project and Request for Comments on Environmental Issues

June 27, 1994.

On June 3 and 17, 1994, Avoca Natural Gas Storage (Avoca) filed an updated description of its proposed Avoca Gas Storage Field Project, in Docket No. CP94-161-000. Avoca's filing contained significant design changes in the proposed storage field project. This notice updates the Federal Energy Regulatory Commission's (FERC or Commission) "Notice of Intent To Prepare An Environmental Assessment for the Proposed Avoca Gas Storage Field Project and Request for Comments on Environmental Issues" (NOI) issued February 1, 1994.

Summary of the Proposed Changes in Facility Design

Avoca proposes the following changes in the Avoca Gas Storage Field Project:

- new locations for the brine disposal wells, brine disposal pipeline, water source pipeline, and the solution-mined cavern wells;
- a change in the design of the cavern system—instead of developing 10 individual caverns, Avoca would solution-mine 5 caverns using 10 wells (2 wells per cavern); and
- Avoca proposes to increase its solution-mining rate by withdrawing up to 3 million gallons of water per day (2,000 gallons per minute), rather than limiting its withdrawal to 2 million gallons of water per day. The total leaching period for all five caverns is approximately 3 years.

Avoca has moved several of its proposed facilities. The new proposed location of these facilities is shown in appendix 1.[1] Avoca states that the proposed changes in facility locations are a result of negotiations with local landowners.

Avoca proposes the change in cavern design and the increase in leaching rate to reduce the time required to solution-mine the proposed caverns. Avoca states that it has obligations to have certain facilities in service for the 1996 winter heating season. Avoca believes that reducing the time required to solution-mine its caverns will allow it to place some of the proposed facilities in service for the 1996 winter heating season.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Additional Environmental Issues

We have already identified several environmental issues that we think deserve attention based on a preliminary review of the proposed facilities and the information provided by Avoca. These were listed in the Commission's February 1, 1994 NOI.

As a result of Avoca's modified proposal, the following additional environmental issues will be addressed:

- Avoca proposes to use up to 3,000,000 gallons of water per day for the solution-mining process. This may have an impact on groundwater availability. Testing of wells in the local aquifers indicates that the water supply recharges up to 14,600,000 gallons of water per day.
- Avoca's brine disposal pipelines would cross five wetlands.
- Moving the facilities to the new locations may have an impact on cultural resources.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be.

Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP94-161-000;
- Send a copy of your letter to: Mr. Steven G. Grape, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE. Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before July 14, 1994.

If you wish to receive a copy of the EA, you should request one from Mr. Grape at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of

---

[1] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional Questions?

Additional information about the proposed project is available from Mr. Steven G. Grape, EA Project Manager, at (202) 208–1046.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16147 Filed 7–1–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1922–008 Alaska]

Ketchikan Public Utilities ; Availability of Final Environmental Assessment

June 27, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Beaver Falls Hydroelectric Project, located on Beaver Falls Creek near the city of Ketchikan, in the First Judicial District of Alaska. The Federal Energy Regulatory Commission and the U.S. Forest Service, Ketchikan Ranger District, have prepared a Final Environmental Assessment (FEA) for the project that analyzes existing and potential future environmental impacts of the existing project and has concluded that approval of the project, with appropriate enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–S16142 Filed 7–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Project 2114–024 Washington]

Public Utility District No. 2 of Grant County; Intent to Prepare an Environmental Impact Statement and to Conduct a Scoping Meeting

June 27, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing has evaluated four downstream fish passage alternatives addressed in the Mid-Columbia Proceeding (Docket No. E–9569–003) for the Priest Rapids Project. Staff's initial evaluation of the proposed modifications was issued on May 25, 1994, in an environmental assessment (EA). The June 3, 1994 transmittal letter for the EA stated our intent to prepare an environmental impact statement (EIS).

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by staff and considered in the final EIS. Staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final decision.

Scoping Meetings

To obtain information from the public regarding relevant environmental issues that should be analyzed in the EIS, the Commission will conduct two public scoping meetings. The first scoping meeting will be held on Monday July 25, 1994 in Portland Oregon, at the Portland Building, 2nd Floor Auditorium, 1120 SW 5th Avenue, from 1 pm to 5 pm. The second scoping meeting will be held on Wednesday July 27, 1994 in Ephrata, Washington at the City of Ephrata Recreation Center, 112 Basin Street SW, from 7:00 pm to 11 pm. All interested individuals, organizations, and agencies are invited to attend.

The EA will be considered the initial coping document. Copies of the EA have been mailed to all entities who have expressed interest in this proceeding. The EA is also available in the Commission's Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, N.E. Washington, D.C. 20426 and will be available at the scoping meeting. We encourage all interested parties to read the EA prior to the scoping meeting.

Objectives

At the meeting the staff will: (1) describe the range of issues being considered in this post-licensing proceeding (2) review the conclusions and recommendations in the EA; (3) receive input from meeting participants on the alternatives considered in the EA; (4) identify any additional issues that should be included in the EIS; and (5) obtain any additional information that any entity feels should be considered during the preparation of the EIS.

Procedures

The scoping meeting will be recorded by a stenographer and all statements (oral and written) will become part of the Commission's public record for this proceeding. Interested persons who are unable to attend, or do not choose to speak at the scoping meeting, may submit written statements for inclusion in the public record. All written comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capital Street N.E., Washington, DC 20426, on or before August 30, 1994.

All written correspondence should clearly show on the first page of each document the following caption: Priest Rapids Project, FERC Project No. 2114–024.

Further, please note the Commission's Rules of Practice and Procedure, requires all entities to file an original and eight copies of any filing with the Commission. Parties filing documents must also serve the documents on each person whose name is on the official service list.

For further information, please contact Timothy Welch at (202) 219–2666.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16144 Filed 7–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2197–016 North Carolina]

Yadkin, Inc.; notice of availability of environmental assessment

Issued: June 28, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed a non-project use of project lands application for the Yadkin Hydropower Project, No. 2197–016. The Yadkin Project is located on the Yadkin/Pee Dee River in Stanly and Montgomery Counties, North Carolina. The application is for approval to build a marina on the Narrows Reservoir. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2197–016 to all comments. For further information, please contact Steve Hocking at (202) 219–2656.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16150 Filed 7–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2543–037, et al.]

Hydroelectric Applications Montana Power Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Amendment of License.

b. Project No.: 2543–037.

c. Date Filed: April 29, 1994.

d. Applicant: The Montana Power Company.

e. Name of Project: Milltown.

f. Location: On the Clark Fork River in Missoula County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Michael P. Manion, The Montana Power Company, 40 East Broadway, Butte, MT 59701, (406) 723–5421 (Ext. 72456).

Brian J. McManus, Reid & Priest, Market Square, 701 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 508–4201.

i. FERC Contact: Regina Saizan, (202) 219–2673.

j. Comment Date: July 29, 1994.

k. Description of the Request: The licensee requests that its license be amended to extend the expiration date of the license five years, from December 31, 1999 to December 31, 2004.

marina on the Narrows Reservoir. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2197–016 to all comments. For further information, please contact Steve Hocking at (202) 219–2656.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16150 Filed 7–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2543–037, et al.]

Hydroelectric Applications Montana Power Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Amendment of License.

b. Project No.: 2543–037.

c. Date Filed: April 29, 1994.

d. Applicant: The Montana Power Company.

e. Name of Project: Milltown.

f. Location: On the Clark Fork River in Missoula County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Michael P. Manion, The Montana Power Company, 40 East Broadway, Butte, MT 59701, (406) 723–5421 (Ext. 72456).

Brian J. McManus, Reid & Priest, Market Square, 701 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 508–4201.

i. FERC Contact: Regina Saizan, (202) 219–2673.

j. Comment Date: July 29, 1994.

k. Description of the Request: The licensee requests that its license be amended to extend the expiration date of the license five years, from December 31, 1999 to December 31, 2004.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2a. Type of Application: Major License (Notice of Tendering).

b. Project No.: 11077–001.

c. Date filed: May 31, 1994.

d. Applicant: Alaska Power and Telephone Company.

e. Name of Project: Goat Lake.

f. Location: At the existing Goat Lake, near Skagway, Alaska. Sections 10, 11, 14, 15, and 16, Township 27 South, Range 60 West, CRM.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r)

h. Applicant Contact: Mr. Robert S. Grimm, President Alaska Power & Telephone Co. P.O. Box 222, Port Townsend, WA 98368 (206) 385–1733

i. FERC Contact: James Hunter (202) 219–2839

j. Brief Description of Project: The proposed project will consist of a siphon intake extending into Goat Lake, a penstock, and a powerhouse with an installed capacity of 4.0 megawatts, a tailrace discharging flows into the Skagway River, and a transmission line connecting to an existing distribution line at Clifton.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. In accordance with section (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

3a. Type of Application: Declaration of Intention.

b. Docket No.: D194–2–000.

c. Date Filed: June 2, 1994.

d. Applicant: Gary Kratzman.

e. Name of Project: Kratzman-Zebold Hydro.

f. Location: Unnamed Creek, tributary to Oyster Creek, T. 36, N., R. 3 E., sec. 4, SE¼SW¼ Skagit County, Washington.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b).

h. Applicant Contact: Gary Kratzman, Kratzman-Zebold Hydro, P.O. Box 52, Bow, WA 98232, (206) 428–9645.

i. FERC Contact: Hank Ecton, (202) 219–2678.

j. Comment Date: July 28, 1994.

k. Description of Project: The proposed project will consist of: (1) a 1,400-foot-long, 2-inch diameter pipeline from an unnamed creek; (2) a 7-kilowatt Pelton wheel, connected to the water supply for two residences; and (3) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

1. Purpose of Project: Applicant intends to use all energy produced on-site. No other power source is available for 3–5 miles.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

4a. Type of Application: Original License for Minor Project.

b. Project No.: 11285–001.

c. Date filed: February 25, 1993.

d. Applicant: Casitas Municipal Water District (Casitas District), Oak View, California.

e. Name of Project: Lake Casitas Power Recovery Facility.

f. Location: On Bureau of Reclamation's existing pipeline between its Casitas dam and its water treatment plant, near the City of San Buena Ventura, in Ventura County, California, on 0.38 acre of land owned by Reclamation.

g. Filed Pursuant to: Federal Power Act, 16 USC 791(a)–825(r).

h. Applicant Contact: Mr. John J. Johnson, General manager, Casitas Municipal Water District, 1055 Ventura Avenue, Oak View, CA 93022, (805) 649–2251.

i. FERC Contact: Mr. Surender M. Yepuri, P.E. (202) 219–2847.

j. Deadline Date: Deadline for filing Interventions, Protests, Comments, Recommendations, Terms and Conditions (see attached paragraph D4), and also for filing Written Scoping Comments [see item (1) below]—60 days from issuance.

k. Status of Environmental Analysis: The application is ready for environmental analysis at this time—paragraph D4 below.

l. Intent To Prepare An Environmental Assessment And Invitation For Written Scoping Comments: The Commission staff (staff) intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act. The EA will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives and will include economic, financial, and engineering analyses.

A draft EA will be issued and circulated for review by all interested parties. All timely filed comments on the draft EA will be analyzed by the staff and considered in the final EA. The staff's conclusions and recommendations will then be presented for consideration of the Commission in reaching its final licensing decision.

Scoping: Interested individuals, organizations, and agencies with environmental expertise are invited to assist the staff in identifying the scope of environmental issues that should be analyzed in the EA by submitting written scoping comments. To help focus those comments, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the Commission mailing list. Copies of the scoping document may also be requested from the staff.

Persons who have views on the issues or information relevant to the issues may submit written statements for inclusion in the public record. Those written comments should be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, by the deadline date shown in item (j) above. All written correspondence should clearly show the following caption on the first page: Lake Casitas Power Recovery Facility, FERC No. 11285.

Intervenors are reminded of the Commission's Rules of Practice and Procedure requiring parties filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

m. Description of Project: The project, on Reclamation's existing water distribution system originating from Lake Casitas, would consist of: (1) a 319-foot-long, 54-inch-diameter concrete penstock; (2) a 72-foot-long, 34-foot-wide concrete powerhouse, containing two turbine-generator units with a total installed capacity of 1,000 Kw; and (3) a 68-foot-long, 54-inch-diameter outlet pipe to carry the turbine discharge to the non-project water treatment plant.

n. Purpose of Project: Power generated at the project will be used by the applicant to off-set part of the power requirements at the treatment plant and the adjacent Rincon Pump Plant.

o. This notice also consists of the following standard paragraphs: A2, A9, B1 and D4.

p. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

5a. Type of Application: Preliminary Permit.

b. Project No.: 11485–000.

c. Date Filed: June 1, 1994.

d. Applicant: North American Hydro, Inc.

e. Name of Project: Delhi Milldam Hydro Project.

f. Location: On the Maquoketa River near Delhi, in Delaware County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Loyal Gake, North American Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960, (414) 293–4628.

i. FERC Contact: Ed Lee (202) 219–2809.

j. Comment Date: August 15, 1994.

k. Description of Project: The proposed project would consist of: (1) an existing earth filled dam approximately 58.5 feet high and 700 feet long; (2) an existing 50-acre reservoir with a maximum storage of 880 acre-feet at pool elevation 896 feet MSL; (3) a powerhouse containing two generating units for a total installed capacity of 1425 kW; (4) a proposed 1.5-kV or equivalent transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 3,300 MWh. The cost of the work to be performed under the permit by the applicant would be $70,000. The existing dam and structures are owned by the Lake Delhi Recreation Association, R.R.2, Delhi, Iowa 52223.

l. Purpose of Project: The applicant anticipates that the power generated will be sold to a nearby utility company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6a. Type of Application: Preliminary Permit.

b. Project No.: 11483–000.

c. Date filed: May 27, 1994.

d. Applicant: James G. Ordway.

e. Name of Project: Glenwood Hydroelectric Project.

f. Location: At the Klickitat Salmon Hatchery, on Indian Ford Springs #1 and Wonder Springs, near the town of Glenwood, in Klickitat County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Albert Liou, P.E., Harza Engineering, Inc., 2353 130th Avenue N.E., Suite 200, P.O. Box C–96900, Bellevue, Washington 98005, (206) 882–2455.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Comment Date: August 27, 1994.

k. Description of Project: The proposed project would include two developments. The first development would consist of: (1) a small existing diversion structure on Indian Ford Springs #1; (2) an existing 1,200-foot-long, 19-inch-diameter penstock; (3) a powerhouse with an installed capacity of 140 kW; (4) a 150-foot-long transmission line interconnecting with an existing Klickitat County PUD transmission line; and (5) appurtenant facilities.

The second development would consist of: (1) a small existing diversion structure on Wonder Springs; (2) an existing 1,100-foot-long, 24-inch-diameter penstock; (3) a powerhouse with an installed capacity of 50 kW; (4) a 900-foot-long transmission line interconnecting with an existing Klickitat County PUD transmission line; and (5) appurtenant facilities.

All existing facilities are owned by the Washington Department of Fish and Wildlife. No new access roads will be needed to conduct the studies.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7a. Type of Application: Preliminary Permit.

b. Project No.: P–11487–000.

c. Date Filed: June 14, 1994.

d. Applicant: N.E.W. Hydro, Inc.

e. Name of Project: Vulcan Hydro Project.

f. Location: On the Fox River near Appleton, in Outagamie County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Charles Alsberg, N.E.W. Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960, (414) 293–4628.

i. FERC Contact: Ed Lee (202) 219–2809.

j. Comment Date: August 29, 1994.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Upper Dam and Reservoir, and would consist of: (1) an existing 600-foot-long and 50-foot-wide power canal; (2) the Vulcan powerhouse housing two generating units for a total installed capacity of 900 kW; (3) a new 450-foot-long tailrace; (4) a short transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 3,300 MWh. The cost of the work to be performed under the permit by the applicant would be $70,000. The existing powerhouse is owned by Wisconsin Electric Power Company, 231 West Michigan, Milwaukee, WI 53201.

l. Purpose of Project: The applicant anticipates that the power generated will be sold to a nearby utility company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8a. Type of Application: Surrender of License.

b. Project No.: 2794–004.

c. Date filed: June 16, 1994.

d. Applicant: Silver King Limited.

e. Name of Project: Warren Hydro Project.

f. Location: Warren Creek, Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: David Hammerquist, Ringert Clark, Chartered Lawyers, 455 South Third Street, P.O. Box 2773, Boise, Idaho 83701, (208) 342–4591.

i. FERC Contact: Etta Foster, (202) 219–2679.

j. Comment Date: August 11, 1994.

k. Description of Proposed Action: Silver King Limited has decided to surrender the license for the Warren Hydro Project because of economic reasons.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

9a. Type of Application: Plan to Monitor Recreation Use and Demand.

b. Project No: 2916–015.

c. Date Filed: January 10, 1994.

d. Applicant: East Bay Municipal Utility District.

e. Name of Project: Lower Mokelumne Project.

f. Location: Mokelumne River, Amador, Calaveras, and San Joaquin Counties, California.

h. Applicant Contact: Mr. Charles Alsberg, N.E.W. Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960, (414) 293–4628.

i. FERC Contact: Ed Lee (202) 219–2809.

j. Comment Date: August 29, 1994.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Upper Dam and Reservoir, and would consist of: (1) an existing 600-foot-long and 50-foot-wide power canal; (2) the Vulcan powerhouse housing two generating units for a total installed capacity of 900 kW; (3) a new 450-foot-long tailrace; (4) a short transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 3,300 MWh. The cost of the work to be performed under the permit by the applicant would be $70,000. The existing powerhouse is owned by Wisconsin Electric Power Company, 231 West Michigan, Milwaukee, WI 53201.

l. Purpose of Project: The applicant anticipates that the power generated will be sold to a nearby utility company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8a. Type of Application: Surrender of License.

b. Project No.: 2794–004.

c. Date filed: June 16, 1994.

d. Applicant: Silver King Limited.

e. Name of Project: Warren Hydro Project.

f. Location: Warren Creek, Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: David Hammerquist, Ringert Clark, Chartered Lawyers, 455 South Third Street, P.O. Box 2773, Boise, Idaho 83701, (208) 342–4591.

i. FERC Contact: Etta Foster, (202) 219–2679.

j. Comment Date: August 11, 1994.

k. Description of Proposed Action: Silver King Limited has decided to surrender the license for the Warren Hydro Project because of economic reasons.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

9a. Type of Application: Plan to Monitor Recreation Use and Demand.

b. Project No: 2916–015.

c. Date Filed: January 10, 1994.

d. Applicant: East Bay Municipal Utility District.

e. Name of Project: Lower Mokelumne Project.

f. Location: Mokelumne River, Amador, Calaveras, and San Joaquin Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. John A. Myers, 375 Eleventh Street, Oakland, CA 94623, (510) 287–1121.

i. FERC Contact: Patti Pakkala, (202) 219–0025.

j. Comment Date: August 11, 1994.

k. Description of Project: East Bay Municipal Utility District, licensee for the Lower Mokelumne Project, requests approval of a plan to monitor recreation use and demand at the South Camanche Shore Recreation Area. The data obtained by monitoring use and demand would complement the recreational opportunities and facilities currently being offered at the South Camanche Shore location.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file aa motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT

TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (August 15, 1994 for Project No. 11285–001). All reply comments must be filed with the Commission within 105 days from the date of this notice (September 28, 1994 for Project No. 11285–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commmission in this proceeding with 18 supervisors in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 29, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16222 Filed 7–1–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–619–000, et al.]

Transcontinental Gas Pipe Line Corporation, et al.; Natural Gas Certificate Filings

June 27, 1994.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation

[Docket No. CP94–619–000]

Take notice that on June 21, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP94–619–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Public Service Electric & Gas Company (PSE&G), which was authorized in Docket No. CP79–389, as amended, all as more fully set forth in the application on file with the Commission and open to public inspection.

TGPL proposes to abandon firm and interruptible transportation carried out under its Rate Schedule X–222 for PSE&G. TGPL is authorized to transport up to 75,000 dt equivalent of natural gas per day (or a greater amount if mutually agreed upon) on an interruptible basis for PSE&G and up to 6,600 dt equivalent of natural gas per day on a firm basis. Both firm and interruptible services were for transportation from offshore and onshore Louisiana to various delivery points in New Jersey. PSE&G has notified TGPL of its intent to terminate the service under Rate Schedule X–222 with an effective date of June 22, 1994. It is stated that the service proposed for abandonment would be replaced by TGPL's existing Part 284 transportation on an interruptible service under TGPL's Rate Schedule IT. It is asserted that PSE&G can receive equivalent service this way with the same quality and flexibility as other Rate Schedule IT shippers.

Comment date: July 18, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company Columbia Gulf Transmission Company

Docket No. CP94–623–000

Take notice that on June 22, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, and Columbia Gulf Transmission Company (Columbia Gulf), P. O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP94–623–000, a joint application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of a natural gas exchange service known as ANR's (formerly Michigan Wisconsin Pipe Line Company) Rate Schedule X–39 and as Columbia Gulf's Rate Schedule X–15, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR and Columbia Gulf state that this exchange service, authorized by an October 26, 1973, order in Docket No. CP74–39, provides for an exchange to take place when a shortage of gas exists on either company's system, which could be alleviated by deliveries of gas from the system of the other company. ANR and Columbia Gulf state the points of exchange are at an interconnection in Eugene Island Block 250, off-shore Louisiana, and at an interconnection near Calumet, St. Mary Parish, Louisiana. ANR and Columbia Gulf maintain there is no abandonment of any facilities pursuant to the instant application.

ANR and Columbia Gulf relate that on August 17, 1993, Columbia Gulf gave ANR written notice of its intention to terminate the exchange service.

Comment date: July 18, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP94–624–000]

Take notice that on June 23, 1994, Texas Eastern Transmission Corporation (Texas Eastern), 540 Westheimer Court, Houston, Texas 77056–5301, filed in Docket No. CP94–624 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205, and 157.211) for authorization to construct a new delivery point to enable Texas Eastern to deliver natural gas to GATX Terminals Corporation (GATX), end user. It is stated that it would enable Texas to make natural gas deliveries to GATX under Texas Eastern's blanket certificate issued on November 5, 1982 in Docket No. CP82–535–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Pursuant to Section 157.211 of the Commission's regulations, Texas Eastern requests authorization to install a new delivery point in order to deliver natural gas under the agreement covering service for GATX under Rate Schedule IT–1 of Texas Eastern's FERC Gas Tariff, Volume No. 1, and that Texas Eastern's existing tariff does not prohibit the additional volumes. Texas Eastern states that the peak and average day

order permitting and approving the abandonment of a natural gas exchange service known as ANR's (formerly Michigan Wisconsin Pipe Line Company) Rate Schedule X–39 and as Columbia Gulf's Rate Schedule X–15, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR and Columbia Gulf state that this exchange service, authorized by an October 26, 1973, order in Docket No. CP74–39, provides for an exchange to take place when a shortage of gas exists on either company's system, which could be alleviated by deliveries of gas from the system of the other company. ANR and Columbia Gulf state the points of exchange are at an interconnection in Eugene Island Block 250, off-shore Louisiana, and at an interconnection near Calumet, St. Mary Parish, Louisiana. ANR and Columbia Gulf maintain there is no abandonment of any facilities pursuant to the instant application.

ANR and Columbia Gulf relate that on August 17, 1993, Columbia Gulf gave ANR written notice of its intention to terminate the exchange service.

Comment date: July 18, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP94–624–000]

Take notice that on June 23, 1994, Texas Eastern Transmission Corporation (Texas Eastern), 540 Westheimer Court, Houston, Texas 77056–5301, filed in Docket No. CP94–624 a request pursuant to §§157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205, and 157.211) for authorization to construct a new delivery point to enable Texas Eastern to deliver natural gas to GATX Terminals Corporation (GATX), end user. It is stated that it would enable Texas to make natural gas deliveries to GATX under Texas Eastern's blanket certificate issued on November 5, 1982 in Docket No. CP82–535–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Pursuant to Section 157.211 of the Commission's regulations, Texas Eastern requests authorization to install a new delivery point in order to deliver natural gas under the agreement covering service for GATX under Rate Schedule IT–1 of Texas Eastern's FERC Gas Tariff, Volume No. 1, and that Texas Eastern's existing tariff does not prohibit the additional volumes. Texas Eastern states that the peak and average day deliveries at the point would be 5,000 Dth per day.

Texas Eastern states that the installation of the delivery point will have no effect on Texas Eastern's peak day or annual deliveries. Texas Eastern submits that its proposal will be accomplished without detriment or disadvantage to Texas Eastern's other customers.

The delivery point to be installed by Texas Eastern includes the installation of two 2-inch taps on Texas Eastern's 12-inch Line Nos. 1–C and 1–R at M.P. 2.63 in Richmond County, New York. The approximate cost of such facilities is $551,500 and would be 100% reimbursable by GATX.

It is further stated that GATX would cause to be installed a dual 2-inch meter station, including 50 feet of 4-inch pipeline between the proposed Texas Eastern taps to GATX's proposed meter station and electronic gas measurement equipment.

Comment date: August 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16223 Filed 7–1–94; 8:45 am]

BILLING CODE 6717–01–P

Chance Pond Brook Associates; Surrender of Preliminary Permit

[Project No. 11378–001 New Hampshire]

June 27, 1994

Take notice that Chance Pond Brook Associates, permittee for the Lower Chance Pond Brook Project No. 11378, located on the Chance Pond Brook, Merrimack County, New Hampshire, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 12, 1993, and would have expired on April 30, 1996. The permittee states that the project would be economically infeasible.

The permittee filed the request on June 17, 1994, and the preliminary permit for Project No. 11378 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR

part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary

[FR Doc. 94-16141 Filed 7-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11204-001 Idaho]

Magic Irrigators, Inc.; Surrender Of Preliminary Permit

June 27, 1994

Take notice that Magic Irrigators, Inc., Permittee for the Hertzinger Project No. 11204, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11204 was issued February 28, 1992, and would have expired January 31, 1995. The project would have been located on Salmon Falls Creek, in Twin Falls County, Idaho.

The Permittee filed the request on May 31, 1994, and the preliminary permit for Project No. 11204 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary

[FR Doc. 94-16143 Filed 7-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1059-000]

Eclipse Energy, Inc.; Issuance of Order

June 27, 1994

On March 30, 1994 and April 28, 1994, Eclipse Energy, Inc. (Eclipse) submitted for filing a rate schedule under which Eclipse will engage in wholesale electric power and energy transactions as a marketer. Eclipse also requested waiver of various Commission regulations. In particular, Eclipse requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Eclipse.

On June 15, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Eclipse should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Eclipse is authorized to issue securities and assume obligations or liabilities as a guaranto, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public or private interests will be adversely affected by continued approval of Eclipse's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set for the above, is July 15, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426

Lois D. Cashell,

Secretary

[FR Doc. 94-16145 Filed 7-1-94; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93-137-000, *et al*]

Equitrans, Inc.; Informal Settlement Conference

June 28, 1994

Take notice that an informal conference will be convened in this proceeding on Tuesday, July 12, 1994, at 10 a.m., for the purpose of exploring the possible settlement of the above-refecenced docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208-0783 or Arnold H. Meltz at (202) 208-2161.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16148 Filed 7-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-260-001]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

June 27, 1994.

Take notice that on June 23, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sixth Revised Sheet No. 14, to be effective July 1, 1994.

Natural states that it is filing to supplement its GSR filing of May 31, 1994, filed at Docket No. RP94-260-000, to be effective July 1, 1994. Natural states that contrary to what was stated in the May 31st filing, its Rate Schedule ITS rates should also have changed to reflect the increases that were indicated on Exhibit A of the May 31st filing

Natural requested whatever waivers may be necessary to permit the tariff sheet as submitted herein to become effective July 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisidictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16140 Filed 7-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1061-000]

Rainbow Energy Marketing Corp.; Issuance of Order

June 27, 1994.

On March 18, 1994 and April 19, 1994, Rainbow Energy Marketing Corporation (Rainbow) submitted for filing a rate schedule under which Rainbow will engage in wholesale electric power and energy transactions as a marketer. Rainbow also requested waiver of various Commission regulations. In particular, Rainbow requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Rainbow.

On June 10, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Rainbow should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Rainbow is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security or another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public or private interests will be adversely affected by continued approval of Rainbow's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set for the above, is July 11, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16146 Filed 7-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1061-000]

Rainbow Energy Marketing Corp.; Issuance of Order

June 27, 1994.

On March 18, 1994 and April 19, 1994, Rainbow Energy Marketing Corporation (Rainbow) submitted for filing a rate schedule under which Rainbow will engage in wholesale electric power and energy transactions as a marketer. Rainbow also requested waiver of various Commission regulations. In particular, Rainbow requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Rainbow.

On June 10, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Rainbow should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Rainbow is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security or another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public or private interests will be adversely affected by continued approval of Rainbow's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set for the above, is July 11, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16146 Filed 7-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-622-000]

Trunkline Gas Co.; Request Under Blanket Authorization

June 28, 1994.

Take notice that on June 22, 1994, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP94-622-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a delivery point located in Calcasieu Parish, Louisiana under Trunkline's blanket certificate issued in Docket No. CP83-84-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline proposes to abandon the facilities associated with its Amoco Delivery Point located at the interconnect with Florida Gas Transmission Company in Section 27, Township 8 South, Range 7 West, Calcasieu Parish, Louisiana. Trunkline states that the Amoco Delivery Point was originally constructed to serve Amoco Production Company (Amoco), and that Amoco removed its compressor units and abandoned the site in 1992. Trunkline further states that no firm or interruptible transportation agreements utilize the facilities proposed to be abandoned herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16149 Filed 7-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-298-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 27, 1994.

Take notice that Williams Natural Gas Company (WNG) on June 20, 1994, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Second Revised Sheet Nos. 1 and 9
First Revised Sheet Nos. 10, 11 and 252

The proposed effective date of these tariff sheets is July 20, 1994.

WNG states that this filing is being made pursuant to Section 4 of the Natural Gas Act and Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. WNG proposes to recover approximately $22.7 million in unrecovered purchased gas costs and approximately $13.7 million representing the unamortized portion of deferred gas storage costs. As provided in Article 14.1, WNG proposes to direct bill such amounts to parties who were customers under WNG's former Rate Schedules F, PR(A), PR(B) and P on May 18, 1992, based on each customer's purchases as a percentage of total purchases by all customers under the above rate schedules during the 12-month period ending September 30, 1993.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 5, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion on intervene. Copies of this filing are on the file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16152 Filed 7-1-94; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 94–47–NG]

Coastal Gas Marketing Company; Order Granting Blanket Authorization to Import and Export Natural Gas, Including Liquefied Natural Gas, From and to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Coastal Gas Marketing Company authorization to import and export a combined total of up to 750 Bcf of natural gas, including liquefied natural gas (LNG), from and to Canada and Mexico. The term of the authorization is for a period of two years beginning on the date of the initial import or export after July 11, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 24, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–16231 Filed 7–1–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–46–NG]

Oxy USA Inc.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada and Mexico and Vacating Authorization

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting OXY USA Inc. (OXY) authorization to import and export a combined total of up to 29.2 Bcf of natural gas from and to Canada and Mexico. This import/export authorization shall extend for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first. This order replaces DOE/FE Opinion and Order No. 666, issued to OXY on September 9, 1992 (1 FE ¶ 70,633).

OXY's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 24, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–16230 Filed 7–1–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–38–NG]

Phibro Division of Salomon Inc.; Order Granting Blanket Authorization to Import Natural Gas, Including Liquefied Natural Gas from Canada, and to Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Phibro Division of Salomon Inc. blanket authorization to import up to 200 billion cubic feet (Bcf) of natural gas, including liquefied natural gas (LNG), from Canada, and to export up to 200 Bcf of natural gas to Canada, over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 21, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–16229 Filed 7–1–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–48–NG]

Talisman Marketing (U.S.) Inc.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada and Mexico and Vacating Authorizations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Talisman Marketing (U.S.) Inc. (Talisman U.S.) authorization to import and export a combined total of up to 60 Bcf of natural gas from and to Canada and Mexico. This import/export authorization shall extend for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first. In conjunction with this new authorization, two import authorizations previously issued to BP Resources Canada Limited and to Encor Energy (America) Inc. have been vacated.

Talisman U.S.'s order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 24, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy

[FR Doc. 94–16232 Filed 7–1–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5006–5]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between February 1, 1994 and April 30, 1994, the United States Environmental Protection Agency (EPA) Region II Office, issued 3 final determinations and the New Jersey Department of Environmental Protection and Energy issued 1 final determination pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21. In addition, EPA Region II and the New York State Department of Environmental Conservation (NYSDEC) issued 2 final determinations between October 1, 1993 and January 31, 1994. These 2 determinations were inadvertently omitted from the last publication.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Frank Jon of the Permitting and Toxics Support Section, Air Compliance Branch, Division of Air and Waste Management, U.S. Environmental Protection Agency Region II Office, 26 Federal Plaza, Room 505, New York, New York 10278, (212) 264–6672.

SUPPLEMENTARY INFORMATION: Pursuant to PSD determinations relative to the sources

Name	Location	
Virgin Islands Water and Power Authority—Unit 19.	St. Croix, Virgin Islands.	Permit begin days the c modif or em PSD
American Ref-Fuel Company of Essex County (Resource Recovery Facility).	Newark, New Jersey.	PSD pe non-c waste els of
Halfmoon Cogeneration Project (Inter-Power).	Halfmoon, New York.	New 21 ing of tors.
Virgin Islands Water and Power Authority—Unit 20.	St. Croix, Virgin Islands.	New 24. 20) an MW di
Caribbean Petroleum Corporation.	Bayamon, Puerto Rico.	Permit m tion of crease during Crackir emissio permitt lowed ages in ages..
Indeck Silver Springs Cogeneration.	Silver Springs, New York.	Modificati gas turb No. 2 fu

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office, Air Compliance Branch - Room 505, 26 Federal Plaza, New York, New York 10278.

NJDEPE Actions

New Jersey Department of Environmental Protection and Energy, Division of Environmental Quality, Bureau of

Protection Agency Region II Office, 26 Federal Plaza, Room 505, New York, New York 10278, (212) 264–6672.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II and the NYSDEC have made final PSD determinations relative to the sources listed below:

Name	Location	Project	Agency	Final Action	Date
Virgin Islands Water and Power Authority—Unit 19.	St. Croix, Virgin Islands.	Permit modification to allow Unit 19 to begin operating for a period of up to 180 days prior to the date of installation of the continuous emission monitors. This modification had no effect on any control or emission requirement contained in the PSD permit..	EPA	PSD Permit Modification.	Apr. 23, 1994.
American Ref-Fuel Company of Essex County (Resource Recovery Facility).	Newark, New Jersey.	PSD permit modification to install selective non-catalytic reduction and require yard waste separation to meet permitted levels of NO_x..	NJDEPE	PSD Permit Modification.	July 7, 1993.
				Environmental Appeals Board's Order Denying Review.	Apr. 18, 1994.
Halfmoon Cogeneration Project (Inter-Power).	Halfmoon, New York.	New 210 MW cogeneration project consisting of 3 coal-fired fluidized bed combustors.	EPA	PSD Permit	Oct. 26, 1992
				Environmental Appeals Board's Order Granting Review.	Apr. 7, 1993
				Environmental Appeals Board's Final Order Affirming PSD Permit and Denying Administrative Review.	Mar. 16, 1994
Virgin Islands Water and Power Authority—Unit 20.	St. Croix, Virgin Islands.	New 24.5 MW oil-fired gas turbine (Unit 20) and the retirement of an existing 4.5 MW diesel engine (Unit 12)..	EPA	PSD Permit	Mar. 1, 1994
Caribbean Petroleum Corporation.	Bayamon, Puerto Rico.	Permit modification to increase the utilization of the crude heater, CH–6, and increase the utilization of the CO boiler during startups of the Fluid Catalytic Cracking Unit while maintaining annual emissions for the CC boiler to previously permitted levels. In addition, EPA allowed the use of 12-month rolling averages instead of the 365-day rolling averages..	EPA	PSD Permit Modification.	Jan. 14, 1994
Indeck Silver Springs Cogeneration.	Silver Springs, New York.	Modification at a 55 MW combined cycle gas turbine project firing natural gas with No. 2 fuel oil as backup..	NYSDEC	PSD Permit Modification.	Oct. 1, 1993

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office, Air Compliance Branch - Room 505, 26 Federal Plaza, New York, New York 10278.

NJDEPE Actions

New Jersey Department of Environmental Protection and Energy, Division of Environmental Quality, Bureau of Engineering and Technology, 401 East State Street, Trenton, New Jersey 08625.

NYSDEC ACTIONS

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233–0001.

If available pursuant to the Consolidated Permit Regulations (40 CFR 124), judicial review of these determinations under Section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under Section 307(b) (2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement

Dated: June 2, 1994

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 94–16214 Filed 7–1–94, 8:45 am]

BILLING CODE 6560–50–P

[FRL–5006–6]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intended Transfer of Confidential Business Information to a Subcontractor.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer confidential business information (CBI) collected from the landfills and incinerators industry to Highland Data Services, a subcontractor of Science Applications International Corporation (SAIC). The information being transferred was collected or will be collected under the authority of Section 308 of the Clean Water Act. Interested persons may submit comments on this intended transfer of information to the address noted below.

DATES: Information will not be provided to Highland Data Services before July 12, 1994.

ADDRESSES: Comments may be sent to David Hoadley, Engineering and Analysis Division (4303), Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Hoadley, Document Control Officer, Engineering and Analysis Division (4303), U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7765.

SUPPLEMENTARY INFORMATION: EPA intends to transfer information, including CBI, to Highland Data Services for data entry. In accordance with 40 CFR Part 2, Subpart B, SAIC was identified in letters to industry as one of a number of contractors and subcontractors receiving this information. In effect, this notice merely adds Highland Data Services to the list.

The information being transferred consists of information previously collected by EPA's Office of Science and Technology (OST), in connection with the Waste Treatment Industry Phase II Questionnaires, to support the development of effluent limitations guidelines and standards under the Clean Water Act for the landfills and incinerators industry.

EPA also intends to transfer to SAIC and Highland Data Services all information listed in this notice, of the type described above (including CBI) that may be collected in the future under the authority of CWA Section 308, as is necessary to enable SAIC and Highland Data Services to carry out the work required by their contracts to support EPA's development of effluent limitations guidelines and standards for the landfills and incinerators industry.

EPA office receiving support	Contract No.	Contractor (P=prime contractor S=subcontractor)	Type of support
OW/OST/EAD	68–C1–0006	SAIC(P) Hackensack, NJ Highland Data Services(S) Bluegrass, VA	Technical. Data Entry.

Dated: June 8, 1994.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 94–16110 Filed 7–1–94; 8:45 am]

BILLING CODE 6560–50–P

National Air Pollution Control Techniques Advisory Committee; Open Meeting

ACTION: Notice of open meeting.

SUMMARY: A meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) will be held at the Sheraton Inn University Center, 2800 Middleton Avenue, Durham, North Carolina 27705. The telephone number is (919) 383–8575.

DATES: July 18 and 19, 1994.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public. Anyone wishing to make a presentation must contact Ms. Teresa Clemons at the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina by July 14, 1994. The telephone number is (919) 541–5571.

SUPPLEMENTARY INFORMATION: Section 183(e) of the Clean Air Act of 1990 requires the U.S. Environmental Protection Agency (EPA) to conduct a study of emissions of volatile organic compounds (VOC's) from consumer and commercial products and to report to Congress the findings of the study. Upon submittal of the report to the Congress, the EPA must list those categories of products which contribute at least 80 percent of the VOC emissions from all consumer and commercial products in ozone nonattainment areas. The EPA must at that time divide the list into 4 groups by priority. Beginning no later than 2 years after publishing the list, the EPA must regulate one group every 2 years until all 4 groups are regulated.

One objective of the study is to develop criteria for regulating consumer and commercial products under section 183(e). These criteria are to be used to select products for regulation. Section 183(e) lists 5 factors which must be taken into consideration when developing the criteria: (1) The uses, benefits, and commercial demand of consumer and commercial products; (2) any health or safety functions served by the products; (3) those consumer and commercial products which emit highly reactive VOC's into the ambient air; (4) those products which are subject to the most cost-effective controls; and (5) the availability of any alternatives to such consumer and commercial products that are of comparable costs, considering health, safety, and environmental impacts. The EPA has developed criteria based on the 5 factors listed in section 183(e).

The EPA has not yet exercised the criteria to develop a prioritized list of categories for regulation under section 183(e). In order to ensure consistency and fairness in developing the draft prioritized category list, a decision was made to convene an independent panel to exercise the criteria.

The National Air Pollution Control Techniques Advisory Committee (NAPCTAC), established in 1968 by the Surgeon General, is an ongoing advisory group which provides independent views based upon specialized knowledge and skills unavailable in the EPA. The NAPCTAC consists of the Director, Office of Air Quality Planning and Standards, or his designee, as chairperson and 11 members appointed by the EPA's Deputy Administrator. The members are selected from the chemical, engineering, biomedical, and socioeconomic disciplines resident in universities, State and local governments, research institutions, industry, and public interest groups.

Because of the balance afforded by such a diverse group, the NAPCTAC was considered a logical and convenient choice for the panel. The panel will consider each category of products subject to section 183(e) and will assign a score of 1 to 5 for each criterion. The output of the scoring exercise will be a draft prioritized category list, with the highest scored categories receiving the highest priority for regulation.

The draft list will be reviewed by the Administrator who reserves the right to make adjustments to the list. For example, certain health and safety products may be considered for exemption as provided for in section 183(e)(3)(a). Some product categories may be grouped in the interest of regulatory efficiency. The criteria and draft prioritized category list are not final and may be subject to change until regulatory action is taken.

The agenda for the meeting is as follows:

July 18 (Monday)—9 a.m. to 12 p.m.

—Overview of section 183(e) and expectations for the meeting.
—Presentations by interested parties (10 minutes each).

1 to 5 p.m.

—Criteria exercised by the NAPCTAC panel

7 to 10 p.m. Evening Session

—Continue criteria exercise

July 19 (Tuesday)—8 a.m. to 12 p.m.

—Continue criteria exercise

1 to 5 p.m.

—Continue and conclude criteria exercise
—Closing remarks

Dated: June 28, 1994.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 94–16212 Filed 7–1–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5007–6]

Proposed Agreement and Covenant Not To Sue Under the Comprehensive Environmental Response, Compensation, and Liability Act; Peterson/Puritan, Inc. Superfund Site; Lincoln and Cumberland, RI

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement and covenant not to sue and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement and covenant not to sue (the "agreement") to resolve potential claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed agreement and of the opportunity to comment. The agreement is intended to resolve the potential liability under CERCLA of Alpha-Realty Corporation, N.F.A. Corporation and The Rhode Island Industrial Facilities

The draft list will be reviewed by the Administrator who reserves the right to make adjustments to the list. For example, certain health and safety products may be considered for exemption as provided for in section 183(e)(3)(a). Some product categories may be grouped in the interest of regulatory efficiency. The criteria and draft prioritized category list are not final and may be subject to change until regulatory action is taken.

The agenda for the meeting is as follows:

July 18 (Monday)—9 a.m. to 12 p.m.

—Overview of section 183(e) and expectations for the meeting.
—Presentations by interested parties (10 minutes each).

1 to 5 p.m.

—Criteria exercised by the NAPCTAC panel

7 to 10 p.m. Evening Session

—Continue criteria exercise

July 19 (Tuesday)—8 a.m. to 12 p.m.

—Continue criteria exercise

1 to 5 p.m.

—Continue and conclude criteria exercise
—Closing remarks

Dated: June 28, 1994.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 94–16212 Filed 7–1–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5007–6]

Proposed Agreement and Covenant Not To Sue Under the Comprehensive Environmental Response, Compensation, and Liability Act; Peterson/Puritan, Inc. Superfund Site; Lincoln and Cumberland, RI

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement and covenant not to sue and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement and covenant not to sue (the "agreement") to resolve potential claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed agreement and of the opportunity to comment. The agreement is intended to resolve the potential liability under CERCLA of Alpha-Realty Corporation, N.F.A. Corporation and The Rhode Island Industrial Facilities Corporation ("the Settling Parties") regarding a portion of the Peterson/Puritan, Inc. Superfund Site in Lincoln and Cumberland, Rhode Island. The Settling Parties are acquiring the Health-Tex property portion of the Peterson/Puritan, Inc. Superfund Site.

DATES: Comments must be provided on or before July 26, 1994.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: In the Matter of Alpha-Realty Corporation, N.F.A. Corporation, and The Rhode Island Industrial Facilities Corporation, U.S. EPA Docket No. I–94–1061.

FOR FURTHER INFORMATION CONTACT: Brian Rohan, U.S. Environmental Protection Agency, Office of Regional Counsel, RCU, J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 565–3699.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a proposed agreement concerning the Peterson/Puritan, Inc. Superfund Site in Lincoln and Cumberland, RI. The agreement was approved by EPA Region I on June 22, 1994 subject to review by the public pursuant to this Notice. The Settling Parties have executed signature pages committing them to participate in the agreement. Under the proposed agreement, the Settling Parties are required to pay $150,000 to the Hazardous Substances Superfund; grant access to the property to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight; and record institutional controls for the property in the form of a deed restriction. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the inherent settlement authority of CERCLA. CERCLA provides EPA with authority to consider, compromise, and settle a potential claim under section 107 of CERCLA if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on June 20, 1994.

EPA will receive written comments relating to this settlement for twenty-one (21) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Brian Rohan, U.S. Environmental Protection Agency, Office of Regional Counsel, JFK Federal Building—RCU, Boston, Massachusetts 02203, (617) 565–3699.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts (U.S. EPA Docket No. I–94–1061).

Dated: June 22, 1994.

John P. DeVillars,

Regional Administrator.

[FR Doc. 94–16221 Filed 7–1–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 27, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0246
Title: Section 74.452, Equipment changes
Action: Extension of currently approved collection
Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting requirement
Estimated Annual Burden: 25 responses; 0.5 hours average burden per response; 13 hours total annual burden
Needs and Uses: Section 74.452 requires that licensees of remote pickup stations notify the Commission of any equipment changes that are deemed desirable or necessary (without departing from its station authorization) upon completion of such changes. The data are used by FCC staff to assure that changes made

comply with the rules and regulations.

OMB Number: 3060–0254
Title: Section 74.433, Temporary authorizations
Action: Extension of a currently approved collection
Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting requirement
Estimated Annual Burden: 30 responses; 1 hour average burden per response; 30 hours total annual burden
Needs and Uses: Section 74.433 requires that a licensee of a remote pickup station make an informal written request to the FCC when requesting temporary authorization for operations of a temporary nature that cannot be conducted in accordance with § 74.24. The data is used by FCC staff to insure that the temporary operation of a remote pickup station will not cause interference to existing stations.

OMB Number: 3060–0342
Title: Section 74.1284, Rebroadcasts
Action: Extension of a currently approved collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting requirement
Estimated Annual Burden: 25 responses; 1 hour average burden per response; 25 hours total annual burden
Needs and Uses: Section 74.1284 requires that the licensee of an FM Translator station obtain prior consent from the primary FM broadcast station or other FM translator before rebroadcasting their programs. In addition, the licensee must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. The data is used by FCC staff to update records and to assure compliance with FCC rules and regulations.

OMB Number: 3060–0483
Title: Section 73.687, Transmission system requirements
Action: Extension of a currently approved collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting requirement
Estimated Annual Burden: 6 responses; 1 hour average burden per response; 6 hours total annual burden
Needs and Uses: Section 73.687(e)(3) requires TV broadcast stations operating on Channels 14 and 69 to take special precautions to avoid interference to adjacent spectrum land mobile operations. This requirement applies to all new Channel 14 and 69 TV broadcast stations and those authorized to change channel, increase effective radiated power (ERP), change directional antenna characteristics such that ERP increases in any azimuth direction or change location, involving an existing or proposed channel 14 or 69 assignment. Section 73.687(e)(4) requires these stations to submit evidence to the FCC that no interference is being cause before they will be permitted to transmit programming on the new facilities. The data is used by FCC to ensure proper precautions have been taken to protect land mobile stations from interference. It will also increase and improve service to the public by broadcasters and land mobile services operating in certain parts of the spectrum.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–16137 Filed 7–1–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3333
Name: Integrated Traffic Systems, Inc.
Address: 122 W. 22nd, #301, Oak Brook, IL 60521
Date Revoked: March 18, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3353
Name: Zuazu International, Inc.
Address: 310 Madison Ave., Ste. 1010, New York, NY 10017
Date Revoked: April 4, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2610
Name: Tar-Mac International, Inc.
Address: 2700 Greens Rd., Bldg. K, Ste. 300, Houston, TX 77032
Date Revoked: May 23, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1812
Name: Byrd Freight Services International, Inc. dba U-Freight/BFS International
Address: 14720 Lee Road, Humble, TX 77396
Date Revoked: May 25, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 83
Name: Alro Forwarding Co., Ltd.
Address: One World Trade Center, Ste. 4623, NY, NY 10048
Date Revoked: June 1, 1994
Reason: Surrendered license voluntarily.

License Number: 1462
Name: Commodity Forwarders, Inc.
Address: 210 Baronne Street, Ste 1242, New Orleans, LA 70112
Date Revoked: June 5, 1994
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,
Director, Bureau of Tariffs, Certification and Licensing.
[FR Doc. 94–16164 Filed 7–1–94; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

NationsBank Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 1994

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina, to engage *de novo* through its subsidiary NationsBanc-CRT Services, Inc., Chicago, Illinois, and NationsBanc-CRT Energy (U.K. Ltd., London, England, in acting as a futures commission merchant for unaffiliated customers in executing and clearing (including clearing without executing) and providing investment advice on futures and options on financial instruments and non-financial commodities; and also providing securities brokerage services pursuant to § 225.25(b)((15), (b)(18), and (b)(19) of the Board's Regulation Y and *J.P. Morgan & Co., Inc.*, 80 Federal Reserve Bulletin 151 (1994).

Board of Governors of the Federal Reserve System, June 28, 1994.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 94–16165 Filed 7–1–94; 8:45 am]
BILLING CODE 6210–01–F

Howard R. Ross, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-15270) published on page 32432 of the issue for Thursday, June 23, 1994.

Under the Federal Reserve Bank of Kansas City heading, the entry for Howard R. Ross is revised to read as follows:

1. Howard R. Ross, Chicago, Illinois; to acquire 23.05 percent; Steve Bangert, Denver, Colorado, to acquire 23.05 percent; Noel Rothman, Chicago, Illinois, to acquire 11.53 percent; Elizabeth W. Parker Trust, created under the George S. Parker Trust; co-trustees & Elizabeth W. Parker, San Juan, Puerto Rico, and Robert Fiddes, Naples, Florida, to acquire 8.65 percent; Scott C. Wylie, Denver, Colorado, to acquire 5.76 percent; John Rose, Chicago, Illinois, to acquire 1.73 percent; Edward Ross, Chicago, Illinois, to acquire 8.65 percent; Howard Gilbert, Chicago, Illinois, to acquire 4.61 percent; Walter

identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 1994

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina, to engage *de novo* through its subsidiary NationsBanc-CRT Services, Inc., Chicago, Illinois, and NationsBanc-CRT Energy (U.K. Ltd., London, England, in acting as a futures commission merchant for unaffiliated customers in executing and clearing (including clearing without executing) and providing investment advice on futures and options on financial instruments and non-financial commodities; and also providing securities brokerage services pursuant to § 225.25(b)((15), (b)(18), and (b)(19) of the Board's Regulation Y and *J.P. Morgan & Co., Inc.*, 80 Federal Reserve Bulletin 151 (1994).

Board of Governors of the Federal Reserve System, June 28, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16165 Filed 7–1–94; 8:45 am]

BILLING CODE 6210–01–F

Howard R. Ross, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-15270) published on page 32432 of the issue for Thursday, June 23, 1994.

Under the Federal Reserve Bank of Kansas City heading, the entry for Howard R. Ross is revised to read as follows:

1. Howard R. Ross, Chicago, Illinois; to acquire 23.05 percent; Steve Bangert, Denver, Colorado, to acquire 23.05 percent; Noel Rothman, Chicago, Illinois, to acquire 11.53 percent; Elizabeth W. Parker Trust, created under the George S. Parker Trust; co-trustees & Elizabeth W. Parker, San Juan, Puerto Rico, and Robert Fiddes, Naples, Florida, to acquire 8.65 percent; Scott C. Wylie, Denver, Colorado, to acquire 5.76 percent; John Rose, Chicago, Illinois, to acquire 1.73 percent; Edward Ross, Chicago, Illinois, to acquire 8.65 percent; Howard Gilbert, Chicago, Illinois, to acquire 4.61 percent; Walter Schaub, Schaumburg, Illinois, to acquire 2.59 percent; John M. Eggemeyer, Chicago, Illinois, to acquire 2.31 percent; Mark Kipnis, Chicago, Illinois, to acquire 1.73 percent; Memorial Capital Corporation, Ható Rey, Puerto Rico, to acquire 1.44 percent; and American Investment Corporation, Hato Rey, Puerto Rico, to acquire 1.44 percent of the voting shares of Equitable Bankshares of Colorado, Inc., Denver, Colorado, and thereby indirectly acquire Women's Bank, N.A., Denver, Colorado, and Equitable Bank of Littleton, N.A., Littleton, Colorado.

Comments on this application must be received by July 13, 1994.

Board of Governors of the Federal Reserve System, June 28, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16166 Filed 7–1–94; 8:45 am]

BILLING CODE 6210–01–F

Wiley W. Smith; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 25, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Wiley W. Smith, individually and as trustee, and Edward A. Carson, considered to be a group acting in concert, both of Sapulpa, Oklahoma, to acquire an additional 22.29 percent for a total of 27.16 percent of the voting shares of Security National Bank of Sapulpa, Sapulpa, Oklahoma.

Board of Governors of the Federal Reserve System, June 28, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16167 Filed 7–1–94; 8:45 am]

BILLING CODE 6210–01–F

SouthTrust Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama and SouthTrust of Florida, Inc., Jacksonville, Florida to acquire 100 percent of the voting shares of Island Bank of Collier County, Marco Island, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Western State Agency, Inc., Devils Lake, North Dakota, to merge with Towner Bancorporation, Ltd., Towner, North Dakota, and thereby indirectly acquire State Bank of Towner, Towner, North Dakota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Rockwell Bancorp, Inc., to become a bank holding company by acquiring 81 percent of the voting shares of Rockwell, Bank, N.A., Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, June 28, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16168 Filed 7–1–94, 8:45 am]

BILLING CODE 6210–01–F

Western State Agency, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480

1. Western State Agency, Inc., Devils Lake, North Dakota, to acquire McHenry Insurance, Inc., Towner, North Dakota, and thereby engage in general insurance activities in a town with a population of less than 5,000 people, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. The geographic area to be served is Towner, North Dakota.

Board of Governors of the Federal Reserve System, June 28, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16169 Filed 7–1–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Policy Statement Concerning Errors and Omissions Clauses in Consent Decrees

AGENCY: Federal Trade Commission.

ACTION: Statement of policy.

SUMMARY: The Commission has determined that it is unnecessary and inappropriate to include in any of its consent decrees any provision establishing as a defense to an action brought to enforce the consent decree that the defendant's errors and omissions were inadvertent and unintentional and that the causes and consequences of these errors and omissions were quickly remedied.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Joel N. Brewer, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2967.

SUPPLEMENTARY INFORMATION: In each of two previous Consent Decrees, *Damark International, Inc.*, Civ. No. 4–91–275 (D. Minn. 1991), and *Lillian Vernon Co.*, 92 Civ. 7537 (CLB) (S.D.N.Y. 1992), the Commission included a provision that provided a defense against an enforcement action if the defendant could establish that (1) any order violations arose from inadvertent and unintentional errors that may have occurred despite the defendant's good faith maintenance of records and procedures to prevent such errors, and (2) the defendant took prompt action to remedy any cause of, or injury resulting from, those errors. The Commission now has decided that such provisions are unnecessary in light of the Commission's inherent prosecutorial discretion.

The Commission initiates law enforcement actions under Section 5 of the FTC Act, 15 U.S.C. 45, only when it has reason to believe both that the law has been violated and that an action is in the public interest. In deciding whether an action is in the public interest, the Commission considers, among other things, the scope of the alleged violation, the circumstances in which it occurred and the extent of any resulting injury. Accordingly, the Commission believes that the inclusion of the language referred to above from the decisions and orders in *Damark* and *Lillian Vernon* is redundant to its public interest considerations and could cause confusion concerning the Commission's exercise of prosecutorial discretion within the terms of Section 5. Therefore, the Commission's policy will be to refuse to approve proposed consent decrees containing provisions designed to circumscribe liability for inadvertent and promptly remedied errors, or otherwise to delineate the Commission's discretion in initiating law enforcement proceedings.

Authority: 15 U.S.C. 41–58.

List of Subjects

Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

Dissenting statement of Commissioner Deborah K. Owen, regarding the Commission's policy statement concerning errors and omissions clauses in consent decrees.

I have voted against the proposed change in Commission policy, which would preclude a defense in consent decrees relating to inadvertent and unintentional errors by defendants. In my view, such language is harmless with respect to any legitimate Commission interest, and may serve to reassure parties as to the judicious exercise of our prosecutorial discretion.

[FR Doc. 94–16181 Filed 7–1–94; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration

and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting

TRANSACTIONS GRANT

Name of acquiring person, name o

Michaels Stores, Inc., Frontenac Company, An Illinc
The 1818 Fund, L.P., Columbia/HCA Healthcare Co
AGCO Corporation, Varity Corporation, Massey Fer
Ceridian Corporation, Tesseract Investors, L.P., Tes
American Gas & Oil Investors, Enterra Corporation,
AmGO II, Enterra Corporation, Enterra Corporation
AmGO III, Enterra Corporation, Enterra Corporation
First Reserve Secured Energy Assets Fund, L.P., E
First Reserve Fund V, Limited Partnership, Enterra
First Reserve Fund V–2, Limited Partnership, Enter
First Reserve Fund VI, Limited Partnership, Enterra
Enterra Corporation, Total Energy Services Compan
Specialty Paperboard, Inc., W.R. Grace & Co., W.R.
Apollo Real Estate Investment Fund, L.P., Aetna
West Virginia
The Mutual Life Assurance Company of Canada, M
Company
Helmerich & Payne, Inc., Energy Service Company,
GATX Corporation, Royal Dutch Petroleum Compan
General Electric Company, Quaker State Corporatio
New York Life Insurance Company, Bruce A. Flashn
Illinois Power Company, The Montana Power Compa
Johnson Controls, Inc., Chrysler Corporation, Ensam
General Electric Company, Steel Dynamics, Inc., Ste
Tyler Capital Fund, L.P., Smith Corona Corporation,
Mr. John N. Ehrman, S.A. Louis Dreyfus et Cie, Lou
Bob Magness, TCI/Liberty Holding Company, TCI/Li
The May Department Stores Company, J.C. Penney
Dover Corporation, Equity Holding Limited, Hill Refri
Motorola, Inc., Harris Corporation, Harris Corporatio
TCI/Liberty Holding Company, Cablevision of Baton
Golder, Thoma, Cressey Fund III Limited Partnership
Jerry Zucker, New Polymer, New Polymer
CSM nv, Henry & Henry, Inc., Henry & Henry, Inc
The Lakeland Health Care Corporation, Congregatio
pital and Health Center
MobileMedia Corporation, Local Area Telecommunic
The Allen T. Gilliland Trust dated August 4, 1982, Mo
John C. Malone, TCI/Liberty Holding Company, TCI/L
A. Jerrold Perenchio, Combined Broadcasting, Inc., C
Integrated Health Services, Inc., Chemical Banking C
Welsch, Carson, Anderson & Stowe VI, L.P., Housec
TCW Special Credits Fund V—The Principal Fund, G
Pratt Family Holdings Trust, Mr. Carl Cheek, Georgia
Whitehall Street Real Estate Limited Partnership III,
dential Insurance Company of America
Banta Corporation, United Graphics Inc., United Grap
The Promus Companies Incorporated, Pittsburgh His
ment Corporation
Time Warner Inc., NVC International Inc., NVC Intern
Lagardere Groupe S.C.A., The Walt Disney Company
BellSouth Corporation, BellSouth Corporation, RAM/B
PennCorp Financial Group, Inc., American General C
al
Health Management Associates, Inc., Adventist Healt
CMS Energy Corporation, Sun Company, Inc., Sun C
The Standard Register Company, Seitsu Corporation,
Harcourt General, Inc., The Times Mirror Company,
tions
Pioneer Telephone Cooperative, Inc., GTE Corporatio
Anderson News Corporation, Wal-Mart Stores, Inc., W
Atlas Corporation, M.I.M. Holdings Limited (an Austra
American National Insurance Company, Temple-Inlan
The Mayer Electric Supply Company, Inc., Donald F.
Ronald W. Burkle, Fiducie M.H.G. (a Canadian Trust),

and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061394 AND 062494

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Michaels Stores, Inc., Frontenac Company, An Illinois Partnership, Leewards Creative Crafts, Inc	94-1383	06/13/94
The 1818 Fund, L.P., Columbia/HCA Healthcare Corporation, Columbia/HCA Healthcare Corporation	94-1412	06/14/94
AGCO Corporation, Varity Corporation, Massey Ferguson Group Limited	94-1484	06/14/94
Ceridian Corporation, Tesseract Investors, L.P., Tesseract Corporation	94-1515	06/14/94
American Gas & Oil Investors, Enterra Corporation, Enterra Corporation	94-1372	06/15/94
AmGO II, Enterra Corporation, Enterra Corporation	94-1373	06/15/94
AmGO III, Enterra Corporation, Enterra Corporation	94-1374	06/15/94
First Reserve Secured Energy Assets Fund, L.P., Enterra Corporation, Enterra Corporation	94-1375	06/15/94
First Reserve Fund V, Limited Partnership, Enterra Corporation, Enterra Corporation	94-1376	06/15/94
First Reserve Fund V-2, Limited Partnership, Enterra Corporation, Enterra Corporation	94-1377	06/15/94
First Reserve Fund VI, Limited Partnership, Enterra Corporation, Enterra Corporation	94-1378	06/15/94
Enterra Corporation, Total Energy Services Company, Total Energy Services Company	94-1379	06/15/94
Specialty Paperboard, Inc., W.R. Grace & Co., W.R. Grace & Co.—Conn.'s Endura Products Division	94-1411	06/15/94
Apollo Real Estate Investment Fund, L.P., Aetna Life and Casualty Company, Kanawah Mall, Charleston, West Virginia	94-1434	06/15/94
The Mutual Life Assurance Company of Canada, Milwaukee Insurance Group, Inc., Milwaukee Life Insurance Company	94-1441	06/15/94
Helmerich & Payne, Inc., Energy Service Company, Inc., ENSCO Drilling Company	94-1455	06/15/94
GATX Corporation, Royal Dutch Petroleum Company (a Netherlands Corp.), Shell Oil Company	94-1457	06/15/94
General Electric Company, Quaker State Corporation, Heritage Insurance Group, Inc	94-1468	06/15/94
New York Life Insurance Company, Bruce A. Flashner, M.C., Flashner Medical Partnership	94-1494	06/15/94
Illinois Power Company, The Montana Power Company, North American Energy Services Company	94-1496	06/15/94
Johnson Controls, Inc., Chrysler Corporation, Ensamble de Interiores Automotrices, S.A. de C.V	94-1424	06/16/94
General Electric Company, Steel Dynamics, Inc., Steel Dynamics, Inc	94-1476	06/16/94
Tyler Capital Fund, L.P., Smith Corona Corporation, SCM Office Supplies, Inc	94-1497	06/16/94
Mr. John N. Ehrman, S.A. Louis Dreyfus et Cie, Louis Dreyfus Natural Gas Corp	94-1354	06/20/94
Bob Magness, TCI/Liberty Holding Company, TCI/Liberty Holding Company	94-1409	06/20/94
The May Department Stores Company, J.C. Penney Company, Inc., J.C. Penney Properties, Inc	94-1414	06/20/94
Dover Corporation, Equity Holding Limited, Hill Refrigeration, Inc	94-1415	06/20/94
Motorola, Inc., Harris Corporation, Harris Corporation	94-1432	06/20/94
TCI/Liberty Holding Company, Cablevision of Baton Rouge, Ltd., Cablevision of Baton Rouge, Ltd	94-1438	06/20/94
Golder, Thoma, Cressey Fund III Limited Partnership, New Polymer, New Polymer	94-1452	06/20/94
Jerry Zucker, New Polymer, New Polymer	94-1453	06/20/94
CSM nv, Henry & Henry, Inc., Henry & Henry, Inc	94-1466	06/20/94
The Lakeland Health Care Corporation, Congregation of the Sisters of the Humility of Mary, St. Joseph Hospital and Health Center	94-1491	06/20/94
MobileMedia Corporation, Local Area Telecommunications, Inc., Local Area Telecommunications, Inc	94-1500	06/20/94
The Allen T. Gilliland Trust dated August 4, 1982, MobileMedia Corporation, MobileMedia Corporation	94-1501	06/20/94
John C. Malone, TCI/Liberty Holding Company, TCI/Liberty Holding Company	94-1502	06/20/94
A. Jerrold Perenchio, Combined Broadcasting, Inc., Combined Broadcasting of Chicago, Inc	94-1508	06/20/94
Integrated Health Services, Inc., Chemical Banking Corporation, Cooper Holding Corporation	94-1519	06/20/94
Welsch, Carson, Anderson & Stowe VI, L.P., Housecall, Inc., Housecall, Inc	94-1522	06/20/94
TCW Special Credits Fund V—The Principal Fund, General Electric Company, Chief Auto Parts	94-1527	06/20/94
Pratt Family Holdings Trust, Mr. Carl Cheek, Georgia Box, Inc	94-1529	06/20/94
Whitehall Street Real Estate Limited Partnership III, The Prudential Insurance Company of America, The Prudential Insurance Company of America	94-1535	06/20/94
Banta Corporation, United Graphics Inc., United Graphics Inc	94-1541	06/20/94
The Promus Companies Incorporated, Pittsburgh History & Landmarks Foundation, The Landmarks Development Corporation	94-1545	06/20/94
Time Warner Inc., NVC International Inc., NVC International Inc	94-1547	06/20/94
Lagardere Groupe S.C.A., The Walt Disney Company, Disney Direct Response Publishing, Inc	94-1548	06/20/94
BellSouth Corporation, BellSouth Corporation, RAM/BSE, L.P	94-1550	06/20/94
PennCorp Financial Group, Inc., American General Corporation, Pioneer Security Life Insurance Company et al	94-1551	06/20/94
Health Management Associates, Inc., Adventist Health System/Sunbelt Health Care Corporation, Newco	94-1430	06/21/94
CMS Energy Corporation, Sun Company, Inc., Sun Colombia Oil Company	94-1431	06/21/94
The Standard Register Company, Seitsu Corporation, Uarco, Inc	94-1443	06/21/94
Harcourt General, Inc., The Times Mirror Company, the Brown-ROA division of Wm. C. Brown Communications	94-1499	06/21/94
Pioneer Telephone Cooperative, Inc., GTE Corporation, GTE Southwest Incorporated	94-1503	06/21/94
Anderson News Corporation, Wal-Mart Stores, Inc., Western Merchandisers, Inc	94-1504	06/21/94
Atlas Corporation, M.I.M. Holdings Limited (an Australian company), Granges Inc	94-1521	06/21/94
American National Insurance Company, Temple-Inland Inc., Guaranty Federal Bank, F.S.B	94-1532	06/21/94
The Mayer Electric Supply Company, Inc., Donald F. McMullan, Mack Electric Supply Co., Inc	94-1553	06/21/94
Ronald W. Burkle, Fiducie M.H.G. (a Canadian Trust), Smitty's Super Valu, Inc	94-1554	06/21/94

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061394 AND 062494—Continued

Name of acquiring person, name of adquired person, name of acquired entity	PMN No.	Date terminated
Daughters of Charity National Health System, Inc., Sisters of St. Joseph of Tipton, Indiana, St. Joseph Hospital & Health Center of Kokomo, IN, Inc	94-1423	06/22/94
Enron Corporation, Bridge Oil Limited, Bridge Oil Limited	94-1610	06/22/94
Kelso Investment Associates IV, L.P., F. DeWight Titus, F.D. Titus and Son Inc	94-1530	06/23/94
Swift Energy Company, Parker & Parsley Petroleum Company, P&P Producing, Inc	94-1538	06/23/94
United States Filter Corporation, Warburg, Pincus Capital Company, L.P., Liquipure Technologies, Inc	94-1384	06/24/94
United States Filter Corporation, John S. Swartley, Liquipure Technologies, Inc	94-1385	06/24/94
Warburg, Pincus Capital Company, L.P., United States Filter Corporation, United States Filter Corporation	94-1387	06/24/94
Thomas H. Lee Equity Partners, L.P., Mid-State Plastics, Inc., Mid-State Plastics, Inc	94-1469	06/24/94
Atlantic Equity Partners, L.P., MagneTek, Inc., MagneTek Controls, Inc	94-1473	06/24/94
Main Street Partners, L.P., CommNet Cellular, Inc., CommNet Cellular, Inc	94-1475	06/24/94
Gerhard R. Andlinger, Robert R. Dyson, Cissell Manufacturing Company	94-1516	06/24/94
Cardinal Health, Inc., Behrens Inc., Behrens Inc	94-1525	06/24/94
The Vigoro Corporation, Peter Lederer, Koos, Inc. and Lederer of Florida, Inc	94-1536	06/24/94
AT&T Corp., CP Institutional Partners I, Inc., CP Institutional Partners I, Inc	94-1540	06/24/94
Mariner Health Group, Inc., M&F Legend Holdings, L.P., Legend/Bymebrook Corporation	94-1542	06/24/94
General Electric Company, Cavco Industries, Inc., C.V.C. Leasing Division	94-1544	06/24/94
I.C.H. Corporation, Robert T. Shaw, Consolidated Fidelity Life Insurance Company	94-1557	06/24/94
N.V. Verenigd Bezit VNU, Citicorp, I/B/E/S	94-1568	06/24/94
Pfizer Inc., Neurogen Corporation, Neurogen Corporation	94-1569	06/24/94
Charter Medical Corporation, National Medical Enterprises, Inc., NME Psychiatric Properties, Inc	94-1577	06/24/94
Canadian Pacific Limited, Doubletree Corporation, Joint Venture, Doubletree Corporation, Joint Venture	94-1594	06/24/94
General Electric Company, Doubletree Corporation, Joint Venture, Doubletree Corporation, Joint Venture	94-1608	06/24/94
Kidd, Kamm Equity Partners, L.P., Luigi Massironi, Houbigant, Inc	94-1613	06/24/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-16182 Filed 7-1-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3497]

Arizona Automobile Dealers Association; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Arizona association consisting of approximately 199 dealers from restricting, regulating, or interfering with truthful, non-deceptive comparative or price advertising or advertising concerning financing by its members in the future. In addition, the order requires the respondent to remove from its "Standards for Advertising Motor Vehicles" any provision, policy statement or guideline that is inconsistent with the terms of the settlement, to distribute copies to each member, and to publish the revised standards in the AADA member magazine

DATES: Complaint and Order issued May 31, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Ralph Stone, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Monday, March 21, 1994, there was published in the **Federal Register**, 59 FR 13325, a proposed consent agreement with analysis In the Matter of Arizona Automobile Dealers Association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary

[FR Doc. 94-16177 Filed 7-1-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3495]

Orkin Exterminating Company, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Georgia pesticides corporation from advertising or representing that its pesticides used in its lawn care service programs are as safe as some common household products or that they pose no significant risk to human health or the environment, without possessing competent and reliable scientific evidence to substantiate the claims.

DATES: Complaint and Order issued May 25, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S-4002, Washington, DC 20580. (202) 326-3158.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On Wednesday, April 14, 1993, there was published in the **Federal Register**, 58 FR 19444, a proposed consent agreement with analysis In the Matter of Orkin Exterminating Company, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94-16178 Filed 7-1-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3496]

Samick Music Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California subsidiary of a Korean piano manufacturer from misrepresenting the composition of any of its piano soundboards or any other piano parts in the future, and requires the respondent to pay, to the U.S. Treasury, $266,000 in disgorgement.

DATES: Complaint and Order issued May 27, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Darren Bowie, FTC/H-200, Washington, DC 20580. (202) 326-2018.

SUPPLEMENTARY INFORMATION: On Monday, March 21, 1994, there was published in the **Federal Register**, 59 FR 13332, a proposed consent agreement with analysis In the Matter of Samick Music Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On Wednesday, April 14, 1993, there was published in the **Federal Register**, 58 FR 19444, a proposed consent agreement with analysis In the Matter of Orkin Exterminating Company, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–16178 Filed 7–1–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3496]

Samick Music Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California subsidiary of a Korean piano manufacturer from misrepresenting the composition of any of its piano soundboards or any other piano parts in the future, and requires the respondent to pay, to the U.S. Treasury, $266,000 in disgorgement.

DATES: Complaint and Order issued May 27, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Darren Bowie, FTC/H–200, Washington, DC 20580. (202) 326–2018.

SUPPLEMENTARY INFORMATION: On Monday, March 21, 1994, there was published in the **Federal Register**, 59 FR 13332, a proposed consent agreement with analysis In the Matter of Samick Music Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–16179 Filed 7–1–94; 8:45 am]

BILLING CODE 6750–01–M

[Docket 9190]

Ticor Title Insurance Company, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order modifies the Commission's Final Order, issued in 1989, by deleting references to the states of New Jersey and Pennsylvania. Therefore, in accordance with the decision and judgment of the court of appeal, the order, as modified by the Commission, prohibits the companies from discussing, proposing, setting or filing any rates for title search and examination services through a rating bureau in the states of Connecticut, Wisconsin, Arizona, and Montana.

DATES: Final Order issued September 19, 1989. Modifying Order issued April 22, 1994.[1]

FOR FURTHER INFORMATION CONTACT: David Von Nirschl, FTC/S–2115, Washington, DC 20580. (202) 326–3213.

SUPPLEMENTARY INFORMATION: In the Matter of Ticor Title Insurance Company, et al. The prohibited trade practices and/or corrective actions as set forth at 55 FR 363, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–16180 Filed 7–1–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 13% for the quarter ended June 30, 1994. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: June 22, 1994.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 94–16184 Filed 7–1–94; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control and Prevention

Prevention Centers Grant Review Committee: Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

NAME: Prevention Centers Grant Review Committee.

Time and Dates: 8 a.m.–5 p.m., July 21–22, 1994.

Place: Hotel Nikko Atlanta, 3300 Peachtree Road, NE, Atlanta, Georgia 30305.

Status: Open 8 a.m.–8:45 a.m., July 21, 1994; Closed 9 a.m., July 21, through 5 p.m., July 22, 1994.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit of grant applications relating to the establishment, maintenance, and operation of centers for research and demonstration with respect to health promotion and disease prevention.

---

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H–130, 6th & PA. Ave., NW., Washington, DC 20580.

Matters to be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of cooperative agreement applications. Beginning at 9 am., July 21, through 5 p.m., July 22, the committee will conduct its review of cooperative agreement applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S. Code, and the Determination of the Acting Associate Director for Policy Coordination, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for more information: Diane H. Jones, Ph.D., Project Officer, Office of Surveillance and Analysis, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, Mailstop K–30, Atlanta, Georgia 30341–3724, telephone 404/488–5395.

Dated: June 28, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16156 Filed 7–1–94; 8:45 am]

BILLING CODE 4163–18–P–M

National Institutes of Health

Division of Research Grants; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Name of SEP: Behavioral and Neurosciences.

Date: July 6, 1994.

Time: 2:00 p.m.

Place: NIH, Westwood Bldg., Room 306B (Telephone Conference).

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 5333 Westbard Ave., Room 306B, Bethesda, MD 20892, (301) 594–7165.

Purpose/Agenda: To review individual grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 28, 1994

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 94–16253 Filed 7–1–94; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Rescission of Social Security Acquiescence Ruling 86–1(9)—Summy v. Schweiker, 688 F.2d 1233 (9th Cir. 1982)

AGENCY: Social Security Administration, HHS.

ACTION: Rescission of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 416.1485(e) and 422.406(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 86–1(9).

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Darlynda Bogle, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–4237.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On January 23, 1986, we issued Acquiescence Ruling 86–1(9) to reflect the holding in *Summy* v. *Schweiker*, 688 F.2d 1233 (9th Cir. 1982), that an additional pension or compensation payment from the Veterans Administration (now the Department of Veterans Affairs) as a result of unreimbursed medical expenses is not income for Supplemental Security Income purposes.

Concurrent with the rescission of this ruling, we are adding a new paragraph (a)(7) to section 416.1103 of Social Security Regulations No. 16 (20 CFR 416.1103), which provides that payments from the Department of Veterans Affairs resulting from unusual medical expenses are not income for Supplemental Security Income purposes. Because the change in the regulations adopts the court's holding *Summy* on a nationwide basis, we are rescinding the current Acquiescence Ruling.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.805 Social Security-Survivors Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Dated: May 25, 1994.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 94–16049 Filed 7–1–94; 8:45 am]

BILLING CODE 4190–29–F

DEPARTMENT OF THE INTERIOR

National Park Service

Creve Coeur Lake Memorial Park Draft Supplemental Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Availability of draft supplemental environmental impact statement for determination of section 6(f) replacement lands for Creve Coeur Lake Memorial Park, St. Louis County, Missouri.

SUMMARY: The National Park Service, in compliance with section 102(2)(c) of the National Environmental Policy Act of 1069 (NEPA) [42 United States Code (U.S.C.) 4321 et seq. and 42 U.S.C. 4332, as amended] and with section 6(f) of the Land and Water Conservation Fund (LWCF) Act (Public Law 88–578, as amended), announces the availability of a draft supplemental environmental impact statement (DSEIS) evaluating additional replacement land for the 184 acres of Creve Coeur Lake Memorial Park converted from outdoor recreation use. Creve Coeur Lake Memorial Park is a county park which has received Federal financial assistance from the LWCF program. This DSEIS will supplement the final environmental impact statement (FEIS) for Page Avenue (Route D) extension, St. Louis and St. Charles Counties, Missouri, approved in a Record of Decision on January 6, 1993, by the Federal Highway Administration (FHWA).

The FHWA FEIS addressed construction of a ten-land elevated extension of Page Avenue across the southern tip of the park site assuming all necessary coordination with other Federal agencies has been satisfactorily accomplished. The National Park Service on December 11, 1992, adopted the FEIS for use in the environmental evaluation requirements of section 6(f) of the LWCF Act.

The initial proposal of 265 acres, submitted by the State of Missouri to replace the converted 184 acres was determined by the National Park Service as not offering "reasonably equivalent usefulness" to the extent necessary to reflect appropriately the loss of this unique natural area. Secretary Babbitt announced on May 18, 1993, in letters to Senators Danforth and Bond, that he did not intend to use his authority under section 6(f)(3) to block the construction of this highway project. He further stated that ". . . it is necessary to identify a significant amount of additional lands to be included in the mitigation package."

The DSEIS identifies a range of alternative land proposals, including additional substitution properties, and analyzes the "equivalent usefulness" of each candidate replacement land parcel. In addition, each of the replacement parcels have been evaluated for impacts on natural and cultural resources, the socioeconomic environment, and current uses.

The State of Missouri's and the NPS's preferred alternative for additional replacement land is identified in the DSEIS as Alternative B (Little Creve Coeur Lake Proposal). The alternative, consisting of approximately 440 acres and located southwest of the present Creve Coeur Lake Memorial Park, consists primarily of wetlands presently in agricultural use.

Copies of the DSEIS may be obtained from the responsible official, Mr. William Schenk, Acting Regional Director (refer to address below). Comments on the DSEIS should be received no later than August 8, 1994.

ADDRESSES: Comments on the DSEIS should be submitted to: Mr. William W. Schenk, Acting Regional Director National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3432.

Public reading copies of the DSEIS will be available for review at: Office of Public Affairs, Department of the Interior, National Park Service, 18th and C Streets, N.W., Washington, D.C. 20240, (202) 343–6843.

PUBLIC MEETING: A public meeting, at a date to be announced later, will be held in the St. Louis area during this 45-day review period to solicit public comments on the DSEIS.

FOR FURTHER INFORMATION CONTACT: Mr. Clay McDermeit, Chief, Western Heartland Division, Recreation Assistance Programs, National Park Service, Midwest Region, 1709 Jackson

the FEIS for use in the environmental evaluation requirements of section 6(f) of the LWCF Act.

The initial proposal of 265 acres, submitted by the State of Missouri to replace the converted 184 acres was determined by the National Park Service as not offering "reasonably equivalent usefulness" to the extent necessary to reflect appropriately the loss of this unique natural area. Secretary Babbitt announced on May 18, 1993, in letters to Senators Danforth and Bond, that he did not intend to use his authority under section 6(f)(3) to block the construction of this highway project. He further stated that ". . . it is necessary to identify a significant amount of additional lands to be included in the mitigation package."

The DSEIS identifies a range of alternative land proposals, including additional substitution properties, and analyzes the "equivalent usefulness" of each candidate replacement land parcel. In addition, each of the replacement parcels have been evaluated for impacts on natural and cultural resources, the socioeconomic environment, and current uses.

The State of Missouri's and the NPS's preferred alternative for additional replacement land is identified in the DSEIS as Alternative B (Little Creve Coeur Lake Proposal). The alternative, consisting of approximately 440 acres and located southwest of the present Creve Coeur Lake Memorial Park, consists primarily of wetlands presently in agricultural use.

Copies of the DSEIS may be obtained from the responsible official, Mr. William Schenk, Acting Regional Director (refer to address below). Comments on the DSEIS should be received no later than August 8, 1994.

ADDRESSES: Comments on the DSEIS should be submitted to: Mr. William W. Schenk, Acting Regional Director National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3432.

Public reading copies of the DSEIS will be available for review at: Office of Public Affairs, Department of the Interior, National Park Service, 18th and C Streets, N.W., Washington, D.C. 20240, (202) 343–6843.

PUBLIC MEETING: A public meeting, at a date to be announced later, will be held in the St. Louis area during this 45-day review period to solicit public comments on the DSEIS.

FOR FURTHER INFORMATION CONTACT: Mr. Clay McDermeit, Chief, Western Heartland Division, Recreation Assistance Programs, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3203.

Dated: June 16, 1994.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 94–16162 Filed 7–1–94; 8:45 am]

BILLING CODE 4310–70–P

Federal Subsistence Sheep Season; Baird Mountains, Alaska; Public Hearing

AGENCY: National Park Service, Interior.

ACTION: Public hearing regarding the federal subsistence sheep season in a portion of Unit 23 in the Baird Mountains, Alaska.

SUMMARY: A public hearing is scheduled regarding the federal subsistence sheep season in the Baird Mountain portion of Unit 23. Dependent upon the status of the sheep population, the Federal Subsistence Board may have to exercise its closure authority to conserve healthy and natural populations of sheep in the area. If such a closure becomes necessary, this public meeting will have fulfilled the requirements of 50 CFR 100.19. The purpose of the meeting will be to inform the public of the status of the sheep population and of potential proposals to the Federal Subsistence Board for action. Public comment will be accepted.

BACKGROUND: Aerial surveys conducted in the Baird Mountains (that area of Unit 23 south and east of the Noatak River) show a dramatic decline in the sheep population since 1989. In an effort to protect this population and facilitate its recovery, this area has been closed to all hunting of sheep since 1991, through closure actions of the Federal Subsistence Board. Survey results from July 1992 indicate the sharp decline has at least temporarily stopped; however, the population has not significantly grown. A sheep survey by the Alaska Department of Fish and Game and the National Park Service is scheduled for mid-July 1994. These survey results are expected to be available for discussion at the July 21 meeting. Should the survey and past biological data indicate a continuing threat to the conservation of a health population of sheep in the Baird Mountains of Unit 23, a proposal will be advanced to the Federal Subsistence Board to once again close federal public lands to sport hunting, under Alaska regulations, and, perhaps, to the subsistence seasons currently scheduled for August 10–September 20, 1994, and October 1–April 30, 1995. The Federal Subsistence Board will make a final determination on any such proposed closure, if advanced.

The National Park Service is hosting this meeting as the principal federal land manager in the Baird Mountains area. The federal lands in the Baird Mountain area are within the Noatak National Preserve, Kobuk Valley National Park, and Kobuk District, Bureau of Land Management.

DATE/LOCATION: The meeting will be held July 21, 1994, at 7:00 p.m. in the Public Lands Information Center, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Bob Gerhard, Superintendent, Northwest Alaska Areas, P.O. Box 1029 Kotzebue, Alaska 99752, telephone: (907) 442–3890.

David B. Ames,

Acting Regional Director.

[FR Doc. 94–16163 Filed 7–1–94; 8:45 am]

BILLING CODE 4310–70–M

Mtgs: Gettysburg National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the eleventh meeting of the Gettysburg National Military Park Advisory Commission.

Meeting Date and Time: July 21, 1994; 2 p.m. until 5 p.m.

Address: Holiday Inn, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

The Agenda for the meeting will focus on Sub-Committee Reports, briefing on traffic surveys—Federal Highway Program, report on status of Environmental Impact Statement—deer management, briefing on Gettysburg College land exchange status, and an operational update on park activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

FOR FURTHER INFORMATION CONTACT: Jose A. Cisneros, Superintendent,

Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325–1080, (717) 334–1124.

Dated: June 20, 1994.

Karen Wade,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92–16161 Filed 7–1–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 22–55]

Peanut Butter and Peanut Paste

AGENCY: United States International Trade Commission.

ACTION: Indefinite suspension of investigation and cancellation of public hearing.

SUMMARY: The Commission has indefinitely suspended this investigation pursuant to a request for such action by the President dated and received June 28, 1994 and has cancelled the hearing in this investigation scheduled for June 30, 1994.

EFFECTIVE DATE: June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: The subject investigation was instituted by the Commission on January 18, 1994. Notice of the investigation and the schedule for its conduct was published in the **Federal Register** of January 26, 1994 (59 FR 3734). Notice of the rescheduling of the public hearing to June 30 was published in the **Federal Register** of May 16, 1994 (59 FR 25503).

For further information concerning the conduct of this investigation and rules of general application see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 204, (19 CFR part 204).

This notice is published pursuant to section 204 of the Commission's rules (19 CFR 204.4).

Issued: June 29, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16183 Filed 7–1–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32527]

CSX Transportation, Inc.—Trackage Rights Exemption—Wheeling & Lake Erie Railway Company

Wheeling & Lake Erie Railway Company (W&LE) has agreed to grant to CSX Transportation, Inc. (CSXT), overhead trackage rights over approximately 101 miles of rail line, between W&LE's milepost 73.6, at Harmon, near Brewster, OH, and W&LE's milepost A–101.5, at Greenwich, OH, where CSXT's and W&LE's lines connect. The trackage rights will, in effect, substitute for trackage rights CSXT held over another W&LE line, between Brewster and Creston, OH. CSXT's discontinuance of its trackage rights and W&LE's abandonment of that line were the subject of a notice of exemption in *CSX Transportation, Inc.—Discontinuance of Trackage Rights Exemption—In Stark and Wayne Counties, OH*, Docket No. AB–55 (Sub–No. 445) (ICC served Sept. 22, 1992), and a petition for exemption in *The Wheeling & Lake Erie Railway Company—Abandonment Exemption—In Stark, Wayne, and Medina Counties, OH*, Docket No. AB–227 (Sub–No. 2X) (ICC served Oct. 1, 1992), respectively. The trackage rights were to become effective on June 23, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 24, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16228 Filed 7–1–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Nagel Motors, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been lodged with the United States District Court for the District of Wyoming in *United States of America v. Nagel Motors, Inc., et al.*, Civil Action No. 94CV146–J. The Complaint in this case alleges that the three defendant corporations and co-conspirators agreed to participate in discussions and information exchanges to facilitate an increase in the rates charged for automobile body repair services in the Casper, Wyoming area in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment enjoins the defendants from agreeing with any other automobile body repair shop to fix an hourly rate or part price or discount. It also enjoins the defendants from participating in any discussion with or communicating with any other automobile repair shop concerning adherence to or changes to, or the need or desirability of adhering to or changing, any hourly rate or part price or discount. The proposed Final Judgment further enjoins the defendants from disseminating any information to any automobile body repair shop concerning any planned or contemplated change in an hourly rate or part price or discount. Each defendant is required to establish an antitrust compliance program.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Office, Box 36046, Antitrust Division, U.S. Department of Justice, San Francisco, California 94102 (telephone: (415) 556–6300).

Constance K. Robinson,

Director of Operations, Antitrust Division.

In the United States District Court, District of Wyoming

United States of America, Plaintiff, vs. *Nagel Motors, Inc., Greiner Motor Company, Inc., and Benson Chevrolet, Inc.*, Defendants. Civil No. 94–CV–146–J.

Complaint

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants named herein, and complains and alleges as follows:

I. Jurisdiction and Venue

1. This Complaint is filed under Section 4 of the Sherman Act, 15 U.S.C. 4, as amended, in order to prevent and restrain the continuing violations by the defendants of Section 1 of the Sherman Act, 15 U.S.C. 1.

2. Each of the defendants maintains an office, transacts business, and is found within the District of Wyoming, within the meaning of 15 U.S.C. 22 and 28 U.S.C. 1391(c).

II. Defendants

3. Nagel Motors, Inc. ("Nagel") is made a defendant herein. Nagel operates a General Motors Corporation dealership with its principal place of business in Casper, Wyoming. Nagel sells both new and used automobiles and offers a full range of automobile repair services, including automobile body repair services. Nagel is engaged in interstate commerce and in activities substantially affecting interstate commerce.

4. Greiner Motor Company, Inc., d/b/a Greiner Motor & Marine ("Greiner"), is made a defendant herein. Greiner operates a Ford Motor Company dealership with its principal place of business in Casper, Wyoming. Greiner sells both new and used automobiles and offers a full range of automobile repair services, including automobile body repair services. Greiner is engaged in interstate commerce and in activities substantially affecting interstate commerce.

5. Benson Chevrolet, Inc. ("Benson") is made a defendant herein. Benson operates a General Motors Corporation dealership with its principal place of business in Casper, Wyoming. Benson sells both new and used automobiles and offers a full range of automobile repair services, including automobile body repair services. Benson is engaged

Justice, San Francisco, California 94102 (telephone: (415) 556–6300).

Constance K. Robinson,

Director of Operations, Antitrust Division.

In the United States District Court, District of Wyoming

United States of America, Plaintiff, vs. *Nagel Motors, Inc., Greiner Motor Company, Inc., and Benson Chevrolet, Inc.*, Defendants. Civil No. 94–CV–146–J.

Complaint

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants named herein, and complains and alleges as follows:

I. Jurisdiction and Venue

1. This Complaint is filed under Section 4 of the Sherman Act, 15 U.S.C. 4, as amended, in order to prevent and restrain the continuing violations by the defendants of Section 1 of the Sherman Act, 15 U.S.C. 1.

2. Each of the defendants maintains an office, transacts business, and is found within the District of Wyoming, within the meaning of 15 U.S.C. 22 and 28 U.S.C. 1391(c).

II. Defendants

3. Nagel Motors, Inc. ("Nagel") is made a defendant herein. Nagel operates a General Motors Corporation dealership with its principal place of business in Casper, Wyoming. Nagel sells both new and used automobiles and offers a full range of automobile repair services, including automobile body repair services. Nagel is engaged in interstate commerce and in activities substantially affecting interstate commerce.

4. Greiner Motor Company, Inc., d/b/a Greiner Motor & Marine ("Greiner"), is made a defendant herein. Greiner operates a Ford Motor Company dealership with its principal place of business in Casper, Wyoming. Greiner sells both new and used automobiles and offers a full range of automobile repair services, including automobile body repair services. Greiner is engaged in interstate commerce and in activities substantially affecting interstate commerce.

5. Benson Chevrolet, Inc. ("Benson") is made a defendant herein. Benson operates a General Motors Corporation dealership with its principal place of business in Casper, Wyoming. Benson sells both new and used automobiles and offers a full range of automobile repair services, including automobile body repair services. Benson is engaged in interstate commerce and in activities substantially affecting interstate commerce.

6. Whenever this Complaint refers to any corporation's act, deed, or transaction, it means that such corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they actively were engaged in the management, direction, control, or transaction of its business or affairs.

III. Co-Conspirators

7. Various firms and individuals, not named as defendants in this Complaint, have participated as co-conspirators with defendants in the violations alleged in this Complaint, and have performed acts and made statements in furtherance thereof.

IV. Trade and Commerce

8. During the period covered by this Complaint, each of the defendants has engaged in the business of providing automobile repair services, including automobile body repair services, in Casper, Wyoming.

9. Between January 1, 1991 and June 30, 1993 the defendants' total revenue from automobile body repair services was approximately $3,250,000.

10. During the period covered by this Complaint, the activities of each of the defendants that are the subject of this Complaint, and the activities of their co-conspirators, have been within the flow of, and have substantially affected, interstate trade and commerce.

11. Each of the defendants and their co-conspirators perform automobile body repair services for out-of-state customers as well as Wyoming customers.

12. Each of the defendants and their co-conspirators purchase substantial quantities of parts, paints and materials for use in automobile body repair from various sources located outside the State of Wyoming.

13. Each of the defendants and their co-conspirators do business with insurance carriers with headquarters located outside the State of Wyoming and receive payments from such insurance carriers which are issued from offices located outside the State of Wyoming.

V. Violation Alleged

14. During the period beginning at least as early as December 1990 and continuing through at least July 1993, the defendants and their co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. This offense is likely to recur unless the relief hereinafter sought is granted.

15. This combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators to participate in discussions and information exchanges to facilitate an increase in the rates charged for automobile body repair services in the Casper, Wyoming area.

16. For the purpose of forming and effectuating this combination and conspiracy, the defendants and their co-conspirators did the following things, among others:

(a) discussed insurance company requirements that an automobile body repair rate increase would not be accepted unless a requisite number of area automobile body repair shops had adopted such a rate increase;

(b) disseminated information relating to possible changes in automobile body repair rates; and

(c) discussed plans of various area automobile body repair shops concerning possible rate increases.

17. This combination and conspiracy had the following effects, among others:

(a) coordinated interaction among the defendants and co-conspirators was made more successful and more complete;

(b) price competition among the defendants and their co-conspirators for providing automobile body repair services in the Casper, Wyoming area has been unreasonably restrained and eliminated; and

(c) consumers have been deprived of the benefits of free and open competition in the purchase of automobile body repair services.

VI. Prayer

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that the defendants and their co-conspirators engaged in unlawful agreements, combinations and conspiracies in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

2. That each defendant, its officers, directors, agents, employees, and successors and all other persons acting or claiming to act on its behalf be enjoined, restrained ad prohibited for a period of ten years from:

(a) agreeing with any other automobile body repair shop to fix, establish, raise, stabilize or maintain any hourly rate or part price of discount;

(b) participating in any discussion with or communicating with any other

automobile body repair shop concerning adherence to or changes to, or the need or desirability of adhering to or changing, any hourly rate or part price or discount; and

(c) disseminating any information to any automobile body repair shop concerning any planned or contemplated change in an hourly rate or part price or discount.

3. That each defendant shall establish and maintain an antitrust compliance program.

4. That for ten years after the entry of the Final Judgment, on or before its anniversary date, each defendant shall file with plaintiff an annual Declaration reporting that such defendant has complied with the terms of the Final Judgment and has engaged in no activities of the type prohibited by the Final Judgment.

5. That plaintiff have such other relief as the nature of the case may require and the Court may deem just and proper.

6. That plaintiff recover the costs of this suit.

Dated: June 2, 1994.

Anne K. Bingaman,
Assistant Attorney General.
Robert E. Litan,
Deputy Assistant Attorney General.
March C. Schechter,
Gary R. Spratling,
Attorneys, U.S. Department of Justice.
David D. Freudenthal,
United States Attorney, District of Wyoming.
Richard B. Cohen,
Carla G. Addicks,
Attorneys, U.S. Department of Justice, Antitrust Division, Box 36046, 450 Golden Gate Avenue, San Francisco, CA 94102, (415) 556–6300.

In The United States District Court, District of Wyoming

United States of America, Plaintiff, vs. *Nigel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc.*, Defendants. Civil No. 94–CV–146.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the District of Wyoming;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court;

3. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: June 2, 1994.

For Plaintiff United States of America.
Anne K. Bingaman,
Assistant Attorney General.
Robert E. Litan,
Deputy Assistant Attorney General.
Mark C. Schechter,
Gary R. Spratling,
Attorneys, U.S. Department of Justice.
David D. Freudenthal,
United States Attorney, District of Wyoming.
Richard B. Cohen,
Carla G. Addicks,
Attorneys, U.S. Department of Justice, Antitrust Division, Box 36046, 450 Golden Gate Avenue, San Francisco, California 94102, (415) 556–6300.

For Defendant Nagel Motors, Inc.: Stoel, Rives, Boley, Jones & Grey.
By:
J. Ronald Sim,
One Union Square, 36th Floor, 600 University Street, Seattle, Washington 98101, (206) 386–7592.

For Defendant Greiner Motor Company, Inc.: Brown and Drew.
By:
W. Thomas Sullins II,
123 West 1st Street, Suite 800, Casper, Wyoming 82601, (307) 234–1000.

For Defendant Benson Chevrolet, Inc: By: Keith P. Tyler, Esq., P.O. Box 2671, Casper, Wyoming 82602, (307) 266–0129.

In The United States District Court, District of Wyoming

United States of America, Plaintiff, vs. *Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc.*, Defendants. Civil No. 94–CV–146.

Final Judgment

Plaintiff, United States of America, filed its Complaint on June 2, 1994. Plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed, as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used herein, the term:

(A) "Automobile body repair services" means work performed by automobile body repair shops applying new or used parts and labor to the damaged bodies and frames of automobiles and trucks for the purpose of repairing them;

(B) "Automobile body repair shop" means any person engaged in the performance and sale of automobile body repair services;

(C) "Hourly rate" means the dollar charge per hour in connection with time spent on automobile body repair services; and

(D) "Person" means any individual, partnership, corporation, association, firm, or any other business or legal entity.

III. Applicability

(A) This Final Judgment applies to the defendants and to each of their successors, assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV. Prohibited Conduct

Each of the defendants is enjoined and restrained from:

(A) Agreeing with any other automobile body repair shop to fix, establish, raise, stabilize or maintain any hourly rate or part price or discount;

(B) Participating in any discussion with or communicating with any other automobile body repair shop concerning adherence to or changes to, or the need or desirability of adhering to or changing, any hourly rate or part price or discount; and

(C) Disseminating any information to any automobile body repair shop concerning any planned or contemplated change in an hourly rate or part price or discount.

V. Compliance Program

(A) Each defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her defendant company to ensure that the company complies with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following requirements:

(1) Distributing, within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to all officers and to employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any hourly rate or part price or discount;

(2) Distributing in a timely manner a copy of this Final Judgment to any officer or employee who succeeds to a position described in Section V(A)(1);

(3) Briefing annually those persons designated in Section V(A)(1) on the meaning and requirements of this Final Judgment and the antitrust laws and advising them that the defendant's legal advisors are available to confer with them regarding compliance with the Final Judgment and the antitrust laws;

(4) Obtaining from each officer or employee designated in section V(A)(1) an annual written certification that he or she: (a) Has read, understands, and agrees to abide by the terms of this Final Judgment; (b) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer;

(5) Maintaining a record of persons to whom the Final Judgment has been distributed and from whom the certification in section V(A)(4) has been obtained; and

(6) Reporting to the Department of Justice any violation of the Final Judgment.

(B) Each defendant is ordered to distribute, within 60 days of entry of

(C) Disseminating any information to any automobile body repair shop concerning any planned or contemplated change in an hourly rate or part price or discount.

V. Compliance Program

(A) Each defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her defendant company to ensure that the company complies with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following requirements:

(1) Distributing, within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to all officers and to employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any hourly rate or part price or discount;

(2) Distributing in a timely manner a copy of this Final Judgment to any officer or employee who succeeds to a position described in Section V(A)(1);

(3) Briefing annually those persons designated in Section V(A)(1) on the meaning and requirements of this Final Judgment and the antitrust laws and advising them that the defendant's legal advisors are available to confer with them regarding compliance with the Final Judgment and the antitrust laws;

(4) Obtaining from each officer or employee designated in section V(A)(1) an annual written certification that he or she: (a) Has read, understands, and agrees to abide by the terms of this Final Judgment; (b) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer;

(5) Maintaining a record of persons to whom the Final Judgment has been distributed and from whom the certification in section V(A)(4) has been obtained; and

(6) Reporting to the Department of Justice any violation of the Final Judgment.

(B) Each defendant is ordered to distribute, within 60 days of entry of this Final Judgment, a copy of this Final Judgment to an owner or manager of each automobile body repair shop located within 50 miles of Casper, Wyoming, which is presently in business and which has purchased parts or automobile body repair services from the defendant in the last five years.

VI. Certification

(A) Within 75 days of the entry of this Final Judgment, each defendant shall certify to the plaintiff whether it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with section V (A)(1) and (B) above.

(B) For ten years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall file with the plaintiff an annual Declaration as to the fact and manner of its compliance with the provisions of sections IV and V(A).

VII. Plaintiff Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during such defendant's office hours to inspect and copy all documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees or agents of such defendant, who may have such defendant's counsel and/or their own counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in section VII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

(E) Nothing set forth in this Final Judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as the Civil Investigative Demand process provided by 15 U.S.C. 1311–1314 or a Federal grand jury, to determine if the defendant has complied with this Final Judgment.

VIII. Further Elements of the Final Judgment

(A) This Final Judgment shall expire ten years from the date of its entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

In The United States District Court, District of Wyoming

United States of America, Plaintiff, vs. *Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc.*, Defendants. Civil No. 94–CV–146.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 2, 1994, the United States filed a civil antitrust complaint alleging that Nagel Motors, Inc., Greiner Motor Company, Inc., Benson Chevrolet, Inc. and their co-conspirators conspired to unreasonably restrain competition among Casper, Wyoming automobile body repair shops in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint asks the Court to find that Nagel Motors, Inc., Greiner Motor Company, Inc., and Benson Chevrolet, Inc. have violated Section 1 of the Sherman Act and further requests the Court to enjoin the continuance of the conspiracy.

Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the Judgment or to punish violations of any of its provisions.

II. Practices Giving Rise to the Alleged Violations

Defendants, Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. are automobile dealerships operating in Casper, Wyoming. They each offer a full range of automobile repair services, including automobile body repair work.

The Government contends, and was prepared to show at trial, that during the period beginning as early as December 1990 and continuing through at least July 1993, the defendants and their co-conspirators agreed, combined and conspired to unreasonably restrain competition among Casper, Wyoming area automobile body repair shops in violation of Section 1 of the Sherman Act. These agreements, combinations and conspiracies consisted of discussions and information exchanges aimed at increasing the rates charged for automobile body repair services in the Casper area.

For the purpose of forming and effectuating these agreements, combinations and conspiracies, Nagel Motors, Inc., Greiner Motor Company, Inc., Benson Chevrolet, Inc., and their co-conspirators, communicated with each other concerning the need to increase automobile body repair rates and, in conjunction with these discussions, disseminated to each other information concerning contemplated changes in automobile body repair rates. As a result of their discussions and exchange of contemplated changes in repair rates, coordinated rate increases were put into effect.

These agreements, combinations and conspiracies suppressed price competition among the defendants and their co-conspirators for providing automobile body repair services in the Casper area and deprived consumers of the benefits of free and open competition in the purchase of automobile body repair services.

III. Explanation of the Proposed Final Judgment

The United States and Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission of any party with respect to any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section VIII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. discontinue all practices which unreasonably restrain competition among automobile body repair shops.

A. Prohibitions and Obligations

Under Section IV of the proposed Final Judgment, Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. are enjoined and restrained from: (1) Agreeing with any other automobile body repair shop to fix, establish, raise, stabilize or maintain any hourly rate or part price or discount; (2) participating in any discussion with or communicating with any other automobile body repair shop concerning adherence to or changes to, or the need or desirability of adhering to or changing, any hourly rate or part price or discount; and (3) disseminating any information to any automobile body repair shop concerning any planned or contemplated change in an hourly rate or part price or discount.

Section V of the proposed Final Judgment obligates Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. to implement and maintain an antitrust compliance program. This program would require each defendant to designate an Antitrust Compliance Officer within 30 days of entry of the Final Judgment. The Antitrust Compliance Officer for each defendant would be responsible for implementing and supervising the antitrust compliance program and compliance with the Final Judgment. Section V also obligates Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. to distribute within 60 days from entry of the Final Judgment, a copy of the Final Judgment to all officers and employees responsible for approving, disapproving, monitoring, recommending, or implementing any hourly rate or part price or discount, as well as any officer or employee who succeeds to such a position, and briefing those persons annually on the meaning and requirements of the Final Judgment and the antitrust laws and advising them that the defendant's legal advisors are available to confer with them regarding compliance with the Final Judgment and the antitrust laws. Further the Antitrust Compliance Officer must obtain from each such officer or employee, annual written certifications stating that he or she: (1) Has read, understands, and agrees to abide by the terms of the Final Judgment; (2) has been advised and understands that his or her failure to comply with the Final Judgment may result in conviction for criminal contempt of court; and (3) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer. The Antitrust Compliance Officer must maintain a record of recipients to whom the Final Judgment has been distributed and from whom certifications have been obtained. He or she must also report to the Department of Justice any violation of the Final Judgment. Finally, the Antitrust Compliance Officer must also distribute copies of the Final Judgment to the owner or manager of each automobile body repair shop, located within 50 miles of Casper, Wyoming, which is presently in business and has purchased parts or body repair services from the defendant in the last five years.

In addition to the prohibitions and obligations contained in Section IV and V, Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. are further obligated, under Section VI, to certify, within 75 days after the entry of the Final Judgment, that they have designated an Antitrust Compliance Officer and have distributed the Final Judgment in accordance with the Section V requirement. Section VI also requires Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc., for a period of ten years after the entry of the Final Judgment, on or before its anniversary date, to file with the Government, a statement as to the fact and manner of compliance with the provisions of Section V of the Final Judgment.

B. Scope of the Proposed Final Judgment

Section VIII of the proposed Final Judgment provides that the Final Judgment shall remain in effect for ten years.

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. and to each of their successors, assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

C. Effect of the Proposed Final Judgment on Competition

The relief set out in the proposed Final Judgment is designed to prevent recurrence of the activities alleged in the Complaint. The proposed Final Judgment's provisions are designed to remove the artificial restraints that the defendants have imposed on competition among automobile body repair shops and create an environment in which more vigorous competition may take place. It is intended to ensure that marketing and pricing decisions of Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. are made independently, without any discussions and conversations with each other. The Department of Justice believes that the proposed Final Judgment contains sufficient provisions to prevent further violations of the type alleged in the Complaint.

IV. Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides relief that will remedy the violations of the Sherman Act alleged in the United States' Complaint.

V. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a),

provisions of Section V of the Final Judgment.

B. Scope of the Proposed Final Judgment

Section VIII of the proposed Final Judgment provides that the Final Judgment shall remain in effect for ten years.

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. and to each of their successors, assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

C. Effect of the Proposed Final Judgment on Competition

The relief set out in the proposed Final Judgment is designed to prevent recurrence of the activities alleged in the Complaint. The proposed Final Judgment's provisions are designed to remove the artificial restraints that the defendants have imposed on competition among automobile body repair shops and create an environment in which more vigorous competition may take place. It is intended to ensure that marketing and pricing decisions of Nagel Motors, Inc., Greiner Motor Company, Inc. and Benson Chevrolet, Inc. are made independently, without any discussions and conversations with each other. The Department of Justice believes that the proposed Final Judgment contains sufficient provisions to prevent further violations of the type alleged in the Complaint.

IV. Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides relief that will remedy the violations of the Sherman Act alleged in the United States' Complaint.

V. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against any defendant in this matter.

VI. Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to Gary R. Spratling, Chief, San Francisco Office, Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, California 94102, within the 60-day period provided by the Act. These comments, and the Government's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to its entry if it should determine that some modification of the judgment is necessary to the public interest. The proposed judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the court for such orders as may be necessary or appropriate for the modification or enforcement of the judgment.

VII. Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed judgment. Consequently, none are filed herewith.

Gary R. Spratling,
Richard B. Cohen,
Carla G. Addicks,
Attorneys, U.S. Department of Justice

[FR Doc. 94–15911 Filed 7–1–94; 8:45 am]
BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Correction of Notice of Intent To Designate Recipient for the Provision of State Support for the Delivery of Legal Services in the State of Louisiana

AGENCY: Legal Services Corporation.
ACTION: Correction of notice of intention to award grant.

SUMMARY: In a Notice published on May 27, 1994 (59 FR 27585), the Legal Services Corporation announced its intention to make a grant to Louisiana Legal Consortium, Inc. to provide state support services to the Legal Services Corporation's recipient programs in the State of Louisiana. The intended grant for the remainder of 1994 was erroneously stated as $94,314. The correct amount is $78,596.

FOR FURTHER INFORMATION CONTACT: John Tull, Director, Office of Program Services, (202) 336–7264.

Dated: June 28, 1994.

John A. Tull,
Director, Office of Program Services

[FR Doc. 94–16176 Filed 7–1–94; 8:45 am]
BILLING CODE 7050-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.
ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 21, 1994

Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This combined meeting will review Fellowships for University Teachers and Fellowships for College Teachers applications in Art History I, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

2. *Date:* July 22, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in American History and Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

3. *Date:* July 22, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers applications in Anthropology, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

4. *Date:* July 25, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Music, Dance, Theater and Film History and Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

5. *Date:* July 25, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers applications in Music, Theater and Film, submitted to the Division of Fellowships and Seminars, for projects after June 1, 1995.

6. *Date:* July 26, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 415
Program: This combined meeting will review Fellowships for University and Fellowships for College Teachers applications in Art History II, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

7. *Date:* July 27, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for College Teachers applications in Languages and Literatures I, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

8. *Date:* July 27, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers applications in Languages and Literatures II, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

9. *Date:* July 28, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers applications in American History I, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

10. *Date:* July 29, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for College Teachers applications in Sociology Psychology, and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

David Fisher,
Advisory Committee Management Officer.
[FR Doc. 94–16192 Filed 7–1–94; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Haddam Neck Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise Technical Specification (TS) Section 3/4.5.1, "ECCS Subsystems—Tavg Greater Than or Equal to 350 °F," by adding a new ACTION Statement "a" which increases the allowed outage time for the centrifugal charging pumps from 72 hours to 7 days. The Technical Specification changes will reduce the risk of an unnecessary shutdown to perform charging pump repairs. The proposed action is in accordance with the licensee's amendment request dated November 2, 1993, as supplemented February 28, 1994, and May 31, 1994.

The Need for the Proposed Action

The current TS allows a charging pump to be inoperable for a period of up to 72 hours. Experience at the plant has shown that 72 hours may not be sufficient to accomplish certain repairs such as rebuilding the rotating assembly or complete pump replacement. Increasing the allowed outage time to 7 days provides sufficient time to perform such repairs without having to shut the plant down.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The increase in the core damage frequency due to internal events as result of the increased allowed outage time is 3.0E–7 per year or less than 1 percent of the current core damage frequency of 1.8E–4 per year for internal events. The increase in the core damage frequency due to external events as result of the increased outage time has been determined to be insignificant for external events. The unavailability of the charging pumps has limited effects on the risk because the charging pumps are not credited for during the injection phase of a design basis accident and are the backup to the high-pressure safety injection pumps during the recirculation phase if power is available. The only use of the charging pumps credited in the safety analysis is for two path sump recirculation, which is later in the accident and is manually initiated.

The TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment and would result in unjustified cost to the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

The NRC staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letters dated November 2, 1993, as supplemented February 28, and May 31, 1994. These letters are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown Connecticut 06547.

Dated at Rockville, Maryland, this 27th day of June 1994.

For the Nuclear Regulatory Commission.
John F. Stolz,
Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 94–16196 Filed 7–1–94; 8:45 am]
BILLING CODE 7590–01–M

GPU Nuclear Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16 issued to GPU Nuclear Corporation (GPUN, the licensee) for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would revise Technical Specification Section 2.3.D to change the setpoints "Reactor High Pressure, Relief Valve Initiation" by increasing the setpoint value by 15 psig for each of the Electromatic Relief Values in the Automatic Depressurization System.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

The NRC staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letters dated November 2, 1993, as supplemented February 28, and May 31, 1994. These letters are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown Connecticut 06547.

Dated at Rockville, Maryland, this 27th day of June 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16196 Filed 7–1–94; 8 45 am]

BILLING CODE 7590–01–M

GPU Nuclear Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16 issued to GPU Nuclear Corporation (GPUN, the licensee) for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would revise Technical Specification Section 2.3.D to change the setpoints "Reactor High Pressure, Relief Valve Initiation" by increasing the setpoint value by 15 psig for each of the Electromatic Relief Values in the Automatic Depressurization System.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 4, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW.,

Washington, DC 20037 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 15, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated At Rockville, Maryland, this 27th day of June 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16195 Filed 7–1–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. EA 93–236, IA 94–003; ASLBP Nos. 94–692–05–EA, 94–693–04–EA]

Nuclear Support Services, Inc., EA 93–236: Order Requiring the Removal of an Individual From NRC Licensed or Regulated Activities and Order Directing Review of Personnel Security Files (Effective Immediately) and Robert C. Dailey IA 94–003: Order Prohibiting Involvement in Certain NRC–Licensed or Regulated Activities (Effective Immediately); Hearing and Prehearing Conference

This Licensing Board has been established to preside over the hearing requested on April 29, 1994 by Nuclear Support Services, Inc. (NSSI) and Mr. Robert C. Dailey, challenging two enforcement actions issued by the NRC Staff on March 22, 1994. The enforcement actions were published at 59 FR 14429 (March 28, 1994) (NSSI) and 59 FR 14688 (March 29, 1994) (Dailey). The first of these actions would order NSSI to remove an individual from NRC-licensed or regulated activities for five years; the second would prohibit that same individual from participating in NRC-licensed or regulated activities for the same period. In each case, the issue for hearing, as specified in the respective enforcement actions, is whether the particular order should be sustained.

By Memorandum and Order (Consolidating Proceedings and Granting Extension of Time), dated May 4, 1994 (unpublished), the Licensing Board granted the hearing requests and consolidated the two proceedings.

Notice is hereby given that the Atomic Safety and Licensing Board will conduct a prehearing conference in this consolidated proceeding on Tuesday, July 12, 1994, beginning at 2:00 p.m. The conference will be held in the new Commission hearing room, 3rd floor, Two White Flint North, 11545 Rockville Pike, North Bethesda, Maryland. Members of the public are invited to attend but may not participate in the course of the conference.

Among matters to be discussed will be the precise issues for the hearing, discovery, and scheduling. Parties are invited to submit proposed agenda for the conference, to be in the hands of Board members by close of business Thursday, July 7, 1994.

As permitted by 10 CFR 2.715(a), persons who are not parties to the proceeding are invited to submit limited appearance statements. Such statements do not constitute testimony or evidence but, to the extent pertinent to issues in these proceedings, may assist the Board and/or parties in their deliberations as to scope of the issues to be considered. Such statements should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. A copy should also be served on the Chairman of this Licensing Board, Atomic Safety and Licensing Board Panel, Mail Station T–3F23, Washington, D.C. 20555. Oral limited appearance statements may be heard during the course of the proceeding but will not be entertained at the July 12, 1994 prehearing conference.

Bethesda, Maryland, June 17, 1994.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 94–16197 Filed 7–1–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of a request by the Washington Public Power Supply System, (the licensee) for an amendment to Facility Operating License No. NPF–21 issued to the licensee for operation of the Washington Nuclear Project No. 2, located in Benton County, Washington. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 13, 1994 (59 FR 17609).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to reflect management and organizational changes at the Washington Public Power Supply System (the licensee) for operation of the WNP–2 facility. The proposed changes would (1) modify the reporting responsibility of the quality assurance organization from the Managing Director to the Assistant Managing Director, Operations (AMDO), and (2) modify the appointment authority for the Corporate Nuclear Safety Review Board (CNSRB) from the Managing Director to the AMDO. These changes are proposed to reflect the current designation of the AMDO as the licensee's designated official with corporate responsibility for overall plant nuclear safety, and as the direct report for the CNSRB.

In addition, the proposed change would (1) delete the specific requirement for health physics/chemistry program procedures, (2) modify the titles of two positions on the Plant Operations Committee (POC) to reflect revised organizational titles, (3) modify the CNSRB composition requirements from nine personnel to a minimum of nine personnel, and (4) delete the requirement that the CNSRB Executive Secretary be designated from the CNSRB membership. The NRC staff has concluded that part of the licensee's request cannot be granted. The staff denied the proposed change to modify the CNSRB composition requirements from nine personnel to a minimum of nine personnel, because the proposed change does not specify a maximum number of CNSRB members and is inconsistent with the existing TS provision that 5 persons shall constitute a quorum of the CNSRB. The licensee was notified of the Commission's partial denial of the proposed change by a letter dated June 28, 1994.

By August 4, 1994, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M.H. Philips, Jr., Esq., Winston and Strawn, 1400 L Street NW., Washington, DC 20005–3502, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated February 17, 1994, and (2) the Commission's letter to the licensee dated June 28, 1994.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 28th day of June 1994.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Project Director, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16198 Filed 7–1–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of SF 3106 and SF 3106A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for a reclearance of an information collection. Form SF 3106 and SF 3106A are used by former Federal employees who contributed to

By August 4, 1994, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M.H. Philips, Jr., Esq., Winston and Strawn, 1400 L Street NW., Washington, DC 20005–3502, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated February 17, 1994, and (2) the Commission's letter to the licensee dated June 28, 1994.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 28th day of June 1994.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Project Director, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16198 Filed 7–1–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of SF 3106 and SF 3106A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for a reclearance of an information collection. Form SF 3106 and SF 3106A are used by former Federal employees who contributed to the Federal Employee's Retirement System to receive a refund of retirement deductions and any other money to their credit in the Retirement fund.

There are estimated to be 81,000 respondents for SF 3106 and 40,500 respondents for SF 3106A. It takes approximately 27 minutes to complete SF 3106 and 6 minutes to complete SF 3106A. The annual burden for SF 3106 is 36,450 hours and the annual burden for SF 3106A is 4,050.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before August 4, 1994.

ADDRESSES: Send or deliver comments to—

Daniel A. Green, Retirement and Insurance Group, FERS Division, U.S. Office of Personnel Management, 1900 E Street NW., room 4429, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis and Design, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–16053 Filed 7–1–94; 8:45 am]

BILLING CODE 6325–01–M

Request for Reclearance of Form RI 20–80

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 20–80, Alternative Annuity Election, is used for individuals who are eligible to elect whether to receive a reduced annuity and a lump-sum payment equal to their retirement contributions (alternative form of annuity) or an unreduced annuity and no lump sum.

Approximately 9,600 RI 20–80 forms are completed annually. The form requires approximately 20 minutes to complete. The annual burden is 3,200 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESS: Send or deliver comments to—

Lorraine E. Dettman, Chief, Retirement and Insurance Group, Operations Support Division, Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COOPERATION CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–16051 Filed 7–1–94; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0940.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on June 15, 1994 (59 FR 30815). Individual authorities established or revoked under Schedules A and B and established under Schedule C between May 1 and May 31, 1994, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, is published each year.

Schedule A

No Schedule A authorities were established or revoked during May 1994.

Schedule B

Department of Commerce

Revoked on position, of Minority Business Opportunity Specialist, at

grades GS–9 through GS–15, in the Minority Business Development agency. Effective May 2, 1994.

National Endowment for the Humanities

Established one position, Humanities Administrator, in the Division of Research Programs by amending as established position. Effective May 2, 1994.

Schedule C

Agency for International Development

Administrative Operations Assistant to the Chief of Staff. Effective May 19, 1994.

Department of Agriculture

Staff Assistant to the Administrator, Farmers Home Administration. Effective May 4, 1994.

Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective May 10, 1994.

Confidential Assistant to the Administrator, Rural Electrification Administration. Effective May 10, 1994.

Confidential Assistant to the Administrator, Farmers Home Administration. Effective May 17, 1994.

Department of the Air Force (DOD)

Confidential Assistant for Environmental Legislation to the Deputy Assistant Secretary for Environmental Safety and Occupational Health. Effective May 12, 1994.

Department of the Army (DOD)

Executive Assistant to the Secretary of the Army. Effective May 19, 1994.

Department of Commerce

Director, Office of Energy, Infrastructure and Machinery to the Deputy Assistant Secretary for Basic Industries. Effective May 10, 1994.

Special Assistant to the General Counsel. Effective May 11, 1994.

Department of Defense

Special Assistant to the Deputy to the Under Secretary of Defense for Policy Support. Effective May 4, 1994.

Paralegal Specialist to a Judge, U.S. Court of Military Appeals. Effective May 23, 1994.

Paralegal Specialist to a Judge, U.S. Court of Military Appeals. Effective May 23, 1994.

Paralegal Specialist to the Chief Judge, U.S. Court of Military Appeals. Effective May 23, 1994.

Personal and Confidential Assistant to the Assistant Secretary of Defense for Economic Security. Effective May 26, 1994.

Department of Education

Confidential Assistant to the Deputy Assistant Secretary. Effective May 5, 1994.

Special Assistant to the Deputy Chief of Staff. Effective May 6, 1994.

Director, Scheduling and Briefing Staff to the Chief of Staff, Office of the Secretary. Effective May 23, 1994.

Department of Energy

Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective May 2, 1994.

Staff Assistant to the Deputy Associate Deputy Secretary for Field Management. Effective May 3, 1994.

Staff Assistant to the Assistant Secretary for Environmental Restoration and Waste Management. Effective May 3, 1994.

Policy Analyst to the Assistant Secretary for Policy, Planning and Program Evaluation. Effective May 4, 1994.

Staff Assistant to the Director, Office of Public Accountability. Effective May 10, 1994.

Special Assistant to the Press Secretary, Press Services Division, Office of Public and Consumer Affairs. Effective May 31, 1994.

Department of Health and Human Services

Special Assistant to the Director, Office of Community Services, Administration for Children and Families. Effective May 2, 1994.

Special Outreach Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective May 5, 1994.

Special Assistant to the Director, Office of Public Affairs, Administration for Children and Families. Effective May 6, 1994.

Special Assistant to the Director, Office of Community Services, Administration for Children and Families. Effective May 6, 1994.

Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services). Effective May 19, 1994.

Department of Housing and Urban Development

Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs. Effective May 4, 1994.

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective May 10, 1994.

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective May 10, 1994.

Deputy Assistant Secretary for Operations to the Assistant Secretary for Community Planning and Development. Effective May 10, 1994.

Special Advisor to the Assistant Secretary for Community Planning and Development. Effective May 10, 1994.

Deputy Assistant Secretary for Planning to the Assistant Secretary for Community Planning. Effective May 10, 1994.

Department of Justice

Secretary (OA) to the United States Attorney. Effective May 10, 1994.

Deputy Assistant Attorney General to the Assistant Attorney General, Office of Legislative Affairs. Effective May 16, 1994.

Department of Labor

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 10, 1994.

Special Assistant to the Assistant Secretary for Public Affairs. Effective May 10, 1994.

Special Assistant to the Administrator, Wage and Hour Division Effective May 26, 1994.

Department of State

Staff Assistant to the Deputy Secretary of State. Effective May 5, 1994.

Staff Assistant to the Population Coordinator, Bureau of Oceans and International Environment and Scientific Affairs. Effective May 5, 1994.

Department of Transportation

Deputy Director of Public Affairs to the Assistant to the Secretary and Director of Public Affairs. Effective May 4, 1994.

Special Assistant to the General Counsel. Effective May 12, 1994.

Scheduling Assistant to the Special Assistant for Scheduling and Advance. Effective May 12, 1994.

Special Assistant to the Director, Small and Disadvantaged Business Utilization. Effective May 19, 1994.

Department of Treasury

Confidential Assistant to the Deputy Secretary of the Treasury. Effective May 9, 1994.

Senior Advisor to the Treasurer of the United States. Effective May 9, 1994.

Policy Advisor to the Assistant Secretary (Enforcement). Effective May 19, 1994.

Policy Advisor to the Assistant Secretary (Enforcement). Effective May 19, 1994.

Policy Advisor to the Assistant Secretary (Enforcement). Effective May 19, 1994.

Policy Advisor to the Assistant Secretary (Enforcement). Effective May 19, 1994.

Staff Assistant to the Deputy Executive Secretary (Public Liaison). Effective May 25, 1994.

Deputy Executive Director for Special Programs to the Executive Director, United States Bond Division, Bureau of Public Debt. Effective May 25, 1994.

Federal Mine Safety and Health Review Commission

Attorney-Advisor (General) to the Chairman. Effective May 5, 1994.

General Services Administration

Special Assistant to the Chief of Staff. Effective May 31, 1994.

National Aeronautics and Space Administration

Public Affairs Specialist to the Senior Public Affairs Specialist. Effective May 2, 1994.

Legislative Affairs Specialist to the Special Assistant to the Associate Administrator for Legislative Affairs. Effective May 12, 1994.

White House Liaison Officer to the Administrator. Effective May 31, 1994.

National Credit Union Administration

Deputy Director to the Director of Community Development Credit Unions. Effective May 12, 1994.

Executive Assistant to the Board Member. Effective May 24, 1994.

National Endowment for the Arts

Executive Secretary to the Chairman. Effective May 12, 1994.

National Mediation Board

Confidential Assistant to the Chairman. Effective May 19, 1994.

Small Business Administration

Assistant Administrator for Marketing and Outreach to the Associate Administrator for Communications and Public Liaison. Effective May 23, 1994.

Special Assistant to the Associate Administrator for Communications and Public Liaison. Effective May 26, 1994.

Associate Administrator for Field Operations to the Administrator. Effective May 26, 1994.

Director of Intergovernmental Affairs to the Associate Administrator for Communications and Public Liaison. Effective May 26, 1994.

Special Assistant to the Administrator and Director of Special Capital Initiatives to the Associate Deputy Administrator for Economic Development. Effective May 26, 1994.

Policy Advisor to the Assistant Secretary (Enforcement). Effective May 19, 1994.

Staff Assistant to the Deputy Executive Secretary (Public Liaison). Effective May 25, 1994.

Deputy Executive Director for Special Programs to the Executive Director, United States Bond Division, Bureau of Public Debt. Effective May 25, 1994.

Federal Mine Safety and Health Review Commission

Attorney-Advisor (General) to the Chairman. Effective May 5, 1994.

General Services Administration

Special Assistant to the Chief of Staff. Effective May 31, 1994.

National Aeronautics and Space Administration

Public Affairs Specialist to the Senior Public Affairs Specialist. Effective May 2, 1994.

Legislative Affairs Specialist to the Special Assistant to the Associate Administrator for Legislative Affairs. Effective May 12, 1994.

White House Liaison Officer to the Administrator. Effective May 31, 1994.

National Credit Union Administration

Deputy Director to the Director of Community Development Credit Unions. Effective May 12, 1994.

Executive Assistant to the Board Member. Effective May 24, 1994.

National Endowment for the Arts

Executive Secretary to the Chairman. Effective May 12, 1994.

National Mediation Board

Confidential Assistant to the Chairman. Effective May 19, 1994.

Small Business Administration

Assistant Administrator for Marketing and Outreach to the Associate Administrator for Communications and Public Liaison. Effective May 23, 1994.

Special Assistant to the Associate Administrator for Communications and Public Liaison. Effective May 26, 1994.

Associate Administrator for Field Operations to the Administrator. Effective May 26, 1994.

Director of Intergovernmental Affairs to the Associate Administrator for Communications and Public Liaison. Effective May 26, 1994.

Special Assistant to the Administrator and Director of Special Capital Initiatives to the Associate Deputy Administrator for Economic Development. Effective May 26, 1994.

United States Information Agency

Director, Policy and Planning Unit to the Deputy Director, United States Information Agency. Effective May 10, 1994.

Public Affairs Specialist to the Director, New York Foreign Press Center, New York, NY. Effective May 16, 1994.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1994–1958 Comp., P.218

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–16052 Filed 7–1–94; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket No. A94–12 Order No. 1019]

Petroleum, West Virginia 26161 (Nancy L. Putnam, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued June 28, 1994.

Docket Number: A94–12
Name of Affected Post Office: Petroleum, West Virginia 26161
Name(s) of Petitioner(s): Nancy L. Putnam and others
Type of Determination: Closing
Date of Filing of Appeal Papers: June 22, 1994
Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by July 7, 1994.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

June 22, 1994—Filing of Appeal letters
June 28, 1994—Commission Notice and Order of Filing of Appeal
July 18, 1994—Last day of filing of petitions to intervene [*see* 39 C.F.R. § 3001.111(b)]
July 27, 1994—Petitioners' Participant Statements or Initial Briefs [*see* 39 C.F.R. § 3001.115 (a) and (b)]
August 17, 1994—Postal Service's Answering Brief [*see* 39 C.F.R. § 3001.115(c)]
September 1, 1994—Petitioners' Reply Briefs should Petitioners choose to file them [*see* 39 C.F.R. § 3001.115(d)]
September 8, 1994—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. § 3001.116]
October 21, 1994—Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 94–16129 Filed 7–1–94; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34270; File No. SR–CBOE–94–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Equity and SPX RAES Participation Requirements

June 28, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 22, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-

regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to impose fees on market makers who fail to observe certain participation duties on the Retail Automated Execution System ("RAES") for equity and Standard & Poor's 500 Index ("SPX") classes of options. Specifically, the CBOE proposes to amend CBOE Rules 8.16m, "RAES Eligibility in Equity Options" and 24.16, "RAES Eligibility in SPX/NDX," to impose the following fees for failures to satisfy the rules' log-off requirements: (1) a fee of $100.00 for one to three failures within one twelve-month period; (2) a fee of $250.00 for four to six failures within one twelve-month period; and (3) a fee of $500.00 for seven or more failures within one twelve-month period. In addition, the CBOE proposes to issue a Regulatory Circular clarifying market makers' RAES responsibilities with respect to equity and SPX options classes and indicating that members who fail to meet the long-on requirements of CBOE Rules 8.16(b) or 24.16(b) ordinarily will be suspended from participation on RAES at the applicable trading station for a period of 21 consecutive business days.[1]

The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE stats that the purpose of the proposed rule change is to impose fees on members who fail to observe the RAES log-off requirements set forth in CBOE Rules 8.16(a) and 24.16(a) relative to equity options and SPX index options. The CBOE proposes to incorporate the following fee schedule into CBOE Rules 8.16(a) for equity options) and 24.16(a) (for SPX options) for failures to comply with the log-off requirements: (1) a fee of $100.00 for one to three failures within one twelve-month period; (2) a fee of $250.00 for four to six failures within one twelve-month period; and (3) a fee of $500.00 for seven or more failures within one twelve-month period.

The proposed fees for failures to observe the log-off requirements for equity and SPX RAES are identical in amounts and graduated structure to the fees proposed for Standard & Poor's 100 Index ("OEX") options in File No. SR–CBOE–94–12. Under both proposals, the fee amounts will increase in relation to the number of times each calendar year that a member does not log off as required.

As is the case of fees applicable to OEX RAES participants under existing CBOE Rule 24.17, "RAES Eligibility in "OEX," the proposed fees do not constitute disciplinary action, although the CBOE's review procedures in Chapter XIX, "Hearings and Review," of the CBOE's rules will be available for review of fees assessed under the proposal. The Commission has noted the appropriateness of such fees and appeal rights in a related context.[2]

In addition to establishing a fee schedule, the CBOE proposes to issue a Regulatory Circular that will reaffirm the nature of CBOE market makers' RAES log-on and log-off responsibilities in respect of equity and SPX options classes and will describe the consequences that attach to any market maker's failure to observe these responsibilities. The Regulatory Circular addresses four points. First, CBOE Rules 8.16(a)(iii) and 24.16(a)(iii) require any market maker who has logged onto RAES at a trading station on any given trading day to log off RAES whenever the market maker leaves the trading crowd for more than "a brief interval." The Regulatory Circular interprets "a brief interval" to mean "five consecutive minutes." Under this interpretation any market maker who signs onto RAES at a particular trading station during a trading session must log off the system prior to leaving that station for more than five consecutive minutes. The CBOE believes that this interpretation should eliminate ambiguity about the amount of time a market maker may be away from the trading crowd without signing off RAES.

Second, the Regulatory Circular notes that graduated fees will be assessed under CBOE Rules 8.16(a) and 24.16(a) for failure to observe the RAES log-off requirement.

Third, the Regulatory Circular reflects the MPC's designation pursuant to CBOE Rules 8.16(b) and 24.16(b) that the expiration month log-on requirements reflected in those rules will be enforced in all classes of equity and SPX options for which RAES is available. Accordingly, any market maker who has logged onto RAES in accordance with CBOE Rules 8.16(a) or 24.16(a) during an expiration month for a given class of options must log on whenever present at the applicable trading station, until expiration.

Fourth, the Regulatory Circular reflects a determination by the MPC, pursuant to its authority under CBOE Rules 8.16(d) and 24.16(d), that any market maker who fails to meet the log-on requirements under CBOE Rules 8.16(b) or 24.16(b) ordinarily will be suspended from participation on RAES at the applicable trading station for a period of 21 consecutive business days.[3]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to enable the CBOE to enforce compliance with the Act, to promote just and equitable principles of trade, and to protect investors and the public interest by assuring that equity and SPX options market makers are aware of and meet their responsibilities pertaining to RAES.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption

[1] CBOE Rule 8.16(b) states that in option classes designated by the market Performance Committee ("MPC"), any market maker who has logged on RAES at any time during an expiration month must log on the RAES system in that option class whenever he is present in that trading crowd until the next expiration. CBOE Rule 24.(b) states that unless exempted by the MPC, any market maker who has logged on RAES at any time during an expiration month must log on the RAES system in SPX/NSX whenever he is present in that trading crowd until the expiration.

[2] Specifically, in approving a CBOE proposal that included procedures for contesting the fees assessed for delayed submission of trade data the Commission stated that "Although such formalized procedures are unusual for challenging fee assessments, they actually make the imposition of the fee fairer by allowing members to challenge erroneous fee charges. Moreover, these procedures are reasonably designed to afford a member assessed fee the opportunity to challenge the veracity of the assessments." *See* Securities Exchange Act Release No. 30001 (November 26, 1991), 56 FR 63529 (order approving File No. SR–CBOE–90–06).

[3] In contrast to this suspension provision, File No. SR–CBOE–94–12 proposes that members who fail to observe the RAES log-on requirements for OEX options would be subject to a fee. The CBOE has determined that suspensions, not fees, are the appropriate mechanisms to promote compliance with RAES log-on requirements for equity and SPX options. The CBOE states that it may introduce fees for failures to observe the log-on requirements for equity and SPX options at a later date if experience so dictates.

protect investors and the public interest by assuring that equity and SPX options market makers are aware of and meet their responsibilities pertaining to RAES.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 26, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 94-16186 Filed 7-1-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34268; File No. SR-CHX-94-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to Disclosure of Pending Formal Exchange Disciplinary Proceeding to the CRD

June 28, 1994

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice if hereby given that on May 6, 1994, the Chicago Stock Exchange, Inc. ("CHX") or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to add Rule 9 to Article XII of the Exchange's Rules. Rule 9 to Article XII is proposed to be provided as follows:

The initiation of, and all significant changes in the status of, a formal disciplinary proceeding brought by the Exchange shall be reported by the Exchange to the Central Registration Depository operated by the National Association of Securities Dealers, Inc. For purposes of this Rule, significant changes in the status of a pending formal disciplinary proceeding shall include, but are not limited to, issuance of a decision by the President, the filing of an appeal; to and/or the issuance of a decision by, a Judiciary Committee, the Exchange's Executive Committee or Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The proposed rule change authorizes the Exchange to provide information to the Central Registration Depository ("CRD") [1] concerning pending formal Exchange disciplinary proceedings for disclosure to the public. A formal disciplinary proceeding is considered to be pending from the time charges are issued [2] until the proceeding is completed.[3] Currently, the Exchange discloses information only on final Exchange disciplinary actions to the CRD.

Information concerning final disciplinary actions taken by the Exchange and other SROs and regulatory organizations and certain criminal convictions contained in the CRD has been disclosed to the public pursuant to the NASD's 800 number service since October 1991.[4]

On July 1, 1993, the SEC approved an NASD rule change to make more information available to the general public regarding pending disciplinary proceedings or actions taken by federal or state securities agencies and SROs that relate to securities or commodities transactions, and regarding criminal indictments and informations.[5]

---

[6] 17 CFR 200.30-3(a)(12) (1993).

[1] The CRD is an automated industry database containing employment and disciplinary history of members and associated persons registered with self-regulatory organizations ("SROs") and state securities agencies. The CRD is operated by the National Association of Securities Dealers, Inc. ("NASD") with input on policy and other matters from federal and state agencies and other SROs, including the Exchange.

[2] CHX Article XII, Rule 1(b) provides, in part, that if in the judgment of the President it shall appear that an accused has committed a default or other offense in violation of the Constitution or Rules of the Exchange the President shall, except as hereinafter provided, direct the staff to prefer written charges against the accused. A copy of such charges shall be served upon the accused. The accused shall also be served with written notice of when and where the charges will be heard.

[3] *See* CHX Article XII, Rule 7.

[4] The Commission subsequently approved the NASD's procedures for operating its 800 number service in Securities Exchange Act Release No. 30629 (April 23, 1992), 57 FR 18535 (April 30, 1992) (File No. SR-NASD-91-39) ("800 Number Service Plan Approval Order").

[5] *See* Securities Exchange Act Release No. 32568 (July 1, 1993), 59 FR 36723 (July 8, 1993) (File No.

Continued

Information on pending SRO disciplinary proceedings, among other events, is currently also in the CRD, to the extent that reports are made by members, member organizations and associated persons pursuant to their reporting obligations on the Uniform Application for Securities Industry Registration or Transfer (Form U–4) and Form BD, the uniform applications form for broker-dealer registration. However, the Exchange does not currently report such pending events to the CRD.

The submission of information concerning pending formal disciplinary proceedings directly by the Exchange would enhance the CRD database since the CRD would not have to rely solely on reports from members, member organizations and associated persons.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–12 and should be submitted by July 26, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16189 Filed 7–1–94; 8:45 am]

BILLING CODE 8010–01–M

SR–NASD–93–26) ("Pending Event Disclosure Approval Order").

[Release No. 34–34257; File No. SR–NSCC–94–11]

Self Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying Fund/Serv Fee

June 24, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on June 21, 1994, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is as follows:

Italicized text indicates additions

Bracketed text indicates deletions

Addendum A.

* * * * *

IV. Other Service Fees

* * * * *

Q. Fund/Serv (FN10), $0.40 per side per order.

* * * * *

(10) This fee applies to Members utilizing the revised Fund/Serv service available after December 31, 1992. [Members not utilizing the revised service will continue to be charged $.50 per side per settled transaction.] *Effective July 1, 1994 for Members who do not convert to the revised Fund/Serv service by July 31, 1994, the fee will be $.75 per side per settled transaction.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC advised its members that it would discontinue the old Fund/Serv service on June 30, 1994. Because some members have not completed the conversion from the old Fund/Serv service to the new Fund/Serv service, NSCC has determined not to discontinue the old Fund/Serv service on June 30, 1994, as originally planned.

The purpose of the proposed rule change is to modify the fees charged by NSCC for the old Fund/Serv service so as to reflect, in part, the additional cost of simultaneously maintaining both versions of the Fund/Serv system. Currently, old Fund/Serv transactions are $.50 per side per settled transaction. Effective July 1, 1994, for members who do not convert to the revised Fund/Serv service by July 31, 1994, the fee will be $.75 per side per settled transaction. Members who successfully achieve conversion from the old Fund/Serv service to the new Fund/Serv service by July 31, 1994, therefore, are being given an additional one-month grace period from the effectiveness of the new fee.

[1] 15 U.S.C. § 78s(b)(1) (1988).

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Securities Exchange Act Rule 19b–4 in that the proposed rule change establishes or changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NSCC–94–11 and should be submitted by July 26, 1994.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Securities Exchange Act Rule 19b–4 in that the proposed rule change establishes or changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NSCC–94–11 and should be submitted by July 26, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary

[FR Doc. 94–16185 Filed 7–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34269; File No. SR–NYSE–94–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Audit Trail Account Identification Codes

June 28, 1994

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 20, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the addition of identification codes to the Exchange's audit trail to indicate transactions that are exempt from the short sale rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

NYSE Rule 132 requires a clearing member firm submitting a trade to comparison to include specified audit trail data elements, including a specification of the account type for which that trade was effected according to specified account categories. Currently, the Exchange uses 12 identifiers. Three additional account type identifiers, relating to orders of competing dealers, have been approved by the Commission, but have not yet been implemented.[1] These three identifiers would be implemented upon Commission approval of the new identifiers being proposed herein.

The Exchange is proposing to expand use of the audit trail account type field to require designation of a type of trade, namely, "short exempt" trades. Four identifiers would be added to the audit trail account type field to identify "short exempt" trades for:

- The proprietary account of a clearing member organization or an affiliated member/member organization—to be designated E
- The proprietary account of an unaffiliated member/member organization—to be designated F
- An individual customer account—to be designated H
- Other agency customer account—to be designated B

In addition, three identifiers would be added to identify "short exempt" trades of competing dealers. A competing dealer is defined as a registered specialist on another stock exchange or a market-maker bidding and offering over-the-counter in a NYSE traded security. The identifiers, as proposed, are:

L—to designate a "short exempt" transaction for the account of a competing dealer that is a member or member organization trading for its own account.

X—to designate a "short exempt" transaction where one member is acting as agent for another member's competing dealer account.

Z—to designate a "short exempt" transaction for the account of a non-member competing dealer.

The Exchange is proposing the addition of older type identifiers to enhance its ability to identify violations

---

[2] 17 CFR 200.30–3(a)(12) (1993).

[1] The three identifiers recently approved by the Commission consist of O, T, and R and will denote that a transaction was effected for the account of a competing dealer. The identifier "O" denotes a proprietary order for the account of a competing dealer. The identifier "T" denotes an order where one member is acting as an agent for another member's competing dealer account. The identifier "R" denotes an order for the account of a non-member competing dealer. *See* Securities Exchange Act Release No. 33662 (February 23, 1994), 59 FR 10027 (March 2, 1994) (order approving File No. SR–NYSE–91–46).

of SEC Rule 10a–1[2] and Exchange Rule 440B, which prohibit short selling under specified circumstances. The rules require orders to sell to be marked as "long," or "short," or "exempt."[3]

SEC Rule 10a–1(e)[4] provides exemptions for certain orders to the prohibitions against short selling. These are limited to types of trades that are believed to be beneficial to the market or that carry little risk of the kind of manipulative or destabilizing trading that Rule 10a–1 was designed to address. By requiring identification of "short exempt" orders in the Exchange's post trade audit trail process, the Exchange will enhance its ability to examine whether trades effected pursuant to such orders were in compliance with the exceptions set forth in SEC Rule 10a–1(e).

Member firms would be given a reasonable period of time (approximately six months) to make their own system enhancements so that they may be in compliance with the new trade type identification requirements.

The Exchange is also proposing to amend its definition of competing dealer and to change the term "competing dealer" to "competing market-maker" in order to correspond more closely with the definition of market-maker included in the Act.[5]

(b) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the addition of the identifiers for "short exempt" trades will add to the protection of investors by enhancing the Exchange's surveillance capabilities with respect to "short" sales.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–16 and should be submitted by July 26, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16188 Filed 7–1–94; 8:45 am]

BILLING CODE 8010–01–M

[2] SEC Rule 10a–1 states, in part, that no person shall, for his own account or for the account of any other person, effect a short sale of any security registered on, or admitted to unlisted trading privileges on, a national securities exchange, if trades in such security are reported pursuant to an effective transaction reporting plan as defined in Rule 11Aa3–1, and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information, (A) below the price at which the last sale thereof, regular way, was reported pursuant to an effective transaction reporting plan; or (B) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan. *See* 17 CFR 240.10a–1 (1993).

[3] SEC Rule 10a–1 requires only that orders be marked "long" or "short." NYSE Rule 440B.20 provides, in effect, that orders relying on an exception to Rule 10a–1 should be marked "short exempt."

[4] 17 CFR 240.10a–1(e) (1993).

[5] The term "competing market-maker" is proposed to be defined as any person acting as a market-maker, as defined in Section 3(a)(38) of the Act, in a NYSE traded security. A person acting solely in the capacity of a block positioner would not be considered to be a competing market-maker.

[Release No. 34–34271; File No. SR–PSE–94–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Assessments and Fees on Members

June 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 1994, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PSE. The PSE has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to add new Rule 12.32 to the Rules of the Board of Governors of the PSE to require that any member named as a party to an arbitration proceeding shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. Below is the text of the proposed rule change. Proposed new language is italicized.

* * * * *

Member Surcharge

Rule 12.32

(a) Each member, member organization, or associated person who is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Third-Party Claim, or Crossclaim, shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member, member organization or associated person on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member(s) or member organization(s) which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member or member organization shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Rule 12.31.

(b) For the purposes of this Rule, service is perfected when the Arbitration Department properly serves the Respondent(s) to the arbitration proceeding under Rule 12.13(c).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE is proposing to add new Rule 12.32 to provide that any member, member organization or associated person named as a party to an arbitration proceeding shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member, member organization or associated person on any party to the proceeding. In addition, the firm whose associated persons are named in an arbitration proceeding will be assessed the surcharge.

Historically, the revenue-to-expense ratio of the PSE's arbitration service has resulted in a deficit, which has been subsidized by other revenues of the PSE. Although the deficit has declined in recent years, the Arbitration Department has determined in a recent review of the arbitration process that the deficit will begin to rise in the immediate future as

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

Counterclaim, Third-Party Claim, or Crossclaim, shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member, member organization or associated person on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member(s) or member organization(s) which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member or member organization shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Rule 12.31.

(b) For the purposes of this Rule, service is perfected when the Arbitration Department properly serves the Respondent(s) to the arbitration proceeding under Rule 12.13(c).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE is proposing to add new Rule 12.32 to provide that any member, member organization or associated person named as a party to an arbitration proceeding shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member, member organization or associated person on any party to the proceeding. In addition, the firm whose associated persons are named in an arbitration proceeding will be assessed the surcharge.

Historically, the revenue-to-expense ratio of the PSE's arbitration service has resulted in a deficit, which has been subsidized by other revenues of the PSE. Although the deficit has declined in recent years, the Arbitration Department has determined in a recent review of the arbitration process that the deficit will begin to rise in the immediate future as a result of significantly increased resourcing needs. The PSE anticipates such needs to be ongoing. The increased resourcing needs result from a number of factors, including case growth, more complex cases being filed, more selective arbitrator recruitment, increased arbitrator training, and increased arbitrator compensation. Cost recovery for increased resourcing needs should be directed at those member firms using the PSE's arbitration service.

Proposed new Rule 12.32(a) would require each member, member organization or associated person who is named as a party to an arbitration proceeding, as a Claimant or a Respondent, in a Claim, Counterclaim, Third-Party Claim, or Crossclaim, to be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the Claim naming the member, member organization or associated person on any party to the proceeding. This fee would be in addition to fees assessed pursuant to Rule 12.31. The fee applies both to members, member organizations and associated persons who file as Claimants and to members, member organizations and associated persons who are served by the Arbitration Department as Respondents. In a claim brought by a member, member organization or associated person against a customer, the $200 fee would be assessed in addition to the $500 claim filing fee described in the current fee schedule in Rule 12.31. For an associated person who is named as a party to an arbitration proceeding, the fee would be assessed against the member or member organization which employed the associated person at the time of the events which gave rise to the claim. However, no member or member organization will be assessed more than a single charge in any arbitration proceeding. Finally, Rule 12.32(a) clarifies that the surcharge is not subject to reimbursement under Rule 12.31.

Proposed new Rule 12.32(b) clarifies that service is considered to have been perfected when the Arbitration Department serves the Claim under Rule 12.13.

The PSE believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act, which require that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among members, member organizations and associated persons in that the proposed rule equitably assesses a surcharge on each member, member organization and associated person who is named and for whom service is perfected in an arbitration proceeding and applies such revenue to additional costs resulting from increased arbitration resourcing needs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a due, fee or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–94–14 and should be submitted by July 26, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16187 Filed 7–1–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organization; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

June 27, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Jalate, Ltd.
Common Stock, No Par Value (File No. 7–12589)
Alliances Entertainment Corp.
Warrants A 5/13/95 (File No. 7–12590)
Alliances Entertainment Corp.
Warrants B 5/13/95 (File No. 7–12591)
Energy Ventures, Inc.
Common Stock, $1.00 Par Value (File No. 7–12592)
Highwoods Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12593)
International Lottery, Inc.
Common Stock, $.01 Par Value (File No. 7–12594)
Liberty Property Trust
Shares of Beneficial Interest, $.001 Par Value (File No. 7–12595)
Watsco, Inc.
Common Stock, $.50 Par Value (File No. 7–12596)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 19, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16120 Filed 7–1–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on August 2 and 3, 1994, of the following debt management advisory committee:

Public Securities Association, Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff on August 2, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. On August 3, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 11:30 a.m. Eastern time on August 2 and will be open to the public. The remaining sessions on August 2 and the committee's reporting session on August 3 will be closed to the public, pursuant to 5 U.S.C. App. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by U.S.C. 552b(c)(9)(A).

The Office of the Under Secretary for Domestic Finance is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: June 28, 1994.

Frank N. Newman,

Under Secretary of the Treasury, Domestic Finance.

[FR Doc. 94–16154 Filed 7–1–94; 8:45 am]

BILLING CODE 4810–25–M

Fiscal Service

Renegotiation Board Interest Rate, Prompt Payment Interest Rate, Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computer under the criteria established by the Renegotiation Act of 1971 (P.L. 92–41). For example, the Contracts Disputes Act of 1978 (P.L. 95–563) and the Prompt Payment Act (P.L. 97–177) are required to calculate interest due on claims at a rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board (31 U.S.C. 3902).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1994 and ending on December 31, 1994, is 7% per centum per annum.

Dated: June 28, 1994.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 94–16116 Filed 7–1–94; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetin

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Thursday, July 7, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of a draft policy statement containing standards for privately operated large-dollar multilateral netting systems.
2. Proposed 1995 Federal Reserve Board budget objective.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 30, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16307 Filed 6–30–94; 3:03 pm]

BILLING CODE 6210–01–P

Sunshine Act Meetings

Federal Register

Vol. No. 127

Tuesday, July 5, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Thursday, July 7, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of a draft policy statement containing standards for privately operated large-dollar multilateral netting systems.
2. Proposed 1995 Federal Reserve Board budget objective.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 30, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16307 Filed 6–30–94; 3:03 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Thursday, July 7, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 30, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16308 Filed 6–30–94; 3:03 pm]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 4, 1994.

A closed meeting will be held on Thursday, July 7, 1994, at 10 a.m.

Commissioners, Counsel of the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in the closed session.

The subject matter of the closed meeting scheduled for Thursday, July 7, 1994, at 10 a.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Atkins (202) 942–0100.

Dated: June 29, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16268 Filed 6–30–94; 11:44 am]

BILLING CODE 8010–01–M

VOL
59
ISS
1
27
JL
5
994
UMI

Federal Register

Tuesday
July 5, 1994

Part II

Environmental Protection Agency

Sole Source Aquifer Designation of the Vashon-Maury Island Aquifer System, King County, Washington; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5006–8]

Sole Source Aquifer Designation of the Vashon-Maury Island Aquifer System, King County, Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination.

SUMMARY: The Region 10 Administrator of the Environmental Protection Agency (EPA) has determined that the Vashon-Maury Island Aquifer System is a sole or principal source of drinking water, and if contaminated, would create a significant hazard to public health. This action was taken under the authority of section 1424(e) of the Safe Drinking Water Act in response to a petition submitted to EPA by the Seattle-King County Department of Public Health on April 2, 1992. As a result of this determination, all federal financially assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time on July 19, 1994.

ADDRESSES: The information upon which this determination is based is available to the public and may be inspected during normal business hours at the EPA Library, 10th Floor, Park Place Building, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Scott E. Downey, Environmental Protection Specialist, Ground Water Section, WD–133, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, 206–553–0662.

SUPPLEMENTARY INFORMATION: This action is being taken under the authority of section 1424(e) of the Safe Drinking Water Act (42 United States Code, 300f, 300h-3(e), Public Law 93–523). The information upon which EPA is issuing this final determination has been summarized in the "Support Document for Sole Source Aquifer Designation of the Vashon-Maury Island Aquifer System", EPA 910/K–94–002.

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Although EPA has the authority to initiate "sole source aquifer" designations, the Agency has a policy of acting only in response to petitions. Petitions may be submitted to EPA by any individual or organization and must address procedures and criteria outlined in EPA's "Sole Source Aquifer Designation Petitioner Guidance", EPA 440/6–87–003.

On April 2, 1992, EPA Region 10 received a petition from the Seattle-King County Department of Public Health requesting that EPA designate Vashon-Maury Island as a sole source aquifer. The petition was developed in cooperation with the Vashon-Maury Island Ground Water Advisory Committee and the Vashon-Maury Island Water Utilities Coordinating Committee. Recognizing the value of the aquifer as a present and future source of drinking water, the petition was submitted as an additional way to protect the Island's ground water resources.

EPA's initial review of the petition led to a request for additional hydrogeologic and water usage information. This information was subsequently submitted to EPA by the petitioner. On October 21, 1992, the petition was considered complete enough to undergo a more detailed technical review. The technical review was completed in April of 1994 and EPA's findings and basis for the proposed designation were documented in EPA's Support Document.

II. Basis for Determination

The Region 10 Administrator has determined that the Vashon-Maury Island Aquifer System meets all applicable sole source aquifer designation criteria established through Federal statute and EPA guidance documents, as follows:

(1) Sole or Principal Source of Drinking Water: Sole source aquifers must supply at least 50 percent of the drinking water to persons living in the area overlying the aquifer and in areas supplied by the aquifer. The Vashon-Maury Island Aquifer System supplies approximately 71 percent of the drinking water to persons living on the Island.

(2) Potential Public Health Hazard: Contamination of the sole source aquifer must create a significant hazard to public health. As the principal drinking water source for the area, contamination of the Vashon-Maury Island Aquifer System would create a significant hazard to public health.

(3) Definable Aquifer Boundaries: EPA guidance allows designations to be made for entire aquifers, hydrogeologically connected aquifers (aquifer systems), or part of an aquifer if that portion is hydrogeologically separated from the rest of the aquifer. The Vashon-Maury Aquifer System boundary is based on hydrogeological principles and EPA's interpretation of available data. The Island's hydrogeology is representative of an aquifer system, as data indicate that water from shallow aquifers infiltrates to underlying deeper aquifers. The sole source aquifer boundary is coincident with the shoreline of the Island, and at depth includes all geologic units that can supply significant quantities of drinking water to wells. This boundary is assumed because stratigraphic data are not available to fully map the vertical extent of the aquifer materials.

(4) No Alternative Source of Drinking Water: There can be no physical, legal, or economically feasible alternative source(s) of drinking water of sufficient volume that could replace the sole source aquifer, should it become contaminated. EPA has determined that there are no reasonably available alternative source(s) of drinking water that could replace the aquifer.

III. Description of the Vashon-Maury Island Aquifer System

Note: Information in this section represents an unfootnoted summary from EPA's Support Document, EPA 910/K–94–002.

Vashon-Maury Island is located near the southern end of Puget Sound in the southwestern corner of King County, Washington. The Island covers an area of 36.7 square miles and its population has been estimated at approximately 7,800 persons. Recorded data indicates an average rainfall of 46.53 inches.

The aquifer system is composed of both interbedded glacial and non-glacial deposits. In general, the water table elevation reflects the surface topography and the ground water moves radially outward from the interior to the shorelines of the Island.

The uppermost and most recent deposits (Quaternary Vashon unit) are mainly stratified sand and gravel overlying glacial till and sandy gravel interbedded with medium and fine-grained sand. The Vashon unit contains a surficial aquifer comprised primarily of glacial till which has poor water-bearing characteristics, and the uppermost fresh water aquifer (Principal Aquifer) comprised of outwash sand and gravel beds. The Principal Aquifer is found at an elevation of between 0 and 400 feet above mean sea level. Recharge of the Principal Aquifer is probably highest along a north-south corridor of west-central Vashon Island, and is estimated to be approximately 9 million gallons per day. The Principal Aquifer supplies ninety-five percent of the wells located on the Island.

Underlying the Vashon unit are non-glacial deposits (Quaternary Olympia beds) generally consisting of thin-bedded sand and silt with local layers of gravel, massive silt and clayey silt. The Olympia beds serve as a leaky aquitard between the upper Principal Aquifer and the lower Deep Aquifer. The Deep Aquifer underlies the Olympia beds and consists of a variety of interbedded glacial tills, sand and gravel units and laminated silts and clays. The Deep Aquifer is located at an elevation of between about 100 to 300 feet below mean sea level. Recharge to the Deep Aquifer is estimated at between 1.73 and 3.46 million gallons per day.

Ground water quality data was sampled from 72 wells in the aquifer area. In general, deeper wells exhibited higher specific conductance values. Elevated chloride concentrations were found in near-shore wells on the northern and eastern edges of the Island. Ground water quality trend data is limited, but combined water system and spring data indicate that source water nitrate concentrations show a generally increasing trend.

The sand interbeds within the surficial glacial till deposits allow easy infiltration, and although discontinuous, make much of the Principal Aquifer vulnerable to contamination. The Deep Aquifer is also vulnerable to contamination from activities occurring on the land surface, as evidence suggests that it receives recharge from the Principal Aquifer.

interbedded with medium and fine-grained sand. The Vashon unit contains a surficial aquifer comprised primarily of glacial till which has poor water-bearing characteristics, and the uppermost fresh water aquifer (Principal Aquifer) comprised of outwash sand and gravel beds. The Principal Aquifer is found at an elevation of between 0 and 400 feet above mean sea level. Recharge of the Principal Aquifer is probably highest along a north-south corridor of west-central Vashon Island, and is estimated to be approximately 9 million gallons per day. The Principal Aquifer supplies ninety-five percent of the wells located on the Island.

Underlying the Vashon unit are non-glacial deposits (Quaternary Olympia beds) generally consisting of thin-bedded sand and silt with local layers of gravel, massive silt and clayey silt. The Olympia beds serve as a leaky aquitard between the upper Principal Aquifer and the lower Deep Aquifer. The Deep Aquifer underlies the Olympia beds and consists of a variety of interbedded glacial tills, sand and gravel units and laminated silts and clays. The Deep Aquifer is located at an elevation of between about 100 to 300 feet below mean sea level. Recharge to the Deep Aquifer is estimated at between 1.73 and 3.46 million gallons per day.

Ground water quality data was sampled from 72 wells in the aquifer area. In general, deeper wells exhibited higher specific conductance values. Elevated chloride concentrations were found in near-shore wells on the northern and eastern edges of the Island. Ground water quality trend data is limited, but combined water system and spring data indicate that source water nitrate concentrations show a generally increasing trend.

The sand interbeds within the surficial glacial till deposits allow easy infiltration, and although discontinuous, make much of the Principal Aquifer vulnerable to contamination. The Deep Aquifer is also vulnerable to contamination from activities occurring on the land surface, as evidence suggests that it receives recharge from the Principal Aquifer.

Potential sources of contamination include landfill leachate, on-site sewage disposal systems, leaky sewer lines, underground storage tanks, agricultural chemicals, small hazardous waste generators, accidental spills, seawater intrusion, and improper household, forestry and farm practices.

The Island has one publicly-owned water well (the largest water system on the Island), at least six large private water systems, and more than 100 smaller water systems. Some purveyors use both surface water and ground water to supply their distribution system. In addition, private wells provide water to a considerable number of houses and businesses across the Island. It is estimated that 71% of the water supplied to households on the Island is from ground water and 29% is from surface water sources. There are no alternative sources of drinking water for the Island that can be physically, legally, and economically supplied.

IV. Project Reviews

Designation of a sole source aquifer authorizes EPA to review federal financially-assisted projects proposed within the designated area. The principal mechanism used by EPA Region 10 to identify projects for review are Memorandums of Understanding (MOUs) with federal funding agencies. These MOUs outline procedures for screening and referring projects to EPA in order to ensure that only projects which may have a significant impact to ground water quality are reviewed.

Most projects referred to EPA for review meet all federal, state, and local ground water protection standards and are approved without any additional conditions being imposed. Occasionally, site or project-specific concerns for ground water quality protection lead to specific recommendations or additional pollution prevention requirements as a condition of funding. In rare cases, federal funding has been denied when the applicant has been either unwilling or unable to modify the project.

Whenever feasible, EPA coordinates the review of proposed projects with other offices within EPA and with various federal, state, or local agencies that have a responsibility for ground water quality protection. Relevant information from these sources is given full consideration in the sole source aquifer review process. Such coordination can complement, support, and strengthen existing ground water protection mechanisms.

V. Public Comments

EPA issued a news release (April 12, 1994) and a public notice (April 14, 1994) to request comments and announce the proposed designation. Both stated that a public hearing would be held if sufficient interest were expressed to EPA in advance. No requests for a formal hearing were received and it was subsequently cancelled.

Five written comments were received prior to the expiration of the public comment period on June 1, 1994. Three letters were from Vashon Island residents and expressed support for the proposed designation. One letter was from the King County Department of Public Works, Roads and Engineering Division, and requested information and coordination of future federal financially-assisted road projects on the Island. Another letter was from the Bureau of Reclamation and stated there were no ongoing or proposed federal financially-assisted projects within the area. No controversial issues were raised as a result of this proposed action.

VI. Summary

This determination affects only the Vashon-Maury Island Aquifer System located in King County, Washington. As a result of this determination, all federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health.

Dated: June 17, 1994.

Chuck Clarke,

Regional Administrator, U.S. Environmental Protection Agency, Region 10.

[FR Doc. 94-16220 Filed 7-1-94; 8:45 am]

BILLING CODE 6560-50-P

UMI
994
JL
5
ISS
1
2
7
VOL
5 9

federal judicial

Tuesday
July 5, 1994

Part III

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of actions under the National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth four actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines (51 FR 16958).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Office of Science Policy and Technology Transfer, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: Today four actions are being promulgated under the NIH Guidelines. These four proposed actions were published for comment in the **Federal Register** announcements of August 11, 1987 (52 FR 29800); April 18, 1988 (53 FR 12752); December 30, 1988 (53 FR 53262); April 29, 1991 (56 FR 19776); November 9, 1993 (58 FR 59612); and February 11, 1994 (59 FR 6702). These proposed actions were reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meetings on September 21, 1987; December 3, 1988; January 30, 1989; May 30–31, 1991; December 2–3, 1993; and March 3–4, 1994.

In accordance with Section IV-C-1-b of the NIH Guidelines, these actions have been found to comply with the NIH Guidelines and to present no significant risk to health or the environment.

A revised version of the NIH Guidelines is published in a separate section of the **Federal Register** following this announcement. These revised NIH Guidelines differ from the previous version promulgated on May 7, 1986 (51 FR 16958) by incorporating within them the major actions to the NIH Guidelines that were promulgated on August 24, 1987 (52 FR 31848); July 29, 1988 (53 FR 28819); October 26, 1988 (53 FR 43410); March 13, 1989 (54 FR 10508); March 1, 1990 (55 FR 7438); September 12, 1990 (55 FR 37565); July 18, 1991 (56 FR 33174); October 15, 1991 (56 FR 51784); November 21, 1991 (56 FR 58800); January 28, 1992 (57 FR 3212); April 22, 1992 (57 FR 14774); August 26, 1992 (57 FR 38734); February 18, 1993 (58 FR 9102); April 23, 1993 (58 FR 21738); September 13, 1993 (58 FR 47906); October 18, 1993 (58 FR 53814); and the changes that are promulgated in this announcement.

I. Background Information and Decision on Action Under the NIH Guidelines

A. Amendment to Sections II, III–C, III–D, V, Appendices C–I, and G and Addition of Appendix P, Physical and Biological Containment for Recombinant DNA Research Involving Plants, and Appendix Q, Physical and Biological Containment for Recombinant DNA Research Involving Animals of the NIH Guidelines

The NIH Guidelines were originally developed to cover research in laboratories in which recombinant DNA techniques were used. It is recognized today that these techniques are being used by scientists working with plants and large animals, and that procedures for containment of these plants and animals have not been specifically described in the NIH Guidelines. Institutional Biosafety Committees (IBCs) have requested guidance on the containment procedures that should be recommended for specific experiments with these organisms since they have the responsibility of approving such experiments under containment appropriate for the organisms. The principles of biological safety that are used to categorize experiments involving microorganisms, for example, are equally applicable to plants and animals. These safety procedures have been employed successfully for many years and have been recognized for their efficacy in biological containment.

Appendices P and Q are the result of several years of meetings and discussions involving research scientists and representatives from university, government, and industrial research sectors with expertise in several disciplines, including plant genetics, plant physiology, plant pathology, entomology, animal (including arthropod and aquatic species) physiology and reproduction, molecular biology, veterinary medicine, and human biomedical research. The Federal agencies involved in the development of Appendices P and Q include the NIH, the National Science Foundation (NSF), and the U.S. Department of Agriculture (USDA).

The process of developing Appendices P and Q was initiated when the USDA published an Advanced Notice of Proposed USDA Guidelines (USDA Guidelines) in the **Federal Register** on June 26, 1986 (51 FR 23367). This notice was followed by an announcement by the USDA regarding its intent to propose new guidelines for conducting all phases of research with domestic agriculture species, including both plants and animals modified through the application of genetic engineering techniques, in the **Federal Register** on December 9, 1986 (51 FR 44397). At that time, the NIH Guidelines did not include specific descriptions for containment conditions for research involving recombinant DNA containing whole plants and animals. The USDA convened a working group composed of university, government, and industrial scientists on December 13–14, 1986, with the purpose of discussing and redrafting guidelines for physical and biological containment of transgenic plant and animal species, and associated microorganisms. This meeting came to be known as the "Arlington House Workshop."

Participants of the "Arlington House Workshop," including former members of the RAC, agreed that the USDA Guidelines should be incorporated into the NIH Guidelines. The workshop participants noted that merging these two documents would offer the distinct advantage of providing a single comprehensive source of information regarding conduct of research involving organisms containing recombinant DNA and plants and animals exposed to microorganisms containing recombinant DNA.

A staff working group representing the Office of Recombinant DNA Activities, NIH, and the Cooperative State Research Service, USDA, held meetings during the following six months. This working group met with the purpose of revising the containment section and developing a final incorporated document for RAC review, approval by the NIH Director, and incorporation into the NIH Guidelines.

On June 28, 1987, and July 16, 1987, the RAC appointed the Working Group on Revision of the NIH Guidelines to meet and consider the draft documents, Appendices P and Q, and minor modifications to the NIH Guidelines, that would accommodate the proposed appendices. Appendices P and Q and the proposed revisions to the NIH Guidelines were published for public comment in the **Federal Register** on August 11, 1987 (52 FR 29800). Additional revisions to Appendices P and Q were proposed by the RAC and the Agricultural Research Service, USDA, at the September 17, 1987, RAC meeting. These modifications were published for public comment in the **Federal Register** on December 30, 1988 (53 FR 53262). The RAC Working Group on Transgenic Animals proposed additional modifications to Appendices P and Q which were published for public comment in the **Federal Register** on April 18, 1988 (53 FR 12752). Further revisions were approved by the RAC at its January 30, 1989, meeting.

Throughout all of the meetings, discussions, and revisions, the intent of the Federal agencies and interested parties has been to describe working conditions that would minimize the risk to both the researcher and the environment from any possible harm or adverse effects due to the conduct of research involving recombinant DNA containing organisms.

On June 24, 1994, an Environmental Assessment of Appendices P and Q was completed by the NIH and USDA, and there was a finding of no significant impact. Copies of the Environmental Assessment are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

The actions are detailed in Section II—Summary of Actions. I accept these recommendations, and the NIH Guidelines will be amended accordingly.

B. Amendment to Sections I-C-1-b-(2) and Deletion of Section III–A–2 of the NIH Guidelines Regarding Deliberate Release

On December 6, 1990, the RAC Planning Subcommittee recommended that the requirement for RAC review of experiments involving deliberate environmental release of organisms containing recombinant DNA be eliminated from the NIH Guidelines. This recommendation reflects the fact that the Federal regulatory agencies, the USDA, and the Environmental Protection Agency (EPA), are responsible for the review and approval of environmental release experiments. The proposed amendment was published for public comment in the **Federal Register** on April 29, 1991 (56 FR 19776). The RAC reviewed and recommended approval of the proposed amendment at its May 30–31, 1991, meeting.

The actions are detailed in Section II—Summary of Actions. I accept these recommendations, and the NIH Guidelines will be amended accordingly.

published for public comment in the **Federal Register** on December 30, 1988 (53 FR 53262). The RAC Working Group on Transgenic Animals proposed additional modifications to Appendices P and Q which were published for public comment in the **Federal Register** on April 18, 1988 (53 FR 12752). Further revisions were approved by the RAC at its January 30, 1989, meeting.

Throughout all of the meetings, discussions, and revisions, the intent of the Federal agencies and interested parties has been to describe working conditions that would minimize the risk to both the researcher and the environment from any possible harm or adverse effects due to the conduct of research involving recombinant DNA containing organisms.

On June 24, 1994, an Environmental Assessment of Appendices P and Q was completed by the NIH and USDA, and there was a finding of no significant impact. Copies of the Environmental Assessment are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

The actions are detailed in Section II—Summary of Actions. I accept these recommendations, and the NIH Guidelines will be amended accordingly.

B. Amendment to Sections I-C-1-b-(2) and Deletion of Section III–A–2 of the NIH Guidelines Regarding Deliberate Release

On December 6, 1990, the RAC Planning Subcommittee recommended that the requirement for RAC review of experiments involving deliberate environmental release of organisms containing recombinant DNA be eliminated from the NIH Guidelines. This recommendation reflects the fact that the Federal regulatory agencies, the USDA, and the Environmental Protection Agency (EPA), are responsible for the review and approval of environmental release experiments. The proposed amendment was published for public comment in the **Federal Register** on April 29, 1991 (56 FR 19776). The RAC reviewed and recommended approval of the proposed amendment at its May 30–31, 1991, meeting.

The actions are detailed in Section II—Summary of Actions. I accept these recommendations, and the NIH Guidelines will be amended accordingly.

C. Amendments to Sections I, III, IV, and V, and Appendix M of the NIH Guidelines Regarding NIH/ORDA Review and Approval of Certain Categories of Human Gene Transfer Experiments That Qualify for the Accelerated Review Process

On December 3, 1993, and March 3–4, 1994, the Working Group on Accelerated Review Protocols presented an overview of the proposed amendments to the NIH Guidelines. The proposed amendments will: (1) Establish an accelerated review process for certain categories of human gene transfer experiments, (2) allow the NIH/Office of Recombinant DNA Activities to assign the appropriate review category to all human gene transfer proposals that are submitted in compliance with the NIH Guidelines, (3) allow the NIH/Office of Recombinant DNA Activities to approve those categories of human gene transfer experiments that qualify for the accelerated review process in consultation with the Chair and one or more RAC members, as necessary, and (4) exempt certain experiments involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects which are not covered by Section V–U. All human gene transfer experiments approved by the NIH/Office of Recombinant DNA Activities through the accelerated review process will be provided in a report by the RAC Chair at the next regularly scheduled RAC meeting and will be included in the list of approved experiments which is available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

The proposed amendments were published for public comment in the **Federal Register** on November 9, 1993 (58 FR 59612) and February 11, 1994 (59 FR 6702). The RAC reviewed and unanimously recommended approval of the proposed amendments at its March 3–4, 1994, meeting.

The actions are detailed in Section II—Summary of Actions. I accept these recommendations, and the NIH Guidelines will be amended accordingly.

D. Amendments to Section V–U of the NIH Guidelines Regarding Recombinant DNA Vaccines

On March 3, 1994, the Working Group on Vaccines presented an overview of the proposed amendment to the footnote in Section V–U. The proposed amendment will define those categories of experiments involving the administration of recombinant DNA vaccines that are exempt from RAC review and NIH and Institutional Biosafety Committee approval.

The proposed amendment was published for public comments in the **Federal Register** on February 11, 1994 (59 FR 6702). The proposed amendment was revised by the RAC at its March 3–4, 1994, meeting. The revised amendment was unanimously approved.

The action is detailed in Section II—Summary of Actions. I accept this recommendation, and the NIH Guidelines will be amended accordingly.

II. Summary of Actions

A. Amendment to Section I, Scope of the NIH Guidelines

The amended version of Section I reads as follows:

Section I. Scope of the NIH Guidelines

Section I–A. Purpose

The purpose of the NIH Guidelines is to specify practices for constructing and handling: (i) Recombinant deoxyribonucleic acid (DNA) molecules, and (ii) organisms and viruses containing recombinant DNA molecules.

Section I–A–1. Any recombinant DNA experiment, which according to the NIH Guidelines requires approval by the NIH, must be submitted to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approval, or other applicable clearances, has been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval (see exceptions in Sections I–A–2 and I–A–3).

Section I–A–2. Certain experiments that involve the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects (see Section V–U) shall be considered Major Actions (see Section IV-C-1-b-(1)), and shall require RAC review and NIH Director approval, if determined by NIH/ORDA in consultation with the RAC Chair and/or one or more RAC members, as necessary, to: (i) Represent novel characteristics (e.g., target disease or vector), (ii) represent an uncertain degree of risk to human health or the environment, or (iii) contain information determined to require further public review (see Section III–A–2).

Section I–A–3. Experiments involving the transfer of recombinant DNA to one or more human subjects that are not considered under Section III–A–2 may qualify for Accelerated Review (see Section III–B–2 and Appendix M–V) and will be considered as Minor Actions (see Section IV-C-1-b-(2)-(a)). Actions that qualify for Accelerated Review will be reviewed and approved by NIH/ORDA in consultation with the RAC Chair and/or one or more RAC members, as necessary.

Certain experiments involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects (see Section V–U) may be considered exempt from RAC and/or NIH/ORDA review and/or NIH Director approval and only require registration with NIH/ORDA (see Section III–C–7).

Section I–B. Definition of Recombinant DNA Molecules

In the context of the NIH Guidelines, recombinant DNA molecules are defined as either: (i) Molecules that are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) molecules that result from the replication of those described in (i) above.

Synthetic DNA segments which are likely to yield a potentially harmful polynucleotide or polypeptide (e.g., a toxin or a pharmacologically active agent) are considered as equivalent to their natural DNA counterpart. If the synthetic DNA segment is not expressed *in vivo* as a biologically active polynucleotide or polypeptide product, it is exempt from the NIH Guidelines.

Genomic DNA of plants and bacteria that have acquired a transposable element, even if the latter was donated from a recombinant vector no longer present, are not subject to the NIH Guidelines unless the transposon itself contains recombinant DNA.

Section I–C. General Applicability

Section I–C–1. The NIH Guidelines are applicable to:

Section I-C-1-a. All recombinant DNA research within the United States (U.S.) or its territories that is conducted at or sponsored by an institution that receives any support for recombinant DNA research from the NIH, including research performed directly by the NIH. An individual who receives support for research involving recombinant DNA must be associated with or sponsored by an institution that assumes the responsibilities assigned in the NIH Guidelines.

Section I-C-1-b. All recombinant DNA research performed abroad: Specifically:

Section I-C-1-b-(1). Research supported by NIH funds.

Section I-C-1-b-(2). If they involve testing in humans of materials containing recombinant DNA developed with NIH funds and if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractual agreements, not mere provision of research materials.

Section I-C-1-b-(3). If the host country has established rules for the conduct of recombinant DNA research, then the research must be in compliance with those rules. If the host country does not have such rules, the proposed research must be reviewed and approved by an NIH-approved Institutional Biosafety Committee or equivalent review body and accepted in writing by an appropriate national governmental authority of the host country. The safety practices that are employed abroad must be reasonably consistent with the NIH Guidelines.

Section I-D. General Definitions

The following terms, which are used throughout the NIH Guidelines, are defined as follows:

Section I-D–1. An 'institution' is any public or private entity (including Federal, state, and local government agencies).

Section I-D–2. An 'Institutional Biosafety Committee' is a committee that: (i) meets the requirements for membership specified in Section IV-B–2, and (ii) reviews, approves, and oversees projects in accordance with the responsibilities defined in Section IV-B–2.

Section I-D–3. The 'Office of Recombinant DNA Activities (ORDA)' is the office within the NIH that is responsible for: (i) Reviewing and coordinating all activities relating to the NIH Guidelines, and (ii) performing other duties as defined in Section IV-C–3.

Section I-D–4. The 'Recombinant DNA Advisory Committee' is the public advisory committee that advises the Department of Health and Human Services (DHHS) Secretary, the DHHS Assistant Secretary for Health, and the NIH Director concerning recombinant DNA research. The RAC shall be constituted as specified in Section IV-C–2.

Section I-D–5. The 'NIH Director' is the Director of the National Institutes of Health, or any other officer or employee of NIH to whom authority has been delegated.

Section I-D–6. 'Deliberate release' is defined as a planned introduction of recombinant DNA-containing microorganisms, plants, or animals into the environment.

B. Amendment to Section II, Containment, of the NIH Guidelines

The amended version of Section II reads as follows:

Section II. Containment

Effective biological safety programs have been operative in a variety of laboratories for many years. Considerable information already exists about the design of physical containment facilities and selection of laboratory procedures applicable to organisms carrying recombinant DNA (see Section V-A). The existing programs rely upon mechanisms that can be divided into two categories: (i) A set of standard practices that are generally used in microbiological laboratories; and (ii) special procedures, equipment, and laboratory installations that provide physical barriers that are applied in varying degrees according to the estimated biohazard. Four biosafety levels are described in Appendix G. These biosafety levels consist of combinations of laboratory practices and techniques, safety equipment, and laboratory facilities appropriate for the operations performed and are based on the potential hazards imposed by the agents used and for the laboratory function and activity. Biosafety Level 4 provides the most stringent containment conditions, Biosafety Level 1 the least stringent.

Experiments involving recombinant DNA lend themselves to a third containment mechanism, namely, the application of highly specific biological barriers. Natural barriers exist that limit either: (i) The infectivity of a vector or vehicle (plasmid or virus) for specific hosts, or (ii) its dissemination and survival in the environment. Vectors, which provide the means for recombinant DNA and/or host cell replication, can be genetically designed to decrease, by many orders of magnitude, the probability of dissemination of recombinant DNA outside the laboratory (see Appendix I).

Since these three means of containment are complementary, different levels of containment can be established that apply various combinations of the physical and biological barriers along with a constant use of standard practices. Categories of containment are considered separately in order that such combinations can be conveniently expressed in the NIH Guidelines.

Physical containment conditions within laboratories, described in Appendix G, may not always be appropriate for all organisms because of their physical size, the number of organisms needed for an experiment, or the particular growth requirements of the organism. Likewise, biological containment for microorganisms described in Appendix I may not be appropriate for all organisms, particularly higher eukaryotic organisms. However, significant information exists about the design of research facilities and experimental procedures that are applicable to organisms containing recombinant DNA that is either integrated into the genome or into microorganisms associated with the higher organism as a symbiont, pathogen, or other relationship. This information describes facilities for physical containment of organisms used in non-traditional laboratory settings and special practices for limiting or excluding the unwanted establishment, transfer of genetic information, and dissemination of organisms beyond the intended location, based on both physical and biological containment principles. Research conducted in accordance with these conditions effectively confines the organism.

For research involving plants, four biosafety levels (BL1–P through BL4–P) are described in Appendix P. BL1–P is designed to provide a moderate level of containment for experiments for which there is convincing biological evidence that precludes the possibility of survival, transfer, or dissemination of recombinant DNA into the environment, or in which there is no recognizable and predictable risk to the environment in the event of accidental release. BL2–P is designed to provide a greater level of containment for experiments involving plants and certain associated organisms in which there is a recognized possibility of survival, transmission, or dissemination of recombinant DNA containing organisms, but the consequence of such an inadvertent release has a predictably minimal biological impact. BL3–P and BL4–P describe additional containment conditions for research with plants and certain pathogens and other organisms that require special containment because of their recognized potential for significant detrimental impact on managed or natural ecosystems. BL1–P relies upon accepted scientific practices for conducting research in most ordinary greenhouse or growth chamber facilities and incorporates accepted procedures for good pest control and cultural practices. BL1–P facilities and

Physical containment conditions within laboratories, described in Appendix G, may not always be appropriate for all organisms because of their physical size, the number of organisms needed for an experiment, or the particular growth requirements of the organism. Likewise, biological containment for microorganisms described in Appendix I may not be appropriate for all organisms, particularly higher eukaryotic organisms. However, significant information exists about the design of research facilities and experimental procedures that are applicable to organisms containing recombinant DNA that is either integrated into the genome or into microorganisms associated with the higher organism as a symbiont, pathogen, or other relationship. This information describes facilities for physical containment of organisms used in non-traditional laboratory settings and special practices for limiting or excluding the unwanted establishment, transfer of genetic information, and dissemination of organisms beyond the intended location, based on both physical and biological containment principles. Research conducted in accordance with these conditions effectively confines the organism.

For research involving plants, four biosafety levels (BL1–P through BL4–P) are described in Appendix P. BL1–P is designed to provide a moderate level of containment for experiments for which there is convincing biological evidence that precludes the possibility of survival, transfer, or dissemination of recombinant DNA into the environment, or in which there is no recognizable and predictable risk to the environment in the event of accidental release. BL2–P is designed to provide a greater level of containment for experiments involving plants and certain associated organisms in which there is a recognized possibility of survival, transmission, or dissemination of recombinant DNA containing organisms, but the consequence of such an inadvertent release has a predictably minimal biological impact. BL3–P and BL4–P describe additional containment conditions for research with plants and certain pathogens and other organisms that require special containment because of their recognized potential for significant detrimental impact on managed or natural ecosystems. BL1–P relies upon accepted scientific practices for conducting research in most ordinary greenhouse or growth chamber facilities and incorporates accepted procedures for good pest control and cultural practices. BL1–P facilities and procedures provide a modified and protected environment for the propagation of plants and microorganisms associated with the plants and a degree of containment that adequately controls the potential for release of biologically viable plants, plant parts, and microorganisms associated with them. BL2–P and BL3–P rely upon accepted scientific practices for conducting research in greenhouses with organisms infecting or infesting plants in a manner that minimizes or prevents inadvertent contamination of plants within or surrounding the greenhouse. BL4–P describes facilities and practices known to provide containment of certain exotic plant pathogens.

For research involving animals, which are of a size or have growth requirements that preclude the use of conventional primary containment systems used for small laboratory animals, four biosafety levels (BL1–N through BL4–N) are described in Appendix Q. BL1–N describes containment for animals that have been modified by stable introduction of recombinant DNA, or DNA derived therefrom, into the germ-line (transgenic animals) and experiments involving viable recombinant DNA-modified microorganisms and is designed to eliminate the possibility of sexual transmission of the modified genome or transmission of recombinant DNA-derived viruses known to be transmitted from animal parent to offspring only by sexual reproduction. Procedures, practices, and facilities follow classical methods of avoiding genetic exchange between animals. BL2–N describes containment which is used for transgenic animals associated with recombinant DNA-derived organisms and is designed to eliminate the possibility of vertical or horizontal transmission. Procedures, practices, and facilities follow classical methods of avoiding genetic exchange between animals or controlling arthropod transmission. BL3–N and BL4–N describe higher levels of containment for research with certain transgenic animals involving agents which pose recognized hazard.

In constructing the NIH Guidelines, it was necessary to define boundary conditions for the different levels of physical and biological containment and for the classes of experiments to which they apply. These definitions do not take into account all existing and anticipated information on special procedures that will allow particular experiments to be conducted under different conditions than indicated here without affecting risk. Individual investigators and Institutional Biosafety Committees are urged to devise simple and more effective containment procedures and to submit recommended changes in the NIH Guidelines to permit the use of these procedures."

C. Amendment to Section III, Experiments Covered by the NIH Guidelines

The previous version of Section III-A–2 will be deleted as follows:

Section III-A–2. Deliberate release into the environment of any organism containing recombinant DNA except those listed below. The term 'deliberate release' is defined as a planned introduction of recombinant DNA-containing microorganisms, plants, or animals into the environment.

Section III-A–2-a. Introduction conducted under conditions considered to be accepted scientific practices in which there is adequate evidence of biological and/or physical control of the recombinant DNA-containing organisms. The nature of such evidence is described in Appendix L.

Section III-A–2-b. Deletion derivatives and single base changes not otherwise covered by the NIH Guidelines.

Section III-A–2-c. For extrachromosomal elements and microorganisms (including viruses), rearrangements and amplifications within a single genome. Rearrangements involving the introduction of DNA from different strains of the same species would not be covered by this exemption."

The amended version of Section III reads as follows:

Section III. Experiments Covered by the NIH Guidelines.

This section describes five categories of experiments involving recombinant DNA: (i) Those that require RAC review and NIH and Institutional Biosafety Committee approval before initiation (see Section III-A), (ii) those that require NIH/ORDA and Institutional Biosafety Committee approval before initiation (see Section III-B); (iii) those that require Institutional Biosafety Committee approval before initiation (see Section III-C), (iv) those that require Institutional Biosafety Committee notification simultaneous with initiation (see Section III-D), and (v) those that are exempt from the NIH Guidelines (see Section III-E).

Note: If an experiment falls into either Section III-A or Section III-B and one of the other categories, the rules pertaining to Section III-A or Section III-B shall be followed. If an experiment falls into Section III-E and into either Sections III-C or III-D categories as well, the experiment is considered exempt from the NIH Guidelines

Any change in containment level, which is different from those specified in the NIH Guidelines, may not be initiated without the express approval of NIH/ORDA (see Minor Actions, Section IV-C–1-b-(2) and its subsections).

Section III–A. Experiments That Require Institutional Biosafety Committee Approval, RAC Review, and NIH Approval Before Initiation

Experiments in this category are considered Major Actions (see Section IV-C–1-b-(1)) and cannot be initiated without submission of relevant information on the proposed experiment to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838, the publication of the proposal in the **Federal Register** for 15 days of comment, reviewed by the RAC, and specific approval by the NIH (not applicable for Expedited Review single patient human gene transfer experiments considered under Appendix M-VI). The containment conditions for such experiments will be recommended by the RAC and set by the NIH at the time of approval. Such experiments require Institutional Biosafety Committee approval before initiation. Specific experiments already approved are included in Appendix D which may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Section III–A–1. Deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire the trait naturally (see Section V–B), if such acquisition could compromise the use of the drug to control disease agents in humans, veterinary medicine, or agriculture.

Section III–A–2. Certain experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects (see Section V–U) shall be considered Major Actions (see Section IV–C–1–b–(1) and Appendix M–III), and shall require RAC review and NIH Director approval, if determined by NIH/ORDA, in consultation with the RAC Chair and one or more RAC members, as necessary, to: (i) represent novel characteristics (e.g., target disease or vector), (ii) represent an uncertain degree of risk to human health or the environment, or (iii) contain information determined to require further public review. The requirement for RAC review shall not be considered to preempt any other required review or approval of experiments with one or more human subjects. Relevant Institutional Biosafety Committee and Institutional Review Board reviews and approvals of the proposal should be completed before submission to NIH. Certain experiments involving deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects may qualify for the Accelerated Review process (see Section III–B–2). Certain categories of experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects and that are not covered by Section V–U, may be considered exempt from RAC and/or NIH/ORDA review and/or NIH Director approval and only require registration with NIH/ORDA (see Section III–C–7).

Section III–B. Experiments That Require NIH/ORDA and Institutional Biosafety Committee Approval Before Initiation

Section III–B–1. Experiments Involving the Cloning of Toxin Molecules with LD_{50} of Less Than 100 Nanograms per Kilogram Body Weight

Deliberate formation of recombinant DNA containing genes for the biosynthesis of toxin molecules lethal for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, and *Shigella dysenteriae* neurotoxin). Specific approval has been given for the cloning in *Escherichia coli* K–12 of DNA containing genes coding for the biosynthesis of toxic molecules which are lethal to vertebrates at 100 nanograms to 100 micrograms per kilogram body weight. Specific experiments already approved under this section may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Section III–B–1–(a). Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH/ORDA. The containment conditions for such experiments will be determined by NIH/ORDA in consultation with ad hoc experts. Such experiments require Institutional Biosafety Committee approval before initiation (see Section IV–B–2–b–(1)).

Section III–B–2. Accelerated Review of Human Gene Transfer Experiments

As determined by NIH/ORDA, in consultation with the RAC Chair and one or more RAC members, as necessary, certain categories of human gene transfer experiments may be considered as Minor Actions and qualify for Accelerated Review and approval (see Section IV–C–1–b–(2)–(a), Appendix M–III–A, and Appendix M–V). The RAC Chair will present a report of all NIH/ORDA approved human gene transfer protocols at the next regularly scheduled RAC meeting. If NIH/ORDA determines that an experiment does not qualify for the Accelerated Review process, the Principal Investigator must submit the proposal for full RAC review ≥ 8 weeks prior to the next scheduled RAC meeting (See Section III–A–2).

Section III–B–3. Minor Modifications to Human Gene Transfer Experiments

A minor modification in a human gene transfer protocol is a modification that does not significantly alter the basic design of the protocol and that does not increase risk to human subjects or the environment. After approval has been obtained by the relevant Institutional Biosafety Committee and Institutional Review Board, NIH/ORDA will consider the change in consultation with the RAC Chair and one or more RAC members, as necessary. Submit minor modifications to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. The RAC Chair will provide a report on any such approvals at the next regularly scheduled RAC meeting.

Section III–C. Experiments That Require Institutional Biosafety Committee Approval Before Initiation

Prior to the initiation of an experiment that falls into this category, the Principal Investigator must submit a registration document to the Institutional Biosafety Committee which contains the following information: (i) The source(s) of DNA; (ii) the nature of the inserted DNA sequences; (iii) the host(s) and vector(s) to be used; (iv) if an attempt will be made to obtain expression of a foreign gene, and if so, indicate the protein that will be produced; and (v) the containment conditions that will be implemented as specified in the NIH Guidelines. For experiments in this category, the registration document shall be dated, signed by the Principal Investigator, and filed with the Institutional Biosafety Committee. The Institutional Biosafety Committee shall review and approve all experiments in this category prior to their initiation. Requests to decrease the level of containment specified for experiments in this category will be considered by NIH (see Section IV–C–1–b–(2)–(c)).

Section III–C–1. Experiments Using Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents (See Section V–A) as Host-Vector Systems

Section III–C–1–a. Experiments involving the introduction of recombinant DNA into Class 2 agents shall be conducted at Biosafety Level (BL) 2 containment. Experiments with such agents shall be conducted with whole animals at BL2 or BL2–N (Animals) containment.

Section III–C–1–b. Experiments involving the introduction of recombinant DNA into Class 3 agents shall be conducted at BL3 containment. Experiments with such agents shall be conducted with whole animals at BL3 or BL3–N containment.

Section III–C–1–c. Experiments involving the introduction of recombinant DNA into Class 4 agents shall be conducted at BL4 containment. Experiments with such agents shall be conducted with whole animals at BL4 or BL4–N containment.

Section III–C–1–d. Containment conditions for experiments involving the introduction of recombinant DNA into Class 5 agents shall be set on a case-by-case basis following NIH/ORDA review. A U.S. Department of Agriculture permit is required for work with Class 5 agents (see Sections V–R and V–T). Experiments with such agents shall be conducted with whole animals at BL4 or BL4–N containment.

Section III–C–2. Experiments in Which DNA From Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents (See Section V–A) is Cloned Into Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems

Section III–C–2–a. Experiments in which DNA from Class 2 or Class 3 agents (see Section V–A) is transferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under BL2 containment. Experiments in which DNA from Class 4 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under BL2 containment after demonstration that only a totally and irreversibly defective fraction of the agent's genome is present in a given recombinant. In the absence of such a demonstration, BL4 containment shall be used. The Institutional Biosafety Committee may approve the specific lowering of containment for particular

experiments in this category prior to their initiation. Requests to decrease the level of containment specified for experiments in this category will be considered by NIH (see Section IV–C–1–b–(2)–(c)).

Section III–C–1. Experiments Using Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents (See Section V–A) as Host-Vector Systems

Section III–C–1–a. Experiments involving the introduction of recombinant DNA into Class 2 agents shall be conducted at Biosafety Level (BL) 2 containment. Experiments with such agents shall be conducted with whole animals at BL2 or BL2–N (Animals) containment.

Section III–C–1–b. Experiments involving the introduction of recombinant DNA into Class 3 agents shall be conducted at BL3 containment. Experiments with such agents shall be conducted with whole animals at BL3 or BL3–N containment.

Section III–C–1–c. Experiments involving the introduction of recombinant DNA into Class 4 agents shall be conducted at BL4 containment. Experiments with such agents shall be conducted with whole animals at BL4 or BL4–N containment.

Section III–C–1–d. Containment conditions for experiments involving the introduction of recombinant DNA into Class 5 agents shall be set on a case-by-case basis following NIH/ORDA review. A U.S. Department of Agriculture permit is required for work with Class 5 agents (see Sections V–R and V–T). Experiments with such agents shall be conducted with whole animals at BL4 or BL4–N containment.

Section III–C–2. Experiments in Which DNA From Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents (See Section V–A) is Cloned Into Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems

Section III–C–2–a. Experiments in which DNA from Class 2 or Class 3 agents (see Section V–A) is transferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under BL2 containment. Experiments in which DNA from Class 4 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under BL2 containment after demonstration that only a totally and irreversibly defective fraction of the agent's genome is present in a given recombinant. In the absence of such a demonstration, BL4 containment shall be used. The Institutional Biosafety Committee may approve the specific lowering of containment for particular experiments to BL1. Many experiments in this category are exempt from the NIH Guidelines (see Section III–E). Experiments involving the formation of recombinant DNA for certain genes coding for molecules toxic for vertebrates require NIH/ORDA approval (see Section III–B–1) or shall be conducted under NIH specified conditions as described in Appendix F.

Section III–C–2–b. Containment conditions for experiments in which DNA from Class 5 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes shall be determined by NIH/ORDA following a case-by-case review. A U.S. Department of Agriculture permit is required for work with Class 5 agents (see Sections V–R and V–T).

Section III–C–3. Experiments Involving the Use of Infectious Animal or Plant DNA or RNA Viruses or Defective Animal or Plant DNA or RNA Viruses in the Presence of Helper Virus in Tissue Culture Systems

Caution: Special care should be used in the evaluation of containment levels for experiments which are likely to either enhance the pathogenicity (e.g., insertion of a host oncogene) or to extend the host range (e.g., introduction of novel control elements) of viral vectors under conditions that permit a productive infection. In such cases, serious consideration should be given to increasing physical containment by at least one level.

Note: Recombinant DNA or RNA molecules derived therefrom, which contain less than two–thirds of the genome of any eukaryotic virus (all viruses from a single Family (see Section V–Q) being considered identical (see Section V–S), are considered defective and may be used in the absence of helper under the conditions specified in Section III–D–1.

Section III–C–3–a. Experiments involving the use of infectious or defective Class 2 animal viruses (see Section V–A, Appendix B–II, and Appendix B–II–E) in the presence of helper virus may be conducted at BL2.

Section III–C–3–b. Experiments involving the use of infectious or defective Class 3 animal viruses (see Section V–A and Appendix B–III–D) in the presence of helper virus may be conducted at BL3.

Section III–C–3–c. Experiments involving the use of infectious or defective Class 4 animal viruses (see Section V–A and Appendix B–IV–D) in the presence of helper virus may be conducted at BL4.

Section III–C–3–d. Experiments involving the use of infectious or defective Class 5 viruses (see Section V–A and Appendix B–V) in the presence of helper virus shall be determined on a case-by-case basis following NIH/ORDA review. A U.S. Department of Agriculture permit is required for work with Class 5 agents (see Sections V–R and V–T).

Section III–C–3–e. Experiments involving the use of infectious or defective animal or plant viruses in the presence of helper virus are not covered in Sections III–C–3–a through III–C–3–d and may be conducted at BL1.

Section III–C–4. Experiments Involving Whole Animals

This section covers experiments involving whole animals in which the animal's genome has been altered by stable introduction of recombinant DNA, or DNA derived therefrom, into the germ-line (transgenic animals) and experiments involving viable recombinant DNA-modified microorganisms tested on whole animals. For the latter, other than viruses which are only vertically transmitted, the experiments may not be conducted at BL1–N containment. A minimum containment of BL2 or BL2–N is required.

Caution—Special care should be used in the evaluation of containment conditions for some experiments with transgenic animals. For example, such experiments might lead to the creation of novel mechanisms or increased transmission of a recombinant pathogen or production of undesirable traits in the host animal. In such cases, serious consideration should be given to increasing the containment conditions.

Section III–C–4–a. Recombinant DNA or DNA or RNA molecules derived therefrom, from any source except for greater than two-thirds of eukaryotic viral genome may be transferred to any non-human vertebrate or any invertebrate organism and propagated under conditions of physical containment comparable to BL1 or BL1–N and appropriate to the organism under study (see Section V–B).

Animals that contain sequences from viral vectors, which do not lead to transmissible infection either directly or indirectly as a result of complementation or recombination in animals, may be propagated under conditions of physical containment comparable to BL1 or BL1–N and appropriate to the organism under study. Experiments involving the introduction of other sequences from eukaryotic viral genomes into animals are covered under Section III–C–4–b. For experiments involving recombinant DNA-modified Class 2, 3, 4, or 5 organisms, see Section V–A. It is important that the investigator

demonstrate that the fraction of the viral genome being utilized does not lead to productive infection. A U.S. Department of Agriculture permit is required for work with Class 5 agents (see Section V–R and V–T).

Section III–C–4–b. For experiments involving recombinant DNA, or DNA or RNA derived therefrom, involving whole animals, including transgenic animals, and not covered by Sections III–C–1 or III–C–4–a, the appropriate containment shall be determined by the Institutional Biosafety Committee.

Section III–C–5. Experiments Involving Whole Plants

Experiments to genetically engineer plants by recombinant DNA methods, to use such plants for other experimental purposes (e.g., response to stress), to propagate such plants, or to use plants together with microorganisms or insects containing recombinant DNA, may be conducted under the containment conditions described in Sections III–C–5–a through III–C–5–e. If experiments involving whole plants are not described in Section III–C–5 and do not fall under Sections III–A, III–B, or III–E, they are included in Section III–D.

Note. For recombinant DNA experiments falling under Sections III–C–5–a through III–C–5–d, physical containment requirements may be reduced to the next lower level by appropriate biological containment practices, such as conducting experiments on a virus with an obligate insect vector in the absence of that vector or using a genetically attenuated strain.

Section III–C–5–a. BL3–P (Plants) or BL2–P + biological containment is recommended for experiments involving most exotic (see Section V–W) infectious agents with recognized potential for serious detrimental impact on managed or natural ecosystems when recombinant DNA techniques are associated with whole plants.

Section III–C–5–b. BL3–P or BL2–P + biological containment is recommended for experiments involving plants containing cloned genomes of readily transmissible exotic (see Section V–W) infectious agents with recognized potential for serious detrimental effects on managed or natural ecosystems in which there exists the possibility of reconstituting the complete and functional genome of the infectious agent by genomic complementation *in planta*.

Section III–C–5–c. BL4–P containment is recommended for experiments with a small number of readily transmissible exotic (see Section V–W) infectious agents, such as the soybean rust fungus (*Phakospora pachyrhizi*) and maize streak or other viruses in the presence of their specific arthropod vectors, that have the potential of being serious pathogens of major U.S. crops.

Section III–C–5–d. BL3–P containment is recommended for experiments involving sequences encoding potent vertebrate toxins introduced into plants or associated organisms. Recombinant DNA containing genes for the biosynthesis of toxin molecules lethal for vertebrates at an LD_{50} of <100 nanograms per kilogram body weight fall under Section III–B–1 and require NIH/ORDA and Institutional Biosafety Committee approval before initiation.

Section III–C–5–e. BL3–P or BL2–P + biological containment is recommended for experiments with microbial pathogens of insects or small animals associated with plants if the recombinant DNA-modified organism has a recognized potential for serious detrimental impact on managed or natural ecosystems.

Section III–C–6. Experiments Involving More than 10 Liters of Culture

The appropriate containment will be decided by the Institutional Biosafety Committee. Where appropriate, Appendix K, Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules, shall be used. Appendix K describes containment conditions Good Large Scale Practice through BL3–Large Scale.

Section III–C–7. Human Gene Transfer Experiments Not Covered by Sections III–A–2, III–B–2, III–B–3, and Not Considered Exempt Under Section V–U

Certain experiments involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects that are not covered by Sections III–A–2, III–B–2, III–B–3, and that are not considered exempt under Section V–U must be registered with NIH/ORDA. The relevant Institutional Biosafety Committee and Institutional Review Board must review and approve all experiments in this category prior to their initiation.

Section III–D. Experiments That Require Institutional Biosafety Committee Notice Simultaneous With Initiation

Experiments not included in Sections III–A, III–B, III–C, III–E, and their subsections are considered in Section III–D. All such experiments may be conducted at BL1 containment. For experiments in this category, a registration document (see Section III–C) shall be dated and signed by the investigator and filed with the local Institutional Biosafety Committee at the time the experiment is initiated. The Institutional Biosafety Committee reviews and approves all such proposals, but Institutional Biosafety Committee review and approval prior to initiation of the experiment is not required (see Section IV–A). For example, experiments in which all components derived from non-pathogenic prokaryotes and non-pathogenic lower eukaryotes fall under Section III–D and may be conducted at BL1 containment.

Section III–D–1. Experiments Involving the Formation of Recombinant DNA Molecules Containing No More Than Two-Thirds of the Genome of Any Eukaryotic Virus

Recombinant DNA molecules containing no more than two-thirds of the genome of any eukaryotic virus (all viruses from a single Family (see Section V–Q) being considered identical (see Section V–S)) may be propagated and maintained in cells in tissue culture using BL1 containment. For such experiments, it must be demonstrated that the cells lack helper virus for the specific Families of defective viruses being used. If helper virus is present, procedures specified under Section III–C–3 should be used. The DNA may contain fragments of the genome of viruses from more than one Family but each fragment shall be less than two-thirds of a genome.

Section III–D–2. Experiments Involving Whole Plants

This section covers experiments involving recombinant DNA-modified whole plants, and/or experiments involving recombinant DNA-modified organisms associated with whole plants, except those that fall under Section III-A, III-B, III-C, or III-E. It should be emphasized that knowledge of the organisms and judgment based on accepted scientific practices should be used in all cases in selecting the appropriate level of containment. For example, if the genetic modification has the objective of increasing pathogenicity or converting a non-pathogenic organism into a pathogen, then a higher level of containment may be appropriate depending on the organism, its mode of dissemination, and its target organisms. By contrast, a lower level of containment may be appropriate for small animals associated with many types of recombinant DNA-modified plants.

Section III-D-2-a. BL1–P is recommended for all experiments with recombinant DNA-containing plants and plant-associated microorganisms not covered in Section III-D–2-b or other sections of the NIH Guidelines. Examples of such experiments are those involving recombinant DNA-modified plants that are not noxious weeds or that cannot interbreed with noxious weeds in the immediate geographic area, and experiments involving whole plants and recombinant DNA-modified non-exotic (see Section V-W) microorganisms that have no recognized potential for rapid and widespread dissemination or for serious detrimental impact on managed or natural ecosystems (e.g., *Rhizobium* spp. and *Agrobacterium* spp.).

Section III-D–2-b. BL2–P or BL1–P + biological containment is recommended for the following experiments:

Section III-D–2-b-(1). Plants modified by recombinant DNA that are noxious weeds or can interbreed with noxious weeds in the immediate geographic area.

Section III-D–2-b-(2). Plants in which the introduced DNA represents the complete genome of a non-exotic infectious agent (see Section V-W).

Section III-D–2-b-(3). Plants associated with recombinant DNA-modified non-exotic microorganisms that have a recognized potential for serious detrimental impact on managed or natural ecosystems (see Section V-W).

Section III-D–2-b-(4). Plants associated with recombinant DNA-modified exotic microorganisms that have no recognized potential for serious natural ecosystems (see Section V-W).

Section III-D–2-b-(5). Experiments with recombinant DNA-modified arthropods or small animals associated with plants, or with arthropods or small animals with recombinant DNA-modified microorganisms associated with them if the recombinant DNA-modified microorganisms have no recognized potential for serious detrimental impact on managed or natural ecosystems (see Section V-W).

Section III-E. Exempt Experiments

The following recombinant DNA molecules are exempt from the NIH Guidelines and registration with the Institutional Biosafety Committee is not required:

Section III-E–1. Those that are not in organisms or viruses.

Section III-E–2. Those that consist entirely of DNA segments from a single nonchromosomal or viral DNA source, though one or more of the segments may be a synthetic equivalent.

Section III-E–3. Those that consist entirely of DNA from a prokaryotic host including its indigenous plasmids or viruses when propagated only in that

plant-associated microorganisms not covered in Section III-D–2-b or other sections of the NIH Guidelines. Examples of such experiments are those involving recombinant DNA-modified plants that are not noxious weeds or that cannot interbreed with noxious weeds in the immediate geographic area, and experiments involving whole plants and recombinant DNA-modified non-exotic (see Section V-W) microorganisms that have no recognized potential for rapid and widespread dissemination or for serious detrimental impact on managed or natural ecosystems (e.g., *Rhizobium* spp. and *Agrobacterium* spp.).

Section III-D–2-b. BL2–P or BL1–P + biological containment is recommended for the following experiments:

Section III-D–2-b-(1). Plants modified by recombinant DNA that are noxious weeds or can interbreed with noxious weeds in the immediate geographic area.

Section III-D–2-b-(2). Plants in which the introduced DNA represents the complete genome of a non-exotic infectious agent (see Section V-W).

Section III-D–2-b-(3). Plants associated with recombinant DNA-modified non-exotic microorganisms that have a recognized potential for serious detrimental impact on managed or natural ecosystems (see Section V-W).

Section III-D–2-b-(4). Plants associated with recombinant DNA-modified exotic microorganisms that have no recognized potential for serious natural ecosystems (see Section V-W).

Section III-D–2-b-(5). Experiments with recombinant DNA-modified arthropods or small animals associated with plants, or with arthropods or small animals with recombinant DNA-modified microorganisms associated with them if the recombinant DNA-modified microorganisms have no recognized potential for serious detrimental impact on managed or natural ecosystems (see Section V-W).

Section III-E. Exempt Experiments

The following recombinant DNA molecules are exempt from the NIH Guidelines and registration with the Institutional Biosafety Committee is not required:

Section III-E–1. Those that are not in organisms or viruses.

Section III-E–2. Those that consist entirely of DNA segments from a single nonchromosomal or viral DNA source, though one or more of the segments may be a synthetic equivalent.

Section III-E–3. Those that consist entirely of DNA from a prokaryotic host including its indigenous plasmids or viruses when propagated only in that host (or a closely related strain of the same species), or when transferred to another host by well established physiological means.

Section III-E–4. Those that consist entirely of DNA from an eukaryotic host including its chloroplasts, mitochondria, or plasmids (but excluding viruses) when propagated only in that host (or a closely related strain of the same species).

Section III-E–5. Those that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the NIH Director with advice of the RAC after appropriate notice and opportunity for public comment (see Section IV-C–1-b-(1)-(c)). See Appendices A-I through A-VI for a list of natural exchangers that are exempt from the NIH Guidelines.

Section III-E–6. Those that do not present a significant risk to health or the environment (see Section IV-C–1-b-(1)-(c)), as determined by the NIH Director, with the advice of the RAC, and following appropriate notice and opportunity for public comment. See Appendix C for other classes of experiments which are exempt from the NIH Guidelines."

D. Amendment to Section IV, Roles and Responsibilities of the NIH Guidelines

The amended version of Section IV-C–1-b reads as follows:

Section IV-C–1-b. Specific Responsibilities [NIH Director]

In carrying out the responsibilities set forth in this section, the NIH Director, or a designee shall weigh each proposed action through appropriate analysis and consultation to determine whether it complies with the NIH Guidelines and presents no significant risk to health or the environment.

Section IV-C–1-b-(1). Major Actions

To execute Major Actions, the NIH Director shall seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the Notice of Meeting and Proposed Actions to the NIH Guidelines shall be published in the **Federal Register** at least 15 days before the RAC meeting (not applicable for Expedited Review single patient human gene transfer experiments considered under Appendix M-VI). The NIH Director's decision, at his/her discretion, may be published in the **Federal Register** for 15 days of comment before final action is taken. The NIH Director's final decision, along with responses to public comments, shall be published in the **Federal Register**. The RAC and Institutional Biosafety Committee Chairs shall be notified of the following decisions:

Section IV-C–1-b-(1)-(a). Changing containment levels for types of experiments that are specified in the NIH Guidelines when a Major Action is involved;

Section IV-C–1-b-(1)-(b). Assigning containment levels for types of experiments that are not explicitly considered in the NIH Guidelines when a Major Action is involved;

Section IV–C–1–b–(1)–(c). Promulgating and amending a list of classes of recombinant DNA molecules to be exempt from the NIH Guidelines because they consist entirely of DNA segments from species that exchange DNA by known physiological processes or otherwise do not present a significant risk to health or the environment;

Section IV–C–1–b–(1)–(d). Permitting experiments specified by Section III–A;

Section IV–C–1–b–(1)–(e). Certifying new host-vector systems with the exception of minor modifications of already certified systems (the standards and procedures for certification are described in Appendix I–II). Minor modifications constitute (e.g., those of minimal or no consequence to the properties relevant to containment); and

Section IV–C–1–b–(1)–(f). Adopting other changes in the NIH Guidelines.

Section IV–C–1–b–(2). Minor Actions

NIH/ORDA shall carry out certain functions as delegated to it by the NIH Director (see Section IV–C–3). Minor Actions (as determined by NIH/ORDA in consultation with the RAC Chair and one or more RAC members, as necessary) will be transmitted to the RAC and Institutional Biosafety Committee Chairs:

Section IV–C–1–b–(2)–(a). Reviewing and approving certain experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects that qualify for the Accelerated Review process (see Section III–B–2);

Section IV–C–1–b–(2)–(b). Reviewing and approving minor changes to human gene transfer protocols under Section III–A–2 and III–B–2;

Section IV–C–1–b–(2)–(c). Changing containment levels for experiments that are specified in Section III;

Section IV–C–1–b–(2)–(d). Assigning containment levels for experiments not explicitly considered in the NIH Guidelines; and

Section IV–C–1–b–(2)–(e). Revising the Classification of Etiologic Agents for the purpose of these NIH Guidelines (see Section V–A).

Section IV–C–1–b–(2)–(f). Interpreting the NIH Guidelines for experiments to which the NIH Guidelines do not specifically assign containment levels;

Section IV–C–1–b–(2)–(g). Setting containment under Sections III–C–1–d and III–C–2–b;

Section IV–C–1–b–(2)–(h). Approving minor modifications of already certified host-vector systems (the standards and procedures for such modifications are described in Appendix I–II);

Section IV–C–1–b–(2)–(i). Decertifying already certified host-vector systems;

Section IV–C–1–b–(2)–(j). Adding new entries to the list of molecules toxic for vertebrates (see Appendix F); and

Section IV–C–1–b–(2)–(k). Determining appropriate containment conditions for experiments according to case precedents developed under Section IV–C–1–b–(2)–(c).

The amended version of Section IV–C–2 reads as follows:

Section IV–C–2. Recombinant DNA Advisory Committee (RAC). The RAC shall be responsible for advising the Director, NIH, on the actions listed in Section IV–C–1–b–(1).

The amended version of Section IV–C–3 reads as follows:

Section IV–C–3. Office of Recombinant DNA Activities (ORDA)

ORDA shall serve as a focal point for information on recombinant DNA activities and provide advice to all within and outside NIH including institutions, Biological Safety Officers, Principal Investigators, Federal agencies, state and local governments, and institutions in the private sector. ORDA shall carry out such other functions as may be delegated to it by the NIH Director, including those authorities described in Section IV–C–1–b–(2). ORDA's responsibilities include, but are not limited to the following:

Section IV–C–3–a. Reviewing and approving experiments in conjunction with ad hoc experts involving the cloning of genes encoding for toxin molecules that are lethal for vertebrates at an LD_{50} ≤100 nanograms per kilogram body weight in organisms other than *Escherichia coli* K–12 (see Section III–B–1 and Appendices F–I and F–II);

Section IV–C–3–b. Reviewing and approving certain experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects, in consultation with the RAC Chair and one or more RAC members, as necessary, that qualify for the Accelerated Review process (see Section III–B–2);

Section IV–C–3–c. Reviewing and approving minor changes to human gene transfer protocols approved under Sections III–A–2 and III–B–2, in consultation with the RAC Chair and one or more RAC members, as necessary;

Section IV–C–3–d. Reviewing and approving the membership of an institution's Institutional Biosafety Committee, and where it finds the Institutional Biosafety Committee meets the requirements set forth in Section IV–B–2 will give its approval to the Institutional Biosafety Committee membership;

Section IV–C–3–e. Publishing in the **Federal Register**:

Section IV–C–3–e–(1). Announcements of RAC meetings and agendas at least 15 days in advance (Note—If the agenda for a RAC meeting is modified, ORDA shall make the revised agenda available to anyone upon request at least 72 hours in advance of the meeting);

Section IV–C–3–e–(2). Proposed Major Actions to the NIH Guidelines (see Section IV–C–1–b–(1)) at least 15 days prior to the RAC meeting;

Section IV–C–3–f. Serve as the focal point for data management of NIH-approved human gene transfer protocols approved under Sections III–A–2 and III–B–2 and registered with NIH/ORDA as required under Section III–C–7;

Section IV–C–3–g. Serve as the executive secretary of the RAC; and

Section IV–C–3–h. Maintain a list of Major and Minor Actions approved under Section III–A–2 and III–B–3 and a list of experiments registered with NIH/ORDA as described in Section III–C–7.

E. Amendment and Addition to Section V, Footnotes and References of Sections I–IV of the NIH Guidelines

The amended version of Section V–U reads as follows:

Section V–U. Human studies in which the induction or enhancement of an immune response to a vector-encoded microbial immunogen is the major goal, such an immune response has been demonstrated in model systems, and the persistence of the vector-encoded immunogen is not expected, are not covered under Sections III–A–2, III–B–2, or III–B–3. Such studies may be initiated without RAC review and NIH approval if approved by another Federal agency."

The following new footnote, V–W is added to Section V:

Section V–W. In accordance with accepted scientific and regulatory practices of the discipline of plant pathology, an exotic plant pathogen (e.g., virus, bacteria, or fungus) is one that is unknown to occur within the U.S. (see Section V–R). Determination of whether a pathogen has a potential for serious detrimental impact on managed (agricultural, forest, grassland) or natural ecosystems should be made by the Principal Investigator and the Institutional Biosafety Committee, in consultation with scientists knowledgeable of plant diseases, crops, and ecosystems in the geographic area of the research.

F. Addition to Appendix C–I, Recombinant DNA in Tissue Culture, of the NIH Guidelines

The amended version of Appendix C–I reads as follows:

Appendix C–I. Recombinant DNA in Tissue Culture

Recombinant DNA molecules containing less than one-half of any eukaryotic viral genome (all viruses from a single family (see Appendix C–VI–D) being considered identical (see Appendix C–VI–E), that are propagated and maintained in cells in tissue culture are exempt from these NIH Guidelines with the exceptions listed in Appendix C–I–A.

Appendix C–I–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) Experiments described in Section III–A which require specific RAC review and NIH and Institutional Biosafety Committee approval before initiation, (ii) experiments described in Section III–B which require NIH/ORDA and Institutional Biosafety Committee approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms (see Appendix C–VI–A) or cells known to be infected with these agents, (iv) experiments involving the deliberate introduction of genes coding for the biosynthesis of molecules that are toxic for vertebrates (see Appendix F), and (v) whole plants regenerated from plant cells and tissue cultures are covered by the exemption provided they remain axenic cultures even though they differentiate into embryonic tissue and regenerate into plantlets.

G. Addition to Appendix G, Physical Containment, of the NIH Guidelines

Appendix G through G–I is amended to read as follows:

Appendix G specifies physical containment for standard laboratory experiments and defines Biosafety Level 1 through Biosafety Level 4. For large scale (over 10 liters) research or production, Appendix K supersedes Appendix G. Appendix K defines Good Large Scale Practice through Biosafety Level 3—Large Scale. For certain work with plants, Appendix P supersedes Appendix G. Appendix P defines Biosafety Levels 1 through 4—Plants. For certain work with animals, Appendix Q supersedes Appendix G. Appendix Q defines Biosafety Levels 1 through 4—Animals.

Appendix G–I. Standard Practices and Training

The first principle of containment is strict adherence to good microbiological practices (see Appendices G–III–A through G–III–J). Consequently, all personnel directly or indirectly involved in experiments using recombinant DNA shall receive adequate instruction (see Sections IV–B–1–e and IV–B–4–d). At a minimum, these instructions include training in aseptic techniques and in the biology of the organisms used in the experiments so that the potential biohazards can be understood and appreciated.

Any research group working with agents that are known or potential biohazards shall have an emergency plan that describes the procedures to be followed if an accident contaminates personnel or the environment. The Principal Investigator shall ensure that everyone in the laboratory is familiar with both the potential hazards of the work and the emergency plan (see Sections IV–B–4–d and IV–B–4–e). If a research group is working with a known pathogen for which there is an effective vaccine, the vaccine should be made available to all workers. Serological monitoring, when clearly appropriate, will be provided (see Section IV–B–1–f).

The Laboratory Safety Monograph (see Appendix G–III–O) and Biosafety in Microbiological and Biomedical Laboratories (see Appendix G–III–B) describe practices, equipment, and facilities in detail.

H. Addition of Appendix P, Physical and Biological Containment for Recombinant DNA Research Involving Plants, to the NIH Guidelines

The following new appendix, Appendix P, reads as follows:

Appendix P specifies physical and biological containment conditions and practices suitable to the greenhouse conduct of experiments involving recombinant DNA-containing plants, plant-associated microorganisms, and small animals. All provisions of the NIH Guidelines apply to plant research

1 through Biosafety Level 4. For large scale (over 10 liters) research or production, Appendix K supersedes Appendix G. Appendix K defines Good Large Scale Practice through Biosafety Level 3—Large Scale. For certain work with plants, Appendix P supersedes Appendix G. Appendix P defines Biosafety Levels 1 through 4—Plants. For certain work with animals, Appendix Q supersedes Appendix G. Appendix Q defines Biosafety Levels 1 through 4—Animals.

Appendix G–I. Standard Practices and Training

The first principle of containment is strict adherence to good microbiological practices (see Appendices G–III–A through G–III–J). Consequently, all personnel directly or indirectly involved in experiments using recombinant DNA shall receive adequate instruction (see Sections IV–B–1–e and IV–B–4–d). At a minimum, these instructions include training in aseptic techniques and in the biology of the organisms used in the experiments so that the potential biohazards can be understood and appreciated.

Any research group working with agents that are known or potential biohazards shall have an emergency plan that describes the procedures to be followed if an accident contaminates personnel or the environment. The Principal Investigator shall ensure that everyone in the laboratory is familiar with both the potential hazards of the work and the emergency plan (see Sections IV–B–4–d and IV–B–4–e). If a research group is working with a known pathogen for which there is an effective vaccine, the vaccine should be made available to all workers. Serological monitoring, when clearly appropriate, will be provided (see Section IV–B–1–f).

The Laboratory Safety Monograph (see Appendix G–III–O) and Biosafety in Microbiological and Biomedical Laboratories (see Appendix G–III–B) describe practices, equipment, and facilities in detail.

H. Addition of Appendix P, Physical and Biological Containment for Recombinant DNA Research Involving Plants, to the NIH Guidelines

The following new appendix, Appendix P, reads as follows:

Appendix P specifies physical and biological containment conditions and practices suitable to the greenhouse conduct of experiments involving recombinant DNA-containing plants, plant-associated microorganisms, and small animals. All provisions of the NIH Guidelines apply to plant research activities with the following modifications:

Appendix P shall supersede Appendix G when the research plants are of a size, number, or have growth requirements that preclude the use of containment conditions described in Appendix G. The plants covered in Appendix P include but are not limited to mosses, liverworts, macroscopic algae, and vascular plants including terrestrial crops, forest, and ornamental species.

Plant-associated microorganisms include viroids, virusoids, viruses, bacteria, fungi, protozoans, certain small algae, and microorganisms that have a benign or beneficial association with plants, such as certain *Rhizobium* species and microorganisms known to cause plant diseases. The appendix applies to microorganisms which are being modified with the objective of fostering an association with plants.

Plant-associated small animals include those arthropods that: (i) Are in obligate association with plants, (ii) are plant pests, (iii) are plant pollinators, or (iv) transmit plant disease agents, as well as other small animals such as nematodes for which tests of biological properties necessitate the use of plants. Microorganisms associated with such small animals (e.g., pathogens or symbionts) are included.

The Institutional Biosafety Committee shall include at least one individual with expertise in plant, plant pathogen, or plant pest containment principles when experiments utilizing Appendix P require prior approval by the Institutional Biosafety Committee.

Appendix P–I. General Plant Biosafety Levels

Appendix P–I–A. The principal purpose of plant containment is to avoid the unintentional transmission of a recombinant DNA-containing plant genome, including nuclear or organelle hereditary material or release of recombinant DNA-derived organisms associated with plants.

Appendix P–I–B. The containment principles are based on the recognition that the organisms that are used pose no health threat to humans or higher animals (unless deliberately modified for that purpose), and that the containment conditions minimize the possibility of an unanticipated deleterious effect on organisms and ecosystems outside of the experimental facility, e.g., the inadvertent spread of a serious pathogen from a greenhouse to a local agricultural crop or the unintentional introduction and establishment of an organism in a new ecosystem.

Appendix P–I–C. Four biosafety levels, referred to as Biosafety Level (BL) 1—Plants (P), BL2–P, BL3–P, and BL4–P, are established in Section II. The selection of containment levels required for research involving recombinant DNA molecules in plants or associated with plants is specified in Section III. These biosafety levels are described in Appendix P–II. This appendix describes greenhouse practices and special greenhouse facilities for physical containment.

Appendix P–I–D. BL1–P through BL4–P are designed to provide differential levels of biosafety for plants in the absence or presence of other experimental organisms that contain recombinant DNA. These biosafety levels, in conjunction with biological containment conditions described in Appendix P–III, provide flexible approaches to ensure the safe conduct of research.

Appendix P–I–E. For experiments in which plants are grown at the BL1 through BL4 laboratory settings, containment practices shall be followed as described in Appendix G. These containment practices include the use of plant tissue culture rooms, growth chambers within laboratory facilities, or experiments performed on open benches. Additional biological containment practices should be added by the Greenhouse Director or Institutional Biosafety Committee as necessary (see Appendix P–III), if botanical reproductive structures are produced that have the potential of being released.

Appendix P–II. Physical Containment Levels

Appendix P–II–A. Biosafety Level 1—Plants (BL1–P)

Appendix P–II–A–1. Standard Practices (BL1–P)

Appendix P–II–A–1–a. Greenhouse Access (BL1–P)

Appendix P–II–A–1–a–(1). Access to the greenhouse shall be limited or restricted, at the discretion of the Greenhouse Director, when experiments are in progress.

Appendix P–II–A–1–a–(2). Prior to entering the greenhouse, personnel shall be required to read and follow instructions on BL1–P greenhouse practices and procedures. All procedures shall be performed in accordance with accepted greenhouse practices that are appropriate to the experimental organism.

Appendix P-II-A–1-b. Records (BL1–P)

Appendix P-II-A–1-b-(1). A record shall be kept of experiments currently in progress in the greenhouse facility.

Appendix P-II-A–1-c. Decontamination and Inactivation (BL1–P)

Appendix P-II-A–1-c-(1). Experimental organisms shall be rendered biologically inactive by appropriate methods before disposal outside of the greenhouse facility.

Appendix P-II-A–1-d. Control of Undesired Species and Motile Macroorganisms (BL1–P)

Appendix P-II-A–1-d-(1). A program shall be implemented to control undesired species (e.g., weed, rodent, or arthropod pests and pathogens), by methods appropriate to the organisms and in accordance with applicable state and Federal laws.

Appendix P-II-A–1-d-(2). Arthropods and other motile macroorganisms shall be housed in appropriate cages. If macroorganisms (e.g., flying arthropods or nematodes) are released within the greenhouse, precautions shall be taken to minimize escape from the greenhouse facility.

Appendix P-II-A–1-e. Concurrent Experiments Conducted in the Greenhouse (BL1–P)

Appendix P-II-A–1-e-(1). Experiments involving other organisms that require a containment level lower than BL1–P may be conducted in the greenhouse concurrently with experiments that require BL1–P containment, provided that all work is conducted in accordance with BL1–P greenhouse practices.

Appendix P-II-A–2. Facilities (BL1–P)

Appendix P-II-A–2-a. Definitions (BL1–P)

Appendix P-II-A–2-a-(1). The term 'greenhouse' refers to a structure with walls, a roof, and a floor designed and used principally for growing plants in a controlled and protected environment. The walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth.

Appendix P-II-A–2-a-(2). The term 'greenhouse facility' includes the actual greenhouse rooms or compartments for growing plants, including all immediately contiguous hallways and head-house areas, and is considered part of the confinement area.

Appendix P-II-A–2-b. Greenhouse Design (BL1–P)

Appendix P-II-A–2-b-(1). The greenhouse floor may be composed of gravel or other porous material. At a minimum, impervious (e.g., concrete) walkways are recommended.

Appendix P-II-A–2-b-(2). Windows and other openings in the walls and roof of the greenhouse facility may be open for ventilation as needed for proper operation and do not require any special barrier to contain or exclude pollen, microorganisms, or small flying animals (e.g., arthropods and birds); however, screens are recommended.

Appendix P-II-B. Biosafety Level 2—Plants (BL2–P)

Appendix P-II-B–1. Standard Practices (BL2–P)

Appendix P-II-B–1-a. Greenhouse Access (BL2–P)

Appendix P-II-B–1-a-(1). Access to the greenhouse shall be limited or restricted, at the discretion of the Greenhouse Director, to individuals directly involved with the experiments when they are in progress.

Appendix P-II-B–1-a-(2). Personnel shall be required to read and follow instructions on BL2–P practices and procedures. All procedures shall be conducted in accordance with accepted greenhouse practices that are appropriate to the experimental organisms.

Appendix P-II-B–1-b. Records (BL2–P)

Appendix P-II-B–1-b-(1). A record shall be kept of experimental plants, microorganisms, or small animals that are brought into or removed from the greenhouse facility.

Appendix P-II-B–1-b-(2). A record shall be kept of experiments currently in progress in the greenhouse facility.

Appendix P-II-B–1-b-(3). The Principal Investigator shall report any greenhouse accident involving the inadvertent release or spill of microorganisms to the Greenhouse Director, Institutional Biosafety Committee, NIH/ORDA and other appropriate authorities immediately (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Documentation of any such accident shall be prepared and maintained.

Appendix P-II-B–1-c. Decontamination and Inactivation (BL2–P)

Appendix P-II-B–1-c-(1). Experimental organisms shall be rendered biologically inactive by appropriate methods before disposal outside of the greenhouse facility.

Appendix P-II-B–1-c-(2). Decontamination of run-off water is not necessarily required. If part of the greenhouse is composed of gravel or similar material, appropriate treatments should be made periodically to eliminate, or render inactive, any organisms potentially entrapped by the gravel.

Appendix P-II-B–1-d. Control of Undesired Species and Motile Macroorganisms (BL2–P)

Appendix P-II-B–1-d-(1). A program shall be implemented to control undesired species (e.g., weed, rodent, or arthropod pests and pathogens) by methods appropriate to the organisms and in accordance with applicable state and Federal laws.

Appendix P-II-B–1-d-(2). Arthropods and other motile macroorganisms shall be housed in appropriate cages. If macroorganisms (e.g., flying arthropods or nematodes) are released within the greenhouse, precautions shall be taken to minimize escape from the greenhouse facility.

Appendix P-II-B–1-e. Concurrent Experiments Conducted in the Greenhouse (BL2–P)

Appendix P-II-B–1-e-(1). Experiments involving other organisms that require a containment level lower than BL2–P may be conducted in the greenhouse concurrently with experiments that require BL2–P containment provided that all work is conducted in accordance with BL2–P greenhouse practices.

Appendix P-II-B–1-f. Signs (BL2–P)

Appendix P-II-B–1-f-(1). A sign shall be posted indicating that a restricted experiment is in progress. The sign shall indicate the following: (i) the name of the responsible individual, (ii) The plants in use, and (iii) any special requirements for using the area.

Appendix P-II-B–1-f-(2). If organisms are used that have a recognized potential for causing serious detrimental impacts on managed or natural ecosystems, their presence shall be indicated on a sign posted on the greenhouse access doors.

Appendix P-II-B–1-f-(3). If there is a risk to human health, a sign shall be posted incorporating the universal biosafety symbol.

Appendix P-II-B–1-g. Transfer of Materials (BL2–P)

Appendix P-II-B–1-g-(1). Materials containing experimental microorganisms, which are brought into or removed from the greenhouse facility in a viable or intact state, shall be transferred in a closed non-breakable container.

Appendix P-II-B–1-h. Greenhouse Practices Manual (BL2–P)

Appendix P-II-B–1-h-(1). A greenhouse practices manual shall be prepared or adopted. This manual shall: (i) Advise personnel of the potential consequences if such practices are not followed, and (ii) outline contingency plans to be implemented in the event of the unintentional release of organisms.

Appendix P-II-B–2. Facilities (BL2–P)

Appendix P-II-B–2-a. Definitions (BL2–P)

Appendix P-II-B–2-a-(1). The term 'greenhouse' refers to a structure with walls, a roof, and a floor designed and used principally for growing plants in a controlled and protected environment. The walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth.

Appendix P-II-B–2-a-(2). The term 'greenhouse facility' includes the actual greenhouse rooms or compartments for growing plants, including all immediately contiguous hallways and head-house areas and is considered part of the confinement area.

Appendix P-II-B–2-b. Greenhouse Design (BL2–P)

Appendix P-II-B–2-b-(1). A greenhouse floor composed of an impervious material. Concrete is recommended, but gravel or other porous material under benches is acceptable unless propagules of experimental organisms are readily disseminated through soil. Soil beds are acceptable unless propagules of experimental organisms are readily disseminated through soil.

Appendix P-II-B–2-b-(2). Windows and other openings in the walls and roof of the greenhouse facility may be open for ventilation as needed for proper operation and do not require any special barrier to exclude pollen or microorganisms; however, screens are required to exclude small flying animals (e.g., arthropods and birds).

Appendix P-II-B–2-c. Autoclaves (BL2–P)

Appendix P-II-B–2-c-(1). An autoclave shall be available for the treatment of contaminated greenhouse materials.

Appendix P-II-B–2-d. Supply and Exhaust Air Ventilation Systems (BL2–P)

Appendix P-II-B–2-d-(1). If intake fans are used, measures shall be taken to minimize the ingress of arthropods. Louvers or fans shall be constructed such that they can only be opened when the fan is in operation.

Appendix P-II-B–2-e. Other (BL2–P)

Appendix P-II-B–2-e-(1). BL2–P greenhouse containment requirements

prepared or adopted. This manual shall: (i) Advise personnel of the potential consequences if such practices are not followed, and (ii) outline contingency plans to be implemented in the event of the unintentional release of organisms.

Appendix P-II-B–2. Facilities (BL2–P)

Appendix P-II-B–2-a. Definitions (BL2–P)

Appendix P-II-B–2-a-(1). The term 'greenhouse' refers to a structure with walls, a roof, and a floor designed and used principally for growing plants in a controlled and protected environment. The walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth.

Appendix P-II-B–2-a-(2). The term 'greenhouse facility' includes the actual greenhouse rooms or compartments for growing plants, including all immediately contiguous hallways and head-house areas and is considered part of the confinement area.

Appendix P-II-B–2-b. Greenhouse Design (BL2–P)

Appendix P-II-B–2-b-(1). A greenhouse floor composed of an impervious material. Concrete is recommended, but gravel or other porous material under benches is acceptable unless propagules of experimental organisms are readily disseminated through soil. Soil beds are acceptable unless propagules of experimental organisms are readily disseminated through soil.

Appendix P-II-B–2-b-(2). Windows and other openings in the walls and roof of the greenhouse facility may be open for ventilation as needed for proper operation and do not require any special barrier to exclude pollen or microorganisms; however, screens are required to exclude small flying animals (e.g., arthropods and birds).

Appendix P-II-B–2-c. Autoclaves (BL2–P)

Appendix P-II-B–2-c-(1). An autoclave shall be available for the treatment of contaminated greenhouse materials.

Appendix P-II-B–2-d. Supply and Exhaust Air Ventilation Systems (BL2–P)

Appendix P-II-B–2-d-(1). If intake fans are used, measures shall be taken to minimize the ingress of arthropods. Louvers or fans shall be constructed such that they can only be opened when the fan is in operation.

Appendix P-II-B–2-e. Other (BL2–P)

Appendix P-II-B–2-e-(1). BL2–P greenhouse containment requirements may be satisfied by using a growth chamber or growth room within a building provided that the external physical structure limits access and escape of microorganisms and macroorganisms in a manner that satisfies the intent of the foregoing clauses.

Appendix P-II-C. Biosafety Level 3—Plants (BL3–P)

Appendix P-II-C–1. Standard Practices (BL3–P)

Appendix P-II-C–1-a. Greenhouse Access (BL3–P)

Appendix P-II-C–1-a-(1). Authorized entry into the greenhouse shall be restricted to individuals who are required for program or support purposes. The Greenhouse Director shall be responsible for assessing each circumstance and determining those individuals who are authorized to enter the greenhouse facility.

Appendix P-II-C–1-a-(2). Prior to entering the greenhouse, personnel shall be required to read and follow instructions on BL3–P practices and procedures. All procedures shall be conducted in accordance with accepted greenhouse practices that are appropriate to the experimental organisms.

Appendix P-II-C–1-b. Records (BL3–P)

Appendix P-II-C–1-b-(1). A record shall be kept of experimental plants, microorganisms, or small animals that are brought into or removed from the greenhouse facility.

Appendix P-II-C–1-b-(2). A record shall be kept of experiments currently in progress in the greenhouse facility.

Appendix P-II-C–1-b-(3). The Principal Investigator shall report any greenhouse accident involving the inadvertent release or spill of microorganisms to the Biological Safety Officer, Greenhouse Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities immediately (if applicable).

Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Documentation of any such accident shall be prepared and maintained.

Appendix P-II-C–1-c. Decontamination and Inactivation (BL3–P)

Appendix P-II-C–1-c-(1). All experimental materials shall be sterilized in an autoclave or rendered biologically inactive by appropriate methods before disposal, except those that are to remain in a viable or intact state for experimental purposes; including water that comes in contact with experimental microorganisms or with material exposed to such microorganisms, and contaminated equipment and supplies.

Appendix P-II-C–1-d. Control of Undesired Species and Motile Macroorganisms (BL3–P)

Appendix P-II-C–1-d-(1). A program shall be implemented to control undesired species (e.g., weed, rodent, or arthropod pests and pathogens) by methods appropriate to the organisms and in accordance with applicable state and Federal laws.

Appendix P-II-C–1-d-(2). Arthropods and other motile macroorganisms shall be housed in appropriate cages. When appropriate to the organism, experiments shall be conducted within cages designed to contain the motile organisms.

Appendix P-II-C–1-e. Concurrent Experiments Conducted in the Greenhouse (BL3–P)

Appendix P-II-C–1-e-(1). Experiments involving organisms that require a containment level lower than BL3–P may be conducted in the greenhouse concurrently with experiments that require BL3–P containment provided that all work is conducted in accordance with BL3–P greenhouse practices.

Appendix P-II-C–1-f. Signs (BL3–P)

Appendix P-II-C–1-f-(1). A sign shall be posted indicating that a restricted experiment is in progress. The sign shall indicate the following: (i) The name of the responsible individual, (ii) the plants in use, and (iii) any special requirements for using the area.

Appendix P-II-C–1-f-(2). If organisms are used that have a recognized potential for causing serious detrimental impacts on managed or natural ecosystems, their presence should be indicated on a sign posted on the greenhouse access doors.

Appendix P-II-C–1-f-(3). If there is a risk to human health, a sign shall be posted incorporating the universal biosafety symbol.

Appendix P-II-C–1-g. Transfer of Materials (BL3–P)

Appendix P-II-C–1-g-(1). Experimental materials that are brought into or removed from the greenhouse facility in a viable or intact state shall be transferred to a non-breakable sealed secondary container. At the time of transfer, if the same plant species, host, or vector are present within the effective dissemination distance of propagules of the experimental organism, the surface

of the secondary container shall be decontaminated. Decontamination may be accomplished by passage through a chemical disinfectant or fumigation chamber or by an alternative procedure that has demonstrated effective inactivation of the experimental organism.

Appendix P-II-C–1-h. Greenhouse Practices Manual (BL3–P)

Appendix P-II-C–1-h-(1). A greenhouse practices manual shall be prepared or adopted. This manual shall: (i) Advise personnel of the potential consequences if such practices are not followed, and (ii) outline contingency plans to be implemented in the event of the unintentional release of organisms with recognized potential for serious detrimental impact.

Appendix P-II-C–1-i. Protective Clothing (BL3–P)

Appendix P-II-C–1-i-(1). Disposable clothing (e.g., solid front or wrap-around gowns, scrub suits, or other appropriate clothing) shall be worn in the greenhouse if deemed necessary by the Greenhouse Director because of potential dissemination of the experimental microorganisms.

Appendix P-II-C–1-i-(2). Protective clothing shall be removed before exiting the greenhouse and decontaminated prior to laundering or disposal.

Appendix P-II-C–1-j. Other (BL3–P)

Appendix P-II-C–1-j-(1). Personnel are required to thoroughly wash their hands upon exiting the greenhouse.

Appendix P-II-C–1-j-(2). All procedures shall be performed carefully to minimize the creation of aerosols and excessive splashing of potting material/soil during watering, transplanting, and all experimental manipulations.

Appendix P-II-C–2. Facilities (BL3–P)

Appendix P-II-C–2-a. Definitions (BL3–P)

Appendix P-II-C–2-a-(1). The term 'greenhouse' refers to a structure with walls, roof, and floor designed and used principally for growing plants in a controlled and protected environment. The walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth.

Appendix P-II-C–2-a-(2). The term 'greenhouse facility' includes the actual greenhouse rooms or compartments for growing plants, including all immediately contiguous hallways and head-house areas, and is considered part of the confinement area. The need to maintain negative pressure should be considered when constructing or renovating the greenhouse.

Appendix P-II-C–2-b. Greenhouse Design (BL3–P)

Appendix P-II-C–2-b-(1). The greenhouse floor shall be composed of concrete or other impervious material with provision for collection and decontamination of liquid run-off.

Appendix P-II-C–2-b-(2). Windows shall be closed and sealed. All glazing shall be resistant to breakage (e.g., double-pane tempered glass or equivalent).

Appendix P-II-C–2-b-(3). The greenhouse shall be a closed self-contained structure with a continuous covering that is separated from areas that are open to unrestricted traffic flow. The minimum requirement for greenhouse entry shall be passage through two sets of self-closing locking doors.

Appendix P-II-C–2-b-(4). The greenhouse facility shall be surrounded by a security fence or protected by equivalent security measures.

Appendix P-II-C–2-b-(5). Internal walls, ceilings, and floors shall be resistant to penetration by liquids and chemicals to facilitate cleaning and decontamination of the area. All penetrations into these structures and surfaces (e.g., plumbing and utilities) shall be sealed.

Appendix P-II-C–2-b-(6). Bench tops and other work surfaces should have seamless surfaces that are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix P-II-C–2-b-(7). The greenhouse contains a foot, elbow, or automatically operated sink, which is located near the exit door for hand washing.

Appendix P-II-C–2-c. Autoclaves (BL3–P)

Appendix P-II-C–2-c-(1). An autoclave shall be available for decontaminating materials within the greenhouse facility. A double-door autoclave is recommended (not required) for the decontamination of materials passing out of the greenhouse facility.

Appendix P-II-C–2-d. Supply and Exhaust Air Ventilation Systems (BL3–P)

Appendix P-II-C–2-d-(1). An individual supply and exhaust air ventilation system shall be provided. The system maintains pressure differentials and directional airflow, as required, to assure inward (or zero) airflow from areas outside of the greenhouse.

Appendix P-II-C–2-d-(2). The exhaust air from the greenhouse facility shall be filtered through high efficiency particulate air-HEPA filters and discharged to the outside. The filter chambers shall be designed to allow *in situ* decontamination before filters are removed and to facilitate certification testing after they are replaced. Air filters shall be 80–85% average efficiency by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 52- 68 test method using atmosphere dust. Air supply fans shall be equipped with a back-flow damper that closes when the air supply fan is off. Alternatively, a HEPA filter may be used on the air supply system instead of the filters and damper. The supply and exhaust airflow shall be interlocked to assure inward (or zero) airflow at all times.

Appendix P–II–C–2–e. Other (BL3–P)

Appendix P–II–C–2–e–(1). BL3–P greenhouse containment requirements may be satisfied using a growth chamber or growth room within a building provided that the location, access, airflow patterns, and provisions for decontamination of experimental materials and supplies meet the intent of the foregoing clauses.

Appendix P–II–C–2–e–(2). Vacuum lines shall be protected with high efficiency particulate air/HEPA or equivalent filters and liquid disinfectant traps.

Appendix P–II–D. Biosafety Level 4—Plants (BL4–P)

Appendix P–II–D–1. Standard Practices (BL4–P)

Appendix P–II–D–1–a. Greenhouse Access (BL4–P)

Appendix P–II–D–1–a–(1). Authorized entry into the greenhouse shall be restricted to individuals who are required for program or support purposes. The Greenhouse Director shall be responsible for assessing each circumstance and determining those individuals who are authorized to enter the greenhouse facility or work in the greenhouse during experiments.

Appendix P–II–D–1–a–(2). Access shall be managed by the Greenhouse Director, Biological Safety Officer, or other individual responsible for physical security of the greenhouse facility; and access limited by means of secure, locked doors.

Appendix P–II–D–1–a–(3). Prior to entering, individuals shall be advised of the potential environmental hazards and instructed on appropriate safeguards for ensuring environmental safety. Individuals authorized to enter the greenhouse facility shall comply with the instructions and all other applicable entry/exit procedures.

Appendix P–II–D–1–a–(4). Personnel shall enter and exit the greenhouse facility only through the clothing change and shower rooms and shall shower each time they exit the greenhouse facility. Personnel shall use the airlocks to enter or exit the laboratory only in an emergency. In the event of an emergency, every reasonable effort should be made to prevent the possible transport of viable propagules from containment.

Appendix P–II–D–1–a–(5). Prior to entering the greenhouse, personnel shall be required to read and follow instructions on BL4–P practices and procedures.

Appendix P–II–D–1–b. Records (BL4–P)

Appendix P–II–D–1–b–(1). A record shall be kept of all experimental materials brought into or removed from the greenhouse.

Appendix P–II–D–1–b–(2). A record shall be kept of experiments currently in progress in the greenhouse facility.

Appendix P–II–D–1–b–(3). A record shall be kept of all personnel entering and exiting the greenhouse facility; including the date and time of each entry.

Appendix P–II–D–1–b–(4). The Principal Investigator shall report any greenhouse accident involving the inadvertent release or spill of microorganisms to the Biological Safety Officer, Greenhouse Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities immediately (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Documentation of any such accident shall be prepared and maintained.

Appendix P–II–D–1–c. Decontamination and Inactivation (BL4–P)

Appendix P–II–D–1–c–(1). All materials, except for those that are to remain in a viable or intact state for experimental purposes, shall be autoclaved prior to removal from the maximum containment greenhouse. Equipment or material that could be damaged by high temperatures or steam shall be decontaminated by alternative methods (e.g., gas or vapor sterilization) in an airlock or chamber designed for this purpose.

Appendix P–II–D–1–c–(2). Water that comes in contact with experimental microorganisms or with material exposed to such microorganisms (e.g.,

greenhouse facility shall comply with the instructions and all other applicable entry/exit procedures.

Appendix P–II–D–1–a–(4). Personnel shall enter and exit the greenhouse facility only through the clothing change and shower rooms and shall shower each time they exit the greenhouse facility. Personnel shall use the airlocks to enter or exit the laboratory only in an emergency. In the event of an emergency, every reasonable effort should be made to prevent the possible transport of viable propagules from containment.

Appendix P–II–D–1–a–(5). Prior to entering the greenhouse, personnel shall be required to read and follow instructions on BL4–P practices and procedures.

Appendix P–II–D–1–b. Records (BL4–P)

Appendix P–II–D–1–b–(1). A record shall be kept of all experimental materials brought into or removed from the greenhouse.

Appendix P–II–D–1–b–(2). A record shall be kept of experiments currently in progress in the greenhouse facility.

Appendix P–II–D–1–b–(3). A record shall be kept of all personnel entering and exiting the greenhouse facility; including the date and time of each entry.

Appendix P–II–D–1–b–(4). The Principal Investigator shall report any greenhouse accident involving the inadvertent release or spill of microorganisms to the Biological Safety Officer, Greenhouse Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities immediately (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Documentation of any such accident shall be prepared and maintained.

Appendix P–II–D–1–c. Decontamination and Inactivation (BL4–P)

Appendix P–II–D–1–c–(1). All materials, except for those that are to remain in a viable or intact state for experimental purposes, shall be autoclaved prior to removal from the maximum containment greenhouse. Equipment or material that could be damaged by high temperatures or steam shall be decontaminated by alternative methods (e.g., gas or vapor sterilization) in an airlock or chamber designed for this purpose.

Appendix P–II–D–1–c–(2). Water that comes in contact with experimental microorganisms or with material exposed to such microorganisms (e.g., run-off from watering plants) shall be collected and decontaminated before disposal.

Appendix P–II–D–1–c–(3). Standard microbiological procedures shall be followed for decontamination of equipment and materials. Spray or liquid waste or rinse water from containers used to apply the experimental microorganisms shall be decontaminated before disposal.

Appendix P–II–D–1–d. Control of Undesired Species and Motile Macroorganisms (BL4–P)

Appendix P–II–D–1–d–(1). A chemical control program shall be implemented to eliminate undesired pests and pathogens in accordance with applicable state and Federal laws.

Appendix P–II–D–1–d–(2). Arthropods and other motile macroorganisms used in conjunction with experiments requiring BL4–P level physical containment shall be housed in appropriate cages. When appropriate to the organism, experiments shall be conducted within cages designed to contain the motile organisms.

Appendix P–II–D–1–e. Concurrent Experiments Conducted in the Greenhouse (BL4–P)

Appendix P–II–D–1–e–(1). Experiments involving organisms that require a containment level lower than BL4–P may be conducted in the greenhouse concurrently with experiments that require BL4–P containment provided that all work is conducted in accordance with BL4–P greenhouse practices. When the experimental microorganisms in use require a containment level lower than BL4–P, greenhouse practices reflect the level of containment required by the highest containment level microorganisms being tested.

Appendix P–II–D–1–f. Signs (BL4–P)

Appendix P–II–D–1–f–(1). A sign shall be posted indicating that a restricted experiment is in progress. The sign shall indicate the following: (i) The name of the responsible individual, (ii) the plants in use, and (iii) any special requirements for using the area.

Appendix P–II–D–1–f–(2). If organisms are used that have a recognized potential for causing serious detrimental impacts on managed or natural ecosystems, their presence shall be indicated by a sign posted on the greenhouse access doors.

Appendix P–II–D–1–f–(3). If there is a risk to human health, a sign shall be posted incorporating the universal biosafety symbol.

Appendix P–II–D–1–g. Transfer of Materials (BL4–P)

Appendix P–II–D–1–g–(1). Experimental materials that are brought into or removed from the greenhouse in a viable or intact state shall be transferred to a non-breakable, sealed, primary container then enclosed in a non-breakable, sealed secondary container. These containers shall be removed from the greenhouse facility through a chemical disinfectant, fumigation chamber, or an airlock designed for this purpose.

Appendix P–II–D–g–(2). Supplies and materials shall be brought into the greenhouse facility through a double-door autoclave, fumigation chamber, or airlock that is appropriately decontaminated between each use. After securing the outer doors, personnel within the greenhouse facility shall retrieve the materials by opening the interior door of the autoclave, fumigation chamber, or airlock. These doors shall be secured after the materials are brought into the greenhouse facility.

Appendix P–II–D–1–h. Greenhouse Practices Manual (BL4–P)

Appendix P–II–D–1–h–(1). A greenhouse practices manual shall be prepared or adopted. This manual shall include contingency plans to be implemented in the event of the unintentional release of experimental organisms.

Appendix P–II–D–1–i. Protective Clothing (BL4–P)

Appendix P–II–D–1–i–(1). Street clothing shall be removed in the outer clothing change room. Complete laboratory clothing (may be disposable) including undergarments, pants, and shirts, jump suits, shoes, and hats shall be provided and worn by all personnel entering the greenhouse facility.

Appendix P–II–D–1–i–(2). Personnel shall remove laboratory clothing when exiting the greenhouse facility and before entering the shower area. This clothing shall be stored in a locker or hamper in the inner change room.

Appendix P–II–D–1–i–(3). All laboratory clothing shall be autoclaved before laundering.

Appendix P–II–D–2. Facilities (BL4–P)

Appendix P–II–D–2–a. Greenhouse Design (BL4–P)

Appendix P–II–D–2–a–(1). The maximum containment greenhouse facility shall consist of a separate building or a clearly demarcated and isolated area within a building. The need to maintain negative *pressure*

should be considered when constructing or renovating the greenhouse facility.

Appendix P–II–D–2–a–(2). Outer and inner change rooms, separated by a shower, shall be provided for personnel entering and exiting the greenhouse facility.

Appendix P–II–D–2–a–(3). Windows shall be closed and sealed. All glazing shall be resistant to breakage (e.g., double-pane tempered glass or equivalent).

Appendix P–II–D–2–a–(4). Access doors to the greenhouse shall be self-closing and locking.

Appendix P–II–D–2–a–(5). The greenhouse facility shall be surrounded by a security fence or protected by equivalent security measures.

Appendix P–II–D–2–a–(6). The walls, floors, and ceilings of the greenhouse shall be constructed to form a sealed internal shell that facilitates fumigation and is animal and arthropod-proof. These internal surfaces shall be resistant to penetration and degradation by liquids and chemicals to facilitate cleaning and decontamination of the area. All penetrations into these structures and surfaces (e.g., plumbing and utilities) shall be sealed.

Appendix P–II–D–2–a–(7). Bench tops and other work surfaces shall have seamless surfaces impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix P–II–D–2–a–(8). A double-door autoclave, fumigation chamber, or ventilated airlock shall be provided for passage of all materials, supplies, or equipment that are not brought into the greenhouse facility through the change room.

Appendix P–II–D–2–b. Autoclaves (BL4–P)

Appendix P–II–D–2–b–(1). A double-door autoclave shall be provided for the decontamination of materials removed from the greenhouse facility. The autoclave door, which opens to the area external to the greenhouse facility, shall be sealed to the outer wall and automatically controlled so that it can only be opened upon completion of the sterilization cycle.

Appendix P–II–D–2–c. Supply and Exhaust Air Ventilation Systems (BL4–P)

Appendix P–II–D–2–c–(1). An individual supply and exhaust air ventilation system shall be provided. The system shall maintain pressure differentials and directional airflow as required to assure inward (or zero) airflow from areas outside of the greenhouse. Differential pressure transducers shall be used to sense pressure levels. If a system malfunctions, the transducers shall sound an alarm. A backup source of power should be considered. The supply and exhaust airflow shall be interlocked to assure inward (or zero) airflow at all times. The integrity of the greenhouse shall have an air leak rate (decay rate) not to exceed 7 percent per minute (logarithm of pressure against time) over a 20-minute period at 2 inches of water gauge pressure. Nominally, this is 0.05 inches of water gauge pressure loss in 1 minute at 2 inches water gauge pressure.

Appendix P–II–D–2–c–(2). Exhaust air from the greenhouse facility shall be filtered through high efficiency particulate air/HEPA filters and discharged to the outside and dispersed away from occupied buildings and air intakes. Filter chambers shall be designed to allow *in situ* decontamination before filters are removed and to facilitate certification testing after they are replaced. HEPA filters shall be provided to treat air supplied to the greenhouse facility. HEPA filters shall be certified annually.

Appendix P–II–D–2–d. Other (BL4–P)

Appendix P–II–D–2–d–(1). Sewer vents and other ventilation lines contain high efficiency particulate air/HEPA filters. HEPA filters shall be certified annually.

Appendix P–II–D–2–d–(2). A pass-through dunk tank, fumigation chamber, or an equivalent method of decontamination shall be provided to ensure decontamination of materials and equipment that cannot be decontaminated in the autoclave.

Appendix P–II–D–2–d–(3). Liquid effluent from sinks, floors, and autoclave chambers shall be decontaminated by heat or chemical treatment before being released from the maximum containment greenhouse facility. Liquid wastes from shower rooms and toilets may be decontaminated by heat or chemical treatment. Autoclave and chemical decontamination of liquid wastes shall be evaluated by appropriate standard procedures for autoclaved wastes. Decontamination shall be evaluated mechanically and biologically using a recording thermometer and an indicator microorganism with a defined heat susceptibility pattern. If liquid wastes are decontaminated with chemical disinfectants, the chemicals used must have demonstrated efficacy against the target or indicator microorganisms.

Appendix P–II–D–2–d–(4). If there is a central vacuum system, it shall not serve areas outside of the greenhouse facility. In-line high efficiency particulate air/HEPA filters shall be placed as near as practicable to each use point or vacuum service cock. Other liquid and gas services to the greenhouse facility shall be protected by devices that prevent back-flow. HEPA filters shall be certified annually.

Appendix P–III. Biological Containment Practices

Appropriate selection of the following biological containment practices may be used to meet the containment requirements for a given organism. The present list is not exhaustive; there may be other ways of preventing effective dissemination that could possibly lead to the establishment of the organism or its genetic material in the environment resulting in deleterious consequences to managed or natural ecosystems.

Appendix P–III–A. Biological Containment Practices (Plants)

Appendix P–III–A–1. Effective dissemination of plants by pollen or seed can be prevented by one or more of the following procedures: (i) Cover the reproductive structures to prevent pollen dissemination at flowering and seed dissemination at maturity; (ii) remove reproductive structures by employing male sterile strains, or harvest the plant material prior to the reproductive stage; (iii) ensure that experimental plants flower at a time of year when cross-fertile plants are not flowering within the normal pollen dispersal range of the experimental plant; or (iv) ensure that cross-fertile plants are not growing within the known pollen dispersal range of the experimental plant.

Appendix P-III-B. Biological Containment Practices (Microorganisms)

Appendix P-III-B–1. Effective dissemination of microorganisms beyond the confines of the greenhouse can be prevented by one or more of the following procedures: (i) Confine all operations to injections of microorganisms or other biological procedures (including genetic manipulation) that limit replication or reproduction of viruses and microorganisms or sequences derived from microorganisms, and confine these injections to internal plant parts or adherent plant surfaces; (ii) ensure that organisms, which can serve as hosts or promote the transmission of the virus or microorganism, are not present within the farthest distance that the airborne virus or microorganism may be expected to be effectively disseminated; (iii) conduct experiments at a time of year when plants that can serve as hosts are either not growing or are not susceptible to productive infection; (iv) use viruses and other microorganisms or their genomes that have known arthropod or animal vectors, in the absence of such vectors; (v) use microorganisms that have an obligate association with the plant; or (vi) use microorganisms that are genetically disabled to minimize survival outside of the research facility and whose natural mode of transmission requires injury of the target organism, or assures that inadvertent release is unlikely to initiate productive infection of organisms outside of the experimental facility.

Appendix P-III-C. Biological Containment Practices (Macroorganisms)

Appendix P-III-C–1. Effective dissemination of arthropods and other small animals can be prevented by using one or more of the following procedures: (i) Use non-flying, flight-impaired, or sterile arthropods; (ii) use non-motile or sterile strains of small animals; (iii) conduct experiments at a time of year that precludes the survival of escaping organisms; (iv) use animals that have an obligate association with a plant that is not present within the dispersal range of the organism; or (v) prevent the escape of organisms present in run-off water by chemical treatment or evaporation of run-off water.

I. Addition of Appendix Q, Physical and Biological Containment for Recombinant DNA Research Involving Animals, to the NIH Guidelines

The following new appendix, Appendix Q, reads as follows:

Appendix Q specifies containment and confinement practices for research involving whole animals, both those in which the animal's genome has been altered by stable introduction of recombinant DNA, or DNA derived therefrom, into the germ-line (transgenic animals) and experiments involving viable recombinant DNA-modified microorganisms tested on whole animals. The appendix applies to animal research activities with the following modifications:

Appendix Q shall supersede Appendix G when research animals are of a size or have growth requirements that preclude the use of containment for laboratory animals. Some animals may require other types of containment (see Appendix Q-III-D). The animals covered in Appendix Q are those species normally categorized as animals including but not limited to cattle, swine, sheep, goats, horses, and poultry.

The Institutional Biosafety Committee shall include at least one scientist with expertise in animal containment

to productive infection; (iv) use viruses and other microorganisms or their genomes that have known arthropod or animal vectors, in the absence of such vectors; (v) use microorganisms that have an obligate association with the plant; or (vi) use microorganisms that are genetically disabled to minimize survival outside of the research facility and whose natural mode of transmission requires injury of the target organism, or assures that inadvertent release is unlikely to initiate productive infection of organisms outside of the experimental facility.

Appendix P-III-C. Biological Containment Practices (Macroorganisms)

Appendix P-III-C–1. Effective dissemination of arthropods and other small animals can be prevented by using one or more of the following procedures: (i) Use non-flying, flight-impaired, or sterile arthropods; (ii) use non-motile or sterile strains of small animals; (iii) conduct experiments at a time of year that precludes the survival of escaping organisms; (iv) use animals that have an obligate association with a plant that is not present within the dispersal range of the organism; or (v) prevent the escape of organisms present in run-off water by chemical treatment or evaporation of run-off water.

I. Addition of Appendix Q, Physical and Biological Containment for Recombinant DNA Research Involving Animals, to the NIH Guidelines

The following new appendix, Appendix Q, reads as follows:

Appendix Q specifies containment and confinement practices for research involving whole animals, both those in which the animal's genome has been altered by stable introduction of recombinant DNA, or DNA derived therefrom, into the germ-line (transgenic animals) and experiments involving viable recombinant DNA-modified microorganisms tested on whole animals. The appendix applies to animal research activities with the following modifications:

Appendix Q shall supersede Appendix G when research animals are of a size or have growth requirements that preclude the use of containment for laboratory animals. Some animals may require other types of containment (see Appendix Q-III-D). The animals covered in Appendix Q are those species normally categorized as animals including but not limited to cattle, swine, sheep, goats, horses, and poultry.

The Institutional Biosafety Committee shall include at least one scientist with expertise in animal containment principles when experiments utilizing Appendix Q require Institutional Biosafety Committee prior approval.

The institution shall establish and maintain a health surveillance program for personnel engaged in animal research involving viable recombinant DNA-containing microorganisms that require Biosafety Level (BL) 3 or greater containment in the laboratory.

Appendix Q-I. General Considerations

Appendix Q-I-A. Containment Levels

The containment levels required for research involving recombinant DNA associated with or in animals is based on classification of experiments in Section III. For the purpose of animal research, four levels of containment are established. These are referred to as BL1–Animals (N), BL2–N, BL3–N, and BL4–N and are described in the following sections of Appendix Q. The descriptions include: (i) standard practices for physical and biological containment, and (ii) animal facilities.

Appendix Q-I-B. Disposal of Animals (BL1–N through BL4–N)

Appendix Q-I-B–1. When an animal covered by Appendix Q containing recombinant DNA or a recombinant DNA-derived organism is euthanized or dies, the carcass shall be disposed of to avoid its use as food for human beings or animals unless food use is specifically authorized by an appropriate Federal agency.

Appendix Q-I-B–2. A permanent record shall be maintained of the experimental use and disposal of each animal or group of animals.

Appendix Q-II. Physical and Biological Containment Levels

Appendix Q-II-A. Biosafety Level 1 - Animals (BL1–N)

Appendix Q-II-A–1. Standard Practices (BL1–N)

Appendix Q-II-A–1-a. Animal Facility Access (BL1–N)

Appendix Q-II-A–1-a-(1). The containment area shall be locked.

Appendix Q-II-A–1-a-(2). Access to the containment area shall be limited or restricted when experimental animals are being held.

Appendix Q-II-A–1-a-(3). The containment area shall be patrolled or monitored at frequent intervals.

Appendix Q-II-A–1-b. Other (BL1–N)

Appendix Q-II-A–1-b-(1). All genetically engineered neonates shall be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences that allow identification of transgenic animals from among non- transgenic animals.

Appendix Q-II-A–1-b-(2) A double barrier shall be provided to separate male and female animals unless reproductive studies are part of the experiment or other measures are taken to avoid reproductive transmission. Reproductive incapacitation may be used.

Appendix Q-II-A–1-b-(3). The containment area shall be in accordance with state and Federal laws and animal care requirements.

Appendix Q-II-A–2. Animal Facilities (BL1–N)

Appendix Q-II-A–2-(a). Animals shall be confined to securely fenced areas or be in enclosed structures (animal rooms) to minimize the possibility of theft or unintentional release.

Appendix Q-II-B. Biosafety Level 2 - Animals (BL2–N) (see Appendix Q-III-A)

Appendix Q-II-B–1. Standard Practices (BL2–N)

Appendix Q-II-B–1-a. Animal Facility Access (BL2–N)

Appendix Q-II-B–1-a-(1). The containment area shall be locked.

Appendix Q-II-B–1-a-(2). The containment area shall be patrolled or monitored at frequent intervals.

Appendix Q-II-B–1-a-(3). The containment building shall be controlled and have a locking access.

Appendix Q-II-B–1-a-(4). The Animal Facility Director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) may enter the laboratory or animal rooms.

Appendix Q-II-B–1-a-(5). Animals of the same or different species, which are not involved in the work being performed, shall not be permitted in the animal area.

Appendix Q-II-B–1-b. Decontamination and Inactivation (BL2–N)

Appendix Q-II-B–1-b-(1). Contaminated materials that are decontaminated at a site away from the laboratory shall be placed in a closed durable leak-proof container prior to removal from the laboratory.

Appendix Q-II-B–1-b-(2). Needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q-II-B–1-c. Signs (BL2–N)

Appendix Q-II-B–1-c-(1). When the animal research requires special provisions for entry (e.g., vaccination), a warning sign incorporating the universal biosafety symbol shall be posted on all access doors to the animal work area. The sign shall indicate: (i) The agent, (ii) the animal species, (iii) the name and telephone number of the Animal Facility Director or other responsible individual, and (iv) any special requirements for entering the laboratory.

Appendix Q-II-B–1-d. Protective Clothing (BL2–N)

Appendix Q-II-B–1-d-(1). Laboratory coats, gowns, smocks, or uniforms shall be worn while in the animal area or attached laboratory. Before entering non-laboratory areas (e.g., cafeteria, library, administrative offices), protective clothing shall be removed and kept in the work entrance area.

Appendix Q-II-B–1-d-(2). Special care shall be taken to avoid skin contamination with microorganisms containing recombinant DNA. Impervious and/or protective gloves shall be worn when handling experimental animals and when skin contact with an infectious agent is unavoidable.

Appendix Q-II-B–1-e. Records (BL2–N)

Appendix Q-II-B–1-e-(1). Any incident involving spills and accidents that result in environmental release or exposures of animals or laboratory workers to organisms containing recombinant DNA molecules shall be reported immediately to the Animal Facility Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Medical evaluation, surveillance, and treatment shall be provided as appropriate and written records maintained. If necessary, the area shall be appropriately decontaminated.

Appendix Q-II-B–1-e-(2). When appropriate and giving consideration to the agent handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agent handled and the function of the animal facility.

Appendix Q-II-B–1-f. Transfer of Materials (BL2–N)

Appendix Q-II-B–1-f-(1). Biological materials removed from the animal containment area in a viable or intact state shall be transferred to a non-breakable sealed primary container and then enclosed in a non-breakable sealed secondary container. All containers, primary and secondary, shall be disinfected before removal from the animal facility. Advance approval for transfer of material shall be obtained from the Animal Facility Director. Packages containing viable agents may only be opened in a facility having an equivalent or higher level of physical containment unless the agent is biologically inactivated or incapable of reproduction.

Appendix Q-II-B–1-g. Other (BL2–N)

Appendix Q-II-B–1-g-(1). All genetically engineered neonates shall be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences that allow identification of transgenic animals from among non-transgenic animals.

Appendix Q-II-B–1-g-(2). Needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Following use, needles shall not be bent, sheared, replaced in the needle sheath or guard, or removed from the syringe. Needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q-II-B–1-g-(3). Appropriate steps should be taken to prevent horizontal transmission or exposure of laboratory personnel. If the agent used as a vector is known to be transmitted by a particular route (e.g., arthropods), special attention should be given to preventing spread by that route. In the absence of specific knowledge of a particular route of transmission, all potential means of horizontal transmission (e.g., arthropods, contaminated bedding, or animal waste, etc.) should be prevented.

Appendix Q-II-B–1-g-(4). Eating, drinking, smoking, and applying cosmetics shall not be permitted in the work area.

Appendix Q-II-B–1-g-(5). Individuals who handle materials and animals containing recombinant DNA molecules shall be required to wash their hands before exiting the containment area.

Appendix Q-II-B–1-g-(6). A double barrier shall be provided to separate male and female animals unless reproductive studies are part of the experiment or other measures are taken to avoid reproductive transmission. Reproductive incapacitation may be used.

Appendix Q-II-B–1-g-(7). The containment area shall be in accordance with state and Federal laws and animal care requirements.

Appendix Q-II-B–1-g-(8). A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and required to read and follow instructions on practices and procedures.

Appendix Q-II-B–2. Animal Facilities (BL2–N)

Appendix Q-II-B–2-a. Animals shall be contained within an enclosed structure (animal room or equivalent) to minimize the possibility of theft or unintentional release and to avoid arthropod access. The special provision to avoid the entry or escape of arthropods from the animal areas may be waived if the agent in use is not known to be transmitted by arthropods.

Appendix Q-II-B–2-b. Surfaces shall be impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix Q-II-B–2-c. The animal containment area shall be designed so that it can be easily cleaned.

Appendix Q-II-B–2-d. Windows that open shall be fitted with fly screens.

Appendix Q-II-B–2-e. An autoclave shall be available for decontamination of laboratory wastes.

Appendix Q-II-B–2-f. If arthropods are used in the experiment or the agent under study can be transmitted by an arthropod, interior work areas shall be appropriately screened (52 mesh). All perimeter joints and openings shall be sealed and additional arthropod control mechanisms used to minimize arthropod entry and propagation, including appropriate screening of access doors or the equivalent.

Appendix Q-II-C. Biosafety Level 3—Animals (BL3–N) (See Appendix Q-III-B)

Appendix Q-II-C–1. Standard Practices (BL3–N)

Appendix Q-II-C–1-a. Animal Facility Access (BL3–N)

Appendix Q-II-C–1-a-(1). The containment area shall be locked.

Appendix Q-II-C–1-a-(2). The containment area shall be patrolled or monitored at frequent intervals.

Appendix Q-II-C–1-a-(3). The containment building shall be controlled and have a locking access.

Appendix Q-II-C–1-a-(4). The Animal Facility Director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) shall enter the laboratory or animal rooms.

Appendix Q-II-C–1-a-(5). Animal room doors, gates, or other closures shall be kept closed when experiments are in progress.

Appendix Q-II-C–1-b. Decontamination and Inactivation (BL3–N)

Appendix Q-II-C–1-b-(1). The work surfaces of containment equipment shall be decontaminated when work with organisms containing recombinant DNA molecules is finished. Where feasible, plastic-backed paper toweling shall be used on nonporous work surfaces to facilitate clean-up.

Appendix Q-II-C–1-b-(2). All animals shall be euthanized at the end of their experimental usefulness and the carcasses decontaminated before disposal in an approved manner.

Appendix Q-II-C–1-b-(3). Needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q-II-C–1-b-(4). Special safety testing, decontamination procedures, and Institutional Biosafety Committee approval shall be required to transfer agents or tissue/organ specimens from a BL3–N animal facility to a facility with a lower containment classification.

Appendix Q-II-C–1-b-(5). Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers shall be decontaminated by heat treatment before being released into the sanitary system. The procedure used for heat decontamination of liquid wastes shall be monitored with a recording thermometer. The effectiveness of the heat decontamination process system shall

Appendix Q-II-C. Biosafety Level 3—Animals (BL3–N) (See Appendix Q-III-B)

Appendix Q-II-C–1. Standard Practices (BL3–N)

Appendix Q-II-C–1-a. Animal Facility Access (BL3–N)

Appendix Q-II-C–1-a-(1). The containment area shall be locked.

Appendix Q-II-C–1-a-(2). The containment area shall be patrolled or monitored at frequent intervals.

Appendix Q-II-C–1-a-(3). The containment building shall be controlled and have a locking access.

Appendix Q-II-C–1-a-(4). The Animal Facility Director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) shall enter the laboratory or animal rooms.

Appendix Q-II-C–1-a-(5). Animal room doors, gates, or other closures shall be kept closed when experiments are in progress.

Appendix Q-II-C–1-b. Decontamination and Inactivation (BL3–N)

Appendix Q-II-C–1-b-(1). The work surfaces of containment equipment shall be decontaminated when work with organisms containing recombinant DNA molecules is finished. Where feasible, plastic-backed paper toweling shall be used on nonporous work surfaces to facilitate clean-up.

Appendix Q-II-C–1-b-(2). All animals shall be euthanized at the end of their experimental usefulness and the carcasses decontaminated before disposal in an approved manner.

Appendix Q-II-C–1-b-(3). Needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q-II-C–1-b-(4). Special safety testing, decontamination procedures, and Institutional Biosafety Committee approval shall be required to transfer agents or tissue/organ specimens from a BL3–N animal facility to a facility with a lower containment classification.

Appendix Q-II-C–1-b-(5). Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers shall be decontaminated by heat treatment before being released into the sanitary system. The procedure used for heat decontamination of liquid wastes shall be monitored with a recording thermometer. The effectiveness of the heat decontamination process system shall be revalidated every 30 days with an indicator organism.

Appendix Q-II-C–1-c. Signs (BL3–N)

Appendix Q-II-C–1-c-(1). When the animal research requires special provisions for entry (e.g., vaccination), a warning sign incorporating the universal biosafety symbol shall be posted on all access doors to the animal work area. The sign shall indicate: (i) The agent, (ii) the animal species, (iii) the name and telephone number of the Animal Facility Director or other responsible individual, and (iv) any special requirements for entering the laboratory.

Appendix Q-II-C–1-d. Protective Clothing (BL3–N)

Appendix Q-II-C–1-d-(1). Full protective clothing that protects the individual (e.g., scrub suits, coveralls, uniforms) shall be worn in the animal area. Clothing shall not be worn outside the animal containment area and shall be decontaminated before laundering or disposal. Personnel shall be required to shower before exiting the BL3–N area and wearing of personal clothing.

Appendix Q-II-C–1-d-(2). Special care shall be taken to avoid skin contamination with microorganisms containing recombinant DNA. Impervious and/or protective gloves shall be worn when handling experimental animals and when skin contact with an infectious agent is unavoidable.

Appendix Q-II-C–1-d-(3). Appropriate respiratory protection shall be worn in rooms containing experimental animals.

Appendix Q-II-C–1-e. Records (BL3–N)

Appendix Q-II-C–1-e-(1). Documents regarding experimental animal use and disposal shall be maintained in a permanent record book.

Appendix Q-II-C–1-e-(2). Any incident involving spills and accidents that result in environmental release or exposure of animals or laboratory workers to organisms containing recombinant DNA shall be reported immediately to the Biological Safety Office, Animal Facility Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Medical evaluation, surveillance, and treatment shall be provided as appropriate and written records maintained. If necessary, the area shall be appropriately decontaminated.

Appendix Q-II-C–1-e-(3). When appropriate and giving consideration to the agent handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agent handled or the function of the facility.

Appendix Q-II-C–1-f. Transfer of Materials (BL3–N)

Appendix Q-II-C–1-f-(1). Biological materials removed from the animal containment laboratory in a viable or intact state shall be transferred to a non-breakable sealed primary container and then enclosed in a non-breakable sealed secondary container. All containers, primary and secondary, shall be disinfected before removal from the animal facility. Advance approval for transfer of material shall be obtained from the Animal Facility Director. Packages containing viable agents may be opened only in a facility having an equivalent or higher level of physical containment unless the agent is biologically inactivated or incapable of reproduction.

Appendix Q-II-C–1-f-(2). Special safety testing, decontamination procedures, and Institutional Biosafety Committee approval shall be required to transfer agents or tissue/organ specimens from a BL3–N animal facility to a facility with a lower containment classification.

Appendix Q-II-C–1-g. Other (BL3–N)

Appendix Q-II-C–1-g-(1). All genetically engineered neonates shall be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences that allow identification of transgenic animals from among nontransgenic animals.

Appendix Q-II-C–1-g-(2). Appropriate steps should be taken to prevent horizontal transmission or exposure of laboratory personnel. If the agent used as the vector is known to be transmitted by a particular route (e.g., arthropods), special attention should be given to preventing spread by that route. In the absence of specific knowledge of a particular route of transmission, all potential means of horizontal transmission (e.g., arthropods, contaminated bedding, or animal waste) should be prevented.

Appendix Q-II-C–1-g-(3). Eating, drinking, smoking, and applying cosmetics shall not be permitted in the work area.

Appendix Q-II-C–1-g-(4). Individuals who handle materials and animals containing recombinant DNA molecules shall be required to wash their hands before exiting the containment area.

Appendix Q-II-C–1-g-(5). Experiments involving other organisms that require containment levels lower than BL3–N may be conducted in the same area concurrently with experiments requiring BL3–N containment provided that they are conducted in accordance with BL3–N practices.

Appendix Q-II-C–1-g-(6). Animal holding areas shall be cleaned at least once a day and decontaminated immediately following any spill of viable materials.

Appendix Q-II-C–1-g-(7). All procedures shall be performed carefully to minimize the creation of aerosols.

Appendix Q-II-C–1-g-(8). A double barrier shall be provided to separate male and female animals unless reproductive studies are part of the experiment or other measures are taken to avoid reproductive transmission. Reproductive incapacitation may be used.

Appendix Q-Ii-C–1-g-(9). The containment area shall be in accordance with state and Federal laws and animal care requirements.

Appendix Q-II-C–1-g-(10). All animals shall be euthanized at the end of their experimental usefulness and the carcasses decontaminated before disposal in an approved manner.

Appendix Q-II-C–1-g-(11). Personnel shall be required to shower before exiting the BL3–N area and wearing personal clothing.

Appendix Q-II-C–1-g-(12). Animals of the same or different species, which are not involved in the work being performed, shall not be permitted in the animal area.

Appendix Q-II-C–1-g-(13). Needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Following use, needles shall not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe. The needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q-II-C–1-g-(14). A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and required to read and follow instructions on practices and procedures.

Appendix Q-II-C–2. Animal Facilities (BL3–N)

Appendix Q-II-C–2-a. Animals shall be contained within an enclosed structure (animal room or equivalent) to minimize the possibility of theft or unintentional release and avoid arthropod access. The special provision to avoid the entry or escape of arthropods from the animal areas may be waived if the agent in use is not known to be transmitted by arthropods.

Appendix Q–II–C–2–b. The interior walls, floors, and ceilings shall be impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat, to facilitate cleaning. Penetrations in these structures and surfaces (e.g., plumbing and utilities) shall be sealed.

Appendix Q–II–C–2–c. Windows in the animal facility shall be closed, sealed, and breakage resistant (e.g., double-pane tempered glass or equivalent). The need to maintain negative pressure should be considered when constructing or renovating the animal facility.

Appendix Q–II–C–2–d. An autoclave, incinerator, or other effective means to decontaminate animals and waste shall be available, preferably within the containment area. If feasible, a double-door autoclave is preferred and should be positioned to allow removal of material from the containment area.

Appendix Q–II–C–2–e. If arthropods are used in the experiment or the agent under study can be transmitted by an arthropod, the interior work area shall be appropriately screened (52 mesh). All perimeter joints and openings shall be sealed, and additional arthropod control mechanisms used to minimize arthropod entry and propagation, including appropriate screening, or the equivalent of access doors.

Appendix Q–II–C–2–f. Access doors to the containment area shall be self-closing.

Appendix Q–II–C–2–g. The animal area shall be separated from all other areas. Passage through two sets of doors shall be the basic requirement for entry into the animal area from access corridors or other contiguous areas. The animal containment area shall be physically separated from access corridors and other laboratories or areas by a double-door clothes change room, equipped with integral showers and airlock.

Appendix Q–II–C–2–h. Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers shall be decontaminated by heat treatment before being released into the sanitary system. The procedure used for heat decontamination of liquid wastes shall be monitored with a recording thermometer. The effectiveness of the heat decontamination process system shall be revalidated every 30 days with an indicator organism.

Appendix Q–II–C–2–i. An exhaust air ventilation system shall be provided. This system shall create directional airflow that draws air into the animal room through the entry area. The building exhaust, or the exhaust from primary containment units, may be used for this purpose if the exhaust air is discharged to the outside and shall be dispersed away from occupied areas and air intakes. Personnel shall verify that the direction of the airflow (into the animal room) is proper.

Appendix Q–II–C–2–j. If the agent is transmitted by aerosol, then the exhaust air shall pass through a high efficiency particulate air/HEPA filter.

Appendix Q–II–C–2–k. Vacuum lines shall be protected with high efficiency particulate air/HEPA filters and liquid disinfectant traps.

Appendix Q–II–C–2–l. In lieu of open housing in the special animal room, animals held in a BL3–N area may be housed in partial-containment caging systems (e.g., Horsfall units or gnotobiotic systems, or other special containment primary barriers). Prudent judgment must be exercised to implement this ventilation system (e.g., animal species) and its discharge location.

Appendix Q–II–C–2–m. Each animal area shall contain a foot, elbow, or automatically operated sink for hand washing. The sink shall be located near the exit door.

Appendix Q–II–C–2–n. Restraining devices for animals may be required to avoid damage to the integrity of the animal containment facility.

Appendix Q–II–D. Biosafety Level 4—Animals (BL4–N) (See Appendix Q–III–C)

Appendix Q–II–D–1. Standard Practices (BL4–N)

Appendix Q–II–D–1–a. Animal Facility Access (BL4–N)

Appendix Q–II–D–1–a–(1). Individuals under 16 years of age shall not be permitted to enter the animal area.

Appendix Q–II–D–1–a–(2). The containment area shall be locked.

Appendix Q–II–D–1–a–(3). The containment area shall be patrolled or monitored at frequent intervals.

Appendix Q–II–D–1–a–(4). The containment building shall be controlled and have a locking access.

Appendix Q–II–D–1–a–(5). The Animal Facility Director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) may enter the laboratory or animal room.

Appendix Q–II–D–1–a–(6). Individuals shall enter and exit the animal facility only through the clothing change and shower rooms.

Appendix Q–II–D–1–a–(7). Personnel shall use the airlocks to enter or exit the laboratory only in an emergency.

Appendix Q–II–D–1–a–(8). Animal room doors, gates, and other closures shall be kept closed when experiments are in progress.

Appendix Q–II–D–1–b. Decontamination and Inactivation (BL4–N)

Appendix Q–II–D–1–b–(1). All contaminated liquid or solid wastes shall be decontaminated before disposal.

Appendix Q–II–D–1–b–(2). The work surfaces and containment equipment shall be decontaminated when work with organisms containing recombinant DNA molecules is finished. Where feasible, plastic-backed paper toweling shall be used on nonporous work surfaces to facilitate clean-up.

Appendix Q–II–D–1–b–(3). All wastes from animal rooms and laboratories shall be appropriately decontaminated before disposal in an approved manner.

Appendix Q–II–D–1–b–(4). No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the maximum containment laboratory unless they have been autoclaved or decontaminated.

Equipment or material that might be damaged by high temperatures or steam shall be decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

Appendix Q-II-D–1-b-(5). When ventilated suits are required, the animal personnel shower entrance/exit area shall be equipped with a chemical disinfectant shower to decontaminate the surface of the suit before exiting the area. A neutralization or water dilution device shall be integral with the chemical disinfectant discharge piping before entering the heat sterilization system. Entry to this area shall be

Appendix Q–II–D–1–a–(2). The containment area shall be locked.

Appendix Q–II–D–1–a–(3). The containment area shall be patrolled or monitored at frequent intervals.

Appendix Q–II–D–1–a–(4). The containment building shall be controlled and have a locking access.

Appendix Q–II–D–1–a–(5). The Animal Facility Director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) may enter the laboratory or animal room.

Appendix Q–II–D–1–a–(6). Individuals shall enter and exit the animal facility only through the clothing change and shower rooms.

Appendix Q–II–D–1–a–(7). Personnel shall use the airlocks to enter or exit the laboratory only in an emergency.

Appendix Q–II–D–1–a–(8). Animal room doors, gates, and other closures shall be kept closed when experiments are in progress.

Appendix Q–II–D–1–b. Decontamination and Inactivation (BL4–N)

Appendix Q–II–D–1–b–(1). All contaminated liquid or solid wastes shall be decontaminated before disposal.

Appendix Q–II–D–1–b–(2). The work surfaces and containment equipment shall be decontaminated when work with organisms containing recombinant DNA molecules is finished. Where feasible, plastic-backed paper toweling shall be used on nonporous work surfaces to facilitate clean-up.

Appendix Q–II–D–1–b–(3). All wastes from animal rooms and laboratories shall be appropriately decontaminated before disposal in an approved manner.

Appendix Q–II–D–1–b–(4). No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the maximum containment laboratory unless they have been autoclaved or decontaminated.

Equipment or material that might be damaged by high temperatures or steam shall be decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

Appendix Q-II-D–1-b-(5). When ventilated suits are required, the animal personnel shower entrance/exit area shall be equipped with a chemical disinfectant shower to decontaminate the surface of the suit before exiting the area. A neutralization or water dilution device shall be integral with the chemical disinfectant discharge piping before entering the heat sterilization system. Entry to this area shall be through an airlock fitted with airtight doors.

Appendix Q-II-D–1-b-(6). Needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q-II-D–1-b-(7). Supplies and materials needed in the animal facility shall be brought in by way of the double-door autoclave, fumigation chamber, or airlock that shall be appropriately decontaminated between each use.

Appendix Q-II-D–1-b-(8). An autoclave, incinerator, or other effective means to decontaminate animals and wastes shall be available, preferably within the containment area. If feasible, a double-door autoclave is preferred and should be positioned to allow removal of material from the containment area.

Appendix Q-II-D–1-b-(9). Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers shall be decontaminated by heat treatment before being released into the sanitary system. Liquid wastes from shower rooms and toilets shall be decontaminated with chemical disinfectants or heat by methods demonstrated to be effective. The procedure used for heat decontamination of liquid wastes shall be monitored with a recording thermometer. The effectiveness of the heat decontamination process system shall be revalidated every 30 days with an indicator organism. Liquid wastes from the shower shall be chemically decontaminated using an Environmental Protection Agency-approved germicide. The efficacy of the chemical treatment process shall be validated with an indicator organism. Chemical disinfectants shall be neutralized or diluted before release into general effluent waste systems.

Appendix Q-II-D–1-c. Signs (BL4–N)

Appendix Q-II-D–1-c-(1). When the animal research requires special provisions for entry (e.g., vaccination), a warning sign incorporating the universal biosafety symbol shall be posted on all access doors to the animal work area. The sign shall indicate: (i) The agent, (ii) the animal species, (iii) the name and telephone number of the Animal Facility Director, or other responsible individual, and (iv) any special requirements for entering the laboratory.

Appendix Q-II-D–1-d. Protective Clothing (BL4–N)

Appendix Q-II-D–1-d-(1). Individuals shall enter and exit the animal facility only through the clothing change and shower rooms. Street clothing shall be removed and kept in the outer clothing change room. Complete laboratory clothing (may be disposable), including undergarments, pants, shirts, jump suits, and shoes shall be provided for all personnel entering the animal facility. When exiting the BL4–N area and before proceeding into the shower area, personnel shall remove their laboratory clothing in the inner change room. All laboratory clothing shall be autoclaved before laundering. Personnel shall shower each time they exit the animal facility.

Appendix Q-II-D–1-d-(2). A ventilated head-hood or a one-piece positive pressure suit, which is ventilated by a life-support system, shall be worn by all personnel entering rooms that contain experimental animals when appropriate. When ventilated suits are required, the animal personnel shower entrance/exit area shall be equipped with a chemical disinfectant shower to decontaminate the surface of the suit before exiting the area. A neutralization or water dilution device shall be integral with the chemical disinfectant discharge piping before entering the heat sterilization system. Entry to this area shall be through an airlock fitted with airtight doors.

Appendix Q-II-D–1-d-(3). Appropriate respiratory protection shall be worn in rooms containing experimental animals.

Appendix Q-II-D–1-e. Records (BL4–N)

Appendix Q-II-D–1-e-(1). Documents regarding experimental animal use and disposal shall be maintained in a permanent record book.

Appendix Q-II-D–1-e-(2). A system shall be established for: (i) Reporting laboratory accidents and exposures that are a result of overt exposures to organisms containing recombinant DNA, (ii) employee absenteeism, and (iii) medical surveillance of potential laboratory-associated illnesses. Permanent records shall be prepared and maintained. Any incident involving spills and accidents that results in environmental release or exposures of animals or laboratory workers to organisms containing recombinant DNA molecules shall be reported immediately to the Biological Safety Officer, Animal Facility Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Medical evaluation, surveillance, and treatment shall be

provided as appropriate and written records maintained. If necessary, the area shall be appropriately decontaminated.

Appendix Q-II-D–1-e-(3). When appropriate and giving consideration to the agents handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agents handled or the function of the facility.

Appendix Q-II-D–1-e-(4). A permanent record book indicating the date and time of each entry and exit shall be signed by all personnel.

Appendix Q-II-D–1-f. Transfer of Materials (BL4–N)

Appendix Q-II-D–1-f-(1). No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the maximum containment laboratory unless they have been autoclaved or decontaminated. Equipment or material that might be damaged by high temperatures or steam shall be decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

Appendix Q-II-D–1-f-(2). Biological materials removed from the animal maximum containment laboratory in a viable or intact state shall be transferred to a non-breakable sealed primary container and then enclosed in a non-breakable sealed secondary container that shall be removed from the animal facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose. Advance approval for transfer of material shall be obtained from the Animal Facility Director. Such packages containing viable agents can only be opened in another BL4–N animal facility if the agent is biologically inactivated or incapable of reproduction. Special safety testing, decontamination procedures, and Institutional Biosafety Committee approval shall be required to transfer agents or tissue/organ specimens from a BL4–N animal facility to one with a lower containment classification.

Appendix Q-II-D–1-f-(3). Supplies and materials needed in the animal facility shall be brought in by way of the double-door autoclave, fumigation chamber, or airlock that shall be appropriately decontaminated between each use. After securing the outer doors, personnel within the animal facility retrieve the materials by opening the interior doors of the autoclave, fumigation chamber, or airlock. These doors shall be secured after materials are brought into the animal facility.

Appendix Q-II-D–1-g. Other (BL4–N)

Appendix Q-II-D–1-g-(1). All genetically engineered neonates shall be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences that allow identification of transgenic animals from among non-transgenic animals.

Appendix Q-II-D–1-g-(2). Eating, drinking, smoking, and applying cosmetics shall not be permitted in the work area.

Appendix Q-II-D–1-g-(3). Individuals who handle materials and animals containing recombinant DNA molecules shall be required to wash their hands before exiting the containment area.

Appendix Q-II-D–1-g-(4). Experiments involving other organisms that require containment levels lower than BL4–N may be conducted in the same area concurrently with experiments requiring BL4–N containment provided that they are conducted in accordance with BL4–N practices.

Appendix Q-II-D–1-g-(5). Animal holding areas shall be cleaned at least once a day and decontaminated immediately following any spill of viable materials.

Appendix Q-II-D–1-g-(6). All procedures shall be performed carefully to minimize the creation of aerosols.

Appendix Q-II-D–1-g-(7). A double barrier shall be provided to separate male and female animals. Animal isolation barriers shall be sturdy and accessible for cleaning. Reproductive incapacitation may be used.

Appendix Q-II-D–1-g-(8). The containment area shall be in accordance with state and Federal laws and animal care requirements.

Appendix Q-II-D–1-g-(9). The life support system for the ventilated suit or head hood is equipped with alarms and emergency back-up air tanks. The exhaust air from the suit area shall be filtered by two sets of high efficiency particulate air/HEPA filters installed in series or incinerated. A duplicate filtration unit, exhaust fan, and an automatically starting emergency power source shall be provided. The air pressure within the suit shall be greater than that of any adjacent area. Emergency lighting and communication systems shall be provided. A double-door autoclave shall be provided for decontamination of waste materials to be removed from the suit area.

Appendix Q-II-D–1-g-(10). Needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Following use, needles shall not be bent, sheared, replaced in the needle sheath or guard, or removed from the syringe. The needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q-II-D–1-g-(11). An essential adjunct to the reporting-surveillance system is the availability of a facility for quarantine, isolation, and medical care of personnel with potential or known laboratory-associated illnesses.

Appendix Q-II-D–1-g-(12). A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and required to read and follow instructions on practices and procedures.

Appendix Q-II-D–1-g-(13). Vacuum lines shall be protected with high efficiency particulate air/HEPA filters and liquid disinfectant traps.

Appendix Q-II-D–2. Animal Facilities (BL4–N)

Appendix Q-II-D–2-a. Animals shall be contained within an enclosed structure (animal room or equivalent) to minimize the possibility of theft or unintentional release and avoid arthropod access.

Appendix Q-II-D–2-b. The interior walls, floors, and ceilings shall be impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat, to facilitate cleaning. Penetrations in these structures and surfaces (e.g., plumbing and utilities) shall be sealed.

Appendix Q-II-D–2-c. Windows in the animal facility shall be closed, sealed, and breakage resistant (e.g., double-pane tempered glass or equivalent).

Appendix Q-II-D–2-d. An autoclave, incinerator, or other effective means to decontaminate animals and wastes shall be available, preferably within the containment area. If feasible, a double-door autoclave is preferred and should be positioned to allow removal of material from the containment area.

Appendix Q-II-D–2-e. Access doors to the containment area shall be self-closing.

Appendix Q-II-D–2-f. All perimeter joints and openings shall be sealed to form an arthropod-proof structure.

Appendix Q-II-D–2-g. The BL4–N laboratory provides a double barrier to prevent the release of recombinant DNA containing microorganisms into the environment. Design of the animal facility shall be such that if the barrier of the inner facility is breached, the outer barrier will prevent release into the environment. The animal area shall be separated from all other areas. Passage through two sets of doors shall be the basic requirement for entry into the animal area from access corridors or other contiguous areas. Physical separation of the animal containment area from access corridors or other laboratories or activities shall be provided by a double-door clothes change room equipped with integral showers and airlock.

Appendix Q-II-D–2-h. A necropsy room shall be provided within the BL4–N containment area.

Appendix Q-II-D–2-i. Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers shall be decontaminated by heat treatment before being released into the sanitary system. Liquid wastes from shower rooms and toilets shall be decontaminated with chemical disinfectants or heat by methods demonstrated to be effective. The procedure used for heat decontamination of liquid wastes shall be monitored with a recording thermometer. The effectiveness of the heat decontamination process system shall be revalidated every 30 days with an indicator organism. Liquid wastes from the shower shall be chemically decontaminated using an Environmental Protection Agency-approved germicide.

The efficacy of the chemical treatment process shall be validated with an indicator organism. Chemical disinfectants shall be neutralized or diluted before release into general effluent waste systems.

Appendix Q-II-D–2-j. A ducted exhaust air ventilation system shall be provided that creates directional airflow that draws air into the laboratory through the entry area. The exhaust air, which is not recirculated to any other area of the building, shall be discharged to the outside and dispersed away from the occupied areas and air intakes. Personnel shall verify that the direction of the airflow (into the animal room) is proper.

Appendix Q-II-D–2-e. Access doors to the containment area shall be self-closing.

Appendix Q-II-D–2-f. All perimeter joints and openings shall be sealed to form an arthropod-proof structure.

Appendix Q-II-D–2-g. The BL4–N laboratory provides a double barrier to prevent the release of recombinant DNA containing microorganisms into the environment. Design of the animal facility shall be such that if the barrier of the inner facility is breached, the outer barrier will prevent release into the environment. The animal area shall be separated from all other areas. Passage through two sets of doors shall be the basic requirement for entry into the animal area from access corridors or other contiguous areas. Physical separation of the animal containment area from access corridors or other laboratories or activities shall be provided by a double-door clothes change room equipped with integral showers and airlock.

Appendix Q-II-D–2-h. A necropsy room shall be provided within the BL4–N containment area.

Appendix Q-II-D–2-i. Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers shall be decontaminated by heat treatment before being released into the sanitary system. Liquid wastes from shower rooms and toilets shall be decontaminated with chemical disinfectants or heat by methods demonstrated to be effective. The procedure used for heat decontamination of liquid wastes shall be monitored with a recording thermometer. The effectiveness of the heat decontamination process system shall be revalidated every 30 days with an indicator organism. Liquid wastes from the shower shall be chemically decontaminated using an Environmental Protection Agency-approved germicide.

The efficacy of the chemical treatment process shall be validated with an indicator organism. Chemical disinfectants shall be neutralized or diluted before release into general effluent waste systems.

Appendix Q-II-D–2-j. A ducted exhaust air ventilation system shall be provided that creates directional airflow that draws air into the laboratory through the entry area. The exhaust air, which is not recirculated to any other area of the building, shall be discharged to the outside and dispersed away from the occupied areas and air intakes. Personnel shall verify that the direction of the airflow (into the animal room) is proper.

Appendix Q-II-D–2-k. Exhaust air from BL4–N containment area shall be double high efficiency particulate air/HEPA filtered or treated by passing through a certified HEPA filter and an air incinerator before release to the atmosphere. Double HEPA filters shall be required for the supply air system in a BL4–N containment area.

Appendix Q-II-D–2-l. All high efficiency particulate air/HEPA filters' frames and housings shall be certified to have no detectable smoke [dioctylphthalate] leaks when the exit face (direction of flow) of the filter is scanned above 0.01 percent when measured by a linear or logarithmic photometer. The instrument must demonstrate a threshold sensitivity of at least 1×10^{-3} micrograms per liter for 0.3 micrometer diameter dioctylphthalate particles and a challenge concentration of 80–120 micrograms per liter. The air sampling rate should be at least 1 cfm (28.3 liters per minute).

Appendix Q-II-D–2-m. If an air incinerator is used in lieu of the second high efficiency particulate air/HEPA filter, it shall be biologically challenged to prove all viable test agents are sterilized. The biological challenge must be minimally 1×10^{8} organisms per cubic foot of airflow through the incinerator. It is universally accepted if bacterial spores are used to challenge and verify that the equipment is capable of killing spores, then assurance is provided that all other known agents are inactivated by the parameters established to operate the equipment. Test spores meeting this criterion are *Bacillus subtilis* var. *niger* or *Bacillus stearothermophilis*. The operating temperature of the incinerator shall be continuously monitored and recorded during use.

Appendix Q-II-D–2-n. All equipment and floor drains shall be equipped with deep traps (minimally 5 inches). Floor drains shall be fitted with isolation plugs or fitted with automatic water fill devices.

Appendix Q-II-D–2-o. Each animal area shall contain a foot, elbow, or automatically operated sink for hand washing. The sink shall be located near the exit door.

Appendix Q–II–D–2–p. Restraining devices for animals may be required to avoid damage to the integrity of the containment animal facility.

Appendix Q–II–D–2–q. The supply water distribution system shall be fitted with a back-flow preventer or break tank.

Appendix Q–II–D–2–r. All utilities, liquid and gas services, shall be protected with devices that avoid back-flow.

Appendix Q–II–D–2–s. Sewer and other atmospheric ventilation lines shall be equipped minimally with a single high efficiency particulate/HEPA filter. Condensate drains from these type housings shall be appropriately connected to a contaminated or sanitary drain system. The drain position in the housing dictates the appropriate system to be used.

Appendix Q–III. Footnotes and References for Appendix Q

Appendix Q–III–A. If recombinant DNA is derived from a Class 2 organism requiring BL2 containment, personnel shall be required to have specific training in handling pathogenic agents and directed by knowledgeable scientists.

Appendix Q–III–B. Personnel who handle pathogenic and potentially lethal agents shall be required to have specific training and be supervised by knowledgeable scientists who are experienced in working with these agents. BL3–N containment also minimizes escape of recombinant DNA-containing organisms from exhaust air or waste material from the containment area.

Appendix Q–III–C. Classes 4 and 5 microorganisms pose a high level of individual risk for acquiring life-threatening diseases to personnel and/or animals. To import Class 5 agents, special approval must be obtained from U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Import-Export Products, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

Laboratory staff shall be required to have specific and thorough training in handling extremely hazardous infectious agents, primary and secondary containment, standard and special practices, and laboratory design characteristics. The laboratory staff shall be supervised by knowledgeable scientists who are trained and experienced in working with these agents and in the special containment facilities.

Within work areas of the animal facility, all activities shall be confined to the specially equipped animal rooms or support areas. The maximum animal containment area and support areas shall have special engineering and design features to prevent the dissemination of microorganisms into the environment via exhaust air or waste disposal.

Appendix Q–III–D. Other research with non-laboratory animals, which may not appropriately be conducted under conditions described in Appendix Q, may be conducted safely

by applying practices routinely used for controlled culture of these biota. In aquatic systems, for example, BL1 equivalent conditions could be met by utilizing growth tanks that provide adequate physical means to avoid the escape of the aquatic species, its gametes, and introduced exogenous genetic material. A mechanism shall be provided to ensure that neither the organisms nor their gametes can escape into the supply or discharge system of the rearing container (e.g., tank, aquarium, etc.) Acceptable barriers include appropriate filtration, irradiation, heat treatment, chemical treatment, etc. Moreover, the top of the rearing container shall be covered to avoid escape of the organism and its gametes. In the event of tank rupture, leakage, or overflow, the construction of the room containing these tanks should prevent the organisms and gametes from entering the building's drains before the organism and its gametes have been inactivated.

Other types of non-laboratory animals (e.g., nematodes, arthropods, and certain forms of smaller animals) may be accommodated by using the appropriate BL1 through BL4 or BL1–P through BL4–P containment practices and procedures as specified in Appendices G and P.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective Date: June 24, 1994.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 94–16199 Filed 7–1–94; 8:45 am]

BILLING CODE 4140–01–P

federal register

Tuesday
July 5, 1994

Part IV

Department of Health and Human Services

National Institutes of Health

Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines); Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines)

June 1994.

These NIH Guidelines supersede all earlier versions and shall be in effect until further notice.

Table of Contents

Section I. Scope of the NIH Guidelines
Section I–A. Purpose
Section I–B. Definition of Recombinant DNA Molecules
Section I–C. General Applicability
Section I–D. General Definitions
Section II. Containment
Section III. Experiments Covered by the NIH Guidelines
Section III–A. Experiments that Require Institutional Biosafety Committee Approval, RAC Review, and NIH Approval Before Initiation
Section III–B. Experiments that Require NIH/ORDA and Institutional Biosafety Committee Approval Before Initiation
Section III–B–1. Experiments Involving the Cloning of Toxin Molecules with LD_{50} of Less than 100 Nanograms Per Kilogram Body Weight
Section III–B–2. Accelerated Review of Human Gene Transfer Experiments
Section III–B–3. Minor Modifications to Human Gene Transfer Experiments
Section III–C. Experiments that Require Institutional Biosafety Committee Approval Before Initiation
Section III–C–1. Experiments Using Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5) Agents as Host-Vector Systems
Section III–C–2. Experiments in which DNA from Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5) Agents is Cloned into Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems
Section III–C–3. Experiments Involving the Use of Infectious Animal or Plant DNA or RNA Viruses or Defective Animal or Plant DNA or RNA Viruses in the Presence of Helper Virus in Tissue Culture Systems
Section III–C–4. Experiments Involving Whole Animals
Section III–C–5. Experiments Involving Whole Plants
Section III–C–6. Experiments Involving More than 10 Liters of Culture
Section III–C–7. Human Gene Transfer Experiments Not Covered by Section III–A–2, III–B–2, III–B–3, and Not Considered Exempt under Section V–U
Section III–D. Experiments that Require Institutional Biosafety Committee Notice Simultaneous with Initiation
Section III–D–1. Experiments Involving the Formation of Recombinant DNA Molecules Containing No More than Two-Thirds of the Genome of any Eukaryotic Virus
Section III–D–2. Experiments Involving Whole Plants
Section III–E. Exempt Experiments
Section IV. Roles and Responsibilities
Section IV–A. Policy
Section IV–B. Responsibilities of the Institution
Section IV–B–1. General Information
Section IV–B–2. Institutional Biosafety Committee (IBC)
Section IV–B–3. Biological Safety Officer (BSO)
Section IV–B–4. Principal Investigator (PI)
Section IV–C. Responsibilities of the National Institutes of Health (NIH)
Section IV–C–1. NIH Director
Section IV–C–1–a. General Responsibilities
Section IV–C–1–b. Specific Responsibilities
Section IV–C–1–b–(1). Major Actions
Section IV–C–1–b–(2). Minor Actions
Section IV–C–2. Recombinant DNA Advisory Committee (RAC)
Section IV–C–3. Office of Recombinant DNA Activities (ORDA)
Section IV–C–4. Other NIH Components
Section IV–D. Compliance with the NIH Guidelines
Section IV–E. Voluntary Compliance
Section V. Footnotes and References of Sections I–IV
Appendix A. Exemptions under Section III–E–5—Sublists of Natural Exchangers
Appendix B. Classification of Etiologic Agents and Oncogenic Viruses on the Basis of Hazard
Appendix B–I. Class 1 Agents
Appendix B–II. Class 2 Agents
Appendix B–III. Class 3 Agents
Appendix B–IV. Class 4 Agents
Appendix B–V. Class 5 Agents
Appendix B–VI. Footnotes and References of Appendix B
Appendix C. Exemptions under Section III–E–6
Appendix C–I. Recombinant DNA in Tissue Culture
Appendix C–II. *Escherichia coli* K–12 Host-Vector Systems
Appendix C–III. *Saccharomyces* Host-Vector Systems
Appendix C–IV. *Bacillus subtilis* or *Bacillus licheniformis* Host-Vector Systems
Appendix C–V. Extrachromosomal Elements of Gram Positive Organisms
Appendix C–VI. Footnotes and References of Appendix C
Appendix D. Major Actions Taken under the NIH Guidelines
Appendix E. Certified Host-Vector Systems
Appendix E–I. *Bacillus subtilis*
Appendix E–II. *Saccharomyces cerevisiae*
Appendix E–III. *Escherichia coli*
Appendix E–IV. *Neurospora crassa*
Appendix E–V. *Streptomyces*
Appendix E–VI. *Pseudomonas putida*
Appendix F. Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates
Appendix F–I. General Information
Appendix F–II. Cloning of Toxin Molecule Genes in *Escherichia coli* K–12
Appendix F–III. Cloning of Toxic Molecule Genes in Organisms other than *Escherichia coli* K–12
Appendix F–IV. Specific Approvals
Appendix G. Physical Containment
Appendix G–I. Standard Practices and Training
Appendix G–II. Physical Containment Levels
Appendix G–II–A. Biosafety Level 1 (BL1)
Appendix G–II–B. Biosafety Level 2 (BL2)
Appendix G–II–C. Biosafety Level 3 (BL3)
Appendix G–II–D. Biosafety Level 4 (BL4)
Appendix G–III. Footnotes and References of Appendix G
Appendix H. Shipment
Appendix I. Biological Containment
Appendix I–I. Levels of Biological Containment
Appendix I–I–A. Host-Vector 1 Systems
Appendix I–I–B. Host-Vector 2 Systems
Appendix I–II. Certification of Host-Vector Systems
Appendix I–III. Footnotes and References of Appendix I
Appendix J. Biotechnology Research Subcommittee
Appendix K. Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules
Appendix K–I. Selection of Physical Containment Levels
Appendix K–II. Good Large Scale Practices (GLSP)
Appendix K–III. Biosafety Level 1 (BL1)—Large Scale
Appendix K–IV. Biosafety Level 2 (BL2)—Large Scale
Appendix K–V. Biosafety Level 3 (BL3)—Large Scale
Appendix K–VI. Footnotes of Appendix K
Appendix K–VII. Definitions to Accompany Containment Grid and Appendix K
Appendix L. Release into the Environment of Certain Plants
Appendix M. Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into the Genome of One or More Human Subjects
Appendix M–I. Description of Proposal
Appendix M–I–A. Objectives and Rationale of the Proposed Research
Appendix M–I–B. Research Design, Anticipated Risks and Benefits
Appendix M–I–C. Selection of the Patients
Appendix M–I–D. Informed Consent
Appendix M–I–E. Privacy and Confidentiality
Appendix M–II. Special Issues
Appendix M–III. Guidelines for the Submission of Human Gene Transfer Protocols
Appendix M–III–A. Principal Investigator-Submitted Material
Appendix M–III–B. Time Frame for Submissions
Appendix M–III–C. Oral Responses to the RAC
Appendix M–III–D. Primary Reviewers' Responses
Appendix M–IV. Reporting Requirements
Appendix M–V. Procedures to be Followed for Accelerated Review of Human Gene Transfer Experiments by NIH/ORDA under Section III–B–2
Appendix M–VI. Procedures to be Followed for Expedited Review of Single Patient Human Gene Transfer Experiments by the NIH Director Under Section III–A–2
Appendix M–VII. Footnotes of Appendix M
Appendix P. Physical and Biological Containment for Recombinant DNA Research Involving Plants
Appendix P–I. General Plant Biosafety Levels
Appendix P–II. Physical Containment Levels
Appendix P–II–A. Biosafety Level 1—Plants (BL1–P)
Appendix P–II–B. Biosafety Level 2—Plants (BL2–P)
Appendix P–II–C. Biosafety Level 3—Plants (BL3–P)
Appendix P–II–D. Biosafety Level 4—Plants (BL4–P)
Appendix P–III. Biological Containment Practices
Appendix P–III–A. Biological Containment Practices (Plants)
Appendix P–III–B. Biological Containment Practices (Microorganisms)
Appendix P–III–C. Biological Containment Practices (Macroorganisms)
Appendix Q. Physical and Biological Containment for Recombinant DNA Research Involving Animals
Appendix Q–I. General Considerations
Appendix Q–I–A. Containment Levels
Appendix Q–I–B. Disposal of Animals (BL1–N through BL4–N)
Appendix Q–II. Physical and Biological Containment Levels
Appendix Q–II–A. Biosafety Level 1—Animals (BL1–N)
Appendix Q–II–B. Biosafety Level 2—Animals (BL2–N)
Appendix Q–II–C. Biosafety Level 3—Animals (BL3–N)
Appendix Q–II–D. Biosafety Level 4—Animals (BL4–N)
Appendix Q–III. Footnotes and References for Appendix Q

Section I. Scope of the NIH Guidelines

Section I–A. Purpose

The purpose of the NIH Guidelines is to specify practices for constructing and handling: (i) Recombinant deoxyribonucleic acid (DNA) molecules, and (ii) organisms and viruses containing recombinant DNA molecules.

Section I–A–1. Any recombinant DNA experiment, which according to the NIH Guidelines requires approval by the NIH, must be submitted to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approval, or other applicable clearances, has been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH or sent directly there by the submitter), the experiment may proceed without the necessity for

Appendix M–V. Procedures to be Followed for Accelerated Review of Human Gene Transfer Experiments by NIH/ORDA under Section III–B–2
Appendix M–VI. Procedures to be Followed for Expedited Review of Single Patient Human Gene Transfer Experiments by the NIH Director Under Section III–A–2
Appendix M–VII. Footnotes of Appendix M
Appendix P. Physical and Biological Containment for Recombinant DNA Research Involving Plants
Appendix P–I. General Plant Biosafety Levels
Appendix P–II. Physical Containment Levels
Appendix P–II–A. Biosafety Level 1—Plants (BL1–P)
Appendix P–II–B. Biosafety Level 2—Plants (BL2–P)
Appendix P–II–C. Biosafety Level 3—Plants (BL3–P)
Appendix P–II–D. Biosafety Level 4—Plants (BL4–P)
Appendix P–III. Biological Containment Practices
Appendix P–III–A. Biological Containment Practices (Plants)
Appendix P–III–B. Biological Containment Practices (Microorganisms)
Appendix P–III–C. Biological Containment Practices (Macroorganisms)
Appendix Q. Physical and Biological Containment for Recombinant DNA Research Involving Animals
Appendix Q–I. General Considerations
Appendix Q–I–A. Containment Levels
Appendix Q–I–B. Disposal of Animals (BL1–N through BL4–N)
Appendix Q–II. Physical and Biological Containment Levels
Appendix Q–II–A. Biosafety Level 1—Animals (BL1–N)
Appendix Q–II–B. Biosafety Level 2—Animals (BL2–N)
Appendix Q–II–C. Biosafety Level 3—Animals (BL3–N)
Appendix Q–II–D. Biosafety Level 4—Animals (BL4–N)
Appendix Q–III. Footnotes and References for Appendix Q

Section I. Scope of the NIH Guidelines

Section I–A. Purpose

The purpose of the NIH Guidelines is to specify practices for constructing and handling: (i) Recombinant deoxyribonucleic acid (DNA) molecules, and (ii) organisms and viruses containing recombinant DNA molecules.

Section I–A–1. Any recombinant DNA experiment, which according to the NIH Guidelines requires approval by the NIH, must be submitted to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approval, or other applicable clearances, has been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval (see exceptions in Sections I–A–2 and I–A–3).

Section I–A–2. Certain experiments that involve the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects (see Section V–U) shall be considered Major Actions (see Section IV–C–1–b–(1)), and shall require RAC review and NIH Director approval, if determined by NIH/ORDA in consultation with the RAC Chair and/or one or more RAC members, as necessary, to: (i) Represent novel characteristics (e.g., target disease or vector), (ii) represent an uncertain degree of risk to human health or the environment, or (iii) contain information determined to require further public review (see Section III–A–2).

Section I–A–3. Experiments involving the transfer of recombinant DNA to one or more human subjects that are not considered under Section III–A–2 may qualify for Accelerated Review (see Section III–B–2 and Appendix M–V) and will be considered as Minor Actions (see Section IV–C–1–b–(2)–(a)). Actions that qualify for Accelerated Review will be reviewed and approved by NIH/ORDA in consultation with the RAC Chair and/or one or more RAC members, as necessary.

Certain experiments involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects (see Section V–U) may be considered exempt from RAC and/or NIH/ORDA review and/or NIH Director approval and only require registration with NIH/ORDA (see Section III–C–7).

Section I–B. Definition of Recombinant DNA Molecules

In the context of the NIH Guidelines, recombinant DNA molecules are defined as either: (i) Molecules that are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) molecules that result from the replication of those described in (i) above.

Synthetic DNA segments which are likely to yield a potentially harmful polynucleotide or polypeptide (e.g., a toxin or a pharmacologically active agent) are considered as equivalent to their natural DNA counterpart. If the synthetic DNA segment is not expressed *in vivo* as a biologically active polynucleotide or polypeptide product, it is exempt from the NIH Guidelines.

Genomic DNA of plants and bacteria that have acquired a transposable element, even if the latter was donated from a recombinant vector no longer present, are not subject to the NIH Guidelines unless the transposon itself contains recombinant DNA.

Section I–C. General Applicability

Section I–C–1. The NIH Guidelines are applicable to:

Section I–C–1–a. All recombinant DNA research within the United States (U.S.) or its territories that is conducted at or sponsored by an institution that receives any support for recombinant DNA research from the NIH, including research performed directly by the NIH. An individual who receives support for research involving recombinant DNA must be associated with or sponsored by an institution that assumes the responsibilities assigned in the NIH Guidelines.

Section I–C–1–b. All recombinant DNA research performed abroad: Specifically:

Section I–C–1–b–(1). Research supported by NIH funds.

Section I–C–1–b–(2). If they involve testing in humans of materials containing recombinant DNA developed with NIH funds and if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractual agreements, not mere provision of research materials.

Section I–C–1–b–(3). If the host country has established rules for the conduct of recombinant DNA research, then the research must be in compliance with those rules. If the host country does not have such rules, the proposed research must be reviewed and approved by an NIH-approved Institutional Biosafety Committee or equivalent review body and accepted in writing by an appropriate national governmental authority of the host country. The safety practices that are employed abroad must be reasonably consistent with the NIH Guidelines.

Section I–D. General Definitions

The following terms, which are used throughout the NIH Guidelines, are defined as follows:

Section I–D–1. An "institution" is any public or private entity (including Federal, state, and local government agencies).

Section I–D–2. An "Institutional Biosafety Committee" is a committee that: (i) Meets the requirements for membership specified in Section IV–B–2, and (ii) reviews, approves, and oversees projects in accordance with the responsibilities defined in Section IV–B–2.

Section I–D–3. The "Office of Recombinant DNA Activities (ORDA)"

is the office within the NIH that is responsible for: (i) Reviewing and coordinating all activities relating to the NIH Guidelines, and (ii) performing other duties as defined in Section IV–C–3.

Section I–D–4. The "Recombinant DNA Advisory Committee" is the public advisory committee that advises the Department of Health and Human Services (DHHS) Secretary, the DHHS Assistant Secretary for Health, and the NIH Director concerning recombinant DNA research. The RAC shall be constituted as specified in Section IV–C–2.

Section I–D–5. The "NIH Director" is the Director of the National Institutes of Health, or any other officer or employee of NIH to whom authority has been delegated.

Section I–D–6. "Deliberate release" is defined as a planned introduction of recombinant DNA-containing microorganisms, plants, or animals into the environment.

Section II. Containment

Effective biological safety programs have been operative in a variety of laboratories for many years. Considerable information already exists about the design of physical containment facilities and selection of laboratory procedures applicable to organisms carrying recombinant DNA (see section V–A). The existing programs rely upon mechanisms that can be divided into two categories: (i) A set of standard practices that are generally used in microbiological laboratories; and (ii) special procedures, equipment, and laboratory installations that provide physical barriers that are applied in varying degrees according to the estimated biohazard. Four biosafety levels are described in Appendix G. These biosafety levels consist of combinations of laboratory practices and techniques, safety equipment, and laboratory facilities appropriate for the operations performed and are based on the potential hazards imposed by the agents used and for the laboratory function and activity. Biosafety Level 4 provides the most stringent containment conditions, Biosafety Level 1 the least stringent.

Experiments involving recombinant DNA lend themselves to a third containment mechanism, namely, the application of highly specific biological barriers. Natural barriers exist that limit either: (i) The infectivity of a vector or vehicle (plasmid or virus) for specific hosts, or (ii) its dissemination and survival in the environment. Vectors, which provide the means for recombinant DNA and/or host cell replication, can be genetically designed to decrease, by many orders of magnitude, the probability of dissemination of recombinant DNA outside the laboratory (see Appendix I).

Since these three means of containment are complementary, different levels of containment can be established that apply various combinations of the physical and biological barriers along with a constant use of standard practices. Categories of containment are considered separately in order that such combinations can be conveniently expressed in the NIH Guidelines.

Physical containment conditions within laboratories, described in Appendix G, may not always be appropriate for all organisms because of their physical size, the number of organisms needed for an experiment, or the particular growth requirements of the organism. Likewise, biological containment for microorganisms described in Appendix I may not be appropriate for all organisms, particularly higher eukaryotic organisms. However, significant information exists about the design of research facilities and experimental procedures that are applicable to organisms containing recombinant DNA that is either integrated into the genome or into microorganisms associated with the higher organism as a symbiont, pathogen, or other relationship. This information describes facilities for physical containment of organisms used in non-traditional laboratory settings and special practices for limiting or excluding the unwanted establishment, transfer of genetic information, and dissemination of organisms beyond the intended location, based on both physical and biological containment principles. Research conducted in accordance with these conditions effectively confines the organism.

For research involving plants, four biosafety levels (BL1–P through BL4–P) are described in Appendix P. BL1–P is designed to provide a moderate level of containment for experiments for which there is convincing biological evidence that precludes the possibility of survival, transfer, or dissemination of recombinant DNA into the environment, or in which there is no recognizable and predictable risk to the environment in the event of accidental release. BL2–P is designed to provide a greater level of containment for experiments involving plants and certain associated organisms in which there is a recognized possibility of survival, transmission, or dissemination of recombinant DNA containing organisms, but the consequence of such an inadvertent release has a predictably minimal biological impact. BL3–P and BL4–P describe additional containment conditions for research with plants and certain pathogens and other organisms that require special containment because of their recognized potential for significant detrimental impact on managed or natural ecosystems. BL1–P relies upon accepted scientific practices for conducting research in most ordinary greenhouse or growth chamber facilities and incorporates accepted procedures for good pest control and cultural practices. BL1–P facilities and procedures provide a modified and protected environment for the propagation of plants and microorganisms associated with the plants and a degree of containment that adequately controls the potential for release of biologically viable plants, plant parts, and microorganisms associated with them. BL2–P and BL3–P rely upon accepted scientific practices for conducting research in greenhouses with organisms infecting or infesting plants in a manner that minimizes or prevents inadvertent contamination of plants within or surrounding the greenhouse. BL4–P describes facilities and practices known to provide containment of certain exotic plant pathogens.

For research involving animals, which are of a size or have growth requirements that preclude the use of conventional primary containment systems used for small laboratory animals, four biosafety levels (BL1–N through BL4–N) are described in Appendix Q. BL1–N describes containment for animals that have been modified by stable introduction of recombinant DNA, or DNA derived therefrom, into the germ-line (transgenic animals) and experiments involving viable recombinant DNA-modified microorganisms and is designed to eliminate the possibility of sexual transmission of the modified genome or transmission of recombinant DNA-derived viruses known to be transmitted from animal parent to offspring only by sexual reproduction. Procedures, practices, and facilities follow classical methods of avoiding genetic exchange between animals. BL2–N describes containment which is used for transgenic animals associated with recombinant DNA-derived organisms and is designed to eliminate the possibility of vertical or horizontal transmission. Procedures, practices, and facilities follow classical methods of avoiding genetic exchange between animals or controlling arthropod transmission. BL3–N and BL4–N describe higher levels of containment for research with certain transgenic animals involving agents which pose recognized hazard.

In constructing the NIH Guidelines, it was necessary to define boundary conditions for the different levels of physical and biological containment and for the classes of experiments to which they apply. These definitions do not take into account all existing and anticipated information on special procedures that will allow particular experiments to be conducted under different conditions than indicated here without affecting risk. Individual investigators and Institutional Biosafety Committees are urged to devise simple and more effective containment procedures and to submit recommended changes in the NIH Guidelines to permit the use of these procedures.

Section III. Experiments Covered by the NIH Guidelines

This section describes five categories of experiments involving recombinant DNA: (i) Those that require RAC review and NIH and Institutional Biosafety Committee approval before initiation (see section III–A), (ii) those that require NIH/ORDA and Institutional Biosafety Committee approval before initiation (see section III–B); (iii) those that require Institutional Biosafety Committee approval before initiation (see section III–C), (iv) those that require Institutional Biosafety Committee notification simultaneous with initiation (see section III–D), and (v) those that are exempt from the NIH Guidelines (see section III–E).

Note: If an experiment falls into either section III–A or section III–B and one of the other categories, the rules pertaining to section III–A or section III–B shall be followed. If an experiment falls into section III–E and into either sections III–C or III–D categories as well, the experiment is considered exempt from the NIH Guidelines.

Any change in containment level, which is different from those specified in the NIH Guidelines, may not be initiated without the express approval of NIH/ORDA (see Minor Actions, section IV–C–1–b–(2) and its subsections).

Section III–A. Experiments that Require Institutional Biosafety Committee Approval, RAC Review, and NIH Approval Before Initiation

Experiments in this category are considered Major Actions (see section IV–C–1–b–(1)) and cannot be initiated without submission of relevant information on the proposed experiment to the Office of Recombinant DNA Activities, National Institutes of Health,

describe higher levels of containment for research with certain transgenic animals involving agents which pose recognized hazard.

In constructing the NIH Guidelines, it was necessary to define boundary conditions for the different levels of physical and biological containment and for the classes of experiments to which they apply. These definitions do not take into account all existing and anticipated information on special procedures that will allow particular experiments to be conducted under different conditions than indicated here without affecting risk. Individual investigators and Institutional Biosafety Committees are urged to devise simple and more effective containment procedures and to submit recommended changes in the NIH Guidelines to permit the use of these procedures.

Section III. Experiments Covered by the NIH Guidelines

This section describes five categories of experiments involving recombinant DNA: (i) Those that require RAC review and NIH and Institutional Biosafety Committee approval before initiation (see section III–A), (ii) those that require NIH/ORDA and Institutional Biosafety Committee approval before initiation (see section III–B); (iii) those that require Institutional Biosafety Committee approval before initiation (see section III–C), (iv) those that require Institutional Biosafety Committee notification simultaneous with initiation (see section III–D), and (v) those that are exempt from the NIH Guidelines (see section III–E).

Note: If an experiment falls into either section III–A or section III–B and one of the other categories, the rules pertaining to section III–A or section III–B shall be followed. If an experiment falls into section III–E and into either sections III–C or III–D categories as well, the experiment is considered exempt from the NIH Guidelines.

Any change in containment level, which is different from those specified in the NIH Guidelines, may not be initiated without the express approval of NIH/ORDA (see Minor Actions, section IV–C–1–b–(2) and its subsections).

Section III–A. Experiments that Require Institutional Biosafety Committee Approval, RAC Review, and NIH Approval Before Initiation

Experiments in this category are considered Major Actions (see section IV–C–1–b–(1)) and cannot be initiated without submission of relevant information on the proposed experiment to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838, the publication of the proposal in the **Federal Register** for 15 days of comment, reviewed by the RAC, and specific approval by the NIH (not applicable for Expedited Review single patient human gene transfer experiments considered under Appendix M–VI). The containment conditions for such experiments will be recommended by the RAC and set by the NIH at the time of approval. Such experiments require Institutional Biosafety Committee approval before initiation. Specific experiments already approved are included in Appendix D which may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Section III–A–1. Deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire the trait naturally (see section V–B), if such acquisition could compromise the use of the drug to control disease agents in humans, veterinary medicine, or agriculture.

Section III–A–2. Certain experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects (see section V–U) shall be considered Major Actions (see section IV–C–1–b–(1) and Appendix M–III), and shall require RAC review and NIH Director approval, if determined by NIH/ORDA, in consultation with the RAC Chair and one or more RAC members, as necessary, to: (i) Represent novel characteristics (e.g., target disease or vector), (ii) represent an uncertain degree of risk to human health or the environment, or (iii) contain information determined to require further public review. The requirement for RAC review shall not be considered to preempt any other required review or approval of experiments with one or more human subjects. Relevant Institutional Biosafety Committee and Institutional Review Board reviews and approvals of the proposal should be completed before submission to NIH. Certain experiments involving deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects may qualify for the Accelerated Review process (see section III–B–2). Certain categories of experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects and that are not covered by section V–U, may be considered exempt from RAC and/or NIH/ORDA review and/or NIH Director approval and only require registration with NIH/ORDA (see section III–C–7).

Section III–B. Experiments That Require NIH/ORDA and Institutional Biosafety Committee Approval Before Initiation

Section III–B–1. Experiments Involving the Cloning of Toxin Molecules with LD_{50} of Less than 100 Nanograms per Kilogram Body Weight

Deliberate formation of recombinant DNA containing genes for the biosynthesis of toxin molecules lethal for vertebrates at an LD_{50} of less than 100 nanograms per kilogram body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, and *Shigella dysenteriae* neurotoxin). Specific approval has been given for the cloning in *Escherichia coli* K–12 of DNA containing genes coding for the biosynthesis of toxic molecules which are lethal to vertebrates at 100 nanograms to 100 micrograms per kilogram body weight. Specific experiments already approved under this section may be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Section III–B–1–(a). Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH/ORDA. The containment conditions for such experiments will be determined by NIH/ORDA in consultation with ad hoc experts. Such experiments require Institutional Biosafety Committee approval before initiation (see section IV–B–2–b–(1)).

Section III–B–2. Accelerated Review of Human Gene Transfer Experiments

As determined by NIH/ORDA, in consultation with the RAC Chair and one or more RAC members, as necessary, certain categories of human gene transfer experiments may be considered as Minor Actions and qualify for Accelerated Review and approval (see section IV–C–1–b–(2)–(a), Appendix M–III–A, and Appendix M–V). The RAC Chair will present a report of all NIH/ORDA approved human gene transfer protocols at the next regularly scheduled RAC meeting. If NIH/ORDA determines that an experiment does not qualify for the Accelerated Review process, the Principal Investigator must submit the proposal for full RAC review ≥ 8 weeks prior to the next scheduled RAC meeting (See section III–A–2).

Section III-B–3. Minor Modifications to Human Gene Transfer Experiments

A minor modification in a human gene transfer protocol is a modification that does not significantly alter the basic design of the protocol and that does not increase risk to human subjects or the environment. After approval has been obtained by the relevant Institutional Biosafety Committee and Institutional Review Board, NIH/ORDA will consider the change in consultation with the RAC Chair and one or more RAC members, as necessary. Submit minor modifications to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. The RAC Chair will provide a report on any such approvals at the next regularly scheduled RAC meeting.

Section III-C. Experiments that Require Institutional Biosafety Committee Approval Before Initiation

Prior to the initiation of an experiment that falls into this category, the Principal Investigator must submit a registration document to the Institutional Biosafety Committee which contains the following information: (i) The source(s) of DNA; (ii) the nature of the inserted DNA sequences; (iii) the host(s) and vector(s) to be used; (iv) if an attempt will be made to obtain expression of a foreign gene, and if so, indicate the protein that will be produced; and (v) the containment conditions that will be implemented as specified in the NIH Guidelines. For experiments in this category, the registration document shall be dated, signed by the Principal Investigator, and filed with the Institutional Biosafety Committee. The Institutional Biosafety Committee shall review and approve all experiments in this category prior to their initiation. Requests to decrease the level of containment specified for experiments in this category will be considered by NIH (see Section IV-C–1-b-(2)-(c)).

Section III-C–1. Experiments Using Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents (see Section V-A) as Host-Vector Systems

Section III-C–1-a. Experiments involving the introduction of recombinant DNA into Class 2 agents shall be conducted at Biosafety Level (BL) 2 containment. Experiments with such agents shall be conducted with whole animals at BL2 or BL2–N (Animals) containment.

Section III-C–1-b. Experiments involving the introduction of recombinant DNA into Class 3 agents shall be conducted at BL3 containment. Experiments with such agents shall be conducted with whole animals at BL3 or BL3–N containment.

Section III-C–1-c. Experiments involving the introduction of recombinant DNA into Class 4 agents shall be conducted at BL4 containment. Experiments with such agents shall be conducted with whole animals at BL4 or BL4–N containment.

Section III-C–1-d. Containment conditions for experiments involving the introduction of recombinant DNA into Class 5 agents shall be set on a case-by-case basis following NIH/ORDA review. A U.S. Department of Agriculture permit is required for work with Class 5 agents (see Sections V-R and V-T). Experiments with such agents shall be conducted with whole animals at BL4 or BL4–N containment.

Section III-C–2. Experiments in Which DNA From Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents (see Section V-A) is Cloned Into Nonpathogenic Prokaryotic or Lower Eukaryotic Host-Vector Systems

Section III-C–2-a. Experiments in which DNA from Class 2 or Class 3 agents (see Section V-A) is transferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under BL2 containment. Experiments in which DNA from Class 4 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes may be performed under BL2 containment after demonstration that only a totally and irreversibly defective fraction of the agent's genome is present in a given recombinant. In the absence of such a demonstration, BL4 containment shall be used. The Institutional Biosafety Committee may approve the specific lowering of containment for particular experiments to BL1. Many experiments in this category are exempt from the NIH Guidelines (see Section III-E). Experiments involving the formation of recombinant DNA for certain genes coding for molecules toxic for vertebrates require NIH/ORDA approval (see Section III-B–1) or shall be conducted under NIH specified conditions as described in Appendix F.

Section III-C–2-b. Containment conditions for experiments in which DNA from Class 5 agents is transferred into nonpathogenic prokaryotes or lower eukaryotes shall be determined by NIH/ORDA following a case-by-case review. A U.S. Department of Agriculture permit is required for work with Class 5 agents (see Sections V-R and V-T).

Section III-C–3. Experiments Involving the Use of Infectious Animal or Plant DNA or RNA Viruses or Defective Animal or Plant DNA or RNA Viruses in the Presence of Helper Virus in Tissue Culture Systems

Caution: Special care should be used in the evaluation of containment levels for experiments which are likely to either enhance the pathogenicity (e.g., insertion of a host oncogene) or to extend the host range (e.g., introduction of novel control elements) of viral vectors under conditions that permit a productive infection. In such cases, serious consideration should be given to increasing physical containment by at least one level.

Note: Recombinant DNA or RNA molecules derived therefrom, which contain less than two-thirds of the genome of any eukaryotic virus (all viruses from a single Family (see Section V-Q) being considered identical (see Section V-S), are considered defective and may be used in the absence of helper under the conditions specified in Section III-D–1.

Section III-C–3-a. Experiments involving the use of infectious or defective Class 2 animal viruses (see Section V-A, Appendix B-II, and Appendix B-II-E) in the presence of helper virus may be conducted at BL2.

Section III-C–3-b. Experiments involving the use of infectious or defective Class 3 animal viruses (see Section V-A and Appendix B-III-D) in the presence of helper virus may be conducted at BL3.

Section III-C–3-c. Experiments involving the use of infectious or defective Class 4 animal viruses (see Section V-A and Appendix B-IV-D) in the presence of helper virus may be conducted at BL4.

Section III-C–3-d. Experiments involving the use of infectious or defective Class 5 viruses (see Section V-A and Appendix B-V) in the presence of helper virus shall be determined on a case-by-case basis following NIH/ORDA review. A U.S. Department of Agriculture permit is required for work with Class 5 agents (see Sections V-R and V-T).

Section III-C–3-e. Experiments involving the use of infectious or defective animal or plant viruses in the presence of helper virus are not covered in Sections III-C–3-a through III-C–3-d and may be conducted at BL1.

Section III-C–4. Experiments Involving Whole Animals

This section covers experiments involving whole animals in which the animal's genome has been altered by stable introduction of recombinant DNA, or DNA derived therefrom, into the germ-line (transgenic animals) and experiments involving viable recombinant DNA-modified microorganisms tested on whole animals. For the latter, other than viruses which are only vertically transmitted, the experiments may not be conducted at BL1–N containment. A minimum containment of BL2 or BL2–N is required.

Caution—Special care should be used in the evaluation of containment conditions for some experiments with transgenic animals. For example, such experiments might lead to the creation of novel mechanisms or increased transmission of a recombinant pathogen or production of undesirable traits in the host animal. In such cases, serious consideration should be given to increasing the containment conditions.

Section III-C–4-a. Recombinant DNA, or DNA or RNA molecules derived therefrom, from any source except for greater than two-thirds of eukaryotic viral genome may be transferred to any non-human vertebrate or any invertebrate organism and propagated under conditions of physical containment comparable to BL1 or BL1–N and appropriate to the organism under study (see Section V-B). Animals that contain sequences from viral vectors, which do not lead to transmissible infection either directly or indirectly as a result of complementation or recombination in animals, may be propagated under conditions of physical containment comparable to BL1 or BL1–N and appropriate to the organism under study. Experiments involving the introduction of other sequences from eukaryotic viral genomes into animals are covered under Section III-C–4-b. For experiments involving recombinant DNA-modified Class 2, 3, 4, or 5 organisms, see Section V-A. It is important that the investigator demonstrate that the fraction of the viral genome being utilized does not lead to productive infection. A U.S. Department of Agriculture permit is required for work with Class 5 agents (see Section V-R and V-T).

Section III-C–4-b. For experiments involving recombinant DNA, or DNA or RNA derived therefrom, involving whole animals, including transgenic animals, and not covered by Sections III-C–1 or III-C–4-a, the appropriate containment shall be determined by the Institutional Biosafety Committee.

Section III-C–5. Experiments Involving Whole Plants

Experiments to genetically engineer plants by recombinant DNA methods, to use such plants for other experimental

the germ-line (transgenic animals) and experiments involving viable recombinant DNA-modified microorganisms tested on whole animals. For the latter, other than viruses which are only vertically transmitted, the experiments may not be conducted at BL1–N containment. A minimum containment of BL2 or BL2–N is required.

Caution—Special care should be used in the evaluation of containment conditions for some experiments with transgenic animals. For example, such experiments might lead to the creation of novel mechanisms or increased transmission of a recombinant pathogen or production of undesirable traits in the host animal. In such cases, serious consideration should be given to increasing the containment conditions.

Section III-C–4-a. Recombinant DNA, or DNA or RNA molecules derived therefrom, from any source except for greater than two-thirds of eukaryotic viral genome may be transferred to any non-human vertebrate or any invertebrate organism and propagated under conditions of physical containment comparable to BL1 or BL1–N and appropriate to the organism under study (see Section V-B). Animals that contain sequences from viral vectors, which do not lead to transmissible infection either directly or indirectly as a result of complementation or recombination in animals, may be propagated under conditions of physical containment comparable to BL1 or BL1–N and appropriate to the organism under study. Experiments involving the introduction of other sequences from eukaryotic viral genomes into animals are covered under Section III-C–4-b. For experiments involving recombinant DNA-modified Class 2, 3, 4, or 5 organisms, see Section V-A. It is important that the investigator demonstrate that the fraction of the viral genome being utilized does not lead to productive infection. A U.S. Department of Agriculture permit is required for work with Class 5 agents (see Section V-R and V-T).

Section III-C–4-b. For experiments involving recombinant DNA, or DNA or RNA derived therefrom, involving whole animals, including transgenic animals, and not covered by Sections III-C–1 or III-C–4-a, the appropriate containment shall be determined by the Institutional Biosafety Committee.

Section III-C–5. Experiments Involving Whole Plants

Experiments to genetically engineer plants by recombinant DNA methods, to use such plants for other experimental purposes (e.g., response to stress), to propagate such plants, or to use plants together with microorganisms or insects containing recombinant DNA, may be conducted under the containment conditions described in Sections III-C–5-a through III-C–5-e. If experiments involving whole plants are not described in Section III-C–5 and do not fall under Sections III-A, III-B, or III-E, they are included in Section III-D.

Note: For recombinant DNA experiments falling under Sections III-C–5-a through III-C–5-d, physical containment requirements may be reduced to the next lower level by appropriate biological containment practices, such as conducting experiments on a virus with an obligate insect vector in the absence of that vector or using a genetically attenuated strain.

Section III-C–5-a. BL3–P (Plants) or BL2–P + biological containment is recommended for experiments involving most exotic (see Section V-W) infectious agents with recognized potential for serious detrimental impact on managed or natural ecosystems when recombinant DNA techniques are associated with whole plants.

Section III-C–5-b. BL3–P or BL2–P + biological containment is recommended for experiments involving plants containing cloned genomes of readily transmissible exotic (see Section V-W) infectious agents with recognized potential for serious detrimental effects on managed or natural ecosystems in which there exists the possibility of reconstituting the complete and functional genome of the infectious agent by genomic complementation *in planta*.

Section III-C–5-c. BL4–P containment is recommended for experiments with a small number of readily transmissible exotic (see Section V-W) infectious agents, such as the soybean rust fungus (*Phakospora pachyrhizi*) and maize streak or other viruses in the presence of their specific arthropod vectors, that have the potential of being serious pathogens of major U.S. crops.

Section III-C–5-d. BL3–P containment is recommended for experiments involving sequences encoding potent vertebrate toxins introduced into plants or associated organisms. Recombinant DNA containing genes for the biosynthesis of toxin molecules lethal for vertebrates at an LD_{50} of <100 nanograms per kilogram body weight fall under Section III-B–1 and require NIH/ORDA and Institutional Biosafety Committee approval before initiation.

Section III-C–5-e. BL3–P or BL2–P + biological containment is recommended for experiments with microbial pathogens of insects or small animals associated with plants if the recombinant DNA-modified organism has a recognized potential for serious detrimental impact on managed or natural ecosystems.

Section III-C–6. Experiments Involving More than 10 Liters of Culture

The appropriate containment will be decided by the Institutional Biosafety Committee. Where appropriate, Appendix K, Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules, shall be used. Appendix K describes containment conditions Good Large Scale Practice through BL3–Large Scale.

Section III-C–7. Human Gene Transfer Experiments Not Covered by Sections III-A-2, III-B–2, III-B–3, and Not Considered Exempt Under Section V-U

Certain experiments involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects that are not covered by Sections III-A–2, III-B–2, III-B–3, and that are not considered exempt under Section V-U must be registered with NIH/ORDA. The relevant Institutional Biosafety Committee and Institutional Review Board must review and approve all experiments in this category prior to their initiation.

Section III-D. Experiments that Require Institutional Biosafety Committee Notice Simultaneous With Initiation

Experiments not included in Sections III-A, III-B, III-C, III-E, and their subsections are considered in Section III-D. All such experiments may be conducted at BL1 containment. For experiments in this category, a registration document (see Section III-C) shall be dated and signed by the investigator and filed with the local Institutional Biosafety Committee at the time the experiment is initiated. The Institutional Biosafety Committee reviews and approves all such proposals, but Institutional Biosafety Committee review and approval prior to initiation of the experiment is not required (see Section IV-A). For example, experiments in which all components derived from non-pathogenic prokaryotes and non-pathogenic lower eukaryotes fall under Section III-D and may be conducted at BL1 containment.

Section III-D-1. Experiments Involving the Formation of Recombinant DNA Molecules Containing No More than Two-Thirds of the Genome of Any Eukaryotic Virus

Recombinant DNA molecules containing no more than two-thirds of the genome of any eukaryotic virus (all viruses from a single Family (see Section V-Q) being considered identical (see Section V-S)) may be propagated and maintained in cells in tissue culture using BL1 containment. For such experiments, it must be demonstrated that the cells lack helper virus for the specific Families of defective viruses being used. If helper virus is present, procedures specified under Section III-C–3 should be used. The DNA may contain fragments of the genome of viruses from more than one Family but each fragment shall be less than two-thirds of a genome.

Section III-D–2. Experiments Involving Whole Plants

This section covers experiments involving recombinant DNA-modified whole plants, and/or experiments involving recombinant DNA-modified organisms associated with whole plants, except those that fall under Section III-A, III-B, III-C, or III-E. It should be emphasized that knowledge of the organisms and judgment based on accepted scientific practices should be used in all cases in selecting the appropriate level of containment. For example, if the genetic modification has the objective of increasing pathogenicity or converting a non-pathogenic organism into a pathogen, then a higher level of containment may be appropriate depending on the organism, its mode of dissemination, and its target organisms. By contrast, a lower level of containment may be appropriate for small animals associated with many types of recombinant DNA-modified plants.

Section III-D–2-a. BL1–P is recommended for all experiments with recombinant DNA-containing plants and plant-associated microorganisms not covered in Section III-D–2-b or other sections of the NIH Guidelines. Examples of such experiments are those involving recombinant DNA-modified plants that are not noxious weeds or that cannot interbreed with noxious weeds in the immediate geographic area, and experiments involving whole plants and recombinant DNA-modified non-exotic (see Section V-W) microorganisms that have no recognized potential for rapid and widespread dissemination or for serious detrimental impact on managed or natural ecosystems (e.g., *Rhizobium* spp. and *Agrobacterium* spp.).

Section III-D–2-b. BL2–P or BL1–P + biological containment is recommended for the following experiments:

Section III-D–2-b-(1). Plants modified by recombinant DNA that are noxious weeds or can interbreed with noxious weeds in the immediate geographic area.

Section III-D–2-b-(2). Plants in which the introduced DNA represents the complete genome of a non-exotic infectious agent (see Section V-W).

Section III-D–2-b-(3). Plants associated with recombinant DNA-modified non-exotic microorganisms that have a recognized potential for serious detrimental impact on managed or natural ecosystems (see Section V-W).

Section III-D–2-b-(4). Plants associated with recombinant DNA-modified exotic microorganisms that have no recognized potential for serious natural ecosystems (see Section V-W).

Section III–D–2–b–(5). Experiments with recombinant DNA-modified arthropods or small animals associated with plants, or with arthropods or small animals with recombinant DNA-modified microorganisms associated with them if the recombinant DNA-modified microorganisms have no recognized potential for serious detrimental impact on managed or natural ecosystems (see Section V–W).

Section III–E. Exempt Experiments

The following recombinant DNA molecules are exempt from the NIH Guidelines and registration with the Institutional Biosafety Committee is not required:

Section III–E–1. Those that are not in organisms or viruses.

Section III–E–2. Those that consist entirely of DNA segments from a single nonchromosomal or viral DNA source, though one or more of the segments may be a synthetic equivalent.

Section III–E–3. Those that consist entirely of DNA from a prokaryotic host including its indigenous plasmids or viruses when propagated only in that host (or a closely related strain of the same species), or when transferred to another host by well established physiological means.

Section III–E–4. Those that consist entirely of DNA from an eukaryotic host including its chloroplasts, mitochondria, or plasmids (but excluding viruses) when propagated only in that host (or a closely related strain of the same species).

Section III–E–5. Those that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the NIH Director with advice of the RAC after appropriate notice and opportunity for public comment (see Section IV–C–1–b–(1)–(c)). See Appendices A–I through A–VI for a list of natural exchangers that are exempt from the NIH Guidelines.

Section III–E–6. Those that do not present a significant risk to health or the environment (see Section IV–C–1–b–(1)–(c)), as determined by the NIH Director, with the advice of the RAC, and following appropriate notice and opportunity for public comment. See Appendix C for other classes of experiments which are exempt from the NIH Guidelines.

Section IV, Roles and Responsibilities

Section IV–A. Policy

The safe conduct of experiments involving recombinant DNA depends on the individual conducting such activities. The NIH Guidelines cannot anticipate every possible situation. Motivation and good judgment are the key essentials to protection of health and the environment. The NIH Guidelines are intended to assist the institution, Institutional Biosafety Committee, Biological Safety Officer, and Principal Investigator in determining safeguards that should be implemented. The NIH Guidelines will never be complete or final since all conceivable experiments involving recombinant DNA cannot be foreseen. Therefore, it is the responsibility of the institution and those associated with it to adhere to the intent of the NIH Guidelines as well as to their specifics. Each institution (and the Institutional Biosafety Committee acting on its behalf) is responsible for ensuring that recombinant DNA activities comply with the NIH Guidelines. General recognition of institutional authority and responsibility properly establishes accountability for safe conduct of the research at the local level. The following roles and responsibilities constitute an administrative framework in which safety is an essential and integral part of research involving recombinant DNA molecules. Further clarifications and interpretations of roles and responsibilities will be issued by the NIH as necessary.

Section IV–B. Responsibilities of the Institution

Section IV-B–1. General Information

Each institution conducting or sponsoring recombinant DNA research which is covered by the NIH Guidelines is responsible for ensuring that the research is conducted in full conformity with the provisions of the NIH Guidelines. In order to fulfill this responsibility, the institution shall:

Section IV-B–1-a. Establish and implement policies that provide for the safe conduct of recombinant DNA research and that ensure compliance with the NIH Guidelines. As part of its general responsibilities for implementing the NIH Guidelines, the institution may establish additional procedures, as deemed necessary, to govern the institution and its components in the discharge of its responsibilities under the NIH Guidelines. Such procedures may include: (i) Statements formulated by the institution for the general implementation of the NIH Guidelines, and (ii) any additional precautionary steps the institution deems appropriate.

Section IV-B–1-b. Establish an Institutional Biosafety Committee that meets the requirements set forth in Section IV-B–2-a and carries out the functions detailed in Section IV-B–2-b.

Section IV-B–1-c. Appoint a Biological Safety Officer (who is also a member of the Institutional Biosafety Committee) if the institution: (i) Conducts recombinant DNA research at Biosafety Level (BL) 3 or BL4, or (ii) engages in large scale (greater than 10 liters) research. The Biological Safety Officer carries out the duties specified in Section IV-B–3.

Section IV-B–1-d. Assist and ensure compliance with the NIH Guidelines by Principal Investigators conducting research at the institution as specified in Section IV-B–4.

Section IV-B–1-e. Ensure appropriate training for the Institutional Biosafety Committee Chair and members, Biological Safety Officer (when applicable), Principal Investigators, and laboratory staff regarding laboratory safety and implementation of the NIH Guidelines. The Institutional Biosafety Committee Chair is responsible for ensuring that Institutional Biosafety Committee members are appropriately trained. The Principal Investigator is responsible for ensuring that laboratory staff are appropriately trained. The institution is responsible for ensuring that the Principal Investigator has sufficient training; however, this responsibility may be delegated to the Institutional Biosafety Committee.

Section IV-B–1-f. Determine the necessity for health surveillance of personnel involved in connection with individual recombinant DNA projects; and if appropriate, conduct a health surveillance program for such projects.

is responsible for ensuring that the research is conducted in full conformity with the provisions of the NIH Guidelines. In order to fulfill this responsibility, the institution shall:

Section IV-B–1-a. Establish and implement policies that provide for the safe conduct of recombinant DNA research and that ensure compliance with the NIH Guidelines. As part of its general responsibilities for implementing the NIH Guidelines, the institution may establish additional procedures, as deemed necessary, to govern the institution and its components in the discharge of its responsibilities under the NIH Guidelines. Such procedures may include: (i) Statements formulated by the institution for the general implementation of the NIH Guidelines, and (ii) any additional precautionary steps the institution deems appropriate.

Section IV-B–1-b. Establish an Institutional Biosafety Committee that meets the requirements set forth in Section IV-B–2-a and carries out the functions detailed in

Section IV-B–2-b.

Section IV-B–1-c. Appoint a Biological Safety Officer (who is also a member of the Institutional Biosafety Committee) if the institution: (i) Conducts recombinant DNA research at Biosafety Level (BL) 3 or BL4, or (ii) engages in large scale (greater than 10 liters) research. The Biological Safety Officer carries out the duties specified in Section IV-B–3.

Section IV-B–1-d. Assist and ensure compliance with the NIH Guidelines by Principal Investigators conducting research at the institution as specified in

Section IV-B–4.

Section IV-B–1-e. Ensure appropriate training for the Institutional Biosafety Committee Chair and members, Biological Safety Officer (when applicable), Principal Investigators, and laboratory staff regarding laboratory safety and implementation of the NIH Guidelines. The Institutional Biosafety Committee Chair is responsible for ensuring that Institutional Biosafety Committee members are appropriately trained. The Principal Investigator is responsible for ensuring that laboratory staff are appropriately trained. The institution is responsible for ensuring that the Principal Investigator has sufficient training; however, this responsibility may be delegated to the Institutional Biosafety Committee.

Section IV-B–1-f. Determine the necessity for health surveillance of personnel involved in connection with individual recombinant DNA projects; and if appropriate, conduct a health surveillance program for such projects. The institution shall establish and maintain a health surveillance program for personnel engaged in large scale research or production activities involving viable organisms containing recombinant DNA molecules which require BL3 containment at the laboratory scale. The institution shall establish and maintain a health surveillance program for personnel engaged in animal research involving viable recombinant DNA-containing microorganisms that require BL3 or greater containment in the laboratory. The Laboratory Safety Monograph discusses various components of such a program (e.g., records of agents handled, active investigation of relevant illnesses, and the maintenance of serial serum samples for monitoring serologic changes that may result from the employees' work experience). Certain medical conditions may place a laboratory worker at increased risk in any endeavor where infectious agents are handled. Examples cited in the Laboratory Safety Monograph include gastrointestinal disorders and treatment with steroids, immunosuppressive drugs, or antibiotics. Workers with such disorders or treatment should be evaluated to determine whether they should be engaged in research with potentially hazardous organisms during their treatment or illness. Copies of the Laboratory Safety Monograph are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Section IV-B–1-g. Report any significant problems, violations of the NIH Guidelines, or any significant research-related accidents and illnesses to NIH/ORDA within thirty days, unless the institution determines that a report has already been filed by the Principal Investigator or Institutional Biosafety Committee. Reports shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Section IV-B–2. Institutional Biosafety Committee (IBC)

The institution shall establish an Institutional Biosafety Committee whose responsibilities need not be restricted to recombinant DNA. The Institutional Biosafety Committee shall meet the following requirements:

Section IV-B–2-a. Membership and Procedures

Section IV-B–2-a-(1). The Institutional Biosafety Committee must be comprised of no fewer than five members so selected that they collectively have experience and expertise in recombinant DNA technology and the capability to assess the safety of recombinant DNA research and to identify any potential risk to public health or the environment. At least two members shall not be affiliated with the institution (apart from their membership on the Institutional Biosafety Committee) and who represent the interest of the surrounding community with respect to health and protection of the environment (e.g., officials of state or local public health or environmental protection agencies, members of other local governmental bodies, or persons active in medical, occupational health, or environmental concerns in the community). The Institutional Biosafety Committee shall include at least one individual with expertise in plant, plant pathogen, or plant pest containment principles when experiments utilizing Appendix P require prior approval by the Institutional Biosafety Committee. The Institutional Biosafety Committee shall include at least one scientist with expertise in animal containment principles when experiments utilizing Appendix Q require Institutional Biosafety Committee prior approval. When the institution conducts recombinant DNA research at BL3 or BL4, a Biological Safety Officer is mandatory and shall be a member of the Institutional Biosafety Committee (see Section IV-B–3).

Section IV-B–2-a-(2). In order to ensure the competence necessary to review and approve recombinant DNA activities, it is recommended that the Institutional Biosafety Committee: (i) include persons with expertise in recombinant DNA technology, biological safety, and physical containment; (ii) include or have available as consultants persons knowledgeable in institutional commitments and policies, applicable law, standards of professional conduct and practice, community attitudes, and the environment, and (iii) include at least one member representing the laboratory technical staff.

Section IV-B–2-a-(3). The institution shall file a report with NIH/ORDA which includes the names and biographical sketches of all Institutional Biosafety Committee members, including community members, in such form and at such times as required by NIH/ORDA.

Section IV-B–2-a-(4). No member of an Institutional Biosafety Committee may be involved (except to provide information requested by the Institutional Biosafety Committee) in the review or approval of a project in

which he/she has been or expects to be engaged or has a direct financial interest.

Section IV-B–2-a-(5). The institution, that is ultimately responsible for the effectiveness of the Institutional Biosafety Committee, may establish procedures that the Institutional Biosafety Committee shall follow in its initial and continuing review and approval of applications, proposals, and activities.

Section IV-B–2-a-(6). When possible and consistent with protection of privacy and proprietary interests, the institution is encouraged to open its Institutional Biosafety Committee meetings to the public.

Section IV-B–2-a-(7). Upon request, the institution shall make available to the public all Institutional Biosafety Committee meeting minutes and any documents submitted to or received from funding agencies which the latter are required to make available to the public. If public comments are made on Institutional Biosafety Committee actions, the institution shall forward both the public comments and the Institutional Biosafety Committee's response to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Section IV-B–2-b. Functions

On behalf of the institution, the Institutional Biosafety Committee is responsible for:

Section IV-B–2-b-(1). Reviewing recombinant DNA research conducted at or sponsored by the institution for compliance with the NIH Guidelines as specified in Section III and approving those research projects that are found to conform with the NIH Guidelines. This review shall include: (i) independent assessment of the containment levels required by the NIH Guidelines for the proposed research, and (ii) assessment of the facilities, procedures, practices, and training and expertise of personnel involved in recombinant DNA research.

Section IV-B–2-b-(2). Notifying the Principal Investigator of the results of the Institutional Biosafety Committee's review and approval.

Section IV-B–2-b-(3). Lowering containment levels for certain experiments as specified in Section III-C–2-a.

Section IV-B–2-b-(4). Setting containment levels as specified in Sections III-C–4-b and III-C–5.

Section IV-B–2-b-(5). Periodically reviewing recombinant DNA research conducted at the institution to ensure compliance with the NIH Guidelines.

Section IV-B–2-b-(6). Adopting emergency plans covering accidental spills and personnel contamination resulting from recombinant DNA research.

Note: The Laboratory Safety Monograph describes basic elements for developing specific procedures dealing with major spills of potentially hazardous materials in the laboratory, including information and references about decontamination and emergency plans. The NIH and the Centers for Disease Control and Prevention are available to provide consultation and direct assistance, if necessary, as posted in the Laboratory Safety Monograph. The institution shall cooperate with the state and local public health departments by reporting any significant research-related illness or accident that may be hazardous to the public health.

Section IV-B–2-b-(7). Reporting any significant problems with or violations of the NIH Guidelines and any significant research-related accidents or illnesses to the appropriate institutional official and NIH/ORDA within 30 days, unless the Institutional Biosafety Committee determines that a report has already been filed by the Principal Investigator. Reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9838.

Section IV-B–2-b-(8). The Institutional Biosafety Committee may not authorize initiation of experiments which are not explicitly covered by the NIH Guidelines until NIH (with the advice of the RAC when required) establishes the containment requirement.

Section IV-B–2-b-(9). Performing such other functions as may be delegated to the Institutional Biosafety Committee under Section IV-B–2.

Section IV-B–3. Biological Safety Officer (BSO)

Section IV-B–3-a. The institution shall appoint a Biological Safety Officer if it engages in large scale research or production activities involving viable organisms containing recombinant DNA molecules.

Section IV-B–3-b. The institution shall appoint a Biological Safety Officer if it engages in recombinant DNA research at BL3 or BL4. The Biological Safety Officer shall be a member of the Institutional Biosafety Committee.

Section IV-B–3-c. The Biological Safety Officer's duties include, but are not be limited to:

Section IV-B–3-c-(1). Periodic inspections to ensure that laboratory standards are rigorously followed;

Section IV-B–3-c-(2). Reporting to the Institutional Biosafety Committee and the institution any significant problems, violations of the NIH Guidelines, and any significant research-related accidents or illnesses of which the Biological Safety Officer becomes aware unless the Biological Safety Officer determines that a report has already been filed by the Principal Investigator;

Section IV-B–3-c-(3). Developing emergency plans for handling accidental spills and personnel contamination and investigating laboratory accidents involving recombinant DNA research;

Section IV-B–3-c-(4). Providing advice on laboratory security;

Section IV-B–3-c-(5). Providing technical advice to Principal Investigators and the Institutional Biosafety Committee on research safety procedures.

Note: See the Laboratory Safety Monograph for additional information on the duties of the Biological Safety Officer.

Section IV–B–4. Principal Investigator (PI)

On behalf of the institution, the Principal Investigator is responsible for full compliance with the NIH Guidelines in the conduct of recombinant DNA research.

Section IV–B–4–a. General Responsibilities

As part of this general responsibility, the Principal Investigator shall:

Section IV–B–4–a–(1). Initiate or modify no recombinant DNA research which requires Institutional Biosafety Committee approval prior to initiation (see Sections III–A, III–B, and III–C) until that research or the proposed modification thereof has been approved by the Institutional Biosafety Committee and has met all other requirements of the NIH Guidelines;

Section IV–B–4–a–(2). Determine whether experiments are covered by Section III–D and that the appropriate procedures are followed;

Section IV–B–4–a–(3). Report any significant problems, violations of the NIH Guidelines, or any significant research–related accidents and illnesses to the Biological Safety Officer (where applicable), Greenhouse/Animal Facility Director (where applicable), Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable) within 30 days (reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838);

Section IV–B–4–a–(4). Report any new information bearing on the NIH Guidelines to the Institutional Biosafety Committee and to NIH/ORDA (reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838);

Section IV–B–4–a–(5). Be adequately trained in good microbiological techniques;

Section IV–B–4–a–(6). Adhere to Institutional Biosafety Committee–approved emergency plans for handling accidental spills and personnel contamination; and

Section IV–B–4–a–(7). Comply with shipping requirements for recombinant DNA molecules (see Appendix H for shipping requirements and the Laboratory Safety Monograph for technical recommendations).

Section IV–B–4–b. Submissions by the Principal Investigator to the NIH/ORDA

The Principal Investigator shall:

Section IV–B–4–b–(1). Submit information to NIH/ORDA for certification of new host–vector systems;

Section IV–B–4–b–(2). Petition NIH/ORDA, with notice to the Institutional Biosafety Committee, for proposed exemptions to the NIH Guidelines;

Section IV–B–4–b–(3). Petition NIH/ORDA, with concurrence of the Institutional Biosafety Committee, for approval to conduct experiments specified in Sections III–A and III–B of the NIH Guidelines;

Section IV–B–4–b–(4). Petition NIH/ORDA for determination of containment for experiments requiring case–by–case review; and

Section IV–B–4–b–(5). Petition NIH/ORDA for determination of containment for experiments not covered by the NIH Guidelines.

Section IV–B–4–c. Submissions by the Principal Investigator to the Institutional Biosafety Committee

The Principal Investigator shall:

Section IV–B–4–c–(1). Make an initial determination of the required levels of physical and biological containment in accordance with the NIH Guidelines;

Section IV–B–4–c–(2). Select appropriate microbiological practices and laboratory techniques to be used for the research;

Section IV–B–4–c–(3). Submit the initial research protocol and any subsequent changes (e.g., changes in the source of DNA or host–vector system), if covered under

Sections III–A, III–B, III–C, or III–D, to the Institutional Biosafety Committee for review and approval or disapproval; and

Section IV–B–4–c–(4). Remain in communication with the Institutional

Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838);

Section IV–B–4–a–(5). Be adequately trained in good microbiological techniques;

Section IV–B–4–a–(6). Adhere to Institutional Biosafety Committee–approved emergency plans for handling accidental spills and personnel contamination; and

Section IV–B–4–a–(7). Comply with shipping requirements for recombinant DNA molecules (see Appendix H for shipping requirements and the Laboratory Safety Monograph for technical recommendations).

Section IV–B–4–b. Submissions by the Principal Investigator to the NIH/ORDA

The Principal Investigator shall:

Section IV–B–4–b–(1). Submit information to NIH/ORDA for certification of new host–vector systems;

Section IV–B–4–b–(2). Petition NIH/ORDA, with notice to the Institutional Biosafety Committee, for proposed exemptions to the NIH Guidelines;

Section IV–B–4–b–(3). Petition NIH/ORDA, with concurrence of the Institutional Biosafety Committee, for approval to conduct experiments specified in Sections III–A and III–B of the NIH Guidelines;

Section IV–B–4–b–(4). Petition NIH/ORDA for determination of containment for experiments requiring case–by–case review; and

Section IV–B–4–b–(5). Petition NIH/ORDA for determination of containment for experiments not covered by the NIH Guidelines.

Section IV–B–4–c. Submissions by the Principal Investigator to the Institutional Biosafety Committee

The Principal Investigator shall:

Section IV–B–4–c–(1). Make an initial determination of the required levels of physical and biological containment in accordance with the NIH Guidelines;

Section IV–B–4–c–(2). Select appropriate microbiological practices and laboratory techniques to be used for the research;

Section IV–B–4–c–(3). Submit the initial research protocol and any subsequent changes (e.g., changes in the source of DNA or host–vector system), if covered under

Sections III–A, III–B, III–C, or III–D, to the Institutional Biosafety Committee for review and approval or disapproval; and

Section IV–B–4–c–(4). Remain in communication with the Institutional Biosafety Committee throughout the conduct of the project.

Section IV–B–4–d. Responsibilities of the Principal Investigator Prior to Initiating Research

The Principal Investigator shall:

Section IV–B–4–d–(1). Make available to all laboratory staff the protocols that describe the potential biohazards and the precautions to be taken;

Section IV–B–4–d–(2). Instruct and train laboratory staff in: (i) the practices and techniques required to ensure safety, and (ii) the procedures for dealing with accidents; and

Section IV–B–4–d–(3). Inform the laboratory staff of the reasons and provisions for any precautionary medical practices advised or requested (e.g., vaccinations or serum collection).

Section IV–B–4–e. Responsibilities of the Principal Investigator During the Conduct of the Research

The Principal Investigator shall:

Section IV–B–4–e–(1). Supervise the safety performance of the laboratory staff to ensure that the required safety practices and techniques are employed;

Section IV–B–4–e–(2). Investigate and report any significant problems pertaining to the operation and implementation of containment practices and procedures in writing to the Biological Safety Officer (where applicable); Greenhouse/Animal Facility Director (where applicable), the Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable) (reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838);

Section IV–B–4–e–(3). Correct work errors and conditions that may result in the release of recombinant DNA materials; and

Section IV–B–4–e–(4). Ensure the integrity of the physical containment (e.g., biological safety cabinets) and the biological containment (e.g., purity and genotypic and phenotypic characteristics).

Section IV–C. Responsibilities of the National Institutes of Health (NIH)

Section IV–C–1. NIH Director

The NIH Director is responsible for: (i) establishing the NIH Guidelines, (ii) overseeing their implementation, and (iii) their final interpretation. The NIH Director has responsibilities under the NIH Guidelines that involve ORDA and the RAC. ORDA's responsibilities under the NIH Guidelines are administrative. Advice from the RAC is primarily scientific, technical, and ethical. In certain circumstances, there is specific opportunity for public comment with published response prior to final action.

Section IV–C–1–a. General Responsibilities

The NIH Director is responsible for:

Section IV–C–1–a–(1). Promulgating requirements as necessary to implement the NIH Guidelines;

Section IV–C–1–a–(2). Establishing and maintaining the RAC to carry out the responsibilities set forth in Section IV–C–2 (RAC membership is specified in its charter and in Section IV–C–2); and

Section IV–C–1–a–(3). Establishing and maintaining ORDA to carry out the responsibilities defined in Section IV–C–3.

Section IV–C–1–b. Specific Responsibilities

In carrying out the responsibilities set forth in this section, the NIH Director, or a designee shall weigh each proposed action through appropriate analysis and consultation to determine whether it complies with the NIH Guidelines and presents no significant risk to health or the environment.

Section IV–C–1–b–(1). Major Actions

To execute Major Actions, the NIH Director shall seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the Notice of Meeting and Proposed Actions to the NIH Guidelines shall be published in the **Federal Register** at least 15 days before the RAC meeting (not applicable for Expedited Review single patient human gene transfer experiments considered under Appendix M–VI). The NIH Director's decision, at his/her discretion, may be published in the **Federal Register** for 15 days of comment before final action is taken. The NIH Director's final decision, along with responses to public comments, shall be published in the **Federal Register**. The RAC and Institutional Biosafety Committee Chairs shall be notified of the following decisions:

Section IV–C–1–b–(1)–(a). Changing containment levels for types of experiments that are specified in the NIH Guidelines when a Major Action is involved;

Section IV–C–1–b–(1)–(b). Assigning containment levels for types of experiments that are not explicitly considered in the NIH Guidelines when a Major Action is involved;

Section IV–C–1–b–(1)–(c). Promulgating and amending a list of classes of recombinant DNA molecules

to be exempt from the NIH Guidelines because they consist entirely of DNA segments from species that exchange DNA by known physiological processes or otherwise do not present a significant risk to health or the environment;

Section IV–C–1–b–(1)–(d). Permitting experiments specified by Section III–A;

Section IV–C–1–b–(1)–(e). Certifying new host-vector systems with the exception of minor modifications of already certified systems (the standards and procedures for certification are described in Appendix I–II). Minor modifications constitute (e.g., those of minimal or no consequence to the properties relevant to containment); and

Section IV–C–1–b–(1)–(f). Adopting other changes in the NIH Guidelines.

Section IV–C–1–b–(2). Minor Actions

NIH/ORDA shall carry out certain functions as delegated to it by the NIH Director (see Section IV–C–3). Minor Actions (as determined by NIH/ORDA in consultation with the RAC Chair and one or more RAC members, as necessary) will be transmitted to the RAC and Institutional Biosafety Committee Chairs:

Section IV–C–1–b–(2)–(a). Reviewing and approving certain experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects that qualify for the Accelerated Review process (see Section III–B–2);

Section IV–C–1–b–(2)–(b). Reviewing and approving minor changes to human gene transfer protocols under Section III–A–2 and III–B–2;

Section IV–C–1–b–(2)–(c). Changing containment levels for experiments that are specified in Section III;

Section IV–C–1–b–(2)–(d). Assigning containment levels for experiments not explicitly considered in the NIH Guidelines; and

Section IV–C–1–b–(2)–(e). Revising the Classification of Etiologic Agents for the purpose of these NIH Guidelines (see Section V–A).

Section IV–C–1–b–(2)–(f). Interpreting the NIH Guidelines for experiments to which the NIH Guidelines do not specifically assign containment levels;

Section IV–C–1–b–(2)–(g). Setting containment under Sections III–C–1–d and III–C–2– b;

Section IV–C–1–b–(2)–(h). Approving minor modifications of already certified host-vector systems (the standards and procedures for such modifications are described in Appendix I–II);

Section IV–C–1–b–(2)–(i). Decertifying already certified host-vector systems;

Section IV-C–1-b-(2)-(j). Adding new entries to the list of molecules toxic for vertebrates (see Appendix F); and

Section IV-C–1-b-(2)-(k). Determining appropriate containment conditions for experiments according to case precedents developed under Section IV-C–1-b-(2)-(c).

Section IV-C–1-b-(3). The NIH Director shall conduct, support, and assist training programs in laboratory safety for Institutional Biosafety Committee members, Biological Safety Officers, Principal Investigators, and laboratory staff.

Section IV-C–2. Recombinant DNA Advisory Committee (RAC)

The RAC is responsible for carrying out specified functions cited below as well as others assigned under its charter or by the DHHS Secretary, the DHHS Assistant Secretary for Health, and the NIH Director. The RAC consists of 25 members including the Chair, appointed by the DHHS Secretary or his/her designee, at least fourteen of whom are selected from authorities knowledgeable in the fields of molecular genetics, molecular biology, recombinant DNA research, or other scientific fields. At least six members of the RAC shall be persons knowledgeable in applicable law, standards of professional conduct and practice, public attitudes, the environment, public health, occupational health, or related fields. Representatives from Federal agencies shall serve as non-voting members.

Nominations for the RAC may be submitted to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

All meetings of the RAC shall be announced in the **Federal Register**, including tentative agenda items, 15 days before the meeting. Final agendas, if modified, shall be available at least 72 hours before the meeting. No item defined as a Major Action under Section IV-C–1-b-(1) may be added to an agenda following **Federal Register** publication.

The RAC shall be responsible for advising the NIH Director on the actions listed in Sections IV-C–1-b-(1).

Section IV-C–3. Office of Recombinant DNA Activities (ORDA)

ORDA shall serve as a focal point for information on recombinant DNA activities and provide advice to all within and outside NIH including institutions, Biological Safety Officers, Principal Investigators, Federal agencies, state and local governments, and institutions in the private sector. ORDA shall carry out such other functions as may be delegated to it by the NIH Director, including those authorities described in Section IV-C–1-b-(2). ORDA's responsibilities include, but are not limited to the following:

Section IV-C–3-a. Reviewing and approving experiments in conjunction with ad hoc experts involving the cloning of genes encoding for toxin molecules that are lethal for vertebrates at an LD_{50} ≤100 nanograms per kilogram body weight in organisms other than Escherichia coli K–12 (see Section III-B–1 and Appendices F-I and F-II);

Section IV-C–3-b. Reviewing and approving certain experiments involving the deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects, in consultation with the RAC Chair and one or more RAC members, as necessary, that qualify for the Accelerated Review process (see Section III-B–2);

Section IV-C–3-c. Reviewing and approving minor changes to human gene transfer protocols approved under Sections III-A–2 and III-B–2, in consultation with the RAC Chair and one or more RAC members, as necessary;

Section IV-C–3-d. Reviewing and approving the membership of an institution's Institutional Biosafety Committee, and where it finds the Institutional Biosafety Committee meets the requirements set forth in Section IV-B–2 will give its approval to the Institutional Biosafety Committee membership;

Section IV-C–3-e. Publishing in the **Federal Register**:

Section IV–C–3–e–(1). Announcements of RAC meetings and agendas at least 15 days in advance (NOTE—If the agenda for a RAC meeting is modified, ORDA shall make the revised agenda available to anyone upon request at least 72 hours in advance of the meeting);

Section IV–C–3–e–(2). Proposed Major Actions to the NIH Guidelines (see Section IV–C–1–b–(1)) at least 15 days prior to the RAC meeting;

Section IV–C–3–f. Serve as the focal point for data management of NIH-approved human gene transfer protocols approved under Sections III–A–2 and III–B–2 and registered with NIH/ORDA as required under Section III–C–7;

Section IV–C–3–g. Serve as the executive secretary of the RAC; and

Section IV–C–3–h. Maintain a list of Major and Minor Actions approved under Section III–A–2 and III–B–3 and a list of experiments registered with NIH/ORDA as described in Section III–C–7.

Section IV–C–4. Other NIH Components

Other NIH components shall be responsible for certifying maximum containment (BL4) facilities, inspecting them periodically, and inspecting other recombinant DNA facilities as deemed necessary.

Section IV–D. Compliance with the NIH Guidelines

As a condition for NIH funding of recombinant DNA research, institutions shall ensure that such research conducted at or sponsored by the institution, irrespective of the source of funding, shall comply with the NIH Guidelines. The policies on noncompliance are as follows:

All NIH-funded projects involving recombinant DNA techniques must comply with the NIH Guidelines. Non-compliance may result in: (i) suspension, limitation, or termination of financial assistance for such projects and of NIH funds for other recombinant DNA research at the institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the institution.

All non-NIH funded projects involving recombinant DNA techniques conducted at or sponsored by an institution that receives NIH funds for projects involving such techniques must comply with the NIH Guidelines. Noncompliance may result in: (i) suspension, limitation, or termination of NIH funds for recombinant DNA research at the institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the institution.

Information concerning noncompliance with the NIH Guidelines may be brought forward by any person. It should be delivered to both NIH/ORDA and the relevant institution. The institution, generally through the Institutional Biosafety Committee, shall take appropriate action. The institution shall forward a complete report of the incident recommending any further action to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

In cases where NIH proposes to suspend, limit, or terminate financial assistance because of noncompliance with the NIH Guidelines, applicable DHHS and Public Health Service procedures shall govern.

Section IV–E. Voluntary Compliance

Section IV–E–1. Basic Policy

Individuals, corporations, and institutions not otherwise covered by the NIH Guidelines are encouraged to

Other NIH components shall be responsible for certifying maximum containment (BL4) facilities, inspecting them periodically, and inspecting other recombinant DNA facilities as deemed necessary.

Section IV–D. Compliance with the NIH Guidelines

As a condition for NIH funding of recombinant DNA research, institutions shall ensure that such research conducted at or sponsored by the institution, irrespective of the source of funding, shall comply with the NIH Guidelines. The policies on noncompliance are as follows:

All NIH-funded projects involving recombinant DNA techniques must comply with the NIH Guidelines. Non-compliance may result in: (i) suspension, limitation, or termination of financial assistance for such projects and of NIH funds for other recombinant DNA research at the institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the institution.

All non-NIH funded projects involving recombinant DNA techniques conducted at or sponsored by an institution that receives NIH funds for projects involving such techniques must comply with the NIH Guidelines. Noncompliance may result in: (i) suspension, limitation, or termination of NIH funds for recombinant DNA research at the institution, or (ii) a requirement for prior NIH approval of any or all recombinant DNA projects at the institution.

Information concerning noncompliance with the NIH Guidelines may be brought forward by any person. It should be delivered to both NIH/ORDA and the relevant institution. The institution, generally through the Institutional Biosafety Committee, shall take appropriate action. The institution shall forward a complete report of the incident recommending any further action to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

In cases where NIH proposes to suspend, limit, or terminate financial assistance because of noncompliance with the NIH Guidelines, applicable DHHS and Public Health Service procedures shall govern.

Section IV–E. Voluntary Compliance

Section IV–E–1. Basic Policy

Individuals, corporations, and institutions not otherwise covered by the NIH Guidelines are encouraged to do so by following the standards and procedures set forth in Sections I through IV. In order to simplify discussion, references hereafter to "institutions" are intended to encompass corporations and individuals who have no organizational affiliation. For purposes of complying with the NIH Guidelines, an individual intending to carry out research involving recombinant DNA is encouraged to affiliate with an institution that has an Institutional Biosafety Committee approved under the NIH Guidelines.

Since commercial organizations have special concerns, such as protection of proprietary data, some modifications and explanations of the procedures are provided in Sections IV–E–2 through IV–E–5–b in order to address these concerns.

Section IV–E–2. Institutional Biosafety Committee Approval

It should be emphasized that employment of an Institutional Biosafety Committee member solely for purposes of membership on the Institutional Biosafety Committee does not itself make the member an institutionally affiliated member. Except for the unaffiliated members, a member of an Institutional Biosafety Committee for an institution not otherwise covered by the NIH Guidelines may participate in the review and approval of a project in which the member has a direct financial interest so long as the member has not been, and does not expect to be, engaged in the project. Section IV–B–2–a–(4) is modified to that extent for purposes of these institutions.

Section IV–E–3. Certification of Host-Vector Systems

A host-vector system may be proposed for certification by the NIH Director in accordance with the procedures set forth in Appendix I-II. In order to ensure protection for proprietary data, any public notice regarding a host-vector system which is designated by the institution as proprietary under Section IV–E–5-a will be issued only after consultation with the institution as to the content of the notice.

Section IV–E–4. Requests for Exemptions and Approvals

Requests for exemptions or other approvals as required by the NIH Guidelines should be submitted based on the procedures set forth in Sections I through IV. In order to ensure protection for proprietary data, any public notice regarding a request for an exemption or other approval which is designated by the institution as proprietary under Section IV–E–5-a will be issued only after consultation with the institution as to the content of the notice.

Section IV–E–5. Protection of Proprietary Data

Section IV–E–5-a. General

In general, the Freedom of Information Act requires Federal agencies to make their records available to the public upon request. However, this requirement does not apply to, among other things, "trade secrets and commercial or financial information that is obtained from a person and that is privileged or confidential." Under 18 U.S.C. 1905, it is a criminal offense for an officer or employee of the U.S. or any Federal department or agency to publish, divulge, disclose, or make known "in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, (or) processes—of any person, firm, partnership, corporation, or association." This provision applies to all employees of the Federal Government, including special Government employees. Members of the RAC are "special Government employees."

In submitting to NIH for purposes of voluntary compliance with the NIH Guidelines, an institution may designate those items of information which the institution believes constitute trade secrets, privileged, confidential, commercial, or financial information. If NIH receives a request under the Freedom of Information Act for information so designated, NIH will promptly contact the institution to secure its views as to whether the information (or some portion) should be released. If the NIH decides to release this information (or some portion) in response to a Freedom of Information request or otherwise, the institution will be advised; and the actual release will not be made until the expiration of 15 days after the institution is so advised except to the extent that earlier release in the judgment of the NIH Director is necessary to protect against an imminent hazard to the public or the environment.

Section IV–E–5–b. Presubmission Review

Any institution not otherwise covered by the NIH Guidelines, which is considering submission of data or information voluntarily to NIH, may request presubmission review of the records involved to determine if NIH will make all or part of the records available upon request under the Freedom of Information Act.

A request for presubmission review should be submitted to NIH/ORDA along with the records involved to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. These records shall be clearly marked as being the property of the institution on loan to NIH solely for the purpose of making a determination under the Freedom of Information Act. NIH/ORDA will seek a determination from the responsible official under DHHS regulations (45 Code of Federal Regulations, Part 5) as to whether the records involved, (or some portion) will be made available to members of the public under the Freedom of Information Act. Pending such a determination, the records will be kept separate from NIH/ORDA files, will be considered records of the institution and not NIH/ORDA, and will not be received as part of NIH/ORDA files. No copies will be made of such records.

NIH/ORDA will inform the institution of the DHHS Freedom of Information Officer's determination and follow the institution's instructions as to whether some or all of the records involved are to be returned to the institution or to become a part of NIH/ORDA files. If the institution instructs NIH/ORDA to return the records, no copies or summaries of the records will be made or retained by DHHS, NIH, or ORDA. The DHHS Freedom of Information Officer's determination will represent that official's judgment at the time of the determination as to whether the records involved (or some portion) would be exempt from disclosure under the Freedom of Information Act if at the time of the determination the records were in NIH/ORDA files and a request was received for such files under the Freedom of Information Act.

Section V. Footnotes and References of Sections I Through IV

Section V–A. The original reference to organisms as Class 1, 2, 3, 4, or 5 refers to the classification in the publication Classification of Etiologic Agents on the Basis of Hazard, 4th Edition, July 1974, U.S. Department of Health, Education, and Welfare, Public Health Services, Centers for Disease Control and Prevention, Office of Biosafety, Atlanta, Georgia 30333. The NIH Director, with advice of the RAC, may revise the classification for the purposes of the NIH Guidelines (see Section IV–C–1-b-(2)-(e)). The revised list of organisms in each class is reprinted in Appendix B.

Section V–B. Section III describes a number of places where judgments are to be made. In all these cases, the Principal Investigator shall make the judgment on these matters as part of his/her responsibility to "make the initial determination of the required levels of physical and biological containment in accordance with the NIH Guidelines" (see Section IV–B–4-c-(1)). For cases falling under Sections III–A through III–D, this judgment is to be reviewed and approved by the Institutional Biosafety Committee as part of its responsibility to make an "independent assessment of the containment levels required by the NIH Guidelines for the proposed research" (see Section IV–B–2-b-(1)). The Institutional Biosafety Committee may refer specific cases to NIH/ORDA as part of NIH/ORDA's functions to "provide advice to all within and outside NIH" (see Section IV–C–3). NIH/ORDA may request advice from the RAC as part of the RAC's responsibility for "interpreting the NIH Guidelines for experiments to which the NIH Guidelines do not specifically assign containment levels" (see Section IV–C–1-b-(2)-(f)).

Section V–C. Laboratory Safety at the Centers for Disease Control, September 1974, U.S. Department of Health, Education, and Welfare Publication No. CDC 75–8118.

Section V–D. Classification of Etiologic Agents on the Basis of Hazard, 4th Edition, July 1974, U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, Office of Biosafety, Atlanta, Georgia 30333.

Section V–E. National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses, October 1974, U.S. Department of Health, Education, and Welfare, Publication No. (NIH) 75–790.

Section V–F. National Institutes of Health Biohazards Safety Guide, 1974, U.S. Department of Health, Education, and Welfare, Public Health Service, NIH, U.S. Government Printing Office, Stock No. 1740–00383.

Section V–G. A. Hellman, M. N. Oxman, and R. Pollack (eds.), 1973, Biohazards in Biological Research, Cold Spring Harbor Laboratory, Cold Spring Harbor, NY.

Section V–H. Furr, A. K., Handbook of Laboratory Safety, 2nd ed, The Chemical Rubber Co., Boca Raton, Florida, 1990.

Section V–I. American Public Health Association, Bodily, J. L., General Administration of the Laboratory, 6th ed., "Diagnostic Procedures for Bacterial, Mycotic, and Parasitic Infections," New York, 1981.

Section V–J. H. M. Darlow, Safety in the Microbiological Laboratory, in J. R. Norris and D. W. Robbins (eds.), Methods in Microbiology, Academic Press, Inc, New York, New York, 1969, pp. 169–204.

Section V–K. C. M. Collins, E. G. Hartley, and R. Pilsworth, The Prevention of Laboratory Acquired Infection, Public Health Laboratory Service, Monograph Series No. 6, 1974.

Section V–L. Chatigny, M. A, "Protection Against Infection in the Microbiological Laboratory: Devices and Procedures," in W.W. Umbreit (ed.), Advances in Applied Microbiology, Academic Press, New York, New York, 1961, 3:131–192.

Section V–M. Design Criteria for Viral Oncology Research Facilities, U.S. Department of Health, Education, and Welfare, Public Health Service, NIH, DHEW Publication No. (NIH) 75–891, 1975.

Section V–N. Kuehne, R. W., Biological Containment Facility for Studying Infectious Disease, Appl. Microbiol. 26:239–243, 1973.

Section V–O. Runkle, R. B., and G. B. Phillips, Microbial Containment Control Facilities, Van Nostrand Reinhold, New York, 1969.

Section V–P. Chatigny, M. A., and D. I. Clinger, "Contamination Control in Aerobiology," in R. L. Dimmick and A. B. Akers (eds.), An Introduction to Experimental Aerobiology, John Wiley & Sons, New York, 1969, pp. 194–263.

Section V–Q. As classified in the Third Report of the International Committee on Taxonomy of Viruses: Classification and Nomenclature of Viruses, R. E. F. Matthews (ed.), Intervirology 12 (129–296), 1979.

Section V–R. A U.S. Department of Agriculture permit is required for the importation, interstate movement, and release into the environment of certain organisms that are plant or animal pathogens, whether genetically engineered or not. Permits are required for veterinary biologics and for certain plants or microorganisms derived through genetic engineering using genetic sequences from plant pests (pathogens). Specific information about regulated organisms and procedures for obtaining a permit for regulated organisms may be obtained from the Director, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 850, Hyattsville, Maryland 20782, (301) 436–7601.

Section V–S. I.e., the total of all genomes within a family shall not exceed two-thirds of the genome.

Section V–T. All activities, including storage of variola and whitepox, are restricted to the single national facility (World Health Organization Collaborating Center for Smallpox Research, Centers for Disease Control and Prevention, Atlanta, Georgia).

Section V–U. Human studies in which the induction or enhancement of an immune response to a vector-encoded microbial immunogen is the major goal, such an immune response has been demonstrated in model systems, and the persistence of the vector-encoded immunogen is not expected, are not covered under Sections III–A–2, III–B–2, or III–B–3. Such studies may be initiated without RAC review and NIH approval if approved by another Federal agency.

Section V–V. For recombinant DNA experiments in which the intent is to modify stably the genome of cells of one or more human subjects (see Sections III–A–2, III–B–2, and III–B–3).

Section V–W. In accordance with accepted scientific and regulatory practices of the discipline of plant pathology, an exotic plant pathogen (e.g., virus, bacteria, or fungus) is one that is unknown to occur within the U.S. (see Section V–R). Determination of whether a pathogen has a potential for serious detrimental impact on managed (agricultural, forest, grassland) or natural ecosystems should be made by the Principal Investigator and the Institutional Biosafety Committee, in consultation with scientists knowledgeable of plant diseases, crops, and ecosystems in the geographic area of the research.

Appendix A. Exemptions Under Section III–E–5—Sublists of Natural Exchangers

Certain specified recombinant DNA molecules that "consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent are exempt from these NIH Guidelines (see Section III–E–5). Institutional Biosafety Committee registration is not required for these exempt experiments. A list of such exchangers will be prepared and periodically revised by the NIH Director with advice from the RAC after appropriate notice and opportunity for public comment (see Section IV–C–1–b–(1)–(c)). See Appendices A–I through A–VI for a list of natural

Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 850, Hyattsville, Maryland 20782, (301) 436–7601.

Section V–S. i.e., the total of all genomes within a family shall not exceed two-thirds of the genome.

Section V–T. All activities, including storage of variola and whitepox, are restricted to the single national facility (World Health Organization Collaborating Center for Smallpox Research, Centers for Disease Control and Prevention, Atlanta, Georgia).

Section V–U. Human studies in which the induction or enhancement of an immune response to a vector-encoded microbial immunogen is the major goal, such an immune response has been demonstrated in model systems, and the persistence of the vector-encoded immunogen is not expected, are not covered under Sections III–A–2, III–B–2, or III–B–3. Such studies may be initiated without RAC review and NIH approval if approved by another Federal agency.

Section V–V. For recombinant DNA experiments in which the intent is to modify stably the genome of cells of one or more human subjects (see Sections III–A–2, III–B–2, and III–B–3).

Section V–W. In accordance with accepted scientific and regulatory practices of the discipline of plant pathology, an exotic plant pathogen (e.g., virus, bacteria, or fungus) is one that is unknown to occur within the U.S. (see Section V–R). Determination of whether a pathogen has a potential for serious detrimental impact on managed (agricultural, forest, grassland) or natural ecosystems should be made by the Principal Investigator and the Institutional Biosafety Committee, in consultation with scientists knowledgeable of plant diseases, crops, and ecosystems in the geographic area of the research.

Appendix A. Exemptions Under Section III–E–5—Sublists of Natural Exchangers

Certain specified recombinant DNA molecules that "consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent are exempt from these NIH Guidelines (see Section III–E–5). Institutional Biosafety Committee registration is not required for these exempt experiments. A list of such exchangers will be prepared and periodically revised by the NIH Director with advice from the RAC after appropriate notice and opportunity for public comment (see Section IV–C–1–b–(1)–(c)). See Appendices A–I through A–VI for a list of natural exchangers that are exempt from the NIH Guidelines." Section III–E–5 describes recombinant DNA molecules that are: (1) composed entirely of DNA segments from one or more of the organisms within a sublist, and (2) to be propagated in any of the organisms within a sublist (see Classification of Bergey's Manual of Determinative Bacteriology; 8th edition, R. E. Buchanan and N. E. Gibbons, editors, Williams and Wilkins Company; Baltimore, Maryland 1984). Although these experiments are exempt, it is recommended that they be performed at the appropriate biosafety level for the host or recombinant organism (see Biosafety in Microbiological and Biomedical Laboratories, 3rd edition, May 1993, U.S. DHHS, Public Health Service, Centers for Disease Control, Atlanta, Georgia, and NIH Office of Biosafety, Bethesda, Maryland).

Appendix A–I. Sublist A

Genus *Escherichia*
Genus *Shigella*
Genus *Salmonella*—including Arizona
Genus *Enterobacter*
Genus *Citrobacter*—including *Levinea*
Genus *Klebsiella*—including *oxytoca*
Genus *Erwinia*
Pseudomonas aeruginosa, Pseudomonas putida, Pseudomonas fluorescens, and Pseudomonas mendocina
Serratia marcescens
Yersinia enterocolitica

Appendix A–II. Sublist B

Bacillus subtilis
Bacillus licheniformis
Bacillus pumilus
Bacillus globigii
Bacillus niger
Bacillus nato
Bacillus amyloliquefaciens
Bacillus aterrimus

Appendix A–III. Sublist C

Streptomyces aureofaciens
Streptomyces rimosus
Streptomyces coelicolor

Appendix A–IV. Sublist D

Streptomyces griseus
Streptomyces cyaneus
Streptomyces venezuelae

Appendix A–V. Sublist E

One way transfer of *Streptococcus mutans* or *Streptococcus lactis* DNA into *Streptococcus sanguis*

Appendix A–VI. Sublist F

Streptococcus sanguis
Streptococcus pneumoniae
Streptococcus faecalis
Streptococcus pyogenes
Streptococcus mutans

Appendix B. Classification of Etiologic Agents and Oncogenic Viruses on the Basis of Hazard (See Appendix B–VI–A).

Appendix B–I. Class 1 Agents

All bacterial, parasitic, fungal, viral, rickettsial, and chlamydial agents not included in higher classes shall be considered Class 1 agents.

Appendix B–II. Class 2 Agents

Appendix B–II–A. Class 2 Bacterial Agents

Acinetobacter calcoaceticus
Actinobacillus—all species
Aeromonas hydrophila
Amycolata autotrophica
Arizona hinshawii—all serotypes
Bacillus anthracis
Bordetella—all species
Borrelia recurrentis, B. vincenti
Campylobacter fetus
Campylobacter jejuni
Chlamydia psittaci
Chlamydia trachomatis
Clostridium botulinum, Cl. chauvoei, Cl haemolyticum, Cl. histolyticum, Cl. novyi, Cl.
septicum, Cl. tetani
Corynebacterium diphtheriae, C. equi, C. haemolyticum, C. pseudotuberculosis, C.
pyogenes, C. renale
Dermatophilus congolensis
Edwardsiella tarda
Erysipelothrix insidiosa
Escherichia coli—all enteropathogenic, enterotoxigenic, enteroinvasive and strains
bearing K1 antigen
Haemophilus ducreyi, H. influenzae
Klebsiella—all species except oxytoca
Legionella pneumophila
Leptospira interrogans—all serotypes
Listeria—all species
Moraxella—all species
Mycobacteria—all species except those listed in Class 3
Mycobacterium avium
Mycoplasma—all species except *Mycoplasma mycoides* and *Mycoplasma agalactiae*, which are in Class 5
Neisseria gonorrhoea, N. meningitides
Nocardia asteroides, N. brasiliensis, N otitidiscaviarum, N. transvalensis
Pasteurella—all species except those listed in Class 3
Rhodococcus equi
Salmonella—all species and all serotypes
Shigella-all species and all serotypes
Sphaerophorus necrophorus
Staphylococcus aureus
Streptobacillus moniliformis
Streptococcus pneumoniae, S. pyogenes
Treponema carateum, T. pallidum, and T. pertenue

Vibrio cholerae, V. parahemolyticus
Yersinia enterocolitica

Appendix B-II-B. Class 2 Fungal Agents

Blastomyces dermatitidis
Cryptococcus neoformans
Paracoccidioides braziliensis

Appendix B-II-C. Class 2 Parasitic Agents

Endamoeba histolytica
Leishmania sp.
Naegleria gruberi
Schistosoma mansoni
Toxocara canis
Toxoplasma gondii
Trichinella spiralis
Trypanosoma cruzi

Appendix B–II–D. Class 2 Viral, Rickettsial, and Chlamydial Agents

Adenoviruses—human—all types
Cache Valley virus
Coronaviruses
Coxsackie A and B viruses
Cytomegaloviruses
Echoviruses—all types
Encephalomyocarditis virus (EMC)
Flanders virus
Hart Park virus
Hepatitis viruses—associated antigen material
Herpesviruses—except *Herpesvirus simiae* (Monkey B virus) which is in Class 4
Influenza viruses—all types except A/PR8/34, which is in Class 1
Langat virus
Lymphogranuloma venereum agent
Measles virus
Mumps virus
Parainfluenza virus—all types except Parainfluenza virus 3, SF4 strain, which is in Class 1
Polioviruses —all types, wild and attenuated
Poxviruses—all types except Alastrim, Smallpox, and Whitepox which are Class 5 and Monkey pox which depending on experiments is in Class 3 or Class 4
Rabies virus—all strains except Rabies street virus which should be classified in Class 3
Reoviruses—all types
Respiratory syncytial virus
Rhinoviruses—all types
Rubella virus
Simian viruses—all types except *Herpesvirus simiae* (Monkey B virus) and Marburg virus which are in Class 4
Sindbis virus
Tensaw virus
Turlock virus
Vaccinia virus
Varicella virus
Vesicular stomatitis virus (see Appendix B-VI-B)
Vole rickettsia
Yellow fever virus, 17D vaccine strain

Appendix B-II-E. Class 2 Oncogenic Viruses (See Appendix B-VI-C)

Appendix B-II-E-1. Low-Risk Oncogenic Viruses

Adenovirus 7–Simian virus 40 (Ad7–SV40)
Adenovirus
Avian leukosis virus
Bovine leukemia virus
Bovine papilloma virus
Chick-embryo-lethal orphan (CELO) virus or fowl adenovirus 1
Dog sarcoma virus
Guinea pig herpes virus
Lucke (Frog) virus
Hamster leukemia virus
Marek's disease virus
Mason-Pfizer monkey virus
Mouse mammary tumor virus
Murine leukemia virus
Murine sarcoma virus
Polyoma virus
Rat leukemia virus
Rous sarcoma virus
Shope fibroma virus
Shope papilloma virus
Simian virus 40 (SV–40)

Appendix B-II-E-2. Moderate-Risk Oncogenic Viruses

Adenovirus 2–Simian virus 40 (Ad2–SV40)
Epstein-Barr virus (EBV)
Feline leukemia virus (FeLV)
Feline sarcoma virus (FeSV)
Gibbon leukemia virus (GaLV)
Herpesvirus (HV) *ateles*
Herpesvirus (HV) *saimiri*
Simian sarcoma virus (SSV)–1
Yaba

Appendix B–III. Class 3 Agents

Appendix B–III–A. Class 3 Bacterial Agents

Bartonella—all species
Brucella—all species
Francisella tularensis
Mycobacterium bovis, M. tuberculosis
Pasteurella multocide type—"buffalo" and other foreign virulent strains (see Appendix B–VI–B)
Pseudomonas mallei (see Appendix B–VI–B)
Pseudomonas pseudomallei (see Appendix B–VI–B)
Yersinia pestis

Appendix B–III–B. Class 3 Fungal Agents

Coccidioides immitis
Histoplasma capsulatum
Histoplasma capsulatum var. *duboisii*

Appendix B–III–C. Class 3 Parasitic Agents

None

Appendix B–III–D. Class 3 Viral, Rickettsial, and Chlamydial Agents

Monkey pox virus—when used *in vitro* (see Appendix B–VI–D)
Arboviruses—all strains except those in Class 2 and 4. (Arboviruses indigenous to the United States are in Class 3 except those listed in Class 2. West Nile and Semliki Forest viruses may be classified up or down depending on the conditions of use and geographical location of the laboratory).
Dengue virus—when used for transmission or animal inoculation experiments
Lymphocytic choriomeningitis virus (LCM)
Rickettsia—all species except *Vole rickettsia* when used for transmission or animal inoculation experiments
Yellow fever virus—wild, when used *in vitro*

Appendix B–IV. Class 4 Agents

Appendix B–IV–A. Class 4 Bacterial Agents

None

Appendix B–IV–B. Class 4 Fungal Agents

None

Appendix B–IV–C. Class 4 Parasitic Agents

None

Appendix B–IV–D. Class 4 Viral, Rickettsial, and Chlamydial Agents

Ebola fever virus
Monkey pox virus—when used for transmission or animal inoculation experiments (see Appendix B–VI–D)
Hemorrhagic fever agents—including Crimean hemorrhagic fever, (Congo), Junin, and Machupo viruses, and others as yet undefined
Herpesvirus simiae (Monkey B virus)
Lassa virus
Marburg virus
Tick-borne encephalitis virus complex—including Russian spring-summer encephalitis, Kyasanur forest disease, Omsk hemorrhagic fever, and Central European encephalitis viruses
Venezuelan equine encephalitis virus, epidemic strains—when used for transmission or animal inoculation experiments
Yellow fever virus-wild—when used for transmission or animal inoculation experiments

Appendix B–V. Class 5 Agents (see Appendix B–VI–E)

Appendix B–V–A. Animal Disease Organisms which are Forbidden Entry into the United States by Law

Foot and mouth disease virus

Appendix B–V–B. Animal Disease Organisms and Vectors which are Forbidden Entry into the United States by U.S. Department of Agriculture Policy

African horse sickness virus
African swine fever virus
Besnoitia besnoiti
Borna disease virus
Bovine infectious petechial fever
Camel pox virus
Ephemeral fever virus
Fowl plague virus
Goat pox virus
Hog cholera virus
Louping ill virus
Lumpy skin disease virus
Mycoplasma mycoides—contagious bovine pleuropneumonia
Mycoplasma agalactiae—contagious agalactia of sheep
Nairobi sheep disease virus
Newcastle disease virus—Asiatic strains
Rhinderpest virus
Rickettsia ruminatium—heart water
Rift valley fever virus
Sheep pox virus
Swine vesicular disease virus
Teschen disease virus
Theileria annulata
Theileria bovis
Theileria hirci
Theileria lawrencei
Theileria parva—East Coast fever
Trypanosoma evansi
Trypanosoma vivax—Nagana
Vesicular exanthema virus
Wesselsbron disease virus
Zyonema

Appendix B–V–C. Organisms which may not be Studied in the United States Except at Specified Facilities

Alastrim (see Appendix B–VI–D)
Small pox (see Appendix B–VI–D)
White pox (see Appendix B–VI–D)

Appendix B–VI. Footnotes and References of Appendix B

Appendix B–VI–A. The original reference for this classification was the publication Classification of Etiologic Agents on the Basis of Hazard, 4th edition, July 1974, U.S. DHHS, Public Health Service, Centers for Disease Control and Prevention, Office of Biosafety, Atlanta, Georgia 30333. For the purposes of these NIH Guidelines, this list has been revised by the NIH.

Appendix B–VI–B. A U.S. Department of Agriculture permit, required for import and interstate transport of pathogens, may be obtained from the U.S. Department of Agriculture, ATTN: Animal and Plant Health Inspection Service, Import-Export Products Office, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

Appendix B–V–B. Animal Disease Organisms and Vectors which are Forbidden Entry into the United States by U.S. Department of Agriculture Policy

African horse sickness virus
African swine fever virus
Besnoitia besnoiti
Borna disease virus
Bovine infectious petechial fever
Camel pox virus
Ephemeral fever virus
Fowl plague virus
Goat pox virus
Hog cholera virus
Louping ill virus
Lumpy skin disease virus
Mycoplasma mycoides—contagious bovine pleuropneumonia
Mycoplasma agalactiae—contagious agalactia of sheep
Nairobi sheep disease virus
Newcastle disease virus—Asiatic strains
Rhinderpest virus
Rickettsia ruminatium—heart water
Rift valley fever virus
Sheep pox virus
Swine vesicular disease virus
Teschen disease virus
Theileria annulata
Theileria bovis
Theileria hirci
Theileria lawrencei
Theileria parva—East Coast fever
Trypanosoma evansi
Trypanosoma vivax—Nagana
Vesicular exanthema virus
Wesselsbron disease virus
Zyonema

Appendix B–V–C. Organisms which may not be Studied in the United States Except at Specified Facilities

Alastrim (see Appendix B–VI–D)
Small pox (see Appendix B–VI–D)
White pox (see Appendix B–VI–D)

Appendix B–VI. Footnotes and References of Appendix B

Appendix B–VI–A. The original reference for this classification was the publication Classification of Etiologic Agents on the Basis of Hazard, 4th edition, July 1974, U.S. DHHS, Public Health Service, Centers for Disease Control and Prevention, Office of Biosafety, Atlanta, Georgia 30333. For the purposes of these NIH Guidelines, this list has been revised by the NIH.

Appendix B–VI–B. A U.S. Department of Agriculture permit, required for import and interstate transport of pathogens, may be obtained from the U.S. Department of Agriculture, ATTN: Animal and Plant Health Inspection Service, Import-Export Products Office, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

Appendix B–VI–C. National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses, U.S. Department of Health, Education, and Welfare Publication No. (NIH) 75–790, October 1974.

Appendix B–VI–D. All activities, including storage of variola and whitepox, are restricted to the single national facility (World Health Organization Collaborating Center for Smallpox Research, Centers for Disease Control and Prevention, Atlanta, Georgia).

Appendix B–VI–E. U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

Appendix C. Exemptions Under Section III–E–6

Section III–E–6 states that exempt from these NIH Guidelines are "those that do not present a significant risk to health or the environment (see Section IV–C–1–b–(1)–(c)), as determined by the NIH Director, with the advice of the RAC, and following appropriate notice and opportunity for public comment. See Appendix C for other classes of experiments which are exempt from the NIH Guidelines." The following classes of experiments are exempt under Section III–E–6:

Appendix C–I. Recombinant DNA in Tissue Culture

Recombinant DNA molecules containing less than one-half of any eukaryotic viral genome (all viruses from a single family (see Appendix C–VI–D) being considered identical (see Appendix C–VI–E), that are propagated and maintained in cells in tissue culture are exempt from these NIH Guidelines with the exceptions listed in Appendix C–I–A.

Appendix C–I–A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require specific RAC review and NIH and Institutional Biosafety Committee approval before initiation, (ii) experiments described in Section III–B which require NIH/ORDA and Institutional Biosafety Committee approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms (see Appendix C–VI–A) or cells known to be infected with these agents, (iv) experiments involving the deliberate introduction of genes coding for the biosynthesis of molecules that are toxic for vertebrates (see Appendix F), and (v) whole plants regenerated from plant cells and tissue cultures are covered by the exemption provided they remain axenic cultures even though they differentiate into embryonic tissue and regenerate into plantlets.

Appendix C–II. *Escherichia coli* K–12 Host-Vector Systems

Experiments which use *Escherichia coli* K–12 host-vector systems, with the exception of those experiments listed in Appendix C–II–A, are exempt from the NIH Guidelines provided that: (i) the *Escherichia coli* host does not contain conjugation proficient plasmids or generalized transducing phages; or (ii) lambda or lambdoid or Ff bacteriophages or non-conjugative plasmids (see Appendix C–VI–B) shall be used as vectors. However, experiments involving the insertion into *Escherichia coli* K–12 of DNA from prokaryotes that exchange genetic information (see Appendix C–VI–C) with Escherichia coli may be performed with any Escherichia coli K–12 vector (e.g., conjugative plasmid). When a non-conjugative vector is used, the *Escherichia coli* K–12 host may contain conjugation-proficient plasmids either autonomous or integrated, or generalized transducing phages. For these exempt laboratory experiments, Biosafety Level (BL) 1 physical containment conditions are recommended. For large scale fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques; the Institutional Biosafety Committee can specify higher containment if deemed necessary.

Appendix C–II–A. Exceptions

The following categories of experiments are not exempt from the NIH Guidelines: (i) experiments described in Section III–A which require Institutional Biosafety Committee approval, RAC review, and NIH approval before initiation, (ii) experiments described in Section III–B which require Institutional Biosafety Committee and NIH/ORDA approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms (see Appendix C–VI–A) or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–C–2 with prior Institutional Biosafety Committee review and approval, (iv) large scale experiments (e.g., more than 10 liters of culture), and (v) experiments involving the cloning of toxin molecule genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

Appendix C-III. Saccharomyces Host-Vector Systems

Experiments involving *Saccharomyces cerevisiae* and *Saccharomyces uvarum* host-vector systems, with the exception of experiments listed in Appendix C-III-A, are exempt from the NIH Guidelines. For these exempt experiments, BL1 physical containment is recommended. For large scale fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques; the Institutional Biosafety Committee can specify higher containment if deemed necessary.

Appendix C-III-A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) Experiments described in Section III-A which require Institutional Biosafety Committee approval, RAC review, and NIH approval before initiation, (ii) experiments described in Section III-B which require Institutional Biosafety Committee and NIH/ORDA approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms (see Appendix C-VI-A) or cells known to be infected with these agents may be conducted under containment conditions specified in Section III-C–2 with prior Institutional Biosafety Committee review and approval, (iv) large scale experiments (e.g., more than 10 liters of culture), and (v) experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

Appendix C-IV. Bacillus subtilis or Bacillus licheniformis Host-Vector Systems

Any asporogenic *Bacillus subtilis* or asporogenic *Bacillus licheniformis* strain which does not revert to a spore-former with a frequency greater than 10^{-7} may be used for cloning DNA with the exception of those experiments listed in Appendix C-IV-A. For these exempt laboratory experiments, BL1 physical containment conditions are recommended. For large scale fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques; the Institutional Biosafety Committee can specify higher containment if it deems necessary.

Appendix C-IV-A. Exceptions

The following categories are not exempt from the NIH Guidelines: (i) Experiments described in Section III-A which require Institutional Biosafety Committee approval, RAC review, and NIH approval before initiation, (ii) experiments described in Section III-B which require Institutional Biosafety Committee and NIH/ORDA approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms (see Appendix C-VI-A) or cells known to be infected with these agents may be conducted under containment conditions specified in Section III-C–2 with prior Institutional Biosafety Committee review and approval, (iv) large scale experiments (e.g., more than 10 liters of culture), and (v) experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

Appendix C-V. Extrachromosomal Elements of Gram Positive Organisms

Recombinant DNA molecules derived entirely from extrachromosomal elements of the organisms listed below (including shuttle vectors constructed from vectors described in Appendix C), propagated and maintained in organisms listed below are exempt from these NIH Guidelines.

Bacillus amyloliquefaciens
Bacillus amylosaccharitícus
Bacillus anthracis
Bacillus aterrimus
Bacillus brevis
Bacillus cereus
Bacillus globigii
Bacillus licheniformis
Bacillus megaterium
Bacillus natto
Bacillus niger
Bacillus pumilus
Bacillus sphaericus
Bacillus stearothermophilis
Bacillus subtilis
Bacillus thuringiensis
Clostridium acetobutylicum
Lactobacillus casei
Listeria grayi
Listeria monocytogenes
Listeria murrayi
Pediococcus acidilactici
Pediococcus damnosus
Pediococcus pentosaceus
Staphylococcus aureus
Staphylcoccus carnosus
Staphylococcus epidermidis
Streptococcus agalactiae
Streptococcus anginosus
Streptococcus avium
Streptococcus cremoris
Streptococcus dorans
Streptococcus equisimilis
Streptococcus faecalis
Streptococcus ferus
Streptococcus lactis
Streptococcus ferns
Streptococcus mitior
Streptococcus mutans
Streptococcus pneumoniae
Streptococcus pyogenes
Streptococcus salivarious
Streptococcus sanguis
Streptococcus sobrinus
Streptococcus thermophylus

Appendix C–V–A. Exceptions

The following categories of experiments are not exempt from the NIH Guidelines: (i) Experiments described in Section III–A which require Institutional Biosafety Committee, specific RAC review, and NIH approval before initiation, (ii) experiments described in Section III–B which require Institutional Biosafety Committee and NIH/ORDA approval before initiation, (iii) experiments involving DNA from Class 3, 4, or 5 organisms (see Appendix C–VI–A) or cells known to be infected with these agents may be conducted under containment conditions specified in Section III–C–2 with prior Institutional Biosafety Committee review and approval, (iv) large scale experiments (e.g., more than 10 liters of culture), and (v) experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

Appendix C–VI. Footnotes and References of Appendix C

Appendix C–VI–A. The original reference to organisms as Class 1, 2, 3, 4, or 5 refers to the classification in the publication Classification of Etiologic Agents on the Basis of Hazard, 4th Edition, July 1974, U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control and Prevention, Office of Biosafety, Atlanta, Georgia 30333.

Appendix C–VI–A–1. The NIH Director, with advice of the RAC, may revise the classification for the purposes of these NIH Guidelines (see Section IV–C–1–b–(2)–(d)). The revised list of organisms in each class is reprinted in Appendix B.

Appendix C–VI–B. A subset of non-conjugative plasmid vectors are poorly mobilizable (e.g., pBR322, pBR313). Where practical, these vectors should be employed.

Appendix C–VI–C. Defined as observable under optimal laboratory conditions by transformation, transduction, phage infection, and/or conjugation with transfer of phage, plasmid, and/or chromosomal genetic information. Note that this definition of exchange may be less stringent than that applied to exempt organisms under Section III–E–5.

Appendix C–VI–D. As classified in the Third Report of the International Committee on Taxonomy of Viruses: Classification and Nomenclature of Viruses, R.E.F. Matthews (ed.), Intervirology 12 (129–296), 1979.

Appendix C–VI–E. i.e., the total of all genomes within a Family shall not exceed one-half of the genome.

Appendix D. Major Actions Taken Under the NIH Guidelines

Under Section IV–C–1–b–(1), the NIH Director may take certain actions with regard to the NIH Guidelines after the issues have been considered by the RAC. An updated list of these actions are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Appendix E. Certified Host-Vector Systems (see Appendix I)

While many experiments using *Escherichia coli* K–12, *Saccharomyces cerevisiae*, and *Bacillus subtilis* are currently exempt from the NIH Guidelines under Section III–E, some derivatives of these host-vector systems were previously classified as Host-Vector 1 Systems or Host-Vector 2 Systems. A listing of those systems follows:

Appendix E–I. Bacillus subtilis

Appendix E–I–A. Bacillus subtilis Host-Vector 1 Systems

The following plasmids are accepted as the vector components of certified *B. subtilis* systems: pUB110, pC194, pS194, pSA2100, pE194, pT127, pUB112, pC221, pC223, and pAB124. *B. subtilis* strains RUB 331 and BGSC 1S53 have been certified as the host component of Host-Vector 1 systems based on these plasmids.

Appendix E–I–B. Bacillus Subtilis Host-Vector 2 Systems

The asporogenic mutant derivative of *Bacillus subtilis*, ASB 298, with the following plasmids as the vector component: pUB110, pC194, pS194, pSA2100, pE194, pT127, pUB112, pC221, pC223, and pAB124.

Appendix E–II. Saccharomyces Cerevisiae

Appendix E–II–A. Saccharomyces Cerevisiae Host-Vector 2 Systems

The following sterile strains of *Saccharomyces cerevisiae*, all of which have the ste-VC9 mutation, SHY1, SHY2, SHY3, and SHY4. The following plasmids are certified for use: YIp1, YEp2, YEp4, YIp5, YEp6, YRp7, YEp20,

Appendix C–VI–D. As classified in the Third Report of the International Committee on Taxonomy of Viruses: Classification and Nomenclature of Viruses, R.E.F. Matthews (ed.), Intervirology 12 (129–296), 1979.

Appendix C–VI–E. i.e., the total of all genomes within a Family shall not exceed one-half of the genome.

Appendix D. Major Actions Taken Under the NIH Guidelines

Under Section IV–C–1–b–(1), the NIH Director may take certain actions with regard to the NIH Guidelines after the issues have been considered by the RAC. An updated list of these actions are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Appendix E. Certified Host-Vector Systems (see Appendix I)

While many experiments using *Escherichia coli* K–12, *Saccharomyces cerevisiae*, and *Bacillus subtilis* are currently exempt from the NIH Guidelines under Section III–E, some derivatives of these host-vector systems were previously classified as Host-Vector 1 Systems or Host-Vector 2 Systems. A listing of those systems follows:

Appendix E–I. Bacillus subtilis

Appendix E–I–A. Bacillus subtilis Host-Vector 1 Systems

The following plasmids are accepted as the vector components of certified *B. subtilis* systems: pUB110, pC194, pS194, pSA2100, pE194, pT127, pUB112, pC221, pC223, and pAB124. *B. subtilis* strains RUB 331 and BGSC 1S53 have been certified as the host component of Host-Vector 1 systems based on these plasmids.

Appendix E–I–B. Bacillus Subtilis Host-Vector 2 Systems

The asporogenic mutant derivative of *Bacillus subtilis*, ASB 298, with the following plasmids as the vector component: pUB110, pC194, pS194, pSA2100, pE194, pT127, pUB112, pC221, pC223, and pAB124.

Appendix E–II. Saccharomyces Cerevisiae

Appendix E–II–A. Saccharomyces Cerevisiae Host-Vector 2 Systems

The following sterile strains of *Saccharomyces cerevisiae*, all of which have the ste-VC9 mutation, SHY1, SHY2, SHY3, and SHY4. The following plasmids are certified for use: YIp1, YEp2, YEp4, YIp5, YEp6, YRp7, YEp20, YEp21, YEp24, YIp25, YIp26, YIp27, YIp28, YIp29, YIp30, YIp31, YIp32, and YIp33.

Appendix E-III. Escherichia coli

Appendix E-III-A. *Escherichia coli* (EK2) Plasmid Systems

The *Escherichia coli* K–12 strain chi-1776. The following plasmids are certified for use: pSC101, pMB9, pBR313, pBR322, pDH24, pBR325, pBR327, pGL101, and pHB1. The following *Escherichia coli*/S. cerevisiae hybrid plasmids are certified as EK2 vectors when used in *Escherichia coli* chi-1776 or in the sterile yeast strains, SHY1, SHY2, SHY3, and SHY4: YIpI, YEp2, YEp4, YIp5, YEp6, YRp7, YEp20, YEp21, YEP24, YIp25, YIp26, YIp27, YIp28, YIp29, YIp30, YIp31, YIp32, and YIp33.

Appendix E-III-B. *Escherichia coli* (EK2) Bacteriophage Systems

The following are certified EK2 systems based on bacteriophage lambda:

Vector	Host
λgt *WES*λ*B*′	DP50*supF*
λgt *WES*λ*B*°	DP50*supF*
λgt *ZJ* virλ*B*′	*Escherichia coli* K–12
λgtALO•λ*B*	DP50*supF*
Charon 3A	DP50 or DP50*supF*
Charon 4A	DP50 or DP50*supF*
Charon 16A	DP50 or DP50*supF*
Charon 21A	DP50*supF*
Charon 23A	DP50 or DP50*supF*
Charon 24A	DP50 or DP50*supF*

Escherichia coli K–12 strains chi-2447 and chi-2281 are certified for use with lambda vectors that are certified for use with strain DP50 or DP50*supF* provided that the su-strain not be used as a propagation host.

Appendix E-IV. Neurospora crassa

Appendix E-IV-A. Neurospora crassa Host-Vector 1 Systems

The following specified strains of *Neurospora crassa* which have been modified to prevent aerial dispersion: In1 (inositolless) strains 37102, 37401, 46316, 64001, and 89601. Csp-1 strain UCLA37 and csp-2 strains FS 590, UCLA101 (these are conidial separation mutants).

Eas strain UCLA191 (an "easily wettable" mutant).

Appendix E–V. Streptomyces

Appendix E–V–A. *Streptomyces* Host-Vector 1 Systems

The following *Streptomyces* species: *Streptomyces coelicolor*, *S. lividans*, *S. parvulus*, and *S. griseus*. The following are accepted as vector components of certified *Streptomyces* Host-Vector 1 systems: *Streptomyces* plasmids SCP2, SLP1.2, pIJ101, actinophage phi C31, and their derivatives.

Appendix E–VI. Pseudomonas Putida

Appendix E–VI–A. Pseudomonas putida Host-Vector 1 Systems

Pseudomonas putida strains KT2440 with plasmid vectors pKT262, pKT263, and pKT264.

Appendix F. Containment Conditions for Cloning of Genes Coding for the Biosynthesis of Molecules Toxic for Vertebrates

Appendix F–I. General Information

Appendix F specifies the containment to be used for the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates. The cloning of genes coding for molecules toxic for vertebrates that have an LD_{50} of <100 nanograms per kilograms body weight (e.g., microbial toxins such as the botulinum toxins, tetanus toxin, diphtheria toxin, *Shigella dysenteriae* neurotoxin) are covered under Section III–B–1 and require Institutional Biosafety Committee and NIH/ORDA approval before initiation. No specific restrictions shall apply to the cloning of genes if the protein specified by the gene has an LD_{50} ≥100 micrograms per kilograms of body weight. Experiments involving genes coding for toxin molecules with an LD_{50} of <100 micrograms per kilograms and >100 nanograms per kilograms body weight require Institutional Biosafety Committee approval and registration with NIH/ORDA prior to initiating the experiments. A list of toxin molecules classified as to LD_{50} is available from NIH/ORDA. Testing procedures for determining toxicity of toxin molecules not on the list are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. The results of such tests shall be forwarded to NIH/ORDA, which will consult with *ad hoc* experts, prior to inclusion of the molecules on the list (see Section IV–C–1–b–(2)–(e)).

Appendix F–II. Cloning of Toxin Molecule Genes in Escherichia coli K–12

Appendix F–II–A. Cloning of genes coding for molecules toxic for vertebrates that have an LD_{50} of >100 nanograms per kilograms and <1000 nanograms per kilograms body weight (e.g., abrin, *Clostridium perfringens* epsilon toxin) may proceed under Biosafety Level (BL) 2 + EK2 or BL3 + EK1 containment conditions.

Appendix F–II–B. Cloning of genes for the biosynthesis of molecules toxic for vertebrates that have an LD_{50} of >1 microgram per kilogram and <100 microgram per kilogram body weight may proceed under BL1 + EK1 containment conditions (e.g., *Staphylococcus aureus* alpha toxin, *Staphylococcus aureus* beta toxin, ricin, *Pseudomonas aeruginosa* exotoxin A, *Bordetella pertussis* toxin, the lethal factor of *Bacillus anthracis*, the *Pasteurella pestis* murine toxins, the oxygen-labile hemolysins such as streptolysin O, and certain neurotoxins present in snake venoms and other venoms).

Appendix F–II–C. Some enterotoxins are substantially more toxic when administered enterally than parenterally. The following enterotoxins shall be subject to BL1 + EK1 containment conditions: cholera toxin, the heat labile toxins of *Escherichia coli*, *Klebsiella*, and other related proteins that may be identified by neutralization with an antiserum monospecific for cholera toxin, and the heat stable toxins of *Escherichia coli* and of *Yersinia enterocolitica*.

Appendix F–III. Cloning of Toxic Molecule Genes in Organisms Other Than Escherichia coli K–12

Requests involving the cloning of genes coding for molecules toxic for vertebrates at an LD_{50} of <100 nanograms per kilogram body weight in host-vector systems other than *Escherichia coli* K–12 will be evaluated by NIH/ORDA in consultation with *ad hoc* toxin experts (see Sections III–B–1 and IV–C–1–b–(2)–(e)).

Appendix F–IV. Specific Approvals

An updated list of experiments involving the deliberate formation of recombinant DNA containing genes coding for toxins lethal for vertebrates at an LD_{50} of <100 nanograms per kilogram body weight is available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Appendix G. Physical Containment

Appendix G specifies physical containment for standard laboratory experiments and defines Biosafety Level 1 through Biosafety Level 4. For large scale (over 10 liters) research or production, Appendix K supersedes Appendix G. Appendix K defines Good Large Scale Practice through Biosafety Level 3—Large Scale. For certain work with plants, Appendix P supersedes Appendix G. Appendix P defines Biosafety Levels 1 through 4—Plants. For certain work with animals, Appendix Q supersedes Appendix G. Appendix Q defines Biosafety Levels 1 through 4—Animals.

Appendix G–I. Standard Practices and Training

The first principle of containment is strict adherence to good microbiological practices (see Appendices G–III–A through G–III–J). Consequently, all personnel directly or indirectly involved in experiments using recombinant DNA shall receive adequate instruction (see Sections IV–B–1–e and IV–B–4–d). At a minimum, these instructions include training in aseptic techniques and in the biology of the organisms used in the experiments so that the potential biohazards can be understood and appreciated.

Any research group working with agents that are known or potential biohazards shall have an emergency plan that describes the procedures to be followed if an accident contaminates personnel or the environment. The Principal Investigator shall ensure that everyone in the laboratory is familiar with both the potential hazards of the work and the emergency plan (see Sections IV–B–4–d and IV–B–4–e). If a research group is working with a known pathogen for which there is an effective vaccine, the vaccine should be made available to all workers. Serological monitoring, when clearly appropriate, will be provided (see Section IV–B–1–f).

The Laboratory Safety Monograph (see Appendix G–III–O) and Biosafety in Microbiological and Biomedical Laboratories (see Appendix G–III–B) describe practices, equipment, and facilities in detail.

Appendix G–II. Physical Containment Levels

The objective of physical containment is to confine organisms containing recombinant DNA molecules and to reduce the potential for exposure of the laboratory worker, persons outside of the laboratory, and the environment to organisms containing recombinant DNA molecules. Physical containment is achieved through the use of laboratory practices, containment equipment, and special laboratory design. Emphasis is placed on primary means of physical containment which are provided by laboratory practices and containment equipment. Special laboratory design provides a secondary means of protection against the accidental release of organisms outside the laboratory or to the environment. Special laboratory design is used primarily in facilities in which experiments of moderate to high potential hazard are performed.

Combinations of laboratory practices, containment equipment, and special laboratory design can be made to achieve different levels of physical containment. Four levels of physical containment, which are designated as BL1, BL2, BL3, and BL4 are described. It should be emphasized that the descriptions and assignments of physical containment detailed below are based on existing approaches to containment of pathogenic organisms (see Appendix G–III–B). The National Cancer Institute describes three levels for research on oncogenic viruses which roughly correspond to our BL2, BL3, and BL4 levels (see Appendix G–III–C).

It is recognized that several different combinations of laboratory practices, containment equipment, and special laboratory design may be appropriate for containment of specific research activities. The NIH Guidelines, therefore, allow alternative selections of primary containment equipment within facilities that have been designed to provide BL3 and BL4 levels of physical containment. The selection of alternative methods of primary containment is dependent, however, on the level of biological containment provided by the host-vector system used in the experiment. Consideration will be given by the NIH Director, with the advice of the RAC to other combinations which achieve an equivalent level of containment (see Section IV–C–1–b–(2)–(c)).

Appendix G–II–A. Biosafety Level 1 (BL1) (see Appendix G–III–M)

Appendix G–II–A–1. Standard Microbiological Practices (BL1). Appendix G–II–A–1–a. Access to the laboratory is limited or restricted at the discretion of the Principal Investigator when experiments are in progress.

Appendix G–II–A–1–b. Work surfaces are decontaminated once a day and after any spill of viable material.

Appendix G–II–A–1–c. All contaminated liquid or solid wastes are decontaminated before disposal.

Appendix G–II–A–1–d. Mechanical pipetting devices are used; mouth pipetting is prohibited.

Appendix G–II–A–1–e. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area. Food may be stored in cabinets or refrigerators designated and used for this purpose only.

Appendix G–II–A–1–f. Persons wash their hands: (i) After they handle materials involving organisms containing recombinant DNA molecules and animals, and (ii) before exiting the laboratory.

Appendix G–II–A–1–g. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G–II–A–1–h. In the interest of good personal hygiene, facilities (e.g., hand washing sink, shower, changing room) and protective clothing (e.g., uniforms, laboratory coats) shall be provided that are appropriate for the risk of exposure to viable organisms containing recombinant DNA molecules.

Appendix G–II–A–2. Special Practices (BL1). Appendix G–II–A–2–a. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leak-proof container which is closed before being removed from the laboratory.

Appendix G–II–A–2–b. An insect and rodent control program is in effect.

Appendix G–II–A–3. Containment Equipment (BL1). Appendix G–II–A–3–a. Special containment equipment is generally not required for manipulations of agents assigned to BL1.

Appendix G–II–A–4. Laboratory Facilities (BL1). Appendix G–II–A–4–a. The laboratory is designed so that it can be easily cleaned.

Appendix G–II–A–4–b. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G–II–A–4–c. Laboratory furniture is sturdy. Spaces between benches, cabinets, and equipment are accessible for cleaning.

Appendix G–II–A–4–d. Each laboratory contains a sink for hand washing.

Appendix G–II–A–4–e. If the laboratory has windows that open, they are fitted with fly screens.

Appendix G–II–B. Biosafety Level 2 (BL2) (see Appendix G–III–N)

Appendix G–II–B–1. Standard Microbiological Practices (BL2). Appendix G–II–B–1–a. Access to the laboratory is limited or restricted by the Principal Investigator when work with organisms containing recombinant DNA molecules is in progress.

Appendix G–II–B–1–b. Work surfaces are decontaminated at least once a day and after any spill of viable material.

Appendix G–II–B–1–c. All contaminated liquid or solid wastes are decontaminated before disposal.

Appendix G–II–B–1–d. Mechanical pipetting devices are used; mouth pipetting is prohibited.

Appendix G–II–B–1–e. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area. Food may be stored in cabinets or refrigerators designated and used for this purpose only.

and animals, and (ii) before exiting the laboratory.

Appendix G-II-A–1-g. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G-II-A–1-h. In the interest of good personal hygiene, facilities (e.g., hand washing sink, shower, changing room) and protective clothing (e.g., uniforms, laboratory coats) shall be provided that are appropriate for the risk of exposure to viable organisms containing recombinant DNA molecules.

Appendix G-II-A–2. Special Practices (BL1). Appendix G-II-A–2-a. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leak-proof container which is closed before being removed from the laboratory.

Appendix G-II-A–2-b. An insect and rodent control program is in effect.

Appendix G-II-A–3. Containment Equipment (BL1). Appendix G-II-A–3-a. Special containment equipment is generally not required for manipulations of agents assigned to BL1.

Appendix G-II-A–4. Laboratory Facilities (BL1). Appendix G-II-A–4-a. The laboratory is designed so that it can be easily cleaned.

Appendix G-II-A–4-b. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G-II-A–4-c. Laboratory furniture is sturdy. Spaces between benches, cabinets, and equipment are accessible for cleaning.

Appendix G-II-A–4-d. Each laboratory contains a sink for hand washing.

Appendix G-II-A–4-e. If the laboratory has windows that open, they are fitted with fly screens.

Appendix G-II-B. Biosafety Level 2 (BL2) (see Appendix G-III-N)

Appendix G-II-B–1. Standard Microbiological Practices (BL2). Appendix G-II-B–1-a. Access to the laboratory is limited or restricted by the Principal Investigator when work with organisms containing recombinant DNA molecules is in progress.

Appendix G-II-B–1-b. Work surfaces are decontaminated at least once a day and after any spill of viable material.

Appendix G-II-B–1-c. All contaminated liquid or solid wastes are decontaminated before disposal.

Appendix G-II-B–1-d. Mechanical pipetting devices are used; mouth pipetting is prohibited.

Appendix G-II-B–1-e. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area. Food may be stored in cabinets or refrigerators designated and used for this purpose only.

Appendix G-II-B–1-f. Persons wash their hands: (i) after handling materials involving organisms containing recombinant DNA molecules and animals, and (ii) when exiting the laboratory.

Appendix G-II-B–1-g. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G-II-B–1-h. Experiments of lesser biohazard potential can be conducted concurrently in carefully demarcated areas of the same laboratory.

Appendix G-II-B–2. Special Practices (BL2). Appendix G-II-B–2-a. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leak-proof container which is closed before being removed from the laboratory.

Appendix G-II-B–2-b. The Principal Investigator limits access to the laboratory. The Principal Investigator has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory.

Appendix G-II-B–2-c. The Principal Investigator establishes policies and procedures whereby only persons who have been advised of the potential hazard and meet any specific entry requirements (e.g., immunization) may enter the laboratory or animal rooms.

Appendix G-II-B–2-d. When the organisms containing recombinant DNA molecules in use in the laboratory require special provisions for entry (e.g., vaccination), a hazard warning sign incorporating the universal biosafety symbol is posted on the access door to the laboratory work area. The hazard warning sign identifies the agent, lists the name and telephone number of the Principal Investigator or other responsible person(s), and indicates the special requirement(s) for entering the laboratory.

Appendix G-II-B–2-e. An insect and rodent control program is in effect.

Appendix G-II-B–2-f. Laboratory coats, gowns, smocks, or uniforms are worn while in the laboratory. Before exiting the laboratory for non-laboratory areas (e.g., cafeteria, library, administrative offices), this protective clothing is removed and left in the laboratory or covered with a clean coat not used in the laboratory.

Appendix G-II-B–2-g. Animals not involved in the work being performed are not permitted in the laboratory.

Appendix G-II-B–2-h. Special care is taken to avoid skin contamination with organisms containing recombinant DNA molecules; gloves should be worn when handling experimental animals and when skin contact with the agent is unavoidable.

Appendix G-II-B–2-i. All wastes from laboratories and animal rooms are appropriately decontaminated before disposal.

Appendix G-II-B–2-j. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution should be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles should not be bent, sheared, replaced in the needle sheath or guard, or removed from the syringe following use. The needle and syringe should be promptly placed in a puncture-resistant container and decontaminated, preferably autoclaved, before discard or reuse.

Appendix G-II-B–2-k. Spills and accidents which result in overt exposures to organisms containing recombinant DNA molecules are immediately reported to the Institutional Biosafety Committee and NIH/ORDA. Reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Medical evaluation, surveillance, and treatment are provided as appropriate and written records are maintained.

Appendix G-II-B–2-l. When appropriate, considering the agent(s) handled, baseline serum samples for laboratory and other at-risk personnel are collected and stored. Additional serum specimens may be collected periodically depending on the agents handled or the function of the facility.

Appendix G-II-B–2-m. A biosafety manual is prepared or adopted. Personnel are advised of special hazards and are required to read and follow instructions on practices and procedures.

Appendix G-II-B–3. Containment Equipment (BL 2). Appendix G-II-B–3-a. Biological safety cabinets (Class I or II) (see Appendix G-III-L) or other appropriate personal protective or physical containment devices are used whenever:

Appendix G-II-B–3-a-(1). Procedures with a high potential for creating aerosols are conducted (see Appendix G-III-O). These may include centrifuging, grinding, blending, vigorous shaking or mixing, sonic disruption, opening containers of

materials whose internal pressures may be different from ambient pressures, intranasal inoculation of animals, and harvesting infected tissues from animals or eggs.

Appendix G-II-B–3-a-(2). High concentrations or large volumes of organisms containing recombinant DNA molecules are used. Such materials may be centrifuged in the open laboratory if sealed beads or centrifuge safety cups are used and if they are opened only in a biological safety cabinet.

Appendix G-II-B–4, Laboratory Facilities (BL 2). Appendix G-II-B–4-a. The laboratory is designed so that it can be easily cleaned.

Appendix G-II-B–4-b. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G-II-B–4-c. Laboratory furniture is sturdy and spaces between benches, cabinets, and equipment are accessible for cleaning.

Appendix G-II-B–4-d. Each laboratory contains a sink for hand washing.

Appendix G-II-B–4-e. If the laboratory has windows that open, they are fitted with fly screens.

Appendix G-II-B–4-f. An autoclave for decontaminating laboratory wastes is available.

Appendix G-II-C. Biosafety Level 3 (BL3) (see Appendix G-III-P)

Appendix G-II-C–1. Standard Microbiological Practices (BL3). Appendix G-II-C–1-a. Work surfaces are decontaminated at least once a day and after any spill of viable material.

Appendix G-II-C–1-b. All contaminated liquid or solid wastes are decontaminated before disposal.

Appendix G-II-C–1-c. Mechanical pipetting devices are used; mouth pipetting is prohibited.

Appendix G-II-C–1-d. Eating, drinking. smoking, storing food, and applying cosmetics are not permitted in the work area.

Appendix G-II-C–1-e. Persons wash their hands: (i) after handling materials involving organisms containing recombinant DNA molecules, and handling animals, and (ii) when exiting the laboratory.

Appendix G-II-C–1-f. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G-II-C–1-g. Persons under 16 years of age shall not enter the laboratory.

Appendix G-II-C–1-h. If experiments involving other organisms which require lower levels of containment are to be conducted in the same laboratory concurrently with experiments requiring BL3 level physical containment, they shall be conducted in accordance with all BL3 level laboratory practices.

Appendix G-II-C–2. Special Practices (BL3) Appendix G-II-C–2-a. Laboratory doors are kept closed when experiments are in progress.

Appendix G-II-C–2-b. Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leak-proof container which is closed before being removed from the laboratory.

Appendix G-II-C–2-c. The Principal Investigator controls access to the laboratory and restricts access to persons whose presence is required for program or support purposes. The Principal Investigator has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory.

Appendix G-II-C–2-d. The Principal Investigator establishes policies and procedures whereby only persons who have been advised of the potential biohazard, who meet any specific entry requirements (e.g., immunization), and who comply with all entry and exit procedures entering the laboratory or animal rooms.

Appendix G-II-C–2-e. When organisms containing recombinant DNA molecules or experimental animals are present in the laboratory or containment module, a hazard warning sign incorporating the universal biosafety symbol is posted on all laboratory and animal room access doors. The hazard warning sign identifies the agent, lists the name and telephone number of the Principal Investigator or other responsible person(s), and indicates any special requirements for entering the laboratory such as the need for immunizations, respirators, or other personal protective measures.

Appendix G-II-C–2-f. All activities involving organisms containing recombinant DNA molecules are conducted in biological safety cabinets or other physical containment devices within the containment module. No work in open vessels is conducted on the open bench.

Appendix G-II-C–2-g. The work surfaces of biological safety cabinets and other containment equipment are decontaminated when work with organisms containing recombinant DNA molecules is finished. Plastic-backed paper toweling used on non-perforated work surfaces within biological safety cabinets facilitates clean-up.

Appendix G-II-C–2-h. An insect and rodent program is in effect.

Appendix G-II-C–2-i. Laboratory clothing that protects street clothing (e.g., solid front or wrap-around gowns, scrub suits, coveralls) is worn in the laboratory. Laboratory clothing is not worn outside the laboratory, and it is decontaminated prior to laundering or disposal.

Appendix G-II-C–2-j. Special care is taken to avoid skin contamination with contaminated materials; gloves should be worn when handling infected animals and when skin contact with infectious materials is unavoidable.

Appendix G-II-C–2-k. Molded surgical masks or respirators are worn in rooms containing experimental animals.

Appendix G-II-C–2-l. Animals and plants not related to the work being conducted are not permitted in the laboratory.

Appendix G-II-C–2-m. Laboratory animals held in a BL3 area shall be housed in partial-containment caging systems, such as Horsfall units (see Appendix G-III-K), open cages placed in ventilated enclosures, solid-wall and -bottom cages covered by filter bonnets or solid-wall and -bottom cages placed on holding racks equipped with ultraviolet in radiation lamps and reflectors.

Note: Conventional caging systems may be used provided that all personnel wear appropriate personal protective devices. These protective devices shall include at a minimum wrap-around gowns, head covers, gloves, shoe covers, and respirators. All personnel shall shower on exit from areas where these devices are required.

Appendix G-II-C–2-n. All wastes from laboratories and animal rooms are appropriately decontaminated before disposal.

Appendix G-II-C–2-o. Vacuum lines are protected with high efficiency particulate air/HEPA filters and liquid disinfectant traps.

Appendix G–II–C–2–p. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution should be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles should not be bent, sheared, replaced in the needle sheath or guard, or removed from the syringe following use. The needle and syringe should be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix G–II–C–2–q. Spills and accidents which result in overt or potential exposures to organisms

containing recombinant DNA molecules are immediately reported to the Biological Safety Officer, Institutional Biosafety Committee, and NIH/ORDA. Reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Appropriate medical evaluation, surveillance, and treatment are provided and written records are maintained.

Appendix G–II–C–2–r. Baseline serum samples for all laboratory and other at-risk personnel should be collected and stored. Additional serum specimens may be collected periodically depending on the agents handled or the function of the laboratory.

Appendix G–II–C–2–s. A biosafety manual is prepared or adopted. Personnel are advised of special hazards and are required to read and follow the instructions on practices and procedures.

Appendix G–II–C–2–t. Alternative Selection of Containment Equipment (BL3) Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified may be conducted in the BL3 laboratory using containment equipment specified for the BL2 level of physical containment. Experimental procedures involving a host-vector system that provides a one-step lower level of biological containment than that specified may be conducted in the BL3 laboratory using containment equipment specified for the BL4 level of physical containment. Alternative combination of containment safeguards are shown in Appendix G–Table 1.

Appendix G–II–C–3. Containment Equipment (BL3). Appendix G–II–C–3–a. Biological safety cabinets (Class I, II, or III) (see Appendix G–III–L) or other appropriate combinations of personal protective or physical containment devices (e.g., special protective clothing, masks, gloves, respirators, centrifuge safety cups, sealed centrifuge rotors, and containment caging for animals) are used for all activities with organisms containing recombinant DNA molecules which pose a threat of aerosol exposure. These include: manipulation of cultures and of those clinical or environmental materials which may be a source of aerosols; the aerosol challenge of experimental animals; the harvesting of infected tissues or fluids from experimental animals and embryonate eggs; and the necropsy of experimental animals.

Appendix G–II–C–4. Laboratory Facilities (BL3) Appendix G–II–C–4–a. The laboratory is separated from areas

containing recombinant DNA molecules are immediately reported to the Biological Safety Officer, Institutional Biosafety Committee, and NIH/ORDA. Reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Appropriate medical evaluation, surveillance, and treatment are provided and written records are maintained.

Appendix G–II–C–2–r. Baseline serum samples for all laboratory and other at-risk personnel should be collected and stored. Additional serum specimens may be collected periodically depending on the agents handled or the function of the laboratory.

Appendix G–II–C–2–s. A biosafety manual is prepared or adopted. Personnel are advised of special hazards and are required to read and follow the instructions on practices and procedures.

Appendix G–II–C–2–t. Alternative Selection of Containment Equipment (BL3) Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified may be conducted in the BL3 laboratory using containment equipment specified for the BL2 level of physical containment. Experimental procedures involving a host-vector system that provides a one-step lower level of biological containment than that specified may be conducted in the BL3 laboratory using containment equipment specified for the BL4 level of physical containment. Alternative combination of containment safeguards are shown in Appendix G–Table 1.

Appendix G–II–C–3. Containment Equipment (BL3). Appendix G–II–C–3–a. Biological safety cabinets (Class I, II, or III) (see Appendix G–III–L) or other appropriate combinations of personal protective or physical containment devices (e.g., special protective clothing, masks, gloves, respirators, centrifuge safety cups, sealed centrifuge rotors, and containment caging for animals) are used for all activities with organisms containing recombinant DNA molecules which pose a threat of aerosol exposure. These include: manipulation of cultures and of those clinical or environmental materials which may be a source of aerosols; the aerosol challenge of experimental animals; the harvesting of infected tissues or fluids from experimental animals and embryonate eggs; and the necropsy of experimental animals.

Appendix G–II–C–4. Laboratory Facilities (BL3) Appendix G–II–C–4–a. The laboratory is separated from areas which are open to unrestricted traffic flow within the building. Passage through two sets of doors is the basic requirement for entry into the laboratory from access corridors or other contiguous areas. Physical separation of the high containment laboratory from access corridors or other laboratories or activities may be provided by a double-doored clothes change room (showers may be included), airlock, or other access facility which requires passage through two sets of doors before entering the laboratory.

Appendix G–II–C–4–b. The interior surfaces of walls, floors, and ceilings are water resistant so that they can be easily cleaned. Penetrations in these surfaces are sealed or capable of being sealed to facilitate decontaminating the area.

Appendix G–II–C–4–c. Bench tops are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G–II–C–4–d. Laboratory furniture is sturdy and spaces between benches, cabinets, and equipment are accessible for cleaning.

Appendix G–II–C–4–e. Each laboratory contains a sink for hand washing. The sink is foot, elbow, or automatically operated and is located near the laboratory exit door.

Appendix G–II–C–4–f. Windows in the laboratory are closed and sealed.

Appendix G–II–C–4–g. Access doors to the laboratory or containment module are self-closing.

Appendix G–II–C–4–h. An autoclave for decontaminating laboratory wastes is available preferably within the laboratory.

Appendix G–II–C–4–i. A ducted exhaust air ventilation system is provided. This system creates directional airflow that draws air into the laboratory through the entry area. The exhaust air is not recirculated to any other area of the building, is discharged to the outside, and is dispersed away from the occupied areas and air intakes. Personnel shall verify that the direction of the airflow (into the laboratory) is proper. The exhaust air from the laboratory room may be discharged to the outside without being filtered or otherwise treated.

Appendix G–II–C–4–j. The high efficiency particulate air/HEPA filtered exhaust air from Class I or Class II biological safety cabinets is discharged directly to the outside or through the building exhaust system. Exhaust air from Class I or II biological safety cabinets may be recirculated within the laboratory if the cabinet is tested and certified at least every twelve months. If the HEPA-filtered exhaust air from Class I or II biological safety cabinets is to be discharged to the outside through the building exhaust air system, it is connected to this system in a manner (e.g., thimble unit connection (see Appendix G–III–L)) that avoids any interference with the air balance of the cabinets or building exhaust system.

Appendix G–II–D. Biosafety Level 4 (BL4)

Appendix G–II–D–1. Standard Microbiological Practices (BL4)

Appendix G–II–D–1–a. Work surfaces are decontaminated at least once a day and immediately after any spill of viable material.

Appendix G–II–D–1–b. Only mechanical pipetting devices are used.

Appendix G–II–D–1–c. Eating, drinking, smoking, storing food, and applying cosmetics are not permitted in the laboratory.

Appendix G–II–D–1–d. All procedures are performed carefully to minimize the creation of aerosols.

Appendix G–II–D–2. Special Practices (BL4). Appendix G–II–D–2–a. Biological materials to be removed from the Class III cabinets or from the maximum containment laboratory in a viable or intact state are transferred to a non-breakable, sealed primary container and then enclosed in a non-breakable, sealed secondary container which is removed from the facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose.

Appendix G–II–D–2–b. No materials, except for biological materials that are to remain in a viable or intact state, are removed from the maximum containment laboratory unless they have been autoclaved or decontaminated before exiting the facility. Equipment or material which might be damaged by high temperatures or steam is decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

Appendix G–II–D–2–c. Only persons whose presence in the facility or individual laboratory rooms is required for program or support purposes are authorized to enter. The supervisor has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory. Access to the facility is limited by means of secure, locked doors; accessibility is managed by the Principal Investigator, Biological Safety Officer, or other persons responsible for the physical security of the facility. Before entering, persons are advised of the potential biohazards and instructed as to appropriate safeguards for ensuring their safety. Authorized persons comply with the instructions and all other applicable entry and exit procedures. A logbook signed by all personnel

indicates the date and time of each entry and exit. Practical and effective protocols for emergency situations are established.

Appendix G–II–D–2–d. Personnel enter and exit the facility only through the clothing change and shower rooms. Personnel shower each time they exit the facility. Personnel use the air locks to enter or exit the laboratory only in an emergency.

Appendix G–II–D–2–e. Street clothing is removed in the outer clothing change room and kept there. Complete laboratory clothing (may be disposable), including undergarments, pants and shirts or jump suits, shoes, and gloves, is provided and used by all personnel entering the facility. Head covers are provided for personnel who do not wash their hair during the exit shower. When exiting the laboratory and before proceeding into the shower area, personnel remove their laboratory clothing and store it in a locker or hamper in the inner change room. Protective clothing shall be decontaminated prior to laundering or disposal.

Appendix G–II–D–2–f. When materials that contain organisms containing recombinant DNA molecules or experimental animals are present in the laboratory or animal rooms, a hazard warning sign incorporating the universal biosafety symbol is posted on all access doors. The sign identifies the agent, lists the name of the Principal Investigator or other responsible person(s), and indicates any special requirements for entering the area (e.g., the need for immunizations or respirators).

Appendix G–II–D–2–g. Supplies and materials needed in the facility are brought in by way of the double-doored autoclave, fumigation chamber, or airlock which is appropriately decontaminated between each use. After securing the outer doors, personnel within the facility retrieve the materials by opening the interior doors or the autoclave, fumigation chamber, or airlock. These doors are secured after materials are brought into the facility.

Appendix G–II–D–2–h. An insect and rodent control program is in effect.

Appendix G–II–D–2–i. Materials (e.g., plants, animals, and clothing) not related to the experiment being conducted are not permitted in the facility.

Appendix G–II–D–2–j. Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral part of unit) are used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Needles should not be bent, sheared, replaced in the needle sheath or guard, or removed from the syringe following use. The needle and syringe should be placed in a puncture-resistant container and decontaminated, preferably by autoclaving before discard or reuse. Whenever possible, cannulas are used instead of sharp needles (e.g., gavage).

Appendix G–II–D–2–k. A system is set up for reporting laboratory accidents, exposures, employee absenteeism, and for the medical surveillance of potential laboratory-associated illnesses. Spills and accidents which result in overt exposures to organisms containing recombinant DNA molecules are immediately reported to the Biological Safety Officer, Institutional Biosafety Committee, and NIH/ORDA. Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Written records are prepared and maintained. An essential adjunct to such a reporting-surveillance system is the availability of a facility for quarantine, isolation, and medical care of personnel with potential or known laboratory associated illnesses.

Appendix G–II–D–2–l. Laboratory animals involved in experiments requiring BL4 level physical containment shall be housed either in cages contained in Class III cabinets or in partial containment caging systems, such as Horsfall units (see Appendix G–III–K), open cages placed in ventilated enclosures, or solid-wall and- bottom cages placed on holding racks equipped with ultraviolet irradiation lamps and reflectors that are located in a specially designed area in which all personnel are required to wear one-piece positive pressure suits.

Appendix G–II–D–2–m. Alternative Selection of Containment Equipment (BL4)

Experimental procedures involving a host-vector system that provides a one-step higher level of biological containment than that specified may be conducted in the BL4 facility using containment equipment requirements specified for the BL3 level of physical containment. Alternative combinations of containment safeguards are shown in Appendix G—Table 1.

Appendix G–II–D–3. Containment Equipment (BL4). Appendix G–II–D–3–a. All procedures within the facility with agents assigned to Biosafety Level 4 are conducted in the Class III biological safety cabinet or in Class I or II biological safety cabinets used in conjunction with one-piece positive pressure personnel suits ventilated by a life-support system.

Appendix G–II–D–4. Laboratory Facilities (BL4). Appendix G–II–D–4–a. The maximum containment facility consists of either a separate building or a clearly demarcated and isolated zone within a building. Outer and inner change rooms separated by a shower are provided for personnel entering and exiting the facility. A double-doored autoclave, fumigation chamber, or ventilated airlock is provided for passage of those materials, supplies, or equipment which are not brought into the facility through the change room.

Appendix G–II–D–4–b. Walls, floors, and ceilings of the facility are constructed to form a sealed internal shell which facilitates fumigation and is animal and insect proof. The internal surfaces of this shell are resistant to liquids and chemicals, thus facilitating cleaning and decontamination of the area. All penetrations in these structures and surfaces are sealed. Any drains in the floors contain traps filled with a chemical disinfectant of demonstrated efficacy against the target agent, and they are connected directly to the liquid waste decontamination system. Sewer and other ventilation lines contain high efficiency particulate air/HEPA filters.

Appendix G–II–D–4–c. Internal facility appurtenances, such as light fixtures, air ducts, and utility pipes, are arranged to minimize the horizontal surface area on which dust can settle.

Appendix G–II–D–4–d. Bench tops have seamless surfaces which are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix G–II–D–4–e. Laboratory furniture is simple and of sturdy construction; and spaces between benches, cabinets, and equipment are accessible for cleaning.

Appendix G–II–D–4–f. A foot, elbow, or automatically operated hand washing sink is provided near the door of each laboratory room in the facility.

Appendix G–II–D–4–g. If there is a central vacuum system, it does not serve areas outside the facility. In-line high efficiency particulate air/HEPA filters are placed as near as practicable to each use point or service cock. Filters are installed to permit in-place decontamination and replacement. Other liquid and gas services to the facility are protected by devices that prevent back-flow.

Appendix G–II–D–4–h. If water fountains are provided, they are foot operated and are located in the facility corridors outside the laboratory. The water service to the fountain is not connected to the back-flow protected distribution system supplying water to the laboratory areas.

Appendix G–II–D–4–i. Access doors to the laboratory are self-closing and locking.

Appendix G–II–D–4–j. Any windows are breakage resistant.

Appendix G–II–D–4–k. A double-doored autoclave is provided for decontaminating materials passing out of the facility. The autoclave door which opens to the area external to the facility is sealed to the outer wall and automatically controlled so that the outside door can only be opened after the autoclave "sterilization" cycle has been completed.

Appendix G–II–D–4–l. A pass-through dunk tank, fumigation chamber, or an equivalent decontamination method is provided so that materials and equipment that cannot be decontaminated in the autoclave can be safely removed from the facility.

Appendix G–II–D–4–m. Liquid effluent from laboratory sinks, biological safety cabinets, floors, and autoclave chambers are decontaminated by heat treatment before being released from the maximum containment facility. Liquid wastes from shower rooms and toilets may be decontaminated with chemical disinfectants or by heat in the liquid waste decontamination system. The procedure used for heat decontamination of liquid wastes is evaluated mechanically and biologically by using a recording thermometer and an indicator microorganism with a defined heat susceptibility pattern. If liquid wastes from the shower room are decontaminated with chemical

APPENDIX G—TABLE 1.—POSSIBLE A

Classification of physical & biological contain
BL3/HV2
BL3/HV1
BL4/HV1

BL—Biosafety Level.
HV—Host-Vector System.

Appendix G–III. Footnotes and References of Appendix G

Appendix G–III–A. Laboratory Safety at the Center for Disease Control, U.S. Department of Health, Education, and Welfare Publication No. CDC 75–8118, September 1974.

corridors outside the laboratory. The water service to the fountain is not connected to the back-flow protected distribution system supplying water to the laboratory areas.

Appendix G–II–D–4–i. Access doors to the laboratory are self-closing and locking.

Appendix G–II–D–4–j. Any windows are breakage resistant.

Appendix G–II–D–4–k. A double-doored autoclave is provided for decontaminating materials passing out of the facility. The autoclave door which opens to the area external to the facility is sealed to the outer wall and automatically controlled so that the outside door can only be opened after the autoclave "sterilization" cycle has been completed.

Appendix G–II–D–4–l. A pass-through dunk tank, fumigation chamber, or an equivalent decontamination method is provided so that materials and equipment that cannot be decontaminated in the autoclave can be safely removed from the facility.

Appendix G–II–D–4–m. Liquid effluent from laboratory sinks, biological safety cabinets, floors, and autoclave chambers are decontaminated by heat treatment before being released from the maximum containment facility. Liquid wastes from shower rooms and toilets may be decontaminated with chemical disinfectants or by heat in the liquid waste decontamination system. The procedure used for heat decontamination of liquid wastes is evaluated mechanically and biologically by using a recording thermometer and an indicator microorganism with a defined heat susceptibility pattern. If liquid wastes from the shower room are decontaminated with chemical disinfectants, the chemical used is of demonstrated efficacy against the target or indicator microorganisms.

Appendix G–II–D–4–n. An individual supply and exhaust air ventilation system is provided. The system maintains pressure differentials and directional airflow as required to assure flows inward from areas outside of the facility toward areas of highest potential risk within the facility. Manometers are used to sense pressure differentials between adjacent areas maintained at different pressure levels. If a system malfunctions, the manometers sound an alarm. The supply and exhaust airflow is interlocked to assure inward (or zero) airflow at all times.

Appendix G–II–D–4–o. The exhaust air from the facility is filtered through high efficiency particulate air/HEPA filters and discharged to the outside so that it is dispersed away from occupied buildings and air intakes. Within the facility, the filters are located as near the laboratories as practicable in order to reduce the length of potentially contaminated air ducts. The filter chambers are designed to allow in situ decontamination before filters are removed and to facilitate certification testing after they are replaced. Coarse filters and HEPA filters are provided to treat air supplied to the facility in order to increase the lifetime of the exhaust HEPA filters and to protect the supply air system should air pressures become unbalanced in the laboratory.

Appendix G–II–D–4–p. The treated exhaust air from Class I and II biological safety cabinets may be discharged into the laboratory room environment or the outside through the facility air exhaust system. If exhaust air from Class I or II biological safety cabinets is discharged into the laboratory the cabinets are tested and certified at six-month intervals. The exhaust air from Class III biological safety cabinets is discharged, without recirculation through two sets of high efficiency particulate air/HEPA filters in series, via the facility exhaust air system. If the treated exhaust air from any of these cabinets is discharged to the outside through the facility exhaust air system, it is connected to this system in a manner (e.g., thimble unit connection (see Appendix G–III–L)) that avoids any interference with the air balance of the cabinets or the facility exhaust air system.

Appendix G–II–D–4–q. A specially designed suit area may be provided in the facility. Personnel who enter this area shall wear a one-piece positive pressure suit that is ventilated by a life-support system. The life-support system includes alarms and emergency backup breathing air tanks. Entry to this area is through an airlock fitted with airtight doors. A chemical shower is provided to decontaminate the surface of the suit before the worker exits the area. The exhaust air from the suit area is filtered by two sets of high efficiency particulate air/HEPA filters installed in series. A duplicate filtration unit, exhaust fan, and an automatically starting emergency power source are provided. The air pressure within the suit area is greater than that of any adjacent area. Emergency lighting and communication systems are provided. All penetrations into the internal shell of the suit are sealed. A double-doored autoclave is provided for decontaminating waste materials to be removed from the suit areas.

APPENDIX G—TABLE 1.—POSSIBLE ALTERNATIVE COMBINATIONS OF PHYSICAL AND BIOLOGICAL CONTAINMENT SAFEGUARDS

Classification of physical & biological containment	Alternate physical containment			Alternate biological containment
	Laboratory facili-	Laboratory prac-tices	Laboratory equip-	
BL3/HV2	BL3	BL3	BL3	HV2
BL3/HV1	BL3	BL3	BL4	HV1
	BL3	BL3	BL3	HV1
BL4/HV1	BL3	BL3	BL2	HV2
	BL4	BL4	BL4	HV1
	BL4	BL4	BL3	HV2

BL—Biosafety Level.
HV—Host-Vector System.

Appendix G–III. Footnotes and References of Appendix G

Appendix G–III–A. Laboratory Safety at the Center for Disease Control, U.S. Department of Health, Education, and Welfare Publication No. CDC 75–8118, September 1974.

Appendix G–III–B. Biosafety in Microbiological and Biomedical Laboratories, 3rd edition, May 1993, U.S. DHHS, Public Health Service, Centers for Disease Control and Prevention, Atlanta, Georgia, and NIH, Bethesda, Maryland.

Appendix G–III–C. National Cancer Institute Safety Standards for Research Involving Oncogenic Viruses, U.S. Department of Health, Education, and Welfare Publication No. (NIH) 75–790, October 1974.

Appendix G–III–D. National Institutes of Health Biohazards Safety Guide, U.S.

VOL 59 ISS 127 JL 5 994 UMI

Department of Health, Education, and Welfare, Public Health Service, NIH, U.S. Government Printing Office, Stock No. 1740–00383, 1974.

Appendix G–III–E. A. Hellman, M. N. Oxman, and R. Pollack (eds.), Biohazards in Biological Research, Cold Spring Harbor Laboratory 1973.

Appendix G–III–F. N. V. Steere (ed.), Handbook of Laboratory Safety, 2nd edition, The Chemical Rubber Co., Cleveland, Ohio, 1971.

Appendix G–III–G. Bodily, J. L, "General Administration of the Laboratory," H. L. Bodily, E. L. Updyke, and J. O. Mason (eds.), Diagnostic Procedures for Bacterial, Mycotic, and Parasitic Infections, American Public Health Association, New York, 1970, pp. 11–28.

Appendix G–III–H. Darlow, H. M. (1969). "Safety in the Microbiological Laboratory," in J. R. Norris and D. W. Robbins (eds.), Methods in Microbiology, Academic Press, Inc., New York, pp. 169–204.

Appendix G–III–I. The Prevention of Laboratory Acquired Infection, C. H. Collins, E. G. Hartley, and R. Pilsworth, Public Health Laboratory Service, Monograph Series No. 6, 1974.

Appendix G–III–J. Chatigny, M. A., "Protection Against Infection in the Microbiological Laboratory: Devices and Procedures," in W. W. Umbreit (ed.), Advances in Applied Microbiology, Academic Press, New York, New York, 1961, 3:131–192.

Appendix G–III–K. Horsfall, F. L. Jr., and J. H. Baner, Individual Isolation of Infected Animals in a Single Room, J. Bact., 1940, 40, 569–580.

Appendix G–III–L. Biological safety cabinets referred to in this section are classified as Class I, Class II, or Class III cabinets. A Class I is a ventilated cabinet for personnel protection having an inward flow of air away from the operator. The exhaust air from this cabinet is filtered through a high efficiency particulate air/HEPA filter. This cabinet is used in three operational modes: (i) with a full-width open front, (ii) with an installed front closure panel (having four 6-inch diameter openings) without gloves, and (iii) with an installed front closure panel equipped with arm-length rubber gloves. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater. A Class II cabinet is a ventilated cabinet for personnel and product protection having an open front with inward air flow for personnel protection, and HEPA filtered mass recirculated air flow for product protection. The cabinet exhaust air is filtered through a HEPA filter. The face velocity of the inward flow of air through the full-width open front is 75 feet per minute or greater. Design and performance specifications for Class II cabinets have been adopted by the National Sanitation Foundation, Ann Arbor, Michigan. A Class III cabinet is a closed-front ventilated cabinet of gas tight construction which provides the highest level of personnel protection of all biosafety safety cabinets. The interior of the cabinet is protected from contaminants exterior to the cabinet. The cabinet is fitted with arm-length rubber gloves and is operated under a negative pressure of at least 0.5 inches water gauge. All supply air is filtered through HEPA filters. Exhaust air is filtered through two HEPA filters or one HEPA filter and incinerator before being discharged to the outside environment. National Sanitation Foundation Standard 49. 1976. Class II (Laminar Flow) Biohazard Cabinetry, Ann Arbor, Michigan.

Appendix G–III–M. Biosafety Level 1 is suitable for work involving agents of unknown or minimal potential hazard to laboratory personnel and the environment. The laboratory is not separated from the general traffic patterns in the building. Work is generally conducted on open bench tops. Special containment equipment is not required or generally used. Laboratory personnel have specific training in the procedures conducted in the laboratory and are supervised by a scientist with general training in microbiology or a related science (see Appendix G–III–B).

Appendix G–III–N. Biosafety Level 2 is similar to Level 1 and is suitable for work involving agents of moderate potential hazard to personnel and the environment. It differs in that: (1) laboratory personnel have specific training in handling pathogenic agents and are directed by competent scientists; (2) access to the laboratory is limited when work is being conducted; and (3) certain procedures in which infectious aerosols are created are conducted in biological safety cabinets or other physical containment equipment (see Appendix G–III–B).

Appendix G–III–O. Office of Research Safety, National Cancer Institute, and the Special Committee of Safety and Health Experts, Laboratory Safety Monograph: A Supplement to the NIH Guidelines for Recombinant DNA Research, NIH, Bethesda, Maryland 1978.

Appendix G–III–P. Biosafety Level 3 is applicable to clinical, diagnostic, teaching, research, or production facilities in which work is conducted with indigenous or exotic agents which may cause serious or potentially lethal disease as a result of exposure by the inhalation route. Laboratory personnel have specific training in handling pathogenic and potentially lethal agents and are supervised by competent scientists who are experienced in working with these agents. All procedures involving the manipulation of infectious material are conducted within biological safety cabinets or other physical containment devices or by personnel wearing appropriate personal protective clothing and devices. The laboratory has special engineering and design features. It is recognized, however, that many existing facilities may not have all the facility safeguards recommended for BL3 (e.g., access zone, sealed penetrations, and directional airflow, etc.). In these circumstances, acceptable safety may be achieved for routine or repetitive operations (e.g., diagnostic procedures involving the propagation of an agent for identification, typing, and susceptibility testing) in laboratories where facility features satisfy BL2 recommendations provided the recommended "Standard Microbiological Practices," "Special Practices," and "Containment Equipment" for BL3 are rigorously followed. The decision to implement this modification of BL3 recommendations should be made only by the Principal Investigator.

Appendix H. Shipment

Recombinant DNA molecules contained in an organism or in a viral genome shall be shipped under the applicable regulations of the U.S. Postal Service (39 Code of Federal Regulations, Part 3); the Public Health Service (42 Code of Federal Regulations, Part 72); the U.S. Department of Agriculture (9 Code of Federal Regulations, Subchapters D and E; 7 CFR, Part 340); and/or the U.S. Department of Transportation (49 Code of Federal Regulations, Parts 171–179).

Appendix H–I. Host organisms or viruses will be shipped as etiologic agents, regardless of whether they contain recombinant DNA, if they are regulated as human pathogens by the Public Health Service (42 Code of Federal Regulations, Part 72) or as animal pathogens or plant pests under the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (Titles 9 and 7 Code of Federal Regulations, respectively).

Appendix H–II. Host organisms and viruses will be shipped as etiologic agents if they contain recombinant DNA when: (i) the recombinant DNA includes the complete genome of a host organism or virus regulated as a human or animal pathogen or a plant pest; or (ii) the recombinant DNA codes for a toxin or other factor directly involved in eliciting human, animal, or plant disease or inhibiting plant growth, and is carried on an expression vector or within the host chromosome and/or when the host organism contains a conjugation proficient plasmid or a generalized transducing phage; or (iii) the recombinant DNA comes from a host organism or virus regulated as a human or animal pathogen or as a plant pest and has not been adequately characterized to demonstrate that it does not code for a factor involved in eliciting human, animal, or plant disease.

Appendix H–III. Footnotes and References of Appendix H

For further information on shipping etiologic agents contact: (i) The Centers for Disease Control and Prevention, ATTN: Biohazards Control Office, 1600 Clifton Road, Atlanta, Georgia 30333, (404) 639–3883, FTS 236–3883; (ii) The U.S. Department of Transportation, ATTN: Office of Hazardous Materials Transportation, 400 7th Street, S.W., Washington, DC 20590, (202) 366–4545; or (iii) U.S. Department of Agriculture, ATTN: Animal and Plant Health Inspection Service, Import-Export Products, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782; for Animal Pathogens call (301) 436–7885; for Plant Pests (301) 436–6799.

Appendix I. Biological Containment (See Appendix E)

Appendix I–I. Levels of Biological Containment

In consideration of biological containment, the vector (plasmid, organelle, or virus) for the recombinant DNA and the host (bacterial, plant, or animal cell) in which the vector is propagated in the laboratory will be considered together. Any combination of vector and host which is to provide biological containment shall be chosen or constructed so that the following types of "escape" are minimized: (i) survival of the vector in its host outside the laboratory, and (ii) transmission of the vector from the propagation host to other non-laboratory hosts. The following levels of biological containment (host-vector systems) for prokaryotes are established. Appendices I–I–A through I–II–B describe levels of biological containment (host-vector systems) for prokaryotes. Specific criteria will depend on the organisms to be used.

pathogen or a plant pest; or (ii) the recombinant DNA codes for a toxin or other factor directly involved in eliciting human, animal, or plant disease or inhibiting plant growth, and is carried on an expression vector or within the host chromosome and/or when the host organism contains a conjugation proficient plasmid or a generalized transducing phage; or (iii) the recombinant DNA comes from a host organism or virus regulated as a human or animal pathogen or as a plant pest and has not been adequately characterized to demonstrate that it does not code for a factor involved in eliciting human, animal, or plant disease.

Appendix H–III. Footnotes and References of Appendix H

For further information on shipping etiologic agents contact: (i) The Centers for Disease Control and Prevention, ATTN: Biohazards Control Office, 1600 Clifton Road, Atlanta, Georgia 30333, (404) 639–3883, FTS 236–3883; (ii) The U.S. Department of Transportation, ATTN: Office of Hazardous Materials Transportation, 400 7th Street, S.W., Washington, DC 20590, (202) 366–4545; or (iii) U.S. Department of Agriculture, ATTN: Animal and Plant Health Inspection Service, Import-Export Products, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782; for Animal Pathogens call (301) 436–7885; for Plant Pests (301) 436–6799.

Appendix I. Biological Containment (See Appendix E)

Appendix I–I. Levels of Biological Containment

In consideration of biological containment, the vector (plasmid, organelle, or virus) for the recombinant DNA and the host (bacterial, plant, or animal cell) in which the vector is propagated in the laboratory will be considered together. Any combination of vector and host which is to provide biological containment shall be chosen or constructed so that the following types of "escape" are minimized: (i) survival of the vector in its host outside the laboratory, and (ii) transmission of the vector from the propagation host to other non-laboratory hosts. The following levels of biological containment (host-vector systems) for prokaryotes are established. Appendices I–I–A through I–II–B describe levels of biological containment (host-vector systems) for prokaryotes. Specific criteria will depend on the organisms to be used.

Appendix I–I–A. Host-Vector 1 Systems

Host-Vector 1 systems provide a moderate level of containment. Specific Host-Vector 1 systems are:

Appendix I–I–A–1. Escherichia coli K–12 Host-Vector 1 Systems (EK1). The host is always *Escherichia coli* K–12 or a derivative thereof, and the vectors include non-conjugative plasmids (e.g., pSC101, Co1E1, or derivatives thereof (see Appendices I–III–A through G) and variants of bacteriophage, such as lambda (see Appendices I–III–H through O). The *Escherichia coli* K–12 hosts shall not contain conjugation-proficient plasmids, whether autonomous or integrated, or generalized transducing phages.

Appendix I–I–A–2. Other Host-Vector 1 Systems. At a minimum, hosts and vectors shall be comparable in containment to *Escherichia coli* K–12 with a non-conjugative plasmid or bacteriophage vector. Appendix I–II describes the data to be considered and mechanism for approval of Host-Vector 1 systems.

Appendix I–I–B. Host-Vector 2 Systems

Host-Vector 2 Systems provide a high level of biological containment as demonstrated by data from suitable tests performed in the laboratory. Escape of the recombinant DNA either via survival of the organisms or via transmission of recombinant DNA to other organisms should be $<1/10^8$ under specified conditions. Specific Host-Vector 2 systems are:

Appendix I–I–B–1. For *Escherichia coli* K–12 Host-Vector 2 systems (EK2) in which the vector is a plasmid, no more than $1/10^8$ host cells shall perpetuate a cloned DNA fragment under the specified non-permissive laboratory conditions designed to represent the natural environment, either by survival of the original host or as a consequence of transmission of the cloned DNA fragment.

Appendix I–I–B–2. For Escherichia coli K–12 Host-Vector 2 systems (EK2) in which the vector is a phage, no more than $1/10^8$ phage particles shall perpetuate a cloned DNA fragment under the specified non-permissive laboratory conditions designed to represent the natural environment, either as a prophage (in the inserted or plasmid form) in the laboratory host used for phage propagation, or survival in natural environments and transferring a cloned DNA fragment to other hosts (or their resident prophages).

Appendix I–II. Certification of Host-Vector Systems

Appendix I–II–A. Responsibility. Host-Vector 1 systems (other than Escherichia coli K–12) and Host-Vector 2 systems may not be designated as such until they have been certified by the NIH Director. Requests for certification of host-vector systems may be submitted to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Proposed host-vector systems will be reviewed by the RAC (see section IV-C-1-b-(1)-(e)). Initial review will based on the construction, properties, and testing of the proposed host-vector system by a subcommittee composed of one or more RAC members and/or *ad hoc* experts. The RAC will evaluate the subcommittee's report and any other available information at the next scheduled RAC meeting. The NIH Director is responsible for certification of host-vector systems, following advice of the RAC. Minor modifications to existing host-vector systems (i.e., those that are of minimal or no consequence to the properties relevant to containment), may be certified by the NIH Director without prior RAC review (see section IV-C-1-b-(2)-(h)). Once a host-vector system has been certified by the NIH Director, a notice of certification will be sent by NIH/ORDA to the applicant and to the Institutional Biosafety Committee Chairs. A list of all currently certified host-vector systems is available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838. The NIH Director may rescind the certification of a host-vector system (see section IV-C-1-b-(2)-(i)). If certification is rescinded, NIH will instruct investigators to transfer cloned DNA into a different system or use the clones at a higher level of physical containment level, unless NIH determines that the already constructed clones incorporate adequate biological containment. Certification of an host-vector system does not extend to modifications of either the host or vector component of that system. Such modified systems shall be independently certified by the NIH Director. If modifications are minor, it may only be necessary for the investigator to submit data showing that the modifications have either improved or not impaired the major phenotypic traits on which the containment of the system depends. Substantial modifications to a certified host-vector system requires submission of complete testing data.

Appendix I–II–B. Data To Be Submitted for Certification

Appendix I–II–B–1. Host-Vector 1 Systems Other than Escherichia coli K–12. The following types of data shall be submitted, modified as appropriate for the particular system under consideration: (i) a description of the organism and vector; the strain's natural habitat and growth requirements; its physiological properties, particularly those related to its reproduction, survival, and the mechanisms by which it exchanges genetic information; the range of organisms with which this organism normally exchanges genetic information and the type of information is exchanged; and any relevant information about its pathogenicity or toxicity; (ii) a description of the history of the particular strains and vectors to be used, including data on any mutations which render this organism less able to survive or transmit genetic information; and (iii) a general description of the range of experiments contemplated with emphasis on the need for developing such an Host-Vector 1 system.

Appendix I–II–B–2. Host-Vector 2 Systems. Investigators planning to request Host-Vector 2 systems certification may obtain instructions from NIH/ORDA concerning data to be submitted (see Appendices I–III–N and O). In general, the following types of data are required: (i) description of construction steps with indication of source, properties, and manner of introduction of genetic traits; (ii) quantitative data on the stability of genetic traits that contribute to the containment of the system; (iii) data on the survival of the host-vector system under non-permissive laboratory conditions designed to represent the relevant natural environment; (iv) data on transmissibility of the vector and/or a cloned DNA fragment under both permissive and non-permissive conditions; (v) data on all other properties of the system which affect containment and utility, including information on yields of phage or plasmid molecules, ease of DNA isolation, and ease of transfection or transformation; and (vi) in some cases, the investigator may be asked to submit data on survival and vector transmissibility from experiments in which the host-vector is fed to laboratory animals or one or more human subjects. Such in vivo data may be required to confirm the validity of predicting in vivo survival on the basis of in vitro experiments. Data shall be submitted 12 weeks prior to the RAC meeting at which such data will be considered by the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Investigators are encouraged to publish their data on the construction, properties, and testing of proposed Host Vector 2 systems prior to consideration of the system by the RAC and its subcommittee. Specific instructions concerning the submission of data for proposed *Escherichia coli* K–12 Host-Vector 2 system (EK2) involving either plasmids or bacteriophage in *Escherichia coli* K–12, are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Appendix I–III. Footnotes and References of Appendix I

Appendix I–III–A. Hersfield, V., H.W. Boyer, C. Yanofsky, M.A. Lovett, and D.R. Helinski, Plasmid Co1E1 as a Molecular Vehicle for Cloning and Amplification of DNA. Proc. Nat. Acad. Sci., 1974, 71, pp. 3455–3459.

Appendix I–III–B. Wensink, P.C., D.J. Finnegan, J.E. Donelson, and D.S. Hogness, A System for Mapping DNA Sequences in the Chromosomes of Drosophila Melanogaster. Cell, 1974, 3, pp. 315–335.

Appendix I–III–C. Tanaka, T., and B. Weisblum, Construction of a Colicin El-R Factor Composite Plasmid in Vitro: Means for Amplification of Deoxyribonucleic Acid. J. Bacteriol., 1975, 121, pp. 354–362.

Appendix I–III–D. Armstrong, K.A., V. Hershfield, and D.R. Helinski, Gene Cloning and Containment Properties of Plasmid Col E1 and Its Derivatives, Science, 1977, 196, pp. 172–174.

Appendix I–III–E. Bolivar, F., R.L. Rodriguez, M.C. Betlack, and H.W. Boyer, Construction and Characterization of New Cloning Vehicles: I. Ampicillin-Resistant Derivative of PMB9, Gene, 1977, 2, pp. 75–93.

Appendix I–III–F. Cohen, S.N., A.C.W. Chang, H. Boyer, and R. Helling. Construction of Biologically Functional Bacterial Plasmids in Vitro. Proc. Natl. Acad, Sci., 1973, 70, pp. 3240–3244.

Appendix I–III–G. Bolivar, F., R.L. Rodriguez, R.J. Greene, M.C. Batlack, H.L. Reyneker, H.W. Boyer, J.H. Cross, and S. Falkow, 1977, Construction and Characterization of New Cloning Vehicles II. A Multi-Purpose Cloning System, Gene, 1977, 2, pp. 95–113.

Appendix I–III–H. Thomas, M., J.R. Cameron, and R.W. Davis (1974). Viable Molecular Hybrids of Bacteriophage Lambda and Eukaryotic DNA. Proc. Nat. Acad. Sci., 1974, 71, pp. 4579–4583.

Appendix I–III–I. Murray, N.E., and K. Murray, Manipulation of Restriction Targets in Phage Lambda to Form Receptor Chromosomes for DNA Fragments. Nature, 1974, 51, pp. 476–481.

Appendix I–III–J. Ramback, A., and P. Tiollais (1974). Bacteriophage Having EcoRI Endonuclease Sites Only in the Non-Essential Region of the Genome. Proc. Nat. Acad. Sci., 1974, 71, pp. 3927–3820.

Appendix I–III–K. Blattner, F.R., B.G. Williams, A.E. Bleche, K. Denniston-Thompson, H.E. Faber, L.A. Furlong, D.J. Gunwald, D.O. Kiefer, D.D. Moore, J.W. Shumm, E.L. Sheldon, and O. Smithies, Charon Phages: Safer Derivatives of Bacteriophage Lambda for DNA Cloning, Science 1977, 196, pp. 163–169.

Appendix I–III–L. Donoghue, D.J., and P.A. Sharp, An Improved Lambda Vector: Construction of Model Recombinants Coding for Kanamycin Resistance, Gene, 1977, 1, pp. 209–227.

Appendix I–III–M. Leder, P., D. Tiemeier and L. Enquist (1977), EK2 Derivatives of Bacteriophage Lambda Useful in the Cloning of DNA from Higher Organisms: The λgt WES System, Science, 1977, 196, pp. 175–177.

Appendix I–III–N. Skalka, A., Current Status of Coliphage AEK2 Vectors, Gene, 1978, 3, pp. 29–35.

Appendix I–III–O. Szybalski, W., A. Skalka, S. Gottesman, A. Campbell, and D. Botstein, Standardized Laboratory Tests for EK2 Certification, Gene, 1978, 3, pp. 36–38.

Appendix J. Biotechnology Research Subcommittee

The National Science and Technology Council's Committee on Fundamental Science determined that a subcommittee should be continued to identify and coordinate Federal research efforts, identify research needs, stimulating international cooperation, and assess national and international policy issues concerning biotechnology sciences. The primary emphasis will be on scientific issues to increase the overall effectiveness and productivity of the Federal investment in biotechnology sciences, especially regarding issues which cut across agency boundaries. This subcommittee is called the Biotechnology Research Subcommittee.

Membership of the Biotechnology Research Subcommittee will include Federal agencies that support biotechnology research. Agencies represented are: U.S. Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, Department of Health and Human Services, Department of Interior, Department of Justice, Department of State, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, National Aeronautics and Space Administration, and National Science Foundation. The Biotechnology Research Subcommittee will function in an advisory capacity to the Committee on Fundamental Science, the Director of the Office of Science and Technology Policy, and the Executive Office of the President. The Biotechnology Research Subcommittee will review the scientific aspects of proposed regulations and guidelines as they are developed.

The primary responsibilities of the Biotechnology Research Subcommittee are to: (i) Describe and review current Federal efforts in biotechnology research; (ii) identify and define the priority areas for future Federal biotechnology research, including areas needing greater emphasis, describing the role of each agency in those areas, and delineate where interagency cooperation would enhance progress in the biotechnology sciences, with an emphasis on integrated research efforts, where appropriate; (iii) assess major international efforts in the biotechnology sciences and develop mechanisms for international collaboration. For example, activities of the U.S.-European Community Task Force on Biotechnology have been coordinated through the Biotechnology Research Subcommittee; (iv) identify and review national and international policy issues (such as public education) associated with biotechnology; and (v) provide reviews, analyses, and recommendations to the Chairs of the Committee on Fundamental Science on scientific issues related to regulations and the applications of biotechnology research and biotechnology policies and issues.

In 1990, the Biotechnology Research Subcommittee replaced the Biotechnology Sciences Coordinating Committee. Both the Biotechnology Research Subcommittee and the Biotechnology Sciences Coordinating Committee previously functioned under the Federal Coordinating Council on Science, Engineering, and Technology (FCCSET). While regulatory issues became the primary focus of the Biotechnology Sciences Coordinating Committee, the Biotechnology Research Subcommittee focuses on scientific issues, although it will still provide scientific support for regulatory responsibilities.

Department of Justice, Department of State, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, National Aeronautics and Space Administration, and National Science Foundation. The Biotechnology Research Subcommittee will function in an advisory capacity to the Committee on Fundamental Science, the Director of the Office of Science and Technology Policy, and the Executive Office of the President. The Biotechnology Research Subcommittee will review the scientific aspects of proposed regulations and guidelines as they are developed.

The primary responsibilities of the Biotechnology Research Subcommittee are to: (i) Describe and review current Federal efforts in biotechnology research; (ii) identify and define the priority areas for future Federal biotechnology research, including areas needing greater emphasis, describing the role of each agency in those areas, and delineate where interagency cooperation would enhance progress in the biotechnology sciences, with an emphasis on integrated research efforts, where appropriate; (iii) assess major international efforts in the biotechnology sciences and develop mechanisms for international collaboration. For example, activities of the U.S.-European Community Task Force on Biotechnology have been coordinated through the Biotechnology Research Subcommittee; (iv) identify and review national and international policy issues (such as public education) associated with biotechnology; and (v) provide reviews, analyses, and recommendations to the Chairs of the Committee on Fundamental Science on scientific issues related to regulations and the applications of biotechnology research and biotechnology policies and issues.

In 1990, the Biotechnology Research Subcommittee replaced the Biotechnology Sciences Coordinating Committee. Both the Biotechnology Research Subcommittee and the Biotechnology Sciences Coordinating Committee previously functioned under the Federal Coordinating Council on Science, Engineering, and Technology (FCCSET). While regulatory issues became the primary focus of the Biotechnology Sciences Coordinating Committee, the Biotechnology Research Subcommittee focuses on scientific issues, although it will still provide scientific support for regulatory responsibilities.

Appendix K. Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules

Appendix K specifies physical containment guidelines for large scale (greater than 10 liters of culture) research or production involving viable organisms containing recombinant DNA molecules. It shall apply to large scale research or production activities as specified in Section III-C–6. It is important to note that this appendix addresses only the biological hazard associated with organisms containing recombinant DNA. Other hazards accompanying the large scale cultivation of such organisms (e.g., toxic properties of products; physical, mechanical, and chemical aspects of downstream processing) are not addressed and shall be considered separately, albeit in conjunction with this appendix.

All provisions shall apply to large scale research or production activities with the following modifications: (i) Appendix K shall supersede Appendix G when quantities in excess of 10 liters of culture are involved in research or production. Appendix K-II applies to Good Large Scale Practice; (ii) the institution shall appoint a Biological Safety Officer if it engages in large scale research or production activities involving viable organisms containing recombinant DNA molecules. The duties of the Biological Safety Officer shall include those specified in Section IV-B–3; (iii) the institution shall establish and maintain a health surveillance program for personnel engaged in large scale research or production activities involving viable organisms containing recombinant DNA molecules which require Biosafety Level (BL) 3 containment at the laboratory scale. The program shall include: preassignment and periodic physical and medical examinations; collection, maintenance, and analysis of serum specimens for monitoring serologic changes that may result from the employee's work experience; and provisions for the investigation of any serious, unusual, or extended illnesses of employees to determine possible occupational origin.

Appendix K–I. Selection of Physical Containment Levels

The selection of the physical containment level required for recombinant DNA research or production involving more than 10 liters of culture is based on the containment guidelines established in Section III. For purposes of large scale research or production, four physical containment levels are established. The four levels set containment conditions at those appropriate for the degree of hazard to health or the environment posed by the organism, judged by experience with similar organisms unmodified by recombinant DNA techniques and consistent with Good Large Scale Practice. The four biosafety levels of large scale physical containment are referred to as Good Large Scale Practice, BL1–Large Scale, BL2–Large Scale, and BL3–Large Scale. Good Large Scale Practice is recommended for large scale research or production involving viable, non-pathogenic, and non-toxigenic recombinant strains derived from host organisms that have an extended history of safe large scale use. Good Large Scale Practice is recommended for organisms such as those included in Appendix C which have built-in environmental limitations that permit optimum growth in the large scale setting but limited survival without adverse consequences in the environment. BL1–Large Scale is recommended for large scale research or production of viable organisms containing recombinant DNA molecules that require BL1 containment at the laboratory scale and that do not qualify for Good Large Scale Practice. BL2–Large Scale is recommended for large scale research or production of viable organisms containing recombinant DNA molecules that require BL2 containment at the laboratory scale. BL3–Large Scale is recommended for large scale research or production of viable organisms containing recombinant DNA molecules that require BL3 containment at the laboratory scale. No provisions are made for large scale research or production of viable organisms containing recombinant DNA molecules that require BL4 containment at the laboratory scale. If necessary, these requirements will be established by NIH on an individual basis.

Appendix K–II. Good Large Scale Practice (GLSP)

Appendix K–II–A. Institutional codes of practice shall be formulated and implemented to assure adequate control of health and safety matters.

Appendix K–II–B. Written instructions and training of personnel shall be provided to assure that cultures of viable organisms containing recombinant DNA molecules are handled prudently and that the workplace is kept clean and orderly.

Appendix K–II–C. In the interest of good personal hygiene, facilities (e.g., hand washing sink, shower, changing room) and protective clothing (e.g.,

uniforms, laboratory coats) shall be provided that are appropriate for the risk of exposure to viable organisms containing recombinant DNA molecules. Eating, drinking, smoking, applying cosmetics, and mouth pipetting shall be prohibited in the work area.

Appendix K–II–D. Cultures of viable organisms containing recombinant DNA molecules shall be handled in facilities intended to safeguard health during work with microorganisms that do not require containment.

Appendix K–II–E. Discharges containing viable recombinant organisms shall be handled in accordance with applicable governmental environmental regulations.

Appendix K–II–F. Addition of materials to a system, sample collection, transfer of culture fluids within/between systems, and processing of culture fluids shall be conducted in a manner that maintains employee's exposure to viable organisms containing recombinant DNA molecules at a level that does not adversely affect the health and safety of employees.

Appendix K–II–G. The facility's emergency response plan shall include provisions for handling spills. Spills and accidents which result in overt exposures to organisms containing recombinant DNA molecules are immediately reported to the Biological Safety Officer, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable). Reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Appendix K–III. Biosafety Level 1 (BL1)—Large Scale

Appendix K–III–A. Spills and accidents which result in overt exposures to organisms containing recombinant DNA molecules are immediately reported to the Biological Safety Officer, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable). Reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Medical evaluation, surveillance, and treatment are provided as appropriate and written records are maintained.

Appendix K–III–B. Cultures of viable organisms containing recombinant DNA molecules shall be handled in a closed system (e.g., closed vessel used for the propagation and growth of cultures) or other primary containment equipment (e.g., biological safety cabinet containing a centrifuge used to process culture fluids) which is designed to reduce the potential for escape of viable organisms. Volumes less than 10 liters may be handled outside of a closed system or other primary containment equipment provided all physical containment requirements specified in Appendix G–II–A are met.

Appendix K–III–C. Culture fluids (except as allowed in Appendix K–III–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–III–D. Sample collection from a closed system, the addition of materials to a closed system, and the transfer of culture fluids from one closed system to another shall be conducted in a manner which minimizes the release of aerosols or contamination of exposed surfaces.

Appendix K–III–E. Exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to high efficiency particulate air/HEPA filters or by other equivalent procedures (e.g., incineration) to minimize the release of viable organisms containing recombinant DNA molecules to the environment.

Appendix K–III–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure. A validated sterilization procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–III–G. Emergency plans required by Sections IV–B–2–b–(6) and IV–B–3–c–(3) shall include methods and procedures for handling large losses of culture on an emergency basis.

Appendix K–IV. Biosafety Level 2 (BL2)—Large Scale

Appendix K–IV–A. Spills and accidents which result in overt exposures to organisms containing recombinant DNA molecules are immediately reported to the Biological Safety Officer, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable). Reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Medical evaluation, surveillance, and treatment are provided as appropriate and written records are maintained.

Appendix K–IV–B. Cultures of viable organisms containing recombinant DNA molecules shall be handled in a closed system (e.g., closed vessel used for the propagation and growth of cultures) or other primary containment equipment (e.g., Class III biological safety cabinet containing a centrifuge used to process culture fluids) which is designed to prevent the escape of viable organisms. Volumes less than 10 liters may be handled outside of a closed system or other primary containment equipment provided all physical containment requirements specified in Appendix G–II–B are met.

Appendix K–IV–C. Culture fluids (except as allowed in Appendix K–IV–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–IV–D. Sample collection from a closed system, the addition of materials to a closed system, and the transfer of cultures fluids from one closed system to another shall be conducted in a manner which prevents the release of aerosols or contamination of exposed surfaces.

Appendix K–IV–E. Exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to high efficiency particulate air/HEPA filters or by other equivalent procedures (e.g., incineration) to prevent the release of viable organisms containing recombinant DNA molecules to the environment.

Appendix K–IV–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure. A validated sterilization procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–IV–G. Rotating seals and other mechanical devices directly associated with a closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be designed to prevent leakage or shall be fully enclosed in ventilated housings that are exhausted through filters which have efficiencies equivalent to high efficiency particulate air/HEPA filters or through other equivalent treatment devices.

Appendix K–IV–H. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules and other primary containment equipment used to contain operations involving viable organisms containing sensing devices that monitor the integrity of containment during operations.

Appendix K–IV–I. A closed system used for the propagation and growth of viable organisms containing the recombinant DNA molecules shall be tested for integrity of the containment features using the organism that will serve as the host for propagating recombinant DNA molecules. Testing shall be accomplished prior to the introduction of viable organisms containing recombinant DNA molecules and following modification or replacement of essential containment features. Procedures and methods used in the testing shall be appropriate for the equipment design and for recovery and demonstration of the test organism. Records of tests and results shall be maintained on file.

Appendix K–IV–J. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be permanently identified. This identification shall be used in all records reflecting testing, operation, and maintenance and in all documentation relating to use of this equipment for research or production activities involving viable organisms containing recombinant DNA molecules.

Appendix K–IV–K. The universal biosafety sign shall be posted on each closed system and primary containment equipment when used to contain viable organisms containing recombinant DNA molecules.

Appendix K–IV–L. Emergency plans required by Sections IV–B–2–b–(6) and IV–B–3–c–(3) shall include methods and procedures for handling large losses of culture on an emergency basis.

Appendix K–V. Biosafety Level 3 (BL3)—Large Scale

organisms that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–IV–G. Rotating seals and other mechanical devices directly associated with a closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be designed to prevent leakage or shall be fully enclosed in ventilated housings that are exhausted through filters which have efficiencies equivalent to high efficiency particulate air/HEPA filters or through other equivalent treatment devices.

Appendix K–IV–H. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules and other primary containment equipment used to contain operations involving viable organisms containing sensing devices that monitor the integrity of containment during operations.

Appendix K–IV–I. A closed system used for the propagation and growth of viable organisms containing the recombinant DNA molecules shall be tested for integrity of the containment features using the organism that will serve as the host for propagating recombinant DNA molecules. Testing shall be accomplished prior to the introduction of viable organisms containing recombinant DNA molecules and following modification or replacement of essential containment features. Procedures and methods used in the testing shall be appropriate for the equipment design and for recovery and demonstration of the test organism. Records of tests and results shall be maintained on file.

Appendix K–IV–J. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be permanently identified. This identification shall be used in all records reflecting testing, operation, and maintenance and in all documentation relating to use of this equipment for research or production activities involving viable organisms containing recombinant DNA molecules.

Appendix K–IV–K. The universal biosafety sign shall be posted on each closed system and primary containment equipment when used to contain viable organisms containing recombinant DNA molecules.

Appendix K–IV–L. Emergency plans required by Sections IV–B–2–b–(6) and IV–B–3–c–(3) shall include methods and procedures for handling large losses of culture on an emergency basis.

Appendix K–V. Biosafety Level 3 (BL3)—Large Scale

Appendix K–V–A. Spills and accidents which result in overt exposures to organisms containing recombinant DNA molecules are immediately reported to the Biological Safety Officer, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable). Reports to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Medical evaluation, surveillance, and treatment are provided as appropriate and written records are maintained.

Appendix K–V–B. Cultures of viable organisms containing recombinant DNA molecules shall be handled in a closed system (e.g., closed vessels used for the propagation and growth of cultures) or other primary containment equipment (e.g., Class III biological safety cabinet containing a centrifuge used to process culture fluids) which is designed to prevent the escape of viable organisms. Volumes less than 10 liters may be handled outside of a closed system provided all physical containment requirements specified in Appendix G–II–C are met.

Appendix K–V–C. Culture fluids (except as allowed in Appendix K–V–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–V–D. Sample collection from a closed system, the addition of materials to a closed system, and the transfer of culture fluids from one closed system to another shall be conducted in a manner which prevents the release of aerosols or contamination of exposed surfaces.

Appendix K–V–E. Exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to high efficiency particulate air/HEPA filters or by other equivalent procedures (e.g., incineration) to prevent the release of viable organisms containing recombinant DNA molecules to the environment.

Appendix K–V–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure. A validated sterilization procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules.

Appendix K–V–G. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be operated so that the space above the culture level will be maintained at a pressure as low as possible, consistent with equipment design, in order to maintain the integrity of containment features.

Appendix K–V–H. Rotating seals and other mechanical devices directly associated with a closed system used to contain viable organisms containing recombinant DNA molecules shall be designed to prevent leakage or shall be fully enclosed in ventilated housings that are exhausted through filters which have efficiencies equivalent to high efficiency particulate air/HEPA filters or through other equivalent treatment devices.

Appendix K–V–I. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules and other primary containment equipment used to contain operations involving viable organisms containing recombinant DNA molecules shall include monitoring or sensing devices that monitor the integrity of containment during operations.

Appendix K–V–J. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be tested for integrity of the containment features using the organisms that will serve as the host for propagating the recombinant DNA molecules. Testing shall be accomplished prior to the introduction of viable organisms containing recombinant DNA molecules and following modification or replacement of essential containment features. Procedures and methods used in the testing shall be appropriate for the equipment design and for recovery and demonstration of the test organism. Records of tests and results shall be maintained on file.

Appendix K–V–K. A closed system used for the propagation and growth of viable organisms containing recombinant DNA molecules shall be permanently identified. This identification shall be used in all records reflecting testing, operation, maintenance, and use of this equipment for research production activities

involving viable organisms containing recombinant DNA molecules.

Appendix K–V–L. The universal biosafety sign shall be posted on each closed system and primary containment equipment when used to contain viable organisms containing recombinant DNA molecules.

Appendix K–V–M. Emergency plans required by Sections IV–B–2–b–(6) and IV–B–3–c–(3) shall include methods and procedures for handling large losses of culture on an emergency basis.

Appendix K–V–N. Closed systems and other primary containment equipment used in handling cultures of viable organisms containing recombinant DNA molecules shall be located within a controlled area which meets the following requirements:

Appendix K–V–N–1. The controlled area shall have a seperate entry area. The entry area shall be a double-doored space such as an air lock, anteroom, or change room that separates the controlled area from the balance of the facility.

Appendix K–V–N–2. The surfaces of walls, ceilings, and floors in the controlled area shall be such as to permit ready cleaning and decontamination.

Appendix K–V–N–3. Penetrations into the controlled area shall be sealed to permit liquid or vapor phase space decontamination.

Appendix K–V–N–4. All utilities and service or process piping and wiring entering the controlled area shall be protected against contamination.

Appendix K–V–N–5. Hand washing facilities equipped with foot, elbow, or automatically operated valves shall be located at each major work area and near each primary exit.

Appendix K–V–N–6. A shower facility shall be provided. This facility shall be located in close proximity to the controlled area.

Appendix K–V–N–7. The controlled area shall be designed to preclude release of culture fluids outside the controlled area in the event of an accidental spill or release from the closed systems or other primary containment equipment.

Appendix K–V–N–8. The controlled area shall have a ventilation system that is capable of controlling air movement. The movement of air shall be from areas of lower contamination potential to areas of higher contamination potential. If the ventilation system provides positive pressure supply air, the system shall operate in a manner that prevents the reversal of the direction of air movement or shall be equipped with an alarm that would be actuated in the event that reversal in the direction of air movement were to occur. The exhaust air from the controlled area shall not be recirculated to other areas of the facility. The exhaust air from the controlled area may not be discharged to the outdoors without being high efficiency particulate air/HEPA filtered, subjected to thermal oxidation, or otherwise treated to prevent the release of viable organisms.

Appendix K–V–O. The following personnel and operational practices shall be required:

Appendix K–V–O–1. Personnel entry into the controlled area shall be through the entry area specified in Appendix K–V–N–1.

Appendix K–V–O–2. Persons entering the controlled area shall exchange or cover their personal clothing with work garments such as jump suits, laboratory coats, pants and shirts, head cover, and shoes or shoe covers. On exit from the controlled area the work clothing may be stored in a locker separate from that used for personal clothing or discarded for laundering. Clothing shall be decontaminated before laundering.

Appendix K–V–O–3. Entry into the controlled area during periods when work is in progress shall be restricted to those persons required to meet program or support needs. Prior to entry, all persons shall be informed of the operating practices, emergency procedures, and the nature of the work conducted.

Appendix K-V-O–4. Persons under 18 years of age shall not be permitted to enter the controlled area.

Appendix K-V-O–5. The universal biosafety sign shall be posted on entry doors to the controlled area and all internal doors when any work involving the organism is in progress. This includes periods when decontamination procedures are in progress. The sign posted on the entry doors to the controlled area shall include a statement of agents in use and personnel authorized to enter the controlled area.

Appendix K-V-O–6. The controlled area shall be kept neat and clean.

Appendix K-V-O–7. Eating, drinking, smoking, and storage of food are prohibited in the controlled area.

Appendix K-V-O–8. Animals and plants shall be excluded from the controlled area.

Appendix K-V-O–9. An effective insect and rodent control program shall be maintained.

Appendix K-V-O–10. Access doors to the controlled area shall be kept closed, except as necessary for access, while work is in progress. Serve doors leading directly outdoors shall be sealed and locked while work is in progress.

Appendix K-V–0–11. Persons shall wash their hands when exiting the controlled area.

Appendix K-V-O–12. Persons working in the controlled area shall be trained in emergency procedures.

Appendix K-V-O–13. Equipment and materials required for the management of accidents involving viable organisms containing recombinant DNA molecules shall be available in the controlled area.

Appendix K-V-O–14. The controlled area shall be decontaminated in accordance with established procedures following spills or other accidental release of viable organisms containing recombinant DNA molecules.

Appendix K—Table 1. Comparison of Good Large Scale Practice (GLSP) and Biosafety Level (BL)—Large Scale (LS) Practice (see Appendix K–VI–A)

Criterion [See Appendix K–VI–B]	GLSP	BL1–LS	BL2–LS	BL3–LS
1. Formulate and implement institutional codes of practice for safety of personnel and adequate control of hygiene and safety measures.	K–II–A	G–I	G–I	G–I
2. Provide adequate written instructions and training of personnel to keep work place clean and tidy and to keep exposure to biological, chemical or physical agents at a level that does not adversely affect health and safety of employees.	K–II–B	G–I ¶ 1	G–I ¶ 1	G–I ¶ 1
3. Provide changing and hand washing facilities as well as protective clothing, appropriate to the risk, to be worn during work.	K–II–C	G–II–A–1–h	G–II–B–2–f	G–II–C–2–i
4. Prohibit eating, drinking, smoking, mouth pipetting, and applying cosmetics in the work place.	K–II–C	G–II–A–1–d G–II–A–1–e	G–II–B–1–d G–II–B–1–e	G–II–C–1–c G–II–C–1–d
5. Internal accident reporting	K–II–G	K–III–A	K–IV–A	K–IV–A

Criterion [See Appendix K–VI–
6. Medical surveillance
7. Viable organisms should be handled in a sy separates the process from the external system or other primary containment).
8. Culture fluids not removed from a system un activated.
9. Inactivation of waste solutions and materials biohazard potential.
10. Control of aerosols by engineering or pro prevent or minimize release of organisms dur system, addition of materials to a system, t cells, and removal of material, products, and tem.
11. Treatment of exhaust gases from a closed or prevent release of viable organisms.
12. Closed system that has contained viable o opened until sterilized by a validated procedur
13. Closed system to be maintained at as a lo sible to maintain integrity of containment featu
14. Rotating seals and other penetrations into signed to prevent or minimize leakage.
15. Closed system shall incorporate monitoring to monitor the integrity of containment.
16. Validated integrity testing of closed containm
17. Closed system to be permanently identified purposes.
18. Universal biosafety sign to be posted on eac
19. Emergency plans required for handling large
20. Access to the work place
21. Requirements for controlled access area

NR=not required.

Appendix K–VI. Footnotes of Appendix K

Appendix K–VI–A. This table is derived from the text in Appendices G and K and is not to be used in lieu of Appendices G and K.

Appendix K–VI–B. The criteria in this grid address only the biological hazards associated with organisms containing recombinant DNA. Other hazards accompanying the large scale cultivation of such organisms (e.g., toxic properties of products; physical, mechanical, and chemical aspects of downstream processing) are not addressed and shall be considered separately, albeit in conjunction with this grid.

Appendix K–VII. Definitions to Accompany Containment Grid and Appendix K

Appendix K–VII–A. Accidental Release. An accidental release is the unintentional discharge of a microbiological agent (i.e., microorganism or virus) or eukaryotic cell due to a failure in the containment system.

Appendix K–VII–B. Biological Barrier. A biological barrier is an impediment (naturally occurring or introduced) to the infectivity and/or survival of a microbiological agent or eukaryotic cell once it has been released into the environment.

Criterion [See Appendix K–VI–B]	GLSP	BL1–LS	BL2–LS	BL3–LS
6. Medical surveillance	NR	NR	K–IV–A	K–V–A
7. Viable organisms should be handled in a system that physically separates the process from the external environment (closed system or other primary containment).	NR	K–III–B	K–IV–B	K–V–B
8. Culture fluids not removed from a system until organisms are inactivated.	NR	K–III–C	K–IV–C	K–V–C
9. Inactivation of waste solutions and materials with respect to their biohazard potential.	K–II–E	K–III–C	K–V–C	K–V–C
10. Control of aerosols by engineering or procedural controls to prevent or minimize release of organisms during sampling from a system, addition of materials to a system, transfer of cultivated cells, and removal of material, products, and effluent from a system.	Minimize Procedure K–II–F	Minimize Engineer K–III–B K–III–D	Prevent Engineer K–IV–B K–IV–D	Prevent Engineer K–V–B K–V–D
11. Treatment of exhaust gases from a closed system to minimize or prevent release of viable organisms.	NR	Minimize K–III–E	Prevent K–IV–E	Prevent K–V–E
12. Closed system that has contained viable organisms not to be opened until sterilized by a validated procedure.	NR	K–III–F	K–IV–F	K–V–F
13. Closed system to be maintained at as a low pressure as possible to maintain integrity of containment features.	NR	NR	NR	K–V–G
14. Rotating seals and other penetrations into closed system designed to prevent or minimize leakage.	NR	NR	Prevent K–IV–G	Prevent K–V–H
15. Closed system shall incorporate monitoring or sensing devices to monitor the integrity of containment.	NR	NR	K–IV–H	K–V–I
16. Validated integrity testing of closed containment system	NR	NR	K–IV–I	K–V–J
17. Closed system to be permanently identified for record keeping purposes.	NR	NR	K–IV–J	K–V–K
18. Universal biosafety sign to be posted on each closed system	NR	NR	K–IV–K	K–V–L
19. Emergency plans required for handling large losses of cultures	K–II–G	K–III–G	K–IV–L	K–V–M
20. Access to the work place	NR	G–II–A–1–a	G–II–B–1–a	K–V–N
21. Requirements for controlled access area	NR	NR	NR	K–V–N&O

NR=not required.

Appendix K–VI. Footnotes of Appendix K

Appendix K–VI–A. This table is derived from the text in Appendices G and K and is not to be used in lieu of Appendices G and K.

Appendix K–VI–B. The criteria in this grid address only the biological hazards associated with organisms containing recombinant DNA. Other hazards accompanying the large scale cultivation of such organisms (e.g., toxic properties of products; physical, mechanical, and chemical aspects of downstream processing) are not addressed and shall be considered separately, albeit in conjunction with this grid.

Appendix K–VII. Definitions to Accompany Containment Grid and Appendix K

Appendix K–VII–A. Accidental Release. An accidental release is the unintentional discharge of a microbiological agent (i.e., microorganism or virus) or eukaryotic cell due to a failure in the containment system.

Appendix K–VII–B. Biological Barrier. A biological barrier is an impediment (naturally occurring or introduced) to the infectivity and/or survival of a microbiological agent or eukaryotic cell once it has been released into the environment.

Appendix K–VII–C. Closed System. A closed system is one in which by its design and proper operation, prevents release of a microbiological agent or eukaryotic cell contained therein.

Appendix K–VII–D. Containment. Containment is the confinement of a microbiological agent or eukaryotic cell that is being cultured, stored, manipulated, transported, or destroyed in order to prevent or limit its contact with people and/or the environment. Methods used to achieve this include: physical and biological barriers and inactivation using physical or chemical means.

Appendix K–VII–E. De minimis Release. *De minimis* release is the release of: (i) viable microbiological agents or eukaryotic cells that does not result in the establishment of disease in healthy people, plants, or animals; or (ii) in uncontrolled proliferation of any microbiological agents or eukaryotic cells.

Appendix K–VII–F. Disinfection. Disinfection is a process by which viable microbiological agents or eukaryotic cells are reduced to a level unlikely to produce disease in healthy people, plants, or animals.

Appendix K–VII–G. Good Large Scale Practice Organism. For an organism to qualify for Good Large Scale Practice consideration, it must meet the following criteria [Reference: Organization for Economic Cooperation and Development, Recombinant DNA Safety Considerations, 1987, p. 34–35]: (i) the host organism should be non-pathogenic, should not contain adventitious agents and should have an extended history of safe large scale use or have built-in environmental limitations that permit optimum growth in the large scale setting but limited survival without adverse consequences in the environment; (ii) the recombinant DNA-engineered organism should be non-pathogenic, should be as safe in the large scale setting as the host organism, and without adverse consequences in the environment; and (iii) the vector/insert should be well characterized and free from known harmful sequences; should be limited in size as much as possible to the DNA required to perform the intended function; should not increase the stability of the construct in the environment unless that is a requirement of the intended function; should be poorly mobilizable; and should not transfer any resistance markers to microorganisms unknown to acquire them naturally if such acquisition could compromise the use of a drug to control disease agents in human or veterinary medicine or agriculture.

Appendix K–VII–H. Inactivation. Inactivation is any process that destroys

the ability of a specific microbiological agent or eukaryotic cell to self-replicate.

Appendix K–VII–I. Incidental Release. An incidental release is the discharge of a microbiological agent or eukaryotic cell from a containment system that is expected when the system is appropriately designed and properly operated and maintained.

Appendix K–VII–J. Minimization. Minimization is the design and operation of containment systems in order that any incidental release is a de minimis release.

Appendix K–VII–K. Pathogen. A pathogen is any microbiological agent or eukaryotic cell containing sufficient genetic information, which upon expression of such information, is capable of producing disease in healthy people, plants, or animals.

Appendix K–VII–L. Physical Barrier. A physical barrier is considered any equipment, facilities, or devices (e.g., fermentors, factories, filters, thermal oxidizers) which are designed to achieve containment.

Appendix K–VII–M. Release. Release is the discharge of a microbiological agent or eukaryotic cell from a containment system. Discharges can be incidental or accidental. Incidental releases are de minimis in nature; accidental releases may be de minimis in nature.

Appendix L. Release into the Environment of Certain Plants

Appendix L–I. General Information

Appendix L specifies conditions under which certain plants as specified below, may be approved for release into the environment. Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, review by the RAC Plant Subcommittee, and specific approval by the NIH Director. Such experiments also require the approval of the Institutional Biosafety Committee before initiation.

Appendix L–II. Criteria Allowing Review by the RAC Plant Subcommittee Without the Requirement for Full RAC Review

In consultation with the RAC Plant Subcommittee and without the requirement for full RAC review (Institutional Biosafety Committee review and approval is necessary), NIH/ORDA may approve the growing of plants containing recombinant DNA in the field under the following conditions: (i) The plant species is a cultivated crop of a genus that has no species known to be a noxious weed; (ii) the introduced DNA consists of well-characterized genes containing no sequences harmful to humans, animals, or plants; (iii) the vector consists of DNA from exempt host-vector systems (see Appendix C), from plants of the same or closely related species, from nonpathogenic prokaryotes or nonpathogenic lower eukaryotic plants, from plants pathogens only if sequences resulting in production of disease symptoms have been deleted, or chimeric vectors constructed from sequences of exempt host-vector systems (see Appendix C) or from sequences from plant pathogens in which the disease symptoms have been deleted. The DNA may be introduced by any suitable method. If sequences resulting in production of disease symptoms are retained for purposes of introducing the DNA into the plant, greenhouse-grown plants must be shown to be free of such sequences before such plants, their derivatives, or seed can be used in field tests; (iv) plants are grown in controlled access fields under specified conditions appropriate for the plant under study and the geographical location. Such conditions should include provisions for using good cultural and pest control practices, for physical isolation from plants of the same species outside of the experimental plot in accordance with pollination characteristics of the species, and the prevention of plants containing recombinant DNA from becoming established in the environment. Review by the Institutional Biosafety Committee should include an appraisal by scientists knowledgeable of the crop, its production practices, and the local geographical conditions. Procedures for assessing alterations in and the spread of organisms containing recombinant DNA must be developed. The results of the outlined tests must be submitted for review and approval by the Institutional Biosafety Committee. Copies of such results must be submitted to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Appendix M. Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules Into the Genome of One or More Human Subjects

Appendix M applies to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from the NIH. Researchers not covered by the NIH Guidelines are encouraged to use Appendix M. Experiments in which recombinant DNA or DNA or RNA derived from recombinant DNA is introduced into one or more human subjects with the intent of stably modifying his/her genome are covered by Sections III–A–2, III–B–2, and III–B–3 (see Section V–U). Experiments in which recombinant DNA or DNA or RNA derived from recombinant DNA and that are not covered by Sections III–A–2, III–B–2, or III–B–3 and that are not considered exempt under Section V–U, are covered under Section III–C–7.

This document is intended to provide guidance in preparing proposals for NIH consideration under Sections III–A–2 and III–B–2. Section III–A–2 addresses Major Actions involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects that have been determined by NIH/ORDA, in consultation with the RAC Chair and one or more RAC members, as necessary, to: (i) Represent novel characteristics (e.g., target disease or vector), (ii) represent an uncertain degree of risk to human health or the environment, or (iii) contain information determined to require further public review. Proposals considered under Section III–A–2 will be reviewed by the RAC and approved by the NIH Director. RAC review of experiments considered under Section III–A–2 will follow publication of a precis of the proposal in the **Federal Register** and an opportunity for public comment. Section III–B–2 addresses Minor Actions involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects that have been determined by NIH/ORDA, in consultation with the RAC Chair and one or more RAC members, as necessary, to qualify for the Accelerated Review process. Proposals considered under Sections III–A–2 and III–B–2 will be on a case-by-case basis. A list of actions approved under Sections III–A–2 and III–B–2 involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects is available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. The list of actions to the NIH Guidelines involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects does not include experiments considered to be exempt from RAC and NIH/ORDA review under Section III–C–7.

Since the recombinant DNA or DNA or RNA derived from recombinant DNA is expected to be confined following transfer to one or more human subjects, no risk to public health or to the environment is expected. Nevertheless, Appendix M–I–B–4–b specifically asks the researchers to address this point.

This appendix will be considered for revision as experience in evaluating proposals accumulates and as new scientific developments occur. This review will be carried out periodically as needed.

A proposal involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects will be considered by the RAC and/or NIH/ORDA only after the protocol has been approved by the local Institutional Biosafety Committee and Institutional Review Board in accordance with DHHS Regulations for the Federal Regulations for the Protection of Human Subjects (45 Code of Federal Regulations, Part 46). If a proposal involves children, special attention should be paid to subpart D of these DHHS regulations. The Institutional Review Board and Institutional Biosafety Committee may, at their discretion, condition their approval on further specific deliberation by the RAC and/or NIH/ORDA. Consideration of human gene transfer proposals by the RAC and/or NIH/ORDA may proceed simultaneously with review by other involved Federal agencies (see Appendix M–VII–A) provided that NIH/ORDA is notified of the simultaneous review. Meetings of the full RAC and its subcommittee will be open to the public except where trade secrets or proprietary information would be disclosed. The committee prefers that proposals submitted for RAC review contain no proprietary information or trade secrets, enabling all aspects of the review to be open to the public. Public review of these protocols will serve to inform the public about the technical aspects of the proposals as well as the meaning and significance of the research.

The clinical application of recombinant DNA techniques raises two general kinds of questions: (i) the questions usually discussed by Institutional Review Boards in their review of any proposed research involving one or more human subjects; and (ii) broader issues. The first type of question is addressed principally in Appendix M-I of this document. Several broader issues are discussed throughout Appendix M.

Appendix M-I requests a description of the protocol with special attention to the short-term risks and benefits of the proposed research to the patient and to other people, the selection of patients, informed consent, privacy, and confidentiality. Appendix M-II

no risk to public health or to the environment is expected. Nevertheless, Appendix M–I–B–4–b specifically asks the researchers to address this point.

This appendix will be considered for revision as experience in evaluating proposals accumulates and as new scientific developments occur. This review will be carried out periodically as needed.

A proposal involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects will be considered by the RAC and/or NIH/ORDA only after the protocol has been approved by the local Institutional Biosafety Committee and Institutional Review Board in accordance with DHHS Regulations for the Federal Regulations for the Protection of Human Subjects (45 Code of Federal Regulations, Part 46). If a proposal involves children, special attention should be paid to subpart D of these DHHS regulations. The Institutional Review Board and Institutional Biosafety Committee may, at their discretion, condition their approval on further specific deliberation by the RAC and/or NIH/ORDA. Consideration of human gene transfer proposals by the RAC and/or NIH/ORDA may proceed simultaneously with review by other involved Federal agencies (see Appendix M–VII–A) provided that NIH/ORDA is notified of the simultaneous review. Meetings of the full RAC and its subcommittee will be open to the public except where trade secrets or proprietary information would be disclosed. The committee prefers that proposals submitted for RAC review contain no proprietary information or trade secrets, enabling all aspects of the review to be open to the public. Public review of these protocols will serve to inform the public about the technical aspects of the proposals as well as the meaning and significance of the research.

The clinical application of recombinant DNA techniques raises two general kinds of questions: (i) the questions usually discussed by Institutional Review Boards in their review of any proposed research involving one or more human subjects; and (ii) broader issues. The first type of question is addressed principally in Appendix M-I of this document. Several broader issues are discussed throughout Appendix M.

Appendix M-I requests a description of the protocol with special attention to the short-term risks and benefits of the proposed research to the patient and to other people, the selection of patients, informed consent, privacy, and confidentiality. Appendix M-II addresses special issues pertaining to the free flow of information about the clinical trials. These issues lie outside the usual purview of Institutional Review Boards and reflect general public concerns about biomedical research. Appendix M-III summarizes guidelines for submission of human gene transfer protocols for RAC review. Appendix M-IV specifies reporting requirements. Appendix M-V describes the procedures for Accelerated Review of human gene transfer experiments. Appendix M-VI describes the procedures to be followed for Expedited Review of single patient human gene transfer experiments. Appendix M-VII contains the footnotes to Appendix M.

The RAC will not at present entertain proposals for germ-line alterations but will consider for approval protocols involving somatic cell gene transfer. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into a patient's somatic cells. In germ-line alterations, a specific attempt is made to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring.

The acceptability of human somatic cell gene therapy has been addressed in several public documents as well as in numerous academic studies. In November 1982, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research published a report, Splicing Life, which resulted from a two-year process of public deliberations and hearing. Upon release of that report, a U.S. House of Representatives subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, Human Gene Therapy, which concluded: civic, religious, scientific, and medical groups have all accepted; in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferable to other technologies. In light of this public support, the RAC is prepared to consider proposals for somatic cell gene therapy.

In its evaluation of proposals involving the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects, the RAC will consider whether the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of clinical investigations, namely, to protect the health and well-being of one or more human subjects being treated while at the same time gathering generalizable knowledge. Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (i) vertical transmission of genetic changes from an individual to his/her offspring, or (ii) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, this document requests information that will enable the RAC and/or NIH/ORDA to assess the possibility that the proposed experiments will inadvertently affect reproductive cells or lead to infection of other people (e.g., medical personnel or relatives).

In recognition of the social concern that surrounds the subject of gene transfer, the RAC and NIH/ORDA will cooperate with other groups in assessing the possible long-term consequences of the transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

Responses to Appendix M should be provided in the form of either written answers or references to specific sections of the protocol or its appendices. Principal Investigators should indicate points which are not applicable with a brief explanation. Principal Investigators submitting proposals that employ essentially the same vector systems (or with minor variations), and/or that are based on the same preclinical testing as proposals previously reviewed by the RAC, may refer to preceding documents without having to rewrite such material.

Appendix M–I. Description of Proposal

Appendix M–I–A. Objectives and Rationale of the Proposed Research

State concisely the overall objectives and rationale of the proposed study. Provide information on the specific points that relate to whichever type of research is being proposed.

Appendix M–I–A–1. Use of Recombinant DNA for Therapeutic Purposes. For research in which recombinant DNA is transferred in order to treat a disease or disorder (e.g., genetic diseases, cancer, and metabolic

diseases), the following questions should be addressed:

Appendix M–I–A–1–a. Why is the disease selected for treatment by means of gene therapy a good candidate for such treatment?

Appendix M–I–A–1–b. Describe the natural history and range of expression of the disease selected for treatment. What objective and/or quantitative measures of disease activity are available? In your view, are the usual effects of the disease predictable enough to allow for meaningful assessment of the results of gene therapy?

Appendix M–I–A–1–c. Is the protocol designed to prevent all manifestations of the disease, to halt the progression of the disease after symptoms have begun to appear, or to reverse manifestations of the disease in seriously ill victims?

Appendix M–I–A–1–d. What alternative therapies exist? In what groups of patients are these therapies effective? What are their relative advantages and disadvantages as compared with the proposed gene therapy?

Appendix M–I–A–2. Transfer of DNA for Other Purposes. Appendix M–I–A–2–a. Into what cells will the recombinant DNA be transferred?

Why is the transfer of recombinant DNA necessary for the proposed research? What questions can be answered by using recombinant DNA?

Appendix M–I–A–2–b. What alternative methodologies exist? What are their relative advantages and disadvantages as compared to the use of recombinant DNA?

Appendix M–I–B. Research Design, Anticipated Risks and Benefits

Appendix M–I–B–1. Structure and Characteristics of the Biological System. Provide a full description of the methods and reagents to be employed for gene delivery and the rationale for their use. The following are specific points to be addressed:

Appendix M–I–B–1–a. What is the structure of the cloned DNA that will be used?

Appendix M–I–B–1–a–(1). Describe the gene (genomic or cDNA), the bacterial plasmid or phage vector, and the delivery vector (if any). Provide complete nucleotide sequence analysis or a detailed restriction enzyme map of the total construct.

Appendix M–I–B–1–a–(2). What regulatory elements does the construct contain (e.g., promoters, enhancers, polyadenylation sites, replication origins, etc.)? From what source are these elements derived? Summarize what is currently known about the regulatory character of each element.

Appendix M–I–B–1–a–(3). Describe the steps used to derive the DNA construct.

Appendix M–I–B–1–b. What is the structure of the material that will be administered to the patient?

Appendix M–I–B–1–b–(1). Describe the preparation, structure, and composition of the materials that will be given to the patient or used to treat the patient's cells: (i) If DNA, what is the purity (both in terms of being a single DNA species and in terms of other contaminants)? What tests have been used and what is the sensitivity of the tests? (ii) If a virus, how is it prepared from the DNA construct? In what cell is the virus grown (any special features)? What medium and serum are used? How is the virus purified? What is its structure and purity? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials (for example, VL30 RNA, other nucleic acids, or proteins) or contaminating viruses (both replication-competent or replication-defective) or other organisms in the cells or serum used for preparation of the virus stock including any contaminants that may have biological effects? (iii) If co-cultivation is employed, what kinds of cells are being used for co-cultivation? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials? Specifically, what tests are being conducted to assess the material to be returned to the patient for the presence of live or killed donor cells or other non-vector materials (for example, VL30 sequences) originating from those cells? (iv) If methods other than those covered by Appendices M–I–B–1–b-(1)-(i) through (iii) are used to introduce new genetic information into target cells, what steps are being taken to detect and eliminate any contaminating materials? What are possible sources of contamination? What is the sensitivity of tests used to monitor contamination?

Appendix M–I–B–1–b-(2). Describe any other material to be used in preparation of the material to be administered to the patient. For example, if a viral vector is proposed, what is the nature of the helper virus or cell line? If carrier particles are to be used, what is the nature of these?

Appendix M–I–B–2. Preclinical Studies, Including Risk-Assessment Studies. Provide results that demonstrate the safety, efficacy, and feasibility of the proposed procedures using animal and/or cell culture model systems, and explain why the model(s) chosen is/are most appropriate.

Appendix M–I–B–2–a. Delivery System. Appendix M–I–B–2–a–(1). What cells are the intended target cells of recombinant DNA? What target cells are to be treated ex vivo and returned to the patient, how will the cells be characterized before and after treatment? What is the theoretical and practical basis for assuming that only the target cells will incorporate the DNA?

Appendix M–I–B–2–a–(2). Is the delivery system efficient? What percentage of the target cells contain the added DNA?

Appendix M–I–B–2–a–(3). How is the structure of the added DNA sequences monitored and what is the sensitivity of the analysis? Is the added DNA extrachromosomal or integrated? Is the added DNA unrearranged.

Appendix M–I–B–2–a–(4). How many copies are present per cell? How stable is the added DNA both in terms of its continued presence and its structural stability?

Appendix M–I–B–2–b. Gene Transfer and Expression. Appendix M–I–B–2–b–(1). What animal and cultured cell models were used in laboratory studies to assess the in vivo and in vitro efficacy of the gene transfer system? In what ways are these models similar to and different from the proposed human treatment?

Appendix M–I–B–2–b–(2). What is the minimal level of gene transfer and/or expression that is estimated to be necessary for the gene transfer protocol to be successful in humans? How was this level determined?

Appendix M–I–B–2–b–(3). Explain in detail all results from animal and cultured cell model experiments which assess the effectiveness of the delivery system (see Appendix M–I–B–2–a) in achieving the minimally required level of gene transfer and expression (see Appendix M–I–B–2–b–(2)).

Appendix M–I–B–2–b–(4). To what extent is expression only from the desired gene (and not from the surrounding DNA)? To what extent does the insertion modify the expression of other genes?

Appendix M–I–B–2–b–(5). In what percentage of cells does expression from the added DNA occur? Is the product biologically active? What percentage of normal activity results from the inserted gene?

Appendix M–I–B–2–b–(6). Is the gene expressed in cells other than the target cells? If so, to what extent?

Appendix M–I–B–2–c. Retrovirus Delivery Systems. Appendix M–I–B–2–c–(1). What cell types have been infected with the retroviral vector preparation? Which cells, if any, produce infectious particles?

Appendix M–I–B–2–c–(2). How stable are the retroviral vector and the resulting provirus against loss, rearrangement, recombination, or mutation? What information is available on how much rearrangement of recombination with endogenous or other viral sequences is likely to occur in the patient's cells? What steps have been taken in designing the vector to minimize instability or variation? What laboratory studies have been performed to check for stability, and what is the sensitivity of the analyses?

Appendix M–I–B–2–c–(3). What laboratory evidence is available concerning potential harmful effects of the transfer (e.g., development of neoplasia, harmful mutations, regeneration of infectious particles, or immune responses)? What steps will be taken in designing the vector to minimize pathogenicity? What laboratory studies have been performed to check for pathogenicity, and what is the sensitivity of the analyses?

Appendix M–I–B–2–c–(4). Is there evidence from animal studies that vector DNA has entered untreated cells, particularly germ-line cells? What is the sensitivity of the analyses?

Appendix M–I–B–2–c–(5). Has a protocol similar to the one proposed for a clinical trial been conducted in non-human primates and/or other animals? What were the results? Specifically, is there any evidence that the retroviral vector has recombined with any endogenous or other viral sequences in the animals?

Appendix M–I–B–2–d. Non-Retrovirus Delivery/Expression Systems. If a non-retroviral delivery system is used, what animal studies have been conducted to determine if there are pathological or other undesirable consequences of the protocol (including insertion of DNA into cells other than those treated, particularly germ-line cells)? How long have the animals been studied after treatment? What safety studies have been conducted? (Include data about the level of sensitivity of such assays.)

Appendix M–I–B–3. Clinical Procedures, Including Patient Monitoring. Describe the treatment that will be administered to patients and the diagnostic methods that will be used to monitor the success or failure of the treatment. If previous clinical studies using similar methods have been performed by yourself or others, indicate their relevance to the proposed study. Specifically:

Appendix M–I–B–3–a. Will cells (e.g., bone marrow cells) be removed from patients and treated ex vivo? If so,

preparation? Which cells, if any, produce infectious particles?

Appendix M–I–B–2–c–(2). How stable are the retroviral vector and the resulting provirus against loss, rearrangement, recombination, or mutation? What information is available on how much rearrangement of recombination with endogenous or other viral sequences is likely to occur in the patient's cells? What steps have been taken in designing the vector to minimize instability or variation? What laboratory studies have been performed to check for stability, and what is the sensitivity of the analyses?

Appendix M–I–B–2–c–(3). What laboratory evidence is available concerning potential harmful effects of the transfer (e.g., development of neoplasia, harmful mutations, regeneration of infectious particles, or immune responses)? What steps will be taken in designing the vector to minimize pathogenicity? What laboratory studies have been performed to check for pathogenicity, and what is the sensitivity of the analyses?

Appendix M–I–B–2–c–(4). Is there evidence from animal studies that vector DNA has entered untreated cells, particularly germ-line cells? What is the sensitivity of the analyses?

Appendix M–I–B–2–c–(5). Has a protocol similar to the one proposed for a clinical trial been conducted in non-human primates and/or other animals? What were the results? Specifically, is there any evidence that the retroviral vector has recombined with any endogenous or other viral sequences in the animals?

Appendix M–I–B–2–d. Non-Retrovirus Delivery/Expression Systems. If a non-retroviral delivery system is used, what animal studies have been conducted to determine if there are pathological or other undesirable consequences of the protocol (including insertion of DNA into cells other than those treated, particularly germ-line cells)? How long have the animals been studied after treatment? What safety studies have been conducted? (Include data about the level of sensitivity of such assays.)

Appendix M–I–B–3. Clinical Procedures, Including Patient Monitoring. Describe the treatment that will be administered to patients and the diagnostic methods that will be used to monitor the success or failure of the treatment. If previous clinical studies using similar methods have been performed by yourself or others, indicate their relevance to the proposed study. Specifically:

Appendix M–I–B–3–a. Will cells (e.g., bone marrow cells) be removed from patients and treated ex vivo? If so, describe the type, number, and intervals at which these cells will be removed.

Appendix M–I–B–3–b. Will patients be treated to eliminate or reduce the number of cells containing malfunctioning genes (e.g., through radiation or chemotherapy)?

Appendix M–I–B–3–c. What treated cells (or vector/DNA combination) will be given to patients? How will the treated cells be administered? What volume of cells will be used? Will there be single or multiple treatments? If so, over what period of time?

Appendix M–I–B–3–d. How will it be determined that new gene sequences have been inserted into the patient's cells and if these sequences are being expressed? Are these cells limited to the intended target cell populations? How sensitive are these analyses?

Appendix M–I–B–3–e. What studies will be conducted to assess the presence and effects of the contaminants?

Appendix M–I–B–3–f. What are the clinical endpoints of the study? Are there objections and quantitative measurements to assess the natural history of the disease? Will such measurements be used in patient follow-up? How will patients be monitored to assess specific effects of the treatment on the disease? What is the sensitivity of the analyses? How frequently will follow-up studies be conducted? How long will patient follow-up continue?

Appendix M–I–B–3–g. What are the major beneficial and adverse effects of treatment that you anticipate? What measures will be taken in an attempt to control or reverse these adverse effects if they occur? Compare the probability and magnitude of deleterious consequences from the disease if recombinant DNA transfer is not used.

Appendix M–I–B–3–h. If a treated patient dies, what special post-mortem studies will be performed?

Appendix M–I–B–4. Public Health Considerations. Describe any potential benefits and hazards of the proposed therapy to persons other than the patients being treated. Specifically:

Appendix M–I–B–4–a. On what basis are potential public health benefits or hazards postulated?

Appendix M–I–B–4–b. Is there a significant possibility that the added DNA will spread from the patient to other persons or to the environment?

Appendix M–I–B–4–c. What precautions will be taken against such spread (e.g., patients sharing a room, health-care workers, or family members)?

Appendix M–I–B–4–d. What measures will be undertaken to mitigafe the risks, if any, to public health?

Appendix M–I–B–4–e. In light of possible risks to offspring, including vertical transmission, will birth control measures be recommended to patients? Are such concerns applicable to health care personnel?

Appendix M–I–B–5. Qualifications of Investigators and Adequacy of Laboratory and Clinical Facilities. Indicate the relevant training and experience of the personnel who will be involved in the preclinical studies and clinical administration of recombinant DNA. Describe the laboratory and clinical facilities where the proposed study will be performed. Specifically:

Appendix M–I–B–5–a. What professional personnel (medical and nonmedical) will be involved in the proposed study and what is their relevant expertise? Provide a two-page curriculum vitae for each key professional person in biographical sketch format (see Appendix M–III–E).

Appendix M–I–B–5–b. At what hospital or clinic will the treatment be given? Which facilities of the hospital or clinic will be especially important for the proposed study? Will patients occupy regular hospital beds or clinical research center beds? Where will patients reside during the follow-up period? What special arrangements will be made for the comfort and consideration of the patients. Will the research institution designate an ombudsman, patient care representative, or other individual to help protect the rights and welfare of the patient?

Appendix M–I–C. Selection of the Patients

Estimate the number of patients to be involved in the proposed study. Describe recruitment procedures and patient eligibility requirements, paying particular attention to whether these procedures and requirements are fair and equitable. Specifically:

Appendix M–I–C–1. How many patients do you plan to involve in the proposed study?

Appendix M–I–C–2. How many eligible patients do you anticipate being able to identify each year?

Appendix M–I–C–3. What recruitment procedures do you plan to use?

Appendix M–I–C–4. What selection criteria do you plan to employ? What are the exclusion and inclusion criteria for the study?

Appendix M–I–C–5. How will patients be selected if it is not possible to include all who desire to participate?

Appendix M–I–D. Informed Consent

Indicate how patients will be informed about the proposed study and

how their consent will be solicited. The consent procedure should adhere to the requirements of DHHS regulations for the protection of human subjects (45 Code of Federal Regulations, Part 46). If the study involves pediatric or mentally handicapped patients, describe procedures for seeking the permission of parents or guardians and, where applicable, the assent of each patient. Areas of special concern include potential adverse effects, financial costs, privacy, long-term follow-up and post-mortem examination. When gene transfer is a procedure separate from a clinical protocol, Informed Consent documents shall be submitted for both the gene transfer and clinical protocols.

Appendix M–I–D–1. How will the major points covered in Appendices M–I–A through M–I–C be disclosed to potential participants in this study and/or parents or guardians in language that is understandable to them?

Appendix M–I–D–2. How will the innovative character and the theoretically possible adverse effects of the experiment be discussed with patients and/or parents or guardians? How will the potential adverse effects be compared with the consequences of the disease?

Appendix M–I–D–3. What explanation of the financial costs of the experiment, follow-up care, and any available alternatives will be provided to patients and/or parents or guardians?

Appendix M–I–D–4. How will patients and/or their parents or guardians be informed that the innovative character of the experiment may lead to great interest by the media in the research and in the treated patients?

Appendix M–I–D–5. How will the patients and/or their parents or guardians be informed about: (i) the irreversible consequences of some of the procedures performed? (ii) any adverse medical consequences that may occur if the subject(s) withdraws from the study once it has begun? (iii) expectations of willingness to cooperate in long-term follow-up? and (iv) expectations that permission to perform an autopsy will be granted in the event of a patient's death as a precondition for a patient's participation in the study? This stipulation is included because an accurate determination of the precise cause of a patient's death would be of vital importance to all future patients.

Appendix M–I–E. Privacy and Confidentiality

Indicate what measure will be taken to protect the privacy of patients and their families as well as to maintain the confidentiality of research data.

Appendix M–I–E–1. What provisions will be made to honor the wishes of individual patients (and the parents or guardians of pediatric or mentally handicapped patients) as to whether, when, or how the identity of patients is publicly disclosed.

Appendix M–I–E–2. What provision will be made to maintain the confidentiality of research data, at least in cases where data could be linked to individual patients?

Appendix M–II. Special Issues

Although the following issues are beyond the normal purview of local Institutional Review Boards, the RAC requests that Principal Investigators respond to Appendices M–II–A and M–II–B below:

Appendix M–II–A. What steps will be taken, consistent with Appendix M–I–E, to ensure that accurate and appropriate information is made available to the public with respect to such public concerns as may arise from the proposed study?

Appendix M–II–B. Do you or your funding sources intend to protect under patent or trade secret laws either the products or the procedures developed in the proposed study? If so, what steps will be taken to permit as full communication as possible among Principal Investigators and clinicians concerning research methods and results?

Appendix M–III. Guidelines for the Submission of Human Gene Transfer Protocols

Appendices M–III–A through M–III–D and M–IV apply to human gene transfer protocols considered under Section III–A–2 and III–B–2. Appendices M–III–A, M– IV, and M–V apply to human gene transfer protocols considered under Section III– B–2.

Appendix M–III–A. Principal Investigator-Submitted Material

Principal Investigators should submit the following materials to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Appendix M–III–A–1. Written proposals shall be submitted in the following order:

(1) Scientific abstract—1 page; (2) non-technical abstract—1 page; (3) Institutional Biosafety Committee and Institutional Review Board approvals and their deliberations pertaining to your protocol; (4) Response to Points to Consider—5 pages (see Appendix M through M–III); (6) protocol—20 pages excluding appendices—approved by the local Institutional Biosafety Committee and Institutional Review Board); (7) Informed Consent document—approved by the Institutional Review Board; (8) appendices including tables, figures, and manuscripts; (9) curricula vitae—2 pages for each key professional person in biographical sketch format; and (10) an indication of other Federal agencies to which the protocol is being submitted for review.

Appendix M–III–A–2. When a proposal has been submitted previously, there should be a short section (≤ 200 words) immediately following the abstracts that summarizes the major revisions since the last review.

Appendix M–III–A–3. Data provided shall include: (i) A description of the elements in the vector, (ii) the source of that information, (iii) the method by which sequence data were compiled, and (iv) three 3½ inch diskettes with the vector sequence in ASCII format.

Appendix M–III–B. Time Frame for Submissions

Note: Time frames are applicable only to protocols that are determined by NIH/ORDA to require full RAC review and NIH Director approval. Time frames do not apply to *Accelerated* Review human gene transfer experiments (see Section III–B–2 or those that only require registration with NIH/ORDA (see Section III–C– 7).

Appendix M–III–B–1. Written material from Principal Investigator shall be submitted ≤ 8 weeks before the RAC meeting at which it will be reviewed.

Appendix M–III–B–2. Written comments from the primary reviewers to the Principal Investigator shall be submitted ≤ 4 weeks before the RAC meeting at which it will be reviewed.

Appendix M–III–B–3. Written responses (including critical data in response to the primary reviewers' comments) shall be submitted by the Principal Investigator to NIH/ORDA ≤ 2 weeks before the RAC meeting.

Appendix M–III–C. Oral Responses to the RAC

Principal Investigators shall limit their oral responses to the RAC only to those questions that are raised during the meeting. Oral presentations of previously submitted material and/or critical data that was not submitted ≤ 2 weeks prior to the RAC meeting are prohibited.

Appendix M–III–D. Primary Reviewers' Responses

Appendix M–III–D–1. Primary Reviewers' Written Comments. The primary reviewers' written comments on a proposal should include the following:

Appendix M–III–D–1–a. Emphasize the issues related to gene marking, gene transfer, or gene therapy.

Appendix M–III–D–1–b. State explicitly whether the Points to Consider have been addressed satisfactorily.

Appendix M–III–D–1–c. Examine the scientific rationale, scientific context (relative to other proposals reviewed by the RAC), whether the preliminary in vitro and in vivo data were obtained in appropriate models and are sufficient, and whether questions related to safety, efficacy, and social/ethical context have been resolved.

Appendix M–III–D–1–d. Whenever possible, criticisms of Informed Consent documents should include written alternatives for suggested revisions for the RAC to consider.

Appendix M–III–D–1–e. Primary reviews should state whether the proposal is: (i) acceptable as written, (ii) expected to be acceptable with specific revisions or after satisfactory responses to specific questions raised on review, or (iii) unacceptable in its present form.

Appendix M–III–D–2. Oral Discussions by Primary Reviewers at the RAC Meeting. Appendix M–III–D–2–a. It should be possible for most primary reviewers to present their oral reviews in ≤ 5 minutes.

Appendix M–IV. Reporting Requirements

Appendix M–IV–A. Serious adverse effects of treatment should be reported immediately to the local Institutional Review Board, the NIH Office for Protection from Research Risks, and NIH/ORDA followed by the submission of a written report filed with each group. Reports submitted to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Appendix M–IV–B. Reports regarding the general progress of patients should be filed with both the local Institutional Review Board and NIH/ORDA within six months of the commencement of the experiment and at six-month intervals thereafter. These twice-yearly reports should continue for a sufficient period of time to allow observation of all major effects. In the event of a patient's death, a summary of the special post-mortem studies and statement of the cause of death should be submitted to the Institutional Review Board and NIH/ORDA, if available.

Appendix M–III–D–1–a. Emphasize the issues related to gene marking, gene transfer, or gene therapy.

Appendix M–III–D–1–b. State explicitly whether the Points to Consider have been addressed satisfactorily.

Appendix M–III–D–1–c. Examine the scientific rationale, scientific context (relative to other proposals reviewed by the RAC), whether the preliminary in vitro and in vivo data were obtained in appropriate models and are sufficient, and whether questions related to safety, efficacy, and social/ethical context have been resolved.

Appendix M–III–D–1–d. Whenever possible, criticisms of Informed Consent documents should include written alternatives for suggested revisions for the RAC to consider.

Appendix M–III–D–1–e. Primary reviews should state whether the proposal is: (i) acceptable as written, (ii) expected to be acceptable with specific revisions or after satisfactory responses to specific questions raised on review, or (iii) unacceptable in its present form.

Appendix M–III–D–2. Oral Discussions by Primary Reviewers at the RAC Meeting. Appendix M–III–D–2–a. It should be possible for most primary reviewers to present their oral reviews in ≤ 5 minutes.

Appendix M–IV. Reporting Requirements

Appendix M–IV–A. Serious adverse effects of treatment should be reported immediately to the local Institutional Review Board, the NIH Office for Protection from Research Risks, and NIH/ORDA followed by the submission of a written report filed with each group. Reports submitted to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Appendix M–IV–B. Reports regarding the general progress of patients should be filed with both the local Institutional Review Board and NIH/ORDA within six months of the commencement of the experiment and at six-month intervals thereafter. These twice-yearly reports should continue for a sufficient period of time to allow observation of all major effects. In the event of a patient's death, a summary of the special post-mortem studies and statement of the cause of death should be submitted to the Institutional Review Board and NIH/ORDA, if available.

Appendix M–V. Procedures to the Followed for Accelerated Review of Human Gene Transfer Experiments by NIH/ORDA under Section III–B–2

Requests for Accelerated Review should be submitted to the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9838.

Appendix M–V–A. Human gene transfer experiments in this category must be in accordance with the provisions of Section III–B–2. If the human gene transfer protocol does not qualify for Accelerated Review (see Section III–B–2) as determined by NIH/ORDA, then the Principal Investigator must submit the experiment for full RAC review and NIH approval in accordance with Section III–A–2.

Appendix M–V–B. No protocol shall be considered without Institutional Biosafety Committee and Institutional Review Board approval.

Appendix M–V–C. At this time, all gene transfer protocols must be considered experimental.

Appendix M–V–D. Principal Investigators requesting Accelerated Review (see Section III–B–2), must submit the relevant documentation in accordance with Appendix M–III. NIH/ORDA will notify the Principal Investigator whether the proposed study qualifies for the Accelerated Review process. If NIH/ORDA determines that an experiment does not qualify for Accelerated Review process, the Principal Investigator must submit the proposal for full RAC review ≤ 8 weeks prior to the next scheduled RAC meeting.

Appendix M–V–E. It is expected that NIH/ORDA will consult with the RAC Chair and one or more RAC members, as necessary, when considering Accelerated Review human gene transfer protocols (see Section III–B–2).

Appendix M–V–F. The RAC Chair will provide a report on all human gene transfer protocols that have been approved by NIH/ORDA at the next regularly scheduled RAC meeting.

Appendix M–V–F–1. In accordance with Reporting Requirements (See Appendix M– IV), any adverse effects of the treatment should be reported immediately to the local Institutional Review Board, the NIH Office for Protection from Research Risks, and NIH/ORDA followed by the submission of a written report filed with each group. Reports submitted to NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

Appendix M–V–F–2. In accordance with Reporting Requirements (see Appendix M– IV), reports regarding the general progress of patients should be filed with both the local Institutional Review Board and NIH/ORDA within six months of the commencement of the experiment and at six-month intervals thereafter. In the event of a patient's death, a summary of the special post-mortem studies and statement of the cause of death should be submitted to the Institutional Review Board and NIH/ORDA, if available.

Appendix M–VI. Procedures to be Followed for Expedited Review of Single Patient Human Gene Transfer Experiments by NIH Director Under Section III–A–2 Requests for Expedited Review should be submitted to the Office of Recombinant DNA Activities, National Insitutes of Health, Bethesda, Maryland 20892, (301) 496–9838.

Appendix M–VI–A. A Principal Investigator submitting a request to the NIH/ORDA for Expedited Review of a single patient gene transfer protocol shall provide detailed information regarding the necessity of Expedited Review.

Appendix M–VI–B. No protocol shall be considered without relevant Institutional Biosafety Committee and Institutional Review Board approvals.

Appendix M–VI–C. At this time, all gene transfer protocols are considered experimental.

Appendix M–VI–D. Regardless of the method of review, the Points to Consider is the standard of review for all gene transfer protocols.

Appendix M–VI–E. Review of such protocols may include intramural NIH experts but must include extramural experts.

Appendix M–VI–F. The reviewers shall consider similarity of the new protocol to previously approved protocols.

Appendix M–VI–G. The NIH/ORDA shall report to the RAC following Expedited Review and include all of the materials on which the decision was based. The RAC shall formally review the protocol at its next scheduled meeting. Patient privacy shall be maintained.

Appendix M–VI–H. Protocols that are deferred or not approved by the RAC in its normal review process are not eligible for Expedited Review. No protocol shall have more than one patient approved under Expedited Review.

Appendix M–VI–I. As requested in the context of non-expedited review, none of the costs of the experimental protocol shall be borne by the patient or the patient's family.

Appendix M–VI–J. Data on all patients undergoing gene transfer shall be provided to the RAC within six months of the procedure.

Appendix M–VII. Footnotes of Appendix M

Appendix M–VII–A. The Food and Drug Administration has jurisdiction over products intended for use in human gene transfer clinical trials. For general information on the Food and Drug Administration's policies and regulatory requirements, see the **Federal Register**, Volume 51, pages 23309–23313, 1986.

Appendix M–VII–B. The term "patient" and its variants are used in the text as a shorthand designation for "patient-subject."

Appendix P. Physical and Biological Containment for Recombinant DNA Research Involving Plants

Appendix P specifies physical and biological containment conditions and practices suitable to the greenhouse conduct of experiments involving recombinant DNA-containing plants, plant-associated microorganisms, and small animals. All provisions of the NIH Guidelines apply to plant research activities with the following modifications:

Appendix P shall supersede Appendix G when the research plants are of a size, number, or have growth requirements that preclude the use of containment conditions described in Appendix G. The plants covered in Appendix P include but are not limited to mosses, liverworts, macroscopic algae, and vascular plants including terrestrial crops, forest, and ornamental species.

Plant-associated microorganisms include viroids, virusoids, viruses, bacteria, fungi, protozoans, certain small algae, and microorganisms that have a benign or beneficial association with plants, such as certain Rhizobium species and microorganisms known to cause plant diseases. The appendix applies to microorganisms which are being modified with the objective of fostering an association with plants.

Plant-associated small animals include those arthropods that: (i) Are in obligate association with plants, (ii) are plant pests, (iii) are plant pollinators, or (iv) transmit plant disease agents, as well as other small animals such as nematodes for which tests of biological properties necessitate the use of plants. Microorganisms associated with such small animals (e.g., pathogens or symbionts) are included.

The Institutional Biosafety Committee shall include at least one individual with expertise in plant, plant pathogen, or plant pest containment principles when experiments utilizing Appendix P require prior approval by the Institutional Biosafety Committee.

Appendix P–I. General Plant Biosafety Levels

Appendix P–I–A. The principal purpose of plant containment is to avoid the unintentional transmission of a recombinant DNA-containing plant genome, including nuclear or organelle hereditary material or release of recombinant DNA-derived organisms associated with plants.

Appendix P–I–B. The containment principles are based on the recognition that the organisms that are used pose no health threat to humans or higher animals (unless deliberately modified for that purpose), and that the containment conditions minimize the possibility of an unanticipated deleterious effect on organisms and ecosystems outside of the experimental facility, e.g., the inadvertent spread of a serious pathogen from a greenhouse to a local agricultural crop or the unintentional introduction and establishment of an organism in a new ecosystem.

Appendix P–I–C. Four biosafety levels, referred to as Biosafety Level (BL) 1—Plants (P), BL2–P, BL3–P, and BL4–P, are established in Section II. The selection of containment levels required for research involving recombinant DNA molecules in plants or associated with plants is specified in Section III. These biosafety levels are described in Appendix P–II. This appendix describes greenhouse practices and special greenhouse facilities for physical containment.

Appendix P–I–D. BL1–P through BL4–P are designed to provide differential levels of biosafety for plants in the absence or presence of other experimental organisms that contain recombinant DNA. These biosafety levels, in conjunction with biological containment conditions described in Appendix P–III, provide flexible approaches to ensure the safe conduct of research.

Appendix P–I–E. For experiments in which plants are grown at the BL1 through BL4 laboratory settings, containment practices shall be followed as described in Appendix G. These containment practices include the use of plant tissue culture rooms, growth chambers within laboratory facilities, or experiments performed on open benches. Additional biological containment practices should be added by the Greenhouse Director or Institutional Biosafety Committee as necessary (see Appendix P–III), if botanical reproductive structures are produced that have the potential of being released.

Appendix P–II. Physical Containment Levels

Appendix P–II–A. Biosafety Level 1—Plants (BL1–P)

Appendix P–II–A–1. Standard Practices (BL1–P)

Appendix P–II–A–1–a. Greenhouse Access (BL1–P)

Appendix P–II–A–1–a–(1). Access to the greenhouse shall be limited or restricted, at the discretion of the Greenhouse Director, when experiments are in progress.

Appendix P–II–A–1–a–(2). Prior to entering the greenhouse, personnel shall be required to read and follow instructions on BL1–P greenhouse practices and procedures. All procedures shall be performed in accordance with accepted greenhouse practices that are appropriate to the experimental organism.

Appendix P–II–A–1–b. Records (BL1–P)

Appendix P–II–A–1–b–(1). A record shall be kept of experiments currently in progress in the greenhouse facility.

Appendix P–II–A–1–c. Decontamination and Inactivation (BL1–P)

Appendix P–II–A–1–c–(1). Experimental organisms shall be rendered biologically inactive by appropriate methods before disposal outside of the greenhouse facility.

Appendix P–II–A–1–d. Control of Undesired Species and Motile Macroorganisms (BL1–P)

Appendix P–II–A–1–d–(1). A program shall be implemented to control undesired species (e.g., weed, rodent, or arthropod pests and pathogens), by methods appropriate to the organisms and in accordance with applicable state and Federal laws.

Appendix P–II–A–1–d–(2). Arthropods and other motile macroorganisms shall be housed in appropriate cages. If macroorganisms (e.g., flying arthropods or nematodes) are released within the greenhouse, precautions shall be taken to minimize escape from the greenhouse facility.

Appendix P–II–A–1–e. Concurrent Experiments Conducted in the Greenhouse (BL1–P)

Appendix P–II–A–1–e–(1). Experiments involving other organisms that require a containment level lower than BL1–P may be conducted in the greenhouse concurrently with experiments that require BL1–P containment, provided that all work is conducted in accordance with BL1–P greenhouse practices.

Appendix P–II–A–2. Facilities (BL1–P)

Appendix P–II–A–2–a. Definitions (BL1–P)

Appendix P–II–A–2–a–(1). The term "greenhouse" refers to a structure with walls, a roof, and a floor designed and used principally for growing plants in a controlled and protected environment. The walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth.

Appendix P–II–A–2–a–(2). The term "greenhouse facility" includes the actual greenhouse rooms or compartments for growing plants, including all immediately contiguous hallways and head-house areas, and is considered part of the confinement area.

Appendix P–II–A–2–b. Greenhouse Design (BL1–P)

Appendix P–II–A–2–b–(1). The greenhouse floor may be composed of gravel or other porous material. At a minimum, impervious (e.g., concrete) walkways are recommended.

Appendix P–II–A–2–b–(2). Windows and other openings in the walls and roof of the greenhouse facility may be open for ventilation as needed for proper operation and do not require any special barrier to contain or exclude pollen, microorganisms, or small flying animals (e.g., arthropods and birds); however, screens are recommended.

Appendix P–II–B. Biosafety Level 2—Plants (BL2–P)

Appendix P–II–B–1. Standard Practices (BL2–P)

Appendix P–II–B–1–a. Greenhouse Access (BL2–P)

Appendix P–II–B–1–a–(1). Access to the greenhouse shall be limited or restricted, at the discretion of the Greenhouse Director, to individuals directly involved with the experiments when they are in progress.

Appendix P–II–B–1–a–(2). Personnel shall be required to read and follow instructions on BL2–P practices and procedures. All procedures shall be conducted in accordance with accepted greenhouse practices that are appropriate to the experimental organisms.

experiments that require BL1–P containment, provided that all work is conducted in accordance with BL1–P greenhouse practices.

Appendix P–II–A–2. Facilities (BL1–P)

Appendix P–II–A–2–a. Definitions (BL1–P)

Appendix P–II–A–2–a–(1). The term "greenhouse" refers to a structure with walls, a roof, and a floor designed and used principally for growing plants in a controlled and protected environment. The walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth.

Appendix P–II–A–2–a–(2). The term "greenhouse facility" includes the actual greenhouse rooms or compartments for growing plants, including all immediately contiguous hallways and head-house areas, and is considered part of the confinement area.

Appendix P–II–A–2–b. Greenhouse Design (BL1–P)

Appendix P–II–A–2–b–(1). The greenhouse floor may be composed of gravel or other porous material. At a minimum, impervious (e.g., concrete) walkways are recommended.

Appendix P–II–A–2–b–(2). Windows and other openings in the walls and roof of the greenhouse facility may be open for ventilation as needed for proper operation and do not require any special barrier to contain or exclude pollen, microorganisms, or small flying animals (e.g., arthropods and birds); however, screens are recommended.

Appendix P–II–B. Biosafety Level 2—Plants (BL2–P)

Appendix P–II–B–1. Standard Practices (BL2–P)

Appendix P–II–B–1–a. Greenhouse Access (BL2–P)

Appendix P–II–B–1–a–(1). Access to the greenhouse shall be limited or restricted, at the discretion of the Greenhouse Director, to individuals directly involved with the experiments when they are in progress.

Appendix P–II–B–1–a–(2). Personnel shall be required to read and follow instructions on BL2–P practices and procedures. All procedures shall be conducted in accordance with accepted greenhouse practices that are appropriate to the experimental organisms.

Appendix P–II–B–1–b. Records (BL2–P)

Appendix P–II–B–1–b–(1). A record shall be kept of experimental plants, microorganisms, or small animals that are brought into or removed from the greenhouse facility.

Appendix P–II–B–1–b–(2). A record shall be kept of experiments currently in progress in the greenhouse facility.

Appendix P–II–B–1–b–(3). The Principal Investigator shall report any greenhouse accident involving the inadvertent release or spill of microorganisms to the Greenhouse Director, Institutional Biosafety Committee, NIH/ORDA and other appropriate authorities immediately (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Documentation of any such accident shall be prepared and maintained.

Appendix P–II–B–1–c. Decontamination and Inactivation (BL2–P)

Appendix P–II–B–1–c–(1). Experimental organisms shall be rendered biologically inactive by appropriate methods before disposal outside of the greenhouse facility.

Appendix P–II–B–1–c–(2). Decontamination of run-off water is not necessarily required. If part of the greenhouse is composed of gravel or similar material, appropriate treatments should be made periodically to eliminate, or render inactive, any organisms potentially entrapped by the gravel.

Appendix P–II–B–1–d. Control of Undesired Species and Motile Macroorganisms (BL2–P)

Appendix P–II–B–1–d–(1). A program shall be implemented to control undesired species (e.g., weed, rodent, or arthropod pests and pathogens) by methods appropriate to the organisms and in accordance with applicable state and Federal laws.

Appendix P–II–B–1–d–(2). Arthropods and other motile macroorganisms shall be housed in appropriate cages. If macroorganisms (e.g., flying arthropods or nematodes) are released within the greenhouse, precautions shall be taken to minimize escape from the greenhouse facility.

Appendix P–II–B–1–e. Concurrent Experiments Conducted in the Greenhouse (BL2–P)

Appendix P–II–B–1–e–(1). Experiments involving other organisms that require a containment level lower than BL2–P may be conducted in the greenhouse concurrently with experiments that require BL2–P containment provided that all work is conducted in accordance with BL2–P greenhouse practices.

Appendix P–II–B–1–f. Signs (BL2–P)

Appendix P–II–B–1–f–(1). A sign shall be posted indicating that a restricted experiment is in progress. The sign shall indicate the following: (i) the name of the responsible individual, (ii) the plants in use, and (iii) any special requirements for using the area.

Appendix P–II–B–1–f–(2). If organisms are used that have a recognized potential for causing serious detrimental impacts on managed or natural ecosystems, their presence shall be indicated on a sign posted on the greenhouse access doors.

Appendix P–II–B–1–f–(3). If there is a risk to human health, a sign shall be posted incorporating the universal biosafety symbol.

Appendix P–II–B–1–g. Transfer of Materials (BL2–P)

Appendix P–II–B–1–g–(1). Materials containing experimental microorganisms, which are brought into or removed from the greenhouse facility in a viable or intact state, shall be transferred in a closed non-breakable container.

Appendix P–II–B–1–h. Greenhouse Practices Manual (BL2–P)

Appendix P–II–B–1–h–(1). A greenhouse practices manual shall be prepared or adopted. This manual shall: (i) advise personnel of the potential consequences if such practices are not followed, and (ii) outline contingency plans to be implemented in the event of the unintentional release of organisms.

Appendix P–II–B–2. Facilities (BL2–P)

Appendix P–II–B–2–a. Definitions (BL2–P)

Appendix P–II–B–2–a–(1). The term "greenhouse" refers to a structure with walls, a roof, and a floor designed and used principally for growing plants in a controlled and protected environment. The walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth.

Appendix P–II–B–2–a–(2). The term "greenhouse facility" includes the actual greenhouse rooms or compartments for growing plants, including all immediately contiguous hallways and head-house areas and is considered part of the confinement area.

Appendix P–II–B–2–b. Greenhouse Design (BL2–P)

Appendix P–II–B–2–b–(1). A greenhouse floor composed of an impervious material. Concrete is recommended, but gravel or other porous material under benches is acceptable unless propagules of experimental organisms are readily disseminated through soil. Soil beds are acceptable unless propagules of experimental organisms are readily disseminated through soil.

Appendix P–II–B–2–b–(2). Windows and other openings in the walls and roof of the greenhouse facility may be open for ventilation as needed for proper operation and do not require any special barrier to exclude pollen or microorganisms; however, screens are required to exclude small flying animals (e.g., arthropods and birds).

Appendix P–II–B–2–c. Autoclaves (BL2–P)

Appendix P–II–B–2–c–(1). An autoclave shall be available for the treatment of contaminated greenhouse materials.

Appendix P–II–B–2–d. Supply and Exhaust Air Ventilation Systems (BL2–P)

Appendix P–II–B–2–d–(1). If intake fans are used, measures shall be taken to minimize the ingress of arthropods. Louvers or fans shall be constructed such that they can only be opened when the fan is in operation.

Appendix P–II–B–2–e. Other (BL2–P)

Appendix P–II–B–2–e–(1). BL2–P greenhouse containment requirements may be satisfied by using a growth chamber or growth room within a building provided that the external physical structure limits access and escape of microorganisms and macroorganisms in a manner that satisfies the intent of the foregoing clauses.

Appendix P–II–C. Biosafety Level 3—Plants (BL3–P)

Appendix P–II–C–1. Standard Practices (BL3–P)

Appendix P–II–C–1–a. Greenhouse Access (BL3–P)

Appendix P–II–C–1–a–(1). Authorized entry into the greenhouse shall be restricted to individuals who are required for program or support purposes. The Greenhouse Director shall be responsible for assessing each circumstance and determining those individuals who are authorized to enter the greenhouse facility.

Appendix P–II–C–1–a–(2). Prior to entering the greenhouse, personnel shall be required to read and follow instructions on BL3–P practices and procedures. All procedures shall be conducted in accordance with accepted greenhouse practices that are appropriate to the experimental organisms.

Appendix P–II–C–1–b. Records (BL3–P)

Appendix P–II–C–1–b–(1). A record shall be kept of experimental plants, microorganisms, or small animals that are brought into or removed from the greenhouse facility.

Appendix P–II–C–1–b–(2). A record shall be kept of experiments currently in progress in the greenhouse facility.

Appendix P–II–C–1–b–(3). The Principal Investigator shall report any greenhouse accident involving the inadvertent release or spill of microorganisms to the Biological Safety Officer, Greenhouse Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities immediately (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Documentation of any such accident shall be prepared and maintained.

Appendix P–II–C–1–c. Decontamination and Inactivation (BL3–P)

Appendix P–II–C–1–c–(1). All experimental materials shall be sterilized in an autoclave or rendered biologically inactive by appropriate methods before disposal, except those that are to remain in a viable or intact state for experimental purposes; including water that comes in contact with experimental microorganisms or with material exposed to such microorganisms, and contaminated equipment and supplies.

Appendix P–II–C–1–d. Control of Undesired Species and Motile Macroorganisms (BL3–P)

Appendix P–II–C–1–d–(1). A program shall be implemented to control undesired species (e.g., weed, rodent, or arthropod pests and pathogens) by methods appropriate to the organisms and in accordance with applicable state and Federal laws.

Appendix P–II–C–1–d–(2). Arthropods and other motile macroorganisms shall be housed in appropriate cages. When appropriate to the organism, experiments shall be conducted within cages designed to contain the motile organisms.

Appendix P–II–C–1–e. Concurrent Experiments Conducted in the Greenhouse (BL3–P)

Appendix P–II–C–1–e–(1). Experiments involving organisms that require a containment level lower than BL3–P may be conducted in the greenhouse concurrently with experiments that require BL3–P containment provided that all work is conducted in accordance with BL3–P greenhouse practices.

Appendix P–II–C–1–f. Signs (BL3–P)

Appendix P–II–C–1–f–(1). A sign shall be posted indicating that a restricted experiment is in progress. The sign shall indicate the following: (i) The name of the responsible individual, (ii) the plants in use, and (iii) any special requirements for using the area.

Appendix P–II–C–1–f–(2). If organisms are used that have a recognized potential for causing serious detrimental impacts on managed or natural ecosystems, their presence should be indicated on a sign posted on the greenhouse access doors.

Appendix P–II–C–1–f–(3). If there is a risk to human health, a sign shall be posted incorporating the universal biosafety symbol.

Appendix P–II–C–1–g. Transfer of Materials (BL3–P)

Appendix P–II–C–1–g–(1). Experimental materials that are brought into or removed from the greenhouse facility in a viable or intact state shall be transferred to a non-breakable sealed secondary container. At the time of transfer, if the same plant species, host, or vector are present within the effective dissemination distance of propagules of the experimental organism, the surface of the secondary container shall be decontaminated. Decontamination may be accomplished by passage through a chemical disinfectant or fumigation chamber or by an alternative procedure that has demonstrated effective inactivation of the experimental organism.

Appendix P–II–C–1–h. Greenhouse Practices Manual (BL3–P)

Appendix P–II–C–1–h–(1). A greenhouse practices manual shall be prepared or adopted. This manual shall: (i) Advise personnel of the potential consequences if such practices are not followed, and (ii) outline contingency plans to be implemented in the event of the unintentional release of organisms with recognized potential for serious detrimental impact.

Appendix P–II–C–1–i. Protective Clothing (BL3–P)

Appendix P–II–C–1–i–(1). Disposable clothing (e.g., solid front or wrap-around gowns, scrub suits, or other appropriate clothing) shall be worn in the greenhouse if deemed necessary by the Greenhouse Director because of potential dissemination of the experimental microorganisms.

Appendix P–II–C–1–i–(2). Protective clothing shall be removed before exiting the greenhouse and decontaminated prior to laundering or disposal.

Appendix P–II–C–1–j. Other (BL3–P)

Appendix P–II–C–1–j–(1). Personnel are required to thoroughly wash their hands upon exiting the greenhouse.

Appendix P–II–C–1–j–(2). All procedures shall be performed carefully to minimize the creation of aerosols and excessive splashing of potting material/soil during watering, transplanting, and all experimental manipulations.

Appendix P–II–C–2. Facilities (BL3–P)

Appendix P–II–C–2–a. Definitions (BL3–P)

Appendix P–II–C–2–a–(1). The term "greenhouse" refers to a structure with walls, roof, and floor designed and used principally for growing plants in a controlled and protected environment. The walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth.

Appendix P–II–C–2–a–(2). The term "greenhouse facility" includes the actual greenhouse rooms or compartments for growing plants, including all immediately contiguous hallways and head-house areas, and is considered part of the confinement area. The need to maintain negative pressure should be considered when constructing or renovating the greenhouse.

Appendix P–II–C–2–b. Greenhouse Design (BL3–P)

Appendix P–II–C–2–b–(1). The greenhouse floor shall be composed of concrete or other impervious material with provision for collection and decontamination of liquid run-off.

Appendix P–II–C–2–b–(2). Windows shall be closed and sealed. All glazing shall be resistant to breakage (e.g., double-pane tempered glass or equivalent).

Appendix P–II–C–2–b–(3). The greenhouse shall be a closed self-contained structure with a continuous covering that is separated from areas that are open to unrestricted traffic flow. The minimum requirement for greenhouse entry shall be passage

Appendix P–II–C–1–i. Protective Clothing (BL3–P)

Appendix P–II–C–1–i–(1). Disposable clothing (e.g., solid front or wrap-around gowns, scrub suits, or other appropriate clothing) shall be worn in the greenhouse if deemed necessary by the Greenhouse Director because of potential dissemination of the experimental microorganisms.

Appendix P–II–C–1–i–(2). Protective clothing shall be removed before exiting the greenhouse and decontaminated prior to laundering or disposal.

Appendix P–II–C–1–j. Other (BL3–P)

Appendix P–II–C–1–j–(1). Personnel are required to thoroughly wash their hands upon exiting the greenhouse.

Appendix P–II–C–1–j–(2). All procedures shall be performed carefully to minimize the creation of aerosols and excessive splashing of potting material/soil during watering, transplanting, and all experimental manipulations.

Appendix P–II–C–2. Facilities (BL3–P)

Appendix P–II–C–2–a. Definitions (BL3–P)

Appendix P–II–C–2–a–(1). The term "greenhouse" refers to a structure with walls, roof, and floor designed and used principally for growing plants in a controlled and protected environment. The walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth.

Appendix P–II–C–2–a–(2). The term "greenhouse facility" includes the actual greenhouse rooms or compartments for growing plants, including all immediately contiguous hallways and head-house areas, and is considered part of the confinement area. The need to maintain negative pressure should be considered when constructing or renovating the greenhouse.

Appendix P–II–C–2–b. Greenhouse Design (BL3–P)

Appendix P–II–C–2–b–(1). The greenhouse floor shall be composed of concrete or other impervious material with provision for collection and decontamination of liquid run-off.

Appendix P–II–C–2–b–(2). Windows shall be closed and sealed. All glazing shall be resistant to breakage (e.g., double-pane tempered glass or equivalent).

Appendix P–II–C–2–b–(3). The greenhouse shall be a closed self-contained structure with a continuous covering that is separated from areas that are open to unrestricted traffic flow. The minimum requirement for greenhouse entry shall be passage through two sets of self-closing locking doors.

Appendix P–II–C–2–b–(4). The greenhouse facility shall be surrounded by a security fence or protected by equivalent security measures.

Appendix P–II–C–2–b–(5). Internal walls, ceilings, and floors shall be resistant to penetration by liquids and chemicals to facilitate cleaning and decontamination of the area. All penetrations into these structures and surfaces (e.g., plumbing and utilities) shall be sealed.

Appendix P–II–C–2–b–(6). Bench tops and other work surfaces should have seamless surfaces that are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix P–II–C–2–b–(7). The greenhouse contains a foot, elbow, or automatically operated sink, which is located near the exit door for hand washing.

Appendix P–II–C–2–c. Autoclaves (BL3–P)

Appendix P–II–C–2–c–(1). An autoclave shall be available for decontaminating materials within the greenhouse facility. A double-door autoclave is recommended (not required) for the decontamination of materials passing out of the greenhouse facility.

Appendix P–II–C–2–d. Supply and Exhaust Air Ventilation Systems (BL3–P)

Appendix P–II–C–2–d–(1). An individual supply and exhaust air ventilation system shall be provided. The system maintains pressure differentials and directional airflow, as required, to assure inward (or zero) airflow from areas outside of the greenhouse.

Appendix P–II–C–2–d–(2). The exhaust air from the greenhouse facility shall be filtered through high efficiency particulate air-HEPA filters and discharged to the outside. The filter chambers shall be designed to allow *in situ* decontamination before filters are removed and to facilitate certification testing after they are replaced. Air filters shall be 80–85% average efficiency by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 52–68 test method using atmosphere dust. Air supply fans shall be equipped with a back-flow damper that closes when the air supply fan is off. Alternatively, a HEPA filter may be used on the air supply system instead of the filters and damper. The supply and exhaust airflow shall be interlocked to assure inward (or zero) airflow at all times.

Appendix P–II–C–2–e. Other (BL3–P)

Appendix P–II–C–2–e–(1). BL3–P greenhouse containment requirements may be satisfied using a growth chamber or growth room within a building provided that the location, access, airflow patterns, and provisions for decontamination of experimental materials and supplies meet the intent of the foregoing clauses.

Appendix P–II–C–2–e–(2). Vacuum lines shall be protected with high efficiency particulate air/HEPA or equivalent filters and liquid disinfectant traps.

Appendix P–II–D. Biosafety Level 4—Plants (BL4–P)

Appendix P–II–D–1. Standard Practices (BL4–P)

Appendix P–II–D–1–a. Greenhouse Access (BL4–P)

Appendix P–II–D–1–a–(1). Authorized entry into the greenhouse shall be restricted to individuals who are required for program or support purposes. The Greenhouse Director shall be responsible for assessing each circumstance and determining those individuals who are authorized to enter the greenhouse facility or work in the greenhouse during experiments.

Appendix P–II–D–1–a–(2). Access shall be managed by the Greenhouse Director, Biological Safety Officer, or other individual responsible for physical security of the greenhouse facility; and access limited by means of secure, locked doors.

Appendix P–II–D–1–a–(3). Prior to entering, individuals shall be advised of the potential environmental hazards and instructed on appropriate safeguards for ensuring environmental safety. Individuals authorized to enter the greenhouse facility shall comply with the instructions and all other applicable entry/exit procedures.

Appendix P–II–D–1–a–(4). Personnel shall enter and exit the greenhouse facility only through the clothing change and shower rooms and shall shower each time they exit the greenhouse facility. Personnel shall use the airlocks to enter or exit the laboratory only in an emergency. In the event of an emergency, every reasonable effort should be made to prevent the possible transport of viable propagules from containment.

Appendix P–II–D–1–a–(5). Prior to entering the greenhouse, personnel shall be required to read and follow instructions on BL4–P practices and procedures.

Appendix P–II–D–1–b. Records (BL4–P)

Appendix P–II–D–1–b–(1). A record shall be kept of all experimental materials brought into or removed from the greenhouse.

Appendix P–II–D–1–b–(2). A record shall be kept of experiments currently in progress in the greenhouse facility.

Appendix P–II–D–1–b–(3). A record shall be kept of all personnel entering and exiting the greenhouse facility, including the date and time of each entry.

Appendix P–II–D–1–b–(4). The Principal Investigator shall report any greenhouse accident involving the inadvertent release or spill of microorganisms to the Biological Safety Officer, Greenhouse Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities immediately (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Documentation of any such accident shall be prepared and maintained.

Appendix P–II–D–1–c. Decontamination and Inactivation (BL4–P)

Appendix P–II–D–1–c–(1). All materials, except for those that are to remain in a viable or intact state for experimental purposes, shall be autoclaved prior to removal from the maximum containment greenhouse. Equipment or material that could be damaged by high temperatures or steam shall be decontaminated by alternative methods (e.g., gas or vapor sterilization) in an airlock or chamber designed for this purpose.

Appendix P–II–D–1–c–(2). Water that comes in contact with experimental microorganisms or with material exposed to such microorganisms (e.g., run-off from watering plants) shall be collected and decontaminated before disposal.

Appendix P–II–D–1–c–(3). Standard microbiological procedures shall be followed for decontamination of equipment and materials. Spray or liquid waste or rinse water from containers used to apply the experimental microorganisms shall be decontaminated before disposal.

Appendix P–II–D–1–d. Control of Undesired Species and Motile Macroorganisms (BL4–P)

Appendix P–II–D–1–d–(1). A chemical control program shall be implemented to eliminate undesired pests and pathogens in accordance with applicable state and Federal laws.

Appendix P–II–D–1–d–(2). Arthropods and other motile macroorganisms used in conjunction with experiments requiring BL4–P level physical containment shall be housed in appropriate cages. When appropriate to the organism, experiments shall be conducted within cages designed to contain the motile organisms.

Appendix P–II–D–1–e. Concurrent Experiments Conducted in the Greenhouse (BL4–P)

Appendix P–II–D–1–e–(1). Experiments involving organisms that require a containment level lower than BL4–P may be conducted in the greenhouse concurrently with experiments that require BL4–P containment provided that all work is conducted in accordance with BL4–P greenhouse practices. When the experimental microorganisms in use require a containment level lower than BL4–P, greenhouse practices reflect the level of containment required by the highest containment level microorganisms being tested.

Appendix P–II–D–1–f. Signs (BL4–P)

Appendix P–II–D–1–f–(1). A sign shall be posted indicating that a restricted experiment is in progress. The sign shall indicate the following: (i) The name of the responsible individual, (ii) the plants in use, and (iii) any special requirements for using the area.

Appendix P–II–D–1–f–(2). If organisms are used that have a recognized potential for causing serious detrimental impacts on managed or natural ecosystems, their presence shall be indicated by a sign posted on the greenhouse access doors.

Appendix P–II–D–1–f–(3). If there is a risk to human health, a sign shall be posted incorporating the universal biosafety symbol.

Appendix P–II–D–1–g. Transfer of Materials (BL4–P)

Appendix P–II–D–1–g–(1). Experimental materials that are brought into or removed from the greenhouse in a viable or intact state shall be transferred to a non- breakable, sealed, primary container then enclosed in a non-breakable, sealed secondary container. These containers shall be removed from the greenhouse facility through a chemical disinfectant, fumigation chamber, or an airlock designed for this purpose.

Appendix P–II–D–1–g–(2). Supplies and materials shall be brought into the greenhouse facility through a double-door autoclave, fumigation chamber, or airlock that is appropriately decontaminated between each use. After securing the outer doors, personnel within the greenhouse facility shall retrieve the materials by opening the interior door of the autoclave, fumigation chamber, or airlock. These doors shall be secured after the materials are brought into the greenhouse facility.

Appendix P–II–D–1–h. Greenhouse Practices Manual (BL4–P)

Appendix P–II–D–1–h–(1). A greenhouse practices manual shall be prepared or adopted. This manual shall include contingency plans to be implemented in the event of the unintentional release of experimental organisms.

Appendix P–II–D–1–i. Protective Clothing (BL4–P)

Appendix P–II–D–1–i–(1). Street clothing shall be removed in the outer clothing change room. Complete laboratory clothing (may be disposable) including undergarments, pants, and shirts, jump suits, shoes, and hats shall be provided and worn by all personnel entering the greenhouse facility.

Appendix P–II–D–1–i–(2). Personnel shall remove laboratory clothing when exiting the greenhouse facility and before entering the shower area. This clothing shall be stored in a locker or hamper in the inner change room.

Appendix P–II–D–1–i–(3). All laboratory clothing shall be autoclaved before laundering.

Appendix P–II–D–2. Facilities (BL4–P)

Appendix P–II–D–2–a. Greenhouse Design (BL4–P)

Appendix P–II–D–2–a–(1). The maximum containment greenhouse facility shall consist of a separate building or a clearly demarcated and isolated area within a building. The need to maintain negative pressure should be considered when constructing or renovating the greenhouse facility.

Appendix P–II–D–2–a–(2). Outer and inner change rooms, separated by a shower, shall be provided for personnel entering and exiting the greenhouse facility.

Appendix P–II–D–2–a–(3). Windows shall be closed and sealed. All glazing shall be resistant to breakage (e.g., double-pane tempered glass or equivalent).

Appendix P–II–D–2–a–(4). Access doors to the greenhouse shall be self-closing and locking.

Appendix P–II–D–2–a–(5). The greenhouse facility shall be surrounded by a security fence or protected by equivalent security measures.

Appendix P–II–D–2–a–(6). The walls, floors, and ceilings of the greenhouse shall be constructed to form a sealed internal shell that facilitates fumigation and is animal and arthropod-proof. These internal surfaces shall be resistant to penetration and degradation by liquids and chemicals to facilitate cleaning and decontamination of the area. All penetrations into these structures and surfaces (e.g., plumbing and utilities) shall be sealed.

Appendix P–II–D–2–a–(7). Bench tops and other work surfaces shall have seamless surfaces impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix P–II–D–2–a–(8). A double-door autoclave, fumigation chamber, or ventilated airlock shall be provided for passage of all materials, supplies, or equipment that are not brought into the greenhouse facility through the change room.

Appendix P–II–D–2–b. Autoclaves (BL4–P)

Appendix P–II–D–2–b–(1). A double-door autoclave shall be provided for the decontamination of materials removed from the greenhouse facility. The autoclave door, which opens to the area external to the greenhouse facility, shall be sealed to the outer wall and automatically controlled so that it can only be opened upon completion of the sterilization cycle.

Appendix P–II–D–2–c. Supply and Exhaust Air Ventilation Systems (BL4–P)

Appendix P–II–D–2–c–(1). An individual supply and exhaust air ventilation system shall be provided. The system shall maintain pressure differentials and directional airflow as required to assure inward (or zero) airflow from areas outside of the greenhouse. Differential pressure transducers shall be used to sense pressure levels. If a system malfunctions, the transducers shall sound an alarm. A backup source of power should be considered. The supply and exhaust airflow shall be interlocked to assure inward (or zero) airflow at all times. The integrity of the greenhouse shall have an air leak rate (decay rate) not to exceed 7 percent per minute (logarithm of pressure against time) over a 20-minute period at 2 inches of water gauge pressure. Nominally, this is 0.05 inches of water gauge pressure loss in 1 minute at 2 inches water gauge pressure.

Appendix P–II–D–2–c–(2). Exhaust air from the greenhouse facility shall be filtered through high efficiency particulate air/HEPA filters and discharged to the outside and dispersed away from occupied buildings and air

shall be constructed to form a sealed internal shell that facilitates fumigation and is animal and arthropod-proof. These internal surfaces shall be resistant to penetration and degradation by liquids and chemicals to facilitate cleaning and decontamination of the area. All penetrations into these structures and surfaces (e.g., plumbing and utilities) shall be sealed.

Appendix P–II–D–2–a–(7). Bench tops and other work surfaces shall have seamless surfaces impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix P–II–D–2–a–(8). A double-door autoclave, fumigation chamber, or ventilated airlock shall be provided for passage of all materials, supplies, or equipment that are not brought into the greenhouse facility through the change room.

Appendix P–II–D–2–b. Autoclaves (BL4–P)

Appendix P–II–D–2–b–(1). A double-door autoclave shall be provided for the decontamination of materials removed from the greenhouse facility. The autoclave door, which opens to the area external to the greenhouse facility, shall be sealed to the outer wall and automatically controlled so that it can only be opened upon completion of the sterilization cycle.

Appendix P–II–D–2–c. Supply and Exhaust Air Ventilation Systems (BL4–P)

Appendix P–II–D–2–c–(1). An individual supply and exhaust air ventilation system shall be provided. The system shall maintain pressure differentials and directional airflow as required to assure inward (or zero) airflow from areas outside of the greenhouse. Differential pressure transducers shall be used to sense pressure levels. If a system malfunctions, the transducers shall sound an alarm. A backup source of power should be considered. The supply and exhaust airflow shall be interlocked to assure inward (or zero) airflow at all times. The integrity of the greenhouse shall have an air leak rate (decay rate) not to exceed 7 percent per minute (logarithm of pressure against time) over a 20-minute period at 2 inches of water gauge pressure. Nominally, this is 0.05 inches of water gauge pressure loss in 1 minute at 2 inches water gauge pressure.

Appendix P–II–D–2–c–(2). Exhaust air from the greenhouse facility shall be filtered through high efficiency particulate air/HEPA filters and discharged to the outside and dispersed away from occupied buildings and air intakes. Filter chambers shall be designed to allow in situ decontamination before filters are removed and to facilitate certification testing after they are replaced. HEPA filters shall be provided to treat air supplied to the greenhouse facility. HEPA filters shall be certified annually.

Appendix P–II–D–2–d. Other (BL4–P)

Appendix P–II–D–2–d–(1). Sewer vents and other ventilation lines contain high efficiency particulate air/HEPA filters. HEPA filters shall be certified annually.

Appendix P–II–D–2–d–(2). A pass-through dunk tank, fumigation chamber, or an equivalent method of decontamination shall be provided to ensure decontamination of materials and equipment that cannot be decontaminated in the autoclave.

Appendix P–II–D–2–d–(3). Liquid effluent from sinks, floors, and autoclave chambers shall be decontaminated by heat or chemical treatment before being released from the maximum containment greenhouse facility. Liquid wastes from shower rooms and toilets may be decontaminated by heat or chemical treatment. Autoclave and chemical decontamination of liquid wastes shall be evaluated by appropriate standard procedures for autoclaved wastes. Decontamination shall be evaluated mechanically and biologically using a recording thermometer and an indicator microorganism with a defined heat susceptibility pattern. If liquid wastes are decontaminated with chemical disinfectants, the chemicals used must have demonstrated efficacy against the target or indicator microorganisms.

Appendix P–II–D–2–d–(4). If there is a central vacuum system, it shall not serve areas outside of the greenhouse facility. In-line high efficiency particulate air/HEPA filters shall be placed as near as practicable to each use point or vacuum service cock. Other liquid and gas services to the greenhouse facility shall be protected by devices that prevent back-flow. HEPA filters shall be certified annually.

Appendix P–III. Biological Containment Practices

Appropriate selection of the following biological containment practices may be used to meet the containment requirements for a given organism. The present list is not exhaustive; there may be other ways of preventing effective dissemination that could possibly lead to the establishment of the organism or its genetic material in the environment resulting in deleterious consequences to managed or natural ecosystems.

Appendix P–III–A. Biological Containment Practices (Plants)

Appendix P–III–A–1. Effective dissemination of plants by pollen or seed can be prevented by one or more of the following procedures: (i) Cover the reproductive structures to prevent pollen dissemination at flowering and seed dissemination at maturity; (ii) remove reproductive structures by employing male sterile strains, or harvest the plant material prior to the reproductive stage; (iii) ensure that experimental plants flower at a time of year when cross-fertile plants are not flowering within the normal pollen dispersal range of the experimental plant; or (iv) ensure that cross-fertile plants are not growing within the known pollen dispersal range of the experimental plant.

Appendix P–III–B. Biological Containment Practices (Microorganisms)

Appendix P–III–B–1. Effective dissemination of microorganisms beyond the confines of the greenhouse can be prevented by one or more of the following procedures: (i) Confine all operations to injections of microorganisms or other biological procedures (including genetic manipulation) that limit replication or reproduction of viruses and microorganisms or sequences derived from microorganisms, and confine these injections to internal plant parts or adherent plant surfaces; (ii) ensure that organisms, which can serve as hosts or promote the transmission of the virus or microorganism, are not present within the farthest distance that the airborne virus or microorganism may be expected to be effectively disseminated; (iii) conduct experiments at a time of year when plants that can serve as hosts are either not growing or are not susceptible to productive infection; (iv) use viruses and other microorganisms or their genomes that have known arthropod or animal vectors, in the absence of such vectors; (v) use microorganisms that have an obligate association with the plant; or (vi) use microorganisms that are genetically disabled to minimize survival outside of the research facility and whose natural mode of transmission requires injury of the target organism, or assures that inadvertent release is unlikely to initiate productive infection of organisms outside of the experimental facility.

Appendix P–III–C. Biological Containment Practices (Macroorganisms)

Appendix P–III–C–1. Effective dissemination of arthropods and other small animals can be prevented by using one or more of the following procedures: (i) Use non-flying, flight-impaired, or sterile arthropods; (ii) use non-motile or sterile strains of small animals; (iii) conduct experiments at a time of year that precludes the survival of escaping organisms; (iv) use animals that have an obligate association with a plant that is not present within the dispersal range of the organism; or (v) prevent the escape of organisms present in run-off water by chemical treatment or evaporation of run-off water.

Appendix Q. Physical and Biological Containment for Recombinant DNA Research Involving Animals

Appendix Q specifies containment and confinement practices for research involving whole animals, both those in which the animal's genome has been altered by stable introduction of recombinant DNA, or DNA derived therefrom, into the germ-line (transgenic animals) and experiments involving viable recombinant DNA-modified microorganisms tested on whole animals. The appendix applies to animal research activities with the following modifications:

Appendix Q shall supersede Appendix G when research animals are of a size or have growth requirements that preclude the use of containment for laboratory animals. Some animals may require other types of containment (see Appendix Q– III–D). The animals covered in Appendix Q are those species normally categorized as animals including but not limited to cattle, swine, sheep, goats, horses, and poultry.

The Institutional Biosafety Committee shall include at least one scientist with expertise in animal containment principles when experiments utilizing Appendix Q require Institutional Biosafety Committee prior approval.

The institution shall establish and maintain a health surveillance program for personnel engaged in animal research involving viable recombinant DNA-containing microorganisms that require Biosafety Level (BL) 3 or greater containment in the laboratory.

Appendix Q–I. General Considerations

Appendix Q–I–A. Containment Levels

The containment levels required for research involving recombinant DNA associated with or in animals is based on classification of experiments in Section III. For the purpose of animal research, four levels of containment are established. These are referred to as BL1-Animals (N), BL2–N, BL3–N, and BL4–N and are described in the following sections of Appendix Q. The descriptions include: (i) standard practices for physical and biological containment, and (ii) animal facilities.

Appendix Q–I–B. Disposal of Animals (BL1–N through BL4–N)

Appendix Q–I–B–1. When an animal covered by Appendix Q containing recombinant DNA or a recombinant DNA-derived organism is euthanized or dies, the carcass shall be disposed of to avoid its use as food for human beings or animals unless food use is specifically authorized by an appropriate Federal agency.

Appendix Q–I–B–2. A permanent record shall be maintained of the experimental use and disposal of each animal or group of animals.

Appendix Q–II. Physical and Biological Containment Levels

Appendix Q–II–A. Biosafety Level 1—Animals (BL1–N)

Appendix Q–II–A–1. Standard Practices (BL1–N)

Appendix Q–II–A–1–a. Animal Facility Access (BL1–N)

Appendix Q–II–A–1–a–(1). The containment area shall be locked.

Appendix Q–II–A–1–a–(2). Access to the containment area shall be limited or restricted when experimental animals are being held.

Appendix Q–II–A–1–a–(3). The containment area shall be patrolled or monitored at frequent intervals.

Appendix Q–II–A–1–b. Other (BL1–N)

Appendix Q–II–A–1–b–(1). All genetically engineered neonates shall be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences that allow identification of transgenic animals from among non-transgenic animals.

Appendix Q–II–A–1–b–(2). A double barrier shall be provided to separate male and female animals unless reproductive studies are part of the experiment or other measures are taken to avoid reproductive transmission. Reproductive incapacitation may be used.

Appendix Q–II–A–1–b–(3). The containment area shall be in accordance with state and Federal laws and animal care requirements.

Appendix Q–II–A–2. Animal Facilities (BL1–N)

Appendix Q–II–A–2–(a). Animals shall be confined to securely fenced areas or be in enclosed structures (animal rooms) to minimize the possibility of theft or unintentional release.

Appendix Q–II–B. Biosafety Level 2—Animals (BL2–N) (see Appendix Q–III–A)

Appendix Q–II–B–1. Standard Practices (BL2–N)

Appendix Q–II–B–1–a. Animal Facility Access (BL2–N)

Appendix Q–II–B–1–a–(1). The containment area shall be locked.

Appendix Q–II–B–1–a–(2). The containment area shall be patrolled or monitored at frequent intervals.

Appendix Q–II–B–1–a–(3). The containment building shall be controlled and have a locking access.

Appendix Q–II–B–1–a–(4). The Animal Facility Director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) may enter the laboratory or animal rooms.

Appendix Q–II–B–1–a–(5). Animals of the same or different species, which are not involved in the work being performed, shall not be permitted in the animal area.

Appendix Q–II–B–1–b. Decontamination and Inactivation (BL2–N)

Appendix Q–II–B–1–b–(1). Contaminated materials that are decontaminated at a site away from the laboratory shall be placed in a closed durable leak-proof container prior to removal from the laboratory.

Appendix Q–II–B–1–b–(2). Needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q–II–B–1–c. Signs (BL2–N)

Appendix Q–II–B–1–c–(1). When the animal research requires special provisions for entry (e.g., vaccination), a warning sign incorporating the universal biosafety symbol shall be posted on all access doors to the animal work area. The sign shall indicate: (i) the agent, (ii) the animal species, (iii) the name and telephone number of the Animal Facility Director or other responsible individual, and (iv) any special requirements for entering the laboratory.

Appendix Q–II–B–1–d. Protective Clothing (BL2–N)

Appendix Q–II–B–1–d–(1). Laboratory coats, gowns, smocks, or uniforms shall be worn while in the animal area or attached laboratory. Before entering non-laboratory areas (e.g., cafeteria, library, administrative offices), protective clothing shall be removed and kept in the work entrance area.

Appendix Q–II–B–1–d–(2). Special care shall be taken to avoid skin contamination with microorganisms containing recombinant DNA. Impervious and/or protective gloves shall be worn when handling experimental animals and when skin contact with an infectious agent is unavoidable.

Appendix Q–II–B–1–e. Records (BL2–N)

Appendix Q–II–B–1–e–(1). Any incident involving spills and accidents that result in environmental release or exposures of animals or laboratory workers to organisms containing recombinant DNA molecules shall be reported immediately to the Animal Facility Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Medical evaluation, surveillance, and treatment shall be provided as appropriate and written records maintained. If necessary, the area shall be appropriately decontaminated.

Appendix Q–II–B–1–e–(2). When appropriate and giving consideration to the agent handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agent handled and the function of the animal facility.

Appendix Q–II–B–1–f. Transfer of Materials (BL2–N)

Appendix Q–II–B–1–f–(1). Biological materials removed from the animal containment area in a viable or intact state shall be transferred to a non-breakable sealed primary container and then enclosed in a non-breakable sealed secondary container. All containers, primary and secondary, shall be disinfected before removal from the animal facility. Advance approval for transfer of material shall be obtained from the Animal Facility Director. Packages containing viable agents may only be opened in a facility having an equivalent or higher level of physical

Appendix Q–II–B–1–d. Protective Clothing (BL2–N)

Appendix Q–II–B–1–d–(1). Laboratory coats, gowns, smocks, or uniforms shall be worn while in the animal area or attached laboratory. Before entering non-laboratory areas (e.g., cafeteria, library, administrative offices), protective clothing shall be removed and kept in the work entrance area.

Appendix Q–II–B–1–d–(2). Special care shall be taken to avoid skin contamination with microorganisms containing recombinant DNA. Impervious and/or protective gloves shall be worn when handling experimental animals and when skin contact with an infectious agent is unavoidable.

Appendix Q–II–B–1–e. Records (BL2–N)

Appendix Q–II–B–1–e–(1). Any incident involving spills and accidents that result in environmental release or exposures of animals or laboratory workers to organisms containing recombinant DNA molecules shall be reported immediately to the Animal Facility Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Medical evaluation, surveillance, and treatment shall be provided as appropriate and written records maintained. If necessary, the area shall be appropriately decontaminated.

Appendix Q–II–B–1–e–(2). When appropriate and giving consideration to the agent handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agent handled and the function of the animal facility.

Appendix Q–II–B–1–f. Transfer of Materials (BL2–N)

Appendix Q–II–B–1–f–(1). Biological materials removed from the animal containment area in a viable or intact state shall be transferred to a non-breakable sealed primary container and then enclosed in a non-breakable sealed secondary container. All containers, primary and secondary, shall be disinfected before removal from the animal facility. Advance approval for transfer of material shall be obtained from the Animal Facility Director. Packages containing viable agents may only be opened in a facility having an equivalent or higher level of physical containment unless the agent is biologically inactivated or incapable of reproduction.

Appendix Q–II–B–1–g. Other (BL2–N)

Appendix Q–II–B–1–g–(1). All genetically engineered neonates shall be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences that allow identification of transgenic animals from among non-transgenic animals.

Appendix Q–II–B–1–g–(2). Needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Following use, needles shall not be bent, sheared, replaced in the needle sheath or guard, or removed from the syringe. Needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q–II–B–1–g–(3). Appropriate steps should be taken to prevent horizontal transmission or exposure of laboratory personnel. If the agent used as a vector is known to be transmitted by a particular route (e.g., arthropods), special attention should be given to preventing spread by that route. In the absence of specific knowledge of a particular route of transmission, all potential means of horizontal transmission (e.g., arthropods, contaminated bedding, or animal waste, etc.) should be prevented.

Appendix Q–II–B–1–g–(4). Eating, drinking, smoking, and applying cosmetics shall not be permitted in the work area.

Appendix Q–II–B–1–g–(5). Individuals who handle materials and animals containing recombinant DNA molecules shall be required to wash their hands before exiting the containment area.

Appendix Q–II–B–1–g–(6). A double barrier shall be provided to separate male and female animals unless reproductive studies are part of the experiment or other measures are taken to avoid reproductive transmission. Reproductive incapacitation may be used.

Appendix Q–II–B–1–g–(7). The containment area shall be in accordance with state and Federal laws and animal care requirements.

Appendix Q–II–B–1–g–(8). A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and required to read and follow instructions on practices and procedures.

Appendix Q–II–B–2. Animal Facilities (BL2–N)

Appendix Q–II–B–2–a. Animals shall be contained within an enclosed structure (animal room or equivalent) to minimize the possibility of theft or unintentional release and to avoid arthropod access. The special provision to avoid the entry or escape of arthropods from the animal areas may be waived if the agent in use is not known to be transmitted by arthropods.

Appendix Q–II–B–2–b. Surfaces shall be impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

Appendix Q–II–B–2–c. The animal containment area shall be designed so that it can be easily cleaned.

Appendix Q–II–B–2–d. Windows that open shall be fitted with fly screens.

Appendix Q–II–B–2–e. An autoclave shall be available for decontamination of laboratory wastes.

Appendix Q–II–B–2–f. If arthropods are used in the experiment or the agent under study can be transmitted by an arthropod, interior work areas shall be appropriately screened (52 mesh). All perimeter joints and openings shall be sealed and additional arthropod control mechanisms used to minimize arthropod entry and propagation, including appropriate screening of access doors or the equivalent.

Appendix Q–II–C. Biosafety Level 3—Animals (BL3–N) (see Appendix Q–III–B)

Appendix Q–II–C–1. Standard Practices (BL3–N)

Appendix Q–II–C–1–a. Animal Facility Access (BL3–N)

Appendix Q–II–C–1–a–(1). The containment area shall be locked.

Appendix Q–II–C–1–a–(2). The containment area shall be patrolled or monitored at frequent intervals.

Appendix Q–II–C–1–a–(3). The containment building shall be controlled and have a locking access.

Appendix Q–II–C–1–a–(4). The Animal Facility Director shall establish policies and procedures whereby only persons who have been advised of the

potential hazard and who meet any specific entry requirements (e.g., vaccination) shall enter the laboratory or animal rooms.

Appendix Q–II–C–1–a–(5). Animal room doors, gates, or other closures shall be kept closed when experiments are in progress.

Appendix Q–II–C–1–b. Decontamination and Inactivation (BL3–N)

Appendix Q–II–C–1–b–(1). The work surfaces of containment equipment shall be decontaminated when work with organisms containing recombinant DNA molecules is finished. Where feasible, plastic-backed paper toweling shall be used on nonporous work surfaces to facilitate clean-up.

Appendix Q–II–C–1–b–(2). All animals shall be euthanized at the end of their experimental usefulness and the carcasses decontaminated before disposal in an approved manner.

Appendix Q–II–C–1–b–(3). Needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q–II–C–1–b–(4). Special safety testing, decontamination procedures, and Institutional Biosafety Committee approval shall be required to transfer agents or tissue/organ specimens from a BL3–N animal facility to a facility with a lower containment classification.

Appendix Q–II–C–1–b–(5). Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers shall be decontaminated by heat treatment before being released into the sanitary system. The procedure used for heat decontamination of liquid wastes shall be monitored with a recording thermometer. The effectiveness of the heat decontamination process system shall be revalidated every 30 days with an indicator organism.

Appendix Q–II–C–1–c. Signs (BL3–N)

Appendix Q–II–C–1–c–(1). When the animal research requires special provisions for entry (e.g., vaccination), a warning sign incorporating the universal biosafety symbol shall be posted on all access doors to the animal work area. The sign shall indicate: (i) the agent, (ii) the animal species, (iii) the name and telephone number of the Animal Facility Director or other responsible individual, and (iv) any special requirements for entering the laboratory.

Appendix Q–II–C–1–d. Protective Clothing (BL3–N)

Appendix Q–II–C–1–d–(1). Full protective clothing that protects the individual (e.g., scrub suits, coveralls, uniforms) shall be worn in the animal area. Clothing shall not be worn outside the animal containment area and shall be decontaminated before laundering or disposal. Personnel shall be required to shower before exiting the BL3–N area and wearing of personal clothing.

Appendix Q–II–C–1–d–(2). Special care shall be taken to avoid skin contamination with microorganisms containing recombinant DNA. Impervious and/or protective gloves shall be worn when handling experimental animals and when skin contact with an infectious agent is unavoidable.

Appendix Q–II–C–1–d–(3). Appropriate respiratory protection shall be worn in rooms containing experimental animals.

Appendix Q–II–C–1–e. Records (BL3–N)

Appendix Q–II–C–1–e–(1). Documents regarding experimental animal use and disposal shall be maintained in a permanent record book.

Appendix Q–II–C–1–e–(2). Any incident involving spills and accidents that result in environmental release or exposure of animals or laboratory workers to organisms containing recombinant DNA shall be reported immediately to the Biological Safety Office, Animal Facility Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Medical evaluation, surveillance, and treatment shall be provided as appropriate and written records maintained. If necessary, the area shall be appropriately decontaminated.

Appendix Q–II–C–1–e–(3). When appropriate and giving consideration to the agent handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agent handled or the function of the facility.

Appendix Q–II–C–1–f. Transfer of Materials (BL3–N)

Appendix Q–II–C–1–f–(1). Biological materials removed from the animal containment laboratory in a viable or intact state shall be transferred to a non-breakable sealed primary container and then enclosed in a non-breakable sealed secondary container. All containers, primary and secondary, shall be disinfected before removal from the animal facility. Advance approval for transfer of material shall be obtained from the Animal Facility Director. Packages containing viable agents may be opened only in a facility having an equivalent or higher level of physical containment unless the agent is biologically inactivated or incapable of reproduction.

Appendix Q–II–C–1–f–(2). Special safety testing, decontamination procedures, and Institutional Biosafety Committee approval shall be required to transfer agents or tissue/organ specimens from a BL3–N animal facility to a facility with a lower containment classification.

Appendix Q–II–C–1–g. Other (BL3–N)

Appendix Q–II–C–1–g–(1). All genetically engineered neonates shall be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences that allow identification of transgenic animals from among non-transgenic animals.

Appendix Q–II–C–1–g–(2). Appropriate steps should be taken to prevent horizontal transmission or exposure of laboratory personnel. If the agent used as the vector is known to be transmitted by a particular route (e.g., arthropods), special attention should be given to preventing spread by that route. In the absence of specific knowledge of a particular route of transmission, all potential means of horizontal transmission (e.g., arthropods, contaminated bedding, or animal waste) should be prevented.

Appendix Q–II–C–1–g–(3). Eating, drinking, smoking, and applying cosmetics shall not be permitted in the work area.

Appendix Q–II–C–1–g–(4). Individuals who handle materials and animals containing recombinant DNA molecules shall be required to wash their hands before exiting the containment area.

Appendix Q–II–C–1–g–(5). Experiments involving other organisms that require containment levels lower than BL3–N may be conducted in the same area concurrently with experiments requiring BL3–N containment provided that they are conducted in accordance with BL3–N practices.

Appendix Q–II–C–1–g–(6). Animal holding areas shall be cleaned at least once a day and decontaminated immediately following any spill of viable materials.

Appendix Q–II–C–1–g–(7). All procedures shall be performed carefully to minimize the creation of aerosols.

Appendix Q–II–C–1–g–(8). A double barrier shall be provided to separate male and female animals unless reproductive studies are part of the experiment or other measures are taken to avoid reproductive transmission. Reproductive incapacitation may be used.

Appendix Q–II–C–1–g–(9). The containment area shall be in accordance with state and Federal laws and animal care requirements.

Appendix Q–II–C–1–g–(10). All animals shall be euthanized at the end of their experimental usefulness and the carcasses decontaminated before disposal in an approved manner.

Appendix Q–II–C–1–g–(11). Personnel shall be required to shower before exiting the BL3–N area and wearing personal clothing.

Appendix Q–II–C–1–g–(12). Animals of the same or different species, which are not involved in the work being performed, shall not be permitted in the animal area.

Appendix Q–II–C–1–g–(13). Needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Following use, needles shall not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe. The needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q–II–C–1–g–(14). A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and required to read and follow instructions on practices and procedures.

Appendix Q–II–C–2. Animal Facilities (BL3–N)

Appendix Q–II–C–2–a. Animals shall be contained within an enclosed structure (animal room or equivalent) to minimize the possibility of theft or

Appendix Q–II–C–1–g–(6). Animal holding areas shall be cleaned at least once a day and decontaminated immediately following any spill of viable materials.

Appendix Q–II–C–1–g–(7). All procedures shall be performed carefully to minimize the creation of aerosols.

Appendix Q–II–C–1–g–(8). A double barrier shall be provided to separate male and female animals unless reproductive studies are part of the experiment or other measures are taken to avoid reproductive transmission. Reproductive incapacitation may be used.

Appendix Q–II–C–1–g–(9). The containment area shall be in accordance with state and Federal laws and animal care requirements.

Appendix Q–II–C–1–g–(10). All animals shall be euthanized at the end of their experimental usefulness and the carcasses decontaminated before disposal in an approved manner.

Appendix Q–II–C–1–g–(11). Personnel shall be required to shower before exiting the BL3–N area and wearing personal clothing.

Appendix Q–II–C–1–g–(12). Animals of the same or different species, which are not involved in the work being performed, shall not be permitted in the animal area.

Appendix Q–II–C–1–g–(13). Needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Following use, needles shall not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe. The needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q–II–C–1–g–(14). A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and required to read and follow instructions on practices and procedures.

Appendix Q–II–C–2. Animal Facilities (BL3–N)

Appendix Q–II–C–2–a. Animals shall be contained within an enclosed structure (animal room or equivalent) to minimize the possibility of theft or unintentional release and avoid arthropod access. The special provision to avoid the entry or escape of arthropods from the animal areas may be waived if the agent in use is not known to be transmitted by arthropods.

Appendix Q–II–C–2–b. The interior walls, floors, and ceilings shall be impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat, to facilitate cleaning. Penetrations in these structures and surfaces (e.g., plumbing and utilities) shall be sealed.

Appendix Q–II–C–2–c. Windows in the animal facility shall be closed, sealed, and breakage resistant (e.g., double-pane tempered glass or equivalent). The need to maintain negative pressure should be considered when constructing or renovating the animal facility.

Appendix Q–II–C–2–d. An autoclave, incinerator, or other effective means to decontaminate animals and waste shall be available, preferably within the containment area. If feasible, a double-door autoclave is preferred and should be positioned to allow removal of material from the containment area.

Appendix Q–II–C–2–e. If arthropods are used in the experiment or the agent under study can be transmitted by an arthropod, the interior work area shall be appropriately screened (52 mesh). All perimeter joints and openings shall be sealed, and additional arthropod control mechanisms used to minimize arthropod entry and propagation, including appropriate screening, or the equivalent of access doors.

Appendix Q–II–C–2–f. Access doors to the containment area shall be self-closing.

Appendix Q–II–C–2–g. The animal area shall be separated from all other areas.

Passage through two sets of doors shall be the basic requirement for entry into the animal area from access corridors or other contiguous areas. The animal containment area shall be physically separated from access corridors and other laboratories or areas by a double-door clothes change room, equipped with integral showers and airlock.

Appendix Q–II–C–2–h. Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers shall be decontaminated by heat treatment before being released into the sanitary system. The procedure used for heat decontamination of liquid wastes shall be monitored with a recording thermometer. The effectiveness of the heat decontamination process system shall be revalidated every 30 days with an indicator organism.

Appendix Q–II–C–2–i. An exhaust air ventilation system shall be provided. This system shall create directional airflow that draws air into the animal room through the entry area. The building exhaust, or the exhaust from primary containment units, may be used for this purpose if the exhaust air is discharged to the outside and shall be dispersed away from occupied areas and air intakes. Personnel shall verify that the direction of the airflow (into the animal room) is proper.

Appendix Q–II–C–2–j. If the agent is transmitted by aerosol, then the exhaust air shall pass through a high efficiency particulate air/HEPA filter.

Appendix Q–II–C–2–k. Vacuum lines shall be protected with high efficiency particulate air/HEPA filters and liquid disinfectant traps.

Appendix Q–II–C–2–l. In lieu of open housing in the special animal room, animals held in a BL3–N area may be housed in partial-containment caging systems (e.g., Horsfall units or gnotobiotic systems, or other special containment primary barriers). Prudent judgment must be exercised to implement this ventilation system (e.g., animal species) and its discharge location.

Appendix Q–II–C–2–m. Each animal area shall contain a foot, elbow, or automatically operated sink for hand washing. The sink shall be located near the exit door.

Appendix Q–II–C–2–n. Restraining devices for animals may be required to avoid damage to the integrity of the animal containment facility.

Appendix Q–II–D. Biosafety Level 4—Animals (BL4–N) (see Appendix Q–III–C)

Appendix Q–II–D–1. Standard Practices (BL4–N)

Appendix Q–II–D–1–a. Animal Facility Access (BL4–N)

Appendix Q–II–D–1–a–(1). Individuals under 16 years of age shall not be permitted to enter the animal area.

Appendix Q–II–D–1–a–(2). The containment area shall be locked.

Appendix Q–II–D–1–a–(3). The containment area shall be patrolled or monitored at frequent intervals.

Appendix Q–II–D–1–a–(4). The containment building shall be controlled and have a locking access.

Appendix Q–II–D–1–a–(5). The Animal Facility Director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any

specific entry requirements (e.g., vaccination) may enter the laboratory or animal room.

Appendix Q–II–D–1–a–(6). Individuals shall enter and exit the animal facility only through the clothing change and shower rooms.

Appendix Q–II–D–1–a–(7). Personnel shall use the airlocks to enter or exit the laboratory only in an emergency.

Appendix Q–II–D–1–a–(8). Animal room doors, gates, and other closures shall be kept closed when experiments are in progress.

Appendix Q–II–D–1–b. Decontamination and Inactivation (BL4–N)

Appendix Q–II–D–1–b–(1). All contaminated liquid or solid wastes shall be decontaminated before disposal.

Appendix Q–II–D–1–b–(2). The work surfaces and containment equipment shall be decontaminated when work with organisms containing recombinant DNA molecules is finished. Where feasible, plastic-backed paper toweling shall be used on nonporous work surfaces to facilitate clean-up.

Appendix Q–II–D–1–b–(3). All wastes from animal rooms and laboratories shall be appropriately decontaminated before disposal in an approved manner.

Appendix Q–II–D–1–b–(4). No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the maximum containment laboratory unless they have been autoclaved or decontaminated. Equipment or material that might be damaged by high temperatures or steam shall be decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

Appendix Q–II–D–1–b–(5). When ventilated suits are required, the animal personnel shower entrance/exit area shall be equipped with a chemical disinfectant shower to decontaminate the surface of the suit before exiting the area. A neutralization or water dilution device shall be integral with the chemical disinfectant discharge piping before entering the heat sterilization system. Entry to this area shall be through an airlock fitted with airtight doors.

Appendix Q–II–D–1–b–(6). Needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q–II–D–1–b–(7). Supplies and materials needed in the animal facility shall be brought in by way of the double-door autoclave, fumigation chamber, or airlock that shall be appropriately decontaminated between each use.

Appendix Q–II–D–1–b–(8). An autoclave, incinerator, or other effective means to decontaminate animals and wastes shall be available, preferably within the containment area. If feasible, a double-door autoclave is preferred and should be positioned to allow removal of material from the containment area.

Appendix Q–II–D–1–b–(9). Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers shall be decontaminated by heat treatment before being released into the sanitary system. Liquid wastes from shower rooms and toilets shall be decontaminated with chemical disinfectants or heat by methods demonstrated to be effective. The procedure used for heat decontamination of liquid wastes shall be monitored with a recording thermometer. The effectiveness of the heat decontamination process system shall be revalidated every 30 days with an indicator organism. Liquid wastes from the shower shall be chemically decontaminated using an Environmental Protection Agency-approved germicide. The efficacy of the chemical treatment process shall be validated with an indicator organism. Chemical disinfectants shall be neutralized or diluted before release into general effluent waste systems.

Appendix Q–II–D–1–c. Signs (BL4–N)

Appendix Q–II–D–1–c–(1). When the animal research requires special provisions for entry (e.g., vaccination), a warning sign incorporating the universal biosafety symbol shall be posted on all access doors to the animal work area. The sign shall indicate: (i) the agent, (ii) the animal species, (iii) the name and telephone number of the Animal Facility Director, or other responsible individual, and (iv) any special requirements for entering the laboratory.

Appendix Q–II–D–1–d. Protective Clothing (BL4–N)

Appendix Q–II–D–1–d–(1). Individuals shall enter and exit the animal facility only through the clothing change and shower rooms. Street clothing shall be removed and kept in the outer clothing change room. Complete laboratory clothing (may be disposable), including undergarments, pants, shirts, jump suits, and shoes shall be provided for all personnel entering the animal facility. When exiting the BL4–N area and before proceeding into the shower area, personnel shall remove their laboratory clothing in the inner change room. All laboratory clothing shall be autoclaved before laundering. Personnel shall shower each time they exit the animal facility.

Appendix Q–II–D–1–d–(2). A ventilated head-hood or a one-piece positive pressure suit, which is ventilated by a life-support system, shall be worn by all personnel entering rooms that contain experimental animals when appropriate. When ventilated suits are required, the animal personnel shower entrance/exit area shall be equipped with a chemical disinfectant shower to decontaminate the surface of the suit before exiting the area. A neutralization or water dilution device shall be integral with the chemical disinfectant discharge piping before entering the heat sterilization system. Entry to this area shall be through an airlock fitted with airtight doors.

Appendix Q–II–D–1–d–(3). Appropriate respiratory protection shall be worn in rooms containing experimental animals.

Appendix Q–II–D–1–e. Records (BL4–N)

Appendix Q–II–D–1–e–(1). Documents regarding experimental animal use and disposal shall be maintained in a permanent record book.

Appendix Q–II–D–1–e–(2). A system shall be established for: (i) Reporting laboratory accidents and exposures that are a result of overt exposures to organisms containing recombinant DNA, (ii) employee absenteeism, and (iii) medical surveillance of potential laboratory-associated illnesses. Permanent records shall be prepared and maintained. Any incident involving spills and accidents that results in environmental release or exposures of animals or laboratory workers to organisms containing recombinant DNA molecules shall be reported immediately to the Biological Safety Officer, Animal Facility Director, Institutional Biosafety Committee, NIH/ORDA, and other appropriate authorities (if applicable). Reports to the NIH/ORDA shall be sent to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838. Medical evaluation, surveillance, and treatment shall be provided as appropriate and written records maintained. If necessary, the area shall be appropriately decontaminated.

Appendix Q–II–D–1–e–(3). When appropriate and giving consideration to the agents handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agents handled or the function of the facility.

Appendix Q–II–D–1–e–(4). A permanent record book indicating the date and time of each entry and exit shall be signed by all personnel.

Appendix Q–II–D–1–f. Transfer of Materials (BL4–N)

Appendix Q–II–D–1–f–(1). No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the maximum containment laboratory unless they have been autoclaved or decontaminated. Equipment or material that might be damaged by high temperatures or steam shall be decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

Appendix Q–II–D–1–f–(2). Biological materials removed from the animal maximum containment laboratory in a viable or intact state shall be transferred to a non-breakable sealed primary container and then enclosed in a non-breakable sealed secondary container that shall be removed from the animal facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose. Advance approval for transfer of material shall be obtained from the Animal Facility Director. Such packages containing viable agents can only be opened in another BL4–N animal facility if the agent is biologically inactivated or incapable of reproduction. Special safety testing, decontamination procedures, and Institutional Biosafety Committee approval shall be required to transfer agents or tissue/organ specimens from a BL4–N animal facility to one with a lower containment classification.

Appendix Q–II–D–1–f–(3). Supplies and materials needed in the animal facility shall be brought in by way of the double-door autoclave, fumigation chamber, or airlock that shall be appropriately decontaminated between each use. After securing the outer doors, personnel within the animal facility retrieve the materials by opening the interior doors of the autoclave, fumigation chamber, or airlock. These doors shall be secured after materials are brought into the animal facility.

Appendix Q–II–D–1–g. Other (BL4–N)

Appendix Q–II–D–1–g–(1). All genetically engineered neonates shall be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically

agents handled or the function of the facility.

Appendix Q–II–D–1–e–(4). A permanent record book indicating the date and time of each entry and exit shall be signed by all personnel.

Appendix Q–II–D–1–f. Transfer of Materials (BL4–N)

Appendix Q–II–D–1–f–(1). No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the maximum containment laboratory unless they have been autoclaved or decontaminated. Equipment or material that might be damaged by high temperatures or steam shall be decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

Appendix Q–II–D–1–f–(2). Biological materials removed from the animal maximum containment laboratory in a viable or intact state shall be transferred to a non-breakable sealed primary container and then enclosed in a non-breakable sealed secondary container that shall be removed from the animal facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose. Advance approval for transfer of material shall be obtained from the Animal Facility Director. Such packages containing viable agents can only be opened in another BL4–N animal facility if the agent is biologically inactivated or incapable of reproduction. Special safety testing, decontamination procedures, and Institutional Biosafety Committee approval shall be required to transfer agents or tissue/organ specimens from a BL4–N animal facility to one with a lower containment classification.

Appendix Q–II–D–1–f–(3). Supplies and materials needed in the animal facility shall be brought in by way of the double-door autoclave, fumigation chamber, or airlock that shall be appropriately decontaminated between each use. After securing the outer doors, personnel within the animal facility retrieve the materials by opening the interior doors of the autoclave, fumigation chamber, or airlock. These doors shall be secured after materials are brought into the animal facility.

Appendix Q–II–D–1–g. Other (BL4–N)

Appendix Q–II–D–1–g–(1). All genetically engineered neonates shall be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences that allow identification of transgenic animals from among non-transgenic animals.

Appendix Q–II–D–1–g–(2). Eating, drinking, smoking, and applying cosmetics shall not be permitted in the work area.

Appendix Q–II–D–1–g–(3). Individuals who handle materials and animals containing recombinant DNA molecules shall be required to wash their hands before exiting the containment area.

Appendix Q–II–D–1–g–(4). Experiments involving other organisms that require containment levels lower than BL4–N may be conducted in the same area concurrently with experiments requiring BL4–N containment provided that they are conducted in accordance with BL4–N practices.

Appendix Q–II–D–1–g–(5). Animal holding areas shall be cleaned at least once a day and decontaminated immediately following any spill of viable materials.

Appendix Q–II–D–1–g–(6). All procedures shall be performed carefully to minimize the creation of aerosols.

Appendix Q–II–D–1–g–(7). A double barrier shall be provided to separate male and female animals. Animal isolation barriers shall be sturdy and accessible for cleaning. Reproductive incapacitation may be used.

Appendix Q–II–D–1–g–(8). The containment area shall be in accordance with state and Federal laws and animal care requirements.

Appendix Q–II–D–1–g–(9). The life support system for the ventilated suit or head hood is equipped with alarms and emergency back-up air tanks. The exhaust air from the suit area shall be filtered by two sets of high efficiency particulate air/HEPA filters installed in series or incinerated. A duplicate filtration unit, exhaust fan, and an automatically starting emergency power source shall be provided. The air pressure within the suit shall be greater than that of any adjacent area. Emergency lighting and communication systems shall be provided. A double-door autoclave shall be provided for decontamination of waste materials to be removed from the suit area.

Appendix Q–II–D–1–g–(10). Needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Following use, needles shall not be bent, sheared, replaced in the needle sheath or guard, or removed from the syringe. The needles and syringes shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse.

Appendix Q–II–D–1–g–(11). An essential adjunct to the reporting-surveillance system is the availability of a facility for quarantine, isolation, and medical care of personnel with potential or known laboratory-associated illnesses.

Appendix Q–II–D–1–g–(12). A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and required to read and follow instructions on practices and procedures.

Appendix Q–II–D–1–g–(13). Vacuum lines shall be protected with high efficiency particulate air/HEPA filters and liquid disinfectant traps.

Appendix Q–II–D–2. Animal Facilities (BL4–N)

Appendix Q–II–D–2–a. Animals shall be contained within an enclosed structure (animal room or equivalent) to minimize the possibility of theft or unintentional release and avoid arthropod access.

Appendix Q–II–D–2–b. The interior walls, floors, and ceilings shall be impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat, to facilitate cleaning. Penetrations in these structures and surfaces (e.g., plumbing and utilities) shall be sealed.

Appendix Q–II–D–2–c. Windows in the animal facility shall be closed, sealed, and breakage resistant (e.g., double-pane tempered glass or equivalent).

Appendix Q–II–D–2–d. An autoclave, incinerator, or other effective means to decontaminate animals and wastes shall be available, preferably within the containment area. If feasible, a double-door autoclave is preferred and should be positioned to allow removal of material from the containment area.

Appendix Q–II–D–2–e. Access doors to the containment area shall be self-closing.

Appendix Q–II–D–2–f. All perimeter joints and openings shall be sealed to form an arthropod-proof structure.

Appendix Q–II–D–2–g. The BL4–N laboratory provides a double barrier to prevent the release of recombinant DNA containing microorganisms into the environment. Design of the animal

facility shall be such that if the barrier of the inner facility is breached, the outer barrier will prevent release into the environment. The animal area shall be separated from all other areas. Passage through two sets of doors shall be the basic requirement for entry into the animal area from access corridors or other contiguous areas. Physical separation of the animal containment area from access corridors or other laboratories or activities shall be provided by a double-door clothes change room equipped with integral showers and airlock.

Appendix Q–II–D–2–h. A necropsy room shall be provided within the BL4–N containment area.

Appendix Q–II–D–2–i. Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers shall be decontaminated by heat treatment before being released into the sanitary system. Liquid wastes from shower rooms and toilets shall be decontaminated with chemical disinfectants or heat by methods demonstrated to be effective. The procedure used for heat decontamination of liquid wastes shall be monitored with a recording thermometer. The effectiveness of the heat decontamination process system shall be revalidated every 30 days with an indicator organism. Liquid wastes from the shower shall be chemically decontaminated using an Environmental Protection Agency-approved germicide. The efficacy of the chemical treatment process shall be validated with an indicator organism. Chemical disinfectants shall be neutralized or diluted before release into general effluent waste systems.

Appendix Q–II–D–2–j. A ducted exhaust air ventilation system shall be provided that creates directional airflow that draws air into the laboratory through the entry area. The exhaust air, which is not recirculated to any other area of the building, shall be discharged to the outside and dispersed away from the occupied areas and air intakes. Personnel shall verify that the direction of the airflow (into the animal room) is proper.

Appendix Q–II–D–2–k. Exhaust air from BL4–N containment area shall be double high efficiency particulate air/HEPA filtered or treated by passing through a certified HEPA filter and an air incinerator before release to the atmosphere. Double HEPA filters shall be required for the supply air system in a BL4–N containment area.

Appendix Q–II–D–2–l. All high efficiency particulate air/HEPA filters' frames and housings shall be certified to have no detectable smoke [dioctylphthalate] leaks when the exit face (direction of flow) of the filter is scanned above 0.01 percent when measured by a linear or logarithmic photometer. The instrument must demonstrate a threshold sensitivity of at least 1×10^{-3} micrograms per liter for 0.3 micrometer diameter dioctylphthalate particles and a challenge concentration of 80–120 micrograms per liter. The air sampling rate should be at least 1 cfm (28.3 liters per minute).

Appendix Q–II–D–2–m. If an air incinerator is used in lieu of the second high efficiency particulate air/HEPA filter, it shall be biologically challenged to prove all viable test agents are sterilized. The biological challenge must be minimally 1×10^{8} organisms per cubic foot of airflow through the incinerator. It is universally accepted if bacterial spores are used to challenge and verify that the equipment is capable of killing spores, then assurance is provided that all other known agents are inactivated by the parameters established to operate the equipment. Test spores meeting this criterion are *Bacillus subtilis* var. *niger* or *Bacillus stearothermophilis*. The operating temperature of the incinerator shall be continuously monitored and recorded during use.

Appendix Q–II–D–2–n. All equipment and floor drains shall be equipped with deep traps (minimally 5 inches). Floor drains shall be fitted with isolation plugs or fitted with automatic water fill devices.

Appendix Q–II–D–2–o. Each animal area shall contain a foot, elbow, or automatically operated sink for hand washing. The sink shall be located near the exit door.

Appendix Q–II–D–2–p. Restraining devices for animals may be required to avoid damage to the integrity of the containment animal facility.

Appendix Q–II–D–2–q. The supply water distribution system shall be fitted with a back-flow preventer or break tank.

Appendix Q–II–D–2–r. All utilities, liquid and gas services, shall be protected with devices that avoid back-flow.

Appendix Q–II–D–2–s. Sewer and other atmospheric ventilation lines shall be equipped minimally with a single high efficiency particulate/HEPA filter. Condensate drains from these type housings shall be appropriately connected to a contaminated or sanitary drain system. The drain position in the housing dictates the appropriate system to be used.

Appendix Q–III. Footnotes and References for Appendix Q

Appendix Q–III–A. If recombinant DNA is derived from a Class 2 organism requiring BL2 containment, personnel shall be required to have specific training in handling pathogenic agents and directed by knowledgeable scientists.

Appendix Q–III–B. Personnel who handle pathogenic and potentially lethal agents shall be required to have specific training and be supervised by knowledgeable scientists who are experienced in working with these agents. BL3–N containment also minimizes escape of recombinant DNA-containing organisms from exhaust air or waste material from the containment area.

Appendix Q–III–C. Classes 4 and 5 microorganisms pose a high level of individual risk for acquiring life-threatening diseases to personnel and/or animals. To import Class 5 agents, special approval must be obtained from U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Import-Export Products, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

Laboratory staff shall be required to have specific and thorough training in handling extremely hazardous infectious agents, primary and secondary containment, standard and special practices, and laboratory design characteristics. The laboratory staff shall be supervised by knowledgeable scientists who are trained and experienced in working with these agents and in the special containment facilities.

Within work areas of the animal facility, all activities shall be confined to the specially equipped animal rooms or support areas. The maximum animal containment area and support areas shall have special engineering and design features to prevent the dissemination of microorganisms into the environment via exhaust air or waste disposal.

Appendix Q–III–D. Other research with non-laboratory animals, which may not appropriately be conducted under conditions described in Appendix Q, may be conducted safely by applying practices routinely used for controlled culture of these biota. In aquatic systems, for example, BL1 equivalent conditions could be met by utilizing growth tanks that provide adequate physical means to avoid the escape of the aquatic species, its gametes, and introduced exogenous genetic material. A mechanism shall be provided to ensure that neither the organisms nor their gametes can escape into the supply or discharge system of the rearing container (e.g., tank, aquarium, etc.) Acceptable barriers include appropriate filtration, irradiation, heat treatment, chemical treatment, etc. Moreover, the top of the rearing container shall be covered to avoid escape of the organism and its gametes. In the event of tank rupture, leakage, or overflow, the construction of the room containing these tanks should prevent the organisms and gametes from entering the building's drains before the organism and its gametes have been inactivated.

Other types of non-laboratory animals (e.g., nematodes, arthropods, and certain forms of smaller animals) may be accommodated by using the appropriate BL1 through BL4 or BL1–P through

organisms nor their gametes can escape into the supply or discharge system of the rearing container (e.g., tank, aquarium, etc.) Acceptable barriers include appropriate filtration, irradiation, heat treatment, chemical treatment, etc. Moreover, the top of the rearing container shall be covered to avoid escape of the organism and its gametes. In the event of tank rupture, leakage, or overflow, the construction of the room containing these tanks should prevent the organisms and gametes from entering the building's drains before the organism and its gametes have been inactivated.

Other types of non-laboratory animals (e.g., nematodes, arthropods, and certain forms of smaller animals) may be accommodated by using the appropriate BL1 through BL4 or BL1–P through BL4–P containment practices and procedures as specified in Appendices G and P.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective Date: June 24, 1994.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 94–16200 Filed 7–1–94; 8:45 am]

BILLING CODE 4140–01–P

VOL
59
ISS
1
2
7
JL
5
994
MI

Federal Register

Tuesday
July 5, 1994

Part V

The President

Executive Order 12923—Continuation of Export Control Regulations

VOL
59
ISS
127
JL
5
994
UMI

Federal Register
Vol. 59, No. 127
Tuesday, July 5, 1994

Pre

Title 3—

The President

Execu

Conti

By th
laws o
203 of
1702),
find th
and te
nation
as ame
dinary
United
that th

Accord
to exp
(b) to
its pol
boycot
to prot
and re
ordere

Sectio
Admin
tion of
out un
as nec
Admin
1979, a
No. 12
of Mar
Order
of Jun
the exe

Sec. 2.
of Con
as ame
VII. Su
799, ar
action
amend
and ef
provisi
and 17
Nothin
tive sar

Sec. 3.
Control
force a
203 of
order a
full for

Federal Register
Vol. 59, No. 127
Tuesday, July 5, 1994

Presidential Documents

Title 3—

The President

Executive Order 12923 of June 30, 1994

Continuation of Export Control Regulations

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to section 203 of the International Emergency Economic Powers Act ("Act") (50 U.S.C. 1702), I, WILLIAM J. CLINTON, President of the United States of America, find that the unrestricted access of foreign parties to U.S. goods, technology, and technical data and the existence of certain boycott practices of foreign nations, in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*), constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and hereby declare a national emergency with respect to that threat.

Accordingly, in order (a) to exercise the necessary vigilance with respect to exports and activities affecting the national security of the United States; (b) to further significantly the foreign policy of the United States, including its policy with respect to cooperation by U.S. persons with certain foreign boycott activities; and to fulfill its international responsibilities; and (c) to protect the domestic economy from the excessive drain of scarce materials and reduce the serious economic impact of foreign demand, it is hereby ordered as follows:

Section 1. To the extent permitted by law, the provisions of the Export Administration Act of 1979, as amended, and the provisions for administration of the Export Administration Act of 1979, as amended, shall be carried out under this order so as to continue in full force and effect and amend, as necessary, the export control system heretofore maintained by the Export Administration Regulations issued under the Export Administration Act of 1979, as amended. The delegations of authority set forth in Executive Order No. 12002 of July 7, 1977, as amended by Executive Order No. 12755 of March 12, 1991; Executive Order No. 12214 of May 2, 1980; Executive Order No. 12735 of November 16, 1990; and Executive Order No. 12851 of June 11, 1993, shall be incorporated in this order and shall apply to the exercise of authorities under this order.

Sec. 2. All rules and regulations issued or contained in effect by the Secretary of Commerce under the authority of the Export Administration Act of 1979, as amended, including those published in Title 15, Subtitle B, Chapter VII, Subchapter C, of the Code of Federal Regulations, Parts 768 through 799, and all orders, regulations, licenses, and other forms of administrative action issued, taken, or continued in effect pursuant thereto, shall, until amended or revoked by the Secretary of Commerce, remain in full force and effect as if issued or taken pursuant to this order, except that the provisions of sections 203(b)(2) and 206 of the Act (50 U.S.C. 1702(b)(2) and 1705) shall control over any inconsistent provisions in the regulations. Nothing in this section shall affect the continued applicability of administrative sanctions provided for by the regulations described above.

Sec. 3. Provisions for administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this order also shall constitute authority for the issuance and continuation in full force and effect of all rules and regulations by the President or his

delegate, and all orders, licenses, and other forms of administrative actions issued, taken, or continued in effect pursuant thereto, relating to the administration of section 38(e).

Sec. 4. This order shall be effective as of midnight between June 30, 1994, and July 1, 1994, and shall remain in effect until terminated. It is my intention to terminate this order upon the enactment into law of a bill reauthorizing the authorities contained in the Export Administration Act.

William J. Clinton

THE WHITE HOUSE,
June 30, 1994.

[FR Doc. 94-16403
Filed 7-1-94; 10:38 am]
Billing code 3195-01-P

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc.)
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public L
numbers, Federal Register finding aids, and list of
documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and th
documents on public inspection are available on th
National Archives fax-on-demand system. You mus
from a fax machine. There is no charge for the serv
except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33897–34342 1
34343–34552 5

Reader Aids

Federal Register

Vol. 59, No. 127

Tuesday, July 5, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342 1
34343–34552 5

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
June 30, 1994 34341
Proclamations:
6641 (See Proc. 6704) 34329
6704 34329
6705 34343
Executive Orders:
12002 (See EO 12923) 34551
12214 (See EO 12923) 34551
12735 (See EO 12923) 34551
12755 (See EO 12923) 34551
12851 (See EO 12923) 34551
12923 34551

5 CFR

Proposed Rules:
575 34393

7 CFR

916 33897
917 33897
928 33898
947 33900
1205 33901
1421 34345
1755 34353
Proposed Rules:
1036 33922

8 CFR

103 33903
245 33903
245a 33903
264 33903
274a 33903

9 CFR

92 34375
Ch. III 34375
Proposed Rules:
317 34396

12 CFR

Proposed Rules:
220 33923

14 CFR

Proposed Rules:
39 34396
71 34192
93 34192

16 CFR

305 34014
Proposed Rules:
1117 33925
1500 (2 documents) 33928, 33932

17 CFR

1 34376
33 34376
190 34376

20 CFR

416 33906

21 CFR

510 33908
520 33908

22 CFR

60 33909
61 33909
62 33909
63 33909
64 33909
65 33909

23 CFR

655 33909

24 CFR

3280 34294
Proposed Rules:
43 34300
92 34300
570 34300

26 CFR

Proposed Rules:
1 34398

29 CFR

1910 33910

32 CFR

90 34382
91 34382
383 34382
389 34382

33 CFR

4 34210
130 34210
131 34210
132 34210
137 34210
138 34210
Proposed Rules:
334 33939

34 CFR

641 34198

685 34278
Proposed Rules:
Ch. VI 34398

38 CFR
3 34382

39 CFR
111 33911

40 CFR
9 ..... 33912, 34070
52 ..... 33914, 34383
85 33912
86 33912
112 34070
141 34320
142 34320
372 34386
600 33912
Proposed Rules:
Ch. I 33940
52 ..... 33941, 34399, 34401
185 33941

47 CFR
73 34391
Proposed Rules:
61 33947
64 33947
69 33947
73 ..... 34404, 34405

49 CFR
1056 34392
Proposed Rules:
571 34405

50 CFR
675 ..... 33920, 34392
Proposed Rules:
654 33947

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List July 1, 1994

CFR CHECKLIST

This checklist, prepared by the Office of the Federal R published weekly. It is arranged in the order of CFR ti numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issu week and which is now available for sale at the Gover Office.

A checklist of current CFR volumes comprising a com also appears in the latest issue of the LSA (List of CF Affected), which is revised monthly.

The annual rate for subscription to all revised volumes domestic, $207.25 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: P.O. Box 371954, Pittsburgh, PA 15250–7954. All ord accompanied by remittance (check, money order, GP Account, VISA, or Master Card). Charge orders may b to the GPO Order Desk, Monday through Friday, at (2 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your to **(202) 512-2233**.

Title	Stock Number	Price
1, 2 (2 Reserved)	(869–022–00001–2)	$5.0
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.0
4	(869–022–00003–9)	5.5
5 Parts:		
1–699	(869–022–00004–7)	22.0
700–1199	(869–022–00005–5)	19.0
1200–End, 6 (6 Reserved)	(869–022–00006–3)	23.0
7 Parts:		
0–26	(869–022–00007–1)	21.0
27–45	(869–022–00008–0)	14.0
46–51	(869–022–00009–8)	20.0
52	(869–022–00010–1)	30.0
53–209	(869–022–00011–0)	23.0
210–299	(869–022–00012–8)	32.0
300–399	(869–022–00013–6)	16.0
400–699	(869–022–00014–4)	18.0
700–899	(869–022–00015–2)	22.0
900–999	(869–022–00016–1)	34.0
1000–1059	(869–022–00017–9)	23.0
1060–1119	(869–022–00018–7)	15.0
1120–1199	(869–022–00019–5	12.0
1200–1499	(869–022–00020–9)	30.0
1500–1899	(869–022–00021–7)	30.0
1900–1939	(869–022–00022–5)	15.0
1940–1949	(869–022–00023–3)	30.0
1950–1999	(869–022–00024–1)	35.0
2000–End	(869–022–00025–0)	14.0
8	(869–022–00026–8)	22.0
9 Parts:		
1–199	(869–022–00027–6)	29.0
200–End	(869–022–00028–4)	23.0
10 Parts:		
0–50	(869–022–00029–2)	29.0
51–199	(869–022–00030–6)	22.0
200–399	(869–022–00031–4)	15.0
400–499	(869–022–00032–2)	21.0
500–End	(869–022–00033–1)	37.0
11	(869–022–00034–9)	14.0
12 Parts:		
1–199	(869–022–00035–7)	12.0
200–219	(869–022–00036–5)	16.0
220–299	(869–019–00037–2)	26.0
300–499	(869–022–00038–1)	22.0
500–599	(869–022–00039–0)	20.0
600–End	(869–022–00040–3)	32.0
13	(869–022–00041–1)	30.0

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $829.00 domestic, $207.25 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2233**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
4	(869–022–00003–9)	5.50	Jan. 1, 1994
5 Parts:			
1–699	(869–022–00004–7)	22.00	Jan. 1, 1994
700–1199	(869–022–00005–5)	19.00	Jan. 1, 1994
1200–End, 6 (6 Reserved)	(869–022–00006–3)	23.00	Jan. 1, 1994
7 Parts:			
0–26	(869–022–00007–1)	21.00	Jan. 1, 1994
27–45	(869–022–00008–0)	14.00	Jan. 1, 1994
46–51	(869–022–00009–8)	20.00	[6] Jan. 1, 1993
52	(869–022–00010–1)	30.00	Jan. 1, 1994
53–209	(869–022–00011–0)	23.00	Jan. 1, 1994
210–299	(869–022–00012–8)	32.00	Jan. 1, 1994
300–399	(869–022–00013–6)	16.00	Jan. 1, 1994
400–699	(869–022–00014–4)	18.00	Jan. 1, 1994
700–899	(869–022–00015–2)	22.00	Jan. 1, 1994
900–999	(869–022–00016–1)	34.00	Jan. 1, 1994
1000–1059	(869–022–00017–9)	23.00	Jan. 1, 1994
1060–1119	(869–022–00018–7)	15.00	Jan. 1, 1994
1120–1199	(869–022–00019–5	12.00	Jan. 1, 1994
1200–1499	(869–022–00020–9)	30.00	Jan. 1, 1994
1500–1899	(869–022–00021–7)	30.00	Jan. 1, 1994
1900–1939	(869–022–00022–5)	15.00	Jan. 1, 1994
1940–1949	(869–022–00023–3)	30.00	Jan. 1, 1994
1950–1999	(869–022–00024–1)	35.00	Jan. 1, 1994
2000–End	(869–022–00025–0)	14.00	Jan. 1, 1994
8	(869–022–00026–8)	22.00	Jan. 1, 1994
9 Parts:			
1–199	(869–022–00027–6)	29.00	Jan. 1, 1994
200–End	(869–022–00028–4)	23.00	Jan. 1, 1994
10 Parts:			
0–50	(869–022–00029–2)	29.00	Jan. 1, 1994
51–199	(869–022–00030–6)	22.00	Jan. 1, 1994
200–399	(869–022–00031–4)	15.00	[6] Jan. 1, 1993
400–499	(869–022–00032–2)	21.00	Jan. 1, 1994
500–End	(869–022–00033–1)	37.00	Jan. 1, 1994
11	(869–022–00034–9)	14.00	Jan. 1, 1994
12 Parts:			
1–199	(869–022–00035–7)	12.00	Jan. 1, 1994
200–219	(869–022–00036–5)	16.00	Jan. 1, 1994
220–299	(869–019–00037–2)	26.00	Jan. 1, 1993
300–499	(869–022–00038–1)	22.00	Jan. 1, 1994
500–599	(869–022–00039–0)	20.00	Jan. 1, 1994
600–End	(869–022–00040–3)	32.00	Jan. 1, 1994
13	(869–022–00041–1)	30.00	Jan. 1, 1994
14 Parts:			
1–59	(869–022–00042–0)	32.00	Jan. 1, 1994
60–139	(869–022–00043–8)	26.00	Jan. 1, 1994
140–199	(869–022–00044–6)	13.00	Jan. 1, 1994
200–1199	(869–022–00045–4)	23.00	Jan. 1, 1994
1200–End	(869–022–00046–2)	16.00	Jan. 1, 1994
15 Parts:			
0–299	(869–022–00047–1)	15.00	Jan. 1, 1994
300–799	(869–022–00048–4)	26.00	Jan. 1, 1994
800–End	(869–022–00049–7)	23.00	Jan. 1, 1994
16 Parts:			
0–149	(869–022–00050–1)	6.50	Jan. 1, 1994
150–999	(869–022–00051–9)	18.00	Jan. 1, 1994
1000–End	(869–022–00052–7)	25.00	Jan. 1, 1994
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–019–00055–1)	23.00	June 1, 1993
240–End	(869–019–00056–9)	30.00	June 1, 1993
18 Parts:			
1–149	(869–019–00057–7)	16.00	Apr. 1, 1993
150–279	(869–022–00058–6)	19.00	Apr. 1, 1994
280–399	(869–019–00059–3)	15.00	Apr. 1, 1993
400–End	(869–022–00060–8)	11.00	Apr. 1, 1994
19 Parts:			
1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–022–00062–4)	12.00	Apr. 1, 1994
20 Parts:			
1–399	(869–022–00063–2)	20.00	Apr. 1, 1994
400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
*500–End	(869–022–00065–9)	31.00	Apr. 1, 1994
21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
100–169	(869–019–00067–4)	21.00	Apr. 1, 1993
170–199	(869–019–00068–2)	20.00	Apr. 1, 1993
200–299	(869–022–00069–1)	7.00	Apr. 1, 1994
300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
500–599	(869–019–00071–2)	21.00	Apr. 1, 1993
600–799	(869–019–00072–1)	8.00	Apr. 1, 1993
800–1299	(869–019–00073–9)	22.00	Apr. 1, 1993
1300–End	(869–022–00074–8)	13.00	Apr. 1, 1994
22 Parts:			
1–299	(869–019–00075–5)	30.00	Apr. 1, 1993
300–End	(869–022–00076–4)	23.00	Apr. 1, 1994
23	(869–019–00077–1)	21.00	Apr. 1, 1993
24 Parts:			
0–199	(869–019–00078–0)	38.00	Apr. 1, 1993
200–499	(869–019–00079–8)	36.00	Apr. 1, 1993
*500–699	(869–022–00080–2)	20.00	Apr. 1, 1994
700–1699	(869–019–00081–0)	39.00	Apr. 1, 1993
1700–End	(869–019–00082–8)	15.00	Apr. 1, 1993
25	(869–019–00083–6)	31.00	Apr. 1, 1993
26 Parts:			
§§ 1.0-1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–019–00085–2)	37.00	Apr. 1, 1993
§§ 1.170–1.300	(869–019–00086–1)	23.00	Apr. 1, 1993
§§ 1.301–1.400	(869–019–00087–9)	21.00	Apr. 1, 1993
§§ 1.401–1.440	(869–019–00088–7)	31.00	Apr. 1, 1993
§§ 1.441–1.500	(869-019-00089-5)	23.00	Apr. 1, 1993
§§ 1.501–1.640	(869–019–00090–9)	20.00	Apr. 1, 1993
§§ 1.641–1.850	(869–019–00091–7)	24.00	Apr. 1, 1993
§§ 1.851–1.907	(869–019–00092–5)	27.00	Apr. 1, 1993
§§ 1.908–1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
§§ 1.1001–1.1400	(869–019–00094–1)	22.00	Apr. 1, 1993
§§ 1.1401–End	(869–019–00095–0)	31.00	Apr. 1, 1993
2–29	(869–019–00096–8)	23.00	Apr. 1, 1993
30–39	(869–019–00097–6)	18.00	Apr. 1, 1993
40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–019–00099–2)	13.00	Apr. 1, 1993
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–022–00101–9)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600-End	(869-019-00102-6)	8.00	Apr. 1, 1993
27 Parts:			
1-199	(869-019-00103-4)	37.00	Apr. 1, 1993
200-End	(869-022-00104-3)	13.00	Apr. 1, 1994
28 Parts:			
1-42	(869-019-00105-1)	27.00	July 1, 1993
43-end	(869-019-00106-9)	21.00	July 1, 1993
29 Parts:			
0-99	(869-019-00107-7)	21.00	July 1, 1993
100-499	(869-019-00108-5)	9.50	July 1, 1993
500-899	(869-019-00109-3)	36.00	July 1, 1993
900-1899	(869-019-00110-7)	17.00	July 1, 1993
1900-1910 (§§ 1901.1 to 1910.999)	(869-019-00111-5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869-019-00112-3)	21.00	July 1, 1993
1911-1925	(869-019-00113-1)	22.00	July 1, 1993
1926	(869-019-00114-0)	33.00	July 1, 1993
1927-End	(869-019-00115-8)	36.00	July 1, 1993
30 Parts:			
1-199	(869-019-00116-6)	27.00	July 1, 1993
200-699	(869-019-00117-4)	20.00	July 1, 1993
700-End	(869-019-00118-2)	27.00	July 1, 1993
31 Parts:			
0-199	(869-019-00119-1)	18.00	July 1, 1993
200-End	(869-019-00120-4)	29.00	July 1, 1993
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-019-00121-2)	30.00	July 1, 1993
191-399	(869-019-00122-1)	36.00	July 1, 1993
400-629	(869-019-00123-9)	26.00	July 1, 1993
630-699	(869-019-00124-7)	14.00	[5] July 1, 1991
700-799	(869-019-00125-5)	21.00	July 1, 1993
800-End	(869-019-00126-3)	22.00	July 1, 1993
33 Parts:			
1-124	(869-019-00127-1)	20.00	July 1, 1993
125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-019-00129-8)	24.00	July 1, 1993
34 Parts:			
1-299	(869-019-00130-1)	27.00	July 1, 1993
300-399	(869-019-00131-0)	20.00	July 1, 1993
400-End	(869-019-00132-8)	37.00	July 1, 1993
35	(869-019-00133-6)	12.00	July 1, 1993
36 Parts:			
1-199	(869-019-00134-4)	16.00	July 1, 1993
200-End	(869-019-00135-2)	35.00	July 1, 1993
37	(869-019-00136-1)	20.00	July 1, 1993
38 Parts:			
0-17	(869-019-00137-9)	31.00	July 1, 1993
18-End	(869-019-00138-7)	30.00	July 1, 1993
39	(869-019-00139-5)	17.00	July 1, 1993
40 Parts:			
1-51	(869-019-00140-9)	39.00	July 1, 1993
52	(869-019-00141-7)	37.00	July 1, 1993
53-59	(869-019-00142-5)	11.00	July 1, 1993
60	(869-019-00143-3)	35.00	July 1, 1993
61-80	(869-019-00144-1)	29.00	July 1, 1993
81-85	(869-019-00145-0)	21.00	July 1, 1993
86-99	(869-019-00146-8)	39.00	July 1, 1993
100-149	(869-019-00147-6)	36.00	July 1, 1993
150-189	(869-019-00148-4)	24.00	July 1, 1993
190-259	(869-019-00149-2)	17.00	July 1, 1993
260-299	(869-019-00150-6)	39.00	July 1, 1993
300-399	(869-019-00151-4)	18.00	July 1, 1993
400-424	(869-019-00152-2)	27.00	July 1, 1993
425-699	(869-019-00153-1)	28.00	July 1, 1993
700-789	(869-019-00154-9)	26.00	July 1, 1993
790-End	(869-019-00155-7)	26.00	July 1, 1993
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-019-00156-5)	10.00	July 1, 1993
101	(869-019-00157-3)	30.00	July 1, 1993
102-200	(869-019-00158-1)	11.00	[5] July 1, 1991
201-End	(869-019-00159-0)	12.00	July 1, 1993
42 Parts:			
1-399	(869-019-00160-3)	24.00	Oct. 1, 1993
400-429	(869-019-00161-1)	25.00	Oct. 1, 1993
430-End	(869-019-00162-0)	36.00	Oct. 1, 1993
43 Parts:			
1-999	(869-019-00163-8)	23.00	Oct. 1, 1993
1000-3999	(869-019-00164-6)	32.00	Oct. 1, 1993
4000-End	(869-019-00165-4)	14.00	Oct. 1, 1993
44	(869-019-00166-2)	27.00	Oct. 1, 1993
45 Parts:			
1-199	(869-019-00167-1)	22.00	Oct. 1, 1993
200-499	(869-019-00168-9)	15.00	Oct. 1, 1993
500-1199	(869-019-00169-7)	30.00	Oct. 1, 1993
1200-End	(869-019-00170-1)	22.00	Oct. 1, 1993
46 Parts:			
1-40	(869-019-00171-9)	18.00	Oct. 1, 1993
41-69	(869-019-00172-7)	16.00	Oct. 1, 1993
70-89	(869-019-00173-5)	8.50	Oct. 1, 1993
90-139	(869-019-00174-3)	15.00	Oct. 1, 1993
140-155	(869-019-00175-1)	12.00	Oct. 1, 1993
156-165	(869-019-00176-0)	17.00	Oct. 1, 1993
166-199	(869-019-00177-8)	17.00	Oct. 1, 1993
200-499	(869-019-00178-6)	20.00	Oct. 1, 1993
500-End	(869-019-00179-4)	15.00	Oct. 1, 1993
47 Parts:			
0-19	(869-019-00180-8)	24.00	Oct. 1, 1993
20-39	(869-019-00181-6)	24.00	Oct. 1, 1993
40-69	(869-019-00182-4)	14.00	Oct. 1, 1993
70-79	(869-019-00183-2)	23.00	Oct. 1, 1993
80-End	(869-019-00184-1)	26.00	Oct. 1, 1993
48 Chapters:			
1 (Parts 1-51)	(869-019-00185-9)	36.00	Oct. 1, 1993
1 (Parts 52-99)	(869-019-00186-7)	23.00	Oct. 1, 1993
2 (Parts 201-251)	(869-019-00187-5)	16.00	Oct. 1, 1993
2 (Parts 252-299)	(869-019-00188-3)	12.00	Oct. 1, 1993
3-6	(869-019-00189-1)	23.00	Oct. 1, 1993
7-14	(869-019-00190-5)	31.00	Oct. 1, 1993
15-28	(869-019-00191-3)	31.00	Oct. 1, 1993
29-End	(869-019-00192-1)	17.00	Oct. 1, 1993
49 Parts:			
1-99	(869-019-00193-0)	23.00	Oct. 1, 1993
100-177	(869-019-00194-8)	30.00	Oct. 1, 1993
178-199	(869-019-00195-6)	20.00	Oct. 1, 1993
200-399	(869-019-00196-4)	27.00	Oct. 1, 1993
400-999	(869-019-00197-2)	33.00	Oct. 1, 1993
1000-1199	(869-019-00198-1)	18.00	Oct. 1, 1993
1200-End	(869-019-00199-9)	22.00	Oct. 1, 1993
50 Parts:			
1-199	(869-019-00200-6)	20.00	Oct. 1, 1993
200-599	(869-019-00201-4)	21.00	Oct. 1, 1993
600-End	(869-019-00202-2)	22.00	Oct. 1, 1993
CFR Index and Findings Aids	(869-022-00053-5)	38.00	Jan. 1, 1994

Title	Stock Number	Pri
Complete 1994 CFR set		829.
Microfiche CFR Edition:		
Complete set (one-time mailing)		188.
Complete set (one-time mailing)		188.
Complete set (one-time mailing)		223.
Subscription (mailed as issued)		244.

Title	Stock Number	Price	Revision Date
Complete 1994 CFR set		829.00	1994
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
Complete set (one-time mailing)		223.00	1993
Subscription (mailed as issued)		244.00	1994
Individual copies		2.00	1994

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

VOL
59
ISS
1
27
JL
5
994
UMI

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

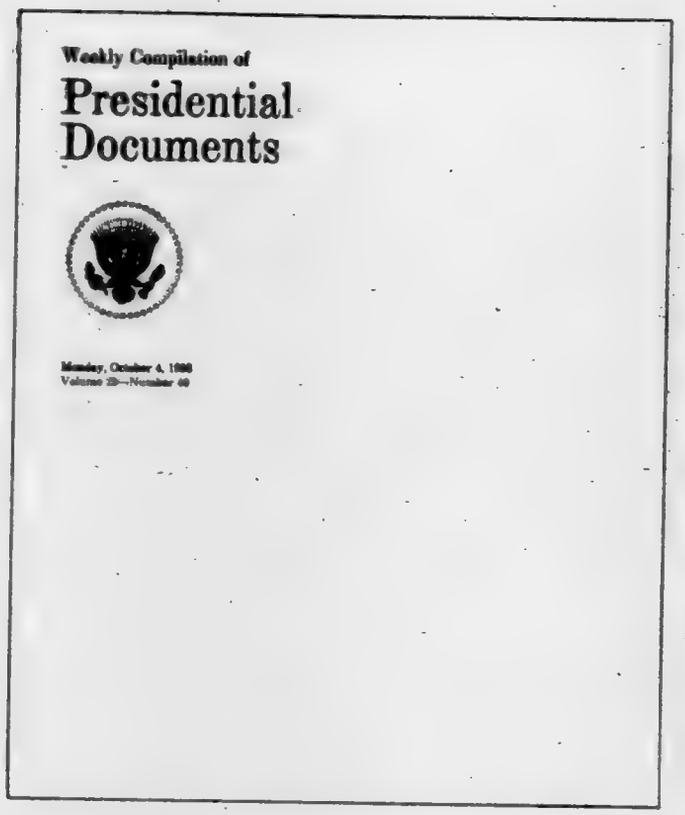

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Order Processing Code:
* 5420

Superintendent of Documents Subscription Order Form

Charge your order. It's easy!

To fax your orders (202) 512–2233

☐ **YES,** please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

❑ $103 First Class Mail ❑ $65 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

gest of
White

Federal

VISA

2-2233

so I

954

VOL
59

ISS
1
2
7

JL
5

994

UMI

Printed on recycled paper

VOL
59
ISS
128
JL
6
994
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7–6–94
Vol. 59 No. 128

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****
A FR UMISE34
UMI SERIALS AC
300 N ZEEB RD
PO BOX 1346
ANN ARBOR

7–6–94
Vol. 59 No. 128

federal register

Wednesday
July 6, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********3-DIGIT 481
A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

UMI
300 N ZEEB RD
ANN ARBOR MI 48106-1346

7-6-94
Vol. 59 No. 128
Pages 34553-34754

Federal Register

7-6-94
Vol. 59 No. 128
Pages 34553-34754

Wednesday
July 6, 1994

Federal Register

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche — 202–512–1800
Assistance with public subscriptions — 512–1806

Online:
Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.
Assistance with online subscriptions — 202–512–1530

Single copies/back copies:
Paper or fiche — 512–1800
Assistance with public single copies — 512–1803

FEDERAL AGENCIES

Subscriptions:
Paper or fiche — 523–5243
Assistance with Federal agency subscriptions — 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Printed on recycled paper containing 100% post consumer waste

Contents

Agriculture Department
See Food and Nutrition Service
See Forest Service
See Soil Conservation Service

Army Department
RULES
Military reservations and national cemeteri
Fort Benjamin Harrison, IN; training area vehicles, motorized and non-motoriz restrictions, 34581–34582

Arts and Humanities, National Foundation
See National Foundation on the Arts and th

Centers for Disease Control and Preventio
NOTICES
Grants and cooperative agreements; availabi
Hepatitis C virus technologies or inventio development, refinement, and validat
Laboratory medicine sentinel monitoring 34637–34639
Occupational exposures control during cons NIOSH meeting, 34639

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Adm

Commission of Fine Arts
NOTICES
Meetings, 34596

Defense Department
See Army Department
See Navy Department
NOTICES
Agency information collection activities und review, 34596
Meetings:
Electron Devices Advisory Group, 34596

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Organix Inc., 34651–34652

Education Department
RULES
Grants and agreements administration:
Uniform administrative requirements and institutions of higher education, hospi non-profit institutions (OMB A–110), 3
NOTICES
Grants and cooperative agreements; availabili
Independent living centers, 34597–34599
Independent living services for older indiv blind program, 34599–34600
State vocational rehabilitation unit in-servi program, 34600–34603

Contents

Federal Register

Vol. 59, No. 128

Wednesday, July 6, 1994

Agriculture Department
See Food and Nutrition Service
See Forest Service
See Soil Conservation Service

Army Department
RULES
Military reservations and national cemeteries:
Fort Benjamin Harrison, IN; training areas; unauthorized vehicles, motorized and non-motorized vehicles; restrictions, 34581–34582

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Hepatitis C virus technologies or inventions; development, refinement, and validation, 34637
Laboratory medicine sentinel monitoring network, 34637–34639
Occupational exposures control during construction; NIOSH meeting, 34639

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commission of Fine Arts
NOTICES
Meetings, 34596

Defense Department
See Army Department
See Navy Department
NOTICES
Agency information collection activities under OMB review, 34596
Meetings:
Electron Devices Advisory Group, 34596

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Organix Inc., 34651–34652

Education Department
RULES
Grants and agreements administration:
Uniform administrative requirements and definitions; institutions of higher education, hospitals, and other non-profit institutions (OMB A–110), 34722–34739
NOTICES
Grants and cooperative agreements; availability, etc.:
Independent living centers, 34597–34599
Independent living services for older individuals who are blind program, 34599–34600
State vocational rehabilitation unit in-service training program, 34600–34603

Employment and Training Administration
NOTICES
Adjustment assistance:
Classic Lady Fashions et al., 34652–34653
General Tire, Inc., 34653
Hughes Christiansen Co., 34653–34654
Prudential Insurance & Financial Service; correction, 34654
Sportette Industries, Inc., et al., 34654
Committees; establishment, renewal, termination, etc.:
Native American Employment and Training Council, 34654
Meetings:
Unemployment Compensation Advisory Council, 34654–34655
NAFTA transitional adjustment assistance:
Thomas & Betts Corp. et al., 34655–34656
Valeo Climate Control Corp., 34656

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Meetings:
Environmental Management Site Specific Advisory Board—
Nevada Test Site, 34603
National Petroleum Council, 34603–34604

Environmental Protection Agency
NOTICES
Agency information collection activities under OMB review, 34611–34613
Pesticide programs:
Certain substances exemption from Federal Insecticide, Fungicide, and Rodenticide Act requirements; notification to Agriculture Secretary, 34614
Pesticide assessment guidelines—
Data reporting addenda; availability, 34613
Water soluble packaging; policy statement, 34621–34622
Pesticide registration, cancellation, etc.:
Nuclo Dry Granular Algaecide, etc., 34614–34620
Pesticides; temporary tolerances:
Triclopyr, 34620–34621
Toxic Substances Control Act; confidential business information claims policies, etc.; availability, 34622

Federal Aviation Administration
RULES
Aircraft:
Emergency locator transmitters
Correction, 34578
Airworthiness directives:
Boeing, 34574–34576
Dassault, 34576–34577
Airworthiness standards:
Special conditions—
Ballistic Recovery Systems, Inc.; parachute recovery system, 34572–34574
Class E airspace, 34577–34578

PROPOSED RULES
Airworthiness directives:
Enstrom Helicopter Corp., 34584–34585
Class E airspace, 34585–34586
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 34703

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 34622
Public safety radio communications plans:
Illinois, 34623

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Hamilton, OH, 34604
Wisconsin Electric Power Co., 34604
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 34604
Koch Gateway Pipeline Co., 34604

Federal Highway Administration
RULES
Motor carrier safety standards:
Parts and accessories necessary for safe operation—
Protection against shifting or falling cargo, 34712–34719
Warning devices for stopped vehicles, 34708–34712

Federal Procurement Policy Office
NOTICES
Acquisition regulations:
Board of Directors; FAR rewrite; implementation Meeting, 34678–34700

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Deutsche Bank AG, 34623–34624
FSB Financial Corp. et al., 34624
Trans Financial Bancorp, Inc., 34624–34625

Federal Trade Commission
NOTICES
Prohibited trade practices:
Dow Chemical Co. et al., 34625–34631
Macy's Northeast, Inc., et al., 34631–34633
Montgomery Ward & Co., Inc., 34633–34634
Sears, Roebuck & Co., 34634–34636

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Walnut Creek National Wildlife Refuge, IA, 34649–34650

Food and Nutrition Service
RULES
Food Stamp Program:
Quality control claims, State agency challenges; administrative review process, 34553–34572
NOTICES
Child nutrition programs:
Child and adult care food programs—
National average payment rates; day care home food service payment rates, etc., 34590–34591
National school lunch program and child and adult care food program—
Donated food value (July 1, 1994–June 30, 1995), 34591–34592
National school lunch, special milk, and school breakfast programs—
National average payments/maximum reimbursement rates, 34592–34594

Forest Service
NOTICES
Environmental statements; availability, etc.:
Siuslaw National Forest, OR, 34594

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 34636

General Services Administration
NOTICES
Environmental statements; availability, etc.:
Cleveland, OH; U.S. Courthouse, 34636–34637

Health and Human Services Department
See Centers for Disease Control and Prevention
See National Institutes of Health
See Public Health Service
See Social Security Administration
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Federal claims collection, 34578–34580
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
HOPE for elderly independence program, 34746–34754

Interior Department
See Fish and Wildlife Service
See Interior Department
See Land Management Bureau
See National Park Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Exxon Valdez Oil Spill Public Advisory Group, 34647–34648
Meetings:
Exxon Valdez Oil Spill Public Advisory Group, 34648

International Trade Administration
NOTICES
Export trade certificates of review, 34595

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Burlington Northern Railroad Co., 34651

Justice Department
See Drug Enforcement Administration
See Prisons Bureau

Labor Department
See Employment and Training Administrat
See Occupational Safety and Health Admin

Land Management Bureau
RULES
Public land orders:
Alaska, 34582
NOTICES
Realty actions; sales, leases, etc.:
Arkansas, 34648–34649

Management and Budget Office
See Federal Procurement Policy Office

National Council on Disability
NOTICES
Meetings; Sunshine Act, 34705

National Foundation on the Arts and the H
NOTICES
Meetings:
Challenge/Advancement Advisory Panel,
Dance Advisory Panel, 34656–34657
Humanities National Council, 34657

National Highway Traffic Safety Administra
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations,

National Institutes of Health
NOTICES
Committees; establishment, renewal, termin
National Center for Human Genome Resea
Counselors Board, 34639
Meetings:
National Cancer Institute, 34639–34640
National Institute on Deafness and Other
Disorders, 34640
Research Grants Division Behavioral and
Special Emphasis Panel, 34640–3464

National Oceanic and Atmospheric Admini
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfis
Gulf of Mexico shrimp, 34582–34583
NOTICES
Permits:
Marine mammals, 34595–34596

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 34650–34651

Navy Department
NOTICES
Patent licenses; non-exclusive, exclusive, or exclusive:
Martin Marietta Corp. et al., 34596–34597

Justice Department
See Drug Enforcement Administration
See Prisons Bureau

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration

Land Management Bureau
RULES
Public land orders:
Alaska, 34582
NOTICES
Realty actions; sales, leases, etc.:
Arkansas, 34648–34649

Management and Budget Office
See Federal Procurement Policy Office

National Council on Disability
NOTICES
Meetings; Sunshine Act, 34705

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Challenge/Advancement Advisory Panel, 34656, 34657
Dance Advisory Panel, 34656–34657
Humanities National Council, 34657

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 34703–34704

National Institutes of Health
NOTICES
Committees; establishment, renewal, termination, etc.:
National Center for Human Genome Research, Scientific Counselors Board, 34639
Meetings:
National Cancer Institute, 34639–34640
National Institute on Deafness and Other Communication Disorders, 34640
Research Grants Division Behavioral and Neurosciences Special Emphasis Panel, 34640–34641

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 34583
Gulf of Mexico shrimp, 34582–34583
NOTICES
Permits:
Marine mammals, 34595–34596

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 34650–34651

Navy Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Martin Marietta Corp. et al., 34596–34597

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 34705
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 34657–34676
Petitions; Director's decisions:
Florida Power & Light Co., 34677–34678
Applications, hearings, determinations, etc.:
Mignotte, Stephen, 34676–34677
Virginia Electric & Power Co., 34678

Occupational Safety and Health Administration
RULES
Safety and health standards:
Personal protective equipment for general industry, 34580–34581
PROPOSED RULES
Shipyard employment safety and health standards:
Personal protective equipment, 34586–34589

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Smoking/no smoking areas, 34742–34743

Public Health Service
See Centers for Disease Control and Prevention
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration
Health Resources Development Bureau, 34641

Research and Special Programs Administration
NOTICES
Meetings:
International standards on transport of dangerous goods, 34704

Resolution Trust Corporation
NOTICES
Coastal Barrier Improvement Act; property availability:
Pecos, NM, 34701

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 34701–34702
Self-regulatory organizations; unlisted trading privileges:
Cincinnati Stock Exchange, Inc., 34702
Applications, hearings, determinations, etc.:
Designatronics Inc., 34702–34703

Social Security Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Federal old-age, survivors, and disability insurance; research grants, 34641–34647

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
West Fork Bayou L'Ours Watershed Supplement No. 2, LA, 34594–34595

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Women's Services Advisory Committee, 34647

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Tomb Treasures from China: The Buried Art of Ancient Xi'an, 34704

Western Area Power Administration
NOTICES
National Defense Authorization Act:
Central Valley Project, CA; electric power allocations to military installations, 34604–34611

Separate Parts In This Issue

Part II
Department of Transportation, Federal Highway Administration, 34738–34719

Part III
Department of Education, 3472234739

Part IV
Department of Justice, Bureau of Prisons, 34742–34743

Part V
Department of Housing and Urban Development, 34746–34754

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can
Reader Aids section at the end of this issue.

7 CFR
272 34553
275 34553
283 34553

14 CFR
21 34572
23 34572
39 (2 documents) 34574, 34576
71 34577
91 34578
Proposed Rules:
39 34584
71 34585

24 CFR
17 34578

28 CFR
551 34742

29 CFR
1910 34580
Proposed Rules:
1915 34586

32 CFR
552 34581

34 CFR
74 34722
77 34722

43 CFR
Public Land Order:
7064 34582

49 CFR
392 34708
393 (2 documents) 34708, 34712

50 CFR
658 34582
675 34583

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
272 34553
275 34553
283 34553

14 CFR
21 34572
23 34572
39 (2 documents) 34574, 34576
71 34577
91 34578

Proposed Rules:
39 34584
71 34585

24 CFR
17 34578

28 CFR
551 34742

29 CFR
1910 34580

Proposed Rules:
1915 34586

32 CFR
552 34581

34 CFR
74 34722
77 34722

43 CFR

Public Land Order:
7064 34582

49 CFR
392 34708
393 (2 documents) 34708, 34712

50 CFR
658 34582
675 34583

VOL
59
ISS
128
JL
6
994
UMI

Rules and Regulation

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 275, and 283

[Amdt. No. 348]

Food Stamp Program: Hunger Prevention Act of 1988 and Mickey Leland Childhood Hunger Relief Act; Rules of Practice; Administrative Law Judges

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the rules of practice governing the administrative review process for State agencies challenging food stamp quality control (QC) claims and is intended to speed the resolution of the QC claims. This action is necessary to implement program administrative review requirements mandated by the Hunger Prevention Act of 1988 and the Omnibus Budget Reconciliation Act of 1993 (Mickey Leland Childhood Hunger Relief Act).

DATES: 1. *Effective Date:* This rule is effective August 5, 1994.

2. *Implementation Date:* This rule must be implemented for all QC billing actions beginning with fiscal year 1986.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 907, Alexandria, Virginia 22302, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Rules and Regulations

Federal Register
Vol. 59, No. 128
Wednesday, July 6, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 275, and 283

[Amdt. No. 348]

Food Stamp Program: Hunger Prevention Act of 1988 and Mickey Leland Childhood Hunger Relief Act; Rules of Practice; Administrative Law Judges

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the rules of practice governing the administrative review process for State agencies challenging food stamp quality control (QC) claims and is intended to speed the resolution of the QC claims. This action is necessary to implement program administrative review requirements mandated by the Hunger Prevention Act of 1988 and the Omnibus Budget Reconciliation Act of 1993 (Mickey Leland Childhood Hunger Relief Act).

DATES: 1. *Effective Date:* This rule is effective August 5, 1994.

2. *Implementation Date:* This rule must be implemented for all QC billing actions beginning with fiscal year 1986.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 907, Alexandria, Virginia 22302, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR part 3015, subpart V and related Notice (48 FR 29115), the Food Stamp Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or part 283 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). William E. Ludwig, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. Only State and local welfare agencies will be affected to the extent that they are involved with appeals of Food Stamp Program quality control claims. The procedures to appeal quality control claims are being changed by this rule to streamline and reduce the time and resources State and local welfare agencies previously devoted to such appeals. Potential and current participants in the Food Stamp Program will not be affected.

Paperwork Reduction Act

This rulemaking does not contain recordkeeping and reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and falls within the exceptions to coverage.

Background

On January 19, 1993, the Department issued a Notice of Proposed Rulemaking (NPRM) at 58 FR 5188 to implement section 603 of the Hunger Prevention Act of 1988 (HPA) (Pub. L. 100–435). The HPA amended the Food Stamp Act of 1977, as amended (the Act) (7 U.S.C. 2011–2032) regarding the Food Stamp Program's administrative review process for QC claims (7 U.S.C. 2023(a)). A total of eight comment letters were received on the proposed rule. One commenter subsequently advised the Department that it considered its comment letter to be inappropriate to the subject of the NPRM and withdrew its letter. The following analysis is based on the remaining seven comment letters.

Since issuance of the proposed regulations on January 19, 1993, Congress has enacted Chapter 3, Title XIII of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 (Mickey Leland Childhood Hunger Relief Act) (Leland Act) to further streamline the appeals process for QC claims established under section 16(c) of the Act, 7 U.S.C. 2025(c). Section 13951 of the Leland Act amended sections 13(a)(1), 14(a) and 16(c) of the Act to: (1) Provide that State agencies will be assessed interest on outstanding QC liabilities if the administrative appeals process takes more than one year to resolve these claims; (2) to establish timeframes for the administrative review process and (3) to provide that an administrative law judge (ALJ) shall consider a State agency's contention of good cause when considering whether to waive all or part of a State agency's QC liability.

A full explanation of the rationale of the proposed rule is contained in its preamble. It is suggested that interested parties refer to that preamble for additional background information (58 FR 5188). Following is a detailed discussion on the comments received on

the proposed rule, non-discretionary revisions based on the Leland Act and the provisions of the final rule. The Department has determined that, with respect to the revisions based upon non-discretionary provisions of the Leland Act referenced above, notice and comment are unnecessary since the Department has no discretion with respect to these provisions. accordingly, such revisions have been made through this final rule.

Discussion of the Regulations

In the following discussion, we have identified each section of the regulation being addressed and have interspersed comments and responses as appropriate. The regulatory language from the NPRM was retained except where indicated.

Section 283.4: Filing Appeals for QC Claims of $50,000 or More

This section of the NPRM contains the procedures which State agencies are to follow in appealing the bill for collection from the Food and Nutrition Service (FNS) for QC claims of $50,000 or more.

Time: In § 283.4(a) of the NPRM, the Department proposed that a State agency must file a notice of appeal within 10 days of receipt by certified mail or personal service of the bill for collection from FNS.

Comments: The Department received three comments on this provision. One commenter stated that the 10-day time span to file the written notice of appeal was too short and that a 30-day period would be more reasonable. Two commenters indicated that it was unclear whether the notice of appeal or the bill for collection must be served by certified mail or personal service. These commenters questioned if it was FNS' intent to require that the notice of appeal be filed by certified mail or personal service.

Response: The Department has considered the comment urging extension of the 10-day requirement but cannot adopt this suggestion. Section 13951 of the Leland Act retained the 10-day filing requirement for the notice of appeal but provides that the filing deadline shall be extended by the ALJ for cause shown. The Department believes that the requirements for the content of the notice of appeal are minimal and should not pose any undue difficulty for the State agency to meet the 10-day filing deadline. If an extension is requested, the request and cause for such request must be submitted to the ALJ or chief judge prior to the expiration of the 10-day filing deadline. The Department has also revised § 283.22(f) to incorporate this provision.

The Department also notes that section 13951(c)(4) of the Leland Act authorizes the ALJ to extend the deadlines for filing of the appeal petition, answer, rebuttal and initial decision for cause shown.

The Department has considered the comment concerning the service of the notice of appeal and has revised this section to clarify that it is not FNS' intention to require the State agency to file the notice of appeal by certified mail or personal service. As discussed in the preamble to the NPRM, the State agency will have 10 days from receipt of the bill for collection to file a notice of appeal with the Hearing Clerk. Section 283.22(b) of the NPRM provides that the notice of appeal is considered to be filed on the date that it is postmarked or, if hand delivered, the date it is received by the Hearing Clerk. FNS will continue its policy of issuing the bill for collection either by certified mail or personal service. Once the State agency receives the bill for collection, it will have 10 calendar days to file its notice of appeal, unless an extension is requested prior to the expiration of the 10-day filing deadline.

Exhaustion of Administrative remedies: The Department has added new §§ 283.4(b) and 283.25(b) to clarify that the State agency must appeal the bill for collection to the ALJ in order to exhaust available administrative remedies as a prerequisite to seeking judicial review. While the Department believes it is clear that Congress intended section 14(a) of the Act to require the State agency to exhaust an administrative appeal before the ALJ before seeking judicial review, the rule has been clarified to specifically require such exhaustion. Thus, the decision of the ALJ is final for purposes of judicial review. However, as discussed in the preamble regarding § 283.17(c)(3), either party to the appeal may, at its option, seek reconsideration of ALJ decision or review by the Judicial Officer. Accordingly, §§ 283.4 (b)–(c) of the NPRM have been renumbered as §§ 283.4 (c)–(d) and §§ 283.25 (b)–(h) of the NPRM have been renumbered §§ 283.25 (c)–(i).

Content of the notice: In § 283.4(c) of the NPRM, the Department proposed the information which an acceptable notice of appeal must contain and that failure to file an acceptable notice of appeal would result in a dismissal of the notice by the ALJ and a waiver of the opportunity for further review unless the State agency pursues reconsideration by the ALJ or review by the Judicial Officer.

Comment: The Department received one comment on this provision. The commenter indicated that there were no provisions for a State to remedy a technical defect or omission in a notice of appeal.

Response: The Department has considered the comment concerning the technical defect or omission from the notice of appeal, and has determined that adoption of this suggestion is unnecessary since the NPRM contains provisions for a State to remedy a technical defect or omission in a notice of appeal. As discussed in § 283.4(c)(2) of the NPRM, if the ALJ dismisses the notice of appeal because the State agency fails to file an adequate notice, the State agency may remedy the defect and either request reconsideration by the ALJ or review by the Judicial Officer in accordance with §§ 283.17(d) and 283.20 of the NPRM. These provisions would not apply for failure to file a timely notice of appeal or request for extensions of time to file. This section has been renumbered in the final rulemaking as § 283.4(d).

Good Cause: In § 283.4(d) of the NPRM, the Department proposed that the Secretary's determination concerning good cause be final and not subject to an appeal to the ALJ.

Comment: The Department received one comment on this provision. The commenter objected to the fact that FNS' good cause determinations will not be subject to the appeal process.

Response: Section 13951(c)(4) of the Leland Act deleted the provision of section 603 of the HPA which provided that the Secretary retained the authority to waive some or all of a State's QC claim where the Secretary determined that the State agency had good cause for failure to meet its error rate goal and that the decision of the Secretary was not subject to review by the ALJ. The Leland Act requires that the ALJ, in considering a State agency's appeal of QC liability consider all grounds for denying the claim, in whole or in part, including the contention of a State agency that the claim should be waived, in whole or in part, for good cause. The Department intends to publish a proposed rulemaking addressing the good cause criteria, as defined in the Leland Act. The regulation will be used by the Secretary and/or the Secretary's designee to assess, evaluate and respond to claims by the State for a good cause waiver of liability in conjunction with the appeals process. The Department has deleted § 283.4(d) of the NPRM. Additionally, § 283.5(a) of the NPRM has been amended to reflect Leland Act changes to good cause.

Receipt of notice of appeal and assignment of docket number: In § 283.4(e)(iii) of the NPRM, the Department proposed that the Hearing Clerk would acknowledge timely receipt of the notice of appeal and advise the State agency that the appeal petition must be filed within 30 days of service of the Hearing Clerk's letter.

Comment: The Department received one comment on this provision. The commenter indicated that the 30-day deadline for filing the appeal petition is too burdensome for States and that a 60-day deadline would be more appropriate. The commenter believed that the extended time period would enable States to obtain necessary legal support and to better develop appropriate arguments in support of the appeal petition.

Response: The Department has revised the deadline for filing the appeal petition from 30 days to 60 days. Section 13951(c)(4) of the Leland Act requires that the State agency submit evidence in support of the appeal not later than 60 days after receiving a notice of the claim and provides that the ALJ shall extend the 60-day deadline for cause shown. As previously discussed, § 283.22(f) of this final rule requires the State agency to file a written request for the extension prior to the due date for the submission with a showing of cause for the extension. This provision is in keeping with the legislative intent of the HPA that the appeals process be streamlined and the appeal procedures be as expeditious as possible.

Stay of Collection: In § 283.4(f) of the NPRM, the Department proposed that a timely notice of appeal would automatically stay collection action on the QC claim. However, interest would continue to accrue on the outstanding claim.

Comment: The Department received one comment on this provision. The commenter noted that since the NPRM would allow the Department to seek review by the Judicial Officer, the final determination of the ALJ may be delayed beyond the two year period during which interest on a QC claim would not accrue. The commenter suggested that in order to avoid the imposition of interest due to a delay that the State agency did not seek, the accrual of interest should be tolled (suspended) during the review by the Judicial Officer.

Response: The Department has considered this comment but cannot adopt this suggestion. Section 13951(a)(2) of the Leland Act provides that interest on the unpaid claim would accrue either from a date that is one year after the date the bill is received or the

Receipt of notice of appeal and assignment of docket number: In § 283.4(e)(iii) of the NPRM, the Department proposed that the Hearing Clerk would acknowledge timely receipt of the notice of appeal and advise the State agency that the appeal petition must be filed within 30 days of service of the Hearing Clerk's letter.

Comment: The Department received one comment on this provision. The commenter indicated that the 30-day deadline for filing the appeal petition is too burdensome for States and that a 60-day deadline would be more appropriate. The commenter believed that the extended time period would enable States to obtain necessary legal support and to better develop appropriate arguments in support of the appeal petition.

Response: The Department has revised the deadline for filing the appeal petition from 30 days to 60 days. Section 13951(c)(4) of the Leland Act requires that the State agency submit evidence in support of the appeal not later than 60 days after receiving a notice of the claim and provides that the ALJ shall extend the 60-day deadline for cause shown. As previously discussed, § 283.22(f) of this final rule requires the State agency to file a written request for the extension prior to the due date for the submission with a showing of cause for the extension. This provision is in keeping with the legislative intent of the HPA that the appeals process be streamlined and the appeal procedures be as expeditious as possible.

Stay of Collection: In § 283.4(f) of the NPRM, the Department proposed that a timely notice of appeal would automatically stay collection action on the QC claim. However, interest would continue to accrue on the outstanding claim.

Comment: The Department received one comment on this provision. The commenter noted that since the NPRM would allow the Department to seek review by the Judicial Officer, the final determination of the ALJ may be delayed beyond the two year period during which interest on a QC claim would not accrue. The commenter suggested that in order to avoid the imposition of interest due to a delay that the State agency did not seek, the accrual of interest should be tolled (suspended) during the review by the Judicial Officer.

Response: The Department has considered this comment but cannot adopt this suggestion. Section 13951(a)(2) of the Leland Act provides that interest on the unpaid claim would accrue either from a date that is one year after the date the bill is received or the date of the decision on the administrative appeal, whichever is earlier. The Leland Act does not allow a suspension of interest beyond the one-year period, regardless of the reason for the delay in a final administrative decision.

Content of the Appeal Petition: In § 283.4(g)(3) of the NPRM, the Department proposed that the State agency must request an oral hearing and that failure to request that hearing would result in the forfeiture of the opportunity for an oral hearing. The QC claim would then be decided using the procedures established under subpart C.

Comment: The Department received one comment on this provision. The commenter suggested that rather than making an oral hearing an option for the State agency, the Department should make this a standard element in the process which the State must request be omitted if the State wishes an appeal to be decided without oral hearing. The commenter argued that this change would avoid any misunderstanding on the part of the State agency or the Department as to whether the State intended to request an oral hearing.

Response: The Department has considered this comment and has decided not to adopt the suggestion. Section 603 of the HPA provides that determinations regarding a QC claim shall be made on the record after an opportunity for an agency hearing. In addition, section 13951(c)(4) of the Leland Act requires that, on the request of the Secretary or the State agency, the ALJ shall hold an evidentiary hearing. The Department is retaining the provisions of the NPRM which require that the State agency notify the Hearing Clerk in its appeal petition if the State agency desires an oral hearing. The Department wishes to emphasize that a State agency that waives an oral hearing would not generally be permitted to later request that an oral hearing be conducted. The Department will amend § 283.4(g)(3) to cross-reference § 283.15(a) to clarify those circumstances under which it would be possible for a State agency to receive an oral hearing if it had not initially requested the oral hearing in its appeal petition. In addition, the Department has added § 283.4(i) to provide that if no hearing had been requested, the appeal would proceed in accordance with the procedures set forth under subpart C (Summary Procedure for Appeals of QC Claims of Less than $50,000). In the event that the appeal is pursued under subpart C, procedures exist under § 283.26(a) to provide the State agency with an opportunity to request an oral hearing if the State agency does not believe that the summary procedure is adequate for handling the appeal and that an oral hearing is necessary.

Section 283.6: Answer

This section of the NPRM contains the procedures that FNS is to follow in responding to the State agency's appeal petition.

Filling and service: In § 283.6(a) of the NPRM, the Department proposed that FNS would be allowed 30 days from the date of service of the State agency's appeal petition to file its answer to that petition.

Comment: The Department received one comment recommending that FNS be given 60 days in which to file an answer to the State agency's appeal petition. The commenter also agreed with the provision that failure to file a timely answer would be considered, for purposes of the appeal, an admission of the State agency's allegations.

Response: The Department has revised the deadline for FNS to file an answer to the State agency's appeal petition from 30 days to 60 days. Section 13951(c)(4) of the Leland Act requires that not later than 60 days after a State agency submits evidence in support of the appeal, the Secretary shall submit responsive evidence to the ALJ and provides that the ALJ shall extend the 60-day deadline for cause shown. As previously discussed, § 283.22(f) of the final rule requires the Secretary to file a written request for the extension prior to the due date for the submission with a showing of cause for the request.

Section 283.8: Amendment of Appeal or Answer

This section of the NPRM contains the provision allowing either party to amend the appeal or answer at any time prior to the other party filing a motion for a hearing.

Comment: The Department received one comment on this provision. The commenter noted that the preamble and the regulations do not contain a timeline in which the motion for a hearing is to be filed. The commenter suggested that it would be difficult to conclude that both parties would be knowledgeable if a motion for a hearing was filed with the appeal petition or the answer to the appeal petition.

Response: The Department is revising this provision to incorporate section 13951(c)(4) of the Leland Act which requires the State agency to submit rebuttal evidence to the ALJ, to the extent such evidence exists, not later than 30 days after the Secretary submits responsive evidence. The Department is retaining the provision in the NPRM

which allows either party to amend the appeal or answer at any time prior to the other party filing a motion for a hearing. An amendment following such a motion would require approval by the ALJ.

The Department wishes to clarify that the motion for a hearing would not be filed with the appeal or the answer to the appeal. Rather, as discussed in § 283.15(b), a motion for a hearing is filed by either party after the completion of all scheduled prehearing actions (such as discovery) that were agreed upon during the prehearing conference, scheduling conference or as otherwise established by the ALJ. The filing of a motion for a hearing advises the ALJ and the other parties to the appeal that the party has completed all prehearing activities and is ready to proceed with the hearing. Because the timing for the filing of the motion for a hearing is dependent upon the completion of all previously agreed upon prehearing activities, it is not possible to provide an absolute timeline as to when a motion for a hearing would be filed.

Section 283.10: Consent Decision

This section of the NPRM contains the provision allowing the parties to the appeal to mutually agree to end the appeal process prior to the ALJ issuing an initial decision. The consent decision would not be subject to review by the Judicial Officer or by the Federal Court.

Comment: The Department received one comment on this provision. The commenter suggested that this section be modified to state clearly that the parties may enter into a stipulation as to facts and that this would not preclude further review of the legal issues. The commenter was concerned that legal issues would not be considered if the underlying basis for the legal issues were facts which were not in dispute.

Response: The Department has considered this comment and has decided not to adopt it since the concerns of the commenter are addressed in § 283.11, the pre-hearing conference (and similarly in § 283.29—scheduling conference). As provided for in § 283.11(c), one purpose of the ALJ conducting a prehearing conference is to allow the parties to consider the possibility of obtaining stipulations as to facts in order to expedite and aid in the disposition of the appeal. The Department wishes to clarify that the purpose of the consent decree is to allow the parties to mutually agree to conclude the appeal process prior to the ALJ issuing an initial decision on the merits of the appeal. It is similar to settlement of a civil action in court. The consent decree is not subject to further review by the Judicial Officer or the Federal court. The appeals process contains prehearing procedures to allow the parties to enter into a stipulation as to facts which would not preclude further review of the legal issues. Furthermore, the Department believes that stipulations as to facts may be appropriate at any point to further expedite the appeal.

Section 283.11: Prehearing Conference and Procedure

This section of the NPRM contains the procedures for and the requirements of the prehearing conference.

Reporting: In § 283.11(d) of the NPRM, the Department proposed that the prehearing conference would not be stenographically reported unless ordered by the ALJ.

Comment: The Department received one comment on this proposal. The commenter noted that given the multiplicity of issues to be addressed at the prehearing conference, any party should be entitled to obtain a stenographic transcript of a prehearing conference at its own expense.

Response: The Department has considered this comment and has revised § 283.11(d) to clarify that any party may petition the ALJ to allow for a stenographic transcript of a prehearing conference at the petitioner's own expense. A copy of the prehearing transcript must be made available to the ALJ and the other parties to the appeal at no cost to the other parties. In response to this comment, the Department has also revised § 283.15(o) to clarify that the cost of preparing the hearing transcript and providing one copy of the transcript to the ALJ and the other parties to the appeal shall be borne by the party requesting the hearing. The Department further notes that where these costs are incurred by the State, such costs are eligible for reimbursement in accordance with part 277 of the Food Stamp Program regulations.

Section 283.12: Discovery

This section of the NPRM contains the procedures which the parties to the QC appeal are to follow in pursuing discovery. The ALJ would establish the scope of and schedule for the completion of discovery.

Comment: The Department received one comment concerning the organization of § 283.12. The commenter noted that this section was confusing and that organizational changes would clarify and simplify this provision.

Response: The Department has considered this comment and has adopted this suggestion. The Department has made the following changes from the NPRM: *§ 283.12(b)(5)* (Supplementation of response) has been renumbered as *§ 283.12(c)*; a new *§ 283.12(d)* (Frequency and use of discovery) has been created and *§§ 283.12(b)(3)(ii)* and *283.12(b)(3)(iv)* have been moved to this new subsection; a new *§ 283.12(e)* (Protective Orders) has been created and *§§ 283.12(b)(3)(iii)* and *283.12(b)(8)* have been moved to this new subsection; *§ 283.12(b)(7)* (Failure to respond to discovery) has been renumbered as *§ 283.12(f)*; a new *§ 283.12(g)* (Decision of the ALJ) has been created and *§§ 283.12(b)(3) (vii) and (viii)* have been moved to this subsection; a new *§ 283.12(h)* (Failure to comply with an order) has been created and *§§ 283.12(b)(7) (i) and (ii)* have been moved to this new subsection; *§ 283.12(b)(4)* (Postponements or delays) has been renumbered as *§ 283.12(i)*. In addition, *§ 283.12(b)(6)* (Inclusion in the record) has been moved to *§ 283.15(i)* and *§ 238.12(b)(9)* (Exchange of witness and rebuttal witness lists, statements and exhibits) has been moved to *§ 283.15(d)*.

Depositions: In § 283.12(a) of the NPRM, the Department proposed that the ALJ could order the taking of depositions in order to elicit testimony which otherwise might not be available at the time of the hearing.

Comments: The Department received five comments on this provision. All of the commenters objected to restricting the use of depositions to those instances in which testimony might not otherwise be available. One commenter argued that the States' right to due process at the administrative appeal level was in jeopardy. Another commenter noted that by categorically prohibiting the use of depositions other than to preserve testimony, FNS has seriously compromised the States' ability to challenge error-rate penalty claims. This commenter also argued that by preventing the ALJ from using discovery depositions as one tool of litigation management, FNS has compromised the ALJ's ability to preside over the taking of evidence.

Response: The Department has considered these comments but has not adopted them. It is the Department's position that the use of depositions should be restricted to those instances in which the witness may be unavailable to testify at the hearing. The Department believes that the discovery procedures provided in the NPRM for interrogatories, admissions, request for production of documents, and depositions, as well as the prehearing conference, provide adequate discovery tools for the parties to prepare for the oral hearing or to submit cross motions for summary judgment pursuant to § 283.30.

In addition, the Department believes that permitting discovery depositions would result in substantial costs and delay in the appeals process. The Department recognizes that a significant goal of the amendments to the Act by section 603 of the HPA was to create a more efficient appeals process. The House Report states that an objective of section 603 of the HPA was to "streamline[] the appeals process of the quality control system. * * *" H.R. Rep. No. 828, 100th Cong., 2d Sess. 32 (1988). Further, Representative Panetta stated during debate of the HPA, "(a) third set of changes aims to speed the resolution of financial claims against State agencies for excessive error by streamlining the appeals process and providing for the payment of interest." 134 Cong. Rec. 20,982 (1988). Representative Emerson reiterated this same intention. 134 Cong. Rec. 20,984 (1988). The Department believes that restricting the use of depositions to those instances in which the witness may be unavailable to testify at the hearing is in keeping with the stated intent of Congress.

Interrogatories and Admissions: In §§ 283.12(b) (1) and (2) of the NPRM, the Department proposed that the parties be limited to fifteen interrogatories and admissions, including subparts, unless additional questions were authorized by the ALJ.

Comments: The Department received five comments on these provisions. All of the commenters objected to limiting the number of interrogatories and admissions. One commenter noted that given the ALJ's authority to limit discovery, it would be more efficient not to impose an arbitrary limit on the number of interrogatories and admissions. The commenter argued that the responding party could request a protective order from the ALJ if it felt that the requests were burdensome.

Response: The Department has considered these comments and has revised §§ 283.12(b) (1) and (2) to permit twenty-five interrogatories and admissions, including subparts, unless additional questions are authorized by the ALJ. The Department continues to believe that a limit on the number of interrogatories and admissions available without approval by the ALJ is reasonable given the authority of the ALJ to authorize an increase in that number. The Department disagrees that it should be the responsibility of the responding party to pursue a protective order if the scope of the discovery is

tools for the parties to prepare for the oral hearing or to submit cross motions for summary judgment pursuant to § 283.30.

In addition, the Department believes that permitting discovery depositions would result in substantial costs and delay in the appeals process. The Department recognizes that a significant goal of the amendments to the Act by section 603 of the HPA was to create a more efficient appeals process. The House Report states that an objective of section 603 of the HPA was to "streamline[] the appeals process of the quality control system. * * *" H.R. Rep. No. 828, 100th Cong., 2d Sess. 32 (1988). Further, Representative Panetta stated during debate of the HPA, "(a) third set of changes aims to speed the resolution of financial claims against State agencies for excessive error by streamlining the appeals process and providing for the payment of interest." 134 Cong. Rec. 20,982 (1988). Representative Emerson reiterated this same intention. 134 Cong. Rec. 20,984 (1988). The Department believes that restricting the use of depositions to those instances in which the witness may be unavailable to testify at the hearing is in keeping with the stated intent of Congress.

Interrogatories and Admissions: In §§ 283.12(b) (1) and (2) of the NPRM, the Department proposed that the parties be limited to fifteen interrogatories and admissions, including subparts, unless additional questions were authorized by the ALJ.

Comments: The Department received five comments on these provisions. All of the commenters objected to limiting the number of interrogatories and admissions. One commenter noted that given the ALJ's authority to limit discovery, it would be more efficient not to impose an arbitrary limit on the number of interrogatories and admissions. The commenter argued that the responding party could request a protective order from the ALJ if it felt that the requests were burdensome.

Response: The Department has considered these comments and has revised §§ 283.12(b) (1) and (2) to permit twenty-five interrogatories and admissions, including subparts, unless additional questions are authorized by the ALJ. The Department continues to believe that a limit on the number of interrogatories and admissions available without approval by the ALJ is reasonable given the authority of the ALJ to authorize an increase in that number. The Department disagrees that it should be the responsibility of the responding party to pursue a protective order if the scope of the discovery is burdensome. Rather, it is reasonable to place the responsibility on the requesting party to justify why the ALJ should authorize an increase in the number of interrogatories and admissions. This limit is also consistent with congressional intent to streamline the appeals process.

Production of Documents: In § 283.12(b)(3) of the NPRM, the Department proposed that any party to the appeal may serve a request for the production of documents that are in the possession or control of another party. The Department also proposed that the requested documents would be provided upon payment of fees for search and duplication of the documents.

Comment: The Department received two comments on this provision. One commenter noted that while the preamble to the NPRM contained a provision requiring that the requested documents be relevant to the issues under appeal, the regulatory language did not contain that requirement. The commenter suggested that the Department adopt the standard set forth in the Federal Rules of Civil Procedure. The second commenter opposed the assessment of fees for the production of documents. The commenter noted that since only governmental agencies are participating in the review of the QC claim, the Department ought to forgo the assessment of fees.

Response: The Department has considered the comment concerning the issue of the relevancy of the documents and has decided to revise § 283.12(b)(3) to be consistent with Rule 26(b)(1) of the Federal Rules of Civil Procedure.

The Department has considered the comment concerning the assessment of fees for the production of documents and has decided not to adopt it. The Department believes that it is consistent and equitable that the costs of the search and duplication of documents under a request for production be borne by the party making the request. State agencies may submit such costs for reimbursement under 7 CFR part 277.

Postponements or delays: In § 283.12(b)(4) of the NPRM, the Department proposed that the hearing or other proceedings of the appeal process would not be postponed or delayed pending a response to or resolution of issues pertaining to a Freedom of Information Act (FOIA) request.

Comment: The Department received one comment on this provision. The commenter strongly disagreed with the proposal that no delays or postponements of the QC appeal occur pending receipt of documents requested under FOIA. The commenter argued that documents requested under FOIA may be crucial to the resolution of the appeal and suggested that either a timeline should be imposed for furnishing documents requested under the FOIA or delays/postponements should be accepted as part of the process.

Response: The Department has considered this comment but has decided not to adopt it. The Department has established procedures for the production of documents which would negate the need for a party to the appeal to pursue document production under the provisions of FOIA. As provided for in § 283.12(b)(3) of the NPRM, the parties to the appeal are afforded the opportunity under the discovery process to request all documents relevant to the issues under appeal or which would reasonably lead to the discovery of such documents. In addition, the ALJ will establish the deadline by which all discovery activities must be completed. While the Department must process the FOIA and provide all responsive nonprivileged documents, it is inappropriate to delay or postpone the QC appeal pending action on the FOIA request. This also furthers congressional intent to streamline the appeals process. This section has been renumbered in the final rulemaking as § 283.12(i).

Witnesses and Exhibits: In § 283.12(b)(9)(ii) of the NPRM, the Department proposed that a witness whose name did not appear on the list of witnesses would not be permitted to testify at the hearing. In addition, exhibits which were not provided to the opposing party 15 days prior to the hearing would not be admitted into evidence at the hearing absent a showing of cause.

Comment: The Department received two comments on this provision. The commenters argued that there may be situations where a witness identified on an exchanged list is unavailable to testify at the hearing. However, the party may have a substitute witness not identified on the exchanged list who is available to testify. The party should be permitted to amend the list upon a showing of cause.

One commenter noted that there are circumstances where it is unnecessary to exchange documents during the prehearing process because those documents are already in the possession of each party through their normal course of business. The commenter argued that under this circumstance the regulation should require that the parties need only identify documents in the possession of the opposing party and notice an intention to introduce them at the hearing.

Response: The Department has considered the comment concerning witnesses and has revised the regulations to clarify that it is the intent of the Department that in those situations where a party shows cause as to the reason a witness's name did not appear on the witness list, upon motion and approval by the ALJ, that witness will be permitted to testify at the hearing. The Department also wishes to clarify that if this situation arises, the other parties to the appeal may request a delay in the hearing to allow for an opportunity to prepare for this previously unidentified witness.

The Department has considered the comment concerning the exchange of documents and has determined that adoption of this suggestion is unnecessary since § 283.11(a)(3) of the NPRM provides the parties with the option of either furnishing copies or a list of documents that the party anticipates relying upon at the hearing. Since exhibits are not necessarily previously existing documents which are in the possession of the other party, the Department is retaining the provision concerning the exchange of exhibits. This section of the NPRM has been moved in the final rulemaking to § 283.15(d).

Section 283.15: Procedure for Hearing

This section of the NPRM contains the procedures related to the scheduling and conducting of hearings before the ALJ.

Comment: The Department received one comment concerning the organization of this section. The commenter suggested that since §§ 283.12(b)(6) (Inclusion in the record) and (9) (Exchange of witness and rebuttal witness lists, statements and exhibits) relate to the hearing procedures, these two subsections should be moved to § 283.15.

Response: The Department has considered this comment and has adopted this suggestion. The Department has made the following changes from the NPRM: § 283.12(b)(9) has been moved and renumbered as § 283.15(d) and § 283.15(b)(6) has been moved and renumbered as § 283.15(i). The remaining sections of 283.15 have been renumbered, as necessary.

Time and Place: In § 283.15(b) of the NPRM, the Department proposed that the ALJ shall schedule a hearing upon receipt of a motion by any party setting forth the issue and stating that the matter is ready for a hearing.

Comment: The Department received one comment on this provision. The commenter indicated that this provision could be interpreted as allowing the ALJ to deny a party's request for a hearing. The commenter suggested that this section be revised to clarify that this section pertains only to the scheduling of a hearing. The commenter also noted that this section suggests that a hearing is permitted only if material facts are disputed and suggested that this section should be revised to permit the ALJ to hear oral arguments on legal issues even if there are no material facts in dispute.

Response: Section 13951(c)(4) of the Leland Act requires that the ALJ decide the appeal within 60 days after receipt of rebuttal evidence by the State agency, or, if no rebuttal evidence is submitted, within 90 days after the State submits the notice of appeal and evidence in support of the appeal. Given these statutory deadlines, the ALJ shall establish at the prehearing conference the dates by which the parties must complete prehearing activities. The parties would, following completion of such activities, file a motion stating that they are ready for hearing. The Leland Act authorizes the ALJ to extend certain statutory deadlines for cause shown. The Department anticipates that the ALJ may extend procedural deadlines for cause shown to accommodate the completion of prehearing and posthearing activities as is shown to be necessary. As previously discussed, § 283.22(f) of the final rule requires the parties to file a written request for an extension prior to the due date with a showing of cause for the extension requested.

The Department has considered the comment concerning the motion for a hearing and has determined that a revision to this provision is unnecessary, other than to eliminate the requirement to set forth the issues within the motion. The Department believes that the issues will be adequately framed by the prehearing procedures. Upon filing for a motion for hearing, an oral hearing will be scheduled within the statutory time frames provided by the Leland Act, unless an extension has been requested and granted by the ALJ or the ALJ has extended the time frames *sua sponte*.

The Department has considered the comment concerning the ALJ conducting an oral hearing on the legal issues when there are no material facts in dispute. The Department has not adopted this suggestion. The Department wishes to clarify that the purpose of the oral hearing is to present the facts which are in dispute. If it is determined or agreed at prehearing or otherwise that there are no material facts in dispute, then the appropriate course of action would be to pursue resolution of the remaining legal issues utilizing the procedures established under subpart C—Summary Procedure for Appeals of QC Claims of Less than $50,000. These legal issues should be the basis for cross motions for summary judgment. In view of the comment received, the Department has revised § 283.31(d) to allow the ALJ to request oral argument, if necessary, in those instances when a stipulation of all material facts has been entered by the parties to the appeal.

Time and Place: In § 283.15(b) of the NPRM, the Department proposed that the hearing before the ALJ shall be held at the Department of Agriculture, Washington, DC.

Comment: The Department received two comments on this provision. Both commenters objected to the hearings being held exclusively in Washington, DC and suggested that the ALJ should determine the location of the hearing taking into account the convenience of the parties and their witnesses.

Response: The Department has considered this comment and has revised § 283.15(b) to permit the ALJ to hold the hearing at a location more convenient to the parties and their witnesses upon a showing of unusual or extraordinary circumstances. The Department has determined that budgetary constraints will not be considered an unusual or extraordinary circumstance since these costs are eligible for reimbursement, in part, in accordance with part 277 of the Food Stamp Program regulations. The Department believes that requiring a showing of unusual or extraordinary circumstances takes into consideration such burdens of the parties while also preserving the efficiency of the appeals process.

Order of appearance: In § 283.15(f) of the NPRM, the Department proposed that FNS would have the burden of proving, by a preponderance of the evidence, the QC claim against the State and that the State agency would have the burden of proving, by a preponderance of the evidence, the facts upon which it bases its appeal.

Comment: The Department received one comment on this provision. The commenter argued that contrary to the intent of Congress, the proposed rule shifted the burden of proof to the States. The commenter suggested that this section be modified to require that FNS, and not the States, bear the burden of proving its error-rate penalty claim against the State. This burden of proof would be required for all factual matters put in issue.

Response: The Department has considered this comment and has determined that a revision to this provision is unnecessary.

The Department, however, wishes to reiterate that it has the ultimate burden of persuasion, by a preponderance of the evidence, of the QC error rate claim against the State throughout the appeals process. Nothing in the NPRM or this final rule changes that burden. However, if the Department makes a prima facia case, the burden of going forward with the evidence upon which the State bases its appeal shifts to the State agency. The State must prove any evidence offered to meet this burden of going forward by a preponderance. It is well settled that a fact can never be proven by something less than a preponderance of the evidence. This section has been renumbered in the final rulemaking as § 283.15(g).

Objections: In § 283.15(h) of the NPRM, the Department proposed that at the hearing any party may object to a ruling by the ALJ and that any objection not made to the ALJ could not be raised if there were a subsequent review by the Judicial Officer.

Comment: The Department received one comment on this provision. The commenter noted that there appeared to be some confusion of intent between the preamble and the regulatory language. The commenter questioned if it was the intent of the Department to limit materials presented to the Judicial Officer.

Response: The Department has considered this comment and wishes to clarify that the review by the Judicial Officer shall be based on decisions rendered by the ALJ. The ALJ must have been provided the opportunity to render a decision on an issue before that issue can be appealed to the Judicial Officer. If a party to the appeal fails to raise an objection to the ALJ, that objection cannot be raised with the Judicial Officer since the ALJ had not rendered a decision on that objection. This section has been renumbered in the final rulemaking as § 283.15(j).

Official Records or documents: In § 283.15(j) of the NPRM, the Department proposed that official government records or documents could be admitted into evidence without the production of the person who prepared the document. The party could either submit the officially published document or a certified copy of the document. The Department's Office of General Counsel would prepare the certification for FNS and other Departmental records.

Comment: The Department received one comment on this provision. The commenter noted that this procedure was too cumbersome since it apparently would require that States go to the

determined that a revision to this provision is unnecessary.

The Department, however, wishes to reiterate that it has the ultimate burden of persuasion, by a preponderance of the evidence, of the QC error rate claim against the State throughout the appeals process. Nothing in the NPRM or this final rule changes that burden. However, if the Department makes a prima facia case, the burden of going forward with the evidence upon which the State bases its appeal shifts to the State agency. The State must prove any evidence offered to meet this burden of going forward by a preponderance. It is well settled that a fact can never be proven by something less than a preponderance of the evidence. This section has been renumbered in the final rulemaking as § 283.15(g).

Objections: In § 283.15(h) of the NPRM, the Department proposed that at the hearing any party may object to a ruling by the ALJ and that any objection not made to the ALJ could not be raised if there were a subsequent review by the Judicial Officer.

Comment: The Department received one comment on this provision. The commenter noted that there appeared to be some confusion of intent between the preamble and the regulatory language. The commenter questioned if it was the intent of the Department to limit materials presented to the Judicial Officer.

Response: The Department has considered this comment and wishes to clarify that the review by the Judicial Officer shall be based on decisions rendered by the ALJ. The ALJ must have been provided the opportunity to render a decision on an issue before that issue can be appealed to the Judicial Officer. If a party to the appeal fails to raise an objection to the ALJ, that objection cannot be raised with the Judicial Officer since the ALJ had not rendered a decision on that objection. This section has been renumbered in the final rulemaking as § 283.15(j).

Official Records or documents: In § 283.15(j) of the NPRM, the Department proposed that official government records or documents could be admitted into evidence without the production of the person who prepared the document. The party could either submit the officially published document or a certified copy of the document. The Department's Office of General Counsel would prepare the certification for FNS and other Departmental records.

Comment: The Department received one comment on this provision. The commenter noted that this procedure was too cumbersome since it apparently would require that States go to the USDA General Counsel to certify each and every FNS document, including policy statements.

Response: The Department has considered this comment and wishes to clarify that State agencies would only be required to request that the USDA General Counsel certify FNS documents if such documents are not officially published documents. The Department also wishes to clarify that official records or documents may include official State government records or documents. In similar fashion, for unpublished State documents, any necessary certification would be provided by State personnel having the legal authority to make such certification. This section has been renumbered in the final rulemaking as § 283.15(l).

Section 283.17: Post-Hearing Procedures

This section of the NPRM contains the procedures which will be followed at the completion of the hearing before the ALJ. This section includes the requirements for post-hearing submissions by the parties to the appeal as well as the issuance of the ALJ decision.

ALJ's initial decision: In § 283.17(c)(1) of the NPRM, the Department proposed that the ALJ would issue a decision on the appeal within a reasonable period of time after the termination of the time allowed for filing of proposed findings of fact, conclusions of law, orders, and any briefs in support thereof.

Section 13951(c)(4) of the Leland Act requires that the ALJ decide the appeal within 60 days after receipt of rebuttal evidence by the State agency, or, if no rebuttal evidence is submitted, within 90 days after the State submits the notice of appeal and evidence in support of the appeal. The Department has revised §§ 283.17(c)(1) and 283.32(a) to incorporate this legislative provision. As previously discussed, § 283.22(f) of the final rule requires the State agency to file a written request for the extension prior to the due date for the submission with a showing of cause for the extension.

ALJ's Initial decision. In § 283.17(c)(3) of the NPRM, the Department proposed that no decision would be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

Comment: The Department received one comment on this provision. The commenter noted that if the decision of the ALJ is adverse to the State agency, judicial review by the Federal court should not be precluded because the State agency did not seek review by the Judicial Officer.

Response: The Department has considered this comment and has revised the final rule to provide that the initial decision of the ALJ is considered final for purposes of judicial review. However, this would not preclude FNS, or any other party to the appeal, from seeking either reconsideration by the ALJ or review by the Judicial Officer.

Motion for Reconsideration: In § 283.17(d)(3) of the NPRM, the Department proposed that a response to the motion for reconsideration would be allowed only upon the request of the ALJ.

Comment: The Department received two comments on this provision. The commenters argued that a response to a motion for reconsideration should be the standard procedure rather than at the discretion of the ALJ.

Response: The Department has considered this comment and has revised § 283.17(d)(3) to provide that the other parties to the appeal shall respond within 10 days of receipt of the brief or written materials filed by the party requesting reconsideration unless an extension has been requested and granted by the ALJ or the ALJ has extended the time frame *sua sponte.*

Motion for Reconsideration: In § 283.17(d)(4) of the NPRM, the Department proposed that the parties to the appeal could not pursue a motion for reconsideration if the initial ALJ decision had been revised based upon a previous motion for reconsideration.

Comment: The Department received one comment on this provision. The commenter noted that other agencies permit a party to file a motion for reconsideration at any time, as of right, on the basis of material error, new evidence, or substantially changed circumstances.

Response: The Department has considered this comment but has decided not to adopt it. The Department believes that with the modification to § 283.17(d)(3) allowing all parties to the appeal to respond to the initial motion for reconsideration, any further requests for review of the ALJ's decision should be made to the Judicial Officer.

Section 283.18: Motions and Requests

This section of the NPRM contains the procedures related to the filing of motions and requests with the ALJ or the Judicial Officer.

Response to motions and requests: In § 283.18(d) of the NPRM, the Department proposed that a party have 20 days to respond to a motion or request and that the party initiating the motion or request not be permitted to reply to the response of the other party unless ordered to do so by the ALJ.

Comment: The Department received one comment on this provision. The commenter argued that by not being permitted to file a reply brief, the party initiating the motion or request is disadvantaged since the initiating party would not have access to arguments raised in response to the motion or request. The commenter recommended that one response be allowed each party after the initial motion and response.

Response: The Department has considered this comment but has decided not to adopt it. This provision is in keeping with the congressional intent that the appeal process be streamlined and that the appeal procedures be as expeditious as possible. Since the ALJ can direct *sua sponte* that a reply be filed either to clarify issues or upon motion in those instances where a party believes that a reply is necessary, the Department believes that restricting the number of responses to a motion or request which may be filed would not be disadvantage to the party initiating the motion or request.

The Department has also revised the 20-day time frame to respond to a motion or request in order to address the statutory deadlines established by section 13951(c)(4) of the Leland Act for the completion of the appeals process. Given these deadlines, the Department has shortened the 20-day time frame to 10 days unless an extension has been requested and granted by the ALJ or the ALJ has extended such time frame *sua sponte.*

Section 283.20: Review by the Judicial Officer

This section of the NPRM contains the procedures for appealing the initial ALJ decision to the Department's Judicial Officer.

Filing of review petition: In § 283.20(a) of the NPRM, the Department proposed that within 30 days of receipt of the initial ALJ decision, any party to the appeal may seek Judicial Officer review.

Comments: The Department received four comments on this provision. The commenters objected to this provision arguing that the HPA prohibits Secretarial review of decisions made by the ALJ. The commenters recommended that the Department delete this provision.

Response: The Department has considered these comments but has decided not to adopt the recommendation to forgo Secretarial review of the initial ALJ decision. As discussed under § 283.17(c)(3), the Department has revised the regulations to provide that the initial decision of the ALJ shall be considered final for purposes of judicial review. However, this would not preclude any party to the appeal from seeing reconsideration by the ALJ or review by the Department's Judicial Officer within 30 days of the ALJ's decision.

It is the Department's position that the specific incorporation of section 557 of the Administrative Procedure Act (APA) (5 U.S.C. 557) by section 603 of the HPA necessarily means that the Secretary is authorized to review ALJ decisions. Indeed, the APA expressly provides that an agency action can be final for purposes of the APA, and thus for purposes of judicial review, even though it is subject to reconsideration or appeal to a higher authority within the agency. 5 U.S.C. 704. This interpretation is consistent with both the expressed statutory language and legislative history of section 603 of the HPA. *See* Memorandum for Alan C. Raul, General Counsel, U.S. Department of Agriculture, from Douglas R. Cox, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice (February 20, 1991).

The Department has also determined that review by the Secretary of issues raised on appeal is a more efficient process for resolving disputes concerning initial ALJ decisions that if such issues were brought to the federal courts without providing the Secretary the opportunity to review and, if necessary, revise such decisions. The Secretary has delegated to the Judicial Officer the authority to act as the final deciding officer in adjudicatory proceedings subject to 5 U.S.C. 556 and 557. Section 283.20 will permit the Judicial Officer, on behalf of the Secretary, to address the party's objections to the initial ALJ decision, to apply expertise on the issues under review, exercise informed discretion, and create a more concise record for any subsequent judicial review. This procedure will also ensure that there is continuity in the decisions which are rendered for cases involving similar issues.

Submission of briefs: In § 283.20(h)(i) of the NPRM, the Department proposed that if the Judicial Officer determined that there were reasonable grounds that additional evidence which is material was not presented to the ALJ, the Judicial Officer shall remand the matter back to the ALJ for disposition.

Comment: The Department received one comment on this provision. The commenter questioned if it was the Department's intent to limit materials presented to the Judicial Officer.

Response: The Department has considered this comment and wishes to clarify that the Judicial Officer reviews the record created before the ALJ. However, if a party to the appeal can persuade the Judicial Officer that there are reasonable grounds why material evidence was not presented to the ALJ, the Judicial Officer shall remand the matter back to the ALJ for further consideration.

Section 283.30: Cross Motions for Summary Judgment

This section of the NPRM contains the procedures which are to be followed if the appeal is being pursued under subpart C—Summary Procedures for Appeal of QC Claims of Less than $50,000.

Comment: The Department received one comment on this provision. The commenter expressed a concern that the 35 page limitation on the brief accompanying the motion for summary judgment and the 15 page reply brief limitation were too restricted and recommended that a higher page limit be established.

Response: The Department considered this comment but decided not to adopt it. The Department believes that given the authority of the ALJ to increase the size of the brief and reply brief, the page limitations are reasonable. These page limits are consistent with congressional intent to streamline the appeals process. The Department has also made changes to subpart C to conform to the timeframes specified in the Leland Act.

Implementation

In accordance with section 701(b)(5)(c) of the HPA, the amendments to section 14 of the Act are effective and must be implemented for all QC billing actions beginning with Fiscal Year 1986.

List of Subjects

7 CFR Part 272

Administrative practice and procedures, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedures, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 283

Administrative practice and procedures, claims, Food stamps, Government procedures, and penalties.

For the reasons set out in the preamble, 7 CFR parts 272 and 275 are amended and 7 CFR part 283 is added as follows:

1. The authority citation for parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(135) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(135) *Amendment No. 348.* The provisions of *Amendment No. 348* are effective August 5, 1994 and must be implemented for all QC billing actions beginning with Fiscal Year 1986.

PART 275—PERFORMANCE REPORTING SYSTEM

3. Section 275.23 is amended by revising paragraph (e)(5)(iii) to read as follows:

§ 272.23 Determination of State Agency Program Performance.

* * * * *

(e) * * *

(5) * * *

(iii) Whenever a State is assessed for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283 of this chapter.

* * * * *

4. 7 CFR part 283 is added to read as follows:

PART 283—APPEALS OF QUALITY CONTROL ("QC") CLAIMS

Subpart A—General

Sec.

283.1 Meaning of words.
283.2 Scope and applicability.
283.3 Definitions.

Subpart B—Appeals of QC Claims of $50,000 or More

283.4 Filing appeals for QC claims of $50,000 or more.
283.5 Motion to dismiss.
283.6 Answer.
283.7 Procedures upon failure to file an answer.
283.8 Rebuttal or amendment of appeal or answer.
283.9 Withdrawal of appeal.
283.10 Consent decision.
283.11 Prehearing conference and procedure.
283.12 Discovery.
283.13 Subpoenas.
283.14 Fees of witnesses.
283.15 Procedure for hearing.
283.16 Consolidation of issues.
283.17 Post-hearing procedure.
283.18 Motions and requests.
283.19 ALJs.
283.20 Review by the Judicial Officer.

1. The authority citation for parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(135) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(135) *Amendment No. 348.* The provisions of *Amendment No. 348* are effective August 5, 1994 and must be implemented for all QC billing actions beginning with Fiscal Year 1986.

PART 275—PERFORMANCE REPORTING SYSTEM

3. Section 275.23 is amended by revising paragraph (e)(5)(iii) to read as follows:

§ 272.23 Determination of State Agency Program Performance.

* * * * *

(e) * * *

(5) * * *

(iii) Whenever a State is assessed for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283 of this chapter.

* * * * *

4. 7 CFR part 283 is added to read as follows:

PART 283—APPEALS OF QUALITY CONTROL ("QC") CLAIMS

Subpart A—General

Sec.

283.1 Meaning of words.
283.2 Scope and applicability.
283.3 Definitions.

Subpart B—Appeals of QC Claims of $50,000 or More

283.4 Filing appeals for QC claims of $50,000 or more.
283.5 Motion to dismiss.
283.6 Answer.
283.7 Procedures upon failure to file an answer.
283.8 Rebuttal or amendment of appeal or answer.
283.9 Withdrawal of appeal.
283.10 Consent decision.
283.11 Prehearing conference and procedure.
283.12 Discovery.
283.13 Subpoenas.
283.14 Fees of witnesses.
283.15 Procedure for hearing.
283.16 Consolidation of issues.
283.17 Post-hearing procedure.
283.18 Motions and requests.
283.19 ALJs.
283.20 Review by the Judicial Officer.
283.21 Ex parte communications.
283.22 Form; filing; service; proof of service; computation of time; and extensions of time.
283.23 Procedural matters.

Subpart C—Summary Procedure for Appeals of QC Claims of Less Than $50,000

283.24 Incorporation of procedures by reference.
283.25 Filing Appeals for QC claims of less than $50,000.
283.26 Request that appeals be handled under procedures in subpart B for appeals of QC claims of $50,000 or more.
283.27 Procedures upon failure to file an answer.
283.28 Discovery.
283.29 Scheduling conference.
283.30 Cross motions for summary judgment.
283.31 Review of the record.
283.32 ALJ's initial decision.

Authority: 7 U.S.C. 2011–2032.

Subpart A—General

§ 283.1 Meaning of words.

As used in this part, words in the singular form shall be deemed to import the plural, and vice versa, as the case may require.

§ 283.2 Scope and applicability.

The rules of practice in this part, shall be applicable to appeals by State agencies of Food and Nutrition Service quality control (QC) claims for Fiscal Year ("FY") 1986 and subsequent fiscal years pursuant to sections 14(a) and 16(c) of the Food Stamp Act of 1977, as amended, 7 U.S.C. 2023(a) and 2025(c).

§ 283.3 Definitions.

As used in this part, the terms as defined in the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032 ("Act"), and in the regulations, standards, instructions or orders issued thereunder, shall apply with equal force and effect. In addition, and except as may be provided otherwise in this section:

Administrator means the Administrator, Food and Nutrition Service, U.S. Department of Agriculture ("USDA").

ALJ means any Administrative Law Judge in USDA appointed pursuant to 5 U.S.C. 3105 or detailed to the USDA pursuant to 5 U.S.C. 3344 and assigned to the appeal.

Appeal means the appeal to the ALJ.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include procedural matters.

Filing. A pleading or other document allowed or required to be filed in accordance with this part shall be considered filed when postmarked, if mailed, or when received, if hand delivered.

FNS means the Food and Nutrition Service, USDA.

Hearing means that part of the appeal which involves the submission of evidence before the ALJ for the record in the appeal.

Hearing Clerk means the Hearing Clerk, USDA, Washington, DC 20250.

Judicial Officer means an official of the USDA delegated authority by the Secretary of Agriculture, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–459g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1970 ed., Appendix, P. 550), as amended by Public Law 97–35, title I, sec. 125, 95 Stat. 357, 369 (1981) (7 U.S.C. 2201 note), to perform the adjudicating function involved (7 CFR 2.35(a)), or the Secretary of Agriculture if the authority so delegated is exercised by the Secretary.

OC claim means a claim made pursuant to 7 U.S.C. 2025(c).

Secretary means the Secretary of the USDA.

State agency means:

(1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency; and

(2) The Indian tribal organization of any Indian tribe determined by the Secretary to be capable of effectively administering a Food Stamp Program in accordance with the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032.

Subpart B—Appeals of QC Claims of $50,000 or More

§ 283.4 Filing appeals for QC claims of $50,000 or more.

(a) *Time.* A State agency may appeal the bill for collection from FNS for a QC claim of $50,000 or more for a food stamp QC error rate in excess of the tolerance level. A State agency shall file a written notice of appeal, in accordance with this subpart, within 10 days of receipt of the bill for collection from FNS for a QC claim of $50,000 or more. The State agency may request an extension to the 10-day filing requirement in accordance with § 283.22(f). FNS shall issue the bill for collection by certified mail or personal service.

(b) *Exhaustion of administrative remedies.* The State agency must appeal

the bill for collection to the ALJ, pursuant to this subpart, and exhaust the available administrative remedies before filing suit in the Federal District Courts.

(c) *Filing.* The notice of appeal shall be filed with the Hearing Clerk in accordance with § 283.22(b).

(c) *Content of the notice.* (1) A notice of appeal, in order to be considered acceptable, must contain the following information:

(i) A brief and clear statement that it is an appeal from a QC claim of $50,000 or more identifying the period the claim covers, the date and amount of the bill for collection, and the date of receipt of the bill for collection;

(ii) Identification of the State agency as the appellant and FNS as the appellee;

(iii) A statement that the notice of appeal is filed pursuant to section 14(a) of the Food Stamp Act;

(iv) A copy of the bill for collection which constitutes the basis for the filing of the notice of appeal shall be attached to the notice.

(2) Failure to file an acceptable notice of appeal may result in a challenge by FNS to the notice, dismissal of the notice by the ALJ and a waiver of the opportunity for further appeal or review by the Judicial Officer unless the State agency pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Receipt of notice of appeal and assignment of docket number.* Upon receipt of a notice of appeal, the Hearing Clerk shall assign the appeal a docket number. The Hearing Clerk shall:

(1) Send the State agency a letter which shall include the following information:

(i) Advice that the notice of appeal has been received and the date of receipt;

(ii) The docket number assigned to the appeal and instructions that all future communications related to the appeal shall reference the docket number, and;

(iii) Advice that the State agency must file and serve its appeal petition, as set forth in § 283.22, not later than 60 days after receiving a notice of the claim. Failure to file a timely appeal petition may result in a waiver of further appeal rights.

(2) Send FNS a copy of the notice of appeal and a copy of the letter to the State agency.

(f) *Stay of collection.* The filing of a timely notice of appeal shall automatically stay the action of FNS to collect the QC claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final administrative determination has been issued. However, interest will accrue on the outstanding claim amount during the stay as provided in section 13(a)(1) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2022(a)(1)).

(g) *Content of the appeal petition.* The appeal petition shall include:

(1) A brief statement of the allegations of fact and provisions of law that constitute the basis for the appeal including a statement as to whether a factual basis for good cause relief exists;

(2) The nature of the relief sought, and;

(3) A request for an oral hearing, if desired by the State agency. Failure to request an oral hearing will result in a forfeiture of the opportunity for such a hearing, except as provided in § 283.15(a).

(h) *FNS answer.* Upon service of the State agency appeal petition, FNS shall:

(1) File an answer, in accordance with § 283.6, not later than 60 days after the State agency submits its appeal petition and;

(2) Advise the Hearing Clerk if FNS wishes to have an oral hearing.

(i) *Oral hearing not requested.* If no oral hearing has been requested, the appeal shall proceed in accordance with the procedures set forth under subpart C of this part.

§ 283.5 Motion to dismiss.

(a) *Filing of motion to dismiss.* Prior to or at the same time as filing the answer, FNS may file a motion to dismiss. The appeal may be challenged on the basis that the notice of appeal was not filed within 10 days or as that time may have been extended by the ALJ, the appeal petition was not filed in accordance with § 283.4, or that the appeal petition is substantially incomplete and could not be quickly and easily cured by amendment. The motion must be accompanied by clear and convincing proof of any of these factors alleged as grounds for dismissal.

(b) *Service of motion to dismiss.* FNS shall serve the State agency with a copy of the motion to dismiss. The State agency will have 10 days from date of service to submit objections to the motion.

(c) *Ruling on a motion to dismiss.* The ALJ will rule on the motion to dismiss before any further action proceeds on the basis of the merits of the appeal. The basis of the ruling will be clearly documented and will become part of the official record. If the ALJ denies the motion, FNS shall file its answer in accordance with § 283.6 within 60 days of service of the ALJ's ruling, unless there is a motion for reconsideration filed pursuant to § 283.17(d) or review by the Judicial Officer is sought pursuant to § 283.20.

(d) *Dismissal of appeal.* If the ALJ finds the basis for the motion to have merit, the appeal may be dismissed. The initial decision of the ALJ shall become final and effective 30 days after service in accordance with § 283.17(c)(2) unless either party pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Waiver.* Failure to file for dismissal of the appeal by the time the answer is required to be filed will result in waiver of the right to request dismissal.

§ 283.6 Answer.

(a) *Filing and service.* Not later than 60 days after the State agency submits its appeal petition, or within 60 days following service of a ruling in accordance with § 283.5, FNS shall file an answer signed by the FNS Administrator or authorized representative or the attorney of record in the appeal. The attorney may file an appearance of record prior to or simultaneously with the filing of the answer.

(b) *Contents.* The answer shall clearly admit, deny, or explain each of the allegations of the appeal petition and shall:

(1) Clearly set forth any defense asserted by FNS; or

(2) State that FNS admits all the facts alleged in the appeal petition; or

(3) State that FNS admits the jurisdictional allegations of the appeal petition and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(c) *Default.* Failure to file a timely answer shall be deemed, for purposes of the appeal, an admission of the allegations in the appeal petition and failure to deny or otherwise respond to an allegation of the appeal petition shall be deemed for purposes of the appeal, an admission of said allegation, unless FNS and the State agency have agreed to a consent decision pursuant to § 283.10.

§ 283.7 Procedures upon failure to file an answer.

The failure by FNS to file an answer shall constitute a waiver of hearing. Upon such failure to file, the State agency shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon FNS by the State agency. Within 10 days after service of such motion and proposed decision, FNS may file objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures or hearing. Copies of the initial decision or denial of the State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service in accordance with § 283.17(c)(2) unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20.

§ 283.8 Rebuttal or amendment of appeal or answer.

(a) Not later than 30 days after FNS submits an answer in accordance with § 283.6, the State agency may submit rebuttal evidence.

(b) At any time prior to the filing of a motion for a hearing pursuant to § 283.15(b), the appeal petition or the answer may be amended without prior authorization by the ALJ. Thereafter, such an amendment may only be made as authorized by the ALJ upon a showing of cause.

§ 283.9 Withdrawal of appeal.

At any time before the ALJ files an initial decision, the State agency may withdraw its appeal and agree to pay the full amount of the claim. By withdrawing an appeal, the State agency waives all opportunity to appeal or seek further administrative or judicial review on the claim or related matters.

§ 283.10 Consent decision.

At any time before the ALJ files an initial decision, FNS and the State agency may agree to entry of a consent decision. Such decision shall be filed in the form of a decision signed by the parties with appropriate space for signature by the ALJ and shall contain an admission of at least the jurisdictional facts, consent to the issuance of the agreed decision without further procedure and such other admissions or statements as may be agreed between the parties. The ALJ shall enter such decision without further procedures, unless an error is apparent on the face of the document. Such decision shall be final and shall take effect 30 days after the date of the delivery or service of such decision and is not subject to further administrative or judicial.

§ 283.11 Prehearing conference and procedure.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing.

meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures or hearing. Copies of the initial decision or denial of the State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service in accordance with § 283.17(c)(2) unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20.

§ 283.8 Rebuttal or amendment of appeal or answer.

(a) Not later than 30 days after FNS submits an answer in accordance with § 283.6, the State agency may submit rebuttal evidence.

(b) At any time prior to the filing of a motion for a hearing pursuant to § 283.15(b), the appeal petition or the answer may be amended without prior authorization by the ALJ. Thereafter, such an amendment may only be made as authorized by the ALJ upon a showing of cause.

§ 283.9 Withdrawal of appeal.

At any time before the ALJ files an initial decision, the State agency may withdraw its appeal and agree to pay the full amount of the claim. By withdrawing an appeal, the State agency waives all opportunity to appeal or seek further administrative or judicial review on the claim or related matters.

§ 283.10 Consent decision.

At any time before the ALJ files an initial decision, FNS and the State agency may agree to entry of a consent decision. Such decision shall be filed in the form of a decision signed by the parties with appropriate space for signature by the ALJ and shall contain an admission of at least the jurisdictional facts, consent to the issuance of the agreed decision without further procedure and such other admissions or statements as may be agreed between the parties. The ALJ shall enter such decision without further procedures, unless an error is apparent on the face of the document. Such decision shall be final and shall take effect 30 days after the date of the delivery or service of such decision and is not subject to further administrative or judicial.

§ 283.11 Prehearing conference and procedure.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing. The prehearing conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time, place of the prehearing conference and if personal attendance will be necessary shall be given. Prehearing conferences may be conducted telephonically. The ALJ shall order each of the parties to furnish at the prehearing conference or at another time prior to the hearing the following:

(1) An outline of the appeal or defense;

(2) The legal theories upon which the party will rely;

(3) Copies of or a list of documents that the party anticipates relying upon at the hearing; and

(4) A list of witnesses who will testify on behalf of the party. At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way, such as a short statement of the type of evidence they will offer.

(b) *Procedures.* The ALJ shall not order any of the foregoing procedures that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Matters to be considered.* At the prehearing conference, the following matters shall be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(4) The limitation of the number of expert or other witnesses;

(5) Negotiation, compromise, or settlement of issues;

(6) The exchange of copies of proposed exhibits;

(7) The nature of and the date by which discovery, as provided in § 283.12, must be completed;

(8) The identification of documents or matters of which official notice may be requested;

(9) A schedule to be followed by the parties for the completion of the actions decided at the conference; and

(10) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* (1) A prehearing conference will not be stenographically reported unless so directed by the ALJ.

(2) Any party to the appeal may, upon motion, request the ALJ to allow for a stenographic transcript of a prehearing conference. The party requesting the transcript shall bear the transcription cost of producing the transcript and the duplication cost for one transcript provided to the ALJ and to the other parties to the appeal.

(e) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report, if available, shall suffice, or, in the event the conference takes place within 7 days of the beginning of the hearing, the ALJ elects to make a statement on the record at the hearing summarizing the actions taken.

§ 283.12 Discovery.

(a) *Dispositions.*—(1) *Motion for taking deposition.* Only upon a finding by the ALJ that a deposition is necessary to preserve testimony as provided in this subparagraph, upon the motion of a party to the appeal, the ALJ may, at any time after the filing of the answer, order the taking of testimony by deposition. The motion shall set forth:

(i) The name and address of the proposed deponent;

(ii) The name and address of the person (referred to hereafter in this section as the "officer") qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made;

(iii) The proposed time and place of the examination, which shall be at least 15 days after the date of service of the motion; and

(iv) The reasons why such deposition should be taken, which shall be solely for the purpose of eliciting testimony which otherwise might not be available at the time of the hearing, for use as provided in accordance with paragraph (a)(7) of this section.

(2) *ALJ's order for taking depositions.* If the ALJ finds that the testimony may not otherwise be available at the hearing, the taking of the deposition may be ordered. The order shall be served upon the parties, and shall state:

(i) The time and place of the examination;

(ii) The name of the officer before whom the examination is to be made; and

(iii) The name of the deponent. The officer and the time and place need not be the same as those suggested in the motion.

(3) *Qualifications of officer.* The deposition shall be made before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(4) *Procedure on examination.* (i) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. Objections to

questions or documents shall be in the short form, stating the grounds of objections relied upon. The questions propounded, together with all objections made (but not including argument or debate), shall be recorded verbatim. In lieu of oral examination, parties may transmit written questions to the officer prior to the examination and the officer shall propound such questions to the deponent.

(ii) The party taking the deposition shall arrange for the examination of the witness either by oral examination, or by written questions upon agreement of the parties or as directed by the ALJ. If the examination is conducted by means of written questions, copies of the questions shall be served upon the other party to the appeal and filed with the officer at least 10 days prior to the date set for the examination unless otherwise agreed, and the other party may serve cross questions and file them with the officer at any time prior to the time of the examination.

(iii) The parties may stipulate in writing or the ALJ may upon motion order that a deposition be taken by telephone. A deposition taken by telephone is to be taken at the place where the deponent is to answer questions propounded to the deponent.

(iv) The parties may stipulate in writing or the ALJ may upon motion order that a deposition be recorded by other than stenographic means. The stipulation or the order shall designate the manner of recording, preserving and filing of the deposition, and may include other provisions to assure that the recorded testimony is accurate and trustworthy.

(5) *Certification by the officer.* The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the deponent's testimony. The officer shall then securely seal the deposition, together with one copy thereof (unless there are more than two parties in the appeal, in which case there should be another copy for each additional party), in an envelope and mail the same by registered or certified mail to the Hearing Clerk.

(6) *Corrections to the transcript.* (i) At any time prior to the hearing, any party may file a motion proposing corrections to the transcript of the deposition.

(ii) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given in the deposition proceeding and to contain an accurate description or reference to all exhibits in connection therewith, and shall be deemed to be certified correct without further procedure.

(iii) At any time prior to the use of the deposition in accordance with paragraph (a)(7) of this section and after consideration of any objections filed thereto, the ALJ may issue an order making any corrections in the transcript which the ALJ finds are warranted, and these corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(7) *Use of depositions.* A deposition ordered and taken in accordance with the provisions of this section may be used in an appeal under these rules if the ALJ finds that the evidence is otherwise admissible and

(i) That the witness is deceased;

(ii) That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;

(iii) That the party offering the deposition has endeavored to procure the attendance of the witness by subpoena, but has been unable to do so; or

(iv) That such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If the party upon whose motion the deposition was taken refuses to offer it in evidence, any other party may offer the deposition or any part thereof in evidence. If only part of a deposition is offered in evidence by a party, any other party may require the introduction of any other part which is relevant be considered with the part introduced, and any party may introduce any other parts.

(b) *Interrogatories, requests for admissions and requests for production of documents*—(1) *Interrogatories.* A party may submit written interrogatories to any other party to an appeal. The time for submitting and responding to written interrogatories shall be set by the ALJ at the pre-hearing conference, but in no event shall the time for response be less than 20 days from the date of service or within such time as determined upon motion to the ALJ. The number of interrogatories submitted by each party shall not exceed twenty-five questions including subparts, unless additional interrogatories are authorized by the ALJ. Each interrogatory should be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated in lieu of an answer. The answers are to be signed under penalty of perjury by the person making them. Objections shall be signed by the attorney of record in the appeal or by the responding party's authorized representative.

(2) *Request for admissions.* A party may submit a written request for admission of the truth of any matters relevant to the appeal to any other party to the appeal. The time for submitting a written request for admission shall be set by the ALJ at the pre-hearing conference. The number of admissions contained in a request submitted by a party shall not exceed twenty-five unless additional admissions are authorized by the ALJ. The matter is admitted unless, within 20 days after service thereof, or within such time as determined upon motion to the ALJ, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter signed by the party, counsel or designated representative. If objection is made, the reasons therefor should be stated. The answer should specifically deny the matter or set forth in detail why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for the failure to admit or deny unless it is stated that reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter for which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) *Request for production of documents.* (i) Any party may serve upon any other party to the appeal a request for production of documents which are in the possession or control of the party upon whom the request is served. The time for service and response to such a request shall be set by the ALJ at the pre-hearing conference. Upon payment of fees for search and duplication of documents, any party to the appeal may obtain copies of such documents.

(ii) Parties may request production of any documents regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Grounds for objection will not exist if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(iii) If such documents include privileged information or information the disclosure of which is proscribed by the Food Stamp Act of 1977, as amended, such documents need not be produced.

(c) *Supplementation of response.* A party who knows or later learns that a response is incorrect is under a duty to correct such response as soon as possible. A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired. A party is under a duty to supplement responses with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters, and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which such expert(s) is expected to testify, and the substance of the testimony.

(d) *Frequency and use of discovery.* The ALJ shall limit, upon motion of a party, the frequency or extent of discovery if the ALJ determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

(e) *Protective orders*—(1) *Request for protective order.* A party served with such a request may file a motion for a protective order before the date on which a response to the discovery request is due, stating why discovery should be limited or should not be required.

(2) *Issuance of protective order.* In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

(i) That discovery not be had;

(ii) That the discovery may be had only through a method of discovery other than that requested;

(iii) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(iv) That discovery be conducted with no one present except persons designated by the ALJ; and

(v) That the contents of discovery or evidence be sealed.

(c) *Supplementation of response.* A party who knows or later learns that a response is incorrect is under a duty to correct such response as soon as possible. A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired. A party is under a duty to supplement responses with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters, and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which such expert(s) is expected to testify, and the substance of the testimony.

(d) *Frequency and use of discovery.* The ALJ shall limit, upon motion of a party, the frequency or extent of discovery if the ALJ determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

(e) *Protective orders*—(1) *Request for protective order.* A party served with such a request may file a motion for a protective order before the date on which a response to the discovery request is due, stating why discovery should be limited or should not be required.

(2) *Issuance of protective order.* In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

(i) That discovery not be had;

(ii) That the discovery may be had only through a method of discovery other than that requested;

(iii) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(iv) That discovery be conducted with no one present except persons designated by the ALJ; and

(v) That the contents of discovery or evidence be sealed.

(f) *Failure to respond to discovery*—(1) *Motions to compel.* If a deponent fails to respond or gives an evasive or incomplete answer to a question propounded at a deposition pursuant to paragraph (a) of this section or a party fails to respond or gives evasive or incomplete answers to written interrogatories or admissions, or fails to respond, in full or in part, to a request for production of documents served pursuant to paragraph (b) of this section, the party seeking discovery may apply for an order compelling an answer by filing and serving a motion on all parties and deponents.

(2) *Filing motion to compel.* (i) Such motion must be filed within 20 days following the service of the unresponsive answer upon deposition or within 20 days after expiration of the period allowed for answers to interrogatories or production of documents.

(ii) On matters related to an oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(3) *Responding to motion to compel.* A response to the motion may be filed in accordance with § 283.18(d).

(g) *Decision of the ALJ.* (1) The ALJ may grant a motion to compel production or deny a motion for a protective order only if the ALJ finds that the discovery sought is necessary for the expeditious, fair, and reasonable consideration of the issues; it is not unduly costly or burdensome; it will not unduly delay the proceeding; and the information sought is not privileged.

(2) The initial decision of the ALJ regarding the motion to compel the production of privileged documents or the motion for a protective order shall become final and effective 10 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20.

(h) *Failure to comply with an order.* (1) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by order of the ALJ, such refusal may subject the refusing party to proceedings to compel compliance with the ALJ's order in the appropriate United States district court.

(2) If any party or other person refuses to obey an order made under this section requiring an answer to designated questions or production of documents, the ALJ may order that the matters regarding which questions were asked or the contents of the document or documents or any other designated facts should be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order.

(i) *Postponements or delays.* No hearing, proceeding or other matter under this part shall be postponed or otherwise delayed pending the response or resolution of issues pertaining to a request for information pursuant to the Freedom of Information Act, 5 U.S.C. 552.

§ 283.13 Subpoenas.

(a) *Issuance of subpoenas.* The attendance and testimony of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the appeal may be required by subpoena at the designated place of hearing. Except for cause shown, requests for subpoenas shall be filed at least 15 days prior to the date of the hearing. Subpoenas shall be issued by the ALJ, over the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity and reasonable scope thereof.

(b) *Service of subpoenas.* (1) When the ALJ issues a subpoena under this section, the party who requested such subpoena shall serve all other parties with a copy of the subpoena, notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.

(2) Subpoenas may be served:

(i) By a U.S. Marshal or deputy marshal,

(ii) By any other person who is not less than 18 years of age, or

(iii) By registering and mailing a copy of the subpoena addressed to the person to be served at the last known principal place of business or residence.

(3) Proof of service may be made:

(i) By the return of service on the subpoena by the U.S. Marshal or deputy marshal,

(ii) If served by an employee of the Department, by a certificate stating that he personally served the subpoena upon the person named therein,

(iii) If served by another person, by an affidavit of such person stating that he personally served the subpoena upon the person named therein, or

(iv) If service was by registered mail, by an affidavit made by the person mailing the subpoena that it was mailed as provided herein and by the signed return post-office receipt. Where the subpoena is issued on behalf of the Secretary and service is by mail, the return receipt without an affidavit or certificate of mailing shall be sufficient proof of service.

(4) In making personal service, the person making service shall leave a copy of the subpoena with the person

subpoenaed, or, if such person is not immediately available, with any other responsible person authorized to accept service residing or employed at the place of residence or business of the person subpoenaed.

(5) The original of the subpoena, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same. The party at whose request the subpoena is issued shall be responsible for the service thereof.

§ 283.14 Fees of witnesses.

Witnesses summoned under these rules shall be paid the same fees and expenses that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose request the witness appears. Current Federal, State, or local government employees shall not be eligible to receive witness fees.

§ 283.15 Procedure for hearing.

(a) *Request for hearing.* A party may request a hearing on the facts by including such request in its Appeal Petition or Answer, whichever is appropriate. Failure to request a hearing within the time specified shall constitute a waiver of the opportunity for such a hearing, except as provided for under § 283.4(i). In the event FNS denies any material facts and fails to request a hearing, the matter may be set down for hearing on motion of the State agency or upon the ALJ's own motion.

(b) *Time and place.* If any material issue of fact is joined by the pleadings, the ALJ, upon motion of any party, stating that the matter is ready for hearing, shall set a time for the hearing, as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FNS. The hearing shall be held at the U.S. Department of Agriculture, Washington, DC. Upon a showing of unusual or extraordinary circumstances, the ALJ may order that the hearing be held at another location. The ALJ shall file a notice stating the time and place of the hearing. If any change in the time of the hearing is made, the ALJ shall file a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript or actual notice given to the parties.

(c) *Appearances.* The parties may appear in person or by attorney of record in the appeal or by any other designated representative. Any person who appears as attorney or as a party's designated representative must conform to the standards of ethical conduct required by practitioners before the courts of the United States.

(d) *Exchange of witness and rebuttal witness lists, statements and exhibits.* (1) Witness and rebuttal witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements or depositions that a party intends to offer in lieu of live testimony in accordance with § 283.12(a)(7), shall be exchanged at least 15 days in advance of the hearing or at such other time as may be set by the ALJ.

(2) A witness whose name does not appear on the witness list shall not be permitted to testify and exhibits which were not provided to the opposing party as provided above shall not be admitted into evidence at the hearing absent a showing of cause and as authorized by the ALJ.

(e) *Deparment of attorney or representative.* (1) Whenever an ALJ finds that a person acting as attorney or designated representative for any party to the appeal is guilty of unethical or contumacious conduct in, or in connection with an appeal, the ALJ may order that such person be precluded from further acting as attorney or representative in the appeal. Review by the Judicial Officer may be taken on any such order, but no appeal of the QC claim shall be delayed or suspended pending disposition of the debarment review by the Judicial Officer. Provided, however, that the ALJ shall suspend the appeal of the QC claim for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

(2) Whenever it is found, after notice and opportunity for hearing, that a person who is acting or who has acted as attorney or representative for another person in any proceeding before the U.S. Department of Agriculture, is unfit to act as such counsel because of such unethical or contumacious conduct, such person will be precluded from acting as the attorney or representative in any or all proceedings before the Department as found to be appropriate.

(f) *Failure to appear.* (1) If FNS or the State agency, after being duly notified, fails to appear at the hearing without cause, that party shall be deemed to have waived the opportunity for an oral hearing and to have admitted any facts which may be presented at the hearing. Such failure by either party shall also constitute an admission of all the material allegations of fact contained in any pleadings submitted by the other party. The party who appears shall have the option of whether to follow the procedure under § 283.7 or to present evidence, in whole or in part, in the form of declarations or by oral testimony before the ALJ.

(2) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the ALJ's initial decision, to file a motion for reconsideration pursuant to § 283.17(d) or to seek review by the Judicial Officer in accordance with § 283.20.

(g) *Order of proceeding.* Except as may be decided otherwise by the ALJ, FNS shall proceed first at the hearing. FNS has the burden of proving, by a preponderance of the evidence, the QC claim against the State agency for a QC error rate in excess of the tolerance level. The State agency will proceed second and must prove, by a preponderance of the evidence, the facts upon which it bases its appeal.

(h) *Evidence.* (1) The testimony of witnesses at a hearing shall be on oath or affirmation and subject to cross-examination.

(2) Upon a finding of cause, the ALJ may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the appeal or whose presence is shown by a party to be essential to the presentation of the party's cause.

(3) After a witness called by either party has testified on direct examination, any other party may request and obtain the production of any statement, or part thereof, of such witness in the possession of the opposing party which relates to the subject matter as to which the witness has testified. Such production shall be made according to the procedures and subject to the definitions and limitations prescribed in the Jencks Act (18 U.S.C. 3500).

(4) Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded by order of the ALJ insofar as practicable.

(i) *Inclusion in the record.* At the oral hearing or as ordered by the ALJ, depositions to the extent deemed admissible, written interrogatories, written requests for admission and respective responses may be offered in evidence by the party at whose instance they were taken. If not offered by such party, they may be offered in whole or in part by any other party. If only part of a deposition, written interrogatory, written request for admission or response thereto is offered in evidence by a party, any other party may require that all of it, which is relevant to the part introduced, be offered, and any party may introduce any other parts.

Such depositions, written interrogatories, written requests for admission and respective responses thereto shall be admissible in evidence subject to such objections as to relevancy, materiality or competency of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.

(j) *Objections.* (1) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross examination or to any other ruling by the ALJ, the party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the ALJ.

(2) Only objections made before the ALJ may be subsequently relied upon on review by the Judicial Officer.

(k) *Exhibits.* Four copies of each exhibit shall be filed with the ALJ. However, where there are more than two parties in the appeal, an additional copy shall be filed for each additional party. A true copy of an exhibit may be substituted for the original.

(l) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof or by a copy certified by a person having legal authority to make such certification.

(m) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character. Provided, that the parties shall be given adequate opportunity to show that such facts are erroneously noticed.

(n) *Offer of proof.* Whenever evidence is excluded by the ALJ, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript in toto. If the evidence consists of a document or other exhibit, it shall be marked for identification and inserted in the hearing record. In either event, if the Judicial Officer, upon review, determines that the ALJ's ruling excluding the evidence was erroneous and prejudicial, the evidence shall be considered a part of the transcript and hearing record. If the Judicial Officer determines that the ALJ's ruling

Such depositions, written interrogatories, written requests for admission and respective responses thereto shall be admissible in evidence subject to such objections as to relevancy, materiality or competency of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.

(j) *Objections.* (1) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross examination or to any other ruling by the ALJ, the party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the ALJ.

(2) Only objections made before the ALJ may be subsequently relied upon on review by the Judicial Officer.

(k) *Exhibits.* Four copies of each exhibit shall be filed with the ALJ. However, where there are more than two parties in the appeal, an additional copy shall be filed for each additional party. A true copy of an exhibit may be substituted for the original.

(l) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof or by a copy certified by a person having legal authority to make such certification.

(m) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character. Provided, that the parties shall be given adequate opportunity to show that such facts are erroneously noticed.

(n) *Offer of proof.* Whenever evidence is excluded by the ALJ, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript in toto. If the evidence consists of a document or other exhibit, it shall be marked for identification and inserted in the hearing record. In either event, if the Judicial Officer, upon review, determines that the ALJ's ruling excluding the evidence was erroneous and prejudicial, the evidence shall be considered a part of the transcript and hearing record. If the Judicial Officer determines that the ALJ's ruling excluding the evidence was erroneous and prejudicial, and that it would inappropriate to have such evidence considered a part of the hearing record without reopening the hearing, the Judicial Officer may direct that the hearing be reopened to permit the taking of such evidence or for any other purpose in connection with the excluded evidence.

(o) *Transcript.* Hearings shall be recorded and transcribed verbatim. The party requesting the hearing shall bear the transcription cost of producing the transcript and the duplication cost for one transcript provided to the ALJ and to the other parties to the appeal.

§ 283.16 Consolidation of issues.

Similar issues involved in appeals by two or more State agencies may be consolidated upon motion by the State agencies, FNS, or at the discretion of the ALJ if it is decided that consolidation would help to promote administrative efficiency.

(a) *Disposition of consolidated issues.* If the ALJ orders consolidation, the issues consolidated will be considered first. If a hearing has been requested by any of the parties that have had issues consolidated, arguments on the consolidated issues will be heard before arguments on dissimilar issues. The ALJ will take the information into consideration along with arguments on other issues in preparing initial decisions for QC appeals in which some issues have been consolidated.

(b) *Initial decision.* (1) If the ALJ decides the evidence and arguments by the State agencies on the consolidated issues cannot be overcome by the evidence presented by FNS and are sufficient to grant the relief requested by a State agency or all State agencies in which the issue is involved, the ALJ shall prepare an initial decision as provided in § 283.17(c).

(2) FNS may file a motion for reconsideration pursuant to § 283.17(d) or seek review by the Judicial Officer in accordance with § 283.20.

§ 283.17 Post-hearing procedure.

(a) *Corrections to transcript.* (1) At any time, but not later than the time fixed for filing proposed findings of fact, conclusions of law, order and briefs, any party may file a motion proposing corrections to the transcript.

(2) Unless a party files such a motion in the matter prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given at the hearing and to contain an accurate description or reference to all exhibits received in evidence and made part of the hearing record. The transcript shall be deemed to be certified without further action by the ALJ.

(3) At any time prior to the filing of the ALJ's initial decision and after consideration of any objections filed as to the transcript, the ALJ may issue an order making any corrections in the transcript that the ALJ finds are warranted. Such corrections shall be entered into the original transcript by the Hearing Clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions of law, order, and briefs.* The parties may file proposed findings of fact, conclusions of law and orders based solely upon the record and on officially noticed matters, and briefs in support thereof. briefs may be filed at the discretion of the ALJ. The ALJ shall announce at the hearing the time within which these documents may be filed.

(c) *ALJ's initial decision.* (1) The ALJ shall decide the appeal not later than 60 days after receipt of rebuttal evidence submitted by the State agency or, if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal. In accordance with § 283.22(f), the ALJ may, upon motion or *sua sponte*, extend this deadline for cause shown.

(2) The ALJ shall prepare, upon the basis of the record and officially noticed matters, and shall file, an initial decision which shall include a decision on a request for good cause relief, a copy of which shall be served upon each of the parties.

(3) Such initial decision shall be considered final for purposes of judicial review without further proceedings, unless there is a motion for reconsideration filed pursuant to § 283.17(d) or review by the Judicial Officer is sought pursuant to § 283.20.

(4) If no motion for reconsideration or review by the Judicial Officer is filed, the initial decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 day after service.

(d) *Motion for reconsideration.* (1) Except as provided in paragraph (d)(4) of this section, any party may file a motion for reconsideration of the initial decision within 30 days of service of the initial decision. If served by mail, the time for filing a motion for reconsideration will be 5 days longer in accordance with § 283.22.

(2) Every such motion must set forth the mattes claimed to have been erroneously decided and the basis of the alleged errors. Such motion shall be accompanied by a supporting brief.

(3) Responses to such motions shall be filed in accordance with § 283.18(d).

(4) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(5) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(6) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 days after service unless review by the Judicial Officer is sought in accordance with § 283.20.

(7) If the ALJ issues a revised initial decision, that decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 days after service unless review by the Judicial Officer is sought in accordance with § 283.20.

§ 283.18 Motions and requests.

(a) *Filing.* All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties by the moving or requesting party, except motions and requests made on the record during the oral hearing. The ALJ assigned to the appeal or the Chief Judge shall rule upon all motions and requests filed or made prior to seeking review of the ALJ's initial decision pursuant to § 283.20, except motions directly relating to such review. Thereafter, the Judicial Officer shall rule on any motions and requests as well as the motions directly relating to the review of the ALJ's initial decision.

(b) *Time for filing.* Any motion or request may be filed at any time, except that:

(1) Motions to dismiss pursuant to § 283.5 must be filed within the time allowed for filing an answer; and

(2) Motions for reconsideration must be filed within 30 days of service of the ALJ's initial decision pursuant to § 283.17(d).

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefor.

(d) *Response to motions and requests.* Within 10 days after service of any written motion or request or within such shorter or longer period as may be fixed by the ALJ or Judicial Officer, an opposing party may file a response to the motion or request. The moving party shall have no right to reply to the response; however, the ALJ or Judicial Officer may order that a reply be filed.

(e) *Certification to the Judicial Officer.* The submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to the seeking of review pursuant to § 283.20 shall be made by and in the discretion of the ALJ. The ALJ may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

§ 283.19 ALJs.

(a) *Assignment.* No ALJ shall be assigned to serve in any appeal who:

(1) Has any pecuniary interest in any matter or business involved in the appeal,

(2) Is related by blood or marriage to any party in the appeal, or

(3) Has any conflict of interest which might impair the ALJ's objectivity in the appeal.

(b) *Disqualification of ALJ.* (1) Any party to the appeal may, by motion, request that the ALJ withdraw from the appeal on one or more of the grounds set out in paragraph (a) of this section. Such motion shall set forth with particularity the alleged grounds for disqualification. The ALJ may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) The ALJ may withdraw from any appeal for any reason deemed by the ALJ to be disqualifying.

(c) *Powers.* (1) Subject to review as provided elsewhere in this part, the ALJ, in any assigned appeal, shall have the power to:

(i) Rule upon motions and requests;

(ii) Set the time and place of a pre-hearing conference and the time of the hearing, adjourn the hearing from time to time, and change the time of the hearing;

(iii) Administer oaths and affirmations;

(iv) Regulate the scope and timing of discovery;

(v) Issue and enforce subpoenas as authorized under 7 U.S.C. 2023(a) and these rules;

(vi) Summon and examine witnesses and receive evidence at the hearing;

(vii) Appoint expert witnesses in accordance with the provisions of Rule 706 of the Federal Rules of Evidence;

(viii) Admit or exclude evidence;

(ix) Hear oral argument on facts or law;

(x) Upon motion of a party, decide cases, in whole or in part, by non-oral hearing procedures under subpart C of this part where there is no disputed material issue of fact;

(xi) Perform all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;

(xii) Take all other actions authorized under the Act and these rules, including the extension of time upon motion of a party or *sua sponte* for cause shown.

(2) The ALJ may not rule upon the validity of Federal statutes or regulations.

(d) *Who may act in the absence of the ALJ.* In case of the absence of the ALJ or the ALJ's inability to act, the powers and duties to be performed by the ALJ under these rules of practice in connection with any assigned appeal may, without abatement of the appeal, unless otherwise directed by the Chief Judge, be assigned to any other ALJ.

§ 283.20 Review by the Judicial Officer.

(a) *Filing of review petition.* (1) Within 30 days after service of the ALJ's initial decision, or any part thereof, any party may seek Judicial Officer review of such decision by filing a review petition with the Hearing Clerk. However, if another party files a motion for reconsideration under § 283.17(d), consideration of the review petition shall be stayed automatically pending resolution of the motion for reconsideration. If a motion for reconsideration is timely filed, a review petition may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(2) As provided in § 283.15(h), objections made before the ALJ regarding evidence or regarding a limitation on examination or cross-examination or other ruling may be relied upon in a Judicial Officer review.

(3) Each issue set forth in the review petition, and the arguments thereon, shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations or authorities being relied upon in support thereof. A brief in support may be filed simultaneously with the review petition.

(b) *Response to review petition.* Within 30 days after service of a copy of a review petition and any brief in support thereof, any other party to the proceedings may file a response in support of or in opposition to the review petition and in such response any relevant issue, not presented in the review petition, may be raised.

(c) *Transmittal of the record.* (1) Whenever a review petition of an ALJ's initial decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the appeal.

(2) Such record shall include: The pleadings; motions and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a prehearing conference; such proposed findings of fact, conclusions of law, orders, and briefs in support thereof, as may have been filed in connection with the appeal; the ALJ's initial decision; the motion for reconsideration of the ALJ's initial decision; the ALJ's initial decision on the motion for reconsideration and the review petition, and such briefs in support thereof and responses thereto as may have been filed.

(d) *Oral argument.* A party filing a review petition may request, within the prescribed time for filing such review petition, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, the responding party may file a request for such oral argument. Failure to make such request to appear before the Judicial Officer, within the prescribed time period, shall be deemed a waiver of the opportunity for oral argument. There is no right to appear personally before the Judicial Officer. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard by the Judicial Officer on review, whether oral or on brief, shall be limited to the issues raised in the review petition to the Judicial Officer or in the response to such petition, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit adequate preparation on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed within a reasonable time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to commence and conclude the argument.

(h) *Submission of briefs.* By agreement of the parties, a review may be submitted for decision on the briefs, but the Judicial Officer may direct that the review be argued orally.

(i) *Additional evidence.* If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented to the ALJ is material, not cumulative, and that there were reasonable grounds for the failure to present such evidence to the ALJ, the Judicial Officer shall remand the matter

fact, conclusions of law, orders, and briefs in support thereof, as may have been filed in connection with the appeal; the ALJ's initial decision; the motion for reconsideration of the ALJ's initial decision; the ALJ's initial decision on the motion for reconsideration and the review petition, and such briefs in support thereof and responses thereto as may have been filed.

(d) *Oral argument.* A party filing a review petition may request, within the prescribed time for filing such review petition, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, the responding party may file a request for such oral argument. Failure to make such request to appear before the Judicial Officer, within the prescribed time period, shall be deemed a waiver of the opportunity for oral argument. There is no right to appear personally before the Judicial Officer. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard by the Judicial Officer on review, whether oral or on brief, shall be limited to the issues raised in the review petition to the Judicial Officer or in the response to such petition, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit adequate preparation on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed within a reasonable time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to commence and conclude the argument.

(h) *Submission of briefs.* By agreement of the parties, a review may be submitted for decision on the briefs, but the Judicial Officer may direct that the review be argued orally.

(i) *Additional evidence.* If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented to the ALJ is material, not cumulative, and that there were reasonable grounds for the failure to present such evidence to the ALJ, the Judicial Officer shall remand the matter to the ALJ for consideration of such additional evidence.

(j) *Decision of the Judicial Officer on review.* (1) As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of the record and any matter of which official notice is taken, shall rule on the review.

(2) The Judicial Officer may adopt, reduce, reverse, compromise, remand or approve settlement of any claim initially decided by the ALJ under this part.

(3) The Judicial Officer shall promptly serve each party to the appeal with a copy of the ruling of the Judicial Officer which shall be considered the final determination and contain a statement describing the right to seek judicial review.

(4) Judicial review must be sought within 30 days of service of the final notice of determination by the Judicial Officer pursuant to 7 U.S.C. 2023(a).

§ 283.21 Ex parte communications.

(a) *ALJ; Judicial Officer.* At no time prior to the issuance of the final decision shall the ALJ or Judicial Officer discuss ex parte the merits of the appeal or review with any person who is connected with the appeal or review in an advocative or in an investigative capacity, or with any representative of such person. However, procedural matters shall not be included within this limitation; and furthermore, the ALJ or Judicial Officer may discuss the merits of the case with such a person if all parties to the appeal or review, or their attorneys have been given notice and an opportunity to participate. A memorandum of such discussion shall be included in the record.

(b) *Parties; interested persons.* No party or other interested person shall make or knowingly cause to be made to the ALJ or Judicial Officer an ex parte communication relevant to the merits of the appeal or review.

(c) *Procedure.* If the ALJ or Judicial Officer receives an ex parte communication in violation of this section, the one who receives the communication shall place in the public record of the appeal or review:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) Copies of all written responses, and memoranda stating the substance of all oral responses thereto.

(4) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the ALJ or Judicial Officer may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why its claim or interest in the appeal or review should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(d) *Decision.* To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly causes such a violation to occur.

§ 283.22 Form; filing; service; proof of service; computation of time; and extensions of time.

(a) *Form.* (1) The original and two copies of all papers in a proceeding conducted under this subpart shall be filed with the Hearing Clerk.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the docket number assigned by the Hearing Clerk, and a descriptive title (e.g., Motion for Extension of Time).

(3) Every pleading and paper shall be signed by and contain the address and telephone number of the representative for the party on whose behalf the paper was filed.

(b) *Filing.* Papers are considered filed when they are postmarked, or, received, if hand delivered. Date of mailing may be established by a certificate from the party or representative or by proof that the document was sent by certified or registered mail.

(c) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by an attorney or designated representative, service shall be made upon such attorney or representative in lieu of the actual party.

(d) *Proof of service.* A certificate of the person serving the document by personal delivery or by mail, setting forth the date, time and manner of service, shall be proof of service.

(e) *Computation of time.*

(1) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday or legal holiday observed by the Federal Government, in which event it includes the next business day.

(2) When a document has been served by mail, an additional five days will be added to the time permitted for any response.

(f) *Extensions of time.* Requests for extensions of time shall be submitted to the ALJ, Chief Judge or the Judicial Officer prior to the expiration of the original due date. The time for the filing of any document or paper required or authorized under the rules in this part may be extended by the ALJ, Chief Judge or the Judicial Officer, if, in the judgment of the ALJ, Chief Judge or the Judicial Officer, there is cause for the extension. In instances where the time permits notice of the request for extension, time shall be given to the other party to submit views concerning the request.

§ 283.23 Procedural matters.

(a) *Communications from Hearing Clerk.* In order to expedite the appeal process, the Hearing Clerk may develop form letters and transmittal forms to be used for notices, service of papers, requests for information, and all other communications between the Hearing Clerk's Office and the parties.

(b) *Representation.* All parties may be represented by attorneys or by designated representatives. Attorneys or designated representatives appearing for the parties shall file formal notices of appearances and withdrawals with the Hearing Clerk.

Subpart C—Summary Procedure for Appeals of QC Claims of Less Than $50,000

§ 283.24 Incorporation of procedures by reference.

Except as otherwise provided, the following procedures detailed in subpart B of this part shall apply to appeals of QC claims of less than $50,000: §§ 283.5 *Motion to Dismiss*; 283.6 *Answer*; 283.8 *Rebuttal or Amendment of Appeal or Answer*; 283.9 *Withdrawal of Appeal*; 283.10 *Consent Decision*; 283.18 *Motions and Requests*; 283.19 *ALJ's*; 283.20 *Review by the Judicial Officer*; 283.21 *Ex Parte Communications*; 283.22 *Filings; Service; Extensions of Time; and Computations of Time*; and 283.23 *Procedural Matters*.

§ 283.25 Filing appeals for QC claims of less than $50,000.

(a) *Time.* A State agency may appeal the bill for collection from FNS for a QC claim of less than $50,000 for a food stamp QC error rate in excess of the tolerance level. A State agency must file a written notice of appeal, in accordance with this section, within 10 days of receipt of the bill for collection from FNS for a QC claim of less than $50,000. The State agency may request an extension to the 10-day filing requirement in accordance with § 283.22(f). FNS shall issue the bill for collection by certified mail or personal service.

(b) *Exhaustion of administrative remedies.* The State agency must appeal the bill for collection to the ALJ, pursuant to this subpart, and exhaust the available administrative remedies before filing suit in the Federal District Courts.

(c) *Filing.* The notice of appeal shall be filed with the Hearing Clerk.

(d) *Content of the notice of appeal.* (1) A notice of appeal, in order to be considered acceptable must contain the following information:

(i) A brief and clear statement that it is an appeal from a QC claim of less than $50,000 identifying the period the claim covers, the date and amount of the bill for collection, and the date of receipt of the bill for collection;

(ii) Identification of the State agency as the appellant and FNS as the appellee;

(iii) A statement that the notice of appeal is filed pursuant to section 14(a) of the Food Stamp Act;

(iv) A true copy of the bill for collection which constitutes the basis for the filing of the notice of appeal shall be attached to the notice.

(2) Failure to file an acceptable notice of appeal may result in a challenge by FNS to the notice and dismissal of the notice by the ALJ and a waiver of the opportunity for further appeal or review by the Judicial Officer unless the State agency pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Receipt of notice of appeal and assignment of docket number.* Upon receipt of a notice of appeal, the Hearing Clerk shall assign the appeal a docket number. The Hearing Clerk shall:

(1) Send the State agency a letter which shall include the following information:

(i) Advise that the notice of appeal has been received and the date of receipt;

(ii) The docket number assigned to the appeal and instructions that all future communications related to the appeal shall reference the docket number, and;

(iii) That the State agency must file and serve its appeal petition, as set forth in § 283.22 not later than 60 days after receiving a notice of the claim. Failure to file a timely appeal petition may result in a waiver of further appeal rights.

(2) Send FNS a copy of the notice of appeal and a copy of the letter to the State agency.

(f) *Stay of collection.* The filing of a timely notice of appeal shall automatically stay the action of FNS to collect the QC claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final administrative determination has been issued. However, interest will accrue on the outstanding claim amount during the stay as provided in section 13(a)(1) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2022(a)(1)).

(g) *Content of appeal petition.* The appeal petition shall include:

(1) A brief statement of the allegations of fact and provisions of law that constitute the basis for the appeal including a statement as to whether a factual basis for good cause relief exists, and

(2) The nature of the relief sought.

(h) *FNS answer.* Upon service of the State agency appeal petition, FNS shall file an answer, pursuant to § 283.6, not later than 60 days after the State agency submits its appeal petition.

§ 283.26 Request that appeals be handled under procedures in subpart B for appeals of QC claims of $50,000 or more.

(a) If, after the filing of its appeal petition, the State agency does not believe that the summary procedure provided in this subpart is adequate for handling the appeal and that an oral hearing is necessary, the State agency may file, no later than the date established for the conclusion of any discovery pursuant to § 283.29, a motion that its appeal be handled under the procedures in subpart B of this part.

(b) The motion shall specify why the State agency believes that the summary procedure is inadequate and what harm will result if an oral hearing is not held.

(c) FNS will have 10 days from service of the State agency's motion that the appeal be handled under subpart B of this part to submit arguments either in support of or against the State agency's position.

(d) The ALJ will review the State agency's motion and the information submitted by FNS and decide which procedures shall be used in the appeal.

§ 283.27 Procedures upon failure to file an answer.

The failure by FNS to file an answer shall constitute a waiver of the opportunity to file a cross motion for summary judgment pursuant to § 283.30. Upon such failure to file, the State agency shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon FNS by the State agency. Within 10 days after service of such motion and proposed decision, FNS may file with the Hearing Clerk objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures. Copies of the decision or denial of State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20.

§ 283.28 Discovery.

Upon motion and as ordered by the ALJ, written interrogatories, written requests for admissions and written requests for the production of documents, may be served by any party to the appeal upon any other party and used in accordance with § 283.12(b).

§ 283.29 Scheduling conference.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to attend a scheduling conference following the filing of a notice of appeal pursuant to § 283.25. The scheduling conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time and place of the scheduling conference shall be given. The ALJ may order each of the parties to furnish at the scheduling conference the following:

(1) An outline of the appeal or defense;

(2) The legal theories upon which the party will rely;

(3) Copies of or a list of documents that the party anticipates relying upon;

(b) *Procedures.* The ALJ shall not order any of the foregoing procedures that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Scheduling conference.* At the scheduling conference, the following matters shall be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) Stipulations of facts and of the authenticity, accuracy, and admissibility of documents;

(4) Negotiation, compromise, or settlement of issues;

(5) The exchange of copies of proposed exhibits;

(6) The nature of and the date by which discovery, as provided in § 283.28, must be completed;

motion and proposed decision, FNS may file with the Hearing Clerk objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures. Copies of the decision or denial of State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20.

§ 283.28 Discovery.

Upon motion and as ordered by the ALJ, written interrogatories, written requests for admissions and written requests for the production of documents, may be served by any party to the appeal upon any other party and used in accordance with § 283.12(b).

§ 283.29 Scheduling conference.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to attend a scheduling conference following the filing of a notice of appeal pursuant to § 283.25. The scheduling conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time and place of the scheduling conference shall be given. The ALJ may order each of the parties to furnish at the scheduling conference the following:

(1) An outline of the appeal or defense;

(2) The legal theories upon which the party will rely;

(3) Copies of or a list of documents that the party anticipates relying upon;

(b) *Procedures.* The ALJ shall not order any of the foregoing procedures that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Scheduling conference.* At the scheduling conference, the following matters shall be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) Stipulations of facts and of the authenticity, accuracy, and admissibility of documents;

(4) Negotiation, compromise, or settlement of issues;

(5) The exchange of copies of proposed exhibits;

(6) The nature of and the date by which discovery, as provided in § 283.28, must be completed;

(7) The identification of documents or matters of which official notice may be requested;

(8) A schedule to be followed by the parties for the filing of cross-motions for summary judgment and completion of other actions decided at the conference; and

(9) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* A scheduling conference will not be stenographically reported unless so directed by the ALJ.

(e) *Attendance at scheduling conference.* In the event the ALJ concludes that personal attendance by the ALJ and the parties or counsel at a scheduling conference is unwarranted or impractical, but decides that a conference would expedite the appeal, the ALJ may conduct such conference by telephone.

(f) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report shall suffice.

§ 283.30 Cross motions for summary judgment.

Appeals filed pursuant to this subpart shall be determined upon cross motions for summary judgment unless the matter is heard under subpart B of this part in accordance with § 283.26. Cross motions for summary judgment shall be filed by the parties along with the appeal petition and answer or in accordance with the schedule established by the ALJ pursuant to § 283.29. Motions for summary judgment shall address the issues raised by the pleadings and may be supported by declarations. Motions and accompanying briefs in support of summary judgment shall not exceed 35 pages excluding exhibits unless otherwise authorized by the ALJ. Reply briefs may be filed by the parties in accordance with the schedule established by the ALJ. Reply briefs may not exceed 15 pages in length, excluding exhibits.

§ 283.31 Review of the Record.

(a) The ALJ shall review the cross motions for summary judgment, briefs, reply briefs and supporting materials submitted by both FNS and the State agency.

(b) If the ALJ decides that additional information or briefing is required from a party, a request for such information or briefing shall be submitted to such party with a copy to the other party. The request shall identify the additional information or specific issues to be addressed and shall specify the date(s) by which such information or briefing must be provided. Upon receipt of such additional information or briefing, the ALJ shall provide the other party an opportunity to submit responsive information or briefing.

(c) If the party to whom a request for additional information or briefing is made fails to submit the information or brief the issue(s) as requested, the ALJ may decide the appeal based on the existing record.

(d) If the ALJ decides that oral argument is necessary on legal issues, the ALJ shall set a time for the oral arguments as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FNS. The oral arguments shall be held at the U.S. Department of Agriculture, Washington, DC. Upon a showing of unusual or extraordinary circumstances, the ALJ may order that the argument be held at another location. The ALJ shall file a notice stating the time and place of the oral arguments. If any change in the time of the oral arguments is made, the ALJ shall file a notice of such change, which notice shall be served upon the parties, unless it is made during the course of the oral arguments and made a part of the transcript or actual notice given to the parties.

(e) Oral argument shall not be transcribed unless so ordered in advance by the ALJ for cause shown upon request of a party or upon the ALJ's own motion.

§ 283.32 ALJ's initial decision.

(a) The ALJ shall decide the appeal not later than 60 days after receipt of rebuttal evidence submitted by the State agency pursuant to § 283.8 or, if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal. The ALJ may extend this deadline for cause shown.

(b) The ALJ shall prepare, upon the basis of the record, and shall file an initial decision which shall include a decision on a request for good cause relief, a copy of which shall be served upon each of the parties.

(c) Such initial decision shall constitute the final notice of determination for purposes of judicial review without further proceedings, unless there is a motion for reconsideration filed pursuant to § 283.17(d) or review by the Judicial Officer is sought pursuant to § 283.20.

Dated: June 22, 1994.
William E. Ludwig,
Administrator, Food and Nutrition Service.
[FR Doc. 94–16003 Filed 7–5–94; 8:45 am]
BILLING CODE 3410–30–U–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 118CE, Special Condition 23–ACE–76]

Special Conditions,; Ballistic Recovery Systems, Modified for Small General Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued for the supplementary type certification of the Ballistic Recovery Systems, Inc., parachute recovery system installed in small general aviation airplanes. This system is referred to as the GARD. Airplanes modified to use this system will incorporate novel or unusual design features for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Aerospace Engineer, Standards Office (ACE–100), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri, 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1987, the Ballistic Recovery System, Inc. (BRS), 9242 Hudson Boulevard, Lake Elmo, Minnesota 55042, filed an application for a supplemental type certificate (STC) to install the GARD–150 parachute recovery system on Cessna 150/A150 Series and 152/A152 Model Airplanes. Subsequently, they received the STC under Special Condition 23–ACE–33, dated November 17, 1987. The parachute recovery system is intended to recover an airplane in emergency situations such as mid-air collision, loss of engine power, loss of airplane control, sever structural failure, pilot disorientation, or pilot incapacitation with a passenger on board. The GARD–150 system, which is only used as a last resort, is intended to prevent serious injuries to the airplane occupants by parachuting the airplane to the ground.

BRS followed their STC on the Cessna 150/A150 and 152/A152 Series with request for special conditions on the General Aviation Recovery Device (GARD) system that would be applicable to most general aviation airplanes. The nature of the parachute recovery system applies to most general aviation airplanes with similar configurations and characteristics. Separate special conditions for each airplane model are not needed.

Parachute recovery systems typically consist of a parachute packed in a canister mounted on the airframe. A solid propellant rocket motor or compressed air may deploy the canopy and is usually located on the side of the canister. A door positioned above the canister seals the canister, parachute canopy, and rocket motor from the elements and provides free exit when the canopy is deployed. These systems are deployed by a mechanical pull handle mounted so that the pilot and passenger can reach it. At least two separate and independent actions are required to deploy the system.

A multicable bridle attaches the canopy bridle to the airplane primary structure. The cable lengths are designed to provide the best airplane touchdown attitude. The cables are routed externally and covered with small frangible fairings from the fuselage exist holes to the attach points.

The applicants must supplement the FAA-approved Flight Manual as part of the STC. The supplement will describe the system, define the operating envelope with appropriate warnings, and define required system maintenance and inspection information. A separate FAA-approved Operating Manual describing the previous items will be provided for those airplanes that do not have an FAA-approved Flight Manual.

Recommended placards should be located near the pull handle in clear view of the pilot to identify the system and operating envelope, state deployment actions, and provide appropriate warnings. A warning placard should also be located on the canister near the rocket motor.

Discussion

The installation of parachute recovery systems in part 23, VLA, and primary category airplanes was not envisioned when the certification basis for these airplanes was established. In addition, the Administrator has determined that current regulations do not contain adequate or appropriate safety standards for a parachute recovery system; therefore, this system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(1) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane modification. Special conditions, as appropriate, are issued after public notice in accordance with § 11.49 (as amended October 25, 1989), as required by §§ 11.28 and 11.29(b). The special conditions become part of the type certification basis, as provided by § 21.17(a)(2).

The flight test demonstration requirements will ensure that the parachute recovery system will perform its intended function without exceeding its strength capabilities. Demonstrations will be required to show that the parachute will deploy in various specified flight conditions.

Occupant restraint requirements will ensure that airplanes modified with a parachute recovery system are equipped with a restraint system designed to protect the occupants from injury during parachute deployment and ground impact.

Requirements for parachute performance will ensure all of the following: (a) The parachute complies with the applicable section of TSO–C23c (SAE AS8015A) at the critical airplane weights. (b) The parachute deployment loads do not exceed the structural strength of the airplane. (c) The system will provide a ground impact that does not result in serious injury of the passengers. (d) The system will operate in adverse weather conditions.

The requirements for the functions and operations of the parachute recovery system will ensure all of the following: (a) There is no fire hazard associated with the system. (b) The system has adequate reliability. (c) The sequence of arming and activating the system will prevent inadvertent deployment. (d) The system can be activated from either the pilot's or the copilot's position by various sized people. (e) The system will be labeled to show its identification function and operating limitations. (f) It must be shown that the occupants will be protected from serious injury after touchdown under various adverse weather conditions, including high winds.

Requirements for protection of the parachute recovery system will ensure that the system is protected from deterioration due to weathering, corrosion, abrasion, and other causes; and that provisions are made to the parachute canister to provide adequate ventilation and drainage.

Requirements for a system inspection provision will ensure that adequate means are available to permit examination of the parachute recovery system components and that instructions for continued airworthiness are provided.

Requirements for operating limitations of the parachute recovery system will ensure that the system operating limitations are prescribed for inspection, repacking, and replacing the system's parachute deployment mechanism at approved intervals.

Discussion of Comments

Notice of Proposed Special Conditions, Docket No. 118CE, Notice No. 23–ACE–76 (59 FR 2786, January 19, 1994) proposed special conditions for small general aviation airplanes. The comment period for the notice closed March 21, 1994. Four comments were received from one commenter. All comments were concerning the flight portion of these special conditions.

The commenter believes that the wording of the proposed special conditions indicates that flight test may be required for each make and model of aircraft for which the GARD system will be installed. The commenter does not believe this is necessary for airplanes with similar characteristics such as configuration, weight, and speed. To support this position, the commenter cites TSO–C23c for emergency personnel parachutes that are certified according to suspended weight and maximum allowable deployment speed. The commenter states that significant configuration changes would be low wing versus high wing or a change in the position of the parachute main attach point relative to the aircraft center of gravity. A significant change in airplane characteristics could be defined as any variation that could potentially cause the airplane to react to parachute deployment different from the original tests.

In this case, a flight demonstration of satisfactory deployment would be required unless a reliable method of analysis is available.

The FAA agrees with the commenter that the wording of the proposal infers that the flight demonstrations are required for each airplane model

weather conditions, including high winds.

Requirements for protection of the parachute recovery system will ensure that the system is protected from deterioration due to weathering, corrosion, abrasion, and other causes; and that provisions are made to the parachute canister to provide adequate ventilation and drainage.

Requirements for a system inspection provision will ensure that adequate means are available to permit examination of the parachute recovery system components and that instructions for continued airworthiness are provided.

Requirements for operating limitations of the parachute recovery system will ensure that the system operating limitations are prescribed for inspection, repacking, and replacing the system's parachute deployment mechanism at approved intervals.

Discussion of Comments

Notice of Proposed Special Conditions, Docket No. 118CE, Notice No. 23–ACE–76 (59 FR 2786, January 19, 1994) proposed special conditions for small general aviation airplanes. The comment period for the notice closed March 21, 1994. Four comments were received from one commenter. All comments were concerning the flight portion of these special conditions.

The commenter believes that the wording of the proposed special conditions indicates that flight test may be required for each make and model of aircraft for which the GARD system will be installed. The commenter does not believe this is necessary for airplanes with similar characteristics such as configuration, weight, and speed. To support this position, the commenter cites TSO–C23c for emergency personnel parachutes that are certified according to suspended weight and maximum allowable deployment speed. The commenter states that significant configuration changes would be low wing versus high wing or a change in the position of the parachute main attach point relative to the aircraft center of gravity. A significant change in airplane characteristics could be defined as any variation that could potentially cause the airplane to react to parachute deployment different from the original tests.

In this case, a flight demonstration of satisfactory deployment would be required unless a reliable method of analysis is available.

The FAA agrees with the commenter that the wording of the proposal infers that the flight demonstrations are required for each airplane model receiving the STC. This was not the FAA's original intent with these special conditions. The FAA agrees with the commenter that the GARD system is intended to add a means of preventing a catastrophic crash when all other means of recovery are exhausted or made inoperative. To this end, this system adds to the overall safety of the airplane. Therefore, the FAA agrees with the commenter's approach to different airplanes with similar characteristics.

The commenter also believes that special condition 1(b)(3) should state: Maneuvering speed with 2g normal load, not Og normal load. The original flight tests included a 60 degree bank turn with a 2g normal load for one deployment condition. Essentially, the deployment condition was the airplane turning into the parachute deployment. The test evaluated both deployment during a turn and the force of the ballistics to eject the parachute away from the airplane in a way that would allow it to open. The possible concern was not having enough load on the parachute to properly inflate the canopy. The results on the original GARD–150 were satisfactory. The FAA's reason for requiring the Og test was to evaluate additional deployment loads against the airframe limits. In re-evaluating this requirement, the FAA believes that data from static tests and the stall condition deployment will adequately address the concerns. Additionally, since the 2g test requirement from the original GARD system was satisfactory, the FAA finds no reason to evaluate the opening during a 2g turn on each airplane that requires deployment testing. A 2g acceleration is the same regardless of the type airplane. If the GARD system had the force to fire the parachute away from the airplane while the airplane was turning toward the parachute, then the results should be the same for other airplanes.

The commenter thought that there should be an option of placarding the operating limitations as an alternative to testing at the never exceed speed 1(b)(i)(4) and in inverted flight for aerobatic aircraft 1(b)(ii). Satisfactory deployment would be demonstrated at a maximum placarded deployment speed with 1g normal load. This maximum placarded deployment speed should be greater than or equal to the structural cruising speed of the aircraft.

The FAA conducted a thorough evaluation of the first system to be STC'd on a certified airplane. The FAA's interest with follow-on modifications to similar airplanes is primarily to investigate deployment at the airplane's limits. It is realistic to expect pilots to deploy this system in an inadvertent spin, at minimum speed (stall), and at the never exceed speed. By testing at these limits, all conditions in between are covered. The only exception might be high g loads from aerobatic airplanes. Any situation where the GARD system is deployed will either be 1g or less (i.e., normal gliding flight through spins), or completely unloaded, or tumbling from a structural failure. It is not reasonable to expect any applicant to test for the tumbling after a structural failure. In an out-of-control situation (structural failure), the airplane could quickly reach its never exceed speed. So the requirement to deploy the GARD system at the never exceed speed will remain. However, since the argument for aerobatic airplane has been presented, including the operational reality of an inverted deployment, the FAA agrees with the commenter that the merits of requiring the test are far outweighted by the cost to conduct the test. Therefore, the option of placarding against operating the GARD system during aerobatics is supported.

Conclusion

In view of the design features discussed for the Ballistic Recovery Systems General Aviation Recovery Device (GARD), the following special conditions are issued. This action is a rule of general applicability and affects small general aviation airplanes with characteristics similar to those identified in these special conditions.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, and Signs and symbols.

Citation

The authority citation for this special condition is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 101; and 14 CFR 11.28 and 11.49.

Adoption of Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration issues the following special conditions as part of the supplemental type certification basis for the BRS GARD system installed in small general aviation airplanes:

1. Flight Test Demonstration

(a) The system must be demonsurated in flight to satisfactorily perform its intended function, without exceeding

the system deployment load factors, for the critical flight conditions, except as allowed in 1(c).

(b) Satisfactory deployment of the parachute must be demonstrated, at the most critical airplane weight and balance, for the following flight conditions:

(1) Power off stall with slow entry,

(2) Spin with deployment at one turn,

(3) Never exceed speed with 1g normal load.

(c) Flight demonstrations are not required for airplanes with similar characteristics, (such as configuration, weight, and speed) to airplanes that have already received an STC for the installation. Only airplanes where a significant change from airplanes that have already received an STC need to include a flight demonstration. A significant change in airplane characteristics could be defined as any variation that could potentially cause the airplane to react to parachute deployment different from original tests.

2. Occupant Restraint

Each seat in an airplane modified with the parachute recovery system must be equipped with a restraint system, consisting of a seat belt and shoulder harness, that will protect the occupants from head and upper torso injuries during parachute deployment and ground impact at the critical load conditions.

3. Parachute Performance

(a) The parachute must comply with the applicable requirements of TSO–C23c, or an approved equivalent, for the critical airplane weights.

(b) The system limit load factor for deployment must not exceed 80 percent of the airplane ultimate load factor.

(c) It must be shown that, although the airplane structure may be damaged, the airplane impact during touchdown will result in an occupant environment in which serious injury to the occupants is improbable.

(d) It must be shown that, with the parachute deployed, the airplane can impact the ground in various adverse weather conditions, including winds up to 15 knots, without endangering the airplane occupants.

4. System Function and Operations

(a) It must be shown that there is no fire hazard associated with activation of the system.

(b) The system must be shown to function reliably and to perform its intended function.

(c) It must be shown that arming and activating the system can only be accomplished in a sequence that makes inadvertent deployment extremely improbable.

(d) It must be demonstrated that the system can be activated without difficulty by various sized people, from a 10th percentile female to a 90th percentile male, while sitting in the pilot or copilot seat.

(e) The system must be labeled to show its identification, function, and operating limitations.

(f) It must be shown that the occupants will be protected from serious injury after touchdown under various adverse weather conditions, including high winds.

5. System Protection

(a) All compponents of the system must provide protection against deterioration due to weathering, corrosion, abrasion, and other causes.

(b) Adequate provisions must be made for ventilation and drainage of the parachute canister and associated structure to ensure the sound condition of the system.

6. System Inspection Provisions

(a) Instructions for continued airworthiness must be prepared for the system that meet the requirements of § 23.1529.

(b) Adequate means must be provided to permit the close examination of the parachute and other system components to ensure proper functioning, alignment, lubrication, and adjustment during the required inspection of the system.

7. Operating Limitations

(a) Operating limitations must be prescribed to ensure proper operation of the system within the approved flight envelope of the airplane.

(b) Operating limitations must be prescribed for inspecting, repacking, and replacing the parachute and deployment mechanism at approved intervals.

Issued in Kansas City, Missouri on June 22, 1994.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16233 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–33–M

---

14 CFR Part 39

[Docket No. 94–NM–85–AD; Amendment 39–8956; AD 94–14–04]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This action requires inspection to detect cracking of the lower spar chord of the engine strut, removal of the stiffener straps from the mid-chord, inspection of the fastener holes, and modification or repair. This amendment is prompted by a report of cracking in the lower spar chord of an engine strut. The actions specified in this AD are intended to prevent cracking in the lower spar chord of the engine strut, which could result in the inability of the strut to carry required engine support loads.

DATES: Effective July 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 6, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–85–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carrie Sumner, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2778; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: Recently, the FAA received a report from an operator that cracking was found in the lower spar chord of a strut on a Boeing Model 757 series airplane equipped with a Rolls Royce Model RB211–535 series engine. This cracking penetrated through the inboard flange of the chord and propagated into the skin flange of the chord. This fatigue crack in the skin flange was approximately five inches in length.

Analysis indicates that stiffener straps, which were installed on early production airplanes, increase the likelihood of cracking in the spar chords. These stiffener straps are no longer installed on later production airplanes.

Continued operation with the stiffener straps installed will cause fatigue cracking or propagation of existing cracks in the lower chord. Such cracking could result in the inability of the strut to carry required engine support loads, and ultimately could lead to separation of the engine from the strut.

The FAA has reviewed and approved Boeing Service Bulletin 757–54–0028, dated March 31, 1994, that describes procedures for eddy current inspection to detect cracking of the lower spar chord of the engine strut, removal of the stiffener straps from the mid-chord, open hole eddy current inspection of the fastener holes, and modification. This modification, which includes installing fasteners, a strut pneumatic duct, a fire extinguisher line, a bulkhead coverplate, and a panel, will decrease the likelihood of fatigue cracking in the lower spar chord of the engine strut.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 757 series airplanes of the same type design, this AD is being issued to prevent cracking of the lower spar chord of the engine strut. This AD requires eddy current inspection to detect cracking of the lower spar chord of the engine strut, removal of the stiffener straps from the mid-chord, open hole eddy current inspection of the fastener holes, and modification. The actions are required to be accomplished in accordance with the service bulletin described previously. In certain cases, this AD requires repair of cracking in accordance with an FAA-approved method.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified

production airplanes, increase the likelihood of cracking in the spar chords. These stiffener straps are no longer installed on later production airplanes.

Continued operation with the stiffener straps installed will cause fatigue cracking or propagation of existing cracks in the lower chord. Such cracking could result in the inability of the strut to carry required engine support loads, and ultimately could lead to separation of the engine from the strut.

The FAA has reviewed and approved Boeing Service Bulletin 757–54–0028, dated March 31, 1994, that describes procedures for eddy current inspection to detect cracking of the lower spar chord of the engine strut, removal of the stiffener straps from the mid-chord, open hole eddy current inspection of the fastener holes, and modification. This modification, which includes installing fasteners, a strut pneumatic duct, a fire extinguisher line, a bulkhead coverplate, and a panel, will decrease the likelihood of fatigue cracking in the lower spar chord of the engine strut.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 757 series airplanes of the same type design, this AD is being issued to prevent cracking of the lower spar chord of the engine strut. This AD requires eddy current inspection to detect cracking of the lower spar chord of the engine strut, removal of the stiffener straps from the mid-chord, open hole eddy current inspection of the fastener holes, and modification. The actions are required to be accomplished in accordance with the service bulletin described previously. In certain cases, this AD requires repair of cracking in accordance with an FAA-approved method.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–85–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–14–04 Boeing: Amendment 39–8956. Docket 94–NM–85–AD.

Applicability: Model 757 series airplanes having airplane line numbers 2, 4, 5, 9 through 13 inclusive, 21, 26, 114, and 115, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking in the lower spar chord of the engine strut, which could result in the inability of the strut to carry required engine support loads, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform an eddy current inspection to detect cracking of the lower chord, in accordance with Boeing Service Bulletin 757–54–0028, dated March 31, 1994.

(b) If no cracking is detected during the inspection required by paragraph (a) of this AD, prior to the accumulation of 1,500 landings after accomplishment of the inspection, remove the stiffener straps from the mid-chord of the inboard and outboard sides of the strut, and perform an open hole eddy current inspection to detect cracking of the fastener holes in the mid-chord, in accordance with Boeing Service Bulletin 757–54–0028, dated March 31, 1994.

(1) If no cracking is detected in the mid-chord strut during the inspection required by paragraph (b) of this AD, prior to further flight, modify in accordance with the service bulletin.

(2) If cracking is detected in the mid-chord strut during the inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) If cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, remove the stiffener straps from the mid-chord of the inboard and outboard sides of the strut, and perform an open hole eddy current inspection to detect cracking of the fastener holes in the mid-chord, in accordance with Boeing Service Bulletin 757–54–0028, dated March 31, 1994.

(1) If no cracking is detected in the mid-chord strut during the inspection required by

paragraph (c) of this AD, prior to further flight, modify in accordance with the service bulletin.

(2) If cracking is detected in the mid-chord strut during the inspection required by paragraph (c) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections, strap removal, and modification shall be done in accordance with Boeing Service Bulletin 757–54–0028, dated March 31, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 21, 1994.

Issued in Renton, Washington, on June 23, 1994

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15738 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 93–NM–159–AD; Amendment 39–8963; AD 94–14–15]

Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Aviation Model Mystere-Falcon 50 series airplanes, that requires replacement of certain attachment clamps installed on the engine exhaust ducts with improved clamps. This amendment is prompted by reports of failures of certain attachment clamps due to fatigue cracking. The actions specified by this AD are intended to prevent such failures, which could cause exhaust gas to leak and, subsequently, could trigger a false engine fire alarm.

DATES: Effective August 5, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Mystere-Falcon 50 series airplanes was published in the **Federal Register** on November 22, 1993 (58 FR 61636). That action proposed to require replacement of certain attachment clamps installed on the engine exhaust ducts with improved clamps.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests that paragraph (b) of the rule be revised to indicate that instructions for verifying that the clamp screw is straight are contained in Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993 (which is the service bulletin cited elsewhere in the proposed rule). The commenter notes that those instructions indicate that the verification cannot be made if the clamp is installed; the clamp must be removed from the tail pipe attachment in order to determine if it is bent or not. The FAA concurs with the commenter's request and has revised the final rule accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 133 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,315, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–14–15 Dassault Aviation: Amendment 39–8963. Docket 93–NM–159–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, serial numbers 2 through 216, inclusive; equipped with exhaust duct attachment clamps, part number (P/N) NH1002299–10 or P/N NH1007763–10; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of attachment clamps installed on the engine exhaust ducts, which could cause exhaust gas to leak and, subsequently, could trigger a false engine fire alarm, accomplish the following:

(a) For airplanes equipped with exhaust duct attachment clamps having P/N NH1002299–10: Within 300 flight hours after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, replace attachment clamps having P/N NH1002299–10 with attachment clamps having P/N NH1007763–10, in accordance with Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993.

(b) For airplanes equipped with exhaust duct attachment clamps having P/N NH1007763–10: Within 1,400 flight hours after the effective date of this AD, inspect the attachment clamps installed on the engine exhaust ducts to verify if the clamp screw is straight (not bent), in accordance with Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993.

(1) If the clamp screw is straight, prior to further flight, verify if the tightening torque value of the screw is marked on the attachment clamp as follows: "NORMAL NET TORQUE 100–120 IN-LBS."

(i) If the marking is as specified in paragraph (b)(1) of this AD, no further action is required.

(ii) If the marking is not as specified in paragraph (b)(1) of this AD, prior to further flight, erase the incorrect marking and replace it with the correct tightening torque value.

(iii) After correcting the marking, prior to further flight, ensure that the clamp screw is secured to the tightening torque value specified in paragraph (b)(1) of this AD.

(2) If the clamp screw is bent, prior to further flight, replace the discrepant attachment clamp with a new attachment clamp having the same part number, in accordance with the Accomplishment

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–14–15 Dassault Aviation: Amendment 39–8963. Docket 93–NM–159–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, serial numbers 2 through 216, inclusive; equipped with exhaust duct attachment clamps, part number (P/N) NH1002299–10 or P/N NH1007763–10; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of attachment clamps installed on the engine exhaust ducts, which could cause exhaust gas to leak and, subsequently, could trigger a false engine fire alarm, accomplish the following:

(a) For airplanes equipped with exhaust duct attachment clamps having P/N NH1002299–10: Within 300 flight hours after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, replace attachment clamps having P/N NH1002299–10 with attachment clamps having P/N NH1007763–10, in accordance with Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993.

(b) For airplanes equipped with exhaust duct attachment clamps having P/N NH1007763–10: Within 1,400 flight hours after the effective date of this AD, inspect the attachment clamps installed on the engine exhaust ducts to verify if the clamp screw is straight (not bent), in accordance with Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993.

(1) If the clamp screw is straight, prior to further flight, verify if the tightening torque value of the screw is marked on the attachment clamp as follows: "NORMAL NET TORQUE 100–120 IN-LBS."

(i) If the marking is as specified in paragraph (b)(1) of this AD, no further action is required.

(ii) If the marking is not as specified in paragraph (b)(1) of this AD, prior to further flight, erase the incorrect marking and replace it with the correct tightening torque value.

(iii) After correcting the marking, prior to further flight, ensure that the clamp screw is secured to the tightening torque value specified in paragraph (b)(1) of this AD.

(2) If the clamp screw is bent, prior to further flight, replace the discrepant attachment clamp with a new attachment clamp having the same part number, in accordance with the Accomplishment Instructions of Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993.

(c) As of the effective date of this AD, no person shall install an exhaust duct attachment clamp having P/N NH1007763–10 on any airplane, unless that attachment clamp is marked "NORMAL NET TORQUE 100–120 IN-LBS."

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 5, 1994.

Issued in Renton, Washington, on June 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16157 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–AGL–14]

Establishment of Class E Airspace; Griffith, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E5 airspace at Griffith, Indiana, to accommodate a new VOR/DME Runway 26 Standard Instrument Approach Procedure (SIAP) to Griffith-Merrillville Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Griffith, Indiana, to accommodate a new VOR/DME Runway 26 SIAP to Griffith-Merrillville Airport (59 FR 22571). The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL for Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Griffith, Indiana, to accommodate a new VOR/DME Runway 26 SIAP to Griffith-Merrillville Airport. Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL IN E5 Griffith, IN [New]

Griffith-Merrillvilie Airport
(lat. 41°31'11" N., long. 87°24'04" W.)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Griffith-Merrillville Airport, excluding that area within the Chicago, IL Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on June 21, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–16267 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 91

[Docket No. 26180; Amendment No. 91–242]

RIN 2120–AD19

Emergency Locator Transmitters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule [FR Doc. 94–14677] on emergency locator transmitters that was published on June 21, 1994 (59 FR 32050). A portion of the rule language that affects the installation of replacement transmitters was inadvertently omitted. This document corrects that omission.

EFFECTIVE DATE: June 21, 1994.

FOR FURTHER INFORMATION CONTACT:

Phil Akers, Aircraft Engineering Division (AIR–120), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9571.

SUPPLEMENTARY INFORMATION: On June 21, 1994, the FAA published a final rule amending the regulations for emergency locator transmitters (ELT's) (59 FR 32050). As discussed in the preamble to that final rule, the FAA intended to include in the language of § 91.207 a date after which ELT's that meet Technical Standard Order (TSO) C91 could no longer be installed in aircraft. That language was inadvertently omitted from the amendment to Section 91.207. This document presents only the omitted rule language for paragraphs (a)(1) and (a)(2) of § 91.207.

Correction of Publication

Accordingly, the publication on June 21, 1994 of the final rule that was the subject of FR Doc. 94–14677 is corrected as follows:

§ 91.207 [Corrected]

1. On page 32057, in the second column, in § 91.207, in paragraph (a)(1), in the last line, add the words ", except that after June 21, 1995, an emergency locator transmitter that meets the requirements of TSO–C91 may not be used for new installations" immediately after the word "operations".

2. On page 32057, in the second column, in § 91.207, in paragraph (a)(2), in the last line, add the words ", except that after June 21, 1995, an emergency locator transmitter that meets the requirements of TSO–C91 may not be used for new installations" immediately after the word "condition".

Issued in Washington, DC, on June 29, 1994.

Henri P. Branting,

Acting Manager, Aircraft Engineering Division.

[FR Doc. 94–16269 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 17

[Docket No. R–94–1738; FR–3595–F–01]

RIN 2501–AB70

Administrative Claims

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule brings up to date the Department's existing regulations relating to administrative claims to reflect current statutory authority for federal agencies to compromise, terminate or suspend collection activities on claims of the Government up to $100,000 without prior approval from the Department of Justice. The existing regulation limits such collection activities to debts up to $20,000. The rule also makes two other technical amendments—one relating to the assessment of interest on claims due to the Department and one relating to the distribution of certain final decisions on indebtedness made by HUD Deputy Assistant Secretaries.

EFFECTIVE DATE: August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Albert M. Miller, Departmental Claims Officer, room 2206, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, voice (202) 708–3310, TDD (202) 708–9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 3711(a) of title 31, United States Code authorizes the head of an executive or legislative agency to compromise (or to suspend or end collection action) on a claim of the Government of not more than $100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe provided that the claim has not been referred to another executive or legislative agency for further collection action. Prior to amendment of this section by the Administrative Dispute Resolution Act (Pub. L. 101–552, 104 Stat. 2736, Approved November 15, 1990) this authority of agencies to compromise, or to suspend or end collection actions on government claims was limited to claims of $20,000 or less.

Existing HUD regulations (24 CFR Part 17 (Administrative Claims) contain a number of provisions setting forth the now out of date dollar threshold of $20,000 rather than the $100,000 threshold which the statute (31 U.S.C. 3711(a)) currently authorizes. This rule updates HUD regulations (Subpart C of 24 CFR Part 17—Procedures for the Collection of Claims by the Government) to reflect the new $100,000 statutory threshold.

Current regulations—17 CFR 17.72(e)—provide for assessment of interest on claims due the Department at 7 percent. This rule revises this provision to provide for the assessment of interest at the Treasury rate in effect when the demand for payment is made, as provided in the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, and in the joint regulations of the Attorney General and Comptroller General at 4 CFR Parts 101–105 (joint regulations).

The rule also revises section 17.72(e) which currently reads:

> When a debt is paid in installments and interest is collected, installment payments will first be applied to the payment of accrued interest and then to principal in accordance with the so-called "U.S. Rule" unless a different rule is prescribed by statute, contract or regulation.

The Debt Collection Act of 1982 specifically provides for the assessment of interest and, in 1984, the joint regulations were amended to reflect the provisions of that Act. Reference to the "U.S. Rule" was properly deleted from the amended joint regulations and a reference to 31 U.S.C. 3717, the statutory provision authorizing agencies to assess interest on debts, was substituted. In this rule, as was done in the amended joint regulations, the obsolete reference to the so called "U.S. Rule" is deleted.

Finally, in 24 CFR 17.110, a section relating to final decisions on amounts of indebtedness made by HUD Deputy Assistant Secretaries or their designees, paragraph (b) providing that copies of the final decisions will be distributed to the General Counsel, the Office of Finance and Accounting, and the debtors (or their attorneys or representatives if applicable) is revised so that it only provides for copies to debtors (or their attorneys or representatives, if applicable). The change reflects HUD policy that any provisions relating to distribution of documents within the Department should not be included in a regulation designed to inform the public of its rights and obligations. Such provisions are more appropriate in a handbook or other internal HUD directive.

Due to the strictly technical nature of this rule, and the fact that the statutory provisions involved are, at any rate, self enforcing, the Department has determined that notice and public comment procedure under Title 5 of the United States Code is unnecessary and

updates HUD regulations (Subpart C of 24 CFR Part 17—Procedures for the Collection of Claims by the Government) to reflect the new $100,000 statutory threshold.

Current regulations—17 CFR 17.72(e)—provide for assessment of interest on claims due the Department at 7 percent. This rule revises this provision to provide for the assessment of interest at the Treasury rate in effect when the demand for payment is made, as provided in the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, and in the joint regulations of the Attorney General and Comptroller General at 4 CFR Parts 101–105 (joint regulations).

The rule also revises section 17.72(e) which currently reads:

> When a debt is paid in installments and interest is collected, installment payments will first be applied to the payment of accrued interest and then to principal in accordance with the so-called "U.S. Rule" unless a different rule is prescribed by statute, contract or regulation.

The Debt Collection Act of 1982 specifically provides for the assessment of interest and, in 1984, the joint regulations were amended to reflect the provisions of that Act. Reference to the "U.S. Rule" was properly deleted from the amended joint regulations and a reference to 31 U.S.C. 3717, the statutory provision authorizing agencies to assess interest on debts, was substituted. In this rule, as was done in the amended joint regulations, the obsolete reference to the so called "U.S. Rule" is deleted.

Finally, in 24 CFR 17.110, a section relating to final decisions on amounts of indebtedness made by HUD Deputy Assistant Secretaries or their designees, paragraph (b) providing that copies of the final decisions will be distributed to the General Counsel, the Office of Finance and Accounting, and the debtors (or their attorneys or representatives if applicable) is revised so that it only provides for copies to debtors (or their attorneys or representatives, if applicable). The change reflects HUD policy that any provisions relating to distribution of documents within the Department should not be included in a regulation designed to inform the public of its rights and obligations. Such provisions are more appropriate in a handbook or other internal HUD directive.

Due to the strictly technical nature of this rule, and the fact that the statutory provisions involved are, at any rate, self enforcing, the Department has determined that notice and public comment procedure under Title 5 of the United States Code is unnecessary and is therefore issuing this document as a final rule.

Procedural Matters

Regulatory Flexibility

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Secretary has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is technical in nature. It effects no substantive changes in HUD programs or policies.

Semiannual Agenda

This rule was listed as item number 1532 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20435) under Executive Order 12866 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have Federalism implications and, thus, are not subject to review under the Order. No programmatic or policy changes result from this rule's promulgation which would affect existing relationships between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule is technical in nature and makes no significant change in existing HUD policies or programs.

Environment

An environmental assessment is unnecessary, since internal administrative procedures whose content does not constitute a development decision affecting the physical condition of specific project areas or building sites are categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(k).

List of Subjects in 24 CFR Part 17

Administration practice and procedure, Claims, Government employees, Income taxes, Wages.

Accordingly, 24 CFR part 17 is amended to read as follows:

PART 17—ADMINISTRATIVE CLAIMS

1. The authority citation for 24 CFR part 17 is revised to read as follows:

Authority: 28 U.S.C. 2672; 42 U.S.C. 3535(d), unless otherwise noted.

2. Paragraph (a) of § 17.60 is revised to read as follows:

§ 17.60 Scope and definitions.

(a) *Scope.* This subpart sets forth the regulations of the Secretary of Housing and Urban Development implementing the Federal Claims Collection Act of 1966, as amended by the Federal Debt Collection Act of 1982 (31 U.S.C. 3701 et seq.) (the Act), in conformity with the standards jointly promulgated by the Attorney General and the Comptroller General in 4 CFR parts 101 through 105. The Act:

(1) Requires the Secretary or his designee to attempt collection of all claims of the United States for money or property arising out of the activities of the Department; and

(2) Authorizes the Secretary or his designee to compromise claims that have not been referred to another executive or legislative agency for further collection action where the claim does not exceed $100,000 exclusive of interest, or to suspend or terminate collection action where it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting the claim is likely to exceed the amount of recovery.

* * * * *

3. Section 17.62 is revised to read as follows:

§ 17.62 Subdivision and joining of claims.

(a) A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one not exceeding $100,000 exclusive of interest for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Act.

(b) Joining of two or more single claims in a demand upon a particular debtor for payment totaling more than $100,000 does not preclude compromise or termination of collection action with respect to any one of such claims that does not exceed $100,000 exclusive of interest.

4. Paragraph (a) of § 17.64 is revised to read as follows:

§ 17.64 Referral of claims to the Assistant Secretary for Administration.

(a) *Authority of the Assistant Secretary for Administration.* The Assistant Secretary for Administration shall exercise the powers and perform the duties of the Secretary to compromise, or to suspend or terminate collection action on all Department claims not exceeding $100,000 exclusive of interest, except as provided in § 17.65 and paragraph (b) of this section. When initial attempts at collection by the office having responsibility for such claims have not been fully successful, the claim file shall be forwarded to the Assistant Secretary for Administration for further administrative collection procedures. Claims shall be referred to the Assistant Secretary for Administration well within the applicable statute of limitations (28 U.S.C. 2415 and 2416), but in no event more than 2 years after the claims accrued.

* * * * *

5. Paragraph (b) of § 17.65 is revised to read as follows:

§ 17.65 Authority of offices to compromise claims or suspend or terminate collection action.

* * * * *

(b) *Claims arising under certain programs.* (1) The office primarily responsible for the following programs of the Department is authorized, in those cases where initial collection attempts are not wholly successful, to compromise or to suspend or terminate collection action on claims not exceeding $100,000 with respect to:

(i) A claim under title I of the National Housing Act;

(ii) A claim on a rehabilitation loan account under section 312 of the Housing Act of 1964;

(iii) A claim against tenants or former tenants of properties acquired by, or under the custody of, the Secretary or held by him as mortgagee in possession; or

(iv) A claim arising out of the operational (nonadministrative) activities of the Government National Mortgage Association (GNMA).

(2) However, no office shall undertake to compromise or terminate any collection action excluded under § 17.64(b).

6. Paragraph (e) of § 17.72 is revised to read as follows:

§ 17.72 Methods of collection and imposition of late charges.

* * * * *

(e) *Interest.* Where prejudgment interest is not mandated by statute, contract or regulation, the minimum rate of interest to be charged on delinquent debts is the Tax and Loan Account Rate for the U.S. Treasury (also known as the Current Value of Funds rate) as prescribed and published semiannually by the Secretary of the Treasury in the **Federal Register**, in accordance with 31 U.S.C. 3717. Prejudgment interest may be waived as an inducement to voluntary payment. In such cases demand letters should inform the debtor that prejudgment interest will be collected if suit becomes necessary. When a debt is paid in installments and interest is collected, installment payments will first be applied to the payment of accrued interest and then to principal unless a different rule is prescribed by statute, contract or regulation. Prejudgment interest shall not be demanded or collected on civil penalty and forfeiture claim unless the statute under which the claim arises authorizes the collection of such interest.

* * * * *

7. Paragraph (b) of § 17.110 is revised to read as follow:

§ 17.110 Determination of indebtedness and appeal from determination.

* * * * *

(b) Copies of the DAS decision will be distributed to the debtor and the debtor's attorney or other representative, if applicable.

Dated: June 22, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–15845 Filed 7–5–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–060]

RIN 1218–AA71

Personal Protective Equipment for General Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; administrative stay.

SUMMARY: OSHA's final rule on Personal Protective Equipment for General Industry, which was published in the **Federal Register** on April 6, 1994 (59 FR 16334), is scheduled to become effective on July 5, 1994. OSHA is administratively staying the effective date of certain provisions of § 1910.132 of the final rule (requirements for hazard assessment and training) until October 5, 1994.

DATES: Effective July 5, 1994, the effective date for paragraphs (d) and (f) of 29 CFR 1910.132 will be administratively stayed until October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Ave., NW., Washington, DC 20210. Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION: OSHA has received several requests to extend the effective date of paragraph (d), hazard assessment, and paragraph (f), training. It is contended that many employers will not be able to complete the required hazard assessment and training before the effective date.

OSHA has also received petitions from the American Forest & Paper Association (AF&PA), the American Iron and Steel Institute (AISI), and the Chocolate Manufacturers Association (CMA) to delay the effective date of the provisions for hazard assessment and training.

It has been asserted that a worksite hazard assessment, where not previously performed, could be a major undertaking. Also, longer periods of time may be necessary if an employer determines that there is a need for task-specific assessments or training.

For example, in its petition to the Agency, AISI stated:

> In some cases, employers may determine that there is a need for task-specific hazard assessments or training. As the compliance effort moves along the continuum from generic toward task-specific, a substantially longer period of time would be required to comply with the final rule.

It has also been asserted that it would take a substantial amount of time to develop and implement the type of training program that is envisioned by the final rule. Even where training programs do exist, some may not meet all of the requirements of the final rule, and employers would not be able to implement changes to these programs before the effective date. In its petition to OSHA, AF&PA remarked:

> While some employers may have performed the required hazard assessments and provided the required training, they may not be fully comfortable certifying that their employees have the necessary knowledge and abilities with respect to PPE without some form of verification. Some employers may find gaps or weak points in their existing PPE programs. Other employers will find that their existing PPE programs are so informal that they will conclude they must begin from "ground zero."

After evaluating these comments, OSHA has decided that it is reasonable to allow an additional amount of time for employers to meet the requirements pertaining to the hazard assessment (§ 1910.132(d)) and training (§ 1910.132(f)).

Therefore, the Agency is granting an administrative stay of the effective date for paragraphs (d) and (f) of § 1910.132 until October 5, 1994 to allow employers an additional amount of time to achieve compliance with these two paragraphs. OSHA expects that employers will continue to expedite their efforts to fully comply with all of the provisions of the standard. It is also important to note that the effective date for all of the other provisions of the final rule remains July 5, 1994.

List of Subject in 29 CFR Part 1910

Eye protection; Fact protection; Foot protection; Hand protection; Footwear; Hard hats; Head protection; Occupational safety and health; Occupational Safety and Health Administration; Personal protective equipment; Safety glasses; Safety shoes.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR part 1911.

Accordingly, effective July 5, 1994, the effective date for paragraph (d), hazard assessment, and paragraph (f), training, of 29 CFR 1910.132 is administratively stayed until October 5, 1994.

Signed at Washington, DC, this 29th day of June, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–16241 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

Restriction of Training Areas on the Installation of Fort Benjamin Harrison, Indiana

AGENCY: U.S. Army Soldier Support Center, Fort Benjamin Harrison, DOD.

ACTION: Interim Rule.

SUMMARY: This action establishes 32 CFR Part 552, subpart K, Restriction of training Areas on Fort Benjamin

After evaluating these comments, OSHA has decided that it is reasonable to allow an additional amount of time for employers to meet the requirements pertaining to the hazard assessment (§ 1910.132(d)) and training (§ 1910.132(f)).

Therefore, the Agency is granting an administrative stay of the effective date for paragraphs (d) and (f) of § 1910.132 until October 5, 1994 to allow employers an additional amount of time to achieve compliance with these two paragraphs. OSHA expects that employers will continue to expedite their efforts to fully comply with all of the provisions of the standard. It is also important to note that the effective date for all of the other provisions of the final rule remains July 5, 1994.

List of Subject in 29 CFR Part 1910

Eye protection; Fact protection; Foot protection; Hand protection; Footwear; Hard hats; Head protection; Occupational safety and health; Occupational Safety and Health Administration; Personal protective equipment; Safety glasses; Safety shoes.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR part 1911.

Accordingly, effective July 5, 1994, the effective date for paragraph (d), hazard assessment, and paragraph (f), training, of 29 CFR 1910.132 is administratively stayed until October 5, 1994.

Signed at Washington, DC, this 29th day of June, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–16241 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

Restriction of Training Areas on the Installation of Fort Benjamin Harrison, Indiana

AGENCY: U.S. Army Soldier Support Center, Fort Benjamin Harrison, DOD.

ACTION: Interim Rule.

SUMMARY: This action establishes 32 CFR Part 552, subpart K, Restriction of training Areas on Fort Benjamin Harrison, Indiana. This subpart establishes restrictions governing the operation of unauthorized vehicles, motorized and non-motorized vehicles, on the Army training areas of Fort Benjamin Harrison, Indiana, as defined in § 552.134 of this subpart. Unauthorized vehicles are restricted to paved roads on the installation of Fort Benjamin Harrison. Paragraph numbering has been changed to permit flexibility in paragraph numbering in Part 552.

DATES: This interim rule is effective July 6, 1994. However, written comments will continue to be received until August 5, 1994.

ADDRESSES: Commander, Soldier Support Center, ATTN: Directorate of Information Management, Fort Benjamin Harrison, Indiana 46216–5151.

FOR FURTHER INFORMATION CONTACT: Cheri Armstrong, (317) 542–4909.

SUPPLEMENTARY INFORMATION: U.S. Codes referenced in this subpart can be obtained from the Government Printing Office or can be reviewed in any Public Library. Army publications referenced in this subpart may be obtained from the U.S. Army Publications and Printing Command, Alexandra, VA 22331–0302.

Executive Order 12291

This interim rule has been classified as nonmajor.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980. This proposed rule does not have a significant impact on small entities.

Paperwork Reduction Act

This interim rule does not contain new reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 552

Military personnel, Government employees.

Accordingly, subpart K to 32 CFR part 552, is added to read as follows:

Subpart K—Restriction of Training Areas on the Installation of Fort Benjamin Harrison, Indiana

Sec.

552.140 Purpose.
552.141 Applicability.
552.142 References.
552.143 Definitions.
552.144 Procedures.
552.145 Violations.

Authority: 16 U.S.C. 470; 1531–1543; 18 U.S.C. 1382; 50 U.S.C. 797

Subpart K—Restriction of Training Areas on the Installation of Fort Benjamin Harrison, Indiana

§ 552.140 Purpose.

(a) This subpart establishes restrictions governing the operation of unauthorized vehicles, motorized and non-motorized, on the army training areas of Fort Benjamin Harrison, Indiana, as defined in § 552.134 of this subpart. Unauthorized vehicles are restricted to paved roads on the installation of Fort Benjamin Harrison, Indiana.

(b) These restrictions are established to prevent the interruption of the use of these Army training areas by any person or persons. The continued and uninterrupted use of these training areas by the military is vital in order to maintain and improve the combat readiness of the U.S. Armed Forces. Training conditions exist within these areas which could be dangerous to unauthorized persons entering these areas.

(c) In addition, these restrictions have been established to prevent property damage, threatening of endangered flora and fauna in the areas, and to prevent the harassment of protected species such as the Blue Heron and the Indiana Bat by any person or persons.

§ 552.141 Applicability.

The restrictions outlined in this subpart apply to all individuals, with the exception of soldiers and Army civilian employees and authorized contractors, who may enter the restricted areas in the performance of their official duties.

§ 552.142 References.

Requried and related publications are listed below. U.S. Codes referenced in this subpart can be obtained from the Government Printing Office or can be reviewed in any Public Library. Army publications referenced in this subpart may be obtained from the U.S. Army Publications and Printing Command, Alexandria, VA 22331–0302.

(a) 16 U.S.C. 1531–1543.
(b) 16 U.S.C. 470.
(c) Title 18, U.S.C. 1382.
(d) Internal Security Act of 1950, section 21 (50 U.S.C. 797).
(e) Army Regulation 420–74.
(f) 10 U.S.C. 801–940
(g) Article 92, Uniform Code of Military Justice.

§ 552.143 Definitions.

(a) For the purpose of this subpart, restricted areas on the installation of Fort Benjamin Harrison, Indiana area defined as training areas A thru J, to

include the golf course. A map defining these areas is located in the Directorate of Plans, Training, and Mobilization, Security, Plans and Operations Division, Training Branch, Building 600, Room B, Fort Benjamin Harrison, Indiana.

(b) Unauthorized motor and non-motorized vehicles are defined as any wheeled or tracked vehicle. This may include, but not limited to, bicycles, ATV, snow mobiles, motor cycles, automobiles, trucks, etc.

§ 552.144 Procedures.

(a) Except for the soldiers, Army civilians and authorized contractors who enter the restricted areas in the performance of their official duties, entry of unauthorized vehicles is prohibited for any purpose whatsoever without the advanced consent of the Commander, United States Army Soldier Support Center (USASSC), Fort Benjamin Harrison, Indiana, or his/her authorized representative.

(b) Any person or group of persons desiring advanced consent shall, in writing, submit a request to the following address: HQ, USASSC and Fort Benjamin Harrison, ATTN: Public Affairs Office, Building 600, Fort Benjamin Harrison, Indiana 46216–5040.

§ 552.145 Violations.

(a) Any person/persons entering or remaining on any training area as defined in § 552.134 without the advance consent of the Commander, USASSC, or his authorized representative, shall be subject to the penalties prescribed by § 552.133 of this subpart, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined for not more than $500.00 or imprisoned not more than six months, or both.

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed $5,000.00 or imprisonment for not more than 1 year as provided in § 552.133(d) of this subpart.

(c) In addition, violation of this subpart by persons subject to the Uniform Code of Military Justice (10 U.S.C. 801–940) is a violation of Article 92 of the Uniform Code of Military Justice.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–15444 Filed 7–5–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–4210–06; AA–9193, F–14223]

43 CFR Public Land Order 7064

Partial Revocation of Secretarial Order dated February 9, 1940, as Modified, and Modification of Public Land Order No. 5150, as Amended, for Conveyance of Land to the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order, as modified, insofar as it affects 80.13 acres of public land withdrawn for Air Navigation Site No. 136 at Thompson Pass. The land is no longer needed for the purpose for which it was withdrawn. This action also modifies a public land order to allow the State of Alaska's existing application for selection to attach, and classifies the land as suitable for conveyance of the land to the State, if such land is otherwise available. If not conveyed to the State, the land will continue to be subject to the terms and conditions of Public Land Order No. 5150, as amended, and any other withdrawal of record. This order does not otherwise change the provisions or limitations of Public Land Order No. 5150, as amended, or any other withdrawal of record.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Sections 17(c), 17(d)(1), and 22(h)(4) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(c), 1616(d)(1), and 1621(h)(4) (1988), and by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated February 9, 1940, as modified, which withdrew public land at Thompson Pass for Air Navigation Site No. 136, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

Located within T. 8 S., R. 3 W., described as U.S. Survey No. 5672.

The area described contains 80.13 acres.

2. Public Land Order No. 5150, as amended, which withdrew public lands as a utility and transportation corridor, is hereby modified to allow conveyance of the land described above to the State of Alaska, if such land is otherwise available.

3. Subject to valid existing rights, the land described above is hereby classified as suitable for conveyance to the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), or Section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

4. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e)(1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. If not conveyed to the State, the land will continue to be subject to the terms and conditions of Public Land Order No. 5150, as amended, and any other withdrawal of record.

5. This order does not change any provisions or limitations of Public Land Order No. 5150, as amended, or any other withdrawal of record except as expressly provided above.

Dated: June 24, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–16245 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[I.D. 062994E]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of the ending date of the Texas closure.

SUMMARY: NMFS announces an adjustment of the ending date of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure normally ends on July 15 each year. Because biological data indicate that brown shrimp leaving the Texas estuaries will have reached the desired size by July 7, 1994, the ending date is changed to this earlier date. The Texas closure is intended to prohibit the harvest of brown shrimp during their major period of emigration from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size and to prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

EFFECTIVE DATES: The EEZ off Texas is closed to trawl fishing from 30 minutes after sunset, May 13, 1994, to 30 minutes after sunset, July 7, 1994.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by regulations at 50 CFR part 658 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The FMP's implementing regulations at 50 CFR 658.25 describe the Texas closure and provide for adjustments to the beginning and ending dates by the Director, Southeast Region, NMFS, under specified criteria.

Available information meeting the criteria specified at 50 CFR 658.25(b)(1) indicates that an early ending of the Texas closure is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department indicate that ending the closure on July 7, 1994, will provide adequate protection of small brown shrimp emigrating from the Texas estuaries.

Accordingly, the time and date at 50 CFR 658.25(a) for ending the Texas closure is changed from 30 minutes after sunset, July 15, 1994, to 30 minutes after sunset on July 7, 1994. During the

from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size and to prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

EFFECTIVE DATES: The EEZ off Texas is closed to trawl fishing from 30 minutes after sunset, May 13, 1994, to 30 minutes after sunset, July 7, 1994.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by regulations at 50 CFR part 658 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The FMP's implementing regulations at 50 CFR 658.25 describe the Texas closure and provide for adjustments to the beginning and ending dates by the Director, Southeast Region, NMFS, under specified criteria.

Available information meeting the criteria specified at 50 CFR 658.25(b)(1) indicates that an early ending of the Texas closure is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department indicate that ending the closure on July 7, 1994, will provide adequate protection of small brown shrimp emigrating from the Texas estuaries.

Accordingly, the time and date at 50 CFR 658.25(a) for ending the Texas closure is changed from 30 minutes after sunset, July 15, 1994, to 30 minutes after sunset on July 7, 1994. During the closure, the area described at 50 CFR 658.25(a) is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100–fathom (183–m) depth contour. The waters of Texas are also closed during this period.

Classification

This action is authorized by 50 CFR 658.25 and has been determined to be not significant for purposes of E.O. 12866.

Dated: June 29, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16306 Filed 6–30–94; 4:41 pm]

BILLING CODE 3510–22–F

---

50 CFR Part 675

[Docket No. 931100–4043; I.D. 062794B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Recision of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for Atka mackerel in the Central Aleutian District (CAD) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of Atka mackerel in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 4, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Atka mackerel TAC for the CAD was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) as 37,846 metric tons (mt). The directed fishery for Atka mackerel was closed on June 7, 1994 (59 FR 29964, June 10, 1994). NMFS has determined that as of June 11, 1994, 2,201 mt remain unharvested

The Director, Alaska Region, NMFS, has determined that the 1994 TAC for Atka mackerel in the CAD has not been reached. Therefore, NMFS is rescinding the June 7, 1994, closure and is reopening directed fishing for Atka mackerel in the CAD, effective at 12 noon, A.l.t., July 4, 1994.

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 29, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16305 Filed 6–30–94; 4:41 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 128
Wednesday, July 6, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-SW-25-AD]

Airworthiness Directives; The Enstrom Helicopter Corporation Model F-28A, F-28C, F-28C-2, 280, and 280C Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to The Endstrom Helicopter Corporation Model F-28A, F-28C, 280, and 280C series helicopters, that currently requires an initial and repetitive visual inspections of the upper swashplate bearings for corrosion, and replacement of defective upper swashplate bearings with airworthy bearings. This action would require that the visual inspections apply to both the upper and lower swashplate bearings (bearings); expand the applicability to those affected helicopters manufactured prior to January 1, 1981; establish a retirement life of 1,200 hours' time-in-service for certain bearings; and provide a corrected upper swashplate bearing part number. This proposal is prompted by the necessity to require visual inspection so the lower swashplate bearings; expand the applicability to include the Model F-28C-2 helicopter; establish a retirement life for certain bearings; and correct the upper swashplate bearing part number from the existing AD. The actions specified by the proposed AD are intended to prevent failure of the bearings and subsequent loss of control of the helicopter.

DATES: Comments must be received by September 6, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-SW-26-Ad, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Enstrom Helicopter Corporation, Twin County Airport, P.O. Box 490, Menominee, Michigan 49858. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meachum Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Joe McGarvey, Aerospace Engineer, Chicago Aircraft Certification Office, Airframe Branch, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois 60018, telephone (708) 294-7136, fax (708) 294-7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-SW-26-Ad." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-SW-26-Ad, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On March 19, 1976, the FAA issued AD 76-01-11, Amendment 39-2560, [41 FR 13906, April 1, 1976], to require an initial and repetitive visual inspection of the upper swashplate bearing, part number (P/N) Z993L13XR3B, for corrosion, and replacement of corroded upper swashplate bearings. That action was prompted by three reports of upper swashplate bearing failures that were attributed to corrosion. These failures occurred between 205 and 586 hours' time-in-service (TIS). In two of these incidents, the probable cause of the upper swashplate bearing failures was corrosion of the balls and race due to water impregnating the housing after the loss of lubricant. This led to a spalling interaction between the balls and race, resulting in upper swashplate bearing failure. After reviewing the data, the FAA has determined that corrosion of either upper or lower bearings (bearings) could create an unsafe condition. These conditions, if not corrected, could result in failure of the bearings and subsequent loss of control of the helicopter.

Since the issuance of that AD, improved and modified bearings have been approved by the FAA for these model helicopters. Additionally, the manufacturer has issued The Enstrom Helicopter Corporation Service Information Letter (SIL) No. 0110, Revision B, dated March 18, 1993, that extends the previous visual inspections to include the Model F-28C-2 helicopters. The SIL describes an approved swashplate modification and indicates that the SIL should only apply to those affected helicopters manufactured prior to January 1, 1981. In addition, a swashplate modification that would constitute terminating action for the requirements of this AD has been approved.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 76-06-11 to require visual inspections of the lower swashplate bearings; expand the applicability to the Model F-28C-2 helicopter; establish a retirement life of 1,200 hours' time-in-service for certain upper and lower swashplate bearings; and correct the upper swashplate bearing part number in the existing AD. This proposed AD would also provide an optional terminating action from the requirements of this AD and limit the applicability of the AD requirements to those affected model helicopters manufactured prior to January 1, 1981.

The FAA estimates that 660 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,400 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,105,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

visual inspections of the lower swashplate bearings; expand the applicability to the Model F–28C–2 helicopter; establish a retirement life of 1,200 hours' time-in-service for certain upper and lower swashplate bearings; and correct the upper swashplate bearing part number in the existing AD. This proposed AD would also provide an optional terminating action from the requirements of this AD and limit the applicability of the AD requirements to those affected model helicopters manufactured prior to January 1, 1981.

The FAA estimates that 660 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,400 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,105,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–2560 (41 FR 13906, April 1, 1976), and by adding a new airworthiness directive (AD), to read as follows:

The Enstrom Helicopter Corporation: Docket No. 93–SW–26–AD. Supersedes AD 76–06–11, Amendment 39–2560.

Applicability: Model F–28A, F–28C, F–28C–2, 280, and 280C helicopters, manufactured prior to January 1, 1981, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the upper and lower swashplate bearings (bearings) and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 10 hours' time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' TIS since the last inspection, perform a visual inspection of the upper swashplate bearing, P/N Z993L13X3B, bearing number SKF 6013–RS, or ECD013–13, and lower swashplate bearing, P/N 5201SBKZZ–ABEC, or ECD009–11, for corrosion as follows:

(1) Lower the swashplate to lowest position with the collective control.

(2) Remove the plastic bearing seal using a blunt scribe.

(3) Using an inspection mirror, visually inspect the bearings for grease lubricant and any evidence of corrosion. Rotate the bearings and housing to reposition balls and race for complete inspection. For bearings found free of corrosion or defects, repack them with Exxon ANDOK–B grease or any MIL–G–18709A grease, and reinstall them in accordance with the applicable maintenance manual.

(b) Replace any unairworthy bearing with an airworthy bearing in accordance with the applicable maintenance manual.

(c) Before further flight, after the effective date of this AD, remove all upper and lower swashplate bearings having 1,200 hours' or more TIS, and replace them with airworthy bearings. For bearings with less than 1,200 hours' TIS on the effective date of this AD, replace the bearings on or before attaining 1,200 hours' TIS.

(d) The owner may elect to install revised upper swashplate bearing housing, P/N 28–16108–2, and lower swashplate bearing housing, P/N 28–16361–1, that are equipped with grease fittings and integral bearing shields as described in The Enstrom Helicopter Corporation Service Information Letter No. 0110, Revision B, dated March 16, 1993. This would constitute terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Chicago Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Chicago Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on June 27, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–16273 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 93–ASW–42]

Proposed Establishment of Class E Airspace: Springdale, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Springdale, AR. Currently, Springdale, AR has Class D airspace during the hours of operation of the Springdale Air Traffic Control Tower. This action is proposing to provide controlled airspace, Class E, upward from the surface to contain instrument flight rule (IFR) operations during the hours that the control tower is closed. The intended effect of this proposal is to provide adequate Class E airspace to contain IFR operations during the hours that the control tower is closed at Springdale, AR.

DATES: Comments must be received on or before August 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–42, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Blvd., Room 662, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Gregory L. Juro, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–222–5591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–42." The postcard will be date and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 2601 Meacham Blvd., Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Springdale, AR. Controlled airspace to the surface is needed during the hours that the control tower is closed to contain IFR operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace, during the hours that the control tower is closed, for IFR operations at Springdale Regional Airport, Springdale, Arkansas.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 958 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002: Class E. airspace areas designated as a surface area for an airport

* * * * *

ASW AR E Springdale, AR [New]

Springdale Municipal Airport, AR
(Latitude 36°14'47" N., longitude 94°07'16" W.)
Razorback VORTAC
(Latitude 36°14'47" N., longitude 94°07'17" W.)

That airspace within a 4.1-mile radius of Springdale Municipal Airport and within 1.3 miles each side of the 358° and 178° radials of the Razorback VORTAC extending from the 4.1-mile radius to 4.6 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Larry D. Gray,
Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–16234 Filed 7–5–94; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S–045]

Personal Protective Equipment for Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; limited reopening of the rulemaking record.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is reopening the rulemaking record for the proposed revision of the regulation of personal protective equipment for shipyard employment (53 FR 48150, November 29, 1988) to incorporate the rulemaking record developed for the recently revised regulation of personal protective equipment for general industry (Docket S–060, final rule published in 59 FR 16334, April 6, 1994) and the record for the proposed regulation of personal protective equipment (fall protection equipment for general industry) (Docket S–057, 55 FR 13423, April 10, 1990). While the shipyard rulemaking on personal protective equipment (PPE) generated 10 comments, the general industry rulemakings generated hundreds of comments and several thousand pages of hearing testimony regarding PPE issues. The Agency believes the regulation of PPE in shipyard and general industry employment should be consistent, in order to facilitate compliance and effective employee protection. OSHA has determined that the information in Dockets S–060 and S–057 is relevant to full consideration of the issues raised by the shipyard PPE proposal, and that it is appropriate to reopen the record to incorporate those materials and to allow the public an opportunity to comment. This notice also raises specific PPE issues arising out of the general industry rulemakings for public comment.

DATES: Comments on the issues raised in the notice of reopening must be postmarked by August 22, 1994.

ADDRESSES: Comments are to be sent to the Docket Office, Docket No. S–045A, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1988, OSHA proposed to revise the personal protective equipment (PPE) requirements in the shipyard employment standards (part 1915, subpart I) (53 FR 48150). The proposal updated references to national consensus standards and added requirements for hazard assessment, proper selection and care of PPE, training, lifesaving equipment and personal fall protection equipment. The written comment period ended on February 27, 1989. The Agency received 10 comments on the proposed rule. There were no hearing requests.

On August 16, 1989, OSHA proposed to update the existing general industry standards (part 1910, subpart I, Docket S–060) for eye and face (§ 1910.133), head (§ 1910.135) and foot (1910.136) PPE and to add generic requirements for hazard assessment, proper selection of PPE, prohibition on use of damaged or defective PPE and training in the proper use of PPE (§§ 1910.132 (d) through (f)) (54 FR 33832). The proposed general

for general industry) (Docket S–057, 55 FR 13423, April 10, 1990). While the shipyard rulemaking on personal protective equipment (PPE) generated 10 comments, the general industry rulemakings generated hundreds of comments and several thousand pages of hearing testimony regarding PPE issues. The Agency believes the regulation of PPE in shipyard and general industry employment should be consistent, in order to facilitate compliance and effective employee protection. OSHA has determined that the information in Dockets S–060 and S–057 is relevant to full consideration of the issues raised by the shipyard PPE proposal, and that it is appropriate to reopen the record to incorporate those materials and to allow the public an opportunity to comment. This notice also raises specific PPE issues arising out of the general industry rulemakings for public comment.

DATES: Comments on the issues raised in the notice of reopening must be postmarked by August 22, 1994.

ADDRESSES: Comments are to be sent to the Docket Office, Docket No. S–045A, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1988, OSHA proposed to revise the personal protective equipment (PPE) requirements in the shipyard employment standards (part 1915, subpart I) (53 FR 48150). The proposal updated references to national consensus standards and added requirements for hazard assessment, proper selection and care of PPE, training, lifesaving equipment and personal fall protection equipment. The written comment period ended on February 27, 1989. The Agency received 10 comments on the proposed rule. There were no hearing requests.

On August 16, 1989, OSHA proposed to update the existing general industry standards (part 1910, subpart I, Docket S–060) for eye and face (§ 1910.133), head (§ 1910.135) and foot (1910.136) PPE and to add generic requirements for hazard assessment, proper selection of PPE, prohibition on use of damaged or defective PPE and training in the proper use of PPE (§§ 1910.132 (d) through (f)) (54 FR 33832). The proposed general industry revisions were consistent with the corresponding provisions of the proposed rule for shipyard employment.

On April 10, 1990, the Agency proposed to add criteria for personal fall arrest equipment (§§ 1910.128, 1910.129 and 1910.131) and positioning device equipment (§§ 1910.128 and 1910.130) to the general industry PPE standards (part 1910, subpart I, Docket S–057) (55 FR 13423). Again, the criteria proposed for general industry PPE were consistent with those proposed for shipyards.

The two general industry rulemakings generated extensive records, including hundreds of comments and several thousand pages of hearing testimony. On April 6, 1994, OSHA issued a final rule (59 FR 16334) which completed Agency action in the Docket S–060 proceeding. Based on the rulemaking record, OSHA made some changes to the proposed rule in drafting the final rule. In particular, OSHA revised the proposed training requirement so that it provides clear direction regarding what constitutes adequate training and what circumstances trigger a requirement for retraining. In addition, the final rule added requirements for the certification of the hazard assessment (§ 1910.132(d)(2)) and certification that the required training has been provided and understood (§ 1910.132(f)(4)).

Also, based on the rulemaking record for general industry fall protection PPE (Docket S–057), the Agency is considering further limiting or prohibiting the use of body belts and non-locking snaphooks in personal fall arrest systems. In particular, the evidence in the record supports the conclusion that an employee who falls while wearing a body belt as part of a personal fall arrest system is substantially more likely to suffer death or serious injury than would be the case if the employee were wearing a full body harness. Furthermore, the rulemaking record indicates that locking snaphooks designed to prevent "roll out" (where snaphooks become accidentally disengaged during use) provide a higher level of employee protection than single-action (non-locking) snaphooks.

While it is appropriate to facilitate employer access to safety and health standards by maintaining separate standards for general industry (part 1910) and for the shipyard industry (part 1915), the Agency believes that the substance of those standards should be consistent. OSHA believes, based on its review of the pertinent rulemaking records, that PPE used in shipyards does not differ markedly from PPE used in general industry. Therefore, the Agency has determined that the information generated in the general industry rulemakings should be taken into account as the Agency drafts the final rule for shipyard PPE, as well. To this end, OSHA is incorporating the general industry PPE rulemaking records (Dockets S–057 and S–060) into the record for the shipyards PPE rulemaking. In addition, OSHA is reopening the written comment period for the shipyard PPE proposal so the public has an opportunity to comment on the newly incorporated materials.

II. Issues

OSHA is requesting comments on these five specific issues:

1. *Certification of hazard assessment.* OSHA believes that a hazard assessment is an important element of a PPE program because it produces the information needed to select the appropriate PPE for the hazards present or likely to be present at particular workplaces. The Agency believes that employers are able to determine and evaluate the hazards of their particular workplaces and to use this information for proper PPE selection.

Proposed § 1915.152(b) required employers to select the types of PPE to be used by employees based on an assessment of the workplace hazards relative to PPE. The comments on proposed § 1910.132(d), which contained identical language, indicated concern about the level of documentation required for hazards assessment (Exs. 3:1 and 3:68). In regard to the general industry rulemaking, OSHA concluded that some form of record is needed to provide OSHA compliance officers and affected employees with appropriate assurance that the required hazard assessment has been performed. Given the performance-oriented nature of the rule, the Agency determined that the generation and review of extensive documentation would be unnecessarily burdensome.

OSHA has addressed such situations in other rulemakings (e.g., permit-required confined spaces, § 1910.146(g)(4); and the control of hazardous energy (lockout/tagout), 1910.147(c)(7)(iv) by requiring employers to verify their compliance with a requirement through a written certification. The Agency has found that a written certification is a reasonable means by which to establish accountability for compliance.

Therefore, OSHA determined that an employer could adequately verify compliance with the hazard assessment requirement through a written certification which identified the workplace evaluated; the person certifying that the hazard assessment

had been performed; the date(s) of the hazard assessment; and which identified the document as a certification of hazard assessment. Accordingly, the Agency added this requirement to the final rule as § 1910.132(d)(2).

OSHA believes that verification through written certification would also be appropriate with regard to hazard assessments to be performed under proposed § 1915.152(b). Therefore, OSHA solicits comments, with supporting information, as to the need for certification of the hazard assessment and the anticipated impact of such a requirement on the shipyard industry.

2. *Certification of training.* Proposed § 1915.152(e) required that employees be trained in the proper use of their PPE. Proposed § 1910.132(f) contained an identical requirement. Based on comments received in relation to proposed § 1910.132(f) (Exs. 3:41, 3:46, 3:49, 3:62 and 3:129) which expressed concern regarding the level of documentation employers would be required to provide for their training efforts, OSHA raised issue 4 in the hearing notice (55 FR 3414, February 1, 1990) to elicit additional information on the recordkeeping needed to document compliance with the proposed paragraph. The commenters (Exs. 7:8, 7:19 and 7:39) generally supported some sort of certification for completion of training.

Based on the rulemaking record and the considerations raised above in regard to Reopening Issue 1, OSHA determined that employers could adequately verify compliance with proposed § 1910.132(f) through a written certification. Accordingly, the Agency revised proposed paragraph (f) to add paragraph (f)(4), which requires a certification record that identifies each employee trained, the date(s) of training, and which identifies the document as a certification of training in the use of PPE.

OSHA believes that verification through written certification would also be appropriate with regard to training to be provided under proposed § 1915.152(e). Therefore, OSHA solicits comments, with supporting information, as to the need for certification of employee training and the anticipated impact of such a requirement on the shipyard industry.

3. *Training elements.* As mentioned above, proposed § 1915.152(e) required that employees be trained in the proper use of their PPE, and proposed § 1910.132(f) set forth an identical requirement. Based on comments and testimony received in relation to proposed § 1910.132(f) (Exs. 3:36, 3:41, 3:50, 3:60, 3:73, 3:86, 3:88, 3:116, 3:128; 7:3, 7:8, 7:11, 7:20, 7:29, 7:38; Tr. 23:24; 4/3, Tr. 272–286; 4/4) which expressed concern that the proposed language did not provide enough detailed guidance regarding what constituted adequate training, OSHA determined that more specific guidance should be provided by the final requirement. Accordingly, the Agency determined that more specific guidance was appropriate and revised proposed § 1910.132(f) to require, at a minimum, training in the following areas:

- When PPE is necessary
- What PPE is necessary
- How to properly don, doff, adjust, and wear PPE
- The limitations of the PPE; and
- That proper care, maintenance, useful life and disposal of the PPE.

In addition, many of the above comments and testimony suggested that in order to have a successful training program, employers should set measurable training objectives and have their employees demonstrate that they have reached those objectives. Also, it was suggested that retraining be provided, when the employer determined that employees may not possess sufficient knowledge about the PPE. Accordingly, the following provisions were added to § 1910.132(f) in the final rule:

(2) Each affected employee shall demonstrate an understanding of the training specified in paragraph (f)(1) of this section, and the ability to use PPE properly, before being allowed to perform work requiring the use of PPE.

(3) When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (f)(2) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations were:

(i) Changes in the workplace render previous training obsolete; or

(ii) Changes in the types of PPE to be used render previous training obsolete; or

(iii) Inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the requisite understanding or skill.

OSHA believes that these more specific training requirements would also be appropriate with regard to training provided under § 1915.152(e). Therefore, OSHA solicits comments, with supporting information, as to the need for such requirements and the anticipated impact of those requirements on the shipyard industry.

4. *Body belts and harnesses in fall arrest systems.* Proposed § 1910.129(b) provided the system performance criteria for personal fall arrest systems In particular, the proposed paragraph limited maximum arresting force on an employee to 900 pounds (4 kN) when using a body belt and 1,800 pounds (8 kN) when using a body harness. The corresponding provision for shipyard employment, proposed § 1915.159(a)(4)(iii), limited maximum arresting force for either belts or harnesses to the lesser of 10 times the employee's weight, or 1,800 pounds (8 kN). The more protective criteria in proposed § 1910.129(b) are based on information obtained after the Shipyard PPE proposal was issued (53 FR 48150, Nov. 29, 1988). This information is discussed in the General Industry PPE proposal (55 FR 13423, April 10, 1990).

Comments and testimony received on proposed § 1910.129(b) (Exs. 3:22, 3:31; Tr. 240–241 and 1374) indicate that the Agency needs to reconsider allowing the use of body belts in fall arrest systems. OSHA solicits comments, with supporting information regarding whether or not body belts should be permitted for use in fall arrest systems, and the anticipated impact on the shipyard industry of any requirement which might limit or prohibit their use.

5. *Locking and non-locking snap hooks.* Proposed § 1915.159 (a)(15), (a)(16), and (a)(17) prohibited certain snap hook connections (such as, connecting snap hooks to each other) where snap hooks have been known to accidentally disengage, allowing an employee to fall. Proposed § 1910.129(c)(1) required that snap hooks, unless of the locking type, and designed for certain connections (such as to each other, to horizontal lifelines, or to incompatibly shaped objects), not be used for these connections.

Comments and testimony received on the general industry provisions (Exs. 3:9, 3:12, 3:19; Tr. 210) has led the Agency to consider a prohibition on the use of non-locking snap hooks in personal fall protection systems.

OSHA solicits comments, with supporting information, regarding whether or not non-locking snap hooks should be permitted for use in personal fall protection systems or in positioning device systems, and the anticipated impact on the shipyard industry of any requirement which might further limit or prohibit their use.

III. Public Participation

Written comments regarding the materials incorporated into the shipyard

PPE record through this notice must be postmarked by August 22, 1994.

Four copies of these comments must be submitted to the Docket Office, Docket S–045A, U.S. Department of Labor, room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 219–7894. All materials submitted will be available for inspection and copying at the above address. Materials

PPE record through this notice must be postmarked by August 22, 1994.

Four copies of these comments must be submitted to the Docket Office, Docket S–045A, U.S. Department of Labor, room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 219–7894. All materials submitted will be available for inspection and copying at the above address. Materials previously submitted to the Docket for this rulemaking need not be resubmitted.

IV. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), section 41 of the LHWCA (33 U.S.C. 941) and 29 CFR part 1911.

Signed at Washington, DC, this 29th day of June 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–16240 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–26–M

Notices

Federal Register
Vol. 59, No. 128
Wednesday, July 6, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1994–June 30, 1995

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in child care, outside-school-hours care and adult day care centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Classification

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR part 226).

Background

Pursuant to sections 4, 11 and 17 of the National School Lunch Act (NSLA) (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1994–June 30, 1995.

As provided for under the NSLA and the Child Nutrition Act of 1966, all rates in the CACFP must be prescribed annually on July 1 to reflect changes in the Consumer Price Index for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes and the administrative reimbursement rates for sponsors of day care homes on July 8, 1993 at 58 FR 36636 (for the period July 1, 1993–June 30, 1994). The payment rates for the period July 1, 1994–June 30, 1995 are:

All States Except Alaska and Hawaii

Meals Served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts:	
Paid	$.1925
Free	.9750
Reduced	.6750
Lunches and Suppers: [1]	
Paid	$.1700
Free	1.7575
Reduced	1.3575
Supplements:	
Paid	$.0450
Free	.4825
Reduced	.2400
Meals Served in DAY CARE HOMES—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts	$.8275
Lunches and Suppers	1.5050
Supplements	.4475
Meals Served in DAY CARE HOMES—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts	$.8275
Lunches and Suppers	1.5050
Supplements	.4475
Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars:*	
Initial 50 day care homes	$69
Next 150 day care homes	53
Next 800 day care homes	41
Additional day care homes	36

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

Pursuant to section 12(f) of the NSLA (42 U.S.C. 1760(f), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

ALASKA

Alaska—Meals Served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts:	
Paid	$.2750
Free	1.5450
Reduced	1.2450
Lunches and Suppers: [1]	
Paid	$.2725
Free	2.8450
Reduced	2.4450
Supplements:	
Paid	$.0725
Free	.7800
Reduced	.3900
Alaska—Meals Served in DAY CARE HOMES—Per Meal Rates in *Dollars or Fractions thereof:*	
Breakfasts	$1.3025
Lunches and Suppers	2.4375
Supplements	.7275

ALASKA—Continued

Alaska—ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars:*	
Initial 50 day care homes	$112
Next 150 day care homes	85
Next 800 day care homes	67
Additional day care homes	59

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

The new payment rates for Hawaii are as follows:

HAWAII

Hawaii—Meals Served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts:	
Paid	$.2150
Free	1.1325
Reduced	.8325
Lunches and Suppers: [1]	
Paid	$.1975
Free	2.0550
Reduced	1.6550
Supplements:	
Paid	.0525
Free	.5650
Reduced	.2825
Hawaii—Meals Served in DAY CARE HOMES—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts	$.9575
Lunches and Suppers	1.7600
Supplements	.5250
Hawaii— ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars:*	
Initial 50 day care homes	$81
Next 150 day care homes	61
Next 800 day care homes	48
Additional day care homes	42

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 1.7 percent increase during the 12-month period May 1993 to May 1994

ALASKA—Continued

Alaska—ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars:*	
Initial 50 day care homes	$112
Next 150 day care homes	85
Next 800 day care homes	67
Additional day care homes	59

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

The new payment rates for Hawaii are as follows:

HAWAII

Hawaii—Meals Served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts:	
Paid	$.2150
Free	1.1325
Reduced	.8325
Lunches and Suppers: [1]	
Paid	$.1975
Free	2.0550
Reduced	1.6550
Supplements:	
Paid	.0525
Free	.5650
Reduced	.2825
Hawaii—Meals Served in DAY CARE HOMES—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts	$.9575
Lunches and Suppers	1.7600
Supplements	.5250
Hawaii— ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars:*	
Initial 50 day care homes	$81
Next 150 day care homes	61
Next 800 day care homes	48
Additional day care homes	42

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 1.7 percent increase during the 12-month period May 1993 to May 1994 (from 142.9 in May 1993 to 145.3 in May 1994) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 2.3 percent increase during the 12-month period May 1993 to May 1994 (from 144.2 in May 1993 to 147.5 in May 1994) in the series for all items of the Consumers Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

Authority: Sec. 4(b)(2), 11(a), 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended (42 U.S.C. 1753, 1759(a), 1766) and sec. 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773b).

Dated: June 29, 1994.

William Ludwig,

Administrator.

[FR Doc. 94–16294 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–30–M

Food Distribution Program; Value of Donated Foods from July 1, 1994 to June 30, 1995

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof to be provided in the 1995 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

This notice also announces that the value of agricultural commodities and other foods provided to States during the past school year met the level of assistance authorized under the National School Lunch Act. Thus, there will be no shortfall cash payments to States for the NSLP for the 1994 school year. The annually programmed level of assistance was met in food donations by June 30, 1994.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 1994 Through June 30, 1995

This notice implements mandatory provisions of sections 6(e), 14(f) and 17(h)(1) of the National School Lunch Act (the Act) (42 U.S.C. 1755(e), 1762a(f), and 1766(h)(1)). Section 6(e)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(e)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 17(h)(1) of the Act provides that the same value of assistance in donated foods for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR part 226) shall be 14.50 cents for the period July 1, 1994 through June 30, 1995.

The Price Index for Food Used in Schools and Institutions is computed on the basis of five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is assigned a proportional value using the appropriate relative weight as determined by the Bureau of Labor Statistics. The value of food

assistance is adjusted each July 1 by the annual percentage change in a three-month simple average value of this Price Index for March, April and May. The three-month average of the Price Index increased by 2.92 percent from 123.23 for March, April and May of 1993 to 126.83 for the same three months in 1994. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1994 through June 30, 1995 will be 14.50 cents per meal. This is an increase of 0.50 cents from the school year 1994 rate.

Section 14(f) of the Act provides that commodity schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(e) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents of this value in cash for processing and handling expenses related to the use of such foods.

Commodity schools are defined in section 12(d)(7) of the Act (42 U.S.C. 1760(d)(7)) as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs."

For the 1995 school year, commodity schools shall be eligible to receive donated food assistance valued at 31.50 cents for each lunch served. This amount is based on the sum of the section 6(e) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 1995. The section 4 factor for commodity schools does not include the two cents per lunch increase for schools where 60 percent of the lunches were served in the second preceding year free or at reduced prices, since that increase is applicable only to schools participating in the National School Lunch Program.

Cash in Lieu Payments—Value of Donated Commodities for School Year 1994

Section 6(b) of the Act (42 U.S.C. 1755(b)) and the regulations governing cash in lieu of donated foods (7 CFR part 240) require the Secretary of Agriculture by June 1 of each school year to estimate the value of agricultural commodities and other foods that will be delivered to States during that school year. Under the food distribution regulations (7 CFR part 250), these foods are used by schools participating in NSLP. If the estimated value is less than the total level of commodity assistance authorized under section 6(e) of the Act, the Secretary is required by July 1 of that school year to pay to each State educational agency funds equal to the difference between the value of programmed deliveries and the total level of authorized assistance for each State.

During the past school year the adjusted minimum national average value of donated foods or payments of cash in lieu thereof per lunch was 14.00 cents. In accordance with section 6(e) of the Act, the mandated level of commodity assistance was $566,188,578 for school year 1994. The Secretary has determined that at least that amount was available for delivery nationally by June 30, 1994 to meet the mandated level of assistance.

Notice is hereby given, therefore, that no shortfall cash payments will be made for the school year ending June 30, 1994.

Authority: Sections 6(e)(1) (A) and (B), 14(f) and 17(h)(1) of the National School Lunch Act, as amended (42 U.S.C. 1755(e)(1)(A) and (B), 1762a(f), and 1766(h)(1)).

Dated: June 29, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–16295 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–30–U

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) The "national average payments," the amount of money the Federal Government provides States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the school lunch and school breakfast programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for milk reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 1994 through June 30, 1995.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FN, USDA, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.).

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

This Notice has been determined to be exempt under Executive Order 12866.

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products (Code 0231), published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1994 to June 30, 1995, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 11.00 cents. This reflects no change over the current reimbursement rate because the Producer Price Index for Fluid Milk Products (Code 0231) from May 1993 to May 1994 (from a level of 120.6 in May 1993 to 121.1 in May 1994) did not change significantly enough to trigger a change in the reimbursement rate.

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a), and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for meals served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 1994 through June 30, 1995 reflect a 1.7 percent increase in the Price Index during the 12-month period May 1993 to May 1994 (from a level of 142.9 in May 1993 to 145.3 in May 1994).

Lunch Payment Factors—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a

SCHOOL PROGRAMS—MEAL AN

[Expressed in Dollars or

	National schoo
Contiguous States:	
Paid	
Reduced Price	
Free	
Alaska:	
Paid	

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a), and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for meals served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 1994 through June 30, 1995 reflect a 1.7 percent increase in the Price Index during the 12-month period May 1993 to May 1994 (from a level of 142.9 in May 1993 to 145.3 in May 1994).

Lunch Payment Factors—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price. To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced-price lunches. The section 11 National Average Payment Factor for each reduced-price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act, maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966 establishes National Average Payment Factors for free, reduced-price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4 and section 11 National Average Payment Factors and maximum reimbursement rates are in effect through June 30, 1995. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and the Pacific Territories use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served *less than 60 percent* free and reduced-price lunches in School Year 1992–93, the payments are:

Contiguous States—17 cents, maximum rate 25.00 cents; *Alaska*—27.25 cents, maximum rate 39.25; *Hawaii*—19.75 cents, maximum rate 29.00 cents.

In school food authorities which served *60 percent or more* free and reduced-price lunches in School Year 1992–93, payments are:

Contiguous States—19.00 cents, maximum rate 25.00 cents; *Alaska*—29.25 cents, maximum rate 39.25 cents; *Hawaii*—21.75 cents, maximum rate 29.00 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch—158.75 cents, reduced-price lunch 118.75 cents; *Alaska*—free lunch 257.25 cents, reduced-price lunch 217.25 cents; *Hawaii*—free lunch 185.75 cents, reduced-price lunch 145.75 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are:

Contiguous States—free breakfast 97.50 cents, reduced-price breakfast 67.50 cents, paid breakfast 19.25 cents; *Alaska*—free breakfast 154.50 cents, reduced-price breakfast 124.50 cents, paid breakfast 27.50 cents; *Hawaii*—free breakfast 113.15 cents, reduced-price breakfast 83.25 cents, paid breakfast 21.50 cents.

For schools in "severe need" the payments are:

Contiguous States—free breakfast 116.00 cents, reduced-price breakfast 86.00 cents, paid breakfast 19.25 cents; *Alaska*—free breakfast 184.25 cents, reduced-price breakfast 154.25 cents, paid breakfast 27.50 cents; *Hawaii*—free breakfast 134.75 cents, reduced-price breakfast 104.75 cents, paid breakfast 21.50 cents.

Payment Chart

The following chart illustrates: the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in Dollars or Fractions Thereof—Effective from July 1, 1994–June 30, 1995]

National school lunch program *	Less than 60%	60% or more	Maximum rate
Contiguous States:			
Paid	.1700	.1900	.2500
Reduced Price	1.3575	1.3775	1.5275
Free	1.7575	1.7775	1.9275
Alaska:			
Paid	.2725	.2925	.3925

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES—Continued

[Expressed in Dollars or Fractions Thereof—Effective from July 1, 1994–June 30, 1995]

National school lunch program*	Less than 60%	60% or more	Maximum rate
Reduced Price	2.4450	2.4650	2.7100
Free	2.8450	2.8650	3.1100
Hawaii:			
Paid	.1975	.2175	.2900
Reduced Price	1.6550	1.6750	1.8525
Free	2.0550	2.0750	2.2525

School breakfast program:	Non-severe need	Severe need
Contiguous States:		
Paid	.1925	.1925
Reduced Price	.6750	.8600
Free	.9750	1.1600
Alaska:		
Paid	.2750	.2750
Reduced Price	1.2450	1.5425
Free	1.5450	1.8425

Special milk program	All milk	Paid milk	Free milk
Pricing Programs Without Free Option	$.11	N/A	N/A
Pricing Programs with Free Option	N/A	$.11	Average cost ½ pint milk.
Nonpricing Programs	$.11	N/A	N/A

*Payments listed for Free & Reduced Price Lunches include both sections 4 and 11 funds. Lunch rates *do not* include the current *entitlement* commodity (or cash-in-lieu) value of an *additional* $.145 per meal.

Authority: Sections 4, 8, and 11 of the National School Lunch Act, as amended (42 U.S.C. 1753, 1757, 1759(a)) and sections 3 and 4(b) of the Child Nutrition Act, as amended (42 U.S.C. 1772 and 42 U.S.C. 1773).

Dated: June 29, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–16293 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Boulder Tony Timber Sale and Other Projects, Siuslaw National Forest, Tillamook County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On July 24, 1991 a notice of intent to prepare an environmental impact statement (EIS) for the Boulder tony Timber Sale and Other Projects on the Siuslaw National Forest was published in the **Federal Register** (56 FR 33903). Because of new direction in the President's Forest Plan, the proposed project is no longer consistent with Forest management objectives. The Forest Service has decided to terminate the environmental analysis for this EIS. There will be no draft or final EIS for the Boulder Tony timber sale and other projects.

FOR FURTHER INFORMATION CONTACT: Bill Pigott, Supervisory Natural Resource Planner, Hebo Ranger District, P.O. Box 324, Hebo, Oregon 97122 or telephone (503) 392–3161.

Dated: June 27, 1994.

Linda D. Goodman,

Acting Forest Supervisor.

[FR Doc. 94–16272 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

West Fork Bayou L'Ours Watershed Supplement #2, Lafourche Parish, Louisiana

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Soil Conservation Service Regulations (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the West Fork Bayou L'Ours Watershed Supplement #2, Lafourche Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are reduced interior marsh losses and shoreline erosion. The planned works of improvement include eight fixed crest weirs with boat bays, three canal plugs with flapgated culverts, seven canal plugs, four earthen overflow banks (a total of 30,730 feet), and two rock overflow banks (a total of 5,338 feet).

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting: Faye A. Talbot, 3470 NE Evangeline Thruway, Lafayette, Louisiana 70507–2554.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 94–16251 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 92–A0014.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to American Pork Export Trading Company ("APEX"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Summary of the Application

Applicant: American Pork Export Trading Company ("APEX"), P.O. Box 10383, Des Moines, Iowa 50306.

Contact: Laurence J. Lasoff, Telephone: (202) 342–8400.

DESCRIPTION OF AMENDED CERTIFICATE: Apex's export trade Certificate of Review has been amended to include the following change:

Each of the following companies has been added to the Certificate as a "Member" within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(a)): Sioux-Prime Packing Company, Sioux Center, Iowa; Excel Corporation, Wichita, Kansas;

taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 94–16251 Filed 7–5–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 92–A0014.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to American Pork Export Trading Company ("APEX"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Summary of the Application

Applicant: American Pork Export Trading Company ("APEX"), P.O. Box 10383, Des Moines, Iowa 50306.

Contact: Laurence J. Lasoff, Telephone: (202) 342–8400.

DESCRIPTION OF AMENDED CERTIFICATE: Apex's export trade Certificate of Review has been amended to include the following change:

Each of the following companies has been added to the Certificate as a "Member" within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(a)): Sioux-Prime Packing Company, Sioux Center, Iowa; Excel Corporation, Wichita, Kansas; Smithfield Food, Inc., Smithfield, Virginia; and American Food Group, Inc., Minneapolis, Minnesota.

Pursuant to Section 304(a)(2) of the ETC Act, 15 USC Section 4014(a)(2), and 15 CFR 325.7, the amended Certificate is effective from March 17, 1994, the date on which the application for an amendment was deemed submitted.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 30, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–16265 Filed 7–5–94; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 062094C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification No. 1 to scientific research permit No. 836 (P79F)

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 836 submitted by the Institute of Marine Studies, University of California, Santa Cruz, CA 95064 (Principal Investigators: Drs. Daniel Costa, Burney J. Le Boeuf, and Charles L. Ortiz) has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/712–3389);

Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4016 (310/980–4020.

SUPPLEMENTARY INFORMATION: On May 11, 1994, notice was published in the **Federal Register** (59 FR 24405) that a modification of Permit No. 836, issued May 12, 1993 (57 FR 29199) had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The modification authorizes: Translocation of seals up to 200 km from the Año Nuevo (40 of which may be released to a location 5 miles south of Sur Ridge or south of Pt. Sur, site of the proposed ATOC sound source); attachment of an acoustic data logger (sound recorder); killer whale sounds played in the track of homing seals; and capture of seals from Gorda and Piedras Blancas in Central California.

Dated: June 29, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 94–16271 Filed 7–5–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062494A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification No. 1 to scientific research permit no. 918 (P191E).

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 918 submitted by California Department of Fish and Game, 1416 Ninth Street, Sacramento, CA 95814, has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/712–3389); and

Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213.

SUPPLEMENTARY INFORMATION: On May 27, 1994, notice was published in the **Federal Register** (59 FR 27535) that a modification of Permit No. 918, issued May 20, 1994 (59 FR 27535), had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking,

importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 918 authorized inadvertent harassment of harbor seals, and the incidental harassment of California sea lions, Northern elephant seals (*Mirounga angustirostris*), Northern fur seals (*Callorhinus ursinus*) during harbor seal surveys. The modification authorizes inadvertent harassment of harbor seals during scat collections and Steller sea lions (*Eumetopias jubatus*) and Guadalupe fur seals (*Arctocephalus townsendi*) during aerial surveys to collect data on abundance and distribution of these species along the California coast and the Channel Islands.

Issuance of this modification, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act.

Dated: June 29, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–16270 Filed 7–5–94; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 27 July 1994 at 10:00 AM in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the Government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call and above number.

Dated in Washington, DC, 27 June 1994.

Charles H. Atherton,

Secretary.

[FR Doc. 94–16250 Filed 7–5–94; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Forms, and OMB Control Number: Industrial Base Program Production Capacity, Crisis Production, and Industrial Facility Survey; DD Forms 2575, 2575–1, and 2575–2; OMB Control Number 0704–0037.

Type of Request: Revision.

Number of Respondents: 20,000.

Responses Per Respondent: 5.

Annual Responses: 10,000.

Average Burden Per Response: 2.5 hours.

Annual Burden Hours: 25,000.

Needs and Uses: The information collected hereby, will be used to analyze and assess the defense industrial base, as required by Public Law 100–456, "The National Defense Authorization Act, Fiscal Year 1989," It will be used to establish a basic understanding of the industrial capacity for defense items, as well as to acquire the data necessary to develop planned producer production commitments.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommends on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16237 Filed 7–5–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

DOD Advisory Group on Electron Devices

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, July 20, 1994.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal park, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition and Technology, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No.92–463, as amended, (5 U.S.C. App. II Section 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: June 29, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16236 Filed 7–5–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Patent Licenses; Non-Exclusive, Exclusive, or Partially Exclusive:

AGENCY: Department of the Navy, DOD.

ACTION: Intent to Grant Co-Exclusive Patent Licenses; Martin Marietta Corporation and Quantum Design, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Martin Marietta Corporation and Quantum Design, Inc., revocable, nonassignable, co-exclusive licenses in the United States and in certain foreign countries to practice the Government-owned inventions described in U.S. Patent No. 5,206,592 entitled "Detection of Explosives by Nuclear Quadrupole Resonance, issued April 27, 1993 to Michael L. Buess, Allen N. Garroway and Joel B. Miller, United States Patent No. 5,233,300 entitled "Detection of Explosive and Narcotics by Low Power Large Sample Volume Nuclear Quadrupole Resonance (NQR)" issued August 3, 1993 to Michael L. Buess, Allen N. Garroway and Joel B. Miller and U.S. Patent Application Serial No. 07/983,990 entitled "Removing the Effects of Acoustical Ringing and Reducing Temperature Effects in the Detection of Explosives by NQR" filed November 30, 1992.

Anyone wishing to object to the grant of these licenses has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: June 29, 1994.

Lewis T. Booker Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–16261 Filed 7–5–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A]

Centers for Independent Living; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program

This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973 (Act), as amended, consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agencies that are designed and

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Martin Marietta Corporation and Quantum Design, Inc., revocable, nonassignable, co-exclusive licenses in the United States and in certain foreign countries to practice the Government-owned inventions described in U.S. Patent No. 5,206,592 entitled "Detection of Explosives by Nuclear Quadrupole Resonance, issued April 27, 1993 to Michael L. Buess, Allen N. Garroway and Joel B. Miller, United States Patent No. 5,233,300 entitled "Detection of Explosive and Narcotics by Low Power Large Sample Volume Nuclear Quadrupole Resonance (NQR)" issued August 3, 1993 to Michael L. Buess, Allen N. Garroway and Joel B. Miller and U.S. Patent Application Serial No. 07/983,990 entitled "Removing the Effects of Acoustical Ringing and Reducing Temperature Effects in the Detection of Explosives by NQR" filed November 30, 1992.

Anyone wishing to object to the grant of these licenses has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: June 29, 1994.

Lewis T. Booker Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–16261 Filed 7–5–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A]

Centers for Independent Living; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program

This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973 (Act), as amended, consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants

An applicant is eligible to apply as a new center if the applicant meets the requirements of §§ 366.2(a) and 366.24 and either— (1) Is not currently receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) proposes the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to those entities proposing to serve areas that are unserved or underserved in the States and territories listed under AVAILABLE FUNDS.

Deadline for Transmittal of Applications: August 5, 1994.

Deadline for Intergovernmental Review: September 6, 1994.

Applications Available: July 6, 1994.

Available Funds: $2,776,432 as distributed in the following—

American Samoa	$154,046
Arkansas	80,107
Arizona	80,107
Delaware	32,531
D.C	64,720
Florida	247,814
Georgia	227,776
Guam	44,641
Hawaii	51,546
Indiana	54,588
Iowa	58,755
Louisiana	80,107
Maryland	80,107
Nevada	80,107
New Hampshire	80,107
New Jersey	284,293
North Carolina	227,885
North Dakota	80,107
Ohio	378,894
Puerto Rico	80,107
South Carolina	80,107
South Dakota	80,107
Washington	56,892
Wyoming	80,107

Estimated Range of Awards: $32,000 to $200,000.

Estimated Number of Awards: 1 to 5 per eligible State or territory.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The program regulations in 34 CFR Parts 364 and 366.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) published in the **Federal Register** on May 12, 1994 (59 FR 24814), because the Department's authority to obligate these funds will expire on September 30, 1994.

The comment period for the NPRM ended on June 13, 1994. A total of 40 comments were received from centers (21), State agencies (11), Statewide Independent Living Councils and other statewide organizations (4), national constituent organizations (3), and an individual (1). The comments were generally favorable and constructive. The following is a summary of the substantive comments received on the NPRM and of the changes that are expected to be made, based on public comments, in the final regulations that are currently undergoing review and that may affect applicants under this competition. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Only one commenter objected to the 30-day comment period. The Secretary considered a 30-day comment period necessary because a longer comment period would not have left enough time to publish this notice inviting applications for competitive awards for new centers under this program for fiscal year (FY) 1995. The Secretary also considered a 30-day comment period adequate because of the extensive opportunity for input and comment that was afforded to the public prior to publishing the NPRM. The Secretary does not believe it is necessary to extend the comment period.

Part 364

Two commenters objected to the change in terminology from an individual with "severe" disabilities to an individual with "significant" disabilities. Although only one comment specifically complimenting the Department on the use of "significant" rather than "severe" was received in response to the NPRM, the IL community previously expressed overwhelming support for the change in comments to the notice of proposed rulemaking on the proposed nomenclature change published on October 27, 1993 (58 FR 57938). Therefore, the Secretary does not expect any change in the final regulations.

A number of commenters suggested changes to the definitions in proposed § 364.4.

Two commenters were concerned that the proposed definition of "advocacy" may be interpreted to require an advocate to be an attorney. One of these commenters suggested a broader definition of "advocacy."

The proposed definition of "advocacy" specifically states that, to the extent permitted by State law or the rules of any agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. The Secretary does not interpret this definition as requiring an advocate to be an attorney in all cases, but only in those situations where State law or the rules of an agency require that an advocate representing another individual be an attorney.

Therefore, the Secretary does not expect any change to this definition in the final regulations.

Commenters suggested that the proposed definition of "attendant care" be revised to make it clear that this service may be provided on the job and in the community, as well as at home.

The Secretary believes the proposed definition provides adequate flexibility to allow attendant care in a variety of situations. Therefore, the Secretary does not expect any change to this definition in the final regulations.

Commenters questioned why the words "cognitive" and "sensory" do not appear in the proposed definition of "individual with significant disabilities." These commenters noted that the proposed definition conflicts with the proposed definition of an "individual with a disability."

The concepts of "physical" and "mental" impairments in the statutory definitions of "individual with a severe disability" and "individual with a disability" include the concepts of "sensory" and "cognitive" impairments, respectively. However, the Secretary agrees that the definitions of "individual with a significant disability" and "individual with a disability" should be consistent. Therefore, the Secretary anticipates adding the words "sensory" and "cognitive" to the definition of "individual with a significant disability" in the final regulations.

In proposed § 364.5, commenters objected to the limitation on reallocating expenditures after the initiation of an audit or compliance review and considered it punitive and contrary to ordinary accounting procedures.

The Secretary agrees that a change is necessary to make this requirement consistent with acceptable accounting practices. Therefore, the Secretary anticipates changing § 364.5 in the final regulations to allow costs that a grantee intends to use as an offset against disallowed costs, if those costs are reported on the final financial status reports within 90 days after the completion of an audit or compliance review.

Commenters objected to the language in proposed §§ 364.6 and 364.7 regarding program income. Commenters asserted that the resource development requirement in evaluation standard 7 in section 725(b)(7) of the Act should be interpreted to permit centers to accumulate funds over several years to create, among other financial instruments, endowments and reserves.

The Secretary agrees that imposing time limits on the use of program income may be inconsistent with long-term "resource development," which may include endowment drives and the solicitation of gifts and bequests that may produce long-term income. Therefore, the Secretary anticipates changing the language in proposed §§ 364.6 and 364.7 in the final regulations to allow centers to use program income to establish endowments and other similar financial instruments, but only if the corpus and income generated from the endowment and other similar financial instruments are used solely to carry out the purposes of the Center for Independent Living (CIL) program authorized under Part C of Chapter 1 of Title VII of the Act.

One commenter objected to the use of the term "special" when referring to reasonable accommodation and "alternative" modes of communication in proposed §§ 364.20, 364.23, and 364.56.

The Secretary agrees with the commenter and anticipates substituting the word "alternative" for the word "special" in these sections of the final regulations.

Commenters expressed concern regarding access to records in proposed § 364.37(c) on the grounds that access to individual records may be unnecessarily intrusive and inconsistent with commitments that providers make to their consumers.

The Secretary believes that access to individual case records or files or consumer service records is necessary for the proper and efficient administration and monitoring of the CIL program. Proposed § 364.37(c) limits this access to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives. The Secretary does not believe that this access is unreasonable or that it will be abused. Therefore, the Secretary does not expect any change in the final regulations.

Commenters were concerned that the references to "legally authorized representative" in proposed § 364.51 may be interpreted to require an attorney or legal guardian.

The Secretary does not intend to require that only an attorney or legal guardian may represent an individual for purposes of proposed § 364.51(b)(2)(requirements pertaining to ineligibility determinations). Therefore, the Secretary anticipates adding a definition of "legally authorized representative" to the final regulations to clarify that an individual's authority to represent or advocate on behalf of an individual with significant disabilities is determined pursuant to State law.

Two commenters objected to the absence of requirements in proposed § 364.52 regarding the content of a waiver and the appropriate solicitation of a waiver. One of the commenters also was concerned that the absence of conditions on the use of waivers could allow service providers to circumvent the requirements of proposed §§ 364.43 (provision of IL services by the State) and 364.53 (documentation of IL services provided to individuals). One of the commenters also suggested that the regulations should require that consumers be advised of the need for an IL plan and how the IL plan helps protect the consumer's rights.

The Secretary agrees in part with the commenters and anticipates adding the words "knowingly and voluntarily" before the word "signs" in § 364.52(a)(2) of the final regulations. The Secretary believes this is adequate protection to prevent the possibility of service providers forcing consumers to sign "waivers." The Secretary does not believe that it is necessary to add further requirements regarding the waiver of an IL plan.

Commenters suggested that proposed § 364.53 be modified to recognize the fact that records may be electronic as well as written.

The Secretary agrees with the commenters. With the exception of an IL plan or a waiver of an IL plan, both of which require a consumer's signature, the Secretary anticipates revising § 364.53 in the final regulations to allow records to be maintained electronically.

Commenters suggested that the State standards in proposed § 364.55 should not be permitted to exceed the standards in section 725 of the Act.

The standards referred to in proposed § 364.55 are actually the standards that the designated State unit (DSU) is required to develop pursuant to proposed § 365.31 for those service providers that are not centers or for

centers that are providing specialized IL services under a contract with the DSU. The Secretary anticipates adding language to the final regulations to make this clear.

One commenter objected to the words "other information" in proposed § 364.56(c)(2) because of the possibility that service providers may use this language to withhold information from a consumer.

Proposed § 364.56(c)(2) does not permit a service provider to withhold information from a consumer. Proposed § 364.56(c)(2) merely requires that, if a service provider determines that releasing medical, psychological, or other information may be harmful if released directly to the consumer, the service provider shall release this information to the consumer through a qualified medical or psychological professional or the individual's legally authorized representative. The Secretary does not expect any change to § 364.56(c)(2) in the final regulations.

Part 366

One commenter suggested adding a requirement to the selection criteria in proposed § 366.27 that the governing board be reflective of the localities to be served by the proposed center.

The Secretary believes that, rather than adding the suggested language to the selection criteria in proposed § 366.27, replacing the words "another" and "other" in proposed § 366.28(a) with "bordering" and adding similar language in §§ 366.2(a)(1)(i), 366.28(a), and 366.29(a) of the final regulations is more appropriate. In this manner, centers will be limited to operating within a "local community," as required by section 702(1)(A) of the Act.

One commenter considered the selection criterion in proposed § 366.27(a)(2) too vague and suggested that it be expanded to "not appear to be the traditional 'needs assessment' that creates more service providers."

The Secretary believes that the criterion adequately explains how an applicant can be expected to identify the need for a new center in a community and how the applicant plans to address this identified need. The Secretary does not expect any change in the final regulations.

Commenters suggested reducing the points allotted to "plan of operation" and increasing points for "involvement of individuals with significant disabilities" in the selection criteria in proposed § 366.27(g) and (h), respectively. Commenters also felt that the proposed selection criteria should include the involvement of individuals

centers that are providing specialized IL services under a contract with the DSU. The Secretary anticipates adding language to the final regulations to make this clear.

One commenter objected to the words "other information" in proposed § 364.56(c)(2) because of the possibility that service providers may use this language to withhold information from a consumer.

Proposed § 364.56(c)(2) does not permit a service provider to withhold information from a consumer. Proposed § 364.56(c)(2) merely requires that, if a service provider determines that releasing medical, psychological, or other information may be harmful if released directly to the consumer, the service provider shall release this information to the consumer through a qualified medical or psychological professional or the individual's legally authorized representative. The Secretary does not expect any change to § 364.56(c)(2) in the final regulations.

Part 366

One commenter suggested adding a requirement to the selection criteria in proposed § 366.27 that the governing board be reflective of the localities to be served by the proposed center.

The Secretary believes that, rather than adding the suggested language to the selection criteria in proposed § 366.27, replacing the words "another" and "other" in proposed § 366.28(a) with "bordering" and adding similar language in §§ 366.2(a)(1)(i), 366.28(a), and 366.29(a) of the final regulations is more appropriate. In this manner, centers will be limited to operating within a "local community," as required by section 702(1)(A) of the Act.

One commenter considered the selection criterion in proposed § 366.27(a)(2) too vague and suggested that it be expanded to "not appear to be the traditional 'needs assessment' that creates more service providers."

The Secretary believes that the criterion adequately explains how an applicant can be expected to identify the need for a new center in a community and how the applicant plans to address this identified need. The Secretary does not expect any change in the final regulations.

Commenters suggested reducing the points allotted to "plan of operation" and increasing points for "involvement of individuals with significant disabilities" in the selection criteria in proposed § 366.27(g) and (h), respectively. Commenters also felt that the proposed selection criteria should include the involvement of individuals with significant disabilities in the preparation of a center's application.

The Secretary believes that the points assigned to the "plan of operation" selection criterion appropriately reflect its value. The Secretary agrees that participation of individuals with significant disabilities in the preparation of applications is important and anticipates substituting the phrase "developing the center's application" for the phrase "conducting center activities" in § 366.27(h)(1) of the final regulations.

Selection Criteria

In evaluating applications for grants under this competition, the Secretary uses the selection criteria in § 366.27 of the notice of proposed rulemaking published in the **Federal Register** on May 12, 1994 (59 FR 24814, 24838–24839), with the anticipated changes discussed in this notice.

Applicants should prepare their applications based on the proposed regulations, as modified by the expected changes contained in this notice. If additional changes are made in the final regulations that are currently undergoing review, applicants will be given the opportunity to revise or resubmit their applications.

FOR APPLICATIONS: Telephone (202) 205–9315. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Individuals may write to receive an application from Donald Thayer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3326 Switzer Building, Washington, DC 20202–2741.

FOR FURTHER INFORMATION CONTACT: Donald Thayer, telephone: (202) 205–9315, or John Nelson, telephone: (202) 205–9362 (Voice and TDD), U.S. Department of Education, 400 Maryland Avenue, SW., Room 3326 Switzer Building, Washington, DC 20202–2741.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 721(c) and (e) and 796(f).

Dated: June 30, 1994.

Judith E. Heumann,

Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 94–16288 Filed 7–5–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.177A]

Independent Living Services for Older Individuals Who Are Blind; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program

This program supports projects that—(1) provide independent living services to older individuals who are blind; (2) conduct activities that will improve or expand services for these individuals; and (3) conduct activities to help improve public understanding of the problems of these individuals. The Independent Living Services for Older Individuals Who Are Blind program supports the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Any designated State agency (DSA) that is authorized to provide rehabilitation services to individuals who are blind is eligible for an award under this program.

Deadline for Transmittal of Applications: August 5, 1994

Deadline for Intergovernmental Review: September 6, 1994

Applications Available: July 6, 1994

Available Funds: $7,449,000.

Estimated Range of Awards: $130,000–180,000.

Estimated Average Size of Award: $158,000.

Estimated Number of Awards: 47.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 367.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications on the basis of the notice of proposed rulemaking, published in the **Federal Register** on May 12, 1994 (59 FR 24814), because the Department's authority to obligate these funds will expire on September 30, 1994.

The comment period for the notice of proposed rulemaking ended on June 13, 1994. Six parties submitted comments on proposed 34 CFR Part 367. The following is a summary of the comments received and of the changes that are expected to be made, based on public comments, in the final regulations that are currently undergoing review.

Three commenters supported the proposed regulations as worded.

One commenter recommended adding the word "may" to proposed § 367.3(b). (Although the commenter identified the provision as § 367.1(b), the comment makes sense only if applied to proposed § 367.3(b).) The commenter stated that the addition of the word "may" would give States flexibility in the event they have funds to cover other services.

Proposed § 367.3(a) states that a DSA "may" use funds awarded under proposed Part 367 for the activities described in proposed §§ 367.1 and in 367.3(b). The Secretary believes that this language already provides a DSA with adequate flexibility in choosing which services will be provided to individuals in the State. Therefore, no change to proposed § 367.3(b) is expected in the final regulations.

One commenter suggested changing the definition of "older individual who is blind" in proposed § 367.5 to make it less restrictive. Because this term is specifically defined in section 751 of the Act, no change to this definition in proposed § 367.5 is expected in the final regulations.

One commenter recommended adding a definition of "capacity building" to proposed § 367.5. The Secretary does not believe a definition is necessary because a variety of possible opportunities already exists for local, regional, and State "capacity building."

One commenter suggested that the list of services in proposed § 367.22(g) should be the same as that provided in proposed § 367.3(b) and also suggested adding the word "may" to § 367.22(g)(2). The commenter also stated that the wording in proposed § 367.22(g) could be construed to mean that grant funds have to be used for all the listed services and that States should not have to duplicate services already provided by the State through other sources.

The Secretary agrees that the list of services in these proposed provisions should be the same. The Secretary expects that this change will be made to proposed §§ 367.3(b) and 367.22(g)(2) in the final regulations. The Secretary also agrees that Chapter 2 funds should be used in a way that will supplement services that may already be available through other sources. The Secretary expects that proposed § 367.22(g)(2) of the final regulations will be changed to make clear that an application will be evaluated on the extent to which the DSA will use Chapter 2 funds to meet the unmet independent living (IL) needs of individuals in the State.

One commenter recommended including older individuals who are blind in the selection of new methods and approaches for the provision of IL services pursuant to proposed § 364.28.

The Secretary believes that the views of older individuals who are blind will be adequately represented and addressed by the Statewide Independent Living Council (SILC). The SILC and DSU have joint responsibility for development of the State plan and for ensuring that consumers have the opportunity to comment on the development and revision of the State plan during public hearings. The selection and incorporation into the State plan of any new approaches for the provision of IL services to older individuals who are blind would require a revision to the State plan. Therefore, the Secretary does not expect any changes in the final regulations.

Two commenters recommended deleting proposed § 367.41(b), which restricts a DSA's flexibility to enter into procurement contracts with public and private nonprofit agencies.

Although section 752(i)(2)(A) of the Rehabilitation Act of 1973 (Act), as amended, 29 U.S.C. 701–796i, is a general provision that allows the DSA to operate or administer this program either directly or through grants or contracts, section 752(g) of the Act requires that a State's awards to public and private nonprofit agencies and organizations under this program be made only through grants. Therefore, no change to proposed § 367.41(b) is expected in the final regulations.

Applicants should prepare their applications based on the proposed regulations, as modified by the expected changes contained in this notice. If additional changes are made in the final regulations that are currently undergoing review, applicants will be given the opportunity to revise or resubmit their applications.

FOR APPLICATIONS OR INFORMATION CONTACT: Raymond Melhoff, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3416 Switzer Building, Washington, D.C. 20202–2741. Telephone: (202) 205–9320. Individuals who use a telecommunications device for the deaf (TTD) may call (202) 205–9362.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 796f.

Dated: June 30, 1994.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 94–16287 Filed 7–5–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No: 84.265]

State Vocational Rehabilitation Unit In-Service Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program

This program is designed to support projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of vocational rehabilitation services or in skill areas that will enable personnel to improve their ability to provide vocational rehabilitation services leading to employment outcomes for individuals with disabilities. The State Vocational Rehabilitation Unit In-Service Training program responds to needs identified in the comprehensive system of personnel development in section 101(a)(7) of the Act. The program may include training designed (a) to address recruitment and retention of qualified rehabilitation professionals; (b) to provide for succession planning; (c) to provide for leadership development and capacity building; and (d) for fiscal year 1994, to provide training on the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

Eligible Applicants: Only State agencies designated under a State plan for vocational rehabilitation services under section 101(a) of the Rehabilitation Act of 1973, as amended, are eligible to receive an award under this program.

Deadline for Transmittal of Applications: August 8, 1994

Deadline for Intergovernmental Review: September 7, 1994

Applications Available: July 7, 1994

Available Funds: $5,944,350, of which $4,755,480 is available for allocation to designated agencies for basic awards and $1,188,870 is available for allocation to high quality applications. (Specific information regarding funds available to be allocated to designated State agencies for basic awards appears in the chart in this notice.)

Estimated Range of Awards: $19,795—$300,680.

Estimated Average Size of Awards: $73,387.

Estimated Number of Awards: 81.

Note: The Department is not bound by any estimate in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR Part 388; and (c) §§ 385.4 and 385.40 through 385.46 of 34 CFR Part 385.

Priorities

Under 34 CFR 75.105(c)(3) and proposed § 385.22(a) the Secretary reserves funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the criteria described in proposed § 388.20. In making a final selection of proposals to support under this program, the Secretary considers the extent to which proposals have exceeded a rating of 80 points and address one or more of the following absolute priorities:

(1) Development and Dissemination of Model In-Service Training Materials and Practices

The proposed project demonstrates an effective plan to develop and disseminate information on its State Vocational Rehabilitation In-Service Training program, including the identification of training approaches and successful practices, in order to permit the replication of these programs by other State vocational rehabilitation units.

(2) Distance Education

The proposed project demonstrates innovative strategies for training State vocational rehabilitation unit personnel through distance education methods, such as interactive audio, video, computer technologies, or existing telecommunications networks.

(3) Enhanced Employment Outcomes for Specific Populations

The proposed project supports specialized training in the provision of vocational rehabilitation or related services to individuals with disabilities

allocation to designated agencies for basic awards and $1,188,870 is available for allocation to high quality applications. (Specific information regarding funds available to be allocated to designated State agencies for basic awards appears in the chart in this notice.)

Estimated Range of Awards: $19,795—$300,680.

Estimated Average Size of Awards: $73,387.

Estimated Number of Awards: 81.

Note: The Department is not bound by any estimate in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR Part 388; and (c) §§ 385.4 and 385.40 through 385.46 of 34 CFR Part 385.

Priorities

Under 34 CFR 75.105(c)(3) and proposed § 385.22(a) the Secretary reserves funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the criteria described in proposed § 388.20. In making a final selection of proposals to support under this program, the Secretary considers the extent to which proposals have exceeded a rating of 80 points and address one or more of the following absolute priorities:

(1) Development and Dissemination of Model In-Service Training Materials and Practices

The proposed project demonstrates an effective plan to develop and disseminate information on its State Vocational Rehabilitation In-Service Training program, including the identification of training approaches and successful practices, in order to permit the replication of these programs by other State vocational rehabilitation units.

(2) Distance Education

The proposed project demonstrates innovative strategies for training State vocational rehabilitation unit personnel through distance education methods, such as interactive audio, video, computer technologies, or existing telecommunications networks.

(3) Enhanced Employment Outcomes for Specific Populations

The proposed project supports specialized training in the provision of vocational rehabilitation or related services to individuals with disabilities to increase the rehabilitation rate into competitive employment for all individuals or specified target groups.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications on the basis of the notice of proposed rulemaking, published in the **Federal Register** on May 9, 1994 (59 FR 24000), because the Department's authority to obligate these funds will expire on September 30, 1994.

The comment period for the notice of proposed rulemaking ended June 8, 1994. Sixteen parties submitted comments on the proposed regulations. The following is a summary of the changes that are expected to be made in the final regulations that are currently undergoing review, based on the public comment.

Five commenters suggested deleting § 388.21(a)(4), which provides a minimum share of not less than one-eighth of one percent of the amounts made available to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau. The commenters believe agencies in the territories, some of which have as many employees as small designated State agencies, should receive the same minimum share of not less than one-third of one percent of the amounts made available for the fiscal year as provided in § 388.21(a)(3) to small agencies. The Secretary agrees that the same minimum share provided to small designated State agencies is appropriate for the specified territories. The Secretary also notes that the territories are eligible to compete for the remaining funds to be allocated based on the quality of the application as determined by competitive reviews conducted by the Department using the selection criteria in § 388.20 and the priorities in § 388.22. The Secretary expects to revise § 388.21(a) by deleting paragraph (4) so that all grant recipients receive the same minimum share of the sums made available for the fiscal year. A revision of § 388.30, deleting paragraph (c), which provides special matching considerations for the territories, is also expected to be made in the final regulations.

Two commenters requested definitions for the terms "succession planning" and "capacity building" used in § 388.1. The Secretary notes that these terms are found in the statute, but are optional for State agencies to address in their in-service training. There are alternative ways to address these terms, and the Secretary prefers not to define them, thus leaving the widest possible discretion to State agencies. No change is expected to be made in the final regulations.

Three commenters addressed the requirement in § 388.20(a)(2)(iii) for an annual needs assessment of in-service training needs. The commenters believe an annual assessment is not necessary and recommend a comprehensive needs assessment every three years and a less comprehensive review annually. The Secretary agrees that a comprehensive assessment is not needed annually. A revision of § 388.20(a)(2)(iii), deleting the word "annual," is expected to be made in the final regulations.

Three commenters noted that the regulations do not specify the length of projects. Recommendations of project periods of 36 and 60 months were made. The Secretary notes that regulations usually do not specify project duration and instead leave flexibility for the Secretary to determine an appropriate project period each time a competition is announced. This notice solicits applications for a 36-month period. No change is expected to be made in the final regulations.

A commenter asked that the phrase "in connection with a distance learning training course" be dropped from the description of allowable telecommunications and technology fees in § 388.31(d). The Secretary agrees that distance learning may include valuable in-service training activities, such as a lecture or technology demonstration, that are not part of a training course. The Secretary expects to revise § 388.31(d) by deleting the words "in connection with a distance learning training course."

A commenter noted that it was an unnecessary limitation to require that distance education for rehabilitation workers be at their job sites as stated in § 388.22(b)(2). The commenter noted that it may be necessary or efficient for an agency to gather a group of employees at a central location removed from individual offices for distance education. The Secretary agrees that there is no compelling reason to require in this priority that training occur at an individual job site. The Secretary expects to revise § 388.22(b)(2) by deleting the words "at their job sites."

A commenter requested clarification of the heading for § 388.22(b)(3), which refers to "specific populations" although the text that follows refers to "all individuals or specified groups." The Secretary believes that it is up to the State agency to determine whether in-service training to improve employment outcomes will be targeted narrowly or broadly. Activities directed

to improving employment outcomes for all population groups or for a specific target group are permitted under this priority. No change is expected to be made in the final regulations.

A commenter observed that the NPRM retains most of the language in the current regulations and does not accurately reflect the Rehabilitation Act Amendments of 1992 (the 1992 Amendments), particularly provisions related to State and strategic plans. The Secretary believes that extensive changes have been proposed in the current regulations and is confident that all requirements in the 1992 Amendments have been implemented. No change is expected to be made in the final regulations.

Two commenters supported reserving a portion of funds for priorities, but believe this reserve should be divided between priorities based on need and priorities based on responsiveness or quality of the application and innovative approaches. The Secretary believes that the three priorities listed in the proposed regulations address significant needs of State agencies and that no further division of the priorities into categories is needed. No change is expected to be made in the final regulations.

Four commenters objected to the proposed formula in § 388.21 whereby 80 percent of the funds available would be distributed based on the number of staff and 20 percent of the funds available would be distributed based on quality. They believe that the split penalizes States with small populations with limited capacity to write grants. In the commenters' view, the distribution does not take into account extra travel costs in a State with a large geographic area, and a commenter suggested increasing the small State agency minimum share. The Secretary believes that the proposed formula maximizes the amount of funds available for basic awards while ensuring that a reasonable amount is available for small agencies and for the Secretary's priorities. No change is expected to be made in the final regulations.

A commenter recommended dropping the priority in § 388.22(b)(2) for distance education on the grounds that there is no evidence that distance education produces better results at less cost. The Secretary believes that distance education is needed in some States and wants to ensure that a mechanism exists to demonstrate innovative approaches to learning. No change is expected to be made in the final regulations.

Two commenters recommended deleting § 388.20(f)(1)(ii) of the evaluation selection criteria that would judge in-service training outcomes by the extent to which training results in improved individual competency through licensure, certification, or award of academic degrees or certificates. The commenters believe in-service training to be short-term and job-based; therefore, reference to improved individual competency through degree-based programs should be dropped. The Secretary believes that, in response to the need to increase the number of qualified rehabilitation personnel, academic outcomes must be included among the measures of in-service training programs. No change is expected to be made in the final regulations.

Three commenters observed that reviewers for in-service proposals should be well qualified, represent diverse populations, and be identified by name and program affiliation after the review is completed. They commented that all applicants should receive reviewer comments. The Secretary agrees that reviewers must be qualified and representative of the diverse populations and agencies assisted through in-service training. The Secretary does make summary information available on characteristics of reviewers but believes the specific reviewers of proposals should remain anonymous. All applicants are provided with the reviewer comments on their applications when the review is completed. No change is expected to be made in the final regulations.

A commenter noted that § 388.21 does not state what the minimum score is that an applicant must receive in order for its application to be approved by the Secretary or how it is to be computed. In order to make funding decisions, the Secretary will set a minimum score for each competition after all applications have been reviewed. The minimum score will be computed through an analysis of all reviewed applications to determine those that are in the fundable range. No change is expected to be made in the final regulations.

A commenter observed that § 388.1 should be revised, and the regulations changed throughout, to emphasize human resource development in place of training. Peer reviewers should be oriented to human resource development prior to their service as reviewers. The Secretary agrees that the term human resource development is descriptive of many appropriate activities under this program. However, the Rehabilitation Act of 1973, as amended, uses the term "in-service training," so that term is used in the regulations. No change is expected to be made in the final regulations.

Regarding § 388.22, which sets the Secretary's priorities, a commenter asked if an application that addresses issues or activities other than the three priorities listed can be eligible for quality funds. The Secretary responds that only applications that respond to the priorities already identified by the Secretary in the regulations for this program or priorities established through future rulemaking will be considered when allocating the quality funds. No change is expected to be made in the final regulations.

Applicants should prepare their applications based on the proposed regulations, as modified by the expected changes contained in this notice. If additional changes are made in the final regulations that are currently undergoing review, applicants will be given the opportunity to revise or resubmit their applications.

For Applications or Information Contact: Richard Melia, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3324 Switzer Building, Washington, D.C. 20202–2649. Telephone (202) 205–9400. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 770 and 771a.

Dated: June 30, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

FUNDS AVAILABLE FOR BASIC AWARDS UNDER § 388.21

State Agency	Amount
AL	$97,738
AK	19,795
AZ	70,830
AR	95,655
AR—Blind	19,795
CA	300,680
CO	39,929
CT	30,901
CT—Blind	19,795

FUNDS AVAILABLE FOR BASIC AWARDS UNDER § 388.21—Continued

State Agency	Amount
DE	19,795
DE—Blind	19,795
FL	167,527
FL—Blind	38,713
GA	152,597
HI	19,795
ID	21,353
ID—Blind	19,795
IL	148,083
IN	65,275
IA	48,956
IA—Blind	19,795
KS	51,213
KT	81,246
KT—Blind	19,795
LA	85,760
ME	23,263
MD	88,855
MA	99,648
MA—Blind	20,138
MI	120,133
MI—Blind	19,795
MN	65,101
MN—Blind	19,795
MS	90,447
MO	57,115
MO—Blind	19,795
MT	19,795
NE	27,256
NE—BLIND	19,795
NV	19,795
NH	19,795
NJ	55,900
NJ—Blind	20,394
NM	29,339
NM—Blind	19,795
NY	161,624
NY—Blind	29,512
NC	162,840
NC—Blind	29,860
ND	19,795
OH	127,077
OK	71,177
OR	43,401
OR—Blind	19,795
PA	103,988
PA—Blind	19,795
RI	19,795
SC	153,291
SC—Blind	19,795
SD	19,795
SD—Blind	19,795
TN	80,899
TX	267,348
TX—Blind	81,593
UT	35,241
VT	19,795
VT—Blind	19,795
VA	82,461
VA—Blind	19,795
WA	55,206
WA—Blind	19,795
WV	103,988
WI	69,615
WY	19,795
District of Columbia	30,033
Puerto Rico	199,817
American Samoa	19,795
Northern Mariania Islands	19,795
Guam	19,795
Virgin Islands	19,795

FUNDS AVAILABLE FOR BASIC AWARDS UNDER § 388.21—Continued

State Agency	Amount
DE	19,795
DE—Blind	19,795
FL	167,527
FL—Blind	38,713
GA	152,597
HI	19,795
ID	21,353
ID—Blind	19,795
IL	148,083
IN	65,275
IA	48,956
IA—Blind	19,795
KS	51,213
KT	81,246
KT—Blind	19,795
LA	85,760
ME	23,263
MD	88,855
MA	99,648
MA—Blind	20,138
MI	120,133
MI—Blind	19,795
MN	65,101
MN—Blind	19,795
MS	90,447
MO	57,115
MO—Blind	19,795
MT	19,795
NE	27,256
NE—BLIND	19,795
NV	19,795
NH	19,795
NJ	55,900
NJ—Blind	20,394
NM	29,339
NM—Blind	19,795
NY	161,624
NY—Blind	29,512
NC	162,840
NC—Blind	29,860
ND	19,795
OH	127,077
OK	71,177
OR	43,401
OR—Blind	19,795
PA	103,988
PA—Blind	19,795
RI	19,795
SC	153,291
SC—Blind	19,795
SD	19,795
SD—Blind	19,795
TN	80,899
TX	267,348
TX—Blind	81,593
UT	35,241
VT	19,795
VT—Blind	19,795
VA	82,461
VA—Blind	19,795
WA	55,206
WA—Blind	19,795
WV	103,988
WI	69,615
WY	19,795
District of Columbia	30,033
Puerto Rico	199,817
American Samoa	19,795
Northern Mariania Islands	19,795
Guam	19,795
Virgin Islands	19,795

FUNDS AVAILABLE FOR BASIC AWARDS UNDER § 388.21—Continued

State Agency	Amount
Palau	19,795
	4,755,480

[FR Doc. 94–16286 Filed 7–5–94; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, July 6, 1994: 7:00 p.m.–10:00 p.m.

ADDRESSES: Holiday Inn Crowne Plaza, 4255 South Paradise Road, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7633.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The EM SSAB provides input and recommendations to the Department of Energy on environmental management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Wednesday, July 6, 1994

7:00 p.m.
- Call to Order
- Review Agenda
- Minutes Acceptance
- Financial Report
- Correspondence
- Reports from Committees, Delegates and Representatives
- Unfinished Business
- New Business
- Evaluation of Board and Environmental Restoration and Waste Management Programs
- Announcements

10:00 p.m.
- Adjournment

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details. A final agenda will be available at the meeting on Wednesday, July 6, 1994.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 2 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC on June 30, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–16298 Filed 7–5–94; 8:45 am]
BILLING CODE 6450–01–P

Office of Fossil Energy

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act. (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC).

Date and Time: Wednesday, July 27, 1994 at 8:30 AM.

Place: ANA Hotel, Grand Ballroom, 2401 M Street, NW., Washington, DC.

Contract: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5) Washington, D.C. 20585, Telephone: 202/586–3867.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order and introductory remarks by Ray L. Hunt, Chairman of the NPC.
—Consider and approve the proposed report of the NPC Committee on the Oil Pollution Act.
—Consider and approve the proposed report of the NPC Committee on Marginal Wells.
—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. This notice is being published less than 15 days in advance of the meeting due to certain programmatic issues which had to be resolved prior to publication in the **Federal Register**.

Transcripts: Available for public review and copying at the Public Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on June 24, 1994.

Marcia Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 94–16297 Filed 7–5–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2724–008; Ohio]

City of Hamilton; Notice of Availability of Environmental Assessment

June 29, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed a non-capacity related amendment of license for the City of Hamilton Hydroelectric Project, No. 2724–008. The City of Hamilton Hydroelectric Project is located on the Miami River in Butler County, Ohio. The application is for approval to remove and replace the existing powerhouse superstructure and lowering the elevation of the powerhouse and generating unit. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16338 Filed 7–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2431–008; Michigan and Wisconsin

Wisconsin Electric Power Company; Notice of Availability of Draft Environmental Assessment

June 29, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major new license for the existing Brule Hydroelectric Project located on the Brule River in Iron County, Michigan and Florence County, Wisconsin, near Crystal Falls, Wisconsin, and has prepared a draft Environmental Assessment (DEA) for the existing project.

Copies of the EA are available for review in the Public Reference Branch, Room 3308 the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2431–008 to all comments. For further information, please contact Mark Pawlowski, Environmental Assessment Coordinator, at (202) 219–2795.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16339 Filed 7–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–266–000]

ANR Pipeline Company; Technical Conference

June 29, 1994.

In the Commission's order issued on June 29, 1994, in the above-captioned proceeding, the Commission held that the filing is to be consolidated with the ongoing proceedings and technical conference scheduled in Docket No. RP94–150–000. The previously scheduled technical conference in Docket No. RP94–150–000 will be held Thursday, July 7, 1994, at 1:30 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16341 Filed 7–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–120–000]

Koch Gateway Pipeline Company; Informal Settlement Conference

June 29, 1994.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on July 13, 1994, at 10 a.m. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Donald A. Heydt at (202) 208–0740 or Warren C. Wood at (202) 208–2091.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16340 Filed 7–5–94; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

National Defense Authorization Act Proposed Procedures—Central Valley Project, California

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Procedures to Implement Section 2929 of the 1994 National Defense Authorization Act (National Defense Authorization Act, Pub. L. No. 103–160, 107 Stat. 1547, 1935 (1993)).

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), has developed proposed procedures to fulfill the requirements of section 2929 of the National Defense Authorization Act for fiscal year 1994 (National Defense Authorization Act, Pub. L. No. 103–160, 107 Stat. 1547, 1935 (1993)) (NDA Act). Under the proposed procedures to implement the requirements of the NDA Act, Western would allocate up to 119.223 megawatts (MW) of Power from the Central Valley Project (CVP), which represents the amount of CVP Power provided as of November 30, 1993, to military installations. The NDA Act was signed into public law on November 30, 1993. Section 2929 of the NDA Act provides that, for a 10-year period beginning on November 30, 1993, the electric power allocations provided as of November 30, 1993, by Western from the CVP to military installations in the State of California which have been closed or approved for closure pursuant to the Defense Base Closure and Realignment Act of 1990 (part A, Title XXIX, Pub. L. 101–510; 10 U.S.C. 2687 note) (1990 Act) shall be reserved for sale through Long-Term Contracts to Preference Entities which agree to use such Power to promote economic development at a military installation that is closed or approved for closure pursuant to the 1990 Act. To the extent Power reserved by the NDA Act is not disposed of through Long-Term Contracts, it shall be made available on a temporary basis during such 10-year period to military installations in the State of California through Short-Term Contracts. By implementing these Procedures, Western will establish the criteria to allocate the Power made available as a result of the NDA Act.

The procedures set forth in this **Federal Register** will explain in detail how Western intends to implement the NDA Act. Under the proposed NDA Act Procedures, Western has identified the Power that will be classified as NDA Act Power and the types of services and contracts that will be offered. Also set forth under the proposed NDA Act Procedures are the general eligibility criteria that Western will apply to all applicants requesting an Allocation of NDA Act Power, and the procedures to be used by applicants when applying for NDA Act Power, which include demonstration that certain economic development criteria are being met. Lastly, Western has set forth the

Military ins

Naval Air Station, Moffett Field, CA	
Naval Station, Treasure Island, CA	
Naval Shipyard, Mare Island, Vallejo, CA	
Totals	

Western is providing notice by this **Federal Register** that 34.209 MW of the total possible 119.223 MW (as shown in Appendix A) will be allocated pursuant

procedures to implement the requirements of the NDA Act, Western would allocate up to 119.223 megawatts (MW) of Power from the Central Valley Project (CVP), which represents the amount of CVP Power provided as of November 30, 1993, to military installations. The NDA Act was signed into public law on November 30, 1993. Section 2929 of the NDA Act provides that, for a 10-year period beginning on November 30, 1993, the electric power allocations provided as of November 30, 1993, by Western from the CVP to military installations in the State of California which have been closed or approved for closure pursuant to the Defense Base Closure and Realignment Act of 1990 (part A, Title XXIX, Pub. L. 101–510; 10 U.S.C. 2687 note) (1990 Act) shall be reserved for sale through Long-Term Contracts to Preference Entities which agree to use such Power to promote economic development at a military installation that is closed or approved for closure pursuant to the 1990 Act. To the extent Power reserved by the NDA Act is not disposed of through Long-Term Contracts, it shall be made available on a temporary basis during such 10-year period to military installations in the State of California through Short-Term Contracts. By implementing these Procedures, Western will establish the criteria to allocate the Power made available as a result of the NDA Act.

The procedures set forth in this **Federal Register** will explain in detail how Western intends to implement the NDA Act. Under the proposed NDA Act Procedures, Western has identified the Power that will be classified as NDA Act Power and the types of services and contracts that will be offered. Also set forth under the proposed NDA Act Procedures are the general eligibility criteria that Western will apply to all applicants requesting an Allocation of NDA Act Power, and the procedures to be used by applicants when applying for NDA Act Power, which include demonstration that certain economic development criteria are being met. Lastly, Western has set forth the procedures that will be used in allocating NDA Act Power to eligible applicants, including a priority list developed by Western for allocating NDA Act Power. In general, the proposed Procedures provide that the allocation of CVP Power as of November 30, 1993, at a military installation that is closed or approved for closure under the 1990 Act will be classified as NDA Act Power and will be reserved through November 30, 2003, for use at that military installation. Until the NDA Act Power is fully utilized at that military installation, the NDA Act Power will be made available on a temporary basis as described in Section G.1. of the NDA Act Procedures.

NDA Act Power will be available to the following types of entities, in the following priority:

1. First for a military load at a Closed Military Installation that received CVP Power as of November 30, 1993, or to qualified preference entities promoting economic development at such closed military installation.

2. Second, on a recallable basis with 3 years' notice, to a qualified preference entity promoting economic development at a Closed Military Installation that did not have CVP Power as of November 30, 1993.

3. Third, on a recallable basis with 6 months' notice, to a military branch which had CVP Power at a Closed Military Installation as of November 30, 1993, for use within that military branch at a military installation within the CVP marketing area.

4. Fourth, on a recallable basis with 6 months' notice, to any military branch for use at a military installation within the CVP marketing area, or to a negatively affected customer.

DATES: The comment period on the proposed procedures will begin with the publication of this notice in the **Federal Register** and will end August 10, 1994. To be assured consideration, all written comments should be received by Western by the end of the comment period. Western will hold a public information forum on the proposed NDA Act Procedures at 9 a.m. on July 27, 1994. A public comment forum on the proposed NDA Act Procedures will follow at 1 p.m. on July 27, 1994. The forums will be held at the Holiday Inn-Holidome, 5321 Date Avenue, Sacramento, California.

ADDRESSES: All written comments regarding the proposed procedures to implement the requirements of the NDA Act should be directed to Mr. James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097. All documentation developed or retained by Western for the purpose of developing these procedures will be available for inspection and copying at the Sacramento Area Office located at the above address.

FOR FURTHER INFORMATION CONTACT: Zola M. Jackson, Assistant Area Manager for Power Marketing, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097, (916) 649–4421.

After all public comments have been thoroughly considered, Western will prepare and publish the final NDA Act Procedures in the **Federal Register**.

SUPPLEMENTARY INFORMATION: On October 5, 1992, Western's Sacramento Area Office published notice of the Final 1994 Power Marketing Plan, Central Valley Project, California (57 FR 45782), governing allocations of 529.946 MW of Power from the CVP. That notice provided the final allocation of a total of 119.223 MW of Power to certain Department of Defense (DOD) military installations, as specified in Appendix A herein. Contracts for such Power were entered into for a term ending December 31, 2004. The power contracts with the DOD agencies allow for certain shifts of Power among military installations with approval by Western. Effective November 30, 1993, such shifts became subject to the NDA Act.

As of the date of publication of this **Federal Register**, the following military installations are scheduled to close pursuant to the 1990 Act:

Military installations	Long-term firm power	Type III withdrawable	Total
Naval Air Station, Moffett Field, CA	4.170	2.270	6.440
Naval Station, Treasure Island, CA	3.020	2.581	5.601
Naval Shipyard, Mare Island, Vallejo, CA	20.020	2.148	22.168
Totals	27.210	6.999	34.209

Western is providing notice by this **Federal Register** that 34.209 MW of the total possible 119.223 MW (as shown in Appendix A) will be allocated pursuant to the final NDA Act Procedures on a first-come, first-served basis beginning 30 days after publication of the final procedures. As any of the remaining amount of 85.014 MW becomes available for allocation, pursuant to the NDA Act, Western will provide

notification of the availability of that Power.

Proposed Procedures for the NDA Act

These proposed procedures address how Western plans to allocate up to 119.223 MW of CVP contract rate of delivery (CROD) provided as of November 30, 1993, to military installations closed or approved for closure pursuant to the 1990 Act. When determining who will receive Allocations of Power, Western will exercise its discretion as provided by law.

A. Acronyms and Definitions

As used herein, the following acronyms and definitions when used in initial capitalization, whether singular or plural, shall have the following meanings:

Allocation: An offer by Western to sell to an applicant a specified type and quantity of NDA Act Power made available by Western in accordance with the final NDA Act Procedures.

Allottee: A Preference Entity receiving an Allocation pursuant to the final NDA Act Procedures.

Closed Military Installation: A military installation in the CVP Marketing Area which is closed or approved for closure pursuant to the 1990 Act.

Contract Rate of Delivery (CROD): The maximum amount of Power served by Western on an annual basis under contract between a contractor and Western, and as it may be reduced or increased in accordance with applicable law or contractual terms.

Contract 2948A: Contract No. 14–06–200–2948A between the Pacific Gas and Electric Company and Western, which provides for certain sales, exchanges, and transmission of electric Power.

CVP: The Central Valley Project, a multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River south of Bakersfield, operated by the Bureau of Reclamation.

CVP Marketing Area: The area which generally encompasses the CVP water basin in northern and central California extending from the Cascade Range in northern California to the plains along the Kern River south of Bakersfield.

Final Withdrawal Procedures: Those procedures published in the **Federal Register** on March 5, 1986 (51 FR 7702), which specify the methods to be used by Western for the adjustment of CROD under varying circumstances.

Long-Term Contract: A contract offered to a Preference Entity who is promoting an economic development project at either a Priority-One Base or a Priority-Two Base.

Long-Term Firm NDA Act Power: Firm Power allocated by Western and subject to the terms and conditions specified in an electric service contract and the final NDA Act Procedures.

Marketing Plan: The Final 1994 Power Marketing Plan, Central Valley Project, California (57 FR 45782).

NDA Act Power: The CVP CROD, in the amounts set forth in Appendix A, which shall be determined to be NDA Act Power by Western based on the following two conditions: (1) such CVP CROD was under contract to military installations in the CVP Marketing Area as of November 30, 1993, and (2) the military installations with such CVP CROD are closed or approved for closure pursuant to the 1990 Act.

NDA Act Power Entitlement: An amount of NDA Act Power equal to the amount of CVP CROD under contract with a Priority-One base as of November 30, 1993.

NDA Act Procedures: Those procedures adopted by Western to fulfill the requirements of the NDA Act.

Negatively Affected Customer: A Preference Entity with a contract for CVP Power from Western as of November 30, 1993, which is detrimentally affected as a result of a Closed Military Installation which is located within the service area of such Preference Entity.

Pacific Gas and Electric Company (PG&E): The investor-owned utility having a service area in northern and central California and load control responsibility for the northern and central California area.

Power: Capacity and associated energy.

Preference Entity: An entity that meets the requirements of Reclamation Law, which provides that preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (Reclamation Act of 1939, section 9(c), 43 U.S.C. 485h(c)).

Priority-One Base: A Closed Military Installation with CVP CROD as of November 30, 1993.

Priority-Three Base: A military installation, not scheduled for closure, which meets the eligibility criteria set forth in the Marketing Plan.

Priority-Two Base: A Closed Military Installation without a CVP CROD.

Short-Term Contract: A contract offered on a temporary basis to a Preference Entity at a Priority-Three Base or to a Negatively Affected Customer.

Type III Withdrawable NDA Act Power: Firm Power which is withdrawable to protect the 1,152–MW Load Level before withdrawal of other types of noninterruptible Power and which is subject to additional terms and conditions specified in an electric service contract.

Unutilized NDA Act Power: NDA Act Power which is not allocated under the final NDA Act Procedures.

Western: Western Area Power Administration, United States Department of Energy (DOE), a Federal power marketing administration responsible for marketing the surplus generation from Federal hydroelectric multipurpose projects pursuant to Reclamation Law and the DOE Organization Act (91 Stat. 565, 42 U.S.C. § 7101 *et seq.*).

1,152–MW Load Level: The maximum simultaneous demand that Western provides, and that PG&E is obligated to support, in accordance with the terms of Contract 2948A.

B. Reclassification of CVP CROD to NDA Act Power

If at any time through November 30, 2003, an amount of CVP CROD set forth in Appendix A is determined to be NDA Act Power by Western, Western will administratively reclassify that amount of CVP CROD to NDA Act Power. Western shall recall that amount of CVP CROD from the military branch with a contractual right for that CVP CROD, and Western shall amend the associated contract to reflect the recall of that amount of reclassified CROD. At that time, Western shall offer the military branch the right to shift any remaining CVP CROD among the bases with CVP CROD at the time of the recall. The NDA Act Power will be offered to the military branch it was recalled from, under a short-term contract, subject to Western allocating all or part of such NDA Act Power first to a qualified applicant with a greater right to such NDA Act Power pursuant to the final NDA Act Procedures.

C. Types of Service

1. Long-Term Firm NDA Act Power

Western proposes to allocate up to a total of 106.000 MW as Long-Term Firm NDA Act Power (identified in Appendix A), as such Power becomes available due to base closures pursuant to the 1990 Act.

2. Type III Withdrawable NDA Act Power

Western proposes to allocate up to a total of 13.223 MW as Type III Withdrawable NDA Act Power (identified in Appendix A), as such Power becomes available due to base closures pursuant to the 1990 Act.

D. Types of Contracts

1. Long-Term Contracts

Long-Term Contracts may be offered to Preference Entities promoting an economic development project at a Closed Military Installation. The termination date of any such contract shall be no later than December 31, 2004, and such contracts shall be subject to the final NDA Act Procedures and the Final Withdrawal Procedures.

2. Short-Term Contracts

Short-Term Contracts may be offered to Preference Entities at a Priority-Three Base or to a Negatively Affected Customer. Western shall have the right to recall all or any part of the NDA Act Power CROD under such Short-Term Contract upon giving 6 months' written notice. The termination date of the contract shall be no later than December 31, 2004, and such contract shall be subject to the final NDA Act Procedures and the Final Withdrawal Procedures.

E. General Eligibility Criteria

General eligibility criteria apply to applicants seeking an Allocation of NDA Act Power under the final NDA Act Procedures. Criteria 1 through 6 shall apply to applicants who are promoting an economic development project at a Closed Military Installation. Criteria 4 through 7 shall apply to all other applicants seeking an Allocation of NDA Act Power.

1. Applicant must have an economic development project plan that fulfills the following criteria:

(i) Promotes the establishment or expansion of industrial, commercial, or governmental facilities at the Closed Military Installation, and

(ii) Helps create or retain jobs in the near term and assists in the creation of additional long-term employment opportunities. The economic development project plan must include a specific plan for hiring the unemployed and underemployed persons from the area near the Closed Military Installation, and

(iii) Has been approved by the appropriate governing body of the military installation in which it is, or will be, located and has community support, which is demonstrated by appropriate local government agency's written approval of the economic development project plan, and

(iv) Is supported by public and/or private sector investment and can

Withdrawable NDA Act Power (identified in Appendix A), as such Power becomes available due to base closures pursuant to the 1990 Act.

D. Types of Contracts

1. Long-Term Contracts

Long-Term Contracts may be offered to Preference Entities promoting an economic development project at a Closed Military Installation. The termination date of any such contract shall be no later than December 31, 2004, and such contracts shall be subject to the final NDA Act Procedures and the Final Withdrawal Procedures.

2. Short-Term Contracts

Short-Term Contracts may be offered to Preference Entities at a Priority-Three Base or to a Negatively Affected Customer. Western shall have the right to recall all or any part of the NDA Act Power CROD under such Short-Term Contract upon giving 6 months' written notice. The termination date of the contract shall be no later than December 31, 2004, and such contract shall be subject to the final NDA Act Procedures and the Final Withdrawal Procedures.

E. General Eligibility Criteria

General eligibility criteria apply to applicants seeking an Allocation of NDA Act Power under the final NDA Act Procedures. Criteria 1 through 6 shall apply to applicants who are promoting an economic development project at a Closed Military Installation. Criteria 4 through 7 shall apply to all other applicants seeking an Allocation of NDA Act Power.

1. Applicant must have an economic development project plan that fulfills the following criteria:

(i) Promotes the establishment or expansion of industrial, commercial, or governmental facilities at the Closed Military Installation, and

(ii) Helps create or retain jobs in the near term and assists in the creation of additional long-term employment opportunities. The economic development project plan must include a specific plan for hiring the unemployed and underemployed persons from the area near the Closed Military Installation, and

(iii) Has been approved by the appropriate governing body of the military installation in which it is, or will be, located and has community support, which is demonstrated by appropriate local government agency's written approval of the economic development project plan, and

(iv) Is supported by public and/or private sector investment and can present evidence of adequate funding, and

(v) Demonstrates that necessary permits, land acquisitions, or options on land and right-of-way have been obtained; demonstrates either that ownership or a long-term lease of the electrical distribution system has been obtained; and demonstrates that all other legal requirements of the application process have been satisfied.

2. The economic development project must occur at a Closed Military Installation.

3. Applicant must provide documentation certifying that the entity operating the economic development project is eligible to exist and operate at the Closed Military Installation that is the site of the economic development project.

4. Applicant must qualify as a Preference Entity.

5. Applicant must be located within the CVP Marketing Area.

6. An applicant's load at each delivery point shall be no less than an annual peak of 500 kW.

7. Those applicants applying for NDA Act Power to be used at a Priority-Three Base must exist and operate and be ready, willing, and able to receive and use, or receive and distribute such NDA Act Power beginning on the date of application. Those applicants applying for NDA Act Power as a Negatively Affected Customer must be a Preference Entity with a contract for CVP Power from Western as of November 30, 1993.

F. Applications for NDA Act Power

Prospective applicants may begin requesting NDA Act Power from Western at any time later than 30 days after publication of the **Federal Register** notice detailing the final NDA Act Procedures, except that requests for applications will not be considered after November 30, 2003. Requests shall be considered on a first-come, first-served basis.

1. Letter of Interest

(i) To be considered for NDA Act Power, each prospective applicant must first submit to the Area Manager, Sacramento Area Office, a letter of interest in receiving NDA Act Power. In the letter of interest, the prospective applicant must indicate whether it is either a Preference Entity requesting an allocation of NDA Act Power for use at a Priority-One, Priority-Two, or Priority-Three Base, or a Negatively Affected Customer.

(A) For Preference Entities requesting an allocation of NDA Act Power to be used at a Priority-One, Priority-Two, or Priority-Three Base, the letter of interest must also indicate the Closed Military Installation where the NDA Act Power will be used, and the estimated date when the economic development project plan will be completed.

(B) Negatively Affected Customers must also identify in the letter of interest, the Closed Military Installation that is located within its service area and the direct effects of the closing of that military installation on the Negatively Affected Customer.

(ii) If the letter of interest does not meet the criteria set forth in F.1.(i) (A) and (B) above, Western will notify the requestor within 60 days of receiving the request.

(iii) If the letter of interest meets the criteria set forth in F.1.(i) (A) and (B) above, Western will determine whether NDA Act Power can be made available to meet the request.

(A) If NDA Act Power is available, Western shall mail an applicant profile data (APD) form to the prospective applicant within 60 days of receiving the request. A completed application package which contains all of the information listed on the APD will be required. This ensures that Western will have a uniform basis upon which to evaluate the applications.

(B) If NDA Act Power is not available, Western will send a letter to the prospective applicant within 60 days of receiving the letter of interest. This letter will state that there is no NDA Act Power currently available to meet the request. Western will place the prospective applicant's name on a list of interested parties. At any time that NDA Act Power becomes available, Western will send a notice of availability to all interested parties from which Western has received a letter of interest and mail an APD form to the prospective applicant.

2. Applicant Profile Data (APD):

The content and format of the APD is outlined below. The information should be submitted in the sequence listed. The applicant must provide all requested information or the most reasonable estimates that are available. The applicant should note any requested information that is not applicable or not available. The APD must be typed and two copies submitted by certified mail to the address provided by Western's Sacramento Area Office. The burden of ensuring consistency of the content of both copies rests with the applicant. Western is not responsible for errors in data or missing pages.

All items of information in the APD should be answered as if prepared by the organization seeking the Allocation.

The application package shall consist of the following:

(i) Applicant.

(A) Applicant's name and address.

(B) Person(s) representing applicant: Please provide the name, address, title, and telephone number of such person(s).

(C) Type of organization: For example, municipality, rural electric cooperative, irrigation district, State agency, or Federal agency.

(D) Parent organization.

(E) Names of members.

(F) Applicable law under which organization was established.

(ii) The proposed economic development project plan, including the name of the military installation on which the economic development project is proposed.

(iii) Documentation certifying that the entity operating the economic development project is eligible to exist and operate at the Closed Military Installation.

(iv) Service Requested:

The amount of electrical service requested.

(v) Loads:

Projected maximum demand (kilowatts (kW)) and energy use (kilowatthours (kWh)) for each month for a period of 5 calendar years, beginning on the proposed date that the economic development project begins operating.

(vi) Transmission:

(A) Points of delivery: Provide the preferred point(s) of delivery on Western's system or a third-party's system, the required voltage of service, and the capacity desired at each point of delivery.

(B) Transmission arrangements: Describe the transmission arrangements necessary to deliver Power to the requested points of delivery.

(vii) Other Information:

The applicant is welcome to provide any other information pertinent to receiving an Allocation.

(viii) Signature:

The signature and title of an appropriate official who is able to attest to the validity of the information submitted and who is authorized to submit the application is required.

3. Western's Consideration of Applications

(i) When the application package is received by Western, Western will verify that the general eligibility criteria set forth in Section E. have been met, and that all items requested in the APD have been provided.

(A) Western will request in writing additional information from any applicant whose application package is determined to be deficient. The applicant shall have 60 days from the postmark date on Western's request to provide the information.

(B) If Western determines that the applicant does not meet the general eligibility criteria, Western will send (within 60 days of Western's receipt of the application package) a letter explaining why the applicant did not qualify.

(C) If the applicant has met the general eligibility criteria, Western will determine the amount of Power to be allocated pursuant to the general allocation and contract principles set forth in Section G. Western will send a draft contract to the applicant for review which identifies the terms and conditions of the offer and the amounts and types of available Power.

(ii) All NDA Act Power shall be allocated according to the procedures set forth in the general allocation and contract principles.

(iii) If Western determines that reallocations are necessary to fulfill the applicant's request, Western will initiate the reallocation procedures set forth in the general allocation and contract principles.

(iv) In the event that two or more applicants are requesting NDA Act Power and Western does not have enough NDA Act Power available to meet those requests, Western shall use its discretion to determine the amounts of NDA Act Power to be allocated. Western shall use information contained in the application package, including, if applicable, the economic development project plan to make its decision.

(v) Western reserves the right to determine the amount of NDA Act Power to allocate to an applicant, as justified by the applicant in its application package, including, if applicable, the economic development project plan. As loads increase at a Priority-One Base, the Allottee may request and Western may allocate any amount of NDA Act Power up to the Priority-One Base's NDA Act Power Entitlement to meet such increase in loads. If necessary, Western may recall NDA Act Power under the general allocation and contract principles to allocate to the Priority-One Base.

G. General Allocation and Contract Principles

The general allocation criteria and contract principles established in the Marketing Plan shall apply to Allocations of NDA Act Power. To meet the specific requirements of the NDA Act, Western shall also apply the following allocation criteria to all applicants seeking an Allocation of NDA Act Power. All Allocations of NDA Act Power shall be at the sole discretion of Western and shall be determined on a case-by-case basis.

Allocations of NDA Act Power will be made in amounts solely determined by Western, subject to the final NDA Act Procedures.

1. Allocation Rights:

Western will allocate NDA Act Power to qualified applicants based on the following hierarchy:

(i) First, for a military load at a Priority-One Base, or to qualified Preference Entities promoting economic development at a Priority-One Base.

Such first right to NDA Act Power will be limited to the NDA Act Power Entitlement designated for a Priority-One Base.

(ii) Second, to a Preference Entity at a Priority-One Base for amounts in excess of the NDA Act Power Entitlement for such base, to serve a military load or to promote an economic development project; or to a Preference Entity promoting an economic development project at a Priority-Two Base.

NDA Act Power allocated under this paragraph will be subject to recall upon a 3-year written notice in order to fulfill an Allocation to a Priority-One Base which has not fully utilized its NDA Act Power Entitlement under G.1.(i) above.

(iii) Third, to a military branch which had a CVP CROD at a Closed Military Installation as of November 30, 1993, for use at a Priority-Three Base within that military branch within the CVP Marketing Area.

NDA Act Power allocated under this paragraph will be subject to recall upon a 6-month written notice in order to serve a Priority-One or Priority-Two Base.

(iv) Fourth, to any military branch for use at a Priority-Three Base within the CVP Marketing Area, or to a Negatively Affected Customer.

NDA Act Power allocated under this subparagraph will be subject to recall upon a 6-month written notice to serve a Priority-One or Priority-Two Base, or a Priority-Three Base pursuant to G.1.(iii) above.

2. Allocation of NDA Act Power

Western will use the following procedures to allocate NDA Act Power to a qualified applicant:

(i) Western will determine whether sufficient Unutilized NDA Act Power is available to fulfill the applicant's request.

(ii) If sufficient Unutilized NDA Act Power is available to fulfill the applicant's request, Western shall allocate the amount needed.

(iii) If sufficient Unutilized NDA Act Power is not available to fulfill the applicant's request, Western shall

$$\frac{D}{D+E}$$

$$\frac{E}{D+E}$$

D is defined as Long-Term Firm NDA Act Power available at the time of the Allocation.

E is defined as Type III Withdrawable NDA Act Power available at the time of the Allocation.

If using the above procedure would result in an Allocation of Long-Term Firm NDA Act Power which is less than 500 kW, Western will modify the procedure to ensure that the Allottee receives a minimum of 500 kW of Long-Term Firm NDA Act Power.

(v) Allocations will be made only to those applicants who qualify pursuant to the final NDA Act Procedures. The NDA Act Power must be used at a Closed Military Installation or a Priority-Three Base, or the NDA Act Power must be used by a Negatively Affected Customer.

(vi) The Allottee has the right to purchase NDA Act Power only when a new electric service contract between Western and the Allottee has been

A is defined as each Allottee's contribution to the sum of the NDA Act Power CROD for all Allottees in the priority group.

B is the sum of all Allottees' NDA Act Power CROD in the priority group.

C is the requested amount to be recalled from the priority group.

4. Withdrawal Procedures

When Western is required to initiate withdrawals of Type III Withdrawable NDA Act Power pursuant to the Final

applicant's request, Western shall allocate the amount needed.

(iii) If sufficient Unutilized NDA Act Power is not available to fulfill the applicant's request, Western shall allocate all Unutilized NDA Act Power and recall and reallocate NDA Act Power CROD to fulfill the request by following the reallocation procedures stated in G.3. below.

(iv) To ensure the most equitable distribution of long-term firm NDA Act and Type III Withdrawable NDA Act Power, Western proposes that each Allocation of NDA Act Power shall be determined as follows:

$$\frac{D}{D+E} = \text{Percentage of given Allocation comprised of Long-Term Firm NDA Act Power}$$

$$\frac{E}{D+E} = \text{Percentage of given Allocation comprised of Type III Withdrawable NDA Act Power}$$

D is defined as Long-Term Firm NDA Act Power available at the time of the Allocation.

E is defined as Type III Withdrawable NDA Act Power available at the time of the Allocation.

If using the above procedure would result in an Allocation of Long-Term Firm NDA Act Power which is less than 500 kW, Western will modify the procedure to ensure that the Allottee receives a minimum of 500 kW of Long-Term Firm NDA Act Power.

(v) Allocations will be made only to those applicants who qualify pursuant to the final NDA Act Procedures. The NDA Act Power must be used at a Closed Military Installation or a Priority-Three Base, or the NDA Act Power must be used by a Negatively Affected Customer.

(vi) The Allottee has the right to purchase NDA Act Power only when a new electric service contract between Western and the Allottee has been executed and when all conditions precedent in that contract have been satisfied.

(vii) To consummate any Allocation of NDA Act Power, an electric service contract shall be executed within 6 months of a contract offer by Western, unless otherwise agreed in writing by Western.

(viii) Western reserves the right to recall any amount of NDA Act Power CROD from an Allottee if the NDA Act Power CROD allocated is in excess of the loads being served by the Allottee.

(ix) Subject to the final NDA Act Procedures, Western's Administrator has the sole discretion to reallocate any NDA Act Power CROD that becomes available for marketing if an Allottee has failed to accept a contract within the period allowed, or if a contract has terminated, subject to the final NDA Act Procedures.

3. Reallocation Procedures

When Western must recall NDA Act Power CROD in order to meet a request for NDA Act Power, Western will use the following procedures and hierarchy:

(i) Allottees receiving Power pursuant to section G.1.(iv) above. This Power is subject to recall by Western upon a 6-month written notice.

(ii) Allottees receiving Power pursuant to section G.1.(iii) above. This Power is subject to recall by Western upon a 6-month written notice.

(iii) Allottees receiving Power pursuant to section G.1.(ii) above. This Power is subject to recall by Western upon a 3-year written notice.

(iv) If Western determines that a partial recall of NDA Act Power from any of the priority groups identified above is necessary to fulfill the request, Western shall apply the following formula to determine the amount of NDA Act Power to be recalled from each Allottee.

$$\frac{A}{B} \times C$$

A is defined as each Allottee's contribution to the sum of the NDA Act Power CROD for all Allottees in the priority group.

B is the sum of all Allottees' NDA Act Power CROD in the priority group.

C is the requested amount to be recalled from the priority group.

4. Withdrawal Procedures

When Western is required to initiate withdrawals of Type III Withdrawable NDA Act Power pursuant to the Final Withdrawal Procedures, Western shall determine the amount to be withdrawn from each Allottee by using the Final Withdrawal Procedures. Western will then total the amounts to be withdrawn from each Allottee and will use the following hierarchy to initiate withdrawals of the Type III Withdrawable NDA Act Power:

(i) Allottees receiving Power pursuant to section G.1.(iv).

(ii) Allottees receiving Power pursuant to section G.1.(iii).

(iii) Allottees receiving Power pursuant to section G.1.(ii).

(iv) Allottees receiving Power pursuant to section G.1.(i).

(v) If Western determines that a partial withdrawal of Type III Withdrawable NDA Act Power from any of the above-mentioned groups is necessary, Western shall apply the following formula to determine the amount of Type III Withdrawable NDA Act Power to be withdrawn.

$$\frac{A}{B} \times C$$

A is defined as each Allottee's contribution to the sum of the Type III Withdrawable NDA Act Power for all the Allottees within the group.

B is the sum of all Allottees' Type III Withdrawable NDA Act Power within the group.

C is the requested amount of Type III Withdrawable NDA Act Power to be withdrawn from the group.

5. Contract Terms for the Purpose of NDA Act Power

(i) Long-Term Contracts:

Western proposes that Long-Term Contracts entered into under the final NDA Act Procedures shall provide for electric service for a period ending by December 31, 2004, and be subject to the reallocation procedures set forth in the final NDA Act Procedures. The effective date of the Long-Term Contract shall be determined by Western at the time of the contract offer. To abide by the requirements of the NDA Act, Western shall have the right to recall all or any part of the NDA Act Power CROD.

(ii) Short-Term Contracts:

Western proposes that Short-Term Contracts entered into under the final NDA Act Procedures shall provide for electric service during a temporary period ending by December 31, 2004, subject to the reallocation procedures set forth in the final NDA Act Procedures. The effective date of the Short-Term Contract shall be determined by Western at the time of the contract offer. To abide by the requirements of the NDA Act, Western shall have the right to recall all or any part of the NDA Act Power CROD.

(iii) For any applicant requesting NDA Act Power to be used for an economic development project, the point of delivery for the NDA Act Power must be at the Closed Military Installation where the NDA Act Power will be used, unless otherwise agreed to by Western.

(iv) The minimum Long-Term Firm NDA Act Power CROD shall be 500 kW.

(v) Transmission Service:

All transmission arrangements beyond Western's CVP system are the full responsibility of the Allottee. Western will assist the Allottee in obtaining third-party transmission arrangements with PG&E for delivery of Power allocated under the final NDA Act Procedures. Nonetheless, each Allottee is ultimately responsible for obtaining its own delivery arrangements. Western reserves the right to terminate a contract if the Allottee is unable to arrange for the transmission necessary to receive the CROD within 6 months of the execution of the contract.

(vi) For those Allottees that receive NDA Act Power to be used at a Closed Military Installation, the following provisions must be complied with:

(A) Western reserves the right to terminate a contract if the Allottee cannot demonstrate that it is using the NDA Act Power for an economic development project within 1 year of the execution of the contract, unless otherwise agreed.

(B) The Allottee must provide a report to Western each January 15, which describes the benefits of the NDA Act Power CROD being passed on to the organization operating the economic development project. This report must be provided to Western in such a way that Western can separately identify the composite energy and capacity costs stated in mills per kWh of NDA Act Power and non-NDA Act Power. The report must also show that the economic development project is still in operation.

(C) Western, at its sole discretion, shall have the right to either withdraw NDA Act Power or terminate its contract with the Allottee upon 30 days' written notice if the Allottee does not comply with G.5.(vi)(B) above for each year of the contract.

(vii) Standard Provisions:

The contracts entered into as a result of the final NDA Act Procedures will incorporate Western's standard provisions for power sales contracts, resale of electric energy, and conservation and renewable energy in addition to the General Power Contract Provisions. Western is in the process of developing procedures to require that all long-term firm customers develop an integrated resource plan consistent with the Energy Policy Act of 1992. It is anticipated that these procedures will be effective in late 1994.

APPENDIX A

[The military installations receiving CVP Power and their respective CVP CRODs as of November 30, 1993, are listed below]

Military installations	Long-term firm power	Type III withdrawable	Total
Parks Reserve Forces Training Area, Dublin, CA	0.500	.....	0.500
Defense Distribution Depot, San Joaquin, CA (Sharpe Facility)	4.000	.....	4.000
Defense Distribution Depot, San Joaquin, CA (Tracy Facility)	3.800	.....	3.800
Naval Weapons Station, Concord, CA	2.170	0.098	2.268
Naval Radio Station, Dixon, CA	1.040	.....	1.040
Naval Air Station, Lemoore, CA	16.000	.....	16.000
Naval Air Station, Moffett Field, CA	4.170	2.270	6.440
Naval Security Group Activity, Skaggs Island, CA	0.650	.....	0.650
Naval Communication Station, Stockton, CA	3.630	.....	3.630
Naval Station, Treasure Island, CA	3.020	2.581	5.601
Naval Shipyard, Mare Island, Vallejo, CA	20.020	2.148	22.168
Beale AFB, Marysville, CA	20.507	1.068	21.575
McClellan AFB, Sacramento, CA	15.094	1.906	17.000
Onizuka AFB, Menlo Park, CA	.....	0.500	0.500
Travis AFB, Fairfield, CA	11.299	1.352	12.651
Travis Wherry, Fairfield, CA	0.100	1.300	1.400
Totals	106.00	13.223	119.223

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., each agency, when required to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the rule on small entities. Western has determined that (1) this rulemaking relates to services offered by Western and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an Allocation from Western would not cause an adverse economic impact to such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

Environmental Compliance

The National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, and implementing regulations issued by the Council on Environmental Quality, 40 CFR § 1500 *et seq.*, and the Department of Energy, 10 CFR § 1021, require that the environmental effects of agency decisions be studied and considered by decision makers. Studies were made to determine whether there were significant impacts to the environment as a result of the original allocation of this Power to the military installations. These studies and analysis are published in the Revised Environmental Assessment and Finding of No Significant Impact which were prepared by Western for its Sacramento Area Office 1994 Power Marketing Plan. Western is examining the applicability of the 1994 Revised Environmental Assessment to these Power allocations.

Paperwork Reduction Act Of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is requested of the public. OMB has issued a final rule on the Paperwork Burdens on the Public, 48 FR 13666, March 31, 1983.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Issued at Washington, DC, June 16, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–15980 Filed 7–5–94; 8:45 am]

BILLING CODE 6450–01–P

and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an Allocation from Western would not cause an adverse economic impact to such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

Environmental Compliance

The National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, and implementing regulations issued by the Council on Environmental Quality, 40 CFR § 1500 *et seq.*, and the Department of Energy, 10 CFR § 1021, require that the environmental effects of agency decisions be studied and considered by decision makers. Studies were made to determine whether there were significant impacts to the environment as a result of the original allocation of this Power to the military installations. These studies and analysis are published in the Revised Environmental Assessment and Finding of No Significant Impact which were prepared by Western for its Sacramento Area Office 1994 Power Marketing Plan. Western is examining the applicability of the 1994 Revised Environmental Assessment to these Power allocations.

Paperwork Reduction Act Of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is requested of the public. OMB has issued a final rule on the Paperwork Burdens on the Public, 48 FR 13666, March 31, 1983.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Issued at Washington, DC, June 16, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–15980 Filed 7–5–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5008–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: comments must be submitted on or before August 5, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202–260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards for Secondary Brass and Bronze Production Plants (Subpart M). (EPA ICR # 1604.04; OMB# 2060–0110). This is a renewal of a currently approved collection.

Abstract: Owners or operators of brass and bronze production facilities must notify EPA of construction, reconstruction, modification, startup, shutdown, and malfunction of reverberatory and electric furnaces of 1,000 kg or greater production capacity, and blast furnaces of 250 kg/hr or greater production capacity. Owners or operators must record all data and calculations and results of initial performance tests and submit that data to EPA. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period in which the monitoring system is inoperative. Recurring compliance reports are not required under this standard. EPA uses the data to determine the ability of each plant to comply with the emission standards.

Burden Statement: The public reporting burden for this collection of information is estimated to be 1.5 hours per source for recordkeeping annually.

Respondents: Owners and operators of secondary brass and bronze production plants.

Estimated No. of Respondents: 5.

Estimated No. of Responses Per Respondent: None.

Estimated Total Annual Burden on Respondents: 8 hours.

Frequency of Collection: Not applicable.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 24, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–16335 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5008–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 5, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR contract Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION: .

Office of Solid Waste and Emergency Response

Title: Spill Prevention, Control, and Countermeasures (SPCC) Plans (EPA No. 0328.04; OMB No. 2050–0021).

Abstract: This ICR is an extension of an existing collection for Spill Prevention, Control, and Countermeasures (SPCC) planning requirements in support of the Clean Water Act at paragraph (1) Section 311 (j), and described at 40 CFR 112. The information will be used by the EPA to ensure that oil spill prevention planning

occurs, thereby ensuring compliance with the requirements of 40 CFR 112.

Under this ICR, owners or operators of affected facilities must: (1) Prepare the SPCC plan (40 CFR 112.3 and 112.7), (2) maintain the plan and appropriate records (40 CFR 112.3 and 112.7(e)) if they begin operations or significantly modify their facilities during the approval period, (3) submit the plan in the event of certain discharges of oil (40 CFR 112.4), (4) revise the plan following modification of the facility (40 CFR 112.5(a)), and (5) conduct a triennial review of the SPCC plan (40 CFR 112(b)).

The SPCC plan should describe: (1) possible equipment failures that could lead to a discharge of oil from the facility (40 CFR 112.7(b)); (2) the use of required preventive measures such as appropriate containment and/or diversion structures or equipment (40 CFR 112.7(c)), or if containment is not available, an oil spill contingency plan and a written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged (40 CFR 112.7(d)); and (3) a discussion of the more detailed planning requirements (40 CFR 112.7(c)).

In addition to these general requirements, onshore facilities must maintain records of maintenance and usage of bypass valves and comparison records on past inspections of aboveground storage tanks. Offshore facilities must maintain written procedures for inspecting and testing pollution prevention equipment, keep records of well shut-in valves, prepare written instructions for contractors and subcontractors, and maintain records of inspection of submarine pipelines.

Currently there are 450,360 facilities subject to this regulation, with an estimated increase in the regulated universe of 4,549 facilities per year over the next three years. Facility records related to compliance must be maintained for three years.

Burden Statement: Public reporting burden for new facilities subject to this collection of information is estimated to range between 39.6 and 100.6 hours per response, with an average of 40.5 hours including time for reviewing the Oil Pollution Prevention regulations, searching existing data sources, gathering and maintaining data, and preparing and reviewing the SPCC plan. The annual recordkeeping burden for existing facilities is estimated to range from 5.0 to 13.9 hours per respondent, with an average recordkeeping burden of 5.5 hours including time for maintaining, reviewing and updating the SPCC plan.

Respondents: Owners or operators of subject facilities as defined at 40 CFR 112.

Estimated Number of Respondents: 4,549 new facilities will be required to prepare a plan; an annual average of 454,878 existing facilities over the next three years will be required to maintain records and submit amendments as needed.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,662,506 hours.

Frequency of Collection: On occasion (as described at 40 CFR 112.4).

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (21346), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 27, 1994.

Paul Lapsley,

Director, Regulatory Management Division

[FR Doc. 94–16336 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5008–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 5, 1994.

EFFECTIVE DATE: For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Needs Survey of Publicly-Owned Wastewater Treatment Works (POTWs) in the United States (EPA ICR No. 0318.06; OMB Control No. 2040–0050).

Abstract: This is an extension of an existing information collection sponsored by the Office of Water in support of the requirements set forth by Sections 205(a) and 516(b) of the Clean Water Act (CWA). The CWA requires EPA to conduct a "needs survey" every two years as a joint effort of the respondents (States, territories, and the District of Columbia), and EPA's Office of Water and Regional Offices to gather construction cost estimates and technical data on all existing and proposed POTWs. The survey results enable EPA, States and Congress to accurately assess construction requirements and develop allotment formulas for wastewater treatment resource allocations.

Respondents will provide information that includes: 1) updated technical and construction cost information on municipal wastewater treatment facilities, 2) planning documentation relevant to construction or project costs of POTWs (capital improvement plans, diagnostics results of needs for construction, etc.), 3) justification of certain specified categories of need based on construction costs curves, and 4) population anomalies relevant to POTWs. Respondents will also be asked to provide information related to combined sewer overflows (CSOs), non-point source and stormwater discharges. The majority of respondents will enter the information using EPA's on-line computerized system.

EPA will manage the conduct of the survey, perform quality control and assurance on the needs survey database, and prepare the final report to Congress using the information provided by the respondents.

Burden Statement: Public reporting burden for this collection of information is estimated to average 248 hours per response including time for reviewing instructions, gathering and compiling the data needed, and completing and reviewing the survey information.

Respondents: State, territorial and District of Columbia government agencies responsible for oversight of POTWs.

Estimated Number of Respondents: 56.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: One time.

Estimated Total Annual Burden on Respondents: 13,888 hours

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M St., SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–16337 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00385; FRL–4898–2]

Publication of Addenda for Data Reporting; Requirements for Pesticide Assessment Guidelines (N, E, and K)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comment.

SUMMARY: This notice announces the availability of and requests comments regarding the proposed addenda which includes a draft Data Reporting Guidelines (DRG) for those environmental chemistry methods associated with Subdivision N, E, and K. This draft DRG is not intended to introduce any new data requirements or revisions into the existing guidelines. Its purpose is to further clarify technical aspects of the existing Pesticide Assessment Guidelines and to provide a format for organizing and submitting soil and water methods and their supporting data in order to facilitate their review. EPA recognizes there are sections of the draft DRG that do not apply to specific soil and water methods; therefore, registrants should exercise scientific judgement in deciding which sections apply to their methods.

DATES: Three copies of written comments must be received by Donald A. Marlow identified below on or before August 22, 1994.

ADDRESSES: The draft Data Reporting Guideline for the Pesticide Assessment Guidelines (N, E, and K) can be obtained from the pesticide public docket at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Donald A. Marlow, Chief, Analytical

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M St., SW., Washington, DC 20460.
and
Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–16337 Filed 7–5–94; 8:45 am]
BILLING CODE 6560–50–M

[OPP–00385; FRL–4898–2]

Publication of Addenda for Data Reporting; Requirements for Pesticide Assessment Guidelines (N, E, and K)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comment.

SUMMARY: This notice announces the availability of and requests comments regarding the proposed addenda which includes a draft Data Reporting Guidelines (DRG) for those environmental chemistry methods associated with Subdivision N, E, and K. This draft DRG is not intended to introduce any new data requirements or revisions into the existing guidelines. Its purpose is to further clarify technical aspects of the existing Pesticide Assessment Guidelines and to provide a format for organizing and submitting soil and water methods and their supporting data in order to facilitate their review. EPA recognizes there are sections of the draft DRG that do not apply to specific soil and water methods; therefore, registrants should exercise scientific judgement in deciding which sections apply to their methods.

DATES: Three copies of written comments must be received by Donald A. Marlow identified below on or before August 22, 1994.

ADDRESSES: The draft Data Reporting Guideline for the Pesticide Assessment Guidelines (N, E, and K) can be obtained from the pesticide public docket at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Donald A. Marlow, Chief, Analytical Chemistry Branch (7503W), Biological and Economic Analysis Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Station 1, Rm. CS 44J1, 2800 Crystal Drive, Arlington, VA 22203, (703) 308–8198 (Voice Mail).

SUPPLEMENTARY INFORMATION: The draft DRG provides the registrant with a detailed format for submitting soil and water methods to the Agency. Each method should be complete and meet the technical requirements identified in the DRG. Those methods should be sent to the Agency to support specific exposure, environmental fate, and ecological effects studies during the normal registration and reregistration cycle. Each study for which environmental chemistry methods are needed has been clearly identified below. Soil and water methods should be clearly written and capable of being repeated by chemists in Federal and state laboratories.

The draft DRG is not intended to introduce any requirements. Its purpose is to further clarify technical aspects of the existing Pesticide Assessment Guidelines and to provide a format for organizing and submitting soil and water methods used to generate study data and to facilitate their review. The studies involved are:

SUBDIVISION N - Environmental Fate
Series 164-1 - Terrestrial Field Dissipation Studies [1]
Series 164-2 - Aquatic Field Dissipation Studies
Series 164-3 - Forest Field Dissipation Studies
Series 164-5 - Long Term Soil Dissipation Studies [1]
Series 165-3 - Accumulation Studies in Irrigation Crops
Series 166-1 - Groundwater Study
SUBDIVISION E - Hazard Evaluation
Series 71-5 - Simulated and Actual Field Testing for Mammals and Birds
Series 72-7 - Simulated and Actual Field Testing and Aquatic Organisms
SUBDIVISION K - Reentry Protection
Series 132-1 - Soil Dislodgeable Residue Dissipation Studies

These addenda supercede the paragraphs in the respective guidelines and the other addenda issued by the Pesticide Program regarding soil and water methods sent to the Agency for the studies identified above.

While these addenda to the Guidelines are not mandatory, data submitters are strongly encouraged to follow the format to assure that reports will be consistent, thereby increasing the efficiency of pesticide registration, reregistration, and other regulatory activities.

This is the ninth addendum to Subdivision N-Environmental Fate (Chemistry) published by the Agency. This new addenda with the draft DRG has been sent to the U.S. Department of Agriculture, the Food and Drug Administration, and other organizations within EPA for comment. With this notice EPA plans to make the DRG available to the public for comment in the **Federal Register**.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires the registration of all pesticides that are manufactured for use in the United States. In order to obtain a registration from EPA, manufacturers must demonstrate that their pesticides do not cause any unreasonable adverse effects to human health and the environment. It is now considered appropriate to provide available soil and water residue methods to EPA because of the increased public concern regarding the contamination of the environment with pesticides. EPA will validate some of those methods and may assemble them into a new manual in order to make them available to address potential environmental problems. This DRG provides more detailed technical guidance regarding those analytical methods and amends Pesticide Assessment Guideline N, E, and K referred to earlier.

These methods may be validated in an EPA laboratory to determine if they identify and quantify the pesticide parent compound, toxicologically significant metabolites, and degradates at the level indicated. The results from the soil and water method validation program may be used to support regulatory decisions regarding the reliability and validity of the chemistry data sent to the Agency with exposure, environmental fate, and ecological effects studies.

List of Subjects

Environmental protection.

Dated: June 27, 1994.

Allen L. Jennings,

Director, Biological and Economic Analysis Division, Office of Pesticide Programs.

[FR Doc. 94–16193 Filed 7–5–94; 8:45 am]
BILLING CODE 6560–50–F

---

[1] In practice these studies are considered to be equivalent because they evaluate the persistent nature of pesticide residues in soil.

[OPP-250094; FRL-4873-2]

Exemption of Certain Substances from Requirements of the Federal Insecticide, Fungicide, and Rodenticide Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of the Environmental Protection Agency (EPA) has forwarded to the Secretary of Agriculture a proposed rule under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposal would exempt certain substances from the requirements of FIFRA. This notification to the Secretary of Agriculture is required by FIFRA section 25(a)(2).

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-5446.

SUPPLEMENTARY INFORMATION: Section 25(a)(2) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed rule at least 60 days before signing the proposal for publication in the **Federal Register**. FIFRA also provides that the Administrator may, by agreement with the Secretary, modify or waive the time requirements of the notification. This notice announces that the Administrator of the EPA has forwarded to the Secretary of Agriculture, a proposed rule that would exempt certain substances from the requirements of FIFRA, and has requested that the Secretary comment on the proposed rule. This notice is required by FIFRA section 25(a)(2).

Dated: June 27, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94-16333 Filed 7-5-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66194; FRL-4896-5]

Notice of Intent to Cancel the Registrations of Nuclo Dry Granular Algaecide, Nuclo Dry Algaecide 90, Winterizing Algaecide, and Algicil Plus

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Cancel (NOIC).

SUMMARY: Pursuant to section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), this Notice announces EPA's intent to cancel the following pesticide registrations for simazine products used in swimming pools, hot tubs, and whirlpool baths: Nuclo Dry Granular Algaecide (EPA Reg. No. 7124-32) and Nuclo Dry Algaecide 90 (EPA Reg. No. 7124-93), produced by Alden Leeds, Inc.; and Winterizing Algaecide (EPA Reg. No. 3432-33) and Algicil Plus (EPA Reg. No. 3432-54), produced by N. Jonas Company. EPA is taking this action because it believes that the use of the products, in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment. Specifically, EPA is concerned with potential cancer and non-cancer effects resulting from exposure to simazine in swimming pools. EPA believes that the risks from this particular simazine use exceed the benefits derived from this use. Effective the date of final cancellation, EPA will not allow further sale, distribution, or use of existing stocks of these products, as described in this Notice. Holders of existing stocks are subject to FIFRA section 6(g) reporting requirements.

DATES: Requests for a hearing by a registrant must be received by the Office of the Hearing Clerk at the address given below on or before August 5, 1994, or on or before 30 days from receipt of this Notice by the registrant, whichever occurs later. Requests for a hearing by other adversely affected parties must be received by the Office of the Hearing Clerk on or before August 5, 1994.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (1900), U.S. EPA, 401 M St., SW., Washington, DC 20460. Additional information supporting this action is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Branch, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA. Telephone: 703-308-8029.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Notice announces EPA's intent to cancel the following pesticide registrations for simazine products used in swimming pools, hot tubs, and whirlpool baths: Nuclo Dry Granular Algaecide (EPA Reg. No. 7124-32), Nuclo Dry Algaecide 90 (EPA Reg. No. 7124-93), Winterizing Algaecide (EPA Reg. No. 3432-33), and Algicil Plus (EPA Reg. No. 3432-54). For the reasons set forth below, the Administrator has made the determination that these products, when used in accordance with widespread and commonly recognized practice, generally cause unreasonable adverse effects on the environment.

A. Organization of this Notice

This Notice is divided into 13 units. This unit provides introductory information and describes the legal authority for this action. Unit II gives the background information on how EPA arrived at its decision to cancel these products. Unit III summarizes EPA's toxicology concerns. Unit IV outlines the exposure assessment. Unit V discusses EPA's risk concerns. Unit VI examines the benefits of these products and the impact of this proposed cancellation action. Unit VII provides the risk/benefit analysis. Unit VIII describes the role of the Scientific Advisory Panel and the Secretary of Agriculture. Unit IX discusses disposition of existing product stocks. Unit X provides the required notification for possession of canceled products. Unit XI outlines the procedures for implementing the actions required by this Notice, as well as the procedures for requesting a hearing. Unit XII lists the references to the supporting documentation. Unit XIII gives information on the public docket.

B. Legal Authority

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by EPA pursuant to FIFRA section 3(a) (7 U.S.C. 136a(a)). A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with use instructions, precautions, and other terms and conditions of the registration.

In order to obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide satisfies the statutory standard for registration, section 3(c)(5) of FIFRA (7 U.S.C. 136a(c)(5)). That standard

requires, among other things, that the pesticide performs its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined under FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" (7 U.S.C. 136(bb)). This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices. The burden of demonstrating that a pesticide product satisfies the statutory criteria for registration is at all times on the proponents of registration, and continues as long as the registration is in effect (*Industrial Union Dept. v. American Petroleum Institute*, 448 U.S. 607, 653 n.61 (1980); *Environmental Defense Fund V. EPA*, 510 F. 2d 1292, 1297 (D.C. Cir. 1975)).

Under FIFRA section 6(b), EPA may issue a notice of intent to cancel the registration of a pesticide product whenever it appears to the Administrator that the product, when used in accordance with widespread and generally recognized practice, generally causes unreasonable effects (7 U.S.C. 136d(b)).

Registrants and other adversely affected persons may request a hearing on the cancellation of a specified registration and use. If they do so in a legally effective manner, the registration and use will be continued pending a decision at the conclusion of an administrative hearing.

II. Background

In 1989, EPA classified simazine as a possible human carcinogen (Ref. 1). Simazine is used primarily as an agricultural herbicide; swimming pool use accounts for less than 2 percent of total simazine usage. In August 1993, EPA conducted a risk assessment for the swimming pool use (Ref. 2). The risk assessment revealed high potential cancer and non-cancer health risks to children and adults exposed to water treated with simazine algaecides.

Because of its risk concerns, EPA requested that the 13 registrants of the simazine swimming pool algaecides cease product formulation and voluntarily cancel their product registrations (Refs. 3 and 4). In response to EPA's request, nine of the registrants--A & V, Great Lakes Biochemical, Applied Biochemists, Aqua Clear Industries, Western Purity Biochemical,

requires, among other things, that the pesticide performs its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined under FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" (7 U.S.C. 136(bb)). This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices. The burden of demonstrating that a pesticide product satisfies the statutory criteria for registration is at all times on the proponents of registration, and continues as long as the registration is in effect (*Industrial Union Dept. v. American Petroleum Institute*, 448 U.S. 607, 653 n.61 (1980); *Environmental Defense Fund V. EPA*, 510 F. 2d 1292, 1297 (D.C. Cir. 1975)).

Under FIFRA section 6(b), EPA may issue a notice of intent to cancel the registration of a pesticide product whenever it appears to the Administrator that the product, when used in accordance with widespread and generally recognized practice, generally causes unreasonable effects (7 U.S.C. 136d(b)).

Registrants and other adversely affected persons may request a hearing on the cancellation of a specified registration and use. If they do so in a legally effective manner, the registration and use will be continued pending a decision at the conclusion of an administrative hearing.

II. Background

In 1989, EPA classified simazine as a possible human carcinogen (Ref. 1). Simazine is used primarily as an agricultural herbicide; swimming pool use accounts for less than 2 percent of total simazine usage. In August 1993, EPA conducted a risk assessment for the swimming pool use (Ref. 2). The risk assessment revealed high potential cancer and non-cancer health risks to children and adults exposed to water treated with simazine algaecides.

Because of its risk concerns, EPA requested that the 13 registrants of the simazine swimming pool algaecides cease product formulation and voluntarily cancel their product registrations (Refs. 3 and 4). In response to EPA's request, nine of the registrants--A & V, Great Lakes Biochemical, Applied Biochemists, Aqua Clear Industries, Western Purity Biochemical, Poolmaster, Leslie's Pool Supplies, York Chemical, and Quantum Biochemical--requested a FIFRA section 6(f) voluntary product cancellation. Also, pursuant to FIFRA section 4(i)(5)(D), EPA canceled two registrations held by EZ-Clor Systems and one held by N. Jonas Company, for failure to pay the annual registration maintenance fees for those registrations. The cancellation order for the registrations held by these 11 registrants was published on April 15, 1994 (59 FR 18120). A separate order, cancelling the registration of Aladdin Winter Care (EPA Reg. No. 11329–17) for failure to pay the annual registration maintenance fee for that product registration, was signed on May 16, 1994. The order was published in the **Federal Register** and became effective on May 25, 1994 (59 FR 27016).

Alden Leeds and N. Jonas Co. still hold the following registrations for the following simazine products: Nuclo Dry Granular Algaecide (EPA Reg. No. 7124–32), Nuclo Dry Algaecide 90 (EPA Reg. No. 7124–93), Winterizing Algaecide (EPA Reg. No. 3432–33), and Algicil Plus (EPA Reg. No. 3432–54).

The three registrants of technical simazine--Ciba-Geigy, Drexel Chemical, and Oxon-Italia--are not supporting the swimming pool simazine use. That is, these manufacturers of the simazine active ingredient do not have their simazine products registered for swimming pool-related uses. None of Drexel Chemical's products were registered for aquatic use, and Ciba-Geigy and Oxon-Italia had ceased supporting all aquatic uses before EPA conducted its risk assessment. The aquatic-use cancellation for Ciba-Geigy, the supplier of technical simazine for the swimming pool products, was published in the **Federal Register** on July 1, 1992 (57 FR 29309) and became effective on October 9, 1992. The notice of Oxon-Italia's request for aquatic use cancellations was published in the **Federal Register** on February 9, 1994 (59 FR 6021), and became effective 90 days from that publication date. At EPA's request, Ciba-Geigy and Oxon-Italia have amended their product labels to explicitly prohibit reformulation of their products into swimming pool products; Drexel has amended its technical simazine label to prohibit formulation into aquatic-use products. Because manufacturers of simazine swimming pool products must formulate their products from technical simazine, the effect of these actions is that there is no legal source of simazine active ingredient from which the swimming pool product manufacturers may formulate any simazine products.

III. Summary of Toxicological Concerns

Based on toxicological studies in laboratory animals, EPA has determined that simazine may pose cancer and non-cancer risks to individuals exposed to this pesticide. The results of these studies, as well as the EPA classification of the carcinogenic potential of simazine, are described below.

A. Carcinogenicity

EPA reviewed the simazine toxicological data base, including rat and mouse chronic feeding/carcinogenicity studies, in its evaluation of the carcinogenic potential of simazine.

1. *Rat study.* In a 2–year chronic feeding carcinogenicity study, simazine technical was administered in the diet of 340 male and 340 female Sprague-Dawley (SD) rats (MRID No. 40614405). The study had two phases: a carcinogenicity phase and a chronic phase. An equal number of male and female rats were randomly divided into four major groups; 50 animals/sex/group were used in the carcinogenicity phase, and 30 to 40 animals/sex/group were used in the chronic phase. Animals were dosed at 0 (control), 10, 100, or 1,000 ppm of simazine for 2 years (corresponding to 0.41, 4.17, or 45.77 mg/kg/day in males; and 0.52, 5.34, or 63.10 mg/kg/day in females).

For the carcinogenicity phase, results in the female SD rats indicated that there was a statistically significant dose-related trend in mammary gland carcinomas, as well as in combined adenomas and carcinomas. The incidence of mammary gland carcinomas was statistically significantly increased at both the 100 and 1,000 ppm groups, as compared to the controls. Also, the incidence of combined adenomas and carcinomas was statistically significantly higher in the highest dose tested (HDT) group, as compared to the controls. Mammary gland carcinomas in the main study contributed to increased mortality in the HDT animals. A higher incidence of mammary gland carcinomas was also seen in the recovery study (52 weeks of treatment at 1,000 ppm, followed by 52 weeks of recovery) for the control (1/10) and the HDT (4/10) animals.

The incidence of hyperplastic changes (cystic glandular hyperplasia) in the mammary glands of female rats was statistically significantly higher in the HDT animals than in the controls. This finding correlates with the observed high incidence of tumors in the HDT group. It is generally understood that the higher tumor incidence correlates

directly with a higher incidence of hyperplastic changes.

In the female rats, the incidence of pituitary carcinomas was found to be statistically significantly higher in the HDT animals than in the controls. The incidence of pituitary adenomas was found to be extremely high in all groups. Further statistical analysis of these tumors (total tumor analysis) indicated that the incidence of combined adenomas/carcinomas in the mid- and high-dose groups was statistically significantly higher than in the controls, and also exhibited a significant increasing dose-related trend.

There was a statistically significant dose-related trend for the incidence of kidney tubular adenomas in female rats. However, the tumors occurred only at the HDT, and the incidence was not statistically significant as compared to the control animals.

In the male SD rats, the incidence of hepatocellular adenomas or carcinomas was very low in all treated and control groups. The incidence of combined hepatocellular adenomas and carcinomas was statistically significantly higher in the HDT group, as compared to the control group. These incidences fell within the historical control range for this testing facility.

A very low incidence of kidney tubular adenomas and carcinomas was seen in male rats. A statistically significant dose-related trend was observed for the incidence of carcinomas, as well as for the incidence of combined adenomas and carcinomas. However, tumors occurred only at the HDT, and tumor incidences were not statistically significantly elevated as compared to concurrent controls.

For this study, the Health Effects Division (HED) of the Office of Pesticide Programs Cancer Peer Review Committee concluded that the highest dose exceeded the Maximum Tolerated Dose (MTD) for female rats, based on excess deaths and body-weight-gain reductions. The Committee also agreed that the highest dose in male rats appeared to have exceeded the MTD, based on a significant decrease in body-weight gain. However, the mid-level dose was well below the MTD, and mammary gland tumors in the female rat were statistically significantly increased at both the mid- and high-dose levels. In addition, the Committee concluded that there was too great an interval between the mid (100 ppm) and high (1,000 ppm) doses. These factors were taken into account in the weight-of-evidence considerations that led the Committee to classify simazine as a possible human carcinogen (Ref. 2).

2. *Mouse study.* There is no evidence of a relationship between simazine exposure and carcinogenicity in the mouse. In a 1988 chronic feeding/carcinogenicity study in mice, simazine technical was administered in the diet to a group of 60 male and 60 female CD1 (ICR) BR mice at 0 (control), 40, 1,000, or 4,000 ppm for 95 weeks (MRID No. 40614404). There were no increases in neoplasms reported for any dosed group and no evidence of compound-related effect on survival or target organ toxicity.

3. *Classification of carcinogenic potential.* Based on the weight-of-evidence, the HED Cancer Peer Review Committee concluded that simazine should be classified as a Group C possible human carcinogen (Ref. 2). This determination was primarily based on results from the 2–year chronic feeding/carcinogenicity study in rats. Based on EPA's evaluation of the data presented in this study, EPA concluded that technical-grade simazine is carcinogenic in female SD rats, inducing the formation of mammary gland carcinomas. There is evidence in the published literature that simazine has genotoxic activity, and this was considered in the weight-of-evidence evaluation of simazine's carcinogenicity classification.

B. Systemic Effects

1. *Rat study.* EPA determined that the 2–year rat chronic feeding study, described in unit III. A.1. of this notice, was appropriate for assessing non-cancer risks for "competitive" exposure to simazine. A No Observed Effect Level (NOEL) of 0.52 mg/kg/day was established based on decreased body weight gain and depression of hematological parameters that occurred at 5.34 mg/kg/day. These effects, which include depressed red-blood-cell count, hemoglobin, and hematocrit, are considered to be reversible when exposure is terminated.

2. *Rabbit study.* For evaluation of non-cancer risks from "recreational" exposure to simazine, EPA based its risk assessment on the results of a rabbit developmental toxicity study (MRID No. 001611407).

In this study, 19 female New Zealand White rabbits per dose level were artificially inseminated and administered technical grade simazine once daily by gastric intubation at doses of 5 mg/kg, 75 mg/kg, and 200 mg/kg of body weight. A significant reduction in mean fetal weight and a significant increase in the incidence of fetuses with skeletal variations were observed at the 200 mg/kg dose level. Therefore, the developmental NOEL for this study is 75 mg/kg of body weight. In the mothers, significant decreases in body weight gain, tremors, and abortions were observed in the mid- and high-dose groups (75 and 200 mg/kg dose levels). The maternal NOEL was therefore established at 5 mg/kg of body weight.

IV. Exposure Assessment

EPA developed four exposure scenarios based on the frequency and duration of exposure (competitive versus recreational swimming), and on the age and weight of the swimmer (6–year–old child versus 35–year–old male). The assessment assumed exposure to the entire body through dermal, oral, buccal and sublingual, orbital and nasal, aural, and inhalation routes. High-exposure frequency, or "competitive," 6–year–old and 35–year–old swimmers are assumed to have daily exposures of 3 and 5 hours, respectively, for 150 days per year (Ref. 5). Based on these assumptions, EPA estimates that "competitive" swimmers are exposed to an Actual Daily Exposure (ADE) of 0.12 mg/kg/day for children, and 0.07 mg/kg/day for adults. Low-exposure frequency, or "recreational," swimmers of both age groups are assumed to be exposed for 30 minutes per day, 5 days a year. This low exposure results in an ADE of 0.02 mg/kg/day for children and 0.0073 mg/kg/day for adults. EPA assumed that lifetime exposure constitutes 30 years of exposure over a 75–year lifetime.

Simazine concentrations in swimming pool water were calculated based on label application rates. Although simazine is soluble to only 3.5 parts per million (ppm) in water at 68 °F, EPA assumed that swimmers could be exposed to average simazine concentrations of 5 ppm, because solubility could increase at temperatures above 68 °F.

EPA has concluded that it is not necessary to conduct a separate exposure assessment for the simazine product that is used to control algae in swimming pools during the off-season or winter months. A separate assessment is unnecessary because the exposure levels for the winter-use (winterizer) product are comparable to the exposure levels for the non-winterizer simazine swimming pool products. Label application rates for winterizer and non-winterizer products are similar. In addition, label directions do not require swimming pools that have been treated with winterizer products to be drained before they are used by swimmers. Because EPA has no data concerning simazine dissipation, EPA must assume that following initial

or subsequent winterizer treatment, simazine does not dissipate from swimming pool water. Consequently, swimmers could be exposed to unacceptable levels of simazine when winterized swimming pools are opened for use. Therefore, EPA believes that the individual risk posed to swimmers from exposure to simazine used as a winterizer is not significantly different from other exposure scenarios.

V. Risk

A. Cancer

1. *Potency factor (Q_1*).* EPA calculated the cancer potency, or Q_1*, for simazine as 1.20×10^{-1} $(mg/kg/day)^{-1}$, based on mammary gland cancer in laboratory animals. The Scientific Advisory Panel (SAP) reviewed the carcinogenicity of simazine in September 1989 and, while agreeing with the Group C classification, did not recommend the use of a quantitative risk assessment (Ref. 6). The SAP noted that certain pesticides, such as simazine, may alter endocrine physiology in the rat and influence the incidence of mammary gland tumors; the SAP therefore recommended that EPA formulate a position on the regulation of chemicals with this mechanism.

At a subsequent OPP Cancer Peer Review Committee meeting, the Peer Review Committee evaluated the SAP's recommendation and concluded that it is appropriate to use the Q_1* to quantify the carcinogenic risks from exposure to simazine until data are provided showing a hormonally mediated mechanism (Ref. 7). EPA has not received data adequate to support this hypothesis.

2. *Cancer risk.* The excess individual lifetime cancer risk is calculated by multiplying the Q_1* by the Lifetime Average Daily Exposure (LADE), expressed in mg/kg/day. EPA estimates that the excess risk to an individual exposed to simazine over a 75–year lifetime (i.e., 30 years of exposure) ranges from 4.8×10^{-6} to 1.4×10^{-3}. Risk to most competitive and recreational swimmers is estimated to fall within this range, although in some instances the risks could be higher or lower. EPA generally considers any risk to the general public greater than 1×10^{-6} to be unacceptable.

B. Non-Cancer

EPA measures non-cancer risks by calculating a margin of exposure (MOE), which is a comparison of the NOEL to actual daily exposure, both of which are expressed in milligrams of chemical dose per kilogram of body weight per

or subsequent winterizer treatment, simazine does not dissipate from swimming pool water. Consequently, swimmers could be exposed to unacceptable levels of simazine when winterized swimming pools are opened for use. Therefore, EPA believes that the individual risk posed to swimmers from exposure to simazine used as a winterizer is not significantly different from other exposure scenarios.

V. Risk

A. Cancer

1. *Potency factor (Q_1^*).* EPA calculated the cancer potency, or Q_1^*, for simazine as 1.20×10^{-1} $(mg/kg/day)^{-1}$, based on mammary gland cancer in laboratory animals. The Scientific Advisory Panel (SAP) reviewed the carcinogenicity of simazine in September 1989 and, while agreeing with the Group C classification, did not recommend the use of a quantitative risk assessment (Ref. 6). The SAP noted that certain pesticides, such as simazine, may alter endocrine physiology in the rat and influence the incidence of mammary gland tumors; the SAP therefore recommended that EPA formulate a position on the regulation of chemicals with this mechanism.

At a subsequent OPP Cancer Peer Review Committee meeting, the Peer Review Committee evaluated the SAP's recommendation and concluded that it is appropriate to use the Q_1^* to quantify the carcinogenic risks from exposure to simazine until data are provided showing a hormonally mediated mechanism (Ref. 7). EPA has not received data adequate to support this hypothesis.

2. *Cancer risk.* The excess individual lifetime cancer risk is calculated by multiplying the Q_1^* by the Lifetime Average Daily Exposure (LADE), expressed in mg/kg/day. EPA estimates that the excess risk to an individual exposed to simazine over a 75–year lifetime (i.e., 30 years of exposure) ranges from 4.8×10^{-6} to 1.4×10^{-3}. Risk to most competitive and recreational swimmers is estimated to fall within this range, although in some instances the risks could be higher or lower. EPA generally considers any risk to the general public greater than 1×10^{-6} to be unacceptable.

B. Non-Cancer

EPA measures non-cancer risks by calculating a margin of exposure (MOE), which is a comparison of the NOEL to actual daily exposure, both of which are expressed in milligrams of chemical dose per kilogram of body weight per day. An MOE less than 100 generally represents an unacceptable risk.

1. *Non-cancer risk to swimmers from high exposure frequency.* The high exposure frequency assumed for the competitive swimmer categories necessitated the use of a long-term toxicity study to calculate non-cancer risk. The 2–year chronic rat feeding study was therefore used to calculate the MOEs for competitive swimmers. The risks to swimmers for the non-cancer effects seen in the chronic study--reduction in body weight gain and depression of hematological parameters (anemia)--are reflected in MOEs of 4.3 for children and 7.4 for adults. The MOEs for swimmers in the competitive category, based on effects seen in the chronic feeding study, are well below 100 and therefore indicate an unacceptable risk.

2. *Non-cancer risk to swimmers from low exposure frequency.* EPA does not consider swimmers exposed at a low exposure frequency (i.e., a few short exposures per year) to be at risk of exhibiting non-cancer effects (Ref. 8). Because of the low exposure frequency assumed for the recreational swimmer categories, the rabbit developmental toxicity study was used to calculate MOEs. The effects of reduction in maternal body weight gain, abortions, and tremors were manifested at very high dose levels and are considered signs of general systemic toxicity in the test animals. EPA calculated MOEs of 250 for children and 685 for adults exposed to simazine in swimming pools. This indicates that recreational swimmers are not at risk from the effects seen in the developmental toxicity study.

The following table summarizes the risk numbers derived from the assessment:

Swimmer Category	Cancer Risk	Non-Cancer Risk (MOE)
Competitive 6–year–old (3 hours/day, 150 days/year).	2.4×10^{-3}	4.3[1]
Competitive 35–year–old male (5 hours/day, 150 days/year).	1.4×10^{-3}	7.4[1]
Recreational 6–year–old (0.5 hour/day, 5 days/year).	1.4×10^{-5}	250[2]
Recreational 35–year–old male (0.5 hour/day, 5 days/year).	4.8×10^{-6}	685[2]

[1] 2–year chronic feeding study in rats, MRID 40614405. NOEL = 0.52 mg/kg/day, based on decreased body weight gain and depression of hematological parameters at 5.34 mg/kg/day.

[2] Developmental toxicity study in rabbits (13–day length of exposure), MRID 00161407. NOEL = 5.0 mg/kg/day, based on tremors, abortions, and decreased body weight gain (all maternal toxicity effects) at 75 mg/kg/day.

VI. Benefits and Impact of Cancellation

Under FIFRA, a pesticide registration may only be maintained if the benefits of the use of the pesticide exceed the risks of use. EPA has found that at least some of the registered alternative algaecides provide comparative control at comparative prices, during summer season use. EPA has concluded that the benefits associated with Nuclo Dry Granular Algaecide, Nuclo Dry Algaecide 90, and Algicil Plus are negligible when compared to the total operating costs on a per–pool basis. The cancellation of these products for summer use will have a negligible impact on the pool industry and the public.

EPA has also found that the benefits associated with Winterizing Algaecide are relatively small. This information is based on the fact that there are a number of alternatives to simazine winterizing products on the market, and the labels of many of these alternative products indicate that they are used at a similar frequency as simazine. Although EPA has anecdotal information that suggests simazine may have a longer duration of activity, which could, if true, result in a cost savings, there are no data to support this. Therefore, EPA concludes that the loss of simazine winterizing products would have only a small impact on the swimming pool industry and the public.

The cancellation of the four products subject to this Notice will not have a significant economic impact in part because they account for only a small share of the algaecide market for swimming pool use. EPA estimates that all 22 simazine products account for less than 10 percent of the market for algaecides for swimming pool use. Registrants of 18 of these products have already requested voluntary cancellation of their registrations, or have had their registrations canceled for maintenance fee non-payment. The remaining four products subject to this

Notice account for less than 1 percent of the total swimming pool algaecide market.

The economic impact of cancelling these four products is minimized by the availability of registered alternative algaecides for swimming pool use. Because these alternatives have a substantially greater market share than simazine, the cancellation of the four products subject to this Notice should not result in significant price increases in the non-simazine products. For the same reasons, EPA does not expect market dislocations due to the inability to produce the alternative algaecides to meet demand.

Alden Leeds and N. Jonas Co. indicated to EPA that they have accounted for approximately 25,000 gallons of liquid product in their possession or in the channels of trade, and 14,000 pounds of unformulated Ciba-Geigy simazine product that Ciba-Geigy has agreed to buy back. Given the small amount of these products and the over 3 million swimming pools in the United States that could use simazine pool products, cancellation of these products would have little impact on the swimming pool industry. Section 6(b) of FIFRA requires EPA to consider the impact of cancellation upon the agricultural economy (7 U.S.C. 136d(b)). EPA has determined that the cancellation of these products will have no impact upon the agricultural economy because these products are registered for swimming pool use, and not for agricultural uses.

VII. Risk/Benefit Assessment

Under section 6(b) of FIFRA, the Administrator may cancel a pesticide due to unreasonable adverse effects, if the pesticide generally causes an "unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits" of the pesticide's use (7 U.S.C. 136d(b)).

As discussed in the preceding sections of this Notice, the cancer and non- cancer risks to human health from continued registration of Nuclo Dry Granular Algaecide, Nuclo Dry Algaecide 90, Winterizing Algaecide, and Algicil Plus are significant, while the benefits of continued registration are negligible for summer use, and are relatively small for the winterizing use. EPA believes that the risks posed by continued registration are unreasonable when compared to the benefits, and that simazine use in swimming pools should be canceled.

In making its determination to propose cancellation, EPA has also examined whether any measures short of cancellation exist to reduce exposure to acceptable levels, and has concluded that there are none. For the summer use, no measures could be identified to reduce risk to an acceptable range. For the winterizer use, EPA considered allowing registrants to retain that use, if data were submitted that showed that superchlorination of pools following simazine use eliminated the product from treated water. No such data were submitted to EPA. Therefore, EPA has determined that for both the summer and winter use, there are no acceptable measures short of cancellation.

VIII. Role of the Scientific Advisory Panel and the Secretary of Agriculture

Sections 6(b) and 25(d) of FIFRA provide certain opportunities for the FIFRA Scientific Advisory Panel (SAP) and the Secretary of the Department of Agriculture (USDA) to review and comment upon a draft NOIC, and in the case of USDA, an analysis of the impact of the proposed action on the agricultural economy. These reviews may be waived, and when they are, the Notice may be published without delay.

On April 5, 1994, EPA asked the SAP and Secretary of USDA to waive their rights to review and comment on this Notice (Refs. 9 and 10). On April 12, 1994, Nancy Ragsdale, Director, National Agricultural Pesticide Impact Assessment Program, USDA, notified EPA that the Secretary would waive review of this action (Ref. 11). On May 25, 1994, the SAP notified EPA that it waived its review of this action (Ref. 12). Because the SAP and USDA have waived their review of this action, EPA is issuing this Notice without delay.

IX. Disposition of Existing Stocks

For purposes of this Notice, existing stocks are defined as those stocks of simazine products for use in swimming pools that were in the United States and were packaged, labeled, and released for shipment prior to July 6, 1994.

EPA has an established policy for determinations concerning the sale, distribution, and use of existing stocks of canceled pesticides (56 FR 29362, June 26, 1991). That policy states that in cases where EPA has identified a significant risk concern and the registration is canceled, EPA will make existing stocks determinations on a case-by-case basis. In most cases EPA will not permit the continued sale, distribution, or use of existing stocks of a canceled product raising risk concerns unless it can be demonstrated that the benefits exceed the risks. EPA reserves the right to amend this existing stocks provision, should conditions warrant such amendment.

The swimming pool use of simazine poses unreasonable cancer and non-cancer risk. As discussed in units VI and VII of this Notice, the benefits of continued sale, distribution, and use of existing stocks are negligible and do not outweigh the risks. Finally, EPA has taken steps to minimize the amount of stocks that are currently in the hands of registrants, retailers, and distributors. In December 1993, EPA notified registrants of the risks associated with the products and asked them to stop formulating, selling, and distributing their products (Ref. 4).

EPA has determined that no person may sell, distribute, or use the existing stocks of any product subject to this Notice except for: (1) Sale or distribution up through the chain of distribution to the former registrant of that product, or (2) for lawful disposal. It is the responsibility of the basic registrants to notify any and all supplementally registered distributors of their product(s) that this Notice also applies to their supplementally registered products. Registrants may be held liable for violations committed by their distributors. Any sale, distribution, or use of existing stocks of canceled products other than as provided in this Notice will be considered a violation of FIFRA 12(a)(2)(J).

Notwithstanding any other provision of this Notice, the distribution or sale of canceled products will be allowed if such distribution or sale is for the purpose of collecting products for relabeling, reformulation, disposal, or export to a country where the use of simazine is not prohibited, or any other lawful purpose not inconsistent with the provisions of this Notice. In order for exported existing stocks of canceled simazine to qualify for this exception, such stocks must comply with all the labeling requirements identified in FIFRA section 17(1)(a) and the foreign purchaser acknowledgement requirements identified in FIFRA section 17(a)(2). In order to be considered to be in compliance with these provisions, the exporter must follow the procedures specified in the EPA's Export Policy and Procedures for Exporting Unregistered Pesticides at 40 CFR part 168, subpart D.

X. Required Notification of Possession of Canceled Products

Pursuant to FIFRA section 6(g), any producer or exporter, registrant, applicant for a registration, applicant or holder of an experimental use permit, commercial applicator, or any person who distributes or sells any pesticide, who possesses any stocks of pesticide products containing simazine subject to this Notice that are canceled by a final order issued either in the absence of or following a hearing on cancellation (hereafter, referred to as "affected persons," which includes affected individuals, partnerships, associations, corporations, or any organized group of persons whether incorporated or not) must notify the EPA and appropriate State and local officials of: (1) Such possession; (2) the quantity of canceled simazine pesticide product possessed; and, (3) the place at which the canceled simazine pesticide product is stored. Notification by affected persons to EPA and designated State and local officials pursuant to FIFRA section 6(g) shall be in accordance with the procedures, time frames, and requirements set out in this Unit. End users, except commercial applicators, are not required to report their stocks of canceled simazine products.

A. Pesticides Required to be Reported

Affected persons must report, pursuant to FIFRA section 6(g), the information described below for canceled simazine pesticide products that are in their possession, regardless of the ownership of that canceled simazine pesticide product. Canceled simazine product that is owned by one affected person, but is in the physical possession of another affected person who is subject to section 6(g) reporting, is to be reported by the person in physical possession of the pesticide.

The Office of Management and Budget (OMB) has given approval for the collection of information under FIFRA section 6(g), and has assigned the OMB control number 2070–0109.

B. Information that Must be Included in the Submission

To be in compliance with FIFRA section 6(g), affected persons must submit to the designated EPA and State and local officials the following information certified by a responsible company official as true and correct:

1. The identity and address of the affected person (company).
2. Name and phone number of a contact person (in the company).
3. Indication that the FIFRA section 6(g) information is being submitted for canceled pesticide products containing simazine.
4. The relationship of the affected person (company) to the canceled simazine pesticide products being reported under FIFRA section 6(g) (i.e., exporter, producer, registrant, applicant for registration, applicant for or holder of an experimental use permit, commercial applicator, distributor, retailer, etc.).

this Notice that are canceled by a final order issued either in the absence of or following a hearing on cancellation (hereafter, referred to as "affected persons," which includes affected individuals, partnerships, associations, corporations, or any organized group of persons whether incorporated or not) must notify the EPA and appropriate State and local officials of: (1) Such possession; (2) the quantity of canceled simazine pesticide product possessed; and, (3) the place at which the canceled simazine pesticide product is stored. Notification by affected persons to EPA and designated State and local officials pursuant to FIFRA section 6(g) shall be in accordance with the procedures, time frames, and requirements set out in this Unit. End users, except commercial applicators, are not required to report their stocks of canceled simazine products.

A. Pesticides Required to be Reported

Affected persons must report, pursuant to FIFRA section 6(g), the information described below for canceled simazine pesticide products that are in their possession, regardless of the ownership of that canceled simazine pesticide product. Canceled simazine product that is owned by one affected person, but is in the physical possession of another affected person who is subject to section 6(g) reporting, is to be reported by the person in physical possession of the pesticide.

The Office of Management and Budget (OMB) has given approval for the collection of information under FIFRA section 6(g), and has assigned the OMB control number 2070–0109.

B. Information that Must be Included in the Submission

To be in compliance with FIFRA section 6(g), affected persons must submit to the designated EPA and State and local officials the following information certified by a responsible company official as true and correct:

1. The identity and address of the affected person (company).

2. Name and phone number of a contact person (in the company).

3. Indication that the FIFRA section 6(g) information is being submitted for canceled pesticide products containing simazine.

4. The relationship of the affected person (company) to the canceled simazine pesticide products being reported under FIFRA section 6(g) (i.e., exporter, producer, registrant, applicant for registration, applicant for or holder of an experimental use permit, commercial applicator, distributor, retailer, etc.).

5. The street address of each location owned, leased, or operated in the United States by the submitter where the canceled simazine pesticide product is held.

6. For each location listed, the quantity (pounds, gallons, or other appropriate measure) of canceled simazine pesticide product listed by the number of units of each size container (pound, gallons, or other appropriate measure) and by EPA registration number (e.g., x units of 5 gallon containers of EPA registration number xxx–xxx).

C. When to Report

Affected persons are advised not to report until the effective date of the final order issued either in the absence of or following a hearing on cancellation. Reports of existing stocks submitted before the effective date of the cancellation are not considered to meet the reporting requirements of FIFRA section 6(g). Upon the effective date of cancellation, affected persons must submit FIFRA section 6(g) information according to the following time frames:

1. Registrants of canceled simazine must report within 30 days of the effective date of the final order.

2. Producers, exporters, applicants for a registration, applicants or holders of an experimental use permit, dealers, distributors, retailers, and commercial applicators must report within 45 days of the effective date of the final order.

3. End users are not required to report their possession of canceled products containing simazine.

D. Where to Submit Section 6(g) Information

The FIFRA section 6(g) information is to be sent to each of the following locations:

1. *EPA.* Chief, Agricultural Branch, Agricultural and Ecosystems Division, Office of Compliance, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, "Attention: FIFRA Section 6(g) Information."

2. *State.* Chief Pesticide Regulatory Official of the agency in the State government that enforces the State pesticide laws where the canceled simazine pesticide product is stored. Envelopes must be marked "Attention: FIFRA Section 6(g) Information."

3. *Local.* Chair of the Local Emergency Planning Committee (LEPC) for the location where the canceled pesticide is stored. Envelopes should be marked "Attention: Notification of Possession of Canceled Pesticides." To identify the name and address of the chair of the LEPC, contact the State Emergency Response Commission (SERC) or call the Emergency Planning and Community Right-to-Know (EPCRA) information Hotline at 1–800–535–0202.

E. Confidentiality of FIFRA Section 6(g) Information

EPA does not consider FIFRA section 6(g) information to be confidential business information (CBI) under the provisions of FIFRA section 10. Such information may be made available by EPA to the public without further notice.

F. Enforcement

Failure to submit complete and accurate FIFRA section 6(g) information, and/or failure to submit accurate section 6(g) information in the required time frames, is a violation of FIFRA section 12(a)(2)(K), and violators may be subject to civil penalties up to $5,000 per offense. Affected persons who possess canceled or suspended pesticide in multiple locations may be fined up to $5,000 per offense for each location for which the FIFRA section 6(g) information is not submitted, submitted late, incomplete, or inaccurate. Persons who knowingly submit false section 6(g) reports are in violation of FIFRA section 12(a)(2)(M) and may also be subject to civil penalties up to $5,000 per offense. Knowing violations of the requirements of FIFRA section 6(g) may also result in criminal penalties under section 14(b) of FIFRA, or 18 U.S.C. 1001.

For additional information regarding FIFRA section 6(g) requirements, contact Phyllis Flaherty or David Stangel of the Agriculture Branch, Agriculture and Ecosystems Division, Office of Compliance, at (703) 308–8383.

XI. Procedural Matters

This Notice announces EPA's intent to cancel the registrations of Nuclo Dry Granular Algaecide (EPA Reg. No. 7124–32), Nuclo Dry Algaecide 90 (EPA Reg. No. 7124–93), Winterizing Algaecide (EPA Reg. No. 3432–33), Algicil Plus (EPA Reg. No. 3432–54), and any products with these registration numbers that are supplementally distributed. This action is taken pursuant to authority in section 6(b) of FIFRA. Under FIFRA section 6(b)(1), registrants and other adversely affected parties may request a hearing on the cancellation actions that this Notice initiates. Any hearing concerning cancellation of the registration for any affected pesticide product will be held in accordance with FIFRA section 6(d). Unless a hearing is properly requested in accordance with the provisions of

this Notice, the registrations will be canceled. This unit of the Notice explains how such persons may request a hearing in accordance with the procedures specified in this Notice, and the consequences of requesting or failing to request a hearing.

A. Procedures for Requesting a Hearing

Requests for a hearing by a registrant must be received by the Office of the Hearing Clerk at the address given below on or before August 5, 1994, or on or before 30 days from receipt of this Notice by the registrant, whichever occurs later. Requests for a hearing by other adversely affected parties must be received by the Office of the Hearing Clerk on or before August 5, 1994. All registrants and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings (40 CFR part 164). These procedures require that all requests identify the specific registration by Registration Number and state the basis for objecting to the cancellation of the product for which a hearing is requested. Requests must be received by the Hearing Clerk within the applicable 30–day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice Governing Hearings under FIFRA section 6 (40 CFR part 164). All hearings will be held in Washington, DC. In the event of a timely and effective request for a hearing, each cancellation action concerning the specific use of the specific registered product that is the subject of the hearing request will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the cancellation of a specific product subject to this Notice is not requested in a timely and effective manner by the end of the applicable 30–day period, registration of that product will be canceled automatically.

B. Separation of Functions

EPA's rules of practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding ex parte with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of his/her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff of EPA in any administrative hearing on this Notice of Intent to Cancel: the Office of Administrative Law Judges, the Environmental Appeals Board, the Deputy Administrator and the members of the staff in the immediate office of the Deputy Administrator, and the Administrator and the members of staff in the immediate office of the Administrator. The following offices are designated as the trial staff in any proceeding which may arise under this Notice: the Office of General Counsel, the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances and immediate staff, the Office of Pesticide Programs, and the Office of Compliance Monitoring. None of the persons designated as the judicial staff may have any ex parte communications with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in these proceedings, without fully complying with the applicable regulations.

XII. References

1. June 16, 1989, "Peer Review of Simazine." HED Peer Review Committee review of the weight of the evidence on simazine with particular reference to its oncogenic potential.

2. August 18, 1993, memo from Henry Spencer, HED/OPP, to Joanne Miller, RD/OPP. RE: exposure assessment and subsequent assessment of cancer risk from simazine-treated swimming pools.

3. November 29, 1993, letter from Daniel Barolo, SRRD/OPP, to the simazine algaecide registrants. RE: EPA's risk concerns and invitation to December 6, 1993 meeting.

4. December 8, 1993, letter from Daniel Barolo to the simazine algaecide registrants. RE: request for voluntary cancellation.

5. July 28, 1993, memo from Judy Smith, HED/OPP, to Henry Spencer. RE: request for swimmer exposure assessment for simazine-treated pools.

6. October 16, 1989, Scientific Advisory Panel (SAP), "A Set of Scientific Issues Being Considered by the Agency in Connection with the Peer Review Classification of Simazine as a Class C Oncogen."

7. May 24, 1990, "Peer Review of Simazine Following SAP Review." HED Peer Review Committee met to reconsider the evaluation of simazine following the presentation to the SAP.

8. November 23, 1993, memo from Henry Spencer to Joanne Miller. RE: addendum to assessment of non-cancer health risk from simazine-treated swimming pools.

9. April 5, 1994, memo from Douglas Campt, OPP, to Bruce Jaeger, SAP. RE: Request for waiver of SAP's right to review the NOIC.

10. April 5, 1994, letter from Douglas Campt to Nancy Ragsdale, USDA. RE: Request for waiver of USDA's right to review the NOIC.

11. April 12, 1994, letter from Nancy Ragsdale to Douglas Campt. RE: USDA waiver of NOIC review.

12. April 25, 1994, memo from R. Bruce Jaeger to Douglas Campt. RE: SAP waiver of NOIC review.

XIII. Public Docket

The public docket containing the above supporting documentation is located at 1921 Jefferson Davis Highway, Room 1128, Arlington, Virginia. The references can be viewed from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: June 24, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–16334 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–F

[PP 8G3571/T663; FRL 4872–7]

Triclopyr; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for the combined residues of the herbicide triclopyr and its metabolites in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire June 23, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the

Federal Register of August 15, 1991 (56 FR 40614), stating that temporary tolerances had been renewed for the combined residues of the herbicide triclopyr (3,5,6-trichloro-2-pyridinyloxyacetic acid) and its metabolites 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine in or on the raw agricultural commodities rice grain at 0.5 part per million (ppm) and rice straw at 8.0 ppm, and for triclopyr in poultry meat, poultry fat, and meat byproducts (except kidney) at 0.2 ppm, poultry kidney at 1.0 ppm and eggs at 0.3 ppm. These tolerances are renewed in response to pesticide petition (PP) 8G3571, submitted by DowElanco, 9002 Purdue Rd., P.O. Box 681428, Indianapolis, IN 46268.

The company has requested a 1–year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 62719-EUP-8, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. DowElanco must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 23, 1995. Residues not in excess of these amounts remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

Federal Register of August 15, 1991 (56 FR 40614), stating that temporary tolerances had been renewed for the combined residues of the herbicide triclopyr (3,5,6-trichloro-2-pyridinyloxyacetic acid) and its metabolites 3,5,6-trichloro-2-pyridinol, and 2-methoxy-3,5,6-trichloropyridine in or on the raw agricultural commodities rice grain at 0.5 part per million (ppm) and rice straw at 8.0 ppm, and for triclopyr in poultry meat, poultry fat, and meat byproducts (except kidney) at 0.2 ppm, poultry kidney at 1.0 ppm and eggs at 0.3 ppm. These tolerances are renewed in response to pesticide petition (PP) 8G3571, submitted by DowElanco, 9002 Purdue Rd., P.O. Box 681428, Indianapolis, IN 46268.

The company has requested a 1–year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 62719-EUP-8, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. DowElanco must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 23, 1995. Residues not in excess of these amounts remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 21 U.S.C. 346a(j).

Dated: June 22, 1994

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–16194 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00386; FRL–4899–7]

Statement of Policy for Water Soluble Packaging; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on a proposed policy for water soluble packaging. That policy has been developed in a draft Pesticide Regulation (PR) Notice entitled, "Water Soluble Packaging (WSP)" which is available upon request. Interested parties may request a copy of the Agency's proposed policy as set forth in the ADDRESSES unit of this notice.

DATES: Written comments, identified by the docket number [OPP–00386], must be received on or before August 19, 1994.

ADDRESSES: The PR Notice is available from Jeff Kempter, By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5448.

Submit written comments to: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Kempter (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5448.

SUPPLEMENTARY INFORMATION: Water soluble packaging (WSP), which usually consists of polyvinyl alcohol, is used to package certain powdered formulations of pesticides to minimize exposure to pesticide handlers via inhalation. EPA is proposing to streamline the registration requirements for WSP to encourage use of such "reduced risk" packaging. Under the proposed policy, EPA will register WSP along with other forms of packaging under one registration number under the following conditions:

1. The confidential statement of formula (CSF) must list the chemical name(s), trade name(s), supplier(s), CAS Registry number(s), and amount(s) of components of the polyvinyl alcohol film and printing ink(s). All WSP components must have been previously cleared and not listed as ingredients to the product.

2. The "Directions For Use" on the label must provide mixing directions in terms of WSP packages to be added per unit volume of water.

To add WSP to an existing registration, a registrant would notify EPA by submitting a letter certifying compliance with the PR Notice, and enclosing two copies of the CSF and one copy of the revised label.

This **Federal Register** notice announces the availability of the draft PR Notice and solicits comment on the proposed policy. If, after reviewing any comments, EPA determines that changes to the Policy are warranted, the Agency will revise the draft PR Notice prior to release.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 27, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–16331 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–00125A; FRL–4872–3]

Toxic Substances Control Act Confidential Business Information Claims Policies and Regulations; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that EPA is making available a final paper entitled *Final Action Plan: TSCA Confidential Business Information Reform* discussing issues regarding Toxic Substances Control Act (TSCA) Confidential Business Information (CBI) policies and certain future actions by EPA which may change CBI requirements or TSCA implementation.

DATES: The paper will be available after July 7, 1994.

ADDRESSES: Copies of the paper may be obtained from the TSCA Hot Line (7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, or TSCA Nonconfidential Information Center (7407), Environmental Protection Agency, NE–B607, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–7099.

FOR FURTHER INFORMATION CONTACT: Scott M. Sherlock, Telephone: (202) 260–1536, or Carl J. Eichenwald, Telephone: (202) 260–3956, Information Management Division (7407), Environmental Protection Agency, 401 M St., SW., Rm. E–118, Washington, DC 20460, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In September 1992, EPA released a commissioned study entitled *Influence of CBI Requirements on TSCA CBI* (the "study"). The study was commissioned as part of an EPA initiative to improve TSCA's utilization as a toxics information dissemination statute. The study provided an in depth analysis of CBI claims, submitter procedures for making such claims, EPA review and challenges of claims, and effects of CBI claims on information which is not eligible for confidential treatment by the standards established in TSCA and its implementing regulations, including 40 CFR part 2, on EPA's toxics information mission.

After releasing the study, EPA has met with a variety of state, environmental, labor, and industry groups. In addition, EPA conducted a public meeting regarding the study. EPA carefully considered the recommendations provided in the study and the comments it has received from the public. Based in part on the recommendations and comments received, EPA formulated a working paper entitled *Proposed Actions to Reform TSCA Confidential Business Information* (the "proposal") discussing the issues raised by EPA, the study, and the various comments.

The Agency conducted a second public meeting after the release of the proposal. Again EPA has received many comments. Based on the recommendations and comments received, EPA developed the final paper entitled *Final Action Plan: TSCA Confidential Business Information Reform*. The paper is available from the TSCA Hot Line at the location listed under the ADDRESSES unit.

The following are components of the Final Action Plan:

1. Educational efforts.
2. Toxics information dissemination.
3. State programs.
4. Regulatory policy clarifications.
5. CBI review.
6. Industry voluntary information dissemination.
7. Regulatory changes: sunset provisions.
8. Regulatory changes: senior management official signing CBI claims.
9. Regulatory changes: upfront substantiation.

All the comments received in the various stages of the policy development process, various other relevant documents and the transcripts of the public meetings have been incorporated into a public case file. This case file, No. 00125A, is available for inspection in the TSCA Nonconfidential Information Center located at EPA headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC, from 12 noon to 4 p.m., Monday through Friday, excluding holidays.

Dated: June 27, 1994.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–16332 Filed 7–5–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted To Office of Management and Budget For Review

June 28, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0341.

Title: Section 73.1680, Emergency antennas.

Action: Extension of currently approved collection.

Respondents: Non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 140 responses; 1 hour average burden per response; 140 hours total annual burden.

Needs and Uses: Section 73.1680 requires that licensees of AM, FM or TV stations submit an informal request to the FCC (within 24 hours of commencement of use) to continue operation with an emergency antenna. An emergency antenna is one that is erected for temporary use after the authorized main and auxiliary antennas are damaged and cannot be used. The data is used by FCC staff to ensure that interference is not caused to other existing stations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–16239 Filed 7–5–94; 8:45 am]

BILLING CODE 6712–01–M

[DA 94–694]

Comments Invited on Illinois Public Safety Plan Amendment

June 24, 1994.

On September 30, 1991, the Commission accepted the Public Safety Plan for Illinois (Region 13). On June 6, 1994, Region 13 submitted a proposed amendment to its plan that would revise the current channel allotments. Because the proposed amendment is a major change to the Region 13 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before August 4, 1994 and reply comments on or before August 19, 1994. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submission to PR Docket 91–228 Illinois-Public Safety Region 13.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–16238 Filed 7–5–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Deutsche Bank AG, Frankfurt, Germany; Application to engage in Nonbanking Activities

Deutsche Bank AG, Frankfurt, Germany (Deutsche Bank), has applied pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage in various activities through Deutsche Bank Sharps Pixley, Inc. (DBSPI) and Sharps Pixley Brokers, Inc. ("Brokers"), both of New York, New York, which were acquired indirectly by Deutsche Bank from Kleinwort Benson Group plc, London, England on December 31, 1993. Deutsche Bank proposes to engage in the following activities through DBSPI: (1) trading for its own account for nonhedging purposes in gold, silver and platinum bullion in the spot, forward and over-the-counter (OTC) option markets; and (2) providing various

[DA 94-694]

Comments Invited on Illinois Public Safety Plan Amendment

June 24, 1994.

On September 30, 1991, the Commission accepted the Public Safety Plan for Illinois (Region 13). On June 6, 1994, Region 13 submitted a proposed amendment to its plan that would revise the current channel allotments. Because the proposed amendment is a major change to the Region 13 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before August 4, 1994 and reply comments on or before August 19, 1994. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submission to PR Docket 91-228 Illinois-Public Safety Region 13.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge; Office of Engineering and Technology, (202) 653-8112.

Federal Communications Commission.

William F. Caton,

Acting Secretary:

[FR Doc. 94-16238 Filed 7-5-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Deutsche Bank AG, Frankfurt, Germany; Application to engage in Nonbanking Activities

Deutsche Bank AG, Frankfurt, Germany (Deutsche Bank), has applied pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage in various activities through Deutsche Bank Sharps Pixley, Inc. (DBSPI) and Sharps Pixley Brokers, Inc. ("Brokers"), both of New York, New York, which were acquired indirectly by Deutsche Bank from Kleinwort Benson Group plc, London, England on December 31, 1993. Deutsche Bank proposes to engage in the following activities through DBSPI: (1) trading for its own account for nonhedging purposes in gold, silver and platinum bullion in the spot, forward and over-the-counter (OTC) option markets; and (2) providing various financing services. Deutsche Bank proposes to provide futures commission merchant (FCM) execution and investment advisory services through Brokers, an FCM registered under the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), on the following contracts: Copper Futures, Options on Copper Futures, Gold Futures, Options on Gold Futures, Silver Futures, and Options on Silver Futures on the Commodity Exchange, Inc.; Copper Futures, Options on Copper Futures, Lead Futures, Options on Lead Futures, Zinc Futures, Options on Zinc Futures, Aluminum Futures, Options on Aluminum Futures, Tin Futures, Options on Tin Futures, Nickel Futures, Options on Nickel Futures, Aluminum Alloy Futures, and Options on Aluminum Alloy Futures on The London Metal Exchange, Limited The activities will be conducted on a world wide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Deutsche Bank states that the Board previously has determined by Regulation that certain of the proposed activities, when conducted within limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of § 4(c)(8) of the BHC Act. See 12 C.F.R 225.25(b)(1) and Westpac Banking Corporation, 73 Federal Reserve Bulletin 61 (1987) (making, acquiring or servicing loans or other extensions of credit); 12 C.F.R. 225.25(b)(18) and (19) (providing FCM transactional and advisory services with respect to bullion contracts).

Deutsche Bank also maintains that the Board has determined by order that several of the other proposed activities, when conducted within the limitations established by the Board in previous orders, are closely related to banking *See Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990) (trading gold and silver bullion in the spot market for a bank holding company's own account); *J.P. Morgan & Co. Incorporated*, 80 Federal Reserve Bulletin 151 (1994) (providing FCM transactional and advisory services with respect to nonfinancial commodity contracts). Deutsche Bank maintains that DBSPI and Brokers would conduct these previously approved activities in conformity with the conditions and limitations established by the Board in prior cases.

Deutsche Bank further states that the Board previously has not approved trading platinum bullion in the spot market for a bank holding company's own account, or trading gold, silver or platinum bullion in the forward or OTC option market for a bank holding company's own account for nonhedging purposes. With respect to trading gold and silver in the forward and OTC option markets, Deutsche Bank maintains that the Board previously has determined that trading for nonhedging purposes in the proposed derivative contracts with respect to other bank-eligible investments is closely related to banking, and, therefore, that trading these contracts with respect to silver and gold bullion also is closely related to banking. *See Hongkong and Shanghai Banking Corporation*, 75 Federal Reserve Bulletin 217 (1989) (trading foreign exchange for a bank holding company's own account for nonhedging purposes in the spot, forward, options, futures and options on futures markets).

With respect to its proposal that Company trade for its own account in platinum bullion, Deutsche Bank states that the OCC and the New York State Banking Department have approved this activity for banks under their respective jurisdictions. Deutsche Bank also states that the Board has approved under § 4(c)(8) of the BHC Act the purchase and

sale of platinum coins, under limited circumstances. *See Standard Chartered PLC*, 76 Federal Reserve Bulletin 681 (1990). Deutsche Bank also states that the Board has approved, under Regulation K (12 C.F.R. part 211), trading in platinum by bank holding company subsidiaries located outside the United States. *See J.P. Morgan & Co. Incorporated*, 76 Federal Reserve Bulletin 552 (1990). Deutsche Bank maintains that for these reasons, the proposed trading in platinum bullion is closely related to banking.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by DBSPI and Brokers "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. § 1843(c)(8).

Deutsche Bank believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Deutsche Bank maintains that the proposal will enhance competition and enable Deutsche Bank to offer its customers a broader range of products. In addition, Deutsche Bank states that the proposed activities will not result in the adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 31, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, June 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16289 Filed 7–5–94; 8:45 am]

BILLING CODE 6210–01–F

FSB Financial Corporation; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. FSB Financial Corporation, Francisco, Indiana, to become a bank holding company by acquiring 100 percent of the voting shares of The Francisco State Bank, Francisco, Indiana.

2. Southern Bancshares, Ltd., Carbondale, Illinois to acquire 100 percent of the voting shares of DeSoto Bancshares, Inc., De Soto, Illinois, and thereby indirectly acquire Bank of DeSoto, De Soto, Illinois.

Board of Governors of the Federal Reserve System, June 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16290 Filed 7–5–94; 8:45 am]

BILLING CODE 6210–01–F

Trans Financial Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Trans Financial Bancorp, Inc., Bowling Green, Kentucky, to engage *de novo*, through indirect nonbank subsidiaries, Tran Financial Service Corporation, Tullahoma, Tennessee and General Service Corporation, Russellville, Kentucky, in full service securities brokerage activities and in fixed and variable rate annuity sales activities in places where the applicant's thrift subsidiaries have lending offices that have populations not exceeding 5,000, pursuant to §§ 225.25(b)(4) and (15)(ii) and § 225.25(b)(8)(iii) of the Board's Regulation Y. The applicant also plans to engage in riskless principal transactions, which has been approved by Board order. *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989); *Cardinal Bancshares, Inc.*, 80 Federal Reserve Bulletin 447 (1994). Nationwide scope for full service brokerage activities and riskless principal activities. For annuity sales activities, in Auburn, Kentucky, and Mt. Pleasant and Kingston, Tennessee, and any future offices acquired or established by the applicant's thrift subsidiaries that are located in towns with populations not exceeding 5,000.

Board of Governors of the Federal Reserve System, June 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16291 Filed 7–5–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 941 0019]

The Dow Chemical Company, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Marion Merrell Dow to license its dicyclomine formulations and production technology to a third party, and to contract manufacture dicyclomine for the third party while that party awaits the Food and Drug Administration approval to sell its own dicyclomine. The consent agreement also would prohibit future acquisition of any dicyclomine manufacturing, production or distribution capabilities without prior Commission approval.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary,

Russellville, Kentucky, in full service securities brokerage activities and in fixed and variable rate annuity sales activities in places where the applicant's thrift subsidiaries have lending offices that have populations not exceeding 5,000, pursuant to §§ 225.25(b)(4) and (15)(ii) and § 225.25(b)(8)(iii) of the Board's Regulation Y. The applicant also plans to engage in riskless principal transactions, which has been approved by Board order. *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989); *Cardinal Bancshares, Inc.*, 80 Federal Reserve Bulletin 447 (1994). Nationwide scope for full service brokerage activities and riskless principal activities. For annuity sales activities, in Auburn, Kentucky, and Mt. Pleasant and Kingston, Tennessee, and any future offices acquired or established by the applicant's thrift subsidiaries that are located in towns with populations not exceeding 5,000.

Board of Governors of the Federal Reserve System, June 29, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16291 Filed 7–5–94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 941 0019]

The Dow Chemical Company, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Marion Merrell Dow to license its dicyclomine formulations and production technology to a third party, and to contract manufacture dicyclomine for the third party while that party awaits the Food and Drug Administration approval to sell its own dicyclomine. The consent agreement also would prohibit future acquisition of any dicyclomine manufacturing, production or distribution capabilities without prior Commission approval.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ann Malester or Claudia Higgins, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the Acquisition of certain stock of Rugby-Darby Group Companies, Inc. ("Rugby") by Marion Merrell Dow Inc. ("MMD"), a subsidiary of The Dow Chemical Company ("Dow") (collectively referred to as "Proposed Respondents"), and it now appearing that Proposed Respondents are willing to enter into an Agreement Containing Consent Order ("Agreement") to license certain assets, contract manufacture dicyclomine tablets and capsules, cease and desist from certain acts, and provide for certain other relief:

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. Proposed Respondent Dow is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at 2030 Dow Center, Midland, Michigan, 48674.

2. Proposed Respondent MMD is a subsidiary of Dow, and is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at 9300 Ward Parkway, Kansas City, Missouri, 64114.

3. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to license and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents' addressed as stated in this agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the

Order or the agreement may be used to vary or contradict the terms of the Order.

8. Proposed Respondents have read the proposed Complaint and Order contemplated hereby. Proposed Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. "Dow" means The Dow Chemical Company, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Dow, and its respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "MMD" means Marion Merrell Dow Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by MMD, and its respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. "Rugby" means Rugby Group, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Rugby, and its respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

D. "Respondents" means Dow and MMD.

E. "Commission" means the Federal Trade Commission.

F. "Acquisition" means the acquisition by Respondents of certain Rugby stock that is the subject of a stock purchase agreement dated October 4, 1993.

G. "Rugby intangible dicyclomine assets" means those assets relating to the manufacture and sale of dicyclomine tablets and capsules acquired in the Acquisition that are not part of Rugby's physical facilities or other tangible assets, including but not limited to all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, quality control data, research materials, technical information, management information systems, software, the Drug Master file, and all information relating to United States Food and Drug Administration ("FDA") approvals.

H. "Potential New Entrant" means the person(s) for whom MMD shall contract manufacture, and to whom MMD shall sell, dicyclomine tablets and capsules and license the Rugby intangible dicyclomine assets. The Potential New Entrant must be a generic or a branded pharmaceutical manufacturer with manufacturing facilities approved by the FDA for the manufacture of generic or branded pharmaceutical products in the United States.

I. "Dicyclomine tablets and capsules" means pharmaceutically acceptable finished tablets and capsules consisting of either 10mg or 20mg of dicyclomine hydrochloride U.S.P. manufactured under an approved New Drug Application ("NDA") or an approved Abbreviated New Drug Application ("ANDA") for sale in the United States and that have received at least an AB rating by the FDA.

J. "Contract manufacture" means the manufacture of an unlimited volume of dicyclomine tablets and capsules by MMD for sale to a Potential New Entrant in finished packaged form suitable for commercial sale in the United States.

K. "Finished packaged form" means packaged in all forms required by the Potential new Entrant so as to optimize sales and distribution of the product, including but not limited to inscribing the name and identification codes of the Potential New Entrant on the packaging of dicyclomine capsules or tablets, and packaging the dicyclomine tablets and capsules in units required by the Potential New Entrant, as permitted by Rugby's existing ANDA.

L. "Formulation" means any and all information, including both patent and trade secret information, technical assistance and advice, relating to the manufacture of dicyclomine tablets and capsules that meet United States Food and Drug Administration approved specifications therefor.

II

It is further ordered that:

A. Within twelve (12) months from the date this Order becomes final, MMD shall enter into an agreement (hereinafter "Agreement"), in good faith:

1. To license to the Potential New Entrant in perpetuity a non-exclusive right to the Rugby intangible dicyclomine assets at no minimum price; and

2. To contract manufacture and deliver in a timely manner the volume of dicyclomine tablets and capsules requested by the Potential New Entrant, at a price not to exceed 48% of the Average Wholesale Price of Rugby's dicyclomine tablets and capsules in effect as of July 2, 1993.

MMD shall enter into such Agreement to license and contract manufacture only with a Potential New Entrant that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission and that is consistent with the purposes of this Order. The purposes of this Order are: (a) to provide the means for establishing an ongoing, viable enterprise to replace the competition in the dicyclomine tablet and capsule market alleged in the Commission's Complaint to have been eliminated by the Acquisition; and (b) to remedy the lessening of competition alleged in the Commission's Complaint to have resulted from the Acquisition.

B. The Agreement shall require the Potential New Entrant to submit to the Commission a certification attesting to the Potential New Entrant's good faith intention and actual plan to obtain FDA approval of its own NDA or ANDA for the manufacture and sale of dicyclomine tablets and capsules in an expedited manner. The Agreement shall terminate in the event that the Potential New Entrant fails to sell or discontinues the sale of contract manufactured dicyclomine tablets and capsules prior to obtaining FDA approval, or abandons its efforts or fails to obtain FDA approval of its own NDA or ANDA for dicyclomine tablets and capsules within seven (7) years from the date the Commission approves the Agreement.

C. The Agreement shall require the Potential New Entrant to submit to the Commission a verified written report setting forth in detail its efforts to sell contract manufactured dicyclomine tablets and capsules and to obtain FDA approvals necessary for manufacturing its own dicyclomine tablets and capsules. The Agreement shall require such report to be submitted one (1) year from the date the Agreement becomes effective and annually thereafter until contract manufacturing ceases. The Agreement shall also require the Potential New Entrant to report to the Commission at least thirty (30) days prior to its discontinuing the sale of contract manufactured dicyclomine tablets and capsules or abandoning its efforts to obtain FDA approvals necessary for manufacturing its own dicyclomine tablets and capsules.

D. MMD shall deliver dicyclomine tablets and capsules to the Potential New Entrant within two (2) months from the date the Commission approves the Potential New Entrant and the Agreement. The Potential New Entrant shall have the right to continue to purchase dicyclomine tablets and capsules from MMD pursuant to the Agreement until six (6) months after the date that the Potential New Entrant obtains FDA approval of its own NDA or ANDA for the manufacture and sale of dicyclomine tablets and capsules in the United States.

E. MMD shall make representations and warranties to the Potential New Entrant that the contract manufactured dicyclomine tablets and capsules meet the United States Food and Drug Administration approved specifications therefor and are not adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. 321, *et seq.* MMD shall agree to indemnify, defend and hold the Potential New Entrant harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the manufactured dicyclomine tablets and capsules to meet the specifications. This obligation shall be contingent upon the Potential New Entrant giving MMD prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting MMD to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require MMD to be liable for any negligent act or omission of the Potential New Entrant or for any representations and warranties, express or implied, made by the Potential New Entrant that exceed the representations and warranties made by MMD to the Potential New Entrant.

F. Upon reasonable notice from and at the option of the Potential New Entrant, MMD shall provide information, technical assistance and advice sufficient to assist the Potential New Entrant in obtaining FDA approval for the manufacture and sale of dicyclomine tablets and capsules. Such assistance shall include reasonable consultation with knowledgeable employees of MMD and training at the Potential New Entrant's facility for a period of time sufficient to satisfy the Potential New Entrant's management that its personnel are appropriately trained in the manufacture of dicyclomine tablets and capsules.

G. While the obligations imposed by Paragraphs II.A, II.D or Paragraph III of this Order are in effect, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Rugby intangible dicyclomine assets and the tangible assets needed to contract manufacture and sell dicyclomine tablets and capsules and to prevent the destruction, removal, wasting, deterioration or impairment of any of the Rugby

capsules from MMD pursuant to the Agreement until six (6) months after the date that the Potential New Entrant obtains FDA approval of its own NDA or ANDA for the manufacture and sale of dicyclomine tablets and capsules in the United States.

E. MMD shall make representations and warranties to the Potential New Entrant that the contract manufactured dicyclomine tablets and capsules meet the United States Food and Drug Administration approved specifications therefor and are not adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. 321, *et seq.* MMD shall agree to indemnify, defend and hold the Potential New Entrant harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the manufactured dicyclomine tablets and capsules to meet the specifications. This obligation shall be contingent upon the Potential New Entrant giving MMD prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting MMD to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require MMD to be liable for any negligent act or omission of the Potential New Entrant or for any representations and warranties, express or implied, made by the Potential New Entrant that exceed the representations and warranties made by MMD to the Potential New Entrant.

F. Upon reasonable notice from and at the option of the Potential New Entrant, MMD shall provide information, technical assistance and advice sufficient to assist the Potential New Entrant in obtaining FDA approval for the manufacture and sale of dicyclomine tablets and capsules. Such assistance shall include reasonable consultation with knowledgeable employees of MMD and training at the Potential New Entrant's facility for a period of time sufficient to satisfy the Potential New Entrant's management that its personnel are appropriately trained in the manufacture of dicyclomine tablets and capsules.

G. While the obligations imposed by Paragraphs II.A, II.D or Paragraph III of this Order are in effect, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Rugby intangible dicyclomine assets and the tangible assets needed to contract manufacture and sell dicyclomine tablets and capsules and to prevent the destruction, removal, wasting, deterioration or impairment of any of the Rugby intangible and tangible assets relating to the manufacture of dicyclomine tablets and capsules except in the ordinary course of business and except for ordinary wear and tear that does not affect the viability and marketability of the Rugby intangible and tangible assets.

III

It is further ordered that:

A. MMD shall consent to the appointment of a trustee by the Commission to terminate MMD's prior Agreement, if any, and to enter into a new Agreement on behalf of MMD with a Potential New Entrant selected by the trustee if:

1. MMD has not entered into an Agreement to contract manufacture dicyclomine tablets and capsules and to license the Rugby intangible dicyclomine assets to a Potential New Entrant within twelve (12) months as provided for in Paragraph II of this Order; or

2. The Potential New Entrant terminates the Agreement to contract manufacturer, fails to sell, or discontinues the sale of contract manufactured dicylomine tablets and capsules in the United States prior to obtaining FDA approval of its own NDA and ANDA for the manufacture and sale of dicyclomine tablets and capsules; or

3. The Potential New Entrant abandons its efforts or fails to obtain FDA approval of it own NDA or ANDA for diclyclomine tablets and capsules within seven (7) years from the date the Commission approves the Agreement.

In the event the Commission or the Attorney General brings an action against Respondents to enforce this order pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. section 45(*l*), or any other statute enforced by the Commission, MMD shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A of this Order, MMD shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of MMD, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If MMD has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to MMD of the identity of any proposed trustee, MMD shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to enter into an Agreement as specified in Paragraph II of this Order.

3. Within ten (10) days after appointment of the trustee, MMD shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to enter into the Agreement required by Paragraph II of this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3 to terminate any prior Agreement and to enter into the Agreement specified in Paragraph II of this Order, which Agreement shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period the trustee has submitted a plan or believes that the Agreement required by Paragraph II of this Order can be entered into within a reasonable time, the twelve (12) month period may be extended by the Commission or, in the case of a court-appointed trustee, by the court; *provided*, however, the Commission my extend the twelve (12) month period only two (2) time and for no longer than twelve (12) months each time.

5. The trustees shall have full and complete access to the personnel, books, records, facilities and technical information related to the manufacture of dicyclomine tablets and capsules and to the Rugby intangible dicyclomine assets, or to any other relevant information, as the trustee may reasonably request. Respondents shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's ability to enter into the Agreement required by Paragraph II of this Order. Any delays in entering into the Agreement required by Paragraph II of this Order caused by Respondents shall extend the time under Paragraph III.B.4 for entering into the Agreement required by Paragraph II of this Order in an amount equal to the delay, as determined by the Commission or, for the court-appointed trustee by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to MMD's absolute and unconditional obligation to enter into the Agreement required by Paragraph II of this Order at no minimum price. The Agreement shall be made in the manner and with a Potential New Entrant as set out in Paragraph II of this Order; *provided,* however, if the trustee receives bona fide offers from more than one Potential New Entrant, and if the Commission determines to approve more than one such Potential New Entrant, the trustee shall enter into an Agreement as required by Paragraph II of this Order with the Potential New Entrant selected by MMD from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of MMD, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of MMD, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the Agreement required by Paragraph II of this Order and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of MMD and the trustee's power shall be terminated.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to enter into the Agreement required by Paragraph II of this Order.

11. The trustee shall report in writing to MMD and to the Commission every sixty (60) days concerning the trustee's efforts to enter into the Agreement required by Paragraph II of this Order.

IV

It is further ordered that for a period of ten (10) years from the date this Order becomes final, Respondents shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

(a) Any stock, share capital, equity, leasehold or other interest in any concern, corporate or non-corporate, presently engaged in, or within the two years preceding such acquisition engaged in, the manufacture, production, distribution or sale of dicyclomine tablets and capsules in the United States; or

(b) Any assets currently used for or previously used for (and still suitable for use for) the manufacture and production of dicyclomine tablets and capsules in the United States from any concern, corporate or noncorporate, presently engaged in, or within the two years preceding the acquisition engaged in the manufacture, production, distribution or sale of dicyclomine tablets and capsules in the United States.

Provided, however, that the obligations imposed by this Paragraph shall not terminate while the obligations of Paragraphs II or III are in effect.

V

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until the Commission has approved a Potential New Entrant, MMD shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with Paragraphs II and III of the Order. MMD shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of this Order, including a description of all substantive contacts or negotiations for entering into the Agreement required by this Order, including the identity of all parties contacted. MMD shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the Agreement required by Paragraph II of this Order.

B. One (1) year from the date this Order becomes final and annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with Paragraphs II, III and IV of this Order.

Provided, however, that the obligations imposed by this Paragraph shall not terminate while the obligations of Paragraphs II or III are in effect.

VI

It is further ordered that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents, Respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents, relating to any matters contained in this consent order; and

B. Upon five (5) days notice to Respondents, and without restraint or interference from Respondents, to interview officers or employees of Respondents, who may have counsel present, regarding such matters.

VII

It is further ordered that either Respondent shall notify the Commission at least thirty (30) days prior to any change in either Respondent such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted provisionally an agreement containing a proposed Consent Order from The Dow Chemical Company ("Dow") and Marion Merrell Dow Inc. ("MMD"), a subsidiary of Dow, under which MMD would be required to manufacture and supply the drug dicyclomine for a potential new entrant and to provide the dicyclomine formulation and other intangible assets to expedite that potential new entrant's entry as a manufacturer into the dicyclomine market. In addition, under the proposed Consent Order the potential new entrant would be required to certify its good faith intention to manufacture dicyclomine.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On October 4, 1993, MMD and Rugby-Darby Group Companies, Inc. ("Rugby") signed an agreement whereby MMD acquired all of the stock of Rugby's generic pharmaceutical business. The proposed compliant alleges that the acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for dicyclomine hydrochloride capsules and tablets in the United States.

The proposed Consent Order would remedy the alleged violation by establishing a new entrant into the U.S. market for dicyclomine capsules and tablets to replace the competition lost as a result of the acquisition. The proposed Consent Order would require MMD to enter into an agreement with a potential new entrant within twelve (12) months from the date the proposed Consent Order becomes final.

The agreement would require MMD to manufacture and supply dicyclomine, as well as to license the relevant dicyclomine technology, to a Commission approved potential new entrant. MMD must continue to supply the potential new entrant with dicyclomine until the potential new entrant has begun manufacturing dicyclomine with FDA approval, or for seven (7) years, whichever is shorter. The price at which MMD may contract to supply dicyclomine to the potential new entrant may not exceed 48 percent of the Average Wholesale Price charged by Rugby as of July 2, 1993. The potential new entrant must certify its good faith intention and actual plan to obtain FDA approval to manufacture dicyclomine capsules and tablets for sale in the U.S. In the event that MMD fails to enter into such an agreement with a potential new entrant, or that the potential new entrant discontinues or fails in its efforts to obtain FDA approval to manufacture dicyclomine within seven (7) years, the proposed

intangible assets to expedite that potential new entrant's entry as a manufacturer into the dicyclomine market. In addition, under the proposed Consent Order the potential new entrant would be required to certify its good faith intention to manufacture dicyclomine.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On October 4, 1993, MMD and Rugby-Darby Group Companies, Inc. ("Rugby") signed an agreement whereby MMD acquired all of the stock of Rugby's generic pharmaceutical business. The proposed compliant alleges that the acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for dicyclomine hydrochloride capsules and tablets in the United States.

The proposed Consent Order would remedy the alleged violation by establishing a new entrant into the U.S. market for dicyclomine capsules and tablets to replace the competition lost as a result of the acquisition. The proposed Consent Order would require MMD to enter into an agreement with a potential new entrant within twelve (12) months from the date the proposed Consent Order becomes final.

The agreement would require MMD to manufacture and supply dicyclomine, as well as to license the relevant dicyclomine technology, to a Commission approved potential new entrant. MMD must continue to supply the potential new entrant with dicyclomine until the potential new entrant has begun manufacturing dicyclomine with FDA approval, or for seven (7) years, whichever is shorter. The price at which MMD may contract to supply dicyclomine to the potential new entrant may not exceed 48 percent of the Average Wholesale Price charged by Rugby as of July 2, 1993. The potential new entrant must certify its good faith intention and actual plan to obtain FDA approval to manufacture dicyclomine capsules and tablets for sale in the U.S. In the event that MMD fails to enter into such an agreement with a potential new entrant, or that the potential new entrant discontinues or fails in its efforts to obtain FDA approval to manufacture dicyclomine within seven (7) years, the proposed Consent Order provides that MMD shall consent to the appointment of a trustee by the Commission. The trustee will be responsible for locating a potential new entrant that will obtain the necessary approvals and sell dicyclomine into the U.S. market.

The proposed Order will also prohibit for a period of ten (10) years, Dow and MMD from acquiring any interest in assets used for the development, manufacture or sale of dicyclomine without prior approval from the Commission. The proposed Order will also require MMD to provide to the Commission a report of its compliance with the provisions of the Order within sixty (60) days following the date this Order becomes final, and every sixty (60) days thereafter until the Commission has approved a potential new entrant.

One year from the date the Order becomes final and annually thereafter for nine (9) years, Dow and MMD will be required to provide to the Commission a report of their compliance with the Consent Order. The Consent Order also requires Dow or MMD to notify the Commission at least thirty (30) days prior to any change in the structure of Dow or MMD resulting in the emergence of a successor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga

In *The Dow Chemical Company*, File No. 941–0019

Today, the Commission accepts for comment a consent agreement settling charges that Marion Merrell Dow's consummated acquisition of certain stock in the Rugby-Darby Group Companies, Inc. would substantially lessen competition in the United States market for dicyclomine hydrochloride capsules and tablets. I support the allegations in the complaint that the acquisition created a monopoly in the manufacture and sale of dicyclomine hydrochloride capsules and tablets, and I have reason to believe the acquisition violated the law. I dissent because I find the remedy insufficient. Ideally, the Commission would have sought to enjoin the transaction. Although it did not seek a preliminary injunction, the Commission still should seek through administrative litigation divestiture of assets sufficient to create a viable, independent dicyclomine business. Administrative litigation takes time but affords a much higher likelihood of obtaining effective relief by divestiture of an ongoing enterprise than does a technology license designed to induce new entry.

The order requires Marion Merrell Dow to grant a nonexclusive license to certain intangible dicyclomine assets, including patents and technology, and for up to seven years to sell to the person acquiring the license dicyclomine tablets and capsules at a price not exceeding 48 percent of the average wholesale price on July 2, 1993. Technology licenses tend to be highly regulatory and less effective than divestitures in restoring competition. Further, because of the great difficulty government agencies have in specifying competitive market prices, it is highly questionable whether requiring sales of dicyclomine at a Commission-specified maximum price will provide consumers with interim relief from the monopoly. Indeed, since the Commission granted early termination of the Hart-Scott-Rodino waiting period on July 12, 1993, it seems entirely possible that the price on July 2 reflected the impending merger to monopoly and was already supra-competitive.

Concurring Statement of Commissioner Deborah K. Owen on Proposed Consent Agreement With Marion Merrell Dow Inc., File No. 941–0019

The Commission is accepting for public comment a proposed consent agreement with Marion Merrell Dow Inc. ("MMD"), the manufacturer of Bentyl, a drug commonly prescribed for the treatment of certain gastrointestinal disorders. In October 1993, MMD acquired Rugby-Darby Group Companies, Inc. ("Rugby"), a manufacturer of numerous pharmaceutical products, including a generic version of Bentyl: dicyclomine hydrochloride. The proposed complaint alleges, *inter alia*, that this acquisition "created a monopoly in the manufacture of dicyclomine hydrochloride capsules and tablets." Complaint ¶ VIII(c). I am writing separately in order to explain one aspect of my analysis of this case, and to raise some questions concerning the proposed remedy.

A threshold issue in analyzing this merger is whether MMD's Bentyl and Rugby's generic dicyclomine are in the same product market. On the one hand, it may seem obvious that two drugs deemed to be bio-equivalent by the Food and Drug Administration, must be in the same relevant product market. On the other hand, branded drugs and their generic counterparts typically vary

dramatically in price, suggesting that consumers may not view the products as equivalent or interchangeable.

As indicated in the Merger Guidelines, the Commission approaches the issue of market definition by asking what products, if any, constrained the price of MMD's Bentyl (and Rugby's generic dicyclomine) at the time of the merger. If, in response to a small but significant increase in the price of Bentyl, enough customers would switch to generic dicyclomine (or, if in response to a small but significant increase in the price of generic dicyclomine, enough customers would switch to Bentyl) to make the price increase unprofitable, then the two products are deemed to be in the same market. Whether a particular branded drug and any generic versions are in the same market may vary over time, and depends in part upon their relative prices at the time of the merger. In general, where the price differential between the branded product and the generic product is great, the products are more likely to be in separate markets.[1] Conversely, where the price gap between the branded product and the generic product is relatively small (for example, where there is only one generic version available to consumers), the products are more likely to be in the same market.

The proposed consent agreement aims to establish a new competitor in the U.S. dicyclomine market to replace the competition lost as a result of MMD's allegedly illegal acquisition. Specifically, MMD is required to license certain dicyclomine production technology to a Commission-approved licensee that avows a good faith intention to obtain FDA approval to independently manufacture dicyclomine for sale in the United States. Further, MMD must supply dicyclomine to the potential new entrant for up to seven years, until such time as the licensee has begun manufacturing dicyclomine on its own.

I am concerned about the terms of this Commission-mandated supply agreement. The proposed consent order provides that the price at which MMD may contract to supply dicyclomine to the potential entrant may not exceed 48 percent of the average wholesale price charged by Rugby as of July 2, 1993.[2] This is in effect a form of government price regulation, and is apt to result in a significant misallocation of resources. It is particularly troubling that the maximum transfer price is fixed by the Commission's order for up to seven years, and (unlike market-based prices) does not vary with either changes in demand or changes in the costs of production. If the costs of production come to exceed the transfer price, then the licensee may have an incentive to delay the opening of its own production facility, and hence delay the return of true, market-based competition.

Furthermore, the fixed transfer price may actually be in effect for longer than seven years. For example, if the original licensee fails after seven years to obtain FDA approval, then a replacement licensee may be selected by a trustee. This second licensee is entitled to purchase dicyclomine from MMD at the same fixed price. Given the Commission's recent experience in the *Institut Merieux* (File No. C–3301) and *Promodes* (Docket No. 9228) matters, the prospect of another seemingly interminable and complicated compliance proceeding disturbs me.

I hope that during the public comment period the Commission will receive advice on the wisdom and workability of the proposed supply agreement. In particular, I am interested in considering alternate ways of structuring the price term. Is there a practical way, under a revised order, to permit the price term to vary should the costs of production or demand vary?[3] Or would the uncertainties of future cost and demand changes be better accomodated if MMD and the licensee were free to negotiate a price term (perhaps subject to Commission approval)? Finally, what is the optimal duration for the supply agreement? Specifically, how long should it take a licensee, acting diligently, to obtain required FDA approvals and commence manufacturing dicyclomine? At this time, I am not confident that the appropriate maximum duration for the MMD supply agreement should be as long as seven years. Public comment on these issues may be of significant value to the Commission not only in this matter, but more generally as the agency seeks to devise effective antitrust remedies for the pharmaceutical, and other industries.

Statement of Commissioner Dennis A. Yao

In *The Dow Chemical Company*, File No. 941 0019

I voted to accept for public comment the proposed consent agreement in this matter because I believe it represents a viable solution to the potential anticompetitive effects that resulted from Marion Merrell Dow's ("MMD") acquisition of Rugby Holding, Inc. ("Rugby"). The acquisition created a monopoly in the market for dicyclomine tablets and capsules by combining the only two manufacturers of the branded and generic product. The proposed consent has the potential of establishing a second competitor through the grant of a nonexclusive license by MMD of certain intangible dicyclomine assets. The order also sets a maximum price at which MMD is allowed to sell dicyclomine tablets and capsules to the licensee for up to seven years. The goal is to replace the competition lost from the dicyclomine market as quickly as possible by establishing a new entrant in the market. The order is the best mechanism to provide quick relief.

The order sets a ceiling of 48% of the average wholesale price on July 2, 1993, as the maximum price at which MMD is allowed to sell dicyclomine tablet and capsules to the licensee. The July 2, 1993, wholesale price offers the best available approximation of the price that would exist in a market consisting of only one manufacturer of the branded and one manufacturer of the generic product. The 48% is based on our best approximation of the margin that a generic distributor of another manufacturer's product needs to make a profit. Furthermore, the July 2 price is the firs price increase that reflected the exit of two generic competitors. The timing of the merger announcement and the price increase could suggest that the price on July 2nd were also influenced by the impending merger; however there is no evidence of this. If the ceiling is higher than one would prefer, the licensee and licensor could conceivably arrive at a transfer price that somewhat reduces their incentives to fully compete. Unfortunately, there is no other non-arbitrary method for setting the maximum allowable price, nor would it be easy to determine such a price. The provision, however, does serve the basic purpose of providing the licensee a chance to succeed without injecting a regulator's version of competition into the market.[1]

I have a mild concern that the licensee will not have sufficient incentives to begin manufacturing dicyclomine on its own under the order. A potential licensee could enter the licensing agreement for a short period of time with the intention of taking advantage of the profit available for selling the licensed product but without the intention of manufacturing dicyclomine on its own. Alternatively, a licensee might initially intend to elf-manufacture, but change its strategy at some later date and sell only the licensed product.[2] In this particular instance, no reasonable fixes to the licensee incentive problem seem available. Therefore, on balance, I support the order because, at a minimum, it should achieve the necessary intermediate relief. Permanent relief, such as divestiture, may not be as needed in this instance because there is.a good possibility of future entry, albeit untimely.

[FR Doc. 94–16279 Filed 7–5–94; 8:45 am]

BILLING CODE 6750–01–M

---

[1] This price differential may be greatest where there is intense price competition among different generic versions of a drug. In this situation, the branded drug may not serve as a significant constraint on the price of the generic versions; that is, a five or ten percent increase in the (very low) price of the generic drugs would not be defeated by sales lost to the (much higher priced) branded drug. And in this situation, the next best substitute for the branded drug (from the perspective of those consumers who are uninterested in low priced generics) may be another branded drug. Under the Merger Guidelines, the branded and generic drugs may then be viewed as occupying separate product markets.

[2] My view, based upon the evidence assembled during this investigation, is that the July 2, 1993 price did not reflect the exercise of any market power gained as a result of the then impending MMD/Rugby transaction, but reflected other factors.

[3] Would it be desirable to use the producer price index or some other index as a proxy for the costs of production?

[1] I think indexing for inflation might have been more appropriate given the seven year period over which the ceiling would be in effect.

[2] Such a change of strategy could come about because of the entry of others, or by unanticipated problems associated with gaining FDA approval, or self-manufacturing.

[File No. 932 3115]

Macy's Northeast, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the New York-based retail department store subsidiaries to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to inform their retail store managers of their compliance responsibilities, and to develop and implement a program for instructing their sales personnel about the availability and location of manufacturers' warranty information.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary,

injecting a regulator's version of competition into the market.[1]

I have a mild concern that the licensee will not have sufficient incentives to begin manufacturing dicyclomine on its own under the order. A potential licensee could enter the licensing agreement for a short period of time with the intention of taking advantage of the profit available for selling the licensed product but without the intention of manufacturing dicyclomine on its own. Alternatively, a licensee might initially intend to self-manufacture, but change its strategy at some later date and sell only the licensed product.[2] In this particular instance, no reasonable fixes to the licensee incentive problem seem available. Therefore, on balance, I support the order because, at a minimum, it should achieve the necessary intermediate relief. Permanent relief, such as divestiture, may not be as needed in this instance because there is a good possibility of future entry, albeit untimely.

[FR Doc. 94–16279 Filed 7–5–94; 8:45 am]
BILLING CODE 6750–01–M

[File No. 932 3115]

Macy's Northeast, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the New York-based retail department store subsidiaries to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to inform their retail store managers of their compliance responsibilities, and to develop and implement a program for instructing their sales personnel about the availability and location of manufacturers' warranty information.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., and Bullock's, Inc. ("proposed respondents" or "respondents", corporations, and wholly-owned subsidiaries of R.H. Macy & Co., Inc., a Delaware corporation, and it is now appearing that proposed respondents are will to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., and Bullock's, Inc., by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Macy's Northeast, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 151 W 34th Street, New York, New York 10001.

Proposed respondent Macy's South, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 151 W. 34th Street, New York, New York 10001.

Proposed respondent Macy's California, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 50 O'Farrell Street, San Francisco, California 94102.

Proposed respondent Bullock's Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 50 O'Farrell Street, San Francisco, California 94102.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

4. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service Delivery by the U.S. Postal Service of

---

[1] I think indexing for inflation might have been more appropriate given the seven year period over which the ceiling would be in effect.

[2] Such a change of strategy could come about because of the entry of others, or by unanticipated problems associated with gaining FDA approval, or self-manufacturing.

the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully compiled with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

The definitions of terms contained in § 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in rule 702, 16 C.F.R. § 702.1, promulgated thereunder, shall apply to the terms of this Order.

I

It is ordered that respondents Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., and Bullock's, Inc., corporations, their successors and assigns, and their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device in connection with the sale or offering for sale of any consumer product in or affecting commerce, do forthwith cease and desist from failing to make a text of any written warranty on a consumer product actually costing more than $15 readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in 16 CFR 702.3(a), as amended.

II

It is further ordered that respondents shall, within thirty (30) days of the date of service of this Order, deliver to each current retail store manager and assistant or operations manager engaged in the sale of consumer products on behalf of respondents, a copy of this Order to cease and desist.

III

It is further ordered that respondents shall, within thirty (30) days of the date of service of this Order, instruct all current retail store managers and assistant or operations managers engaged in the sale of consumer products on behalf of respondents as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

IV

It is further ordered that respondents shall, for a period of not less than four (4) years from the date of service of this order, instruct all future retail store managers and assistant or operations managers who will be engaged in the sale of consumer products on behalf of respondents, before they assume said responsibilities for respondents, as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

V

It is further ordered that respondents shall, within thirty (30) days of the date of service of this Order, develop and implement a program to instruct their sales personnel about the availability and location of warranty information.

VI

It is further ordered that respondents shall, for a period of not less than five (5) years from the date of service of the Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) copies of all written instructions provided by respondents to their retail store managers and assistant and operations managers and sales personnel regarding their obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this order; (ii) copies of signs posted by respondents in their retail store outlets designed to elicit prospective buyers' attention to the availability of the text of written warranties for review upon request; and (iii) copies of the text of written warranties made readily available by respondents' retail store outlets for examination by prospective buyers on request.

VII

It is further ordered that respondents, for a period of six (6) years from the date of service of this Order, shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that respondents shall, within ninety (90) days after service of this Order on them, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., and Bullock's, Inc. ("proposed respondents"), wholly-owned subsidiaries of R.H. Macy & Co., Inc. Proposed respondents operate department stores in New York, California, and a number of other states.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

The complaint alleges that the proposed respondents have violated a Rule promulgated by the Federal Trade Commission (16 CFR 702.3(a)) pursuant to the Magnuson-Moss Consumer Warranty Act (15 U.S.C. 2301). This Rule requires the proposed respondents to make manufacturers' warranty information available to consumers. The purposes of this Act, and the Rule, are to improve the information available to consumers, to prevent deception, and to promote competition, in the marketing of consumer product warranties offered by manufacturers.

The Rule, called the "Pre-Sale Availability Rule," gives retailers the option of either (1) displaying the text of manufacturers' warranties in close proximity to the product display; or (2) furnishing the text of manufacturers' warranties to customers upon request, and prominently displaying signs advising of the availability of such warranties. The complaint alleges that the proposed respondents have not complied with either of these options.

The proposed order requires proposed respondents to comply with this Rule, to inform their retail store executives of their compliance responsibilities, and to develop a program for instructing their sales personnel about the availability and location of manufacturers' warranty information. Proposed respondents will be subject to civil penalties if they do not comply with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–16277 Filed 7–5–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3116]

Montgomery Ward & Co., Incorporated; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Illinois-based retail department store to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to inform its retail store managers of their compliance responsibilities, and to develop and implement a program for instructing its sales personnel about the availability and location of manufacturers' warranty information.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public accord for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the

information. Proposed respondents will be subject to civil penalties if they do not comply with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–16277 Filed 7–5–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3116]

Montgomery Ward & Co., Incorporated; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Illinois-based retail department store to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to inform its retail store managers of their compliance responsibilities, and to develop and implement a program for instructing its sales personnel about the availability and location of manufacturers' warranty information.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public accord for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of Montgomery Ward & Co., Incorporated, a corporation ("proposed respondent" or "respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Montgomery Ward & Co., Incorporated, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Montgomery Ward & Co., Incorporated is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at One Montgomery Ward Plaza, Chicago, Illinois 60671.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

4. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

The definitions of terms contained in § 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rule 702, 16 CFR 702.1, promulgated thereunder, shall apply to the terms of this Order.

I

It is ordered that respondent Montgomery Ward & Co., Incorporated, a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device in connection with the sale or offering for sale of any consumer product in or affecting commerce, do forthwith cease and desist from failing to make a text of any written warranty on a consumer product actually costing more than $15 readily available for examination by prospective buyers prior to sale through utilization

of one or more means specified in 16 CFR 702.3(a), as amended.

II

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, deliver to each current retail store manager engaged in the sale of consumer products on behalf of respondent, a copy of this Order to cease and desist.

III

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, instruct all current retail store managers engaged in the sale of consumer products on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

IV

It is further ordered that respondent shall, for a period of not less than four (4) years from the date of service of this order, instruct all future retail store managers who will be engaged in the sale of consumer products on behalf of respondent, before they assume said responsibilities for respondent, as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

V

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, develop and implement a program to instruct its sales personnel about the availability and location of warranty information.

VI

It is further ordered that respondent shall, for a period of not less than five (5) years from the date of service of the Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) copies of all written instructions provided by respondent to its retail store managers and sales personnel regarding their obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order; (ii) copies of signs posted by respondent in its retail store outlets designed to elicit prospective buyers' attention to the availability of the text of written warranties for review upon request; and (iii) copies of the text of written warranties made readily available by respondent's retail store outlets for examination by prospective buyers on request.

VII

It is further ordered that respondent, for a period of six (6) years from the date of service of this Order, shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that respondent shall, within sixty (60) days after service of this Order on it, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Montgomery Ward & Co., Incorporated, Chicago, Illinois ("Wards"). Wards is a national chain of retail department stores, and of specialty stores selling appliances and consumer electronics.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

The complaint alleges that Wards has violated a Rule promulgated by the Federal Trade Commission (16 CFR 702.3(a)) pursuant to the Magnuson-Moss Consumer Warranty Act (15 U.S.C. § 2301). This Rule requires Wards to maker manufacturers' warranty information available to consumers. The purposes of this Act, and the Rule, are to improve the information available to consumers, to prevent deception, and to promote competition, in the marketing of consumer product warranties offered by manufacturers.

The Rule, called the "Pre-Sale Availability Rule," gives retailers the option of either 1) displaying the text of manufacturers' warranties in close proximity to the product display; or 2) furnishing the text of manufacturers' warranties to customers upon request, and prominently displaying signs advising of the availability of such warranties. The complaint alleges that Wards has not complied with either of these options.

The proposed order requires Wards to comply with this Rule, to inform its retail store executives of their compliance responsibilities, and to develop a program for instructing its sales personnel about the availability and location of manufacturers' warranty information. Wards will be subject to civil penalties if it does not comply with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-16276 Filed 7-5-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932 3117]

Sears, Roebuck and Co.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Illinois-based retail department store to comply with the Pre-Sale Availability Rule under the Magnuson-Moss Warranty Act, to inform its retail store managers of their compliance responsibilities, and to develop and implement a program for instructing its sales personnel about the availability and location of manufacturers' warranty information.

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of Sears, Roebuck and Co., a corporation ("proposed respondent" or "respondent"), and it now appearing that proposed respondent is wiling to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Sears, Roebuck and Co., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sears, Roebuck and Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 333 Beverly Road, Hoffman Estates, Illinois 60179.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

4. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider

approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of Sears, Roebuck and Co., a corporation ("proposed respondent" or "respondent"), and it now appearing that proposed respondent is wiling to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Sears, Roebuck and Co., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sears, Roebuck and Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 333 Beverly Road, Hoffman Estates, Illinois 60179.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

4. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

The definitions of terms contained in § 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rule 702, 16 CFR 702.1, promulgated thereunder, shall apply to the terms of this Order.

I

It is ordered that respondent Sears, Roebuck and Co., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device in connection with the sale or offering for sale of any consumer product in or affecting commerce, do forthwith cease and desist from failing to make a text of any written warranty on a consumer product actually costing more than $15 readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in 16 CFR 702.3(a), as amended.

II

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, deliver to each current retail store manager engaged in the sale of consumer products on behalf of respondent, a copy of this Order to cease and desist.

III

It is further ordered that respondent shall, within thirty (30) days of the date of service of this order, instruct all current retail store managers engaged in the sale of consumer products on behalf of respondent as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

IV

It is further ordered that respondent shall, for a period of not less than four (4) years from the date of service of this Order, instruct all future retail store managers who will be engaged in the sale of consumer products on behalf of respondent, before they assume said responsibilities for respondent, as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

V

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, develop and implement a program to instruct its sales personnel about the availability and location of warranty information.

VI

It is further ordered that respondent shall, for a period of not less than five (5) years from the date of service of the Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) copies of all written instructions provided by respondent to its retail store managers and sales personnel regarding their obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order; (ii) copies of signs posted by respondent in its retail store outlets designed to elicit prospective buyers' attention to the availability of the text of written warranties for review upon request; and

(iii) copies of the text of written warranties made readily available by respondent's retail store outlets for examination by prospective buyers on request.

VII

It is further ordered that respondent, for a period of six (6) years from the date of service of this Order, shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that respondent shall, within sixty (60) days after service of this Order on it, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Sears, Roebuck & Co., Hoffman Estates, Illinois ("Sears") Sears is a national chain of retail department stores.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

The complaint alleges that Sears has violated a Rule promulgated by the Federal Trade Commission (16 CFR 702.3(a)) pursuant to the Magnuson-Moss Consumer Warranty Act (15 U.S.C. § 2301). This Rule requires Sears to make manufacturers' warranty information available to consumers. The purposes of this Act, and the Rule, are to improve the information available to consumers, to prevent deception, and to promote competition, in the marketing of consumer product warranties offered by manufacturers.

The Rule, called the "Pre-Sale Availability Rule," gives retailers the option of either (1) displaying the text of manufacturers' warranties in close proximity to the product display; or (2) furnishing the text of manufacturers' warranties to customers upon request, and prominently displaying signs advising of the availability of such warranties. The complaint alleges that Sears has not complied with either of these options.

The proposed order requires Sears to comply with this Rule, to inform its retail store executives of their compliance responsibilities, and to develop a program for instructing its sales personnel about the availability and location of manufacturers' warranty information. Sears will be subject to civil penalties if it does not comply with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–16275 Filed 7–5–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, July 21, 1994 from 9:00 a.m. to 4:00 p.m. in room 7C13 (old number 7313) of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes discussions on (1) Physical Property and Land issues, (2) Stewardship-Future Claims issues, and (3) other Stewardship issues as time permits.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: June 30, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–16316 Filed 7–5–94; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Intent to Prepare an Environmental Impact Statement U.S. Courthouse—Cleveland, OH

AGENCY: U.S. General Services Administration.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The General Services Administration (GSA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for the construction of a new U.S. Courthouse in Cleveland, Ohio.

FOR FURTHER INFORMATION CONTACT: Ms. Marcy Sherrill, General Services Administration, Region V, 230 S. Dearborn St, Room 3670, Chicago, IL 60604, 312–886–5574.

SUPPLEMENTARY INFORMATION: The General Services Administration proposes to acquire a site and develop a new U.S. Courthouse consisting of approximately 800,000 gross square feet. The new facility will consolidate the district court and court-related agencies which are currently housed in six different Government-owned and leased locations. Although the proposed building will initially accommodate the projected 10-year space requirements of the courts, the site to be acquired will be of sufficient size to allow for its expansion beyond that timeframe.

The existing U.S. Courthouse in Cleveland was constructed in 1910 and is listed on the National Register of Historic Places. It contains a gross area of approximately 250,000 square feet and currently houses the district court, the bankruptcy court and the U.S. court of appeals. Due to the significant expansion of the recent years, several court-related tenants have been relocated into approximately 127,000 square feet of leased space. The proposed new courthouse will, with the exception of two senior district judges, consolidate the entire direct court family and related agencies in one building. The existing U.S. Courthouse will be retained, and will house two senior district judges and the bankruptcy court. The EIS will evaluate alternative sites for the proposed facility, as well as the no-build alternative. The EIS will also evaluate impacts on the affected environment for resource areas including geology and soils, air and noise quality, cultural resources, land us, community services, traffic and transportation, hazardous materials, economics and aesthetics

Public Scoping Meeting

To ensure that the full range of issues relating to the proposed project are addressed and all potential significant issues are identified, comments and suggestions are being solicited. To facilitate the receipt of comments, a public scoping meeting will be held at 5:30 PM, Wednesday, July 13, 1994, at the A.J. Celebrezze Federal Building, 1240 E. Ninth Street, Room B–1 (basement level), Cleveland, Ohio. Both written and oral comments will be accepted at that time.

Written comments may be mailed to the GSA contact person through July 29, 1994.

Issued in Chicago, Illinois on June 23, 1994.

William C. Burke,

Regional Administrator, GSA Region V.

[FR Doc. 94–16249 Filed 7–5–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Cooperative Research and Development Agreement

[CRADA 94–001]

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) for the further development, refinement, and validation of three interrelated technologies: (1) The Exchangeable Template Reaction (ETR), a method to assemble synthetic genes, (2) the construction of hepatitis C virus (HCV) specific "mosaic" proteins composed of immunodominant antigenic epitopes, and (3) differential HCV diagnostic tests. It is anticipated that these and any new technologies or inventions which may arise from this CRADA will be licensed to the

facility, as well as the no-build alternative. The EIS will also evaluate impacts on the affected environment for resource areas including geology and soils, air and noise quality, cultural resources, land us, community services, traffic and transportation, hazardous materials, economics and aesthetics

Public Scoping Meeting

To ensure that the full range of issues relating to the proposed project are addressed and all potential significant issues are identified, comments and suggestions are being solicited. To facilitate the receipt of comments, a public scoping meeting will be held at 5:30 PM, Wednesday, July 13, 1994, at the A.J. Celebrezze Federal Building, 1240 E. Ninth Street, Room B–1 (basement level), Cleveland, Ohio. Both written and oral comments will be accepted at that time.

Written comments may be mailed to the GSA contact person through July 29, 1994.

Issued in Chicago, Illinois on June 23, 1994.

William C. Burke,

Regional Administrator, GSA Region V.

[FR Doc. 94–16249 Filed 7–5–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Cooperative Research and Development Agreement

[CRADA 94–001]

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) for the further development, refinement, and validation of three interrelated technologies: (1) The Exchangeable Template Reaction (ETR), a method to assemble synthetic genes, (2) the construction of hepatitis C virus (HCV) specific "mosaic" proteins composed of immunodominant antigenic epitopes, and (3) differential HCV diagnostic tests. It is anticipated that these and any new technologies or inventions which may arise from this CRADA will be licensed to the collaborator with whom the CRADA is made.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA. This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT: Technical: Howard A. Fields, Ph.D., Hepatitis Branch, Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–14, Atlanta, GA 30333, telephone (404) 639–2335.

Business: Lisa Blake-DiSpigna, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, telephone (404) 639–3227.

SUPPLEMENTARY INFORMATION: The goal of this CRADA is to bring to market HCV-specific technologies that will improve public health. CDC will provide intellectual insight and experimental design protocols to: (1) Improve the efficiency of ETR, (2) construct "mosaic" proteins for HCV that have immunodiagnostic and potential vaccine relevance, and (3) evaluate synthetic peptides containing antigenic epitopes as reagents to discriminate recent from late infections or that may predict outcome of HCV infection. CDC will design and conduct feasibility experiments for each of the project areas and will contribute in the preparation of serologic panels to validate various test formats. The CRADA partner will prepare all synthetic peptides and oligonucleotides as necessary for each project area, prepare monospecific and monoclonal antibodies whenever appropriate, and purify antigens from recombinant lysates as needed. The collaborator will utilize its expertise in market research to evaluate the commercialization of the technologies.

Respondents should provide evidence of expertise in the development and evaluation of diagnostic assays, evidence of experience in commercialization of diagnostics products, and supporting data (e.g., publications, proficiency testing, certifications, resumes, etc.) of qualifications for the principle investigator who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC.

Applicant submissions will be judged according to the following criteria:

1. Expertise in diagnostic virolgoy;
2. Evidence of scientific credibility;
3. Evidence of commitment and ability to develop innovative designs for diagnostic assays and/or vaccines;
4. Evidence of preparing synthetic peptides and oligonucleotides;
5. Evidence of a strong engineering department to design automated equipment; and,
6. Evidence of an existing infrastructure to commercialize on successful technologies.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act, Public Law 99–502 (15 U.S.C. 3710).

The responses must be made to: Lisa Blake-Despigna, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333.

Dated: June 29, 1994.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16281 Filed 7–5–94; 8:45 am]

BILLING CODE 4163–18–P

[Announcement No. 473]

Cooperative Agreement for Laboratory Medicine Sentinel Monitoring Network

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for up to three cooperative agreements to become part of the Laboratory Medicine Sentinel Monitoring Network. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Surveillance and Data Systems. (For ordering a copy of "Healthy People 2000," see the section

"WHERE TO OBTAIN ADDITIONAL INFORMATION.")

Authority

This program is authorized under section 317 (k)(3) [42 U.S.C. 247b(k)(3)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligibility is limited to nonprofit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, and State and local health departments or their bona fide agents, are eligible for these cooperative agreements.

We are limiting eligibility to non-profit organizations to provide assistance to those organizations and to implement long term laboratory medicine monitoring programs.

Availability of Funds

Approximately $250,000 will be available in FY 1994 to fund three cooperative agreements. It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of these cooperative agreements is to develop data collection networks and to provide information about the practice of laboratory medicine in hospital, physician office and independent laboratories. This cooperative agreement will ultimately improve patient care by improving the quality of clinical laboratory medicine and increase the availability of laboratory monitoring networks.

Program Requirements

In conducting the activities to achieve the purpose of the program, the recipients will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for those activities under B. (CDC Activities).

A. Recipient Activities

1. Solicit laboratories to voluntarily participate in the Monitoring Networks so that sufficient representatives of each laboratory type (hospital, physician office, and independent) participate in the total network by the end of the first year of operation.

2. Provide leadership in the design and evaluation of questionnaires for periodic reporting of laboratory operational characteristics and problems, especially those that impact patient care and on methods that are used by the network participants during the period of the study. Topics investigated by the questionnaires and the time period of monitoring may change during the cooperative agreement by mutual consent of both network participants and CDC. The actual monitoring areas will be decided after the award of the cooperative agreement(s) and may differ for each of the laboratory groups.

The questionnaires should also capture information that determines the effectiveness of actions being taken by participants to improve the practice of laboratory medicine.

3. Provide leadership in collecting and sharing raw data both within the network and with CDC. Participant identification information may be omitted from these data sets if the network manager(s) is able to respond to questions concerning the validity of entered data without providing participant identification information.

4. Periodically send the developed questionnaires to network participants for them to gather and submit the response data back. The network manager will then enter, analyze, and summarize the data for the participants in a statistically valid manner.

5. Prepare manuscripts for peer-review publications, as appropriate, that describe the results of one or more of the activities listed above. Manuscripts should benefit the public good. All manuscripts would note the nature of the funding for the project.

B. CDC Activities

1. Collaborate with the network in identifying those areas of Laboratory Medicine that have Public Health concerns.

2. Provide technical assistance with questionnaire development, data gathering devices, statistical analysis, and writing summaries of the results.

3. Collaborate in the development of a mutually defined data set standard for transmission of raw data.

4. Assist with presentations (including visuals, materials, etc.,) of any delivered data at professional forums. CDC staff may also assist in the presentation of material derived from these cooperative agreements.

5. Provide technical assistance in the preparation of manuscripts related to the activities in this project.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including: a) applicant's understanding of the objectives of the proposed cooperative agreement; and b) the relevance of the proposal to the stated objectives. (20 points)

2. Ability to provide staff, knowledge, and other resources required to perform the applicant's responsibilities in this project. The qualifications and time allocations of key personnel to be assigned to this project and the facilities, equipment, and other resources available for performance of this project. (30 points)

3. The methods to be used in carrying out the responsibilities of this project, including the ability to provide the representative participants in the laboratory group or groups they will monitor. Steps to be taken in the planning and implementation of this project. (30 points)

4. Schedule for accomplishing the activities to be carried out in this project and methods for evaluating the accomplishments. (20 points)

5. The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the Laboratory Medicine Sentinel Monitoring Network will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (revised 7/92, OMB Control Number 0937–0189) must be submitted to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–16, Atlanta, Georgia 30305, on or before August 26, 1994.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A pre-proposal conference will be held to answer any questions needed to clarify the activities of the Sentinel Monitoring Network and to disseminate background data that may offer further into the size and complexity of the project, as well as the risks of undertaking the project. That conference will be held at Division of Laboratory Systems Conference Room, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Building 102, Atlanta, Georgia 30341 on July 28, 1994, from 1:00–4:00 PM.

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Bernice A. Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–16, Atlanta, Georgia 30305, telephone (404) 842–6802. Programmatic technical assistance may be obtained from Dr. Steven J. Steindel, Supervisory Health Scientist, Division of Laboratory Systems, Public Health

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (revised 7/92, OMB Control Number 0937–0189) must be submitted to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–16, Atlanta, Georgia 30305, on or before August 26, 1994.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A pre-proposal conference will be held to answer any questions needed to clarify the activities of the Sentinel Monitoring Network and to disseminate background data that may offer further into the size and complexity of the project, as well as the risks of undertaking the project. That conference will be held at Division of Laboratory Systems Conference Room, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Building 102, Atlanta, Georgia 30341 on July 28, 1994, from 1:00–4:00 PM.

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Bernice A. Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–16, Atlanta, Georgia 30305, telephone (404) 842–6802. Programmatic technical assistance may be obtained from Dr. Steven J. Steindel, Supervisory Health Scientist, Division of Laboratory Systems, Public Health Practice Program Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop G–23, Atlanta, Georgia 30341, telephone (404) 488–7680.

Please refer to Announcement Number 473 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "INTRODUCTION" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 29, 1994.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16282 Filed 7–5–94; 8:45 am]

BILLING CODE 4163–18–P

Control of Occupational Exposures During Construction: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Control of Occupational Exposures during Construction.

Time and date: 1 p.m.–4 p.m., July 14, 1994.

Place: Alice Hamilton Laboratory, Conference Room A, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this open meeting is to review and discuss a NIOSH project entitled, "Control of Occupational Exposures during Construction." Peer reviewers will give their individual review comments and suggestions regarding the scope of the study. Historically, many exposures related to construction have gone unquantified and uncontrolled. The objective of this project is to provide the construction industry with information concerning practical, effective engineering controls and work methods which minimize worker exposures to process-generated air contaminants. The initial phases of this project will focus on drywall sanding and roofing kettles. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Kenneth R. Mead, NIOSH, CDC, 4676 Columbia Parkway, Mailstop R5, Cincinnati, Ohio 45226, telephone 513/841–4221.

Dated: June 29, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16280 Filed 7–5–94; 8:45 am]

BILLING CODE 4163–19–M

National Institutes of Health

Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub L. 92–463, 86 Stat. 770–776] and Section 402(b)(6), of the Public Health Service Act, as amended [42 U.S.C. 282(b)(6)], the Director, National Institutes of Health (NIH), announces the establishment of the Board of Scientific Counselors, National Center for Human Genome Research.

The Board shall advise the Director, NIH; the Deputy Director for Intramural Research, NIH; the Director, National Center for Human Genome Research (NCHGR); and the Scientific Director, NCHGR, concerning the Center's intramural research through periodic visits to the laboratories to assess the research in progress, the proposed research, and the productivity and performance of staff scientists.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: June 27, 1994.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 94–16254 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the advisory committees of the National Cancer Institute.

The entire meeting for each committee listed below will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will

provide summaries of the meetings and rosters of the committee members, upon request.

Other information pertaining to the meetings may be obtained from the Scientific Review Administrator indicated.

Committee Name: Cancer Clinical Investigation Review Committee.

Scientific Review Administrator: Dr. John Meyer, Room 611C, Executive Plaza North. Telephone: (301) 496–7721.

Meeting Date and Time: July 26, 1994, 7 am—recess, July 27, 1994, 7 am—adjournment.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Committee Name: Comprehensiveness Subcommittee of the Cancer Center Support Review Committee.

Scientific Review Administrator: Dr. Mary C. Fletcher, Room 643C, Executive Plaza North, Telephone: (301) 496–7929.

Meeting Date and Time: August 4, 1994, 1 pm—5 pm

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Committee Name: Cancer Center Support Review Committee.

Scientific Review Administrator: Dr. David E. Maslow, Room 643A, Executive Plaza North, Telephone: (301) 496–2330.

Meeting Date and Time: August 4, 1994, 7 pm—recess, August 5, 1994, 7:30 am—adjournment.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: June 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–16258 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Cancer Institute.

Both meetings will be open to the public. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed in advance of the meetings.

Committee Name: Clinical Investigations Task Force, National Cancer Advisory Board.

Executive Secretary: Dr. Bruce Chabner, Building 31, Room 3A52, Bethesda, MD 20892; (301) 496–4291.

Meeting Date and Time: July 26, 1994 1 pm to 5 pm.

Place: Executive Plaza North, Conference Room J, 6130 Executive Blvd., Rockville, MD 20852.

Agenda: Discussion will address clinical trials research with cooperative groups funded by the National Cancer Institute.

Committee Name: Subcommittee on Activities and Agenda, National Cancer Advisory Board.

Executive Secretary: Dr. Marvin R. Kalt, EPN, Room 600, Bethesda, MD 20892; (301) 496–5147.

Meeting Date and Time: July 27, 1994 8 am to adjournment.

Place: Executive Plaza North, Conference Room G, 6130 Executive Blvd., Rockville, MD 20852.

Agenda: Discussion of Board's format, potential future agenda items and activities of the National Cancer Advisory Board.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide a summary of the meetings and a roster of members, upon request.

Substantive program information may be obtained from the Executive Secretary.

Dated: June 28, 1994.

Susan K. Feldman,

Committee Management Office, NIH.

[FR Doc. 94–16259 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Deafness and Other Communication Disorders; Meeting of the Board of Scientific Counselors, NIDCD

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIDCD, on August 9, 1994 from 3 pm to adjournment. The meeting will be conducted as a telephone conference call originating from Building 31C, Room 3C–05, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the entire meeting will be closed to the public. The meeting will be for the review and discussion of candidates for the tenure track of the Division of Intramural Research, National Institutes on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from Jay Moskowitz, Ph.D., Acting Executive Secretary, Board of Scientific Counselors, NIDCD, Building 31, Room 3C02, Bethesda, Maryland 20892.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders.

Dated: June 28, 1994

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–16257 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Name of SEP: Behavioral and Neurosciences.

Date: July 14, 1994.

Time: 9:00 a.m.

Place: OMNI Shoreham Hotel, Washington, DC.

Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 5333 Westbard Ave., room 309, Bethesda, MD 20892, (301) 594–7257.

Purpose/Agenda: To review Small Business Innovation Research Program.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393 93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: June 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–16256 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: July 14, 1994.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 309.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 5333 Westbard Ave., room 309, Bethesda, MD 20892, (301) 594–7269.

Name of SEP: Behavioral and Neurosciences.

Date: July 22, 1994.

Time: 10:00 a.m.

Place: St. James Hotel, Washington, DC.

Contact Person: Dr. Luigi Giacometti, M.Sc., Ph.D., Scientific Review Administrator, 5333 Westbard Ave., room 325B, Bethesda, MD 20892, (301) 594–7132.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information , concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: June 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–16255 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 59 FR 28109, May 31, 1994), is amended to reflect the following changes in the Bureau of Health Resources Development:

1. Abolish the Division of Facilities Assistance and Recovery, the Division of Facilities Compliance, and the Division of Facilities Loans;

2. Establish the Division of Facilities and Loans, and the Division of Facilities Compliance and Recovery.

Under HB–10, Organization and Functions amend the functional statements for the *Health Resources and Services Administration (HB)* by deleting the functional statements for

Place: NIH, Westwood Building, Room 309.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 5333 Westbard Ave., room 309, Bethesda, MD 20892, (301) 594–7269.

Name of SEP: Behavioral and Neurosciences.

Date: July 22, 1994.

Time: 10:00 a.m.

Place: St. James Hotel, Washington, DC.

Contact Person: Dr. Luigi Giacometti, M.Sc., Ph.D., Scientific Review Administrator, 5333 Westbard Ave., room 325B, Bethesda, MD 20892, (301) 594–7132.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information , concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: June 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–16255 Filed 7–5–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 59 FR 28109, May 31, 1994), is amended to reflect the following changes in the Bureau of Health Resources Development:

1. Abolish the Division of Facilities Assistance and Recovery, the Division of Facilities Compliance, and the Division of Facilities Loans;

2. Establish the Division of Facilities and Loans, and the Division of Facilities Compliance and Recovery.

Under HB–10, Organization and Functions amend the functional statements for the *Health Resources and Services Administration (HB)* by deleting the functional statements for *the Division of Facilities Compliance (HBB5), Division of Facilities Assistance and Recovery (HBB6),* and *the Division of Facilities Loans (HBB7)* in their entirety. Insert the following functional statements after Division of Trauma and Emergency Medical Systems (HBB8).

Division of Facilities Compliance and Recovery (HBB9)

The Division substantiates health facilities' compliance with the reasonable volume of uncompensated care assurance. Specifically: (1) Establishes, develops, and monitors the implementation of regulations, policies, procedures, and guidelines for use by regional staff and health care facilities in ascertaining that assurances are met; (2) plans and directs the development of regulations and program guidelines for administering grant support for health care, health professions education, and nurse training facilities; (3) provides technical assistance and training, and conducts evaluations to ensure nationwide consistency in program administration; (4) maintains a system for receipt, analysis and disposition of audit appeals by obligated facilities; (5) maintains a system for receiving and responding to patient complaints and for their analysis, evaluation and disposition; (6) develops and initiates monitoring activities necessary to ensure enforcement of provisions regarding the reasonable volume assurance; and (7) coordinates its activities with other components of the Bureau, HRSA, other PHS agencies, and other departmental components.

Division of Facilities and Loans (HBBA)

The Division plans and directs the development of regulations and program guidelines for administering loan, loan guarantee and interest subsidy program for health care facilities. Specifically: (1) Develops regulations, policy and procedures for administering loan and loan guarantee with interest subsidy programs; (2) administers the PHS responsibility for facility construction, renovation, and modification as described in interagency memoranda of agreement; (3) provides overall consultation and guidance on factors affecting future national requirements in specific types of facilities, geographic distribution and facilities utilization; (4) maintains an automated data system for the issuance of periodic and special reports and for the manipulation of institution specific data in performing tests for financial feasibility; (5) assists in the evaluation and analysis of applications for construction under assigned grant programs; (6) reviews and recommends action on: (a) Proposals for new health facilities or additions to or modernization of existing facilities under loan programs assigned to the Division, (b) requests for mortgage relief, such as forbearance of principal and/or interest payment, suspension of sinking fund deposits, modifications of loan terms, etc., and (c) requests for recovery and/or waiver of repayment of Federal loan funds; (7) provides advice and guidance to regional staff on statutory and regulatory provisions and policy and procedures for administering programs assigned to the Division; and (8) maintains liaison with and coordinates its activities and jointly develops pertinent programmatic materials with other components of the Bureau, HRSA, other PHS agencies, HHS, other concerned Federal agencies, and with private lending institutions and associations.

Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

This change will be effective on October 1, 1994.

Dated: June 24, 1994.

Ciro V. Sumaga,

Administrator, Health Resources and Services Administration.

[FR Doc. 94–16235 Filed 7–5–94; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Federal Old-Age, Survivors, and Disability Insurance

[Program Announcement No. SSA-ORS–94–1]

AGENCY: Social Security Administration, HHS.

ACTION: Announcement of the availability of fiscal year 1994 funds for Section 1110 research grants.

SUMMARY: The Social Security Administration (SSA) announces that competing applications will be accepted for new research grants authorized under Section 1110 of the Social Security Act. This announcement, consisting of three parts, describes the nature of the grant activities and gives notice of the anticipated availability of fiscal year (FY) 1994 funds in support of the proposed activities. Part I discusses the purpose of the

announcement and briefly describes the application process. Part II describes the programmatic priorities under which SSA is soliciting applications for funding. Part III describes the application process and provides guidance on how to submit an application.

DATES: The closing date for the receipt of grant applications in response to this announcement is September 6, 1994.

FOR FURTHER INFORMATION OR BACKGROUND MATERIAL CONTACT: Ms. Faye Aziz, Coordinator for Extramural Research; Office of Research and Statistics; Social Security Administration; Van Ness Center, room 205; 4301 Connecticut Avenue, NW., Washington, DC 20008; telephone (202) 282–7215.

Part I. Purpose and the Grants Process

A. Program Purpose

This research is intended to add to existing knowledge and to improve methods and techniques for the management, administration, and effectiveness of SSA programs. Professionals in actuarial science, demography, economics, sociology and related fields are potential users of the results.

In general, SSA will fund types of projects that relate to or examine:

1. Women's issues, especially aged women in poverty.
2. Economic and demographic assumptions used in making projections for the Old Age, Survivors, and Disability Insurance (OASDI) Trust Funds.
3. Issues related to an increase in the retirement age.
4. Issues, using the New Beneficiary Data System, on how aged individuals become poor and how the economic status of individuals with disabilities and their families change.
5. Issues related to differences in calculated poverty rates between the Survey of Income Program Participation (SIPP) and the Current Population Survey (CPS).

B. FY 1994 Grant Process

The grant application process for FY 1994 will consist of a one-stage, full application. Applications are limited to 20 single- or 40 double-spaced pages (excluding resumes, forms, etc.) and must relate to the selection criteria established for review of applications.

Priority areas in this announcement permit applicants to propose research efforts from 12 to 24 months in duration. In item 11 of the Face Sheet (page 1 of form SSA–96–BK) indicate the priority area under which the application is submitted, i.e., ORS–94–001, ORS–94–002, etc.

Part II. Priority Research Areas

In particular, the following projects will be considered for funding:

A. Economic Circumstances of Aged Widows—ORS–94–001

A high proportion of the elderly who are economically vulnerable are widowed women. Although as a group they experience one of the highest rates of poverty, approximately three-quarters of widows aged 65 or older are not poor. Data from the SIPP provide an opportunity to understand the economic circumstances of aged widows and to identify those factors that are associated with their late-life poverty.

Proposals are sought for SIPP-based research that conducts two types of analyses of the poverty of aged widows. The first of these tasks is to provide a comprehensive description of the personal, financial, and environmental characteristics of poor elderly widows. These characteristics will include details of income amounts and specific sources, assets, personal and household characteristics (e.g., age, race, education, work history, fertility history, welfare recipiency history, health status, urban vs rural location, age at which widowhood occurred). This descriptive material should compare and contrast the incidence of poverty and its circumstances for aged widows with similar measures for single elderly women who have never married, aged married women, and, where sample size permits, elderly divorced women.

The second task is to simulate the resulting economic scenario for married women aged 65 or older in the event of the death of their husbands. This will involve projecting the time path of income and assets for the widow, given the couple's economic circumstances at time of the SIPP interviews. The hypothetical widow's income should be based on Social Security and Supplemental Security Income program rules, any pension income she has earned in her own right, whether a husband with public or private pension rights has elected a survivor's option, asset income, the couple's life insurance holdings, and so forth. It is expected that, where possible, the economic status of the couple prior to the husband's death will be related to factors such as lifetime work experience of each spouse, current health status and health insurance coverage, etc. In addition, various scenarios for asset decumulation associated with health expenditures brought on by the husband's death might be introduced to account for reduced assets subsequently available to the surviving spouse [See Linda Del Bene and Denton R. Vaughan, "Income, Assets and Health Insurance: Economic Resources for Meeting Acute Health Care Needs of the Aged," Social Security Bulletin, Spring 1992]. We are interested in learning how the economic status of aged widows compares with their circumstances prior to the husband's death, whether particular background factors can be used to predict which married women are particularly at risk of poverty in their old age, and how the incomes and assets of widows change as the duration of widowhood increases.

Grant proposals must be based on well-developed rigorous analysis. Applications may be submitted for multi-year funding not to exceed 24 months in duration.

The applications for multi-year funding should include a budget for the first budget period (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will subsequently be provided for an additional 12-month budget period dependent on satisfactory performance of the initial budget period, continued relevance of the project, and the availability of FY funds.

It is anticipated that an amount up to $100,000 will be allocated to fund one project under this priority area for the initial 12-month budget period.

B. Selected Economic and Demographic Assumptions Used to Project the Financial Status of the OASDI Trust Funds—ORS–94–002

The annual reports of the Board of Trustees of the Federal OASDI Trust Funds contain long-range, 75-year projections on the financial status of the trust funds. The assumptions and methodology underlying those projections were reviewed by the Panel of Technical Experts (the Panel) convened by the quadrennial Advisory Council on Social Security and recommendations for research were made. (The "Social Security Technical Panel Report to the 1991 Advisory Council on Social Security" and its appendices were reprinted in the November and December 1990 issues of the Social Security Bulletin.)

To address some of the Panel's recommendations for research, the principal topics of this priority are to better understand: (i) the determinants of changes in productivity and earnings, and how to develop better methods of projecting future productivity and earnings; (ii) the determinants of nominal and real interest rates and of how to project them; (iii) the determinants of fertility and how to project future fertility rates; (iv) the determinants of mortality and how to project future mortality rates; (v) the analysis of *illegal* immigration and how to project such immigration; and (vi) the conceptual framework for the current low-cost and high-cost projections.

Among the questions to be addressed on productivity and earnings are: What are the determinants of linkages between productivity and earnings, particularly hours of work and fringe benefits? What are the effects of the changing quality (including the question of measuring quality) and demographic mix of the labor force? What are the effects of research and development by both the public and the private sectors? What are the effects of capital formation by the public sector (e.g., public infrastructure) and by the private sector? What is the effect of the increasing integration of U.S. and foreign markets? Are there analytical methods or strategies for selecting which averaging periods are most appropriate in determining the various economic assumptions? What is the long-term relationship, if any, between productivity and earnings and other economic and demographic factors?

Among the questions to be addressed on nominal and real interest rates are: To what extent can the current structure of interest rates be used to predict future interest rates? What are the determinants of inflation and are there analytical methods for projecting future inflation rates? What strategies are optimal for incorporating both historical and current interest rate information into the projections? What is the long-term relationship, if any, between nominal and real interest rates and other economic and demographic variables?

Among the questions to be addressed on fertility patterns in this priority area are: What are the determinants of fertility and changes in fertility? What is the relationship between age at first birth and the total fertility rate? How do birth rates of immigrants and of their children compare with those of non-immigrants and their children? Will future trends in fertility rates by race and ethnic group mirror past trends? For assumptions used in projecting fertility, can an analytical framework be developed to help decide how much weight to put on long-term trend information and how much weight to put on the most recent trends? Is there empirical evidence supporting alternative weighting schemes?

Among those questions to be addressed on mortality are: What are the determinants of mortality and rates of

how to project them; (iii) the determinants of fertility and how to project future fertility rates; (iv) the determinants of mortality and how to project future mortality rates; (v) the analysis of *illegal* immigration and how to project such immigration; and (vi) the conceptual framework for the current low-cost and high-cost projections.

Among the questions to be addressed on productivity and earnings are: What are the determinants of linkages between productivity and earnings, particularly hours of work and fringe benefits? What are the effects of the changing quality (including the question of measuring quality) and demographic mix of the labor force? What are the effects of research and development by both the public and the private sectors? What are the effects of capital formation by the public sector (e.g., public infrastructure) and by the private sector? What is the effect of the increasing integration of U.S. and foreign markets? Are there analytical methods or strategies for selecting which averaging periods are most appropriate in determining the various economic assumptions? What is the long-term relationship, if any, between productivity and earnings and other economic and demographic factors?

Among the questions to be addressed on nominal and real interest rates are: To what extent can the current structure of interest rates be used to predict future interest rates? What are the determinants of inflation and are there analytical methods for projecting future inflation rates? What strategies are optimal for incorporating both historical and current interest rate information into the projections? What is the long-term relationship, if any, between nominal and real interest rates and other economic and demographic variables?

Among the questions to be addressed on fertility patterns in this priority area are: What are the determinants of fertility and changes in fertility? What is the relationship between age at first birth and the total fertility rate? How do birth rates of immigrants and of their children compare with those of non-immigrants and their children? Will future trends in fertility rates by race and ethnic group mirror past trends? For assumptions used in projecting fertility, can an analytical framework be developed to help decide how much weight to put on long-term trend information and how much weight to put on the most recent trends? Is there empirical evidence supporting alternative weighting schemes?

Among those questions to be addressed on mortality are: What are the determinants of mortality and rates of change in mortality? What evidence is there for projecting changes in mortality for specific causes (e.g., cancer, heart, etc.) based on changes in smoking, nutrition, and other lifestyle patterns? For assumptions used in projecting mortality, can an analytical framework be developed to help decide how much weight to put on long-term trend information and how much weight to put on the most recent trends? Is there empirical evidence supporting alternative weighting schemes?

Among the questions to be addressed on *illegal* immigrants are: Estimates of current numbers, labor-force participation rates, and rates of immigration of illegal immigrants; analysis of factors likely to affect future immigration rates of illegal immigrants and projections based on this analysis; the length of coverage and average earnings of illegal immigrants and the length of time they remain in the country; and the extent to which illegal immigrants receive benefits based upon their coverage under the system.

Among the questions to be asked with respect to the conceptual framework for the current low-cost and high-cost projections are: Although theoretically, the current low-cost and high-cost projections represent a collection of extreme values for each of the variables, how should these bounds be interpreted—as absolute bounds on what could possibly happen, as confidence levels, as illustrative alternative projections, or as sensitivity analyses? (Attention should be given to the way in which rates of inflation are incorporated into the low-cost and high-cost projections.) Should the projections incorporate interrelationships among the economic and demographic variables (for example, among others, interactions among fertility, marital status, labor force participation, and birth expectations), and if so, which interrelationships are critical, and how should they be incorporated?

Grant proposals must be based on well-developed rigorous analysis. Applications may be submitted for multi-year funding not to exceed 24 months in duration.

The applications for multi-year funding should include a budget for the first budget period (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will subsequently be provided for an additional 12-month budget period dependent on satisfactory performance of the initial budget period, continued relevance of the project, and the availability of FY funds.

It is anticipated that up to $240,000 will be allocated to fund one or more projects under this priority area for the initial 12-month budget period.

C. Issues Related to the Scheduled Increase in the Retirement Age—ORS–94–003

The Social Security Amendments of 1983 (Public Law 98–21) provide for a gradual increase in the age at which unreduced retired-workers benefits are first payable (for brevity, the retirement age) from 65 to 67 between the years 2000 and 2027. Benefits for retired workers still will be available at age 62, but the amount payable will be gradually reduced from the currently payable 80 percent of the unreduced benefit to 70 percent. It has further been proposed to speed up the phase-in to a higher retirement age, and to increase the retirement age to 68 (70 in one proposal). At least one proposal also increases the early retirement age to 65. (The executive summary of the report mandated by Congress and consultant reports were reprinted in the October 1986 and February 1987 issues of the Social Security Bulletin.)

1. The increase in retirement age is based on the assumption that the increase in life expectancy has been accompanied by a corresponding improvement in health and capacity to work. But past studies are inconclusive about the relationship between longevity and work ability, especially among persons in their sixties. Proposals are sought to further investigate these relationships, using either new approaches, more current data, and/or new databases.

One possible approach would be to use microdata collected by the National Health Interview Survey (NHIS) to examine trends in health and ability to work. Data should be presented for subgroups of major interest for the retirement age issue (both early and normal retirement), subject to sampling error problems. A wide range of variables that measure health and ability to work should be included.

2. The retirement-age increase may also impact on the Social Security Disability Insurance (DI) program. Studies are needed to address questions such as: (i) what is the expected impact on the number of DI beneficiaries and their duration on the rolls and on the DI Trust Fund; (ii) how many workers would qualify for DI benefits at age 65 and 66 and how many would elect to receive benefits; and (iii) among those aged 62–64 who do not now elect to apply for DI benefits, how many might do so because of the additional reduction in benefits for early

retirement that accompanies a retirement-age increase (including the elimination in some proposals of *early* benefits for workers aged 62–64)?

Grant proposals must be based on well-developed, rigorous analysis. Applicants may submit applications for funding not to exceed 17 months in duration.

The applications should include a budget for the total period of the grant (not to exceed 17 months). If the application is approved, a grant will be awarded for the entire budget period of the grant. It is anticipated that up to $190,000 will be allocated to fund one or more projects for up to 17 months under this priority area.

D. Analyses of the New Beneficiary Data System—ORS–94–004

This project is intended to encourage research with the New Beneficiary Data System (NBDS) developed by SSA over the past decade to study the changing circumstances of aged and disabled beneficiaries. Based initially on a survey of new beneficiaries at the beginning of the 1980's, the dataset has been expanded with information from administrative records (on benefits, covered earnings, Supplemental Security Income, and Medicare) and followup interviews with survivors from the original survey. With the exception of the Medicare records, all administrative data have been obtained both for respondents and spouses.

The original sample contained representative samples of new Social Security beneficiaries who filed for benefits as retired workers, disabled workers, wives, widows, divorced wives, and surviving divorced wives. There was also a representative sample of persons aged 65 and over who were entitled to Medicare benefits but who had not yet received Social Security cash benefits. The aged sample was, for the most part, in its mid- to late-60's in 1982 and in its mid- to late-70's in 1991. Some of the sample members were affected by the "notch" that was created when legislation was enacted to correct for an overcompensation in the benefit formula for inflation.

The original interview covered a wide range of topics, including demographic characteristics, marital and childbearing history, employment history, current income (in the format of the SIPP) and assets, and health. The followup interview, in addition to asking many of the same questions as the original interview, collected a history of critical events since 1982 (such as widowhood or divorce, work cessation, migration, and the sale of the home) and the financial impact of these critical events. The original health items of work disability, functional capacity, and presence of major diseases were expanded to assess specific Activities of Daily Living and Instrumental Activities of Daily Living, private health insurance provisions, and the longest experience in a long-term care facility. Disabled workers who returned to work were asked about their job search experience, employer accommodations to their disability, and their use of vocational and rehabilitation services.

Background material and a compilation of reports based on the 1982 New Beneficiary Survey are available. These reports were also published in various editions of the Social Security Bulletin from 1983 to 1993.

Using the NBDS, the following projects will be considered for funding:

1. Understanding How Aged Beneficiaries Become Poor

Although poverty rates among the aged have declined substantially over the last 30 years, there are still some troublesome problems and poverty among aged women is a particular concern. Various legislative proposals have been made or discussed to improve the treatment of women under the Social Security program, including care-giving credits, increasing benefits at some age, eliminating the actuarial reduction for early benefit receipt at some age, modifying the Social Security special minimum benefit, and redesigning couple benefits in order to enhance survivor benefits. However, many of the proposals are not well targeted to the poor. Proposals for research are sought to increase our understanding of why aged beneficiaries, and especially aged women, become poor, which will improve our ability to form policy in this area.

Some of the key research questions are: To what extent is aged poverty a continuation of a lifetime of low income? To what extent is aged poverty a result of aged couples decumulating assets as they age? What are the economic effects of widowhood, including the extent to which sources of income are lost or reduced, and the extent to which high health care expenditures surrounding the death of a spouse are a major cause of high poverty rates among the aged who have become widowed? Is the type of social security benefit received (retired worker benefits, wife or widow benefits, worker benefits that are supplemented because of entitlement to a higher spouse or survivor benefit and those that are not, retirement benefits that were converted from a disability benefit at age 65 and those that were not) related to differing poverty rates in 1982, and are those patterns the same among beneficiaries 10 years later? How different is the role of major sources of income (including social security, other pensions, asset income, earnings, and Supplemental Security Income—an SSA-administered "safety net" program) in 1991 than it was in 1982?

2. Changing Economic Status of Individuals With Disabilities and Their Families

We know that newly disabled individuals in 1982 were less well-off than newly retired individuals in terms of both income and assets. However, little or no research has been done to follow disabled individuals over time to determine whether they have particular problems maintaining an adequate standard of living. The well-being of many individuals with disabilities depends not only on their own income but also on the income and/or services provided by family members, such as the earnings of spouses, or help with activities of daily living that may mean the difference between living in the community and having to be institutionalized.

Among the questions to be addressed are: How adequate are the income and assets of individuals with disabilities just after benefit receipt and 10 years later? To what extent do disabled individuals maintain their economic status over this period of time? What factors are associated with changes in economic status over the period? How do family members affect the economic status of disabled workers?

Analyses should include background factors (such as demographic characteristics, previous occupational characteristics and earnings, living arrangements, family characteristics, and health conditions), major changes in life circumstances (such as widowhood or divorce, changes in living arrangements, or a spouse changing hours of work or retiring), sources of income, changes in the health status, and health-care costs and how these factors relate to various economic outcomes.

Proposals should identify the expected methods of analysis, the possible variables to be considered, and the logic for inclusion. Application may be submitted for multi-year funding not to exceed 24 months in duration.

The applications for multi-year funding should include a budget for the first budget period (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will subsequently be provided for an additional 12-month budget period dependent on satisfactory performance of the initial budget period, continued relevance of the project, and the availability of FY funds.

It is anticipated that up to $190,000 will be allocated to fund one or more projects for the initial 12-month budget period under this priority area.

E. Documenting and Explaining SIPP-CPS Differences in Aged Poverty Rates—ORS–94–005

The official poverty measure and its three derivative statistics (poverty counts, poverty rates and poverty gaps) are important and frequently used criteria employed in the formulation of policy and the evaluation of program outcomes for the aged and disabled populations served by SSA.

Twelve-month poverty rates based on the SIPP are somewhat lower for many population subgroups than the poverty rates estimated from the CPS. Much of the comparison of poverty rates from the two surveys has been based on the first operational SIPP panel (the 1984 panel) which pertained to the 1983–85 time period. In the 1984 panel context, SIPP-CPS poverty rate differences for the aged, were, if anything, less marked than for younger age groups. Based on a review of published poverty rate estimates based on SIPP panels for 1985–1990 and comparison to corresponding estimates based on the CPS, it appears that a significant change in the pattern of SIPP-CPS differences in poverty rates appeared with the introduction of the 1985 SIPP panel. Key features of the change in the pattern of SIPP-CPS differences in poverty rates include: 1) a modest decline in the poverty rate for all ages in the SIPP relative to the CPS; 2) a much more marked SIPP-CPS difference in poverty rates for the aged than the nonaged (with SIPP rates for the aged ranging between 28 and 34 percent below those based on the CPS); 3) a marked attenuation of the tendency for poverty rates to increase strongly with age among those age 65 and older in the SIPP context as compared with the CPS. Furthermore, preliminary research conducted at SSA indicates that SIPP—CPS poverty rate differences among the aged appear to vary significantly by sex, age, marital status, race and ethnicity; differences appear to be particularly marked for persons who are married, white, or age 85 or older.

Studies are needed (1) to describe more fully the pattern of SIPP—CPS differences in poverty estimates for the aged, and (2) to establish, if possible, the

12-month budget period. Funding will subsequently be provided for an additional 12-month budget period dependent on satisfactory performance of the initial budget period, continued relevance of the project, and the availability of FY funds.

It is anticipated that up to $190,000 will be allocated to fund one or more projects for the initial 12-month budget period under this priority area.

E. Documenting and Explaining SIPP-CPS Differences in Aged Poverty Rates—ORS–94–005

The official poverty measure and its three derivative statistics (poverty counts, poverty rates and poverty gaps) are important and frequently used criteria employed in the formulation of policy and the evaluation of program outcomes for the aged and disabled populations served by SSA.

Twelve-month poverty rates based on the SIPP are somewhat lower for many population subgroups than the poverty rates estimated from the CPS. Much of the comparison of poverty rates from the two surveys has been based on the first operational SIPP panel (the 1984 panel) which pertained to the 1983–85 time period. In the 1984 panel context, SIPP-CPS poverty rate differences for the aged, were, if anything, less marked than for younger age groups. Based on a review of published poverty rate estimates based on SIPP panels for 1985–1990 and comparison to corresponding estimates based on the CPS, it appears that a significant change in the pattern of SIPP-CPS differences in poverty rates appeared with the introduction of the 1985 SIPP panel. Key features of the change in the pattern of SIPP-CPS differences in poverty rates include: 1) a modest decline in the poverty rate for all ages in the SIPP relative to the CPS; 2) a much more marked SIPP-CPS difference in poverty rates for the aged than the nonaged (with SIPP rates for the aged ranging between 28 and 34 percent below those based on the CPS); 3) a marked attenuation of the tendency for poverty rates to increase strongly with age among those age 65 and older in the SIPP context as compared with the CPS. Furthermore, preliminary research conducted at SSA indicates that SIPP—CPS poverty rate differences among the aged appear to vary significantly by sex, age, marital status, race and ethnicity; differences appear to be particularly marked for persons who are married, white, or age 85 or older.

Studies are needed (1) to describe more fully the pattern of SIPP—CPS differences in poverty estimates for the aged, and (2) to establish, if possible, the factors giving rise to the observed differences. SIPP-CPS differences should be delineated for population subgroups defined in terms of salient characteristics such as marital status, more broadly defined aspects of family composition, including the presence of nonaged family members, age, race and ethnicity. Differences should, at a minimum, be characterized in terms of poverty counts, rates, and the poverty gap. Particular attention should be given to evaluating possible differences between the two surveys in the portrayal of poverty as it relates to increasing age. Given that the pattern of poverty by population subgroup is of particular interest, the relatively small sample size available in single SIPP panels as compared with the CPS is likely to be of some concern. If, as is suggested by review of published estimates, it can be shown that the basic patterns of SIPP-CPS differences are stable across the post-1984 SIPP panels, serious consideration should be given to pooling the post-1984 panels in order to support as detailed a subgroup analysis as is possible, given the substantially larger sample sizes available from pooled samples. If the combining of SIPP panels seems feasible, the combined panels should be employed to support the explanatory phase of the overall study, as well.

After developing a plan for documenting more fully SIPP-CPS differences in the portrayal of poverty among the aged, the grantee might discuss how the observed differences might be explained. In this regard a critical review of the literature that has considered the differences between poverty rate estimates from the Panel Study of Income Dynamics (PSID) and the CPS might prove quite useful in generating hypotheses and in formulating empirical approaches to testing the hypotheses. While several possible factors are likely to be suggested by this review (e.g., sample weighting, particularly that component of the overall weighting scheme designed to deal with panel attrition; differing operationalizations of the income unit; differing income concepts; and the quality of income data), emphasis in empirical work should be given to the last factor, the relative quality of the income data from the two surveys. However, some attention could also be given to the change in SIPP-CPS differences in poverty estimates that occurred with the introduction of the 1985 SIPP panel.[1] The nature of each hypothesized factor to be considered and how it might cause the observed pattern of SIPP-CPS differences might be described. A closely reasoned plan for empirically assessing the possible impact data quality on the differences in SIPP-CPS poverty rates for the aged may be presented. Particular emphasis should be given to explaining the relevance of each proposed test for clarifying the observed pattern of SIPP-CPS differences, notwithstanding the fact that it may not be possible to devise fully unambiguous tests of the effects of income data quality on the observed SIPP-CPS differences.

Given the level of available funding, empirical work should be limited to describing the pattern of SIPP-CPS differences in poverty estimates (rates, counts, and gaps).

As much of the study will revolve around comparison of alternative estimates within or between survey contexts, issues of statistical inference also need to be given careful consideration. In particular, given the results of SSA research on the variance properties of SIPP-based estimates of the aged, standard errors for SIPP estimates should be based on the generalized variance parameters as estimated by SSA (see the note by Bye and Gallicchio appearing in the winter 1993 Social Security Bulletin) or calculated directly from the survey file using the methods outlined in the Bye-Gallicchio article.

Grant proposals must be based on well-developed, rigorous analysis. Applicants may submit applications for funding not to exceed 17 months in duration.

The applications should include a budget for the total period of the grant (not to exceed 17 months). If the application is approved, a grant will be awarded for the entire budget period of the grant.

It is anticipated that an amount up to $135,000 will be allocated to fund one or more projects for up to 17 months under this priority area.

Note: To foster the sharing of research, principal investigators for each grant awarded will be required to (1) include in the final report an executive summary which SSA could publish in the quarterly Social Security Bulletin and (2) discuss the results of their research with SSA staff. Funds should be included in the grant budget for a meeting at the SSA Office of Research and Statistics, Washington, DC.

---

[1] The prospective grantee will find it useful to consult recent work conducted by the Bureau of the Census comparing income estimates for calendar year 1990 from the two surveys and Report no. 17, Studies in Income Distribution, for similar material related to SIPP/CPS differences for the 1983–84 period. Recent work conducted at the Bureau of the Census by Lamas, Tin and Eargle about the effect of attrition in the SIPP context on differences in SIPP-CPS poverty rates should also be consulted.

Part III. Application Process

A. Eligible Applicants

Any State or local government, public or private organization, nonprofit or for-profit organization, or agency, hospital, or educational institution may apply for a grant under this announcement. Applications will not be accepted from applicants which do not meet the above eligibility criteria at the time of submission of applications.

Individuals are not eligible to apply. For-profit organizations may apply with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered as any amount in excess of the allowable costs of the grant recipient. A for-profit organization is a corporation or other legal entity which is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his/her own behalf.

B. Availability and Duration of Funding

SSA anticipates allocating up to $100,000 to fund the initial 12-month budget period of a 24-month grant for one project in priority area ORS–94–001, "Economic Circumstances of Aged Widows." SSA anticipates allocating up to $240,000 to fund the initial 12-month budget period for one or more projects in priority area ORS–94–002, "Selected Economic and Demographic Assumptions Used to Project the Financial Status of the OASDI Trust Funds." SSA anticipates allocating up to $190,000 to fund one or more projects not to exceed 17 months in duration in priority area ORS–94–003, "Issues Related to the Scheduled Increase in the Retirement Age." SSA anticipates allocating up to $190,000 to fund the initial 12-month budget period of 24-month grants for one or more projects in priority area ORS–94–004, "Analysis of the New Beneficiary Data System." Also, SSA anticipates allocating up to $135,000 to fund one (1) or more projects not to exceed 17 months in duration in priority area ORS–94–005, "Documenting and Explaining SIPP–CPS Differences in Aged Poverty Rates."

C. Grantee Share of the Project Costs

Grant recipients receiving assistance to conduct these research projects are expected to contribute towards the project costs. Generally, 5 percent of the total costs is considered acceptable. No grant will be awarded that covers 100 percent of the project's costs.

D. The Application Process for Proposals Requesting Grant Funds

Organizations wishing to compete for grants under this announcement must submit an application by September 6, 1994. Applications received in response to this announcement will be reviewed by Federal and non-Federal personnel.

Successful applicants may expect funding during the fourth quarter of FY 1994 (prior to September 30, 1994).

1. Availability of Application Forms

Application kits which contain the prescribed application forms for grant funds are available from the Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, MD 21207; telephone (410) 965–9500; Mr. Lawrence H. Pullen, Chief, Grants Management Staff.

When requesting an application kit, the applicant should refer to program announcement number SSA–ORS–94–1 and the date of this announcement to ensure receipt of the proper application kit.

2. Additional Information

For additional information concerning project development, please contact Ms. Faye Aziz, Coordinator for Extramural Research; Office of Research and Statistics; Social Security Administration; Van Ness Center, Room 205; 4301 Connecticut Avenue, NW; Washington, DC 20008; telephone (202) 282–7215.

3. Application Submission

All applications requesting Federal grant funds must be submitted on the standard forms provided by the Grants Management Staff. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the grant award.

As part of the project title (page 1 of the application form SSA–96–BK, item 11), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–ORS–94–1) and must show the appropriate priority area project identifier (i.e., ORS–94–001, ORS–94–002 etc.).

Applications must be submitted to: Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, MD 21207.

4. Application Consideration

Applications are initially screened for relevance to this announcement. If judged irrelevant, the applications are returned to the applicants. Applications that conform to the requirements of this program announcement will be reviewed and evaluated against the criteria specified in No. 6(b) of this announcement and evaluated by Federal and non-Federal personnel. The results of this evaluation will assist SSA in selecting the applications to be funded.

5. Application Approval

Grant awards will be issued within the limits of Federal funds available following the approval of the applications selected for funding. The official award document is the "Notice of Grant Award." It will provide the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is contemplated, the amount of grantee financial participation, and any special terms and conditions of the grant award.

6. Criteria for Screening and Reviewing of Applications

(a) Screening Requirements. In order for an application to be in conformance, it must meet *all* of the following requirements:

(1) Number of Copies: An original signed application and two copies must be submitted. Five additional copies are optional and will expedite processing of the grant application.

(2) Length: The narrative portion of the application (Part III of form SSA–96–BK) must not exceed 20 single- or 40 double-spaced pages, exclusive of resumes, forms, etc., typewritten on one side only using standard size (8½" × 11") paper. Applications should neither be unduly elaborative nor contain voluminous documentation.

(3) Non-Federal Contribution (Match): Grant recipients must contribute towards the project costs (cash or in-kind). Generally, 5 percent of the total costs is acceptable. SSA will not provide 100 percent or total funding for any project grant.

(b) Evaluation Criteria. Applications which pass the screening process will be reviewed by at least three individuals. Reviewers will score the applications, basing their scoring decisions on the criteria shown below. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application. Relative weights for the criteria are shown in parentheses.

(1) Project Objective: (25 points)

How closely do the project objectives fit those of the announcement? Is the need for the project discussed in terms of the importance of the issues to be addressed? Does it describe how the project builds upon previous research? What is the potential usefulness of the anticipated result and expected benefits to the target groups? What is the potential usefulness of the proposed project for the advancement of scientific knowledge?

(2) Project Design: (30 points)

Is the design of the project adequate and feasible as indicated by the appropriateness of the work statement and the technical approach, including: (a) a concise and clear statement of goals and objectives; (b) theoretical analysis of the problem and, if appropriate, hypotheses to be tested and/or parameters to be estimated; (c) specification of data sources; (d) plan for data analysis, including appropriateness of statistical methods to be used; and (e) scheduling of tasks and milestones in the progress of the project? Does the proposal describe specific plans for conducting the project in terms of the tasks to be performed, and how the approach proposed will accomplish the project objectives?

(3) Qualifications: (30 points)

Do the qualifications of the project personnel, as evidenced by training, experience, and publications, demonstrate that they have the knowledge of subject matter and skills required to competently carry out the research and to produce a final report that is comprehensible and usable? Is the staffing pattern appropriate for the proposed research, linking responsibilities clearly to project tasks?

(4) Organization and Budget: (15 points)

Are the resources needed to conduct the project specified, including personnel, time, funds, and facilities? Are any collaborative efforts with other organizations clearly identified and written assurances referenced? Is all budget information provided, including a description by category (personnel, travel, etc.) of the total of the Federal funds required? Where appropriate, are justifications and explanations of costs provided? Are the project's costs reasonable in view of the level of effort and anticipated outcome? Does the applicant's organization have adequate facilities and resources to plan, conduct, and complete the project?

Please Note: For-profit organizations may not use grant funds to purchase equipment

(1) Project Objective: (25 points)

How closely do the project objectives fit those of the announcement? Is the need for the project discussed in terms of the importance of the issues to be addressed? Does it describe how the project builds upon previous research? What is the potential usefulness of the anticipated result and expected benefits to the target groups? What is the potential usefulness of the proposed project for the advancement of scientific knowledge?

(2) Project Design: (30 points)

Is the design of the project adequate and feasible as indicated by the appropriateness of the work statement and the technical approach, including: (a) a concise and clear statement of goals and objectives; (b) theoretical analysis of the problem and, if appropriate, hypotheses to be tested and/or parameters to be estimated; (c) specification of data sources; (d) plan for data analysis, including appropriateness of statistical methods to be used; and (e) scheduling of tasks and milestones in the progress of the project? Does the proposal describe specific plans for conducting the project in terms of the tasks to be performed, and how the approach proposed will accomplish the project objectives?

(3) Qualifications: (30 points)

Do the qualifications of the project personnel, as evidenced by training, experience, and publications, demonstrate that they have the knowledge of subject matter and skills required to competently carry out the research and to produce a final report that is comprehensible and usable? Is the staffing pattern appropriate for the proposed research, linking responsibilities clearly to project tasks?

(4) Organization and Budget: (15 points)

Are the resources needed to conduct the project specified, including personnel, time, funds, and facilities? Are any collaborative efforts with other organizations clearly identified and written assurances referenced? Is all budget information provided, including a description by category (personnel, travel, etc.) of the total of the Federal funds required? Where appropriate, are justifications and explanations of costs provided? Are the project's costs reasonable in view of the level of effort and anticipated outcome? Does the applicant's organization have adequate facilities and resources to plan, conduct, and complete the project?

Please Note: For-profit organizations may not use grant funds to purchase equipment under the grant. Equipment means tangible, non-expendable, personal property having a useful life of more than 1 year and an acquisition cost of $5,000 or more per unit.

7. Closing Date for Receipt of Applications

The closing date for receipt of grant applications for Federal funds in response to this announcement is September 6, 1994.

Applications may be mailed or sent by commercial carrier or personally delivered to: Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, MD 21207.

Hand-delivered applications are accepted during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

(a) Received on or before the deadline date at the above address; or

(b) Mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above criteria are considered late applications. SSA will notify each late applicant that its application will not be considered.

Note: Facsimile copies will not be accepted.

Notice Procedures

Paperwork Reduction Act

This notice contains reporting requirements in the "Application Process" section. However, the information is collected using form SSA–96–BK, *Federal Assistance*, which has Office of Management and Budget clearance No. 0960–0184.

Executive Orders 12372 and 12416—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372, as amended by Executive Order 12416, relating to Federal agencies providing opportunities for consultation with State and local elected officials on proposed Federal financial assistance or direct Federal development.

(Catalog of Federal Domestic Assistance: Program No. 93.812, Social Security-Research and Demonstration)

Dated: June 22, 1994.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 94–16284 Filed 7–5–94; 8:45 am]

BILLING CODE 4190–29–P

Substance Abuse and Mental Health Services Administration Advisory Committee for Women's Services; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the initial meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA).

The meeting of the Advisory Committee for Women's Services will include an orientation of new members, a discussion of the mission of SAMHSA and its programs for women, administrative announcements, and program developments.

A summary of the meeting, a roster of committee members and/or substantive information about the upcoming meeting may be obtained from: Jennifer B. Fiedelholtz, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443–5184.

Committee Name: Advisory Committee for Women's Services.

Meeting Dates: July 26–27, 1994.

Place: Conference Rooms G–H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open: July 26, 1994, 9:00 a.m.–5:00 p.m., July 27, 1994, 9:00 a.m. until adjournment.

Contact: Jennifer B. Fiedelholtz, Room 13–99, Parklawn Building, Telephone (301) 443–5184.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–16263 Filed 7–5–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Exxon Valdez Oil Spill Public Advisory Group Nomination Solicitation.

SUMMARY: The Exxon Valdez Oil Spill Trustee Council is soliciting nominations for the Public Advisory Group which advises the Trustee Council on decisions related to the planning, evaluation, and conduct of

injury assessment and restoration activities using funds obtained for purposes of restoration as part of the civil settlement pursuant to the T/V Exxon Valdez oil spill of 1989. Public Advisory Group members will be selected to serve a two-year term beginning in October 1994.

DATES: All nominations should be received on or before August 1, 1994.

ADDRESSES: Nominations should be sent to the Exxon Valdez Oil Spill Trustee Council, 646 G Street, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Designated Federal Officer, Department of the Interior, Office of Environmental Policy and Compliance, 1689 C Street, Suite 119, Anchorage, Alaska, (907) 271–5011; or L.J. Evans, Exxon Valdez Oil Spill Restoration Office, 645 G Street, Anchorage, Alaska, (907) 278–8012. A copy of the charter for the Public Advisory Group is available upon request.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The Public Advisory Group was created to advise the Trustee Council on matters relating to decisions on injury assessment, restoration activities, or other use of natural resources damage recoveries obtained by the governments.

The Trustee Council consists of representatives of the State of Alaska Attorney General; Commissioner of the Alaska Department of Fish and Game; Commissioner of the Alaska Department of Environmental Conservation; the Secretary of the Interior; the Secretary of Agriculture; and the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. Appointment to the Public Advisory Group will be made by the Secretary of the Interior with unanimous approval of the Trustees.

The Public Advisory Group consists of 17 members representing the public at large (5 members) and the following special interests: aquaculture, commercial fishing, commercial tourism, forest products, environmental, conservation, local government, Native landowners, recreation users, sport hunting and fishing, subsistence, and science/academic. Two additional ex officio non-voting members are from the Alaska State House of Representatives and the Alaska State Senate.

Nominees need to submit the following information to the Trustee Council:

1. A biographical sketch (education, experience, address, telephone);
2. Information about the nominee's knowledge of the region, peoples, or principal economic and social activities of the area affected by the T/V Exxon Valdez oil spill, or expertise in public lands and resource management;
3. Information about the nominee's relationship/involvement (if any) with the principal interest to be represented;
4. A statement explaining any unique contributions the nominee will make to the Public Advisory Group and why the nominee should be appointed to serve as a member;
5. Any additional relevant information that would assist the Trustee Council in making a recommendation; and
6. A disclosure statement of any potential conflict of interest. Public Advisory Group members and their alternates are chosen to represent a broad range of interests. It is possible that action could be taken by the Public Advisory Group when one or more of the members have a direct personal conflict of interest which would prejudice and call into question the entire public process. To avoid this eventuality and to enable the Trustee Council to choose appropriate individuals as members and/or alternates to members, it is necessary that each nominee provide the following information with their information packet. If the answer to any of these questions is yes, please provide a brief explanation of your answer. A yes will not necessarily preclude any nominee from being appointed to serve on the Public Advisory Group.

a. Do you, your spouse, children, any relative with whom you live or your employer have, or are you defending, a claim filed before any court or administrative tribunal based upon damages caused by the T/V Exxon Valdez oil spill?

b. Do you, your spouse, children, any relative with whom you live or your employer own any property or interest in property which has been, or is likely to be, proposed for acquisition by the Trustee Council?

c. Have you, your spouse, children, any relative with whom you live or your employer submitted, or likely will submit, a proposal for funding by the Trustee Council, or be a direct beneficiary of such a proposal?

d. Do you know of any other potential actions of the Trustee Council or the Public Advisory Group to have a direct bearing on the financial condition of yourself, your spouse, children, other relative with whom you live or your employer?

Jonathan P. Deason,

Director—Office of Environmental Policy and Compliance.

[FR Doc. 94–16311 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–RG–M

Exxon Valdez Oil Spill Public Advisory Group; Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of Meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on Tuesday and Wednesday, August 2–3, 1994, at 9:30 a.m., in the first floor conference room, 645 G Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 C Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include the review of and comment on the draft 1995 Work Plan, reports of subcommittees, and status reports on various restoration activities.

Jonathan P. Deason,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 94–16310 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–RG–M

Bureau of Land Management

[ES–020–04–4210–05:ARES–042126; 4–00157; ILM]

Realty Action; Direct Sale of Public Lands; Arkansas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands; Arkansas.

SUMMARY: The Bureau of Land Management has determined the land described below is suitable for sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1713 and 1719:

Fifth Principal Meridian

T. 16 N., R. 6 W.,
Section 22, SE¼ SE¼.

The above land aggregates 40 acres in Sharp County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Robert V. Abbey, District Manager, Jackson District Office, (601) 977–5400.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate to Danny Smith of Ash Lawn, Arkansas, pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719. Mr. Smith wishes to acquire the land as this particular tract if completely surrounded by land he owns.

The proposed direct sale is scheduled for September 26, 1994. The land parcel is to be offered at the market value. The land contains no other known public values. Detailed information concerning the proposed sale including the mineral report and environmental assessment are available at the Bureau of Land Management, Jackson District Office, 411 Briarwood Drive, Jackson, MS 39206.

Conveyance of the above land will be subject to reservation of all minerals to the United States with the right to prospect for, mine and remove the same.

The public land described above shall be segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of this publication, whichever comes first.

For a period of 45 days from the date of issuance of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, 411 Briarwood Drive, Suite 404, Jackson, MS 39206. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify the realty action. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

Dated: June 22, 1994.

Sammy St. Clair,

Acting District Manager,

[FR Doc. 94–16246 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–GJ–M

described below is suitable for sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1713 and 1719:

Fifth Principal Meridian

T. 16 N., R. 6 W.,
Section 22, SE¼ SE¼.

The above land aggregates 40 acres in Sharp County, Arkansas.

FOR FURTHER INFORMATION CONTACT:

Robert V. Abbey, District Manager, Jackson District Office, (601) 977–5400.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate to Danny Smith of Ash Lawn, Arkansas, pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719. Mr. Smith wishes to acquire the land as this particular tract if completely surrounded by land he owns.

The proposed direct sale is scheduled for September 26, 1994. The land parcel is to be offered at the market value. The land contains no other known public values. Detailed information concerning the proposed sale including the mineral report and environmental assessment are available at the Bureau of Land Management, Jackson District Office, 411 Briarwood Drive, Jackson, MS 39206.

Conveyance of the above land will be subject to reservation of all minerals to the United States with the right to prospect for, mine and remove the same.

The public land described above shall be segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of this publication, whichever comes first.

For a period of 45 days from the date of issuance of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, 411 Briarwood Drive, Suite 404, Jackson, MS 39206. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify the realty action. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

Dated: June 22, 1994.

Sammy St. Clair,

Acting District Manager,

[FR Doc. 94–16246 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Notice of Record of Decision for Walnut Creek National Wildlife Refuge Master Plan, Jasper County, IA

AGENCY: Fish and Wildlife Services, U.S. Department of the Interior.

ACTION: Notice.

SUMMARY: This notice makes available to the public a summary of the Record of Decision (ROD) for the proposed Master Plan for the Walnut Creek National Wildlife Refuge, located in Jasper County, Iowa. Establishment of the 8,654-acre Refuge was approved on September 5, 1990. Federal funding for design, construction, and operation of the Refuge is provided through appropriations by the U.S. Congress. Pursuant to Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) (40 CFR 1505.2), the Service issues this ROD upon consideration of the Final Environmental Impact Statement (FEIS) prepared for the Proposed Action. The U.S. Department of Army, Corps of Engineers (USCOE), acting as a cooperating agency in the preparation of the FEIS also adopts the FEIS and ROD as its NEPA documentation.

A Notice of Availability of the FEIS was published by the U.S. Environmental Protection Agency in the **Federal Register** on July 23, 1993.

The FEIS evaluated alternatives for four elements of the Master Plan: habitat/wildlife emphasis, management, programs, and facilities siting. Based upon an evaluation of the impacts of the various alternatives on the physical, biological, social, and economic environments, the Preferred Alternative was identified. The Preferred Alternative is a balance of several options and is comprised of the following elements:

Alternative I.D: Restoration and reconstruction of over 7000 acres of tallgrass prairie/savanna habitat with reintroduction of bison and elk.

Alternative II.E: Active habitat reconstruction and management to maximize environmental education.

Alternative III.C: Intermediate refuge program including indoor and outdoor environmental education programs and facilities, a visitor center with a tour route and trail system, small laboratory facilities and overnight accommodations for researchers; and other opportunities for interpretation and recreational public use.

Alternative IV.B: Consolidated facilities siting the visitor center, research facilities and maintenance facility in a central campus

Other alternatives considered included: the no build alternative, creation of extensive wetland habitat for waterfowl and fisheries, limited public use programs and facilities and active prairie reconstruction to maximize research.

Comments Received

Prior to preparation of the FEIS, the Draft Environmental Impact Statement (DEIS) on the Proposed Master Plan for the Walnut Creek National Wildlife Refuge was circulated for public review and comment. Comments were received from agencies and individuals expressing concerns about the findings of the DEIS. Issues raised in these comments included but were not limited to the habitat reconstruction process including seed sources, the potential for habitat fragmentation, and the reintroduction of bison and elk; the potential environmental effects of recreational facilities; the siting of Refuge facilities to minimize environmental impacts; Section 404 permit requirements; Refuge access; and historic resource issues. All substantive issues raised in the comments have been addressed to the satisfaction of the Service and the USCOE either through revisions incorporated into the FEIS text or responses contained in Section 6.5 of the FEIS. These responses are incorporated by reference into the ROD. No comments were received on the FEIS.

Findings and Decision

Based upon a careful review and consideration of the impacts identified in the FEIS, results of the various studies and surveys conducted in conjunction with the DEIS and FEIS, public comments received on the DEIS, and other relevant factors, including the purposes for which the Refuge was established by Congress and statutory and regulatory guidance for funding such projects, the Service, with concurrence by the USCOE, finds as follows:

(1) The Preferred Alternative consists of the programs and facilities mentioned above.

(2) The Preferred Alternative represents the best balance between provision of environmental education, interpretive, recreational, and research facilities and programs, minimization of environmental impacts, and public and agency concerns identified during the public participation process.

(3) Consistent with economic, social, and other essential considerations, to the maximum extent practicable, potential adverse environmental effects identified in the FEIS will be minimized or avoided by incorporating mitigative measures as conditions of Federal

funding approval and permit issuance. These measures are described in Section 4.0 of the FEIS.

(4) A wetland mitigation plan providing in-kind and on-site replacement for unavoidable adverse impacts to existing wetlands has been developed and will be implemented, resulting in no net loss of wetland habitat values over time. Specific details regarding the mitigation plan have been developed through the Section 404 permit process.

(5) No state or federally listed endangered or threatened species or their critical habitats are known to be adversely affected by the project.

(6) No historic properties listed in or eligible for listing in the National Register of Historic Places are known to be adversely affected by the project.

(7) Statutory authority for the Service to fund and implement, and for the USCOE to permit, the project exists.

(8) The requirements of NEPA and the implementing regulations (40 CFR Parts 1500–1508) have been satisfied.

The ROD serves as the written facts and conclusions relied upon in reaching this decision. A complete copy of the ROD is filed at the Refuge together with the other NEPA documents. For further information contact: Mr. Richard M. Birger, Refuge Manager, Walnut Creek National Wildlife Refuge, P.O. Box 399, Prairie City, Iowa 50228. Telephone: (515) 994–2415.

Dated: June 22, 1994.

Thomas J. Kerze,

Acting Regional Director.

[FR Doc. 94–16247 Filed 6–5–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 24, 1994. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 21, 1994.

Beth Boland,

Acting Chief of Registration, National Register.

CONNECTICUT

Hartford County

Barlow, Boce W., Jr., House, 31 Canterbury St., Hartford, 94000767

Johnson, Wilfred X., House, 206 Tower Ave., Hartford, 94000765

Metropolitan African Methodist Episcopal Zion Church, 2051 Main St., Hartford, 94000769

Middlesex County

North Cove Historic District, Roughly, N. Cove Rd., from Church St., to the Connecticut R. and adjacent properties on Cromwell Pl., Saybrook, 94000766

Windham County

Aldrich Free Public Library, 299 Main St., Plainfield, 94000768

FLORIDA

Indian River County

Driftwook Inn and Restaurant, 3150 Ocean Dr., Vero Beach, 94000751

Sarasota County

Binz, Frank and Matilda, House, 5050 Bay Shore Rd., Sarasota, 94000736

GEORGIA

De Kalb County

Oglethorpe University Historic District, 4484 Peachtree Rd., NE., Atlanta, 94000779

KENTUCKY

Jefferson County

Jewish Hospital Complex, 236 E. Kennedy St., Louisville, 94000732

Mason County

Richeson, John Brett, House, 331 W. Third St., Maysville, 94000733

LOUISIANA

Iberia Parish

Dulcito Plantation House, 5918 Old Spanish Trail W. (LA 182), New Iberia vicinity, 94000742

MAINE

Waldo County

Archeological Site No. 39.1 (Maine Fluted Point Paleoindian Sites MPS), Address Restricted, Searsmont vicinity, 94000759

MARYLAND

Harford County

The Vineyard, 1201 Conowingo Road. (US 1), Bel Air vicinity, 94000762

Somerset County

Puncheon Mill House, Puncheon Landing Rd., Pocomoke City vicinity, 94000763

Baltimore Independent City

Upton, 811 W. Lanvale St., Baltimore (Independent City), 94000764

MASSACHUSETTS

Hampshire County

Hatfield Center Historic District, Roughly bounded by the Connecticut and Mill Rivers and Day Ave., Hatfield, 94000737

Upper Main Street Historic District, Main St. from 83 Main to Cow Bridge, 1—44 King St. and 6—70 North St., Hatfield, 94000735

MICHIGAN

Calhoun County

Lockwood, Isaac, House, 14011 Verona Rd., Marshall Township, Marshall vicinity, 94000748

Jackson County

Hitt, Gordon, Farmstead, 4561 N. Lake Rd., Columbia Township, Clark Lake vicinity, 94000743

Keweenaw County

Sand Hills Light Station, Five Mile Point Rd., N of Mohawk, Allouez Township, Mohawk vicinity, 94000746

Livingston County

Hecox, Frank J., House, 3720 W. Grand River Ave., Howell Township, Howell vicinity, 94000745

Oakland County

Aldrich, Royal, House, 31110 W. 11 Mile Rd., Farmington Hills, 94000755

St. Clair County

Colony Tower Complex, 6503 Dyke Rd. (MI 29), Clay Township, Pearl Beach, 94000756

Shiawassee County

Pere Marquette Railway Steam Locomotive No. 1225, 600 S. Oakwood St., Owosso, 94000744

Washtenaw County

Kellogg—Warden House, 500 N. Main St., Ann Arbor, 94000754

Wayne County

Hunter, Mulford T., House, 77 W. Hancock Ave., Detroit, 94000757

Loomer, George W., House, 71 W. Hancock Ave., Detroit, 94000753

Richard, Pere Gabriel, Elementary School, 176 McKinley Ave., Grosse Pointe Farms, 94000752

Wexford County

Masonic Temple Building, 122–126 N. Mitchell St., Cadillac, 94000747

MINNESOTA

Morrison County

Little Falls Commercial Historic District, Roughly, First St. SE. from First Ave SE. to First Ave. NE., Little Falls, 94000740

Stearns County

Original Main Street Historic District, Main St. between S. Eighth and N. Third Sts., Sauk Centre, 94000758

MISSOURI

Cape Girardeau County

Clark, George Boardman, House, 6 S. Fountain St., Cape Girardeau, 94000738

Klostermann Block, 7, 9, 11, 13 and 15 S. Spanish St., Cape Girradeau, 94000739

MONTANA

Flathead County

Kearney Rapids Bridge (Historic Bridges of Montana MPS), Bigfork Canyon Rd., Bigfork vicinity, 94000734

OHIO

Auglaize County

Uniopolis Town Hall, Ohio St. (OH 67) E of jct. with Main St., Uniopolis, 94000773

Bulter County

Greenwood Cemetery, 1602 Greenwood Ave., Hamilton, 94000771

Franklin County

Bradford Shoe Company Building, 232 Neilston, Columbus, 94000772

Hamilton County

Baxter, James, House, 2930 Fair Acres Dr., Amberley Village, 94000774

Stark County

Miller, John, House, 9677 Cleveland Ave. NW., Greentown, 94000775

Science Hill School, 11810 Beeson St., Alliance vicinity, 94000776

Tuscarawas County

Ragersville School, 8807 Co. Rd. 52 SW. (Crooked Run Rd.), Ragersville, 9400077

Wayne County

Liggett—Freedlander House, 408 N. Bever St., Wooster, 94000770

TENNESSEE

Davidson County

Sandbar Village (Mississippian Cultural Resources of the Central Basin MPS), Address Restricted, Nashville vicinity, 94000749

VIRGINIA

Rockbridge County

Clifton, VA 631 N side, 2000 ft. E of jct. with US 11, Lexington vicinity, 94000778

Mulberry Grove, VA 724 S side, 5000 ft. SE of jct. with VA 252, Brownsburg vicinity, 94000761

Oak Spring Farm, VA 706 at jct. with US 11, Fairfield vicinity, 94000780

Manassas Independent City

Manassas Industrial School for Colored Youth, Address Restricted, Manassas (Independent City), 94000760

WASHINGTON

Spokane County

Hutton Settlement District (Boundary Increase), 9907 Wellesley, Spokane vicinity, 94000750

WYOMING

Converse County

Fremont, Elkhorn & Missouri Valley Railroad Passenger Depot, 100 Walnut St., Douglas, 94000741

[FR Doc. 94–16283 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–70–M

OHIO

Auglaize County

Uniopolis Town Hall, Ohio St. (OH 67) E of jct. with Main St., Uniopolis, 94000773

Bulter County

Greenwood Cemetery, 1602 Greenwood Ave., Hamilton, 94000771

Franklin County

Bradford Shoe Company Building, 232 Neilston, Columbus, 94000772

Hamilton County

Baxter, James, House, 2930 Fair Acres Dr., Amberley Village, 94000774

Stark County

Miller, John, House, 9677 Cleveland Ave. NW., Greentown, 94000775
Science Hill School, 11810 Beeson St., Alliance vicinity, 94000776

Tuscarawas County

Ragersville School, 8807 Co. Rd. 52 SW. (Crooked Run Rd.), Ragersville, 9400077

Wayne County

Liggett—Freedlander House, 408 N. Bever St., Wooster, 94000770

TENNESSEE

Davidson County

Sandbar Village (Mississippian Cultural Resources of the Central Basin MPS), Address Restricted, Nashville vicinity, 94000749

VIRGINIA

Rockbridge County

Clifton, VA 631 N side, 2000 ft. E of jct. with US 11, Lexington vicinity, 94000778
Mulberry Grove, VA 724 S side, 5000 ft. SE of jct. with VA 252, Brownsburg vicinity, 94000761
Oak Spring Farm, VA 706 at jct. with US 11, Fairfield vicinity, 94000780

Manassas Independent City

Manassas Industrial School for Colored Youth, Address Restricted, Manassas (Independent City), 94000760

WASHINGTON

Spokane County

Hutton Settlement District (Boundary Increase), 9907 Wellesley, Spokane vicinity, 94000750

WYOMING

Converse County

Fremont, Elkhorn & Missouri Valley Railroad Passenger Depot, 100 Walnut St., Douglas, 94000741

[FR Doc. 94–16283 Filed 7–5–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 361X)]

Burlington Northern Railroad Company—Abandonment Exemption—In Bureau County, IL

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 5.09[1] miles of rail line between milepost 193.36 near Ladd and milepost 188.27 near Howe in Bureau County, IL.

BN has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on this line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 5, 1994,[2] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 18, 1994.[5] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 26, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 11, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 27, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16226 Filed 7–5–94; 8:45 am]

BILLING CODE 7035–01–P

[1] Although BN stated it was abandoning 5.13 miles of rail line, the actual mileage between mileposts is 5.09 miles.

[2] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of August 4, 1994. Because the verified notice was filed June 16, 1994, consummation could not take place prior to August 5, 1994. BN's representative has confirmed that the correct consummation date is on or after August 5, 1994.

[3] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[4] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[5] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated May 3, 1994, and published in the **Federal Register** on

May 10, 1994, (59 FR 24184), Organix Inc., 65 Cummings Park, Woburn, Massachusetts 01801, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 23, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–16274 Filed 7–5–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than July 18, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 18, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 20th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union workers firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Classic Lady Fashions (Co)	Hialeah Gardens, FL.	06/20/94	04/26/94	29,978	Ladies' Sportswear.
Xerox Corp, Off. Document Prod Div (Wkrs).	Rochester, NY	06/20/94	06/08/94	29,979	Copiers.
Martin Marietta (IFPTE)	Moorestown, NJ	06/20/94	04/04/94	29,980	Defense Electronics Products.
Ecklund Engine Systems (IAM)	Washington, MO	06/20/94	06/03/94	29,981	Carburator Parts.
Joseph H. Hill Co (Co)	Richmond, IN	06/20/94	05/27/94	29,982	Roses.
Hill Floral Products, Inc (Wkrs)	Richmond, IN	06/20/94	05/27/94	29,983	Roses.
Hoffend & Sons, Inc (Wkrs)	Honeoye, NY	06/20/94	06/07/94	29,984	Stage Rigging Equipment.
Farah Mfg. Co (Wkrs)	El Paso, TX	06/20/94	06/06/94	29,985	Ladies' Pants and Jackets.
New York Air Brake Corp (Co)	Watertown, NY	06/20/94	06/03/94	29,986	Hydraulic Air Brake Units.
Airpol, Inc (Wkrs)	Bakersfield, CA	06/20/94	06/06/94	29,987	Repair Oilfield & Pipeline Equipment.
AT&T Communications (CWA)	Pittsburgh, PA	06/20/94	06/08/94	29,988	Telephone Operator Services.
Autoclave Engineers Group (Wkrs)	Erie, PA	06/20/94	06/03/94	29,989	Pressure Vessels.
Jorca Mfg. Corp (Wkrs)	Hialeah, FL	06/20/94	06/07/94	29,990	Ladies' Blouses and Jackets.
Gucci America, Inc (Wkrs)	Seattle, WA	06/20/94	06/07/94	29,991	Retail Sales.
Virg's DST, Inc (Co)	Littleon, CO	06/20/94	05/26/94	29,992	Oil Services.
Virg's DST, Inc (Co)	Williston, ND	06/20/94	05/26/94	29,993	Oil Services.
Virg's DST, Inc (Co)	Gillette, NY	06/20/94	05/26/94	29,994	Oil Services.
Virg's DST, Inc (Co)	Mohall, ND	06/20/94	05/26/94	29,995	Oil Services.
United States Steel Mining Co (USWA)	Washington, PA	06/20/94	06/10/94	29,996	Coal.
The Seminole Co (Co)	Siminole, OK	06/20/94	06/02/94	29,997	Oil and Gas Services.
Ruth Hombein Sweaters, Inc (Co)	Brooklyn, NY	06/20/94	06/03/94	29,998	Hand Loomed Cotton Children's Sweaters.
PTI Technologies, Inc (Co)	Newbury Park, CA	06/20/94	06/03/94	29,999	Aircraft Filtration Product.
NIKE, Inc (Wkrs)	Beaverton, OR	06/20/94	06/08/94	30,000	Administrative Services for Nike Inc.
Jencraft Corp (Wkrs)	Elsa, TX	06/20/94	06/05/94	30,001	Vertical and Mini Blinds.
Grumman Space Station Engineering (Wkrs).	Houston, TX	06/20/94	06/10/94	30,002	Engineering Services for Grumman.
Goodyear Tire & Rubber Co (URW)	Logan, OH	06/20/94	06/07/94	30,003	Auto Instrument Panels.
Freitex, Inc (Co)	Albany, GA	06/20/94	06/08/94	30,004	Children's Clothing.
Ford New Holand, Inc (Co)	Troy, MI	06/20/94	06/08/94	30,005	Distribution of Tractor Parts.
Imperial Metal & Chemical Co (Wkrs)	Holyoke, MA	06/20/94	06/09/94	30,006	Aluminum Lithographic Printing Plates.
Alaska Safety, Inc (Co)	Anchorage, AK	06/20/94	03/15/94	30,007	Oil and Gas Services.
Aircraft & Electronic Specialties (Co)	Indianapolis, IN	06/20/94	06/03/94	30,008	Wire Harnesses for Vehicles.
Santa Fe Energy Resources (Co)	Houston, TX	06/20/94	06/10/94	30,009	Oil and Gas Production.
Halliburton Energy Services (Co)	Northslope, AK	06/20/94	06/14/94	30,010	Oil and Gas.
Halliburton Energy Services (Co)	Northport, AL	06/20/94	06/14/94	30,011	Oil and Gas.
Halliburton Energy Services (Co)	Forth Smith AR	06/20/94	06/14/94	30,012	Oil and Gas.

Petitioner (union workers firm)	Lo
Halliburton Energy Services (Co)	Bakersfi
Halliburton Energy Services (Co)	Brighton
Halliburton Energy Services (Co)	Jay, FL
Halliburton Energy Services (Co)	Flora, IL
Halliburton Energy Services (Co)	Evansvi
Halliburton Energy Services (Co)	Great Be
Halliburton Energy Services (Co)	Paintsvil
Halliburton Energy Services (Co)	Abbeville
Halliburton Energy Services (Co)	Kalkaska
Halliburton Energy Services (Co)	Jackson
Halliburton Energy Services (Co)	Havre, M
Halliburton Energy Services (Co)	Swanna
Halliburton Energy Services (Co)	Williston
Halliburton Energy Services (Co)	Artesia,
Halliburton Energy Services (Co)	Cambrid
Halliburton Energy Services (Co)	Burnsfla
Halliburton Energy Services (Co)	Grove C
Halliburton Energy Services (Co)	Helenwo
Halliburton Energy Services (Co)	Abilene,
Halliburton Energy Services (Co)	Vernal, U
Halliburton Energy Services (Co)	Norton,
Halliburton Energy Services (Co)	Kirkland,
Halliburton Energy Services (Co)	Blue Cre
Halliburton Energy Services (Co)	Casper,

[FR Doc. 94–16320 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,147]

General Tire, Inc., Mayfield, KY; Affirmative Determination Regarding Application for Reconsideration

On April 25, 1994, after being granted a filing extension, Local #665 of the United Rubber Workers (URW) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm.

The Department's Negative Determination was issued on March 9, 1994, and was published in the **Federal Register** on March 25, 1994 (59 FR 14215).

The union submitted additional import information and the names of additional customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

APPENDIX—Continued

Petitioner (union workers firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Halliburton Energy Services (Co)	Bakersfield, CA	06/20/94	06/14/94	30,013	Oil and Gas.
Halliburton Energy Services (Co)	Brighton, CO	06/20/94	06/14/94	30,014	Oil and Gas.
Halliburton Energy Services (Co)	Jay, FL	06/20/94	06/14/94	30,015	Oil and Gas.
Halliburton Energy Services (Co)	Flora, IL	06/20/94	06/14/94	30,016	Oil and Gas.
Halliburton Energy Services (Co)	Evansville, IN	06/20/94	06/14/94	30,017	Oil and Gas.
Halliburton Energy Services (Co)	Great Bend, KS	06/20/94	06/14/94	30,018	Oil and Gas.
Halliburton Energy Services (Co)	Paintsville, KY	06/20/94	06/14/94	30,019	Oil and Gas.
Halliburton Energy Services (Co)	Abbeville, LA	06/20/94	06/14/94	30,020	Oil and Gas.
Halliburton Energy Services (Co)	Kalkaska, MI	06/20/94	06/14/94	30,021	Oil and Gas.
Halliburton Energy Services (Co)	Jackson, MS	06/20/94	06/14/94	30,022	Oil and Gas.
Halliburton Energy Services (Co)	Havre, MT	06/20/94	06/14/94	30,023	Oil and Gas.
Halliburton Energy Services (Co)	Swannanoa, NC	06/20/94	06/14/94	30,024	Oil and Gas.
Halliburton Energy Services (Co)	Williston, ND	06/20/94	06/14/94	30,025	Oil and Gas.
Halliburton Energy Services (Co)	Artesia, NM	06/20/94	06/14/94	30,026	Oil and Gas.
Halliburton Energy Services (Co)	Cambridge, OH	06/20/94	06/14/94	30,027	Oil and Gas.
Halliburton Energy Services (Co)	Burnsflat, OK	06/20/94	06/14/94	30,028	Oil and Gas.
Halliburton Energy Services (Co)	Grove City, PA	06/20/94	06/14/94	30,029	Oil and Gas.
Halliburton Energy Services (Co)	Helenwood, TN	06/20/94	06/14/94	30,030	Oil and Gas.
Halliburton Energy Services (Co)	Abilene, TX	06/20/94	06/14/94	30,031	Oil and Gas.
Halliburton Energy Services (Co)	Vernal, UT	06/20/94	06/14/94	30,032	Oil and Gas.
Halliburton Energy Services (Co)	Norton, VA	06/20/94	06/14/94	30,033	Oil and Gas.
Halliburton Energy Services (Co)	Kirkland, WA	06/20/94	06/14/94	30,034	Oil and Gas.
Halliburton Energy Services (Co)	Blue Creek, WV	06/20/94	06/14/94	30,035	Oil and Gas.
Halliburton Energy Services (Co)	Casper, WY	06/20/94	06/14/94	30,036	Oil and Gas.

[FR Doc. 94–16320 Filed 7–5–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,147]

General Tire, Inc., Mayfield, KY; Affirmative Determination Regarding Application for Reconsideration

On April 25, 1994, after being granted a filing extension, Local #665 of the United Rubber Workers (URW) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm.

The Department's Negative Determination was issued on March 9, 1994, and was published in the **Federal Register** on March 25, 1994 (59 FR 14215).

The union submitted additional import information and the names of additional customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 24th day of June 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–16318 Filed 7–5–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29, 603, et al.]

Hughes Christiansen Co. a/k/a Baker Hughes Oilfield Operations, Inc. Headquartered in Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm. The certification notice was issued on May 17, 1994 and published in the **Federal Register** on June 1, 1994 (59 FR 28429).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the correct name of the subject firm through December 31, 1992 was Hughes Christiansen Company, Inc. In 1993, Hughes Cristiansen Company became an operating division of Baker Hughes Oilfield Operations, Inc., and the claimants' wages were reported under an unemployment insurance (UI) tax account for Baker Hughes Oilfield Operations, Inc., a subsidiary of Baker Hughes, Inc. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,603 is hereby issued as follows:

"All workers of Hughes Christiansen Company, Houston, Texas a/k/a Baker Hughes Oilfield Operations, Inc., a subsidiary of Baker Hughes, Inc., and operating at various locations in the following cited states who became totally or partially separated from employment on or after January 11, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

TA–W–29,603A	Alaska
TA–W–29,603B	Alabama
TA–W–29,603C	Arkansas
TA–W–29,603D	Arizona
TA–W–29,603E	California
TA–W–29,603F	Colorado
TA–W–29,603G	Connecticut
TA–W–29,603H	Illinois
TA–W–29,603I	Kansas
TA–W–29,603J	Kentucky
TA–W–29,603K	Louisiana
TA–W–29,603L	Michigan
TA–W–29,603M	Missouri
TA–W–29,603N	Mississippi
TA–W–29,603O	Montana
TA–W–29,603P	North Dakota
TA–W–29,603Q	New Hampshire
TA–W–29,603R	New Mexico
TA–W–29,603S	Ohio
TA–W–29,603T	Oklahoma
TA–W–29,603U	Oregon
TA–W–29,603V	Pennsylvania

TA–W–29,603W South Carolina
TA–W–29,603X Texas
TA–W–29,603Y Utah
TA–W–29,603Z Wisconsin
TA–W–29,603ZA West Virginia
TA–W–29,603ZB Wyoming

Signed at Washington, DC, this 21st day of June, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–16324 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,865]

Prudential Insurance and Financial Service, Minneapolis, MN; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–29,865 which was published in the **Federal Register** on June 1, 1994 (59 FR 28425) in FR Document 94–13299. A printing error concerning city and state location appears in the 6th line of the second column in the appendix table on page 28425. The name should read "Minneapolis, Minnesota" instead of "Newark, New Jersey".

Signed in Washington, DC, this 27th day of June, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–16319 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,618; TA–W–29,618A]

Sportette Industries, Inc., Nazareth, PA; NU-Place, Inc., Nazareth, PA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 20, 1994, applicable to all workers of the subject firm. The certification notice was published in the Federal Register on May 11, 1994 (59 FR 24483).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The findings show that Nu-Place and Sportette were subsidiaries of Quartet Fashions in New York. The findings show that production at Nu-Place was integrated with the production at Sportette and Nu-Place closed in January 1994.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports of ladies' pants, skirts, blouses and jackets. Accordingly, the Department is amending the certification by including the workers at Nu-Place, Inc. in Nazareth, Pennsylvania.

The amended notice applicable to TA–W–29,618 is hereby issued as follows:

"All workers of Sportette Industries, Inc., Nazareth, Pennsylvania and Nu-Place, Inc., Nazareth, Pennsylvania engaged in the production of ladies' pants, skirts, blouses and jackets who became totally or partially separated from employment on or after March 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 21st day of June 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–16323 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act: Native American Employment and Training Council; Notice of Appointment of Members

SUMMARY: Notice is hereby given that appointments have been made to fill eight (8) vacancies from the seventeen (17) memberships on the Native American Employment and Training Council. The remaining nine (9) members were appointed until June 30, 1995.

The following seven individuals have been reappointed to the Council:

Representing JTPA Section 401 Grantees

Mr. Terry Polchies, Executive Director, Central Maine Indian Association, Inc., Bangor, Maine
Ms. Joan Cofield, JTPA Director, Powhatan-Renape Nation, Ranococas, New Jersey
Ms. Winona Whitman, Employment and Training Program Administrator, Alu Like, Inc., Honolulu, Hawaii

Representing Other Disciplines

Dr. Rose-Alma McDonald-Jacobs, Council Chair and Native American Consultant, Hogansburg, New York
Mr. Eddie L. Tullis, Council Vice Chair and Tribal Chairman, Poarch Band of Creek Indians, Atmore, Alabama
Mr. Gaiashkibos, President, National Congress of American Indians and Chairman, Lac Courte Oreilles, Hayward, Wisconsin
Mr. Clarence W. Skye, Executive Director, United Sioux Tribes of South Dakota, Pierre, South Dakota.

One individual, representing another discipline, has been newly appointed to the Council:

Dr. Scott Butterfield, Principal, Hayesville Elementary School, Salem, Oregon

The Native American Employment and Training Council was established under section 401(k)(1) of title IV of JTPA, as amended, to provide advice with respect to the implementation of JTPA programs for Native American youth and adults.

DATES: These appointments will be effective July 1, 1994, and will expire on June 30, 1996, contingent on the rechartering of the Native American Employment and Training Council as of July 1, 1995.

FOR ADDITIONAL INFORMATION CONTACT: Charles L. Atkinson, Acting Chief, Division of Indian and Native American Programs, Office of Special Targeted Programs, Employment and Training Administration, Room C–4524, Washington, DC 20210. Telephone: (202) 219–5904 (this is not a toll-free number)

Signed at Washington, DC this 10th day of June, 1994.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 94–16317 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

Advisory Council on Unemployment Compensation; Meeting

SUMMARY: The Advisory Council on Unemployment Insurance Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 40657). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the ACUC to evaluate the overall unemployment insurance program.

The ACUC recently, through requests for proposals, commissioned researchers to prepare reports on a variety of topics associated with the ACUC's deliberations on the reform of the unemployment insurance system. The purpose of this meeting is to provide a forum for presentation and discussion of the results of these research findings.

TIME AND PLACE: The meeting will be held from 8 a.m. to 4 p.m. on August 18, 1994 and from 8 a.m. to 3 p.m. on August 19, 1994 at the Ramada Inn, 1230 Congress Street, Portland, Maine. A lunch break is scheduled from 12:00 noon to 1:30 p.m. each day.

AGENDA: Conference participants will present and discuss the following commissioned reports:

1. Wage Insurance;
2. Unemployment Insurance and Consumption Smoothing;
3. The Evolution, Operation, and Effectiveness of the U.S. Employment Service;
4. The Effectiveness of the U.S. Employment Service;
5. The Interaction between Unemployment Insurance and Income Redistribution Programs: Evidence from the States during 1966–1989;
6. Unemployment Insurance Benefit Formulas and Part-time Work;
7. Immigration, Agriculture, and Unemployment Insurance;
8. The Incidence of the Unemployment Insurance Payroll Tax;
9. Improving Employer Compliance with Unemployment Insurance Tax Reporting Requirements;
10. The Sensitivity of Unemployment Insurance Costs to Variations in Key Program Parameters: Evidence from the G–7 Nations;
11. Impacts of Wage Subsidies on Participants and Nonparticipants;
12. Issues in Financing Unemployment Insurance; and
13. Administering the Unemployment Insurance System.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with disabilities in

Petitioner (union/workers/firm)	L
Thomas & Betts Corporation; Electronics Division (Co.).	Inman,
Avery Dennison; Soabar Systems Division (Wkrs).	Gaston
Byran's Gordon County Farm Co.; Sara Lee Corporation (Wkrs).	Calhou
USA Classic, Inc. (Wkrs)	Counce
Kyrocera International, Inc.; Kyrocera America (Wkrs).	San Di
Theel Shake, Inc. (Wkrs)	Nailton,
International Paper; Container Division (UPIU).	Presqu
Champion Parts Rebuilders; Northeast (IBEW).	Beech
Safeway, Inc.; Supply Operation, Production (Wkrs).	Walnut
Baltimore Aircoil Co.; Pritchard, Inc. (Wkrs).	Merced
Six Gun Cedar (Co.)	Quipaul
Woolrich, Inc.; Avis Facility (Co.)	Avis, P

1230 Congress Street, Portland, Maine. A lunch break is scheduled from 12:00 noon to 1:30 p.m. each day.

AGENDA: Conference participants will present and discuss the following commissioned reports:

1. Wage Insurance;
2. Unemployment Insurance and Consumption Smoothing;
3. The Evolution, Operation, and Effectiveness of the U.S. Employment Service;
4. The Effectiveness of the U.S. Employment Service;
5. The Interaction between Unemployment Insurance and Income Redistribution Programs: Evidence from the States during 1966–1989;
6. Unemployment Insurance Benefit Formulas and Part-time Work;
7. Immigration, Agriculture, and Unemployment Insurance;
8. The Incidence of the Unemployment Insurance Payroll Tax;
9. Improving Employer Compliance with Unemployment Insurance Tax Reporting Requirements;
10. The Sensitivity of Unemployment Insurance Costs to Variations in Key Program Parameters: Evidence from the G–7 Nations;
11. Impacts of Wage Subsidies on Participants and Nonparticipants;
12. Issues in Financing Unemployment Insurance; and
13. Administering the Unemployment Insurance System.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with disabilities in need of special accommodations should contact the Designated Federal official (DFO), listed below, at least 7 days prior to the meeting.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S4231, Washington, DC 20210. She may be reached at (202) 219–7831 (this is not a toll-free number).

Signed at Washington, DC, this 30th day of June 1994.

Doug Ross,

Assistant Secretary of Labor

[FR Doc. 94–16325 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NATA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C., provided such request is filed in writing with the Director of OTAA not later than July 18, 1994, 10 days after publication in the **Federal Register**.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director or OTAA at the address shown below not later than July 18, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C., this 27th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Thomas & Betts Corporation; Electronics Division (Co.).	Inman, SC	06/13/94	NAFTA–00141	Injection molding and assembly of electronic connectors for computer and office equipment application.
Avery Dennison; Soabar Systems Division (Wkrs).	Gastonia, NC	06/13/94	NAFTA–00142	Gravure Printing, Tickets, labels and tags customized to customer's needs.
Byran's Gordon County Farm Co.; Sara Lee Corporation (Wkrs).	Calhoun, GA	06/14/94	NAFTA–00143	Prepared Meats such as luncheon meats (bologna, ham, turkey, salami, hot dogs, and corn dogs)
USA Classic, Inc. (Wkrs)	Counce, TN	06/14/94	NAFTA–00144	Clothing.
Kyrocera International, Inc.; Kyrocera America (Wkrs).	San Diego, CA	06/15/94	NAFTA–00145	Ceramic packages.
Theel Shake, Inc. (Wkrs)	Nailton, WA	06/16/94	NAFTA–00146	Cedar shakes and shingles.
International Paper; Container Division (UPIU).	Presque Isle, ME	06/20/94	NAFTA–00147	Corragated cardboard boxes
Champion Parts Rebuilders; Northeast (IBEW).	Beech Creek, PA	06/20/94	NAFTA–00148	Automotive parts including self contained mechanisms i.e. alternators, distributors.
Safeway, Inc.; Supply Operation, Production (Wkrs).	Walnut Creek, CA	06/20/94	NAFTA–00149	Salsa, fruits, tuna, foodstuffs
Baltimore Aircoil Co.; Pritchard, Inc. (Wkrs).	Merced, CA	06/20/94	NAFTA–00150	Fiberglass cooling tower parts
Six Gun Cedar (Co.)	Quipauli, WA	06/21/94	NAFTA–00151	Red cedar shakes & shingles.
Woolrich, Inc.; Avis Facility (Co.)	Avis, PA	06/20/94	NAFTA–00152	Apparel; outerwear and sportswear.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Woolrich, Inc.; Blanchard Facility (Co.)	Blanchard, PA	06/20/94	NAFTA–00153	Apparel; sportswear and outerwear.
Woolrich, Inc.; Headquarters (Co.)	Woolrich, PA	06/20/94	NAFTA–00154	Apparel; sportswear and outerwear.
Woolrich, Inc.; Broomfield Facility (Co.)	Broomfield, CO	06/20/94	NAFTA–00155	Apparel; sportswear and outerwear.
Ampenol Corp.; Pyle National, Inc. (SEIU)	Chicago, IL	06/21/94	NAFTA–00156	Electrical connectors (high performance).
Martin Marietta; Government Electronic Systems (IFPTE).	Moorestown, NJ	06/23/94	NAFTA–00157	Electronic products for defense.
Oxford Industries, Inc.; Oxford Shirting Div. ( ).	Dawson, GA	06/23/94	NAFTA–00158	Men's and boy's dress and sport shirts.
McClure Manufacturing (Wkrs)	Elligay, GA	06/23/94	NAFTA–00159	Women's blue jeans.

Employment and Training Administration NAFTA–00051

Valeo Climate Control Corp., Fort Worth, TX; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment assistance on April 22, 1994, applicable to workers of Valeo Climate Control Corporation in Fort Worth, Texas. The certification did not apply to workers in the Rapid Product Development Group at the Fort Worth, Texas location of Valeo Climate Control Corporation. The Notice will be published in the **Federal Register**.

At the request of the company, the Department reviewed the certification. New information from the company shows that worker separations from the Rapid Product Development Group of the Fort Worth, Texas facility of Valeo Climate Control Corporation were related to the shift in production from the subject plant to Mexico.

The Department's certification is amended to include workers in the Rapid Product Development Group.

The amended notice applicable to NAFTA–00051 is hereby issued as follows:

"All workers of Valeo Climate Control Corporation in Fort Worth, Texas, including workers in the Rapid Product Development Group, who become totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1994."

Signed at Washington, DC, this 24th day of June, 1994.

James D. Van Erden,

Administrator, Office of Work-Based Learning.

[FR Doc. 94–16321 Filed 7–5–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advancement Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the challenge and Advancement Advisory Panel (Expansion Arts Challenge Section) to the National Council on the Arts will be held on July 26, 1994 from 9: a.m. to 4 p.m. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 9:45 a.m. for opening remarks and a general program overview and from 3:15 p.m. to 4 p.m. for a policy discussion.

The remaining protion of this meeting from 9:45 a.m. to 3:15 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment of the Arts, Washington, DC 20506, or call 202/682–5439.

Dated June 29, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–16300 Filed 7–5–94; 8:45 am]

BILLING CODE 7537–01–M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Company Grants Section B) to the National Council on the Arts will meet on July 23, 1994 from 9:30 a.m. to 2:30 p.m. This meeting will be held in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 522b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 30, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94–16302 Filed 7–5–94; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Company Grants Panel A Section) to the National Council on the Arts will be held on July 18–22, 1994. The panel will meet from 9:00 a.m. to 8:00 p.m. on July 18–21 and from 10:00 a.m. to 1:30 p.m. on July 22 in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10:00 a.m. to 1:30 p.m. on July 22 for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 8:00 p.m. on July 18–21 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of Section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 30, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94–16302 Filed 7–5–94; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Company Grants Panel A Section) to the National Council on the Arts will be held on July 18–22, 1994. The panel will meet from 9:00 a.m. to 8:00 p.m. on July 18–21 and from 10:00 a.m. to 1:30 p.m. on July 22 in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10:00 a.m. to 1:30 p.m. on July 22 for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 8:00 p.m. on July 18–21 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of Section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: June 28, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–16301 Filed 7–5–94; 8:45 am]

BILLING CODE 7537–01–M

National Council on the Humanities; Meeting

June 30, 1994.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on August 1–2, 1994.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on August 1–2, 1994, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on August 1, 1994, will be as follows:

8:30–9:00 a.m.—Coffee for Council Members—Room 527

(Open to the Public)

Committee Meetings

(Open to the Public)

Policy Discussion

9:00–10:00 a.m.

Education Programs—Room M–14
Fellowships Programs—Room 315
Public Programs—Room 415
Research Programs/Preservation and Access—Room M–07
State Programs—Room 507

10:00 a.m. until Adjourned—(Closed to the Public) Discussion of specific grant applications before the Council

2:00 p.m. until Adjourned—(Closed to the Public) Joint Meeting of the State and Public Programs Committees to review Frankel Prize nominees—Room 415

The morning session on August 2, 1994, will convene at 9:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members will be served from 8:30–9:00 a.m.)

Minutes of the Previous Meeting
Reports

A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Dates of Future Council Meetings
E. Budget Report
F. Legislative Report
G. Community Reports on Policy and General Matters
1. Overview
2. Education Programs
3. Fellowships Programs
4. Public Programs
5. Research Programs
6. Preservation and Access
7. State Programs

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, D.C. 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94–16262 Filed 7–5–94; 8:45 am]

BILLING CODE 7536–01–M

UNITED STATES NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is

publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 13, 1994, through June 23, 1994. The last biweekly notice was published on June 22, 1994 (59 FR 32226).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 5, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility-operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 2, 1994

Description of amendment request: The proposed amendment would merge Toledo Edison Company into Cleveland Electric Illuminating Company. As described in the application, the company formed from the merger is intended to be renamed. Therefore, the licensee uses the nomenclature "NEWCO" as a temporary name of the combined operating company, and will provide the permanent name by supplemental letter. The amendment would (1) replace the Toledo Edison Company and Cleveland Electric Illuminating Company with "NEWCO" as a licensee, (2) designate "NEWCO" as the owner of the Perry Nuclear Power Plant, Unit 1, and (3) make other administrative changes to the license as indicated in the amendment application. Centerior Service Company would be unaffected by the amendment and would remain a licensee.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Operating License are administrative and have no effect on any plant systems. All Limiting Conditions for Operation, Limiting Safety Systems Settings and Safety Limits specified in the Technical Specifications remain unchanged. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is a purely administrative changes (48 FR 14864).

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Operating License are administrative and have no effect on any plant systems. All Limiting Conditions for Operation, Limiting Safety Systems Settings and Safety Limits specified in the Technical Specifications remain unchanged. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is a purely administrative change (48 FR 14864).

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to the Operating License are administrative and have no effect on any plant systems. All Limiting Conditions for Operation, Limiting Safety Systems Settings and Safety Limits specified in the Technical Specifications remain unchanged. This change meets one of the examples of a change not likely to involve a significant hazards consideration in that it is purely an administrative change (48 FR 14864).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: May 20, 1994

Description of amendment request: The proposed amendment would permit the licensee to use an alternate repair criteria (ARC), designated as the F* criteria. Use of the F* criteria would allow tubes with otherwise pluggable indications, to remain in service as long as the indications are below the designated minimum distance of the F* criteria. The F* criteria defines a length of 1.7 inches of undegraded expanded tube within the tubesheet as the minimum distance acceptable for implementing this ARC. Below the F* length, a circumferential tube defect can exist and the tube can remain in service. The proposed amendment will change the plugging limit definition and would exclude plugging steam generator tubes with indications that satisfy the F* criteria. The F* criteria maintains the structural integrity of the degraded tube as the primary pressure boundary and allows the tube to remain in service for heat transfer and core cooling.

This alternate repair criteria qualification is documented in Babcock & Wilcox Nuclear Technologies (BWNT) Topical Report BAW-10196 P Revision 1, "W-D4 F* Qualification Report", which is included as part of the licensee's submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The supporting qualification report for the subject criteria demonstrates that the presence of the tubesheet will enhance the tube integrity in the region of the tube-to-tubesheet roll expansions by precluding tube deformation beyond its initial expanded outside diameter. The resistance to a tube rupture is strengthened by the presence of the tubesheet in that region. The results of hardrolling of the tube into the tubesheet provides a mechanical leak limiting seal between the tube and the tubesheet. A tube rupture cannot occur because the contact between the tube and the tubesheet does not permit sufficient movement of tube material.

The type of degradation for which the F* criteria has been developed (cracking with a circumferential orientation) can theoretically lead to a postulated tube rupture event provided that the postulated through-wall circumferential crack exists near the top of the tubesheet. An evaluation including analysis and testing has been done to determine the resistive strength of the expanded tubes within the tubesheet. This evaluation provides the basis for the acceptance criteria for tube degradation subject to the F* criteria.

The F* length of roll expansion is sufficient to preclude tube pullout from tube degradation located below the F* distance, regardless of the extent of the tube degradation. The Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. The tube rupture and pullout is fully bounded by the existing steam generator tube rupture analysis included in the UFSAR. The leakage testing of the roll expanded tubes indicates that for tube expansion lengths approximately equal to the F* distance, any postulated primary to secondary leakage from F* tubes would be insignificant. The proposed alternate repair criteria does not adversely impact any other previously evaluated design basis accident.

The leakage from an F* tube would be limited by the tube-to-tubesheet interface since this leak would occur below the secondary face of the tubesheet. Qualification testing and previous experience indicate that normal and faulted leakage is well below Technical Specification and administrative limits creating no increase in the consequences associated with tube rupture type leakages. The UFSAR analyzed accident scenarios are still bounding since the normal and faulted leak rates are well within the normal operating limit of 150 gallons per day. This conclusion is consistent with previous F* programs approved and used at other operating plants.

All of the design and operating characteristics of the steam generator and connected systems are preserved since the F* criteria utilizes the "as rolled" tube configuration that exists as part of the original steam generator design. The F* joint has been analyzed and tested for design, operating, and faulted condition loadings in accordance with Regulatory Guide 1.121 safety factors. The potential for tube rupture is not increased from the original submittal as demonstrated in the qualification analyses and testing completed in the BWNT report.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

Implementation of the proposed F* criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism to initiate an accident outside of the region of the expanded portion of the tube. In the unlikely event the failed tube severed completely at a point below the F* region, the remaining F* joint would retain engagement in the tubesheet due to its length of expanded contact within the tubesheet bore. This engagement length would prevent any interaction of the severed tube with neighboring tubes. Any hypothetical accident as a result of any tube degradation in the expanded region of the tube would be bounded by the existing tube rupture accident analysis. Tube bundle structural integrity will be maintained. Tube bundle leak tightness will be maintained such that any postulated accident leakage from F* tubes will be negligible with regard to offsite doses.

Therefore, there is not a potential for creating the possibility of a new or different type of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The use of the F* criteria has been demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of Reg Guide 1.121 and the primary to secondary pressure boundary under normal and postulated accident conditions. Acceptable tube degradation for the F* criteria is any degradation indication in the tubesheet region, more than the F* distance from the secondary face of the tubesheet or the top of the last hardroll contact point which ever is further into the tubesheet. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code and Reg Guide 1.121 used in steam generator design. The F* distance has been verified by various testing to be greater than the length of the roll expanded tube-to-tubesheet interface required to preclude both tube pullout and significant leakage during normal and postulated accident conditions. The protective boundaries of the steam generator continue to be maintained with the use of the F* criteria. A tube with the indication of degration previously requiring removal from service can be kept in service through the F* criteria. Since the joint is constrained within the tubesheet bore, there is no additional risk associated with the previously analyzed tube rupture event. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the Technical Specifications and the leakage assumptions used in the UFSAR accident analyses.

Implementation of the alternate repair criteria will decrease the number of tubes which must be taken out of service with tube plugs or repaired by sleeves. Both plugs and sleeves reduce the RCS flow margin; thus, implementation of the F* criteria will maintain the margin of flow that would otherwise be reduced in the event of increased plugging or sleeving.

Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the UFSAR or the Technical Specification Bases.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: October 22, 1993

Description of amendment request: The proposed amendment would modify the Reactor Trip System (RTS) and Engineered Safety Feature (ESF) instrumentation surveillance requirements to incorporate the applicable changes specified in NRC-approved WCAP-10271 and related supplements. Four specific changes were approved by the Nuclear Regulatory Commission for the RTS and Engineered Safety Feature Actuation System analog channels. These changes are limited to the specific Reactor Protection System (RPS) channels evaluated in the WCAP (including all supplements) and are subject to the conditions specified by the NRC.

1. The surveillance or test frequency may be changed from monthly to quarterly.

2. The time allowed for a channel to be inoperable or out of service in an untripped condition may be changed from 1 hour to 6 hours.

3. The time a channel in a functional group may be bypassed to perform testing may be increased from 2 to 4 hours. This bypass time applies to either an inoperable channel when testing is done in the tripped mode or to the channel in test when testing is done in the bypass mode. The Allowed Outage Time for maintenance of a channel is 12 hours.

4. Routine channel testing may be performed in the bypassed condition instead of the tripped condition.

In addition, a number of editorial changes are made to improve clarity, and two-loop operating requirements are proposed to be deleted. Also, the surveillance test interval for RTS interlocks is proposed to be changed from monthly to once-per-refueling (about 18 months). Although not part of WCAP-10271, this was previously approved generically by NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The determination that the results of the proposed changes are within all acceptable criteria was established in the SER(s) [Safety Evaluation Report(s)] prepared for WCAP-10271, WCAP-10271 Supplement 1, WCAP-10271 Supplement 2 and WCAP-10271 Supplement 2, Revision 1 issued by letters dated February 21, 1985, February 22, 1989 and April 30, 1990. Implementation of the proposed changes is expected to result in an acceptable increase in total Reactor Protection System yearly unavailability. This increase, which is primarily due to less frequent surveillance, results in an increase of similar magnitude in the probability of an Anticipated Transient Without Scram (ATWS) and in the probability of core melt resulting from an ATWS and also results in a small increase in Core Damage Frequency (CDF) due to Engineered Safety Features Actuation System unavailability.

Implementation of the proposed changes is expected to result in a significant reduction in the probability of core melt from inadvertent reactor trips. This is a result of a reduction in the number of inadvertent reactor trips (0.5 fewer inadvertent reactor trips per unit per year) occurring during testing of RPS instrumentation. This reduction is primarily attributable to testing in bypass and less frequent surveillance.

The reduction in [***] core melt frequency is sufficiently large to counter the increase in ATWS core melt probability resulting in an overall reduction in total core melt probability.

2. The time allowed for a channel to be inoperable or out of service in an untripped condition may be changed from 1 hour to 6 hours.

3. The time a channel in a functional group may be bypassed to perform testing may be increased from 2 to 4 hours. This bypass time applies to either an inoperable channel when testing is done in the tripped mode or to the channel in test when testing is done in the bypass mode. The Allowed Outage Time for maintenance of a channel is 12 hours.

4. Routine channel testing may be performed in the bypassed condition instead of the tripped condition.

In addition, a number of editorial changes are made to improve clarity, and two-loop operating requirements are proposed to be deleted. Also, the surveillance test interval for RTS interlocks is proposed to be changed from monthly to once-per-refueling (about 18 months). Although not part of WCAP-10271, this was previously approved generically by NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The determination that the results of the proposed changes are within all acceptable criteria was established in the SER(s) [Safety Evaluation Report(s)] prepared for WCAP-10271, WCAP-10271 Supplement 1, WCAP-10271 Supplement 2 and WCAP-10271 Supplement 2, Revision 1 issued by letters dated February 21, 1985, February 22, 1989 and April 30, 1990. Implementation of the proposed changes is expected to result in an acceptable increase in total Reactor Protection System yearly unavailability. This increase, which is primarily due to less frequent surveillance, results in an increase of similar magnitude in the probability of an Anticipated Transient Without Scram (ATWS) and in the probability of core melt resulting from an ATWS and also results in a small increase in Core Damage Frequency (CDF) due to Engineered Safety Features Actuation System unavailability.

Implementation of the proposed changes is expected to result in a significant reduction in the probability of core melt from inadvertent reactor trips. This is a result of a reduction in the number of inadvertent reactor trips (0.5 fewer inadvertent reactor trips per unit per year) occurring during testing of RPS instrumentation. This reduction is primarily attributable to testing in bypass and less frequent surveillance.

The reduction in [***] core melt frequency is sufficiently large to counter the increase in ATWS core melt probability resulting in an overall reduction in total core melt probability.

The values determined by the WOG [Westinghouse Owners Group] and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analyses for the NRC Staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered acceptable.

Changes to Surveillance Test Frequencies for the Reactor Trip System Interlocks do not represent a significant reduction in testing. The currently specified test interval for interlock channels allows the surveillance requirement to be satisfied by verifying that the permissive logic is in its required state using the annunciator status light. The surveillance, as currently required, only verifies the status of the permissive logic and does not address verification of channel setpoint or operability. The setpoint verification and channel operability are verified after a refueling shutdown. The definition of the channel check includes comparison of the channel status with other channels for the same parameter. The requirement to routinely verify permissive status is a different consideration than the availability of trip or actuation channels which are required to change state on the occurrence of an event and for which the function availability is more dependent on the surveillance interval. The change in surveillance requirement to at least once every 18 months does not therefore represent a significant change in channel surveillance and does not involve a significant increase in unavailability of the Reactor Protection System.

The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated.

Implementation of the proposed changes affects the probability of failure of the RPS but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not result in a change in the manner in which the Reactor Protection System provides plant protection. No change is being made which alters the functioning of the Reactor Protection System (other than in a test mode). Rather the likelihood or probability of the Reactor Protection System functioning properly is affected as described above. Therefore,the proposed changes do not create the possibility of a new or different kind of accident nor involve a reduction in a margin of safety as defined in the Safety Analysis Report.

The proposed changes do not involve hardware changes except those necessary to implement testing in bypass. Some existing instrumentation is designed to be tested in bypass and current technical specifications allow testing in bypass. Testing in bypass is also recognized by IEEE [Institute of Electrical and Electronics Engineers] Standards. Therefore, testing in bypass has been previously approved and implementation of the proposed change for testing in bypass does not create the possibility of a new or different kind of accident from any previously evaluated. Furthermore, since the other proposed changes do not alter the functioning of the RPS, the possibility of a new or different kind of accident from any previously evaluated has not been created.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of reduced testing other than as addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Experience has shown that the initial uncertainty assumptions are valid for reduced testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety by:

a. Less frequent testing will result in fewer inadvertent reactor trips and fewer actuations of Engineered Safety Feature Actuation System components.

b. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation. This is due to less frequent distraction of the operator and shift supervisor to attend to instrumentation testing.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: April 19, 1994

Description of amendment request: The proposed amendment would modify Specifications 3.4.9.3 and 3.4.11 to incorporate power operated relief valve (PORV) Technical Specification (TS) changes in accordance with the guidance in Generic Letter 90-06 as implemented in NUREG-1431 Improved Standard Technical Specifications (ISTS), with some exceptions and

modifications to reflect plant specific design features. Certain other TS sections would also be modified to address related TSs.

The proposed changes involve the details of (a) limiting conditions of operation, and (b) surveillance testing for equipment needed to protect the reactor vessel from overpressure conditions. This equipment includes PORVs and their associated block valves, charging pumps, reactor coolant system (RCS) vent, accumulators, and the overpressure protection system. Numerous administrative changes are also proposed, such as renumbering sections, spelling out mathematical symbols, changes in nomenclature for consistency, and relocating sentences and paragraphs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes consolidate the power operated relief valve requirements into Specifications 3.4.9.3 and 3.4.11 which generally adopt the new Improved Standard Technical Specifications of NUREG-1431 to address the concerns identified in Generic Letter 90-06 except for those changes required to reflect plant specific design features. These changes are proposed to enhance safety and improve the reliability of the PORVs and block valves. Since the proposed changes augment or preserve the requirements contained in the current technical specifications, we have concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report].

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical changes to the PORVs or their setpoints. These changes do not delete any function previously provided by the PORVs nor has the probability of inadvertent opening been increased. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of these changes. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes have been incorporated to enhance safety and improve the reliability of the PORVs and block valves to ensure their availability when called upon to perform their function. These changes do not affect the manner by which the facility is operated or involve a change to equipment or features which affect the operational characteristics of the facility. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis. The staff notes that a significant effort has been made by the NRC and by industry over the last several years to improve and tighten the TS requirements for overpressure protection systems. These efforts are documented in Generic Letter 90-06 and NUREG-1431. The changes proposed by the licensee appear to result in TSs that are significantly more comprehensive and restrictive than those now existing for Beaver Valley Units 1 and 2, and, therefore, should help to reduce the probability of an accident. The staff disagrees with the licensee's claim that the changes do not affect the manner by which the facility is operated (consideration number 3 above). However, the staff believes that the proposed TS changes require more restrictive operation (such as more careful control of the number of charging pumps which can inject into the RCS) and do not involve a significant reduction in a margin of safety. Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 9, 1994

Description of amendment request: The proposed amendment would revise Technical Specification section 4.8.1.1.2 to replace the current qualitative examination of new diesel generator fuel oil for water/sediment and particulate contamination with a quantitative examination for the same properties.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated since the diesel generator availability and reliability is not being changed. The quantitative acceptance criteria for new fuel oil is not being changed. Diesel generator performance will therefore not be changed due to the proposed revision to SR [surveillance requirement] 4.8.1[.1].2.d.1.d. The diesel generator will continue to provide sufficient electrical power to ESF [engineered safety feature] systems. The ESF systems will continue to function, as assumed in the safety analyses, to ensure that the fuel, reactor coolant system, and containment design limits are not exceeded.

Therefore, this changes will not increase the probability or consequences of an accident previously evaluated due to the continued availability and reliability of the emergency diesel power source.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not alter the method of operating the plant. This change will continue to ensure that the addition of new fuel oil complies with accepted standards regarding fuel oil quality. Since design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new failure mode has been created. As a result, an accident which is different than any already evaluated in the Updated Final Safety Analysis Report will not be created due to this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety is not reduced because the emergency diesel generators will continue to provide sufficient capacity, capability, redundancy, and reliability to ensure availability of necessary power to ESF systems. The ESF systems will continue to function, as assumed in the safety analyses, to ensure that the fuel, reactor coolant systems, and containment design limits are not exceeded. The replacement of the clear and bright qualitative examination with the proposed quantitative test to determine the actual water/sediment and particulates will ensure that new fuel oil meets the required limits for these properties prior to addition to the storage tank, therefore assuring that the quality of the stored fuel is unaffected by the addition of new fuel.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: February 16, 1994

Description of amendment request: The proposed amendment would delete the Appendix B Section 4.2.2 requirement to perform infrared aerial photography every other year.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will delete from Facility Operating License No. NPF-73 the Appendix B Section 4.2.2 requirement to perform infrared aerial photography every other year. The acceptance limit which forms the licensing basis for this technical specification is related to environmental impact and has no impact on the margin of safety, accident analysis, or other design basis impacting the margin of safety. No increase in adverse environmental impact has been identified over that previously identified in the Final Environmental Statement - Operating License Stage, environmental impact appraisals, or in any decisions of the Atomic Safety and Licensing Board. The Final Environmental Statement concluded, based on a model of combined drift from Units 1 and 2, that no adverse impacts to sensitive species of natural vegetation or to sensitive species of crops were expected. The staff also examined infrared aerial photographs taken from 1975 through 1983 and found no injury to vegetation from cooling tower drift in the vicinity of Unit 1.

Continued terrestrial monitoring was performed for Beaver Valley Unit 2 by infrared aerial photography in 1986, 1988, 1990, and 1992. The results as provided in the Annual Environmental Reports Non-Radiological concluded, "Based on interpretation of the infrared photographs and field verification, there is no evidence to suggest that the BVPS [Beaver Valley Power Station] cooling towers are causing vegetation stress."

Based on the compilation of the infrared aerial photography performed for both BV-1

proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: February 16, 1994

Description of amendment request: The proposed amendment would delete the Appendix B Section 4.2.2 requirement to perform infrared aerial photography every other year.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will delete from Facility Operating License No. NPF-73 the Appendix B Section 4.2.2 requirement to perform infrared aerial photography every other year. The acceptance limit which forms the licensing basis for this technical specification is related to environmental impact and has no impact on the margin of safety, accident analysis, or other design basis impacting the margin of safety. No increase in adverse environmental impact has been identified over that previously identified in the Final Environmental Statement - Operating License Stage, environmental impact appraisals, or in any decisions of the Atomic Safety and Licensing Board. The Final Environmental Statement concluded, based on a model of combined drift from Units 1 and 2, that no adverse impacts to sensitive species of natural vegetation or to sensitive species of crops were expected. The staff also examined infrared aerial photographs taken from 1975 through 1983 and found no injury to vegetation from cooling tower drift in the vicinity of Unit 1.

Continued terrestrial monitoring was performed for Beaver Valley Unit 2 by infrared aerial photography in 1986, 1988, 1990, and 1992. The results as provided in the Annual Environmental Reports Non-Radiological concluded, "Based on interpretation of the infrared photographs and field verification, there is no evidence to suggest that the BVPS [Beaver Valley Power Station] cooling towers are causing vegetation stress."

Based on the compilation of the infrared aerial photography performed for both BV-1 and BV-2, deletion of this terrestrial monitoring requirement will have no impact on the environment or the operation of the plant. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The Appendix B Section 4.2.2 requirement to perform infrared aerial photography reflects a commitment described in Final Environmental Statement Section 5.14.1. Therein it is stated that the preoperational monitoring studies for BV-2 are based primarily on the BV-1 operational monitoring programs. "Results of these studies have shown that there were no BV-1 operational impacts on flora, thus, the only terrestrial monitoring planned for BV-2 is continued infrared aerial photography every other year. The photographs will be compared with preoperational photographs of the BV-2 area, nd any signs of injury as a result of salt drift and other sources will be checked. The details of this terrestrial monitoring program will be specified in the Environmental Protection Plan that will be included in Appendix B of the operating license." The subject of this concern is the impact of salt and water drift on area vegetation including sensitive agricultural crops. From the standpoint of soil salinization (the effects of the accumulation of salts in the soil), described in the Environmental Report-Operating License Stage Section 5.3.3, no appreciable impact resulting from operation of the natural draft cooling towers is anticipated. This is based on the average rate of precipitation of 36.2 inches annually which greatly reduces the potential for accumulation of salt in the soil. The terrestrial monitoring program has been performed in accordance with the Environmental Protection Plan and has provided additional verification that operation of both cooling towers has not produced any evidence of vegetation stress. The proposed change does not introduce any new mode of plant operation or require any physical modification to the plant, therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Infrared aerial photography surveillance does not affect safety systems and/or systems important to safety. Terrestrial monitoring is not used in any accident analysis and does not provide a basis for evaluating the radiological consequences of an accident. Deleting the requirement to perform infrared aerial photography will not result in any environmental impact from operation of the cooling tower and will not affect the operation of the cooling tower. The operating history of both the BV-1 and the BV-2 cooling towers has demonstrated that there is no evidence of vegetation stress in accordance with the results obtained from the infrared aerial photography and other associated methods of environmental monitoring. Therefore, based on the above, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Florida Power and Light Company, et al., Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: May 23, 1994

Description of amendment request: The amendment will revise Technical Specification (TS) 3.5.2 for Emergency Core Cooling Systems (ECCS) by removing the option that allows High Pressure Safety Injection (HPSI) Pump 1C to be used as an alternative to the preferred pump for subsystem operability. HPSI pump 1C is an installed spare which is not required to be maintained in an operable status, and this change is being requested to upgrade the ECCS operability requirements consistent with actual plant operating needs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment will remove the option of using High Pressure Safety Injection Pump 1C (HPSI-1C) to satisfy, in part, the Emergency Core Cooling System (ECCS) operability requirements specified in Limiting Condition for Operation (LCO) 3.5.2. HPSI-1C is an installed spare pump that is not required to be operable unless it is being used in place of the preferred B-train ECCS high pressure pump. The required functional response of the ECCS or the required availability of the minimum equipment necessary to accomplish the ECCS safety function will not be changed by removing the spare pump option from the Technical Specifications.

The calculated cooling performance of the St. Lucie Unit 1 ECCS during postulated accidents conforms to the criteria set forth in 10 CFR 50.46 and the ability to achieve this required performance, including

considerations of single-failure criteria, is independent from optional use of HPSI-1C. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or the modes of operation defined in the facility license. Eliminating the option for the licensee to utilize HPSI-1C in place of the preferred B-train ECCS high pressure pump does not involve the addition of new or different types of equipment to the previously analyzed ECCS. Equipment important to safety will continue to perform their safety functions as previously analyzed and will not be affected by this proposed amendment. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Removing the option to employ the installed spare HPSI pump 1C in lieu of the preferred B-train pump to determine ECCS operability only removes an operational flexibility that has rarely been used by the licensee. St. Lucie Unit 1 accident analyses do not take credit for an installed spare pump, the minimum complement of safety injection equipment required for safe operation of the facility and that is required by LCO 3.5.2 is not changed, and the results of plant accident and transient analyses are not influenced by this proposed amendment. The proposed change does not alter the bases for any Technical Specification related to the establishment of, or maintenance of, a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: May 23, 1994

Description of amendment request: The proposed amendments will relocate the seismic monitoring instrumentation Limiting Conditions for Operation, Surveillance Requirements, and the associated tables contained in Technical Specifications 3.3.3.3, 4.3.3.3.1 and 4.3.3.3.2 to the Updated Final Safety Analysis Report. The basis for this request is consistent with NUREG-1432, "Standard Technical Specifications, Combustion Engineering Plants" and with the "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, "published in the Federal Register (58 FR 39132) dated July 22, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature in that the specifications for operation and surveillance of the Seismic Monitoring Instrumentation system will be relocated from Appendix A of the facility operating license to the Updated Final Safety Analysis Report for St. Lucie Unit 1 and Unit 2. Changes to the system will be controlled by 10 CFR 50.59 and the safety analysis report is required to be updated pursuant to 10 CFR 50.71(e). Relocation of these requirements to the UFSAR is consistent with the NRC "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors" published in the Federal Register (58 FR 39132) dated July 22, 1993.

Seismic monitoring instrumentation is not an accident initiator nor a part of the success path(s) which function to mitigate accidents evaluated in the plant safety analyses. The proposed technical specification change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor do the changes alter any assumptions or conditions in any of the plant accident analyses. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to relocate the existing Technical Specification requirements for Seismic Monitoring Instrumentation to the Updated Final Safety Analysis Report will not change the physical plant or the modes of plant operation defined in the Facility License. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature in that operating and surveillance requirements for the Seismic Monitoring Instrumentation system will be relocated from Appendix A of the facility license to the Updated Final Safety Analysis Report for St. Lucie Unit 1 and Unit 2. Seismic monitoring instruments are not used to actuate safety-related equipment, provide interlocks, or otherwise perform plant control functions. The instruments are used to record the magnitude of a seismic event, should it occur. Conditions evaluated in plant accident and transient analyses do not involve seismic instruments. The proposed changes do not alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the above discussion and the supporting Evaluation of Technical Specification changes, FPL has determined that the proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: May 23, 1994

Description of amendment request: The proposed amendment revises Technical Specifications Section 3/4.7.1.1, Turbine Cycle, Safety Valves, to delete a specific reference to the 1974 edition of the ASME Code and refer to testing in accordance with Technical Specification 4.0.5, the In-Service Inspection and In-Service Testing Specification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1)Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the main steam code safety valves will continue to be tested in accordance with current NRC requirements as implemented through 10 CFR 50.55a. The NRC specifies the ASME code requirements for a facility through revisions to 10 CFR 50.55a and through the review and approval of the plant specific in-service testing plan for pumps and valves at the beginning of each in-service inspection interval.

The probability or consequences of an accident are not increased because testing of the main steam safety valves is in accordance with the appropriate NRC requirements.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any previously evaluated.

The use of this modified specification can not create the possibility of a new or different kind of accident from any previously evaluated since there is no physical change to the facility or the set points for the main steam safety valves. The valves will be tested in accordance with current requirements. No new failure mode is introduced due to the change because no plant change is being made and main steam safety valve test methods are consistent with the endorsed edition of the ASME Code.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The existing technical specification references an outdated version of the ASME Code. This change corrects the reference to Specification 4.0.5 which ensures that in-service testing of ASME Code Class 1, 2, and 3 pumps and valves will be performed in accordance with a periodically updated version of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a.

Safety valve setpoints or tolerances are not changed by this proposal. Therefore, the modified specification corrects the ASME Code reference and does not involve a significant reduction in a margin of safety.

Based on the above, we have determined that the proposed amendment does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the

4.7.1.1, Turbine Cycle, Safety Valves, to delete a specific reference to the 1974 edition of the ASME Code and refer to testing in accordance with Technical Specification 4.0.5, the In-Service Inspection and In-Service Testing Specification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1)Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the main steam code safety valves will continue to be tested in accordance with current NRC requirements as implemented through 10 CFR 50.55a. The NRC specifies the ASME code requirements for a facility through revisions to 10 CFR 50.55a and through the review and approval of the plant specific in-service testing plan for pumps and valves at the beginning of each in-service inspection interval.

The probability or consequences of an accident are not increased because testing of the main steam safety valves is in accordance with the appropriate NRC requirements.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any previously evaluated.

The use of this modified specification can not create the possibility of a new or different kind of accident from any previously evaluated since there is no physical change to the facility or the set points for the main steam safety valves. The valves will be tested in accordance with current requirements. No new failure mode is introduced due to the change because no plant change is being made and main steam safety valve test methods are consistent with the endorsed edition of the ASME Code.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The existing technical specification references an outdated version of the ASME Code. This change corrects the reference to Specification 4.0.5 which ensures that in-service testing of ASME Code Class 1, 2, and 3 pumps and valves will be performed in accordance with a periodically updated version of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a.

Safety valve setpoints or tolerances are not changed by this proposal. Therefore, the modified specification corrects the ASME Code reference and does not involve a significant reduction in a margin of safety.

Based on the above, we have determined that the proposed amendment does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: March 27, 1992, as supplemented on January 6, and May 27, 1994.

Description of amendment request: The proposed amendment would revise the limiting conditions for operation and surveillance requirements for primary containment integrity, secondary containment integrity and other systems and equipment of Technical Specifications Section 3.7.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the requested revisions do not affect the FSAR safety analyses involving these system.

Definitions

The revisions to Definition 15, "Primary Containment Integrity" and Definition 16, "Secondary Containment Integrity" agree with the corresponding definitions of the STS. These changes are administrative in nature in that they only clarify the requirements for containment integrity and the appropriate means of isolating penetrations. These changes do not affect the operation or function of the containment isolation systems and, therefore, do not result in a significant increase in the probability or consequences of an accident previously evaluated.

Primary Containment Integrity

The revision to TS section 3.7.A, "Primary Containment Integrity", only adds a specific requirement to restore primary containment integrity within 1 hour or commence a plant shutdown. These actions are consistent with the actions specified in STS for primary containment integrity. No changes to the primary containment boundary or the requirements for primary containment integrity have been proposed. Therefore, this change does not result in a significant increase in the probability or consequences of an accident previously evaluated.

Primary Containment Power Operated Isolation Valves

The revisions to TS section 3.7.B, "Primary Containment Power Operated Isolation Valves" are editorial in nature in that the wording has only been changed to be consistent with the STS requirements for primary containment isolation valves. These changes do not affect the function of the valves, the requirements to isolate a penetration with an inoperable containment isolation valve or the actual methods of isolation. Penetrations are still required to be isolated within 4 hours in a manner that cannot be adversely affected by a single active failure. Therefore, these changes do not result in a significant increase in the probability or consequences of an accident previously evaluated.

Drywell Average Air Temperature

The addition of limits, actions, and surveillance requirements for drywell average air temperature are intended to ensure that the initial assumptions in the DAEC Primary Containment Response Analysis to a DBA remain valid. The temperature limit (135°F) corresponds to the initial drywell average temperature assumed for this analysis in the UFSAR. The specified limits, actions and surveillance requirements are consistent with STS. The addition of this limit to the TS will not affect the actual operation or function of any equipment but will ensure that the containment analysis remains valid. Therefore, the addition of this limit will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Pressure Suppression Chamber-Reactor Building Vacuum Breakers

The changes to TS section 3/4.7.D only provide additional detail and operability requirements for the pressure suppression chamber-reactor building vacuum breakers. These additional details are consistent with the requirements of STS. Specifying separate operability requirements for vacuum breakers inoperable for opening (but known to be closed), or open better reflects the dual functions of these valves (vacuum relief and containment isolation). The additional surveillance requirement will better ensure that the containment isolation function of these valves is maintained. The rewording of existing surveillances only clarifies current requirements. These changes do not affect the actual function, setpoints, or number of valves required to be operable and therefore do not result in a significant increase in the probability or consequences of an accident previously evaluated.

Drywell-Pressure Suppression Chamber Vacuum Breakers

The changes to TS section 3/4.7.E only provide additional detail and operability requirements for the drywell-pressure suppression chamber vacuum breakers These additional details are consistent with the requirements of STS. Specifying separate

operability requirements for vacuum breakers inoperable for opening (but known to be closed) or open better reflects the dual functions of these valves. The additional requirement to verify that each vacuum breaker is closed at least once per week will better ensure that the isolation boundary between the drywell and torus is maintained. The elimination of the requirement to exercise all operable drywell-pressure suppression chamber vacuum breakers upon determination that a vacuum breaker is inoperable for opening will not affect the reliability of these vacuum breakers. The only valid reason to exercise the operable vacuum breakers is if a common mode failure is suspected. We have reviewed the maintenance history of these valves and have not identified any instance of common mode failures. Conditional testing of these changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Main Steam Isolation Valve Leakage Control System (MSIV-LCS)

The change to TS Section 3/4.7.F, "MSIV-LCS", deletes the unnecessary and potentially non-conservative conditional surveillance testing of the redundant MSIV-LCS subsystems. Although the proposed change will reduce the amount of testing of the MSIV-LCS, reliability of these systems would not be decreased and the necessary assurance that the alternate systems/subsystems/components will operate when needed is provided by the ASME Section XI IST Program.

The possibility of human error will decrease with reduced testing. Human error such as a misalignment of valves after the system is returned to its normal configuration following testing and the misdirection of the operators attention from monitoring and directing plant operations is less likely to occur if this testing is eliminated. Additionally, reducing the scope and frequency of surveillance testing will decrease the probability of equipment failure (due to testing) which could require plant shutdown. Therefore, this change will not increase the probability of occurrence or consequences of an accident previously evaluated.

Suppression Pool Level and Temperature

The changes to TS section 3/4.7.F, "Suppression Pool Level and Temperature", are intended to clarify these requirements and make them more consistent with STS. The revision to the applicability statement which deletes the requirement for suppression pool level and temperature to be within the specified limits during work which has the potential to drain the vessel is in accordance with STS. Suppression pool level and temperature limits ensure that the suppression pool has the capability of acting as a heat sink for design basis events but are not appropriate or applicable during the refueling or cold shutdown conditions. No changes have been made to the actual suppression pool temperature or level limits and therefore, the assumptions made in the accident and transient analyses remain valid. These limits are consistent with the STS. The revisions to the surveillance requirements are also intended to improve clarity and consistency with STS. The deletion of the requirement to monitor suppression pool water temperature every 5 minutes during relief valve operation is appropriate in that plant operating and emergency operating procedures already specify what actions are to be taken when suppression pool average water temperature increases above 95°F including initiation of suppression pool cooling. Monitoring pool temperature every 5 minutes during these events is not necessary and is redundant to other actions. Therefore, these changes will not significantly increase the probability of occurrence of the consequences of an accident previously evaluated.

Containment Atmosphere Dilution

The revisions to the applicability of TS section 3.7.H, "Containment Atmosphere Dilution", requiring the containment atmosphere dilution system to be operable only when the reactor is in power operation and the primary containment is required to be inerted will not significantly increase the probability or consequences of an accident previously evaluated because the CAD system can only function when the containment is inerted. The function of the CAD system is to inject nitrogen into the containment after a LOCA and ensure the containment remains inerted. Drywell inspections performed after plant startup and prior to plant shutdown require that the primary containment be de-inerted for personnel access. Therefore, CAD system operability is not required during these inspections. No changes to the actual function or purpose of the CAD system are proposed.

Oxygen Concentration

The changes to TS section 3/4.7.1, "Oxygen Concentration" are administrative in that they only clarify the requirement that both the suppression chamber and the drywell must have oxygen concentrations less than 4 [percent] by volume. The revisions to the surveillance requirements are consistent with STS. Decreasing the frequency of verification of oxygen concentration from twice per week to once per week is in accordance with STS and reflects the fact that during power operation, the containment is inerted and slightly pressurized such that air (oxygen) cannot leak into the containment. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

Secondary Containment

The deletion of the requirement to operate the SGTS immediately after a secondary containment violation is identified will not affect the reliability of the secondary containment in that containment integrity is normally fully restored immediately after a violation is identified. The testing of the SGTS involves insertion of a Group III containment isolation signal and is only appropriate if the restoration of secondary containment involves a temporary or new secondary containment boundary. These modifications to a secondary containment boundary, however, would require that the SGTS be operated as part of post modification testing. Deleting the requirement for the SGTS to be operated after minor secondary containment violations will reduce the possibility of human error (such as misalignment of valves after the system is returned to its normal configuration) due to reduced testing. Operation of the SGTS after a secondary containment violation is not required by STS.

Revision of the definition of calm wind conditions will not affect the reliability or availability of the secondary containment or SGTS. An engineering evaluation on the effects of wind speed and direction on the ability of the SGTS to maintain 1/4" vacuum in secondary containment has been performed. The results indicate that while wind effects can be seen on individual instruments, there is minimal effect on the average instrument readings with wind speeds up to 15 mph. A discussion of this evaluation has been added to the Bases of TS section 3.7. Therefore, these changes will not significantly increase the probability or the consequences of an accident previously evaluated.

Secondary Containment Automatic Isolation Dampers

The addition of operability requirements, actions and surveillance requirements for secondary containment isolation dampers better ensures the integrity and isolation capability of the secondary containment. The new specifications are consistent with the requirements of the STS. The actual function or operation of the secondary containment isolation valves/dampers will not be affected. The appropriate valves/dampers will be incorporated in plant procedures that are subject to the change control provisions of TS. Therefore, these changes will not increase the probability of occurrence or consequences of an accident previously evaluated in the TS.

Standby Gas Treatment System

The change to the output requirements of the inlet heaters for each train of the SGTS from 11 kw to 22 kw better ensures that these heaters (and the SGTS) can perform their design function. The 22 kw output requirement ensures that the inlet air humidity does not exceed the 70 [percent] humidity specified in the UFSAR. This change does not affect the actual operation of the heaters or the SGTS.

The requirement to demonstrate the HEPA filter uniform air distribution after HEPA filter replacement or after structural maintenance on the filter system housing (rather than annually) will not decrease the reliability of the SGTS. The air flow test will be performed after work or modifications which have the ability to disrupt the system geometry or result in potential flow blockage.

Revising the shutdown LCO requirement in the various specifications from requiring the plant to be in Cold Shutdown in 24 hours to requiring Hot Shutdown in 12 hours and Cold Shutdown (or other condition not requiring equipment operability) in the following 24 hours is consistent with STS and the shutdown requirements in TS section 3.5. This new requirement will allow the reactor to be shutdown in a more controlled manner and will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The revisions to the Bases are administrative in that they only reflect the changes to the individual specifications described previously in this section or correct minor discrepancies. All changes are consistent with the applicable specifications.

(2) The proposed amendment will not increase the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons.

As described in the above response to question #1, none of the proposed changes alters the design of the plant or equipment or the plant's transient response. The changes to the definitions and limiting conditions for operation applicable to TS section 3.7 are consistent with STS and better ensure that equipment assumed to be operable in our accident analysis will be operable upon demand. The addition of limiting conditions for operation for drywell average temperature and secondary containment isolation valves will better ensure that the assumptions in our accident analysis remain valid.

The changes to the surveillance requirements are consistent with the STS. Those systems required to mitigate accidents evaluated in the UFSAR will still be operable and available.

The reduction in conditional surveillance testing of certain systems and equipment will reduce the probability of equipment failure as a result of excessive testing or due to human error.

(3) The proposed amendment will not involve a significant reduction in a margin of safety for the following reasons.

The revisions to the limiting conditions for operation in Chapter 3.7 of the TS will not invalidate the original licensing basis assumptions and will not invalidate any assumptions or input parameters for any DAEC event analysis. These changes provide more specific guidance only and are in accordance with the STS. Extending the time period within which the DAEC must achieve Cold Shutdown conditions will permit increased operator attention and minimal distractions for operators during shutdown, thus minimizing the risks of unexpected operational transients.

Additional surveillance testing for certain instrumentation and systems will provide additional assurance that these systems will be available when needed.

Elimination of unnecessary or conditional surveillance testing will not reduce the minimum necessary equipment operability requirements or equipment reliability. Elimination of the redundant testing will reduce equipment failure due to excessive testing or human error.

In summary, the proposed administrative changes do not change the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident and do not involve a reduction in the margin of safety.

Therefore, the proposed license amendment is judged to involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

changes to the individual specifications described previously in this section or correct minor discrepancies. All changes are consistent with the applicable specifications.

(2) The proposed amendment will not increase the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons.

As described in the above response to question #1, none of the proposed changes alters the design of the plant or equipment or the plant's transient response. The changes to the definitions and limiting conditions for operation applicable to TS section 3.7 are consistent with STS and better ensure that equipment assumed to be operable in our accident analysis will be operable upon demand. The addition of limiting conditions for operation for drywell average temperature and secondary containment isolation valves will better ensure that the assumptions in our accident analysis remain valid.

The changes to the surveillance requirements are consistent with the STS. Those systems required to mitigate accidents evaluated in the UFSAR will still be operable and available.

The reduction in conditional surveillance testing of certain systems and equipment will reduce the probability of equipment failure as a result of excessive testing or due to human error.

(3) The proposed amendment will not involve a significant reduction in a margin of safety for the following reasons.

The revisions to the limiting conditions for operation in Chapter 3.7 of the TS will not invalidate the original licensing basis assumptions and will not invalidate any assumptions or input parameters for any DAEC event analysis. These changes provide more specific guidance only and are in accordance with the STS. Extending the time period within which the DAEC must achieve Cold Shutdown conditions will permit increased operator attention and minimal distractions for operators during shutdown, thus minimizing the risks of unexpected operational transients.

Additional surveillance testing for certain instrumentation and systems will provide additional assurance that these systems will be available when needed.

Elimination of unnecessary or conditional surveillance testing will not reduce the minimum necessary equipment operability requirements or equipment reliability. Elimination of the redundant testing will reduce equipment failure due to excessive testing or human error.

In summary, the proposed administrative changes do not change the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident and do not involve a reduction in the margin of safety.

Therefore, the proposed license amendment is judged to involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 27, 1974

Description of amendment request: The amendment would temporarily allow the Operations Manager to not have a senior reactor operator (SRO) license for Millstone 3, providing other conditions are met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:...The proposed change does not involve an SHC [significant hazards consideration] because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only an administrative control, which was based on the existing industry guidance in ANSI N18.1-1971, that recommended the Operations Manager hold a SRO license. The current guidance in Section 4.2.2 of ANSI/ANS-3.1-1987 recommends, as one option, that the Operations Manager have held a license for a similar unit and the Operations Middle Manager hold a SRO license. The Operations Middle Manager position does not exist at NNECO [Northeast Nuclear Energy Company]. Therefore, the proposed change requests an exception to ANSI N18.1-1971 to allow use of ANSI/ANS-3.101987 in a limited circumstance. Specifically, the proposed revision to Technical Specification 6.3.1 would temporarily allow the Operations Manager to have held a SRO at a PWR [pressurized water reactor] other than Millstone Unit No. 3. The proposed revision would be in effect for the period ending three years after the Staff's approval for this request.

The proposed exception to ANSI N18.1-1971 will allow at least one of the Operations Assistants (instead of a Operations Middle Manager) to hold, and continue to hold, a SRO license, if the Operations Manager does not hold a license. The proposed change includes the requirement if the Operations Manager does not hold a SRO license at Millstone Unit No. 3, he shall have held a license for a similar unit in accordance with Section 4.2.2 of ANSI/ANS-3.1-1987. For those areas of knowledge that require a SRO license, at least one of the Operations Assistants hold a SRO license and provides technical guidance normally required by the Operations Manager.

The proposed change does not alter the design of any system, structure, or component. It does not change the way any plant systems are operated. It does not reduce the knowledge, qualifications, or skills of any operator on watch, and does not affect the way the Operations Department is managed by the Operations Manager in maintaining the effective performance of his personnel and to ensure the plant is operated safely and in accordance with the requirements of the Operating License.

The proposed change does not detract from the Operations Manager's ability to perform his primary responsibilities. In this case, by having previously held a SRO license for a similar unit, he will have gained the necessary training, skills, and experience to fully understand the operation of plant equipment and the watch requirements for operators.

The proposed change does not weaken the supervisory chain that presently exists in the Operations Department. All Control Room operators will continue to be supervised by the licensed Shift Supervisor.

In summary, the proposed change does not affect the ability of the Operations Manager to provide the plant oversight required of his position. In addition, it does not have any [e]ffect on the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to Technical Specification 6.3.1 does not affect the design or function of any plant system, structure, or component. It does not affect, in any way, the performance of NRC licensed operators, nor does it change the way any plant equipment is operated. Operation of the plant in conformance with technical specifications and other license requirements will continue to be supervised by personnel who hold an NRC SRO license. The proposed change to Technical Specification 6.3.1 ensures that the Operations Manager will be a knowledgeable and qualified individual. The proposed change does not introduce any new failure modes.

3. Involve a significant reduction in a margin of safety.

The proposed change involves only an administrative control which is not related to the margin of safety as defined in the technical specifications. The proposed change does not reduce the level of knowledge or experience required of an individual who fills the Operations Manager position, nor does it affect the conservative manner in which the plant is operated. All Control Room operators will continue to be supervised by personnel who hold a SRO license.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: May 31, 1994

Description of amendment request: This amendment will change the frequency for monitoring the Spray Pond ground water level from once per month to once every six months in Technnical Specification Requirement 4.7.1.3.c for each Susquehanna unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification change to extend the monthly surveillance interval for Spray Pond ground water level measurement to biannual does not affect the the probability or consequences of an accident previously evaluated. The safety analysis performed for this change concludes that the ground water level is stable, predictable, and significantly below the acceptance criteria established in the Technical Specifications. Thus, less frequent monitoring of the ground water level does not increase the probability that the Spray Pond will become inoperable due to rising ground water levels or the probability of any accident scenarios associated with Spray Pond inoperability. The Technical Specification change will not impact the function or the method of operation of plant systems, structures, or components. Thus, the consequences of a malfunction of equipment important to safety previously evaluated in the FSAR are not increased by the change.

II. This proposal does not create the possibility of a new or different kind of accident or from any accident previously evaluated.

The proposed Technical Specification change to extend the monthly surveillance interval for Spray Pond ground water level measurement to biannual does not create the possibility of a new or different kind of accident or from any accident previously evaluated. The proposed change dies not affect systems, structures, or components (SSCs) or the operation of the SSCs; and therefore does not create the possibility of a new or different kind of accident.

III. This change does not involve a significant reduction in a margin of safety.

The proposed Technical Specification change to extend the monthly surveillance frequency to biannual does not reduce the margin of safety. The ground water level in the vicinity of the Spray Pond has been proven to be stable and predictable through twelve years of monthly data collection. This data has shown the highest ground water levels (still considerably lower than the Technical Specification limit) to occur in the months of April and October. Therefore, surveillance of the ground water level at the observation sites during April and October will adequately monitor this aspect of the Spray Pond operability.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 25, 1994

Description of amendment request: Salem is in the process of upgrading the Radiation Monitoring System. This upgrade will involve a replacement on many of the existing radiation monitors. The proposed change modifies Tables associated with Technical Specifications 3/4.3.3.1 Radiation Monitoring Instrumentation, 3/4.3.3.8 Radioactive Liquid Effluent Monitoring Instrumentation, and 3/4.3.3.9 Radioactive Gaseous Effluent Monitoring Instrumentation. The proposed change relocates the Salem specific radiation monitor numbers from the table to a cross reference in the Bases. No required radiation monitoring functions are being changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [This proposal does not involve] a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change to relocate the Salem specific radiation monitor numbers to the Bases is administrative. There are no modifications or changes in operating conditions associated with the proposed changes. Providing a more accurate description of a referenced radiation monitor in the note is editorial. The proposed changes do not affect the probability of occurrence or the consequences of accidents identified in the UFSAR. No accident precursors are being generated by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of a previously analyzed accident.

2. [This proposal does not create] the possibility of a new or different kind of accident.

The proposed changes to relocate the Salem specific radiation monitor numbers to the Bases are administrative. The change to the note on Table 3.3-6 is editorial to provide a more accurate description of the required radiation monitor. There are no modifications or changes in operating conditions associated with the proposed changes. Therefore, the proposed changes will not increase the possibility of a new or different kind of accident from any accident previously identified.

3. [These changes do not involve] a significant reduction in a margin of safety.

The Technical Specification operability requirements for the radiation monitors are not being changed. Relocating the Salem specific radiation monitor numbers to the Bases will not change any requirements for the radiation monitors. The change to the note on Table 3.3-6 is editorial to provide a more accurate description of the required radiation monitor. Therefore, the changes to the surveillance frequencies do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: May 23, 1994, as supplemented June 15, 1994

Description of amendment request: The proposed amendment would revise the Ginna Station Technical Specification (TS) 3.1.4 regarding allowable primary coolant levels of specific activity. The limit for I-131 dose equivalent of iodine activity in the reactor coolant would be increased from 0.2 to 1.0 micro Ci/gm. The limit for total specific activity of the reactor coolant would be increased from 84 to 100/E micro Ci/gm, where E is the average beta and gamma energies per disintegration in Mev. Both increased allowable levels are consistent with NUREG-1431 "Standard Technical Specifications, Westinghouse Plants, September 1992," and NUREG-0800 "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants" (Section 15.6.3).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect any accident initiators and therefore the probability of any accident is not increased. Consequences of the changes are analyzed and shown acceptable in the [Westinghouse LOFTTR2 Analysis of Potential Radiological Consequences Following a Steam Generator Tube Rupture at the R.E. Ginna Nuclear Power Plant] analysis, WCAP-11668, Section III.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve no physical modifications to the plant; therefore, no new accident can be postulated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety, as no margin of safety is reduced by the proposed changes, as shown in WCAP-11668.

Based upon the above information, it has been determined that the proposed changes to the Ginna Station Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident previously evaluated, and does not involve a significant reduction in a margin of

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: May 23, 1994, as supplemented June 15, 1994

Description of amendment request: The proposed amendment would revise the Ginna Station Technical Specification (TS) 3.1.4 regarding allowable primary coolant levels of specific activity. The limit for I-131 dose equivalent of iodine activity in the reactor coolant would be increased from 0.2 to 1.0 micro Ci/gm. The limit for total specific activity of the reactor coolant would be increased from 84 to 100/E micro Ci/gm, where E is the average beta and gamma energies per disintegration in Mev. Both increased allowable levels are consistent with NUREG-1431 "Standard Technical Specifications, Westinghouse Plants, September 1992," and NUREG-0800 "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants" (Section 15.6.3).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect any accident initiators and therefore the probability of any accident is not increased. Consequences of the changes are analyzed and shown acceptable in the [Westinghouse LOFTTR2 Analysis of Potential Radiological Consequences Following a Steam Generator Tube Rupture at the R.E. Ginna Nuclear Power Plant] analysis, WCAP-11668, Section III.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve no physical modifications to the plant; therefore, no new accident can be postulated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety, as no margin of safety is reduced by the proposed changes, as shown in WCAP-11668.

Based upon the above information, it has been determined that the proposed changes to the Ginna Station Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident previously evaluated, and does not involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: Walter R. Butler

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: June 6, 1994

Description of amendment request: The proposed amendment would merge Toledo Edison Company into Cleveland Electric Illuminating Company. As described in the application, the company formed from the merger is intended to be renamed. Therefore, the licensee uses the nomenclature "NEWCO" as a temporary name of the combined operating company, and will provide the permanent name by supplemental letter. The amendment would (1) replace the Toledo Edison Company and Cleveland Electric Illuminating Company with "NEWCO" as a licensee, (2) designate "NEWCO" as the owner of the Davis-Besse Nuclear Power Station, Unit 1, and (3) make other associated changes to the license as indicated in the amendment application. Centerior Service Company would be unaffected by the amendment and would remain a licensee.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, indicating that the proposed changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators or assumptions are affected. The proposed changes are administrative and have no direct affect on any plant systems. All Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications will remain unchanged.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected. The proposed changes do not alter the source term, containment isolation, or allowable radiological consequences. The proposed changes are administrative and have no direct effect on any plant systems.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident initiators are created. The proposed changes are administrative and have no direct effect on any plant systems. The changes do not affect the reactor coolant system pressure boundary and do not affect any system functional requirements, plant maintenance, or operability requirements.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators are created. The proposed changes are administrative and have no direct effect on any plant systems. The changes do not affect the reactor coolant system pressure boundary and do not affect any system functional requirements, plant maintenance, or operability requirements.

3. Not involve a significant reduction in the margin of safety because the proposed changes do not involve new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed changes are administrative and have no direct affect on any plant systems.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: May 20, 1994

Description of amendment request: The proposed amendment would remove Core Spray (CS) High Sparger Pressure Instrumentation from the Vermont Yankee Technical Specifications for Emergency Core Cooling System (ECCS) Actuation Instrumentation. In addition, an unrelated administrative change is also proposed.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to remove the Core Spray High Sparger Pressure Instrumentation from the Technical Specifications for ECCS Actuation Instrumentation is consistent with NRC requirements concerning this instrumentation. This instrumentation is considered NNS [nonnuclear safety] and performs a local monitoring and alarm function only. In addition, the NRC has recently approved the removal of Core Spray Sparger Break Detection Instrumentation from the Technical Specifications of another BWR [boiling water reactor] with a similar situation.

The CS Sparger Piping is inspected every refueling outage to verify its integrity. No cracks in the CS Sparger piping have been identified since the first inspection in 1980. CS Sparger Piping integrity is still assured. The instrumentation systems to be removed from the ECCS Actuation Instrumentation Technical Specifications do not perform any automatic control or trip function. In addition, this instrumentation does not provide information that is required to permit the control room operator to take manual actions that are required for safety systems to accomplish their safety functions for design basis accident events.

The proposed change does not result in any system hardware modification, function change or new plant configuration. The requested change to ECCS Actuation Instrumentation does not impact any FSAR [Final Safety Analysis Report] safety analysis involving the ECCS or Protection Systems. These monitoring functions are not contributors to the initiation of accidents.

The administrative changes to correct typographical errors on Tables 3.2.1 and 4.2.1 will have no affect on plant hardware, plant design, safety limit setting or plant system operation and therefore, do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

Therefore, it is concluded that there is not a significant increase in the probability or consequence of an accident previously evaluated.

2. The function of the Core Spray High Sparger Pressure Instrumentation to be removed from the Technical Specifications is for local indication and alarm only. These functions are not necessary for operators to accomplish any safety functions.

The proposed change does not involve any change in hardware, function, Technical Specification trip setpoints, plant operation, redundancy, protective function or design basis of the plant. There is no impact on any existing safety analysis or safety design limits. Core Spray High Sparger Pressure Instrumentation functions do not initiate nuclear system parameter variations which are considered potential initiating causes of threats to the fuel and the nuclear system process barrier.

As discussed above, the proposed administrative change only corrects typographical errors concerning equipment identification numbers. This change doe not affect any equipment and it does not involve any potential initiating events that would create any new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change to remove the Core Spray High Sparger Pressure Instrumentation from the Technical Specifications for ECCS Actuation Instrumentation does not affect any existing safety margins. This equipment is NNS and performs a local indication and alarming function only. The original intent of this detection system was because the first BWR plants had only the CS System for long-term core cooling. Later, plants like VY [Vermont Yankee] were provided with Low Pressure Coolant Injection (LPCI) Systems in addition to CS.

Existing Technical Specification requirements for automatic trip functions are unaffected. Failure of the Core Spray High Sparger Pressure Instrumentation does not preclude the ability of the CS System to perform its safety function to mitigate the consequences of accidents or of any other safety system to accomplish its safety functions. Proper ECCS functioning post-accident is not relied upon by NNS alarming functions but by such systems as safety related reactor level indication.

The CS Sparger Piping is inspected every refueling outage to verify its integrity. No cracks in the CS Sparger piping have been identified since the first inspection in 1980. The removal from the Technical Specifications has no affect on the bases of Protective Instrumentation which is to operate to initiate required system protective actions. The Core Spray High Sparger Pressure Instrumentation does not perform any safety function.

As discussed above, the proposed administrative change which corrects typographical errors does not affect any equipment involved in potential initiating events or safety limits. [***].

Based upon the above, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: March 18, 1992, modifications submitted June 25 and July 28, 1992, and December 6, 1993

Description of amendment request: On December 6, 1993, the licensee submitted a significant modification to its original request of March 18, 1992 (April 19, 1992 (57 FR 12349)). The modified request would amend the Technical Specifications (TS) to provide two surveillance tests to determine the operability of the catalyst beds in the containment atmospheric control (CAC) system. One test compares hydrogen content in the influent to the hydrogen content in effluent process streams to assure the catalyst is operating. The second test measures the temperature profile in the catalyst bed to ensure that sufficient catalyst remains available for the recombination process during postulated accident conditions. Since the original proposal has been significantly changed, the staff is issuing a new notice and proposed no significant hazards consideration determination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any changes in the design or operation of the hydrogen recombiners, which are accident mitigation systems. The proposed change revises surveillance requirements to ensure that existing equipment will perform as designed in response to postulated events. The proposed change does not, therefore, involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any changes in the design or operation of existing equipment, and does not, therefore, create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

The proposed change increases surveillance requirements for existing equipment to ensure that the equipment will perform as designed. With equipment performing as designed in response to postulated accidents, the proposed change does not affect any existing margins of safety.

Based on the licensee's analysis and the staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: March 31, 1994

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant Technical Specifications (TS) by incorporating operability and surveillance requirements for the recently installed Auxiliary Feedwater Pump Low Discharge Pressure Trip instrumentation. Proposed surveillance requirements would be added to Table TS 4.1-1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels." TS 3.4, "Steam and Power Conversions System," would be revised to explicitly link operability of the associated Auxiliary Feedwater Pump Low Discharge Pressure Trip channel to operability of the associated auxiliary feedwater pump. In addition, minor format inconsistencies in TS 3.4.b.1.A and 3.4.b.1.B would be corrected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(a) Table TS 4.1-1

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change defines the necessary surveillance requirements for the recently installed Auxiliary Feedwater Pump Low Discharge Pressure Trip channels. The intent of adding surveillance requirements to the TS's is to ensure the availability and

perform as designed. With equipment performing as designed in response to postulated accidents, the proposed change does not affect any existing margins of safety.

Based on the licensee's analysis and the staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: March 31, 1994

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant Technical Specifications (TS) by incorporating operability and surveillance requirements for the recently installed Auxiliary Feedwater Pump Low Discharge Pressure Trip instrumentation. Proposed surveillance requirements would be added to Table TS 4.1-1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels." TS 3.4, "Steam and Power Conversions System," would be revised to explicitly link operability of the associated Auxiliary Feedwater Pump Low Discharge Pressure Trip channel to operability of the associated auxiliary feedwater pump. In addition, minor format inconsistencies in TS 3.4.b.1.A and 3.4.b.1.B would be corrected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(a) Table TS 4.1-1

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change defines the necessary surveillance requirements for the recently installed Auxiliary Feedwater Pump Low Discharge Pressure Trip channels. The intent of adding surveillance requirements to the TS's is to ensure the availability and reliability of the components. The proposed change is an additional restriction not presently included in the TS's. Therefore, it will not increase the probability or consequences of an accident previously evaluated in the USAR.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change adds surveillance requirements to the TS for the Auxiliary Feedwater Low Discharge Pressure Trip channels. It does not alter the plant configuration or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

This proposed revision is an additional requirement in the TS's to ensure the availability and reliability of the Auxiliary Feedwater Pump Low Discharge Pressure Trip channels. It does not alter the input or assumptions of the safety analysis, and is an enhancement from an overall safety standpoint. Therefore, it will not involve a reduction in the margin of safety.

(b) TS 3.4

The proposed changes were reviewed in accordance with the provision of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change defines the necessary operability requirements for the recently installed Auxiliary Feedwater Pump Low Discharge Pressure Trip channels. Installation of this protection was recommended and approved by the NRC prior to their installation. The proposed change requires that the reactor not be heated ≤ 350°F unless both motor driven Auxiliary Feedwater Pumps and their associated low discharge pressure trip channels are operable. Also, the reactor shall not be heated ≤ 350°F unless the turbine driven auxiliary feedwater pump and its associated low discharge pressure trip channel are operable, or if not demonstrated operable prior to ≤ 350 °F, they shall be declared inoperable when 350°F is exceeded. Furthermore, when the reactor is ≤ 350°F, an auxiliary feedwater pump low discharge pressure trip channel may be inoperable for a period not to exceed 4 hours. If this time is exceeded, the associated auxiliary feedwater pump shall be declared inoperable and the appropriate limiting condition for operation of TS 3.4.b.2 entered. The intent of adding these operability requirements to the TS's is to ensure the availability of the components. The proposed change is an additional restriction not presently included in the TS's. Therefore, it will not increase the probability or consequences of an accident previously evaluated in the USAR.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change adds operability requirements to the TS for the Auxiliary Feedwater Pump Low Discharge Pressure Trip channels. It does not alter the plant configuration or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety

This proposed revision is an additional requirement in the TS's to ensure the operability of the Auxiliary Feedwater Pump Low Discharge Pressure Trip channels. It does not alter the input or assumptions of the safety analysis, and is an enhancement from an overall safety standpoint. Therefore it will not involve a reduction in the margin of safety

(c) Administrative changes to TS 3.4.b.1.A and TS 3.4.b.1.B

The proposed changes were reviewed in accordance with the provision of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from an accident previously evaluated, or

3. Involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not alter the intent of interpretation of the TS. Therefore, no significant hazards exist.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: John N. Hannon

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 24, 1994

Description of amendment request: The amendment request proposes to revise the Technical Specifications (TS) to implement the NRC's Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (58 FR 39132). These improvements involve focusing the Technical Specifications on those requirements that are of controlling importance to operational safety by screening each TS in Section 3/4.1 through 3/4.11 using the criteria provided in the policy statement. The purpose of the proposed amendment request is to relocate the specifications that do not meet any of the four policy

statement criteria. The relocated specifications will be moved to Updated Final Safety Analysis (USAR) Chapter 16. Based on the screening, all or part of 38 technical specifications were identified as not meeting any of the criteria and, therefore, as candidates for relocation. The licensee has categorized the TS changes as (1) specifications relocated intact to USAR Chapter 16, (2) specifications relocated with portions retained in TS, (3) specifications relocated with programmatic requirements referenced in Section 6 of TS, (4) modifications to retained specifications to accomodate relocation of other specifications, and (5) new specification requirements incorporated into the TS. The last category is used to effect the retention of portions of relocated specifications and accomodate the policy statement recommendation to incorporate industry experience in the determination of TS content.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes involve relocating requirements that are not conditions or limitations on reactor operation necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety. The proposed changes were identified through the application of criteria designed to cull those requirements that are not important to operational safety from the Technical Specifications. In this process, selected provisions of the Technical Specifications identified for relocation were retained if necessary to support a Technical Specification that was to be retained. Thus, only specification requirements that have little or no operational safety significance are proposed for relocation. In addition, those requirements that would be relocated will be included in the Updated Final Safety Analysis Report (USAR) and, therefore, will be controlled and implemented as NRC commitments. In this manner, those requirements that have no operational safety significance but involve maintaining the plant in its as-designed state (for example, through surveillance programs) would be controlled.

In addition, the criteria for identifying requirements to be retained in the Technical Specifications specifically call out, for retention those structures, systems, or components that are required to mitigate accidents previously evaluated.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes involve relocating Technical Specification requirements to another licensee-controlled document. No changes or physical alterations of the plant are involved. Also, no changes to the operation of the plant or equipment are involved. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety.

The proposed changes involve relocating Technical Specification requirements to the USAR. The requirements to be relocated were identified by applying the criteria endorsed in the Commission's Policy Statement. Thus, those specifications that would be relocated do not impose constraints on design and operation of the plant that are derived form the plant safety analysis report or from probabilistic safety assessment (PSA) information and do not belong in the Technical Specifications in accordance with 10 CFR 50.36 and the purpose of the Technical Specifications stated in the Policy Statement. Therefore, relocation of these requirements does not involve a significant reduction in the margin of safety.

In addition, revisions to the USAR will be evaluated in accordance with the 10 CFR 50.59 process which considers the reduction in safety margin. Therefore, any future revisions to the provisions in the USAR will consider reductions in the margin of safety using the criteria for identifying an unreviewed safety question.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Theodore T. Quay

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 7, 1994

Description of amendment request: The proposed amendment revises Technical Specification Table 2.2-1, Reactor Trip System Instrumentation Setpoints, to change the over-temperature-delta-temperature (OTDT) axial flux difference (AFD) limits to reflect results of the Cycle 8 core maneuvering analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence and the consequences of an accident evaluated previously in the Updated Safety Analysis Report (USAR) are not increased due to the proposed technical specification change. Operation at 3565 MWt does not affect any of the mechanisms postulated in the USAR to cause LOCA or non-LOCA design basis events. Analyses, evaluations and minimum DNBR [departure from nucleate boiling ratio] calculations confirm that the USAR conclusions remain valid for the proposed changes. On these bases it is concluded that the probability and consequences of the accidents previously evaluated in the USAR are not increased.

2. The proposed change does not create the possiblity of a new or different kind of accident from any previously evaluated.

There is no new type of accident or malfunction being created. The proposed change provides revised operating limits necessary to support Cycle 8, and does not change the method and manner of plant operation. The safety design bases in the USAR have not been altered. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed changes do not change the plant configuration in a way that introduces a new potential hazard to the plant and do not involve a significant reduction in the margin of safety. The analyses and evaluations discussed in the safety evaluation demonstrate that all applicable safety analysis acceptance criteria continue to be met for the proposed operating conditions. Items not specifically cited in this safety evaluation have been reviewed and have been found to be bounded by the evaluations performed for Reference 1 [Wolf Creek Generating Station Technical Specifications]. Therefore, it is concluded that the margin of safety, as described in the bases to any technical specification, is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Theodore R. Quay

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenberg County, North Carolina

Date of amendment request: May 5, 1994, as supplemented June 16, 1994.

Description of amendment request: The proposed amendments would change the Technical Specifications to increase Main Steam and Pressurizer Code Safety Valve Setpoint Tolerances.

Date of publication of individual notice in **Federal Register:** June 21, 1994 (59 FR 32029).

Expiration date of individual notice: July 21, 1994

Local Public Document Room location:

Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Theodore. R. Quay

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenberg County, North Carolina

Date of amendment request: May 5, 1994, as supplemented June 16, 1994.

Description of amendment request: The proposed amendments would change the Technical Specifications to increase Main Steam and Pressurizer Code Safety Valve Setpoint Tolerances.

Date of publication of individual notice in **Federal Register:** June 21, 1994 (59 FR 32029).

Expiration date of individual notice: July 21, 1994

Local Public Document Room location:

Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 29, 1992, as supplemented on October 22, 1993, and November 11, 1993.

Brief description of amendments: The amendments revise the Site Boundary Map and the Low Population Zone Map.

Date of issuance: June 22, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 190 and 167

Facility Operating License Nos. DPR--53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48813) The Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on May 13, 1994 (59 FR 25129). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated June 22, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station,Plymouth County, Massachusetts

Date of application for amendment: February 11, 1993, as supplemented December 2, 1993, January 5, February 22, March 1, April 15, and May 16, 1994.

Brief description of amendment: This amendment increases the allowed fuel assembly storage cells from 2320 to 3859, changes the maximum loads allowed to travel over the spent fuel assemblies from 1050 to 2000 lbs., and changes the limiting characteristics of assemblies to be stored in the spent fuel from a maximum K_{INFITY} less than or equal to 1.35 to a Maximum K_{INFITY} less than or equal to 1.32 and a maximum lattice average uranium enrichment of less than or equal to 4.6% by weight.

Date of issuance: June 22, 1994

Effective date: June 22, 1994

Amendment No.: 155

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 30, 1993 (58 FR 26171) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, IllinoisDocket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, IllinoisDate of application for amendments: March 26, 1993

Brief description of amendments: The amendments revise Technical Specification 3/4.6 for Dresden and Quad Cities Stations to allow Single Loop Operation (SLO) with the recirculation loop suction and discharge valves open. The amendments also delete outdated and unnecessary portions of Technical Specification 3.6.H for Dresden Units 2 and 3 and provide more consistency to the BWR Standard Technical Specifications (NUREG-0123, Revision 4).

Date of issuance: June 16, 1994

Effective date: June 16, 1994

Amendment Nos.: 127, 121, 147, and 143

Facility Operating License Nos. DPR-19, DPR-25, DPR-29 and DPR-30: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17594) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 16, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: For Dresden, Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South CarolinaDate of application for amendments: March 24, 1994, as supplemented April 11 and May 31, 1994

Brief description of amendments: The amendments revise the Technical Specification (TS) to increase boron concentration for the spent fuel storage pool during Modes 1-3 operation and for the refueling canal during Mode 6 operation; include two reload related topical reports in TS 6.9.1.9; and correct errors in nomenclature and remove obsolete footnotes.

Date of issuance: June 13, 1994

Effective date: June 13, 1994

Amendment Nos.: 120 and 114

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1994 (59 FR 22006) The April 11 and May 31, 1994, letters provided clarifying and additional information that did not change the scope of the March 24, 1994, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, ConnecticutDate of application for amendment: December 17, 1993, as supplemented April 12, 1994.

Brief description of amendment: The amendment changes the action statements for the limiting conditions for operation associated with the electrical power sources (Technical Specification 3.8.1.1).

Date of issuance: June 14, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 177

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994(59 FR 4943). The April 12, 1994, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York Date of application for amendment: December 28, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) Section 6.9(A)1.a. to permit startup reports for cycles subsequent to the initial fuel cycle to address only those startup tests that are actually performed. The amendment also revises TS Section 6.9(A) to clarify requirements for the submission of routine reports. These changes are consistent with the guidance provided in NUREG-1433, "Standard Technical Specifications - General Electric Plants, BWR/4."

Date of issuance: June 16, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 212

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4945) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 29, 1993

Brief description of amendment: The amendment revises Appendix B of the Technical Specifications (TSs), the Radiological Effluent TSs. Specifically, the amendment revises Appendix B Surveillance Requirement 3.1.a. and Table 3.10-2 to provide surveillance requirements for data recorders associated with the gaseous effluent monitoring system. The amendment also makes an editorial change to Appendix B Limiting Condition for Operation 3.1.a. to improve consistency and clarity.

Date of issuance: June 16, 1994Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 213

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4946) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: May 13, 1991, as supplemented October 13, 1992.

Brief description of amendments: The amendments modify the TS for the overpressure protection systems. The allowable outage time (AOT) for one inoperable residual heat removal (RHR) relief valve with one or more of the reactor coolant system cold leg temperatures less than or equal to 310 degrees Fahrenheit is being decreased from 7 days to 24 hours for water-solid conditions. The required AOT for low temperature conditions, other than water-solid, will remain at 7 days with one RHR relief valve inoperable, provided the pressurizer level is less than or equal to 30 percent and a dedicated operator is assigned to monitor and control the reactor coolant system pressure.

Date of issuance: June 16, 1994

Effective date: June 16, 1994

Amendment Nos.: 108 and 100

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32577) and February 17, 1993 (58 FR 8787)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 16, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-259 and 50-296, Browns Ferry Nuclear Plant, Units 1 and 3, Limestone County, Alabama

Date of application for amendment: April 1, 1992 (TS 302)

Brief description of amendments: The amendments add requirements to the Browns Ferry Units 1 and 3 Technical Specifications to provide administrative controls for a post-accident sampling system, which were requested by Generic Letter 83-36, "NUREG-0737 Technical Specifications."

Date of issuance: June 21, 1994

Effective date: June 21, 1994

*Amendment Nos.:*207 and 180

Facility Operating License Nos. DPR-33 and DPR-68:

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22269) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: December 23, 1992, as supplemented on March 18, 1994.

Brief description of amendment: This amendment revises TS 3/4 3.3.5 for

conditions. The required AOT for low temperature conditions, other than water-solid, will remain at 7 days with one RHR relief valve inoperable, provided the pressurizer level is less than or equal to 30 percent and a dedicated operator is assigned to monitor and control the reactor coolant system pressure.

Date of issuance: June 16, 1994

Effective date: June 16, 1994

Amendment Nos.: 108 and 100

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32577) and February 17, 1993 (58 FR 8787)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 16, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-259 and 50-296, Browns Ferry Nuclear Plant, Units 1 and 3, Limestone County, Alabama

Date of application for amendment: April 1, 1992 (TS 302)

Brief description of amendments: The amendments add requirements to the Browns Ferry Units 1 and 3 Technical Specifications to provide administrative controls for a post-accident sampling system, which were requested by Generic Letter 83-36, "NUREG-0737 Technical Specifications."

Date of issuance: June 21, 1994

Effective date: June 21, 1994

*Amendment Nos.:*207 and 180

Facility Operating License Nos. DPR-33 and DPR-68:

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22269) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: December 23, 1992, as supplemented on March 18, 1994.

Brief description of amendment: This amendment revises TS 3/4 3.3.5 for transfer switches used to meet 10 CFR Part 50, Appendix R (Fire Protection) requirements, and specifies a new special report requirement for TS 6.9.2.

Date of issuance: June 14, 1994

Effective date: June 14, 1994

Amendment No. 187

Facility Operating License No. NPF-3. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10016) The supplemental information submitted on March 18, 1994, did not change the initial proposed finding of no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: December 20, 1993, as amended March 25 and April 25, 1994

Brief description of amendment: The amendment modifies the technical specifications (TS) to address new containment purge and vent valves to be installed in the 1994 refueling outage. The amendment changes the containment purge and vent valve TS as follows: (1) removes the requirement ensuring that valve position remains at less than or equal to 70 degrees, (2) changes the containment leak testing requirements for the metal-to-metal seated valves from 6 months to 2 years since they have improved seat designs, and (3) makes administrative changes to delete an out-of-date note, to relocate an action statement requirement from the TS surveillance section to the TS action statement section, and to change a related TS reference to this surveillance section. Valve opening position does not need to be limited to less than or equal to 70 degrees. The resiliently-seated valves have a permanently installed mechanical stop to limit the open position to ensure adequate closure times. The metal-to-metal seated valves are designed to close from the 90-degree open position.

Date of issuance: June 15, 1994

Effective date: 15 days from the date of issuance

Amendment No.: 124

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14901) The additional information contained in the March 25 and April 25, 1994, letters was clarifying in nature, is within the scope of the initial notice, and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1994.Public comments on proposed no significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 8, 1994, as supplemented March 25, 1994

Brief description of amendment: The amendment revises the WNP-2 Technical Specifications. Specifically, the amendment increases the stroke time, as specified in Table 3.6.3-1, for reactor core isolation cooling (RCIC) valve RCIC-V-8 from 13 seconds to 26 seconds and deletes the Note (j) reference from RCIC-V-8 and RCIC-V-63. Note (j) indicates that the stroke time specified in the table reflects the requirement for containment isolation only.

Date of issuance: June 17, 1994

Effective date: June 17, 1994

Amendment No.: 125

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 12, 1994 (59 FR 24754) The additional information contained in the March 25, 1994, letter was clarifying in nature, was within the scope of the initial notice, and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352]

Dated at Rockville, Maryland, this 28th day of June 1994.

FOR THE NUCLEAR REGULATORY COMMISSION

Jack W. Roe,

Director, Division of Reactor Projects - III/IVOffice of Nuclear Reactor Regulation

[Doc 94-16174 Filed 7-5-94 8:45 am]

BILLING CODE 7590-01-F

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–60117, License No. SOP–11160, IA 94–014]

Order Prohibiting Involvement in 10 CFR Part 55 Licensed Activities (Effective immediately)

In the Matter of: Stephen Mignotte, Senior Reactor Operator.

I

Stephen Mignotte (Mr. Mignotte) held Senior Reactor Operator License No. SOP–11160 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 55. The license authorized Mr. Mignotte to manipulate, and to supervise the manipulation of, the controls of the nuclear power reactor at the New York Power Authority's (Facility Licensee) Indian Point 3 Nuclear Power Plant in Buchanan, New York. On November 23, 1993, Mr. Mignotte resigned his employment with the New York Power Authority, which caused the License to expire. Additionally, the Facility Licensee, in a letter dated December 23, 1993, informed the NRC that the New York Power Authority no longer had a need to maintain Mr. Mignotte's operating license for the Indian Point Unit 3 Nuclear Power Plant.

II

The responsibilities associated with a Senior Reactor Operator license issued pursuant to 10 CFR Part 55 require that individuals be fit for duty while performing safety-related activities at the facility. The character of the individual, which includes the individual's trustworthiness, is a consideration in issuing an operator license. *See* Section 182a of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2232a). In determining whether or not an individual seeking a license to be a reactor operator or senior reactor operator has the necessary character and trustworthiness, the Commission takes into account any history of illegal drug use by the applicant. Prior to May 26, 1987, each applicant for a reactor operator or senior reactor operator license was required to certify that the applicant had no drug or narcotic habit on the Certificate of Medical Examination, NRC Form 396. Since that time, the NRC has required an evaluation of the applicant prepared by a physician as part of a license application. *See* 10 CFR 55.23(a). This evaluation is presented on a Certificate of Medical Examination, NRC Form 396. *See* 10 CFR 55.23. Among the factors to be considered by the certifying physician are factors such as use of illegal drugs or abuse of alcohol. *See* Form 396; *see also* ANSI/ANS 3.4–1983, Section 5.2.2.

In accordance with 10 CFR Part 26, the Facility Licensee established a program to provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance, legal or illegal, which affects their ability to safely and competently perform their duties, including measures for early detection of persons who are not fit to perform licensed activities. In addition, licensed operators are required by 10 CFR 55.53(j) to refrain from use of illegal drugs, including marijuana and cocaine. Licensed operators are also required by 10 CFR 55.53(k) to participate in 10 CFR Part 26 fitness-for-duty programs established by the Facility Licensees.

III

On November 23, 1993, Mr. Mignotte, while on duty as a Senior Reactor Operator at the Indian Point 3 facility, was requested by the Facility Licensee to provide a urine sample to the nurse at the plant after being randomly selected as part of the routine fitness for duty chemical testing program required of the Facility Licensee by the NRC pursuant to 10 CFR 26.24. After receiving a sample from Mr. Mignotte, the nurse checked the temperature of the sample, noticed that it felt "cool to the touch", and found that the temperature was below specifications in 10 CFR Part 26, Appendix A, § 2.4(g)(14), for acceptable urine samples. As a result, Mr. Mignotte was requested to provide a witnessed urine sample to the Facility Licensee in accordance with the same section of the Appendix. Mr. Mignotte provided a second sample which was subsequently determined, on November 30, 1993, to contain both marijuana and cocaine above cutoff levels specified by the Appendix. After the witnessed urine sample had been collected on November 23, 1993, Mr. Mignotte was suspended from licensed duties and he subsequently resigned that same day. These facts were provided to the NRC by the Facility Licensee, in letters dated December 23, 1993 and January 3, 1994, and were discussed in the report of an NRC inspection conducted January 12–13, 1994.

The results of the second, witnessed urine sample indicate that Mr. Mignotte used illegal drugs, which is a violation of the conditions of his license imposed by 10 CFR 55.53(j). Furthermore, his performance of licensed duties while under the influence of illegal drugs is also a violation of the conditions of his license imposed by 10 CFR 55.53(j). Based on the temperature of the first urine sample provided by Mr. Mignotte and the fact that the first sample yielded negative results when tested for illegal substances while the subsequent, witnessed sample yielded positive results, I conclude that the first sample was a surrogate false sample, submitted by Mr. Mignotte in an attempt to conceal illegal drug use.

10 CFR 50.5(a)(2) prohibits any employee of a licensee from deliberately submitting to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The urine samples collected within the context of a licensee's chemical testing program pursuant to the requirements of 10 CFR Part 26 represent information material to an access authorization and fitness-for-duty decision. Therefore, Mr. Mignotte's deliberately submitting inaccurate information material to the NRC in the form of a false sample is a violation of 10 CFR 50.5(a)(2). In addition, Mr. Mignotte violated 10 CFR 50.5(a)(1) by deliberately providing to the Facility Licensee a surrogate urine sample that he knew to be inaccurate at the time he submitted it and which, but for detection, would have caused the Facility Licensee to be in violation of 10 CFR 50.9(a).

Mr. Nignotte's failure to comply with the prohibition against illegal drug use and his attempts to circumvent the chemical testing program to avoid detection of illegal drug use while employed by the Facility Licensee are violations of the conditions of Mr. Mignotte's license imposed by 10 CFR 55.53 (j) and (k), and demonstrate an intentional disregard for the important obligations of a licensed operator.

IV

Based on the above, Mr. Mignotte, an employee of the New York Power Authority at the time of the incident, engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(1) and (2) by deliberately violating 10 CFR 55.53(k), in that he submitted to the facility licensee information which he knew to be inaccurate in some respect material to the NRC. Mr. Mignotte, a licensed Senior Reactor Operator at the time of the event, also used illegal substances and performed licensed duties while under the influence of illegal substances in violation of 10 CFR 55.53(j), and deliberately failed to participate in the fitness-for-duty program established by the facility licensee in violation of 10 CFR 55.53(k).

The NRC must be able to rely on its licensees and their employees, especially NRC-licensed operators, to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Mignotte's actions in using illegal drugs and attempting to circumvent fitness-for-duty requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements applicable to licensed individuals and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that Mr. Mignotte will conduct any 10 CFR Part 55 licensed activities in compliance with the Commission's requirements and that the health and safety of the public will be protected with Mr. Mignotte engaged in such licensed activities at this time. Therefore, I find that the public health, safety, and interest require that Mr. Mignotte be prohibited from involvement in 10 CFR Part 55 licensed activities for three years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 103, 107, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 55.61, it is hereby ordered, effective immediately, that:

A. Mr. Mignotte is prohibited for three years from the date of this Order from engaging in licensed operator activities licensed by the NRC pursuant to 10 CFR Part 55.

B. For a period of three years from the date of this Order, Mr. Mignotte shall provide a copy of this Order to any prospective employer engaged in activities licensed by the NRC pursuant to 10 CFR Part 50 prior to his acceptance of employment with such prospective employer so that the employer will have notice of the prohibition against Mr. Mignotte's involvement in licensed operator activities licensed pursuant to 10 CFR Part 55.

to the NRC. Mr. Mignotte, a licensed Senior Reactor Operator at the time of the event, also used illegal substances and performed licensed duties while under the influence of illegal substances in violation of 10 CFR 55.53(j), and deliberately failed to participate in the fitness-for-duty program established by the facility licensee in violation of 10 CFR 55.53(k).

The NRC must be able to rely on its licensees and their employees, especially NRC-licensed operators, to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Mignotte's actions in using illegal drugs and attempting to circumvent fitness-for-duty requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements applicable to licensed individuals and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that Mr. Mignotte will conduct any 10 CFR Part 55 licensed activities in compliance with the Commission's requirements and that the health and safety of the public will be protected with Mr. Mignotte engaged in such licensed activities at this time. Therefore, I find that the public health, safety, and interest require that Mr. Mignotte be prohibited from involvement in 10 CFR Part 55 licensed activities for three years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 103, 107, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 55.61, it is hereby ordered, effective immediately, that:

A. Mr. Mignotte is prohibited for three years from the date of this Order from engaging in licensed operator activities licensed by the NRC pursuant to 10 CFR Part 55.

B. For a period of three years from the date of this Order, Mr. Mignotte shall provide a copy of this Order to any prospective employer engaged in activities licensed by the NRC pursuant to 10 CFR Part 50 prior to his acceptance of employment with such prospective employer so that the employer will have notice of the prohibition against Mr. Mignotte's involvement in licensed operator activities licensed pursuant to 10 CFR Part 55.

C. For three years from the date of this Order, Mr. Mignotte shall provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer, from an employer who is engaged in activities licensed by the NRC pursuant to 10 CFR Part 50.

The Director, Office of Enforcement may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Mignotte of good cause.

VI

In accordance with 10 CFR 2.202, Mr. Mignotte must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Mignotte or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region I, U.S. Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, PA 19406; and to Mr. Mignotte, if the answer or hearing request is by a person other than Mr. Mignotte. If a person other than Mr. Mignotte requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Mignotee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Mignotee or any person adversely affected, by this Order, may, in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 28th day of June 1994.

For the Nuclear Regulatory Commission.

James L. Milhoan,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

[FR Doc. 94–16313 Filed 7–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–250 and 50–251, 50–335 and 50–389]

Florida Power and Light Co. (Turkey Point and St. Lucie Nuclear Plants) Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that on June 7, 1994, Thomas J. Saporito, Jr. filed a petition under 10 CFR 2.206 of the Commission's regulations requesting that the NRC take action against Florida Power and Light Co. as operator of the Turkey Point and St. Lucie nuclear power stations.

The Petitioner asks that the NRC institute a show cause proceeding to modify, suspend or revoke Florida Power and Light Co.'s operating licenses and that the NRC take escalated enforcement action for retaliatory actions which were taken against him, a former employee, for engaging in protected activities as defined in 10 CFR 50.7. Petitioner asks that the NRC also take escalated enforcement action against every employee of the company who is found to have been involved in the retaliatory actions.

In order to determine which Licensee employees were involved in the relatiatory actions and to assess the overall work environment at the plants, Petitioner asks that the NRC conduct an investigation. In addition to the specific acts of retaliation he claims were taken against him, the Petitioner alleges that other employees have also been retaliated against, creating a chilling effect at the Turkey Point plant beginning in 1988. Petitioner asks that the NRC initiate an investigation into

his claims, which involve alleged violations of 10 CFR 50.7 and 19.15 and the Energy Reorganization Act, notwithstanding the fact that they are being pursued within the Department of Labor, because of the asserted public health and safety implications involved.

The Petitioner's request has been referred to the Director of the Office of Enforcement. As provided by 10 CFR 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 24th day of June 1994.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Acting Director, Office of Enforcement.

[FR Doc. 94–16314 Filed 7–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–2]

Virginia Electric and Power Co. Notice of Issuance of Amendment to Materials License SNM–2501

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Materials License No. SNM–2501 held by Virginia Electric and Power Company for the receipt and storage of spent fuel at the Surry ISFSI, located in Surry County, Virginia. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications making procedural changes to spent fuel characteristics for the CASTOR V/21 cask and allows use of the CASTOR X/33 cask at the site. These changes do not affect fuel receipt, handling, and storage safety. They are procedural in nature and result in a change in process operations and equipment that does not alter the scope and type of operations presently authorized. The safety evaluation for this amendment demonstrates that the accident consequences for the analyzed design basis accidents remain negligible. There is reasonable assurance that the public health and safety will remain protected by activities authorized under this amendment and that the environmental impact will remain insignificant.

The applications for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.21, an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the applications for amendment dated December 23, 1988, May 3, 1991, and November 19, 1993, and (2) Amendment No. 7 to Materials License No. SNM–2501, and (3) the Commission's letter to the licensee dated June 29, 1994. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC., and at the Local Public Document Room at the Swem Library, College of William and Mary, Williamsburg, Virginia, 23185.

Dated at Rockville, Maryland this 29th day of June, 1994.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Storage and Transport Systems Branch Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 94–16321 Filed 7–5–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Federal Acquisition Regulation (FAR) Rewrite

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of public meeting and request for public comments.

SUMMARY: In response to the report of the National Performance Review (NPR) recommendation to convert the FAR from rigid rules to guiding principles, the Administrator for Federal Procurement Policy has established a Board of Directors (hereinafter the Board), comprised of senior level individuals from the Executive Branch, to develop a plan for the FAR rewrite. This notice solicits public comment on two approaches for the rewrite, including drafting principles, the Board is considering.

Both approaches delineate mandatory and nonmandatory provisions. The first approach would provide for (1) a FAR that is limited to mandatory governmentwide regulations, and (2) an acquisition manual that would reprint the FAR and also include nonmandatory governmentwide policies, procedures, etc. In addition, agency supplements, including both mandatory and nonmandatory provisions, would be authorized to implement agency-unique statutes, policies, etc.

The second approach would consist of (1) the FAR which would include all mandatory Governmentwide provisions, and (2) separate acquisition manuals developed by an agency or a group of agencies. The manuals would include mandatory provisions necessary to implement statutes unique to the agency or group of agencies, a minimal number of mandatory policies and procedures not required by statute, and nonmandatory guidance.

Both approaches would result in a FAR containing only mandatory provisions. However, the first approach would promulgate governmentwide nonregulation guidance, while the second approach would permit an agency to promulgate in agency manuals whatever nonregulation guidance the agency deems appropriate. Additionally, the first approach would retain agency FAR supplements, while the second approach would replace agency supplements with agency acquisition manuals.

The Board has prepared a model rewrite of FAR Part 9 to illustrate the first approach. It is drafted as a governmentwide manual containing both the new FAR (which will also be codified in the Code of Federal Regulations); and policies, procedures, provisions, forms, and clauses that do not constitute regulations. An actual FAR rewrite would likely include a wider variety of options and illustrations than appear in the nonregulation component of the model. This notice solicits comments only on the proposed approach for the FAR rewrite, and not on the content of the model rewrite of Part 9.

The Board intends to provide for a mutual exchange of ideas and information with affected parties both in the government and the private sector by publishing this notice, soliciting public comments, and holding a public meeting.

DATES: Written comments must be received in the Office of Federal Procurement Policy on or before August 5, 1994.

A public meeting will be held at 9:30 on August 17, 1994. Persons or organizations wishing to present ideas or suggestions will be allowed five minutes each to present their views, provided they notify Ms. Rebecca Hardy at 202–395–3501 by August 10, 1994. Persons or organizations with similar positions are encouraged to select a common spokesperson for presentation of their views.

ADDRESSES: Written comments and statements for presentation should be submitted to Susan E. Alesi, Special Assistant for Regulations, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503.

A public meeting will be held in Room 2010, New Executive Office building (NEOB), 725 17th Street, NW, Washington, DC. Individuals wishing to attend the meeting, including individuals wishing to make presentations should contact Ms. Rebecca Hardy at 202–395–3501 prior to 3:30 p.m. on August 16, 1994, for clearance to the NEOB.

FOR FURTHER INFORMATION CONTACT: Susan E. Alesi, at 202–395–6803, Office of Federal Procurement Policy.

SUPPLEMENTARY INFORMATION: On September 7, 1993, the Vice President released the report of the NPR which required simplification of the procurement process by rewriting the FAR, shifting from rigid rules to guiding principles. According to the report, the FAR, which is the government's principal set of procurement regulations, is too process oriented, changes too often, minimizes discretion of procurement officials, and stifles innovation. The Board intends to develop a plan to rewrite the FAR to move from a system of rigid rules to guiding principles, promote decision making at the lowest possible level, eliminate unnecessary regulatory requirements, facilitate innovative contracting and develop a more effective process to listen to its customers.

This project will be accomplished under the direction of the Administrator for Federal Procurement Policy with the assistance of a Board of Directors comprised of senior-level officials from the Executive Branch.

The Board has begun planning the FAR rewrite project by defining two approaches and by drafting a model FAR Part 9 that adheres, for the most part, to the drafting principles outlined in this announcement as the first approach. However, if the FAR is actually rewritten along the lines of the model, we expect that there would be additional material and more than one optional approach or illustration to be included in many parts of the nonregulation part of the model. The Board intends to recommend adoption

or suggestions will be allowed five minutes each to present their views, provided they notify Ms. Rebecca Hardy at 202–395–3501 by August 10, 1994. Persons or organizations with similar positions are encouraged to select a common spokesperson for presentation of their views.

ADDRESSES: Written comments and statements for presentation should be submitted to Susan E. Alesi, Special Assistant for Regulations, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503.

A public meeting will be held in Room 2010, New Executive Office building (NEOB), 725 17th Street, NW, Washington, DC. Individuals wishing to attend the meeting, including individuals wishing to make presentations should contact Ms. Rebecca Hardy at 202–395–3501 prior to 3:30 p.m. on August 16, 1994, for clearance to the NEOB.

FOR FURTHER INFORMATION CONTACT: Susan E. Alesi, at 202–395–6803, Office of Federal Procurement Policy.

SUPPLEMENTARY INFORMATION: On September 7, 1993, the Vice President released the report of the NPR which required simplification of the procurement process by rewriting the FAR, shifting from rigid rules to guiding principles. According to the report, the FAR, which is the government's principal set of procurement regulations, is too process oriented, changes too often, minimizes discretion of procurement officials, and stifles innovation. The Board intends to develop a plan to rewrite the FAR to move from a system of rigid rules to guiding principles, promote decision making at the lowest possible level, eliminate unnecessary regulatory requirements, facilitate innovative contracting and develop a more effective process to listen to its customers.

This project will be accomplished under the direction of the Administrator for Federal Procurement Policy with the assistance of a Board of Directors comprised of senior-level officials from the Executive Branch.

The Board has begun planning the FAR rewrite project by defining two approaches and by drafting a model FAR Part 9 that adheres, for the most part, to the drafting principles outlined in this announcement as the first approach. However, if the FAR is actually rewritten along the lines of the model, we expect that there would be additional material and more than one optional approach or illustration to be included in many parts of the nonregulation part of the model. The Board intends to recommend adoption of the NPR philosophy of giving greater flexibility in the formulation and administration of contracts.

Questions for Commentors

To assist the Board in its deliberations, it is requested that all interested parties review the proposed approaches, drafting principles, and illustration of the model rewrite of FAR Part 9. This notice solicits comments on the proposed approaches for the FAR rewrite and not on the content of the model rewrite of FAR Part 9. In preparing comments the Board requests that commentors consider the following questions with regard to each approach:

1. Does the proposed approach represent an improvement to the existing FAR system? If not, please suggest an alternative approach.
2. Does the proposed approach remove from the regulations system unnecessary, burdensome direction while still providing the procurement community with sufficient common policy and principles? If not, please suggest an alternative approach.
3. Does the proposed approach increase discretion and encourage innovation while still fostering good contracting practices? If not, please suggest an alternative approach.
4. Does the proposed approach simplify the procurement process? If not, please suggest an alternative approach.
5. Does the approach of publishing nonregulation information in an acquisition manual provide useful guidance for contracting officers in decision making, formulating process or practical solutions, identifying alternatives? If not, please suggest an alternative approach.
6. Does the proposed approach for the Code of Federal Regulations to contain only the regulation component of the model raise any concerns for you? If so, please suggest an alternative approach.
7. The nonregulation component of the model would normally not be published for public comment in the **Federal Register**. Does this approach create a problem? What problem? If so, please suggest an alternative approach.
8. Which types or categories of provisions and clauses would you recommend to be included in the regulation component of the model? In the nonregulation manual component of the model?
9. Does the proposed approach to include only guidance needed by procurement personnel improve the contracting process? If not, please suggest an alternative approach.
10. Is there a better approach for rewriting the FAR? What is it?
11. How do we carry forward to lower levels the concept of moving away from a centralized direction?
12. Please provide any other comments you consider appropriate.

First Proposed Approach

Discussion

The basic thrust of this approach under consideration by the Board is to divide the FAR into regulation and nonregulation (a Governmentwide manual) components. The new FAR will essentially retain its current 53 Part structure and will contain policies, provisions and clauses necessary to implement statutory requirements, primary regulation requirements, basic policies/guiding principles and essential governmentwide procedures. Much of the material, provisions and clauses that will be removed from the FAR will be made available in nonregulation remarks in a Federal acquisition manual. In addition, agencies will continue to issue supplements to the FAR, including minimal mandatory as well as nonmandatory provisions. The FAR will be mandatory for use by the agencies, and will be codified in the Code of Federal Regulations.

The Government acquisition manual will include the FAR text, and in addition, will provide nonmandatory guidance, alternative approaches, forms, clauses, and other examples that may be used, at their discretion, by contracting officers in structuring a procurement. The nonregulation material in the manual will be published for public comment only when required by Section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b), which does not require publication of the type of information normally provided nonregulation component of the acquisition manual.

The FAR system will promote decision making at the lowest practicable level by permitting contracting officers to use, modify, tailor to best suit individual situations or disregard nonregulation policies, procedures, provisions, forms and clauses. For example, in the illustration of a new FAR Part 9, the clauses covering First Article Approval, Contractor Testing, (FAR 52.209–3) would be eliminated from the regulation component but would be included in the nonregulation component.

Proposed Drafting Principles—Structure

1. Include in the FAR statements of general policy, standards, forms, provisions, and clauses that—

a. Are required by, or reasonably necessary to implement Statutes,

Executive Orders, OMB Circulars, OFPP Policy Letters, and, as appropriate, case law.

b. The FAR Council or joint FAR signatories decide must have governmentwide application because consistency is essential to maintain an effective and efficient acquisition system.

2. Do not include in the FAR:

a. Procedures, policies, provisions or clauses which are not essential.

b. Guidance that is not needed by procurement personnel.

3. Include in the acquisition manual—

a. Examples of various optional methods for compliance with FAR policies, provisions, and clauses.

b. Procedures, practices, forms provisions, and clauses that may be used, modified, or not used, at the discretion of the Contracting Officer.

Proposed Drafting Principles—General

1. Clearly identify the statutory requirements, basic policies, and principles.

2. Avoid proscription and rigid rules in favor of setting forth guiding principles.

3. Use goals and expected outcomes in place of processes or procedures.

4. Assume the reader is a procurement professional with appropriate knowledge, skills and abilities to do the job.

5. Assume contractors and contracting officials are going to do the "right thing."

6. Assign responsibility for decisions to the lowest practicable level, giving contracting officers authority, responsibility, and maximum flexibility to find the most efficient, cost-effective way to meet customer mission needs and time frames.

7. Minimize administrative and paperwork burdens on contracting officials and contractors.

8. Include in the FAR references to procurement related statutes and regulations, such as labor laws, and small business size standards. Provide, as appropriate, in the acquisition manual, necessary additional information to assist the contracting officers in complying with those requirements.

9. Provide guidance that encourages sound business practices, streamline the contracting process, contributes to increased productivity, and cost effectiveness.

10. Provide guidance that implements policies based on statute without just restating the law.

11. Avoid guidance and other controls that impose unnecessary dollar thresholds, approval levels, contractor certifications, coordination and documentation requirements, determinations.

12. Provide guidance that offers maximum opportunity for innovative contracting approaches.

13. Avoid the creation of regulations to address every contracting contingency.

14. Provide guidance to contracting officers that encourages risk management rather than risk avoidance.

15. Avoid regulations that impose government-unique, unnecessary requirements on federal contractors. Promote the acquisition of commercial products and reliance on the commercial marketplace.

16. Apply a consistent set of drafting conventions so that the FAR will be succinct and understandable to the general reader.

Second Proposed Approach

The second approach is essentially the same as the first approach with respect to which material would be regulations and which material would be provided in a nonregulation acquisition manual. However, the nonregulation material would not be published as a governmentwide manual. Rather, each agency, or group of agencies would be authorized to publish its own manual containing its own guidance. These manuals would contain a minimal amount of mandatory material applicable to the internal operations of the agency or necessary to implement the statutes that apply to that agency or group of agencies. The remainder of the material in the manual would be that as noted in the first approach as nonregulation in nature and not mandatory. Thus the FAR system would be comprised of the FAR (regulations) and agency acquisition manuals (nonmandatory guidance and minimal mandatory requirements) that would take the place of current agency supplements.

Illustration of the First Proposed Approach

Model of revised Part 9. The model FAR Part 9 is provided in the appendix to illustrate the first approach being considered by the Board. Comment only on the approach illustrated by this model rewrite, and not on the content of the model rewrite on Part 9. FAR Part 9 will be submitted to a committee for revisions in accordance with these Drafting Principles once the Drafting Principles have been approved. The following model rewrite of FAR Part 9 shows the governmentwide acquisition manual as it would appear under proposed number one.

Proposed approach number two would follow the same criteria as is followed under proposed approach one to determine which material is to be codified in the CFR and which material is to appear in nonregulation guidance. However, under proposed approach number two, the nonregulation guidance would be published by individual agencies in manuals that apply to contracts issued by that agency.

Dated: June 30, 1994.

Steven Kelman,

Administrator.

BILLING CODE 3110-01-M

MODEL FAR INTRODUCT

(a) The Federal Acquisition Regulation Syst
Federal Acquisition Regulation (FAR), whi
document, and agency regulations that implen
the FAR. The FAR and its supplements are c
of Federal Regulations.
(b) A nonregulation component is provided
leaf edition for assistance of FAR users
"Nonregulation remarks". The nonregulatio
mandatory and provide guidance and examples
the force and effect of law. The "Nonregula
not be codified; however, portions may be pu
comment only when deemed appropriate
agencies issuing this document. Some nonr
include examples, information from ot
suggestions as to methods to use in particula
though a method may be suggested in
remarks, it is not intended to be mandatory, n
restrict any contracting officers to a particu
suggested methods may be used in whole, in
depending on the preferences of the agenc
officer.

PART 9—CONTRACTOR QUALI

SUBPART 9.1—RESPONSIBLE PRO CONTRACTORS

9.100 Scope of subpart.
This subpart implements 41 U.S.C. 403(
prospective contractor and subcontractor respo

9.101 Definitions.
"Responsible prospective contractor" means
meets the standards in 9.104.
"Preaward survey" means an evaluation by a
of a prospective contractor's capability to pe
contract.
"Surveying activity" means the cognizant cont
office or, if there is no such office, ano
designated by the agency to conduct preaward s

9.102 Applicability.
(a) This subpart applies to all proposed co
prospective contractor that is located—
(1) In the United States, its possessions, or Pu
(2) Elsewhere, unless application of the s
inconsistent with the laws or customs where
located.
(b) This subpart does not apply to proposed co
(1) Foreign, State, or local governments;
(2) Other Federal agencies or their instrumental
(3) Agencies for the blind or other severely
nonregulation remarks under 9.104 and Subpar

Appendix-Model FAR

MODEL FAR INTRODUCTION

(a) The Federal Acquisition Regulation System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency regulations that implement or supplement the FAR. The FAR and its supplements are codified in the Code of Federal Regulations.
(b) A nonregulation component is provided in the FAR loose-leaf edition for assistance of FAR users and identified as "Nonregulation remarks". The nonregulation remarks are not mandatory and provide guidance and examples which do not have the force and effect of law. The "Nonregulation remarks" will not be codified; however, portions may be published for public comment only when deemed appropriate by the regulatory agencies issuing this document. Some nonregulation remarks include examples, information from other sources and suggestions as to methods to use in particular situations. Even though a method may be suggested in the nonregulation remarks, it is not intended to be mandatory, nor is it intended to restrict any contracting officers to a particular method. The suggested methods may be used in whole, in part, or not at all, depending on the preferences of the agency and contracting officer.

PART 9—CONTRACTOR QUALIFICATIONS

SUBPART 9.1—RESPONSIBLE PROSPECTIVE CONTRACTORS

9.100 Scope of subpart.
This subpart implements 41 U.S.C. 403(7) and addresses prospective contractor and subcontractor responsibility.

9.101 Definitions.
"Responsible prospective contractor" means a contractor that meets the standards in 9.104.
"Preaward survey" means an evaluation by a surveying activity of a prospective contractor's capability to perform a proposed contract.
"Surveying activity" means the cognizant contract administration office or, if there is no such office, another organization designated by the agency to conduct preaward surveys.

9.102 Applicability.
(a) This subpart applies to all proposed contracts with any prospective contractor that is located—
(1) In the United States, its possessions, or Puerto Rico; or
(2) Elsewhere, unless application of the subpart would be inconsistent with the laws or customs where the contractor is located.
(b) This subpart does not apply to proposed contracts with:
(1) Foreign, State, or local governments;
(2) Other Federal agencies or their instrumentalities; or
(3) Agencies for the blind or other severely handicapped (see nonregulation remarks under 9.104 and Subpart 8.7).

9.103 Policy.
(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only. A prospective contractor must affirmatively demonstrate its responsibility and may be required by the contracting officer to provide evidence of its subcontractor's responsibility.
(b) Determinations of responsibility or nonresponsibility are within the authority of the contracting officer, except those relating to small business concerns, in which case responsibility rests with the Small Business Administration, which is responsible for deciding whether or not to issue Certificates of Competency (see Subpart 19.6).
(c) If a procurement is being conducted under Section 8(a) of the Small Business Act, responsibility determinations shall be handled under Subpart 19.8.
(d) Any special standards of responsibility shall be set forth in the solicitation (and so identified) and shall apply to all offerors.
(e) Preaward survey information that contains proprietary and/or source selection information shall be marked with the appropriate legend and protected accordingly (see 3.104-4(j) and (k)).

Nonregulation remarks
While Government purchases should be made economically, you need not award based on lowest price if you find that offeror may not be able to perform satisfactorily. It may be more appropriate to award to the next low offer to avoid late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs.
When experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance, you may establish special standards of responsibility.

9.104 Standards.
To be determined responsible, a contractor must—
(a) Have adequate financial resources to perform the contract, or the ability to obtain them;
(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
(c) Have a satisfactory performance record;
(d) Have a satisfactory record of integrity and business ethics;
(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors).
(f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
(g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Appendix–Model FAR

Nonregulation remarks

Applying the standards

Ability to obtain resources. You may ask the contractor for acceptable evidence of ability to obtain required resources (see 9.104-1(a), (e), and (f)), unless you know it has sufficient resources or proposes to perform the contract by subcontracting. Acceptable evidence could consist of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel.

Satisfactory performance record. You may determine a contractor to be nonresponsible if it is or recently has been seriously deficient in contract performance, unless the circumstances were properly beyond the contractor's control, or the contractor has taken appropriate corrective action. You can view a contractor's past failure to apply sufficient tenacity and perseverance to perform acceptably as strong evidence of nonresponsibility. For example, failure to meet the quality requirements of the contract or noncompliance with subcontracting plans (if a plan is required under Subpart 19.7)

Affiliated concerns. Affiliated concerns (see "Affiliates" and "Concerns" in 19.101) are normally considered separate entities in determining contractor responsibility. However, an affiliate's past performance and integrity may be considered in determining the responsibility of the prime contractor.

Conducting preaward surveys

Obtaining information. To limit expenses of offerors, you may limit requests for information to only the low bidder or those offerors in range for award. However, in negotiated contracting, especially when research and development is involved, you may obtain this information before issuing the request for proposals.

Examples of some sources of information that may be useful in evaluating contractor responsibility include the list of Parties Excluded from Procurement Programs (see Subpart 9.4.), preaward survey reports and, if the contract is for construction, you may refer to performance evaluation reports (see 36.201(c)(2)).

Determinations. Unless a separate determination is prepared, the contracting officer's signing of a contract effectively constitutes a determination that the prospective contractor is responsible for that contract.

Conditions for preaward surveys. You should consider requesting a preaward survey when the information you have is not sufficient to make a determination regarding responsibility. However, if the contract is a low dollar value, a preaward survey may not be cost effective.

Requests for preaward surveys. (Preaward Survey of Prospective Contractor (General), SF 1403) may be used to request a preaward survey. Information useful to include in preaward survey requests:

- *Specify any additional factors about which information is needed;*
- *Include the complete solicitation package and any information indicating prior unsatisfactory performance by the contractor;*
- *State whether the contracting office will participate in the survey;*
- *Specify the date when the report is required. This date should be consistent with the scope of the survey requested and normally allow at least 7 working days;*
- *Any limiting of the scope of the survey.*

Surveys of nonprofit agencies serving people who are blind or have other severe disabilities. The Committee for Purchase from People Who Are Blind or Severely Disabled (Committee) determines the supplies and services agencies are required to purchase from nonprofit agencies serving people who are blind or have other severe disabilities and whether the nonprofit agency is responsible (see Subpart 8.7).

The Committee may request a contracting office's assistance in assessing the capabilities of a nonprofit agency The contracting officer then has the option of requesting a capability survey, or notifying the Committee that the nonprofit agency is capable, with supporting rationale, and that the survey is waived. Ordinarily the capability survey would focus only on the technical and production capabilities to furnish the supplies or services being considered for addition to the Procurement List.

SUBPART 9.2—QUALIFICATIONS REQUIREMENTS

9.200 Scope of subpart.

This subpart implements 10 U.S.C. 2319 and 41 U.S.C. 253c and prescribes policies regarding qualification requirements.

9.201 Definitions.

"Procuring activity," as used in this subpart, means "contracting activity" as defined in Subpart 2.1 unless otherwise specified in agency regulations.

"Qualification requirement" means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

"Qualified bidders list (QBL)" means a list of bidders who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product or have otherwise satisfied all applicable qualification requirements.

"Qualified manufacturers list (QML)" means a list of manufacturers who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product.

"Qualified products list (QPL)" means a list of products which have been examined, tested, and have satisfied all applicable qualification requirements.

Nonregulation remarks

Qualification and listing in a QPL, QML, or QBL is the process by which (a) products are obtained from manufacturers or distributors, examined and tested for compliance with specifications, or (b) manufacturers or potential offerors are provided an opportunity to demonstrate their abilities to meet the standards specified for qualification. The names of successful products, manufacturers, or potential offerors are included on lists evidencing their status. Generally, qualification is performed in advance and independently of any specific acquisition action. After qualification, the products, manufacturers, or potential offerors are included in a QPL, QML, or QBL.

Specifications and instructions. Specifications for qualified product are included in the Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR 101-29.1

and the Department of Defense Index of Sp
Standards. Instructions concerning qualificatio
included in Federal Standardization Handboo
Chapter IV and Defense Standardization M
Chapter IV, as amended by Military Standar
These documents may be obtained by followin
in the provisions at 52.210-1 and 52.210-2.

9.202 Establishment of a qualification

(a) Before establishing a qualification require
head shall prepare a written justification as to—
(1) The necessity for establishing the qualificati
(2) The reasons why the qualification requ
demonstrated before contract award;
(3) The likely costs for testing and evaluatio
incurred by an offeror to become qualified; and
(4) All requirements that an offeror (or its proc
in order to become qualified. Only those requir
the least restrictive to meet the purposes
establishment of the qualification requirements
(b) Upon request to the contracting activity,
shall be provided—
(1) All requirements that they or their product
become qualified; and
(2) At their expense (but see (c)(2) with
businesses), a prompt opportunity to demonstra
meet the standards specified for qualificatio
personnel and facilities of the agency concern
agency obtained through interagency agree
contract, or other methods approved by the agen
of commercial firms).
(c) If active competition on anticipated fut
requirements is likely to be fewer than two ma
products of two manufacturers, the agency shall
(1) Periodically publish notice in the Commerc
soliciting additional sources or products to s
unless the contracting officer determines that
would compromise national security.
(2) Bear the cost of conducting the testing and
small business concern or a product manufac
business concern which has met the standar
qualification and which could reasonably be exp
for a contract for that requirement. Costs
producing the item or establishing the pro
control, or other system to be tested and evalu
covered by the agency. The costs of testing an
be assumed only if the agency determines th
qualified sources or products will likely prod
from increased competition for future requirem
amortize the costs incurred by the agency wit
period of time, considering the duration and
anticipated future requirements. A prospe
requesting that the Government bear testing and
must certify as to its status as a small busines
Section 3 of the Small Business Act (15 U.S.C
receive further consideration.
(d) When justified under the circumstances, th
responsible for establishing a qualification r
submit to the competition advocate for the p
responsible for purchasing the item subject to
requirement, a determination that it is unreas

Appendix-Model FAR

and the Department of Defense Index of Specifications and Standards. Instructions concerning qualification procedures are included in Federal Standardization Handbook, FPMR 101-29, Chapter IV and Defense Standardization Manual 4120.3-M, Chapter IV, as amended by Military Standards 961 and 962. These documents may be obtained by following the procedures in the provisions at 52.210-1 and 52.210-2.

9.202 Establishment of a qualification requirement.
(a) Before establishing a qualification requirement, the agency head shall prepare a written justification as to—
(1) The necessity for establishing the qualification requirement;
(2) The reasons why the qualification requirement must be demonstrated before contract award;
(3) The likely costs for testing and evaluation which will be incurred by an offeror to become qualified; and
(4) All requirements that an offeror (or its product) must satisfy in order to become qualified. Only those requirements which are the least restrictive to meet the purposes necessitating the establishment of the qualification requirements shall be specified.
(b) Upon request to the contracting activity, potential offerors shall be provided—
(1) All requirements that they or their products must satisfy to become qualified; and
(2) At their expense (but see (c)(2) with regard to small businesses), a prompt opportunity to demonstrate their ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned, or of another agency obtained through interagency agreements or under contract, or other methods approved by the agency (including use of commercial firms).
(c) If active competition on anticipated future qualification requirements is likely to be fewer than two manufacturers or the products of two manufacturers, the agency shall—
(1) Periodically publish notice in the Commerce Business Daily soliciting additional sources or products to seek qualification unless the contracting officer determines that such publication would compromise national security.
(2) Bear the cost of conducting the testing and evaluation for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement. Costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated shall not be covered by the agency. The costs of testing and evaluation may be assumed only if the agency determines that the additional qualified sources or products will likely produce cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time, considering the duration and dollar value of anticipated future requirements. A prospective contractor requesting that the Government bear testing and evaluation costs must certify as to its status as a small business concern under Section 3 of the Small Business Act (15 U.S.C 632) in order to receive further consideration.
(d) When justified under the circumstances, the agency activity responsible for establishing a qualification requirement shall submit to the competition advocate for the procuring activity responsible for purchasing the item subject to the qualification requirement, a determination that it is unreasonable to specify the standards for qualification which a prospective offeror (or its product) must satisfy. After considering any comments of the competition advocate reviewing the determination, the head of the procuring activity may waive the requirements of 9.202(a) for up to 2 years for the item subject to the qualification requirement. The waiver authority provided in this paragraph does not apply with respect to qualification requirements contained in a QPL, QML, or QBL.
(e) The Certificate of Competency procedures in Subpart 19.6 are not applicable to a challenge by an offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

Nonregulation remarks
If a qualification requirement applies to an acquisition, you should consider reviewing the applicable QPL, QML, or QBL or other list of sources which have met the requirement, before issuing a solicitation, to determine the extent of competition. If the number of sources is inadequate, consider whether any sources are presently undergoing evaluation. If so, the solicitation could be rescheduled to allow additional sources to qualify or possibly, another means for testing or demonstrating quality assurance used.
If a product subject to a qualification requirement is to be acquired as a component of an end item, it is recommended that the contracting officer identify all such components and their qualification requirements in the solicitation since the product or source must meet the standards specified for qualification before award.

9.203 Testing and evaluation of additional offerors.
(a) If testing and evaluation services are provided by contract, the contractors selected to provide testing and evaluation services shall—
(1) Not be expected to benefit from an absence of additional qualified sources; and
(2) Be required by their contracts to adhere to any restriction on technical data asserted by the offeror seeking qualification.
(b) An offeror seeking qualification shall be promptly informed as to whether qualification is attained and, if not, the reasons why not.
(c) If a potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror (or its product) meets the standards established for qualification or can meet them before the date specified for award, a potential offeror may not be denied the opportunity to submit and have its offer considered.
(d) The contracting officer need not delay a proposed award in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification. In addition, when approved by the agency head, a procurement need not be delayed in order to comply with 9.202(a).

Nonregulation remarks
When an agency establishes a qualification requirement, it may be useful to urge manufacturers and other potential sources to demonstrate their ability to meet the qualification standards before award and send a CBD notice with the following information to Commerce at the address at 5.207(a)(2):

Appendix—Model FAR

- *Intent to establish a qualification requirement;*
- *The specification number and name of the product;*
- *The name and address of the activity to which a request for the information and opportunity described in 9.202(a)(2) should be submitted;*
- *The anticipated date that the agency will begin awarding contracts subject to the qualification requirement;*
- *A precautionary notice that when a product is submitted for qualification testing, the applicant must furnish any specific information that may be requested of the manufacturer before testing will begin;*
- *The approximate time period following submission for qualification testing by which the applicant will be notified whether the product passed or failed.*

9.204 Enforcement of qualification requirements.

(a) Agencies may not enforce any QPL, QML, or QBL without first complying with the requirements of 9.202(a).

(b) Whenever an agency elects, whether before or after award, not to enforce a qualification requirement which it established, the requirement may not thereafter be enforced unless the agency complies with 9.202(a). The only exception is when the agency head determines that an emergency exists.

(c) Within 7 years following enforcement of a QPL, QML, or QBL, the qualification requirement shall be examined and revalidated in accordance with the requirements of 9.202(a). Any periods for which a waiver under 9.202(b) is in effect shall be excluded in computing the 7 years within which review and revalidation must occur.

9.205 Changes in status regarding qualification requirements.

If an agency determines that a product or source no longer meets the standards specified for qualification, the agency may take appropriate action without advance notification. However, the agency shall promptly notify the affected parties if a product or source is removed from a QPL, QML, or QBL or will no longer be identified as meeting the standards specified for qualification and provide specific information why.

Nonregulation remarks

Circumstances may warrant removal or omission from a QPL, QML, or QBL or affect whether a source should continue to be identified as meeting the requirement. These conditions should be promptly reported to the agency activity which established the qualification requirement.

9.206 Contract clause.

The contracting officer shall insert the clause at 52.209-1X, Qualification Requirements, in solicitations and contracts when the acquisition is subject to a qualification requirement.

SUBPART 9.3—FIRST ARTICLE TESTING AND APPROVAL

9.301 Definitions.

"Approval," as used in this subpart, means the contracting officer's written notification to the contractor accepting the test results of the first article.

"First article," as used in this subpart, means preproduction models, initial production samples, test samples, first lots, pilot lots, and pilot models.

"First article testing" means testing and evaluating the first article for conformance with specified contract requirements before or in the initial stage of production.

9.302 Policy.

First article testing and approval (testing and approval) is appropriate when it is cost effective and in the interests of the Government.

Nonregulation remarks

Use of first article test requirements. Testing and approval ensures that the contractor can furnish a product that conforms to all contract requirements. In deciding whether to establish a testing and approval requirement, the contracting officer should consider factors such as the impact on cost or time of delivery; the risk to the Government of foregoing such a test; and the availability of other, less costly, methods of ensuring the desired quality.

Testing and approval may be appropriate when:

- *the contractor has not previously furnished the product to the Government;*
- *the product is described by a performance specification;*
- *it is essential to have an approved first article to serve as a manufacturing standard*
- *the contractor previously furnished the product to the Government, but there have been subsequent changes in processes or specifications; production has been discontinued for an extended period of time; or the product acquired under a previous contract did not function properly.*

Exceptions. Circumstances for which testing and approval is generally not needed include (a) research or development; (b) products requiring qualification before award (e.g., when an applicable qualified products list exists; (c) products normally sold in the commercial market; or (d) products covered by complete and detailed technical specifications, unless the requirements are novel or exacting.

Commencement of production. Generally, before first article approval, the acquisition of materials or components, or the commencement of production, is at the sole risk of the contractor. To minimize this risk, you may provide sufficient time in the delivery schedule for acquisition of materials and

components, and for production after receipt approval. When Government requirements pre you may, before approval of the first artic contractor to acquire specific materials or commence production to the extent necess delivery schedule (see nonregulation remarks un incurred based on this authorization are normall contract for (1) progress payments and settlements if the contract is terminated for th the Government.

9.303 Solicitation provision.

When a testing and approval requirement is use officer shall include in the solicitation a provisi testing and approval requirements that apply.

Nonregulatory remarks.

Writing a solicitation provision.

The following may be useful in formulatin provision for testing and approval-

- *Where the contractor is to be responsible for specify (1) the performance or other characte first article must meet; (2) the detailed techn for the tests that must be performed; and (3) data that must be submitted to the Governm article approval test report.*
- *Where the Government is to be responsible f specify the performance or other characteris article must meet and the tests to which the f be subjected;*
- *Permit the submission of alternative offers, testing and approval and the other without;*
- *Have a delivery schedule for the production q 12.104). The delivery schedule may (1) be th or not testing and approval is waived; or (2) earlier delivery when testing and approval is Government desires earlier delivery. In the la contracting officer should consider not using factor an; sulting difference in delivery sch nonregulation clause at 52-209-3X, First Art Government Testing, may be used for design delivery schedule for the first article.*
- *Provide for the submission of contract numb document the offeror's eligibility for a waive and approval requirement;*
- *State whether the approved first article will se manufacturing standard; and*
- *When the Government is responsible for first you may want to include the Government's e costs as a factor for use in evaluating offers.*
- *Inform offerors that prices for first articles and tests in relation to production quantities shou materially unbalanced (see 15.814) if first arti article tests are to be separately priced.*

components, and for production after receipt of first article approval. When Government requirements preclude this action, you may, before approval of the first article, authorize the contractor to acquire specific materials or components or commence production to the extent necessary to meet the delivery schedule (see nonregulation remarks under 9.304). Costs incurred based on this authorization are normally allocable to the contract for (1) progress payments and (2) termination settlements if the contract is terminated for the convenience of the Government.

9.303 Solicitation provision.

When a testing and approval requirement is used, the contracting officer shall include in the solicitation a provision specifying the testing and approval requirements that apply.

Nonregulatory remarks.

Writing a solicitation provision.

The following may be useful in formulating a solicitation provision for testing and approval-

- *Where the contractor is to be responsible for the testing, specify (1) the performance or other characteristics that the first article must meet; (2) the detailed technical requirements for the tests that must be performed; and (3) the necessary data that must be submitted to the Government in the first article approval test report.*
- *Where the Government is to be responsible for the testing, specify the performance or other characteristics that the first article must meet and the tests to which the first article will be subjected;*
- *Permit the submission of alternative offers, one including testing and approval and the other without;*
- *Have a delivery schedule for the production quantity (see 12.104). The delivery schedule may (1) be the same whether or not testing and approval is waived; or (2) provide for earlier delivery when testing and approval is waived and the Government desires earlier delivery. In the latter case, the contracting officer should consider not using as an evaluation factor any resulting difference in delivery schedules. The nonregulation clause at 52-209-3X, First Article Approval-Government Testing, may be used for designating the delivery schedule for the first article.*
- *Provide for the submission of contract numbers, if any, to document the offeror's eligibility for a waiver of the testing and approval requirement;*
- *State whether the approved first article will serve as a manufacturing standard; and*
- *When the Government is responsible for first article testing, you may want to include the Government's estimated testing costs as a factor for use in evaluating offers.*
- *Inform offerors that prices for first articles and first article tests in relation to production quantities should not be materially unbalanced (see 15.814) if first article or first article tests are to be separately priced.*

9.304 Contract clauses.

Any testing and approval requirement shall be included in the solicitation and resultant contract.

Nonregulation remarks.

Sample clauses

Contractor Testing. You may use the nonregulation clause at 52.209-2X, First Article Approval—Contractor Testing, to satisfy the requirements of 9.304 when the contract requires first article approval and the contractor is responsible for first article testing. If the contractor is required to produce the first article and the production quantity at the same facility, you may use the clause at 52.209-2X with its Alternate I. If the contractor will be authorized to purchase material or begin production before first article approval, you may use the clause at 52.209-2X with its Alternate II. The clause at 52.209-2X may need to be modified when a cost-reimbursement contract is contemplated.

Government Testing. You may use the clause at 52.209-3X to satisfy the requirements of 9.304 when the contract requires first article approval and the Government is responsible for first article testing. If the contractor is required to produce the first article and the production quantity at the same facility, you may use the nonregulation clause at 52.209-3X with its Alternate I. If the contractor will be authorized to purchase material or commence production before first article approval, you may use the clause at 52.209-3X with its Alternate II. The clause at 52.209-3X may need to be modified when a cost-reimbursement contract is contemplated.

SUBPART 9.4—DEBARMENT, SUSPENSION, AND INELIGIBILITY

9.400 Scope of subpart.

(a) This subpart—

(1) Prescribes policies and procedures governing the debarment and suspension of contractors by agencies for the causes given in 9.406-2 and 9.407-2;

(2) Provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of "ineligible" in 9.403); and

(3) Sets forth the consequences of this listing.

(b) This subpart does not apply to the exclusion of participants or principals from Federal financial or nonfinancial assistance programs and benefits pursuant to Executive Order 12549.

Nonregulation remarks

Subpart 9.4 does not prescribe policies or procedures governing declarations of ineligibility.

Subpart 9.4 does not cover exclusions from financial or nonfinancial assistance. These exclusions are contained within the list entitled Parties Excluded from Nonprocurement Programs (see 9.402)

9.401 Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in

Appendix–Model FAR

accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures set forth in this subpart.

(c) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

9.402 Definitions.

"Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

"Affiliates." Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

"Agency," as used in this subpart, means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

"Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.

"Contractor," as used in this subpart, means any individual or other legal entity that—

(a) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

"Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

"Debarment," as used in this subpart, means action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor so excluded is "debarred."

"Debarring official" means an agency head or designee authorized to impose debarment.

"Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

"Ineligible," as used in this subpart, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act, the Service Contract Act, and the Buy American Act.

"Legal proceedings" means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

"Parties Excluded from Procurement Programs," means a list compiled, maintained, and distributed by the General Services Administration, in accordance with 9.404, containing the names of contractors debarred, suspended, or proposed for debarment by agencies under the procedures of this subpart, as well as contractors declared ineligible under other statutory or regulatory authority other than Executive Order 12549. The list of Parties Excluded from Procurement Programs is contained within the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

"Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

"Suspending official" means an agency head or designee authorized to impose suspension.

"Suspension," as used in this subpart, means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is "suspended."

"Unfair trade practices," as used in this subpart, mians the commission of any or the following acts by a contractor:

(1) A violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposed of the Export Administration Act of 1979 (50 U.S.C. App. 24 2401 *et seq.*) or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the ageny to which such certificate was furnished.

9.403 Parties Excluded from Procurement Programs.

(a) The General Services Administration (GSA) shall compile and maintain a current, consolidated list of all contractors debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office.

(b) Each agency shall notify GSA—

(1) Of the following information within 5 working days after the action becomes effective:

(i) The agency or organization taking the action;

(ii) The cause for the action (see 9.405-2 and 9.403-2 for causes) or other statutory or regulatory authority;

(iii) The effect of the action;

(iv) The termination date for each listing;

(v) The DUNS No.; and

(vi) The name and telephone number of the point of contact for the action.

(2) Within 5 working days after modifying or rescinding an action.

Nonregulation remarks

The List of Parties Excluded from Procurement Programs i distributed to agencies and the General Accounting Office. Th list contains the name and telephone number of the offici

responsible for its maintenance and distrib information provided for by 9.403. Informat available as follows:

- *The printed version is published monthly obtained by purchasing a yearly subscripti*
- *The electronic version is updated daily and to the names of firms and individuals on t*

9.404 Effect of listing.

(a) Contractors debarred, suspended, or propos are excluded from receiving contracts, and a solicit offers from, award contracts to, or conse with these contractors, unless the acquirin determines that there is a compelling reason fo 9.404-2, 9.405-1(c), 9.406-1(d), and 23.506 debarred, suspended or proposed for debarment from conducting business with the Governm representatives of other contractors.

(b) Contractors included on the Parties Procurement Programs as having been declared basis of statutory or other regulatory procedu from receiving contracts, and if applicable, su the conditions and for the period set forth regulation. Agencies shall not solicit offe contracts to, or consent to subcontracts with under those conditions and for that period.

(c) Contractors debarred, suspended, or propos are excluded from acting as individual sureties (s

9.404-1 Continuation of current contr

(a) Contracts awarded to a contractor prior t suspension, or proposed debarment are unaf continue in effect unless the acquiring agenc otherwise.

(b)Agencies shall not renew or otherwise exten current contracts, or consent to subcontracts, debarred, suspended, or proposed for debarr acquiring agency's head states in writing the co for renewal or extension.

Nonregulation remarks

Before you take any action to debar a contra consult with agency contracting and technical pe counsel to ensure that it is proper and in the Government.

9.404-2 Restrictions on subcontracting

(a) When a contractor debarred, suspended, debarment is proposed as a subcontractor for subject to Government consent (see Subpart 4 officers shall not consent to subcontracts with unless the acquiring agency's head states compelling reasons for this approval action concerning declarations of ineligibility affecting

(b) The Government suspends or debars contr the Government's interests. Contractors shall n subcontract equal to or in excess of the small pu at 13.000 with a contractor that has been debarre proposed for debarment unless there is a compel so. If a contractor intends to subcontract wit debarred, suspended, or proposed for debarment

responsible for its maintenance and distribution as well as information provided for by 9.403. Information on the list is available as follows:

- *The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription.*
- *The electronic version is updated daily and provides access to the names of firms and individuals on the list.*

9.404 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the acquiring agency's head determines that there is a compelling reason for such action (see 9.404-2, 9.405-1(c), 9.406-1(d), and 23.506(e)). Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) Contractors included on the Parties Excluded from Procurement Programs as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties (see Part 28).

9.404-1 Continuation of current contracts.

(a) Contracts awarded to a contractor prior to its debarment, suspension, or proposed debarment are unaffected and may continue in effect unless the acquiring agency's head directs otherwise.

(b)Agencies shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the acquiring agency's head states in writing the compelling reasons for renewal or extension.

Nonregulation remarks

Before you take any action to debar a contractor, you should consult with agency contracting and technical personnel and legal counsel to ensure that it is proper and in the interests of the Government.

9.404-2 Restrictions on subcontracting.

(a) When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent (see Subpart 44.2), contracting officers shall not consent to subcontracts with such contractors unless the acquiring agency's head states in writing the compelling reasons for this approval action. (See 9.404(b) concerning declarations of ineligibility affecting subcontracting.)

(b) The Government suspends or debars contractors to protect the Government's interests. Contractors shall not enter into any subcontract equal to or in excess of the small purchase limitation at 13.000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclusion on the list of Parties Excluded from Procurement Programs (see 9.403), a corporate officer or designee of the contractor is required by operation of the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. The notice must provide the following:

(1) The name of the subcontractor;

(2) The contractor's knowledge of the reasons for the subcontractor being on the list of Parties Excluded from Procurement Programs;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the list of Parties Excluded from Procurement Programs; and

(4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcon-tractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

9.405 Debarment.

9.405-1 General.

(a) If a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

(b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor if they are specifically named and given written notice of the proposed debarment and an opportunity to respond (see 9.405-3(b)).

(c) A contractor's debarment, or proposed debarment, shall be effective throughout the executive branch of the Government, unless an acquiring agency's head (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d) It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in 9.405-2, using the procedures in 9.405-3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so,

made the result of the investigation available to the debarring official.
(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.
(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.
(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.
(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.
(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.
(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.
The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this paragraph (d) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

Nonregulation remarks
FAR and FPMR debarments.
When you have authority to debar contractors from contracts under the FAR and contracts for the purchase of Federal personal property pursuant to the Federal Property Management Regulations (FPMR) 101-45.6, you should consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property. When debarring a contractor from both, the debarment notice should so indicate and it should include the appropriate FAR and FPMR citations.

9.405-2 Causes for debarment.
The debarring official may debar a contractor for any of the causes listed in paragraphs (a) through (c) following:
(a) The debarring official may debar a contractor for a conviction of or civil judgment for—
(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
(2) Violation of Federal or State antitrust statutes relating to the submission of offers;
(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
(4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558)); or
(5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.
(b) The debarring official may debar a contractor, based upon a preponderance of the evidence, for—
(1) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—
(i) Willful failure to perform in accordance with the terms of one or more contracts; or
(ii) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.
(2) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by—
(i) The offeror's submission of a false certification;
(ii) The contractor's failure to comply with its certification; or
(iii) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).
(3) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558)).
(4) Commission of an unfair trade practice as defined in Section 9.403 (see section 201 of the Defense Production Act (Pub. L. 102-558)).
(c) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.405-3 Procedures.
(a) *Decisionmaking process.* (1) Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.
(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—
(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and
(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.
(b) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—
(1) That debarment is being considered;

(2) Of the reasons for the proposed debarment in
to put the contractor on notice of the conduct o
upon which it is based;
(3) Of the cause(s) relied upon under 9.405-2
debarment;
(4) That, within 30 days after receipt of the notice
may submit, in person, in writing, or through a
information and argument in opposition to
debarment, including any additional specific in
raises a genuine dispute over the material facts;
(5) Of the agency's procedures governi
decisionmaking;
(6) Of the effect of the issuance of the notic
debarment; and
(7) Of the potential effect of an actual debarment.
(c) *Debarring official's decision.* (1) In action
conviction or civil judgment, or in which there
dispute over material facts, the debarring offici
decision on the basis of all the information in the
record, including any submission made by the c
suspension is in effect, the decision shall be m
working days after receipt of any information
submitted by the contractor, unless the debarring
this period for good cause.
(2)(i) In actions in which additional proceedings a
to disputed material facts, written findings of
prepared. The debarring official shall base the
facts as found, together with any information
submitted by the contractor and any other info
administrative record.
(ii) The debarring official may reject any findings
material facts, in whole or in part, only aft
determining them to be arbitrary and capricio
erroneous.
(iii) The debarring official's decision shall be
conclusion of the proceedings with respect to disp
(3) In any action in which the proposed debarme
upon a conviction or civil judgment, the cause
must be established by a preponderance of the evid
(d) *Notice of debarring official's decision.* (1) I
official decides to impose debarment, the conte
affiliates involved shall be given prompt notice by
return receipt requested—
(i) Referring to the notice of proposed debarment;
(ii) Specifying the reasons for debarment;
(iii) Stating the period of debarment, including e
and
(iv) Advising that the debarment is effective t
Executive Branch of the Government unless the ac
head makes the statement called for by 9.405-1(c).
(2) If debarment is not imposed, the debarring
promptly notify the contractor and any affiliate
certified mail, return receipt requested.

Appendix—Model FAR

(2) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;
(3) Of the cause(s) relied upon under 9.405-2 for proposing debarment;
(4) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
(5) Of the agency's procedures governing debarment decisionmaking;
(6) Of the effect of the issuance of the notice of proposed debarment; and
(7) Of the potential effect of an actual debarment.
(c) *Debarring official's decision.* (1) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.
(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.
(ii) The debarring official may reject any findings as to disputed material facts, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.
(iii) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.
(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.
(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested—
(i) Referring to the notice of proposed debarment;
(ii) Specifying the reasons for debarment;
(iii) Stating the period of debarment, including effective dates; and
(iv) Advising that the debarment is effective throughout the Executive Branch of the Government unless the acquiring agency head makes the statement called for by 9.405-1(c).
(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

Nonregulation remarks
The debarring official may refer issues of disputed material facts to another official to make findings of fact.

9.405-4 Period of debarment.
(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. Generally, a debarment should not exceed 3 years, except that debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see 23.506) may be for a period not to exceed 5 years.
(b) The debarring official may extend a debarment for an additional period, if necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of 9.405-3 apply to the extension of the debarment.
(c) The debarring official may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as newly discovered material evidence or reversal of the conviction or civil judgment upon which the debarment was based.

9.405-5 Scope of debarment.
(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.
(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

9.406 Suspension.

9.406-1 General.
(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3.

(b)(1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest.
(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in the nonregulation guidance under 9.405-1. A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.
(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see 9.406-3(c)).
(d) A contractor's suspension shall be effective throughout the Executive Branch of the Government, unless an acquiring agency's head (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

Nonregulation remarks.
In assessing the adequacy of the evidence, you should consider how much information is available, how credible it is, whether important allegations are corroborated, and what inferences can reasonably be drawn as a result.
FAR and FPMR suspensions. When you have the authority to suspend contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to FPMR 101-45.6, you should consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property. When suspending a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the suspension notice should so indicate and the appropriate FAR and FPMR citations be included.

9.406-2 Causes for suspension.
(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of any of the causes listed at 9.405-2(a)(1), (2), (3), (4), (5) and (b)(2) and (4). Indictment for any of those causes constitutes adequate evidence for suspension.
(b) The suspending official may, upon adequate evidence, also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.406-3 Procedures.
(a) *Decisionmaking process.* (1) Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.
(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, agencies shall also—
(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and
(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.
(b) *Notice of suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by certified mail, return receipt requested—
(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities (i) of a serious nature in business dealings with the Government or (ii) seriously reflecting on the propriety of further Government dealings with the contractor. Any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;
(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;
(3) Of the cause(s) relied upon under 9.406-2 for imposing suspension;
(4) Of the effect of the suspension;
(5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and
(6) That additional proceedings to determine disputed material facts will be conducted unless (i) the action is based on an indictment or (ii) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.
(c) *Suspending official's decision.* (1) In actions (i) based on an indictment, (ii) in which the contractor's submission does not raise a genuine dispute over material facts, or (iii) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the

suspending official's decision shall be ba
information in the administrative record,
submission made by the contractor.
(2)(i) In actions in which additional proceedings
to disputed material facts, written findings
prepared. The suspending official shall base the
facts as found, together with any information
submitted by the contractor and any other in
administrative record.
(ii) The suspending official may reject any
disputed material facts, in whole or in p
specifically determining them to be arbitrary a
clearly erroneous.
(iii) The suspending official's decision shall b
conclusion of the proceedings with respect to dis
(3) The suspending official may modify o
suspension or leave it in force (see accompan
However, a decision to modify or terminate the
be without prejudice to the subsequent in
suspension by any other agency or (ii) debarmen
(4) Prompt written notice of the suspending of
shall be sent to the contractor and any affilia
certified mail, return receipt requested.

Nonregulation remarks
The suspending official may refer issues of d
facts to another official for findings of fact.

9.406-4 Period of suspension.
(a) Suspension shall be for a temporary per
completion of investigation and any ensuing le
unless sooner terminated by the suspending
provided in this subsection.
(b) If legal proceedings are not initiated within
the date of the suspension notice, the susp
terminated unless an Assistant Attorney Gen
extension, in which case it may be extended fo
months. In no event may a suspension ext
months, unless legal proceedings have been init
period.
(c) The suspending official shall notify the Depa
of the proposed termination of the suspension,
before the 12-month period expires, to give tha
opportunity to request an extension.

9.406-5 Scope of suspension.
The scope of suspension shall be the same as th
(see 9.405-5), except that the procedures of 9.40
in imposing suspension.

9.407. Responsibility Information from
The contracting officer shall obtain from offeror
to whether the offeror and/or its principal
responsible.

suspending official's decision shall be based on all the information in the administrative record, including any submission made by the contractor.
(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.
(ii) The suspending official may reject any findings as to disputed material facts, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.
(iii) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.
(3) The suspending official may modify or terminate the suspension or leave it in force (see accompanying guidance). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of (i) suspension by any other agency or (ii) debarment by any agency.
(4) Prompt written notice of the suspending official's decision shall be sent to the contractor and any affiliates involved, by certified mail, return receipt requested.

Nonregulation remarks
The suspending official may refer issues of disputed material facts to another official for findings of fact.

9.406-4 Period of suspension.
(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as provided in this subsection.
(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.
(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

9.406-5 Scope of suspension.
The scope of suspension shall be the same as that for debarment (see 9.405-5), except that the procedures of 9.406-3 shall be used in imposing suspension.

9.407. Responsibility Information from offerors.
The contracting officer shall obtain from offerors information as to whether the offeror and/or its principals are currently responsible.

9.408 Contract clause
The contracting officer shall insert the clause at 52.209-4X, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract exceeds $25,000.

Nonregulation remarks
Sample solicitation provision. The provision at 52.209-5X, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, may be used to satisfy the requirement at 9.407.
Treatment of information. When an offeror indicates an indictment, charge, civil judgment, conviction, suspension, debarment, proposed debarment, ineligibility, or default of a contract, you should consider—
- *Requesting such additional information from the offeror as the contracting officer deems necessary in order to make a determination of the offeror's responsibility (but see 9.404); and*
- *Notifying the agency official responsible for initiating debarment or suspension action prior to award.*

Failure to furnish the certification or the requested information may render the offeror nonresponsible. However, you should consider giving offerors who do not furnish the certification, or other requested information, an opportunity to provide it.

SUBPART 9.5—ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

9.500 Scope of subpart.
This subpart—
(a) Prescribes general rules for identifying, evaluating, and resolving organizational conflicts of interest;
(b) Implements section 8141 of the 1989 Department of Defense Appropriation Act, Pub. L. 100-463, 102 Stat. 2270-47 (1988) and Office of Federal Procurement Policy (OFPP) Letter 89-1, Conflict of Interest Policies Applicable to Consultants.

9.501 Definitions.
"Marketing consultant" means any independent contractor who furnishes advice, information, direction, or assistance to an offeror or any other contractor in support of the preparation or submission of an offer for a Government contract by that offeror. An independent contractor is not a marketing consultant when rendering—
(a) Services excluded in Subpart 37.2;
(b) Routine engineering and technical services (such as installation, operation, or maintenance of systems, equipment, software, components, or facilities);
(c) Routine legal, actuarial, auditing, and accounting services; and
(d) Training services.
"Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable

or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

9.502 Applicability.

(a) This subpart applies to contracts with either profit or nonprofit organizations, including nonprofit organizations created largely or wholly with Government funds.

(b) This subpart does not apply to acquisitions subject to unique agency organizational conflict of interest statutes.

Nonregulation remarks

Do advance work before releasing solicitations. You are more likely to find organizational conflicts of interest (OCI) in contracts for: management support services; consultant or other professional services; contractor performance of or assistance in technical evaluations; or systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production. When you think an OCI may be present or that a solicitation may be particularly susceptible to one, you should analyze the planned acquisition in order to identify and evaluate potential OCIs so as to eliminate or reduce as many as possible before award.

The award decision may be affected by an organizational conflict of interest. You should ordinarily avoid awarding a contract where an OCI is present. However, award may be made if a conflict cannot be removed or reduced, when it is in the Government's best interest and a request for waiver has been approved in accordance with 9.504. If you determine that an otherwise successful offeror should not receive an award because of an OCI, you should inform that offeror of your likely action and provide an opportunity for the offeror to react. The offeror may be able to remove the conflict.

9.503 General rules.

The general rules in 9.503-1 through 9.503-4 prescribe limitations on contracting as the means of avoiding, neutralizing, or mitigating organizational conflicts of interest that might otherwise exist. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are—

(a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and

(b) Preventing unfair competitive advantage. An unfair competitive advantage exists where a contractor competing for award of any Federal contract possesses—

(1) Proprietary information (as defined in 3.104-4(j)) that was obtained from a Government official without proper authorization; or

(2) Source selection information (as defined in 3.104-4(k)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

Nonregulation remarks

General Approach for handling organizational conflicts of interest.

Information. If information concerning prospective contractors is necessary to identify and evaluate potential OCIs or to develop recommended actions, and no OCI certificates have been filed, you should should consider seeking the information from within the Government or from other readily available sources. Government sources include the files and the knowledge of personnel within the contracting office, other contracting offices, the cognizant contract administration and audit activities and offices concerned with contract financing. Non-Government sources include publications and commercial services, such as credit rating services, trade and financial journals, and business directories and registers.

Analysis. If the you decide there is a significant potential organizational conflict of interest, before issuing the solicitation, you should prepare—

- *A written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict, based on the general rules in 9.503 or on another basis;*
- *A draft solicitation provision (see the sample solicitation provision at 9.505-1); and*
- *If appropriate, a proposed contract clause (see 9.505).*

Contract action. After a determination is made on an approach for handling the OCI, you should —

- *Include the provision(s) and any clause(s) in the solicitation or the contract, or both;*
- *Consider additional information provided by contractors in response to the solicitation or during negotiations;*
- *Before awarding the contract, resolve the conflict or the potential conflict in a manner consistent with any agency direction; and*
- *Retain all certificates submitted.*

Administration. If, during the effective period of any restriction, a contracting office transfers acquisition responsibility for the item or system involved, it is suggested that the successor contracting office be notified of the restriction.

Examples of Conflict of Interest Situations.

The following illustrate situations in which questions concerning OGI may arise. They are not all inclusive, but are intended to help you apply the general rules in 9.503 to individual contract situations.

- *Company A agrees to provide systems engineering and technical direction for the Navy on the power plant for a group of submarines (i.e., turbines, drive shafts, propellers, etc.). Company A should not be allowed to supply any power plant components. Company A can, however, supply components of the submarine unrelated to the power plant (e.g., fire control, navigation, etc.). In this example, the*

system is the power plant, not the submarine
supplying components is limited to those fo
only.

- *Company A is the systems engineering and t*
direction contractor for system X. After some
before completion, the system is canceled. L
developed to achieve the same purposes as s
fundamentally different fashion. Company B
engineering and technical direction contracto
Company A may supply system Y or its con
- *Company A develops new electronic equipme*
result of this development, prepares specific
A may supply the equipment.
- *XYZ Tool Company and PQR Machinery C*
representing the American Tool Institute, wo
Government supervision and control to refine
or to clarify the requirements of a specific ac
companies may supply the item.
- *Before an ADP equipment acquisition is cond*
A is awarded a contract to prepare data systen
and equipment performance criteria to be use
the equipment competition. Since the specific
basis for selection of commercial hardware, a
conflict of interest exists. Company A should
from the initial follow-on ADP hardware acq
- *Company A receives a contract to define the a*
performance characteristics an agency will req
purchasing rocket fuels. Company A has not
particular fuels. When the definition contract
clear to both parties that the agency will use
characteristics arrived at to choose competiti
to develop or produce the fuels. Company A
awarded this follow-on contract.
- *Company A receives a contract to prepare a d*
scientific and technical training of an agency'
suggests a curriculum that the agency endorse
incorporates in its request for proposals to in
establish and conduct the training. Company
awarded a contract to conduct the training.
- *Company A is selected to study the use of las*
communications. The agency intends to ask
research in the field make proprietary informa
Company A. The contract must require Comp
enter into agreements with these firms to prot
proprietary information they provide and (2) r
using the information in supplying lasers to
or for any purpose other than that for which it
- *An agency that regulates an industry wishes t*
system for evaluating and processing license a
Contractor X helps develop the system and pr
applications. Contractor X should be prohibit
as a consultant to any of the applicants during
performance and for a reasonable period thereaf

Appendix–Model FAR

system is the power plant, not the submarine, and the ban on supplying components is limited to those for the system only.

- *Company A is the systems engineering and technical direction contractor for system X. After some progress, but before completion, the system is canceled. Later, system Y is developed to achieve the same purposes as system X, but in a fundamentally different fashion. Company B is the systems engineering and technical direction contractor for system Y. Company A may supply system Y or its components.*
- *Company A develops new electronic equipment and, as a result of this development, prepares specifications. Company A may supply the equipment.*
- *XYZ Tool Company and PQR Machinery Company, representing the American Tool Institute, work under Government supervision and control to refine specifications or to clarify the requirements of a specific acquisition. These companies may supply the item.*
- *Before an ADP equipment acquisition is conducted, Company A is awarded a contract to prepare data system specifications and equipment performance criteria to be used as the basis for the equipment competition. Since the specifications are the basis for selection of commercial hardware, a potential conflict of interest exists. Company A should be excluded from the initial follow-on ADP hardware acquisition.*
- *Company A receives a contract to define the detailed performance characteristics an agency will require for purchasing rocket fuels. Company A has not developed the particular fuels. When the definition contract is awarded, it is clear to both parties that the agency will use the performance characteristics arrived at to choose competitively a contractor to develop or produce the fuels. Company A may not be awarded this follow-on contract.*
- *Company A receives a contract to prepare a detailed plan for scientific and technical training of an agency's personnel. It suggests a curriculum that the agency endorses and incorporates in its request for proposals to institutions to establish and conduct the training. Company A may not be awarded a contract to conduct the training.*
- *Company A is selected to study the use of lasers in communications. The agency intends to ask that firms doing research in the field make proprietary information available to Company A. The contract must require Company A to (1) enter into agreements with these firms to protect any proprietary information they provide and (2) refrain from using the information in supplying lasers to the Government or for any purpose other than that for which it was intended.*
- *An agency that regulates an industry wishes to develop a system for evaluating and processing license applications. Contractor X helps develop the system and process the applications. Contractor X should be prohibited from acting as a consultant to any of the applicants during its period of performance and for a reasonable period thereafter.*

9.503-1 Providing systems engineering and technical direction.

(a) A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production shall not (1) be awarded a contract to supply the system or any of its major components or (2) be a subcontractor or consultant to a supplier of the system or any of its major components.

(b) Systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore this contractor should not be in a position to make decisions favoring its own products or capabilities.

9.503-2 Preparing specifications or work statements.

(a) If a contractor prepares and furnishes complete specifications covering nondevelopmental items, to be used in a competitive acquisition, that contractor shall not be allowed to furnish these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial production contract. This rule shall not apply to—

(1) Contractors that furnish at Government request specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; or

(2) Situations in which contractors, acting as industry representatives, help Government agencies prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.

(b) If a contractor prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or service—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services unless—

(1) It is the sole source;

(2) It has participated in the development and design work; or

(3) More than one contractor has been involved in preparing the work statement.

Nonregulation remarks

Agreement not to compete. If you plan to issue a solicitation for development of complete specifications for nondevelopment

equipment, you should consider including a clause in the solicitations that will eliminate the winner from competing for the follow-on production contracts for a reasonable time. This precaution avoids creating a situation in which the contractor drafts specifications favoring its own products or capabilities. This helps the Government get unbiased advice on the specifications and avoids allegations of favoritism in the award of production contracts.

Development contracts. In development work, where the contractor will design or produce an item, it is normal to select firms that have done the most advanced work in the field. These firms can be expected to design and develop around their own prior knowledge. Development contractors can frequently start production earlier and perform better than firms that did not participate in the development. In many instances the Government may have financed the development. Thus, while the development contractor has a competitive advantage, it is often an unavoidable one that is not considered unfair; therefore generally no prohibition on future production work would be warranted.

9.503-3 Providing technical evaluation or advisory and assistance services.

Contracts for technical evaluations of other contractors' offers or products or for advisory and assistance services (see 37.201) shall not generally be awarded to a contractor that would evaluate, or advise the Government concerning, its own products or activities, or those of a competitor, without proper safeguards to ensure objectivity and protect the Government's interests. In this connection, consult OFPP Policy Letter 89-1, Conflict of Interest Policies Applicable to Consultants, and implementing agency regulations.

9.503-4 Obtaining access to proprietary information.

(a) When a contractor requires proprietary information from others to perform a Government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. They are not intended to protect information furnished voluntarily without limitations on its use or available to the Government or contractor from other sources without restriction.

(b) A contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government must agree with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished. The contracting officer shall obtain copies of these agreements and ensure that they are properly executed.

(c) Contractors also obtain proprietary and source selection information by acquiring the services of marketing consultants which, if used in connection with an acquisition, may give the contractor an unfair competitive advantage. Contractors should make inquiries of marketing consultants to ensure that the marketing consultant has provided no unfair competitive advantage. See the certification required for contractors and marketing consultants in the provision at 52.209-6X.

9.504 Waiver.

The Head of the Contracting Activity may waive any general rule or procedure in this subpart by determining that its application in a particular situation would not be in the Government's interest.

9.505 Solicitation provisions and contract clauses.

9.505-1 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.209-6X, Organizational Conflicts of Interest Certificate—Marketing Consultants, in solicitations, other than sealed bids, if the contract amount is expected to exceed $200,000.

(b) The contracting officer shall insert the provision at 52.209-7X, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract amount is expected to exceed $25,000.

(c) The contracting officer shall include an organizational conflict of interest provision in solicitations when an orgaonizational conflict of interest is present or when one is likely. The provision should: Refer offerors' to subpart 9.5;State the nature of the potential conflict as seen by the contracting officer;State the nature of the proposed restraint upon future contractor activities; and Depending on the nature of the acquisition, state whether or not the terms of any proposed clause and the application of subpart 9.5 to the contract are subject to negotiation.

Nonregulation remarks

Exclusions. The provisions required by 9.505-1 (a) and (b) are not appropriate for use in solicitations for—

- *Services excluded in section 37.204;*
- *Routine engineering and technical services (such as installation, operation or maintenance of systems, equipment, software components, or facilities);*
- *Routine legal, actuarial, auditing and accounting services;*
- *Training services; and*
- *Services rendered in connection with intelligence activities defined in section 3.4(e) of Executive Order 12333 or a comparable definitional section in any successor order, or in connection with special access programs.*

9.505-2 Contract clause.

If, as a condition of award, the contractor's eligibility for future prime contract or subcontract awards will be restricted or the contractor must agree to some other restraint, the solicitation shall contain a clause that specifies the nature and duration of the proposed restraint. The clause shall be included in the contract, after negotiating the clause's final terms with the successful offeror, if appropriate.

Nonregulation remarks

Clause limitations. You should generally lim imposed by a clause to a reasonable period, s the circumstance of unfair competitive advan bias. This period varies. It might end, for ex first production contract using the contractor's work statement is awarded, or it might extend t life of a system for which the contractor has pe engineering and technical direction. The re specify termination by a specific date or upon t an identifiable event.

SUBPART 9.6—CONTRACTOR T ARRANGEMENTS

9.601 Definition.

"Contractor team arrangement" means an which—

(a) Two or more companies form a partnership to act as a potential prime contractor; or

(b) A potential prime contractor agrees with or companies to have them act as its subcont specified Government contract or acquisition pro

9.603 Policy.

The Government will recognize the integrity contractor team arrangements; *provided,* the a identified and company relationships are fully offer or, for arrangements entered into after s offer, before the arrangement becomes effective.

9.604 Limitations.

Nothing in this subpart authorizes contractor tea in violation of antitrust statutes or limits the rights to—

(a) Require consent to subcontracts (see Subpart

(b) Determine, on the basis of the stated c arrangement, the responsibility of the prime Subpart 9.1);

(c) Provide to the prime contractor data ri controlled by the Government;

(d) Pursue its policies on competitive subcontracting, and component breakout after in or at any other time; and

(e) Hold the prime contractor fully responsib performance, regardless of any team arrangeme prime contractor and its subcontractors.

Nonregulation remarks

Contractor team arrangements may be desirab Government and industry standpoint by enabling involved to complement each other's unique c offer the Government the best combination of per and delivery for the system or product being acqui

Nonregulation remarks

Clause limitations. You should generally limit the restraint imposed by a clause to a reasonable period, sufficient to avoid the circumstance of unfair competitive advantage or potential bias. This period varies. It might end, for example, when the first production contract using the contractor's specifications or work statement is awarded, or it might extend through the entire life of a system for which the contractor has performed systems engineering and technical direction. The restriction should specify termination by a specific date or upon the occurrence of an identifiable event.

SUBPART 9.6—CONTRACTOR TEAM ARRANGEMENTS

9.601 Definition.

"Contractor team arrangement" means an arrangement in which—

(a) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or

(b) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

9.603 Policy.

The Government will recognize the integrity and validity of contractor team arrangements; *provided,* the arrangements are identified and company relationships are fully disclosed in an offer or, for arrangements entered into after submission of an offer, before the arrangement becomes effective.

9.604 Limitations.

Nothing in this subpart authorizes contractor team arrangements in violation of antitrust statutes or limits the Government's rights to—

(a) Require consent to subcontracts (see Subpart 44.2);

(b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor (see Subpart 9.1);

(c) Provide to the prime contractor data rights owned or controlled by the Government;

(d) Pursue its policies on competitive contracting, subcontracting, and component breakout after initial production or at any other time; and

(e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

Nonregulation remarks

Contractor team arrangements may be desirable from both a Government and industry standpoint by enabling the companies involved to complement each other's unique capabilities and offer the Government the best combination of performance, cost, and delivery for the system or product being acquired. Contractor team arrangements may be particularly appropriate in complex research and development acquisitions.

SUBPART 9.7—DEFENSE PRODUCTION AND RESEARCH AND DEVELOPMENT POOLS

9.701 Definition.

"Pool," as used in this subpart, means a group of concerns (see 19.001) that have—

(a) Associated together in order to obtain and perform, jointly or in conjunction with each other, defense production or research and development contracts;

(b) Entered into an agreement governing their organization, relationship, and procedures; and

(c) Obtained approval of the agreement by either—

(1) The Small Business Administration (SBA) under section 9 or 11 of the Small Business Act (15 U.S.C. 638 or 640) (see 13 CFR 125); or

(2) A designated official under Part V of Executive Order 10480, August 14, 1953 (18 FR 4939, August 20, 1953) and section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

9.702 Contracting with pools.

(a) Except as specified in this subpart, a pool shall be treated the same as any other prospective or actual contractor.

(b) The contracting officer shall not award a contract to a pool unless the offer is submitted by the pool in its own name or by an individual pool member expressly stating that the offer is on behalf of the pool.

(c) Contracts with pools are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healey Public Contracts Act (see Subparts 9.1 and 22.6 and 41 CFR 50-201.604(d)).

(d) Pools approved by the SBA under the Small Business Act are entitled to the preferences and privileges accorded to small business concerns. Approval under the Defense Production Act does not confer these preferences and privileges.

(e) Pool members may submit individual offers, independent of the pool. However, the contracting officer shall not consider an independent offer by a pool member if that pool member participates in a competing offer submitted by the pool.

Nonregulation remarks

Upon receipt of an offer submitted by a group representing that it is a pool, you should consider verifying its approved status with the SBA District Office Director or other approving agency.

Before awarding a contract to an unincorporated pool, you should obtain from each pool member the agent authorized to sign the offer or contract on that member's behalf (i.e., certified copy of a power of attorney).

If a pool member submits an individual offer, independent of the pool, you should consider the pool agreement, along with other factors, in determining whether that pool member is a responsible contractor under Subpart 9.1.

Appendix-Model FAR

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

I. REGULATION PROVISIONS AND CLAUSES

52.209-1X Qualification Requirements.
As prescribed in 9.206, insert the following clause:

QUALIFICATION REQUIREMENTS (DATE)

(a) Definition: "Qualification requirement," as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name)_____

(Address)_____

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name_____

Manufacturer's Name_____

Source's Name_____

Item Name_____

Service Identification_____

Test Number_____ (to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product, or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror shall submit evidence of qualification with its offer in order to receive consideration. If this is a sealed bid acquisition and the product, manufacturer, or offeror that is already qualified or is to be qualified before award is not identified, either above or elsewhere in the bid, the Contracting Officer shall reject the bid. Unless determined to be in the Government's interests, this acquisition will not be delayed in order to provide an offeror with an opportunity to meet the standards specified for qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

52.209-4X Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
As prescribed in 9.408, insert the following clause:

PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (DATE)

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed the small purchase limitation at FAR 13.000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.403 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

52.209-6X Organizational Conflicts of Interest Certificate—Marketing Consultants.
As prescribed in 9.505-1(a), insert the following provision:

ORGANIZATIONAL CONFLICTS OF INTEREST CER
MARKETING CONSULTANTS (DATE)

(a) *Definitions.*

(1) "Marketing consultant" means any independ
who furnishes advice, information, direction, or as
offeror or any other contractor in support of the p
submission of an offer for a Government contract b
An independent Contractor is not a marketing co
rendering—

(i) Services excluded in FAR 37.204;

(ii) Routine engineering and technical servi
installation, operation, or maintenance of systems
software, components, or facilities);

(iii) Routine legal, actuarial, auditing, and
services; or

(iv) Training services.

(2) "Organizational conflict of interest" means th
other activities or relationships with other person
unable or potentially unable to render impartial
advice to the Government, or the person's o
performing the contract work is, or might be otherw
or a person has an unfair competitive advantage.

(b) An individual or firm that employs, retains
contractually one or more marketing consultants i
with a contract, shall submit to the contracting
respect to each marketing consultant, the certificate
paragraph (c) of this provision, if the individu
notified that it is the apparent successful offeror.

(c) The certificate must contain the following:

(1) The name of the agency and the number of th
in question.

(2) The name, address, telephone number, and fe
identification number of the marketing consultant.

(3) The name, address, and telephone number of
officer or employee of the marketing consult
personal knowledge of the marketing consultants in
the contract.

(4) A description of the nature of the services re
to be rendered by, the marketing consultant.

(5) The name, address, and telephone number o
clients, and the name of a responsible officer or em
marketing consultant who is knowledgeable about
provided to such client(s) and a description of the
services rendered to such client(s), if, based on
provided to the Contractor by the marketing co
marketing consultant is rendering or, in the
preceding the date of the certificate, has rende
respecting the same subject matter of the instant s
directly relating to such subject matter, to the Go
any other client (including any foreign government
* If approved by the head of the contracting activi
may be increased up to 36 months.

(6) A statement that the person who signs the c
the prime Contractor has informed the marketing

Appendix—Model FAR

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATE—MARKETING CONSULTANTS (DATE)

(a) *Definitions.*

(1) "Marketing consultant" means any independent contractor who furnishes advice, information, direction, or assistance to an offeror or any other contractor in support of the preparation or submission of an offer for a Government contract by that offeror. An independent Contractor is not a marketing consultant when rendering—

(i) Services excluded in FAR 37.204;

(ii) Routine engineering and technical services (such as installation, operation, or maintenance of systems, equipment, software, components, or facilities);

(iii) Routine legal, actuarial, auditing, and accounting services; or

(iv) Training services.

(2) "Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is, or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An individual or firm that employs, retains, or engages contractually one or more marketing consultants in connection with a contract, shall submit to the contracting officer, with respect to each marketing consultant, the certificates described in paragraph (c) of this provision, if the individual or firm is notified that it is the apparent successful offeror.

(c) The certificate must contain the following:

(1) The name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the marketing consultant.

(3) The name, address, and telephone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultants involvement in the contract.

(4) A description of the nature of the services rendered by, or to be rendered by, the marketing consultant.

(5) The name, address, and telephone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgeable about the services provided to such client(s) and a description of the nature of the services rendered to such client(s), if, based on information provided to the Contractor by the marketing consultant, any marketing consultant is rendering or, in the 12* months preceding the date of the certificate, has rendered services respecting the same subject matter of the instant solicitation, or directly relating to such subject matter, to the Government or any other client (including any foreign government or person.)

* If approved by the head of the contracting activity, this period may be increased up to 36 months.

(6) A statement that the person who signs the certificate for the prime Contractor has informed the marketing consultant of the existence of Subpart 9.5 and Office of Federal Procurement Policy Letter 89-1.

(7) The signature, name, title, employer's name, address, and telephone number of the persons who signed the certificates for both the apparent successful offeror and the marketing consultant.

(d) In addition, the apparent successful offeror shall forward to the Contracting Officer a certificate signed by the marketing consultant that the marketing consultant has been told of the existence of Subpart 9.5 and Office of Federal Procurement Policy Letter 89-1, and the marketing consultant has made inquiry, and to the best of the consultant's knowledge and belief, the consultant has provided no unfair competitive advantage to the prime Contractor with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that, to the best of the consultant's knowledge and belief, does or may exist, has been disclosed to the offeror.

(e) Failure of the offeror to provide the certifications may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other actions provided for by law or regulation.

(End of provision)

52.209-7X Organizational Conflicts of Interest Certificate—Advisory and Assistance Services.

As prescribed in 9.505-1(b), insert the following provision:

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATE—ADVISORY AND ASSISTANCE SERVICES (DATE)

(a) "Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the certificate described in paragraph (c) of this provision.

(c) The certificate must contain the following:

(1) Name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the apparent successful offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) The name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12* months preceding the date of the certification, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contrac

number under which the services were rendered must also be included, if applicable.

* If approved by the head of the contracting activity, this period may be increased up to 36 months.

(5) A statement that the person who signs the certificate has made inquiry and that, to the best of his or her knowledge and belief, no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract, or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated in writing to the Contracting Officer or his or her representatives.

(6) The signature, name, employer's name, address, and telephone number of the person who signed the certificate.

(d) Failure of the offeror to provide the certification may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

(End of provision)

II. NONREGULATION SAMPLE PROVISIONS AND CLAUSES

52.209-2X First Article Approval—Contractor Testing.

As discussed in the non regulation remarks under 9.304, the following clause, or any variant, may be used:

FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (DATE)

*(a) The Contractor shall test (*) unit(s) of Lot/Item (*) as specified in this contract. At least (*) calendar days before the beginning of first article tests, the Contractor shall notify the Contracting Officer, in writing, of the time and location of the testing so that the Government may witness the tests. The characteristics that the first article must meet and the testing requirements are specified elsewhere in this contract.*

*(b) The Contractor shall submit the first article test report within (*) calendar days from the date of award of this contract to (**) marked "FIRST ARTICLE TEST REPORT: Contract No. (*), Lot/Item No. (*)". Within (*) calendar days after the Government receives the test report, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.*

(c) If the first article is disapproved, the Contractor, upon Government request, shall repeat any or all first article tests. After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall then conduct the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) of this clause. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.

(f) If the Government does not act within the time specified in paragraph (b) or (c) of this clause, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(h) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government. The offeror/contractor may request a waiver.

** Contracting Officer shall insert details.*

*** Contracting Officer shall insert the name and address of the Government activity that will receive the report.*

(End of clause)

Alternate I (DATE). Add the following paragraph (i) to the basic clause:

(i) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

Alternate II (DATE). Substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for

(1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

52-209-3X First Article Approval—Government Testing.

As suggested by the non-regulation remarks under 9.304, the following clause may be used:

FIRST ARTICLE APPROVAL—GOVERNMENT TESTING (DATE)

*(a) The Contractor shall deliver (*) unit(s) of Lot/Item (*) within (*) calendar days from the date of award of this contract to the Government at (**) for first article tests. The shipping documentation shall contain this contract number and the Lot/Item identification. The characteristics that the first article must meet and the testing requirements are specified elsewhere in this contract.*

*(b) Within (*) calendar days after the Government receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.*

(c) If the first article is disapproved, the Contractor, upon Government request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall furnish any additional first article to the Government under the terms and conditions and within the time specified by the Government. The Government shall act on this first article within the time limit specified in paragraph (b) of this clause. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, the Contractor—

(1) May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not consumed or destroyed in testing; and

(2) Shall remove and dispose of any first article from the Government test facility at the Contractor's expense.

(f) If the Government does not act within the time specified in paragraphs (b) or (c) of this clause, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.

(h) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(i) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the Offeror/Contractor and have been accepted by the Government. The Offeror/Contractor may request a waiver.

** Contracting Officer shall insert details.*

*** The Contracting Officer shall insert the name and address of the testing facility.*

(End of clause)

Alternate I (DATE). Add the following paragraph (j) to the basic clause:

(j) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

Alternate II (DATE). Substitute the following paragraph (h) for paragraph (h) of the basic clause:

(h) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

52.209-5X Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

As suggested by the non regulation remarks under 9.407, the following provision may be used:

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DATE)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

Appendix-Model FAR

(i) The Offeror and/or any of its Principals—

(A) Are [ ] are not [ ] presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have [ ] have not [ ] within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are [ ] are not [ ] presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has [ ] has not [ ] within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Pecos, San Miguel County, NM

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Pecos, located in San Miguel County, New Mexico, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until October 4, 1994.

ADDRESSES: Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person:

Mr. Stefan J. Vranka, Resolution Trust Corporation, c/o Nevander Asset Management, Inc., 4665 MacArthur Court, Suite 200, Newport Beach, CA 92660, (714) 851–2530; Fax (714) 752–7057

SUPPLEMENTARY INFORMATION: The Pecos property consists of two (2) non-contiguous 80-acre tracts of undeveloped land located east and southeast of Pecos, New Mexico. One 80-acre tract is located 2.25 miles south of Lower Colonias and the other tract is one mile north of Upper Colonias. The sites contain habitat for the Federally-listed endangered peregrine falcon and a rare plant that is proposed for Federal-listing as endangered. Both tracts are bordered by portions of the Santa Fe National Forest and small corners of each tract fall within a 100-year floodplain. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before October 4, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Pecos, San Miguel County, NM

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Pecos, located in San Miguel County, New Mexico, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until October 4, 1994.

ADDRESSES: Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person:

Mr. Stefan J. Vranka, Resolution Trust Corporation, c/o Nevander Asset Management, Inc., 4665 MacArthur Court, Suite 200, Newport Beach, CA 92660, (714) 851–2530; Fax (714) 752–7057

SUPPLEMENTARY INFORMATION: The Pecos property consists of two (2) non-contiguous 80-acre tracts of undeveloped land located east and southeast of Pecos, New Mexico. One 80-acre tract is located 2.25 miles south of Lower Colonias and the other tract is one mile north of Upper Colonias. The sites contain habitat for the Federally-listed endangered peregrine falcon and a rare plant that is proposed for Federal-listing as endangered. Both tracts are bordered by portions of the Santa Fe National Forest and small corners of each tract fall within a 100-year floodplain. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before October 4, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form: Notice of Serious Interest RE: [insert name of property] Federal Register Publication Date: _____ [insert Federal Register publication date].

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: June 29, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–16252 Filed 7–5–94; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34272; File No. SR–Amex–94–12]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Its Listing Fee Schedule for Listed Companies

June 28, 1994.

On May 3, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its original listing fees for stock issues.

The proposed rule change was noticed in Securities Exchange Act Release No. 34133 (May 31, 1994), 59 FR 29308 (June 6, 1994). No comments were received on the proposal.

The Amex is amending Section 140 of its Listing Standards and Requirements relating to the fees charged to listed companies for the original listing of common stock. Specifically, the Exchange is amending Section 140 to adopt a maximum fee applicable to the original listing of stock issues on the Exchange.

Currently, the listing fee for stock issues ranges from $5,000 for new listings of less than one million shares to more than $122,500 for listings of greater than 100 million shares. In addition, each issuer which does not already have securities listed on the Exchange is assessed a one-time charge of $5,000. Listing fees for non-U.S. issuers listed on foreign stock exchanges are currently 50 percent of the rates for U.S. companies, including the $5,000 one-time charge, with a maximum of $30,000.

The Exchange is amending Section 140 to adopt a maximum fee of $45,000 ($50,000 inclusive of the one-time charge of $5,000) for stock issues exceeding 15 million shares. In addition, the Exchange is reducing the maximum listing fee for non-U.S. issuers already listed on a foreign exchange from $30,000 to $25,000, inclusive of the one-time charge.[3]

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Section 140 is amended to require the following fees:

Less than 1 million shares—$5,000
1+— 2 million shares—$10,000
2+— 3 million shares—$15,000
3+— 4 million shares—$17,500
4+— 5 million shares—$20,000
5+— 6 million shares—$22,500
6+— 7 million shares—$25,000
7+— 8 million shares—$27,500
8+— 9 million shares—$30,000
9+—10 million shares—$32,500
10+—15 million shares—$37,500
15+ million shares—$45,000

In addition to the above per-share fee, there is a one-time charge of $5,000 for companies that do not have a stock or warrant issue listed on the Exchange. [The one-time charge of $5,000 does not apply to any company which previously paid the one-time charge in connection with the listing of a debt issue.]

In the case of non-U.S. companies listed on foreign stock exchanges, the fee, including the one-time charge, is 50% of the rates set forth above with a maximum fee of $25,000. Where the original listing of more than one class of stock is in[cluded]

Continued

The Exchange believes, based upon discussions with prospect companies, that each year several large companies elect not to list on the Amex due to the expense of the Exchange's listing fee at the upper end of the fee schedule.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6 of the Act.[4] More specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act which requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities. The Commission believes that the reduced original listing fees for stock issues exceeding 15 million shares are not unfairly discriminatory as proscribed by Section 6(b)(5) of the Act.[5]

The Commission believes that adopting a maximum original listing fee for stock issues exceeding 15 million shares is consistent with Section 6(b)(4) of the Act in that it reasonably balances the Exchange's interest in attracting large companies for listing with its regulatory interests in listing only bona fide companies on the Exchange. For example, although decreasing listing fees for issues over 15 million shares should attract additional larger issuers to its market, as well as provide an incentive for current Exchange issuers to list their new issues on the Amex, the fee amendment will not affect the Amex's quantitative criteria for listing stock on the Exchange. Moreover, the adoption of a maximum fee provides for a more equitable allocation of listing fees among issuers and should eliminate any disincentive for large issuers to list on the Amex.

The Commission also believes that reducing the maximum fee applicable to original listings of stock for non-U.S. companies listed on foreign stock exchanges from $30,000 to $25,000 (inclusive of the $5,000 one-time charge) is consistent with Section 6(b)(5) of the Act in view of the reduction in fees for U.S. companies with issues exceeding 15 million shares.

Accordingly, the Commission believes that it is appropriate to approved the proposed rule change.

in the same application, the fee is based on the aggregate number of shares of all such classes.

[4] 15 U.S.C. 78f (1988).

[5] 15 U.S.C. 78f(b)(5) (1988).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Amex–94–12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16244 Filed 7–5–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

June 29, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Chemical Banking Corp.
Adj. Rate Cm. Pfd. Stock, Ser. L, $1.00 Par Value (File No. 7–12616)
ConAgara Capital L.C.
Ser. B Adj. Rate Cm. Pfd. Securities (File No. 7–12617)
Energy Ventures, Inc.
Common Stock, $1.00 Par Value (File No. 7–12618)
Essex Property Trust
Common Stock, $.0001 Par Value (File No. 7–12619)
Gerrity Oil & Gas Corp.
Depositary Shares (rep. 1/8 sh. of $12.00 Cv. Pfd. Stk., $.01 Par Value (File No. 7–12620)
Great Western Financial
8.75% Cm. Cv. Dep. Pfd., $1.00 Par Value (File No. 7–12621)
Highwoods Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12622)
Kenneth Cole Productions, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–12623)
Liberty Property Trust
Common Shares of Beneficial Interest, $.001 Par Value (File No. 7–12624)
PLC Capital L.L.C.
9% Cm. Monthly Inc. Pfd. Sec. Ser. A, ("MIPS"), $25.00 Par Value (File No. 7–12625)
Storage Equities, Inc.
Adj. Rate Cm. Pfd. Stock, Ser. C, $.01 Par Value (File No. 7–12626)
Watsco, Inc.
Common Stock, $.50 Par Value (File No. 7–12627)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 21, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16243 Filed 7–5–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Designatronics Incorporated, Common Stock, $.04 Par Value) File No. 1–8543

June 29, 1994.

Designatronics Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on June 2, 1994, to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's shareholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASD/NMS system will offer the opportunity for the Company to secure its own group of market makers and expand the capital base available for trading in the Common Stock; and

(4) The Company believes that the firms making a market in the Company's Common Stock on the NASD/NMS system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before July 21, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16242 Filed 7–5–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss emergency evacuation issues.

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1994).

market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's shareholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASD/NMS system will offer the opportunity for the Company to secure its own group of market makers and expand the capital base available for trading in the Common Stock; and

(4) The Company believes that the firms making a market in the Company's Common Stock on the NASD/NMS system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before July 21, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16242 Filed 7–5–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss emergency evacuation issues.

DATES: The meeting will be held on July 28, 1994 at 9 a.m. Arrange for oral presentations by July 18, 1994.

ADDRESSES: The meeting will be held at McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Spirit Room, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 28, 1994, a McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Spirit Room, Crystal City, Virginia. The agenda for the meeting will include:

- Opening Remarks.
- A review of the activities of the Performance Standards Working Group.
- A discussion of future activities and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 18, 1994, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on June 28, 1994.

Daniel Salvano,

Assistant Executive Director for Emergency Evacuation Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–16266 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 94–28; Notice 2]

Determination That Nonconforming 1992 Porsche 911 Carrera 2 and Carrera 4 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified versions of the 1992 Porsche 911 Carrera 2 and Carrera 4), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. § 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligiblity determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Liphardt & Associates, Inc. of Ronkonkoma, New York (Registered Importer R–90–004) petitioned NHTSA to determine whether 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on April 25, 1994 (59 FR 19748) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. The petition covers both the 2-wheel drive Carrera 2 and the 4-wheel drive Carrera 4. The notice referred collectively to these vehicles as the "1992 Porsche 911 Carrera 2/4." No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 52 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1992 Porsche 911 Carrera 2 and Carrera 4 passenger cars originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and are capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 30, 1994.

William S. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–16296 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report on the results of the ninth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods and to report on progress in harmonizing hazardous material transportation regulations with Mexico.

DATES: July 20, 1994 at 9:30 a.m.

ADDRESSES: Room *6200–6204*, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to (1) review the progress made by the ninth session of the Sub-Committee of Experts on the Transport of Dangerous Goods in completing its work program for the 1993–1994 biennium and (2) to begin preparation for the Committee of Experts on the Transport of Dangerous Goods eighteenth session to be held November 28 through December 7, 1994 in Geneva, Switzerland. Topics to be covered include matters related to explosives including packaging requirements for explosives, amendments to the tests and criteria for classifying dangerous goods, criteria for liquid and solid oxidizing substances, amendments to portable tank requirements, matters related to compressed gases, listing and classification issues, requirements for individual substances, packaging requirements for dangerous goods, requirements for limited quantities of dangerous goods, segregation requirements, matters related to infectious substances, criteria for environmentally hazardous substances, international activities related to harmonization of chemical classification and labeling requirements and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods. The opportunity of this meeting will also be used to report on the activities related to the harmonization of hazardous materials regulations in North America, with particular emphasis on progress in harmonizing regulations with Mexico.

The public is invited to attend without prior notification.

Issued in Washington, DC, on June 30, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–16299 Filed 7–5–94; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Tomb Treasures from China: The Buried Art of Ancient Xi'an" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Asian Art Museum of San Francisco, California from on or about August 3, 1994 to on or about October 30, 1994; Kimbell Art Museum, Fort Worth, Texas from on or about November 19, 1994 to on or about February 12, 1995; Honolulu Academy of Arts, Hawaii from on or about March 16, 1995 to on or about June 18, 1995 is in national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: June 29, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–16303 Filed 7–5–94; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meeting

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b of the Government in the Sunshine Act, (P.L. 94–409).

DATES: August 22–24, 1994, 9:00 a.m. to 5:00 p.m.

LOCATION: The Westin Hotel Seattle, 1900 Fifth Avenue, Seattle, Washington 98101, (206) 728–1000.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street, NW., Suite 1050, Washington, DC 20004–1107, Telephone: (202) 272–2004, (202) 272–2074 (TT).

The National Council on Disability is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of the National Council is to promote policies, programs, practices and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability by August 1, 1994.

The quarterly meeting of the National Council shall be open to the public and conducted in a smoke-free atmosphere. In addition, those attending should be

Sunshine Act Meetings

Federal Register

Vol. 59, No. 128

Wednesday, July 6, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b of the Government in the Sunshine Act, (P.L. 94–409).

DATES: August 22–24, 1994, 9:00 a.m. to 5:00 p.m.

LOCATION: The Westin Hotel Seattle, 1900 Fifth Avenue, Seattle, Washington 98101, (206) 728–1000.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street, NW., Suite 1050, Washington, DC 20004–1107, Telephone: (202) 272–2004, (202) 272–2074 (TT).

The National Council on Disability is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of the National Council is to promote policies, programs, practices and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability by August 1, 1994.

The quarterly meeting of the National Council shall be open to the public and conducted in a smoke-free atmosphere. In addition, those attending should be mindful that the use of aromatic fragrances might affect people with environmental and chemical sensitivities.

AGENDA: The proposed agenda includes:

Report from the Chairperson and the Executive Director.
Committee Meetings and Committee Reports.
Unfinished Business.
New Business.
Announcements.
Adjournment.

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on July 1, 1994.

Edward P. Burke,

Acting Executive Director.

[FR Doc. 94–16448 Filed 7–1–94; 3:11 pm]

BILLING CODE 6820–BS–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 4, 11, 18, and 25, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 4

There are no meetings scheduled for the Week of July 4.

Week of July 11—Tentative

There are no meetings scheduled for the Week of July 11.

Week of July 18—Tentative

Tuesday, July 19

10:00 a.m.
Briefing On Fuel Cycle and Waste Management Activities In France (Public Meeting)

Wednesday, July 20

10:00 a.m.
Briefing on Proposed Changes to 10 CFR 50.36—Technical Specifications (Public Meeting)
(Contact: Christopher Grimes, 301–504–1161)
11:30 a.m.
Affirmation/Discussion And Vote (Public Meeting)

Thursday, July 21

3:00 p.m.
Briefing on Decommissioning Process (Public Meeting)
(Contact: David Futoma, 301–504–1621)

Friday, July 22

10:00 a.m.
Briefing on Information Technology Strategic Plan (Public Meeting)
(Contact: Francine Goldberg, 301–415–7460)

Week of July 25—Tentative

There are no meetings scheduled for the Week of July 25.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: June 30, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–16476 Filed 7–1–94; 3:42 pm]

BILLING CODE 7590–01–M

VOL 5 9
SSS 1 2 8
JL 6
994
IMI

federal register

federal register

Wednesday
July 6, 1994

Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 392 and 393
Parts and Accessories Necessary for Safe Operation; Warning Devices for Stopped Vehicles and Protection Against Shifting or Falling Cargo; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 392 and 393

[FHWA Docket No. MC–93–19]

RIN 2125–AD17

Parts and Accessories Necessary for Safe Operation; Warning Devices for Stopped Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the requirements for warning devices for stopped commercial motor vehicles (CMVs) to allow the use of fusees and liquid-burning flares in lieu of bidirectional reflective triangles, unless the CMV is transporting certain hazardous materials or is powered by compressed gas. It is the intent of this final rule to give equal priority to fusees and liquid-burning flares with regard to use as emergency warning devices. This action is required by the Intermodal Surface Transportation Efficiency Act of 1991.

DATES: Effective August 5, 1994. The incorporation by reference of the publication listed in § 393.95 of this final rule is approved by the Director of the Federal Register as of August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles E. Medalen, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 1041(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 1993), signed by the President on December 18, 1991, requires that "Section 393.95 of title 49 of the Code of Federal Regulations shall be applied so that fusees and flares are given equal priority with regard to use as reflecting signs."

On July 14, 1993, the FHWA published a notice of proposed rulemaking (NPRM) to amend § 393.95 to allow commercial motor vehicles to be equipped with fusees and liquid-burning flares in lieu of bidirectional reflective triangles, except CMVs transporting explosives (Division 1.1, 1.2, and 1.3 hazardous materials), cargo tank motor vehicles used for flammable and combustible liquids (Class 3 hazardous materials) or flammable gas (Division 2.1 hazardous materials) (whether loaded or empty), or motor vehicles using compressed gas as a motor fuel. The FHWA also proposed amending § 392.22(b), which sets forth requirements for the placement and use of warning devices for stopped vehicles, because paragraph (b) did not allow the use of fusees and liquid-burning flares in lieu of bidirectional reflective triangles.

The FHWA proposed that vehicles be equipped with either (1) three bidirectional reflective triangles or (2) six fusees or liquid-burning flares. With regard to performance standards for fusees and liquid-burning flares, the FHWA proposed to amend § 393.95(j) to require that these devices be capable of burning for at least 30 minutes, and meet the standards of the Underwriters Laboratories, Inc., Highway Emergency Signals (UL 912).

Discussion of Comments

The FHWA received 12 comments to the NPRM. The commenters were: 3M; Advocates for Highway and Auto Safety (Advocates); the American Trucking Associations (ATA); Chemical Waste Transportation Institute (CWTI); Cortina Tool and Molding Company; James King and Company, Inc.; Federal Mogul; National Tank Truck Carriers, Inc.; Ohio University, College of Engineering and Technology, Department of Industrial and Systems Engineering; Pyrotechnic Signal Manufacturers Association (PSMA); Sate-Lite Manufacturing Company (Sate-Lite); and the Transportation Safety Equipment Institute (TSEI). The commenters were generally opposed to allowing the use of fusees and liquid-burning flares in lieu of bidirectional reflective triangles. The CWTI did not support or oppose the proposal but indicated that the FHWA should retain its restrictions on flame producing devices on certain vehicles and recommended that the FHWA use this rulemaking to amend § 393.95(g) to incorporate the use of the current hazardous materials classifications (i.e., Divisions 1.1, 1.2, or 1.3, 2.1 and Class 3). The PSMA provided the only comments in support of the proposed amendments.

Interpretation of Section 1041(b) of the ISTEA

Several of the commenters questioned the FHWA's interpretation of section 1041(b) of the ISTEA. Sate-Lite believes that section 1041(b) is ambiguous and as such the FHWA has great latitude in the implementation of the requirement. Sate-Lite stated:

By explicitly acknowledging the safety hazards associated with fusees and flares and by specifically addressing these hazards by prohibiting the use of fusees and flares in certain situations, the FHWA has recognized that ISTEA granted the FHWA broad discretion in implementing Section 1041(b).

Clearly Congress did not anticipate or intend to require that the FHWA sacrifice motorist safety and the security of our federal highway system on the altar of "equal priority." As the FHWA has recognized, on these issues of motorist safety, Congress must defer to the expertise and judgment of the FHWA.

In light of the dangers and manifest deficiencies inherent in the use of fusees and flares as a substitute for warning triangles * * * Sate-Lite respectfully urges the FHWA to exercise its discretion by amending the proposed rule change. Sate-Lite strongly believes that the FHWA should continue to require motor carriers to carry three emergency warning triangles in accordance with the current rule.

In its comments, the ATA stated:

The language of Section 1041(b) of the [ISTEA] strongly suggests that its sponsor(s) believe[s] that a fusee and a liquid-burning flare are essentially similar * * *. It should be made clear that fusees are acceptable only as a short-term warning device for use while long-term warning devices are put in place. In addition, it should be made clear that the trucking industry abandoned the use of liquid-burning flares (pot torches) as soon as the use of a superior type of warning device (the "dot-over-dot" emergency reflectors) was authorized by federal and state regulators.

For the reasons outline[d] above, liquid-burning flares have not been manufactured for 30 years, or more. In our view, the current effort to encourage a return to their use by the motor carrier industry is a step backward.

Advocates did not believe that the ISTEA prohibits the FHWA from continuing to require that each CMV be equipped with three bidirectional reflective triangles.

The FHWA believes that section 1041(b) of ISTEA requires that fusees and liquid-burning flares be allowed, but not mandated, in lieu of bidirectional reflective triangles. The FHWA already allows the use of fusees and other warning devices in addition to reflective triangles.

With regard to the ATA's comments about liquid-burning flares, or "pot torches," the ISTEA refers to "fusees and flares." The FHWA believes the term "fusee" refers to a solid material that is ignited by friction and the term "flare" refers to a liquid-burning warning device. These terms, as used in the ISTEA, are not interchangeable. As such, the ISTEA allows the use of fusees and liquid-burning flares as primary emergency warning devices. While the apparent lack of availability of liquid-burning flares, as indicated by the ATA, might preclude their use as an alternative to bidirectional reflective triangles, the requirement of the ISTEA is not contingent upon the availability of the warning device.

In response to the Advocates' concerns, the FHWA does not believe it would be appropriate to require all CMVs to carry bidirectional reflective triangles. For those cases in which the CMV is equipped only with fusees or liquid-burning flares, the NPRM proposed, and this final rule includes, an amendment to § 392.22 stating that there shall be at least one lighted fusee or liquid-burning flare at each of the locations specified in § 392.22(b)(1) for the entire period that the vehicle is stopped. If a motor carrier chooses to rely solely upon fusees or liquid-burning flares as emergency warning devices, the motor carrier should not be penalized by being forced to carry an additional warning device that, under these circumstances, it would not be required to use.

Effectiveness of Fusees and Liquid-Burning Flares Versus Triangles

Many of the commenters opposed the use of fusees in lieu of bidirectional reflective triangles because of concerns about the effectiveness of fusees as emergency warning devices. The Advocates stated;

Unfortunately, the elevation of fusees and liquid-burning flares to the status of primary warning devices alongside triangles is a regressive step that can have serious consequences in the potential for additional truck and bus accidents. Although there are major shortcomings with the design and performance of reflective triangles, and with the criteria for deploying them set forth in the Federal Motor Carrier Safety Regulations (FMCSR), the selection of a single device having priority in all circumstances appropriately fulfills the well-known principle of traffic engineering that motorists should always be reinforced in their traffic control expectations when negotiating roads and streets. That is, it is important to educate motorists to the unambiguous intent of traffic control devices by ensuring the use of designs with

torches," the ISTEA refers to "fusees and flares." The FHWA believes the term "fusee" refers to a solid material that is ignited by friction and the term "flare" refers to a liquid-burning warning device. These terms, as used in the ISTEA, are not interchangeable. As such, the ISTEA allows the use of fusees and liquid-burning flares as primary emergency warning devices. While the apparent lack of availability of liquid-burning flares, as indicated by the ATA, might preclude their use as an alternative to bidirectional reflective triangles, the requirement of the ISTEA is not contingent upon the availability of the warning device.

In response to the Advocates' concerns, the FHWA does not believe it would be appropriate to require all CMVs to carry bidirectional reflective triangles. For those cases in which the CMV is equipped only with fusees or liquid-burning flares, the NPRM proposed, and this final rule includes, an amendment to § 392.22 stating that there shall be at least one lighted fusee or liquid-burning flare at each of the locations specified in § 392.22(b)(1) for the entire period that the vehicle is stopped. If a motor carrier chooses to rely solely upon fusees or liquid-burning flares as emergency warning devices, the motor carrier should not be penalized by being forced to carry an additional warning device that, under these circumstances, it would not be required to use.

Effectiveness of Fusees and Liquid-Burning Flares Versus Triangles

Many of the commenters opposed the use of fusees in lieu of bidirectional reflective triangles because of concerns about the effectiveness of fusees as emergency warning devices. The Advocates stated;

Unfortunately, the elevation of fusees and liquid-burning flares to the status of primary warning devices alongside triangles is a regressive step that can have serious consequences in the potential for additional truck and bus accidents. Although there are major shortcomings with the design and performance of reflective triangles, and with the criteria for deploying them set forth in the Federal Motor Carrier Safety Regulations (FMCSR), the selection of a single device having priority in all circumstances appropriately fulfills the well-known principle of traffic engineering that motorists should always be reinforced in their traffic control expectations when negotiating roads and streets. That is, it is important to educate motorists to the unambiguous intent of traffic control devices by ensuring the use of designs with unvarying shapes, sizes, colors, and messages. Despite the fact that Advocates has serious misgivings over the retroreflective performance and conspicuity of emergency triangles, there is little question that their consistent use over the past two decades has provided instant recognition by motorists that there is a disabled commercial vehicle on or near the travelway. This important recognition by motorists can now be threatened by the substitution of flares or fusees to demarcate the area around a disabled truck or bus.

Several commenters cited an article published in the April 1992 issue of *Consumer Reports* magazine. For example, Sate-Lite stated:

A widely publicized recent study on the effectiveness of vehicle warning devices, in *Consumer Reports Magazine* [sic] [*Consumer Reports*, "Emergency! Handling Trouble on the Road," April 1992], concluded without reservation that triangle reflectors are the best choice of warning device for all vehicles." The *Consumer Reports* Study cites the fact that triangles can be placed as far away from the vehicle as needed and the fact that they do not require electric power. Moreover, flares and fusees: (1) Flares do not command attention because "their light comes from one small source and isn't very conspicuous at a distance"; (2) a flare's light may not last until help arrives; (3) there is the obvious need for periodic replacement of flares; and (4) flares will frequently roll or blow away from their initial site. These problems and deficiencies should be obvious even to the casual observer of highway conditions. The *Consumer Reports* study concluded that "Triangles provided the clearest warning from 100 feet at night."

Some commenters also referred to a National Highway Traffic Safety Administration report entitled "Study of Safety-Related Devices—Emergency Warning Devices for Disabled Vehicles" (August 19, 1986) (NHTSA Report) to support their claims that bidirectional reflective triangles are more effective than fusees as emergency warning devices.

While the FHWA understands the concerns of the commenters, it notes that this rulemaking is in response to section 1041(b) of the ISTEA. Section 1041(b) requires that § 393.95 be applied so that fusees and liquid-burning flares are given "equal priority" with bidirectional reflective triangles as emergency warning devices. The congressional mandate is not contingent upon an evaluation of the effectiveness of fusees and liquid-burning flares relative to that of bidirectional reflective triangles.

In addition, this rulemaking is not intended to require the use of fusees and liquid-burning flares, but rather to allow their use as a primary emergency warning device on certain CMVs. This final rule does not require motor carriers to discontinue the use of bidirectional reflective triangles in favor of warning devices they believe to be less effective

Mixtures of Warning Devices

The NPRM requested comments on whether or not motor carriers should be allowed to use a mixture of fusees, liquid-burning flares, and bidirectional reflective triangles (e.g., a bidirectional triangle at one of the three locations warning devices are required to be deployed, and fusees at the other locations). Sate-Lite and the TSEI believed that allowing a mixture of warning devices would contribute to motorist confusion and uncertainty in associating the warning devices with the stopped CMV.

The FHWA agrees with the commenters concerns about motorist ability to understand the warning devices. The FHWA believes that the effectiveness of the three warning devices placed around the stopped vehicle would be diminished by allowing a different type of device to be used at each location. Therefore, § 392.22 is being amended to require that the same type(s) of warning devices be used at each of the locations specified in § 392.22.

Minimum Number of Fusees and Flares Required

The FHWA proposed that CMVs equipped with only fusees or liquid-burning flares have a minimum of six of these warning devices at all times. The ATA believed the proposed minimum was unrealistic. The ATA believed that the one hour of protection provided by six 30-minute fusees would not be sufficient based on what they considered the "best available information" on the duration of CMV breakdown time under "optimum" conditions. The ATA also pointed out that UL 912 specifies that each liquid-burning flare be capable of burning for 12 hours and that three of these devices should be sufficient.

The FHWA believes that a requirement for six fusees is appropriate. As stated in the NHTSA Report:

Roughly one-half of all emergency stops and disabled vehicle situations last for more than 30 minutes * * *. Moreover, since the distribution of emergency stop durations is highly

positively skewed, the total disabled vehicle exposure time for the time period of more than 30 minutes is considerably greater than for the time period of less than 30 minutes. No statistics are available to compare the "total risk" incurred after 30 minutes to that incurred before 30 minutes, but presumably the risk per minute is greatest soon after the emergency stop * * *. However, the total exposure time of disabled vehicles is greater after 30 minutes due to those vehicles left for several hours or more.

The FHWA recognizes that a number of factors affect the amount of time a vehicle remains disabled, including its location (e.g., urban area versus a rural area) and the availability of maintenance personnel and equipment. The FHWA believes that the performance-based requirement that warning devices be in place for the entire period the vehicle is stopped adequately addresses this issue. Motor carriers are responsible for ensuring that a sufficient number of warning devices are provided on their CMVs.

With regard to the ATA's comments about liquid-burning flares, the FHWA agrees that the proposed requirement for six liquid-burning flares was inconsistent with the UL 912 performance criteria which was proposed for incorporation by reference. Because UL 912 requires that liquid-burning flares be capable of burning for 12 hours, requiring three liquid-burning flares for vehicles which are not equipped with fusees or bidirectional reflective triangles is sufficient.

Incorporation by Reference of UL 912

The NPRM included a proposal that fusees and liquid-burning flares meet UL 912. In the case of fusees, UL 912 would be used to replace the § 393.95(j) reference to the Association of American Railroads (AAR), "Specifications for Red Railway or Red Highway Fuses." The ATA and the PSMA were the only commenters that addressed this issue. The ATA believed the FHWA should allow the use of fusees meeting either UL 912 or the AAR standards. The PSMA believed the performance standards of UL 912 are appropriate.

The FHWA has reviewed the UL and AAR standards. The two documents have comparable performance criteria for fusees. However, the UL document provides performance criteria for both fusees and liquid-burning flares while the AAR document only covers fusees. The FHWA has concluded the UL document is appropriate for incorporation by reference because the ISTEA requires that both fusees and liquid-burning flares be allowed for use as emergency warning devices.

In addition to the requirements contained in UL 912, the PSMA suggested that all fusees be of the "lay-down type" with a "no-roll device." The PSMA did not provide any discussion of this suggestion.

A requirement that all fusees be of the "lay-down type" is unnecessarily design restrictive in that it would prohibit, without technical justification, the use of fusees that are provided with a means to remain in an upright position.

With regard to a "no-roll device," motor carriers must ensure that warning devices are in place at the required locations. If certain devices are necessary to keep fusees in place, the motor carrier is responsible for providing them. Furthermore, a general requirement for a "no-roll device" would not provide objective criteria as to what constitutes an acceptable device. The FHWA has not adopted the PSMA's suggestions.

Economic Impact of the Rulemaking

Both Sate-Lite and the TSEI submitted comments to the docket expressing concern over possible adverse effects of the proposed regulation on small entities. These comments are discussed below under the heading "Regulatory Flexibility Act."

Discussion of Final Rule

The FHWA is amending § 393.95 to allow CMVs to be equipped with fusees and liquid-burning flares in lieu of bidirectional reflective triangles, except CMVs transporting Division 1.1, 1.2, or 1.3 hazardous materials (explosives), cargo tank motor vehicles used for Class 3 (flammable and combustible liquid) or Division 2.1 (flammable gas) hazardous materials (whether loaded or empty), or motor vehicles using compressed gas as a motor fuel. This prohibition is necessary to minimize the risk of explosion or catastrophic fire involving cargoes and fuels of these types. The FHWA believes the retention of this provision is consistent with congressional intent.

The final rule amends § 393.95(f)(2) to require that CMVs be equipped with either (1) three bidirectional reflective triangles, (2) six fusees (each capable of burning for 30 minutes), or (3) three liquid-burning flares (filled with a sufficient amount of fuel to burn continuously for at least one hour). Although the FHWA has specified a minimum number of fusees and liquid burning flares, motor carriers relying solely upon these devices are responsible for ensuring that fusees or liquid-burning flares are in use for the entire time the vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway.

The FHWA is amending § 392.22(b)(1) to require that the same type(s) of warning devices be used at each of the locations where warning devices are placed around the CMV. Section 392.22(b)(2)(i) *Fusees and liquid-burning flares*, is being amended to require that motor carriers relying solely upon fusees or liquid-burning flares ensure that those devices are in use for the entire time the vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway. The driver of the vehicle is required to extinguish and remove each fusee or liquid-burning flare before the stopped vehicle is moved.

In addition, the FHWA is amending § 392.22(b)(2)(ii) *Daylight hours*, to allow motor carriers to use fusees or liquid-burning flares in lieu of bidirectional reflective triangles when their CMVs are stopped during daylight hours in business or residential districts. Section 392.22(b)(2)(ii) requires that if fusees or liquid-burning flares are used, there must be at least one lighted fusee or flare at each of the prescribed locations as long as the vehicle is stopped.

The FHWA is removing § 392.22(b)(2)(vii) Exemption for lightweight vehicles, and certain United States Code and CFR citations at the end of § 392.22. Although the NPRM did not address these issues, the amendments are considered administrative in nature.

On May 19, 1988 (53 FR 18042), the FHWA published a final rule implementing the requirements of the Motor Carrier Act of 1984. The May 19, 1988, final rule included a definition of commercial motor vehicle which with certain exceptions, excluded lightweight vehicles (vehicles with a gross vehicle weight rating of 10,000 pounds or less) from the applicability of the FMCSRs. Therefore, the vehicles for which paragraph (b)(2)(vii) was intended are generally not subject to the FMCSRs and paragraph (b)(2)(vii) is obsolete.

With regard to performance standards for fusees and liquid-burning flares, the FHWA is amending § 393.95(j) to require that both fusees and liquid-burning flares meet the standards of the Underwriters Laboratories, Inc., Highway Emergency Signals (UL 912). The final rule incorporates by reference UL 912 in § 393.95.

The FHWA has created a new section, § 393.7, Matter incorporated by reference, to provide the language of incorporation required by 1 CFR 51 and to provide information on the availability of the incorporated

document. After a review of the comments to the July 14, 1993, NPRM and a determination that the incorporation by reference was necessary for the final rule, the FHWA submitted UL 912 to the Director of the Federal Register for approval in accordance with 5 U.S.C. 522(a) and 1 CFR 51.

The FHWA recognizes that some motor carriers may wish to supplement the required warning devices (reflective triangles or fusees and flares) with other warning devices such as electric lanterns. The final rule allows the use of other warning devices in addition to, but not in lieu of, the required devices provided they do not decrease the effectiveness of the required devices. The FHWA has added § 393.95(f)(3) to clearly indicate this intent.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This final rule amends the requirements for warning devices for stopped vehicles. The FHWA has determined that this is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. This final rule allows motor carriers the option to use fusees and liquid-burning flares in lieu of bidirectional reflective triangles. The rule does not increase the cost of complying with the requirements for emergency warning devices on commercial motor vehicles. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In their comments to the docket, both Sate-Lite and the TSEI expressed concern that the proposed regulation would have adverse impacts on small manufacturers of bidirectional reflective triangles and small motor carriers electing to deploy fusees or liquid-burning flares in accordance with this final rule.

In light of these concerns, and in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rulemaking on small entities. As for small manufacturers of bidirectional reflective triangles, the final rule does not prohibit or restrict the manufacture, sale, or use of such devices. Furthermore, this final rule does not require motor carriers to increase the

document. After a review of the comments to the July 14, 1993, NPRM and a determination that the incorporation by reference was necessary for the final rule, the FHWA submitted UL 912 to the Director of the **Federal Register** for approval in accordance with 5 U.S.C. 522(a) and 1 CFR 51.

The FHWA recognizes that some motor carriers may wish to supplement the required warning devices (reflective triangles or fusees and flares) with other warning devices such as electric lanterns. The final rule allows the use of other warning devices in addition to, but not in lieu of, the required devices provided they do not decrease the effectiveness of the required devices. The FHWA has added § 393.95(f)(3) to clearly indicate this intent.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This final rule amends the requirements for warning devices for stopped vehicles. The FHWA has determined that this is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. This final rule allows motor carriers the option to use fusees and liquid-burning flares in lieu of bidirectional reflective triangles. The rule does not increase the cost of complying with the requirements for emergency warning devices on commercial motor vehicles. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In their comments to the docket, both Sate-Lite and the TSEI expressed concern that the proposed regulation would have adverse impacts on small manufacturers of bidirectional reflective triangles and small motor carriers electing to deploy fusees or liquid-burning flares in accordance with this final rule.

In light of these concerns, and in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rulemaking on small entities. As for small manufacturers of bidirectional reflective triangles, the final rule does not prohibit or restrict the manufacture, sale, or use of such devices. Furthermore, this final rule does not require motor carriers to increase the number and types of warning devices carried on their CMVs. Nor does the rule mandate that CMVs be equipped with only one type of warning device. Rather the rule fulfills the requirements of section 1041(b) of the ISTEA by simply allowing, with few exceptions, the use of fusees and liquid-burning flares as an alternative to bidirectional reflective triangles.

Based on its evaluation of this rulemaking, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 392 and 393

Highway safety, Highways and roads, Incorporation by reference, Motor carriers, and Motor vehicle safety.

Issued on: June 23, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, chapter III, subchapter B, by amending parts 392 and 393 as set forth below:

PART 392—DRIVING OF MOTOR VEHICLES

1. The authority citation at the end of § 392.22 is removed and the authority citation for part 392 is revised to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

2. Section 392.22 is amended by removing paragraph (b)(2)(vii), revising paragraph (b)(1) introductory text, (b)(2)(i), and (b)(2)(ii), and adding paragraph (b)(1)(iv) to read as follows:

§ 392.22 Emergency signals, stopped vehicles.

* * * * *

(b) *Placement of warning devices*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, whenever a vehicle is stopped on the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall as soon as possible, but in any event within 10 minutes, place the warning devices with which the vehicle is equipped in conformance with the requirements of § 393.95 of this subchapter, in the following manner:

* * * * *

(iv) The same type of required emergency warning device [see § 393.95(f) (1) and (2)] shall be placed at each of the three locations specified in paragraph (b)(1) (i) through (iii) of this section. If supplemental warning devices are also used [see § 393.95(f)(3)], a device of the same type shall be placed at each of those locations.

(2) *Special Rules*—(i) *Fusees and liquid-burning flares.* The driver of a commercial motor vehicle equipped with only fusees or liquid-burning flares shall place a lighted fusee or liquid-burning flare at each of the locations specified in paragraph (b)(1) of this section. There shall be at least one lighted fusee or liquid-burning flare at each of the prescribed locations, as long as the vehicle is stopped. Before the stopped vehicle is moved, the driver shall extinguish and remove each fusee or liquid-burning flare.

(ii) *Daylight hours.* Except as provided in paragraph (b)(2)(iii) of this

section, during the period lighted lamps are not required, three bidirectional reflective triangles, or three lighted fusees or liquid-burning flares shall be placed as specified in paragraph (b)(1) of this section within a time of 10 minutes. In the event the driver elects to use only fusees or liquid-burning flares in lieu of bidirectional reflective triangles or red flags, the driver must ensure that at least one fusee or liquid-burning flare remains lighted at each of the prescribed locations as long as the vehicle is stopped or parked.

* * * * *

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATIONS

3. The authority citation for part 393 is revised to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

4. A new section 393.7 is added to subpart A of part 393 to read as follows:

§ 393.7 Matter incorporated by reference.

(a) *Incorporation by reference.* Part 393 includes references to certain matter or materials. The text of the materials is not included in the regulations contained in part 393. The materials are hereby made a part of the regulations in part 393. The Director of the **Federal Register** has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the **Federal Register** and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(b) *Availability.* The materials incorporated by reference are available as follows:

(1) Standards of the Underwriters Laboratories, Inc. Information and copies may be obtained by writing to: Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(2)–(9) [Reserved]

(10) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 400 Seventh Street, SW., Washington, DC 20590 in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7, appendix D; and

(ii) The Office of the **Federal Register**, 800 North Capitol Street, NW, Suite 700, Washington, DC.

5. Section 393.95 is amended by revising paragraphs (f)(2), (g), and (j) and adding paragraph (f)(3) to read as follows:

§ 393.95 Emergency equipment on all power units.

* * * * *

(f) * * *

(2) *Vehicles equipped with warning devices on and after January 1, 1974.*

(i) Three bidirectional emergency reflective triangles that conform to the requirements of Federal Motor Vehicle Safety Standard No. 125, § 571.125 of this title; or

(ii) At least 6 fusees or 3 liquid-burning flares. The vehicle must have as many additional fusees or liquid-burning flares as are necessary to satisfy the requirements of § 392.22.

(3) *Supplemental warning devices.* Other warning devices may be used in addition to, but not in lieu of, the required warning devices, provided those warning devices do not decrease the effectiveness of the required warning devices.

(g) *Restrictions on the use of flame-producing devices.* Liquid-burning flares, fusees, oil lanterns, or any signal produced by a flame shall not be carried on any commercial motor vehicle transporting Division 1.1, 1.2, 1.3 (explosives) hazardous materials; any cargo tank motor vehicle used for the transportation of Division 2.1 (flammable gas) or Class 3 (flammable liquid) hazardous materials whether loaded or empty; or any commercial motor vehicle using compressed gas as a motor fuel.

* * * * *

(j) *Requirements for fusees and liquid-burning flares.* Each fusee shall be capable of burning for 30 minutes, and each liquid-burning flare shall contain enough fuel to burn continuously for at least 60 minutes. Fusees and liquid-burning flares shall conform to the requirements of Underwriters Laboratories, Inc., UL No. 912, Highway Emergency Signals, Fourth Edition, July 30, 1979, (with an amendment dated November 9, 1981). (See § 393.7(b) for information on the incorporation by reference and availability of this document.) Each fusee and liquid-burning flare shall be marked with the UL symbol in accordance with the requirements of UL 912.

* * * * *

[FR Doc. 94–16070 Filed 7–5–94; 8:45 am]
BILLING CODE 4910–22–P

49 CFR Part 393

[FHWA Docket No. MC–93–21]

RIN 2125–AD18

Parts and Accessories Necessary for Safe Operation; Protection Against Shifting or Falling Cargo

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the cargo securement requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to adopt the use of working load limits in specifying the minimum strength of cargo securement devices. The amendment requires that the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction be at least ½ times the weight of the article secured. In addition, a table of working load limits is being included in the FMCSRs to provide motor carriers with a means of determining the number of tiedown assemblies required. It is the intent of this final rule to make the tiedown requirements easier to understand, use, and enforce. This action is in response to a petition from the Commercial Vehicle Safety Alliance (CVSA).

DATES: Effective August 5, 1994. The incorporation by reference of the publications listed in § 393.102(b) of this final rule is approved by the Director of the Federal Register as of August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, HCS–10, (202) 366–2981; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D. C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1990, the CVSA petitioned the FHWA to change the criterion for cargo tiedown assemblies from "static breaking strength" to "working load limit." The CVSA contends the static breaking strength of a tiedown assembly is a rating that incorporates no safety factor, though the rule itself does include such a factor. The CVSA also believes the use of working load limits will make the tiedown regulations easier to understand, use, and enforce. The petitioner asserts that working load limit is the strength criterion commonly used by the chain, cordage, wire rope, and web sling industries and that the term is widely known in the trucking industry. The use of the working load limits would thus promote direct correlation between the rule and the capabilities labeled on or indicated by load securement equipment.

The CVSA proposed that the first sentence of § 393.102(b) be amended to read "Except for integral securement devices * * * the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction must be at least ½ times the weight of that article." The CVSA also proposed that chain, webbing, wire rope, and cordage meet certain manufacturing specifications or standards.

On September 17, 1993, the FHWA published a notice of proposed rulemaking (NPRM) (58 FR 48624) to adopt the use of working load limits and the incorporation by reference of chain, webbing, wire rope, and cordage manufacturing standards. Although the CVSA petition did not discuss standards for steel strapping, the FHWA proposed that Federal Specification No. A–A–880, Strapping, Steel Flat and Seals (May 13, 1980), be incorporated by reference because § 393.102 had referenced Federal Specification No. QQ–S–781 which has been cancelled. The FHWA believed it was necessary to retain specific requirements for steel strapping and that Federal Specification No. A–A–880 was an appropriate replacement.

The FHWA also proposed to create a new section, § 393.7, Matter incorporated by reference, to provide the language of incorporation required by 1 CFR 51, as well as to include information on the availability of documents incorporated by reference.

Discussion of Comments

The FHWA received 23 comments to the NPRM. Several commenters provided more than one docket submission. The commenters were: Advocates for Highway and Auto Safety (Advocates); American Trucking Associations, Inc. (ATA); Department of California Highway Patrol (CHP); Commercial Vehicle Safety Alliance (CVSA); Connecticut Department of Motor Vehicles (Connecticut); Cooper Tools; The Cordage Institute; The Crosby Group, Inc.; Great American Lines, Inc.; Illinois Department of Transportation (Illinois); Kinedyne Corporation; Maine State Police (Maine); The National Industrial Transportation League; New York Department of Transportation (New

petitioner asserts that working load limit is the strength criterion commonly used by the chain, cordage, wire rope, and web sling industries and that the term is widely known in the trucking industry. The use of the working load limits would thus promote direct correlation between the rule and the capabilities labeled on or indicated by load securement equipment.

The CVSA proposed that the first sentence of § 393.102(b) be amended to read "Except for integral securement devices * * * the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction must be at least ½ times the weight of that article." The CVSA also proposed that chain, webbing, wire rope, and cordage meet certain manufacturing specifications or standards.

On September 17, 1993, the FHWA published a notice of proposed rulemaking (NPRM) (58 FR 48624) to adopt the use of working load limits and the incorporation by reference of chain, webbing, wire rope, and cordage manufacturing standards. Although the CVSA petition did not discuss standards for steel strapping, the FHWA proposed that Federal Specification No. A–A–880, Strapping, Steel Flat and Seals (May 13, 1980), be incorporated by reference because § 393.102 had referenced Federal Specification No. QQ–S–781 which has been cancelled. The FHWA believed it was necessary to retain specific requirements for steel strapping and that Federal Specification No. A–A–880 was an appropriate replacement.

The FHWA also proposed to create a new section, § 393.7, Matter incorporated by reference, to provide the language of incorporation required by 1 CFR 51, as well as to include information on the availability of documents incorporated by reference.

Discussion of Comments

The FHWA received 23 comments to the NPRM. Several commenters provided more than one docket submission. The commenters were: Advocates for Highway and Auto Safety (Advocates); American Trucking Associations, Inc. (ATA); Department of California Highway Patrol (CHP); Commercial Vehicle Safety Alliance (CVSA); Connecticut Department of Motor Vehicles (Connecticut); Cooper Tools; The Cordage Institute; The Crosby Group, Inc.; Great American Lines, Inc.; Illinois Department of Transportation (Illinois); Kinedyne Corporation; Maine State Police (Maine); The National Industrial Transportation League; New York Department of Transportation (New York); Owner-Operator Independent Drivers Association, Inc. (OOIDA); United States Representative Jack Quinn, 30th District, New York; Steel Service Center Institute; Truck Trailer Manufacturers Association (TTMA); and Mrs. Richard B. Wilson.

Use of Working Load Limits

The commenters were generally in favor of amending § 393.102(b) to incorporate the use of working load limits. The CHP and Great American Lines were both opposed to the use of working load limits.

The CHP stated:

[Static breaking strength (SBS)] is a readily determined physical parameter. Conversely, the WLL, according to the NPRM is generally between ¼ and ⅓ of the static breaking strength of the tiedown. The CHP is not aware of any regulation which defines WLL. Instead, each manufacturer makes this determination for its own products. In many cases this may be based on industry standard practice, but since these practices are voluntary, no means is available to assure conformance.

In effect, the FHWA is abdicating its responsibility to determine proper tiedown standards by allowing manufacturers to determine the WLL of their devices. It is the opinion of the CHP that this parameter is far too critical to leave to a manufacturer's discretion.

Unless the WLL for each type of binder is defined in the regulation, there will always be some ambiguity as to the strength of the device.

Further, from an enforcement perspective, the WLL method could result in a hardship since WLL, based only on a factor determined by each manufacturer, is a much harder concept for enforcement/prosecution personnel to explain in court as opposed to the SBS, a parameter which is nearly intuitively obvious. Variations from manufacturer to manufacturer will further complicate the issue.

Great American Lines, Inc., stated:

[T]he current regulations as written in [§] 393.102 [of the] FMCS[Rs] are more than sufficient. Properly trained drivers using the securement as specified in the current regulations will have no problem keeping the cargo on the trailer. Education is the key, not change. The changes as proposed can only confuse the drivers, carriers and enforcement officers and cause an extremely dangerous situation * * *.

Changing to the C.V.S.A. guidelines can serve no good purpose and will confuse the people that it is meant to regulate. In the end the public will suffer. Don't change something that is working when properly applied.

In its second docket submission, Great American Lines, Inc., stated that "Neither the reasons presented in the text of the proposal nor at the congressional hearings preceding this notice of proposed rulemaking establish a problem with the regulation that warrant the changes being proposed."

The TTMA's position on the issue was contingent upon the FHWA's clarification of the term "tiedown assemblies." The TTMA stated: "If the term 'tiedown assemblies,' as used in [§] 393.102(b) includes trailer anchor points, then we object to changing 'breaking strength' to 'working load limit.'"

It is true, as the CHP noted, that working load limits are based on each manufacturer's determination. That is also true for static breaking strength, however, and neither value can be tested during roadside enforcement. The FHWA notes that the terms "static breaking strength" and "working load limit" are defined in numerous technical dictionaries, manuals, and reference books. While each manufacturer makes a determination of the working load limits of its own products, the documents incorporated by reference, combined with certain other requirements in § 393.102, eliminate the risk of voluntary or purely subjective standards. By incorporating by reference certain manufacturing standards, this rulemaking establishes specific minimum strength requirements for five categories of securement devices: steel strapping, chains, wire rope, cordage, and synthetic webbing.

The FHWA does not believe that tiedown manufacturers will produce devices which fail to meet these minimum strength requirements. For those cases in which the manufacturing standards do not provide specific working load limits (e.g., the document lists breaking strength or a working load limit range), the final rule establishes the procedure for determining this information.

In addition, the final rule includes a table of working load limits for some of the most commonly used types and sizes of tiedowns. The rule requires that the working load limits listed in the table be used when the tiedown material is not marked with its working load limit. The values listed in the table are based on the industry standards referenced in § 393.102. Therefore, the uncertainty about the strength of a tiedown is limited to tiedowns which do not meet the manufacturing

standards, and the rule prohibits the use of such tiedowns.

As for the CHP's comments about possible difficulties in the enforcement of a working load limit requirement, it is clear that the CVSA, whose membership includes State officials charged with enforcement, considered this issue before petitioning the FHWA. Section 393.102 specifies the relationship between the strength rating of the tiedown devices and the weight of the article being secured. If the strength rating and weight of the article are known, and the relationship between the two is clearly stated in § 393.102, the inspecting official should not have to provide an engineering discussion or justification of the strength rating requirement. Furthermore, as the CVSA indicated in its petition, and as several tiedown manufacturers, manufacturers' associations, and enforcement agencies have stated in their comments in response to the NPRM, a working load limit requirement would be easier to understand, use, and enforce because tiedown manufacturers prefer to label their products with the working load limit as opposed to the static breaking strength. The manufacturers believe the use of working load limits would decrease the likelihood of accidental misuse or overloading of the tiedowns.

The FHWA agrees with Great American Lines' emphasis on training and education. However, the number of accidents involving inadequately secured cargo suggests that some motor carriers do not understand or observe the current regulations. It must be noted that static breaking strength has been in use for approximately 20 years. During this time, education and training have played a role in reducing the number of cargo securement-related accidents to a relatively low level. The final rule is intended to make the cargo securement regulations easier to understand, use, and enforce in order to further reduce the incidence of cargo securement-related accidents.

The TTMA asked whether the term "tiedown assemblies" in the current regulations includes trailer anchor points. The answer is technically no, but the anchor points have to meet the same standard. Section 393.102(d) requires that the hook, bolt, weld, or other connections by which a tiedown assembly is attached to a vehicle, and the mounting place and means of mounting the connector, be at least as strong as the tiedown assembly. The final rule does not reference any manufacturing standards or recommended practices for trailer anchor points nor does it require trailer manufacturers to change their current practices regarding anchor points. However, the FHWA encourages trailer manufacturers to provide information to motor carriers and enforcement officials about the strength of anchor points to improve their knowledge of the cargo restraint capabilities of anchor points.

Incorporation by Reference and the Table of Working Load Limits

Generally, the commenters supported the inclusion of the table of working load limits in § 393.102 and the incorporation by reference of certain industry standards. Several commenters, however, recommended additions and/or corrections to the table.

Commenting in opposition to the incorporation by reference of industry standards, New York stated that "[a]doption by reference will cause confusion and make conformance by the industry difficult and also require the industry and enforcement personnel to use numerous documents in determining appropriate securement methodologies. The regulations should be self-contained and clear in their wording."

Some commenters questioned the need for including requirements for steel strapping. Maine, for example, stated: "While strapping may be used to secure materials to pallets, it is seldom used to hold freight to a vehicle. Since the material is not reused, it has little direct vehicle application." However, Connecticut argued that "[e]nforcement of Section 393.102 would be greatly enhanced if most common dimensions and strengths of steel strapping were added to the tables of working load limits." The CVSA stated:

The steel strap manufacturers have recently formed an association which is presently developing recommendations on their products. Steel strapping is typically not used as the primary load securement device. Normally the strapping will hold the cargo in bundles or to pallets while other devices are used to secure those bundles and pallets to the transporting vehicle. Because steel strapping is not often used as a direct tiedown device and since the strap manufacturers are now working through their association to develop strength and use guidelines, we recommend that this material not be included in the proposed rule at this time. The new industry standards may well supersede the federal specification referenced in the docket. Delaying action at this time could well reduce future confusion over regulatory requirements for steel strapping.

As for the incorporation by reference of rope standards, the Cordage Institute stated that "[s]isal and nylon ropes are not recommended [for cargo securement applications] and references to their standards [Sisal Rope Specifications (SRS–1), Nylon Rope Specifications (NRS–1), and Double Braided Nylon Rope Specifications (C1)] should be deleted." The Cordage Institute did not provide any information to support this recommendation and no other commenters addressed this subject. It was recommended that the new standards for polypropylene fiber rope (PPRS–2, revised August 1992) and polyester fiber rope (PETRS–2, revised January 1993) be used in place of P/PRS–1, May 1979 and PRS–1, May 1979, respectively. The Cordage Institute also provided clarification of its recommendations on calculating working load limit values. Its policy on working load limit values has changed from using a specific design factor for each size of cordage/rope to a design factor range. This approach leaves the selection of a specific value to the particular applications for which the cordage will be used. For cargo securement applications involving polypropylene and polyester fiber ropes, the Cordage Institute recommended a design factor of 6—the working load limit would be equal to ⅙ of the minimum breaking strengths listed in PPRS–2 and PETRS–2. The Cordage Institute recommended that the working load limits for manila rope be ½ that of the polypropylene fiber rope of the same diameter. Working load limit values were also recommended for "California Truck Rope"—rope meeting the requirements of Title 13 of the California Code of Regulations, § 1303(e). The Cordage Institute also suggested that the FHWA include California's § 1303(e) requirements for synthetic fiber rope (e.g., rope shall be treated for ultraviolet resistance, rope must have an orange surface marker in each rope strand, prohibition on the use of solid orange rope, etc.).

In response to those commenters opposed to the incorporation by reference of certain manufacturing standards, the FHWA notes that the intent of this process is to reduce the volume of material published in the **Federal Register** and Code of Federal Regulations by referencing relevant material published by the private sector The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, has the force and effect of law. Motor carriers do not need to obtain copies of all of the materials which are incorporated by reference but only those that are relevant to their specific circumstances (e.g., carriers relying solely upon steel chains do not need to obtain copies of standards for steel strapping, cordage, webbing, or wire rope). Although there may be advantages to printing certain texts from private sector documents in the regulations, the FHWA does not intend § 393.102 to be a technical reference on manufacturing standards. Both the volume and complexity of the information covered in the referenced documents is too great to be effectively presented in the FMCSRs.

As for the specific documents to be incorporated by reference, the final rule differs from the NPRM in that it does not refer to Federal Specification No. A–A–880, Strapping, Steel Flat and Seals (May 13, 1980). Instead, the final rule incorporates American Society for Testing and Materials (ASTM) D3953–91, Standard Specification for Strapping, Flat Steel and Seals. As the CVSA noted in its comments, steel strap manufacturers, working in conjunction with the ASTM, are currently developing recommendations or guidelines concerning the use of steel strapping in load securement. The FHWA has reviewed the preliminary strength and use guidelines that ASTM Subcommittee D10.14 provided to the CVSA concerning breaking strengths and working load limits for steel strapping or banding. A copy of the preliminary strength and use guidelines is included in the docket file. The working load limits are ¼ of the breaking strengths (the breaking strength multiplied by a design factor of ⅓ and a "joint efficiency" of 0.75) listed in ASTM D3953–91.

After a review of ASTM D3953–91, the FHWA has determined that the preliminary strength and use guidelines of ASTM Subcommittee D10.14 have merit and could, to some extent, be addressed in the final rule through the incorporation by reference of ASTM D3953–91. The FHWA has compared the requirements of Federal Specification No. A–A–880 with those of ASTM D3953–91 and determined that the ASTM standard specification would serve as a better reference for manufacturers and carriers to use in determining if certain sizes or grades of steel strapping are adequate for cargo securement applications. Although the ASTM subcommittee (D10.14) is developing new guidelines, most of its preliminary recommendations are based on ASTM D3953–91. Therefore, the FHWA believes that it is appropriate to incorporate by reference the ASTM

need to obtain copies of all of the materials which are incorporated by reference but only those that are relevant to their specific circumstances (e.g., carriers relying solely upon steel chains do not need to obtain copies of standards for steel strapping, cordage, webbing, or wire rope). Although there may be advantages to printing certain texts from private sector documents in the regulations, the FHWA does not intend § 393.102 to be a technical reference on manufacturing standards. Both the volume and complexity of the information covered in the referenced documents is too great to be effectively presented in the FMCSRs.

As for the specific documents to be incorporated by reference, the final rule differs from the NPRM in that it does not refer to Federal Specification No. A–A–880, Strapping, Steel Flat and Seals (May 13, 1980). Instead, the final rule incorporates American Society for Testing and Materials (ASTM) D3953–91, Standard Specification for Strapping, Flat Steel and Seals. As the CVSA noted in its comments, steel strap manufacturers, working in conjunction with the ASTM, are currently developing recommendations or guidelines concerning the use of steel strapping in load securement. The FHWA has reviewed the preliminary strength and use guidelines that ASTM Subcommittee D10.14 provided to the CVSA concerning breaking strengths and working load limits for steel strapping or banding. A copy of the preliminary strength and use guidelines is included in the docket file. The working load limits are ¼ of the breaking strengths (the breaking strength multiplied by a design factor of ⅓ and a "joint efficiency" of 0.75) listed in ASTM D3953–91.

After a review of ASTM D3953–91, the FHWA has determined that the preliminary strength and use guidelines of ASTM Subcommittee D10.14 have merit and could, to some extent, be addressed in the final rule through the incorporation by reference of ASTM D3953–91. The FHWA has compared the requirements of Federal Specification No. A–A–880 with those of ASTM D3953–91 and determined that the ASTM standard specification would serve as a better reference for manufacturers and carriers to use in determining if certain sizes or grades of steel strapping are adequate for cargo securement applications. Although the ASTM subcommittee (D10.14) is developing new guidelines, most of its preliminary recommendations are based on ASTM D3953–91. Therefore, the FHWA believes that it is appropriate to incorporate by reference the ASTM standard specification at this time, and consider the ASTM strength and use guidelines for incorporation after they have been published.

As for cordage specifications, the FHWA is incorporating by reference (1) CRS–1, Polyester/Polypropylene Composite Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979, (2) PPRS–2, Polypropylene Fiber Rope, 3-Strand and 8-Strand Constructions, revised August 1992, (3) PETRS–2, Polyester Fiber Rope, 3-Strand and 8-Strand Constructions, revised January 1993, (4) NRS–1, Nylon Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979, and (5) C1, Double Braided Nylon Rope Specifications, DBN-January 1984. The incorporation of CRS–1, NRS–1 and C1 is consistent with the NPRM and the inclusion of PPRS–2 and PETRS–2 is in response to the docket comments. The FHWA has reviewed the Cordage Institute's recommendation concerning the working load limits for manila rope (three-strand laid construction), and notes that the recommendation results in (1) an increase in the working load limit for rope with diameters of 3/16 through ½ inch and 2½ through 4 inches, and (2) a decrease in the working load limits for diameters of 9/16 through 2¼ inches. The increases in working load limits are generally between 1 and 5 percent for the 2½ through 4 inch diameter ropes. The percentage increases in the working load limits of 3/16 through ½-inch rope are much larger. However, the safety factors provided in MRS–1 for 3/16 through ½-inch rope were greater than those of the larger diameter ropes. The FHWA believes the working load limit recommendations of the Cordage Institute provide reasonable safety factors for manila rope. Accordingly, the FHWA is adopting these recommendations as part of the table of working load limits in the final rule. In light of the Cordage Institute's recommendations concerning manila rope working load limits, the FHWA does not believe that it is appropriate to incorporate by reference MRS–1. To do so would result in a contradiction between the working load limits contained in MRS–1 and the working load limits (for cargo securement applications) recommended by the Cordage Institute.

The FHWA accepts the Cordage Institute's suggestion to delete the reference to sisal rope (SRS–1), but does not believe that excluding nylon rope specifications from the final rule is appropriate. The final rule is not intended to incorporate standards for all tiedown materials, but only the most commonly used. In that context, and in consideration of the relatively low working load limits for sisal rope the FHWA does not believe that including a specification for sisal rope is essential. The FHWA notes that the rule does not prohibit the use of sisal rope.

As for the nylon rope specifications, the references remain as originally proposed. Although the agency cannot quantify the extent to which nylon rope is used, the working load limits for nylon rope are such that its usage in cargo securement applications is likely.

The FHWA is not adopting the Cordage Institute's recommendation to include rope requirements similar to those used in the California Code of Regulations. With the exception of California's requirement for ultraviolet resistance, the FHWA considers this particular regulatory language unnecessarily design restrictive in that it would prohibit, without sufficient technical justification, certain synthetic rope and webbing based primarily on material and/or color, irrespective of its strength or safety for use in cargo securement. As for ultraviolet resistance requirements, the Cordage Institute did not provide, and the California regulations do not include, sufficient information to enable the FHWA to establish specific and objective regulatory language.

The NPRM requested comments on the method used in determining the working load limit for wire rope which is not marked. Four commenters responded to this request. All supported the method described in the NPRM (i.e., ¼ of the nominal strength—the nominal strength multiplied by a design factor of ⅓ and the "termination efficiency," 0.75). Therefore, § 393.102(b) includes this method for determining the working load limit of unmarked wire rope.

Marking and Labeling of Tiedown Devices

Several commenters responded to the FHWA's questions concerning the need for requiring the use of only those tiedown devices which are marked or labeled with the working load limit. For example, the CVSA stated:

Manufacturers of tiedowns have indicated that they are willing to mark load securement devices with working load limit ratings. We believe having working load values marked on load securement devices is a significant aid to their proper use and we would like to see such markings universally required.

We recognize that presently, much of the tiedown equipment in the field is

either unmarked or not directly marked with working load limit. As it would be an extreme waste of resources and a huge financial burden on carriers to scrap today's inventory of products not marked with working load limit, we would recommend the requirement for marking working load limits be made effective at some future date, i.e., three to five years. Another way to handle this would be to grandfather the tiedown equipment already manufactured and being used by the motor carrier industry.

New York believed the final rule should "clearly state that unmarked cargo securement devices, steel strapping, chain, webbing, wire rope, etc. will not be allowed and will cause vehicles transporting materials with unmarked devices to be placed out-of-service. There is no way to effectively ensure the adequacy of unmarked devices."

The OOIDA stated:

Owner-operators frequently purchase tie-down hooks, chains, wire ropes, etc. at truck stops or other similar locations. Drivers need to be assured that the items purchased meet all applicable safety standards. Therefore, the Agency should take steps to require prominent displays on packaging that will ensure that the product meets safety requirements. Specific details on packaging as to working load limit are preferable to general statements that manufacturing standards are met.

While the FHWA is aware of the need for carriers and enforcement officials to be able to identify the various cargo securement devices and the associated working load limits, the final rule does not include a requirement for marking and labeling of these devices. Such a requirement must take into account manufacturers' practices as well as the need for uniformity. The commenters did not provide any listings of current marking and labeling practices to assist the FHWA in determining appropriate regulatory language. The agency cannot estimate what percentage of tiedown equipment currently in use by motor carriers or stocked by manufacturers and retailers is unmarked or not directly marked with a working load limit. Although a general requirement for the use of marked and labeled equipment could be included in § 393.102, the absence of specific and objective guidelines as to what constitutes an acceptable mark or label for each type of tiedown (i.e., chain, synthetic webbing, wire rope, steel strapping, cordage) would create enforcement difficulties. The FHWA encourages tiedown manufacturers to develop uniform systems of marking and labeling their products to assist motor carriers and enforcement officials in determining working load limits.

Applicability of Cargo Securement Regulations to Shippers

New York and the OOIDA expressed concern about the applicability of the cargo securement regulations to shippers. Citing the catastrophic results of accidents caused by inadequate securement of steel and aluminum products, New York believed the "federal regulations should assign responsibility for proper cargo securement of steel and aluminum products to both the shipper and the carrier." The OOIDA stated:

A large degree of responsibility for cargo securement lies squarely with the individual shipper. It is the shipper who selects and ultimately contracts with various motor carriers to transport their commodities. Each shipper has an obligation to scrutinize every prospective carrier and engage only those capable of providing the proper equipment and expertise necessary to safely haul their specific product.

The FHWA acknowledges these concerns. Whatever the merits of these arguments, however, the FHWA has no statutory authority to regulate shippers of steel and aluminum products.

Future Rulemakings on Cargo Securement

Several commenters discussed the need for amending or clarifying numerous provisions of the cargo securement regulations as well as the need for research. The Illinois Department of Transportation wrote:

Illinois is concerned that application of the proposed aggregate working load limit formula may not provide adequate margins of safety. What may be considered adequate securement for general freight may not be adequate for other loads. The regulations identify unique securement standards for intermodal containers. Coils and metal articles also have special securement requirements. Cargo weight and load configuration both need to be factored into the performance standards expected from tiedown systems * * *.

The potential gravity and actual severity of incidents involving the transportation of metal coils, their frequency of occurrence and the high number of apparent violations of the securement regulations give credibility to the need to reevaluate the securement regulations. These concerns have led Illinois to sponsor a university research project to examine the unique properties of metal coil cargo securement * * *.

The project will take 15 months and focus upon five areas: (1) Review and evaluate current systems, (2) examine the volume of coils transported and the types of securement systems in use in Illinois, (3) evaluate the knowledge of persons using or enforcing the securement regulations, (4) perform engineering dynamic studies to evaluate securement systems, and (5) recommend improvements in securement systems and/or educational efforts for persons involved in both the transportation and enforcement areas of the regulations. Upon its completion, the results and conclusion of this project will be made available to FHWA and other parties interested in transportation safety.

The research project will examine the dynamic forces affecting securement systems during normal driving and during less than ideal transportation conditions such as hard braking, emergency maneuvers or sharp radius turns. Illinois' data indicates loss of cargo commonly occurs during these less than ideal conditions.

The FHWA welcomes efforts by academia, tiedown and vehicle manufacturers, motor carriers, and others conducting research or studies directed at reducing the incidence of cargo securement-related accidents. Currently the FHWA is working with the Canadian Council of Motor Transport Administrators, State and Provincial agencies responsible for motor carrier safety activities, and U.S. and Canadian industry groups to conduct a comprehensive research program on cargo securement. A report identifying certain cargo securement issues needing research and describing a program to address them was published by the Ontario Ministry of Transportation in November 1993. A copy of the report entitled "A Proposal for Research to Provide a Technical Basis for a Revised National Standard on Load Security for Heavy Trucks" is included in the docket file. It is expected that this research, along with efforts such as those described by Illinois, will contribute greatly toward evaluating current cargo securement regulations and industry practices and providing recommendations for specific actions needed to improve safety.

This final rule is not intended to preclude consideration of future rulemakings on cargo securement.

Discussion of Final Rule

The FHWA is amending § 393.102(b) to require that the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction be at least [1] the weight of the article secured. Steel

strapping, chain, synthetic webbing, wire rope, and cordage used must meet certain manufacturing or performance standards which are incorporated by reference. The incorporation of these standards is intended to specify minimum requirements for tiedowns and not to restrict the use of tiedowns which exceed the criteria contained therein.

Section 393.7, which was proposed in its entirety in the NPRM, was created by the final rule entitled "Parts and Accessories Necessary for Safe Operation; Warning Devices for Stopped Vehicles" (RIN 2125–AD17; FHWA Docket No. MC–93–19), which is published elsewhere in today's **Federal Register**. The FHWA is amending § 393.7, Matter incorporated by reference, to provide the language of incorporation required by 1 CFR 51 and to provide information on the availability of the incorporated documents. After a review of the responses to the September 17, 1993, NPRM and a determination that the incorporation by reference was necessary for the final rule, the FHWA submitted the documents listed in § 393.102(b)(1) to (b)(5) to the Director of the Federal Register for approval in accordance with 5 U.S.C. 552(a) and 1 CFR 51.

The final rule does not require tiedowns to be marked or labeled. However, manufacturers of tiedowns and associated equipment are encouraged to provide motor carriers and enforcement officials with a means to easily determine the working load limits of their products. For those cases in which the tiedown manufacturing standards (incorporated by reference into the final rule) include guidelines for marking and labeling, adherence to those guidelines is encouraged, but is not mandated.

Section 393.102(b) is amended to include a table of working load limits for common types and sizes of tiedown devices. The working load limits listed in the table are to be used when the tiedown material is not marked by the manufacturer with the working load limit. Tiedown materials marked by the manufacturer with working load limits which differ from the table, shall be considered to have a working load limit equal to the value for which they are marked.

With regard to the working load limits for cordage, the table lists values for manila, polypropylene, polyester, and nylon cordage. For those cases in which the a synthetic rope does not have a manufacturers' marking or label to enable motor carriers and enforcement officials to distinguish between

strapping, chain, synthetic webbing, wire rope, and cordage used must meet certain manufacturing or performance standards which are incorporated by reference. The incorporation of these standards is intended to specify minimum requirements for tiedowns and not to restrict the use of tiedowns which exceed the criteria contained therein.

Section 393.7, which was proposed in its entirety in the NPRM, was created by the final rule entitled "Parts and Accessories Necessary for Safe Operation; Warning Devices for Stopped Vehicles" (RIN 2125–AD17; FHWA Docket No. MC–93–19), which is published elsewhere in today's **Federal Register**. The FHWA is amending § 393.7, Matter incorporated by reference, to provide the language of incorporation required by 1 CFR 51 and to provide information on the availability of the incorporated documents. After a review of the responses to the September 17, 1993, NPRM and a determination that the incorporation by reference was necessary for the final rule, the FHWA submitted the documents listed in § 393.102(b)(1) to (b)(5) to the Director of the Federal Register for approval in accordance with 5 U.S.C. 552(a) and 1 CFR 51.

The final rule does not require tiedowns to be marked or labeled. However, manufacturers of tiedowns and associated equipment are encouraged to provide motor carriers and enforcement officials with a means to easily determine the working load limits of their products. For those cases in which the tiedown manufacturing standards (incorporated by reference into the final rule) include guidelines for marking and labeling, adherence to those guidelines is encouraged, but is not mandated.

Section 393.102(b) is amended to include a table of working load limits for common types and sizes of tiedown devices. The working load limits listed in the table are to be used when the tiedown material is not marked by the manufacturer with the working load limit. Tiedown materials marked by the manufacturer with working load limits which differ from the table, shall be considered to have a working load limit equal to the value for which they are marked.

With regard to the working load limits for cordage, the table lists values for manila, polypropylene, polyester, and nylon cordage. For those cases in which the a synthetic rope does not have a manufacturers' marking or label to enable motor carriers and enforcement officials to distinguish between polypropylene, polyester fiber ropes, polyester/polypropylene composite rope, or nylon rope, the working load limits of polypropylene fiber rope shall be used. Since polypropylene fiber rope generally has a lower working load limit than polyester and nylon ropes, this provision is important to ensure safety. The agency notes that the working load limits for nylon rope are based on the specific design factors in the nylon rope specifications, NRS–1 and C1. These design factors are between 9 and 12 for three- and eight-strand standard construction nylon rope and between 7 and 11 for double braided nylon rope. As a result, the working load limits shown in § 393.102 for certain sizes of nylon rope are lower than that for polypropylene fiber rope. Considering the Cordage Institute's recommendation for a design factor of 6 for polypropylene fiber rope and polyester rope, the FHWA believes that the use of polypropylene fiber rope working load limits is appropriate in those cases in which the rope cannot be identified as nylon. The table of working load limits does not include information on polyester/polypropylene composite rope because the working load limit values are generally very close, if not identical, to those of polypropylene fiber rope.

In the case of steel strapping, wire rope, and cordage, the final rule includes a procedure for calculating the working load limits. The published industry standards for these materials use breaking strengths, nominal strengths, and working load limit ranges respectively. To ensure consistency in calculating the working load limits and an appropriate safety margin in determining the number of tiedown devices required, these procedures must be used when the working load limit is not provided by the manufacturer or when the manufacturer provides working load limit ranges for cargo securement applications.

Ruelmaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This final rule amends the requirements for the strength ratings for cargo securement devices. The FHWA has determined that this is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. The final rule requires that the aggregate working load limits of the tiedown assemblies used to secure cargo be at least 1/2 times the weight of the article being secured. The total number of tiedown assemblies required by the rule would generally be the same as or slightly more than the number required using the previous breaking strength terminology. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rulemaking on small entities. As previously stated, the final rule amends § 393.102(b) of the Federal Motor Carrier Safety Regulations by requiring that the aggregate working load limits of the tiedown assemblies used to secure cargo be at least 1/2 times the weight of the article being secured. The total number of tiedown assemblies required by the rule would generally be the same as or slightly more than the number required prior to this amendment. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highway safety, Incorporation by reference, Motor carriers, Motor vehicle safety.

Issued on: June 23, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending part 393 of title 49, Code of Federal Regulations, as set forth below.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION [AMENDED]

1. The authority citation for 49 CFR part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991), 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

2. Section 393.7 is amended by adding paragraph (b)(2) through (b)(6) to read as follows:

§ 393.7 Matter incorporated by reference.

* * * * *

(b) *Availability.* The materials incorporated by reference are available as follows:

(1) * * *

(2) Specifications of the American Society for Testing and Materials. Information and copies may be obtained by writing to: American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Specifications of the National Association of Chain Manufacturers. Information and copies may be obtained by writing to: National Association of Chain Manufacturers, P.O. Box 3143, York, Pennsylvania 17402–0143.

(4) Specifications of the Web Sling and Tiedown Association. Information and copies may be obtained by writing to: Web Sling and Tiedown Association, Inc., 710 East Ogden Avenue, Suite 113, Naperville, Illinois 60563.

(5) Manuals of the Wire Rope Technical Board. Information and copies may be obtained by writing to: Wire Rope Technical Committee, P.O. Box 849, Stevensville, Maryland 21666.

(6) Standards of the Cordage Institute. Information and copies may be obtained by writing to: Cordage Institute, 350 Lincoln Street, t 115, Hingham, Massachusetts 02043.

(7)–(9) [Reserved].

* * * * *

3. Section 393.102 is amended by removing paragraph (g) and by revising paragraph (b) to read as follows:

§ 393.102 Securement systems.

* * * * *

(b) *Tiedown assemblies.* Except for integral securement devices of containers designed for the transportation of containerized, intermodal cargo which conform to the rules in § 393.100(e), the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction must be at least 1/2 times the weight of the article. With the exception of marking identification, tiedowns used must meet applicable manufacturing standards listed in this paragraph (b).

(1) *Steel strapping.* Steel strapping used as a component of a tiedown assembly must conform to the requirements of the 1991 edition of the American Society for Testing and Materials' Standard Specification for Strapping, Flat Steel and Seals, ASTM D3953–91. Steel strapping which is not marked by the manufacturer with a working load limit, shall be considered to have a working load limit equal to 1/4 of the breaking strength listed in ASTM D3953–91. (See § 393.7(b) for information on the incorporation by reference and availability of this document.) Steel strapping that is one inch wide or wider must have at least two pairs of crimps in each seal and when an end-over-end lap joint is formed, it must be sealed with at least two seals.

(2) *Chain.* Chain used as a component of a tiedown assembly must conform to the requirements of the June 15, 1990, edition of the National Association of Chain Manufacturers' Welded Steel Chain Specifications applicable to all types of chain. (See § 393.7(b) for information on the incorporation by reference and availability of this document.)

(3) *Webbing.* Webbing used as a component of a tiedown assembly must conform to the requirements of the 1991 edition of the Web Sling and Tiedown Association's Recommended Standard Specification for Synthetic Webbing Tiedowns. (See § 393.7(b) for information on the incorporation by reference and availability of this document.)

(4) *Wire rope.* Wire rope used as a component of a tiedown assembly must conform to the requirements of the November 1985 second edition of the Wire Rope Technical Board's Wire Rope Users Manual. Wire rope which is not marked by the manufacturer with a working load limit, shall be considered to have a working load limit equal to 1/4 of the nominal strength listed in the Wire Rope Users Manual. (See § 393.7(b) for information on the incorporation by reference and availability of this document.)

(5) *Cordage.* Cordage used as a component of a tiedown assembly, must conform to the applicable Cordage Institute rope standards listed below: PETRS–2, Polyester Fiber Rope, 3-Strand and 8-Strand Constructions, January, 1993; PPRS–2, Polypropylene Fiber Rope, 3-Strand and 8-Strand Constructions, August, 1992; CRS–1, Polyester/Polypropylene Composite Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979; NRS–1, Nylon Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979; C1, Double Braided Nylon Rope Specifications, DBN-January 1984. (See § 393.7(b) for information on the incorporation by reference and availability of these documents.)

(6) *Tables of working load limits.* The working load limits listed in the tables in this paragraph are to be used when the tiedown material is not marked by the manufacturer with the working load limit. Tiedown materials which are marked by the manufacturer with working load limits which differ from the table, shall be considered to have a working load limit equal to the value for which they are marked. Synthetic cordage (e.g., nylon, polypropylene, polyester) which is not marked or labeled to enable identification of its composition or working load limit shall be considered to have a working load limit equal to that for polypropylene fiber rope.

TABLES

Size inch (mm)	
¼ (7)	
5/16 (8)	
3/8 (10)	
7/16 (11)	
½ (13)	
5/8 (16)	
Chain Mark	
Examples	
1-¾ (45)	
2 (50)	
3 (75)	
4 (100)	
¼ (7)	
5/16 (8)	
3/8 (10)	
7/16 (11)	
½ (13)	
5/8 (16)	
¾ (20)	
7/8 (22)	
1 (25)	
3/8 (10)	
7/16 (11)	
½ (13)	
5/8 (16)	
¾ (20)	
1 (25)	

Polypropyl

3/8 (10)	
7/16 (11)	
½ (13)	
5/8 (16)	
¾ (20)	
1 (25)	

Polyeste

3/8 (10)	
7/16 (11)	
½ (13)	
5/8 (16)	
¾ (20)	
1 (25)	

TABLES TO § 393.102(b)(6)—WORKING LOAD LIMITS (WLL)

[Chain WLL in pounds (kg)]

Size inch (mm)	Grade 3 proof coil	Grade 4 high test	Grade 7 transport	Grade 8 alloy
1/4 (7)	1300 (590)	2600 (1180)	3150 (1430)	3500 (1590)
5/16 (8)	1900 (860)	3900 (1770)	4700 (2130)	5100 (2310)
3/8 (10)	2650 (1200)	5400 (2450)	6600 (2990)	7100 (3220)
7/16 (11)	3500 (1590)	5800 (2630)	8750 (3970)	.....
1/2 (13)	4500 (2040)	9200 (4170)	11300 (5130)	12000 (5440)
5/8 (16)	6900 (3130)	11500 (5220)	15800 (7170)	18100 (8210)
Chain Mark	PC	HT	.....	T
Examples	3	4	7	8
	30	40	70	80

Synthetic Webbing WLL

Width inch (mm)	WLL pounds (kg)
1-3/4 (45)	1750 (790)
2 (50)	2000 (910)
3 (75)	3000 (1360)
4 (100)	4000 (1810)

Wire Rope (6 X 37, Fiber Core) WLL

Diameter inch (mm)	WLL pounds (kg)
1/4 (7)	1400 (640)
5/16 (8)	2100 (950)
3/8 (10)	3000 (1360)
7/16 (11)	4100 (1860)
1/2 (13)	5300 (2400)
5/8 (16)	8300 (3770)
3/4 (20)	10900 (4940)
7/8 (22)	16100 (7300)
1 (25)	20900 (9480)

Manila Rope WLL

3/8 (10)	205 (90)
7/16 (11)	265 (120)
1/2 (13)	315 (150)
5/8 (16)	465 (210)
3/4 (20)	640 (290)
1 (25)	1050 (480)

Polypropylene Fiber Rope WLL (3-Strand and 8-Strand Constructions)

3/8 (10)	400 (180)
7/16 (11)	525 (240)
1/2 (13)	625 (280)
5/8 (16)	925 (420)
3/4 (20)	1275 (580)
1 (25)	2100 (950)

Polyester Fiber Rope WLL (3-Strand and 8-Strand Constructions)

3/8 (10)	555 (250)
7/16 (11)	750 (340)
1/2 (13)	960 (440)
5/8 (16)	1500 (680)
3/4 (20)	1880 (850)
1 (25)	3300 (1500)

Wire Rope (6 X 37, Fiber Core) WLL—Continued

Diameter inch (mm)	WLL pounds (kg)
Nylon Rope WLL	
3/8 (10)	278 (130)
7/16 (11)	410 (190)
1/2 (13)	525 (240)
5/8 (16)	935 (420)
3/4 (20)	1420 (640)
1 (25)	2520 (1140)
Double Braided Nylon Rope WLL	
3/8 (10)	336 (150)
7/16 (11)	502 (230)
1/2 (13)	655 (300)
5/8 (16)	1130 (510)
3/4 (20)	1840 (830)
1 (25)	3250 (1470)
Steel Strapping WLL	
Width – thickness inch	WLL pounds (kg)
1-1/4 x 0.029	1190 (540)
1-1/4 x 0.031	1190 (540)
1-1/4 x 0.035	1190 (540)
1-1/4 x 0.044	1690 (770)
1-1/4 x 0.050	1690 (770)
1-1/4 x 0.057	1925 (870)
2 x 0.044	2650 (1200)
2 x 0.050	2650 (1200)

* * * * *

[FR Doc. 94–16069 Filed 7–5–94; 8:45 am]
BILLING CODE 4910-22-P

federal register

Wednesday
July 6, 1994

Part III

Department of Education

34 CFR Parts 74 and 77
Administration of Grants and Agreements With Institutions; Final Rule

VOL 59 ISS 128 JL 6 1994 UMI

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 77

RIN 1880–AA34

Administration of Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; Definitions That Apply to Department Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary revises Part 74 (Administration of Grants) and amends part 77 (Definitions that Apply to Department Regulations) of the Education Department General Administrative Regulations (EDGAR). These final regulations implement Office of Management and Budget (OMB) Circular A–110 establishing uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations.

EFFECTIVE DATE: These regulations will be effective October 1, 1994, and will apply to new and continuation awards made on or after October 1, 1994, with the exception of §§ 74.12, 74.21, 74.25, 74.34, 74.44, 74.45, 74.46, 74.47, 74.51, 74.52, 74.53, 74.71, 74.72, and 74.75. These sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. A document announcing the effective date of these sections will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Greg Vick, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3636, Regional Office Building 3, Washington, DC 20202. Telephone: (202) 708–8199. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On August 27, 1992, OMB published a proposed version of OMB Circular A–110 (57 FR 39018). OMB received over 200 comments from Federal agencies, non-profit organizations, professional organizations, and others. After considering all comments, OMB published the circular in final form on November 29, 1993 (58 FR 62992).

The Secretary revises Parts 74 (Administration of Grants) and 77 (Definitions that Apply to Department Regulations) of EDGAR to incorporate the revised Circular. The Secretary has deviated from the text of the Circular to make certain technical changes. In addition, the Secretary has made two substantive changes to the text of the Circular.

Section 412 of the Department of Education Organization Act (DEOA)(20 U.S.C. 3472) provides that the Secretary may delegate the functions of the Department only to officers and employees of the Department. Section _____ .4 of the Circular, however, has the effect of delegating one of the Secretary's functions—granting exceptions to the regulations as promulgated by the Secretary for Department programs—to employees of the Office of Management and Budget (OMB). In order to avoid this conflict with the DEOA, the Secretary is deviating from the text of the Circular to authorize the Secretary to grant exceptions to the regulations after consultation with appropriate officials of OMB.

Section 437(a) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232f) requires that records be retained by recipients of grants for a period of five years. The record retention period specified in sec. _____.53(b) of the Circular, as established by OMB, however, requires recipients to retain financial records, supporting documents, statistical records, and all other records pertinent to the award for a period of three years. The Secretary has changed this requirement in § 74.53(b) of the regulations to require recipients to retain records for five years in accordance with GEPA.

Summary of Major Provisions

The revised Circular A–110 as implemented in 34 CFR Parts 74 and 77 of the Education Department General Administrative Regulations (EDGAR) (1) harmonize the regulations with numerous and significant changes in grant administrative practice and legislation since the original Circular was issued in 1976; (2) bring the requirements for institutions of higher education, hospitals, and other non-profit organizations closer to those contained for State, local, and tribal governments in OMB Circular A–102 (implemented by the Department at 34 CFR Part 80) so that the Department's grant administration is more uniform across classes of recipients; (3) reduce regulatory burden on and give greater flexibility to recipients in numerous cases; and (4) strengthen certain provisions in order to protect the Federal interest. The Circular, as implemented in these regulations—

Definitions: Expands or clarifies many of the definitions in the old A–110 Circular (e.g., suspension); Adds new definitions to 34 CFR Parts 74 and 77 of EDGAR; and amends Part 77 of to reflect the definitions contained in Part 80.

Program income: Allows costs incident to the generation of program income to be deducted from gross income to determine program income; requires excess program income to be deducted from total project costs; exempts program income earned after the project period; and clarifies that all program income should be used by recipients before they request additional cash payments.

Specifies in § 74.27 that certain OMB circulars and **Federal Register** notices apply to grants and subgrants subject to Part 74. The Secretary adopts the following Circulars and their cost principles as published in the **Federal Register** on the dates shown:

- A–21—Cost Principles for Educational Institutions—(March 6, 1979 [44 FR 12368]; and August 3, 1982 [47 FR 33658]; and June 9, 1986 [51 FR 20908]; and December 2, 1986 [51 FR 43487]; and October 3, 1991 [56 FR 50224]);
- A–87—Cost Principles for State and Local Governments—(January 28, 1981 [46 FR 9548]); and
- A–122—Cost Principles for Nonprofit Organizations—(July 8, 1990 [45 FR 46022]; and March 17, 1980 [46 FR 17185]; and April 27, 1984 [49 FR 18260]; and May 8, 1984 [49 FR 19588]).

These cost principles would apply except to the extent that program regulations or the regulations in EDGAR require a different outcome.

If OMB publishes at a future date revisions to any of these cost principles, the Secretary will publish regulatory amendments adopting the revised circulars.

Record retention: Clarifies the Department's right to have timely access to recipient personnel and records.

Cost sharing and matching: Allows the fair market value of real property to be used for cost sharing or matching (with the approval of the Department); allows a reasonable amount of fringe benefits to be used for valuing donated services; and adds a section addressing use of indirect costs as part of cost sharing or matching.

Reports: Provides certain conditions for waiving the requirement that recipients submit an SF–272 cash transaction report.

Sub-recipients: Describes recipient responsibilities for monitoring sub-recipients.

Administrative requirements: Revises administrative provisions to allow the Department to restrict fund transfers greater than 10% among direct cost categories for projects with a Federal share greater than $100,000; authorizes the Department to waive certain prior approval and other administrative and programmatic requirements; authorizes administrative and programmatic waivers automatically for research grants unless specifically prohibited; and authorizes the Department to grant exceptions on a case-by-case basis.

Closeout: Requires recipients to liquidate obligations 90 calendar days after the funding period or the date the project is completed.

Preaward provisions: Allows the Department to use application forms other than the SF–424; incorporates requirements of the Federal Grant and Cooperative Agreement Act concerning the use of grants, cooperative agreements, or contracts; and addresses the issues of priority setting and advance public notice.

Property management: Raises the acquisition cost threshold for defining equipment (formerly nonexpendable personal property) from $300 to $5,000; adds new provisions for intangible property that now establish title to intangible property and incorporate governmentwide patent regulations; requires recipients to avoid purchasing unnecessary or duplicative items of equipment by determining through an appropriate process that existing equipment is not available; requires recipients to provide insurance for equipment and real property acquired with Federal funds; and adds new provisions for federally owned property.

Property trust relationship: Authorizes the Secretary to require recipients to file liens or other appropriate notices to protect the federal interest in property acquired or improved with federal funds.

Supplies: Revises standards for supplies (formerly expendable personal property); raises the threshold to $5,000 for having to account for unused supplies at the end of a project; and prohibits recipients from using federally funded supplies to provide services for a fee lower than that charged by private companies for the same service.

Procurement standards: Promotes the use of small/minority-owned/women's business enterprises; requires recipients to establish certain standards of conduct for its employees engaged in awarding contracts; increases the small purchase threshold from $10,000 to $25,000; requires recipients to give preference in contracting to the purchase of recycled products pursuant to EPA guidelines;

Administrative requirements: Revises administrative provisions to allow the Department to restrict fund transfers greater than 10% among direct cost categories for projects with a Federal share greater than $100,000; authorizes the Department to waive certain prior approval and other administrative and programmatic requirements; authorizes administrative and programmatic waivers automatically for research grants unless specifically prohibited; and authorizes the Department to grant exceptions on a case-by-case basis.

Closeout: Requires recipients to liquidate obligations 90 calendar days after the funding period or the date the project is completed.

Preaward provisions: Allows the Department to use application forms other than the SF–424; incorporates requirements of the Federal Grant and Cooperative Agreement Act concerning the use of grants, cooperative agreements, or contracts; and addresses the issues of priority setting and advance public notice.

Property management: Raises the acquisition cost threshold for defining equipment (formerly nonexpendable personal property) from $300 to $5,000; adds new provisions for intangible property that now establish title to intangible property and incorporate governmentwide patent regulations; requires recipients to avoid purchasing unnecessary or duplicative items of equipment by determining through an appropriate process that existing equipment is not available; requires recipients to provide insurance for equipment and real property acquired with Federal funds; and adds new provisions for federally owned property.

Property trust relationship: Authorizes the Secretary to require recipients to file liens or other appropriate notices to protect the federal interest in property acquired or improved with federal funds.

Supplies: Revises standards for supplies (formerly expendable personal property); raises the threshold to $5,000 for having to account for unused supplies at the end of a project; and prohibits recipients from using federally funded supplies to provide services for a fee lower than that charged by private companies for the same service.

Procurement standards: Promotes the use of small/minority-owned/women's business enterprises; requires recipients to establish certain standards of conduct for its employees engaged in awarding contracts; increases the small purchase threshold from $10,000 to $25,000; requires recipients to give preference in contracting to the purchase of recycled products pursuant to EPA guidelines; and requires that recipients add clauses to their contracts for Anti-Lobbying and Debarment and Suspension.

Special award conditions: Provides for written notice to the applicant or recipient about the reasons for imposing special award conditions, including an explanation of how recipients may request reconsideration of these conditions.

In-kind contributions: Redefines third party in-kind contributions to mean the value of non-cash contributions from third parties, and provides that all grantee contributions, whether in the form of property or cash, are considered contributions and are subject to applicable cost principles.

Metric Usage: Commits the Department to follow the provisions of E.O. 12770—Metric Usage in Federal Government Programs.

Audit Requirements: Adopts the audit requirements of OMB Circulars A–128 and A–133. OMB Circular A–128 applies to non-federal audits that States and local governments are required to obtain. OMB Circular A–133 applies to non-federal audits that institutions of higher education and other nonprofit organizations are required to obtain. The Secretary adopts these audit circulars as published in the Federal Register on the following dates:

- A–128—Audits of State and Local Governments—(May 6, 1985 [50 FR 19114]; and December 6, 1985 [50 FR 50027]; and December 23, 1985 [50 FR 52406]; and November 13, 1987 [52 FR 43712]); and
- A–133—Audits of Institutions of Higher Education and Other Nonprofit Organizations—(March 16, 1990 [55 FR 10019]).

In some cases, the regulatory language in these sections represent changes in policy or procedure in the administration of the affected grants. In others, the language—even if changed from the current 34 CFR Part 74—reaffirms the existing administrative policy or procedures of the Department.

If OMB publishes at a future date revisions to any of these audit requirements, the Secretary will publish regulatory amendments adopting the revised circulars.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232f(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the Secretary waives rulemaking on these regulations under section 553(b)(B) of the Administrative Procedure Act (20 U.S.C. 553(b)(B)). This section provides that rulemaking is not required when the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The Secretary believes further public comment on the technical changes made to the Circular is unnecessary because the substance of these provisions has already been subjected to public comment during OMB's solicitation of public comment. The Secretary also believes that further public comment on the substantive changes to the Circular is unnecessary because these changes incorporate statutory requirements that the Secretary is not authorized to change.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Department's programs effectively and efficiently. Burdens, specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these regulations are institutions of higher education, hospitals, and other non-profit organizations. However, the regulations would not have a significant economic impact on these small institutions because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act

Sections 74.12, 74.21, 74.25, 74.34, 74.44, 74.45, 74.46, 74.47, 74.51, 74.52,

74.53, 74.71, 74.72, and 74.75 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These regulations affect institutions of higher education, hospitals, and other non-profit organizations. Annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per response for 7300 respondents, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency of authority of the United States.

List of Subjects

34 CFR Part 74

Administrative practice and procedure, Education Department, Grant programs—education, Grant Administration, Hospitals, Institutions of higher education, Non-profit organizations, Reporting and recordkeeping requirements.

34 CFR Part 77

Definitions, Education Department, Grant programs—education.

Dated: May 27, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Title 34 of the Code of Federal Regulations by revising part 74 and amending part 77 to read as follows:

1. Part 74 is revised to read as follows:

PART 74—ADMINISTRATION OF GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

Subpart A—General

Sec.
74.1 Purpose.
74.2 Definitions.
74.3 Effect on other issuances
74.4 Deviations.
74.5 Subawards.

Subpart B—Pre-Award Requirements

74.10 Purpose.
74.11 Pre-award policies.
74.12 Forms for applying for Federal assistance.
74.13 Debarment and suspension.
74.14 Special award conditions.
74.15 Metric system of measurement.
74.16 Resource Conservation and Recovery Act.
74.17 Certifications and representations.

Subpart C—Post-Award Requirements

Financial and Program Management

74.20 Purpose of financial and program management.
74.21 Standards for financial management systems.
74.22 Payment.
74.23 Cost sharing or matching.
74.24 Program income.
74.25 Revision of budget and program plans.
74.26 Non-Federal audits.
74.27 Allowable costs.
74.28 Period of availability of funds.

Property Standards

74.30 Purpose of property standards.
74.31 Insurance coverage.
74.32 Real property.
74.33 Federally-owned and exempt property.
74.34 Equipment.
74.35 Supplies and other expendable property.
74.36 Intangible property.
74.37 Property trust relationship.

Procurement Standards

74.40 Purpose of procurement standards.
74.41 Recipient responsibilities.
74.42 Codes of conduct.
74.43 Competition.
74.44 Procurement procedures.
74.45 Cost and price analysis.
74.46 Procurement records.
74.47 Contract administration.
74.48 Contract provisions.

Reports and Records

74.50 Purpose of reports and records.
74.51 Monitoring and reporting program performance.
74.52 Financial reporting.
74.53 Retention and access requirements for records.

Termination and Enforcement

74.60 Purpose of termination and enforcement.
74.61 Termination.
74.62 Enforcement.

Subpart D—After-The-Award Requirements

74.70 Purpose.
74.71 Closeout procedures.
74.72 Subsequent adjustments and continuing responsibilities.
74.73 Collection of amounts due.

Appendix A—Contract Provisions

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110, unless otherwise noted

Subpart A—General

§ 74.1 Purpose.

(a) This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations.

(b) The Secretary does not impose additional or inconsistent requirements, except as provided in §§ 74.4 and 74.14 or unless specifically required by Federal statute or executive order.

(c) This part applies to all recipients other than State and local governments and Indian tribal organizations. Uniform requirements for State and local governments and tribal organizations are in 34 CFR Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(d) Non-profit organizations that implement Federal programs for the States are also subject to State requirements. (20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.2 Definitions.

The following definitions apply to this part:

Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for—

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of—

(1) Earnings during a given period from—

(i) Services performed by the recipient; and

(ii) Goods and other tangible property delivered to purchasers; and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment,

including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property, in lieu of money, by the Federal Government to an eligible recipient. The term does not include—

(1) Technical assistance, which provides services instead of money;

(2) Other assistance in the form of loans, loan guarantees, interest subsidies, or insurance;

(3) Direct payments of any kind to individuals; and

(4) Contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which the Secretary determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Department of Education (ED).

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

Disallowed costs means those charges to an award that the Secretary determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an

including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property, in lieu of money, by the Federal Government to an eligible recipient. The term does not include—

(1) Technical assistance, which provides services instead of money;

(2) Other assistance in the form of loans, loan guarantees, interest subsidies, or insurance;

(3) Direct payments of any kind to individuals; and

(4) Contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which the Secretary determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Department of Education (ED).

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

Disallowed costs means those charges to an award that the Secretary determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of ED that is no longer required for its needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the Secretary has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306) for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Federal awarding agency means the Federal agency that provides an award to the recipient.

Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by ED regulations or ED implementing instructions.

Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock, and other instruments of property ownership, whether considered tangible or intangible.

Obligations means the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees, and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 74.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in ED regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as established in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which Federal sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving financial assistance directly from ED to carry out a project or program. The term includes public and private institutions of higher education,

public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Secretary. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term "research" also includes activities involving the training of individuals in research techniques where these activities utilize the same facilities as other pesearch and development activities and where these activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" as defined in this section.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Secretary.

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR Part 401—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.

Suspension means an action by the Secretary that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Secretary. Suspension of an award is a separate action from suspension under 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Secretary that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks, and other nonregulatory materials which are inconsistent with the requirements of this part are superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 74.4.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.4 Deviations.

The Secretary, after consultation with the Office of Management and Budget (OMB), may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part are permitted only in unusual circumstances. The Secretary may apply more restrictive requirements to a class of recipients when approved by OMB. The Secretary may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the Secretary.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if the subrecipients are institutions of higher education, hospitals, or other non-profit organizations. State and local government subrecipients are subject to the provisions of 34 CFR Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Subpart B—Pre-Award Requirements

§ 74.10 Purpose.

Sections 74.11 through 74.17 prescribes forms and instructions and other pre-award matters to be used in applying for awards.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.11 Pre-award policies.

(a) *Use of Grants and Cooperative Agreements, and Contracts.* In each instance, the Secretary decides on the appropriate award instrument (i.e., grant, cooperative agreement, or

contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements, and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, substantial involvement is expected between ED and the recipient when carrying out the activity contemplated in the agreement. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public Notice and Priority Setting.* The Secretary notifies the public of intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.12 Forms for applying for Federal assistance.

(a) The Secretary complies with the applicable report clearance requirements of 5 CFR Part 1320—Controlling Paperwork Burdens on the Public—with regard to all forms used by ED in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Secretary.

(c) For Federal programs covered by E.O. 12372—Intergovernmental Review of Federal Programs (implemented by the Secretary in 34 CFR Part 79—Intergovernmental Review of Department of Education Programs and Activities)—the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Secretary or the *Catalog of Federal Domestic Assistance* (available from the Superintendent of Documents, Government Printing Office). The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) If ED does not use the SF–424 form, the Secretary may indicate whether the application is subject to review by the State under E.O. 12372.

contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements, and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, substantial involvement is expected between ED and the recipient when carrying out the activity contemplated in the agreement. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public Notice and Priority Setting.* The Secretary notifies the public of intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.12 Forms for applying for Federal assistance.

(a) The Secretary complies with the applicable report clearance requirements of 5 CFR Part 1320—Controlling Paperwork Burdens on the Public—with regard to all forms used by ED in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Secretary.

(c) For Federal programs covered by E.O. 12372—Intergovernmental Review of Federal Programs (implemented by the Secretary in 34 CFR Part 79—Intergovernmental Review of Department of Education Programs and Activities)—the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Secretary or the *Catalog of Federal Domestic Assistance* (available from the Superintendent of Documents, Government Printing Office). The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) If ED does not use the SF–424 form, the Secretary may indicate whether the application is subject to review by the State under E.O. 12372.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.13 Debarment and suspension.

The Secretary and recipients shall comply with the nonprocurement debarment and suspension common rule (implemented by the Secretary in 34 CFR Part 85). This common rule restricts subawards and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.14 Special award conditions.

(a) The Secretary may impose special award conditions, if an applicant or recipient—

(1) Has a history of poor performance;

(2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this part;

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) If special award conditions are established under paragraph (a) of this section, the Secretary notifies the applicant or recipient of—

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions are promptly removed once the conditions that prompted them have been corrected.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. The Secretary follows the provisions of E.O. 12770—Metric Usage in Federal Government Programs.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.16 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002 of the RCRA. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR Parts 247–254). Accordingly, recipients that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.17 Certifications and representations.

Unless prohibited by statute or codified regulation, the Secretary allows recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with ED. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Subpart C—Post-Award Requirements

Financial and Program Management

§ 74.20 Purpose of financial and program management.

Sections 74.21 through 74.28 prescribe standards for financial management systems, methods for making payments and rules for—

(a) Satisfying cost sharing and matching requirements;

(b) Accounting for program income;

(c) Approving budget revisions;

(d) Making audits;

(e) Determining allowability of cost; and

(f) Establishing fund availability.

(20 U.S.C. 1221e-3(a)(1) and 3474; OMB Circular A–110)

§ 74.21 Standards for financial management systems.

(a) Recipients shall relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current, and complete disclosure of the financial results of each federally-sponsored project in accordance with the reporting requirements established in § 74.52. If the Secretary requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to awards, authorizations, obligations, unobligated balances, assets, outlays, income, and interest.

(3) Effective control over and accountability for all funds, property, and other assets. Recipients shall adequately safeguard all assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR Part 205—Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.

(6) Written procedures for determining the reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Secretary may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Secretary may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required under paragraphs (a) and (b) of this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR Part 223—Surety Companies Doing Business with the United States.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR Part 205.

(b)(1) Recipients are paid in advance, provided they maintain or demonstrate the willingness to maintain—

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(ii) Financial management systems that meet the standards for fund control and accountability as established in § 74.21.

(2) Cash advances to a recipient organization are limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project.

(3) The timing and amount of cash advances are as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances are consolidated to cover anticipated cash needs for all awards made by the Secretary.

(1) Advance payment mechanisms include, but are not limited to, Treasury check, and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR Part 205.

(3) Recipients are authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270—Request for Advance or Reimbursement—or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by ED instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. The Secretary may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Secretary makes payment within 30 days after receipt of the billing, unless the billing is improper

(2) Recipients are authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Secretary has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Secretary may provide cash on a working capital advance basis. Under this procedure, the Secretary advances cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Secretary reimburses the recipient for its actual cash disbursements. The working capital advance method of payment is not used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on these funds before requesting additional cash payments.

(h) Unless otherwise required by statute, the Secretary does not withhold payments for proper charges made by recipients at any time during the project period unless—

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements; or

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129—Managing Federal Credit Programs. Under these conditions, the Secretary may, upon reasonable notice, inform the recipient that ED does not make payments for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) The standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2) of this section, the Secretary does not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation, and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless—

(1) The recipient receives less than $120,000 in Federal awards per year;

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the

and conditions of the award, or Federal reporting requirements; or

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129—Managing Federal Credit Programs. Under these conditions, the Secretary may, upon reasonable notice, inform the recipient that ED does not make payments for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) The standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2) of this section, the Secretary does not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation, and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless—

(1) The recipient receives less than $120,000 in Federal awards per year;

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Secretary, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms are authorized for the recipients in requesting advances and reimbursements. The Secretary does not require more than an original and two copies of the following:

(1) SF–270—Request for Advance or Reimbursement. The Secretary adopts the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. The Secretary may, however, use this form for construction programs in lieu of the SF–271—Outlay Report and Request for Reimbursement for Construction Programs.

(2) SF–271—Outlay Report and Request for Reimbursement for Construction Programs. The Secretary adopts the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, the Secretary may substitute the SF–270 when the Secretary determines that it provides adequate information to meet Federal needs.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, are accepted as part of the recipient's cost sharing or matching when contributions meet the following criteria:

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Secretary.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Secretary.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If the Secretary authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of—

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

(2) The current fair market value. However, if there is sufficient justification, the Secretary may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings, and land for which title passes to the recipient may differ according to the purpose of the award.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made.

However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Secretary has approved the charges.

(h) The value of donated property must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(1) The value of donated land and buildings may not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment may not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space may not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings, and land must be documented.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.24 Program income.

(a) The Secretary applies the standards contained in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period must be retained by the recipient and, in accordance with ED regulations or the terms and conditions of the award, must be used in one or more of the following ways:

(1) Added to funds committed to the project by the Secretary and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the Secretary authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Secretary does not specify in program regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section applies automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section applies automatically unless the Secretary indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 74.14.

(e) Unless ED regulations or the terms and conditions of the award provide otherwise, recipients have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by ED or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 74.30 through 74.37).

(h) Unless ED regulations or the terms and condition of the award provide otherwise, recipients have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon ED requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from ED for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Secretary.

(6) The inclusion, unless waived by the Secretary, of costs that require prior approval in accordance with OMB Circular A–21—Cost Principles for Institutions of Higher Education, OMB Circular A–122—Cost Principles for Non-Profit Organizations, or 45 CFR Part 74 Appendix E—Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals, or 48 CFR Part 31—Contract Cost Principles and Procedures, as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment, or general support services.

(d) No other prior approval requirements for specific items are imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, the Secretary may waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. These waivers may authorize recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Secretary. All pre-award costs are incurred at the recipient's risk (i.e., the Secretary is under no obligation to reimburse these costs if for any reason the recipient does not receive an award

or if the award is less than anticipated and inadequate to cover these costs).

(2)(i) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply:

(A) The terms and conditions of award prohibit the extension.

(B) The extension requires additional Federal funds.

(C) The extension involves any change in the approved objectives or scope of the project.

(ii) For one-time extensions, the recipient shall notify the Secretary in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Secretary provides otherwise in the award or in ED's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain prior approvals) unless one of the conditions included in paragraph (e)(2)(i) of this section applies.

(f) The Secretary may restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of the transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Secretary. The Secretary does not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of

For the cost of a—	
Private nonprofit organization other than (1) An in of higher education; (2) a hospital; or (3) an o tion named in OMB Circular A–122 as not su that circular..	
Educational institution	
Hospital	
Commercial for-profit organization other than a and an educational institution.	

(b) The cost principles applicable to a State, a local government, or Federally recognized Indian tribal government are specified at 34 CFR § 80.22.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

or if the award is less than anticipated and inadequate to cover these costs).

(2)(i) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply:

(A) The terms and conditions of award prohibit the extension.

(B) The extension requires additional Federal funds.

(C) The extension involves any change in the approved objectives or scope of the project.

(ii) For one-time extensions, the recipient shall notify the Secretary in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Secretary provides otherwise in the award or in ED's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain prior approvals) unless one of the conditions included in paragraph (e)(2)(i) of this section applies.

(f) The Secretary may restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of the transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Secretary. The Secretary does not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from the Secretary for budget revisions whenever—

(1) The revision results from changes in the scope or the objective of the project or program;

(2) The need arises for additional Federal funds to complete the project; or

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 74.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When the Secretary makes an award that provides support for both construction and nonconstruction work, the Secretary may require the recipient to request prior approval from the Secretary before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, recipients shall notify the Secretary in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Secretary indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, the Secretary shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Secretary informs the recipient in writing of the date when the recipient may expect the decision.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations are subject to the audit requirements contained in OMB Circular A–133—Audits of Institutions of Higher Education and Other Non-Profit Institutions.

(b) State and local governments are subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and the ED regulations implementing OMB Circular A–128—Audits of State and Local Governments.

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 are subject to the audit requirements established by the Secretary.

(d) Commercial organizations are subject to the audit requirements established by the Secretary or the prime recipient as incorporated into the award document.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.27 Allowable costs.

(a) For each kind of recipient, there is a set of cost principles for determining allowable costs. Allowability of costs are determined in accordance with the cost principles applicable to the entity incurring the costs, as specified in the following chart.

(**Note:** OMB circulars are available from the Office of Management and Budget, Publication Office, Room 2200, New Executive Office Building, Washington, DC 20503 (202) 395–7332.)

For the cost of a—	Use the principles in—
Private nonprofit organization other than (1) An institution of higher education; (2) a hospital; or (3) an organization named in OMB Circular A–122 as not subject to that circular..	OMB Circular A–122.
Educational institution	OMB Circular A–21.
Hospital	Appendix E to 45 CFR Part 74.
Commercial for-profit organization other than a hospital and an educational institution.	48 CFR Part 31 Contract Cost Principles and Procedures or uniform cost accounting standards that comply with cost principles acceptable to ED.

(b) The cost principles applicable to a State, a local government, or Federally recognized Indian tribal government are specified at 34 CFR § 80.22.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Secretary.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Property Standards

§ 74.30 Purpose of property standards.

Sections 74.31 through 74.37 establish uniform standards governing

management and disposition of property furnished by ED whose cost was charged to a project supported by a Federal award. Recipients shall observe these standards under awards. The Secretary does not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 74.31 through 74.37.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.32 Real property.

The Secretary prescribes requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, the minimum requirements provide the following:

(a) Title to real property must vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Secretary.

(b) The recipient shall obtain written approval by the Secretary for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) that have purposes consistent with those authorized for support by the Secretary.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from ED or its successor Federal awarding agency. The Secretary observes one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Secretary and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures must be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party. The recipient is entitled to compensation for its attributable percentage of the current fair market value of the property.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Secretary. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Secretary for further ED utilization.

(2) If ED has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Secretary has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821—Improving Mathematics and Science Education in Support of the National Education Goals. Appropriate instructions shall be issued to the recipient by the Secretary.

(b) *Exempt property.* When statutory authority exists, the Secretary may vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Secretary considers appropriate. This property is "exempt property." Should the Secretary not establish conditions, title to exempt property upon acquisition vests in the recipient without further obligation to the Federal Government.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient may not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and may not encumber the property without approval of the Secretary. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project; and then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Secretary.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information:

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates ED for its share.

(2) Equipment owned by the Federal Government must be identified to indicate Federal ownership.

(3) A physical inventory of equipment must be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Secretary.

(5) Adequate maintenance procedures must be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures must be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards:

(1) For equipment with a current per unit fair market value of $5000 or more,

(1) Equipment records shall be maintained accurately and shall include the following information:

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates ED for its share.

(2) Equipment owned by the Federal Government must be identified to indicate Federal ownership.

(3) A physical inventory of equipment must be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Secretary.

(5) Adequate maintenance procedures must be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures must be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards:

(1) For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to ED or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment.

(2) If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Secretary. The Secretary shall determine whether the equipment can be used to meet ED requirements. If no requirement exists within ED, the availability of the equipment shall be reported to the General Services Administration by the Secretary to determine whether a requirement for the equipment exists in other Federal agencies. The Secretary issues instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures govern:

(i) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse ED an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(ii) If the recipient is instructed to ship the equipment elsewhere, the recipient is reimbursed by ED by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(iii) If the recipient is instructed to otherwise dispose of the equipment, the recipient is reimbursed by ED for costs incurred in its disposition.

(iv) The Secretary may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when the third party is otherwise eligible under existing statutes. This transfer shall be subject to the following standards:

(A) The equipment must be appropriately identified in the award or otherwise made known to the recipient in writing.

(B) The Secretary issues disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory must list all equipment acquired with grant funds and federally-owned equipment. If the Secretary does not issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(C) When the Secretary exercises the right to take title, the equipment is subject to the provisions for federally-owned equipment.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient may not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. ED and any other Federal awarding agency reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.

(c) Unless waived by the Secretary, the Federal Government has the right to—

(1) Obtain, reproduce, publish, or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use these data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Secretary. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 74.34(g).

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.37 Property trust relationship.

Real property, equipment, intangible property, and debt instruments that are acquired or improved with Federal funds must be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Secretary may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Procurement Standards

§ 74.40 Purpose of procurement standards.

Sections 74.41 through 74.48 contain standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property, and other services with Federal funds. These standards are designed to ensure that these materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. The Secretary does not impose additional procurement standards or requirements upon recipients, unless specifically required by Federal statute or executive order or as authorized in §§ 74.4 or 74.14.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Secretary, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of statute are to be referred to Federal, State or local authority that may have proper jurisdiction.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. A conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of these standards by officers, employees, or agents of the recipient.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals shall be excluded from competing for procurements. Awards must be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly establish all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures must provide for, at a minimum, that—

(1) Recipients avoid purchasing unnecessary items;

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government; or

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of brand name or equal descriptions that bidders are required to meet when these items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment, and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting must not be used.

(d) Contracts are made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration is given to matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by E.O. 12549 (implemented by the Secretary in 34 CFR Part 85) and E.O. 12689—Debarment and Suspension.

(e) Recipients shall, on request, make available for the Secretary, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase

frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting must not be used.

(d) Contracts are made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration is given to matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by E.O. 12549 (implemented by the Secretary in 34 CFR Part 85) and E.O. 12689—Debarment and Suspension.

(e) Recipients shall, on request, make available for the Secretary, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.45 Cost and price analysis.

Some form of cost or price analysis must be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold must include the following at a minimum—

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained;

(c) Basis for award cost or price.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.47 Contract administration.

A system for contract administration must be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract, and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions must also be applied to subcontracts:

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, contracts must describe conditions under which the contract may be terminated for default, as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements must provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Secretary may accept the bonding policy and requirements of the recipient, provided the Secretary has made a determination that the Federal Government's interest is adequately protected. If a determination has not been made, the minimum requirements are as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under a contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required, the bonds must be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223—Surety Companies Doing Business with the United States.

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients must

include a provision to the effect that the recipient, ED, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors must contain the procurement provisions of Appendix A to this part, as applicable.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Reports and Records

§ 74.50 Purpose of reports and records.

Sections 74.51 through 74.53 establish the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also establish record retention requirements.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function, or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements in § 74.26.

(b) The Secretary prescribes the frequency with which the performance reports shall be submitted. Except as provided in § 74.51(f), performance reports are not required more frequently than quarterly or, less frequently than annually. Annual reports are due 90 calendar days after the grant year; quarterly or semi-annual reports are due 30 days after the reporting period. The Secretary may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report is not required after completion of the project.

(d) When required, performance reports must generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, this quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis, and explanation of cost overruns or high unit costs.

(e) Recipients are not required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Secretary of developments that have a significant impact on the award-supported activities. Also, notification must be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) The Secretary may make site visits, as needed.

(h) The Secretary complies with the clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.52 Financial reporting.

(a) The following forms or other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A—Financial Status Report.

(i) Recipients are required to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. The Secretary may not require the SF–269 or SF–269A when, the Secretary determines that SF–270—Request for Advance or Reimbursement, or SF–272—Report of Federal Cash Transactions—provides adequate information to meet the Department's needs, except that a final SF–269 or SF–269A is required at the completion of the project when the SF–270 is used only for advances.

(ii) The Secretary prescribes whether the report is on a cash or accrual basis. If the Secretary requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient is not required to convert its accounting system, but shall develop accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Secretary determines the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report is not required more frequently than quarterly or less frequently than annually. A final report is required at the completion of the agreement.

(iv) The Secretary requires recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Secretary upon request of the recipient.

(2) SF–272—Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Secretary requires each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Secretary uses this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) The Secretary may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, the Secretary may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Secretary may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) The Secretary may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that advances are monitored through other forms contained in this section;

(B) If, in the Secretary's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Secretary needs additional information or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, the Secretary shall issue instructions to require recipients to submit information under the "Remarks" section of the reports.

(2) When the Secretary determines that a recipient's accounting system does not meet the standards in § 74.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until the system is brought up to standard. The Secretary, in obtaining this information, complies with the report clearance requirements of 5 CFR part 1320.

(3) The Secretary may shade out any line item on any report if not necessary.

(4) The Secretary may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) The Secretary may provide computer or electronic outputs to recipients when these outputs expedite or contribute to the accuracy of reporting.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.53 Retention and access requirements for records.

(a) This section establishes requirements for record retention and access to records for awards to recipients. The Secretary does not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of five years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Secretary. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 5-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 5 years after final disposition.

(3) When records are transferred to or maintained by the Secretary, the 5-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in § 74.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Secretary.

(d) The Secretary requests transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid

does not meet the standards in § 74.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until the system is brought up to standard. The Secretary, in obtaining this information, complies with the report clearance requirements of 5 CFR part 1320.

(3) The Secretary may shade out any line item on any report if not necessary.

(4) The Secretary may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) The Secretary may provide computer or electronic outputs to recipients when these outputs expedite or contribute to the accuracy of reporting.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.53 Retention and access requirements for records.

(a) This section establishes requirements for record retention and access to records for awards to recipients. The Secretary does not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of five years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Secretary. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 5-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 5 years after final disposition.

(3) When records are transferred to or maintained by the Secretary, the 5-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in § 74.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Secretary.

(d) The Secretary requests transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, the Secretary may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Secretary, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts, and copies of documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to these documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, the Secretary does not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Secretary can demonstrate that the records must be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to ED.

(g) The starting date for retention of the following types of documents (including supporting records) is specified in paragraphs (g)(1) and (2) of this section: indirect cost rate computations or proposals; cost allocation plans; and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to the Secretary or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 5-year retention period for its supporting records starts on the date of submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Secretary or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 5-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Termination and Enforcement

§ 74.60 Purpose of termination and enforcement.

Sections 74.61 and 74.62 establish uniform suspension, termination, and enforcement procedures.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.61 Termination.

(a) Awards may be terminated in whole or in part only—

(1) By the Secretary, if a recipient materially fails to comply with the terms and conditions of an award;

(2) By the Secretary with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient, upon sending to the Secretary written notification containing the reasons for the termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Secretary determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 74.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Secretary may, in addition to imposing any of the special conditions outlined in § 74.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Secretary.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the Secretary provides the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the Secretary expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if—

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable; and

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude ED from initiating a debarment or suspension action against a recipient under 34 CFR Part 85 (see § 74.13).

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

Subpart D—After-the-Award Requirements

§ 74.70 Purpose.

Sections 74.71 through 74.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Secretary may approve extensions when requested by the recipient.

(b) Unless the Secretary authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in ED implementing instructions.

(c) The Secretary makes prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Secretary has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Secretary makes a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 74.31 through 74.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Secretary shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Secretary to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 74.26.

(4) Property management requirements in §§ 74.31 through 74.37.

(5) Records retention as required in § 74.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Secretary and the recipient, provided the responsibilities of the recipient referred to in § 74.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

§ 74.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Secretary may reduce the debt by—

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the recipient; or

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Secretary charges interest on an overdue debt in accordance with 4 CFR Chapter II—Federal Claims Collection Standards.

(20 U.S.C. 1221e-3(a)(1) and 3474; OMB Circular A–110)

Appendix A to Part 74—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts must contain a provision requiring compliance with E.O. 11246—Equal Employment Opportunity, as amended by E.O. 11375—Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR Part 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2,000 for construction or repair awarded by recipients and subrecipients must include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3—Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR Part 401—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders, or

Construction). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR Part 401—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to ED and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. The disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O. 12549 and E.O. 12689)*—No contract may be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O 12549 and E.O. 12689—Debarment and Suspension. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549.

Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principal employees.

(20 U.S.C. 1221e–3(a)(1) and 3474; OMB Circular A–110)

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

2. The authority citation for Part 77 continues to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474)

3. In § 77.1, paragraph (b) is revised, and paragraph (c) is amended by adding the definitions of *Budget* and *Grantee*, and removing the definitions of *Award* and *Project period* as follows:

§ 77.1 Definitions that apply to all Department programs.

* * * * *

(b) Unless a statute or regulation provides otherwise, the following definitions in part 74 or 80 of this title apply to the regulations in Title 34 of the Code of Federal Regulations. The section of part 74 or 80 that contains the definition is given in parentheses.

Award (§ 74.2)
Contract (includes definition of "Subcontract") (§ 74.2) (§ 80.3)
Equipment (§ 74.2) (§ 80.3)
Grant (§ 80.3)
Personal property (§ 74.2)
Project period (§ 74.2)
Real property (§ 74.2) (§ 80.3)
Recipient (§ 74.2)
Supplies (§ 74.2) (§ 80.3)

(c) * * *

Budget means that recipient's financial plan for carrying out the project or program.

* * * * *

Grantee means the legal entity other than a Government subject to 34 CFR Part 80 to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee one school or campus of a university. In this case, the granting agency usually intends, or actually intends, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility-provision of grant programs in which eligibility is limited to organizations which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant. The definition of "grantee" for State, local, and tribal governments is contained in 34 CFR 80.3.

* * * * *

[FR Doc. 94–16159 Filed 7–5–94; 8:45 am]
BILLING CODE 4000–01–P

ISSN 0001-6969
VOL 5 9
ISS 1 2 8
JL 6
994
IMI

Scandinavica

federal register

Wednesday
July 6, 1994

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 551
Smoking/No Smoking Areas; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

[BOP–1007–F]

RIN 1120–AA12

Smoking/No Smoking Areas

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is revising and reorganizing its regulations on Smoking/No Smoking Areas. As revised, designated smoking areas at the Bureau's medical referral centers and minimum security institutions ordinarily shall be outside of buildings and away from entrances. Wardens at all low, medium, high, and administrative institutions other than medical referral centers may continue, but are not required, to designate indoor smoking areas in addition to outdoor smoking areas. Additional provisions have been revised or reorganized for the sake of clarity or to avoid redundancy. This amendment is intended to provide for a clean air environment and to protect the health and safety of staff and inmates.

DATES: Effective August 1, 1994. Bureau Wardens may request up to a six month extension for compliance.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Smoking/No Smoking Areas. A final rule on this subject was published in the **Federal Register** on November 16, 1989 (54 FR 47753).

On February 8, 1994, the Bureau of Prisons published a proposed rule requiring that "smoking areas" to be designated by Wardens at medical referral centers and at minimum security institutions shall ordinarily be outside of all buildings and away from all entrances so as not to expose others to second-hand smoke. As for the remaining Bureau institutions, the proposed rule specifies that the Warden may, but is not required to, designate indoor smoking areas in addition to outdoor smoking areas. The proposed rule also reorganized and revised the regulations for the sake of clarity and to avoid redundancy. For example, the regulations had contained cross references qualifying those locations where smoking ordinarily was not permitted. Because the Warden is responsible for designating smoking areas, ordinarily only where the needs of effective operations so require, the Bureau deems it unnecessary to list in its revised regulations specific locations which would still be subject to the Warden's discretion. The listing of these locations has therefore been removed from the regulation, but remains as guidance in implementing instructions to staff. The revised regulations also contain a nomenclature change in which the title "Warden" has been substituted for "Chief Executive Officer".

The comment period closed on April 11, 1994. The Bureau received comments from only one respondent. The commenter, a public health interest group, stated that it supported the proposal and believed it to be an important health measure. The commenter further recommended that in the cases in which the Warden decides to designate an indoor smoking area, the area should be separately ventilated so that the air is vented directly to the outside and does not mix with the air circulating in other parts of the facility. Finally, the commenter stated that it believed it essential that smoking cessation services for employees and inmates be made available as part of a policy for a smokefree environment.

In response to these comments, the Bureau wishes to note that guidance on ventilation requirements for indoor smoking areas is provided in its internal instructions to staff. Given the limited number of indoor smoking areas which may be authorized under § 551.163(b) and the constraints of operations in a correctional setting, the Bureau believes it unnecessary to include more specific direction in its regulations. The Bureau also wishes to note that separate policy on the provisioning of wellness programs to staff and to inmates does allow for participation in smoking cessation programs. While budget and staff limitations initially may limit such staff and inmate participation to those institutions most affected by the revised regulations, the Bureau is committed to extending program opportunities at all facilities.

Therefore, in light of the above comment and agency response, the Bureau is adopting the proposed amendments as a final rule without change.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 551

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 551 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR part 551 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987); 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99.

2. Subpart N, consisting of §§ 551.160 through 551.163, is revised to consist of §§ 551.160 through 551.164 as follows:

Subpart N—Smoking/No Smoking Areas

Sec.

551.160 Purpose and scope.
551.161 Definitions.
551.162 Designated no smoking areas.
551.163 Designated smoking areas.
551.164 Notice of smoking areas.

Subpart N—Smoking/No Smoking Areas

§ 551.160 Purpose and scope.

To advance towards becoming a clean air environment and to protect the health and safety of staff and inmates, the Bureau of Prisons will restrict areas and circumstances where smoking is permitted within its institutions and offices.

§ 551.161 Definitions.

For purpose of this subpart, smoking is defined as carrying or inhaling a lighted cigar, cigarette, pipe or other lighted tobacco products.

§ 551.162 Designated no smoking areas.

All areas of Bureau of Prisons facilities and vehicles are no smoking areas unless specifically designated as a smoking area by the Warden as set forth in § 551.163.

§ 551.163 Designated smoking areas.

(a) At all medical referral centers, including housing units, and at minimum security institutions, including satellite camps and intensive confinement centers, the Warden shall identify "smoking areas", ordinarily outside of all buildings and away from all entrances so as not to expose others to second-hand smoke.

areas unless specifically designated as a smoking area by the Warden as set forth in § 551.163.

§ 551.163 Designated smoking areas.

(a) At all medical referral centers, including housing units, and at minimum security institutions, including satellite camps and intensive confinement centers, the Warden shall identify "smoking areas", ordinarily outside of all buildings and away from all entrances so as not to expose others to second-hand smoke.

(b) At all low, medium, high, and administrative institutions other than medical referral centers, the Warden shall identify outdoor smoking areas and may, but is not required to, designate a limited number of indoor smoking areas where the needs of effective operations so require, especially for those who may be employed in, or restricted to, a nonsmoking area for an extended period of time.

(c) To the maximum extent practicable nonsmoking inmates shall be housed in nonsmoking living quarters.

§ 551.164 Notice of smoking areas.

The Warden shall ensure that smoking areas are clearly identified by the appropriate placement of signs. The *absence* of a sign shall be interpreted as indicating a no smoking area. Appropriate disciplinary action shall be taken for failure to observe smoking restrictions.

[FR Doc. 94–16309 Filed 7–5–94; 8:45 am]
BILLING CODE 4410–05–P

UMI
994
6
JUL
8
1
2
SS
6
OL

education

federal register

Wednesday
July 6, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability (NOFA) for Service Coordinators for the HOPE for Elderly Independence Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3784; FR–3677–N–01]

Funding Availability (NOFA) for Service Coordinators for the HOPE for Elderly Independence Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for fiscal year (FY) 1994.

SUMMARY: This NOFA announces the availability of up to $5 million in Section 8 fees for service coordinators in conjunction with the HOPE for Elderly Independence Program. Each public housing agency (PHA) that received rental voucher funding and funding for supportive services under the FY 1992 or FY 1993 HOPE for Elderly Independence Program competitions may apply for funds under this NOFA, to employ or otherwise retain the services of up to one service coordinator for a period of up to five years. A part-time service coordinator may be retained where appropriate. The NOFA contains information concerning the deadline for filing applications; eligibility of applicants; available amounts; selection criteria; and the application and selection process.

DATES: Applications are due on August 5, 1994, by 3 p.m. local time.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4220, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden for this NOFA is provided below. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

	No. of respondents	No. of responses per respondent	Total annual respondents	Hours per response	Total burden hours
	28	1	28	5	140
Total Burden Hours					140

I. Purpose and Substantive Description

(a) Authority

Section 675 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

(b) Allocation Amounts

For FY 1994, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (Pub. L. 103–124, approved October 28, 1993), (94 App. Act) made $5 million available for the purposes of section 675 of HCDA 1992. An eligible PHA may apply for a maximum of $250,000 in Section 8 fees to support up to one service coordinator, for up to five years. HUD may fund applications at less than the requested amount, based on the HUD State or Area Office application review.

To the extent that any applicant PHA's required match of 50 percent of the costs of supportive services for the HOPE for Elderly Independence Program included the dollar value of a service coordinator's services, and funding is received under this NOFA to pay the costs of a service coordinator, that dollar value match must be replaced with payment for other supportive services costs.

(c) Eligibility

(1) Eligible Activity

Funds are available under this NOFA to employ or otherwise retain the services of up to one service coordinator for a period of up to five years in conjunction with the HOPE for Elderly Independence Program. A part-time service coordinator may be retained where appropriate.

The HOPE for Elderly Independence Program is intended to demonstrate that effectively targeted and tailored supportive services, coupled with tenant-based rental voucher assistance, can help frail elderly persons continue to live independently in a cost efficient way and prevent premature or unnecessary institutionalization. Effective delivery of supportive services is the critical element in a successful program.

Supportive services for the frail elderly are coordinated by a PHA through a service coordinator and a professional assessment committee (PAC). The PAC is competent to appraise the functional abilities of frail elderly persons with respect to the performance of normal daily living activities. The service coordinator is skilled and trained in dealing with the frail elderly, is a member of the PAC, and is responsible for assuring, through case management, that program participants are linked to the supportive services they need to continue independent living.

(i) A service coordinator's training, educational, and work experiences must meet the following minimum guidelines:

(A) A Bachelor of Social Work or degree in a related field such as gerontology, psychology or counseling is preferable; a college degree is fully acceptable. However, individuals without a degree but with appropriate work experience may be hired. A PHA may hire a person without a degree, with appropriate justification.

(B) The service coordinator must be trained in the aging process, elder services, disability services, eligibility for and procedures of federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues. This requirement is not a prerequisite for hiring. However, training requirements, if not met at the point of hiring, must be satisfied within one year.

(C) Two years of experience in social services delivery with senior citizens or demonstrated working knowledge of supportive services and other resources for senior citizens in the jurisdiction where the demonstration is located.

(D) Ability to advocate, problem-solve and provide results for the elderly served.

(E) Demonstrated writing and organizational skills.

(ii) A service coordinator performs the following functions:

(A) Consults with frail elderly tenants, service providers, owners and other appropriate persons to identify the particular needs and characteristics of frail elderly persons.

(B) Builds professional relationships with agencies, service providers and volunteers in the community to secure ongoing provision of supportive services and other necessary items for the program. Shops to determine the best value in service pricing to assure individualized, flexible and creative services for the frail elderly. May set up a directory of service providers.

(C) Screens applicants for the HOPE for Elderly Independence Program, reviews any comments from applicants' physicians and the adequacy of applicants' informal support network (i.e., family and friends available to the applicant to assist in meeting daily living needs), conducts preliminary assessments of frailty, refers potentially eligible applicants to the PAC.

(D) Educates program participants on such issues as application procedures, service availability, and client rights providing advocacy as appropriate. Assists participants in making their own choices, refers and links participants to service providers. These are, for example, case management, personal assistance, homemaker assistance, meals-on-wheels, transportation, counseling, occasional visiting nurses, preventive health screening and legal advocacy.

(E) Helps build informal support networks with neighbors, friends and

work experience may be hired. A PHA may hire a person without a degree, with appropriate justification.

(B) The service coordinator must be trained in the aging process, elder services, disability services, eligibility for and procedures of federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues. This requirement is not a prerequisite for hiring. However, training requirements, if not met at the point of hiring, must be satisfied within one year.

(C) Two years of experience in social services delivery with senior citizens or demonstrated working knowledge of supportive services and other resources for senior citizens in the jurisdiction where the demonstration is located.

(D) Ability to advocate, problem-solve and provide results for the elderly served.

(E) Demonstrated writing and organizational skills.

(ii) A service coordinator performs the following functions:

(A) Consults with frail elderly tenants, service providers, owners and other appropriate persons to identify the particular needs and characteristics of frail elderly persons.

(B) Builds professional relationships with agencies, service providers and volunteers in the community to secure ongoing provision of supportive services and other necessary items for the program. Shops to determine the best value in service pricing to assure individualized, flexible and creative services for the frail elderly. May set up a directory of service providers.

(C) Screens applicants for the HOPE for Elderly Independence Program, reviews any comments from applicants' physicians and the adequacy of applicants' informal support network (i.e., family and friends available to the applicant to assist in meeting daily living needs), conducts preliminary assessments of frailty, refers potentially eligible applicants to the PAC.

(D) Educates program participants on such issues as application procedures, service availability, and client rights providing advocacy as appropriate. Assists participants in making their own choices, refers and links participants to service providers. These are, for example, case management, personal assistance, homemaker assistance, meals-on-wheels, transportation, counseling, occasional visiting nurses, preventive health screening and legal advocacy.

(E) Helps build informal support networks with neighbors, friends and family, with the objective to provide only those services necessary to maintain independence and to avoid dependence. If necessary, assists participants with the decision to move to a higher level of care.

(F) Ensures that the services included in participants' case plans are provided on a regular, ongoing and satisfactory basis. Completes and maintains case files for the PAC including records of assessments, case plans, referrals, case monitoring, and reassessments. Keeps the PAC and the service providers informed of the progress of participants. Recommends reassessments as necessary.

(G) Educates other PHA staff on issues related to aging in-place and services coordination to help them assist other frail elderly program participants.

(iii) Staffing Guidelines. Under normal circumstances, a full-time service coordinator should be able to serve about 50 frail elderly participants.

(2) Eligible Applicants

Only the following PHAs, which received Section 8 rental voucher funding and funding for supportive services under the FY 1992 or FY 1993 HOPE for Elderly Independence Program competitions, are eligible to apply for funds under this NOFA:

West Hartford Housing Authority, CT
City of Westbrook Housing Authority, ME
Lynn Housing Authority, MA
Sommerville Housing Authority, MA
New Hampshire Housing Finance Authority
New Jersey Department of Community Affairs
Erie County, NY
Fayette County Housing Authority, PA
Jefferson County Housing Authority, KY
Kentucky Housing Corporation
Fayette Metropolitan Housing Authority, OH
Eau Claire County Housing Authority, WI
White River Regional Housing Authority, AK
Miami Housing Authority, OK
Oklahoma City Housing Authority, OK
El Paso Housing Authority, TX
Des Moines Housing Authority, IA
Waterloo Housing Authority, IA
Boulder County, CO
Jefferson County Housing Authority, CO
Mesa City, AZ
Tucson City, AZ
Alameda County Housing Authority, CA
Los Angeles City Housing Authority, CA
Redding City, CA
Everett Housing Authority, WA
Richland Housing Authority, WA
Seattle Housing Authority, WA

(d) Selection Process

Applications will be reviewed to determine whether or not they are technically adequate based on the requirements of this NOFA. All technically adequate applications will be funded to the extent funds are available. If HUD receives applications for funding greater than the amount made available under this NOFA, HUD will reduce the amount of funds to be provided to each PHA in direct proportion to the funds available.

II. Application Process

Application Submission—Place and Time: Applications are due in the local HUD State or Area Office on August 5, 1994 by 3:00 p.m. local time. This application deadline is firm as to date and hour. HUD will not accept applications via facsimile (fax) transmission. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

III. Checklist of Application Submission Requirements

Each application for funding under this NOFA must contain the following items:

(a) Request for Service Coordinator Funds

All applications must contain the following information stated in a letter from the Executive Director of the PHA to the Director of the Public Housing Division in the local HUD State or Area Office (see sample letter format, Attachment 1):

(1) The total number of HOPE for Elderly Independence Program participants.

(2) The dollar amount of any PHA matching funds for supportive services costs under the HOPE for Elderly Independence Program that is attributable to the costs of a service coordinator. If funds are received under this NOFA to pay service coordinator costs that were formerly part of the PHA's required match, that dollar value match must be replaced with payment for other additional supportive services costs. The PHA's application must identify any replacement supportive services and their costs, and include firm written commitments from the service providers for at least the first year's funding.

(3) The annual salary proposed for the service coordinator, plus any fringe benefits and administrative costs (e.g., additional office equipment, supplies, car allowance, copying, training, etc.) for the first year, the amounts needed for years two through five, and the total

amount requested for the complete five year period.

The service coordinator salary should be based on the following formula:

(i) Determine the salary level, taking into consideration salaries for comparable jobs, modified by the hours worked.

(ii) Set the annual salary, including any fringe benefits that pertain to the job.

(iii) List first year administrative costs.

(iv) Set the total cost for year one: Annual salary, plus first year administrative costs, equals total cost for the first year.

(v) The estimates for years two through five (or less) may be based on an annual inflation factor of up to five percent. Any one-time, first-year start-up costs should be subtracted from the year one administrative cost before calculating the year two through five estimates.

EXAMPLE

	Salary	Fringes	Admin. costs	Total
Year 1	$20,000	$5,000	$2,000	$27,000
Year 2	21,000	5,250	500	26,750
Year 3	22,150	5,550	500	28,200
Year 4	23,350	5,800	550	29,700
Year 5	24,550	6,150	550	31,250
Grand Total	111,050	27,750	4,100	142,900

(4) Evidence that demonstrates salary comparability with similar positions in the local jurisdiction.

(5) Whether the PHA will contract out for a service coordinator.

(b) Required Certification Forms

The following certification forms are required to be submitted with the application and are attached to this NOFA:

(1) Certification Regarding Drug-Free Workplace Requirements (Attachment 2);

(2) Certification Regarding Lobbying (Attachment 3);

(3) Standard Form LLL, Disclosure of Lobbying Activities (Attachment 4, if applicable); and

(4) Certifications regarding Fair Housing and Equal Opportunity (Attachment 5).

(i) The HUD review criteria shall include an analysis of any evidence that challenges the validity of the civil rights certification. Such evidence includes:

(A) A pending civil rights suit against the PHA, referred by the Department's General Counsel and instituted by the Department of Justice;

(B) Outstanding HUD findings of PHA noncompliance with civil rights statutes, regulations and executive orders, as a result of formal administrative proceedings, unless the PHA is implementing a HUD-approved tenant selection and assignment plan and a voluntary compliance agreement designed to correct the areas of noncompliance;

(C) A deferral of the processing of applications from the PHA imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 and HUD implementing regulations (24 CFR 8.57);

(D) A pending proceeding against the PHA based upon a Charge of Discrimination issued under the Fair Housing Act. A Charge of discrimination is a Charge under Section 810(g)(2) of the Fair Housing Act, issued by the Department's General Counsel or legally authorized designee.

(E) There is an adjudication of a civil rights violation in a civil action brought against it by a private individual; unless the PHA demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance.

(ii) In the event that the validity of a civil rights certification is drawn into question the application is eligible to be funded, but the PHA may not draw down funds until it has satisfied any outstanding civil rights issues.

IV. Corrections to Deficient Applications

The HUD State or Area Office will screen all applications and notify applicants of technical deficiencies by letter. Since the funds available under this NOFA are not being awarded on a competitive basis, a technical deficiency would be a significant discrepancy in information supplied by the applicant and information available to HUD, or the omission or the incomplete submission of any of the items required to be submitted in the application. These are listed in section III. of this NOFA, Checklist of Application Submission Requirements, above.

Applicants must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. Information received after 3:00 p.m., local time, on the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as being incomplete.

V. Other Matters

(a) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24, CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(b) Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA makes funds available for PHAs to employ or otherwise retain the services of up to one service coordinator for a period of up to five years in conjunction with the HOPE for Elderly Independence Program. As such, there are no direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

(c) Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that the policies announced in this Notice would not have a

significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

(d) Documentation and Public Access Requirements: HUD Reform Act

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(e) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients,

Year 1 .....
Year 2 .....
Year 3 .....
Year 4 .....
Year 5 .....

Grand Total .....

4. The PHA will contract out for a service coordinator: Yes_____ No _____

5. Attachment: Evidence that demonstrates salary comparability with similar positions in the local jurisdiction.

If there are any questions, please contact _____ at _____.

Sincerely,

Executive Director.

Attachment(s)

Certification Regarding Drug-Free Workplace Requirements (From 24 CFR, Appendix C) Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

(d) Documentation and Public Access Requirements: HUD Reform Act

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(e) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(f) Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Dated: June 29, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

REQUEST FOR SERVICE COORDINATOR FUNDS—SAMPLE LETTER FORMAT

Dear Director, Public Housing Division:

This is to request approval to hire a service coordinator for X years, for the X public housing agency (PHA) HOPE for Elderly Independence Demonstration Program.

1. Total Number of HOPE for Elderly Independence participants _____.

2. Dollar amount, if any, of PHA 50 percent match for supportive services costs under the HOPE for Elderly Independence Program that is attributable to the costs of a service coordinator: _____.

If this request is approved to pay the costs of a service coordinator that were formerly part of the PHA's required match, that dollar value match will be replaced with payment for the following supportive services costs:

[Identify the replacement supportive services and their costs, and attach firm written commitments from the service providers for at least the first year's funding.]

3. Service Coordinator Salary:

a. *Salary level*, based on salaries for comparable jobs (modified by number of hours worked) _____.

b. *Annual Salary* plus Fringe Benefits: _____Hours/Week; _____ $/Hour; _____Fringe Rate (%); Annual Salary _____.

c. *Administrative Costs* (list):
Total Administrative Costs _____.

d. Total Cost per Year:
Annual Salary _____
+ Administrative Costs _____
Total Cost per Year _____

4. Request for Five Years (or Less):

	Salary	Fringes	Admin. costs	Total
Year 1				
Year 2				
Year 3				
Year 4				
Year 5				
Grand Total				

4. The PHA will contract out for a service coordinator: Yes_____ No _____

5. Attachment: Evidence that demonstrates salary comparability with similar positions in the local jurisdiction.

If there are any questions, please contact _____ at _____.

Sincerely,

Executive Director.

Attachment(s)

Certification Regarding Drug-Free Workplace Requirements (From 24 CFR, Appendix C) Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Signed by: (Name, Title & Signature of Authorized HA Official)

(Name & Title)

(Signature & Date)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Signed by: (Name, Title & Signature of Authorized HA Official)

(Name & Title)

(Signature & Date)

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized HA Official)

(Name & Title)

(Signature & Date)

BILLING CODE 4210-33-P

Disclo

Complete this form to
(See reverse

1. Type of Federal Action:
   - a. contract
   - b. grant
   - c. cooperative agreement
   - d. loan
   - e. loan guarantee
   - f. loan insurance

2. Stat

4. Name and Address of Reporting Entity:
   - Prime
   - Subawardee Tier

Congressional District, if known:

6. Federal Department/Agency:

8. Federal Action Number, if known:

10a. Name and Address of Lobbying Entity
(if individual, last name, first name MI):

(attach

11. Amount of Payment (check all that apply):

$ actual

12. Form of Payment (check all that apply):
   - a. cash
   - b. in-kind; specify: nature
     value

14. Brief Description of Services Performed or to be Performe
Indicated in Item 11:

(attach

15. Continuation Sheet(s) SF-LLL-A attached: Yes

16. Information requested through this form is authorized by
section 1352. This disclosure of lobbying activities is a mat
tation of fact upon which reliance was placed by the ab
transaction was made or entered into. This disclosure is req
to 31 U.S.C. 1352. This information will be reported to
semiannually and will be available for public inspection. A
fails to file the required disclosure shall be subject to a civi
less than $10,000 and not more than $100,000 for each s

Federal Use Only:

Disclosure of Lobbying Activities

ATTACHMENT 4

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for instructions and public burden disclosure.)

Approved by OMB
0345-0046

1. Type of Federal Action:
☐ a. contract
☐ b. grant
☐ c. cooperative agreement
☐ d. loan
☐ e. loan guarantee
☐ f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
☐ b. initial award
☐ c. post-award

3. Report Type:
☐ a. initial filing
☐ b. material change

For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee Tier _____, if known:

Congressional District, if known:

5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:

Congressional District, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable: _____

8. Federal Action Number, if known:

9. Award Amount, if known:
$

10a. Name and Address of Lobbying Entity
(if individual, last name, first name MI):

b. Individuals Performing Services (including address if different from No. 10a.)
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):
$_____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment (check all that apply):
☐ a. retainer
☐ b. one--time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify:

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproductio
Standard Form-LL

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).

Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Authorized for Local Reproduction
Standard Form-LL

Dis

Reporting Entity: _____

BILLING CODE 4210-33-C

Disclosure of Lobbying Activities
Continuation Sheet

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproducti
Standard Form-LLL

BILLING CODE 4210-33-C

Fair Housing and Equal Opportunity Certifications

The public housing agency (PHA) certifies that, in administering the activities of elderly service coordinators:

(1) The PHA will comply with Title VI of the Civil Rights Act of 1964 and related HUD regulations (24 CFR Part 1), which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The PHA will comply with the Fair Housing Act and related HUD regulations (24 CFR Part 100), which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The PHA will comply with Section 504 of the Rehabilitation Act of 1973 and related HUD regulations (24 CFR Part 8), which state that no otherwise qualified individual with handicaps in the United States shall, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(4) The PHA will comply with the provisions of the Age Discrimination Act of 1975 and related HUD regulations (24 CFR Part 146), which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.

(5) The PHA will comply with the provisions of Title II of the Americans with Disabilities Act and related Department of Justice regulations (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

(6) The PHA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, and related HUD regulations (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to lower-income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) in which the project is located.

Name of PHA

Signature and Title of PHA Representative

Date

[FR Doc. 94–16292 Filed 7–5–94; 8:45 am]

BILLING CODE 4210–33–P

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc.)
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public L
numbers, Federal Register finding aids, and list of
documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and t
documents on public inspection are available on th
National Archives fax-on-demand system. You mu
from a fax machine. There is no charge for the serv
except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33897–34342 1
34343–34552 5
34553–34754 6

Reader Aids

Federal Register

Vol. 59, No. 128

Wednesday, July 6, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342	1
34343–34552	5
34553–34754	6

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:
June 30, 1994 34341

Proclamations:
6641 (See Proc. 6704) 34329
6704 34329
6705 34343

Executive Orders:
12002 (See EO 12923) 34551
12214 (See EO 12923) 34551
12735 (See EO 12923) 34551
12755 (See EO 12923) 34551
12851 (See EO 12923) 34551
12923 34551

5 CFR

Proposed Rules:
575 34393

7 CFR

272 34553
275 34553
283 34553
916 33897
917 33897
928 33898
947 33900
1205 33901
1421 34345
1755 34353

Proposed Rules:
1036 33922

8 CFR

103 33903
245 33903
245a 33903
264 33903
274a 33903

9 CFR

92 34375
Ch. III 34375

Proposed Rules:
317 34396

12 CFR

Proposed Rules:
220 33923

14 CFR

21 34572
23 34572
39 ..... 34574, 34576
71 34577
91 34578

Proposed Rules:
39 ..... 34396, 34584
71 ..... 34192, 34585
93 34192

16 CFR

305 34014

Proposed Rules:
1117 33925
1500 ..... 33928, 33932

17 CFR

1 34376
33 34376
190 34376

20 CFR

416 33906

21 CFR

510 33908
520 33908

22 CFR

60 33909
61 33909
62 33909
63 33909
64 33909
65 33909

23 CFR

655 33909

24 CFR

17 34578
3280 34294

Proposed Rules:
43 34300
92 34300
570 34300

26 CFR

Proposed Rules:
1 34398

28 CFR

551 34742

29 CFR

1910 ..... 33910, 34580

Proposed Rules:
1915 34586

32 CFR

90 34382
91 34382
383 34382

389 34382
552 34581

33 CFR
4 34210
130 34210
131 34210
132 34210
137 34210
138 34210
Proposed Rules:
334 33939

34 CFR
74 34722
77 34722
641 34198
685 34278
Proposed Rules:
Ch. VI 34398

38 CFR
3 34382

39 CFR
111 33911

40 CFR
9 ..... 33912, 34070
52 ..... 33914, 34383
85 33912
86 33912
112 34070
141 34320
142 34320
372 34386
600 33912
Proposed Rules:
Ch. I 33940
52 ..... 33941, 34399, 34401
185 33941

43 CFR
Public Land Order:
7064 34582

47 CFR
73 34391
Proposed Rules:
61 33947
64 33947
69 33947
73 ..... 34404, 34405

49 CFR
392 34708
393 ..... 34708, 34712
1056 34392
Proposed Rules:
571 34405

50 CFR
658 34582
675 ..... 33920, 34392, 34583
Proposed Rules:
654 33947

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

S. 24/P.L. 103–270

Independent Counsel Reauthorization Act of 1994 (June 30, 1994; 108 Stat. 732; 8 pages)

Last List July 1, 1994

INFORMATION ABOUT THE S

Know when to expect your renew
prices down, the Government Print
learn when you will get your renew
the top line of your label *as shown*

A re
sent
befo

AFR SMITH212J
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747

To be sure that your service contin
If your subscription service is disc
Superintendent of Documents, Was
will be reinstated.

To change your address: Please S
Superintendent of Documents, Attn
DC 20402–9373.

To inquire about your subscripti
your correspondence, to the Superi
Stop: SSOM, Washington, DC 20

To order a new subscription: Ple

Order Processing Code:
* 5468

Superintendent of D

☐**YES,** please enter my subscriptio

____ subscriptions to **Federal Regi**
of Code of Federal Regulation

____ subscriptions to **Federal Regi**

The total cost of my order is $_____
regular shipping and handling.) Price subj

Company or personal name (Plea

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before this date.

```
AFR  SMITH212J                DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before this date.

```
AFRDO  SMITH212J              DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐**YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and LSA List of Code of Federal Regulations Sections Affected, at $490 ($612.50 foreign) each per year.

____ subscriptions to **Federal Register,** *daily only* (FRDO), at $444 ($555 foreign) each per year.

The total cost of my order is $_____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration date)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/94

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

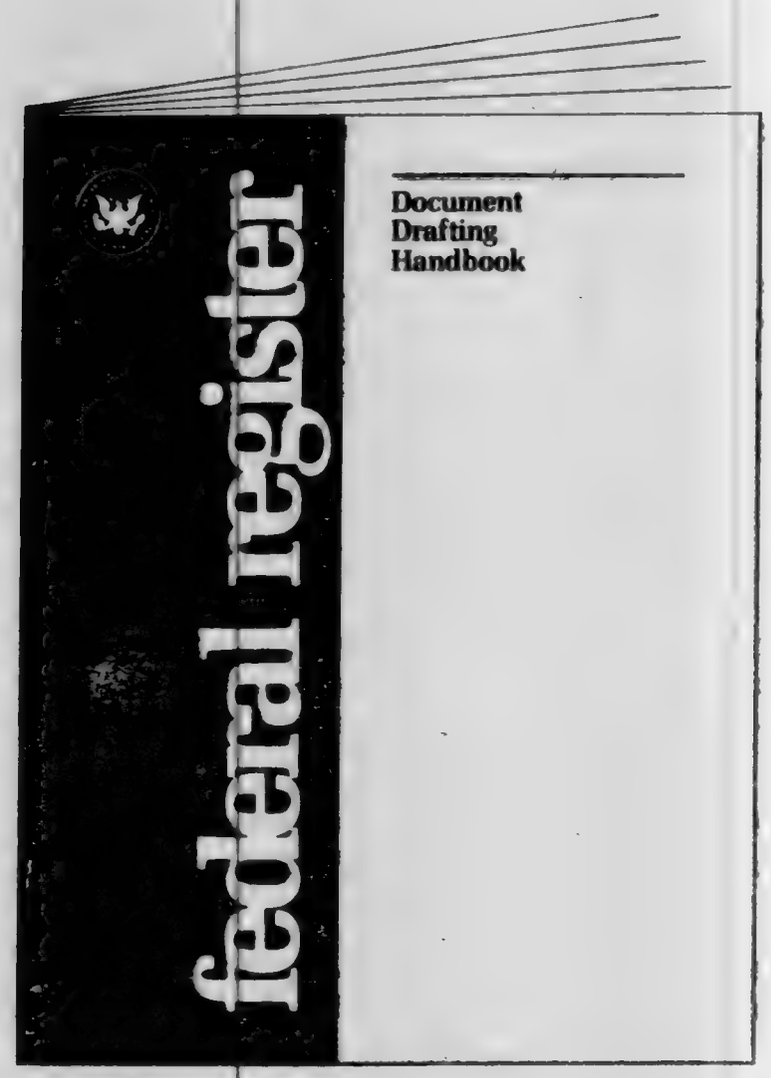

Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy!

To fax your orders and inquiries—(202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069-000-00037-1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%. All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev 12/91)

4. **Mail To:** New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954

Superintendent of Documents Order F

Order Processing Code:
* 7296

☐ **YES,** send me ___ subscriptions t
S/N 069-000-00056-8, at $20.00 ($25.0

The total cost of my order is $ _____

_____
Company or personal name (Please

_____
Additional address/attention line

_____
Street address

_____
City, State, Zip code

_____
Daytime phone including area code

_____
Purchase order number (optional)

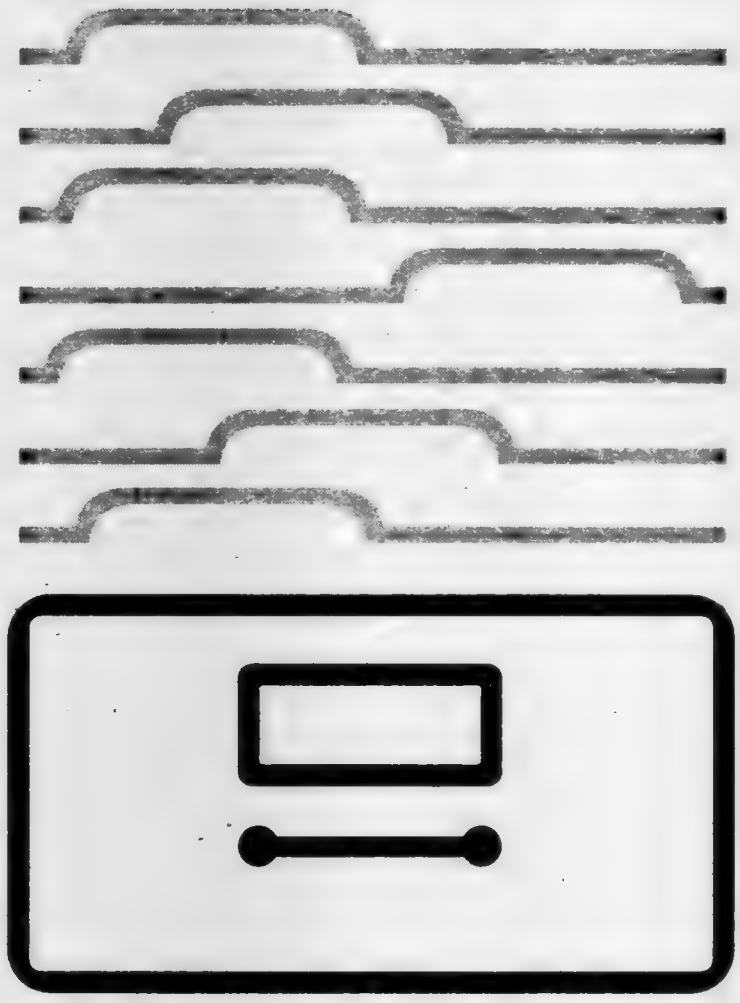

NEW EDITION

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1994

The GUIDE is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Order Form

Charge your order. It's easy! MasterCard VISA

Order Processing Code:
* **7296**

To fax your orders (202) 512-2250

❑ **YES,** send me ____ subscriptions to **1994 Guide to Record Retention Requirements in the CFR,** S/N 069–000–00056–8, at $20.00 ($25.00 foreign) each.

The total cost of my order is $ _____. **(Includes regular shipping and handling.)** Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

Check method of payment:

❑ Check payable to Superintendent of Documents

❑ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐

❑ VISA ❑ MasterCard ☐☐☐☐ (expiration date)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 4/94

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

103d Congress, 2d Session, 1994

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 2d Session, 1994.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws.)

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code
* 6216

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512-2233

☐ **YES**, enter my subscription(s) as follows:

subscriptions to **PUBLIC LAWS** for the 103d Congress, 2d Session, 1994 for $156 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (1/94)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

VOL
59
SS
1
2
8
JL
6
994
MI

Printed on recycled paper

VOL
59
ISS
129
JL
7
994
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7–7–94
Vol. 59 No. 129

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****
A FR UMISE346
UMI SERIALS ACQ
300 N ZEEB RD
PO BOX 1346
ANN ARBOR M

7–7–94
Vol. 59 No. 129

federal register

Thursday
July 7, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********3-DIGIT 481
A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

VOL
5 9

ISS
1
2
9

JL
7

994

UMI

7-7-94
Vol. 59 No. 129
Pages 34755–34966

7–7–94
Vol. 59 No. 129
Pages 34755–34966

Federal Register

Thursday
July 7, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
- Paper or fiche — 202–512–1800
- Assistance with public subscriptions — 512–1806

Online:
- Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.
- Assistance with online subscriptions — 202–512–1530

Single copies/back copies:
- Paper or fiche — 512–1800
- Assistance with public single copies — 512–1803

FEDERAL AGENCIES

Subscriptions:
- Paper or fiche — 523–5243
- Assistance with Federal agency subscriptions — 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am

WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
White House Conference on Aging:
National pre-conference recognition, 34844

Agriculture Department
See Animal and Plant Health Inspection Serv
See Forest Service
See Rural Electrification Administration

Animal and Plant Health Inspection Service
RULES
Overtime services relating to imports and exp
Commuted traveltime allowances, 34756–3

Army Department
See Engineers Corps
RULES
Military reservations and national cemeteries
Fort Lewis, Yakima Training Center, and C
Bonneville, WA; land use policy, 3476
PROPOSED RULES
Military reservations and national cemeteries:
Arlington National Cemetery, VA; intermen
prisoners of war, 34782–34783
NOTICES
Meetings:
Armament Retooling and Manufacturing Su
Private Task Force, 34801
Science Board, 34801
Patent licenses; non-exclusive, exclusive, or p
exclusive:
Body heating and cooling garment and meth
producing biodegradable starch-based p
unprocessed raw materials, 34801
Expandable sand-grid for undersurface stabi
34801–34802

Assassination Records Review Board
NOTICES
Meetings; Sunshine Act, 34898

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availabilit
Initiatives by organizations to strengthen U.
tobacco control activities, 34844–34847

Contents

Federal Register

Vol. 59, No. 129

Thursday, July 7, 1994

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
White House Conference on Aging:
National pre-conference recognition, 34844

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See Rural Electrification Administration

Animal and Plant Health Inspection Service
RULES
Overtime services relating to imports and exports:
Commuted traveltime allowances, 34756–34757

Army Department
See Engineers Corps
RULES
Military reservations and national cemeteries:
Fort Lewis, Yakima Training Center, and Camp Bonneville, WA; land use policy, 34761–34766
PROPOSED RULES
Military reservations and national cemeteries:
Arlington National Cemetery, VA; interment of former prisoners of war, 34782–34783
NOTICES
Meetings:
Armament Retooling and Manufacturing Support Public/Private Task Force, 34801
Science Board, 34801
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Body heating and cooling garment and method of producing biodegradable starch-based produce from unprocessed raw materials, 34801
Expandable sand-grid for undersurface stabilization, 34801–34802

Assassination Records Review Board
NOTICES
Meetings; Sunshine Act, 34898

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Initiatives by organizations to strengthen U.S. national tobacco control activities, 34844–34847

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Developmental disabilities—
Projects of national significance, 34818–34843

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Arkansas, 34798
California, 34798
Indiana, 34798–34799
Louisiana, 34799
Mississippi, 34799
Racial and ethnic tensions in American communities:
New York City, NY, 34799

Commerce Department
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 34799

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 34800–34801

Defense Department
See Army Department
See Engineers Corps

Education Department
RULES
Postsecondary education:
Student assistance general provisions—
Federal family education loan programs, and Federal Pell grant program, 34964–34966
NOTICES
Organization, functions, and authority delegations:
Educational Research and Improvement Office, 34802–34803

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department

Engineers Corps
PROPOSED RULES
Placement of temporary anchors, cables and chains for floating and semisubmersible drilling rigs within shipping safety fairways; permits, 34783–34784
NOTICES
Regulatory guidance letters, 34802

Environmental Protection Agency
NOTICES
Agency information collection activities under OMB review, 34811

Clean Air Act:
Acid rain provisions—
Small diesel refineries allowance allocations for fuel desulfurization, 34811–34812
Municipal solid waste landfill permit program; adequacy determinations:
Campo Band of Mission Indians, 34812
Pesticide registration, cancellation, etc.:
Tributyltin fluoride (TBTF), 34814–34815
Pesticides; experimental use permits, etc.:
Anthropod pheromones, 34812–34814

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 34757–34758
McDonnell Douglas; correction, 34899
Class D airspace; correction, 34759
Class E airspace, 34758–34760
PROPOSED RULES
Aircraft products and parts; certification procedures:
Armed Forces surplus aircraft; type certificates, 34779
NOTICES
Advisory circulars; availability, etc.:
Detecting and reporting suspected unapproved parts, 34894–34895
Passenger facility charges; applications, etc.:
Chicago O'Hare International Airport, IL, 34895
Falls International Airport, MN, 34896
Greater Peoria Regional Airport, IL, 34895–34896

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 34766

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 34898

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
PacifiCorp et al., 34803–34804
Public Service Co. of Colorado et al., 34804–34806
Environmental statements; availability, etc.:
Montana Power Co. et al.; correction, 34899
Meetings; Sunshine Act, 34898
Natural gas certificate filings:
Panhandle Eastern Pipe Line Co. et al., 34806–34807
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 34807
Delmarva Power & Light Co.; correction, 34899
Eastern Shore Natural Gas Co., 34807–34808
El Paso Natural Gas Co., 34808
Koch Gateway Pipeline Co., 34808
Midwestern Gas Transmission Co., 34808–34809
NorAm Gas Transmission Co., 34809–34810
Northwest Pipeline Corp., 34809
Pennsylvania Power & Light Co., 34810
Southern Natural Gas Co., 34810
Stingray Pipeline Co., 34810
Transcontinental Gas Pipe Line Corp., 34810–34811
Williston Basin Interstate Pipeline Co., 34811

Federal Maritime Commission
NOTICES
Agreements filed, etc., 34815–34816
Freight forwarder licenses:
Zior NY Ltd. et al., 34816–34817

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
AmSouth Bancorporation et al., 34818
BOK Financial Corp., 34817–34818
Mellon Bank Corp., 34817
Shaffer, Hal Jonathan, et al., 34817

Federal Trade Commission
PROPOSED RULES
Fur Products Labeling Act regulations; costs, benefits, and overall regulatory and economic impact, 34780
Textile Fiber Products Identification Act regulations; costs, benefits, and overall regulatory and economic impact, 34780–34781
Wool Products Labeling Act regulations; costs, benefits, and regulatory and economic impact, 34780

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Golden paintbrush, 34784–34785
NOTICES
Endangered and threatened species:
Recovery plans—
Puerto Rican ferns, 34960–34861
Rough-leaved loosestrife, 34861–34862
Endangered and threatened species permit applications, 34859, 34862
Environmental statements; availability, etc.:
Migratory bird subsistence hunting in Alaska; 34859–34860

Food and Drug Administration
PROPOSED RULES
Human drugs:
Cold, cough, allergy, bronchodilator, and antiasthmatic products (OTC)—
Antiasthma products; background document availability for advisory committee meeting, etc., 34781–34782
NOTICES
Meetings:
Advisory committees, panels, etc., 34847–34849

Forest Service
NOTICES
Forest Service reinvention team: interim report; availability, 34786

Government Ethics Office
RULES
Reporting and recordkeeping requirements, etc., 34755–34756

Health and Human Services Department
See Aging Administration
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Social Security Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Research Integrity Commission, 34818

Hearings and Appeals Office, Energy De
PROPOSED RULES
Procedural regulations, 34767–34779

Housing and Urban Development Depar
PROPOSED RULES
Fair housing:
Fair Housing Act; discriminatory condu
Housing for older persons; significant services definition, 34902–34961
NOTICES
Agency information collection activities u review, 34852–34857
Organization, functions, and authority de
Deputy Assistant Secretary for Multifan 34857
Director, Mortgage Insurance Accountin Office, et al., 34857–34858

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Export trade certificates of review, 34800

International Trade Commission
NOTICES
Import investigations:
Devices for connecting computers via te 34862–34863
Dielectric miniature microwave filters a containing same, 34863–34864
Oil country tubular goods from—
Argentina et al., 34864–34865
Pencils, cased, from—
China and Thailand, 34865–34866
Steel wire rod from—
Belgium, 34864

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, constructi
Northeast Kansas & Missouri Division of Railroad, Inc., 34866–34867
Railroad services abandonment:
Iowa Northern Railway Co., 34866

Joint Board for Enrollment of Actuaries
NOTICES
Committees; establishment, renewal, termi
Actuarial Examinations Advisory Comm

Justice Department
NOTICES
Pollution control; consent judgments:
Alaska Railroad Corp. et al., 34867–3486

Hearings and Appeals Office, Energy Department
PROPOSED RULES
Procedural regulations, 34767–34779

Housing and Urban Development Department
PROPOSED RULES
Fair housing:
Fair Housing Act; discriminatory conduct—
Housing for older persons; significant facilities and services definition, 34902–34961
NOTICES
Agency information collection activities under OMB review, 34852–34857
Organization, functions, and authority delegations:
Deputy Assistant Secretary for Multifamily Housing et al., 34857
Director, Mortgage Insurance Accounting and Servicing Office, et al., 34857–34858

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Export trade certificates of review, 34800

International Trade Commission
NOTICES
Import investigations:
Devices for connecting computers via telephone lines, 34862–34863
Dielectric miniature microwave filters and multiplexers containing same, 34863–34864
Oil country tubular goods from—
Argentina et al., 34864–34865
Pencils, cased, from—
China and Thailand, 34865–34866
Steel wire rod from—
Belgium, 34864

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Northeast Kansas & Missouri Division of Mid-Michigan Railroad, Inc., 34866–34867
Railroad services abandonment:
Iowa Northern Railway Co., 34866

Joint Board for Enrollment of Actuaries
NOTICES
Committees; establishment, renewal, termination, etc.:
Actuarial Examinations Advisory Committee, 34867

Justice Department
NOTICES
Pollution control; consent judgments:
Alaska Railroad Corp. et al., 34867–34868

Labor Department
See Mine Safety and Health Administration
NOTICES
Meetings:
Future of Worker-Management Relations Commission, 34868

Land Management Bureau
RULES
Public land orders:
Nevada; correction, 34899
NOTICES
Closure of public lands:
California, 34858–34859

Mine Safety and Health Administration
NOTICES
Mine shift atmospheric conditions; respirable dust sample; hearings, 34868–34869

Minority Business Development Agency
NOTICES
Business development center program applications:
Indiana, 34800

National Oceanic and Atmospheric Administration
RULES
Marine mammals:
Commercial fisheries; interim exemption
Correction, 34899

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Anchorage Museum of History and Art, AK; headdress, 34862

National Science Foundation
NOTICES
Committees; establishment, renewal, termination, etc.:
USGS/DOI/NSF Council for Continental Scientific Drilling et al., 34869–34870
Meetings:
Design, Manufacture and Industrial Innovation Special Emphasis Panel, 34870
Education and Human Resources Advisory Committee, 34871
Electrical and Communications Systems Special Emphasis Panel, 34869
Engineering Advisory Committee, 34871
Graduate Education and Research Development Special Emphasis Panel, 34870
Materials Research Special Emphasis Panel, 34870
Mathematical and Physical Sciences Advisory Committee, 34870–34871

Nuclear Regulatory Commission
NOTICES
Reports; availability, etc.:
Non-power reactor operator licensing examiner standards, 34871
Operator licensing examiner standards, 34871
Applications, hearings, determinations, etc.:
Kennecott Uranium Co., 34871–34872
Northeast Nuclear Energy Co., 34872–34874

Tennessee Valley Authority, 34874–34875

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Rural Development Administration
NOTICES
Agency information collection activities under OMB review, 34786–34798

Rural Electrification Administration
RULES
Telecommunications standards and specifications:
Terminating cables specification
Correction, 34899

Securities and Exchange Commission
PROPOSED RULES
Securities:
Capital requirements for brokers or dealers, 34781
NOTICES
Meetings:
Public Utility Holding Company Act of 1935; roundtable discussion, 34875–34876
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 34876
Boston Stock Exchange, Inc., 34876–34879
Chicago Board Options Exchange, Inc., 34879–34880
National Association of Securities Dealers, Inc., 34880–34892
Pacific Stock Exchange, Inc., 34892–34893

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 34893, 34894
Applications, hearings, determinations, etc.:
Pacific Northwest Partners SBIC, L.P., 34893–34894

Social Security Administration
NOTICES
Social security acquiescence rulings:
Lively v. HHS Secretary; effect of prior disability findings, 34849–34840

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 34850–34852

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration

United States Information Agency
RULES
Exchange visitor program:
Insurance requirements, 34760–34761
NOTICES
Meetings:
Cultural Property Advisory Committee, 34896–34897

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 34902–34961

Part III
Department of Education, 34964–34966

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month Reader Aids section at the end of this issue.

5 CFR
2610 34755
2634 34755
2636 34755
2641 34755

7 CFR
1755 34899

9 CFR
97 34756

10 CFR
Proposed Rules:
1003 34767

14 CFR
39 (3 documents) 34757, 34758, 34899
71 (3 documents) 34759, 34759, 34760
Proposed Rules:
21 34779

16 CFR
Proposed Rules:
300 34780
301 34780
303 34780

17 CFR
Proposed Rules:
240 34781

21 CFR
Proposed Rules:
341 34781

22 CFR
514 34760

24 CFR
Proposed Rules:
100 34902

32 CFR
552 34761
Proposed Rules:
553 34782

33 CFR
Proposed Rules:
322 34783

34 CFR
668 34964
682 34964
690 34964

43 CFR
Public Land Orders:
7055 34899

47 CFR
73 34766

50 CFR
229 34899
Proposed Rules:
17 34784

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
2610 34755
2634 34755
2636 34755
2641 34755

7 CFR
1755 34899

9 CFR
97 34756

10 CFR
Proposed Rules:
1003 34767

14 CFR
39 (3 documents) 34757, 34758, 34899
71 (3 documents) 34759, 34759, 34760
Proposed Rules:
21 34779

16 CFR
Proposed Rules:
300 34780
301 34780
303 34780

17 CFR
Proposed Rules:
240 34781

21 CFR
Proposed Rules:
341 34781

22 CFR
514 34760

24 CFR
Proposed Rules:
100 34902

32 CFR
552 34761
Proposed Rules:
553 34782

33 CFR
Proposed Rules:
322 34783

34 CFR
668 34964
682 34964
690 34964

43 CFR
Public Land Orders:
7055 34899

47 CFR
73 34766

50 CFR
229 34899
Proposed Rules:
17 34784

VOL
59
ISS
129
JL
7
994
UMI

Rules and Regulation

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2610, 2634, 2636 and 2641

RINs 3209–AA00, 3209–AA13, 3209–AA14

Addition of Paperwork Approval Numbers to and Updating and Correction of Citations in Certain Regulations of the Office of Government Ethics

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is adding the approval control numbers assigned by the Office of Management and Budget (OMB) under the Paperwork Reduction Act to various information collection requirements set forth in certain portions of its financial disclosure and outside employment regulations. In addition, OGE is updating a couple of authority citations and correcting a couple of citation errors in certain of its regulations.

EFFECTIVE DATE: July 7, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics, telephone: 202–523–5757, FAX: 202–523–6325.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending two of its regulations, codified at 5 CFR parts 2634 and 2636, to add reference to OMB paperwork approval control numbers for the various executive branch-wide information collections contained therein. The paperwork approval numbers for pertinent provisions of the financial disclosure regulation and related forms used to actually collect information are being added in parenthetical references to the appropriate sections of part 2634. These approval numbers cover reporting requirements for executive branch personnel (and certain members of the

Rules and Regulations

Federal Register
Vol. 59, No. 129
Thursday, July 7, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2610, 2634, 2636 and 2641

RINs 3209–AA00, 3209–AA13, 3209–AA14

Addition of Paperwork Approval Numbers to and Updating and Correction of Citations in Certain Regulations of the Office of Government Ethics

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is adding the approval control numbers assigned by the Office of Management and Budget (OMB) under the Paperwork Reduction Act to various information collection requirements set forth in certain portions of its financial disclosure and outside employment regulations. In addition, OGE is updating a couple of authority citations and correcting a couple of citation errors in certain of its regulations.

EFFECTIVE DATE: July 7, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics, telephone: 202–523–5757, FAX: 202–523–6325.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending two of its regulations, codified at 5 CFR parts 2634 and 2636, to add reference to OMB paperwork approval control numbers for the various executive branch-wide information collections contained therein. The paperwork approval numbers for pertinent provisions of the financial disclosure regulation and related forms used to actually collect information are being added in parenthetical references to the appropriate sections of part 2634. These approval numbers cover reporting requirements for executive branch personnel (and certain members of the public) in part 2634 and the Standard Form (SF) 278 Public Financial Disclosure Report, the OGE Form 201 used to seek access to SF 278s and certain other covered records under the Ethics in Government Act, the SF 450 Confidential Financial Disclosure Report and the various model trust documents and certificates used in connection with qualified trusts. In addition, OGE is indicating the OMB paperwork approval number for the as-yet not effective confidential reporting provision for payments to charitable organizations in lieu of honoraria at § 2636.205 of its outside employment regulation. Finally, OGE is updating the authority citations for 5 CFR parts 2636 and 2641 and is correcting two errors in citations in 5 CFR 2610.201(f) and 2641.101 of its regulations.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these minor revisions. The notice and delayed effective date are being waived because these technical amendments and corrections to certain OGE regulations concern matters of agency organization, practice and procedure and because it is in the public interest that correct and up-to-date citations and information about paperwork approval numbers for the respective information collection requirements be contained in the regulations as soon as possible.

Executive Order 12866

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments and corrections have not been reviewed by the Office of Management and Budget under that Executive order, as they deal with agency organization, management and personnel matters and are not, in any event, deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this technical amendments rulemaking does not itself contain any new information collection requirements that require the approval of the Office of Management and Budget (rather, as noted above, in pertinent part references to existing OMB paperwork control numbers are being added at appropriate places in OGE's regulations).

List of Subjects in 5 CFR Parts 2610, 2634, 2636, and 2641

Administrative practice and procedure, Certificates of Divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: June 24, 1994.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR parts 2634 and 2636 and correcting 5 CFR parts 2610 and 2641 as follows:

PART 2610—[CORRECTED]

1. The authority citation for part 2610 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 5 U.S.C. App. (Ethics in Government Act of 1978).

§ 2610.201 [Corrected]

2. In § 2610.201, the parenthetical citation to the Paperwork Reduction Act in paragraph (f) "(5 U.S.C. chapter 35)" is revised to read "(44 U.S.C. chapter 35)".

PART 2634—[AMENDED]

3. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

4. A new § 2634.409 is added to read as follows:

§ 2634.409 OMB Control Number.

The various model trust documents and Certificates of Independence and Compliance referenced in this subpart, together with the underlying regulatory provisions (and appendixes A, B and C to this part for the Certificates), are all approved by the Office of Management and Budget under control number 3209–0007.

§ 2634.601 [Amended]

5. Section 2634.601 is amended by adding at the end of the regulatory text the following parenthetical phrase "(Approved by the Office of Management and Budget under control numbers 3209–0001 and 3209–0006)".

§ 2634.603 [Amended]

6. Section 2634.603 is amended by adding at the end of the regulatory text the following parenthetical phrase "(Approved by the Office of Management and Budget under control numbers 3209–0001 and 3209–0002)".

PART 2636—[AMENDED]

7. The authority citation for part 2636 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306

§ 2636.205 [Amended]

8. Section 2636.205 is amended by adding at the end of the regulatory text the following parenthetical phrase "(Approved by the Office of Management and Budget under control number 3209–0004)".

PART 2641—[CORRECTED]

9. The authority citation for part 2641 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2641.101 [Corrected]

10. In § 2641.101, the statutory citation in paragraph (2) under the definition of *Senior employee* "5 U.S.C. 5302" is revised to read "5 U.S.C. 5304".

[FR Doc. 94–16095 Filed 7–6–94; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 94–029–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services by adding a commmuted traveltime allowance for travel between two locations in Oregon. Commuted traveltime allowances are the periods of time required for Veterinary Services employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Veterinary Services employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime between these locations.

EFFECTIVE DATE: July 7, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Louise R. Lothery, Director, Resource Management Support, Veterinary Services, APHIS, USDA, room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal byproducts, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Veterinary Services (VS) on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding a commuted traveltime allowance for travel between two locations in Oregon. The amendment is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

We are also amending § 97.2 to correct the spelling of Troutdale, OR.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a VS employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

Accordingly, 9 CFR part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 97.2, in the table, under Oregon, the last entry for Portland in the second column is amended by removing the word "Troutsdale" and adding the word "Troutdale" in its place.

3. Section 97.2 is amended by adding in the table, in alphabetical order, under Oregon, the following entry to read as follows:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
[Add]			
. .	. .	. .	. .
Oregon: Hermiston.	Troutdale ...	.....	6
. .	. .	. .	. .

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

Accordingly, 9 CFR part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 97.2, in the table, under Oregon, the last entry for Portland in the second column is amended by removing the word "Troutsdale" and adding the word "Troutdale" in its place.

3. Section 97.2 is amended by adding in the table, in alphabetical order, under Oregon, the following entry to read as follows:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
[Add]			
. .	. .	. .	. .
Oregon:			
Hermiston.	Troutdale ...	.....	6
. .	. .	. .	. .

Done in Washington, DC, this 30th day of June 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–16376 Filed 7–6–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–63–AD; Amendment 39–8965; AD 94–14–17]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires either the removal of the girt bar visual indicator brackets on passenger exit doors, or modification of the lanyard connecting the survival kit to the slide/raft. This amendment is prompted by a report that, during an emergency evacuation demonstration, the lanyard became entangled on the girt bar indicator mechanism, and subsequently prevented an exit door from opening fully to a locked position. The actions specified by this AD are intended to prevent the lanyard from becoming entangled and interfering with proper opening of the exit door, a situation which could impede the successful evacuation of passengers through the door during an overwater operation where ditching is required.

EFFECTIVE DATE: August 8, 1994.

ADDRESSES: Information related to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on April 25, 1994 (59 FR 19681). That action proposed to require either the removal of the girt bar visual indicator brackets on passenger exit doors, or modification of the lanyard that connects the survival kit to the slide/raft.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposal.

One commenters requests that airplanes on which Airbus Industrie Modification 23605 has been accomplished be excluded from the applicability of the rule. That modification is described in Airbus Service Bulletin A320–25–1109, dated April 20, 1993, and entails removing the girt bar visual indicator brackets (plates) and replacing them with a red arrow placard that is used to indicate positive girt bar engagement. (The commenter also states that all Model A320 series airplanes up to serial number 413 have been delivered with this modification.) The FAA concurs with the commenter's request. The FAA addressed Modification 23605 in the preamble to the supplemental NPRM, and found that, although removal of the brackets will prevent possible interference between the overwater survival kit lanyard and the slide/raft decorative cover, the red arrow placard did not provide for an acceptable means of girt bar position indication. However, since one of the options for complying with this AD [as provided by paragraph (a)(1)] is to remove the girt bar visual indicator brackets, the FAA now considers that airplanes on which Modification 23605 has been accomplished are in compliance with that paragraph of the rule because the brackets have been removed on those airplanes. (Whether or not the red arrow placard, installed as part of Modification 23605, is used to determine the engagement of the girt bar is of no consequence, since the girt bar position/arming indicator in the cockpit remains as a source to obtain positive indication of the position of the girt bar.) Accordingly, the applicability of the final rule has been revised to exclude airplanes on which Modification 23605 has been installed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described The FAA has determined that this change will neither

increase the economic burden on any operator nor increase the scope of the AD.

This is considered interim action. Airbus Industrie has advised the FAA that it is developing an alternative method of girt bar position indication for all Model A320 series airplanes that will not entail a design feature that would contribute to the addressed problem of lanyard entanglement. Once this modification is developed, approved, and available, the FAA may consider further rulemaking.

The FAA estimates that 59 Model A320 airplanes of U.S. registry will be affected by this AD.

Accomplishment of the removal of the girt bar visual indicator brackets will take approximately 1 work hour per airplane, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of this removal action on U.S. operators who elect to accomplish it is estimated to be $55 per airplane.

The time necessary to accomplish the modification of the lanyard may vary from operator to operator, depending upon the design submitted for approval by the FAA. However, the FAA estimates that a typical modification will require an average of 2 work hours to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of this modification action on U.S. operators who elect to accomplish it is estimated to be $110 per airplane.

Based on the figures discussed above, the total cost impact of this AD on U.S. operators is estimated to be between $3,245 and $6,490. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–14–17 Airbus Industrie: Amendment 39–8965. Docket 93–NM–63–AD.

Applicability: Model A320 series airplanes equipped with slide/raft evacuation systems; on which Airbus Industrie Modification 23605 (specified in Airbus Service Bulletin A320–25–1109, dated April 20, 1993) has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the lanyard from becoming entangled on the girt bar indicator mechanism and preventing the exit door from opening properly if passengers are required to use the exit door during overwater operations where ditching may be required, accomplish the following:

(a) Within 90 days after the effective date of this AD, accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD:

(1) Remove the girt bar visual indicator brackets (plates) from all passenger exit doors that are so equipped. Or

(2) Modify the lanyard that attaches the survival kit to the slide/raft so that it does not become entangled on the girt bar indicator mechanism, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on August 8, 1994.

Issued in Renton, Washington, on June 29, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 94–16304 Filed 7–6–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 71

[Airspace Docket No. 94–AWP–6]

Modification of Class E Airspace; Arcata Municipal Airport, Arcata, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Arcata, CA. An Instrument Landing System/Distance Measuring Equipment (ILS/DME) standard instrument approach procedure (SIAP) has been developed for the Arcata Municipal Airport. Controlled airspace extending from 700 feet above the surface is needed for aircraft executing the approach. The effect of this proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operations at Arcata Municipal Airport.

EFFECTIVE DATE: 0901 u.t.c., December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297–0697.

SUPPLEMENTARY INFORMATION:

History

On April 15, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Arcata, CA. (59 FR 23034). An Instrument Landing System/Distance Measuring Equipment (ILS/DME) standard instrument approach procedure (SIAP) has been developed for the Arcata Municipal Airport. Controlled airspace extending from 700 feet above the surface is needed for aircraft executing the approach.

Interested parties were invited to participate in this rulemaking proceedings by submitting written comments on the proposal to the FAA. No objections were received concerning this proposal.

The coordinates in the proposal are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993).

The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Arcata, CA, to modify controlled airspace from 700 to 1200 feet AGL at the Arcata Municipal Airport at Arcata, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

DME) standard instrument approach procedure (SIAP) has been developed for the Arcata Municipal Airport. Controlled airspace extending from 700 feet above the surface is needed for aircraft executing the approach.

Interested parties were invited to participate in this rulemaking proceedings by submitting written comments on the proposal to the FAA. No objections were received concerning this proposal.

The coordinates in the proposal are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993).

The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Arcata, CA, to modify controlled airspace from 700 to 1200 feet AGL at the Arcata Municipal Airport at Arcata, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AWP CA E5 Arcata, CA [Revised]

Arcata Municipal Airport, CA
(lat. 40°58'41" N., long. 124°06'31" W.)

That airspace extending upward from 700 feet above the surface within that airspace beginning

at lat. 40°29'00" N., long. 124°07'00" W.;
to lat. 40°45'00" N., long. 123°50'00" W.;
to lat. 41°05'00" N., long. 124°05'00" W.;
to lat. 41°03'00" N., long. 124°19'00" W.;
to lat. 40°36'00" N., long. 124°19'00" W.;
thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on June 15, 1994.

Harvey R. Riebel,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–16412 Filed 7–6–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANM–17]

Modification of Class D Airspace; Renton, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on June 1, 1994, which inadvertently listed an outdated and incorrect airspace description for Renton Municipal Airport, Renton, Washington.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: James E. Riley, System Management Branch (ANM–530), Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, Washington 98055–4056; Telephone: (206) 227–2537.

SUPPLEMENTARY INFORMATION: On June 1, 1994, the Federal Aviation Administration (FAA) published a final rule that amended the Renton, Washington, Class D airspace area to provide up to date information regarding the area's effective hours in relation to the control tower's hours of operation. However, that action inadvertently contained an outdated and incorrect airspace description for the Renton Municipal Airport. This action corrects that error.

Correction of Final Rule

Accordingly, pursuant to the authority delgated to me, the publication in the **Federal Register** on June 1, 1994 (59 FR 28245; **Federal Register** Document 94–13067) and the corresponding description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 28246, in the first column, the description for the Renton, Washington, Class D airspace is corrected to read as follows:

* * * * *

ANM WA D Renton, WA [Corrected]
Renton Municipal Aiport, WA
(lat. 47°29'35" N., long. 122°12'57" W.)
Seattle, Boeing Field/King County International Airport, WA
(lat. 47°31'48" N., long 122°18'07" W.)
Seattle VORTAC
(lat. 47°26'07" N., long. (122° 18'35" W.)

That airpsace extending upward from the surface to and including 2,500 feet MSL beginning at the intersection of a 5-mile radius of Boeing Field/King County International Airport and a 5-mile radius of Renton Municipal Airport at lat. 47°34'32" N., long. 122°11'57" W., thence clockwise along the 5-mile radius of Renton Municipal Airport to the intersection with a Seattle VORTAC 097 bearing at lat. 47°25'20" N., long. 122°09'05" W., thence west along the Seattle VORTAC 097 bearing to lat. 47°25'36" N., long. 122°12'19" W., thence north along a line to lat. 47°27'45" N., long. 122°12'58" W., thence northwest along a line to lat. 47°28'09" N., long. 122°13'33" W., thence north along a line to lat. 47°30'00" N., long., 122°13'33" W., thence northwest along a line to lat. 47°31'13" N., long. 122°15'32" W., thence northeast along a line to lat. 47°33'41" N., long. 122°14'03" W., thence northeast along a line to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory,.

* * * * *

Issued in Seattle, Washington, on June 22. 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–16410 Filed 7–6–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AWP–7]

Establishment and Modification of Class E Airspace; Lompoc Municipal Airport, Lompoc, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Lompoc, CA. Controlled airspace extending from the surface and a transition area from 700 feet above the surface is needed for aircraft executing the approach. The effect of this proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operations at Lompoc Municipal Airport.

EFFECTIVE DATE: 0901 UTC, December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 297–0697.

SUPPLEMENTARY INFORMATION:

History

On May 4, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish and modify Class E airspace at Lompoc, CA. (59 FR 23034). Controlled airspace extending from the surface and a 700 foot transition area is needed for aircraft executing the approach.

Interested parties were invited to participate in this rulemaking proceedings by submitting written comments on the proposal to the FAA. No objections were received concerning this proposal.

The coordinates in the proposal are based on North American Datum 83. Class E airspace designations are published in Paragraph 6002 and Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993).

The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace extending from the surface at Lompoc, CA, and modifies controlled airspace from 700 to 1200 feet AGL at the Lompoc Municipal Airport at Lompoc, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area for an airport.

* * * * *

AWP CA E2 Lompoc, CA [NEW]

Lompoc Airport, CA
(lat. 34°39'56" N, long. 120°28'00" W)

That airspace extending upward from the surface within a 4.3-mile radius of Lompoc Airport, excluding that airspace within Restricted Areas R–2516 and R–2517. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Lompoc, CA [Revised]

Lompoc Airport, CA
(lat. 34°39'56" N, long. 120°28'00" W)
Gaviota VORTAC (lat. 34°31'53" N, long. 120°05'28" W)
Lompoc NDB (lat. 34°39'53" N, long. 120°27'48" W).

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Lompoc Airport and within 4.3 miles each side of the Gaviota VORTAC 293° radial extending from the 4.3-mile radius 10.9 miles west of the Gaviota VORTAC and within 4 miles each side of the 083° bearing from the Lompoc NDB to 8 miles east of the NDB, excluding that airspace within Restricted Areas R–2516 and R–2517. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, CA, on June 22, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–16413 Filed 7–6–94; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 103]

RIN 3116–AA05

Insurance Requirements, the Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Interim final rule with request for comments.

SUMMARY: The Agency issued a final rule on March 19, 1993 which included a requirement that all exchange visitors and their spouses and dependents on J visas have insurance to cover themselves for sickness and accidents, effective September 1, 1994. In response to concerns raised by the public, the Agency is amending the types of insurance allowed under the Exchange Visitor Program regulations.

DATES: This interim final rule is effective July 7, 1994. Written comments will be accepted until August 8, 1994. All written communications received by the Agency on or before the closing date will be considered by the Agency before action on a final rule is undertaken.

ADDRESSES: Comments regarding this rule should be addressed as follows: United States Information Agency, Office of the General Counsel, Rulemaking 103, 301 Fourth Street SW., room 700, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: William G. Ohlhausen, Assistant General Counsel, United States Information Agency, 301 Fourth Street SW., Washington, DC 20547; telephone (202) 619–4979.

SUPPLEMENTARY INFORMATION: Since implementing the final rule on March 19, 1993 (58 FR 15180), USIA has been requested to amend the insurance requirement set forth in 22 CFR 514.14(c). The main concern has been with the requirement that policies be underwritten by an insurance corporation having an A.M. Best rating of "A–" or above, an Insurance Solvency International, Ltd. (ISI) rating of "A–i" or above, a Standard & Poor's Claims-paying Ability rating of "A–" or above, a Weiss Research, Inc. rating of B+ or above, or such other rating as the Agency may from time to time specify. A rating is not presently required when the insurance coverage is backed by the full faith and credit of the government of the exchange visitor's home country or when the sponsor is allowed to self-insure or to accept full financial responsibility.

A number of the Agency's constituents have expressed the view that § 514.14(c) is too restrictive and that compliance could end longstanding and reliable insurance relationships. A number of major insurance plans and almost all health maintenance organizations reportedly do not meet the current regulations. The Agency has been informed that the net effect on exchange visitors and family members could be to actually reduce in some cases the quality of the health care they have been receiving.

Approximately 800 of the 1,200 designated sponsors are colleges and universities, many of which provide health insurance for their students and faculty. Other sponsors include major corporations, government agencies, non-profit organizations, and research institutions, many of which also offer insurance for their employees who are exchange visitors. A number of sponsors expressed concern that the current regulations disqualify reliable insurance policies, plans, and contracts that they provide to their exchange visitors. In response to sponsors' comments, the Agency is amending the regulations to broaden the types of insurance permitted under § 514.14(c). The Agency is proposing two additional ways to satisfy § 514.14(c).

The first is to qualify a policy, plan, or contract which is part of a health benefits program offered on a group basis to employees or enrolled students by a designated sponsor. Here, the

FOR FURTHER INFORMATION CONTACT: William G. Ohlhausen, Assistant General Counsel, United States Information Agency, 301 Fourth Street SW., Washington, DC 20547; telephone (202) 619–4979.

SUPPLEMENTARY INFORMATION: Since implementing the final rule on March 19, 1993 (58 FR 15180), USIA has been requested to amend the insurance requirement set forth in 22 CFR 514.14(c). The main concern has been with the requirement that policies be underwritten by an insurance corporation having an A.M. Best rating of "A–" or above, an Insurance Solvency International, Ltd. (ISI) rating of "A–i" or above, a Standard & Poor's Claims-paying Ability rating of "A–" or above, a Weiss Research, Inc. rating of B+ or above, or such other rating as the Agency may from time to time specify. A rating is not presently required when the insurance coverage is backed by the full faith and credit of the government of the exchange visitor's home country or when the sponsor is allowed to self-insure or to accept full financial responsibility.

A number of the Agency's constituents have expressed the view that § 514.14(c) is too restrictive and that compliance could end longstanding and reliable insurance relationships. A number of major insurance plans and almost all health maintenance organizations reportedly do not meet the current regulations. The Agency has been informed that the net effect on exchange visitors and family members could be to actually reduce in some cases the quality of the health care they have been receiving.

Approximately 800 of the 1,200 designated sponsors are colleges and universities, many of which provide health insurance for their students and faculty. Other sponsors include major corporations, government agencies, non-profit organizations, and research institutions, many of which also offer insurance for their employees who are exchange visitors. A number of sponsors expressed concern that the current regulations disqualify reliable insurance policies, plans, and contracts that they provide to their exchange visitors. In response to sponsors' comments, the Agency is amending the regulations to broaden the types of insurance permitted under § 514.14(c). The Agency is proposing two additional ways to satisfy § 514.14(c).

The first is to qualify a policy, plan, or contract which is part of a health benefits program offered on a group basis to employees or enrolled students by a designated sponsor. Here, the sponsor is in a position to consult with insurance professionals, rating services, insurance commissioners, legal counsel, and other experts before determining which coverage to offer to its employees and enrolled students.

The second is to qualify a policy, plan, or contract which is underwritten by a federally qualified health maintenance organization (HMO) or an eligible competitive medical plan (CMP) as determined by the Health Care Financing Administration. While these HMO's and CMP's often are not rated by insurance rating services, they are monitored for fiscal soundness on a regular basis by the federal government, in addition to being regulated by one or more states.

22 CFR 514.14 sets forth only minimum insurance requirements, so exchange visitors and their families are encouraged to be educated consumers and consult with insurance professionals, rating services, and insurance regulators before determining their insurance coverage.

Comment

The Agency invites comments from the public on this interim final rule. The Agency is under no legal requirement to invite comments. The designation of exchange visitor sponsors and the administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States Government. The Administrative Procedure Act, 5 U.S.C. 553(a)(1)(1989) specifically exempts such functions from the rulemaking requirements of the Act.

The Agency will accept comments for 30 days after publication of this interim final rule. A final rule will be published thereafter to respond to comments received and to promulgate changes, if any, as part of the Exchange Visitor Program regulations, 22 CFR Part 514. In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does it have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

Dated: June 30, 1994.

Les Jin,

General Counsel.

Accordingly, 22 CFR Part 514 is amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for Part 514 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85–5 (50 FR 27393).

2. In § 514.14, paragraph (c) is revised to read as follows:

§ 514.14 Insurance.

* * * * *

(c) Any policy, plan, or contract secured to fill the above requirements must, at a minimum, be:

(1) Underwritten by an insurance corporation having an A.M. Best rating of "A–" or above, an Insurance Solvency International, Ltd. (ISI) rating of "A–i" or above, a Standard & Poor's Claims-paying Ability rating of "A–" or above, a Weiss Research, Inc. rating of B+ or above, or such other rating as the Agency may from time to time specify; or

(2) Backed by the full faith and credit of the government of the exchange visitor's home country; or

(3) Part of a health benefits program offered on a group basis to employees or enrolled students by a designated sponsor; or

(4) Offered through or underwritten by a federally qualified Health Maintenance Organization (HMO) or eligible Competitive Medical Plan (CMP) as determined by the Health Care Financing Administration of the U.S. Department of Health and Human Services.

* * * * *

[FR Doc. 94–16407 Filed 7–6–94; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552, Subpart M

Land Use Policy for Fort Lewis, Yakima Training Center, and Camp Bonneville, WA

AGENCY: Department of the Army, I Corps and Fort Lewis, DOD.

ACTION: Interim rule.

SUMMARY: This action establishes 32 CFR part 552, Subpart M, Land Use Policy for Fort Lewis, Yakima Training Center, and Camp Bonneville and authenticates Fort Lewis Regulation 350–33. Uninterrupted military use of training areas is vital to the maintenance

of U.S. and Allied Armed Forces combat readiness. In addition, maneuver training areas may be dangerous to persons entering without warning provided during training scheduling or use permit processing.

DATES: This rule is effective July 7, 1994. However, written comments will continue to be received until September 6, 1994.

ADDRESSES: Headquarters, I Corps and Fort Lewis, ATTN: Range Officer, AZFH–PTM–R, Fort Lewis, Washington 98433–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Lanoue or A.J. Weller, (206) 967–6165/6371.

Executive Order 12291

This rule has been classified as nonmajor.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980. This interim rule does not have a significant impact on small entities.

Paperwork Reduction Act

This rule does not contain new reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 552, Subpart M

Military personnel, Government employees, Land use.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

Accordingly, subpart M to 32 CFR part 552 is added to read as follows:

Subpart M—Land Use Policy for Fort Lewis, Yakima Training Center, and Camp Bonneville

Sec.

552.160 Purpose.
552.161 References.
552.162 Abbreviations.
552.163 Applicability.
552.164 General.
552.165 Responsibilities.
552.166 Recreational use.
552.167 Activities.
552.168 Fort Lewis Area Access Office.
552.169 Yakima Training Center Area Access Office.
552.170 Camp Bonneville Area Access Office.
552.171 Compatible Use.
552.172 Violations.
Appendix A—DPCA Recreational Areas in Training Areas
Appendix B—Non-Permit Access Routes
Appendix C—Authorized Activities for Maneuver Training Area Access
Appendix D—Unauthorized Activities in Maneuver Training Areas
Appendix E—References
Appendix F—Abbreviations

Authority: 16 USC 470, 1531–1543; 18 USC 1382; 50 USC 797.

§ 552.160 Purpose.

(a) This subpart establishes procedures for entry to maneuver training areas at Fort Lewis, Yakima Training Center (YTC), and Camp Bonneville. Procedures for other sub-installations to Fort Lewis will be developed by the Commanders of those installations.

(b) Uninterrupted military use of training areas is vital to the maintenance of US and Allied Armed Forces combat readiness. In addition, maneuver training areas may be dangerous to persons entering without warnings provided during training scheduling or use permit processing.

§ 552.161 References.

See Appendix E to this subpart.

§ 552.162 Abbreviations.

See Appendix F to this subpart.

§ 552.163 Applicability.

(a) This subpart is applicable to all military and civilian users of the range complexes at Fort Lewis, Yakima Training Center, and Camp Bonneville.

(b) This subpart governs all use of the Fort Lewis, Yakima Training Center and Camp Bonneville Military Reservations outside cantonment areas, housing areas, and recreational sites controlled by the Director of Personnel and Community Activities (DPCA). These areas are designated on the Fort Lewis, Yakima Training Center and Camp Bonneville Military Installation Maps as Impact Areas and lettered or numbered Training Areas (TAs), and comprise the range complexes for each Installation.

§ 552.164 General.

(a) Military training. Use of the Fort Lewis, Yakima Training Center, and Camp Bonneville range complexes for military training is governed by FL Regs 350–30, 350–31, and 350–32. Scheduling is per FL Policy Statement 350–2. Military training always has priority.

(b) Hunting. Hunting, fishing, and trapping on the range complexes are governed by FL Reg 215–1 and the Yakima Training Center Hunting Letter of Intent (LOI).

(c) Fund raising. Fund raising events for non-profit private organizations not affiliated with the Army or Fort Lewis per AR 210–1 require a Corps of Engineers Real Estate Agreement. Requests for fund-raisers by such non-profit organizations, to be conducted on the Fort Lewis range complex, will be sent to the Director of Plans, Training, and Mobilization (DPTM) Range Division of preparation of a DPTM staffing document. The document will be circulated for comment to Director of Personnel and Community Activities (DPCA), Staff Judge Advocate (SJA), Public Affairs Officer (PAO), and Director of Engineering and Housing (DEH). If the event can be supported, DPTM will advise the organization to contact the Director of Engineering and Housing Real Property Branch. Requests for such activities at Yakima Training Center will be sent to the Yakima Training Center Commander for review and processing. For Camp Bonneville, the entry point is the Vancouver Barracks Commander. Corps of Engineers Real Estate Agreements require up to 8 months to process, and includes payment of a $375.00 minimum administrative fee, with actual costs determined on a case by case basis. Requests for fundraisers in the cantonment area by private organizations are processed per AR 210–1 by the Director of Personnel and Community Activities (DPCA).

(d) Commercial use. Individuals or organizations using the range complex for profit-generating activities must possess a Corps of Engineers Real Estate Agreement. As stated above, these agreements require up to 8 months to process and include a minimum administrative fee of $375.00, with actual costs determined on a case by case basis. Entry point for these agreements is the DEH Real Property Branch. Profit-generating activities include collection of fees for services performed on the range complex, or selling materials collected from the range complex. Real Estate Agreement holders must check into the range complex daily by calling or coming to Area Access.

(e) Installation service and maintenance. Department of Defense (DoD) and contractor personnel on official business are authorized on the range complex per Appendix C to this subpart. Access to hazard areas for such personnel is governed by the appropriate Installation Range Regulations.

(f) Non-DoD personnel in transit. Individuals in transit across Fort Lewis on State or County maintained roads, or roads designated for public access by the Installation Commander, require no special permits. See Appendix B to this subpart. This measure does not apply at Yakima Training Center or Camp Bonneville.

(g) Alcoholic Beverages. No alcoholic beverages may be consumed on the range complexes except as authorized per FL Reg 210–1.

(h) Failure to comply. Persons entering the Fort Lewis, Yakima Training Center, or Camp Bonneville range complex without permit or scheduling, which constitute the consent of the Commanding Officer or his designated representative, are in violation of this regulation and trespassing on a controlled access Federal Reservation. Offenders may be cited by Military Police and may be subjected to administrative action or punishment under either the Uniform Code of Military Justice UCMJ) or Title 18 US Code Section 1382, or Title 50 U.S. Code Section 797, as appropriate to each individual's status. Administrative action may include suspension or loss of recreational privileges, or permanent expulsion from the Military Reservations.

§ 552.165 Responsibilities.

(a) Commander, Yakima Training Center:

(1) Schedule the Yakima Training Center range complex per FL Reg 350–31 and FL PS 350–2.

(2) Process requests for non-military, non-commercial use per § 552.166.

(b) Commander, Vancouver Barracks:

(1) Schedule the Camp Bonneville range complex per FL Reg 350–32 and FL PS 350–2.

(2) Process requests for non-military, non-commercial use per Paragraph 6c.

(c) Fort Lewis DPTM.

(1) Schedule the Fort Lewis range complex per FL Reg 350–30 and FL PS 350–2, including allocation of and for recreational use.

(2) Operate the Fort Lewis Area Access Section.

(3) Respond to DEH coordination on timber sales and other commercial use of the range complex.

(d) Law Enforcement Agency (LEC). Provide law enforcement and game warden patrols on the range complexes.

(e) Director of Engineering and Housing (DEH).

(1) Coordinate with DPTM and the appropriate Sub-Installation Commander on Real Estate Agreements, timber sales, wildlife management, construction, forest management, Installation Training Area Management (ITAM), and other DEH or Corps of Engineers managed actions occurring on the range complex

(2) Ensure that Real Estate Agreement holders are required to notify Fort Lewis Area Access, YTC DPCA, or Camp Bonneville Range Control, as appropriate, of range complex entry.

(g) Alcoholic Beverages. No alcoholic beverages may be consumed on the range complexes except as authorized per FL Reg 210–1.

(h) Failure to comply. Persons entering the Fort Lewis, Yakima Training Center, or Camp Bonneville range complex without permit or scheduling, which constitute the consent of the Commanding Officer or his designated representative, are in violation of this regulation and trespassing on a controlled access Federal Reservation. Offenders may be cited by Military Police and may be subjected to administrative action or punishment under either the Uniform Code of Military Justice UCMJ) or Title 18 US Code Section 1382, or Title 50 U.S. Code Section 797, as appropriate to each individual's status. Administrative action may include suspension or loss of recreational privileges, or permanent expulsion from the Military Reservations.

§ 552.165 Responsibilities.

(a) Commander, Yakima Training Center:

(1) Schedule the Yakima Training Center range complex per FL Reg 350–31 and FL PS 350–2.

(2) Process requests for non-military, non-commercial use per § 552.166.

(b) Commander, Vancouver Barracks:

(1) Schedule the Camp Bonneville range complex per FL Reg 350–32 and FL PS 350–2.

(2) Process requests for non-military, non-commercial use per Paragraph 6c.

(c) Fort Lewis DPTM.

(1) Schedule the Fort Lewis range complex per FL Reg 350–30 and FL PS 350–2, including allocation of and for recreational use.

(2) Operate the Fort Lewis Area Access Section.

(3) Respond to DEH coordination on timber sales and other commercial use of the range complex.

(d) Law Enforcement Agency (LEC). Provide law enforcement and game warden patrols on the range complexes.

(e) Director of Engineering and Housing (DEH).

(1) Coordinate with DPTM and the appropriate Sub-Installation Commander on Real Estate Agreements, timber sales, wildlife management, construction, forest management, Installation Training Area Management (ITAM), and other DEH or Corps of Engineers managed actions occurring on the range complex

(2) Ensure that Real Estate Agreement holders are required to notify Fort Lewis Area Access, YTC DPCA, or Camp Bonneville Range Control, as appropriate, of range complex entry.

(f) DPCA. With DEH, manage Installation hunting, fishing, and trapping programs. Manage picnic and recreation sites located in the Fort Lewis range complex, as listed in Appendix A to this part. Advise DPTM on private organizations requesting use of the Fort Lewis range complex for fundraisers.

(g) Public Affairs Office (PAO).

(1) Act as interface to resolve community relations issues related to land use.

(2) Coordinate equipment and special assistance requests per § 552.165, and advise DPTM or the appropriate Sub-Installation Commander if permit requirements have been waived by the Command Group for a particular event or activity.

(3) Inform DPTM or the appropriate Sub-Installation Commander of public response to policy execution.

§ 552.166 Recreational use.

(a) Fort Lewis:

(1) Individuals or organizations, military or civilian, desiring access to the Fort Lewis range complex for recreation must obtain a Fort Lewis Area Access permit, composed of HFL Form 652 and HFL Form 653. Exceptions are outlined below.

(2) Exception 1: DoD ID card holders enroute to or using DPCA recreational areas listed in Appendix A to this subpart need no permit other than the ID card. However, travel to and from DPCA areas is restricted to the most direct paved or improved two lane roads. DoD personnel participating in non-commercial recreational activities listed in Appendix C to this subpart must have an Area Access permit.

(3) Exception 2: Organizations or groups whose activity requires advanced commitment of a specific site or area, such as Scout Camporees, seasonal or one-time regional meets, and so on, must apply to the Fort Lewis DPTM, ATTN: Range Division, in writing. At least 30 days are required to process these requests. If the requested use is allowable and an appropriate area is available, DPTM may approve the request. Groups with approved land commitments will be scheduled onto the Range Complex using HFL 473. Actual commitments of land will not be made until after the Quarterly Range Scheduling Conference that covers the time period in question. Groups who need military equipment or other special support from Fort Lewis must apply in writing directly to the I Corps Public Affairs Office (PAO).

(b) Yakima Training Center: Access to the Yakima Training Center range complex for recreation requires application in writing to the Commander, Yakima Training Center, Yakima WA 98901–9399. Camping is normally not permitted on Yakima Training Center. Exceptions may be granted by the Yakima Training Center Commander for special events.

(c) Camp Bonneville: Access to the Camp Bonneville range complex for recreation requires a call to Range Control, telephone (206) 892–5800, the day before or the day of the activity. Access will be permitted if no military maneuver or live fire training is scheduled for the day requested.

§ 552.167 Activities.

(a) Authorized activities are listed in Appendix C to this subpart.

(b) Prohibited activities are listed in Appendix D to this subpart.

§ 552.168 Fort Lewis area access office.

(a) DPTM Range Division operates the Area Access Section to issue permits and grant non-training access to the range complex.

(b) Area Access is located in Range Control, Building T–6127, 19th and Tacoma Streets, Main Post Fort Lewis. Telephone numbers are (206) 967–4686/6277. Fax extension is 967–4520. E-mail is "rangeflw." Business hours vary dependent on personnel fill, and are available by calling the above numbers.

(c) Individuals desiring access for authorized activities must register in person at Area Access during business hours. Minimum age is 18 years, except for active duty military personnel. Persons under 18 years of age must be sponsored and accompanied by a parent or legal guardian. Individual registration requires:

(1) Picture ID.

(2) Address and telephone number.

(3) Vehicle identification and license number, if a vehicle is to be brought on post.

(4) Names and ages of minor family members who will accompany a sponsor or permit holder.

(5) Liability release signature.

(6) Certification that intended activities are on the authorized list and are not for profit or fund-raising. Persons who submit false certificates are subject to prosecution in Federal Court under Title 18, United States Code, Section 1001, and the provisions of § 552.165 of this subpart.

(d) A wallet-sized permit (HFL Form 653) and a vehicle pass (HFL Form 652) will be issued to each person authorized access. The permit is not transferable. Entry to the Fort Lewis range complex without the permit is prohibited.

(e) A collective permit will be issued to an organization desiring to conduct a one-time group event not tied to a

specific area or site, maximum length 3 days. The group leader must register in person at the Area Access Office and must be 21 years of age or older except for active duty military personnel.

(1) Group registration requires the information listed for individual permits above for the group leader(s), plus a list of names of all persons in the group.

(2) Group permits require that all members of the group be with the leader throughout the event. If the group plans to separate while on Fort Lewis, sub-group leaders must be appointed and must obtain separate group permits. The group leader permit is not transferable.

(3) Events requiring commitment of land must be processed per § 552.166.

(f) Aside from the land commitment coordination time requirement in § 552.166, there is no deadline for permit application. Permits for authorized activities that do not require commitment of land may be obtained on the day of the event.

(g) Group event permits for specialized one-time activities are valid for the duration of the event, not to exceed 3 days. Individuals activities permits are valid for one year. When a permit expires, the holder must re-register to renew privileges, and a new permit will be issued.

(h) Access hours are 30 minutes after daylight to 30 minutes before dark, except for authorized overnight activities and as outlined in FL Reg 215–1.

(i) All permit holders must check in with Area Access, either telephonically or in person, no earlier than 0800 the day prior to the event. It is the responsibility of each permit holder to inform a friend or relative of the area being used, the estimated time of return, and the vehicle being used.

(j) Except when land commitment has been coordinated and approved, Area Access will determine when called for entry whether the area requested is available. If the requested area is not open for permit holders and an alternate area cannot be provided or is not acceptable to the requestor, access will be denied.

§ 552.169 Yakima Training Center area access office.

The Yakima Training Center DPCA functions as the Area Access Officer (AAO).

§ 552.170 Camp Bonneville area access office.

Camp Bonneville Range Control (CBRC) functions as Area Access.

§ 552.171 Compatible use.

(a) Military unit commanders may request during initial scheduling or subsequent training event coordination that no permit holders be allowed in areas they have scheduled for training. If this restriction is granted, the Installation Range Control will close appropriate areas. The following military activities are considered incompatible with non-training access and automatically close affected areas:

(1) Live-fire training events with danger zones extending into training areas.

(2) Parachute and air assault operations.

(3) Field Artillery firing. The numbered training area occupied by the weapons will be closed.

(4) Training involving riot agents or smoke generating equipment.

(b) The Installation Range Officer may also close training areas based on density of occupation by military units, unit size, or training to be conducted.

(c) Areas allocated to modern firearm deer hunting are closed to both training and other recreational activities. At Fort Lewis, when pheasant release sites can be isolated by swamps, streams, or roads from the rest of a training area, multiple use of the affected training area (TA) is authorized.

§ 552.172 Violations.

Anyone observing violators of this or other regulations must report the activity, time, and location to the appropriate Area Access Office or the Military Police (MP) as soon as possible.

Appendix A to Subpart M—DPCA Recreational Areas in Training Areas

1. This listing applies to Fort Lewis only. There are no such facilities at Yakima Training Center or Camp Bonneville.

2. For DoD member use only, no permit other than ID card required.

Note: Use of specific sites is authorized only to military, retired military, DoD civilian personnel, their family members and accompanied guests.

Boat launch adjacent to Officer's Club Beach on American Lake—Beachwood area
Cat Lake Picnic and Fishing Area—Training Area 19
Chambers Lake Picnic and Fishing Area—Training Area 12 (See Para 3 below)
Fiander lake Picnic and Fishing Area—Training Area 20
Johnson Marsh—Training Area 10
Lewis Lake Picnic and Fishing Area—Training Area 16
No Name Lake—Training Area 22
Sequalitchew Lake Picnic Area—Training Area 2
Shannon Marsh—CTA D
Skeet Trap Range—2d Division Range Road, CTA E
Solo Point Boat Launch—North Fort, CTA A West
Sportman's Range—East Gate Road, Range 15
Wright Marsh/Lake—CTA C
Vietnam Village Marsh—Training Area 9 and 10
Spanaway Marsh—Training Area 9
Sears Pond—Beachwood Housing
Nisqually River—Training Area 18

3. For non-DoD member use, permit required: Chambers Lake and Nisqually River for fishing only.

4. The Solo Point road and the South Sanitary Fill roads are also open in an east-west direction only to personnel of the Weyerhaeuser Corporation and Lone Star Corporation, and their assigns, for business or recreation access to adjacent Army owned real estate.

Appendix B to Supbart M—Non-Permit Access Routes

1. This listing applies only to Fort Lewis. There are no such routes on Yakima Training Center or Camp Bonneville.

2. The following public easement routes may be used without permit or check-in: I–5.

Steilacoom-DuPont Road (ET 286163 or ET 301229).
Pacific Highway Southeast (ET 231121 to ET 249143).
Washington State Route 507 (ET 363065 to ET 428146).
Goodacre and Rice Kandle Roads (ET 386090 to ET 449076).
8th Avenue South (ET 424047 to ET 423127).
8th Avenue East (ET 439077 or ET 439128).
208th Avenue (ET 423128 to ET 431128).
Washington State Route 510 (ET 234065 to ET 246056 and ET 260048 to ET 272022)
Yelm Highway (ET 231058 to ET 238061).
Rainier Road Southeast (ES 167999 to ES 212943).
Military Road Southeast (ES 212943 to ES 214945).
Spurgeon Creek Road (ES 177988 to ES 178999).
Stedman Road (ES 152989 to ES 167998).

3. The following military routes may be used without permit ot check-in:

Huggins Meyer Road (North Fort Road, ET 304204–ET 327215)
East Gate Road (C–5 Mock-up to 8th Ave South, ET 423097)
Roy Cut-off (Chambers Lake) Road (East Gate Road to Roy City Limits), when open.
Lincoln Avenue (Old Madigan to ET 390179)

4. The Solo Point Road is open to Weyerhauser Corporation personnel for business and recreation.

5. DoD personnel and Fort Lewis contractor personnel on official business may use all DEH-maintained range roads and trails in the training areas.

6. Range roads closed for training by barricades or road guards will not be used. Barricades and guards will not be by-passed.

Appendix C to Subpart M—Authorized Activities for Maneuver Training Area Access

1. Fort Lewis:
Military Training (FL Reg 350–30)
DEH or Corps of Engineers Real Estate Agreement for commercial use (AR 405–80)
Installation service and maintenance (AR 420–74, FL Reg 350–30)

Non-DoD personnel in transit on public-access routes (Appendix B) non-commercial recreational use:
Hunting, fishing and trapping (FL Reg 215–1)
Dog training (not allowed 1 April through 31 July in selected areas per FL Reg 215–1)
Horseback riding on roads and vehicle tracks
Walking, distance running
Model airplane and rocket flying (Range Control scheduling and Notice to Airmen (NOTAM) required)
Model boating
Orienteering
Sport parachuting
Organized rifle and pistol competition (Range Control scheduling required)
Scout activities and weekend camporees
Observation of wildlife and vegetation
Non-commercial picking of ferns, mushrooms, blackberries, apples and other vegetation
Photography
Hiking

2. Yakima Training Center:
Military Training (FL Reg 350–31)
DEH or Corps of Engineers Real Estate Agreement for commercial use (AR 405–80)
Installation service and maintenance (AR 420–74)

Non-Commercial recreational use:
Hunting, fishing and trapping (FL Reg 215–1)
Dog training
Horseback riding on roads and vehicle tracks
Walking, distance running
Model airplane and rocket flying (Range Control scheduling and Notice to Airmen (NOTAM required)
Orienteering
Sport parachuting
Organized rifle and pistol competition (Range Control scheduling required)
Scout activities
Observation of wildlife and vegetation
Photography
Hiking
Camping, per Paragraph 6

3. Camp Bonneville:
Military Training (FL Reg 350–32)
DEH or Corps of Engineers Real Estate Agreement for commercial use (AR 405–80)
Installation service and maintenance (AR 420–74)

Non-Commercial recreational use:
Hunting, fishing and trapping (FL Reg 215–1)
Dog training
Horseback riding on roads and vehicle tracks
Walking, distance running
Model boating

Appendix C to Subpart M—Authorized Activities for Maneuver Training Area Access

1. Fort Lewis:

Military Training (FL Reg 350–30)
DEH or Corps of Engineers Real Estate Agreement for commercial use (AR 405–80)
Installation service and maintenance (AR 420–74, FL Reg 350–30)

Non-DoD personnel in transit on public-access routes (Appendix B) non-commercial recreational use:

Hunting, fishing and trapping (FL Reg 215–1)
Dog training (not allowed 1 April through 31 July in selected areas per FL Reg 215–1)
Horseback riding on roads and vehicle tracks
Walking, distance running
Model airplane and rocket flying (Range Control scheduling and Notice to Airmen (NOTAM) required)
Model boating
Orienteering
Sport parachuting
Organized rifle and pistol competition (Range Control scheduling required)
Scout activities and weekend camporees
Observation of wildlife and vegetation
Non-commercial picking of ferns, mushrooms, blackberries, apples and other vegetation
Photography
Hiking

2. Yakima Training Center:

Military Training (FL Reg 350–31)
DEH or Corps of Engineers Real Estate Agreement for commercial use (AR 405–80)
Installation service and maintenance (AR 420–74)

Non-Commercial recreational use:

Hunting, fishing and trapping (FL Reg 215–1)
Dog training
Horseback riding on roads and vehicle tracks
Walking, distance running
Model airplane and rocket flying (Range Control scheduling and Notice to Airmen (NOTAM required)
Orienteering
Sport parachuting
Organized rifle and pistol competition (Range Control scheduling required)
Scout activities
Observation of wildlife and vegetation
Photography
Hiking
Camping, per Paragraph 6

3. Camp Bonneville:

Military Training (FL Reg 350–32)
DEH or Corps of Engineers Real Estate Agreement for commercial use (AR 405–80)
Installation service and maintenance (AR 420–74)

Non-Commercial recreational use:

Hunting, fishing and trapping (FL Reg 215–1)
Dog training
Horseback riding on roads and vehicle tracks
Walking, distance running
Model boating
Orienteering
Organized rifle and pistol competition (Range Control scheduling required)
Scout activities and weekend camporees
Observation of wildlife and vegetation
Non-commercial picking of ferns, mushrooms, blackberries, apples and other vegetation
Photography
Hiking

Note: Permit holders for the above activities must certify that they are non-commercial and not for profit.

Appendix D to Subpart M—Unauthorized Activities in Maneuver Training Areas

1. Fort Lewis:

Civilian paramilitary activities and combat games.
Off-pavement motorcycle riding.
Off-road vehicle operation.
Hang gliding.
Ultralight aircraft flying.
Hot air ballooning.
Souvenir hunting and metal-detecting, including recovery of ammunition residue or fragments, archaeological or cultural artifacts, or geological specimens.
Vehicle speed contests.
Wood cutting or brush picking, without DEH or Corps of Engineer permit.
Commercial activities conducted for profit, including horseback riding rentals or guide service, dog training for reimbursement, or fund-raising events for other than non-profit organizations working in the public good. Fund raisers require DEH Real Estate Agreement. For-profit activities require Corps of Engineer leases or permits, obtained through the DEH Real Estate Office.
Overnight camping outside of DPCA sites (camping on DPCA sites is open to DoD members only, per above).
Consumption of alcoholic beverages.

2. Yakima Training Center:

Civilian paramilitary activities and combat games.
Off-pavement motorcycle riding.
Off-road vehicle operation:
Hang gliding.
Ultralight aircraft flying.
Hot air ballooning.
Souvenir hunting and metal-detecting, including recovery of ammunition residue or fragments, archaeological or cultural artifacts.
Vehicle speed contests.
Commercial activities conducted for profit, including dog training for reimbursement, or fund-raising events for other than non-profit organizations working in the public good. Fund raisers require DEH Real Estate Agreement. For-profit activities require Corps of Engineer leases or permits, obtained through the DEH Real Estate Office.
Overnight camping except where specifically permitted as part of the activity by the Commander, Yakima Training Center.
Consumption of alcoholic beverages.

3. Camp Bonneville:

Civilian paramilitary activities and combat games.
Off-pavement motorcycle riding.
Off-road vehicle operation.
Hang gliding.
Ultralight aircraft flying.
Hot air ballooning.
Souvenir hunting and metal-detecting, including recovery of ammunition residue or fragments, archaeological or cultural artifacts, or geological specimens.
Vehicle speed contests.
Wood cutting or brush picking, without DEH or Corps of Engineer permit.
Commercial activities conducted for profit, including horseback riding rentals or guide service, dog training for reimbursement, or fund-raising events for other than non-profit organizations working in the public good. Fund raisers require DEH Real Estate Agreement. For-profit activities require Corps of Engineer leases or permits, obtained through the DEH Real Estate Office.
Overnight camping.
Consumption of alcoholic beverages.
Model airplane and rocket flying.
Sport parachuting.

Appendix E to Subpart M—References

Army Regulations referenced in this subpart may be obtained from National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Fort Lewis Regulations and forms referenced in this subpart may be viewed at the Office of the Staff Judge Advocate General, Fort Lewis, Washington or at the Range Office, Headquarters, I Corps and Fort Lewis.

AR 210–1 (Private Organizations on Department of the Army Installations), with Fort Lewis Supplement 1
AR 405–70 (Utilization of Real Estate)
AR 405–80 (Granting Use of Real Estate)
AR 420–74 (Natural Resources—Land, Forest, and Wildlife Management)
FL Reg 190–11 (Physical Security of Arms, Ammunition, and Explosives)
FL Reg 210–1 (Fort Lewis Post Regulations)
FL Reg 215–1 (Hunting, Fishing, and Trapping)
FL Reg 250–30 (I Corps and Fort Lewis Range Regulations)
FL Reg 350–31 (Yakima Training Center Range Regulations)
FL Reg 350–32 (Camp Bonneville Range Regulations)
FL Policy Statement 350–2 (Training Resource Scheduling)
HFL Form 473 (Training Resource Request)

HFL Form 652 (Range Control Vehicle Permit)
HFL Form 653 (Range Control Area Access Card)

Appendix F to Subpart M—Abbreviations

AAO Area Access Officer
AR Army Regulation
CBRC Camp Bonneville Range Control
DEH Director of Engineering and Housing
DPCA Director of Personnel and Community Activities
DPTM Director of Plans, Training and Mobilization
FL Fort Lewis
ITAM Installation Training Area Management
LEC Law Enforcement Command
LOI Letter of Intent
MP Military Police
PAO Public Affairs Office
TA Training Area
SJA Staff Judge Advocate
UCMJ Uniform Code of Military Justice
YTC Yakima Training Center

[FR Doc. 94–16346 Filed 7–6–94; 8:45 am]
BILLING CODE 3710–08–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–108); RM–6606]

Radio Broadcasting Services; Sonora, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission dismisses the petition filed by the Clarke Broadcasting Corporation for reconsideration of the Report and Order in MM Docket No. 89–108, 56 FR 55,861, published October 30, 1991. Clarke had requested withdrawal of its petition, stating that it had received no consideration for such withdrawal. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy & Rules Division, Mass Media Bureau.

[FR Doc. 94–16409 Filed 7–6–94; 8:45 am]
BILLING CODE 6712–01–M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

10 CFR Part 1003

RIN 1901–AA55

Office of Hearings and Appeals Procedural Regulations

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its regulations by adding a new Part to contain procedural regulations governing proceedings before the Office of Hearings and Appeals (OHA), a quasi-judicial branch of the DOE, pertaining to matters within the jurisdiction of that Office. These proposed rules have been organized into a new part 1003 within chapter X of title 10 of the Code of Federal Regulations. They streamline and distill the procedures governing the conduct of proceedings before the OHA and update pertinent filing information. They will be utilized by OHA in cases that do not involve the former Federal petroleum price and allocation control regulations.

DATES: Comments may be submitted by September 6, 1994.

ADDRESSES: Seven copies of written comments should be mailed to: Marcia B. Carlson, Chief, Docket and Publications Branch, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone: (202) 586–2383; internet: Roger.Klurfeld@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Proposal
II. Procedural Requirements
III. Opportunity For Public Comment

Proposed Rules

Federal Register
Vol. 59, No. 129
Thursday, July 7, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

10 CFR Part 1003

RIN 1901–AA55

Office of Hearings and Appeals Procedural Regulations

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its regulations by adding a new Part to contain procedural regulations governing proceedings before the Office of Hearings and Appeals (OHA), a quasi-judicial branch of the DOE, pertaining to matters within the jurisdiction of that Office. These proposed rules have been organized into a new part 1003 within chapter X of title 10 of the Code of Federal Regulations. They streamline and distill the procedures governing the conduct of proceedings before the OHA and update pertinent filing information. They will be utilized by OHA in cases that do not involve the former Federal petroleum price and allocation control regulations.

DATES: Comments may be submitted by September 6, 1994.

ADDRESSES: Seven copies of written comments should be mailed to: Marcia B. Carlson, Chief, Docket and Publications Branch, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone: (202) 586–2383; internet: Roger.Klurfeld@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Proposal
II. Procedural Requirements
III. Opportunity For Public Comment

I. Introduction and Proposal

The Office of Hearings and Appeals (OHA) is a quasi-judicial body reporting to the Secretary of Energy. It is generally responsible for conducting informal adjudicative proceedings of DOE where there is provision for separation of functions, other than those which are subject to the jurisdiction of the Federal Energy Regulatory Commission. In connection with these duties, OHA holds hearings, receives evidence, develops the record, and issues final agency determinations, which are subject to review in the Federal courts. Except for regulations governing proceedings before the Board of Contract Appeals and other transaction appeals boards in DOE, which are components of the Office of Hearings and Appeals, procedural regulations governing OHA practice generally appear in part 205 of title 10 of the Code of Federal Regulations. Part 205 is a part of chapter II, Subchapter A of the DOE regulations, and are designed to apply to matters involving the former oil price and allocation control regulations which were in effect during the period 1973 through 1981. Because those oil-related proceedings are winding down, and the OHA is conducting a variety of other informal adjudications for the Department, it has become apparent that the OHA procedural regulations should appear in chapter X of title 10, which contains the general provisions of DOE regulations. The rules will be organized into a new part 1003 within chapter X. At the same time, procedures governing the conduct of proceedings before the OHA have been streamlined, and pertinent filing information has been updated.

Apart from general filing procedures, the regulations proposed today set forth OHA procedures for adjudicating various applications, petitions, motions and related requests filed by the public. These regulations include procedures for the filing of:

(1) Applications for Exception from DOE orders, regulations and rulings;

(2) Appeals of DOE orders;

(3) Applications for Stay of DOE orders;

(4) Motions for Modification or Rescission of OHA orders;

(5) Requests for Conferences and Hearings before OHA; and

(6) Petitions for Special Redress or Other Relief.

These rules are not intended to grant by themselves any new authority to the Office of Hearings and Appeals to conduct informal adjudications. They are designed to provide standard procedural rules that may be used to cover a variety of situations that may be encountered by the many different programs that the Department implements. There are two ways these regulations become effective. First, the procedures outlined in these rules become effective where program rules specifically reference them and state that a member of the public can make a request for relief under these rules. For example, the program regulations that the Department promulgated in the Energy Conservation Program for Consumer Products states that any person receiving an order may file an appeal with the Office of Hearings and Appeals utilizing that office's appellate rules. See 10 CFR 430.27(n). Similarly, in implementing the Payments-Equal-to-Taxes provisions of the Nuclear Waste Policy Act of 1982, the Department stated that an entity may file an appeal with the Office of Hearings and Appeals of a DOE payment equal to taxes (PETT) determination utilizing the OHA's 10 CFR part 205, subpart H appellate rules. See Payments-Equal-To-Taxes Provisions of the Nuclear Waste Policy Act of 1982, as Amended, Interpretation and Procedures, as published in the **Federal Register** on August 27, 1991 (56 FR 42314).

Second, these rules may be effective where a statute requires the Department to provide procedures that permit the public to seek redress, and the appropriate departmental official has delegated the responsibility to implement that requirement to the Office of Hearings and Appeals. For example, section 504 of the Department of Energy Organization Act requires the Secretary to provide for the making of adjustments to any rule, regulation or order issued under four statutes—the Emergency Petroleum Allocation Act of 1973 (since expired), the Federal Energy Administration Act, the Energy Supply and Environmental Coordination Act of 1974, and the Energy Policy and Conservation Act—as may be necessary to prevent serious financial hardship, inequity, or unfair distribution of burdens. The Secretary has delegated that responsibility to the Office of Hearings and Appeals, which

promulgated rules by which members of the public could seek an exception to rules, regulations or orders issued under the four named statutes.

Despite the establishment of standard procedures in these rules, there may be situations where the Office of Hearings and Appeals needs to use procedures specific to the particular needs of a program. In those situations, DOE program regulations themselves contain procedures governing OHA proceedings conducted under authority of those particular regulations, rather than a reference to OHA procedural rules. For example, the DOE Contractor Employee Protection Program contains procedural rules governing OHA proceedings in 10 CFR part 708. Similarly, the Department has proposed procedural rules governing OHA proceedings for determining eligibility for access to classified matter as a part of 10 CFR part 710. Under these circumstances, the rules in the program rules would govern OHA proceedings in those matters, and the rules in part 1003 would not apply.

With the exception of the regulations governing the filing and adjudication of an Application for Exception, explained below, the proposed rules correspond to nearly identical procedural rules contained in 10 CFR part 205, which were promulgated in the 1970's to adjudicate matters relating to the federal oil regulations. Part 205 will continue to be used only to adjudicate matters which relate specifically to the federal oil regulations. The new part 1003, proposed today, shall be utilized for adjudicating all other matters under OHA's jurisdiction. For instance, the DOE will modify § 430.27(n) of 10 CFR part 430 (DOE Energy Conservation Program for Consumer Products) to provide that an aggrieved person filing an appeal under that part shall proceed under subpart C of the new part 1003. The DOE will also issue a conforming amendment to the interpretation and procedures implementing the Payments-Equal-to-Taxes provisions of the Nuclear Waste Policy Act of 1982, as amended, to change the reference to the appellate procedures that are available. Future rulemakings which invoke OHA's adjudicatory authority will refer to the rules contained in part 1003 as the operative administrative process.

Regulations concerning the filing and adjudication of an Application for Exception have been revised and are contained in 10 CFR part 1003, subpart B. Generally, an Application for Exception may be filed by a person seeking an exception from or an adjustment to a DOE regulatory requirement, where such relief is authorized by the pertinent regulations or underlying statute concerned. Similar to the regulations appearing in 10 CFR part 205, subpart D, the proposed rules provide that an aggrieved person may file an Application for Exception from a DOE regulation on the basis that the specific regulatory requirement results in a serious hardship, gross inequity or unfair distribution of burdens. The proposed rules set forth in part 1003, subpart B, present a simpler procedure than part 205, subpart D, by (1) eliminating the issuance of a Proposed Decision and Order and related procedures prior to issuance of a final Decision and Order, and (2) providing for an administrative appeal of the final Decision and Order by an aggrieved party directly to OHA, except in exception proceedings brought under section 504 of the DOE Act which will continue to be appealable to the Federal Energy Regulatory Commission. The proposed rules make the adjudication of Applications for Exception more effective since they are more practicable than the more complex procedures of part 205, subpart D, which were formulated in contemplation of the federal oil regulations.

II. Procedural Requirements

Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in section 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort that the rulemaking notice defines key terms, specifies the effect on existing law, and describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. DOE certifies that these proposed rules meet the requirements of section 2(a) and (b)(2) of Executive Order 12778.

Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's regulations do not affect any traditional State function. There are therefore no substantial direct effects requiring evaluation or assessment under Executive Order 12612.

Regulatory Flexibility Act Certification

These regulations were reviewed under the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, which requires preparation of a regulatory flexibility analysis for any regulations that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small government jurisdictions. The proposed regulatory amendment updates and gives greater flexibility to previously existing procedural regulations. DOE therefore certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, and the preparation of a regulatory flexibility analysis is not warranted.

Paperwork Reduction Act

No additional information and recordkeeping requirements are imposed by this rule (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The proposed rules are strictly procedural in nature. Preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) is not required for such rules under Appendix A to subpart D of 10 CFR part 1021.

III. Opportunity for Public Comment

Interested persons are invited to submit written views or arguments regarding the proposed amendment set forth in this notice. Seven copies of these comments should be submitted to Marcia B. Carlson, Chief, Docket and Publications Branch, Office of Hearings and Appeals, at the address shown in the beginning of this notice. The envelope and document submitted should be identified with the designation "Office of Hearings and Appeals Procedural Regulations." Comments may also be sent via electronic mail to an Office of Hearings and Appeals internet mail address, which is: OHA@HQ.DOE.GOV. All comments received on or before the date specified in the beginning of this notice will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. All comments will be available for public inspection and copying in the Office of Hearings and Appeals Public Reference Room, Room 1E–234, telephone number (202) 586–8001, between 1:00 and 5:00 p.m., Monday through Friday.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit seven complete copies, as well as two copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine confidential status of the information or data and to treat it according to its determination. This procedure is set forth in 10 CFR 205.9, which will be superseded by the proposed 1004.10.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Therefore, pursuant to section 501(c) (42 U.S.C. 7191(c)) of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Part 1003

Administrative practice and procedure.

Issued in Washington, DC, on June 24, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

For the reasons set forth in the preamble, Title 10, Chapter X of the CFR is proposed to be amended by adding a new part 1003 to read as follows:

PART 1003—OFFICE OF HEARINGS AND APPEALS PROCEDURAL REGULATIONS

Subpart A—General Provisions

Sec.

1003.1 Purpose and scope.
1003.2 Definitions.
1003.3 Appearance before the OHA.
1003.4 Filing of documents.
1003.5 Computation of time.
1003.6 Extension of time.
1003.7 Service.

Appeals Procedural Regulations." Comments may also be sent via electronic mail to an Office of Hearings and Appeals internet mail address, which is: OHA@HQ.DOE.GOV. All comments received on or before the date specified in the beginning of this notice will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. All comments will be available for public inspection and copying in the Office of Hearings and Appeals Public Reference Room, Room 1E–234, telephone number (202) 586–8001, between 1:00 and 5:00 p.m., Monday through Friday.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit seven complete copies, as well as two copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine confidential status of the information or data and to treat it according to its determination. This procedure is set forth in 10 CFR 205.9, which will be superseded by the proposed 1004.10.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Therefore, pursuant to section 501(c) (42 U.S.C. 7191(c)) of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Part 1003

Administrative practice and procedure.

Issued in Washington, DC, on June 24, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

For the reasons set forth in the preamble, Title 10, Chapter X of the CFR is proposed to be amended by adding a new part 1003 to read as follows:

PART 1003—OFFICE OF HEARINGS AND APPEALS PROCEDURAL REGULATIONS

Subpart A—General Provisions

Sec.

1003.1 Purpose and scope.
1003.2 Definitions.
1003.3 Appearance before the OHA.
1003.4 Filing of documents.
1003.5 Computation of time.
1003.6 Extension of time.
1003.7 Service.
1003.8 Subpoenas, special report order, oaths, witnesses.
1003.9 General filing requirements.
1003.10 Effective date of orders.
1003.11 Address for filing documents.
1003.12 Ratification of prior directives, orders and actions.
1003.13 Public reference room.
1003.14 Notice of proceedings.

Subpart B—Exception

1003.20 Purpose and scope.
1003.21 What to file.
1003.22 Where to file.
1003.23 Notice.
1003.24 Contents.
1003.25 OHA evaluation.
1003.26 Decision and order
1003.27 Appeal.

Subpart C—Appeal

1003.30 Purpose and scope
1003.31 Who may file.
1003.32 What to file.
1003.33 Where to file.
1003.34 Notice.
1003.35 Contents.
1003.36 OHA evaluation.
1003.37 Decision and order

Subpart D—Stay

1003.40 Purpose and scope.
1003.41 What to file.
1003.42 Where to file.
1003.43 Notice.
1003.44 Contents.
1003.45 OHA evaluation.
1003.46 Decision and order.

Subpart E—Modification or Rescission

1003.50 Purpose and scope
1003.51 What to file.
1003.52 Where to file.
1003.53 Notice.
1003.54 Contents.
1003.55 OHA evaluation.
1003.56 Decision and order.

Subpart F—Conferences and Hearings

1003.60 Purpose and scope.
1003.61 Conferences.
1003.62 Hearings.

Subpart G—Private Grievances and Redress

1003.70 Purpose and scope.
1003.71 Who may file.
1003.72 What to file.
1003.73 Where to file.
1003.74 Notice.
1003.75 Contents.
1003.76 OHA evaluation of request.
1003.77 Decision and order.

Authority: 15 U.S.C. 761, *et seq.*; 42 U.S.C. 7101, *et seq.*

Subpart A—General Provisions

§ 1003.1 Purpose and scope.

This part establishes the procedures to be utilized and identifies the sanctions that are available in proceedings before the Office of Hearings and Appeals of the Department of Energy. These procedures provide standard rules of practice in a variety of informal adjudications when jurisdiction is vested in the Office of Hearings and Appeals. The procedures contained in this part may generally be incorporated by reference in proceedings established by rule, regulation or by specific designation, under statutory authority of the Department of Energy, which invoke the adjudicatory authority of the Office of Hearings and Appeals. e.g., 10 CFR part 430 (DOE Energy Conservation Program for Consumer Products). These rules do not apply in instances in which DOE regulations themselves contain procedures governing OHA proceedings conducted under authority of those particular regulations. e.g., 10 CFR part 708 (DOE Contractor Employee Protection Program).

§ 1003.2 Definitions.

(a) As used in this part:

Action means an order, interpretation, ruling issued, or a rulemaking undertaken by the DOE.

Aggrieved, for purposes of administrative proceedings, describes and means a person who is adversely affected by an action of the DOE.

Conference means an informal meeting, incident to any proceeding, between the Office of Hearings and Appeals and any person aggrieved by that proceeding.

Director means the Director of the Office of Hearings and Appeals or duly authorized delegate.

DOE means the Department of Energy, created by the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7254).

Duly authorized representative means a person who has been designated to appear before the Office of Hearings and Appeals in connection with a proceeding on behalf of a person interested in or aggrieved by that proceeding. Such appearance may consist of the submission of a written document, or of a personal appearance, verbal communication, or any other participation in the proceeding.

Exception means the waiver or modification of the requirements of a regulation, ruling or generally applicable requirement under a specific set of facts.

Federal legal holiday means the first day of January, the third Monday of January, the third Monday of February, the last Monday of May, the fourth day of July, the first Monday of September, the second Monday of October, the eleventh day of November, the fourth Thursday of November, the twenty-fifth day of December, or any other calendar day designated as a holiday by Federal statute or Executive order.

OHA means the Office of Hearings and Appeals of the Department of Energy.

Order means a written directive or verbal communication of a written directive, if promptly confirmed in writing, issued by the DOE. For purposes of this definition a written directive shall include telegrams, telefax, telecopies and similar transcriptions. This definition does not include internal DOE orders and directives issued by the Secretary of Energy or delegate in the management and administration of departmental elements and functions.

Person means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, joint-venture, corporation, governmental unit or instrumentality thereof, or a charitable, educational or other institution, and includes any officer, director, owner or duly authorized representative thereof.

Proceeding means the process and activity, and any part thereof, instituted by the OHA, either on its own initiative or in response to an application, complaint, petition or request submitted by a person, that may lead to an action by the OHA.

SRO means a Special Report Order issued pursuant to section 1003.8(a).

(b) Throughout this part the use of a word or term in the singular shall include the plural, and the use of the male gender shall include the female gender.

§ 1003.3 Appearance before the OHA.

(a) A person may make an appearance, including personal appearances in the discretion of the OHA, and participate in any proceeding described in this part on his own behalf or by a duly authorized representative. Any application, appeal, petition, or request filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative. Falsification of such certification will subject such person to the sanctions stated in 18 U.S.C. 1001.

(b) Suspension and disqualification. The OHA may deny, temporarily or permanently, the privilege of participating in proceedings, including oral presentation, to any individual who is found by the OHA—

(1) To have made false or misleading statements, either verbally or in writing;

(2) To have filed false or materially altered documents, affidavits or other writings;

(3) To lack the specific authority to represent the person seeking an OHA action; or

(4) To have engaged in or to be engaged in contumacious conduct that substantially disrupts a proceeding.

§ 1003.4 Filing of documents.

(a) Any document filed with the OHA must be addressed as required by § 1003.11, and should conform to the requirements contained in § 1003.9. All documents and exhibits submitted become part of an OHA file and will not be returned.

(b) A document submitted in connection with any proceeding transmitted by first class United States mail and properly addressed is considered to be filed upon mailing.

(c) Hand-delivered documents to be filed with the OHA shall be submitted to Room 1E–234 at 1000 Independence Avenue, SW., Washington, DC, on business days between the hours of 2 p.m. and 4:30 p.m.

(d) Documents hand delivered or received electronically after regular business hours are deemed filed on the next regular business day.

§ 1003.5 Computation of time.

(a) *Days.* (1) Except as provided in paragraph (b) of this section, in computing any period of time prescribed or allowed by these regulations or by an order of the OHA, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a Federal legal holiday.

(2) Saturdays, Sundays or intervening Federal legal holidays shall be excluded from the computation of time when the period of time allowed or prescribed is 7 days or less.

(b) *Hours.* If the period of time prescribed in an order issued by the OHA is stated in hours rather than days, the period of time shall begin to run upon actual notice of such order, whether by verbal or written communication, to the person directly affected, and shall run without interruption, unless otherwise provided in the order, or unless the order is stayed, modified, suspended or rescinded. When a written order is transmitted by verbal communication, the written order shall be served as soon thereafter as is feasible.

(c) *Additional time after service by mail.* Whenever a person is required to perform an act, to cease and desist therefrom, or to initiate a proceeding under this part within a prescribed period of time after issuance to such person of an order, notice or other document and the order, notice or other document is served solely by mail, 3 days shall be added to the prescribed period.

§ 1003.6 Extension of time.

When a document is required to be filed within a prescribed time, an extension of time to file may be granted by the OHA upon good cause shown.

§ 1003.7 Service.

(a) All documents required to be served under this part shall be served personally or by first class United States mail, except as otherwise provided.

(b) Service upon a person's duly authorized representative shall constitute service upon that person.

(c) Official United States Postal Service receipts from certified mailing shall constitute prima facie evidence of service.

§ 1003.8 Subpoenas, special report orders, oaths, witnesses.

(a) In accordance with the provisions of this section and as otherwise authorized by law, the Director may sign, issue and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to this section; subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

(b) The Director may issue a Special Report Order requiring any person subject to the jurisdiction of the OHA to file a special report providing information relating to OHA regulations, including but not limited to written answers to specific questions. The SRO may be in addition to any other reports required.

(c) The Director, for good cause shown, may extend the time prescribed for compliance with the subpoena or SRO and negotiate and approve the terms of satisfactory compliance.

(d) Prior to the time specified for compliance, but in no event more than 10 days after the date of service of the subpoena or SRO, the person upon whom the document was served may file a request for review of the subpoena or SRO with the Director. The Director then shall provide notice of receipt to the person requesting review, may extend the time prescribed for compliance with the subpoena or SRO, and negotiate and approve the terms of satisfactory compliance.

(e) If the subpoena or SRO is not modified or rescinded within 10 days of the date of the Director's notice of receipt:

(1) The subpoena or SRO shall be effective as issued; and

(2) The person upon whom the document was served shall comply with the subpoena or SRO within 20 days of the date of the Director's notice of receipt, unless otherwise notified in writing by the Director.

(f) There is no administrative appeal of a subpoena or SRO.

(g) A subpoena or SRO shall be served upon a person named in the document by delivering a copy of the document to the person named.

(h) Delivery of a copy of the document to a natural person may be made by:

(1) Handing it to the person;

(2) Leaving it at the person's office with the person in charge of the office;

(3) Leaving it at the person's dwelling or usual place of abode with a person of suitable age and discretion who resides there;

(4) Mailing it to the person by certified mail, at his last known address; or

(5) Any method that provides the person with actual notice prior to the return date of the document.

(i) Delivery of a copy of the document to a person who is not a natural person may be made by:

(1) Handing it to a registered agent of the person;

(2) Handing it to any officer, director, or agent in charge of any office of such person;

(3) Mailing it to the last known address of any registered agent, officer, director, or agent in charge of any office of the person by registered or certified mail; or

(4) Any method that provides any registered agent, officer, director, or agent in charge of any office of the person with actual notice of the document prior to the return date of the document.

(j) A witness subpoenaed by the OHA may be paid the same fees and mileage as paid to a witness in the district courts of the United States.

(k) If in the course of a proceeding a subpoena is issued at the request of a person other than an officer or agency of the United States, the witness fees and mileage shall be paid by the person who requested the subpoena. However, at the request of the person, the witness fees and mileage may be paid by the OHA if the person shows:

compliance with the subpoena or SRO, and negotiate and approve the terms of satisfactory compliance.

(e) If the subpoena or SRO is not modified or rescinded within 10 days of the date of the Director's notice of receipt:

(1) The subpoena or SRO shall be effective as issued; and

(2) The person upon whom the document was served shall comply with the subpoena or SRO within 20 days of the date of the Director's notice of receipt, unless otherwise notified in writing by the Director.

(f) There is no administrative appeal of a subpoena or SRO.

(g) A subpoena or SRO shall be served upon a person named in the document by delivering a copy of the document to the person named.

(h) Delivery of a copy of the document to a natural person may be made by:

(1) Handing it to the person;

(2) Leaving it at the person's office with the person in charge of the office;

(3) Leaving it at the person's dwelling or usual place of abode with a person of suitable age and discretion who resides there;

(4) Mailing it to the person by certified mail, at his last known address; or

(5) Any method that provides the person with actual notice prior to the return date of the document.

(i) Delivery of a copy of the document to a person who is not a natural person may be made by:

(1) Handing it to a registered agent of the person;

(2) Handing it to any officer, director, or agent in charge of any office of such person;

(3) Mailing it to the last known address of any registered agent, officer, director, or agent in charge of any office of the person by registered or certified mail; or

(4) Any method that provides any registered agent, officer, director, or agent in charge of any office of the person with actual notice of the document prior to the return date of the document.

(j) A witness subpoenaed by the OHA may be paid the same fees and mileage as paid to a witness in the district courts of the United States.

(k) If in the course of a proceeding a subpoena is issued at the request of a person other than an officer or agency of the United States, the witness fees and mileage shall be paid by the person who requested the subpoena. However, at the request of the person, the witness fees and mileage may be paid by the OHA if the person shows:

(1) The presence of the subpoenaed witness will materially advance the proceeding; and

(2) the person who requested that the subpoena be issued would suffer a serious hardship if required to pay the witness fees and mileage.

(l) If any person upon whom a subpoena or SRO is served pursuant to this section, refuses or fails to comply with any provision of the subpoena or SRO, an action may be commenced in the appropriate United States District Court to enforce the subpoena or SRO.

(m) Documents produced in response to a subpoena shall be accompanied by the sworn certification, under penalty of perjury, of the person to whom the subpoena was directed or his authorized agent that:

(1) A diligent search has been made for each document responsive to the subpoena; and

(2) To the best of his knowledge, information, and belief each document responsive to the subpoena is being produced.

(n) Any information furnished in response to an SRO shall be accompanied by the sworn certification under penalty of perjury of the person to whom it was directed or his authorized agent who actually provides the information that:

(1) A diligent effort has been made to provide all information required by the SRO; and

(2) All information furnished is true, complete, and correct.

(3) If any document responsive to a subpoena is not produced or any information required by an SRO is not furnished, the certification shall include a statement setting forth every reason for failing to comply with the subpoena or SRO.

(o) If a person to whom a subpoena or SRO is directed withholds any document or information because of a claim of attorney-client or other privilege, the person submitting the certification required by paragraph (m) or (n) of this section also shall submit a written list of the documents or the information withheld indicating a description of each document or information, the date of the document, each person shown on the document as having received a copy of the document, each person shown on the document as having prepared or been sent the document, the privilege relied upon as the basis for withholding the document or information, and an identification of the person whose privilege is being asserted.

(p) If testimony is taken pursuant to a subpoena, the Director shall determine whether the testimony shall be recorded and the means by which the testimony is recorded.

(q) A witness whose testimony is recorded may procure a copy of his testimony by making a written request for a copy and paying the appropriate fees. However, the Director may deny the request for good cause. Upon proper identification, any witness or his attorney has the right to inspect the official transcript of the witness' own testimony.

(r) The Director may sequester any person subpoenaed to furnish documents or give testimony. Unless permitted by the OHA official, neither a witness nor his attorney shall be present during the examination of any other witnesses.

(s) A witness whose testimony is taken may be accompanied, represented and advised by his attorney as follows:

(1) Upon the initiative of the attorney or witness, the attorney may advise his client, in confidence, with respect to the question asked his client, and if the witness refuses to answer any question, the witness or his attorney is required to briefly state the legal grounds for such refusal; and

(2) If the witness claims a privilege to refuse to answer a question on the grounds of self-incrimination, the witness must assert the privilege personally.

(t) The Director shall take all necessary action to regulate the course of testimony and to avoid delay and prevent or restrain contemptuous or obstructionist conduct or contemptuous language. OHA may take actions as the circumstances may warrant in regard to any instances where any attorney refuses to comply with directions or provisions of this section.

§ 1003.9 General filing requirements.

(a) *Purpose and scope.* The provisions of this section shall apply to all documents required or permitted to be filed with the OHA. One copy of each document must be filed with the original, except as provided in § 1003.9(f). A telefax filing of a document will be accepted only if immediately followed by the filing by mail or hand-delivery of the original document.

(b) *Signing.* Any document that is required to be signed, shall be signed by the person filing the document. Any document filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative. (A false certification is unlawful under the provisions of 18 U.S.C. 1001). The signature by the person or duly authorized representative constitutes a

certificate by the signer that the signer has read the document and that to the best of the signer's knowledge, information and belief formed after reasonable inquiry, the document is well grounded in fact, warranted under existing law, and submitted in good faith and not for any improper purpose such as to harass or to cause unnecessary delay. If a document is signed in violation of this section, OHA may impose the sanctions specified in § 1003.3 and other sanctions determined to be appropriate.

(c) *Labeling.* An application, petition, or other request for action by the OHA should be clearly labeled according to the nature of the action involved both on the document and on the outside of the envelope in which the document is transmitted.

(d) *Obligation to supply information.* A person who files an application, petition, appeal or other request for action is under a continuing obligation during the proceeding to provide the OHA with any new or newly discovered information that is relevant to that proceeding. Such information includes, but is not limited to, information regarding any other application, petition, appeal or request for action that is subsequently filed by that person with any DOE office.

(e) *The same or related matters.* A person who files an application, petition, appeal or other request for action by the OHA shall state whether, to the best knowledge of that person, the same or related issue, act or transaction has been or presently is being considered or investigated by any other DOE office, other Federal agency, department or instrumentality; or by a state or municipal agency or court; or by any law enforcement agency, including, but not limited to, a consideration or investigation in connection with any proceeding described in this part. In addition, the person shall state whether contact has been made by the person or one acting on his behalf with any person who is employed by the DOE with regard to the same issue, act or transaction or a related issue, act or transaction arising out of the same factual situation; the name of the person contacted; whether the contact was verbal or in writing, the nature and substance of the contact; and the date or dates of the contact.

(f) *Request for confidential treatment.* (1) If any person filing a document with the OHA claims that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if such person requests the OHA not to disclose such information, such person shall file together with the document two copies of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The person shall indicate in the original document that it is confidential or contains confidential information and must file a statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. If the person states that the information comes within the exception codified at 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, such person shall include a statement specifying why such information is privileged or confidential. If the person filing a document does not submit two copies of the document with the confidential information deleted, the OHA may assume that there is no objection to public disclosure of the document in its entirety.

(2) The OHA retains the right to make its own determination with regard to any claim of confidentiality, under criteria specified in 10 CFR 1004.11. Notice of the decision by the OHA to deny such claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

(g) Each application, petition or request for OHA action shall be submitted as a separate document, even if the applications, petitions, or requests deal with the same or a related issue, act or transaction, or are submitted in connection with the same proceeding.

§ 1003.10 Effective date of orders.

Any order issued by the OHA under this title is effective as against all persons having actual or constructive notice thereof upon issuance, in accordance with its terms, unless and until it is stayed, modified, suspended, or rescinded. An order is deemed to be issued on the date, as specified in the order, on which it is signed by the Director of the OHA or his designee, unless the order provides otherwise.

§ 1003.11 Address for filing documents.

(a) All applications, requests, petitions, appeals, written communications and other documents to be submitted to or filed with the OHA, as provided in this part or otherwise, shall be addressed as follows: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(b) The OHA has facilities for the receipt of transmissions via FAX, at FAX Number (202) 586–4972.

§ 1003.12 Ratification of prior directives, orders and actions.

All orders, or other directives issued, all proceedings initiated, and all other actions taken in accordance with 10 CFR part 205 prior to the effective date of this part, are hereby confirmed and ratified, and shall remain in full force and effect as if issued under this part, unless or until they are altered, amended, modified or rescinded in accordance with the provisions of this part.

§ 1003.13 Public reference room.

There shall be maintained at the OHA, 1000 Independence Avenue, SW., Washington, DC, a public reference room in which shall be made available for public inspection and copying, during business hours from 1 p.m. to 5 p.m.:

(a) A list of all persons who have applied for an exception, or filed an appeal or petition, and a digest of each application;

(b) Each decision and statement setting forth the relevant facts and legal basis of an order, with confidential information deleted, issued in response to an application for an exception, petition or other request, or at the conclusion of an appeal;

(c) Any other information in the possession of OHA which is required by statute to be made available for public inspection and copying, and any other information that the OHA determines should be made available to the public.

§ 1003.14 Notice of proceedings.

At regular intervals, the OHA shall publish in the **Federal Register** a digest of the applications, appeals, petitions and other requests filed, and a summary of the Decisions and Orders issued by the OHA, pursuant to proceedings conducted under this part.

Subpart B—Exception

§ 1003.20 Purpose and scope.

(a) This subpart establishes the procedures for applying for an exception, as provided for in 42 U.S.C. 7194, from a regulation, ruling or generally applicable requirement based on an assertion of serious hardship, gross inequity or unfair distribution of burdens and for the consideration of such application by the OHA.

(b) The filing of an application for an exception shall not constitute grounds for non-compliance with the

requirements of the regulation or generally applicable requirement from which an exception is sought, unless a stay has been issued in accordance with subpart D of this part.

§ 1003.21 What to file.

A person filing under this subpart shall file an "Application for Exception," which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing. The general filing requirements stated in § 1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.22 Where to file.

All applications for exception shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.23 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to each person who is reasonably ascertainable by the applicant as a person who will be aggrieved by the OHA action sought. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application to the OHA office with which the application was filed within 10 days. The application filed with the OHA shall include certification to the OHA that the applicant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the application was sent.

(b) Notwithstanding the provision of paragraph (a) of this section, if an applicant determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was sent. The OHA may require the applicant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the **Federal Register**.

(c) The OHA shall serve notice on any other person readily identified by the OHA as one who will be aggrieved by

requirements of the regulation or generally applicable requirement from which an exception is sought, unless a stay has been issued in accordance with subpart D of this part.

§ 1003.21 What to file.

A person filing under this subpart shall file an "Application for Exception," which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing. The general filing requirements stated in § 1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.22 Where to file.

All applications for exception shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.23 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to each person who is reasonably ascertainable by the applicant as a person who will be aggrieved by the OHA action sought. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application to the OHA office with which the application was filed within 10 days. The application filed with the OHA shall include certification to the OHA that the applicant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the application was sent.

(b) Notwithstanding the provision of paragraph (a) of this section, if an applicant determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was sent. The OHA may require the applicant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the **Federal Register**.

(c) The OHA shall serve notice on any other person readily identified by the OHA as one who will be aggrieved by the OHA action sought and may serve notice on any other person that written comments regarding the application will be accepted if filed within 10 days of service of such notice.

(d) Any person submitting written comments to the OHA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to the applicant. The person shall certify to the OHA that compliance with the requirements of this paragraph (d) has been met. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 1003.24 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the OHA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested action; and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the application. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the application. When the application pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction shall be submitted.

(b) The applicant shall state whether he requests or intends to request that there be a conference or hearing regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference or hearing is held when it will be most beneficial. The request and the OHA's determination regarding it shall be made in accordance with subpart F of this part.

(c) The application shall include a discussion of all relevant authorities, including, but not limited to, DOE rulings, regulations, interpretations and decisions on appeals and exceptions relied upon to support the particular action sought therein.

(d) The application shall specify the exact nature and extent of the relief requested.

§ 1003.25 OHA evaluation.

(a)(1) OHA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the OHA may consider any other source of information. The OHA on its own initiative may convene a hearing or conference, if, in its discretion, it considers that such hearing or conference will advance its evaluation of the application. The OHA may issue appropriate orders as warranted in the proceeding.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if upon request additional information is not submitted by the applicant, the OHA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the application with prejudice. If the applicant fails to provide the notice required by § 1003.23, the OHA may dismiss the application without prejudice.

(b)(1) The OHA shall consider an application for an exception only when it determines that a more appropriate proceeding is not provided by DOE regulations.

(2) An application for an exception may be granted to alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens.

(3) An application for an exception shall be decided in a manner that is, to the extent possible, consistent with the disposition of previous applications for exception.

§ 1003.26 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the OHA shall issue an order granting or denying the application, in whole or in part.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order. The order shall provide that any person aggrieved thereby may file an appeal in accordance with § 1003.27.

(c) The OHA shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person

readily identifiable by the OHA as one who is aggrieved by such order.

§ 1003.27 Appeal.

(a) Except as provided in paragraph (b) of this section, any person aggrieved by an order issued by the OHA under this subpart may file an appeal with the OHA in accordance with subpart C of this part.

(b) Any person aggrieved or adversely affected by the denial of a request for exception relief filed under section 504 of the DOE Organization Act, Pub. L. 95–91, may appeal to the Federal Energy Regulatory Commission, in accordance with the Commission's regulations.

(c) Any appeal filed under this section must be filed within 30 days of service of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until a timely appeal has been filed and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart C—Appeal

§ 1003.30 Purpose and scope.

(a) This subpart establishes the procedures for the filing of an administrative appeal of DOE actions other than a rule or regulation.

(b) Where DOE program regulations provide for an administrative appeal, a person who has appeared before the DOE in connection with a matter has not exhausted his administrative remedies until an appeal has been filed under this subpart and an order granting or denying the appeal has been issued.

§ 1003.31 Who may file.

Where DOE program regulations provide for an administrative appeal, any person aggrieved by an order issued by the DOE may file an appeal under this subpart.

§ 1003.32 What to file.

A person filing under this subpart shall file an "Appeal of Order" which should be clearly labeled as such both on the appeal and on the outside of the envelope in which the appeal is transmitted, and shall be in writing. The general filing requirements stated in § 1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.33 Where to file.

The appeal shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.34 Notice.

(a) The appellant shall send by United States mail a copy of the appeal and any subsequent amendments or other documents relating to the appeal, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to each person who is reasonably ascertainable by the appellant as a person who will be aggrieved by the OHA action sought, including those who participated in the prior proceeding. The copy of the appeal shall be accompanied by a statement that the person may submit comments regarding the appeal to the OHA within 10 days. The appeal filed with the OHA shall include certification to the OHA that the appellant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the appeal was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if any appellant determines that compliance with paragraph (a) of this section would be impracticable, the appellant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the appeal a description of the persons or class or classes of persons to whom notice was not sent. The OHA may require the appellant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the **Federal Register**.

(c) The OHA shall serve notice on any other person readily identifiable by the OHA as one who will be aggrieved by the OHA action sought and may serve notice on any other person that written comments regarding the appeal will be accepted if filed within 10 days of the service of that notice.

(d) Any person submitting written comments to the OHA with respect to an appeal filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to the appellant. The person shall certify to the OHA that compliance with the requirements of this paragraph (d) has been met. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 1003.35 Contents.

(a) The appeal shall contain a concise statement of grounds upon which it is brought and a description of the relief sought. It shall include a discussion of all relevant authorities, including, but not limited to, DOE rulings, regulations, interpretations and decisions on appeals and exceptions relied upon to support the appeal. If the appeal includes a request for relief based on significantly changed circumstances, there shall be a complete description of the events, acts, or transactions that comprise the significantly changed circumstances, and the appellant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding. For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(1) The discovery of material facts that were not known or could not have been known at the time of the prior proceeding;

(2) The discovery of a law, regulation, interpretation, ruling, order or decision on an appeal or any exception that was in effect at the time of the proceeding upon which the order is based and which, if such had been made known to DOE, would have been relevant to the proceeding and would have substantially altered the outcome; or

(3) A substantial change in the facts or circumstances upon which an outstanding and continuing order affecting the appellant was issued, which change has occurred during the interval between issuance of the order and the date of the appeal and was caused by forces or circumstances beyond the control of the appellant.

(b) A copy of the order that is the subject of the appeal shall be submitted with the appeal.

(c) The appellant shall state whether he requests or intends to request that there be a conference or hearing regarding the appeal. Any request not made at the time the appeal is filed shall be made as soon thereafter as possible, to insure that the conference or hearing is held when it will be most beneficial. The request and the OHA's determination regarding it shall be made in accordance with subpart F of this part.

§ 1003.36 OHA evaluation.

(a)(1) The OHA may initiate an investigation of any statement in an appeal and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept submissions from third persons relevant to any appeal provided that the appellant is afforded an opportunity to respond to all third person submissions. In evaluating an appeal, the OHA may consider any other source of information. The OHA on its own initiative may convene a conference or hearing if, in its discretion, it considers that such conference or hearing will advance its evaluation of the appeal.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the OHA may dismiss the appeal with leave to amend within a specified time. If the failure to supply additional information is repeated or willful, the OHA may dismiss the appeal with prejudice. If the appellant fails to provide the notice required by § 1003.34, the OHA may dismiss the appeal without prejudice.

(b)(1) The OHA may issue an order summarily denying the appeal if—

(i) It is not filed in a timely manner, unless good cause is shown; or

(ii) It is defective on its face for failure to state, and to present facts and legal argument in support thereof, that the DOE action was erroneous in fact or in law, or that it was arbitrary or capricious.

(2) The OHA may deny any appeal if the appellant does not establish that—

(i) The appeal was filed by a person aggrieved by a DOE action;

(ii) The DOE's action was erroneous in fact or in law; or

(iii) The DOE's action was arbitrary or capricious.

§ 1003.37 Decision and order.

(a) Upon consideration of the appeal and other relevant information received or obtained during the proceeding, the OHA shall enter an appropriate order, which may include the modification of the order that is the subject of the appeal.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order. The order shall state that it is a final order of the DOE of which the appellant may seek judicial review.

(c) The OHA shall serve a copy of the order upon the appellant, any other person who participated in the proceeding and upon any other person readily identifiable by the OHA as one who is aggrieved by such order.

Subpart D—Stay

§ 1003.40 Purpose and scope.

(a) This subpart establishes the procedures for applying for a stay. It also specifies the nature of the relief which may be effectuated through the approval of a stay.

(b) An application for a stay will be considered if it is incident to a submission which the DOE procedural regulations specify shall be filed with the OHA. An application for stay may also be considered if the stay is

that such conference or hearing will advance its evaluation of the appeal.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the OHA may dismiss the appeal with leave to amend within a specified time. If the failure to supply additional information is repeated or willful, the OHA may dismiss the appeal with prejudice. If the appellant fails to provide the notice required by § 1003.34, the OHA may dismiss the appeal without prejudice.

(b)(1) The OHA may issue an order summarily denying the appeal if—

(i) It is not filed in a timely manner, unless good cause is shown; or

(ii) It is defective on its face for failure to state, and to present facts and legal argument in support thereof, that the DOE action was erroneous in fact or in law, or that it was arbitrary or capricious.

(2) The OHA may deny any appeal if the appellant does not establish that—

(i) The appeal was filed by a person aggrieved by a DOE action;

(ii) The DOE's action was erroneous in fact or in law; or

(iii) The DOE's action was arbitrary or capricious.

§ 1003.37 Decision and order.

(a) Upon consideration of the appeal and other relevant information received or obtained during the proceeding, the OHA shall enter an appropriate order, which may include the modification of the order that is the subject of the appeal.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order. The order shall state that it is a final order of the DOE of which the appellant may seek judicial review.

(c) The OHA shall serve a copy of the order upon the appellant, any other person who participated in the proceeding and upon any other person readily identifiable by the OHA as one who is aggrieved by such order.

Subpart D—Stay

§ 1003.40 Purpose and scope.

(a) This subpart establishes the procedures for applying for a stay. It also specifies the nature of the relief which may be effectuated through the approval of a stay.

(b) An application for a stay will be considered if it is incident to a submission which the DOE procedural regulations specify shall be filed with the OHA. An application for stay may also be considered if the stay is requested pending judicial review of an order issued by the OHA.

(c) All applicable DOE orders, regulations, rulings, and generally applicable requirements shall be complied with unless and until an application for a stay is granted.

§ 1003.41 What to file.

A person filing under this subpart shall file an "Application for Stay" which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted. The application shall be in writing. The general filing requirements stated in § 1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.42 Where to file.

An Application for Stay shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.43 Notice.

(a) An applicant for stay shall notify each person readily identifiable as one who will be directly aggrieved by the OHA action sought that it has filed an Application for Stay. The applicant shall serve the application on each identified person and shall notify each such person that the OHA will receive and endeavor to consider, subject to time constraints imposed by the urgency of the proceeding, written comments on the application that are submitted immediately.

(b) Any person submitting written comments to the OHA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to the applicant. The person shall certify to the OHA that it has complied with the requirements of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

(c) The OHA shall require the applicant to take reasonable measures depending on the circumstances and urgency of the case to notify each person readily identified as one that will be directly aggrieved by the OHA action sought of the date, time and place of any hearing or other proceedings in the matter. However, if the Director of the OHA or his designee concludes that the circumstances presented by the applicant justify immediate action, the OHA may issue a Decision on the Application for Stay prior to receipt of written comments or the oral presentation of views by adversely affected parties.

§ 1003.44 Contents.

(a) An Application for Stay shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the application and to the OHA action sought. Such facts shall include, but not be limited to, all information that relates to satisfaction of the criteria in § 1003.45(b).

(b) The application shall include a description of the proceeding incident to which the stay is being sought. This description shall contain a discussion of all DOE actions relevant to the proceeding.

(c) The applicant shall state whether he requests that a conference or hearing be convened regarding the application, as provided in Subpart F of this part.

§ 1003.45 OHA evaluation.

(a)(1) The OHA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may order the submission of additional information, and may solicit and accept submissions from third persons relevant to an application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the OHA may also consider any other source of information, and may conduct hearings or conferences either in response to requests by parties in the proceeding or on its own initiative.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if upon request additional information is not submitted by the applicant, the OHA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the application with prejudice.

(3) The OHA shall process applications for stay as expeditiously as possible. When administratively feasible, the OHA shall grant or deny an Application for Stay within 10 business days after receipt of the application.

(4) Notwithstanding any other provision of the DOE regulations, the OHA may make a decision on any Application for Stay prior to the receipt of written comments.

(b) The criteria to be considered and weighed by the OHA in determining whether a stay should be granted are:

(1) Whether a showing has been made that an irreparable injury will result in the event that the stay is denied;

(2) Whether a showing has been made that a denial of the stay will result in a more immediate hardship or inequity to the applicant than to the other persons affected by the proceeding;

(3) Whether a showing has been made that it would be desirable for public policy reasons to grant immediate relief pending a decision on the merits of the underlying proceedings;

(4) Whether a showing has been made that it is impossible for the applicant to fulfill the requirements of an outstanding order or regulatory provision; and

(5) Whether a showing has been made that there is a strong likelihood of success on the merits.

§ 1003.46 Decision and order.

(a) In reaching a decision with respect to an Application for Stay, the OHA shall consider all relevant information in the record. An Application for Stay may be decided by the issuance of an order either during the course of a hearing or conference in which an official transcript is maintained or in a separate written Decision and Order. Any such order shall include a statement of the relevant facts and the legal basis of the decision. The approval or denial of a stay is not an order of the OHA that is subject to administrative or judicial review.

(b) In its discretion and upon a determination that it would be desirable to do so in order to further the objectives stated in the regulations or in the statutes the DOE is responsible for administering, the OHA may order a stay on its own initiative.

Subpart E—Modification or Rescission

§ 1003.50 Purpose and scope.

This subpart establishes the procedures for the filing of an application for modification or rescission of an OHA order. An application for modification or rescission is a summary proceeding that will be initiated only if the criteria described in § 1003.55(b) are satisfied.

§ 1003.51 What to file.

A person filing under this subpart shall file an "Application for Modification (or Rescission)", which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing. The general filing requirements stated in § 1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.52 Where to file.

The application shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.53 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, from which confidential information has been deleted in accordance with § 1003.9(f), to each person who is reasonably ascertainable by the applicant as a person who will be aggrieved by the OHA action sought, including persons who participated in the prior proceeding. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application to the OHA within 10 days. The application filed with the OHA shall include certification to the OHA that the applicant has complied with the requirements of this paragraph and shall include the names and addresses of all persons to whom a copy of the application was sent.

(b) If an applicant determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was not sent. The OHA may require the applicant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the **Federal Register**.

(c) The OHA shall serve notice on any other person readily identifiable by the OHA as one who will be aggrieved by the OHA action sought and may serve notice on any other person that written comments regarding the application will be accepted if filed within 10 days of service of that notice.

(d) Any person submitting written comments to the OHA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to the applicant. The person shall certify to the OHA that it has complied with the requirement of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 1003.54 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the OHA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested action; and a full description of the pertinent provisions and relevant facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted to the OHA upon its request. A copy of the order of which modification or rescission is sought shall be included with the application. When the application pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction shall be submitted.

(b) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it will be most beneficial. The request and the OHA's determination regarding it shall be made in accordance with subpart F of this part.

(c) The applicant shall fully describe the events, acts, or transactions that comprise the significantly changed circumstances, as defined in § 1003.55(b)(2), upon which the application is based. The applicant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding.

(d) The application shall include a discussion of all relevant authorities, including, but not limited to, DOE rulings, regulations, interpretations and decisions on appeal and exceptions relied upon to support the action sought therein.

§ 1003.55 OHA evaluation.

(a)(1) The OHA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept submissions from third persons relevant to any application for modification or rescission provided that

the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application for modification or rescission, the OHA may convene a conference, on its own initiative, if, in its discretion, it considers that such conference will advance its evaluation of the application.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the OHA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the application with prejudice. If the applicant fails to provide the notice required by § 1003.53, the OHA may dismiss the application without prejudice.

(b)(1) An application for modification or rescission of an order shall be processed only if—

(i) The application demonstrates that it is based on significantly changed circumstances; and

(ii) The period within which a person may file an appeal has lapsed or, if an appeal has been filed, a final order has been issued.

(2) For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(i) The discovery of material facts that were not known or could not have been known at the time of the proceeding and action upon which the application is based.

(ii) The discovery of a law, regulation, interpretation, ruling, order or decision on appeal or exception that was in effect at the time of the proceeding upon which the application is based and which, if such had been made known to the OHA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(iii) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing order of the OHA affecting the applicant was issued, which change has occurred during the interval between issuance of such order and the date of the application and was caused by forces or circumstances beyond the control of the applicant.

§ 1003.56 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the OHA shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the relevant facts

the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application for modification or rescission, the OHA may convene a conference, on its own initiative, if, in its discretion, it considers that such conference will advance its evaluation of the application.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the OHA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the application with prejudice. If the applicant fails to provide the notice required by § 1003.53, the OHA may dismiss the application without prejudice.

(b)(1) An application for modification or rescission of an order shall be processed only if—

(i) The application demonstrates that it is based on significantly changed circumstances; and

(ii) The period within which a person may file an appeal has lapsed or, if an appeal has been filed, a final order has been issued.

(2) For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(i) The discovery of material facts that were not known or could not have been known at the time of the proceeding and action upon which the application is based.

(ii) The discovery of a law, regulation, interpretation, ruling, order or decision on appeal or exception that was in effect at the time of the proceeding upon which the application is based and which, if such had been made known to the OHA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(iii) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing order of the OHA affecting the applicant was issued, which change has occurred during the interval between issuance of such order and the date of the application and was caused by forces or circumstances beyond the control of the applicant.

§ 1003.56 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the OHA shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order. The order shall state that it is a final order of which the applicant may seek judicial review.

(c) The OHA shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the OHA as one who is aggrieved by such order.

Subpart F—Conferences and Hearings

§ 1003.60 Purpose and scope.

This subpart establishes the procedures for requesting and conducting an OHA conference or hearing. Such proceedings shall be convened in the discretion of the OHA, consistent with OHA requirements.

§ 1003.61 Conferences.

(a) The OHA in its discretion may direct that a conference be convened, on its own initiative or upon request by a person, when it appears that such conference will materially advance the proceeding. The determination as to who may attend a conference convened under this subpart shall be in the discretion of the OHA, but a conference will usually not be open to the public.

(b) A conference may be requested in connection with any proceeding of the OHA by any person who might be aggrieved by that proceeding. The request may be made in writing or verbally, but must include a specific showing as to why such conference will materially advance the proceeding. The request shall be addressed to the OHA, as provided in § 1003.11.

(c) A conference may only be convened after actual notice of the time, place and nature of the conference is provided to the person who requested the conference.

(d) When a conference is convened in accordance with this section, each person may present views as to the issues involved. Documentary evidence may be presented at the conference, but will be treated as if submitted in the regular course of the proceeding. A transcript of the conference will not usually be prepared. However, the OHA in its discretion may have a verbatim transcript prepared.

(e) Because a conference is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings unless the OHA in its discretion determines that such would be advisable.

§ 1003.62 Hearings.

(a) The OHA in its discretion may direct that a hearing be convened on its own initiative or upon request by a person, when it appears that such hearing will materially advance the proceeding. The determination as to who may attend a hearing convened under this subpart shall be in the discretion of OHA, but a hearing will usually be open to the public.

(b) A hearing may be requested by an applicant, appellant, or any other person who might be aggrieved by the OHA action sought. The request shall be in writing and shall include a specific showing as to why such hearing will materially advance the proceeding. The request shall be addressed to the OHA at the address provided in § 1003.11.

(c) The OHA will designate an agency official to conduct the hearing, and will specify the time and place for the hearing.

(d) A hearing may only be convened after actual notice of the time, place, and nature of the hearing is provided both to the applicant or appellant and to any other person readily identifiable by the OHA as one who will be aggrieved by the OHA action involved. The notice shall include, as appropriate:

(1) A statement that such person may participate in the hearing; or

(2) A statement that such person may request a separate conference or hearing regarding the application or appeal.

(e) When a hearing is convened in accordance with this section, each person may present views as to the issue or issues involved. Documentary evidence may be presented at the hearing, but will be treated as if submitted in the regular course of the proceeding. A transcript of the hearing will usually be prepared.

(f) If material factual issues remain in dispute after an application or appeal has been filed, the Director of the OHA or his designee may issue an order convening an evidentiary hearing in which witnesses shall testify under oath, subject to cross-examination, for the record and in the presence of a Presiding Officer. A Motion for Evidentiary Hearing should specify the type of witness or witnesses whose testimony is sought, the scope of questioning that is anticipated, and the relevance of the questioning to the proceeding. A motion may be summarily denied for lack of sufficient specificity, because it would place an undue burden on another person or the DOE or because it will cause undue delay.

(g) A Motion for Evidentiary Hearing must be served on any person from whom information is sought. Any person who wishes to respond to a Motion for Evidentiary Hearing must do so within ten days of service.

(h) In reaching a decision with respect to a request for a hearing or motion filed under this subpart, the OHA shall consider all relevant information in the record. If an order is issued granting a hearing or evidentiary hearing, in whole or in part, the order shall specify the parties, any limitations on the participation of a party, and the issues to be considered. An order of the OHA issued under this section is an interlocutory order which is subject to further administrative review or appeal only upon issuance of a final Decision and Order in the proceeding concerned.

(i) All hearings convened pursuant to this subpart shall be conducted by the Director of the OHA or his designee. At any hearing, the parties shall have the opportunity to present material evidence that directly relates to a particular issue set forth for hearing. The Presiding Officer may administer oaths or affirmations, rule on objections to the presentation of evidence, receive relevant material, require the advance submission of documents offered as evidence, dispose of procedural requests, determine the format of the hearing, modify any order granting a Motion for Evidentiary Hearing, direct that written motions, documents or briefs be filed with respect to issues raised during the course of the hearing, ask questions of witnesses, issue subpoenas, direct that documentary evidence be served upon other parties (under protective order if such evidence is deemed confidential) and otherwise regulate the conduct of the hearing.

Subpart G—Private Grievances and Redress

§ 1003.70 Purpose and scope.

The OHA shall receive and consider petitions that seek special redress, relief or other extraordinary assistance apart from or in addition to the other proceedings described in this part. Such petitions shall include those seeking special assistance based on an assertion that a person is adversely affected by DOE regulations, orders or rulings, or otherwise, administered by DOE in carrying out functions assigned under DOE legislative authority.

§ 1003.71 Who may file.

Any person aggrieved by the regulations contained in 10 CFR Chapter II may file a petition under this subpart.

§ 1003.72 What to file.

The person aggrieved shall file a "Petition for Special Redress or Other Relief," which shall be clearly labeled as such both on the petition and on the outside of the envelope in which it is transmitted, and shall be in writing. The general filing requirements stated in § 1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.73 Where to file.

A petition shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.74 Notice.

(a) The person filing the petition, except a petition that asserts that the DOE is not complying with the agency regulations, orders or rulings, shall send by United States mail a copy of the petition and any subsequent amendments or other documents relating to the petition, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to each person who is reasonably ascertainable by the petitioner as a person who will be aggrieved by the OHA action sought. The copy of the petition shall be accompanied by a statement that the person may submit comments regarding the petition to the OHA within 10 days. The copy filed with the OHA shall include certification that the requirements of this paragraph have been complied with and shall include the names and addresses of each person to whom a copy of the petition was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the petitioner determines that compliance with paragraph (a) of this section would be impracticable, the petitioner shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the petition a description of the persons or class or classes of persons to whom notice was not sent.

(3) The OHA may require the petitioner to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the **Federal Register**.

(c) The OHA may serve notice on any other person readily identifiable by the OHA as one who will be aggrieved by the OHA action sought that written comments regarding the petition will be accepted if filed within 10 days of service of that notice.

(d) Any person submitting written comments to the OHA regarding a petition filed under his subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.9(f), to the petitioner. The person shall certify to the OHA that it has complied with the requirements of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 1003.75 Contents.

The petition shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the petition and to the OHA action sought. Such facts shall include, but not be limited to, the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction, if applicable; a description of the act or transaction, if applicable; a description of the acts or transactions that would be affected by the requested action; a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the petition, and an explanation of how the petitioner is aggrieved by the regulation. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the petition shall be submitted to the OHA upon its request. When the petition pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction must be submitted.

§ 1003.76 OHA evaluation of request.

(a) (1) The OHA may initiate an investigation of any statement in a petition and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept submissions from third persons relevant to any petition provided that the petitioner is afforded an opportunity to respond to all third person submissions. In evaluating a petition, the OHA may consider any other source of information. The OHA on its own initiative may convene a conference, if, in its discretion, it considers that such will advance its evaluation of the petition.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the OHA may dismiss the petition without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the petition with prejudice. If the petitioner fails to provide the notice required by § 1003.74, the OHA may dismiss the petition without prejudice.

(b) (1) The OHA will dismiss without prejudice a "Petition for Special Redress or Other Relief" if it determines that another more appropriate proceeding is provided by this title.

(2) The OHA will dismiss with prejudice a "Petition for Special Redress or Other Relief" filed by a person who has exhausted his administrative remedies with respect to any proceeding provided by this title, and received a final order therefrom that deals with the same issue or transaction.

§ 1003.77 Decision and order.

(a) Upon consideration of the petition and other relevant information received or obtained during the proceeding, the OHA will issue an order granting or denying the petition.

(b) The order denying or granting the petition shall include a written statement setting forth the relevant facts and legal basis for the order. Such order shall state that it is a final order of the OHA of which the petitioner may seek judicial review.

[FR Doc. 94–16105 Filed 7–6–94; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 27699; Notice No. 94–12A]
RIN 2120–AE41

Type Certificates for Surplus Aircraft of the Armed Forces

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rulemaking, reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for the Notice of Proposed Rulemaking (NPRM) No. 94–12, Type Certificates for Surplus Aircraft of the Armed Forces. The reopening of the comment period responds to requests by some members of Congress and several companies in the aircraft industry for additional time for the public to comment on the proposal. Because of the unanticipated public interest in the proposed rule change, the FAA has decided to provide the public additional time to develop and submit comments responsive to the NPRM.

DATES: Comments must be received on or before August 26, 1994.

ADDRESSES: Comments on this notice should be mailed, or delivered in triplicate to: Federal Aviation

(b) (1) The OHA will dismiss without prejudice a "Petition for Special Redress or Other Relief" if it determines that another more appropriate proceeding is provided by this title.

(2) The OHA will dismiss with prejudice a "Petition for Special Redress or Other Relief" filed by a person who has exhausted his administrative remedies with respect to any proceeding provided by this title, and received a final order therefrom that deals with the same issue or transaction.

§ 1003.77 Decision and order.

(a) Upon consideration of the petition and other relevant information received or obtained during the proceeding, the OHA will issue an order granting or denying the petition.

(b) The order denying or granting the petition shall include a written statement setting forth the relevant facts and legal basis for the order. Such order shall state that it is a final order of the OHA of which the petitioner may seek judicial review.

[FR Doc. 94–16105 Filed 7–6–94; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 27699; Notice No. 94–12A]

RIN 2120–AE41

Type Certificates for Surplus Aircraft of the Armed Forces

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rulemaking, reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for the Notice of Proposed Rulemaking (NPRM) No. 94–12, Type Certificates for Surplus Aircraft of the Armed Forces. The reopening of the comment period responds to requests by some members of Congress and several companies in the aircraft industry for additional time for the public to comment on the proposal. Because of the unanticipated public interest in the proposed rule change, the FAA has decided to provide the public additional time to develop and submit comments responsive to the NPRM.

DATES: Comments must be received on or before August 26, 1994.

ADDRESSES: Comments on this notice should be mailed, or delivered in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Att: Rules Docket (AGC–10), Docket No. 27699, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket, Room 915G, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: George Kaseote, Aircraft Engineering Division (AIR–100), Policy and Procedures Branch, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8541.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire concerning NPRM 94–12. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking further rulemaking action. The proposals contained in this notice may be changed in light of comments received. All comments received, both before and after the closing date for comments, will be available in the Rules Docket for examination by interested persons. Anyone wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed rule, must submit a self-addressed stamped postcard with their comments on which the following statement is made: "Comments to Docket 27699." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice and Notice 94–12 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–200), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the appropriate notice numbers.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On April 21, 1994, the FAA issued Notice 94–12, entitled "Type Certificates for Surplus Aircraft of the Armed Forces" (59 FR 19114, April 21, 1994) proposing changes that would remove the regulations for issuing type certificates for surplus aircraft of the Armed Forces. The purpose of the proposed removal is to eliminate references to obsolete airworthiness standards that are no longer appropriate for type certification of surplus airworthiness standards that are no longer appropriate for type certification of surplus military aircraft. Surplus aircraft of the Armed Forces may still be certificate in normal, utility, acrobatic, commuter, transport, and restricted categories when compliance with the applicable regulations is shown. This proposal, if a adopted as final, would become effective on April 21, 1994, and is intended to provide a greater level of assurance that the appropriate airworthiness standards are met before standard airworthiness certificates are issued for surplus military aircraft.

Several telephone and written requests received between June 13 and 14, 1994, asked that the comment period be extended for up to 60 days. In view of these comments and the unanticipated level of public interest in the proposed rule change, the comment period for this notice needs to be reopened to accommodate the requests. Copies of the written requests are available in the docket.

Conclusion

The FAA has determined that the reopening of the comment period will allow several companies in the aircraft industry additional time for a more thorough review of applicable issues and questions raised by the NPRM, and the drafting of responsive comments. Accordingly, the FAA finds that it is in the public interest to reopen the comment period until August 26, 1994.

List of Subjects in 14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

Issued in Washington, DC, on June 30, 1994.

Daniel P. Salvano,

Acting Director, Aircraft Certification Service.

[FR Doc. 94–16411 Filed 7–6–94; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 300

Rules and Regulations Under the Wool Products Labeling Act of 1939; Extension of Time Within Which To File Public Comments

AGENCY: Federal Trade Commission.

ACTION: Extension of time within which to file public comments.

SUMMARY: The Federal Trade Commission (the "Commission") has requested public comments on its Rules and Regulations under the Wool Products Labeling Act of 1939 (59 FR 23645, May 6, 1994). The Commission solicited the comments as part of its periodic review of rules and guides.

DATES: Written comments will be accepted until September 6, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Avenue NW., Washington, DC 20580. Submissions should be marked "Rules and Regulations under the Wool Act, 16 CFR part 300—Comment."

FOR FURTHER INFORMATION CONTACT: Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Boulevard, Suite 13209, Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION: As part of the on-going regulatory review of its rules and guides, the Commission on May 6, 1994 published requests for public comments concerning three related sets of regulations: (1) Rules and Regulations under the Wool Products Labeling Act, (2) Rules and Regulations under the Fur Products Labeling Act, and (3) Rules and Regulations under the Textile Fiber Products Identification Act. The comments were to be accepted until June 6, 1994.

The Commission has received letters seeking extension of these comment periods from the American Textile Manufacturers Institute and the National Knitwear & Sportswear Association. Both trade associations represent large numbers of interested members subject to the marking requirements of the Textile, Wool, and Fur Acts. In addition to these formal requests for extension, Commission staff has been contacted by other trade associations, individual companies, and interested entities who intend to comment or would like to comment and have stated that, because of the widespread coverage and complexity of these regulations, the comment periods should be extended.

To allow all interested persons the opportunity to supply information to the Commission, the Commission hereby extends the period within which to comment on its Rules and Regulations under the Wool Products Labeling Act of 1939, until September 6, 1994.

Authority: 15 U.S.C. 68 *et seq*

List of Subjects in 16 CFR Part 300

Advertising, Labeling, Recordkeeping, Wool products.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–16440 Filed 7–6–94; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 301

Rules and Regulations Under the Fur Products Labeling Act; Extension of Time Within Which To File Public Comments

AGENCY: Federal Trade Commission.

ACTION: Extension of time within which to file public comments.

SUMMARY: The Federal Trade Commission (the "Commission") has requested public comments on its Rules and Regulations under the Fur Products Labeling Act (59 FR 23645, May 6, 1994). The Commission solicited the comments as part of its periodic review of rules and guides.

DATES: Written comments will be accepted until September 6, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Avenue NW., Washington, DC 20580. Submissions should be marked "Rules and Regulations under the Fur Act, 16 CFR part 301—Comment."

FOR FURTHER INFORMATION CONTACT: Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Boulevard, Suite 13209, Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION: As part of the on-going regulatory review of its rules and guides, the Commission on May 6, 1994 published requests for public comments concerning three related sets of regulations: (1) Rules and Regulations under the Wool Products Labeling Act, (2) Rules and Regulations under the Fur Products Labeling Act, and (3) Rules and Regulations under the Textile Fiber Products Identification Act. The comments were to be accepted until June 6, 1994.

The Commission has received letters seeking extension of these comment periods from the American Textile Manufacturers Institute and the National Knitwear & Sportswear Association. Both trade associations represent large numbers of interested members subject to the marking requirements of the Textile, Wool, and Fur Acts. In addition to these formal requests for extension, Commission staff has been contacted by other trade associations, individual companies, and interested entities who intend to comment or would like to comment and have stated that, because of the widespread coverage and complexity of these regulations, the comment periods should be extended.

To allow all interested persons the opportunity to supply information to the Commission, the Commission hereby extends the period within which to comment on its Rules and Regulations under the Fur Products Labeling Act until September 6, 1994

Authority: 15 U.S.C. 69 *et seq*

List of Subjects in 16 CFR Part 301

Advertising, Invoicing, Labeling, Recordkeeping, Fur products.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–16438 Filed 7–6–94; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act; Extension of Time Within Which To File Public Comments

AGENCY: Federal Trade Commission.

ACTION: Extension of time within which to file public comments.

SUMMARY: The Federal Trade Commission (the "Commission") has requested public comments on its Rules and Regulations under the Textile Fiber Products Identification Act (59 FR 23646, May 6, 1994). The Commission solicited the comments as part of its periodic review of rules and guides.

DATES: Written comments will be accepted until September 6, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth & Pennsylvania Avenue NW., Washington, DC 20580. Submissions should be marked "Rules and Regulations under the Textile Act, 16 CFR part 303—Comment."

FOR FURTHER INFORMATION CONTACT: Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Boulevard, Suite 13209, Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION: As part of the on-going regulatory review of its rules and guides, the Commission on May 6, 1994 published requests for public comments concerning three related sets of regulations: (1) Rules and Regulations under the Wool Products Labeling Act, (2) Rules and Regulations under the Fur Products Labeling Act, and (3) Rules and Regulations under the Textile Fiber Products Identification Act. The comments were to be accepted until June 6, 1994. The Commission has received letters seeking extension of these comment periods from the American Textile Manufacturers Institute and the National Knitwear & Sportswear Association. Both trade associations represent large numbers of interested members subject to the marking requirements of the Textile, Wool, and Fur Acts. In addition to these formal requests for extension, Commission staff has been contacted by other trade associations, individual companies, and interested entities who intend to comment or would like to comment and have stated that, because of the widespread coverage and complexity of these regulations, the comment periods should be extended.

To allow all interested persons the opportunity to supply information to the Commission, the Commission hereby extends the period within which to comment on its Rules and Regulations under the Textile Fiber Products Identification Act until September 6, 1994.

Authority: 15 U.S.C. 70 *et seq.*

List of Subjects in 16 CFR Part 303

Advertising, Labeling, Recordkeeping, Textile fiber products.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–16439 Filed 7–6–94; 8:45 am]

BILLING CODE 6750–01–M

Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Boulevard, Suite 13209, Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION: As part of the on-going regulatory review of its rules and guides, the Commission on May 6, 1994 published requests for public comments concerning three related sets of regulations: (1) Rules and Regulations under the Wool Products Labeling Act, (2) Rules and Regulations under the Fur Products Labeling Act, and (3) Rules and Regulations under the Textile Fiber Products Identification Act. The comments were to be accepted until June 6, 1994.

The Commission has received letters seeking extension of these comment periods from the American Textile Manufacturers Institute and the National Knitwear & Sportswear Association. Both trade associations represent large numbers of interested members subject to the marking requirements of the Textile, Wool, and Fur Acts. In addition to these formal requests for extension, Commission staff has been contacted by other trade associations, individual companies, and interested entities who intend to comment or would like to comment and have stated that, because of the widespread coverage and complexity of these regulations, the comment periods should be extended.

To allow all interested persons the opportunity to supply information to the Commission, the Commission hereby extends the period within which to comment on its Rules and Regulations under the Textile Fiber Products Identification Act until September 6, 1994.

Authority: 15 U.S.C. 70 *et seq.*

List of Subjects in 16 CFR Part 303

Advertising, Labeling, Recordkeeping, Textile fiber products.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–16439 Filed 7–6–94; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–34278; File No. S7–7–94]

RIN 3235–AG14

Capital Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Extension of comment period.

SUMMARY: The Commission is extending the comment period from May 16, 1994 to September 16, 1994 for Securities Exchange Act Release No. 33761 (Mar. 15, 1994) (59 FR 13275), which solicited comment on amendments to the net capital rule, Rule 15c3–1 under the Securities Exchange Act of 1934, relating to capital charges for listed options and related positions.

DATES: The requested written data, views, arguments, or comments should be received on or before September 16, 1994.

ADDRESSES: Persons wishing to submit written data, views, arguments, or comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Stop 6–9, Washington, DC 20549. All written data, views arguments, or comments should refer to File No. S7–7–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0132; Roger G. Coffin, Branch Chief, 202/942–0136; Timothy H. Thompson, Branch Chief, 202/942–0138; or Karen Hanson Wellman, Staff Attorney, 202/942–0143; Division of Market Regulation, Securities and Exchange Commission.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 15, 1994, the Commission solicited comments on proposed amendments to the net capital rule relating to capital charges for listed options and related positions.[1] In the release, the Commission also solicited comments on the applicability of the proposed theoretical pricing haircut methodology to assess the market risk for over-the-counter ("OTC") options. The Commission requested that comments be received on or before May 16, 1994.

The Commission already has received several letters commenting on the release. Broker-dealers, however, have requested from the staff of the Division of Market Regulation an extension of the comment period. Specifically, industry members have requested additional time to respond to the Commission's request for comments relating to the net capital treatment of OTC options.

II. Discussion

The Commission appreciates the complexity of the issues addressed by the Commission's proposed amendments to the net capital rule, particularly with respect to OTC options. Therefore, in order to receive additional serious and well-reasoned responses from the industry participants, the Commission is extending the comment period for all commenters to September 16, 1994.

Nevertheless, the Commission is eager to address these important issues in a timely fashion. Accordingly, the Commission staff will continue to develop rulemaking in this area while it is awaiting further responses from the industry.

III. Conclusion

The comment period for responding to Securities Exchange Act Release No. 33761 is extended until September 16, 1994.

Dated: June 29, 1994.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16371 Filed 7–6–94; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Rel. No. 33761 (Mar. 15, 1994), 59 FR 13275.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 94N–0232]

Over-the-Counter Marketing of Antiasthma Drug Products; Background Document for Advisory Committee Meeting; Availability; Establishment of a Public Docket and Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of background document; establishment of a public docket and request for comments.

SUMMARY: The Food and Drug Administration is announcing the availability of a background document for the joint meeting of the Nonprescription Drugs Advisory Committee and the Pulmonary-Allergy Drugs Advisory Committee, on the over-the-counter (OTC) marketing of antiasthma drug products. Elsewhere in this issue of the **Federal Register**, the agency is announcing the joint meeting. This action is being taken to ensure that all interested parties are aware of the issues that are the subject of the joint committee discussion. FDA is also announcing that it is establishing a public docket for comments, views, and other information submitted to the agency on these subjects from interested persons.

DATES: Submit written comments by September 30, 1994, in order for written comments to be considered for discussion at the November 14, 1994, advisory committee meeting.

ADDRESSES: Submit written comments or relevant data and requests for single copies of the background document to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Comments and requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist the branch in processing your requests. Three copies of written comments should be submitted, except that individuals may submit one copy. The background document and received comments are available for public examination at the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger, or Leander B. Madoo, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, FDA is announcing a forthcoming joint meeting of the Nonprescription Drugs Advisory Committee and the Pulmonary-Allergy Drugs Advisory Committee, on OTC marketing of antiasthma drug products. FDA is holding this meeting to discuss:

(1) OTC bronchodilator drug products currently available and possible pending changes in their status;

(2) Whether there is a population for which OTC antiasthma drug products are appropriate;

(3) The general question of whether antiasthma drug products should be available OTC;

(4) Antiasthma drug products currently available by prescription only that could be considered for OTC status; and

(5) Data requirements necessary to support conversion of prescription antiasthma drug products to OTC status. The purpose of this meeting is to address specific topics and questions contained in the background document that could result in future rulemaking.

FDA has established public docket no. 94N–0232 to enable interested persons to submit comments or other relevant data on the background document that could result in future rulemaking.

Dated: June 30, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–16364 Filed 7–6–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 553

Army National Cemeteries

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule.

SUMMARY: In accordance with Section 1176 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, the Department of the Army is proposing to amend the regulations governing eligibility for interment in Arlington National Cemetery to include former prisoners of war (POWs).

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: All comments concerning this proposed rule should be addressed to Superintendent, Arlington National Cemetery, Arlington, Virginia 22211–5003.

FOR FURTHER INFORMATION CONTACT: John C. Metzler, Jr., Superintendent, Arlington National Cemetery, (703) 695–3175.

SUPPLEMENTARY INFORMATION: The Department of the Army is proposing changes to 32 CFR Part 553 in accordance with section 1176 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160. That Section extended eligibility for interment in Arlington National Cemetery to any former prisoner of war who, while a prisoner of war, served honorably in the active military, naval, or air service and who dies on or after the date of enactment of the 1994 Authorization Act (November 30, 1993).

This proposed rule governs eligibility for interment in Arlington National Cemetery, an Army national cemetery which is under the jurisdiction of the Department of the Army. Because the proposed rule pertains to a military function of the Department of the Army, the provisions of Executive Order 12866 do not apply. It is hereby certified that this proposed rule will not have a significant impact on small business or governments in the area.

Lists of Subjects in 32 CFR Part 553

Cemeteries, National Cemeteries.

For the reasons set out in the preamble, 32 CFR Part 553 is proposed to be amended as follows:

PART 553—ARMY NATIONAL CEMETERIES

1. The authority citation for 32 CFR Part 553 continues to read as follows:

Authority: 24 USC Ch. 7.

2. In § 553.15, paragraphs (f) through (i) are redesignated as paragraphs (g) through (j) and new paragraph (f) is added to read as follows:

§ 553.15 Persons eligible for burial in Arlington National Cemetery.

* * * * * *

(f) Any former prisoner of war who, while a prisoner of war, served honorably in the active military, naval, or air service, whose last period of active military, naval, or air service terminated honorably and who died on or after November 30, 1993.

(1) The term "former prisoner of war" means a person who, while serving in the active military, naval, or air service, was forcibly detained or interned in line of duty—

(i) by an enemy government or its agents, or a hostile force, during a period of war; or

(ii) by a foreign government or its agents, or a hostile force, under circumstances which the Secretary of Veterans Affairs finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

(2) The term "active military, naval, or air service" includes active duty, any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty.

* * * * * *

3. In § 553.15a, paragraph (e) is revised to read as follows:

§ 553.15a Persons eligible for inurnment of cremated remains in Columbarium in Arlington National Cemetery.

* * * * * *

(e) Any former prisoner of war who, while a prisoner of war, served honorably in the active military, naval, or air service, whose last period of active military, naval, or air service terminated honorably and who died on or after November 30, 1993.

(1) The term "former prisoner of war" means a person who, while serving in the active military, naval, or air service, was forcibly detained or interned in line of duty—

(i) by an enemy government or its agents, or a hostile force, during a period of war; or

(ii) by a foreign government or its agents, or a hostile force, under circumstances which the Secretary of Veterans Affairs finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

(2) The term "active military, naval, or air service" includes active duty, any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty.

* * * * * *

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–16351 Filed 7–6–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

33 CFR Part 322

Permits for Structures Located Within Shipping Safety Fairways

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Corps seeks comments on a tentative proposal to change its rules regarding permits for the placement of temporary anchors, cables and chains for floating or semisubmersible drilling rigs within shipping safety fairways.

was disabled or died from an injury incurred or aggravated in line of duty.

* * * * *

3. In § 553.15a, paragraph (e) is revised to read as follows:

§ 553.15a Persons eligible for inurnment of cremated remains in Columbarium in Arlington National Cemetery.

* * * * *

(e) Any former prisoner of war who, while a prisoner of war, served honorably in the active military, naval, or air service, whose last period of active military, naval, or air service terminated honorably and who died on or after November 30, 1993.

(1) The term "former prisoner of war" means a person who, while serving in the active military, naval, or air service, was forcibly detained or interned in line of duty—

(i) by an enemy government or its agents, or a hostile force, during a period of war; or

(ii) by a foreign government or its agents, or a hostile force, under circumstances which the Secretary of Veterans Affairs finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

(2) The term "active military, naval, or air service" includes active duty, any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty.

* * * * *

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–16351 Filed 7–6–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

33 CFR Part 322

Permits for Structures Located Within Shipping Safety Fairways

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Corps seeks comments on a tentative proposal to change its rules regarding permits for the placement of temporary anchors, cables and chains for floating or semisubmersible drilling rigs within shipping safety fairways. Shipping safety fairways and anchorages are established on the Outer Continental Shelf by the U.S. Coast Guard to provide unobstructed approaches for vessels using U.S. ports. This initiative arises as a result of requests by offshore oil companies for exemptions to the provisions of the rule because drilling and production technologies have greatly extended the range of deepwater drilling and the limits placed on temporary structures allowed within fairway boundaries may no longer be reasonable.

DATES: Comments should be received on or before August 22, 1994. Comments filed after that date will be considered to the extent practicable.

ADDRESSES: HQUSACE, Attn: CECW–OR, Washington, D.C. 20314–1000 .

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Department of the Army permits are required for the construction of any structure in or over any navigable water of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151; 33 U.S.C. 403). This authority was extended to artificial islands and fixed structures located on the Outer Continental Shelf (OCS) by Section 4(f) of the Outer Continental Shelf Lands Act of 1953 (67 Stat. 463; 43 U.S.C. 1333(f)).

Background

Pursuant to the cited authorities, the Corps promulgated regulations in 33 CFR 209.135 establishing shipping safety fairways in the Gulf of Mexico to provide obstruction-free routes for vessels in approaches to United States ports. The Corps provided these obstruction-free routes by denying permits for structures within certain designated lanes. In 1978, the Ports and Waterways Safety Act (PWSA), was amended to delegate authority to the Department of Transportation and the Commandant, U.S. Coast Guard to establish vessel routing measures, including fairways and fairway anchorages. In accordance with the PWSA, the Coast Guard completed the required studies and published final rules establishing shipping safety fairways on May 13, 1982. The Corps subsequently revoked its fairway regulations in § 209.135(d) but retained paragraph (b), which contained the conditions under which the nationwide permit for oil exploration and production structures on the OCS (33 CFR 330.5(a)(8)), was issued. On November 13, 1986, the fairway regulations were repromulgated in 33 CFR 322.5(l) to consolidate all permit regulations for structures in the same part.

When the regulations allowing temporary structures within fairways were promulgated by the Corps in 1981, deepwater drilling occurred in water depths of 300 to 600 feet. At that time, the limitation of 120 days that temporary anchors would be allowed within fairways was considered reasonable. If the exploratory well was successful, a conventional fixed production platform would be used and there would be no further need to maintain the anchors within the fairway. According to offshore hydrocarbon exploration and production companies, the existing technology has extended the range of deepwater drilling to water depths of 1,000 to 4,000 feet. As a result, drilling times have increased and production methods have changed. Today, the limitation on the length of time (120 days), that an anchor is allowed within a fairway is no longer appropriate, particularly in water depths in excess of 600 feet. The industry has available many different types of production platforms, including floating production systems that are anchored in place during the productive life of the reserves and then moved to a new location. In water depths greater than 600 feet, the floating production platform becomes an important production option and in water depths greater than 1,000 feet these units are essential. In many instances, the only obstacle to using this type of system to drill and produce hydocarbons is the location of a fairway. Current regulations require that the production system be placed a great distance from the fairway in order to keep the anchors clear of the fairway. The result is that there are many hydrocarbon bearing lease areas that cannot be effectively penetrated and produced. It should be noted that if one of the following proposals is adopted, the requirement that the rig must be situated as necessary to insure that the minimum clearance over an anchor line within a fairway is 125 feet, will not be changed, unless we find that an individual permit is required and the minimum clearance over an anchor line would be determined on a case-by-case basis.

Another option that we are exploring is to revise the nationwide permit #8 to eliminate the authorization for all anchors and cables and chains associated with oil and gas drilling and production in water depths greater than 600 feet within fairways. This would result in the requirement that the activities occurring in water depths greater than 600 feet would be subject

to the Corps individual permit procedures. The nationwide permit in 33 CFR 330 would continue to apply to those activities in waters less than 600 feet in depth, without any changes to the regulations.

The following is the text in 33 CFR 322.5(l)(1) *(Existing)*:

(l) * * * (1) *Shipping safety fairways and anchorage areas.* DA permits are required for structures located within shipping safety fairways and anchorage areas established by the U.S. Coast Guard. (1) The Department of the Army will grant no permits for the erection of structures in areas designated as fairways, except that district engineers may permit temporary anchors and attendant cables or chains for floating or semisubmersible drilling rigs to be placed within a fairway provided the following conditions are met:

(i) The installation of anchors to stabilize semisubmersible drilling rigs within fairways must be temporary and shall be allowed to remain only 120 days. This period may be extended by the district engineer provided reasonable cause for such extension can be shown and the extension is otherwise justified.

(ii) Drilling rigs must be at least 500 feet from any fairway boundary or whatever distance necessary to insure that minimum clearance over an anchor line within a fairway will be 125 feet.

(iii) No anchor buoys or floats or related rigging will be allowed on the surface of the water or to a depth of 125 feet from the surface, within the fairway.

(iv) Drilling rigs may not be placed closer than 2 nautical miles of any other drilling rig situated along a fairway boundary, and not closer than 3 nautical miles to any drilling rig located on the opposite side of the fairway.

(v) The permittee must notify the district engineer, Bureau of Land Management, Mineral Management Service, U.S. Coast Guard, National Oceanic and Atmospheric Administration and the U.S. Navy Hydrographic Office of the approximate dates (commencement and completion) the anchors will be in place to insure maximum notification to mariners.

(vi) Navigation aids or danger markings must be installed as required by the U.S. Coast Guard.

(2) * * *

Options

Option #1: Take no action. Leave existing regulations in place with all existing time limits for temporary anchors etc., as stated above.

Option #2: Remove time restrictions on temporary and permanent anchors within fairways when water depths exceed 600 feet, as follows:

(l) * * * (1) The Department of the Army will grant no permits for the erection of structures in areas designated as fairways, except that district engineers may permit temporary or permanent anchors and attendant cables or chains for floating or semisubmersible drilling and/or production systems to be placed within a fairway provided the following conditions are met:

(i) In water depths of 600 feet or less, the installation of anchors to stabilize semisubmersible drilling rigs within fairways must be temporary and shall be allowed to remain only 120 days. This period may be extended by the district engineer provided reasonable cause for such extension can be shown and the extension is otherwise justified. In water depths greater than 600 feet, time restrictions on anchors and attendant cables or chains for floating or semisubmersible drilling rigs and/or production system located within a fairway, whether temporary or permanent, shall not apply.

Option #3: Require an individual permit for any structure that will remain within a fairway for 120 days or longer.

(l) * * * (1) The Department of the Army will grant no permits for the erection of structures in areas designated as fairways, except that district engineers may permit temporary anchors and attendant cables or chains for floating or semisubmersible drilling rigs to be placed within a fairway provided the following conditions are met:

(i) The installation of anchors to stabilize semisubmersible drilling rigs within fairways must be temporary and shall be allowed to remain only 120 days. This period may be extended by the district engineer following the procedures prescribed by these regulations for an individual permit, including the issuance of a public notice and opportunity for a public hearing.

Option #4: Require individual permits for any structure within a fairway.

(l) * * * (1) The Department of the Army will grant no permits for the erection of structures in areas designated as fairways, except that district engineers may permit temporary or permanent anchors and attendant cables or chains for floating or semisubmersible drilling and/or production systems to be placed within a fairway after following the procedures prescribed by these regulations for an individual permit, including the issuance of a public notice and opportunity for a public hearing.

Regulatory Analyses and Notices

This ANPRM seeks comments on a tentative proposal that may be further pursued through informal rulemaking based in part on comments received. This ANPRM does not establish any requirements but is rather a voluntary action intended to collect information regarding whether to pursue rulemaking on this issue. Therefore, no economic impact assessment has been prepared. The Corps will provide all regulatory analyses and notices, as appropriate, for any future rulemakings on this subject.

Dated: June 16, 1994.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

[FR Doc. 94–16348 Filed 7–6–94; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Extension of Comment Period on Proposed Threatened Status for Castilleja Levisecta (Golden Paintbrush)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period on proposed threatened status for *Castilleja levisecta*.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period for the proposed listing of *Castilleja levisecta* (golden paintbrush) as a threatened species is extended. The proposed rule to list this plant species was published on May 10, 1994 (59 FR 24106), and opened the comment period until July 11, 1994. This notice extends the comment period until August 11, 1994.

DATES: Comments on the proposed listing of *Castilleja levisecta* (golden paintbrush) as a threatened species must be submitted by August 11, 1994.

ADDRESSES: Information, comments, or questions on the proposed listing of *Castilleja levisecta* should be submitted to the State Supervisor, U.S. Fish and Wildlife Service, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501. Materials pertaining to the proposed listing of this species will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Dave Frederick, State Supervisor, at the above Olympia address (telephone: (206) 753–9440).

SUPPLEMENTARY INFORMATION:

Background

Castilleja levisecta (golden paintbrush), a perennial herb in the snapdragon family, once occurred from the Willamette Valley in Oregon north to Vancouver Island in British Columbia, Canada. Only ten disjunct populations of this plant now exist, in open grasslands ranging from south of Olympia, Thurston County, Washington; north through the Puget Trough to southwest British Columbia, Canada. Threats to the species include competition with encroaching native and alien plant species, habitat modification through succession in the absence of fire, predation, and stochastic (random) events, such as catastrophic fire. Commercial and residential development also threaten this species. The plant occurs on

snapdragon family, once occurred from the Willamette Valley in Oregon north to Vancouver Island in British Columbia, Canada. Only ten disjunct populations of this plant now exist, in open grasslands ranging from south of Olympia, Thurston County, Washington; north through the Puget Trough to southwest British Columbia, Canada. Threats to the species include competition with encroaching native and alien plant species, habitat modification through succession in the absence of fire, predation, and stochastic (random) events, such as catastrophic fire. Commercial and residential development also threaten this species. The plant occurs on Federal, State, and privately owned land.

On May 10, 1994, the Service published a proposed rule in the **Federal Register** to list *Castilleja levisecta* as a threatened species (59 FR 24106). The rule initiated a public comment period which closes on July 11, 1994. In order that the best information be available before making a final determination on the proposed listing of this plant species, the Service now extends the comment period for a period of 30 days until August 11, 1994.

Author

This notice was prepared by Leslie Propp, Olympia Field Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. 99–625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Dated June 28, 1994.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–16397 Filed 7–6–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 59, No. 129

Thursday, July 7, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Interim Report of the Forest Service Reinvention Team

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; request for comment.

SUMMARY: The Forest Service announces the availability of an interim report which describes 5 alternative models for effecting change within the agency's mission, structure, and operations. The report, *Architecture for Change: Interim Report of the Forest Service Reinvention Team*, describes a range of approaches for the Forest Service to accomplish its legal mandates for land management and forestry assistance. The public and federal employees may request copies of the report and may comment on the models and the individual concepts and ideas the models contain.

DATES: Comments should be submitted no later than August 15, 1994.

ADDRESSES: Requests for the report, questions, and comments should be sent to: Forest Service, U.S. Department of Agriculture, Reinvention Team, Rm. 910–RPE, P.O. Box 96090, Washington, D.C. 20090–6069; telephone: (703) 522–8437.

FOR FURTHER INFORMATION CONTACT: Questions about this report should be addressed to Carl Holguin, Reinvention Team, at (703) 522–8437.

SUPPLEMENTARY INFORMATION: As followup to the National Performance Review and the Department of Agriculture's focus on the improvement of government service, the Forest Service Reinvention Team interacted with over 3,000 individuals, including employees, public land users, special interest groups, and members of Congress to design ways the agency can become a world leader in conservation. The report outlines 5 alternative models that describe potential agency purpose, outcome, culture, work, and structure. A copy of the Executive Summary is available upon request. The 225-page interim report is available for review and comment at all Forest Service offices. Individuals and groups are invited to submit comments on the report.

Dated: June 30, 1994.

David G. Unger,

Associate Chief.

[FR Doc. 94–16377 Filed 7–6–94; 8:45 am]

BILLING CODE 3410–11–M

Rural Development Administration

Submission of Information Collection to OMB (Under Paperwork Reduction Act and 5 CFR Part 1320)

AGENCY: Rural Development Administration, USDA.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for expedited clearance under 5 CFR 1320.18. The Agency is soliciting public comments on the subject submission. This action is necessary in order for the Agency to promulgate a new regulation to administer the Rural Technology Development Grants (RTDG) program as required by legislation. Fiscal year (FY) 1994 appropriation contained $1.5 million for the RTDG program. Implementation of this regulation is required to administer FY 1994 grants before the end of the FY, since appropriated funds cannot be carried forward. It is essential that ample time be given for applicants to complete the application process. Failure to implement this program and award FY 1994 grants will result in a negative impact in the rural areas.

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Barton, Loan Specialist, Community Facilities Division, Room 6304, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–0700, Telephone: (202) 720–1504.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Rural Development Administration (RDA), USDA, has submitted to OMB, for expedited processing, this proposal for collection of information for clearance as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is requested that OMB approve this submission within 10 days.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507.

Supporting Statement

7 CFR 4284–F, Rural Technology Development Grants

1. Explanation of the circumstances that make the collection of information necessary—Public Law 101–624, Section 2347 (7 U.S.C. 1932 (f) through (h) authorizes grants to establish centers for rural technology and cooperative development. In order for an eligible applicant to apply for and receive the grant, application must be made at the Farmers Home Administration (FmHA) State Office.

7 CFR 4284 Subpart F contains the specific eligibility requirements, the application procedures, the evaluation process RDA uses to make selection decisions, and the servicing requirements. Grants are competitive and will be awarded based on specific selection criteria required by legislation. Project selection will be given to those projects that contribute the most to the improvement of economic conditions of rural areas. The information submitted should provide an accurate picture of the economic conditions of the rural areas to be served.

2. How, by whom, and for what purpose the information is to be used—The various forms and narrative requirements contained within this regulation are collected from applicants who are public bodies or nonprofit institutions. This information is used for determining such factors as: (1) eligibility; (2) the specific purposes for which grant funds will be utilized; (3) timeframes or dates by which funds will be used; (4) who will be carrying out the purposes for which the grant is made; (5) project priority; (6) applicant's experience in administering a rural economic development program; (7) employment and economic development improvement; and (8) geographic location of the area/business(s) to be served. This information is collected in the process of developing the full application and will be gathered in the FmHA State Offices.

Grant selection priority points and general project evaluation will be provided for applications based on the economic conditions, project proposal, applicant experience, as well as commitments by other funding sources.

If the information is not collected, FmHA will not be able to determine: (a) the eligibility of the applicant/projects; (b) whether applicable laws and regulations are complied with; and (c) the feasibility of the project.

A summary of the reporting burden to be cleared with this request is described as follows:

Intergovernmental Consultations

This consultation is required in accordance with Executive Order 12372.

Evidence of Legal Existence and Authority

The applicant must provide organizational documents to verify its eligibility in the program.

Financial Information

The applicant's latest financial information must be submitted to verify the organization's financial capacity to carry out the proposed work. The information must include the current year balance sheet and income statement.

Source and Certification of Other Funds

The source and amount of applicant's matching share and other funding sources and amounts to be contributed to the project must be identified. The applicant will be requested to provide certification that it has its matching share of funds available for use on the project and certifications from other funding sources identified as contributing to the grant project. This information will be used by FmHA in making grant selections and in determining that the required funds for the projects will be available.

Budget

The budget must be prepared by the applicant as a plan for the categories of costs under the grant and will be used by FmHA to monitor the use of funds and accomplishments of the grantee.

Area To Be Served

The applicant must identify the area to be served which includes governmental units, town, county, etc.

geographic location of the area/business(s) to be served. This information is collected in the process of developing the full application and will be gathered in the FmHA State Offices.

Grant selection priority points and general project evaluation will be provided for applications based on the economic conditions, project proposal, applicant experience, as well as commitments by other funding sources.

If the information is not collected, FmHA will not be able to determine: (a) the eligibility of the applicant/projects; (b) whether applicable laws and regulations are complied with; and (c) the feasibility of the project.

A summary of the reporting burden to be cleared with this request is described as follows:

Intergovernmental Consultations

This consultation is required in accordance with Executive Order 12372.

Evidence of Legal Existence and Authority

The applicant must provide organizational documents to verify its eligibility in the program.

Financial Information

The applicant's latest financial information must be submitted to verify the organization's financial capacity to carry out the proposed work. The information must include the current year balance sheet and income statement.

Source and Certification of Other Funds

The source and amount of applicant's matching share and other funding sources and amounts to be contributed to the project must be identified. The applicant will be requested to provide certification that it has its matching share of funds available for use on the project and certifications from other funding sources identified as contributing to the grant project. This information will be used by FmHA in making grant selections and in determining that the required funds for the projects will be available.

Budget

The budget must be prepared by the applicant as a plan for the categories of costs under the grant and will be used by FmHA to monitor the use of funds and accomplishments of the grantee.

Area To Be Served

The applicant must identify the area to be served which includes governmental units, town, county, etc.

Demographic Information

The applicant must provide information concerning the project area relating to rural industries and agribusinesses, underemployment, outmigration of people and businesses and industries from the area, and per capita income of the area. This information will be used to select projects that will benefit the most needy areas. The applicant must submit the most current full calendar year for which data is available and the 3 previous calendar years, if available.

Businesses To Be Assisted

This information is requested to determine the method and rationale that the applicant used to select areas and businesses to be assisted by their proposed project to determine that the selection was objective and reached the most needy areas/businesses.

Applicant Experience

The applicant must submit a description of its experience and capability in carrying out similar types of programs to be used to show its ability to carry out the grant purposes.

Duration of Project

The applicant must provide FmHA with the number of months duration of the project or service and the estimated time it will take from grant approval to beginning of service.

Source of Work To Be Performed

The applicant must submit a brief description of how the work will be performed and whether organizational staff or consultants/contractors will be used.

Evaluation Method

The applicant's evaluation method for determining whether the objectives of the project are being met must be provided so that FmHA can determine that the applicant objectively evaluates its project work.

Plan for Rural Technology Development Grants

Applicants must provide a brief plan which describes how they will meet certain provisions relating to how the center will effectively serve rural areas; improve the economic condition of rural areas by promoting the development and commercialization of new products, processes, and services, and new enterprises that can add value to on-farm production through processing or marketing; description of proposed grant activities and results; provisions for consultation with business, industry, educational institutions, Federal Government, State, and local governments, and specifically consultation with colleges/universities administering Extension Service programs; provisions for obtaining other funding sources; provisions for monitoring/evaluating the center's activities and accounting for grant funds; and provisions for optimal application of technology and cooperative development in rural areas, especially areas adversely affected by adverse agricultural economic conditions. This information will be used by RDA to determine that the application meets the intent of the program and to make a determination concerning grant selection of a project.

Proposed Agreement Between Applicants and Ultimate Recipients

If grant funds will be used for the purpose of making loans/grants to businesses (ultimate recipients), the applicant must provide a proposed agreement which reflects the grantee and the ultimate recipient's responsibilities in use of grant funds.

Plan To Provide Financial Assistance to Third Parties

If the project plan is to provide financial assistance to third parties from a revolving fund established, in part, with RTDG funds, the applicant must provide RDA with information regarding the project to be financed, sources of all non-RTDG funds, amount of technical assistance, purposes of loans/grants, project priority, length of time for completion of each project, and other relevant information. This information will be used to ensure that loans made as a direct result of grant funds are being utilized in accordance with RDA regulations (including EEO laws) and environmental regulations and will help ensure that objectives and purposes of the grant program are met.

Scope of Work

The scope of work must be prepared by the applicant. It is a summary of previously gathered information concerning the use of the grant funds, timeframes for actions, key personnel to be utilized, and the use of other than RTDG funds. This information will be used to monitor what is accomplished by the grantee.

Request for Appeal

If applicable, this is a letter from the grantee requesting a review of any adverse decision made by RDA.

Evidence of Authority To Execute Documents

The evidence of authority to execute documents will be used by FmHA as evidence that the person executing applicable grant documents on the behalf of the applicant organization has the authority to obligate the applicant organization.

Evidence of Fidelity Bond Coverage

Fidelity bonds are required for an amount equal to the greatest amount of funds on hand by a grantee. This is to ensure that if funds are somehow lost, stolen, misappropriated, etc., that the actual loss to the grantee will be mitigated and that purposes of the grant will continue.

Project Performance Report

Applicants are required to submit project performance reports in accordance with 7 CFR parts 3015 and 3016. These reports are necessary to monitor the appropriate use of grant funds. The project performance report shall include, but need not be limited to:

1. A comparison of actual accomplishments to the objectives established for that period;

2. Reasons why established objectives were not met;

3. Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, to resolve the situation;

4. Objectives established for the next reporting period;

5. Why available information cannot be used or modified.—Status of compliance with any special conditions on the use of grant funds.

Audit Report

Audit reports will be required in accordance with 7 CFR 3015 and 3016 to determine that grant funds have been utilized for approved purposes.

AD–1049, Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—for Grantees Other Than Individuals

AD–1049 will be executed by the applicant no later than grant closing to certify that the drug-free workplace requirements will be met. The use of this form complies with 7 CFR part 3017.

SF–424.1, Application for Federal Assistance

The SF–424 will be utilized for preapplications for the program. Applicants are initially requested to utilize a preapplication to provide detailed information for RDA to use in determining eligibility and priority for available funds. The information will be utilized by RDA to determine that applicants meet the eligibility criteria mandated by law and have the capability and resources to carry out the proposed projects.

SF–424.1, Application for Federal Assistance

The application and related information will be used by RDA to approve the project. The applicants are asked to provide a minimum amount of additional information with their applications.

SF–269, Financial Status Report

SF–269 will be used by RDA to quarterly monitor the financial status of the grantee. The use of this form complies with 7 CFR parts 3015 and 3016.

SF–270, Request for Advance or Reimbursement

SF–270 will be submitted by the grantee and used by RDA to document disbursement of grant funds. The use of this form complies with 7 CFR parts 3015 and 3016.

Exhibit A—Agreement of Administrative Requirements for Rural Technology Development Grants

This exhibit contains information regarding the responsibilities of the grantee for receipt of grant funds under the Rural Technology Development Grant program. The grantee must read, understand, and sign this agreement.

Record Keeping Requirements

Financial Records

Grantees must maintain financial management systems and retain financial records in accordance with standards prescribed in 7 CFR parts 3015 and 3016, as appropriate, in accordance with terms and conditions of the grant. Grantee records must include an accurate accounting and must document how these funds are used.

Property Records

Grantees must maintain property records in accordance with standards prescribed in 7 CFR parts 3015 and 3016, as appropriate, in accordance with terms and conditions of the grant.

3. Use of improved technology.—Improved information technology may be used by the grantee; however, each grantee may be relatively small and high technology information transfer is not considered economically justifiable by FmHA or the grantees. The collection of information required by this regulation is minimal and is more a synopsis of grantee activities than original data.

4. Efforts to identify duplication.—The Agency has reviewed all grant programs it administers to determine which programs may be similar in intent and purpose. The Agency has several grant programs that are similar. It is doubtful that an applicant would apply for funding under the RTDG program at the same time and for the same purpose as an application under another program. However, if there were simultaneous participation in more than one grant program, the Agency would make every effort to accommodate the requests within the same set of applications and processing forms. This effort is presently facilitated by assignment of management of these programs to the same program area of responsibility. If a grantee is applying for, or receiving, a grant from another Federal agency, the forms and documents furnished to the other agency would be utilized to the extent possible.

5. Why available information cannot be used or modified.—As stated in 4, if similar information is available within RDA or another agency, every effort would be made to utilize that information as is or in an appropriately modified form for this program.

6. Methods to minimize burden of small businesses or entities.—The information to be collected is in a format designed to minimize the paperwork burden on small businesses and other small entities. The information collected is the minimum needed by the Agency to approve grants and monitor the grantee performance.

7. Consequence if information collection were less frequent.—If the collection of information were conducted less frequently, it could have an adverse effect on the Agency's ability to administer the grant program. The Agency must determine that the grant funds are to be used by the eligible applicants for authorized purposes.

8. Inconsistency with guidelines in 5 CFR 1320.6.—There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 7 CFR 1320.6, except for SF–270. The SF–270 is submitted voluntarily during the disbursement period; requests are limited to one every 30 days.

9. Consultation with persons outside of Agency.—The regulation is being published as an interim rule in the **Federal Register** with a request for comments. Implementation of this program is required by legislation. No consultations have been made at this time; however, comments on the interim rule will be considered.

10. Confidentially provided to respondent.—No assurance of confidentiality is provided to applicants and grantees beyond that required by law.

11. Questions of a sensitive nature.—There will be no collection of any information that would be considered sensitive in nature or commonly considered private.

12. Annualized costs to Federal Government and respondents.—The Agency estimates the cost to the respondents to comply with this regulation to be $78,715. This is based on an estimate of 100 organizations filing a preapplication and the Agency making 50 of them a grant. The Agency used $13.00 per hour based on information from similar programs. It is estimated that the primary respondents for the grantee would be a director earning $10.80 to $15.45 per hour.

The cost to the Federal Government to collect and evaluate this information is estimated to be $71,718. This includes staff time, printing, publication of regulations, operational expenses, and overhead. Staff time will vary with appropriation levels because the amount of available resources does affect how many applicants will apply and need evaluation for funding and how many projects will need monitoring and servicing. This estimated cost is based on the grants being approved and serviced in the State Office.

13. Estimate of burden.—We estimate the total annual man hours required to comply with this regulation to be 6,055. It is estimated that 100 organizations will file a preapplication and 50 grantees will be selected for funding. This estimate is based on historical data from similar FmHA programs.

14. Reason for changes in burden.—This is an initial request for OMB clearance.

15. Tabulation, analysis, and publication plans.—The information collected is not for the purpose of publication.

Subpart F—Rural Technology Development Grants

Table of Contents

Sec.
4284.501 Purpose.
4284.502 Policy.
4284.503 [Reserved]

9. Consultation with persons outside of Agency.—The regulation is being published as an interim rule in the **Federal Register** with a request for comments. Implementation of this program is required by legislation. No consultations have been made at this time; however, comments on the interim rule will be considered.

10. Confidentially provided to respondent.—No assurance of confidentiality is provided to applicants and grantees beyond that required by law.

11. Questions of a sensitive nature.—There will be no collection of any information that would be considered sensitive in nature or commonly considered private.

12. Annualized costs to Federal Government and respondents.—The Agency estimates the cost to the respondents to comply with this regulation to be $78,715. This is based on an estimate of 100 organizations filing a preapplication and the Agency making 50 of them a grant. The Agency used $13.00 per hour based on information from similar programs. It is estimated that the primary respondents for the grantee would be a director earning $10.80 to $15.45 per hour.

The cost to the Federal Government to collect and evaluate this information is estimated to be $71,718. This includes staff time, printing, publication of regulations, operational expenses, and overhead. Staff time will vary with appropriation levels because the amount of available resources does affect how many applicants will apply and need evaluation for funding and how many projects will need monitoring and servicing. This estimated cost is based on the grants being approved and serviced in the State Office.

13. Estimate of burden.—We estimate the total annual man hours required to comply with this regulation to be 6,055. It is estimated that 100 organizations will file a preapplication and 50 grantees will be selected for funding. This estimate is based on historical data from similar FmHA programs.

14. Reason for changes in burden.—This is an initial request for OMB clearance.

15. Tabulation, analysis, and publication plans.—The information collected is not for the purpose of publication.

Subpart F—Rural Technology Development Grants

Table of Contents

Sec.
4284.501 Purpose.
4284.502 Policy.
4284.503 [Reserved]
4284.504 Definitions.
4284.505 Applicant eligibility.
4284.506–4284.514 [Reserved]
4284.515 Grant purposes.
4284.516 Ineligible grant purposes.
4284.517–4284.526 [Reserved]
4284.540 Grant selection criteria.
4284.527 Other considerations.
4284.528 Application processing.
4284.529–4284.539 [Reserved]
4284.541 Grant approval, fund obligation, grant closing, and third-party financial assistance.
4284.542–4284.555 [Reserved]
4284.556 Docket preparation and Letter of Conditions.
4284.557 Fund disbursement.
4284.558 Reporting.
4284.559–4284.570 [Reserved]
4284.571 Audit requirements.
4284.572 Grant servicing.
4284.573 Programmatic changes.
4284.574 Subsequent grants.
4284.575 Grant suspension, termination, and cancellation.
4284.576–4284.586 [Reserved]
4284.587 Exception authority.
4284.588 Forms and exhibits.
4284.589–4284.599 [Reserved]
4284.600 OMB control number.

Subpart F—Rural Technology Development Grants

Sec. 4284.501 Purpose

(a) This subpart outlines the Rural Development Administration's (RDA) policies and authorizations and sets forth procedures to provide grants for technology and cooperative development in rural areas. Grants will not be awarded under this subpart after July 13, 1995.

(b) Grants for establishing and operating centers for rural technology or cooperative development will be for the primary purpose of improving the economic condition of rural areas by promoting the development (through technological innovation, cooperative development, and adaptation of existing technology) and commercialization of new services and products that can be produced or provided in rural areas; new processes that can be utilized in the production of products in rural areas; and new enterprises that can add value to on-farm production through processing or marketing.

(c) Copies of all forms and Instructions referenced in this subpart are available in the Farmers Home Administration (FmHA)/RDA National Office or any FmHA State Office.

Sec. 4284.502 Policy

(a) The grant program will be used to assist in the economic development of rural areas.

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by Native American tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Native American tribes residing on such reservations must have equal opportunity along with other rural residents to participate in the benefits of these programs. This includes equal application of outreach activities of RDA servicing offices.

Sec. 4284.503 [Reserved]

Sec. 4284.504 Definitions

Approval official—Any authorized FmHA/RDA official.

Cooperative—An association organized to provide a specific service with open membership, equality in ownership and control, limited return on members' capital, and equitable methods to distribute any excess earnings back to its members.

Cooperative development—The startup or expansion of a cooperative which will promote the development of new services and products that can be produced or provided in rural areas, new processes that can be utilized in the production of products in rural areas, and/or new enterprises that can add value to on-farm production through processing or marketing.

Economic development—The growth of an area as evidenced by increases in total income, employment opportunities, decreased outmigration of populations, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, and/or gains in other measurements of economic activity, such as land values.

Nonprofit institutions—Any organization or institution, including an accredited institution of higher education, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Project—The undertaking for which funds will be used to develop or operate a technology and/or cooperative development center.

Public body—Any State, county, city, township, incorporated towns and villages, boroughs, authorities, districts, locally-based areawide economic development organizations, and Indian tribes on Federal and State reservations, and other federally recognized Indian tribes in rural areas.

Servicing office—Any FmHA/RDA State office.

Small business—A business which does not exceed the maximum number of employees or annual receipts allowed for a concern (including its affiliates) to be considered small according to the established size standards for Small Business Administration (SBA) assistance as set forth in 13 CFR, part 121. The business may be operated on a profit or nonprofit basis but must rely primarily on revenues of the business for operation.

Technology—The application of science to industrial or commercial objectives. The entire body of methods and material used to achieve such objectives.

Technology development—The creation of new technology or the use and application of existing technology to promote the development and commercialization of new products, new processes, and new services that can be produced or provided in rural areas.

Rural and rural area—Includes all territory of a State, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, or the Commonwealth of the Mariana Islands that is

not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than 100 persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

Urbanized area—An area immediately adjacent to a city having a population of 50,000 or more which, for general social and economic purposes, constitutes a single community and has a boundary contiguous with that of the city. Such community may be incorporated or unincorporated to extend from the contiguous boundary(ies) to recognizable open country, less densely settled areas, or natural boundaries such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. Outer boundaries of an incorporated community extend at least to its legal boundaries. Cities which may have a contiguous border with another city, but are located across a river from such city, are recognized as a separate community and are not otherwise considered a part of an urbanized or urbanizing area, as defined in this section, are not in a nonrural area.

Urbanizing area—A community which is not now, or within the foreseeable future not likely to be, clearly separate from and independent of a city of 50,000 or more population and its immediately adjacent urbanized areas. A community is considered "separate from" when it is separated from the city and its immediately adjacent urbanized area by open country, less densely settled areas, or natural barriers such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. A community is considered "independent of" when its social and economic structure (e.g., government; educational, health, and recreational facilities; and business, industry, tax base, and employment opportunities) is not primarily dependent on the city and its immediately adjacent urbanized areas.

Sec. 4284.505 Applicant Eligibility

(a) Grants may be made to public bodies or nonprofit institutions.

(1) The RDA will proceed as follows in rural area determinations: When the RDA determines an area to be urbanized or urbanizing, he/she must then determine the population density per square mile. If the project otherwise appears to be eligible, the RDA will request the National Office to provide the correct density figure.

(2) All such density determinations will be made on the basis of minor civil division or census county division as used by the Bureau of the Census. In making the density calculations, large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, and cemeteries or land set aside for such purposes will be excluded.

(b) An outstanding judgement obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgement is paid in full or otherwise satisfied. RDA grant funds may not be used to satisfy the judgement. Questions about whether or not a judgement is still outstanding should be directed to the Office of the General Counsel (OGC).

Secs. 4284.506–4284.514 [Reserved]

Sec. 4284.515 Grant Purposes

Grant funds may be used to pay up to 75 percent of the costs for establishing and/or operating centers for rural technology and/or cooperative development. Applicant's contribution may be in cash or third party in-kind contribution in accordance with parts 3015 and 3016 of this title. Grant funds may be used for, but are not limited to, the following purposes:

(a) Technology research, investigations, and basic feasibility studies in any field or discipline for the purpose of generating principles, facts, technical knowledge, new technology, or other information that may be useful to rural industries, cooperatives, agribusinesses, and other persons or entities in rural areas served by such centers in the development and commercialization of new products, processes, or services.

(b) The collection, interpretation, and dissemination of principles, facts, technical knowledge, new technology, or other information that may be useful to rural industries, cooperatives, agribusinesses, and other persons or entities in rural areas served by the center in the development and commercialization of new products, processes, or services.

(c) Providing training and instruction for individuals residing in rural areas served by the center with respect to the development (through technological innovation, cooperative development, and adaptation of existing technology) and commercialization of new products, processes, or services.

(d) Providing loans and grants to individuals, small businesses and cooperatives in rural areas for purposes of generating, evaluating, developing and commercializing new products, processes, or services.

(e) Providing technical assistance and advisory services to individuals, small businesses, cooperatives, and industries in rural areas served by the center for purposes of developing and commercializing new products, processes, or services.

(f) Providing research and support to individuals, small businesses, cooperatives, and industries in rural areas served by the center for purposes of developing new agricultural enterprises to add value to on-farm production through processing or marketing.

(g) Paying up to 75 percent of the administrative costs of the applicant in carrying out its projects.

(h) Equipment and materials necessary to carry out other eligible grant purposes under this section.

Sec. 4284.516 Ineligible Grant Purposes

Grant funds may not be used to:

(a) Pay more than 75 percent of a project cost.

(b) Pay more than 75 percent of administrative costs.

(c) Duplicate current services or replace or substitute support previously provided.

(d) Pay costs of preparing the application package for funding under this program.

(e) Pay costs incurred prior to the effective date of the grant made under this subpart.

(f) Pay for building construction or the purchase of real estate or vehicles; improving and/or renovation of office space; or repair or maintenance of privately-owned property.

(g) Fund political activities.

(h) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

Secs. 4284.517–4284.526 [Reserved]

Sec. 4284.527 Other Considerations

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to the requirements of Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, and national origin as outlined in subpart E of part 1901 of this title. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of handicap; the requirements of the Age Discrimination Act of 1975 which prohibits discrimination on the basis of age; and Title III of the Americans with Disabilities Act, Pub. L. 101–336, which prohibits discrimination on the basis of disability by private entities in places of public accommodations.

(b) *Environmental requirements.*

(1) *General applicability.* Unless specifically modified by this section, the requirements of subpart G of part 1940 of this title apply to this subpart. RDA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 of subpart G of part 1940 of this title. Although the purpose of the grant program established by this subpart is to improve business, industry, and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmland and forest lands, prime rangelands, wetland and floodplains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans and projects that minimize the potential to adversely impact on the environment.

(2) *Technical assistance.* An application for a technical assistance project is generally excluded from the environmental review process by § 1940.333 of subpart G of part 1940 of this title. However, as further specified in that section, the grantee of a technical assistance grant, in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the technical assistance.

(3) *Applications for grants to provide financial assistance to third-party recipients.* As part of the preapplication, the applicant must provide a complete Form FmHA 1940–20, "Request for Environmental Information," for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. RDA will review the preapplication, supporting materials, and any required Forms FmHA 1940–20 and initiate a Class II assessment for the preapplication in accordance with § 1940.318 of subpart G of part 1940 of this title. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because RDA's approval of this type of grant application does not constitute RDA's commitment to the use of grant funds for any identified third-party projects (see § 4284.541 of this subpart), no public notification requirements for a Class II assessment will apply to the preapplication. After the grant is approved, each third-party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this title prior to RDA providing its consent to the grantee to assist the third-party project. If the preapplication reflects only one specific project which is specifically identified as the third-party recipient for financial assistance, RDA may perform the appropriate environmental assessment in accordance with the requirements of subpart G of part 1940 of this title and forego initiating a Class II assessment with no public notification. However, the applicant must be advised that if the recipient or project changes after the grant is approved, the project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this title.

(c) *Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace.* All projects must comply with the requirements set forth in part 3017 of this title and FmHA Instruction 1940–M (available in any State RDA/FmHA office).

(d) *Restrictions on lobbying.* All grants must comply with the lobbying restrictions set forth in part 3018 of this title.

(e) *Excess capacity or transfer of employment.*

(1) If a proposed grant is for more than $1 million and will increase direct employment by more than 50 employees, the applicant will be requested to provide written support for an RDA determination that the proposal will not result in a project which is calculated to, or likely to, result in:

(i) The transfer of any employment or business activity from one area to another (this limitation shall not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such expansion is being established with the intention of closing down the operations of the existing

20, "Request for Environmental Information," for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. RDA will review the preapplication, supporting materials, and any required Forms FmHA 1940–20 and initiate a Class II assessment for the preapplication in accordance with § 1940.318 of subpart G of part 1940 of this title. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because RDA's approval of this type of grant application does not constitute RDA's commitment to the use of grant funds for any identified third-party projects (see § 4284.541 of this subpart), no public notification requirements for a Class II assessment will apply to the preapplication. After the grant is approved, each third-party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this title prior to RDA providing its consent to the grantee to assist the third-party project. If the preapplication reflects only one specific project which is specifically identified as the third-party recipient for financial assistance, RDA may perform the appropriate environmental assessment in accordance with the requirements of subpart G of part 1940 of this title and forego initiating a Class II assessment with no public notification. However, the applicant must be advised that if the recipient or project changes after the grant is approved, the project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this title.

(c) *Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace.* All projects must comply with the requirements set forth in part 3017 of this title and FmHA Instruction 1940–M (available in any State RDA/FmHA office).

(d) *Restrictions on lobbying.* All grants must comply with the lobbying restrictions set forth in part 3018 of this title.

(e) *Excess capacity or transfer of employment.*

(1) If a proposed grant is for more than $1 million and will increase direct employment by more than 50 employees, the applicant will be requested to provide written support for an RDA determination that the proposal will not result in a project which is calculated to, or likely to, result in:

(i) The transfer of any employment or business activity from one area to another (this limitation shall not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such expansion is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations), or

(ii) An increase in the production of goods, materials, or commodities or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area. The applicant's written support will consist of a resolution from the applicant and Form FmHA 449–22, "Certification of Non-Relocation and Market and Capacity Information Report," from each existing and future occupant of the site. The applicant may use Guide 2 of subpart G of part 1942 (available in any State RDA/FmHA office) as an example in preparing the resolution. Future occupants of the site must be certified by Department of Labor (DOL) as outlined in paragraph (e)(3) of this section for a period of 3 years after the initial certification by DOL.

(2) RDA will check each document for completeness and accuracy and submit nine copies of each to the National Office for forwarding to DOL.

(3) Grants shall not be made if the Secretary of Labor certifies within 30 days after the matter has been submitted by the Secretary of Agriculture that the provisions of paragraph (e)(1) of this section have not been met. Information for obtaining this certification will be submitted, in writing, by the applicant to RDA. The information will be submitted to DOL by the RDA National Office. Grant approval may be given and funds may be obligated, subject to the DOL certification being received, provided RDA has made its own separate determinations of (e)(1)(i) and (ii) of this section when applicable.

(f) *Management assistance.* Grant recipients will be supervised, as necessary, to ensure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under, and are subject to parts 3015, 3016, and 3017 of this title, as appropriate, and established RDA guidelines.

(g) *National Historic Preservation Act of 1966.* All projects will be in compliance with the National Historic Preservation Act of 1966 in accordance with subpart F of part 1901 of this title.

(h) *Uniform Relocation Assistance and Real Property Acquisition Policies Act.* All projects must comply with the requirements set forth in part 21 of this title.

(i) *Floodplains and wetlands.* All projects must comply with Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands."

(j) *Flood or mudslide hazard area precautions.* If the grantee financed project is in a flood or mudslide area, flood or mudslide insurance must be provided.

(k) *Termination of Federal requirements.* Once the grantee has provided 29 assistance to projects from a revolving fund, in an amount equal to the grant provided by RDA, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the revolving funds. Such new projects shall not be considered as being derived from Federal funds.

(l) *Intergovernmental review.* Grant projects are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. A revolving fund established in whole, or in part, with grant funds will also be considered a project for the purpose of intergovernmental review as well as the specific projects funded with grant funds from the revolving loan project. For each project to be assisted with a grant under this subpart and for which the State has elected to review the project under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the grantee. Any comments from the State must be included with the grantee's request to use RDA grant funds for the specific project. Prior to RDA's decision on the request, compliance with requirements of intergovernmental consultation must be demonstrated for each project. These requirements should be carried out in accordance with subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities," of part 3015 of this title (see subpart J of part 1940 of this title, available in any State RDA/FmHA office).

Sec. 4284.528 Application Processing

(a) *Preapplications.*

(1) Applicants will file an original and one copy of Standard Form (SF)–424.1, "Application for Federal Assistance (For Non-construction)," with the appropriate RDA office. This form is available in any State RDA/FmHA office.

(2) All preapplications shall be accompanied by:

(i) Evidence of applicant's legal existence and authority to perform the proposed activities under the grant.

(ii) Latest financial information to show the organization's financial capacity to carry out the proposed work. At a minimum, the information should include a balance sheet and an income statement. A current audit report is preferred where one is reasonably obtainable.

(iii) Estimated breakdown of total costs, including costs to be funded by the applicant as well as other sources. Other sources should be identified. Certification must be provided from the applicant that its matching share to the project is available and will be used for the project. The matching share must meet the requirements of parts 3015 and 3016 of this title. Certifications from an authorized representative of each source of funds must be provided indicating that funds are available and will be used for the proposed project.

(iv) Budget and description of the accounting system in place or proposed.

(v) Area to be served, identifying each government unit, i.e., town, county, etc., if affected by the proposed project and

evidence of support and concurrence in the proposed project from the affected local governmental bodies as evidenced by resolution or a written statement from the chief elected local official.

(vi) The most current demographic information (and source) about the area to be served which includes information on the rural industries and agribusinesses in the area; unemployment rate; description of under employment in the area; information regarding outmigration of people; businesses and industries; and the per capita income of the area. The source of information and dates must be identified and must be from a recognized source such as Census data or State employment data.

(vii) Businesses to be assisted.

(viii) Applicant's experience, including experience of key staff members and person(s) who will be providing the proposed service(s) and managing the project.

(ix) The number of months duration of the project or service and the estimated time it will take from grant approval to beginning of service.

(x) Method and rationale used to select the areas/businesses that will receive the service.

(xi) Brief description of how the work will be performed and whether organizational staff or consultants/contractors will be used.

(xii) Evaluation method to be used by the applicant to determine if objectives of the proposed activity are being accomplished.

(xiii) A brief plan which contains the following provisions and describes how the applicant will meet those provisions:

(A) A provision that substantiates that the applicant will effectively serve rural areas in the United States.

(B) A provision that the primary objective of the applicant will be to improve the economic condition of rural areas by promoting the development (through technological innovation, cooperative development, and adaptation of existing technology) and commercialization of:

(*1*) New services and products that can be produced or provided in rural areas;

(*2*) New processes that can be utilized in the production of products in rural areas; and

(*3*) New enterprises that can add value to on-farm production through processing or marketing.

(C) A description of the activities that the applicant will carry out to accomplish such objective.

(D) A description of the proposed activities to be funded under this subpart.

(E) A description of the contributions that the applicant's proposed activities are likely to make to the improvement of the economic conditions of the rural areas served by the applicant.

(F) Provisions that the applicant, in carrying out its activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, and State and local governments.

(G) Provisions that the applicant will consult with any college or university administering Extension Service programs and cooperate with such college or university in the coordination of the center's activities and programs.

(H) Provisions that the applicant will take all practicable steps to develop continuing sources of financial support for the center, particularly from sources in the private sector.

(I) Provisions for:

(*1*) Monitoring and evaluating its activities; and

(*2*) Accounting for money received and expended by the institution under this subpart.

(J) Provisions that the applicant will provide for the optimal application of technology and cooperative development in rural areas, especially those areas adversely affected by adverse agricultural economic conditions, through the establishment of demonstration projects and subcenters for:

(*1*) Rural technology development where the technology can be implemented by communities, community colleges, businesses, cooperatives, and other institutions; or

(*2*) Cooperative development where such development can be implemented by cooperatives to improve local economic conditions.

(xiv) If grant funds are to be used for the purpose of making loans and/or grants to eligible individuals, small businesses, or cooperatives (ultimate recipients) in rural areas for eligible purposes under this subpart, the applicant shall develop a plan which outlines the purposes and administration of the fund and include a copy of a proposed agreement to be used between the applicant and the ultimate recipient(s) which includes the following:

(A) An assurance that the responsibilities of the grantee, as a recipient of grant funds under this subpart, are passed on to the ultimate recipient and the ultimate recipient understands its responsibilities to comply with the requirements set forth in this subpart, including parts 3015 and 3016 of this title.

(B) Provisions that the ultimate recipient will comply with debarment and suspension requirements contained in part 3017 of this title and will execute Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions."

(C) Provisions that the ultimate recipient will execute Form FmHA 400–1, "Equal Opportunity Agreement," and Form FmHA 400–4, "Assurance Agreement."

(D) Clear documentation that the ultimate recipient understands its responsibilities to the applicant.

(E) Clear documentation that the applicant understands its responsibilities in monitoring the ultimate recipient's activities under the grant and the applicant's plan for such monitoring.

(F) Brief written narrative addressing all items in § 4284.540(a) of this subpart, regarding grant selection criteria.

(3) [Reserved]

(4) Applicants whose preapplications are found to be ineligible will be given notice by use of Form AD–622 and advised of their appeal rights under subpart B of part 1900 of this title.

(5) If at any time prior to grant approval it is decided that favorable action will not be taken on a preapplication or application, the RDA will notify the applicant in writing of the reasons why the request was not favorably considered. The notification will advise the applicant of appeal rights under subpart B of part 1900 of this title.

(6) Applicants eligible for funding within the available funds will be provided forms and instructions for filing a complete application. Applicants should be advised against incurring obligations which cannot be fulfilled without RDA funds.

(b) *Applications.* Upon notification on Form AD–622 that the applicant is eligible for funding, the following will be submitted to the RDA by the applicant:

(1) SF 424.1.

(2) Proposed scope of work, detailing the proposed activities to be accomplished and timeframes for completion of each activity.

(3) Proposed budget, including source and amount of applicant contribution and any other funding sources for the proposed project.

(4) Other requested information needed by RDA to make a grant award determination.

(c) *Applicant response.* If the applicant fails to submit the application and related material by the date shown on Form AD–622 (normally 30 days from the date of Form AD–622), RDA may discontinue consideration of the application. Appeal rights will be given in accordance with subpart B of part 1900 of this title.

Secs. 4284.529–4284.539 [Reserved]

Sec. 4284.540 Grant Selection Criteria

Grants will be awarded under this subpart on a competitive basis. The priorities described below will be used by the RDA to rate preapplications and applications. Points will be distributed as indicated in paragraph (a) of this section. Points will be distributed according to ranking as compared with other preapplications/applications on hand. A copy of the score sheet (Exhibit B) (available in any State RDA/FmHA Office) should be placed in the casefile for future reference.

(a) The selection criteria are as follows:

(1) *Economic conditions.* Preference will be given to proposed projects which will serve a rural area(s) that has few rural industries and agribusinesses; high levels of unemployment or underemployment; high rates of outmigration of people, businesses, and industries; and low levels of per capita income. RDA will consider data supporting these demographics from the United States Bureau of the Census or other reliable data from recognized local, regional, State or Federal sources or from surveys conducted by reliable, impartial sources. Outmigration of businesses and industries, for example, may be supported by county business patterns data available from the Bureau of the Census. Data to support all categories must be for the most current full calendar year for which the data is available and the 3 calendar years prior to that year. The competitive range for proposed projects is as follows:

(i) Number of rural industries and agribusinesses in comparison with the population of the area(s) to be served: 1 or less per 5,000 residents—25 points; 1 or less per 3,000 residents—15 points; or 1 or less per 1,000 residents—5 points.

(ii) Unemployment rate in the area(s) to be served: Exceeds the State rate by 25 percent or more—15 points; or exceeds the State rate by less than 25 percent but more than 5 percent—10 points.

(iii) Underemployment in the area(s) to be served exceeds the State rate of underemployment by 25 percent or more—20 points; exceeds the State rate by less than 25 percent—10 points; or is equal to or less than State rate—0 points.

(iv) Outmigration of rural residents from the area(s) as evidenced by a population loss in the last full calendar year of at least 20 percent—20 points.

(v) Outmigration of business and industry and/or business and industry closures in the area(s) of at least 20 percent in the last 3 years—20 points.

(vi) Average per capita income of the area(s) is less than the State average by: 50 percent—25 points; or 25 percent—10 points.

(2) *Project proposal.* The project proposal will contribute the most to the improvement of economic conditions of the rural area(s) by:

(i) Creation of industries or agribusinesses in the area(s): 1 or more per 5,000 residents—20 points; 1 or more per 10,000 residents—10 points; or 1 or more per 20,000 residents—5 points.

(ii) Increasing employment by 10 percent or more—10 points.

(iii) Stemming the flow of outmigration of people, businesses, or industries by 10 percent or more—10 points.

(iv) Increasing the tax base of the area(s) by 2 percent or more—5 points.

(3) *Applicant experience.* The applicant demonstrates capability to transfer for practical application in rural areas the technology generated and demonstrates the ability to commercialize products, processes, services, and enterprises in rural areas—15 points.

(b) *Review of decision.* Each application for assistance will be carefully reviewed in accordance with the priorities established in this section. A priority rating will be assigned to each application. Applications selected for funding will be based on the priority rating assigned each application and the total funds available. All applications submitted for funding should contain sufficient information to permit RDA to complete a thorough priority rating. When a determination is made that favorable action will not be taken on a preapplication or application, the applicant will be notified in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by RDA may be requested by the applicant in accordance with subpart B of part 1900 of this title.

Sec. 4284.541 Grant Approval, Fund Obligation, Grant Closing, and Third-Party Financial Assistance

A copy of the executed Form FmHA 1940–1, "Request for Obligation of Funds," and the approved scope of work will be sent to the applicant on the obligation date. The grant will be considered closed on the obligation date. Exhibit A of this subpart, available in any State RDA/FmHA office, shall become a

(ii) Unemployment rate in the area(s) to be served: Exceeds the State rate by 25 percent or more—15 points; or exceeds the State rate by less than 25 percent but more than 5 percent—10 points.

(iii) Underemployment in the area(s) to be served exceeds the State rate of underemployment by 25 percent or more—20 points; exceeds the State rate by less than 25 percent—10 points; or is equal to or less than State rate—0 points.

(iv) Outmigration of rural residents from the area(s) as evidenced by a population loss in the last full calendar year of at least 20 percent—20 points.

(v) Outmigration of business and industry and/or business and industry closures in the area(s) of at least 20 percent in the last 3 years—20 points.

(vi) Average per capita income of the area(s) is less than the State average by: 50 percent—25 points; or 25 percent—10 points.

(2) *Project proposal.* The project proposal will contribute the most to the improvement of economic conditions of the rural area(s) by:

(i) Creation of industries or agribusinesses in the area(s): 1 or more per 5,000 residents—20 points; 1 or more per 10,000 residents—10 points; or 1 or more per 20,000 residents—5 points.

(ii) Increasing employment by 10 percent or more—10 points.

(iii) Stemming the flow of outmigration of people, businesses, or industries by 10 percent or more—10 points.

(iv) Increasing the tax base of the area(s) by 2 percent or more—5 points.

(3) *Applicant experience.* The applicant demonstrates capability to transfer for practical application in rural areas the technology generated and demonstrates the ability to commercialize products, processes, services, and enterprises in rural areas—15 points.

(b) *Review of decision.* Each application for assistance will be carefully reviewed in accordance with the priorities established in this section. A priority rating will be assigned to each application. Applications selected for funding will be based on the priority rating assigned each application and the total funds available. All applications submitted for funding should contain sufficient information to permit RDA to complete a thorough priority rating. When a determination is made that favorable action will not be taken on a preapplication or application, the applicant will be notified in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by RDA may be requested by the applicant in accordance with subpart B of part 1900 of this title.

Sec. 4284.541 Grant Approval, Fund Obligation, Grant Closing, and Third-Party Financial Assistance

A copy of the executed Form FmHA 1940–1, "Request for Obligation of Funds," and the approved scope of work will be sent to the applicant on the obligation date. The grant will be considered closed on the obligation date. Exhibit A of this subpart, available in any State RDA/FmHA office, shall become a permanent part of Form FmHA 1940–1 when grant funds are involved, and the following paragraphs will appear in the comment section of that form as appropriate:

(a) "The grantee understands the requirements for receipt of funds under the Rural Technology Development Grant program. The grantee assures and certifies that it is in compliance with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set forth in exhibit A of subpart F of part 4284 of this chapter, available in any State RDA/FmHA Office, 7 CFR parts 3015, 3016, 3017, and 3018 (including revisions through _____ (date of grant approval)); and the Letter of Conditions and the approved scope of work."

(b) For grants involving the establishment of a revolving loan program to benefit third parties, the following statement shall also be added to the comment section of Form FmHA 1940–1: "The grantee furthermore agrees to use grant funds for the purposes outlined in the Scope of Work approved by RDA."

Sec. 4284.542–4284.555 [Reserved]

Sec. 4284.556 Docket Preparation and Letter of Conditions

(a) The following forms and documents will be part of the grant docket:

(1) Form FmHA 400–1 for the applicant and recipients of the technical assistance, loans under a revolving loan fund, and rural learning projects if the recipients are other than individuals.

(2) Form FmHA 400–4 for the applicant and recipients of the technical assistance or loans under a revolving loan fund.

(3) Scope of work and budget prepared by the applicant.

(4) Form FmHA 1940–1.

(5) Resolution of the Board, if appropriate, approving the grant application.

(6) Evidence of authority for individual, in the applicant's organization, to execute grant documents.

(7) Evidence of fidelity bond coverage.

(8) Form FmHA 1942–43, "Project Summary—Community Facilities (Other Than Utility-Type Projects)."

(9) Executed Forms AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions," and AD–1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals."

(10) Executed certification in accordance with part 3018, Appendix A of this title, that no Federal appropriated funds have been paid or will be paid for lobbying activities and Form LLL, "Disclosure of Lobbying Activities."

(11) Proposed agreement between applicant and ultimate recipient as required in § 4284.528(a)(2)(xiv) of this subpart, if applicable.

(12) Class II Environmental Assessment (if applicable).

(13) Finding of No Significant Impact (if applicable).

(14) Form FmHA 400–8, "Compliance Review," (Nondiscrimination by Recipients of Financial Assistance through Farmers Home Administration.)

(b) The RDA representative will prepare a Letter of Conditions outlining the conditions under which the grant will be made. It will include those matters necessary to assure that the proposed grant is completed in accordance with the terms of the scope of work and budget, that the grant funds are expended for authorized purposes, and that the requirements prescribed in parts 3015, 3016, 3017, and 3018 of this title are complied with. Each Letter of Conditions will contain the following paragraphs:

(1) "This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application."

(2) "This letter is not to be considered as grant approval nor as a representation as to the availability of funds. The docket may be completed on the basis of a grant not to exceed $_____ and a matching share by the applicant in the amount of $_____."

(3) "Please complete and return the attached Form FmHA 1942–46, 'Letter of Intent to Meet Conditions,' if you desire further consideration be given your application."

(4) "You must certify that the activities provided under the grant will benefit a rural area."

(5) "You must certify that at least 25 percent of the total funds for this project are provided as the grantee's share and meet the matching fund requirements of 7 CFR parts 3015 and 3016."

(6) "You must certify that no Federal appropriated funds have been paid or will be paid for lobbying activities in accordance with 7 CFR part 3018, Appendix A, and execute Form LLL."

(7) "You must execute Form AD–1047, 'Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions,' to certify that your organization is not debarred or suspended from Government assistance. You also must obtain a certification on Form AD–1048, 'Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions,' from any person or entity you do business with as a result of this Government assistance that they are not debarred or suspended from Government assistance."

(8) "You must execute Form AD–1049, 'Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals,' to certify that you will provide a drug-free awareness program for employees."

(9) "You must obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget can result in suspension/termination of grant funds."

(10) Other items in the Letter of Conditions should include those appropriate items relative to: maximum amount of grant; contributions; required project audit; evidence of compliance with all applicable Federal, State, and local requirements; closing instructions, DOL certifications

compliance with any required environmental mitigation measures; and other requirements.

Sec. 4284.557 Fund Disbursement

Grantees will be reimbursed as follows:

(a) An SF–270, "Request for Advance or Reimbursement," will be completed by the applicant and submitted to RDA not more frequently than monthly.

(b) Upon receipt of a properly completed SF 270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(c) Grantees are encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, DC 20230.

(d) The grantee's share in the cost of the project will be disbursed in advance of grant funds or on a pro-rata distribution basis with grant funds during the disbursement period. The grantee will not be permitted to provide its contribution at the end of the grant period.

Sec. 4284.558 Reporting

An SF–269, "Financial Status Report," and a project performance activity report will be required of all grantees on a quarterly basis. A final project performance report will be required with the last SF–269. The final report may serve as the last quarterly report. The final report must include a final evaluation of the project. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original of each report to RDA. The project performance reports shall include, but not be limited to, the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Reasons why established objectives were not met;

(c) Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(d) Objectives and timetable established for the next reporting period.

Secs. 4284.559–4284.570 [Reserved]

Sec. 4284.571 Audit Requirements

The grantee will provide an audit report in accordance with subpart A of part 1942 of this title. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with generally accepted government auditing standards using the publication, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions:"

Sec. 4284.572 Grant Servicing

Grants will be serviced in accordance with subpart E of part 1951 of this title.

Sec. 4284.573 Programmatic Changes

The grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope or budget can result in suspension/termination of grant funds.

Sec. 4284.574 Subsequent Grants

Subsequent grants will be processed in accordance with the requirements set forth in this subpart.

Sec. 4284.575 Grant Suspension, Termination, and Cancellation

Grants may be cancelled by RDA by use of Form FmHA 1940–10 "Cancellation of U.S. Treasury Check and/or Obligation." The RDA will notify the applicant, by letter, that the grant has been cancelled. A copy of the letter will be sent to the Regional Attorney, OGC, if the Regional Attorney has been involved. The applicant will be provided appeal rights, as appropriate, in accordance with subpart B of part 1900 of this title. Grants may be suspended or terminated for cause or convenience, in accordance with parts 3015 and 3016 of this title.

Secs. 4284.576–4284.586 [Reserved]

Sec. 4284.587 Exception Authority

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute, an applicable law or a decision of the Comptroller General, if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest and shows how the adverse impact will be eliminated or minimized if the exception is made.

Sec. 4284.588 Forms and Exhibits

Exhibits A, B, and C and forms referenced (all available in any State RDA/FmHA office) are for use in administering grants made under this subpart.

Secs. 4284.589–4284.599 [Reserved]

Sec. 4284.600 OMB Control Number

RDA Instruction 4284–F

Exhibit A

Agreement of Administrative Requirements for Rural Technology Development Grants

This exhibit contains information regarding the responsibilities of the grantee for receipt of grant funds under the Rural Technology Development Grant (RTDG) program. These requirements do not supersede the requirements for receipt of Federal funds as stated in 7 CFR part 3015 and 3016; however, specific areas related to the program are cited below.

In consideration for the RTDG grant by RDA, grantee agrees to:

1. Cause the RTDG program to be completed within the total sums available to it, including grant funds, in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by grantor.

2. Permit periodic inspection of the program operations by a representative of grantor.

3. Make the program available to all persons in grantee's service area without regard to race, color, national origin, religion, sex, marital status, age, physical or mental handicap.

4. Not use grant funds to replace any financial support previously provided or assured from any other source. The grantee agrees that the general level of expenditure by the grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

5. Provide financial management systems which will include:

(a) Accurate, current, and complete disclosure of the financial result of each grant.

(b) Records which identify adequately the source and application of funds for grant-supporting activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds. Grantee shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes.

(d) Accounting records supported by source documentation.

6. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

7. Provide an audit report prepared in accordance with generally accepted Government auditing standards using the publication, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions."

8. Provide grantor with such periodic reports as it may require and permit periodic inspection of its operations by a designated representative of the grantor.

9. Execute Form FmHA 400–1, "Equal Opportunity Agreement," Form FmHA 400–4, "Assurance Agreement," and any other agreements required by grantor to implement the civil rights requirements. If any such form has been executed by grantee as a result of a grant being made to grantee by grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

10. That upon any default under its representations or agreements set forth in this instrument, grantee, at the option and the demand of grantor, will, to the extent legally permissible, repay to grantor forthwith the original principal amount of the grant stated herein above, with interest equal to the rate of interest paid on U.S. 26-week Treasury Bills adjusted quarterly from the date of the default. The provisions of this exhibit may be enforced by grantor at its option and without regard to prior waivers by it of previous defaults of grantee, by judicial proceedings to require specific performance of the terms of this exhibit, or by such other proceedings in the law or equity in either Federal or State courts as may be deemed necessary by grantor to assure compliance with the provisions of this exhibit and the laws and regulations under which this grant is made.

11. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress.

12. That all non-confidential information resulting from its activities shall be made available to the general public on an equal basis.

13. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received, are committed, or are applied to from other sources (public or private).

14. That grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant as published in whole or in part. The material shall contain a notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

8. Provide grantor with such periodic reports as it may require and permit periodic inspection of its operations by a designated representative of the grantor.

9. Execute Form FmHA 400–1, "Equal Opportunity Agreement," Form FmHA 400–4, "Assurance Agreement," and any other agreements required by grantor to implement the civil rights requirements. If any such form has been executed by grantee as a result of a grant being made to grantee by grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

10. That upon any default under its representations or agreements set forth in this instrument, grantee, at the option and the demand of grantor, will, to the extent legally permissible, repay to grantor forthwith the original principal amount of the grant stated herein above, with interest equal to the rate of interest paid on U.S. 26-week Treasury Bills adjusted quarterly from the date of the default. The provisions of this exhibit may be enforced by grantor at its option and without regard to prior waivers by it of previous defaults of grantee, by judicial proceedings to require specific performance of the terms of this exhibit, or by such other proceedings in the law or equity in either Federal or State courts as may be deemed necessary by grantor to assure compliance with the provisions of this exhibit and the laws and regulations under which this grant is made.

11. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress.

12. That all non-confidential information resulting from its activities shall be made available to the general public on an equal basis.

13. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received, are committed, or are applied to from other sources (public or private).

14. That grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant as published in whole or in part. The material shall contain a notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

15. That the grantee shall abide by the policies promulgated in the USDA Uniform Assistance Regulations, 7 CFR parts 3015 and 3016, which provides standards for use by grantee in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

16. Obtain prior approval from grantor for use of grant funds for uses or amounts not consistent with the approved scope of work and budget.

17. That the grantee, except for States, will remit interest earned on grant funds deposited in an interest bearing account in accordance with the USDA Uniform Assistance Regulation 7 CFR parts 3015 and 3016.

18. Grantee will comply with property management standards established by 7 CFR parts 3015 and 3016 for personal property. "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence; such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than 1 year and an acquisition cost of $300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable property. When nonexpendable property is acquired by a grantee with project funds, title shall not be taken by the Federal Government but shall be vested in the grantee subject to the following conditions.

(a) Right to transfer title. For items of real or nonexpendable personal property having a unit acquisition cost of $1,000 or more, RDA may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(i) The property shall be appropriately identified in the grant or otherwise made known to the grantee in writing.

(ii) RDA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If RDA fails to issue disposition instructions within the 120 calendar day period, the grantee shall apply the standards of paragraph 18. (b) of this exhibit.

(iii) When RDA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in paragraphs 18. (b) and (c) of this exhibit.

(iv) When title is transferred either to the Federal Government or to a third party and the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other nonexpendable personal property for which the grantee has title.

(i) The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:

(*1*) Activities sponsored by RDA.

(*2*) Activities sponsored by other Federal agencies.

(ii) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to projects or programs sponsored by RDA; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use for other activities not sponsored by the Federal Government shall be permissible if authorized by RDA. User charges should be considered, if appropriate.

(c) Disposition of nonexpendable personal property. When the grantee no longer needs the property as provided in paragraph 18. (b) of this exhibit, the property may be used for other activities in accordance with the following standards:

(i) Personal property with a unit acquisition cost of less than $1,000. The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The grantee may retain the

property for other use provided that compensation is made to RDA or its successor. The amounts of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the original grantor agency.

(iii) RDA shall determine whether the property can be used to meet the Agency's requirements. If no need exists within RDA, the General Services Administration Federal Property Management Regulations will be used by RDA to determine whether a need for the property exists in other Federal agencies. RDA shall issue instructions to the grantee no later than 120 days after the grantee request and the following procedures shall govern:

(*1*) If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse RDA an amount computed by applying the percentage of the grantor participation in the grant program to the sales proceeds. However, the grantee shall be permitted to deduct and retain from the Federal share $100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(*2*) If the grantee is instructed to dispose of the property other than as described in paragraphs 18. (b) and (c) of this exhibit, the grantee shall be reimbursed by RDA for such costs incurred in its disposition.

(*3*) Property management standards for nonexpendable personal property. The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(*a*) Property records shall be maintained accurately and shall include:

(*i*) A description of the property.

(*ii*) Manufacturer's serial number, model number, Federal stock number, National stock number, or other identification number.

(*iii*) Sources of the property including grant or other agreement number.

(*iv*) Whether title vests in the grantee or the Federal Government.

(*v*) Acquisition date (or date received, if the property was furnished by the Federal Government) and costs.

(*vi*) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government).

(*vii*) Location, use, and condition of the property and the date the information was reported.

(*viii*) Unit acquisition cost.

(*ix*) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a grantee compensates the Federal agency for its share.

(*b*) Property owned by the Federal Government must be marked to indicate Federal ownership.

(*c*) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(*d*) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or the theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee shall promptly notify RDA.

(*e*) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(*f*) Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(*g*) Expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use on nonfederally sponsored activities or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

This exhibit covers the following described personal property and any additional property acquired wholly or in part with grant funds (use continuation sheets as necessary):

19. To the following termination provisions:

(a) Termination for cause: The grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The grantor agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) Termination for convenience: The grantor agency or grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The grantor agency shall allow full credit to the grantee for the Federal share of the noncancelable obligations properly incurred by the grantee prior to termination.

RDA agrees that it will:

1. Assist grantee, within available appropriations, with such technical assistance as grantor deems appropriate in planning the program and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the program is located.

2. At its sole discretion, RDA may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as RDA may determine to be:

(a) Advisable to further the purposes of the grant or to protect the Government's financial interest therein; and

(b) Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Name of Grantee

Title

Date

RDA Approval Official

Title

Date

7 CFR 4284–F Ru

Section of regulations	Title
4284.527	Intergovernmental Consultations.
4284.528 (a)(2)(i)	Evidence of Legal Existence and Authority.
4284.528 (a)(2)(ii)	Financial Information
4284.528 (a)(2)(iii)	Source and Certification of Other Funds.
4284.528 (a)(2)(iv)	Budget
4284.528 (a)(2)(v)	Area to be Served
4284.528 (a)(2)(vi)	Demographic Information.
4284.528 (a)(2)(vii)	Business to be Assisted
4284.528 (a)(2)(viii)	Applicant Experience
4284.528 (a)(2)(ix)	Duration of Project
4284.528 (a)(2)(xi)	Source of Work to be Performed.
4284.528 (a)(2)(xii)	Evaluation Method
4284.528 (a)(2)(xiii)	Plan for Rural Technology Development Grants.
4284.528 (a)(2)(xiv)	Proposed Agreement Between Applicants and Ultimate Recipients.
	Plan to Provide Financial Assistance to Third Parties.
4284.556 (b) Exhibit A	Scope of Work
4284.528	Request for Appeal
4284.555	Evidence of Authority to Execute Document.
4284.556	Evidence of Fidelity Bond Coverage.
4284.558	Project Performance Report.
4284.571	Audit Report

Reporting Requi

4284.527	Request for Environmental Information.
4284.527	Certificate of Non Relocation and Market Capacity Information Report.
4284.527	Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—for Grantees Grantees other than Individuals.
4284 528 (a)	Preapplication for Federal Assistance (for non-construction).

7 CFR 4284–F RURAL TECHNOLOGY DEVELOPMENT GRANTS, JUNE 1994

Section of regulations	Title	Form No.	Estimated number of respondents	Reports filed annually	Estimated total annual responses	Estimated number of hours per respondent	Estimated total hours
Reporting Requirements—No Forms							
4284.527	Intergovernmental Consultations	Written	100	On occasion.	100	2.00	200
4284.528 (a)(2)(i)	Evidence of Legal Existence and Authority.	Written	100	On occasion.	100	1.00	100
4284.528 (a)(2)(ii)	Financial Information	Written	100	On occasion.	100	0.50	50
4284.528 (a)(2)(iii)	Source and Certification of Other Funds.	Written	100	On occasion.	100	0.50	50
4284.528 (a)(2)(iv)	Budget	Written	100	On occasion.	100	2.00	200
4284.528 (a)(2)(v)	Area to be Served	Written	100	On occasion.	100	1.00	100
4284.528 (a)(2)(vi)	Demographic Information.	Written	100	On occasion.	100	2.00	200
4284.528 (a)(2)(vii)	Business to be Assisted	Written	100	On occasion.	100	2.00	200
4284.528 (a)(2)(viii)	Applicant Experience	Written	100	On occasion.	100	1.00	100
4284.528 (a)(2)(ix)	Duration of Project	Written	100	On occasion.	100	0.50	50
4284.528 (a)(2)(xi)	Source of Work to be Performed.	Written	100	On occasion.	100	0.50	50
4284.528 (a)(2)(xii)	Evaluation Method	Written	100	On occasion.	100	0.50	50
4284.528 (a)(2)(xiii)	Plan for Rural Technology Development Grants.	Written	100	On occasion.	100	8.00	800
4284.528 (a)(2)(xiv)	Proposed Agreement Between Applicants and Ultimate Recipients.	Written	100	On occasion.	100	4.00	400
	Plan to Provide Financial Assistance to Third Parties.	Written	30	On occasion.	30	5.00	150
4284.556 (b) Exhibit A	Scope of Work	Written	50	On occasion.	50	8.00	400
4284.528	Request for Appeal	Written	5	On occasion.	5	1.00	5
4284.555	Evidence of Authority to Execute Document.	Written	50	On occasion.	50	0.50	25
4284.556	Evidence of Fidelity Bond Coverage.	Policy	100	On occasion.	100	1.00	100
4284.558	Project Performance Report.	Written	50	4	200	8.00	1,600
4284.571	Audit Report	Written	50	On occasion.	50	6.00	300
Reporting Requirements—Forms Approved Under Other OMB Numbers							
4284.527	Request for Environmental Information.	1940–20 (0575–0094).					
4284.527	Certificate of Non Relocation and Market Capacity Information Report.	449–22 (0575–0029).					
4284.527	Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—for Grantees Grantees other than Individuals.	AD–1049 (9000–0101).	50	On occasion.	50	0.50	25
4284 528 (a)	Preapplication for Federal Assistance (for non-construction).	SF–424.1 (0348–0043).	100	On occasion.	100	1.00	100

7 CFR 4284–F RURAL TECHNOLOGY DEVELOPMENT GRANTS, JUNE 1994—Continued

Section of regulations	Title	Form No.	Estimated number of respondents	Reports filed annually	Estimated total annual responses	Estimated number of hours per respondent	Estimated total hours
4284.528 (b)	Application for Federal Assistance (for non-construction).	SF–424.1 (0348–0043).	50	On occasion.	50	2.00	100
4284.556	Compliance Review	FmHA 400–8 (0575–0018).					
	Assurance Agreement	FmHA 400–4 (0575–0018).					
	Letter of Intent to Meet Conditions.	(FmHA 442–6) (0575–0015).					
	Equal Opportunity Agreement.	(FmHA 400–1) (0575–0018).					
4284.558	Financial Status Report	SF–269 (0348–0039).	50	4	200	1.00	200
4284.557	Request for Advance or Reimbursement.	SF–270 (0348–0006).	50	12	600	0.50	300
Exhibit A	Agreement of Administrative Requirements for Rural Technology Development Grants.	Written	50	On occasion.	50	1.00	50
Record Keeping Requirements							
Exhibit A Sec. 5, 6	Financial Records	Written	50			1.00	50
Exhibit A Sec. 18	Property Records	Written	50			3.00	150
Total reporting					2,935		5,905
Recordkeeping							200
Docket Total							6,105

Dated: June 24, 1994.

Wilbur T. Peer,

Acting Administrator, Rural Development Administration.

[FR Doc. 94–16422 Filed 7–6–94; 8:45 am]

BILLING CODE 3410–32–U

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Arkansas Advisory Committee to the Commission will meet on Friday, September 9, 1994, from 1:00 p.m. until 3:00 p.m. at the Arkansas Excelsior Hotel, Finley-Vinson Room, #3 Statehouse Plaza, Little Rock, Arkansas 72201. The purpose of the meeting is to discuss and plan future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 27, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–16362 Filed 7–6–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 2:00 p.m. on Saturday, July 23, 1994, at the Travelodge Hotel, Harbor Island, 1960 Harbor Island Drive, San Diego, California 92101. The purpose of the meeting is to discuss proposals for civil rights projects in Orange County and on employment in the media in Los Angeles.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 27, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–16359 Filed 7–6–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will be held from 9:00 a.m. until 5:00 p.m. on Friday, July 29, 1994, at the Westin Hotel, 50 South Capitol Avenue, Indianapolis, Indiana 46204. The purpose of the meeting is to discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Hollis E. Hughes, 219–232–8201, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 27, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–16360 Filed 7–6–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Louisiana Advisory Committee to the Commission will meet on Tuesday, September 13, 1994, from 6:00 p.m. until 8:00 p.m. at the Doubletree Hotel, Shadows Room, 300 Canal Street, New Orleans, Louisiana 70130. The purpose of the meeting is to discuss and plan future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 27, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–16363 Filed 7–6–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Mississippi Advisory Commitee to the Commission will meet on Wednesday, August 10, 1994, from 6:00 p.m. to 8:00 p.m. at the

to the Committee, should contact Committee Chairperson Hollis E. Hughes, 219–232–8201, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 27, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–16360 Filed 7–6–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Louisiana Advisory Committee to the Commission will meet on Tuesday, September 13, 1994, from 6:00 p.m. until 8:00 p.m. at the Doubletree Hotel, Shadows Room, 300 Canal Street, New Orleans, Louisiana 70130. The purpose of the meeting is to discuss and plan future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 27, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–16363 Filed 7–6–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Mississippi Advisory Commitee to the Commission will meet on Wednesday, August 10, 1994, from 6:00 p.m. to 8:00 p.m. at the Edison Walthall Hotel, Azaela Room, 225 East Capitol Street, Jackson, Mississippi 39201. The purpose of the meeting is to discuss and plan for the Committee's project on police-community relations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 27, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit

[FR Doc. 94–16361 Filed 7–6–94; 8:45 am]

BILLING CODE 6335–01–P

Hearing on Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—New York City

Notice is hereby given pursuant to the provisions of the United States Commission on Civil Rights Act of 1983, Pub. L. 98–183, 97 Stat. 1301, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on Monday, September 19, 1994, beginning at 9:00 a.m., in the Ceremonial Court of the U.S. Court of International Trade, located at One Federal Plaza, New York, New York 10007.

The purpose of the hearing will be to collect information within the jurisdiction of the Commission, in order to examine underlying causes of racial and ethnic tensions in the United States.

The Commission is an independent bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information concerning legal developments, with respect to discrimination or denials of equal protection of the laws under the constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the hearing and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division, at (202) 376-8105 (TDD (202) 376–8116)), at least five (5) working days before the scheduled date of the hearing.

Dated at Washington, DC, July 1, 1994.

Emma Monroig,

Acting General Counsel.

[FR Doc. 94–16401 Filed 7–6–94; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Defense Diversification Pilot Survey.

Agency Form Number: None assigned.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 4,000 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 2 hours.

Needs and Uses: Commerce is conducting an assessment of defense subcontractors in order to determine the firms' long–term strength and viability, as well as to find out what government resources would be useful to them in diversifying their operations. This data collection will be used to support defense conversion activities in California.

Affected Public: Businesses or other for–profit organizations.

Frequency: One–time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: July 1, 1994

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–16455 Filed 7–6–94; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend Certificate

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–5A016."

Geothermal Energy Association's ("GEA") original Certificate was issued under the name "National Geothermal Association (NGA)". The original Certificate was issued on February 5, 1990 (55 FR 4647, February 9, 1990), and previously amended on November 7, 1990 (55 FR 47784, November 15, 1990); April 17, 1991 (56 FR 16328, April 22, 1991); September 11, 1991 (56 FR 47068, September 17, 1991), and on October 25, 1993 (58 FR 58325, November 1, 1993). On April 12, 1994, the National Geothermal Association changed its name to the Geothermal Energy Association. A summary of the application for an amendment follows.

Summary of the Application

Applicant: Geothermal Energy Association 2001 Second Street, Suite 5 Davis, California 95616

Contact: Arthur John Armstrong, Counsel, Telephone: (703) 356–3100

Application No.: 89–5A016

Date Deemed Submitted: June 28, 1994

Proposed Amendment: GEA seeks to amend its Certificate to:

1. add each of the following companies as a new "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): M-I Drilling Fluids Company, L.L.C., Houston, Texas (controlling entity: Smith International Acquisition Corp., Houston, Texas); Smith International Acquisition Corp., Houston, Texas, (controlling entity: Smith International, Inc., Houston, Texas); and Smith International, Inc., Houston, Texas.

2. Delete each of the following companies as a "Member" of the Certificate: Energylog Corp.; Grace Drilling Company, Inc.; Mesquite Group, Inc.; M-I Drilling Fluids Company and its controlling entity, Dresser Industries, Inc.; Technology Export Company and its controlling entity, Masco Industries, Inc.; USGIC Dominica, L.P.; and Williams Tool Company, Inc.; and

3. Change the listing of the company name for each current "Member" cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Maxwell Laboratories, S–CUBED Division, and its controlling entity, Maxwell Laboratories, Inc. (S–Cubed, a Division of Maxwell Labs, and its controlling entity, Maxwell Laboratories, Inc.); Nabors Loffland Drilling Company (Nabors Drilling USA, Inc.); and Foster Valve Corporation and its controlling entity, Masco Industries, Inc. (Foster Valve Corporation, and its controlling entity, Mascotech, Inc.).

Dated: June 30, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–16394 Filed 7–6–94; 8:45 am]

BILLING CODE 3510–DR–P

Minority Business Development Agency

Business Development Center Applications: Indianapolis, IN

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation of notice.

SUMMARY: The Minority Business Development Agency (MBDA) is canceling the announcement to solicit competitive applications under its Minority Business Development Center program to operate a Indianapolis, Indiana MBDA for a three (3) year period, starting September 1, 1994, to August 31, 1995, in the Indianapolis, Indiana MSA (Closing date May 2, 1994). Refer to the **Federal Register** dated March 23, 1994.

Dated: June 30, 1994.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 94–16393 Filed 7–6–94; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

July 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 362 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 1, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 1, 1994, you are directed to amend further the directive dated January 24, 1994 to increase the limit for Category 362 to 7,463,275 numbers [1], as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–16408 Filed 7–6–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force—Initiative Implementation

AGENCY: U.S. Army Materiel Command, DOD.

ACTION: Notice of meeting.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 1, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 1, 1994, you are directed to amend further the directive dated January 24, 1994 to increase the limit for Category 362 to 7,463,275 numbers [1], as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–16408 Filed 7–6–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force—Initiative Implementation

AGENCY: U.S. Army Materiel Command, DOD.

ACTION: Notice of meeting.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and AR 15–1, Committee Management, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF). The PPTF is chartered to develop new and innovative methods to maintain the government-owned, contractor-operated ammunition industrial base and retain critical skills for a national industrial emergency. Focus of this meeting will be on policy and procedures of property and equipment management. A tour of the Lake City Army Ammunition Plant will be included as part of this meeting. This session is open to the public.

DATES OF MEETING: August 2–4, 1994.

PLACE OF MEETING: Adam's Mark, 9103 E. 39th Street, Kansas City, MO 64133.

TIME OF MEETING: 9:00 a.m.–5:00 p.m.

ADDRESSES: ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333.

FOR FURTHER INFORMATION CONTACT: Mr. R.B. Auger, (703) 274–9838.

SUPPLEMENTARY INFORMATION: Reservations should be made directly with Adam's Mark; telephone (816) 737–0200. Please be sure to mention that you will be attending the ARMS meeting to assure occupancy in the block of rooms set aside for this meeting.

Request that you contact Dona Ponce in the ARMS Office at Rock Island Arsenal; telephone (309) 782–4535, if you will be attending the meeting so that our roster of attendees is accurate This number may also be used if other assistance regarding the ARMS meeting is required.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 94–16350 Filed 7–6–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 27 July 1994.

Time of Meeting: 0800–1700.

Place: Fort Collins, Colorado.

Agenda: The Army Science Board's Ad Hoc Subgroup on "The Use of Technologies in Education and Training" will meet to review the National Technological University distance learning program and to conduct informal discussions on technology and education. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board

[FR Doc. 94–16355 Filed 7–6–94; 8:45 am]

BILLING CODE 3710–08–M

Patents Available for Licensing

AGENCY: U.S. Army Natick Research, Development and Engineering Center, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive of nonexclusive licenses under the following patent. Any licenses granted shall comply with 35 U.S.C. 29 and 37 CFR Part 404.

Issued patent	Title	Issue date
5,320,164	Body Heating and Cooling Garment	06/14/94
5,322,866	Method of Producing Biodegradable Starch-Based Produce From Unprocessed Raw Materials	06/21/94

ADDRESSES: U.S. Army Natick Research, Development and Engineering Center, Office of Chief Counsel, Attn: Patents, Natick, MA 01760–5035.

FOR FURTHER INFORMATION CONTACT: Ms. Jessica M. Niro, Paralegal Specialist, (508) 651–4322.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 94–16345 Filed 7–6–94; 8:45 am]

BILLING CODE 3710–08–M

Prospective Exclusive License

AGENCY: U.S. Army Engineer Waterways Experiment Station, DOD.

ACTION: Notice of exclusive license.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective exclusive license of U.S. Patent No. 4,797–026, entitled "Expandable Sand-Grid for Stabilizing an Undersurface".

ADDRESSES: U.S. Army Corps of Engineers, Waterways Experiment Station, CEWES–CT–C, Vicksburg, MS 39180–6199

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994

FOR FURTHER INFORMATION CONTACT: Ms. Norman E. Logue, (601) 634–3076.

DATES: Written objections must be filed not later than September 6, 1984.

SUPPLEMENTARY INFORMATION: The Expandable Sand-Grid for Stabilizing an Undersurface was invented by Steve L. Webster ((U.S. Patent Application No. 889,025; U.S. Patent No. 4,797,026; filing date, July 24, 1986; issued date, January 10, 1989).

Rights to this United States patent have been assigned to the United States Government as represented by the Secretary of the Army. Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, US Code, the Department of the Army, as represented by the U.S. Army Corps of Engineers, Waterways Experiment Station, intends to grant an exclusive license for the above mentioned patent to Presto Products Company, 670 N. Perkins St., P.O. Box 2399, Appleton, WI 54913–2399.

Pursuant to 37 CFR 404.7(a)(1)(i), any interested party may file written objections to this prospective exclusive license arrangement. Written objections should be directed to the above address, ATTN: Mrs. Norma E. Logue.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–16347 Filed 7–6–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide a copy of the Regulatory Guidance Letter (RGL 94–1) to all known interested parties. RGL's are used by the Corps as a means to transmit guidance on the Corps Regulatory Program (33 CFR 320–330) to its division and district engineers. The Corps publishes RGL's in the **Federal Register** upon issuance as a means of informing the public of Corps guidance.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 272–1782.

SUPPLEMENTARY INFORMATION: RGL 94–1, Subject: Expiration of Geographic Jurisdictional Determinations, is hereby published.

Dated: June 16, 1994.

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter, RGL 94–1

Date: 23 May 1994, Expires: 31 December 1999.

Subject: Expiration of Geographic Jurisdictional Determinations.

1. Regulatory Guidance Letter (RGL) 90–6, Subject: "Expiration Dates for Wetlands Jurisdictional Delineations" is extended until 31 December 1999, subject to the following revisions.

2. This guidance should be applied to all jurisdictional determinations for all waters of the United States made pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection Research and Sanctuaries Act of 1972.

3. To be consistent with paragraph IV.A. of the 6 January 1994, interagency Memorandum of Agreement Concerning the Delineation of Wetlands for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act, all U.S. Army Corps of Engineers geographic jurisdictional determinations shall be in writing and normally remain valid for a period of five years. The Corps letter (see paragraph 4.(d) of RGL 90–6) should include a statement that the jurisdictional determination is valid for a period of five years from the date of the letter unless new information warrants revision of the determination before the expiration date.

4. For wetland jurisdictional delineations the "effective date of this RGL" referred to in paragraphs 4 and 5 of RGL 90–6 was and remains 14 August 1990. For jurisdictional determinations, other than wetlands jurisdictional delineations, the "effective date of this RGL" referred to in paragraphs 4 and 5 of RGL 90–6 will be the date of this RGL.

5. Previous Corps written jurisdictional determinations, including wetland jurisdictional delineations, with a validity period of three years remain valid for the stated period of three years. The district engineer is not required to issue new letters to extend such period from three years to a total of five years. However, if requested to do so, the district engineer will normally extend the three year period to a total of five years unless new information warrants a new jurisdictional determination.

6. Districts are not required to issue a public notice on this guidance but may do so at their discretion.

7. This guidance expires on 31 December 1999 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

[FR Doc. 94–16349 Filed 7–6–94; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement (OERI)

AGENCY: Department of Education.

ACTION: Notice to solicit public comments.

SUMMARY: The Assistant Secretary solicits written public comment on the implementation by the Office of Educational Research and Improvement (OERI) of its new authorizing legislation, the "Educational Research, Development, Dissemination, and Improvement Act of 1994." Comments will be used to help the Assistant Secretary plan for the reorganization of OERI and the activities it will carry out, as well as establish, in collaboration with the National Educational Research Policy and Priorities Board, priorities for OERI's future work.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: All comments concerning this notice, as well as requests for copies of the Educational Research, Development, Dissemination, and Improvement Act of 1994 and the topic papers (discussed below under **SUPPLEMENTARY INFORMATION**), should be addressed to Dr. Laurence Peters, U.S. Department of Education, 555 New Jersey Avenue, NW., room 600, Washington, D.C. 20208–5530. Comments on this notice may also be sent to the Department of Education at the Internet electronic mail address: reauth—comments@inet.ed.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Laurence Peters. Telephone: (202) 219–2050. FAX: (202) 219–1466. Internet electronic mail address: reauth—questions@inet.ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 31, 1994, President Clinton signed Public Law 103–227, which includes both the "Goals 2000: Educate America Act" and the "Educational Research, Development, Dissemination, and Improvement Act of 1994." The latter Act creates a new Office of Educational Research and Improvement with a broad mandate to conduct an array of research, development, dissemination, and improvement activities aimed at strengthening the education of all students. It also requires the establishment of a National Educational Research Policy and Priorities Board, which is to work collaboratively with the Assistant Secretary to identify priorities to guide the work of OERI.

The mission of OERI, which the new authorizing legislation requires be accomplished in collaboration with researchers, teachers, school administrators, parents, students, employers, and policymakers, is to provide national leadership in: (1) expanding fundamental knowledge and understanding of education; (2) promoting excellence and equity in education and the achievement of the National Education Goals by spurring reform in the school systems of the United States; (3) promoting the use and application of research and development to improve practice in the classroom; and (4) monitoring the state of education.

The statute requires that OERI establish five new research institutes and a national dissemination system. Specifically, the new OERI must include:

- The National Institute on Student Achievement, Curriculum, and Assessment;
- The National Institute on the Education of At-Risk Students;
- The National Institute on Early Childhood Development and Education;
- The National Institute on Educational Governance, Finance, Policymaking, and Management;
- The National Institute on Postsecondary Education, Libraries, and Lifelong Learning;
- The Office of Reform Assistance and Dissemination; and
- The National Library of Education.

The Assistant Secretary is interested in receiving comments and recommendations from the public regarding the functions and responsibilities of these new organizational components, the priorities that should govern their work, and the mix of activities that would best serve OERI's mission. The Assistant Secretary welcomes recommendations related to any aspect of the implementation of the "Educational Research, Development, Dissemination, and Improvement Act of 1994," but is

Act" and the "Educational Research, Development, Dissemination, and Improvement Act of 1994." The latter Act creates a new Office of Educational Research and Improvement with a broad mandate to conduct an array of research, development, dissemination, and improvement activities aimed at strengthening the education of all students. It also requires the establishment of a National Educational Research Policy and Priorities Board, which is to work collaboratively with the Assistant Secretary to identify priorities to guide the work of OERI.

The mission of OERI, which the new authorizing legislation requires be accomplished in collaboration with researchers, teachers, school administrators, parents, students, employers, and policymakers, is to provide national leadership in: (1) expanding fundamental knowledge and understanding of education; (2) promoting excellence and equity in education and the achievement of the National Education Goals by spurring reform in the school systems of the United States; (3) promoting the use and application of research and development to improve practice in the classroom; and (4) monitoring the state of education.

The statute requires that OERI establish five new research institutes and a national dissemination system. Specifically, the new OERI must include:

- The National Institute on Student Achievement, Curriculum, and Assessment;
- The National Institute on the Education of At-Risk Students;
- The National Institute on Early Childhood Development and Education;
- The National Institute on Educational Governance, Finance, Policymaking, and Management;
- The National Institute on Postsecondary Education, Libraries, and Lifelong Learning;
- The Office of Reform Assistance and Dissemination; and
- The National Library of Education.

The Assistant Secretary is interested in receiving comments and recommendations from the public regarding the functions and responsibilities of these new organizational components, the priorities that should govern their work, and the mix of activities that would best serve OERI's mission. The Assistant Secretary welcomes recommendations related to any aspect of the implementation of the "Educational Research, Development, Dissemination, and Improvement Act of 1994," but is especially interested in recommendations regarding:

- Research priorities for each institute, especially those topics and issues that should be the focus of long-term, sustained, systematic, and integrated research and development;
- Strategies to help ensure that the research agenda is relevant to the needs of educators working with students;
- Dissemination strategies that will be most effective in meeting the needs of a range of different customers—education researchers, practitioners, policymakers, parents, students, and employers;
- Strategies and technical assistance activities that will help ensure that knowledge gained from research will help improve teaching and learning;
- Strategies for identifying proven and promising educational practices and programs;
- Coordination of OERI's research, development and dissemination with similar activities of other agencies and organizations, including other units of the Department and other federal agencies, to ensure that customer needs are met and the federal investment is maximized;
- Peer review and program evaluation activities to ensure that the programs and projects OERI supports meet the highest standards of professional excellence;
- Education topic areas in which syntheses of research-based information are urgently needed to help guide improvement efforts; and
- Information services, resources and materials that should be available to the public through a National Library of Education.

The Assistant Secretary is interested in wide public comment—from education researchers, practitioners, policymakers, parents, students, employers and others interested in systemic education reform—regarding the policies and priorities OERI must identify and develop.

In seeking public comment, OERI is committed to supporting Executive Order 12862, Setting Customer Service Standards, which provides that the Federal Government be "customer driven." To deliver the highest quality service, OERI must understand its customers' needs and interests and how it can be most responsive to these needs and interests.

Availability of Reauthorization Legislation and Topic Papers: To provide the public with a complete description of the provisions of the new legislation, OERI will make available upon request a copy of the "Educational Research, Development, Dissemination, and Improvement Act of 1994." Prior to submitting any comments, OERI encourages commenters to review this legislation. In addition, OERI has prepared topic papers on a number of discrete subject areas, including each of the major OERI organizational entities required by the new legislation. Individuals who wish to respond to this notice may find these topic papers helpful as they develop their comments. The purpose of these topic papers is to share information and to generate discussion and recommendations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this notice.

All comments and recommendations will be available for public inspection, during and after the comment period, in room 600, 555 New Jersey Avenue, NW., Washington, DC between the hours of 8:30 a.m. and 4 p.m. Monday through Friday of each week except Federal holidays.

Dated: June 30, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–16404 Filed 7–6–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–293–000, et al.]

PacifiCorp, et al.; Electric Rate and Corporate Regulation Filings

June 28, 1994.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER94–293–000]

Take notice that PacifiCorp on June 20, 1994, tendered as an amended filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Harrison Interconnection and Transmission Facilities Conveyance Agreement (Final Agreement) between PacifiCorp and Portland General Electric Company (Portland General) dated June 17, 1994.

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of October 31, 1990 be assigned to the Final Agreement.

Copies of this filing were supplied to Portland General and the Public Utility Commission of Oregon.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Portland General Electric Company

[Docket No. ER94–924–000]

Take notice that on June 22, 1994, Portland General Electric Company (PGE) tendered for filing supplemental information to its original filing in this Docket. The supplemental information consists of a clarifying amendment to the Operation and Maintenance Agreement between PGE and the Eugene Water and Electric Board (EWEB) regarding the Stone Creek Hydroelectric Project.

Copies of this filing have been served on EWEB and the Otegon Public Utility Commission.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Company

[Docket No. ER94–1204–000]

Take notice that on June 21, 1994, Wisconsin Power and Light Company (WP&L) tendered for filing an amendment to its Bulk Power Sales Tariff, originally filed on April 29, 1994. In its amended filing, WP&L has lowered its maximum up-to rate that it can charge for capacity, when the capacity is generated by WP&L. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 15, 1994.

WP&L states that copies of this filing have been served on the Public Service Commission of Wisconsin.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Morgan Stanley Capital Group

[Docket No. ER94–1384–000]

Take notice that Morgan Stanley Capital Group Inc. (MS Capital) on June 21, 1994, tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, .207, its Rate Schedule No. 1, to be effective 60 days from and after June 20, 1994, and a petition for waivers of the blanket approvals under various regulations of the Commission, and clarification of jurisdiction under Section 201 of the Federal Power Act.

MS Capital intends to engage in electric power and energy transactions as a marketer. MS Capital's marketing activities will include purchasing capacity, energy and/or transmission services from electric utilities, qualifying facilities and independent power producers, and reselling such power to other purchasers. All sales will be at arms-length. MS Capital is not in the business of producing or transmitting electric power, nor does it currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. West Texas Utilities Company

[Docket No. ER94–1385–000]

Take notice that on June 21, 1994, West Texas Utilities Company (WTU) filed an unexecuted Remote Control Area Load Addendum (Addendum) to its Interconnection Agreement with Texas Utilities Electric Company (TU Electric). The Addendum establishes terms and conditions pursuant to which WTU and TU Electric will accomplish the transfer of the electric load of Tex-La Electric Cooperative of Texas, Inc. (Tex-La) from TU Electric's control area to WTU's control area.

WTU seeks an effective date the later of June 29, 1994, or the date on which TU Electric begins to provide transmission service to Tex-La pursuant to Commission order in Docket No. TX94–4–000. Accordingly, WTU seeks waiver of the Commission's notice requirements if and to the extent necessary. Copies of the filing have been served on TU Electric, Tex-La and the Public Utility Commission of Texas. Copies are also available for inspection in WTU's offices in Abilene, Texas.

Comment date: July 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date, Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16423 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC94–19–000, et al.]

Public Service Company of Colorado, et al.; Electric Rate and Corporate Regulation Filings

June 29, 1994.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado

[Docket No. EC94–19–000]

Take notice that on June 23, 1994, Public Service Company of Colorado (Public Service) filed an application for approval under § 23 of the Federal Power Act for the sale of a certain transmission facility to Holy Cross Electric Association, Inc. (Holy Cross). Public Service requested that the Commission approve the application prior to the scheduled closing date of August 1, 1994.

Public Service states that it has submitted the information required by Part 33 of the Commission's regulations in support of the application.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Portland General Electric Company

[Docket Nos. ER93–462–000 and ER93–703–000]

Take notice that on June 22, 1994, Portland General Electric Company (PGE) tendered for filing an amendment to its original filings under Docket Nos. ER93–462–000 and ER93–703–000. The nature of the amendment is a revision of tariff language and an update to cost support for rate ceiling components in the tariff. Copies of this filing have been served on the parties included in the distribution list contained in the filing letter.

Pursuant to 18 CFR § 35.11 PGE requests that the Commission grant waiver of the notice requirements of 18 CFR § 35.3 to allow PGE's FERC Electric Tariff, Original Volume No. 1 and the service agreements with Public Utility District No. 1 of Chelan County and City of Vernon to become effective May 20, 1993; and to allow the service agreement with Louis Dreyfus Electric Power Incorporated to become effective July 10, 1993, consistent with the original filings in Docket Nos. ER93–462–000 and ER93–703–000 respectively.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER94–1090–000 and ER94–1113–000]

Take notice that on June 27, 1994, Northern States Power Company (Minnesota) (NSP–MN) and Northern States Power Company (Wisconsin) (NSP–WI), (jointly hereafter NSP) tendered its Purchase and Resale Service (Order 84) and Transmission Tariff Compliance Filing. This Compliance filing addresses the summary dispositions contained in the May 27, 1994, Order and includes corrections to the filing.

NSP requests that this Compliance filing become effective on November 1, 1994.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Wisconsin)

[Docket No. ER94–1392–000]

Take notice that on June 23, 1994, Northern States Power Company, Wisconsin (NSP–W) filed Amendments to its Power and Energy Supply Agreement with the Villages of Trempealeau and Bangor. According to the filing utility the Amendments extend the term of the agreement in exchange for a discount on the power and energy supply rate.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Company

[Docket No. ER94–1393–000]

Take notice that on June 23, 1994, Southwestern Electric Power Company (SWEPCO) tendered for filing an agreement with Northeast Texas Electric Cooperative (NTEC) under which SWEPCO agreed to install, operate and maintain certain facilities at a new delivery point.

SWEPCO requests that the agreement be accepted to become effective as of June 24, 1994. Copies of the filing have been served on NTEC and the Public Utility Commission of Texas.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Valero Power Services Company

[Docket No. ER94–1394–000]

Take notice that on June 22, 1994, Valero Power Services Company (VALPO) tendered for filing pursuant to Rule 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR

3. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER94–1090–000 and ER94–1113–000]

Take notice that on June 27, 1994, Northern States Power Company (Minnesota) (NSP–MN) and Northern States Power Company (Wisconsin) (NSP–WI), (jointly hereafter NSP) tendered its Purchase and Resale Service (Order 84) and Transmission Tariff Compliance Filing. This Compliance filing addresses the summary dispositions contained in the May 27, 1994, Order and includes corrections to the filing.

NSP requests that this Compliance filing become effective on November 1, 1994.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Wisconsin)

[Docket No. ER94–1392–000]

Take notice that on June 23, 1994, Northern States Power Company, Wisconsin (NSP–W) filed Amendments to its Power and Energy Supply Agreement with the Villages of Trempealeau and Bangor. According to the filing utility the Amendments extend the term of the agreement in exchange for a discount on the power and energy supply rate.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Company

[Docket No. ER94–1393–000]

Take notice that on June 23, 1994, Southwestern Electric Power Company (SWEPCO) tendered for filing an agreement with Northeast Texas Electric Cooperative (NTEC) under which SWEPCO agreed to install, operate and maintain certain facilities at a new delivery point.

SWEPCO requests that the agreement be accepted to become effective as of June 24, 1994. Copies of the filing have been served on NTEC and the Public Utility Commission of Texas.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Valero Power Services Company

[Docket No. ER94–1394–000]

Take notice that on June 22, 1994, Valero Power Services Company (VALPO) tendered for filing pursuant to Rule 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective the earlier of July 31, 1994, or the date of a Commission order granting approval of this Rate Schedule.

VALPO intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where VALPO purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, VALPO will be functioning as a marketer. In VALPO's marketing transactions, VALPO proposes to charge rates mutually agreed upon by parties. In transactions where VALPO does not take title to the electric power and/or energy, VALPO will be limited to the role of a broker and will charge a fee for its services. VALPO is not in the business of producing or transmitting electric power. VALPO does not currently have or contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Alabama Power Company

[Docket No. ER94–1395–000]

Take notice that on June 24, 1994, Alabama Power Company tendered for filing, a Delivery Point Specification Sheet dated as of July 13, 1994, which reflect the addition of a delivery point to the Utilities Board of the City of Sylacauga. This delivery point will be served under the terms and conditions of the Agreement for Partial Requirements Service and Complementary Service between Alabama Power Company and the Alabama Municipal Electric Authority dated February 24, 1986, being designated as FERC Rate Schedule No. 165. The parties request an effective date of July 13, 1994, for the addition of said delivery point.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER94–1396–000]

Take notice that on June 24, 1994, Carolina Power & Light Company (CP&L) tendered for filing with the Commission the changes outlined below to its agreements with Lumbee River EMC and Randolph EMC.

1. *Lumbee River EMC-Red Springs 115 kV*—Change in point of delivery location, increase in delivery voltage from 23 kV to 115 kV, change in metering location, decrease in metered voltage from 23 kV to 12 kV and the addition of special provisions for providing facilities for metering pulse information.

2. *Randolph EMC-Parkwood 115 kV*—Installation of a new point of delivery including special provisions for providing facilities for metering pulse information.

The Company requests that the notice period be waived and that these supplements be made effective coincident with the effective dates set forth in the respective Exhibit A's; however, the Company will not begin billing for the new additional facilities until the date the FERC accepts and approves this filing.

A copy of this filing has been sent to the affected parties, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Company

[Docket No. ER94–1397–000]

Take notice that on June 23, 1994, Boston Edison Company (Edison) tendered for filing for informational purposes the 1993 true-up to actual for the Substation 402 Agreement (FPC Rate No. 149) between Edison and Cambridge Electric Light Company (Cambridge). This filing is made pursuant to the terms of the 1987 Settlement Agreement between Edison, Cambridge and the Town of Belmont, Massachusetts in Docket No. ER86–517–000.

Edison states that it has served the filing on Cambridge, Belmont and the Massachusetts Department of Public Utilities.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16424 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–621–000, et al.]

Panhandle Eastern Pipe Line Company, et al.; Natural Gas Certificate Filings

June 29, 1994.

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP94–621–000]

Take notice that on June 22, 1994, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–621–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate certain facilities under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle proposes to install a ten-inch (10") tap and related facilities to provide bi-directional flow for delivery and receipt of up to 60 MMcf of natural gas per day for Midwest Gas Storage, Inc. (Midwest Gas) in Section 5, Township 15 North, Range 6 West, Parke County, Indiana. The estimated cost of the project is $259,700 to be reimbursed to Panhandle by Midwest Gas.

Comment date: August 15, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas; Panhandle Eastern Pipe Line Company

[Docket No. CP94–627–000]

Take notice that on June 24, 1994, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944 and Panhandle Eastern Pipe Line Company (Panhandle), 5400 Westheimer Court, Houston, Texas 77056–1642 filed, in Docket No. CP94–627–000, a joint application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of the transportation and exchange service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG and Panhandle propose to abandon service under the Gas Purchase, Transportation, and Exchange Agreement dated December 1, 1978, as amended (Master Agreement), currently on file as CIG's Rate Schedule X–38 and Panhandle's Rate Schedule TSE–4. CIG and Panhandle state that they have settled all issues related to the Master Agreement.

CIG and Panhandle state there is no abandonment of any facilities pursuant to the instant application.

Comment date: July 20, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. NorAm Gas Transmission Company

[Docket No. CP94–628–000]

Take notice that on June 24, 1994, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002, filed an application in Docket No. CP94–628–000 pursuant to Section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment by transfer to Arkla Gathering Services Company of approximately 600 previously certificated facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NorAm states that this application is being filed, under protest, in compliance with the Commission's May 27, 1994, order in *Arkla Gathering Services Company*, Docket No. CP94–36–000 and that the abandonment would not adversely affect NorAm's ability to continue to render certificated transportation services to its customers or its ability to meet fully its obligations under Order No. 636. NorAm also states that these facilities are gathering facilities but had been erroneously reported in NorAm's predecessors' year-end budgetary certificate reports, in spite of the fact that the facilities were not constructed under those budget-type certificates.

Comment date: July 20, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP94–629–000]

Take notice that on June 24, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–629–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point to provide service to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution), under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to construct and operate a permanent delivery point on National's Line R–24 in Cattaraugus County, New York. National states that on June 20, 1994, Distribution began receiving emergency transportation service from National at this delivery point in order to maintain service to 300 customers who were in danger of losing service because Distribution had sustained a line hit on its Old Line R. National further states that Distribution then asked National to establish a permanent delivery point to Distribution from National's Line R–24 in Cattaraugus County, New York. It is stated that the total volumes to be delivered to Distribution will be 69,000 Mcf annually. It is further stated that Distribution constructed the necessary facilities at its expense to establish the new delivery point; therefore, National will incur no costs as a result of establishing the delivery point.

Comment date: August 15, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16425 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP91–41–028]

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

June 30, 1994.

Take notice that on June 27, 1994 Columbia Gas Transmission Corporation (Columbia) tendered for filing the following proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 18, 1994:

Second Revised Sheet No. 80
First Revised Sheet No. 82
First Revised Sheet No. 83

Columbia states that it tendered this filing in compliance with the Federal Energy Regulatory Commission's

the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16425 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP91–41–028]

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

June 30, 1994.

Take notice that on June 27, 1994 Columbia Gas Transmission Corporation (Columbia) tendered for filing the following proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 18, 1994:

Second Revised Sheet No. 80
First Revised Sheet No. 82
First Revised Sheet No. 83

Columbia states that it tendered this filing in compliance with the Federal Energy Regulatory Commission's (Commission) letter order issued June 10, 1994 in Docket No. RP91–41, et al., which required that Columbia file tariff sheets reflecting the individual amortization periods elected by each customer for additional billing of Order Nos. 500/528 costs.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions, and to each of the parties set forth on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16379 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–41–027]

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

June 30, 1994.

Take notice that on June 23, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective April 18, 1994:

Substitute Second Revised Sheet No. 60
Substitute Original Sheet No. 60A
Substitute First Revised Sheet No. 61
Substitute Original Sheet No. 61A

Columbia states that this filing contains substitute tariff sheets to the compliance filing made in this docket on June 21, 1994.

Columbia states that copies of the filing were served upon Columbia's firm customers, interested state commissions, and to each of the parties set forth on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16378 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA94–1–23–004]

Eastern Shore Natural Gas Company; Proposed Changes in FERC Gas Tariff

June 30, 1994.

Take notice that on June 21, 1994 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets and refund reports, included in Appendix A and B of the filing, to comply with the Commission's Order dated May 19, 1994, in the above referenced proceeding. Eastern Shore has separately filed a request for rehearing of the May 19 Order.

Eastern Shore states that the subject tariff sheets are being filed to comply with Ordering Paragraph C of the Commission's Order. Such paragraph directed Eastern Shore to revise its tariff to provide either a Unit-of-Sales or Unit-of-Purchase methodology for computing both its demand current adjustment and monthly deferred demand costs in accordance with § 154.303(c)(2)(ii) of the Commission's PGA regulations and file such revised tariff sheets within 30 days of the date of the Order to be made effective prospectively from the date of the Order.

As stated in Eastern Shore's request for rehearing, Eastern Shore believes its PGA tariff provisions and its PGA filings during the past six years have consistently used a Unit-of-Purchase methodology for computing both the current demand charge adjustment and the monthly demand deferrals. Eastern Shore, however, states it is willing to revise its tariff provisions to be effective May 19, 1994, in accordance with the Commission's Order to further clarify that both its current demand charge adjustments and monthly demand deferrals will be calculated using a Unit-of-Purchase methodology.

Eastern Shore states that two "refund reports" are being filed to comply with Ordering Paragraph D, which requires Eastern Shore to refund with interest its overcharges from November 1, 1992 to the current billing month and to file a report showing how the refund was

calculated. Due to what Eastern Shore believes to be an inconsistency or contradiction with respect to the Commission's language in its Order, Eastern Shore has submitted for the Commission's review two separate refund scenarios with significantly different results, each of which it states is arguably in compliance with the Commission's Order.

Eastern Shore states that upon notification from the Commission as to which refund report it accepts, it will credit the appropriate refund amount to its Account No. 191 Demand Refund Sub-Account and refund such amount, as provided in § 21.6, "Rufunds" of its PGA tariff provisions.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16380 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–626–000]

El Paso Natural Gas Co.; Notice of Request Under Blanket Authorization

June 30, 1994.

Take notice that on June 23, 1994, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP94–626–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate facilities to implement a new delivery point (the Skellytown Meter Station) in Carson County, Texas, under its blanket certificate issued in Docket No. CP82–435–000,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

El Paso states it has entered into a Transportation Service Agreement with Southern Union Gas Company (Southern Union) dated April 22, 1994, (TSA) for the interruptible transportation and delivery of natural gas to Southern Union at the proposed Skellytown Meter Station of up to 29,000 Mcf annually and 310 Mcf per peak day. El Paso states the transportation will be provided pursuant its blanket transportation certificate issued in Docket No. CP88–433–000.[2] Southern Union currently provides natural gas service to Skellytown, Texas, and it has requested new natural gas service from El Paso to increase the dependability of gas deliveries to Skellytown. El Paso states that the proposed delivery point will be located at milepost 54.4 on El Paso's E.P.N.G. Schafer Plant—Dumas Plant Line and Loop Line in Carson County, Texas.

El Paso states that construction of the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to deliver the requested gas volumes without detriment or disadvantage to it's other customers. It also states that the construction and operation of the proposed delivery point will not be a major Federal action significantly affecting the human environment. The total estimated cost of the proposed facilities is $48,900; and, El Paso states Southern Union has agreed to reimburse El Paso for the costs related to construction pursuant to a December 6, 1993 letter agreement.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16381 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–120–004]

Koch Gateway Pipeline Co.; Notice of Compliance Filing

June 30, 1994.

Take notice that on June 1, 1994, Koch Gateway Pipeline Company (Koch Gateway) filed the Prepared Supplemental Direct Testimony of Robin G. Schwenke, General Manager of Rates and Regulatory Affairs, Koch Gateway Pipeline Company, together with certain exhibits specifically identified therein, in compliance with the Commission's March 2, 1994 suspension order in Docket No. RP94–120–000.

Ordering Paragraph (E) of the suspension order directed Koch Gateway either to demonstrate why its ratepayers should incur the cost responsibility for the SunCoast Pipeline project or to refile the affected rate sheets to remove the amortization cost. On April 29, 1994, the Commission granted an extension of time to June 1, 1994 for Koch Gateway to respond to Ordering Paragraph (E).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16382 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–297–000]

Midwestern Gas Transmission Co.; Notice of Rate Filing

June 30, 1994.

Take notice that on June 21, 1994, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of September 1, 1993.

Midwestern states that the tariff sheets are being filed to correct certain errors that were made in its previously filed restructured tariff. Midwestern requests an effective date to coincide with its implementation of restructured services pursuant to Order No. 636 *et al.* Midwestern further states that the filed tariff sheets contain Midwestern's agreed to changes to its liability language.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16383 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–220–002]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

June 30, 1994.

Take Notice that on June 27, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 271, with an effective date of June 1, 1994.

Northwest states that the purpose of this filing is to comply with the Commission's May 26, 1994 "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions, Rejecting Other Tariff Sheets and Establishing a Hearing," to redesign rates based on representative contract demand for South End shippers. Northwest reserves the right and gives notice that it will refile any tariff sheets and rates for affected periods, should Northwest ultimately be successful on its request for rehearing

---

[1] See, 20 FERC ¶ 62,454 (1982).

[2] See, 45 FERC ¶ 61,175 (1988).

sheets, with an effective date of September 1, 1993.

Midwestern states that the tariff sheets are being filed to correct certain errors that were made in its previously filed restructured tariff. Midwestern requests an effective date to coincide with its implementation of restructured services pursuant to Order No. 636 *et al.* Midwestern further states that the filed tariff sheets contain Midwestern's agreed to changes to its liability language.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16383 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–220–002]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

June 30, 1994.

Take Notice that on June 27, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 271, with an effective date of June 1, 1994.

Northwest states that the purpose of this filing is to comply with the Commission's May 26, 1994 "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions, Rejecting Other Tariff Sheets and Establishing a Hearing," to redesign rates based on representative contract demand for South End shippers. Northwest reserves the right and gives notice that it will refile any tariff sheets and rates for affected periods, should Northwest ultimately be successful on its request for rehearing filed with the Commission in the captioned docket on May 27, 1994.

Northwest states that a copy of this filing has been served on all jurisdictional customers, state regulatory commissions in its market area, as well as all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16385 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–437–001]

Northwest Pipeline Corp.; Petition To Amend

June 30, 1994

Take notice that on June 24, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–437–001 a petition to amend the certificate of public convenience and necessity issued September 13, 1993, in Docket No. CP93–437–000 to upgrade the horsepower of the Snohomish and Sumner Compressor Stations on its mainline transmission system in Washington, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northwest proposes to upgrade the existing compressor unit at Sumner from 4,000 horsepower to 6,350 horsepower instead of the 5,200 horsepower authorized in the September 13, 1993, order. It is stated that the previously authorized increase would not be sufficient to achieve the desired capacity increase because of compressor cylinder limitations. It is stated that the previously estimated cost of $1.08 million for the upgrade would remain the same. It is asserted that the proposed increase in horsepower would increase Northwest's capability to receive Canadian gas supplies during off-peak periods and would enhance Northwest's flexibility in utilizing receipt point options under existing transportation agreements.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 21, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16386 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP94–36–002 MT88–35–009]

NorAm Gas Transmission Co.; Notice of Filing

June 30, 1994.

Take notice that on June 24, 1994, NorAm Gas Transmission Company (NGT) (formerly Arkla Energy Resources Company) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Rate Sheets Nos. 55 and 231 to become effective August 1, 1994.

NGT states that these revised rate sheets are filed in compliance with the Commission's May 27, 1994, Preliminary Determination on Jurisdictional Status of Facilities (Preliminary Determination) in Arkla Gathering Services Company, Docket No. CP94–36–000. These rate sheets reflect the addition to the General Terms and Conditions of NGT's tariff of the standards of conduct for transactions with its gathering affiliate that were set forth in the Commission's May 27, 1994 Preliminary Determination.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16384 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–204–000]

Pennsylvania Power & Light Co.; Notice of Filing

June 30, 1994.

Take notice that on June 24, 1994, Pennsylvania Power Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission supplemental material relating to the above docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16387 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–165–006]

Southern Natural Gas Co.; Notice of Refund Report

June 30, 1994.

Take notice that on June 27, 1994, Southern Natural Gas Company (Southern) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report reflecting its refund to interruptible transportation customers of certain amounts directed by the Commission to be refunded in its order in the captioned proceedings issued May 27, 1994 (May 27 Order).

The report states that Southern refunded $520,873 to its interruptible transportation customers on June 10, 1994, reflecting the amount, with interest, overcollected since April 1, 1994 under previously accepted tariff sheets that amortized the recovery of pricing differential costs from interruptible transportation customers in the instant proceeding over three months, rather than over twelve months as provided in the May 27 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commisston and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16388 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–53–000]

Stingray Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

June 30, 1994.

Take notice that on June 27, 1994, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective as listed below:

To Be Effective December 1, 1993:

Substitute Original Sheet No. 1
Substitute Original Sheet No. 5
Substitute Original Sheet No. 10
Second Substitute Original Sheet No. 56
Substitute Original Sheet Nos. 100, 103, 105 and 109

To Be Effective April 1, 1994:

Substitute First Revised Sheet No. 5
Substitute First Revised Sheet No. 56

Stingray states that the purpose of these tariff sheets is to cancel Stingray's Rate Schedule T–1, a gas transportation agreement between Stingray, Natural Gas Pipeline Company of America (Natural) and Trunkline Gas Company (Trunkline) dated October 2, 1973, as amended, to reflect compliance with the Federal Energy Regulatory Commission's (Commission) Order issued December 17, 1993, in Stingray's restructuring proceeding, approving Section 5 of Rate Schedule T–1, 65 FERC 61,360 (1993). Section 5 provides for automatic authorization of abandonment of Rate Schedule T–1 service and commencement of Rate Schedule FTS service.

Stingray states that it served a copy of this filing on its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211. All such motions or protests must be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16389 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–298–000]

Transcontinental Gas Pipe Line Corp.; Notice of Petition for Declaratory Order

June 30, 1994.

Take notice that on June 23, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) filed a petition for declaratory order seeking Commission approval of a settlement agreement dated February 16, 1994, and executed by TGPL, Dakota Gasification Company, and the United States Department of Energy.

TGPL seeks a declaratory order from the Commission that:

(1) approves the settlement and finds that its implementation is in the public interest;

(2) amends Opinion No. 119 to implement the settlement pricing provisions (which action would also resolve a pending complaint-proceeding before the Commission insofar as it relates to the TGPL-Dakota arrangements); and

(3) allows TGPL to recover costs incurred pursuant to the agreement under the terms of TGPL's Great Plains Adjustment Provision set forth at Section 39 of the General Terms and Conditions of TGPL's FERC Gas Tariff, as the same may be amended from time to time.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 21, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16390 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–139–002]

Williston Basin Interstate Pipeline Co.; Notice of Compliance Tariff Filing

June 30, 1994.

Take notice that on June 22, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

Substitute Second Revised Sheet No. 33
Substitute Second Revised Sheet No. 63
First Revised Sheet No. 92
Substitute First Revised Sheet No. 93
Substitute Second Revised Sheet No. 109
Substitute First Revised Sheet No. 123

Williston Basin states that in compliance with the June 7, 1994 Letter Order in the above-referenced docket, Williston Basin submitted the above tariff sheets incorporating language to make it absolutely clear that only a Shipper may make the election to change its method of reimbursement for fuel use, lost and unaccounted for gas, all as more fully explained in the filing which is on file with the Commission and open for public inspection.

The proposed effective date of the above tariff sheets is April 14, 1994, the effective date of the tariff sheets approved by the June 7, 1994 Letter Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the

D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 21, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16390 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–139–002]

Williston Basin Interstate Pipeline Co.; Notice of Compliance Tariff Filing

June 30, 1994.

Take notice that on June 22, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

Substitute Second Revised Sheet No. 33
Substitute Second Revised Sheet No. 63
First Revised Sheet No. 92
Substitute First Revised Sheet No. 93
Substitute Second Revised Sheet No. 109
Substitute First Revised Sheet No. 123

Williston Basin states that in compliance with the June 7, 1994 Letter Order in the above-referenced docket, Williston Basin submitted the above tariff sheets incorporating language to make it absolutely clear that only a Shipper may make the election to change its method of reimbursement for fuel use, lost and unaccounted for gas, all as more fully explained in the filing which is on file with the Commission and open for public inspection.

The proposed effective date of the above tariff sheets is April 14, 1994, the effective date of the tariff sheets approved by the June 7, 1994 Letter Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16391 Filed 7–6–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5008–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 8, 1994.

FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System (EPA No. 0801.10; OMB No. 2050–0039). This ICR is a renewal of an existing information collection.

Abstract: Under Section 3002(a)(5) of the Resource Conservation and Recovery Act (RCRA), EPA has established a hazardous waste manifesting system to assure that hazardous waste is designated for and arrives at a treatment, storage or disposal facility (TSDF) permitted under RCRA Subtitle C. The information collected in this system includes the completion, submission, and recordkeeping of the manifest itself, completion and submission of discrepancy and exception reports, notification of hazardous waste discharges in the event of an accident, and primary exporter manifest requirements. This information will be collected from large quantity and small quantity generators of hazardous waste, hazardous waste transporters, and owner/operators of treatment, storage and disposal facilities.

The information will be used to: (1) Provide notice to hazardous waste transporters and waste management facility workers on the risks posed by the wastes being handled; (2) track shipments from generator to facility; (3) assist emergency response personnel in determining appropriate responses to accidents; and (4) complement facility inspections to determine compliance.

Burden Statement: The public reporting burden for this collection of information is estimated to average 46 minutes to 1.3 hours per hazardous waste shipment for generators, 16 minutes to 1.8 hours per shipment for transporters, and 17 minutes to 6.5 hours per shipment for TSDFs. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering the data needed, reviewing the collection of information, and submitting the information.

Respondents: Generators, Transporters and Handlers of Hazardous Waste.

Estimated Number of Respondents: 223,173.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 434,944.

Frequency of Collection: As needed.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460;
and,
Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 30, 1994.

Paul Lapsley,

Director, Regulatory Management Division

[FR Doc. 94–16458 Filed 7–6–94; 8:45 am]

BILLING CODE 6560–50–P

Acid Rain Division

[FRL–5008–4]

Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA today announces the allocation of allowances to small diesel refineries for desulfurization of fuel from October 1, 1993 through December 31, 1993. The eligibility for and calculation of allowances to small diesel

refineries is in accordance with Section 410(h) of the Clean Air Act, implemented at 40 CFR part 73 subpart G.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, EPA Acid Rain Division (6204J), 401 M St., SW., Washington DC 20460; telephone (202) 233–9074.

SUPPLEMENTARY INFORMATION: EPA's Acid Rain Program was established by Title IV of the Clean Air Act Amendments of 1990 (CAAA) to reduce acid rain in the continental United States. The Acid Rain Program will achieve a 50 percent reduction in sulfur dioxide (SO_2) emissions from utility units. The SO_2 reduction program is a flexible market-based approach to environmental management. As part of this approach, EPA allocates "allowances" to affected utility units. Each allowance is a limited authorization to emit up to one ton of SO_2. At the end of each calendar year, each unit must hold allowances in an amount equal to or greater than its SO_2 emissions for the year. Allowances may be bought, sold, or transferred between utilities and other interested parties. Those utility units whose annual emissions are likely to exceed their allocation of allowances may either install pollution control technologies or switch to cleaner fuels to reduce SO_2 emissions, or buy additional allowances.

Section 410(h) of the Clean Air Act provides allowances for small diesel refineries which desulfurize diesel fuel from October 1, 1993 through December 31, 1999. Small diesel refineries are not otherwise affected by the Acid Rain Program and do not need the allowances to comply with any provision of the Clean Air Act. Thus, the allowances serve as a financial benefit to small diesel refineries desulfurizing diesel fuel. The following table lists the allowances to be allocated to each eligible small diesel refinery for desulfurization of fuel from October 1, 1993 to December 31, 1993:

Refiner	Refinery /Location	Allocation
Cenex	Laurel, Montana	582
Ergon	Vicksburg, Mississippi.	11
Frontier	Cheyenne, Wyoming.	813
Gary Williams	Bloomfield	306
Giant	Ciniza	300
Holly	Lea	275
Holly	Navajo	367
Kern Oil	Bakersfield, California.	432
Lion Oil	El Dorado	216
Paramount	Paramount, California.	555
Pennzoil	Atlas	369
Pennzoil	Roosevelt	82
Powerine	Santa Fe Springs, CA.	595
Pride	Abilene, Texas	365
Sinclair/Little America.	Casper	349
Sinclair	Sinclair, Wyoming.	592
Sinclair	Tulsa, Oklahoma.	1174
U.S. Oil & Refining Co.	Tacoma, Washington.	269
Wyoming Refining Company.	Denver, Colorado.	192

A total of 7944 allowances are allocated. Allowances for desulfurization which occurs from 1994 through 1999 will be made annually.

The allowances listed above will be placed in the refiners' accounts in the Allowance Tracking System (ATS) this fall. Until that time, the refiners can trade their allowances but the trades cannot be recorded in the ATS. Allowances allocated to small diesel refineries in 1994 (for 1993 desulfurization) and 1995 (for 1994 desulfurization) will have a compliance year of 1995, the first compliance year of the Acid Rain Program. The compliance year of allowances allocated subsequent to 1995 will be the year the allowances are allocated.

Dated: June 19, 1994.

Paul Stolpman,

Director, Office of Atmospheric Programs.

[FR Doc. 94–16459 Filed 7–6–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5007–8]

Campo Band of Mission Indians; Tentative Adequacy Determination of Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Extension of Comment Period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate permit programs for MSWLFs. EPA believes that adequate authority exists under RCRA to allow Tribes to seek an adequacy determination for purposes of Sections 4005 and 4010.

On May 11, 1994, the Environmental Protection Agency (EPA) issued in the **Federal Register** (59 FR 24422) a notice of tentative determination on the application of the Campo Band of Mission Indians. In order to provide additional opportunity for all interested parties to review and comment on this proposed action, EPA is extending the public comment period beyond the original July 14, 1994, date provided for in the May 11, 1994 **Federal Register** notice to August 1, 1994.

DATES: All comments on the Campo Band of Mission Indians' application for determination of adequacy must be postmarked by August 1, 1994.

ADDRESSES: Copies of the Campo Band of Mission Indians' application for adequacy determination are available at the following addresses for inspection and copying: Campo Environmental Protection Agency, Campo Tribal Hall, BIA Route 10, Highway 94, Campo, California, 91906, telephone (619) 478–9369, from 9 a.m. to 4 p.m. Mondays through Fridays; Campo Public Library, 31466 Highway 94, Campo, California, 91906, telephone (619) 478–5945, from 9 a.m. to 1 p.m. and 1:30 p.m. to 4 p.m. Wednesdays, and 9 a.m. to 1 p.m. Fridays and Saturdays; U.S. EPA Region 9 Library, 75 Hawthorne Street, 13th Floor, San Francisco, California, 94105, telephone (415) 744–1510, from 9 a.m. to 5 p.m. Mondays through Fridays. Written comments should be sent to Christiane M. Camp, Mail Code H–3–1, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attn: Ms. Christiane Camp, Mail Code H–3–1, telephone (415) 744–2097.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945, and 6949(a).

Dated: June 21, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–16474 Filed 7–6–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–50791; FRL–4869–8]

Arthropod Pheromones; Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing in this notice that it is expanding the acreage cut-off for when an experimental use permit (EUP) is required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from 10 acres to 250 acres for certain uses of biological pesticides. These uses include arthropod pheromones, irrespective of formulation, when used in non-food areas at a maximum use rate of 150 grams active ingredient (ai)/acre/year. Tests conducted on these pheromone uses under the conditions specified in this notice would not require an EUP at acreages up to and including 250 acres. Tests conducted with pheromone products on food crops entering commerce would still require an EUP and a temporary tolerance or an exemption from the requirement of a temporary tolerance. Similarly, testing on acreages exceeding 250 acres for all pheromones (food and nonfood uses) still requires an EUP.

EFFECTIVE DATE: This policy becomes effective July 7, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM–18), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7690.

SUPPLEMENTARY INFORMATION:

I. Introduction

Biological pesticides, which include biochemical and microbial pesticides, comprise the single fastest growing segment of registration activity within EPA's Office of Pesticide Programs. Biochemical pesticides encompass both semiochemicals and pheromones plus other naturally occurring substances that elicit pesticidal effects by a nontoxic mode of action to the target pest [40 CFR 158.65(a)]. A semiochemical is a biochemical that transmits messages between living organisms. A pheromone is a subclass of semiochemicals and is defined as a chemical produced by an arthropod that modifies the behavior of other individuals of the same species [40 CFR 152.25(b)(1)]. Currently only pheromones labeled for use in pheromone traps and in which the pheromone are the sole active ingredient(s) are exempt from regulation under FIFRA [40 CFR 152.25(b)].

The Agency recognizes that pheromones are inherently different in

ACTION: Notice.

SUMMARY: EPA is announcing in this notice that it is expanding the acreage cut-off for when an experimental use permit (EUP) is required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from 10 acres to 250 acres for certain uses of biological pesticides. These uses include arthropod pheromones, irrespective of formulation, when used in non-food areas at a maximum use rate of 150 grams active ingredient (ai)/acre/year. Tests conducted on these pheromone uses under the conditions specified in this notice would not require an EUP at acreages up to and including 250 acres. Tests conducted with pheromone products on food crops entering commerce would still require an EUP and a temporary tolerance or an exemption from the requirement of a temporary tolerance. Similarly, testing on acreages exceeding 250 acres for all pheromones (food and nonfood uses) still requires an EUP.

EFFECTIVE DATE: This policy becomes effective July 7, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM–18), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7690.

SUPPLEMENTARY INFORMATION:

I. Introduction

Biological pesticides, which include biochemical and microbial pesticides, comprise the single fastest growing segment of registration activity within EPA's Office of Pesticide Programs. Biochemical pesticides encompass both semiochemicals and pheromones plus other naturally occurring substances that elicit pesticidal effects by a nontoxic mode of action to the target pest [40 CFR 158.65(a)]. A semiochemical is a biochemical that transmits messages between living organisms. A pheromone is a subclass of semiochemicals and is defined as a chemical produced by an arthropod that modifies the behavior of other individuals of the same species [40 CFR 152.25(b)(1)]. Currently only pheromones labeled for use in pheromone traps and in which the pheromone are the sole active ingredient(s) are exempt from regulation under FIFRA [40 CFR 152.25(b)].

The Agency recognizes that pheromones are inherently different in their nontoxic pesticidal mode of action, low use rate, and target species specificity, and is employing various measures to facilitate their registration. Most recently the Agency has provided some regulatory relief for pheromones in retrievably sized polymeric matrix dispensers. EPA exempted the inert ingredients in the polymeric matrix dispenser from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA) on December 8, 1993 (58 FR 64493). EPA issued in the **Federal Register** of January 26, 1994 (59 FR 3681), a notice expanding the minimum acreage required for an experimental use permit from 10 to 250 acres for arthropod pheromones in polymeric matrix dispensers with an annual application rate limitation of 150 grams/acre for pest control in or on all raw agricultural commodities. And most recently, on March 30, 1994 (59 FR 14757), EPA exempted from the requirement of a tolerance under FFDCA the residues of arthropod pheromones resulting from the use of these compounds in polymeric matrix dispensers at the above use rates.

EPA has determined that additional regulatory relief for pheromones is warranted. The Agency now wishes to further broaden the scope of regulatory relief for arthropod pheromone researchers and producers to formulations beyond traps and polymeric matrix dispensers by including broadcast applications under certain non-food use conditions outlined in this notice. With the implementation of this policy, EPA hopes to encourage the development and use of environmentally acceptable biological pesticides as alternatives to more toxic conventional chemical pesticides. The aim is to ease the testing requirements of these products, to speed their market entry, and promote their integration into pest management strategies. It is important to note that this policy is only applicable to arthropod pheromone products where the pheromone is the sole active ingredient(s). For pheromone products formulated to include other pesticide active ingredients, the data requirements for biological/chemical pesticides is appropriate [40 CFR part 158].

The need for further regulatory relief above that provided for retrievable polymeric matrix dispensers prompted the Agency to reconsider broadcast application. Of consideration were human dietary exposure, promotion of reduced risk alternative pesticides, persistence, and environmental risk. In regard to nontarget organism effects, the risks from broadcast application should not be appreciably greater than from a polymeric dispenser application if the broadcast formulations are also for terrestrial use only and experimental application does not include use in or around marshes, swamps, rivers, streams, ponds, lakes, estuaries, flood plains, or drainage ditches, nor should the product be allowed to wash or drain into water. Low rates of experimental application, high volatility, limited acreage, and the current extent of knowledge indicating generally low orders of toxicity are all justifications to overcome potential increased risks to nontarget organisms due to exposure to foliar residues.

Today's notice sets forth that for non-food uses of arthropod pheromone pesticides only, EPA is permitting the acreage expansion from 10 to 250 acres for experimental testing at a maximum use rate of 150 grams ai/acre/year before triggering the requirement of an EUP under FIFRA. The Agency contends, that for experimental uses involving non-food crops and other nondietary uses, this change in policy provides significant flexibility to determine product efficacy without resulting in significant risk to human health or the environment due to the active ingredient's low use rate, high volatility, and lack of dietary exposure.

II. Toxicology

A. Ecological Effects

Wildlife toxicity data indicate high toxicity to aquatic invertebrates and moderate toxicity to fish, but practically no toxicity to birds tested. Therefore, these products should not be applied directly to water nor be allowed to runoff into water. To minimize the potential toxic effects on aquatic organisms, this policy is limited to pheromone products tested for terrestrial use only and would not apply to pheromones for use in or around marshes, swamps, rivers, streams, ponds, lakes, estuaries, flood plains, or drainage ditches. The Agency believes that aquatic exposure will be minimal if experimental use is limited to the terrestrial use only pattern of the pheromone. Similarly, the Agency has determined that exposure to wildlife will be minimal when release of the pheromone is confined to experimental purposes only and applications are limited to a maximum of 150 grams ai/acre/year on a maximum of 250 acres.

B. Human Health

The data available to date on arthropod pheromones, including several pheromones with aromatic

structures, have indicated no mammalian toxicity at the limit dose levels recommended for the following studies: acute oral toxicity (LD_{50} >5,000 mg/kg - category IV, nontoxic), acute dermal toxicity (LD_{50} >2,000 mg/kg category III-IV, nontoxic), acute inhalation toxicity (LD_{50} generally >5 mg/L - category III-IV, practically nontoxic), no evidence of mutagenicity (Ames Salmonella assay), and minimal eye and skin irritation. In general, the Agency recommends, however, that whenever using pesticides, adequate precautions to minimize applicator exposure should be taken. .

Human health concerns arise for any experimentally treated crops that may enter the food supply. Experimentally treated food crops are normally destroyed as a routine provision to prevent the food from entering commerce. Crop destruction, however, may not be economically feasible for crop acreages of up to 250 treated acres. Under FFDCA, a food tolerance or an exemption from the requirement of a tolerance must be established prior to any treated crop entering commerce or the seller of the food crop will be in violation of FFDCA provisions for pesticide residues in food. Temporary tolerances may be established for food crops that have been treated with experimental pesticides under an EUP.

EPA is not able at this time to make a no unreasonable adverse effects finding for arthropod pheromone pesticides for use on food crops. Subsequent testing on food or feed crops of other formulations involving, for example, broadcast sprays or dispensers that are not retrievable, will require an EUP to generate adequate data for determining a food tolerance, or exemption from tolerance, and the greater exposure potential of the pesticide to the resulting food. For these uses, an EUP is needed to accompany a temporary tolerance and to generate adequate data to allow for a food tolerance determination. Requests for exemption from the requirement of a temporary tolerance will also be considered in conjunction with an EUP. EPA would consider waivers for many requirements for an experimental use permit on acreages from 10 to 250 acres and use rates up to a maximum of 150 grams ai/acre/year.

In the past, EPA has waived some or all of the required toxicology studies for volatile biochemical pesticide active ingredients in dispensers when the registrant has demonstrated an extremely low exposure scenario, lack of food residues, and inert materials of the dispenser were cleared by the Agency. The Agency will consider waivers for studies of other pheromone formulations when the registrant can adequately demonstrate that either a low application rate, rapid degradation of the active ingredient, high volatilization, and/or timing of the last application prior to harvest will result in no detectable pesticide residues in or on the food crop.

III. Statutory and Regulatory Authority

Section 5 of FIFRA, 7 U.S.C. 136c, and 40 CFR part 172 provide for issuance by the Agency of experimental use permits for the testing of new, unregistered pesticides or new uses of existing pesticides for product performance and registration purposes. Such permits are generally issued for large-scale testing of pesticides on more than 10 acres. Contained within the scope of the regulation, however, is the presumption that small-scale testing, i.e., on less than 10 acres of land, does not require an EUP providing that any treated crops are destroyed or a temporary tolerance for residues in or on the crop is in place (40 CFR 172.3(a)). This presumption, however, is caveated not to preclude experimental testing on larger areas in certain circumstances where the purpose of the large acreage test is only to determine the substance's value for pesticidal purposes or to determine its toxicity or other properties, and no benefit from pest control is expected (40 CFR 172.3(b)). EPA issued in the **Federal Register** of January 22, 1993 (58 FR 5878), a proposed amendment to 40 CFR part 172. The proposed amendment would, among other things, modify § 172.3 to clarify that the determination of whether an EUP is required is based on risk considerations. The amendment would provide that tests conducted on not more than 10 acres of land are presumed not to involve unreasonable risks, and therefore, do not require an EUP.

Due to the unique characteristics of pheromones, EPA believes that pheromone products used for non-food purposes must be tested at acreages larger than 10 acres and as large as 250 acres to determine the products' value for pesticidal purposes. Many pheromone uses are effective as mating disruptants to the adult insects. Larger test acreages are needed to evaluate sufficiently the disruption of the natural flight range of the adult target insect. An additional factor necessitating larger acreages is the volatile nature of most pheromone compounds. Separate treatments in adjoining small plots is unfeasible, and test plot sizes ranging from 20 to 60 acres are usually required depending upon the nature of the treated site and the pest in question. Thus, EPA believes that 250 acres should be sufficient to determine the value for pesticidal purposes of most pheromones.

The Agency has found that given the generally low expected toxicity and high volatility of arthropod pheromones, an upper limit of 150 grams ai/acre/year is adequate for testing the pheromone product performance while still protecting the public health, nontarget organisms and the environment from unreasonable risks. These application rates encompass the majority of pheromone uses seen by the Agency to date.

IV. Agency Determination

EPA is now expanding the terrestrial use limitation for testing arthropod pheromone pesticides without the need for an experimental use permit from 10 acres to 250 acres for non-food use patterns at treatment rates not exceeding 150 grams ai/acre/year. Upon meeting the above conditions, the Agency has determined that pheromones of the type described do not present an unreasonable adverse effect to human health or the environment due to unlikely exposure.

The above policy applies to only the experimental phase of pheromone product development and not to registration of the product. The intent of this regulatory relief policy is to permit adequate conditions for practical research and development, while protecting the food supply and nontarget species from higher pheromone levels than occur naturally The current set of studies listed in 40 CFR 158.690 are still required for the registration and sale of the final product.

Dated: June 28, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs

[FR Doc. 94–16461 Filed 7–6–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–64023; FRL–4897–9]

Tributyltin Fluoride (TBTF); Receipt of Request to Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Request to Cancel Registrations.

SUMMARY: This Notice, issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces EPA's receipt of a request from ELF ATOCHEM North America, Inc. ("Atochem") to voluntarily cancel its registrations for products containing Tributyltin Fluoride (TBTF). Following a 30–day comment period, EPA intends to cancel these registrations. Further, this notice announces the Agency's proposal regarding sale, distribution and use of existing stocks of these products.

DATES: The Agency expects to publish a cancellation order in the **Federal Register** on or after August 8, 1994.

ADDRESSES: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Room 1132, Crystal Mall Building #2, 1921 Jefferson Davis Highway., Arlington, VA 22202, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Review Manager, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Office location and telephone number: 3rd floor, 2800 Crystal Drive, Arlington, VA. 22202 (703) 308–8033.

SUPPLEMENTARY INFORMATION: This notice announces the receipt of a request for cancellation of Atochem's registrations for TBTF products and the Agency's intent to accept these cancellations. In addition, this notice sets forth the Agency's proposal regarding sale, distribution and use of existing stocks of products bearing the affected registration numbers.

I. Background

TBTF compounds are registered for use in paint formulations as an antifoulant treatment for hulls, outboard motors, and lower drive units of certain types of marine vessels. They are used to inhibit the growth of fouling organisms such as barnacles and algae. Atochem manufactures the technical product, an intermediate formulation, and one end-use product. In October, 1991, under sections 4 and 3(c)2(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, a Data Call-in (DCI) for the data necessary for the reregistration of TBTF was issued to certain registrants of products containing TBTF, including Atochem. Two bridging studies (studies used to justify the use of data developed on one pesticide for another pesticide) and the associated progress reports required by this DCI are now overdue, and Atochem's registrations of TBTF are subject to suspension.

from ELF ATOCHEM North America, Inc. ("Atochem") to voluntarily cancel its registrations for products containing Tributyltin Fluoride (TBTF). Following a 30–day comment period, EPA intends to cancel these registrations. Further, this notice announces the Agency's proposal regarding sale, distribution and use of existing stocks of these products.

DATES: The Agency expects to publish a cancellation order in the **Federal Register** on or after August 8, 1994.

ADDRESSES: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Room 1132, Crystal Mall Building #2, 1921 Jefferson Davis Highway., Arlington, VA 22202, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Review Manager, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Office location and telephone number: 3rd floor, 2800 Crystal Drive, Arlington, VA. 22202 (703) 308–8033.

SUPPLEMENTARY INFORMATION: This notice announces the receipt of a request for cancellation of Atochem's registrations for TBTF products and the Agency's intent to accept these cancellations. In addition, this notice sets forth the Agency's proposal regarding sale, distribution and use of existing stocks of products bearing the affected registration numbers.

I. Background

TBTF compounds are registered for use in paint formulations as an antifoulant treatment for hulls, outboard motors, and lower drive units of certain types of marine vessels. They are used to inhibit the growth of fouling organisms such as barnacles and algae. Atochem manufactures the technical product, an intermediate formulation, and one end-use product. In October, 1991, under sections 4 and 3(c)2(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, a Data Call-in (DCI) for the data necessary for the reregistration of TBTF was issued to certain registrants of products containing TBTF, including Atochem. Two bridging studies (studies used to justify the use of data developed on one pesticide for another pesticide) and the associated progress reports required by this DCI are now overdue, and Atochem's registrations of TBTF are subject to suspension.

II. Receipt of Request and Notice of Intent to Cancel

Section 6(f) of FIFRA provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. FIFRA further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request and provide for a 30–day comment period.

In a letter dated April 21, 1994, Atochem requested voluntary cancellation of its TBTF registrations, EPA registration numbers 5204–19, 5204–61, and 5204–64. EPA proposes to accept these voluntary cancellations, and intends to issue a cancellation order for these product registrations immediately after the close of the comment period.

If, during the 30–day comment period, Atochem chooses to withdraw its request for cancellation, it must submit a request for withdrawal in writing to the address listed above prior to (insert date 30 days after date of publication in the **Federal Register**). Should Atochem withdraw its request for cancellation, its affected registrations of TBTF will remain subject to suspension until overdue data requirements are satisfied. The Agency will issue a Notice of Intent to Suspend these registrations as soon as possible after any such withdrawal.

III. Existing Stocks Determination

In its letter of April 21, 1994, Atochem also requested that EPA allow Atochem a 1–year timeframe to continue the distribution and sale of existing stocks.

The Agency's established policy for determinations concerning existing stocks was published in the **Federal Register** on June 26, 1991 (56 FR 29362). In that Notice, EPA said that it would permit a registrant to sell and distribute existing stocks for 1 year after the earliest date that the registrant failed to meet an obligation of registration. In addition, persons other than the registrant would generally be permitted to sell, distribute, or use existing stocks of the cancelled product until supplies are exhausted.

EPA has determined that Atochem has failed to meet an obligation of reregistration of its TBTF products by its failure to meet certain data requirements of the DCI of October, 1991, as follows:

Guideline	Overdue Items
82–1(a) — 90–day rodent feeding study (bridging study).	Progress Report due January, 1993. Final Report due September, 1993
85–2 — dermal penetration study (bridging study).	Progress Report due January, 1993. Final Report due September, 1993.

EPA has considered the registrant's request for sale and distribution of existing stocks for 1 year. In accordance with EPA's policy on existing stocks, EPA has determined that the 1 year for existing stocks sale, distribution, and use by Atochem or its agents began January 8, 1993, the earliest date that the registrant failed to meet an obligation of reregistration, and expired January 8, 1994. Therefore, Atochem will not be permitted to sell, distribute, or use existing stocks as of the effective date of cancellation. Furthermore, it is Atochem's responsibility as the basic registrant to notifiy any and all supplemental registrants of its product(s) that this Agency action also applies to their supplementally registered products. Registrants may be held liable for violations committed by their supplemental registrants. Other dealers and distributors will be permitted to sell and distribute existing stocks of affected Atochem products until stocks are exhausted. End users may use existing stocks until stocks are exhausted.

Dated: June 29, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs

[FR Doc. 94–16460 Filed 7–6–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for

comments and protests are found in § 560.602 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200868.
Title: Port of Houston Authority/ Cargo Terminal Venture Freight Handling Agreement.
Parties:
Port of Houston ("Port")
Cargo Terminal Venture ("CTV")

Filing Agent: Martha T. Williams, Houston Port Authority, P.O. Box 2562, Houston, Texas 77252–2562.

Synopsis: The proposed Agreement permits CTV to perform freight handling services at the Port's Jacintoport Terminal Dockside Shed. The Agreement has an initial term of nine years.

Agreement No.: 224–200869.
Title: Port of Houston Authority/ James J. Flanagan Stevedores, Inc. Freight Handling Agreement.
Parties:
Port of Houston ("Port")
James J. Flanagan Stevedores, Inc. ("JJFSI").

Filing Agent: Martha T. Williams, Houston Port Authority, P.O. Box 2562, Houston, Texas 77252–2562.

Synopsis: The proposed Agreement permits JJFSI to perform freight handling services at the Port's Transit Shed Number 21–A.

Dated: June 30, 1994.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 94–16375 Filed 7–6–94; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000150–107.
Title: Trans-Pacific Freight Conference of Japan.
Parties:
American President Lines, Ltd.
Hapag-Lloyd AG
Mitsui O.S.K. Line, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed amendment modifies Article 8(e)(3)(d) by deleting the requirement of voting by secret ballot and permitting changes in service contract rates to be decided by a two-thirds majority of all votes actually cast.

Agreement No.: 207–011436–002.
Title: Hornet Shipping Company Limited/Lauritzen Reefers A/S Joint Service Agreement.
Parties:
Hornet Shipping Company Limited
Pacific Shipping Limited
Lauritzen Reefers A/S

Synopsis: The proposed amendment expands the geographic scope of the Agreement to include ports and points in Mexico. The parties have requested a shortened review period.

Agreement No.: 203–011452–001.
Title: Trans-Pacific Policing Agreement.
Parties:
American President Lines, Ltd.
A.P. Moller-Maersk Line
Cho Yang Line
China Ocean Shipping Company
DSR-Senator Joint Service
Evergreen Marine Corp.
Hanjin Shipping Co., Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed amendment modifies Article XIII and Appendix B of the Agreement to be consistent with the policing provisions. The parties have requested a shortened review period.

Agreement No.: 224–200164–010.
Title: Port of Oakland/Norsul Internacional S.A.
Parties:
Port of Oakland
Norsul Internacional S.A.

Synopsis: The proposed amendment extends the term of the Agreement to July 31, 1994.

Agreement No.: 224–200865–001.
Title: Port of Oakland/Hanjin Shipping Company, Ltd.
Parties:
Port of Oakland ("Port")
Hanjin Shipping Company, Ltd. ("Hanjin")

Synopsis: The proposed amendment would permit the Port to make certain wharfage tariff refunds to Hanjin in the event Hanjin generates 55,000 or more loaded TEUs in a contract year. It also provides for additional wharfage reductions for Interior Point Intermodal ("IPI") cargo of $10.00 per loaded TEU when IPI cargo equals or exceeds 4,000 loaded TEUs in a contract year.

Agreement No.: 224–200870.
Title: Port of Oakland/Marine Terminals Corporation.
Parties:
Port of Oakland ("Port")
Marine Terminals Corporation ("MTC")

Synopsis: The proposed Agreement provides MTC the responsibility of management, terminal operation and cargo solicitation services at the Port's Seventh Street Marine Container Terminal, for Berths 35, 37 and 38, and the loading and discharge of cargoes and operations supplemental thereto. In addition, the Agreement provides for incentive payments to MTC for any new business they might bring to the above facilities.

Dated: June 30, 1994.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 94–16374 Filed 7–6–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Zior NY Ltd., 145–34 157th Street, Jamaica, NY 11434, Officers: Amitta Ben-Aviv, President, Zipora Ben-Aviv, Treasurer

Vanik, Inc., 17W708 Butterfield Road, #209, Oakbrook, Terrace, IL 60181, Vandana C. Bahl, Sole Proprietor

World Asia Freight Systems, Inc., 1065 Sneath Lane, San Bruno, CA 94066, Officer: Harrison Park, President.

Dated: June 30, 1994.

By the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 94–16342 Filed 7–6–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Hal Jonathan Shaffer; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Hal Jonathan Shaffer, Cherry Hill, New Jersey; Carl Anderson Lingle, Elmer, New Jersey, and Jerome S. Goodman, Cherry Hill, New Jersey, to acquire 79.60 percent of the voting shares of First Bank of Philadelphia, Philadelphia, Pennsylvania. Jerome S. Goodman currently owns 0.25 percent of the stock of the Bank. He owns less than 1 percent of the shares of CoreStates Financial Corp., Philadelphia, Pennsylvania which, in turn, owns 24.8 percent of the shares of the Bank. Notificants will collectively purchase the stock to be issued by the Bank and their total ownership of Bank's stock, upon consummation, will equal 79.65 percent.

Vanik, Inc., 17W708 Butterfield Road, #209, Oakbrook, Terrace, IL 60181, Vandana C. Bahl, Sole Proprietor

World Asia Freight Systems, Inc., 1065 Sneath Lane, San Bruno, CA 94066, Officer: Harrison Park, President.

Dated: June 30, 1994.

By the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 94–16342 Filed 7–6–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Hal Jonathan Shaffer; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Hal Jonathan Shaffer, Cherry Hill, New Jersey; Carl Anderson Lingle, Elmer, New Jersey, and Jerome S. Goodman, Cherry Hill, New Jersey, to acquire 79.60 percent of the voting shares of First Bank of Philadelphia, Philadelphia, Pennsylvania. Jerome S. Goodman currently owns 0.25 percent of the stock of the Bank. He owns less than 1 percent of the shares of CoreStates Financial Corp., Philadelphia, Pennsylvania which, in turn, owns 24.8 percent of the shares of the Bank. Notificants will collectively purchase the stock to be issued by the Bank and their total ownership of Bank's stock, upon consummation, will equal 79.65 percent.

Board of Governors of the Federal Reserve System, June 30, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16429 Filed 7–6–94; 8:45 am]

BILLING CODE 6210–01–F

Mellon Bank Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania, to acquire Stone Trust Company, Tipton, Pennsylvania, and thereby engage in permissible trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 30, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16428 Filed 7–6–94; 8:45 am]

BILLING CODE 6210–01–F

BOK Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. BOK Financial Corporation, Tulsa, Oklahoma, to engage *de novo* through its subsidiary BOKF Leasing

Corporation, Tulsa, Oklahoma, in leasing personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 30, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16427 Filed 7–6–94; 8:45 am]

BILLING CODE 6210–01–F

AmSouth Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. AmSouth Bancorporation, Birmingham, Alabama, to merge with The Tampa Banking Company, Tampa, Florida, and thereby indirectly acquire The Bank of Tampa, Tampa, Florida.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community Bancorporation of New Mexico, Inc., Santa Fe, New Mexico, to become a bank holding company by acquiring 100 percent of the voting shares of El Pueblo State Bank, Espanola, New Mexico.

Board of Governors of the Federal Reserve System, June 30, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16426 Filed 7–6–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[GN # 2557]

Notice of Meeting of the Commission on Research Integrity

Pursuant to P.L. 92–463, notice is hereby given of the meeting of the Commission on Research Integrity, on Monday, July 25, 1994, from 9 a.m. to 5 p.m., in the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Salon 5, Arlington, VA 22202. The meeting will be open to the public.

The mandate of the Commission is to develop recommendations for the Secretary of Health and Human Services and the Congress on the administration of Section 493 of the Public Health Service Act as amended by and added to by Section 161 of the NIH Revitalization Act of 1993.

The purpose of this meeting will be to review the history of the definition of scientific misconduct in the Public Health Service (PHS); to discuss a definition of science, its role, purpose and goals in society; to develop a preliminary working definition of research misconduct; and to compare and contrast the processes of investigating alleged misconduct in science at the PHS and NSF. Discussion items may include but will not be limited to the issues noted above.

Henrietta D. Hyatt-Knorr, Executive Secretary, Commission on Research Integrity, Office of Research Integrity, Division of Policy and Education, Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852, (301) 443–5300, will furnish the meeting agenda, the Committee charter, and a roster of the Committee members upon request. Members of the public wishing to make presentations should contact the Executive Secretary. Depending on the number of presentation and other considerations, the Executive Secretary will allocate a time frame for each speaker.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 94–16430 Filed 7–6–94; 8:45 am]

BILLING CODE 4160–17–M

Administration for Children and Families

[Program Announcement No. 93631–94–02]

Developmental Disabilities: Availability of Financial Assistance for Projects of National Significance for Fiscal Year 1994

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families (ACF).

ACTION: Announcement of availability of financial assistance for Projects of National Significance for Fiscal Year 1994.

SUMMARY: The Administration on Developmental Disabilities, Administration for Children and Families, announces that applications are being accepted for funding of Fiscal Year 1994 Projects of National Significance.

This program announcement consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD. Part II provides the necessary background information on ADD for applicants. Part III describes the review process. Part IV describes the priorities under which ADD solicits applications for Fiscal Year 1994 funding of projects. Part V describes in detail how to prepare and submit an application. All of the forms and instructions necessary to submit an application are published as part of this announcement following Part V.

No separate application kit is either necessary or available for submitting an application. If you have a copy of this announcement, you have all the information and forms required to submit an application.

Grants will be awarded under this program announcement subject to the availability of funds for support of these activities.

DATE: Closing date for submittal of applications under this announcement is August 8, 1994.

ADDRESSES: Applications should be mailed to: Department of Health and Human Services, ACF/Division of Discretionary Grants, Sixth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: 93.631 ADD—Projects of National Significance.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Gail Evans, Program Development Division, Administration on Developmental Disabilities, (202) 690–5911.

SUPPLEMENTARY INFORMATION:

Part I. Introduction

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific populations it serves, ADD shares a common set of goals that promote the economic and social well-being of families, children, individuals and communities. Through national leadership, ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access; and
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees and migrants to address their needs, strengths and abilities.

Emphasis on these goals and progress toward them will help more individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance Program is one means through which ADD promotes the achievement of these goals.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs which promote the self-sufficiency and protect the rights of persons with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000, *et seq.*) (the Act) supports and provides assistance to States and

FOR FURTHER INFORMATION CONTACT: Gail Evans, Program Development Division, Administration on Developmental Disabilities, (202) 690–5911.

SUPPLEMENTARY INFORMATION:

Part I. Introduction

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific populations it serves, ADD shares a common set of goals that promote the economic and social well-being of families, children, individuals and communities. Through national leadership, ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access; and
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees and migrants to address their needs, strengths and abilities.

Emphasis on these goals and progress toward them will help more individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance Program is one means through which ADD promotes the achievement of these goals.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs which promote the self-sufficiency and protect the rights of persons with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000, *et seq.*) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity and integration and inclusion into the community.

The Act points out that:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity and inclusion into the community;
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families;

The Act further finds that:

- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, and integration and inclusion into the community, and often require the provision of services, supports and other assistance to achieve such;
- Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families; and
- It is in the nation's interest for people with developmental disabilities to be employed, and to live conventional and independent lives as a part of families and communities.

Toward these ends, ADD seeks to enhance the capabilities of families in assisting people with developmental disabilities to achieve their maximum potential to support the increasing ability of people with developmental disabilities to exercise greater choice and self-determination; to engage in leadership activities in their communities; as well as to ensure the protection of their legal and human rights.

Programs funded under the Act are:

- Federal assistance to State developmental disabilities councils;
- State system for the protection and advocacy of individual rights;
- Grants to university affiliated programs for interdisciplinary training, exemplary services, technical assistance, and information dissemination; and
- Grants for Projects of National Significance.

Part II. Background Information

A. Description of Projects of National Significance

Under Part E of the Act, grants and contracts are awarded for projects of national significance that support the development of national and State policy to enhance the independence, productivity, and integration and inclusion of individuals with developmental disabilities through:

- Data collection and analysis;
- Technical assistance to enhance the quality of State developmental disabilities councils, protection and advocacy systems, and university affiliated programs; and
- Other projects of sufficient size and scope that hold promise to expand or improve opportunities for people with developmental disabilities, including:

—Technical assistance for the development of information and referral systems;
—Educating policy makers;
—Federal interagency initiatives;
—The enhancement of participation of racial and ethnic groups in public and private sector initiatives in developmental disabilities;
—Transition of youth with developmental disabilities from school to adult life; and
—Special pilots and evaluation studies to explore the expansion of programs under part B (State developmental disabilities councils) to individuals with severe disabilities other than developmental disabilities.

B. Comments on FY 1994 Proposed Priority Areas

The notice soliciting comments on the FY 1994 proposed priority areas was published in the Federal Register on February 24, 1994. A 60 day period was required to allow the public to comment

on the proposed areas. After review and analysis of these comments, ADD is publishing its final priorities in this announcement.

The public comment notice requested specific comments and suggestions on the proposed funding priorities, in addition to recommendations for additional priority areas which would assist in bringing about the increased independence, productivity, and integration into the community of people with developmental disabilities.

ADD received a total of 52 letters and 93 individual comments in response to the public comment notice. The majority of the comments expressed support of the priority areas. Other comments were supportive of the priority areas, but suggested changes.

Agencies which commented were identified as follows:

- Advocacy agencies, which includes national organizations and associations, national advocacy groups and State/local advocacy groups;
- Service organizations, which includes agencies that provide services for individuals with developmental disabilities as well as providing advocacy services on behalf of a particular disability, including developmental disabilities councils;
- Educational systems, which includes schools, colleges and universities, programs located within a university setting (CA/N, R&TC, youth w/disabilities) and university affiliated programs;
- Private agencies, which includes national, State and local non-profit organizations;
- Government agencies, which includes Federal, State, county and local government agencies;
- Private individuals; and
- Foundations.

The comments ranged from requests for copies of the final application solicitation to general support to substantive, insightful responses for this year's proposed funding priorities and recommendations for other priority areas. Few of the comments provided specific guidance on the development of the final priority areas. Rather, the majority were supportive of and expanded upon what we proposed in the announcement, in addition to relating specifically to the program goals and priorities of the particular agencies submitting the comments.

The comments received were helpful in highlighting the concerns of the developmental disabilities field and have been used in refining the final priority areas.

Comment: 24 letters were submitted to ADD recommending additional funding priorities for FY 1994. Suggestions included best practice and systems change, development of standards, and training in Personal Assistance Services (PAS); projects that focus on the integration into community activities of families who have a child who is medically fragile and severely disabled; a project that cares for children with HIV/AIDS; projects on home ownership; dissemination of information to families and practitioners; and aging and developmental disabilities.

Response: ADD funded five PAS projects in FY 1993. We continue to fund those projects and support a variety of other activities in the area of personal assistance services.

Although ADD has not funded any recent projects on community integration of individuals with severe disabilities or medically fragile children through the PNS program, we continue to support projects and activities in this area through the university affiliated program.

ADD funded five HIV/AIDS projects from FY 1990–1992. We continue to support HIV/AIDS projects and activities through the university affiliated program.

ADD funded two projects on home ownership from FY 1991–1994. We also awarded a five year grant in FY 1993 to the university affiliated program at the University of New Hampshire to establish a national information network on consumer based housing.

ADD supports a number of grant-related activities that focus on dissemination of information on issues relating to developmental disabilities. It has become a requirement of each grant award made.

We continue to fund projects on elderly persons with disabilities through the university affiliated program's Training Initiative component.

ADD appreciates the suggestions for additional priority areas for this fiscal year. While we are unable to add new priority areas at this time because of budget constraints, we will consider these suggestions and recommendations for future grant announcements.

Comment: ADD received 34 comments on Proposed Priority Area 1, Leadership Education and Development of Individuals with Disabilities and Their Families from Culturally Diverse Backgrounds. The majority of the comments received in this priority area were supportive of what was proposed in the published notice. However, some of the comments provided recommendations for project design and specific suggestions for how the projects should be funded (based on the particular focus of the organization submitting the comments). There was also a letter writing campaign from advocacy groups supporting strong linkages to and between ADD's national network associations. That writing campaign also included adding a qualifier to the grant requirements regarding composition of the funded agencies board of directors (at least 51% individuals with disabilities or family members of individuals with disabilities). Another letter writer suggested that we collaborate our activities with other Federal and State agencies. There was a suggestion that the requirements of the final priority area be specific about how information would be disseminated as well as how the project would be evaluated. There were also numerous recommendations for ADD to specifically focus its FY 1994 efforts on Youth Leadership Development.

Response: The above comments are representative of the comments received in this priority area. We will make every effort to coordinate this priority area's activities with the Department of Education and other Federal agencies. We will also make every effort to collaborate with our national network associations during the funded projects' grant period. We agree with the recommendation for information dissemination and evaluation. The final priority area project design requirements include dissemination, evaluation, and composition of the project's advisory body. In addition, because there was interest expressed that ADD focus this priority area on youth leadership development, the final leadership education and development priority area will be an inclusive one—to cover individuals and families of all ages.

Comment: ADD received fifteen comments on Proposed Priority Area 2, Expanding the Scope of Developmental Disabilities Councils. The majority of the comments received in this priority area were supportive of what ADD proposed in the published notice. Some of the comments also provided recommendations for project length, specific suggestions for which Councils should be eligible for funding, and ideas on project design. There were two non-supportive letters submitted in this priority area. Those letters will be addressed at the end of this discussion.

There was a recommendation that the project conduct an assessment of the population of persons with disabilities served by the developmental disabilities network (Developmental Disabilities Councils, University Affiliated Programs, and Protection and Advocacy Systems) in their States. Several writers suggested that participation in the fifteen month pilot studies not be limited to just the additional five States. It was also noted that six months to complete the short-term study would be too short of a time frame. ADD was also encouraged to receive input for the studies from the States and not limit participation to the network associations. We were cautioned that each of the DD program components not lose sight of their specific mission and focus during the expansion studies. This was reiterated in one of the non-supportive letters, in addition to the fact that expansion would duplicate the efforts of other State and Federally funded agencies. The other non-supportive letter indicated that the Councils were not adequately addressing the issues of the disability groups they already serve, and suggested that the Councils make some changes in the way they do business before they take on expansion.

Response: The expansion priority area is a legislatively mandated activity. ADD is limited in the number of States to participate in the pilot studies or the length of time to complete each phase of the expansion study. In addition, the short term study of Councils and the national study have already been funded under a separate contractual solicitation. The fifteen month pilot studies are the only part of the expansion study to be funded through this grant announcement. We do, however, agree with the remainder of the comments (including the non-supportive ones) and the final priority area reflects such, as well as a sensitivity to specific foci of Councils and their ability to take on expansion activities without negatively impacting their original mission.

Comment: ADD received three comments on providing technical assistance (through separate contractual solicitations) to improve the functions of the developmental disabilities planning council, protection and advocacy system, and the university affiliated program; and to develop information and referral systems. Two letters supported and expanded upon what we proposed. One letter was non-supportive. The supportive letters recommended specific technical assistance activities, i.e., ongoing technical assistance and information and referral on cultural diversity; and technical assistance activities on self-advocacy of consumers. The one non-supportive letter requested that the technical assistance contract solicitations be provided to all Councils,

Systems) in their States. Several writers suggested that participation in the fifteen month pilot studies not be limited to just the additional five States. It was also noted that six months to complete the short-term study would be too short of a time frame. ADD was also encouraged to receive input for the studies from the States and not limit participation to the network associations. We were cautioned that each of the DD program components not lose sight of their specific mission and focus during the expansion studies. This was reiterated in one of the non-supportive letters, in addition to the fact that expansion would duplicate the efforts of other State and Federally funded agencies. The other non-supportive letter indicated that the Councils were not adequately addressing the issues of the disability groups they already serve, and suggested that the Councils make some changes in the way they do business before they take on expansion.

Response: The expansion priority area is a legislatively mandated activity. ADD is limited in the number of States to participate in the pilot studies or the length of time to complete each phase of the expansion study. In addition, the short term study of Councils and the national study have already been funded under a separate contractual solicitation. The fifteen month pilot studies are the only part of the expansion study to be funded through this grant announcement. We do, however, agree with the remainder of the comments (including the non-supportive ones) and the final priority area reflects such, as well as a sensitivity to specific foci of Councils and their ability to take on expansion activities without negatively impacting their original mission.

Comment: ADD received three comments on providing technical assistance (through separate contractual solicitations) to improve the functions of the developmental disabilities planning council, protection and advocacy system, and the university affiliated program; and to develop information and referral systems. Two letters supported and expanded upon what we proposed. One letter was non-supportive. The supportive letters recommended specific technical assistance activities, i.e., ongoing technical assistance and information and referral on cultural diversity; and technical assistance activities on self-advocacy of consumers. The one non-supportive letter requested that the technical assistance contract solicitations be provided to all Councils, P&As, and UAPs, and not a sole source contractor.

Response: The technical assistance component of the PNS program is a legislatively mandated activity targeted at supporting and improving the functions of the developmental disabilities program components (Councils, P&As, and UAPs). Contract awards for technical assistance to UAPs and P&As are in their last year of funding. A full and open competition for UAP and P&A technical assistance funds will be announced during the FY 1995 PNS funding cycle. Likewise, an announcement for a full and open competition for technical assistance funds for Councils has been made through the ACF procurement process. Technical assistance for information and referral systems will not be announced this fiscal year, but considered for future PNS funding announcements.

Comment: ADD received two comments on funding projects through demonstrations as well as procurements that would ensure the integration and active participation of racial and ethnic groups into the "mainstream" of theservice delivery system. Both letters recommended that we offer an additional solicitation for a data collection and analysis project to establish a national multicultural database.

Response: The FY 1994 PNS program budget is limited in providing funds for additional grants and contracts. Therefore, these recommendations will not be considered this fiscal year, but considered for future PNS announcements.

Comment: ADD received fifteen general comments, the majority of which were supportive of what we proposed for our FY 1994 funding priorities. Several comments were received that commended us for the way in which we approached this year's priorities, but wanted to see changes in the focus of the priority areas.

Response: We appreciate the input and commendations given for this year's priority areas. We believe the final priority areas reflect the input received from the public comment process and a sensitivity to the concerns expressed in each of the letters received.

Part III. The Review Process

A. Eligible Applicants

Before applications are reviewed, each will be screened to determine that the applicant is eligible for funding, as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Only public or non-profit private entities, *not individuals*, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one agency or organization, the applications must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. One means of accomplishing this is by the non-profit agency providing a copy of the applicant's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate.

ADD cannot fund a non-profit applicant without acceptable proof of its non-profit status.

B. Review Process and Funding Decisions

Applications from eligible applicants that meet the deadline date requirements under Part V, Section C will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this part to review and score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ADD Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ADD in making funding decisions.

In making decisions on awards, ADD may give preference to applications which focus on or feature: Culturally diverse racial or ethnic populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations involved in the

administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

Using the evaluation criteria below, a panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. Applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each proposal in terms of the evaluation criteria, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

1. Objectives and Need for Assistance (20 points)

The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; States the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

2. Results or Benefits Expected (20 points)

The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

3. Approach (35 points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

4. Staff Background and Organization's Experience (25 points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or underway by the applicant which is being supported by Federal assistance.

D. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

- *Eligible Applicants:* This section specifies the type of organization which is eligible to apply under the particular priority area.
- *Purpose:* This section presents the basic focus and/or broad goal(s) of the priority area.
- *Background Information:* This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACF and/or other State models are noted, where applicable.
- *Minimum Requirements for Project Design:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- *Project Duration:* This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.
- *Federal Share of Project Costs:* This section specifies the maximum amount of Federal support for the project.
- *Matching Requirement:* This section specifies the minimum non-Federal contribution, either through cash or in-kind match, that is required to the maximum Federal funds requested for the project.
- *Anticipated Number of Projects To Be Funded:* This section specifies the number of projects that ADD anticipates it will fund in the priority area.
- *CFDA:* This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded. This information is needed to complete item 10 on the SF 424.

Please note that applicants that do not comply with the specific priority area requirements in the section on "*Eligible Applicants*" will not be reviewed.

Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. In addition, previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns of that specific priority area.

E. Available Funds

ADD intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 1994, subject to the availability of funding. The size of the actual awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so.

For multi-year projects, continued Federal funding beyond the first budget period, but within the approved project period, is subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

F. Grantee Share of Project Costs

Other than the exception described below, Federal funds will be provided to cover up to 75% of the total allowable project costs. The total allowable project costs are the sum of the ACF share and the non-Federal share. Therefore, the non-Federal share must amount to at least 25% of the total (Federal plus non-Federal) project cost. This means that, for every $3 in Federal funds received, up to the maximum amount allowable under each priority area, applicants must contribute at least $1. For example, the cost breakout for a project costing $100,000 to implement would be:

Federal request	Non-Federal share	Total cost
$75,000 75%	$25,000 25%	$100,000 100%

The exception to the grantee cost sharing requirement relates to applications originating from American

general in concept than outlined in the priority area description is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns of that specific priority area.

E. Available Funds

ADD intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 1994, subject to the availability of funding. The size of the actual awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so.

For multi-year projects, continued Federal funding beyond the first budget period, but within the approved project period, is subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

F. Grantee Share of Project Costs

Other than the exception described below, Federal funds will be provided to cover up to 75% of the total allowable project costs. The total allowable project costs are the sum of the ACF share and the non-Federal share. Therefore, the non-Federal share must amount to at least 25% of the total (Federal plus non-Federal) project cost. This means that, for every $3 in Federal funds received, up to the maximum amount allowable under each priority area, applicants must contribute at least $1. For example, the cost breakout for a project costing $100,000 to implement would be:

Federal request	Non-Federal share	Total cost
$75,000 75%	$25,000 25%	$100,000 100%

The exception to the grantee cost sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under section 501(d) of Pub. L. 95–134, which requires that the Department waive "any requirement for local matching funds for grants under $200,000."

The applicant contribution must generally be secured from non-Federal sources. Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. However, funds from some Federal programs benefitting Tribes and Native American organizations have been used to provide valid sources of matching funds. If this is the case for a Tribe or Native American organization submitting an application to ADD, that organization should identify the programs which will be providing the funds for the match in its application. If the application successfully competes for PNS grant funds, ADD will determine whether there is statutory authority for this use of the funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

The non-Federal share of total project costs may be in the form of grantee-incurred costs and/or third party in-kind contributions. ADD strongly encourages applicants to meet their match requirement through a cash contribution, as opposed to an in-kind contribution. For further information on in-kind contributions, refer to the instructions for completing the SF 424A—Budget Information, in Part IV.

The required amount of non-Federal share to be met by the applicant is the amount indicated in the approved application. Grant recipients will be required to provide the agreed upon non-Federal share, even if this exceeds 25% (or other required portion) of the project costs. Therefore, an applicant should ensure the availability of any amount proposed as match prior to including it in its budget.

The non-Federal share must be met by a grantee during the life of the project. Otherwise, ADD will disallow any unmatched Federal funds.

G. Cooperation in Evaluation Efforts

Grantees funded by ADD may be requested to cooperate in evaluation efforts funded by ADD. The purpose of these evaluation activities is to learn from the combined experience of multiple projects funded under a particular priority area.

H. Closed Captioning for Audiovisual Efforts

Applicants are encouraged to include "closed captioning" in the development of any audiovisual products.

Part IV. Fiscal Year 1994 Priority Areas for Projects of National Significance

The following section presents the final priority areas for Fiscal Year 1994 Projects of National Significance (PNS) and solicits the appropriate applications.

Fiscal Year 1994 Priority Area 1: Leadership Education and Development of Individuals With Disabilities and Their Families From Culturally Diverse Backgrounds

- *Eligible Applicants:* State agencies, public or private nonprofit organizations, institutions or agencies.
- *Purpose:* Under this priority area, ADD will award demonstration grant funds on Leadership Education and Development of Individuals With Disabilities and Their Families From Culturally Diverse Backgrounds. The lead initiative intends to target individuals with developmental disabilities and their families from culturally diverse backgrounds to enable them to impact service delivery and fully access the services they need. This priority area is also a very inclusive one meant to cover individuals and families of all ages. However, we are particularly interested in proposals that foster the leadership development of young adults (15–25 years of age).

These projects would strengthen the ability of individuals with developmental disabilities and their families from culturally diverse backgrounds to serve as leaders and advocates on critical issues in the developmental disabilities field in the nation, and in their own communities.

- *Background Information:* Demographic trends continue to rapidly change the character of our Nation. As communities become more culturally, ethnically, and racially diverse, the need has increased to assist individuals from culturally diverse backgrounds and their families in the development and implementation of effective methods of communication that increase public awareness, inform individuals from other ethnic groups with disabilities of issues and services, and develop and implement networking strategies that improve access to community resources. Therefore, it is imperative to include persons with disabilities who are from diverse cultural and ethnic backgrounds in all aspects of service delivery.

The institutionalization of action strategies that promote culturally

competent policies and practices which are family-centered and community-based will depend on the ease with which physicians and other practitioners successfully incorporate ethnic and cultural factors in their work. For example, issues of importance may include: cultural and ethnic background of the health care professionals; sensitivity and competence of the health care professionals to deal with cultural and ethnic factors; or language and the strength of cultural and ethnic identification.

• *Minimum Requirements for Project Design:* ADD is seeking Historically Black Colleges and Universities (HBCUs), grassroots organizations, racial and ethnic coalitions, civil rights and other private non-profit organizations experienced in working with culturally diverse populations to develop successful models for accessing services; and supporting the ability of these constituencies with developmental disabilities to perform leadership functions, and make their own choices—personal or professional.

In order to successfully compete under this priority area, the application must include activities which would:

• Strengthen the ability of members of culturally diverse racial and ethnic groups with disabilities to serve as leaders and advocates on critical issues in the developmental disabilities field, particularly in their own communities;

• Enable and actively support members of culturally diverse racial and ethnic groups with disabilities and their families to take part in and benefit from advocacy in accessing health care services; recreational activities, public education efforts and employment programs;

• Support and train members of culturally diverse racial and ethnic groups with disabilities and their families to participate on boards of organizations that plan for and make decisions on their behalf;

• Support and train members of culturally diverse racial and ethnic groups and their families in establishing effective methods of communication at the community level, and establishing collaborative relationships between local systems in the provision of individualized services that they have choice and control of;

• Develop and implement public awareness campaigns and other written materials specifically geared toward members of culturally diverse groups with disabilities to inform them of the services available in their catchment areas;

• Provide evidence of the applicant's ability to establish an advisory board comprised of 51% persons with disabilities and 51% persons from culturally diverse groups. Applicants must also commit to including members of the project's advisory body into the board membership of the organization. A plan to accomplish this goal must be submitted to ADD; and

• Provide leadership development and training to increase and strengthen active participation by individuals with developmental disabilities and their families from culturally diverse racial and ethnic backgrounds.

• Proposals should also include provisions for the travel of two key personnel during the first and last year of the project to Washington, DC. for a one day meeting with ADD staff.

• Describe an evaluation component which will measure the project's effectiveness in achieving desired objectives.

• In addition, proposals should provide for the widespread dissemination of their products (reports, summary documents, audio-visual materials, and the like) in accessible formats. A plan to accomplish this goal must be submitted to ADD.

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a 3-year project period.

• *Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

• *Anticipated Number of Projects to be Funded:* It is anticipated that up to two (2) projects will be funded.

• *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance.

Fiscal Year 1993 Priority Area 2: Expanding the Scope of Developmental Disabilities Planning Councils

• *Eligible Applicants:* State Developmental Disabilities Councils (DDCs) in States with approved State plans and assurances as required by the Act which do not have a State mandate to focus on individuals with disabilities other than developmental disabilities.

• *Purpose:* Under this priority area, ADD will award up to five (5) individual grants at a maximum of $150,000 and/or one or more consortium grants to consortiums including a total of no more than five States to explore the implications of expanding the current scope of DDC activities to include individuals with a broad range of severe disabilities. Individuals with severe disabilities other than developmental disabilities can and have benefitted from the systems change, capacity building and advocacy activities of the DDCs. ADD is interested in determining the feasibility and implications of expanding the focus constituency of the DDCs in States differing in size, population, geographical distribution, and allotments received under Part B of the Act.

• *Background Information:* While individuals with developmental disabilities and their families directly benefit from DDC advocacy, systemic change, and capacity building activities, there are many people with severe disabilities other than developmental disabilities who might benefit further if their concerns were within the purview of DDCs. Therefore, ADD is accepting proposals, as mandated through a special initiative under Part E of the Act, for studies in consultation with and active support from State Protection and Advocacy Systems and University Affiliated Programs, to explore the feasibility and implications of expanding the scope of DDC systems change, capacity building, advocacy and other activities mandated under Part B of the Act to address the issues and concerns of people with a broader range of severe disabilities. ADD is looking for information which examines the potential effect, positive and/or adverse, of expanding the target constituency to include individuals with severe disabilities whose eligibility will be based on an extended age of onset and other determining criteria.

• *Minimum Requirements for Project Design:* These projects must be conducted in consultation with and active support from the State Protection and Advocacy System and the University Affiliated Program. Through this collaboration, DDCs should conduct an assessment of the characteristics of individuals with disabilities currently served by all three ADD-funded networks in their States and address consumer comments and 1990 report findings, particularly those pertaining to individuals who are unserved or underserved. The project must address the needs of individuals with developmental disabilities and other severe disabilities from culturally diverse racial and ethnic backgrounds. Individuals with disabilities, advocacy groups, and State and other service agencies must play a role in these studies.

ADD is particularly interested in supporting projects which include the following:

• Propose criteria which define the constituency to be served through potential DDC expansion (e.g.; age, functional limitations, or other factors such as individuals from culturally diverse racial and ethnic backgrounds, disadvantaged individuals, individuals with limited-English proficiency, individuals from underserved geographic areas, or specific groups of individuals with severe disabilities, including individuals with developmental or other disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments).

• Identify the service and support needs of the expanded population of individuals with severe disabilities other than developmental disabilities, and provide strategies that will assist all such individuals and their families, the developmental disabilities network, and others, in effecting positive changes on their behalf.

• Identify State and local linkages that would be essential to establishing collaborative relationships with service organizations.

• Delineate the barriers, opportunities, and critical issues related to DDC expansion to a broader range of disabilities as well as other economic and organizational implications, and the allocation of resources.

• Define outreach activities and collaborative relationships with other State agencies, organizations, task forces and commissions, and the impact of these relationships on systems change, advocacy and capacity building for the expanded constituency.

• Explore the effects of expansion activities on the staff support and other resources of the DDC. Provide a cost analysis of the proposed expansion.

• Describe how Federal, State, or other funds would be used.

this collaboration, DDCs should conduct an assessment of the characteristics of individuals with disabilities currently served by all three ADD-funded networks in their States and address consumer comments and 1990 report findings, particularly those pertaining to individuals who are unserved or underserved. The project must address the needs of individuals with developmental disabilities and other severe disabilities from culturally diverse racial and ethnic backgrounds. Individuals with disabilities, advocacy groups, and State and other service agencies must play a role in these studies.

ADD is particularly interested in supporting projects which include the following:

- Propose criteria which define the constituency to be served through potential DDC expansion (e.g.; age, functional limitations, or other factors such as individuals from culturally diverse racial and ethnic backgrounds, disadvantaged individuals, individuals with limited-English proficiency, individuals from underserved geographic areas, or specific groups of individuals with severe disabilities, including individuals with developmental or other disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments).
- Identify the service and support needs of the expanded population of individuals with severe disabilities other than developmental disabilities, and provide strategies that will assist all such individuals and their families, the developmental disabilities network, and others, in effecting positive changes on their behalf.
- Identify State and local linkages that would be essential to establishing collaborative relationships with service organizations.
- Delineate the barriers, opportunities, and critical issues related to DDC expansion to a broader range of disabilities as well as other economic and organizational implications, and the allocation of resources.
- Define outreach activities and collaborative relationships with other State agencies, organizations, task forces and commissions, and the impact of these relationships on systems change, advocacy and capacity building for the expanded constituency.
- Explore the effects of expansion activities on the staff support and other resources of the DDC. Provide a cost analysis of the proposed expansion.
- Describe how Federal, State, or other funds would be used.
- Identify the potential for, and the strategies to avoid, duplication of activities funded by the State or by other Federal agencies.
- Describe the anticipated changes in DDC board membership, agency policies and procedures, and other requirements necessary to respond to the needs of the expanded constituency.
- *Project Duration:* This announcement is soliciting applications for a 15-month project period to meet the legislative provision for a 15-month investigation under this priority area. Awards, on a competitive basis, will be for a 15-month budget period. Applications for continuation grants will not be entertained.
- *Federal Share of Project Costs:* The maximum Federal share is not to exceed $150,000 for the 15-month budget period for individual DD Council grants and/or $750,000 for one or more consortium grants to consortiums that include a total of no more than five States for the 15-month budget period.
- *Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $150,000 is $50,000 for a 15-month project period for individual DD Council grants. The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $250,000 for a 15-month project period for one consortium grant. This constitutes 25 percent of the total project budget.
- *Anticipated Number of Projects to be Funded:* It is anticipated that up to five individual DD Council expansion studies and/or at least one consortium DD Council expansion project will be funded.
- *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 1994 Priority Area 3: Technical Assistance Projects

(This priority area appeared in the February 1994 announcement without a priority area number designation)

For this priority area, ADD will be awarding funds separately using the procurement process to provide technical assistance to improve the functions of the Developmental Disabilities Planning Councils. Protection and Advocacy Systems, and University Affiliated Programs have ongoing technical assistance contracts and will not be competing for funds this fiscal year.

Part V. Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part IV.

A. Required Notification of the State Single Point of Contact

All applications under the ADD priority areas are required to follow the Executive Order (E.O.) 12372 process, "Intergovernmental Review of Federal Programs," and 45 CFR part 100. "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these 18 jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials and indicate the date of this submittal (or date SPOC was contact, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new or competing continuation awards. However, because PNS grant applications are due 30 days from the

date of publication, and grants are to be awarded in September 1994, there is insufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 30 days from the closing date for applications. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendation which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Sixth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: 93.631 ADD—Projects of National Significance.

Contact information for each State's SPOC is found at the end of this Part.

B. Notification of State Developmental Disabilities Planning Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. A list of the State Developmental Disabilities Councils is included at the end of this announcement.

C. Deadline for Submittal of Applications

One signed original and two copies of the application must be submitted on or before August 8, 1994 to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 6th Floor, Washington, DC. 20447, Attn: 93.631 ADD—Projects of National Significance.

Applications may be mailed or hand-delivered. Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications shall be considered as meeting an announced deadline if they are either:

1. Received *on or before* the deadline date at the ACF Grants Office specified in this section; or
2. Sent *on or before* the deadline date and received by ACF in time for the independent review.

(Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing)

Late applications: Applications which do not meet the criteria stated above are considered late applications. ACF/ADD shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend the deadline for all applicants due to acts of God, such as floods, hurricanes or earthquakes; or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

D. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A, Page 2 and Certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information".

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For all of ADD's priority areas, the following should be entered, "93.631—Developmental Disabilities: Projects of National Significance."

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter "00."

Items 15. Estimated Funding Levels. In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15 b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the

located. If Statewide, a multi-State effort, or nationwide, enter "00."

Items 15. Estimated Funding Levels. In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15 b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) The total project period of 15 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) The total project period of 17 months or less or (2) the first year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $500 or more per unit and the required useful life is more than two years. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, §§ 74.51 and 92.24, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) *Objectives and Need for Assistance;*

(b) *Results and Benefits Expected;*

(c) *Approach;* and

(d) *Staff Background and Organization's Experience.*

The specific information to be included under each of these headings is described in Section C of Part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½" x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may

description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) *Objectives and Need for Assistance;*

(b) *Results and Benefits Expected;*

(c) *Approach;* and

(d) *Staff Background and Organization's Experience.*

The specific information to be included under each of these headings is described in Section C of Part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½" x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Part V—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Applicants must also provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications, and need not be mailed back with the application.

In addition, applicants are required under section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

—Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);

—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.

—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B—Budget Categories;

—Table of Contents;

—Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate;

—Project summary description and listing of key words;

—Program Narrative Statement (See Part III, Section C);

—Organizational capability statement, including an organization chart;

—Any appendices/attachments;

—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);

—Certification Regarding Lobbying; and

—Certification of Protection of Human Subjects, if necessary.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

(Federal Catalog of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance)

Dated: June 30, 1994.

Bob Williams,

Commissioner, Administration on Developmental Disabilities.

Executive Order 12372—State Single Points of Contact

Arizona

Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor

Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX # (602) 280–1305

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX # (501) 682–5206

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX # (916) 323–3018

Colorado

State Single Point of Contact State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 521, Denver, Colorado 80203, Telephone: (303) 866–2156, FAX # (303) 866–2251

Delaware

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX # (302) 739–5661

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street NW., Suite 500, Washington, DC 20005, Telephone: (202) 727–6551, FAX # (202) 727–1617

Florida

Suzanne Traub-Metlay, Florida State Clearinghouse, Intergovernmental Affairs, Policy Unit, Executive Office of the Governor, The Capitol (room 1603), Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114, FAX # (904) 488–9005

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX # (404) 656–7938

Illinois

Steve Klokkenga, State Single Point of Contact Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone: (217) 782–1671, FAX # (217) 782–6620

Indiana

Frances E. Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–2972, FAX # (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX # (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX # (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38 Augusta, Maine 04333, Telephone: (207) 287–3261, FAX # (207) 287–6489

Maryland

Mr. Roland E. English III, Chief, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street, room 1104, Baltimore, Maryland 21201–2365, Telephone: (410) 225–4490, FAX # (410) 225–4480

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Telephone: (617) 727–7001 ext. 443, FAX # (617) 727–4259

Michigan

Richard S. Pastula, Director, Office of Federal Grants, Michigan Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Telephone: (517) 373–7356, FAX # (517) 373–6683

Mississippi

Cathy Malette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, Department of Finance and Administration, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone: (601) 949–2174, FAX # (601) 949–2125

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX # (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX # (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX # (603) 271–1728

New Jersey

Gregory W. Adkins, Director, Division of Community Resources, New Jersey Department of Community, Affairs

Please direct all correspondence and questions about intergovernmental review to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, room 609, Trenton, New Jersey 08625–0814, Telephone: (609) 292–9025, FAX # (609) 984–0386

New Mexico

George Elliott, Deputy Director, State Budget Division, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX # (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX # (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, FAX # (614) 466–5400

Rhode Island

Daniel W. Varin, Associate Director, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX # (401) 277–2083

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact Grant Services, Office of the Governor, 1205 Pendleton Street, room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX # (803) 734–0385

Tennessee

Charles Brown, State Single Point of Contact State Planning Office, 500 Charlotte Avenue, John Sevier Building, suite 309, Nashville, Tennessee 37243–0001, Telephone: (615) 741–1676

Texas

Tom Adams, Director, Intergovernmental Coordination, PO Box 13005, Austin, Texas 78711, Telephone: (512) 463–1771, FAX # (512) 463–1984

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX # (801) 538–1547

Vermont

Nancy McAvoy, State Single Point of Contact, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05609, Telephone: (802) 828–3326, FAX # (802) 828–3339

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX # (304) 558–3248

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street, 6th Floor, PO Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, FAX # (608) 267–6931

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th floor, East Wing, Cheyenne, Wyoming 82002, Telephone: (307) 777–7574, FAX # (307) 638–8967

Territories (SPOC)

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX # 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX # (809) 724–3270, (809) 724–3103

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX # (809) 776–0069

State Developmental Disabilities Planning Councils

Alabama

Joan B. Hannah, Ed.D., Executive Director, Alabama Developmental Disabilities Planning Council, 200 Interstate Park Dr., PO Box 3710, Montgomery, Alabama 36193–5001, (205) 270–4680, 1–800–232–2158, FAX # (205) 240–3195

Alaska

David Maltman, Director, Govenor's Council on Disabilities and Special Education, PO Box 240249, Anchorage, Alaska 99524–0249, (907) 563–5355, FAX # (907) 563–5357

Arizona

Diane Skay, Director, Governor's Council on Developmental Disabilities, 1717 West

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX # (304) 558–3248

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street, 6th Floor, PO Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, FAX # (608) 267–6931

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th floor, East Wing, Cheyenne, Wyoming 82002, Telephone: (307) 777–7574, FAX # (307) 638–8967

Territories (SPOC)

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX # 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX # (809) 724–3270, (809) 724–3103

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX # (809) 776–0069

State Developmental Disabilities Planning Councils

Alabama

Joan B. Hannah, Ed.D., Executive Director, Alabama Developmental Disabilities Planning Council, 200 Interstate Park Dr., PO Box 3710, Montgomery, Alabama 36193–5001, (205) 270–4680, 1–800–232–2158, FAX # (205) 240–3195

Alaska

David Maltman, Director, Govenor's Council on Disabilities and Special Education, PO Box 240249, Anchorage, Alaska 99524–0249, (907) 563–5355, FAX # (907) 563–5357

Arizona

Diane Skay, Director, Governor's Council on Developmental Disabilities, 1717 West Jefferson Street, Site Code 074Z, Phoenix, Arizona 85007, (602) 542–4049, FAX # (602) 542–5339

Arkansas

Orson Berry, Executive Director, Governor's Developmental Disabilities, Planning Council, 4815 West Markham, Slot 12, Little Rock, Arkansas 72205–3867, (501) 661–2589, FAX # (501) 661–2399

California

Roberta A. Marlowe, Ph.D., Executive Director, CA State Council on Developmental Disabilities, 2000 "O" Street, suite 100, Sacramento, California 95814, (916) 322–8481, FAX # (916) 443–4957

Colorado

Donald St. Louis, Executive Director, Colorado Developmental Disabilities Planning Council, 777 Grant Street, suite 304, Denver, Colorado 80203, (303) 894–2345, FAX # (303) 894–2880

Connecticut

Edward T. Preneta, Director, CT Council on Developmental Disabilities, 90 Pitkin Street, East Hartford, Connecticut 06108, (203) 725–3829, FAX # (203) 528–3680

Delaware

James F. Linehan, Director, Developmental Disabilities Planning Council, Department of Administrative Services, Box 1401, Townsend Building, Dover, Delaware 19901, (302) 739–3333, FAX # (302) 739–6704

District of Columbia

Carol Boykins, Executive Director, Developmental Disabilities State Planning Council, 801 N. Capitol St. NE., suite 954, Washington, DC. 20002, (202) 279–6085, FAX # (202) 727–6587

Florida

K. Joseph Krieger, Executive Director, Florida Developmental Disabilities Planning Council, 820 East Park Avenue, suite I–100, Tallahassee, Florida 32301, (904) 488–4180, FAX # (904) 922–6702

Georgia

Zebe Schmitt, Executive Director, Governor's Council on Developmental Disabilities, 2 Peachtree St. NE, room 3–210, Atlanta, Georgia 30303, (404) 657–2126, FAX # (404) 657–2132, TDD 657–2133

Hawaii

Diana Tizard, Director, State Planning Council on Developmental Disabilities, Five Waterfront Plaza, 500 Ala Moana Boulevard, suite 5–200, Honolulu, Hawaii 96813, (808) 586–8100, FAX # (808) 586–8129

Idaho

John D. Watts, Director, Idaho State Council on Developmental Disabilities, 280 North 8th Street, suite 208, Boise, Idaho 83720, (208) 334–2178, FAX # (208) 334–3417, 800–544–2433 (Idaho only)

Illinois

Rene Christensen-Leininger, Director, Illinois Council on Developmental Disabilities, 830 S. Spring Street, Springfield, IL 62704, (217) 782–9696, FAX # (217) 524–5339

Joan Asturrizaga, Director, Illinois Council on Developmental Disabilities, 100 W. Randolph/10–600, Chicago, Illinois, (312) 814–2080, FAX # (312) 814–7141

Indiana

Ms. Suellen Jackson-Boner, Director, Governor's Planning Council for People with Disabilities, 143 W. Market Street, Harrison Building, suite 404, Indianapolis, Indiana 46204, (317) 232–7770/3, FAX # (317) 233–3712

Iowa

Mr. Jay Brewer, Executive Director, Governor's Planning Council for Developmental Disabilities, Hoover State Office Building, 1st Floor, Des Moines, Iowa 50319, (515) 281–7632, FAX # (515) 281–4597

Kansas

Ms. Jane Rhys, Executive Director, Kansas Planning Council on Developmental Disabilities, 915 Harrison, room 141, Topeka, Kansas 66612, (913) 296–2608/9, FAX # (913) 296–1158

Kentucky

Prudence Reilly, Executive Director, Kentucky Developmental Disabilities Planning Council, Department for Mental Health and Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, (502) 564–7842, FAX # (502) 564–3844

Louisiana

Clarice Eichelberger, Executive Director, Louisiana State Planning Council on Developmental Disabilities, PO Box 3455 Bin 14, 1201 Capitol Access, 5th floor, DOT Edition, East Entrance, Baton Rouge, Louisiana 70821–3455, (504) 342–6804, FAX # (504) 342–4419

Maine

Peter R. Stowell, Executive Director, Maine Developmental Disabilities Council, Nash Building, Station #139, Augusta, Maine 04333–0139, (207) 287–4213, FAX # (207) 287–4268

Maryland

Susanne Elrod, Executive Director, Maryland State Planning Council on Developmental Disabilities, One Market Center, Box 10, 300 West Lexington Street, Baltimore, Maryland 21201–2323, (410) 333–3688, FAX # (401) 333–6674

Massachusetts

Jody Williams, Executive Director, Massachusetts Developmental Disabilities Council, 600 Washington Street, room 670, Boston, Massachusetts 02111, (617) 727–6374, FAX # (617) 727–1174, TDD 617 727–1885

Michigan

Ms. Sharon Tipton, Executive Director, Dept. of Mental Health, Michigan DD Council,

Lewis Cass Building, 6th floor, Lansing, Michigan 48913, (517) 334–6123, 7240, FAX # (517) 334–7353

Minnesota

Ms. Colleen Wieck, Ph.D., Executive Director, Governor's Planning Council on Developmental Disabilities, 300 Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55155, (612) 296–4018, FAX # (612) 296–3698

Mississippi

Ed C. Bell, Staff Director, Mississippi Developmental Disabilities Planning Council, 1101 Robert E. Lee Building, Jackson, Mississippi 39201, (601) 359–6238, FAX # (601) 359–6295

Missouri

Ms. Kay Conklin, Director, Missouri Planning Council for Developmental Disabilities, PO Box 687, 1706 East Elm Street, Jefferson City, Missouri 65102, (314) 751–8611, FAX # (314) 751–9207

Montana

Greg A. Olsen, Executive Director, Developmental Disabilities Planning and Advisory Council, 111 N. Last Chance Gulch, Arcade Bldg., Unit C, Box 526, Helena, Montana 59620, (406) 444–1334, FAX # (406) 444–5999.

Nebraska

Ms. Mary Gordon, Director, Dept. of Health/ Developmental Disabilities, 301 Centennial Mall South, PO Box 95007, Lincoln, Nebraska 68509, (402) 471–2330, FAX # (402) 471–0383.

Nevada

Donny Loux, Director, DD Council, Dept. of Rehab., 711 S. Stewart, Carson City, Nevada 89710, (702) 687–4440, FAX # (702) 687–5980.

New Hampshire

Thomas Flayton, (Acting) Executive Director, New Hampshire Developmental Disabilities Council, The Concord Center—Room 315, PO Box 315, 10 Ferry Street, Concord, New Hampshire 03301–5022, (603) 271–3236,7,8, FAX # (603) 225–6766.

New Jersey

Ethan B. Ellis, Executive Director, NJ Developmental Disabilities Planning Council, 32 W. State Street, CN 700, Trenton, New Jersey 08625–0700, (609) 292–3745, FAX # (609) 292–7114.

New Mexico

Chris Isengard, Executive Director, Developmental Disabilities Planning Council, State of New Mexico, 435 St. Michael's Drive, Building D, Santa Fe, New Mexico 87501, (505) 827–7590, FAX # (505) 827–7589.

New York

Isabel T. Mills, Executive Director, New York State Developmental Disabilities Planning Council, 155 Washington Avenue, 2nd Floor, Albany, New York 12210, (518) 432–8233, FAX # 518–432–8238.

North Carolina

Holly Riddle, Executive Director, North Carolina Council on Developmental Disabilities, 1508 Western Blvd., Raleigh, North Carolina 27606–1359, (919) 733–6566, FAX # (919) 733–1863.

North Dakota

Tom Wallner, Director, North Dakota Council on Developmental Disabilities, c/o Department of Human Services, State Capitol, 600 E. Boulevard Avenue, Bismarck, North Dakota 58505–0250, (701) 224–3219, FAX # (701) 224–2359.

Ohio

Mr. Ken Campbell, Executive Director, Ohio Developmental Disabilities, Planning Council, Department of Mental Retardation/Developmental Disabilities, 8 East Long Street, 6th Floor, Columbus, Ohio 43266–0523, (614) 466–5205, FAX # (614) 466–0298.

Oklahoma

Ann Trudgeon, Director, Developmental Disabilities Planning Council, Department of Human Services, PO Box 25352, Oklahoma City, Oklahoma 73125–0352, (405) 521–4984(5), FAX # (405) 521–6684.

Oregon

Charlotte Duncan, Executive Director, Oregon Developmental Disabilities Planning Council, 540 24th Place NE, Salem, Oregon 97301–4517, (503) 373–7555, FAX # (503) 373–7172.

Pennsylvania

David B. Schwartz, Executive Director, Developmental Disabilities Planning Council, Forum Building, Room 569, Commonwealth Avenue, Harrisburg, Pennsylvania 17120, (717) 787–6057.

Rhode Island

Marie V. Citrone, Executive Director, Rhode Island Developmental Disabilities Council, State Executive Department, 600 New London Avenue, Cranston, Rhode Island 02920–3028, (401) 464–3191, FAX # (401) 464–3570.

South Carolina

Charles Lang, Interim Executive Director, South Carolina Developmental Disabilities, Planning Council, Edgar Brown Building, Room 372, 1205 Pendleton Street, Columbia, South Carolina 29201–3731, (803) 734–0465, FAX # (803) 734–0356.

South Dakota

Charles A. Anderson, Director, South Dakota Governor's Planning Council on Developmental Disabilities, Hillsview Plaza, c/o 500 East Capitol, Pierre, South Dakota 57501–5070, (605) 773–6415, FAX # (605) 773–5483.

Tennessee

Wanda Willis, Director, Developmental Disabilities Planning Council, Department of Mental Health and Mental Retardation, 706 Church Street, 3rd Floor, Doctor's Building, Nashville, Tennessee 37219–5393, (615) 741–9791, FAX # (615) 741–0770.

Texas

Roger A. Webb, Executive Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Blvd., Austin, Texas 78751–2399, (512) 483–4080, FAX # (512) 483–4097.

Utah

Catherine E. Chambless, Director, Utah Governor's Council for People with Disabilities, PO Box 1958, Salt Lake City, Utah 84110–1958, (801) 533–4128, FAX # (801) 533–5302.

Vermont

Thomas A. Pombar, Executive Secretary, Vermont Developmental Disabilities Council, Waterbury Office Complex, 103 South Main Street, Waterbury, Vermont 05671–1534, (802) 241–2612, FAX # (802) 241–2979.

Virginia

Sandy Reen, Director, Virginia Board for People with Disabilities, Post Office Box 613, Richmond, Virginia 23205–0613, (804) 786–0016, FAX # (804) 786–1118.

Washington

Edward M. Holen, Executive Director, Developmental Disabilities Planning Council, Department of Community Development, 906 Columbia St., SW, Post Office Box 48314, Olympia, Washington 98504–8314, (206) 753–3908, 1–800–634–4473, FAX # (206) 586–2424.

West Virginia

Julie Pratt, Director, West Virginia Developmental Disabilities, Planning Council, 1601 Kanawha Blvd., West—Suite 200, Charleston, West Virginia 25312–2500, (304) 558–0416 (Voice), (304) 558–2376 (TDD), FAX # (304) 558–0941.

Wisconsin

Ms. Jayn Wittenmyer, Executive Director, Council on Developmental Disabilities, State of Wisconsin, 722 Williamson Street, PO Box 7851, Madison, Wisconsin 53707–7851, (608) 266–7826, FAX # (608) 267–3906.

Wyoming

Sharron C. Kelsey, Executive Director, Governor's Planning Council on Developmental Disabilities, 122 West 25th Street, Herschler Bldg., First Floor East, Cheyenne, Wyoming 82002, (307) 777–7230, 1–800–442–4333 (in-state-only), FAX # (307) 777–5690.

National Office

Ms. Susan Ames-Zierman, Executive Director, National Association of Developmental Disabilities Councils (NADDC), 1234 Massachusetts Avenue, NE., Suite 103, Washington, DC 20005, (202) 347–1234, FAX # (202) 347–4023.

TERRITORIES (DDCs)

American Samoa

Henry Sesepasara, Executive Director, American Samoa Developmental Disabilities Council, PO Box 184, Pago Pago, American Samoa 96799, (684) 633–2919, FAX # (684) 633–1139

Commonwealth of the Northern Mariana Islands

Juanita S. Malone, CNMI DD Council, PO Box 2565, Saipan, MP 96950, (011) 670–323–3014/16, FAX # (011) 670–322–4168.

Government of Federated State of Micronesia

Yosiro Suta, Gov't of Federated States, of Micronesia, Dept of Ed., Palikir, Pohnpei, FM 96941, (691) 320–2609, FAX # (691) 320–5500.

Guam

Frances Limitiaco Standing Soldier, Executive Director, Guam Developmental

Commonwealth of the Northern Mariana Islands

Juanita S. Malone, CNMI DD Council, PO Box 2565, Saipan, MP 96950, (011) 670–323–3014/16, FAX # (011) 670–322–4168.

Government of Federated State of Micronesia

Yosiro Suta, Gov't of Federated States, of Micronesia, Dept of Ed., Palikir, Pohnpei, FM 96941, (691) 320–2609, FAX # (691) 320–5500.

Guam

Frances Limitiaco Standing Soldier, Executive Director, Guam Developmental Disabilities Council, 122 IT&E Plazza, Rm. 201, Harmon, Guam 96911, (671) 646–9468, 9469, FAX # (671) 649–7672, TDD 671–649–3911.

Northern Mariana Islands

Juanita S. Malone; Executive Director, Developmental Disabilities Council, Department of Education, PO Box 2565, Saipan, CM 96950, W (670) 322–3014, H (670) 322–1398.

Puerto Rico

Maria Luisa Mendia, Executive Director, Puerto Rico Developmental Disabilities State Council, PO Box 9543, Santurce, Puerto Rico 00908, (809) 722–0595, FAX # (809) 721–3622.

Virgin Islands

Mark Vinzant, Director, VI Developmental Disabilities Council, P.O. Box 2671 Kings Hill, St. Croix, U.S. Virgin Islands 00850–9999, (809) 772–2133

Western Carolina Islands (Trust Territories of the Pacific)

Minoru Ueki, MD, Trust Territory Health Council, MacDonald Memorial Hospital KOROR, Palau. WCI 96940

BILLING CODE 4184–01–P

APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify) _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of the applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of the applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3						
4						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

13. Federal	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	$	$	$	$	$
14. Non-Federal					

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

Authorized for Local Reproduction

Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Line 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17 Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184–01–P

APPENDIX B

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, with respect to any employee who is so convicted:

(1) Taking appropriate personnel action agai requirements of the Rehabilitation Act of 1973, in a drug abuse assistance or rehabilitation prog enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to m (b), (c), (d), (e) and (f).

The grantee may insert in the space provid connection with the specific grant (use att

Place of Performance (Street address, City,

Check ___ if there are workplaces on file that a

Sections 76.630(c) and (d)(2) and 76.635(a)(point for STATE-WIDE AND STATE AGENC For the Department of Health and Human Se Oversight, Office of Management and Acquis Independence Avenue, S.W., Washington, D.C.

BILLING CODE 4184-01-C

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Appendix C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions, "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Appendix D

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall completer and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer of employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United states to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

DISCLOSURE

Complete this form to disclo
(See reverse

1. Type of Federal Action:
   - ☐ a. contract
   - b. grant
   - c. cooperative agreement
   - d. loan
   - e. loan guarantee
   - f. loan insurance

2. Status
   - ☐ a.
   - b.
   - c.

4. Name and Address of Reporting Entity:
   - ☐ Prime
   - ☐ Subawardee
     Tier _____, *if known*

Congressional District, *if known*:

6. Federal Department/Agency:

8. Federal Action Number, *if known*:

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

(attach Continu

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ plan

12. Form of Payment *(check all that apply)*:
- ☐ a. cash
- ☐ b. in-kind; specify: nature _____
  value _____

14. Brief Description of Services Performed or to be
or Member(s) contacted, for Payment Indicated i

(attach Continua

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Ye

16. Information requested through this form is authorized by title 31 U.
section 1352. This disclosure of lobbying activities is a material representa
of fact upon which reliance was placed by the tier above when
transaction was made or entered into. This disclosure is required pursua
31 U.S.C. 1352. This information will be reported to the Congress s
annually and will be available for public inspection. Any person who fail
file the required disclosure shall be subject to a civil penalty of not less
$10,000 and not more than $100,000 for each such failure.

Federal Use Only:

[FR Doc. 94-16315 Filed 7-6-94; 8:45 am]
BILLING CODE 4184-01-C

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. *in-kind*; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

[FR Doc. 94-16315 Filed 7-6-94; 8:45 am]

BILLING CODE 4184-01-C

Administration on Aging

White House Conference on Aging; Recognition of National Pre-White House Conferences on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice.

SUMMARY: This notice complements the March 17 and April 19, 1994 **Federal Register** Notices announcing the White House Conference on Aging's (WHCoA's) intent to recognize local programs/events and mini-conferences as part of its grass roots pre-1995 WHCoA strategy. The WHCoA proposes to recognize an additional category of events which is national in scope and which will precede the official 1995 WHCoA. Recognition implies the WHCoA's acknowledgement of the relevancy of the event to the goals of the WHCoA. To qualify for this additional category, interested organizations must adhere to the guidelines listed below.

ADDRESSES: Letters of intent should be sent to the WHCOA, 501 School Street SW., 8th Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Judy Satine, White House Conference on Aging, 202–245–7826. See address above.

SUPPLEMENTARY INFORMATION: A White House Conference on Aging is intended to produce policy recommendations to guide national aging policy over the next decade. To further these efforts, the WHCoA proposes to recognize National Pre-White House Conferences on Aging (National Pre-Conference) to address in detail and to develop substantive recommendations for those topics identified as WHCoA agenda items.

Guidelines

In order for an organization to qualify as a National Pre-Conference, it must have nationwide representation and/or an affiliate structure; have a national focus and an impact on national policy; have an organizational mission or purpose related to aging and related issues; conduct national substantive meetings and propose to conduct the National Pre-Conference in conjunction with an annual or regular national meeting. The program of the proposed National Pre-Conference must be structured to ensure specific discussion on one or more of the major topic areas of the White House Conference on Aging as listed in the agenda expected to be published in the **Federal Register** in the fall of 1994. Recommendations in each of these topic areas must be the specific product of the National Pre-Conference. Organizations are encouraged to develop discussion papers which could be presented to the participants in these National Pre-Conferences and which may later be distributed to the delegates to the 1995 White House Conference on Aging. The proposed National Pre-Conference should be held by March 31, 1995.

Recognition by the White House Conference on Aging allows the organization conducting the event to publicize that the event has been recognized by the WHCoA and that it will be listed in the final report of the Conference. However, recognition is not meant to imply and does not signify that the WHCoA agrees with or endorses the recommendations. Interested organizations should submit a letter of intent to the above address by August 31, 1994. The letter should include the name, address, telephone number and contact person of the organization as well as a brief description of the proposed National Pre-Conference including the theme and/or title.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 94–16367 Filed 7–6–94; 8:45 am]

BILLING CODE 4130–02–M

Centers for Disease Control and Prevention

[Announcement 484]

Initiatives by Organizations To Strengthen National Tobacco Control Activities in the United States

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for cooperative agreements to establish programs to demonstrate methodologies to train personnel, provide national leadership, and mobilize constituencies regarding tobacco control programs. This announcement's purpose is to develop capacity among organizations, which have not previously focused efforts on tobacco control, to develop the infrastructure necessary to educate, support, and mobilize their membership to promote and implement Healthy People 2000 tobacco control objectives. The primary constituencies served by the organizations should be minorities (African-Americans, Hispanics/Latinos, Asians/Pacific Islanders, and American Indians/Alaska Natives), youth, women, blue collar and/or agricultural workers. Tobacco control is defined as preventing tobacco use, encouraging cessation, and protecting both smokers and nonsmokers through public policy and public education.

Organizations that have not traditionally been active in the tobacco control field, but have a newly emerging interest in tobacco control, are encouraged to apply for this award. Upon receiving funding, organizations will be expected to demonstrate a focus on increasing tobacco control capacity within target communities or among an organization's constituents at the national, State or local level. Funding will be used to build the organization's capacity for leadership among its constituency for, and to assist State and local health agencies and other appropriate organizations and agencies in, the development of tobacco prevention and control.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of tobacco, with emphasis on target populations specified in risk reduction objective 3.4 and reducing the initiation of smoking by children and youth as described in Objective 3.5. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under Section 317(k)(3) [42 U.S.C. 247b(k)(3)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are public and private, nonprofit, and minority organizations. Experience with tobacco control activities or programs is not required. However, applicants must have established organizational capacities and experience in:

- Coalition building;
- Leadership;
- Advocacy skills;
- Impacting policy development at the local, State, regional, and/or national level;
- Working with legislators and decision makers;
- Serving one or more of the following constituencies: minorities (African-Americans, Hispanics/Latinos, Asians/Pacific Islanders, and American Indians/Alaska Natives), youth, women, blue collar and/or agricultural workers;
- Collaboration with State and local health agencies, and/or other relevant agencies, on programmatic activities.

In addition to the requirements described above, national eligible organizations must have a primary relationship to one of the target populations. A primary relationship is one in which the organization's service to the target population is viewed as the most important component of its mission. The relationship to the target population must be direct (membership, service, advocacy) rather than indirect or secondary (philanthropy, fund raising, educational).

Eligible organizations must have affiliate offices or organizations in more than one State or territory. Individual chapters or affiliates of parent organizations are not eligible to apply.

States or their bona fide agents or instrumentalities are not eligible for funding under this program announcement. States are currently funded for tobacco control activities under Program Announcement 332 or by the National Cancer Institute under the America Stop Smoking Intervention Study (ASSIST) demonstration program. CDC intends to support full and open competition among the States at the termination of the ASSIST demonstration program.

In addition to the eligibility requirements above, minority applicants must meet the following criteria:

1. At least 51 percent of persons on the governing board must be members of racial or ethnic minority populations.
2. The organization must possess a documented history of serving racial and ethnic minority populations through its offices, affiliates, or participating minority organizations for at least 12 months before the submission of the application to CDC.

Limited competition is justified under this program announcement because of the need to diversify and increase the number and type of organizations with the capacity to serve and represent a diverse target population. In addition, the organizations must have the capacity to work with these target populations to effectively strengthen existing tobacco control coalitions and assist State tobacco control programs. It is critical that organizations, in working with their target populations, are able to create leadership networks and mobilize them for action, and work with other organizations representative of the target population to increase their commitment to tobacco control. The

(African-Americans, Hispanics/Latinos, Asians/Pacific Islanders, and American Indians/Alaska Natives), youth, women, blue collar and/or agricultural workers;

• Collaboration with State and local health agencies, and/or other relevant agencies, on programmatic activities.

In addition to the requirements described above, national eligible organizations must have a primary relationship to one of the target populations. A primary relationship is one in which the organization's service to the target population is viewed as the most important component of its mission. The relationship to the target population must be direct (membership, service, advocacy) rather than indirect or secondary (philanthropy, fund raising, educational).

Eligible organizations must have affiliate offices or organizations in more than one State or territory. Individual chapters or affiliates of parent organizations are not eligible to apply.

States or their bona fide agents or instrumentalities are not eligible for funding under this program announcement. States are currently funded for tobacco control activities under Program Announcement 332 or by the National Cancer Institute under the America Stop Smoking Intervention Study (ASSIST) demonstration program. CDC intends to support full and open competition among the States at the termination of the ASSIST demonstration program.

In addition to the eligibility requirements above, minority applicants must meet the following criteria:

1. At least 51 percent of persons on the governing board must be members of racial or ethnic minority populations.

2. The organization must possess a documented history of serving racial and ethnic minority populations through its offices, affiliates, or participating minority organizations for at least 12 months before the submission of the application to CDC.

Limited competition is justified under this program announcement because of the need to diversify and increase the number and type of organizations with the capacity to serve and represent a diverse target population. In addition, the organizations must have the capacity to work with these target populations to effectively strengthen existing tobacco control coalitions and assist State tobacco control programs. It is critical that organizations, in working with their target populations, are able to create leadership networks and mobilize them for action, and work with other organizations representative of the target population to increase their commitment to tobacco control. The coordination and implementation of a more inclusive and comprehensive tobacco control strategy requires organizations with the capacity, experience, leadership, and organizational skills to influence the health-related actions of their constituency, and an interest in developing the capacity to identify, assess, and advocate scientifically proven, environmental (policy and legislative changes at State, local, and community levels) tobacco control activities.

Availability of Funds

Approximately $1,000,000 is available in FY 1994 to fund approximately 10 awards. It is expected that the average award will be $150,000, ranging from $50,000 to $200,000.

1. Approximately one award will be funded in each of the following target populations: youth, women, and blue collar and/or agricultural workers.

2. Approximately $500,000 of the total $1,000,000, will be available to fund approximately 5 minority organizations which serve one or more of the following constituencies: African-Americans, Hispanics/Latinos, Asians/Pacific Islanders, and American Indians/Alaska Natives.

It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

This is a demonstration program to expand the developing network of organizations beyond those traditionally involved with tobacco control. The purpose is to demonstrate that these organizations can provide leadership, assistance, and training to facilitate the development, organization, and implementation of tobacco control programs among selected target populations, in order to achieve Healthy People 2000 tobacco objectives.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Collaborate with constituents, State and local health agencies, and other appropriate organizations and agencies to establish a broad-based coalition to advise and support tobacco control program activities.

2. Establish specific, measurable, and realistic goals and objectives that focus on the development and implementation of program activities (i.e., leadership training, consultation with primary tobacco organizations, providing constituent education) over time.

3. Establish an operational plan to include, but not be limited to:

a. Achievement of goals.

b. Identification of the target population and appropriate tobacco control strategies.

c. Establishment of tobacco control as a high organizational priority and promotion of tobacco control initiatives, especially those directed at minorities, youth, women, and blue collar and/or agricultural workers.

d. Facilitation of organizational policies and initiatives, within affiliates and/or other organizations serving target populations, aimed at decreasing tobacco use at the national, State, and local levels.

e. Acquisition of technical advice, training, and assistance by: voluntary health agencies (such as the American Cancer Society, the American Lung Association, and the American Heart Association) and tobacco control organizations (such as Americans for NonSmokers Rights, Doctors Ought To Care, Stop Teenage Addiction To Tobacco, and the Advocacy Institute).

f. Mobilization of existing national, State, and local alliances, networks, coalitions, and support systems to support initiatives.

g. Participation in the CDC's Office on Smoking and Health (OSH) sponsored national tobacco control campaigns.

h. Provision of strategic support to State and local affiliates.

i. Development of procedures for the evaluation of performance in achieving goals and objectives.

4. Disseminate programmatic information to CDC and other interested recipients through appropriate methods, including:

a. Identifying and submitting pertinent programmatic information for incorporation into an appropriate computerized database of health information and health promotion resources.

b. Sharing information on electronic bulletin boards, such as SCARCNet.

5. Collaborate with CDC and other appropriate agencies in planning and participating in an annual conference, and two 2-day workshops in Atlanta,

Georgia, for no more than two individuals.

B. CDC Activities

1. Provide and periodically update information related to the purposes or activities of this program announcement.

2. Coordinate with national, State, and local health agencies and other relevant organizations in planning and conducting national strategies designed to strengthen programs for preventing tobacco use among youth, protecting nonsmokers, and creating a supportive environment for those who wish to quit tobacco use.

3. Provide programmatic consultation and guidance related to program planning, implementation, and evaluation; assessment of program objectives; and dissemination of successful strategies, experiences, and evaluation reports.

4. Plan meetings of national, State, and local partners, including training meetings, to address issues and program activities related to improving tobacco control programs.

5. Assist in the evaluation of program activities.

6. Monitor the recipient's performance of program activities.

Evaluation Criteria (Total 100 Points)

Applications will be reviewed and evaluated according to the following criteria:

A. Background/Need (10 points). The extent to which the applicant justifies the need for, and describes the geographic boundaries of, the project.

B. Capacity (15 points). The extent to which the applicant identifies and describes a target population and constituency; and demonstrates the capacity, ability, and leadership potential to address the identified needs and develop and conduct program activities.

C. Goals and Objectives (15 points)

1. Goals. The extent to which the applicant has submitted specific and realistic goals for the projected three-year project period that are consistent with program requirements.

2. Objectives. The extent to which the applicant has submitted objectives for each one-year budget period that are specific, measurable, feasible, and are directly related to the program's goals. Objectives should focus on the development and implementation of activities over time.

D. Operational Plan (20 points).

The feasibility and appropriateness of the Operational Plan and the extent to which it:

1. Is consistent with the applicant's level of experience and proposed strategy;

2. Targets one or more priority populations;

3. Uses effective strategies that are culturally appropriate to the target population;

4. Proposes activities that are likely to accomplish proposed program objectives; and

5. Provides a reasonable time line for conducting proposed activities.

E. Project Management and Staffing (15 points).

The extent to which the applicant identifies staff and affiliates that have the professional experience, authority, and responsibility to carry out each activity as evidenced by job descriptions, curricula vitae, organizational charts, and letters of support from collaborating agencies.

F. Sharing Experiences and Resources (5 points).

The extent to which the applicant indicates how it will share and use effective materials and activities.

G. Collaborating (10 points).

The extent to which the applicant describes in detail how it will collaborate with CDC, local and State tobacco control programs, and other appropriate regional and/or national organizations.

H. Evaluation (10 points).

The extent to which the applicant presents a reasonable plan designed to measure progress in meeting goals and objectives, evaluate performance, obtain and assess data, and report and use the results for programmatic decisions.

I. Budget and Accompanying Justification (Not Weighted) The extent to which the applicant provides a detailed and clear budget narrative consistent with the stated objectives and planned activities of the project.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Lobbying Activities

Title 31 U.S.C. Section 1352 prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific grant or cooperative agreement.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, on or before August 16, 1994.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6803.

Programmatic technical assistance may be obtained from Carole C. Rivera, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–50, Atlanta, GA 30341–3724, telephone (404) 488–5707.

Please refer to Announcement 484 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock Number 017–001–00474–0), or "Healthy People 2000" (Summary Report, Stock Number 017–001–00473–1), referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 30, 1994.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16396 Filed 7–6–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming joint meeting of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Joint Meeting of the Nonprescription Drugs and the Pulmonary-Allergy Drugs Advisory Committees

Date, time, and place. November 14, 1994, 8:30 a.m., Parklawn Bldg., conference rms. G through J, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; the agency anticipates that the meeting will last only 1 day, but if there is sufficient interest in participation, the meeting will be extended an additional day at the discretion of the chairperson; Lee L. Zwanziger or Leander B. Madoo, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committees. The Nonprescription Drugs Advisory

4770 Buford Highway, NE., Mailstop K–50, Atlanta, GA 30341–3724, telephone (404) 488–5707.

Please refer to Announcement 484 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock Number 017–001–00474–0), or "Healthy People 2000" (Summary Report, Stock Number 017–001–00473–1), referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 30, 1994.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16396 Filed 7–6–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming joint meeting of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Joint Meeting of the Nonprescription Drugs and the Pulmonary-Allergy Drugs Advisory Committees

Date, time, and place. November 14, 1994, 8:30 a.m., Parklawn Bldg., conference rms. G through J, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; the agency anticipates that the meeting will last only 1 day, but if there is sufficient interest in participation, the meeting will be extended an additional day at the discretion of the chairperson; Lee L. Zwanziger or Leander B. Madoo, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committees. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Pulmonary-Allergy Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. Those desiring to make formal presentations should notify a contact person before September 30, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committees will jointly discuss over-the-counter (OTC) drug products for the treatment of asthma and will address topics such as: (1) OTC bronchodilator drug products currently available and possible pending changes in their marketing status; (2) whether there is a population for which OTC antiasthma drug products are appropriate; (3) the general question of whether antiasthma drug products should be available OTC; (4) antiasthma drug products currently available by prescription only that could be considered for OTC status; and (5) data requirements necessary to support conversion of prescription antiasthma drug products to OTC status. Public comments are available for inspection in docket no. 94N–0232 at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above)

beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 30,1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–16365 Filed 7–6–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meetings are announced:

Subcommittee Meeting of the National Task Force on AIDS Drug Development on Drug Development Issues

Date, time, and place. July 19, 1994, 12:30 p.m., Sheraton National Hotel, 900 South Orme St., Arlington, VA.

Type of meeting and contact person. Open subcommittee discussion, 12:30 p.m. to 2 p.m.; open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; Jean H. McKay, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104.

General function of the task force. The National Task Force on AIDS Drug Development shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers.

Open task force discussion. The subcommittee will present, hear, and discuss issues on the barriers to the development of drugs for acquired immunodeficiency syndrome (AIDS) from the perspective of the subcommittee members, members of the Federal government, and the public.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the task force. Those desiring to make formal presentations should notify the contact person before July 13, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Subcommittee Meeting of the National Task Force on AIDS Drug Development on Public/Private Issues

Date, time, and place. July 19, 1994, 1 p.m., Sheraton National Hotel, South Ballroom, 900 South Orme St., Arlington, VA.

Type of meeting and contact person. Open subcommittee discussion, 1 p.m. to 3 p.m.; open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; Jean H. McKay, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104.

General function of the task force. The National Task Force on AIDS Drug Development shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for HIV infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers.

Open task force discussion. The subcommittee will present, hear, and discuss issues on the barriers to collaboration on AIDS drug development from the perspective of the subcommittee members, members of the Federal government, and the public.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the task force. Those desiring to make formal presentations should notify the contact person before July 13, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9.a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 30, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–16366 Filed 7–6–94; 8:45 am]

BILLING CODE 4160–01–F

Social Security Administration

Social Security Acquiescence Ruling 94–2(4)—Lively v. Secretary of Health and Human Services, 820 F.2d 1391 (4th Cir. 1987)—Effect of Prior Disability Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of Social Security Acquiescence Rule 94–2(4).

EFFECTIVE DATE: July 7, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9.a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 30, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–16366 Filed 7–6–94; 8:45 am]

BILLING CODE 4160–01–F

Social Security Administration

Social Security Acquiescence Ruling 94–2(4)—Lively v. Secretary of Health and Human Services, 820 F.2d 1391 (4th Cir. 1987)—Effect of Prior Disability Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of Social Security Acquiescence Rule 94–2(4).

EFFECTIVE DATE: July 7, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Fourth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after July 7, 1994. If we made a determination or decision on your application for benefits between June 29, 1987, the date of the Court of Appeals' decision and July 7, 1994, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.805 Social Security-Survivors Insurance; 93.806-Special Benefits for Disabled Coal Miners; 93.807-Supplemental Security Income.)

Dated: May 11, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Acquiescence Ruling 94–2(4)

Lively v. Secretary of Health and Human Services, 820 F.2d 1391 (4th Cir. 1987)—Effect of Prior Disability Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Issue

Whether, in making a disability determination or decision on a subsequent disability claim with respect to an unadjudicated period, an adjudicator must adopt a finding regarding a claimant's residual functional capacity, or other finding required under the applicable sequential evaluation process for determining disability, made in a final decision by an Administrative Law Judge or the Appeals Council on a prior disability claim arising under the same title of the Social Security Act.*

Statute/Regulation/Ruling Citation

Section 205(a) and (h) and 1102 of the Social Security Act (42 U.S.C. 405(a) and (h) and 1302). 20 CFR 404.955, 404.957(c)(1), 404.981, 416.1455, 416.1457(c)(1), 416.1481.

Circuit

Fourth (Maryland, North Carolina, South Carolina, Virginia, West Virginia) *Lively v. Secretary of Health and Human Services*, 820 F.2d 1391 (4th Cir. 1987)

Applicability of Ruling

The Ruling applies to determinations or decisions at all levels of the administrative review process (i.e., initial, reconsideration, Administrative Law Judge hearing and Appeals Council).

Description of Case

In a decision dated October 19, 1981, an Administrative Law Judge found that the plaintiff, Mr. Lively, was not disabled under Rule 202.10 of the medical-vocational guidelines, 20 CFR Part 404, Subpart P, Appendix 2, and denied his application for disability insurance benefits. In applying Rule 202.10, the Administrative Law Judge found that Mr. Lively had the residual functional capacity for light work. The decision that Mr. Lively was not entitled to disability insurance benefits became the final decision of the Secretary and was affirmed by the district court.

The plaintiff filed a second application for disability insurance benefits on December 14, 1983. After holding a hearing, an Administrative Law Judge concluded that the plaintiff was not entitled to disability insurance benefits. The Administrative Law Judge determined that Mr. Lively retained the functional capacity for the performance of work activity of any exertional level on and prior to December 31, 1981, the date his insured status expired. The Administrative Law Judge did not discuss in his decision the 1981 finding by another Administrative Law Judge that the plaintiff had the residual functional capacity to do only light work. This decision became the final decision of the Secretary and was appealed to the district court. The case was referred to a United States Magistrate who found that the evidence before the Administrative Law Judge on the plaintiff's 1983 application was sufficient to sustain the Secretary's

* Although Lively was a title II case, similar principles also apply to title XVI. Therefore, this Ruling extends to both title II and title XVI disability claims.

decision that the plaintiff was not disabled as of December 31, 1981. The district court adopted the Magistrate's Report and Recommendation. Mr. Lively then appealed to the United States Court of Appeals for the Fourth Circuit.

Holding

The Fourth Circuit stated that:

> Congress has clearly provided by statute that *res judicata* prevents reappraisal of both the Secretary's findings and his decision in Social Security cases that have become final. 42 U.S.C. § 405(h), and the courts have readily applied *res judicata* to prevent the Secretary from reaching an inconsistent result in a second proceeding based on evidence that has already been weighed in a claimant's favor in an earlier proceeding.

The court noted that the plaintiff became 55 years of age two weeks after the Administrative Law Judge, in connection with the first application for benefits, found that Mr. Lively was limited to light work. The court further noted that a person with the plaintiff's education and vocational background who is 55 years of age or older and limited to light work would be considered disabled under Rule 202.02 of the medical-vocational guidelines, 20 CFR Part 404, Subpart P, Appendix 2. The court found it inconceivable that Mr. Lively's condition had improved so much in two weeks as to enable him to perform medium work. Accordingly the court held:

> Principles of finality and fundamental fairness * * * indicate that the Secretary must shoulder the burden of demonstrating that the claimant's condition had improved sufficiently to indicate that the claimant was capable of performing medium work. * * * [E]vidence, not considered in the earlier proceeding, would be needed as an independent basis to sustain a finding contrary to the final earlier finding.

Statement as to How Lively Differs From SSA Policy

Under SSA policy, if a determination or decision on a disability claim has become final, the Agency may apply administrative *res judicata* with respect to a subsequent disability claim under the same title of the Act if the same parties, facts and issues are involved in both the prior and subsequent claims. However, if the subsequent claim involves deciding whether the claimant is disabled during a period that was not adjudicated in the final determination or decision on the prior claim, SSA considers the issue of disability with respect to the unadjudicated period to be a new issue that prevents the application of administrative *res judicata*. Thus, when adjudicating a subsequent disability claim involving an unadjudicated period, SSA considers the facts and issues *de novo* in determining disability with respect to the unadjudicated period.

The United States Court of Appeals for the Fourth Circuit concluded that where a final decision of the Secretary after a hearing on a prior disability claim contained a finding about a claimant's residual functional capacity, the Secretary may not make a different finding in adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim unless there is new and material evidence relating to the claimant's residual functional capacity.

Explanation of How SSA Will Apply the Decision Within the Circuit

This Ruling applies only to disability findings in cases involving claimants who reside in Maryland, North Carolina, South Carolina, Virginia, or West Virginia at the time of the determination or decision on the subsequent claim at the initial, reconsideration, Administrative Law Judge hearing or Appeals Council level. It applies only to a finding regarding a claimant's residual functional capacity or other finding required at a step in the sequential evaluation process for determining disability provided under 20 CFR 404.1520, 416.920 or 416.924, or a finding required under the evaluation process for determining disability provided under 20 CFR 404.1578, as appropriate, which was made in a final decision by an Administrative Law Judge or the Appeals Council on a prior disability claim. When adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim, adjudicators must adopt such a finding from the final decision by an Administrative Law Judge or the Appeals Council on the prior claim in determining whether the claimant is disabled with respect to the unadjudicated period unless there is new and material evidence relating to such a finding.

[FR Doc. 94–16418 Filed 7–6–94; 8:45 am]
BILLING CODE 4190–29–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Center for Laboratory Services, a Division of LabOne, Inc., 8915 Lenexa Drive, Overland Park, Kansas 66214, 913–888–3927

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054 (Outside OH) 800–338–0166/(Inside OH) 800–362–8913 (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063 214–929–0535 (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert

letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Center for Laboratory Services, a Division of LabOne, Inc., 8915 Lenexa Drive, Overland Park, Kansas 66214, 913–888–3927

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054 (Outside OH) 800–338–0166/(Inside OH) 800–362–8913 (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063 214–929–0535 (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugProof, Division of Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601–236–2609 (moved 6/16/93)

EXPRESSLAB, INC., 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Road, Southfield, MI 48034, Inside MI: 800–328–4142/Outside MI: 800–225–9414 (formerly: HealthCare/Preferred Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, OH 45229, 513–569–2051

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Med-Chek/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc.)

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Avenue, Toledo, OH 43699–0008, 419–381–5213

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

Metropolitan Reference Laboratories, Inc., 2320 Schuetz Road, St. Louis, MO 63146, 800–288–7293

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (formerly: Med Arts Lab)

National Health Laboratories Incorporated, 5601 Oberlin Drive, Suite 100, San Diego, CA 92121, 619–455–1221

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627/Inside NC: 800–642–0894

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272

Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211

Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286

Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986

Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; moved 12/21/92)
UNILAB, 18408 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory withdrew from the Program on June 15:

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511

The following laboratory will be withdrawing on July 8:

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080

Patricia S. Bransford,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–16529 Filed 7–6–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–94–1731; FR–3611–N–02]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 23, 1994.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Consolidated Plan for Community Investment (FR–3611).

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: State and units of general local government are required to submit to HUD and to implement a Comprehensive Housing Affordability Strategy (CHAS) as a condition for receiving funds made available under Title I of the National Affordable Housing Act, the United States Housing Act of 1937, the Housing and Community Development Act of 1974, and the Stewart B. McKinney Homeless Assistance Act.

Form Number: HUD–40090–A and 40091–A.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping and Annually..

Reporting Burden:

Information Collection .....
Recordkeeping .....

Total Estimated Burden Hours: 424,250.

Status: Revision.

Contact: Salvatore Sclafani, HUD, (202) 708–1283; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 23, 1994.

[FR Doc. 94–16433 Filed 7–6–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–94–1346; FR–1761–N–03]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Information Collection .....

Total Estimated Burden Hours: 86,739

Status: Reinstatement with changes

Contact: Eugene R. Fogel, HUD, (202) 708–3287; Joseph F. Lackey, Jr., OMB (202) 395–7316.

Date: June 24, 1994.

[FR Doc. 94–16432 Filed 7–6–94; 8:45 am]

BILLING CODE 4210–01–M

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	950		1		416		395,200
Recordkeeping	950		1		39		29,050

Total Estimated Burden Hours: 424,250.

Status: Revision.

Contact: Salvatore Sclafani, HUD, (202) 708–1283; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 23, 1994.

[FR Doc. 94–16433 Filed 7–6–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–94–1346; FR–1761–N–03]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 24, 1994.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Loans for Housing for the Elderly or Handicapped—Housing Assistance Payments Contract and Project Management (FR–1761)

Office: Housing

Description of the need for the information and its proposed use: This regulation will amend 24 CFR Part 885, which governs projects that receive direct loans under Section 202 of the Housing Act of 1959, and housing assistance under Section 8 of the United States Housing Act of 1937. The rule will add regulatory provisions to govern the housing assistance payments contract, project operations and project management. In addition, the rule proposes changes to 24 CFR Part 813 to reflect the addition of contract and management regulations in Part 885.

Form Number: None

Respondents: Individuals or Households, Federal Agencies or Employees, and Non-Profit Institutions

Frequency of Submission: Annually, On Occasion, and Recordkeeping

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	4,294		50		.404		86,739

Total Estimated Burden Hours: 86,739

Status: Reinstatement with changes

Contact: Eugene R. Fogel, HUD, (202) 708–3287; Joseph F. Lackey, Jr., OMB (202) 395–7316.

Date: June 24, 1994.

[FR Doc. 94–16432 Filed 7–6–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–94–3795]

Notices of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of

Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for this information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 23, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Evaluation of the New Congregate Housing Services Program
Office: Policy Development and Research
Description of the Need for the Information and its Proposed Use: The evaluation of the Congregate Housing Services Program will test the effectiveness of combining housing with supportive services in allowing frail elderly and disabled persons to continue to live in their own homes. The evaluation will also document how grantees have implemented their programs.
Form Number: None
Respondents: Individuals or Households and State or Local Governments
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hour per response	=	Burden hours
Evaluation	3,236		1		.986		3,191

Total Estimated Burden Hours: 3,191
Status: New
Contact: Priscilla Prunella, HUD (202) 708–3700; Joseph F. Lackey, Jr., OMB (202) 395–7316.
Date: June 23, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Management Review Report for Unsubsidized Multifamily Housing Programs and Management Review Worksheet
Office: Housing
Description of the Need for the Information and Its Proposed Use: This information is used by coinsuring lenders to evaluate the adequacy of project management applying for coinsured loans. The information is needed to periodically monitor and evaluate ongoing management operations and procedures at coinsured projects with regard to maintenance and security; financial management; leasing and occupancy; tenant management relations; and general management practices.
Form Number: HUD–9838
Respondents: Businesses or Other For-Profit
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Management Review Worksheet	450		1		7		3,150
Management Review Report	450		1		1		450

Total Estimated Burden Hours: 3,600
Status: Extension, no changes
Contact: Richard C. Pace, HUD, (202) 401–3272; Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: June 20, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Relocation and Acquisition Recordkeeping Requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implementing regulations at 49 CFR Part 24, and related HUD program regulations
Office: Community Planning and Development
Description of the Need for the Information and Its Proposed Use: Agencies that acquire real property or displace property occupants must collect information to process claims, make payments and document compliance with 49 CFR Part 24 and HUD program rules. Expanded URA coverage (effective April 2, 1989) and new HUD-assisted programs have increased the overall reporting burden.
Form Number: None
Respondents: State or Local Governments
Frequency of Submission: Recordkeeping
Reporting Burden:

Recordkeeping

Total Estimated Burden Hours: 170,000
Status: Reinstatement, no changes
Contact: Harold J. Huecker, HUD, (202) 708–0336; Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: June 20, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Transfer of Physical Assets

Information Collection

Total Estimated Burden Hours: 32,200
Status: Extension, no changes
Contact: James J. Tahash, HUD, (202) 708–3944; Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Date: June 10, 1994.

HUD–93100

Total Estimated Burden Hours: 17,187
Status: Extension, no changes
Contact: Florence B. Brooks, HUD, (202) 708–1719; Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Date: June 30, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Reporting Requirements Associated with 24 CFR 203.508 and 235.1001—Providing Information

Annual Reporting

Total Estimated Burden Hours: 3,000
Status: Extension, no changes
Contact: Ann M. Sudduth, HUD, (202) 708–1719; Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Date: June 30, 1994.

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Recordkeeping	2,000		1		85		170,100

Total Estimated Burden Hours: 170,000
Status: Reinstatement, no changes
Contact: Harold J. Huecker, HUD, (202) 708–0336; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 20, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Transfer of Physical Assets
Office: Housing
Description of the Need for the Information and Its Proposed Use: The form is completed and submitted to HUD by prospective purchasers of properties with mortgages either HUD-insured or HUD-held before the transfer. The information is needed by HUD for approval of a transfer of physical assets. HUD uses the information to ensure that the project is not placed in physical, financial, or managerial jeopardy by the transfer.
Form Number: HUD–92266
Respondents: Businesses or Other For-Profit and Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	350		1		92		32,200

Total Estimated Burden Hours: 32,200
Status: Extension, no changes
Contact: James J. Tahash, HUD, (202) 708–3944; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Date: June 10, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Home Ownership Assistance Under Section 235 of the National Housing Act
Office: Housing
Description of the Need for the Information and Its Proposed Use: The information collection will be used to determine a homeowner's eligibility for and amount of financial assistance to be provided under Section 235, Homeowners Assistance Payments Program.
Form Number: HUD–93100
Respondents: Individuals or Households and Businesses or Other For-Profit
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–93100	55,000		1.25		.25		17,187

Total Estimated Burden Hours: 17,187
Status: Extension, no changes
Contact: Florence B. Brooks, HUD, (202) 708–1719; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Date: June 30, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Reporting Requirements Associated with 24 CFR 203.508 and 235.1001—Providing Information
Office: Housing
Description of the Need for the Information and Its Proposed Use: Mortgagees are required to provide homeowners with the amount of interest paid and taxes disbursed from the escrow account for income tax purpose. For Section 235 mortgages, lenders are required to provide the interest accounting in such a way as to allow the homeowner to easily deduct the amount of subsidy the Department paid on behalf of the homeowner.
Form Number: None
Respondents: Businesses or Other For-Profit
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Annual Reporting	12,000		1		.25		3,000

Total Estimated Burden Hours: 3,000
Status: Extension, no changes
Contact: Ann M. Sudduth, HUD, (202) 708–1719; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Date: June 30, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Issuer's Monthly Remittance Advice
Office: Government National Mortgage Association
Description of the Need for the Information and its Proposed Use: Government National Mortgage Associations (GNMA) issuers are required to provide summary information to the holder of each GNMA mortgage-backed security with respect to the current month's account transactions and calculations of the

holder's fractional share of total cash distribution.

Form Number: HUD–11714 and HUD–11714SN

Respondents: Businesses or Other For-Profit

Frequency of Submission: Monthly

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Issuer's Monthly Remittance	824		6,456		1/60		88,668

Total Estimated Burden Hours: 88,668
Status: Extension with changes
Contact: Charles Clark or Brenda Countee, HUD, (202) 708–1535; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Date: June 30, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Information Request to the Owners and Managers of all HUD-assisted housing in the Boston Metropolitan Statistical Area, pursuant to Section II.A of the March 11, 1991, Consent Decree Entered in NAACP, Boston Chapter v. Kemp

Office: General Counsel

Description of the Need for the Information and its Proposed Use: In order for HUD to implement Section II.A of the March 11, 1991, consent decree entered in *NAACP, Boston Chapter v. Kemp*, it must require owners and managers of HUD-assisted housing to provide certain information to the Boston Housing Opportunity Clearing Center.

Form Number: None

Respondents: Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations

Frequency of Submission: On Occasion and Recordkeeping

Reporting Burden:

	Number of respondents	x	Frequence of response	x	Hours per response	=	Burden hours
Information Collection	550		1–12		.25		300
Recordkeeping	550		1		.18		100

Total Estimated Burden Hours: 400
Status: Extension with changes
Contact: Linda G. Katz, HUD, (617) 565–5126; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Date: June 30, 1994.

[FR Doc. 94–16431 Filed 7–6–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–94–1679; FR–3449–N–02]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 23, 1994.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Residential Antidisplacement and Relocation Assistance Plan (FR–3449) (24 CFR Part 43)

Office: Community Planning and Development

Description of the need for the information and its proposed use: The rule implements Section 200 of the Housing and Community Development Act (HCD) of 1992. This rule adds a requirement that a recipient funded under the HOME program must certify under its 1994 Comprehensive Housing Affordability Strategy (CHAS) that it is following a "residential antidisplacement and relocation assistance Plan." This plan must be equivalent to that required for the Community Development Block Grant Program under Section 104(d) of the HCD Act of 1974, as amended.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

Information Collection	
Recordkeeping	

Total Estimated Burden Hours: 7,218.
Status: New.
Contact: H.J. Huecker, HUD, (202) 708–0336; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Date: June 23, 1994.

[FR Doc. 94–16434 Filed 7–6–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D–94–1067; FR–3744–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates the power and authority of the Assistant Secretary for Housing—Federal Housing Commissioner to order a Limited Denial of Participation, affecting certain contractors and participants in programs of the Department of Housing and Urban Development ("HUD" or "Department"), to the Department's Deputy Assistant Secretary for Multifamily Housing Programs and the Deputy Assistant Secretary for Single Family Housing.

EFFECTIVE DATE: June 21, 1994.

FOR FURTHER INFORMATION CONTACT: Michael D. Noonan, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10251, Washington, DC 20410, (202) 708–1424 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The HUD regulations, at 24 CFR 24.700, have been modified effective April 19, 1994, to provide that officials designated by the Secretary, including the Assistant Secretary for Housing—Federal Housing Commissioner, are authorized to order Limited Denials of Participation (LDP) and to redelegate this authority. This Notice redelegates the authority to order Limited Denials of Participation (LDP) from the Assistant Secretary for Housing—Federal Housing Commissioner to the Deputy Assistant Secretary for Multifamily Housing Programs and the Deputy Assistant Secretary for Single Family Housing.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	60		1		40		2,400
Recordkeeping	435		1		12		5,218

Total Estimated Burden Hours: 7,218.
Status: New.
Contact: H.J. Huecker, HUD, (202) 708–0336; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Date: June 23, 1994.

[FR Doc. 94–16434 Filed 7–6–94; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D–94–1067; FR–3744–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates the power and authority of the Assistant Secretary for Housing—Federal Housing Commissioner to order a Limited Denial of Participation, affecting certain contractors and participants in programs of the Department of Housing and Urban Development ("HUD" or "Department"), to the Department's Deputy Assistant Secretary for Multifamily Housing Programs and the Deputy Assistant Secretary for Single Family Housing.

EFFECTIVE DATE: June 21, 1994.

FOR FURTHER INFORMATION CONTACT: Michael D. Noonan, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10251, Washington, DC 20410, (202) 708–1424 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The HUD regulations, at 24 CFR 24.700, have been modified effective April 19, 1994, to provide that officials designated by the Secretary, including the Assistant Secretary for Housing—Federal Housing Commissioner, are authorized to order Limited Denials of Participation (LDP) and to redelegate this authority. This Notice redelegates the authority to order Limited Denials of Participation (LDP) from the Assistant Secretary for Housing—Federal Housing Commissioner to the Deputy Assistant Secretary for Multifamily Housing Programs and the Deputy Assistant Secretary for Single Family Housing.

In November of 1993, the Secretary announced the reorganization of HUD's structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD employees to serve HUD's customers more effectively. This redelegation of authority implements the Secretary's objective with respect to ordering LDPs.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for Housing—Federal Housing Commissioner of the United States Department of Housing and Urban Development redelegates to the Deputy Assistant Secretary for Multifamily Housing Programs and to the Deputy Assistant Secretary for Single Family Housing the power and authority to order Limited Denials of Participation, pursuant to 24 CFR 24.700.

Authority: Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: June 21, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–16436 Filed 7–6–94; 8:45 am]
BILLING CODE 4210–27–M

[Docket No. D–94–1066; FR–3743–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This redelegation of authority redelegates from the Assistant Secretary for Housing—Federal Housing Commissioner to the Director, Office of Mortgage Insurance Accounting and Servicing, Office of the FHA-Comptroller, and to each Debt Management Center ("DMC") Director of the HUD FHA-Debt Management Centers in Albany, New York, Chicago, Illinois, and Seattle, Washington the power and authority to perform the following functions, without respect to geographical area, in connection with FHA debt referred to the DMC for collection and debt arising from the payment of claims under Title I of the National Housing Act: 1) execute documents necessary to transfer or subordinate title in and to any debt, contract, claim or security instrument obtained by the Secretary; 2) satisfy and/or execute deeds, liens, and notes; and 3) execute settlement agreements and/or write-offs in connection with the collection of any such debt, contract, claim, or security instrument. The Director of the Title I Accounting and Servicing Division, Office of Mortgage Insurance Accounting and Servicing, Office of the FHA-Comptroller is also redelegated the authority to issue implementing policies and procedures with respect to all functions specified in this redelegation.

EFFECTIVE DATE: June 21, 1994.

FOR FURTHER INFORMATION CONTACT: Paulette Porché, Director, Title I Accounting and Servicing Division, Department of Housing and Urban Development, 451 7th Street SW., Room B–133, Washington, DC 20410, (202) 755–7550. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 25, 1991, at 48 FR 40959, the Assistant Secretary for Housing—Federal Housing Commissioner redelegated to the Director, Office of Mortgage Insurance Accounting and Servicing, Office of the FHA-Comptroller, and to each Debt Management Center ("DMC") Director of the HUD Debt Management Centers in Albany, New York, Chicago, Illinois, and Seattle, Washington the power and authority to execute documents necessary to transfer title in and to any debt and contract, claim or security instrument obtained by the Secretary in connection with the payment of claims under Title I of the National Housing Act and to execute settlement agreements in connection with the collection of any such debt, contract, claim, or security instrument.

In FY 1987 HUD began consolidating the Title I program by establishing the first of three multi-regional Debt Management Center ("DMC's") in Seattle, Washington. The purpose of the DMC was to collect debts owed to the Department which result from defaulted Title I loans assigned to the Department. The consolidation effort was completed

in FY 1989 with the opening of the Chicago, Illinois center. The three DMC's are located in Albany, New York, Chicago, Illinois, and Seattle, Washington. The role of the Debt Management Centers has expanded to include collection and management responsibility for not only Title I, but other FHA debt that has been referred to the DMCs for collection.

This redelegation of authority grants to the Director, Office of Mortgage Insurance Accounting and Servicing, Office of the FHA-Comptroller, and to each of the three DMC Directors the power and authority to perform the following functions, without regard to geographical area, in connection with FHA debt referred to the DMC for collection and debt arising from the payment of claims under Title I of the National Housing Act: 1) execute documents necessary to transfer or subordinate title in and to any debt, contract, claim or security instrument obtained by the Secretary; 2) satisfy and/or execute deeds, liens, and notes; and 3) execute settlement agreements and/or write-off in connection with the collection of any such debt, contract, claim, or security instrument. The Director of the Title I Accounting and Servicing Division, Office of Mortgage Insurance Accounting and Servicing is also redelegated the authority to issue implementing policies and procedures with respect to all functions specified in this redelegation. This redelegation does not in any way include the power and authority to transfer title to real property, except as it relates to the collection and settlement of Title I and referred FHA debt.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates the following authority:

Section A. Redelegation of Authority

The Assistant Secretary for Housing—Federal Housing Commissioner redelegates to the Director of the Office of Mortgage Insurance Accounting and Servicing, Office of the FHA-Comptroller, and to the Director of the HUD FHA-Debt Management Centers in Albany, New York, Chicago, Illinois, and Seattle, Washington the power and authority to perform the following functions, without regard to geographical area, in connection with FHA debt referred to the DMC for collection and debt arising from the payment of claims under Title I of the National Housing Act: 1) execute documents necessary to transfer or subordinate title in and to any debt, contract, claim or security instrument obtained by the Secretary; 2) satisfy and/or execute deeds, liens, and notes; and 3) execute settlement agreements and/or write-off in connection with the collection of any such debt, contract, claim, or security instrument. The authority to issue policies and procedures with respect to the above-stated functions is hereby redelegated to the Director of the Title I Accounting and Servicing Division, Office of Mortgage Insurance Accounting and Servicing, Office of the FHA-Comptroller.

Section B. No Further Redelegation

The authority redelegated under Section A may not be further redelegated.

Section C. Redelegation of Authority Superseded

The redelegation of authority published on October 25, 1991, at 48 FR 40959, is hereby superseded in its entirety.

Authority: Section 2(c)(2) of the National Housing Act, 12 U.S.C. 1703(c)(2); Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 21, 1994.

Nicholas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–16435 Filed 7–6–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Shooting Closure on Public Lands in San Diego County, CA

AGENCY: Bureau of Land Management.

ACTION: Closure order.

SUMMARY: The Bureau of Land Management (BLM) is closing part of the public lands on Otay Mountain, located in San Diego County, California, to recreational target shooting. The closure is permanent and covers all public lands located on and within 300 feet of the Otay Mountain Truck Trail, communication sites, historic bunkers, and water tank structures. The closure does not apply to hunters in lawful pursuit of game. It is BLM's intent to protect public users on the road, eliminate shooting damage occurring to numerous structures, and reduce the litter occurring near wilderness study areas. The closure will affect all of the current, popular shooting areas being accessed by vehicle, thus eliminating target shooting from most of the public lands on Otay Mountain.

EFFECTIVE DATE: July 7, 1994.

FOR FURTHER INFORMATION CONTACT: Julia Dougan, Area Manager, Palm Springs-South Coast Resource Area at (619) 251–0812.

SUPPLEMENTARY INFORMATION: BLM administers 16,675 acres of public lands in the Otay Mountain area. The area includes two wilderness study areas, one area of critical environmental concern, four communication tower sites, three historic military bunker structures, and five water storage tanks. Although there are several existing roads, the general public's only access through the area is on the Otay Mountain Truck Trail, which connects Otay Mesa Road on the West to Marron Valley Road on the East. This primitive road, with the adjacent communication sites, bunker structures, and water tanks, is where most public users concentrate on the mountain. It is used by four-wheelers, off-highway vehicles, mountain bikers, hikers, hang gliders, remote control airplane operators, target shooters, hunters, and law enforcement personnel. Three problems exist from the target shooters that this closure will address: First, most of the popular shooting areas are located so that individuals are shooting from, down, or across the roadway, or are shooting from ridge lines offering no backstop. This creates a safety hazard for all recreationists using the road and, more than once, has jeopardized law enforcement officers in the field not visible from the road. Second, most of the communication, bunker, and water tank structures are being used as backstops or targets by target shooters. This has result in damaged communications equipment, cracked concrete water tanks, and scarred bunker structures. Finally, all of the shooting areas were trashed, seriously impacting the wilderness values of the area. Over 3 tons of trash were removed from the mountain in December, 1993, and most of it was debris left from target shooters. By closing this area to one type of recreational activity, the health and safety of all other recreationists using the mountain will be protected, the man-made structures will be protected, and the natural resource values of the public lands will be enhanced. The closure does not limit hunters in lawful pursuit of game, nor address other BLM lands in San Diego County where target shooting is still legal.

Authority for this permanent closure is established by 43 CFR 8364.1. Violation of the closure is punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

Dated: June 16, 1994.

Lucia Kuizon,

Acting District Manager.

[FR Doc. 94–16353 Filed 7–6–94; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Oakhill Center for Rare and Endangered Species, Oklahoma City, OK, PRT–791552

The applicant requests a permit to import one captive born male Amur leopard (*Panthera pardus orientalis*) from Zoo Praha, Prague, Czech Republic, for the purpose of enhancement of the survival of the species through propagation.

Applicant: San Diego Zoological Society, San Diego, CA PRT–790854

The applicant requests a permit to import blood and tissue samples collected from wild and captive-held Chinese monals (*Lophophorus lhuysii*) from the Beijing Center for Breeding Endangered Animals, Beijing, China, for the purpose of enhancement of the survival of the species through scientific research.

Applicant: Ray Gill, Memphis, TN, PRT–791439

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Contour (National Nature Conservation and Tourism Board), "Tsolwana Game Reserve", Tarkastad, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: University of Illinois, College of Veterinary Medicine, Urbana, IL, PRT–791956

The applicant requests a permit to import the pituitary gland taken from the carcass of a male Northern White rhinoceros (*Ceratotherium simum cottoni*) from the Matobo National Park, Bulawayo, Zimbabwe, for scientific research aimed at enhancing the propagation and survival of the species.

Applicant: Arthur Swanstrom, Edina, MN, PRT–791503

The applicant request a permit to import the sport-hunted trophy of one

Dated: June 16, 1994.

Lucia Kuizon,

Acting District Manager.

[FR Doc. 94–16353 Filed 7–6–94; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Oakhill Center for Rare and Endangered Species, Oklahoma City, OK, PRT–791552

The applicant requests a permit to import one captive born male Amur leopard (*Panthera pardus orientalis*) from Zoo Praha, Prague, Czech Republic, for the purpose of enhancement of the survival of the species through propagation.

Applicant: San Diego Zoological Society, San Diego, CA PRT–790854

The applicant requests a permit to import blood and tissue samples collected from wild and captive-held Chinese monals (*Lophophorus lhuysii*) from the Beijing Center for Breeding Endangered Animals, Beijing, China, for the purpose of enhancement of the survival of the species through scientific research.

Applicant: Ray Gill, Memphis, TN, PRT–791439

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Contour (National Nature Conservation and Tourism Board), "Tsolwana Game Reserve", Tarkastad, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: University of Illinois, College of Veterinary Medicine, Urbana, IL, PRT–791956

The applicant requests a permit to import the pituitary gland taken from the carcass of a male Northern White rhinoceros (*Ceratotherium simum cottoni*) from the Matobo National Park, Bulawayo, Zimbabwe, for scientific research aimed at enhancing the propagation and survival of the species.

Applicant: Arthur Swanstrom, Edina, MN, PRT–791503

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. M. G. Wienand, "Longwood," Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: George Butsikaris, Brooklyn, NY, PRT–791709

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. A.G. Spaeth, "Doornboom," Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: David Blasko, Napa, CA, PRT–791518

The applicant request a permit to export one captive-born male Asian elephant (*Elephas maximus*) to Promotora Zoofari S.A. de C.U. in Mexico for the purpose of enhancement of the survival of the species through education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 30, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–16402 Filed 7–6–94; 8:45 am]

BILLING CODE 4310–55–P

Managing Migratory Bird Subsistence Hunting in Alaska; Strategy for Regulating the Spring and Summer Taking of Migratory Birds in Alaska for Subsistence Purposes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final environmental assessment and finding of no significant impact.

SUMMARY: This Notice is to inform the public of the availability of the U.S. Fish and Wildlife Service's (Service) final environmental assessment (EA) evaluating alternatives for resolving the problem of ongoing spring and summer migratory bird subsistence hunting. This notice also makes available to the public the substance of the Service's proposed Finding of No Significant Impact which results from the EA. The Service has finalized the selection of the preferred alternative set out in the EA, i.e., to amend the 1916 Convention Between the United States and Great Britain for the Protection of Migratory Birds (Convention) to allow a regulated migratory bird subsistence harvest during what is now the closed period of March 10 to September 1. The final EA is available from the Service upon request at either of the addresses provided below (See **ADDRESSES:** and/or **FOR FURTHER INFORMATION CONTACT:**).

DATES: The decision stated in the Finding of No Significant Impact will be effective no earlier than August 8, 1994.

ADDRESSES: The contact point for this matter is: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240; or Regional Director (MBC), Region 7, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503. Any comments received on previous drafts are available for public inspection during normal business hours in Room 634 Arlington Square Building, 4401 No. Fairfax Drive, Arlington, VA 22203; or, for those comments originating within Alaska, 3rd Floor, Room 3387, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240 (703/358–1714); or Mr. Robin West, Migratory Bird Coordinator, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503 (907/786–3423).

SUPPLEMENTARY INFORMATION: Subsistence hunting of migratory birds for cultural and nutritional purposes occurs in Alaska and in the far northern areas of Canada as a customary and traditional activity during the closed period (between March 10 and September 1) required by the Convention and the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), which implements the terms of the Convention. Apparently, the framers of the Convention were aware of migratory bird subsistence hunting activity but unaware of the extent to which it was

needed and practiced by far northern rural peoples. Thus, the Convention provides inadequately for this particular subsistence use, with the result that much of the current subsistence hunting activity is illegal. However, restricting subsistence hunting to a time period outside of that in which birds are available neither provides equitable access to the resource nor accommodates customary and traditional uses. Because the Service recognizes the legitimate need for equitable access to the migratory bird resource for subsistence purposes, regulatory strategies have been under evaluation which would bring about successful resolution of the problem. The Service has recently completed the environmental assessment process regarding this issue and the results are contained in the final EA titled "Regulation of Migratory Bird Subsistence Hunting in Alaska," dated May 1994. All comments received during the review of the draft EA have been considered in the preparation of the final EA. The Service has also completed a proposed Finding of No Significant Impact for the EA process, which is as follows:

Finding of No-Significant Impact

Finding of no significant impact for managing migratory bird subsistence hunting in Alaska

On the basis of the final environmental assessment analysis contained in the document titled "Managing Migratory Bird Subsistence Hunting in Alaska" and dated May 1994, the U.S. Fish and Wildlife Service finds that no significant impacts will result from the action to be taken to amend the 1916 Convention Between the U.S. and Great Britain [For Canada] For the Protection of Migratory Birds (Convention). The Service examined five alternatives for dealing with the subsistence hunting of migratory bird issue, which are: (1) maintaining the status quo; (2) expanding the universe of cooperative agreements; (3) enforcing the terms of the current Convention; (4) amending the Convention; and (5) amending the Migratory Bird Treaty Act to allow subsistence hunting outside of the Convention. Action modifiers which specify how subsistence harvest of migratory birds would be managed were considered in conjunction with the five alternatives. Amendment of the Convention is the Service's preferred strategy for resolving problems associated with the illegal subsistence hunting of migratory birds by far northern peoples in Alaska and Canada.

Of the five alternatives considered, only amending the Convention responds to problems created by its current provisions for subsistence harvest. Selection of this alternative, amending the Convention, is based on the following factors: The Convention currently proscribes hunting for migratory birds during the period March 10 to September 1, except under very limited circumstances; there is an existing need for the customary and traditional use of migratory bird resources that must be accommodated; accommodation of this need recognizes existing levels of use and will not significantly increase levels of harvest; migratory birds used for subsistence purposes are generally not available when harvest is allowed under the Convention; regulatory mechanisms now available to management agencies to monitor and control harvest will be enhanced by this action; and that, because the same subsistence harvest problems exist within Canada because of inadequacies in the Convention, amendment is the best alternative for ensuring the future of the North American migratory bird resource. Also, there is a preponderance of public opinion that believes amending the Convention is the most satisfactory way of dealing with the migratory bird subsistence hunting issue.

Based upon my review and evaluation of the enclosed environmental assessment and other supporting documentation, I have determined that the action that is anticipated to be taken to regulate migratory bird subsistence hunting in Alaska is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, preparation of an environmental impact statement on the proposed action is not required.

The EA presents a menu of action modifiers that allow the Service a range of approaches to regulating subsistence harvest within an amended Convention. Action modifiers selected that specify how the Service would regulate a migratory bird subsistence harvest, as well as associated principles that are intended to guide the process, are as follows: *First*, the subsistence harvest should be available to Alaska Natives and other qualified residents residing in designated subsistence harvest areas; *Second*, the Service believes that nothing in this action should grant entitlement, rights or preference of some users over any other users of migratory birds in the U.S. As with sport hunting, promulgation of appropriate regulations will be the vehicle for opening subsistence hunting season(s). A management system would be established that allows coordination among user groups, State and Federal interests, and the Flyway Councils. All the ordinary strategies of bag limits, seasons, species restrictions, quotas, management units, zones, etc., could be used to manage, as appropriate. Windows of harvest opportunity would be set that would vary from area to area, but would, to the maximum extent possible, protect breeding birds; *Third*, the migratory bird and/or migratory bird egg subsistence harvest should be regionally limited, e.g., Southeast and Southcentral Alaska generally would be excluded because of fall harvest options, and urban areas such as the North Star Borough would be similarly excluded Communities outside of the proposed inclusion areas should be allowed to petition for consideration of hunting opportunity based on specific criteria including past and ongoing customary and traditional take of migratory birds for food during the closed season; *Fourth*, birds should be taken for food, for personal and family use and could be shared within the communities. Items crafted from non-edible by-products could be utilized for personal, cultural or ceremonial uses. Birds, parts, eggs and craft items may be bartered or traded in limited quantities but may not be sold; *Fifth*, variable levels of harvest should be set that fluctuate with population numbers. However, it is the Service's goal that there should be no significant increase in levels of harvest in the future beyond the variable levels referenced above. Harvest of eggs should be considered for all traditional species. However, limited harvest of waterfowl eggs would be considered where it is shown as an established customary use *and* egg resources from nonwaterfowl species are not available; and *Sixth*, there should be moderate enforcement in cooperation with subsistence users. That is, enforcement for this activity should be consistent with enforcement during the other part of the year and sufficiently great on an as-needed basis to help ensure compliance.

Since international agreement negotiations of the U.S. Department of State are not bound by agency NEPA process results, the foregoing position of the Service represents the desired, but may not be the actual, results of Convention amendment. However, it is the Service's intent to pursue amendment results which incorporate these features.

Dated: July 1, 1994.

Bruce Blanchard,

Acting Director.

[FR Doc. 94–16449 Filed 7–6–94; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Technical/Agency Draft Recovery Plan for Puerto Rican Endangered Ferns for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces availability for public review of a technical/agency draft recovery plan for Puerto Rican endangered ferns. They occur in the limestone or karst region of northwestern Puerto Rico and in the central mountains. Deforestation and fragmentation of habitat may have restricted these species to their present locations. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before (September 6, 1994) to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Ms. Marelisa Rivera, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera, Caribbean Field Office, P.O. Box 491, Boquerón, P.R. 00622, Tel. 809–851–7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency Draft is for seven Puerto Rican endangered ferns, all endemic to the island of Puerto Rico. These ferns are currently restricted to one, two or three locations each. *Adiantum vivesii, Tectaria estremerana* and *Thelypteris verecunda* are found in the limestone or karst region of northwestern Puerto Rico. *Adiantum*

limestone or karst region of northwestern Puerto Rico and in the central mountains. Deforestation and fragmentation of habitat may have restricted these species to their present locations. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before (September 6, 1994) to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Ms. Marelisa Rivera, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera, Caribbean Field Office, P.O. Box 491, Boquerón, P.R. 00622, Tel. 809–851–7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency Draft is for seven Puerto Rican endangered ferns, all endemic to the island of Puerto Rico. These ferns are currently restricted to one, two or three locations each. *Adiantum vivesii, Tectaria estremerana* and *Thelypteris verecunda* are found in the limestone or karst region of northwestern Puerto Rico. *Adiantum vivesii* and *Tectaria estremerana* are only known from one locality each in Quebradillas and Arecibo, respectively. *Thelypteris verecunda* is known from Quebradillas, Hatillo and San Sebastian. *Elaphoglossum serpens, Polystichum calderonense, Thelypteris inabonensis,* and *Thelypteris yaucoensis* are found in the mountains of the central region of Puerto Rico. *Elaphoglossum serpens* and *Thelypteris inabonensis* are known from the Toro Negro commonwealth Forest and *Polystichum calderonense* is known from Monte Guilarte Commonwealth Forest. *Thelypteris yaucoensis* is known from Yauco and Ciales. The seven species face extinction due to the extreme rarity and restricted distribution, habitat destruction and modification, forest management practices, hurricane damage and possible collection.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 24, 1994.

Susan Silander,

Acting Field Supervisor, Caribbean Field Office, Puerto Rico.

[FR Doc. 94–16344 Filed 7–6–94; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Recovery Plan for Rough-leaved Loosestrife for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of an agency draft recovery plan for rough-leaved loosestrife (*Lysimachia asperulaefolia*). This rare perennial herb, native only to North Carolina and South Carolina, grows on moist sand or peat in the transition zone between longleaf pine or oak savannas and wetter, shrubby plant communities. Only nine populations of rough-leaved loosestrife are currently known to exist. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 6, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the address above; Telephone: 704–665–1195 (Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is rough-leaved loosestrife (*Lysimachia asperulaefolia*). The areas of emphasis for recovery actions are the southern coastal plain and sandhills of North Carolina (Cumberland, Pamlico, Onslow, Brunswick, Beaufort, and Pender Counties) and the sandhills of South Carolina (Richland County). Habitat protection and management,

reintroduction, and preservation of genetic material are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 23, 1994.

Brian P. Cole,

Field Supervisor, Asheville Field Office, North Carolina.

[FR Doc. 94–16352 Filed 7–6–94; 8:45 am]

BILLING CODE 4310–55–M

[PRT–684154]

Receipt of Application for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *ET SEQ.*)

Applicant

Dr. G. David Johnson, Chairman, Department of Vertebrate Zoology, National Museum Natural History, Smithsonian Institution, Washington, D.C.

The applicant requests renewal of his permit to salvage dead endangered and/or threatened sea turtles that may occur anywhere in the United States and territories for scientific research and recovery purposes aimed at enhancement of propagation or survival of the species. The species involved are: green (*Chelonia mydas [incl. agassizi]*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys Kempii*), leatherback (*Dermochelys coriacea*), loggerhead (*Caretta caretta*), and olive (*Lepidochelys olivacea*).

Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 and must be received by the Assistant Regional Director within 30 days of the date of this publication.

Documents and other information submitted with this application is available for review by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See address above)

James A. Young,

Assistant Regional Director, Ecological Services, Southwest Region (2).

[FR Doc. 94–16398 Filed 7–6–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Anchorage Museum of History and Art, Anchorage, Alaska

AGENCY: National Park Service, Interior

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate a cultural item in the possession of the Anchorage Museum of History and Art that meets the definition of "object of cultural patrimony" under Section 2 of the act.

The item consists of a headdress in the form of a wolf's head, with a wicker frame, calico lining, red trade cloth tongue, and cape with ermine skins. The headdress was purchased by the Museum in 1983 from Boyd Didrickson and is designated accession number 83.134 in the Museum records.

Evidence provided by the Yanyeidi Clan of the Taku Tlingit confirms that the headdress is of ongoing historical, traditional, and cultural importance to the clan, and that at the time the headdress was separated from the Yanyeidi Clan of the Taku Tlingit, no individual clan member was considered to have the right to convey it to a non-clan member without clan consent.

The Douglas Indian Association, an association recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, has petitioned for the repatriation of the headdress on behalf of the Yanyeidi Clan of the Taku Tlingit. Representatives of the Douglas Indian Association, the Yanyeidi Clan of the Taku Tlingit, and the Museum have determined pursuant to 25 U.S.C. 3001 (2) that there is a relationship of shared group identity which can be reasonably traced between the headdress, the Douglas Indian Association, and the Yanyeidi Clan of the Taku Tlingit. The Museum has agreed to repatriate the headdress.

Representatives of any other Indian tribe or Alaska Native village or corporation that believes itself to be culturally affiliated with this item should contact Patricia B. Wolf, Museum Director, Anchorage Museum of History and Art, 121 W. 7th Avenue, Anchorage, Alaska 99501, (907) 343–4326, before [*thirty days following publication of this notice*]. Repatriation of the item to the Douglas Indian Association, on behalf of the Yanyeidi Clan of the Taku Tlingit, may begin after that date if no additional claimants come forward.

Dated: June 30, 1994

C. Timothy McKeown,

Acting Departmental Consulting ArcheologistActing Chief, Archeological Assistance Division.

[FR Doc. 94–16457 Filed 7–6–94; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–360]

Decision Not To Review an Initial Determination Finding a Violation of Section 337 and Schedule for the Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

In the Matter of: Certain Devices for Connecting Computers Via Telephone Lines.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) final initial determination (ID) issued on May 24, 1994, in the above-captioned investigation finding a violation of section 337 in the importation into the United States, and the sale within the United States after importation, of certain devices for connecting computers via telephone lines.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–3113.

SUPPLEMENTARY INFORMATION: Farallon Computing, Inc. ("Farallon") filed a complaint on October 12, 1993, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) alleging that 16 respondents had violated section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain devices for connecting computers via telephone lines. Those 16 respondents were: (1) ABL Electronics Corp. ("ABL"), (2) Caltechnology International Ltd. ("Caltechnology"), (3) CPU Products ("CPU"), (4) Enhance Cable Technology ("Enhance"), (5) Focus Enhancements, Inc. ("Focus"), (6) Full Enterprises Corp. ("Full"), (7) Good Way Industrial Co., Ltd. ("Good Way"), (8) MACProducts (USA) (now known as DGR Technologies, Inc.) ("DGR"), (9) MicroComputer Cable Co., Inc. ("MCC"), (10) Ming Technology Corp. ("Ming"), (11) Pan International (USA) ("Pan"), (12) Shiunn Yang Enterprises Co., Ltd. ("Shiunn Yang"), (13) Taiwan Techtron Corp. ("Techtron"), (14) Technology Works, Inc. ("TechWorks"), (15) Total Technologies, Ltd. ("Total"), and (16) Tremon Enterprises Co., Ltd. ("Tremon"). Complainant Farallon alleged infringement of certain claims of U.S. Letters Patent 5,003,579, which it owns. The Commission published a notice of investigation in the Federal Register on November 17, 1993 (58 *FR* 60671). Two additional respondents were subsequently added to the investigation: Ji-Haw Industrial Co., Ltd. ("Ji-Haw"), and Tri-Tech Instruments Co., Ltd. ("Tri-Tech"). *See* 59 *Fed. Reg.* 10164 (March 3, 1994).

Of the 18 respondents named in this investigation, the Commission has approved terminations based on settlements with respect to the following 16 respondents: ABL, Caltechnology, CPU, DGR, Enhance, Focus, Full, Good Way, Ji-Haw, MCC, Ming, Pan, Shiunn Yang, Techtron, Total, and Tremon. Only respondents Tri-Tech and TechWorks have not settled with complainant Farallon.

On April 26, 1994, the ALJ granted Farallon's motion for a summary determination that a domestic industry exists in accordance with subsections 337(a)(2) and (a)(3). The Commission published a notice of its decision not to review that ID on May 24, 1994. *See* 59 *Fed. Reg.* 26811–12 (May 24, 1994).

On April 28, 1994, Farallon filed a motion for summary determination of violation of section 337. The motion was unopposed by any respondent and was supported by the Commission investigative attorney. On May 24, 1994, the presiding ALJ issued an ID finding that there was a violation of section 337. The ALJ found that the '579 patent was valid and infringed, that Tri-Tech imported the infringing product into the United States, and that after importation, TechWorks sold the infringing product in the United States. No petitions for review of the ID or government comments were received by the Commission.

In connection with final disposition of this investigation, the Commission may issue (1) An order that could result

Caltechnology International Ltd. ("Caltechnology"), (3) CPU Products ("CPU"), (4) Enhance Cable Technology ("Enhance"), (5) Focus Enhancements, Inc. ("Focus"), (6) Full Enterprises Corp. ("Full"), (7) Good Way Industrial Co., Ltd. ("Good Way"), (8) MACProducts (USA) (now known as DGR Technologies, Inc.) ("DGR"), (9) MicroComputer Cable Co., Inc. ("MCC"), (10) Ming Technology Corp. ("Ming"), (11) Pan International (USA) ("Pan"), (12) Shiunn Yang Enterprises Co., Ltd. ("Shiunn Yang"), (13) Taiwan Techtron Corp. ("Techtron"), (14) Technology Works, Inc. ("TechWorks"), (15) Total Technologies, Ltd. ("Total"), and (16) Tremon Enterprises Co., Ltd. ("Tremon"). Complainant Farallon alleged infringement of certain claims of U.S. Letters Patent 5,003,579, which it owns. The Commission published a notice of investigation in the Federal Register on November 17, 1993 (58 *FR* 60671). Two additional respondents were subsequently added to the investigation: Ji-Haw Industrial Co., Ltd. ("Ji-Haw"), and Tri-Tech Instruments Co., Ltd. ("Tri-Tech"). *See* 59 *Fed. Reg.* 10164 (March 3, 1994).

Of the 18 respondents named in this investigation, the Commission has approved terminations based on settlements with respect to the following 16 respondents: ABL, Caltechnology, CPU, DGR, Enhance, Focus, Full, Good Way, Ji-Haw, MCC, Ming, Pan, Shiunn Yang, Techtron, Total, and Tremon. Only respondents Tri-Tech and TechWorks have not settled with complainant Farallon.

On April 26, 1994, the ALJ granted Farallon's motion for a summary determination that a domestic industry exists in accordance with subsections 337(a)(2) and (a)(3). The Commission published a notice of its decision not to review that ID on May 24, 1994. *See* 59 *Fed. Reg.* 26811–12 (May 24, 1994).

On April 28, 1994, Farallon filed a motion for summary determination of violation of section 337. The motion was unopposed by any respondent and was supported by the Commission investigative attorney. On May 24, 1994, the presiding ALJ issued an ID finding that there was a violation of section 337. The ALJ found that the '579 patent was valid and infringed, that Tri-Tech imported the infringing product into the United States, and that after importation, TechWorks sold the infringing product in the United States. No petitions for review of the ID or government comments were received by the Commission.

In connection with final disposition of this investigation, the Commission may issue (1) An order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed, if remedial orders are issued.

Written Submissions

The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding.

Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on July 8, 1994. Reply submissions must be filed no later than the close of business on July 15, 1994. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.53 and 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53 and 210.58).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: June 29, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16471 Filed 7–6–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–359]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Com Dev, Ltd.

In the matter of: Certain Dielectric Miniature Microwave Filters and Multiplexers Containing Same.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the

date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on June 30, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC. 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted.

The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: June 30, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16472 Filed 7–6–94; 8.45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–686 (Final)]

Certain Steel Wire Rod From Belgium

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On June 20, 1994, the Commission received a letter from counsel for petitioner in the subject investigation (Wiley, Rein & Fielding) withdrawing its petition. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping duty investigation concerning certain steel wire rod from Belgium (investigation No. 731–TA–686 (Final)) is terminated.

EFFECTIVE DATE: June 29, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: June 30, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16470 Filed 7–6–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 701–TA–363 and 364 (Preliminary), and Investigations Nos. 731–TA–711 through 717 (Preliminary)]

Oil Country Tubular Goods From Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701–TA–363 and 364 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and preliminary antidumping investigations Nos. 731–TA–711 through 717 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Austria and Italy of oil country tubular goods (OCTG),[1] that are alleged to be subsidized by the Governments of Austria and Italy, and by reason of imports from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain of OCTG, that are alleged to be sold in the United States at less than fair value. The product subject to these investigations is provided for in subheadings 7304.20, 7305.20, and 7306.20 of the Harmonized Tariff Schedule of the United States.

The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by August 15, 1994. For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on June 30, 1994, by Bellville Tube Corp., Bellville, TX; IPSCO Steel, Inc., Camanche, IA; Koppel Steel Corp., Beaver Falls, PA; Maverick Tube Corp., Chesterfield, MO; North Star Steel Ohio, Youngstown, OH; USX Corp., Pittsburgh, PA; and USS/Kobe Steel Co., Lorain, OH.[2]

[1] The imported merchandise which is the subject of this petition is casing, tubing, and drill pipe used in drilling for oil or gas, whether seamless or welded, of iron (other than cast iron) or steel (both carbon or alloy), whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes). This petition does not cover casing, tubing, or drill pipe containing 10.5 percent or more by weight of chromium.

[2] Not all firms are petitioners in all investigations.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 22, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than July 20, 1994, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 27, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 22, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than July 20, 1994, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 27, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 1, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16489 Filed 7–6–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–669 and 670 (Final)]

Certain Cased Pencils from the People's Republic of China and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–669 and 670 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) and Thailand of certain cased pencils (with leads encased in a rigid sheath), provided for in subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States.[1]

[1] As defined by Commerce, the products covered by these investigations are certain cased pencils of any shape or dimension, which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or manmade materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened.

Specifically excluded from the scope of these investigations are mechanical pencils, cosmetic pencils, pens, noncased crayons (wax), pastels, charcoals, or chalks.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain cased pencils from China and Thailand are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on November 10, 1993, by the Pencil Makers Association, Inc., Marlton, NJ.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will

make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on August 12, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on August 25, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 17, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 19, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is August 19, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is September 2, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before August 22, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § § 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: June 28, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16473 Filed 7–6–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–284 (Sub-No. 4X)]

Iowa Northern Railway Co.—Abandonment Exemption—In Tama and Benton Counties, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Iowa Northern Railway Company of a 14.1-mile line of railroad in Tama and Benton Counties, IA, subject to standard labor protective conditions, a trail use condition, and a public use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 22, 1994. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] and requests for interim trail use/rail banking under 16 U.S.C. 1247(d) must be filed by July 18, 1994. Petitions to stay must be filed by July 14, 1994. Requests for a public use condition and petitions to reopen must be filed by July 18, 1994.

ADDRESSES: Send pleadings, referring to Docket No. AB–284 (Sub-No. 4X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423; and (2) Petitioner's representative: T. Scott Bannister, 1300 Des Moines Building, 405 Sixth Avenue, Des Moines, IA 50309.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: June 29, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16454 Filed 7–6–94; 8:45 am]

BILLING CODE 7035–01–P

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Finance Docket No. 32529]

Northeast Kansas & Missouri Division, Mid-Michigan Railroad, Inc.—Trackage Rights Exemption—Blue Rapids Railway Company

Blue Rapids Railway Company (BR), has agreed to grant Northeast Kansas & Missouri Division of Mid-Michigan Railroad, Inc. (NEKM) local trackage rights over BR's entire line, which runs between milepost 0.12 at Marysville, KS and milepost 10.12 at Bestwall, KS, a distance of approximately 10 miles.[1] The trackage rights were to become effective on or after June 14, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Eugenia Langan, Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 29, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16453 Filed 7–6–94; 8:45 am]

BILLING CODE 7035–01–P

[1] On March 31, 1994, BR acquired the line from the Union Pacific Railroad pursuant to an exemption granted in *Blue Rapids Ry.—Acquisition & Operation Exemption—Line of Union Pacific R.R. between Milepost 0.12 at Marysville, KS and Milepost 10.12 at Bestwall, KS*, Finance Docket No 32483 (ICC served Apr. 20, 1994).

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

The Joint Board for the Enrollment of Actuaries (Joint Board) established under the Employment Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 1994. The charter for the Joint Board's Advisory Committee has been renewed, and a new Advisory Committee will be formed. This notice describes the Advisory Committee and invites applications from those interested in service on it.

1. General

To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and must satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology, and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries and the American Society of Pension Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial

on: Eugenia Langan, Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 29, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16453 Filed 7–6–94; 8:45 am]

BILLING CODE 7035–01–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

The Joint Board for the Enrollment of Actuaries (Joint Board) established under the Employment Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 1994. The charter for the Joint Board's Advisory Committee has been renewed, and a new Advisory Committee will be formed. This notice describes the Advisory Committee and invites applications from those interested in service on it.

1. General

To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and must satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology, and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries and the American Society of Pension Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial organizations as part of their respective examination programs.

2. Purposes

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations which will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views on examination content are understood.

3. Function

The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable, and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions and include them in what is recommended.)

4. Membership

The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examination extant in the community of actuaries. In this regard, appointment will be made from the actuarial community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations which will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will be comprised of not more than nine members.

The Advisory Committee will meet about four times a year. Advisory Committee members should be prepared to devote from 100 to 150 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for Advisory Committee travel, meals and lodging expenses incurred in accordance with applicable government regulations.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o Office of Director of Practice, Internal Revenue Service, suite 600, 801 Pennsylvania Avenue NW., Washington, DC 20004.

Any questions may be directed to the Joint Board's Executive Director at 202–376–1421.

The deadline for accepting applications is September 6, 1994.

Dated: June 29, 1994.

Leslie S. Shapiro,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 94–16368 Filed 7–6–94; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Consistent with the policy set forth in Section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), 42 U.S.C. § 9622(d)(2)(B), and the Department of Justice regulations at 28 CFR 50.7, notice is hereby given that on June 22, 1994, a proposed partial Consent Decree was lodged with the United States District Court for the District of Alaska in *United States* v. *Alaska Railroad Corporation et al*, No. A–91–589 CV. The Consent Decree resolves claims asserted by the United States on behalf of the U.S. Environmental Protection Agency pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, against six of the defendants in this action (and the

United States as a counterclaim defendant) for past response costs incurred in connection with the Standard Steel & Metals Salvage Yard Site (the "Site") in Anchorage, Alaska. The settling defendants include the Alaska Railroad Corporation, Chugach Electric Association, Inc. ("Chugach"), Westinghouse Electric Corporation, Montgomery Ward & Co., Inc., J.C. Penney, Inc. and Bridgestone/Firestone, Inc. The Consent Decree also obligates five of the settling defendants to reimburse Chugach and the United States for their share of the costs currently being incurred in connection with performance of a remedial investigation and feasibility study ("RI/FS") for the Site. The proposed partial Consent Decree also allocates past costs and RI/FS costs among all the settlers based on aliquot shares or percentages agreed upon among the parties for these phases of work and investigation at the Site only.

The Department of Justice will receive written comments relating to the proposed partial consent decree for thirty (30) days from the date of publication of this notice. Comments should be directed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Alaska Railroad Corporation et al.*, DOJ Reference #90–11–3–810.

The proposed partial consent decree and appendices may be examined at the Office of the United States Attorney for the District of Alaska, Room 253, Federal Building and U.S. Courthouse, 222 West Seventh Avenue, Anchorage, Alaska 99513–7567 and at the Region 10 office of the Environmental Protection Agency, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed consent decree and appendices (if requested) may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $9.25 (without appendices) or $34.50 (with appendices) (25 cents per page reproduction cost) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–16354 Filed 7–6–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of Public Meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with the Federal Advisory Committee Act (FACA) Pub. L. 92–463. Pursuant to Section 10(a) of FACA, this is to announce that the Commission will meet at the time and place shown below:

Time and Place

The meeting will be on Monday, July 25, 1994 from 9:00 a.m. to 3:00 p.m. in Room N–3437 A–D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

Agenda

The agenda for the meeting is as follows:

The Commission is seeking proposals and options to deal with the problems identified in its Fact Finding Report related to the appropriate coverage of labor relations and employment law with respect to (1) the dividing line between employee and individual contractor (part of "contingent workers"), and (2) the proper scope of the exclusion of managers, supervisors and salaried employees from the protection of such laws.

The Fact Finding Report identifies some of the facts and questions relevant to these issues at varying points including the following pages: 21–22, 39–40, 55–57, 93–95, 110–111, 123–125.

The Commission invites the views of interested parties about both problems cited above that are reported to arise under current law and the recommendations they would make to deal with these problems. The Commission would also welcome comparisons of the current treatment of these questions under the National Labor Relations Act and various forms of employment regulation (such as FLSA, OSHA, ERISA and civil rights law).

Public Participation

The meeting will be open to the public. It will be in session from 9:00 a.m. until 3:00 p.m. when it will adjourn. Seating will be available to the public on a first-come, first-served basis. Disabled individuals wishing to attend should contact the Commission no later than July 25, 1994, if special accommodations are needed.

The Commission welcomes by July 18 written statements of proposals to deal with the issues identified above. The Commission may schedule, time permitting, the authors of such statements for a brief presentation and questions on July 25th, if they indicate they would like to appear, in addition to organizational representatives invited to present proposals to the Commission. Individuals who wish to submit written statements should send 15 copies on or before July 18, to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. telephone (202) 219–9148.

Signed at Washington, DC this 30th day of June, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–16395 Filed 7–6–94; 8:45 am]

BILLING CODE 4510–23–M

Mine Safety and Health Administration

Coal Mine Respirable Dust Standard; Single-Shift and Noncompliance Determinations

AGENCIES: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) will hold additional hearings to receive comments on proposed changes to the Federal program for respirable coal mine dust. The first hearing will address a joint finding by the Secretary of Labor and the Secretary of Health and Human Services that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be measured accurately over a single shift. This hearing is being held under section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act). Following that hearing, MSHA will hold a second hearing to receive public comments on the Agency's intent to use single, full-shift respirable dust measurements to determine noncompliance under the MSHA coal mine respirable dust standard. The hearings will be held in Salt Lake City, Utah.

DATES: Requests to make oral presentations should be submitted prior to the hearings. The hearings will be held on Tuesday, July 19, 1994. The joint MSHA-NIOSH hearing is scheduled from 9:00 a.m. to 12:00 p.m. The MSHA hearing is scheduled from 1:00 p.m. to 5:00 p.m.

ADDRESSES: Both hearings will be held at the Holiday Inn, 999 South Main Street, Salt Lake City, Utah 84111, (801) 395–8600.

Send requests to make oral presentations to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On February 18, 1994, the Secretary of Labor and the Secretary of Health and Human Services jointly published a notice in the **Federal Register** (59 FR 8357) announcing a new finding that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift in accordance with section 202(f)(2) of the Federal Mine Safety and Health Act of 1977. Based on this finding, the Secretaries are proposing to rescind the finding issued on July 17, 1971, and affirmed on February 23, 1972.

Concurrently, MSHA published a notice in the **Federal Register** (59 FR 8356) announcing its intention to use both single, full-shift respirable dust measurements, and the average of multiple, full-shift respirable dust samples, to determine noncompliance and issue citations for violations of the

Code	
30	USGS/DOI/NSF Council for Cor
57	Special Emphasis Panel in Grad
59	Special Emphasis Panel in Elem
66	Advisory Committee for Mathem
139	Advisory Panel for Presidential
173	Special Emphasis Panel in Engi
1151	Advisory Committee for Comput
1196	Special Emphasis Panel in Elect
1171	Advisory Committee for Social,
1173	Committee on Equal Opportuniti
1185	Special Emphasis Panel in Adva
1186	Special Emphasis Panel in Astro
1189	Special Emphasis Panel in Bioe
1190	Special Emphasis Panel in Chem
1191	Special Emphasis Panel in Chem
1192	Special Emphasis Panel in Com
1193	Special Emphasis Panel in Cros
1194	Special Emphasis Panel in Desi
1198	Special Emphasis Panel in Syst
1199	Special Emphasis Panel in Hum
1200	Special Emphasis Panel in Infor
1201	Special Emphasis Panel in Inter
1203	Special Emphasis Panel in Mate
1204	Special Emphasis Panel in Math

joint MSHA-NIOSH hearing is scheduled from 9:00 a.m. to 12:00 p.m. The MSHA hearing is scheduled from 1:00 p.m. to 5:00 p.m.

ADDRESSES: Both hearings will be held at the Holiday Inn, 999 South Main Street, Salt Lake City, Utah 84111, (801) 395–8600.

Send requests to make oral presentations to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On February 18, 1994, the Secretary of Labor and the Secretary of Health and Human Services jointly published a notice in the **Federal Register** (59 FR 8357) announcing a new finding that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift in accordance with section 202(f)(2) of the Federal Mine Safety and Health Act of 1977. Based on this finding, the Secretaries are proposing to rescind the finding issued on July 17, 1971, and affirmed on February 23, 1972.

Concurrently, MSHA published a notice in the **Federal Register** (59 FR 8356) announcing its intention to use both single, full-shift respirable dust measurements, and the average of multiple, full-shift respirable dust samples, to determine noncompliance and issue citations for violations of the respirable dust standard under the MSHA coal mine respirable dust program.

Public hearings on these matters were held on July 6, 1994, in Morgantown, West Virginia (59 FR 29348–29349). In response to requests from the mining community, MSHA has scheduled a second set of public hearings in the West. NIOSH concurs with this action and will participate. The hearings will be held in accordance with the same procedures cited in the **Federal Register** notices for the July 6, 1994, hearings.

To allow for the submission of post-hearing comments, the record will remain open until August 5, 1994.

Dated: July 5, 1994.

Edward C. Hugler,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 94–16573 Filed 7–6–94; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communication Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Electrical and Communication Systems—1196.

Date and time: July 28–29, 1994/8:30 a.m.–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (Room 530).

Type of meeting: Closed.

Contact Person: Dr. Radhikishan Bahaeti, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1180.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda

To review and evaluate proposal submitted for financial support.

Reason for Closing

The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16465 Filed 7–6–94; 8:45 am]

BILLING CODE 7555–01–M

Committee Management; Renewals

The Assistant Directors having responsibility for the Advisory Committees listed below have determined that renewal of these groups is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 USC 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration. Authority for these Advisory Committees will expire on June 30, 1996, unless they are renewed.

Code	Name
30	USGS/DOI/NSF Council for Continental Scientific Drilling.
57	Special Emphasis Panel in Graduate Education & Research Development.
59	Special Emphasis Panel in Elementary, Secondary & Informal Education.
66	Advisory Committee for Mathematical and Physical Sciences.
139	Advisory Panel for Presidential Faculty Fellows.
173	Special Emphasis Panel in Engineering Education and Centers.
1151	Advisory Committee for Computer & Information Science & Engineering.
1196	Special Emphasis Panel in Electrical & Communications System.
1171	Advisory Committee for Social, Behavioral & Economic Sciences.
1173	Committee on Equal Opportunities in Science & Engineering.
1185	Special Emphasis Panel in Advanced Scientific Computing.
1186	Special Emphasis Panel in Astronomical Sciences.
1189	Special Emphasis Panel in Bioengineering & Environmental Systems (nee Biological & Critical Systems).
1190	Special Emphasis Panel in Chemical & Transport Systems (nee Chemical & Thermal Systems).
1191	Special Emphasis Panel in Chemistry.
1192	Special Emphasis Panel in Computer & Computation Research.
1193	Special Emphasis Panel in Cross-Disciplinary Activities.
1194	Special Emphasis Panel in Design, Manufacturing & Industrial Innovation (nee Design & Manufacturing Systems)
1198	Special Emphasis Panel in Systemic Reform.
1199	Special Emphasis Panel in Human Resource Development.
1200	Special Emphasis Panel in Information, Robotics & Intelligent Systems.
1201	Special Emphasis Panel in International Programs.
1203	Special Emphasis Panel in Materials Research.
1204	Special Emphasis Panel in Mathematical Sciences.

Code	Name
1205	Special Emphasis Panel in Civil & Mechanics (nee Mechanical & Structural Systems).
1206	Special Emphasis Panel in Microelectronics Information Processing Systems.
1207	Special Emphasis Panel in Networking & Communications Research & Infrastructure.
1208	Special Emphasis Panel in Physics.
1209	Special Emphasis Panel in Polar Programs.
1210	Special Emphasis Panel in Research, Evaluation & Dissemination.
1214	Special Emphasis Panel in Undergraduate Education.

Dated: June 30, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16462 Filed 7–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture and Industrial Innovation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—1194.

Date and Time: August 4, 1994, 8:30 a.m. to 5:00 p.m.

Place: Rooms 340, 360, and 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. F. Stan Settles, Design and Integration Engineering, Dr. Cheena Srinivasan, Manufacturing Processes and Equipment, and Dr. Pius Egbelu, Operations Research and Production Systems, Division of Design, Manufacture, and Industrial Innovation, located in room 550, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, phone/(703) 306–1328.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate rapid prototyping proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16463 Filed 7–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Graduate Education and Research Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Graduate Education and Research Development.

Date and Time: August 1-2, 1994; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Roosevelt Y. Johnson, Program Director, 4201 Wilson Boulevard, Room 907, Arlington, VA 22230 Telephone: (703) 306–1696.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Graduate Research Traineeships Program (GRT).

Agenda: Review and evaluate GRT proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: July 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16467 Filed 7–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR).

Dates and Times: July 25, 1994, 7:00 pm–9:00 pm; July 26, 1994, 8:00 am–8:00 pm; July 27, 1994, 8:00 am–5:00 pm.

Place: July 25, 1994: South Coast Inn, 5620 Calle Real, (Meeting Room), Goleta, CA: July 26 and 27, 1994: University of California, Santa Barbara, Santa Barbara, California, 93106.

Type of Meetings: Closed.

Contact Person: Dr. LaVerne D. Hess, Program Director, Electronic Materials Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone (703) 306–1837.

Purpose of Meetings: To provide advice and recommendations concerning support for the Science and Technology Center (STC) for Quantized Electronic Structures (QUEST) at the University of California, Santa Barbara.

Agenda: To evaluate progress at this Science and Technology Center in relation to continuing support for this renewal proposal.

Reason for Closing: The proposal being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552 b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: July 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16475 Filed 7–6–94; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematics and Physical Sciences Committee of Visitors for Physics—#66.

Date and Time: July 28–29, 1994; 8:30 a.m. to 6:00 p.m.; July 30, 1994; 8:30 a.m. to 3:00 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Robert A. Eisenstein, Director, PHY, Room 1015, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide oversight review of the PHY programs.

Agenda: To carry out Committee of Visitors review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C.552b.(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: July 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16468 Filed 7–6–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Engineering.

Date and Time: August 2, 1994—8:30 a.m. to 5:00 p.m.

Place: Room 530 National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. F. Stan Settles, Program Director, Design and Integration Engineering, Division of Design, Manufacture, and Industrial Engineering, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, phone/703–306–1328.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Closed Session: August 2, 1994, 8:30 a.m.–5:30 p.m., to provide oversight review of the Design and Integration Engineering Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16466 Filed 7–6–94; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee of Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: July 21–22, 1994; 8:30 a.m.–5:30 p.m.

Place: Room 830, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Costello Brown, Dr. Betty Jones, Program Directors for Career Access Programs, Division of Human

Dated: July 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16468 Filed 7–6–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Engineering.

Date and Time: August 2, 1994—8:30 a.m. to 5:00 p.m.

Place: Room 530 National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. F. Stan Settles, Program Director, Design and Integration Engineering, Division of Design, Manufacture, and Industrial Engineering, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, phone/703–306–1328.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Closed Session: August 2, 1994, 8:30 a.m.–5:30 p.m., to provide oversight review of the Design and Integration Engineering Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16466 Filed 7–6–94; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee of Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: July 21–22, 1994; 8:30 a.m.–5:30 p.m.

Place: Room 830, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Costello Brown, Dr. Betty Jones, Program Directors for Career Access Programs, Division of Human Resources Development, Room 815, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1640.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Comprehensive Regional Centers for Minorities (CRCM) Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed: If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16464 Filed 7–6–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

NUREG–1478, "Non-Power Reactor Operator Licensing Examiner Standards"; Availability

The Nuclear Regulatory Commission has issued NUREG–1478, "Non-Power Reactor Operator Licensing Examiner Standards." The Commission will use this document to provide policy and guidelines for NRC examiners and to establish the procedures and practices for conducting initial and requalification written examinations and operating tests for license applicants and licensed operators at non-power reactor facilities pursuant to Part 55 of Title 10 of the Code of Federal Regulations. The policies and guidelines contained in the NUREG will be used for all examinations commencing 30 days from the date of this notice.

Copies of NUREG–1478 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

Dated at Rockville, Maryland, this 21st day of June 1994.

For the Nuclear Regulatory Commission.

Robert M. Gallo,

Chief, Operator Licensing Branch, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16443 Filed 7–6–94; 8:45 am]

BILLING CODE 7590–01–M

NUREG–1021, Revision 7, Supplement 1, "Operator Licensing Examiner Standards"; Availability

The Nuclear Regulatory Commission has issued Supplement 1 to Revision 7 of NUREG–1021, "Operator Licensing Examiner Standards." The Commission uses this document to provide policy and guidelines for NRC examiners and to establish the procedures and practices for conducting initial and requalification written examinations and operating tests for licensed applicants and licensed operators at power reactor facilities pursuant to Part 55 of Title 10 of the Code of Federal Regulations. The policies and guidelines contained in the supplement will be used for all examinations commencing 30 days from the date of this notice.

Copies of NUREG–1021, Revision 7, Supplement 1, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Dated at Rockville, Maryland, this 21st day of June 1994.

For the Nuclear Regulatory Commission.

Robert M. Gallo,

Chief, Operator Licensing Branch, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16444 Filed 7–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8584]

Kennecott Uranium Company; Sweetwater Uranium Mill, Located in Sweetwater County, WY; Receipt of Application To Amend Source Material License SUA–1350 (Renotice) and Notice of Opportunity To Request Hearing on License Amendment

By letter dated July 21, 1993, Kennecott Uranium Company, holder of Source Material License SUA–1350 for the Sweetwater Uranium Mill, located in Sweetwater County, WY, requested an amendment to License Condition No.

10.6 to allow for disposal of byproduct material from U.S. Energy's Green Mountain Ion Exchange Facility, which is being decommissioned. On February 28 1994, the NRC published notice of its receipt of this request in the **Federal Register** (59 FR 9502). On April 15, 1994, the NRC published notice of its intent to issue the requested license amendment (59 FR 18168). Neither **Federal Register** notice specifically offered interested persons an opportunity to request a hearing pursuant to Title 10, Code of Federal Regulations, Part 2 Subpart L. Accordingly, notice is hereby provided that interested parties may request a hearing, pursuant to the provisions of 10 CFR 2.1205(c) within thirty (30) days of the publication of this notice. Further information concerning the requested license amendment is located in the **Federal Register** notices referenced above.

For Further Information, Contact: Charlotte E. Abrams, Project Manager, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–7 F9, Washington, D.C. 20555. Telephone (301) 415–5808.

The licensee and any person whose interest may be affected by the issuance of this license amendment may file a request for hearing. A request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; must be served on the NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555; must be served on the licensee (Kennecott Uranium Company, 505 South Gillette Avenue, Gillette, Wyoming 82717); and must comply with the requirements set forth in the Commission's regulations, 10 CFR 2.1205. The request for hearing filed by a person other than the licensee must describe in detail the interest of the requestor in the proceeding and how that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the following factors:

1. The nature of the requestors' right, under the Atomic Energy Act, to be made a party to ther proceeding;

2. The nature and extent of the requestor's property, financial or other interest in the proceeding; and

3. The possible effect, on the requestor's interest, of any order which may be entered in the proceeding.

The request must also set forth the requestors' areas of concern about the licensing activity that is the subject matter of the proceeding, and the circumstances establishing that the request for hearing is timely in accordance with 10 CFR 2.1205(c).

Dated at Rockville, Maryland, this 21st day of June 1994.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–16442 Filed 7–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–336]

Northeast Nuclear Energy Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–21, issued to the Northeast Nuclear Energy Company (NNECO/the Licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would revise the Technical Specifications (TS) to change the Administrative Controls section to require an individual who serves as the Operations Manager to either hold a Millstone Unit 2 senior reactor operator (SRO) license or have an SRO license at another pressurized water reactor (PWR). If the Operating Manager does not hold a Millstone Unit 2 SRO license, then an individual serving as the Assistant Operations Manager would be required to possess an SRO license at Millstone Unit 2.

The proposed change would permit Millstone Unit 2 to accelerate efforts to strengthen the Millstone Unit 2 Operations Department. Exigent action is justified in order to permit the licensee to proceed with their efforts to strengthen the Millstone Unit 2 Operations Department in a prompt and decisive manner.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards (SHC) consideration, which is presented below:

The proposed changes do not involve a SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects an administrative control, which was based on the guidance of ANSI N18.1–1971. ANSI N18.1–1971 recommended that the Operations Manager hold an SRO license. The current guidance in Section 4.2.2 of ANSI/ANS–3.1–1987 recommends, as one option, that the Operations Manager have held a license for a similar unit and the Operations Middle Manager hold an SRO license. While the Operations Middle Manager position does not exist at Millstone Unit No. 2, we are proposing to create the position of Assistant Operations Manager (staffed by an individual with an SRO license at Millstone Unit No. 2). This individual will be required to meet the requirements for, and will have responsibilities as recommended in ANSI/ANS–3.1–1987 for the Operations Middle Manager position.

Therefore, the proposed change requests an exception to ANSI N18.1–1971 to allow use of ANSI/ANS–3.1–1987 in a limited circumstance. Specifically, the proposed revision to Technical Specification 6.3.1 would require the Operations Manager to either hold an SRO license at Millstone Unit No. 2 or have held an SRO at a PWR other than Millstone Unit No. 2.

If the Operations Manager does not hold an SRO license at Millstone Unit No. 2, the proposal will require the Assistant Operations Manager to hold, and continue to hold, an SRO license. The proposed change includes the requirement to have held a license for a similar unit (a PWR) in accordance with Section 4.2.2 of ANSI/ANS–3.1–1987, if the Operations Manager does not hold an SRO license at Millstone Unit No. 2. For those areas of knowledge that require an SRO license, the Assistant Operations Manager will hold an SRO license and provide technical guidance normally required by the Operations Manager.

The proposed change does not alter the design of any system, structure, or component, nor does it change the way plant systems are operated. It does not reduce the knowledge, qualifications, or skills of licensed operators, and does not affect the way the Operations Department is managed by the Operations Manager. The Operations Manager will continue to maintain the effective performance of his personnel and ensure the plant is operated safely and in accordance with the requirements of the operating license. Additionally, the Control Room operators will continue to be supervised by the licensed Shift Supervisors.

The proposed change does not detract from the Operations Manager's ability to perform his primary responsibilities. In this case, by having previously held an SRO license for a similar unit, he has achieved the necessary training, skills, and experience to fully understand the operation of plant equipment and the watch requirements for operators.

In summary, the proposed change does not affect the ability of the Operations Manager to provide the plant oversight required of his position. Thus, it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to Technical Specification 6.3.1 does not affect the design or function of any plant system, structure, or component, nor does it change the way plant systems are operated. It does not affect the performance of NRC licensed operators. Operation of the plant in conformance with technical specifications and other license requirements will continue to be supervised by personnel who hold an NRC SRO license. The proposed change to Technical Specification 6.3.1 ensures that the Operations Manager will be a knowledgeable and qualified individual by requiring the individual to have held an SRO license at a PWR. Based on the above, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

a similar unit (a PWR) in accordance with Section 4.2.2 of ANSI/ANS–3.1–1987, if the Operations Manager does not hold an SRO license at Millstone Unit No. 2. For those areas of knowledge that require an SRO license, the Assistant Operations Manager will hold an SRO license and provide technical guidance normally required by the Operations Manager.

The proposed change does not alter the design of any system, structure, or component, nor does it change the way plant systems are operated. It does not reduce the knowledge, qualifications, or skills of licensed operators, and does not affect the way the Operations Department is managed by the Operations Manager. The Operations Manager will continue to maintain the effective performance of his personnel and ensure the plant is operated safely and in accordance with the requirements of the operating license. Additionally, the Control Room operators will continue to be supervised by the licensed Shift Supervisors.

The proposed change does not detract from the Operations Manager's ability to perform his primary responsibilities. In this case, by having previously held an SRO license for a similar unit, he has achieved the necessary training, skills, and experience to fully understand the operation of plant equipment and the watch requirements for operators.

In summary, the proposed change does not affect the ability of the Operations Manager to provide the plant oversight required of his position. Thus, it does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2, Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to Technical Specification 6.3.1 does not affect the design or function of any plant system, structure, or component, nor does it change the way plant systems are operated. It does not affect the performance of NRC licensed operators. Operation of the plant in conformance with technical specifications and other license requirements will continue to be supervised by personnel who hold an NRC SRO license. The proposed change to Technical Specification 6.3.1 ensures that the Operations Manager will be a knowledgeable and qualified individual by requiring the individual to have held an SRO license at a PWR. Based on the above, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change involves an administrative control which is not related to the margin of safety as defined in the technical specifications. The proposed change does not reduce the level of knowledge or experience required of an individual who fills the Operations Manager position, nor does it affect the conservative manner in which the plant is operated. The Control Room operators will continue to be supervised by personnel who hold an SRO license. Thus, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Service, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 8, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I–4: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 24, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 29th day of June 1994.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16445 Filed 7–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–438; 50–439]

In the Matters of Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 and 2)

Order

I

Tennessee Valley Authority (TVA or the applicant) is the current holder of Construction Permit Nos. CPPR–122 and CPPR–123, issued by the Atomic Energy Commission on December 12, 1974, for construction of the Bellefonte Nuclear Plant (BLN), Units 1 and 2. These facilities are currently under construction at the applicant's site on a peninsula at Tennessee River Mile (TRM) 392 on the west shore of Guntersville Reservoir, about 6 miles east-northeast of Scottsboro, Alabama.

On April 19, 1994, the TVA filed a request pursuant to 10 CFR 50.55(b) for extensions of the completion dates. The extensions were sought because construction activities had been deferred in 1988 due, in part, to a lower than expected load forecast. On March 23, 1993, TVA notified NRC that it planned to resume completion activities 120 days from the date of the letter. However, as a result of the delay from the inactivity during the construction deferral and a need to conduct an Integrated Resource Planning (IRP) process to consider the lowest-cost options for providing an adequate supply of electricity to TVA's customers pursuant to the provisions of the Energy Policy Act of 1992, TVA is unable to complete the construction of the two units before the expiration of CPPR–122 on July 1, 1994, and CPPR–123 on July 1, 1996, and construction permits extensions now need to be extended. As part of the planning process, TVA will evaluate the completion of the BLN units along with other generating options. The IRP process is presently scheduled for completion in November 1995. Additional delays associated with these efforts to ensure that BLN complies with regulatory requirements and licensing commitments make it necessary for TVA to request extensions of the expiration dates for Construction Permit Nos. CPPR–122 and CPPR–123.

II

The NRC staff has concluded that good cause has been shown for the delays, the extensions are sought for a reasonable period, and this action involves no significant hazards consideration, the basis for which are given in the staff's evaluation.

The NRC staff has prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on May 26, 1994 (59 FR 27299).

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion dates will have no significant impact on the environment.

The applicant's letter dated April 19, 1994, and the NRC staff's letter and safety evaluation of the request for extensions of the construction permits, dated June 27, 1994, are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001 and at the Local Public Document Room, Scottsboro Public Library, 1002 South Broad Street, Scottsboro, Alabama 37402.

III

It is hereby ordered that the latest construction completion date for Permit No. CPPR–122 is extended to October 1, 2001 and the latest construction completion date for Construction Permit No. CPPR–123 is extended to October 1, 2004.

Dated at Rockville, Maryland this 27th day of June 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16446 Filed 7–6–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26077; File No. S7–19–94]

Roundtable Discussion To Inaugurate Comprehensive Study of Regulation Under the Public Utility Holding Company Act of 1935

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of roundtable discussion.

SUMMARY: This is to give notice that the Commission will conduct a roundtable discussion on July 18 and July 19, 1994, at the Willard Hotel, Washington, DC, beginning at 8:30 a.m., to inaugurate a comprehensive study of regulation under the Public Utility Holding Company Act of 1935. The public is invited to attend.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, (202) 942–0545, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

published in the Federal Register on May 26, 1994 (59 FR 27299).

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion dates will have no significant impact on the environment.

The applicant's letter dated April 19, 1994, and the NRC staff's letter and safety evaluation of the request for extensions of the construction permits, dated June 27, 1994, are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001 and at the Local Public Document Room, Scottsboro Public Library, 1002 South Broad Street, Scottsboro, Alabama 37402.

III

It is hereby ordered that the latest construction completion date for Permit No. CPPR–122 is extended to October 1, 2001 and the latest construction completion date for Construction Permit No. CPPR–123 is extended to October 1, 2004.

Dated at Rockville, Maryland this 27th day of June 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16446 Filed 7–6–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26077; File No. S7–19–94]

Roundtable Discussion To Inaugurate Comprehensive Study of Regulation Under the Public Utility Holding Company Act of 1935

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of roundtable discussion.

SUMMARY: This is to give notice that the Commission will conduct a roundtable discussion on July 18 and July 19, 1994, at the Willard Hotel, Washington, DC, beginning at 8:30 a.m., to inaugurate a comprehensive study of regulation under the Public Utility Holding Company Act of 1935. The public is invited to attend.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, (202) 942–0545, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission will conduct a roundtable discussion on July 18 and July 19, 1994, at the Willard Hotel, Washington, DC, beginning at 8:30 a.m., to inaugurate a comprehensive study of regulation under the Public Utility Holding Company Act of 1935 ("1935 Act").

The 1935 Act was New Deal legislation, enacted by Congress to eliminate abuses that had plagued the United States electric and gas utility industry and threatened the interests of investors and consumers. The statute is complex and far-reaching. Although there have been fundamental changes in the industry in the past sixty years, the 1935 Act has remained largely unchanged.

The Commission believes that it is time to undertake a thorough evaluation of the 1935 Act, to review the regulatory framework in light of developments in the industry, and to consider how federal regulation of utility holding companies can best serve the public interest and the interest of investors and consumers in the approaching century.

To that end, the Commission recently announced that it will undertake a comprehensive study of the 1935 Act.[1] The study will be inaugurated by a roundtable discussion in which representatives of the industry, state, local and other federal regulators, consumer groups, trade associations, an economist, investment banks, rating agencies and others will participate. The public is invited to attend. The agenda is set forth below:

Roundtable Agenda

Monday, July 18, 1994

Morning Session

8:30 am—Opening remarks of Chairman Arthur Levitt

8:45 am—Introductory remarks by staff of the Division of Investment Management

9:00 am—*The future of the industry*

There have been profound changes in the gas and electric industries over the past few years. The Energy Policy Act of 1992, in particular, has accelerated the development of a competitive electric industry, and freed United States companies to invest in utility operations around the world. The momentum in this area is not abating—retail wheeling is only the most recent issue. How will the profile of the industry change in coming years? What role, if any, is envisioned for a federal holding company statute in this evolving industry?

Afternoon Session

1:30 pm—*State and federal regulation*

A federal holding company statute should supplement, not supplant, the work of the Federal Energy Regulatory Commission and state and local regulators. What is the role of a federal holding company statute in the regulation of the gas and electric utility industry? Given the roles of the Federal Energy Regulatory Commission and state and local regulators, is a federal holding company statute necessary for effective regulation?

4:50 pm—Questions and comments

5:30 pm—Session ends

Tuesday, July 19, 1994

Morning Session

8:30 am—Opening remarks by Commissioner Richard Y. Roberts.

8:45 am—Brief remarks by staff of the Division of Investment Management

9:00 am—*Financings and intrasystem transactions*

What protections are provided by review of financing transactions under a federal holding company statute? Is this review still necessary in light of developments in other federal and state regulation? If so, how could this review be made more effective and efficient? Is federal oversight of intrasystem transactions needed to prevent affiliate abuses, or can the Federal Energy Regulatory Commission and the states effectively safeguard the interests of consumers?

10:50 am—*Integration and exemption*

The requirement of a single integrated public-utility system was intended to ensure economical and efficient utility operations. Are the interests of investors and consumers still served by this requirement? Has the requirement of geographic integration affected the development of creative solutions to the production and delivery of energy?

Should the law prohibit foreign ownership of United States public-utility companies? If so, why and under what conditions?

The law currently exempts certain types of holding companies. Do the theories underlying these exemptions remain valid? Should the exemptions be changed in light of recent developments? Are additional exemptions needed?

Afternoon Session

1:30 pm—*Diversification*

Has the requirement that nonutility interests be "functionally related" to a system's core utility operations demonstrably benefited investors and consumers of registered holding companies? What has been the experience of companies that were not similarly constrained?

Should there be limits on diversification by utility holding companies? How would increased diversification affect the ability of the Federal Energy Regulatory Commission and the states to protect the interests of consumers? When would the risks associated with diversification outweigh the potential benefits?

4:00 pm—Questions and comments

5:00 pm—Session ends

Based upon the roundtable discussions and its own review, the Commission will thereafter invite public comment generally on every aspect of the 1935 Act and specifically on certain

[1] See Testimony of the Honorable Richard Y. Roberts before the Subcommittee on Energy and Power of the House Committee on Energy and Commerce (May 26, 1994).

issues. The comments will be incorporated in a report and recommendations at the conclusion of the study.

Dated: July 1, 1994.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16488 Filed 7–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34291; File No. SR–Amex–94–11]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Floor Official Zone System

June 30, 1994.

On April 18, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 22 ("Authority of Floor Officials") to delete references to the Floor Official zone system.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33980 (April 28, 1994), 59 FR 23241 (May 5, 1994). No comments were received on the proposal. This order approves the proposed rule change.

The Exchange Floor currently is divided into zones comprised of designated trading posts. As set forth in Commentary .01 to Amex Rule 22, each Floor Official is assigned to a specific zone and may render rulings only in that zone. Among other things, Rule 22(c) authorizes a Floor Official to supervise openings and reopenings of securities; to halt or reopen trading in a security; to resolve market disputes submitted to him or her by members; and to regulate and supervise unusual situations which may arise in connection with the making of bids, offers or transactions. Finally, a majority of the available Floor Officials assigned to a zone may (1) restrict or ban trading by Registered Traders; (2) restrict or ban transactions pursuant to off-Floor orders in which members or member organizations have an interest; (3) prohibit specialists from accepting stop or stop limit orders; or (4) restrict or ban the use of hand signals.[3]

The Exchange proposes to amend Rule 22 to delete references to the zone system for purposes of establishing the authority of Floor Officials, and to permit a Floor Official to render rulings anywhere on the Floor. In addition, the Amex proposal will provide that those matters which currently require the approval of a majority of the Floor Officials in a zone[4] may be determined by a Floor Official with the concurrence of a Senior Floor Official.[5]

The Amex states that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

After careful review, the Commission agrees with the Amex that the Floor Official zone system may not be appropriate for today's market environment. According to the Amex, its system of assigning Floor Officials to specific zones was adopted in 1965, before the Exchange Floor was expanded and reconfigured. The Amex also notes that, since that time, new securities products and improved technologies have been developed, and trading (particularly for options and other derivatives) generally proceeds at a faster pace. Given these changes in market conditions, the Commission finds that requiring members to deal only with the assigned Floor Officials may be unduly time-consuming and burdensome.

Accordingly, the Commission believes that the proposed rule change should facilitate quicker resolution of trading questions. By eliminating the zone system for assignment of Floor Officials, the Amex proposal will enable members to seek guidance from any Floor Official. In the Commission's opinion, this flexibility should reduce unnecessary delays and encourage compliance with Exchange rules, the Act and the regulations thereunder. For those matters which previously required the approval of a majority of the Floor Officials in a zone,[7] the Commission believes that the Amex proposal contains sufficient safeguards to ensure accurate and consistent decisionmaking. Specifically, the Floor official who determines the matter will be required to consult with, and obtain the agreement of, a Senior Floor Official (*i.e.*, a Floor Governor or an Exchange Official who was previously a Floor Governor).[8] According to Amex staff, these individuals are among the most experienced and knowledgeable members of Exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–94–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16420 Filed 7–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34284; File No. SR–BSE–93–19]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Boston Stock Exchange Inc., Relating to the Insider Trading and Securities Fraud Enforcement Act of 1988

June 30, 1994.

I. Introduction

On November 8, 1993, the Boston Stock Exchange Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new BSE Rule—Chapter II, Section 37(a), ITSFEA Procedures—relating to the establishment, maintenance and enforcement of procedures designed to prevent the misuse of material, non-public information. On January 13, 1994, the BSE submitted to the Commission an amendment to the proposed rule change.[3] Notice of the proposal appeared in the **Federal Register** on February 14, 1994. No comments were received on the proposal.

II. Description of the Proposal

A. Background

In November 1988, Congress enacted the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"), designed primarily to prevent, deter, and prosecute insider trading.[4] ITSFEA created a new Section 15(f) of the Act[5] to require broker-dealers to maintain procedures designed to prevent the misuse of material, non-public information by such broker-dealers or any person associated with such broker-dealers. ITSEFEA also granted the Commission broad rule-making authority concerning so-called "Chinese Wall" procedures developed by broker-dealers to deter and prevent insider trading.[6] Pursuant to this grant of rule-making authority, the Division undertook a comprehensive review of broker-dealer policies and procedures and, in March of 1990, issued a report of its findings, conclusions and recommendations.[7] In the Report, the Division stated that, among other things, it was concerned about the need for firms to "maintain documentation sufficient to recreate actions taken pursuant to Chinese Wall procedures."[8] Accordingly, the Division urged the self-regulatory organizations ("SRO") to develop standards of documentation for

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* Amex Rule 22(c).

[4] *See supra*, note 3 and accompanying text.

[5] Pursuant to Amex Rule 21(a), Senior Floor Officials include the Floor Governors and those Exchange Officials who were previously Floor Governors and continue to be active on the Floor.

[6] 15 U.S.C. 78f(b) (1988).

[7] *See supra*, note 3 and accompanying text.

[8] *See* Amex Rule 21(a).

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR § 240.19b–4 (1991).

[3] See letter from Karen A. Aluise, assistant Vice President, Boston Stock Exchange, to Sandy Sciole, Branch Chief, Commission, dated January 13, 1994. The BSE letter made a similar change in nine places that clarifies member obligations with respect to "securities transactions which they reasonably believe may have involved the misuse of material, non-public information." Exhibit 4 of the proposal requires associated persons to submit a list of securities accounts in which they either have a direct or indirect financial interest or make investment decisions. Associated persons with the firm are under a continuous obligation to update the list. The BSE's letter deleted a sentence that resulted in confusion on this matter. The letter also added "trade confirmations" to Exhibit 4, paragraph 1a, so that associated persons must submit to the member organization duplicate trade confirmations and monthly account statements for each relevant account. Finally, the letter changed the date in the Exhibit 3, Sample Membership Bulletin, from March 31, 1994, to April 30, 1994.

[4] 4 Pub. L. No. 100–704.

[5] 15 U.S.C. 78o (f) (1988).

[6] "Chinese Walls" are broker-dealer policies and procedures designed as information barriers to segment the flow and prevent the misuse of material, non-public information.

[7] See Report on Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of material Non-public Information ("Report"), Division of Market Regulation, Commission, March 1990.

[8] Id. at 26.

amendment to the proposed rule change.[3] Notice of the proposal appeared in the Federal Register on February 14, 1994. No comments were received on the proposal.

II. Description of the Proposal

A. Background

In November 1988, Congress enacted the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"), designed primarily to prevent, deter, and prosecute insider trading.[4] ITSFEA created a new Section 15(f) of the Act[5] to require broker-dealers to maintain procedures designed to prevent the misuse of material, non-public information by such Broker-dealers or any person associated with such broker-dealers. ITSEFEA also granted the Commission broad rule-making authority concerning so-called "Chinese Wall" procedures developed by broker-dealers to deter and prevent insider trading.[6] Pursuant to this grant of rule-making authority, the Division undertook a comprehensive review of broker-dealer policies and procedures and, in March of 1990, issued a report of its findings, conclusions and recommendations.[7] In the Report, the Division stated that, among other things, it was concerned about the need for firms to "maintain documentation sufficient to recreate actions taken pursuant to Chinese Wall procedures."[8] Accordingly, the Division urged the self-regulatory organizations ("SRO") to develop standards of documentation for their member firms as well as effective examination programs.

B. The Proposal

The proposed rule change was designed to supplement Section 15(f) of the Act and ITSFEA, by requiring every member organization of the Exchange to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such member and any person associated with the member. The proposal establishes minimum standards for compliance with the record-keeping requirements of the Rule and the Act. It mandates that all members that are required to file SEC Form X–17A–5 ("FOCUS Reports") with the Exchange on an annual basis submit with their FOCUS Reports signed statements by such members that the procedures mandated by this rule have been established, enforced and maintained. The proposal requires members and associated persons to promptly notify the Exchange's Market Surveillance Department of any securities transaction that the firm reasonably believes may have involved the misuse of material, non-public information. Finally, the proposal provides that when BSE members adopt written supervisory procedures relating to ITSFEA in connection with requirements of another designated examining authority ("DEA"), that member organization shall not be subject to the ITSFEA requirements of this Rule.

The proposal adds four Supplementary Material provisions to Chapter II, ITSFEA Procedures, Section 37(a) of the BSE Rules. Supplementary Material .01 describes conduct that would constitute the misuse of material, non-public information. This conduct includes, but is not limited to: (a) Trading in any securities, or in any related securities issued by a corporation, in any related securities or related options on other derivative securities while knowingly in possession of material non-public information concerning that issuer; (b) trading in a security or related option or other derivative security while in possession of material, non-public information concerning imminent transactions in the security or related securities; or (c) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of knowingly facilitating the possible misuse of material, non-public information.

The Exchange states that the scope of the aforementioned definition is intended to be consistent with the goals of Section 15(f) of the Act and ITSFEA to prevent the misuse of material, non-public information. The Exchange believes that this definition should be broad enough to encompass frontrunning, trading on the basis of material corporate inside information, tipping, and misappropriating material corporate inside information.

Supplementary Material .02 defines the terms "associated person" or "person associated with a member." These terms shall mean any partner, officer, director, or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a member, or any employee of a member.

Supplementary Material .03 requires, at a minimum, that each member establish, maintain and enforce certain policies and procedures. This provision specifically requires, first, that members must advise all associated persons in writing of the prohibition against the misuse of material, non-public information. Second, each member organization and all persons associated with that member organization must sign statements affirming their awareness of and agreement to abide by the prohibitions of the ITSFEA Rule. These signed statements must be maintained for at least three years, the first two years in an easily accessible place. Third, each member organization must maintain copies of trade confirmations and monthly account statements for each account in which an associated person has a direct or indirect interest or makes investment decisions. These trade confirmations and monthly account statements must be maintained for at least three years, the first two years in an easily accessible place. In addition, such brokerage accounts must be reviewed at least quarterly by the member organization for the purpose of detecting the possible misuse of material, non-public information. Fourth, an associated person must disclose to the member organization whether he, or any person in whose account he has a direct or indirect financial interest, is an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material, non-public information.

The Exchange states that the aforementioned policies and procedures

---

[3] See letter from Karen A. Aluise, assistant Vice President, Boston Stock Exchange, to Sandy Sciole, Branch Chief, Commission, dated January 13, 1994. The BSE letter made a similar change in nine places that clarifies member obligations with respect to "securities transactions which they reasonably believe may have involved the misuse of material, non-public information." Exhibit 4 of the proposal requires associated persons to submit a list of securities accounts in which they either have a direct or indirect financial interest or make investment decisions. Associated persons with the firm are under a continuous obligation to update the list. The BSE's letter deleted a sentence that resulted in confusion on this matter. The letter also added "trade confirmations" to Exhibit 4, paragraph 1a, so that associated persons must submit to the member organization duplicate trade confirmations and monthly account statements for each relevant account. Finally, the letter changed the date in the Exhibit 3, Sample Membership Bulletin, from March 31, 1994, to April 30, 1994.

[4] 4 Pub. L. No. 100–704.

[5] 15 U.S.C. 78o (f) (1988).

[6] "Chinese Walls" are broker-dealer policies and procedures designed as information barriers to segment the flow and prevent the misuse of material, non-public information.

[7] See Report on Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of material Non-public Information ("Report"), Division of Market Regulation, Commission, March 1990.

[8] Id. at 26.

may not, in all cases, satisfy the requirements of this rule. The adequacy of each member's policies and procedures will depend upon the nature of such member's business.

Supplementary Material .04 and the Sample Membership Bulletin [9] (Exhibit 3 to the proposal) describe a set of forms, denominated as the "ITSFEA Compliance Procedures" (Exhibit 4 to the proposal), which may be used by certain eligible member organizations to facilitate their compliance with the recordkeeping and filing requirements of Chapter II, Section 37 (a) and (b). The Exchange states that the Sample ITSFEA Compliance Procedures are intended to constitute the minimum policies and procedures required by the Act and this rule. Their use, however, does not ensure compliance with the recordkeeping and filing requirements.

The Sample ITSFEA Compliance Procedures require identification of securities accounts as described in ITSFEA Form 1 ("Form 1"). Form 1 requires each associated person to submit a list of each securities accounts in which he/she either has a direct or indirect financial interest, or makes investment decisions. This list is to include not only the accounts of associated persons, but also the accounts of relatives of such persons to the extent that an associated person has an interest in such accounts or makes investment decisions with respect thereto. Form 1 further requires all associated persons to transmit to the member organization duplicate trade confirmations and monthly account statements for each account in which they have a direct or indirect financial interest, or for which they make investment decisions. These account statements must be maintained by the member organization for at least three years. In addition, Form 1 requires all associated persons to disclose to the member organization if they, or any persons in whose account they have a direct or indirect financial interest, or over whose account they make investment decisions, is an officer, director or 10% shareholder in the company whose shares are publicly traded. Any transaction in the stock of any company shall be reviewed to determine whether the transaction may have involved a misuse of material, non-public information.

The Sample ITSFEA Compliance Procedures requires a "Statement of Compliance by Associated Persons" as described in ITSFEA Form 2 ("Form 2").[10] Form 2 outlines a sample "Statement of Compliance" which should be read and signed by all associated persons at the time they join the member organization and at least annually thereafter.

The Sample ITSFEA Compliance Procedures also require a "Statement of Compliance by Senior Reporting Member" as described in ITSFEA Form 3 ("Form 3").[11] Form 3 provides that each member organization must designate a Senior Reporting Member to be responsible for implementing all necessary policies and procedures on behalf of the member organization.[12] This person shall sign a Statement of Compliance on behalf of the member organization and submit such certification to the Exchange at the time the firm files its year-end FOCUS Report (Form X–17A–5).

The Sample ITSFEA Compliance Procedures provide additional guidance regarding account review and review of proprietary or associated person trading. For example, under the Sample ITSFEA Compliance Procedures, a member organization shall review, at least quarterly, all account statements and/or trade confirmations for accounts in which associated persons have a direct or indirect financial interest or make investment decisions and a written record of such review shall be maintained for three years. The Sample ITSFEA Compliance Procedures also provide, *inter alia*, that when conducting a review of proprietary or associated person trading, the timing or unusual nature of a transaction shall be considered.

III. Discussion and Conclusion

The Commission believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5) of the Act, in particular,[13] in that it is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. The proposal will accomplish this by setting standards and bringing consistency to member practices to prevent the misuse of material, non-public information.

Broker-dealer Chinese Walls predate section 15(f) of the Act and have evolved to include policies and physical apparatus designed to prevent the improper or unintended dissemination of market sensitive information from one division of a multi-service firm to another. The Chinese Wall procedures also have developed trading reviews designed to prevent and detect illegal trading. Prior to the existence of section 15(f), however, the policies and procedures varied from one broker-dealer to the next, ranging from very tight, centralized control of information and review to little or no review or follow-up. The Division, in its Report, stated that broker-dealer oversight with regard to section 15(f) is an important issue and is best effectuated by SRO examinations and regulation subject to Commission oversight.[14] The Commission believes that the BSE's proposal adequately addresses the concerns raised in the Division's Report and that it should help to prevent the misuse of material, non-public information by brokers and dealers.

Specifically, the Commission believes that the policies and procedures set forth in Chapter II, Section 37(a) of the BSE Rules and the corresponding Supplementary Material provisions will serve to ensure that BSE members establish, maintain and enforce policies to prevent the misuse of material, non-public information, thereby helping to assure that BSE members are in compliance with section 15(f) of the Act. First, the requirement that all associated persons be advised in writing of the prohibition against the misuse of material, non-public information as defined in the Rule, and the requirement that member organizations and persons associated with them sign attestations affirming their awareness of, and agreement to abide by, the aforementioned prohibitions will serve to heighten awareness of associated persons of this prohibition. Second, the requirements that member organizations maintain copies of trade confirmations and monthly account statements for each account in which an associated person has a direct or indirect financial interest or makes investment decisions and that such brokerage accounts be reviewed by the member organization will assist Exchange and Commission review of those records and make any fraudulent acts easier to deter and detect. Third, the requirement that an associated person disclose to the member organization whether he, or any person in whose account he has a direct or indirect financial interest, or for which he makes investment decisions, is an officer, director or 10% shareholder in a company whose shares are publicly traded, and the requirement that transactions in the stock (or option thereon) of such company be reviewed to determine whether the transaction may have involved a misuse of material, non-public information, will assist the Exchange and the Commission in the detection and deterrence of the misuse of material, non-public information.

The Commission believes that it is consistent with the Act for the BSE Rules to require that only members who file their FOCUS reports annually with the Exchange submit, along with their FOCUS Reports, an attestation of their compliance with the BSE Rule. In this regard, the Commission notes that members that file FOCUS Reports on a more frequent basis are subject to more frequent periodic audits by the Exchange. During these audits, the Exchange will review the procedures maintained by such members pursuant to the BSE's Rule. Members who file FOCUS Reports on an annual basis, however, are subject to audits on a more infrequent basis. Accordingly, the Commission believes that the requirement that these members file an annual attestation that they are in compliance with the BSE Rule will serve as a continuing reminder of the obligations of this rule. This should result in more internal compliance checks by members and, therefore, assist the Exchange in the administration of the BSE Rule without compromising the effectiveness of the rule or adherence to section 15(f) of the Act.

The Commission believes that Supplementary Material .02 of Chapter II, Section 37 of the BSE Rule, which defines "associated persons" or "person associated with a member" is consistent with the Act. Currently, the Exchange, in enforcing its rules, applies the definition of "person associated with a member" or "associated person of a member" contained in section 3(a)(21) of the Act. The proposal adopts this definition into the Exchange's rules.

Finally, the Commission believes that the designation of a senior reporting member to be responsible for implementing all necessary ITSFEA policies and procedures is appropriate to help ensure member firm compliance with the ITSFEA requirements of the Act.

For the reasons stated above, *it is therefore ordered*, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–BSE–93–19) is hereby approved.

---

[9] A copy of the BSE's "Sample Membership Bulletin" and a "Summary of the ITSFEA Compliance Procedures" were filed with the proposed rule change.

[10] A copy of the BSE's "Statement of Compliance by Associated Persons" was filed with the proposed rule change.

[11] A copy of the BSE's "Statement of Compliance by Senior Reporting Members" was filed with the proposed rule change.

[12] This includes, *inter alia*, the filing of all appropriate information and the review of all employee accounts.

[13] 15 U.S.C. 78f(b)(5) (1988).

[14] See Report, *supra* note 8 at 23.

[15] 15 U.S.C. 78s(b)(2) (1988).

shareholder in a company whose shares are publicly traded, and the requirement that transactions in the stock (or option thereon) of such company be reviewed to determine whether the transaction may have involved a misuse of material, non-public information, will assist the Exchange and the Commission in the detection and deterrence of the misuse of material, non-public information.

The Commission believes that it is consistent with the Act for the BSE Rules to require that only members who file their FOCUS reports annually with the Exchange submit, along with their FOCUS Reports, an attestation of their compliance with the BSE Rule. In this regard, the Commission notes that members that file FOCUS Reports on a more frequent basis are subject to more frequent periodic audits by the Exchange. During these audits, the Exchange will review the procedures maintained by such members pursuant to the BSE's Rule. Members who file FOCUS Reports on an annual basis, however, are subject to audits on a more infrequent basis. Accordingly, the Commission believes that the requirement that these members file an annual attestation that they are in compliance with the BSE Rule will serve as a continuing reminder of the obligations of this rule. This should result in more internal compliance checks by members and, therefore, assist the Exchange in the administration of the BSE Rule without compromising the effectiveness of the rule or adherence to section 15(f) of the Act.

The Commission believes that Supplementary Material .02 of Chapter II, Section 37 of the BSE Rule, which defines "associated persons" or "person associated with a member" is consistent with the Act. Currently, the Exchange, in enforcing its rules, applies the definition of "person associated with a member" or "associated person of a member" contained in section 3(a)(21) of the Act. The proposal adopts this definition into the Exchange's rules.

Finally, the Commission believes that the designation of a senior reporting member to be responsible for implementing all necessary ITSFEA policies and procedures is appropriate to help ensure member firm compliance with the ITSFEA requirements of the Act.

For the reasons stated above, *it is therefore ordered,* pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–BSE–93–19) is hereby approved.

[15] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16419 Filed 7–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34289; File No. SR–CBOE–93–56]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Termination of Registered Representatives

June 30, 1994.

On December 14, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend CBOE Rule 9.3, "Registration and Termination of Registered Representatives," to require members to file with the CBOE's Department of Compliance a termination notice for any discharge or termination of employment of a registered person, and the reason therefor, within 30 days of the termination. In addition, the CBOE proposes to allow members to fulfill CBOE Rule 9.3's filing requirements by submitting their filings or submissions to the North American Securities Administrators Association ("NASAA")/National Association of Securities Dealers, Inc. ("NASD") Central Registration Depository ("CRD") within the time period allowed under CBOE Rule 9.3.

The proposed rule change was published in Securities Exchange Act Release No. 33826 (March 28, 1994), 59 FR 15467 (April 1, 1994). No comments were received on the proposed rule change.[3]

The CBOE states that the purpose of the proposal is to modify the manner in which CBOE members report "Termination for Cause" of employment or affiliation of any registered representative to the CBOE. Currently, under CBOE Rule 9.3, members must file with the CBOE's Department of Investigation a Uniform Termination Notice for Securities Industry Registration (Form U–5) immediately after the termination of employment "for cause" of a registered representative.[4] The proposal makes CBOE Rule 9.3 more encompassing by requiring members to file termination notices with the Exchange's Department of Compliance for any discharge or termination of employment of a registered person, not just "terminations for cause." In addition, the proposal clarifies when termination notices must be filed, *i.e.*, "immediately, but in no event later than thirty (30) days following termination," and requires members to file an amended Form U–5 if the member learns of facts or circumstances which cause any information provided in the notice to become inaccurate or incomplete. Members must file the amended Form U–5 within 30 days after learning of the facts or circumstances giving rise to the amendment. Finally, the proposal relieves CBOE member organizations of the obligation to file Form U–5 information in hard copy form and, instead, deems all CBOE Rule 9.3 filings and submissions as made for purposes of the rule if they are filed with the NASAA/NASD CRD within the time period set forth in CBOE Rule 9.3.

The CBOE believes that the proposal will reduce the costs to members of copying, handling and mailing termination materials. Further, the CBOE states that the proposal will bring the CBOE's "Termination for Cause" reporting requirements in line with similar rules of the NASD (NASD By-Law Article IV, Section 3) and the New York Stock Exchange, Inc. ("NYSE") (NYSE Rule 345).[5]

[16] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] On March 30, 1994, the CBOE submitted a letter explaining that the CBOE's Department of Compliance currently has an electronic mail box in the CRD that captures all filings submitted by CBOE member organizations in reference to terminations for cause. The staff of the CBOE's Department of Compliance reviews this electronic mail box on a daily basis and will continue to do so after the Commission approves the proposal. *See* Letter from Michael L. Meyer, Schiff Hardin & Waite, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation, Commission, Dated March 30, 1994 ("March 30 Letter").

[4] The Department of Investigation no longer exists at the CBOE, and a portion of the duties previously performed by the Department of Investigation, including the receipt of Form U–5 information, is now performed by the CBOE's Department of Compliance. The proposal reflects this change by requiring that Form U–5 filings be made with the Exchange's Department of Compliance.

[5] NASD By-Law Article IV, Section 3, "Notification by Member to Corporation and Associated Person of Termination; Amendments to Notification," requires NASD members to provide the NASD with written notice of the termination of a registered person within 30 calendar days of the termination. If a member learns of facts or circumstances which cause the information in the notice to become inaccurate or incomplete, the member must file a written amendment with the NASD no later than 30 calendar days after the member learns of the facts or circumstances giving rise to the amendment. NYSE Rule 345,

Continued

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to improve the CBOE's capacity to enforce compliance with the provisions of the Act and the CBOE's rules by enabling the Exchange to monitor more efficiently all discharges or terminations of employment of registered persons, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5)[6] in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. Specifically, the Commission believes that the proposal to require CBOE members to file Form U–5 notices for any discharge or termination with the Exchange, rather than only for "terminations for cause," should facilitate the CBOE's oversight of members' personnel by providing a more complete and accurate record of the employment history of registered representatives.[7] The Commission also believes that the proposal should help the Exchange to fulfill its responsibility under Section 6(c) of the Act to deny membership to those who have engaged in acts or practices inconsistent with just and equitable principles of trade. In addition, the proposal should simplify the Exchange's procedures by eliminating the need for members to determine whether there has been a "termination for cause" and requiring, instead, that members file a Form U–5 notice for all discharges and terminations.

The Commission believes that the proposal is designed to help to ensure prompt compliance with CBOE Rule 9.3 by requiring members to file a Form U–5 immediately, but no later than 30 days after a termination. Moreover, by requiring members to file amendments to Form U–5 within 30 days after learning of facts or circumstances giving rise to the amendment, the proposal advises members of their continuing obligation to amend to Form U–5 to report relevant changes and should help to ensure the accuracy and reliability of the Exchange's records. Finally, the Commission believes that allowing members to submit the filings required under CBOE Rule 9.3 through the NASAA/NASD CRD will facilitate timely compliance with the requirements of CBOE Rule 9.3 and reduce the cost to members of complying with the rule. As noted above, the CBOE is under a continuing obligation to review the CRD submissions on a daily basis. This will ensure that the CBOE is aware of the U–5 filings from CBOE members in a timely manner.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–93–56) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16421 Filed 7–6–94; 8:45 am]

BILLING CODE 8010–01–M

"Employees—Registration, Approval, Record," Supplementary Material .17, "General Information Regarding Employees," requires NYSE members to report to the NYSE on a Form U–5 the discharge or termination of employment of any registered person and the reason thereof within 30 days following the termination. In addition, NYSE Supplementary Material .17 requires members to provide a written amendment to Form U–5 if the member learns of facts or circumstances causing any information in the notice to become inaccurate or incomplete. The amendment must be filed with the NYSE no later than 30 days after the member learns of the facts or circumstances giving rise to the amendment.

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] After the proposal is approved, the CBOE is expected to continue to review members' Form U–5 filings with the CRD on a daily basis. *See* May 30 Letter, *supra* note 3.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34280; File No. SR–NASD–93–10]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by National Association of Securities Dealers, Inc. Requiring Participation in the Intermarket Trading System by Third Market Makers

June 29, 1994.

The National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NASD–93–10) on March 1, 1993, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder.[2] The purpose of the proposed rule change is to require third market makers registered as Consolidated Quotation System ("CQS") market makers to register and participate in the Computer Assisted Execution System ("CAES") and the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") interface.[3]

Notice of the proposal appeared in the **Federal Register** on July 8, 1993.[4] The Commission received three comment letters opposing the proposal.[5] For the reasons discussed below, the Commission is approving the proposal.

I. Description

The third market is where off-exchange, or over-the-counter ("OTC"), transactions in listed securities take place. Third market makers, registered with the NASD as CQS market makers, disseminate quotations through the CQS and through NASDAQ pursuant to rules promulgated by the NASD.[6] CQS market makers, that are not registered as ITS/CAES market makers, account for approximately 17% of third market share volume in CQS securities. Currently, 33 registered CQS market makers are not registered as ITS/CAES market makers or as CAES market makers. Only CQS registered market makers make OTC markets in listed securities by disseminating quotations through CQS or NASDAQ. Thus, only CQS registered market makers are subject to the requirements of the proposal.

The proposed rule change amends Schedules D and G to the NASD By-Laws and the Rules of Practice and Procedure for the ITS/CAES Automated Interface ("ITS/CAES Rules"). The proposal requires registered CQS market makers to: (1) register and participate in ITS/CAES and CAES; (2) quote minimum sizes of 200 or 500 shares (depending on trading characteristics of the securities);[7] and (3) abide by excess spread parameters established for NASDAQ securities.[8] The proposal also will enable market makers to execute principal transactions through CAES for those specific securities in which the market maker is registered.

The NASD developed CAES to provide a more efficient mechanism for OTC trading in listed securities. The ITS/CAES interface commenced operation on May 17, 1982.[9] ITS is a communications network designed to facilitate intermarket trading in exchange-listed securities by linking the eight national securities exchanges and the NASDAQ market.[10] ITS enables a broker or dealer who is physically present in one market center to execute principal or agency orders in an ITS security on another market center.

The ITS/CAES interface permits members of participant markets to execute transactions in Rule 19c–3 securities between the exchanges and the OTC market.[11] The proposal will require registered NASD market makers that trade Rule 19c–3 securities to register and participate in ITS/CAES. For non-Rule 19c–3 securities, which are not eligible for trading through the ITS/CAES interface, registered market makers will be required to register and participate in CAES. Currently,

[2] On June 10, 1993, the NASD amended the proposed rule change to clarify that only third market makers registered as Consolidated Quotation Service ("CQS") market makers must register as ITS/CAES market makers. Letter from Robert Aber, Vice President, General Counsel/Corporate Subsidiaries, NASD, to Elizabeth MacGregor, Branch Chief, National Market System Division of Market Regulation, Commission, (June 10, 1993).

[1] 15 U.S.C. 78s(b)(1).

[3] A CQS market marker is a dealer that, with respect to a reported security, holds itself out as being willing to buy and sell the security for its own account on a regular and continuous basis otherwise than on a national securities exchange in amounts less than block size and is registered as such. NASD Rules, Schedule D, Part I. CAES enables NASD member firms to direct agency orders in both exchange-listed and NASDAQ/NMS securities to market makers for automatic execution. ITS/CAES enables market makers in Rule 19c–3 securities to direct agency and principal orders to, and receive orders from, the floors of the participating ITS exchanges.

[4] Securities Exchange Act Release No. 32573 (July 1, 1993), 58 FR 36726.

[5] Letters from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, Commission, (September 24, 1993); George W. Mann, Jr., Senior Vice President and General Counsel, Boston Stock Exchange, Inc. ("BSE"), to Jonathan G. Katz, Secretary, Commission, (September 20, 1993); and James F. Duffy, Senior Vice President and General Counsel, Legal & Regulatory Policy Division, American Stock Exchange, Inc. ("Amex"), to Jonathan G. Katz, Secretary, Commission, (October 22, 1993).

[6] *See* NASD Rules, Schedule D, Market makers displaying quotations in both CQS and in NASDAQ must maintain identical quotations in CQS and in NASDAQ. *See* NASD Rules, Schedule D, Part VI, Section 2.

[7] NASD By-Laws, Schedule D, Part VI. *See also* Securities Exchange Act Release No. 31678 (January 8, 1993), 58 FR 3314.

[8] NASD By-Laws, Schedule D, Part VI. *See also* Securities Exchange Act Release No. 32419 (June 4, 1993), 58 FR 32971.

[9] In 1981, the Commission issued an order which required implementation of an automated interface between the ITS and CAES. Securities Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23856. On May 6, 1982, the Commission adopted final amendments to the ITS Plan to provide for the inclusion of the NASD in ITS. Securities Exchange Act Release No. 18713 (May 6, 1982), 47 FR 20413.

[10] Participants to the ITS Plan include the Amex, the BSE, the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the NASD, the NYSE, the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

[11] The ITS Plan limits securities eligible for trading through the ITS/CAES interface to Rule 19c–3 securities. Rule 19c–3 precludes off-board trading restrictions from applying, with certain exceptions, to any reported security: (1) which was not traded on an exchange prior to April 26, 1979, or (2) which was traded on an exchange on April 26, 1979 but which ceased to be traded on an exchange for any period of time thereafter. Rule 19c–3, 17 CFR 240.19c–3.

Procedure for the ITS/CAES Automated Interface ("ITS/CAES Rules"). The proposal requires registered CQS market makers to: (1) register and participate in ITS/CAES and CAES; (2) quote minimum sizes of 200 or 500 shares (depending on trading characteristics of the securities);[7] and (3) abide by excess spread parameters established for NASDAQ securities.[8] The proposal also will enable market makers to execute principal transactions through CAES for those specific securities in which the market maker is registered.

The NASD developed CAES to provide a more efficient mechanism for OTC trading in listed securities. The ITS/CAES interface commenced operation on May 17, 1982.[9] ITS is a communications network designed to facilitate intermarket trading in exchange-listed securities by linking the eight national securities exchanges and the NASDAQ market.[10] ITS enables a broker or dealer who is physically present in one market center to execute principal or agency orders in an ITS security on another market center.

The ITS/CAES interface permits members of participant markets to execute transactions in Rule 19c–3 securities between the exchanges and the OTC market.[11] The proposal will require registered NASD market makers that trade Rule 19c–3 securities to register and participate in ITS/CAES. For non-Rule 19c–3 securities, which are not eligible for trading through the ITS/CAES interface, registered market makers will be required to register and participate in CAES. Currently, participation in ITS/CAES and CAES by CQS market makers is voluntary.

The proposal will require ITS/CAES and CAES market makers to quote minimum sizes of 200 or 500 shares (depending on trading characteristics of the securities) and to abide by excess spread parameters established for NASDAQ securities. ITS/CAES market makers currently are not required to include minimum sizes in their quotations or to comply with the excess spread parameters established for NASDAQ securities. The excess spread parameters for NASDAQ and CQS securities limit a dealer's spread in a security to 125% of the average of the narrowest three dealer spreads in that security.[12]

ITS/CAES enables market makers in Rule 19c–3 securities to direct agency and principal orders to, and receive orders from, the floors of ITS participant exchanges. Currently, transactions in CAES are limited to agency orders. The proposal will enable market makers to execute principal transactions through CAES for listed securities in which the market maker is registered.

II. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act, and in particular, with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11), 11A(a)(1)(C), and 11A(a)(1)(D) of the Act. Section 15A(b)(6) of the Act requires that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to an facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system. Section 15A(b)(9) requires that the NASD's rules not impose any burden on competition not necessary or appropriate in furtherance of the Act.[13] Section 15A(b)(11) authorizes the NASD to adopt rules concerning the form and content of quotations of securities sold in the OTC market.[14] Section 11A grants the Commission the authority to facilitate the establishment of a National Market System ("NMS") for securities to implement certain specified Congressional goals and objectives. Sections 11A(1) (C) and (D) set forth the Congressional finding that the linking of all markets for qualified securities through communication and data processing facilities would foster efficiency; enhance competition; increase the information available to brokers, dealers, and investors; facilitate the offsetting of investors' orders; and contribute to best execution of such orders.

The Commission believes that the proposal will facilitate the further development of the NMS by integrating all registered market makers with intermarket trading in listed securities. This will facilitate the ability of third market orders to interact with orders of other market participants. Other ITS participant markets currently cannot execute, through ITS, transactions with registered third market makers that are not registered as ITS/CAES market makers, even when a better published quotation may exist in the third market.[15] Thus, despite the ITS/CAES linkage, not all third market orders are exposed to other ITS participants. This inhibits a broker's ability to ensure best execution of customer orders and impedes fair competition between and among different types of trading markets and market professionals.

The proposal will facilitate the development of a more efficient market linkage for concurrent exchange and OTC trading of listed securities. The ITS/CAES interface is designed to permit the execution of orders routed to exchange floors in the OTC market when more favorable prices are offered by OTC market makers. The ITS/CAES interface likewise provides OTC market makers access to rapid execution of their orders on exchange floors when exchange markets are quoting better prices. The proposal will facilitate interaction of orders in Rule 19c–3 securities in all market centers, and thus, will increase competition between the markets for order flow in Rule 19c–3 securities. For non-Rule 19c–3 securities, CAES provides an efficient mechanism for OTC trading of listed securities.

By extending application of ITS Plan provisions to all registered third market makers, the proposal also will provide consistent trading rules for multiple

---

[7] NASD By-Laws, Schedule D, Part VI. *See also* Securities Exchange Act Release No. 31678 (January 8, 1993), 58 FR 3314.

[8] NASD By-Laws, Schedule D, Part VI. *See also* Securities Exchange Act Release No. 32419 (June 4, 1993), 58 FR 32971.

[9] In 1981, the Commission issued an order which required implementation of an automated interface between the ITS and CAES. Securities Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23856. On May 6, 1982, the Commission adopted final amendments to the ITS Plan to provide for the inclusion of the NASD in ITS. Securities Exchange Act Release No. 18713 (May 6, 1982), 47 FR 20413.

[10] Participants to the ITS Plan include the Amex, the BSE, the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the NASD, the NYSE, the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

[11] The ITS Plan limits securities eligible for trading through the ITS/CAES interface to Rule 19c–3 securities. Rule 19c–3 precludes off-board trading restrictions from applying, with certain exceptions, to any reported security: (1) which was not traded on an exchange prior to April 26, 1979, or (2) which was traded on an exchange on April 26, 1979 but which ceased to be traded on an exchange for any period of time thereafter. Rule 19c–3, 17 CFR 240.19c–3.

[12] *See supra* note 8.

[13] The Commission believes that any burden on competition that may result from the proposal, if any, is necessary and appropriate in furtherance of the purposes of the Act.

[14] The Act requires these rules to be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. Section 15A(b)(11).

[15] The quotations of all third market makers are consolidated into a composite third market quote and disseminated through CQS to the exchange floors and to quotation vendors. Therefore, while third market quotations are visible to other markets, they may not be accessible through the ITS/CAES interface.

trading of listed securities. The ITS Plan provides uniform rules governing: (1) Trade-throughs, to provide price protection for customer orders;[16] (2) block trades, to enable other markets to derive the benefit of a block without breaking it up;[17] (3) pre-openings, to enable other markets to participate in the primary market's opening of a security;[18] and (4) dispute resolution, to enable efficient resolution of disputes between market centers.[19]

The amendments regarding size of displayed quotations and excess spread parameters will improve the quality of the third market, and thus, will facilitate efficient OTC trading of listed securities. The proposal will require CQS market makers to quote a minimum size of 200 or 500 shares, depending on price, volume, and number of market makers in the security; and will impose excess spread parameters comparable to those in the NASDAQ market.

The proposal also allows principal market maker transactions in listed securities through CAES for securities in which the market maker is registered and active. The Commission does not perceive any basis for limiting CAES to agency orders. The proposal will not affect the provisions of the ITS Plan, which apply to both principal and agency transactions. The proposal will allow market makers to obtain electronic access to the quotations of other market makers through CAES and thus, will reduce reliance on telephone contact.

The Amex, BSE, and NYSE submitted comment letters on the proposal.[20] These exchanges commented that the proposal does not apply to all third market makers, but applies only to third market makers currently registered as CQS market makers with the NASD.[21] The NYSE also commented that third market and exchange transaction reporting in listed securities are not consistent.[22]

The Commission acknowledges that brokerage firms that execute transactions in listed securities in the OTC market are not required, by Commission or NASD Rules, to register with the NASD as market makers. Brokerage firms not registered with the NASD as market makers cannot disseminate quotations in CQS or NASDAQ for listed securities.[23]

The commentators' arguments against the current proposal, however, appear to based on the assumption that requiring all CQS market markets to register and participate in ITS will increase the extent of internalization in Rule 19c–3 securities. In its study of the U.S. equity market, the Division of Market Regulation ("Division") considered concerns regarding internalization of transactions in Rule 19c–3 securities.[24] After examining data on off-board trading for 100 most active NYSE issues during 1992,[25] the division determined that the extent of internalization of transactions in Rule 19c–3 securities was not significant.[26] In addition, in their letters in response to the Division's study,[27] the Amex and the regional exchanges urged that all third market makers be required to become part of the ITS/CAES linkage and subjected to the ITS trade through rules.[28]

The NASD's proposal will increase the interaction and exposure of third market making activity to other markets by requiring all registered CQS market makers to participate in ITS/CAES. Thus, the proposal will increase the universe of third market trading subject to the ITS price protection rules. On balance, the proposal will benefit the market, advance the development of an NMS, and meet statutory goals. Thus, the Commission believes that the NASD's proposal represents a significant step in the interaction and exposure of securities in the NMS.

The NYSE also commented that transaction reporting by third market makers is not comparable to transaction reporting by exchanges. Because the NASD's rules require the price reported by third market makers be "reasonably related to the prevailing market," the NYSE believes that third market makers may report a transaction price different from the execution price confirmed to customers.

In 1980, the NASD amended its rules to require third market makers to report transactions on a "gross" basis, excluding any mark-up, mark-down, or service charge.[29] The NASD's reporting requirements effectively eliminated any disparity in transaction reporting between the exchange and the third market.[30] These rules are still in effect. In addition, Rule 10b–10 under the Act requires broker-dealers to report on confirmations the trade price and mark-up in principal transactions. Because Rule 10b–10 requires that the trade price broker-dealers disclose on a customer confirmation be the same as that disseminated for transaction reporting, the rule prevents broker-dealers from reporting a transaction price different from that confirmed to customers.[31] The Commission continues to believe that transaction reporting by the third market is sufficiently comparable to transaction reporting by the exchange market.

[16] A trade-through occurs when an ITS participant initiates a purchase of an ITS security at a price that is higher than the price at which the security is being offered at another ITS participating market; or initiates the sale of an ITS security at a price that is lower than the price at which the security is being bid at another ITS participant.

[17] A block trade is a trade that:

(1) involves 10,000 or more shares of a common stock traded through ITS or a quantity of any such security having a market value of $200,000 or more ("block size");

(2) is effected at a price outside the bid or offer displayed from another ITS participating market center; and

(3) involves either:

(i) a cross of block size (where the member represents all of one side of the transaction and all or a portion of the other side); or

(ii) any other transaction of block size (i.e., in which the member represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the exchange.

[18] The ITS pre-opening application enables an ITS participant who wishes to open his or her market in an ITS security to solicit any pre-opening interest in that security of other market makers registered in that security in other participant markets. This allows other ITS market makers to participate as either principal or as agent in the opening transaction, which may ameliorate disparities between pre-opening orders.

[19] The ITS Plan provides for procedures by which participants can obtain a non-binding opinion on a dispute between ITS participants on the application or interpretation of the ITS Plan and model rules.

[20] *Supra* note 5.

[21] The NYSE commented that these firms may "internalize" customer orders by executing third market transactions "in-house" without exposing the orders to other market participants. The NYSE stated that NASD member firms may internalize customer orders by trading against such orders, or by holding themselves out, often through proprietary automatic execution systems, as willing to buy and sell listed securities. The NYSE believes that allowing brokerage firms to trade listed securities, without registering as CQS market makers or disseminating any quotations, allows trading of listed securities outside the provisions of ITS price protection rules. *Id.*

[22] The NYSE believed that transaction reporting in the OTC market is not comparable to transaction reporting on exchanges because the NASD's rules require the price reported by market makers to be "reasonably related to the prevailing market." *See* NASD Rules, Schedule G, Section 2.

[23] As discussed above, only CQS market makers may disseminate quotations through CQS or Nasdaq.

[24] Division of Market Regulation, Securities and Exchange Commission, *Market 2000, An Examination of Current Equity Market Developments*, (January 1994), ("*Market 2000*"), Study III at 8–10.

[25] Of these stocks, 20 stocks were Rule 19c–3 stocks that are not subject to off-board trading restrictions and 80 were covered by off-board trading restrictions, NYSE Rule 390.

[26] The Division's analysis revealed that the exchange markets have remained the primary marketplace for securities that are not subject to off-board trading restrictions. In addition, the mean proportion of reported share volume executed OTC for the 20 Rule 19c–3 stocks was 8% versus 5.2% for the 80 stocks subject to off-board trading restrictions. Even if the 2.8% difference between the figures is wholly attributable to internalization by NYSE firms, it is not a large figure. It is less than the volume in these stocks sent by NYSE members to affiliated specialists at regional exchanges. *Market 2000*, Study III at 10.

[27] The Division requested comments regarding its equity market study in Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587.

[28] *See letters to Jonathan G. Katz, Secretary, Commission, from James R. Jones, Chairman, Amex, (December 8, 1992); and from William G. Morton, Jr., BSE; John L. Fletcher, CHX, Leopold Korins, PSE, and Nicholas A. Giordano, PHLX, (December 11, 1992).*

The Commission believes that the ITS trade-through policy should apply to all third market trading. *See Market 2000*, Study III, at 13, 14.

[29] *See* Securities Exchange Act Release No. 16960 (July 7, 1980), 45 FR 47291. To ensure adherence to the rule, the NASD also requires the price reported to be reasonably related to the prevailing market. Generally, the mark-up is the difference between the price the customer paid for the stock and the prevailing market price. Thus, the price third market makers report to the consolidated tape should, at all times, be the "gross" price excluding any dealer mark-up or mark-down.

[30] In 1981, the PSE raised concerns regarding third market transaction reporting, similar to those of the NYSE, to oppose the implementation of the ITS/CAES interface. Because the NASD requires transaction reporting on a gross basis, the Commission stated that the PSE's concerns were not warranted. Securities Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23865.

[31] Securities Exchange Act Release No. 22397 (March 17, 1985), 50 FR 37648.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9), 15A(b)(11), 11A(a)(1)(C), and 11A(a)(D) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change described above be, and hereby is, approved.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16370 Filed 7–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34279; File No. SR–NASD–93–58]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers Relating to Handling of Customer Limit Orders

June 29, 1994.

On October 13, 1993, the National Association of Securities Dealers ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change consisting of an Interpretation to the

[1] 15 U.S.C. 78s(b)(1) (1988).

disparity in transaction reporting between the exchange and the third market.[30] These rules are still in effect. In addition, Rule 10b–10 under the Act requires broker-dealers to report on confirmations the trade price and mark-up in principal transactions. Because Rule 10b–10 requires that the trade price broker-dealers disclose on a customer confirmation be the same as that disseminated for transaction reporting, the rule prevents broker-dealers from reporting a transaction price different from that confirmed to customers.[31] The Commission continues to believe that transaction reporting by the third market is sufficiently comparable to transaction reporting by the exchange market.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9), 15A(b)(11), 11A(a)(1)(C), and 11A(a)(D) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change described above be, and hereby is, approved.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16370 Filed 7–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34279; File No. SR–NASD–93–58]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers Relating to Handling of Customer Limit Orders

June 29, 1994.

On October 13, 1993, the National Association of Securities Dealers ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change consisting of an Interpretation to the NASD's Rules of Fair Practice relating to the handling of customer limit orders. The proposed rule change was published for comment in the Federal Register.[2] Two comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Background

Over the past several years, limit order practices involving NASDAQ stocks have become the subject of investor complaints and Commission scrutiny. Current NASDAQ limit order handling practice often results in a market maker's delaying execution of the customer's sell (or buy) order until the highest bid (offer) from among competing market makers equals the customer's limit price. Moreover, firms that accept limit orders often trade for their own accounts at prices better than the customer's limit order price without executing the customer's order.

The priority accorded a customer limit order today is different depending on the structure of the marketplace of execution, a distinction customers do not always understand. The rules of national securities exchanges require specialists to yield to a customer's limit order; the specialist cannot trade for its own account at prices better than the limit order until the limit order is executed.

In 1988, the Commission expressed its views on the issue of limit order protection in the NASDAQ market when it ruled that broker-dealers owe a fiduciary duty to their limit order customers not to trade ahead of these orders unless the customer is first informed of the firm's limit order policy.[3] As a result of the Manning decision, the NASD filed a proposed rule change with the Commission that states that a member firm will be deemed not to have violated NASD Rules of Fair Practice if it provides to customers a statement setting forth the circumstances in which the firm accepts limit orders and the policies and procedures that the firm follows in handling these orders.[4]

In July of 1993, the NASD Board of Governors reviewed the handling of limit orders in NASDAQ securities and concluded that "the continuation of the disclosure exception appeared inappropriate."[5] The NASD solicited member comment on eliminating the disclosure safe harbor for members trading ahead of customer limit orders and the effect a rule prohibiting trading ahead might have on integrated broker-dealers, on limit orders received from other firms ("member-to-member" trades) and on market liquidity.[6]

After full consideration of the concerns articulated in the comment process, the NASD withdrew the rule filing containing the disclosure approach,[7] and submitted this proposed Interpretation to its Rules of Fair Practice, prohibiting member firms from trading ahead of their customers' limit orders in their market making capacity.

II. Description

The NASD is proposing to adopt an Interpretation to its Rules of Fair Practice that would prohibit member firms that hold their own customer limit orders from trading ahead of those orders, regardless of whether the practice has been disclosed, and would make trading in disregard of the prohibition a violation of just and equitable principles of trade. The Interpretation establishes that a member holding its customers' limit order may not continue to trade for its own position without executing that limit order under the specific terms and conditions that the customer understands and accepts. If the member does trade ahead of its customer, it will be deemed a violation of Article III, Section 1 of the Rules of Fair Practice regarding just and equitable principles of trade.[8]

The Interpretation also states that a member that "controls or is controlled by"[9] another member will be considered affiliated in a single entity for purposes of determining the application of the rule. Thus, if a member firm accepts a customer's limit order and forwards that limit order for execution to a market making unit that

---

[30] In 1981, the PSE raised concerns regarding third market transaction reporting, similar to those of the NYSE, to oppose the implementation of the ITS/CAES interface. Because the NASD requires transaction reporting on a gross basis, the Commission stated that the PSE's concerns were not warranted. Securities Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23865.

[31] Securities Exchange Act Release No. 22397 (March 17, 1985), 50 FR 37648.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33697 (March 1, 1994), 59 FR 45 (March 8, 1994).

[3] *See In re E.F. Hutton & Co.* (the "Manning" decision), Securities Exchange Act Release No. 25887 (July 6, 1988), 41 SEC Doc. 473, *appeal filed, Hutton & Co. Inc.* v. *SEC*, Dec. No. 88–1649 (D.C. Cir. Sept. 2, 1988), (Stipulation of Dismissal Filed, Jan. 11, 1989).

[4] Securities Exchange Act Release No. 26824 (May 15, 1989), 54 FR 22040 (May 22, 1989). The proposal included model disclosure language to be used by firms whose policy is not to grant priority to customer limit orders over the member's own proprietary trading.

[5] *See* File No. SR–NASD–93–58, p. 6.

[6] *See* Notice to Members 93–49 (July 23, 1993).

[7] *See* Letter from Robert E. Aber, Vice President and General Counsel, National Association of Securities Dealers, to Selwyn Notelovitz, Branch Chief, Division of Market Regulation, SEC (Oct. 13, 1993).

[8] The Interpretation does not distinguish between the limit order protection provided retail and institutional customers.

[9] Amendment No. 1 to File No. SR–NASD–93–58. *See* Letter from T. Grant Callery, Vice President and General Counsel, to Mark Barracca, Branch Chief, Division, Commission (June 14, 1994).

it controls, the firms will be considered affiliated and the prohibition against trading ahead of the customer's limit order will apply to the firm as a whole.

The Interpretation will not apply to limit orders accepted by market makers from unaffiliated members. For example, a firm's customer limit orders that are sent to an unrelated market making firm for execution would not be covered by the Interpretation. The NASD has decided to defer temporarily application of the Interpretation to these trades so that a task force may complete its examination of the potential consequences of a broader application of the rule. The Interpretation emphasizes that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution.[10]

III. Summary of Comments

As noted above, the Commission received two comment letters on the proposal.[11] Merrill Lynch, a registered broker dealer, supports the proposal, noting that it will increase investor confidence in the NASDAQ market by improving the quality of executions they receive. The other commenter, STANY, supports the principle that the limit order of a commission-paying customer is entitled to priority over the order of the customer's broker-dealer. Both Merrill Lynch and STANY believe that the proposed interpretation should not apply to member-to-member transactions. Merrill Lynch believes that requiring leaders to provide limit order protection to other broker-dealers might have a serious deleterious effect on dealers' willingness and ability to make markets in these stocks. STANY offers three reasons why dealers that receive the limit orders of other firms' customers should not be subject to the restriction: (1) Agency dealers could be acting for their own customers, for themselves or for other dealers, thereby creating the possibility that some dealers could make markets within the spread without a capital commitment; (2) it would force a dealer to assume a fiduciary responsibility to customers of another firm with whom the dealer has no preexisting relationship; and (3) it may require dealers to execute certain limit orders at prices which do not provide an opportunity for any profit.

IV. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9) and 11A(a)(1)(C) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect he mechanism of a free and open market and a national market systems and in general to protect investors and the public interest. Section 15A(b)(9) requires that the rules of the association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 11A(a)(1)(C) (i) and (iv) set forth the objectives of assuring economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market.[12]

The NASD's proposal seeks to address the practice of NASDAQ market makers trading ahead of their customers' limit orders. That practice, its origins and implications for investors was recently discussed in the Division of Market Regulation's Market 2000 Report.[13] That study concluded that the adverse effects of trading ahead exist whether the customer's limit order is handled by the customer's firm or by another market maker. The study recommended that the NASD revise its proposal to prohibit broker-dealers from trading ahead of all customer limit orders for NASDAQ National Market securities.

The Commission believes that the rule change will enhance investor confidence by improving the quality of executions for customers. By giving a customer's limit order priority over the market maker's proprietary trading, more trade volume will be available to be matched with the customer's order, resulting in quicker and more frequent executions for customers.

The NASD's proposal will also improve the price discovery process in NASDAQ securities. Limit orders aid price discovery by adding liquidity to the market and by tightening the spread between the bid and ask price of a security. In the past, customers may have refrained from placing limit orders because of the uncertainty of and difficulty in obtaining an execution at a price between the spread. The new rule will encourage dealers to execute customer limit orders in a timely fashion so that they may resume their proprietary trading activities. The practice of delaying executions until the inside price reaches the customer's limit order also impedes price discovery by shielding those orders from the rest of the investing public. More expeditious handling of customer limit orders under the proposed Interpretation will provide investors with a more accurate indication of the buy and sell interest at a given moment.

The NASD proposal seeks to prevent a market maker from trading ahead of its own customer's limit order, but will not prevent the same market maker from trading ahead of the limit orders of other firms' customers that are sent to the market maker for handling.[14] The NASD has determined to defer temporarily application of the Interpretation to member-to-member orders in order to avoid any unintended consequences from a broader application of the rule and to permit a special NASD task force to complete its examination of the ramifications of extending limit order protection to these limit orders. The Market 2000 study concluded that the adverse effects of trading ahead of a customer exist whether the customer's limit order is handled by a customer's firm or by another market maker. The Commission, at this time, strongly believes that the ban on trading ahead should be applied to these member-to-member trades. The NASD has requested the opportunity to examine and report the potential impact of the ban on market liquidity and market maker capital commitment. While such a report could be helpful to a future determination of the issue if it offers specific data regarding the potential consequences for market liquidity and market maker capital commitment rather than the anecdotal observations of NASD members, the Commission continues to believe that member-to-member trades raise significant concerns that should be addressed, and if necessary, the Commission would consider instituting its own rulemaking proceeding for that purpose. The Commission has expressed to the NASD its view that expanded limit order protection is desirable and will be expecting their response soon after the approval of this rule filing.

As reflected in the Market 2000 study, the Commission agrees that institutional orders may qualify for special treatment. Because most market makers cannot typically fill institution-size orders out of inventory, institutions generally only hold market makers to a "best efforts" standard in return for the willingness of the market maker to put up substantial capital to provide liquidity for large orders. In order to permit a member firm to employ the necessary trading strategy without being subjected to the requirements of the proposed ban, the Interpretation allows the parties to set the specific "terms and conditions" for acceptance of institutional orders.

Finally, the Commission believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Because the rule will apply to all NASD members, individual brokers and dealers will not be disparately affected by the rule change.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9) and 11A(a)(1)(C) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–93–58) be and hereby is approved, effective July 7, 1994.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16369 Filed 7–6–94; 8:45 am]

BILLING CODE 8010–01–M

---

[10] The best execution Interpretation requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. NASD Rules of Fair Practice, Art. III, Section 1, NASD Manual (CCH) ¶ 2151.03

[11] Letter from Frank Masi, President, Security Traders Association of New York ("STANY"), to Jonathan G. Katz, Secretary, Commission (March 29, 1994). Letter from Hugh Quigley, Managing Director, Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch") to Jonathan G. Katz, Secretary, Commission (April 20, 1994).

[12] Although the proposed rule change is adopted pursuant to Section 15A of the Act, the Commission believes the goals of Section 11A are equally served by this proposed rule change.

[13] Division of Market Regulation, SEC, *Market 2000: An Examination of Current Equity Market Developemnts* V–5 (1993).

[14] The Commission would consider any order swapping arrangements between firms for the purpose of evading the Interpretation to constitute a violation of NASD rules. The NASD has stated that, while it is not aware of any instances of this practice, it would likewise consider it to be a violation of Article III, Section 1 of the NASD's Rules of Fair Practice. *See* Letter from Richard Ketchum, Executive Vice President and Chief Operating Officer, NASD, to Katherine England, Assistant Director, Division, Commission (June 29, 1994).

maker capital commitment. While such a report could be helpful to a future determination of the issue if it offers specific data regarding the potential consequences for market liquidity and market maker capital commitment rather than the anecdotal observations of NASD members, the Commission continues to believe that member-to-member trades raise significant concerns that should be addressed, and if necessary, the Commission would consider instituting its own rulemaking proceeding for that purpose. The Commission has expressed to the NASD its view that expanded limit order protection is desirable and will be expecting their response soon after the approval of this rule filing.

As reflected in the Market 2000 study, the Commission agrees that institutional orders may qualify for special treatment. Because most market makers cannot typically fill institution-size orders out of inventory, institutions generally only hold market makers to a "best efforts" standard in return for the willingness of the market maker to put up substantial capital to provide liquidity for large orders. In order to permit a member firm to employ the necessary trading strategy without being subjected to the requirements of the proposed ban, the Interpretation allows the parties to set the specific "terms and conditions" for acceptance of institutional orders.

Finally, the Commission believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Because the rule will apply to all NASD members, individual brokers and dealers will not be disparately affected by the rule change.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9) and 11A(a)(1)(C) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–93–58) be and hereby is approved, effective July 7, 1994.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16369 Filed 7–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34277; File No. SR–NASD–92–12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Temporary Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 8 of Proposed Rule Change Creating a Short Sale Bid-Test for Nasdaq National Market Securities

June 29, 1994.

I. Introduction

On July 22, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The rule change creates, on a temporary basis for eighteen months, a short sale rule or "bid-test" for Nasdaq Stock Market ("Nasdaq") National Market Securities[3] that will prohibit short sales at or below the current inside bid as shown on the Nasdaq screen when that bid is lower than the previous inside bid. The rule provides certain exemptions, including an exemption for qualified Nasdaq market makers, options market makers, and warrant market makers. The rule also provides exemptions similar to those provided under the Commission's short sale rule, Rule 10a–1.[4] Further, the NASD has submitted three interpretations regarding "bona fide" market making activity, the prices at which "legal" short sales may be effected, and examples of conduct that will be deemed to be in violation of the rule; these interpretations are part of the proposed rule change.

Notice of the proposed rule change and subsequent amendments appeared in the **Federal Register**.[5] The Commission received 397 comments in response to the release, 122 in support and 275 in opposition.[6] In addition to amending the proposal several times, the NASD responded to issues raised by the commenters in a letter dated June 24, 1993.[7] For the reasons discussed below, the Commission is approving the proposal, effective September 6, 1994, on a temporary basis through March 5, 1996.

II. Description of the Rule

A. Background

The opportunity for short selling can add to market liquidity and pricing efficiency, while at the same time can raise general anti-manipulation concerns. Currently, neither the Commission nor the NASD imposes any general restriction on short selling of OTC securities. This contrasts with short sale restrictions on exchange-listed securities that have been in place since 1938. In general, the Commission's short sale rule, Rule 10a–1, provides that short sales of securities may be effected only at a price above the price at which the immediately preceding sale was effected ("plus-tick") or at a price equal to the last sale if the last preceding transaction at a different price was at a lower price ("zero-plus-tick").

The NASD proposes to add two sections to Article III of the Rules of Fai Practice establishing a short sale rule based on a "bid-test" for Nasdaq National Market securities.[8] The first section will prohibit members from effecting short sales at or below the bid for themselves or their customers when the current inside or best bid is below the previous bid, unless one of the exemptions applies. The second section provides a definition of "primary

---

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Nasdaq includes both Nasdaq SmallCap Market and Nasdaq National Market securities. In July 1993, the NASD began referring to Nasdaq National Market System or Nasdaq NMS securities as Nasdaq National Market securities.

[4] 17 CFR 240.10a–1.

[5] The NASD amended the proposed rule change eight times since it was originally filed with the Commission on April 9, 1992. The first two amendments were included in the Commission's original notice. Securities Exchange Act Release No. 31003 (Aug. 6, 1992), 57 FR 36421 (Aug. 13, 1992). The NASD submitted Amendment No. 3 on December 23, 1992, Securities Exchange Act Release No. 31729 (Jan. 13, 1993), 58 FR 5791 (Jan. 22, 1993), Amendment No. 4 on November 19, 1993, Securities Exchange Act Release No. 33289 (Dec. 3, 1993), 58 FR 64994 (Dec. 10, 1993), Amendment No. 5 on January 14, 1994, Amendment No. 6 on March 8, 1994, Securities Exchange Act Release No. 33758 (Mar. 11, 1994), 59 FR 13016 (Mar. 18, 1994) (Amendment No. 6 replaced Amendment No. 5, which was not published for comment), and Amendment No. 7 on May 16, 1994, Securities Exchange Act Release No. 34092 (May 20, 1994), 59 FR 27634 (May 27, 1994). On June 29, 1994, the NASD submitted Amendment No. 8 requesting approval of the rule on a temporary basis for eighteen months beyond the effective date of the rule and amending Interpretation C to clarify that moving a bid up or down and then moving it back to the original bid simply to create an up bid or down bid to facilitate or preclude short selling will be considered a manipulative act and a violation of the rule.

[6] A list of comment letters received in connection with the publication of the rule change is available for inspection in the Commission's Public Reference Room.

[7] Letter from Richard Ketchum, Executive Vice President and Chief Operating Officer, NASD, to Jonathan G. Katz, Security, SEC (June 24, 1993).

[8] The rule will be in effect during normal, domestic market hours (9:30 a.m. to 4 p.m. Eastern Time).

Nasdaq market maker" which, beginning one year after the effective date of the rule, sets forth the criteria a market maker must satisfy to be exempt from the rule. In addition, the NASD submitted three interpretations setting forth: (a) what will constitute "bona fide market making activity;" (b) the prices at which "legal" short sales may be effected; and (c) situations that will be deemed to be indirect violations of the rule.

The proposed rule also contains a limited exemption from the short sale prohibition for market makers. In addition, in response to concerns raised by commenters, the NASD submitted a number of amendments providing limited exemptions for options market makers and warrant market makers satisfying certain requirements, and clarifying that bona fide market making includes, under certain conditions, risk arbitrage activity. The exemptions are designed to allow short selling where necessary to conduct efficient and effective market making activities without allowing unrestricted short selling. During the eighteen-month period of effectiveness of the rule, the NASD will study the impact of the rule and its exemptions and, prior to the rule's expiration, the NASD will evaluate whether the rule and its exemptions should be extended, modified, approved on a permanent basis, or terminated. If the NASD decides to extend, modify or approve on a permanent basis any part or all of the rule, it must obtain Commission approval pursuant to Section 19(b) of the Act.[9]

B. The General Rule and Exemptions

The NASD's bid-test rule will prohibit NASD members from effecting a short sale in a security at or below the current inside bid when this bid is below the preceding best bid.[10] This prohibition applies equally to trades for customers and to trades for the member's own account.[11] The rule, however, sets forth ten exemptions. Seven of these exemption mirror the exceptions provided under the Commission's short sale rule.[12] The three additional exemptions provide an exemption for bona fide market making activity by qualified market makers, hedge transactions by options market makers registered as qualified options market makers, and hedge transactions resulting in fully hedged positions by warrant market makers registered as market makers for the warrant.

1. The Qualified Market Maker Exemption

The NASD received substantial comment from its members that application of a short sale rule to market makers would dramatically reduce their ability to adjust inventory positions quickly, thereby lessening liquidity throughout the marketplace. Thus, the NASD provided an exemption for qualified market makers satisfying certain criteria. To be exempt from the provisions of the rule, a market maker must be conducting bona fide market making activity[13] and satisfy the criteria for a qualified market maker. The rule sets forth certain criteria for becoming a qualified market maker, which criteria change after the first year of the effectiveness of the rule. Under both the criteria applicable to the first year and those applicable to the last six months of the rule, general qualifications standards apply. The rule then sets forth separate criteria for becoming a qualified market maker for securities subject to a secondary offering,[14] an initial public offering, or a merger or acquisition.

During the first year of the eighteen-month pilot period, a qualified market maker is defined as a market maker that has maintained quotations in the subject security continuously for the preceding 20 business days.[15] During the last six months of the eighteen-month pilot period, a qualified market maker is defined as a market maker satisfying the criteria for a primary Nasdaq market maker. To qualify as a primary Nasdaq market maker, market makers must satisfy at least two of the following three standards: (1) The market maker must be at the best bid or best offer as shown in the Nasdaq system no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; or (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading.[16] Alternatively, recognizing that overall volume is also indicative of quality market making, the NASD has proposed a supplemental criterion for becoming a primary market maker. Under the supplemental criterion, a market maker must satisfy one of the three criteria set forth above and account for 1½ times its proportionate share[17] of volume in the stock.[18]

---

[9] 15 U.S.C. § 78s (b)(1).

[10] As set forth in Interpretation B, the NASD has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least 1/16th point above the current inside bid. The last sale report of such a trade would, therefore, be above the inside bid by at least 1/16th point. Moreover, the NASD believes that requiring short sales to be a minimum increment of 1/16th point above the bid ensures that transactions are not effected at prices inconsistent with the underlying purpose of the rule.

[11] In Interpretation C, the NASD provides examples of circumstances under which a member would be deemed to be in violation of the rule. For example, if a market maker moves its bid up or down and then moves it back to the original bid simply to create an up bid or down bid to facilitate or preclude short selling, the NASD would consider this a manipulative act and a violation of the rule. In addition, if a market maker agrees to an arrangement proposed by a member or a customer where the market maker raises its bid in the Nasdaq system in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of the rule. Similarly, a market maker would be deemed in violation of the rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sale short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades. The NASD believes that members' activities to circumvent the rule through indirect actions such as executions with other members or through facilitation of customer orders while being protected from loss are antithetical to the purposes of the rule. Accordingly, the NASD will consider any such activity as a violation of this section.

[12] In particular, the NASD's exceptions found in XX(c)(2), (3), (4), (5), (6), (7) and (8) parallel 17 CFR 240.10a–1(e)(1), (2), (3), (4), (7), (8) and (10), respectively. The NASD's proposal does not include the Commission's exemptions found in 17 CFR 240.10a–1(e)(5), (6), (11), (12) and (13); 17 CFR 240.10a–1(e)(9) is reserved for future use.

[13] A market maker executing a transaction on an agency basis would not be exempt from the rule with respect to that transaction.

As indicated above, the NASD submitted three interpretations of the short sale rule. Interpretation A states, among other things, the factors the NASD will consider when determining whether certain market making activity may not be deemed bona fide market making activity and, therefore, ineligible for the qualified market maker exemption.

First, the interpretation reiterates the express exclusion from the exemption for activity unrelated to market making functions, such as index arbitrage and risk arbitrage that is independent from a member's market making functions. The interpretation does, however, allow short sales of a security of a company involved in a merger or acquisition of the sale is made to hedge the purchase or prospective purchase (based on communicated indications of interest) of other security of a company involved in the merger or acquisition, which purchase was made, or is to be made, in the course of bona fide market making activity. Short sales made to hedge any such purchases or prospective purchases must be reasonably consistent with the exchange ratio (or exchange ratio formula) specified by the terms of the merger or acquisition.

Similarly, the interpretation provides that bona fide market making activity would exclude speculative selling strategies that are disproportionate to the usual market making patterns of the member in that security. Furthermore, the interpretation indicates that the NASD does not anticipate that a firm could properly take advantage of its market maker exemption to effectuate such speculative or investment short selling decisions. Disproportionate short selling in a market making account to effectuate such strategies will be viewed by the NASD as inappropriate activity that does not represent bona fide market making and would therefore be in violation of the rule.

[14] For secondary offerings, the NASD concluded that the time period after the announcement of the offering is so sensitive to short selling pressure that it established special time frames and eligibility criteria for primary market makers. In these situations, the stock of the issuer is currently being traded and the "overhang" on the market of the new stock coming into the market from the offering makes the security particularly susceptible to short selling abuse. Such short selling can adversely affect the capitalization of the issuer, particularly of smaller issuers, whose securities often have less liquid secondary markets. The NASD believes that the heightened requirements should address the concerns about short selling by newly registered market makers in secondary offerings.

[15] During the first year of the effectiveness of the rule, the separate criteria for becoming a qualified market maker for securities subject to a secondary offering, an initial public offering, or a merger or acquisition are:

(i) For secondary offerings, the offering has become effective and the market maker has been registered in and maintained quotations without interruption in the subject security for 40 calendar days (between January 1, 1994 and May 31, 1994, the average time between filing and effective dates for secondary offerings reviewed by the NASD's Corporate Financing department was 34 business (48 calendar) days);

(ii) For initial public offerings, the market maker may register in the offering and immediately become a qualified market maker; and

(iii) After a merger or acquisition has been publicly announced, a qualified market maker in one of the two affected securities may immediately register as a qualified market maker in the other merger or acquisition security.

[16] During the last six months of the eighteen-month exemption period, the separate criteria for becoming a qualified market maker for securities subject to a secondary offering, an initial public offering, or a merger or acquisition are:

(a) For secondary offerings:

(i) the secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective; or

(ii) the market maker has satisfied the qualification criteria for 40 calendar days.

(b) For initial public offerings:

(i) the market maker may register in the offering and immediately become a primary Nasdaq market maker if it is a primary Nasdaq market maker in 80% of the securities in which it has registered; provided however, that if, at the end of the first review period, the primary Nasdaq market maker has withdrawn on an unexcused basis from the security or has not satisfied the qualification criteria, it shall not be afforded a primary Nasdaq market maker designation on any subsequent initial public offerings for the next 10 business days; or

(ii) the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(c) After a merger or acquisition has been publicly announced, a primary Nasdaq market maker in one of the two affected securities may immediately register as a primary Nasdaq market maker in the other merger or acquisition security.

[17] The rule provides that the NASD may change from time to time the proportionate volume necessary for a market maker to satisfy this test. If the NASD elects to change this criterion, the Act requires it to file a proposed rule change with the Commission.

[18] For example, if there are 10 market makers in a stock, each has a proportionate share of 10

months of the eighteen-month pilot period, a qualified market maker is defined as a market maker satisfying the criteria for a primary Nasdaq market maker. To qualify as a primary Nasdaq market maker, market makers must satisfy at least two of the following three standards: (1) The market maker must be at the best bid or best offer as shown in the Nasdaq system no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; or (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading.[16] Alternatively, recognizing that overall volume is also indicative of quality market making, the NASD has proposed a supplemental criterion for becoming a primary market maker. Under the supplemental criterion, a market maker must satisfy one of the three criteria set forth above and account for 1½ times its proportionate share[17] of volume in the stock.[18]

Compliance with the criteria will be tracked through the Nasdaq system, which will enable market makers to review their status in each criterion in each stock, and will also provide members with notice of their compliance with the standards at set intervals.[19] The NASD will monitor market makers for compliance with the primary market maker standards on a monthly review period. A market maker failing to satisfy the qualification criteria remains a market maker in the security,[20] but is subject to the short sale limitations. The NASD will establish review procedures for market makers seeking reconsideration of their failure to satisfy the primary market maker standards. Because the primary market maker standards are objective, however, the NASD will limit requests for reconsideration to consideration of system failures, excused withdrawals, or related activity in derivative or convertible securities or derivative pricing mechanisms, as seen with foreign securities or ADRs, that may affect a market maker's compliance with the criteria.

2. The Options Market Maker Exemption

The rule also provides an exemption for certain transactions by options market makers registered as qualified options market makers in stock options or qualified stock index options. With certain restrictions, the exemption permits members to execute short sales for the account of qualified options market makers that would otherwise be prohibited by the rule. To be eligible for the exemptions, the short sale must satisfy the criteria for an "exempt hedge transaction" and the market maker must be designated a qualified options market maker.

The rule provides separate definitions of "exempt hedge transaction" for market making in stock options and stock index options. For stock options, the term means a short sale of an underlying security to hedge an existing offsetting options position or an offsetting options position that was created "contemporaneous with the short sale."[21] For stock index options, an exempt hedge transaction means a short sale to hedge an existing offsetting stock index options position or an offsetting stock index options position that was created contemporaneously with the short sale, provided that: (a) The security sold short must be a component security of the index underlying such index option; (b) the index underlying such offsetting index options position must be a "qualified stock index";[22] and (c) the dollar value of all exempt short sales effected to hedge the offsetting stock index options position does not exceed the aggregate current index value of the offsetting options position.

To be designated a qualified options market maker, the market maker must have received an appointment as such pursuant to the rules of a "qualified options exchange."[23] In addition, when establishing the short position, the options market maker must receive, or be eligible to receive, good-faith margin pursuant to Section 220.12 of Regulation T under the Act.

As discussed more fully below, options market maker short sale transactions unrelated to normal options market making activity (e.g., index

---

(ii) For initial public offerings, the market maker may register in the offering and immediately become a qualified market maker; and

(iii) After a merger or acquisition has been publicly announced, a qualified market maker in one of the two affected securities may immediately register as a qualified market maker in the other merger or acquisition security.

[16] During the last six months of the eighteen-month exemption period, the separate criteria for becoming a qualified market maker for securities subject to a secondary offering, an initial public offering, or a merger or acquisition are:

(a) For secondary offerings:

(i) the secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective; or

(ii) the market maker has satisfied the qualification criteria for 40 calendar days.

(b) For initial public offerings:

(i) the market maker may register in the offering and immediately become a primary Nasdaq market maker if it is a primary Nasdaq market maker in 80% of the securities in which it has registered; provided however, that if, at the end of the first review period, the primary Nasdaq market maker has withdrawn on an unexcused basis from the security or has not satisfied the qualification criteria, it shall not be afforded a primary Nasdaq market maker designation on any subsequent initial public offerings for the next 10 business days; or

(ii) the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(c) After a merger or acquisition has been publicly announced, a primary Nasdaq market maker in one of the two affected securities may immediately register as a primary Nasdaq market maker in the other merger or acquisition security.

[17] The rule provides that the NASD may change from time to time the proportionate volume necessary for a market maker to satisfy this test. If the NASD elects to change this criterion, the Act requires it to file a proposed rule change with the Commission.

[18] For example, if there are 10 market makers in a stock, each has a proportionate share of 10 percent. Thus, a market maker seeking to qualify as a primary market maker under the alternative criteria must, in addition to satisfying one of the three criteria under the standard approach, account for at least 15 percent of the overall volume. For example, if a market maker maintains its bid or offer at the inside quote at least 35 percent of the time, but maintains a 1 point spread in the stock when the other dealers averaged a ¾ point spread and changed its quote three times on average for every trade, then the market maker would have to meet the proportionate volume test to qualify as a primary market maker.

[19] A market maker satisfying the criteria will be designated as a primary market maker in the Nasdaq system, with "primary" or "P" designation displayed on the Nasdaq Workstation screen. In addition, to assist market participants' compliance with the proposed rule, indication of a market maker's primary market maker designation will be available through vendor services.

[20] The requirements for registration as a Nasdaq market maker are set forth in the *NASD Manual*. *NASD Manual*, Schedules to the By-Laws, Schedule D, Part V, Sec. 1, (CCH) ¶ 1818. These requirements are not affected by the NASD's bid-test proposal.

[21] "Contemporaneous with the short sale" includes transactions occurring simultaneously as well as transactions occurring within the same brief period of time. Thus, the short sale can precede, as well as follow, the option transaction.

[22] The rule defines a "qualified stock index" as a stock index that includes one or more Nasdaq National Market securities, provided that more than 10% of the weight of the index is accounted for by Nasdaq National Market securities. The rule further provides that a qualified stock index shall be reviewed by the NASD as of the end of each calendar quarter, and the index shall cease to qualify if the value of the index represented by one or more Nasdaq National Market securities is less than 8% at the end of any subsequent calendar quarter.

[23] A "qualified options exchange" is a national securities exchange with Commission approved rules and procedures governing: (1) The designation of options market makers as qualified options market makers; (2) the surveillance of its market makers' utilization of the exemption; and (3) authorization of the NASD to limit the designation of a qualified options market maker where the options exchange finds substantial, willful, or continuing violations of the rule. *See e.g.*, File Nos. SR–CBOE–94–10, SR-Phlx-94–9, SR-Amex-94–21 and SR–PSE–94–16 filed with the Commission on March 31, 1994, June 1, 1994, June 13, 1994 and June 16, 1994, respectively. The NYSE has informed the Commission that it sent its filing on June 27, 1994 under the file number SR–NYSE–94–22.

arbitrage and risk arbitrage) are not exempt. Nonetheless, the rule provides that a member would not violate the short sale rule if it executed an order for the account of an options market maker with the good-faith belief that the order was in full compliance with the rule, even though a subsequent determination was made that the order was either not entitled to the exemption or was incorrectly marked "long."

3. The Warrant Market Maker Exemption

The rule also extends an exemption to registered warrant market makers, with restrictions similar to those imposed on qualified options market makers. To be eligible for this exemption, the warrant market maker must be registered as a market maker in the warrant and the short sale must be an "exempt hedge transaction" that results in a fully hedged position. The rule defines the term "exempt hedge transaction" as a short sale to hedge an existing offsetting warrant position or an offsetting warrant position that was created contemporaneous with the short sale.[24]

Short sales unrelated to normal warrant market making activity (e.g., index arbitrage and risk arbitrage) would not be exempt. As with short sales executed on behalf of options market makers, a member who executes a short sale on behalf of a warrant market maker will not be deemed to violate the short sale rule if it executed the order with the good-faith belief that the order was in full compliance with the rule, even though a subsequent determination was made that the order was either not entitled to the exemption or was incorrectly marked "long."

4. The Exemptions Mirroring Rule 10a–1

The rule also incorporates the exemptions in the Commission's short sale rule that are relevant to trading in Nasdaq.[25] In addition, the Commission recently proposed an amendment to Rule 10a–1 to codify an interpretation with respect to liquidating index arbitrage positions.[26] The NASD has requested that if approved by the Commission, it intends to conform its rule to the Commission's rule and will file the proposed rule change with the Commission.[27]

III. Comments

As indicated above, the Commission received a total of 397 comment letters on the NASD's proposed short sale bid-test, with 275 opposing approval of the rule change and 122 supporting approval.[28] In addition to amending the proposal several times, the NASD responded to issues raised by the commenters in a letter dated June 24, 1993.[29]

Commenters in support of the proposed short sale bid-test are mostly issuers whose securities trade on Nasdaq.[30] Many of these issuers report that they have experienced short selling "abuse" and several commenters provide what they believe are specific examples of "piling-on" and manipulation. These commenters make four principal arguments in favor of the proposal: (1) The short sale rule is necessary to reduce intra-day volatility on Nasdaq; (2) the proposal will reduce market manipulation that threatens the integrity of the Nasdaq market; (3) short selling abuse undervalues stock prices; and (4) the proposed rule will provide more equal regulation of short selling between the exchange and Nasdaq markets.

Commenters opposing the rule change make three principal arguments that remain relevant after consideration of the NASD's amendments: (1) The NASD has failed to provide sufficient evidence of the need for a short sale rule or demonstrate the appropriateness of a bid-test; (2) the "primary" market maker qualification standards will have negative effects on both market makers and the Nasdaq market; and (3) the proposed rule is inconsistent with the requirements of the Act.

A. The Need for a Short Sale Bid-Test

Commenters argue that the NASD has failed to provide sufficient evidence demonstrating the need for short sale regulation in the form of a bid-test. Indeed, many argue that there is no need for additional short sale restrictions. They argue that instead of adding another layer of regulation to the OTC market, the NASD should enforce existing anti-fraud rules more stringently and increase surveillance over market participants. Commenters further believe that the NASD proposed the rule with the primary purpose of eliminating a competitive disadvantage vis-à-vis the exchanges. They argue that the NASD is simply responding to issuer misconception of the effect of the Commission's short sale rule, which applies only to exchange-listed securities. They believe that issuers incorrectly conclude that manipulative short selling is substantially diminished because of the restrictions on short selling on exchanges. Finally, these commenters believe the NASD has not adequately balanced the benefits of short selling, such as increased liquidity and more accurate pricing of securities, against the costs that its rule will impose.

Commenters also argued against the NASD's proposal on the basis that there are less restrictive alternatives. For example, the NASD could limit short selling in a given security only when the security has experienced a certain percentage decrease during the trading day. Many of these commenters further argued that the NASD's proposal would create long periods of short sale prohibition in some of the less liquid Nasdaq National Market securities. Commenters also opposed the rule due to concerns that it could encourage Market makers to manipulate bids to guard against short selling. Finally, several commenters cited economic studies such as that of Irving M. Pollack to support their arguments that short selling restrictions in the form of a bid-test are unnecessary.[31]

In response to the commenters' belief that a short sale rule for the Nasdaq market is unnecessary, the NASD stated that notwithstanding the implementation of the Pollack Report recommendations, it remains concerned about short-term volatility and inaccurate pricing of Nasdaq securities often associated with short selling. In addition, the NASD cited to over one hundred comment letters submitted by issuers claiming that they have experienced short selling problems, some recounting specific instances alleging that participants sold short on the basis of rumors or inaccurate reports. The NASD, therefore, indicated its belief that its proposal is a reasonable approach to solving these problems and is consistent with the Act.

B. Effect of Primary Market Maker Qualification Standards on Nasdaq Market Makers and the Market

Many commenters indicated their believe that most short selling is done by market makers and, therefore, if the NASD does impose a bid-test restriction on short selling, there should be no exemptions. Many market making firms and others criticized the NASD's

---

[24] The phrase contained in the proposed rule "contemporaneous with the short sale" is meant to include transactions occurring simultaneously as well as transactions occurring within the same brief period of time.

[25] Specifically, the rule exempts: (1) A broker-dealer from a sale that is for an account in which it has no interest and that is marked long; (2) Any sale by a market maker to offset odd-lot orders of customers; (3) Any sale by a market maker to liquidate a long position, which is less than a round lot, provided the sale does not change the dealer's position by more than one unit of trading (100 shares); (4) Certain short same arbitrage transactions, in special arbitrage accounts, by a person who owns another security or presently will be entitled to acquire an equivalent number of securities of the sale class as the securities sold (provided the sale, or purchase which the sale offsets, is made for the bona fide purpose of profiting from a current price difference between the security sold and the security owned) and that the right of acquisition was originally attached to the security or was issued to all holders of any class of securities of the issuer; (5) Transactions made as part of an international arbitrage opportunity, whereby the seller must have a bona fide purpose to profit from the price difference between a security on an international market outside the jurisdiction of the U.S. and a security listed as a Nasdaq National Market security (for the purposes of this section, a depository receipt (*e.g.*, ADR) for a security shall be deemed the same as the security represented by the receipt); (6) Short sales by an underwriter or any member of the distribution syndicate in connection with the over-allotment of securities, or any lay-off sale by a person with a distribution of securities pursuant to a rights offering (17 CFR 240.10b–6) or a standby underwriting commitment; and (7) Liquidations of blocks acquired by a market maker acting in the capacity of a block positioner even if the block positioner does not have a net long position in the security if and to the extent that its net short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

[26] Securities Exchange Act Release No. 30772 (June 3, 1992), 57 FR 26891 (June 16, 1992).

[27] Securities Exchange Act Release No. 31003 (Aug. 6, 1992), 57 FR 36421 (Aug. 13, 1992) (publication of the Commission's original notice of SR–NASD–92–12).

[28] A list of comment letters received in connection with the publication of the rule change is available for inspection in the Commission's Public Reference Room.

[29] Letter from Richard Ketchum, Executive Vice President and Chief Operating Officer, NASD, to Jonathan G. Katz, Secretary, SEC (June 24, 1993).

[30] The Commission received approximately 120 letters from issuers and issuer trade groups.

[31] In 1986, the NASD retained former Commissioner Irving M. Pollack to conduct a study of short selling in the OTC market. Irving M. Pollack, Short-Sale Regulation of Nasdaq Securities (July 1986) ("Pollack Report").

In general, the Pollack Report recommended against a formal short sale rule for Nasdaq and found that the preponderance of short selling is done for legitimate purposes by market professionals. The report also found that short positions in Nasdaq stocks generally are smaller overall in relation to average daily volume and share outstanding than is true of exchange-listed securities, and that Nasdaq stocks have lower average short-interest percentages. *Pollack Report* at 65. The same finding was made by the NASD based on later data. NASD, *Reports of the special Committee of the Regulatory Review Task Force on the Quality of Markets* 32 (1988). *See also* J. Randall Woolridge and Amy Dickinson, *Short Selling and Common Stock Prices*, Fin. Analysts J. 20 (Jan.-Feb. 1994) (analysis of overall market data and selected individual securities traded on exchanges and in the OTC market indicating that there is an insignificant relationship between changes in short positions and stock prices).

The Pollack Report also concluded that, unless accompanied by a violation of delivery and settlement requirements or by fraudulent or manipulative conduct, short selling is not improper or abusive. Since the study found that there was no current evidence of problems that would support consideration of tick-test type restrictions, the study did not explore the varieties of tick-tests and their feasibility for the market. The study identified, however, the build-up of short to clearing (*i.e.*, naked short) positions as having the potential to create serious problems in a lengthy bear market or in times of market stress. *Pollack Report* at 63–64.

several commenters cited economic studies such as that of Irving M. Pollack to support their arguments that short selling restrictions in the form of a bid-test are unnecessary.[31]

In response to the commenters' belief that a short sale rule for the Nasdaq market is unnecessary, the NASD stated that notwithstanding the implementation of the Pollack Report recommendations, it remains concerned about short-term volatility and inaccurate pricing of Nasdaq securities often associated with short selling. In addition, the NASD cited to over one hundred comment letters submitted by issuers claiming that they have experienced short selling problems, some recounting specific instances alleging that participants sold short on the basis of rumors or inaccurate reports. The NASD, therefore, indicated its belief that its proposal is a reasonable approach to solving these problems and is consistent with the Act.

B. Effect of Primary Market Maker Qualification Standards on Nasdaq Market Makers and the Market

Many commenters indicated their believe that most short selling is done by market makers and, therefore, if the NASD does impose a bid-test restriction on short selling, there should be no exemptions. Many market making firms and others criticized the NASD's primary market maker qualification standards, which goes into effect one year after the effective date of the rule. They argued that the criteria will unfairly discriminate among market makers and create two tiers of market makes and, thus, will fragment the market making community and restrict the ability of non-primary market makers to use short sales as a risk management technique.

Some commenters also believe that requiring market makers to maintain the inside bid or offer will result in dealers following the lead of other dealers in the issue, thus creating additional volatility. Additionally, commenters stated that the requirements that no more than 50% of a market maker's quotation updates occur without being accompanied by an execution appears to be in direct conflict with a market maker reflecting a customer's order in its quote. In addition, some commenters believed that this requirement would prevent market makers from updating quotes in response to significant external events and amounts to a penalty on efficient pricing policies.

Some commenters also strongly opposed the interim, first year 20-day qualification criteria, stating that it is overly restrictive and disadvantageous to market makers that want to add new stocks. They believed that the inability to short a stock at the bid price will seriously impede market makers' capital commitment to these issues and recommended that the 20-day test be a stand-by provision, to be implemented only when abuses of the market maker exemption have been uncovered. On the other hand, at least one commenter believed that immediate implementation of the permanent qualification standards may have the effect of improving the quality of the market and, thus, is preferable to the 20-day registration standard.

In response to these comments, the NASD stated that the qualification standards are designed to limit the exemption to those market participants that add depth and liquidity to the market. This approach, according to the NASD, will ensure that the exemption is available only to those market makers that consistently add value to the market.

Responding to the concern that the primary market maker criteria may have negative effects on market makers and the Nasdaq market, the NASD indicated that it believes that the specific qualification criteria can be met successfully by both small and large market makers. The NASD further noted that market making firms have direct control over whether they meet the primary market maker qualification standards. In particular, they have control over the amount of time at which they are at the inside bid or offer, their spread in comparison to the average spread, quotation updates accompanied by reported transactions and accounting for 1½ times of proportionate share of overall volume.

C. Consistency With the Requirements of the Act

Many commenters on the proposed rule change believed that it is inconsistent with the requirements of the Act. In particular, commenters believed that the rule proposal is at odds with the Act's requirements that the NASD's rules: (a) Promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest;[32] and (b) not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[33]

Beyond the commenters' concern that the rule will unfairly discriminate among market makers (discussed in the previous section), commenters argued that the bid-test will create inequitable principles of trade by disadvantaging non-exempt market participants. Further, they believed that the bid-test adds an unnecessary and poorly designed impediment to an otherwise free and open market by restricting the ability of participants to determine the natural market price of securities. Finally, commenters asserted that the proposal will not protect investors or the public interest because, as drafted, the rule fails to restrict manipulative short selling, while at the same time it exempts market makers which are the most active class of short sellers.

Notwithstanding the NASD's assertion that the proposal furthers Congress' goal of fair competition among brokers and dealers and among markets, commenters argued that the proposal is inconsistent with Section 11A(a)(1)(C).[34] These commenters asserted that the bid-test is anti-competitive in that it creates unfair advantages for certain market participants at the expense of other market participants. Specifically, they argued that the rule provides unfair advantages to qualified market makers

---

[31] In 1986, the NASD retained former Commissioner Irving M. Pollack to conduct a study of short selling in the OTC market. Irving M. Pollack, Short-Sale Regulation of Nasdaq Securities (July 1986) ("Pollack Report").

In general, the Pollack Report recommended against a formal short sale rule for Nasdaq and found that the preponderance of short selling is done for legitimate purposes by market professionals. The report also found that short positions in Nasdaq stocks generally are smaller overall in relation to average daily volume and share outstanding than is true of exchange-listed securities, and that Nasdaq stocks have lower average short-interest percentages. *Pollack Report* at 65. The same finding was made by the NASD based on later data. NASD, *Reports of the special Committee of the Regulatory Review Task Force on the Quality of Markets* 32 (1988). *See also* J. Randall Woolridge and Amy Dickinson, *Short Selling and Common Stock Prices*, Fin. Analysts J. 20 (Jan.-Feb. 1994) (analysis of overall market data and selected individual securities traded on exchanges and in the OTC market indicating that there is an insignificant relationship between changes in short positions and stock prices).

The Pollack Report also concluded that, unless accompanied by a violation of delivery and settlement requirements or by fraudulent or manipulative conduct, short selling is not improper or abusive. Since the study found that there was no current evidence of problems that would support consideration of tick-test type restrictions, the study did not explore the varieties of tick-tests and their feasibility for the market. The study identified, however, the build-up of short to clearing (*i.e.*, naked short) positions as having the potential to create serious problems in a lengthy bear market or in times of market stress. *Pollack Report* at 63–64.

[32] 15 U.S.C. § 78*o*–3(b)(6).

[33] 15 U.S.C. § 78*o*–(b)(9).

[34] Section 11A(a)(1)(C) sets forth, among other things, Congress' finding that it is in the public interest to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets. 15 U.S.C. 78k(a)(1)(C).

at the expense of non-exempt market participants. Further, commenters stated that the purpose of the rule is to enhance the NASD's competitive status at the expense of other markets and that this goal is directly at odds with the requirements of the Act.

The NASD argued that its proposal complies with Section 15A(b)(6) because, similar to Rule 10a–1, it is designed to prevent fraudulent and manipulative acts. In addition, the NASD argued, because the immediate beneficiaries of short sale regulation are the shareholders who own stock, the NASD believes the proposal ensures an environment designed to protect investors and the public interest. The NASD also asserted that the rule is consistent with Section 15A(b)(9) because, although the proposal does impose burdens on members and their customers, these burdens are appropriate for maintaining the integrity of the market for shareholders.

The NASD responded to the commenters' unequal regulation argument by asserting that, for the purposes of Section 3(a)(36) of the Act, NASD members and non-members are not within the same "class." Thus, granting members of the NASD an exemption to the rule while not granting investors or non-members an equivalent exemption cannot be deemed unequal regulation. The NASD further pointed out that Congress did not ban all forms of discrimination between members of the same class. The Act only bans *unfair* discrimination and the NASD asserts that to grant an exemption to those member firms that add liquidity and otherwise improve the market is not unfair.

The NASD also addressed the unequal regulation argument by asserting that the exemption for certain Nasdaq market makers is appropriate even though exchange specialists do not have a similar exemption under Rule 10a–1 because of the inherent differences between the competitive dealer market and the auction markets. In particular, the NASD pointed out that: (a) Exchange specialists have a monopoly over the securities in which they trade; (b) dealers generally do not have an informational advantage over other dealers; and (c) dealers do not have the ability to close their markets because of sudden volatility or an order imbalance.

IV. Discussion

Under Section 19(b) of the Act, the Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[35] In evaluating a given proposal, the Commission must examine the record before it and all relevant factors and necessary information.[36] Section 15A of the Act addresses with some specificity requirements applicable to NASD rules, and those standards are particularly significant in the Commission's determination of whether the NASD's proposal is consistent with the Act.[37]

The Commission has determined to approve the NASD's proposal. The Commission believes that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Sections 15A(b)(6), 15A(b)(9) and 15A(b)(11) of the Act.[38] Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.[39] Sections 15A(b)(9) and (11) require that the NASD's rule be designed not to impose any burden on competition not necessary or appropriate in furtherance of the Act[40] and to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing and publishing quotations.[41] In addition, the Commission believes that the rule change will further the goals of Section 11A in that it will promote efficient and effective market operations and economically efficient execution of investor orders in the best market and assure fair competition between the exchange markets and the OTC market and among brokers and dealers.[42]

[35] 15 U.S.C. 78s(b).

[36] In the Securities Acts Amendments of 1975, Congress directed the Commission to use its authority under the Act, including its authority to approve SRO rule changes, to foster the establishment of a national market system and promote the goals of economically efficient securities transactions, fair competition, and best execution. Congress granted the Commission "broad, discretionary powers" and "maximum flexibility" to develop a national market system and to carry out these objectives. Furthermore, Congress gave the Commission "the power to classify markets, firms, and securities in any manner it deems necessary or appropriate in the public interest or for the protection of investors and to facilitate the development of subsystems within the national market system." S. Rep. No. 75, 94th Cong., 1st. Sess., at 7 (1975).

[37] *See* 15 U.S.C. § 78o–3.

[38] *Id* 78o–3(b)(6), (9) and (11).

[39] *Id* 78o–3(b)(6).

[40] *Id* 78o–3(b)(9).

[41] *Id* 78o–3(b)(11).

[42] *Id* 78k–1(a)(1)(C).

A. Background of Short Sale Regulation

The Commission believes that the disparate regulation of short selling in Nasdaq and exchange markets may no longer be warranted or justified by valid regulatory purposes. Short selling of exchange-listed securities has been the subject of Commission regulation since 1938.[43] On a number of occasions, the Commission has sought comment on and considered whether to extend short sale regulation similar to Rule 10a–1 to securities traded solely in the OTC market. In the process of designating certain OTC securities as National Market securities, the Commission discussed issues related to the eventual inclusion of qualified OTC securities in additional national market system facilities.[44] In response, the NASD stated that "short selling regulations prior to and during a distribution of [National Market] Securities would be appropriate but that it is not necessary, at this time, to impose across-the-board short sales regulations on transactions in [National Market] Securities."[45] In 1985, the Commission again sought comment on whether short sales in Nasdaq National Market securities should be regulated, and if so, how such regulation should occur.[46] Commenters generally opposed the adoption of a tick-test for Nasdaq National Market securities. The Commission did not act on these requests for comments.[47]

[43] 17 CFR 240.10a–1. Congress granted the Commission plenary power to regulate short sales in listed securities to "purge the markets of the abuses connected with these practices." *See* Stock Exchange Practices, Report of the Senate Comm. on Banking and Currency, S. Rep. No. 1455, 73d Cong., 2d Sess. 55 (1934). *See also* H.R. Rep. No. 1383, 73d Cong., 2d Sess. 11 (1934). Following a Commission inquiry into the effects of concentrated short selling in the 1937 market break, the Commission in 1938 adopted Rule 10a–1. This rule prohibited all short sales in securities listed on a national securities exchange below the last sale price, or at the last sale price if the last preceding trade at a different price was at a higher price, subject to certain exceptions. *See* Securities Exchange Act Release No. 1548 (Jan. 24, 1938), 3 FR 213. In that release, the Commission also adopted Rule 3b–3. For a detailed discussion of the development of Rule 10a–1, see 7 Louis Loss & Joel Seligman, *Securities Regulation* 3198–3221 (1991).

[44] Securities Exchange Act Release No. 18590 (Mar. 24, 1982), 47 FR 13617 (Mar. 31, 1982). The primary effect of designating OTC securities as National Market securities is that transactions in these securities must be reported in a real-time system in accordance with the Commission's last sale reporting rule, and quotations for these securities must be firm as to the quoted price and size. 17 CFR 240.11Aa3–1 and 17 CFR 240.11Ac1–1.

[45] Letter from William Broka, Secretary, NASD, to George A. Fitzsimmons, Secretary, SEC (July 31, 1981).

[46] Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26584 (June 27, 1985).

[47] The Commission did, however, adopt Rule 10b–21 to address the concern expressed by the NASD and other commenters about the practice of short selling immediately prior to a public offering of securities with the covering purchases being made from the securities in the offering. 17 CFR 240.10b–21. In particular, Rule 10b–21 prohibits a person who effects short sales of an equity security between the filing of a registration statement and the time at which sales of such equity security may be commenced, from covering those short sales with offered securities purchased from an underwriter or other broker or dealer participating in the offering. The Commission originally adopted Rule 10b–21 on a temporary basis (Rule 10b–21(T)). Securities Exchange Act Release No. 26028 (Aug. 25, 1988), 53 FR 33455 (Aug. 31, 1988). The Commission subsequently adopted the rule on a permanent basis. Securities Exchange Act Release No. 33702 (Mar. 2, 1994) 59 FR 10984 (Mar. 9, 1994).

In 1986, the Pollack Report made a number of recommendations regarding short selling in Nasdaq stocks, but recommended against a formal short selling rule for Nasdaq.[48] Since 1986 the NASD has adopted a number of the recommendations for short sale regulation contained in the Pollack Report. The NASD now requires each member to mark all sale transactions either "long" or "short;"[49] requires each member, prior to accepting a short sale from a customer, to make an affirmative determination that it will receive delivery of the security from the customer or that it can borrow the security on the customer's behalf;[50] requires each member, with certain exceptions, to make an affirmative determination that it can borrow the security before effecting a short sale for its own account;[51] imposes mandatory buy-in requirements for cash or guaranteed delivery for Nasdaq securities where the buyer is a customer other than another NASD member, upon failure of a clearing corporation to effect delivery pursuant to a buy-in notice;[52]

[48] *See supra* note 31 and accompanying text.

[49] *NASD Manual*, Rules of Fair Practice, Art. 3, Sec. 21(b)(i), (CCH) ¶ 2171. Securities Exchange Act Release No. 23572 (Aug. 28, 1986), 51 FR 31865 (Sept. 5, 1986) (approval of File No. SR–NASD–86–17).

[50] *NASD Manual*, Rules of Fair Practice, Art. 3, Sec. 1, Prompt Receipt and Delivery Interpretation (b)(2)(A), (CCH) ¶ 2151.04. Securities Exchange Act Release No. 23572 (Aug. 28, 1986), 51 FR 31865 (Sept. 5, 1986) (approval of File No. SR–NASD–86–17). On May 26, 1994, the NASD filed a proposed rule change to amend the definition of "affirmative determination" to require a member to maintain a written record identifying, among other things, the location and deliverability of the securities or the identity of the individual and firm who offered assurance that the securities will be delivered or available for borrowing by the settlement date. *See* File No. SR–NASD–94–31.

[51] *NASD Manual*, Rules of Fair Practice, Art. 3, Sec. 1, Prompt Receipt and Delivery Interpretation (b)(2)(B), (CCH) ¶ 2151.04. Securities Exchange Act Release No. 28186 (July 5, 1990), 55 FR 28703 (July 12, 1990) (approval of File No. SR–NASD–89–5). *See also supra* note 50 concerning NASD proposal to amend the definition of "affirmative determination."

[52] *NASD Manual*, Uniform Practice Code, Sec. 59(j), (CCH) ¶ 3559. Securities Exchange Act

In 1986, the Pollack Report made a number of recommendations regarding short selling in Nasdaq stocks, but recommended against a formal short selling rule for Nasdaq.[48] Since 1986 the NASD has adopted a number of the recommendations for short sale regulation contained in the Pollack Report. The NASD now requires each member to mark all sale transactions either "long" or "short;"[49] requires each member, prior to accepting a short sale from a customer, to make an affirmative determination that it will receive delivery of the security from the customer or that it can borrow the security on the customer's behalf;[50] requires each member, with certain exceptions, to make an affirmative determination that it can borrow the security before effecting a short sale for its own account;[51] imposes mandatory buy-in requirements for cash or guaranteed delivery for Nasdaq securities where the buyer is a customer other than another NASD member, upon failure of a clearing corporation to effect delivery pursuant to a buy-in notice;[52] requires each member to report to the NASD, as of the 15th of each month, aggregate short positions in all customer and proprietary accounts in Nasdaq securities;[53] and requires a short seller's broker to close-out securities for cash or guaranteed delivery when delivery has not occurred within 10 business days after normal settlement date.[54]

The NASD also encouraged adoption of Rule 10b–21,[55] which prohibits a person who effects a short sale of an equity security between the filing of a registration statement and the time at which sales of such equity security may be commenced from covering the short sale with offered securities purchased from an underwriter or other broker or dealer participating in the offering.[56]

B. The NASD's Initiative

1. The Need for a Short Sale Rule for the OTC Market

The Commission is reluctant to approve regulations that are likely to hinder efficient price discovery. The Commission's experience with Rule 10a–1 demonstrates that limited short sale rule restrictions have not interfered with the efficient operation of the exchange markets, while reducing the potential for abusive short selling practices. In addition, investors derive a certain measure of confidence from short selling limitations.

Over the past twenty years, the enhancements to, and growth of, the OTC market have led to increased expectations by investors, issuers and broker-dealers of Nasdaq securities generally, and Nasdaq National Market securities, in particular. Today, these participants expect safeguards in Nasdaq comparable to the exchange markets. The NASD believes that implementation of the principal Pollack Report recommendations have not adequately provided these safeguards.

The NASD and commenters have presented evidence, albeit anecdotal, of continuing problems of short selling in the OTC market. In addition, the Commission recognizes that without a short sale rule for Nasdaq, the NASD is competitively disadvantaged. The exchange markets can and do attract issuers and investors with claims that their markets protect against potential short selling abuse. In 1975, Congress specifically found that the interests of the public, the protection of investors and the maintenance of fair and orderly markets are furthered by fair competition between the exchange markets and the OTC market.[57] Thus, recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act.

2. The Design of the Proposed Restrictions

Having determined that some regulation of short selling of Nasdaq National Market securities is consistent with the Act, the Commission must determine whether the proposed design of that regulation is consistent with the Act. The Commission's tick-test restricts short selling based on the most recent sale price in the particular security. This is a logical approach in the auction market environment where, generally, transactions in a given security are executed at one location and, consequently, are typically reported sequentially.

Notwithstanding the advances over the past fifteen years in trade reporting of Nasdaq securities, the NASD is not convinced that a tick-test would be appropriate for Nasdaq short sale regulation. In Nasdaq, the average security has more than ten market makers. With many trades occurring over the telephone and transaction reporting occurring up to ninety seconds after execution, the sequence in which trades are reported may not always reflect the sequence in which the trades occurred. Thus, the NASD believes that differences between trade reporting in the auction markets and the competing dealer market warrant consideration of a different, although analogous, approach to short sale regulation.

The NASD's rule also differs from the Commission's short sale rule by providing, under certain circumstances, a market maker exemption; under the Commission's rule, which generally applies only to the auction markets, specialists do not enjoy an exemption. The NASD believes that a market maker exemption is justified, considering the inherent differences between its competing dealer market and the auction markets. In particular, unlike

---

NASD and other commenters about the practice of short selling immediately prior to a public offering of securities with the covering purchases being made from the securities in the offering. 17 CFR 240.10b–21. In particular, Rule 10b–21 prohibits a person who effects short sales of an equity security between the filing of a registration statement and the time at which sales of such equity security may be commenced, from covering those short sales with offered securities purchased from an underwriter or other broker or dealer participating in the offering. The Commission originally adopted Rule 10b–21 on a temporary basis (Rule 10b–21(T)). Securities Exchange Act Release No. 26028 (Aug. 25, 1988), 53 FR 33455 (Aug. 31, 1988). The Commission subsequently adopted the rule on a permanent basis. Securities Exchange Act Release No. 33702 (Mar. 2, 1994) 59 FR 10984 (Mar. 9, 1994).

[48] *See supra* note 31 and accompanying text.

[49] *NASD Manual*, Rules of Fair Practice, Art. 3, Sec. 21(b)(i), (CCH) ¶ 2171. Securities Exchange Act Release No. 23572 (Aug. 28, 1986), 51 FR 31865 (Sept. 5, 1986) (approval of File No. SR–NASD–86–17).

[50] *NASD Manual*, Rules of Fair Practice, Art. 3, Sec. 1, Prompt Receipt and Delivery Interpretation (b)(2)(A), (CCH) ¶ 2151.04. Securities Exchange Act Release No. 23572 (Aug. 28, 1986), 51 FR 31865 (Sept. 5, 1986) (approval of File No. SR–NASD–86–17). On May 26, 1994, the NASD filed a proposed rule change to amend the definition of "affirmative determination" to require a member to maintain a written record identifying, among other things, the location and deliverability of the securities or the identity of the individual and firm who offered assurance that the securities will be delivered or available for borrowing by the settlement date. *See* File No. SR–NASD–94–31.

[51] *NASD Manual*, Rules of Fair Practice, Art. 3, Sec. 1, Prompt Receipt and Delivery Interpretation (b)(2)(B), (CCH) ¶ 2151.04. Securities Exchange Act Release No. 28186 (July 5, 1990), 55 FR 28703 (July 12, 1990) (approval of File No. SR–NASD–89–5). *See also supra* note 50 concerning NASD proposal to amend the definition of "affirmative determination."

[52] *NASD Manual*, Uniform Practice Code, Sec. 59(j), (CCH) ¶ 3559. Securities Exchange Act Release No. 26694 (Apr. 4, 1989) 54 FR 14404 (Apr. 11, 1989) (approval of File No. SR–NASD–87–10).

[53] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 41 (CCH) ¶ 2200A. Securities Exchange Act Release No. 23855 (Dec. 1, 1986), 51 FR 44170 (Dec. 8, 1986) (approval of File No. SR–NASD–86–30).

[54] *NASD Manual*, Uniform Practice Code, Sec. 71, (CCH) ¶ 3571. Securities Exchange Act Release No. 32632 (July 14, 1993), 58 FR 39072 (July 21, 1993) (File No. SR–NASD–90–30).

[55] *See supra* note 47.

[56] 17 CFR 240.10b–21.

[57] 15 U.S.C. 78k–1(a)(1)(C)(ii).

competing market makers, specialists have a monopoly over the securities in which they trade and are able to call trading halts in response to excessive volatility or order imbalances.

The Commission believes that the NASD's short sale bid-test, including the market maker exemptions, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure. The Commission believes, however, that experience with the NASD's bid-test may raise issues that require reconsideration of some or all elements of the proposal. The Commission is sensitive to commenters' concerns about efficiency and liquidity in the market. The Commission acknowledges, based in large part on the arguments raised by commenters, that there will be opportunities for market makers to control short selling by moving their bids.[58] The Commission is also concerned that the bid-test may restrict non-abusive short-selling for lengthy periods of time when the bid is stable after a down-bid.[59]

In addition, questions remain about whether market maker exemptions from these restrictions are necessary on an ongoing basis. It is worth noting that specialists and other market makers do not enjoy similar exemptions from the Commission's short sale rule for listed securities under Rule 10a–1. With respect to the market maker exemption, commenters have raised concerns about one of the conditions of the proposed exemption, which requires that at least 50% of a market maker's quote updates be accompanied by an execution. The Commission acknowledges that this requirement may decrease pricing efficiency by discouraging market makers from updating their quotes in response to external events. Moreover, the Commission is concerned that this requirement could discourage market makers from exposing customer orders in their quotes. The Commission has long encouraged the display of customer orders with prices better than the interdealer quotes,[60] and will scrutinize the effects of this requirement on transparency for customer orders.

During the eighteen-month temporary approval period for the proposal, the Commission and the NASD will have an opportunity to study the effects of the bid-test and market marker exemptions, and to determine whether the bid-test and exemptions are practicable and necessary on an ongoing basis.[61] The Commission expects the NASD to monitor the effects of its short sale rule on a continuing basis during the first 12 months of effectiveness, and expects a full report as soon as practicable thereafter. In particular, the NASD's study should address the following issues:

- *Effectis on Amount of Short-Selling:* As noted, the bid-test will lead to prohibitions of short selling for longer time intervals than would a transaction price tick-test. The study should provide data on the length of these intervals. In addition, the study should evaluate the amount of non-market maker short selling permitted under the rule, the extent of short selling by market makers exempt from the rule, and any incidents of perceived "abusive short selling."
- *Spreads and Volatility:* The NASD has asserted that "abusive short selling" has increased volatility and spreads in Nasdaq stocks. The study should evaluate the effects of the rule on spreads and volatility.
- *Potential Bid Manipulation:* As noted, the rule provides market makers with the opportunity to control short selling by moving their bids. The study should evaluate whether the behavior of bid prices has been significantly altered by the rule. Specifically, the study should compare the average time that short sales are prohibited after the rule is in place relative to the average time short sales would have been prohibited in the period prior to effectiveness, had the rule been in place.
- *Minimum Increment for Allowable Sales Above the Bid:* The study should review the effects of permitting short selling based on a minimum bid increment of 1/16.[62]

V. Conclusion

For the reasons discussed above, the Commission has determined that the NASD's proposed short sale rule is designed to prevent manipulative acts and practices and protect investors and the public interest, and that these goals, on balance, outweigh any negative effects the rule may have on the market for Nasdaq National Market securities.

Accordingly, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11). In addition, the Commission finds that the rule change is consistent with the Congressional objectives for the equity markets, set out in Section 11A, of achieving more efficient and effective market operations, fair competition among brokers and dealers, and the economically efficient execution of investor orders in the best market.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the instant rule change SR–NASD–92–12 be, and hereby is, approved, effective September 6, 1994, on a temporary eighteen-month basis through March 5, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16372 Filed 7–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34- 34276; File No. SR–PSE–94–8]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Its Listing Fee Schedule for Listed Companies

June 29, 1994.

On March 8, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19 8b–4 thereunder,[2] a proposed rule change to amend its original listing fee, processing and fee and annual maintenance fee.

The proposed rule change was notified in Securities Exchange Act Release No. 33928 (April 19, 1994), 59 FR 21793 (April 26, 1994). No comments were received on the proposal.

The PSE is amending its fees for listed companies. Specifically, the Exchange is increasing its original listing fee for the common stock of exclusively listed companies from $10,000 to $20,000. In addition, the Exchange is increasing its initial processing fee, applicable to all original listing applications, from $250 to $500. Finally, the Exchange is increasing its annual maintenance fee for exclusively listed companies from $1,000 to $2,000. Dually listed equity securities would continue to be charged $10,000 for original listings, and $1,000 for the annual maintenance fee (for one issue).[3]

The Exchange states that the fee increases are designed to offset rising costs associated with maintaining listing services and related overhead expenses.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6 of the Act.[5] More specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act which requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities. The Commission notes that an increase in the PSE's listing fees was last approved in 1991.[6] Moreover, the current increases do not place an excessive allocation of Exchange fees on its issuers as opposed to members and other persons using its facilities. Accordingly, the Commission believes that it is appropriate to approve the proposed rule change.

The Commission believes that it is appropriate for the Exchange to charge greater original listing fees for exclusive listings as opposed to dual listings due to the additional costs incident to maintaining exclusive listings. For example, with respect to exclusively listed companies, the Exchange may incur additional costs for, among other

---

[58] We note, however, that the rule includes a provision (conditioning market maker exemption on at least 50% of quote updates being accompanied by executions) that could discourage market makers from lowering their bids to limit short selling.

[59] The Commission notes that facilities for exposure of customer limit orders in Nasdaq would alleviate the restrictiveness of the rule by increasing opportunities for customers to trade between the quotes. Increased transparency would also limit the ability of market makers to restrict short selling by lowering their bids. In this regard, the Commission's Division of Market Regulation recently recommended that the NASD encourage the display of limit orders in Nasdaq stocks that are better than the best Nasdaq quote. *See* Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* at IV–6 (January 1994) ("*Market 2000 Report*").

[60] *See e.g., Market 2000 Report,* at IV–6 (the NASD should "consider encouraging the display of limit orders in Nasdaq stocks that are better than the best Nasdaq quote [• •]").

[61] This 18-month pilot period also enables the Commission and the NASD to consider other alternatives to the rule. *See e.g. supra* Comment section of this order.

[62] In this regard, the Commission notes that various proprietary trading systems may allow for finer pricing intervals.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–2 (1994).

[3] The Exchange stated that for the purposes of this amendment, an equity security is dually listed if it is listed on both the PSE and either the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. ("Amex"). An equity security is exclusively listed for purposes of this amendment if it is listed on the PSE and not on either the NYSE or the Amex.

[4] The Complete schedule of fee changes is contained in Exhibit A to File No. SR–PSE–94–8.

[5] 15 U.S.C. 78f (1988).

[6] *See* Securities Exchange Act Release No. 29682 (October 29, 1991), 56 FR 57028 (October 29, 1991) (order approving File No. SR–PSE–91–29).

The PSE is amending its fees for listed companies. Specifically, the Exchange is increasing its original listing fee for the common stock of exclusively listed companies from $10,000 to $20,000. In addition, the Exchange is increasing its initial processing fee, applicable to all original listing applications, from $250 to $500. Finally, the Exchange is increasing its annual maintenance fee for exclusively listed companies from $1,000 to $2,000. Dually listed equity securities would continue to be charged $10,000 for original listings, and $1,000 for the annual maintenance fee (for one issue).[3]

The Exchange states that the fee increases are designed to offset rising costs associated with maintaining listing services and related overhead expenses.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6 of the Act.[5] More specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act which requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities. The Commission notes that an increase in the PSE's listing fees was last approved in 1991.[6] Moreover, the current increases do not place an excessive allocation of Exchange fees on its issuers as opposed to members and other persons using its facilities. Accordingly, the Commission believes that it is appropriate to approve the proposed rule change.

The Commission believes that it is appropriate for the Exchange to charge greater original listing fees for exclusive listings as opposed to dual listings due to the additional costs incident to maintaining exclusive listings. For example, with respect to exclusively listed companies, the Exchange may incur additional costs for, among other things, monitoring the company for corporate developments.

The Commission further finds that the fees are reasonable because the Exchange has proposed the increases to offset rising costs associated with maintaining listing services and related overhead expenses. Accordingly, the Commission believes that it is appropriate to approve the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PSE–94–8) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16373 Filed 7–6–94; 8:45 am]

BILLING CODE 8010–01–M

[3] The Exchange stated that for the purposes of this amendment, an equity security is dually listed if it is listed on both the PSE and either the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. ("Amex"). An equity security is exclusively listed for purposes of this amendment if it is listed on the PSE and not on either the NYSE or the Amex.

[4] The Complete schedule of fee changes is contained in Exhibit A to File No. SR–PSE–94–8.

[5] 15 U.S.C. 78f (1988).

[6] *See* Securities Exchange Act Release No. 29682 (October 29, 1991), 56 FR 57028 (October 29, 1991) (order approving File No. SR–PSE–91–29).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted August 8, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies

Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: SBA Counseling Evaluation.

Form No. SBA Form 1419.

Frequency: Annually.

Description of Respondents: Small business clients.

Annual Responses: 31,208.

Annual Burden: 20,402.

Dated: July 1, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–16450 Filed 7–6–94; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000127]

Pacific Northwest Partners SBIC, L.P.; Filing of An Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Pacific Northwest Partners SBIC, L.P., Suite 800, Koll Center Bellevue, 500—108th Avenue N.E., Bellevue, MA 98004, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et seq.), and the Rules and Regulations promulgated thereunder.

The initial investors and their percent of ownership of the Applicant are as follows:

Name	Percentage of ownership
General Partner:	
Kertesz/Wight Partnership, 500—108th Avenue NE., Bellevue, WA 98004	1.0
Limited Partners	99.0

No single Limited Partner owns a 10% or larger partnership interest.

Pacific Northwest Partners SBIC, L.P. will be managed by PNP Management, Inc. The offices and directors of PNP Management, Inc. are:

Name	Relationship to manager	Percentage ownership of manager
Theodore M. Wight, 5302—143rd Avenue SE, Bellevue, WA 98006.	President ..	50
Louis R. Kertesz, 5606 Lakeview Drive NE, Apartment D, Kirkland, WA 98003.	Vice-President.	50

The applicant will begin operations with capitalization of approximately $10.6 million and will be a source of debt and equity financings for qualified small business concerns. The applicant will invest primarily in the Pacific Northwest.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Seattle, Washington.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: June 28, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–16452 Filed 7–6–94; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted August 8, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3d Street, SW., 5th floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Quarterly Guaranty Loan Status Report.

Form No.: SBA 1175.

Frequency: Quarterly.

Description of Respondents: SBA Guaranty Lenders.

Annual Responses: 430,528.

Annual Burden: 19,804.

Dated: June 8, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–16451 Filed 7–6–94; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: Survey of Regulatory Cost Burdens

Form No.: N/A

Frequency: One-Time

Description of Respondents: Small business owners

Annual Responses: 360

Annual Burden: 120

Dated: June 10, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–16356 Filed 7–6–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 21–29B; Detecting and Reporting Suspected Unapproved Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–29B, Detecting and Reporting Suspected Unapproved Parts. The proposed AC 21–29B updates the information and guidance to the aviation community for detecting and reporting suspected unapproved aircraft parts, and includes procedures for referral of such reports to the appropriate Federal Aviation Administration Office. The proposed AC provides revised definitions of approved, acceptable, and unapproved parts when used in conjunction with this AC.

DATES: Comments submitted must identify the proposed AC 21–29B File Number, PO–220–0444, and be received August 8, 1994.

ADDRESSES: Copies of the proposed AC 21–29B can be obtained from and comments sent to the following: Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue SW., Washington, DC 20591 (202) 267–8361.

SUPPLEMENTARY INFORMATION: This proposed AC provides information and guidance to the aviation community for detecting and reporting suspected unapproved aircraft parts, and includes procedures for referral of such reports to the appropriate Federal Aviation Administration (FAA) office. This AC also includes a revised FAA Form 8120–11, Suspected Unapproved Part Notification, which provides a standardized method of reporting suspected unapproved parts to the FAA. The guidance is relevant to any member of the aviation community concerned with installation of parts, including repair stations and manufacturers of aeronautical products.

Comments Invited

Interested persons are invited to comment on proposed AC 21–29B listed in this notice by submitting such written data, views, and arguments as they desire to the aforementioned address. All communications received on or before the closing date for comments will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–29B may be examined before and after the comment closing date in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 30, 1994.

Frank P. Paskiewicz,

Manager, Airworthiness Certification Branch.

[FR Doc. 94–16414 Filed 7–6–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport, Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from PFC at Chicago O'Hare International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Comments on this application may be mailed or delivered

guidance to the aviation community for detecting and reporting suspected unapproved aircraft parts, and includes procedures for referral of such reports to the appropriate Federal Aviation Administration (FAA) office. This AC also includes a revised FAA Form 8120–11, Suspected Unapproved Part Notification, which provides a standardized method of reporting suspected unapproved parts to the FAA. The guidance is relevant to any member of the aviation community concerned with installation of parts, including repair stations and manufacturers of aeronautical products.

Comments Invited

Interested persons are invited to comment on proposed AC 21–29B listed in this notice by submitting such written data, views, and arguments as they desire to the aforementioned address. All communications received on or before the closing date for comments will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–29B may be examined before and after the comment closing date in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 30, 1994.

Frank P. Paskiewicz,

Manager, Airworthiness Certification Branch.

[FR Doc. 94–16414 Filed 7–6–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport, Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from PFC at Chicago O'Hare International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 258, Des Plaines, IL 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David R. Mosena, Commissioner of the City of Chicago Department of Aviation at the following address: O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Avenue, room 248, Des Plaines, IL 60018, (708) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago O'Hare International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 13, 1994, the FAA determined that the application to use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 10, 1994.

The following is a brief overview of the application:

Level of the PFC: $3.00

Actual charge effective date: September 1, 1993

Proposed charge expiration date: February 1, 2000

Total approved net PFC revenue: $500,418,285.00

Proposed additional collection: $28,765,492.00

Brief description of proposed projects: Airport Rescue & Fire Fighting Facility; Scenic Hold Pad; Radio Alarm Call Box System; Overlay Lower Level Roadway; and Install Permanent Noise Monitoring

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on June 27, 1994.

Benito DeLeon,

Manager, Planning/Programming Branch, Great Lakes Region.

[FR Doc. 94–16416 Filed 7–6–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use The Revenue From a Passenger Facility Charge (PFC) at Greater Peoria Regional Airport, Peoria, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Greater Peoria Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 258, Des Planes, IL 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. W. Ron Burling, Director of the Greater Peoria Airport Authority at the following address: 6100 W. Everett M. Dirksen Pkwy, Peoria, IL 61607.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Greater Peoria Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager Chicago Airports District Office, 2300 East Devon Avenue, room 258, Des Plaines, IL, 60018, (708) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

comment on the application to impose and use the revenue from a PFC at Greater Peoria Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 8, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Greater Peoria Airport Authority was substantially complete within the requirements of §158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 8, 1994.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: November 1, 1994
Proposed charge expiration date: May 31, 2001
Total estimated PFC revenue: $4,104,719.00
Brief description of proposed project(s):
Access Control and Security System
Sprinkler and Fire Control Suppression & Monitoring
Runway 4/22 Extension
Power line Relocation
Land Acquisition
Security Fence
Airfield Signage
St. John's Church Soundproofing
1500 Gallon Fire Truck
Snow Sweeper/Broom
Passenger Lift Device.
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Greater Peoria Airport Authority.

Issued in Des Plaines, Illinois on June 27, 1994.

Benito DeLeon,

Manager, Planning/Programming Branch, Great Lakes Region.

[FR Doc. 94–16415 Filed 7–6–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Falls International Airport, International Falls, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Falls International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Myrna Ahlgren, Secretary of the International Falls-Koochiching County Airport Commission at the following address: P.O. Box 392, International Falls, Minnesota 56649.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the International Falls-Koochiching County Airport Commission under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, (612) 725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Falls International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 1589 of the Federal Aviation Regulations (14 CFR part 158).

On June 16, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by International Falls-Koochiching County Airport Commission was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 24, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Proposed charge effective date: December 1, 1994.
Proposed charge expiration date: December 1, 1998.
Total estimate PFC revenue: $245,280.
Brief description of proposed project(s): Pavement Crack Repair; Airfield Guidance Signs; PFC Administration; Pavement Rehabilitation; Master Plan Update; Lift for Mobility-Impaired Passengers.
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the International Falls-Koochiching County Airport Commission.

Issued in Des Plaines, Illinois on June 27, 1994.

Benito DeLeon,

Manager, Planning/Programming Branch, Great Lakes Region.

[FR Doc. 94–16417 Filed 7–6–94; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Cultural Property Advisory Committee; Meetings

AGENCY: United States Information Agency.

ACTION: Notice of Meeting of the Cultural Property Advisory Committee.

SUMMARY: The Cultural Property Advisory Committee will meet on Tuesday, July 19, 1994, from 9 AM to approximately 3:30 PM, USIA headquarters, 301 4th Street SW., room 840 and room 849 (afternoon session), Washington, DC.

The meeting's agenda will include deliberation of whether to extend an emergency import restriction (imposed under the Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et al*) on archaeological material from the Peten Region, Guatemala. Since discussion of this matter will involve information the premature disclosure of which would likely frustrate implementation of proposed actions and policies, this portion of the meeting will be closed pursuant to 5 U.S.C 552b(c)(9)(B) and 19 U.S.C. 2605(h).

The Committee's agenda will also include a discussion of whether there is a need for special ethical criteria for the Committee. This portion of the meeting will be open to the public and will take place beginning approximately 1:30 PM. Due to security requirements and limited space, persons wishing to attend should telephone (202) 619–6612 by 5 PM on Friday, July 15, 1994. A list of public attendees will be posted at the security desk of USIA in order to facilitate access to the meeting room.

a need for special ethical criteria for the Committee. This portion of the meeting will be open to the public and will take place beginning approximately 1:30 PM. Due to security requirements and limited space, persons wishing to attend should telephone (202) 619–6612 by 5 PM on Friday, July 15, 1994. A list of public attendees will be posted at the security desk of USIA in order to facilitate access to the meeting room.

Dated: June 30, 1994.

Penn Kemble,

Deputy Director, United States Information Agency.

Determination To Close the Meeting of the Cultural Property Advisory Committee

July 19, 1994.

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that the portion of the Cultural Property Advisory Committee meeting on July 19, 1994, devoted to deliberations about possible extension of the emergency import restriction on archaeological material from the Peten region of Guatemala, may be closed to the public.

Dated: June 30, 1994.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 94–16392 Filed 7–6–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 129
Thursday, July 7, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORDS REVIEW BOARD

TIME AND DATE: 10:00 a.m., July 12, 1994

PLACE: National Archives and Records Administration, Archivists Reception Room, Room 105, 7th and Pennsylvania Avenue, N.W., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

(1) Personnel actions including consideration of appointment of staff members.

(2) Extension of term of Review Board members pursuant to section 7(o)(1) of the President John F. Kennedy Assassination Records Collection Act of 1992.

(3) Other matters carried over from the previous meeting of the Board.

CONTACT PERSON FOR MORE INFORMATION: Mr. John R. Tunheim, Chair of the Board, telephone number 612/296–2351.

Dated: July 1, 1994

John R. Tunheim,

Chair.

[FR Doc. 94–16530 Filed 7–5–94; 10:46 am]

BILLING CODE 3195–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 12, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration

Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, July 14, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes

Advisory Opinion 1994–4: Judith K. Richmond on behalf of the U.S. Chamber of Commerce (continued from meeting of June 23, 1994)

Advisory Opinion 1994–17: Katherine S. Feichtner Ruffolo on behalf of Peter Barca for U.S. Senate

Advisory Opinion 1994–20: Albert M. Edwards, Jr. on behalf of the Committee for Congressman Charlie Rose

MCFL Rulemaking: Summary of Comments and Draft Final Rules

Job Recommendations from Political Office Holders

Letter to Party Committees Regarding $25,000 Annual Contribution Limit on Individuals

Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–16596 Filed 7–5–94; 2:36 pm]

BILLING CODE 6715–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 28, 1994, 59 FR 33327.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 29, 1994, 10:00 a.m.

CHANGE IN THE MEETING: The following Project Nos. have been added to Item CAE–5 on the Agenda scheduled for June 29, 1994:

Item No., Docket No. and Company

CAE–5—P–432–009, Carolina Power and Light Company; P–2748–002, North Carolina Electric Membership

Lois D. Cashell,

Secretary.

[FR Doc. 94–16514 Filed 7–5–94, 9:24 am]

BILLING CODE 6717–01–M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1755

REA Specification for Terminating Cables

Correction

In rule document 94-14338 beginning on page 30505, in the issue of Tuesday, June 14, 1994, make the following corrections:

§ 1755.870 [Corrected]

On page 30507, in the third column, in § 1755.870, in the second column of the table, in the first line, "D22" should read "22".

§ 1755.870 [Corrected]

On page 30511, in the third column, in § 1755.870 (h)(3)(i), in the seventh line, after "1" insert "±".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 950542-4142; I.D. 050394B]

Interim Exemption for Commercial Fisheries

Correction

In rule document 94-14248 beginning on page 31165 in the issue of Friday, June 17, 1994, make the following correction:

Corrections

Federal Register
Vol. 59, No. 129
Thursday, July 7, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1755

REA Specification for Terminating Cables

Correction

In rule document 94-14338 beginning on page 30505, in the issue of Tuesday, June 14, 1994, make the following corrections:

§ 1755.870 [Corrected]

On page 30507, in the third column, in § 1755.870, in the second column of the table, in the first line, "D22" should read "22".

§ 1755.870 [Corrected]

On page 30511, in the third column, in § 1755.870 (h)(3)(i), in the seventh line, after "1" insert "±".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 950542-4142; I.D. 050394B]

Interim Exemption for Commercial Fisheries

Correction

In rule document 94-14248 beginning on page 31165 in the issue of Friday, June 17, 1994, make the following correction:

On page 31165, in the third column, in amendatory instruction 3., after the first line insert the following:

PART 229— INTERIM EXEMPTION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project 5-021 Montana]

Montana Power Company and Confederated Salish and Kootenai Tribes; Notice of Intent To Prepare An Environmental Impact Statement and To Conduct A Scoping Meeting

Correction

In notice document 94-14750 appearing on page 31228, in the issue of Friday, June 17, 1994, make the following corrections:

On page 31228, in the second column, in the first line, "Federal Agency Regulatory Commission" should be removed.

On the same page, in the same column, the project number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1319–000]

Delmarva Power & Light Co.; Notice of Filing

Correction

In notice document 93-14651 beginning on page 30928 in the issue of Thursday, June 16, 1994, the docket number is corrected to read as above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7055

[NV-930-4210-06; N-52465]

Withdrawal of Public Land for High Rock Canyon Area of Critical Environmental Concern; Nevada

Correction

In rule document 94-13175 beginning on page 28013, in the issue of Tuesday, May 31, 1994, make the following correction:

On page 28014, in the first column, under the heading Mount Diablo Meridian, in the land description, in T. 40 N., R. 23 E., "Sec. 17, lots 1 and 2, W½NE¼SE¼, NE¼, W½, and SE¼;" should read "Sec. 17, lots 1 and 2, W½NE¼, SE¼NE¼, W½, and SE¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-168-AD; Amendment 39-8947; AD 94-13-07]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

Correction

In rule document 94-15013 beginning on page 32327, in the issue of Thursday, June 23, 1994, make the following correction:

§ 39.13 [Corrected]

On page 32329, in the first column, in § 39.13 (g), in the second line, "July 8, 1993" should read "July 8, 1994".

BILLING CODE 1505-01-D

VOL
59
ISS
12
9
JUL
7
994
UMI

Federal Register

Thursday
July 7, 1994

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 100

Fair Housing; Fair Housing Act; Discriminatory Conduct; Housing for Older Persons; Significant Facilities and Services Definition; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 100

[Docket No. R–94–1706; FR–3502–P–01]

RIN 2529–AA66

Housing for Older Persons; Defining Significant Facilities and Services; Proposed Amendments

AGENCY: Office of the Secretary and Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Proposed Rule and Notice of Public Meeting.

SUMMARY: This proposed rule would implement the rulemaking required by section 919 of the Housing and Community Development Act of 1992. Section 919 requires the Secretary of HUD to issue "rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term 'housing for older persons' in such section." This rule would amend existing regulations governing "housing for older persons", to provide the definitions required by section 919.

DATES: Comments due date: October 5, 1994.

ADDRESSES: Interested persons are invited to submit comments on the proposed rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Peter Kaplan, Office of Program Training and Technical Assistance, Office of Fair Housing and Equal Opportunity, room 5242, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–1145 (not a toll-free number). The toll-free TDD number is: 1–800–877–8339.

Notice of Public Meeting

The customary 60-day public comment period will be extended to a 90-day public comment period to ensure broad public input into the rulemaking process. Additionally, the Assistant Secretary for Fair Housing and Equal Opportunity will schedule a public meeting to hear from all those affected by this proposed rule.

Attendance will be open to the interested public, but necessarily limited to the space available. Presentation of oral statements will be welcomed. However, groups that wish to make an oral presentation at the meeting must request an opportunity to do so in writing. Oral presentations will also be limited to a prescribed time and to the groups that submit written comments. Written comments may be submitted at any time during the 90 day comment period following publication of the proposed rule in the **Federal Register**.

Specific details as to the date, time and location of the meeting will be provided by notification in the **Federal Register** within 20 days from the date of this publication. The Notice of meeting will also contain all procedures governing the conduct of the meeting.

For further information concerning the public meeting contact Peter Kaplan, Director, Office of Program Training and Technical Assistance, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1145, not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Housing Act (Title VIII of the Civil Right Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601–19) exempts "housing for older persons" from the prohibitions against discrimination because of familial status. The purpose of the prohibition against discrimination on the basis of familial status and the "housing for older persons" exemption is to protect families with children from discrimination in housing without unfairly limiting housing choices for elderly persons (see 134 Cong. Rec. S 19722 (Aug. 1, 1988) statement of Senator Karnes).

On January 23, 1989 (54 FR 3232), HUD published a final rule implementing the Fair Housing Act. This rule included regulations governing housing for older persons. The "housing for older persons" regulations implement, among other things, section 807(b)(2)(C) of the Fair Housing Act, which exempts housing intended and operated for occupancy by at least one person 55 years of age or older per unit that satisfies certain criteria. These regulations are codified in 24 CFR part 100, subpart E. In drafting the housing for older persons regulations, HUD took into consideration the public comments that addressed the issue of what constitutes "significant facilities and services specifically designed to meet the physical or social needs of older persons."

Congress mandated that, in determining whether housing qualifies as housing for persons 55 years of age or older, the Secretary develop regulations which require at least the following factors:

(1) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(2) That at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(3) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

II. Overview of Proposed Rule

Section 919 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992 (the 1992 Act)), requires the Secretary of HUD to issue rules further defining what are "significant facilities and services especially designed to meet the physical or social needs of older persons" required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term "housing for older persons."[1] This proposed rule would implement the rulemaking required by section 919 of the 1992 Act. Specifically, this proposed rule would revise the "55 or over" housing regulation, codified at 24 CFR 100.304.

This proposed rule would expound upon the significant facilities and services requirements governing "55 or over housing" currently set forth in § 100.304(b)(1). A new § 100.305 would be added and would address the requirements for "facilities and services specifically designed to meet the physical or social needs of older persons." A new § 100.306 would be added and would address the requirement that such facilities and services be "significant." In addition to adding these two new sections, the substance of existing § 100.304(b)(2) would be located in the new § 100.310. Existing subsections §§ 100.304(c)(1) and 100.304(d) and 100.304(e) would provide the substance of new § 100.315, and existing § 100.304(c)(2) would be redesignated as new § 100.316.

In developing this proposed regulation, the Department desires to provide as much certainty as possible regarding the determination that housing qualifies as housing for older persons. It has sought to structure the regulation to allow both housing providers and protected classes alike to ascertain with confidence whether a community qualifies under the Fair Housing Act.

However, it is the Department's view that a single, precise, mathematical-like standard that fully implements the Act is not possible, nor may it be equitable.

As a result, the Department has concluded that a flexible standard is necessary in order to reflect regional variations in services and facilities that distinguish housing for older persons from other similar housing, as well variations determined by the geography of the site or by the differences in the nature or cost of the housing in question. To do otherwise could unnecessarily restrict housing opportunities for older persons by holding all housing to a single arbitrary standard that was not intended by the framers of the Act.

Services common to older persons in one region of the country are often not commonly provided or expected in another where weather, for example, or terrain make them unnecessary or undesirable. Similarly, facilities expected as the norm at large, single family older community developments may not be expected at small, mobile home parks with limited acreage, or at large, multi-story, multi-family condominium complexes. And services or facilities common or needed in urban communities near transportation may differ substantially from those appropriate to rural locations.

In addition, the Department recognizes that housing for older persons is not limited to the affluent. Therefore, the Department is concerned lest a single standard that offers certainty would not be sufficiently flexible to accommodate housing for low and moderate income older persons.

[1] The language of section 919 contains the word "especially": "* * * rules defining what are 'significant facilities and services *especially* designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term 'housing for older person' in such section." (emphasis added) This proposed rule uses the word "specifically" rather than the word "especially" to comply with congressional intent and reflect the actual language of section 807(b)(2) of the Fair Housing Act.

physical or social needs of older persons." A new § 100.306 would be added and would address the requirement that such facilities and services be "significant." In addition to adding these two new sections, the substance of existing § 100.304(b)(2) would be located in the new § 100.310. Existing subsections §§ 100.304(c)(1) and 100.304(d) and 100.304(e) would provide the substance of new § 100.315, and existing § 100.304(c)(2) would be redesignated as new § 100.316.

In developing this proposed regulation, the Department desires to provide as much certainty as possible regarding the determination that housing qualifies as housing for older persons. It has sought to structure the regulation to allow both housing providers and protected classes alike to ascertain with confidence whether a community qualifies under the Fair Housing Act.

However, it is the Department's view that a single, precise, mathematical-like standard that fully implements the Act is not possible, nor may it be equitable.

As a result, the Department has concluded that a flexible standard is necessary in order to reflect regional variations in services and facilities that distinguish housing for older persons from other similar housing, as well variations determined by the geography of the site or by the differences in the nature or cost of the housing in question. To do otherwise could unnecessarily restrict housing opportunities for older persons by holding all housing to a single arbitrary standard that was not intended by the framers of the Act.

Services common to older persons in one region of the country are often not commonly provided or expected in another where weather, for example, or terrain make them unnecessary or undesirable. Similarly, facilities expected as the norm at large, single family older community developments may not be expected at small, mobile home parks with limited acreage, or at large, multi-story, multi-family condominium complexes. And services or facilities common or needed in urban communities near transportation may differ substantially from those appropriate to rural locations.

In addition, the Department recognizes that housing for older persons is not limited to the affluent. Therefore, the Department is concerned lest a single standard that offers certainty would not be sufficiently flexible to accommodate housing for low and moderate income older persons.

In structuring the proposed rule which follows, the Department has sought to identify as many as possible of the factors and considerations which are germane to capture the differences required by housing for older persons, thus making it possible for wide varieties of communities to qualify who meet the statutory requirements of the Act. In addition, through the publication of the appendix and the illustrative examples it contains, the Department has sought to provide further guidance to assist in the application of the regulation.

However, the Department specifically requests detailed comment on how the proposed standards can be modified to provide greater certainty and precision while still providing the flexibility necessary to accommodate the other factors essential to carry out the Act. To allow for this, the Department has extended the comment period to 90 days and will provide for a public hearing process, described elsewhere in the preamble, to receive public comments.

As is the case with other exemptions to civil rights statutes and other exemptions under the Fair Housing Act (the Act), the exemption to the Act's requirements provided by the "housing for older persons" exemption will be interpreted narrowly. A narrow construction of this exemption is intended to give full force and effect to the protection against familial status discrimination afforded by the Act.

The burden of demonstrating that the "older persons" exemption applies rests on the party asserting the exemption. Part of that party's burden in establishing qualification for the exemption requires affirmatively demonstrating through credible and objective evidence that the requirements for the exemption exist as of the date of an alleged violation of the Act or at any time that the exemption is asserted as a basis for allowing a practice that would otherwise be prohibited as discriminatory on the basis of familial status.

The Department believes that the Fair Housing Act imposes a strict burden upon a person claiming the exemption to provide credible and objective evidence showing that the facilities and services offered by the housing provider were designed, constructed or adapted to meet the particularized needs of older persons. In order to be considered as sufficient to qualify a housing facility for the exemption, the evidence must show that the housing in question is clearly distinguished from the bulk of other housing (except for other older persons' housing) in a particular area, by the existence of those facilities and services which set the housing facility apart as housing intended for and operated as housing for older persons. Absent such evidence, the familial status prohibitions of the Act will apply.

There is no indication in the Act or in its legislative history that Congress intended that only the most expensive housing with the most expansive and expensive facilities and services, should qualify for the exemption. Housing in all affordable categories may offer the types of facilities and services for older persons which make that housing unique for the class of persons who can afford that housing. This determination is made by contrasting the housing being offered as housing for older persons to comparable housing not claiming the exemption and evaluating the significance of the facilities and services being offered to meet the requirements of the exemption (See § 100.306(c)(l); Comparable housing is of similar type, size and cost of lease or purchase.)

Proposed Amendments

New § 100.305—Specifically Designed Facilities and Services

New § 100.305 proposes to set forth the criteria by which a facility or service will be determined to be "specifically designed to meet the physical or social needs of older persons."

New § 100.306—Significant Facilities and Services.

New § 100.306 proposes to set forth the criteria by which facilities or services that meet the requirements of § 100.305 (i.e., specifically designed facilities and services) will be determined to be "significant." The factors listed in new § 100.306 are intended to measure the relative importance of the facilities and services so that their significance can be determined. New § 100.306 would approach the "significance" determination as an aggregate one—that is, a determination with respect to all facilities and services as a whole, rather than a determination with respect to each facility and service individually.

New § 100.310—Impracticability

Existing § 100.304(b)(2), which would be redesignated as new § 100.310, would be revised by adding the following language as the introductory text to the current provisions contained in paragraph (b)(2):

The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55

years of age or older per unit, provided that the person or entity affirmatively demonstrates through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or 100.310, 100.315 and 100.316. Housing satisfies the requirements of section 100.310 if * * *

New § 100.315—80% Occupancy

Existing §§ 100.304(c)(1), 100.304(d) and 100.304(e) would be combined as new § 100.315, and the following language would be added to the new § 100.315:

The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively demonstrates through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or 100.310, 100.315 and 100.316. Housing satisfies the requirements of this section 100.315 if * * *

New § 100.316 —Intent To Provide Housing for Older Persons

Existing § 100.304(c)(2), which would be redesignated as new § 100.316, would be revised by adding the following language as the introductory text to new § 100.316:

The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively demonstrates through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or 100.310, 100.315 and 100.316. Housing satisfies the requirements of section 100.316 if * * *

III. Appendix

HUD is also proposing to publish an Appendix to the proposed rule. This Appendix is intended to provide members of the public with detailed guidance interpreting the provisions of the Fair Housing Act that pertain to the exemption for "housing for older persons" (55 or over housing). The Department believes that supplementing the regulatory language with interpretive guidance in the Appendix is the best way to comply with the Congressional mandate to further define the term "significant facilities and services specifically designed to meet the physical or social needs of older persons."

The Department intends for the Appendix to serve as guidance for housing providers and others in determining whether housing qualifies for the "housing for older persons" exemption (55 or over housing). The Appendix illustrates the application of the factors that the Department will consider in making its determination. The Department will refer to the interpretive guidance in the Appendix when considering whether there is reasonable cause to believe that a discriminatory practice has occurred or is about to occur. It should be clearly understood, however, that the illustrative examples provided in this Appendix are not dispositive of any actual case; i.e., a bare claim by a housing provider that the operation of a particular housing development duplicates the fact pattern of any example presented in this Appendix will not preclude the Department from conducting an investigation under the Fair Housing Act of an alleged discriminatory housing practice directed against an aggrieved person with familial status; nor will it preclude the Secretary from issuing a determination based upon the evidence obtained through such an investigation.

The Department will apply the criteria for "specifically designed" and "significant" facilities and services on a case-by-case basis, and a determination will be based upon the totality of the factual circumstances examined.

The Department may revise or supplement the Appendix from time to time in order to incorporate additional guidance, fact patterns, and relevant Administrative Law Judge (ALJ) and court decisions that reflect future developments in administrative and case law. This will be accomplished through the publication of formal notices in the **Federal Register**.

IV. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and, by approving it, certifies that the proposed rule will not have a significant impact on a substantial number of small entities. The proposed rule would implement section 919 of the Housing and Community Development Act of 1992, which requires the Secretary of HUD to further define the term "significant facilities and services specifically designed to meet the physical or social needs of older persons." The Department anticipates that the proposed rule will have an impact on some small housing providers. However, the number of small housing providers affected is not considered to be so great as to constitute a significant economic impact on a substantial number of small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this proposed rule would not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities among the various levels of government. The Fair Housing Act, and section 919 of the Housing and Community Development Act of 1992 direct HUD to provide further guidance on the meaning significant facilities and services so that States, local governments, and housing providers will have a better understanding of what housing is exempt from the Fair Housing Act's prohibition against discrimination on the basis of familial status.

Regulatory Agenda

This proposed rule was listed as sequence 1662 in the Department's Semiannual Regulatory Agenda, published on April 25, 1994 (59 FR 20424, 20464) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 100 would be amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for part 100 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 3600–3620.

2. In subpart E, § 100.304 would be revised, new §§ 100.305, 100.306, 100.310, 100.315 and 100.316 would be added, and an appendix to subpart E would be added to read as follows:

Subpart E—Housing for Older Persons

§ 100.304 55 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that, at the time of an alleged violation of the Act or at any time that the exemption is asserted as a basis for allowing a practice that would otherwise be prohibited as discriminatory on the basis of familial status, the housing satisfies the requirements of:

(1) §§ 100.305, 100.306, 100.315 and 100.316; or

(2) §§ 100.310, 100.315 and 100.316.

(b) With reference to complaints filed pursuant to the Act, this means that the person or entity claiming the exemption must affirmatively demonstrate through credible and objective evidence as of the date of the alleged violation of the Act or at any time that the exemption is asserted as a basis for allowing a practice that would otherwise be prohibited as discriminatory on the basis of familial status that the housing meets the requirements of paragraph (a) of this section.

(c) For purposes of §§ 100.305, 100.306, 100.310, 100.315 and 100.316 of this subpart, "older persons" means persons 55 years of age or older. For purposes of §§ 100.305 and 100:306, "housing provider" means:

(1) The owner or manager of a housing facility; or

(2) The owner or manager of the common and public use areas of a housing facility, where the dwelling units are individually owned.

12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 100 would be amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for part 100 would be revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 3600–3620.

2. In subpart E, § 100.304 would be revised, new §§ 100.305, 100.306, 100.310, 100.315 and 100.316 would be added, and an appendix to subpart E would be added to read as follows:

Subpart E—Housing for Older Persons

§ 100.304 55 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that, at the time of an alleged violation of the Act or at any time that the exemption is asserted as a basis for allowing a practice that would otherwise be prohibited as discriminatory on the basis of familial status, the housing satisfies the requirements of:

(1) §§ 100.305, 100.306, 100.315 and 100.316; or

(2) §§ 100.310, 100.315 and 100.316.

(b) With reference to complaints filed pursuant to the Act, this means that the person or entity claiming the exemption must affirmatively demonstrate through credible and objective evidence as of the date of the alleged violation of the Act or at any time that the exemption is asserted as a basis for allowing a practice that would otherwise be prohibited as discriminatory on the basis of familial status that the housing meets the requirements of paragraph (a) of this section.

(c) For purposes of §§ 100.305, 100.306, 100.310, 100.315 and 100.316 of this subpart, "older persons" means persons 55 years of age or older. For purposes of §§ 100.305 and 100.306, "housing provider" means:

(1) The owner or manager of a housing facility; or

(2) The owner or manager of the common and public use areas of a housing facility, where the dwelling units are individually owned.

§ 100.305 Specifically designed facilities and services.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity asserting the exemption affirmatively demonstrates through credible and objective evidence that the housing has facilities and services specifically designed to meet the physical or social needs of older persons. In order to satisfy this paragraph, there must be more than one facility and more than one service specifically designed to meet the physical or social needs of older persons. Both facilities and services specifically designed to meet the physical or social needs of older persons must exist as of the date of an alleged violation of the Act or at any time that the exemption is asserted as a basis for allowing a practice that would otherwise be prohibited as discriminatory on the basis of familial status.

(b)(1) In determining that a facility or service is "specifically designed to meet the physical or social needs of older persons," the Department will first consider whether the facility or service is readily accessible to and usable by older persons with mobility, visual and hearing impairments.

(i) If the housing is a covered multifamily dwelling as defined in 24 CFR 100.201 constructed for first occupancy and use after March 13, 1991, in order for a facility to satisfy § 100.305(b)(1) it must meet the requirements of § 100.205. In order for a service to satisfy § 100.305(b)(1), the Department will consider whether older persons with mobility, visual and hearing impairments occupying units can readily access and use the service and the extent to which the service is designed to meet the mobility, visual and hearing impairments of an aging population.

(ii) If the housing is not a covered multifamily dwelling as defined in 24 CFR 100.201 constructed for first occupancy after March 13, 1991, in order for a facility or service to satisfy § 100.305(b)(1), the Department will consider whether older persons with mobility, visual and hearing impairments occupying units can readily access and use the facility or service, and the extent to which the facility or service is designed to meet the mobility, visual and hearing impairments of an aging population. However, if the facility meets the Fair Housing Accessibility Guidelines for new construction (24 CFR Ch. 1, Subch. A, App. II), the facility will satisfy the requirements of this paragraph (b).

(2) If the requirements of paragraph (b)(1) of this section are met, the Department will consider such factors as the following as relevant in determining whether a facility or service is "specifically designed to meet the physical or social needs of older persons":

(i) The extent to which the facility or service benefits the current and future health, safety or leisure needs of an aging population.

(ii) Whether a housing provider has published and adhered to policies and procedures which demonstrate an intent by the housing provider not only to comply with all requirements of law governing discrimination against persons with disabilities, but, even in circumstances not otherwise required by law, to make, at the housing provider's expense, reasonable alterations, modifications and accommodations to facilities and services to make them accessible to persons with disabilities who become or who are residents. The policies and procedures must ensure that as the needs of older persons currently residing in the housing change and as new residents move into the housing, the housing provider will respond to those changing needs. A statement of these policies and procedures shall be provided to residents and applicants for housing.

(iii) The extent to which the housing provider has taken meaningful steps to make available an off-site facility or service which would otherwise be unavailable to older persons who are residents of the housing facility.

(iv) The extent to which a service, or services, specifically designed to meet the physical or social needs of older persons is provided in connection with the facility.

(3) The types of facilities and services provided in the section 202 "Supportive Housing for the Elderly" Program (see 24 CFR part 889) are the types of facilities and services that would meet the physical or social needs of older persons in general. However, these do not constitute the exclusive set of facilities and services that the Department will consider in determining whether a facility or service is "specifically designed" to meet the physical or social needs of older persons.

§ 100.306 Significant facilities and services.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55

years of age or older per unit, provided that the person or entity asserting the exemption affirmatively demonstrates through credible and objective evidence that the facilities and services specifically designed to meet the physical or social needs of older persons are "significant".

(b) In determining whether the facilities and services offered as specifically designed to meet the physical or social needs of older persons are significant, the Department will consider, in the aggregate, all facilities and services that meet the requirements of § 100.305.

(c) The Department will evaluate each facility or service that meets the requirements of § 100.305 by the following criteria to determine whether the facilities in the aggregate and the services in the aggregate are "significant":

(1) The extent to which a facility or service offered by a housing provider to residents is not customarily offered to residents of compatable housing (other than housing for older persons) in the relevant geographic area.

(2) The extent to which a facility or service can accommodate the older population of the housing facility. The capacity of each facility or service specifically designed to meet the physical or social needs of older persons depends upon, but is not limited to, such factors as:

(i) The size of the facility or scope of the service offered;

(ii) The length of time during which the facility is made available or the service is offered;

(iii) The frequency with which the facility is made available or the service is offered; and

(iv) Whether the facility or service is offered only at one location or there are a number of locations at which the facility is made available or at which the service is offered.

(3) The extent to which the facility or service is of benefit to older persons, given the climate and physical setting of the housing facility.

(4) The extent to which a facility or service is actually used by older persons who are residents.

(5) The extent to which the facility or service is provided by the housing provider rather than by others.

(6) Whether a facility or service is not one that is required to be provided by a law related to housing for the elderly or housing for older persons.

§ 100.310 Impracticability.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively demonstrates through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or §§ 100.310, 100.315 and 100.316. Housing satisfies the requirements of this section § 100.310 if it is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons.

(b) In order to satisfy the requirements of § 100.310 the owner or manager must affirmatively demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of § 100.310.

(1) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable.

(2) The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.

(3) The income range of the residents of the housing facility.

(4) The demand for housing for older persons in the relevant geographic area.

(5) The range of housing choices for older persons within the relevant geographic area.

(6) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area then the housing facility does not meet the requirements of § 100.310 .

(7) The vacancy rate of the housing facility.

§ 100.315 80 percent occupancy.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively demonstrates through credible and objective evidence that housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.315 if at least 80 percent of the units in the housing facility are occupied by at least one person 55 years of age or older per unit except that a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with § 100.315 until 25 percent of the units in the facility are occupied.

(b) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of such units are reserved for occupancy by at least one person 55 years of age or over.

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(c) The application of this section may be illustrated by the following examples:

Example 1: A. John and Mary apply for housing at the Valley Heights apartment complex which is a 100 unit housing complex that is operated for persons 55 years of age or older in accordance with all the requirements of this section. John is 56 years of age. Mary is 50 years of age. Eighty (80) units are occupied by at least one person who is 55 years of age or older. Eighteen (18) units are occupied exclusively by persons who are under 55. Among the units occupied by new occupants after September 13, 1988 were 18 units occupied exclusively by persons who are under 55. Two (2) units are vacant. At the time John and Mary apply for housing, Valley Heights qualifies for the "55 or over" exemption because 82% of the occupied units (80/98) at Valley Heights are occupied by at least one person 55 years old or older. If John and Mary are accepted for occupancy, then 81 out of the 99 occupied units (82%) will be occupied by at least one person who is 55 years of age or older and Valley Heights will continue to qualify for the "55 or over" exemption.

B. If only 78 out of the 98 occupied units had been occupied by at least one person 55 years of age or older, Valley Heights would still qualify for the exemption, but could not rent to John or Mary if they were both under 55 without losing the exemption.

Example 2: Green Meadow is a 1,000 unit retirement community that provides significant facilities and services specifically designed to meet the physical or social needs of older persons. On September 13, 1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older. On September 13, 1988, 100 units were vacant and 300 units were occupied only by people who were under 55 years old. Consequently, on September 13, 1988 67% of the Green Meadow's occupied units (600 out of 900) were occupied by at least one person 55 years of age or older. Under paragraph (b)(1) of this section, Green Meadow qualifies for the "55 or over" exemption even though, on September 13, 1988, under 80% of the occupied units in the housing facility were occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that were occupied after September 13, 1988 are occupied by at least one person 55 years of age or older. Under paragraph (b) of this section, Green Meadow qualifies for the "55 or over" exemption, even though it has unoccupied units, provided that at least 80% of its unoccupied units are reserved for occupancy by at least one person 55 years of age or over.

Example 3: Waterfront Gardens is a 200 unit housing facility to be constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with the requirements of this section. Waterfront Gardens need not comply with the requirement in paragraph (a) of this section that at least 80% of the occupied units be occupied by at least one person 55 years of age or older per unit until 50 units (25%) are occupied. When the 50th unit is occupied, then 80% of the 50 occupied units (i.e., 40 units) must be occupied by at least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.

designed to meet the physical or social needs of older persons. On September 13, 1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older. On September 13, 1988, 100 units were vacant and 300 units were occupied only by people who were under 55 years old. Consequently, on September 13, 1988 67% of the Green Meadow's occupied units (600 out of 900) were occupied by at least one person 55 years of age or older. Under paragraph (b)(1) of this section, Green Meadow qualifies for the "55 or over" exemption even though, on September 13, 1988, under 80% of the occupied units in the housing facility were occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that were occupied after September 13, 1988 are occupied by at least one person 55 years of age or older. Under paragraph (b) of this section, Green Meadow qualifies for the "55 or over" exemption, even though it has unoccupied units, provided that at least 80% of its unoccupied units are reserved for occupancy by at least one person 55 years of age or over.

Example 3: Waterfront Gardens is a 200 unit housing facility to be constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with the requirements of this section. Waterfront Gardens need not comply with the requirement in paragraph (a) of this section that at least 80% of the occupied units be occupied by at least one person 55 years of age or older per unit until 50 units (25%) are occupied. When the 50th unit is occupied, then 80% of the 50 occupied units (i.e., 40 units) must be occupied by at least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.

§ 100.316 Intent to provide housing for older persons.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity affirmatively demonstrates through credible and objective evidence that the housing satisfies the requirements of §§ 100.305, 100.306, 100.315 and 100.316 or 100.310, 100.315 and 100.316. Housing satisfies the requirements of § 100.316 if the owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(b) The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of § 100.316:

(1) The manner in which the housing facility is described to prospective residents.

(2) The nature of any advertising designed to attract prospective residents.

(3) Age verification procedures.

(4) Lease provisions.

(5) Written rules and regulations.

(6) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

Appendix A to Subpart E—Guidance on Defining Significant Facilities and Services

The guidance set out in this Appendix represents the Department's interpretation of the principles and requirements of the Fair Housing Act that require, in order for housing to qualify as housing for persons 55 years of age or older, that there must exist "significant facilities and services specifically designed to meet the physical or social needs of older persons."

The Department intends for the Appendix to serve as a resource document for housing providers and others in determining whether housing qualifies for the "housing for older persons" exemption. The Appendix illustrates the application of the factors that the Department will consider in making its determination. The Department will refer to the interpretive guidance in the Appendix when considering whether there is reasonable cause to believe that a discriminatory practice has occurred or is about to occur.

It should be clearly understood, however, that the examples provided in this Appendix are illustrative and presented in summary form. The examples are *not* intended to predetermine the Department's disposition on any actual case since more detailed facts and circumstances would have to be considered. Therefore, a claim from a housing provider that the operation of a particular housing development is an exact replica of one of the examples presented in this Appendix will not preclude the Department from commencing an investigation under the Fair Housing Act of an alleged discriminatory housing practice directed against an aggrieved person with familial status; nor will it preclude the Secretary from issuing a determination based upon the evidence obtained through such an investigation.

The Department may, from time-to-time, publish in the **Federal Register** additional or revised interpretive guidance which will be included in this Appendix.

BILLING CODE 4210-28-P

REGULATION	INTERPRETIVE GUIDANCE
100.304 55 or over housing. (a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, *provided that, at the time of an alleged violation of the Act or at any time that the exemption is asserted as a basis for allowing a practice that would otherwise be prohibited as discriminatory on the basis of familial status*, the housing satisfies the requirements of: (1) §§100.305, 100.306, 100.315 and 100.316; or (2) §§100.310, 100.315 and 100.316.	**100.304 55 or over housing.** This interpretive guidance applies to all of the requirements necessary to qualify for this exemption contained in §§100.305, 100.306, 100.310, 100.315 and 100.316. Qualification for the exemption requires providing credible and objective evidence that the facilities and services exist as of the date of an alleged violation of the Act or at any time that the exemption is asserted as a basis for allowing a practice that would otherwise be prohibited as discriminatory on the basis of familial status. To qualify as housing for persons 55 years of age or older, the housing must satisfy the requirement: o that it has facilities and services which are specifically designed to meet the physical or social needs of older persons (§100.305) that are significant (§100.306); or o that it is not practicable to provide significant facilities and services specifically designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons (§100.310).

REGULATION
100.304 (cont'd)

REGULATION	INTERPRETIVE GUIDANCE
100.304 (cont'd)	100.304 (cont'd) In addition, at least 80 percent of the units in the housing facility must be occupied by at least one person 55 years of age or older (§100.315); and, the housing owner or manager must publish and adhere to policies and procedures which demonstrate an intent to provide housing for persons 55 years of age or older (§100.316). Sections 100.305 and 100.306 provide a two-pronged test to determine whether a housing development provides significant facilities and services specifically designed to meet the physical or social needs of older persons: o First, each facility and each service must be *"specifically designed"* to meet the physical or social needs of older persons (§100.305). This is the first prong of the test. If a facility or service is not "specifically designed," it is not further considered. o Second, each facility or service that meets the requirements of the first prong is evaluated using factors aimed at measuring the extent to which it is *"significant"*. All these facilities are then judged in the aggregate and all these services are judged in the aggregate to determine if they are significant(§100.306). This is the second prong of the test.

REGULATION	INTERPRETIVE GUIDANCE
100.304 (cont'd) (b) With reference to complaints filed pursuant to the Act, this means that the person or entity claiming the exemption must affirmatively demonstrate through credible and objective evidence as of the date of the alleged violation of the Act or at any time that the exemption is asserted as a basis for allowing a practice that would otherwise be prohibited as discriminatory on the basis of familial status, that the housing meets the requirements of paragraph (a). (c) For purposes of §§100.305, 100.306, 100.310, 100.315 and 100.316 of this subpart, *"older persons"* means persons 55 years of age or older.	100.304 (cont'd) The burden of demonstrating that the "older persons" exemption applies rests on the party asserting the exemption. As is the case with other exemptions to civil rights statutes, and other exemptions under the Fair Housing Act (the Act), this exemption will be interpreted narrowly. A narrow construction of this exemption is intended to give full force and effect to the protection against familial status discrimination afforded by the Act.

REGULATION
100.304(c), (cont'd) For purposes of §§100.305 and 100.306, *"housing provider"* means: (1) the owner or manager of a housing facility; or (2) the owner or manager of the common and public use areas of a housing facility, where the dwelling units are individually owned.

28

REGULATION	INTERPRETIVE GUIDANCE
100.304(c), (cont'd) For purposes of §§100.305 and 100.306, *"housing provider"* means: (1) the owner or manager of a housing facility; or (2) the owner or manager of the common and public use areas of a housing facility, where the dwelling units are individually owned.	100.304(c), (cont'd) EXAMPLE 1 Vista Valley is a 250-unit apartment complex, owned by Vista Valley, Inc. and managed by Valley Management, Ltd. The housing providers, for purposes of §§100.305 and 100.306, are Vista Valley, Inc. and Valley Management Ltd. EXAMPLE 2 Mountain View Terrace is a 300-unit condominium complex consisting of one-and two-bedroom condominium units which are individually owned (by persons who reside in the units or rent the units to tenants). The Mountain View Terrace Condominium Association owns and manages the common and public use areas of Mountain View Terrace. The housing provider, for purposes of §§100.305 and 100.306, is the Mountain View Terrace Condominium Association.

REGULATION	INTERPRETIVE GUIDANCE
100.304(c), (cont'd)	100.304(c), (cont'd) EXAMPLE 3 Meadow Lakes is a planned community consisting of 390 single family detached houses which are individually owned (by persons who reside in the houses or rent the houses to tenants). The public and common use areas in Meadow Lakes are owned and managed by the Meadow Lakes Homeowners Association. The housing provider, for purposes of §§100.305 and 100.306, is the Meadow Lakes Homeowners Association. EXAMPLE 4 Chelsea Village is a 200-unit cooperative, owned by Chelsea Village Cooperative, Inc. and managed by the Chelsea Village Cooperative Board. The housing providers, for purposes of §§100.305 and 100.306 are Chelsea Village Cooperative, Inc. and the Chelsea Village Cooperative Board.

REGULATION
100.305 Specifically designed facilities and services. 100.305(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity asserting the exemption affirmatively demonstrates through credible and objective evidence that the housing has facilities and services specifically designed to meet the physical or social needs of older persons. In order to satisfy this paragraph, there must be more than one facility and more than one service specifically designed to meet the physical or social needs of older persons. Both facilities and services specifically designed to meet the physical or social needs of older persons must exist as of the date of an alleged violation of the Act or at any time that the exemption is asserted as a basis for allowing a practice that would otherwise be prohibited as discriminatory on the basis of familial status.

30

REGULATION	INTERPRETIVE GUIDANCE
100.305 Specifically designed facilities and services. 100.305(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the person or entity asserting the exemption affirmatively demonstrates through credible and objective evidence that the housing has facilities and services specifically designed to meet the physical or social needs of older persons. In order to satisfy this paragraph, there must be more than one facility and more than one service specifically designed to meet the physical or social needs of older persons. Both facilities and services specifically designed to meet the physical or social needs of older persons must exist as of the date of an alleged violation of the Act or at any time that the exemption is asserted as a basis for allowing a practice that would otherwise be prohibited as discriminatory on the basis of familial status.	**100.305 Specifically designed facilities and services.** 100.305(a) The Department believes the Fair Housing Act imposes a strict burden upon a person claiming the exemption to provide credible and objective evidence showing that the structures and amenities offered by the housing provider were designed, constructed or adapted to meet the particularized needs of older persons. In order to be considered as sufficient to qualify a housing facility for the exemption, the evidence must show the housing in question is clearly distinguished from the bulk of other housing in a particular area by the existence of those facilities and services which set the housing facility apart as housing intended and operated as housing for older persons. Absent such evidence, the familial status prohibitions of the Act will apply. (Also see discussion in guidance at §100.304(b)). The housing provider must have *facilities* that are specifically designed to meet the physical or social needs of older persons *and services* specifically designed to meet such needs, using the factors that are listed in §100.305. Because the language of the Act requires the existence of "*facilities and services* (in the plural, emphasis added) specifically designed to meet the physical or social needs of older persons", the Department will require *more than one* specifically designed facility and *more than one* specifically designed service.

REGULATION	INTERPRETIVE GUIDANCE
100.305(a), (cont'd)	100.305(a), (cont'd) EXAMPLE 1 Mobile Village is owned and managed by Mobile Properties, Inc., which transports residents twice a week to a local shopping center by use of a van. Mobile Village also provides health services on-site. The health services are located in a large trailer that visits Mobile Village on Mondays and Thursdays (on other days it is located at other developments owned by Mobile Properties). Both the transportation service provided by the van and the health care services provided in the mobile clinic would be considered services. The trailer in which the clinic operates would also be considered a facility. See interpretive guidance for §100.305(b)(3) for other examples of what constitutes a facility and what constitutes a service. Each facility and each service claimed must have been operable at the time an alleged discriminatory practice occurred. EXAMPLE 2 The Mountain Bluff Housing Authority has excluded persons on the basis of familial status since August 1, 1993, the date of the alleged violation of the Act. Mountain Bluff claims to have been exempt housing for older persons age 55 or older as of that date. In support of this claim, Mountain Bluff Housing provides records showing the following facilities and services:

REGULATION
100.305(a), (cont'd)
100.305(b)(1) In determining that a facility or service is "*specifically designed to meet the physical or social needs of older persons*", the Department will first consider whether the facility or service is readily accessible to and usable by older persons with mobility, visual and hearing impairments.

REGULATION	INTERPRETIVE GUIDANCE
100.305(a), (cont'd)	100.305(a), (cont'd) EXAMPLE 2, (cont'd) 1. pool - completed in 1987 2. club house - completed in 1988 3. congregate dining facility - completed July 1993 4. transportation service-organized August 15, 1993 5. medical lectures-organized September 9, 1993 The Department would consider facilities 1-3 but not services 4-5 in connection with Mountain Bluff's claim of qualification for the exemption, since the transportation service and medical lectures were not operable at the time the alleged discriminatory practice occurred.
100.305(b)(1) In determining that a facility or service is "*specifically designed to meet the physical or social needs of older persons*", the Department will first consider whether the facility or service is readily accessible to and usable by older persons with mobility, visual and hearing impairments.	100.305(b)(1) Congress recognized that older persons are likely to experience mobility, visual and hearing impairments--especially as they age--and will require certain features to meet those needs. The Committee stated, "While residents may be of generally good health when they enter a development, they are likely to experience a diminution of physical capacity as the years pass. This requires an environment which can accommodate the changing needs of such residents, and would typically include handrails along steps and interior hallways to reduce risk of falls, grab bars in bathrooms, routes that allow use of wheelchairs, canes and walkers, lever type doorknobs and single lever faucets." H.R. Rep. No. 711, 100th Cong., 2nd Sess., Pages 31-32 (1988) reprinted in 1988 U.S.C.C.A.N. 2173 [hereinafter House Judiciary Report].

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(1), (cont'd)	100.305(b)(1), (cont'd) Therefore, in order for a facility or service to be "specifically designed" for older persons, the Department requires exempt housing to be designed to meet the accessibility needs of the *current* older persons who are residents *and* expects the housing provider, to some extent, to meet the needs that an aging population will have (even where those needs are *not* currently present). To do otherwise, especially with respect to the needs of an aging population, could result in communities that are not currently accessible and usable to older persons with such impairments, thus discouraging them from seeking housing there. As a result, the Department has established accessibility as a threshold requirement which must be met in order for the Department to determine whether a facility or service is specifically designed for older persons, using factors set forth in 100.305(b)(2).

REGULATION
100.305(b)(1)(i) If the housing is a covered multifamily dwelling as defined in 24 CFR § 100.201 constructed for first occupancy and use after March 13, 1991, in order for a *facility* to satisfy §100.305(b)(1) it must meet the requirements of §100.205 of this part.

VOL 59 ISS 129 JL 7 1994 UMI

34

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(1)(i) If the housing is a covered multifamily dwelling as defined in 24 CFR § 100.201 constructed for first occupancy and use after March 13, 1991, in order for a *facility* to satisfy §100.305(b)(1) it must meet the requirements of §100.205 of this part.	100.305(b)(1)(i) With respect to facilities: covered multifamily dwellings for first occupancy after March 13, 1991, are already required by the Fair Housing Act to meet accessibility requirements (42 U.S.C. §3604(f)(3)(C); 24 C.F.R. §100.205) which cover dwelling units as well as public and common use areas. Other housing is not required by the Fair Housing Act to meet the accessibility requirements, but may be subject to accessibility requirements of laws such as Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, or state and local laws. The Department requires exempt housing to meet the accessibility requirements of the Fair Housing Act where the housing consists of covered multifamily dwellings for first occupancy after March 13, 1991 in order for the facility to meet the accessibility requirements of this paragraph. EXAMPLE 1 Golden Times Apartments, a multifamily elevator high rise apartment development, subject to the Fair Housing Act accessibility requirements, claims to be "housing for older persons." None of the residents of Golden Times have a mobility, visual or hearing impairment that prevents him or her from using any of the facilities and services in the development. The development supports its claim for exemption by the fact that the ground floor contains a room with a swimming pool and sauna. This room is separated from the lobby entrance by a stairway of six steps and a small landing, with a doorway that opens out.

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(1)(i), (cont'd)	100.305(b)(1)(i), (cont'd) EXAMPLE 1, (cont'd) The Department will not consider the swimming pool to be a facility that is specifically designed to meet the physical or social needs of older persons because it fails to meet the accessibility requirements of the Act. EXAMPLE 2 Silver Times Apartments, a multifamily elevator high rise apartment development subject to the Fair Housing Act accessibility requirements, claims to be "housing for older persons." None of the residents of Silver Times have any mobility, visual or hearing impairment that prevents him or her from using any of the facilities and services in the development. The development supports its claim for exemption by the fact that the ground floor contains a room with a swimming pool and sauna that meet the accessibility requirements of the Act. However, while the rental office meets the requirements of the Act, it does not meet certain requirements of Title III of the Americans with Disabilities Act (ADA), which apply to it. In determining whether the facility is "specifically designed to meet the physical or social needs of older persons, " the Department will consider only ~~the fact that the rental office meets~~ the accessibility requirements of the Act. However, where the Department is aware of violations of the ADA it will notify the Department of Justice.

REGULATION
100.305(b)(1)(i), (cont'd) In order for a *service* to satisfy §100.305(b)(1) the Department will consider whether older persons with mobility, visual and hearing impairments occupying units can readily access and use the service and the extent to which the service is designed to meet the mobility, visual and hearing impairments of an aging population. 100.305(b)(1)(ii) If the housing is *not* a covered multifamily dwelling as defined in 24 CFR § 100.201 constructed for first occupancy after March 13, 1991, in order for a facility or service to satisfy §100.305(b)(1) the Department will consider *whether older persons with mobility, visual and hearing impairments occupying units can readily access and use the facility or service*, and the extent to which the facility or service is designed to meet the mobility, visual and hearing impairments of an aging population.

36

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(1)(i), (cont'd) In order for a *service* to satisfy §100.305(b)(1) the Department will consider whether older persons with mobility, visual and hearing impairments occupying units can readily access and use the service and the extent to which the service is designed to meet the mobility, visual and hearing impairments of an aging population.	100.305(b)(1)(i), (cont'd) Since the accessibility requirements of §100.205 address structural features only, a multifamily dwelling that meets those requirements will satisfy the accessibility requirements of 100.305(b)(1) *only with respect to the facilities.* The requirements for a service are set forth in the remaining language of this paragraph. Even where the facilities of a development meet the Fair Housing Act Accessibility requirements, the services would be subject to a determination of whether current residents can access and use them and the extent to which they are designed to meet the mobility, visual and hearing needs of an aging population. The application of this standard is discussed in the analysis of §100.305(b)(1)(ii), below.
100.305(b)(1)(ii) If the housing is *not* a covered multifamily dwelling as defined in 24 CFR § 100.201 constructed for first occupancy after March 13, 1991, in order for a facility or service to satisfy §100.305(b)(1) the Department will consider *whether older persons with mobility, visual and hearing impairments occupying units can readily access and use the facility or service*, and the extent to which the facility or service is designed to meet the mobility, visual and hearing impairments of an aging population.	100.305(b)(1)(ii) The first part of this factor (see italics) addresses the needs of current older persons who are residents. If the housing does not consist of covered multifamily dwellings for first occupancy after March 13, 1991, it must meet the accessibility needs of the current older residents *and* must provide for changing needs of residents who may develop mobility, visual or hearing impairments and new applicants with mobility, visual or hearing impairments who move into the housing.

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(1)(ii), (cont'd)	100.305(b)(1)(ii), (cont'd) The Department believes that unless this level of accessibility is provided, older residents will not be able to benefit fully from the housing and older persons with mobility, visual or hearing impairments will be deterred from seeking the housing. EXAMPLE 1 Sylvan Park is a mobile home community established in 1975, claiming an exemption as "housing for older persons." Sylvan Park has rejected the application of a family with children to live in the community. None of the residents of the community have any mobility, visual or hearing impairments that prevent them from using any of the facilities and services in the community. The Park asserts that a club house in which the residents can hold group activities is a facility specifically designed to meet the physical or social needs of older persons. The club house cannot readily be accessed or used by a person with a mobility impairment. The Park has no contingency plan to build a ramp or otherwise make the club house accessible to persons with mobility impairments.

REGULATION
100.305(b)(1)(ii), (cont'd)

38

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(l)(ii), (cont'd)	100.305(b)(l)(ii), (cont'd) EXAMPLE 1, (cont'd) While this facility meets the requirements of the first part of this factor because current residents have no mobility, visual or hearing impairments, it would not be considered to be specifically designed to meet the physical or social needs of older persons. Because the facility is not designed to meet the mobility, hearing and visual impairments characteristic of an aging population, it would not meet the requirements of the second part of §100.305(b)(1)(ii) (see Example 5, below). EXAMPLE 2 Project Ancienne is a multifamily housing development formerly opened to families with children now claiming to be housing for older persons. Among its facilities is a club house. The club house does not meet the Fair Housing Accessibility Guidelines for new construction, does not meet the design and construction requirements of the Fair Housing Act, and is not subject to them. Management has widened the doorways of some club house entrances to allow passage by persons in wheelchairs and has provided grab bars in some bathrooms.

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(1)(ii), (cont'd)	100.305(b)(1)(ii), (cont'd) EXAMPLE 2, (cont'd) Since these changes, management can demonstrate that older residents with mobility, visual and hearing impairments make regular use of the leisure activities at the club house. The housing provider has also arranged with the local television station to provide closed captioning for the daily news and special programming. At bi-monthly educational seminars conducted in the club house, management has arranged with the Office of Vocational Rehabilitation for an interpreter to sign for the hearing impaired. Materials are reproduced in the large print or on audio tape. Residents may use tape players provided by management. These facilities and services would meet the requirements of §100.305(b)(1)(ii) due to the level of use by the current residents with mobility, visual and hearing impairments. (Note, in addition, management has taken steps to meet the future needs of older persons with mobility, visual and hearing impairments and ensured that the needs of current residents are met on a continuous basis.)

REGULATION
100.305(b)(1)(ii), (cont'd)

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(1)(ii), (cont'd)	100.305(b)(1)(ii), (cont'd) EXAMPLE 3 Deer Hill does not meet and is not required to meet the Act's design and construction requirements. However, management conducts periodic surveys regarding tenant requests for accommodations to their disabilities. They also take written and telephone requests from tenants for accessibility features they need to accommodate their changing needs. In response to a request from a new resident, Deer Hill, at its expense, installed a ramp at the front door to the club house. In response to a request from a tenant whose vision has deteriorated over time, management also distributes community notices in large print and provides a staff member to read notices and other community information to residents who request such a service. As a result, older residents with mobility, visual and hearing impairments are afforded ready access and extensive use of the facilities and services. Deer Hill would meet the requirements of §100.305(b)(1)(ii) because it meets the current needs of older persons who are residents and to a considerable extent it addresses the mobility, visual and hearing needs of older persons in general.

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(1)(ii), (cont'd)	100.305(b)(1)(ii), (cont'd) EXAMPLE 4 Deepwood Delta has facilities which do not meet and are not required to meet the Fair Housing Act's design and construction requirements. Management does not respond to the changing mobility, visual and hearing needs of its residents. It discourages older persons from making their needs known and ignores or stalls in responding to residents' requests for alterations to make facilities and services accessible and usable to them. As a result, older residents with mobility, hearing and visual impairments are denied access to and use of the facilities and services of Deepwood. Deepwood would not meet the requirements of §100.305(b)(1)(ii). Deepwood could also be in violation of the Act's requirements in several respects.
If the housing is *not* a covered multifamily dwelling constructed for first occupancy after March 13, 1991, in order for a facility or service to satisfy §100.305(b)(1) the Department will consider whether older persons with mobility, visual and hearing impairments occupying units can readily access and use the facility or service, *and the extent to which the facility or service is designed to meet the mobility, visual and hearing impairments of an aging population.*	The second part of this factor (see italics) addresses the mobility, visual and hearing impairments of an aging population.

REGULATION
100.305(b)(1)(ii), (cont'd)

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(l)(ii), (cont'd)	100.305(b)(l)(ii), (cont'd) EXAMPLE 5 Harbor House is a 100-unit single family housing development with common area facilities provided by a management company. Built in 1974, it is not covered by the design and construction requirements of the Fair Housing Act. Among the facilities available to residents are a club house and community rooms. Most entrances to the club house have been widened but do not meet the dimensions of the Fair Housing Act guidelines. Grab bars have been placed in many bathrooms, hand rails and ramps installed in some locations. Some public telephones are accessible and have volume controls and touch dials with large numbers. Management has also ensured that most common area facilities are accessible by providing curb cuts, accessible parking spaces, and walkways that are firm and slip-resistant. Management provides copies of periodicals and magazines in the large print for residents who ask for them. Staff is also available to read or write for older residents (presently, residents do not need this service). There is a large screen television in the club house where special programming and the news is provided on closed caption. Currently, there are no residents who are wheelchair-users. Recently, however, management has seen a steady increase in the number of residents with canes and walkers and others with visual impairments using the club house daily. The Department would determine that the facilities and services at Harbor House met the mobility, visual and hearing impairments of the aging residents (see second part of §100.305(b)(1)(ii)).

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(l)(ii), (cont'd)	100.305(b)(l)(ii), (cont'd) EXAMPLE 5, (cont'd) The club house and community rooms have been made accessible for use by all residents including those using canes and walkers. The widening of entrances, addition of grab bars in bathrooms, installation of hand rails and ramps are beneficial to aging residents. These accessible features are needed as residents age and mobility becomes more restrictive; the features will continue to be useful. Telephones with volume controls, reading materials available in large print, closed caption television and staff to read and/or write for older residents are efforts by management to meet the visual and hearing needs that exist in older persons as they age. Although the services of staff to read and/or write for older residents is not being used now, it will meet the future needs of older residents.
However, if the facility meets the Fair Housing Accessibility Guidelines for new construction, (24 CFR Ch.1, Subch. A, App. II), the facility will satisfy the requirements of this paragraph.	A facility that meets the Fair Housing Accessibility Guidelines for new construction (24 CFR Ch.1, Subch.A, App. II pp 942-43) will be considered by the Department to be accessible to and usable by older persons with mobility, visual and hearing impairments. This will be so whether or not the facility is covered under the design and construction standards of the Act.

REGULATION
100.305(b)(1)(ii), (cont'd)

44

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(1)(ii), (cont'd)	100.305(b)(1)(ii), (cont'd) The Department's use of the Fair Housing Accessibility Guidelines as a "safe harbor" for this purpose does not relieve a housing provider from complying with otherwise applicable accessibility requirements of any federal, state, or local law. EXAMPLE 6 A health clinic constructed in 1993 and located within Sunshine City, a community of single family detached homes, is available for use both by the public and the residents of this housing development. The design and construction requirements of §804(f)(3)(C) of the Fair Housing Act do not apply to this community because the development consists of detached dwelling units. The housing provider has chosen to comply with those accessibility standards in the design of the clinic in order to support a claim that it is a facility specifically designed to meet the physical needs of older persons. However, the design and construction of the clinic does not meet certain accessibility requirements of Title III of the Americans with Disabilities Act, which apply to this facility. In determining whether the facility is "specifically designed to meet the physical or social needs of older persons," the Department will consider only the fact that the clinic meets the accessibility requirements of the Act. However, where the Department is aware of violations of the Americans with Disabilities Act (ADA) it will notify the Department of Justice.

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2) If the requirements of paragraph (1) of this section are met, the Department will consider such factors as the following as relevant in determining whether a facility or service is "*specifically designed to meet the physical or social needs of older persons*":	100.305(b)(2) The ability to access and use a facility or service is a threshold requirement which must be met in order for the Department to determine whether a facility or service is "specifically designed" for older persons, using factors set forth in §100.305(b)(2). For example, a recreational facility may be fully accessible under the accessibility guidelines of the Act, and may be usable for activities that are *not* specifically designed for older persons. Likewise, a service may be fully accessible under the accessibility guidelines of the Act, but may not be specifically designed to meet the physical or social needs of older persons: (for example, child day care and teen counseling services). Therefore, the regulation sets forth additional factors that, among others, will be used to determine whether facilities and services that are accessible to and usable by older persons are "specifically designed" for them. Each situation will be considered on its merits to determine if, after applying the requirements of §100.305, the facilities or the services have been "specifically designed" to meet the physical or social needs of older persons. The Department expects that further experience under the Act will allow the promulgation of additional guidance to help in determining whether the intent of the regulatory requirements has been met.

REGULATION
100.305(b)(2)(i) The extent to which the facility or service benefits the *current* and *future* health, safety or leisure needs of an aging population.

46

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(i) The extent to which the facility or service benefits the *current* and *future* health, safety or leisure needs of an aging population.	100.305(b)(2)(i) The House Judiciary Committee recognized the physical or social needs of older persons. The Committee also recognized that those needs may change over time, as the older person population ages. The Committee described the needs of an older population as follows: "As the President's Commission on Housing recently stated, the frailties of old age need not result in institutionalization if accessible housing and adequate services are available (citation omitted). Earlier, the President's Task Force on Aging noted the period of independence of older persons may be extended and the quality of their lives enhanced through the provision of limited supportive services in apartments and villages designed especially for their use". (House Judiciary Report, Pages 31-32). This factor focuses upon the extent to which a facility or a service addresses the health, safety or leisure needs of an existing population which will age, with increasing needs of this kind. A facility or service designed to meet *both* current and increasing needs is more likely to be recognized as one that is "specifically designed" for older persons.

47

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(i), (cont'd)	100.305(b)(2)(i), (cont'd) The housing provider may utilize any credible and objective evidence (e.g. recent correspondence to residents indicating the availability of a facility or service, minutes of tenant association or housing development board meetings, or other objective evidence) to support its claim that the facilities and services that existed at the time of the alleged discrimination meet the needs of older persons who are residents. In any case, the Department will consider any other evidence it deems appropriate to its determination. The Department believes that surveys are only of limited value in demonstrating whether the needs of older persons were met at the time of the alleged violation and that reliance on surveys would bring with it a potential for abuse. Residents may face increased assessments, rents, or other charges to support facilities or services designed to meet their needs. Therefore, the fact that the residents of a housing facility have indicated, through surveys, that they do not need or want facilities or services specifically designed to meet the physical or social needs of older persons does not change or lessen the necessity that the requirements of Sections 100.305 and 100.306 be met. When determining whether to consider a resident survey, the factors the Department will apply include: o The manner in which a survey is conducted (the number of older residents who participated in the survey; how long residents had to respond, how responses were collected); o How recent is the survey; o Was there more than one survey and, if so, the frequency of the surveys; and o Whether the housing provider, as a result of the survey(s), added or modified facilities or services to respond to residents' needs.

REGULATION
100.305(b)(2)(i), (cont'd)

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(i), (cont'd)	100.305(b)(2)(i), (cont'd) EXAMPLE 1 John and Mary purchased their unit when their children were ages two and six. They lived in a 150-unit multifamily complex. Over time, all of the children left this development and the housing provider took actions to accommodate an older population. o Congregate dining services were provided and therapeutic aerobics classes were scheduled daily. o Tennis courts were adapted and outfitted with rest areas, benches with trees for shade, and water fountains. o Care giver groups and alzheimer's support groups were provided by management. o Safety precautions were added, which included brighter lighting for the hallways and laundry room. Most of the residents are active and healthy adults. Only a few of the current residents have a need for specialized medical care and relatively few use the convenience of the congregate dining room. The Department would determine that management's actions to provide for current and future tenants' needs meet the requirements of this factor: o Congregate dining services and aerobics exercise classes would be given substantial weight as they benefit both the current and future health and leisure needs of older persons. o Although caregiver and alzheimer's services are needed by only a small number of residents, the housing provider assured that this service was available to meet their needs, as well as the future needs of the aging residents of this housing.

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(i), (cont'd)	100.305(b)(2)(i), (cont'd) EXAMPLE 1, (cont'd) o Adapting the tennis courts to insure that older residents were able to comfortably enjoy playing tennis would be given substantial weight in this case; and o Assuring that walkways are properly lighted would be viewed favorably as a factor in meeting the needs of older persons in general. EXAMPLE 2 Nautylus Apartments offers a swimming pool which has no shady area in or around the pool, does not provide chairs around the pool for the use of residents (residents must carry their own chairs to the pool), does not have an accessible route into the pool area or into the pool, and is not proximate to a water fountain. The pool is only open 11:00 a.m. -8:00 p.m. on Saturday, Sunday, and holidays, and after regular working hours on Monday through Friday (5:00 p.m. - 8:00 p.m.). Pysces Apartments, on the other hand, offers a swimming pool that is accessible to persons with mobility impairments, has chairs and tables with umbrellas around it where residents socialize and play mahjongg, and has a functioning water fountain. The pool is open during the day both during the week and on the weekend. In addition, a water aerobics course is given that is primarily designed for senior citizens. The Nautylus Apartments pool is a facility that would not meet this factor. In contrast, the Pysces Apartments pool would.

REGULATION
100.305(b)(2)(i), (cont'd)

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(i), (cont'd)	100.305(b)(2)(i), (cont'd) EXAMPLE 3 The Tranquil Acres housing development is located in a warm climate (in the southern or southwestern part of the United States). The provider has identified a swimming pool and recreational center as two facilities that qualify as specifically designed to meet the physical or social needs of older persons. The pool is equipped with a whirlpool, and there are specific physical therapy exercises for "tennis elbow" and "arthritic elbow". Arts and crafts classes, dancing, and counseling for bereaved spouses are just some of the activities that are held in the recreation center. Classes are held both in the mornings and evenings. The classes in the morning are geared to older persons. The housing provider has also made available a 24-hour, seven days a week attendant service to respond to general medical emergencies of residents. The housing provider prints and distributes a monthly newsletter that lists various types of activities/services that are of interest to an older population.

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(i), (cont'd)	100.305(b)(2)(i), (cont'd) EXAMPLE 3, (cont'd) Even though the pool is used by all persons, there are services offered in conjunction with this facility that would benefit both older persons (arthritic elbow) and persons generally (tennis elbow). The whirlpool has hot air jets which relieve pain and soreness in muscles and joints. This is a medical aid to older persons and a source of recreation and enjoyment for all. The recreation center also has activities that are beneficial to older and younger persons. In addition, the housing provider has focused on the need to schedule activities at times that are conducive to the respective audiences. During the day, older persons are generally more available and have more leisure time. Therefore, the Department would consider these facilities and services to meet the requirements of this factor because they meet the current and future needs of an aging population.
100.305(b)(2)(ii) Whether a housing provider has published and adhered to policies and procedures which demonstrate an intent by the housing provider not only to comply with all requirements of law governing discrimination against persons with disabilities, but, even in circumstances not otherwise required by law, to make, at the housing provider's expense, reasonable alterations, modifications and accommodations to facilities and services to make them accessible to persons with disabilities who become or who are residents.	100.305(b)(2)(ii) EXAMPLE 1 The Concourse Creek is a 150 unit housing development. Management of Concourse Creek provides regular transportation service to a local medical clinic, once a day delivery of nutritious meals, and homemaker service, as requested. None of the residents of Concourse Creek is disabled. This provision is intended to assure (1) that future applicants who are older persons who apply to a development with facilities and services that do not presently meet the accessibility requirements of the applicant are not dissuaded from seeking residence and (2) that the provider meets its obligation to provide those needs except where it would be unreasonable to do so.

REGULATION
100.305(b)(2)(ii), (cont'd) The policies and procedures must ensure that as the needs of older persons currently residing in the housing change and as new residents move into the housing, the housing provider will respond to those changing needs. A statement of these policies and procedures shall be provided to residents and applicants for housing.

VOL 59 ISS 129 JL 7 994 UMI

52

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(ii), (cont'd) The policies and procedures must ensure that as the needs of older persons currently residing in the housing change and as new residents move into the housing, the housing provider will respond to those changing needs. A statement of these policies and procedures shall be provided to residents and applicants for housing.	100.305(b)(2)(ii), (cont'd) EXAMPLE 1, (cont'd) One person was particularly attracted to Concourse Creek due to its advertisement which stated: You can consider Concourse Creek the place to live--Today and Tomorrow. We will make any reasonable accommodation to assure that individuals with disabilities can fully enjoy their home and to provide all facilities and services on the same basis to disabled individuals as non-disabled persons. Contact Jane Lawson to learn about the wide range of adaptable features that are available to all of our clients. A similar commitment is provided as part of all applications and lease agreements. In this instance actions taken by the housing provider would meet this factor. The advertisement clearly reflects the intent of the housing provider to modify the housing based upon the needs of both residents and applicants.

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(iii) The extent to which the housing provider has taken meaningful steps to make available an off-site facility or service which would otherwise be unavailable to older persons who are residents of the housing facility.	100.305(b)(2)(iii) Situations may arise where a housing provider makes use of a service or facility that is not located within the development. While the Act does not prohibit consideration of such services or facilities as specifically designed to meet the physical or social needs of older persons, in addition to the other factors, the provision of this kind of service or facility would be evaluated with respect to the extent to which the housing provider made an otherwise unavailable facility or service available to older persons who are residents of the housing development, thus setting it apart from other communities that make use of the facilities. The Department believes that when a housing provider uses generally available services and facilities that are used by others in the same geographic location such use does not tend to set a specific community apart as housing for older persons. If such use was considered within the meaning of the regulation, any community could claim the right to discriminate against families, assuming it met the other requirements of this regulation, all citing the provision of identical or similar facilities and services. This would broaden the exemption beyond the intent of the statute. EXAMPLE 1 Cactus Colonials is a single family development, claiming to be housing for persons 55 years of age or older, with common ownership of certain facilities. A management company provides common maintenance similar to that provided at other, non-exempt housing. The development is located 5 miles from the nearest commercial center and there is no public transportation available. The management provides free transportation

REGULATION
100.305(b)(2)(iii), (cont'd)

54

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(iii), (cont'd)	100.305(b)(2)(iii), (cont'd) EXAMPLE 1, (cont'd) to the commercial center by means of vans, driven by employees of management. Vans shuttle back and forth every two hours, picking up residents at their door and dropping them off at the commercial center. Some vans include wheelchair lifts. No other housing provides such transportation services. The commercial center contains a library, health services and a senior citizens center. Accordingly, only where the facilities or services are otherwise unavailable and where the housing provider has taken meaningful steps to make them available, will they be considered for purposes of meeting this factor.

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(iii), (cont'd)	100.305(b)(2)(iii), (cont'd) EXAMPLE 1, (cont'd) The facilities and services provided at the commercial center would qualify for consideration as to whether they are specifically designed only because they are otherwise unavailable to residents and are being made readily available to the older persons residing in the housing development through the meaningful steps taken by the management. The facilities or services at the commercial center are 5 miles away and there is no public transportation. Thus, they are not readily available to the residents of Cactus Colonials without the support of management.
100.305(b)(2)(iv) The extent to which a service, or services, specifically designed to meet the physical or social needs of older persons is provided in connection with the facility.	100.305(b)(2)(iv) In considering whether a facility is "specifically designed" to meet the physical or social needs of older persons, the Department will consider the services that are carried out in the facility in question. Where a facility, even those fully accessible within the meaning of the Fair Housing Accessibility Guidelines (24 CFR Ch.1, Subch. A, App. II), is utilized for several different purposes, it is more likely that the

REGULATION
100.305(b)(2)(iv), (cont'd)

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(iv), (cont'd)	100.305(b)(2)(iv), (cont'd) Department will determine that the facility is "specifically designed" for older persons if services that take place there clearly are "specifically designed" for older persons. EXAMPLE 1 The owner of the Happy Horizons has taken steps to provide the following services: o Happy Horizons has a fully accessible club house with a swimming pool and congregate dining. Meals in the congregate dining facility are prepared based on the nutritional information that is shared at monthly seminars. o Space is also made available on the second floor to provide for medical services where doctors, including a specialist in Gerontology, visit weekly on Tuesday and Thursday. o Services include medical screening for blood pressure, eye examinations, cholesterol and diabetes testing -- with referral to pre-identified sources for more comprehensive care. o Management also contracts with the local wellness clinic to provide monthly seminars on such conditions as Alzheimer's disease, colon, prostate and uterine cancer, osteoporosis, cataracts and glaucoma.

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(iv), (cont'd)	100.305(b)(2)(iv), (cont'd) EXAMPLE 1, (cont'd) o Staff of Happy Horizons provide supervised exercise classes that include a walk club and very-low impact aerobics designed to stimulate the heart and some exercises recommended by the National Arthritis Foundation to help relieve stress in joints. While the presence of the swimming pool would not be sufficient for the club house to meet this factor, the club house would meet this factor due to the arrangements made by the housing provider for services to be provided at the club house. While medical care and services to provide information on eye problems, cholesterol and diabetes are potentially of interest to older and younger persons alike, these services address physical needs of older persons because they relate to diseases and health problems common among older persons. Supervised exercise classes address both the physical and social needs of older persons. Low-impact aerobic exercise classes may also be of particular benefit to older persons with blood circulation problems or arthritic problems. These activities not only provide the opportunity for social interaction between residents they also focus on matters and issues of a primary concern to older persons. Provision of the congregate dining room and regular seminars on nutrition are services that are routinely requested and needed by older persons. The presence of services that are clearly designed for older persons results in the club house meeting this factor.

REGULATION
100.305(b)(2)(iv), (cont'd)
100.305 (b)(3) The types of facilities and services provided in Section 202 "Supportive Housing for the Elderly" (24 CFR part 889) are the types of facilities and services that would meet the physical or social needs of older persons in general.

VOL 59 ISS 129 JL 7 994 UMI

58

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(2)(iv), (cont'd)	100.305(b)(2)(iv), (cont'd) EXAMPLE 2 In contrast to Happy Horizons, Morose Manor offers a club house with nothing in it except a pool table and card table with a few chairs. The only organized activity that occurs in the club house is a semi-annual pool tournament arranged by a group of the residents. Since there are no services offered at the club house, it would not satisfy this factor.
100.305 (b)(3) The types of facilities and services provided in Section 202 "Supportive Housing for the Elderly" (24 CFR part 889) are the types of facilities and services that would meet the physical or social needs of older persons in general.	100.305 (b)(3) The House Judiciary Report page 32 set forth examples of facilities and services that are specifically designed to meet the physical or social needs of older persons, and the Report also referred to Section 202(f) of the Housing Act of 1959, 12 U.S.C. 1701q. However, these were intended as examples, not as an exclusive list. The following expands the list of facilities and services cited by Congress. Listed below are examples of the types of facilities and services that would meet the physical or social needs of older persons. This list is merely illustrative and each service or facility must be evaluated using factors set forth in Section 100.305(b) to determine if it qualifies as "specifically designed" to meet the physical or social needs of older persons. (Items 1-4 are facilities and items 5-14 are services).

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(3),(cont'd) However, these do not constitute the exclusive set of facilities and services that the Department will consider in determining whether a facility or service is "*specifically designed* to meet the physical or social needs of older persons."	100.305(b)(3),(cont'd) 1. adult day health facilities; 2. outpatient treatment facilities; 3. congregate dining facilities; 4. community rooms and workshops; 5. social and recreational programs; 6. information, referral, counseling and support services for diseases such as Alzheimer's Disease, colon, uterine and prostate cancer, osteoporosis, cataracts, and strokes; 7. counseling and support services for bereaved spouses; 8. delivery of health, recreational, homemaker, nutritional services (groceries, prepared meals); 9. exterior maintenance services; 10. emergency and preventive health care or programs that address the health concerns of an aging population; 11. provision of transportation to facilitate access to on-site and off-site medical/health, social and recreational facilities and services; 12. services that encourage and assist older residents to use the services and facilities available to them in the housing facility as well as in the community in general; 13. non-mandatory modifications to exteriors and interiors of individual dwelling units at a housing provider's initiative and expense in order to make such units readily accessible to and usable by older persons with mobility, visual or hearing impairments; 14. an overall physical environment that is readily accessible to and usable by older persons with mobility, visual and hearing impairments.

REGULATION
100.305(b)(3), (cont'd)

60

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(3), (cont'd)	100.305(b)(3), (cont'd) EXAMPLE 1 The Department will consider actions taken by a housing provider to make individual units accessible to and usable by persons with mobility, visual and hearing impairments to be a service "specifically designed" for older persons (See Item 13, above). The Uniform Towers Apartments has modified the units of the development in the following manner: o the kitchen appliances were adapted for use by individuals who use wheelchairs; o water closets (toilets), bathtubs or showers were outfitted with reinforced walls, grab bars and single lever faucets; o smoke detectors with special light signals were added to units to assist persons with hearing impairments; o heat sensors were installed in kitchens to indicate excessive heat around kitchen stoves; and o doors were widened. The Department would consider the actions taken by the housing provider to be a service "specifically designed" to meet the physical or social needs of older persons since it goes beyond any other requirements of the Fair Housing Act or its implementing regulation.

REGULATION	INTERPRETIVE GUIDANCE
100.305(b)(3), (cont'd)	100.305(b)(3), (cont'd) The Department will consider actions by a housing provider to make the overall physical environment of a community accessible to and usable by persons with mobility, visual and hearing impairments to be a service "specifically designed" to meet the physical or social needs of older persons when not otherwise required by law, unless the law is intended to benefit the elderly. When the law is intended to benefit the elderly, the actions will be considered because these actions are specifically designed to meet the needs of older persons. To be so considered, the housing provider must seek to make the *community as a whole accessible* to persons with such impairments, not merely individual services and facilities. EXAMPLE 2 Section II of the Uniform Towers Apartments was first occupied on February 20, 1990. In January 1991, all common areas were redesigned with new features which typically included hand rails along steps and interior hallways, accessible ground floor routes including curb cuts, and lever type door knobs. In this instance, the Department would consider the actions of the housing provider to be a service "specifically designed" to meet the physical or social needs of older persons.

REGULATION
100.306 Significant facilities and services. 100.306 (a) The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit *provided that* the person or entity asserting the exemption affirmatively demonstrates through credible and objective evidence that the facilities and services specifically designed to meet the physical or social needs of older persons are "*significant*". 100.306(b). In determining whether the facilities and services offered as specifically designed to meet the physical or social needs of older persons are significant, the Department will consider, *in the aggregate*, all facilities and services that meet the requirements of §100.305.

62

REGULATION	INTERPRETIVE GUIDANCE
100.306 Significant facilities and services.	**100.306 Significant facilities and services.**
100.306 (a)	100.306(a)
The provisions regarding familial status in this part shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit *provided that* the person or entity asserting the exemption affirmatively demonstrates through credible and objective evidence that the facilities and services specifically designed to meet the physical or social needs of older persons are "*significant*".	See discussion in guidance at §100.304(b).
100.306(b)	100.306(b)
In determining whether the facilities and services offered as specifically designed to meet the physical or social needs of older persons are significant, the Department will consider, *in the aggregate*, all facilities and services that meet the requirements of §100.305.	This factor describes the Department's process for reaching a final determination regarding the overall "significance" of the facilities and services provided by the housing provider. The Department will examine all facilities collectively and all services collectively to determine if they meet the requirements of §100.306. Prior to the Department making a determination with respect to significance required by this section, the facilities and services will have had to qualify as being "specifically designed" to meet the physical or social needs of older persons pursuant to §100.305.

REGULATION	INTERPRETIVE GUIDANCE
100.306(b),(cont'd)	100.306(b),(cont'd) Only those facilities and services that meet the requirements of "specifically designed" as set forth in §100.305 are evaluated for their significance in making a determination of whether, in the aggregate, the facilities and services are "significant". The process involves two stages. o First, the Department will apply the factors described in §§100.306(c)(1) through 100.306(c)(6) to evaluate each facility; then o the Department will *aggregate* all such facilities to determine collectively if they are "significant". The same process will be applied to all of the services made available by the housing provider that have been determined to be specifically designed to meet the physical or social needs of older persons as set forth in §100.305(b).
100.306(c) The Department will evaluate each facility or service that meets the requirements of §100.305 by the following criteria to determine whether the facilities in the aggregate and the services in the aggregate are *"significant"*:	100.306(c) The Department will weigh each facility and each service against the following six criteria, set forth in §§ 100.306(c)(1) through 100.306(c)(6):

REGULATION
100.306(c),(cont'd)

64

REGULATION	INTERPRETIVE GUIDANCE
100.306(c),(cont'd)	100.306(c),(cont'd) 100.306(c)(1) The extent to which a facility or service offered by a housing provider to residents is not customarily offered to residents of comparable housing (other than housing for older persons) in the relevant geographic area. 100.306(c)(2) The extent to which a facility or service can accommodate the older population of the housing facility. 100.306(c)(3) The extent to which the facility or service is of benefit to older persons. 100.306(c)(4) The extent to which a facility or service is actually used by older persons who are residents. 100.306(c)(5) The extent to which the facility or service is provided by the housing provider rather than by others. 100.306(c)(6) Whether a facility or service is NOT one that is required by a law. This determination is made in the aggregate. When a facility or service, viewed alone, does not appear to have substantial merit under the preceding factors, the housing provider may demonstrate that, nevertheless, the facilities and services, *in the aggregate*, are "significant" and that they meet the requirements of this part.

REGULATION	INTERPRETIVE GUIDANCE
100.306(c),(cont'd)	100.306(c),(cont'd) EXAMPLE 1 The owner of the Little Coast housing development manages a 25 lot mobile home park occupied primarily by retired military personnel. It is located near a military base. The park provides assistance, as needed, to a few residents who have difficulty with light household tasks to help them maintain independent living. The major service provided by the park is regular and dependable bus transportation to the local military base where the residents have access to a heated pool, physical therapy, use of a clinic and other services at a minimum cost to the residents. Standing alone, the service provided by the management on an "as needed" basis would not be significant. However, in evaluating all of the services, the Department would consider whether the household assistance services and any others, *in the aggregate*, are significant in meeting the needs of the older residents.

REGULATION
100.306(c)(1) The extent to which a facility or service offered by a housing provider to residents is not customarily offered to residents of comparable housing (other than housing for older persons) in the relevant geographic area.

VOL 59 ISS 129 JL 7 1994 UMI

REGULATION	INTERPRETIVE GUIDANCE
100.306(c)(1) The extent to which a facility or service offered by a housing provider to residents is not customarily offered to residents of comparable housing (other than housing for older persons) in the relevant geographic area.	100.306(c)(1) This factor compares facilities or services offered by a provider claiming an exemption to those offered by a non-exempt provider of similar housing in the same community. Where the services are not customarily offered by such a non-exempt provider, it is more likely that they are specifically designed for older persons. The evaluation of the facilities and services offered at one type of housing is made (in addition to the other factors) in relationship to or in consideration of the presence or absence of facilities and services at the same type of housing (e.g. mobile home park, high rise condominium, single family detached housing developments, etc.). Housing which meets the requirement of the exemption should be unique for the type of housing which is offered. The Department stresses that there is no indication in the Act or its legislative history that Congress intended that only the most expensive housing, with the most expansive and expensive facilities and services, should qualify for the exemption. Housing in all affordable categories may offer the types of facilities and services for older persons which make that housing unique for the class of persons who can afford that housing. Furthermore, the weight given to a specific facility or service may vary depending upon the type of housing being offered. This determination is made by comparing the housing being offered as housing for older persons to other housing of similar type, size and cost of lease or purchase not claiming the exemption, and evaluating the facilities and services being offered to meet the requirements of the exemption. Therefore, mobile home communities seeking the exemption would be compared to other mobile home communities not seeking to be exempt. Luxury elderly residential communities would be compared to luxury non-elderly complexes.

REGULATION	INTERPRETIVE GUIDANCE
100.306(c)(1), (cont'd)	100.306(c)(1), (cont'd) EXAMPLE 1 The Midway Heights Mobile Home Park has hook-ups for twenty mobile home units. The owner of the Midway Park recently added paved driveways and lighting at the main gate and throughout the park near most of the lots. The park also provides a daily van service to the city recreation department building where most of the park's residents participate in the golden age noon meal program. The recreation center is close to "First Stop Urgent Care Center" which treats minor illnesses and injuries and provides an assessment of many medical problems that are common among senior citizens. The Midway Park van service makes regular scheduled stops at both the recreation center and the medical facility. The Sunrise Mobile Home Park located in a nearby town is about the same size ~~as~~ Midway Heights (18 lots). Sunrise has no on-site facilities and does not hold itself out as housing for older persons. Big Lot Park a 200 unit luxury mobile home park in the community also provides van services and provides extensive medical facilities for its older residents. Big lot does not hold itself out as housing for older persons. In this example, the Department would give considerable weight to the steps taken by the owner of the Midway Park to ensure that services that are otherwise unavailable to the older residents of the park are made available to them. While the services available at Midway Heights Mobile Home Park are also available at other communities not qualifying for the exemption, the Department's conclusion is based on the comparison between Midway and Sunrise, the housing communities that are of similar type, cost and size.

REGULATION
100.306(c)(1)

68

REGULATION	INTERPRETIVE GUIDANCE
100.306(c)(1)	100.306(c)(1) EXAMPLE 2 Green Acres, a 100 unit condominium development, holds itself out as housing for persons 55 years of age or older. Management at Green Acres performs all outdoor maintenance and the upkeep of all common areas. Green Acres provides cleaning services for resident units and a congregate dining room. Other condominium developments in the community that house families with children also perform all outdoor maintenance and upkeep of common areas. However, they do not provide housekeeping services and a congregate dining facility is not available. In this instance the Department would determine that the services provided at Green Acres meet this factor because they are not provided customarily at other housing in the community which does not hold itself out as housing for older persons. EXAMPLE 3 Metropolitan Manor is a small 20 family townhouse development located in a small town in New England. During the winter, the management of Metropolitan Manor plows the common walks and drives in the development, but not individually owned driveways, stoops or walkways. All of the large housing developments in this town (50 family or more) offer the same service, regardless of whether they are housing for older persons or not. However, Metropolitan Manor is the only small development to offer snow service.

69

REGULATION	INTERPRETIVE GUIDANCE
	The service of snow removal from common walks and driveways would meet this factor. The service in this instance is being compared to the same type of housing (small developments).
100.306(c)(2) The extent to which a facility or service can accommodate the older population of the housing facility. The capacity of each facility or service specifically designed to meet the physical or social needs of older persons depends upon *but is not limited to* such factors as: (i) the size of the facility or scope of the service offered; (ii) the length of time during which the facility is made available or the service is offered; (iii) the frequency with which the facility is made available or the service is offered; and (iv) whether the facility or service is offered only at one location or there are a number of locations at which the facility is made available or at which the service is offered.	100.306(c)(2) An important factor in determining whether facilities and services *in the aggregate* are "significant" is the extent to which the housing provider has taken steps to ensure that each facility or service can accommodate the older population of the housing facility. EXAMPLE 1 The Everready housing development is a seventy (70) unit housing complex consisting of one-hundred-fifty (150) residents located in Winona, Virginia. More than 82 percent of the housing complex population is elderly. The housing provider maintains a multi-purpose room which is used by nearly all of its residents. Recreational activities, educational seminars and some clinical screening services are conducted in the room in accordance with a schedule maintained by the housing provider. Several different seminars may be conducted simultaneously. Approximately fifty (50) to seventy-five (75) persons attend the sessions whenever conducted. Because the room capacity is 100, schedules are posted weekly in order for the residents to register in advance of each session. Management monitors the registration sheets and schedules extra sessions when necessary.

REGULATION
100.306(c)(2), (cont'd)
100.306(c)(3) The extent to which the facility or service is of benefit to older persons, given the climate and physical setting of the housing facility.

REGULATION	INTERPRETIVE GUIDANCE
100.306(c)(2), (cont'd)	100.306(c)(2), (cont'd) EXAMPLE 1, (cont'd) In this example, the Department would conclude that there is sufficient capacity to make the facilities and the services available to the residents who are age 55 or older. Generally, the greater the number of older persons who are residents, the greater must be the capacity of each facility or service to meet the physical or social needs of older persons. Flexibility and planning to accommodate the number of older persons who need the facility or service is the key. The Department would take note of the fact that the housing provider has planned a flexible schedule to ensure that the services are available to the residents who request them. Use of a flexible schedule also makes maximum use of the limited space in the facility.
100.306(c)(3) The extent to which the facility or service is of benefit to older persons, given the climate and physical setting of the housing facility.	100.306(c)(3) The geographic location of the housing development is one of several relevant factors in assessing whether the facilities and services are "significant". The facility and service must be designed to be useful given the overall setting surrounding the housing. Aspects of location to be assessed include: o whether the facilities or services are designed to be useful given the climate, (i.e. snow removal service may be useful in Chicago but is not in Miami); o whether the facilities or services are designed to be used in an urban or rural area (i.e., certain security features or services may be more useful in urban settings than in rural settings).

REGULATION	INTERPRETIVE GUIDANCE
100.306(c)(3), (cont'd)	100.306(c)(3), (cont'd) EXAMPLE 1 The Tropical Lake housing development located in Key West, Florida offers the service of snow shoveling the driveways, walks and stoops of older residents so that they do not have to exert themselves. The Sideway Plaza housing development located in Ithaca, New York offers the same service. The service of snow removal meets this factor in Ithaca, New York because, given the climate, it is likely to be used frequently. However, the service would not meet this factor in Key West, Florida, because, given the climate, it is unlikely to be used. EXAMPLE 2 Project Enliven offers a walking trail around the exterior of the complex. Project Enliven is in a high crime area and does not offer any security measures for the protection of residents using the walking trail such as a fence or panic buttons. At night the trail is poorly lit. The owner of Project Enliven has received complaints from older residents who were accosted on the walking trail. In contrast, Project Heavenly Home offers the same facility but affords some security protection and the trail is well lit. Project Enliven's walking trail would not receive much weight under this factor. Project Heavenly Home's walking trail would receive substantially more weight under this factor.

REGULATION
100.306(c)(4) The extent to which a facility or service is actually used by older persons who are residents.

REGULATION	INTERPRETIVE GUIDANCE
100.306(c)(4) The extent to which a facility or service is actually used by older persons who are residents.	100.306(c)(4) Actual use is a relevant factor in evaluating each facility or service specifically designed to meet the physical or social needs of older persons. The Department, in its evaluation as to the significance of a housing development's facilities and services, will weigh heavily facilities or services that are used extensively. Conversely, if a facility or service is seldom used by older residents, it would receive little weight under this factor. EXAMPLE 1 Every year, the housing provider receives a grant from a local musical organization to sponsor classical music concerts and other bi-monthly events at the Moorezart housing complex. In addition to these events, bingo and other card games are held in the multi-purpose center every Wednesday night. However, less than five percent of the residents participate in these activities. The services provided in this example would get little weight under this factor.

REGULATION	INTERPRETIVE GUIDANCE
100.306(c)(4), (cont'd)	100.306(c)(4), (cont'd) EXAMPLE 2 The Crosslands housing development claims, pursuant to a HUD investigation, that it offers transportation services to any resident upon request. On further probing, it is determined that the transportation service which exists is that residents may call the manager and if she is free, she will drive them wherever they want to go. The use of this service is at best sporadic. Many residents are not even aware that such a service exists. Therefore, this transportation service would get little weight under this factor. In contrast, the Cozzy Corner housing development provides regular transportation services to and from a local medical center, a shopping center with a supermarket, cleaners, a bank, and a senior citizens center. A handicap accessible shuttle van runs twice a day, back and forth, to each of these locations and with 24-hour advance notice accommodates residents who wish transportation to other nearby locations. The housing provider is able to document extensive use of these transportation services by the residents, most of whom do not drive their own cars. This service would get great weight under this factor. Use by non-residents: Facilities and services specifically designed to meet the physical or social needs of older persons that are made available to non-residents (including non-residents who are not older persons), would not be excluded. However, when they are made available to non-residents, the extent to which residents who are older persons use the facilities or services, and the extent to which non-residents who are older persons use the facilities and services will weigh heavily in the evaluation.

REGULATION
100.306(c)(4), (cont'd)

REGULATION	INTERPRETIVE GUIDANCE
100.306(c)(4), (cont'd)	100.306(c)(4), (cont'd) EXAMPLE 3 o The swimming pool at the Seagate Apartments is adapted with grab bars and other accessible features. The housing provider has arranged for regular training in special therapeutic aerobic sessions for the elderly population. o The pool is open to both residents and non-residents. A schedule limits the use of the pool by non-residents who are not older persons to afternoon hours between 3:00 p.m. and 6:00 p.m. Because space is not a problem, elderly non-residents use the pool at any time and it is never over its capacity. In this instance, the facility would receive a favorable evaluation for this factor. The housing provider has the means to determine who is using the facility and to make adjustments where necessary to assure that older persons are the prime beneficiaries of the facility. EXAMPLE 4 There is a golf course on the premises of the All Around Housing Place. Although the course is used by many of the older residents, the course has excess capacity. Management opens up use of the course to non-residents who are charged a golf membership fee. The fact that the course is opened up to outsiders would not preclude the course from being evaluated favorably, assuming it meets the other factors, but it would lessen the weight it would receive under 100.306(c)(3).

REGULATION	INTERPRETIVE GUIDANCE
100.306(c)(4), (cont'd)	100.306(c)(4), (cont'd) EXAMPLE 5 There is a concert hall at the All Around Housing Place which attracts nationally known performers. Tickets are not made available to residents at the housing facility on a preferential basis. Rather, large blocks of the tickets are reserved by local corporations for their employees and clients. Much of the time, residents are unable to get tickets to events at their own facility. The concert hall would not receive weight under this factor. EXAMPLE 6 The All Around Housing Place holds frequent pot luck dinner socials. Residents of neighboring housing for older persons communities are invited and notices are posted at the local senior citizens center inviting persons to attend as well. Most of the non-residents who attend are older persons. In such a case, the participation of non-resident older persons would contribute to a favorable evaluation of the pot luck dinner socials under this factor.
100.306(c)(5) The extent to which the facility or service is provided by the housing provider rather than by others.	100.306(c)(5) Generally, the housing provider must provide facilities and services specifically designed to meet the physical or social needs of older persons in order to demonstrate that they are "significant". However, in some cases facilities and services that are provided by others may also be "significant".

REGULATION
100.306 (c)(5), (cont'd)
100.306(c)(6) Whether a facility or service is not one that is required to be provided by a law related to housing for the elderly or housing for older persons.

REGULATION	INTERPRETIVE GUIDANCE
100.306 (c)(5), (cont'd)	100.306 (c)(5), (cont'd) Where facilities and services specifically designed to meet the physical or social needs of older persons are provided by the residents or others, the housing provider must *foster, facilitate, or support* such facilities and services to receive credit for them. The extent to which the housing provider has, for example, paid part of the expenses or provided support for such facilities and services will be considered under this factor. EXAMPLE 1 The Jefferson Highway housing development is a 300-unit complex. All of the facilities and services provided at this housing are designed and operated by a resident management association (RMA). The housing provider has entered into agreements with local organizations to provide significant support and assistance to the RMA to ensure that all of the services needed by the residents are available to them. The facilities and services available at this housing development would be given substantial weight in the Department's evaluation. That a housing provider contributes funds, equipment or other support essential for the continued operation of a facility or service will be noted and receive favorable consideration.
100.306(c)(6) Whether a facility or service is not one that is required to be provided by a law related to housing for the elderly or housing for older persons.	100.306(c)(6) A facility or service will not be considered if it is required by law, unless the law requiring the provision of the facility or service is one that sets requirements for housing for the elderly or the law is otherwise intended to benefit the elderly.

REGULATION	INTERPRETIVE GUIDANCE
3100.306(c)(6), (cont'd)	100.306(c)(6), (cont'd) EXAMPLE 1 Uptown Apartments is located in Somewhere, Massachusetts, a town which does not provide garbage collection services. Rather, residents of Somewhere are required to bring their own trash to the city dump. However, Uptown Apartments provides the service of picking up residents' garbage for them and bringing it to the dump. This service would get great weight under this factor. EXAMPLE 2 Hightower Apartments is a 65-unit apartment building located in Somewhere, Massachusetts, a town which does not provide garbage collection services. However, a Somewhere ordinance requires all apartment buildings with 50 or more units to collect garbage and bring it to the dump for the residents. Hightower Apartments' service of picking up residents' garbage and bringing it to the dump would get little or no weight under this factor. EXAMPLE 3 Lowtower Apartments is a participant in the Somewhere, Massachusetts Elderly Housing Program, pursuant to which Lowtower Apartments receives an operating subsidy. As a condition of participation in the elderly housing program, Lowtower Apartments is required to provide garbage collection services for its residents, even though these services are not otherwise provided to residents of Somewhere. Lowtower Apartments' service of picking up residents' garbage and bringing it to the dump would meet this factor because the service is required pursuant to a local law that sets requirements on housing for the elderly.

BILLING CODE 4210-28-C

Dated: June 24, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94-16139 Filed 7-6-94; 8:45 am]

BILLING CODE 4210-28-P

Dated: June 24, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–16139 Filed 7–6–94; 8:45 am]

BILLING CODE 4210–28–P

UMI
Ann Arbor, MI 48106
1994
7
JL
2
9
SS
1
2
9
VOL
5 9

federal register

Federal Register

Thursday
July 7, 1994

Part III

Department of Education

34 CFR Parts 668, 682, and 690

Student Assistance General Provisions; Federal Family Education Loan Programs; Federal Pell Grant Program; Interim Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, and 690

RIN 1840–AB85 and 1840–AB80

Student Assistance General Provisions; Federal Family Education Loan Programs; Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Interim final regulations with invitation for comment; Correction; Extension of comment period; Compliance with information collection requirements.

SUMMARY: On April 29, 1994, the Secretary of Education published in the **Federal Register** interim final regulations with an invitation for comment for the Student Assistance General Provisions, Federal Family Education Loan programs, and the Federal Pell Grant (59 FR 22348). The final regulations listed the comment period end date as June 20, 1994.

Members of the financial aid community have requested an extension of the comment period. The Secretary agrees that a longer comment period would give the financial aid community a better opportunity to thoroughly evaluate the final regulations and submit more comprehensive comments to the Department. Therefore, the Secretary extends the comment period to July 28, 1994, which is 90 days following the April 29 publication date.

This document also clarifies the Secretary's intent in publishing "interim final regulations with invitation for comment," adds an Office of Management and Budget (OMB) control number to certain sections of the regulations, and corrects the effective date statement and corrects an error in the preamble in the final regulations published in the **Federal Register** on April 29.

DATES: Comments must be received on or before July 28, 1994. The corrections to the April 29 regulations and the addition of OMB control numbers in §§ 668.3, 668.8, 668.12, 668.13, 668.14, 668.15, 668.16, 668.17, 668.22, 668.23, 668.25, 668.26, 668.90, 668.96, 668.113, Appendix A to 34 CFR part 668, 682.414, 682.416, 682.711, and 690.83 are effective July 7, 1994.

ADDRESSES: All comments concerning the final regulations should be addressed to Greg Allen and Wendy Macias, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, Room 4318), Washington, DC 20202–5342.

FOR FURTHER INFORMATION CONTACT: Greg Allen and Wendy L. Macias, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, Room 4318), Washington, DC 20202–5343. Telephone (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The final regulations published on April 29 had an effective date of July 1, 1994, in accordance with 20 U.S.C. 1089(c), which required that the Secretary publish such regulations "in final form by May 1, 1994" to be in effect for the 1994–1995 award year, which begins on July 1, 1994. Under the terms of 20 U.S.C. 1089(c), any regulatory changes that the Secretary published after May 1, 1994, could not take effect, at the earliest, until July 1, 1995. Thus, the April 29 regulations are final and effective at least with respect to the period July 1, 1994 through June 30, 1995. The "interim" nature of the April 29 regulations reflected the possibility that changes might be made to take effect on July 1, 1995.

The Secretary solicited public comment in the April 29 final regulations to determine whether any changes should be made to take effect on July 1, 1995, the earliest that any such changes can take effect under 20 U.S.C. 1089(c). In order for any such changes to take effect by July 1, 1995, the changes would, under 20 U.S.C. 1089(c), have to be published in final form by December 1, 1994.

Compliance with the information collection requirements in certain sections of the regulations published on April 29 was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1990, as amended. On June 23, 1994, OMB approved those information collection requirements, and affected parties must now comply with those requirements. The Secretary corrects the effective date statement in the April 29 regulations to reflect this more accurately.

A section of the *Analysis of Comments and Responses* was omitted from the final regulations published on April 29. The Secretary notes that the changes to the regulatory text corresponding to this omitted section of the preamble were included in the April 29 final regulations. The omitted material, which is included in this document, is the explanation for those changes.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship.

Dated: June 30, 1994.

Richard W. Riley,

Secretary of Education.

1. The authority citation for part 668 of title 34 of the Code of Federal Regulations continues to read as follows:

Authority: 20 U.S.C. 1091, 1092, and 1094, unless otherwise noted.

2. The following sections are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0537)" at the end of each of these sections: Sections 668.3, 668.8, 668.12, 668.13, 668.14, 668.15, 668.16, 668.17, 668.22, 668.23, 668.25, 668.26, 668.90, 668.96, 668.113, Appendix A to 34 CFR part 668, 682.414 682.416, 682.711, and 690.083.

3. The following corrections are made in FR Doc. 94–10140, published on April 29, 1994 (59 FR 22348):

a. On page 22348, column column 1, the first sentence after "**DATES:** Effective Date:" is corrected to read as follows: These regulations take effect July 1, 1994, except that compliance is not required with the information collection requirements in §§ 668.3, 668.8, 668.12, 668.13, 668.14, 668.15, 668.16, 668.17, 668.22, 668.23, 668.25, 668.26, 668.90, 668.96, 668.113, Appendix A to 34 CFR part 668, 682.414, 682.416, 682.711, and 690.83 until the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

On page 22382, column 2, the following text is added after "*Changes*: None."

Comments: One commenter expressed concern that the Secretary had not defined the circumstances in which an institution could satisfy the financial responsibility requirements added through the Technical Amendments of 1993 by demonstrating that it had sufficient resources to ensure against precipitous closure. The commenter suggested that the regulations need to provide specific guidance to institutions showing when the exception can be used. Several other commenters also questioned whether the general financial responsibility standards in the proposed regulations were consistent with the statutory exception permitting an institution to participate without restrictions by demonstrating that it has sufficient resources to ensure against precipitous closure.

Discussion: The Secretary agrees to establish a standard in the regulations that is consistent with the explanation made by Senator Pell that the technical amendments were intended to make sure that financially at-risk institutions are subject to careful scrutiny, to protect institutions that are not financially at risk, and to accomplish these aims without weakening the general standards for financial responsibility. See 139 Cong. Rec. 162–2, S16593 (daily ed. November 19, 1993). The Secretary therefore considers it necessary to define the limited circumstances in which an institution may satisfy the statutory exception in a manner that will not create a lower standard for financial responsibility.

Because an institution using this exception will not be required to post surety or enter into provisional certification, the Secretary has minimized the Federal risks in such unprotected participation by making the exception only available to an institution that met the financial responsibility requirements in its last timely submitted audited financial statement. This structure will permit an institution that now fails the financial responsibility requirements but meets the alternate standards in the exception to have an opportunity to improve its financial condition for one year without having to post surety or be placed under provisional certification. This requirement prevents this exception from becoming a means to continue participating under a lower standard of financial responsibility than that required for all other institutions. An institution that has not satisfied the general standards of financial responsibility in its previous audit and has not improved its operations to meet current financial responsibility standards is not permitted to participate on an unrestricted basis under this provision, and is required to provide the additional safeguards presented through a surety or through provisional certification.

If an institution that met the standards of financial responsibility, as demonstrated by its last audited financial statement, fails to meet these standards in its current audit, it can

provide specific guidance to institutions showing when the exception can be used. Several other commenters also questioned whether the general financial responsibility standards in the proposed regulations were consistent with the statutory exception permitting an institution to participate without restrictions by demonstrating that it has sufficient resources to ensure against precipitous closure.

Discussion: The Secretary agrees to establish a standard in the regulations that is consistent with the explanation made by Senator Pell that the technical amendments were intended to make sure that financially at-risk institutions are subject to careful scrutiny, to protect institutions that are not financially at risk, and to accomplish these aims without weakening the general standards for financial responsibility. See 139 Cong. Rec. 162–2, S16593 (daily ed. November 19, 1993). The Secretary therefore considers it necessary to define the limited circumstances in which an institution may satisfy the statutory exception in a manner that will not create a lower standard for financial responsibility.

Because an institution using this exception will not be required to post surety or enter into provisional certification, the Secretary has minimized the Federal risks in such unprotected participation by making the exception only available to an institution that met the financial responsibility requirements in its last timely submitted audited financial statement. This structure will permit an institution that now fails the financial responsibility requirements but meets the alternate standards in the exception to have an opportunity to improve its financial condition for one year without having to post surety or be placed under provisional certification. This requirement prevents this exception from becoming a means to continue participating under a lower standard of financial responsibility than that required for all other institutions. An institution that has not satisfied the general standards of financial responsibility in its previous audit and has not improved its operations to meet current financial responsibility standards is not permitted to participate on an unrestricted basis under this provision, and is required to provide the additional safeguards presented through a surety or through provisional certification.

If an institution that met the standards of financial responsibility, as demonstrated by its last audited financial statement, fails to meet these standards in its current audit, it can show that it meets the alternate standards in this provision in order to participate on an unrestricted basis for one year to give it an opportunity to solidify its operations and demonstrate that it meets financial responsibility standards in its next timely submitted audited financial statement. Such participation without surety or provisional certification can only be permitted where the institution meets all of the requirements in § 668.15(d)(2)(ii)(A) to show that it is current in all tax obligations, its equity and operating income have not materially decreased since its last audit, and that it is not shifting the institution's operating capital to its owners or related parties. These standards are necessary to show that the institution's financial condition has not significantly deteriorated since it last demonstrated financial responsibility, and that the institution's failure to meet the current financial responsibility standards is not exacerbated by benefits given to its owners or related parties.

In order to participate without restriction under this provision, an institution that now fails to demonstrate financial responsibility after having done so in its last audit, must show that it has not accelerated the funds going to its owners or related parties through disproportionately large salary increases, or through making uncollateralized loans to these parties. The institution must also show that all loans made to the institution's owners or related parties are in repayment, and that a demand has been made for repayment of any loans that did not carry fixed payment terms. These measures will help ensure that the institution's failure to demonstrate financial responsibility is not due to capital diverted to its owners or related parties.

The institution must also show that there have been no material findings in the institution's latest compliance audit, and that there are no pending administrative or legal actions pending before a member of the Triad or other Federal or State entity.

Changes: Section 668.15(d) now provides that the Secretary considers an institution to be financially responsible, even if the institution does not meet the general standards of financial responsibility (except for the minimum cash reserve requirement) if the institution establishes to the satisfaction of the Secretary, with the support of an audited financial statement, that the institution has sufficient resources to ensure against its precipitous closure. As a part of this showing, an institution must establish that it has the ability to meet all of its financial obligations, including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

The Secretary considers the institution to have sufficient resources to ensure against precipitous closure only if the institution formerly demonstrated financial responsibility under the standards of financial responsibility in its preceding audited financial statement and that its most recent audited financial statement indicates the following (if no prior audited financial statement was requested by the Secretary, the institution must demonstrate in conjunction with its current audit that it would have satisfied the following): (a) All taxes owed by the institution are current; (b) The institution's net income, or a change in total net assets, before extraordinary items and discontinued operations, has not decreased by more than 10 percent from the prior fiscal year, unless the institution demonstrates that the decreased net income shown on the current financial statement is a result of downsizing pursuant to a management-approved business plan; (c) loans and other advances to related parties have not increased from the prior fiscal year unless such increases were secured and collateralized, and do not exceed 10 percent of the prior fiscal year's working capital of the institution; (d) The equity of a for-profit institution, or the total net assets of a nonprofit institution, have not decreased by more than 10 percent of the prior year's total equity; (e) Compensation for owners or other related parties (including bonuses, fringe benefits, employee stock option allowances, 401(k) contributions, deferred compensation allowances) has not increased from the prior year at a rate higher than for all other employees; (f) The institution has not materially leveraged its assets or income by becoming a guarantor on any new loan or obligation on behalf of any related party; (g) All obligations owed to the institution by related parties are current, and the institution has demanded and is receiving payment of all funds owed from related parties that are payable upon demand. The regulations clarify that, for purposes of these provisions, a person does not become a related party by attending an institution as a student.

Finally, in order for the Secretary to consider the institution to have sufficient resources to ensure against precipitous closure, the institution would also have to demonstrate that (1) there have been no material findings in the institution's latest compliance audit of its administration of the Title IV,

HEA programs and (2) there are no pending administrative or legal actions being taken against the institution by the Secretary, and other Federal agency, the institution's nationally recognized accrediting agency, or any State entity.

[FR Doc. 94–16400 Filed 7–6–94; 8:45 am]
BILLING CODE 4000–01–M

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc.)
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public L
numbers, Federal Register finding aids, and list of
documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and t
documents on public inspection are available on t
National Archives fax-on-demand system. You mu
from a fax machine. There is no charge for the ser
except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33897–34342 1
34343–34552 5
34553–34754 6
34755–34966 7

Reader Aids

Federal Register

Vol. 59, No. 129

Thursday, July 7, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–6229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342	1
34343–34552	5
34553–34754	6
34755–34966	7

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
June 30, 1994 34341
Proclamations:
6641 (See Proc. 6704) 34329
6704 34329
6705 34343
Executive Orders:
12002 (See EO 12923) 34551
12214 (See EO 12923) 34551
12735 (See EO 12923) 34551
12755 (See EO 12923) 34551
12851 (See EO 12923) 34551
12923 34551

5 CFR

2610 34755
2634 34755
2636 34755
2641 34755
Proposed Rules:
575 34393

7 CFR

272 34553
275 34553
283 34553
916 33897
917 33897
928 33898
947 33900
1205 33901
1421 34345
1755 ..... 34353, 34899
Proposed Rules:
1036 33922

8 CFR

103 33903
245 33903
245a 33903
264 33903
274a 33903

9 CFR

92 34375
97 34756
Ch. III 34375
Proposed Rules:
317 34396

10 CFR

Proposed Rules:
1003 34767

12 CFR

Proposed Rules:
220 33923

14 CFR

21 34572
23 34572
39 ..... 34574, 34576, 34757, 34758, 34899
71 ..... 34577, 34758, 34759, 34760
91 34578
Proposed Rules:
21 34779
39 ..... 34396, 34584
71 ..... 34192, 34585
93 34192

16 CFR

305 34014
Proposed Rules:
300 34780
301 34780
303 34780
1117 33925
1500 ..... 33928, 33932

17 CFR

1 34376
33 34376
190 34376
Proposed Rules:
240 34781

20 CFR

416 33906

21 CFR

510 33908
520 33908
Proposed Rules:
341 34781

22 CFR

60 33909
61 33909
62 33909
63 33909
64 33909
65 33909
514 34760

23 CFR

655 33909

24 CFR

17 34578
3280 34294
Proposed Rules:
43 34300

92 34300
100 34902
570 34300

25 CFR

Proposed Rules:
1 34398

28 CFR

551 34742

29 CFR

1910 ..... 33910, 34580
Proposed Rules:
1915 34586

32 CFR

90 34382
91 34382
383 34382
389 34382
552 ..... 34581, 34761
Proposed Rules:
553 34782

33 CFR

4 34210
130 34210
131 34210
132 34210
137 34210
138 34210
Proposed Rules:
322 34783
334 33909

34 CFR

74 34722
77 34722
641 34198
668 34964
682 34964
685 34278
690 34964
Proposed Rules:
Ch. VI 34398

38 CFR

3 34382

39 CFR

111 33911

40 CFR

9 ..... 33912, 34070
52 ..... 33914, 34383
85 33912
86 33912
112 34070
141 34320
142 34320
372 34386
600 33912
Proposed Rules:
Ch. I 33940
52 ..... 33941, 34399, 34401
185 33941

43 CFR

Public Land Order:
7055 34899
7064 34582

47 CFR

73 ..... 34391, 34766
Proposed Rules:
61 33947
64 33947
69 33947
73 ..... 34404, 34405

48 CFR

392 34708
393 ..... 34708, 34712
1056 34392
Proposed Rules:
571 34405

50 CFR

229 34899
658 34582
675 ..... 33920, 34392, 34583
Proposed Rules:
17 34784
654 33947

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 6, 1994

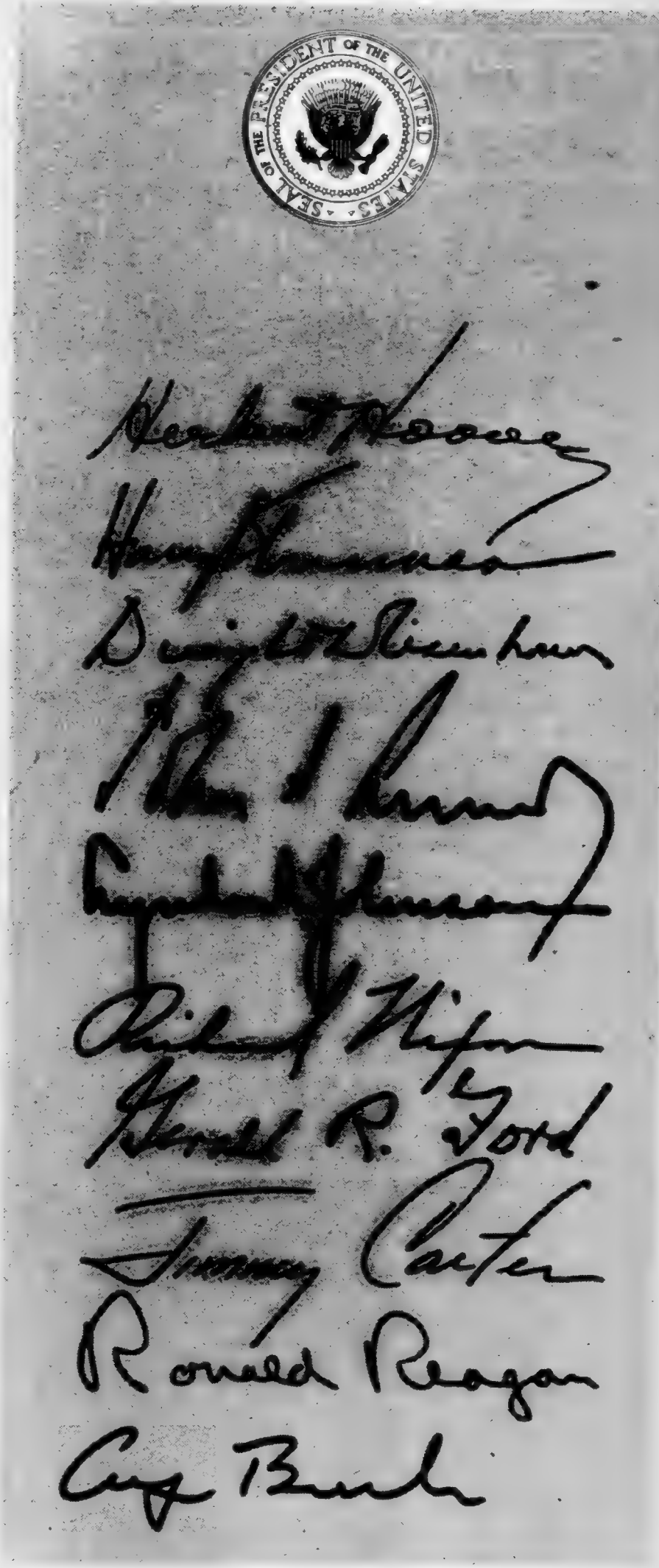

Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House

Volumes for the following years are available; other volumes not listed are out of print

Ronald Reagan

1984
(Book II) $36.00

1985
(Book I) $34.00

1985
(Book II) $30.00

1986
(Book I) $37.00

1986
(Book II) $35.00

1987
(Book I) $33.00

1987
(Book II) $35.00

1988
(Book I) $39.00

1988–89
(Book II) $38.00

George Bush

1989
(Book I) $38.00

1989
(Book II) $40.00

1990
(Book I) $41.00

1990
(Book II) $41.00

1991
(Book I) $41.00

1991
(Book II) $44.00

1992
(Book I) $47.00

1992–93
(Book II) $49.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
New Orders, Superintendent of Documents
P O Box 371954, Pittsburgh, PA 15250–7954

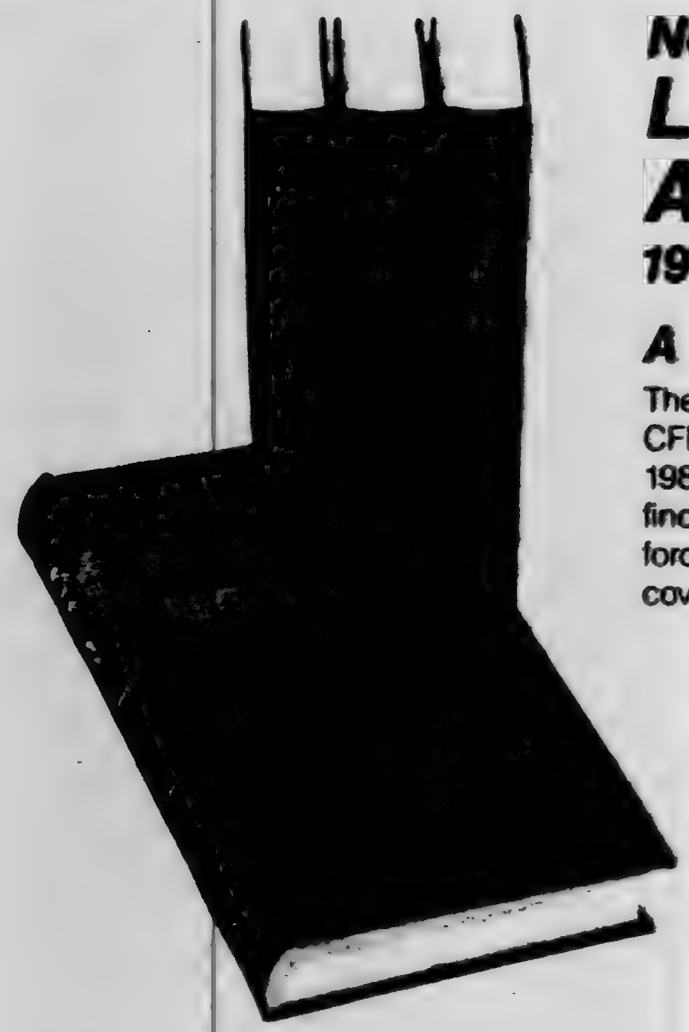

New Publication

List of CFR Sections Affected

1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16) $27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27) $25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41) $28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50) $25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code
*6962

Charge your order. It's easy!

To fax your orders and inquiries—(202) 512-2250

Please Type or Print (Form is aligned for typewriter use.)
Prices include regular domestic postage and handling and are good through 12/92. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog—Bestselling Government Books	FREE	FREE

Total for Publications

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail order to:
New Orders, Superintendent of Documents
PO. Box 371954, Pittsburgh, PA 15250-7954

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) ***Thank you for your order!***

(Signature)

Rev 6-92

VOL
59

ISS
1
2
9

JL
7

994

UMI

Printed on recycled paper

VOL
59
ISS
130
JUL
8
1994
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7–8–94
Vol. 59 No. 130

Federal Register

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****
A FR UMISE346L
UMI SERIALS ACQU
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI

7–8–94
Vol. 59 No. 130

federal register

Friday
July 8, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481

A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106

VOL
59
ISS
130
JL
8
994
UMI

7-8-94
Vol. 59 No. 130
Pages 34967-35210

7–8–94
Vol. 59 No. 130
Pages 34967–35210

Federal Register

Friday
July 8, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806

Online:

Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions	202–512–1530

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am

WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Agriculture Department
NOTICES
Agency information collection activities und
review, 35094
Import quotas and fees:
Meat import limitations; quarterly estimat
35095

Antitrust Division
NOTICES
National cooperative research notifications:
General Motors Corp. et al., 35143
Petroleum Environmental Research Forum

Army Department
NOTICES
Environmental statements; availability, etc.:
Military Ocean Terminal, NC; deep-draft c

Blind or Severely Disabled, Committee for People Who Are
See Committee for Purchase From People W
Severely Disabled

Centers for Disease Control and Preventio
NOTICES
Grants and cooperative agreements; availabil
Agricultural safety promotion systems, 351
Meetings:
Injury Prevention and Control Advisory Co
35126

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Massachusetts, 35095

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Adm

Committee for Purchase From People Who Severely Disabled
NOTICES
Procurement list; additions and deletions, 35

Consumer Product Safety Commission
PROPOSED RULES
Consumer Product Safety Act:
Plastic buckets, 35058–35065

Customs Service
RULES
Protest filers identification; permitted metho
34971
NOTICES
Meetings:
Automated export system development, 351

Defense Department
See Army Department

Contents

Federal Register

Vol. 59, No. 130

Friday, July 8, 1994

Agriculture Department
NOTICES
Agency information collection activities under OMB review, 35094
Import quotas and fees:
Meat import limitations; quarterly estimates, 35094–35095

Antitrust Division
NOTICES
National cooperative research notifications:
General Motors Corp. et al., 35143
Petroleum Environmental Research Forum, 35143–35144

Army Department
NOTICES
Environmental statements; availability, etc.:
Military Ocean Terminal, NC; deep-draft dredging, 35113

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Agricultural safety promotion systems, 35124–35126
Meetings:
Injury Prevention and Control Advisory Committee, 35126

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Massachusetts, 35095

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 35111–35113

Consumer Product Safety Commission
PROPOSED RULES
Consumer Product Safety Act:
Plastic buckets, 35058–35065

Customs Service
RULES
Protest filers identification; permitted methods, 34970–34971
NOTICES
Meetings:
Automated export system development, 35170

Defense Department
See Army Department
See Navy Department

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Direct grant and fellowship programs; correction
[**Editorial note:** A correction document that appeared at page 33284 in the **Federal Register** of June 28, 1994, was inadvertently omitted in that issue's table of contents.]

Employment and Training Administration
NOTICES
Adjustment assistance:
Gandalf Systems Corp., 35145–35146
Martin Marietta, 35146
Rohr, Inc., 35146
Western Atlas Geophysical, 35147

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 35144–35145

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
RULES
Classified matter or special nuclear material; criteria and procedures for determining eligibility for access, 35178–35193
NOTICES
Electricity export and import authorizations, permits, etc.:
Western Systems Power Pool; correction, 35118
Grant and cooperative agreement awards:
DCS Corp., 35113–35114
Ramex Systems, Inc., 35114
Svnfuels Engineering & Development, Inc., 35114

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado, 35035–35036
Indiana, 35044–35054
Utah, 35036–35044
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; designation of areas:
Indiana, 35079
Maine, 35072–35079
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 35118
Weekly receipts, 35119
Meetings:
Clean Air Act Advisory Committee, 35119–35120
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 35120

Federal Aviation Administration
RULES
Airworthiness directives:
de Havilland, 34967–34968
PROPOSED RULES
Airworthiness standards:
European Joint Aviation Requirements proposals; normal, utility, acrobatic, and commuter category airplanes—
Airframe proposals, 35196–35210

Federal Communications Commission
RULES
Common carrier services:
Public mobile services—
Air-ground stations channel assignments, 35054–35055
Radio stations; table of assignments:
Florida, 35055
Wisconsin, 35055–35056
PROPOSED RULES
Radio stations; table of assignments:
California, 35081
Colorado, 35081
South Carolina, 35082
NOTICES
Agency information collection activities under OMB review, 35120

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Colorado Springs, CO, 35115–35116
Virginia Electric & Power Co., 35114–35115
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 35115
Columbia Gas Transmission Corp., 35116
El Paso Natural Gas Co., 35116
Florida Gas Transmission Co., 35116–35117
Northern Border Pipeline Co., 35117
Northwest Pipeline Corp., 35117–35118

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
California, 35168

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 35175

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 35173
Applications, hearings, determinations, etc.:
Grupo Financiero Serfin, S.A. de C.V.; correction, 35121–35122
Lakland Bancorp, Inc., et al., 35122
Saban, S.A. et al., 35122–35123
UJB Financial Corp., 35123
Wallander, Gregory H., 35123

Federal Trade Commission
RULES
Practice and procedure rules:
Compliance reports, review procedures; and confidentiality issues resolution, authority delegation, 34968–34970

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Barton Springs salamander, 35089
NOTICES
Endangered and threatened species:
Recovery plans—
Great Lakes and northern Great Plains piping plover, 35136
Endangered and threatened species permit applications, 35136–35137

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Delaware
Zeneca Inc.; pharmaceutical manufacturing facility, 35095
Hawaii,
Kerr Pacific Corp.; bakery mixes and animal feed, 35095–35096
New York, 35096
South Carolina
BMW Manufacturing Corp.; automobile manufacturing plant, 35096

Health and Human Services Department
See Centers for Disease Control and Prevention
See National Institutes of Health
See Public Health Service
NOTICES
Organization, functions, and authority delegations:
Program Systems Office, 35123–35124

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 35118

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 35129–35132

Interior Department
See Fish and Wildlife Service
See Interior Department
See Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Earth Observing System Land Processes Distributed Active Archive Center Science Advisory Panel, 35132–35133

Internal Revenue Service
RULES
Income taxes:
Accuracy-related penalty imposition, 35030–35033
Intercompany transfer pricing regulations, 34971–35030
PROPOSED RULES
Income taxes:
Accuracy-related penalty imposition; cross reference 35066
NOTICES
Taxable substances, imported:
Di-2 ethyl hexyl phthalate, 35170–35171

Polycarbonate, 35171
Sodium nitriolotriacetate monohydrate,

International Trade Administration
NOTICES
Antidumping:
Electrolytic manganese dioxide from—
Japan, 35096–35098
Polyethylene terephthalate film, sheet, a
Korea, 35098–35101
Countervailing duties:
Fresh cut flowers from—
Peru, 35101
Applications, hearings, determinations, etc
Georgia University Research Foundation,
University of—
Utah, 35102

International Trade Commission
NOTICES
Agency information collection activities un
review, 35138–35139
Import investigations:
Glycine from—
China, 35136–35138

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, constructio
CSX Transportation, Inc., 35139

Justice Department
See Antitrust Division
NOTICES
Agency information collection activities un
review, 35139–35143
Pollution control; consent judgments:
Texas Eastern Gas Pipeline Co., 35143

Labor Department
See Employment and Training Administrati
See Employment Standards Administration
See Mine Safety and Health Administration

Land Management Bureau
RULES
Public land orders:
Alaska, 35054
NOTICES
Oil and gas leases:
Colorado, 35133
Realty actions; sales, leases, etc.:
Nevada, 35133–35135
Survey plat filings:
Wyoming, 35135
Withdrawal and reservation of lands:
Washington, 35135

Legal Services Corporation
NOTICES
Grants and cooperative agreements; availabi
Law school civil clinical programs, 35149
Meetings; Sunshine Act, 35173–35175

Library of Congress
RULES
National Film Registry; list additions, 35034

Polycarbonate, 35171
Sodium nitriolotriacetate monohydrate, etc., 35171–35172

International Trade Administration
NOTICES
Antidumping:
Electrolytic manganese dioxide from—
Japan, 35096–35098
Polyethylene terephthalate film, sheet, and strip from—
Korea, 35098–35101
Countervailing duties:
Fresh cut flowers from—
Peru, 35101
Applications, hearings, determinations, etc.:
Georgia University Research Foundation, 3510135102
University of—
Utah, 35102

International Trade Commission
NOTICES
Agency information collection activities under OMB review, 35138–35139
Import investigations:
Glycine from—
China, 35136–35138

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Transportation, Inc., 35139

Justice Department
See Antitrust Division
NOTICES
Agency information collection activities under OMB review, 35139–35143
Pollution control; consent judgments:
Texas Eastern Gas Pipeline Co., 35143

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Mine Safety and Health Administration

Land Management Bureau
RULES
Public land orders:
Alaska, 35054
NOTICES
Oil and gas leases:
Colorado, 35133
Realty actions; sales, leases, etc.:
Nevada, 35133–35135
Survey plat filings:
Wyoming, 35135
Withdrawal and reservation of lands:
Washington, 35135

Legal Services Corporation
NOTICES
Grants and cooperative agreements; availability, etc.:
Law school civil clinical programs, 35149–35150
Meetings; Sunshine Act, 35173–35175

Library of Congress
RULES
National Film Registry; list additions, 35034–35035

Mine Safety and Health Administration
PROPOSED RULES
Underground coal mine ventilation; safety standards, 35071
NOTICES
Safety standard petitions:
Chestnut Coal Co. et al., 35147–35149

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle theft prevention standard:
Multipurpose passenger vehicles and light-duty trucks; designation as high theft lines, 35082–35088

National Institutes of Health
NOTICES
Meetings:
Advisory Committee to Director, 35126–35127
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 35127

National Labor Relations Board
NOTICES
Agency information collection activities under OMB review, 35150

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 35056–35057
Gulf of Alaska groundfish, 35056
Northeast multispecies; correction, 35056
PROPOSED RULES
Endangered and threatened species:
North and South Umpqua River sea-run cutthroat trout, 35089–35093
NOTICES
Grants and cooperative agreements; availability, etc.:
Antarctic marine ecosystem; scientific research, 35102–35107
Northeast fisheries assistance program, 35107–35111

National Science Foundation
PROPOSED RULES
Court demanded or requested testimony and production of official records and information, 35079–35081

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Mitscher, 35033–35034

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
North Atlantic Energy Service Corp., 35150–35151
South Carolina Patriots Point Development Authority et al., 35151–35152

Pension Benefit Guaranty Corporation
PROPOSED RULES
Technical amendments, 35067–35071

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 35152

Public Health Service
See Centers for Disease Control and Prevention
See National Institutes of Health
NOTICES
Agency information collection activities under OMB review, 35127–35128
Organization, functions, and authority delegations:
National Institutes of Health, 35128

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 35152–35157
New York Stock Exchange, Inc., 35157–35159, 35161–35163
Pacific Stock Exchange, Inc., 35159–35161
Philadelphia Stock Exchange, Inc., 35164
Applications, hearings, determinations, etc.:
Massachusetts Mutual Life Insurance Co. et al., 35164–35167

State Department
NOTICES
Garnishment of Federal employees wages for payment of debt, 35167–35168

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration

Treasury Department
See Customs Service
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 35168–35170

United States Enrichment Corporation
NOTICES
Meetings; Sunshine Act, 35173

Separate Parts In This Issue

Part II
Department of Energy, 35178–35193

Part III
Department of Transportation, Federal Aviation Administration, 35196–35210

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month c
Reader Aids section at the end of this issue.

10 CFR
710.....35178

14 CFR
39.....34967
Proposed Rules:
23.....35196

16 CFR
2.....34968
4.....34968
Proposed Rules:
1307.....35058

19 CFR
174.....34970

26 CFR
1 (2 documents).....34971, 35030
602 (2 documents).....34971, 35030
Proposed Rules:
1.....35066

29 CFR
Proposed Rules:
Ch. XXVI.....35067
Ch. XL.....35067

30 CFR
Proposed Rules:
75.....35071

32 CFR
706.....35033

36 CFR
704.....35034

40 CFR
52 (3 documents).....35035, 35036, 35044
81.....35044
Proposed Rules:
52 (2 documents).....35072, 35079
81.....35079

43 CFR
Public Land Orders:
7065.....35054

45 CFR
Proposed Rules:
615.....35079

47 CFR
22.....35054
73 (2 documents).....35055
Proposed Rules:
73 (3 documents).....35081, 35082

49 CFR
Proposed Rules:
541.....35082

50 CFR
651.....35056
672.....35056
675 (2 documents).....35056, 35057
Proposed Rules:
17.....35089
222.....35089

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR
710.....35178

14 CFR
39.....34967
Proposed Rules:
23.....35196

16 CFR
2.....34968
4.....34968
Proposed Rules:
1307.....35058

19 CFR
174.....34970

26 CFR
1 (2 documents).....34971, 35030
602 (2 documents).....34971, 35030
Proposed Rules:
1.....35066

29 CFR
Proposed Rules:
Ch. XXVI.....35067
Ch. XL.....35067

30 CFR
Proposed Rules:
75.....35071

32 CFR
706.....35033

36 CFR
704.....35034

40 CFR
52 (3 documents).....35035, 35036, 35044
81.....35044
Proposed Rules:
52 (2 documents).....35072, 35079
81.....35079

43 CFR
Public Land Orders:
7065.....35054

45 CFR
Proposed Rules:
615.....35079

47 CFR
22.....35054
73 (2 documents).....35055
Proposed Rules:
73 (3 documents).....35081, 35082

49 CFR
Proposed Rules:
541.....35082

50 CFR
651.....35056
672.....35056
675 (2 documents).....35056, 35057
Proposed Rules:
17.....35089
222.....35089

VOL
59
ISS
1
30
JL
8
994
UMI

Rules and Regulation

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–52–AD; Amendment 39–8971; AD 94–14–22]

Airworthiness Directives: de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to de Havilland DHC–6 series airplanes. This action requires repetitively inspecting the horizontal stabilizer center hinge bracket for cracks, and replacing any cracked center hinge bracket. Several reports of cracks in the horizontal stabilizer center hinge bracket flange on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent separation of the elevator control support from the airplane as a result of a cracked horizontal stabilizer center hinge bracket, which could result in reduced controllability of the airplane.

DATES: Effective August 31, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North

Rules and Regulations

Federal Register
Vol. 59, No. 130
Friday, July 8, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–52–AD; Amendment 39–8971; AD 94–14–22]

Airworthiness Directives: de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to de Havilland DHC–6 series airplanes. This action requires repetitively inspecting the horizontal stabilizer center hinge bracket for cracks, and replacing any cracked center hinge bracket. Several reports of cracks in the horizontal stabilizer center hinge bracket flange on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent separation of the elevator control support from the airplane as a result of a cracked horizontal stabilizer center hinge bracket, which could result in reduced controllability of the airplane.

DATES: Effective August 31, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220; facsimile (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain de Havilland DHC–6 series airplanes was published in the **Federal Register** on February 17, 1994 (59 FR 7913). The action proposed to require repetitively inspecting the horizontal stabilizer center hinge bracket for cracks, and replacing any cracked center hinge bracket. The proposed action would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin 6/512, dated October 25, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 169 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,295. This figure only includes the cost for the initial inspection and does not include replacement costs if a center hinge bracket is found cracked nor does it include repetitive inspection costs. The FAA has no way to determine how many center hinge brackets may be cracked or how many repetitive inspections each owner/operator may incur.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

94–14–22 de Havilland: Amendment 39–8971; Docket No. 93–CE–52–AD.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 250 hours time-in-service (TIS), unless already

accomplished, and thereafter at intervals not to exceed 1,200 hours TIS.

To prevent separation of the elevator control support from the airplane as a result of a cracked horizontal stabilizer center hinge bracket, which could result in reduced controllability of the airplane, accomplish the following:

(a) Inspect the horizontal stabilizer center hinge bracket for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin 6/512, dated October 25, 1991, except that where dye penetrant inspections are specified, accomplish visual inspections with a strong light source and 10X magnifying glass. If any cracks are found, prior to further flight, replace the center hinge bracket in accordance with the referenced service bulletin.

Note 1: The repetitive inspection requirement of this AD still applies if the center hinge bracket is replaced.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) The inspections required by this AD shall be done in accordance with de Havilland Service Bulletin 6/512, dated October 25, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–8971) becomes effective on August 31, 1994.

Issued in Kansas City, Missouri, on July 1, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16536 Filed 7–7–94; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Parts 2 and 4

Procedures for Review of Compliance Reports and Delegation of Authority To Resolve Confidentiality Issues

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends 16 CFR Parts 2 and 4 to streamline the processing of compliance reports and to delegate to the General Counsel the authority to resolve confidentiality issues respecting information in compliance reports and in other documents subject to routine placement on the public record. These amendments are intended to improve efficiency and reduce delays in connection with the processing of compliance reports and the resolution of confidentiality issues by the agency.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, Attorney, Bureau of Consumer Protection, 202–326–2098.

SUPPLEMENTARY INFORMATION:

Compliance Procedures

The Commission is revising its procedures for processing compliance reports submitted pursuant to Commission orders and pursuant to section 2.41(a) of the Commission's Rules of Practice, 16 CFR 2.41(a). Under former section 2.41(b) of the rules, most compliance reports were either "approved" or "rejected," although the Commission could bring a civil penalty case pursuant to section 5(l) of the FTC Act, 15 U.S.C. 45(l), without any prior notice to the respondents. *See* 16 CFR 2.41(a). Henceforth, there will be no provision for Commission approval or rejection of compliance reports; rather, staff will review these reports and determine whether to recommend that the Commission take further action, such as commencing a civil penalty case for failure to comply with the order.[1] Staff may also, in appropriate cases, advise a respondent that a compliance report appears inadequate and request that the report be supplemented with additional material that shall be deemed part of the report.

Under the former rules, there was a limited delegation by the Commission to the Directors and Deputy Directors of the Bureaus of Competition and Consumer Protection of the authority to approve or reject most types of compliance reports after five days notice to the Commission. However, the Commission had reserved for itself the authority to review, and if warranted to approve or reject four categories of reports: (1) Most reports involving section 7 of the Clayton Act; (2) reports in matters which had received previous Commission consideration as to compliance or in which the Commission or any Commissioner had expressed an interest; (3) reports in matters proposed to be closed by reason of expense of investigation or testing, and (4) reports in matters involving substantial questions as to the public interest, Commission policy or statutory construction.

Under the new rules, the Director, Deputy Directors, and Assistant Director for Compliance of the Bureau of Competition and the Director, Deputy Directors, and Associate Director for Enforcement of the Bureau of Consumer Protection will be delegated the authority to monitor compliance reports, and to open and close compliance investigations, subject to the requirement that staff submit an analysis regarding their intended actions to the Commission for any report falling within categories (2), (3), or (4) above. Many compliance reports involving section 7 of the Clayton Act do not raise issues that require Commission review. Therefore, the staff will not have to submit an analysis regarding their intended actions with respect to such reports unless they fall within categories (2), (3), or (4) above. The result of the new rules will be to continue to have the Commission advised of compliance matters of special priority, while promoting the efficient use of Commission resources.

Confidentiality Requests

The Commission is also amending its rules of practice to delegate to the General Counsel the authority to resolve confidentiality issues with respect to information in documents subject to disclosure on the public record. Section 4.9(b) of the Commission's Rules of Practice, 16 CFR 4.9(b), provides that certain categories of documents are routinely placed on the public record.[2] However, the rules also provide that portions of compliance reports and other documents subject to routine placement on the public record will be withheld from public disclosure if the submitter can make an adequate showing of confidentiality, 16 CFR 2.41(f), 4.9(b)(7), 4.9(c)(1), or if the documents are otherwise exempt from mandatory public disclosure, 16 CFR 4.9(c)(3) and 4.10.[3] Under the revised rule, the General Counsel has the authority to resolve confidentiality issues respecting such materials. The General Counsel has substantial expertise in resolving confidentiality issues, and already resolves numerous other confidentiality issues. *See, e.g.*, 16 CFR 4.11(a)(2) (appeals under the Freedom of Information Act); 4.11(e) (subpoenas to Commission employees).

In addition, the Commission is amending section 4.9(b) of its rules to provide for placement on the public record of staff letters to respondents advising them that their compliance reports do not warrant any further action. This amendment will afford such letters the same treatment as closing letters sent to the targets of Commission law enforcement investigations—*See* 16 CFR 4.9(b)(4)(ii) (provides for placement of closing letters in initial and full phase investigations on the public record)—and the same treatment as the compliance reports themselves. *See* 16 CFR 4.9(b)(7)(i).

As required by the Regulatory Flexibility Act, 5 U.S.C. 604, it is hereby certified that this rule will not have a significant economic impact on small business entities. The agency did not seek or accept public comments on these amendments because they address rules of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A).

List of Subjects

16 CFR Part 2

Administrative practice and procedure, Investigations, Reporting and recordkeeping requirements.

16 CFR Part 4

Administrative practice and procedure, Freedom of information, Privacy, Sunshine Act.

PART 2—NONADJUDICATIVE PROCEDURES

1. The authority for part 2 continues to read as follows:

[1] This amendment does not revise the approval process relating to proposed divestitures, acquisitions, or similar transactions subject to Commission review pursuant to 16 CFR 2.41(f).

[2] Section 4.9(b) sets forth a list of materials subject to public disclosure. Some of the public record requirements set forth in section 4.9(b) also appear in other rules. *See, e.g.*, 16 CFR 2.41(f).

[3] Although confidentiality issues will generally be raised by submitters, Bureau staff may identify a confidentiality issue that submitters failed to raise. For example, submitters may not identify as confidential information in a compliance report filed pursuant to a credit practices order that reveals personal information about debtors. Such materials may be withheld from the public record, under section 4.9(c)(3), to the extent that they are exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.

showing of confidentiality, 16 CFR 2.41(f), 4.9(b)(7), 4.9(c)(1), or if the documents are otherwise exempt from mandatory public disclosure, 16 CFR 4.9(c)(3) and 4.10.[3] Under the revised rule, the General Counsel has the authority to resolve confidentiality issues respecting such materials. The General Counsel has substantial expertise in resolving confidentiality issues, and already resolves numerous other confidentiality issues. *See, e.g.*, 16 CFR 4.11(a)(2) (appeals under the Freedom of Information Act); 4.11(e) (subpoenas to Commission employees).

In addition, the Commission is amending section 4.9(b) of its rules to provide for placement on the public record of staff letters to respondents advising them that their compliance reports do not warrant any further action. This amendment will afford such letters the same treatment as closing letters sent to the targets of Commission law enforcement investigations—*See* 16 CFR 4.9(b)(4)(ii) (provides for placement of closing letters in initial and full phase investigations on the public record)—and the same treatment as the compliance reports themselves. *See* 16 CFR 4.9(b)(7)(i).

As required by the Regulatory Flexibility Act, 5 U.S.C. 604, it is hereby certified that this rule will not have a significant economic impact on small business entities. The agency did not seek or accept public comments on these amendments because they address rules of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A).

List of Subjects

16 CFR Part 2

Administrative practice and procedure, Investigations, Reporting and recordkeeping requirements.

16 CFR Part 4

Administrative practice and procedure, Freedom of information, Privacy, Sunshine Act.

PART 2—NONADJUDICATIVE PROCEDURES

1. The authority for part 2 continues to read as follows:

[3] Although confidentiality issues will generally be raised by submitters, Bureau staff may identify a confidentiality issue that submitters failed to raise. For example, submitters may not identify as confidential information in a compliance report filed pursuant to a credit practices order that reveals personal information about debtors. Such materials may be withheld from the public record, under section 4.9(c)(3), to the extent that they are exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46, unless otherwise noted.

2. Section 2.33 is revised to read as follows:

§ 2.33 Compliance procedure.

The Commission may in its discretion require that a proposed agreement containing an order to cease and desist be accompanied by an initial report signed by the respondent setting forth in precise detail the manner in which the respondent will comply with the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission. At the time any such report is submitted a respondent may request confidentiality for any portion thereof with a precise showing of justification therefore, and the General Counsel with due regard to statutory restrictions, the Commission's rules, and the public interest will act upon such request.

3. Sections 2.41 (a), (b), (e), and (f) are revised to read as follows:

§ 2.41 Reports of compliance.

(a) In every proceeding in which the Commission has issued an order, pursuant to the provisions of section 5 of the Federal Trade Commission Act or section 11 of the Clayton Act, as amended, and except as otherwise specifically provided in any such order, each respondent named in such order shall file with the Commission, within sixty (60) days after service thereof, or within such other time as may be provided by the order or the rules in this chapter, a report in writing, signed by the respondent, setting forth in detail the manner and form of his compliance with the order, and shall thereafter file with the Commission such further signed, written reports of compliance as it may require. Reports of compliance shall be under oath if so requested. Where the order prohibits the use of a false advertisement of a food, drug, device, or cosmetic which may be injurious to health because of results from its use under the conditions prescribed in the advertisement, or under such conditions as are customary or usual, or if the use of such advertisement is with intent to defraud or mislead, or in any other case where the circumstances so warrant, the order may provide for an interim report stating whether and how respondents intend to comply to be filed within ten (10) days after service of the order. When court review of an order of the Commission is pending, the respondent shall file only such reports of compliance as the court may require. Thereafter, the time for filing a report of compliance shall begin to run de novo from the final judicial determination, except that if no petition for certiorari has been filed following affirmance of the order of the Commission by a court of appeals, the compliance report shall be due the day following the date on which the time expires for the filing of such petition. Staff of the Bureaus of Competition and Consumer Protection will review such reports of compliance and may advise each respondent whether the staff intends to recommend that the Commission take any enforcement action. The Commission may, however, institute proceedings, including certification of facts to the Attorney General pursuant to the provisions of section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l)) and section 11(l) of the Clayton Act, as amended (15 U.S.C. 21(l)), to enforce compliance with an order, without advising a respondent whether the actions set forth in a report of compliance evidence compliance with the Commission's order or without prior notice of any kind to a respondent.

(b) The Commission has delegated to the Director, the Deputy Directors, and the Assistant Director for Compliance of the Bureau of Competition, and to the Director, the Deputy Directors, and the Associate Director for Enforcement of the Bureau of Consumer Protection the authority to monitor compliance reports and to open and close compliance investigations. With respect to any compliance matter which has received previous Commission consideration as to compliance or in which the Commission or any Commissioner has expressed an interest, any matter proposed to be closed by reason of expense of investigation or testing, or any matter involving substantial questions as to the public interest, Commission policy or statutory construction, the Bureaus shall submit an analysis to the Commission regarding their intended actions.

* * * * *

(e) The Commission may at any time reconsider any advice given under this section and, where the public interest requires, rescind or revoke its prior advice. In such event the respondent will be given notice of the Commission's intent to revoke or rescind and will be given an opportunity to submit its views to the Commission. The Commission will not proceed against a respondent for violation of an order with respect to any action which was taken in good faith reliance upon the Commission's advice under this section, where all relevant facts were fully, completely,

and accurately presented to the Commission and where such action was promptly discontinued upon notification of rescission or revocation of the Commission's advice.

(f) All applications for approval of proposed divestitures, acquisitions, or similar transactions subject to Commission review under outstanding orders, together with supporting materials, will be placed on the public record as soon after they are received as circumstances permit, except for information for which confidential classification has been requested, with a showing of justification therefor, and which the General Counsel, with due regard to statutory restrictions, the Commission's rules, and the public interest, has determined should not be made public. Within thirty (30) days after such requests and materials are placed on the public record, any person may file formal written objections or comments with the Secretary of the Commission. Such objections or comments shall be placed on the public record except for information for which confidentiality has been requested, with a showing of justification therefor, and which the General Counsel with due regard to statutory restrictions, the Commission's rules, and the public interest, has determined should not be made public. Additionally, any communications, written or oral, concerning such proposed transactions, received by any individual member of the Commission, or by any employee involved in the decisional process, will be placed on the public record immediately after their receipt. In the case of an oral communication, the member or employee shall immediately furnish the Commission with a memorandum setting forth the full contents of such communication and the circumstances thereof, and such memorandum will immediately be placed on the public record. All responses to applications for approval of proposed divestitures, acquisitions, or similar transactions subject to Commission review under outstanding orders, together with a statement of supporting reasons, will be published when made.

PART 4—MISCELLANEOUS RULES

4. The authority for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

5. Section 4.9(b)(7)(i), (c)(1) and (c)(3) are revised to read as follows:

§ 4.9. Public records.

* * * * *

(b) * * *

(7) Compliance/Enforcement (16 CFR 2.33, 2.41). (i) Reports of compliance filed pursuant to the rules in this chapter or pursuant to a provision in a Commission order and supplemental materials filed in connection with these reports, except for reports of compliance, and supplemental materials filed in connection with Commission orders requiring divestitures or establishment of business enterprises or facilities, which are confidential until the last divestiture or establishment of a business enterprise or facility, as required by a particular order, has been finally approved by the Commission, and staff letters to respondents advising them that their compliance reports do not warrant any further action. At the time each such report is submitted the filing party may request confidential treatment in whole or in part and submit satisfactory reasons therefor, and the General Counsel with due regard for statutory restrictions, the Commission's rules and the public interest will pass upon such request;

* * * * *

(c) Confidentiality and in camera records. (1) Persons submitting documentary material to the Commission described in this section may designate that material or portions of it confidential and request that it be withheld from the public record. No such material or portions of material (including documents generated by the Commission or its staff containing or reflecting such material or portions of material) will be placed on the public record pursuant to this section until the General Counsel has ruled on the request for confidential treatment and provided any prior notice to the submitter required by law. All requests for confidential treatment shall be supported by a showing of justification in light of applicable statutes, rules, orders of the Commission or its administrative law judges, orders of the courts, or other relevant authority.

* * * * *

(3) To the extent that any documents or portions of documents otherwise falling within § 4.9(b) of this section contain information that would be exempt from mandatory public disclosure under § 4.10 of this part, the General Counsel may determine to withhold such materials from the public record.

By direction of the Commission, Commissioner Owen dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 94-16513 Filed 7-7-94; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 174

[T.D. 94-55]

RIN 1515-AB52

Permitted Forms of Signatures on Protests

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations regarding what Customs will consider to be an acceptable method of identifying the filer of a protest filed to contest a Customs decision regarding imported merchandise. The current regulations require that a protest be signed by the person filing the protest. In light of advances in methods of communication and the movement of Customs toward automation in all aspects of its operations, Customs will now accept methods of identification on protests and amendments to protest forms other than those which are handwritten in ink. The document also amends the regulations to allow amendments of protests to have the same types of identification as original protests.

EFFECTIVE DATE: August 8, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Rose Johnson, Office of Trade Operations, (202) 927-0376.

SUPPLEMENTARY INFORMATION:

Background

Section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514), establishes the procedures which the public can use to administratively contest Customs decisions with respect to imported merchandise. Procedures for filing protests of decisions of district directors, including the legality of all orders and findings, are set forth in §§ 174.11-174.16 of the Customs Regulations. Section 174.12 (c) currently requires that protests "be signed by the person filing the protest, or his agent, or attorney."

Customs has determined that requiring handwritten signatures on protests is unnecessary. Customs published a Notice of Proposed Rulemaking which appeared in the **Federal Register** (58 FR 50300) on September 27, 1993, proposing to permit filing of protests without requiring actual handwritten signatures on the protest. Customs stated, in the proposal, that as long as a protest contains all the pertinent information

(see § 174.13, Customs Regulations), and is filed in accordance with all other requirements of §§ 174.11 and 174.12, Customs Regulations, including identifying the filer, the requirement of a handwritten signature serves no other purpose than to sometimes delay the filing of an already prepared protest by a protestant. A protest must be submitted within the time limit set forth in § 174.12(e), Customs Regulations.

As indicated in the proposal, another reason for no longer requiring a handwritten signature on protests is that Customs is developing, as part of its Automated Commercial System (ACS), a protest module which will enable protests to be filed electronically. Requiring a handwritten signature on an electronic transmission would be self-defeating, if not impossible. Although the module is not presently available, reference to the module (electronic certification) was made in the proposal. This was done to prevent multiple changes to the same section within a short period of time. Before the ACS protest module does become available, another Notice of Proposed Rulemaking will be published which will provide detailed information and instructions for its use and how the electronic certification is intended to operate.

Analysis of Comments

In response to the Notice of Proposed Rulemaking, Customs received no comments which addressed the amendment as proposed. Customs did receive comments which anticipated the introduction of the protest module in ACS. Because that issue will be the subject of a different regulatory initiative before that particular module is activated, those comments are premature.

Amendment of the Regulations

In accordance with the above, Customs is now amending its regulations to permit the filing of a protest without requiring actual handwritten signatures on the protest. If the protest filer is not the importer of record or consignee, it will not be necessary, at this time for the protest filer to provide a filer number. Customs will accept protests which contain signatures which are facsimile, telefax, typed, or stamped, and, when the protest module is available for use, electronic certification in ACS.

Because Customs already accepts similar formats of signatures in certain situations, it is not anticipated that any abuses or great confusion will arise, nor should it create any increased burden of any segment of the public.

(see § 174.13, Customs Regulations), and is filed in accordance with all other requirements of §§ 174.11 and 174.12, Customs Regulations, including identifying the filer, the requirement of a handwritten signature serves no other purpose than to sometimes delay the filing of an already prepared protest by a protestant. A protest must be submitted within the time limit set forth in § 174.12(e), Customs Regulations.

As indicated in the proposal, another reason for no longer requiring a handwritten signature on protests is that Customs is developing, as part of its Automated Commercial System (ACS), a protest module which will enable protests to be filed electronically. Requiring a handwritten signature on an electronic transmission would be self-defeating, if not impossible. Although the module is not presently available, reference to the module (electronic certification) was made in the proposal. This was done to prevent multiple changes to the same section within a short period of time. Before the ACS protest module does become available, another Notice of Proposed Rulemaking will be published which will provide detailed information and instructions for its use and how the electronic certification is intended to operate.

Analysis of Comments

In response to the Notice of Proposed Rulemaking, Customs received no comments which addressed the amendment as proposed. Customs did receive comments which anticipated the introduction of the protest module in ACS. Because that issue will be the subject of a different regulatory initiative before that particular module is activated, those comments are premature.

Amendment of the Regulations

In accordance with the above, Customs is now amending its regulations to permit the filing of a protest without requiring actual handwritten signatures on the protest. If the protest filer is not the importer of record or consignee, it will not be necessary, at this time for the protest filer to provide a filer number. Customs will accept protests which contain signatures which are facsimile, telefax, typed, or stamped, and, when the protest module is available for use, electronic certification in ACS.

Because Customs already accepts similar formats of signatures in certain situations, it is not anticipated that any abuses or great confusion will arise, nor should it create any increased burden of any segment of the public.

Customs is also amending § 174.14(d) so that the requirements which apply to signatures on amendments of protests will conform to those for the original protest.

Executive Order 12866 and Regulatory Flexibility Act

This document is not a "significant regulatory action" within the meaning of E.O. 12866. Based on the supplementary information set forth above and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection.

Amendment

Part 174, Customs Regulations (19 CFR part 174), is amended as set forth below.

PART 174—PROTESTS

1. The general authority citation for part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

2. Paragraph (c) of § 174.12 is revised to read as follows:

§ 174.12 Filing of protests.

* * * * *

(c) *Identity of filer.* The identity of the person filing the protest or his agent, or attorney shall be noted on the protest. This may be accomplished through a signature which is handwritten in ink, stamped, typed, facsimile, telefax, or by electronic certification in ACS. If the person filing the protest is not the importer of record or consignee, the filer shall include his address and importer number, if any.

* * * * *

3. Paragraph (d) of § 174.14 is revised to read as follows:

§ 174.14 Amendment of protests.

* * * * *

(d) *Identification of filer.* An amendment to a protest may be filed only by the person who originally filed such protest or his agent or attorney subject to the provisions of § 174.3. The identity of the filer shall be noted on the amendment to a protest. Any acceptable method used to identify the filer described in § 174.12(c) as being acceptable on a protest will be acceptable on an amendment to a protest.

* * * * *

Approved: June 17, 1994.

Michael H. Lane,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–16544 Filed 7–7–94; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8552]

RIN 1545–AL80

Intercompany Transfer Pricing Regulations Under Section 482

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to intercompany transfer pricing under section 482 of the Internal Revenue Code. These regulations reflect the changes made to section 482 by the Tax Reform Act of 1986, and provide guidance implementing the amendment.

EFFECTIVE DATES: Effective July 8, 1994, except §§ 1.482–0T through 1.482–6T are removed effective October 6, 1994.

FOR FURTHER INFORMATION CONTACT: Sim Seo of the Office of Associate Chief Counsel (International), IRS. (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1364. The estimated average annual burden per recordkeeper is .8 hour. The estimated average annual reporting burden per respondent is 1 hour.

Comments concerning the accuracy of this burden estimate, and suggestions for reducing this burden, should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP,

Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Office for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

Section 482 was amended by the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085, 2561, et. seq. On January 21, 1993, temporary regulations relating to the evaluation of intercompany transfer pricing under section 482 were published in the **Federal Register** (58 FR 5263). A notice of proposed rulemaking (INTL–401–88) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (58 FR 5310).

Written comments responding to the notice of proposed rulemaking were received, and a public hearing was held on August 16, 1993. After consideration of all the comments, the proposed regulations under section 482 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Revisions and Summary of Comments

Introduction

The Tax Reform Act of 1986 (the Act) amended section 482 to require that consideration for intangible property transferred in a controlled transaction be commensurate with the income attributable to the intangible. The legislative history of the Act indicates that the change was intended to assure that the division of income between related parties reasonably reflects the economic activities that each undertakes. See H.R. Rep. 99–281, 99th Cong., 2d Sess. (1986) at II–637. The legislative history also expresses concern that insufficiently stringent standards had been used in determining whether an uncontrolled transaction is sufficiently comparable to a controlled transaction. In particular, the legislative history observed that industry norms for transfers of less profitable intangibles frequently are not realistic comparables for transfers of so-called "high profit" intangibles. See H.R. Rep. 99–426, 99th Cong., 1st Sess. (1985) at 424. Finally, the Conference Committee report recommended that the IRS conduct a comprehensive study and consider whether the regulations under section 482, which had been issued in 1968 (the 1968 regulations) should be "modified in any respect."

The White Paper

In response to this directive, the IRS and the Treasury Department issued a study of intercompany pricing (Notice 88–123, 1988–2 C.B. 458) on October 18, 1988 (the White Paper). The White Paper proposed two approaches for implementing the "commensurate with income" standard with respect to transfers of intangible property. The first was based on either an "exact comparable" method or an "inexact comparable" method. The second was an income-based approach that also included two methods: the basic arm's length return method (the BALRM), and the BALRM with profit split. The BALRM generally assigned an average rate of return to the assets and functions devoted to the routine activities associated with the controlled transaction. When high profit intangibles were involved, any residual profit would be divided on the basis of the estimated relative values of the intangibles that each party contributed to the activity.

The 1992 Proposed Regulations

The IRS issued proposed regulations under section 482 on January 30, 1992 (INTL–0372–88; INTL–0401–88, 57 FR 3571) (the 1992 regulations). The most significant change proposed was the introduction of three new pricing methods for transfers of intangible property: the matching transaction method (the MTM), the comparable adjustable transaction method (the CATM) and the comparable profit interval (the CPI). The CPI also could be used with respect to transfers of tangible property.

The MTM and the CATM were based on exact and inexact comparable transactions, respectively. The CPI was an income-based method under which the operating income resulting from a controlled transaction was compared with the operating income of comparable uncontrolled taxpayers. The consideration charged in the controlled transaction would be considered arm's length if the taxpayer's operating income fell within a range of results derived from the uncontrolled taxpayers over a three-year period. Finally, the 1992 regulations required that the result derived from the CATM be verified by the CPI.

In addition to providing new methods for transfers of intangibles, the 1992 regulations implemented the "commensurate with income" standard by providing that these methods could be applied to adjust the consideration charged in the year of examination (periodic adjustments) unless one of three narrow exceptions applied.

Other changes made by the 1992 regulations included modification of the rules with respect to transfers of tangible property, principally by providing for the use of CPI with respect to tangible property, requiring that the results derived from the resale price or cost plus methods be verified by application of the CPI, introducing new cost sharing regulations, introducing a limited comparable profit split method, and relaxing the fixed priority of methods set forth in the 1968 regulations.

Commenters criticized several aspects of the 1992 regulations, including the inclusion of the CPI in the regulations; the requirement that the results of most methods be verified by the CPI, the tight standards of comparability for applying the MTM, the narrow scope of the exceptions from periodic adjustments, the narrow scope for the profit split method, and the lack of a safe harbor. Commenters generally approved of the introduction of a range of acceptable results and the use of a multi-year average under the CPI, and the relaxation of the strict priority of methods.

The 1993 Temporary and Proposed Regulations

In response to comments, the IRS issued revised temporary and proposed regulations on January 21, 1993 (TD 8470; INTL 401–88, 58 FR 5263) (the 1993 regulations). With the exception of the provisions on cost sharing, the 1993 regulations replaced all the provisions contained in the 1992 regulations and added some new provisions. In addition, the 1993 regulations also modified other provisions under the 1968 regulations that had not been affected by the 1992 regulations. The 1993 regulations also adopted a structure different from that set forth under the 1968 regulations. Section 1.482–1T sets forth general rules applicable to all the subsequent provisions of the regulations under section 482. Most important of these rules is extensive guidance to be applied in determining whether an uncontrolled transaction is sufficiently comparable to serve as a basis for application of a pricing method. Determining comparability under these rules generally requires consideration of functions, risks, contractual terms, economic conditions and products. Detailed guidance is provided as to how these factors are to be assessed. Finally, the relative importance of any of these factors varies depending upon the method applied.

Section 1.482–1T also provides a "best method rule" to be used in determining which method provides the most accurate measure of an arm's length result in a given case. The best method rule adopts a flexible approach under which the determination of which method is most accurate depends on the facts and circumstances of the case. Factors to take into account in this determination include the completeness and accuracy of available data, the degree of comparability between the controlled and uncontrolled transactions, and the extent of adjustments required to apply a method. The best method rule also provides that when two methods provide inconsistent results and the best method rule does not otherwise indicate which of the two analyses should be preferred, an additional factor to take into account is whether a third method provides a result that is consistent with the result of one of the first two methods.

Section 1.482–1T also sets forth special rules to deal with issues presented by market penetration strategies, different geographic markets, "location savings," aggregation of transactions, analysis of contractual terms, multiple year analyses, collateral adjustments, coordination with section 936, and consideration of alternatives. Under the latter rule, the district director is instructed to determine an arm's length price based upon the structure actually adopted, and not to restructure the transaction as long as its form was consistent with its substance. The district director may, however, consider alternatives reasonably available to the taxpayer in determining whether a purported comparable transaction actually represents a reliable indicator of the terms to which the taxpayer would have agreed under arm's length conditions.

In addition, § 1.482–1T provides that no allocation will be made if the taxpayer's result falls within a range of arm's length results. Under this rule, two or more valid applications of any single method create a range of acceptable results within which the taxpayer's result are considered to satisfy the arm's length standard. Results falling outside the range are subject to adjustment to any point within the range (generally the midpoint).

Section 1.482–1T also provides a safe harbor for small taxpayers. That provision would permit a small taxpayer (generally defined as a group having less than $10 million in U.S. or foreign sales) to elect to determine its U.S. taxable income in accordance with

Section 1.482–1T also provides a "best method rule" to be used in determining which method provides the most accurate measure of an arm's length result in a given case. The best method rule adopts a flexible approach under which the determination of which method is most accurate depends on the facts and circumstances of the case. Factors to take into account in this determination include the completeness and accuracy of available data, the degree of comparability between the controlled and uncontrolled transactions, and the extent of adjustments required to apply a method. The best method rule also provides that when two methods provide inconsistent results and the best method rule does not otherwise indicate which of the two analyses should be preferred, an additional factor to take into account is whether a third method provides a result that is consistent with the result of one of the first two methods.

Section 1.482–1T also sets forth special rules to deal with issues presented by market penetration strategies, different geographic markets, "location savings," aggregation of transactions, analysis of contractual terms, multiple year analyses, collateral adjustments, coordination with section 936, and consideration of alternatives. Under the latter rule, the district director is instructed to determine an arm's length price based upon the structure actually adopted, and not to restructure the transaction as long as its form was consistent with its substance. The district director may, however, consider alternatives reasonably available to the taxpayer in determining whether a purported comparable transaction actually represents a reliable indicator of the terms to which the taxpayer would have agreed under arm's length conditions.

In addition, § 1.482–1T provides that no allocation will be made if the taxpayer's result falls within a range of arm's length results. Under this rule, two or more valid applications of any single method create a range of acceptable results within which the taxpayer's result are considered to satisfy the arm's length standard. Results falling outside the range are subject to adjustment to any point within the range (generally the midpoint).

Section 1.482–1T also provides a safe harbor for small taxpayers. That provision would permit a small taxpayer (generally defined as a group having less than $10 million in U.S. or foreign sales) to elect to determine its U.S. taxable income in accordance with annual published measures of profitability.

Finally, the 1993 regulations include proposed regulations to be added to § 1.482–1 dealing with foreign legal restrictions. In general, this rule provides that a foreign legal restriction preventing or limiting payment of an arm's length amount will be respected for purposes of determining an arm's length consideration only if there is evidence of a comparable uncontrolled transaction in which unrelated parties agreed to enter a similar transaction subject to the restriction. In other cases, the foreign legal restriction will be disregarded in determining an arm's length amount, but the taxpayer is permitted to elect a deferred method of accounting to defer recognition of additional income until such time as the restriction is lifted, subject to the consistent deferral of related expenses.

In addition to revising § 1.482–1, the 1993 regulations restructured the rules relating to transfers of tangible and intangible property. The 1993 regulations contain separate subsections for these rules, which were all contained in § 1.482–2 in the 1968 regulations. Specifically, § 1.482–3T governs transfers of tangible property, § 1.482–4T governs transfers of intangible property, and § 1.482–5T sets forth the comparable profit method (the CPM), which, as under the 1993 regulations, applies to transfers of tangibles or intangibles. In addition, the 1993 regulations contain a proposed set of profit split rules (to be added as § 1.482–6).

The section on transfers of tangible property provides five principal methods: The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the CPM, and (when authorized by the regulations) profit split. The CUP method was modified to provide that this method may be applied only if there are at most minor differences between the controlled and uncontrolled transactions. The 1968 regulations provided that CUP could be used only if the transactions were "so nearly identical" that any differences could be reflected by a reasonable number of adjustments. Since the CUP method is likely to achieve the highest degree of comparability of any method potentially applicable to a transfer of tangible property, the 1993 regulations state that the CUP method generally provides the most reliable measure of an arm's length result when it can be applied. The rules under the resale price and cost plus methods were not substantially changed from their predecessors in the 1968 regulations.

Section 1.482–3T also provides that when none of the enumerated methods can be applied, other (unspecified) methods may be used. In order to employ an unspecified method, taxpayers are required to disclose the use of such method on the tax return and to prepare contemporaneous documentation explaining why the method provides the most accurate measure of an arm's length result. Finally, § 1.482–3T provides rules coordinating the application of the tangible and intangible rules in cases involving transfers of so-called imbedded intangibles.

Section 1.482–4T combine the MTM and CATM from the 1992 regulations into a single method known as the comparable uncontrolled transaction (CUT) method. Unlike the CATM, the results of the CUT method are not subject to mandatory check by the CPI. As with the CUP method under § 1.482–3T, the regulations provide that this method ordinarily provides the most reliable measure of an arm's length result. The mandatory CPI check in the 1992 regulations is replaced in the 1993 regulations by requiring that the intangibles transferred in the controlled and uncontrolled transactions have substantially the same profit potential. In addition, to apply this method, the property transferred must be from the same class of intangible property and relate to the same class of products or services. Further, the underlying circumstances of the two transactions must be sufficiently similar that reliable adjustments may be made to account for the effect of any differences.

Section 1.482–4T also permits the application of unspecified methods, subject to the same constraints on taxpayer use that are imposed under § 1.482–3T. The preamble of the proposed regulation also requested comment on the merits of including a method that would measure an arm's length result for the transfer of an intangible by discounting the projected costs and benefits to the licensor or licensee, employing valid measures of the cost of capital such as those derived from the capital asset pricing model.

The 1993 regulations broaden the exceptions from periodic adjustments that were contained in the 1992 regulations by providing two exceptions. The first applies if the consideration for the intangible was determined to be arm's length under the CUT Method in the first year when substantial periodic consideration was paid, the taxpayer's actual profits from the intangible remained within a band between 80 and 120 percent of the profits projected at the time of the

controlled transactions, and certain other conditions are met. The second exception is similar but applies to methods other than the CUT Method.

The 1993 regulations also provide rules for identifying the owner of an intangible for purposes of section 482 (the developer-assister rule). These rules generally track rules provided in prior regulations, under which the owner normally is considered to be the controlled taxpayer that bears the greatest share of the risk of developing the intangible. The party that bears the greatest risk of development generally is determined by identifying costs of development. Under this rule the owner for purposes of income allocation under section 482 would not necessarily be the legal owner.

Section 1.482–5T describes the CPM. The CPM may be applied to transfers of tangible and intangible property. In broad terms the CPM is similar to the CPI set out in the 1992 regulations. However, it no longer serves as a mandatory check on the results provided by certain other methods. In addition to the general comparability factors and other considerations that must be applied before a method can be considered to provide a reasonable and reliable benchmark, § 1.482–5T provides that CPM ordinarily is inappropriate if the tested party owns "valuable non-routine intangible" property. This limitation was added to the other limitations generally applicable to all methods because CPM could be expected to understate the income attributable to such property due to the difficulty in locating uncontrolled taxpayers that possess comparable intangible property.

The 1993 regulations do not define the term "valuable non-routine intangible." The preamble to the regulations, however, states that in general the term would encompass intangible property "that is central to the conduct of a business activity and without which the business activity could not be conducted." The preamble to the proposed regulations requested comment on possible more precise definitions.

The CPM generally is applied to the taxpayer with the simplest and most easily compared operations (the tested party). In identifying potential comparables, the regulations provide that the standard of comparability is not as strict as other methods. Some diversity in terms of the functions and products is permitted, although the degree of comparability affects the reliability of the results in relation to the results of other methods under the best method rule. It also affects the derivation of the arm's length range under this method. In addition, the regulations describe a number of adjustments, including adjustments to achieve accounting consistency, that should be made when possible to the results of the uncontrolled comparables to enhance comparability.

Like the CPI under the 1992 regulations, a result will satisfy the arm's length standard under the CPM if it falls within a range of results, based on a single profit level indicator derived from uncontrolled comparables. Profit level indicators include the rate of return on capital employed (i.e., rate of return on assets) and financial ratios such as operating profit to gross sales and gross profit to operating expenses (Berry ratio).

Unlike the other methods in the 1993 regulations, the arm's length range may be constructed under the CPM in one of two ways. First, if reliable adjustments for all material differences that would affect profitability are made, the arm's length range includes all the results obtained, as under the other methods. In other cases, however, the range is limited by statistical methods. The range so determined consists either of the interquartile range or the range constructed under some other statistically valid method. No additional guidance was provided as to how the range would be established if the interquartile range were not used.

The 1993 regulations also contain a set of proposed regulations (§ 1.482–6) providing profit split methodologies. Three methods are described: the residual allocation rule, the capital employed allocation rule and the comparable profit split. In addition, other profit splits may be used if they provide an economically valid basis for the allocation of the combined profit or loss of the relevant business activity. The basic objective of the profit split methods is to estimate an arm's length return by comparing the relative economic contributions that two parties make to the success of an activity (the relevant business activity), and dividing the returns from the relevant business activity between them on the basis of the value of such contributions.

The residual allocation rule is similar to the BALRM with profit split described in the White Paper. It consists of two basic steps. First, using other methods such as the CPM, market returns for routine functions are estimated and allocated to the parties that performed them. The remaining, residual amount then is allocated between the parties on the assumption that this residual is attributable to intangible property contributed to the activity by the controlled taxpayers. Based on this assumption, the residual is divided based on the estimate of the relative value of the parties' contributions of such property. Since fair market value of the intangible property usually would not be readily ascertainable, the regulations permit use of other measures of the relative values of intangible property, including capitalized research and development expenses.

The capital employed allocation rule may be applied only if all the controlled taxpayers participating in the relevant business activity assumed an approximately equal level of risk with respect to their capital employed. Comment was requested on the feasibility of measuring relative levels of risk. This method divides the combined operating profit from the relevant business activity by allocating an equal return to each controlled taxpayer's capital employed. Capital employed may be measured by either book or fair market value, as long as all assets are valued on the same basis. Further, if book value is used and there are intangible assets that have no book value, some other measure (such as capitalized research and development expense) must be used.

The comparable profit split rule is similar to the profit split rule set forth in the 1992 regulations. It essentially may be applied only if it is possible to locate two unrelated parties that are each comparable to one of the controlled taxpayers and that deal with one another in a comparable manner. In such a case the combined operating profit from the relevant business activity is divided among the controlled taxpayers in the same percentage as it was divided among the unrelated parties.

There are a number of substantive and procedural restrictions on the use of the profit split method. These restrictions were imposed because the profit split method relies either wholly or in part on internal data rather than data derived from uncontrolled taxpayers, and it is therefore likely that other methods will provide a more reliable measure of an arm's length result under the best method rule.

There are three substantive limitations on the use of the profit split method. The profit split method may be applied only if both controlled taxpayers own valuable non-routine intangible property, the intangibles contribute significantly to the combined operating profit derived from the relevant business activity, and there were significant transactions between the controlled taxpayers.

The most important administrative requirement is that the taxpayer must make a binding election to apply the profit split method, which can be revoked only with the consent of the Commissioner. In addition, the taxpayer also is required to document the combined profit or loss attributable to the relevant business activity to the satisfaction of the district director and explain in such documentation why the profit split method provides the best method for determining an arm's length result. Further, prior to electing the profit split method the taxpayer must execute a pricing agreement setting forth the method chosen, and the method must be applied consistently from year to year. The district director also is required to meet all of the substantive, but not the procedural requirements, to apply the profit split method.

Comments on the 1993 Regulations

The IRS received comments on the 1993 regulations from many taxpayers and industry and professional groups. In addition, comments were received from several tax treaty partners, both individually and through the international forum of the Organization for Economic Cooperation and Development (OECD).

The commenters generally approved of the introduction of the best method rule and the flexibility implied by reliance on comparability, rather than a hierarchy of methods, to identify the method that would provide the most accurate measure of an arm's length result. Commenters also generally approved of the extension of the concept of an arm's length range to all the methods, the proposal of a set of profit split methods, the inclusion of exceptions from periodic adjustments that were broader than the exceptions provided under the 1992 regulations, and the elimination of the requirement that the CPM be a mandatory check on the results of most other methods.

Commenters also expressed concerns with various aspects of the 1993 regulations. In particular, the most critical comments focused on the CPM and profit split portions of the regulation. With respect to the CPM, some commenters expressed a belief that the method was inconsistent with the arm's length standard and should be eliminated. Others felt that it could provide useful evidence in certain cases and therefore should be retained, but the scope for its application should be circumscribed further than it was in the 1993 regulations. In addition, some commenters were concerned that examiners might apply the CPM without regard to the evidence provided by other

The most important administrative requirement is that the taxpayer must make a binding election to apply the profit split method, which can be revoked only with the consent of the Commissioner. In addition, the taxpayer also is required to document the combined profit or loss attributable to the relevant business activity to the satisfaction of the district director and explain in such documentation why the profit split method provides the best method for determining an arm's length result. Further, prior to electing the profit split method the taxpayer must execute a pricing agreement setting forth the method chosen, and the method must be applied consistently from year to year. The district director also is required to meet all of the substantive, but not the procedural requirements, to apply the profit split method.

Comments on the 1993 Regulations

The IRS received comments on the 1993 regulations from many taxpayers and industry and professional groups. In addition, comments were received from several tax treaty partners, both individually and through the international forum of the Organization for Economic Cooperation and Development (OECD).

The commenters generally approved of the introduction of the best method rule and the flexibility implied by reliance on comparability, rather than a hierarchy of methods, to identify the method that would provide the most accurate measure of an arm's length result. Commenters also generally approved of the extension of the concept of an arm's length range to all the methods, the proposal of a set of profit split methods, the inclusion of exceptions from periodic adjustments that were broader than the exceptions provided under the 1992 regulations, and the elimination of the requirement that the CPM be a mandatory check on the results of most other methods.

Commenters also expressed concerns with various aspects of the 1993 regulations. In particular, the most critical comments focused on the CPM and profit split portions of the regulation. With respect to the CPM, some commenters expressed a belief that the method was inconsistent with the arm's length standard and should be eliminated. Others felt that it could provide useful evidence in certain cases and therefore should be retained, but the scope for its application should be circumscribed further than it was in the 1993 regulations. In addition, some commenters were concerned that examiners might apply the CPM without regard to the evidence provided by other methods. Contributing to this concern was the fact that the comparability standards under other methods were generally tighter than under the CPM, potentially making the CPM more readily available. Finally, commenters evidenced some confusion over certain language in § 1.482–5T; some interpreted the scope language under that section as indicating that the CPM was preferred to other methods, in contradiction to the best method rule.

With respect to the profit split method, many commenters urged that the elective and other procedural requirements for its use by taxpayers be eliminated. Commenters expressed some ambivalence with respect to the requirement that both parties to the transaction own valuable non-routine intangibles in order to employ the profit split method. Some were concerned that this requirement would make profit split unavailable in some cases in which it might otherwise provide the most reliable measure of an arm's length result. Others were uncertain of its effect given the absence of an explicit definition of the term in the regulations. Many suggestions were received as to possible definitions of this term, which was relevant not only under profit split but also under the CPM.

In addition to the comments received on the CPM and profit split methods, numerous concerns were expressed with regard to other aspects of the regulations. The most significant of these included the following. In connection with the provisions relating to tangible property, a large number of commenters expressed concerns about the limited role accorded to evidence provided by "inexact comparables," particularly under the CUP method, arguing that in some instances the evidence provided by an "inexact comparable" would be more reliable than other available information. Some also perceived the modified comparability standard under the CUP method as being more restrictive than the standard under the 1968 regulations, and several comments objected to the restrictions placed on the use of unspecified methods.

In connection with the provisions relating to intangibles, several commenters objected to the high comparability standard under the CUT method, particularly the requirement that profit potential of the controlled transaction and the uncontrolled transaction be substantially the same. Further, the continued availability of periodic adjustments was viewed by some as potentially conflicting with the arm's length standard. Others criticized the failure of the developer-assister rule to give sufficient weight to legal ownership in identifying the owner of an intangible, and objected to an example illustrating the potential use of alternatives in applying the arm's length standard.

Commenters also requested further guidance as to the interaction of the tangible and intangible property rules. Finally, some commenters requested that the thresholds for application of the safe harbor be liberalized to make it more widely available, and others requested that the published measures of profitability allow electing taxpayers to report less income than they would be expected to report under the otherwise applicable methods.

Further discussion of the comments received is included in the following description of the changes reflected in the final regulations.

The Final Regulations

While the final regulations reflect numerous modifications in response to the comments received on the 1993 regulations, both the format and the substance of the final regulations are generally consistent with the 1993 regulations. The changes adopted are intended to clarify and refine those provisions of the 1993 regulations that required improvement, without fundamentally altering the basic policies reflected in the 1993 regulations.

The most noteworthy feature of the 1993 regulations in comparison to earlier versions of the regulations under section 482 was the emphasis on comparability, and the resulting flexibility. This feature of the 1993 regulations was generally well received by taxpayers and foreign governments. The final regulations adhere to this emphasis, and in some cases increase it. For instance, so-called "inexact" comparables potentially may be used under all the methods in the final regulations, while they were generally not taken into account under the 1993 regulations. Further, the elective and other procedural barriers to the use of profit split and "other" (i.e., unspecified) methods have been removed, and the limitations regarding the presence of valuable non-routine intangibles under CPM and profit split have been eliminated. These restrictive rules were contained in the 1993 regulations primarily out of a concern that in their absence taxpayers or the IRS might employ methods that did not provide the best measure of an arm's length result.

By removing these restrictions, the final regulations are intended to maximize the extent to which relevant

information may be taken into account in evaluating taxpayers' results under the arm's length standard. As a consequence, however, the emphasis on comparability and the importance of the best method rule are increased; because *ex ante* restrictions will no longer prohibit the use of potentially less reliable information or methodologies, it is critically important that the best method rule be properly applied to select the most reliable measure of an arm's length result from the available evidence. Thus, taxpayers and the IRS will be required to exercise considerable judgment in applying the arm's length standard. To assist taxpayers and the IRS in exercising this judgment, the discussion of the factors to consider in applying the best method rule has been substantially expanded. Set forth below is a more detailed explanation of the provisions in the final regulations.

Section 1.482–1

With one exception, the scope and purpose provision of the regulations (§ 1.482–1(a)(1)) is substantially similar to its counterpart in the 1993 regulations. The final regulations delete the statement that section 482 places uncontrolled and controlled taxpayers on a parity by determining the controlled taxpayer's true taxable income "in a manner that reasonably reflects the relative economic activity undertaken by each taxpayer." The definition of true taxable income in § 1.482–1(i)(9) already incorporates the notion that, under section 482, the controlled taxpayer should earn the amount of income that would have resulted had it dealt with other controlled taxpayers at arm's length. Because a transaction at arm's length naturally would reflect the "relative economic activity undertaken," this definition incorporates that concept, and it is unnecessary to include the additional language in this provision.

The provision authorizing the IRS to make allocations (§ 1.482–1(a)(2)) is unchanged from the 1993 regulations.

The provision regarding the taxpayer's use of section 482 (§ 1.482–1(a)(3)) has been revised to clarify that, although the taxpayer is generally barred from invoking the provisions of section 482, the taxpayer may report an arm's length result on its original tax return, even if such result reflects prices that are different from the prices originally set forth in the taxpayer's books and records. In response to comments, the requirement in the 1993 regulations that such differences be eliminated through the use of "compensating adjustments" has been deleted. Section 482 is concerned only with whether the taxpayer reports its true taxable income, and whether or not this result is consistent with the taxpayer's books, or is corrected in the books, is generally irrelevant to this inquiry. However, the absence of a requirement to eliminate book and tax differences for section 482 purposes has no effect on the mechanisms otherwise provided for reporting and reconciling such differences (e.g., Schedule M–1 of Form 1120). Further, the limited exception provided by this rule does not permit taxpayers to apply section 482 at will; thus, for example, a taxpayer may not rely on section 482 to reduce its taxable income on an amended return.

Section 1.482–1(b) summarizes some key principles that guide application of section 482. Section 1.482–1(b)(1) states that the governing principle under section 482 is the arm's length standard. Under this standard controlled taxpayers are expected to realize from their controlled transactions the results that would have been realized if uncontrolled taxpayers had engaged in the same transactions under the same circumstances. This expression of the arm's length standard differs from that set forth in the 1993 regulations, which stated that the arm's length standard was satisfied if the results of a controlled transaction were consistent with the results of "comparable transactions between uncontrolled taxpayers." The latter definition has been replaced because it is inconsistent with the notion underlying the arm's length standard that controlled and uncontrolled taxpayers should be placed on the same (rather than a merely similar) footing. However, this provision recognizes that in most cases identical transactions between unrelated parties will not be located, and it therefore will be appropriate to consider uncontrolled transactions that are comparable rather than identical.

Section 1.482–1(b)(2) provides rules for determining the type of method that will be applied to evaluate whether controlled transactions are at arm's length, given that different methods apply to different types of transactions (e.g., transfers of property or services). In some cases it may be necessary to apply more than one method to a single transaction when the transaction is most reliably evaluated under more than one method. This provision is identical to its counterpart in the 1993 regulations, except that it, along with a number of other provisions, has been revised in response to comments to make clear that it applies to taxpayers as well as the district director. Thus, such provisions apply with equal force to the district director and to a taxpayer that seeks to apply the final regulations for purposes of determining and reporting its true taxable income on its original return, consistent with § 1.482–1(a)(3).

Section 1.482–1(c) contains the best method rule. Although similar in purpose and substance to its counterpart in the 1993 regulations, this provision contains considerably more detail and guidance for application than its predecessor, and has been given more prominence in the structure of the regulation. The best method rule guides the application of all the methods in the final regulations. Whenever the available data creates the possibility that more than one method could be applied to a controlled transaction (or that one method could be applied in more than one way), the best method rule must be applied to determine which of those methods (or applications) will be selected.

The best method rule provides that an arm's length result must be determined under the method that, given the facts and circumstances, provides the "most reliable measure" of an arm's length result. This formulation modifies the 1993 regulation's reference to the "most *accurate* measure," to conform to the factors that are taken into account in applying the best method rule. These considerations are couched in terms of reliability rather than accuracy.

In deciding which of two or more methods provides the most reliable measure of an arm's length result, § 1.482–1(c)(2) provides that there are two primary factors to consider: comparability and the quality of data and assumptions. In addition, as under the 1993 regulations, in some cases it may be relevant to consider whether the results of a particular method are consistent with the results under another method.

Section 1.482–1(c)(2)(i) discusses the role of comparability under the best method rule. Although the results of identical transactions between unrelated parties under identical circumstances provide the most objective basis for determining the true taxable income of a controlled taxpayer, it rarely is possible to locate uncontrolled transactions with this degree of similarity to the controlled transactions. Therefore, the regulations contemplate use of uncontrolled transactions that are comparable, rather than identical, to the controlled transaction.

In most cases there will be more than one potential comparable uncontrolled transaction to which the controlled transaction may be compared, and it will be possible to apply more than one method. In such cases it is necessary to evaluate the relative degree of

comparability of each such uncontrolled transaction under the comparability criteria relevant to the application of the method; the method that employs the uncontrolled comparables with the highest degree of comparability to the controlled transaction is more reliable than methods that employ uncontrolled comparables with a lesser degree of comparability, assuming data and assumptions of equal quality. Methods relying on uncontrolled transactions with the highest degree of comparability are preferred because, as the degree of comparability is improved, the number of differences that could render the analysis unreliable is reduced. Adjustments can and should be made for any differences if the reliability of the analysis is improved by making the adjustment. Under this approach, the comparable uncontrolled price and comparable uncontrolled transaction methods ordinarily will provide the most reliable measure of true taxable income when they can be applied to closely comparable uncontrolled transactions, because such analyses can be expected to achieve a higher degree of comparability than other methods.

In determining which method provides the highest degree of comparability, it is necessary to consider the comparability factors discussed in § 1.482–1(d) (Comparability). In addition, it is necessary to consider further guidance on comparability set out under each method, as certain differences have a greater effect on comparability under some methods than under others. Finally, the reliability of data and assumptions, discussed below, will affect the ability to determine the degree of comparability between an uncontrolled transaction and the controlled transaction.

Section 1.482–1(c)(2)(ii) discusses data and assumptions, which constitute the second factor that must be considered in applying the best method rule. This provision is divided into three components: completeness and accuracy of data, reliability of assumptions, and sensitivity of results to deficiencies in data and assumptions.

Completeness and accuracy of data defines the ability to identify and quantify material differences. When data regarding a controlled or uncontrolled transaction is relatively incomplete, it is more difficult to determine if there are material differences between the transactions. Thus, the fact that no material difference between an uncontrolled and a controlled transaction has been identified does not necessarily mean that the two transactions are highly

comparability of each such uncontrolled transaction under the comparability criteria relevant to the application of the method; the method that employs the uncontrolled comparables with the highest degree of comparability to the controlled transaction is more reliable than methods that employ uncontrolled comparables with a lesser degree of comparability, assuming data and assumptions of equal quality. Methods relying on uncontrolled transactions with the highest degree of comparability are preferred because, as the degree of comparability is improved, the number of differences that could render the analysis unreliable is reduced. Adjustments can and should be made for any differences if the reliability of the analysis is improved by making the adjustment. Under this approach, the comparable uncontrolled price and comparable uncontrolled transaction methods ordinarily will provide the most reliable measure of true taxable income when they can be applied to closely comparable uncontrolled transactions, because such analyses can be expected to achieve a higher degree of comparability than other methods.

In determining which method provides the highest degree of comparability, it is necessary to consider the comparability factors discussed in § 1.482–1(d) (Comparability). In addition, it is necessary to consider further guidance on comparability set out under each method, as certain differences have a greater effect on comparability under some methods than under others. Finally, the reliability of data and assumptions, discussed below, will affect the ability to determine the degree of comparability between an uncontrolled transaction and the controlled transaction.

Section 1.482–1(c)(2)(ii) discusses data and assumptions, which constitute the second factor that must be considered in applying the best method rule. This provision is divided into three components: completeness and accuracy of data, reliability of assumptions, and sensitivity of results to deficiencies in data and assumptions.

Completeness and accuracy of data defines the ability to identify and quantify material differences. When data regarding a controlled or uncontrolled transaction is relatively incomplete, it is more difficult to determine if there are material differences between the transactions. Thus, the fact that no material difference between an uncontrolled and a controlled transaction has been identified does not necessarily mean that the two transactions are highly comparable unless the data on both transactions is sufficiently comprehensive that it is possible to conclude that it is unlikely that any such differences exist. In addition, the completeness and accuracy of data will affect the ability to reliably estimate the effect of a material difference once such a difference is identified. Thus, merely identifying and adjusting for the effect of a material difference does not render the controlled and uncontrolled transactions highly comparable unless the data on both transactions is sufficiently complete and accurate that the difference has a definite and reasonably ascertainable effect.

Another factor that affects the reliability of an analysis is the reliability of the assumptions upon which the analysis is based. All methods rely on assumptions. For instance, adjustments for differences in payment terms reflect the assumption that such differences would have an effect on price at arm's length. While this assumption is relatively sound, other assumptions may be less reliable. In particular, assumptions under the profit split method (such as the assumption that the value of intangible assets is related to the cost of development) may not always be as reliable as the assumptions under methods that rely more closely on direct market indicators.

After assessing the completeness and accuracy of data and the reliability of the assumptions upon which the analysis is based, § 1.482–1(c)(2)(ii)(C) provides that it is necessary to determine the effect that any deficiencies in the data and assumptions have on the reliability of the result. Some deficiencies will be more important than others. Thus, a difference in risks borne might be expected to affect all methods to some extent. Further, some deficiencies will have a more adverse impact on some methods than on other methods, because different methods rely more heavily on different types of comparability. Thus, an inability to reliably allocate research and development expenses would have a serious effect on the reliability of a residual profit split under § 1.482–6(c)(3), but would have little effect on an analysis under the CUT method.

Finally, § 1.482–1(c)(2)(iii) provides that in some cases it may be relevant to consider whether the results obtained under a method are consistent with the results obtained under another method. This situation will arise when, after considering the comparability and the quality of the data and assumptions under two different methods (or under two different applications of the same method), it is not possible to determine which of the competing analyses provides a more reliable measure of an arm's length result. In such a case, it may be relevant to compare the results with the result obtained under a third method (or, given two applications of a single method, a third application of that method).

Section 1.482–1(d) provides general guidance for determining comparability. General guidance on comparability is provided in this section of the regulations because the factors described are relevant under all the methods. This provision is substantially similar to the guidance provided in § 1.482–1T(c) of the 1993 regulations. It provides that in determining the degree of comparability between a controlled and uncontrolled transaction, the functions, contractual terms, risks, economic conditions, and property or services in the two transactions must be compared.

Section 1.482–1(d)(2) provides that for two transactions to be considered comparable, they need not be identical, but must be sufficiently similar that the uncontrolled transaction provides a reliable measure of an arm's length result. Further, if there are material differences between the transactions, adjustments must be made to account for such differences if the effect of the differences can be ascertained with sufficient accuracy to improve the reliability of the results. A "material difference" is defined as a difference that would materially affect price or profit. Thus, adjustments for differences that would have only a *de minimis* or minor effect on price or profit are not required (although such adjustments will tend to increase the reliability of the result). Further, the extent (i.e., the number and magnitude) and reliability of any adjustments will affect the reliability of the result. The number and magnitude of adjustments affects reliability because as the number or magnitude of adjustments increases, the potential for error also increases. Although the standard of comparability under § 1.482–1(d)(2) creates the possibility that there may be a material difference between the controlled and uncontrolled transactions for which an adjustment has not been made, this only would occur if an adjustment was not possible and no better analysis could be employed.

There are several differences between § 1.482–1(d)(2) and its counterpart in the 1993 regulations (§ 1.482–1T(c)(2)(i)). First, in response to comments, the definition of comparability in the final regulations contemplates the use of so-called

"inexact" comparables under all methods. The 1993 regulations only contemplated the use of such analyses under the CPM. Of course, inexact comparables only will be used if the best method rule indicates that these analyses provide the most reliable measure of an arm's length result.

A second difference between the final and 1993 regulations is the standard for making adjustments. The 1993 regulations provided that adjustments "may" be made to account for material differences if such differences have a "definite and reasonably ascertainable effect" on prices or profits, and that if such differences can be reflected by such adjustments, the result constitutes an arm's length result for the controlled transaction. This language therefore seemed to preclude adjustments when the effect of the difference did not have a definite and reasonably ascertainable effect. Interpreted literally, this standard could prevent adjustments that, although not perfectly precise, nonetheless would improve the reliability of the analysis.

Accordingly, the final regulations provide that adjustments for material differences should be made to the extent that they improve the reliability of a result. In some cases it may be possible to make adjustments that improve reliability even though the difference for which the adjustment is made does not have a "definite and reasonably ascertainable" effect on price or profit. Such adjustments nevertheless should be made. The provision adds that the extent and reliability of the adjustments will affect the reliability of the result in relation to the reliability of applications of other methods.

A third important difference between the 1993 regulations and the final regulations is the definition of the minimum level of comparability. The 1993 regulations provided that an uncontrolled comparable could be used to determine an arm's length result only if it provided a "reasonable and reliable benchmark." This phrase has been replaced by the phrase "a reliable measure" of an arm's length result. To some readers the word "benchmark" indicated that unadjusted industry averages could serve as the basis for adjustments. This concern was most evident with respect to the comments received with respect to the CPM.

Section 1.482–1(d)(3) discusses the five factors that affect comparability: functions, contractual terms, risks, economic conditions and property or services. Of these factors, the discussions of functions, economic conditions and property or services are substantially similar to the discussions of these factors in the 1993 regulations. The discussions of contractual terms and risks differ in some respects from the discussions of these factors in the 1993 regulations.

Contractual terms were covered in two provisions of the 1993 regulations: § 1.482–1T (c)(3)(iii) and (d)(3)(ii). The final regulations consolidate the discussion of these provisions into § 1.482–1(d)(3)(ii) and make some clarifying changes.

The discussion of risk in § 1.482–1(d)(3)(iii), particularly as it relates to identifying the party that bears a risk, is somewhat different from its predecessor in the 1993 regulations (§ 1.482–1T(c)(3)(ii)). In general, the determination of which party bears a risk will be made in accordance with the provisions of § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms). Thus, to the extent that taxpayers allocate risks by contract and their conduct is consistent with such contract, their allocation of risk will be respected, unless the contract is executed after the impact of the risk is known or knowable. In cases where the allocation of risk is not clear from the parties' contractual arrangements, several factors may be particularly relevant to determine which party bore the risk. These factors include whether the parties' conduct is consistent over time; which controlled taxpayer would ultimately bear the consequences of a risk; and the extent to which each taxpayer controls any activities that influence the outcome of a particular risk. The rules on documentation of risks contained in the 1993 regulations has been revised because some readers thought they implied that the district director could arbitrarily allocate risks in the absence of express documentation allocating the risk.

Section 1.482–1(d)(4) sets forth rules for certain special circumstances affecting comparability. First, § 1.482–1(d)(4)(i) describes the extent to which market share strategies will be respected in determining an arm's length result for a controlled transaction. As under the 1993 regulations, these strategies may be recognized in certain situations in which a company is attempting to gain entry into a market or to increase market share. In such circumstances the amount charged in the controlled transaction, or the expenses borne by a controlled taxpayer, may for a short time differ from what normally would be observed at arm's length. The reference in the 1993 regulations to using such strategies to meet competition in an existing market has not been included in the final regulations because companies in competitive markets are routinely faced with the problem of meeting competition, which is reflected in a normal arm's length price.

A market share strategy will be respected only if certain conditions are satisfied. These conditions are that the costs incurred to implement the strategy are borne by the controlled taxpayer that would derive the benefits from engaging in the strategy (and there is a reasonable likelihood that the strategy will bear fruit), the strategy is pursued for a reasonable period of time given the industry in question, and the strategy and related matters are documented before the strategy was implemented. The taxpayer must provide documentation establishing that it has satisfied these conditions. These conditions and the documentation requirement are similar to those imposed under the 1993 regulations. In addition, a market share strategy "will be taken into account only if it can be shown that an uncontrolled taxpayer engaged in a comparable strategy under comparable circumstances for a comparable period of time. . . ." This requirement ensures that the strategy is consistent with the behavior of parties operating at arm's length. It does not, however, require that the taxpayer locate a comparable uncontrolled transaction that would satisfy the standards of the CUP method in order to take advantage of this rule. The critical component of this requirement is that there be evidence that uncontrolled taxpayers engage in similar behavior under comparable circumstances. A taxpayer could, for example, satisfy this requirement by providing evidence of an uncontrolled taxpayer in a different industry engaging in such a strategy, given evidence that the circumstances otherwise were comparable.

Section 1.482–1(d)(4)(ii) addresses certain issues presented by differences in geographic markets. This section generally conforms to the analogous provision in the 1993 regulations by providing that while it is permissible to derive uncontrolled comparables from geographic markets that are different from the market in which the controlled transaction occurred, adjustments must be made to the extent possible to reflect the effect of any differences between the markets, and the failure to accurately adjust for such differences will affect the reliability of the analysis under the best method rule. In addition, § 1.482–1(d)(4)(ii)(C) provides that "location savings" from operating in a low-cost jurisdiction must be allocated among controlled taxpayers consistent with the allocation of such savings that would occur between unrelated parties, taking into account the competitive conditions in the low-cost market. As a result, some or all of the location savings might inure to the benefit of the other party to the controlled transaction.

Finally, § 1.482–1(d)(4)(iii) describes certain transactions that are not ordinarily accepted as comparables. Transactions not in the ordinary course of business, and transactions arranged with a principal purpose of establishing an arm's length result, ordinarily will not constitute comparable transactions for purposes of section 482. This provision is generally consistent with § 1.482–1T(c)(4)(iii), except that the reference to "isolated transactions" has been deleted, as most transactions involving intangible property may be viewed as isolated. In addition, the statement that transfers of tangibles should be significant in number and amount in order to constitute comparables has also been deleted. Transfers of some property may be few in volume, but nonetheless be in the ordinary course of business and provide a useful basis for determining an arm's length result. Moreover, even large differences in volume are not per se bars to the use of a potential comparable. Rather, such differences should be taken into account as comparability factors under § 1.482–1(d)(3).

Section 1.482–1(e) describes the arm's length range. This provision corresponds to § 1.482–1T(d)(2)(i) of the 1993 regulations. As under the 1993 regulations, the arm's length range is derived from two or more uncontrolled transactions. Under the 1993 regulations the range included all valid applications of a particular method. A modified rule has been included in the final regulations to reflect the possible use of inexact comparables under all of the methods. Given this relaxed standard of comparability, it would be inappropriate to derive a range from a mix of exact and inexact comparables, because to do so would accord the same weight to results with potentially widely varying degrees of reliability. Therefore, § 1.482–1(e)(2)(i) provides that the range is derived from two or more uncontrolled transactions "of similar comparability and reliability."

Section 1.482–1(e)(2)(ii) expands upon this rule, providing that uncontrolled comparables with significantly lower levels of comparability and reliability than others will be disregarded. Thus, it is necessary in every case in which more than one uncontrolled transaction is available to compare the relative levels of comparability and reliability of the uncontrolled transactions, and to

occur between unrelated parties, taking into account the competitive conditions in the low-cost market. As a result, some or all of the location savings might inure to the benefit of the other party to the controlled transaction.

Finally, § 1.482–1(d)(4)(iii) describes certain transactions that are not ordinarily accepted as comparables. Transactions not in the ordinary course of business, and transactions arranged with a principal purpose of establishing an arm's length result, ordinarily will not constitute comparable transactions for purposes of section 482. This provision is generally consistent with § 1.482–1T(c)(4)(iii), except that the reference to "isolated transactions" has been deleted, as most transactions involving intangible property may be viewed as isolated. In addition, the statement that transfers of tangibles should be significant in number and amount in order to constitute comparables has also been deleted. Transfers of some property may be few in volume, but nonetheless be in the ordinary course of business and provide a useful basis for determining an arm's length result. Moreover, even large differences in volume are not per se bars to the use of a potential comparable. Rather, such differences should be taken into account as comparability factors under § 1.482–1(d)(3).

Section 1.482–1(e) describes the arm's length range. This provision corresponds to § 1.482–1T(d)(2)(i) of the 1993 regulations. As under the 1993 regulations, the arm's length range is derived from two or more uncontrolled transactions. Under the 1993 regulations the range included all valid applications of a particular method. A modified rule has been included in the final regulations to reflect the possible use of inexact comparables under all of the methods. Given this relaxed standard of comparability, it would be inappropriate to derive a range from a mix of exact and inexact comparables, because to do so would accord the same weight to results with potentially widely varying degrees of reliability. Therefore, § 1.482–1(e)(2)(i) provides that the range is derived from two or more uncontrolled transactions "of similar comparability and reliability."

Section 1.482–1(e)(2)(ii) expands upon this rule, providing that uncontrolled comparables with significantly lower levels of comparability and reliability than others will be disregarded. Thus, it is necessary in every case in which more than one uncontrolled transaction is available to compare the relative levels of comparability and reliability of the uncontrolled transactions, and to discard those uncontrolled transactions that do not have approximately the same level of comparability and reliability as the most comparable and reliable of the uncontrolled transactions.

Under § 1.482–1(e)(2)(iii), the arm's length range will be established in one of two ways, depending upon the extent to which material differences between the uncontrolled comparables and the controlled transaction can be identified, and the reliability of adjustments made to account for such differences. First, under § 1.482–1(e)(2)(iii)(A), the arm's length range will consist of the results of all the uncontrolled comparables (i.e., all the uncontrolled comparables of similar comparability and reliability) if certain requirements are met. These requirements are that every identified material difference have a definite and reasonably ascertainable effect on prices or profits; that appropriate adjustments for such differences be made; and that the data be sufficiently complete that it is likely that there are no unidentified material differences. Given equal degrees of high comparability, it is impossible to conclude which of the uncontrolled comparables provides a more reliable measure of an arm's length result, and it is inappropriate to draw distinctions between them by excluding some from the range. Therefore all the results are included in the arm's length range.

Second, § 1.482–1(e)(2)(iii)(B) provides that if the standards of § 1.482–1(e)(2)(iii)(A) are not met, then the reliability of the analysis must be enhanced, if possible, by applying valid statistical techniques to the uncontrolled comparables that are of similar comparability and reliability. In this case the range generally consists of the interquartile range, i.e., the 25th to the 75th percentile of the results derived from the uncontrolled comparables, or an equivalent range determined pursuant to other valid statistical methods corresponding to a level of confidence equal to that provided by the interquartile range. Finally, this section reemphasizes that all adjustments for material differences that improve the reliability of the result must be made to the extent possible. Section 1.482–1(e)(2)(iii)(C) provides guidance for determining the interquartile range.

The 1993 regulations contemplated the use of statistical techniques to derive the arm's length range only under the CPM. The use of these techniques has been extended to all methods under the final regulations to reflect the fact that the standards of comparability have been relaxed to permit the use of inexact comparables.

Unlike the uncontrolled comparables used in establishing the range under § 1.482–1(e)(2)(iii)(A), the comparables under § 1.482–1(e)(2)(iii)(B) have, or may have, material differences for which adjustments have not been made. The justification for including all the results in the arm's length range under § 1.482–1(e)(2)(iii)(A) is that all the uncontrolled comparables are of approximately equal comparability, and it is inappropriate to draw distinctions between them by excluding some from the range. This is not true, however, of the comparables used to derive the arm's length range under § 1.482–1(e)(2)(iii)(B). Although these comparables will appear to be of equal comparability, the presence of either unidentified material differences or identified material differences that do not have a definite and reasonably ascertainable effect, means that they are actually unlikely to be equally comparable. Therefore, to include all the results in the arm's length range under § 1.482–1(e)(2)(iii)(B) would mean that uncontrolled comparables of differing degrees of comparability and reliability would be included in the range, violating the rule set forth in § 1.482–1(e)(2)(ii) (Selection of comparables). If results of varying degrees of comparability and reliability were included in the range, the analysis would be distorted, because results with different degrees of comparability and reliability would be accorded equal weight.

Since it is impossible to directly identify and quantify these material differences, the regulations require that they be taken into account indirectly through the use of a statistical range. Results that differ widely from one another have significant, unaccounted for, differences. Therefore when it is highly probable that the uncontrolled comparables are not of roughly equal comparability (it being impossible to identify all material differences), it is reasonable to assume that the results diverging significantly from the norm are not comparable to the controlled taxpayer.

If results fall outside the arm's length range, § 1.482–1(e)(3) provides that the district director may make adjustments so that the taxpayer's result falls at any point within the range. When the interquartile range is used, this point generally will be the median of the results. In other cases, this point will normally be the mean of the results.

Section 1.482–1(e)(4) states that the district director may properly propose an adjustment based on a single comparable uncontrolled price. However, if the taxpayer subsequently

demonstrates that its results are within a range established by additional equally comparable transactions, no allocation will be made.

Section 1.482–1(f) sets forth several rules relating to the scope of review under section 482 that correspond closely to rules provided under § 1.482–1T(d) of the 1993 regulations. This section provides that a section 482 allocation may be made whenever the taxable income of a controlled taxpayer differs from an arm's length amount. Further, § 1.482–1(f)(1)(i) provides that the discretion of the district director to utilize section 482 is not limited to cases in which the taxpayer intentionally distorted its taxable income. Section 1.482–1(f)(1)(ii) provides that the district director may make an allocation even if the ultimate income anticipated from a series of transactions is not realized. Sections 1.482–1(f)(1) (iii) and (iv) relate to the interaction between section 482 and the nonrecognition and consolidated return provisions, respectively. They are consistent with guidance set forth in the 1968 and 1993 regulations.

Section 1.482–1(f)(2) contains rules relating to the determination of true taxable income. These rules are substantially similar to rules set forth in § 1.482–1T(d)(3) of the 1993 regulations. Section 1.482–1(f)(2)(i) provides that multiple transactions (generally within the same product grouping) may be aggregated when they are so interrelated that it is necessary to view them as a whole. Section 1.482–1(f)(2)(ii) provides that the district director ordinarily will evaluate controlled transactions based on the structure of the actual transaction, and will not treat the transaction as if it had been structured differently. The district director may, however, consider the alternatives that were available to the taxpayer in determining whether the terms of the controlled transactions would be acceptable to an uncontrolled taxpayer faced with similar alternatives. Adjustments should be made in such cases to reflect material differences between the alternative and the controlled transactions. As under the 1993 regulations, this authority to examine alternatives is limited to the determination of an arm's length price, and does not permit the district director to treat a controlled transaction as if it actually had been structured differently.

Section 1.482–1(f)(2)(iii) provides that the results of controlled transactions ordinarily will be compared with the results of uncontrolled taxpayers derived from the same period as the controlled transactions. Data from different years may be used, however, under certain conditions. If data from other years is employed, such data should be compared to the controlled taxpayer's results from the same years. Data from multiple years also may be relevant for purposes of certain enumerated provisions, including analysis of risk, market share strategy, periodic adjustments, and the CPM. Section 1.482–1(f)(2)(iii)(C) provides that results from other years may be examined to determine if the same economic conditions that caused the taxpayer's result also caused the uncontrolled taxpayer's result. For example, in determining whether a loss from a controlled transaction is within an arm's length range based upon losses realized by uncontrolled taxpayers, it may be relevant to consider data from other taxable years to determine whether the same conditions that caused the controlled taxpayer's loss had a similar effect on the controlled taxpayer.

Section 1.482–1(f)(2)(iii)(D) provides that if the application of a method is based on a multiple year analysis, the district director may make an adjustment if the taxpayer's average result for the period is outside the range of average results derived from uncontrolled comparables for the same period. Comparison of multiple year averages may provide a more accurate reflection of a taxpayer's transfer pricing practices over a period than an analysis based on a single year and reduces the effect of short-term variations that may be unrelated to transfer pricing. The determination of whether the taxpayer is within the arm's length range is based on a comparison of the taxpayer's average result for the relevant years to the results of the uncontrolled comparables over the same period, which indicates whether the taxpayer had similar results over a similar period. An adjustment ordinarily will be equal to the difference, if any, between the taxpayer's result for the taxable year and the mid-point (generally the median) of the uncontrolled comparables' results for the taxable year. However, an adjustment will be made only to the extent that it would move the controlled taxpayer's multiple year average closer to the arm's length range for the multiple year period or to any point within such range. Thus, for example, if a method is applied to a U.S. taxpayer, and the taxpayer's average result for the multiple year period is below the arm's length range of average results derived from uncontrolled comparables for the same period, an adjustment may be made that is equal to the difference between the controlled taxpayer's result for the taxable year and the mid-point of the results of the uncontrolled comparables for that year. However, the adjustment would not be made to the extent that the adjustment would cause the taxpayer to have an average result for the multiple year period that exceeds any point within the arm's length range derived from the average results of the uncontrolled comparables.

Section 1.482–1(f)(2)(iv) permits evaluation of product lines and statistical groupings in a manner analogous to that permitted under the 1968 and 1993 regulations. Finally, § 1.482–1(f)(2)(v) follows the 1993 regulations in providing that it is not necessary for the district director to determine whether the method that a taxpayer employs to determine the amounts charged in its controlled transactions correspond to the method that the taxpayer might have used in uncontrolled transactions. In other words, the focus of this evaluation is the result achieved rather than the method employed in reaching that result.

Section 1.482–1(g) provides procedural rules relating to collateral adjustments. Such adjustments include correlative allocations, conforming adjustments, and set-offs. Section 1.482–1(g)(2) provides rules regarding correlative allocations that are generally similar to the rules provided under the 1968 and 1993 regulations.

Section 1.482–1(g)(3) provides that appropriate adjustments must be made to conform a taxpayer's accounts to reflect allocations under section 482. Such adjustments may include the treatment of an allocated amount as a dividend or a capital contribution. In other cases, pursuant to applicable revenue procedures (see, e.g., Rev. Proc. 65–17), amounts may be repaid without further income tax consequences.

Section 1.482–1(g)(4) provides rules relating to setoffs that are similar to the rules provided under the 1993 regulations and the 1968 regulations. Several requirements are imposed on taxpayers that claim setoffs. First, as in the 1993 regulations, the taxpayer must establish that the transaction that is the basis of the set-off was not at arm's length. Second, the taxpayer must document all adjustments resulting from the proposed set-off. Finally, the taxpayer must notify the district director of any claimed set-off within 30 days after the earlier of the date of a letter by which the district director transmits an examination report notifying the taxpayer of proposed adjustments or the date of the issuance of the notice of deficiency. This requirement corresponds to § 1.482–1A(d)(3) of the 1968 regulations.

In addition to set-offs arising from transactions between the controlled taxpayers that were the parties to the transaction giving rise to the original allocation, the temporary regulations permitted set-offs arising from transactions between one of these controlled taxpayers and a third controlled taxpayer. In discussions with treaty partners it proved impossible to reach an acceptable consensus on this issue, and no such rule was included in the final regulations. Therefore, as under the 1968 regulations and in accordance with the practice of most treaty partners, set-offs are permitted only for transactions between the same two controlled taxpayers that were parties to the transactions giving rise to the original allocation.

The 1993 regulations contained a provision on compensating adjustments that has not been included in the final regulations. The provision in the 1993 regulations (§ 1.482–1T(e)(2)) imposed several restrictions on the ability of taxpayers to adjust reported results to reflect an arm's length result. This requirement was deleted because it was not appropriate to impose such restrictions given the penalties that could be imposed under section 6662(e) on taxpayers that fail to make such adjustments in certain circumstances. The final regulations therefore impose no restrictions on taxpayers' ability to report a result on their original tax return that differs from the result reflected in the taxpayer's books and records. However, as provided in § 1.482–1(a)(3), taxpayers may not use section 482 to decrease their taxable income on an amended return.

Section 1.482–1(h) provides special rules relating to a small taxpayer safe harbor, foreign legal restrictions and coordination with section 936. Under § 1.482–1(h)(1), the small taxpayer safe harbor is reserved. The 1993 regulations contained a small taxpayer safe harbor that has not been included in the final regulations. This provision was never implemented because the IRS did not issue the profit level indicators required to apply the provisions of the safe harbor. There are three reasons why this provision was not included. First, treaty partners had expressed concern that the safe harbor might cause taxpayers to overreport their U.S. taxable income and underreport their foreign taxable income. They requested that the safe harbor provide that electing taxpayers be required to report an amount of profit in the United States that was less than that expected under a strict application of the arm's length standard. Such an approach was not acceptable. Second, it would have been necessary to add a

In addition to set-offs arising from transactions between the controlled taxpayers that were the parties to the transaction giving rise to the original allocation, the temporary regulations permitted set-offs arising from transactions between one of these controlled taxpayers and a third controlled taxpayer. In discussions with treaty partners it proved impossible to reach an acceptable consensus on this issue, and no such rule was included in the final regulations. Therefore, as under the 1968 regulations and in accordance with the practice of most treaty partners, set-offs are permitted only for transactions between the same two controlled taxpayers that were parties to the transactions giving rise to the original allocation.

The 1993 regulations contained a provision on compensating adjustments that has not been included in the final regulations. The provision in the 1993 regulations (§ 1.482–1T(e)(2)) imposed several restrictions on the ability of taxpayers to adjust reported results to reflect an arm's length result. This requirement was deleted because it was not appropriate to impose such restrictions given the penalties that could be imposed under section 6662(e) on taxpayers that fail to make such adjustments in certain circumstances. The final regulations therefore impose no restrictions on taxpayers' ability to report a result on their original tax return that differs from the result reflected in the taxpayer's books and records. However, as provided in § 1.482–1(a)(3), taxpayers may not use section 482 to decrease their taxable income on an amended return.

Section 1.482–1(h) provides special rules relating to a small taxpayer safe harbor, foreign legal restrictions and coordination with section 936. Under § 1.482–1(h)(1), the small taxpayer safe harbor is reserved. The 1993 regulations contained a small taxpayer safe harbor that has not been included in the final regulations. This provision was never implemented because the IRS did not issue the profit level indicators required to apply the provisions of the safe harbor. There are three reasons why this provision was not included. First, treaty partners had expressed concern that the safe harbor might cause taxpayers to overreport their U.S. taxable income and underreport their foreign taxable income. They requested that the safe harbor provide that electing taxpayers be required to report an amount of profit in the United States that was less than that expected under a strict application of the arm's length standard. Such an approach was not acceptable. Second, it would have been necessary to add a number of anti-abuse provisions in order to eliminate the possibility of inappropriate use of the provision by large taxpayers. Commenters had already expressed concern that the existing restrictions were excessively complex and burdensome given the level of sophistication of its intended beneficiaries. The final concern was that both taxpayers and the IRS might give undue weight to the published measures of profitability in cases not governed by the safe harbor. It was not possible to address these problems consistently with the overall objective of alleviating the compliance burden for small taxpayers. Moreover, the concern regarding the compliance burden on small taxpayers has been addressed to some extent by the regulations under section 6662(e), which provide that one of the factors to be taken into account in determining whether a taxpayer reasonably applied a method to determine its transfer prices is the taxpayer's experience and knowledge. Comment is requested on alternative approaches to the small taxpayer safe harbor that would not suffer from the deficiencies noted above.

The rules on foreign legal restrictions were originally issued in proposed form in the 1993 regulations. Section 1.482–1(h)(2) modifies and finalizes that provision. It provides that a foreign legal restriction will be taken into account to the extent that such restriction affects the results of transactions at arm's length. If there is no evidence that the restriction affected uncontrolled taxpayers the restriction will be disregarded in determining an arm's length result, and it will be taken into account only to the extent provided in §§ 1.482–1(h)(2) (iii) and (iv), relating to the deferred income method of accounting. A foreign legal restriction is generally defined under § 1.482–1(h)(2)(ii) as a restriction that is publicly promulgated and generally applicable, not imposed as part of a commercial transaction between the taxpayer and the foreign government, with respect to which the taxpayer has exhausted all practicable legal remedies afforded under foreign law, expressly prevents the payment, in any form, of an arm's length amount within the meaning of section 482, and was not otherwise circumvented by the controlled taxpayers.

Section 1.482–1(h)(2)(iii) provides that if a provision meets the definition of a foreign legal restriction and the taxpayer has elected the deferred income method of accounting, any section 482 allocation connected with the transaction will be deferrable until the restriction is removed.

Section 1.482–1(h)(2)(iv) provides that if the requirements of § 1.482–1(h)(2)(iii) are satisfied, the amount subject to the restriction will be treated as deferrable until payment or receipt of the relevant item ceases to be prevented by the foreign legal restriction. Deductions and credits incurred in open years and that are chargeable against a deferred amount are subject to deferral under § 1.461–1(a)(4).

Section 1.482–1(h)(3) provides a coordination rule for section 936 that is identical to § 1.482–1T(f)(3) of the 1993 regulations.

Section 1.482–1(i) defines ten terms that are employed in the regulations. These are generally identical to their definitions under the 1993 regulations, with the following exceptions. The definition of trade or business under § 1.482–1(i)(2) clarifies that employment for compensation will constitute a separate trade or business from the employing trade or business. The definition of "controlled" in § 1.482–1(i)(4) has been modified. The definition in the 1993 regulations was misinterpreted to provide that a presumption of control arises only if income or deductions have been arbitrarily shifted "as a result of the actions of two or more taxpayers acting in concert or with a common goal or purpose." This phrase was added to the 1993 regulations as an example of the type of control that could be considered control for purposes of section 482. The definition has been amended to make clear that this addition is only an example. The definition of the term "controlled taxpayer" has been clarified to include the taxpayer that owns or controls other taxpayers.

Section 1.482–1(j)(1) provides that these regulations generally are effective for taxable years beginning 90 days after publication in the **Federal Register**. Section 1.482–1(j)(2) provides that taxpayers may elect to apply these regulations retroactively to all open years (in which case they also must be applied to all subsequent years). Section 1.482–1(j)(3) provides that the last sentence of section 482 is generally effective for taxable years beginning after December 31, 1986, and this sentence, prior to the effective date of the final regulations, must be applied using any reasonable method not inconsistent with the statute (including these regulations). Finally, § 1.482–1(j)(4) provides that the final regulations will not apply to transfers made or licenses granted prior to November 17, 1985 (in the case of a foreign transferee) or August 17, 1986 (in the case of other transferees), unless the property was not in existence on the relevant date.

Section 1.482–2

The regulations under section 1.482–2 have not been changed. Section 1.482–2(d), providing that guidance with respect to transfers of property is set forth in §§ 1.482–3 through 1.482–6, is now part of the final regulations.

Section 1.482–3

Section 1.482–3 provides rules for transfers of tangible property. Six methods are provided: the CUP method; the resale price method; the cost plus method; the CPM; the profit split method; and unspecified methods. The method that will be applied in a particular case will be selected in accordance with § 1.482–1(c) (Best method rule).

Section 1.482–3(b) describes the CUP method. Consistent with the best method rule, § 1.482–3(b)(2)(ii) provides that the CUP method generally provides the most direct and reliable measure of an arm's length result if an uncontrolled transaction either has no differences from the controlled transaction or there are only minor differences that have a definite and reasonably ascertainable effect on price, and appropriate adjustments are made for such differences. Further, unlike the 1993 regulations, the CUP method potentially may be used when there are more than minor differences between the controlled and uncontrolled transactions, or when adjustments for minor differences cannot be made. In such cases, the method may be employed, but its reliability for purposes of the best method rule will be reduced.

In determining comparability under this method, product similarity is the most important factor to consider. Indeed, § 1.482–3(b)(2)(ii) provides that if there are material product differences for which reliable adjustments cannot be made, this method ordinarily will not provide a reliable basis for determining an arm's length result. Comparability also will be reduced if either the uncontrolled taxpayer or the controlled taxpayer owns a trademark that is exploited in connection with the sale of the product. Minor differences in contractual terms and economic conditions also can have a material effect on price, so comparability under this method also depends on close similarity with respect to these factors.

Although all the comparability factors described in § 1.482–1(d) must be considered, § 1.482–3(b)(2)(ii)(B) provides examples of several factors that may be particularly relevant to the application of the CUP method.

Section 1.482–3(b)(2)(iii) provides that the data and assumptions used to apply the CUP method also will affect the reliability of the result. This method assumes that a very similar transaction between uncontrolled taxpayers is a reliable basis for determining the price that would have been agreed between the controlled taxpayers had they been dealing at arm's length. Given reasonably complete and accurate data, this assumption is usually very reliable.

Section 1.482–3(b)(5) describes the use of indirect evidence derived from public exchanges or quotation media to establish a comparable uncontrolled price under this method. This provision had been added in response to comments that in some industries in which commodities are traded in large quantities, it is common for unrelated parties to set prices based upon publicly available prices or quotations. Since these quoted prices are not themselves transactional prices, but may be averages based upon actual transactions, they do not qualify as applications of the CUP method as that method is otherwise described in the regulations. This section has been added to permit use of such indicators in appropriate circumstances.

Such indicators may be employed only if the data is widely and routinely used in the ordinary course of business in the industry to establish prices in uncontrolled transactions, the data is used in the same way by uncontrolled and controlled taxpayers, and adjustments are made for differences that affect price. Further, such indicators may not be employed under extraordinary market conditions.

Section 1.482–3(c) describes the resale price method. It is generally similar to the resale price method provisions of the 1968 and 1993 regulations, although greater guidance has been provided on comparability factors to consider in applying the method, and the standards of comparability expressly permit use of "inexact comparables" under this method.

The discussion of comparability considerations emphasizes that, although all the factors described in § 1.482–1(d)(3) must be considered, this method is particularly dependent on similarity of functions performed, risks borne, and contractual terms. Further, although close product similarity will tend to improve the reliability of the result, reliable application of the resale price method is less dependent on product similarity than the CUP method. The reliability of the analysis also would be reduced if the uncontrolled taxpayer sells goods that are significantly more (or less) valuable than the goods in the controlled transaction, or if either the uncontrolled taxpayer or the controlled taxpayer owns a trademark that is exploited in connection with the resale of the product. In addition, it may be necessary to consider certain factors, such as management efficiency and differences in business experience, that would normally have little effect on comparability under the CUP method.

The final regulations do not include the statement that in the absence of comparable transactions, prevailing gross profit margins in the general industry may be appropriate. Although this statement was included in the 1968 and 1993 regulations, such a measure of an arm's length result would be contrary to the rule under § 1.482–1(d)(2) that unadjusted industry average returns cannot independently establish an arm's length result.

Section 1.482–3(d) describes the cost plus method. It is generally similar to the cost plus method provisions of the 1968 and 1993 regulations, although additional guidance has been provided on comparability factors to consider in applying the method, the rules for computing the arm's length price and appropriate gross profit have been clarified, and the standards of comparability expressly permit use of "inexact comparables" under this method.

As under the resale price method, the discussion of comparability considerations emphasizes that, although all the factors described in § 1.482–1(d)(3) must be considered, this method is particularly dependent on similarity of functions performed, risks borne, and contractual terms. Further, although close product similarity will tend to improve the reliability of the result, reliable application of the cost plus method is less dependent on product similarity than the CUP method. As under the resale price method, it may be necessary to consider certain factors, such as management efficiency and differences in business experience, that would normally have little effect on comparability under the CUP method.

Section 1.482–3(d)(3)(iii)(B) emphasizes that in computing the gross profit markup, items such as inventory and cost allocation must be accounted for consistently.

Section 1.482–3(e) provides that in addition to the methods specifically enumerated in § 1.482–3, unspecified methods may be employed. This provision differs from its counterpart in the 1993 regulations in two significant respects. First, in response to comments, the procedural requirements that the 1993 regulations imposed in connection with the use of an unspecified method by the taxpayer have been deleted.

Second, guidance has been provided on considerations that should be taken into account in applying an unspecified method. Such methods should reflect the principle underlying the arm's length standard that uncontrolled taxpayers compare the terms of a transaction to their realistic alternatives to the transaction. Therefore, an unspecified method should provide information on the prices or profits that the controlled taxpayer could have realized by choosing a realistic alternative to the controlled transaction. This guidance has been included because it is a principle that is consistent with all methods that apply the arm's length standard. For example, the CUP method identifies an alternative price at which the controlled taxpayer could have completed the controlled transaction. An example of the application of this principle is provided in which a *bona fide* offer is used to establish an arm's length price. Unspecified methods are not, however, limited to examination of potential transactions that did not occur. They should, in general, be based on actual transactions and other indicia derived from actual or potential market transactions.

Section 1.482–3(f) provides rules coordinating the application of the tangible property rules with the rules governing transfers of intangible property. This provision provides more guidance than its predecessor in the 1993 regulations. It provides that in most cases the transfer of tangible property with a so-called "embedded intangible" will not be considered a transfer of the intangible if the purchaser does not acquire the right to exploit the intangible other than in connection with the resale of the tangible property. This provision responds to commenters who expressed concern that sales of branded products to controlled taxpayers for resale would routinely have to be evaluated under the provisions of both §§ 1.482–3 and 1.482–4. While in such a case the transaction may be evaluated under § 1.482–3, the presence of the intangible will affect the analysis of comparability, because the value of the product may be increased by the presence of an embedded intangible.

Finally, when a purchaser of a tangible product acquires the right to commercially exploit an embedded intangible, it may be necessary to apply § 1.482–3 to determine the arm's length consideration for the tangible property transferred and § 1.482–4 to determine the arm's length consideration for the

with the use of an unspecified method by the taxpayer have been deleted.

Second, guidance has been provided on considerations that should be taken into account in applying an unspecified method. Such methods should reflect the principle underlying the arm's length standard that uncontrolled taxpayers compare the terms of a transaction to their realistic alternatives to the transaction. Therefore, an unspecified method should provide information on the prices or profits that the controlled taxpayer could have realized by choosing a realistic alternative to the controlled transaction. This guidance has been included because it is a principle that is consistent with all methods that apply the arm's length standard. For example, the CUP method identifies an alternative price at which the controlled taxpayer could have completed the controlled transaction. An example of the application of this principle is provided in which a *bona fide* offer is used to establish an arm's length price. Unspecified methods are not, however, limited to examination of potential transactions that did not occur. They should, in general, be based on actual transactions and other indicia derived from actual or potential market transactions.

Section 1.482–3(f) provides rules coordinating the application of the tangible property rules with the rules governing transfers of intangible property. This provision provides more guidance than its predecessor in the 1993 regulations. It provides that in most cases the transfer of tangible property with a so-called "embedded intangible" will not be considered a transfer of the intangible if the purchaser does not acquire the right to exploit the intangible other than in connection with the resale of the tangible property. This provision responds to commenters who expressed concern that sales of branded products to controlled taxpayers for resale would routinely have to be evaluated under the provisions of both §§ 1.482–3 and 1.482–4. While in such a case the transaction may be evaluated under § 1.482–3, the presence of the intangible will affect the analysis of comparability, because the value of the product may be increased by the presence of an embedded intangible.

Finally, when a purchaser of a tangible product acquires the right to commercially exploit an embedded intangible, it may be necessary to apply § 1.482–3 to determine the arm's length consideration for the tangible property transferred and § 1.482–4 to determine the arm's length consideration for the embedded intangible. An example of this type of transaction could include the transfer of a machine incorporating a valuable manufacturing process that the purchaser will exploit in connection with the operation of the machine.

Section 1.482–4

Section 1.482–4 provides rules with respect to the transfer of intangible property. Four methods are provided: the comparable uncontrolled transaction (CUT) method, the CPM, the profit split method, and unspecified methods. The method that will be applied in a particular case will be selected in accordance with § 1.482–1(c) (Best method rule).

Section 1.482–4(b) provides a definition of intangible property that is similar to that provided in the 1968 regulations. It differs from the 1993 regulations in that the requirement that the property be "commercially transferrable" has been deleted. This language was not included in the definition because it was superfluous: if the property was not commercially transferrable, then it could not have been transferred in a controlled transaction. In addition, the reference to "other similar items" under § 1.482–4(b)(6) has been clarified to refer to items that derive their value from intellectual content or other intangible properties rather than physical attributes.

Section 1.482–4(c) describes the CUT method. This method is similar but not identical to the CUT method under the 1993 regulations. The CUT method determines an arm's length royalty for an intangible by reference to uncontrolled transfers of comparable intangible property under comparable circumstances. An important comparability factor under this method is the profit potential of the intangibles in the controlled and uncontrolled transactions. In response to comments, the requirement that the profit potential of the intangibles transferred in the controlled and uncontrolled transactions be "substantially the same" has been relaxed to permit more frequent use of this method, as long as it provides the most reliable measure of an arm's length result under the best method rule. In addition, as under all methods, the discussion of the comparability factors under this method has been expanded.

As under the 1993 regulations, § 1.482–4(c)(2)(ii) provides, consistent with the best method rule, that the CUT method generally provides the most direct and reliable measure of an arm's length result if the same intangible is transferred in the controlled and uncontrolled transactions, and there are, at most, only minor differences between the uncontrolled and the controlled transaction, these differences have a definite and reasonably ascertainable effect on price, and appropriate adjustments are made for such differences. The CUT method also may provide the most reliable measure of an arm's length result in other cases, as determined under the best method rule in § 1.482–1(c).

Section 1.482–4(c)(2)(ii) emphasizes that, although all the factors described in § 1.482–1(d)(3) must be considered, this method is particularly dependent on similarity in terms of contractual arrangements and economic conditions. Further, this method cannot be applied unless the intangible property involved in the controlled and uncontrolled transactions is comparable within the meaning of § 1.482–4(c)(2)(iii)(B)(*1*).

Section 1.482–4(c)(2)(iii)(B)(*1*) provides that two requirements must be satisfied in order for the intangible property involved in two transactions to be comparable. First, as under the 1993 regulations, the intangibles must be used in connection with similar products or processes within the same general industry or market. Second, the intangibles must have similar profit potential. As indicated, this requirement is not as strict as the profit potential requirement under the 1993 regulations. Additional guidance is provided concerning the analysis applied in determining whether the profit potential of two intangibles is similar within the meaning of this provision.

In order to conclude that the profit potential of two intangibles is similar, it is necessary to have an acceptably reliable measure of the profit potential of the two intangibles. Profit potential is most reliably measured by direct calculations, based on reliable projections, of the net present value of the benefits to be realized through use of the intangible. While this information frequently will be available with respect to the controlled transaction, it normally will not be available with respect to an uncontrolled transaction unless one of the controlled taxpayers was a party to it. In recognition of this difficulty, the regulations provide that in certain cases it may be acceptable to refer to evidence other than projections to compare profit potential. Such indirect comparisons of profit potential will be most useful in cases where it is not possible to directly calculate the profit potential of the intangibles in either the controlled or uncontrolled transaction. An example of such a case could include a transfer of an intangible that relates to a component of an asset consisting of

many components (such as an airplane or automobile). In such a case it would be difficult to reliably calculate the net present value of the profit attributable to the intangible that was transferred in the controlled transaction, because the profit attributable to the intangible will be difficult to isolate from the overall profit attributable to the final asset.

As the profit potential increases, the importance of reliably measuring the profit potential also increases, because the effects of errors may increase as the overall profitability of the intangible increases. The reliability of indirect comparisons of profit potential therefore decreases as the profit potential in the controlled transaction increases. Consequently, given an indirect measure of profit potential, it might be concluded that the profit potential of the intangible property involved in the uncontrolled transaction might be similar to that of the controlled transaction within the meaning of this provision when the overall profitability of the intangibles is relatively small, but the profit potential might not be similar under the same circumstances if the overall profitability was much greater. The ultimate determination will depend on the facts and circumstances of each case.

Finally, § 1.482–4(c)(2)(iii)(B)(*2*) provides that to apply the CUT method the circumstances involved in the controlled and uncontrolled transactions must be similar. This provision is substantially the same as its counterpart in the 1993 regulations.

Section 1.482–4(d) provides a rule for the use of unspecified methods that is analogous to the rule on unspecified methods provided for tangible property under § 1.482–3(e). To the extent that a method relies on internal data rather than uncontrolled comparables, its reliability will be reduced. Reliability also will be affected by the reliability of the data and assumptions used to apply the method, including any projections.

Section 1.482–4(e) provides a rule for coordination with the tangible property rules that is analogous to the rule provided under § 1.482–3(f).

Section 1.482–4(f) provides special rules for transfers of intangible property. Section 1.482–4(f)(1) provides that when a controlled taxpayer pays nominal or no consideration for the right to exploit an intangible, and the transferor retains a substantial interest in the intangible, the arm's length consideration shall be in the form of a royalty, unless a different form is more appropriate.

Section 1.482–4(f)(2) provides that if an intangible is transferred for a period in excess of one year, the consideration charged is generally subject to an annual adjustment to ensure that it is commensurate with the income attributable to the intangible. This provision is required by the 1986 amendment to section 482.

The 1993 regulations contained two exceptions to this rule. The final regulations retain these exceptions and add three additional exceptions in response to comments. First, § 1.482–4(f)(2)(ii)(A) provides that no periodic adjustments will be made if the consideration for the transfer of an intangible is determined to be an arm's length amount under the CUT method, and if the uncontrolled transaction that serves as the basis for the application of the CUT method involved the transfer of the same intangible under substantially the same circumstances as those of the controlled transaction. Thus, for example, the consideration for the transfer of an intangible to a controlled taxpayer in one country could be determined to be arm's length based on the transfer of the same intangible to an uncontrolled taxpayer in another country in which the relevant economic conditions were substantially similar to those in the first country. In such case no periodic adjustment would be made if the two transactions occurred under substantially similar circumstances.

Section 1.482–4(f)(2)(ii)(B) provides an exception, based on the CUT method, that is similar to the exception provided in § 1.482–4T(e)(2)(ii)(A) of the 1993 regulations. Section 1.482–4(f)(2)(ii)(C) provides an exception based on other methods that is similar to the exception provided in § 1.482–4T(e)(2)(ii)(B) of the 1993 regulations. Both of these exceptions are substantially identical to their counterparts in the 1993 regulations with one modification. The rule requiring that the taxpayer's actual profits attributable to the intangible must be no less than 80 percent and no greater than 120 percent of the projected profits has been liberalized. In the 1993 regulations, the profits subject to this comparison were only the projected and actual profits for all open years. Under the final regulations, this comparison applies to all past years, which in many cases will be a longer period. By enlarging the pool of data that is taken into account for purposes of this comparison, it generally will be less likely that the taxpayer's actual profits will fall outside the band of projected profits based solely on timing variances, and therefore fewer periodic adjustments will be permitted under these provisions.

Section 1.482–4(f)(2)(ii)(D) provides an additional exception from periodic adjustments for extraordinary events. It provides that no periodic adjustments will be made if the aggregate actual profits fall outside the permissible band of projected profits, but this variation from the projected results was due to extraordinary events that could not reasonably have been anticipated (such as natural or man-made disaster but does not include more routine events such as the failure of a market to develop as anticipated), and all the other requirements of either § 1.482–4(f)(2)(ii) (B) or (C) are satisfied.

Finally, § 1.482–4(f)(2)(ii)(E) provides that if the requirements of either § 1.482–4(f)(2)(ii) (B) or (C) are satisfied for the five-year period beginning with the year in which substantial periodic consideration is first paid, no periodic adjustments will be made.

Section 1.482–4(f)(3) provides rules regarding the ownership of intangible property. These rules are required to identify the controlled taxpayer that should recognize the income attributable to intangible property. The 1993 regulations provided that, for purposes of section 482, intangible property generally would be treated as owned by the controlled taxpayer that bore the greatest share of the costs of development. This rule was criticized by many commenters, principally because it disregarded legal ownership. The commenters asserted that disregarding legal ownership could be inconsistent with the arm's length standard. For instance, a controlled taxpayer that was treated as the owner of an intangible for section 482 purposes might not be the legal owner. At arm's length, the legal owner could transfer the rights to the intangible to another person irrespective of the developer's contribution to the development of the intangible. On the other hand, it would be unlikely that at arm's length an unrelated party would incur substantial costs adding value to an intangible that was owned by an unrelated party, unless there was some assurance that the party that incurred the expenses would receive the opportunity to reap the benefit attributable to the expenses.

The final regulations recognize these criticisms and adopt a modified approach to the identification of the owner of an intangible that is more consistent with legal ownership. Under § 1.482–4(f)(3)(ii)(A), the legal owner of the right to exploit an intangible will be considered the owner for purposes of section 482. Legal ownership does not refer solely to the registered holder of an intangible: ownership rights may be transferred by explicit or implicit agreement, and more than one party may be considered a legal owner of rights in the same intangible. For example, a license agreement would grant the licensee a set of rights in the intangible for the duration of the agreement, while the licensor would retain the residual rights to the intangible after the expiration of the agreement.

Under § 1.482–4(f)(2)(ii)(B), ownership of intangible property that is not legally protected will be determined in a manner similar to that under the 1993 regulations, i.e., the owner generally will be the person that bore the greatest share of the costs of development.

Section 1.482–4(f)(2)(iii) provides that allocations may be made with respect to assistance provided to the owner by other parties that assisted in the development of the intangible. Assistance does not include expenditures of a routine nature that an unrelated party dealing at arm's length would be expected to incur under similar circumstances. For instance, even in the absence of a license agreement transferring the right to exploit a trademark to an unrelated distributor, a distributor may be expected to incur a certain amount of advertising and other marketing expenses that could increase the value of the trademark. If an uncontrolled taxpayer would incur such expenses without express or implicit reimbursement by the owner of the intangible, then no allocation with respect to similar levels of expenses would be made under section 482 in the case of a distributor that is a member of the controlled group to which the legal owner of the trademark belongs. On the other hand, an allocation could be made if the expenses were greater than those that an unrelated party would have incurred without some form of compensation.

Section 1.482–4(f)(4) provides that the arm's length consideration for the transfer of an intangible is not limited either by prevailing industry average royalty rates or the consideration paid in uncontrolled transactions that are not comparable to the controlled transaction.

Section 1.482–4(f)(5) addresses lump sum payments. This issue was reserved in the 1993 regulations. The final regulations provide that lump sum payments are potentially subject to periodic adjustments to the same extent as license agreements providing for periodic royalty payments. For purposes of determining if the lump sum payment satisfies the arm's length standard and if periodic adjustments may be made, the lump sum must be treated as an advance payment of a stream of royalties over the life of the agreement.

example, a license agreement would grant the licensee a set of rights in the intangible for the duration of the agreement, while the licensor would retain the residual rights to the intangible after the expiration of the agreement.

Under § 1.482–4(f)(2)(ii)(B), ownership of intangible property that is not legally protected will be determined in a manner similar to that under the 1993 regulations, i.e., the owner generally will be the person that bore the greatest share of the costs of development.

Section 1.482–4(f)(2)(iii) provides that allocations may be made with respect to assistance provided to the owner by other parties that assisted in the development of the intangible. Assistance does not include expenditures of a routine nature that an unrelated party dealing at arm's length would be expected to incur under similar circumstances. For instance, even in the absence of a license agreement transferring the right to exploit a trademark to an unrelated distributor, a distributor may be expected to incur a certain amount of advertising and other marketing expenses that could increase the value of the trademark. If an uncontrolled taxpayer would incur such expenses without express or implicit reimbursement by the owner of the intangible, then no allocation with respect to similar levels of expenses would be made under section 482 in the case of a distributor that is a member of the controlled group to which the legal owner of the trademark belongs. On the other hand, an allocation could be made if the expenses were greater than those that an unrelated party would have incurred without some form of compensation.

Section 1.482–4(f)(4) provides that the arm's length consideration for the transfer of an intangible is not limited either by prevailing industry average royalty rates or the consideration paid in uncontrolled transactions that are not comparable to the controlled transaction.

Section 1.482–4(f)(5) addresses lump sum payments. This issue was reserved in the 1993 regulations. The final regulations provide that lump sum payments are potentially subject to periodic adjustments to the same extent as license agreements providing for periodic royalty payments. For purposes of determining if the lump sum payment satisfies the arm's length standard and if periodic adjustments may be made, the lump sum must be treated as an advance payment of a stream of royalties over the life of the agreement. This "equivalent royalty amount" serves as the basis for determining if the consideration is arm's length. In addition, if a periodic adjustment is made pursuant to the provisions of § 1.482– 4(f)(2), the royalty that was deemed to have been prepaid for the taxable year in question will be set off against the arm's length royalty determined for such year, and the difference will be treated as an additional payment in the year of the allocation that is of the same character as the initial lump sum payment.

Section 1.482–5

Section 1.482–5 describes the comparable profits method. It is similar to § 1.482–5T of the 1993 regulations. The CPM may be used to determine the arm's length consideration for tangible and intangible property. The CPM relies on the general principle that similarly situated taxpayers will tend to earn similar returns over a reasonable period of time. The CPM determines the arm's length consideration for a controlled transaction by referring to objective measures of operating profit (profit level indicators) derived from uncontrolled taxpayers that engage in similar activities with other uncontrolled taxpayers under similar circumstances.

Many commenters were concerned that the CPM could be applied in a manner that would be inconsistent with the arm's length standard. This concern was attributable to the fact that operating profit is normally affected by more factors than gross profit or price, which are the measures employed under the other methods provided in §§ 1.482–3 and 1.482–4. The commenters were concerned that the CPM would be applied without taking these additional differences into account, and as a result the comparability achieved under the CPM would be weaker than the comparability required under other methods. The commenters believed that in such cases an analysis under the CPM would be suspect. Further, some commenters concluded that it was permissible under the 1993 regulations to apply the CPM without making adjustments for observed material differences, which led them to believe that the IRS would routinely apply the CPM in a manner that did not provide a reasonably reliable measure of an arm's length result. This concern was heightened by language in § 1.482–5T(a) of the 1993 regulations stating that the CPM would ordinarily provide an accurate measure of an arm's length result unless the tested party owned certain types of intangible property. Some commenters misinterpreted this language as indicating that the CPM was preferred to the results obtained under other methods, irrespective of the relative levels of comparability obtained under the potentially applicable methods and without regard to the operation of the best method rule.

The final regulations make it clear that the CPM is subject to the same considerations as any other method. First, the language providing that the CPM "ordinarily will provide an accurate measure of an arm's length result" has been deleted.

Second, and more importantly, the final regulations contain a much more extensive discussion of comparability considerations under the CPM than did the 1993 regulations. While it may be permissible to apply the CPM when there is (or may be) a material difference but it is not possible to make a reliable adjustment for such difference, application of the CPM in such a case only would be permissible if the other methods were less reliable than the CPM under the facts and circumstances.

Given adequate data, methods that determine an arm's length price (e.g., the CUP method) or gross margin (e.g., the resale price method) generally achieve a higher degree of comparability than the CPM. Because the degree of comparability, including the extent and reliability of adjustments, determines the relative reliability of the result under the best method rule, the results of these methods will be selected unless the data necessary to apply them is relatively incomplete or unreliable. In this regard the CPM generally would be considered a method of last resort.

This greater emphasis on comparability under the CPM is also reflected in the treatment of "valuable non-routine intangibles." The 1993 regulations indicated that the CPM ordinarily would not provide an accurate measure of an arm's length result if the tested party owned certain highly valuable intangibles because it was unlikely that it would be possible to locate uncontrolled taxpayers that possessed similar intangibles in connection with activities similar to those performed by the controlled taxpayer. In such a case the CPM could understate the income attributable to the assets of the controlled taxpayer. As a result of this concern, the 1993 regulations generally provided that the CPM should not be applied if the tested party owned "valuable non-routine intangibles" that it developed or that it acquired from third parties.

The final regulations have taken a different approach to the problem of valuable non-routine intangibles. Due to the difficulty in adequately defining the term and the fact that it would be

inappropriate to deny use of the CPM if a comparable uncontrolled taxpayer could be located that owned intangibles similar to those owned by the controlled taxpayer, the restriction contained in the 1993 regulations has been eliminated. In its place intangible property is expressly mentioned as a factor to consider in determining if an uncontrolled taxpayer is comparable to the controlled taxpayer. In most cases in which the controlled taxpayer owns intangible property of the type described in the 1993 regulations it will not be possible to locate an uncontrolled comparable that owns similarly valuable intangible property. The final regulations recognize, however, the possibility that a comparable uncontrolled taxpayer with such intangibles might be found; therefore they do not rule out the possibility of the CPM being applied under such facts.

Section 1.482–5(b)(4) describes the profit level indicators that are used to evaluate operating profit. They include two types of measures: the rate of return on capital employed and financial ratios. In addition, § 1.482–5(b)(4)(iii) provides that other profit level indicators not specifically described in the regulations may be employed, provided that they provide the most reliable measure of an arm's length result within the meaning of the best method rule. Under this provision, any measure of profit based on objective measures of profitability derived from uncontrolled taxpayers that engage in similar business activities under similar circumstances could be employed. Accordingly, profit level indicators based solely on a controlled taxpayer's internal data would not be included under this provision, as they are not objective measures of profitability derived from transactions between uncontrolled taxpayers.

In determining an arm's length result under the CPM, the taxpayer's average reported operating profit for the year under review and the preceding two taxable years ordinarily will be compared to the average result of the uncontrolled comparables for the same period. Comparison of multiple year averages may provide a more accurate reflection of a taxpayer's transfer pricing practices over a period than an analysis based on a single year and reduces the effect of short-term variations in operating profit that may be unrelated to transfer pricing. If the taxpayer's average reported operating profit for this period falls outside the range of arm's length results determined pursuant to § 1.482–1(e)(2) (Determination of arm's length range), the district director may make an adjustment. In most cases, the adjustment will be made to the median of the uncontrolled comparables results for the taxable year. Adjustments under section 482 for prior years are taken into account in determining the tested party's average reported operating profit for a particular year if a final determination has been made with respect to such adjustments.

In line with the greater emphasis on comparability under the final regulations, § 1.482–5(c) contains a discussion of comparability factors that is substantially more comprehensive than that contained in the 1993 regulations. Section 1.482–5(c)(2) describes a number of comparability factors that must be taken into account under the CPM. In particular, § 1.482–5(c)(2)(ii) provides that, while all the comparability factors described in § 1.482–1(d)(3) must be considered, comparability under the CPM is particularly dependent on resources employed and risks assumed. Further, since resources and risks are directly related to functions, functional comparability, while somewhat less important than under the resale price or cost plus methods, also is an important consideration under the CPM.

Section 1.482–5(c)(2)(iii) provides that product comparability is not as important a consideration under the CPM as it is under the cost plus or resale price methods. Conversely, comparability under the CPM may be adversely affected by other factors that have little effect on comparability under the CUP method, such as management efficiency. Determining whether such differences exist may be difficult in some cases. As with any potential difference, the regulations provide that objective evidence, such as long-term sales or executive compensation trends, is required in order to ascertain whether such differences exist.

Section 1.482–5(c)(2)(iv) provides that adjustments must be made for all material differences to the extent that such adjustments improve the reliability of the analysis. In a departure from the 1993 regulations, the final regulations provide that differences in non-interest bearing liabilities (such as accounts payable) that would materially affect operating profit generally should be reflected by adjustments to operating profit to reflect an imputed interest charge on each party's liability. Such differences are more appropriately reflected by adjustments to operating profits than by adjustments to operating assets.

Section 1.482–5(c)(3)(ii) requires that all items that have a material affect on the profit level indicators be accounted for consistently, and if necessary to obtain this consistency, adjustments must be made. An additional factor that may affect reliability under the CPM is the ability to allocate costs and other items between the relevant business activity and the other activities of the controlled taxpayer or the uncontrolled taxpayers.

The definitions of several items under § 1.482–5(d) are substantially similar to the definitions provided under the 1993 regulations.

Section 1.482–6

Section 1.482–6 describes profit split methods. This provision, which was in proposed form under the 1993 regulations, has been finalized. Like the CPM, profit split methods may be applied to controlled transactions involving tangible or intangible property. The basic approach of a profit split method is to estimate an arm's length return by comparing the relative economic contributions that the parties make to the success of a venture, and dividing the returns from that venture between them on the basis of the relative value of such contributions. Two profit split methods are provided: the comparable profit split and the residual profit split. In addition to these two methods, the 1993 regulations proposed two other profit split methods: the capital employed allocation rule and other profit splits. These methods have not been included in the final regulations for the reasons set forth below.

Under the 1993 regulations taxpayers were required to satisfy a number of requirements in order to employ a profit split method. Since a profit split method either wholly or in part relies on internal data rather than data derived from uncontrolled taxpayers, other methods ordinarily will provide more reliable measures of an arm's length result, and these restrictions were imposed in order to ensure that the profit split method was applied only in cases where it was likely to be the most reliable measure of an arm's length result. As noted previously, these restrictions were both procedural and substantive.

Many commenters objected to these restrictions. They observed that, contrary to the best method rule, these restrictions could prevent taxpayers from employing a profit split method in cases where the method would be likely to provide the most accurate measure of an arm's length result. In response to these comments, and in accordance with the greater flexibility associated with the increased reliance on the best method rule, the final regulations have removed these restrictions. In particular, for reasons similar to those discussed above under the CPM, the requirements that a profit split method may be applied only if both controlled taxpayers own valuable non-routine intangible property and that the intangibles contribute significantly to the combined operating profit derived from the relevant business activity, have been deleted. Further, the requirement that the taxpayer must make a binding election to apply a profit split method also has been deleted. The concerns that these and other restrictions were intended to address (the possibility that a profit split method would be used when it did not provide the most reliable measure of an arm's length result) are addressed by the more prominent role played by the best method rule in selecting a method.

Section 1.482–6(c)(2) describes the comparable profit split method. It is substantially similar to the comparable profit split rule set forth under the 1993 regulations. As with other methods described in the final regulations, the discussion of comparability factors under this method is more comprehensive than under the 1993 regulations. In addition, § 1.482–6(c)(2)(ii)(C) identifies several reliability considerations that are particularly pronounced under this method. These are reliability of cost and income allocation to the relevant business activity and accounting consistency. Further, § 1.482–6(c)(2)(ii)(D) provides that if the data and assumptions with respect to one of the controlled taxpayers are significantly more reliable than for the other, a method relying solely on an analysis of the first controlled taxpayer may be more reliable than the profit split method.

Section 1.482–6(c)(3) describes the residual profit split. Like the version of this method described in the 1993 regulations, the residual profit split determines an arm's length consideration in a two-step process. First, using other methods such as the CPM, market returns for routine functions are estimated and allocated to the parties that performed them. The remaining, residual amount then is allocated between the parties on the assumption that this residual is attributable to intangible property contributed to the activity by the controlled taxpayers. Based on this assumption, the residual is divided based on the estimate of the relative value of the parties' contributions of such property. Since fair market value of the intangible property usually will not be readily ascertainable, the regulations permit use of other measures of the relative values of intangible

for reasons similar to those discussed above under the CPM, the requirements that a profit split method may be applied only if both controlled taxpayers own valuable non-routine intangible property and that the intangibles contribute significantly to the combined operating profit derived from the relevant business activity, have been deleted. Further, the requirement that the taxpayer must make a binding election to apply a profit split method also has been deleted. The concerns that these and other restrictions were intended to address (the possibility that a profit split method would be used when it did not provide the most reliable measure of an arm's length result) are addressed by the more prominent role played by the best method rule in selecting a method.

Section 1.482–6(c)(2) describes the comparable profit split method. It is substantially similar to the comparable profit split rule set forth under the 1993 regulations. As with other methods described in the final regulations, the discussion of comparability factors under this method is more comprehensive than under the 1993 regulations. In addition, § 1.482–6(c)(2)(ii)(C) identifies several reliability considerations that are particularly pronounced under this method. These are reliability of cost and income allocation to the relevant business activity and accounting consistency. Further, § 1.482–6(c)(2)(ii)(D) provides that if the data and assumptions with respect to one of the controlled taxpayers are significantly more reliable than for the other, a method relying solely on an analysis of the first controlled taxpayer may be more reliable than the profit split method.

Section 1.482–6(c)(3) describes the residual profit split. Like the version of this method described in the 1993 regulations, the residual profit split determines an arm's length consideration in a two-step process. First, using other methods such as the CPM, market returns for routine functions are estimated and allocated to the parties that performed them. The remaining, residual amount then is allocated between the parties on the assumption that this residual is attributable to intangible property contributed to the activity by the controlled taxpayers. Based on this assumption, the residual is divided based on the estimate of the relative value of the parties' contributions of such property. Since fair market value of the intangible property usually will not be readily ascertainable, the regulations permit use of other measures of the relative values of intangible property, including capitalized intangible development expenses.

The final regulations contain an extensive discussion of comparability and reliability considerations under this method. The comparability considerations relevant to the first step of the allocation are analogous to the considerations relevant under the method employed to determine this portion of the allocation (such as the CPM). Since the second step ordinarily will not be based on a market benchmark, the reliability of this method will tend to be reduced for purposes of the best method rule as the amount of the residual profit allocated pursuant to the second step increases.

Under the best method rule, methods that determine an arm's length result based on the results of transactions between uncontrolled taxpayers are generally considered to be more reliable than methods (such as the residual profit split) that only rely on such transactions in part. Therefore, the results of the methods based solely on results of transactions between uncontrolled taxpayers will be selected under the best method rule unless the data necessary to apply them is relatively incomplete or unreliable. In this regard the residual profit split generally would be considered a method of last resort.

Further, § 1.482–6(c)(3)(ii)(C) identifies several other factors that may reduce the reliability of this method. In addition to allocation of costs, income and assets, and accounting consistency, another factor to take into account under the residual profit split is the reliability of the estimate of the value of intangible property. The reliability of this method could be particularly adversely affected if capitalized costs of development are used to estimate the value of intangible property because such costs may bear no relation to market value, calculation of such costs may require allocation of indirect expenses between the relevant business activity and the controlled taxpayer's other lines of business, and capitalizing costs requires assumptions regarding the useful life of intangible property.

Finally, § 1.482–6(c)(3)(ii)(D) provides that the analysis of both parties to the controlled transaction under this method may, to some extent, mitigate the reliability concerns attributable to the use of internal data in allocating the residual profit. However, as under the comparable profit split, other methods that analyze only one of the parties to the controlled transaction may be more reliable if the data and assumptions regarding one of the parties is more reliable than the data and assumptions regarding the other party.

As indicated previously, the final regulations do not provide for the use of the capital employed allocation rule or other profit splits. The capital employed allocation rule generally could be applied only when the controlled taxpayers were subject to approximately equal levels of risk with respect to the relevant business activity. This requirement was imposed because the method allocated the same rate of return to all the assets employed in the relevant business activity. This result generally would be encountered under arm's length conditions only if the parties shared all profits in proportion to their risks. With one exception it has not been possible to describe a case in which it would be possible to conclude with certainty that two or more controlled taxpayers face equal levels of risk. The one case where it undoubtedly is true that the parties face equal levels of risk is where the parties agree ex ante to share costs and benefits proportionately. Since, absent a joint venture, such a scenario is encountered rarely, if ever, under arm's length conditions, and it describes a situation contemplated under the cost sharing regulations, the capital employed allocation rule has been deleted from the profit split provisions of the final regulations. Its possible role as a variant of the cost sharing provisions will be examined in connection with the revision of those provisions. Comments are requested as to its potential use as a variant of the cost sharing method.

Finally, the use of other profit split methods is not discussed under § 1.482–6 because it was unnecessary to provide an express rule for use of other profit splits given the liberalized rules for use of unspecified methods under §§ 1.482–3 and 1.482–4. Accordingly, a profit split method other than the comparable profit split method and the residual profit split will be considered to be an unspecified method.

Section 1.482–7, relating to cost sharing, is not being finalized with these regulations. The temporary regulations, which incorporate the text of the 1968 regulations, continue to apply. However, final regulations based on the 1992 proposed regulations are anticipated in the near future.

Finally, § 1.482–8 provides a number of examples illustrating the application of the best method rule under specific fact patterns. Like all the examples in these regulations, the examples under § 1.482–8 are provided solely for purposes of illustrating the principles contained in the text of the regulations, and are not themselves statements of

principles not contained in the text. The conclusions reached in these examples are based on the assumed simplified facts of the examples, and should not be read as general conclusions.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Sim Seo, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for "§ 1.482–1T", "§ 1.482–2T", "§ 1.482–3T", "§ 1.482–4T", "§ 1.482–5T" and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.482–1 also issued under 26 U.S.C. 482 and 936. Section 1.482–2 also issued under 26 U.S.C. 482. Section 1.482–3 also issued under 26 U.S.C. 482. Section 1.482–4 also issued under 26 U.S.C. 482. Section 1.482–5 also issued under 26 U.S.C. 482. * * *

§§ 1.482–0T through 1.482–6T [Removed].

Par. 2. Sections 1.482–0T through 1.482–6T are removed.

Par. 3. Sections 1.482–0 through 1.482–6 and 1.482–8 are added to read as follows:

§ 1.482–0 Outline of regulations under 482.

This section contains major captions for §§ 1.482–1 through 1.482–8.

Section 1.482–1 Allocation of income and deductions among taxpayers.

(a) In general.
(1) Purpose and scope.
(2) Authority to make allocations.
(3) Taxpayer's use of section 482.
(b) Arm's length standard.
(1) In general.
(2) Arm's length methods.
(i) Methods.
(ii) Selection of category of method applicable to transaction.
(c) Best method rule.
(1) In general.
(2) Determining the best method.
(i) Comparability.
(ii) Data and assumptions.
(A) Completeness and accuracy of data.
(B) Reliability of assumptions.
(C) Sensitivity of results to deficiencies in data and assumptions.
(iii) Confirmation of results by another method.
(d) Comparability.
(1) In general.
(2) Standard of comparability.
(3) Factors for determining comparability.
(i) Functional analysis.
(ii) Contractual terms.
(A) In general.
(B) Identifying contractual terms.
(*1*) Written agreement.
(*2*) No written agreement.
(C) Examples.
(iii) Risk.
(A) In general.
(B) Identification of party that bears risk.
(C) Examples.
(iv) Economic conditions.
(v) Property or services.
(4) Special circumstances.
(i) Market share strategy.
(ii) Different geographic markets.
(A) In general.
(B) Example.
(C) Location savings.
(D) Example.
(iii) Transactions ordinarily not accepted as comparables.
(A) In general.
(B) Examples.
(e) Arm's length range.
(1) In general.
(2) Determination of arm's length range.
(i) Single method.
(ii) Selection of comparables.
(iii) Comparables included in arm's length range.
(A) In general.
(B) Adjustment of range to increase reliability.
(C) Interquartile range.
(3) Adjustment if taxpayer's results are outside arm's length range.
(4) Arm's length range not prerequisite to allocation.
(5) Examples.
(f) Scope of review.
(1) In general.
(i) Intent to evade or avoid tax not a prerequisite.
(ii) Realization of income not a prerequisite.
(A) In general.
(B) Example.
(iii) Nonrecognition provisions may not bar allocation.
(A) In general.
(B) Example.
(iv) Consolidated returns.
(2) Rules relating to determination of true taxable income.
(i) Aggregation of transactions.
(A) In general.
(B) Examples.
(ii) Allocation based on taxpayer's actual transactions.
(A) In general.
(B) Example.
(iii) Multiple year data.
(A) In general.
(B) Circumstances warranting consideration of multiple year data.
(C) Comparable effect over comparable period.
(D) Applications of methods using multiple year averages.
(E) Examples.
(iv) Product lines and statistical techniques.
(v) Allocations apply to results, not methods.
(A) In general.
(B) Example.
(g) Collateral adjustments with respect to allocations under section 482.
(1) In general.
(2) Correlative allocations.
(i) In general.
(ii) Manner of carrying out correlative allocation.
(iii) Events triggering correlative allocation.
(iv) Examples.
(3) Adjustments to conform accounts to reflect section 482 allocations.
(i) In general.
(ii) Example.
(4) Setoffs.
(i) In general.
(ii) Requirements.
(iii) Examples.
(h) Special rules.
(1) Small taxpayer safe harbor [Reserved].
(2) Effect of foreign legal restrictions.
(i) In general.
(ii) Applicable legal restrictions.
(iii) Requirement for electing the deferred income method of accounting.
(iv) Deferred income method of accounting.
(v) Examples.
(3) Coordination with section 936.
(i) Cost sharing under section 936.
(ii) Use of terms.
(i) Definitions.
(j) Effective dates.

Section 1.482–2 Determination of taxable income in specific situations.

(a) Loans or advances.
(1) Interest on bona fide indebtedness.
(i) In general.
(ii) Application of paragraph (a) of this section.
(A) Interest on bona fide indebtedness.
(B) Alleged indebtedness.
(iii) Period for which interest shall be charged.
(A) General rule.
(B) Exception for certain intercompany transactions in the ordinary course of business.
(C) Exception for trade or business of debtor member located outside the United States.
(D) Exception for regular trade practice of creditor member or others in creditor's industry.
(E) Exception for property purchased for resale in a foreign country.
(*1*) General rule.
(*2*) Interest-free period.
(*3*) Average collection period.
(*4*) Illustration.
(iv) Payment; book entries.
(2) Arm's length interest rate.
(i) In general.
(ii) Funds obtained at situs of borrower.
(iii) Safe haven interest rates for certain loans and advances made after May 8, 1986.
(A) Applicability.
(*1*) General rule.
(*2*) Grandfather rule for existing loans.
(B) Safe haven interest rate based on applicable Federal rate.
(C) Applicable Federal rate.
(D) Lender in business of making loans.
(E) Foreign currency loans.
(3) Coordination with interest adjustments required under certain other Internal Revenue Code sections.
(4) Examples.
(b) Performance of services for another.
(1) General rule.
(2) Benefit test.
(3) Arm's length charge.
(4) Costs or deductions to be taken into account.
(5) Costs and deductions not to be taken into account.
(6) Methods.
(7) Certain services.
(8) Services rendered in connection with the transfer of property.
(c) Use of tangible property.
(1) General rule.
(2) Arm's length charge.
(i) In general.
(ii) Safe haven rental charge.
(iii) Subleases.
(d) Transfer of property.

Section 1.482–3 Methods to determine taxable income in connection with a transfer of tangible property.

(a) In general.
(b) Comparable uncontrolled price method.
(1) In general.
(2) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) In general.
(B) Adjustments for differences between controlled and uncontrolled transactions.
(iii) Data and assumptions.
(3) Arm's length range.
(4) Examples.
(5) Indirect evidence of comparable uncontrolled transactions.
(i) In general.
(ii) Limitations.

(B) Exception for certain intercompany transactions in the ordinary course of business.
(C) Exception for trade or business of debtor member located outside the United States.
(D) Exception for regular trade practice of creditor member or others in creditor's industry.
(E) Exception for property purchased for resale in a foreign country.
(1) General rule.
(2) Interest-free period.
(3) Average collection period.
(4) Illustration.
(iv) Payment; book entries.
(2) Arm's length interest rate.
(i) In general.
(ii) Funds obtained at situs of borrower.
(iii) Safe haven interest rates for certain loans and advances made after May 8, 1986.
(A) Applicability.
(1) General rule.
(2) Grandfather rule for existing loans.
(B) Safe haven interest rate based on applicable Federal rate.
(C) Applicable Federal rate.
(D) Lender in business of making loans.
(E) Foreign currency loans.
(3) Coordination with interest adjustments required under certain other Internal Revenue Code sections.
(4) Examples.
(b) Performance of services for another.
(1) General rule.
(2) Benefit test.
(3) Arm's length charge.
(4) Costs or deductions to be taken into account.
(5) Costs and deductions not to be taken into account.
(6) Methods.
(7) Certain services.
(8) Services rendered in connection with the transfer of property.
(c) Use of tangible property.
(1) General rule.
(2) Arm's length charge.
(i) In general.
(ii) Safe haven rental charge.
(iii) Subleases.
(d) Transfer of property.

Section 1.482–3 Methods to determine taxable income in connection with a transfer of tangible property.

(a) In general.
(b) Comparable uncontrolled price method.
(1) In general.
(2) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) In general.
(B) Adjustments for differences between controlled and uncontrolled transactions.
(iii) Data and assumptions.
(3) Arm's length range.
(4) Examples.
(5) Indirect evidence of comparable uncontrolled transactions.
(i) In general.
(ii) Limitations.
(iii) Examples.
(c) Resale price method.
(1) In general.
(2) Determination of arm's length price.
(i) In general.
(ii) Applicable resale price.
(iii) Appropriate gross profit.
(iv) Arm's length range.
(3) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) Functional comparability.
(B) Other comparability factors.
(C) Adjustments for differences between controlled and uncontrolled transactions.
(D) Sales agent.
(iii) Data and assumptions.
(A) In general.
(B) Consistency in accounting.
(4) Examples.
(d) Cost plus method.
(1) In general.
(2) Determination of arm's length price.
(i) In general.
(ii) Appropriate gross profit.
(iii) Arm's length range.
(3) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) Functional comparability.
(B) Other comparability factors.
(C) Adjustments for differences between controlled and uncontrolled transactions.
(D) Purchasing agent.
(iii) Data and assumptions.
(A) In general.
(B) Consistency in accounting.
(4) Examples.
(e) Unspecified methods.
(1) In general.
(2) Example.
(f) Coordination with intangible property rules.

Section 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.

(a) In general.
(b) Definition of intangible.
(c) Comparable uncontrolled transaction method.
(1) In general.
(2) Comparability and reliability considerations.
(i) In general.
(ii) Reliability.
(iii) Comparability.
(A) In general.
(B) Factors to be considered in determining comparability.
(1) Comparable intangible property.
(2) Comparable circumstances.
(iv) Data and assumptions.
(3) Arm's length range.
(4) Examples.
(d) Unspecified methods.
(1) In general.
(2) Example.
(e) Coordination with tangible property rules.
(f) Special rules for transfers of intangible property.
(1) Form of consideration.
(2) Periodic adjustments.
(i) General rule.
(ii) Exceptions.
(A) Transactions involving the same intangible.
(B) Transactions involving comparable intangible.
(C) Methods other than comparable uncontrolled transaction.
(D) Extraordinary events.
(E) Five-year period.
(iii) Examples.
(3) Ownership of intangible property.
(i) In general.
(ii) Identification of the owner.
(A) Legally protected intangible property
(B) Intangible property that is not legally protected.
(iii) Allocations with respect to assistance provided to the owner.
(iv) Examples.
(4) Consideration not artificially limited.
(5) Lump sum payments.
(i) In general.
(ii) Exceptions.
(iii) Example.

Section 1.482–5 Comparable profits method.

(a) In general.
(b) Determination of arm's length result.
(1) In general.
(2) Tested party.
(i) In general.
(ii) Adjustments for tested party
(3) Arm's length range.
(4) Profit level indicators.
(i) Rate of return on capital employed.
(ii) Financial ratios.
(iii) Other profit level indicators.
(c) Comparability and reliability considerations.
(1) In general.
(2) Comparability.
(i) In general.
(ii) Functional, risk and resource comparability.
(iii) Other comparability factors.
(iv) Adjustments for differences between tested party and the uncontrolled taxpayers.
(3) Data and assumptions.
(i) In general.
(ii) Consistency in accounting.
(iii) Allocations between the relevant business activity and other activities.
(d) Definitions.
(e) Examples.

Section 1.482–6 Profit split method.

(a) In general.
(b) Appropriate share of profits and losses.
(c) Application.
(1) In general.
(2) Comparable profit split.
(i) In general.
(ii) Comparability and reliability considerations.
(A) In general.
(B) Comparability.
(1) In general.
(2) Adjustments for differences between the controlled and uncontrolled taxpayers.
(C) Data and assumptions.
(D) Other factors affecting reliability.

(3) Residual profit split.
(i) In general.
(A) Allocate income to routine contributions.
(B) Allocate residual profit.
(ii) Comparability and reliability considerations.
(A) In general.
(B) Comparability.
(C) Data and assumptions.
(D) Other factors affecting reliability.
(iii) Example.

Section 1.482–7T Sharing of costs and risks.

Section 1.482–8 Examples of the best method rule.

(a) In general.
(b) Examples.

§ 1.482–1 Allocation of income and deductions among taxpayers.

(a) *In general*—(1) *Purpose and scope.* The purpose of section 482 is to ensure that taxpayers clearly reflect income attributable to controlled transactions, and to prevent the avoidance of taxes with respect to such transactions. Section 482 places a controlled taxpayer on a tax parity with an uncontrolled taxpayer by determining the true taxable income of the controlled taxpayer. This § 1.482–1 sets forth general principles and guidelines to be followed under section 482. Section 1.482–2 provides rules for the determination of the true taxable income of controlled taxpayers in specific situations, including controlled transactions involving loans or advances, services, and property. Sections 1.482–3 through 1.482–6 elaborate on the rules that apply to controlled transactions involving property. Section 1.482–7T sets forth the cost sharing provisions. Finally, § 1.482–8 provides examples illustrating the application of the best method rule.

(2) *Authority to make allocations.* The district director may make allocations between or among the members of a controlled group if a controlled taxpayer has not reported its true taxable income. In such case, the district director may allocate income, deductions, credits, allowances, basis, or any other item or element affecting taxable income (referred to as allocations). The appropriate allocation may take the form of an increase or decrease in any relevant amount.

(3) *Taxpayer's use of section 482.* If necessary to reflect an arm's length result, a controlled taxpayer may report on a timely filed U.S. income tax return (including extensions) the results of its controlled transactions based upon prices different from those actually charged. Except as provided in this paragraph, section 482 grants no other right to a controlled taxpayer to apply the provisions of section 482 at will or to compel the district director to apply such provisions. Therefore, no untimely or amended returns will be permitted to decrease taxable income based on allocations or other adjustments with respect to controlled transactions. See § 1.6662–6T(a)(2) or successor regulations.

(b) *Arm's length standard*—(1) *In general.* In determining the true taxable income of a controlled taxpayer, the standard to be applied in every case is that of a taxpayer dealing at arm's length with an uncontrolled taxpayer. A controlled transaction meets the arm's length standard if the results of the transaction are consistent with the results that would have been realized if uncontrolled taxpayers had engaged in the same transaction under the same circumstances (arm's length result). However, because identical transactions can rarely be located, whether a transaction produces an arm's length result generally will be determined by reference to the results of comparable transactions under comparable circumstances. See § 1.482–1(d)(2) (Standard of comparability). Evaluation of whether a controlled transaction produces an arm's length result is made pursuant to a method selected under the best method rule described in § 1.482–1(c).

(2) *Arm's length methods*—(i) *Methods.* Sections 1.482–2 through 1.482–6 provide specific methods to be used to evaluate whether transactions between or among members of the controlled group satisfy the arm's length standard, and if they do not, to determine the arm's length result.

(ii) *Selection of category of method applicable to transaction.* The methods listed in § 1.482–2 apply to different types of transactions, such as transfers of property, services, loans or advances, and rentals. Accordingly, the method or methods most appropriate to the calculation of arm's length results for controlled transactions must be selected, and different methods may be applied to interrelated transactions if such transactions are most reliably evaluated on a separate basis. For example, if services are provided in connection with the transfer of property, it may be appropriate to separately apply the methods applicable to services and property in order to determine an arm's length result. But see § 1.482–1(f)(2)(i) (Aggregation of transactions). In addition, other applicable provisions of the Code may affect the characterization of a transaction, and therefore affect the methods applicable under section 482. See for example section 467.

(c) *Best method rule*—(1) *In general.* The arm's length result of a controlled transaction must be determined under the method that, under the facts and circumstances, provides the most reliable measure of an arm's length result. Thus, there is no strict priority of methods, and no method will invariably be considered to be more reliable than others. An arm's length result may be determined under any method without establishing the inapplicability of another method, but if another method subsequently is shown to produce a more reliable measure of an arm's length result, such other method must be used. Similarly, if two or more applications of a single method provide inconsistent results, the arm's length result must be determined under the application that, under the facts and circumstances, provides the most reliable measure of an arm's length result. See § 1.482–8 for examples of the application of the best method rule.

(2) *Determining the best method.* Data based on the results of transactions between unrelated parties provides the most objective basis for determining whether the results of a controlled transaction are arm's length. Thus, in determining which of two or more available methods (or applications of a single method) provides the most reliable measure of an arm's length result, the two primary factors to take into account are the degree of comparability between the controlled transaction (or taxpayer) and any uncontrolled comparables, and the quality of the data and assumptions used in the analysis. In addition, in certain circumstances, it also may be relevant to consider whether the results of an analysis are consistent with the results of an analysis under another method. These factors are explained in paragraphs (c)(2)(i), (ii), and (iii) of this section.

(i) *Comparability.* The relative reliability of a method based on the results of transactions between unrelated parties depends on the degree of comparability between the controlled transaction or taxpayers and the uncontrolled comparables, taking into account the factors described in § 1.482–1(d)(3) (Factors for determining comparability), and after making adjustments for differences, as described in § 1.482–1(d)(2) (Standard of comparability). As the degree of comparability increases, the number and extent of potential differences that could render the analysis inaccurate is reduced. In addition, if adjustments are made to increase the degree of comparability, the number, magnitude, and reliability of those adjustments will affect the reliability of the results of the analysis. Thus, an analysis under the comparable uncontrolled price method will generally be more reliable than analyses obtained under other methods if the analysis is based on closely comparable uncontrolled transactions, because such an analysis can be expected to achieve a higher degree of comparability and be susceptible to fewer differences than analyses under other methods. See § 1.482–3(b)(2)(ii)(A). An analysis will be relatively less reliable, however, as the uncontrolled transactions become less comparable to the controlled transaction.

(ii) *Data and assumptions.* Whether a method provides the most reliable measure of an arm's length result also depends upon the completeness and accuracy of the underlying data, the reliability of the assumptions, and the sensitivity of the results to possible deficiencies in the data and assumptions. Such factors are particularly relevant in evaluating the degree of comparability between the controlled and uncontrolled transactions. These factors are discussed in paragraphs (c)(2)(ii) (A), (B), and (C) of this section.

(A) *Completeness and accuracy of data.* The completeness and accuracy of the data affects the ability to identify and quantify those factors that would affect the result under any particular method. For example, the completeness and accuracy of data will determine the extent to which it is possible to identify differences between the controlled and uncontrolled transactions, and the reliability of adjustments that are made to account for such differences. An analysis will be relatively more reliable as the completeness and accuracy of the data increases.

(B) *Reliability of assumptions.* All methods rely on certain assumptions. The reliability of the results derived from a method depends on the soundness of such assumptions. Some assumptions are relatively reliable. For example, adjustments for differences in payment terms between controlled and uncontrolled transactions may be based on the assumption that at arm's length such differences would lead to price differences that reflect the time value of money. Although selection of the appropriate interest rate to use in making such adjustments involves some judgement, the economic analysis on which the assumption is based is relatively sound. Other assumptions may be less reliable. For example, the residual profit split method may be based on the assumption that capitalized intangible development

affect the reliability of the results of the analysis. Thus, an analysis under the comparable uncontrolled price method will generally be more reliable than analyses obtained under other methods if the analysis is based on closely comparable uncontrolled transactions, because such an analysis can be expected to achieve a higher degree of comparability and be susceptible to fewer differences than analyses under other methods. See § 1.482–3(b)(2)(ii)(A). An analysis will be relatively less reliable, however, as the uncontrolled transactions become less comparable to the controlled transaction.

(ii) *Data and assumptions.* Whether a method provides the most reliable measure of an arm's length result also depends upon the completeness and accuracy of the underlying data, the reliability of the assumptions, and the sensitivity of the results to possible deficiencies in the data and assumptions. Such factors are particularly relevant in evaluating the degree of comparability between the controlled and uncontrolled transactions. These factors are discussed in paragraphs (c)(2)(ii) (A), (B), and (C) of this section.

(A) *Completeness and accuracy of data.* The completeness and accuracy of the data affects the ability to identify and quantify those factors that would affect the result under any particular method. For example, the completeness and accuracy of data will determine the extent to which it is possible to identify differences between the controlled and uncontrolled transactions, and the reliability of adjustments that are made to account for such differences. An analysis will be relatively more reliable as the completeness and accuracy of the data increases.

(B) *Reliability of assumptions.* All methods rely on certain assumptions. The reliability of the results derived from a method depends on the soundness of such assumptions. Some assumptions are relatively reliable. For example, adjustments for differences in payment terms between controlled and uncontrolled transactions may be based on the assumption that at arm's length such differences would lead to price differences that reflect the time value of money. Although selection of the appropriate interest rate to use in making such adjustments involves some judgement, the economic analysis on which the assumption is based is relatively sound. Other assumptions may be less reliable. For example, the residual profit split method may be based on the assumption that capitalized intangible development expenses reflect the relative value of the intangible property contributed by each party. Because the costs of developing an intangible may not be related to its market value, the soundness of this assumption will affect the reliability of the results derived from this method.

(C) *Sensitivity of results to deficiencies in data and assumptions.* Deficiencies in the data used or assumptions made may have a greater effect on some methods than others. In particular, the reliability of some methods is heavily dependent on the similarity of property or services involved in the controlled and uncontrolled transaction. For certain other methods, such as the resale price method, the analysis of the extent to which controlled and uncontrolled taxpayers undertake the same or similar functions, employ similar resources, and bear similar risks is particularly important. Finally, under other methods, such as the profit split method, defining the relevant business activity and appropriate allocation of costs, income, and assets may be of particular importance. Therefore, a difference between the controlled and uncontrolled transactions for which an accurate adjustment cannot be made may have a greater effect on the reliability of the results derived under one method than the results derived under another method. For example, differences in management efficiency may have a greater effect on a comparable profits method analysis than on a comparable uncontrolled price method analysis, while differences in product characteristics will ordinarily have a greater effect on a comparable uncontrolled price method analysis than on a comparable profits method analysis.

(iii) *Confirmation of results by another method.* If two or more methods produce inconsistent results, the best method rule will be applied to select the method that provides the most reliable measure of an arm's length result. If the best method rule does not clearly indicate which method should be selected, an additional factor that may be taken into account in selecting a method is whether any of the competing methods produce results that are consistent with the results obtained from the appropriate application of another method. Further, in evaluating different applications of the same method, the fact that a second method (or another application of the first method) produces results that are consistent with one of the competing applications may be taken into account.

(d) *Comparability*—(1) *In general.* Whether a controlled transaction produces an arm's length result is generally evaluated by comparing the results of that transaction to results realized by uncontrolled taxpayers engaged in comparable transactions under comparable circumstances. For this purpose, the comparability of transactions and circumstances must be evaluated considering all factors that could affect prices or profits in arm's length dealings (comparability factors). While a specific comparability factor may be of particular importance in applying a method, each method requires analysis of all of the factors that affect comparability under that method. Such factors include the following—

(i) Functions;
(ii) Contractual terms;
(iii) Risks;
(iv) Economic conditions; and
(v) Property or services.

(2) *Standard of comparability.* In order to be considered comparable to a controlled transaction, an uncontrolled transaction need not be identical to the controlled transaction, but must be sufficiently similar that it provides a reliable measure of an arm's length result. If there are material differences between the controlled and uncontrolled transactions, adjustments must be made if the effect of such differences on prices or profits can be ascertained with sufficient accuracy to improve the reliability of the results. For purposes of this section, a material difference is one that would materially affect the measure of an arm's length result under the method being applied. If adjustments for material differences cannot be made, the uncontrolled transaction may be used as a measure of an arm's length result, but the reliability of the analysis will be reduced. Generally, such adjustments must be made to the results of the uncontrolled comparable and must be based on commercial practices, economic principles, or statistical analyses. The extent and reliability of any adjustments will affect the relative reliability of the analysis. See § 1.482–1(c)(1) (Best method rule). In any event, unadjusted industry average returns themselves cannot establish arm's length results.

(3) *Factors for determining comparability.* The comparability factors listed in § 1.482–1(d)(1) are discussed in this section. Each of these factors must be considered in determining the degree of comparability between transactions or taxpayers and the extent to which comparability adjustments may be necessary. In addition, in certain cases involving special circumstances, the rules under paragraph (d)(4) of this section must be considered.

(i) *Functional analysis.* Determining the degree of comparability between controlled and uncontrolled transactions requires a comparison of the functions performed, and associated resources employed, by the taxpayers in each transaction. This comparison is based on a functional analysis that identifies and compares the economically significant activities undertaken, or to be undertaken, by the taxpayers in both controlled and uncontrolled transactions. A functional analysis should also include consideration of the resources that are employed, or to be employed, in conjunction with the activities undertaken, including consideration of the type of assets used, such as plant and equipment, or the use of valuable intangibles. A functional analysis is not a pricing method and does not itself determine the arm's length result for the controlled transaction under review. Functions that may need to be accounted for in determining the comparability of two transactions include—

(A) Research and development;

(B) Product design and engineering;

(C) Manufacturing, production and process engineering;

(D) Product fabrication, extraction, and assembly;

(E) Purchasing and materials management;

(F) Marketing and distribution functions, including inventory management, warranty administration, and advertising activities;

(G) Transportation and warehousing; and

(H) Managerial, legal, accounting and finance, credit and collection, training, and personnel management services.

(ii) *Contractual terms*—(A) *In general.* Determining the degree of comparability between the controlled and uncontrolled transactions requires a comparison of the significant contractual terms that could affect the results of the two transactions. These terms include—

(*1*) The form of consideration charged or paid;

(*2*) Sales or purchase volume;

(*3*) The scope and terms of warranties provided;

(*4*) Rights to updates, revisions or modifications;

(*5*) The duration of relevant license, contract or other agreements, and termination or renegotiation rights;

(*6*) Collateral transactions or ongoing business relationships between the buyer and the seller, including arrangements for the provision of ancillary or subsidiary services; and

(*7*) Extension of credit and payment terms. Thus, for example, if the time for payment of the amount charged in a controlled transaction differs from the time for payment of the amount charged in an uncontrolled transaction, an adjustment to reflect the difference in payment terms should be made if such difference would have a material effect on price. Such comparability adjustment is required even if no interest would be allocated or imputed under § 1.482–2(a) or other applicable provisions of the Internal Revenue Code or regulations.

(B) *Identifying contractual terms*—(*1*) *Written agreement.* The contractual terms, including the consequent allocation of risks, that are agreed to in writing before the transactions are entered into will be respected if such terms are consistent with the economic substance of the underlying transactions. In evaluating economic substance, greatest weight will be given to the actual conduct of the parties, and the respective legal rights of the parties (see, for example, § 1.482–4(f)(3) (Ownership of intangible property)). If the contractual terms are inconsistent with the economic substance of the underlying transaction, the district director may disregard such terms and impute terms that are consistent with the economic substance of the transaction.

(*2*) *No written agreement.* In the absence of a written agreement, the district director may impute a contractual agreement between the controlled taxpayers consistent with the economic substance of the transaction. In determining the economic substance of the transaction, greatest weight will be given to the actual conduct of the parties and their respective legal rights (see, for example, § 1.482–4(f)(3) (Ownership of intangible property)). For example, if, without a written agreement, a controlled taxpayer operates at full capacity and regularly sells all of its output to another member of its controlled group, the district director may impute a purchasing contract from the course of conduct of the controlled taxpayers, and determine that the producer bears little risk that the buyer will fail to purchase its full output. Further, if an established industry convention or usage of trade assigns a risk or resolves an issue, that convention or usage will be followed if the conduct of the taxpayers is consistent with it. See UCC 1–205. For example, unless otherwise agreed, payment generally is due at the time and place at which the buyer is to receive goods. See UCC 2–310.

(C) *Examples.* The following examples illustrate this paragraph (d)(3)(ii).

Example 1—Differences in volume. USP, a United States agricultural exporter, regularly buys transportation services from FSub, its foreign subsidiary, to ship its products from the United States to overseas markets. Although FSub occasionally provides transportation services to URA, an unrelated domestic corporation, URA accounts for only 10% of the gross revenues of FSub, and the remaining 90% of FSub's gross revenues are attributable to FSub's transactions with USP. In determining the degree of comparability between FSub's uncontrolled transaction with URA and its controlled transaction with USP, the difference in volumes involved in the two transactions and the regularity with which these services are provided must be taken into account if such difference would have a material effect on the price charged. Inability to make reliable adjustments for these differences would affect the reliability of the results derived from the uncontrolled transaction as a measure of the arm's length result.

Example 2—Reliability of adjustment for differences in volume. (i) FS manufactures product XX and sells that product to its parent corporation, P. FS also sells product XX to uncontrolled taxpayers at a price of $100 per unit. Except for the volume of each transaction, the sales to P and to uncontrolled taxpayers take place under substantially the same economic conditions and contractual terms. In uncontrolled transactions, FS offers a 2% discount for quantities of 20 per order, and a 5% discount for quantities of 100 per order. If P purchases product XX in quantities of 60 per order, in the absence of other reliable information, it may reasonably be concluded that the arm's length price to P would be $100, less a discount of 3.5%.

(ii) If P purchases product XX in quantities of 1,000 per order, a reliable estimate of the appropriate volume discount must be based on proper economic or statistical analysis, not necessarily a linear extrapolation from the 2% and 5% catalog discounts applicable to sales of 20 and 100 units, respectively.

Example 3—Contractual term imputed from economic substance. (i) USD, a United States corporation, is the exclusive distributor of products manufactured by FP, its foreign parent. The FP products are sold under a tradename that is not known in the United States. USD does not have an agreement with FP for the use of FP's tradename. For Years 1 through 6, USD bears marketing expenses promoting FP's tradename in the United States that are substantially above the level of such expenses incurred by comparable distributors in uncontrolled transactions. FP does not directly or indirectly reimburse USD for its marketing expenses. By Year 7, the FP tradename has become very well known in the market and commands a price premium. At this time, USD becomes a commission agent for FP.

(ii) In determining USD's arm's length result for Year 7, the district director considers the economic substance of the arrangements between USD and FP throughout the course of their relationship. It is unlikely that at arm's length, USD would incur these above-normal expenses without some assurance it could derive a benefit from these expenses. In this case, these expenditures indicate a course of conduct that is consistent with an agreement under which USD received a long-term right to use the FP tradename in the United States. Such conduct is inconsistent with the contractual arrangements between FP and USD under which USD was merely a distributor, and later a commission agent, for FP. Therefore, the district director may impute an agreement between USD and FP under which USD will retain an appropriate portion of the price premium attributable to the FP tradename.

(iii) *Risk*—(A) *Comparability.* Determining the degree of comparability between controlled and uncontrolled transactions requires a comparison of the significant risks that could affect the prices that would be charged or paid, or the profit that would be earned, in the two transactions. Relevant risks to consider include—

(*1*) Market risks, including fluctuations in cost, demand, pricing, and inventory levels;

(*2*) Risks associated with the success or failure of research and development activities;

(*3*) Financial risks, including fluctuations in foreign currency rates of exchange and interest rates;

(*4*) Credit and collection risks;

(*5*) Product liability risks; and

(*6*) General business risks related to the ownership of property, plant, and equipment.

(B) *Identification of taxpayer that bears risk.* In general, the determination of which controlled taxpayer bears a particular risk will be made in accordance with the provisions of § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms). Thus, the allocation of risks specified or implied by the taxpayer's contractual terms will generally be respected if it is consistent with the economic substance of the transaction. An allocation of risk between controlled taxpayers after the outcome of such risk is known or reasonably knowable lacks economic substance. In considering the economic substance of the transaction, the following facts are relevant—

(*1*) Whether the pattern of the controlled taxpayer's conduct over time is consistent with the purported allocation of risk between the controlled taxpayers; or where the pattern is changed, whether the relevant contractual arrangements have been modified accordingly;

(*2*) Whether a controlled taxpayer has the financial capacity to fund losses that might be expected to occur as the result of the assumption of a risk, or whether, at arm's length, another party to the controlled transaction would ultimately

some assurance it could derive a benefit from these expenses. In this case, these expenditures indicate a course of conduct that is consistent with an agreement under which USD received a long-term right to use the FP tradename in the United States. Such conduct is inconsistent with the contractual arrangements between FP and USD under which USD was merely a distributor, and later a commission agent, for FP. Therefore, the district director may impute an agreement between USD and FP under which USD will retain an appropriate portion of the price premium attributable to the FP tradename.

(iii) *Risk*—(A) *Comparability.* Determining the degree of comparability between controlled and uncontrolled transactions requires a comparison of the significant risks that could affect the prices that would be charged or paid, or the profit that would be earned, in the two transactions. Relevant risks to consider include—

(*1*) Market risks, including fluctuations in cost, demand, pricing, and inventory levels;

(*2*) Risks associated with the success or failure of research and development activities;

(*3*) Financial risks, including fluctuations in foreign currency rates of exchange and interest rates;

(*4*) Credit and collection risks;

(*5*) Product liability risks; and

(*6*) General business risks related to the ownership of property, plant, and equipment.

(B) *Identification of taxpayer that bears risk.* In general, the determination of which controlled taxpayer bears a particular risk will be made in accordance with the provisions of § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms). Thus, the allocation of risks specified or implied by the taxpayer's contractual terms will generally be respected if it is consistent with the economic substance of the transaction. An allocation of risk between controlled taxpayers after the outcome of such risk is known or reasonably knowable lacks economic substance. In considering the economic substance of the transaction, the following facts are relevant—

(*1*) Whether the pattern of the controlled taxpayer's conduct over time is consistent with the purported allocation of risk between the controlled taxpayers; or where the pattern is changed, whether the relevant contractual arrangements have been modified accordingly;

(*2*) Whether a controlled taxpayer has the financial capacity to fund losses that might be expected to occur as the result of the assumption of a risk, or whether, at arm's length, another party to the controlled transaction would ultimately suffer the consequences of such losses; and

(*3*) The extent to which each controlled taxpayer exercises managerial or operational control over the business activities that directly influence the amount of income or loss realized. In arm's length dealings, parties ordinarily bear a greater share of those risks over which they have relatively more control.

(C) *Examples.* The following examples illustrate this paragraph (d)(3)(iii).

Example 1. FD, the wholly-owned foreign distributor of USM, a U.S. manufacturer, buys widgets from USM under a written contract. Widgets are a generic electronic appliance. Under the terms of the contract, FD must buy and take title to 20,000 widgets for each of the five years of the contract at a price of $10 per widget. The widgets will be sold under FD's label, and FD must finance any marketing strategies to promote sales in the foreign market. There are no rebate or buy back provisions. FD has adequate financial capacity to fund its obligations under the contract under any circumstances that could reasonably be expected to arise. In Years 1, 2 and 3, FD sold only 10,000 widgets at a price of $11 per unit. In Year 4, FD sold its entire inventory of widgets at a price of $25 per unit. Since the contractual terms allocating market risk were agreed to before the outcome of such risk was known or reasonably knowable, FD had the financial capacity to bear the market risk that it would be unable to sell all of the widgets it purchased currently, and its conduct was consistent over time, FD will be deemed to bear the risk.

Example 2. The facts are the same as in *Example 1*, except that in Year 1 FD had only $100,000 in total capital, including loans. In subsequent years USM makes no additional contributions to the capital of FD, and FD is unable to obtain any capital through loans from an unrelated party. Nonetheless, USM continues to sell 20,000 widgets annually to FD under the terms of the contract, and USM extends credit to FD to enable it to finance the purchase. FD does not have the financial capacity in Years 1, 2 and 3 to finance the purchase of the widgets given that it could not sell most of the widgets it purchased during those years. Thus, notwithstanding the terms of the contract, USM and not FD assumed the market risk that a substantial portion of the widgets could not be sold, since in that event FD would not be able to pay USM for all of the widgets it purchased.

Example 3. S, a Country X corporation, manufactures small motors that it sells to P, its U.S. parent. P incorporates the motors into various products and sells those products to uncontrolled customers in the United States. The contract price for the motors is expressed in U.S. dollars, effectively allocating the currency risk for these transactions to S for any currency fluctuations between the time the contract is signed and payment is made. As long as S has adequate financial capacity to bear this currency risk (including by hedging all or part of the risk) and the conduct of S and P is consistent with the terms of the contract (i.e., the contract price is not adjusted to reflect exchange rate movements), the agreement of the parties to allocate the exchange risk to S will be respected.

Example 4. USSub is the wholly-owned U.S. subsidiary of FP, a foreign manufacturer. USSub acts as a distributor of goods manufactured by FP. FP and USSub execute an agreement providing that FP will bear any ordinary product liability costs arising from defects in the goods manufactured by FP. In practice, however, when ordinary product liability claims are sustained against USSub and FP, USSub pays the resulting damages. Therefore, the district director disregards the contractual arrangement regarding product liability costs between FP and USSub, and treats the risk as having been assumed by USSub.

(iv) *Economic conditions.* Determining the degree of comparability between controlled and uncontrolled transactions requires a comparison of the significant economic conditions that could affect the prices that would be charged or paid, or the profit that would be earned in each of the transactions. These factors include—

(A) The similarity of geographic markets;

(B) The relative size of each market, and the extent of the overall economic development in each market;

(C) The level of the market (e.g., wholesale, retail, etc.);

(D) The relevant market shares for the products, properties, or services transferred or provided;

(E) The location-specific costs of the factors of production and distribution;

(F) The extent of competition in each market with regard to the property or services under review;

(G) The economic condition of the particular industry, including whether the market is in contraction or expansion; and

(H) The alternatives realistically available to the buyer and seller.

(v) *Property or services.* Evaluating the degree of comparability between controlled and uncontrolled transactions requires a comparison of the property or services transferred in the transactions. This comparison may include any intangibles that are embedded in tangible property or services being transferred. The comparability of the embedded intangibles will be analyzed using the factors listed in § 1.482–4(c)(2)(iii)(B)(*1*) (Comparable intangible property). The relevance of product comparability in evaluating the relative reliability of the results will depend on the method applied. For guidance concerning the specific comparability considerations applicable to transfers of tangible and

intangible property, see §§ 1.482–3 through 1.482–6; see also § 1.482–3(f), dealing with the coordination of the intangible and tangible property rules.

(4) *Special circumstances*—(i) *Market share strategy.* In certain circumstances, taxpayers may adopt strategies to enter new markets or to increase a product's share of an existing market (market share strategy). Such a strategy would be reflected by temporarily increased market development expenses or resale prices that are temporarily lower than the prices charged for comparable products in the same market. Whether or not the strategy is reflected in the transfer price depends on which party to the controlled transaction bears the costs of the pricing strategy. In any case, the effect of a market share strategy on a controlled transaction will be taken into account only if it can be shown that an uncontrolled taxpayer engaged in a comparable strategy under comparable circumstances for a comparable period of time, and the taxpayer provides documentation that substantiates the following—

(A) The costs incurred to implement the market share strategy are borne by the controlled taxpayer that would obtain the future profits that result from the strategy, and there is a reasonable likelihood that the strategy will result in future profits that reflect an appropriate return in relation to the costs incurred to implement it;

(B) The market share strategy is pursued only for a period of time that is reasonable, taking into consideration the industry and product in question; and

(C) The market share strategy, the related costs and expected returns, and any agreement between the controlled taxpayers to share the related costs, were established before the strategy was implemented.

(ii) *Different geographic markets*—(A) *In general.* Uncontrolled comparables ordinarily should be derived from the geographic market in which the controlled taxpayer operates, because there may be significant differences in economic conditions in different markets. If information from the same market is not available, an uncontrolled comparable derived from a different geographic market may be considered if adjustments are made to account for differences between the two markets. If information permitting adjustments for such differences is not available, then information derived from uncontrolled comparables in the most similar market for which reliable data is available may be used, but the extent of such differences may affect the reliability of the method for purposes of the best method rule. For this purpose, a geographic market is any geographic area in which the economic conditions for the relevant product or service are substantially the same, and may include multiple countries, depending on the economic conditions.

(B) *Example.* The following example illustrates this paragraph (d)(4)(ii).

Example. Manuco, a wholly-owned foreign subsidiary of P, a U.S. corporation, manufactures products in Country Z for sale to P. No uncontrolled transactions are located that would provide a reliable measure of the arm's length result under the comparable uncontrolled price method. The district director considers applying the cost plus method or the comparable profits method. Information on uncontrolled taxpayers performing comparable functions under comparable circumstances in the same geographic market is not available. Therefore, adjusted data from uncontrolled manufacturers in other markets may be considered in order to apply the cost plus method. In this case, comparable uncontrolled manufacturers are found in the United States. Accordingly, data from the comparable U.S. uncontrolled manufacturers, as adjusted to account for differences between the United States and Country Z's geographic market, is used to test the arm's length price paid by P to Manuco. However, the use of such data may affect the reliability of the results for purposes of the best method rule. See § 1.482–1(c).

(C) *Location savings.* If an uncontrolled taxpayer operates in a different geographic market than the controlled taxpayer, adjustments may be necessary to account for significant differences in costs attributable to the geographic markets. These adjustments must be based on the effect such differences would have on the consideration charged or paid in the controlled transaction given the relative competitive positions of buyers and sellers in each market. Thus, for example, the fact that the total costs of operating in a controlled manufacturer's geographic market are less than the total costs of operating in other markets ordinarily justifies higher profits to the manufacturer only if the cost differences would increase the profits of comparable uncontrolled manufacturers operating at arm's length, given the competitive positions of buyers and sellers in that market.

(D) *Example.* The following example illustrates the principles of this paragraph (d)(4)(ii)(C).

Example. Couture, a U.S. apparel design corporation, contracts with Sewco, its wholly owned Country Y subsidiary, to manufacture its clothes. Costs of operating in Country Y are significantly lower than the operating costs in the United States. Although clothes with the Couture label sell for a premium price, the actual production of the clothes does not require significant specialized knowledge that could not be acquired by actual or potential competitors to Sewco at reasonable cost. Thus, Sewco's functions could be performed by several actual or potential competitors to Sewco in geographic markets that are similar to Country Y. Thus, the fact that production is less costly in Country Y will not, in and of itself, justify additional profits derived from lower operating costs in Country Y inuring to Sewco, because the competitive positions of the other actual or potential producers in similar geographic markets capable of performing the same functions at the same low costs indicate that at arm's length such profits would not be retained by Sewco.

(iii) *Transactions ordinarily not accepted as comparables*— (A) *In general.* Transactions ordinarily will not constitute reliable measures of an arm's length result for purposes of this section if—

(*1*) They are not made in the ordinary course of business; or

(*2*) One of the principal purposes of the uncontrolled transaction was to establish an arm's length result with respect to the controlled transaction.

(B) *Examples.* The following examples illustrate the principle of this paragraph (d)(4)(iii).

Example 1—Not in the ordinary course of business. USP, a United States manufacturer of computer software, sells its products to FSub, its foreign distributor in country X. Compco, a United States competitor of USP, also sells its products in X through unrelated distributors. However, in the year under review, Compco is forced into bankruptcy, and Compco liquidates its inventory by selling all of its products to unrelated distributors in X for a liquidation price. Because the sale of its entire inventory was not a sale in the ordinary course of business, Compco's sale cannot be used as an uncontrolled comparable to determine USP's arm's length result from its controlled transaction.

Example 2—Principal purpose of establishing an arm's length result. USP, a United States manufacturer of farm machinery, sells its products to FSub, its wholly-owned distributor in Country Y. USP, operating at nearly full capacity, sells 95% of its inventory to FSub. To make use of its excess capacity, and also to establish a comparable uncontrolled price for its transfer price to FSub, USP increases its production to full capacity. USP sells its excess inventory to Compco, an unrelated foreign distributor in Country X. Country X has approximately the same economic conditions as that of Country Y. Because one of the principal purposes of selling to Compco was to establish an arm's length price for its controlled transactions with FSub, USP's sale to Compco cannot be used as an uncontrolled comparable to determine USP's arm's length result from its controlled transaction.

(e) *Arm's length range*—(1) *In general.* In some cases, application of a pricing method will produce a single result that is the most reliable measure of an arm's length result. In other cases, application of a method may produce a number of results from which a range of reliable results may be derived. A taxpayer will not be subject to adjustment if its results fall within such range (arm's length range).

(2) *Determination of arm's length range*—(i) *Single method.* The arm's length range is ordinarily determined by applying a single pricing method selected under the best method rule to two or more uncontrolled transactions of similar comparability and reliability. Use of more than one method may be appropriate for the purposes described in paragraph (c)(2)(iii) of this section (Best method rule).

(ii) *Selection of comparables.* Uncontrolled comparables must be selected based upon the comparability criteria relevant to the method applied and must be sufficiently similar to the controlled transaction that they provide a reliable measure of an arm's length result. If material differences exist between the controlled and uncontrolled transactions, adjustments must be made to the results of the uncontrolled transaction if the effect of such differences on price or profits can be ascertained with sufficient accuracy to improve the reliability of the results. See § 1.482–1(d)(2) (Standard of comparability). The arm's length range will be derived only from those uncontrolled comparables that have, or through adjustments can be brought to, a similar level of comparability and reliability, and uncontrolled comparables that have a significantly lower level of comparability and reliability will not be used in establishing the arm's length range.

(iii) *Comparables included in arm's length range*—(A) *In general.* The arm's length range will consist of the results of all of the uncontrolled comparables that meet the following conditions: the information on the controlled transaction and the uncontrolled comparables is sufficiently complete that it is likely that all material differences have been identified, each such difference has a definite and reasonably ascertainable effect on price or profit, and an adjustment is made to eliminate the effect of each such difference.

(B) *Adjustment of range to increase reliability.* If there are no uncontrolled comparables described in paragraph (e)(2)(iii)(A) of this section, the arm's length range is derived from the results of all the uncontrolled comparables, selected pursuant to paragraph (e)(2)(ii) of this section, that achieve a similar level of comparability and reliability. In

is the most reliable measure of an arm's length result. In other cases, application of a method may produce a number of results from which a range of reliable results may be derived. A taxpayer will not be subject to adjustment if its results fall within such range (arm's length range).

(2) *Determination of arm's length range*—(i) *Single method.* The arm's length range is ordinarily determined by applying a single pricing method selected under the best method rule to two or more uncontrolled transactions of similar comparability and reliability. Use of more than one method may be appropriate for the purposes described in paragraph (c)(2)(iii) of this section (Best method rule).

(ii) *Selection of comparables.* Uncontrolled comparables must be selected based upon the comparability criteria relevant to the method applied and must be sufficiently similar to the controlled transaction that they provide a reliable measure of an arm's length result. If material differences exist between the controlled and uncontrolled transactions, adjustments must be made to the results of the uncontrolled transaction if the effect of such differences on price or profits can be ascertained with sufficient accuracy to improve the reliability of the results. See § 1.482–1(d)(2) (Standard of comparability). The arm's length range will be derived only from those uncontrolled comparables that have, or through adjustments can be brought to, a similar level of comparability and reliability, and uncontrolled comparables that have a significantly lower level of comparability and reliability will not be used in establishing the arm's length range.

(iii) *Comparables included in arm's length range*—(A) *In general.* The arm's length range will consist of the results of all of the uncontrolled comparables that meet the following conditions: the information on the controlled transaction and the uncontrolled comparables is sufficiently complete that it is likely that all material differences have been identified, each such difference has a definite and reasonably ascertainable effect on price or profit, and an adjustment is made to eliminate the effect of each such difference.

(B) *Adjustment of range to increase reliability.* If there are no uncontrolled comparables described in paragraph (e)(2)(iii)(A) of this section, the arm's length range is derived from the results of all the uncontrolled comparables, selected pursuant to paragraph (e)(2)(ii) of this section, that achieve a similar level of comparability and reliability. In such cases the reliability of the analysis must be increased, where it is possible to do so, by adjusting the range through application of a valid statistical method to the results of all of the uncontrolled comparables so selected. The reliability of the analysis is increased when statistical methods are used to establish a range of results in which the limits of the range will be determined such that there is a 75 percent probability of a result falling above the lower end of the range and a 75 percent probability of a result falling below the upper end of the range. The interquartile range ordinarily provides an acceptable measure of this range; however a different statistical method may be applied if it provides a more reliable measure.

(C) *Interquartile range.* For purposes of this section, the interquartile range is the range from the 25th to the 75th percentile of the results derived from the uncontrolled comparables. For this purpose, the 25th percentile is the lowest result derived from an uncontrolled comparable such that at least 25 percent of the results are at or below the value of that result. However, if exactly 25 percent of the results are at or below a result, then the 25th percentile is equal to the average of that result and the next higher result derived from the uncontrolled comparables. The 75th percentile is determined analogously.

(3) *Adjustment if taxpayer's results are outside arm's length range.* If the results of a controlled transaction fall outside the arm's length range, the district director may make allocations that adjust the controlled taxpayer's result to any point within the arm's length range. If the interquartile range is used to determine the arm's length range, such adjustment will ordinarily be to the median of all the results. The median is the 50th percentile of the results, which is determined in a manner analogous to that described in paragraph (e)(2)(iii)(C) of this section (Interquartile range). In other cases, an adjustment normally will be made to the arithmetic mean of all the results. See § 1.482–1(f)(2)(iii)(D) for determination of an adjustment when a controlled taxpayer's result for a multiple year period falls outside an arm's length range consisting of the average results of uncontrolled comparables over the same period.

(4) *Arm's length range not prerequisite to allocation.* The rules of this paragraph (e) do not require that the district director establish an arm's length range prior to making an allocation under section 482. Thus, for example, the district director may properly propose an allocation on the basis of a single comparable uncontrolled price if the comparable uncontrolled price method, as described in § 1.482–3(b), has been properly applied. However, if the taxpayer subsequently demonstrates that the results claimed on its income tax return are within the range established by additional equally reliable comparable uncontrolled prices in a manner consistent with the requirements set forth in § 1.482–1(e)(2)(iii), then no allocation will be made.

(5) *Examples.* The following examples illustrate the principles of this paragraph (e).

Example 1—Selection of comparables. (i) To evaluate the arm's length result of a controlled transaction between USSub, the United States taxpayer under review, and FP, its foreign parent, the district director considers applying the resale price method. The district director identifies ten potential uncontrolled transactions. The distributors in all ten uncontrolled transactions purchase and resell similar products and perform similar functions to those of USSub.

(ii) Data with respect to three of the uncontrolled transactions is very limited, and although some material differences can be identified and adjusted for, the level of comparability of these three uncontrolled comparables is significantly lower than that of the other seven. Further, of those seven, adjustments for the identified material differences can be reliably made for only four of the uncontrolled transactions. Therefore, pursuant to § 1.482–1(e)(2)(ii) only these four uncontrolled comparables may be used to establish an arm's length range.

Example 2—Arm's length range consists of all the results. (i) The facts are the same as in *Example 1.* Applying the resale price method to the four uncontrolled comparables, and making adjustments to the uncontrolled comparables pursuant to § 1.482- 1(d)(2), the district director derives the following results:

Comparable	Result (price)
1	$44.00
2	45.00
3	45.00
4	45.50

(ii) The district director determines that data regarding the four uncontrolled transactions is sufficiently complete and accurate so that it is likely that all material differences between the controlled and uncontrolled transactions have been identified, such differences have a definite and reasonably ascertainable effect, and appropriate adjustments were made for such differences. Accordingly, if the resale price method is determined to be the best method pursuant to § 1.482–1(c), the arm's length range for the controlled transaction will consist of the results of all of the uncontrolled comparables, pursuant to paragraph (e)(2)(iii)(A) of this section. Thus, the arm's length range in this case would be the range from $44 to $45.50.

Example 3—Arm's length range limited to interquartile range. (i) The facts are the same as in *Example 2*, except in this case there are some product and functional differences between the four uncontrolled comparables and USSub. However, the data is insufficiently complete to determine the effect of the differences. Applying the resale price method to the four uncontrolled comparables, and making adjustments to the uncontrolled comparables pursuant to § 1.482–1(d)(2), the district director derives the following results:

Uncontrolled comparable	Result (price)
1	$42.00
2	44.00
3	45.00
4	47.50

(ii) It cannot be established in this case that all material differences are likely to have been identified and reliable adjustments made for those differences. Accordingly, if the resale price method is determined to be the best method pursuant to § 1.482–1(c), the arm's length range for the controlled transaction must be established pursuant to paragraph (e)(2)(iii)(B) of this section. In this case, the district director uses the interquartile range to determine the arm's length range, which is the range from $43 to $46.25. If USSub's price falls outside this range, the district director may make an allocation. In this case that allocation would be to the median of the results, or $44.50.

Example 4—Arm's length range limited to interquartile range. (i) To evaluate the arm's length result of controlled transactions between USP, a United States manufacturing company, and FSub, its foreign subsidiary, the district director considers applying the comparable profits method. The district director identifies 50 uncontrolled taxpayers within the same industry that potentially could be used to apply the method.

(ii) Further review indicates that only 20 of the uncontrolled manufacturers engage in activities requiring similar capital investments and technical know-how. Data with respect to five of the uncontrolled manufacturers is very limited, and although some material differences can be identified and adjusted for, the level of comparability of these five uncontrolled comparables is significantly lower than that of the other 15. In addition, for those five uncontrolled comparables it is not possible to accurately allocate costs between the business activity associated with the relevant transactions and other business activities. Therefore, pursuant to § 1.482–1(e)(2)(ii) only the other fifteen uncontrolled comparables may be used to establish an arm's length range.

(iii) Although the data for the fifteen remaining uncontrolled comparables is relatively complete and accurate, there is a significant possibility that some material differences may remain. The district director has determined, for example, that it is likely that there are material differences in the level of technical expertise or in management efficiency. Accordingly, if the comparable profits method is determined to be the best method pursuant to § 1.482–1(c), the arm's length range for the controlled transaction may be established only pursuant to paragraph (e)(2)(iii)(B) of this section.

(f) *Scope of review*—(1) *In general.* The authority to determine true taxable income extends to any case in which either by inadvertence or design the taxable income, in whole or in part, of a controlled taxpayer is other than it would have been had the taxpayer, in the conduct of its affairs, been dealing at arm's length with an uncontrolled taxpayer.

(i) *Intent to evade or avoid tax not a prerequisite.* In making allocations under section 482, the district director is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction, or to the case of a device designed to reduce or avoid tax by shifting or distorting income, deductions, credits, or allowances.

(ii) *Realization of income not a prerequisite*—(A) *In general.* The district director may make an allocation under section 482 even if the income ultimately anticipated from a series of transactions has not been or is never realized. For example, if a controlled taxpayer sells a product at less than an arm's length price to a related taxpayer in one taxable year and the second controlled taxpayer resells the product to an unrelated party in the next taxable year, the district director may make an appropriate allocation to reflect an arm's length price for the sale of the product in the first taxable year, even though the second controlled taxpayer had not realized any gross income from the resale of the product in the first year. Similarly, if a controlled taxpayer lends money to a related taxpayer in a taxable year, the district director may make an appropriate allocation to reflect an arm's length charge for interest during such taxable year even if the second controlled taxpayer does not realize income during such year. Finally, even if two controlled taxpayers realize an overall loss that is attributable to a particular controlled transaction, an allocation under section 482 is not precluded.

(B) *Example.* The following example illustrates this paragraph (f)(1)(ii).

Example. USSub is a U.S. subsidiary of FP, a foreign corporation. Parent manufactures product X and sells it to USSub. USSub functions as a distributor of product X to unrelated customers in the United States. The fact that FP may incur a loss on the manufacture and sale of product X does not by itself establish that USSub, dealing with FP at arm's length, also would incur a loss. An independent distributor acting at arm's length with its supplier would in many circumstances be expected to earn a profit without regard to the level of profit earned by the supplier.

(iii) *Nonrecognition provisions may not bar allocation*—(A) *In general.* If necessary to prevent the avoidance of taxes or to clearly reflect income, the district director may make an allocation under section 482 with respect to transactions that otherwise qualify for nonrecognition of gain or loss under applicable provisions of the Internal Revenue Code (such as section 351 or 1031).

(B) *Example.* The following example illustrates this paragraph (f)(1)(iii).

Example. (i) In Year 1 USP, a United States corporation, bought 100 shares of UR, an unrelated corporation, for $100,000. In Year 2, when the value of the UR stock had decreased to $40,000, USP contributed all 100 shares of UR stock to its wholly-owned subsidiary in exchange for subsidiary's capital stock. In Year 3, the subsidiary sold all of the UR stock for $40,000 to an unrelated buyer, and on its U.S. income tax return, claimed a loss of $60,000 attributable to the sale of the UR stock. USP and its subsidiary do not file a consolidated return.

(ii) In determining the true taxable income of the subsidiary, the district director may disallow the loss of $60,000 on the ground that the loss was incurred by USP. *National Securities Corp. v Commissioner*, 137 F.2d 600 (3rd Cir. 1943), cert. denied, 320 U.S. 794 (1943).

(iv) *Consolidated returns.* Section 482 and the regulations thereunder apply to all controlled taxpayers, whether the controlled taxpayer files a separate or consolidated U.S. income tax return. If a controlled taxpayer files a separate return, its true separate taxable income will be determined. If a controlled taxpayer is a party to a consolidated return, the true consolidated taxable income of the affiliated group and the true separate taxable income of the controlled taxpayer must be determined consistently with the principles of a consolidated return.

(2) *Rules relating to determination of true taxable income.* The following rules must be taken into account in determining the true taxable income of a controlled taxpayer.

(i) *Aggregation of transactions*—(A) *In general.* The combined effect of two or more separate transactions (whether before, during, or after the taxable year under review) may be considered, if such transactions, taken as a whole, are so interrelated that consideration of multiple transactions is the most reliable means of determining the arm's length consideration for the controlled transactions. Generally, transactions will be aggregated only when they involve related products or services, as defined in § 1.6038A–3(c)(7)(vii).

(B) *Examples.* The following examples illustrate this paragraph (f)(2)(i).

Example 1. P enters into a license agreement with S1, its subsidiary, that permits S1 to use a proprietary manufacturing process and to sell the output from this process throughout a specified region. S1 uses the manufacturing process and sells its output to S2, another subsidiary of P, which in turn resells the output to uncontrolled parties in the specified region. In evaluating the arm's length character of the royalty paid by S1 to P, it may be appropriate to consider the arm's length character of the transfer prices charged by S1 to S2 and the aggregate profits earned by S1 and S2 from the use of the manufacturing process and the sale to uncontrolled parties of the products produced by S1.

Example 2. S1, S2, and S3 are Country Z subsidiaries of U.S. manufacturer P. S1 is the exclusive Country Z distributor of computers manufactured by P. S2 provides marketing services in connection with sales of P computers in Country Z, and in this regard uses significant marketing intangibles provided by P. S3 administers the warranty program with respect to P computers in Country Z, including maintenance and repair services. In evaluating the arm's length character of the transfer price paid by S1 to P, of the fees paid by S2 to P for the use of P marketing intangibles, and of the service fees earned by S2 and S3, it may be appropriate to consider the combined effects of these separate transactions because they are so interrelated that they are most reliably analyzed on an aggregated basis.

Example 3. The facts are the same as in *Example 2*. In addition, U1, U2, and U3 are uncontrolled taxpayers that carry out functions comparable to those of S1, S2, and S3, respectively, with respect to computers produced by unrelated manufacturers. R1, R2, and R3 are a controlled group of taxpayers (unrelated to the P controlled group) that also carry out functions comparable to those of S1, S2, and S3 with respect to computers produced by their common parent. Prices charged to uncontrolled customers of the R group differ from the prices charged to customers of U1, U2, and U3. In determining whether the transactions of U1, U2, and U3, or the transactions of R1, R2, and R3 would provide a more reliable measure of the arm's length result, it is determined that the interrelated R group transactions are more reliable than the wholly independent transactions of U1, U2, and U3, given the interrelationship of the P group transactions.

Example 4. P enters into a license agreement with S1 that permits S1 to use a propriety process for manufacturing product X and to sell product X to uncontrolled parties throughout a specified region. P also sells to S1 product Y which is manufactured by P in the United States, and which is unrelated to product X. Product Y is resold by S1 to uncontrolled parties in the specified region. In evaluating the arm's length character of the royalty paid by S1 to P for the use of the manufacturing process for product X, and the transfer prices charged for

(B) *Examples.* The following examples illustrate this paragraph (f)(2)(i).

Example 1. P enters into a license agreement with S1, its subsidiary, that permits S1 to use a proprietary manufacturing process and to sell the output from this process throughout a specified region. S1 uses the manufacturing process and sells its output to S2, another subsidiary of P, which in turn resells the output to uncontrolled parties in the specified region. In evaluating the arm's length character of the royalty paid by S1 to P, it may be appropriate to consider the arm's length character of the transfer prices charged by S1 to S2 and the aggregate profits earned by S1 and S2 from the use of the manufacturing process and the sale to uncontrolled parties of the products produced by S1.

Example 2. S1, S2, and S3 are Country Z subsidiaries of U.S. manufacturer P. S1 is the exclusive Country Z distributor of computers manufactured by P. S2 provides marketing services in connection with sales of P computers in Country Z, and in this regard uses significant marketing intangibles provided by P. S3 administers the warranty program with respect to P computers in Country Z, including maintenance and repair services. In evaluating the arm's length character of the transfer price paid by S1 to P, of the fees paid by S2 to P for the use of P marketing intangibles, and of the service fees earned by S2 and S3, it may be appropriate to consider the combined effects of these separate transactions because they are so interrelated that they are most reliably analyzed on an aggregated basis.

Example 3. The facts are the same as in *Example 2.* In addition, U1, U2, and U3 are uncontrolled taxpayers that carry out functions comparable to those of S1, S2, and S3, respectively, with respect to computers produced by unrelated manufacturers. R1, R2, and R3 are a controlled group of taxpayers (unrelated to the P controlled group) that also carry out functions comparable to those of S1, S2, and S3 with respect to computers produced by their common parent. Prices charged to uncontrolled customers of the R group differ from the prices charged to customers of U1, U2, and U3. In determining whether the transactions of U1, U2, and U3, or the transactions of R1, R2, and R3 would provide a more reliable measure of the arm's length result, it is determined that the interrelated R group transactions are more reliable than the wholly independent transactions of U1, U2, and U3, given the interrelationship of the P group transactions.

Example 4. P enters into a license agreement with S1 that permits S1 to use a propriety process for manufacturing product X and to sell product X to uncontrolled parties throughout a specified region. P also sells to S1 product Y which is manufactured by P in the United States, and which is unrelated to product X. Product Y is resold by S1 to uncontrolled parties in the specified region. In evaluating the arm's length character of the royalty paid by S1 to P for the use of the manufacturing process for product X, and the transfer prices charged for unrelated product Y, it would not be appropriate to consider the combined effects of these separate and unrelated transactions.

(ii) *Allocation based on taxpayer's actual transactions*—(A) *In general.* The district director will evaluate the results of a transaction as actually structured by the taxpayer unless its structure lacks economic substance. However, the district director may consider the alternatives available to the taxpayer in determining whether the terms of the controlled transaction would be acceptable to an uncontrolled taxpayer faced with the same alternatives and operating under comparable circumstances. In such cases the district director may adjust the consideration charged in the controlled transaction based on the cost or profit of an alternative as adjusted to account for material differences between the alternative and the controlled transaction, but will not restructure the transaction as if the alternative had been adopted by the taxpayer. See § 1.482–1(d)(3) (Factors for determining comparability, Contractual terms and Risk); §§ 1.482–3(e) and 1.482–4(d) (Unspecified methods).

(B) *Example.* The following example illustrates this paragraph (f)(2)(ii).

Example. P and S are controlled taxpayers. P enters into a license agreement with S that permits S to use a proprietary process for manufacturing product X. Using its sales and marketing employees, S sells product X to related and unrelated customers outside the United States. If the license agreement between P and S has economic substance, the district director ordinarily will not restructure the taxpayer's transaction to treat P as if it had elected to exploit directly the manufacturing process. However, the fact that P could have manufactured product X may be taken into account under § 1.482–4(d) in determining the arm's length consideration for the controlled transaction. For an example of such an analysis, see *Example* in § 1.482–4(d)(2).

(iii) *Multiple year data*—(A) *In general.* The results of a controlled transaction ordinarily will be compared with the results of uncontrolled comparables occurring in the taxable year under review. It may be appropriate, however, to consider data relating to the uncontrolled comparables or the controlled taxpayer for one or more years before or after the year under review. If data relating to uncontrolled comparables from multiple years is used, data relating to the controlled taxpayer for the same years ordinarily must be considered. However, if such data is not available, reliable data from other years, as adjusted under paragraph (d)(2) (Standard of comparability) of this section may be used.

(B) *Circumstances warranting consideration of multiple year data.* The extent to which it is appropriate to consider multiple-year data depends on the method being applied and the issue being addressed. Circumstances that may warrant consideration of data from multiple years include the extent to which complete and accurate data is available for the taxable year under review, the effect of business cycles in the controlled taxpayer's industry, or the effects of life cycles of the product or intangible being examined. Data from one or more years before or after the taxable year under review must ordinarily be considered for purposes of applying the provisions of § 1.482–1(d)(3)(iii) (Risk), § 1.482–1(d)(4)(i) (Market share strategy), § 1.482–4(f)(2) (Periodic adjustments), and § 1.482–5 (Comparable profits method). On the other hand, multiple-year data ordinarily will not be considered for purposes of applying the comparable uncontrolled price method (except to the extent that risk or market share strategy issues are present).

(C) *Comparable effect over comparable period.* Data from multiple years may be considered to determine whether the same economic conditions that caused the controlled taxpayer's results had a comparable effect over a comparable period of time on the uncontrolled comparables that establish the arm's length range. For example, given that uncontrolled taxpayers enter into transactions with the ultimate expectation of earning a profit, persistent losses among controlled taxpayers may be an indication of non-arm's length dealings. Thus, if a controlled taxpayer that realizes a loss with respect to a controlled transaction seeks to demonstrate that the loss is within the arm's length range, the district director may take into account data from taxable years other than the taxable year of the transaction to determine whether the loss was attributable to arm's length dealings. The rule of this paragraph (f)(2)(iii)(C) is illustrated by *Example 3* of paragraph (f)(2)(iii)(E) of this section.

(D) *Applications of methods using multiple year averages.* If a comparison of a controlled taxpayer's average result over a multiple year period with the average results of uncontrolled comparables over the same period would reduce the effect of short-term variations that may be unrelated to transfer pricing, it may be appropriate to establish a range derived from the average results of uncontrolled comparables over a multiple year period to determine if an adjustment should be made. In such a case the district director

may make an adjustment if the controlled taxpayer's average result for the multiple year period is not within such range. Such a range must be determined in accordance with § 1.482–1(e) (Arm's length range). An adjustment in such a case ordinarily will be equal to the difference, if any, between the controlled taxpayer's result for the taxable year and the mid-point of the uncontrolled comparables' results for that year. If the interquartile range is used to determine the range of average results for the multiple year period, such adjustment will ordinarily be made to the median of all the results of the uncontrolled comparables for the taxable year. See *Example 2* of § 1.482–5(e). In other cases, the adjustment normally will be made to the arithmetic mean of all the results of the uncontrolled comparables for the taxable year. However, an adjustment will be made only to the extent that it would move the controlled taxpayer's multiple year average closer to the arm's length range for the multiple year period or to any point within such range. In determining a controlled taxpayer's average result for a multiple year period, adjustments made under this section for prior years will be taken into account only if such adjustments have been finally determined, as described in § 1.482–1(g)(2)(iii). See *Example 3* of § 1.482–5(e).

(E) *Examples.* The following examples, in which S and P are controlled taxpayers, illustrate this paragraph (f)(2)(iii). *Examples 1* and *4* also illustrate the principle of the arm's length range of paragraph (e) of this section.

Example 1. P sold product Z to S for $60 per unit in 1995. Applying the resale price method to data from uncontrolled comparables for the same year establishes an arm's length range of prices for the controlled transaction from $52 to $59 per unit. Since the price charged in the controlled transaction falls outside the range, the district director would ordinarily make an allocation under section 482. However, in this case there are cyclical factors that affect the results of the uncontrolled comparables (and that of the controlled transaction) that cannot be adequately accounted for by specific adjustments to the data for 1995. Therefore, the district director considers results over multiple years to account for these factors. Under these circumstances, it is appropriate to average the results of the uncontrolled comparables over the years 1993, 1994, and 1995 to determine an arm's length range. The averaged results establish an arm's length range of $56 to $58 per unit. For consistency, the results of the controlled taxpayers must also be averaged over the same years. The average price in the controlled transaction over the three years is $57. Because the controlled transfer price of product Z falls within the arm's length range, the district director makes no allocation.

Example 2. (i) FP, a Country X corporation, designs and manufactures machinery in Country X. FP's costs are incurred in Country X currency. USSub is the exclusive distributor of FP's machinery in the United States. The price of the machinery sold by FP to USSub is expressed in Country X currency. Thus, USSub bears all of the currency risk associated with fluctuations in the exchange rate between the time the contract is signed and the payment is made. The prices charged by FP to USSub for 1995 are under examination. In that year, the value of the dollar depreciated against the currency of Country X, and as a result, USSub's gross margin was only 8%.

(ii) UD is an uncontrolled distributor of similar machinery that performs distribution functions substantially the same as those performed by USSub, except that UD purchases and resells machinery in transactions where both the purchase and resale prices are denominated in U.S. dollars. Thus, UD had no currency exchange risk. UD's gross margin in 1995 was 10%. UD's average gross margin for the period 1990 to 1998 has been 12%.

(iii) In determining whether the price charged by FP to USSub in 1995 was arm's length, the district director may consider USSub's average gross margin for an appropriate period before and after 1995 to determine whether USSub's average gross margin during the period was sufficiently greater than UD's average gross margin during the same period such that USSub was sufficiently compensated for the currency risk it bore throughout the period. See § 1.482- 1(d)(3)(iii) (Risk).

Example 3. FP manufactures product X in Country M and sells it to USSub, which distributes X in the United States. USSub realizes losses with respect to the controlled transactions in each of five consecutive taxable years. In each of the five consecutive years a different uncontrolled comparable realized a loss with respect to comparable transactions equal to or greater than USSub's loss. Pursuant to paragraph (f)(3)(iii)(C) of this section, the district director examines whether the uncontrolled comparables realized similar losses over a comparable period of time, and finds that each of the five comparables realized losses in only one of the five years, and their average result over the five-year period was a profit. Based on this data, the district director may conclude that the controlled taxpayer's results are not within the arm's length range over the five year period, since the economic conditions that resulted in the controlled taxpayer's loss did not have a comparable effect over a comparable period of time on the uncontrolled comparables.

Example 4. (i) USP, a U.S. corporation, manufactures product Y in the United States and sells it to FSub, which acts as USP's exclusive distributor of product Y in Country N. The resale price method described in § 1.482–3(c) is used to evaluate whether the transfer price charged by USP to FSub for the 1994 taxable year for product Y was arm's length. For the period 1992 through 1994, FSub had a gross profit margin for each year of 13%. A, B, C and D are uncontrolled distributors of products that compete directly with product Y in country N. After making appropriate adjustments in accordance with §§ 1.482–1(d)(2) and 1.482–3(c), the gross profit margins for A, B, C, and D are as follows:

	1992	1993	1994	Average
A	13	3	8	8.00
B	11	13	2	8.67
7C	4	7	13	8.00
7D	7	9	8	7.33

(ii) Applying the provisions of § 1.482–1(e), the district director determines that the arm's length range of the average gross profit margins is between 7.33 and 8.67. The district director concludes that FSub's average gross margin of 13% is not within the arm's length range, despite the fact that C's gross profit margin for 1994 was also 13%, since the economic conditions that caused S's result did not have a comparable effect over a comparable period of time on the results of C or the other uncontrolled comparables. In this case, the district director makes an allocation equivalent to adjusting FSub's gross profit margin for 1994 from 13% to the mean of the uncontrolled comparables' results for 1994 (7.25%).

(iv) *Product lines and statistical techniques.* The methods described in §§ 1.482–2 through 1.482–6 are generally stated in terms of individual transactions. However, because a taxpayer may have controlled transactions involving many different products, or many separate transactions involving the same product, it may be impractical to analyze every individual transaction to determine its arm's length price. In such cases, it is permissible to evaluate the arm's length results by applying the appropriate methods to the overall results for product lines or other groupings. In addition, the arm's length results of all related party transactions entered into by a controlled taxpayer may be evaluated by employing sampling and other valid statistical techniques.

(v) *Allocations apply to results, not methods*—(A) *In general.* In evaluating whether the result of a controlled transaction is arm's length, it is not necessary for the district director to determine whether the method or procedure that a controlled taxpayer employs to set the terms for its controlled transactions corresponds to the method or procedure that might have been used by a taxpayer dealing at arm's length with an uncontrolled taxpayer. Rather, the district director will evaluate the result achieved rather than the method the taxpayer used to determine its prices.

(B) *Example.* The following example illustrates this paragraph (f)(2)(v).

Example. (i) FS is a foreign subsidiary of P, a U.S. corporation. P manufactures and sells household appliances. FS operates as P's exclusive distributor in Europe. P annually establishes the price for each of its appliances sold to FS as part of its annual budgeting, production allocation and scheduling, and performance evaluation processes. FS's aggregate gross margin earned in its distribution business is 18%.

(ii) ED is an uncontrolled European distributor of competing household appliances. After adjusting for minor differences in the level of inventory, volume of sales, and warranty programs conducted by FS and ED, ED's aggregate gross margin is also 18%. Thus, the district director may conclude that the aggregate prices charged by P for its appliances sold to FS are arm's length, without determining whether the budgeting, production, and performance evaluation processes of P are similar to such processes used by ED.

(g) *Collateral adjustments with respect to allocations under section 482*—(1) *In general.* The district director will take into account appropriate collateral adjustments with respect to allocations under section 482. Appropriate collateral adjustments may include correlative allocations, conforming adjustments, and setoffs, as described in this paragraph (g).

(2) *Correlative allocations*—(i) *In general.* When the district director makes an allocation under section 482 (referred to in this paragraph (g)(2) as the primary allocation), appropriate correlative allocations will also be made with respect to any other member of the group affected by the allocation. Thus, if the district director makes an allocation of income, the district director will not only increase the income of one member of the group, but correspondingly decrease the income of the other member. In addition, where appropriate, the district director may make such further correlative allocations as may be required by the initial correlative allocation.

(ii) *Manner of carrying out correlative allocation.* The district director will furnish to the taxpayer with respect to which the primary allocation is made a written statement of the amount and nature of the correlative allocation. The correlative allocation must be reflected in the documentation of the other member of the group that is maintained for U.S. tax purposes, without regard to whether it affects the U.S. income tax liability of the other member for any open year. In some circumstances the allocation will have an immediate U.S. tax effect, by changing the taxable income computation of the other member (or the taxable income computation of a shareholder of the other member, for example, under the provisions of subpart F of the Internal

Example. (i) FS is a foreign subsidiary of P, a U.S. corporation. P manufactures and sells household appliances. FS operates as P's exclusive distributor in Europe. P annually establishes the price for each of its appliances sold to FS as part of its annual budgeting, production allocation and scheduling, and performance evaluation processes. FS's aggregate gross margin earned in its distribution business is 18%.

(ii) ED is an uncontrolled European distributor of competing household appliances. After adjusting for minor differences in the level of inventory, volume of sales, and warranty programs conducted by FS and ED, ED's aggregate gross margin is also 18%. Thus, the district director may conclude that the aggregate prices charged by P for its appliances sold to FS are arm's length, without determining whether the budgeting, production, and performance evaluation processes of P are similar to such processes used by ED.

(g) *Collateral adjustments with respect to allocations under section 482*—(1) *In general.* The district director will take into account appropriate collateral adjustments with respect to allocations under section 482. Appropriate collateral adjustments may include correlative allocations, conforming adjustments, and setoffs, as described in this paragraph (g).

(2) *Correlative allocations*—(i) *In general.* When the district director makes an allocation under section 482 (referred to in this paragraph (g)(2) as the primary allocation), appropriate correlative allocations will also be made with respect to any other member of the group affected by the allocation. Thus, if the district director makes an allocation of income, the district director will not only increase the income of one member of the group, but correspondingly decrease the income of the other member. In addition, where appropriate, the district director may make such further correlative allocations as may be required by the initial correlative allocation.

(ii) *Manner of carrying out correlative allocation.* The district director will furnish to the taxpayer with respect to which the primary allocation is made a written statement of the amount and nature of the correlative allocation. The correlative allocation must be reflected in the documentation of the other member of the group that is maintained for U.S. tax purposes, without regard to whether it affects the U.S. income tax liability of the other member for any open year. In some circumstances the allocation will have an immediate U.S. tax effect, by changing the taxable income computation of the other member (or the taxable income computation of a shareholder of the other member, for example, under the provisions of subpart F of the Internal Revenue Code). Alternatively, the correlative allocation may not be reflected on any U.S. tax return until a later year, for example when a dividend is paid.

(iii) *Events triggering correlative allocation.* For purposes of this paragraph (g)(2), a primary allocation will not be considered to have been made (and therefore, correlative allocations are not required to be made) until the date of a final determination with respect to the allocation under section 482. For this purpose, a final determination includes—

(A) Assessment of tax following execution by the taxpayer of a Form 870 (Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment) with respect to such allocation;

(B) Acceptance of a Form 870–AD (Offer of Waiver of Restriction on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment);

(C) Payment of the deficiency;

(D) Stipulation in the Tax Court of the United States; or

(E) Final determination of tax liability by offer-in-compromise, closing agreement, or final resolution (determined under the principles of section 7481) of a judicial proceeding.

(iv) *Examples.* The following examples illustrate this paragraph (g)(2). In each example, X and Y are members of the same group of controlled taxpayers and each regularly computes its income on a calendar year basis.

Example 1. (i) In 1996, Y, a U.S. corporation, rents a building owned by X, also a U.S. corporation. In 1998 the district director determines that Y did not pay an arm's length rental charge. The district director proposes to increase X's income to reflect an arm's length rental charge. X consents to the assessment reflecting such adjustment by executing Form 870, a Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment. The assessment of the tax with respect to the adjustment is made in 1998. Thus, the primary allocation, as defined in paragraph (g)(2)(i) of this section, is considered to have been made in 1998.

(ii) The adjustment made to X's income under section 482 requires a correlative allocation with respect to Y's income. The district director notifies X in writing of the amount and nature of the adjustment made with respect to Y. Y had net operating losses in 1993, 1994, 1995, 1996, and 1997. Although a correlative adjustment will not have an effect on Y's U.S. income tax liability for 1996, an adjustment increasing Y's net operating loss for 1996 will be made for purposes of determining Y's U.S. income tax liability for 1998 or a later taxable year to which the increased net operating loss may be carried.

Example 2. (i) In 1995, X, a U.S. construction company, provided engineering services to Y, a U.S. corporation, in the construction of Y's factory. In 1997, the district director determines that the fees paid by Y to X for its services were not arm's length and proposes to make an adjustment to the income of X. X consents to an assessment reflecting such adjustment by executing Form 870. An assessment of the tax with respect to such adjustment is made in 1997. The district director notifies X in writing of the amount and nature of the adjustment to be made with respect to Y.

(ii) The fees paid by Y for X's engineering services properly constitute a capital expenditure. Y does not place the factory into service until 1998. Therefore, a correlative adjustment increasing Y's basis in the factory does not affect Y's U.S. income tax liability for 1997. However, the correlative adjustment must be made in the books and records maintained by Y for its U.S. income tax purposes and such adjustment will be taken into account in computing Y's allowable depreciation or gain or loss on a subsequent disposition of the factory.

Example 3. In 1995, X, a U.S. corporation, makes a loan to Y, its foreign subsidiary not engaged in a U.S. trade or business. In 1997, the district director, upon determining that the interest charged on the loan was not arm's length, proposes to adjust X's income to reflect an arm's length interest rate. X consents to an assessment reflecting such allocation by executing Form 870, and an assessment of the tax with respect to the section 482 allocation is made in 1997. The district director notifies X in writing of the amount and nature of the correlative allocation to be made with respect to Y. Although the correlative adjustment does not have an effect on Y's U.S. income tax liability, the adjustment must be reflected in the documentation of Y that is maintained for U.S. tax purposes. Thus, the adjustment must be reflected in the determination of the amount of Y's earnings and profits for 1995 and subsequent years, and the adjustment must be made to the extent it has an effect on any person's U.S. income tax liability for any taxable year.

(3) *Adjustments to conform accounts to reflect section 482 allocations*—(i) *In general.* Appropriate adjustments must be made to conform a taxpayer's accounts to reflect allocations made under section 482. Such adjustments may include the treatment of an allocated amount as a dividend or a capital contribution (as appropriate), or, in appropriate cases, pursuant to such applicable revenue procedures as may be provided by the Commissioner (see § 601.601(d)(2) of this chapter), repayment of the allocated amount without further income tax consequences.

(ii) *Example.* The following example illustrates the principles of this paragraph (g)(3).

Example—Conforming cash accounts. (i) USD, a United States corporation, buys

Product from its foreign parent, FP. In reviewing USD's income tax return, the district director determines that the arm's length price would have increased USD's taxable income by $5 million. The district director accordingly adjusts USD's income to reflect its true taxable income.

(ii) To conform its cash accounts to reflect the section 482 allocation made by the district director, USD applies for relief under Rev. Proc. 65–17, 1965–1 C.B. 833 (see § 601.601(d)(2)(ii)(*b*) of this chapter), to treat the $5 million adjustment as an account receivable from FP, due as of the last day of the year of the transaction, with interest accruing therefrom.

(4) *Setoffs*—(i) *In general.* If an allocation is made under section 482 with respect to a transaction between controlled taxpayers, the district director will also take into account the effect of any other non-arm's length transaction between the same controlled taxpayers in the same taxable year which will result in a setoff against the original section 482 allocation. Such setoff, however, will be taken into account only if the requirements of § 1.482–1(g)(4)(ii) are satisfied. If the effect of the setoff is to change the characterization or source of the income or deductions, or otherwise distort taxable income, in such a manner as to affect the U.S. tax liability of any member, adjustments will be made to reflect the correct amount of each category of income or deductions. For purposes of this setoff provision, the term arm's length refers to the amount defined in paragraph (b) (Arm's length standard) of this section, without regard to the rules in § 1.482–2 under which certain charges are deemed to be equal to arm's length.

(ii) *Requirements.* The district director will take a setoff into account only if the taxpayer—

(A) Establishes that the transaction that is the basis of the setoff was not at arm's length and the amount of the appropriate arm's length charge;

(B) Documents, pursuant to paragraph (g)(2) of this section, all correlative adjustments resulting from the proposed setoff; and

(C) Notifies the district director of the basis of any claimed setoff within 30 days after the earlier of the date of a letter by which the district director transmits an examination report notifying the taxpayer of proposed adjustments or the date of the issuance of the notice of deficiency.

(iii) *Examples.* The following examples illustrate this paragraph (g)(4).

Example 1. P, a U.S. corporation, renders services to S, its foreign subsidiary in Country Y, in connection with the construction of S's factory. An arm's length charge for such services determined under § 1.482–2(b) would be $100,000. During the same taxable year P makes available to S the use of a machine to be used in the construction of the factory, and the arm's length rental value of the machine is $25,000. P bills S $125,000 for the services, but does not charge S for the use of the machine. No allocation will be made with respect to the undercharge for the machine if P notifies the district director of the basis of the claimed setoff within 30 days after the date of the letter from the district director transmitting the examination report notifying P of the proposed adjustment, establishes that the excess amount charged for services was equal to an arm's length charge for the use of the machine and that the taxable income and income tax liabilities of P are not distorted, and documents the correlative allocations resulting from the proposed setoff.

Example 2. The facts are the same as in *Example 1*, except that, if P had reported $25,000 as rental income and $25,000 less as service income, it would have been subject to the tax on personal holding companies. Allocations will be made to reflect the correct amounts of rental income and service income.

(h) *Special rules*—(1) *Small taxpayer safe harbor.* [Reserved]

(2) *Effect of foreign legal restrictions*—(i) *In general.* The district director will take into account the effect of a foreign legal restriction to the extent that such restriction affects the results of transactions at arm's length. Thus, a foreign legal restriction will be taken into account only to the extent that it is shown that the restriction affected an uncontrolled taxpayer under comparable circumstances for a comparable period of time. In the absence of evidence indicating the effect of the foreign legal restriction on uncontrolled taxpayers, the restriction will be taken into account only to the extent provided in paragraphs (h)(2) (iii) and (iv) of this section (Deferred income method of accounting).

(ii) *Applicable legal restrictions.* Foreign legal restrictions (whether temporary or permanent) will be taken into account for purposes of this paragraph (h)(2) only if, and so long as, the conditions set forth in paragraphs (h)(2)(ii) (A) through (D) of this section are met.

(A) The restrictions are publicly promulgated, generally applicable to all similarly situated persons (both controlled and uncontrolled), and not imposed as part of a commercial transaction between the taxpayer and the foreign sovereign;

(B) The taxpayer (or other member of the controlled group with respect to which the restrictions apply) has exhausted all remedies prescribed by foreign law or practice for obtaining a waiver of such restrictions (other than remedies that would have a negligible prospect of success if pursued);

(C) The restrictions expressly prevented the payment or receipt, in any form, of part or all of the arm's length amount that would otherwise be required under section 482 (for example, a restriction that applies only to the deductibility of an expense for tax purposes is not a restriction on payment or receipt for this purpose); and

(D) The related parties subject to the restriction did not engage in any arrangement with controlled or uncontrolled parties that had the effect of circumventing the restriction, and have not otherwise violated the restriction in any material respect.

(iii) *Requirement for electing the deferred income method of accounting.* If a foreign legal restriction prevents the payment or receipt of part or all of the arm's length amount that is due with respect to a controlled transaction, the restricted amount may be treated as deferrable if the following requirements are met—

(A) The controlled taxpayer establishes to the satisfaction of the district director that the payment or receipt of the arm's length amount was prevented because of a foreign legal restriction and circumstances described in paragraph (h)(2)(ii) of this section; and

(B) The controlled taxpayer whose U.S. tax liability may be affected by the foreign legal restriction elects the deferred income method of accounting, as described in paragraph (h)(2)(iv) of this section, on a written statement attached to a timely U.S. income tax return (or an amended return) filed before the IRS first contacts any member of the controlled group concerning an examination of the return for the taxable year to which the foreign legal restriction applies. A written statement furnished by a taxpayer subject to the Coordinated Examination Program will be considered an amended return for purposes of this paragraph (h)(2)(iii)(B) if it satisfies the requirements of a qualified amended return for purposes of § 1.6664–2(c)(3) as set forth in those regulations or as the Commissioner may prescribe by applicable revenue procedures. The election statement must identify the affected transactions, the parties to the transactions, and the applicable foreign legal restrictions.

(iv) *Deferred income method of accounting.* If the requirements of paragraph (h)(2)(ii) of this section are satisfied, any portion of the arm's length amount, the payment or receipt of which is prevented because of applicable foreign legal restrictions, will be treated as deferrable until payment or receipt of the relevant item ceases to be prevented by the foreign legal restriction. For purposes of the deferred income method of accounting under this paragraph (h)(2)(iv), deductions (including the cost or other basis of inventory and other assets sold or exchanged) and credits properly chargeable against any amount so deferred, are subject to deferral under the provisions of § 1.461- 1(a)(4). In addition, income is deferrable under this deferred income method of accounting only to the extent that it exceeds the related deductions already claimed in open taxable years to which the foreign legal restriction applied.

(v) *Examples.* The following examples, in which Sub is a Country FC subsidiary of U.S. corporation, Parent, illustrate this paragraph (h)(2).

Example 1. Parent licenses an intangible to Sub. FC law generally prohibits payments by any person within FC to recipients outside the country. The FC law meets the requirements of paragraph (h)(2)(ii) of this section. There is no evidence of unrelated parties entering into transactions under comparable circumstances for a comparable period of time, and the foreign legal restrictions will not be taken into account in determining the arm's length amount. The arm's length royalty rate for the use of the intangible property in the absence of the foreign restriction is 10% of Sub's sales in country FC. However, because the requirements of paragraph (h)(2)(ii) of this section are satisfied, Parent can elect the deferred income method of accounting by attaching to its timely filed U.S. income tax return a written statement that satisfies the requirements of paragraph (h)(2)(iii)(B) of this section.

Example 2. (i) The facts are the same as in *Example 1*, except that Sub, although it makes no royalty payment to Parent, arranges with an unrelated intermediary to make payments equal to an arm's length amount on its behalf to Parent.

(ii) The district director makes an allocation of royalty income to Parent, based on the arm's length royalty rate of 10%. Further, the district director determines that because the arrangement with the third party had the effect of circumventing the FC law, the requirements of paragraph (h)(2)(ii)(D) of this section are not satisfied. Thus, Parent could not validly elect the deferred income method of accounting, and the allocation of royalty income cannot be treated as deferrable. In appropriate circumstances, the district director may permit the amount of the distribution to be treated as payment by Sub of the royalty allocated to Parent, under the provisions of § 1.482–1(g) (Collateral adjustments).

Example 3. The facts are the same as in *Example 1*, except that the laws of FC do not prevent distributions from corporations to their shareholders. Sub distributes an amount equal to 8% of its sales in country FC. Because the laws of FC did not expressly prevent all forms of payment from Sub to

receipt of the relevant item ceases to be prevented by the foreign legal restriction. For purposes of the deferred income method of accounting under this paragraph (h)(2)(iv), deductions (including the cost or other basis of inventory and other assets sold or exchanged) and credits properly chargeable against any amount so deferred, are subject to deferral under the provisions of § 1.461- 1(a)(4). In addition, income is deferrable under this deferred income method of accounting only to the extent that it exceeds the related deductions already claimed in open taxable years to which the foreign legal restriction applied.

(v) *Examples.* The following examples, in which Sub is a Country FC subsidiary of U.S. corporation, Parent, illustrate this paragraph (h)(2).

Example 1. Parent licenses an intangible to Sub. FC law generally prohibits payments by any person within FC to recipients outside the country. The FC law meets the requirements of paragraph (h)(2)(ii) of this section. There is no evidence of unrelated parties entering into transactions under comparable circumstances for a comparable period of time, and the foreign legal restrictions will not be taken into account in determining the arm's length amount. The arm's length royalty rate for the use of the intangible property in the absence of the foreign restriction is 10% of Sub's sales in country FC. However, because the requirements of paragraph (h)(2)(ii) of this section are satisfied, Parent can elect the deferred income method of accounting by attaching to its timely filed U.S. income tax return a written statement that satisfies the requirements of paragraph (h)(2)(iii)(B) of this section.

Example 2. (i) The facts are the same as in *Example 1*, except that Sub, although it makes no royalty payment to Parent, arranges with an unrelated intermediary to make payments equal to an arm's length amount on its behalf to Parent.

(ii) The district director makes an allocation of royalty income to Parent, based on the arm's length royalty rate of 10%. Further, the district director determines that because the arrangement with the third party had the effect of circumventing the FC law, the requirements of paragraph (h)(2)(ii)(D) of this section are not satisfied. Thus, Parent could not validly elect the deferred income method of accounting, and the allocation of royalty income cannot be treated as deferrable. In appropriate circumstances, the district director may permit the amount of the distribution to be treated as payment by Sub of the royalty allocated to Parent, under the provisions of § 1.482–1(g) (Collateral adjustments).

Example 3. The facts are the same as in *Example 1*, except that the laws of FC do not prevent distributions from corporations to their shareholders. Sub distributes an amount equal to 8% of its sales in country FC. Because the laws of FC did not expressly prevent all forms of payment from Sub to Parent, Parent cannot validly elect the deferred income method of accounting with respect to any of the arm's length royalty amount. In appropriate circumstances, the district director may permit the 8% that was distributed to be treated as payment by Sub of the royalty allocated to Parent, under the provisions of § 1.482–1(g) (Collateral adjustments).

Example 4. The facts are the same as in *Example 1*, except that Country FC law permits the payment of a royalty, but limits the amount to 5% of sales, and Sub pays the 5% royalty to Parent. Parent demonstrates the existence of a comparable uncontrolled transaction for purposes of the comparable uncontrolled transaction method in which an uncontrolled party accepted a royalty rate of 5%. Given the evidence of the comparable uncontrolled transaction, the 5% royalty rate is determined to be the arm's length royalty rate.

(3) *Coordination with section 936*—(i) *Cost sharing under section 936.* If a possessions corporation makes an election under section 936(h)(5)(C)(i)(I), the corporation must make a section 936 cost sharing payment that is at least equal to the payment that would be required under section 482 if the electing corporation were a foreign corporation. In determining the payment that would be required under section 482 for this purpose, the provisions of §§ 1.482–1 and 1.482–4 will be applied, and to the extent relevant to the valuation of intangibles, §§ 1.482–5 and 1.482–6 will be applied. The provisions of section 936(h)(5)(C)(i)(II) (Effect of Election—electing corporation treated as owner of intangible property) do not apply until the payment that would be required under section 482 has been determined.

(ii) *Use of terms.* A cost sharing payment, for the purposes of section 936(h)(5)(C)(i)(I), is calculated using the provisions of section 936 and the regulations thereunder and the provisions of this paragraph (h)(3). The provisions relating to cost sharing under section 482 do not apply to payments made pursuant to an election under section 936(h)(5)(C)(i)(I). Similarly, a profit split payment, for the purposes of section 936(h)(5)(C)(ii)(I), is calculated using the provisions of section 936 and the regulations thereunder, not section 482 and the regulations thereunder.

(i) *Definitions.* The definitions set forth in paragraphs (i) (1) through (10) of this section apply to §§ 1.482–1 through 1.482–8.

(1) *Organization* includes an organization of any kind, whether a sole proprietorship, a partnership, a trust, an estate, an association, or a corporation (as each is defined or understood in the Internal Revenue Code or the regulations thereunder), irrespective of the place of organization, operation, or conduct of the trade or business, and regardless of whether it is a domestic or foreign organization, whether it is an exempt organization, or whether it is a member of an affiliated group that files a consolidated U.S. income tax return, or a member of an affiliated group that does not file a consolidated U.S. income tax return.

(2) *Trade* or *business* includes a trade or business activity of any kind, regardless of whether or where organized, whether owned individually or otherwise, and regardless of the place of operation. Employment for compensation will constitute a separate trade or business from the employing trade or business.

(3) *Taxpayer* means any person, organization, trade or business, whether or not subject to any internal revenue tax.

(4) *Controlled* includes any kind of control, direct or indirect, whether legally enforceable or not, and however exercisable or exercised, including control resulting from the actions of two or more taxpayers acting in concert or with a common goal or purpose. It is the reality of the control that is decisive, not its form or the mode of its exercise. A presumption of control arises if income or deductions have been arbitrarily shifted.

(5) *Controlled taxpayer* means any one of two or more taxpayers owned or controlled directly or indirectly by the same interests, and includes the taxpayer that owns or controls the other taxpayers. *Uncontrolled taxpayer* means any one of two or more taxpayers not owned or controlled directly or indirectly by the same interests.

(6) *Group, controlled group,* and *group of controlled taxpayers* mean the taxpayers owned or controlled directly or indirectly by the same interests.

(7) *Transaction* means any sale, assignment, lease, license, loan, advance, contribution, or any other transfer of any interest in or a right to use any property (whether tangible or intangible, real or personal) or money, however such transaction is effected, and whether or not the terms of such transaction are formally documented. A transaction also includes the performance of any services for the benefit of, or on behalf of, another taxpayer.

(8) *Controlled transaction* or *controlled transfer* means any transaction or transfer between two or more members of the same group of controlled taxpayers. The term *uncontrolled transaction* means any transaction between two or more

taxpayers that are not members of the same group of controlled taxpayers.

(9) *True taxable income* means, in the case of a controlled taxpayer, the taxable income that would have resulted had it dealt with the other member or members of the group at arm's length. It does not mean the taxable income resulting to the controlled taxpayer by reason of the particular contract, transaction, or arrangement the controlled taxpayer chose to make (even though such contract, transaction, or arrangement is legally binding upon the parties thereto).

(10) *Uncontrolled comparable* means the uncontrolled transaction or uncontrolled taxpayer that is compared with a controlled transaction or taxpayer under any applicable pricing methodology. Thus, for example, under the comparable profits method, an uncontrolled comparable is any uncontrolled taxpayer from which data is used to establish a comparable operating profit.

(j) *Effective dates*—(1) The regulations in this are generally effective for taxable years beginning after October 6, 1994

(2) Taxpayers may elect to apply retroactively all of the provisions of these regulations for any open taxable year. Such election will be effective for the year of the election and all subsequent taxable years.

(3) Although these regulations are generally effective for taxable years as stated, the final sentence of section 482 (requiring that the income with respect to transfers or licenses of intangible property be commensurate with the income attributable to the intangible) is generally effective for taxable years beginning after December 31, 1986. For the period prior to the effective date of these regulations, the final sentence of section 482 must be applied using any reasonable method not inconsistent with the statute. The IRS considers a method that applies these regulations or their general principles to be a reasonable method.

(4) These regulations will not apply with respect to transfers made or licenses granted to foreign persons before November 17, 1985, or before August 17, 1986, for transfers or licenses to others. Nevertheless, they will apply with respect to transfers or licenses before such dates if, with respect to property transferred pursuant to an earlier and continuing transfer agreement, such property was not in existence or owned by the taxpayer on such date.

§ 1.482–2 Determination of taxable income in specific situations.

(a) *Loans or advances*—(1) *Interest on bona fide indebtedness*—(i) *In general.* Where one member of a group of controlled entities makes a loan or advance directly or indirectly to, or otherwise becomes a creditor of, another member of such group and either charges no interest, or charges interest at a rate which is not equal to an arm's length rate of interest (as defined in paragraph (a)(2) of this section) with respect to such loan or advance, the district director may make appropriate allocations to reflect an arm's length rate of interest for the use of such loan or advance.

(ii) *Application of paragraph (a) of this section*—(A) *Interest on bona fide indebtedness.* Paragraph (e) of this section applies only to determine the appropriateness of the rate of interest charged on the principal amount of a bona fide indebtedness between members of a group of controlled entities, including—

(*1*) Loans or advances of money or other consideration (whether or not evidenced by a written instrument); and

(*2*) Indebtedness arising in the ordinary course of business from sales, leases, or the rendition of services by or between members of the group, or any other similar extension of credit.

(B) *Alleged indebtedness.* This paragraph (e) does not apply to so much of an alleged indebtedness which is not in fact a bona fide indebtedness, even if the stated rate of interest thereon would be within the safe haven rates prescribed in paragraph (a)(2)(iii) of this section. For example, paragraph (a) of this section does not apply to payments with respect to all or a portion of such alleged indebtedness where in fact all or a portion of an alleged indebtedness is a contribution to the capital of a corporation or a distribution by a corporation with respect to its shares. Similarly, this paragraph (a) does not apply to payments with respect to an alleged purchase-money debt instrument given in consideration for an alleged sale of property between two controlled entities where in fact the transaction constitutes a lease of the property. Payments made with respect to alleged indebtedness (including alleged stated interest thereon) shall be treated according to their substance. See § 1.482–2(a)(3)(i).

(iii) *Period for which interest shall be charged*—(A) *General rule.* This paragraph (a)(1)(iii) is effective for indebtedness arising after June 30, 1988. See § 1.482–2(a)(3) (26 CFR Part 1 edition revised as of April 1, 1988) for indebtedness arising before July 1, 1988. Except as otherwise provided in paragraphs (a)(1)(iii)(B) through (E) of this section, the period for which interest shall be charged with respect to a bona fide indebtedness between controlled entities begins on the day after the day the indebtedness arises and ends on the day the indebtedness is satisfied (whether by payment, offset, cancellation, or otherwise). Paragraphs (a)(1)(iii)(B) through (E) of this section provide certain alternative periods during which interest is not required to be charged on certain indebtedness. These exceptions apply only to indebtedness described in paragraph (a)(1)(ii)(A)(*2*) of this section (relating to indebtedness incurred in the ordinary course of business from sales, services, etc., between members of the group) and not evidenced by a written instrument requiring the payment of interest. Such amounts are hereinafter referred to as intercompany trade receivables. The period for which interest is not required to be charged on intercompany trade receivables under this paragraph (a)(1)(iii) is called the interest-free period. In general, an intercompany trade receivable arises at the time economic performance occurs (within the meaning of section 461(h) and the regulations thereunder) with respect to the underlying transaction between controlled entities. For purposes of this paragraph (a)(1)(iii), the term United States includes any possession of the United States, and the term foreign country excludes any possession of the United States.

(B) *Exception for certain intercompany transactions in the ordinary course of business.* Interest is not required to be charged on an intercompany trade receivable until the first day of the third calendar month following the month in which the intercompany trade receivable arises.

(C) *Exception for trade or business of debtor member located outside the United States.* In the case of an intercompany trade receivable arising from a transaction in the ordinary course of a trade or business which is actively conducted outside the United States by the debtor member, interest is not required to be charged until the first day of the fourth calendar month following the month in which such intercompany trade receivable arises.

(D) *Exception for regular trade practice of creditor member or others in creditor's industry.* If the creditor member or unrelated persons in the creditor member's industry, as a regular trade practice, allow unrelated parties a longer period without charging interest than that described in paragraph (a)(1)(iii)(B) or (C) of this section (whichever is applicable) with respect to transactions which are similar to transactions that give rise to intercompany trade receivables, such longer interest-free period shall be allowed with respect to a comparable amount of intercompany trade receivables.

(E) *Exception for property purchased for resale in a foreign country—(1) General rule.* If in the ordinary course of business one member of the group (related purchaser) purchases property from another member of the group (related seller) for resale to unrelated persons located in a particular foreign country, the related purchaser and the related seller may use as the interest-free period for the intercompany trade receivables arising during the related seller's taxable year from the purchase of such property within the same product group an interest-free period equal the sum of—

(*i*) The number of days in the related purchaser's average collection period (as determined under paragraph (a)(1)(iii)(E)(*2*) of this section) for sales of property within the same product group sold in the ordinary course of business to unrelated persons located in the same foreign country; plus

(*ii*) Ten (10) calendar days.

(*2*) *Interest-free period.* The interest-free period under this paragraph (a)(1)(iii)(E), however, shall in no event exceed 183 days. The related purchaser does not have to conduct business outside the United States in order to be eligible to use the interest-free period of this paragraph (a)(1)(iii)(E). The interest-free period under this paragraph (a)(1)(iii)(E) shall not apply to intercompany trade receivables attributable to property which is manufactured, produced, or constructed (within the meaning of § 1.954–3(a)(4)) by the related purchaser. For purposes of this paragraph (a)(1)(iii)(E) a product group includes all products within the same three-digit Standard Industrial Classification (SIC) Code (as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President.)

(*3*) *Average collection period.* An average collection period for purposes of this paragraph (a)(1)(iii)(E) is determined as follows—

(whichever is applicable) with respect to transactions which are similar to transactions that give rise to intercompany trade receivables, such longer interest-free period shall be allowed with respect to a comparable amount of intercompany trade receivables.

(E) *Exception for property purchased for resale in a foreign country—(1) General rule.* If in the ordinary course of business one member of the group (related purchaser) purchases property from another member of the group (related seller) for resale to unrelated persons located in a particular foreign country, the related purchaser and the related seller may use as the interest-free period for the intercompany trade receivables arising during the related seller's taxable year from the purchase of such property within the same product group an interest-free period equal the sum of—

(*i*) The number of days in the related purchaser's average collection period (as determined under paragraph (a)(1)(iii)(E)(*2*) of this section) for sales of property within the same product group sold in the ordinary course of business to unrelated persons located in the same foreign country; plus

(*ii*) Ten (10) calendar days.

(*2*) *Interest-free period.* The interest-free period under this paragraph (a)(1)(iii)(E), however, shall in no event exceed 183 days. The related purchaser does not have to conduct business outside the United States in order to be eligible to use the interest-free period of this paragraph (a)(1)(iii)(E). The interest-free period under this paragraph (a)(1)(iii)(E) shall not apply to intercompany trade receivables attributable to property which is manufactured, produced, or constructed (within the meaning of § 1.954–3(a)(4)) by the related purchaser. For purposes of this paragraph (a)(1)(iii)(E) a product group includes all products within the same three-digit Standard Industrial Classification (SIC) Code (as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President.)

(*3*) *Average collection period.* An average collection period for purposes of this paragraph (a)(1)(iii)(E) is determined as follows—

(*i*) *Step 1.* Determine total sales (less returns and allowances) by the related purchaser in the product group to unrelated persons located in the same foreign country during the related purchaser's last taxable year ending on or before the first day of the related seller's taxable year in which the intercompany trade receivable arises.

(*ii*) *Step 2.* Determine the related purchaser's average month-end accounts receivable balance with respect to sales described in paragraph (a)(1)(iii)(E)(*2*)(*i*) of this section for the related purchaser's last taxable year ending on or before the first day of the related seller's taxable year in which the intercompany trade receivable arises.

(*iii*) *Step 3.* Compute a receivables turnover rate by dividing the total sales amount described in paragraph (a)(1)(iii)(E)(*2*)(*i*) of this section by the average receivables balance described in paragraph (a)(1)(iii)(E)(*2*)(*ii*) of this section.

(*iv*) *Step 4.* Divide the receivables turnover rate determined under paragraph (a)(1)(iii)(E)(*2*)(*iii*) of this section into 365, and round the result to the nearest whole number to determine the number of days in the average collection period.

(*v*) *Other considerations.* If the related purchaser makes sales in more than one foreign country, or sells property in more than one product group in any foreign country, separate computations of an average collection period, by product group within each country, are required. If the related purchaser resells fungible property in more than one foreign country and the intercompany trade receivables arising from the related party purchase of such fungible property cannot reasonably be identified with resales in particular foreign countries, then solely for the purpose of assigning an interest-free period to such intercompany trade receivables under this paragraph (a)(1)(iii)(E), an amount of each such intercompany trade receivable shall be treated as allocable to a particular foreign country in the same proportion that the related purchaser's sales of such fungible property in such foreign country during the period described in paragraph (a)(1)(iii)(E)(2)(i) of this section bears to the related purchaser's sales of all such fungible property in all such foreign countries during such period. An interest-free period under this paragraph (a)(1)(iii)(E) shall not apply to any intercompany trade receivables arising in a taxable year of the related seller if the related purchaser made no sales described in paragraph (a)(1)(iii)(E)(2)(i) of this section from which the appropriate interest-free period may be determined.

(*4*) *Illustration.* The interest-free period provided under paragraph (a)(1)(iii)(E) of this section may be illustrated by the following example:

Example—(i) *Facts.* X and Y use the calendar year as the taxable year and are members of the same group of controlled entities within the meaning of section 482. For Y's 1988 calendar taxable year X and Y intend to use the interest-free period determined under this paragraph (a)(1)(iii)(E) for intercompany trade receivables attributable to X's purchases of certain products from Y for resale by X in the ordinary course of business to unrelated persons in country Z. For its 1987 calendar taxable year all of X's sales in country Z were of products within a single product group based upon a three-digit SIC code, were not manufactured, produced, or constructed (within the meaning of § 1.954–3(a)(4)) by X, and were sold in the ordinary course of X's trade or business to unrelated persons located only in country Z. These sales and the month-end accounts receivable balances (for such sales and for such sales uncollected from prior months) are as follows:

Month	Sales	Accounts receivable
Jan. 1987	$500,000	$2,835,850
Feb.	600,000	2,840,300
Mar.	450,000	2,850,670
Apr.	550,000	2,825,700
May.	650,000	2,809,360
June	525,000	2,803,200
July	400,000	2,825,850
Aug.	425,000	2,796,240
Sept.	475,000	2,839,390
Oct.	525,000	2,650,550
Nov.	450,000	2,775,450
Dec. 1987	650,000	2,812,600
Totals	6,200,000	33,665,160

(ii) *Average collection period.* X's total sales within the same product group to unrelated persons within country Z for the period are $6,200,000. The average receivables balance for the period is $2,805,430 ($33,665,160/12). The average collection period in whole days is determined as follows:

$$\text{Receivables Turnover Rate} = \frac{\$6,200,000}{\$2,805,430} = 2.21$$

$$\text{Average Collection Period} = \frac{365}{2.21} = \begin{array}{l}165.16 \text{ days, rounded to the} \\ \text{nearest whole day} = 165 \text{ days.}\end{array}$$

(iii) *Interest-free period.* Accordingly, for intercompany trade receivables incurred by X during Y's 1988 calendar taxable year attributable to the purchase of property from Y for resale to unrelated persons located in country Z and included in the product group, X may use an interest-free period of 175 days (165 days in the average collection period plus 10 days, but not in excess of a maximum of 183 days). All other intercompany trade receivables incurred by X are subject to the interest-free periods described in paragraphs (a)(1)(iii) (B), (C), or (D), whichever are applicable. If X makes sales in other foreign countries in addition to country Z or makes sales of property in more than one product group in any foreign country, separate computations of X's average collection period, by product group within each country, are required in order for X and Y to determine an interest-free period for such product groups in such foreign countries under this paragraph (a)(1)(iii)(E).

(iv) *Payment; book entries*—(A) Except as otherwise provided in this paragraph (a)(1)(iv), in determining the period of time for which an amount owed by one member of the group to another member is outstanding, payments or other credits to an account are considered to be applied against the earliest amount outstanding, that is, payments or credits are applied against amounts in a first-in, first-out (FIFO) order. Thus, tracing payments to individual intercompany trade receivables is generally not required in order to determine whether a particular intercompany trade receivable has been paid within the applicable interest-free period determined under paragraph (a)(1)(iii) of this section. The application of this paragraph (a)(1)(iv)(A) may be illustrated by the following example:

Example—(i) *Facts.* X and Y are members of a group of controlled entities within the meaning of section 482. Assume that the balance of intercompany trade receivables owed by X to Y on June 1 is $100, and that all of the $100 balance represents amounts incurred by X to Y during the month of May. During the month of June X incurs an additional $200 of intercompany trade receivables to Y. Assume that on July 15, $60 is properly credited against X's intercompany account to Y, and that $240 is properly credited against the intercompany account on August 31. Assume that under paragraph (a)(1)(iii)(B) of this section interest must be charged on X's intercompany trade receivables to Y beginning with the first day of the third calendar month following the month the intercompany trade receivables arise, and that no alternative interest-free period applies. Thus, the interest-free period for intercompany trade receivables incurred during the month of May ends on July 31, and the interest-free period for intercompany trade receivables incurred during the month of June ends on August 31.

(ii) *Application of payments.* Using a FIFO payment order, the aggregate payments of $300 are applied first to the opening June balance, and then to the additional amounts incurred during the month of June. With respect to X's June opening balance of $100, no interest is required to be accrued on $60 of such balance paid by X on July 15, because such portion was paid within its interest-free period. Interest for 31 days, from August 1 to August 31 inclusive, is required to be accrued on the $40 portion of the opening balance not paid until August 31. No interest is required to be accrued on the $200 of intercompany trade receivables X incurred to Y during June because the $240 credited on August 31, after eliminating the $40 of indebtedness remaining from periods before June, also eliminated the $200 incurred by X during June prior to the end of the interest-free period for that amount. The amount of interest incurred by X to Y on the $40 amount during August creates bona fide indebtedness between controlled entities and is subject to the provisions of paragraph (a)(1)(iii)(A) of this section without regard to any of the exceptions contained in paragraphs (a)(1)(iii)(B) through (E).

(B) Notwithstanding the first-in, first-out payment application rule described in paragraph (a)(1)(iv)(A) of this section, the taxpayer may apply payments or credits against amounts owed in some other order on its books in accordance with an agreement or understanding of the related parties if the taxpayer can demonstrate that either it or others in its industry, as a regular trade practice, enter into such agreements or understandings in the case of similar balances with unrelated parties.

(2) *Arm's length interest rate*—(i) *In general.* For purposes of section 482 and paragraph (a) of this section, an arm's length rate of interest shall be a rate of interest which was charged, or would have been charged, at the time the indebtedness arose, in independent transactions with or between unrelated parties under similar circumstances. All relevant factors shall be considered, including the principal amount and duration of the loan, the security involved, the credit standing of the borrower, and the interest rate prevailing at the situs of the lender or creditor for comparable loans between unrelated parties.

(ii) *Funds obtained at situs of borrower.* Notwithstanding the other provisions of paragraph (a)(2) of this section, if the loan or advance represents the proceeds of a loan obtained by the lender at the situs of the borrower, the arm's length rate for any taxable year shall be equal to the rate actually paid by the lender increased by an amount which reflects the costs or deductions incurred by the lender in borrowing such amounts and making such loans, unless the taxpayer establishes a more appropriate rate under the standards set forth in paragraph (a)(2)(i) of this section.

(iii) *Safe haven interest rates for certain loans and advances made after May 8, 1986*—(A) *Applicability*—(*1*) *General rule.* Except as otherwise provided in paragraph (a)(2) of this section, paragraph (a)(2)(iii)(B) applies with respect to the rate of interest charged and to the amount of interest paid or accrued in any taxable year—

(*i*) Under a term loan or advance between members of a group of controlled entities where (except as provided in paragraph (a)(2)(iii)(A)(*2*)(*ii*) of this section) the loan or advance is entered into after May 8, 1986; and

(*ii*) After May 8, 1986 under a demand loan or advance between such controlled entities.

(*2*) *Grandfather rule for existing loans.* The safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the safe haven rates prescribed in § 1.482–2(a)(2)(iii) (26 CFR part 1 edition revised as of April 1, 1985), shall apply to—

(*i*) Term loans or advances made before May 9, 1986; and

(*ii*) Term loans or advances made before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(B) *Safe haven interest rate based on applicable Federal rate.* Except as otherwise provided in this paragraph (a)(2), in the case of a loan or advance between members of a group of controlled entities, an arm's length rate of interest referred to in paragraph (a)(2)(i) of this section shall be for purposes of chapter 1 of the Internal Revenue Code—

(*1*) The rate of interest actually charged if that rate is—

(*i*) Not less than 100 percent of the applicable Federal rate (lower limit); and

(*ii*) Not greater than 130 percent of the applicable Federal rate (upper limit); or

(*2*) If either no interest is charged or if the rate of interest charged is less than the lower limit, then an arm's length rate of interest shall be equal to the lower limit, compounded semiannually; or

(*3*) If the rate of interest charged is greater than the upper limit, then an arm's length rate of interest shall be equal to the upper limit, compounded semiannually, unless the taxpayer establishes a more appropriate compound rate of interest under paragraph (a)(2)(i) of this section. However, if the compound rate of interest actually charged is greater than the upper limit and less than the rate determined under paragraph (a)(2)(i) of this section, or if the compound rate actually charged is less than the lower limit and greater than the rate determined under paragraph (a)(2)(i) of this section, then the compound rate actually charged shall be deemed to be an arm's length rate under paragraph (a)(2)(i). In the case of any sale-leaseback described in section 1274(e), the lower limit shall be 110 percent of the applicable Federal rate, compounded semiannually.

(C) *Applicable Federal rate.* For purposes of paragraph (a)(2)(iii)(B) of this section, the term applicable Federal rate means, in the case of a loan or advance to which this section applies and having a term of—

(*1*) Not over 3 years, the Federal short-term rate;

(*2*) Over 3 years but not over 9 years, the Federal mid-term rate; or

(*3*) Over 9 years, the Federal long-term rate, as determined under section 1274(d) in effect on the date such loan or advance is made. In the case of any sale or exchange between controlled entities, the lower limit shall be the lowest of the applicable Federal rates in effect for any month in the 3-calendar-month period ending with the first calendar month in which there is a binding written contract in effect for such sale or exchange (lowest 3-month rate, as defined in section 1274(d)(2)). In the case of a demand loan or advance to which this section applies, the applicable Federal rate means the Federal short-term rate determined under section 1274(d) (determined without regard to the lowest 3-month short term rate determined under section 1274(d)(2)) in effect for each day on which any amount of such loan or advance (including unpaid accrued interest determined under paragraph (a)(2) of this section) is outstanding.

(D) *Lender in business of making loans.* If the lender in a loan or advance transaction to which paragraph (a)(2) of this section applies is regularly engaged in the trade or business of making loans or advances to unrelated parties, the safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the arm's length interest rate to be used shall be determined under the standards described in paragraph (a)(2)(i) of this section, including reference to the interest rates charged in such trade or business by the lender on loans or advances of a similar type made to unrelated parties at and about the time the loan or advance to which paragraph (a)(2) of this section applies was made.

(E) *Foreign currency loans.* The safe haven interest rates prescribed in paragraph (a)(2)(iii)(B) of this section do not apply to any loan or advance the principal or interest of which is

determined under paragraph (a)(2)(i) of this section, then the compound rate actually charged shall be deemed to be an arm's length rate under paragraph (a)(2)(i). In the case of any sale-leaseback described in section 1274(e), the lower limit shall be 110 percent of the applicable Federal rate, compounded semiannually.

(C) *Applicable Federal rate.* For purposes of paragraph (a)(2)(iii)(B) of this section, the term applicable Federal rate means, in the case of a loan or advance to which this section applies and having a term of—

(*1*) Not over 3 years, the Federal short-term rate;

(*2*) Over 3 years but not over 9 years, the Federal mid-term rate; or

(*3*) Over 9 years, the Federal long-term rate, as determined under section 1274(d) in effect on the date such loan or advance is made. In the case of any sale or exchange between controlled entities, the lower limit shall be the lowest of the applicable Federal rates in effect for any month in the 3-calendar-month period ending with the first calendar month in which there is a binding written contract in effect for such sale or exchange (lowest 3-month rate, as defined in section 1274(d)(2)). In the case of a demand loan or advance to which this section applies, the applicable Federal rate means the Federal short-term rate determined under section 1274(d) (determined without regard to the lowest 3-month short term rate determined under section 1274(d)(2)) in effect for each day on which any amount of such loan or advance (including unpaid accrued interest determined under paragraph (a)(2) of this section) is outstanding.

(D) *Lender in business of making loans.* If the lender in a loan or advance transaction to which paragraph (a)(2) of this section applies is regularly engaged in the trade or business of making loans or advances to unrelated parties, the safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the arm's length interest rate to be used shall be determined under the standards described in paragraph (a)(2)(i) of this section, including reference to the interest rates charged in such trade or business by the lender on loans or advances of a similar type made to unrelated parties at and about the time the loan or advance to which paragraph (a)(2) of this section applies was made.

(E) *Foreign currency loans.* The safe haven interest rates prescribed in paragraph (a)(2)(iii)(B) of this section do not apply to any loan or advance the principal or interest of which is expressed in a currency other than U.S. dollars.

(3) *Coordination with interest adjustments required under certain other Code sections.* If the stated rate of interest on the stated principal amount of a loan or advance between controlled entities is subject to adjustment under section 482 and is also subject to adjustment under any other section of the Internal Revenue Code (for example, section 467, 483, 1274 or 7872), section 482 and paragraph (a) of this section may be applied to such loan or advance in addition to such other Internal Revenue Code section. After the enactment of the Tax Reform Act of 1964, Pub. L. 98–369, and the enactment of Pub. L. 99–121, such other Internal Revenue Code sections include sections 467, 483, 1274 and 7872. The order in which the different provisions shall be applied is as follows—

(i) First, the substance of the transaction shall be determined; for this purpose, all the relevant facts and circumstances shall be considered and any law or rule of law (assignment of income, step transaction, etc.) may apply. Only the rate of interest with respect to the stated principal amount of the bona fide indebtedness (within the meaning of paragraph (a)(1) of this section), if any, shall be subject to adjustment under section 482, paragraph (a) of this section, and any other Internal Revenue Code section.

(ii) Second, the other Internal Revenue Code section shall be applied to the loan or advance to determine whether any amount other than stated interest is to be treated as interest, and if so, to determine such amount according to the provisions of such other Internal Revenue Code section.

(iii) Third, whether or not the other Internal Revenue Code section applies to adjust the amounts treated as interest under such loan or advance, section 482 and paragraph (a) of this section may then be applied by the district director to determine whether the rate of interest charged on the loan or advance, as adjusted by any other Code section, is greater or less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

(iv) Fourth, section 482 and paragraphs (b) through (e) of this section, if applicable, may be applied by the district director to make any appropriate allocations, other than an interest rate adjustment, to reflect an arm's length transaction based upon the principal amount of the loan or advance and the interest rate as adjusted under paragraph (a)(3)(i), (ii) or (iii) of this section. For example, assume that two commonly controlled taxpayers enter into a deferred payment sale of tangible property and no interest is provided, and assume also that section 483 is applied to treat a portion of the stated sales price as interest, thereby reducing the stated sales price.

If after this recharacterization of a portion of the stated sales price as interest, the recomputed sales price does not reflect an arm's length sales price under the principles of paragraph (e) of this section, the district director may make other appropriate allocations (other than an interest rate adjustment) to reflect an arm's length sales price.

(4) *Examples.* The principles of paragraph (a)(3) of this section may be illustrated by the following examples:

Example 1. An individual, A, transfers $20,000 to a corporation controlled by A in exchange for the corporation's note which bears adequate stated interest. The district director recharacterizes the transaction as a contribution to the capital of the corporation in exchange for preferred stock. Under paragraph (a)(3)(i) of this section, section 1.482–2(a) does not apply to the transaction because there is no bona fide indebtedness.

Example 2. B, an individual, is an employee of Z corporation, and is also the controlling shareholder of Z. Z makes a term loan of $15,000 to B at a rate of interest that is less than the applicable Federal rate. In this instance the other operative Code section is section 7872. Under section 7872(b), the difference between the amount loaned and the present value of all payments due under the loan using a discount rate equal to 100 percent of the applicable Federal rate is treated as an amount of cash transferred from the corporation to B and the loan is treated as having original issue discount equal to such amount. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may also be applied by the district director to determine if the rate of interest charged on this $15,000 loan (100 percent of the AFR, compounded semiannually, as adjusted by section 7872) is an arm's length rate of interest. Because the rate of interest on the loan, as adjusted by section 7872, is within the safe haven range of 100–130 percent of the AFR, compounded semiannually, no further interest rate adjustments under section 482 and paragraph (a) of this section will be made to this loan.

Example 3. The facts are the same as in Example 2 except that the amount lent by Z to B is $9,000, and that amount is the aggregate outstanding amount of loans between Z and B. Under the $10,000 de minimis exception of section 7872(c)(3), no adjustment for interest will be made to this $9,000 loan under section 7872. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $9,000 loan to determine whether the rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

Example 4. X and Y are commonly controlled taxpayers. At a time when the applicable Federal rate is 12 percent, compounded semiannually, X sells property to Y in exchange for a note with a stated rate of interest of 18 percent, compounded semiannually. Assume that the other applicable Code section to the transaction is section 483. Section 483 does not apply to this transaction because, under section 483(d), there is no total unstated interest under the contract using the test rate of interest equal to 100 percent of the applicable Federal rate. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may be applied by the district director to determine whether the rate of interest under the note is excessive, that is, to determine whether the 18 percent stated interest rate under the note exceeds an arm's length rate of interest.

Example 5. Assume that A and B are commonly controlled taxpayers and that the applicable Federal rate is 10 percent, compounded semiannually. On June 30, 1986, A sells property to B and receives in exchange B's purchase-money note in the amount of $2,000,000. The stated interest rate on the note is 9%, compounded semiannually, and the stated redemption price at maturity on the note is $2,000,000. Assume that the other applicable Code section to this transaction is section 1274. As provided in section 1274A(a) and (b), the discount rate for purposes of section 1274 will be nine percent, compounded semiannually, because the stated principal amount of B's note does not exceed $2,800,000. Section 1274 does not apply to this transaction because there is adequate stated interest on the debt instrument using a discount rate equal to 9%, compounded semiannually, and the stated redemption price at maturity does not exceed the stated principal amount. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $2,000,000 note to determine whether the 9% rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

(b) *Performance of services for another*—(1) *General rule.* Where one member of a group of controlled entities performs marketing, managerial, administrative, technical, or other services for the benefit of, or on behalf of another member of the group without charge, or at a charge which is not equal to an arm's length charge as defined in paragraph (b)(3) of this section, the district director may make appropriate allocations to reflect an arm's length charge for such services.

(2) *Benefit test*—(i) Allocations may be made to reflect arm's length charges with respect to services undertaken for the joint benefit of the members of a group of controlled entities, as well as with respect to services performed by one member of the group exclusively for the benefit of another member of the group. Any allocations made shall be consistent with the relative benefits intended from the services, based upon the facts known at the time the services were rendered, and shall be made even if the potential benefits anticipated are not realized. No allocations shall be made if the probable benefits to the other members were so indirect or remote that unrelated parties would not have charged for such services. In general, allocations may be made if the service, at the time it was performed, related to the carrying on of an activity by another member or was intended to benefit another member, either in the member's overall operations or in its day-to-day activities. The principles of this paragraph (b)(2)(i) may be illustrated by the following examples in each of which it is assumed that X and Y are corporate members of the same group of controlled entities:

Example 1. X's International Division engages in a wide range of sales promotion activities. Although most of these activities are undertaken exclusively for the benefit of X's international operations, some are intended to jointly benefit both X and Y and others are undertaken exclusively for the benefit of Y. The district director may make an allocation to reflect an arm's length charge with respect to the activities undertaken for the joint benefit of X and Y consistent with the relative benefits intended as well as with respect to the services performed exclusively for the benefit of Y.

Example 2. X operates an international airline, and Y owns and operates hotels in several cities which are serviced by X. X, in conjunction with its advertising of the airline, often pictures Y's hotels and mentions Y's name. Although such advertising was primarily intended to benefit X's airline operations, it was reasonable to anticipate that there would be substantial benefits to Y resulting from patronage by travelers who responded to X's advertising. Since an unrelated hotel operator would have been charged for such advertising, the district director may make an appropriate allocation to reflect an arm's length charge consistent with the relative benefits intended.

Example 3. Assume the same facts as in Example 2 except that X's advertising neither mentions nor pictures Y's hotels. Although it is reasonable to anticipate that increased air travel attributable to X's advertising will result in some benefit to Y due to increased patronage by air travelers, the district director will not make an allocation with respect to such advertising since the probable benefit to Y was so indirect and remote that an unrelated hotel operator would not have been charged for such advertising.

(ii) Allocations will generally not be made if the service is merely a duplication of a service which the related party has independently performed or is performing for itself. In this connection, the ability to independently perform the service (in terms of qualification and availability of personnel) shall be taken into account. The principles of this paragraph (b)(2)(ii) may be illustrated by the following examples, in each of which it is assumed that X and Y are corporate members of the same group of controlled entities:

Example 1. At the request of Y, the financial staff of X makes an analysis to determine the amount and source of the borrowing needs of Y. Y does not have personnel qualified to make the analysis, and it does not undertake the same analysis. The district director may make an appropriate allocation to reflect an arm's length charge for such analysis.

Example 2. Y, which has a qualified financial staff, makes an analysis to determine the amount and source of its borrowing needs. Its report, recommending a loan from a bank, is submitted to X. X's financial staff reviews the analysis to determine whether X should advise Y to reconsider its plan. No allocation should be made with respect to X's review.

(3) *Arm's length charge.* For the purpose of this paragraph an arm's length charge for services rendered shall be the amount which was charged or would have been charged for the same or similar services in independent transactions with or between unrelated parties under similar circumstances considering all relevant facts. However, except in the case of services which are an integral part of the business activity of either the member rendering the services or the member receiving the benefit of the services (as described in paragraph (b)(7) of this section) the arm's length charge shall be deemed equal to the costs or deductions incurred with respect to such services by the member or members rendering such services unless the taxpayer establishes a more appropriate charge under the standards set forth in the first sentence of this subparagraph. Where costs or deductions are a factor in applying the provisions of this paragraph adequate books and records must be maintained by taxpayers to permit verification of such costs or deductions by the Internal Revenue Service.

(4) *Costs or deductions to be taken into account*—(i) Where the amount of an arm's length charge for services is determined with reference to the costs or deductions incurred with respect to such services, it is necessary to take into account on some reasonable basis all the costs or deductions which are directly or indirectly related to the service performed.

(ii) Direct costs or deductions are those identified specifically with a particular service. These include, but are not limited to, costs or deductions

for compensation, bonuses, and travel expenses attributable to employees directly engaged in performing such services, for material and supplies directly consumed in rendering such services, and for other costs such as the cost of overseas cables in connection with such services.

(iii) Indirect costs or deductions are those which are not specifically identified with a particular activity or service but which relate to the direct costs referred to in paragraph (b)(4)(ii) of this section. Indirect costs or deductions generally include costs or deductions with respect to utilities, occupancy, supervisory and clerical compensation, and other overhead burden of the department incurring the direct costs or deductions referred to in paragraph (b)(4)(ii) of this section. Indirect costs or deductions also generally include an appropriate share of the costs or deductions relating to supporting departments and other applicable general and administrative expenses to the extent reasonably allocable to a particular service or activity. Thus, for example, if a domestic corporation's advertising department performs services for the direct benefit of a foreign subsidiary, in addition to direct costs of such department, such as salaries of employees and fees paid to advertising agencies or consultants, which are attributable to such foreign advertising, indirect costs must be taken into account on some reasonable basis in determining the amount of costs or deductions with respect to which the arm's length charge to the foreign subsidiary is to be determined. These generally include depreciation, rent, property taxes, other costs of occupancy, and other overhead costs of the advertising department itself, and allocations of costs from other departments which service the advertising department, such as the personnel, accounting, payroll, and maintenance departments, and other applicable general and administrative expenses including compensation of top management.

(5) *Costs and deductions not to be taken into account.* Costs or deductions of the member rendering the services which are not to be taken into account in determining the amount of an arm's length charge for services include—

(i) Interest expense on indebtedness not incurred specifically for the benefit of another member of the group;

(ii) Expenses associated with the issuance of stock and maintenance of shareholder relations; and

(iii) Expenses of compliance with regulations or policies imposed upon the member rendering the services by its

for compensation, bonuses, and travel expenses attributable to employees directly engaged in performing such services, for material and supplies directly consumed in rendering such services, and for other costs such as the cost of overseas cables in connection with such services.

(iii) Indirect costs or deductions are those which are not specifically identified with a particular activity or service but which relate to the direct costs referred to in paragraph (b)(4)(ii) of this section. Indirect costs or deductions generally include costs or deductions with respect to utilities, occupancy, supervisory and clerical compensation, and other overhead burden of the department incurring the direct costs or deductions referred to in paragraph (b)(4)(ii) of this section. Indirect costs or deductions also generally include an appropriate share of the costs or deductions relating to supporting departments and other applicable general and administrative expenses to the extent reasonably allocable to a particular service or activity. Thus, for example, if a domestic corporation's advertising department performs services for the direct benefit of a foreign subsidiary, in addition to direct costs of such department, such as salaries of employees and fees paid to advertising agencies or consultants, which are attributable to such foreign advertising, indirect costs must be taken into account on some reasonable basis in determining the amount of costs or deductions with respect to which the arm's length charge to the foreign subsidiary is to be determined. These generally include depreciation, rent, property taxes, other costs of occupancy, and other overhead costs of the advertising department itself, and allocations of costs from other departments which service the advertising department, such as the personnel, accounting, payroll, and maintenance departments, and other applicable general and administrative expenses including compensation of top management.

(5) *Costs and deductions not to be taken into account.* Costs or deductions of the member rendering the services which are not to be taken into account in determining the amount of an arm's length charge for services include—

(i) Interest expense on indebtedness not incurred specifically for the benefit of another member of the group;

(ii) Expenses associated with the issuance of stock and maintenance of shareholder relations; and

(iii) Expenses of compliance with regulations or policies imposed upon the member rendering the services by its government which are not directly related to the service in question.

(6) *Methods*—(i) Where an arm's length charge for services rendered is determined with reference to costs or deductions, and a member has allocated and apportioned costs or deductions to reflect arm's length charges by employing in a consistent manner a method of allocation and apportionment which is reasonable and in keeping with sound accounting practice, such method will not be disturbed. If the member has not employed a method of allocation and apportionment which is reasonable and in keeping with sound accounting practice, the method of allocating and apportioning costs or deductions for the purpose of determining the amount of arm's length charges shall be based on the particular circumstances involved.

(ii) The methods of allocation and apportionment referred to in this paragraph (b)(6) are applicable both in allocating and apportioning indirect costs to a particular activity or service (see paragraph (b)(4)(iii) of this section) and in allocating and apportioning the total costs (direct and indirect) of a particular activity or service where such activity or service is undertaken for the joint benefit of two or more members of a group (see paragraph (b)(2)(i) of this section). While the use of one or more bases may be appropriate under the circumstances, in establishing the method of allocation and apportionment, appropriate consideration should be given to all bases and factors, including, for example, total expenses, asset size, sales, manufacturing expenses, payroll, space utilized, and time spent. The costs incurred by supporting departments may be apportioned to other departments on the basis of reasonable overall estimates, or such costs may be reflected in the other departments' costs by means of application of reasonable departmental overhead rates. Allocations and apportionments of costs or deductions must be made on the basis of the full cost as opposed to the incremental cost. Thus, if an electronic data processing machine, which is rented by the taxpayer, is used for the joint benefit of itself and other members of a controlled group, the determination of the arm's length charge to each member must be made with reference to the full rent and cost of operating the machine by each member, even if the additional use of the machine for the benefit of the other members did not increase the cost to the taxpayer.

(iii) Practices actually employed to apportion costs or expenses in connection with the preparation of statements and analyses for the use of management, creditors, minority shareholders, joint venturers, clients, customers, potential investors, or other parties or agencies in interest shall be considered by the district director. Similarly, in determining the extent to which allocations are to be made to or from foreign members of a controlled group, practices employed by the domestic members of a controlled group in apportioning costs between themselves shall also be considered if the relationships with the foreign members of the group are comparable to the relationships between the domestic members of the group. For example, if, for purposes of reporting to public stockholders or to a governmental agency, a corporation apportions the costs attributable to its executive officers among the domestic members of a controlled group on a reasonable and consistent basis, and such officers exercise comparable control over foreign members of such group, such domestic apportionment practice will be taken into consideration in determining the amount of allocations to be made to the foreign members.

(7) *Certain services.* An arm's length charge shall not be deemed equal to costs or deductions with respect to services which are an integral part of the business activity of either the member rendering the services (referred to in this paragraph (b) as the renderer) or the member receiving the benefit of the services (referred to in this paragraph (b) as the recipient). Paragraphs (b)(7)(i) through (b)(7)(iv) of this section describe those situations in which services shall be considered an integral part of the business activity of a member of a group of controlled entities.

(i) Services are an integral part of the business activity of a member of a controlled group where either the renderer or the recipient is engaged in the trade or business of rendering similar services to one or more unrelated parties.

(ii) (A) Services are an integral part of the business activity of a member of a controlled group where the renderer renders services to one or more related parties as one of its principal activities. Except in the case of services which constitute a manufacturing, production, extraction, or construction activity, it will be presumed that the renderer does not render services to related parties as one of its principal activities if the cost of services of the renderer attributable to the rendition of services for the taxable year to related parties does not exceed 25 percent of the total costs or deductions of the renderer for the taxable year. Where the cost of services rendered to related parties is in excess

of 25 percent of the total costs or deductions of the renderer for the taxable year or where the 25-percent test does not apply, the determination of whether the rendition of such services is one of the principal activities of the renderer will be based on the facts and circumstances of each particular case. Such facts and circumstances may include the time devoted to the rendition of the services, the relative cost of the services, the regularity with which the services are rendered, the amount of capital investment, the risk of loss involved, and whether the services are in the nature of supporting services or independent of the other activities of the renderer.

(B) For purposes of the 25-percent test provided in this paragraph (b)(7)(ii), the cost of services rendered to related parties shall include all costs or deductions directly or indirectly related to the rendition of such services including the cost of services which constitute a manufacturing, production, extraction, or construction activity; and the total costs or deductions of the renderer for the taxable year shall exclude amounts properly reflected in the cost of goods sold of the renderer. Where any of the costs or deductions of the renderer do not reflect arm's length consideration and no adjustment is made under any provision of the Internal Revenue Code to reflect arm's length consideration, the 25-percent test will not apply if, had an arm's length charge been made, the costs or deductions attributable to the renderer's rendition of services to related entities would exceed 25 percent of the total costs or deductions of the renderer for the taxable year.

(C) For purposes of the 25-percent test in this paragraph (b)(7)(ii), a consolidated group (as defined in this paragraph (b)(7)(ii)(C)) may, at the option of the taxpayer, be considered as the renderer where one or more members of the consolidated group render services for the benefit of or on behalf of a related party which is not a member of the consolidated group. In such case, the cost of services rendered by members of the consolidated group to any related parties not members of the consolidated group, as well as the total costs or deductions of the members of the consolidated group, shall be considered in the aggregate to determine if such services constitute a principal activity of the renderer. Where a consolidated group is considered the renderer in accordance with this paragraph (b)(7)(ii)(C), the costs or deductions referred to in this paragraph (b)(7)(ii) shall not include costs or deductions paid or accrued to any member of the consolidated group. In addition to the preceding provisions of this paragraph (b)(7)(ii)(C), if part or all of the services rendered by a member of a consolidated group to any related party not a member of the consolidated group are similar to services rendered by any other member of the consolidated group to unrelated parties as part of a trade or business, the 25-percent test in this paragraph (b)(7)(ii) shall be applied with respect to such similar services without regard to this subdivision (c). For purposes of this paragraph (b)(7)(ii)(C), the term consolidated group means all members of a group of controlled entities created or organized within a single country and subjected to an income tax by such country on the basis of their combined income.

(iii) Services are an integral part of the business activity of a member of a controlled group where the renderer is peculiarly capable of rendering the services and such services are a principal element in the operations of the recipient. The renderer is peculiarly capable of rendering the services where the renderer, in connection with the rendition of such services, makes use of a particularly advantageous situation or circumstance such as by utilization of special skills and reputation, utilization of an influential relationship with customers, or utilization of its intangible property (as defined in § 1.482–4(b)). However, the renderer will not be considered peculiarly capable of rendering services unless the value of the services is substantially in excess of the costs or deductions of the renderer attributable to such services.

(iv) Services are an integral part of the business activity of a member of a controlled group where the recipient has received the benefit of a substantial amount of services from one or more related parties during its taxable year. For purposes of this subdivision, services rendered by one or more related parties shall be considered substantial in amount if the total costs or deductions of the related party or parties rendering services to the recipient during its taxable year which are directly or indirectly related to such services exceed an amount equal to 25 percent of the total costs or deductions of the recipient during its taxable year. For purposes of the preceding sentence, the total costs or deductions of the recipient shall include the renderers' costs or deductions directly or indirectly related to the rendition of such services and shall exclude any amounts paid or accrued to the renderers by the recipient for such services and shall also exclude any amounts paid or accrued for materials the cost of which is properly reflected in the cost of goods sold of the recipient. At the option of the taxpayer, where the taxpayer establishes that the amount of the total costs or deductions of a recipient for the recipient's taxable year are abnormally low due to the commencement or cessation of an operation by the recipient, or other unusual circumstances of a nonrecurring nature, the costs or deductions referred to in the preceding two sentences shall be the total of such amount for the 3-year period immediately preceding the close of the taxable year of the recipient (or for the first 3 years of operation of the recipient if the recipient had been in operation for less than 3 years as of the close of the taxable year in which the services in issue were rendered).

(v) The principles of paragraphs (b)(7)(i) through (iv) of this section may be illustrated by the following examples:

Example 1. Y is engaged in the business of selling merchandise and X, an entity related to Y, is a printing company regularly engaged in printing and mailing advertising literature for unrelated parties. X also prints circulars advertising Y's products, mails the circulars to potential customers of Y, and in addition, performs the art work involved in the preparation of the circulars. Since the printing, mailing, and art work services rendered by X to Y are similar to the printing and mailing services rendered by X as X's trade or business, the services rendered to Y are an integral part of the business activity of X as described in subdivision (i) of this subparagraph.

Example 2. V, W, X, and Y are members of the same group of controlled entities. Each member of the group files a separate income tax return. X renders wrecking services to V, W, and Y, and, in addition, sells building materials to unrelated parties. The total costs or deductions incurred by X for the taxable year (exclusive of amounts properly reflected in the cost of goods sold of X) are $4 million. The total costs or deductions of X for the taxable year which are directly or indirectly related to the services rendered to V, W, and Y are $650,000. Since $650,000 is less than 25 percent of the total costs or deductions of X (exclusive of amounts properly reflected in the cost of goods sold of X) for the taxable year ($4,000,000 * 25% = $1,000,000), the services rendered by X to V, W, and Y will not be considered one of X's principal activities within the meaning of subdivision (ii) of this subparagraph.

Example 3. Assume the same facts as in *Example 2*, except that the total costs or deductions of X for the taxable year which are directly or indirectly related to the services rendered to V, W, and Y are $1,800,000. Assume in addition, that there is a high risk of loss involved in the rendition of the wrecking services by X, that X has a large investment in the wrecking equipment, and that a substantial amount of X's time is devoted to the rendition of wrecking services to V, W, and Y. Since $1,800,000 is greater than 25 percent of the total costs or deductions of X for the taxable year (exclusive of amounts properly reflected in the cost of goods sold of X), i.e., $1 million, the services rendered by X to V, W, and Y will not be automatically excluded from classification as one of the principal activities of X as in *Example 2*, and consideration must be given to the facts and circumstances of the particular case. Based on the facts and circumstances in this case, X would be considered to render wrecking services to related parties as one of its principal activities. Thus, the wrecking services are an integral part of the business activity of X as described in paragraph (b)(7)(ii) of this section.

Example 4. Z is a domestic corporation and has several foreign subsidiaries. Z and X, a domestic subsidiary of Z, have exercised the privilege granted under section 1501 to file a consolidated return and, therefore, constitute a *consolidated group* within the meaning of paragraph (b)(7)(ii)(C) of this section. Pursuant to paragraph (b)(7)(ii)(C) of this section, the taxpayer treats X and Z as the renderer. The sole function of X is to provide accounting, billing, communication, and travel services to the foreign subsidiaries of Z. Z also provides some other services for the benefit of its foreign subsidiaries. The total costs or deductions of X and Z related to the services rendered for the benefit of the foreign subsidiaries is $750,000. Of that amount, $710,000 represents the costs of X, which are X's total operating costs. The total costs or deductions of X and Z for the taxable year with respect to their operations (exclusive of amounts properly reflected in the cost of goods sold of X and Z) is $6,500,000. Since the total costs or deductions related to the services rendered to the foreign subsidiaries ($750,000) is less than 25 percent of the total costs or deductions of X and Z (exclusive of amounts properly reflected in the costs of goods sold of X or Z) in the aggregate ($6,500,000 * 25% = $1,625,000), the services rendered by X and Z to the foreign subsidiaries will not be considered one of the principal activities of X and Z within the meaning of paragraph (b)(7)(ii) of this section.

Example 5. Assume the same facts as in *Example 4*, except that all the communication services rendered for the benefit of the foreign subsidiaries are rendered by X and that Z renders communication services to unrelated parties as part of its trade or business. X is regularly engaged in rendering communication services to foreign subsidiaries and devotes a substantial amount of its time to this activity. The costs or deductions of X related to the rendition of the communication services to the foreign subsidiaries are $355,000. By application of the paragraph (b)(7)(ii)(C) of this section, the services provided by X and Z to related entities other than the communication services will not be considered one of the principal activities of X and Z. However, since Z renders communication services to unrelated parties as a part of its trade or business, the communication services rendered by X to the foreign subsidiaries will be subject to the

to V, W, and Y. Since $1,800,000 is greater than 25 percent of the total costs or deductions of X for the taxable year (exclusive of amounts properly reflected in the cost of goods sold of X), i.e., $1 million, the services rendered by X to V, W, and Y will not be automatically excluded from classification as one of the principal activities of X as in *Example 2*, and consideration must be given to the facts and circumstances of the particular case. Based on the facts and circumstances in this case, X would be considered to render wrecking services to related parties as one of its principal activities. Thus, the wrecking services are an integral part of the business activity of X as described in paragraph (b)(7)(ii) of this section.

Example 4. Z is a domestic corporation and has several foreign subsidiaries. Z and X, a domestic subsidiary of Z, have exercised the privilege granted under section 1501 to file a consolidated return and, therefore, constitute a *consolidated group* within the meaning of paragraph (b)(7)(ii)(C) of this section. Pursuant to paragraph (b)(7)(ii)(C) of this section, the taxpayer treats X and Z as the renderer. The sole function of X is to provide accounting, billing, communication, and travel services to the foreign subsidiaries of Z. Z also provides some other services for the benefit of its foreign subsidiaries. The total costs or deductions of X and Z related to the services rendered for the benefit of the foreign subsidiaries is $750,000. Of that amount, $710,000 represents the costs of X, which are X's total operating costs. The total costs or deductions of X and Z for the taxable year with respect to their operations (exclusive of amounts properly reflected in the cost of goods sold of X and Z) is $6,500,000. Since the total costs or deductions related to the services rendered to the foreign subsidiaries ($750,000) is less than 25 percent of the total costs or deductions of X and Z (exclusive of amounts properly reflected in the costs of goods sold of X or Z) in the aggregate ($6,500,000 * 25% = $1,625,000), the services rendered by X and Z to the foreign subsidiaries will not be considered one of the principal activities of X and Z within the meaning of paragraph (b)(7)(ii) of this section.

Example 5. Assume the same facts as in *Example 4*, except that all the communication services rendered for the benefit of the foreign subsidiaries are rendered by X and that Z renders communication services to unrelated parties as part of its trade or business. X is regularly engaged in rendering communication services to foreign subsidiaries and devotes a substantial amount of its time to this activity. The costs or deductions of X related to the rendition of the communication services to the foreign subsidiaries are $355,000. By application of the paragraph (b)(7)(ii)(C) of this section, the services provided by X and Z to related entities other than the communication services will not be considered one of the principal activities of X and Z. However, since Z renders communication services to unrelated parties as a part of its trade or business, the communication services rendered by X to the foreign subsidiaries will be subject to the provisions of paragraph (b)(7)(ii) of this section without regard to paragraph (b)(7)(ii)(C) of this section. Since the costs or deductions of X related to the rendition of the communication services ($355,000) are in excess of 25 percent of the total costs or deductions of X (exclusive of amounts properly reflected in the cost of goods sold of X) for the taxable year ($710,000 * 25% = $177,500), the determination of whether X renders the communication services as one of its principal activities will depend on the particular facts and circumstances. The given facts and circumstances indicate that X renders the communication services as one of its principal activities.

Example 6. X and Y are members of the same group of controlled entities. Y produces and sells product D. As a part of the production process, Y sends materials to X who converts the materials into component parts. This conversion activity constitutes only a portion of X's operations. X then ships the component parts back to Y who assembles them (along with other components) into the finished product for sale to unrelated parties. Since the services rendered by X to Y constitute a manufacturing activity, the 25-percent test in paragraph (b)(7)(ii) of this section does not apply.

Example 7. X and Y are members of the same group of controlled entities. X manufactures product D for distribution and sale in the United States, Canada, and Mexico. Y manufactures product D for distribution and sale in South and Central America. Due to a breakdown of machinery, Y is forced to cease its manufacturing operations for a 1-month period. In order to meet demand for product D during the shutdown period, Y sends partially finished goods to X. X, for that period, completes the manufacture of product D for Y and ships the finished product back to Y. The costs or deductions of X related to the manufacturing services rendered to Y are $750,000. The total costs or deductions of X are $24,000,000. Since the services in issue constitute a manufacturing activity, the 25-percent test in paragraph (b)(7)(ii) of this section does not apply. However, under these facts and circumstances, i.e., the insubstantiality of the services rendered to Y in relation to X's total operations, the lack of regularity with which the services are rendered, and the short duration for which the services are rendered, X's rendition of manufacturing services to Y is not considered one of X's principal activities within the meaning of paragraph (b)(7)(ii) of this section.

Example 8. Assume the same facts as in *Example 7*, except that, instead of temporarily ceasing operations, Y requests assistance from X in correcting the defects in the manufacturing equipment. In response, X sends a team of engineers to discover and correct the defects without the necessity of a shutdown. Although the services performed by the engineers were related to a manufacturing activity, the services are essentially supporting in nature and, therefore, do not constitute a manufacturing, production, extraction, or construction activity. Thus, the 25-percent test in paragraph (b)(7)(ii) of this section applies.

Example 9. X is a domestic manufacturing corporation. Y, a foreign subsidiary of X, has decided to construct a plant in Country A. In connection with the construction of Y's plant, X draws up the architectural plans for the plant, arranges the financing of the construction, negotiates with various Government authorities in Country A, invites bids from unrelated parties for several phases of construction, and negotiates, on Y's behalf, the contracts with unrelated parties who are retained to carry out certain phases of the construction. Although the unrelated parties retained by X for Y perform the physical construction, the aggregate services performed by X for Y are such that they, in themselves, constitute a construction activity. Thus, the 25-percent test in paragraph (b)(7)(ii) of this section does not apply with respect to such services.

Example 10. X and Y are members of the same group of controlled entities. X is a finance company engaged in financing automobile loans. In connection with such loans it requires the borrower to have life insurance in the amount of the loan. Although X's borrowers are not required to take out life insurance from any particular insurance company, at the same time that the loan agreement is being finalized, X's employees suggest that the borrower take out life insurance from Y, which is an agency for life insurance companies. Since there would be a delay in the processing of the loan if some other company were selected by the borrower, almost all of X's borrowers take out life insurance through Y. Because of this utilization of its influential relationship with its borrowers, X is peculiarly capable of rendering selling services to Y and, since a substantial amount of Y's business is derived from X's borrowers, such selling services are a principal element in the operation of Y's insurance business. In addition, the value of the services is substantially in excess of the costs incurred by X. Thus, the selling services rendered by X to Y are an integral part of the business activity of a member of the controlled group as described in paragraph (b)(7)(iii) of this section.

Example 11. X and Y are members of the same group of controlled entities. Y is a manufacturer of product E. In past years product E has not always operated properly because of imperfections present in the finished product. X owns an exclusive patented process by which such imperfections can be detected and removed prior to sale of the product, thereby greatly increasing the marketability of the product. In connection with its manufacturing operations Y sends its products to X for inspection which involves utilization of the patented process. The inspection of Y's products by X is not one of the principal activities of X. However, X is peculiarly capable of rendering the inspection services to Y because of its utilization of the patented process. Since this inspection greatly increases the marketability of product E it is extremely valuable. Such value is substantially in excess of the cost incurred by X in rendition of such services. Because of the impact of the inspection on sales, such services are a principal element in the operations of Y. Thus, the inspection services

rendered by X to Y are an integral part of the business activity of a member of the controlled group as described in paragraph (b)(7)(iii) of this section.

Example 12. Assume the same facts as in *Example 11* except that Y owns the patented process for detecting the imperfections. Y, however, does not have the facilities to implement the inspection process. Therefore, Y sends its products to X for inspection which involves utilization of the patented process owned by Y. Since Y owns the patent, X is not peculiarly capable of rendering the inspection services to Y within the meaning of paragraph (b)(7)(iii) of this section.

Example 13. Assume the same facts as in *Example 12* except that X and Y both own interests in the patented process as a result of having developed the process pursuant to a bona fide cost sharing plan (within the meaning of paragraph (d)(4) of this section). Since Y owns the requisite interest in the patent, X is not peculiarly capable of rendering the inspection services to Y within the meaning of paragraph (b)(7)(iii) of this section.

Example 14. X and Y are members of the same group of controlled entities. X is a large manufacturing concern. X's accounting department has, for many years, maintained the financial records of Y, a distributor of X's products. Although X is able to render these accounting services more efficiently than others due to its thorough familiarity with the operations of Y, X is not peculiarly capable of rendering the accounting services to Y because such familiarity does not, in and of itself, constitute a particularly advantageous situation or circumstance within the meaning of paragraph (b)(7)(iii) of this section. Furthermore, under these circumstances, the accounting services are supporting in nature and, therefore, do not constitute a principal element in the operations of Y. Thus, the accounting services rendered by X to Y are not an integral part of the business activity of either X or Y within the meaning of paragraph (b)(7)(iii) of this section.

Example 15. (i) Corporations X, Y, and Z are members of the same group of controlled entities. X is a manufacturer, and Y and Z are distributors of X's products. X provides a variety of services to Y including billing, shipping, accounting, and other general and administrative services. During Y's taxable year, on several occasions, Z renders selling and other promotional services to Y. None of the services rendered to Y constitute one of the principal activities of any of the renderers within the meaning of paragraph (b)(7)(ii) of this section. Y's total costs and deductions for Y's taxable year (exclusive of amounts paid to X and Z for services rendered and amounts paid for goods purchased for resale) are $1,600,000. The total direct and indirect costs of X and Z for services rendered to Y during Y's taxable year are as follows:

Services provided by X:	
Billing	$50,000
Shipping	250,000
Accounting	150,000
Other	200,000
Services provided by Z:	
Selling	500,000
Total Costs	1,150,000

(ii) Since the total costs or deductions of X and Z related to the rendition of services to Y exceed the amount equal to 25 percent of the total costs or deductions of Y (exclusive of amounts paid to X and Z for the services rendered and amounts paid for goods purchased for resale) plus the total costs or deductions of X and Z related to the rendition of services to Y ($1,150,000 + [$1,600,000 + $1,150,000] = 41.8%), the services rendered by X and Z to Y are substantial within the meaning of paragraph (b)(7)(iv) of this section. Thus, the services rendered by X and Z to Y are an integral part of the business activity of Y as described in paragraph (b)(7)(iv) of this section.

Example 16. Assume the same facts as in *Example 15*, except that the taxpayer establishes that, due to a major change in the operations of Y, Y's total costs or deductions for Y's taxable year were abnormally low. Y has always used the calendar year as its taxable year. Y's total costs and deductions for the 2 years immediately preceding the taxable year in issue (exclusive of amounts paid to X and Z for services rendered and amounts paid for goods purchased for resale) were $6 million and $6,200,000 respectively. The total direct and indirect costs of X and Z for services rendered to Y were $1,150,000 for each of the 3 years. Applying the same formula to the costs or deductions for the 3 years immediately preceding the close of the taxable year in issue, the costs or deductions of X and Z related to the rendition of services to Y (3 * $1,150,000=$3,450,000) amount to 20 percent of the sum of the total costs or deductions of Y (exclusive of amounts paid to X and Z for the services rendered and amounts paid for goods purchased for resale) plus the total costs or deductions of X and Z related to the rendition of services to Y ($3,450,000 $1,600,000 + $6,000,000 + $6,200,000 + $3,450,000=20%). If the taxpayer chooses to use the 3-year period, the services rendered by X and Z to Y are not substantial within the meaning of paragraph (b)(7)(iv) of this section. Thus, the services will not be an integral part of the business activity of a member of the controlled group as described in paragraph (b)(7)(iv) of this section.

(8) *Services rendered in connection with the transfer of property.* Where tangible or intangible property is transferred, sold, assigned, loaned, leased, or otherwise made available in any manner by one member of a group to another member of the group and services are rendered by the transferor to the transferee in connection with the transfer, the amount of any allocation that may be appropriate with respect to such transfer shall be determined in accordance with the rules of paragraph (c) of this section, or §§ 1.482–3 or 1.482–4, whichever is appropriate and a separate allocation with respect to such services under this paragraph shall not be made. Services are rendered in connection with the transfer of property where such services are merely ancillary and subsidiary to the transfer of the property or to the commencement of effective use of the property by the transferee. Whether or not services are merely ancillary and subsidiary to a property transfer is a question of fact. Ancillary and subsidiary services could be performed, for example, in promoting the transaction by demonstrating and explaining the use of the property, or by assisting in the effective starting-up of the property transferred, or by performing under a guarantee relating to such effective starting-up. Thus, where an employee of one member of a group, acting under the instructions of his employer, reveals a valuable secret process owned by his employer to a related entity, and at the same time supervises the integration of such process into the manufacturing operation of the related entity, such services could be considered to be rendered in connection with the transfer, and, if so considered, shall not be the basis for a separate allocation. However, if the employee continues to render services to the related entity by supervising the manufacturing operation after the secret process has been effectively integrated into such operation, a separate allocation with respect to such additional services may be made in accordance with the rules of this paragraph.

(c) *Use of tangible property*—(1) *General rule.* Where possession, use, or occupancy of tangible property owned or leased by one member of a group of controlled entities (referred to in this paragraph as the owner) is transferred by lease or other arrangement to another member of such group (referred to in this paragraph as the user) without charge or at a charge which is not equal to an arm's length rental charge (as defined in paragraph (c)(2)(i) of this section) the district director may make appropriate allocations to properly reflect such arm's length charge. Where possession, use, or occupancy of only a portion of such property is transferred, the determination of the arm's length charge and the allocation shall be made with reference to the portion transferred.

(2) *Arm's length charge*—(i) *In general.* For purposes of paragraph (c) of this section, an arm's length rental charge shall be the amount of rent which was charged, or would have been charged for the use of the same or similar property, during the time it was in use, in independent transactions with or between unrelated parties under similar circumstances considering the period and location of the use, the owner's investment in the property or rent paid for the property, expenses of maintaining the property, the type of property involved, its condition, and all other relevant facts.

(ii) *Safe haven rental charge.* See § 1.482–2(c)(2)(ii) (26 CFR Part 1 revised as of April 1, 1985), for the determination of safe haven rental charges in the case of certain leases entered into before May 9, 1986, and for leases entered into before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(iii) *Subleases*—(A) Except as provided in paragraph (c)(2)(iii)(B) of this section, where possession, use, or occupancy of tangible property, which is leased by the owner (lessee) from an unrelated party is transferred by sublease or other arrangement to the user, an arm's length rental charge shall be considered to be equal to all the deductions claimed by the owner (lessee) which are attributable to the property for the period such property is used by the user. Where only a portion of such property was transferred, any allocations shall be made with reference to the portion transferred. The deductions to be considered include the rent paid or accrued by the owner (lessee) during the period of use and all other deductions directly and indirectly connected with the property paid or accrued by the owner (lessee) during such period. Such deductions include deductions for maintenance and repair, utilities, management and other similar deductions.

(B) The provisions of paragraph (c)(2)(iii)(A) of this section shall not apply if either—

(*1*) The taxpayer establishes a more appropriate rental charge under the general rule set forth in paragraph (c)(2)(i) of this section; or

(*2*) During the taxable year, the owner (lessee) or the user was regularly engaged in the trade or business of renting property of the same general type as the property in question to unrelated persons.

(d) *Transfer of property.* For rules governing allocations under section 482 to reflect an arm's length consideration for controlled transactions involving the transfer of property, see §§ 1.482–3 through 1.482–6.

§ 1.482–3 Methods to determine taxable income in connection with a transfer of tangible property.

(a) *In general.* The arm's length amount charged in a controlled transfer of tangible property must be determined under one of the six methods listed in this paragraph (a). Each of the methods must be applied in accordance with all of the provisions of § 1.482–1, including

maintaining the property, the type of property involved, its condition, and all other relevant facts.

(ii) *Safe haven rental charge.* See § 1.482–2(c)(2)(ii) (26 CFR Part 1 revised as of April 1, 1985), for the determination of safe haven rental charges in the case of certain leases entered into before May 9, 1986, and for leases entered into before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(iii) *Subleases*—(A) Except as provided in paragraph (c)(2)(iii)(B) of this section, where possession, use, or occupancy of tangible property, which is leased by the owner (lessee) from an unrelated party is transferred by sublease or other arrangement to the user, an arm's length rental charge shall be considered to be equal to all the deductions claimed by the owner (lessee) which are attributable to the property for the period such property is used by the user. Where only a portion of such property was transferred, any allocations shall be made with reference to the portion transferred. The deductions to be considered include the rent paid or accrued by the owner (lessee) during the period of use and all other deductions directly and indirectly connected with the property paid or accrued by the owner (lessee) during such period. Such deductions include deductions for maintenance and repair, utilities, management and other similar deductions.

(B) The provisions of paragraph (c)(2)(iii)(A) of this section shall not apply if either—

(*1*) The taxpayer establishes a more appropriate rental charge under the general rule set forth in paragraph (c)(2)(i) of this section; or

(*2*) During the taxable year, the owner (lessee) or the user was regularly engaged in the trade or business of renting property of the same general type as the property in question to unrelated persons.

(d) *Transfer of property.* For rules governing allocations under section 482 to reflect an arm's length consideration for controlled transactions involving the transfer of property, see §§ 1.482–3 through 1.482–6.

§ 1.482–3 Methods to determine taxable income in connection with a transfer of tangible property.

(a) *In general.* The arm's length amount charged in a controlled transfer of tangible property must be determined under one of the six methods listed in this paragraph (a). Each of the methods must be applied in accordance with all of the provisions of § 1.482–1, including the best method rule of § 1.482–1(c), the comparability analysis of § 1.482–1(d), and the arm's length range of § 1.482–1(e). The methods are—

(1) The comparable uncontrolled price method, described in paragraph (b) of this section;

(2) The resale price method, described in paragraph (c) of this section;

(3) The cost plus method, described in paragraph (d) of this section;

(4) The comparable profits method, described in § 1.482–5;

(5) The profit split method, described in § 1.482–6; and

(6) Unspecified methods, described in paragraph (e) of this section.

(b) *Comparable uncontrolled price method*—(1) *In general.* The comparable uncontrolled price method evaluates whether the amount charged in a controlled transaction is arm's length by reference to the amount charged in a comparable uncontrolled transaction.

(2) *Comparability and reliability considerations*—(i) *In general.* Whether results derived from applications of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in § 1.482–1(c). The application of these factors under the comparable uncontrolled price method is discussed in paragraph (b)(2)(ii) and (iii) of this section.

(ii) *Comparability*—(A) *In general.* The degree of comparability between controlled and uncontrolled transactions is determined by applying the provisions of § 1.482–1(d). Although all of the factors described in § 1.482–1(d)(3) must be considered, similarity of products generally will have the greatest effect on comparability under this method. In addition, because even minor differences in contractual terms or economic conditions could materially affect the amount charged in an uncontrolled transaction, comparability under this method depends on close similarity with respect to these factors, or adjustments to account for any differences. The results derived from applying the comparable uncontrolled price method generally will be the most direct and reliable measure of an arm's length price for the controlled transaction if an uncontrolled transaction has no differences with the controlled transaction that would affect the price, or if there are only minor differences that have a definite and reasonably ascertainable effect on price and for which appropriate adjustments are made. If such adjustments cannot be made, or if there are more than minor differences between the controlled and uncontrolled transactions, the comparable uncontrolled price method may be used, but the reliability of the results as a measure of the arm's length price will be reduced. Further, if there are material product differences for which reliable adjustments cannot be made, this method ordinarily will not provide a reliable measure of an arm's length result.

(B) *Adjustments for differences between controlled and uncontrolled transactions.* If there are differences between the controlled and uncontrolled transactions that would affect price, adjustments should be made to the price of the uncontrolled transaction according to the comparability provisions of § 1.482–1(d)(2). Specific examples of the factors that may be particularly relevant to this method include—

(*1*) Quality of the product;

(*2*) Contractual terms (e.g., scope and terms of warranties provided, sales or purchase volume, credit terms, transport terms);

(*3*) Level of the market (i.e., wholesale, retail, etc.);

(*4*) Geographic market in which the transaction takes place;

(*5*) Date of the transaction;

(*6*) Intangible property associated with the sale;

(*7*) Foreign currency risks; and

(*8*) Alternatives realistically available to the buyer and seller.

(iii) *Data and assumptions.* The reliability of the results derived from the comparable uncontrolled price method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply the method. See § 1.482–1(c) (Best method rule).

(3) *Arm's length range.* See § 1.482–1(e)(2) for the determination of an arm's length range.

(4) *Examples.* The principles of this paragraph (b) are illustrated by the following examples.

Example 1—Comparable Sales of Same Product. USM, a U.S. manufacturer, sells the same product to both controlled and uncontrolled distributors. The circumstances surrounding the controlled and uncontrolled transactions are substantially the same, except that the controlled sales price is a delivered price and the uncontrolled sales are made f.o.b. USM's factory. Differences in the contractual terms of transportation and insurance generally have a definite and reasonably ascertainable effect on price, and adjustments are made to the results of the uncontrolled transaction to account for such differences. No other material difference has been identified between the controlled and uncontrolled transactions. Because USM sells in both the controlled and uncontrolled transactions, it is likely that all material differences between the two transactions have been identified. In addition, because the

comparable uncontrolled price method is applied to an uncontrolled comparable with no product differences, and there are only minor contractual differences that have a definite and reasonably ascertainable effect on price, the results of this application of the comparable uncontrolled price method will provide the most direct and reliable measure of an arm's length result. See § 1.482–3(b)(2)(ii)(A).

Example 2—Effect of Trademark. The facts are the same as in *Example 1*, except that USM affixes its valuable trademark to the property sold in the controlled transactions, but does not affix its trademark to the property sold in the uncontrolled transactions. Under the facts of this case, the effect on price of the trademark is material and cannot be reliably estimated. Because there are material product differences for which reliable adjustments cannot be made, the comparable uncontrolled price method is unlikely to provide a reliable measure of the arm's length result. See § 1.482–3(b)(2)(ii)(A).

Example 3—Minor Product Differences. The facts are the same as in *Example 1*, except that USM, which manufactures business machines, makes minor modifications to the physical properties of the machines to satisfy specific requirements of a customer in controlled sales, but does not make these modifications in uncontrolled sales. If the minor physical differences in the product have a material effect on prices, adjustments to account for these differences must be made to the results of the uncontrolled transactions according to the provisions of § 1.482- 1(d)(2), and such adjusted results may be used as a measure of the arm's length result.

Example 4—Effect of Geographic Differences. FM, a foreign specialty radio manufacturer, sells its radios to a controlled U.S. distributor, AM, that serves the West Coast of the United States. FM sells its radios to uncontrolled distributors to serve other regions in the United States. The product in the controlled and uncontrolled transactions is the same, and all other circumstances surrounding the controlled and uncontrolled transactions are substantially the same, other than the geographic differences. If the geographic differences are unlikely to have a material effect on price, or they have definite and reasonably ascertainable effects for which adjustments are made, then the adjusted results of the uncontrolled sales may be used under the comparable uncontrolled price method to establish an arm's length range pursuant to § 1.482–1(e)(iii)(A). If the effects of the geographic differences would be material but cannot be reliably ascertained, then the reliability of the results will be diminished. However, the comparable uncontrolled price method may still provide the most reliable measure of an arm's length result, pursuant to the best method rule of § 1.482–1(c), and, if so, an arm's length range may be established pursuant to § 1.482–1(e)(iii)(B).

(5) *Indirect evidence of comparable uncontrolled transactions*—(i) *In general.* A comparable uncontrolled price may be derived from data from public exchanges or quotation media, but only if the following requirements are met—

(A) The data is widely and routinely used in the ordinary course of business in the industry to negotiate prices for uncontrolled sales;

(B) The data derived from public exchanges or quotation media is used to set prices in the controlled transaction in the same way it is used by uncontrolled taxpayers in the industry; and

(C) The amount charged in the controlled transaction is adjusted to reflect differences in product quality and quantity, contractual terms, transportation costs, market conditions, risks borne, and other factors that affect the price that would be agreed to by uncontrolled taxpayers.

(ii) *Limitation.* Use of data from public exchanges or quotation media may not be appropriate under extraordinary market conditions.

(iii) *Examples.* The following examples illustrate this paragraph (b)(5).

Example 1—Use of Quotation Medium. (i) On June 1, USOil, a United States corporation, enters into a contract to purchase crude oil from its foreign subsidiary, FS, in Country Z. USOil and FS agree to base their sales price on the average of the prices published for that crude in a quotation medium in the five days before August 1, the date set for delivery. USOil and FS agree to adjust the price for the particular circumstances of their transactions, including the quantity of the crude sold, contractual terms, transportation costs, risks borne, and other factors that affect the price.

(ii) The quotation medium used by USOil and FS is widely and routinely used in the ordinary course of business in the industry to establish prices for uncontrolled sales. Because USOil and FS use the data to set their sales price in the same way that unrelated parties use the data from the quotation medium to set their sales prices, and appropriate adjustments were made to account for differences, the price derived from the quotation medium used by USOil and FS to set their transfer prices will be considered evidence of a comparable uncontrolled price.

Example 2—Extraordinary Market Conditions. The facts are the same as in *Example 1*, except that before USOil and FS enter into their contract, war breaks out in Countries X and Y, major oil producing countries, causing significant instability in world petroleum markets. As a result, given the significant instability in the price of oil, the prices listed on the quotation medium may not reflect a reliable measure of an arm's length result. See § 1.482–3(b)(5)(ii).

(c) *Resale price method*—(1) *In general.* The resale price method evaluates whether the amount charged in a controlled transaction is arm's length by reference to the gross profit margin realized in comparable uncontrolled transactions. The resale price method measures the value of functions performed, and is ordinarily used in cases involving the purchase and resale of tangible property in which the reseller has not added substantial value to the tangible goods by physically altering the goods before resale. For this purpose, packaging, repackaging, labelling, or minor assembly do not ordinarily constitute physical alteration. Further the resale price method is not ordinarily used in cases where the controlled taxpayer uses its intangible property to add substantial value to the tangible goods.

(2) *Determination of arm's length price*—(i) *In general.* The resale price method measures an arm's length price by subtracting the appropriate gross profit from the applicable resale price for the property involved in the controlled transaction under review.

(ii) *Applicable resale price.* The applicable resale price is equal to either the resale price of the particular item of property involved or the price at which contemporaneous resales of the same property are made. If the property purchased in the controlled sale is resold to one or more related parties in a series of controlled sales before being resold in an uncontrolled sale, the applicable resale price is the price at which the property is resold to an uncontrolled party, or the price at which contemporaneous resales of the same property are made. In such case, the determination of the appropriate gross profit will take into account the functions of all members of the group participating in the series of controlled sales and final uncontrolled resales, as well as any other relevant factors described in § 1.482–1(d)(3).

(iii) *Appropriate gross profit.* The appropriate gross profit is computed by multiplying the applicable resale price by the gross profit margin (expressed as a percentage of total revenue derived from sales) earned in comparable uncontrolled transactions.

(iv) *Arm's length range.* See § 1.482–1(e)(2) for determination of the arm's length range.

(3) *Comparability and reliability considerations*—(i) *In general.* Whether results derived from applications of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in § 1.482–1(c). The application of these factors under the resale price method is discussed in paragraphs (c)(3) (ii) and (iii) of this section.

(ii) *Comparability*—(A) *Functional comparability.* The degree of comparability between an uncontrolled transaction and a controlled transaction

is determined by applying the comparability provisions of § 1.482–1(d). A reseller's gross profit provides compensation for the performance of resale functions related to the product or products under review, including an operating profit in return for the reseller's investment of capital and the assumption of risks. Therefore, although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on similarity of functions performed, risks borne, and contractual terms, or adjustments to account for the effects of any such differences. If possible, appropriate gross profit margins should be derived from comparable uncontrolled purchases and resales of the reseller involved in the controlled sale, because similar characteristics are more likely to be found among different resales of property made by the same reseller than among sales made by other resellers. In the absence of comparable uncontrolled transactions involving the same reseller, an appropriate gross profit margin may be derived from comparable uncontrolled transactions of other resellers.

(B) *Other comparability factors.* Comparability under this method is less dependent on close physical similarity between the products transferred than under the comparable uncontrolled price method. For example, distributors of a wide variety of consumer durables might perform comparable distribution functions without regard to the specific durable goods distributed. Substantial differences in the products may, however, indicate significant functional differences between the controlled and uncontrolled taxpayers. Thus, it ordinarily would be expected that the controlled and uncontrolled transactions would involve the distribution of products of the same general type (e.g., consumer electronics). Furthermore, significant differences in the value of the distributed goods due, for example, to the value of a trademark, may also affect the reliability of the comparison. Finally, the reliability of profit measures based on gross profit may be adversely affected by factors that have less effect on prices. For example, gross profit may be affected by a variety of other factors, including cost structures (as reflected, for example, in the age of plant and equipment), business experience (such as whether the business is in a start-up phase or is mature), or management efficiency (as indicated, for example, by expanding or contracting sales or executive compensation over time).

is determined by applying the comparability provisions of § 1.482–1(d). A reseller's gross profit provides compensation for the performance of resale functions related to the product or products under review, including an operating profit in return for the reseller's investment of capital and the assumption of risks. Therefore, although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on similarity of functions performed, risks borne, and contractual terms, or adjustments to account for the effects of any such differences. If possible, appropriate gross profit margins should be derived from comparable uncontrolled purchases and resales of the reseller involved in the controlled sale, because similar characteristics are more likely to be found among different resales of property made by the same reseller than among sales made by other resellers. In the absence of comparable uncontrolled transactions involving the same reseller, an appropriate gross profit margin may be derived from comparable uncontrolled transactions of other resellers.

(B) *Other comparability factors.* Comparability under this method is less dependent on close physical similarity between the products transferred than under the comparable uncontrolled price method. For example, distributors of a wide variety of consumer durables might perform comparable distribution functions without regard to the specific durable goods distributed. Substantial differences in the products may, however, indicate significant functional differences between the controlled and uncontrolled taxpayers. Thus, it ordinarily would be expected that the controlled and uncontrolled transactions would involve the distribution of products of the same general type (e.g., consumer electronics). Furthermore, significant differences in the value of the distributed goods due, for example, to the value of a trademark, may also affect the reliability of the comparison. Finally, the reliability of profit measures based on gross profit may be adversely affected by factors that have less effect on prices. For example, gross profit may be affected by a variety of other factors, including cost structures (as reflected, for example, in the age of plant and equipment), business experience (such as whether the business is in a start-up phase or is mature), or management efficiency (as indicated, for example, by expanding or contracting sales or executive compensation over time). Accordingly, if material differences in these factors are identified based on objective evidence, the reliability of the analysis may be affected.

(C) *Adjustments for differences between controlled and uncontrolled transactions.* If there are material differences between the controlled and uncontrolled transactions that would affect the gross profit margin, adjustments should be made to the gross profit margin earned with respect to the uncontrolled transaction according to the comparability provisions of § 1.482–1(d)(2). For this purpose, consideration of operating expenses associated with functions performed and risks assumed may be necessary, because differences in functions performed are often reflected in operating expenses. If there are differences in functions performed, however, the effect on gross profit of such differences is not necessarily equal to the differences in the amount of related operating expenses. Specific examples of the factors that may be particularly relevant to this method include—

(*1*) Inventory levels and turnover rates, and corresponding risks, including any price protection programs offered by the manufacturer;

(*2*) Contractual terms (e.g., scope and terms of warranties provided, sales or purchase volume, credit terms, transport terms);

(*3*) Sales, marketing, advertising programs and services, (including promotional programs, rebates, and co-op advertising);

(*4*) The level of the market (e.g., wholesale, retail, etc.); and

(*5*) Foreign currency risks.

(D) *Sales agent.* If the controlled taxpayer is comparable to a sales agent that does not take title to goods or otherwise assume risks with respect to ownership of such goods, the commission earned by such sales agent, expressed as a percentage of the uncontrolled sales price of the goods involved, may be used as the comparable gross profit margin.

(iii) *Data and assumptions*—(A) *In general.* The reliability of the results derived from the resale price method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply this method. See § 1.482–1(c) (Best method rule).

(B) *Consistency in accounting.* The degree of consistency in accounting practices between the controlled transaction and the uncontrolled comparables that materially affect the gross profit margin affects the reliability of the result. Thus, for example, if differences in inventory and other cost accounting practices would materially affect the gross profit margin, the ability to make reliable adjustments for such differences would affect the reliability of the results. Further, the controlled transaction and the uncontrolled comparable should be consistent in the reporting of items (such as discounts, returns and allowances, rebates, transportation costs, insurance, and packaging) between cost of goods sold and operating expenses.

(*4*) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. A controlled taxpayer sells property to another member of its controlled group that resells the property in uncontrolled sales. There are no changes in the beginning and ending inventory for the year under review. Information regarding an uncontrolled comparable is sufficiently complete to conclude that it is likely that all material differences between the controlled and uncontrolled transactions have been identified and adjusted for. If the applicable resale price of the property involved in the controlled sale is $100 and the appropriate gross profit margin is 20%, then an arm's length result of the controlled sale is a price of $80 ($100 minus (20%×$100)).

Example 2. (i) S, a U.S. corporation, is the exclusive distributor for FP, its foreign parent. There are no changes in the beginning and ending inventory for the year under review. S's total reported cost of goods sold is $800, consisting of $600 for property purchased from FP and $200 of other costs of goods sold incurred to unrelated parties. S's applicable resale price and reported gross profit are as follows:

Applicable resale price	$1000
Cost of goods sold:	
Cost of purchases from FP	600
Costs incurred to unrelated parties	200
Reported gross profit	200

(ii) The district director determines that the appropriate gross profit margin is 25%. Therefore, S's appropriate gross profit is $250 (i.e., 25% of the applicable resale price of $1000). Because S is incurring costs of sales to unrelated parties, an arm's length price for property purchased from FP must be determined under a two-step process. First, the appropriate gross profit ($250) is subtracted from the applicable resale price ($1000). The resulting amount ($750) is then reduced by the costs of sales incurred to unrelated parties ($200). Therefore, an arm's length price for S's cost of sales of FP's product in this case equals $550 (i.e., $750 minus $200).

Example 3. FP, a foreign manufacturer, sells Product to USSub, its U.S. subsidiary, which in turn sells Product to its domestic affiliate Sister. Sister sells Product to unrelated buyers. In this case, the applicable resale price is the price at which Sister sells Product in uncontrolled transactions. The determination of the appropriate gross profit margin for the sale from FP to USSub will

take into account the functions performed by USSub and Sister, as well as other relevant factors described in § 1.482–1(d)(3).

Example 4. (i) USSub, a U.S. corporation, is the exclusive distributor of widgets for its foreign parent. To determine whether the gross profit margin of 25% earned by USSub is an arm's length result, the district director considers applying the resale price method. There are several uncontrolled distributors that perform similar functions under similar circumstances in uncontrolled transactions. However, the uncontrolled distributors treat certain costs such as discounts and insurance as cost of goods sold, while USSub treats such costs as operating expenses. In such cases, accounting reclassifications, pursuant to § 1.482–3(c)(iii)(B), must be made to ensure consistent treatment of such material items. Inability to make such accounting reclassifications will decrease the reliability of the results of the uncontrolled transactions.

Example 5. (i) USP, a U.S. corporation, manufactures Product X, an unbranded widget, and sells it to FSub, its wholly owned foreign subsidiary. FSub acts as a distributor of Product X in country M, and sells it to uncontrolled parties in that country. Uncontrolled distributors A, B, C, D, and E distribute competing products of approximately similar value in country M. All such products are unbranded.

(ii) Relatively complete data is available regarding the functions performed and risks borne by the uncontrolled distributors and the contractual terms under which they operate in the uncontrolled transactions. In addition, data is available to ensure accounting consistency between all of the uncontrolled distributors and FSub. Because the available data is sufficiently complete and accurate to conclude that it is likely that all material differences between the controlled and uncontrolled transactions have been identified, such differences have a definite and reasonably ascertainable effect, and reliable adjustments are made to account for such differences, the results of each of the uncontrolled distributors may be used to establish an arm's length range pursuant to § 1.482–1(e)(2)(iii)(A).

Example 6. The facts are the same as *Example 5*, except that sufficient data is not available to determine whether any of the uncontrolled distributors provide warranties or to determine the payment terms of the contracts. Because differences in these contractual terms could materially affect price or profits, the inability to determine whether these differences exist between the controlled and uncontrolled transactions diminishes the reliability of the results of the uncontrolled comparables. However, the reliability of the results may be enhanced by the application of a statistical method when establishing an arm's length range pursuant to § 1.482–1(e)(2)(iii)(B).

Example 7. The facts are the same as in *Example 5*, except that Product X is branded with a valuable trademark that is owned by P. A, B, and C distribute unbranded competing products, while D and E distribute products branded with other trademarks. D and E do not own any rights in the trademarks under which their products are sold. The value of the products that A, B, and C sold are not similar to the value of the products sold by S. The value of products sold by D and E, however, is similar to that of Product X. Although close product similarity is not as important for a reliable application of the resale price method as for the comparable uncontrolled price method, significant differences in the value of the products involved in the controlled and uncontrolled transactions may affect the reliability of the results. In addition, because in this case it is difficult to determine the effect the trademark will have on price or profits, reliable adjustments for the differences cannot be made. Because D and E have a higher level of comparability than A, B, and C with respect to S, pursuant to § 1.482–1(e)(2)(ii), only D and E may be included in an arm's length range.

(d) *Cost plus method*—(1) *In general.* The cost plus method evaluates whether the amount charged in a controlled transaction is arm's length by reference to the gross profit markup realized in comparable uncontrolled transactions. The cost plus method is ordinarily used in cases involving the manufacture, assembly, or other production of goods that are sold to related parties.

(2) *Determination of arm's length price*—(i) *In general.* The cost plus method measures an arm's length price by adding the appropriate gross profit to the controlled taxpayer's costs of producing the property involved in the controlled transaction.

(ii) *Appropriate gross profit.* The appropriate gross profit is computed by multiplying the controlled taxpayer's cost of producing the transferred property by the gross profit markup, expressed as a percentage of cost, earned in comparable uncontrolled transactions.

(iii) *Arm's length range.* See § 1.482–1(e)(2) for determination of an arm's length range.

(3) *Comparability and reliability considerations*—(i) *In general.* Whether results derived from the application of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in § 1.482–1(c).

(ii) *Comparability*—(A) *Functional comparability.* The degree of comparability between controlled and uncontrolled transactions is determined by applying the comparability provisions of § 1.482–1(d). A producer's gross profit provides compensation for the performance of the production functions related to the product or products under review, including an operating profit for the producer's investment of capital and assumption of risks. Therefore, although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on similarity of functions performed, risks borne, and contractual terms, or adjustments to account for the effects of any such differences. If possible, the appropriate gross profit markup should be derived from comparable uncontrolled transactions of the taxpayer involved in the controlled sale, because similar characteristics are more likely to be found among sales of property by the same producer than among sales by other producers. In the absence of such sales, an appropriate gross profit markup may be derived from comparable uncontrolled sales of other producers whether or not such producers are members of the same controlled group.

(B) *Other comparability factors.* Comparability under this method is less dependent on close physical similarity between the products transferred than under the comparable uncontrolled price method. Substantial differences in the products may, however, indicate significant functional differences between the controlled and uncontrolled taxpayers. Thus, it ordinarily would be expected that the controlled and uncontrolled transactions involve the production of goods within the same product categories. Furthermore, significant differences in the value of the products due, for example, to the value of a trademark, may also affect the reliability of the comparison. Finally, the reliability of profit measures based on gross profit may be adversely affected by factors that have less effect on prices. For example, gross profit may be affected by a variety of other factors, including cost structures (as reflected, for example, in the age of plant and equipment), business experience (such as whether the business is in a start-up phase or is mature), or management efficiency (as indicated, for example, by expanding or contracting sales or executive compensation over time). Accordingly, if material differences in these factors are identified based on objective evidence, the reliability of the analysis may be affected.

(C) *Adjustments for differences between controlled and uncontrolled transactions.* If there are material differences between the controlled and uncontrolled transactions that would affect the gross profit markup, adjustments should be made to the gross profit markup earned in the comparable uncontrolled transaction according to the provisions of § 1.482–1(d)(2). For this purpose, consideration of the operating expenses associated with the functions performed and risks assumed may be necessary, because differences in functions performed are often reflected in operating expenses. If there are differences in functions performed, however, the effect on gross profit of such differences is not necessarily equal to the differences in the amount of related operating expenses. Specific examples of the factors that may be particularly relevant to this method include—

(*1*) The complexity of manufacturing or assembly;

(*2*) Manufacturing, production, and process engineering;

(*3*) Procurement, purchasing, and inventory control activities;

(*4*) Testing functions;

(*5*) Selling, general, and administrative expenses;

(*6*) Foreign currency risks; and

(*7*) Contractual terms (e.g., scope and terms of warranties provided, sales or purchase volume, credit terms, transport terms).

(D) *Purchasing agent.* If a controlled taxpayer is comparable to a purchasing agent that does not take title to property or otherwise assume risks with respect to ownership of such goods, the commission earned by such purchasing agent, expressed as a percentage of the purchase price of the goods, may be used as the appropriate gross profit markup.

(iii) *Data and assumptions*—(A) *In general.* The reliability of the results derived from the cost plus method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply this method. See § 1.482–1(c) (Best method rule).

(B) *Consistency in accounting.* The degree of consistency in accounting practices between the controlled transaction and the uncontrolled comparables that materially affect the gross profit margin affects the reliability of the result. Thus, for example, if differences in inventory and other cost accounting practices would materially affect the gross profit markup, the ability to make reliable adjustments for such differences would affect the reliability of the results. Further, the controlled transaction and the comparable uncontrolled transaction should be consistent in the reporting of costs between cost of goods sold and operating expenses. The term *cost of producing* includes the cost of acquiring property that is held for resale.

(4) *Examples.* The following examples illustrate the principles of this paragraph (d).

Example 1. (i) USP, a domestic manufacturer of computer components, sells

may be necessary, because differences in functions performed are often reflected in operating expenses. If there are differences in functions performed, however, the effect on gross profit of such differences is not necessarily equal to the differences in the amount of related operating expenses. Specific examples of the factors that may be particularly relevant to this method include—

(*1*) The complexity of manufacturing or assembly;

(*2*) Manufacturing, production, and process engineering;

(*3*) Procurement, purchasing, and inventory control activities;

(*4*) Testing functions;

(*5*) Selling, general, and administrative expenses;

(*6*) Foreign currency risks; and

(*7*) Contractual terms (e.g., scope and terms of warranties provided, sales or purchase volume, credit terms, transport terms).

(D) *Purchasing agent.* If a controlled taxpayer is comparable to a purchasing agent that does not take title to property or otherwise assume risks with respect to ownership of such goods, the commission earned by such purchasing agent, expressed as a percentage of the purchase price of the goods, may be used as the appropriate gross profit markup.

(iii) *Data and assumptions*—(A) *In general.* The reliability of the results derived from the cost plus method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply this method. See § 1.482–1(c) (Best method rule).

(B) *Consistency in accounting.* The degree of consistency in accounting practices between the controlled transaction and the uncontrolled comparables that materially affect the gross profit margin affects the reliability of the result. Thus, for example, if differences in inventory and other cost accounting practices would materially affect the gross profit markup, the ability to make reliable adjustments for such differences would affect the reliability of the results. Further, the controlled transaction and the comparable uncontrolled transaction should be consistent in the reporting of costs between cost of goods sold and operating expenses. The term *cost of producing* includes the cost of acquiring property that is held for resale.

(4) *Examples.* The following examples illustrate the principles of this paragraph (d).

Example 1. (i) USP, a domestic manufacturer of computer components, sells its products to FS, its foreign distributor. UT1, UT2, and UT3 are domestic computer component manufacturers that sell to uncontrolled foreign purchasers.

(ii) Relatively complete data is available regarding the functions performed and risks borne by UT1, UT2, and UT3, and the contractual terms in the uncontrolled transactions. In addition, data is available to ensure accounting consistency between all of the uncontrolled manufacturers and USP. Because the available data is sufficiently complete to conclude that it is likely that all material differences between the controlled and uncontrolled transactions have been identified, the effect of the differences are definite and reasonably ascertainable, and reliable adjustments are made to account for the differences, an arm's length range can be established pursuant to § 1.482–1(e)(2)(iii)(A).

Example 2. The facts are the same as in *Example 1*, except that USP accounts for supervisory, general, and administrative costs as operating expenses, which are not allocated to its sales to FS. The gross profit markups of UT1, UT2, and UT3, however, reflect supervisory, general, and administrative expenses because they are accounted for as costs of goods sold. Accordingly, the gross profit markups of UT1, UT2, and UT3 must be adjusted as provided in paragraph (d)(3)(iii)(B) of this section to provide accounting consistency. If data is not sufficient to determine whether such accounting differences exist between the controlled and uncontrolled transactions, the reliability of the results will be decreased.

Example 3. The facts are the same as in *Example 1*, except that under its contract with FS, USP uses materials consigned by FS. UT1, UT2, and UT3, on the other hand, purchase their own materials, and their gross profit markups are determined by including the costs of materials. The fact that USP does not carry an inventory risk by purchasing its own materials while the uncontrolled producers carry inventory is a significant difference that may require an adjustment if the difference has a material effect on the gross profit markups of the uncontrolled producers. Inability to reasonably ascertain the effect of the difference on the gross profit markups will affect the reliability of the results of UT1, UT2, and UT3.

Example 4. (i) FS, a foreign corporation, produces apparel for USP, its U.S. parent corporation. FS purchases its materials from unrelated suppliers and produces the apparel according to designs provided by USP. The district director identifies 10 uncontrolled foreign apparel producers that operate in the same geographic market and are similar in many respect to FS.

(ii) Relatively complete data is available regarding the functions performed and risks borne by the uncontrolled producers. In addition, data is sufficiently detailed to permit adjustments for differences in accounting practices. However, sufficient data is not available to determine whether it is likely that all material differences in contractual terms have been identified. For example, it is not possible to determine which parties in the uncontrolled transactions bear currency risks. Because differences in these contractual terms could materially affect price or profits, the inability to determine whether differences exist between the controlled and uncontrolled transactions will diminish the reliability of these results. Therefore, the reliability of the results of the uncontrolled transactions must be enhanced by the application of a statistical method in establishing an arm's length range pursuant to § 1.482–1(e)(2)(iii)(B).

(e) *Unspecified methods*—(1) *In general.* Methods not specified in paragraphs (a)(1), (2), (3), (4), and (5) of this section may be used to evaluate whether the amount charged in a controlled transaction is arm's length. Any method used under this paragraph (e) must be applied in accordance with the provisions of § 1.482–1. Consistent with the specified methods, an unspecified method should take into account the general principle that uncontrolled taxpayers evaluate the terms of a transaction by considering the realistic alternatives to that transaction, and only enter into a particular transaction if none of the alternatives is preferable to it. For example, the comparable uncontrolled price method compares a controlled transaction to similar uncontrolled transactions to provide a direct estimate of the price to which the parties would have agreed had they resorted directly to a market alternative to the controlled transaction. Therefore, in establishing whether a controlled transaction achieved an arm's length result, an unspecified method should provide information on the prices or profits that the controlled taxpayer could have realized by choosing a realistic alternative to the controlled transaction. As with any method, an unspecified method will not be applied unless it provides the most reliable measure of an arm's length result under the principles of the best method rule. See § 1.482–1(c). Therefore, in accordance with § 1.482–1(d) (Comparability), to the extent that a method relies on internal data rather than uncontrolled comparables, its reliability will be reduced. Similarly, the reliability of a method will be affected by the reliability of the data and assumptions used to apply the method, including any projections used.

(2) *Example.* The following example illustrates an application of the principle of this paragraph (e).

Example. Amcan, a U.S. company, produces unique vessels for storing and transporting toxic waste, toxicans, at its U.S. production facility. Amcan agrees by contract to supply its Canadian subsidiary, Cancan, with 4000 toxicans per year to serve the Canadian market for toxicans. Prior to entering into the contract with Cancan, Amcan had received a bona fide offer from an independent Canadian waste disposal

company, Cando, to serve as the Canadian distributor for toxicans and to purchase a similar number of toxicans at a price of $5,000 each. If the circumstances and terms of the Cancan supply contract are sufficiently similar to those of the Cando offer, or sufficiently reliable adjustments can be made for differences between them, then the Cando offer price of $5,000 may provide reliable information indicating that an arm's length consideration under the Cancan contract will not be less than $5,000 per toxican.

(f) *Coordination with intangible property rules.* The value of an item of tangible property may be affected by the value of intangible property, such as a trademark affixed to the tangible property (embedded intangible). Ordinarily, the transfer of tangible property with an embedded intangible will not be considered a transfer of such intangible if the controlled purchaser does not acquire any rights to exploit the intangible property other than rights relating to the resale of the tangible property under normal commercial practices. Pursuant to § 1.482–1(d)(3)(v), however, the embedded intangible must be accounted for in evaluating the comparability of the controlled transaction and uncontrolled comparables. For example, because product comparability has the greatest effect on an application of the comparable uncontrolled price method, trademarked tangible property may be insufficiently comparable to unbranded tangible property to permit a reliable application of the comparable uncontrolled price method. The effect of embedded intangibles on comparability will be determined under the principles of § 1.482–4. If the transfer of tangible property conveys to the recipient a right to exploit an embedded intangible (other than in connection with the resale of that item of tangible property), it may be necessary to determine the arm's length consideration for such intangible separately from the tangible property, applying methods appropriate to determining the arm's length result for a transfer of intangible property under § 1.482–4. For example, if the transfer of a machine conveys the right to exploit a manufacturing process incorporated in the machine, then the arm's length consideration for the transfer of that right must be determined separately under § 1.482–4.

§ 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.

(a) *In general.* The arm's length amount charged in a controlled transfer of intangible property must be determined under one of the four methods listed in this paragraph (a). Each of the methods must be applied in accordance with all of the provisions of § 1.482–1, including the best method rule of § 1.482–1(c), the comparability analysis of § 1.482–1(d), and the arm's length range of § 1.482–1(e). The arm's length consideration for the transfer of an intangible determined under this section must be commensurate with the income attributable to the intangible. See § 1.482–4(f)(2) (Periodic adjustments). The available methods are—

(1) The comparable uncontrolled transaction method, described in paragraph (c) of this section;

(2) The comparable profits method, described in § 1.482–5;

(3) The profit split method, described in § 1.482–6; and

(4) Unspecified methods described in paragraph (d) of this section.

(b) *Definition of intangible.* For purposes of section 482, an intangible is an asset that comprises any of the following items and has substantial value independent of the services of any individual—

(1) Patents, inventions, formulae, processes, designs, patterns, or know-how;

(2) Copyrights and literary, musical, or artistic compositions;

(3) Trademarks, trade names, or brand names;

(4) Franchises, licenses, or contracts;

(5) Methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data; and

(6) Other similar items. For purposes of section 482, an item is considered similar to those listed in paragraph (b)(1) through (5) of this section if it derives its value not from its physical attributes but from its intellectual content or other intangible properties.

(c) *Comparable uncontrolled transaction method*—(1) *In general.* The comparable uncontrolled transaction method evaluates whether the amount charged for a controlled transfer of intangible property was arm's length by reference to the amount charged in a comparable uncontrolled transaction. The amount determined under this method may be adjusted as required by paragraph (f)(2) of this section (Periodic adjustments).

(2) *Comparability and reliability considerations*—(i) *In general.* Whether results derived from applications of this method are the most reliable measure of an arm's length result is determined using the factors described under the best method rule in § 1.482–1(c). The application of these factors under the comparable uncontrolled transaction method is discussed in paragraphs (c)(2)(ii), (iii), and (iv) of this section.

(ii) *Reliability.* If an uncontrolled transaction involves the transfer of the same intangible under the same, or substantially the same, circumstances as the controlled transaction, the results derived from applying the comparable uncontrolled transaction method will generally be the most direct and reliable measure of the arm's length result for the controlled transfer of an intangible. Circumstances between the controlled and uncontrolled transactions will be considered substantially the same if there are at most only minor differences that have a definite and reasonably ascertainable effect on the amount charged and for which appropriate adjustments are made. If such uncontrolled transactions cannot be identified, uncontrolled transactions that involve the transfer of comparable intangibles under comparable circumstances may be used to apply this method, but the reliability of the analysis will be reduced.

(iii) *Comparability*—(A) *In general.* The degree of comparability between controlled and uncontrolled transactions is determined by applying the comparability provisions of § 1.482–1(d). Although all of the factors described in § 1.482–1(d)(3) must be considered, specific factors may be particularly relevant to this method. In particular, the application of this method requires that the controlled and uncontrolled transactions involve either the same intangible property or comparable intangible property, as defined in paragraph (c)(2)(iii)(B)(*1*) of this section. In addition, because differences in contractual terms, or the economic conditions in which transactions take place, could materially affect the amount charged, comparability under this method also depends on similarity with respect to these factors, or adjustments to account for material differences in such circumstances.

(B) *Factors to be considered in determining comparability*—(*1*) *Comparable intangible property.* In order for the intangible property involved in an uncontrolled transaction to be considered comparable to the intangible property involved in the controlled transaction, both intangibles must—

(*i*) Be used in connection with similar products or processes within the same general industry or market; and

(*ii*) Have similar profit potential. The profit potential of an intangible is most reliably measured by directly calculating the net present value of the benefits to be realized (based on prospective profits to be realized or costs to be saved) through the use or

subsequent transfer of the intangible, considering the capital investment and start-up expenses required, the risks to be assumed, and other relevant considerations. The need to reliably measure profit potential increases in relation to both the total amount of potential profits and the potential rate of return on investment necessary to exploit the intangible. If the information necessary to directly calculate net present value of the benefits to be realized is unavailable, and the need to reliably measure profit potential is reduced because the potential profits are relatively small in terms of total amount and rate of return, comparison of profit potential may be based upon the factors referred to in paragraph (c)(2)(iii)(B)(*2*) of this section. See *Example 3* of § 1.482–4(c)(4). Finally, the reliability of a measure of profit potential is affected by the extent to which the profit attributable to the intangible can be isolated from the profit attributable to other factors, such as functions performed and other resources employed.

(*2*) *Comparable circumstances.* In evaluating the comparability of the circumstances of the controlled and uncontrolled transactions, although all of the factors described in § 1.482–1(d)(3) must be considered, specific factors that may be particularly relevant to this method include the following—

(*i*) The terms of the transfer, including the exploitation rights granted in the intangible, the exclusive or nonexclusive character of any rights granted, any restrictions on use, or any limitations on the geographic area in which the rights may be exploited;

(*ii*) The stage of development of the intangible (including, where appropriate, necessary governmental approvals, authorizations, or licenses) in the market in which the intangible is to be used;

(*iii*) Rights to receive updates, revisions, or modifications of the intangible;

(*iv*) The uniqueness of the property and the period for which it remains unique, including the degree and duration of protection afforded to the property under the laws of the relevant countries;

(*v*) The duration of the license, contract, or other agreement, and any termination or renegotiation rights;

(*vi*) Any economic and product liability risks to be assumed by the transferee;

(*vii*) The existence and extent of any collateral transactions or ongoing business relationships between the transferee and transferor; and

subsequent transfer of the intangible, considering the capital investment and start-up expenses required, the risks to be assumed, and other relevant considerations. The need to reliably measure profit potential increases in relation to both the total amount of potential profits and the potential rate of return on investment necessary to exploit the intangible. If the information necessary to directly calculate net present value of the benefits to be realized is unavailable, and the need to reliably measure profit potential is reduced because the potential profits are relatively small in terms of total amount and rate of return, comparison of profit potential may be based upon the factors referred to in paragraph (c)(2)(iii)(B)(*2*) of this section. See *Example 3* of § 1.482–4(c)(4). Finally, the reliability of a measure of profit potential is affected by the extent to which the profit attributable to the intangible can be isolated from the profit attributable to other factors, such as functions performed and other resources employed.

(2) *Comparable circumstances.* In evaluating the comparability of the circumstances of the controlled and uncontrolled transactions, although all of the factors described in § 1.482–1(d)(3) must be considered, specific factors that may be particularly relevant to this method include the following—

(*i*) The terms of the transfer, including the exploitation rights granted in the intangible, the exclusive or nonexclusive character of any rights granted, any restrictions on use, or any limitations on the geographic area in which the rights may be exploited;

(*ii*) The stage of development of the intangible (including, where appropriate, necessary governmental approvals, authorizations, or licenses) in the market in which the intangible is to be used;

(*iii*) Rights to receive updates, revisions, or modifications of the intangible;

(*iv*) The uniqueness of the property and the period for which it remains unique, including the degree and duration of protection afforded to the property under the laws of the relevant countries;

(*v*) The duration of the license, contract, or other agreement, and any termination or renegotiation rights;

(*vi*) Any economic and product liability risks to be assumed by the transferee;

(*vii*) The existence and extent of any collateral transactions or ongoing business relationships between the transferee and transferor; and

(*viii*) The functions to be performed by the transferor and transferee, including any ancillary or subsidiary services.

(*iv*) *Data and assumptions.* The reliability of the results derived from the comparable uncontrolled transaction method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply this method. See § 1.482–1(c) (Best method rule).

(3) *Arm's length range.* See § 1.482–1(e)(2) for the determination of an arm's length range.

(4) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. (i) USpharm, a U.S. pharmaceutical company, develops a new drug Z that is a safe and effective treatment for the disease zeezee. USpharm has obtained patents covering drug Z in the United States and in various foreign countries. USpharm has also obtained the regulatory authorizations necessary to market drug Z in the United States and in foreign countries.

(ii) USpharm licenses its subsidiary in country X, Xpharm, to produce and sell drug Z in country X. At the same time, it licenses an unrelated company, Ydrug, to produce and sell drug Z in country Y, a neighboring country. Prior to licensing the drug, USpharm had obtained patent protection and regulatory approvals in both countries and both countries provide similar protection for intellectual property rights. Country X and country Y are similar countries in terms of population, per capita income and the incidence of disease zeezee. Consequently, drug Z is expected to sell in similar quantities and at similar prices in both countries. In addition, costs of producing and marketing drug Z in each country are expected to be approximately the same.

(iii) USpharm and Xpharm establish terms for the license of drug Z that are identical in every material respect, including royalty rate, to the terms established between USpharm and Ydrug. In this case the district director determines that the royalty rate established in the Ydrug license agreement is a reliable measure of the arm's length royalty rate for the Xpharm license agreement.

Example 2. The facts are the same as in *Example 1*, except that the incidence of the disease zeezee in Country Y is much higher than in Country X. In this case, the profit potential from exploitation of the right to make and sell drug Z is likely to be much higher in country Y than it is in Country X. Consequently, the Ydrug license agreement is unlikely to provide a reliable measure of the arm's length royalty rate for the Xpharm license.

Example 3 (i) FP, is a foreign company that designs, manufactures and sells industrial equipment. FP has developed proprietary components that are incorporated in its products. These components are important in the operation of FP's equipment and some of them have distinctive features, but other companies produce similar components and none of these components by itself accounts for a substantial part of the value of FP's products.

(ii) FP licenses its U.S. subsidiary, USSub, exclusive North American rights to use the patented technology for producing component X, a heat exchanger used for cooling operating mechanisms in industrial equipment. Component X incorporates proven technology that makes it somewhat more efficient than the heat exchangers commonly used in industrial equipment. FP also agrees to provide technical support to help adapt component X to USSub's products and to assist with initial production. Under the terms of the license agreement USSub pays FP a royalty equal to 3 percent of sales of USSub equipment incorporating component X.

(iii) FP does not license unrelated parties to use component X, but many similar components are transferred between uncontrolled taxpayers. Consequently, the district director decides to apply the comparable uncontrolled transaction method to evaluate whether the 3 percent royalty for component X is an arm's length royalty.

(iv) The district director uses a database of company documents filed with the Securities and Exchange Commission (SEC) to identify potentially comparable license agreements between uncontrolled taxpayers that are on file with the SEC. The district director identifies 40 license agreements that were entered into in the same year as the controlled transfer or in the prior or following year, and that relate to transfers of technology associated with industrial equipment that has similar applications to USSub's products. Further review of these uncontrolled agreements indicates that 25 of them involved components that have a similar level of technical sophistication as component X and could be expected to play a similar role in contributing to the total value of the final product.

(v) The district director makes a detailed review of the terms of each of the 25 uncontrolled agreements and finds that 15 of them are similar to the controlled agreement in that they all involve—

(A) The transfer of exclusive rights for the North American market;

(B) Products for which the market could be expected to be of a similar size to the market for the products into which USSub incorporates component X;

(C) The transfer of patented technology;

(D) Continuing technical support;

(E) Access to technical improvements;

(F) Technology of a similar age; and

(G) A similar duration of the agreement.

(vi) Based on these factors and the fact that none of the components to which these license agreements relate accounts for a substantial part of the value of the final products, the district director concludes that these fifteen intangibles have similar profit potential to the component X technology.

(vii) The 15 uncontrolled comparables produce the following royalty rates:

License	Royalty rate (percent)
1	1.0

License	Royalty rate (percent)
2	1.0
3	1.25
4	1.25
5	1.5
6	1.5
7	1.75
8	2.0
9	2.0
10	2.0
11	2.25
12	2.5
13	2.5
14	2.75
15	3.0

(viii) Although the uncontrolled comparables are clearly similar to the controlled transaction, it is likely that unidentified material differences exist between the uncontrolled comparables and the controlled transaction. Therefore, an appropriate statistical technique must be used to establish the arm's length range. In this case the district director uses the interquartile range to determine the arm's length range. Therefore, the arm's length range covers royalty rates from 1.25 to 2.5 percent, and an adjustment is warranted to the 3 percent royalty charged in the controlled transfer. The district director determines that the appropriate adjustment corresponds to a reduction in the royalty rate to 2.0 percent, which is the median of the uncontrolled comparables.

Example 4. (i) USdrug, a U.S. pharmaceutical company, has developed a new drug, Nosplit, that is useful in treating migraine headaches and produces no significant side effects. Nosplit replaces another drug, Lessplit, that USdrug had previously produced and marketed as a treatment for migraine headaches. A number of other drugs for treating migraine headaches are already on the market, but Nosplit can be expected rapidly to dominate the worldwide market for such treatments and to command a premium price since all other treatments produce side effects. Thus, USdrug projects that extraordinary profits will be derived from Nosplit in the U.S. market and other markets.

(ii) USdrug licenses its newly established European subsidiary, Eurodrug, the rights to produce and market Nosplit in the European market. In setting the royalty rate for this license, USdrug considers the royalty that it established previously when it licensed the right to produce and market Lessplit in the European market to an unrelated European pharmaceutical company. In many respects the two license agreements are closely comparable. The drugs were licensed at the same stage in their development and the agreements conveyed identical rights to the licensees. Moreover, there appear to have been no significant changes in the European market for migraine headache treatments since Lessplit was licensed. However, at the time that Lessplit was licensed there were several other similar drugs already on the market to which Lessplit was not in all cases superior. Consequently, the projected and actual Lessplit profits were substantially less than the projected Nosplit profits. Thus, USdrug concludes that the profit potential of Lessplit is not similar to the profit potential of Nosplit, and the Lessplit license agreement consequently is not a comparable uncontrolled transaction for purposes of this paragraph (c) in spite of the other indicia of comparability between the two intangibles.

(d) *Unspecified methods*—(1) *In general.* Methods not specified in paragraphs (a)(1), (2), and (3) of this section may be used to evaluate whether the amount charged in a controlled transaction is arm's length. Any method used under this paragraph (d) must be applied in accordance with the provisions of § 1.482–1. Consistent with the specified methods, an unspecified method should take into account the general principle that uncontrolled taxpayers evaluate the terms of a transaction by considering the realistic alternatives to that transaction, and only enter into a particular transaction if none of the alternatives is preferable to it. For example, the comparable uncontrolled transaction method compares a controlled transaction to similar uncontrolled transactions to provide a direct estimate of the price the parties would have agreed to had they resorted directly to a market alternative to the controlled transaction. Therefore, in establishing whether a controlled transaction achieved an arm's length result, an unspecified method should provide information on the prices or profits that the controlled taxpayer could have realized by choosing a realistic alternative to the controlled transaction. As with any method, an unspecified method will not be applied unless it provides the most reliable measure of an arm's length result under the principles of the best method rule. See § 1.482–1(c). Therefore, in accordance with § 1.482–1(d) (Comparability), to the extent that a method relies on internal data rather than uncontrolled comparables, its reliability will be reduced. Similarly, the reliability of a method will be affected by the reliability of the data and assumptions used to apply the method, including any projections used.

(2) *Example.* The following example illustrates an application of the principle of this paragraph (d).

Example. (i) USbond is a U.S. company that licenses to its foreign subsidiary, Eurobond, a proprietary process that permits the manufacture of Longbond, a long-lasting industrial adhesive, at a substantially lower cost than otherwise would be possible. Using the proprietary process, Eurobond manufactures Longbond and sells it to related and unrelated parties for the market price of $550 per ton. Under the terms of the license agreement, Eurobond pays USbond a royalty of $100 per ton of Longbond sold. USbond also manufactures and markets Longbond in the United States.

(ii) In evaluating whether the consideration paid for the transfer of the proprietary process to Eurobond was arm's length, the district director may consider, subject to the best method rule of § 1.482–1(c), USbond's alternative of producing and selling Longbond itself. Reasonably reliable estimates indicate that if USbond directly supplied Longbond to the European market, a selling price of $300 per ton would cover its costs and provide a reasonable profit for its functions, risks and investment of capital associated with the production of Longbond for the European market. Given that the market price of Longbond was $550 per ton, by licensing the proprietary process to Eurobond, USbond forgoes $250 per ton of profit over the profit that would be necessary to compensate it for the functions, risks and investment involved in supplying Longbond to the European market itself. Based on these facts, the district director concludes that a royalty of $100 for the proprietary process is not arm's length.

(e) *Coordination with tangible property rules.* See § 1.482–3(f) for the provisions regarding the coordination between the tangible property and intangible property rules.

(f) *Special rules for transfers of intangible property*—(1) *Form of consideration.* If a transferee of an intangible pays nominal or no consideration and the transferor has retained a substantial interest in the property, the arm's length consideration shall be in the form of a royalty, unless a different form is demonstrably more appropriate.

(2) *Periodic adjustments*—(i) General rule. If an intangible is transferred under an arrangement that covers more than one year, the consideration charged in each taxable year may be adjusted to ensure that it is commensurate with the income attributable to the intangible. Adjustments made pursuant to this paragraph (f)(2) shall be consistent with the arm's length standard and the provisions of § 1.482–1. In determining whether to make such adjustments in the taxable year under examination, the district director may consider all relevant facts and circumstances throughout the period the intangible is used. The determination in an earlier year that the amount charged for an intangible was an arm's length amount will not preclude the district director in a subsequent taxable year from making an adjustment to the amount charged for the intangible in the subsequent year. A periodic adjustment under the commensurate with income requirement of section 482 may be made in a subsequent taxable year without regard to whether the taxable year of the original transfer remains open for

statute of limitation purposes. For exceptions to this rule see paragraph (f)(2)(ii) of this section.

(ii) *Exceptions*—(A) *Transactions involving the same intangible.* If the same intangible was transferred to an uncontrolled taxpayer under substantially the same circumstances as those of the controlled transaction; this transaction serves as the basis for the application of the comparable uncontrolled transaction method in the first taxable year in which substantial periodic consideration was required to be paid; and the amount paid in that year was an arm's length amount, then no allocation in a subsequent year will be made under paragraph (f)(2)(i) of this paragraph for a controlled transfer of intangible property.

(B) *Transactions involving comparable intangible.* If the arm's length result is derived from the application of the comparable uncontrolled transaction method based on the transfer of a comparable intangible under comparable circumstances to those of the controlled transaction, no allocation will be made under paragraph (f)(2)(i) of this section if each of the following facts is established—

(*1*) The controlled taxpayers entered into a written agreement (controlled agreement) that provided for an amount of consideration with respect to each taxable year subject to such agreement, such consideration was an arm's length amount for the first taxable year in which substantial periodic consideration was required to be paid under the agreement, and such agreement remained in effect for the taxable year under review;

(*2*) There is a written agreement setting forth the terms of the comparable uncontrolled transaction relied upon to establish the arm's length consideration (uncontrolled agreement), which contains no provisions that would permit any change to the amount of consideration, a renegotiation, or a termination of the agreement, in circumstances comparable to those of the controlled transaction in the taxable year under review (or that contains provisions permitting only specified, non-contingent, periodic changes to the amount of consideration);

(*3*) The controlled agreement is substantially similar to the uncontrolled agreement, with respect to the time period for which it is effective and the provisions described in paragraph (f)(2)(ii)(B)(*2*) of this section;

(*4*) The controlled agreement limits use of the intangible to a specified field or purpose in a manner that is

statute of limitation purposes. For exceptions to this rule see paragraph (f)(2)(ii) of this section.

(ii) *Exceptions*—(A) *Transactions involving the same intangible.* If the same intangible was transferred to an uncontrolled taxpayer under substantially the same circumstances as those of the controlled transaction; this transaction serves as the basis for the application of the comparable uncontrolled transaction method in the first taxable year in which substantial periodic consideration was required to be paid; and the amount paid in that year was an arm's length amount, then no allocation in a subsequent year will be made under paragraph (f)(2)(i) of this paragraph for a controlled transfer of intangible property.

(B) *Transactions involving comparable intangible.* If the arm's length result is derived from the application of the comparable uncontrolled transaction method based on the transfer of a comparable intangible under comparable circumstances to those of the controlled transaction, no allocation will be made under paragraph (f)(2)(i) of this section if each of the following facts is established—

(*1*) The controlled taxpayers entered into a written agreement (controlled agreement) that provided for an amount of consideration with respect to each taxable year subject to such agreement, such consideration was an arm's length amount for the first taxable year in which substantial periodic consideration was required to be paid under the agreement, and such agreement remained in effect for the taxable year under review;

(*2*) There is a written agreement setting forth the terms of the comparable uncontrolled transaction relied upon to establish the arm's length consideration (uncontrolled agreement), which contains no provisions that would permit any change to the amount of consideration, a renegotiation, or a termination of the agreement, in circumstances comparable to those of the controlled transaction in the taxable year under review (or that contains provisions permitting only specified, non-contingent, periodic changes to the amount of consideration);

(*3*) The controlled agreement is substantially similar to the uncontrolled agreement, with respect to the time period for which it is effective and the provisions described in paragraph (f)(2)(ii)(B)(*2*) of this section;

(*4*) The controlled agreement limits use of the intangible to a specified field or purpose in a manner that is consistent with industry practice and any such limitation in the uncontrolled agreement;

(*5*) There were no substantial changes in the functions performed by the controlled transferee after the controlled agreement was executed, except changes required by events that were not foreseeable; and

(*6*) The aggregate profits actually earned or the aggregate cost savings actually realized by the controlled taxpayer from the exploitation of the intangible in the year under examination, and all past years, are not less than 80% nor more than 120% of the prospective profits or cost savings that were foreseeable when the comparability of the uncontrolled agreement was established under paragraph (c)(2) of this section.

(C) *Methods other than comparable uncontrolled transaction.* If the arm's length amount was determined under any method other than the comparable uncontrolled transaction method, no allocation will be made under paragraph (f)(2)(i) of this section if each of the following facts is established—

(*1*) The controlled taxpayers entered into a written agreement (controlled agreement) that provided for an amount of consideration with respect to each taxable year subject to such agreement, and such agreement remained in effect for the taxable year under review;

(*2*) The consideration called for in the controlled agreement was an arm's length amount for the first taxable year in which substantial periodic consideration was required to be paid, and relevant supporting documentation was prepared contemporaneously with the execution of the controlled agreement;

(*3*) There have been no substantial changes in the functions performed by the transferee since the controlled agreement was executed, except changes required by events that were not foreseeable; and

(*4*) The total profits actually earned or the total cost savings realized by the controlled transferee from the exploitation of the intangible in the year under examination, and all past years, are not less than 80% nor more than 120% of the prospective profits or cost savings that were foreseeable when the controlled agreement was entered into.

(D) *Extraordinary events.* No allocation will be made under paragraph (f)(2)(i) of this section if the following requirements are met—

(*1*) Due to extraordinary events that were beyond the control of the controlled taxpayers and that could not reasonably have been anticipated at the time the controlled agreement was entered into, the aggregate actual profits or aggregate cost savings realized by the taxpayer are less than 80% or more than 120% of the prospective profits or cost savings; and

(*2*) All of the requirements of paragraph (f)(2)(ii) (B) or (C) of this section are otherwise satisfied.

(E) *Five-year period.* If the requirements of § 1.482–4 (f)(2)(ii)(B) or (f)(2)(ii)(C) are met for each year of the five-year period beginning with the first year in which substantial periodic consideration was required to be paid, then no periodic adjustment will be made under paragraph (f)(2)(i) of this section in any subsequent year.

(iii) *Examples.* The following examples illustrate this paragraph (f)(2).

Example 1. (i) USdrug, a U.S. pharmaceutical company, has developed a new drug, Nosplit, that is useful in treating migraine headaches and produces no significant side effects. A number of other drugs for treating migraine headaches are already on the market, but Nosplit can be expected rapidly to dominate the worldwide market for such treatments and to command a premium price since all other treatments produce side effects. Thus, USdrug projects that extraordinary profits will be derived from Nosplit in the U.S. and European markets.

(ii) USdrug licenses its newly established European subsidiary, Eurodrug, the rights to produce and market Nosplit for the European market for 5 years. In setting the royalty rate for this license, USdrug makes projections of the annual sales revenue and the annual profits to be derived from the exploitation of Nosplit by Eurodrug. Based on the projections, a royalty rate of 3.9% is established for the term of the license

(iii) In Year 1, USdrug evaluates the royalty rate it received from Eurodrug. Given the high profit potential of Nosplit, USdrug is unable to locate any uncontrolled transactions dealing with licenses of comparable intangible property. USdrug therefore determines that the comparable uncontrolled transaction method will not provide a reliable measure of an arm's length royalty. However, applying the comparable profits method to Eurodrug, USdrug determines that a royalty rate of 3.9% will result in Eurodrug earning an arm's length return for its manufacturing and marketing functions.

(iv) In Year 5, the U.S. income tax return for USdrug is examined, and the district director must determine whether the royalty rate between USdrug and Eurodrug is commensurate with the income attributable to Nosplit. In making this determination, the district director considers whether any of the exceptions in § 1.482–4(f)(2)(ii) are applicable. In particular, the district director compares the profit projections attributable to Nosplit made by USdrug against the actual profits realized by Eurodrug. The projected and actual profits are as follows:

	Profit projections	Actual profits
Year 1	200	250
Year 2	250	300
Year 3	500	600
Year 4	350	200
Year 5	100	100
Total ...	1400	1450

(v) The total profits earned through Year 5 were not less than 80% nor more than 120% of the profits that were projected when the license was entered into. If the district director determines that the other requirements of § 1.482–4(f)(2)(ii)(C) were met, no adjustment will be made to the royalty rate between USdrug and Eurodrug for the license of Nosplit.

Example 2. (i) The facts are the same as in *Example 1*, except that Eurodrug's actual profits earned were much higher than the projected profits, as follows:

	Profit projections	Actual profits
Year 1	200	250
Year 2	250	500
Year 3	500	600
Year 4	350	700
Year 5	100	600
Total ...	1400	2650

(ii) In examining USdrug's tax return for Year 5, the district director considers the actual profits realized by Eurodrug in Year 5, and all past years. Accordingly, although Years 1 through 4 may be closed under the statute of limitations, for purposes of determining whether an adjustment should be made with respect to the royalty rate in Year 5 with respect to Nosplit, the district director aggregates the actual profits from those years with the profits of Year 5. However, the district director will make an adjustment, if any, only with respect to Year 5.

Example 3. (i) FP, a foreign corporation, licenses to USS, its U.S. subsidiary, a new air-filtering process that permits manufacturing plants to meet new environmental standards. The license runs for a 10-year period, and the profit derived from the new process is projected to be $15 million per year, for an aggregate profit of $150 million.

(ii) The royalty rate for the license is based on a comparable uncontrolled transaction involving a comparable intangible under comparable circumstances. The requirements of paragraphs (f)(2)(ii)(B)(*1*) through (*5*) of this section have been met. Specifically, FP and USS have entered into a written agreement that provides for a royalty in each year of the license, the royalty rate is considered arm's length for the first taxable year in which a substantial royalty was required to be paid, the license limited the use of the process to a specified field, consistent with industry practice, and there are no substantial changes in the functions performed by USS after the license was entered into.

(iii) In examining Year 4 of the license, the district director determines that the aggregate actual profits earned by USS through Year 4 are $30 million, less than 80% of the projected profits of $60 million. However, USS establishes to the satisfaction of the district director that the aggregate actual profits from the process are less than 80% of the projected profits in Year 3 because an earthquake severely damaged USS's manufacturing plant. Because the difference between the projected profits and actual profits was due to an extraordinary event that was beyond the control of USS, and could not reasonably have been anticipated at the time the license was entered into, the requirement under § 1.482–4(f)(2)(ii)(D) has been met, and no adjustment under this section is made.

(3) *Ownership of intangible property*—(i) *In general.* If the owner of the rights to exploit an intangible transfers such rights to a controlled taxpayer, the owner must receive an amount of consideration with respect to such transfer that is determined in accordance with the provisions of this section. If another controlled taxpayer provides assistance to the owner in connection with the development or enhancement of an intangible, such person may be entitled to receive consideration with respect to such assistance. See § 1.482–4(f)(3)(iii) (Allocations with respect to assistance provided to the owner). Because the right to exploit an intangible can be subdivided in various ways, a single intangible may have multiple owners for purposes of this paragraph (3)(i). Thus, for example, the owner of a trademark may license to another person the exclusive right to use that trademark in a specified geographic area for a specified period of time (while otherwise retaining the right to use the intangible). In such a case, both the licensee and the licensor will be considered owners for purposes of this paragraph (f)(3)(i), with respect to their respective exploitation rights.

(ii) *Identification of owner*—(A) *Legally protected intangible property.* The legal owner of a right to exploit an intangible ordinarily will be considered the owner for purposes of this section. Legal ownership may be acquired by operation of law or by contract under which the legal owner transfers all or part of its rights to another. Further, the district director may impute an agreement to convey legal ownership if the conduct of the controlled taxpayers indicates the existence in substance of such an agreement. See § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms).

(B) *Intangible property that is not legally protected.* In the case of intangible property that is not legally protected, the developer of the intangible will be considered the owner. Except as provided in § 1.482–7T, if two or more controlled taxpayers jointly develop an intangible, for purposes of section 482, only one of the controlled taxpayers will be regarded as the developer and owner of the intangible, and the other participating members will be regarded as assisters. Ordinarily, the developer is the controlled taxpayer that bore the largest portion of the direct and indirect costs of developing the intangible, including the provision, without adequate compensation, of property or services likely to contribute substantially to developing the intangible. A controlled taxpayer will be presumed not to have borne the costs of development if, pursuant to an agreement entered into before the success of the project is known, another person is obligated to reimburse the controlled taxpayer for its costs. If it cannot be determined which controlled taxpayer bore the largest portion of the costs of development, all other facts and circumstances will be taken into consideration, including the location of the development activities, the capability of each controlled taxpayer to carry on the project independently, the extent to which each controlled taxpayer controls the project, and the conduct of the controlled taxpayers.

(iii) *Allocations with respect to assistance provided to the owner.* Allocations may be made to reflect an arm's length consideration for assistance provided to the owner of an intangible in connection with the development or enhancement of the intangible. Such assistance may include loans, services, or the use of tangible or intangible property. Assistance does not, however, include expenditures of a routine nature that an unrelated party dealing at arm's length would be expected to incur under circumstances similar to those of the controlled taxpayer. The amount of any allocation required with respect to that assistance must be determined in accordance with the applicable rules under section 482.

(iv) *Examples.* The principles of this paragraph are illustrated by the following examples.

Example 1. A, a member of a controlled group, allows B, another member of the controlled group and the owner of an intangible, to use tangible property, such as laboratory equipment, in connection with the development of the intangible. Any allocations with respect to the owner's use of the property will be determined under § 1.482–2(c).

Example 2. FP, a foreign producer of cheese, markets the cheese in countries other than the United States under the tradename Fromage Frere. FP owns all the worldwide rights to this name. The name is widely known and is valuable outside the United States but is not known within the United States. In 1995, FP decides to enter the United States market and incorporates U.S. subsidiary, USSub, to be its U.S. distributor and to supervise the advertising and other marketing efforts that will be required to develop the name Fromage Frere in the United States. USSub incurs expenses that are not reimbursed by FP for developing the U.S. market for Fromage Frere. These expenses are comparable to the levels of expense incurred by independent distributors in the U.S. cheese industry when introducing a product in the U.S. market under a brand name owned by a foreign manufacturer. Since USSub would have been expected to incur these expenses if it were unrelated to FP, no allocation to USSub is made with respect to the market development activities performed by USSub.

Example 3. The facts are the same as in *Example 2*, except that the expenses incurred by USSub are significantly larger than the expenses incurred by independent distributors under similar circumstances. FP does not reimburse USSub for its expenses. The district director concludes based on this evidence that an unrelated party dealing at arm's length under similar circumstances would not have engaged in the same level of activity relating to the development of FP's marketing intangibles. The expenditures in excess of the level incurred by the independent distributors therefore are considered to be a service provided to FP that adds to the value of FP's trademark for Fromage Frere. Accordingly, the district director makes an allocation under section 482 for the fair market value of the services that USSub is considered to have performed for FP.

Example 4. The facts are the same as in *Example 3*, except that FP and USSub conclude a long term agreement under which USSub receives the exclusive right to distribute cheese in the United States under FP's trademark. USSub purchases cheese from FP at an arm's length price. Since USSub is the owner of the trademark under paragraph (f)(3)(ii)(A) of this section, and its conduct is consistent with that status, its activities related to the development of the trademark are not considered to be a service performed for the benefit of FP, and no allocation is made with respect to such activities.

(4) *Consideration not artificially limited.* The arm's length consideration for the controlled transfer of an intangible is not limited by the consideration paid in any uncontrolled transactions that do not meet the requirements of the comparable uncontrolled transaction method described in paragraph (c) of this section. Similarly, the arm's length consideration for an intangible is not limited by the prevailing rates of consideration paid for the use or transfer of intangibles within the same or similar industry.

Fromage Frere. FP owns all the worldwide rights to this name. The name is widely known and is valuable outside the United States but is not known within the United States. In 1995, FP decides to enter the United States market and incorporates U.S. subsidiary, USSub, to be its U.S. distributor and to supervise the advertising and other marketing efforts that will be required to develop the name Fromage Frere in the United States. USSub incurs expenses that are not reimbursed by FP for developing the U.S. market for Fromage Frere. These expenses are comparable to the levels of expense incurred by independent distributors in the U.S. cheese industry when introducing a product in the U.S. market under a brand name owned by a foreign manufacturer. Since USSub would have been expected to incur these expenses if it were unrelated to FP, no allocation to USSub is made with respect to the market development activities performed by USSub.

Example 3. The facts are the same as in *Example 2*, except that the expenses incurred by USSub are significantly larger than the expenses incurred by independent distributors under similar circumstances. FP does not reimburse USSub for its expenses. The district director concludes based on this evidence that an unrelated party dealing at arm's length under similar circumstances would not have engaged in the same level of activity relating to the development of FP's marketing intangibles. The expenditures in excess of the level incurred by the independent distributors therefore are considered to be a service provided to FP that adds to the value of FP's trademark for Fromage Frere. Accordingly, the district director makes an allocation under section 482 for the fair market value of the services that USSub is considered to have performed for FP.

Example 4. The facts are the same as in *Example 3*, except that FP and USSub conclude a long-term agreement under which USSub receives the exclusive right to distribute cheese in the United States under FP's trademark. USSub purchases cheese from FP at an arm's length price. Since USSub is the owner of the trademark under paragraph (f)(3)(ii)(A) of this section, and its conduct is consistent with that status, its activities related to the development of the trademark are not considered to be a service performed for the benefit of FP, and no allocation is made with respect to such activities.

(4) *Consideration not artificially limited.* The arm's length consideration for the controlled transfer of an intangible is not limited by the consideration paid in any uncontrolled transactions that do not meet the requirements of the comparable uncontrolled transaction method described in paragraph (c) of this section. Similarly, the arm's length consideration for an intangible is not limited by the prevailing rates of consideration paid for the use or transfer of intangibles within the same or similar industry.

(5) *Lump sum payments*—(i) *In general.* If an intangible is transferred in a controlled transaction for a lump sum, that amount must be commensurate with the income attributable to the intangible. A lump sum is commensurate with income in a taxable year if the equivalent royalty amount for that taxable year is equal to an arm's length royalty. The equivalent royalty amount for a taxable year is the amount determined by treating the lump sum as an advance payment of a stream of royalties over the useful life of the intangible (or the period covered by an agreement, if shorter), taking into account the projected sales of the licensee as of the date of the transfer. Thus, determining the equivalent royalty amount requires a present value calculation based on the lump sum, an appropriate discount rate, and the projected sales over the relevant period. The equivalent royalty amount is subject to periodic adjustments under § 1.482–4(f)(2)(i) to the same extent as an actual royalty payment pursuant to a license agreement.

(ii) *Exceptions.* No periodic adjustment will be made under paragraph (f)(2)(i) of this section if any of the exceptions to periodic adjustments provided in paragraph (f)(2)(ii) of this section apply.

(iii) *Example.* The following example illustrates the principle of this paragraph (f)(5).

Example. Calculation of the equivalent royalty amount. (i) FSub is the foreign subsidiary of USP, a U.S. company. USP licenses FSub the right to produce and sell the whopperchopper, a patented new kitchen appliance, for the foreign market. The license is for a period of five years, and payment takes the form of a single lump-sum charge of $500,000 that is paid at the beginning of the period.

(ii) The equivalent royalty amount for this license is determined by deriving an equivalent royalty rate equal to the lump-sum payment divided by the present discounted value of FSub's projected sales of whopperchoppers over the life of the license. Based on the riskiness of the whopperchopper business, an appropriate discount rate is determined to be 10 percent. Projected sales of whopperchoppers for each year of the license are as follows:

Year	Projected sales
1	$2,500,000
2	2,600,000
3	2,700,000
4	2,700,000
5	2,750,000

(iii) Based on this information, the present discounted value of the projected whopperchopper sales is approximately $10 million, yielding an equivalent royalty rate of approximately 5%. Thus, the equivalent royalty amounts for each year are as follows:

Year	Projected sales	Equivalent royalty amount
1	$2,500,000	$125,000
2	2,600,000	130,000
3	2,700,000	135,000
4	2,700,000	135,000
5	2,750,000	137,500

(iv) If in any of the five taxable years the equivalent royalty amount is determined not to be an arm's length amount, a periodic adjustment may be made pursuant to § 1.482–4(f)(2)(i). The adjustment in such case would be equal to the difference between the equivalent royalty amount and the arm's length royalty in that taxable year.

§ 1.482–5 Comparable profits method.

(a) *In general.* The comparable profits method evaluates whether the amount charged in a controlled transaction is arm's length based on objective measures of profitability (profit level indicators) derived from uncontrolled taxpayers that engage in similar business activities under similar circumstances.

(b) *Determination of arm's length result*—(1) *In general.* Under the comparable profits method, the determination of an arm's length result is based on the amount of operating profit that the tested party would have earned on related party transactions if its profit level indicator were equal to that of an uncontrolled comparable (comparable operating profit). Comparable operating profit is calculated by determining a profit level indicator for an uncontrolled comparable, and applying the profit level indicator to the financial data related to the tested party's most narrowly identifiable business activity for which data incorporating the controlled transaction is available (relevant business activity). To the extent possible, profit level indicators should be applied solely to the tested party's financial data that is related to controlled transactions. The tested party's reported operating profit is compared to the comparable operating profits derived from the profit level indicators of uncontrolled comparables to determine whether the reported operating profit represents an arm's length result.

(2) *Tested party*—(i) *In general.* For purposes of this section, the tested party will be the participant in the controlled transaction whose operating profit attributable to the controlled transactions can be verified using the most reliable data and requiring the fewest and most reliable adjustments, and for which reliable data regarding

uncontrolled comparables can be located. Consequently, in most cases the tested party will be the least complex of the controlled taxpayers and will not own valuable intangible property or unique assets that distinguish it from potential uncontrolled comparables.

(ii) *Adjustments for tested party.* The tested party's operating profit must first be adjusted to reflect all other allocations under section 482, other than adjustments pursuant to this section.

(3) *Arm's length range.* See § 1.482–1(e)(2) for the determination of the arm's length range. For purposes of the comparable profits method, the arm's length range will be established using comparable operating profits derived from a single profit level indicator.

(4) *Profit level indicators.* Profit level indicators are ratios that measure relationships between profits and costs incurred or resources employed. A variety of profit level indicators can be calculated in any given case. Whether use of a particular profit level indicator is appropriate depends upon a number of factors, including the nature of the activities of the tested party, the reliability of the available data with respect to uncontrolled comparables, and the extent to which the profit level indicator is likely to produce a reliable measure of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length, taking into account all of the facts and circumstances. The profit level indicators should be derived from a sufficient number of years of data to reasonably measure returns that accrue to uncontrolled comparables. Generally, such a period should encompass at least the taxable year under review and the preceding two taxable years. This analysis must be applied in accordance with § 1.482–1(f)(2)(iii)(D). Profit level indicators that may provide a reliable basis for comparing operating profits of the tested party and uncontrolled comparables include the following—

(i) *Rate of return on capital employed.* The rate of return on capital employed is the ratio of operating profit to operating assets. The reliability of this profit level indicator increases as operating assets play a greater role in generating operating profits for both the tested party and the uncontrolled comparable. In addition, reliability under this profit level indicator depends on the extent to which the composition of the tested party's assets is similar to that of the uncontrolled comparable. Finally, difficulties in properly valuing operating assets will diminish the reliability of this profit level indicator.

(ii) *Financial ratios.* Financial ratios measure relationships between profit and costs or sales revenue. Since functional differences generally have a greater effect on the relationship between profit and costs or sales revenue than the relationship between profit and operating assets, financial ratios are more sensitive to functional differences than the rate of return on capital employed. Therefore, closer functional comparability normally is required under a financial ratio than under the rate of return on capital employed to achieve a similarly reliable measure of an arm's length result. Financial ratios that may be appropriate include the following—

(A) Ratio of operating profit to sales; and

(B) Ratio of gross profit to operating expenses. Reliability under this profit level indicator also depends on the extent to which the composition of the tested party's operating expenses is similar to that of the uncontrolled comparables.

(iii) *Other profit level indicators.* Other profit level indicators not described in this paragraph (b)(4) may be used if they provide reliable measures of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length. However, profit level indicators based solely on internal data may not be used under this paragraph (b)(4) because they are not objective measures of profitability derived from operations of uncontrolled taxpayers engaged in similar business activities under similar circumstances.

(c) *Comparability and reliability considerations*—(1) *In general.* Whether results derived from application of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in § 1.482–1(c).

(2) *Comparability*—(i) *In general.* The degree of comparability between an uncontrolled taxpayer and the tested party is determined by applying the provisions of § 1.482–1(d)(2). The comparable profits method compares the profitability of the tested party, measured by a profit level indicator (generally based on operating profit), to the profitability of uncontrolled taxpayers in similar circumstances. As with all methods that rely on external market benchmarks, the greater the degree of comparability between the tested party and the uncontrolled taxpayer, the more reliable will be the results derived from the application of this method. The determination of the degree of comparability between the tested party and the uncontrolled taxpayer depends upon all the relevant facts and circumstances, including the relevant lines of business, the product or service markets involved, the asset composition employed (including the nature and quantity of tangible assets, intangible assets and working capital), the size and scope of operations, and the stage in a business or product cycle.

(ii) *Functional, risk and resource comparability.* An operating profit represents a return for the investment of resources and assumption of risks. Therefore, although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on resources employed and risks assumed. Moreover, because resources and risks usually are directly related to functions performed, it is also important to consider functions performed in determining the degree of comparability between the tested party and an uncontrolled taxpayer. The degree of functional comparability required to obtain a reliable result under the comparable profits method, however, is generally less than that required under the resale price or cost plus methods. For example, because differences in functions performed often are reflected in operating expenses, taxpayers performing different functions may have very different gross profit margins but earn similar levels of operating profit.

(iii) *Other comparability factors.* Other factors listed in § 1.482–1(d)(3) also may be particularly relevant under the comparable profits method. Because operating profit usually is less sensitive than gross profit to product differences, reliability under the comparable profits method is not as dependent on product similarity as the resale price or cost plus method. However, the reliability of profitability measures based on operating profit may be adversely affected by factors that have less effect on results under the comparable uncontrolled price, resale price, and cost plus methods. For example, operating profit may be affected by varying cost structures (as reflected, for example, in the age of plant and equipment), differences in business experience (such as whether the business is in a start-up phase or is mature), or differences in management efficiency (as indicated, for example, by objective evidence such as expanding or contracting sales or executive compensation over time). Accordingly, if material differences in these factors are identified based on objective evidence, the reliability of the analysis may be affected.

(iv) *Adjustments for the differences between the tested party and the uncontrolled taxpayers.* If there are differences between the tested party and an uncontrolled comparable that would materially affect the profits determined under the relevant profit level indicator, adjustments should be made according to the comparability provisions of § 1.482–1(d)(2). In some cases, the assets of an uncontrolled comparable may need to be adjusted to achieve greater comparability between the tested party and the uncontrolled comparable. In such cases, the uncontrolled comparable's operating income attributable to those assets must also be adjusted before computing a profit level indicator in order to reflect the income and expense attributable to the adjusted assets. In certain cases it may also be appropriate to adjust the operating profit of the tested party and comparable parties. For example, where there are material differences in accounts payable among the comparable parties and the tested party, it will generally be appropriate to adjust the operating profit of each party by increasing it to reflect an imputed interest charge on each party's accounts payable.

(3) *Data and assumptions*—(i) *In general.* The reliability of the results derived from the comparable profits method is affected by the quality of the data and assumptions used to apply this method.

(ii) *Consistency in accounting.* The degree of consistency in accounting practices between the controlled transaction and the uncontrolled comparables that materially affect operating profit affects the reliability of the result. Thus, for example, if differences in inventory and other cost accounting practices would materially affect operating profit, the ability to make reliable adjustments for such differences would affect the reliability of the results.

(iii) *Allocations between the relevant business activity and other activities.* The reliability of the allocation of costs, income, and assets between the relevant business activity and other activities of the tested party or an uncontrolled comparable will affect the reliability of the determination of operating profit and profit level indicators. If it is not possible to allocate costs, income, and assets directly based on factual relationships, a reasonable allocation formula may be used. To the extent direct allocations are not made, the reliability of the results derived from the application of this method is reduced relative to the results of a method that requires fewer allocations of costs,

(iv) *Adjustments for the differences between the tested party and the uncontrolled taxpayers.* If there are differences between the tested party and an uncontrolled comparable that would materially affect the profits determined under the relevant profit level indicator, adjustments should be made according to the comparability provisions of § 1.482–1(d)(2). In some cases, the assets of an uncontrolled comparable may need to be adjusted to achieve greater comparability between the tested party and the uncontrolled comparable. In such cases, the uncontrolled comparable's operating income attributable to those assets must also be adjusted before computing a profit level indicator in order to reflect the income and expense attributable to the adjusted assets. In certain cases it may also be appropriate to adjust the operating profit of the tested party and comparable parties. For example, where there are material differences in accounts payable among the comparable parties and the tested party, it will generally be appropriate to adjust the operating profit of each party by increasing it to reflect an imputed interest charge on each party's accounts payable.

(3) *Data and assumptions*—(i) *In general.* The reliability of the results derived from the comparable profits method is affected by the quality of the data and assumptions used to apply this method.

(ii) *Consistency in accounting.* The degree of consistency in accounting practices between the controlled transaction and the uncontrolled comparables that materially affect operating profit affects the reliability of the result. Thus, for example, if differences in inventory and other cost accounting practices would materially affect operating profit, the ability to make reliable adjustments for such differences would affect the reliability of the results.

(iii) *Allocations between the relevant business activity and other activities.* The reliability of the allocation of costs, income, and assets between the relevant business activity and other activities of the tested party or an uncontrolled comparable will affect the reliability of the determination of operating profit and profit level indicators. If it is not possible to allocate costs, income, and assets directly based on factual relationships, a reasonable allocation formula may be used. To the extent direct allocations are not made, the reliability of the results derived from the application of this method is reduced relative to the results of a method that requires fewer allocations of costs, income, and assets. Similarly, the reliability of the results derived from the application of this method is affected by the extent to which it is possible to apply the profit level indicator to the tested party's financial data that is related solely to the controlled transactions. For example, if the relevant business activity is the assembly of components purchased from both controlled and uncontrolled suppliers, it may not be possible to apply the profit level indicator solely to financial data related to the controlled transactions. In such a case, the reliability of the results derived from the application of this method will be reduced.

(d) *Definitions.* The definitions set forth in paragraphs (d)(1) through (6) of this section apply for purposes of this section.

(1) *Sales revenue* means the amount of the total receipts from sale of goods and provision of services, less returns and allowances. Accounting principles and conventions that are generally accepted in the trade or industry of the controlled taxpayer under review must be used.

(2) *Gross profit* means sales revenue less cost of goods sold.

(3) *Operating expenses* includes all expenses not included in cost of goods sold except for interest expense, foreign income taxes (as defined in § 1.901–2(a)), domestic income taxes, and any other expenses not related to the operation of the relevant business activity. Operating expenses ordinarily include expenses associated with advertising, promotion, sales, marketing, warehousing and distribution, administration, and a reasonable allowance for depreciation and amortization.

(4) *Operating profit* means gross profit less operating expenses. Operating profit includes all income derived from the business activity being evaluated by the comparable profits method, but does not include interest and dividends, income derived from activities not being tested by this method, or extraordinary gains and losses that do not relate to the continuing operations of the tested party.

(5) *Reported operating profit* means the operating profit of the tested party reflected on a timely filed U.S. income tax return. If the tested party files a U.S. income tax return, its operating profit is considered reflected on a U.S. income tax return if the calculation of taxable income on its return for the taxable year takes into account the income attributable to the controlled transaction under review. If the tested party does not file a U.S. income tax return, its operating profit is considered reflected on a U.S. income tax return in any taxable year for which income attributable to the controlled transaction under review affects the calculation of the U.S. taxable income of any other member of the same controlled group. If the comparable operating profit of the tested party is determined from profit level indicators derived from financial statements or other accounting records and reports of comparable parties, adjustments may be made to the reported operating profit of the tested party in order to account for material differences between the tested party's operating profit reported for U.S income tax purposes and the tested party's operating profit for financial statement purposes. In addition, in accordance with § 1.482–1(f)(2)(iii)(D), adjustments under section 482 that are finally determined may be taken into account in determining reported operating profit.

(6) *Operating assets.* The term operating assets means the value of all assets used in the relevant business activity of the tested party, including fixed assets and current assets (such as cash, cash equivalents, accounts receivable, and inventories).

The term does not include investments in subsidiaries, excess cash, and portfolio investments. Operating assets may be measured by their net book value or by their fair market value, provided that the same method is consistently applied to the tested party and the comparable parties, and consistently applied from year to year. In addition, it may be necessary to take into account recent acquisitions, leased assets, intangibles, currency fluctuations, and other items that may not be explicitly recorded in the financial statements of the tested party or uncontrolled comparable. Finally, operating assets must be measured by the average of the values for the beginning of the year and the end of the year, unless substantial fluctuations in the value of operating assets during the year make this an inaccurate measure of the average value over the year. In such a case, a more accurate measure of the average value of operating assets must be applied.

(e) *Examples.* The following examples illustrate the application of this section.

Example 1—Transfer of tangible property resulting in no adjustment. (i) FP is a publicly traded foreign corporation with a U.S. subsidiary, USSub, that is under audit for its 1996 taxable year. FP manufactures a consumer product for worldwide distribution. USSub imports the assembled product and distributes it within the United

States at the wholesale level under the FP name.

(ii) FP does not allow uncontrolled taxpayers to distribute the product. Similar products are produced by other companies but none of them is sold to uncontrolled taxpayers or to uncontrolled distributors.

(iii) Based on all the facts and circumstances, the district director determines that the comparable profits method will provide the most reliable measure of an arm's length result. USSub is selected as the tested party because it engages in activities that are less complex than those undertaken by FP.

There is data from a number of independent operators of wholesale distribution businesses. These potential comparables are further narrowed to select companies in the same industry segment that perform similar functions and bear similar risks to USSub. An analysis of the information available on these taxpayers shows that the ratio of operating profit to sales is the most appropriate profit level indicator, and this ratio is relatively stable where at least three years are included in the average. For the taxable years 1994 through 1996, USSub shows the following results:

	1994	1995	1996	Average
Sales	$00,000	$60,000	$00,000	$20,000
Cost of Goods Sold	393,000	412,400	400,000	401,800
Operating Expenses	80,000	110,000	104,600	98,200
Operating Profit	27,000	37,600	(4,600)	20,000

(iv) After adjustments have been made to account for identified material differences between USSub and the uncontrolled distributors, the average ratio of operating profit to sales is calculated for each of the uncontrolled distributors. Applying each ratio to USSub would lead to the following comparable operating profit (COP) for USSub.

Uncontrolled distributor	OP/S (percent)	USSub COP
A	1.7	$8,840
B	3.1	16,120
C	3.8	19,760
D	4.5	23,400
E	4.7	24,440
F	4.8	24,960
G	4.9	25,480
H	6.7	34,840
I	9.9	51,480
J	10.5	54,600

(v) The data is not sufficiently complete to conclude that it is likely that all material differences between USSub and the uncontrolled distributors have been identified. Therefore, an arm's length range can be established only pursuant to § 1.482-1(e)(2)(iii)(B). The district director measures the arm's length range by the interquartile range of results, which consists of the results ranging from $19,760 to $34,840. Although USSub's operating income for 1996 shows a loss of $4,600, the district director determines that no allocation should be made, because USSub's average reported operating profit of $20,000 is within this range.

Example 2—Transfer of tangible property resulting in adjustment. (i) The facts are the same as in *Example 1* except that USSub reported the following income and expenses:

	1994	1995	1996	Average
Sales	$500,000	$560,000	$500,000	$520,000
Cost of Good Sold	370,000	460,000	400,000	410,000
Operating Expenses	110,000	110,000	110,000	110,000
Operating Profit	20,000	(10,000)	(10,000)	0

(ii) The interquartile range of comparable operating profits remains the same as derived in *Example 1*: $19,760 to $34,840. USSub's average operating profit for the years 1994 through 1996 ($0) falls outside this range. Therefore, the district director determines that an allocation may be appropriate.

(iii) To determine the amount, if any, of the allocation, the district director compares USSub's reported operating profit for 1996 to comparable operating profits derived from the uncontrolled distributors' results for 1996. The ratio of operating profit to sales in 1996 is calculated for each of the uncontrolled comparables and applied to USSub's 1996 sales to derive the following results:

Uncontrolled distributor	OP/S (percent)	USSub COP
C	0.5	$2,500
D	1.5	7,500
E	2.0	10,000
A	1.6	13,000
F	2.8	14,000
B	2.9	14,500
J	3.0	15,000
I	4.4	22,000
H	6.9	34,500
G	7.4	37,000

(iv) Based on these results, the median of the comparable operating profits for 1996 is $14,250. Therefore, USSub's income for 1996 is increased by $24,250, the difference between USSub's reported operating profit for 1996 and the median of the comparable operating profits for 1996.

Example 3—Multiple year analysis. (i) The facts are the same as in *Example 2*. In addition, the district director examines the taxpayer's results for the 1997 taxable year. As in *Example 2*, the district director increases USSub's income for the 1996 taxable year by $24,250. The results for the 1997 taxable year, together with the 1995 and 1996 taxable years, are as follows:

	1995	1996	1997	Average
Sales	$560,000	$500,000	$530,000	$530,000
Cost of Good Sold	460,000	400,000	430,000	430,000
Operating Expenses	110,000	110,000	110,000	110,000
Operating Profit	(10,000)	(10,000)	(10,000)	(10,000)

(ii) The interquartile range of comparable operating profits, based on average results from the uncontrolled comparables and average sales for USSub for the years 1995 through 1997, ranges from $15,500 to $30,000. In determining whether an allocation for the 1997 taxable year may be made, the district director compares USSub's average reported operating profit for the years 1995 through 1997 to the interquartile range of average comparable operating profits over this period. USSub's average reported operating profit is determined without regard to the adjustment made with respect to the 1996 taxable year. See § 1.482-1(f)(2)(iii)(D). Therefore, USSub's average reported operating profit for the years 1995 through 1997 is ($10,000). Because this amount of income falls outside the interquartile range, the district director determines that an allocation may be appropriate.

(iii) To determine the amount, if any, of the allocation for the 1997 taxable year, the district director compares USSub's reported operating profit for 1997 to the median of the comparable operating profits derived from the uncontrolled distributors' results for 1997. The median of the comparable operating profits derived from the uncontrolled comparables results for the 1997 taxable year is $12,000. Based on this comparison, the district director increases USSub's 1997 taxable income by $22,000, the difference between the median of the comparable operating profits for the 1997 taxable year and USSub's reported operating profit of ($10,000) for the 1997 taxable year.

Assets	
Sales to MarkCo	
Cost of Goods Sold	
Royalty to DevCo (5%)	
Other	
Operating Expenses	
Operating Profit	

(v) Applying the ratios of average operating profit to operating assets for the 1994 through 1996 taxable years derived from a group of similar uncontrolled comparables located in country M and N to ManuCo's average operating assets for the same period provides a set of comparable operating profits. The interquartile range for these average comparable operating profits is $3,000 to $4,500. ManuCo's average reported operating profit for the years 1994 through 1996 ($21,500) falls outside this range. Therefore, the district director determines that an allocation may be appropriate for the 1996 taxable year.

(vi) To determine the amount, if any, of the allocation for the 1996 taxable year, the district director compares ManuCo's reported operating profit for 1996 to the median of the comparable operating profits derived from the uncontrolled distributors' results for 1996. The median result for the uncontrolled comparables for 1996 is $3,750. Based on this comparison, the district director increases royalties that ManuCo paid by $21,500 (the difference between $25,250 and the median of the comparable operating profits, $3,750).

Example 5—Adjusting operating assets and operating profit for differences in accounts receivable. (i) USM is a U.S. company that manufactures parts for industrial equipment and sells them to its foreign parent corporation. For purposes of applying the comparable profits method, 15 uncontrolled manufacturers that are similar to USM have been identified.

(ii) USM has a significantly lower level of accounts receivable than the uncontrolled

operating profit is determined without regard to the adjustment made with respect to the 1996 taxable year. See § 1.482–1(f)(2)(iii)(D). Therefore, USSub's average reported operating profit for the years 1995 through 1997 is ($10,000). Because this amount of income falls outside the interquartile range, the district director determines that an allocation may be appropriate.

(iii) To determine the amount, if any, of the allocation for the 1997 taxable year, the district director compares USSub's reported operating profit for 1997 to the median of the comparable operating profits derived from the uncontrolled distributors' results for 1997. The median of the comparable operating profits derived from the uncontrolled comparables results for the 1997 taxable year is $12,000. Based on this comparison, the district director increases USSub's 1997 taxable income by $22,000, the difference between the median of the comparable operating profits for the 1997 taxable year and USSub's reported operating profit of ($10,000) for the 1997 taxable year.

Example 4—Transfer of intangible to offshore manufacturer. (i) DevCo is a U.S. developer, producer and marketer of widgets. DevCo develops a new "high tech widget" (htw) that is manufactured by its foreign subsidiary ManuCo located in Country H. ManuCo sells the htw to MarkCo (a U.S. subsidiary of DevCo) for distribution and marketing in the United States. The taxable year 1996 is under audit, and the district director examines whether the royalty rate of 5 percent paid by ManuCo to DevCo is an arm's length consideration for the htw technology.

(ii) Based on all the facts and circumstances, the district director determines that the comparable profits method will provide the most reliable measure of an arm's length result. ManuCo is selected as the tested party because it engages in relatively routine manufacturing activities, while DevCo engages in a variety of complex activities using unique and valuable intangibles. Finally, because ManuCo engages in manufacturing activities, it is determined that the ratio of operating profit to operating assets is an appropriate profit level indicator.

(iii) Uncontrolled taxpayers performing similar functions cannot be found in country H. It is determined that data available in countries M and N provides the best match of companies in a similar market performing similar functions and bearing similar risks. Such data is sufficiently complete to identify many of the material differences between ManuCo and the uncontrolled comparables, and to make adjustments to account for such differences. However, data is not sufficiently complete so that it is likely that no material differences remain. In particular, the differences in geographic markets might have materially affected the results of the various companies.

(iv) In a separate analysis, it is determined that the price that ManuCo charged to MarkCo for the htw's is an arm's length price under § 1.482–3(b). Therefore, ManuCo's financial data derived from its sales to MarkCo are reliable. ManuCo's financial data from 1994–1996 is as follows:

	1994	1995	1996	Average
Assets	$24,000	$25,000	$26,000	$25,000
Sales to MarkCo	25,000	30,000	35,000	30,000
Cost of Goods Sold	6,250	7,500	8,750	7,500
Royalty to DevCo (5%)	1,250	1,500	1,750	1,500
Other	5,000	6,000	7,000	6,000
Operating Expenses	1,000	1,000	1,000	1,000
Operating Profit	17,750	21,500	25,250	21,500

(v) Applying the ratios of average operating profit to operating assets for the 1994 through 1996 taxable years derived from a group of similar uncontrolled comparables located in country M and N to ManuCo's average operating assets for the same period provides a set of comparable operating profits. The interquartile range for these average comparable operating profits is $3,000 to $4,500. ManuCo's average reported operating profit for the years 1994 through 1996 ($21,500) falls outside this range. Therefore, the district director determines that an allocation may be appropriate for the 1996 taxable year.

(vi) To determine the amount, if any, of the allocation for the 1996 taxable year, the district director compares ManuCo's reported operating profit for 1996 to the median of the comparable operating profits derived from the uncontrolled distributors' results for 1996. The median result for the uncontrolled comparables for 1996 is $3,750. Based on this comparison, the district director increases royalties that ManuCo paid by $21,500 (the difference between $25,250 and the median of the comparable operating profits, $3,750).

Example 5—Adjusting operating assets and operating profit for differences in accounts receivable. (i) USM is a U.S. company that manufactures parts for industrial equipment and sells them to its foreign parent corporation. For purposes of applying the comparable profits method, 15 uncontrolled manufacturers that are similar to USM have been identified.

(ii) USM has a significantly lower level of accounts receivable than the uncontrolled manufacturers. Since the rate of return on capital employed is to be used as the profit level indicator, both operating assets and operating profits must be adjusted to account for this difference. Each uncontrolled comparable's operating assets is reduced by the amount (relative to sales) by which they exceed USM's accounts receivable. Each uncontrolled comparable's operating profit is adjusted by deducting imputed interest income on the excess accounts receivable. This imputed interest income is calculated by multiplying the uncontrolled comparable's excess accounts receivable by an interest rate appropriate for short-term debt.

Example 6—Adjusting operating profit for differences in accounts payable. (i) USD is the U.S. subsidiary of a foreign corporation. USD purchases goods from its foreign parent and sells them in the U.S. market. For purposes of applying the comparable profits method, 10 uncontrolled distributors that are similar to USD have been identified.

(ii) There are significant differences in the level of accounts payable among the uncontrolled distributors and USD. To adjust for these differences, the district director increases the operating profit of the uncontrolled distributors and USD to reflect interest expense imputed to the accounts payable. The imputed interest expense for each company is calculated by multiplying the company's accounts payable by an interest rate appropriate for its short-term debt.

§ 1.482–6 Profit split method.

(a) *In general.* The profit split method evaluates whether the allocation of the combined operating profit or loss attributable to one or more controlled transactions is arm's length by reference to the relative value of each controlled taxpayer's contribution to that combined operating profit or loss. The combined operating profit or loss must be derived from the most narrowly identifiable business activity of the controlled taxpayers for which data is available that includes the controlled transactions (relevant business activity).

(b) *Appropriate share of profits and losses.* The relative value of each controlled taxpayer's contribution to the success of the relevant business activity must be determined in a manner that reflects the functions performed, risks assumed, and resources employed by each participant in the relevant business activity, consistent with the comparability provisions of § 1.482–1(d)(3). Such an allocation is intended to correspond to the division of profit or loss that would result from an arrangement between uncontrolled taxpayers, each performing functions similar to those of the various controlled taxpayers engaged in the relevant business activity. The profit allocated to any particular member of a controlled

group is not necessarily limited to the total operating profit of the group from the relevant business activity. For example, in a given year, one member of the group may earn a profit while another member incurs a loss. In addition, it may not be assumed that the combined operating profit or loss from the relevant business activity should be shared equally, or in any other arbitrary proportion. The specific method of allocation must be determined under paragraph (c) of this section.

(c) *Application*—(1) *In general.* The allocation of profit or loss under the profit split method must be made in accordance with one of the following allocation methods—(i) The comparable profit split, described in paragraph (c)(2) of this section; or

(ii) The residual profit split, described in paragraph (c)(3) of this section.

(2) *Comparable profit split*—(i) *In general.* A comparable profit split is derived from the combined operating profit of uncontrolled taxpayers whose transactions and activities are similar to those of the controlled taxpayers in the relevant business activity. Under this method, each uncontrolled taxpayer's percentage of the combined operating profit or loss is used to allocate the combined operating profit or loss of the relevant business activity.

(ii) *Comparability and reliability considerations—(A) In general.* Whether results derived from application of this method are the most reliable measure of the arm's length result is determined using the factors described under the best method rule in § 1.482–1(c).

(B) *Comparability—(1) In general.* The degree of comparability between the controlled and uncontrolled taxpayers is determined by applying the comparability provisions of § 1.482–1(d). The comparable profit split compares the division of operating profits among the controlled taxpayers to the division of operating profits among uncontrolled taxpayers engaged in similar activities under similar circumstances. Although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on the considerations described under the comparable profits method in § 1.482–5(c)(2), because this method is based on a comparison of the operating profit of the controlled and uncontrolled taxpayers. In addition, because the contractual terms of the relationship among the participants in the relevant business activity will be a principal determinant of the allocation of functions and risks among them, comparability under this method also depends particularly on the degree of similarity of the contractual terms of the controlled and uncontrolled taxpayers. Finally, the comparable profit split may not be used if the combined operating profit (as a percentage of the combined assets) of the uncontrolled comparables varies significantly from that earned by the controlled taxpayers.

(2) Adjustments for differences between the controlled and uncontrolled taxpayers. If there are differences between the controlled and uncontrolled taxpayers that would materially affect the division of operating profit, adjustments must be made according to the provisions of § 1.482–1(d)(2).

(C) *Data and assumptions.* The reliability of the results derived from the comparable profit split is affected by the quality of the data and assumptions used to apply this method. In particular, the following factors must be considered—

(1) The reliability of the allocation of costs, income, and assets between the relevant business activity and the participants' other activities will affect the accuracy of the determination of combined operating profit and its allocation among the participants. If it is not possible to allocate costs, income, and assets directly based on factual relationships, a reasonable allocation formula may be used. To the extent direct allocations are not made, the reliability of the results derived from the application of this method is reduced relative to the results of a method that requires fewer allocations of costs, income, and assets. Similarly, the reliability of the results derived from the application of this method is affected by the extent to which it is possible to apply the method to the parties' financial data that is related solely to the controlled transactions. For example, if the relevant business activity is the assembly of components purchased from both controlled and uncontrolled suppliers, it may not be possible to apply the method solely to financial data related to the controlled transactions. In such a case, the reliability of the results derived from the application of this method will be reduced.

(2) The degree of consistency between the controlled and uncontrolled taxpayers in accounting practices that materially affect the items that determine the amount and allocation of operating profit affects the reliability of the result. Thus, for example, if differences in inventory and other cost accounting practices would materially affect operating profit, the ability to make reliable adjustments for such differences would affect the reliability of the results. Further, accounting consistency among the participants in the controlled transaction is required to ensure that the items determining the amount and allocation of operating profit are measured on a consistent basis.

(D) *Other factors affecting reliability.* Like the methods described in §§ 1.482–3, 1.482–4, and 1.482–5, the comparable profit split relies exclusively on external market benchmarks. As indicated in § 1.482–1(c)(2)(i), as the degree of comparability between the controlled and uncontrolled transactions increases, the relative weight accorded the analysis under this method will increase. In addition, the reliability of the analysis under this method may be enhanced by the fact that all parties to the controlled transaction are evaluated under the comparable profit split. However, the reliability of the results of an analysis based on information from all parties to a transaction is affected by the reliability of the data and the assumptions pertaining to each party to the controlled transaction. Thus, if the data and assumptions are significantly more reliable with respect to one of the parties than with respect to the others, a different method, focusing solely on the results of that party, may yield more reliable results.

(3) *Residual profit split*—(i) *In general.* Under this method, the combined operating profit or loss from the relevant business activity is allocated between the controlled taxpayers following the two-step process set forth in paragraphs (c)(3)(i)(A) and (B) of this section.

(A) *Allocate income to routine contributions.* The first step allocates operating income to each party to the controlled transactions to provide a market return for its routine contributions to the relevant business activity. Routine contributions are contributions of the same or a similar kind to those made by uncontrolled taxpayers involved in similar business activities for which it is possible to identify market returns. Routine contributions ordinarily include contributions of tangible property, services and intangibles that are generally owned by uncontrolled taxpayers engaged in similar activities. A functional analysis is required to identify these contributions according to the functions performed, risks assumed, and resources employed by each of the controlled taxpayers. Market returns for the routine contributions should be determined by reference to the returns achieved by uncontrolled taxpayers engaged in similar activities, consistent with the methods described in §§ 1.482–3, 1.482–4 and 1.482–5.

(B) *Allocate residual profit.* The allocation of income to the controlled taxpayers' routine contributions will not reflect profits attributable to the controlled group's valuable intangible property where similar property is not owned by the uncontrolled taxpayers from which the market returns are derived. Thus, in cases where such intangibles are present there normally will be an unallocated residual profit after the allocation of income described in paragraph (c)(3)(i)(A) of this section. Under this second step, the residual profit generally should be divided among the controlled taxpayers based upon the relative value of their contributions of intangible property to the relevant business activity that was not accounted for as a routine contribution. The relative value of the intangible property contributed by each taxpayer may be measured by external market benchmarks that reflect the fair market value of such intangible property. Alternatively, the relative value of intangible contributions may be estimated by the capitalized cost of developing the intangibles and all related improvements and updates, less an appropriate amount of amortization based on the useful life of each intangible. Finally, if the intangible development expenditures of the parties are relatively constant over time and the useful life of the intangible property of all parties is approximately the same, the amount of actual expenditures in recent years may be used to estimate the relative value of intangible contributions. If the intangible property contributed by one of the controlled taxpayers is also used in other business activities (such as transactions with other controlled taxpayers), an appropriate allocation of the value of the intangibles must be made among all the business activities in which it is used.

(ii) *Comparability and reliability considerations*—(A) *In general.* Whether results derived from this method are the most reliable measure of the arm's length result is determined using the factors described under the best method rule in § 1.482–1(c). Thus, comparability and the quality of data and assumptions must be considered in determining whether this method provides the most reliable measure of an arm's length result. The application of these factors to the residual profit split is discussed in paragraph (c)(3)(ii)(B), (C), and (D) of this section.

(B) *Comparability.* The first step of the residual profit split relies on market benchmarks of profitability. Thus, the

with the methods described in §§ 1.482–3, 1.482–4 and 1.482–5.

(B) *Allocate residual profit.* The allocation of income to the controlled taxpayers' routine contributions will not reflect profits attributable to the controlled group's valuable intangible property where similar property is not owned by the uncontrolled taxpayers from which the market returns are derived. Thus, in cases where such intangibles are present there normally will be an unallocated residual profit after the allocation of income described in paragraph (c)(3)(i)(A) of this section. Under this second step, the residual profit generally should be divided among the controlled taxpayers based upon the relative value of their contributions of intangible property to the relevant business activity that was not accounted for as a routine contribution. The relative value of the intangible property contributed by each taxpayer may be measured by external market benchmarks that reflect the fair market value of such intangible property. Alternatively, the relative value of intangible contributions may be estimated by the capitalized cost of developing the intangibles and all related improvements and updates, less an appropriate amount of amortization based on the useful life of each intangible. Finally, if the intangible development expenditures of the parties are relatively constant over time and the useful life of the intangible property of all parties is approximately the same, the amount of actual expenditures in recent years may be used to estimate the relative value of intangible contributions. If the intangible property contributed by one of the controlled taxpayers is also used in other business activities (such as transactions with other controlled taxpayers), an appropriate allocation of the value of the intangibles must be made among all the business activities in which it is used.

(ii) *Comparability and reliability considerations*—(A) *In general.* Whether results derived from this method are the most reliable measure of the arm's length result is determined using the factors described under the best method rule in § 1.482–1(c). Thus, comparability and the quality of data and assumptions must be considered in determining whether this method provides the most reliable measure of an arm's length result. The application of these factors to the residual profit split is discussed in paragraph (c)(3)(ii)(B), (C), and (D) of this section.

(B) *Comparability.* The first step of the residual profit split relies on market benchmarks of profitability. Thus, the comparability considerations that are relevant for the first step of the residual profit split are those that are relevant for the methods that are used to determine market returns for the routine contributions. The second step of the residual profit split, however, may not rely so directly on market benchmarks. Thus, the reliability of the results under this method is reduced to the extent that the allocation of profits in the second step does not rely on market benchmarks.

(C) *Data and assumptions.* The reliability of the results derived from the residual profit split is affected by the quality of the data and assumptions used to apply this method. In particular, the following factors must be considered—

(*1*) The reliability of the allocation of costs, income, and assets as described in paragraph (c)(2)(ii)(C)(*1*);

(*2*) Accounting consistency as described in paragraph (c)(2)(ii)(C)(*2*) of this section;

(*3*) The reliability of the data used and the assumptions made in valuing the intangible property contributed by the participants. In particular, if capitalized costs of development are used to estimate the value of intangible property, the reliability of the results is reduced relative to the reliability of other methods that do not require such an estimate, for the following reasons. First, in any given case, the costs of developing the intangible may not be related to its market value. Second, the calculation of the capitalized costs of development may require the allocation of indirect costs between the relevant business activity and the controlled taxpayer's other activities, which may affect the reliability of the analysis. Finally, the calculation of costs may require assumptions regarding the useful life of the intangible property.

(D) *Other factors affecting reliability.* Like the methods described in §§ 1.482–3, 1.482–4, and 1.482–5, the first step of the residual profit split relies exclusively on external market benchmarks. As indicated in § 1.482–1(c)(2)(i), as the degree of comparability between the controlled and uncontrolled transactions increases, the relative weight accorded the analysis under this method will increase. In addition, to the extent the allocation of profits in the second step is not based on external market benchmarks, the reliability of the analysis will be decreased in relation to an analysis under a method that relies on market benchmarks. Finally, the reliability of the analysis under this method may be enhanced by the fact that all parties to the controlled transaction are evaluated under the residual profit split. However, the reliability of the results of an analysis based on information from all parties to a transaction is affected by the reliability of the data and the assumptions pertaining to each party to the controlled transaction. Thus, if the data and assumptions are significantly more reliable with respect to one of the parties than with respect to the others, a different method, focusing solely on the results of that party, may yield more reliable results.

(iii) *Example.* The provisions of this paragraph (c)(3) are illustrated by the following example.

Example—Application of Residual Profit Split. (i) XYZ is a U.S. corporation that develops, manufactures and markets a line of products for police use in the United States. XYZ's research unit developed a bulletproof material for use in protective clothing and headgear (Nulon). XYZ obtains patent protection for the chemical formula for Nulon. Since its introduction in the U.S., Nulon has captured a substantial share of the U.S. market for bulletproof material.

(ii) XYZ licensed its European subsidiary, XYZ-Europe, to manufacture and market Nulon in Europe. XYZ-Europe is a well-established company that manufactures and markets XYZ products in Europe. XYZ-Europe has a research unit that adapts XYZ products for the defense market, as well as a well-developed marketing network that employs brand names that it developed.

(iii) XYZ-Europe's research unit alters Nulon to adapt it to military specifications and develops a high-intensity marketing campaign directed at the defense industry in several European countries. Beginning with the 1995 taxable year, XYZ-Europe manufactures and sells Nulon in Europe through its marketing network under one of its brand names.

(iv) For the 1995 taxable year, XYZ has no direct expenses associated with the license of Nulon to XYZ-Europe and incurs no expenses related to the marketing of Nulon in Europe. For the 1995 taxable year, XYZ-Europe's Nulon sales and pre-royalty expenses are $500 million and $300 million, respectively, resulting in net pre-royalty profit of $200 million related to the Nulon business. The operating assets employed in XYZ-Europe's Nulon business are $200 million. Given the facts and circumstances, the district director determines under the best method rule that a residual profit split will provide the most reliable measure of an arm's length result. Based on an examination of a sample of European companies performing functions similar to those of XYZ-Europe, the district director determines that an average market return on XYZ-Europe's operating assets in the Nulon business is 10 percent, resulting in a market return of $20 million (10% X $200 million) for XYZ-Europe's Nulon business, and a residual profit of $180 million.

(v) Since the first stage of the residual profit split allocated profits to XYZ-Europe's contributions other than those attributable to highly valuable intangible property, it is

assumed that the residual profit of $180 million is attributable to the valuable intangibles related to Nulon, i.e., the European brand name for Nulon and the Nulon formula (including XYZ-Europe's modifications). To estimate the relative values of these intangibles, the district director compares the ratios of the capitalized value of expenditures as of 1995 on Nulon-related research and development and marketing over the 1995 sales related to such expenditures.

(vi) Because XYZ's protective product research and development expenses support the worldwide protective product sales of the XYZ group, it is necessary to allocate such expenses among the worldwide business activities to which they relate. The district director determines that it is reasonable to allocate the value of these expenses based on worldwide protective product sales. Using information on the average useful life of its investments in protective product research and development, the district director capitalizes and amortizes XYZ's protective product research and development expenses. This analysis indicates that the capitalized research and development expenditures have a value of $0.20 per dollar of global protective product sales in 1995.

(vii) XYZ-Europe's expenditures on Nulon research and development and marketing support only its sales in Europe. Using information on the average useful life of XYZ-Europe's investments in marketing and research and development, the district director capitalizes and amortizes XYZ-Europe's expenditures and determines that they have a value in 1995 of $0.40 per dollar of XYZ-Europe's Nulon sales.

(viii) Thus, XYZ and XYZ-Europe together contributed $0.60 in capitalized intangible development expenses for each dollar of XYZ-Europe's protective product sales for 1995, of which XYZ contributed one-third (or $0.20 per dollar of sales). Accordingly, the district director determines that an arm's length royalty for the Nulon license for the 1995 taxable year is $60 million, i.e., one-third of XYZ-Europe's $180 million in residual Nulon profit.

§ 1.482–8 Examples of the best method rule.

In accordance with the best method rule of § 1.482–1(c), a method may be applied in a particular case only if the comparability, quality of data, and reliability of assumptions under that method make it more reliable than any other available measure of the arm's length result. The following examples illustrate the comparative analysis required to apply this rule. As with all of the examples in these regulations, these examples are based on simplified facts, are provided solely for purposes of illustrating the type of analysis required under the relevant rule, and do not provide rules of general application. Thus, conclusions reached in these examples as to the relative reliability of methods are based on the assumed facts of the examples, and are not general conclusions concerning the relative reliability of any method.

Example 1—Preference for comparable uncontrolled price method. Company A is the U.S. distribution subsidiary of Company B, a foreign manufacturer of consumer electrical appliances. Company A purchases toaster ovens from Company B for resale in the U.S. market. To exploit other outlets for its toaster ovens, Company B also sells its toaster ovens to Company C, an unrelated U.S. distributor of toaster ovens. The products sold to Company A and Company C are identical in every respect and there are no material differences between the transactions. In this case application of the CUP method, using the sales of toaster ovens to Company C, generally will provide a more reliable measure of an arm's length result for the controlled sale of toaster ovens to Company A than the application of any other method. See §§ 1.482–1(c)(2)(i) and –3(b)(2)(ii)(A).

Example 2—Resale price method preferred to comparable uncontrolled price method. The facts are the same as in Example 1, except that the toaster ovens sold to Company A are of substantially higher quality than those sold to Company C and the effect on price of such quality differences cannot be accurately determined. In addition, in order to round out its line of consumer appliances Company A purchases blenders from unrelated parties for resale in the United States. The blenders are resold to substantially the same customers as the toaster ovens, have a similar resale value to the toaster ovens, and are purchased under similar terms and in similar volumes. The distribution functions performed by Company A appear to be similar for toaster ovens and blenders. Given the product differences between the toaster ovens, application of the resale price method using the purchases and resales of blenders as the uncontrolled comparables is likely to provide a more reliable measure of an arm's length result than application of the comparable uncontrolled price method using Company B's sales of toaster ovens to Company C.

Example 3—Resale price method preferred to comparable profits method. (i) The facts are the same as in *Example 2* except that Company A purchases all its products from Company B and Company B makes no uncontrolled sales into the United States. However, six uncontrolled U.S. distributors are identified that purchase a similar line of products from unrelated parties. The uncontrolled distributors purchase toaster ovens from unrelated parties, but there are significant differences in the characteristics of the toaster ovens, including the brandnames under which they are sold.

(ii) Under the facts of this case, reliable adjustments for the effect of the different brandnames cannot be made. Except for some differences in payment terms and inventory levels, the purchases and resales of toaster ovens by the three uncontrolled distributors are closely similar to the controlled purchases in terms of the markets in which they occur, the volume of the transactions, the marketing activities undertaken by the distributor, inventory levels, warranties, allocation of currency risk, and other relevant functions and risks. Reliable adjustments can be made for the differences in payment terms and inventory levels. In addition, sufficiently detailed accounting information is available to permit adjustments to be made for differences in accounting methods or in reporting of costs between cost of goods sold and operating expenses. There are no other material differences between the controlled and uncontrolled transactions.

(iii) Because reliable adjustments for the differences between the toaster ovens, including the trademarks under which they are sold, cannot be made, these uncontrolled transactions will not serve as reliable measures of an arm's length result under the comparable uncontrolled price method. There is, however, close functional similarity between the controlled and uncontrolled transactions and reliable adjustments have been made for material differences that would be likely to affect gross profit. Under these circumstances, the gross profit margins derived under the resale price method are less likely to be susceptible to any unidentified differences than the operating profit measures used under the comparable profits method. Therefore, given the close functional comparability between the controlled and uncontrolled transactions, and the high quality of the data, the resale price method achieves a higher degree of comparability and will provide a more reliable measure of an arm's length result. See § 1.482–1(c) (Best method rule).

Example 4—Comparable profits method preferred to resale price method. The facts are the same as in *Example 3*, except that the accounting information available for the uncontrolled comparables is not sufficiently detailed to ensure consistent reporting between cost of goods sold and operating expenses of material items such as discounts, insurance, warranty costs, and supervisory, general and administrative expenses. These expenses are significant in amount. Therefore, whether these expenses are treated as costs of goods sold or operating expenses would have a significant effect on gross margins. Because in this case reliable adjustments can not be made for such accounting differences, the reliability of the resale price method is significantly reduced. There is, however, close functional similarity between the controlled and uncontrolled transactions and reliable adjustments have been made for all material differences other than the potential accounting differences. Because the comparable profits method is not adversely affected by the potential accounting differences, under these circumstances the comparable profits method is likely to produce a more reliable measure of an arm's length result than the resale price method. See § 1.482–1(c) (Best method rule).

Example 5—Cost plus method preferred to comparable profits method. (i) USS is a U.S. company that manufactures machine tool parts and sells them to its foreign parent corporation, FP. Four U.S. companies are identified that also manufacture various types of machine tool parts but sell them to uncontrolled purchasers.

(ii) Except for some differences in payment terms, the manufacture and sales of machine tool parts by the four uncontrolled companies are closely similar to the controlled transactions in terms of the functions performed and risks assumed. Reliable adjustments can be made for the differences in payment terms. In addition, sufficiently detailed accounting information is available to permit adjustments to be made for differences between the controlled transaction and the uncontrolled comparables in accounting methods and in the reporting of costs between cost of goods sold and operating expenses.

(iii) There is close functional similarity between the controlled and uncontrolled transactions and reliable adjustments can be made for material differences that would be likely to affect gross profit. Under these circumstances, the gross profit markups derived under the cost plus method are less likely to be susceptible to any unidentified differences than the operating profit measures used under the comparable profits method. Therefore, given the close functional comparability between the controlled and uncontrolled transactions, and the high quality of the data, the cost plus method achieves a higher degree of comparability and will provide a more reliable measure of an arm's length result. See § 1.482–1(c) (Best method rule).

Example 6—Comparable profits method preferred to cost plus method. The facts are the same as in *Example 5*, except that there are significant differences between the controlled and uncontrolled transactions in terms of the types of parts and components manufactured and the complexity of the manufacturing process. The resulting functional differences are likely to materially affect gross profit margins, but it is not possible to identify the specific differences and reliably adjust for their effect on gross profit. Because these functional differences would be reflected in differences in operating expenses, the operating profit measures used under the comparable profits method implicitly reflect to some extent these functional differences. Therefore, because in this case the comparable profits method is less sensitive than the cost plus method to the potentially significant functional differences between the controlled and uncontrolled transactions, the comparable profits method is likely to produce a more reliable measure of an arm's length result than the cost plus method. See § 1.482–1(c) (Best method rule).

Example 7—Preference for comparable uncontrolled transaction method. (i) USpharm, a U.S. pharmaceutical company, develops a new drug Z that is a safe and effective treatment for the disease zeezee. USpharm has obtained patents covering drug Z in the United States and in various foreign countries. USpharm has also obtained the regulatory authorizations necessary to market drug Z in the United States and in foreign countries.

(ii) USpharm licenses its subsidiary in country X, Xpharm, to produce and sell drug Z in country X. At the same time, it licenses an unrelated company, Ydrug, to produce and sell drug Z in country Y, a neighboring country. Prior to licensing the drug, USpharm had obtained patent protection and regulatory approvals in both countries and

companies are closely similar to the controlled transactions in terms of the functions performed and risks assumed. Reliable adjustments can be made for the differences in payment terms. In addition, sufficiently detailed accounting information is available to permit adjustments to be made for differences between the controlled transaction and the uncontrolled comparables in accounting methods and in the reporting of costs between cost of goods sold and operating expenses.

(iii) There is close functional similarity between the controlled and uncontrolled transactions and reliable adjustments can be made for material differences that would be likely to affect gross profit. Under these circumstances, the gross profit markups derived under the cost plus method are less likely to be susceptible to any unidentified differences than the operating profit measures used under the comparable profits method. Therefore, given the close functional comparability between the controlled and uncontrolled transactions, and the high quality of the data, the cost plus method achieves a higher degree of comparability and will provide a more reliable measure of an arm's length result. See § 1.482–1(c) (Best method rule).

Example 6—Comparable profits method preferred to cost plus method. The facts are the same as in *Example 5*, except that there are significant differences between the controlled and uncontrolled transactions in terms of the types of parts and components manufactured and the complexity of the manufacturing process. The resulting functional differences are likely to materially affect gross profit margins, but it is not possible to identify the specific differences and reliably adjust for their effect on gross profit. Because these functional differences would be reflected in differences in operating expenses, the operating profit measures used under the comparable profits method implicitly reflect to some extent these functional differences. Therefore, because in this case the comparable profits method is less sensitive than the cost plus method to the potentially significant functional differences between the controlled and uncontrolled transactions, the comparable profits method is likely to produce a more reliable measure of an arm's length result than the cost plus method. See § 1.482–1(c) (Best method rule).

Example 7—Preference for comparable uncontrolled transaction method. (i) USpharm, a U.S. pharmaceutical company, develops a new drug Z that is a safe and effective treatment for the disease zeezee. USpharm has obtained patents covering drug Z in the United States and in various foreign countries. USpharm has also obtained the regulatory authorizations necessary to market drug Z in the United States and in foreign countries.

(ii) USpharm licenses its subsidiary in country X, Xpharm, to produce and sell drug Z in country X. At the same time, it licenses an unrelated company, Ydrug, to produce and sell drug Z in country Y, a neighboring country. Prior to licensing the drug, USpharm had obtained patent protection and regulatory approvals in both countries and both countries provide similar protection for intellectual property rights. Country X and country Y are similar countries in terms of population, per capita income and the incidence of disease zeezee. Consequently, drug Z is expected to sell in similar quantities and at similar prices in both countries. In addition, costs of producing drug Z in each country are expected to be approximately the same.

(iii) USpharm and Xpharm establish terms for the license of drug Z that are identical in every material respect, including royalty rate, to the terms established between USpharm and Ydrug. In this case the district director determines that the royalty rate established in the Ydrug license agreement is a reliable measure of the arm's length royalty rate for the Xpharm license agreement. Given that the same property is transferred in the controlled and uncontrolled transactions, and that the circumstances under which the transactions occurred are substantially the same, in this case the comparable uncontrolled transaction method is likely to provide a more reliable measure of an arm's length result than any other method. See § 1.482–4(c)(2)(ii).

Example 8—Residual profit split method preferred to other methods. (i) USC is a U.S. company that develops, manufactures and sells communications equipment. EC is the European subsidiary of USC. EC is an established company that carries out extensive research and development activities and develops, manufactures and sells communications equipment in Europe. There are extensive transactions between USC and EC. USC licenses valuable technology it has developed to EC for use in the European market but EC also licenses valuable technology it has developed to USC. Each company uses components manufactured by the other in some of its products and purchases products from the other for resale in its own market.

(ii) Detailed accounting information is available for both USC and EC and adjustments can be made to achieve a high degree of consistency in accounting practices between them. Relatively reliable allocations of costs, income and assets can be made between the business activities that are related to the controlled transactions and those that are not. Relevant marketing and research and development expenditures can be identified and reasonable estimates of the useful life of the related intangibles are available so that the capitalized value of the intangible development expenses of USC and EC can be calculated. In this case there is no reason to believe that the relative value of these capitalized expenses is substantially different from the relative value of the intangible property of USC and EC. Furthermore, comparables are identified that could be used to estimate a market return for the routine contributions of USC and EC. Based on these facts, the residual profit split could provide a reliable measure of an arm's length result.

(iii) There are no uncontrolled transactions involving property that is sufficiently comparable to much of the tangible and intangible property transferred between USC and EC to permit use of the comparable uncontrolled price method or the comparable uncontrolled transaction method. Uncontrolled companies are identified in Europe and the United States that perform somewhat similar activities to USC and EC; however, the activities of none of these companies are as complex as those of USC and EC and they do not use similar levels of highly valuable intangible property that they have developed themselves. Under these circumstances, the uncontrolled companies may be useful in determining a market return for the routine contributions of USC and EC, but that return would not reflect the value of the intangible property employed by USC and EC. Thus, none of the uncontrolled companies is sufficiently similar so that reliable results would be obtained using the resale price, cost plus, or comparable profits methods. Moreover, no uncontrolled companies can be identified that engaged in sufficiently similar activities and transactions with each other to employ the comparable profit split method.

(iv) Given the difficulties in applying the other methods, the reliability of the internal data on USC and EC, and the fact that acceptable comparables are available for deriving a market return for the routine contributions of USC and EC, the residual profit split method is likely to provide the most reliable measure of an arm's length result in this case.

Example 9—Comparable profits method preferred to profit split. (i) Company X is a large, complex U.S. company that carries out extensive research and development activities and manufactures and markets a variety of products. Company X has developed a new process by which compact disks can be fabricated at a fraction of the cost previously required. The process is expected to prove highly profitable, since there is a large market for compact disks Company X establishes a new foreign subsidiary, Company Y, and licenses it the rights to use the process to fabricate compact disks for the foreign market as well as continuing technical support and improvements to the process. Company Y uses the process to fabricate compact disks which it supplies to related and unrelated parties.

(ii) The process licensed to Company Y is unique and highly valuable and no uncontrolled transfers of intangible property can be found that are sufficiently comparable to permit reliable application of the comparable uncontrolled transaction method. Company X is a large, complex company engaged in a variety of activities that owns unique and highly valuable intangible property. Consequently, no uncontrolled companies can be found that are similar to Company X. Furthermore, application of the profit split method in this case would involve the difficult and problematic tasks of allocating Company X's costs and assets between the relevant business activity and other activities and assigning a value to Company X's intangible contributions. On the other hand, Company Y performs relatively routine manufacturing and marketing activities and there are a number of similar uncontrolled companies. Thus, application of the comparable profits method using Company Y as the tested party is likely

to produce a more reliable measure of an arm's length result than a profit split in this case.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101 is amended by:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	.
1.482–1T	D1545–1298
1.482–2	1545–0123
1.482–3T	1545–1298
1.482–4T	1545–1298
. . . . .	.

2. Adding entries to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	.
1.482–1	1545–1364
1.482–4	1545–1364
. . . . .	.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 27, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–16456 Filed 7–1–94; 3:59 pm]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 602

[TD 8551]

RIN 1545–AS25

Imposition of Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary Regulations.

SUMMARY: These amendments to the regulations under 26 CFR part 1 provide guidance on the imposition of the accuracy-related penalty under Internal Revenue Code section 6662(e) for net section 482 transfer price adjustments. This action is necessary to conform the existing temporary regulations with changes to the section 482 regulations.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1426.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

Section 13236 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 312) amended sections 6662(e) and (h) of the Code. On February 2, 1994, the IRS published temporary regulations and a notice of proposed rulemaking in the **Federal Register** (58 FR 5263) that proposed amendments to the Income Tax Regulations under sections 6662(e) and (h) and section 6664(c) of the Internal Revenue Code of 1986 (Code), as amended.

Explanation of Provisions

The principal purpose of these regulations is to conform the temporary regulations with the final section 482 regulations contained in this issue of the **Federal Register**. The regulations are amended primarily to conform the provisions to the revised best method rule contained in § 1.482–1(c) and the arm's length range rule contained in § 1.482–1(d). The temporary and proposed regulations provided, with respect to the specified method requirement and in circumstances in which no specified method is applicable, that the selection and application of a method is reasonable only if, given the available data and the applicable pricing methods, the taxpayer reasonably concluded that the method and its application of that method provided the most accurate measure of an arm's length result under the principles of the best method rule in § 1.482–1T(b)(2)(iii). In conformity with the final section 482 regulations, these temporary regulations substitute the term reliable for the term accurate.

These regulations also clarify that if a taxpayer applies a specified or unspecified method, the taxpayer cannot reasonably conclude that the method it selected provided the most reliable measure of an arm's length result if it has not made a reasonable effort to evaluate the potential applicability of the other specified methods under the section 482 regulations in a manner consistent with the principles of the best method rule. This rule does not require that a taxpayer conduct an extensive analysis or detailed application of each method, but merely that, following a reasonably thorough search for relevant data, the taxpayer consider which method would provide the most reliable measure of an arm's length result given that data. In many cases the nature of the data located will make it possible to conclude that a particular method is inapplicable without further analysis.

The regulations add a fifth factor to the analysis of whether a taxpayer reasonably concluded that its application of a specified method provided the most reliable measure of an arm's length result. This factor is relevant if the taxpayer uses a range of results to set its price. In such a case, the district director will consider whether the taxpayer arbitrarily selected a result that corresponded to an extreme point in the range of results. In many cases a point selected in this manner would not be likely to be closest to an arm's length result. The regulations provide that when the taxpayer uses "inexact" comparables, such as those described in § 1.482–1(e)(2)(iii)(B), one reasonable method of selecting a point in the range would be that provided in § 1.482–1(e)(3). Other methods also could be reasonable as long as they are intended to select a point most likely to be closest to an arm's length result.

These regulations also specify, through examples in the text of the regulations, the type of documentation necessary if a profit split method is used. The significance of such documentation has been increased by the final regulations' elimination of certain proposed restrictions on the use of profit split methods.

These regulations add § 1.6662–6T(d)(2)(iii)(D), which provides that, if a taxpayer uses a profit split method or receives or makes a lump sum payment for the transfer of an intangible, then the taxpayer must annually document that fact on a statement attached to a timely filed income tax return. Similarly, these regulations add § 1.6662–6T(d)(3)(iii)(C), which provides that if a taxpayer applies an unspecified method, then the taxpayer must annually document that fact on a statement attached to a timely filed U.S. income tax return. A taxpayer that fails to comply with these documentation rules would not satisfy the documentation requirements of § 1.6662–6T(d)(2)(iii) and would therefore be unable to qualify for the exclusion from the calculation of a net section 482 adjustment provided under § 1.6662–6T(d).

Effective Date

These regulations apply to taxable years beginning after December 31, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, an initial Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Thomas L. Ralph of the Office of the Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

the final regulations' elimination of certain proposed restrictions on the use of profit split methods.

These regulations add § 1.6662–6T(d)(2)(iii)(D), which provides that, if a taxpayer uses a profit split method or receives or makes a lump sum payment for the transfer of an intangible, then the taxpayer must annually document that fact on a statement attached to a timely filed income tax return. Similarly, these regulations add § 1.6662–6T(d)(3)(iii)(C), which provides that if a taxpayer applies an unspecified method, then the taxpayer must annually document that fact on a statement attached to a timely filed U.S. income tax return. A taxpayer that fails to comply with these documentation rules would not satisfy the documentation requirements of § 1.6662–6T(d)(2)(iii) and would therefore be unable to qualify for the exclusion from the calculation of a net section 482 adjustment provided under § 1.6662–6T(d).

Effective Date

These regulations apply to taxable years beginning after December 31, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, an initial Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Thomas L. Ralph of the Office of the Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

1.6662–6T also issued under 26 U.S.C. 6662. * * *

Par. 2. Section 1.6662–0 is amended in the table of contents by adding the entries for § 1.6662–6T(d)(2)(iii)(D) and § 1.6662–6T(d)(3)(iii)(C) to read as follows:

§ 1.6662–0 Table of contents.

* * * * *

Section 1.6662–6T Transactions between persons described in section 482 and net section 482 transfer price adjustments (temporary).

* * * * *

(d) * * *
(2) * * *
(iii) * * *
(D) Tax return documentation.
(3) * * *
(iii) * * *
(C) Tax return documentation.

* * * * *

Par. 3. Section 1.6662–6T is amended as follows:

a. By revising the section heading;
b. By revising paragraph (d)(2)(ii);
c. By revising paragraphs (d)(2)(iii)(A) and (B);
d. By adding paragraph (d)(2)(iii)(D);
e. By revising paragraphs (d)(3)(ii) (B) and (C);
f. By adding paragraph (d)(3)(iii)(C).

The additions and revisions read as follows:

Section 1.6662–6T Transactions between persons described in section 482 and net section 482 transfer price adjustments (temporary).

* * * * *

(d) * * *
(2) * * *

(ii) *Specified method requirement.* The specified method requirement is met if the taxpayer selects and applies a specified method in a reasonable manner. The taxpayer's selection and application of a specified method is reasonable only if, given the available data and the applicable pricing methods, the taxpayer reasonably concluded that the method (and its application of that method) provided the most reliable measure of an arm's length result under the principles of the best method rule of § 1.482–1(c). A taxpayer can reasonably conclude that a specified method provided the most reliable measure of an arm's length result only if it has made a reasonable effort to evaluate the potential applicability of the other specified methods in a manner consistent with the principles of the best method rule. However, it is not necessary for a taxpayer to conclude that the selected specified method provides a more reliable measure of an arm's length result than any unspecified method. For examples illustrating the selection of a specified method consistent with this paragraph (d)(2)(ii), see § 1.482–8. Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this determination include the following:

(A) The experience and knowledge of the taxpayer, including all members of the taxpayer's controlled group.

(B) The extent to which accurate data was available and the data was analyzed in a reasonable manner. A taxpayer must engage in a reasonably thorough search for the data necessary to determine which method should be selected and how it should be applied. Furthermore, a taxpayer must use the most current reliable data that is available before the return is filed. In this regard, the expense of collecting data relative to the dollar amount of the transactions in question is a factor that may be taken into account in determining the scope of a reasonably thorough search for data.

(C) The extent to which the taxpayer followed the relevant requirements set forth in regulations under section 482 with respect to the application of the method.

(D) The extent to which the taxpayer reasonably relied on the analysis of, or a study done by, a professional qualified to conduct such an analysis or study, including an attorney, accountant, or economist. Whether the professional is an employee of, or related to, the taxpayer is not determinative in evaluating the reliability of that analysis or study, as long as the analysis or study is objective, thorough, and well reasoned. Such reliance is reasonable only if the taxpayer disclosed to the professional all relevant information regarding the controlled transactions at issue. A transfer pricing study or analysis that was reasonably relied upon in a prior year may reasonably be relied upon in the current year if the relevant facts and circumstances have not changed or if the study or analysis has

been appropriately modified to reflect any change in facts and circumstances.

(E) If the taxpayer attempted to determine an arm's length result by using more than one uncontrolled comparable, whether the taxpayer arbitrarily selected a result that corresponds to an extreme point in the range of results derived from the uncontrolled comparables. Such a result generally would not likely be closest to an arm's length result. If the uncontrolled comparables that the taxpayer uses to determine an arm's length result are described in § 1.482–1(e)(2)(ii)(B), one reasonable method of selecting a point in the range would be that provided in § 1.482–1(e)(3).

(iii) * * * (A) *In general.* The documentation requirement of this paragraph (d)(2)(iii) is met if the taxpayer maintains sufficient documentation to establish that the taxpayer reasonably concluded that, given the available data and the applicable pricing methods, the method (and its application of that method) provided the most accurate measure of an arm's length result under the principles of the best method rule in § 1.482–1(c), and provides that documentation to the Internal Revenue Service within 30 days of a request for it. That documentation must be in existence when the return is filed. The district director may, in his discretion, excuse a minor or inadvertent failure to provide required documents, but only if the taxpayer has made a good faith effort to comply, and the taxpayer promptly remedies the failure when it becomes known. The required documentation is divided into three categories, principal documents, background documents, and tax return documentation, as described in paragraphs (d)(2)(iii) (B), (C), and (D) of this section.

(B) *Principal documents.* The principal documents should accurately and completely describe the basic transfer pricing analysis conducted by the taxpayer. The documentation must include the following—

(*1*) An overview of the taxpayer's business, including an analysis of the economic and legal factors that affect the pricing of its property or services;

(*2*) A description of the taxpayer's organizational structure (including an organization chart) covering all related parties engaged in transactions potentially relevant under section 482, including foreign affiliates whose transactions directly or indirectly affect the pricing of property or services in the United States;

(*3*) Any documentation explicitly required by the regulations under section 482;

(*4*) A description of the method selected and an explanation of why that method was selected;

(*5*) A description of the alternative methods that were considered and an explanation of why they were not selected;

(*6*) A description of the controlled transactions (including the terms of sale) and any internal data used to analyze those transactions. For example, if a profit split method is applied, the documentation must include a schedule providing the total income, costs, and assets (with adjustments for different accounting practices and currencies) for each controlled taxpayer participating in the relevant business activity and detailing the allocations of such items to that activity;

(*7*) A description of the comparables that were used, how comparability was evaluated, and what (if any) adjustments were made;

(*8*) An explanation of the economic analysis and projections relied upon in developing the method. For example, if a profit split method is applied, the taxpayer must provide an explanation of the analysis undertaken to determine how the profits would be split; and

(*9*) A general index of the principal and background documents and a description of the recordkeeping system used for cataloging and accessing those documents.

* * * * *

(D) *Tax return documentation*— (*1*) *Use of profit split method.* If the taxpayer applies a profit split method, as described in § 1.482–6, the taxpayer must attach a statement to a timely filed U.S. income tax return (with extensions) disclosing the kind of profit split method employed, the combined operating profit from the relevant business activity, and the split of that profit among the controlled participants in that activity. Such statement must be titled "Disclosure of profit split methodology required by § 1.6662–6T."

(*2*) *Lump sum payments.* If the consideration for the controlled transfer of an intangible is in the form of a lump sum payment, the taxpayer must attach a statement to a timely filed U.S. income tax return (with extensions) for each taxable year throughout the useful life of the intangible. The statement must disclose the calculation of the arm's length consideration for the transfer under the provisions of § 1.482–4(f)(5), and must be titled "Disclosure of lump sum payment required by § 1.6662–6T."

(3) * * *

(ii) * * *

(B) *Specified method potentially applicable.* If the transaction is of a type for which methods are specified in the regulations under section 482, then a taxpayer will be considered to have met the unspecified method requirement if the taxpayer reasonably concludes, given the available data, that none of the specified methods was likely to provide a reliable measure of an arm's length result, and that it selected and applied an unspecified method in a way that would likely provide a reliable measure of an arm's length result. A taxpayer can reasonably conclude that no specified method was likely to provide a reliable measure of an arm's length result only if it has made a reasonable effort to evaluate the potential applicability of the specified methods in a manner consistent with the principles of the best method rule. However, it is not necessary for a taxpayer to conclude that the selected method provides a more reliable measure of an arm's length result than any other unspecified method. Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this conclusion include those set forth in paragraph (d)(2)(ii) of this section.

(C) *No specified method applicable.* If the transaction is of a type for which no methods are specified in the regulations under section 482, then a taxpayer will be considered to have met the unspecified method requirement if it selected and applied an unspecified method in a reasonable manner. For purposes of this paragraph (d)(3)(ii)(C), a taxpayer's selection and application is reasonable if the taxpayer reasonably concludes that the method (and its application of that method) provided the most reliable measure of an arm's length result under the principles of the best method rule in § 1.482–1(c). However, it is not necessary for a taxpayer to conclude that the selected method provides a more reliable measure of an arm's length result than any other unspecified method. Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this conclusion include those set forth in paragraph (d)(2)(ii) of this section.

(iii) * * *

(C) *Tax return documentation.* If the taxpayer applies an unspecified method, the taxpayer must attach a statement to a timely filed U.S. income tax return (with extensions) disclosing the use of such method for the taxable year in which the method is applied. Such statement must be titled "Disclosure of use of unspecified method required by § 1.6662–6T."

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101(c) is amended by removing the entry for "1.6662–6T. . . .1545–1365" from the table and adding the entry "1.6662–6T. . . .1545–1426" in numerical order to the table.

Dated: June 27, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 94–16357 Filed 7–5–94; 12:26 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS MITSCHER (DDG 57) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with

Vessel

USS MITSCHER .....

use of unspecified method required by § 1.6662–6T."

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101(c) is amended by removing the entry for "1.6662–6T. . . .1545–1365" from the table and adding the entry "1.6662–6T. . . .1545–1426" in numerical order to the table.

Dated: June 27, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 94–16357 Filed 7–5–94; 12:26 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS MITSCHER (DDG 57) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval guided missile destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 24, 1994.

FOR FURTHER INFORMATION CONTACT: Captain R. R. ROSSI, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS MITSCHER (DDG 57) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the vessel in the athwartship direction; and Rule 21(a), pertaining to the masthead light unbroken arc of visibility over an arc of the horizon of 225 degrees and visibility from right ahead to abaft the beam of 22.5 degrees, without interfering with its special function as a naval vessel. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Four of 706.2 is amended by:

a. Adding the following vessel to Paragraph 15:

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS MITSCHER	DDG 57	1.93 meters.

b. Adding the following vessel to Paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
USS MITSCHER	DDG 57	94.51 thru 111.15 degree.

3. Table Five of 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS MITSCHER	DDG 57	X	X	X	14.3

Dated: June 24, 1994.

Approved:

H.E. Grant,

Rear Admiral, JAGC, U.S. Navy Judge Advocate General.

[FR Doc. 94–16503 Filed 7–7–94; 8:45 am]

BILLING CODE 3810–AE–P

LIBRARY OF CONGRESS

36 CFR Part 704

[Docket No. NFPB 94–1]

National Film Preservation Board; 1992 and 1993 Films Selected for Inclusion in the National Film Registry

AGENCY: National Film Preservation Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Librarian of Congress is publishing the following list of films selected in 1992 and 1993 for inclusion in the National Film Registry in the Library of Congress pursuant to section 203 of the National Film Preservation Act of 1992, 2 U.S.C. 179a. The films are published to notify the public of the Librarian's selection of twenty-five films selected in each of these years deemed to be "culturally, historically or aesthetically significant" in accordance with Congress' mandate. These fifty new films join the seventy-five films already selected for inclusion in the Registry under the 1988 Act. The Librarian's goal in administering the Act is to promote the preservation of all genres of film, represented by the diverse list of films selected for inclusion in the Registry, and to generate public interest in film as an art form deserving of preservation. Additionally, an amendment is made to delete the film-labeling guidelines no longer applicable under the 1992 Act.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone (202) 707–8350; telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: On August 9, 1990 (55 FR 32567), the Librarian of Congress published the list of films for 1989 for inclusion in the National Film Registry in the Library of Congress. On December 24, 1990 (55 FR 52844) the Librarian published the list of films for 1990. On September 30, 1991 (56 FR 49413) the Librarian published the list of films for 1991, bringing the total to seventy-five films selected under the 1988 Act. Today, the Librarian publishes the fourth and fifth lists of films for inclusion in the National Film Registry—twenty-five additional films selected in each year, 1992 and 1993, added to the films already selected.

In 1990, the Librarian of Congress issued final regulations establishing criteria for the selection of films and procedures for public participation in the selection of films for the National Film Registry in accordance with section 3 of Public Law 100–446, the National Film Preservation Act of 1988, 2 U.S.C. 178b. That Act expired on September 27, 1991. On June 26, 1992, President Bush signed into law the National Film Preservation Act of 1992, reauthorizing the National Film Preservation Act for an additional four years. The legislation (section 203(b), 2 U.S.C. 179a) requires the Librarian of Congress, in consultation with a newly formed National Film Preservation Board, to continue selecting up to twenty-five films a year for inclusion in the National Film Registry established by the 1988 Act. However, the 1992 Act made some changes from the 1988 Act in the criteria used to select films for the Registry. Under the 1992 Act, films will continue to be selected on the basis of their historical, cultural, or aesthetic significance and they must be at least 10 years old. However, films no longer have to be feature-length nor are they required to have had a theatrical release in order to be included.

The new broader criteria for eligible films allows many more genres of film to be selected for inclusion in the National Film Registry. In addition, the Librarian's procedures for public participation are intended to allow the public the greatest flexibility in nominating films for inclusion. This is in keeping with the broad goals of the Librarian in administering the National Film Preservation Act to promote the preservation of the broadest diversity of films and to generate public interest for this cause.

On December 8, 1992 (57 FR 57979), the Librarian of Congress published a notice of proposed amended criteria for the selection of films in the National Film Registry, and procedures for allowing the general public to make recommendations to the Librarian for the selection of films. The proposed new criteria and procedures reflect changes made in the law in 1992 from the previous 1988 Act, and incorporate recommendations made by the National Film Preservation Board at its meeting in September 1992. On May 27, 1993 (58 FR 30708), the Librarian adopted the final regulations (effective July 12, 1993) setting out criteria for the selection of films and procedures for public participation. In accordance with those final regulations, the following fifty additional films are added to the National Film Registry.

The 1988 Act required the labeling of films selected for inclusion in the National Film Registry if they were colorized or materially altered. The labeling requirements were deleted by the 1992 Act (section 213 and 214, 2 U.S.C. 179 j and k) for the films previously selected to the National Film Registry and for all subsequent films selected. Therefore, because the film labeling guidelines found in Subpart B are no longer applicable for any of the films in the National Film Registry this rule removes and reserves that subpart.

List of Subjects in 36 CFR Part 704

Libraries, Motion pictures.

Publication of 1992 and 1993 Film Titles

In consideration of the foregoing, 36 CFR Part 704 is amended in the manner set forth below.

PART 704—NATIONAL FILM REGISTRY OF THE LIBRARY OF CONGRESS

1. The authority citation for 36 CFR part 704 is revised to read as follows:

Authority: Public Law 102–307, 106 Stat. 267 (2 U.S.C. 179).

Subpart A—Films Selected for Inclusion in the National Film Registry

2. In subpart A, § 704.23 is added to read as follows:

§ 704.23 Films Selected for Inclusion in the National Film Registry in the Library of Congress for 1992.

(a) The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board, registers these films in the National Film Registry within the Library of Congress for 1992:

1. Adam's Rib (1949)
2. Annie Hall (1977)
3. The Bank Dick (1940)
4. Big Business (1929)
5. The Big Parade (1925)
6. The Birth of a Nation (1915)
7. Bonnie and Clyde (1967)
8. Carmen Jones (1954)
9. Castro Street (1966)
10. Detour (1946)
11. Dog Star Man (1964)
12. Double Indemnity (1944)
13. Footlight Parade (1933)
14. The Gold Rush (1925)
15. Letter From an Unknown Woman (1948)
16. Morocco (1930)
17. Nashville (1975)
18. The Night of the Hunter (1955)
19. Paths of Glory (1957)
20. Psycho (1960)
21. Ride the High Country (1962)
22. Salesman (1969)
23. Salt of the Earth (1954)
24. What's Opera, Doc? (1957)
25. Within Our Gates (1920)

(b) In keeping with section 206(a) of the Act, 2 U.S.C. 179d(a), the Librarian shall endeavor to obtain an archival quality copy for each of these twenty-five films for the National Film Registry Collection of the Library of Congress.

3. In subpart A, § 704.24 is added to read as follows:

§ 704.24 Films Selected for Inclusion in the National Film Registry in the Library of Congress for 1993.

(a) The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board, registers these films in the National Film Registry within the Library of Congress for 1993:

1. An American in Paris (1951)
2. Badlands (1973)
3. The Black Pirate (1926)
4. Blade Runner (1982)
5. Cat People (1942)
6. The Cheat (1915)
7. Chulas Fronteras (1976)
8. Eaux D'Artifice (1953)
9. The Godfather, Part II (1974)
10. His Girl Friday (1940)
11. It Happened One Night (1934)
12. Lassie Come Home (1943)
13. Magical Maestro (1952)
14. March of Time: Inside Nazi Germany—1938 (1938)
15. A Night at the Opera (1935)
16. Nothing But a Man (1964)
17. One Flew Over the Cuckoo's Nest (1975)
18. Point of Order (1964)
19. Shadows (1959)
20. Shane (1953)
21. Sweet Smell of Success (1957)
22. Touch of Evil (1958)
23. Where Are My Children? (1916)
24. The Wind (1928)
25. Yankee Doodle Dandy (1942)

(b) In keeping with section 206(a) of the Act, 2 U.S.C. 179d(a), the Librarian shall endeavor to obtain an archival quality copy for each of these twenty-five films for the National Film Registry Collection of the Library of Congress.

4. For the reasons outlined in the Supplementary Information, subpart B consisting of § 704.30 is removed and reserved.

Dated: June 30, 1994.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–16510 Filed 7–7–94; 8:45 am]

BILLING CODE 1410–18–P

23. Salt of the Earth (1954)
24. What's Opera, Doc? (1957)
25. Within Our Gates (1920)

(b) In keeping with section 206(a) of the Act, 2 U.S.C. 179d(a), the Librarian shall endeavor to obtain an archival quality copy for each of these twenty-five films for the National Film Registry Collection of the Library of Congress.

3. In subpart A, § 704.24 is added to read as follows:

§ 704.24 Films Selected for Inclusion in the National Film Registry in the Library of Congress for 1993.

(a) The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board, registers these films in the National Film Registry within the Library of Congress for 1993:

1. An American in Paris (1951)
2. Badlands (1973)
3. The Black Pirate (1926)
4. Blade Runner (1982)
5. Cat People (1942)
6. The Cheat (1915)
7. Chulas Fronteras (1976)
8. Eaux D'Artifice (1953)
9. The Godfather, Part II (1974)
10. His Girl Friday (1940)
11. It Happened One Night (1934)
12. Lassie Come Home (1943)
13. Magical Maestro (1952)
14. March of Time: Inside Nazi Germany—1938 (1938)
15. A Night at the Opera (1935)
16. Nothing But a Man (1964)
17. One Flew Over the Cuckoo's Nest (1975)
18. Point of Order (1964)
19. Shadows (1959)
20. Shane (1953)
21. Sweet Smell of Success (1957)
22. Touch of Evil (1958)
23. Where Are My Children? (1916)
24. The Wind (1928)
25. Yankee Doodle Dandy (1942)

(b) In keeping with section 206(a) of the Act, 2 U.S.C. 179d(a), the Librarian shall endeavor to obtain an archival quality copy for each of these twenty-five films for the National Film Registry Collection of the Library of Congress.

4. For the reasons outlined in the Supplementary Information, subpart B consisting of § 704.30 is removed and reserved.

Dated: June 30, 1994.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–16510 Filed 7–7–94; 8:45 am]

BILLING CODE 1410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO31–1–6511; FRL–5008–7]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Emission Controls for Alfalfa Dehydrators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is approving a revision to the Colorado State Implementation Plan (SIP) which was submitted by the Governor of Colorado on May 6, 1993. The Governor requested that Colorado Regulation No. 5, which contained emission control regulations for alfalfa dehydration plant drum facilities that had begun operation prior to December 31, 1984, be removed from the Federally-approved SIP. The State made this request pursuant to the repeal of Regulation No. 5 from the State air quality regulations, which was mandated by amendments to the State's laws relating to the regulation of agricultural sources of air pollution. EPA is approving this revision because the State provided a modeling demonstration which showed that the removal of the emission limitations in Regulation No. 5 from the SIP would not interfere with attainment or maintenance of the PM–10 National Ambient Air Quality Standards (NAAQS).

EFFECTIVE DATE: This rule will become effective on August 8, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART-AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

In 1992, the Colorado Air Pollution Prevention and Control Act was signed into law. This State Act significantly revised the previously-existing Colorado statutory provisions relating to air quality, including the regulation of agricultural sources of air pollution. Specifically, Section 25–7–109(8) of the Colorado Revised Statutes states that the State ". . . shall not regulate emissions from agricultural production such as farming, seasonal crop drying, animal feeding, and pesticide application . . . unless such a source is otherwise required to meet Federal requirements (e.g., construction or operating permits, new source performance standards, etc.). Colorado's Regulation No. 5 contained emission control regulations for existing alfalfa dehydration plant drum facilities, which fall under the category of seasonal crop drying. Because the State Air Quality Control Commission is now prohibited from regulating air pollution emissions from sources such as seasonal crop drying, the State repealed Colorado Regulation No. 5 and, in a May 6, 1993 SIP submittal, requested that it be removed from the Federally-approved SIP.

Section 110(l) of the Clean Air Act (Act), as amended, prohibits EPA from approving a revision to the SIP "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of [the Clean Air Act]."[1] Thus, in order for EPA to approve a revision to a State's SIP, especially one which weakens or eliminates an existing emission limitation, EPA must ensure that the revision will not interfere with attainment or maintenance of the NAAQS.

In an April 21, 1994 **Federal Register** notice, EPA proposed to find that the State had adequately demonstrated that the repeal of Regulation No. 5 from the SIP would not interfere with attainment or maintenance of the NAAQS. Consequently, EPA proposed to approve the revision to the Colorado SIP. (See 59 FR 18988–18990.) In that proposed rulemaking action and related Technical Support Document (TSD), EPA described in detail its interpretations of the Act and its rationale for proposing to approve the revision repealing Regulation No. 5 from the SIP. EPA requested public comments on all aspects of that proposed rulemaking (see 59 FR 18990). No comments were received on the proposed rulemaking.

This Action

In this action, EPA is finalizing its approval of the revision to the Colorado SIP which was submitted by the Governor on May 6, 1993. As discussed in EPA's April 21, 1994 notice of

[1] The Clean Air Act ("the Act") is codified in the U.S. Code at 42 U.S.C. sections 7401, *et seq*

proposed approval and related TSD, EPA believes the State adequately demonstrated that the repeal of the emission limitations regarding alfalfa dehydrators in Regulation No. 5 will not interfere with attainment or maintenance of the NAAQS. The approval thus removes Colorado Regulation No. 5, which contained provisions regulating existing alfalfa dehydrators, from the Federally-approved SIP.[2] For further information on the State's demonstration and EPA's rationale for approving this SIP revision, please refer to the April 21, 1994 notice of proposed rulemaking (59 FR 18988–18990) and the TSD accompanying this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Final Action

This document makes final the action proposed on April 21, 1994 (59 FR 18988). As noted elsewhere in this final action, EPA received no public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 2 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 6, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 22, 1994.

Jack McGraw,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by revising paragraphs (c)(32) and (c)(38) to read as follows:

§ 52.320 Identification of Plan.

* * * * *

(c) * * *

(32) Revisions to Air Pollution Control Commission Regulation No. 1, section II.A.6 and III.C.2 (a) and (b), submitted by the Governor on April 9, 1985.

(i) Incorporation by reference.

(A) Revisions to Air Pollution Control Commission Regulation No. 1, "Emission Control Regulation for Particulates, Smokes, and Sulfur Oxides for the State of Colorado," sections II.A.6 and III.C.2 (a) and (b), effective March 2, 1985.

* * * * *

(38) Revisions to Regulation 1 to control emissions from alfalfa dehydrators were submitted by the Governor on July 29, 1987.

(i) Incorporation by reference.

(A) Section II.A.6 and introductory text of Section III.C.2.a of Regulation 1 adopted by the Colorado Air Quality Control Commission on January 15, 1987, effective on March 2, 1987.

[FR Doc. 94–16504 Filed 7–7–94; 8:45 am]

BILLING CODE 3560–50–P

[2] Note that the new construction or modification of alfalfa dehydration plant drum facilities will continue to be regulated under the State's prevention of significant deterioration (PSD) and new source review (NSR) provisions, which are included in Colorado Regulation No. 3.

40 CFR Part 52

[UT3–1–5452, FRL–5003–5]

Approval and Promulgation of Air Quality Implementation Plan; Utah; Revision to the State Implementation Plan Addressing PM_{10} for Salt Lake and Utah County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving the State Implementation Plan (SIP) submitted by the State of Utah for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The SIP was submitted by the Governor of Utah to satisfy certain Federal requirements for an approvable nonattainment area PM_{10} SIP for Utah and Salt Lake Counties.

EPA is also approving revisions to the State-wide SIP, chapters 1 through 7 and 10 through 15, which were submitted by the Utah Air Quality Division Director as a supplement to the Governor's submittal. The State-wide revisions pertain to air program elements necessary to implement control strategies to assure attainment and maintenance of the NAAQS, such as resources, emergency episodes, monitoring program, legislative authority, public notification, etc.

The Utah Air Conservation Regulations (UACR) have been revised numerous times since the early 1970's. The regulations have been renumbered and new requirements added. EPA is, therefore, approving the State request to replace, in its entirety, the existing UACR with that which was submitted on November 15, 1991.

EFFECTIVE DATE: Effective on August 8, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: U. S. Environmental Protection Agency Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Lee Hanley at (303) 293–1760.

SUPPLEMENTARY INFORMATION:

1. Background

A. Utah PM_{10} Statutory and Regulatory History

1. 1977 Clean Air Act (CAA) Requirements: Revision and Implementation of PM_{10} NAAQS

The CAA requires EPA to periodically review and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as revise the NAAQS themselves. On July 1, 1987 (52 FR 24634), EPA finalized its decision to revise the particulate matter NAAQS from "total suspended particulate" (TSP) to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

To implement the new particulate matter NAAQS, all areas in the country were divided into three groups, based on the probability that each area would violate the new PM_{10} NAAQS. "Group I" areas were those areas having violated the PM^{10} NAAQS or having air quality data showing a high (greater than 95%) probability of violating the NAAQS. These areas required substantial SIP adjustment. "Group II" areas were those areas estimated at having 20–95% probability of violating the PM_{10} NAAQS and needing less adjustment to their existing SIPs. "Group III" areas were those areas estimated as having less than 20% probability of violating the PM_{10} NAAQS and, therefore, only needing SIP adjustment as required under the preconstruction review program. See 52 FR 24672 and 52 FR 24679–82 (July 1, 1987).

In the State of Utah, Salt Lake and Utah Counties were identified by EPA as Group I areas. The rest of the State was classified as Group III (52 FR 29383, August 7, 1987). The State, therefore, under section 110(a)(1) of the CAA then in effect, was required to submit a PM_{10} SIP by April 1988. On November 15, 1990, the President signed into law revisions to the CAA (Public Law No. 101–549, 104 Stat. 2399). All former "Group I" areas and certain other areas were designated nonattainment for PM_{10} and classified as moderate by operation of law upon enactment of the 1990 Amendments. See Section 107(d)(4)(B) and 188(a) of the Act. Thus, Utah and Salt Lake Counties became moderate PM_{10} nonattainment areas (56 FR 56694, 56840, November 6, 1991) and were subject to the associated moderate PM_{10} nonattainment area SIP requirements.

2. Citizen Lawsuit

In 1989, a lawsuit (*Preservation Counsel* v. *Reilly*, Civil Action No. 89–

SUPPLEMENTARY INFORMATION:

1. Background

A. Utah PM_{10} Statutory and Regulatory History

1. 1977 Clean Air Act (CAA) Requirements: Revision and Implementation of PM_{10} NAAQS

The CAA requires EPA to periodically review and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as revise the NAAQS themselves. On July 1, 1987 (52 FR 24634), EPA finalized its decision to revise the particulate matter NAAQS from "total suspended particulate" (TSP) to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

To implement the new particulate matter NAAQS, all areas in the country were divided into three groups, based on the probability that each area would violate the new PM_{10} NAAQS. "Group I" areas were those areas having violated the PM^{10} NAAQS or having air quality data showing a high (greater than 95%) probability of violating the NAAQS. These areas required substantial SIP adjustment. "Group II" areas were those areas estimated at having 20–95% probability of violating the PM_{10} NAAQS and needing less adjustment to their existing SIPs. "Group III" areas were those areas estimated as having less than 20% probability of violating the PM_{10} NAAQS and, therefore, only needing SIP adjustment as required under the preconstruction review program. See 52 FR 24672 and 52 FR 24679–82 (July 1, 1987).

In the State of Utah, Salt Lake and Utah Counties were identified by EPA as Group I areas. The rest of the State was classified as Group III (52 FR 29383, August 7, 1987). The State, therefore, under section 110(a)(1) of the CAA then in effect, was required to submit a PM_{10} SIP by April 1988. On November 15, 1990, the President signed into law revisions to the CAA (Public Law No. 101–549, 104 Stat. 2399). All former "Group I" areas and certain other areas were designated nonattainment for PM_{10} and classified as moderate by operation of law upon enactment of the 1990 Amendments. See Section 107(d)(4)(B) and 188(a) of the Act. Thus, Utah and Salt Lake Counties became moderate PM_{10} nonattainment areas (56 FR 56694, 56840, November 6, 1991) and were subject to the associated moderate PM_{10} nonattainment area SIP requirements.

2. Citizen Lawsuit

In 1989, a lawsuit (*Preservation Counsel* v. *Reilly*, Civil Action No. 89–C–262–G, (D. Utah)) was filed by the Preservation Council, Utah Environment Center and the Utah Valley Citizens for Clean Air against EPA. The plaintiffs claimed that, because the State had failed to submit a PM_{10} SIP within the timeframe provided under the CAA that provided for attainment of the PM_{10} NAAQS, the duty to issue such a plan for Utah had devolved to EPA and that EPA was required to issue a plan for Utah pursuant to Section 110(c)(1) of the CAA then in effect.

A settlement agreement was signed by the parties in January 1990, which called for submittal of a SIP for Utah County and Salt Lake County and EPA approval, or EPA promulgation of a Federal Implementation Plan (FIP) for these counties, if necessary, signed by the EPA Administrator by December 31, 1991. The settlement allowed the State to maintain the SIP development lead, but placed significant emphasis on EPA's involvement and technical oversight.

The Utah County area plan was adopted in September 1990 and submitted to EPA in October 1990. The Salt Lake County area plan was adopted in June 1991, and submitted to EPA in November 1991. EPA's agreement as to the appropriateness of developing separate plans for the two area plans was based on its review of the various complex source contributions in these areas, the effort by the State to address the issues in an equitable and timely manner (numerous scoping and public hearings were held to obtain interested parties' comments), and the different areas' design values.

The State did consider control strategies for area and mobile sources which were common to both counties. The Utah County plan, therefore, was modified in June 1991 to be consistent with the Salt Lake County plan and resubmitted with the Salt Lake County plan in November 1991. The parties voluntarily stipulated to dismissal of the lawsuit (agreeing to vacate the Settlement Agreement and dismiss the complaint) in August 1991.

B. Moderate PM_{10} Nonattainment Area SIP Requirements

The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in title I of the Act. The EPA issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements. (See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).) Today's final approval rulemaking action will apply EPA's interpretations to the Utah PM_{10} SIP.

Part D of title I contains the provisions applicable to nonattainment areas. Moderate PM_{10} nonattainment areas must meet the applicable requirements set out in Subparts 1 and 4 of Part D. Subpart 1 contains provisions generally applicable to all nonattainment areas and Subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, Subparts 1 and 4 overlap or conflict. The EPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in today's notice.

Those States containing initial moderate PM_{10} nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. A comprehensive, accurate, current inventory of actual emissions which provides a sufficient basis for determining the adequacy of the attainment demonstration;

2. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) to be implemented no later than December 10, 1993;

3. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable, but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

4. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

5. Provisions to assure that control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See Sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992. (See Section 189(a).) Such States also must submit contingency measures by November 15.

1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline of December 1994. (See Section 172(c)(9) and 57 FR 13543–13544.)

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals. (See 57 FR 13565–13566.) In this action, EPA is approving the Utah PM_{10} plan revision submitted to EPA in a letter dated November 15, 1991. This submittal was intended to satisfy those moderate PM_{10} nonattainment area SIP requirements due November 15, 1991. EPA proposed to approve the submittal on December 18, 1992, 57 FR 60149. Comments were received from Geneva Steel and Kennecott Utah Copper Corporation. EPA's response to these comments are discussed below in III. Public Comment.

A. Regulatory Discussion

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. (Also, Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).) Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. Utah held several public hearings after reasonable notice, evaluated the hearing comments, made changes to the SIPs and regulations as needed, and provided EPA with documentation of this process. The state documentation can be found in the State's Technical Support Document (TSD), Evaluation of the PM_{10} SIPs Compliance with 40 CFR 51, Appendix V Requirements.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action. (See Section 110(k)(1) and 57 FR 13565.) The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The Utah PM_{10} SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1992). The submittal was found to be complete, and a letter dated January 19, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

The reader is referred to the **Federal Register** dated December 18, 1992, 57 FR 60149, for the detailed discussion on the Utah PM_{10} SIP and corresponding regulatory requirements. In summary, the Utah PM_{10} SIP must address various elements such as: emissions inventory, RACM (including RACT), demonstration of attainment, PM_{10} precursors, quantitative milestones and reasonable further progress (RFP), and enforceability issues.

C. The Utah PM_{10} SIP

1. Utah County

The Utah County area has three monitoring sites, each of which recorded violations of the PM_{10} NAAQS. The Lindon site had 666 total number of days of available data; the second highest value is 254 $\mu g/m^3$, measured in February 1989. The North Provo site had 226 days of available data; the first high is 191 $\mu g/m^3$ measured in January 1988. The West Orem site had 339 days of available data; the first high is 263 $\mu g/m^3$. These high/second high days represent the design value for these sites; they were determined using the "look-up table," Table 6–1, in the PM_{10} SIP Development Guideline document (EPA—450/2–86–001).

The Utah County monitoring network recorded additional data other than those stated above. However, to ensure that each season of the year is represented by the data used in determining the design value, EPA requires the use of a complete discrete 12-month data set, or sets which are multiples of 12-month periods. The use of the most recent data sets which represents the area is also encouraged.

The Utah County area had a unique data base involving the operation-shutdown-startup of Geneva Steel. The steel mill was down for the period August 1986 to September 1987. Data comparison showed the facility as a major contributor to the PM_{10} violations. The days of violations, the average winter concentration, and average iron content on the filters were significantly greater during the operation of the facility than during the down period.

EPA recommends the use of certain methods to demonstrate whether a plan will provide for timely attainment (57 FR 13538–39). Dispersion and receptor modeling are among the recommended methods and these methods were initially used by the State to define the design value(s) and control strategies.

Within the time constraints in meeting the settlement agreement imposed deadlines to complete a SIP, there were extensive reanalyses of the monitoring network, Chemical Mass Balance (CMB) filters, and the emission inventory (CMB is a receptor modeling effort which can be used to define PM_{10} emissions). EPA determined that, with the information available from the detailed emission inventory (supported by a micro inventory) and CMB analyses, the SIP would not result in additional or different control strategies if there was sufficient time to run a dispersion modeling analysis, adjusting for the concerns regarding stagnation and secondary contributions.

As indicated in the General Preamble, 57 FR 13539, EPA has developed a supplemental attainment demonstration policy that applies to the initial moderate PM_{10} nonattainment areas. See "PM_{10} SIP Attainment Demonstration Policy for Initial Moderate Nonattainment Areas," issued by John Calcagni on March 4, 1991. The policy indicates that in certain circumstances (where time constraints, inadequate resources, inadequate data bases, lack of a model for some unique situations, and other unavoidable circumstances would leave an area unable to submit an attainment demonstration by November 15, 1991), "modified demonstrations" may be accepted on a case-by-case basis. The policy recommends that a modified demonstration be accompanied with the following: (1) documentation of the procedures or analyses used in the modified method; (2) an explanation why alternative methods identified in EPA guidance were not used; (3) a description of how the modified method demonstrates, adequately and appropriately, area-wide attainment; and (4) when the design value is based on monitoring data, a showing that the SIP is based on one full year of adequate data for an approved network, a review of the monitoring data and network, and provision for appropriate followup monitoring to address issues raised during the review. For the reasons stated previously, EPA believes it was appropriate for the State to use a modified demonstration for Utah County. The State TSD describes how the Utah County analyses are consistent with this policy.

The base year emission inventory was for 1988. Since the exceedances are wintertime occurrences, the State focused on a wintertime (1988–89 season) inventory and an annual inventory. Summaries of these inventories, as well as the attainment year inventory, are provided in Table 9.A.3 of the SIP. Specific details of the base year and attainment year (after controls) inventories are provided in Volume II, Utah County, State Technical Support Document.

Although the design values varied by site, the source apportionments were similar. The source apportionment at the West Orem monitoring site, which had the County's highest design value, was representative of the source apportionment of the Lindon and North Provo monitoring sites. Thus, if attainment can be demonstrated at West Orem, attainment could also be assured at the other two sites. The categories of sources contributing to the design day include Geneva Steel (62.5%, primary and secondary), automobile (10.9%, primary and secondary), space heating (including wood and coal burning, primary and secondary, 16.6%), and other point sources (10%, primary and secondary).

To demonstrate attainment by December 1994 (and to show on-going maintenance of the NAAQS), the SIP provided for implementation of the following control measures (the SIP shows attainment by 1993 and maintenance to 2003):

(1) New operating parameters and emission limitations for PM_{10}, SO_2, and NO_x for existing sources of primary and secondary PM_{10} impacting the ambient concentrations at the monitoring sites are detailed in Appendix A.1. of the Utah Air Conservation Regulation (UACR). These control measures include:

(a) a 54.4% emission reduction for Geneva Steel (primarily from the coke oven stacks and open hearth) includes facility-wide emission limitations and reporting and recordkeeping requirements specified in Appendix A.1.2.F of the SIP;

(b) fourteen other sources, which include a nitric acid plant, power plants, and asphalt & cement plants, have emission limitations specified in Appendix A.1.2.A through A.1.2.O;

(c) provisions limiting fuel burning to natural gas or to a specific sulfur content in the fuel, with specific permitting and recordkeeping requirements, apply to all major fuel burning units or facilities in the County;

(d) general provisions relating to stack testing, opacity, compliance with annual limitations, recordkeeping

The base year emission inventory was for 1988. Since the exceedances are wintertime occurrences, the State focused on a wintertime (1988–89 season) inventory and an annual inventory. Summaries of these inventories, as well as the attainment year inventory, are provided in Table 9.A.3 of the SIP. Specific details of the base year and attainment year (after controls) inventories are provided in Volume II, Utah County, State Technical Support Document.

Although the design values varied by site, the source apportionments were similar. The source apportionment at the West Orem monitoring site, which had the County's highest design value, was representative of the source apportionment of the Lindon and North Provo monitoring sites. Thus, if attainment can be demonstrated at West Orem, attainment could also be assured at the other two sites. The categories of sources contributing to the design day include Geneva Steel (62.5%, primary and secondary), automobile (10.9%, primary and secondary), space heating (including wood and coal burning, primary and secondary, 16.6%), and other point sources (10%, primary and secondary).

To demonstrate attainment by December 1994 (and to show on-going maintenance of the NAAQS), the SIP provided for implementation of the following control measures (the SIP shows attainment by 1993 and maintenance to 2003):

(1) New operating parameters and emission limitations for PM_{10}, SO_2, and NO_x for existing sources of primary and secondary PM_{10} impacting the ambient concentrations at the monitoring sites are detailed in Appendix A.1. of the Utah Air Conservation Regulation (UACR). These control measures include:

(a) a 54.4% emission reduction for Geneva Steel (primarily from the coke oven stacks and open hearth) includes facility-wide emission limitations and reporting and recordkeeping requirements specified in Appendix A.1.2.F of the SIP;

(b) fourteen other sources, which include a nitric acid plant, power plants, and asphalt & cement plants, have emission limitations specified in Appendix A.1.2.A through A.1.2.O;

(c) provisions limiting fuel burning to natural gas or to a specific sulfur content in the fuel, with specific permitting and recordkeeping requirements, apply to all major fuel burning units or facilities in the County;

(d) general provisions relating to stack testing, opacity, compliance with annual limitations, recordkeeping requirements of consumption/production, on-site fugitive dust control requirements from unpaved operation areas, etc., are specified in Appendix A.1.1;

(e) regulations to ensure implementation and enforcement provisions were revised or added, such as definitions, general requirements applicable to all sources or source categories, permitting regulations, emission standards, and emergency episode requirements.

(2) No burn periods, beginning September 1992, will achieve 60% emission reduction from fireplaces and 50% from woodstoves (Section 9.A.6(4)(a) of the SIP):

(a) area coverage is north of the southernmost border of Payson City and east of State Route 68 (this covers virtually all the populated areas in Utah County; the areas not covered are mountainous areas and Utah Lake);

(b) program is triggered when ambient PM_{10} concentrations reach 120 $\mu g/m^3$ as measured by the real-time monitor located at the Lindon monitoring site;

(c) City and County Health Department commits to adopt local regulations to promulgate plan consistent with the State regulations;

(d) the State commits to eight inspectors round-the-clock during mandatory no burn periods and inspections to include investigation of calls made by private citizens;

(e) a regulation which specifically prohibits any visible emissions during the mandatory no burn period, except for those residences with burning as the sole source of heat for the entire residence and registered with the Executive Secretary or the local Health District (UACR 4.13.3); [1] and

(f) guidelines established for assessing the amount of penalty for violation of the no burn regulation (UACR 9.A.6.(4)(c)(viii)).

(3) Reducing sand/salt/slag applied to roads during the wintertime by 20% (Section 9.A.6(7) of the SIP). In addition, a study is to be conducted to confirm 20% reduction. Within six months from completion of the study, agencies responsible for application of these materials on the road must submit a plan and implementation schedules to reduce initial silt loading by 25% from the amount applied during the 1990 base year. The methods included in the Plan must be implemented by October 1, 1993. Regulations specifying the requirements for those who apply salt, slag or sand to roads are located in UACR 3.2.7.A & B.

EPA requires that attainment be demonstrated at all sites violating the PM_{10} standard. The control measures discussed above are necessary for all the sites to attain the standard, although the impact of a specific source category at a site may vary. The attainment summary for the 24-hour PM_{10} NAAQS at each of the three monitoring sites (Lindon, North Provo, and West Orem) through the year 2003 can be found in Tables 9.A.5, 9.A.7 and 9.A.9 of the SIP, respectively. Changes in emissions between 1993 and 2003 show a slight decrease in mobile source emissions, but a slight increase in residential space heating (woodburning) emissions.

Although the State focused on the emissions and exceedances during the winter months, the control measures specific to the stationary sources are year-round. The highest annual average in Utah County occurred in 1988 at the Lindon site and was 54 $\mu g/m^3$. Since attainment of the 24-hour design value results in an emission reduction of 43% in Utah County, the 24-hour emission limits are the more restrictive and will ensure attainment of the annual standard (as summarized in Table 9.A.24 of the SIP).

The State has also committed to adopt a diesel inspection and maintenance (I/M) program to reduce diesel particulate emissions by 20%. The SIP contains a detailed discussion of the program elements, committed to by the State, including, among other things, the following measures:

(a) opacity inspections and mandatory repair upon failure;

(b) compliance monitored through diesel vehicle registration;

(c) certification of mechanics and stations upon their demonstration of adequate training, skill, and resources;

(d) opacity compliance test methods and roadside opacity enforcement;

(e) fleet self-certification;

(f) limited waiver provisions;

(g) public education on the program requirements provided to diesel vehicle owners and diesel industry organizations;

(h) enforcement program, penalties and annual program evaluation.

The SIP contains a detailed schedule of the State's action on the diesel I/M program that indicates, among other things, the program provisions will become effective on July 1, 1993. The State has since advised EPA that the implementation of this program has slipped due to delays in the national

[1] The SIP requires that the County develop regulations/ordinances for fireplace and woodstove installer and operator training programs, a solid fuel burner inspection program, weatherization requirements for homes, and banning of coal burning. EPA notes that when implemented, this program should help ensure maintenance of the NAAQS in the area.

opacity testing and measurement specifications.

2. Salt Lake County

Two distinct PM_{10} problems have been identified in Salt Lake County: (1) the summertime exceedances due to blowing dust from the Kennecott tailings in Magna, and (2) the winter exceedances during winter inversion periods in Salt Lake and Davis Counties.

a. Magna

Based on 724 observations in a three-year period, 1987 through 1989, the design value was determined to be the third-high reading, 304 $\mu g/m^3$. The exceedances were specifically caused by blowing dust from the Kennecott tailings pond while the facility was shut down. Additional analyses to determine any other source contribution were not necessary.

Kennecott and the State agreed to various control measures to ensure dust control of the tailings pond during current operation, and temporary or permanent shutdown of the mine, smelter and/or associated tailings pond operations.

The control measures (which included slurry distribution throughout the periphery and surface top of the pond) were completed in July 1988. Vegetation planting was also initiated. The meteorological conditions (winds at 15 mph or greater) which caused the past exceedances have occurred since the implementation of the control measure and no exceedances were recorded. The control measures are defined in Section 9.A.6(1) of the SIP and Appendix A.2.2.BB.B of the Utah Air Conservation Regulation.

b. Salt Lake County

The Salt Lake County exceedances, with the exception of the Magna area problem, occurred only during the winter season (November through February). The County has three monitoring sites (North Salt Lake, Air Monitoring Center, and Salt Lake), which recorded violations of the PM_{10} NAAQS. The North Salt Lake design value is 169 $\mu g/m^3$. The Air Monitoring Center design value is 177 $\mu g/m^3$. The Salt Lake design value is 170 $\mu g/m^3$.

The source apportionments for these sites are fairly similar, showing significant PM_{10} contribution from secondary emissions. The Salt Lake area has different types of major stationary sources which emit SO_2 and NO_x emissions, including refineries, a copper smelter, power plants, and asphalt plants. Significant emissions were also identified from industrial vehicles, trains, and planes (Salt Lake has an international airport and a major railroad distribution center), woodburning, and from gasoline vehicles. The State concluded that showing attainment at the Air Monitoring Center, where the design value was highest, would also show attainment at the remaining two sites.

Analyses of the gridded emission inventory and the CMB indicated that the Salt Lake monitors, especially the North Salt Lake site, were impacted by PM_{10} and its precursors (SO_2 and NO_x) in Davis County. Therefore, to adequately address the nonattainment problem in Salt Lake County, sources were evaluated and controls required in Davis County, as well as in Salt Lake County.

As with the Utah County effort, the Salt Lake modeling analysis was receptor modeling, or CMB, due to difficulties with using dispersion modeling. Low wind speed (stagnation) and inversions were recurring meteorological conditions; they were not necessarily as severe as the conditions in Utah County. The area, however, had significant mountain-valley-lake effects. (The Wasatch Mountains are to the east and the Great Salt Lake is to the west.) The State has only vector wind data, which could not be changed to scaler units in a timely manner. Therefore, to meet the deadlines of the Settlement Agreement, EPA and the State agreed to proceed with the Salt Lake analysis using CMB and emission inventory rollback. A micro inventory and critical review of the CMB provides an adequate and appropriate analysis of the PM_{10} contribution and the required emission reduction necessary for attainment in Salt Lake County. In addition, Kennecott Copper performed a tracer study in February 1990 to determine if its emissions impact the Salt Lake monitoring sites. That study confirmed that the 1215 ft. stack and emissions from low heights at the smelter do impact the monitoring sites.

As discussed in II.C.1. above, EPA's policy indicates that, in certain circumstances, "modified demonstrations" may be accepted on a case-by-case basis. The policy is applicable to the Salt Lake County attainment demonstration due to the meteorological and topographical concerns, as well as the secondary particulate contribution issues. These issues were documented in Volume I, Salt Lake County, General Data Technical Support Document.

The base year emission inventory was for 1988. Since the exceedances were wintertime occurrences, the State focused on a wintertime (1988–89 season) inventory and an annual inventory. Summaries of these inventories, as well as the attainment year inventory, are provided in Table 9.A.13 of the SIP. Specific details of the base year and attainment year (after controls) inventories are provided in Volumes II through VI, Salt Lake County, State Technical Support Document.

The Air Monitoring Center site, with the highest design value in the area, was used as the "control" site for demonstrating attainment of the PM_{10} NAAQS in Salt Lake County. The categories of source contribution for the highest design value site include refineries (5.35% primary), other point sources (12.42% primary), secondary sulfates (12.97%, primarily from Kennecott smelter and refineries), secondary nitrates (10.42%, primarily from Kennecott mine and refineries), automobiles (29.28% primary and secondary), space heating (including wood and coal burning, 24% primary and secondary), and other sources (trains and planes, 3.52% primary and secondary). The source contribution for all the sources, except Kennecott, is similar at the other monitoring sites. The Kennecott source contributions were 4 to 6% for primary PM_{10} at the North Provo and Salt Lake sites and 0% at the Air Monitoring Center.

To demonstrate attainment by December 1994 (and to show ongoing maintenance of the NAAQS), the SIP provides for implementation of the following control measures (the SIP shows attainment by 1993 and maintenance to at least 2000):

(1) New operating parameters and emission limitations for PM_{10}, SO_2, and NO_x for existing sources of primary and secondary PM_{10} impacting the ambient concentrations at the monitoring sites are detailed in Appendix A.2. of the UACR. These control measures include:

(a) significant emission reduction for Kennecott's facilities (concentrator, power plant, refinery, gold mine, copper mine and smelter). The smelter's 1215 ft. stack previously was allowed to emit SO_2 emissions of 18,000 lbs/hr, annual average and a maximum 3-hour average of 98,400 lbs/hr. The new emission limit which requires emission reduction equivalent to that which would be realized from a double contact acid plant is 3240 lbs/hr, annual average and 5700 lbs/hr, 24-hour average.

(b) emission reduction for the refineries (the major control requirements are the installation of a sulfur recovery unit, and emission limitations on the boilers, furnaces, flares, catalytic crackers, etc.);

(c) provisions allowing the burning of only natural gas fuel during the wintertime (November through Febriary) at all power plants; year-round burning of natural gas fuel is required at Utah Power and Light (Gadsby and 40 N. 100W.) and Murray City Power;

(d) sources are considered major if they emit 50 tpy of PM_{10}, SO_2, or NO_x, or any combination of the three pollutants.

(e) general provisions relating to stack testing, opacity, compliance with annual limitations, recordkeeping requirements of consumption/production, on-site fugitive dust control requirements from unpaved operation areas, etc.

(f) regulations to ensure implementation and enforcement provisions were revised or added, such as definitions, general requirements applicable to all sources or source categories, permitting regulations, emission standards, emergency episode requirements and malfunction provisions.

(2) No burn period, beginning September 1992, will achieve 60% emission reduction from fireplaces and 50% from woodstoves (Section 9.A.6(4)(b) of the SIP):

(a) area coverage is all of Salt Lake County and for areas in Davis County which are south of the southernmost border of Kaysville; the prohibition applies when the ambient concentration of PM_{10} reaches 120 $\mu g/m^3$ and the forecasted weather includes a temperature inversion which is predicted to continue for at least 24 hours;

(b) the State commits to eight inspectors round-the-clock during mandatory no burn periods and inspections to include investigation of calls made by private citizens;

(c) a regulation which specifically prohibits any visible emissions during the mandatory no burn period, except for those residences with burning as the sole source of heat for the entire residence and registered with the Executive Secretary or the local health department (UACR 4.13.3); and

(d) guidelines established for assessing the amount of penalty for violation of the no burn regulation (UACR 9.A.6.(4)(c)(viii))

(3) Reducing sand/salt/slag applied to roads during the wintertime by 20%, as described above in the Utah County plan, B.1.d.3. EPA's position regarding this measure is also the same as described above in the discussion of the Utah County plan and is incorporated here by reference. In short, EPA is approving the road salting and sanding

(c) provisions allowing the burning of only natural gas fuel during the wintertime (November through February) at all power plants; year-round burning of natural gas fuel is required at Utah Power and Light (Gadsby and 40 N. 100W.) and Murray City Power;

(d) sources are considered major if they emit 50 tpy of PM_{10}, SO_2, or NO_x, or any combination of the three pollutants.

(e) general provisions relating to stack testing, opacity, compliance with annual limitations, recordkeeping requirements of consumption/production, on-site fugitive dust control requirements from unpaved operation areas, etc.

(f) regulations to ensure implementation and enforcement provisions were revised or added, such as definitions, general requirements applicable to all sources or source categories, permitting regulations, emission standards, emergency episode requirements and malfunction provisions.

(2) No burn period, beginning September 1992, will achieve 60% emission reduction from fireplaces and 50% from woodstoves (Section 9.A.6(4)(b) of the SIP):

(a) area coverage is all of Salt Lake County and for areas in Davis County which are south of the southernmost border of Kaysville; the prohibition applies when the ambient concentration of PM_{10} reaches 120 $\mu g/m^3$ and the forecasted weather includes a temperature inversion which is predicted to continue for at least 24 hours;

(b) the State commits to eight inspectors round-the-clock during mandatory no burn periods and inspections to include investigation of calls made by private citizens;

(c) a regulation which specifically prohibits any visible emissions during the mandatory no burn period, except for those residences with burning as the sole source of heat for the entire residence and registered with the Executive Secretary or the local health department (UACR 4.13.3); and

(d) guidelines established for assessing the amount of penalty for violation of the no burn regulation (UACR 9.A.6.(4)(c)(viii))

(3) Reducing sand/salt/slag applied to roads during the wintertime by 20%, as described above in the Utah County plan, B.1.d.3. EPA's position regarding this measure is also the same as described above in the discussion of the Utah County plan and is incorporated here by reference. In short, EPA is approving the road salting and sanding rules contained in the SIP. Based on the information currently available, EPA believes the 20% reduction estimated by the State is reasonable. However, in acting on any SIP revision following from the study described in B.1.d.3 above, EPA would review the sufficiency of any new measures in light of the new information. EPA also may find it necessary to assess the sufficiency of the area's attainment demonstration in light of such new information. See Section 110(k)(6) of the Act.

The control strategies discussed above are necessary to demonstrate attainment at the three monitoring sites, although the impact of a specific source category at a site may vary. The attainment summaries for the 24-hour PM_{10} NAAQS at each of the monitoring sites (North Salt Lake, Air Monitoring Center, and Salt Lake City) through the year 2000 can be found in Tables 9.A.16, 9.A.a and 9.A.22, respectively. Changes in emissions between 1993 and 2000 show a slight decrease in mobile source emissions, but an increase from residential space heating (woodburning).

Although the State focused on the emissions and exceedances during the winter months, the control measures specific to the stationary sources are year-round. The highest annual average, 54 μm^3, in Salt Lake County occurred in 1988 at the North Salt Lake site. Since the 24-hour design value results in a PM_{10} emission reduction of 19.6% in Salt Lake County, the 24-hour emission limits are more restrictive, and will ensure attainment of the annual standard (as summarized in Table 9.A.24 of the SIP).

The State's commitment to adopt a diesel I/M program to reduce diesel particulate emission by 20% applies to Salt Lake and Davis County as well as Utah County (Section 9.A.6(6) of the SIP). In the Utah County portion of this notice, EPA described in broad terms the program elements and associated schedules committed to by the State. The prior discussion of the commitment applies with equal force here. EPA's position regarding the State's commitment to adopt this program is also the same as that described in the Utah County discussion above and is incorporated here by reference.

D. Additional Section 110(a)(2) and Section 172 CAA Requirements

The Utah State-wide SIP was last revised in 1978 and, at that time, the State addressed major SIP elements such as resources, ambient monitoring program, emergency episodes, permitting, etc. These program elements are required by Section 110(a)(2) and Section 172 (Part D) of the CAA. The Utah SIP has been revised since 1978, but the revisions were only for pollutant specific nonattainment areas. To ensure adequate implementation and enforcement of the PM_{10} SIP, the State reviewed and updated its State-wide SIP and regulations. The regulations were revised, as necessary, to enforce the PM_{10} SIP. The State-wide SIP, excluding Section 9 (pollutant-specific nonattainment area plans), and Section 8 (Prevention of Significant Deterioration), was revised to address changes in EPA guidance and other Federal requirements. A public hearing was held on these revisions on December 16, 1991. The revisions were made effective on March 31, 1992 and officially submitted to EPA on October 16, 1992.

Prior to this revision, the UACR were incorporated into the State-wide SIP, Chapter 12. During the public hearing process, the State identified administrative and publishing concerns which justified the "rearranging" of the regulations and the document titled "SIP". The State clarified that the SIP has always been incorporated by reference into the regulations, as stated in UACR R446–2. Past inclusion of the regulations into the SIP creates a double incorporation. The State clarified that the regulations and the revised "SIP" will continue to be federally enforceable for the State-wide program. Clarification of the State's position on this issue is documented in the State's response to public hearing comments on the revisions to Chapter 1–7 and 10–15; the State's internal memorandum of its response to public hearing comments is dated December 23, 1991, and is included in the State TSD.

E. Post SIP Submittal Issues

EPA reviewed the Utah PM_{10} submittal dated November 15, 1991, and determined the package as administratively and technically complete. This finding was documented in a letter to the Governor of Utah on January 17, 1992. EPA, however, had several concerns on the approvability of the SIP due to missing documentation. Documentation on the State's analyses on various stationary source control measures and how they were to be revised in the SIP and specified in the permits was needed. EPA has since received a majority of the documentation requested or has received an adequate State response with respect to correcting any stationary-source emission-limitation clarity issues. The State did not need a formal SIP revision (i.e., that which has

gone to the public hearing process) to correct these changes (with the exception of the Pacific States Cast Iron opacity and the 202 test method, discussed below) because the changes were not significant and substantive modifications.

The Pacific States Cast Iron Company (this source is located in Utah County) opacity limit stated in the SIP is 30%. Generally, EPA policy provides that, for any major stationary source emitting particulates in a nonattainment area, the opacity should be restricted to 20% unless the source can demonstrate that 20% is not feasible. In that case, the source must demonstrate the lowest opacity level that is feasible. The 30% opacity was a requirement that was stated in the public hearing document. This opacity limit was an oversight in the review of the Pacific States Cast Iron emission limitations. In a letter dated October 23, 1992, the Director of the Utah Division of Air Quality committed to review the emission limit (the 20% or feasible opacity level) for this source and to adopt a SIP revision, if appropriate, by March 1993. This review must be completed by the State.

When the Utah PM_{10} SIP was finalized, Method 202 had not been promulgated by EPA. Therefore, the absence of Method 202 is not a basis for disapproving any requirements or elements in the SIP submittal being acted on today. However, Method 202 is now available and should be specified in the future as appropriate in the SIP and in the stationary source permits. The State was aware of this potential requirement and has agreed to address this issue as part of its State/EPA Agreement for fiscal year 1994.

During the review of the November 15, 1991 submittal, EPA and the State identified typographical errors in the final printing of the SIP. The State has committed to correct these errors in a letter dated July 1, 1992. The typographical errors on (1) page 42 of the SIP, Section 9.A.6.(2)(a), (2) page 52 of the SIP, third paragraph, sixth line, and (3) page 185, Section 9 of the SIP, Appendix A.2.2.RR, Condition 6, have been corrected in September 1993.

Since State adoption of this PM_{10} SIP, the State has been finalizing the permit conditions for stationary sources. EPA has discussed and advised the State on the need to ensure consistency with the State's permits and the federally-enforceable SIP. The State's permit program is in the federally-approved SIP. The final approval to the PM_{10} SIP will also make the emission limitations for the stationary sources federally enforceable. EPA is giving notice that should different emission limitations exist, EPA will enforce the more stringent of the two (or more) emission limitations. EPA must have assurance that the attainment demonstration of a nonattainment area plan is maintained. The less stringent emission limitation may not provide that assurance without a reanalysis of the attainment demonstration. It is, therefore, critical that the State maintain consistent emission limitations in the permits and in the federally-approved nonattainment-area plan. EPA has agreed to allow the State to update the emission limitations section of the SIP once a year, i.e., by September of each year beginning 1993. The tracking of this effort will be documented annually in the EPA/State Agreement.

III. Public Comment

EPA proposed to approve the Utah PM_{10} SIP on December 18, 1992, 57 FR 60149. Comments were received from Geneva Steel and Kennecott Utah Copper Corporation. The Geneva comments consisted of two parts: general comments in support of the SIP and a specific comment regarding equity on where controls were required and what controls are necessary for growth. The Kennecott comments contained a status report of its control measures on its tailings pond and the belief that the Federal approval of the PM_{10} SIP, which includes sulfur emission limitations for the smelter, would automatically imply resolution of the stack-height issues at the smelter. (The Kennecott smelter has a long history of issues surrounding its 1215 ft. stack. These issues are being addressed in a separate **Federal Register** action.) The Geneva and Kennecott comments are discussed in more details below.

A. Geneva Comments

The Geneva comments raised interesting issues, some of which have been raised previously during the PM_{10} SIP development, others which would be more appropriately addressed by the State in its current work on the PM_{10} contingency plan SIP Revision or the Carbon Monoxide SIP Revision. The comments are summarized below:

1. Geneva believes it has done its fair share to reduce emissions, but the SIP does not provide an adequate margin for growth from area and mobile sources. Geneva claims it has submitted data in February 1993 suggesting that ignoring the increasing vehicle emissions has resulted in overcontrol at Geneva.

Response: EPA has not seen the February 1993 data. The SIP, however, cannot be changed simply by the submittal of new data. EPA believes the State made the best decision with the data available at the time of the SIP development in 1990. The State can evaluate new data and revise the SIP accordingly. The State is required to submit a SIP Revision by November 15, 1993, to address contingency measures. The State should work with Geneva in considering the February 1993 data in the next SIP Revision.

2. Geneva commented that no Up-Down-Up analysis was performed on a similar source [the Kennecott smelter] in Salt Lake County which was also temporarily shut down during the PM_{10} data collection period. If the Up-Down-Up analysis is really useful, equivalent use for source apportionment in Salt Lake County would be expected.

Response: EPA believes that the State did not have sufficient data or time to perform an Up-Down-Up analysis for the Kennecott facility. Instead, the State used a tracer study which Kennecott funded. EPA and the State reviewed the data and believed they adequately evaluated the Kennecott emissions impact in the Wasatch Front. EPA believes that for PM_{10}, equitable emission reduction was applied to this stationary source category.

3. Geneva claims significantly different approaches were applied in defining the design values for the Utah County and Salt Lake County SIPs.

Response: The design value determination had been discussed between EPA, the State and Geneva prior to and during the State public hearing period. EPA continues to believe that the State adequately applied the appropriate rationale for evaluating quality assured complete data sets for both area SIPs. EPA Headquarters specifically documented the procedures for review of PM_{10} data in Utah County in EPA internal memoranda dated May 11, 1990 and July 11, 1990. The Salt Lake data were reviewed in the same manner.

4. Geneva pointed out that reductions in coal burning emissions were not adequately considered in the Utah County SIP and credit inappropriately applied in the Salt Lake County SIP.

Response: EPA agrees that coal burning emissions may not have been adequately addressed in the Utah County or Salt Lake County SIPs. EPA, however, did not give emission reduction credit for coal burning control measures in either SIP. EPA does agree that significant data were gathered on coal burning emissions in the Utah County area and that more data gathering may be needed in Salt Lake County. EPA believes the State could address these issues when it develops its PM_{10} contingency plan.

5. Geneva commented that the oxygenated fuels program may increase mobile source NO_x emissions which could jeopardize the success of the PM_{10} SIP (NO_x has been determined to be a PM_{10} precursor in the Utah County area).

Response: The oxygenated fuels program is being implemented in Utah County in response to the CAA mandate for moderate CO nonattainment areas with design values greater than 12.7 ppm. It was adopted and implemented *after* the PM_{10} SIP was adopted and submitted to EPA. That is, the PM_{10} SIP did not and could not have anticipated the impact of other future CAA requirements. EPA believes that the State should address the Utah County oxygenated fuels issues through the Carbon Monoxide (CO) SIP and filter data analyses to demonstrate that mobile source emissions, during the oxygenated fuels program, did in fact raise the NO_x emissions in the area. EPA has seen much of the data referenced by Geneva, but has also seen data to the contrary. EPA Headquarters has not made a conclusive determination on either data base.

6. Geneva suggested that the diesel emissions may not have been accurately apportioned; emissions assigned to diesel vehicles should have been assigned to gasoline vehicles.

Response: The PM_{10} SIP does break out diesel and gasoline fueled PM_{10} emissions, but does not break out NO_x emissions; there is only a single category for secondary nitrate. The NO_x emission estimates came from the MOBILE model, which includes both EPA's tailpipe emission factors and VMT shares for gasoline and diesel fueled vehicles. The model provides one composite NO_x emission factor, which is multiplied by total VMT in the County to produce one NO_x emissions number. Since the MOBILE model includes the necessary emission factors for the different vehicle types, the only way the State could have produced an erroneous NO_x estimate using the model would have been to input faulty VMT share information for gas and diesel vehicles. EPA believes the State used EPA's default inputs for VMT share.

7. Geneva claims that EPA and the State used the Kennecott tracer study for the PM_{10} SIP but that EPA was not in favor of applying the Geneva tracer study in the same manner for the Utah County CO SIP.

Response: EPA believes the intent and application of the Kennecott PM_{10} tracer study differed from the Geneva CO study. The Kennecott study was to determine if there was an impact from

5. Geneva commented that the oxygenated fuels program may increase mobile source NO_x emissions which could jeopardize the success of the PM_{10} SIP (NO_x has been determined to be a PM_{10} precursor in the Utah County area).

Response: The oxygenated fuels program is being implemented in Utah County in response to the CAA mandate for moderate CO nonattainment areas with design values greater than 12.7 ppm. It was adopted and implemented *after* the PM_{10} SIP was adopted and submitted to EPA. That is, the PM_{10} SIP did not and could not have anticipated the impact of other future CAA requirements. EPA believes that the State should address the Utah County oxygenated fuels issues through the Carbon Monoxide (CO) SIP and filter data analyses to demonstrate that mobile source emissions, during the oxygenated fuels program, did in fact raise the NO_x emissions in the area. EPA has seen much of the data referenced by Geneva, but has also seen data to the contrary. EPA Headquarters has not made a conclusive determination on either data base.

6. Geneva suggested that the diesel emissions may not have been accurately apportioned; emissions assigned to diesel vehicles should have been assigned to gasoline vehicles.

Response: The PM_{10} SIP does break out diesel and gasoline fueled PM_{10} emissions, but does not break out NO_x emissions; there is only a single category for secondary nitrate. The NO_x emission estimates came from the MOBILE model, which includes both EPA's tailpipe emission factors and VMT shares for gasoline and diesel fueled vehicles. The model provides one composite NO_x emission factor, which is multiplied by total VMT in the County to produce one NO_x emissions number. Since the MOBILE model includes the necessary emission factors for the different vehicle types, the only way the State could have produced an erroneous NO_x estimate using the model would have been to input faulty VMT share information for gas and diesel vehicles. EPA believes the State used EPA's default inputs for VMT share.

7. Geneva claims that EPA and the State used the Kennecott tracer study for the PM_{10} SIP but that EPA was not in favor of applying the Geneva tracer study in the same manner for the Utah County CO SIP.

Response: EPA believes the intent and application of the Kennecott PM_{10} tracer study differed from the Geneva CO study. The Kennecott study was to determine if there was an impact from Kennecott in the Salt Lake or Utah County PM_{10} nonattainment area. The Kennecott emission limitations were then set using emission rollback and CMB analyses. The Geneva study was to determine Geneva's impact in downtown Provo, but EPA has questioned the emission rates used during the study *and* the length of the study time. EPA believes that the study contains good information, but is inadequate to define the CO impact during stagnation conditions or establish emission rates as was done with the Kennecott study. This discussion, however, is not applicable to the approval of the Utah County PM_{10} SIP.

In summary, the Geneva comments raised interesting issues, some of which have been raised previously, and others which are more appropriate for the State to address during the PM_{10} contingency SIP revision or for the CO SIP revision.

B. Kennecott Comments

Kennecott made two specific comments. The first is the status of the vegetation cover around the tailings pond and its success in attaining the standard in the Magna area in the past four and a half years. In the second comment, Kennecott indicates that for PM_{10}, attainment was demonstrated using receptor modeling and ambient monitoring data. Kennecott states that "If the smokestacks used by one or more of the PM_{10} sources had been taller or shorter than they actually are, the ambient data would have been different and the results of the CMB analysis would have been different. Therefore, if any of the stacks were taller than GEP, credit could not be given for the height above GEP and an attainment demonstration based on CMB would not be valid." Kennecott reiterates its commitment to install a double contact acid plan and asserts that EPA's approval of the PM_{10} SIP implies approval of the GEP SIP.

Response: EPA acknowledges the good faith effort Kennecott has made in successfully implementing the control measures for the tailings pond. The comment on GEP, however, is not applicable here. The PM_{10} SIP did not attempt to review stack height issues in the Salt Lake or Utah County areas. (Stack heights could have been reviewed if any of the stationary sources emitted greater than 5000 tpy total suspended particulates. Such sources did not exist in these PM_{10} nonattainment areas.)

As stated in I.C.2.b above, Kennecott emissions from the tall stack and from other sources did impact PM_{10} monitoring sites in Utah and Salt Lake Counties. The Salt Lake PM_{10} SIP is related to the stack height (GEP) issue because SO_2 emissions in the Wasatch Front have been determined to be precursors of PM_{10}. To demonstrate attainment for the Utah SIP, "major" PM_{10} sources and their precursors must demonstrate RACT. For the Kennecott smelter, RACT was a double contact acid plant or its equivalent. A double contact acid plant has been determined by EPA to be RACT for the SO_2 SIP, but it is a control measure that was highly contested by Kennecott over the past two decades in favor of other control measures. Emissions rollback was used to determine the level necessary for PM_{10} attainment of the area. Stack height (or GEP) was not an issue which had to be resolved for the PM_{10} SIP. EPA did encourage the double contact acid plant control measure since such control measure, combined with other requirements, was necessary for both the PM_{10} and SO_2 attainment demonstration. The GEP SIP is focused on another criteria pollutant, was not discussed in the proposed approval rulemaking of the Utah PM_{10} SIP, and must be processed in a separate **Federal Register** action.

As with the Geneva comments, the Kennecott comments/issues do not affect the approvability of the PM_{10} SIP.

IV. Implications of Today's Action

The EPA is approving the plan revision submitted to EPA for the Utah and Salt Lake Counties, Utah, in a letter from the Governor dated November 15, 1991. Among other things, the State of Utah has demonstrated that the Utah and Salt Lake Counties PM_{10} nonattainment areas will attain the PM_{10} NAAQS by December 31, 1994.

The Utah Air Conservation Regulations (UACR) have been revised numerous times since the early 1970's. The regulations have been renumbered and new requirements added. EPA is today approving the replacement of the entire UACR submitted on November 15, 1991.

EPA is approving the State-wide SIP revisions (Chapters 1–7 and 10–15) submitted in a letter dated October 15, 1992, by the Director, Utah Air Quality Division. As with the UACR, the State-wide SIP was updated to clarity and consistency with current State and Federal requirements. The October 15, 1992 submittal was referenced in the Governor's original November 15, 1991 letter.

As noted, additional submittals for the initial moderate PM_{10} nonattainment areas were due at later dates. These include a new source review program for new and modified major sources of

PM_{10} (and PM_{10} precursors, where applicable), which was required to be submitted by June 30, 1992 (see Section 189(a) of the Act) and contingency measures, which were required to be submitted by November 15, 1993 (see Section 172(c)(9) of the Act and 57 FR 13543). The EPA will determine the adequacy of any such submittal as appropriate.

The approval of the PM_{10} plans for the Salt Lake and Utah Counties has benefits that extend to other criteria pollutant efforts. The approval of these PM_{10} plans, however, does not automatically resolve the other criteria pollutant issues, such as GEP and the SO_2 SIP. The GEP issue and the SO_2 SIP for Salt Lake County will be addressed in a separate **Federal Register** notice.

The approval of this PM_{10} plan for Salt Lake and Utah Counties establishes emission limitations and implementation milestones. The State must update its SIP for changes to these emission limitations, especially for stationary sources. EPA and the State agree that such updates (which are SIP Revisions) will occur each September, as appropriate. Should differences exist between emission limitations, EPA will enforce, as necessary, the most stringent limitation.

Final Action

This document makes final the action proposed at 57 FR 60149, December 18, 1992, including the clarifications discussed above. As noted elsewhere in this notice, EPA received public comments in support of its proposed approval and on comments more applicable to other pollutant (SO_2 and CO) issues; no adverse public comments were believed to have been submitted on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table I to a Table III under the processing procedures established at 54 FR 2214, January 19, 1989.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on a substantial number of small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.* 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 6, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

Executive Order 12866

OMB has exempted this action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, hydrocarbons, intergovernmental relations, nitrogen dioxide, particulate matter, reporting and recordkeeping requirements, and sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of Utah was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 26, 1994.

William Yellowtail,

Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(25) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(25) The Governor of Utah submitted a PM_{10} State Implementation Plan (SIP) for Salt Lake and Utah Counties, Utah with a letter dated November 15, 1991. The submittals were made to satisfy those moderate PM_{10} nonattainment area SIP requirements due for Salt Lake and Utah Counties as outlined in the Clean Air Act of 1990. The Governor's submittal also included revisions to the Utah Air Quality Rules and to other sections of the State-wide SIP. The Utah Air Conservation Regulations have been revised and renumbered over the past decade and are being replaced in its entirely with this Governor's submittal.

(i) Incorporation by reference.

(A) Utah Air Conservation Regulations, printed January 27, 1992.

(B) Utah State Implementation Plan, Section 1–7 and 10–15, effective March 31, 1992.

(C) Utah State Implementation Plan, Section 9, Part A and Section 9, Part A, Appendix A effective August 14, 1991.

[FR Doc. 94–16505 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Parts 52 and 81

[IN15–2–6326A; FRL–5008–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving three requests to redesignate marginal ozone nonattainment areas in the State of Indiana to attainment. The USEPA is also approving their accompanying maintenance plans as State Implementation Plan (SIP) revisions. The redesignation requests and maintenance plans were submitted by the Indiana Department of Environmental Management (IDEM) for the following ozone nonattainment areas: St. Joseph and Elkhart, Vanderburgh, and Marion Counties. The State has met the requirements for redesignation contained in the Clean Air Act (the Act), as amended in 1990. The redesignation requests are based on ambient monitoring data that show no violations of the ozone National Ambient Air Quality Standard (NAAQS) during the three-year period from 1990 through 1992. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on these requested redesignations and SIP revisions. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. Adverse comments received concerning a specific geographic area, St. Joseph and Elkhart, Vanderburgh, or Marion Counties, will only affect this final rule as it pertains to that area and only the portion of this final rule concerning the area receiving adverse comments will be withdrawn.

EFFECTIVE DATES: This action will be effective September 6, 1994, unless notice is received by August 8, 1994, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and USEPA's analyses are available for inspection at the following address: (It is recommended that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of these SIP revisions is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7548.

Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6069.

SUPPLEMENTARY INFORMATION: The redesignation requests and maintenance plans considered in this rulemaking were submitted by the Indiana Department of Environmental Management (IDEM) for the following

through 1992. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on these requested redesignations and SIP revisions. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. Adverse comments received concerning a specific geographic area, St. Joseph and Elkhart, Vanderburgh, or Marion Counties, will only affect this final rule as it pertains to that area and only the portion of this final rule concerning the area receiving adverse comments will be withdrawn.

EFFECTIVE DATES: This action will be effective September 6, 1994, unless notice is received by August 8, 1994, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and USEPA's analyses are available for inspection at the following address: (It is recommended that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of these SIP revisions is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7548.

Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6069.

SUPPLEMENTARY INFORMATION: The redesignation requests and maintenance plans considered in this rulemaking were submitted by the Indiana Department of Environmental Management (IDEM) for the following ozone nonattainment areas: South Bend/Elkhart (St. Joseph and Elkhart Counties, submitted on September 22, 1993); Evansville (Vanderburgh County, submitted on November 4, 1993); and Indianapolis (Marion County, submitted on November 12, 1993).

I. USEPA Redesignation Policy

The Act's requirements for redesignation to attainment are contained in section 107(d)(3)(E) of the Act, and discussed in a September 4, 1992 memorandum from the Director of the Air Quality Management Division, Office of Air Quality Planning and Standards, to Directors of Regional Air Divisions. As outlined in this memorandum, section 107(d)(3)(E) of the Act requires that the following conditions be met for redesignation to attainment:

1. The USEPA must determine that the areas subject to the redesignation request have attained the National Ambient Air Quality Standard (NAAQS);

2. The USEPA must have fully approved the applicable SIP for the areas under section 110(k) of the Act;

3. The USEPA must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from the implementation of the applicable SIP, Federal air pollution control regulations, and other federally enforceable emission reductions;

4. The USEPA must have fully approved maintenance plans for the areas as meeting the requirements of section 175A of the Act; and

5. The State must have met all requirements applicable to the areas under section 110 and Part D of the Act.

To demonstrate that the areas have attained the ozone NAAQS, the State must show that the ozone data representative of the highest ozone concentrations in the areas do not indicate violations of the NAAQS at any monitoring site in the areas during the most recent three years of monitoring at the sites. In accordance with 40 CFR 50.9, the annual average number of expected exceedances of the ozone standard (0.12 parts per million [ppm], one-hour averaged) at any monitor can not exceed 1.0 during the preceding three year period. The data used in this demonstration must be quality assured, in accordance with 40 CFR part 58, and collected in accordance with 40 CFR part 50, appendix H. The data should be recorded in USEPA's Aerometric Information Retrieval System (AIRS).

The SIP for the areas must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply to the areas. These requirements include new requirements added by the 1990 Act amendments. The State must meet all requirements of section 110 and Part D of the Act that were applicable prior to the submittal of the complete, finally adopted redesignation request(s). (It should be noted that, based on section 175A of the Act, other requirements of Part D of the Act remain in effect until the USEPA approves the maintenance plan and redesignation to attainment. If the USEPA disapproves the request to redesignate an area, these requirements remain in effect with no delay.) A SIP which meets the pre-redesignation request submittal requirements must be fully approved by the USEPA prior to USEPA's approval of the redesignation of the areas to attainment of the NAAQS. The requirements of Title I of the Act, which includes section 110 and Part D of the Act, are discussed in the General Preamble to Title I (57 FR 13498, April 16, 1992).

The State must be able to reasonably attribute the improvements in air quality to permanent and enforceable emission reductions. Attainment resulting from temporary emission reductions or from favorable (not conducive to high ozone concentrations) meteorology would not qualify as a permanent air quality improvement. The State should demonstrate that the emission reductions from a past high ozone period (generally the year or period for which the area ozone classification design values were determined), to the period of attainment were due to permanent and enforceable emission control measures and were sufficient to explain the attainment of the ozone NAAQS.

Prior to the redesignation of an area to attainment, the USEPA must fully approve a maintenance plan (as a SIP revision) which meets the requirements of section 175A of the Act. The maintenance plan must provide for maintenance of the NAAQS attainment in the area(s) for at least 10 years after the USEPA approval of the redesignation request. The maintenance plan must contain additional emission control measures as necessary to assure maintenance of the NAAQS (generally this means maintaining the ozone precursor emissions at or below the attainment year levels). The Act also requires (section 175A(b)) a second SIP revision 8 years after an area is redesignated to attainment to assure maintenance of the NAAQS for an additional 10 years beyond the first 10 year maintenance period.

The maintenance plan must contain such contingency measures as the

USEPA deems necessary to ensure prompt correction of any violation of the NAAQS occurring after an area is redesignated to attainment or exceedance of other triggering levels, such as emissions exceeding attainment levels (this could be caused by emission increases not anticipated in the maintenance plan).

At a minimum, the maintenance plan should contain the following elements:

1. Attainment Inventory

The State must develop an emissions inventory for the initial period of attainment to identify the level of emissions in each area which is associated with attainment of the NAAQS. This emissions inventory must be consistent with USEPA's most recent guidance on preparation and documentation of emission inventories. For ozone nonattainment areas, the inventory should be based on actual, typical summer weekday emissions of ozone precursors (Volatile Organic Compounds [VOC], Oxides of Nitrogen [NOx], and Carbon Monoxide [CO]).

2. Maintenance Demonstration

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of the ozone precursors will not exceed the levels of the emissions in the attainment inventory or by modeling to demonstrate that the future mix of sources and emission rates will not cause a violation of the NAAQS. The maintenance plan should be based on the same type and level of modeling used to demonstrate attainment of the NAAQS in the SIP. Regardless of which approach is used, the State must project the emissions for the 10 year period following the anticipated time of the USEPA approval of the redesignation request (the State should assume that the USEPA will take two years to complete the rulemaking on the redesignation request). The projected emissions must reflect the expected actual emissions based on enforceable emission rates and typical source activity rates (such as production rates) adjusted for expected source growth. Projected emission reductions must reflect the impacts of permanent, enforceable emission control measures. The assumptions of emission reductions and source growth and techniques used to project the emissions must be clearly documented.

3. Monitoring Network

The maintenance plan must contain provisions for the continued operation of air quality monitors of the applicable type (ozone monitors in this case) in the areas to be redesignated to attainment. This is needed to provide verification of the maintenance of the NAAQS attainment, and is also needed to provide triggering data for the possible activation of the contingency measures in the event of a future violation or exceedance of the NAAQS (the State may choose to activate some contingency measures even when the NAAQS is simply exceeded but not yet violated to prevent future NAAQS violations).

4. Verification of Continued Attainment

The State must assure that it has the legal authority to implement and enforce all measures necessary to attain and maintain the NAAQS. In addition, the maintenance plan must indicate how the State will track the progress and success of the maintenance plan. This includes tracking air quality levels and emissions.

5. Contingency Plan

Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after the redesignation of an area to attainment. For the purposes of section 175A, a State is not required to fully adopt contingency measures that will take effect without further action by the State. The contingency plan, however, is considered to be an enforceable part of the SIP and must ensure that the contingency measures will be adopted and implemented expeditiously after they are triggered. The plan must clearly identify the measures that will be adopted, a schedule and procedure for their adoption and implementation, and a specific time limit for action by the State. The plan must also identify the specific indicators or triggers that will be used to determine when the contingency measures will be required.

II. Summary of the Indiana Redesignation Submittals

Summarized below are the contents of the three IDEM redesignation requests and maintenance plans.

A. Current Designations and Area Definitions

On November 6, 1991 (56 FR 56694) the USEPA formally designated the Evansville, (Vanderburgh County); Indianapolis, (Marion County); and South Bend/Elkhart (Elkhart and St. Joseph Counties) areas as marginal ozone nonattainment areas. These designations and classifications were based on ozone standard violations monitored in these areas in 1988.

B. Monitored Attainment of the NAAQS

B.1. Evansville Area

During the most recent three years with quality assured monitoring data as addressed in the Evansville area redesignation request (1990 through 1992), ozone was monitored at six sites in Indiana and at two sites in Kentucky. No exceedance of the ozone standard was monitored during this period, with the highest monitored ozone concentration being 0.122 ppm, one-hour averaged, at the Mount Vernon monitoring site in 1990.

The worst-case historical sites (AIRS site 19–173–0002 in Warrick County and the Old State Road site in Vanderburgh County) recorded a number of ozone standard exceedances in 1988 and 1989. The Warrick County site recorded three exceedances in 1988, 0.133 ppm, 0.132 ppm, and 0.128 ppm. The Old State Road site recorded two exceedances in 1988, 0.148 ppm and 0.127 ppm, and one exceedance, 0.146 ppm, in 1989. The exceedances recorded in Warrick County are believed by the State to be due to the impact of emissions from Vanderburgh County, which is an adjoining county just west of Warrick County. The 1990 through 1992 data for these sites show no exceedances of the ozone standard (0.12 ppm one-hour averaged), with the peak ozone concentration at the Warrick County site being 0.118 ppm and that at the Old State Road site being 0.115 ppm.

These data show that attainment of the ozone NAAQS has been monitored in the Evansville area based on the most recent air quality data available at the time of the redesignation request submittal. To further support this case, the 1993 data showed no exceedances of the ozone standard.

B.2. Indianapolis Area

During the most recent three years with quality assured monitoring data prior to the redesignation submittal (1990 through 1992), ozone was monitored at seven sites in the Indianapolis area. Only one exceedance, 0.125 ppm, was recorded (recorded at the Trailer Court Road site in Indianapolis in 1990) in this area during this period.

The worst-case historical sites (1321 South Harding in Indianapolis and Noblesville in Hamilton County) recorded a number of exceedances of the ozone standard during the 1987 through 1989 period. The Noblesville monitor recorded three exceedances, 0.130 ppm, 0.130 ppm, and 0.127 ppm, during this period. The 1321 South Harding monitor also recorded three

exceedances, 0.147 ppm, 0.142 ppm, and 0.137 ppm, during this period. The 1990 through 1992 data for these sites show no exceedances of the ozone standard (0.12 ppm one-hour averaged), with the peak concentration at the Noblesville site being 0.117 ppm and that at the 1321 South Harding site being 0.104 ppm.

These data show that attainment of the ozone NAAQS has been monitored in the Indianapolis area. To further support this case, the 1993 data showed no exceedances of the ozone standard at any of the monitoring sites in the Indianapolis area.

B.3. South Bend/Elkhart Area

During the 1990 through 1992 period, ozone was monitored at five sites in the South Bend/Elkhart area. No exceedance of the ozone standard was monitored during this period, with the maximum monitored concentration being 0.124 ppm, monitored at the Ross Beatty High School in Cass County, Michigan in 1991.

The worst-case historical site, Childrens Hospital in South Bend, recorded three ozone standard exceedances, 0.137 ppm, 0.135 ppm, and 0.130 ppm, in 1988. The 1990 through 1992 data for this site show no exceedances of the ozone standard (0.12 ppm one-hour averaged), with the peak monitored ozone concentration being 0.107 ppm.

These data show that attainment of the ozone NAAQS has been monitored in the South Bend/Elkhart area. To further support this case, the 1993 data showed no exceedances of the ozone standard at any of the monitoring sites in the area.

C. Meeting Applicable Requirements of Section 110 and Part D

As noted in 40 CFR 52.773, the USEPA has approved Indiana's ozone SIP as meeting the requirements of section 110(a)(2) and Part D of the Act, as amended in 1977, for Elkhart, Marion, and St. Joseph Counties. (Since Vanderburgh County was designated as attainment for ozone prior to the 1990 amendment of the Act and prior to the submittal deadlines covered under other requirements of the pre-1990 Act, Vanderburgh County was subject only to Prevention of Significant Deterioration (PSD) regulations, which the USEPA has promulgated for Indiana and has delegated to the State of Indiana for implementation. Vanderburgh County, however, is subject to the amended requirements of Part D as addressed below.) The 1990 Act amendments, however, modified section 110(a)(2) and, under Part D, revised sections 172

exceedances, 0.147 ppm, 0.142 ppm, and 0.137 ppm, during this period. The 1990 through 1992 data for these sites show no exceedances of the ozone standard (0.12 ppm one-hour averaged), with the peak concentration at the Noblesville site being 0.117 ppm and that at the 1321 South Harding site being 0.104 ppm.

These data show that attainment of the ozone NAAQS has been monitored in the Indianapolis area. To further support this case, the 1993 data showed no exceedances of the ozone standard at any of the monitoring sites in the Indianapolis area.

B.3. South Bend/Elkhart Area

During the 1990 through 1992 period, ozone was monitored at five sites in the South Bend/Elkhart area. No exceedance of the ozone standard was monitored during this period, with the maximum monitored concentration being 0.124 ppm, monitored at the Ross Beatty High School in Cass County, Michigan in 1991.

The worst-case historical site, Childrens Hospital in South Bend, recorded three ozone standard exceedances, 0.137 ppm, 0.135 ppm, and 0.130 ppm, in 1988. The 1990 through 1992 data for this site show no exceedances of the ozone standard (0.12 ppm one-hour averaged), with the peak monitored ozone concentration being 0.107 ppm.

These data show that attainment of the ozone NAAQS has been monitored in the South Bend/Elkhart area. To further support this case, the 1993 data showed no exceedances of the ozone standard at any of the monitoring sites in the area.

C. Meeting Applicable Requirements of Section 110 and Part D

As noted in 40 CFR 52.773, the USEPA has approved Indiana's ozone SIP as meeting the requirements of section 110(a)(2) and Part D of the Act, as amended in 1977, for Elkhart, Marion, and St. Joseph Counties. (Since Vanderburgh County was designated as attainment for ozone prior to the 1990 amendment of the Act and prior to the submittal deadlines covered under other requirements of the pre-1990 Act, Vanderburgh County was subject only to Prevention of Significant Deterioration (PSD) regulations, which the USEPA has promulgated for Indiana and has delegated to the State of Indiana for implementation. Vanderburgh County, however, is subject to the amended requirements of Part D as addressed below.) The 1990 Act amendments, however, modified section 110(a)(2) and, under Part D, revised sections 172 and 182 adding new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to satisfy the requirement that the SIP meet all applicable requirements under the Act, USEPA has reviewed the SIP to ensure that it contains all measures and information that were due under the Act, as amended in 1990, prior to or at the same time Indiana submitted its redesignation requests as considered here. The USEPA interprets section 107(d)(3)(E)(V) of the Act to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject areas prior to or at the same time of the submission of the complete redesignation requests. Requirements of the Act that come due subsequently continue to be applicable to the areas at later dates (see section 175A(c)) and, if the redesignation of any of the areas is disapproved, the State remains obligated to fulfill those requirements.

C.1. Section 110 Requirements

Although section 110 was amended in 1990, the Indiana SIP for the areas addressed in this rulemaking meets the requirements of amended section 110(a)(2). A number of the requirements in section 110(a)(2) did not change in substance and, therefore, USEPA believes that the pre-amendment SIP meets these requirements. As to those requirements that were amended (57 FR 27936 and 23939, June 23, 1993), many duplicate other requirements of the Act, which are addressed below.

C.2. Part D Requirements

Before the subject Indiana areas may be redesignated to attainment, the areas must meet the applicable requirements of Part D. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of Part D sets forth the basic requirements applicable to all nonattainment areas. Subpart 2 of Part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble for the Implementation of Title I, specific requirements of Subpart 2 may override Subpart 1's general provisions (57 FR 13501, (April 16, 1922)). Elkhart, Marion, St. Joseph, and Vanderburgh Counties were classified as marginal ozone nonattainment areas (56 FR 56694, (November 6, 1991)). Therefore, in order to be redesignated to attainment, the State, for these Counties, must meet the applicable requirements of subpart 1 of Part D, as well as the applicable requirements of Subpart 2 of Part D.

C.2.a. Subpart 1 of Part D—Section 172(c) Provisions

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable on a schedule as determined by the Administrator, but no later than three years after an area has been designated as nonattainment under the amended Act. The USEPA has not determined that these requirements were applicable to ozone nonattainment areas on or before November 12, 1993—the date by which the State of Indiana submitted the complete redesignation requests considered here. Therefore, the State of Indiana was not required to meet these requirements for redesignation purposes. In addition, as discussed below, Indiana has either satisfied the section 172(c) requirements or, as is the case for several of them, they lose their continued force once an area has demonstrated attainment and maintenance of the ozone NAAQS.

The requirements of section 172(c) are discussed below along with their relevancy to the redesignation requests at hand:

(1) Section 172(c)(1) requires SIPs to provide for all Reasonably Available Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. As discussed elsewhere in this rulemaking, Indiana has completed the adoption of stationary source Reasonably Available Control Technology (RACT) require for the Indianapolis and South Bend/Elkhart ozone nonattainment areas. The USEPA has approved these RACT regulations in prior rulemaking.

In addition, the USEPA notes that, with respect to all three of the areas that are the subject of this notice, no additional RACM controls beyond what may already be required in the SIP are necessary upon redesignation to attainment. The General Preamble (57 FR 13560, (April 16, 1992)) explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable. The USEPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area components of the areas' attainment demonstrations. Because attainment has been reached in all three areas, no additional measures are needed to provide for attainment.

(2) Section 172(c)(2) requires the SIP to provide for Reasonable Further Progress (RFP) towards attainment of the NAAQS. This requirement only has relevance during the time it takes an area to attain the NAAQS. Because the areas covered by this rulemaking have already attained the NAAQS, the SIP has already achieved the necessary RFPs toward that goal for the three areas.

(3) Section 172(c)(3) requires the SIP to contain a comprehensive, accurate, current inventory of actual emissions from all source of the relevant pollutants. As noted elsewhere in this rulemaking, the State of Indiana has developed and submitted such an emissions inventory for the areas covered here. As also noted elsewhere in this rulemaking, the USEPA has approved this emissions inventory.

(4) Section 172(c)(4) requires the SIP to identify and quantify the emissions which will be allowed to result from the construction of major new or modified stationary sources in each of the areas. This requirement has been addressed in Indiana's revised New Source Review (NSR) regulations, which have been submitted to the USEPA (see a discussion of this submittal below). The approval of Indiana's NSR regulations would also satisfy section 172(c)(5) NSR provisions.

Although the USEPA has not completed approval of Indiana's NSR regulations, it should be noted that once an area is redesignated to attainment, nonattainment NSR requirements are not generally applicable. The redesignated area(s) then becomes subject to Prevention of Significant Deterioration (PSD) requirements instead of the NSR requirements. The USEPA has promulgated acceptable PSD regulations for Indiana and has delegated the implementation of these regulations to the State.

(5) Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, the USEPA believes the Indiana SIP meets the requirements of section 110(a)(2).

(6) Section 172(c)(9) requires the SIP to contain contingency measures to be undertaken if an area fails to make RFP or fails to attain the NAAQS. Since the areas covered by this rulemaking have attained the NAAQS, the section 172(c)(9) contingency measure requirements are not applicable unless the redesignation requests and maintenance plans are not fully approved. It should be noted that section 175A contingency measures apply to areas that are redesignated to attainment.

C.2.b. Other Part D Requirements

See the discussion below concerning the implementation of the new requirements of Part D of the 1990 amended Act.

D. Improvement of Air Quality Due to Permanent and Enforceable Emission Reductions

Indiana has developed and submitted 1990 base year ozone precursor emission inventories for all of the State's ozone nonattainment areas. Indiana used the 1990 base year emissions data available at the time the redesignation requests were prepared to backcast (the use of source category annual growth factors, emission control impacts, and other source-specific data to estimate past year emissions) to 1988 emission levels. The 1988 backcasted emissions were compared to the 1990 emissions to show that emission reductions could explain the observed improvement in ozone concentrations between 1988 and the 1990–1992 period.

D.1. Evansville Area

A listing of major source VOC emissions for 1988 and 1990 shows that stationary source VOC emissions in Vanderburgh County declined by 339 tons per year (approximately 1.1 tons per day) between 1988 and 1990. Permanent VOC emission reductions due to source closures and implementation of emission controls totalled 570 tons per year in the same period (some of this emission reduction was offset by source growth). Indiana asserts that these point source emission reductions are permanent and enforceable. Indiana will not renew the source permits of closed sources, will require these sources to undergo review under PSD or NSR requirements if they seek to restart, and will prohibit these facilities from banking the pre-closure emissions against future source growth. Documentation is also given in the redesignation submittal showing that NO_x emissions declined by approximately 17.5 tons per day at stationary point sources between 1988 and 1990, due primarily to source closures.

In addition to emission reductions from the major stationary source closures and emission controls, Vanderburgh County has also experienced VOC emission reductions as the result of the implementation of the Federal Motor Vehicle Emission Control Program (FMVCP) and the implementation of gasoline Reid Vapor Pressure (RVP) reduction requirements.

D.2. Indianapolis Area

Revised VOC point source emissions for 1988 and 1990 were included in the redesignation submittal. VOC emission reductions due to permanent source closures (see discussion above for the Evansville area regarding Indiana's approach to dealing with source closures) and application of emission controls have reduced point source VOC emissions by 2,239.22 tons per year between 1988 and 1990.

In addition to emission reductions from the major stationary source closures and emission controls, Marion County has also experienced VOC emission reductions as the result of the implementation of the Federal Motor Vehicle Emission Control Program (FMVCP) and the implementation of gasoline RVP reduction requirements.

D.3. South Bend/Elkhart Area

IDEM has provided emissions data for individual stationary point source facilities in St. Joseph and Elkhart Counties showing that a permanent, enforceable VOC emission reduction of 857 tons per year (2.7 tons per day assuming 312 days per year of source operation) occurred between 1988 and 1990.

In addition to emission reductions from the major stationary source closures and emission controls, Elkhart and St. Joseph Counties have also experienced VOC emission reductions as the result of the implementation of the Federal Motor Vehicle Emission Control Program (FMVCP) and the implementation of gasoline RVP reduction requirements.

E. Maintenance Plans

The redesignation requests for all three areas contain common maintenance plan elements. First, the State commits to continue monitoring of ozone during the 10-year maintenance period following the redesignation of the areas. Any changes in the monitoring systems will be subject to USEPA approval. Second, the State commits to revise the maintenance plans 8 years after the areas are redesignated to cover an additional 10-year period beyond the initial 10-year maintenance period. The State has selected 2006 as the year ending the initial 10-year maintenance period. Third, to help verify maintenance of the standard, the State commits to require major stationary sources to annually submit information on their emissions in accordance with the State's emission statement rule (326 IAC 2–6). Finally, the State has selected a joint set of possible contingency emission control

measures and a common approach to triggering the need for contingency measures in each area.

Indiana plans on a two-level approach for the triggering of contingency measures. A Level I response would occur in the event that the ozone NAAQS is violated. This response would entail conducting an analysis to determine the level of the control measures needed to assure expeditious future attainment of the ozone NAAQS. Measures that could be implemented quickly would be selected so as to be in place within 12 months after the State becomes aware of a NAAQS violation. This will require the State to adopt the regulations prior to and in time to achieve the 12-month implementation deadline.

A Level II response would be implemented in the event that:

a. The monitored ambient levels of ozone exceed 0.115 ppm more than once in any year at any site in any one of the redesignated areas;

b. The level of VOC, CO, or NO_x emissions increase above the level of the 1990 emissions, corrected for any errors found prior to the approval to the redesignation requests. (The State is in a continual process of upgrading the emissions inventory as a result of updated emission factors and ongoing quality assurance procedures. Significant future changes in the base year emission inventories resulting from this process must be addressed in SIP revisions); or

c. The level of total VOC emissions for any area determined for any future year has increased above the level recorded in the prior year sufficiently so that an increase of the same magnitude in the following year would result in a level of emissions exceeding those recorded in 1990 by 5 percent or more.

A Level II response would consist of a study to determine whether the noted trends are likely to continue, and, if so, to determine control measures necessary

Point sources	
Area sources	
On-road mobile sources	
Off-road mobile sources	
Biogenic sources	
Total	

Point sources	
Area sources	

measures and a common approach to triggering the need for contingency measures in each area.

Indiana plans on a two-level approach for the triggering of contingency measures. A Level I response would occur in the event that the ozone NAAQS is violated. This response would entail conducting an analysis to determine the level of the control measures needed to assure expeditious future attainment of the ozone NAAQS. Measures that could be implemented quickly would be selected so as to be in place within 12 months after the State becomes aware of a NAAQS violation. This will require the State to adopt the regulations prior to and in time to achieve the 12-month implementation deadline.

A Level II response would be implemented in the event that:

a. The monitored ambient levels of ozone exceed 0.115 ppm more than once in any year at any site in any one of the redesignated areas;

b. The level of VOC, CO, or NO_x emissions increase above the level of the 1990 emissions, corrected for any errors found prior to the approval to the redesignation requests. (The State is in a continual process of upgrading the emissions inventory as a result of updated emission factors and ongoing quality assurance procedures. Significant future changes in the base year emission inventories resulting from this process must be addressed in SIP revisions); or

c. The level of total VOC emissions for any area determined for any future year has increased above the level recorded in the prior year sufficiently so that an increase of the same magnitude in the following year would result in a level of emissions exceeding those recorded in 1990 by 5 percent or more.

A Level II response would consist of a study to determine whether the noted trends are likely to continue, and, if so, to determine control measures necessary to reverse the trends, taking into consideration ease and timing of implementation as well as economic and social considerations. Implementation of necessary controls in response to a Level II trigger will take place as expeditiously as practicable but no later than 18 months after the State is aware that a contingency measure trigger level has been exceeded. This will require the State to adopt the required emission reduction regulations prior to and in time to achieve the 18 month implementation deadline.

The analysis technique used to select emission control measures under Level I and Level II will be mutually agreed upon by the State and the USEPA.

The maintenance plan contingency measures to be considered and selected will be chosen from the following list or any other emission control measures deemed appropriate based on a consideration of cost-effectiveness, VOC reduction potential, economic and social considerations, or other factors that the State deems to be appropriate:

a. Lower Reid Vapor Pressure for gasoline;

b. Reformulated gasoline program;

c. Stage II gasoline vapor recovery;

d. Vehicle anti-tampering program;

e. Broader geographic coverage of existing regulations;

f. Application of RACT on sources covered by new control techniques guidelines issued in response to the 1990 Act amendments;

g. Application of RACT to smaller existing sources;

h. Vehicle inspection/maintenance program;

i. Implementation of one or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in actual area wide VOC emissions. The transportation control measures to be considered would include: (1) Trip reduction programs, including but not limited to employer-based transportation management programs, area wide rideshare programs, work schedule changes, and telecommuting; (2) transit improvements; (3) traffic flow improvements; and (4) other measures;

j. Alternative fuel programs for fleet vehicle operations;

k. Controls on consumer products consistent with those adopted elsewhere in the United States;

l. Enhanced vehicle inspection/maintenance program;

m. VOC offsets for new or modified major sources;

n. VOC offsets for new or modified minor sources;

o. Increased ratio of VOC offsets required for new sources; and

p. Require VOC controls on new minor sources.

The demonstration of maintenance differs for each area as discussed below.

E.1. Evansville Area

Indiana has projected 2006 mobile source emissions using USEPA's MOBILE 5.0 model and documented growth factors for Vehicle Miles Travelled (VMT). Emissions for the year 2006 were determined for the other source categories using documented growth factors, including growth data supplied by the United States Department of Commerce, Bureau of Economic Analysis (BEA), and accounting for known post-1990 source closures. Indiana also used guidance and techniques provided in the USEPA guideline "Procedures for Preparing Emission Projections" (EPA–450/4–91–019). The year 2006 was assumed to be 10 years after the anticipated time for USEPA's approval of the redesignation request. Emission estimates have been updated to reflect Indiana's current estimates of the 1990 base year ozone precursor emissions inventory. Emissions estimates for the attainment base year (1990), 2006, and several interim years are given below:

VOC EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	12.76	13.74	14.73	15.91
Area sources	12.46	12.82	13.18	13.61
On-road mobile sources	25.25	20.77	16.29	10.91
Off-road mobile sources	7.50	7.74	8.00	8.29
Biogenic sources	8.37	8.37	8.37	8.37
Total	66.34	63.44	60.57	57.08

CO EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	1.20	1.28	1.36	1.46
Area sources	1.71	1.77	1.84	1.91

CO EMISSIONS (TONS PER DAY)—Continued

	1990	1995	2000	2006
On-road mobile sources	155.33	131.15	106.96	77.94
Off-road mobile sources	41.00	42.93	44.86	47.18
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Total	199.24	177.13	155.02	128.49

NO_X EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	2.78	2.98	3.18	3.42
Area sources	2.14	2.27	2.41	2.57
On-road mobile sources	14.11	13.31	12.52	11.56
Off-road mobile sources	7.70	7.86	8.02	8.21
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Total	26.73	26.42	26.13	25.76

It should be noted that the interim year emissions above were determined by the USEPA based on discussions with IDEM. USEPA and IDEM agreed that the interim year emission estimates should be based on linear interpolation between the 1990 and 2006 emission estimates for all three areas subject to this redesignation rulemaking. This is consistent with the source growth estimation procedure used by the State to estimate the 2006 emission levels, and the USEPA believes that this method is appropriate and reasonable for estimating the interim year emissions. The USEPA believes that this method provides reasonable estimates of the emission levels in those years and does not underestimate those emissions.

Based on the 1990 base year and 2006 projected emissions, VOC emissions are projected to decrease by 14.0 percent, CO emissions are projected to decrease by 35.5 percent, and NO_x emissions are projected to decrease by 3.7 percent over the 16 year period. Interim year emissions are expected to remain below the attainment year emission level. IDEM believes maintenance of the ozone standard has been demonstrated because VOC emissions are projected to decrease between 1990 and 2006.

E.2. Indianapolis Area

The City of Indianapolis, which was responsible for the 1990 base year emission estimates for Marion County, used the same approach followed by IDEM for Evansville to project 1990 base year emissions to 2006. The following emissions for 1990 and 2006 (expressed in tons per summer weekday) are contained in a March 21, 1994 supplement to the Indianapolis redesignation request (Indiana revised its attainment year and projected emission estimates based on comments on the States 1990 base year emission inventories received during public hearings). The interim year emissions were determined by the USEPA based on linear interpolation between the 1990 and 2006 emission estimates.

VOC EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	29.2	29.9	30.6	31.5
Area sources	48.7	52.3	55.9	60.2
On-road mobile sources	107.2	96.1	85.0	71.7
Off-road mobile sources	19.2	20.6	22.0	23.6
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Totals	204.3	198.9	193.5	187.0

CO EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	124.4	127.9	131.3	135.5
Area sources	37.9	39.2	40.5	42.0
On-road mobile sources	731.5	665.9	600.3	521.6
Off-road mobile sources	147.7	158.1	168.5	181.0
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Totals	1041.5	991.1	940.6	880.1

NO_X EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	53.6	49.7	45.8	41.1

Based on the 1990 base year and 2006 projected emissions, VOC emissions are projected to decrease by 8.5 percent, CO emissions are projected to decrease by 15.5 percent, and NO_x emissions are projected to decrease by 3.3 percent over the 16 year period. IDEM and the City of Indianapolis believe maintenance of the ozone standard has been demonstrated because VOC emissions are projected to decrease between 1990 and 2006.

E.3. South Bend/Elkhart Area

Indiana has projected the 2006 mobile source emissions using USEPA's

Based on the 1990 base year and 2006 projected emissions, VOC emissions are projected to decrease by 6.1 percent, CO emissions are projected to decrease by 31.2 percent, and NO_X emissions are projected to decrease by 1.1 percent

NO_x EMISSIONS (TONS PER DAY)—Continued

	1990	1995	2000	2006
Area sources	30.9	32.6	34.5	36.6
On-road mobile sources	63.4	63.3	63.2	63.1
Off-road mobile sources	28.6	29.0	29.4	29.8
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Totals	176.5	174.6	172.9	170.6

Based on the 1990 base year and 2006 projected emissions, VOC emissions are projected to decrease by 8.5 percent, CO emissions are projected to decrease by 15.5 percent, and NO_x emissions are projected to decrease by 3.3 percent over the 16 year period. IDEM and the City of Indianapolis believe maintenance of the ozone standard has been demonstrated because VOC emissions are projected to decrease between 1990 and 2006.

E.3. South Bend/Elkhart Area

Indiana has projected the 2006 mobile source emissions using USEPA's MOBILE 5.0 model and documented growth factors for VMT. Emissions for 2006 were determined for the other source categories using documented growth factors, including growth data supplied by the Bureau of Economic Affairs (BEA), and known source closures occurring after 1990. Indiana also used guidance and techniques provided in the USEPA guideline "Procedures for Preparing Emission Projections" (EPA–450/4–91–019). Emission estimates have been updated to reflect Indiana's current estimates of the 1990 base year ozone precursor emissions inventory.

The following 1990 and 2006 emissions for Elkhart and St. Joseph Counties in tons per summer weekday are contained in a February 25, 1994, supplement to the Evansville and South Bend/Elkhart redesignation requests (Indiana revised its attainment year and projected emission estimates based on comments on the States 1990 base year emission inventories received during public hearings). The interim year emissions were linearly interpolated by the USEPA.

VOC EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	14.44	15.79	17.13	18.75
Area sources	41.83	43.64	45.45	47.62
On-road mobile sources	39.83	33.85	27.86	20.68
Off-road mobile sources	10.13	10.58	11.02	11.56
Biogenic sources	19.62	19.62	19.62	19.62
Totals	125.85	123.48	121.08	118.23

CO EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	1.06	1.14	1.23	1.33
Area sources	5.47	5.64	5.80	6.00
On-road mobile sources	249.95	216.29	182.63	142.24
Off-road mobile sources	56.42	59.32	62.22	65.70
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Totals	312.90	282.39	251.88	215.27

NO_x EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	10.81	11.61	12.42	13.38
Area sources	6.32	6.70	7.08	7.53
On-road mobile sources	31.36	30.07	28.78	27.24
Off-road mobile sources	17.82	17.70	17.58	17.44
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Totals	66.31	66.08	65.86	65.59

Based on the 1990 base year and 2006 projected emissions, VOC emissions are projected to decrease by 6.1 percent, CO emissions are projected to decrease by 31.2 percent, and NO_x emissions are projected to decrease by 1.1 percent over the 16 year period. These emission decreases between 1990 and 2006 demonstrate maintenance of the ozone standard.

F. Implementation of New Requirements of Section 110 and Part D of the Act

Although the SIPs for the three areas were previously approved by the USEPA under section 110 of the Act, the

Act, as amended in 1990, has added new requirements. Below is a summary of the status of Indiana's compliance with the requirements for marginal nonattainment areas, such as the areas covered by this rulemaking.

F.1. Submittal of a Comprehensive Base Year Emissions Inventory

Indiana has submitted final, adopted 1990 base year emission estimates and associated documentation for the subject areas. The emission inventories for these areas have been reviewed in a separate technical support document and have been found to be acceptable. A direct final rulemaking approving these emission inventories was published on June 20, 1994 (59 FR 31544).

F.2. Emission Statement SIP Revision

Indiana has submitted a SIP revision covering regulations requiring the submittal of annual emission statements by facilities with potential VOC emissions equal to or exceeding 25 tons per year. This SIP revision has been reviewed in a separate rulemaking. A direct final rulemaking approving this SIP revision was published on June 10, 1994 (59 FR 29953).

F.3. New Source Review Regulations

The State of Indiana has submitted NSR regulations in compliance with section 182(a)(2)(C) of the Act. The USEPA is in the process of reviewing these regulations. Although the USEPA has not approved these regulations, it should be noted that the USEPA does not consider compliance with these requirements to be a prerequisite to the redesignation of an area to attainment of the ozone NAAQS. The USEPA believes that the applicability of the Part C PSD program to maintenance areas makes it unnecessary to require that an area have obtained full approval of NSR revisions required by Part D of the Act in order to be redesignated. The USEPA believes that this interpretation of the Act is appropriate notwithstanding section 175A(d)'s requirement that the contingency provisions of a maintenance plan include a commitment on the part of the State to implement all measures to control the relevant air pollutants that were contained in the SIP prior to redesignation. The term "measure" is not defined in section 175A(d) and it appears that Congress utilized the terms "measure" or "control measure" differently in different provisions of the Act that concern the PSD and NSR permitting programs. Compare section 110(a)(2)(A) and (C) with section 161. In light of this ambiguity in the use of the term "measure," USEPA believes that term "measure" as used in section 175A(d) may be interpreted so as not to include NSR permitting programs. That this is an appropriate interpretation is further supported by USEPA's historical practice, dating back even before the 1990 amendment of the Act, of not requiring redesignating areas to demonstrate through modeling or to otherwise justify replacing the nonattainment NSR program with the PSD program once the areas were redesignated. Rather, the USEPA has historically allowed the NSR programs to be automatically replaced by the PSD programs upon redesignation.

F.4. RACT Corrections

As required by section 182(a)(2)(A) of the Act, Indiana has corrected RACT deficiencies previously identified by the USEPA. These RACT corrections were approved by the USEPA on March 6, 1992 (57 FR 8086).

F.5. Conformity of Federal Actions With the SIP

Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the CAA required USEPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final USEPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)).

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require the States to adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the CAA. Pursuant to § 51.396 of the transportation conformity rule and § 51.851 of the general conformity rule, the State of Indiana is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Indiana is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals have not yet come due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of the redesignation request. It should be noted, however, that the State of Indiana has committed to the submittal of these SIP revisions by the required submittal deadlines.

F.6. Vehicle Inspection and Maintenance

Section 182(a)(2)(B) of the Act presents the savings clause for vehicle inspection and maintenance, requiring the adoption and implementation of a vehicle inspection and maintenance program if already included in the SIP (prior to the 1990 amendments of the Act) or if required by section 172(b)(11)(B) of the pre-1990 Act. The USEPA fully approved Indiana vehicle inspection and maintenance plan on July 31, 1990 (55 FR 31048). The approved plan only applied to Clark, Floyd, Lake, and Porter Counties. The areas subject to this redesignation rulemaking were not required to implement a vehicle inspection and maintenance program.

III. Summary of USEPA Review of Redesignation Requests

1. Monitored Attainment of the NAAQS

IDEM has collected quality assured ozone data in all three areas showing attainment of the ozone standard at all monitoring sites during the most recent three years of monitoring (1990–1992). These data are recorded in AIRS. These data show compliance with this redesignation requirement. Additionally, the 1993 data show continued monitored attainment of the ozone NAAQS.

2. Approved State Implementation Plans

All three areas are covered by a SIP approved under section 110 and Part D of the Act. Indiana has implemented this SIP in all three areas. This implementation includes the adoption and implementation of USEPA approved RACT regulations and other required reasonably available control measures required by the pre-1990 Act. Indiana has corrected all previously noted RACT deficiencies, and USEPA has fully approved Indiana's RACT regulations.

3. Improvement of Air Quality Due to Permanent and Enforceable Emission Reductions

In all three areas, implementation of VOC emission control requirements and permanent, enforceable emission reductions from source closures have led to VOC emission reductions.

4. Maintenance Plans

The contingency portions of the maintenance plans were found to be acceptable. In addition, demonstrations of maintenance have been made for all three areas through emission projections to 2006.

One issue concerning the contingency measures, however, must be noted. As discussed above, Indiana has chosen to include the implementation of tighter gasoline RVP (requiring lower RVP) requirements as a contingency measure. At the same time Indiana was finalizing its maintenance plans, the USEPA issued new guidance concerning the use of lower RVP as contingency measures in maintenance plans. This new guidance was provided in a November 8, 1993 memorandum from Michael Horowitz, Office of General Counsel, to Directors of Air and Radiation Divisions. The guidance indicates that, for States to include lower RVP as a contingency measure in maintenance plans, the maintenance plan must include several things with respect to this contingency measure. First, the maintenance plan must indicate that if the former nonattainment area fell back into nonattainment, the State would submit a request to the USEPA to find under section 211(c)(4)(C) of the Act that the lower RVP requirement is necessary for the area to achieve the ozone NAAQS. Second, since the implementation of a lower RVP would rely upon USEPA's determination of whether it was necessary to achieve attainment, the State must provide for the possibility that a lower RVP could not be implemented. To do so, the State would need to provide for a backup measure in the maintenance plan. The maintenance plan could also include a commitment to adopt, as an alternative to the specified measure, measures identified by the USEPA as practicable in its denial of the State's request for a lower RVP requirement. If the State chooses to adopt measures specified by the USEPA and the USEPA has provided several options for acceptable

required reasonably available control measures required by the pre-1990 Act. Indiana has corrected all previously noted RACT deficiencies, and USEPA has fully approved Indiana's RACT regulations.

3. Improvement of Air Quality Due to Permanent and Enforceable Emission Reductions

In all three areas, implementation of VOC emission control requirements and permanent, enforceable emission reductions from source closures have led to VOC emission reductions.

4. Maintenance Plans

The contingency portions of the maintenance plans were found to be acceptable. In addition, demonstrations of maintenance have been made for all three areas through emission projections to 2006.

One issue concerning the contingency measures, however, must be noted. As discussed above, Indiana has chosen to include the implementation of tighter gasoline RVP (requiring lower RVP) requirements as a contingency measure. At the same time Indiana was finalizing its maintenance plans, the USEPA issued new guidance concerning the use of lower RVP as contingency measures in maintenance plans. This new guidance was provided in a November 8, 1993 memorandum from Michael Horowitz, Office of General Counsel, to Directors of Air and Radiation Divisions. The guidance indicates that, for States to include lower RVP as a contingency measure in maintenance plans, the maintenance plan must include several things with respect to this contingency measure. First, the maintenance plan must indicate that if the former nonattainment area fell back into nonattainment, the State would submit a request to the USEPA to find under section 211(c)(4)(C) of the Act that the lower RVP requirement is necessary for the area to achieve the ozone NAAQS. Second, since the implementation of a lower RVP would rely upon USEPA's determination of whether it was necessary to achieve attainment, the State must provide for the possibility that a lower RVP could not be implemented. To do so, the State would need to provide for a backup measure in the maintenance plan. The maintenance plan could also include a commitment to adopt, as an alternative to the specified measure, measures identified by the USEPA as practicable in its denial of the State's request for a lower RVP requirement. If the State chooses to adopt measures specified by the USEPA and the USEPA has provided several options for acceptable measures, the State must adopt the requisite number of these measures as is necessary to again achieve the standard. The State would need to include a schedule for submittal of the section 211(c)(4)(C) request to the USEPA and a schedule for final adoption and implementation of a lower RVP standard, or the back-up measure(s), or the alternative measures selected by the USEPA. The schedule would need to be tied to the triggering event for the contingency measure, not to USEPA action on the 211(c)(4)(C) request.

Notwithstanding the November 8, 1993 policy discussed above, which was not available to Indiana at the time the State was finalizing and submitting its maintenance plans to the USEPA, USEPA is approving Indiana's maintenance plans as they currently exist. This is because Indiana has identified a wide range of contingency measures to choose from in the maintenance plan and is, therefore, not relying exclusively on lower RVP requirements as a contingency measure. If Indiana, however, upon the triggering of the need to implement contingency measures, chooses to implement requirements for lower RVP, Indiana must submit the section 211(c)(4)(C) request in compliance with the Act.

5. Implementation of All Requirements of Section 110 and Part D of the Act

As indicated above, all requirements of the Act applicable to these areas have been met through SIP revision submittals. These SIP revisions must be approved through final rulemaking before or at the same time as final rulemaking on the redesignation of the areas.

IV. Final Rulemaking Action

The State of Indiana has met the requirements of the Act revising the Indiana ozone SIP. The USEPA approves the redesignation of Evansville (Vanderburgh County); Indianapolis (Marion County); and South Bend/Elkhart (St. Joseph and Elkhart Counties) to attainment for ozone.

Because USEPA considers this action to be noncontroversial and routine, the USEPA is approving it without prior approval. This action will become effective on September 6, 1994. However, if the USEPA receives adverse comments by August 8, 1994, then the USEPA will publish a notice that withdraws the action, and will address these comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. The comment period will not be extended or reopened. This withdrawal will be done on a geographic basis if the adverse comments received do not concern all three geographic areas. For example, if USEPA receives adverse comments concerning the South Bend/Elkhart Area redesignation request, only that portion of the final rule concerning the South Bend/Elkhart Area will be withdrawn.

The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

List of Subjects in 40 CFR Parts 52 and 81

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: June 21, 1994.

Valdas V. Adamkus,

Regional Administrator.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (f) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(f) Approval—The Indiana Department of Environmental Management submitted three ozone redesignation requests and maintenance plans requesting the ozone nonattainment areas to be redesignated to attainment for ozone: South Bend/Elkhart (St. Joseph and Elkhart Counties), submitted on September 22, 1993; Evansville (Vanderburgh County), submitted on November 4, 1993; Indianapolis (Marion County), submitted on November 12, 1993. The redesignation requests and maintenance plans meet the redesignation requirements in section 107(d)(3)(d) of the Act as amended in 1990. The redesignations meet the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Indiana ozone State Implementation Plan for the above mentioned counties.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7871q.

2. In Section 81.315 the attainment status designation table for ozone is amended by revising the following; designated areas to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—OZONE

Designated areas	Designation		Classification	
	Date	Type	Date	Type
. . . . .				
Evansville area:				
Vanderburgh County.	(*)	Attainment	.....	.....
Indianapolis area:				
Marion County.	(*)	Attainment	.....	.....

INDIANA—OZONE—Continued

Designated areas	Designation		Classification	
	Date	Type	Date	Type
. . . . .				
South Bend-Elkhart area:				
Elkhart County.	(*)	Attainment	.....	.....
St. Joseph County.	(*)	Attainment	.....	.....
. . . . .				

*September 6, 1994.

[FR Doc. 94–16506 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7065

[AK–932–4210–06; AA–367]

Partial Revocation of Executive Order No. 1919½, Dated April 21, 1914, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 1.42 acres of public land withdrawn for townsite purposes at Talkeetna, Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Executive Order No. 1919½, dated April 21, 1914, as amended, which withdrew public land for townsite purposes at Talkeetna, Alaska, is hereby revoked insofar as it affects the following described land:

Seward Meridian

Located within T. 26 N., R. 5 W., described as U.S. Survey No. 1260, Lots 3 and 4, Block 26.

The area described contains 1.42 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988) and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State is opened and will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

Dated: June 24, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–16500 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–JA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 91–121, CC Docket No. 92–137, FCC 94–83]

Assignment of Channels, Air-Ground Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order amends the Table of Assignments for conventional Air-Ground Stations. This was done to reflect new geographic areas where the provision of air-to-ground service is required.

EFFECTIVE DATE: September 6, 1994.

FOR FURTHER INFORMATION CONTACT: Sam Gumbert, Common Carrier Bureau, Mobile Services Division, 202–632–0914.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in CC Dockets 91–121 and 92–137, adopted April 6, 1994 and released April 28, 1994. The Complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC

Dockets Branch (Room 230), 1919 M St., NW., Washington, DC, and also may be purchased from the Commission's copy contract, International Transcription Service, (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Synopsis of the Report and Order

This Report and Order reassigned channel 10 from Washington, D.C. to Pittsburgh, PA. and deleted channel 12 from Pittsburgh. Channel 9 was deleted from Seattle, Washington. Channel 12 was deleted from Grand Canyon, Arizona and assigned to Williams, Arizona. Proposed reassignments of channel 9 from Newark, New Jersey to Laurel Run, Pennsylvania and channel 2 from Boston, Massachusetts to Laurel Run were denied. All of these actions were initiated in Docket No. 92–121. Docket No. 92–137 proposed allocating channel 3 to Schaller, Iowa. This was denied.

Ordering Clauses

Authority for the rule changes adopted herein is contained in Sections 1, 4(i), 4(j) and 303(r) of the Communications Act, days from the date of publication the 47 U.S.C. §§ 151, 154(j), 303(r).

It is Ordered that § 22.521(b) of the Commission's Rules is amended to reflect the channel assignments set forth below.

It Is further Ordered that CC Docket No. 91–121 and CC Docket No. 92–137 are concluded.

It is further Ordered that the rule changes made herein will become effective 60 days from the date of publication in the **Federal Register**.

List of Subjects in 47 CFR Part 22

Communications common carriers, Public land mobile service, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.521(b) is amended by revising the entries for Arizona; District of Columbia; Pittsburgh, Pennsylvania; and Seattle, Washington to read as follows:

Dockets Branch (Room 230), 1919 M St., NW., Washington, DC, and also may be purchased from the Commission's copy contract, International Transcription Service, (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Synopsis of the Report and Order

This Report and Order reassigned channel 10 from Washington, D.C. to Pittsburgh, PA. and deleted channel 12 from Pittsburgh. Channel 9 was deleted from Seattle, Washington. Channel 12 was deleted from Grand Canyon, Arizona and assigned to Williams, Arizona. Proposed reassignments of channel 9 from Newark, New Jersey to Laurel Run, Pennsylvania and channel 2 from Boston, Massachusetts to Laurel Run were denied. All of these actions were initiated in Docket No. 92–121. Docket No. 92–137 proposed allocating channel 3 to Schaller, Iowa. This was denied.

Ordering Clauses

Authority for the rule changes adopted herein is contained in Sections 1, 4(i), 4(j) and 303(r) of the Communications Act, days from the date of publication the 47 U.S.C. §§ 151, 154(j), 303(r).

It is Ordered that § 22.521(b) of the Commission's Rules is amended to reflect the channel assignments set forth below.

It Is further Ordered that CC Docket No. 91–121 and CC Docket No. 92–137 are concluded.

It is further Ordered that the rule changes made herein will become effective 60 days from the date of publication in the Federal Register.

List of Subjects in 47 CFR Part 22

Communications common carriers, Public land mobile service, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.521(b) is amended by revising the entries for Arizona; District of Columbia; Pittsburgh, Pennsylvania; and Seattle, Washington to read as follows:

§ 22.521 Air-ground radiotelephone service.

* * * * *

(b) * * *

Location	Channel
* * * * *	
Arizona:	
Phoenix	2, 8.
Williams	12.
* * * * *	
District of Columbia: Washington	1, 7.
* * * * *	
Pennsylvania: Pittsburgh	4, 10.
* * * * *	
Washington: Seattle	1, 2, 5.
* * * * *	

* * * * *

[FR Doc. 94–16343 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–307; RM–8386]

Radio Broadcasting Services; Jensen Beach and Melbourne, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 272C3 for Channel 272A at Jensen Beach, Florida, and modifies the license for Station WHLG(FM) to specify operation on the higher class channel, and substitutes Channel 236A for Channel 272A at Melbourne, Florida, at the request of HLG, Inc., and City Broadcasting Co. See 59 FR 01365, January 10, 1994. Channel 272C3 can be allotted to Jensen Beach in compliance with the minimum distance separation requirements of the Commission's Rules at the licensed transmitter site. The coordinates for Channel 272C3 at Jensen Beach are 27–12–53 North Latitude and 80–15–24 West Longitude. Channel 236A can be allotted to Melbourne in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 6.4 kilometers (4 miles) north of the community, in order to avoid a short-spacing to Station WWRM(FM), Channel 235C, Tampa, Florida. The coordinates for Channel 236A at Melbourne are 28–08–08 North Latitude and 80–35–35 West Longitude. With this action, this proceeding is terminated.

DATES: Effective August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Nanacy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–307, adopted June 21, 1994, and released July 5, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 272A and adding 272C3 at Jensen Beach, and by removing Channel 272A and adding 236A at Melbourne.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16551 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–219; RM–7729]

Radio Broadcasting Services; Brillion, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 298C3 for Channel 298A at Brillion, Wisconsin, and modifies the license for Station WEZR(FM) to specify operation on Channel 298C3 in lieu of Channel 298A, in response to a petition filed by Brillion Radio Company. The coordinates for Channel 298C3 at Brillion are 44–19–10 North Latitude and 87–57–30 West Longitude. With this action, this proceeding is terminated.

DATES: Effective August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–219, adopted June 21, 1994, and released July 5, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 298A and adding Channel 298C3 at Brillion.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16552 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 940552–4152; I.D. 051294A]

Northeast Multispecies Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on May 25, 1994 (59 FR 26972), which is related to Framework Adjustment 4 to the Northeast Multispecies Fishery Management Plan (FMP). This document corrects the specifications of the Massachusetts Bay Closure Area.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, Northeast Regional Office, 508–281–9272.

Correction of Publication

The publication on May 25, 1994, of the final rule (I.D. 051294A), which was the subject of FR Doc. 94–12782, is corrected as follows:

§ 651.32 [Corrected]

On page 26977, in § 651.32(a)(1)(iii), in the table "Massachusetts Bay Closure Area", the entry "MB5" under the heading "Point", is revised and the entries MB6 and MB7 are added to read as follows:

Point	Latitude	Longitude
.	.	.
MB5 ..	Cape Cod shoreline.	70°00′ W.
MB6 ..	42°00′ N	Cape Cod shoreline.
MB7 ..	42°00′ N	Massachusetts shoreline.
.	.	.

Date: July 1, 1994.

Henry R. Beasley,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–16499 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 672

[Docket No. 931199–4042; I.D. 070194B]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 61 (between 159° and 170° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 2, 1994, until 12 noon, A.l.t., October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 61 is 4,827 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv). The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that this third quarterly allowance soon will be reached. The Regional Director has established a directed fishing allowance of 4,200 mt, and has set aside the remaining 627 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 61 is prohibited, effective from 12 noon, A.l.t., July 2, 1994, until 12 noon, A.l.t., October 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 1, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16480 Filed 7–5–94; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 931100–4043; I.D. 070594B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary because the first seasonal apportionment of the Pacific halibut bycatch mortality allowance specified for the trawl yellowfin sole fishery has been reached.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), July 5, 1994, until 12 noon, A.l.t., August 3, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1994 Pacific halibut bycatch mortality allowance for the trawl yellowfin sole fishery, which is defined at § 675.21(b)(1)(iii)(B)(*1*), is 592 metric tons (mt). The first seasonal apportionment of that allowance is 230 mt for the period January 20, 1994, through August 2, 1994 (59 FR 7656, February 16, 1994).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the first seasonal apportionment of the Pacific halibut bycatch mortality allowance for the trawl yellowfin sole fishery has been reached. Therefore, NMFS is prohibiting directed fishing for yellowfin sole by vessels using trawl gear in the BSAI from 12 noon, A.l.t., July 5, 1994, until 12 noon, A.l.t., August 3, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1994 Pacific halibut bycatch mortality allowance for the trawl yellowfin sole fishery, which is defined at § 675.21(b)(1)(iii)(B)(*1*), is 592 metric tons (mt). The first seasonal apportionment of that allowance is 230 mt for the period January 20, 1994, through August 2, 1994 (59 FR 7656, February 16, 1994).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the first seasonal apportionment of the Pacific halibut bycatch mortality allowance for the trawl yellowfin sole fishery has been reached. Therefore, NMFS is prohibiting directed fishing for yellowfin sole by vessels using trawl gear in the BSAI from 12 noon, A.l.t., July 5, 1994, until 12 noon, A.l.t., August 3, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16635 Filed 7–5–94; 4:44 pm]

BILLING CODE 3510–22–F

---

50 CFR Part 675

[Docket No. 931100–4043; I.D. 070594A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Pisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for species in the rock sole/≥other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the annual bycatch allowance of Pacific halibut apportioned to the trawl rock sole/≥other flatfish" fishery category in the BSAI.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), July 5, 1994, until 12 noon, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The annual bycatch allowance of Pacific halibut for the BSAI trawl rock sole/≥other flatfish" fishery category, which is defined at § 675.21(b)(1)(iii)(B)(*2*), was established as 688 metric tons (mt) by the final 1994 initial specifications (59 FR 7656, February 16, 1994).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the annual bycatch allowance of Pacific halibut apportioned to the trawl rock sole/≥other flatfish" fishery in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for species in the rock sole/≥other flatfish" fishery category by vessels using trawl gear in the BSAI from 12 noon, A.l.t., July 5, 1994, until 12 noon, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16636 Filed 7–5–94; 4:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 130
Friday, July 8, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1307

Plastic Buckets; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Based on information currently available to the Commission, it has reason to believe that unreasonable risks of injury and death may be associated with certain containers referred to in this notice as "5-gallon plastic buckets." The Commission is aware of more than 250 instances in the last 10 years in which young children have fallen head first into plastic buckets containing liquids and drowned or were injured. This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the authority of the Consumer Product Safety Act ("CPSA"). One result of the proceeding could be the promulgation of a rule mandating performance standards and/or labeling requirements for these plastic buckets. If a performance standard is found to be unfeasible, another result of the proceeding could be a ban of plastic buckets having characteristics that create a drowning risk for children. A third option could be an information and education campaign. Further, some combination of these options could be adopted.

The Commission solicits written comments from interested persons concerning the risks of injury and death associated with buckets, the regulatory alternatives discussed in this notice, other possible means to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risks of injury and death described in this notice.

DATES: Written comments and submissions in response to this notice must be received by the Commission by September 6, 1994.

ADDRESS: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800.

FOR FURTHER INFORMATION CONTACT: John D. Preston, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0494, ext. 1315.

SUPPLEMENTARY INFORMATION:

A. Background

By publishing this advance notice of proposed rulemaking, the Consumer Product Safety Commission commences a rulemaking proceeding for products known as 5-gallon plastic buckets.[1] In July 1989, the Commission first learned of a drowning hazard associated with certain large buckets or bucket-like containers. The particular characteristics of these products will be discussed below in section C of this notice, but the products will be referred to generically as "5-gallon plastic buckets."

Drownings have occurred with these products when small children leaned over the buckets and fell in. These drownings can occur in even just a few inches of liquid in the bottom of the buckets. Given the shape and size of the buckets, and their stability when they contain even a small amount of liquid, they may not tip over when a child leans into them and falls in.

Five-gallon containers are used for bulk or commercial-sized quantities of a wide variety of products, including food, paint, and construction materials such as spackling compound. When emptied of their original contents, these containers are sometimes reused as buckets by consumers. Similar 5-gallon containers are also sold new in stores as large-volume household buckets.

Young children's curiosity, combined with their crawling and pulling up while learning to walk, can lead to drowning when buckets are used around the house. The Commission believes that these drownings typically happened when curious children crawled to a bucket containing mop water or other liquids for household chores, pulled themselves up and leaned forward to play in the water or retrieve an object. When they toppled into the bucket, they were unable to free themselves, and drowned.

The Commission issued a Safety Alert in July 1989 warning consumers of the drowning hazard associated with these products. At that time, the Commission knew of at least 67 drowning deaths in buckets during 1985–1987, mostly to young children 8 to 12 months old. In many of these cases, 5-gallon plastic buckets or containers were being used for mopping floors or for other household chores.

Also in 1989, the Commission contacted the major trade associations representing manufacturers and fillers of buckets. As a result, the trade associations formed the Coalition for Container Safety to work with CPSC on the issue of child drownings. The coalition agreed to undertake an information and education effort. A program was developed that included a plan to inform consumers of the availability of free self-adhesive warning labels for placement on buckets already in their homes. Additionally, a video news release produced by the coalition was reported to have reached 13 million viewers, resulting in phone calls from 4,200 consumers and the distribution of 71,000 labels.

The Commission's staff also worked with ASTM subcommittee F15.31 on voluntary standards for 5-gallon buckets. In 1993, ASTM approved an emergency standard for labeling of buckets to address this drowning hazard, and a final ASTM standard for labeling currently is being balloted by the subcommittee.

Concurrent with the development of the emergency labeling standard by ASTM subcommittee F15.31, a subcommittee task group worked to develop a draft performance standard. At a July 8, 1992, task group meeting, CPSC staff proposed a basic format for

[1] The Commission voted 3–0 to approve this notice and commence the rulemaking. Separate statements of Chairman Ann Brown, Commissioner Mary Sheila Gall, and Commissioner Jacqueline Jones-Smith are available from the Commission's Office of the Secretary.

the performance standard. The standard would describe several performance classes or options, and a container that met the requirements of any one of them would comply with the standard. This approach would allow each industry to select the most appropriate performance class for its uses. CPSC staff provided industry with several example performance classes at a December 1, 1992, meeting. These classes included:

a. *Stability.* Buckets would meet performance criteria that would ensure that the buckets were sufficiently unstable that if a child were to fall into one of them, the bucket would tip over. The buckets would have to tip over if subjected separately to specified horizontal and vertical forces.

b. *Restrictor.* Buckets could contain a "restrictor" device that prevents a child from falling into the bucket (*e.g.*, a post projecting upward from the bottom of the bucket).

c. *Liquid retention.* Buckets could be constructed so that they cannot retain liquid. (They still could be used to ship solid materials in a liner.)

In addition to the performance criteria proposed by the CPSC staff, the subcommittee's draft performance standard could be satisfied in any of the following ways:

a. *Photodegradability.* ASTM's draft standard would allow buckets that degraded quickly from ultraviolet radiation from the sun. The draft standard contains exposure time and test requirements for assessing material degradation. However, these test requirements were developed for thin films and not for products such as buckets. Moreover, buckets kept indoors might not degrade quickly enough to prevent substantial consumer use. Furthermore, at a meeting on May 2, 1994, the task group decided that this option was impracticable because, if a degradable bucket were developed, it might degrade before its original contents were used.

b. *Cleanability.* The draft standard would permit buckets with a nonremovable residue. The subcommittee reasoned that a bucket with a nonremovable residue would be unsuitable for consumer applications and therefore would not present a drowning risk. The draft ASTM standard provides a method and criteria for assessing cleanability of the residue that a product would leave in a bucket.

c. *Recycling.* A "recycling class" also was added to ASTM's draft standard. This would allow manufacturers to use 5-gallon buckets if they had a closed system for recycling or retrieving buckets, so that they would not come into consumers' hands.

the performance standard. The standard would describe several performance classes or options, and a container that met the requirements of any one of them would comply with the standard. This approach would allow each industry to select the most appropriate performance class for its uses. CPSC staff provided industry with several example performance classes at a December 1, 1992, meeting. These classes included:

a. *Stability.* Buckets would meet performance criteria that would ensure that the buckets were sufficiently unstable that if a child were to fall into one of them, the bucket would tip over. The buckets would have to tip over if subjected separately to specified horizontal and vertical forces.

b. *Restrictor.* Buckets could contain a "restrictor" device that prevents a child from falling into the bucket (*e.g.*, a post projecting upward from the bottom of the bucket).

c. *Liquid retention.* Buckets could be constructed so that they cannot retain liquid. (They still could be used to ship solid materials in a liner.)

In addition to the performance criteria proposed by the CPSC staff, the subcommittee's draft performance standard could be satisfied in any of the following ways:

a. *Photodegradability.* ASTM's draft standard would allow buckets that degraded quickly from ultraviolet radiation from the sun. The draft standard contains exposure time and test requirements for assessing material degradation. However, these test requirements were developed for thin films and not for products such as buckets. Moreover, buckets kept indoors might not degrade quickly enough to prevent substantial consumer use. Furthermore, at a meeting on May 2, 1994, the task group decided that this option was impracticable because, if a degradable bucket were developed, it might degrade before its original contents were used.

b. *Cleanability.* The draft standard would permit buckets with a nonremovable residue. The subcommittee reasoned that a bucket with a nonremovable residue would be unsuitable for consumer applications and therefore would not present a drowning risk. The draft ASTM standard provides a method and criteria for assessing cleanability of the residue that a product would leave in a bucket.

c. *Recycling.* A "recycling class" also was added to ASTM's draft standard. This would allow manufacturers to use 5-gallon buckets if they had a closed system for recycling or retrieving buckets, so that they would not come into consumers' hands.

The draft ASTM standard would cover plastic buckets of 4 to 6 gallon rated capacities. Industry members expressed concerns that any changes in bucket design would have significant economic consequences.

In August 1993, CPSC staff provided the subcommittee with detailed comments on the draft performance standard. These comments were incorporated into a revised draft standard. However, the subcommittee members' response to the first ballot vote on the draft performance standard was overwhelmingly negative.

At a November 30, 1993, meeting, subcommittee members proposed that the performance standard be modified to allow labeling as an alternative to a performance solution. CPSC staff voiced strong objections to this proposal, stating that labeling was meant to be an interim measure. Representatives from Underwriters Laboratories presented a proposal for validating buckets against the draft performance standard. The testing would be run by ASTM's Institute for Standards Research (ISR). The subcommittee members, however, were not interested in funding the proposal.

Subsequently, the subcommittee chairman modified the draft performance standard to address several of the negative ballots. The standard was then redistributed for subcommittee balloting at the end of February 1994. Once again, the ballot failed to receive the necessary two-thirds affirmative vote.

At a March 17, 1994, meeting, subcommittee members stated that they did not think that a performance standard was feasible and that they would continue to vote against it. All the industry representatives present were in agreement that the subcommittee should abandon a performance standard and focus instead on information and education efforts. Nevertheless, the subcommittee formed a new task group to examine the negative ballots and see if some sort of a performance standard could be drafted.

Because of the hazard of drowning associated with 5-gallon plastic buckets, and the absence of any voluntary performance standard that adequately addresses the drowning hazard, the Commission decided to publish this advance notice of proposed rulemaking ("ANPR"). Publication of this document commences a proceeding that ultimately could require certain buckets to meet specified performance requirements and/or bear labeling to warn consumers of the hazard presented by these buckets. Alternatively, certain buckets could be banned if no other option adequately addressed the risk.

B. Statutory Authority

This proceeding is conducted under provisions of the Consumer Product Safety Act ("CPSA"). 15 U.S.C. 2051–2084. A proceeding to promulgate a regulation establishing performance or labeling requirements as a consumer product safety standard is governed by the requirements in sections 7 and 9 of the CPSA. 15 U.S.C. 2056, 2058. Where there is no feasible consumer product safety standard that would adequately protect the public, the Commission may ban a product in accordance with sections 8 and 9 of the CPSA. 15 U.S.C. 2057, 2058.

Before adopting either a standard or a ban, the Commission first must issue an ANPR as provided in section 9(a) of the CPSA. 15 U.S.C. 2058(a). If the Commission decides to continue the rulemaking proceeding after considering responses to the ANPR, the Commission must then publish the text of the proposed rule, along with a preliminary regulatory analysis, in accordance with section 9(c) of the CPSA. 15 U.S.C. 2058(c). If the Commission then wishes to issue a final rule, it must publish the text of the final rule and a final regulatory analysis that includes the elements stated in section 9(f)(2) of the CPSA. 15 U.S.C. 2058(f)(2). And before issuing a final regulation, the Commission must make certain statutory findings concerning voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. CPSC section 9(f)(3), 15 U.S.C. 2058(f)(3).

C. The Product

This ANPR covers only certain plastic buckets, which are described in greater detail below. Open-head plastic buckets having a rated capacity of 4½ to 5½ gallons generally are 14 inches high and 10.25 to 11.25 inches in diameter. They are practically straight sided, with a slight taper to facilitate nesting of empty buckets and release of plastic buckets from the mold. Buckets are manufactured to conform to government and international standards pertaining to performance characteristics such as stability, strength, and impact resistance. Plastic buckets are manufactured of high density polyethylene ("HDPE") using the injection molding process.

Five-gallon buckets are used as containers to package and transport industrial, commercial, and consumer products, such as chemicals, cleaning substances, foods, paints and construction materials. According to a

study by The Freedonia Group, Inc. (the "Freedonia study"),[2] about 50 percent of the plastic buckets produced in 1992 were used to contain cleaning compounds, paints, and adhesives. Food products accounted for approximately 40 percent; gypsum and other industrial and consumer products accounted for the remainder. In addition, empty buckets may be purchased new in retail stores.

Buckets can be plastic or steel and compete directly for market share with other containers, such as multi-walled bags and the bag-in-box. Industry data indicate that plastic bucket sales have outstripped metal bucket sales over the past decade and will continue to do so. Reasons cited for the shift to plastic are that plastic is less expensive than metal, weighs 25–35 percent less, and is noncorrosive in the presence of water-based products.[3]

Consumers obtain 5-gallon plastic buckets through purchases of consumer goods, such as paints and detergents, that are sold packaged in such buckets, and by taking empty buckets from job sites. The percentage of the annual 5-gallon plastic bucket production that enters secondary use in homes as utility buckets is not known.

Some characteristics of buckets that possibly affect the risk of children drowning in buckets are discussed below. Prior to issuing any proposed rule to address the drowning risk with plastic buckets, the Commission will determine how these risk characteristics should be used to define the buckets subject to the rule.

One of these risk characteristics is the size of the bucket. The Commission's Division of Human Factors analyzed data for children ages 8 to 14 months to determine the size ranges for potentially hazardous buckets for this age range. Approximately 86 percent of the drowning incidents with buckets involved children in this age range. Based on anthropometric data and a rigid-body model, the Human Factors Division determined that potentially hazardous buckets include those that are 12–21 inches in height and have a top opening diameter of greater than 7 inches. Other variables, such as the amount of liquid in the bucket, the weight of the bucket, and the orientation of the child in the bucket, can influence whether a bucket is potentially hazardous. (Memorandum from G. Sweet, CPSC Division of Human Factors, "Five-Gallon Buckets," Aug. 2, 1993.)

Another possible risk characteristic of a bucket is the material of which it is made. Of 128 incidents in which the material of the bucket was known, only 1 was made of metal; the others were made of plastic. Representatives of the metal bucket industry contend that metal buckets are less suitable for secondary consumer use because they will rust when exposed to water. Also, metal buckets tend to be used with solvent-based materials that may be more difficult to clean from the bucket so it can be used subsequently by the consumer.

In any event, the one incident that is known to have involved a metal bucket does not indicate that metal buckets present an unreasonable risk, particularly given the large number of these buckets that have been distributed. Accordingly, the scope of this proceeding extends only to plastic buckets. If information becomes available indicating that metal buckets also may present an unreasonable risk, the Commission can consider whether metal buckets should be regulated.

A third characteristic of a bucket that may affect the drowning risk is its capacity. The rated capacities of most of the buckets known to have been involved in drowning incidents range from 3½ to 6½ gallons. The draft ASTM performance standard for buckets, discussed below, would cover buckets of 4–6 gallon capacity. Only three deaths are known to have involved buckets with rated capacities outside the 4–6 gallon range. It is not known how many manufacturers of 4–6 gallon buckets would change to a size outside that range if a performance standard for 4–6 gallon buckets were adopted.

D. The Bucket Industry

According to the Freedonia study, approximately 248 million metal and plastic buckets of all sizes were shipped in 1992. Of these, approximately 70 percent, or 173 million units, were plastic buckets. More than 85 percent (150 million units) of the plastic buckets shipped were open-head buckets, which are generally the 5-gallon capacity. It is estimated that by 1997, 175 million open-head plastic buckets will be produced annually.

The Freedonia study also reports that there are approximately 50 plants producing open-head buckets in the United States. In 1992, 5 companies accounted for approximately 50 percent of shipments of plastic buckets. The estimated value of the 1992 shipments of open-head plastic buckets was $355 million, or approximately $2.37 per unit. Net exports of plastic buckets account for approximately three percent of shipments.

The industry has become somewhat organized through the ASTM subcommittee as a result of voluntary standards activities and the Coalition for Container Safety. Many of the dominant manufacturers are members of the Plastic Shipping Container Institute, representing approximately 30 percent of firms. Another trade association in which open-head bucket producers are members is the Society of the Plastics Industry.

E. Risks of Injury and Death

Between January 1984 and March 15, 1994, the Commission received reports of 228 deaths and 30 nonfatal incidents associated with buckets. These numbers do not represent a complete count of all bucket-related deaths and injuries, since reporting is still in progress for some data sources. For 1990 and 1991 (the latest years for which all data sources are complete), it is estimated that there were approximately 40 drownings per year.

Victims ranged in age from 7 to 24 months, with a median age of 11 months; almost two-thirds (63%) of the children were male.

TABLE 1.—VICTIM AGE FOR INVESTIGATED BUCKET INCIDENTS 1986–1994

Age (months)	Count
7	1
8	6
9	16
10	26
11	33
12	21
13	17
14	7
15	9
16	3
17	3
18	4
>18	5
Total	151

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, In-Depth Investigation File

Race/ethnicity was reported in 136 of the 151 investigated cases. Victims were Black (53), White (41), Hispanic (37), American Indian (4), and Asian (1). Minority groups accounted for a higher proportion (almost 70%) of bucket-related incidents.

TABLE 2.—RELATIVE RISK OF BUCKET INCIDENTS BY RACE/ETHNICITY 1986–1994

Race/ethnicity	Incidents (percent)	U.S. live births (percent)	Relative risk
Asian	<1	3.3	.3
Black	39	16.8	2.3
Caucasian	30	65.8	.4
Hispanic	27	13.3	2.0
Native American	3	1.0	3.0

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, In-Depth Investigation File

Spanish was reported to be the household language in 21 incidents, and Navajo was the language in two cases. However, conclusive information was not usually available on whether the caretakers involved in these cases could also read and/or speak English. In one family, the victim's mother, who was caring for him at the time, spoke only Kurdish. Whether the caretaker can read English is relevant to the potential effectiveness of labels and to the content of the label.

CPSC in-depth investigations generally do not collect socioeconomic data, but police reports and other documents collected as part of the investigations suggest that most victims were at the lower end of the socioeconomic scale. Statements taken in the investigations indicate that 5-gallon, industrial-type buckets are used by many low-income families because of the buckets' durability, versatility, availability, and low, if any, cost.

Generally, victims fell into buckets while leaning over them. There were no witnesses to virtually any of the incidents. However, it appears that, in many situations, unattended children were reaching for an object inside the container, or may have leaned over the bucket to look inside or play with the water, and fell in head first. In a few situations, children fell into buckets from higher levels, such as a patio bench or from a bed. The average height of liquid in the bucket was about 6 inches. The smallest amount of water was reported to be 3 inches.

Most buckets were used originally for bulk packaging of industrial and commercial products and were often brought home by neighbors or family members to use for household tasks. In the majority of incidents, the containers were used for cleaning purposes (mop buckets) around homes and held water mixed with various cleaning agents. The buckets were also used to hold drinking

[2] *Industrial Bulk Packaging*, The Freedonia Group, Inc., March 1993.

[3] *U.S. Paint Industry Data Base*, SRI International, September 1990.

TABLE 2.—RELATIVE RISK OF BUCKET INCIDENTS BY RACE/ETHNICITY 1986–1994

Race/ethnicity	Incidents (percent)	U.S. live births (percent)	Relative risk
Asian	<1	3.3	.3
Black	39	16.8	2.3
Caucasian	30	65.8	.4
Hispanic	27	13.3	2.0
Native American	3	1.0	3.0

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, In-Depth Investigation File

Spanish was reported to be the household language in 21 incidents, and Navajo was the language in two cases. However, conclusive information was not usually available on whether the caretakers involved in these cases could also read and/or speak English. In one family, the victim's mother, who was caring for him at the time, spoke only Kurdish. Whether the caretaker can read English is relevant to the potential effectiveness of labels and to the content of the label.

CPSC in-depth investigations generally do not collect socioeconomic data, but police reports and other documents collected as part of the investigations suggest that most victims were at the lower end of the socioeconomic scale. Statements taken in the investigations indicate that 5-gallon, industrial-type buckets are used by many low-income families because of the buckets' durability, versatility, availability, and low, if any, cost.

Generally, victims fell into buckets while leaning over them. There were no witnesses to virtually any of the incidents. However, it appears that, in many situations, unattended children were reaching for an object inside the container, or may have leaned over the bucket to look inside or play with the water, and fell in head first. In a few situations, children fell into buckets from higher levels, such as a patio bench or from a bed. The average height of liquid in the bucket was about 6 inches. The smallest amount of water was reported to be 3 inches.

Most buckets were used originally for bulk packaging of industrial and commercial products and were often brought home by neighbors or family members to use for household tasks. In the majority of incidents, the containers were used for cleaning purposes (mop buckets) around homes and held water mixed with various cleaning agents. The buckets were also used to hold drinking water for animals, for laundry purposes, as diaper pails, for gardening projects, as toilet aids, and to hold water for other household purposes. The incidents took place in all rooms of the home, as well as in yards and on porches.

As noted above, there were an estimated 40 bucket drowning deaths per year for 1990 and 1991. Also, there are approximately 8 million children under the age of 2 years in the United States. Based on these figures, the risk of death from drowning in a bucket is 5 per million each year for children in this age group. This risk ratio is most likely an underestimate. For example, the Commission knows of no children under age 7 months involved in the incidents from 1986 to 1994. Also, not all children under the age of 2 years have 5-gallon buckets in their homes.

F. Existing Standards

The Commission is aware of some existing standards that may be relevant to this proceeding. These standards are described below.

1. *ASTM standard ES 26–93 for labeling.* In May 1992, at the request of the Commission, ASTM formed subcommittee F15.31 to address the hazards associated with 5-gallon buckets. The subcommittee's primary goals were to develop a labeling standard and to determine the feasibility of a performance standard. The subcommittee recognized that a labeling standard could be developed and put into place in much less time than a performance standard. Consequently, the subcommittee initially focused its efforts on the development of an emergency labeling standard.[4] In July 1993, ASTM approved ES 26–93, "Emergency Standard Specification for Cautionary Labeling for Plastic Five-Gallon Open-Head Containers (Buckets)." A final ASTM labeling standard is currently undergoing the subcommittee balloting process.

The Commission preliminarily believes that the ASTM labeling standard alone will not adequately reduce the risk of child drownings associated with buckets. Warning labels generally are not as effective in reducing the risks of injury and death as appropriate design changes, particularly where, as here, the population at risk—infants and toddlers—cannot read. In addition, the Commission does not know the degree of compliance with the ASTM standard that is likely to occur in the buckets presenting the risks being addressed in this proceeding. It appears that a performance standard and information and education efforts will also be required to achieve a reasonable reduction in the risk of child drownings associated with this product.

2. *California labeling requirement.* In September 1993, a California law became effective that requires a warning label on 5-gallon buckets that are intended for use, sale, or distribution within the state. As noted above, the Commission believes that a labeling requirement alone will not adequately reduce the risk of child drownings associated with this product.

3. *Handling and shipping standards.* The Commission is aware of a number of standards that establish criteria for packaging to ensure that it will have sufficient strength and impact resistance to withstand conditions encountered in handling and shipping. These standards are not directly relevant to the development of a performance standard for buckets to address the child-drowning hazard. However, any new bucket designs needed to meet a performance standard may also have to meet one or more of the standards listed below:

1. I258. National Motor Freight Classification Rules, National Motor Freight Association, Inc., 2300 Mill Road, Alexandria, VA 22314.

2. ASTM Standard Specification Designation: D4504–85, Standard Specification for Molded Polyethylene Open-Head-Pails for Industrial Shipping.[5]

3. ASTM Standard Specification Designation: D4919–89, Standard Specification for Testing of Hazardous Materials Packaging.

4. Department of Transportation Hazardous Material Regulations, 16 CFR Part 178 (1993), Specifications for Packaging.

5. Uniform Freight Classification 6000–E, Section 7–1/4, Part 2 (Open Head Pails).

6. Environmental Stress Crack Resistance Test Procedure for Plastic Pails, Plastic Shipping Container Institute, 4913 Main Street, Downers Grove, IL 60515.

7. United Nations Transportation of Dangerous Goods, Chapter 9, Section 9.6.19.2–9.8.2.

For the reasons given above, the Commission believes that none of the existing standards would eliminate or adequately reduce the risk of child drownings associated with buckets.

[4] ASTM procedures allow for emergency standards, which will be in effect for only 2 years, to be developed on an expedited basis. During the 2-year life of the emergency standard, a final standard is considered according to the usual ASTM procedures.

[5] Available from the ASTM, 1916 Race St., Philadelphia, PA 19103.

G. Regulatory Alternatives Under Consideration

The Commission is considering alternatives to reduce the number of injuries and deaths related to 5-gallon buckets. Available information suggests that many of the families of the children involved in the reported incidents were unaware of the potential drowning hazard associated with secondary use of these containers and are less likely to be reached by traditional information and education (I&E) programs. Thus, labeling and performance standards, as well as new and aggressive I&E campaigns designed to reach this vulnerable population, continue to be warranted. It is also possible that a voluntary standard could be developed that would adequately reduce the risk of child drownings associated with this product. These alternatives are discussed below.

1. *Performance standard.* Based on the history of the ASTM subcommittee's consideration of a performance standard, it appears unlikely that ASTM will adopt an adequate performance standard for buckets. In addition, it is unclear whether there would be substantial industry compliance with any such standard. Accordingly, it is possible that the Commission will issue a mandatory performance standard for hazardous plastic buckets. A mandatory standard could include provisions similar to some of those developed for the draft ASTM performance standard, or additional or alternate requirements could be developed.

Performance standards to reduce or eliminate the drowning hazard may require product redesign. A redesigned 5-gallon plastic bucket may entail costs to change the bucket molds and filling assembly lines, and also may adversely affect transportation and handling efficiencies. If these costs are prohibitive, fillers are likely to use alternate packaging, such as smaller or larger buckets.

2. *Labeling.* Another alternative is labeling plastic buckets. ASTM subcommittee F15.31 developed two labels to address the drowning hazard with buckets. The present ASTM labels are as follows:

BILLING CODE 6355-01-P

FIG. 1 Example of Label Type A

BILLING CODE 6355-01-C

The Commission believes that the labels developed by ASTM could be modified to more closely comply with recognized principles of safety labeling. The Commission presently lacks data, however, to demonstrate that such modifications to the ASTM labels would result in further reductions in deaths or injuries. In any event, as described above, the Commission is concerned that labeling alone will not adequately reduce the risk of child drowning.

3. Voluntary standards. As discussed above, ASTM has Emergency Standard ES 26–93 for labeling of 5-gallon

FIGURE 2

BILLING CODE 6355–01–C

The Commission believes that the labels developed by ASTM could be modified to more closely comply with recognized principles of safety labeling. The Commission presently lacks data, however, to demonstrate that such modifications to the ASTM labels would result in further reductions in deaths or injuries. In any event, as described above, the Commission is concerned that labeling alone will not adequately reduce the risk of child drowning.

3. Voluntary standards. As discussed above, ASTM has Emergency Standard ES 26–93 for labeling of 5-gallon buckets, and a permanent ASTM labeling standard is being balloted. There are also other voluntary standards applicable to these buckets, discussed above, but these standards do not address the drowning hazard to children. The Commission is not aware of any other voluntary standards in effect that apply to the risk of children drowning that is associated with this product.

4. A ban. The Commission may determine that a performance standard that would adequately reduce the risk of children drowning in buckets is not feasible. If this occurs and the requisite findings are made, the Commission could declare plastic buckets that present this risk to be banned hazardous products. This alternative would require the use of either smaller or larger buckets, or other types of packaging, that do not present the risk addressed in this proceeding.

G. Solicitation of Information and Comments

This ANPR is the first step of a proceeding which could result in a mandatory performance or labeling standard for plastic buckets that present an unreasonable risk of child drownings

(probably buckets of rated capacities of 3½ to 6½ gallons), or in a ban of these products. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, CPSC solicits the following additional information: (1) How consumers obtain the buckets, (2) the size of the exposed population, (3) a breakdown of production by bucket size and intended use, (4) the costs of bucket injection molds, (5) the degree to which industry and businesses depend upon the existing 5-gallon plastic bucket size and shape (shipping, storage, etc.), (6) the likely effects of elimination of the 5-gallon size, (7) the likelihood of industry substitution of another container, such as another size bucket, and how this would affect risk, (8) any markets with little or no potential of primary or secondary consumer use of plastic buckets, (9) the likelihood and nature of significant economic impact on small entities, and (10) the costs of mandating a labeling requirement.

In addition, the Commission solicits comments on the likely effects on drowning incidents and on the bucket market of possible design changes to plastic buckets. For example, commenters might be able to supply information about the reduction in drownings and the effect on bucket uses that might result if all plastic buckets were over 18 or 21 inches in height or less than 10 or so inches in height. Information on whether buckets with shapes other than round could be used would also be helpful.

Also, in accordance with section 9(a) of the CPSA, the Commission solicits:

(1) Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

(2) Any existing standard or portion of a standard which could be issued as a proposed regulation.

(3) A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. All comments and submissions should be received no later than September 6, 1994.

Dated: June 30, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814:

1. I258. National Motor Freight Classification Rules, National Motor Freight Association, Inc., 2300 Mill Road, Alexandria, VA 22314.

2. ASTM Standard Specification Designation: D4504–85, Standard Specification for Molded Polyethylene Open-Head-Pails for Industrial Shipping.[6]

3. ASTM Standard Specification Designation: D4919–89, Standard Specification for Testing of Hazardous Materials Packaging.

4. Department of Transportation Hazardous Material Regulations, 16 CFR Part 178 (1993), Specifications for Packaging.

5. Uniform Freight Classification 6000–E, Section 7–1/4, Part 2 (Open Head Pails).

6. Environmental Stress Crack Resistance Test Procedure for Plastic Pails, Plastic Shipping Container Institute, 4913 Main Street, Downers Grove, IL 60515.

7. United Nations Transportation of Dangerous Goods, Chapter 9, Section 9.6.19.2–9.8.2.

8. Report: "Polyethylene Shipping Containers: The Marketing of Hazard," Public Interest Scientific Consulting Service, Inc., New York, September 1985.

9. News from CPSC, "Large Buckets Are Drowning Hazards for Young Children," July 12, 1989.

10. COMSIS report on warning labels for 5-gallon buckets, August 22, 1989.

11. Materials from press conference with CPSC and the Coalition for Container Safety, August 22, 1990. Includes: sample label, agenda, remarks of CPSC Chairman Jacqueline Jones-Smith, remarks of Lewis R. Freeman, news release, fact sheet, suburban newspaper news release, and poster.

12. Log of 7/16/91 meeting with the Coalition for Container Safety.

13. Letter from Lewis R. Freeman, Jr., Vice President Government Affairs, The Society of the Plastics Industry, Inc. concerning labels, November 1, 1991. Attached is an undated "white paper" of the Technical Committee of the Plastic Shipping Container Institute, "Plastic 5–Gallon Shipping Containers."

14. Memorandum from Renae Rauchschwalbe, CPSC/CECA, to Eric Peterson, CPSC Executive Director, commenting on SPI's 11/1/91 labeling proposal, November 15, 1991.

15. Memorandum from Robert Hartwig, CPSC/EPHA, to George Rutherford, CPSC/EP, "Updated Analysis of Infant Bucket Drownings," November 25, 1991.

16. Memorandum from George Rutherford, CPSC, to the Commission, "Current Listing of Infant Bucket Drownings," December 5, 1991.

17. Letter from Bert Simson, CPSC, to Drew Azzaro, ASTM, requesting ASTM to call a meeting to discuss a voluntary standard for 5-gallon buckets, February 10, 1992.

18. Safety Alert, "Large Buckets are Drowning Hazards for Young Children," April 1992.

19. Log of organizational meeting of ASTM F15.31, May 5, 1992.

20. Staff memorandum to the Commission, "Injury and Human Factors Analyses of Bucket Drownings," May 14, 1992.

21. Mann, N.C., Weller, S.C., and Rauchschwalbe, R., "Bucket- Related Drownings in the United States, 1984 Through 1990," Pediatrics, Vol. 89 No. 6, June 1992.

22. Staff memorandum to the Commission, "Request for Participation Level Voluntary Standard Project on Certain Buckets," June 19, 1992.

23. Staff memorandum to the Commission, "Request for Participation Level Voluntary Standard Project on Certain Buckets," July 7, 1992, with ballot vote, July 29, 1992.

24. Log of meeting of ASTM F15.31, July 8, 1992.

25. Log of meeting of ASTM F15.31, August 15, 1992.

26. Log of meeting of ASTM F15.31, September 9, 1992.

27. Congressional Record, September 10, 1992, House Section, text of amendment offered by Rep. Bilirakis to H.R. 4706 to require bucket labels.

28. Log of meeting of ASTM 15.31 Performance Task Group, October 27, 1992.

29. "Focus Group Study of Bucket Labels," RIVA Market Research, Inc., November 1992.

30. Log of meeting of ASTM 15.31 Performance Task Group, December 1, 1992.

31. Log of meeting of ASTM F15.31, December 2, 1992.

32. Memorandum from J. Elder to the Commission, re Bucket Labels—Contractor's Report and Human Factors Staff Recommendations, December 28, 1992.

33. Memorandum to the Commission from Donna-Bea Tillman, CPSC/HSHE, "Updated listing of infant bucket drownings," January 27, 1993.

34. Log of meeting of ASTM 15.31 Performance Task Group, February 16, 1993.

35. Log of meeting of ASTM F15.31, February 17, 1993.

36. Log of meeting of ASTM 15.31 Performance Task Group, March 30, 1993.

37. Log of meeting of ASTM 15.31 Performance Task Group, May 4, 1993.

38. Log of meeting of ASTM F15.31, May 5, 1993.

39. Scheers, N.J. and Cassidy, S., "Analysis of Investigated Cases of Deaths and Hospitalizations Associated with Five Gallon-Type Buckets: January, 1984 Through June 1, 1993," CPSC/EPHA, June 15, 1993.

40. American Society for Testing and Materials standard ES 26–93, "Emergency Standard Specification for Cautionary Labeling for Plastic Five-Gallon Open-Head Containers (Buckets)," approved July 28, 1993; published August 1993.

41. CPSC Safety Alert, August 1993.

42. Memorandum from G. Sweet, CPSC Division of Human Factors, to Donna-Bea Tillman, CPSC/HSHE, "Five-Gallon Buckets," Aug. 2, 1993.

43. Log of meeting of ASTM 15.31 Performance Task Group, September 8, 1993.

44. Log of meeting of ASTM F15.31, September 9, 1993.

45. Log of meeting of ASTM F15.34 (steel buckets), October 4, 1993.

46. Log of meeting of ASTM F15.31, November 30, 1993.

47. Letter from Eric Peterson, CPSC Executive Director, to John Blair, Chairman ASTM F15.31, regarding labeling should be replaced by performance requirements, December 27, 1993.

48. Letter from Frederick Huber, who is seeking a patent on a bucket with a ring at the base that can be removed to decrease the stability of the bucket, March 2, 1994.

49. Letter from Brock Landry to Donna-Bea Tillman, CPSC, concerning a drowning in a steel industrial cooking vessel, March 14, 1994.

50. Log of meeting of ASTM F15.31, March 17, 1994.

51. Memorandum from Donna-Bea Tillman, CPSC, to John Preston, CPSC, "ASTM activities on five-gallon buckets," March 24, 1994.

52. Interview with CPSC Chairman Ann Brown, Los Angeles Times, D3, March 25, 1994.

53. Memorandum from Mary Donaldson, CPSC/ECSS, to John

[6] Available from the ASTM, 1916 Race Street, Philadelphia, PA 19103.

33. Memorandum to the Commission from Donna-Bea Tillman, CPSC/HSHE, "Updated listing of infant bucket drownings," January 27, 1993.

34. Log of meeting of ASTM 15.31 Performance Task Group, February 16, 1993.

35. Log of meeting of ASTM F15.31, February 17, 1993.

36. Log of meeting of ASTM 15.31 Performance Task Group, March 30, 1993.

37. Log of meeting of ASTM 15.31 Performance Task Group, May 4, 1993.

38. Log of meeting of ASTM F15.31, May 5, 1993.

39. Scheers, N.J. and Cassidy, S., "Analysis of Investigated Cases of Deaths and Hospitalizations Associated with Five Gallon-Type Buckets: January, 1984 Through June 1, 1993," CPSC/EPHA, June 15, 1993.

40. American Society for Testing and Materials standard ES 26–93, "Emergency Standard Specification for Cautionary Labeling for Plastic Five-Gallon Open-Head Containers (Buckets)," approved July 28, 1993; published August 1993.

41. CPSC Safety Alert, August 1993.

42. Memorandum from G. Sweet, CPSC Division of Human Factors, to Donna-Bea Tillman, CPSC/HSHE, "Five-Gallon Buckets," Aug. 2, 1993.

43. Log of meeting of ASTM 15.31 Performance Task Group, September 8, 1993.

44. Log of meeting of ASTM F15.31, September 9, 1993.

45. Log of meeting of ASTM F15.34 (steel buckets), October 4, 1993.

46. Log of meeting of ASTM F15.31, November 30, 1993.

47. Letter from Eric Peterson, CPSC Executive Director, to John Blair, Chairman ASTM F15.31, regarding labeling should be replaced by performance requirements, December 27, 1993.

48. Letter from Frederick Huber, who is seeking a patent on a bucket with a ring at the base that can be removed to decrease the stability of the bucket, March 2, 1994.

49. Letter from Brock Landry to Donna-Bea Tillman, CPSC, concerning a drowning in a steel industrial cooking vessel, March 14, 1994.

50. Log of meeting of ASTM F15.31, March 17, 1994.

51. Memorandum from Donna-Bea Tillman, CPSC, to John Preston, CPSC, "ASTM activities on five-gallon buckets," March 24, 1994.

52. Interview with CPSC Chairman Ann Brown, Los Angeles Times, D3, March 25, 1994.

53. Memorandum from Mary Donaldson, CPSC/ECSS, to John Preston, CPSC, "Economic Information for Options Briefing Package on Five-Gallon Buckets," March 25, 1994.

54. Letter from John Preston, CPSC to John A. Blair, Chairman ASTM F15.31, urging development of performance standard, March 29, 1994.

55. Memorandum from George Sushinsky, CPSC to John Preston, CPSC, "The ASTM Draft Performance Standard for 5–Gallon Buckets," March 29, 1994.

56. Memorandum from S. Cassidy, CPSC/EPHA, to John Preston, CPSC, "Update of Investigated Cases Associated with Five Gallon Buckets," March 29, 1994.

57. Letter from Wm. Roper, Ropak Corp., to CPSC Chairman Ann Brown, concerning 3/25/94 interview and requesting meeting, March 30, 1994.

58. Letter from Wm. Roper, Ropak Corp., to John Preston, CPSC, asking for cumulative reports of infant drownings by year, March 30, 1994.

59. Memorandum from S. Cassidy, CPSC/EPHA, to John Preston, CPSC, "Risk of Death for Children under 2 Years of Age Associated with 5–Gallon Buckets," April 1, 1994.

60. Memorandum from Kathy Kaplan, CPSC/EXPA, to John Preston, CPSC, "Cost Estimate for Media Events and Consumer Information Program for 5-Gallon Buckets, April 1, 1994.

61. Letter from John Preston, CPSC to Mr. Frederick Huber, responding to his 3/2/94 letter, April 5, 1994.

62. Fax/Letter from CPSC Chairman Ann Brown to Wm. Roper, Ropak Corp., assuring that she is unbiased and inviting him to 4/15 meeting, April 8, 1994.

63. Fax from Harleigh Ewell, CPSC, to John Blair, Chairman ASTM F15.31, inviting interested parties to 4/15 meeting, April 8, 1994.

64. Letter from Wm. Roper, Ropak Corp., to John Preston, CPSC, stating that performance standard is impractical, April 11, 1994.

65. CPSC staff briefing paper from John Preston to the Commission, "Options for Addressing Drownings Associated with 5-Gallon Buckets," with Tabs A–I, April 18, 1994.

66. Letter from Brock R. Landry, attorney for the Coalition for Safe Steel Containers, requesting that steel industrial containers not be included in any rulemaking, April 18, 1994.

67. Log of meeting with bucket industry representatives and CPSC Chairman Ann Brown, April 26, 1994.

68. Log of 5/2/94 meeting of ASTM Subcommittee F15.31 Performance Task Group.

69. Letter from Wm. Roper, Ropak Corp., to CPSC Chairman Ann Brown, concerning labels and the need for an educational program, May 5, 1994.

70. Letter from Brock Landry, attorney for the Safe Steel Container Coalition, to CPSC Chairman Ann Brown concerning persons to attend 5/9 meeting and their position that steel containers should not be included in the proposed ANPR, May 5, 1994.

71. Letter from Wm. Roper, Ropak Corp., to John Preston, CPSC, concerning the "Just a Few Seconds" drowning prevention campaign, May 6, 1994.

72. Letter from Rep. Charles Wilson to CPSC Chairman Ann Brown, May 9, 1994.

73. Letter from CPSC Chairman Ann Brown to Rep. Charles Wilson, May 12, 1994.

74. Memorandum from CPSC Commissioner Mary Sheila Gall to CPSC Chairman Ann Brown, "In Depth Investigation (IDI) Reports—Bucket Drownings," May 13, 1994.

75. Letter from John Blair, Chairman ASTM 15.31, to Wm. Roper, Ropak Corp., "Proposed Educational and Communications Program, F15.31—Five Gallon Buckets," May 13, 1994.

76. Letter from R. J. Gardner to John Preston, CPSC, questioning value of bucket project based on 5/12/94 article in the *Utica Observer Dispatch*, May 15, 1994.

77. Letter from Wm. Roper, Ropak Corp., to CPSC Chairman Ann Brown announcing that the 5 major producers will label products commencing 1/1/95 and initiate an I&E program by 7/1/94, with attachments concerning I&E program, May 16, 1994.

78. Memorandum from John Preston, CPSC, to the Commission, "Response to Commission Questions Regarding 5-Gallon Buckets," May 17, 1994.

79. Tape recording of Commission decision meeting of May 19, 1994.

80. Statement of Chairman Ann Brown on 5-gallon buckets, May 19, 1994.

81. Statement of Commissioner Mary Sheila Gall on options on mandatory Federal regulation of five gallon buckets, May 19, 1994.

82. Statement of Commissioner Jacqueline Jones-Smith on the Issuance of an ANPR for 5-Gallon Plastic Containers, May 19, 1994.

83. News from CPSC, "CPSC Votes to Begin Rulemaking on Plastic, 5-Gallon Buckets," May 19, 1994.

84. Ballot vote sheet, "Revised ANPR for 5-Gallon Buckets," May 24, 1994.

[FR Doc. 94–16481 Filed 7–7–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IL–21–91]

RIN 1545–AS24

Imposition of Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the imposition of the accuracy-related penalty under Internal Revenue Code sections 6662 (e) and (h) for net section 482 transfer price adjustments. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Comments and requests to appear at the public hearing scheduled on September 19, 1994, must be received by August 19, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IL–21–91), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (IL–21–91), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224.

The collection of information in this notice of proposed rulemaking is in §§ 1.6662–6T (d)(2)(iii) and (d)(3)(iii). This information is required by the IRS to implement section 6662(e)(3)(B) of the Internal Revenue Code. This information will be used to determine whether the taxpayer reasonably concluded that the transfer prices charged in related party transactions were consistent with the arm's length standard. The likely respondents and recordkeepers are business or other for-profit institutions and small businesses or organizations. Estimated total reporting burden: 125 hours. The estimated average burden per respondent: .25 hour. Estimated number of respondents: 500. Estimated annual frequency of responses: 1. Estimated total annual recordkeeping burden: 20,000. The estimated annual burden per recordkeeper varies from 5 hours to 15 hours, depending on individual circumstances, with an estimated average of 10 hours. Estimated number of recordkeepers: 2,000.

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations under sections 6662 (e) and (h) relating to the imposition of accuracy-related penalties. The final regulations that will result from the regulations proposed in this notice would be based on the text of the temporary regulations and would provide rules relating to the imposition of accuracy-related penalties under those sections for net section 482 transfer price adjustments.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing has been scheduled on September 19, 1994, at 10 a.m. in the IRS auditorium.

Drafting Information

The principal author of these proposed regulations is Thomas L. Ralph of the Office of the Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.6662–6 also issued under 26 U.S.C. 6662. * * *

Par. 2. Section 1.6662–0 is amended by adding entries to the table to read as follows:

§ 1.6662–0 Table of contents.

[The text of the proposed amendments to this section is the same as the text of the amendments to § 1.6662–0 published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.6662–6 is added to read as follows:

§ 1.6662–6 Transactions between persons described in section 482 and net section 482 transfer price adjustments.

[The text of this proposed section is the same as the text of § 1.6662–6T published elsewhere in this issue of the **Federal Register**.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–16358 Filed 7–5–94; 12:26 pm]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Chs. XXVI and XL

Renumbering of Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Regulation renumbering with request for comments.

SUMMARY: The Pension Benefit Guaranty Corporation plans to renumber its regulations to track the primary statutory provision to which each relates. The purpose of the regulation renumbering is to give the public easier access to the regulations. Other agencies in the pension field already number their regulations based on pertinent statutory provisions. The planned renumbering would facilitate access to the regulations by practitioners who generally are accustomed to searching for pension regulations under statute-based numbering systems.

DATES: Comments must be submitted by September 6, 1994.

ADDRESSES: Comments should be sent to the Office of the General Counsel (Suite 340), Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department in Suite 240 at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel (Suite 340), Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension insurance program established by title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Most of the PBGC's regulations implement one or more of the statutory provisions in title IV of ERISA, which begins with section 4001 and currently ends with section 4402.

The regulations of the PBGC currently are codified at title 29, chapter XXVI of the Code of Federal Regulations ("CFR"), and the regulatory part numbers under that chapter may run from part 2600 through 2699; PBGC's regulations promulgated to date run from part 2601 through 2677, with

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Chs. XXVI and XL

Renumbering of Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Regulation renumbering with request for comments.

SUMMARY: The Pension Benefit Guaranty Corporation plans to renumber its regulations to track the primary statutory provision to which each relates. The purpose of the regulation renumbering is to give the public easier access to the regulations. Other agencies in the pension field already number their regulations based on pertinent statutory provisions. The planned renumbering would facilitate access to the regulations by practitioners who generally are accustomed to searching for pension regulations under statute-based numbering systems.

DATES: Comments must be submitted by September 6, 1994.

ADDRESSES: Comments should be sent to the Office of the General Counsel (Suite 340), Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department in Suite 240 at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel (Suite 340), Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension insurance program established by title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Most of the PBGC's regulations implement one or more of the statutory provisions in title IV of ERISA, which begins with section 4001 and currently ends with section 4402.

The regulations of the PBGC currently are codified at title 29, chapter XXVI of the Code of Federal Regulations ("CFR"), and the regulatory part numbers under that chapter may run from part 2600 through 2699; PBGC's regulations promulgated to date run from part 2601 through 2677, with certain part numbers reserved. At this time, the PBGC's regulations are codified into subchapters of chapter XXVI based on subject matter categories, *i.e.*, internal and administrative rules (subchapter A), rules applicable to both single-employer and multiemployer plans (subchapter B), rules applicable to single-employer plans only (subchapter C), withdrawal liability rules for multiemployer plans (subchapter F), and other rules applicable to multiemployer plans (subchapter H).

The other agencies responsible for the implementation of ERISA, the Department of Labor and the Department of the Treasury, have numbered their pension regulations in accordance with the numbering of provisions in ERISA and the Internal Revenue Code, respectively. Consequently, when a pension practitioner or another member of the public is looking for a regulation by either of the above agencies on a specific statutory provision, he or she may find it under the equivalent statutory number. The PBGC believes that renumbering its regulations in a similar fashion will facilitate the public's access to its regulations, thus making use of the PBGC's regulations easier.

Attached are documents illustrating a possible approach for implementing PBGC's plan to renumber and reorganize its regulations according to the primary ERISA section number that they interpret. The regulations would become new chapter XL of 29 CFR. Parts in the 4000 through 4099 series would cover various rules relating to either single-employer or multiemployer plans (or both); parts in the 4200 through 4299 series would cover other multiemployer rules; parts in the 4500 through 4599 series would cover rules promulgated under other ERISA sections such as section 302(f) (current subpart B of part 2615 would become part 4502); and parts in the 4700 through 4799 series would cover certain internal and administrative rules. Other part numbers through 4999 would be reserved for future use.

The attachments to this document are: (1) A Table of Contents showing subchapter, part, and subpart numbers; (2) an Outline showing, in addition, unnumbered center headings, section numbers, and source in current regulations; (3) a Distribution Table showing where part 2600 provisions would appear in chapter XL; and (4) a Derivation Table showing where the new parts currently are found in 29 CFR chapter XXVI.

Because this renumbering is intended in large part for the benefit of the public, the PBGC invites members of the public to express their views on the PBGC's plan to renumber its regulations and on the approach to renumbering reflected in the attachments. The planned renumbering may be changed in light of comments received.

Issued in Washington, DC this 30th day of June, 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

Attachment 1

Table of Contents to Regulation Renumbering Proposal

Title 29—Labor

Subtitle B—Regulations Relating to Labor

* * * * *

Chapter XL—Pension Benefit Guaranty Corporation

SUBCHAPTER A—GENERAL

Part
4000 Finding aids
4001 Definitions

Subpart A—Definitions

Subpart B—Trades or businesses under common control; controlled groups

4002 Bylaws of the Pension Benefit Guaranty Corporation
4003 Rules for administrative review of agency decisions

Subpart A—General provisions

Subpart B—Initial determinations

Subpart C—Reconsideration of initial determinations

Subpart D—Administrative appeals

SUBCHAPTER B—PREMIUMS

4006 Premium rates
4007 Payment of premiums

SUBCHAPTER C—COVERAGE AND BENEFITS

4022 Benefits payable in terminated single-employer plans

Subpart A—Guaranteed benefits

Subpart B—Limitations on guaranteed benefits

Subpart C—[reserved]

Subpart D—Benefit reductions in terminating plans

Subpart E—PBGC recoupment and reimbursement of benefit overpayments and underpayments

4022B Aggregate limits on guaranteed benefits

SUBCHAPTER D—PLAN TERMINATIONS

4041 Single-employer plan terminations

Subpart A—General provisions

Subpart B—Standard terminations

Subpart C—Distress terminations

4041A Termination of multiemployer plans

Subpart A—General provisions

Subpart B—Notice of termination

Subpart C—Plan sponsor duties

Subpart D—Closeout of sufficient plans

4043 Reportable events
4044 Allocation of assets in single-employer plans

Subpart A—General

Subpart B—Allocation of assets to benefit categories

Subpart C—Allocation of residual assets

4047 Restoration of terminating and terminated plans

SUBCHAPTER E—LIABILITY

4061 Amounts payable by the Pension Benefit Guaranty Corporation
4062 Liability for termination of single-employer plans

Subpart A—Determination and payment of liability

Subpart B—Valuation of plan benefits

Subpart C—Valuation of plan assets

4063 Withdrawal liability; plans under multiple controlled groups
4064 Liability on termination of single-employer plans under multiple controlled groups

SUBCHAPTER F—ANNUAL REPORTING REQUIREMENTS

4065 Annual report

SUBCHAPTER G—ENFORCEMENT PROVISIONS

4068 Lien for liability

SUBCHAPTER H—WITHDRAWAL LIABILITY IN MULTIEMPLOYER PLANS

4203 Extension of special withdrawal liability rules
4204 Variances for sale of assets

Subpart A—Procedures for individual and class variances or exemptions

Subpart B—Variance of the statutory requirement

4206 Adjustment of liability for a withdrawal subsequent to a partial withdrawal
4207 Reduction or waiver of complete withdrawal liability
4208 Reduction or waiver of partial withdrawal liability
4211 Allocating unfunded vested benefits

Subpart A—General

Subpart B—Changes not subject to PBGC approval

Subpart C—Changes subject to PBGC approval

4219 Notice, collection, and redetermination of withdrawal liability

Subpart A—General provisions

Subpart B—Overdue, defaulted, and overpaid withdrawal liability

Subpart C—Redetermination of withdrawal liability upon mass withdrawal

4220 Procedures for PBGC approval of plan amendments
4221 Arbitration of disputes in multiemployer plans

SUBCHAPTER I—INSOLVENCY, REORGANIZATION, TERMINATION, AND OTHER RULES APPLICABLE TO MULTIEMPLOYER PLANS

4231 Mergers and transfers between multiemployer plans
4245 Notice of insolvency
4261 Financial assistance to multiemployer plans
4281 Powers and duties of plan sponsor of plan terminated by mass withdrawal

Subpart A—General provisions

Subpart B—Valuation of plan benefits and plan assets

Subpart C—Benefit reductions

Subpart D—Benefit suspensions

SUBCHAPTER J—OTHER ERISA PROVISIONS

4501 Notification requirements

Subpart A—Section 302(f); Notice of failure to make required contributions

SUBCHAPTER K—INTERNAL AND ADMINISTRATIVE RULES AND PROCEDURES

4701 Examination and copying of Pension Benefit Guaranty Corporation records

Subpart A—General

Subpart B—Fees for services and waiver policy

4702 Disclosure and amendment of records under the Privacy Act
4703 Ethical conduct of employees
4704 Appearances in certain proceedings
4705 Rules for administrative enforcement of post employment conflict of interest restrictions
4706 Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Pension Benefit Guaranty Corporation
4707—4999 [reserved]

Attachment 2

Outline of Regulation Renumbering Proposal
Title 29—Labor

Subtitle B—Regulations Relating to Labor

* * * * *

Chapter XL—Pension Benefit Guaranty Corporation

SUBCHAPTER A—GENERAL

PART 4000—FINDING AIDS

Sec.
4000.1 Distribution table.
4000.2 Derivation table.

PART 4001—DEFINITIONS

Subpart A—Definitions

Sec.
4001.1–4001.xx [definitions of certain section 4001(a) terms used in regulations]
4001.101–4001.xxx [general definitions (e.g., Code, PBGC, Plan) applicable to some or all regulations]

Subpart B—Trades or Businesses Under Common Control; Controlled Groups

4001.201–4001.203 [current part 2612]

PART 4002—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

Sec.
4002.1–4002.9 [current part 2601]

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

Subpart A—General Provisions

Sec.
4003.1–4003.10 [current subpart A of part 2606]

Subpart B—Initial Determinations

4003.21–4003.23 [current subpart B of part 2606]

Subpart C—Reconsideration of Initial Determinations

4003.31–4003.36 [current subpart C of part 2606]

Subpart D—Administrative Appeals

4003.51–4003.61 [current subpart D of part 2606]

SUBCHAPTER B—PREMIUMS

PART 4006—PREMIUM RATES

Sec.
4006.1–4006.xx [applicable provisions in current part 2610]
Appendix A to part 4006 . . . . [current appendix B, part 2610]

PART 4007—PAYMENT OF PREMIUMS

Sec.
4007.1–4007.xx [applicable provisions in current part 2610]
Appendix A to part 4007 . . . . [current appendix A, part 2610]

SUBCHAPTER C—COVERAGE AND BENEFITS

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

Subpart A—Guaranteed Benefits

Sec.
4022.1–4022.8 [current part 2613]

Subpart B—Limitations on Guaranteed Benefits

Sec.
4022.21–4022.28 [current part 2621]

Subpart C—[Reserved]

Sec.
4022.41–4022.xx [reserved for § 4022(c) regulation]

Subpart D—Benefit Reductions in Terminating Plans

Sec.
4022.81–4022.86 [applicable provisions in current §§ 2623.1 and 2623.2 and current subpart B of part 2623]

Subpart E—PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

Sec.
4022.101–4022.105 [applicable provisions in current §§ 2623.1 and 2623.2 and current subpart C of part 2623]
Appendix A to part 4022 . . . . [current appendix A, part 2621]

PART 4022B—AGGREGATE LIMITS ON GUARANTEED BENEFITS

Sec.
4022B.1 Purpose and scope.
4022B.2 [cross-reference § 4022.23(b), current § 2621.3(b)]

SUBCHAPTER D—PLAN TERMINATIONS

PART 4041—SINGLE-EMPLOYER PLAN TERMINATIONS

Subpart A—General Provisions

Sec.
4041.1 Purpose and scope.
4041.2–4041.xx [provisions in current subparts A of parts 2616 and 2617, combined and modified as appropriate]

Subpart B—Standard Terminations

4041.21–4041.28 [current subpart B of part 2617]

Subpart C—Distress Terminations

4041.41–4041.49 [current subpart B of part 2616]
Appendix A to part 4041 . . . . [current appendix to part 2617]

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

Subpart A—General Provisions

Sec.
4041A.1–4041A.3 [applicable provisions in current §§ 2673.1 and 2673.4 and in subpart A of part 2675 plus definitions from current § 2670.4]

Subpart B—Notice of Termination

4041A.11–4041A.12 [current §§ 2673.2 and 2673.3]

Subpart C—Plan Sponsor Duties

4041A.21–4041A.27 [current subpart B of part 2675]

Subpart D—Closeout of Sufficient Plans

4041A.41–4041A.44 [current subpart E of part 2675]

PART 4043—REPORTABLE EVENTS

Sec.
4043.1–4043.23 [current subpart A of part 2615, with cross-reference to part 4501 for subpart B of part 2615]

Subpart D—Benefit Reductions in Terminating Plans

Sec.
4022.81–4022.86 [applicable provisions in current §§ 2623.1 and 2623.2 and current subpart B of part 2623]

Subpart E—PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

Sec.
4022.101–4022.105 [applicable provisions in current §§ 2623.1 and 2623.2 and current subpart C of part 2623]
Appendix A to part 4022 . . . . [current appendix A, part 2621]

PART 4022B—AGGREGATE LIMITS ON GUARANTEED BENEFITS

Sec.
4022B.1 Purpose and scope.
4022B.2 [cross-reference § 4022.23(b), current § 2621.3(b)]

SUBCHAPTER D—PLAN TERMINATIONS

PART 4041—SINGLE-EMPLOYER PLAN TERMINATIONS

Subpart A—General Provisions

Sec.
4041.1 Purpose and scope.
4041.2–4041.xx [provisions in current subparts A of parts 2616 and 2617, combined and modified as appropriate]

Subpart B—Standard Terminations

4041.21–4041.28 [current subpart B of part 2617]

Subpart C—Distress Terminations

4041.41–4041.49 [current subpart B of part 2616]
Appendix A to part 4041 . . . . [current appendix to part 2617]

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

Subpart A—General Provisions

Sec.
4041A.1–4041A.3 [applicable provisions in current §§ 2673.1 and 2673.4 and in subpart A of part 2675 plus definitions from current § 2670.4]

Subpart B—Notice of Termination

4041A.11–4041A.12 [current §§ 2673.2 and 2673.3]

Subpart C—Plan Sponsor Duties

4041A.21–4041A.27 [current subpart B of part 2675]

Subpart D—Closeout of Sufficient Plans

4041A.41–4041A.44 [current subpart E of part 2675]

PART 4043—REPORTABLE EVENTS

Sec.
4043.1–4043.23 [current subpart A of part 2615, with cross-reference to part 4501 for subpart B of part 2615]

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

Subpart A—General

Sec.
4044.1–4044.4 [current subpart A of part 2618]

Subpart B—Allocation of Assets to Benefit Categories

4044.10–4044.17 [current subpart B of part 2618]

Subpart C—Allocation of Residual Assets

4044.30–4044.32 [current subpart C of part 2618]

PART 4047—RESTORATION OF TERMINATING AND TERMINATED PLANS

Sec.
4047.1–4047.4 [current part 2625]

SUBCHAPTER E—LIABILITY

PART 4061—AMOUNTS PAYABLE BY THE PENSION BENEFIT GUARANTY CORPORATION

Sec.
4061.1–4061.3 [cross-reference parts 4022, 4022A, and 4261]

PART 4062—LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS

Subpart A—Determination and Payment Of Liability

4062.1–4062.11 [current part 2622 other than 2622.9]

Subpart B—Valuation of Plan Benefits

GENERAL

4062.21–4062.23 [current subpart A of part 2619]

NON-TRUSTEED PLANS

4062.31–4062.38 [current subpart B of part 2619]

TRUSTEED PLANS

4062.41–4062.49 [current subpart C of part 2619]

EXPECTED RETIREMENT AGE

4062.61–4062.65 [current subpart D of part 2619]

Subpart C—Valuation of Plan Assets

4062.81–4062.85 [current part 2620]
Appendices A–F to part 4062 . . . . [current appendix A, part 2622 and appendices A–E, part 2619]

PART 4063—WITHDRAWAL LIABILITY; PLANS UNDER MULTIPLE CONTROLLED GROUPS

Sec.
4063.1 [cross-reference part 4062]

PART 4064—LIABILITY ON TERMINATION OF SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS

Sec.
4064.1 [cross-reference part 4062]

SUBCHAPTER F—ANNUAL REPORTING REQUIREMENTS

PART 4065—ANNUAL REPORT

Sec.
4065.1–4065.3 [current part 2611]

SUBCHAPTER G—ENFORCEMENT PROVISIONS

PART 4068—LIEN FOR LIABILITY

Sec.
4068.1–4068.xx [current §2622.9]

SUBCHAPTER H—WITHDRAWAL LIABILITY IN MULTIEMPLOYER PLANS

PART 4203—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

Sec.
4203.1–4203.4 [current part 2645]

PART 4204—VARIANCES FOR SALE OF ASSETS

Subpart A—Procedures for Individual and Class Variances or Exemptions

Sec.
4204.1–4204.3 [current subpart A of part 2643 plus definitions from current §2640.5]

Subpart B—Variance of the Statutory Requirement

4204.10–4204.15 [current subpart B of part 2643]

PART 4206—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

Sec.
4206.1–4206.9 [current part 2649 plus definitions from current §2640.8]

PART 4207—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

Sec.
4207.1–4207.8 [current part 2647 plus definitions from current §2640.6]

PART 4208—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

Sec.
4208.1–4208.8 [current part 2646 plus definitions from current §2640.6]

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS

Subpart A—General

Sec.
4211.1–4211.2 [current subpart A of part 2642 plus definitions from current §2640.4]

Subpart B—Changes Not Subject to PBGC Approval

4211.5–4211.7 [current subpart B of part 2642]

Subpart C—Changes Subject to PBGC Approval

4211.11–4211.14 [current subpart C of part 2642]

PART 4219—NOTICE, COLLECTION, AND REDETERMINATION OF WITHDRAWAL LIABILITY

Subpart A—General Provisions

Sec.
4219.1 [general provisions]

Subpart B—Overdue, Defaulted, and Overpaid Withdrawal Liability

4219.11–4219.14 [current part 2644]

Subpart C—Redetermination of Withdrawal Liability Upon Mass Withdrawal

4219.21–4219.30 [current part 2648 plus definitions from current § 2640.7, with cross-reference to part 4281]
Appendix A to part 4219 . . . . [current appendix A, part 2644]

PART 4220—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

Sec.
4220.1–4220.3 [current part 2677]

PART 4221—ARBITRATION OF DISPUTES IN MULTIEMPLOYER PLANS

Sec.
4221.1–4221.13 [current part 2641 plus definitions from current § 2640.3]

SUBCHAPTER I—INSOLVENCY, REORGANIZATION, TERMINATION, AND OTHER RULES APPLICABLE TO MULTIEMPLOYER PLANS

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

Sec.
4231.1–4231.9 [current part 2672 plus definitions from current § 2670.3]

PART 4245—NOTICE OF INSOLVENCY

Sec.
4245.1–4245.6 [current part 2674 plus definitions from current § 2670.4]

PART 4261—FINANCIAL ASSISTANCE TO MULTIEMPLOYER PLANS

Sec.
4261.1 [cross-reference § 4281.88, current § 2675.38]

PART 4281—POWERS AND DUTIES OF PLAN SPONSOR OF PLAN TERMINATED BY MASS WITHDRAWAL

Subpart A—General Provisions

Sec.
4281.1–4281.3 [current subpart A of part 2675 and § 2676.1 combined and modified as appropriate plus definitions from current § 2670.4]

Subpart B—Valuation of Plan Benefits and Plan Assets

GENERAL

4281.11–4281.12 [current subpart A of part 2676]

VALUATION OF BENEFITS

4281.21–4281.26 [current subpart B of part 2676]

VALUATION OF ASSETS

4281.41–4281.51 [current subpart C of part 2676]

Subpart C—Benefit Reductions

4281.61–4281.64 [current subpart C of part 2675]

Subpart D—Benefit Suspensions

4281.81–4281.88 [current subpart D of part 2675]
Appendices A–C to part 4281 . . . . [current appendices A–C, part 2676]

SUBCHAPTER J—OTHER ERISA PROVISIONS

PART 4501—NOTIFICATION REQUIREMENTS

Subpart A—Section 302(f); Notice of Failure to Make Required Contributions

Sec.
4501.1–4501.3 [current subpart B of part 2615]

SUBCHAPTER K—INTERNAL AND ADMINISTRATIVE RULES AND PROCEDURES

PART 4701—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

Subpart A—General

Sec.
4701.1–4701.47 [current subpart A of part 2603]

Subpart B—Fees for Services and Waiver Policy

Sec.
4701.51–4701.55 [current subpart B of part 2603]

PART 4702—DISCLOSURE AND AMENDMENT OF RECORDS UNDER THE PRIVACY ACT

Sec.
4702.1–4702.10 [current part 2607]

PART 4703—ETHICAL CONDUCT OF EMPLOYEES

Sec.
4703.1 [current subpart A of part 2602]

PART 4704—APPEARANCES IN CERTAIN PROCEEDINGS

Sec.
4704.1–4704.6 [current subpart B of part 2602]

PART 4705—RULES FOR ADMINISTRATIVE ENFORCEMENT OF POST EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

Sec.
4705.1–4705.10 [current part 2604]

PART 4706—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENSION BENEFIT GUARANTY CORPORATION

Sec.
4706.101–4706.170 [current part 2608]

PART 4707–PART 4999—[RESERVED]

Attachment 3

Distribution Table

The following distribution table shows where provisions in the original part number will be found in the new parts. Certain definitions in the old parts have been moved to new part 4001, subpart A.

Old part (ch. XXVI)	New part/sec. (ch. XL)
Subchapter A—Internal and Administrative Rules	Subchapter A—General
2601	4002.1–4002.9
2602 subpt A	4703.1
Subpt B	4704.1–4704.6
2603	4701.1–4701.55
2604	4705.1–4705.10
2606	4003.1–4003.61
2607	4702.1–4702.10
2608	4706.101–4706.170
Subchapter B—Rules Applicable to Single-Employer and Multiemployer Plans	
2610	4006, 4007 [details upon publication]
2611	4065.1–4065.3
2612	4001.201–4001.203
2613	4022.1–4022.8
Subchapter C—Single-Employer Plans	
2615 subpt A	4043.1–4043.23
Subpt B	4501.1–4501.3
2616 subpt A	4041 subpt A (modified)
Subpt B	4041.41–4041.49
2617 subpt A	4041 subpt A (modified)
Subpt B	4041.21–4041.28
2618	4044.1–4044.32
2619	4062.21–4062.65
2620	4062.81–4062.85
2621	4022.21–4022.28
2622	4062.1–4062.11
2622.19	4068
2623 subpts A and B	4022.81–4022.86
Subpt C	4022.101–4022.105
2625	4047.1–4047.4
Subchapter F—Withdrawal Liability in Multiemployer Plans	
2640.1	None
2640.2	4001 subpt A
2640.3	4221.1
2640.4	4211.1
2640.5	4204.1
2640.6	4207.1; 4208.1
2640.7	4219.21
2640.8	4206.1
2641	4221
2642	4211
2643	4204
2644	4219 subpt B
2645	4203
2646	4208
2647	4207
2648	4219 subpt C
2649	4205
Subchapter H—Other Rules Applicable to Multiemployer Plans	
2670.1	None

Old part (ch. XXVI)	New part/sec. (ch. XL)
2670.2	4001 subpt A
2670.3	4231.1
2670.4	4041A, 4245.1, 4281.1
2672	4231
2673	4041A subpts A, B
2674	4245
2675 subpt A	4281 subpt A
Subpt B	4041A subpt C
Subpt C	4281 subpt C
Subpt D	4281 subpt D
Subpt E	4041A subpt D
2675.38	4261
2676	4281 subpts A, B
2677	4220

Attachment 4

Derivation Table

The following derivation table shows where each part in the renumbered regulations comes from. Certain definitions in the old parts have been collected in new part 4001, subpart A.

New part (Ch. XL)	Old part (Ch. XXVI)
Subchapter A—General	
Part Subpart	Part
4000	None
4001 A	Various def. secs., 2640.2, 2670.2
B	2612
4002	2601
4003	2606
Subchapter B—Premiums	
4006	2610
4007	2610
Subchapter C—Coverage and Benefits	
4022 A	2613
B	2621
D	2623
E	2623
4022B	2621
Subchapter D—Plan Terminations	
4041 A	2616, 2617
B	2617
C	2616, 2623
4041A A	2670, 2673, 2675
B	2673
C	2675
D	2675
4043	2615
4044	2618
4047	2625
Subchapter E—Liability	
4061	None
4062 A	2622
B	2619
C	2620
4063	2622
4064	2622

Old part (ch. XXVI)	New part/sec. (ch. XL)
2670.2	4001 subpt A
2670.3	4231.1
2670.4	4041A, 4245.1, 4281.1
2672	4231
2673	4041A subpts A, B
2674	4245
2675 subpt A	4281 subpt A
Subpt B	4041A subpt C
Subpt C	4281 subpt C
Subpt D	4281 subpt D
Subpt E	4041A subpt D
2675.38	4261
2676	4281 subpts A, B
2677	4220

Attachment 4

Derivation Table

The following derivation table shows where each part in the renumbered regulations comes from. Certain definitions in the old parts have been collected in new part 4001, subpart A.

New part (Ch. XL)	Old part (Ch. XXVI)
Subchapter A—General	
Part Subpart	Part
4000	None
4001 A	Various def. secs., 2640.2, 2670.2
B	2612
4002	2601
4003	2606
Subchapter B—Premiums	
4006	2610
4007	2610
Subchapter C—Coverage and Benefits	
4022 A	2613
B	2621
D	2623
E	2623
4022B	2621
Subchapter D—Plan Terminations	
4041 A	2616, 2617
B	2617
C	2616, 2623
4041A A	2670, 2673, 2675
B	2673
C	2675
D	2675
4043	2615
4044	2618
4047	2625
Subchapter E—Liability	
4061	None
4062 A	2622
B	2619
C	2620
4063	2622
4064	2622

New part (Ch. XL)	Old part (Ch. XXVI)
Subchapter F—Annual Reporting Requirements	
4065	2611
Subchapter G—Enforcement Provisions	
4068	2622
Subchapter H—Withdrawal Liability in Multiemployer Plans	
4203	2645
4204	2640, 2643
4206	2640, 2649
4207	2640, 2647
4208	2640, 2646
4211	2640, 2642
4219 A	None
B	2644
C	2640, 2648
4220	2677
4221	2640, 2641
Subchapter I—Insolvency, Reorganization, Termination, and Other Rules Applicable to Multiemployer Plans	
4231	2670, 2672
4245	2670, 2674
4261	2675
4281 A	2670, 2675
B	2676
C	2675
D	2675
Subchapter J—ERISA Title I Provisions	
4501	2615
Subchapter K—Administrative Rules and Procedures	
4701	2603
4702	2607
4703	2602
4704	2602
4705	2604
4706	2605

[FR Doc. 94–16509 Filed 7–7–94; 8:45 am]
BILLING CODE 7708–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA11

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: MSHA is extending the period for public comment regarding the Agency's proposed rule for ventilation of underground coal mines in 30 CFR part 75 published in the **Federal Register** on May 19, 1994. This extension is in response to a request from the mining community.

DATES: Written comments must be submitted on or before August 8, 1994. Commenters are encouraged to send comments on a computer disk along with a hard copy.

ADDRESSES: Send written comments and computer disks to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On May 19, 1994, MSHA published in the **Federal Register** a proposed rule (59 FR 26356) to revise stayed provisions of MSHA's existing safety standards for ventilation of underground coal mines. The proposal also revised, clarified or reproposed certain other provisions in the existing rule; included some new provisions; and addressed concerns raised by the public. In response to a request from the mining community, MSHA is extending the comment period for the proposed rule to August 8, 1994. All interested parties are encouraged to submit comments by that date.

The Agency believes that this extension will provide sufficient time for all interested parties to comment, and does not anticipate any further extensions of the comment period.

Dated: July 1, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 94–16574 Filed 7–7–94; 8:45 am]
BILLING CODE 4510–43–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME13–1–6321; A–1–FRL–5006–7]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Enhanced Inspection and Maintenance in Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to conditionally approve a revision to the Maine Department of Environmental Protection (DEP) State Implementation Plan (SIP) for Inspection and Maintenance (I/M). This SIP revision was submitted to EPA for approval on November 1, 1993. The submittal was supplemented by a May 26, 1994 letter from the Commissioner of the DEP describing the changes and additions Maine is making to the I/M program. The SIP includes Chapter 128 of a State rule entitled "Motor Vehicle Emission Inspection Program," and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented. EPA proposes to conditionally approve the SIP revision if the changes and additions specified in this proposal are submitted to EPA by July 22, 1994. If a full SIP revision addressing the issues discussed in this notice is not submitted, EPA proposes in the alternative to disapprove Maine's submission. This action is being taken under Section 110 of the Clean Air Act (CAA).

EPA proposes conditional approval, under section 110(k)(4) of the CAA, of certain commitments made by Maine in its May 26, 1994 letter. Maine's commitments pertain to the "low mileage" waiver described in III.F below. Section 110(k)(4) provides that, if a state fails to comply with its commitments by a date certain, but no later than one year of EPA approval, EPA's conditional approval will convert to a disapproval. The content of the State letter is described in detail in this notice.

DATES: Comments must be received on or before August 8, 1994. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg. (AAA), Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565–3233.

SUPPLEMENTARY INFORMATION: In this action, EPA is proposing to conditionally approve or, in the alternative, disapprove the Maine I/M SIP revision if the State fails to submit an additional SIP correcting the deficiencies identified in this notice. EPA proposes to conditionally approve the DEP's I/M SIP, which was submitted to EPA for approval on November 1, 1993. The SIP includes Chapter 128 of a State rule entitled "Motor Vehicle Emission Inspection Program," and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented. However, because many issues were not adequately addressed in the November 1, 1993 submittal, Maine intends to supplement its submittal by July 22, 1994. Upon submission, this revised submittal will be made part of the material on Maine's enhanced I/M program available for public review.

Maine submitted this SIP revision request to the EPA to satisfy the requirements of sections 182(b)(4) and 184(b)(1)(A) of the Clean Air Act, and the federal I/M rule codified at 40 CFR Part 51, Subpart S. This SIP revision will require vehicle owners to comply with the Maine I/M program in the seven Maine moderate ozone nonattainment counties. This revision applies to the Maine counties of Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York. In addition, the State is proposing revisions to its regulations and is undergoing rulemaking action to address outstanding deficiencies in the rules submitted as part of this SIP revision. Once those revised adopted rules and a detailed narrative description of the program are submitted by Maine, EPA proposes to take final action approving the program if the content of that submission is consistent with the requirements of the I/M rule. EPA intends to take final action on this rulemaking no later than September 15, 1994.

On May 26, 1994, the State of Maine sent a letter to EPA describing how the state intends to address all outstanding issues, and agreed to make the required changes. These changes include submission of a detailed description of the motorist enforcement program, a description of resources to provide staff and equipment to implement the program, and assurances that the state will prepare reports and program evaluations. These and other changes are described later in this notice, and in even greater detail in the technical support document (TSD) prepared for this revision.

If the State of Maine does not address the issues discussed in this notice and submit revised rules and a narrative as a complete SIP revision to EPA by July 22, 1994, EPA proposes to disapprove the November 1, 1993 I/M SIP revision, since the program will not meet the requirements of EPA's final rule (57 FR 52950).

EPA believes it is appropriate to propose in the alternative for several reasons. The State is presently on an expedited schedule to revise its regulations prior to the July 1, 1994 start-up of the inspection and maintenance program. As such, a public hearing was held on May 25, 1994 on proposed changes to the Maine I/M regulations. These changes will be submitted to EPA no later than July 22, 1994. EPA reviewed the proposed changes and received a guarantee from the State of Maine to address other outstanding issues with their I/M program prior to July 22, 1994. Once these issues are adequately addressed, EPA believes the program will fulfill most of the requirements set forth in EPA's final I/M rule.

The only outstanding issue which cannot be resolved in time for the July 22, 1994 submission (and which therefore necessitates that the final action on this proposal be a conditional approval) is the "low mileage" waiver (LMW). Conditional approval is necessary because the number of vehicles to be granted low mileage exemptions is uncertain and EPA is concerned that the use of LMWs may result in the State's failing to meet the minimum enhanced I/M performance standard in actual practice. By proposing conditional approval on this action, EPA is agreeing to defer final, full approval on the revised SIP until the State has conducted a study of the impact of the LMW on the I/M program's emission reductions. The May 26, 1994 letter commits to completing this evaluation no later than January 31, 1995. It should be noted that the State's authorizing legislation currently sets a deadline of January 15, 1996 for completion of this evaluation, and the State's commitment to complete the report by January 31, 1995 represents a significantly expedited schedule. In the event that the above evaluation shows that the State's use of LMWs causes it to fall short of the enhanced I/M performance standard in actual practice, the State has further committed to securing the necessary legal and regulatory changes to eliminate LMWs in time to submit a corrected I/M SIP no later than September 1, 1995. Should the State fail to meet the above commitments, the conditional approval will convert to a disapproval.

Based on the State's May 26, 1994 letter, EPA expects that the outstanding issues will be addressed in a manner consistent with EPA's final I/M rule. Therefore, this revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this proposal, EPA will disapprove the revision. If no substantial changes are made other than those areas cited in this proposal, EPA will publish a Final Rulemaking Notice on the revised revision. The final conditional approval by EPA will occur only after the amended regulations, as described below, have been adopted by Maine and submitted formally to EPA for incorporation into the SIP.

I. Clean Air Act Requirements

Background

Maine is part of the Ozone Transport Region (OTR). Section 184(b)(1)(A) of the Act requires areas of the OTR defined in EPA's final I/M rule (57 FR 52950, November 5, 1992) to adopt and implement an inspection and maintenance program meeting EPA's enhanced I/M performance standard. In addition, the I/M rule requires that all moderate ozone nonattainment areas containing urbanized areas with a population greater than 50,000 must implement a program meeting the basic I/M performance standard. Maine is affected by these provisions in areas of the State. Specifically, under EPA's I/M rule, enhanced I/M programs are required in the Portland area, and the Maine portion of the Portsmouth, New Hampshire area. Basic I/M would be required in the Lewiston-Auburn area. This program is being submitted to

January 31, 1995. It should be noted that the State's authorizing legislation currently sets a deadline of January 15, 1996 for completion of this evaluation, and the State's commitment to complete the report by January 31, 1995 represents a significantly expedited schedule. In the event that the above evaluation shows that the State's use of LMWs causes it to fall short of the enhanced I/M performance standard in actual practice, the State has further committed to securing the necessary legal and regulatory changes to eliminate LMWs in time to submit a corrected I/M SIP no later than September 1, 1995. Should the State fail to meet the above commitments, the conditional approval will convert to a disapproval.

Based on the State's May 26, 1994 letter, EPA expects that the outstanding issues will be addressed in a manner consistent with EPA's final I/M rule. Therefore, this revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this proposal, EPA will disapprove the revision. If no substantial changes are made other than those areas cited in this proposal, EPA will publish a Final Rulemaking Notice on the revised revision. The final conditional approval by EPA will occur only after the amended regulations, as described below, have been adopted by Maine and submitted formally to EPA for incorporation into the SIP.

I. Clean Air Act Requirements

Background

Maine is part of the Ozone Transport Region (OTR). Section 184(b)(1)(A) of the Act requires areas of the OTR defined in EPA's final I/M rule (57 FR 52950, November 5, 1992) to adopt and implement an inspection and maintenance program meeting EPA's enhanced I/M performance standard. In addition, the I/M rule requires that all moderate ozone nonattainment areas containing urbanized areas with a population greater than 50,000 must implement a program meeting the basic I/M performance standard. Maine is affected by these provisions in areas of the State. Specifically, under EPA's I/M rule, enhanced I/M programs are required in the Portland area, and the Maine portion of the Portsmouth, New Hampshire area. Basic I/M would be required in the Lewiston-Auburn area. This program is being submitted to fulfill Maine's obligations to implement basic and enhanced I/M. Enhanced I/M is a more stringent program and includes all of the required components of basic I/M.

By this action, EPA proposes to conditionally approve Maine's submittal if the necessary regulatory changes are completed in accordance with the I/M rule and submitted by July 22, 1994. If such changes are not made and submitted by July 22, 1994, EPA proposes to disapprove this action. EPA has reviewed the State submittal against the requirements of the Act and EPA's final I/M rule. A summary of EPA's analysis is provided below.

II. I/M Regulation General SIP Submittal Requirements

On November 5, 1992 (57 FR 52950), EPA published a final regulation establishing the I/M requirements, pursuant to section 182 and 187 of the Act. The I/M regulation was codified at 40 CFR Part 51, Subpart S, and requires States to submit, by November 15, 1993, an I/M SIP revision that includes all necessary legal authority and the items specified in 40 CFR 51.350 through 51.373.

III. State Submittal

On November 1, 1993, and on May 26, 1994, the State of Maine submitted an I/M SIP revision for seven ozone nonattainment counties classified as moderate or above. A public hearing for the November 1, 1993 submittal was held on October 26, 1992. As stated in the May 26, 1994 letter from the DEP, a public hearing also was held on May 25, 1994. The DEP has pledged to submit revised regulations based on this most recent hearing no later than July 22, 1994. EPA submitted comments during both of those hearings. In addition, EPA has worked closely with the DEP to ensure that the I/M program meets EPA requirements identified in the I/M rule.

The I/M SIP submittal provides for the implementation of enhanced I/M in the Maine counties of Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York beginning on July 1, 1994. Maine will be implementing a biennial, test-only I/M program. Once the changes the State committed to in its May 26, 1994 letter have been adopted and submitted as an amendment to the November 1, 1993 submission, the program will meet the requirements of EPA's performance standard and other requirements contained in the federal I/M rule, in the above-listed counties. Testing will be overseen by the DEP and implemented by an I/M contractor. Other aspects of the Maine I/M program include: transient testing of 1968 and later light duty vehicles and trucks and heavy duty trucks (only the testing of 1981 and newer vehicles is considered in evaluating whether the enhanced performance standard is met), evaporative emission testing for specified model year vehicles, a test fee to ensure adequate resources to implement the program, enforcement by registration suspension, a repair effectiveness program, requirements for testing convenience, quality assurance, data collection, minimum expenditures prior to time extensions and hardship waivers, reporting, test equipment and test procedure specifications, public information and consumer protection, inspector training and certification, penalties based on inspector incompetence, an on-road testing program, and emission recall enforcement. A section-by-section analysis of the federal I/M rule, and Maine's demonstration of how the I/M program meets some of the federal SIP requirements, as well as the expected changes to the Maine I/M program described in the May 26, 1994 letter from the DEP so that the remainder of the federal I/M program requirements are met, is provided below.

A. Applicability

The SIP describes in detail the areas subject to the enhanced I/M SIP revision and, consistent with 40 CFR 51.372, includes the legal authority necessary to establish program boundaries.

The Maine I/M regulations and authorizing legislation specify that the enhanced I/M program be implemented in the counties described above. The Maine I/M program is being implemented in areas beyond those required by EPA's rule. Maine is implementing the enhanced I/M program throughout each of its moderate ozone nonattainment areas, in part, to meet requirements of Section 182(b)(1)(A) of the CAA that requires reasonable further progress (RFP). EPA currently is taking separate rulemaking action on the portion of the Maine submittal that expands the geographical scope of the I/M program to counties not otherwise required to adopt I/M. These counties include Kennebec, Knox, Lincoln, and Sagadahoc. Although these areas are not required to implement enhanced or basic I/M, the State of Maine has requested expedited approval for those areas in order to make the resultant emission reductions federally enforceable. Therefore, EPA has moved forward to approve I/M in these areas as strengthening the SIP in Knox, Kennebec, Lincoln, and Sagadahoc Counties. EPA is taking separate action

on the optional I/M program in the event that EPA takes final action disapproving this SIP. However, if the Maine I/M program is conditionally approved, the revised SIP requirements will apply, and once Maine has fulfilled its commitment regarding the "low mileage" waiver, EPA will withdraw the separate rulemaking action approving the optional I/M program since that action would be superseded by final approval of this action.

B. Enhanced I/M Performance Standard

Today's proposal discusses the I/M program designed, in part, to meet the enhanced I/M performance standard for ozone precursors causing air quality problems in Maine. Maine's program was designed to meet the performance standard for volatile organic compounds (VOC) and nitrogen oxides (NOx). EPA's performance standard establishes an emission reduction target that must be met by a program in order for the SIP to be approvable. The program, as documented in the SIP, must meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

The State submitted a modeling demonstration using the EPA computer model, MOBILE5a, showing that the enhanced performance standard will be met in the area. The effect of the allowed program exemptions (for example, street rods and stock race cars) have been incorporated into the estimate of the program's effectiveness. In addition, in its May 26, 1994 submittal, the DEP provided a commitment to maintain the level of compliance and waivers assumed in the modeling. The DEP also committed to providing additional detail on this modeling effort, including justification for the modeling inputs assumed, in the revised submittal no later than July 22, 1994. The effect of the "low mileage" waiver was not evaluated in this modeling effort. The reason that this action is a conditional approval is to allow the State to demonstrate that the effect is negligible, or to fulfill its commitment to make necessary legislative and regulatory changes if the "low mileage" waiver affects the ability of the State to meet the performance standard.

C. Network Type and Program Evaluation

Under the Act and EPA's I/M rule the SIP must include a description of the network to be employed, the required legal authority, and, in the case of areas making claims for case-by-case equivalency, the required demonstration. Also, for enhanced I/M areas, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation and related details of the evaluation program, as well as the legal authority establishing the evaluation program.

Maine has chosen to implement a test-only I/M network program design utilizing contractors to implement the inspection portion of the program. The State has chosen not to make a demonstration for case-by-case equivalency for a different network design, and has provided evidence that precludes conflicts of interest by the contractor, as described in the "test-only" requirements in the I/M rule. In its May 26, 1994 letter, the Maine DEP states, in its SIP revision narrative, that it will institute a continuous ongoing evaluation program consistent with the federal I/M rule. The results of the evaluation program will be reported to EPA on a biennial basis (40 CFR 51.353). In addition, Maine commits to developing and submitting the annual reports described by 40 CFR 51.366 and will describe the reports in more detail in the revised SIP submittal required by July 22, 1994. Legal authority, already contained in Maine state law, authorizes the DEP to implement this contractor operated, test-only program and conduct the program evaluation, as necessary to implement I/M consistent with federal requirements. As mentioned earlier, if a program for evaluation and submission of annual reports is not completed consistent with the I/M rule and submitted to EPA by July 22, 1994, EPA will disapprove Maine's SIP revision.

D. Adequate Tools and Resources

Under the Act and EPA's I/M rule, the SIP must include a description of the resources that will be used for program operation and must discuss how the performance standard will be met, including: (1) A detailed budget plan describing the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and for other requirements discussed throughout the I/M rule, for the period prior to the next biennial self-evaluation required by the federal I/M rule, and (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions, and the training attendant to each function.

The current Maine legislation was effective July 12, 1993. The legislation authorizes the DEP to collect a fee from the I/M contractors to cover the costs of administrating, overseeing, and enforcing the I/M program, and provides for allocation of certain highway funds for implementation. The May 26, 1994 letter states that the DEP will include additional detail on the funding and description of resources to be used for implementation of the enhanced I/M program in the SIP narrative to be submitted no later than July 22, 1994. In order to be conditionally approved, this narrative will describe the budget, staffing support, and equipment needed to implement the program. The revised regulations provide for up to a $4.00 fee per inspection to be used to administer the program. Pursuant to EPA comment, the revised regulations are expected to define that the fee be no less than $2.00 per test.

E. Test Frequency and Convenience

Under EPA's I/M rule, the SIP must include a detailed test schedule, including the test year selection scheme if testing is other than annual. The SIP must also include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in enhanced I/M programs, the SIP needs to demonstrate that the network of stations providing testing services is sufficient to ensure consumer convenience by providing short waiting times to get a test, and short driving distances to get to the test center.

The Maine SIP revision requires biennial inspections for all subject motor vehicles that are at least two years old. The inspections will be conducted on odd or even years corresponding to the model year of the vehicle and timed with the registration process committed to be described in more detail in the July 22, 1994 submittal. The authority for enforcing the testing frequency is contained in the revised Maine I/M rule expected to be submitted shortly. Short waiting times and short driving distances relating to network design are addressed in the contract between the State and its contractor, and in the Maine rules. The contract requires an average waiting time of 15 minutes per test and inspection facility locations which ensure that 85% of the vehicle population is within a fifteen mile drive of each facility.

F. Vehicle Coverage

Under EPA's I/M rule, the SIP must include a detailed description of the number and types of vehicles to be covered by the program, and a plan for identifying subject vehicles, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP must include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of vehicles granted such exemptions. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority necessary to implement and enforce the vehicle coverage requirement.

Maine's I/M program covers all 1968 and newer model year gasoline powered light-duty vehicles and light-duty and heavy-duty trucks, registered, or required to be registered, within the nonattainment areas (only the testing of 1981 and newer vehicles is considered in evaluating whether the enhanced performance standard is met). Vehicles will be identified through the State Department of Transportation vehicle registration database. Special classes, which are exempt from the emission testing program, include vehicles weighing more than 10,000 pounds (GVWR), street rods, stock race cars, and motorcycles. Based on information provided by the State, EPA believes such exemptions will not prevent the program from achieving the performance standard. Additional detail supporting this conclusion will be submitted by the state no later than July 22, 1994. Legal authority for the vehicle coverage requirement is contained in the Maine I/M rule and the July 1993 authorizing legislation. The revised rules committed to be submitted by Maine by July 22, 1994 will include a low-mileage waiver (LMW) which exempts vehicles driven less than 5000 miles per year. The authorizing legislation requires the LMW and also requires that the DEP prepare a report on its effect on Maine's ability to meet the performance standard. The May 26, 1994 letter from the DEP commits to provide the legislature with this information by January 31, 1995, and to secure revised legislation if the data shows that Maine cannot achieve the performance standard required by EPA's I/M rule. If necessary, the DEP also commits to revising its regulation by June 1, 1995, to hold a public hearing on necessary regulatory changes, and to submit to EPA a revised SIP submittal removing the LMW by September 1, 1995. At present, there is inadequate information for EPA to determine how this waiver will affect the performance standard. For this reason, EPA proposes

number and types of vehicles to be covered by the program, and a plan for identifying subject vehicles, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP must include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of vehicles granted such exemptions. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority necessary to implement and enforce the vehicle coverage requirement.

Maine's I/M program covers all 1968 and newer model year gasoline powered light-duty vehicles and light-duty and heavy-duty trucks, registered, or required to be registered, within the nonattainment areas (only the testing of 1981 and newer vehicles is considered in evaluating whether the enhanced performance standard is met). Vehicles will be identified through the State Department of Transportation vehicle registration database. Special classes, which are exempt from the emission testing program, include vehicles weighing more than 10,000 pounds (GVWR), street rods, stock race cars, and motorcycles. Based on information provided by the State, EPA believes such exemptions will not prevent the program from achieving the performance standard. Additional detail supporting this conclusion will be submitted by the state no later than July 22, 1994. Legal authority for the vehicle coverage requirement is contained in the Maine I/M rule and the July 1993 authorizing legislation. The revised rules committed to be submitted by Maine by July 22, 1994 will include a low-mileage waiver (LMW) which exempts vehicles driven less than 5000 miles per year. The authorizing legislation requires the LMW and also requires that the DEP prepare a report on its effect on Maine's ability to meet the performance standard. The May 26, 1994 letter from the DEP commits to provide the legislature with this information by January 31, 1995, and to secure revised legislation if the data shows that Maine cannot achieve the performance standard required by EPA's I/M rule. If necessary, the DEP also commits to revising its regulation by June 1, 1995, to hold a public hearing on necessary regulatory changes, and to submit to EPA a revised SIP submittal removing the LMW by September 1, 1995. At present, there is inadequate information for EPA to determine how this waiver will affect the performance standard. For this reason, EPA proposes to conditionally approve the submission based on the DEP's commitments. Failure to meet any of these dates will result in EPA disapproval of this action, unless the EPA Regional Administrator approves a later date in writing no later than the date of the milestone. In no circumstances will the September 1, 1995 date for final submittal be revised.

G. Test Procedures and Standards

Under EPA's I/M rule, the SIP must include a description of each test procedure used. The SIP also must include the rule, ordinance or law describing and establishing the test procedures.

The Maine I/M SIP revision obligates the State to perform transient exhaust emission testing using the IM240 driving cycle. In addition, the State of Maine has stated that it will follow procedures in accordance with EPA's guidance document entitled, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications" (Technical Guidance). The State will be requiring IM240 tests on 1968 and later model year vehicles in the area. This model year coverage complies with EPA's I/M regulation. In addition, the State of Maine will require evaporative emission testing of the fuel system's integrity and functionality for at least 1981 and newer vehicles. The test procedures are set forth with specificity in the I/M Request For Proposal (RFP) which the Maine I/M contractor is required to abide by. Maine committed to amending these procedures to ensure that the latest EPA procedures will be used in the program.

H. Test Equipment

Under EPA's I/M rule, the SIP must include written technical specifications for all test equipment used in the program and address each of the requirements set forth at 40 CFR 51.358. The specifications must describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

By its May 26, 1994 letter, Maine guarantees to supplement its I/M SIP revision by or before July 22, 1994 so that the Maine I/M SIP revision requires the State to use the current written equipment specifications contained in EPA's IM240 Guidance and the appendices of EPA's I/M rule. The Maine SIP, May 26, 1994 letter, and request for proposal address the requirements in 40 CFR 51.358 and include descriptions of performance features and functional characteristics of the computerized test systems. The necessary test equipment, required features, and acceptance testing criteria are mandated by the RFP and contract.

I. Quality Control

Under EPA's I/M rule, the SIP must include a description of quality control and recordkeeping procedures. The SIP also must include the procedures manual, rule, and ordinance or law describing and establishing quality control procedures and requirements.

The Maine I/M SIP narrative and RFP and contract contain descriptions and requirements establishing the quality control procedures in accordance with the federal I/M rule. As stated in the Maine DEP's May 26, 1994 letter, these procedures will be detailed in the revised SIP submittal, and will be consistent with EPA guidance. These requirements will help ensure that equipment calibrations are properly performed and recorded and that the necessary compliance document security is maintained. The Maine SIP will obligate the State to comply with all specifications for quality control set forth in Section 51.359 and Appendix A of the federal I/M rule, and EPA's technical guidance.

J. Waivers and Compliance via Diagnostic Inspection

Under EPA's I/M rule the SIP must include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate is used for estimating emission reduction benefits in the modeling analysis. Corrective action must be taken if the waiver rate exceeds that estimated in the SIP, or the state must revise the SIP and claim emission reductions accordingly. The SIP also must describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP must include the necessary legal authority, ordinance(s), or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

Cost limits for the minimum expenditure waivers must be in accordance with the CAA and federal I/M rule. Expenditures for repairs of at least $450, adjusted annually for the consumer price index (CPI), must be spent in order to qualify for a waiver in the enhanced I/M program. Maine has demonstrated that it can meet the enhanced I/M performance standard testing only 1981 and newer vehicles. In addition, Maine is requiring I/M on vehicles as old as 1968 model year.

These vehicles will not be included as part of the "enhanced I/M" program, despite being subject to the same type of emission testing. The testing of these additional vehicles will achieve additional emission reductions which will be used, in part, as a means of achieving additional emission reductions required for RFP, and anticipated by Maine to be necessary for attainment. Accordingly, these older vehicles will be subject to a lower waiver expenditure of $125, adjusted for CPI, prior to receiving a waiver.

The Maine program includes a waiver rate of 3% of initially failed vehicles in the area. These waiver rates are used in the modeling demonstration. The DEP has stated in the May 26, 1994 letter, and will include in the revised SIP, that if the waiver rates are higher than estimated as determined by its program reports, the State will take corrective action to address the deficiency. The SIP describes the three types of waivers the State will allow including: a minimum expenditure, a time extension, and a one-time hardship waiver provisions. These issues are dealt with in a manner consistent with the federal I/M rule. The proper criteria, procedures, quality assurance and administration regarding the issuance of waivers, consistent with EPA's I/M rule, will be ensured by the DEP and its contractors and are committed to be detailed in the SIP narrative, promised to be submitted by July 22, 1994.

K. Motorist Compliance Enforcement

Under EPA's I/M rule, the SIP must provide information concerning motorist enforcement, including: (1) A description of the existing compliance mechanism if it will continue to be used for this program, and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of, and accounting for, all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, such as those operated (but not necessarily registered) in the program area. Also, the SIP must include a determination of the current compliance rate based on a study of the system including an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism must be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP must include a commitment to an enforcement level and minimum compliance level used for modeling purposes and to be maintained, at a minimum, in practice.

The State of Maine has chosen to use a program of registration suspension whereby subsequent registration is denied to anyone who fails to meet emission testing requirements. The motorist compliance enforcement program will be implemented primarily by the Maine Bureau of Motor Vehicles (BMV). The enforcement strategy is described in Maine's May 26, 1994 letter, and more detail will be provided in the revised SIP. The enforcement strategy is designed to ensure a 90 percent compliance rate for all vehicles within 4 months of the compliance deadline. As described in the May 26, 1994 letter, this will be accomplished by a computer matching program that will identify registered vehicles tested prior to registration, as well as those receiving their emission inspection within a specified period after registering. Those not receiving the emissions test will be notified of such failure, and put on notice that their registration will be suspended if they do not comply. Those that still fail to comply will either receive a summons to appear in court, or be subject to confiscation of their license plate by BMV personnel who would physically remove the plate from the vehicle. In addition, the Maine legislation authorizing I/M provides that vehicles operating with a suspended registration must be fined at least $450.

The only classes of vehicles exempt from this program are described above under vehicle coverage. Fleet vehicles, rental car fleets, and leased vehicles will be required to meet the same program requirements as all other vehicles that receive annual registration. Compliance rates with the new program are estimated at 96%. The May 26, 1994 letter, and the anticipated revised SIP, commit to revise the I/M SIP if Maine fails to meet the 96% compliance rate. The legal authority to implement and enforce the program are included in the Maine State law and in DEP and BMV rules to be supplied by July 22, 1994.

L. Motorist Compliance Enforcement Program Oversight

Under EPA's I/M rule, the SIP must include a description of enforcement program oversight and information management activities.

The Maine I/M SIP revision provides for regular auditing of its enforcement program and adherence to effective management practices, including adjustments to improve the program when necessary. According to the May 26, 1994 letter from the DEP, these program oversight and information management activities will be described in the July 22, 1994 SIP narrative, be consistent with the I/M rule, and include: establishing written procedures for personnel engaged in I/M document handling and processing, supporting an on-line telecommunications network for the State's oversight and management requirements, and establishing an I/M database to compare to the registration database for purposes of to determining program effectiveness.

M. Quality Assurance

Under EPA's I/M rule, the SIP must include a description of the quality assurance program, and written procedure manuals covering both overt and covert performance audits, record audits, and equipment audits.

The May 26, 1994 letter from Maine includes a description of the quality assurance program, and a pledge to provide more detail, consistent with EPA's I/M rule, in the revised SIP submittal expected on or before July 22, 1994. According to that letter, the program will include operation and progress reports and overt and covert audits of all emission inspectors and emission inspection facilities to be conducted by the DEP. Written procedures and techniques for overt and covert performance, record, and equipment audits will be provided to auditors and updated as needed. The July 22, 1994 submission will also include a commitment to a minimum level of activity for overt and covert audits, as required by the federal I/M rule.

N. Enforcement Against Contractors, Stations and Inspectors

Under EPA's I/M rule, the SIP must include a penalty schedule and legal authority for establishing and imposing penalties, civil fines; station and inspector, license suspension, and revocations. In the case of state constitutional impediments precluding immediate authority to suspend licenses, the state Attorney General shall furnish an official opinion within the SIP explaining the constitutional impediment as well as relevant case law. The SIP also must describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including the agencies, courts, and jurisdictions involved; personnel to prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to the enforcement function, and the source of those funds. In states that are without immediate suspension authority, the SIP must demonstrate that sufficient resources, personnel, and systems are in place to meet the three-day case management requirement for violations that directly affect emission reductions.

The Maine I/M SIP revision includes specific penalties in its enforcement against contractors, stations and inspectors in accordance with the federal I/M rule. Based on its May 26, 1994 letter, Maine intends to revise its SIP submittal by July 22, 1994, to include the State's enforcement procedures that can be pursued through contractual or regulatory action. The DEP also will address the authority to immediately suspend a station inspector for violations that directly affect emission reduction benefits. Authority for establishing and imposing penalties, civil fines, license suspension, and revocations are contained in the awarded contract. The DEP is planning to assign employees to covert and overt auditing and commit additional resources required for enforcement oversight provided by the contractor. These audits and oversight functions will be funded by the inspection fee. Final approval of the SIP will be dependent upon this information being submitted consistent with EPA's I/M rule.

O. Data Analysis and Reporting

Under EPA's I/M rule, the SIP must describe the types of data to be collected.

The Maine I/M SIP provides for collecting test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected. As outlined above and described in the May 26, 1994 letter, the data will be used to generate reports concerning test data, quality assurance, quality control, enforcement, as well as necessary changes and identified weaknesses in the program. The state has also committed to collecting all data necessary for the quality assurance and enforcement reports. These reports will be described in more detail in the revised SIP submittal expected on or before July 22, 1994. Final approval of the SIP will be dependent upon this information being submitted consistent with EPA's I/M rule.

P. Inspector Training and Licensing or Certification

Under EPA's I/M rule, the SIP must include a description of the training

allocated to the enforcement function, and the source of those funds. In states that are without immediate suspension authority, the SIP must demonstrate that sufficient resources, personnel, and systems are in place to meet the three-day case management requirement for violations that directly affect emission reductions.

The Maine I/M SIP revision includes specific penalties in its enforcement against contractors, stations and inspectors in accordance with the federal I/M rule. Based on its May 26, 1994 letter, Maine intends to revise its SIP submittal by July 22, 1994, to include the State's enforcement procedures that can be pursued through contractual or regulatory action. The DEP also will address the authority to immediately suspend a station inspector for violations that directly affect emission reduction benefits. Authority for establishing and imposing penalties, civil fines, license suspension, and revocations are contained in the awarded contract. The DEP is planning to assign employees to covert and overt auditing and commit additional resources required for enforcement oversight provided by the contractor. These audits and oversight functions will be funded by the inspection fee. Final approval of the SIP will be dependent upon this information being submitted consistent with EPA's I/M rule.

O. Data Analysis and Reporting

Under EPA's I/M rule, the SIP must describe the types of data to be collected.

The Maine I/M SIP provides for collecting test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected. As outlined above and described in the May 26, 1994 letter, the data will be used to generate reports concerning test data, quality assurance, quality control, enforcement, as well as necessary changes and identified weaknesses in the program. The state has also committed to collecting all data necessary for the quality assurance and enforcement reports. These reports will be described in more detail in the revised SIP submittal expected on or before July 22, 1994. Final approval of the SIP will be dependent upon this information being submitted consistent with EPA's I/M rule.

P. Inspector Training and Licensing or Certification

Under EPA's I/M rule, the SIP must include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The May 26, 1994 letter from the DEP provides some detail on the inspector training program. The Maine revised I/M SIP will provide for implementation of training, certification, and refresher programs for emission inspectors. The revised SIP will describe this program and curriculum including written and hands-on testing at least once every two years. All inspectors will be required to be certified to inspect vehicles in the Maine I/M program.

Q. Improving Repair Effectiveness

Under EPA's I/M rule, the SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for enhanced I/M programs, and a description of the repair technician training resources available in the community.

In the May 26, 1994 letter, Maine commits to providing additional detail and a description of the technical assistance, performance monitoring and repair technician training programs to be implemented. The SIP revision provides for regularly informing repair facilities about changes to the inspection program, training course schedules, common problems, and potential solutions for particular engine families, diagnostic tips, repairs, and other assistance issues. As described in the May 26, 1994 letter, the DEP will also ensure that a repair technician hotline will be available for repair technicians, and issued a request for proposals to serve this purpose. Performance monitoring statistics of repair facilities will be provided to motorists whose vehicles fail the I/M tests in enhanced I/M areas. The State has committed to ensure that adequate repair technician training exists by establishing training courses at technical schools in the area, and has secured necessary funding under the Intermodal Surface Transportation Efficiency Act. Further, the May 26, 1994 letter states that the revised SIP will include a detailed public information and consumer protection plan consistent with the requirements of EPA's I/M at section 51.368.

R. Compliance With Recall Notices

Under EPA's I/M rule, the SIP must describe, for enhanced I/M programs, the procedures used to incorporate the vehicle recall lists provided into the inspection or registration database, the quality control methods used to insure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The revised Maine I/M SIP will ensure that vehicles subject to enhanced I/M programs, that are included in either a voluntary emission recall or a remedial plan determination pursuant to the CAA, have had the appropriate repairs made prior to the inspection. The contractor will identify vehicles that have not completed recall repairs by electronic means. Motorists with unresolved recall notices will be required to show proof of compliance or will be denied the opportunity for inspection. The rules recently revised by Maine address this issue, and will be submitted on or before July 22, 1994. These rules have undergone public comment at the State level, and are being adopted.

S. On-Road Testing

Under the Act and EPA's I/M rule, the SIP must include a detailed description of the on-road testing program required in enhanced I/M areas, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP must include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs can only be granted for a program designed to obtain significant emission reductions over and above those predicted to be achieved by other aspects of the I/M program. The SIP needs to include technical support for the claimed additional emission reductions.

Maine has stated that in the revised I/M SIP to be submitted by July 22, 1994, it will include a detailed description of its on-road testing program. The testing program will include 0.5% of the subject vehicles. Vehicles with emission readings measured by remote sensing devices exceeding limits defined in the revised rules will be required to obtain an out-of-cycle inspection at a vehicle emission inspection facility. This program will be staffed by a State contractor and overseen by the DEP. Data collection and reporting will be done using the general record-keeping and reporting provisions of the I/M

program. The legal authority for this program is contained in the Maine I/M rule and the authorizing legislation. The State did not include additional modeling credit for this portion of the program in the modeling demonstrating that EPA's performance standard was met.

T. Concluding Statement

A more detailed analysis of the State's submittal and how it meets the federal requirements is contained in the EPA's technical support document prepared for this action. The TSD is available from the EPA New England Regional office listed above. The criteria used to review the submitted SIP revision are based on the requirements set forth in Section 182 of the CAA and in the federal I/M regulations. Based on these requirements, EPA developed a detailed I/M approvability checklist to be used nationally to determine if I/M programs meet the requirements of the CAA and the federal I/M rule. The checklist states the federal requirements, referenced by section of the rule, whether or not the Maine program meets such requirements, and where in the Maine SIP submittal the requirements are met. This checklist, the CAA, and the federal I/M regulation formed the basis for EPA's technical review. EPA has reviewed the Maine I/M SIP revision submitted to the EPA using the criteria stated above. The Maine regulations and accompanying materials contained in the SIP, as well as the May 26, 1994 commitment letter from the State to provide revised rules and a more detailed description of the I/M program fulfilling the outstanding requirements of the federal I/M rule by July 22, 1994, represent an acceptable plan to comply with the I/M requirements and meet all the criteria required for EPA to conditionally approve the SIP.

IV. Maine I/M Committal SIP

On September 27, 1993, (58 FR 50304) EPA proposed conditional approval of the Maine I/M committal SIP which was submitted on December 11, 1992, including a schedule of implementation for the program. At that time, EPA believed that conditional approvals were appropriate for I/M SIPs because the States could not be expected to begin developing an I/M program meeting the requirements of the CAA and the I/M regulations until the I/M regulations were adopted as a final rule which occurred on November 5, 1992. In a letter dated October 21, 1993, the Natural Resource Defense Counsel (NRDC) commented on the proposed approval of the committal SIP arguing that States should have submitted full I/M SIPs by November 15, 1992. In addition, in a Court order dated May 6, 1994, the United States Court of Appeals for the District of Columbia Circuit concluded, as a result of an NRDC lawsuit concerning I/M, that EPA's acceptance of I/M committal SIPs was contrary to law and improperly delayed SIP submissions beyond the statutory deadlines. Further, the Court directed EPA to review and either approve or disapprove by no later than September 15, 1994 all I/M SIPs already received. As a result of that court order, EPA is taking this action to propose conditional approval of the Maine SIP submitted on November 1, 1993 and on May 26, 1994, and will not be taking further action on the "committal" I/M SIP submitted by the State of Maine on December 11, 1992. In the alternative, EPA is proposing disapproval if the July 22, 1994 submittal is deficient or not made.

Proposed Action

EPA is proposing to conditionally approve the Maine I/M program initially submitted by the State, on November 1, 1993, in consideration of Maine's May 26, 1994 letter calling for a revised SIP submittal by July 22, 1994. EPA's proposed conditional approval of the Maine I/M program is subject to Maine's fulfillment of the specific conditions outlined in this notice. This action also proposes, in the alternative, to disapprove the Maine I/M SIP revision if Maine does not adequately address the issues articulated in this notice by July 22, 1994.

Pursuant to section 110(k)(4) of the CAA, EPA proposes conditional approval of Maine's submission based on the commitments of the DEP. Specifically, by January 31, 1995 the DEP will submit a report outlining the effect of the "low mileage" waiver to the legislature; by June 1, 1995, if necessary, to hold a public hearing on revised regulation changes; and by September 1, 1995, if necessary, to submit a revised SIP revision removing the "low mileage" waiver from the regulations. Section 110(k)(4) provides that, if a state fails to comply with its commitment, such conditional approval will become a disapproval.

Failure to meet any of these dates will result in EPA disapproval of this action, unless the EPA Regional Administrator approves a later date in writing no later than the date of the milestone. In no circumstances will the September 1, 1995 date for final submittal be revised.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The EPA requests comments on this proposal including the EPA's proposal to conditionally approve the I/M SIP for Maine as meeting the requirements of the CAA and federal I/M rule and, in the alternative, to disapprove the I/M SIP for Maine. As indicated at the outset of this action, the EPA will consider any comments received by August 8, 1994, and make the TSD available upon request.

This action has been classified as a Table 1 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables.

Conditional approvals of SIP submittal under Sections 110 and 301 subchapter I; Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing or has committed to impose in the future. Therefore, because the federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis for a SIP approval would constitute federal inquiry into the economic reasonableness of the state actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 96 S. Ct. 2518 (1976); 42 U.S.C. Section 7410(a)(2).

If EPA issues a final disapproval or if the conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that in the event EPA disapproves the state submittal, this disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing state requirements nor does it substitute a new federal requirement.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of Section 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 12, 1994.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 94–16599 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–F

---

40 CFR Parts 52 and 81

[IN15–2–6326B; FRL–5008–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve requests to redesignate Indiana marginal ozone nonattainment areas to attainment. The USEPA is also proposing to approve accompanying maintenance plans as State Implementation Plan (SIP) revisions. The redesignation requests and maintenance plans were submitted by the Indiana Department of Environmental Management (IDEM) for the following ozone nonattainment areas: St. Joseph and Elkhart, Vanderburgh and Marion Counties. The State has met the requirements for redesignation contained in the Clean Air Act, as amended in 1990. In the final rules section of this **Federal Register**, the USEPA is approving the State's redesignation requests and the supporting maintenance plans without prior proposal because USEPA views these as noncontroversial revisions and anticipates no adverse comments. A detailed rationale for the approvals is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct

12866 and is therefore not subject to OMB review.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of Section 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 12, 1994.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 94–16599 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Parts 52 and 81

[IN15–2–6326B; FRL–5008–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve requests to redesignate Indiana marginal ozone nonattainment areas to attainment. The USEPA is also proposing to approve accompanying maintenance plans as State Implementation Plan (SIP) revisions. The redesignation requests and maintenance plans were submitted by the Indiana Department of Environmental Management (IDEM) for the following ozone nonattainment areas: St. Joseph and Elkhart, Vanderburgh and Marion Counties. The State has met the requirements for redesignation contained in the Clean Air Act, as amended in 1990. In the final rules section of this **Federal Register**, the USEPA is approving the State's redesignation requests and the supporting maintenance plans without prior proposal because USEPA views these as noncontroversial revisions and anticipates no adverse comments. A detailed rationale for the approvals is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule based on this proposed rule. A second comment period on this action will not be held. Parties interested in commenting on this notice should do so at this time. Adverse comments received concerning a specific geographic area, St. Joseph and Elkhart, Vanderburgh or Marion Counties, will only affect the final rule as it pertains to that area and only the portion of the final rule concerning the area receiving adverse comments will be withdrawn.

DATES: Comments on this proposed rule must be received on or before August 8, 1994.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 21, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–16507 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 615

Testimony and Production of Official Records and Information

AGENCY: National Science Foundation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Science Foundation (NSF) is proposing to establish procedures to be followed when an NSF employee is issued a court demand or is requested to provide testimony or produce records in a legal proceeding. These procedures are designed to promote economy and efficiency in NSF's programs and operations, to minimize the possibility of involving NSF in controversial issues not related to its functions, to maintain the impartiality of NSF among private litigants, and to protect sensitive, confidential information and the deliberative process.

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Please address comments to: Miriam Leder, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230, (703) 306–1060.

FOR FURTHER INFORMATION CONTACT: Miriam Leder, Assistant General Counsel, National Science Foundation, at the above address.

SUPPLEMENTARY INFORMATION: The Supreme Court has upheld the ability of Federal agencies to establish procedures governing the production of records and testimony by personnel in legal proceedings in which the agencies are not a party. *United States ex rel. Touhy v. Ragen,* 340 U.S. 462 (1951). This proposed rule would establish policies and procedures to be followed when, in a legal proceeding, a current or former NSF employee is issued a demand or is requested to testify or to produce NSF records or other information or material acquired by that employee as part of the performance of his or her official duties or because of his or her official status.

This proposed rule would cover testimony and the production of records only in connection with legal proceedings. As a result, it would not apply to Congressional requests for records or testimony, or to requests under the Freedom of Information Act, 5 U.S.C. 552. It also would not affect the requirements of applicable confidentiality laws, such as the Privacy Act, 5 U.S.C. 552a.

I have determined that this proposed rule is not an economically significant rule as that term is defined in Executive Order 12866. I have also determined that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, because it would affect only the conduct of NSF activities and actions of NSF personnel. Pursuant to 5 U.S.C. 605(b), the rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 45 CFR Part 615

Administrative practice and procedure, Courts, and Government employees.

For the reasons set forth in the preamble, NSF proposes to amend 45 CFR by adding a new part 615 as follows:

PART 615—TESTIMONY AND PRODUCTION OF RECORDS

Sec.

615.1 Purpose.
615.2 Applicability.
615.3 Definitions.
615.4 Legal proceedings before NSF or in which the United States is a party.
615.5 Legal proceedings between private litigants: Testimony and production of documents.
615.6 Legal proceedings between private litigants: Procedure when demand is made.
615.8 Legal proceedings between private litigants: Office of Inspector General employees.

Authority: 42 U.S.C. 1870(a)

§ 615.1 Purpose.

(a) This part sets forth policies and procedures to be followed when, in connection with a legal proceeding, an NSF employee is issued a demand to provide testimony or produce official records and information.

(b) The provisions of this part are intended to promote economy and efficiency in NSF's programs and operations; minimize the possibility of involving NSF in controversial issues not related to its functions; maintain the impartiality of NSF among private litigants; and protect sensitive, confidential information and the deliberative process.

(c) This part is not intended to and does not waive the sovereign immunity of the United States.

(d) This part is intended only to provide guidance for the internal operations of NSF, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

§ 615.2 Applicability.

This part applies to demands and requests for factual or expert testimony or for official records or information in legal proceedings, whether or not the United States is a party, except that it does not apply to (a) demands upon or requests for an NSF employee to testify, while in leave status, as to factors or events that are in no way related to his or her official duties or to the functions of NSF, (b) demands upon or requests for a former NSF employee to testify as to matters in which the former employee was not directly or materially involved while at NSF, and (c) Congressional demands and requests for testimony or records.

§ 615.3 Definitions.

(a) *Demand.* A subpoena, order, or other demand of a court or other competent authority for the production of records or for the appearance and testimony of an NSF employee, issued in a legal proceeding between private litigants.

(b) *Foundation or NSF* means the National Science Foundation.

(c) *General Counsel* means the General Counsel of the Foundation, or any person to whom the General Counsel has delegated authority under this part.

(d) *Legal proceeding* means any proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

(e) *Official records and information* means all documents and material which are records of the Foundation under the Freedom of Information Act, 5 U.S.C. 552; all other records contained in NSF's files; and all other information or material acquired by an NSF employee in the performance of his or her official duties or because of his or her official status.

(f) *NSF employee or employee* means any present or former officer or employee of NSF; any other individual hired through contractual agreement by or on behalf of NSF, or who has performed or is performing services under such an agreement for NSF; and any individual who served or is serving on any advisory committee or in any advisory capacity, whether formal or informal.

(g) *Request* means any informal request, by whatever method, for the production of official records and information or for testimony which has not been ordered by a court or other competent authority.

(h) *Testimony* means any written or oral statement by a witness, including depositions, answers to interrogatories, affidavits, declarations, and statements at a hearing or trial.

§ 615.4 Legal proceedings before NSF or in which the United States is a party.

In any legal proceeding before NSF or to which the United States is a party, the General Counsel shall arrange for an employee to testify as a witness for the United States whenever the attorney representing the United States requests it. The employee may testify for the United States both as to facts within the employee's personal knowledge and as an expert or opinion witness. For any party other than the United States, the employee may testify only as to facts within his or her personal knowledge.

§ 615.5 Legal proceedings between private litigants: Testimony and production of documents.

(a) No employee may produce official records and information or provide any testimony in response to a demand or request unless authorized to do so by the General Counsel in accordance with this part or by other applicable law.

(b) The General Counsel, in his or her discretion, may grant an employee permission to testify or produce official records and information in response to a demand or request. In making this decision, the General Counsel shall consider whether (1) the purposes of this part are met; (2) allowing such testimony or production of records would be necessary to prevent a miscarriage of justice; (3) NSF has an interest in the decision that may be rendered in the legal proceeding; and (4) allowing such testimony or production of records would be in the best interest of NSF or the United States.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but shall not (1) disclose confidential or privileged information; (2) testify as to facts when the General Counsel determines such testimony would not be in the best interest of the Foundation or the United States; or (3) testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the Foundation.

§ 615.6 Legal proceedings between private litigants: Procedure when demand is made.

(a) Whenever an employee is served with a demand to testify in his or her official capacity, or to produce official records and information, the employee shall immediately notify the General Counsel.

(b) The General Counsel shall review the demand and, in accordance with the provisions of § 615.5, determine whether, or on what conditions, to authorize the employee to testify and/or produce official records and information.

(c) If a response to a demand is required before the General Counsel has made the determination referred to in § 615.6(b), the General Counsel shall provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the demand is being reviewed, and seek a stay of the demand pending a final determination. If the court fails to stay the demand, the employee must appear at the stated time and place, produce a copy of this part, and respectfully decline to comply with the demand. "*United States ex rel Touhy* v. *Ragen*," 340 US 462 (1951).

(d) If a court or other competent authority orders that a demand be complied with notwithstanding a final decision by the General Counsel to the contrary, or at any other stage in the process, the General Counsel may take steps to arrange for legal representation for the employee, and shall advise the employee on how to respond to the demand.

§ 615.7 Legal proceedings between private litigants: Office of Inspector General employees.

Notwithstanding the requirements set forth in §§ 615.1 through 615.6, when an employee of the Office of Inspector General is issued a demand to provide testimony or produce official records and information, the Inspector General or his or her designee shall be responsible for performing the functions assigned to the General Counsel with respect to such demand pursuant to the provisions of this part.

Dated: June 29, 1994.

Lawrence Rudolph,

Acting General Counsel.

[FR Doc. 94–16576 Filed 7–7–94; 8:45 am]

BILLING CODE 7555–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–55, RM–8454]

Radio Broadcasting Services; Vail, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Ryan B. Smith and Jennifer Tufty, requesting the allotment of Channel 237A to Vail, Colorado, as that community's second local FM service. Coordinates used for this proposal are 39–39–01 and 106–22–45.

DATES: Comments must be filed on or before August 26, 1994, and reply comments on or before September 12, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC,

reviewed, and seek a stay of the demand pending a final determination. If the court fails to stay the demand, the employee must appear at the stated time and place, produce a copy of this part, and respectfully decline to comply with the demand. "*United States ex rel Touhy* v. *Ragen*," 340 US 462 (1951).

(d) If a court or other competent authority orders that a demand be complied with notwithstanding a final decision by the General Counsel to the contrary, or at any other stage in the process, the General Counsel may take steps to arrange for legal representation for the employee, and shall advise the employee on how to respond to the demand.

§ 615.7 Legal proceedings between private litigants: Office of Inspector General employees.

Notwithstanding the requirements set forth in §§ 615.1 through 615.6, when an employee of the Office of Inspector General is issued a demand to provide testimony or produce official records and information, the Inspector General or his or her designee shall be responsible for performing the functions assigned to the General Counsel with respect to such demand pursuant to the provisions of this part.

Dated: June 29, 1994.

Lawrence Rudolph,

Acting General Counsel.

[FR Doc. 94–16576 Filed 7–7–94; 8:45 am]

BILLING CODE 7555–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–55, RM–8454]

Radio Broadcasting Services; Vail, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Ryan B. Smith and Jennifer Tufty, requesting the allotment of Channel 237A to Vail, Colorado, as that community's second local FM service. Coordinates used for this proposal are 39–39–01 and 106–22–45.

DATES: Comments must be filed on or before August 26, 1994, and reply comments on or before September 12, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Ryan B. Smith and Jennifer Tufty, c/o Ryan B. Smith, 4026 Helen Court, Rapid City, SD 57702.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed RuleMaking, MM Docket No. 94–55, adopted June 7, 1994, and released July 5, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed RuleMaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16554 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–61, RM–8464]

Radio Broadcasting Services; Garberville and Hydesville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Brett E. Miller, permittee of Station KWEO(FM), Channel 279C1, Garberville, California, requesting the reallotment of Channel 279C1 from Garberville to Hydesville, California, and modification of the authorization for Station KWEO(FM) to specify Hydesville as its community of license, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates for Channel 279C1 at Hydesville are 40–23–00 and 124–11–00.

DATES: Comments must be filed on or before August 26, 1994, and reply comments on or before September 12, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Brett E. Miller, 11608 Blossomwood Ct., Moorpark, CA 93021.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–61, adopted June 9, 1994 and released July 5, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16553 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–70; RM–8474]

Radio Broadcasting Services; Moncks Corner and Kiawah Island, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ceder Carolina Limited Partnership proposing the substitution of Channel 288C2 for Channel 287C3 and the reallotment of Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina, and the modification of Station WJYQ(FM)'s construction permit accordingly. Channel 288C2 can be allotted to Kiawah Island in compliance with the Commission's minimum distance separation requirements with a site restriction of 13 kilometers (8.1 miles) north at petitioner's requested site. The coordinates for Channel 288C2 at Kiawah Island are North Latitude 32–43–38 and West Longitude 80–00–05.

DATES: Comments must be filed on or before August 26, 1994 and reply comments on or before September 12, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Nancy A. Ory, Leventhal, Senter & Lerman, 2000 K Street NW., Suite 600, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. _____, adopted June 21, 1994, and released July 5, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16555 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. 93–50; Notice 2]

RIN: 2127–AE85

Federal Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Anti Car Theft Act (ACTA) of 1992, which amended Title VI, "Theft Prevention," of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), requires certain lines of multipurpose passenger vehicles (MPVs) and light-duty trucks (LDTs) to be designated as high theft lines. Manufacturers of high theft lines of those types of vehicles will have to mark the major parts of each vehicle in the line. This notice seeks comments on a definition of LDT for Title VI purposes and on which MPV and LDT parts should be considered major parts, and therefore subject to parts marking. In accordance with ACTA, NHTSA also proposes to require the marking of major parts of certain other lines because, although they have below median theft rates, their parts bear a significant degree of similarity to lines with above median theft rates.

DATES: Comments on this notice of proposed rulemaking must be received by this agency not later than September 6, 1994.

ADDRESSES: Comments should refer to the docket number referenced in the heading of this notice, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION:

Anti Car Theft Act of 1992

The "Anti Car Theft Act of 1992" (ACTA) is a comprehensive attack on automotive theft and fraud. ACTA strengthens Federal penalties for motor vehicle theft, armed robbery of motor vehicles, and motor vehicle titling fraud. In addition, ACTA amended title VI "Theft Prevention" of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) (15 U.S.C. 2021 *et seq.*).

As amended by ACTA, title VI defines "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less." (See section 601(1) of title VI.) Since title VI had formerly defined "passenger motor vehicle" to include passenger cars only, the effect of the new definition is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be likely high theft vehicles, and may thus be subject to the parts marking requirements of the Theft Prevention Standard.

In this notice, NHTSA proposes revisions to the Motor Vehicle Theft Prevention Standard (49 CFR part 541) to reflect the amendments to title VI. The purpose of the standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major motor vehicle parts. Each vehicle in a high theft line must have its major parts and major replacement parts marked unless the line is exempted from parts marking pursuant to 49 CFR part 543.

Advance Notice of Proposed Rulemaking

In a July 7, 1993 advance notice of proposed rulemaking (ANPRM) (58 FR 36376), public comment was sought to aid the agency in implementing ACTA. NHTSA sought comments on definitions of multipurpose passenger vehicles (MPVs) and light-duty trucks (LDTs) for the Theft Prevention Standard, and on which parts of these vehicles should be

considered major parts and therefore subject to parts marking.

1. Definitions of MPV and LDT

The agency noted that since the title VI requirements for "multipurpose passenger vehicles" differ in some respects from those for "light-duty trucks," these two terms must be defined so that it can be readily determined whether a particular vehicle is an MPV or an LDT. A distinction must be made between MPVs and LDTs in order to implement section 602(f) of the Theft Act. Section 602(f) requires NHTSA, by October 25, 1994, to promulgate a parts marking standard applicable to major parts installed by manufacturers of "passenger motor vehicles (other than light-duty trucks) in not to exceed one-half of the lines not designated under section 603 as high theft lines." Since LDTs are excepted from coverage under section 602(f), but MPVs are subject to section 602(f), NHTSA must ensure that distinctions between LDTs and MPVs are made.

In the ANPRM, NHTSA noted that its proposed definition of "MPV" followed the statutory definition of MPV in section 2(2) of the Cost Savings Act, except for being limited to vehicles at or less than 6,000 pounds gross vehicle weight rating. NHTSA's proposed definition of "multipurpose passenger vehicle" was:

> A passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation and which is rated at 6,000 pounds gross vehicle weight or less.

Defining "light-duty truck" was more complex. No definition of "light-duty truck" is provided in the Cost Savings Act (including Title VI), or in ACTA itself. The legislative history of ACTA provides no express guidance as to what types of vehicles ACTA's drafters intended to include in "light-duty truck" for theft prevention purposes.

After reviewing existing NHTSA definitions of "light truck" (for purposes of the Corporate Average Fuel Economy Program) and "truck" (for purposes of the Federal Motor Vehicle Safety Standards), NHTSA proposed to base its definition of "light duty truck" for Theft Prevention Standard purposes on NHTSA's definition of "truck" at 49 CFR 571.3: "a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment." NHTSA modified the definition to take account of the 6,000 pound gross vehicle weight rating limitation. As modified, NHTSA's proposed definition of "light-duty truck" for the purposes of Title VI was:

considered major parts and therefore subject to parts marking.

1. Definitions of MPV and LDT

The agency noted that since the title VI requirements for "multipurpose passenger vehicles" differ in some respects from those for "light-duty trucks," these two terms must be defined so that it can be readily determined whether a particular vehicle is an MPV or an LDT. A distinction must be made between MPVs and LDTs in order to implement section 602(f) of the Theft Act. Section 602(f) requires NHTSA, by October 25, 1994, to promulgate a parts marking standard applicable to major parts installed by manufacturers of "passenger motor vehicles (other than light-duty trucks) in not to exceed one-half of the lines not designated under section 603 as high theft lines." Since LDTs are excepted from coverage under section 602(f), but MPVs are subject to section 602(f), NHTSA must ensure that distinctions between LDTs and MPVs are made.

In the ANPRM, NHTSA noted that its proposed definition of "MPV" followed the statutory definition of MPV in section 2(2) of the Cost Savings Act, except for being limited to vehicles at or less than 6,000 pounds gross vehicle weight rating. NHTSA's proposed definition of "multipurpose passenger vehicle" was:

> A passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation and which is rated at 6,000 pounds gross vehicle weight or less.

Defining "light-duty truck" was more complex. No definition of "light-duty truck" is provided in the Cost Savings Act (including Title VI), or in ACTA itself. The legislative history of ACTA provides no express guidance as to what types of vehicles ACTA's drafters intended to include in "light-duty truck" for theft prevention purposes.

After reviewing existing NHTSA definitions of "light truck" (for purposes of the Corporate Average Fuel Economy Program) and "truck" (for purposes of the Federal Motor Vehicle Safety Standards), NHTSA proposed to base its definition of "light duty truck" for Theft Prevention Standard purposes on NHTSA's definition of "truck" at 49 CFR 571.3: "a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment." NHTSA modified the definition to take account of the 6,000 pound gross vehicle weight rating limitation. As modified, NHTSA's proposed definition of "light-duty truck" for the purposes of Title VI was:

> A motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment, that is rated at 6,000 pounds gross vehicle weight or less.

NHTSA selected this definition because it focuses on the primary distinction between multipurpose passenger vehicles and light-duty trucks: Multipurpose passenger vehicles are designed to carry passengers, while light-duty trucks are designed to carry property. This distinction is important for Theft Prevention Standard purposes because it facilitates the separation of MPVs from LDTs. Since multipurpose passenger vehicles are not designed primarily to transport property or equipment, multipurpose passenger vehicles are not included in the 49 CFR § 571.3 definition of "truck."

2. Specifying "Major Parts"

NHTSA also sought public comments on major parts for MPVs and LDTs. Section 601(7) of Title VI "Theft Prevention" of the Motor Vehicle Information and Cost Savings Act, defines "major part" for passenger motor vehicles as:

> The engine;
> The transmission;
> Each door allowing entrance or egress to the passenger compartment;
> The hood;
> The grille;
> Each bumper;
> Each front fender;
> The deck lid, tailgate or hatchback (whichever is present);
> Rear quarter panels;
> The trunk floor pan;
> The frame, or in the case of a unitized body, the supporting structure which serves as a frame; and
> Any other part of a passenger motor vehicle which the agency, by rule, determines is comparable in design or function to any of the parts listed above.

At 49 CFR § 541.5, NHTSA has specified the major parts on high theft passenger car lines that must be marked. Section 541.5 lists all the parts identified in section 601(7) except for the grille, the trunk floor pan, and the frame or supporting structure which serves as a frame. The agency did not use its authority under section 601(7) to add additional parts to the list.

Before its amendment by ACTA, title VI of the Cost Savings Act specified that manufacturers could not be required to mark more than 14 major parts on a high theft passenger automobile. As amended, there is no statutory limit on the number of major parts that may be required to be marked. However, the scope of the parts marking requirement is still limited by a $15 (in 1984 dollars) maximum marking cost per vehicle. (See section 604.) Hence, although there is no longer a statutory limit on the number of parts that must be marked, the limit on costs involved in marking parts would still indirectly restrict the number of parts that can be required to be marked.

In the ANPRM, NHTSA solicited comments on what parts of MPVs and of LDTs should be considered "major parts." Comments were also solicited whether any other major parts on passenger cars should be added to the list of passenger car parts subject to the Theft Prevention Standard.

Comments on the ANPRM and NHTSA's Response

In response to the ANPRM, NHTSA received comments from 13 commenters: Advocates for Highway and Auto Safety; AM General; American Automobile Manufacturers Association; Chrysler Corporation; Ford Motor Company; General Motors Corporation; the Maryland State Police; National Insurance Crime Bureau; the National Truck Equipment Association; Nissan Motor Company; Prospective Technologies; State Farm Insurance Companies; and Volkswagen of America. The commenters addressed the issues raised in the ANPRM as discussed below. NHTSA carefully considered their comments in developing this notice of proposed rulemaking.

1. Definitions of LDT and MPV

All but two commenters, Advocates for Highway and Auto Safety (Advocates), and State Farm, either concurred with NHTSA's proposed definition of light-duty truck (LDT) or had no comment. Advocates (whose comments were referenced by State Farm) urged that in defining LDT, the "real-world use of the vehicle" not the design, should be taken into account and that NHTSA exclude from the LDT definition, vehicles built to accommodate more than the driver and one passenger or vehicles designed to be convertible to passenger use.

Regarding Advocates' recommendation that the "LDT" definition excludes vehicles built to accommodate more than a driver and one passenger, NHTSA sees no indication of any Congressional intent to exclude such vehicles from the definition of LDT. Since section 601(1) of the Theft Act defines "passenger motor vehicle" to include any "light-duty truck that is rated at 6,000 pounds gross vehicle weight or less," Congress

must have intended LDTs to have some (unspecified) passenger carrying capacity. Advocates' definition of LDT would exclude many light trucks with jump seats in the passenger compartment, such as the S–10 Chevy pickup, the Ranger Ford pickup, the Toyota pickup, the Nissan pickup, and the Dodge Dakota.

Further, NHTSA believes that its ANPRM definition of "LDT" makes clear that vehicles designed to be convertible to carry either property or passengers would be considered MPVs. In vehicles such as the E 150 Ford Club Wagon and Ford Dodge B150 Wagon, passenger seats behind the driver and front passengers' seats are removable, creating a flat surface, with storage space inside the vehicle. When the seats are removed, cargo or other property may be carried in the vehicle, in lieu of passengers.

Vehicles such as the Ford E 150 Club Wagon or Dodge B–150 Wagon, that may be converted to carry either passengers or property, are considered MPVs because they do not meet the proposed definition of "LDT." In the ANPRM, NHTSA discussed defining "LDTs" as those 6,000 pound or under GVWR vehicles "designed primarily for the transportation of property or special purpose equipment." Vehicles such as the Ford E 150 Club Wagon or Dodge B–150 Wagon were not designed primarily to carry property. However, vehicles such as the Ford E 150 Club Wagon and Dodge B–150 Wagon meet the proposed definition of "MPV"—i.e., those 6,000 pound or under GVWR vehicles "constructed either on a truck chassis or with special features for occasional off-road operation." Thus, for purposes of the Theft Prevention Standard, a vehicle designed to be convertible to carry either passengers or property would be considered an MPV.

Since there were no other comments addressing the definition of LDT, this notice of proposed rulemaking proposes to define "light-duty truck" as discussed in the ANPRM.

2. Multipurpose Passenger Vehicle

All comments on the definition of "multipurpose passenger vehicle" concurred with the definition discussed in the ANPRM. Since there were no objections to that definition, NHTSA is proposing to define "multipurpose passenger vehicle" as set forth in the ANPRM.

3. Specifying "Major Parts"

a. Major Parts for LDTs and MPV

In discussing the proposal it would develop regarding major parts for LDTs and/or MPVs, NHTSA applied the same criteria used to select the current 14 major parts specified in the Theft Prevention Standard at § 541.5(a). The selection criteria are whether the parts are among those most frequently repaired or most costly to replace. (See 50 FR 19728, at 19732; May 10, 1985.)

In response to the ANPRM, commenters recommended that parts already listed in the Theft Prevention Standard at § 541.5(a) (1) through (11) (i.e., engine, transmission, right and left front fenders, hood, right and left front doors, right and left rear doors, front and rear bumpers) should, if present on a vehicle, be treated as major parts for MPVs and LDTs also. Since the 11 parts listed are among the most frequently repaired and costly to replace, NHTSA tentatively concurs that the parts, if present on MPVs and LDTs, should be major parts. NHTSA is proposing to treat these MPV and LDT parts as major parts.

As to the designation of additional parts as major parts for MPVs and LDTs, commenters had similar recommendations. Right and left rear quarter panels (designated as major parts in § 541.5(a) (12) and (13)), are not necessarily present on MPVs or LDTs. Therefore, GM and Ford recommended that for MPVs, in lieu of quarter panels, side-panels should be designated as major parts, and for LDTs, pickup boxes or cargo boxes should be designated as major parts. Volkswagen offered similar recommendations. It stated that side panels and pickup or cargo boxes are, respectively, the MPV and LDT counterparts to right and left quarter panels, designated major parts for passenger cars. In addition, the side panels and pickup or cargo boxes are among those most frequently repaired on, respectively, MPVs and LDTs.

NHTSA tentatively agrees with the recommendations. Thus, it is proposing to include side panels as major parts for MPVs, and pickup boxes and/or cargo boxes as major parts for LDTs. Some commenters recommended the truck bed as a major part. NHTSA believes, however that "pickup box and/or cargo box" includes "truck bed", and is not proposing to list truck bed separately.

Other commenters recommended cargo doors as major parts for MPVs and LDTs. NHTSA concurs that cargo doors should be proposed as major parts, since cargo doors are the LDT counterpart to passenger car doors, and are among the parts most frequently replaced. Thus, NHTSA is proposing to treat cargo doors, if present on an LDT, as major parts.

b. Specifying Pieces of Motor Vehicle Glazing as Major Parts for MPVs, LTDs and Passenger Cars

Advocates, Prospective Technologies, and State Farm, recommended that windows and pieces of other motor vehicle glazing be treated as major parts for all high theft vehicles. Prospective Technologies cited the relative ease with which vehicle glazing could be marked, the low cost of marking, and provided instances where motor vehicles with glazing that was voluntarily marked with the vehicle identification number resulted in lower theft rates. As an example, Prospective Technologies cited Nissan's experience in etching the windows of the Nissan 300ZX line with the vehicle identification number. As background information about the 300ZX line, since model year 1987, the Nissan 300ZX, a high theft line, has been exempted from the parts marking requirements of part 541 because every vehicle in the 300ZX line has an antitheft device that NHTSA has determined is likely to be as effective as parts marking. (See 51 FR 42577, November 25, 1986.)

Prospective reported that, beginning with model year 1992, Nissan initiated window etching for 100 percent of the vehicles in its 300ZX line. As a basis for comparison, no vehicle in the model year 1990 or 1991 300ZX line had its windows etched. Prospective stated that State Farm Insurance Companies reported no theft claims on the etched 300ZXs for the first 12 months that the etching was available. Prospective further stated that the National Insurance Crime Bureau (NICB) reported the theft rate of window-etched Nissan 300ZXs to be 26 percent below that of the unmarked 300ZXs. Based on the NICB report, Prospective multiplied the average theft loss cost expected over the life of the 300ZX ($1,012.50) by 26 percent to arrive at the theft loss reduction expected over the life of the 300ZX, or $263.25. Subtracting Prospective's estimate of the per vehicle cost of etching windows—$5.00 (assuming economies of scale), Prospective estimates a net savings per vehicle as a result of window etching of $258.25.

NHTSA tentatively agrees that specifying pieces of glazing as major parts to be marked pursuant to the Theft Prevention Standard would further the purpose of title IV, i.e., to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. (See section 2(1).) Since the markings on glazing would be in plain view, all types of motor vehicle theft, not just theft for the purposes of chop shop operations or other trafficking in stolen motor vehicle parts, might be deterred.

The possible furthering of legislative purpose and the public commenters' evidence of window-marking efficacy (based, in part, on a showing of lower theft losses for window marked Nissan 300ZXs compared with non window marked Nissan 300ZXs) leads NHTSA to propose to specify motor vehicle glazing as major parts. NHTSA further notes that motor vehicle glazing, especially windshields, are among those parts most frequently replaced. More specifically, NHTSA proposes to specify parts marking for the following glazing parts, if present on a high theft motor vehicle: Windshield; right front side window; left front side window; right rear side window; left rear side window; rear window; and right and left T-top inserts. NHTSA does not propose that glazing in the interior of the vehicle, such as partitions, or small outside-facing glazing, such as side vents or opera windows, be designated as major parts. NHTSA seeks comment whether all the above listed glazing parts should be specified for parts marking, and if not, which parts should be excluded. NHTSA also seeks comment on the following three issues that arise from marking windows and other glazing parts.

First, since all the glazing parts that NHTSA proposes for marking are made of glass, they are more fragile than major parts that are made mainly out of metal or hard rubber composites. Although glazing has a greater tendency to break, NHTSA does not propose to specify any particular method of parts marking for glazing, so that each manufacturer may decide for itself the best marking method. NHTSA, however, proposes that for parts that are labeled, glazing parts be excluded from the specification in § 541.5(d)(1)(ii)(B) that the label be on a portion of the part not likely to be damaged in a collision, and seeks comment on whether the exclusion is necessary.

Second, when marking major parts, manufacturers of original and replacement parts must designate target areas for the identifying number to be marked on each part. (See §§ 541.5(e) and 541.6(e).) Pursuant to Federal Motor Vehicle Safety Standard No. 205, *Glazing materials* (49 CFR 571.205), a glazing manufacturer must place markings on glazing certifying that the glazing complies with Standard No. 205. Standard No. 205 does not specify areas on the glazing where the certification markings must be placed. (See S6. *Certification and marking* of Standard No. 205.) NHTSA seeks public comment

the purposes of chop shop operations or other trafficking in stolen motor vehicle parts, might be deterred.

The possible furthering of legislative purpose and the public commenters' evidence of window-marking efficacy (based, in part, on a showing of lower theft losses for window marked Nissan 300ZXs compared with non window marked Nissan 300ZXs) leads NHTSA to propose to specify motor vehicle glazing as major parts. NHTSA further notes that motor vehicle glazing, especially windshields, are among those parts most frequently replaced. More specifically, NHTSA proposes to specify parts marking for the following glazing parts, if present on a high theft motor vehicle: Windshield; right front side window; left front side window; right rear side window; left rear side window; rear window; and right and left T-top inserts. NHTSA does not propose that glazing in the interior of the vehicle, such as partitions, or small outside-facing glazing, such as side vents or opera windows, be designated as major parts. NHTSA seeks comment whether all the above listed glazing parts should be specified for parts marking, and if not, which parts should be excluded. NHTSA also seeks comment on the following three issues that arise from marking windows and other glazing parts.

First, since all the glazing parts that NHTSA proposes for marking are made of glass, they are more fragile than major parts that are made mainly out of metal or hard rubber composites. Although glazing has a greater tendency to break, NHTSA does not propose to specify any particular method of parts marking for glazing, so that each manufacturer may decide for itself the best marking method. NHTSA, however, proposes that for parts that are labeled, glazing parts be excluded from the specification in § 541.5(d)(1)(ii)(B) that the label be on a portion of the part not likely to be damaged in a collision, and seeks comment on whether the exclusion is necessary.

Second, when marking major parts, manufacturers of original and replacement parts must designate target areas for the identifying number to be marked on each part. (See §§ 541.5(e) and 541.6(e).) Pursuant to Federal Motor Vehicle Safety Standard No. 205, *Glazing materials* (49 CFR 571.205), a glazing manufacturer must place markings on glazing certifying that the glazing complies with Standard No. 205. Standard No. 205 does not specify areas on the glazing where the certification markings must be placed. (See S6. *Certification and marking* of Standard No. 205.) NHTSA seeks public comment on how the theft program target areas for glazing parts can be specified so that theft program markings and Standard No. 205 markings are not placed in the same areas.

The third issue concerns passenger car lines that were subject to the marking requirements of the Theft Prevention Standard before ACTA was enacted. NHTSA is proposing to specify pieces of glazing as major parts with the intention that manufacturers of such passenger car lines mark glazing parts, in addition to all of the other passenger car parts already specified in the Theft Prevention Standard. In this connection, NHTSA notes that ACTA removed the statutory limit on the number of major parts that may be required to be marked.

c. Decision Not To Propose Other Parts as Major Parts for MPVs, LTDs or Passenger Cars

Commenters recommended several other motor vehicle parts for consideration as major parts for MPVs, LDTs and passenger cars. The NICB recommended that floor pans be considered as major parts for MPVs. The Maryland State Police recommended that frames and grilles be added as major parts for MPVs and LDTs. Advocates for Highway and Auto Safety recommended including the rear axle housing, radiator core supports, and seats for MPVs and LTDs. Advocates further recommended designating airbag modules and vehicle computer modules as major parts for all high theft vehicles, including passenger cars. The commenters provided no evidence that marking the additional parts would be cost effective or result in fewer motor vehicle thefts.

In contrast to the above recommendations, Nissan recommended that the "rear trunk floor pan" not be included as a major part. GM recommended that the grille, trunk floor pan, and frame (or comparable structure) not be added as major parts for passenger cars.

NHTSA has decided not to propose the additional parts recommended above as major parts on high theft lines. NHTSA does not believe the recommended parts are as frequently replaced as those that are already listed as major parts in the Theft Prevention Standard. Marking the recommended parts would also mean additional costs for manufacturers, with no evidence that the additional marking would help deter or reduce motor vehicle thefts. Without a showing of possible reduction in motor vehicle thefts as a result of marking these additional parts, NHTSA sees no need to require manufacturers to incur the additional costs of marking.

Other Proposed Changes to the Theft Prevention Standard; Proposed Effective Date

In addition to the foregoing, NHTSA proposes to include a definition of "1990/91 median theft rate." NHTSA believes this definition is necessary to minimize confusion between the median theft rate specified in the Motor Vehicle Theft Law Enforcement Act of 1984, based on 1983/84 data, and the updated median theft rate specified in ACTA, based on 1990/1991 data. As mandated in ACTA, NHTSA calculated the theft rates of all "passenger motor vehicles" for sale in the U.S. in 1990 and 1991. NHTSA published the final results of its calculations (final theft data) in a **Federal Register** document of January 6, 1994. (See 59 FR 796) These data were subsequently corrected in a **Federal Register** document of March 16, 1994. (See 59 FR 12400) The corrected theft data showed that, based on 231 vehicle lines, the median theft rate was 3.5826 thefts per thousand vehicles produced.

As discussed in the January 1994 document, in determining high or low theft lines, pursuant to 49 CFR part 542, *Procedure for Selecting Lines to be Covered by the Theft Prevention Standard*, NHTSA will apply the 1990/91 median theft rate to passenger motor vehicle lines to be introduced for model year (MY) 1996 and thereafter. NHTSA will continue to apply the 1983/84 median theft rate to passenger car lines introduced before MY 1996. In order to maintain consistency, NHTSA also proposes that the amendments proposed in this NPRM, if made final, be applied to all high theft passenger vehicle lines beginning with MY 1996.

Section 602(f) of the Theft Act requires NHTSA, by October 25, 1994, to promulgate a parts marking standard applicable to major parts installed by manufacturers of "passenger motor vehicles (other than light-duty trucks) in not to exceed one-half of the lines not designated under section 603 as high theft lines." In carrying out section 602(f), NHTSA began by reviewing theft rates of the 231 vehicle lines that were listed in the 1990/91 theft data. A total of 116 vehicle lines (any line rated at number 116 and lower) was potentially subject to parts marking pursuant to section 602(f).

Out of the 116 lines, NHTSA removed from consideration any line that was already subject to parts marking because NHTSA had previously determined the line to be high theft, and also removed all light-duty truck lines. NHTSA tentatively determined whether a line is a light-duty truck line by applying the

definition of "light-duty truck" proposed in this notice. If a different definition of "light-duty truck" is adopted in the final rule, NHTSA will, in the final rule, make appropriate adjustments to the list of subject lines. After removing the ineligible lines, NHTSA determined that there were 57 below median lines still eligible for selection under section 602(f). Out of the 57 below median lines left, NHTSA designated the 28 lines with the highest theft rates, for selection to be parts marked pursuant to section 602(f).

Therefore, in this NPRM, NHTSA proposes to implement section 602(f) by selecting for parts marking the highest ranked 28 (out of 57) eligible vehicle lines ranked below the 1990/91 median, in the January 1994 final theft data. Since the selected lines must be marked pursuant to part 541, the Theft Prevention Standard, NHTSA proposes to list each of the 28 below-median lines to be marked, in appendix B to part 541. Pursuant to section 602(f) of the Theft Act, NHTSA proposes that parts marking for these below-median lines begin with MY 1996, the first model year that begins at least six months after October 1994. Since section 602(f) does not specify marking of replacement parts for below-median lines, NHTSA is not proposing to require marking for replacement parts.

Finally, since appendix B—*Criteria for Limiting the Selection of Prestandard Lines Having or Likely to Have High Theft Rates to 14*, contains outdated references to lines introduced before April 24, 1986, NHTSA proposes to revise Appendix B by removing all references to pre-1986 lines, and, as described above, listing below median lines that must be parts marked.

Regulatory Impacts

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this rulemaking action and has determined the action not to be "significant" under the Department of Transportation's regulatory policies and procedures. This action solicits comments on the definition of "light-duty truck" (LDT) and on what parts of multipurpose passenger vehicles (MPVs) and LDTs should be considered "major parts." If made final, the definition of LDT may affect low theft lines that are selected for parts marking, pursuant to section 602(f) of the Theft Act. Since section 602(f) excludes LDTs from its coverage, any passenger motor vehicle with a low theft rate (other than an LDT) would be subject to parts marking. The definition clarifies which vehicles Congress intended to be subject, as LDTs, to the marking of high theft passenger motor vehicle lines, but excluded from the potential rules for marking of low theft passenger motor vehicle lines.

Similarly, the selection of the MPV and LDT parts to be marked is already, in large part, decided by Congress in title VI, since the term "major parts" is defined at section 601(7) of the Theft Act. However, the agency has authority under section 601(7) to make modifications to the statutory list. The specific nature of the modifications that might be made, as well as their impact, is unknown at this point. The overall cost of marking the MPVs and LDTs would, in any event, be limited to the $15 (in 1984 dollars), or $20.86 (in 1993 dollars, based on the U.S. Department of Labor's United States City Average All Items Consumer Price Index for All Urban Consumers (See 59 FR 8021, February 17, 1994)) per vehicle maximum specified in section 604(c).

Based on 1993 motor vehicle production estimates calculated by the agency, NHTSA estimates the cost impact of this NPRM as follows. If this NPRM is made final, current high theft passenger cars will need to add window etching, at an estimated $5.00 per car. There were almost 3 million high theft passenger cars sold in calendar year 1993, making this total cost of marking windows $15 million. Of these 3 million cars, about 2.5 million passenger cars were required to mark all 14 parts, and about 0.5 million had to mark only the engine and transmission. Another 0.4 million were exempt from parts marking by having NHTSA-approved antitheft devices. If this NPRM is made final, vehicles with the NHTSA-approved antitheft devices would not need to have marked windows.

If this NPRM is made final, high theft MPVs and LDTs, and lines listed in Appendix B must add both window etching ($5.00 and parts marking ($5.06) per vehicle for a total of $10.06 per vehicle. Based on 1991 production figures, an additional 7.4 million would need to be marked, making the approximate cost of marking high theft MPVs, LTDs, and lines listed in appendix B, $74 million dollars. However, NHTSA believes the $74 million estimate is high because many manufacturers will petition for approval to use an antitheft device, in lieu of parts marking.

Adding the $15 million estimated for the additional cost of window marking for existing high theft lines to $74 million to the cost of marking high theft MPVs, LDTs, and lines in appendix B, NHTSA estimates that if made final, the total cost of this NPRM would be approximately $89 million.

NHTSA cannot estimate the benefits of the proposal. The average value of a stolen vehicle is approximately $6,100. Thus, the rule would have to result in the prevention of about 14,590 vehicle thefts ($89 million divided by $6,100) to break even with the costs imposed, if this NPRM is made final.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I certify that this proposed rule, if made final, will not have a significant economic impact on a substantial number of small entities. As already noted, this proposed rule seeks comments on a definition of "light duty truck" and on parts for MPVs and LDTs that should be designated as "major parts." If made final, the proposed rule itself will have minimal effects on small manufacturers of passenger motor vehicles, as almost none of the manufacturers of passenger motor vehicles that may be subject to this rule is considered a small business. If made final, this proposed rule will have no effect on small organizations or governmental units that purchase passenger motor vehicles. Accordingly, the agency has not prepared a regulatory flexibility analysis.

3. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that if made final, it will not have a significant impact on the quality of the human environment.

4. Paperwork Reduction Act

The procedures in this rule for manufacturers to mark vehicle identification numbers on specified parts of high theft passenger motor vehicle lines, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for part 541 have been submitted to and approved by the OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*): This collection of information has been assigned OMB Control No. 2127–0510, (Consolidated Vehicle Identification Number Requirements) and has been approved for use through June 30, 1996.

5. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

6. Civil Justice Reform

This proposed rule would not have any retroactive effect, and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2020), provides that judicial review of this rule may be obtained pursuant to section 504 of the Cost Savings Act, (15 U.S.C. 2004). The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Procedures for Filing Comments

NHTSA solicits public comments on the issues presented in this notice. It is requested, but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this notice will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on this notice will be available for inspection in the docket. NHTSA will continue to file

5. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

6. Civil Justice Reform

This proposed rule would not have any retroactive effect, and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2020), provides that judicial review of this rule may be obtained pursuant to section 504 of the Cost Savings Act, (15 U.S.C. 2004). The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Procedures for Filing Comments

NHTSA solicits public comments on the issues presented in this notice. It is requested, but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this notice will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 541 would be revised to read as follows:

1. The authority citation would continue to read as follows:

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

2. Section 541.3 would be revised to read as follows:

§ 541.3. Application.

This standard applies to the following:

(a) Passenger motor vehicle parts identified in § 541.5(a) that are present:

(1) In the vehicle lines listed in appendix A of this part;

(2) Beginning with model year 1996, in passenger motor vehicle lines which NHTSA has finally determined, pursuant to 49 CFR part 542, to be high theft based on the 1990/91 median theft rate; and

(3) Beginning with model year 1996, in passenger motor vehicle lines listed in appendix B of this part.

(b) Replacement parts for the passenger motor vehicle lines described in § 541.3(a) (1) and (2), if the part is identified in § 541.5(a).

3. Section 541.4 would be revised to read as follows:

§ 541.4. Definitions.

(a) *Statutory terms.* All terms defined in sections 2 and 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021) are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

(b) *Other definitions.*—(1) *Interior surface* means, with respect to a vehicle part, a surface that is not directly exposed to sun and precipitation.

(2) *Light-duty truck (LDT)* means a motor vehicle, with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment, that is rated at 6,000 pounds gross vehicle weight or less.

(3) *Line* means a name which a manufacturer applies to a group of motor vehicles of the same make which have the same body or chassis, or otherwise are similar in construction or design. A "line" may, for example, include 2-door, 4-door, station wagon, and hatchback vehicles of the same make.

(4) *1990/91 median theft rate* means 3.5826 thefts per thousand vehicles produced.

(5) *Multipurpose passenger vehicle (MPV)* means a passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation and which is rated at 6,000 pounds gross vehicle weight or less.

(6) *Passenger car* is used as defined in § 571.3 of this chapter.

(7) VIN means the vehicle identification number required by part 565 and § 571.115 of this chapter.

4. Section 541.5 would be revised to read as follows:

§ 541.5 Requirements for passenger motor vehicles.

(a) Each passenger motor vehicle subject to this standard must have an identifying number affixed or inscribed on each of the parts specified in paragraphs (a)(1) through (a)(26) inclusive of this section, if the part is present on the passenger motor vehicle. In the case of passenger motor vehicles not originally manufactured to comply with applicable U.S. vehicle safety and bumper standards, each such motor vehicle subject to this standard must have an identifying number inscribed in a manner which conforms to paragraph (d)(2) of this section, on each of the parts specified in paragraphs (a)(1) through (a)(26), inclusive of this section, if the part is present on the motor vehicle.

(1) Engine.
(2) Transmission.
(3) Right Front Fender.
(4) Left Front Fender.
(5) Hood.
(6) Right Front Door.
(7) Left Front Door.
(8) Right Rear Door.
(9) Left Rear Door.
(10) Sliding or Cargo Door(s).
(11) Front Bumper.
(12) Rear Bumper.
(13) Right Rear Quarter Panel (passenger cars).
(14) Left Rear Quarter Panel (passenger cars).
(15) Right-Side Assembly (MPVs).

(16) Left-Side Assembly (MPVs).
(17) Pickup box, and/or cargo box (LDTs).
(18) Rear door(s) (both doors in case of double doors), decklid, tailgate, or hatchback (whichever is present).
(19) Windshield.
(20) Window of the Right Front Door.
(21) Window of the Left Front Door.
(22) Window of the Right Rear Door.
(23) Window of the Left Rear Door.
(24) Rear Window.
(25) Right T-top Glazing.
(26) Left T-top Glazing.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the number required to be inscribed or affixed by paragraph (a) of this section shall be the VIN of the passenger motor vehicle.

(2) In place of the VIN, manufacturers who were marking engines and/or transmissions with a VIN derivative consisting of at least the last eight characters of the VIN on October 24, 1984, may continue to mark engines and/or transmissions with such VIN derivative.

(3) In the case of passenger motor vehicles not originally manufactured to comply with U.S. vehicle safety and bumper standards, the number required to be inscribed by paragraph (a) of this section shall be the original vehicle identification number assigned to the motor vehicle by its original manufacturer in the country where the motor vehicle was originally produced or assembled.

(c) The characteristics of the number required to be affixed or inscribed by paragraph (a) of this section shall satisfy the size and style requirements set forth for vehicle certification labels in § 567.4(g) of this chapter.

(d) The number required by paragraph (a) of this section must be affixed by means that comply with paragraph (d)(1) of this section or inscribed by means that comply with paragraph (d)(2) of this section.

(1) *Labels.* (i) The number must be printed indelibly on a label, and the label must be permanently affixed to the passenger motor vehicle's part.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location such that the number is, if practicable, on an interior surface of the part as installed on the vehicle and in a location where it:

(A) Will not be damaged by the use of any tools necessary to install, adjust, or remove the part and any adjoining parts, or any portions thereof;

(B) Except for labels on windows or other glazing, is on a portion of the part not likely to be damaged in a collision; and

(C) Will not be damaged or obscured during normal dealer preparation operations (including rustproofing and undercoating).

(iii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicle.

(iv) The number must be placed entirely within the target area specified by the original manufacturer for that part, pursuant to paragraph (e) of this section, on each part specified in paragraph (a) of this section.

(v) Removal of the label must—

(A) Cause the label to self-destruct by tearing or rendering the number on the label illegible, and

(B) Discernibly alter the appearance of that area of the part where the label was affixed by leaving residual parts of the label or adhesive in that area, so that investigators will have evidence that a label was originally present.

(vi) Alteration of the number on the label must leave traces of the original number or otherwise visibly alter the appearance of the label material.

(vii) The label and the number shall be resistant to counterfeiting.

(viii) The logo or some other unique identifier of the vehicle manufacturer must be placed in the material of the label in a manner such that alteration or removal of the logo visibly alters the appearance of the label.

(2) *Other means of identification.* (i) Removal or alteration of any portion of the number must visibly alter the appearance of the section of the vehicle part on which the identification is marked.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicle.

(iii) The number must be placed entirely within the target area specified by the original manufacturer for that part, pursuant to paragraph (e) of this section, on each part specified in paragraph (a) of this section.

(e) *Target areas.* (1) Each manufacturer that is the original producer who installs or assembles the covered major parts on a line shall designate a target area for the identifying numbers to be marked on each part specified in paragraph (a) of this section for each of its lines subject to this standard. The target area shall not exceed 50 percent of the surface area on the surface of the part on which the target area is located.

(2) Each manufacturer subject to paragraph (e)(1) of this section shall, not later than 30 days before the line is introduced into commerce, inform NHTSA in writing of the target areas designated for each line listed in appendix A to this part. The information should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

(3) The target areas designated by the original vehicle manufacturer for a part on a line shall be maintained for the duration of the production of such line, unless a restyling of the part makes it no longer practicable to mark the part within the original target area. If there is such a restyling, the original vehicle manufacturer shall inform NHTSA of that fact and the new target area, in accordance with the requirements of paragraph (e)(2) of this section.

5. Appendix B would be revised to read as follows:

Appendix B—Passenger Motor Vehicle Lines (Except Light-Duty Trucks) with Theft Rates Below the 1990/91 Median Theft Rate, Subject to the Requirements of This Standard

Manufacturer	Subject lines
Chrysler	Dodge Ramcharger.
	Dodge Ram Wagon/Van B150.
Daihatsu	Rocky.
Ferrari	Testarossa.
Ford	Aerostar.
	Crown Victoria.
	Explorer.
	Festiva.
	Mercury Grand Marquis.
	Mercury Sable.
	Taurus.
General Motors.	Chevrolet Astro.
	Chevrolet Celebrity.
	Chevrolet Sprint.
	GMC Safari.
	Oldsmobile Custom Cruiser.
	Oldsmobile Cutlass Cruiser.
Honda	Civic.
Mazda	Navajo.
Nissan	Axxess
Porsche	944
Volvo	240.
	740.
	760.
	940.
Volkswagen	Audi 80/90.
	Fox.
	Passat.

Issued on: July 1, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–16493 Filed 7–7–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC22

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Public Hearing on Proposed Endangered Status for the Barton Springs Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice on the proposed determination of endangered status for the Barton Springs salamander (*Eurycea sosorum*) and that the comment period on the proposal is reopened. This salamander is found only in Barton Springs, Travis County, Texas. All interested parties are invited to submit comments on this proposal.

DATES: The comment period, which originally closed on April 18, 1994, has been reopened and now closes on July 29, 1994. The Service will accept comments received between April 18, 1994, and July 29, 1994..

ADDRESSES: Both sessions of the public hearing will be held at the Lyndon Baines Johnson Auditorium, Lyndon Baines Johnson Library Complex, 2315 Red River Street, University of Texas campus, Austin, Texas. Written comments and materials should be sent to the Supervisor, Fish and Wildlife Service, Ecological Services, 611 East 6th Street, Room 407, Austin, Texas 78701. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell, Biologist, Fish and Wildlife Service, Ecological Services in Austin at the above address (telephone 512/482–5436).

SUPPLEMENTARY INFORMATION:

Background

The Barton Springs salamander is completely aquatic and currently known only from Barton Springs in Travis County, Texas. The salamander is threatened by contamination of the waters that feed Barton Springs, reduced groundwater supplies, and disturbances to its surface habitat in the pools where it is found (such as use of chemicals and high pressure hoses for pool cleaning).

On February 17, 1994, the Service published a proposed rule in the

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC22

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Public Hearing on Proposed Endangered Status for the Barton Springs Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice on the proposed determination of endangered status for the Barton Springs salamander (*Eurycea sosorum*) and that the comment period on the proposal is reopened. This salamander is found only in Barton Springs, Travis County, Texas. All interested parties are invited to submit comments on this proposal.

DATES: The comment period, which originally closed on April 18, 1994, has been reopened and now closes on July 29, 1994. The Service will accept comments received between April 18, 1994, and July 29, 1994..

ADDRESSES: Both sessions of the public hearing will be held at the Lyndon Baines Johnson Auditorium, Lyndon Baines Johnson Library Complex, 2315 Red River Street, University of Texas campus, Austin, Texas. Written comments and materials should be sent to the Supervisor, Fish and Wildlife Service, Ecological Services, 611 East 6th Street, Room 407, Austin, Texas 78701. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell, Biologist, Fish and Wildlife Service, Ecological Services in Austin at the above address (telephone 512/482–5436).

SUPPLEMENTARY INFORMATION:

Background

The Barton Springs salamander is completely aquatic and currently known only from Barton Springs in Travis County, Texas. The salamander is threatened by contamination of the waters that feed Barton Springs, reduced groundwater supplies, and disturbances to its surface habitat in the pools where it is found (such as use of chemicals and high pressure hoses for pool cleaning).

On February 17, 1994, the Service published a proposed rule in the **Federal Register** (59 FR 7968) to list the Barton Springs salamander as endangered under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Section 4(b)(5)(E) of the Act requires that a public hearing be held if requested within 45 days of the proposal's publication in the **Federal Register**. The first public hearing request received within the allotted time period came from Mr. Jon Beall, President of the Save Barton Creek Association, Austin, Texas. Several other hearing requests were subsequently received.

The comment period on the proposed rule originally closed on April 18, 1994. The Service finds that good cause exists to reopen the comment period. Written comments may now be submitted until July 29, 1994, to the Service office in the **ADDRESSES** section. The Service will also accept comments received between April 18, 1994, and the publication date of this notice.

Author

The primary author of this notice is Lisa O'Donnell (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 1, 1994.

James A. Young,

Assistant Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 94–16533 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 940685–4185; I.D. 040694C]

RIN 0648–AG74

Endangered and Threatened Species; Proposed Endangered Status for North and South Umpqua River Cutthroat Trout in Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is issuing a proposed rule to list the Umpqua River cutthroat trout (*Oncorhynchus clarki*) as endangered under the Endangered Species Act of 1973 (ESA). NMFS has determined that the Umpqua River cutthroat trout is a "species" as interpreted under the ESA. The number of adult cutthroat trout counted at Winchester Dam on the North Umpqua River has declined to extremely low numbers. Habitat degradation and recreational fishing are believed to be the major factors contributing to the decline; they continue to represent a potential threat to the Umpqua River cutthroat trout's existence. Should the proposed listing be made final, a recovery program would be implemented.

DATES: Comments must be received by September 6, 1994. Requests for a public hearing must be received by August 8, 1994.

ADDRESSES: Comments on this proposed rule should be sent to the Environmental and Technical Services Division, NMFS, Northwest Region, 911 NE. 11th Avenue, Suite 620, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Environmental and Technical Services Division, NMFS, Portland, OR (503/230–5430) or Marta Nammack, Protected Species Management Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1993, the Secretary of Commerce received a petition from the Oregon Natural Resources Council, Umpqua Valley Audubon Society, and the Wilderness Society to list North and South Umpqua River sea-run cutthroat trout (*Oncorhynchus clarki clarki*) as threatened or endangered and to designate critical habitat under the ESA. On July 19, 1993, NMFS published (58 FR 38554) its intent to conduct a status review of North and South Umpqua River sea-run cutthroat trout. To ensure a comprehensive review, NMFS solicited information and data regarding the present and historic status of North and South Umpqua River sea-run cutthroat trout and whether this stock qualifies as a "species" under the ESA. NMFS also requested information on areas that may qualify as critical habitat for North and South Umpqua River sea-run cutthroat trout.

On August 19, 1993, NMFS received a petition from the Oregon Natural Resources Council and the Steamboaters for an emergency listing of North and South Umpqua River sea-run cutthroat trout. On December 17, 1993, NMFS published a notice of finding (58 FR 65961) that an emergency listing was not warranted at that time.

Status Review for Umpqua River Sea-run Cutthroat Trout

The NMFS Northwest Region Biological Review Team has prepared a "Status Review for Umpqua River Sea-run Cutthroat Trout" (Johnson et al. 1994), providing detailed information, discussion and references. This status review is available upon request (see **ADDRESSES**), and is summarized below.

Biological Background

The Umpqua River watershed covers approximately 4,560 square miles (11,810 km^2) in southwestern Oregon, and enters the Pacific Ocean 60 miles (97 km) north of Cape Blanco. The river is approximately 210 miles (338 km) long and, above river mile 112, consists of two principal forks: The North Umpqua and the South Umpqua rivers.

In general, cutthroat trout are considered to be either migratory and anadromous, or non-migratory and resident. In some large river systems, however, cutthroat trout may make extensive in-river migrations but never enter the ocean. There is some evidence that this "potamodromous" life history form occurs in the Umpqua River. Potamodromous forms migrate to mainstem rivers or lakes, but otherwise their life history characteristics are similar to the anadromous form. Resident forms of cutthroat trout inhabit headwater areas throughout their lives, and seldom live beyond the age of 4 or 5 years.

Throughout their range, anadromous cutthroat trout usually spawn in small tributary streams. In Oregon, anadromous cutthroat trout re-enter fresh water between July and March; few, if any, overwinter in salt water. Spawning generally occurs during late winter and spring, but timing varies by geographic location. Anadromous adults may survive spawning and reproduce in one or more subsequent years.

Anadromous cutthroat trout first migrate to the ocean as smolts between the ages of 2 and 4 years. In Oregon, the downstream migration of smolts occurs between March and June. Because they spend a variable amount of time in the ocean, the growth rate of these fish varies.

Adult cutthroat trout (presumed to be anadromous) passing Winchester Dam (river mile 118 on the North Umpqua River) have been monitored since 1946. During this monitoring period, a maximum annual count of 2,364 (1966–67) and a minimum annual count of zero (1992–93) adult cutthroat trout have been recorded. The numbers of anadromous cutthroat trout returning to the South Umpqua River is unknown.

Consideration as a "Species" Under the ESA

To qualify for listing as a threatened or endangered species, Umpqua River sea-run cutthroat trout must be a "species" under the ESA. The ESA defines a "species" to include any "distinct population segment of any species of vertebrate . . . which interbreeds when mature." NMFS published a policy document (56 FR 58612, November 20, 1991) describing how the agency will apply the ESA definition of "species" to anadromous salmonid species, including sea-run cutthroat trout and steelhead. This policy provides that a salmonid population will be considered distinct, and hence a species under the ESA, if it represents an evolutionarily significant unit (ESU) of the biological species. The population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion would be met if the population contributed substantially to the ecological/genetic diversity of the species as a whole. Further guidance on the application of this policy is contained in "Pacific salmon (*Oncorhynchus* spp.) and the Definition of Species under the Endangered Species Act," which is available upon request (see **ADDRESSES**).

For the first criterion, NMFS considered available information regarding geographic and physical factors that may isolate Umpqua River sea-run cutthroat trout from other conspecific populations of cutthroat trout. The scarcity of available information about the different life history forms of cutthroat trout in the Umpqua River makes it difficult to assess accurately the reproductive isolation of the sea-run cutthroat trout within the Umpqua River basin. In general, the potamodromous life history form provides a possible link between anadromous and resident fish and may retard divergence of these two life history forms. Sea-run cutthroat trout generally do not overwinter at sea and may, after spawning, spend an entire year in fresh water prior to returning to the ocean. Incidence of repeat spawning in cutthroat trout is higher than in steelhead, and this distinctive life history trait may reflect a greater affinity with resident life history forms. These traits suggest that opportunities for reproductive isolation between life history forms are not as great as with other *Oncorhynchus* species (e.g., *O. mykiss* and *O. nerka*). According to NMFS policy on application of the ESA species definition, anadromous and nonanadromous life history forms can be considered separately under the ESA if they are reproductively isolated, but they should be considered together if they are not. Because there is no clear basis for considering sea-run cutthroat trout in the Umpqua River as a separate entity from resident and potamodromous fish, NMFS has determined that, at least until more information is available, all life history forms of *O. clarki* in the Umpqua River should be considered part of the same ESU.

Unlike most other coastal rivers, the Umpqua River drainage originates in the Cascade Mountains and passes through the Coast Range. Anadromous cutthroat trout in the Umpqua River are believed to spawn farther from the ocean (125 miles (201 km or more) than most other sea-run cutthroat trout populations. The homing ability of sea-run cutthroat trout is generally considered to be highly precise and there is reason to suspect that populations in different drainages could become reproductively isolated. In addition, warm water temperatures in the lower mainstem of the Umpqua River may also act as an isolating mechanism. Although a scarcity of direct evidence (e.g., genetic information) highlights the scientific uncertainty regarding the degree of reproductive isolation of Umpqua River cutthroat trout, available circumstantial evidence suggests that all life history forms (i.e., anadromous, resident, and potamodromous) of cutthroat trout within the Umpqua River basin are substantially reproductively isolated from populations in adjacent basins.

Regarding the second ESU criterion, evolutionary significance, the lengthy migration of the anadromous form of Umpqua River cutthroat trout, possible adaptations for dealing with warm water temperatures, and distinctive hydrographic features of the Umpqua River drainage all suggest that there is an ESU at the Umpqua River level. The effects of the extensive releases of Alsea River Hatchery fish between 1961 and 1976 were also considered. During the period when the Umpqua River was stocked with Alsea River hatchery fish, counts of adult cutthroat trout (presumably sea-run fish) at Winchester Dam increased dramatically. This trend was not sustained after stocking was discontinued, and counts have declined

to precariously low levels. This may be evidence of the inability of Alsea River cutthroat trout to sustain a population in the Umpqua River. Further, during the stocking program, the sea-run cutthroat trout passing over Winchester Dam exhibited a later run timing than the indigenous population. After stocking was discontinued, this later run timing shifted back toward the original run timing. Although there are no data that directly address the effects of Alsea River fish on Umpqua River native fish (e.g., genetic information), available evidence suggests that the current population of cutthroat trout represented by the dam counts is a remnant of the indigenous cutthroat trout and may be genetically distinct from Alsea River hatchery fish.

Status of Umpqua River Cutthroat Trout

The precarious status of the remaining sea-run cutthroat trout in the Umpqua River is not in question. However, the existence of potamodromous fish is still largely speculative. Resident cutthroat trout numbers are not known, but there are a few lakes within the Umpqua River Basin believed to contain cutthroat trout. Although there is no direct information (e.g., abundance estimates) on the current status of the species, it is likely that there have been significant reductions in the numbers of resident and potamodromous fish due to widespread habitat degradation in the Umpqua River Basin.

A key factor influencing NMFS' determination of the status of the Umpqua River cutthroat trout concerns the evolutionary significance of the anadromous life history form to *O. clarki* as a whole. On the issue of anadromy/nonanadromy, Waples (1991) states:

> If substantial gene flow occurs or has recently occurred between the two forms, they represent polymorphisms within a single population and should be considered as a unit for purposes of the Act. In determining whether such a population unit is an ESU, the anadromous and non-anadromous traits should be considered in the same manner as other population characteristics. . . . The important questions are whether the traits have a genetic basis and whether they help to make the population unit "distinct" from other populations. For example, an anadromous/nonanadromous unit might be considered an ESU if other ecologically comparable populations of the species harbored only the nonanadromous form. In this case, if the population unit is considered to be an ESU solely or primarily on the basis of the anadromous trait, then the potential loss of anadromy should be a legitimate ESA concern. A key question would be whether the nonanadromous form was likely to give

to precariously low levels. This may be evidence of the inability of Alsea River cutthroat trout to sustain a population in the Umpqua River. Further, during the stocking program, the sea-run cutthroat trout passing over Winchester Dam exhibited a later run timing than the indigenous population. After stocking was discontinued, this later run timing shifted back toward the original run timing. Although there are no data that directly address the effects of Alsea River fish on Umpqua River native fish (e.g., genetic information), available evidence suggests that the current population of cutthroat trout represented by the dam counts is a remnant of the indigenous cutthroat trout and may be genetically distinct from Alsea River hatchery fish.

Status of Umpqua River Cutthroat Trout

The precarious status of the remaining sea-run cutthroat trout in the Umpqua River is not in question. However, the existence of potamodromous fish is still largely speculative. Resident cutthroat trout numbers are not known, but there are a few lakes within the Umpqua River Basin believed to contain cutthroat trout. Although there is no direct information (e.g., abundance estimates) on the current status of the species, it is likely that there have been significant reductions in the numbers of resident and potamodromous fish due to widespread habitat degradation in the Umpqua River Basin.

A key factor influencing NMFS' determination of the status of the Umpqua River cutthroat trout concerns the evolutionary significance of the anadromous life history form to *O. clarki* as a whole. On the issue of anadromy/nonanadromy, Waples (1991) states:

> If substantial gene flow occurs or has recently occurred between the two forms, they represent polymorphisms within a single population and should be considered as a unit for purposes of the Act. In determining whether such a population unit is an ESU, the anadromous and non-anadromous traits should be considered in the same manner as other population characteristics. . . . The important questions are whether the traits have a genetic basis and whether they help to make the population unit "distinct" from other populations. For example, an anadromous/nonanadromous unit might be considered an ESU if other ecologically comparable populations of the species harbored only the nonanadromous form. In this case, if the population unit is considered to be an ESU solely or primarily on the basis of the anadromous trait, then the potential loss of anadromy should be a legitimate ESA concern. A key question would be whether the nonanadromous form was likely to give rise to the anadromous form after the latter had gone locally extinct. Therefore, an anadromous/nonanadromous population unit could be listed based on a threat to one of the life-history traits, if the trait were genetically based and loss of the trait would compromise the "distinctness" of the population. (p. 16)

Thus, even if the resident form were determined to be healthy, the risk of losing the anadromous form would still be an ESA concern if the trait has a genetic basis and it contributes substantially to the species' ecological and genetic diversity. Although there are no data that directly address the genetic relationship between the different life history forms of Umpqua River cutthroat trout, circumstantial evidence regarding population abundance and run-timing suggests that a component of the native run persists, and the possibility of losing this life history form must be considered in determining whether to list the entire population.

NMFS concludes that the best available information indicates that this stock meets both of the criteria necessary to be considered an ESU. Therefore, NMFS determines that the Umpqua River cutthroat trout is a "species" under the ESA.

Summary of Factors Affecting the Species

Section 2(a) of the ESA states that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation. Section 4(a)(1) of the ESA and the NMFS listing regulations (50 CFR Part 424) set forth procedures for listing species. The Secretary of Commerce must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat degradation and impacts associated with logging and related land management activities in particular have likely contributed to the Umpqua River cutthroat trout population's decline. Removal of forest canopy can cause an increase in both the maximum and the diurnal fluctuation of water temperatures, leading to disease outbreaks, altered timing of migration, and accelerated maturation. The removal of streamside vegetation can deplete the bank area of potential new woody debris that provides cover for cutthroat trout. Siltation is another result of some logging practices; it is known to hinder fry emergence from the gravel and may limit production of benthic invertebrates. Dissolved oxygen content of both surface and intragravel water can decrease as a result of logging operations. Logging can also cause changes in stream flow regimes, resulting in potentially adverse water velocity and depth characteristics.

B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Cutthroat trout are not harvested commercially, and scientific and educational programs have probably had little or no impact on Umpqua River cutthroat trout populations. However, the cutthroat trout is a popular gamefish throughout the Pacific Northwest and available information indicates that recreational fishing has likely contributed to the general decline in Umpqua River cutthroat trout populations. Also, poaching may pose a major threat to depressed populations of salmonids in the Umpqua River.

C. Disease or Predation

Disease is not believed to be a factor contributing to the decline of cutthroat trout populations in the Umpqua River. Several non-native fish species introduced to the Umpqua River are known to prey on or compete with salmonids; however, there is no specific information regarding predation impacts by these or native fishes on Umpqua River cutthroat trout.

D. Inadequacy of Existing Regulatory Mechanisms

Because recreational fishing is believed to have been a factor contributing to the general decline in cutthroat trout populations in the Umpqua River basin, Oregon sportfishing regulations now require anglers to release naturally produced cutthroat trout (i.e. fish without clipped adipose fins) that are greater than 12 inches in length. However, anglers are still allowed to catch and keep up to five fish per day between 8–12 inches in length in the Umpqua River and estuary. Therefore, existing harvest regulations may not be adequate to protect a substantial portion of the Umpqua

River's juvenile and adult cutthroat trout population from overutilization by recreational anglers.

The significant decline in numbers of cutthroat trout passing Winchester Dam suggests that management plans and practices followed by the U.S. Forest Service (FS), Bureau of Land Management (BLM), and Oregon Department of Fish and Wildlife have not provided adequate protection for this species. Although the State of Oregon listed the Umpqua River sea-run cutthroat trout as a sensitive species in 1990, the designation has not reversed the decline of this species. Furthermore, the designation has not protected the species from adverse effects resulting from Federal actions.

A Federal interagency cooperative program, the Record of Decision for Amendments to FS and BLM Planning Documents Within the Range of the Spotted Owl (the Forest Plan, April 1994), has recently been implemented to provide a coordinated management direction for the lands administered by the FS and the BLM. Region-wide management direction will amend existing management plans, including Forest Plans, Regional Guides, Timber Sales Plans, and Resource Management Plans for lands within the range of the northern spotted owl (including the Umpqua River Basin). As part of the Forest Plan, implementation of the Aquatic Conservation Strategy (ACS) should help reverse the trend of aquatic ecosystem degradation and contribute toward recovery of fish habitat. Coordination between the Federal land management agencies and NMFS, the Environmental Protection Agency, and the U.S. Fish and Wildlife Service should ensure that the ACS objectives are achieved. Although the restoration measures should benefit the species in the future, they have just been implemented, and the effectiveness of these measures is not known and cannot be assessed with certainty until future runs return.

NMFS is aware of timber sales that were awarded prior to implementation of the Forest Plan. Although the Forest Plan does not address previous actions, the FS and BLM have screened previously sold or awarded timber sales in the Umpqua River Basin to avoid potential direct, indirect, or cumulative adverse impacts to salmonids. During the screening process, several concerns regarding individual sales were identified. Although the direct adverse effects of these individual timber sales were addressed and mitigated, there may be remaining cumulative effects concerns (i.e., amount of canopy removal).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The Alsea River Hatchery fish stocking program (1960–75) may have been a factor in the decline of Umpqua River cutthroat trout, although there is considerable uncertainty regarding the ability of these hatchery fish to sustain a population in the river. The stocked fish may have affected the native fish through behavioral and genetic interactions, competition, predation, and the spread of disease. However, circumstantial evidence regarding population abundance and run timing suggests that a component of the native run persists.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Regarding the Umpqua River cutthroat trout ESU determination and associated threatened or endangered classification, the NMFS status review identified three issues that cannot currently be resolved strictly on the basis of available scientific evidence: (1) The geographic extent of the ESU; (2) the effects of the Alsea River hatchery fish; and, (3) the status (threatened or endangered) of the ESU. Although there is uncertainty regarding assumptions about the above issues, the precarious status of the remaining sea-run fish suggests that the anadromous component of the Umpqua River cutthroat trout population (which may have a genetic basis) is in danger of extinction. Any evaluation of a proposal to list Umpqua River cutthroat trout must include full consideration of the potential consequences of the loss of the anadromous life history form.

Based on its assessment of the best scientific and commercial information available, NMFS determines that the Umpqua River cutthroat trout (i.e., all life forms) is a "species" under the ESA. The collective evidence suggests that an important component of the ESU is in danger of extinction throughout a significant portion of its range. Therefore, NMFS proposes to list all life forms of Umpqua River cutthroat trout as endangered. With the proposal to list Umpqua River cutthroat trout, NMFS is assuming that: (1) All life history forms of cutthroat trout in the Umpqua Basin constitute one ESU, (2) the ESU represents the evolutionary legacy of the historical cutthroat trout population, and (3) either all life history forms of cutthroat trout in the Umpqua Basin have experienced extensive declines in abundance such that they are presently threatened with extinction, or the depressed sea-run component of the population is a substantial and important component of the ESU, and its loss would compromise the distinctness and viability of the inclusive ESU. NMFS will reconsider this proposed listing determination if it obtains relevant information regarding the extent of the ESU that contains Umpqua River cutthroat trout, the effects of previous stocking of Alsea River hatchery fish on current populations, or the relationship between anadromous, potamodromous, and resident life-history forms in the Umpqua River.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. While NMFS has completed its analysis of the biological status of Umpqua River cutthroat trout, it has not completed the analysis necessary for designating critical habitat. NMFS has determined that a critical habitat designation will require a more detailed assessment of the relationship between the various cutthroat trout life forms. Therefore, to avoid delaying this listing proposal, NMFS will propose critical habitat in a separate rulemaking.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and as effective as possible, NMFS is soliciting comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties (see **DATES** and **ADDRESSES**). The final decision on this proposal will take into consideration the comments and any additional information received by NMFS, and may differ from this proposed rule.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of NEPA (48 FR 4413, February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of the species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process.

Similarly, this proposed rule is exempt from review under E.O. 12866.

decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of NEPA (48 FR 4413, February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of the species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process.

Similarly, this proposed rule is exempt from review under E.O. 12866.

References

Johnson et al. 1994. Status review for Umpqua River sea-run cutthroat trout. U.S. Dep. Commer., NOAA Tech. Memo. NMFS F/NWC–xxx, 112 p.

Waples, R.S. 1991. Pacific salmon, *Oncorhynchus* spp., and the definition of "species" under the Endangered Species Act. Mar. Fish. Rev. 53(3):11–22.

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 1, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 222 is proposed to be amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation of part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543

§ 222.23 [Amended]

2. In § 222.23, paragraph (a), the second sentence, is amended by adding the phrase "Umpqua River cutthroat trout (*Oncorhynchus clarki*);" immediately after the phrase "Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*);".

[FR Doc. 94–16577 Filed 7–5–94; 2:47 pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 59, No. 130

Friday, July 8, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 1, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Farmers Home Administration
7 CFR 1924–B, Management Advice to Individual Borrowers and Applicants
FmHA 431–1, 2, 4; 432–1, 10; 1924–22, 23, 24, and 27
Recordkeeping; On occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 234,935 responses; 2,148,799 hours
Jack Holston (202) 720–9736
• Rural Electrification Administration
Electric and Telephone Standards/ Specifications Acceptance
Telephone Field Trials, and Telephone Contract Forms
Numerous forms
Businesses or other for-profit; Small businesses or organizations; 7,019 responses; 8,837 hours
George J. Bagnell (202) 720–0698
• Forest Service
Special-Use Application, Permitting, and Administration Program—Addendum
FS–2700–3b
Quarterly; Annually
Individuals or households; Non-profit institutions; Small businesses or organizations; 56,738 responses; 68,488 hours
Mark Scheibel (202) 205–1371
• Rural Electrification Administration
REA Specifications for Quality Control and Inspection of Timber Products
Recordkeeping; Annually
Businesses or other for-profit; Non-profit institutions; 21,000 responses; 39,166 hours
Bob Lash (202) 720–9098

Extension

• Agricultural Marketing Service
Papayas Grown in Hawaii, Marketing Order No. 928
FV–86; FV–86–1; FV–87; and FV–88
Recordkeeping; On occasion; Annually; Every six years
Farms; Businesses or other for-profit; Small businesses or organizations; 1,217 responses; 1,039 hours
Charles L. Bush (202) 690–3670
• Agricultural Marketing Service
Tokay Grapes Grown in San Joaquin County, California; Marketing Order No. 926
FV–106; FV–107; FV–108
Recordkeeping; On occasion
Farms; Businesses or other for-profit; Small businesses or organizations; 311 responses; 13 hours
Mark J. Kreaggor (202) 720–2431
• Rural Electrification Administration
Financial Requirement and Expenditure Statement—Electric
REA Form 595
On occasion
Small businesses or organizations; 2,700 responses; 29,700 hours
Daphne L. Brown (202) 205–3660
• Rural Electrification Administration
Accounting Requirements for Electric Borrowers
Recordkeeping
Small businesses or organizations; 950 recordkeepers; 247,000 hours
Roberta Detwiler (202) 720–5227
• Rural Electrification Administration
Manual for Preservation of Borrowers' Records (Electric)
Recordkeeping
Small businesses or organizations; 950 recordkeepers; 19,000 hours
Roberta Detwiler (202) 720–5227

New Collection

• Rural Development Administration
7 CFR 4284–F, Rural Technology Development Grants
Recordkeeping; On occasion; Monthly; Quarterly
Individuals or households; State or local governments; Non-profit institutions; Small businesses or organizations; 2,935 responses; 6,105 hours
Jack Holston (202) 720–9736

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 94–16511 Filed 7–7–94; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Meat Import Limitations; Third Quarterly Estimate

The Meat Import Act of 1979, as amended (19 U.S.C. 2253 note) (the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep (except lamb), and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), other than products of Canada and Mexico, which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada and Mexico, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed

110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1994 by section 2(c) as adjusted under section 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on January 6, 1994 (59 FR 727), the estimated aggregate quantity of meat articles other than products of Canada and Mexico prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1994 is 1,108.1 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate of the aggregate quantity of meat articles other than products of Canada and Mexico which would, in the absence of limitations under the Act, be imported during calendar year 1994 is 1,218.8 million pounds.

Done at Washington, DC, this 30th day of June, 1994.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94–16512 Filed 7–7–94; 8:45 am]

BILLING CODE 3410–10–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee will be convened at 1:00 p.m. and adjourn at 4:00 p.m. on Thursday, August 18, 1994, in the Executive Dining Room (Room E–226 of the Low Rise Building) of the John F. Kennedy Federal Building, Cambridge and New Sudbury Streets, Boston, MA 02203. The purpose of the meeting is to: (1) induct 11 new members; (2) discuss civil rights issues around the State; and (3) select a 1995 project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dorothy S. Jones, 617–623–5610, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1994 by section 2(c) as adjusted under section 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on January 6, 1994 (59 FR 727), the estimated aggregate quantity of meat articles other than products of Canada and Mexico prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1994 is 1,108.1 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate of the aggregate quantity of meat articles other than products of Canada and Mexico which would, in the absence of limitations under the Act, be imported during calendar year 1994 is 1,218.8 million pounds.

Done at Washington, DC, this 30th day of June, 1994.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94–16512 Filed 7–7–94; 8:45 am]

BILLING CODE 3410–10–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee will be convened at 1:00 p.m. and adjourn at 4:00 p.m. on Thursday, August 18, 1994, in the Executive Dining Room (Room E–226 of the Low Rise Building) of the John F. Kennedy Federal Building, Cambridge and New Sudbury Streets, Boston, MA 02203. The purpose of the meeting is to: (1) induct 11 new members; (2) discuss civil rights issues around the State; and (3) select a 1995 project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dorothy S. Jones, 617–623–5610, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 1, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–16586 Filed 7–7–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–94]

Foreign-Trade Zone 99—Wilmington, DE; Application for Subzone Zeneca Inc., Pharmaceuticals Plant Newark, DE

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Delaware Development Office, on behalf of the State of Delaware, grantee of FTZ 99, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Zeneca Inc. (Zeneca), in Newark, Delaware, adjacent to the Wilmington Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 22, 1994.

Zeneca Inc. is a wholly-owned subsidiary of Zeneca Group PLC (U.K.), a bioscience company comprising three global businesses—pharmaceuticals, agrochemicals and seeds, and specialty products. Zeneca Group was created as part of the 1993 worldwide reorganization of Imperial Chemical Industries PLC (U.K.) along industry lines.

Zeneca's plant (2 bldgs. on 156 acres/520,700 sq. ft.) is located at 587 Old Baltimore Pike, Newark, Delaware, some 10 miles west of Wilmington. The facility (530 employees) is used to produce and/or distribute a wide range of pharmaceuticals, including CEFOTAN® (antibiotic), HIBICLENS® (antiseptic), DIPRIVAN® (anesthetic), TENORETIC® and TENORMIN® (hypertension treatment); and NOLVADEX® and ZOLADEX® (anti-cancer). The application also requests approval for the production of MERREM® (antibiotic), for which a plant expansion is currently underway. In addition, the company is requesting to use zone procedures for drugs currently in development that may also be produced at the Newark facility; including ARIMIDEX®, CASODEX® and TOMUDEX® (anti- cancer); PALUDRINE® (anti-malarial); and SEROQUEL® (schizophrenia treatment). The active ingredients for a number of these products are or would be sourced abroad. For those products currently produced in the U.S., foreign-sourced materials account for some 30 percent of finished product value.

Zone procedures would exempt Zeneca from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (3.7%-6.9%). The duty rates on foreign-sourced items range from 3.7% to 8.7%. At the outset, zone savings would primarily involve choosing the finished product duty rate for NOLVADEX® (6.3%) rather than the rate for the foreign active ingredient, tamoxifen (6.6%). The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 6, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 21, 1994.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Suite 201, 660 American Avenue, King of Prussia, PA 19406,

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 28, 1994.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 94–16603 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 24–94]

Foreign-Trade Zone 9B—Honolulu, HI; Kerr Pacific Corp., HFM Division (Bakery Mixes and Animal Feed); Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of FTZ

Subzone 9B, requesting authority on behalf of Kerr Pacific Corp., HFM Division (HFM) (formerly known as Hawaiian Flour Mills, Inc.) to expand the scope of subzone manufacturing authority and to expand the boundary of the subzone. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 8, 1994.

Subzone 9B was approved by the FTZ Board in 1984, with authorized activity involving the production of bakery mixes (flour, sugar, milk blends) for export (Board Order 274, 49 FR 42969, 10/17/84). The subzone consists of one site (72,000 sq. ft., 14 employees), adjacent to Pier 23 at Honolulu Harbor.

HFM is now seeking authority to expand the scope of activities conducted under zone procedures to include the processing of animal feeds. Some of the ingredients would be sourced abroad, including corn, soybean meal, alfalfa meal and barley. The finished animal feed would be sold to the livestock industry in Hawaii and abroad.

Zone procedures would exempt HFM from Customs duty payments on foreign items that are used in production for export. On sales to the Hawaiian market, the company would be able to choose the duty rate that applies to the blended animal feeds (duty free) instead of the rate that applies to foreign ingredients (duty free to 3%). The application indicates that the savings from zone procedures would help improve the company's international competitiveness.

To accommodate the proposed activity, the applicant is also requesting authority to expand the boundary of the subzone to include HFM's grain silos and a parcel for a proposed animal feed mill (approx. 20,000 sq. ft.), adjacent to the existing subzone.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 6, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 21, 1994.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office 300 Ala Moana, Suite 4106, Honolulu, Hawaii 96813

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue NW., Washington, DC 20230.

Dated: June 20, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–16606 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket A(32b1)–3–93]

Foreign-Trade Zone 54—Clinton County, New York Withdrawal of Request for Export Manufacturing Authority (Bicycles)

Notice is hereby given of the withdrawal of the request submitted by the Clinton County Area Economic Development Corporation, grantee of FTZ 54, for authority for the manufacture of bicycles for export within FTZ 54. The application was filed on June 24, 1993 (58 FR 36390, 7/7/93).

The withdrawal was requested by the applicant because of a policy issue that arose regarding the proposed operation, and the case has been closed without prejudice.

Dated: June 24, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–16604 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 697]

Grant of Authority for Subzone Status; BMW Manufacturing Corporation (Automobiles), Spartanburg County, SC, Greenville-Spartanburg Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, for authorization of special-purpose subzone status at the automobile manufacturing plant of BMW Manufacturing Corporation in Spartanburg County, South Carolina, was filed by the Board on July 19, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 32–93, 58 FR 40623, 7–29–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 38A) at the BMW Manufacturing Corporation in Spartanburg County, South Carolina, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 24th day of June 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–16605 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–806]

Electrolytic Manganese Dioxide From Japan: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Erik Warga or Dorothy Tomaszewski, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–0922 and (202) 482–0631, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1992 (57 FR 11935), the Department of Commerce (the Department) published in the **Federal Register** notices of "Opportunity to Request Administrative Review." In response to the request made by Petitioners, Chemetals Inc. and Kerr-McGee Chemical Corporation, the Department initiated the administrative review on May 22, 1992 (57 FR 21769) of the antidumping duty order on Electrolytic Manganese Dioxide (EMD) from Japan on April 17, 1989 (54 FR 15244). The review covers one manufacturer/exporter of the subject merchandise to the United States, Tosoh Corporation (TOSOH) during the period, April 1, 1991, through March 31, 1992. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On August 26, 1992, the Department issued a questionnaire to TOSOH for the 1991–1992 administrative review. The questionnaire had three sections: section A, requesting general information; section B, requesting information on U.S. sales; and section C, requesting information on home market sales. TOSOH submitted its questionnaire response on November 13, 1992. Petitioners submitted comments on TOSOH's questionnaire response on December 2, 1992.

On December 18, 1992, petitioners alleged to the Department that TOSOH was selling the subject merchandise to the United States at prices below cost of production. On March 29, 1994, pursuant to section 773(b) of the Act, the Department issued section D of the questionnaire, which requested information on TOSOH's cost of production. On April 29, 1994, TOSOH informed the Department that it would not respond to section D of the questionnaire. TOSOH explained that its small role in the U.S. market does not justify the high cost of completing the questionnaire.

Since TOSOH did not respond to section D of the Department's questionnaire, we consider it to be an uncooperative respondent. Therefore, pursuant to section 776(c) of the Act, the Department has preliminarily determined to assess antidumping duties of 77.43 percent *ad valorem* based on best information available (BIA) for this period of review.

Interested parties are invited to comment on these preliminary results.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1992 (57 FR 11935), the Department of Commerce (the Department) published in the **Federal Register** notices of "Opportunity to Request Administrative Review." In response to the request made by Petitioners, Chemetals Inc. and Kerr-McGee Chemical Corporation, the Department initiated the administrative review on May 22, 1992 (57 FR 21769) of the antidumping duty order on Electrolytic Manganese Dioxide (EMD) from Japan on April 17, 1989 (54 FR 15244). The review covers one manufacturer/exporter of the subject merchandise to the United States, Tosoh Corporation (TOSOH) during the period, April 1, 1991, through March 31, 1992. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On August 26, 1992, the Department issued a questionnaire to TOSOH for the 1991–1992 administrative review. The questionnaire had three sections: section A, requesting general information; section B, requesting information on U.S. sales; and section C, requesting information on home market sales. TOSOH submitted its questionnaire response on November 13, 1992. Petitioners submitted comments on TOSOH's questionnaire response on December 2, 1992.

On December 18, 1992, petitioners alleged to the Department that TOSOH was selling the subject merchandise to the United States at prices below cost of production. On March 29, 1994, pursuant to section 773(b) of the Act, the Department issued section D of the questionnaire, which requested information on TOSOH's cost of production. On April 29, 1994, TOSOH informed the Department that it would not respond to section D of the questionnaire. TOSOH explained that its small role in the U.S. market does not justify the high cost of completing the questionnaire.

Since TOSOH did not respond to section D of the Department's questionnaire, we consider it to be an uncooperative respondent. Therefore, pursuant to section 776(c) of the Act, the Department has preliminarily determined to assess antidumping duties of 77.43 percent *ad valorem* based on best information available (BIA) for this period of review.

Interested parties are invited to comment on these preliminary results.

Scope of Review

Imports covered by the review are shipments of electrolytic manganese dioxide. EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. During the review period, such merchandise was classifiable under subheading 2820.10.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. The written description remains dispositive.

On January 6, 1992, the Department published a final scope ruling, *Electrolytic Manganese Dioxide from Japan; Final Scope Ruling* (57 FR 395; January 6, 1992), in which it affirmed that high-grade chemical manganese dioxide (CMD–U) is a "later-developed product" and is included within the scope of the order on EMD from Japan. For a detailed discussion of that ruling, *see Electrolytic Manganese Dioxide from Japan; Preliminary Scope Ruling* (56 FR 56977; November 7, 1991).

Preliminary Results of the Review

This review covers EMD entries into the United States by one manufacturer/exporter, TOSOH. Given that TOSOH declined to respond to section D of the Department's questionnaire, we consider it to be an uncooperative respondent, and have assigned to it a margin based on BIA under section 776(c) of the Act (*see Final Determination of Sales at Less than Fair Value: Steel Wire Rod from Brazil* (59 FR 5984, February 9, 1994); *Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, etc. from Brazil* (58 FR 37091, July 9, 1993)). Our practice, for uncooperative respondents, is to apply as BIA the higher of (1) the highest of the rates found for any firm in the less-than-fair-value (LTFV) investigation or prior administrative reviews, or (2) the highest rate found in this review for any firm (*see Final Results of Administrative Review: Antifriction Bearings (other than Tapered Roller Bearings) from France* (58 FR 39729, 39739, July 26, 1993)). Therefore, we used, as BIA, the highest of the rates found for any firm in the *Final Determination of Sales at Less than Fair Value: EMD from Japan* (54 FR 8778, March 2, 1989), which is 77.43 percent.

As a result of this review, we preliminarily determine that the following margin exists for the review period:

Manufacturer/exporter	Time period	Margin (percent)
TOSOH	04/1/92–03/31/93	77.43

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries for the period of review. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act. A cash deposit of estimated antidumping duties based on margins for the period of April 1, 1991, through March 31, 1992, shall be required on all shipments of subject merchandise from Japan, as follows:

(1) the cash deposit rate for the reviewed company will be that established in the final results of this administrative review;

(2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all other" rate established in the LTFV investigation (54 FR 8778) of 73.30 percent, as discussed below.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council* v. *United States*, 822 F. Supp. 782 (1993), and *Federal Mogul Corporation* v. *United States*, 822 F. Supp. 782 (1993), decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders.

In proceedings governed by antidumping findings (*i.e.*, proceedings originally investigated by the Treasury Department), unless we are able to

ascertain the "all others" rate from the Treasury LTVF investigation, the Department adopts the "new shipper" rate established in the first final results of administrative review published by the Department of Commerce (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding was investigated by the Department of Commerce, it is governed by an antidumping duty order. Therefore, the "all others" rate for the purposes of this review will be 73.30 percent, the "all others" rate established in the LTFV investigation (54 FR 8778).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least seven copies must be submitted to the Assistant Secretary for Import Administration no later than July 20, 1994, and rebuttal briefs, no later than July 27, 1994. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal brief. We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 1, 1994, at 1:30 p.m. at the U.S. Department of Commerce, Room 3606, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 29, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16607 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration/ Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from three respondents, three U.S. producers, and one interested party, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from the Republic of Korea. The review covers four manufacturers/ exporters of the subject merchandise to the United States generally for the period November 30, 1990 through May 31, 1992.

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Roy F. Unger, Jr., or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0651/ 3814.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1991, the Department of Commerce published in the **Federal Register** (56 FR 25660) the antidumping duty order on polyethylene terephthalate (PET) film from the Republic of Korea. On June 8, 1992, the Department published (57 FR 24244) a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period November 30, 1990, through May 31, 1992 (56 FR 25660). We received timely requests for review from Cheil Synthetics, Inc. (Cheil), SKC Limited (SKC), Kolon Industries, Inc. (Kolon), and STC Corporation (STC). The petitioners, E.I. DuPont Nemours & Co., Inc., Hoechst Celanese Corporation and ICI Americas, Inc., requested an administrative review for the same four Korean manufacturers/exporters of PET film.

For most of the respondents the review period covers November 30, 1990 through May 31, 1992, on July 22, 1992 (57 FR 32521). Because Cheil was determined to have a *de minimis* margin in the *Preliminary Determination of Sales at Less-Than-Fair-Value* (LTFV) (56 FR 16305), Cheil's period of review (POR) begins on April 22, 1991, when suspension of its merchandise was first ordered, and runs through May 31, 1992. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by the review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage. The POR was November 30, 1990, through May 31, 1992, for SKC, Kolon, and STC. Cheil's POR was April 22, 1991, through May 31, 1992.

United States Price

In calculating USP, the Department treated respondents' sales as purchase price (PP), as defined in section 772 of the Act, when the merchandise was sold to unrelated U.S. purchasers prior to importation. The Department treated respondents' sales as exporter's sale price (ESP), as defined in section 772 of the Act, when the merchandise was sold to unrelated U.S. purchasers after importation.

PP was based on ex-factory, f.o.b. Korean port, f.o.b. customer's specific delivery point, c.i.f. U.S. port, or packed and delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage and handling, terminal handling charges, Korean and U.S. inland freight, ocean freight, marine insurance, containerization expenses and taxes, sample movement charges, return movement charges, discounts, wharfage expense, consolidated freight charges, and U.S. duties in accordance with section 772(d)(2) of the Act.

ESP was based on ex-warehouse, f.o.b. customer's specific delivery point, or packed and delivered prices to unrelated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage and handling, Korean and U.S. inland freight, ocean freight, marine insurance, consolidated freight charges, miscellaneous handling charges, containerization expenses and taxes, wharfage expenses, warranty expenses, rebates, discounts, U.S. duties, U.S. commissions, U.S. credit expense and indirect selling expenses (which include inventory carrying costs and pre-sale warehousing expenses), in accordance with section 772(d)(2) of the Act.

For ESP sales, we deducted indirect selling expenses which included U.S. inventory carrying expenses and U.S. pre-sale warehousing expenses. We allowed an ESP offset to FMV, where appropriate, amounting to the lesser of the weighted-average total of home market indirect selling expenses, or the total U.S. indirect selling expenses in accordance with 19 CFR 353.56(b)(2).

For both PP and ESP, we added duty drawback, where applicable, pursuant to section 772(d)(1)(B) of the Act.

Kolon paid an unrelated insurance company a percentage of sales value on all of its sales to U.S. customers. During verification, we discovered that Kolon reported the incorrect rate for this insurance. We corrected Kolon's

POR was April 22, 1991, through May 31, 1992.

United States Price

In calculating USP, the Department treated respondents' sales as purchase price (PP), as defined in section 772 of the Act, when the merchandise was sold to unrelated U.S. purchasers prior to importation. The Department treated respondents' sales as exporter's sale price (ESP), as defined in section 772 of the Act, when the merchandise was sold to unrelated U.S. purchasers after importation.

PP was based on ex-factory, f.o.b. Korean port, f.o.b. customer's specific delivery point, c.i.f. U.S. port, or packed and delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage and handling, terminal handling charges, Korean and U.S. inland freight, ocean freight, marine insurance, containerization expenses and taxes, sample movement charges, return movement charges, discounts, wharfage expense, consolidated freight charges, and U.S. duties in accordance with section 772(d)(2) of the Act.

ESP was based on ex-warehouse, f.o.b. customer's specific delivery point, or packed and delivered prices to unrelated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage and handling, Korean and U.S. inland freight, ocean freight, marine insurance, consolidated freight charges, miscellaneous handling charges, containerization expenses and taxes, wharfage expenses, warranty expenses, rebates, discounts, U.S. duties, U.S. commissions, U.S. credit expense and indirect selling expenses (which include inventory carrying costs and pre-sale warehousing expenses), in accordance with section 772(d)(2) of the Act.

For ESP sales, we deducted indirect selling expenses which included U.S. inventory carrying expenses and U.S. pre-sale warehousing expenses. We allowed an ESP offset to FMV, where appropriate, amounting to the lesser of the weighted-average total of home market indirect selling expenses, or the total U.S. indirect selling expenses in accordance with 19 CFR 353.56(b)(2).

For both PP and ESP, we added duty drawback, where applicable, pursuant to section 772(d)(1)(B) of the Act.

Kolon paid an unrelated insurance company a percentage of sales value on all of its sales to U.S. customers. During verification, we discovered that Kolon reported the incorrect rate for this insurance. We corrected Kolon's reported U.S. inland insurance expense to reflect the correct rate.

We adjusted USP for taxes in accordance with our practice as outlined in *Siliconmanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204, June 17, 1994.

With respect to subject merchandise to which value was added in the United States by SKC and STC prior to sale to unrelated U.S. customers, we deducted any increased value in accordance with section 772(e)(3) of the Act. The value added consists of the cost associated with the production and sale of the further-processed merchandise, other than the cost associated with the imported PET film, and a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the further-processed merchandise all production and selling costs incurred by SKC and STC in the value-added process. The profit or loss was then allocated proportionally to all components of cost.

No other adjustments were claimed or allowed.

Foreign Market Value

In order to determine whether there were sufficient sales of PET film in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales of PET film to the volume of third country sales of PET film, in accordance with section 773(a)(1) of the Act. All four respondents had viable home markets with respect to sales of PET film made during the POR.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. However, in accordance with the test described in the following paragraph, we determined that the annual weighted-average FMVs did not vary significantly from the monthly weighted-average FMVs. Therefore, in accordance with section 353.44 of the Department's regulations, we calculated FMVs for each model based on annual weighted-average prices.

To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test. *See Antifriction Bearings from Japan, et al.; Final Results of Review*, 58 FR 42289 (1993). First, we compared the monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary more than plus or minus ten percent from the monthly weighted-average prices. We did this test for each model of PET film. Second, we compared the volume of sales of all models of PET film whose POR weighted-average price did not vary more than plus or minus ten percent from the monthly weighted-average price with the total volume of sales of PET film. If the POR weighted-average price of at least 90 percent of sales of PET film did not vary more than plus or minus ten percent from the monthly weighted-average price, we considered the POR weighted-average price to be representative of the transactions under consideration. Third, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 indicates a direct relation between price and time), we concluded that there was no significant relation between price and time.

Based on this analysis, we determined that the POR weighted-average price of sales of PET film by respondents did not vary more than plus or minus ten percent from the monthly weighted-average price, indicating that the POR weighted-average price was representative of the transactions under consideration. Additionally, we determined that there was no significant relation between price and time during the POR. Therefore, we used the POR weighted-average price for purposes of our calculation.

Because SKC and STC made some home market sales to related parties during the POR we tested these sales to ensure that, on average, the related party sales were at "arms-length." *See Antifriction Bearings from France et al.; Final Results of Review*, 57 FR 28388 (1992). We determined that SKC's home market sales of PET film to related parties were on average at "arms-length", while STC's home market sales of PET film to related parties on average were not at "arms-length." Accordingly, we did not use STC's related party home market sales for comparison to U.S. sales.

Because many of Cheil's and SKC's sales were determined to have been made below cost of production (COP) during the original LTFV investigation, the Department, pursuant to section 773(b) of the Act, initiated COP investigations of Cheil and SKC for purposes of this administrative review. Furthermore, based on an allegation by petitioners, we also determined that reasonable grounds existed to believe or suspect that sales below cost had been

made by Kolon and STC of PET film. Thus, we initiated a COP investigation with respect to Kolon and STC.

We performed a model-specific cost of production test, in which we examined whether each home market sale was priced below the merchandise's cost of production. The Department defines the cost of production as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packaging. For each model, we compared this sum to the reported home market unit price, net of price adjustments and movement expenses. In accordance with Section 773(b) of the Tariff Act, we also examined whether the home market sales of each model were made at prices below their cost of production in substantial quantities over an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each model where less than ten percent, by quantity, of the home market sales during the period of review were made at prices below the cost of production, we included all sales of that model in the computation of FMV. For each model where ten percent or more, but less than ninety percent, of the home market sales during the period of review were priced below the merchandise's cost of production, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's cost of production, provided that these below-cost sales were made over an extended period of time. For each model where ninety percent or more of the home market sales during the period of review were priced below the cost of production, we disregarded all sales of that model from our analysis.

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months during the period of review in which each model was sold. If a product was sold in fewer than three months during the review period, we did not exclude the below-cost sales unless there were below-cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three months during the period of review.

We calculated the COP for the merchandise using Cheil's, SKC's, Kolon's and STC's cost of manufacturing (COM) and general expenses, in accordance with section 353.51(c) of the Department's regulations (19 CFR 353.51(c)(1993)). Respondents' COM consisted of materials, labor, and overhead costs incurred during film manufacturing. General expenses consisted of general and administrative expenses as well as net interest expenses normally included in general expenses for COP. In our analysis, we discovered that Cheil did not include home market packing costs in its calculation of COP. Accordingly, we added Cheil's reported home market packing costs to each model's COP.

Based upon data collected during verification of Kolon and STC, we made the following cost adjustments: We reallocated STC's technical revenues offset against STC's reported general expenses instead of against STC's materials cost, as reported. We readjusted the reported labor costs to include all those labor costs actually reported in the general ledger. We reallocated STC's reported variable overhead cost on the basis of actual PET film output rather than relying on the reported basis of production capacity. We disallowed STC's claim for a start-up costs adjustment because the costs were not actually reflected in STC's financial records. We readjusted STC's materials costs to reflect arms-length prices paid to unrelated parties for raw PET chips. For Kolon, we corrected errors in reported interest rate ratios contained in Kolon's net interest expense reported for CV purposes.

When all home market sales of a such or similar product in the contemporaneous month (as identified in the model match) were excluded from our analysis because the home market sales were priced below the cost of production, or when no home market sales of such or similar merchandise were found, then we used the constructed value of the merchandise sold in the United States as the basis for FMV. We calculated the constructed value, in accordance with Section 773(e) of the Tariff Act, as the sum of the cost of manufacture of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, and home market profit. The cost of manufacture of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For home market SG&A expenses, we used the larger of the actual SG&A expenses reported by the respondents or ten percent of the cost of manufacture, the statutory minimum for foreign SG&A expenses. For home market profit, we used the larger of the actual profit reported by the respondents or the statutory minimum of eight percent of the sum of cost of manufacture and SG&A expenses.

We calculated FMV based on delivered prices to unrelated customers and, where appropriate, to related customers in the home market. In calculating FMV, we made adjustments, where appropriate, for rebates, Korean inland freight and insurance, Korean brokerage and loading charges, home market credit expenses. We adjusted for Korean consumption tax in accordance with our decision in *Siliconmanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204, June 17, 1994. We deducted home market packing costs from the home market price and added U.S. packing costs to the FMV. We also made, where applicable, difference-in-merchandise adjustments. For SKC, we added a duty adjustment where the price SKC reported did not include import duties.

Due to a clerical error, Kolon incorrectly reported its home market freight expense in its questionnaire response. During verification, we determined the actual home market freight expense charge and adjusted Kolon's home market sales data accordingly.

For comparison to PP sales, pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments to FMV, where appropriate, for post-sale warehousing expenses, Korean and U.S. bank charges, U.S. credit expenses, and U.S. warranty expenses. We made further adjustments, where appropriate, for U.S. commissions in accordance with 19 CFR 353.56(a)(2). Where commissions were paid on U.S. sales and not paid on home market sales, we allowed an offset to FMV amounting to the lesser of the weighted-average home market indirect selling expenses, or the U.S. commissions in accordance with 19 CFR 353.56(b) of the regulations.

For comparison to ESP sales, we allowed an ESP offset to FMV, amounting to the lesser of the weighted-average total of home market indirect selling expenses, or the total U.S. indirect selling expenses in accordance with 19 CFR 353.56(b)(2).

No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margins exist for the periods indicated:

Manufacturer exporter	Percent margin
November 30, 1990 through May 31, 1992:	
SKC Limited	1.03.
Kolon Industries	0.44 (de minimis).
STC Corporation ...	5.86.
April 22, 1991 through May 31, 1992:	
Cheil Synthetics	0.05 (de minimis).

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

Individual differences between United States price and foreign market value may vary from the percentages stated above. Upon completion of the review the Department will issue appraisement instructions on each exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of polyethylene terephthalate film, sheet, and strip, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act.

(1) The cash deposit rate for the reviewed companies will be those rates established in the final results of this review. Since the rates for Cheil and Kolon were *de minimis*, there will be no cash deposits on shipments from these firms of subject merchandise;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be 4.82%, the all other rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within ten days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of

Manufacturer exporter	Percent margin
November 30, 1990 through May 31, 1992:	
SKC Limited	1.03.
Kolon Industries	0.44 (de minimis).
STC Corporation ...	5.86.
April 22, 1991 through May 31, 1992:	
Cheil Synthetics	0.05 (de minimis).

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

Individual differences between United States price and foreign market value may vary from the percentages stated above. Upon completion of the review the Department will issue appraisement instructions on each exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of polyethylene terephthalate film, sheet, and strip, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act.

(1) The cash deposit rate for the reviewed companies will be those rates established in the final results of this review. Since the rates for Cheil and Kolon were *de minimis*, there will be no cash deposits on shipments from these firms of subject merchandise;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be 4.82%, the all other rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within ten days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 29, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16608 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–601]

Certain Fresh Cut Flowers From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain fresh cut flowers from Peru.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Mercedes Fitchett or Sarah Givens, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 16615) its intent to revoke the countervailing duty order on certain fresh cut flowers from Peru (52 FR 13491; April 23, 1987). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On April 29, 1994, the Floral Trade Council, petitioner in the original investigation, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: June 29, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–16609 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

University of Georgia Research Foundation; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–023. *Applicant:* University of Georgia Research Foundation, Athens, GA 30602-7411. *Instrument:* Autosampler and Gas Sampling Kit, Model A200S. *Manufacturer:* CTC for Finnigan MAT, Switzerland/Germany. *Intended Use:* See notice at 59 FR 12894, March 18, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The National Institutes of Health advises in its memorandum dated May 31, 1994 that the accessory is pertinent to the intended uses and it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the previously imported instrument.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–16610 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–F

University of Utah, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–010. *Applicant:* University of Utah, Salt Lake City, UT 84112. *Instrument:* Isotope Ratio Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 59 FR 9964, March 2, 1994. *Reasons:* The foreign instrument provides: (1) unattended analysis of 50 samples, (2) precision of 0.1% and (3) sensitivity of 1000 molecules of CO_2 per mass 44 ion. *Advice Received From:* National Institutes of Health, May 31, 1994.

Docket Number: 94–013. *Applicant:* South Dakota State University, Brookings, SD 57007. *Instrument:* GC - Dumas Ratio Mass Spectrometer, Model Europa 20-20. *Manufacturer:* Europa, United Kingdom. *Intended Use:* See notice at 59 FR 9964, March 2, 1994. *Reasons:* The foreign instrument provides continuous flow GC/MS with: (1) analysis error of less than 0.1% for nitrogen and carbon and (2) an automatic combustion sample preparation system with 130 positions. *Advice Received From:* National Institutes of Health, May 31, 1994.

Docket Number: 94–057. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Optical Floating Zone System. *Manufacturer:* Vacuum Metallurgical Co., Ltd., Japan. *Intended Use:* See notice at 59 FR 24691, May 12, 1994. *Reasons:* The foreign instrument provides growth of single crystals using high intensity lamps in a parabolic reflector to translate a molten zone along a rod of test material. *Advice Received From:* The National Aeronautics and Space Administration, June 8, 1994.

Docket Number: 93–146. *Applicant:* Hunter College, New York, NY 10021. *Instrument:* Northern Light Illuminator. *Manufacturer:* Imaging Research, Inc., Canada. *Intended Use:* See notice at 58 FR 68875, December 29, 1993. *Reasons:* The foreign instrument provides flicker free illumination with ± 0.5% stability over a 12 hour period. *Advice Received From:* National Institutes of Health, April 21, 1994.

The National Institutes of Health and The National Aeronautics and Space Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–16611 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[Docket No.940560–4160; I.D. 042194C]

RIN: 0648-ZA07

Financial Assistance for Information on the Antarctic Marine Ecosystem

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of financial assistance.

SUMMARY: Subject to the availability of funds, NMFS issues this notice describing funding for directed scientific research conducted under the Antarctic Living Marine Resources program and the conditions under which applications will be accepted and how NMFS will determine which applications will be funded.

DATES: Applications for funding under this program will be accepted between July 8, 1994, and 4:30 p.m. Pacific standard time on August 5, 1994. Applications received after that time will not be considered for funding. No facsimile applications will be accepted. Awards are expected to be made by November 1, 1994.

ADDRESSES: Send applications to: Dr. Roger P. Hewitt, Krill Studies and Field Operations Director, Antarctic Ecosystem Research Group, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92037.

Requests for application packages should be sent to: Jean West, Chief, Grants Operation Branch, NOAA SSMC2, OA321, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0926.

FOR FURTHER INFORMATION CONTACT: Dr. Roger P. Hewitt, 619–546–5602.

SUPPLEMENTARY INFORMATION:

I. Authority

The Antarctic Marine Living Resources Convention Act of 1984 (Act) (Title III of Pub.L. 98–623, 16 U.S.C. 2431 *et seq.*) provides the legislative authority necessary to implement, with respect to the United States, the Antarctic Living Marine Resources (AMLR) program. One of the principal tenets of the Act is that the harvest of Antarctic marine living resources shall be managed with the goal of preserving species diversity and stability of the entire Antarctic marine ecosystem. The AMLR program was created to provide information needed to advise the U.S. delegation to the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), part of the Antarctic treaty system.

II. Catalog of Federal Domestic Assistance (CFDA).

This program is described in the Catalog of Federal Domestic Assistance under program number 11.446 Antarctic Marine Living Resources.

III. Program Description

The Act provides for Federal agency cooperation in carrying out the policies and objectives of the Convention or to implement any decision of CCAMLR. It further provides that the Secretary of Commerce, in conjunction with the Director of the National Science Foundation, the Secretary of State, and the heads of other appropriate Federal agencies, shall design and conduct a program of directed scientific research pursuant to a plan entered in accordance with the Act. The plan is to describe priority directed research and identify needs to be fulfilled by the United States. The research to be funded is pursuant to 16 U.S.C. 2441 in support of the U.S. AMLR program, which provides information needed to

formulate U.S. policy on the conservation and international management of resources living in the oceans surrounding Antarctica.

The AMLR program monitors finfish and krill fisheries, projects sustainable yields where possible, and formulates management advice and options. In addition, the program conducts field research designed to describe the functional relationships between krill, their predators, and key environmental variables.

The field work to be funded will be accomplished during a research cruise conducted in the vicinity of Elephant Island, Antarctica, during the months of January, February, and March, 1995. A large-area survey grid of approximately 90 stations and covering the area around Elephant, Clarence, and the eastern end of King George Islands will be occupied twice. In addition, station transects across hydrographic features, directed net sampling, fine-scale acoustic surveys, and other specialized studies will be conducted. Additional research details will be provided to principal investigators prior to the cruise.

Sampling gear and supplies may be loaded aboard the NOAA Ship *Surveyor* in Seattle in mid-November, 1994, and during a port call in San Diego in late November, 1994. The scientific party will fly to Punta Arenas, Chile, to meet the ship in late December, 1994. Proposals should include cost of travel to and from Punta Arenas, Chile. Airline tickets bought with cooperative agreement funds must be fully refundable and reservations alterable due to last minute changes in ship scheduling. There will be two mid-cruise port calls in Punta Arenas, and a final Punta Arenas port call in late March, 1995, prior to the ship's departure to return to Seattle.

Depending on funding availability, a post-cruise data workshop for principal investigators may be held in San Diego at the end of May, 1995. The Government will provide travel reimbursement for this meeting if it should occur; the cost of travel for this meeting should not be included in proposals.

A report of accomplishments and tentative conclusions will be due from each principal investigator by April 1, 1995. Copies of all data sets on magnetic media will be due to the Southwest Fisheries Science Center no later than June 1, 1995. At least one article summarizing the field work will be prepared by each principal investigator for the annual review issue of the U.S. Antarctic Journal and will be due to the Southwest Fisheries Science Center by June 15, 1995. In addition, it is expected

formulate U.S. policy on the conservation and international management of resources living in the oceans surrounding Antarctica.

The AMLR program monitors finfish and krill fisheries, projects sustainable yields where possible, and formulates management advice and options. In addition, the program conducts field research designed to describe the functional relationships between krill, their predators, and key environmental variables.

The field work to be funded will be accomplished during a research cruise conducted in the vicinity of Elephant Island, Antarctica, during the months of January, February, and March, 1995. A large-area survey grid of approximately 90 stations and covering the area around Elephant, Clarence, and the eastern end of King George Islands will be occupied twice. In addition, station transects across hydrographic features, directed net sampling, fine-scale acoustic surveys, and other specialized studies will be conducted. Additional research details will be provided to principal investigators prior to the cruise.

Sampling gear and supplies may be loaded aboard the NOAA Ship *Surveyor* in Seattle in mid-November, 1994, and during a port call in San Diego in late November, 1994. The scientific party will fly to Punta Arenas, Chile, to meet the ship in late December, 1994. Proposals should include cost of travel to and from Punta Arenas, Chile. Airline tickets bought with cooperative agreement funds must be fully refundable and reservations alterable due to last minute changes in ship scheduling. There will be two mid-cruise port calls in Punta Arenas, and a final Punta Arenas port call in late March, 1995, prior to the ship's departure to return to Seattle.

Depending on funding availability, a post-cruise data workshop for principal investigators may be held in San Diego at the end of May, 1995. The Government will provide travel reimbursement for this meeting if it should occur; the cost of travel for this meeting should not be included in proposals.

A report of accomplishments and tentative conclusions will be due from each principal investigator by April 1, 1995. Copies of all data sets on magnetic media will be due to the Southwest Fisheries Science Center no later than June 1, 1995. At least one article summarizing the field work will be prepared by each principal investigator for the annual review issue of the U.S. Antarctic Journal and will be due to the Southwest Fisheries Science Center by June 15, 1995. In addition, it is expected that results will be published in peer-reviewed journals. Proposals should include provisions for the preparation of collaborative manuscripts, publishing costs, and presentation of significant results at scientific meetings.

It is highly desirable that the principal investigators participate in the field work. Minimum requirements for each of the three research components are listed in this notice (see Funding Priorities). Applicants are encouraged to propose research elements to be conducted in addition to the minimum requirements; however, funding will not be increased for these additional elements.

IV. Funding Availability

Under this solicitation, NMFS estimates that up to $185,000 will be available to fund three cooperative agreements for research on the Antarctic marine ecosystem for 1 year: (1) Physical oceanography, for $65,000; (2) phytoplankton and primary productivity, $65,000; and (3) krill (*Euphausia superba*) demographics, $55,000. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate all or any part of the available funds.

V. Matching Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations by the applicant or third parties. Cost sharing is not required for the AMLR program. However, cost sharing is encouraged and may be considered in the final selection of proposals.

The appropriateness of cost sharing will be determined on the basis of guidance provided in applicable Office of Management and Budget (OMB) Circulars and Federal cost principles. If an applicant chooses to cost-share, and if that application is selected for funding, the applicant will be bound by the percentage of the cost share reflected in the cooperative agreement award.

The non-Federal share may include the applicant's cash and/or in-kind contributions or amounts received from private sources or from state or local governments including the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and use of real or personal property owned by others (for which consideration is not required) in carrying out the project.

VI. Type of Funding Instrument

Cooperative agreements will be used to fund this program since NMFS is substantially involved in developing program research and priorities and will work closely with the recipient to carry out the contemplated activity throughout the project period. Three cooperative agreements will be awarded to conduct research on the Antarctic marine ecosystem in a 15,000 square mile (38,850 km^2) area around Elephant Island, South Shetland Islands, Antarctica.

VII. Eligibility Criteria

A. Applications for cooperative agreements under the AMLR research program may be made, in accordance with the procedures set forth in this notice, by any individual, state agency, university or college, institution, or laboratory, or any public or private nonprofit institution or organization qualified to perform the research described in this notice.

B. NOAA employees, including full-time, part-time, and intermittent personnel (or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application.

VIII. Award Period

Awards under this program are normally for 1 year. Project dates should be scheduled to begin November 1, 1994, and end October 31, 1995.

IX. Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. A copy of the current, approved or negotiated indirect cost rate/agreement with the Federal Government should be included with the application, if available. Otherwise, the applicant will be required to submit documentation to its cognizant agency to establish an indirect cost rate within 90 days of the award date or be precluded from drawing down further indirect costs until the documentation is provided.

X. Application Forms

Applications for project funding must be complete. Applicants are advised that failure to include all required information outlined in this notice, or to complete required forms, may have a

detrimental effect on the evaluation of the application.

Applicants are encouraged to obtain application packages and forms from the NOAA Grants Management Division (see **ADDRESSES**).

A. An original and two signed copies of all of the following items are required from the applicant:

1. SF–424, "Application for Federal Assistance;"

2. SF–424A, "Budget Information-Non-Construction Programs;"

3. SF–424B, "Assurances-Non-Construction Program;"

4. Budget with necessary supporting detail, i.e., budget narrative/breakdown;

5. Copy of current approved Negotiated Indirect Cost Rate Agreement, if available;

6. Financial Audit Information, signed and dated, including date of organization's last financial audit and period covered by audit; any negative findings indicated and if so, how they were resolved; date of next scheduled audit and period to be covered by scheduled audit (copy of financial statement should not be included);

7. CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying;"

8. CD–512, "Certifications Regarding Debarment, Suspension and Eligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying;"

9. SF-LLL, "Disclosure of Lobbying Activities" (if applicable); and SF-LLL-A Continuation Sheet (if applicable);

10. Statement of Work (narrative description of proposed activity, objectives, and milestones"; and

11. Proof of status for First Time Eligible Non-Profit Applicants (any of the following is acceptable evidence of status):

a. A reference to the applicant organization in the IRS' most recent list of tax-exempt organizations under Section 501(c) of the IRS code;

b. A copy of a currently valid IRS tax-exemption certificate;

c. A statement from a State taxing body or State Attorney General certifying that the applicant organization has nonprofit status and that none of the net earnings accrue to any private shareholders;

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status; or,

e. Any of the above proof regarding a parent organization if one exists, and a statement signed by the parent organization that the applicant is a local nonprofit affiliate.

Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described by the application. Applications are not to be bound in any manner and should be one-sided. All proposals will be considered by NMFS. All incomplete proposals will be returned to the applicant. Applicants must submit one signed original and two copies of the complete application.

B. *Project Description.* Each project must be completely and accurately described. Each project description may be up to 15 pages in length. NMFS will make all portions of the project description available to the public for review and comment; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

1. *Identification of Research Discipline.* State which of the three research components (see Funding Priorities XI) is being applied for. If the application is not in response to a funding priority, it should be so stated.

2. *Project Goals and Objectives.* State what the proposed project will accomplish and describe how this will contribute to the description of the Antarctic marine ecosystem. Describe the time frame in which tasks would be conducted.

3. *Need for Government Financial Assistance.* Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

4. *Benefits or Results Expected.* Identify and document the results or benefits to be derived from the proposed activities.

5. *Participation by Persons or Groups Other Than the Applicant.* Describe the level of participation required in the project by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the proposal.

6. *Federal, State, and Local Government Activities.* List any programs (Federal, state, or local government or activities) this project would affect and describe the relationship between the project and those plans or activities.

7. *Project Statement of Work.* The Statement of Work is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, NMFS will not consider the application for funding and will return it to the applicant. Identify specific milestones that can be used to track project progress. The following activities must be included as milestones: Submission of a report of accomplishments and tentative conclusions by April 1, 1995; submission of data sets on magnetic media by June 1, 1995; and submission of article summarizing field work for annual review issue of the U.S. Antarctic Journal by June 15, 1995. Each Statement of Work must include the following information:

a. The applicant's name.

b. The inclusive dates of the budget period covered under the Statement of Work.

c. The title of the proposal.

d. The scientific or technical objectives and procedures that are to be accomplished during the budget period. Devise a detailed set of objectives and procedures to answer who, what, how, when and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

e. Location of the work.

f. A list of all project personnel and their responsibilities.

g. A milestone table that summarizes the procedures that are to be attained in each month covered by the Statement of Work.

8. *Project Management.* Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved in the project, their qualifications, and their level of involvement in the project.

9. *Monitoring of Project Performance.* Identify who will participate in monitoring the project.

10. *Project Impacts.* Describe the impact of the project in terms of anticipated improved management, social value enhancement, or any other values that will be improved by this project. Describe how these products or services will be made available to the fisheries and management communities.

11. *Evaluation of Project.* The applicant is required to provide an evaluation of project accomplishments at the end of each budget period and in the final report. The application must describe the methodology to be followed to determine technical feasibility.

12. *Total Project Costs.* Total project costs is the amount of funds required to accomplish the proposed statement of work (SOW), and includes contributions and donations. All costs must be shown in a detailed budget. Cost sharing must not come from another Federal source. Costs must be allocated to the Federal share and non-Federal share provided by the applicant or other sources. Non-Federal costs are to be divided into cash and in-kind contributions. A standard budget form (SF–424A) is included in the applications package (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees. To support its budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability or reasonableness. The date, period covered, and findings for the most recent financial audit performed, as well as the name of the audit firm, the contact person, and phone number and address, must also be provided. Costs for the following categories must be detailed in the budget as follows:

a. *Personnel.* Names and titles must be included for all project personnel. Abbreviated curricula vitae are to be submitted with each proposal as part of the supporting documentation (see below). Publication lists must be limited to all those documents prepared within the last 3 years. Up to five other relevant documents which fall outside this time frame will be accepted.

b. *Salaries.* Identify salaries by position and percentage of time and annual/hourly salary of each individual dedicated to the project.

c. *Fringe Benefits.* Indicate benefits associated with personnel working on the project. This entry should be the proportionate cost of fringe benefits paid for the amount of time spent on the project. For example, if an employee spends 20 percent of his/her time on the project, 20 percent of his/her fringe benefits should be charged to this project.

d. *Consultants and Contract Services.* Identify all consultant and/or contractual service costs by specific task in relation to the project. If a commitment has been made prior to application to contract with a particular organization, explain how the organization was selected. Describe the type of contract, budget, deliveries expected, and time frame. A detailed budget must be submitted (with supporting documentation) for the total

describe the methodology to be followed to determine technical feasibility.

12. *Total Project Costs.* Total project costs is the amount of funds required to accomplish the proposed statement of work (SOW), and includes contributions and donations. All costs must be shown in a detailed budget. Cost sharing must not come from another Federal source. Costs must be allocated to the Federal share and non-Federal share provided by the applicant or other sources. Non-Federal costs are to be divided into cash and in-kind contributions. A standard budget form (SF–424A) is included in the applications package (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees. To support its budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability or reasonableness. The date, period covered, and findings for the most recent financial audit performed, as well as the name of the audit firm, the contact person, and phone number and address, must also be provided. Costs for the following categories must be detailed in the budget as follows:

a. *Personnel.* Names and titles must be included for all project personnel. Abbreviated curricula vitae are to be submitted with each proposal as part of the supporting documentation (see below). Publication lists must be limited to all those documents prepared within the last 3 years. Up to five other relevant documents which fall outside this time frame will be accepted.

b. *Salaries.* Identify salaries by position and percentage of time and annual/hourly salary of each individual dedicated to the project.

c. *Fringe Benefits.* Indicate benefits associated with personnel working on the project. This entry should be the proportionate cost of fringe benefits paid for the amount of time spent on the project. For example, if an employee spends 20 percent of his/her time on the project, 20 percent of his/her fringe benefits should be charged to this project.

d. *Consultants and Contract Services.* Identify all consultant and/or contractual service costs by specific task in relation to the project. If a commitment has been made prior to application to contract with a particular organization, explain how the organization was selected. Describe the type of contract, budget, deliveries expected, and time frame. A detailed budget must be submitted (with supporting documentation) for the total amount of funding requested for a subcontractor/consultant. All contracts must meet the standards established in OMB circulars.

e. *Travel and Transportation.* Identify the number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs, including the approximate cost of transportation (airfare at coach rates), per diem rates, and any additional fees associated with the trip.

f. *Equipment, Space or Rental Costs.* Identify equipment purchases or rental costs with the intended use. Equipment purchases greater than $500 are discouraged, since experienced investigators are expected to have sufficient capital equipment on hand. Use of lease to purchase (LTOP) or similar leases are prohibited. Identify space or rental costs with specific uses.

g. *Other Costs.*

(1) *Supplies.* Identify specific supplies necessary for the accomplishment of the project. Only consumable office supplies purchased and used on this project may be treated as a direct cost to the project.

(2) *Postage and Shipping.* Include postage for correspondence and other project related material, as well as air freight, truck or rail shipping of bulk materials.

(3) *Printing Costs.* Include costs associated with producing materials in connection with the project.

(4) *Long Distance Telephone and Telegraph.* Identify estimated monthly bills.

(5) *Utilities.* These costs should be included under indirect costs unless identified as direct costs to the project. Identify costs of utilities and percentage of use in conjunction with performance of project.

(6) *Additional Costs.* Indicate any additional costs associated with the project that are allowable under OMB circulars A–21, A–87, or A–122, as applicable.

13. *Geographic location.* Field, laboratory, and office locations must be identified for all project activities.

C. *Supporting Documentation.* This section should include any required documents and any additional information necessary or useful to the description of the project (e.g., curricula vitae, results from prior funding). The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the discipline addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question the assertions made in describing the project and may result in a lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

XI. Project Funding Priorities

A. Physical Oceanography

The objectives for this component are to: (1) Describe the hydrography of the upper ocean waters in the vicinity of Elephant Island throughout the 1995 austral summer; (2) describe the physical setting in relation to the observed vertical and horizontal distribution of phytoplankton and zooplankton; and (3) provide a continuous record of sea surface and atmospheric conditions annotated by date, time, and ship's position.

Minimum observations should include: (1) Salinity, temperature, and oxygen profiles at each station; and (2) continuous measurements of solar irradiance, air temperature, wind speed and direction, relative humidity, barometric pressure, sea surface temperature, and sea surface salinity.

The Government will supply a Seabird thermosalinograph, a General Oceanics rosette with 10-liter Niskin bottles equipped with teflon springs, a Guideline salinometer, and a Seabird SBE–9 CTD (to be used as a backup unit). All other equipment, supplies, and necessary personnel must be provided by the recipient.

B. Phytoplankton and Primary Productivity

The objectives for this component are to: (1) Determine available food sources for zooplankton, including particulate organic carbon, phytoplankton organic carbon, cell size distribution, and dominant species composition; (2) determine rates of primary production and associated levels of incident radiation and light attenuation; (3) describe the seasonal change of phytoplankton growth and standing stock; and (4) estimate the relative importance of grazing, vertical mixing, nutrient depletion, and settling on the distribution of phytoplankton biomass.

Minimum observations should include: (1) Vertical profiles of chlorophyll-a and inorganic nutrient content from discreet bottle samples and solar irradiance, beam attenuation and fluorescence from continuous measurements at each station; (2)

primary production rates from shipboard incubations and associated irradiance levels; (3) continuous measurements between stations of sea surface fluorescence and beam attenuation; (4) cell size distribution and floristics composition of the phytoplankton; (5) organic carbon and nitrogen content of the particulate material; and (6) total microbial biomass.

The Government will supply a General Oceanics rosette with 10-liter Niskin bottles equipped with teflon springs. All other equipment, supplies, and necessary personnel must be provided by the recipient. Laboratory space is very limited; however, fresh water, salt water, and electrical supplies can be provided to portable laboratory vans and incubation arrays.

C. Krill Demographics

The objectives of this component are to: (1) Describe the population structure and biological characteristics of krill collected throughout the study area and over the duration of the cruise; and (2) correlate and interpret the krill data with information on phytoplankton biomass, primary production, circulation pattern, and water mass boundaries.

Minimum observations should include distributions of animal length, maturity stages, sex ratios, reproductive condition, moult stages, and feeding condition. Specimen processing should be done at sea.

The Government will provide personnel and equipment necessary for sample collection, as well as a small interior lab with fresh water, salt water, and electrical supplies. All other equipment, supplies, and necessary personnel must be provided by the recipient.

XII. Evaluation Criteria

Unless otherwise specified by statute, in reviewing applications for cooperative agreements that include consultants and contracts, NOAA will make a determination regarding the following:

A. Is the involvement of the consultant or contractor necessary to the conduct of the project and the accomplishment of its goals and objectives?

B. Is the proposed allocation of the consultant or contractors time reasonable and commensurate with the his/her involvement in the project?

C. Are the proposed costs for the consultant or contractors involvement in the project reasonable and commensurate with the benefits to be derived from his/her participation?

In accordance with OMB Circulars and NOAA Administrative Special Award Conditions, grantees must request prior approval for all proposed sole-source contracts or where only one bid or proposals is received in which the aggregate expenditure is expected to exceed $25,000. Proposals involving a consultant or contractor will be reviewed for compliance with pertinent procurement standards, and this information will be used in the proposal selection process.

XIII. Selection Procedures

Consideration for financial assistance will be given to those applications which meet the requirements of this solicitation and the following evaluation criteria: (1) Experience and qualifications of personnel. Organization and management of the project (34 points); (2) relevance to the objectives outlined in this notice (see Introduction and Funding Priorities XI) (33 points); and (3) soundness of project design and technical approach, especially whether the applicant provided sufficient information to technically evaluate the project, and, if so, the strengths and weaknesses of the technical design (33 points).

For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each proposal. The review will be conducted by experts from non-NOAA, as well as NOAA, organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will assign point scores on proposals based on the evaluation criteria stated above. Applications will be ranked into two groups (a) Recommended, and (b) Not Recommended. Proposals ranked as Not Recommended will not be given further consideration for selection and funding.

The ranked applications will be evaluated by a panel of experts convened by NMFS. The panel will individually consider each proposal, along with the technical evaluation and the need for funding. The panel will provide individual recommendations to NMFS on each proposal ranked as Recommended.

After the proposals have been evaluated by the panel, the Director of the NMFS Southwest Fisheries Science Center, in consultation with the NOAA Assistant Administrator for Fisheries, will ascertain which projects do not substantially duplicate other projects that are funded by NOAA or are approved for funding by other Federal offices, recommend the projects to be funded, and the amounts available for the program. Awards may not necessarily be made to applicants with the highest-scored proposals. The exact amount of funds awarded to each project will be determined in pre-award negotiations between the applicant, the NOAA Grants Office, and the NMFS program staff.

NMFS will make project descriptions available for review as follows:

A. *Consultation with Management Agencies, Environmental Organizations, and Academic Institutions.* NMFS shall, at its discretion, request comments from groups, organizations and institutions who have knowledge in the subject matter of a project or who would be affected by a project.

B. *Consultation with Government Agencies.* Applications will be reviewed in consultation with the Director, NMFS Southwest Fisheries Science Center, and appropriate laboratory personnel, NOAA Grants Officer and, as appropriate, Department of Commerce bureaus and other Federal agencies, for elimination of duplicate funding.

XIV. Other Requirements

A. Federal Policies and Procedures

Recipients and subrecipients are subject to all Federal laws and Federal and Departmental policies, regulations, and procedures applicable to Federal financial assistance awards. Women and minority individuals and groups are encouraged to submit applications under this program.

B. Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. Any first-time applicant for Federal cooperative agreement funds may be subject to a pre-award accounting survey prior to execution of the award. In addition, any recipient and/or researcher who is past due for submitting acceptable progress reports on any previous project funded under this program may be ineligible to be considered for new awards until the delinquent reports are received, reviewed and deemed acceptable by NMFS.

C. Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department to cover pre-award costs.

D. No Obligation for Future Funding

If an application for an award is selected for funding, the Department has no obligation to provide any additional prospective funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

E. Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has any outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to the Department are made.

F. Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicants management honesty or financial integrity.

G. Primary Applicant Certification

All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

2. Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for

no obligation to provide any additional prospective funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

E. Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has any outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to the Department are made.

F. Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicants management honesty or financial integrity.

G. Primary Applicant Certification

All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

2. Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single-family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

H. Lower Tier Certifications

Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. An SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

I. False Statements

A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment as provided in 18 U.S.C. 1001.

J. Intergovernmental Review

Applications under this program are not subject to the provisions of E.O. 12372, "Intergovernmental Review of Federal Programs."

K. Requirement to Buy American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program, in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, sections 606 (a) and (b).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice involves information collection requirements subject to the Paperwork Reduction Act, which have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0348–0043.

Dated: July 1, 1994.

C. Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–16479 Filed 7–5–94; 8:45 am]

BILLING CODE 3510–22–P

[Docket No. 940679–4179; I.D. 060394C]

Financial Assistance for the Northeast Fisheries Assistance Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of federal assistance.

SUMMARY: NMFS issues this notice describing the conditions under which applications will be accepted for Northeast fishing industry grants (NFIG) under the Northeast Fisheries Assistance Program (NFAP) and how NMFS will determine which applications it will fund. A total of $9.0 million for NFIG will be available in two parts. This notice implements the first part, for which up to $4.5 million is available to meet the most pressing needs of fishermen who are affected by the decline of the traditional fisheries in the Northeast and recent Federal regulatory actions, and who require assistance in developing alternative employment or new business opportunities.

DATES: Applications must be received by August 22, 1994. Applicants must submit one signed original and two copies of the complete application. No facsimile applications will be accepted. Generally, the time required to process applications is 120 days from the closing date of the solicitation.

ADDRESSES: Applications should be sent to the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, Telephone: (508) 281–9256 or (508) 281–9267. Application kits, with

instructions for completion, may be obtained from that office.

FOR FURTHER INFORMATION CONTACT: Kenneth Beal or Joyce Lacerda, at (508) 281–9267.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Under the provisions of Public Law 103–211, the Emergency Supplemental Appropriations Act of 1994, $30 million has been provided to the U.S. Department of Commerce (Department) for NFAP to address the needs of those directly affected by the decline of the traditional fisheries in the Northeast. Of the total package, $18 million will be used by the Economic Development Administration (EDA) to provide economic adjustment assistance to communities; $12 million will be used by NOAA for direct industry assistance in the form of (1) loan guarantees under the Fisheries Obligation Guarantee Program to help restructure existing debt, (2) grants to assist the fishing industry which has been affected by the decline of the traditional groundfish and scallop fisheries, and (3) Fishing Family Assistance Centers in the Northeast to serve as clearinghouses for all possible assistance available from Federal and state sources.

Of the $12.0 million NOAA will administer under NFAP, $9.0 million for NFIG will be provided directly to the private sector through grants that are authorized under 15 U.S.C. 713c–3(d). These grants will be administered in two parts. This **Federal Register** notice implements the first part, for which up to $4.5 million is available. NMFS will provide financial assistance to meet the most pressing needs of fishermen who require assistance in developing alternative employment or new business opportunities. This part will require no cost-sharing by applicants. The second part, for which $4.5 million will be available, will be implemented through a separate **Federal Register** notice, which will invite innovative proposals to assist the Northeast fishing industry to expand the harvesting, processing, and marketing of underexploited species; increase the value of species currently harvested; address bycatch reduction; and create new business and employment opportunities through aquaculture. The second part will require cost-sharing by the applicants.

B. Funding

NMFS issues this notice to solicit applications for federal assistance, describing the conditions under which applications will be accepted for part-one fishing industry grants under NFAP and how NMFS will select the applications it will fund.

II. Funding Priorities

NMFS' emphasis in part one of the fishing industry grant portion of NFAP will be to meet the most pressing needs of fishermen who are affected by the decline of the traditional fisheries in the Northeast, and who require assistance in developing alternative employment or new business opportunities.

Greatest consideration will be given to applications that involve, or are expected to benefit, a broad range of fishermen, rather than individual fishermen. Applications may be for demonstration or pilot projects, technology development and/or transfer, experimental fishing, or other activities to develop alternative long-term employment or new business opportunities to fishermen. Funding will not be provided for projects primarily involving construction or operational costs for individual businesses. Fishermen seeking financial assistance for proprietary business activities, e.g., business loans, may contact the Family Assistance Centers listed in section III.A. of this document for information regarding other types of financial assistance and eligibility.

The following areas, listed in no particular order, have been identified as priorities for part one of the NFIG Program.

A. Develop commercial fisheries and markets for finfish and shellfish species of the Northwest Atlantic Ocean for which there are harvestable surpluses. These include Atlantic mackerel, Atlantic herring, butterfish, spiny dogfish, skates, short-finned and long-finned squid, and red hake. NOTE: If applicable, recipients must have the appropriate Federal fishing permits in their possession. Also, if applicable, obtaining an experimental fishing permit may be required prior to approval of project activities.

B. Help restore overfished New England groundfish stocks through aquaculture or hatchery programs. This may include, but is not limited to, establishing small-scale aquaculture pilot and demonstration projects in commercial fishing communities.

C. Develop projects/conduct activities to provide alternate employment or new business opportunities for fishermen who have been affected by the decline of the traditional Northeast fisheries.

III. How to Apply

A. Eligible Applicants

Applications for assistance may be made, in accordance with the procedures set forth in this notice, by any individual who is a citizen or national of the United States, or any corporation, partnership, association, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 U.S.C. App. 802). Although a broad range of applicants is eligible, all applications submitted must respond to the funding priorities as noted in the above sections.

Federal Government employees, including full-time, part-time, and intermittent personnel (or their spouses or blood relatives who are members of their immediate households), are not eligible to submit an application under this solicitation.

Assistance from NOAA employees is available to eligible applicants, by telephone or through pre-proposal meetings, and will be limited to such issues as the program goals, funding priorities, application procedures, and completion of application forms. Since this is a competitive program, assistance will not be provided in conceptualizing, developing, or structuring competitive proposals. Pre-proposal meetings will be held at Fishing Family Assistance Centers located in Portland and Rockland, ME; Gloucester, New Bedford, and Provincetown, MA; and Narragansett, RI. Details on specific times and location of pre-proposal meetings may be obtained by calling the NMFS Northeast Regional Office in Gloucester (508–281–9256 or 508–281–9267), or the Fishing Family Assistance Center locations in Portland, New Bedford, or Provincetown. The addresses and telephone numbers of all Fishing Family Assistance Centers are as follows:

Fishing Family Assistance Center, National Marine Fisheries Service, Marine Trades Center, Suite 311, 2 Portland Fish Pier, Portland, ME 04101, Tel: 207–780–3423.

Fishing Family Assistance Center, National Marine Fisheries Service, Greater New Bedford Reemployment Career Services, 693 Purchase Street, New Bedford, MA 02740, Tel: 508–979–1750.

Fishing Family Assistance Center, National Marine Fisheries Service, City Hall, 260 Commercial Street, Provincetown, MA 02657, Tel: 508–487–7261.

Fishing Family Assistance Center, National Marine Fisheries Service, Department of Employment and Training, 11–15 Parker Street, Gloucester, MA 01930, Tel: 508–283–4750.

Fishing Family Assistance Center, National Marine Fisheries Service, Federal Building, Room 200, 21 Limerock Street, Rockland, ME 02841, Tel: 207–594–2267.

Fishing Family Assistance Center, National Marine Fisheries Service, Narragansett Laboratory, 28 Tarzwell Drive, Narragansett, RI 02882, Tel: 401–782–3200.

B. Duration and Terms of Funding

Generally, grants are awarded for a period of 1 year, but no more than 18 months at a time.

If an application for an award is selected for funding, the Department has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available.

C. Cost-sharing

Cost-sharing is not required for applications submitted in response to this solicitation to implement part one of NFIG. It will not be a factor in the evaluation and selection of the application. If cost-sharing is proposed, the applicant will be obligated to account for the amount contained in the award document.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications must respond to priority(ies) contained in section II of this document. Project applications must be clearly and completely submitted in the format that follows. The forms described are available, with instructions for completion, from the Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930, telephone: 508–281–9256 or 508–281–9267.

1. *Cover Sheet:* An applicant must use OMB Standard Form 424 (revised 4–92) as the cover sheet for each project. (Do not complete item 16 of Standard Form 424 (REV 4–92). NMFS will obtain for the applicant any necessary clearances by the State Point of Contact (SPOC) established as a result of E.O. 12372, Intergovernmental Review of Federal Programs to which this program is subject.)

Fishing Family Assistance Center, National Marine Fisheries Service, Federal Building, Room 200, 21 Limerock Street, Rockland, ME 02841, Tel: 207–594–2267.

Fishing Family Assistance Center, National Marine Fisheries Service, Narragansett Laboratory, 28 Tarzwell Drive, Narragansett, RI 02882, Tel: 401–782–3200.

B. Duration and Terms of Funding

Generally, grants are awarded for a period of 1 year, but no more than 18 months at a time.

If an application for an award is selected for funding, the Department has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available.

C. Cost-sharing

Cost-sharing is not required for applications submitted in response to this solicitation to implement part one of NFIG. It will not be a factor in the evaluation and selection of the application. If cost-sharing is proposed, the applicant will be obligated to account for the amount contained in the award document.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications must respond to priority(ies) contained in section II of this document. Project applications must be clearly and completely submitted in the format that follows. The forms described are available, with instructions for completion, from the Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930, telephone: 508–281–9256 or 508–281–9267.

1. *Cover Sheet:* An applicant must use OMB Standard Form 424 (revised 4–92) as the cover sheet for each project. (Do not complete item 16 of Standard Form 424 (REV 4–92). NMFS will obtain for the applicant any necessary clearances by the State Point of Contact (SPOC) established as a result of E.O. 12372, Intergovernmental Review of Federal Programs to which this program is subject.)

2. *Project Summary:* An applicant must complete NOAA Form 88–204 (10–92), Project Summary, for each project.

3. *Project Budget:* A budget must be submitted for each project, using NOAA Form 88–205 (10–92), Project Budget. The applicants must submit cost estimates showing total project costs. Estimates of the direct costs must be specified in the categories listed on the Project Budget form. The budget may also include an amount for indirect costs, if the applicant has an established indirect cost rate with the Federal Government. However, this program limits the indirect cost rate that may be charged to 25 percent of the federal share of total direct costs or the institution's negotiated indirect cost rate, whichever is less. A copy of the current, approved, negotiated indirect Cost Agreement with the Federal Government must be included with the application.

NOAA will not consider fees or profits as allowable costs for applicants.

The total costs of a project consist of all costs incurred in the performance of project tasks to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of an award between the applicant and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are not reimbursable.

4. *Project Narrative Description:* The project must be completely and accurately described, as follows:

a. *Identification of Problem(s):* As appropriate, in this description include: (1) The fisheries involved, (2) the specific problem(s) being addressed, and (3) the sectors of the fishing industry that are affected.

b. *Project Goals and Objectives:* State what the proposed project is expected to accomplish, and describe how this will eliminate or reduce the problem(s) described in 4.a. above.

c. *Need for Government Financial Assistance:* Explain why Government financial assistance is needed for the proposed work. List all other sources of funding that are or have been sought for the project.

d. *Participation by Persons or Groups Other Than the Applicant:* Describe: (1) The participation by Government and non-Government entities, particularly members of the fishing industry, required in the project(s); and (2) the nature of such participation.

e. *Federal, State, and Local Government Activities:* List any existing Federal, state, or local government programs or activities that this project would affect, including activities under state Coastal Zone Management Plans and those requiring consultation with the Federal Government under the Endangered Species Act and the Marine Mammal Protection Act. Describe the relationship between the project and these plans or activities, and list names and addresses of persons providing this information.

f. *Project Statement of Work:* The statement of work is an action plan of activities to be conducted during the period of the project. This section requires the applicant to prepare a detailed narrative, fully describing the work to be performed that will achieve the previously articulated goals and objectives. A milestone chart that outlines major goals, supporting work activities, timeframe, and individuals responsible for various work activities must be included. The narrative should include information that responds to the following questions:

(1) How will the project be designed?

(2) What major products (e.g., research, services, or reports) will result and what is their specific purpose?

(3) What work, activities, or procedures (be as specific as possible) will be undertaken to produce major products?

(4) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting).

(5) How will the final products or services be evaluated? What evaluation methods will be used?

The milestone chart should graphically illustrate:

(1) Steps to accomplish the major products, research, services and/or activities;

(2) Supporting activities and associated timelines, e.g., month 1, month 2; and

(3) The individual(s) responsible for the various activities.

Because this information is critical to understanding and reviewing the application, NMFS encourages applicants to provide sufficient detail. Applications lacking sufficient detail may be eliminated from further consideration.

g. *Project Management:* Describe how the project will be organized and managed. List all persons directly employed by the applicant who will be involved in the project, their

qualifications, experience, and level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontracts, applicants, as appropriate, must follow procurement guidance in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A–110 for Institutions of Higher Education, Hospitals, and other Non-profit Organizations. Commercial organizations and individuals that apply should use OMB Circular A–110. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

h. *Project Impacts:* Describe the anticipated impacts of the project in terms of landings, production, sales, improvement in product quality or safety, or other measurable factors. Describe how the results of the project will be made available to the public.

i. *Evaluation of Project:* The procedures for evaluating the relative success or failure of a project in achieving its goals and objectives should be clearly described within each application.

5. *Supporting Documentation:* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed.

IV. Evaluation Criteria and Selection Procedures

A. Evaluation of Proposed Projects

1. *Consultation with Interested Parties:* NMFS will evaluate applications in consultation with NMFS Offices, NOAA Grants Office, and, as appropriate, Department and other Federal agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and others outside NMFS who have knowledge in the subject matter of a project or who would be affected by a project. The Regional Fishery Management Councils will be asked to review applications that could impact a managed fishery, the bycatch of a managed fishery, or a fishery management issue.

2. *Technical Evaluation:* NMFS will solicit technical evaluations of each project application from appropriate private and public sector experts. Point scores will be given to project applications, based on the following evaluation criteria:

a. *Problem Description and Conceptual Approach for Resolution.* Both the applicant's comprehension of the problem(s) and the overall concept proposed to resolve the problem(s) will be evaluated. (25 points)

b. *Soundness of Project Design/ Technical Approach.* Applications will be evaluated to determine whether or not the applicant provided sufficient information to evaluate the project technically and; if so, the strengths and/ or weaknesses of the technical design proposed for problem resolution. (25 points)

c. *Project Management and Experience and Qualifications of Personnel.* The organization and management of the project, and the project's Principal Investigator and other key personnel in terms of related experience and qualifications will be evaluated. Those projects that do not identify the Principal Investigator with his or her qualifications will receive a lower point score. (20 points)

d. *Project Evaluation.* The effectiveness of the applicant's proposed methods to evaluate the project in terms of meeting its original goals and objectives will be evaluated. (10 points)

e. *Project Costs.* The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high project costs will be taken into account. (20 points)

f. In addition to the above criteria, in reviewing applications that include consultants and contracts, NMFS will make a determination regarding the following:

(1) Is the involvement of the primary applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

(2) Is the proposed allocation of the primary applicant's time reasonable and commensurate with the applicant's involvement in the project?

(3) Are the proposed costs for the primary applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

3. *Panel Review:* After the technical evaluation, comments will be solicited from a panel of representatives selected by the Assistant Administrator for Fisheries, NOAA, from the fishing industry, state government, and others, as appropriate, to rank the projects. Considered in the rankings, along with the technical evaluation, will be the significance of the problem addressed in the project. Each panelist will rank each project in terms of importance or need for funding and provide recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Selection Procedures and Project FundingU.S.C.

After projects have been evaluated and ranked, the Director, Northeast Region, NMFS, will develop recommendations for project funding. These recommendations will be submitted to the Assistant Administrator for Fisheries, NOAA, who will determine the number of projects to be funded, ensuring that there is no duplication with other projects funded by NOAA or other Federal organizations.

The exact amount of funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA/NMFS program and grants management representatives. The funding instrument will be determined by the NOAA Grants Management Division. Projects should not be initiated in expectation of Federal funding until a notice of award document is received.

V. Administrative Requirements

A. Obligation of the Applicant

An Applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. *Primary Applicant Certification.* Applicants whose applications are recommended for funding will be required to submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

a. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

c. *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs which ever is greater; and

d. *Anti-Lobbying Disclosure.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

4. *Lower Tier Certifications.* Successful applicants shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

B. Other Requirements

1. *Federal Policies and Procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

2. *Name check review.* All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

3. *Past Performance.* Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

4. *Delinquent Federal Debts.* No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs which ever is greater; and

d. *Anti-Lobbying Disclosure.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

4. *Lower Tier Certifications.* Successful applicants shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

B. Other Requirements

1. *Federal Policies and Procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

2. *Name check review.* All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

3. *Past Performance.* Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

4. *Delinquent Federal Debts.* No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

a. The delinquent account is paid in full,

b. A negotiated repayment schedule is established and at least one payment is received, or

c. Other arrangements satisfactory to DOC are made.

5. *Buy American-Made Equipment or Products.* Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, sections 606 (a) and (b).

6. *Preaward Activities.* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB, OMB Control Number 0648–0135. Public reporting burden for preparation of the grant application is estimated to be 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Richard Roberts, NOAA/IRMS, 6010 Executive Blvd., Rm. 722, WSC–5, Rockville, MD 20852; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Project No. 0648–0135.

A notice of availability of financial assistance for the NFIG Program will also appear in the Commerce Business Daily.

(Authority: 15 U.S.C. 713c–3(d))

Dated: July 1, 1994.

Charles Karnella,

Acting Program Management Officer for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–16498 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–22–W

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity, military resale commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 8, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity, military resale commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity, military resale commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity, military resale commodities and service.

3. The action will result in authorizing small entities to furnish the commodity, military resale commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity, military resale commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity, military resale commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Box, Wood, Fiberboard
8115–00–L01–0683
(Requirements for the Defense Distribution Region East, New Cumberland, Pennsylvania)
NPA: Sabine Association for Retarded Citizens, Inc., Many, Louisiana

Military Resale Commodities

Bag, Tote, Canvas
M.R. 511
M.R. 512
M.R. 513
M.R. 595
NPA: New Mexico Industries for the Blind, Albuquerque, New Mexico

Sponge, Cloth
M.R. 580
NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Scrubber, Sponge
M.R. 548
NPA: Mississippi Industries for the Blind, Jackson, Mississippi, The Lighthouse, Inc., Long Island City, New York

Sweatsuit, Recruit, Marine Corps
M.R. 650
M.R. 651
M.R. 652
M.R. 653
M.R. 654
M.R. 655
M.R. 656
M.R. 657
M.R. 658
M.R. 659
NPA: Lions Club Industries f/t Blind, Inc., Durham, North Carolina

Cloth, Dish
M.R. 942
NPA: Lions Services, Inc., Charlotte, North Carolina
Cleveland Skilled Industries
Cleveland, Ohio

Service

Grounds Maintenance
Naval Ordnance Center, Pacific Division
Detachment Port Hadlock
Port Hadlock, Washington
NPA: Skookum Educational Programs, Port Townsend, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–16597 Filed 7–7–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes from the Procurement List commodities, a military resale commodity and services previously furnished by such agencies.

EFFECTIVE DATE: August 8, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 18, 25, April 1, 15, May 6, 13 and 20, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 12895, 14155, 15385, 18105, 23700, 25038 and 26482) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Folder, File
7530–01–356–4295
7530–01–356–4296
7530–01–347–5227
Snowshoes, Assault
8430–00–NSH–0002
(Requirements for the U.S. Marine Corps, Quantico, Virginia)

Services

Janitorial/Custodial
Eldorado National Forest
Supervisors Office
Placerville, California

Janitorial/Custodial
Philadelphia International Airport
Air Mobility Command Terminal D/Concourse D
Philadelphia, Pennsylvania

Janitorial/Custodial
Schuylkill Haven USARC
101 Route 61 South
Schuylkill Haven, Pennsylvania

Toner Cartridge Remanufacturing
Department of Energy
Washington, DC

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities, military resale commodity and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities, military resale commodity and services are hereby deleted from the Procurement List:

Commodities

Bracket, Angle
5340–01–180–5984
5340–00–435–6451

Bracket, Duct
2840–00–798–0897

Retainer
5340–00–409–8491

Cloth, Abrasive
5350–00–229–3085
5350–00–229–3088

Clamp Strap Fastener Assembly
5820–00–937–9844

Gown, Hospital, Patient's Bedshirt
6532–01–005–8411
6532–01–005–8412

Medical Packet, Individual Survival Kit, Airman's
6545–00–231–9421

Table, Office, Steel
7110–00–113–0507
7110–00–113–0509

Binder, Looseleaf
7510–00–582–5488
7510–00–286–7791
7510–00–286–7792

Paper, Teletypewriter, Roll
7530–00–223–7966
7530–01–056–2900

Marker, Traffic Control Device
9905–01–009–7826

Military Resale Commodity

Kitchen, Scrubber
M.R. 542

Services

Food Service Attendant
Seneca Army Depot
Romulus, New York

Janitorial/Custodial
Buildings 713, 734, 2004, 2108 and 2600 (Chapel)
Bergstrom Air Force Base, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–16598 Filed 7–7–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Office of the Secretary; Availability of a Draft Environmental Impact Statement (DEIS) for Proposed Deep-Draft Dredging at Military Ocean Terminal, Sunny Point, NC

AGENCY: Department of Defense, United States Army.

Accordingly, the following commodities, military resale commodity and services are hereby deleted from the Procurement List:

Commodities

Bracket, Angle
5340–01–180–5984
5340–00–435–6451

Bracket, Duct
2840–00–798–0897

Retainer
5340–00–409–8491

Cloth, Abrasive
5350–00–229–3085
5350–00–229–3088

Clamp Strap Fastener Assembly
5820–00–937–9844

Gown, Hospital, Patient's Bedshirt
6532–01–005–8411
6532–01–005–8412

Medical Packet, Individual Survival Kit, Airman's
6545–00–231–9421

Table, Office, Steel
7110–00–113–0507
7110–00–113–0509

Binder, Looseleaf
7510–00–582–5488
7510–00–286–7791
7510–00–286–7792

Paper, Teletypewriter, Roll
7530–00–223–7966
7530–01–056–2900

Marker, Traffic Control Device
9905–01–009–7826

Military Resale Commodity

Kitchen, Scrubber
M.R. 542

Services

Food Service Attendant
Seneca Army Depot
Romulus, New York

Janitorial/Custodial
Buildings 713, 734, 2004, 2108 and 2600 (Chapel)
Bergstrom Air Force Base, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–16598 Filed 7–7–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Office of the Secretary; Availability of a Draft Environmental Impact Statement (DEIS) for Proposed Deep-Draft Dredging at Military Ocean Terminal, Sunny Point, NC

AGENCY: Department of Defense, United States Army.

ACTION: Notice of availability.

SUMMARY: The Military Ocean Terminal, Sunny Point, located along the west bank of the Cape Fear River in southeastern North Carolina, is 25 miles south of Wilmington and 5 miles north of Southport. The proposed improvements consist of dredging to deepen the south and center basins and their entrance channels from 34 feet mean low water (m.l.w.) to 38 feet m.l.w., plus 2 feet of overdepth, and to widen these entrance channels from 300 feet to 400 feet. Also, a portion of the center basin will be widened from 800–1,000 feet wide to 1,500 feet wide. Existing permanent navigation facilities require improvements to provide sufficient depth and width to allow the safe passage and maneuvering of modern deep-draft vessels and to permit loading them to their designed capacity and draft. Dredged material disposal will likely be at the Wilmington Ocean Dredged Material Disposal Site, although other reasonable alternatives will be considered. Any modification of this proposed plan will be addressed, as appropriate, during preparation of the Final Environmental Impact Statement (FEIS).

Significant resources which may occur in the area and be impacted by the proposed plan include endangered species; estuarine, marine, and terrestrial habitat; estuarine, marine, and terrestrial life; historic properties; water quality; recreational and aesthetic resources; and wetlands.

Alternatives:

a. No action/maintaining status quo.

b. Improvement of existing navigation facilities.

Federal, State, and local officials; conservation groups; and interested businesses, groups, and individuals are invited to comment on the DEIS. Comments will be addressed in the FEIS. In order to be considered, comments should be received no later than 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

ADDRESSES: Written comments may be forwarded to: District Engineer, U.S. Army Corps of Engineers, Wilmington District, (Attention: Mr. Philip Payonk), P.O. Box 1890, Wilmington, North Carolina 28402–1890.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Mr. Payonk, (919) 251–4589.

Dated: June 29, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 94–16487 Filed 7–7–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Financial Assistance Award: DCS Corporation

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on the acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to DCS Corporation under Grant Number DE–FG01–94CE15605. The proposed grant will provide funding in the estimated amount of $99,960 by the Department of Energy for the purpose of saving energy through development of the grantee's, Mr. W, Paul Blase's, "Surface Profiling System Optimized for Inspection of Turbine Blades".

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by DCS Corporation is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique device offering the potential for high speed and high accuracy in turbine inspection which should translate to faster inspection time, larger sample sizes, and lower production time with commensurately reduced costs and energy savings. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program was never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., S.W., Washington, DC 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, DC on June 29, 1994.

David Leotta,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–16582 Filed 7–7–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Ramex Systems, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on the acceptance of an unsolicited proposal meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FG01–94CE15561 to Ramex Systems, Inc. The proposed grant will provide funding in the estimated amount of $90,759 by the Department of Energy for the purpose of saving energy through development of the grantee's, Mr. Howard Handewith's, patented device "RAMEX Tunneler", that can deliver low-velocity high-energy impacts to fracture rock in a more controlled and focused manner than explosives.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by Ramex Systems, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the invention conserves energy by creating tunnels with greater energy, efficiency, control and safety than explosives. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

The anticipated term of the proposed grant is 14 months from the date of award.

Issued in Washington, DC on June 29, 1994.

David Leotta,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–16584 Filed 7–7–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Synfuels Engineering and Development, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FG01–94CE15612 to Synfuels Engineering and Development, Inc. The proposed grant will provide funding in the estimated amount of $95,839 by the Department of Energy for the purpose of making more efficient and cost effective use of both oil shale and municipal solid waste (MSW) through development of the grantee's, Mr. Reed L. Clayson's, invention of a "Combustion of Municipal Solid Waste with Oil Shale in Circulation Fluidized Bed".

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by Synfuels Engineering and Development, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique technology that would utilize the calcium salts in oil shale as a pollutant absorber, thereby making more efficient and cost effective use of both oil shale and municipal solid waste (MSW) as energy sources. The ash waste products resulting from this process will be used to make material similar to Portland cement. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, DC on June 29, 1994.

David Leotta,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–16583 Filed 7–7–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2009–003 North Carolina]

Virginia Electric and Power Co.; Notice of Availability of Environmental Assessment

June 24, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for Non-project Use of Project Lands and Waters at the Gaston and Roanoke Rapids Project (FERC No. 2009), located on the Roanoke River, and has prepared a Final Environmental Assessment (FEA). The proposed water intake and pipeline would be located in Brunswick, Greenville, Sussex, Southampton and Isle of Wight Counties, Virginia.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Based on the conclusions reached in the FEA, the Commission will prepare an environmental impact statement (EIS) for the proposed action. Notice of the intent to prepare an EIS will soon be published in the **Federal Register**.

As you review the FEA, please note additional information that should be included in the EIS and provide that information with your scoping comments for the EIS. All parties will be notified of the time and location for scoping meetings that will be conducted related to the preparation of the EIS, and the procedures for providing written scoping comments. This notification will also be provided in a **Federal Register** notice.

For further information, please contact Steve Edmondson at (202) 219–2653.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16516 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2009–003 North Carolina]

Virginia Electric and Power Co.; Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings

July 1, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, at 18 CFR part 380 (Order 486, 52 FR 47897), the Commission will prepare an Environmental Impact Statement (EIS) for the application for Non-project Use of Project Lands and Waters at the Gaston and Roanoke Rapids Project (FERC No. 2009), located on the Roanoke River. The proposed water intake and pipeline would be located in Brunswick, Greenville, Sussex, Southampton and Isle of Wight Counties, Virginia.

The Office of Hydropower Licensing has prepared a Final Environmental Assessment (FEA) for the proposed action. The FEA will be the scoping document. We intend to conduct a thorough and comprehensive analysis of all relevant issues while keeping to an expedited schedule for completion of a Final EIS.

Three scoping meetings will be held. The two open scoping meetings are intended for input from both the public and from resource agency and non-governmental organizations while the public meeting is intended primarily for public input. All interested individuals, organizations, and agencies are urged to attend one or more of these meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS. The times and locations of these meetings are as follows:

Open Scoping Meeting 1—Raleigh Durham NC . . . July 14 (10:00 am to 5:00 pm) Raleigh Sheraton Inn, Crabtree Valley, 45301 Creedmoor Road.

Public Scoping Meeting—South Hill VA . . . July 18 (7:00 to 10:00 pm) Holiday Inn, 585 US Route 58, South Hill, VA 23970.

Open Scoping Meeting 2—Virginia Beach VA . . . July 20 (10:00 am to 5:00 pm) Omni Waterside, 777 Waterside Drive, Norfolk, VA 23510.

Each scoping meeting will be recorded by a court reporter, and all

For further information, please contact Steve Edmondson at (202) 219–2653.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16516 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2009–003 North Carolina]

Virginia Electric and Power Co.; Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings

July 1, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, at 18 CFR part 380 (Order 486, 52 FR 47897), the Commission will prepare an Environmental Impact Statement (EIS) for the application for Non-project Use of Project Lands and Waters at the Gaston and Roanoke Rapids Project (FERC No. 2009), located on the Roanoke River. The proposed water intake and pipeline would be located in Brunswick, Greenville, Sussex, Southampton and Isle of Wight Counties, Virginia.

The Office of Hydropower Licensing has prepared a Final Environmental Assessment (FEA) for the proposed action. The FEA will be the scoping document. We intend to conduct a thorough and comprehensive analysis of all relevant issues while keeping to an expedited schedule for completion of a Final EIS.

Three scoping meetings will be held. The two open scoping meetings are intended for input from both the public and from resource agency and non-governmental organizations while the public meeting is intended primarily for public input. All interested individuals, organizations, and agencies are urged to attend one or more of these meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS. The times and locations of these meetings are as follows:

Open Scoping Meeting 1—Raleigh Durham NC . . . July 14 (10:00 am to 5:00 pm) Raleigh Sheraton Inn, Crabtree Valley, 45301 Creedmoor Road.

Public Scoping Meeting—South Hill VA . . . July 18 (7:00 to 10:00 pm) Holiday Inn, 585 US Route 58, South Hill, VA 23970.

Open Scoping Meeting 2—Virginia Beach VA . . . July 20 (10:00 am to 5:00 pm) Omni Waterside, 777 Waterside Drive, Norfolk, VA 23510.

Each scoping meeting will be recorded by a court reporter, and all statements (oral and written) will become part of the Commission's public record for the project. Interested parties who are unable to attend the scoping meeting may provide written comments and information to the FERC as described below.

Federal, state, and local resource agencies, and other interested groups and individuals are requested to forward to the Commission, or present at the Commission's scoping meetings, information that they believe will assist the Commission in conducting an accurate and thorough analysis of the individual as well as cumulative effects of the proposed water withdrawal facility.

Requested information can be submitted at the scoping meetings or submitted in writing. If submitting comments in writing, communications must be received no later than August 19, 1994, and must be sent to: Secretary, Federal Energy Regulatory Commission, Mail code: DPCA, HL–21.1, 825 North Capitol Street, NE., Washington, DC 20426.

Any questions concerning the scoping process for the Non-project Use of Project Lands and Waters at the Gaston and Roanoke Rapids Project should be directed to Steve Edmondson at (202) 219–2653.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16517 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–54–000]

CNG Transmission Corp.; Notice of Proposed Changes In FERC Gas Tariff

July 1, 1994.

Take notice that on June 27, 1994, CNG Transmission Corporation (CNG), filed a revised tariff sheet for inclusion in its FERC Gas Tariff, Original Volume No. 2:

First Revised Sheet No. 522

The proposed effective date of the revised tariff sheet is October 1, 1993.

CNG states that it has filed this revised tariff sheet because it was inadvertently omitted from CNG's August 2, 1993, compliance filing in Docket No. RS92–14–005. CNG further states that this tariff sheet reflects the adoption of straight fixed-variable rate design for an incremental transportation service, as was contemplated in CNG's November 2, 1992, "Application and Compliance Filing" in Docket No. RS92–14–000, et al.

CNG states that copies of this filing are being served upon parties to the captioned proceedings, and to the one CNG customer that is affected by the revised sheet.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16518 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 9195–012 Colorado]

City of Colorado Springs; Notice of Availability of Draft Environmental Assessment

July 1, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Office of Hydropower Licensing reviewed an application to amend the license for the Stanley Canyon Hydroelectric Project located on West Monument Creek, El Paso County, Colorado. The application's major proposed changes are: (1) Construction of a new aboveground regulating reservoir and underground tailrace and transfer conduits, (2) a shorter and realigned transmission line, and (3) removal from the project boundary of certain facilities no longer needed for the project. A Draft Environmental Assessment (DEA) was prepared for the application. In the DEA, Commission staff finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or

recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 9195–012 to all comments. For further information, please contact Steve Hocking at (202) 219–2656.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16515 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–632–000]

Columbia Gas Transmission Corp.; Notice of Request Under Blanket Authorization

July 1, 1994.

Take notice that on June 29, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP94–632–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate the facilities necessary to establish eleven new points of delivery to existing customers for firm transportation service under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate eleven new delivery points for delivery of natural gas in Ohio and West Virginia to Columbia Gas of Ohio and Mountain Gas Company. Columbia states that the quantities to be provided through the new delivery points will be within Columbia's authorized level of services.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16519 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–329–000]

El Paso Natural Gas Company; Supplemental Notice of Technical Conference

July 1, 1994.

On June 9, 1994, the Commission issued a notice scheduling a technical conference in the above-captioned proceeding for 10:00 a.m. on August 11, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

The purpose of the conference is to discuss matters of interest and concern raised by several parties relating to El Paso Natural Gas Company's (El Paso) proposal to construct and operate the North/South Transfer Project. In order to facilitate discussion and assist the participants in preparing for the technical conference, El Paso should come prepared to address the following issues:

(1) Whether there are existing alternative means of providing the flexibility proposed by El Paso?

(2) Whether the project is economical based solely on the price advantage of the San Juan Basin natural gas?

(3) Whether a sufficient market exists, including evidence of contracts, a showing that a long-term fundamental market shift has occurred, and data demonstrating a long-term need for the project?

(4) Rate issues, including but not limited to the impact on existing rates, a showing of system-wide benefits, justification for rolling-in costs, and need for an at-risk condition.

Further, El Paso should be prepared to provide any information, data, or studies it may have which responds to any other issues, concerns or alleged deficiencies identified by the intervenors.

All interested parties are invited to attend. For additional information, interested parties may call Whit Holden at (202) 208–1118.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16520 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–5–34–001]

Florida Gas Transmission Company; Compliance Filing

July 1, 1994.

Take notice that on June 21, 1994 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of July 1, 1994:

Fifth Revised Sheet No. 8A
Fourth Revised Sheet No. 8B

FGT states that on May 11, 1994, it requested a waiver and filed tariff sheets, as provided in Section 27A.2 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, to make an out-of-cycle adjustment to lower its Fuel Reimbursement Percentage from 3.4% to 2.25%. FGT proposed an effective date of June 1, 1994, but in the event the Commission did not issue an order by May 23 in time for FGT's June nominations, FGT requested a July 1, 1994, effective date.

On June 17, 1994, the Commission issued an order accepting the tariff sheets effective July 1, 1994. FGT states that it is making the instant filing to reflect the July 1 effective date.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16521 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–230–002]

Florida Gas Transmission Company; Compliance Filing

July 1, 1994.

Take notice that on June 20, 1994 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, with an effective date April 29, 1994:

Substitute Original Sheet No. 8C

On April 29, 1994 FGT filed its Initial PGA Termination Report as required by Section 26 of the General Terms and Conditions of FGT's FERC Gas Tariff, Third Revised Volume No. 1. Subsequently, on June 9, 1994, the Commission issued an order accepting the filings subject to FGT recalculating the total refund by subtracting the same amount of unpaid accruals from FGT's Account 191 balance as of March 31, 1994, as FGT used for calculating carrying charges ($460,549 instead of $396,713). In the instant filing FGT is complying with the Commission Order by refunding additional amounts to its former sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16522 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA90–65–000]

Northern Border Pipeline Company; Compliance Filing and Technical Conference

July 1, 1994.

On June 16, 1994, Northern Border Pipeline Company (Northern Border) filed a preliminary report on potential adjustments in the above referenced docket. This filing purports to comply with the Commission's directive in its May 17, 1994 order in this docket which directed Northern Border to implement the "stand-alone method of allocating consolidated income tax liability based upon a review of the actual Federal tax returns on which taxable income and expenses of Northern Border are reported.

On July 15, 1994, at 9:00 a.m. at a room to be designated at the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, a technical conference will be convened to discuss the issues raised by Northern

Volume No. 1, the following tariff sheet, with an effective date April 29, 1994:

Substitute Original Sheet No. 8C

On April 29, 1994 FGT filed its Initial PGA Termination Report as required by Section 26 of the General Terms and Conditions of FGT's FERC Gas Tariff, Third Revised Volume No. 1. Subsequently, on June 9, 1994, the Commission issued an order accepting the filings subject to FGT recalculating the total refund by subtracting the same amount of unpaid accruals from FGT's Account 191 balance as of March 31, 1994, as FGT used for calculating carrying charges ($460,549 instead of $396,713). In the instant filing FGT is complying with the Commission Order by refunding additional amounts to its former sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16522 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA90–65–000]

Northern Border Pipeline Company; Compliance Filing and Technical Conference

July 1, 1994.

On June 16, 1994, Northern Border Pipeline Company (Northern Border) filed a preliminary report on potential adjustments in the above referenced docket. This filing purports to comply with the Commission's directive in its May 17, 1994 order in this docket which directed Northern Border to implement the "stand-alone method of allocating consolidated income tax liability based upon a review of the actual Federal tax returns on which taxable income and expenses of Northern Border are reported.

On July 15, 1994, at 9:00 a.m. at a room to be designated at the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, a technical conference will be convened to discuss the issues raised by Northern Border's compliance filing and its attempt to comply with the Commission's directive in the May 17, 1994 order.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16523 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–618–000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

July 1, 1994.

Take notice that on June 20, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP94–618–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, and 157.211) for authorization to abandon certain obsolete facilities at the Connell Meter Station in Whitman County, Washington, and to construct and operate replacement facilities at this station to maintain the ability to accommodate its existing firm maximum daily delivery obligations to The Washington Water Power Company (Water Power) under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to replace the existing obsolete 4-inch positive displacement meter with a new 4-inch turbine meter at the Connell Meter Station. Northwest also proposes to abandon the operation of the existing 4-inch orifice meter at this station by removing the recorder and utilizing this second meter run only as a by-pass for the meter station. Northwest states the proposed modification will result in a decrease in the maximum design delivery capacity of the meter station from 4,700 Dth per day to approximately 3,433 Dth per day at a pressure of 150 psig, a capacity still adequate to accommodate existing delivery obligations to Water Power. Northwest further states that the total net of replacing the described facilities at the Connell Meter Station is estimated to be approximately $104,750.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16524 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–229–002]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

Take notice that on June 29, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of August 1, 1994:

First Revised Sheet No. 13
Second Revised Sheet No. 244
First Revised Sheet No. 245
Second Revised Sheet No. 246
First Revised Sheet No. 247
Second Revised Sheet No. 248
Second Revised Sheet No. 249
Second Revised Sheet No. 250

Northwest states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's (Commission) directives in the Order on Compliance Filing, dated May 31, 1994, in Docket No. RP92–229–000 to change the allocation among Northwest's affected customers of the fixed component of supplier settlement payments (SSP) previously paid to Northwest by certain of its customers. First Revised Sheet No. 13 shows by customer the incremental principal amounts, with interest computed through June 30, 1994, that will be billed or refunded to the affected customers pursuant to further order of the Commission. The other sheets being tendered revise Section 19 of Northwest's General Terms and Conditions in its FERC Gas Tariff, Third Revised Volume No. 1, so that the SSP provisions comply with the directives of the Commission.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP92–229–000, upon Northwest's affected customers, and upon affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16525 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. EA–98]

Application for Authorization to Export Electricity; Western Systems Power Pool

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application correction.

SUMMARY: This document contains corrections to a notice of application published on Wednesday, May 11, 1994, (59 FR 24407).

On page 24407 in the third column, add Louis Dryfus Electric Power, Inc. and change Oklahoma Electric Company to Oklahoma Gas and Electric Company. In addition, the period during which the DOE will accept comments has been extended seven (7) business days to July 20, 1994.

Issued in Washington, DC, on July 5, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–16581 Filed 7–7–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order During the Week of May 30 Through June 3, 1994

Office of Hearings and Appeals

During the week of May 30 through June 3, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: July 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Reporting Requirements

R&R Oil, Inc., Gillette, Wyoming, LEE–0079

R&R Oil, Inc. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship as a result of the reporting requirement. Accordingly, on June 3, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–16585 Filed 7–7–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4713–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 20, 1994 Through June 24, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D–COE–D39025–00 Rating LO1, Anacostia River and Tributaries Feasibility Study relating to Restoration of Fish and Wild Habitat, Implementation, Prince George's and Montgomery Cos., MD, and DC.

Summary: EPA had no objections to the proposed action, but made several recommendations.

Final EISs

ERP No. F–FHW–F40331–WI, WI–TH–29 Improvement, from Chippewa Falls to Abbotoford and Marathon City in Martin Lane, Funding and Possible COE 404 Permit, Clark and Marathon Counties, WI.

Summary: The final EIS responds to EPA's wetland comments made on the draft EIs. EPA encourages additional reductions in impacts to wetlands during the design phase.

ERP No. F-FHW-L40180–WA, WA–522 Transportation Improvements, WA–9 near Woodinville to WA–2 in Monroe, Funding, U.S. CGD Permit and Section 10 and 404 Permits, Snohomish River Bridge, Snohomish County, WA.

Summary: The final EIS has been responsive to concerns EPA expressed on the preliminary draft and draft EISs. Impacts to wetlands and drinking water have been satisfactorily addressed and EPA fully supports the inclusion of wildlife crossing.

Dated: July 5, 1994.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–16601 Filed 7–7–94; 8:45 am]

BILLING CODE: 6560–50–U

[ER–FRL–4712–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed June 27, 1994 Through July 01, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940252, Draft EIS, USA, IN, Fort Benjamin Harrison Disposal and Reuse, Implementation, City of Lawrence, Marion County, IN, Due: August 22, 1994, Contact: Maj. Michael A. Spasyk (703) 693–7556.

EIS No. 940253, Final EIS, FAA, AK, Anchorage International Airport Instrument Landing Systems (ILS), Construction and Operation, Install ILS on Runway 14, Approval, Funding and COE Section 404 Permit, Anchorage, AK, Due: August 08, 1994, Contact: Mel Leskiner (907) 271–5199.

EIS No. 940254, Final EIS, FHW, NC, NC–64/Pittsboro Bypass Construction, NC–1514 to NC–64 near B. Everett Jordan Lake, Funding and Possible COE Section 404 Permits, Town of Pittsboro, Chatham County, NC, Due: August 08, 1994, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 940255, Draft Supplement, NPS, MO, Page Avenue Extension, Bennington Place to US 40, Creve Coeur Lake Memorial Park Conversion of Land for Construction of a 10-Lane Elevated Extension of Page Avenue, Approval, St. Louis and St. Charles Counties, MO, Due: August 22, 1994, Contact: William Schenk (402) 221–3431.

EIS No. 940256, Draft EIS, FAA, NJ, Newark International Airport Ground Access Monorail-Northeast Corridor Connection Project, Funding, Construction, Operation, Airport Layout Plant and Approval, Essex and Union Counties, NJ, Due: August 22, 1994, Contact: Anthony Spera (718) 553–1250.

EIS No. 940257, Draft EIS, FHW, AL, Tuscaloosa East Bypass Corridor, Construction, I–59/I–20 east of Tuscaloosa to US 82 west of Northport, Funding, NPDES Permit, COE Section 10 and 404 Permits, Tuscaloosa County, AL, Due: August 23, 1994, Contact: Joe D. Wilkerson (205) 223–7374.

EIS No. 940258, Draft EIS, BOP, TX, Houston Metropolitan Detention Center, Site Selection, Construction and Operation, City of Houston County, TX, Due: August 22, 1994, Contact: Patricia K. Sledge (202) 514–6470.

[ER–FRL–4712–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed June 27, 1994 Through July 01, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940252, Draft EIS, USA, IN, Fort Benjamin Harrison Disposal and Reuse, Implementation, City of Lawrence, Marion County, IN, Due: August 22, 1994, Contact: Maj. Michael A. Spasyk (703) 693–7556.

EIS No. 940253, Final EIS, FAA, AK, Anchorage International Airport Instrument Landing Systems (ILS), Construction and Operation, Install ILS on Runway 14, Approval, Funding and COE Section 404 Permit, Anchorage, AK, Due: August 08, 1994, Contact: Mel Leskiner (907) 271–5199.

EIS No. 940254, Final EIS, FHW, NC, NC–64/Pittsboro Bypass Construction, NC–1514 to NC–64 near B. Everett Jordan Lake, Funding and Possible COE Section 404 Permits, Town of Pittsboro, Chatham County, NC, Due: August 08, 1994, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 940255, Draft Supplement, NPS, MO, Page Avenue Extension, Bennington Place to US 40, Creve Coeur Lake Memorial Park Conversion of Land for Construction of a 10-Lane Elevated Extension of Page Avenue, Approval, St. Louis and St. Charles Counties, MO, Due: August 22, 1994, Contact: William Schenk (402) 221–3431.

EIS No. 940256, Draft EIS, FAA, NJ, Newark International Airport Ground Access Monorail-Northeast Corridor Connection Project, Funding, Construction, Operation, Airport Layout Plant and Approval, Essex and Union Counties, NJ, Due: August 22, 1994, Contact: Anthony Spera (718) 553–1250.

EIS No. 940257, Draft EIS, FHW, AL, Tuscaloosa East Bypass Corridor, Construction, I–59/I–20 east of Tuscaloosa to US 82 west of Northport, Funding, NPDES Permit, COE Section 10 and 404 Permits, Tuscaloosa County, AL, Due: August 23, 1994, Contact: Joe D. Wilkerson (205) 223–7374.

EIS No. 940258, Draft EIS, BOP, TX, Houston Metropolitan Detention Center, Site Selection, Construction and Operation, City of Houston County, TX, Due: August 22, 1994, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 940259, Final EIS, AFS, OR, ID, Snake River Recreation Wild and Scenic River Management Plan, Implementation, Hells Canyon National Recreation Area, Wallowa-Whitman National Forest and Nez Perce and Payette National Forests, Bake and Wallowa Counties, OR and Nez Perce, Idaho and Adams Counties, ID, Due: August 08, 1994, Contact: Kurt Wiedermann (503) 523–6391.

EIS No. 940260, Draft EIS, USN, CA, Lemoore Naval Air Station Realignment, Relocation of 98 Military Construction Projects from Miramar Naval Air Station, Implementation, Lemoore County, CA, Due: August 22, 1994, Contact: Surinder Sikand (415) 244–3721.

EIS No. 940261, Final EIS, UMT, IL, Chicago Central Area Circulator Transit System Improvement, Division Street (north) Halsted Street to the Chicago River, Stevenson Expressway to Lake Michigan, Funding, Cook, DuPage, Kane, Lake, McHenry and Will, IL, Due: August 08, 1994, Contact: Joel Ettinger (312) 353–2865.

EIS No. 940262, Draft EIS, COE, LA, Port Fourchon Navigation Channel Project, Channel Deepening, Implementation, Lafourche Parish, LA, Due: August 08, 1994, Contact: Richard E. Boe (504) 862–1505.

Under Section 1506.10(d) of the Council on Environmental Quality Regulations For Implementating The Procedural Provisions of the National Environmental Policy Act a 15-day Reduction of the Comment Period has been Granted.

EIS No. 940263, Draft EIS, FHW, NC, US 70 Goldsboro Bypass Construction, US 70 in the vicinity of NC–1237 to US 70 in the vicinity of NC–1731, Funding and COE Permits, Wayne County, NC, Due: August 22, 1994, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 940264, Draft EIS, USA, NC, Military Ocean Terminal Navigation Basins and Entrance Channels Improvements, Implementation, Sunny Point, Brunswick and New Hanover Counties, NC, Due: August 22, 1994, Contact: Gordon Schwerzmann (703) 614–6605.

EIS No. 940265, Draft EIS, BPA, Business Plan to Operate Electric Utility Market, Transmission Services and Fish and and Wildlife Activities, Funding and Implementation, WA, OR, ID, CA, NV, AZ, MT, WY, UT, NM and British Columbia, Due: August 22, 1994, Contact: Carol M. Borgstrom (800) 472–2756.

Dated: July 5, 1994.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–16602 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5008–9]

New Source Review Reform Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: On July 7, 1993, the EPA gave notice of the establishment of the New Source Review (NSR) Reform Subcommittee (Subcommittee) (58 FR 36407) under the auspices of the Clean Air Act Advisory Committee (55 FR 46993) which was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I). The Subcommittee's purpose is to provide independent advice and counsel to the EPA on policy and technical issues associated with reforming the NSR rules.

OPEN MEETING DATES: Notice is hereby given that the Subcommittee will hold an open meeting on July 19–20, 1994 at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202, telephone (703) 418–1234, telefax (703) 418–1289. The Subcommittee is scheduled to meet from 9:00 a.m. to 5 p.m. on July 19 and 8:30 a.m. to 1 p.m. on July 20, 1994. Due to the size of the meeting room, seating is limited to approximately 100 individuals and will be made available on a first come, first serve basis.

At its last meeting on March 16–17, 1994, the Subcommittee discussed recommendations for program reform regarding Class I area impacts, best available control technology and NSR applicability. Since that meeting, the Agency staff have been working on draft preamble and regulatory language that addresses the numerous issues deliberated upon by the Subcommittee. At the upcoming July 19–20, 1994 meeting, the Subcommittee will have the opportunity to respond to the staff draft of the NSR reform rulemaking package.

Written comments on the draft package must be received on or before August 31, 1994. Comments concerning the draft proposal should be addressed to Ms. Lydia Wegman, Deputy Director, Office of Air Quality Planning and Standards (MD–10), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the

above-noted topics will be publicly available at the meeting. Thereafter, these documents, together with transcript of the Subcommittee's meeting, will be available for public inspection in EPA's Air and Radiation Docket and Information Center, No. A–90–37. The docket is available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., weekdays, at EPA's Air and Radiation Docket and Information Center (6102), Room M–1500, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

Approximately 1 week prior to the meeting, a copy of the staff draft of the NSR reform rulemaking package will be available to the public on EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) electronic bulletin board. Approximately 3–4 weeks after the July 1994 Subcommittee meeting, a transcript of the meeting will also be available to the public through the TTN. Access to the TTN, via a computer and communications software, may be obtained by dialing (919) 541–5742. For assistance in accessing the OAQPS TTN, contact the systems operator at (919) 541–5384 in Research Triangle Park, North Carolina, 1:00 to 5:00 EST.

FOR FURTHER INFORMATION: For questions concerning the Subcommittee or its activities, please contact Mr. David Solomon, Designated Federal Official to the Subcommittee at (919) 541–5375, telefax (919) 541–5509, or by mail at U.S. EPA, OAQPS, Air Quality Management Division (MD–15), Research Triangle Park, North Carolina 27711.

As of the date of this notice, the Agency intends to proceed with the meeting as announced; however, unforeseen circumstances may result in a postponement. Therefore, members of the public planning to attend this meeting are advised to contact Alice Peland, TRC Environmental Corporation, 100 Europa Drive, Chapel Hill, North Carolina 27514, telephone (919) 968–9900, to confirm the July 19–20 meeting location and dates.

Dated: June 28, 1994.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 94–16579 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–44611; FRL–4900–9]

TSCA Consent Order; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on refractory ceramic fibers (RCFs) (CAS No. 142844–00–6), submitted pursuant to a Testing Consent Order entered into under the authority of the Toxic Substances Control Act (TSCA). Publication of this notice is required under section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all results of testing conducted pursuant to a consent order must be announced to the public in accordance with the procedures specified in section 4(d) of TSCA. Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted within 15 days after the test data are received.

I. Test Data Submissions

Test data for refractory ceramic fibers (RCFs) were submitted by three member companies of the Refractory Ceramic Fiber Coalition (Carborundum Company, Premier Refractories and Chemicals, Inc., and Thermal Ceramics, Inc.) pursuant to a Testing Consent Order at 40 CFR 799.5000. The test data were received by EPA on June 27, 1994. The submission includes workplace exposure monitoring data from RCFC company facilities, and their customers' facilities.

RCFs are used as insulation for industrial applications such as high temperature furnaces, heaters, and kilns. RCFs are also used in automotive applications, aerospace uses, and in certain commercial appliances such as self-cleaning ovens.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency has not determined whether the submissions are complete.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–42166A). This record includes copies of all data reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA NCIC, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Lists of Subjects

Environmental protection, Test data.

Dated: June 30, 1994.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–16600 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 1, 1994.

The Federal Communications Commission has submitted the following Information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: None.

Title: Expanded Interconnection with Local Telephone Company Facilities.

Action: New collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting and Other: one-time tariff filing to be made by approximately 9/30/94.

Estimated Annual Burden: 16 responses; 37 hours average burden per response; 592 hours total annual burden.

Needs and Uses: In the attached Third Report and Order, the Commission concluded that the LECs should be required to provide certain cost support to justify the rate levels for the tariff charges to be paid by parties for the offered signalling information. The Commission required the price cap LECs to provide cost support for the signalling charge using the same methodology employed to support new services under the price cap rules. The Commission believes that this cost information is necessary to ensure the proper pricing of signalling information offerings since they will be used by the LECs' competitors. The LECs may use approved, commonly used public utility ratemaking methodologies to develop the required cost support, including sampling and averaging of certain costs, and thereby minimize the burden of this requirement. Absent these requirements, the Commission is concerned that the LECs would have a strong incentive to price these services in a manner that would undermine the growth of competition in interstate access. Unless parties can purchase expanded interconnection offerings at rates that are just, reasonable and nondiscriminatory, mandating expanded interconnection will not lead to effective competition and the anticipated benefits.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–16556 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Grupo Financiero Serfin, S.A. de C.V., Mexico City, Mexico; Application to Engage in Nonbanking Activities; Correction of Comment Period Date

This notice corrects a notice (FR Doc. 94-15271) published on page 32433 of the issue for Thursday, June 23, 1994.

The entry for Grupo Financiero Serfin, S.A., is revised to read as follows:

Grupo Financiero Serfin, S.A. de C.V., Mexico City, Mexico (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through its subsidiary, Serfin Funds Transfer, Inc., Los Angeles, California (Company), in the following activities throughout the United States:

(1) making cash advances on credit cards to consumers pursuant to § 225.25(b)(1) of the Board's Regulation Y (12 CFR 225.25(b)(1));

(2) issuing and selling U.S. dollar denominated money orders and similar payment instruments with a face value of $1,000 or less pursuant to § 225.25(b)(12) of the Board's Regulation Y (12 CFR § 225.25(b)(12)) and foreign

LECs to provide cost support for the signalling charge using the same methodology employed to support new services under the price cap rules. The Commission believes that this cost information is necessary to ensure the proper pricing of signalling information offerings since they will be used by the LECs' competitors. The LECs may use approved, commonly used public utility ratemaking methodologies to develop the required cost support, including sampling and averaging of certain costs, and thereby minimize the burden of this requirement. Absent these requirements, the Commission is concerned that the LECs would have a strong incentive to price these services in a manner that would undermine the growth of competition in interstate access. Unless parties can purchase expanded interconnection offerings at rates that are just, reasonable and nondiscriminatory, mandating expanded interconnection will not lead to effective competition and the anticipated benefits.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94-16556 Filed 7-7-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Grupo Financiero Serfin, S.A. de C.V., Mexico City, Mexico; Application to Engage in Nonbanking Activities; Correction of Comment Period Date

This notice corrects a notice (FR Doc. 94-15271) published on page 32433 of the issue for Thursday, June 23, 1994.

The entry for Grupo Financiero Serfin, S.A., is revised to read as follows:

Grupo Financiero Serfin, S.A. de C.V., Mexico City, Mexico (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through its subsidiary, Serfin Funds Transfer, Inc., Los Angeles, California (Company), in the following activities throughout the United States:

(1) making cash advances on credit cards to consumers pursuant to § 225.25(b)(1) of the Board's Regulation Y (12 CFR 225.25(b)(1));

(2) issuing and selling U.S. dollar denominated money orders and similar payment instruments with a face value of $1,000 or less pursuant to § 225.25(b)(12) of the Board's Regulation Y (12 CFR § 225.25(b)(12)) and foreign currency denominated money orders and similar payment instruments with a face value of the U.S. dollar equivalent of $1,000 or less;

(3) receiving money for transmission and transmitting the same to a foreign country;

(4) buying and selling foreign currency at retail and at wholesale solely to manage its retail inventory of currency;

(5) cashing U.S. dollar payroll checks; and

(6) cashing federal, state, and local government benefit checks.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806, January 5, 1984.

The Board has previously determined by regulation that engaging in credit card lending, and issuing and selling money orders and similar consumer-type payment instruments having a face value of less than $1,000 are closely related to banking and permissible for bank holding companies under section 4 of the BHC Act. *See* 12 CFR 225.25(b)(1) and (b)(12). Additionally, the Board previously has determined by order that the following activities that Applicant proposes to conduct are closely related to banking and proper incidents thereto under section 4 of the BHC Act:

(1) issuing and selling foreign currency denominated money orders and similar payment instruments with a face value of the U.S. dollar equivalent of $1,000 or less, *Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990);

(2) receiving money for transmission and transmitting the same to a foreign country, *Philippines Commercial International Bank*, 56 Federal Reserve Bulletin 861 (1991);

(3) buying and selling foreign currency at retail and at wholesale solely to manage its retail inventory of currency, *Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990); and

(4) cashing U.S. dollar payroll checks drawn on unaffiliated banks, *Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990).

Applicant has committed that it will conduct these activities in accordance with the limitations established by regulation and order on the conduct of such activities.

The Board has not previously determined that cashing federal, state, and local government benefit checks is permissible under section 4(c)(8) of the BHC Act. Applicant states that this proposed activity is closely related and a proper incident to banking because the cashing of government benefit checks is no less fundamental to banking than is the cashing of payroll checks, which the Board has determined is permissible under section 4(c)(8) of the BHC Act. Applicant also states that recipients of such checks should have the same access to check cashing services as do individuals who cash payroll checks.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 18, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, July 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16546 Filed 7–7–94; 8:45 am]

BILLING CODE 6210–01–F

Lakland Bancorp, Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 1, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Lakland Bancorp, Inc., Oak Ridge, New Jersey, to acquire 9.9 percent of the voting shares of High Point Financial Corp., Branchville, New Jersey, and thereby indirectly acquire National Bank of Sussex County, Branchville, New Jersey.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. IBS Financial Corp., Cherry Hill, New Jersey, to become a bank holding company by acquiring 100 percent of the voting shares of Inter-Boro Savings and Loan Association, Cherry Hill, New Jersey. In connection with the holding company formation, Inter-Boro Savings and Loan Association will be converting from mutual to stock form. Inter-Boro Savings and Loan Association will lose its status as a qualified thrift lender due to its failure to comply with the Qualified Thrift Lender Test, as set forth in 12 CFR 563.50.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. HSB, Inc., Hedrick, Iowa, to become a bank holding company by acquiring 98.3 percent of the votings shares of Hedrick Savings Bank, Hedrick, Iowa.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Hensley Investment Limited Partnership, Springfield, Missouri, to become a bank holding company by acquiring at least 76 percent of Peoples Bank of Fordland, Fordland, Missouri; at least 43 percent of the voting shares of Citizens Bank of the Ozarks, Camdenton, Missouri; and at least 52 percent of the voting shares of Peoples Bank of the Ozarks, Nixa, Missouri.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Froid Bankshares, Inc., Froid, Montana, to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Froid, Froid, Montana.

2. Winona Banc Holding Company, Winona, Minnesota, to acquire 93.2 percent of the voting shares of Town and Country State Bank of Winona, Winona, Minnesota.

F. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Peak Banks of Colorado, Inc., Nederland, Colorado, to become a bank holding company by acquiring 100 percent of the voting shares of Peak National Bank, Nederland, Colorado.

Board of Governors of the Federal Reserve System, July 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16547 Filed 7–7–94; 8:45 am]

BILLING CODE 6210–01–F

Saban, S.A., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Saban S.A., Panama City, Panama, to engage *de novo* through its subsidiaries RNYC Holdings Limited, Marina Bay, Gibraltar, and Republic New York Corporation, New York, New York, in providing investment advice, including counsel, publications, written analyses and reports, as a futures commission merchant authorized pursuant to § 225.25(b)(18) of the Board's Regulation Y. As a commodity trading advisor registered with the Commodity Futures Trading Commission, with respect to the purchase and sale of futures contracts and options on futures contracts for the commodities and instruments referred to in 12 CFR 225.25(b)(18) of the Board's Regulation Y or in the Board's SR 93-27. These activities will be conducted on a worldwide basis.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Security National Corporation, Sioux City, Iowa, to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16548 Filed 7–7–94; 8:45 am]

BILLING CODE 6210–01–F

UJB Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Saban S.A., Panama City, Panama, to engage *de novo* through its subsidiaries RNYC Holdings Limited, Marina Bay, Gibraltar, and Republic New York Corporation, New York, New York, in providing investment advice, including counsel, publications, written analyses and reports, as a futures commission merchant authorized pursuant to § 225.25(b)(18) of the Board's Regulation Y. As a commodity trading advisor registered with the Commodity Futures Trading Commission, with respect to the purchase and sale of futures contracts and options on futures contracts for the commodities and instruments referred to in 12 CFR 225.25(b)(18) of the Board's Regulation Y or in the Board's SR 93-27. These activities will be conducted on a worldwide basis.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Security National Corporation, Sioux City, Iowa, to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-16548 Filed 7-7-94; 8:45 am]

BILLING CODE 6210-01-F

UJB Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. UJB Financial Corp., Princeton, New Jersey, to acquire Palisade Savings Bank, FSB, Ridgefield Park, New Jersey, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-16549 Filed 7-7-94; 8:45 am]

BILLING CODE 6210-01-F

Gregory H. Wallander; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 27, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Gregory H. Wallander, Froid, Montana, to acquire 18.39 percent for a resulting ownership interest of 40.41 percent of the voting shares of First State Bank of Froid, Froid, Montana.

Board of Governors of the Federal Reserve System, July 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-16550 Filed 7-7-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegation of Authority

Part A (Office of the Secretary), Chapter AE (Office of the Assistant Secretary for Planning and Evaluation (OASPE)) of the Statement of Organization, Functions and Delegation of Authority for the Department of Health and Human Services (most recently amended at 58 FR 247 on December 28, 1993) is amended as follows:

I. Chapter AE, paragraph B. "The Office of Program Systems," delete in its entirety and replace with the following:

B. The Office of Program Systems—The Office of Program Systems is responsible for providing guidance and direction to the Department's strategic, policy, and support planning, conducting policy and economic analyses of crosscutting issues, developing planning and policy information and related support systems, and providing technical and policy support services.

1. The Division of Planning and Policy Systems is responsible for managing strategic, policy and policy support planning for the Department. The Division coordinates the development and implementation of the Department's strategic plan, provides assistance to the Operating Divisions and Staff Divisions in the development of their components for the plan, and assists in developing and maintaining performance measurements and reporting under the plan. The Division

will coordinate these activities with other offices with implementation responsibilities and functions related to the Government Performance and Results Act. The Division coordinates the development of the Department's legislative program, including establishment of schedules and procedures to ensure the availability of supporting information. The Division also develops functional requirements for departmental policy support systems in the legislative and strategic planning areas. Finally, the Division coordinates the planning and conduct of evaluation and social research across the Department.

2. The Division of Policy and Regulatory Analysis is responsible for the conduct of policy and economic analysis in subjects and areas not covered by, or cutting across, the programmatic offices of the OASPE. It conducts analyses of economic issues and their implications for the Department's programs. It provides analyses to identify opportunities to improve program linkages and the effectiveness of HHS and related programs, and provides analytic support and direction for strategies to improve access to assistance at the community level. It develops approaches for conducting effective policy analysis of social programs, and provides support to other Departmental offices on techniques of policy analysis, policy systems, program design, and cost-benefit analyses.

3. The Division of Technical and Computer Support is responsible for providing statistical, scientific programming, computer systems support, and other technical services to support policy analyses, research and evaluation activities of the OASPE. It also is responsible for development, coordination, and oversight of Departmental policy for social and demographic statistics, including the revision and publication of the Poverty Income Guidelines. Finally, it provides technical assistance and advice to other policy offices within the Department on certain statistical and specialized scientific policy analyses, and administers a policy information center for identifying and retrieving evaluative and policy research studies.

II. Chapter AE, paragraph C. Within "The Office of Health Policy," delete paragraph 3. "Division of Health Economic Analysis and Research."

Dated: June 30, 1994.

Kenneth S. Apfel,

Assistant Secretary for Management and Budget.

[FR Doc. 94-16485 Filed 7-7-94; 8:45 am]

BILLING CODE 4110-12-M

Centers for Disease Control and Prevention; National Institute for Occupational Safety and Health

[Announcement Number 463]

Cooperative Agreement Program for Agricultural Safety Promotion Systems

Introduction: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program for agricultural safety promotion systems through the National Institute for Occupational Safety and Health (NIOSH). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority: This program is authorized under Section 21 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670). Applicable program regulations are set forth in 42 CFR Part 86, entitled "Grants for Educational Programs in Occupational Safety and Health."

Smoke-Free Workplace: The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants: Eligible applicants are the colleges of agriculture located in the land-grant university(ies) of the States. The selection of land-grant universities seeks to utilize the research expertise and knowledge of personnel resources familiar with agricultural safety issues and to use the existing intervention network which is available to land-grant universities—namely, the cooperative extension service. The restriction to colleges of agriculture in the land-grant universities is due to the original FY 1990 appropriations language providing funds to establish agricultural injury and disease prevention programs at land-grant universities.

Availability of Funds: Approximately $1,212,000 will be available in FY 1994 to fund approximately six awards. It is expected that the average award will be $200,000, ranging from $180,000 to $220,000. It is expected that the awards will begin on or about September 1, 1994, for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and on the availability of funds.

Purpose: The purpose of this new cooperative agreement is to stimulate agricultural safety and health intervention programs to reduce agricultural injury or to reduce exposure to hazards resulting in injury. A primary emphasis is the assessment of the efficacy of the proposed intervention programs.

Program Requirement: In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop a scientific protocol for the specific intervention which encompasses the following elements:

a. Design and implementation of intervention(s).

b. Target population—

i. Identification of the target population.

ii. Information regarding background rates for the pertinent outcomes within the target population.

iii. Procedures to recruit the target population into the study.

c. Description of evaluation design and methods for both scientific and operational aspects of the intervention evaluation, including statement of the questions to be answered and specific process and outcome data that will be collected.

2. Establish goals and time-oriented objectives for all phases of the project.

3. Disseminate the final results of the project to a wide audience including, but not limited to, peer-reviewed journal articles, presentations at professional conferences, and presentations to agricultural or other client groups.

B. CDC/NIOSH Activities

1. Provide liaison services between the land-grant universities and other CDC/NIOSH grantees and collaborate in the implementation of all phases of the study.

2. Provide consultation upon request on data collection instruments and procedures.

3. Monitor intervention implementation and collection of process and outcome data.

4. Collaborate in the analysis of process and outcome data and interpretation of research results.

5. Upon request, collaborate with recipient in dissemination of research results.

Evaluation Criteria: Applications will be reviewed and evaluated according to the following criteria (Maximum of 100 total points):

A. *Documentation of the Problem.* Documentation of the magnitude of the agricultural injury problem(s) for the applicant's State (and the relevance of the injury problem nationally) by both rate and frequency of agricultural hazardous exposure and injury. (10 points)

B. *Goals and Objectives.* The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable. The extent to which they encompass both process and outcome features of the intervention. The extent to which a qualified plan is proposed that will help achieve the goals stated in "Healthy People 2000." The extent to which specific research questions and/or hypotheses are described. (12 points)

C. *Intervention Description.* The extent to which the potential effectiveness of the intervention is theoretically justified and supported with epidemiologic, methodological, or behavioral research. The extent to which the intervention is feasible and can be expected to produce the expected results in the target group of interest. The extent to which the intervention, its implementation, the development of all necessary materials, and all necessary training are clearly described. The extent to which the desired outcomes (e.g., behavior, injury, or death) are specified and definitions of measurable endpoints are provided. The extent to which the setting in which the intervention is to be implemented is clearly described and shown to be adequate for reaching the target group and achieving the desired objectives. (25 points)

D. *Evaluation Study Design.* The extent to which the study design is clearly described and is appropriate for the target population, intervention, data collection opportunities, and proposed project period. The extent to which the sampling methods, sample size estimates, power estimates, and attrition of the participating population are clarified. The extent to which the

2. Provide consultation upon request on data collection instruments and procedures.

3. Monitor intervention implementation and collection of process and outcome data.

4. Collaborate in the analysis of process and outcome data and interpretation of research results.

5. Upon request, collaborate with recipient in dissemination of research results.

Evaluation Criteria: Applications will be reviewed and evaluated according to the following criteria (Maximum of 100 total points):

A. *Documentation of the Problem.* Documentation of the magnitude of the agricultural injury problem(s) for the applicant's State (and the relevance of the injury problem nationally) by both rate and frequency of agricultural hazardous exposure and injury. (10 points)

B. *Goals and Objectives.* The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable. The extent to which they encompass both process and outcome features of the intervention. The extent to which a qualified plan is proposed that will help achieve the goals stated in "Healthy People 2000." The extent to which specific research questions and/or hypotheses are described. (12 points)

C. *Intervention Description.* The extent to which the potential effectiveness of the intervention is theoretically justified and supported with epidemiologic, methodological, or behavioral research. The extent to which the intervention is feasible and can be expected to produce the expected results in the target group of interest. The extent to which the intervention, its implementation, the development of all necessary materials, and all necessary training are clearly described. The extent to which the desired outcomes (e.g., behavior, injury, or death) are specified and definitions of measurable endpoints are provided. The extent to which the setting in which the intervention is to be implemented is clearly described and shown to be adequate for reaching the target group and achieving the desired objectives. (25 points)

D. *Evaluation Study Design.* The extent to which the study design is clearly described and is appropriate for the target population, intervention, data collection opportunities, and proposed project period. The extent to which the sampling methods, sample size estimates, power estimates, and attrition of the participating population are clarified. The extent to which the various threats to the validity of the study are recognized and addressed. The extent to which data collection, data processing, and management activities are described. The extent to which the major phases of the project are clearly presented and logically and realistically sequenced. (20 points)

E. *Target Group.* The extent to which the target group is described and access to the target group is demonstrated. The extent to which the target group has a high incidence of injury or prevalence of risk factors to be influenced by the proposed intervention and the extent to which appropriate demographic and morbidity data are described. The extent to which it is demonstrated that the participation of the target group will be sufficient to evaluate the intervention in an unbiased fashion. (13 points)

F. *Project Management and Staffing Plan.* The extent to which the management staff and their working partners are clearly described, appropriately assigned, and have pertinent skills and experiences. The extent to which the applicant proposes to involve appropriate researchers and other personnel who reflect the racial/ethnic composition of the target population. The extent to which the applicant or a full working partner has the capacity and facilities to design, implement, and evaluate the proposed intervention. (10 points)

G. *Collaboration.* The extent to which the necessary partners are clearly described and their qualifications and intentions to participate explicitly stated. The extent to which the applicant provides proof of support (e.g., letters of support and/or memoranda of understanding) for proposed activities. The extent to which a full working partnership between a community-based organization, agricultural organization, other academic institution(s), and a State or local health department has been established. Evidence should be provided that these funds do not duplicate already funded components of ongoing projects. (10 points)

H. *Proposed Budget.* The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds. (Not scored)

Funding Priorities: Following the guidelines of Executive Order 12876, Enhancement of Federal Support to Historically Black Colleges and Universities, one award will be made to a Historically Black Land-Grant University (HBU), contingent upon receiving application(s) from such institution(s) and the application(s) receiving a recommendation for funding. These applications should target underserved agricultural populations (e.g., migrant and/or seasonal farmworkers, black farmers, women farmers/farm wives, or farm youth) as the emphasis of the intervention and evaluation efforts.

Public comments are not being solicited regarding the funding priority because time does not permit solicitation and review prior to the funding date.

Executive Order 12372: Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, no later than 30 days after the application due date. (A waiver for the 60 day requirement has been requested.) The Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements: This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number: The Catalog of Federal Domestic Assistance number for this program is 93.287.

OTHER REQUIREMENTS

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget

(OMB) under the Paperwork Reduction Act.

Application Submission and Deadline: The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before August 8, 1994.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information: A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, telephone (404) 842–6630. Programmatic technical assistance may be obtained from Alfred A. Amendola, Ph.D., P.E., Acting Director, NIOSH, Division of Safety Research, telephone (304) 284–5700, or David L. Hard, Ph.D., Safety Specialist, telephone (304) 284–5704, at NIOSH, Division of Safety Research, Centers for Disease Control and Prevention (CDC), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888.

Please refer to Announcement Number 463 when requesting information pertaining to this program.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–00100473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 1, 1994.

Richard A. Lemen, Ph.D.,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16531 Filed 7–7–94; 8:45 am]

BILLING CODE 4163–19–P

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting:

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 8:30 a.m.–5 p.m., July 25, 1994; 8:30 a.m.–4 p.m., July 26, 1994.

Place: Swissôtel Atlanta, 3391 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Closed 8:30 a.m.–1:30 p.m., July 25; Open 1:30 p.m.–5 p.m., July 25; Open 8:30 a.m.–4 p.m., July 26.

Purpose: The committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the implementation of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters To Be Discussed: This meeting will convene in closed session from 8:30 a.m. to 1:30 p.m. on July 25, 1994. The purpose of this closed session is for the Science and Program Review Work Group to consider injury control research grant applications recommended for further consideration by CDC's Injury Research Grant Review Committee. The full committee will then vote on a funding recommendation. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Acting Associate Director for Policy Coordination, CDC, pursuant to Public Law 92–463. Following the closed session, the full committee will discuss: (1) An update from the Director of the National Center for Injury Prevention and Control (NCIPC) on NCIPC activities, (2) updates on injury issues from other Federal agencies, and (3) issues related to funding poison control centers. In two open work groups, discussion will center around priority setting and science and program review. A committee member and an NCIPC staff liaison will preside over each work group. Reports from each work group will be presented at the conclusion of the breakout session.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Mr. Larry W. Sparks, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, Mailstop F–41, Atlanta, Georgia 30341–3724, telephone 404/488–4690.

Dated: July 1, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16532 Filed 7–7–94; 8:45 am]

BILLING CODE 4163–18–M

National Institutes of Health

Forum on Cooperative Research and Development Agreements; Meeting

Notice is hereby given that the Forum on Cooperative Research and Development Agreements: Perspectives, Outlook, and Policy Development, convened as an *ad hoc* group of consultants to the Advisory Committee to the Director, NIH, will meet in public session on July 21, 1994, from 8:30 am to 8:00 p.m., at the Bethesda Holiday Inn, Bethesda, Maryland.

The purpose of the Forum is to provide recommendations that will be used in NIH's development of policy on the negotiation, execution, and implementation of Cooperative Research and Development Agreements (CRADAs) under the Federal Technology Transfer Act of 1986. The Forum Panel members will discuss several issues relating to CRADAs including the scope of the research plan, fair access to collaborative research opportunities, and the "reasonable pricing" clause. Case studies will be presented to illustrate these and other issues of importance to CRADAs. At the conclusion of the Forum, the Panel will develop and transmit its report to the Advisory Committee to the Director, NIH, for review.

Concerned organizations and individuals are invited to present their views at the Forum or submit written views of any length to the Panel. Please submit requests for a 5-minute presentation time, or written views to: Harold Safferstein, Technology Transfer Branch, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 31, Room 7A–32, 9000 Rockville Pike, Bethesda, MD 20892, (301) 402–7123 (fax).

Written views submitted by July 15 will be distributed to the Panel. Comments and questions related to the proposed Forum may also be addressed to Dr. Safferstein at (301) 496–2644.

Dated: June 28, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–16526 Filed 7–7–94; 8:45 am]

BILLING CODE 4140–01–P

National Institute of Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on July 25, 1994. The meeting will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814. The Board will meet July 25, 8:30 a.m. to approximately 3 p.m.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Geraldine B. Pollen, Executive Director, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–0801.

A summary of the meeting and roster of the members may be obtained by contacting the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045.

Dated: July 1, 1994.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 94–16527 Filed 7–7–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, June 24, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

Dated: June 28, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–16526 Filed 7–7–94; 8:45 am]

BILLING CODE 4140–01–P

National Institute of Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on July 25, 1994. The meeting will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814. The Board will meet July 25, 8:30 a.m. to approximately 3 p.m.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Geraldine B. Pollen, Executive Director, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–0801.

A summary of the meeting and roster of the members may be obtained by contacting the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045.

Dated: July 1, 1994.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 94–16527 Filed 7–7–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, June 24, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution—0910–0045 (Revision)—This revision incorporates the Food and Drug Administration's new regulation, "Imprinting of Solid Oral Dosage Form Drug Products for Human Use—Final Rule." Information must be provided to insure agency regulatory action and surveillance of drug products. Information is also used to publish the NDC Directory which is used by the drug industry, third party reimbursement firms, insurance companies, and other government regulatory agencies.

Respondents: Businesses or other for-profit; Small Businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response
21 CFR, 207.25(c) Imprint—Reporting.	1,500	12.04	.05 hour.
Currently Approved Reporting.	14,500	2.31	.50 hour.
Currently Approved Record-keeping.	14,500	N/A	.039 hour.

Estimated Total Annual Burden: 31,367 hours.

2. Portable Self-Recording Flow-Meter in the Investigation of Occupational Airways Disorders—0920–0279 (Revision)—This submission is for extension of current approval for the National Institute of Occupational Safety and Health to test a newly developed portable self-recording flow meter which may offer important advantages in the investigation of occupational asthma and acutely toxic or irritating environments. The new device offers investigators the potential for reducing the requirements for recording results while obtaining multiple, accurate and valid lung function measures before, during and after the workshift.

Respondents: Individuals or households.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Phase 1–5	230	2	1.84 hours.
Screener	275	1	.10 hour.

Estimated Total Annual Burden: 873 hours.

3. Health Education Assistance Loan (HEAL) Program Regulations—42 CFR Part 60—0915–0108 (Revision)—These notification, reporting and recordkeeping requirements insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans.

Respondents: Individuals or households; Businesses or other for-profit; Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Reporting	351	1.9	2.5 hours.
Notification	31,255	13.8	.25 hour.
Record-keeping.	351	1,114	.19 hour.

Estimated Total Annual Burden: 183,544 hour.

4. Evaluation of the Ryan White Title IV HIV Demonstration Program for Children, Adolescents, and Families—New—Information needed to evaluate the Ryan White Title IV HIV Demonstration Program for Children, Adolescents, and Families will be collected from project staff and clients. Multiple data collection mechanisms will be used, including self-administered questionnaires (all 36 grantees), site visits to 18 grantees, and focus groups with clients at ten grantee sites.

Respondents: Individuals or households; Non-profit institutions; Small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Self-Study Guide.	36	1	4 hours.
Site Visits	180	1	3 hours.
Focus Groups.	120	1	3 hours.

Estimated Total Annual Burden: 1,044 hours.

5. Deferment Request Form for the National Health Service Corps and Native Hawaiian Health Scholarship Programs—New—Scholars participating in the National Health Service Corps or Native Hawaiian Health Scholarship Programs who wish to defer their service obligation in order to complete advanced training must submit

information on the training program to the Secretary. This is a request for approval of the deferment form and associated requirements.

Respondents: Individuals or households.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Deferment Request Form.	200	1	.5 hour.
Associated Notification Requirements.	30	1	1 hour.

Estimated Total Annual Burden: 130 hours.

6. Evaluation of Learning Needs in AETC Service Areas—New—AIDS Education and Training Centers (AETCs) are required, as a condition of award, to conduct an assessment of training needs in their service areas every three years. A standardized protocol has been developed for identifying training needs of physicians, physician assistants, nurses, certified nurse practitioners, dentists, and dental hygienists. Respondents: Individuals or households; Number of Respondents: 13,561; Number of Responses per Respondent: 1; Average Burden per Response: .19 hour; Estimated Annual Burden: 2,557 hours.

7. Responsibility of Applicants for Promoting Objectivity in Research for Which PHS Funding is Sought: 42 CFR Part 50 and 48 CFR Part 309—NPRM—New—The purpose of this rule is to protect the objectivity with which PHS-funded research is conducted. Disclosure of financial interests related to PHS-funded research by personnel who have decision making responsibilities that could affect the outcome of the research is required. The NPRM appeared in the **Federal Register** on June 28, 1994 (Vol. 59, No. 123, pp. 33242–33251). Respondents: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; Estimated Annual Burden: 1 hour.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 10235, Washington, DC 20503.

Dated: June 30, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–16486 Filed 7–7–94; 8:45 am]

BILLING CODE 4160–17–M

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) (NIH) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 59 FR 30366–7, June 13, 1994, is amended to reflect the reorganization of the Office of Management (HNA9), Office of the Director, NIH (HNA). The reorganization consists of the following: (1) Revise the functional statement for the Office of Administration (OA) (HNA92), Office of Management (OM) (HNA9); (2) transfer the Division of Financial Management (HNA923) from the OA to the OM and retitle it as the Office of Financial Management and change its Standard Administrative Code (SAC) to (HNA96); (3) transfer the Office of Human Resource Management (HNA926) from the OA to the OM and change its SAC to (HNA97); (4) transfer the Office of Information Resources Management (HNA94) from the OM to the OA and change its SAC to (HNA928); and (5) transfer the Office of Management Assessment (HNA95) from the OM to the OA and change its SAC to (HNA929).

Section HN–B, Organization and Functions, is amended as follows:

1. Under the heading *Office of Management (HNA9),* delete the functional statement for the *Office of Administration (HNA92)* in its entirety and substitute the following: (1) Advises the NIH Director and staff on NIH administration and management; (2) provides leadership and direction to NIH components on administrative management; and (3) develops/implements policies and provides oversight in the areas of information resources management, management assessment, grant administration and contract management, procurement, and logistics.

2. After the heading *Office of Management Assessment (HNA95),* insert the following:

Office of Financial Management (HNA96). (1) Advises the NIH Director and staff and provides leadership and direction for NIH financial management activities; (2) develops policies and instructions for budget preparation and presentation; (3) administers allocation of funds and manages a system of fund and budgetary controls; (4) provides an NIH staffing resource control system designed to allocate resources; (5) provides, develops, and maintains an NIH Management Account Structure; (6) directs planning and implementation of NIH fiscal systems and procedures and provides accounting services to all NIH components; and (7) participates in the development of policies and procedures pertaining to grants and contracts.

Office of the Director (HNA961). (1) Advises the NIH Director and staff on financial management activities, including budget, accounting, and the cost advisory aspects of grants and contracts administration; and (2) plans and directs the activities of the Office.

Office of Human Resource Management (HNA97). (1) Advises the NIH Director and staff on human resource management; (2) directs central human resource management services; (3) provides NIH leadership and planning on human resource program development, salary administration, upward mobility, and other functions; and (4) conducts studies and makes recommendations to senior NIH and PHS management for new or redirected human resource efforts and policies, as appropriate.

Office of the Director (HNA971). (1) Advises the NIH Director and staff on all matters pertaining to human resource management; and (2) plans and directs the activities of the Office.

3. Under the headings *Office of Information Resources Management (HNA94)* and the *Office of Management Assessment (HNA95),* delete the titles and functional statements in their entirety.

Dated: June 21, 1994.

Harold Varmus, M.D.,

Director, NIH.

[FR Doc. 94–16528 Filed 7–7–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–91]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–91]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60-day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (This is not a toll-free number).

Dated: July 1, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 07/08/94

Suitable/Available Properties

Buildings (by State)

California

17 Housing Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420130
Status: Pryor Amendment
Base closure: Number of Units: 17
Comment: 3,000–121,716 sq. ft., 1–3 stories, incl. duplex w/two apts., barracks, & other housing types, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

24 Comm. Support Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420131
Status: Pryor Amendment
Base closure: Number of Units: 24
Comment: 128–34,856 sq. ft., 1–2 stories, incl. day care centers, stores, chapels, fire stations, etc., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

94 Admin. Support Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420132
Status: Pryor Amendment
Base closure: Number of Units: 94
Comment: 48–164,914 sq. ft., 1–5 stories, presence of asbestos, some need rehab., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

27 Training Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420133
Status: Pryor Amendment
Base closure: Number of Units: 27
Comment: 400–126,852 sq. ft., 1–5 stories, incl. 2 trailers & 4 school bldgs., some need rehab., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

2 Medical Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420134

Status: Pryor Amendment
Base closure: Number of Units: 2
Comment: 1, 572 & 69,727 sq. ft., 1–2 stories, incl. a first aid station & a dispensary, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

15 Recreational Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420135
Status: Pryor Amendment
Base closure: Number of Units: 15
Comment: 144–89,589 sq. ft., 1–2 stories, includes gym, racket ball court, dugouts, & stables, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

3 Vehicle Parking Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420136
Status: Pryor Amendment
Base closure: Number of Units: 3
Comment: 543–3,066 sq. ft., 1 story, includes 3 garages, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

11 Guard Houses
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420137
Status: Pryor Amendment
Base closure: Number of Units: 11
Comment: 46–77 sq. ft., 1 story, some need rehab., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

38 Maintenance Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420138
Status: Pryor Amendment
Base closure: Number of Units: 38
Comment: 120–436,328 sq. ft., 1–6 stories, some need rehab., presence of asbestos, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

7 Utility Support Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420139
Status: Pryor Amendment
Base closure: Number of Units: 7
Comment: 81–2,890 sq. ft., 1–2 stories, includes heating plants, pumphouses, substations, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

239 Storage Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420140
Status: Pryor Amendment
Base closure: Number of Units: 239
Comment: 84–263,032 sq. ft., 1–4 stories, some need rehab., incl. warehouses, bomb shelters, underground bunkers, presence of asbestos, may be subject to the Tidelands Trust, vacated 4–96.

17 Industrial Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420141
Status: Pryor Amendment
Base closure Number of Units: 17
Comment: 248–149,680 sq. ft., 1–3 stories, some need rehab., presence of asbestos, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. 1301
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420142
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 207 sq. ft., 1 story, bridge operation house, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. 99A
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420143
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 4,352 sq. ft., 2 stories, needs rehab., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. 146
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420144
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 4,000 sq. ft., 1 story, breathing air stations, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. 237A
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420145
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 25,915 sq. ft., 1 story, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. A–292
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420146
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 70 sq. ft., 1 story, needs rehab., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. S11–04
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420147
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 2,148 sq. ft., 1 story, includes bomb/air raid shelter, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

2 Housing Facilities
Naval Station Treasure Island
Croaker Court Co: San Francisco CA 94130
Landholding Agency: Navy Base Close
Property Number: 789420164
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 4695 sq. ft. each, 2-story, scheduled to be vacated 9–97.

2 Housing Facilities
Naval Station Treasure Island
Halibut Court Co: San Francisco CA 94130
Landholding Agency: Navy Base Close
Property Number: 789420165
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 4695 sq. ft. each, 2-story, scheduled to be vacated 9–97.

10 Housing Facilities
Naval Station Treasure Island
Chinook Court Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420166
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 2822–4695 sq. ft., 2-story, scheduled to be vacated 9–97.

4 Housing Facilities
Naval Station Treasure Island
Westside Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420167
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 3468–5202 sq. ft., 2-story, scheduled to be vacated 9–97.

5 Housing Facilities
Naval Station Treasure Island
Mariner Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420168
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 4620 sq. ft., 2-story, scheduled to be vacated 9–97.

7 Housing Facilities
Naval Station Treasure Island
Bayside Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420169
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 4620–5940 sq. ft., 2-story, scheduled to be vacated 9/97.

7 Housing Facilities
Naval Station Treasure Island
Exposition Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420170
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 4620–5940 sq. ft., 2-story, scheduled to be vacated 9/97.

18 Housing Facilities
Naval Station Treasure Island
North Point Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420171
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 4352–5940 sq. ft., 2-story, scheduled to be vacated 9/97.

10 Housing Facilities
Naval Station Treasure Island
Yerba Buena Road Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420172
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 1597–15504 sq. ft., 1 to 2 story, scheduled to be vacated 9/97.

4 Housing Facilities
Naval Station Treasure Island
Nimitz Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420173
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 3797–5952 sq. ft., 2 to 3 story, scheduled to be vacated 9/97.

6 Housing Facilities
Naval Station Treasure Island
Forest Road Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420174
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 2244–2783 sq. ft., 1-story, scheduled to be vacated 9/97.

9 Housing Facilities
Naval Station Treasure Island
13th Street Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420175
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 2496–5510 sq. ft., 2-story, scheduled to be vacated 9/97.

2 Housing Facilities
Naval Station Treasure Island
Hillcrest Road Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420176
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 1133–1502 sq. ft., 2 to 3 story, scheduled to be vacated 9/97.

4 Housing Facilities
Naval Station Treasure Island
Macalla Road Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420177
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 1199–12083 sq. ft., 1 to 3 story, scheduled to be vacated 9/97.

7 Housing Facilities
Naval Station Treasure Island
Whitting Way Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420178
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 1126–3393 sq. ft., 2 to 3 story, scheduled to be vacated 9/97.

36 Housing Facilities
Naval Station Treasure Island
Gateview Avenue Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420179
Status: Pryor Amendment
Base closure Number of Units: 36
Comment: 2496–5940 sq. ft., 2-story, scheduled to be vacated 9/97.

7 Detached Garages
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420180

Property Number: 789420172
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 1597–15504 sq. ft., 1 to 2 story, scheduled to be vacated 9/97.

4 Housing Facilities
Naval Station Treasure Island
Nimitz Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420173
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 3797–5952 sq. ft., 2 to 3 story, scheduled to be vacated 9/97.

6 Housing Facilities
Naval Station Treasure Island
Forest Road Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420174
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 2244–2783 sq. ft., 1-story, scheduled to be vacated 9/97.

9 Housing Facilities
Naval Station Treasure Island
13th Street Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420175
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 2496–5510 sq. ft., 2-story, scheduled to be vacated 9/97.

2 Housing Facilities
Naval Station Treasure Island
Hillcrest Road Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420176
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 1133–1502 sq. ft., 2 to 3 story, scheduled to be vacated 9/97.

4 Housing Facilities
Naval Station Treasure Island
Macalla Road Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420177
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 1199–12083 sq. ft., 1 to 3 story, scheduled to be vacated 9/97.

7 Housing Facilities
Naval Station Treasure Island
Whitting Way Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420178
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 1126–3393 sq. ft., 2 to 3 story, scheduled to be vacated 9/97.

36 Housing Facilities
Naval Station Treasure Island
Gateview Avenue Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420179
Status: Pryor Amendment
Base closure Number of Units: 36
Comment: 2496–5940 sq. ft., 2-story, scheduled to be vacated 9/97.

7 Detached Garages
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420180
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 300–6482 sq. ft., 1 to 2 story garages, scheduled to be vacated 9/97.

88 Detached Carports
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Naval Base Close
Property Number: 789420181
Status: Pryor Amendment
Base closure Number of Units: 88
Comment: 231—1260 sq. ft., scheduled to be vacated 9/97.

15 Pers. Support/Svc. Facs.
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420182
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: various sq. ft., includes stores, chapel, laundry, day care, fire & police stations, possible asbestos & lead base paint, scheduled to be vacated 9/97.

10 Recreation Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420183
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: various sq. ft., includes clubs, gym, theater, rec center, hobby shops, possible asbestos & lead base paint, scheduled to be vacated 9/97.

26 Training Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420184
Status: Pryor Amendment
Base closure Number of Units: 26
Comment: various sq. ft., some need repair, includes training centers, schools, educ. & instr. bldgs., possible asbestos & lead base paint, scheduled to be vacated 9/97.

15 Administrative Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420185
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: 512–149799 sq. ft., includes admin/ofc bldgs. & museum, possible asbestos & lead base paint, scheduled to be vacated 9/97.

2 Communication Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420186
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 12886 sq. ft. communication center & signal tower, possible asbestos & lead base paint, scheduled to be vacated 9/97.

2 Medical Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420187
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 73037 sq. ft., former dispensary/dental bldg., needs repair, 2880 sq. ft. dental clinic, possible asbestos & lead base paint, scheduled to be vacated 9/97

27 Storage/Support Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420188
Status: Pryor Amendment
Base closure Number of Units: 27
Comment: various sq. ft., includes warehouses, storage bldgs & sheds, possible asbestos & lead base paint, scheduled to be vacated 9/97.

11 Maintenance/Ind. Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420189
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: various sq. ft., includes repair shops, maintenance bldgs., possible asbestos & lead base paint, scheduled to be vacated 9/97.

17 Utility Support Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420190
Status: Pryor Amendment
Base closure Number of Units: 17
Comment: various sq. ft., includes water treatment, elec. dist. & heating bldgs., scheduled to be vacated 9/97.

Land (by State)

California

Rifle Ranges—M–135, M–136
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quad E–4
Landholding Agency: Navy Base Close
Property Number: 789420148
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 20,000 sq. ft. & 9 acres, includes 2 rifle ranges, may be subject to the Tidelands Trust, scheduled to be vacated 4/96.

17 Recreation Areas
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quads C–2, C–3, E–3, F–2, I–2, K–1, & K–2
Landholding Agency: Navy Base Close
Property Number: 789420149
Status: Pryor Amendment
Base closure Number of Units: 17
Comment: Incl. tennis & basketball courts, football & baseball fields, playgrounds & picnic areas, 54 acre golf course, & a pool, may be subject to Tidelands Trust, to be vacated 4–96.

3 Parking Areas
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quads H–1, K–1, & K–2
Landholding Agency: Navy Base Close
Property Number: 789420150
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 169,000–303,400 sq. ft., paved parking lots, may be subject to the

Tidelands Trust, scheduled to be vacated 4–96.

Storage Area
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quad H–3
Landholding Agency: Navy Base Close
Property Number: 789420151
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 90,000 sq. ft., concrete pad, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

2 Vacant Areas
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quads H–1 & J–1
Landholding Agency: Navy Base Close
Property Number: 789420152
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 3.2 & 6.5 acres, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Recreational Land
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quad C–2
Landholding Agency: Navy Base Close
Property Number: 789420153
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 4 acres, includes baseball field with 2 dugouts, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

4 Recreation Grounds
Naval Station Treasure Island Co: San Francisco CA 94130–
Location: TI–86, TI–251, TI–288, TI–289
Landholding Agency: Navy Base Close
Property Number: 789420191
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: scheduled to be vacated 9/97

Unsuitable Properties

Buildings (by State)

California

Latrines
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Bldgs. 77A, 138, 261, 390A, 624, 849, 858, 879, 888, 1025, 1325, A–194
Landholding Agency: Navy Base Close
Property Number: 789420154
Status: Pryor Amendment
Base closure Number of Units: 12
Reason: Other
Comment: Detached latrines.

Bldgs. 547, 878
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420155
Status: Pryor Amendment
Base closure Number of Units: 2
Reason: Other
Comment: Sewer pump houses.

Bldg. 650
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420156
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 869
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420157
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Sewage treatment tank.

Bldg. 919
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420158
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Garbage cooker.

Bldg. 1274
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420159
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 1276
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420160
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 1332
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420161
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

15 Sewage Pumping Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420192
Status: Pryor Amendment
Base closure Number of Units: 15
Reason: Other
Comment: Sewage Pumping Stations.

Bldg. 277YBI
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420193
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Detached latrines.

Bldg. 480TI
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420194
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Detached latrines.

10 Recreation Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Location: #P2TI, P23TI, P12TI, 273TI, 397TI, 398TI, 407TI, 478TI, 485TI, 492TI
Landholding Agency: Navy Base Close
Property Number: 789420195
Status: Pryor Amendment
Base closure Number of Units: 10
Reason: Extensive deterioration.

10 Bldgs.
Naval Station Treasure Island Co: San Francisco CA 94130–
Location: #P1TI, P21TI, 195TI, 358TI, 379TI, 383TI, 459TI, 460TI, 482TI, 493TI
Landholding Agency: Navy Base Close
Property Number: 789420196
Status: Pryor Amendment
Base closure Number of Units: 10
Reason: Extensive deterioration

Land (by State)

California

Landfill
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quad J–1
Landholding Agency: Navy Base Close
Property Number: 789420162
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Garbage dump.

Land—A–0

Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quad A–1
Landholding Agency: Navy Base Close
Property Number: 789420163
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Cemetery.

[FR Doc. 94–16537 Filed 7–7–94; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Earth Observing System (EOS) Land Processes Distributed Active Archive Center (DAAC) Science Advisory Panel; Renewal

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), 5 U.S.C. App. (1988). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the EOS Land Processes DAAC Science Advisory Panel.

The purpose of the Panel is to advise the U.S. Geological Survey, Earth Resources Observation Systems (EROS) Data Center in the definition, development, implementation, and operation of data processing, archiving, and distribution systems and associated science support capabilities required in its role as one of eight primary DAACs established by the National Aeronautics and Space Administration (NASA) as part of the EOS Program. EOS is a major component of the U.S. Global Change Program.

The Panel is responsible for providing advice and consultation on a broad range of scientific and technical topics and for representing the interests and requirements of the scientific research community in guiding development of Land Processes DAAC systems and capabilities. Membership on the Panel includes representation by scientists formally affiliated with the EOS Program and by scientists who do not have such formal affiliation, including representation from the U.S. academic research community.

The Panel functions solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, fifteen days from the date of publication of this notice. Further information regarding the Land Processes DAAC Science Advisory Panel may be obtained from the Director, U.S. Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092. Certification of renewal is published below.

Certification

I hereby certify that the renewal of the EOS Land Processes DAAC Science Advisory Panel is necessary and in the public interest in connection with the performance of duties undertaken by the Department of the Interior pursuant to the Memorandum of Understanding between the U.S. Geological Survey and the National Aeronautics and Space Administration (NASA) for Experimental Land Remotely Sensed Data Processing, Distribution, Archiving, and Related Science Support. The U.S. Geological Survey is authorized to cooperate with NASA in developing and operating the Land Processes DAAC pursuant to the Organic Act of the U.S. Geological Survey of March 3, 1879 (43 U.S.C. 31), Section 101(h) of Public Law 99–591 (An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 10, 1987, and for other purposes), 100 Stat. 3341, 3341–252; and NASA's Section 203(c)(5) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(5)).

its role as one of eight primary DAACs established by the National Aeronautics and Space Administration (NASA) as part of the EOS Program. EOS is a major component of the U.S. Global Change Program.

The Panel is responsible for providing advice and consultation on a broad range of scientific and technical topics and for representing the interests and requirements of the scientific research community in guiding development of Land Processes DAAC systems and capabilities. Membership on the Panel includes representation by scientists formally affiliated with the EOS Program and by scientists who do not have such formal affiliation, including representation from the U.S. academic research community.

The Panel functions solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, fifteen days from the date of publication of this notice. Further information regarding the Land Processes DAAC Science Advisory Panel may be obtained from the Director, U.S. Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092. Certification of renewal is published below.

Certification

I hereby certify that the renewal of the EOS Land Processes DAAC Science Advisory Panel is necessary and in the public interest in connection with the performance of duties undertaken by the Department of the Interior pursuant to the Memorandum of Understanding between the U.S. Geological Survey and the National Aeronautics and Space Administration (NASA) for Experimental Land Remotely Sensed Data Processing, Distribution, Archiving, and Related Science Support. The U.S. Geological Survey is authorized to cooperate with NASA in developing and operating the Land Processes DAAC pursuant to the Organic Act of the U.S. Geological Survey of March 3, 1879 (43 U.S.C. 31), Section 101(h) of Public Law 99–591 (An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 10, 1987, and for other purposes), 100 Stat. 3341, 3341–252; and NASA's Section 203(c)(5) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(5)).

Dated: April 11, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94–16587 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[CO–920–94–4110–03;COC48893]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC48893, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from November 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective November 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Milada Krasilinec of the Colorado State Office at (303) 239–3767.

Dated: June 8, 1994.

Milada Krasilinec,

Land Law Examiner, Lease Closure Team.

[FR Doc. 94–16501 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–JB–M

[CO–920–94–4110–03; COC49401]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC49401, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from January 1, 1994, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective January 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Milada Krasilinec of the Colorado State Office at (303) 239–3767.

Dated: June 8, 1994.

Milada Krasilinec,

Land Law Examiner, Lease Closure Team.

[FR Doc. 94–16502 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–4210–04; N–57773, N–7301–G, N–36900, N–54882 and N–44642]

Amendment to Previous Notices of Realty Action (NORAs) for Exchange Proposal N–57773; Partial Termination of Recreation and Public Purposes (R&PP) Classifications and Segregation Under N–7301–G, N–36900, and N–54882; and Partial Termination of Segregation of Airport Lease Application N–44642; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice (1) amends previously published NORAs pertaining to exchange proposal N–57773, (2) provides for partial termination of recreation and public purposes classifications and segregation under N–7301–G, N–36900, and N–54882, and (3) terminates, in part, the segregation of airport lease application N–44642.

FOR FURTHER INFORMATION CONTACT: Gary Ryan, Acting District Manager, BLM Las Vegas District Office, PO Box 26569, Las Vegas, NV 89126; (702) 647–5000.

EFFECTIVE DATE: July 8, 1994.

SUPPLEMENTARY INFORMATION: The Notice of Realty Action pertaining to exchange N–57773, published in the Federal Register on September 9, 1993 (58 FR 47472) is hereby corrected as to the following:

T. 19 S., R. 60 E.,
Sec. 6, lots 1–5, 12–18, S½NE¼, SE¼NW¼SE¼.

It has been determined that the following described Federal lands are suitable for disposal to the proponent

and/or its joint ventures in Phase 1 of exchange proposal N–57773:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 21, SW¼NW¼.
T. 20 S., R. 60 E.,
Sec. 5, lot 1, E½NE¼SE¼NE¼.
T. 21 S., R. 60 E.,
Sec. 11, E½SW¼SW¼,
N½NW¼SW¼SW¼.
T. 22 S., R. 61 E.,
Sec. 14, NE¼NE¼NE¼NE¼,
W½NW¼NE¼NE¼NE¼,
SW¼NE¼NE¼NE¼,
E½SE¼NE¼NE¼NE¼,
E½SE¼NE¼NE¼,
E½W½SE¼NE¼NE¼,
N½NE¼SE¼NE¼,
E½SE¼NE¼SE¼NE¼,
E½SW¼NE¼SE¼NE¼,
E½NW¼SE¼NE¼,
SW¼NW¼SE¼NE¼,
NE¼NE¼SW¼NE¼,
E½SE¼SE¼NW¼NE¼,
NE¼SE¼NW¼NE¼,
SE¼NE¼NW¼NE¼,
E½NE¼NE¼NW¼NE¼,
S½NW¼NE¼NE¼,
E½NW¼NW¼NE¼NE¼,
E½NE¼NW¼NE¼NE¼,
SW¼NE¼NE¼;
Sec. 23, N½NE¼NE¼NE¼,
SW¼NE¼NE¼NE¼, W½NE¼NE¼,
SE¼NE¼NE¼, NE¼NE¼NW¼NE¼,
SW¼NE¼NW¼NE¼,
N½NW¼NW¼NE¼,
SE¼NW¼NW¼NE¼, S½NW¼NE¼,
E½SW¼NE¼, S½NW¼SW¼NE¼,
N½SW¼SW¼NE¼,
N½NE¼SE¼NE¼,
SE¼NE¼SE¼NE¼, NW¼SE¼NE¼,
N½S½SE¼NE¼, SW¼SW¼SE¼NE¼,
SW¼SE¼SE¼NE¼, N½N½SE¼,
E½SW¼NE¼SE¼, SE¼NE¼SE¼,
SW¼NW¼SE¼, E½SE¼NW¼SE¼,
W½NE¼SW¼SE¼,
W½NW¼SW¼SE¼, S½SW¼SE¼,
W½NE¼SE¼SE¼, NW¼SE¼SE¼,
E½SE¼SE¼SE¼.
Sec. 26, Lots 2, 3, 4, N½N½NE¼NE¼,
S½NW¼NE¼NE¼, S½NE¼NE¼,
S½SW¼NW¼NE¼, NE¼SW¼NE¼,
S½SW¼SW¼NE¼,
N½SE¼SW¼NE¼, S½NE¼SE¼NE¼,
NW¼SE¼NE¼, S½SE¼NE¼,
N½NE¼SE¼, N½SE¼NE¼SE¼,
SW¼NE¼SE¼, N½SE¼NW¼SE¼,
S½SW¼NW¼SE¼, NE¼SW¼SE¼,
N½SW¼SW¼SE¼.

Aggregating 589.09 acres (gross).

The patent, when issued, will contain reservations to the United States for (1) ditches or canals, and (2) all minerals except those having no known mineral value. Further, the patent will be subject to easements for road, public utility and flood control purposes in accordance with City of Las Vegas/Clark County's transportation plan, and all valid existing third party rights including but not limited to the following rights-of-way of record: Highways CC–018138, Nev–031066 and N–46063; Powerlines Nev–043546, Nev–059100, N–597, N–2557, N–10402, N–12852, N–15291, N–17395, N–18560, N–37967, N–42592, N–53121, N–54685, N–54735; Power/communication lines N–29910, N–57446; communication lines N–6486, N–7883, N–7353, N–13192, N–24393; gas pipelines N–38771, N–55952; drainage channel N–51823; roads N–57226, N–57868; power substation N–53428; road/public utilities N–55084; and water main N–55369.

The non-Federal lands involved in this exchange were previously identified in a NORA published in the **Federal Register** on April 12, 1994 (59 FR 17396). As mentioned in that NORA, acreage adjustments and/or monetary payments may be necessary in order to equalize the values of the Federal and non-Federal lands in accordance with regulations contained in 43 CFR 2200. The mineral interests owned by the proponent in the non-Federal lands will be conveyed to the United States simultaneously with the surface estate. Previous NORA's identified the proponent as Olympic Nevada Inc. The proponent of the exchange will be Olympic Land Corporation.

The following actions are also accomplished upon publication of this NORA in the **Federal Register**:

1. R&PP classification N–7301–G is partially terminated as it affects the SW¼NE¼NE¼ of sec. 14, T. 22 S., R. 61 E., MDM.
2. R&PP classification N–36900 is partially terminated as it affects the NE¼NE¼NE¼NE¼ of sec. 14, T. 22 S., R. 61 E., MDM.
3. R&PP application N–54882 has been withdrawn in part and the classification is hereby terminated as to the NW¼NE¼SE¼ of sec. 26, T. 22 S., R. 61 E., MDM.
4. Airport lease application N–44642 has been withdrawn in part and the segregation is terminated on the SW¼NW¼ of sec. 21, T. 19 S., R. 60 E., MDM.

Detailed in formation concerning the exchange, including the environmental assessment, is available for review at the Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada 89502.

Dated: June 30, 1994.

Gary Ryan,

District Manager.

[FR Doc. 94–16491 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–4210–05; N–57468]

Issuance of Land Exchange Conveyance Document

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Issuance of Land Exchange Conveyance Document, Nevada.

SUMMARY: This notice identifies Federal and non-Federal lands involved in a recently completed exchange transaction. With the exception of oil, gas, sodium, potassium and saleable minerals, the mineral estate in the Federal lands was conveyed with the surface estate. As to the non-federal lands, the United States acquired no minerals.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520, (702) 785–6532.

SUPPLEMENTARY INFORMATION: The following described lands were conveyed out of Federal ownership pursuant to Sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 29, E½NE¼NE¼,
E½NW¼NE¼NE¼.

The area described contains 25 acres in Clark County, Nevada. Patent was issued on June 29, 1994 to Gilbert Development Company.

The non-Federal lands acquired by the United States in this exchange are described as follows:

Mount Diablo Meridian, Nevada

T. 3 N., R. 42 E.,
Sec. 36, a portion of the E½W½, described as a portion of the Eula and Rescue patent lode mining claims, Survey No. 2792, the Maggie May, Survey No. 2291, and the Last Thought, Survey No. 2792, described as follows:

Surface rights only to a depth of TWO HUNDRED FEET (200) in and to the following:

That certain parcel of land particularly referred to as Parcel 2 on the parcel map filed and recorded on behalf of Hilda A. McGowan on May 20, 1983, having File No. 81052, in the Office of the County Recorder of the County of Nye, State of Nevada.

The area described contains 8.23 acres in Nye County, Nevada. Title to the non-Federal land was accepted on June 28, 1994.

The value of the Federal lands exceeded the value of the non-Federal lands. Proponent expenses documented and allowed by the authorized officer in the amount of $11,235.00 was credited against the necessary cash equalization payment required. An equalization payment of $154,390.00 was made by the exchange proponent. The purpose of the exchange was to acquire private land in the Town of Tonopah, Nevada to be used as an administrative office complex for the Bureau of Land Management's Tonopah Resource Area Office.

Dated: June 29, 1994.

Dennis J. Samuelson,

Acting Deputy State Director, Operations.

[FR Doc. 94–16588 Filed 7–17–94; 8:45 am]

BILLING CODE 4310–HC–M

[WY–980–4340–04]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 49 N., R. 62 W.,
Accepted June 29, 1994.
T. 38 N., R. 64 W.,
Accepted June 29, 1994.
T. 41 N., R. 81 W.,
Accepted June 29, 1994.
T. 50 N., R. 105 W.,
Accepted June 29, 1994.

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys and subdivision of sections.

payment of $154,390.00 was made by the exchange proponent. The purpose of the exchange was to acquire private land in the Town of Tonopah, Nevada to be used as an administrative office complex for the Bureau of Land Management's Tonopah Resource Area Office.

Dated: June 29, 1994.

Dennis J. Samuelson,

Acting Deputy State Director, Operations.

[FR Doc. 94–16588 Filed 7–17–94; 8:45 am]

BILLING CODE 4310–HC–M

[WY–980–4340–04]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 49 N., R. 62 W.,
Accepted June 29, 1994.
T. 38 N., R. 64 W.,
Accepted June 29, 1994.
T. 41 N., R. 81 W.,
Accepted June 29, 1994.
T. 50 N., R. 105 W.,
Accepted June 29, 1994.

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys and subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: June 29, 1994.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 94–16589 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–22–M

[OR–943–4210–06; GP4–201; OR–50892 (WASH)]

Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 1,712.50 acres of National Forest System lands to protect the recreational and visual resources of the White Pass Ski Area in the Snoqualmie and Gifford Pinchot National Forests. This notice closes the lands for up to two years from mining. The lands will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by October 6, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, 503–280–7162.

SUPPLEMENTARY INFORMATION: On June 14, 1994, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2) subject to valid existing rights:

Willamette Meridian

Snoqualmie and Gifford Pinchot National Forests

T. 13 N., R. 11 E., unsurveyed,
Sec. 1, that portion of the N½ lying northerly of the withdrawal for State Highway 12 (PLO 2434);
Sec. 2, that portion of the N½ lying outside the William O. Douglas Wilderness Area;
Sec. 10, that portion of the E½ lying southerly of the withdrawal for State Highway 12 (PLO 2434);
Sec. 11, S½S½;
Sec. 12, that portion of the S½SW¼ lying outside the Goat Rocks Wilderness Area;
Sec. 14, that portion lying outside the Goat Rocks Wilderness Area;
Sec. 15, that portion lying outside the Goat Rocks Wilderness Area;
Sec. 22, that portion lying outside the Goat Rocks Wilderness Area;
Sec. 23, that portion lying outside the Goat Rocks Wilderness Area.
T. 14 N., R. 11 E., unsurveyed,
Sec. 35, that portion lying outside the William O. Douglas Wilderness Area;
Sec. 36, those portions of the S½SW¼ and SW¼SE¼ lying outside the William O. Douglas Wilderness Area and outside the three unpatented mining claims known as Cover All Bets (ORMC–30522), Up The Creek (ORMC–30523), and Spiral View (ORMC–111969).

The areas described aggregate approximately 1,712.50 acres in Lewis and Yakima Counties.

The purpose of the proposed withdrawal is to protect the recreational and visual resources of the White Pass Ski Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are other National Forest management activities, including permits, licenses, cooperative agreements, mineral leases, and mineral material permits that are compatible with the intended use under the discretion of the authorized officer.

Dated: June 24, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–16590 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–33–P

Fish and Wildlife Service

Notice of Availability of a Draft Revised Recovery Plan for the Great Lakes and Northern Great Plains Population of the Piping Plover for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for the Great Lakes and Northern Great Plains Population of the Piping Plover (*Charadrius melodus*). The Service listed the piping plover as endangered and threatened in January, 1986, and completed a recovery plan for the Great Lakes and Northern Great Plains populations in May, 1988. That recovery plan is being revised to incorporate new information on the species' biology, the results of the 1991 International Piping Plover Census, and changes in threats experienced by the two populations. The Service solicits review and comments from the public on this draft revised plan.

DATES: Comments on the draft recovery plan must be received on or before October 6, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (phone: 612/725–3276; fax 612/725–3526). Written comments and materials regarding the plan should be addressed to Ronald L. Refsnider at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ronald L. Refsnider at the above address and phone numbers.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed. The Service revises existing recovery plans, as needed, to reflect important new biological information, significant changes in a species' status, or the accomplishment of tasks identified in the original plan.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The piping plover was listed as endangered in the Great Lakes watershed, and threatened in the Great Plains, along the Atlantic coast, and throughout the remainder of its range due to the near-extirpation of the species in the Great Lakes area and its dwindling population elsewhere. To facilitate recovery of this widespread species, it was separated into two recovery programs, one of which deals with Atlantic coast-nesting birds and the second includes the inland-nesting piping plovers. This recovery plan deals only with the inland-nesting populations of the piping plover.

In recent years the Great Lakes piping plovers have nested only along the sandy shorelines of Michigan. Predation, disturbance, habitat degradation and destruction, and possibly insufficient prey are believed to be the factors preventing the expansion of this population. Northern Great Plains piping plovers are more widespread, nesting along prairie rivers and alkali wetlands in Iowa, Minnesota, North and South Dakota, Nebraska, Montana, and the Prairie Provinces of Canada. Predation, disturbance, and habitat loss also affect these nesting areas. Piping plovers from both nesting areas spend the winter along the Gulf Coast of the United States and Mexico, where they face the same threats, as well as contaminant spills from Gulf Coast shipping and oil extraction activities.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 29, 1994.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 94–16490 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of applications for permit.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–791803

Applicant: Mr. Ron Redman, Conway, Arkansas.

The applicant requests a permit to take (survey and monitor) gray bats (*Myotis grisescens*), Indiana bats (*Myotis sodalis*), and Ozark big-eared bats (*Plecotus townsendii ingens*) to document new populations in the Ozark Mountains of Arkansas, Oklahoma, and Missouri. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–791805

Applicant: Mr. Chris Charlton, Fayetteville, Arkansas.

The applicant requests a permit to take (trap, survey, and monitor) American burying beetles (*Nicrophorus americanus*) to document new populations in Arkansas. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–791797

Applicant: Leithold Wildlife Management Consulting, Shulerville, South Carolina.

The applicant requests a permit to take (conduct population surveys, handle, band, and release) red-cockaded woodpeckers (*Picoides borealis*) throughout the Southeastern United States. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–791801

Applicant: Barry A. Vittor & Associates, Incorporated, Mobile, Alabama.

The applicant requests a permit to take (conduct population surveys, handle, collect 1 dead shell of each species) 44 species of endangered mussels throughout the Southeastern United States for the purpose of enhancement of survival of the species.

PRT–791799

Applicant: Mr. Douglas N. Shelton, Mobile, Alabama.

The applicant requests a permit to take (conduct population surveys, handle, collect 1 dead shell of each species) 43 species of endangered mussels and snails throughout all southeastern States for the purpose of enhancement of survival of the species.

PRT–792102

Applicant: Mr. Rex Roberg, Cabot, Arkansas.

The applicant requests a permit to take (conduct population surveys) Ozark big-eared bats (*Plecotus townsendii ingens*) in Arkansas, Oklahoma, and Missouri for the purpose of enhancement of survival of the species.

PRT–792106

Applicant: Mr. Glyn Turnipseed, Russellville, Arkansas.

The applicant requests a permit to take (trap, survey, and monitor) American burying beetles (*Nicrophorus americanus*) to document new populations in Arkansas. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–792116

Applicant: Mr. William L. Matthews, M & M Environmental, Fort Smith, Arkansas.

The applicant requests a permit to take (trap, survey, and monitor) American burying beetles (*Nicrophorus americanus*) on Fort Smith, Arkansas. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–792113

Applicant: Mr. Bruce Shackleford, Little Rock, Arkansas.

The applicant requests a permit to take (trap, survey, and monitor) American burying beetles (*Nicrophorus americanus*) to document new populations in Arkansas, Louisiana,

States. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–791801

Applicant: Barry A. Vittor & Associates, Incorporated, Mobile, Alabama.

The applicant requests a permit to take (conduct population surveys, handle, collect 1 dead shell of each species) 44 species of endangered mussels throughout the Southeastern United States for the purpose of enhancement of survival of the species.

PRT–791799

Applicant: Mr. Douglas N. Shelton, Mobile, Alabama.

The applicant requests a permit to take (conduct population surveys, handle, collect 1 dead shell of each species) 43 species of endangered mussels and snails throughout all southeastern States for the purpose of enhancement of survival of the species.

PRT–792102

Applicant: Mr. Rex Roberg, Cabot, Arkansas.

The applicant requests a permit to take (conduct population surveys) Ozark big-eared bats (*Plecotus townsendii ingens*) in Arkansas, Oklahoma, and Missouri for the purpose of enhancement of survival of the species.

PRT–792106

Applicant: Mr. Glyn Turnipseed, Russellville, Arkansas.

The applicant requests a permit to take (trap, survey, and monitor) American burying beetles (*Nicrophorus americanus*) to document new populations in Arkansas. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–792116

Applicant: Mr. William L. Matthews, M & M Environmental, Fort Smith, Arkansas.

The applicant requests a permit to take (trap, survey, and monitor) American burying beetles (*Nicrophorus americanus*) on Fort Smith, Arkansas. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–792113

Applicant: Mr. Bruce Shackleford, Little Rock, Arkansas.

The applicant requests a permit to take (trap, survey, and monitor) American burying beetles (*Nicrophorus americanus*) to document new populations in Arkansas, Louisiana, Oklahoma, and Texas. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–750477 (Renewal)

Applicant: Mr. Gerald B. Pottern, Robert J. Goldstein and Associates, Inc., Raleigh, North Carolina.

The applicant requests a permit to take (collect dead shells) of dwarf wedge mussel (*Alasmidonta heterodon*) in North Carolina for the purpose of enhancement of survival of the species.

PRT–769270 (Renewal)

Applicant: Mr. Gerald B. Pottern, Robert J. Goldstein and Associates, Inc., Raleigh, North Carolina.

The applicant requests a permit to take (capture using sienes) the Cape Fear shiner (*Notropis mekistocholas*) in North Carolina for the purpose of enhancement of survival of the species.

PRT–697819

Applicant: Fish and Wildlife Service, Atlanta, Georgia.

The applicant requests an amendment to their current permit to include take activities for the following species if and when they become federally protected as endangered or threatened under the Endangered Species Act:

Alabama sturgeon—*Scaphirhynchus suttkusi*
Appalachian elktoe— *Alasmidonta raveneliana*
ortegón—*Coccoloba rugosa*
uvillo—*Eugenia haematocarpa*
no common name—*Mitracarpus maxwelliae*
no common name—*Mitracarpus polycladus*
no common name—*Eugenia woodburyana*
no common name—*Gesneria pauciflora*
chupacallos—*Pleodendron macranthum*
Cherokee darter—*Etheostoma (Ulocentra) sp.*
Etowah darter—*Etheostoma etowahae*
rock gnome lichen—*Gymnoderma lineare*
rock cress—*Arabis perstellata*
Arkansas River shiner—*Notropis girardi*
Jaguar—*Panthera onca*
Puerto Rican broad-winged hawk—*Buteo platypterus brunnescens*
Puerto Rican sharp-shinned hawk—*Accipiter striatus venator*
West Indian whistling duck—*Dendrocygna arborea*
Spruce-fir moss spider—*Microhexura montivaga*
St. Francis satyr—*Neonympha mitchellii francisci*
Stones River bladderpod—*Lesquerella stonensis*
Spring Creek bladderpod—*Lesquerella perforata*
Cumberland elktoe—*Alasmidonta atropurpurea*
Oyster mussel—*Epioblasma capsaeformis*
Cumberlandian combshell—*Epioblasma brevidens*
Purple bean—*Villosa perpurpurea*
Rough rabbitsfoot—*Quadrula cylindrica strigillata*
Chipola slabshell—*Elliptio chipolaensis*
purple bankclimber—*Elliptiodeus sloatianus*
fat three-ridge—*Amblema neislerii*
shiny-rayed pocketbook—*Lampsilis subangulata*
Gulf moccasinshell—*Medionidus penicillatus*
Ochlockonee moccasinshell—*Medionidus simpsonianus*
oval pigtoe—*Pleurobema pyriforme*
Armored snail—*Pyrgulopsis (=Marstonia) pachyta*
Eggert's sunflower—*Helianthus eggertii*

The purpose of adding the species to the current permit will be to conduct scientific research and enhancement of propagation or survival of the species as prescribed by Fish and Wildlife Service recovery documents.

Written data or comments on any of these applications should be submitted to: Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by the Regional Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Permit Coordinator). Telephone: 404/679–7110; Fax: 404/679–7081.

Dated: June 30, 1994.

John R. Eadie,

Acting Regional Director.

[FR Doc. 94–16534 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–718 (Preliminary)

Glycine From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–718 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of glycine, provided for in subheading 2922.49.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 15, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on July 1, 1994, by Hampshire Chemical Corporation, Lexington, MA, and Chattem, Inc., Chattanooga, TN.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 22, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than July 20, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 27, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 5, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16674 Filed 7–7–94; 8:45 am]

BILLING CODE 7020–02–P

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of questionnaires to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–347, Global Competitiveness of U.S. Environmental Technology Industries: Municipal and Industrial Water and Wastewater, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

SUMMARY OF PROPOSAL:

(1) Number of forms submitted: two
(2) Title of form: Global Competitiveness of U.S. Environmental Technology Industries: Municipal and Industrial Water and Wastewater-Questionnaires for U.S. Producers of Equipment and Services
(3) Type of request: new
(4) Frequency of use: Producer questionnaire, single data gathering, scheduled for 1994.
(5) Description of respondents: U.S. firms which produce equipment or provide services for the provision of water and/or wastewater.
(6) Estimated number of respondents: 150 (Equipment producer questionnaire); 150 (Service producer questionnaire)
(7) Estimated total number of hours to complete the forms: 6,000
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from David Ingersoll (USITC, telephone no. (202) 205–2218). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attention: Desk Officer for the U.S. International Trade Commission (telephone no. 202–395–7340). All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810).

LIST OF SUBJECTS: Environmental protection, environmental technology, water supply, wastewater treatment, export promotion, air pollution.

By order of the Commission.

Issued: July 1, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16508 Filed 7–7–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32528]

CSX Transportation, Inc.—Tracking Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NS) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT) over approximately 15.4 miles of rail line from the connection between the tracks of CSXT and NS at milepost 161.2W at Princeton, IN, to the connection between NS and the Algers, Winslow and Western Railway (AWW) at milepost 176.6W at Oakland City Jct., IN. The trackage rights were to become effective on June 30, 1994.

The trackage rights will allow an alternative route for CSXT's transportation of coal shipments from origins on the AWW line to the Southern Indiana Gas and Electric Company plant in Abee, IN, and thereby facilitate more economical and efficient operations. CSXT now transports these shipments, in part, over the track of the Indiana Southern Railway Company.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false

Ingersoll (USITC, telephone no. (202) 205–2218). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attention: Desk Officer for the U.S. International Trade Commission (telephone no. 202–395–7340). All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810).

LIST OF SUBJECTS: Environmental protection, environmental technology, water supply, wastewater treatment, export promotion, air pollution.

By order of the Commission.

Issued: July 1, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16508 Filed 7–7–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32528]

CSX Transportation, Inc.—Tracking Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NS) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT) over approximately 15.4 miles of rail line from the connection between the tracks of CSXT and NS at milepost 161.2W at Princeton, IN, to the connection between NS and the Algers, Winslow and Western Railway (AWW) at milepost 176.6W at Oakland City Jct., IN. The trackage rights were to become effective on June 30, 1994.

The trackage rights will allow an alternative route for CSXT's transportation of coal shipments from origins on the AWW line to the Southern Indiana Gas and Electric Company plant in Abee, IN, and thereby facilitate more economical and efficient operations. CSXT now transports these shipments, in part, over the track of the Indiana Southern Railway Company.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John W. Humes, Jr. and Charles M. Rosenberger, 500 Water Street, J150, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 24, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16225 Filed 7–7–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission cagetories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Travel Document. (I–131).

(2) Form I–131. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This form is used to apply for an Immigration and Naturalization Service Travel Document, ReEntry Permit, Refugee Travel Document or Advance Parole Document. Also, this data will be used by the service to determine eligibility for the requested immigration benefit.

(5) 290,000 annual respondents at .90 hours per response.

(6) 261,000 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16562 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Replacement Initial Nonimmigrant Arrival-Departure Document. (I–102).

(2) Form I–102. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This information will be used to determine eligibility for a replacement nonimmigrant arrival/departure document.

(5) 20,000 annual respondents at .410 hours per response.

(6) 8,200 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16563 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Request for Certification of Military or Naval Service (Form N–426).

(2) Form N–426. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. Form N–426 is used by the Immigration and Naturalization Service to request a verification of the military or naval service claimed by an applicant under sections 328 and 329 of the Immigration and Naturalization Act.

(5) 32,000 annual respondents at .166 hours per response.

(6) 5,312 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16564 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application To File Declaration of Intention. (Form N–300)

(2) Form N–300. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This form will be used by the Immigration and Naturalization Service to determine eligibility for a declaration of intention to become a citizen of the United States.

(5) 1,400 annual respondents at .750 hours per response.

(6) 1,050 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16565 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application To File Declaration of Intention. (Form N–300)

(2) Form N–300. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This form will be used by the Immigration and Naturalization Service to determine eligibility for a declaration of intention to become a citizen of the United States.

(5) 1,400 annual respondents at .750 hours per response.

(6) 1,050 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16565 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Issuance or replacement of Northern Mariana Card (Form I–777).

(2) Form I–777. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. The information collected by this form will be used by the Immigration and Naturalization Service to determine the eligibility for replacement of the citizen ID card.

(5) 100 annual respondents at .5 hours per response.

(6) 50 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16558 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Petition to Remove Condition on Residence (Form I–751).

(2) Form I–751. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This form is for a conditional resident who obtained such status through marriage to apply to remove the conditions on his or her residence.

(5) 108,000 annual respondents at 1.335 hours per response.

(6) 144,180 annual burden hours.

(7) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16559 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Action on an Approved Application or Petition (I–824).

(2) Form I–824. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This form will be used to request a duplicate approval notice, to notify the United States Consulate that a person has been adjusted to permanent resident status so family members can apply for derivative immigrant visa and to request another United States Consulate be notified that a petition has been approved.

(5) 25,000 annual respondents at .410 hours per response.

(6) 10,250 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16560 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indications as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Refugee/Asylee Relative Petition (I–730).

(2) Form I–730. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This form will be used to file petitions on behalf of the applicant's spouse and/or child who had never had refugee or asylee status.

(5) 2,500 annual respondents at .083 hours per response.

(6) 207 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this time is encouraged.

Dated: July 5, 1940

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16561 Filed 7–8–94; 8:45 am]

BILLING CODE 4410–10–M

Notice of Lodging of Consent Decree Pursuant to the Toxic Substances Control Act

In accordance with Department of Justice Policy set forth at 28 CFR 50.7, notice is hereby given that a proposed second modification to the consent decree previously entered by the United States District Court for the Southern District of Texas in *United States* v. *Texas Eastern Transmission Corp. d/b/a/ Texas Eastern Gas Pipeline Co.* Civ. No. H–88–1917, has been lodged with this Court on June 16, 1994.

The proposed modification integrates certain provisions of an administrative settlement between Texas Eastern and the Commonwealth of Pennsylvania with those set forth in the consent decree. Integration of these provisions is necessary to protect Texas Eastern from being made subject to inconsistent remediation requirements imposed in the administrative settlement and the consent decree. The Environmental Protection Agency has analyzed the cleanup requirements in the administrative settlement and concluded that, although different from those in the consent decree, are equally protective of human health and the environment. The provisions of the administrative settlement being integrated will be applicable only to Texas Eastern's remedial efforts at its compressor station sites located in Pennsylvania. For sites located outside of Pennsylvania, the cleanup requirements set forth in the consent decree will continue to apply.

In addition, the second proposed modification would allow Texas Eastern to propose to clean up areas or environmental media (e.g. off-site areas or streambeds) that it is not presently required to remediate under the consent decree. This provision is not limited to locations in Pennsylvania, but would apply at any of the compressor station sites and off site locations covered by the original decree. EPA's decision to accept Texas Eastern's proposal is entirely discretionary, and Texas Eastern has no ability to invoke the Court's dispute resolution authority if it disagrees with EPA's decision. If EPA approved the additional cleanup, and Texas Eastern performed the cleanup adequately, then Texas Eastern would be granted the same covenant not to sue

Dated: July 5, 1940

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16561 Filed 7–8–94; 8:45 am]

BILLING CODE 4410–10–M

Notice of Lodging of Consent Decree Pursuant to the Toxic Substances Control Act

In accordance with Department of Justice Policy set forth at 28 CFR 50.7, notice is hereby given that a proposed second modification to the consent decree previously entered by the United States District Court for the Southern District of Texas in *United States* v. *Texas Eastern Transmission Corp. d/b/a/ Texas Eastern Gas Pipeline Co.* Civ. No. H–88–1917, has been lodged with this Court on June 16, 1994.

The proposed modification integrates certain provisions of an administrative settlement between Texas Eastern and the Commonwealth of Pennsylvania with those set forth in the consent decree. Integration of these provisions is necessary to protect Texas Eastern from being made subject to inconsistent remediation requirements imposed in the administrative settlement and the consent decree. The Environmental Protection Agency has analyzed the cleanup requirements in the administrative settlement and concluded that, although different from those in the consent decree, are equally protective of human health and the environment. The provisions of the administrative settlement being integrated will be applicable only to Texas Eastern's remedial efforts at its compressor station sites located in Pennsylvania. For sites located outside of Pennsylvania, the cleanup requirements set forth in the consent decree will continue to apply.

In addition, the second proposed modification would allow Texas Eastern to propose to clean up areas or environmental media (e.g. off-site areas or streambeds) that it is not presently required to remediate under the consent decree. This provision is not limited to locations in Pennsylvania, but would apply at any of the compressor station sites and off site locations covered by the original decree. EPA's decision to accept Texas Eastern's proposal is entirely discretionary, and Texas Eastern has no ability to invoke the Court's dispute resolution authority if it disagrees with EPA's decision. If EPA approved the additional cleanup, and Texas Eastern performed the cleanup adequately, then Texas Eastern would be granted the same covenant not to sue at these additional areas that would apply at the areas covered by the original consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments related to the proposed modification. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Texas Eastern Gas Transmission Corp. d/b/a/ Texas Eastern Gas Pipeline Co.* DOJ Ref. #90–5–1–1–2820.

The proposed modification may be examined at the TSCA Public Docket Office, room NE–G004, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 and at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC (20005), 202–624–0892. A copy of the proposed modification may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division.

[FR Doc. 94–16591 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993, Electrical Wiring Component Applications Partnership

Notice is hereby given that, on June 9, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), General Motors Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; Chrysler Corporation, Highland Park, MI; and Ford Motor Company, Dearborn, MI. General areas of planned activities are to identify opportunities for joining aspects of their independent research and development efforts in the use of electrical wiring component technology relating to automotive wiring, connectors, electrical components and connection systems. The objectives are to avoid inefficient duplication of effort and expense in research in this area, improve general scientific knowledge and accelerate the development of technologies in this area. To meet these objectives, the Parties will collect, exchange and analyze research information, interact with suppliers and other entities interested in this area and perform other acts allowed by the National Cooperative Research and Production Act that would advance the Partnership's objectives.

Membership in this venture remains open, and General Motors Corporation intends to file additional written notification disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–16592 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division; Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on May 24, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 93–15 filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to Project No. 93–15 and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and the general area of planned activity are: Amoco Production Company, Tulsa, OK; Exxon Production Research Company, Houston, TX; Mobil Exploration and Production Company, Dallas, TX; Texaco, Inc., Bellaire, TX; Chevron U.S.A., Houston, TX; and Remediation Technologies, Inc., Pittsburgh, PA.

The nature of the research program performed in accordance with PERF Project 93–15 is to test, verify, develop and refine the process for ex-situ soil washing of salt contaminated soils,

developed under PERF Project No. 91–07, by testing the process in a field/pilot scale continuous mode operation utilizing various soil types, process fluids, equipment and process variables.

Participation in this project will remain open until termination of the Agreement for Project 93–15.

Information about participating in project 93–15 may be obtained by contacting Grant A. Young, Amoco Production Company, P.O. Box 3385, Tulsa, OK 74102.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–16593 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. TX940009 dated March 25, 1994, and ND940057 dated April 29, 1994.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting a SF–308. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume III

Georgia
GA940081 (Jul. 8, 1994)

Volume V

Iowa
IA940069 (Jul. 8, 1994)
IA940070 (Jul. 8, 1994)
IA940071 (Jul. 8, 1994)
IA940072 (Jul. 8, 1994)
IA940073 (Jul. 8, 1994)
IA940074 (Jul. 8, 1994)

Oklahoma
OK940025 (Jul. 8, 1994)
OK940026 (Jul. 8, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ940002 (Feb. 11, 1994)
NJ940003 (Feb. 11, 1994)
NJ940004 (Feb. 11, 1994)
NJ940007 (Feb. 11, 1994)

New York
NY940007 (Feb. 11, 1994)
NY940011 (Feb. 11, 1994)
NY940022 (Feb. 11, 1994)
NY940031 (Feb. 11, 1994)
NY940032 (Feb. 11, 1994)
NY940034 (Feb. 11, 1994)
NY940037 (Feb. 11, 1994)
NY940040 (Feb. 11, 1994)
NY940044 (Feb. 11, 1994)
NY940046 (Feb. 11, 1994)
NY940047 (Feb. 11, 1994)

Rhode Island
RI940001 (Feb. 11, 1994)
RI940002 (Feb. 11, 1994)

Volume II

Pennsylvania
PA940001 (Feb. 11, 1994)
PA940002 (Feb. 11, 1994)
PA940003 (Feb. 11, 1994)
PA940004 (Feb. 11, 1994)
PA940007 (Feb. 11, 1994)
PA940008 (Feb. 11, 1994)
PA940010 (Feb. 11, 1994)
PA940011 (Feb. 11, 1994)
PA940012 (Feb. 11, 1994)
PA940013 (Feb. 11, 1994)
PA940015 (Feb. 11, 1994)
PA940016 (Feb. 11, 1994)
PA940020 (Feb. 11, 1994)
PA940021 (Feb. 11, 1994)
PA940022 (Feb. 11, 1994)
PA940024 (Feb. 11, 1994)
PA940027 (Feb. 11, 1994)
PA940028 (Feb. 11, 1994)
PA940029 (Feb. 11, 1994)
PA940032 (Feb. 11, 1994)
PA940033 (Feb. 11, 1994)
PA940041 (Feb. 11, 1994)
PA940051 (Feb. 11, 1994)
PA940052 (Feb. 11, 1994)
PA940053 (Feb. 11, 1994)
PA940062 (Feb. 11, 1994)
PA940063 (Feb. 11, 1994)
PA940065 (Feb. 11, 1994)

Volume III

Alabama
AL940003 (Feb. 11, 1994)
AL940027 (Feb. 11, 1994)
AL940034 (Mar. 25, 1994)

Georgia
GA940003 (Feb. 11, 1994)
GA940008 (Feb. 11, 1994)
GA940016 (Feb. 11, 1994)
GA940018 (Feb. 11, 1994)
GA940022 (Feb. 11, 1994)
GA940031 (Feb. 11, 1994)
GA940033 (Feb. 11, 1994)
GA940040 (Feb. 11, 1994)
GA940045 (Feb. 11, 1994)
GA940050 (Feb. 11, 1994)
GA940052 (Feb. 11, 1994)
GA940053 (Feb. 11, 1994)
GA940065 (Feb. 11, 1994)
GA940073 (Feb. 11, 1994)

Kentucky
KY940001 (Feb. 11, 1994)
KY940002 (Feb. 11, 1994)
KY940003 (Feb. 11, 1994)
KY940004 (Feb. 11, 1994)
KY940007 (Feb. 11, 1994)
KY940025 (Feb. 11, 1994)
KY940026 (Feb. 11, 1994)
KY940027 (Feb. 11, 1994)
KY940028 (Feb. 11, 1994)
KY940029 (Feb. 11, 1994)
KY940011 (Feb. 11, 1994)

South Carolina
SC940011 (Feb. 11, 1994)

Volume IV

Illinois
IL940001 (Feb. 11, 1994)
IL940002 (Feb. 11, 1994)
IL940003 (Feb. 11, 1994)
IL940004 (Feb. 11, 1994)
IL940005 (Feb. 11, 1994)
IL940006 (Feb. 11, 1994)
IL940007 (Feb. 11, 1994)
IL940008 (Feb. 11, 1994)
IL940009 (Feb. 11, 1994)
IL940011 (Feb. 11, 1994)
IL940012 (Feb. 11, 1994)
IL940013 (Feb. 11, 1994)
IL940014 (Feb. 11, 1994)
IL940015 (Feb. 11, 1994)
IL940016 (Feb. 11, 1994)
IL940017 (Feb. 11, 1994)

PA940010 (Feb. 11, 1994)
PA940011 (Feb. 11, 1994)
PA940012 (Feb. 11, 1994)
PA940013 (Feb. 11, 1994)
PA940015 (Feb. 11, 1994)
PA940016 (Feb. 11, 1994)
PA940020 (Feb. 11, 1994)
PA940021 (Feb. 11, 1994)
PA940022 (Feb. 11, 1994)
PA940024 (Feb. 11, 1994)
PA940027 (Feb. 11, 1994)
PA940028 (Feb. 11, 1994)
PA940029 (Feb. 11, 1994)
PA940032 (Feb. 11, 1994)
PA940033 (Feb. 11, 1994)
PA940041 (Feb. 11, 1994)
PA940051 (Feb. 11, 1994)
PA940052 (Feb. 11, 1994)
PA940053 (Feb. 11, 1994)
PA940062 (Feb. 11, 1994)
PA940063 (Feb. 11, 1994)
PA940065 (Feb. 11, 1994)

Volume III

Alabama
AL940003 (Feb. 11, 1994)
AL940027 (Feb. 11, 1994)
AL940034 (Mar. 25, 1994)
Georgia
GA940003 (Feb. 11, 1994)
GA940008 (Feb. 11, 1994)
GA940016 (Feb. 11, 1994)
GA940018 (Feb. 11, 1994)
GA940022 (Feb. 11, 1994)
GA940031 (Feb. 11, 1994)
GA940033 (Feb. 11, 1994)
GA940040 (Feb. 11, 1994)
GA940045 (Feb. 11, 1994)
GA940050 (Feb. 11, 1994)
GA940052 (Feb. 11, 1994)
GA940053 (Feb. 11, 1994)
GA940065 (Feb. 11, 1994)
GA940073 (Feb. 11, 1994)
Kentucky
KY940001 (Feb. 11, 1994)
KY940002 (Feb. 11, 1994)
KY940003 (Feb. 11, 1994)
KY940004 (Feb. 11, 1994)
KY940007 (Feb. 11, 1994)
KY940025 (Feb. 11, 1994)
KY940026 (Feb. 11, 1994)
KY940027 (Feb. 11, 1994)
KY940028 (Feb. 11, 1994)
KY940029 (Feb. 11, 1994)
KY940011 (Feb. 11, 1994)
South Carolina
SC940011 (Feb. 11, 1994)

Volume IV

Illinois
IL940001 (Feb. 11, 1994)
IL940002 (Feb. 11, 1994)
IL940003 (Feb. 11, 1994)
IL940004 (Feb. 11, 1994)
IL940005 (Feb. 11, 1994)
IL940006 (Feb. 11, 1994)
IL940007 (Feb. 11, 1994)
IL940008 (Feb. 11, 1994)
IL940009 (Feb. 11, 1994)
IL940011 (Feb. 11, 1994)
IL940012 (Feb. 11, 1994)
IL940013 (Feb. 11, 1994)
IL940014 (Feb. 11, 1994)
IL940015 (Feb. 11, 1994)
IL940016 (Feb. 11, 1994)
IL940017 (Feb. 11, 1994)
IL940023 (Apr. 15, 1994)
IL940024 (Apr. 15, 1994)
IL940025 (Apr. 15, 1994)
IL940033 (Apr. 15, 1994)
IL940039 (Apr. 15, 1994)
IL940041 (Apr. 15, 1994)
IL940044 (Apr. 15, 1994)
IL940045 (Apr.15,1994)
IL940054 (Apr.15,1994)
IL940072 (Apr.15,1994)
IL940083 (Apr.15,1994)
IL940088 (Apr.15,1994)
IL940093 (Apr.15,1994)
IL940099 (Apr.15,1994)
Indiana
IN940002 (Feb.11,1994)
Minnesota
MN940005 (Feb.11,1994)
MN940007 (Feb.11,1994)
MN940008 (Feb.11,1994)
MN940012 (Feb.11,1994)
MN940015 (Feb.11,1994)
MN940027 (Mar.25,1994)
MN940031 (Mar.25,1994)
MN940035 (Mar.25,1994)
MN940039 (Mar.25,1994)
MN940043 (Mar.25,1994)
MN940045 (Mar.25,1994)
MN940046 (Mar.25,1994)
MN940047 (Apr.1,1994)
MN940049 (Apr.1,1994)
Ohio
OH940001 (Feb.11,1994)
OH940002 (Feb.11,1994)
OH940003 (Feb.11,1994)
OH940026 (Feb.11,1994)
OH940027 (Feb.11,1994)
OH940028 (Feb.11,1994)
OH940029 (Feb.11,1994)
OH940034 (Feb.11,1994)
OH940035 (Feb.11,1994)
OH940036 (Feb.11,1994)

Volume V

Kansas
KS940003 (Feb.11,1994)
KS940004 (Feb.11,1994)
KS940005 (Feb.11,1994)
Louisiana
LA940004 (Feb.11,1994)
LA940005 (Feb.11,1994)
LA940018 (Feb.11,1994)
New Mexico
NM940001 (Feb.11,1994)
NM940005 (Feb.11,1994)
Texas
TX940001 (Feb.11,1994)
TX940011 (Feb.11,1994)
TX940033 (Feb.11,1994)
TX940034 (Feb.11,1994)
TX940035 (Feb.11,1994)
TX940037 (Feb.11,1994)
TX940046 (Feb.11,1994)
TX940101 (Feb.11,1994)

VOLUME VI

Arizona
AZ940012 (Feb.11,1994)
Colorado
CO940009 (Feb.11,1994
Idaho
ID940001 (Feb.11,1994)
ID940002 (Feb.11,1994)
North Dakota
ND940015 (Apr.1,1994)
ND940016 (Apr.1,1994)
ND940017 (Apr.1,1994)
ND940018 (Apr.1,1994)
ND940019 (Apr.1,1994)
ND940020 (Apr.1,1994)
ND940027 (Apr.8,1994)
ND940029 (Apr.8,1994)
ND940055 (Apr.29,1994)
Washington
WA940001 (Feb.11,1994)
WA940002 (Feb.11,1994)
WA940003 (Feb.11,1994)
WA940005 (Feb.11,1994)
WA940007 (Feb.11,1994)
WA940008 (Feb.11,1994)
Wyoming
WY940005 (Feb.11,1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 1st day of July 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–16469 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–29,450]

Gandalf Systems Corporation Cherry Hill, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Operating in the Following States

TA–W–29,450A	Connecticut
TA–W–29,450B	Georgia
TA–W–29,450C	Illinois
TA–W–29,450D	Maryland
TA–W–29,450E	Massachusetts

TA–W–29,450F Minnesota
TA–W–29,450G North Carolina
TA–W–29,450H Ohio
TA–W–29,450I Pennsylvania

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 19, 1994, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on June 1, 1994 (59 FR 28429).

At the request of the State Agency, the Department reviewed its certification for the workers of Gandalf Systems Corporation. The findings show that Gandalf Systems had several field worker separations occurring in Connecticut, Georgia, Illinois, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, and Pennsylvania.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending its certification to include worker separations in the below cited States.

Also, on further review the Department found a typographical error in the impact date. The new impact date is changed to January 11, 1993 from January 11, 1994.

The amended notice applicable to TA–W–29,450 is hereby issued as follows:

All workers of Gandalf Systems Corporation, Cherry Hill, New Jersey engaged in employment related to the production of mechanical and circuit board assemblies and all field workers of Gandalf Systems Corporation engaged in employment related to the production of mechanical and circuit board assemblies in Connecticut, Georgia, Illinois, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, and Pennsylvania who became totally or partially separated from employment on or after January 11, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

This certification does not apply to workers engaged in regional sales.

Signed in Washington, DC, this 29th day of June, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–16538 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,394]

Martin Marietta Projection Display Products Syracuse, NY; Notice of Revised Determination on Reconsideration

On June 8, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 16, 1994 (59 FR 30954).

The company indicated in its application for reconsideration that the Department's original survey was inadequate and submitted a new list of lost bid customers in the domestic market which accounted for a major portion of its 1993 sales decline.

On reconsideration, the Department conducted a survey of lost bids in 1993. The respondents which accounted for a major portion of the Projection Display Products sales decline in 1993 showed that most named a Belgian firm as the successful awardee of the bids instead of Martin Marietta.

Other findings showed that sales and production of video projectors at Syracuse declined in 1993 compared to 1992. Substantial worker separations occurred in 1993 and will continue into 1994.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the Projection Display Products workers at Martin Marietta in Syracuse, New York were adversely affected by increased imports of articles like or directly competitive with the video projectors produced at Martin Marietta in Syracuse, New York.

All workers and former workers of Projection Display Products of Martin Marietta in Syracuse, New York who became totally or partially separated from employment on or after March 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of June 1994.

James D. Van Erden,

Administrator, Office of Work-Based Learning.

[FR Doc. 94–16539 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,418]

Rohr, Inc., Chula Vista, CA; Notice of Negative Determination Regarding Application for Reconsideration

By an application postmarked May 21, 1994, Local #755 of the Machinists Union (IAM) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 21, 1994 and published in the **Federal Register** on May 11, 1994 (59 FR 24482)

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers of Rohr, Inc., in Chula Vista, California produce aircraft engine nacelle systems and components.

The union claims that the production of engine mounts and cascades was transferred overseas.

Investigation findings show that, with the exception of a few spares which account for a negligible portion of current production, engine mounts were outsourced to Singapore and other manufacturers in the United States in 1991. This transfer is beyond the period applicable to the petition. Section 223(b)(1) of the Trade Act does not permit the certification of workers who were laid off prior to one year of the date of the petition which in this case is November 18, 1993.

With respect to cascades, the findings show that they haven't been produced in Chula Vista for some eight to ten years. Further, company officials indicated that no production workers were laid off because of the production transfer of engine mounts and cascades to offshore producers. Sufficient work was available at Chula Vista so as not to negatively impact employees.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 28th day of June 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–16540 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,838]

Western Atlas Geophysical Houston, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 2, 1994 in response to a worker petition which was filed on April 10, 1994 on behalf of workers at Western Atlas Geophysical, Houston, Texas.

An active certification covering the petitioning group of workers remains in effect (TA–W–29,802). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 27th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–16541 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Chestnut Coal Company

[Docket No. M–94–72–C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 10 Slope (I.D. No. 36–07059) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Chestnut Coal Company

[Docket No. M–94–73–C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.335

[TA-W-29,838]

Western Atlas Geophysical Houston, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 2, 1994 in response to a worker petition which was filed on April 10, 1994 on behalf of workers at Western Atlas Geophysical, Houston, Texas.

An active certification covering the petitioning group of workers remains in effect (TA-W-29,802). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 27th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-16541 Filed 7-7-94; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Chestnut Coal Company

[Docket No. M-94-72-C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 10 Slope (I.D. No. 36-07059) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Chestnut Coal Company

[Docket No. M-94-73-C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 10 Slope (I.D. No. 36-07059) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Chestnut Coal Company

[Docket No. M-94-74-C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its No. 10 Slope (I.D. No. 36-07059) located in Northumberland County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Chestnut Coal Company

[Docket No. M-94-75-C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its No. 10 Slope (I.D. No. 36-07059) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Chestnut Coal Company

[Docket No. M-94-76-C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its No. 10 Slope (I.D. No. 36-07059) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Costain Coal Inc.

[Docket No. M-94-77-C]

Costain Coal Inc., P.O. Box 289, Sturgis, Kentucky 42459-0289 has filed a petition to modify the application of 30 CFR 75.380(f)(2) (escapeways; bituminous and lignite mines) to its Wheatcroft Mine (I.D. No. 15-13920); its Baker Mine (I.D. No. 15-14492); and its Smith Underground No. 1 Mine (I.D. No. 15-16020) all located in Webster County, Kentucky. The petitioner requests to be excluded from the requirement that equipment used to transport persons in the primary escapeway be equipped with a multi-purpose dry powder fire suppression system, as it may apply to electric, nonpermissible golf carts. The petitioner states that the golf cart operators are experienced supervisory or maintenance personnel; that the golf carts are equipped with a 10-pound, dry chemical fire extinguisher; that the golf carts have virtually no flammable materials incorporated in their structure; and that a golf cart fire would have minimal effect on the mine environment because of the nominal size of the golf cart and the relatively large size of the entries being traveled. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. K & S Coal Company

[Docket No. M-94-78-C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its First Chance Slope (I.D. No. 36-07629) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible

abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. K & S Coal Company

[Docket No. M–94–79–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. As an alternative to removing the batteries and transporting them in the gunboat to the surface for charging, the petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have the intake air which is used to ventilate the charging station continue through its normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. K & S Coal Company

[Docket No. M–94–80–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. K & S Coal Company

[Docket No. M–94–81–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

11. K & S Coal Company

[Docket No. M–94–82–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

12. K & S Coal Company

[Docket No. M–94–83–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. The petitioner proposes to limit the mapping of mines above and below mine workings to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

13. Brookside Coal Company

[Docket No. M–94–84–C]

Brookside Coal Company, Box 64, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Diamond Vein Slope (I.D. No. 36–08456) located in Schuylkill County, Pennsylvania. Because of the steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope, the petitioner proposes to use the gunboat without safety catches in transporting persons. As an alternative, when using the gunboat to transport persons, the petitioner proposes to use an increased rope strength safety factor and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connecting device. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

14. K & S Coal Company

[Docket No. M–94–85–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

15. Shadle Coal Company

[Docket No. M–94–86–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

16. Shadle Coal Company

[Docket No. M–94–88–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

17. Shadle Coal Company

[Docket No. M–94–89–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to limit the mapping of mines above and below mine workings to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

18. Shadle Coal Company

[Docket No. M–94–90–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

19. Shadle Coal Company

[Docket No. M–94–91–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364)(b)(1), (4), and (5) (weekly examination) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car

application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

17. Shadle Coal Company

[Docket No. M–94–89–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to limit the mapping of mines above and below mine workings to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

18. Shadle Coal Company

[Docket No. M–94–90–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

19. Shadle Coal Company

[Docket No. M–94–91–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364)(b)(1), (4), and (5) (weekly examination) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

20. Shadle Coal Company

[Docket No. M–94–92–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

21. Island Creek Coal Company

[Docket No. M–94–93–C]

Island Creek Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1002 (trolley wires and trolley feeder wires, high-voltage cables and transformers) to its VP–8 Mine (I.D. No. 44–03795) located in Buchanan County, Virginia. The petitioner proposes to use high-voltage cables to supply power to a longwall mining system in by the last open crosscut. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 8, 1994. Copies of these petitions are available for inspection at that address.

Dated: July 1, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–16575 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Grant Awards For Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation (LSC/Corporation) hereby announces its intention to award seventeen (17) grants under its Law School Civil Clinical Program to expand relationships between legal services programs and law schools in meeting the challenges of equal access to justice. Pursuant to the Corporation's announcement of funding availability on March 10, 1994 (59 FR 11327), a total of $1,394,000 will be awarded to the following organizations:

Name of organization	State	Amount
University of Arkansas Law School.	AR	$80,770
San Francisco Neighborhood Legal Assistance Foundation/New College of California School of Law.	CA	72,553
Santa Clara University School of Law.	CA	100,000
University of Connecticut School of Law.	CT	71,091
National Association for Public Interest Law.	DC	258,910
The Florida Bar Foundation.	FL	90,000
Georgia Legal Services Program.	GA	39,295
Idaho Legal Aid Services.	ID	62,200
Southern New England School of Law/Legal Services for Cape Cod & Islands/Southeastern Massachusetts Legal Assistance Corporation.	MA	33,167
Legal Services of Eastern Missouri.	MO	100,000
University of Michigan Law School.	MI	100,000
Southern Minnesota Regional Legal Services.	MN	92,000
University of Mississippi School of Law.	MS	34,026
University of Nebraska-Lincoln College of Law.	NE	59,790
Southern New Mexico Legal Services.	NM	50,198

Name of organization	State	Amount
Brooklyn Legal Services Corp. "A"/City University of New York (CUNY) Law School.	NY	50,000
Evergreen Legal Services.	WA	100,000

These one-time, one-year grants are awarded under the authority conferred on LSC by Section 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended (LSC Act). This public notice is issued pursuant to Section 1007(f) of the LSC Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. Grant awards will become effective and grant funds will be distributed upon the expiration of this 30-day public comment period.

DATES: All comments and recommendations must be received on or before the close of business on August 8, 1994 at the Office of Program Services, Legal Services Corporation, 750 First Street, 11th Floor, Washington, D.C. 20002–4250.

FOR FURTHER INFORMATION CONTACT: Janice P. White, Office of Program Services, (202) 336–8924.

Date Issued: July 5, 1994.

Leslie Q. Russell,

Assistant to the Director, Office of Program Services.

[FR Doc. 94–16578 Filed 7–7–94; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL LABOR RELATIONS BOARD

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The National Labor Relations Board (NLRB), in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35) and Executive Order 12862 (Setting Customer Service Standards), considers comments on the reporting/recordkeeping requirements that will affect the public.

Recordkeeping/Reporting Requirements Under Review

As required by E.O. 12862, the NLRB will publish the Agency recordkeeping/reporting requirements under review by OMB. The designated Clearance Officer will, upon request, be able to advise members of the public of the nature of this submission.

Each survey (4) contains the following information:

The title of the recordkeeping/reporting requirement.

How often the recordkeeping/reporting requirement is needed.

Which segment of the public is affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent to complete each survey.

An abstract describing the need for and uses of the information collected through the surveys.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the designated Clearance Officer, Donald Hartline on (202) 273–3907. Comments and questions about the surveys should be directed to Mr. Donald Hartline, Budget Branch, National Labor Relations Board, 1099 14th Street, NW., Washington, DC 20570. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for NLRB (Daniel Chenok), Office of Management and Budget, Room 3002, Washington, DC 20503 or call (202) 395–7316.

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Hartline of this intent at the earliest possible date.

The following information applies: Director of Administration; Customer Satisfaction Survey Generic Clearance; One-time surveys (4).

Individuals or households; Businesses or other for-profit; Small businesses or organizations; 10,500 respondents; 15 minutes per response; 2,625 total hours. The NLRB is seeking a generic clearance for customer satisfaction surveys (4) in accordance with the requirements of Executive Order 12862, Setting Customer Service Standards.

Dated July 1, 1994.

By direction of the Board:

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 94–16492 Filed 7–7–94; 8:45 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443 (License No. NPF–86)]

North Atlantic Energy Service Corp.; (Seabrook Station, Unit No. 1); Order for Modification of Order Approving Transfer of License

I

Great Bay Power Corporation, formerly EUA Power Corporation, is the holder of a 12.1324 percent ownership share in Seabrook Station, Unit No. 1. Great Bay Power Corporation's interest in Seabrook Station, Unit No. 1, is governed by License No. NPF–86 issued by the U.S. Nuclear Regulatory Commission (NRC), pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50), on March 15, 1990, in Docket No. 50–443. Under this license, only North Atlantic Energy Service Corporation, acting as agent and representative of the 11 joint owners listed in the license, has the authority to operate Seabrook Station, Unit No. 1. Seabrook Station, Unit No. 1, is located in Rockingham County, New Hampshire.

II

The transfer of any right under License No. NPF–86 is subject to the NRC's approval pursuant to 10 CFR 50.80(a). By letter of May 14, 1993, from its counsel, Ropes & Gray, North Atlantic Energy Service Corporation filed two requests with the NRC. One requested NRC approval of the indirect transfer of control of EUA Power Corporation's 12.1324 percent ownership share in Seabrook Station, Unit No. 1. The other requested an amendment to the Operating License to reflect EUA Power Corporation's change of name to Great Bay Power Corporation. The name of EUA Power Corporation was formally changed to Great Bay Power Corporation in February 1993 following the redemption of all outstanding stock in EUA Power Corporation from its corporate parent, Eastern Utility Associates. Following the redemption of its outstanding stock, EUA Power Corporation was no longer a subsidiary of Eastern Utility Associates, and the name was changed to remove any implication of a continuing relationship with its former corporate parent. The name change did not affect the corporate entity of the debtor in bankruptcy. An indirect transfer of ownership occurs with the elimination of the existing stock of the debtor (now known as Great Bay Power Corporation) and the issuance of new stock to others.

On August 16, 1993, the NRC issued Amendment 23 to License No. NPF–86 that incorporated the name change of EUA Power Corporation to Great Bay Power Corporation in the footnote to page 1 of the operating license and issued an order approving the indirect transfer of the ownership interest of EUA Power Corporation. The order was contingent on the transfer of control being completed no later than February 15, 1994, and included the provision that upon application and showing of good cause, the order may be extended for a short period beyond February 15, 1994.

On February 3, 1994, North Atlantic Energy Service Corporation, through their counsel Ropes & Gray, filed an application requesting extension of the Order until June 30, 1994, and identified the reasons why the transfer of control could not be completed by February 15, 1994. In that application, it was asserted that the sole obstacle to final implementation of the Plan of Reorganization was the difficulty with completing the contemplated $45 million credit facility for the source of funds to cover Great Bay Power Corporation's cash requirements. In lieu of this credit facility, the debtor's bondholders entered into an agreement in principle with Omega Advisors that provided for an investment of $35 million by Omega Advisors in exchange for 60 percent equity in Great Bay Power Corporation. This agreement, reached on February 2, 1994, was a modification to the Plan of Reorganization and additional time was required to formalize the agreement, recirculate a revised Disclosure Statement to the creditors, and obtain reconfirmation of the revised Plan of Reorganization from the Bankruptcy Court.

On February 15, 1994, the NRC issued an Order which modified the August 16, 1993, Order Approving Transfer of License by extending the expiration date to June 30, 1994. On April 7, 1994, a Stock Subscription Agreement was entered into with Omega Advisors and Elliot Associates, L.P.,[1] and a revised Disclosure Statement was circulated to all creditors. The Revised Plan of

[1] On April 14, 1994, Ropes & Gray submitted a status report on behalf of North Atlantic Energy Service Corporation and a copy of the Supplemental Disclosure Statement. That statement disclosed that in addition to Omega Advisors, Elliot Associates, L.P., would participate in the acquisition of an aggregate of 60 percent of Great Bay Power Corporation's equity securities. Previously, Omega Advisors was identified as the sole participant in the equity financing. The stock purchase agreement discloses that the Omega entities will purchase 49 percent of the equity position and Elliot Associates will purchase the remaining 11 percent.

On August 16, 1993, the NRC issued Amendment 23 to License No. NPF–86 that incorporated the name change of EUA Power Corporation to Great Bay Power Corporation in the footnote to page 1 of the operating license and issued an order approving the indirect transfer of the ownership interest of EUA Power Corporation. The order was contingent on the transfer of control being completed no later than February 15, 1994, and included the provision that upon application and showing of good cause, the order may be extended for a short period beyond February 15, 1994.

On February 3, 1994, North Atlantic Energy Service Corporation, through their counsel Ropes & Gray, filed an application requesting extension of the Order until June 30, 1994, and identified the reasons why the transfer of control could not be completed by February 15, 1994. In that application, it was asserted that the sole obstacle to final implementation of the Plan of Reorganization was the difficulty with completing the contemplated $45 million credit facility for the source of funds to cover Great Bay Power Corporation's cash requirements. In lieu of this credit facility, the debtor's bondholders entered into an agreement in principle with Omega Advisors that provided for an investment of $35 million by Omega Advisors in exchange for 60 percent equity in Great Bay Power Corporation. This agreement, reached on February 2, 1994, was a modification to the Plan of Reorganization and additional time was required to formalize the agreement, recirculate a revised Disclosure Statement to the creditors, and obtain reconfirmation of the revised Plan of Reorganization from the Bankruptcy Court.

On February 15, 1994, the NRC issued an Order which modified the August 16, 1993, Order Approving Transfer of License by extending the expiration date to June 30, 1994. On April 7, 1994, a Stock Subscription Agreement was entered into with Omega Advisors and Elliot Associates, L.P.,[1] and a revised Disclosure Statement was circulated to all creditors. The Revised Plan of Reorganization was confirmed by the Bankruptcy Court on May 23, 1994, and a closing of the transaction was scheduled for June 15, 1994. However, on June 11, 1994, Omega Advisors notified Great Bay Power Corporation that unanticipated events leading to the delay in the completion of the Seabrook Station, Unit No. 1 third refueling outage from early June 1994 until early August 1994 has the potential to adversely affect Great Bay Power Corporation's financial projections, and the delay constitutes a material adverse change in Great Bay Power Corporation's financial condition. Omega Advisors requested postponement of the scheduled closing while the impact of these events could be assessed by independent financial and engineering consultants retained by Omega Advisors. Because these evaluations will not be available by June 30, 1994, North Atlantic Energy Service Corporation has requested further extension of the Order until August 31, 1994.

On the basis of the information in North Atlantic Energy Service Corporation's application (Ropes & Gray letter dated June 27, 1994), I find good cause to extend the expiration date of the Order Approving Transfer of License dated August 16, 1993.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954 (as amended), 42 U.S.C. 2201 *et seq.*, and 10 CFR 50.80, It Is Hereby Ordered that: the Order Approving Transfer of License dated August 16, 1993, is modified to change the latest date for completion of the transfer, as specified in Section III of the August 16, 1993, Order, to August 31, 1994. The Order of August 16, 1993, except as modified herein, remains in effect.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 30th day of June 1994.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16543 Filed 7–7–94; 8:45 am]

BILLING CODE 7590–01–M

[1] On April 14, 1994, Ropes & Gray submitted a status report on behalf of North Atlantic Energy Service Corporation and a copy of the Supplemental Disclosure Statement. That statement disclosed that in addition to Omega Advisors, Elliot Associates, L.P., would participate in the acquisition of an aggregate of 60 percent of Great Bay Power Corporation's equity securities. Previously, Omega Advisors was identified as the sole participant in the equity financing. The stock purchase agreement discloses that the Omega entities will purchase 49 percent of the equity position and Elliot Associates will purchase the remaining 11 percent.

[Docket No. 50–238 License No. NS–1]

State of South Carolina Patriots Point Development Authority U.S. Maritime Administration (N.S. Savannah); Order Approving Transfer and Notice of Issuance of License Amendment

I

On August 5, 1965, pursuant to 10 CFR Part 50, License No. NS–1 was issued to First Atomic Ship Transport Inc., (FAST) for the N.S. *SAVANNAH*. On November 9, 1970, Amendment No. 7 was issued to License No. NS–1 transferring the license from FAST to the U.S. Maritime Administration (MARAD). On May 16, 1976, Amendment No. 8 was issued to License No. NS–1 which authorized MARAD to possess but not operate the N.S. *SAVANNAH* reactor facility. On August 14, 1981, Amendment No. 9 was issued to License No. NS–1 adding the State of South Carolina Patriots Point Development Authority (PPDA) to the license as a co-licensee. On July 15, 1986, Amendment No. 11 was issued renewing the license until July 15, 1996.

II

On May 9, 1994, the State of South Carolina PPDA formally informed MARAD that it was exercising its option to return the vessel upon giving 30 days notice according to the charter agreement under which MARAD made the N.S. *SAVANNAH* available to PPDA. PPDA gave notice and stipulated that PPDA will remain a co-licensee and fulfill its obligations as a co-licensee until a license amendment is issued and effectively deletes PPDA as a co-licensee.

III

To remove PPDA from the license as a co-licensee, PPDA and MARAD applied to the U.S. Nuclear Regulatory Commission (NRC) for an exigent amendment to License No. NS–1, by letter dated May 19, 1994, as supplemented by later filings. Under this requested license amendment, the license and Technical Specifications would reflect the deletion of PPDA as a co-licensee and would make other changes to the Technical Specifications related to the deletion of PPDA as a co-licensee. The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration, and requested that any comments on the proposed no significant hazards consideration be submitted to the staff by the close of business on June 2, 1994. The notice was published in the Virginian-Pilot/Ledger-Star, Norfolk,

Virginia, on Sunday, May 29, 1994, the Daily Press, Newport News, Virginia, on Friday, May 27, 1994, and the Post and Courier, Charleston, South Carolina, on Friday, May 27, 1994.

IV

The transfer of rights under License No. NS–1 is subject to NRC approval under 10 CFR 50.80. On the basis of information submitted by PPDA and MARAD, and other information before the Commission, it is determined that the proposed deletion of PPDA as a co-licensee, subject to the conditions stated herein, is in the public interest and is consistent with the applicable provisions of law, regulations, and orders issued by the Commission. These actions were evaluated by the staff as documented in a safety evaluation, dated June 29, 1994, which contains final no significant hazards consideration determinations. The conditions of deletion of the co-licensee, to which neither PPDA nor MARAD have objected, are:

The title on page 1 of the license shall read: U.S. MARITIME ADMINISTRATION, DOCKET NO. 50–238, N.S. *SAVANNAH*, AMENDED FACILITY LICENSE.

1.D. The licensee is technically and financially qualified to engage in the activities authorized by this amended license in accordance with the rules and regulations of the Commission;

1.E. The licensee has complied with the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;

2.B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses the U.S. Maritime Administration:

(1) Pursuant to Section 104b of the Act and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," to possess, but not operate, the reactor as a utilization facility in accordance with the procedures and limitations in this license; and

(2) Pursuant to the Act and 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," to possess, but not separate, such byproduct material as may have been produced by operation of the facility.

2.C.(1) The licensee shall not reactivate the reactor without prior approval of the Commission;

2.C.(2) The licensee shall not dismantle or dispose of the facility without prior approval of the Commission.

V

Accordingly, pursuant to Sections 104b, 161b, 161i, 184, and 187 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201 et seq., and 10 CFR Part 50, *It Is Hereby Ordered* that the deletion of PPDA as a co-licensee, is approved, and Notice Is Given that a license amendment providing for the deletion of PPDA as a co-licensee, subject to the license conditions stated is issued.

For further details with respect to this action see (1) the application for amendment dated May 19, 1994, as supplemented by letters dated May 24 and 27, 1994, and June 3, 1994, (2) the Commission safety evaluation related to the amendment, and (3) the Environmental Assessment and Finding of No Significant Impact. Each of these items is available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20037.

Copies of items 2 and 3 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Operating Reactor Support.

Dated at Rockville, Maryland, this 29th day of June 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16447 Filed 7–7–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Form DPRS 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form DPRS 2809, Request to Change FEHB Enrollment or to Receive Plan Brochures, is used by former spouses who are eligible to elect, cancel, or change health benefits enrollment during open season.

Approximately 15,000 forms are completed annually. The form requires approximately 10 minutes to complete. The annual burden is 2,500 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before August 8, 1994.

ADDRESSES: Send or deliver comments to—

Maurice O. Duckett, Retirement and Insurance Group, Fiscal Management Division, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3451, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–16441 Filed 7–7–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34294; File No. SR–Amex–94–3]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Rules 575 ("Giving of Proxies Restricted"), 576 ("Transmission of Proxy Material to Customers"), 577 ("Giving Proxies by Member Organization") and 585 ("Transmission of Interim Reports and Other Material")

July 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on February 22, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On May 26, 1994, the Amex submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rules 575, 576, 577, and 585 governing proxies, to allow designated registered investment advisers to vote proxies and receive proxy and related issuer material in lieu of the beneficial owners. The Amex also proposes to amend Rule 575 to allow a member organization which is the investment manager for an ERISA Plan to vote proxies on behalf of the ERISA Plan.[4] The text of these rules follows (italics reflects proposed additions to the Rules):

Giving of Proxies Restricted

Rule 575. No member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of Rule 577, unless such member organization is the beneficial owner of such stock.

Notwithstanding the foregoing,

(1) any member organization designed by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities; and

(2) any person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for stock which is in the possession or control of the member organization, may vote such proxies.

Transmission of Proxy Material to Customers

Rule 576. (a) Whenever a person soliciting proxies shall furnish a member organization:

[3] See letter from Linda Tarr, Senior Counsel, Amex, to Sandra Sciolo, Special Counsel, SEC, dated May 25, 1994. Amendment No. 1 made certain clarifying changes to the proposed rule change.

[4] ERISA is an acronym for the Employee Retirement Income Security Act of 1974. See 29 U.S.C. 1001–1461 (1988). ERISA defines the term "investment manager" to mean any fiduciary (other than a trustee or named fiduciary, as defined in Section 1102(a)(2) of Title 29): (A) who has the power to manage, acquire, or dispose of any asset of a plan; (B) who is (i) registered as an investment adviser under the Investment Advisers Act of 1940 (ii) is a bank, as defined in that Act or (iii) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and (C) has acknowledged in writing that he is a fiduciary with respect to the plan. See 29 U.S.C. § 1002(38) (1988).

proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rules 575, 576, 577, and 585 governing proxies, to allow designated registered investment advisers to vote proxies and receive proxy and related issuer material in lieu of the beneficial owners. The Amex also proposes to amend Rule 575 to allow a member organization which is the investment manager for an ERISA Plan to vote proxies on behalf of the ERISA Plan.[4] The text of these rules follows (italics reflects proposed additions to the Rules):

Giving of Proxies Restricted

Rule 575. No member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of Rule 577, unless such member organization is the beneficial owner of such stock.

Notwithstanding the foregoing,

(1) any member organization designed by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities; and

(2) any person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for stock which is in the possession or control of the member organization, may vote such proxies.

Transmission of Proxy Material to Customers

Rule 576. (a) Whenever a person soliciting proxies shall furnish a member organization:

(1) copies of all soliciting material which such person is sending to registered holders, and

(2) satisfactory assurance that he will reimburse such member organization for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member organization in connection with such solicitation,

such member organization shall transmit to each beneficial owner of stock which is in its possession or control *or to an investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter "designated investment adviser") to receive soliciting material in lieu of the beneficial owner,* the material furnished; and

(b) such member organization shall transmit with such material either:

(1) a request for voting instructions and, as to matters which may be voted without instructions under Rule 577, a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock *or to the beneficial owner's designated investment adviser,* at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the stock *or to the beneficial owner's designated investment adviser* twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock; or

(2) a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records of such member organization, and also a letter informing the beneficial owner *or the beneficial owner's designated investment adviser,* of the necessity for completing the proxy form and forwarding it to the person soliciting proxies in order that the shares may be represented at the meeting.

* * * Commentary

.01 Annual reports to be transmitted.—The annual report shall be transmitted to beneficial owners *or to the beneficial owners' designated investment advisers* under the same conditions as those applying to proxy soliciting material under Rule 576 even though it is not proxy soliciting material under the proxy rules of the Securities and Exchange Commission.

.20 through .50—No Change.

.60 Duty to transmit even when requested not to.—The proxy material must be sent to a beneficial owner even though such owner has instructed the member organization not to do so, *unless the beneficial owner has instructed the member organization in writing to send such material to the beneficial owner's designated investment adviser.*

.70 through .92—No Change.

Giving Proxies by Member Organization

Rule 577. A member organization shall give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

Voting Member Organization Holdings as Executor, etc.

A member organization may give or authorize the giving of a proxy to vote any stock registered in its name, or in the name of its nominee, if such member organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

Voting Procedure Without Instructions

A member organization which has transmitted proxy soliciting material to the beneficial owner of stock *or to an investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter "designated investment adviser") to receive soliciting material in lieu of the beneficial owner* and solicited voting instructions in accordance with the provisions of Rule 576, and which has not received instructions from the beneficial owner *or from the beneficial owner's designated investment adviser* by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to vote such stock, provided the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

Instructions on Stock in Names of Other Member Organizations

A member organization which has in its possession or control stock registered in the name of another member organization, and which has solicited voting instructions in accordance with the provisions of Rule 576(b)(1), shall

(1) forward to the second member organization any voting instructions received from the beneficial owner, or

(2) if the proxy soliciting material has been transmitted to the beneficial owner of the stock in accordance with Rule 576 and no instructions have been received by the date specified in the statement accompanying such material, notify the second member organization of such fact in order that such member organization may give the proxy as provided in the third paragraph of this rule.

Signed Proxies for Stock in Names of Other Member Organizations

A member organization which has in its possession or control stock registered in the

---

[3] See letter from Linda Tarr, Senior Counsel, Amex, to Sandra Sciolo, Special Counsel, SEC, dated May 25, 1994. Amendment No. 1 made certain clarifying changes to the proposed rule change.

[4] ERISA is an acronym for the Employee Retirement Income Security Act of 1974. *See* 29 U.S.C. 1001–1461 (1988). ERISA defines the term "investment manager" to mean any fiduciary (other than a trustee or named fiduciary, as defined in Section 1102(a)(2) of Title 29): (A) who has the power to manage, acquire, or dispose of any asset of a plan; (B) who is (i) registered as an investment adviser under the Investment Advisers Act of 1940 (ii) is a bank, as defined in that Act or (iii) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and (C) has acknowledged in writing that he is a fiduciary with respect to the plan. *See* 29 U.S.C. § 1002(38) (1988).

name of another member organization, and which desires to transmit signed proxies pursuant to the provisions of Rule 576(b)(2), shall obtain the requisite number of signed proxies from such holder of record.

* * * Commentary

Giving a Proxy to Vote Stock

.10 When member organization may vote without customer instructions.—Rule 577, above, provides that a member organization may give a proxy to vote stock provided that:

(1) it has transmitted proxy soliciting material to the beneficial owner of stock *or to the beneficial owner's designated investment adviser* in accordance with Rule 576, and

(2) it has not received voting instructions from the beneficial owner *or from the beneficial owner's designed investment adviser*, by the date specified in the statement accompanying such material, and

(3)—No Change.

.11 through .20—No Change.

Transmission of Interim Reports and Other Material

Rule 585. A member organization, when so requested by a company, and upon being furnished with:

(1) copies of interim reports of earnings or other material being sent to stockholders, and

(2) satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or materials to each beneficial owner of stock of such company held by such member organization and registered in a name other than the name of the beneficial owner *unless the beneficial owner has instructed the member organization in writing to transmit such reports or material to a designated investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for such beneficial owner.*

* * * Commentary—No Change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange's rules currently prohibit a member organization from voting proxies, on a discretionary basis, on securities held in its custody unless (1) the securities are beneficially owned by the member organization, or (2) the beneficial owner has failed to provide the member organization with voting instructions and the subject of the vote is nonsubstantive. Exchange rules further require member organizations to transmit proxy and related issuer materials to each beneficial owner of stock held in the member organization's possession even when the beneficial owner has instructed the member organization not to do so.

The Exchange is proposing to amend Rules 575, 576, 577 and 585 to provide that a beneficial owner of stock may designate in writing that a registered investment adviser who exercises investment discretion for his account(s) pursuant to an advisory contract, is to receive proxy materials and vote proxies on behalf of such beneficial owner. The proposed rule amendments would also allow designated registered investment advisers to receive annual reports and other related issuer materials in lieu of the beneficial owner. The term investment adviser is defined to include a registered broker-dealer, such as a member organization.[5]

The Board of Directors of the New York Stock Exchange, Inc. ("NYSE") recently approved a proposal to amend its comparable proxy rules, and filed such proposal with the SEC.[6] The NYSE proposal was developed in response to concerns raised by a number of its member organizations and by the Investment Adviser Committee of the Securities Industry Association, that many customers do not want to receive proxy materials and vote. These customers apparently would prefer that their registered investment advisers represent their interests in this regard because, as professionals, they are better qualified to perform this function.

It is also proposed that the Board approve an additional amendment to Exchange Rule 575 to conform that rule to a comparable NYSE rule which allows a member organization managing stock under an ERISA Plan to vote the proxies on the stock in accordance with its ERISA Plan fiduciary responsibilities.[7]

Most Amex member firms doing a public business are dual members of both the NYSE and Amex, and the rules of the two exchanges regarding proxies and voting have historically been substantially the same. Accordingly, it is appropriate to modify these Amex rules to track the NYSE amendments.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it prevents fraudulent and manipulative acts, promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and, in general, protects the investing public in that it establishes standards for investment advisers to receive proxy and related material and to vote proxies, thereby meeting customer needs while providing appropriate regulatory safeguards.

[5] The Investment Advisers Act of 1940 defines an "investment adviser" as any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an investment company; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to Section 3(a)(12) of the 1934 Act, as exempted securities for the purposes of that Act; or (F) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order. 15 U.S.C. § 80b–2(a)(11) (1988).

[6] See File No. SR-NYSE–93–37 filed with the Commission on October 22, 1993.

[7] This NYSE Rule currently states that no member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of Rule 452, unless such member organization is the beneficial owner of such stock. Notwithstanding the foregoing, any member organization, designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary, may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities. See NYSE Rule 450, Restriction on Giving of Proxies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–3 and should be submitted by July 29, 1994.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–3 and should be submitted by July 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16567 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34299; File No. SR–Amex–94–02]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Rescission of Rules 560 and 570, and Amendment of Rule 550, Commentary .02

July 1, 1994.

On February 16, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Rules 560 and 570, and to amend Commentary .02 to Rule 550 to delete its reference to Rules 560 and 570.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33750 (March 10, 1994), 59 FR 12386 (March 16, 1994). No comments were received on the proposal.

In light of the Commission's rescission of Rule 10b–2, promulgated under the Act,[3] the Exchange is rescinding its Rules 560 and 570. Rule 10b–2, adopted by the Commission in 1937, was part of a comprehensive package of antifraud provisions.[4] Its purpose was to prevent persons participating in the distribution of a security from stimulating the purchase on an exchange of such security by paying compensation to any person for soliciting such purchases.

In 1942, the Commission amended Rule 10b–2 to permit an exemption for special offerings under a plan filed with the Commission by an exchange.[5] The Amex's plan, contained in Rule 560, permits special offerings, at a fixed price and for a fixed period of time, on the Exchange where the quantity of stock involved cannot be absorbed in the regular auction market within a reasonable time and at a reasonable price. Rule 560 permits a person making a special offering to pay a special commission to a broker for a purchasing customer.[6]

In 1953, the Commission amended Rule 10b–2 to expand the scope of its exemption by eliminating the requirements that the compensation paid be a "special commission."[7] Amex Rule 570, which permits distributions of stock of the type addressed under Exchange Act Rule 10b–2, requires that compensation be paid in accordance with the terms of a Commission approved plan for an exchange distribution, and that the payer not know or have reasonable grounds to believe that transactions violating the terms of an approved plan are taking place.

In proposing the rescission of Rule 10b–2, the Commission stated that the significant changes that have taken place in the securities markets since Rule 10b–2's adoption, and the coverage of other antifraud and antimanipulation provisions of the federal securities laws, such as Rule 10b–5 and Rule 10b–6, made it appropriate to rescind Rule 10b–2.[8] The Exchange is rescinding Rules 560 and 570, its plans adopted in response to Rule 10b–2, because they are obsolete. The Exchange also is amending Rule 550 (which pertains to secondary distributions) to delete a reference to the Special Offering and Exchange Distribution rules.[9]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[10] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] See Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993).

[4] See Securities Exchange Act Release No. 1330 (August 4, 1937).

[5] See Securities Exchange Act Release No. 3146 (February 6, 1942).

[6] Rule 560 specifies a minimum share size of 1,000 shares, with a value of $25,000. By today's standards, 1,000 shares of stock with a value of $25,000 is not a quantity of stock that cannot readily be absorbed in the regular auction market. Rule 560 predates special Amex block trading rules, such as Rule 24, which defines a block of stock as 10,000 shares or more.

[7] See Securities Exchange Act Release No. 4922 (August 20, 1953).

[8] The Commission recently issued a concept release to solicit comments on a broad range of issues relating to antimanipulation regulation of securities offerings under the Act, including Rule 10b–6. See Securities Act Release No. 7057, Securities Exchange Act Release No. 33924, International Series Release No. 657 (April 19 1994), 59 FR 21681 (April 26, 1994).

[9] The Commission approved the rescission of analogous New York Stock Exchange rules. See Securities Exchange Act Release No. 32822 (August 31, 1993), 58 FR 47484 (September 9, 1993)

[10] 15 U.S.C. 78(f) (1988).

prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[11]

The Commission believes that the rescission of Exchange Rules 560 and 570, and the amendment to Exchange Rule 550 (which deletes any reference to the substance of Exchange Rules 560 and 570), is appropriate because these Exchange Rules were adopted in response to recently rescinded Rule 10b–2 under the Act. The Commission believes that the activities with which these Exchange rules are concerned are sufficiently addressed by the general antifraud and antimanipulation provisions of the federal securities laws as discussed in the Commission's release rescinding Rule 10b–2 of the Act. Furthermore, the Commission believes that it is consistent with the Act to allow the Exchange to delete obsolete and redundant rules.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–94–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16568 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34300; International Series Release No. 678; File No. SR–Amex–94–04]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Listing Standards for Non-U.S. Companies

July 1, 1994.

I. Introduction

On February 23, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit non-U.S. issuers to distribute summary annual reports to U.S. holders of Amex-listed foreign securities and American Depositary Receipts (ADRs) ("U.S. Holders") under certain circumstances.[3] On May 19, 1994, the Amex submitted Amendment No. 1 to the rule filing.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33864 (April 5, 1994), 59 FR 17406 (April 12, 1994). No comments were received on the proposal.

II. Description of the Proposal

Current Amex policy requires all listed companies to submit to shareholders an annual report with financial information as detailed in the Amex Company Guide. The Exchange is modifying its annual report requirements to allow U.S. Holders to receive summary annual reports if it is the practice in the home country of the foreign issuer and certain other conditions are met. The following is the text of the rule, with italics representing the language added:

Section 110. Securities of Foreign Companies

* * * * *

(d) Disclosure—The Exchange will require the company to: (i) furnish to American shareholders an English language version of its annual financial statements and all other materials regularly provided to other shareholders, and (ii) publish, at least semi-annually, an English language version of its interim financial statements. *In addition, the Exchange will permit non-U.S. issuers to follow home country practices regarding the distribution of annual reports to shareholders, if, at a minimum, shareholders (i) are provided at least summary annual reports, including summary financial information, and (ii) have the ability, upon request, to receive a complete annual report, and the financial information contained in the summary annual report is reconciled to U.S. generally accepted accounting principles to the extent that such reconciliation would be required in the full annual report.*

The rule change is, in part, in response to an amendment, adopted in 1990, to the U.K. Companies Act that permits issuers listed on the London Stock Exchange to provide holders of their ordinary shares a choice to receive a full annual report or a summary annual report.[5] The Amex rule is formulated to permit foreign issuers to distribute summary annual reports consistent with the practices of their home countries. The rule does not attempt to specify particular financial requirements.[6] Instead, the Exchange will review specific proposals to ensure that U.S. Holders receive adequate information.[7]

The rule also does not mandate any specific method for providing U.S. Holders with summary annual reports. As with the substantive requirements, the Amex proposal recognizes that foreign countries will develop their own procedures for issuers to provide summary reports in lieu of full annual reports. The Exchange, however, has indicated that it will review all proposed programs to ensure that U.S. Holders have reasonable access to the full annual report and receive full disclosure of their option to receive the full report.[8]

III. Discussion

The Commission finds that the proposed rule change to permit non-U.S. issuers to distribute summary annual reports to U.S. Holders according to the home country practice of the foreign issuer is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest, in that it accommodates foreign practices while ensuring that U.S. shareholders of foreign securities and holders of ADRs continue to receive adequate information concerning the companies in which they invest.

As the securities markets of the world become increasingly interconnected, it is inevitable that application of certain exchange rules conflict with customs and market practices in other jurisdictions.[10] The Commission believes that the Amex's rule reflects an appropriate balance between the need to protect U.S. investors and the costs associated with requiring non-U.S. companies to provide U.S. investors with full annual reports while the companies' home country law permits summary reports to foreign investors. Accordingly, for the reasons discussed in more detail below, we believe it is appropriate, in this limited situation pursuant to the conditions set forth in Section 110, to allow foreign issuers to comply with their home country practices for the distribution of annual reports to U.S. Holders.

First, the rule sets forth certain minimum requirements before summary reports can be used, including that financial information contained in the summary annual report be reconciled to U.S. generally-accepted accounting principles, and that all shareholders have the ability upon request to receive a full annual report. Second, the Amex will evaluate each country's program for providing shareholders with summary annual reports to verify that U.S. Holders are receiving adequate information under the laws of the foreign country. Finally, the Amex will also review the procedure the country has provided for disclosing to shareholders the option to receive a full annual report. If the Exchange determines that either the substance or the procedure provided by a foreign country's law is unsatisfactory, the Exchange may prescribe additional requirements before the summary annual report can be distributed to U.S. Holders under the Amex rule. In this regard, the Amex has stated it will ensure, under its new rule, that

---

[11] 15 U.S.C. 78f(b)(5) (1988).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] An ADR is a negotiable receipt that is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. ADRs are traded on the national stock exchanges and in over-the-counter markets like stocks of domestic companies.

[4] Letter from Claudia Crowley, Amex, to Sharon Lawson, Assistant Director, SEC, dated May 18, 1994 ("Amex Letter"). The amendment added the phrase "including summary financial information" in subsection (i) of the new language. *See* text of new rule, *infra*.

[5] The U.K. Companies Act sets forth the specific financial and management information that must be contained in the summary reports. In addition, the U.K. Companies Act requires that shareholders who receive only the summary report be given the opportunity, at any time, to obtain the full annual report from the company and that companies must notify shareholders annually of this right and how the report can be obtained. When the program was instituted in the U.K. in 1990, shareholders received both reports and notice of the available option with respect to future reports.

[6] Although the new rule is formulated to accommodate the U.K.'s program, other foreign countries may adopt different practices.

[7] Amex Letter, *supra* note 4. The letter clarified that the Exchange does not intend to adopt the substance of the U.K. program, and that it will permit the practice of providing shareholders with an option to receive summary annual reports as opposed to full annual reports to evolve over time. The Amex has committed to review each home country's practices to determine their sufficiency in providing information to U.S. Holders.

[8] *Id.* Under the Amex rule, full annual reports must still be prepared and made available to all U.S. shareholders.

[9] 15 U.S.C. 78f(b) (1988).

[10] The Commission previously has allowed exchanges to waive or modify certain of its listing standards for foreign companies based on the laws, customs or practices of their home countries. See Securities Exchange Act Release No. 33661 (February 23, 1994), 59 FR 10028 (March 2, 1994); Securities Exchange Act Release No. 24634 (June 23, 1987), 52 FR 24230 (June 29, 1987).

rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest, in that it accommodates foreign practices while ensuring that U.S. shareholders of foreign securities and holders of ADRs continue to receive adequate information concerning the companies in which they invest.

As the securities markets of the world become increasingly interconnected, it is inevitable that application of certain exchange rules conflict with customs and market practices in other jurisdictions.[10] The Commission believes that the Amex's rule reflects an appropriate balance between the need to protect U.S. investors and the costs associated with requiring non-U.S. companies to provide U.S. investors with full annual reports while the companies' home country law permits summary reports to foreign investors. Accordingly, for the reasons discussed in more detail below, we believe it is appropriate, in this limited situation pursuant to the conditions set forth in Section 110, to allow foreign issuers to comply with their home country practices for the distribution of annual reports to U.S. Holders.

First, the rule sets forth certain minimum requirements before summary reports can be used, including that financial information contained in the summary annual report be reconciled to U.S. generally-accepted accounting principles, and that all shareholders have the ability upon request to receive a full annual report. Second, the Amex will evaluate each country's program for providing shareholders with summary annual reports to verify that U.S. Holders are receiving adequate information under the laws of the foreign country. Finally, the Amex will also review the procedure the country has provided for disclosing to shareholders the option to receive a full annual report. If the Exchange determines that either the substance or the procedure provided by a foreign country's law is unsatisfactory, the Exchange may prescribe additional requirements before the summary annual report can be distributed to U.S. Holders under the Amex rule. In this regard, the Amex has stated it will ensure, under its new rule, that shareholders receive adequate information and are provided with full and meaningful disclosure of their choices to receive the full annual report as opposed to the summary report.[11] Based on the above, the Commission believes the Exchange's review and oversight, combined with the minimum requirements set forth in the rule, should ensure the continued protection of investors and the public interest consistent with Section 6(b)(5) of the Act.

The Commission finds good cause for approving Amendment No. 1 to the rule change prior to the thirtieth day after publication of notice of filing thereof. Amendment No. 1 added language to subsection (a) of the proposed rule to clarify the Exchange's intention that summary annual reports include summary financial information.[12] The Amex's proposed rule change was published in the **Federal Register** for the full statutory period and no comments were received.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–04 and should be submitted by July 29, 1994.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–94–04), including Amendment No. 1 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

[FR Doc. 94–16569 Filed 7–7–94; 8:45 am]
BILLING CODE 8010-01-M

[10] The Commission previously has allowed exchanges to waive or modify certain of its listing standards for foreign companies based on the laws, customs or practices of their home countries. See Securities Exchange Act Release No. 33661 (February 23, 1994), 59 FR 10028 (March 2, 1994); Securities Exchange Act Release No. 24634 (June 23, 1987), 52 FR 24230 (June 29, 1987).

[11] See Amex Letter, *supra* note 4.

[12] *Id.*

[13] See Securities Exchange Act Release No. 33864 (April 5, 1994), 59 FR 17406 (April 12, 1994).

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34303; File No. SR–NYSE–93–48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Procedures for Handling Block Crosses at Significant Premiums or Discounts

July 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an Information Memo which discusses procedures under current Exchange Rules for handling block crosses that are proposed to be executed at significant premiums or discounts from the last sale.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to review the Exchange's existing procedures for handling block crosses that are proposed to be executed at significant premiums or discounts from the prevailing market in the subject security. These procedures are designed to ensure that such block transactions are subject to appropriate oversight and exposure to other market interest.

There are three types of decisions that may be made, as appropriate, when a block cross is proposed to be effected at a significant premium or discount. First, pursuant to Exchange Rule 79A.30, whenever any transaction is to be effected at a price that is $1 or more away from a last sale in the subject security under $20, or $2 or more away from a last sale of $20 or more, it must be approved by a Floor Official. In addition, in the case of a proposed block transaction which would be effected at a significant price change from the last sale (and particularly any trade at a price which would be the lesser of 10% or three points from the previous sale in the subject security, or five points if the previous sale was $100 or more), a floor Governor, a Senior Floor Official, or two Floor Officials, should make a determination whether the expected price change suggests that the overall market in that security would be better served by a trading halt, with telescoping price indications that come progressively closer to the re-opening price.

Third, in exceptional circumstances, a Floor Governor or a Senior Floor Official may determine that it is appropriate to continue trading rather than calling a trading halt. In such a case, when a member proposes to effect a block transaction at a significant premium or discount from the prevailing market and the specialist is aware of interest on the contra side, the specialist, with approval of a Floor Governor or Senior Floor official, may widen the quotation for a brief period, generally not to exceed five minutes, to try to contact and/or attract contra side market interest. In the case of a significant discount, the bid would represent the proposed cross price, the offer would touch the last sale price and the quotation size would be 100 shares by 100 shares. Conversely, in the case of a significant premium, the bid would touch the last sale and the offer would represent the proposed cross price, with the quotation size being 100 shares by 100 shares. The same principles would also apply to a situation where a sudden influx of market orders on only one side of the market make a significant price change likely.

All block transactions are subject to the Exchange's auction market rules (*e.g.*, Rules 72, 76, and 127), which provide the opportunity for other market participants to improve the price for one side or the other of the proposed cross. However, if a block transaction at a significant premium or discount is proposed very near the close of trading, there may not be sufficient time to implement the procedures described above and a Floor Governor or a Senior Floor Official, or two Floor Officials may determine that it is therefore appropriate to halt trading.

Specialists must be prepared to participate in such transactions, as dealer, to the extent necessary to maintain a fair and orderly aftermarket following the execution of such transactions. Any situation where there is a disagreement between the specialist and the broker representing the block orders as to the extent of the needs of the specialist should be referred to a Floor Official for resolution.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–48 and should be submitted by July 29, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[3] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's policy requiring the approval of a Floor Governor, Senior Floor Official, or two Floor Officials for block transactions effected at significant price changes from the last sale provides appropriate Exchange oversight of specialists' conduct and is consistent with Section 6(b)(5) of the Act in that this oversight may tend to prevent fraudulent and manipulative acts and practices and assist specialists in maintaining fair and orderly markets by ensuring that block transactions are properly priced and exposed to other market interest.

The Commission believes the rule change is consistent with NYSE Rule 79A.30, which requires that all transactions that are made at one point or more away from a last sale in a security priced under $20, or two points or more away from a last sale of $20 or more must be approved by a Floor Official. Where a block transaction is proposed that would result in a more significant price change than the one or two point parameter discussed in Rule 79A.30, the Information Memo states that consultation should involve a Floor Governor, a Senior Floor Official or two Floor Officials. The Commission believes that in such situations, a trading halt or a gap quotation may be needed to maintain orderly markets, and that consultations with the specified officials could aid specialist in fulfilling their market making responsibilities.[4]

The Commission believes that the Information Memo highlights the responsibilities of specialists in terms of block crosses that are already set forth in the Exchange's Rules and policies. In addition, the Commission believes that the adoption of the Information Memo will ensure that floor members are aware of their obligation to consult with floor officials when proposing to execute block crosses at prices that would result in significant price changes from the last sale. The Commission therefore finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2)[5] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16570 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)(5) (1988).

[4] Nothing in the rule change effects the Exchange's current rules regarding execution of block transactions, such as NYSE Rule 72 (Priority and Precedence of Bids and Offers), NYSE Rule 76 ("Crossing" Orders), NYSE Rule 78 (Sell and Buy Orders Coupled at Same Price), and NYSE 127 (Block Positioning).

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34295; File No. SR–PSE–94–3]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Its Net Capital Requirements for Specialists

July 1, 1994.

I. Introduction

On January 14, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or

Official. Where a block transaction is proposed that would result in a more significant price change than the one or two point parameter discussed in Rule 79A.30, the Information Memo states that consultation should involve a Floor Governor, a Senior Floor Official or two Floor Officials. The Commission believes that in such situations, a trading halt or a gap quotation may be needed to maintain orderly markets, and that consultations with the specified officials could aid specialist in fulfilling their market making responsibilities.[4]

The Commission believes that the Information Memo highlights the responsibilities of specialists in terms of block crosses that are already set forth in the Exchange's Rules and policies. In addition, the Commission believes that the adoption of the Information Memo will ensure that floor members are aware of their obligation to consult with floor officials when proposing to execute block crosses at prices that would result in significant price changes from the last sale. The Commission therefore finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2)[5] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16570 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34295; File No. SR–PSE–94–3]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Its Net Capital Requirements for Specialists

July 1, 1994.

I. Introduction

On January 14, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's net capital requirements for Exchange specialists. On March 8, 1994, the PSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] On April 1, 1994, the PSE submitted to the Commission Amendment No. 2 to the proposed rule change.[4]

The proposed rule change, together with Amendment Nos. 1 and 2, was noticed in Securities Exchange Act Release No. 34026 (May 9, 1994), 59 FR 25134 (May 13, 1994). No comments were received on the proposal. This order approves the proposed rule change, including Amendment Nos. 1 and 2.

II. Description of the Proposal

The Exchange is amending Rules 2.8 and 2.1, and adopting Rules 2.1(b), 2.1(c) and 2.1(d) of the PSE Rules of the Board of Governors, concerning capital requirements for specialists. The amended and adopted rules will become effective July 1, 1994. The Exchange is amending PSE Rule 2.8(a), which currently exempts specialists from the Exchange's net capital rule.[5] The Exchange is deleting "specialists" from this list of exempt members and adding "lead market makers in listed options" to the list. The Exchange stated that this amendment is intended to make the Exchange's rules conform to the recent amendments to the SEC's net capital rule, which effective April 1, 1994, made the SEC's net capital rule applicable to equity specialists.[6]

The PSE is amending Rule 2.1(a) to require, to the extent applicable, every member organization to maintain a minimum net capital in accordance with the provisions of SEC Rule 15c3–1.[7] This amendment also reflects the SEC's amendments to SEC Rule 15c3–1, which, as mentioned above, made the SEC's net capital rule applicable to the Exchange's equity specialists. Rule 2.1 is also being amended to clarify that the PSE's net capital requirements will be in addition to the Specialist Post Capital requirement of Rule 2.2.[8]

The PSE is adopting Rule 2.1(b) to establish a net capital requirement for Exchange specialist firms that are subject to the aggregate indebtedness and alternative net capital requirements under Rule 15c3–1.[9] Rule 2.1(b) requires specialist firms subject to the SEC's aggregate indebtedness requirement to maintain a minimum net capital of not less than $200,000. Rule 2.1(b)(4) establishes a lesser minimum net capital requirement of $150,000 for broker-dealers in specialist posts subject to the SEC's aggregate indebtedness requirement and backed by more than one broker-dealer.

Rule 2.1(c)(1) adopts a net capital requirement for equity specialist firms subject to the SEC's alternative net capital requirement. Pursuant to the adopted Rule, specialist firms subject to the SEC's alternative net capital standard are required to comply with subsection (a)(1)(ii) of Rule 15c3–1.[10] With respect to joint accounts, Rule 2.1(c)(2) requires each broker-dealer in a specialist post backed by more than one broker-dealer and subject to the SEC's alternative net capital requirement to comply with the requirements of SEC Rule 15c3–1(a)(1)(ii).[11]

The Exchange's amendments also adopt new requirements and establish related procedures for specialist firms

---

[4] Nothing in the rule change effects the Exchange's current rules regarding execution of block transactions, such as NYSE Rule 72 (Priority and Precedence of Bids and Offers), NYSE Rule 76 ("Crossing" Orders), NYSE Rule 76 (Sell and Buy Orders Coupled at Same Price), and NYSE 127 (Block Positioning).

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated March 4, 1994. Amendment No. 1 made various clarifying amendments to the proposed rule change.

[4] See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated March 28, 1994. Amendment No. 2 made further clarifying amendments to the proposed rule change.

[5] The term "net capital", as used in the PSE proposal, means net capital as defined by Commission Rule 15c3–1. Rule 15c3–1 defines net capital as the net worth of a broker or dealer, adjusted by certain adjustments prescribed in Rule 15c3–1. See 17 CFR 240.15c3–1(c)(2) (1994).

[6] See Securities Exchange Act Release No. 32737 (August 11, 1993), 58 FR 43555 (August 17, 1993).

[7] 17 CFR 240.15c3–1 (1994).

[8] Rule 2.2 provides, in part, that members registered as specialists shall at all times maintain for each specialist post a minimum of $150,000 in either cash or marketable securities or an amount equal to 25% of the sum of the market value of its securities positions, both long and short, whichever is greater.

[9] The Aggregate Indebtedness Standard under Rule 15c3–1 states that no broker or dealer, other than one that elects the Alternative Standard, shall permit its aggregate indebtedness to all other persons to exceed 1500 percent of its net capital (or 800 percent of its net capital for 12 months after commencing business as a broker or dealer). See 17 CFR 240.15c3–1(a)(1)(i) (1994). Rule 15c3–1(a)(1)(ii) contains the Alternative Standard, which states in part, that a broker or dealer shall not permit its net capital to be less than the greater of $250,000 or 2 percent of aggregate debit items computed in accordance with Exhibit A to Rule 15c3–3. See 17 CFR 240.15c3–1(a)(1)(ii) (1994). The Commission's net capital rule requires the Exchange's equity specialists to maintain net capital, under the aggregate indebtedness method, equal to a minimum of $100,000 and, under the alternative method, equal to a minimum of $250,000. See Securities Exchange Act Release No. 32737, *supra* note 6.

[10] Rule 15c3–1(a)(1)(ii) contains the SEC's alternative net capital requirement. See 17 CFR 240.15c3–1(a)(1)(ii) (1994).

[11] See *supra* note 10.

whose net capital falls below certain levels.[12] With respect to specialist firms subject to the SEC's aggregate indebtedness requirement, adopted Rule 2.1(b)(2) states that if at any time a specialist firm's net capital falls below $200,000, the firm shall promptly notify the Financial Compliance Department of the Exchange and, in addition, the firm shall not operate as a specialist with net capital of between $150,000 and $199,999 for more than 60 days unless such firm (a) obtains from the Vice President, Regulation, or a senior officer of the Exchange written consent to continue to operate as a specialist; and (b) takes corrective action including, but not limited to, actively seeking financing to correct its net capital deficiency. If a specialist firm's net capital falls below $150,000, the firm shall be subject to remedial action including, but not limited to, the loss of specialist privileges.

With respect to specialist posts backed by more than one broker-dealer and subject to the SEC's aggregate indebtedness requirement, Rule 2.1(b)(4) provides that if at any time such a broker-dealer's net capital falls below $150,000, the broker-dealer shall promptly notify the Financial Compliance Department of the Exchange and, in addition, such broker-dealer shall not operate as a specialist with net capital between $120,000 and $149,999 for more than 60 days unless such firm (a) obtains from the Vice President, Regulation, or a senior officer of the Exchange written consent to continue to operate as a specialist; and (b) takes corrective action including, but not limited to, actively seeking financing to correct its net capital deficiency. In addition, if such broker-dealer's net capital falls below $120,000, such broker-dealer shall be subject to remedial action including, but not limited to, the loss of specialist privileges.

The PSE is also adopting Rule 2.1(d) to require each specialist firm to report its net capital to the Exchange in a form and manner prescribed by the Exchange. The Exchange will promptly notify the Equity Floor Trading Committee of any specialist firm's net capital deficiency and of any action taken by the Vice President, Regulation, or senior officer of the Exchange in connection therewith.

The Exchange believes that the proposed amendments are appropriate to assure that the customers and creditors of its equity specialists are protected from monetary losses and delays in the event of a specialist's failure.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest.

III. Discussion

The Commission finds that the PSE's amendments to its net capital requirements for specialists are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) and 11(b) of the Act.[13] The Commission believes that the PSE's amendments are consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also believes that the rule change is consistent with Section 11(b) of the Act, and Rule 11b–1 thereunder,[14] which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets. The rule change is consistent with the Rule 11b–1(a)(2)(i) requirement that the rules of a national securities exchange that permits a member to register as a specialist and to act as a dealer include, among other things, adequate minimum capital requirements in view of the markets for securities on such exchange.

The rules of the PSE, in addition to the rules set forth under the act, impose certain obligations upon specialists, including, but not limited to, the maintenance of fair and orderly markets.[15] Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of stocks on the Exchange. Generally, specialists are under an affirmative obligation to trade for their own accounts to minimize order imbalances and contribute to continuity and depth in their speciality stocks.[16] Conversely, pursuant to their negative obligations, specialists are precluded from trading for their own accounts unless such dealing is necessary for the maintenance of a fair and orderly market. To ensure that specialists fulfill these obligations, it is important that they maintain an adequate amount of capital.

The importance of specialists' net capital as it relates to the quality of Exchange markets was highlighted during the October 1987 Market Break. In the Division of Market Regulation's ("Division") report on the 1987 Market Break, the Division reviewed, among other things, specialists' ability to maintain fair and orderly markets and minimum capital requirements imposed by the exchanges. During the 1987 Market Break, most exchange specialists were exempt from the Commission's net capital rule, and therefore, were only required to maintain a minimum amount of capital as determined by the rules of their exchange. In this respect, the Division stated its concern that the minimum capital requirements imposed by the exchanges on specialists did not reflect the actual capital needed to ensure the maintenance of fair and orderly markets in different types of securities.[17] Accordingly, as a result of the staff's concerns regarding the availability of capital for specialists, today's more volatile market conditions, and the state of the exchanges' specialist surveillance and monitoring system, the staff began to examine the ramifications of eliminating the specialist exemption from the SEC's net capital rule and applying the net capital rule to all specialists.[18]

The Commission believes that amending Rules 2.1 and 2.8(a) to make the PSE net capital rule applicable to all specialists except lead market makers in listed options, and adopting minimum net capital requirements for specialist firms and specialist posts backed by more than one broker-dealer is consistent with recent amendments to SEC Rule 15c3–1 under the Act, as well as a positive step toward procuring stronger capital foundations for specialists on its floor.

The Commission believes that adopting rules to require each specialist firm and each broker-dealer in a specialist post backed by more than one broker-dealer to maintain minimum amounts of net capital is consistent with Section 6(b)(5) of the Act in that the required reserves of specialist net capital should help to ensure that PSE specialists have greater access to the capital necessary for the maintenance of fair and orderly markets in their registered securities. In the Commission's release amending the SEC's net capital rule to make the rule applicable to certain specialists, the Commission stated that it did not believe that sufficient reasons still exist to exempt specialists other than options market makers from the net capital rule and the overall uniform, minimum financial responsibility which results from its application. The Commission further stated that application of the net capital rule to specialists other than options market makers is necessary to provide reasonable assurance that specialists are maintaining minimum levels of liquid capital. More significantly, the Commission believes that application of the rule will provide significant monitoring and consistent reporting benefits.[19] By assuring that specialists have capital sufficient to perform their market making responsibilities, the proposal should provide additional protection for the Exchange, member organizations, and public investors.

The Commission believes that Rules 2.1(b)(2), 2.1(b)(3), 2.1(b)(4), and 2.1(d), which establish procedures and requirements for specialist firms whose net capital falls below certain levels should help to ensure compliance with the PSE's net capital requirements by encouraging specialists to actively obtain additional financing in a reasonable amount of time. Specifically, by requiring a specialist firm subject to the aggregate indebtedness requirement to notify the Financial Compliance Department of the Exchange when its net capital falls below $200,000, and requiring a specialist post backed by more than one broker-dealer to notify the Exchange when its net capital falls below $150,000 gives the Exchange adequate early warning of potential financial problems. Furthermore, after receiving notice of a potential net capital deficiency, the Exchange will be able to increase its surveillance of a specialist experiencing difficulty and to obtain any additional information necessary to assess and monitor the specialist's financial condition.

Moreover, subjecting specialist firms to remedial action, including, but not limited to, the loss of specialist privileges if a specialist firms net capital falls below a certain amount should help to ensure that specialists will not be allowed to make markets in stocks

[12] Pursuant to amendments to the Commission's net capital rule, effective April 1, 1994, Exchange equity specialists became subject to the Commission's net capital rule. *See* Securities Exchange Act Release No. 32737, *supra* note 6. As a result, Exchange equity specialists are required to comply generally with the provisions of the Commission's early warning notification procedures as codified in Section 17a–11 under the Act. See 17 CFR 240.17a–11 (1994).

[13] 15 U.S.C. 78f(b)(5) and 78k(b) (1988).

[14] 17 CFR 240.11b–1 (1994).

[15] See generally Rule 5.29(f) PSE Rules of the Board of Governors. See also Rule 11b–1 under the Act.

[16] See *supra* note 15.

[17] See Division of Market Regulation, The October 1987 Market Break, February 1988, at 4–66 to 4–67. See also Market Analysis of October 13 and 16, 1989, A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, December 1990, at 4, 16 and 33.

[18] See 1987 Market Break, *supra* note 17 at 4–68.

[19] See *supra* note 6.

required reserves of specialist net capital should help to ensure that PSE specialists have greater access to the capital necessary for the maintenance of fair and orderly markets in their registered securities. In the Commission's release amending the SEC's net capital rule to make the rule applicable to certain specialists, the Commission stated that it did not believe that sufficient reasons still exist to exempt specialists other than options market makers from the net capital rule and the overall uniform, minimum financial responsibility which results from its application. The Commission further stated that application of the net capital rule to specialists other than options market makers is necessary to provide reasonable assurance that specialists are maintaining minimum levels of liquid capital. More significantly, the Commission believes that application of the rule will provide significant monitoring and consistent reporting benefits.[19] By assuring that specialists have capital sufficient to perform their market making responsibilities, the proposal should provide additional protection for the Exchange, member organizations, and public investors.

The Commission believes that Rules 2.1(b)(2), 2.1(b)(3), 2.1(b)(4), and 2.1(d), which establish procedures and requirements for specialist firms whose net capital falls below certain levels should help to ensure compliance with the PSE's net capital requirements by encouraging specialists to actively obtain additional financing in a reasonable amount of time. Specifically, by requiring a specialist firm subject to the aggregate indebtedness requirement to notify the Financial Compliance Department of the Exchange when its net capital falls below $200,000, and requiring a specialist post backed by more than one broker-dealer to notify the Exchange when its net capital falls below $150,000 gives the Exchange adequate early warning of potential financial problems. Furthermore, after receiving notice of a potential net capital deficiency, the Exchange will be able to increase its surveillance of a specialist experiencing difficulty and to obtain any additional information necessary to assess and monitor the specialist's financial condition.

Moreover, subjecting specialist firms to remedial action, including, but not limited to, the loss of specialist privileges if a specialist firms net capital falls below a certain amount should help to ensure that specialists will not be allowed to make markets in stocks indefinitely if they fall below the capital requirements.

The Commission believes that exempting lead market makers in listed options from the PSE's net capital rule is consistent with Rule 15c3–1 under the Act. In the release amending Rule 15c3–1 to make the Commission's net capital rule applicable to all specialists except options market makers, the Commission stated that it does not believe that it is necessary to apply the net capital rule to options market makers because, on an individual basis, they are not as integral to the proper functioning of the markets in their securities. The release further states that specialists other than options market makers perform several functions that options market makers do not, including the maintenance of a specialist's book containing a listing of all orders away from the current market price and the dissemination of accurate quotations in their speciality securities. Moreover, the exchanges that use options specialists look to a single specialist or specialist unit to handle all trades whereas options market makers compete with other market makers. Options lead market makers on the Exchange floor compete with other market makers for orders and do not maintain a specialist book containing a list of all orders away from the current market price. Accordingly, the Commission agrees with the Exchange that it is appropriate to exclude options lead market makers from the Exchange capital regulations.[20]

It is therefore ordered, pursuant to Section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[21] that the proposed rule change (SR–PSE–94–3) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16566 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[19] See *supra* note 6.

[20] See securities Exchange Act Release No. 32737, *supra* note 6.

[21] 15 U.S.C. 78s(b)(2) (1988) and 17 CFR 240.19d–1(c)(2) (1994).

[22] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–34302; File No. SR–NYSE–94–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amendments to Rule 127 (Block Positioning) and Rule 72(b) ("Clean" Agency Crosses)

July 1, 1994

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 17, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 127 on Block Positioning and 72(b) on "clean" agency crosses.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 127, which governs procedures for handling block crosses outside the prevailing quotation, was originally adopted in June 1972 and amended in February 1976. The Exchange recently undertook a review of the Rule and determined that, due to changes in trading rules and practices since the Rule was first adopted, it should be revised to simplify the language and eliminate a number of provisions that the Exchange believes are no longer appropriate.

Specifically, the Exchange has determined:

- To eliminate the requirement that a member affecting an agency cross outside of the prevailing quotation give up the greater of 5% of 1,000 shares of the amount crossed to orders on the specialist book limited to the cross (clean-up) price;
- To eliminate the reference to the block positioner's responsibility for maintaining the after market when the block positioner has not satisfied the reasonable needs of the specialist;
- To require documentation on the Floor when an agency block cross outside the prevailing quotation is effected and the specialist's book does not participate. This may be done after the trade has been completed. The Exchange expects these procedures to include notification of a Floor Official.

In addition, Rule 72(b) will be amended to include the same documentation requirements for agency crosses under the Rule as those proposed for agency block crosses under Rule 127.

The Exchange believes that the deletion of the requirements to give the greater of 5% or 1,000 shares of the cross to orders on the specialist's book in agency cross transactions is appropriate to conform the agency cross principles of Rule 127 with the agency cross principles of Rule 72(b). Under both rules, a member may still participate in the cross transaction by providing price improvement to one side of the cross. The Exchange is not proposing to amend the requirement in Rule 127 that a member organization that is establishing or increasing a position must fill, at the clean-up price, public orders limited to the clean-up price or better before retaining any stock for its proprietary account.

The Exchange believes that it is appropriate to place responsibility for the after-market on the specialist rather than the block positioner, as the specialist is otherwise responsible under Exchange rules for the maintenance of a fair and orderly market.[1] The Exchange believes that the proposed Floor documentation requirement will help ensure appropriate regulatory oversight with respect to agency cross transactions.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect their mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–10 and should be submitted by July 29, 1994.

[1] See NYSE Rule 104 (Dealings by Specialists).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16571 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34301; File No. SR–NYSE–94–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. to Amend Rule 321 to Clarify the Term "Control" and Amend Rules 113, 122 and 321 to Delete the Word "Affiliate" and Insert the Word "Subsidiary"

July, 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 15, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is intended to clarify the term "control" for purposes of Rule 321 and to delete the word "affiliate" and insert the word "subsidiary" in Rules 113, 122 and 321 in order to minimize confusion and avoid potential problems which could arise as a result of differing definitions of the term "affiliate."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved amendments to Exchange Rule 321 ("Formation or Acquisition of Affiliates") as part of a rule package designed to allow members and member organizations greater flexibility in structuring their affiliates while maintaining appropriate regulatory safeguards.[1]

Rule 321 requires a member or member organization to obtain Exchange approval for the formation or acquisition of an affiliate and to comply with certain reporting and other requirements. Rule 321.10 defines "affiliate" as an entity engaged in a securities or kindred business that is controlled by the member or member organization within the meaning of Exchange Rule 2, except for paragraph (iii) of Rule 2. As such, control would currently be presumed if a member or member organization owns 25% or more of the voting securities of an entity or is entitled to receive 25% or more of the net profits. Control would currently not be presumed for purposes of Rule 321.10, if an associate person is a director, general partner or principal executive officer of another entity.[2]

The Exchange does not feel it is appropriate to continue to exclude situations where a member or member organization is a general partner of other entities from being subject to the rule. Since general partner status represents control it should therefore be included in the presumption of "control" for purposes of Rule 321. It is proposed that Rule 321.10 be amended to exclude only Directors and Principal Executive Officers from the presumption of control and not General Partners.

Further, Rule 321 is, in effect, applicable only to subsidiaries and not other types of affiliates.[3] Some confusion as to which entities are subject to the rule has arisen because of the word "affiliate's" general and often broad usage.

The Securities Act of 1933 and the Securities Exchange Act of 1934 and the rules thereunder define affiliate as follows: "an 'affiliate' or person

[1] See Securities Exchange Act Release No. 32823 (August 31, 1993), 58 FR 47164 (September 7, 1993).

[2] See supra note 5 for text of proposed rule change to NYSE Rule 321.10.

[3] The term "affiliate" is defined in NYSE Rule 321 as "an entity engaged in a securities, or kindred business that is controlled by a member or member organization * * *."

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved amendments to Exchange Rule 321 ("Formation or Acquisition of Affiliates") as part of a rule package designed to allow members and member organizations greater flexibility in structuring their affiliates while maintaining appropriate regulatory safeguards.[1]

Rule 321 requires a member or member organization to obtain Exchange approval for the formation or acquisition of an affiliate and to comply with certain reporting and other requirements. Rule 321.10 defines "affiliate" as an entity engaged in a securities or kindred business that is controlled by the member or member organization within the meaning of Exchange Rule 2, except for paragraph (iii) of Rule 2. As such, control would currently be presumed if a member or member organization owns 25% or more of the voting securities of an entity or is entitled to receive 25% or more of the net profits. Control would currently not be presumed for purposes of Rule 321.10, if an associate person is a director, general partner or principal executive officer of another entity.[2]

The Exchange does not feel it is appropriate to continue to exclude situations where a member or member organization is a general partner of other entities from being subject to the rule. Since general partner status represents control it should therefore be included in the presumption of "control" for purposes of Rule 321. It is proposed that Rule 321.10 be amended to exclude only Directors and Principal Executive Officers from the presumption of control and not General Partners.

Further, Rule 321 is, in effect, applicable only to subsidiaries and not other types of affiliates.[3] Some confusion as to which entities are subject to the rule has arisen because of the word "affiliate's" general and often broad usage.

The Securities Act of 1933 and the Securities Exchange Act of 1934 and the rules thereunder define affiliate as follows: "an 'affiliate' or person 'affiliated' with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified."[4] As such, under the statutory definitions, an affiliate can be a parent company, subsidiary or "sister" company, while current Rule 321 is only applicable to subsidiaries. Similarly, the term "affiliate" is used to include other than subsidiaries in the legal and accounting fields.

In order to minimize confusion and avoid potential problems which could arise as a result of differing definitions of the term "affiliate," it is proposed that Rule 321 as well as Rules 113 and 122 (that refer to an affiliate within the meaning of Rule 321) be amended to delete the word "affiliate" and insert the word "subsidiary."[5]

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange in that the amendments are designed, in accordance with Section 6(b)(1) of the Act, to enhance the Exchange's capacity to carry out the purposes of the Act and to compel and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder and the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members, member organizations or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–09 and should be submitted by July 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16572 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

---

[1] See Securities Exchange Act Release No. 32823 (August 31, 1993), 58 FR 47164 (September 7, 1993).

[2] See supra note 5 for text of proposed rule change to NYSE Rule 321.10.

[3] The term "affiliate" is defined in NYSE Rule 321 as "an entity engaged in a securities, or kindred business that is controlled by a member or member organization * * *."

[4] See, e.g., Regulation D under the Securities Act of 1933, 17 CFR 230.501 (1993); and Regulation 12B under the Securities Exchange Act of 1934, 17 CFR 240.12b–2 (1993).

[5] The text of the proposed rule change to NYSE Rule 321.10 is as follows, with language to be deleted in brackets and language to be added in italics:

.10 Definition of *subsidiary* [affiliate].—For purposes of this rule, the term *"subsidiary"* ["affiliate"] means an entity engaged in a securities or kindred business that is controlled by a member or member organization within the meaning of Rule 2 of the Constitution and Rules. [except that it shall not include paragraph (iii) of said Rule 2.] *However, control shall not be presumed, for purposes of this rule, merely because a member is a director or principal executive officer of another person.*

[Release No. 34-34290; File No. SR-Phlx-93-49]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Unbundling of PACE Orders

June 30, 1994.

On November 3, 1993 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to prohibit the unbundling of orders entered for execution through the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"). On February 7, 1994, the Phlx submitted Amendment No. 1 to the proposal.[3]

The proposed rule change, as amended, was published for comment in Securities Exchange Act Release No. 33594 (February 8, 1994), 59 FR 6989 (February 14, 1994). No comments were received on the proposal.

The proposed rule change adopts Commentary .19 to Phlx Rule 229,[4] which details the execution guarantees due a PACE order. Commentary .19 prohibits members from unbundling customer orders, or soliciting customers to unbundle their orders, for purposes of availing upon PACE volume and size execution guarantees.

PACE is the Exchange's automated order routing, delivery and execution system for equity securities. Pursuant to Phlx Rule 229, customer orders entered through PACE are entitled to certain execution guarantees. For example, limit orders for less than 600 shares become due an execution once an accumulative volume of 1,000 shares of that security prints at the limit price or better on the New York Stock Exchange ("primary market guarantee").[5]

Unbundling occurs when a member organization or its agent splits a larger sized order into two or more small-sized orders. Because PACE does not have a size maximum for order entry,[6] the Commission agrees with the Phlx that there may be circumstances where the member organizations are justified in unbundling a customer order to attain best execution. For example, if a customer places a buy order for 20,000 shares, a better overall price may often be obtained if the order is entered as two orders for 10,000 shares each (*i.e.*, the first half would probably be filled at a lower price than the second). However, the Exchange believes, and the Commission agrees, that unbundling orders solely to take advantage of PACE execution guarantees is abusive and contrary to the Act.

The Phlx proposal prohibits members from unbundling customer orders, as well as from soliciting their customers to unbundle orders, for the purpose of taking advantage of PACE execution guarantees. However, because the Exchange does not have any jurisdiction over non-members, the proposed prohibition against unbundling does not extend to any orders broken up by a non-member customer at his or her own discretion as long as the customer was not solicited to do so by the Phlx member firm for the aforementioned purpose.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that it prevents the abuse of the Exchange's execution guarantees available through PACE. Such abuse can result in increased risk to the Phlx specialists who are required to fill these trades and can potentially result in misleading market information with respect to legitimate trading interest. Moreover, unbundling of orders solely to take advantage of PACE execution guarantees is contrary to the intent of the system to facilitate guaranteed automatic execution of small public customer orders.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR-Phlx-93-49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 94-16494 Filed 7-7-94; 8:45 am]

BILLING CODE 8010-01-M

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Sandy Sciole, Branch Chief, Commission, dated February 1, 1994. The language submitted originally by the Phlx prohibited unbundling "for the primary purpose of availing upon PACE volume and size execution guarantees." In the amendment the Phlx clarified the language of the rule to prohibit any such action for the purpose of attaining PACE guarantees by removing the world "primary" which originally preceded "purpose."

[4] See Philadelphia Stock Exchange Rules, Rule 229.

[5] See Phlx Rule 229, Supplementary Material 10(a).

[6] Phlx Rule 229 does, however, have size maximums with respect to automatic order execution.

[7] 15 U.S.C. 78f(b) (1988).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1991).

[Investment Company Act Rel. No. 20381; 812-8998]

Massachusetts Mutual Life Insurance Company, et al.; Notice of Application

June 30, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Massachusetts Mutual Life Insurance Company (the "Insurance Company"), MassMutual Corporate Investors ("Fund I"), and MassMutual Participation Investors ("Fund II") (Fund I and Fund II collectively, the "Funds").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(d) and rule 17d-1.

SUMMARY OF APPLICATION: Applicants seek an order amending previous orders that allow them to co-invest in securities acquired in private placements ("Private Placement Securities"). The amended order would let applicants co-invest with an additional entity, MassMutual Corporate Value Partners Limited ("Newco"), in Private Placement Securities. The order also would modify the previous orders to let applicants and Newco sell, exchange, or otherwise dispose of the Private Placement Securities and exercise warrants, conversion privileges and other rights, and make follow-on investments at different times and in differing amounts, subject to the approval of a committee comprised of all of the trustees of each participating Fund who are not "interested persons" (as defined in section 2(a)(19)) of the Fund or the Insurance Company (a "Joint Transaction Committee").

FILING DATE: The application was filed on May 18, 1994, and amended on June 16, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 25, 1994, and should be accompanied by proof of service on applicants, in the from of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, Springfield, Massachusetts 01111.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942-0573, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Insurance Company is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts. The Insurance Company acts as investment adviser to Fund I and Fund II and will act as investment adviser to Newco.

2. Fund I is a registered, non-diversified, closed-end management investment company. Fund I invests primarily in Private Placement Securities with equity features.

3. Fund II is a registered, diversified, closed-end management investment company. Fund II invests in Private Placement Securities, both with and without equity features.

4. The Insurance Company and Fund I received exemptive relief from Section 17(d) of the Act in 1971, as subsequently amended, to allow the Insurance Company to invest concurrently in each issue of Private Placement Securities purchased by Fund I.[1] Fund II was permitted to participate in transactions in Private Placement Securities with Fund I and

[1] Massachusetts Mutual Life Insurance Company, Investment Company Act Release Nos. 6634 (Jul. 22, 1971) (notice) and 6690 (Aug. 19, 1971) (order); amended by Investment Company Act Release Nos. 10688 (May 10, 1979) (notice) and 10718 (June 4, 1979) (order) and Investment Company Act Release Nos. 14494 (Apr. 30, 1985) (notice) and 14532 (May 21, 1985) (order).

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 25, 1994, and should be accompanied by proof of service on applicants, in the from of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, Springfield, Massachusetts 01111.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Insurance Company is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts. The Insurance Company acts as investment adviser to Fund I and Fund II and will act as investment adviser to Newco.

2. Fund I is a registered, non-diversified, closed-end management investment company. Fund I invests primarily in Private Placement Securities with equity features.

3. Fund II is a registered, diversified, closed-end management investment company. Fund II invests in Private Placement Securities, both with and without equity features.

4. The Insurance Company and Fund I received exemptive relief from Section 17(d) of the Act in 1971, as subsequently amended, to allow the Insurance Company to invest concurrently in each issue of Private Placement Securities purchased by Fund I.[1] Fund II was permitted to participate in transactions in Private Placement Securities with Fund I and the Insurance Company by an exemptive order granted in 1988 (the "1988 Order").[2]

5. The Insurance Company anticipates having its wholly-owned subsidiary, MassMutual Holding Company, join with a limited number of other United States investors to acquire all the equity securities of MassMutual Corporate Value Limited ("MCV"), an entity that is presently contemplated to be a special purpose Cayman Islands corporation. MCV in turn would join with one or more non-United States investors to acquire and hold all the equity securities of Newco, another special purpose Cayman Islands corporation. Substantially all of the assets of MCV would be invested in Newco. As an alternative to the foregoing organization of Newco, may be organized as a United States entity (such as a Delaware business trust) in which United States investors invest directly, with the Insurance Company holding an indirect voting equity stake of approximately 30 to 50 percent.

6. Both MCV and Newco will be investment funds that are not required to be registered under the Act. MCV and Newco: (a) will be excepted from the definition of investment company pursuant to section 3(c)(1) because their outstanding securities (other than short-term paper) will be beneficially owned by no more than 100 persons; or (b) will not be subject to registration pursuant to section 7(d) because they will not be organized or otherwise created under the laws of the United States or any state, will not make use of the mails or any means or instrumentality of interstate commerce in connection with any public offering of their securities, and their outstanding securities (other than short-term paper) will be beneficially owned by no more than 100 persons resident in the United States.

7. Newco will invest its assets primarily in high yield bank debt and public and private high yield debt; mezzanine securities consisting of private debt securities with equity features, convertible debt and convertible preferred stock; and special situations consisting of public or private equity, restructured loans and non-performing debt. Many of the Private Placement Securities that are suitable for co-investment by the Funds also will be suitable investments for Newco.

8. Applicants seek an order pursuant to sections 6(c) and 17(d) and rule 17d–1 to permit them to co-invest with Newco. Applicants also propose to modify two conditions of the 1988 Order to allow applicants and Newco to sell, exchange, or otherwise dispose of the Private Placement Securities and exercise warrants, conversion privileges and other rights, and make follow-on investments at different times and in differing amounts, subject to the approval of each Fund's Joint Transaction Committee. If exemptive relief is granted, the minimum amount of Private Placement Securities of any issuance that the Insurance Company and Newco collectively will be required or permitted to purchase if either or both of the Funds participate will be calculated by aggregating the amount purchased for the Insurance Company with any amount purchased by Newco that is attributed to the Insurance Company based on its direct or indirect percentage ownership interest in Newco.

9. Newco may from time to time incur indebtedness secured by a pledge of its assets. For purposes of this application, Newco's pledge of Private Placement Securities and a transfer of Private Placement Securities by Newco to the Insurance Company will not be deemed to be a sale, exchange, or other disposition.

Applicants' Legal Analysis

1. Section 17(d) and rule 17d–1, in the absence of an exemption granted by the SEC, preclude an affiliated persons of a registered investment company, or an affiliated person of such person, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company, or a company controlled by such registered investment company, is a participant. The determination of whether to grant relief under section 17(d) and rule 17d–1 turns on whether the participation of the investment company in the joint arrangements is consistent with the provisions, policies and purposes of the Act and not on a basis different from or less advantageous than that of the other participants in such arrangements.

2. Applicants believe that the conditions in the 1988 Order, as modified in this application, ensure that the participation of the Funds in Private Placement Securities will be on a basis no less advantageous than that of the Insurance Company and Newco and consistent with the policies and purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

[1] Massachusetts Mutual Life Insurance Company, Investment Company Act Release Nos. 6634 (Jul. 22, 1971) (notice) and 6690 (Aug. 19, 1971) (order); amended by Investment Company Act Release Nos. 10688 (May 10, 1979) (notice) and 10718 (June 4, 1979) (order) and Investment Company Act Release Nos. 14494 (Apr. 30, 1985) (notice) and 14532 (May 21, 1985) (order).

[2] Massachusetts Mutual Life Insurance Company, Investment Company Act Release Nos. 16578 (Sept. 28, 1988) (notice) and 16601 (Oct. 19, 1988) (order).

1. Each time the Insurance Company proposes to acquire Private Placement Securities having equity features, the acquisition of which would be consistent with the investment objectives and policies of both Fund I and Fund II, the Insurance Company will offer both Fund I and Fund II the opportunity to acquire an amount of each class of such Private Placement Securities equal to the amount proposed to be acquired by the Insurance Company. Each time the Insurance Company proposes to acquire Private Placement Securities without equity features, the acquisition of which would be consistent with the investment objective and policies of Fund II, the Insurance Company will offer Fund II the opportunity to acquire an amount of each class of such Private Placement equal to the amount of such Private Placement Securities proposed to be acquired by the Insurance Company. Each of Fund I and Fund II may choose to acquire none of such securities or any amount of such securities up to the entire amount of securities offered to it by the Insurance Company. If either Fund shall have declined such offer or accepted a portion of Private Placement Securities offered to it, the Insurance Company shall offer the other Fund up to 50% of the aggregate amount of such Private Placement Securities then available for acquisition; provided that the amount of any individual issuance of Private Placement Securities acquired by either Fund shall not exceed the amount of such issuance of Private Placement Securities acquired by the Insurance Company. For purposes of this condition, the amount of any Private Placement Securities acquired or proposed to be acquired by the Insurance Company shall be deemed to equal (a) the amount (if any) acquired or proposed to be acquired by the Insurance Company plus (b) the amount (if any) acquired or proposed to be acquired by Newco that is attributable to the Insurance Company's direct or indirect percentage ownership interest in Newco.

2. If Fund I and Fund II choose, or either of them chooses, to acquire Private Placement Securities concurrently with the Insurance Company or Newco, then the Insurance Company, Newco, Fund I and Fund II or either of the Funds together with the Insurance Company or Newco may acquire such Private Placement Securities at the same time and at the same unit price without further order of the SEC. If Fund I or Fund II chooses to acquire Private Placement Securities, but to acquire less than the entire amount of such securities offered to it by the Insurance Company, such Fund's decision must be approved by a majority vote of the members of the Joint Transaction Committee who have no financial interest in the transaction ("Required Majority"). The determination of Fund I or Fund II to acquire less than all of such securities and the reasons therefor will be recorded and become a part of the permanent records of such Fund.

3. If Fund I or Fund II chooses not to acquire any Private Placement Securities offered to it by the Insurance Company, such Fund's decision must be approved by the Required Majority of the Joint Transactions Committee. The determination of Fund I or Fund II not to acquire such Private Placement Securities and the reasons therefore will be recorded and become a part of the permanent records of such Fund.

4. None of the Insurance Company, Newco, Fund I or Fund II shall "make available significant managerial assistance" (within the meaning of Section 2(a)(47) of the Act) to any issuer (a "Portfolio Company") of a Private Placement Security that is acquired in a joint transaction by the Insurance Company, Newco and the Funds or either of them. However, the Insurance Company, Newco and the Funds may take steps to protect their rights as creditors.

5. None of the Insurance Company, Newco, Fund I or Fund II shall be involved in the sponsorship of any Portfolio Company.

6. None of the Insurance Company, Newco, Fund I or Fund II shall be materially involved in the structuring of any Portfolio Company or of any Private Placement Security issued by a Portfolio Company; provided that the Insurance Company may take part in the negotiation of the terms (such as coupon, final maturity, average life, sinking funds, conversion price, registration, put rights and call protection) and appropriate restrictive covenants governing Private Placement Securities.

7. Neither the Insurance Company nor Newco shall receive any transaction fees in connection with any investment in any security of a Portfolio Company (such fees include monitoring, "topping," breakup, and termination fees).

8. None of the Insurance Company, Fund I, Fund II, or Newco will make follow-on investments ("Follow-on Investments") or will exercise warrants, conversion privileges, or other rights with respect to Private Placement Securities of a class held by the Funds or either of them and the Insurance Company and/or Newco, unless each Fund and the Insurance Company and/or Newco holding such Private Placement Securities shall make such Follow-on Investments or exercise such rights and such investments or exercises are made at the same time and in amounts proportionate to their respective holdings of such Private Placement Securities, subject, however, to the determinations made by a Fund's Joint Transaction Committee, as set forth below.

If (a) the Insurance Company and/or Newco determines to make a Follow-on Investment or exercise warrants, conversion privileges, or other rights with respect to Private Placement Securities of a class held by the Funds or either of them and the Insurance Company and/or Newco, and the Insurance Company determines not to make such Follow-on Investments or exercise such rights with respect to such Private Placement Securities on behalf of the Funds or either of them in accordance with the first paragraph of this condition, or (b) the Insurance Company determines to cause the Funds or either of them to make Follow-on Investments or to exercise warrants, conversion privileges, or other rights with respect to a class of Private Placement Securities of a class held by the Funds or either of them, and the Insurance Company, Newco, or the other Fund, as the case may be, shall not also so elect to make such Follow-On Investments or exercise such rights in accordance with the first paragraph of this condition, then the Insurance Company shall notify in writing the chairman of the Joint Transactions Committee of the Fund or Funds holding such Private Placement Securities by sending the relevant material to the chairman by messenger, overnight delivery or, to the extent feasible, by telecopy. Such notification shall include a written presentation regarding the proposed transaction, including the reasons for the Insurance Company's recommendations to the Fund in light of the contrary decision made with respect to the Insurance Company, Newco, or the other Fund. The chairman shall convene a meeting of the Joint Transactions Committee no later than five business days after receipt of the above-referenced notification, at which meeting the Joint Transactions Committee will consider the Insurance Company's recommendation and, based upon its review, shall determine to make such Follow-On Investments or exercise the rights with respect to such Private Placement Securities if it determines (pursuant to the vote of the Required Majority) such action is in the best interests of the Fund, is fair and reasonable to the Fund and its shareholders, and does not involve overreaching of the Fund and its shareholders on the part of any person concerned. The Joint Transactions Committee's determination, and the reasons therefor, shall be recorded and made a part of the records of the Fund. None of the Insurance Company, Newco, or the Funds of either of them shall effect such Follow-On Investments or exercise such rights until the Joint Transactions Committee of each Fund considering such transaction has determined, pursuant to the vote of the Required Majority, the action to be taken by the Fund.

9. None of the Insurance Company, Fund I, Fund II, or Newco will sell, exchange, or otherwise dispose of any interest in any Private Placement Securities of a class held by the Funds or either of them and the Insurance Company and/or Newco, unless each Fund holding such Private Placement Securities and the Insurance Company and/or Newco, if it or they hold such securities, shall dispose of such interest in such Private Placement Securities and such dispositions shall be made at the same time, for the same unit consideration, and in amounts proportionate to their respective holdings of such Private Placement Securities, subject, however, to the determinations made by a Fund's Joint Transactions Committee, as set forth below.

If (a) the Insurance Company and/or Newco determines to sell, exchange, or otherwise dispose of any interest in any Private Placement Securities of a class held by the Funds or either of them and the Insurance Company and/or Newco, and the Insurance Company determines not to so dispose of the Private Placement Securities held by the Funds or either of them in accordance with the first paragraph of this condition, or (b) the Insurance Company determines to cause the Funds or either of them to sell, exchange, or otherwise dispose of any interest in Private Placement Securities of a class held by the Funds or either of them, and the Insurance Company, Newco, or the other Fund, as the case may be, shall not also so dispose of such interest in the Private Placement Securities in accordance with the first paragraph of this condition, then the Insurance Company shall notify in writing the chairman of the Joint Transactions Committee of the Fund or Funds holding such Private Placement Securities by sending the relevant material to the chairman by

(pursuant to the vote of the Required Majority) such action is in the best interests of the Fund, is fair and reasonable to the Fund and its shareholders, and does not involve overreaching of the Fund and its shareholders on the part of any person concerned. The Joint Transactions Committee's determination, and the reasons therefor, shall be recorded and made a part of the records of the Fund. None of the Insurance Company, Newco, or the Funds of either of them shall effect such Follow-On Investments or exercise such rights until the Joint Transactions Committee of each Fund considering such transaction has determined, pursuant to the vote of the Required Majority, the action to be taken by the Fund.

9. None of the Insurance Company, Fund I, Fund II, or Newco will sell, exchange, or otherwise dispose of any interest in any Private Placement Securities of a class held by the Funds or either of them and the Insurance Company and/or Newco, unless each Fund holding such Private Placement Securities and the Insurance Company and/or Newco, if it or they hold such securities, shall dispose of such interest in such Private Placement Securities and such dispositions shall be made at the same time, for the same unit consideration, and in amounts proportionate to their respective holdings of such Private Placement Securities, subject, however, to the determinations made by a Fund's Joint Transactions Committee, as set forth below.

If (a) the Insurance Company and/or Newco determines to sell, exchange, or otherwise dispose of any interest in any Private Placement Securities of a class held by the Funds or either of them and the Insurance Company and/or Newco, and the Insurance Company determines not to so dispose of the Private Placement Securities held by the Funds or either of them in accordance with the first paragraph of this condition, or (b) the Insurance Company determines to cause the Funds or either of them to sell, exchange, or otherwise dispose of any interest in Private Placement Securities of a class held by the Funds or either of them, and the Insurance Company, Newco, or the other Fund, as the case may be, shall not also so dispose of such interest in the Private Placement Securities in accordance with the first paragraph of this condition, then the Insurance Company shall notify in writing the chairman of the Joint Transactions Committee of the Fund or Funds holding such Private Placement Securities by sending the relevant material to the chairman by messenger, overnight delivery or, to the extent feasible, by telecopy. Such notification shall include a written presentation regarding the proposed transaction, including the reasons for the Insurance Company's recommendations to the Fund in light of the contrary decision made with respect to the Insurance Company, Newco, or the other Fund. The chairman shall convene a meeting of the Joint Transactions Committee no later than five business days after receipt of the above-referenced notification, at which meeting the Joint Transactions Committee will consider the Insurance Company's recommendation and, based upon its review, the Joint Transactions Committee shall determine (pursuant to the vote of a Required Majority), to sell, exchange, or dispose of such Private Placement Securities pursuant to the Insurance Company's recommendation if it determines that such action is in the best interests of the Fund, is fair and reasonable to the Fund and its shareholders, and does not involve overreaching of the Fund and its shareholders on the part of any person concerned. The Joint Transactions Committee's determination, and the reasons therefor, shall be recorded and made a part of the records of the Fund. None of the Insurance Company, Newco, or the Funds of either of them shall effect such disposition until the Joint Transactions Committee of each Fund considering such transaction has determined, pursuant to the vote of the Required Majority, the action to be taken by the Fund.

10. The expenses, if any, associated with acquiring, holding or disposing of any Private Placement Securities (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act of 1933) shall, to the extent not payable solely by the Insurance Company under its investment management agreements with each of the Funds and Newco, be shared by the Insurance Company, Newco and the Funds in proportion to the relative amounts of such securities held or being acquired or disposed of, as the case may be, by the Insurance Company, Newco, and each of the Funds.

11. The Joint Transactions Committee of each Fund will be provided quarterly for review all information concerning co-investments made by the Insurance Company, Newco and the Funds, including investments made by the Insurance Company or Newco in which the Fund declined to participate, so that the Joint Transactions Committee may determine whether all investments made during the preceding quarter, including those investments in which the Fund declined to participate, comply with the conditions set forth above.

12. Each of the applicants will maintain and preserve all records required by Section 31 of the Act and any other provisions of the Act and the rules and regulations thereunder applicable to such applicant.

13. For purposes of the requested order, any Private Placement Securities acquired or held by applicants and Newco that are identical in all respects except for the fact that only Private Placement Securities acquired and held by both Funds or either of them have voting rights shall be considered to be of the same class of securities.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16495 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2032]

Garnishment of Federal Employees Wages for Payment of Debt

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: On February 23, 1994, the Department of State gave notice that requests for payments pursuant to court-ordered garnishments as authorized under 5 U.S.C. 5520a for all employees of the Department of State are to be submitted to the Executive Director (L/EX), Office of the Legal Adviser, Department of State, room 5519, 2201 C Street, NW., Washington, DC 20520, (202) 647–8323. The Department now gives notice that, in order to standardize its processing of garnishments, it is instituting use of a Garnishment Application for garnishments under 5 U.S.C. 5520a, as well as garnishments for child support or alimony under 42 U.S.C. 659, 661 and 662.

The Garnishment Application can be obtained from the office listed above, or from Ms. Sheila McCoy, at 202–647–7359. Use of the application form is voluntary. However, failure to provide requested information may result in delay in processing a garnishment or return of the request.

EFFECTIVE DATE: July 8, 1994.

ADDRESSES: Comments regarding this notice should be sent to the Assistant Legal Adviser for Legislation and General Management (L/LM), Office of

the Legal Adviser, Department of State, room 5425, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila McCoy, at (202) 647–7359.

SUPPLEMENTARY INFORMATION: This form has been approved by the Office of Management and Budget, pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

Dated: June 28, 1994.

Mary Beth West,

Assistant Legal Adviser for Legislation and General Management.

[FR Doc. 94–16594 Filed 7–7–94; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration (FHWA)

Supplemental Environmental Impact Statement; Riverside County, CA

ACTION: Withdrawal of NOI/EIS.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent for preparation of a Supplemental Environmental Impact Statement (SEIS) for a highway project in Riverside County, California has been withdrawn.

FOR FURTHER INFORMATION CONTACT: Leonard E. Brown, Chief, District Operations "C", Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, CA 95814–2724. Telephone: 916/551–1307.

SUPPLEMENTAL INFORMATION: The August 26, 1993 **Federal Register** indicated that the FHWA in cooperation with the California Department of Transportation (CALTRANS) would prepare an Environmental Impact Statement (SEIS) for the proposed State Route 86 expressway project in Riverside County.

The purpose and need of the project have remained the same and are defined as: the overall purpose of the project is to improve safety conditions and provide for efficient transportation of people, goods and services within and through Coachella Valley between the existing 4-lane expressway south of Oasis and Interstate 10. The need for the project is to reduce accidents to or below normal rates and to simultaneously provide for improved mobility of local, regional and international traffic.

Subsequent interdisciplinary studies and consultation with Federal, State, and local agencies to date indicate that an Environmental Assessment (EA) is the appropriate environmental document. Accordingly, the NOI/SEIS notice is hereby withdrawn. If it is determined that a public hearing is needed then a public notice will be issued with advertisements in local newspapers, regarding the time and place of the hearing.

Comments or questions concerning this proposed action and the EA should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 28, 1994.

Leonard E. Brown,

Chief, District Operations—C, Sacramento, California.

[FR Doc. 94–16595 Filed 7–7–94; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 30, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of The Public Debt (BPD)

OMB Number: 1535–0005.
Form Number: PD F 3253.
Type of Review: Extension.
Title: Exchange Application for U.S. Savings Bonds of Series HH.
Description: This form is used by owners of Series EE/E bonds or notes to request exchange for Series HH Savings Bonds.
Respondents: Individuals or households.
Estimated Number of Respondents: 60,000.
Estimated Burden Hours Per Response: 40 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 39,960 hours.

OMB Number: 1535–0014.
Form Number: PD F 1025.
Type of Review: Extension.
Title: Application for Relief on Account of Loss, Theft or Destruction of United States Registered Securities.
Description: This form is needed and required by the Bureau of the Public Debt to obtain compensation for lost, stolen, or destroyed securities. It is generally used by parties that have purchased securities or the owner of registered securities when such securities are no longer in their possession.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 460 hours.

OMB Number: 1535–0015.
Form Number: PD F 1022.
Type of Review: Extension.
Title: Report/Application for Relief on Account of Loss, Theft or Destruction of United States Bearer Securities (Organizations).
Description: This form is needed and required by the Bureau in order to obtain compensation for lost, stolen, or destroyed bearer securities. It is usually executed by parties that purchased, were holding in safekeeping/custody or are entitled to bearer securities and these securities are no longer in their possession.
Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses organizations.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 92 hours.

OMB Number: 1535–0016.
Form Number: PD F 1022–1.
Type of Review: Extension.
Title: Report/Application for Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individual).
Description: This form is needed and required by the Bureau in order to obtain compensation for lost, stolen, or destroyed bearer securities. It is usually executed by parties that purchase, were given or entitled to bearer securities and these securities are no longer in their possession.
Respondents: Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 92 hours.

OMB Number: 1535–0098.
Form Number: PD F 3062–4.
Type of Review: Extension.
Title: Claim for Relief on Account of the Nonreceipt of United States Savings Bonds.

ESTIMATED B

Form	
1120	
1120–A	
Sch. D	
Sch. H	
Sch. PH	

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 481,624,275 hours.

OMB Number: 1545–0195.
Form Number: IRS Form 5213.
Type of Review: Extension.
Title: Election to Postpone Determination as to Whether the Presumption That an Activity is Engaged in for Profit Applies.
Description: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Response: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 92 hours.

OMB Number: 1535–0016.

Form Number: PD F 1022–1.

Type of Review: Extension.

Title: Report/Application for Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individual).

Description: This form is needed and required by the Bureau in order to obtain compensation for lost, stolen, or destroyed bearer securities. It is usually executed by parties that purchase, were given or entitled to bearer securities and these securities are no longer in their possession.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Response: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 92 hours.

OMB Number: 1535–0098.

Form Number: PD F 3062–4.

Type of Review: Extension.

Title: Claim for Relief on Account of the Nonreceipt of United States Savings Bonds.

Description: This application is used by owner(s) to request substitute savings bond(s) in lieu of bond(s) not received.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Response: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 92 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553. Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–16496 Filed 7–7–94; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

June 30, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0123.

Form Number: IRS Form 1120, Schedule D (Form 1120), Schedule H (Form 1120), and Schedule PH (Form 1120).

Type of Review: Revision.

Titles: U.S. Corporation Income Tax Return (1120); Capital Gains and Losses (Schedule D); Section 280H Limitations for a Personal Service Corporation (PSC) (Schedule H); U.S. Personal Holding Company (PHC) Tax (Schedule PH).

Description: Form 1120 is used by corporations to compute their taxable income and tax liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability. Schedule H (Form 1120) is used by personal service corporations to determine if they have met the minimum distribution requirements of section 280H. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 2,462,931.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120	71 hr., 16 min.	41 hr., 8 min.	72 hr., 2 min.	8 hr., 2 min.
1120–A	43 hr., 3 min.	23 hr., 44 min.	41 hr., 18 min.	4 hr., 34 min.
Sch. D	6 hr., 56 min.	3 hr., 31 min.	5 hr., 39 min.	32 min.
Sch. H	5 hr., 59 min.	35 min.	43 min.	0 min.
Sch. PH	15 hr., 19 min.	6 hr., 6 min.	8 hr., 29 min.	32 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 481,624,275 hours.

OMB Number: 1545–0195.

Form Number: IRS Form 5213.

Type of Review: Extension.

Title: Election to Postpone Determination as to Whether the Presumption That an Activity is Engaged in for Profit Applies.

Description: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election to postpone an IRS determination as to whether an activity is engaged in for profit for 5 years (7 years for breeding, training, showing, or racing horses). The data is used to verify eligibility to make the election.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 10,730.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Minutes
Recordkeeping	7 minutes
Learning about the law or the form	5 minutes
Preparing the form	10 minutes
Copying, assembling, and sending the form to the IRS	20 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 7,511 hours.

OMB Number: 1545–0410.

Form Number: IRS Forms 6468 and 6469.

Type of Review: Extension.

Title: How To Prepare Form 6469, Tape Label For Form W–4 (6468); Tape Label For Form W–4 (6469).

Description: 26 USC 3402 requires all employers making payments of wages to deduct (withhold) tax upon such payments. Employers are further required under Regulation 31.3402(f)(2)–1(g) to submit certain withholding certificates (W–4) to IRS. Form 6469 (labels) and 6468 (instructions) are sent to employers who prefer to file this information on magnetic tape.

Respondents: State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 25,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 2,500 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–16497 Filed 7–7–94; 8:45 am]

BILLING CODE 4830–01–P

Customs Service

Public Meetings in Boston and New York on Customs Automated Export System

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meetings.

SUMMARY: This notice announces the location and dates of public meetings to be held in Boston, MA, and New York, NY, on the development of the Automated Export System (AES). Dates and locations of further meetings on this subject will be scheduled and announced in a subsequent notice. These meetings are being held to: (1) Give Customs managers an opportunity to provide the public with information related to the development of AES and (2) give attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. A notice published by Customs in the **Federal Register** on June 13, 1994 (59 FR 30383) announced that the first of these meetings would be held in Washington, D.C. on July 8, 1994. Customs is now announcing that AES meetings will be held in Boston, Massachusetts, on July 19, 1994 and in New York City on July 21, 1994. Those planning to attend a meeting are requested to so notify Customs in the city where the meeting will be held in advance.

DATES: Boston, MA., July 19, 1994, commencing at 2:00 p.m.; New York, NY, July 21, 1994, commencing at 9:00 a.m.

ADDRESSES:

Boston, MA; Thomas P. "Tip" O'Neil Federal Building Auditorium, 10 Causeway Street, Boston, MA 02222.

New York, NY; 6 World Trade Center, Room 770, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT:

Boston Meeting: James Knight, (617) 565–6242; Pre-registration Fax: (617) 565–6662.

New York Meeting: Susan Mitchell, (212) 466–4494; Pre-registration Fax: (212) 466–4507.

General AES questions: Lorna Finley, AES Development Team, U.S. Customs Service, 1301 Constitution Avenue, NW, Room 7331, Washington, DC, 20229, (202) 927–0280.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** on June 13, 1994, (59 FR 30383) Customs announced its intention of developing an Automated Export System (AES) and informed the public that a series of meetings would be held around the country regarding the AES. That notice provided information on the first such meeting which was scheduled in Washington, DC. This notice is being issued to inform the public of the date and time of meetings which will be held in Boston, MA and New York, NY.

Since AES is in the very early design stage, the AES Development Team intends to hold a series of public meetings for the purpose of: (1) Giving Customs managers an opportunity to provide the public with information related to the development of AES and (2) giving attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. Each meeting will open with a short presentation on AES, past, present and future. After this presentation, the floor will be open to all attendees for general informal discussion of the AES program.

In this document, Customs is announcing the following public meetings on AES:

1. Boston, Massachusetts—July 19, 1994, commencing at 2:00 p.m., Thomas P. "Tip" O'Neil Federal Building Auditorium 10 Causeway Street, Boston, MA 02222. Point of Contact: Mr. James Knight (617) 565–6242, Pre-registration Fax Number (617) 565–6662
2. New York, New York—July 21, 1994, commencing at 9:00 a.m., 6 World Trade Center, Room 770, New York, NY 10048. Point of Contact: Ms. Susan Mitchell (212) 466–4494, Pre-registration Fax Number (212) 466–4507

In order to ensure that overcrowding does not result, persons planning to attend a meeting are requested to preregister by contacting the individual identified as the contact person for the city where they plan on attending.

Additional public meetings on AES are planned for the following locations: Houston, Texas; New Orleans, Louisiana; Seattle, Washington; Los Angeles, California; and Portland, Oregon. Appropriate notice will be published in the **Federal Register** when the dates, times and specific locations for these meetings have been established.

Dated: July 5, 1994.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 94–16545 Filed 7–7–94; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Tax on Certain Imported Substances (Di-2 Ethyl Hexyl Phthalate); Notice of Determination

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include di-2 ethyl hexyl phthalate.

EFFECTIVE DATE: This modification is effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On June 30, 1994, the Secretary determined that di-2 ethyl hexyl phthalate should be added to the list of taxable substances in section 4672(a)(3), effective October 1, 1993.

The rate of tax prescribed for di-2 ethyl hexyl phthalate, under section 4671(b)(3), is $3.42 per ton. This is based upon a conversion factor for xylene of 0.272 and a conversion factor for propylene of 0.431.

The petitioner is Aristech Chemical Corporation, a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination:

HTS number: 2917.32.00.00

CAS number: 117–81–7

Di-2-ethyl hexyl phthalate is derived from the taxable chemicals xylene and propylene. Di-2 ethyl hexyl phthalate is a liquid produced predominantly by acid catalyzed esterification of phthalic anhydride (derived from o-xylene) and 2-ethyl hexanol (derived from propylene).

The stoichiometric material consumption formula for di-2 ethyl hexyl phthalate is:

C_8H_{10} (xylene)+4 C_3H_6 (propylene)+3 O_2 (oxygen)+4 CO (carbon monoxide)+8 H_2 (hydrogen) → $C_{24}H_{38}O_4$ (di-2 ethyl hexyl phthalate)+6 H_2O (water)

Di-2 ethyl hexyl phthalate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 55 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–16482 Filed 7–7–94; 8:45 am]

BILLING CODE 4830–01–U

such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On June 30, 1994, the Secretary determined that di-2 ethyl hexyl phthalate should be added to the list of taxable substances in section 4672(a)(3), effective October 1, 1993.

The rate of tax prescribed for di-2 ethyl hexyl phthalate, under section 4671(b)(3), is $3.42 per ton. This is based upon a conversion factor for xylene of 0.272 and a conversion factor for propylene of 0.431.

The petitioner is Aristech Chemical Corporation, a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination:

HTS number: 2917.32.00.00

CAS number: 117–81–7

Di-2-ethyl hexyl phthalate is derived from the taxable chemicals xylene and propylene. Di-2 ethyl hexyl phthalate is a liquid produced predominantly by acid catalyzed esterification of phthalic anhydride (derived from o-xylene) and 2-ethyl hexanol (derived from propylene).

The stoichiometric material consumption formula for di-2 ethyl hexyl phthalate is:

C_8H_{10} (xylene)+4 C_3H_6 (propylene)+3 O_2 (oxygen)+4 CO (carbon monoxide)+8 H_2 (hydrogen) → $C_{24}H_{38}O_4$ (di-2 ethyl hexyl phthalate)+6 H_2O (water)

Di-2 ethyl hexyl phthalate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 55 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–16482 Filed 7–7–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances (Polycarbonate); Notice of Determination

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include polycarbonate.

EFFECTIVE DATE: This modification is effective July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On June 30, 1994, the Secretary determined that polycarbonate should be added to the list of taxable substances in section 4672(a)(3), effective July 1, 1993.

The rate of tax prescribed for polycarbonate, under section 4671(b)(3), is $4.91 per ton. This is based upon a conversion factor for methane of 0.083, a conversion factor for chlorine of 0.276, a conversion factor for benzene of 0.614, a conversion factor for propylene of 0.165, and a conversion factor for sodium hydroxide of 0.315.

The petitioner is Miles Inc., a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination.

HTS number: 3907.40.00.00

CAS number: 127133–67–9

Polycarbonate is derived from the taxable chemicals methane, chlorine, benzene, propylene, and sodium hydroxide. Polycarbonate is a solid produced predominantly by the interfacial polycondensation reaction of the sodium salt solution of bisphenol-A in an aqueous phase and phosgene in an organic phase.

The stoichiometric material consumption formula for polycarbonate is:

CH_4 (methane)+$C1_2$ (chlorine)+2 C_6H_6 (benzene)+C_3H_6 (propylene)+2 NaOH (sodium hydroxide)+3 O_2 (oxygen) → $O(C_6H_4)C(CH_3)_2(C_6H_4)OCO$ (polycarbonate)+5 H_2O (water)+2 NaCl (sodium chloride)

Polycarbonate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 79.1 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–16483 Filed 7–7–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances (Sodium Nitriolotriacetate Monohydrate, et al.); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include sodium nitriolotriacetate monohydrate, diphenyl oxide, and tetrachlorophthalic anhydride.

EFFECTIVE DATE: This modification is effective April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis

of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On June 30, 1994, the Secretary determined that sodium nitriolotriacetate monohydrate, diphenyl oxide, and tetrachlorophthalic anhydride should be added to the list of taxable substances in section 4672(a)(3), effective April 1, 1993.

The rate of tax prescribed for sodium nitriolotriacetate monohydrate, under section 4671(b)(3), is $2.45 per ton. This is based upon a conversion factor for methane of 0.24, a conversion factor for sodium hydroxide of 0.52, a conversion factor for propylene of 0.25, and a conversion factor for ammonia of 0.10.

The rate of tax prescribed for diphenyl oxide, under section 4671(b)(3), is $8.13 per ton. This is based upon a conversion factor for benzene of 1.05 and a conversion factor for propylene of 0.62.

The rate of tax prescribed for tetrachlorophthalic anhydride, under section 4671(b)(3), is $5.87 per ton. This is based upon a conversion factor for chlorine of 1.22 and a conversion factor for xylene of 0.53.

The petitioner is Monsanto Company, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Sodium nitriolotriacetate monohydrate

HTS number: 2922.49.60.00
CAS number: 18662–53–8

Sodium nitriolotriacetate monohydrate is derived from the taxable chemicals methane, sodium hydroxide, propylene, and ammonia. Sodium nitriolotriacetate monohydrate is a solid produced predominantly by the reaction of formaldehyde with hydrogen cyanide in the presence of a catalyst, which is then further reacted with sodium hydroxide to produce sodium nitriolotriacetate monohydrate.

The stoichiometric material consumption formula for sodium nitriolotriacetate monohydrate is:

$3\ CH_4$ (methane)+3 NaOH (sodium hydroxide)+C_3H_6 (propylene)+NH_3 (ammonia)+4.5 O_2 (oxygen) → $N(CH_2COONa)_3H_2O$ (sodium nitriolotriacetate monohydrate)+5 H_2O (water)+3 H_2 (hydrogen)

Sodium nitriolotriacetate monohydrate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 61.1 percent by weight of the materials used in its production.

Diphenyl oxide

HTS number: 2909.30.00.00
CAS number: 101–84–8

Diphenyl oxide is derived from the taxable chemicals benzene and propylene. Diphenyl oxide is a solid produced predominantly by the catalytic condensation of phenol.

The stoichiometric material consumption formula for diphenyl oxide is:

2 C_6H_6 (benzene)+2 C_3H_6 (propylene)+2 O_2 (oxygen) → $C_{12}H_{10}O$ (diphenyl oxide)+2 C_3H_6O (acetone)+H_2O (water)

Diphenyl oxide has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 78.9 percent by weight of the materials used in its production.

Tetrachlorophthalic anhydride

HTS number: 2916.19.00.00
CAS number: 117–08–8

Tetrachlorophthalic anhydride is derived from the taxable chemicals chlorine and xylene. Tetrachlorophthalic anhydride is a solid produced predominantly by the high temperature reaction of phthalic anhydride with chlorine. Phthalic anhydride is produced by the reaction of o-xylene with air in the presence of a catalyst.

The stoichiometric material consumption formula for tetrachlorophthalic anhydride is:

4 Cl_2 (chlorine)+C_8H_{10} (xylene)+3 O_2 (oxygen) → $C_8Cl_4O_3$ (tetrachlorophthalic anhydride)+3 H_2O (water) + 4 HCl (hydrogen chloride)

Tetrachlorophthalic anhydride has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 80.0 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–16484 Filed 7–7–94; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetin

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ENRICHMENT CORPORATION BOARD OF DIRECTORS

TIME AND DATE: 8:00 a.m., Tuesday, July 12, 1994.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial, financial and internal personnel issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: July 5, 1994.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 94–16681 Filed 7–6–94; 11:15 am]

BILLING CODE 8720–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 1:00 p.m., Wednesday, July 13, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 5, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16645 Filed 7–6–94; 9:12 am]

BILLING CODE 6210–01–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 130
Friday, July 8, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ENRICHMENT CORPORATION BOARD OF DIRECTORS

TIME AND DATE: 8:00 a.m., Tuesday, July 12, 1994.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial, financial and internal personnel issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: July 5, 1994.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 94–16681 Filed 7–6–94; 11:15 am]

BILLING CODE 8720–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 1:00 p.m., Wednesday, July 13, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 5, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16645 Filed 7–6–94; 9:12 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 34465, July 5, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Thursday, July 7, 1994.

CHANGES IN THE MEETING: Addition of the following closed item to the meeting: Proposed response to the Department of the Treasury's Electronic Federal Tax Payment System Invitation for Expressions of Interest.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16699 Filed 7–6–94; 2:36 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:00 p.m., Thursday, July 14, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16700 Filed 7–6–94; 2:36 pm]

BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on July 14–15, 1994. The meeting will commence at 6:00 p.m. on July 14, 1994, and at 9:00 a.m. on July 15, 1994.

PLACE: Legal Services Corporation, 750 First Street, N.E., 10th Floor, Office of Program Services, Conference Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a majority vote of the Board of Directors, said vote to be solicited prior to the meeting. In this regard, contingent upon receipt of the aforementioned majority vote, the Committee will consider the recommendation of the Office of the Inspector General regarding selection of an audit firm to conduct the Corporation's annual financial audit for fiscal years 1994, 1995, and 1996. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(6)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(e)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of June 17, 1994 Meeting.
3. Consideration and Review of Budget and Expenses for the Period Ending May 31, 1994.
4. Consideration and Development of Plans to Utilize Uncommitted Funds.
5. Discussion of the Distribution of Fiscal Year 1995 Consolidated Operating Budget Funds Within Line Items.
6. Preliminary Discussion Regarding the Fiscal Year 1996 Budget Mark.

CLOSED SESSION:

7. Consideration of Recommendation of the Office of the Inspector General Regarding Selection of An Accounting Firm to Conduct the Corporation's Annual Audit for the Fiscal Years 1994–1996.

OPEN SESSION: (Resumed)

8. Selection of An Accounting Firm to Conduct the Corporation's Annual Audit for the Fiscal Years 1994–1996.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: July 5, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–16646 Filed 7–6–94; 9:17 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on July 15, 1994. The meeting will commence at 9:00 a.m. It is anticipated the substantive portion of the open session (i.e., deliberation of agenda item number 5) will commence at approximately 10:00 a.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., Board Room, Washington, DC, 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that portion of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will hear the report of the General Counsel on litigation to which the Corporation is or may become a party. In addition, the Committee will consider and act on internal personnel and operational matters related to the Executive Office, the Office of the General Counsel, the Office of Administration, and the Office of Human Resources/Equal Opportunity, the four offices of the Corporation under the Committee's purview. Finally, the Committee will consider for approval the minutes of the executive session(s) held on June 19, 1994. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (e), and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, DC, 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.

CLOSED SESSION:

2. Approval of Minutes of June 19, 1994 Executive Session.
3. Consider and Act on General Counsel's Report on Litigation to Which the Corporation is or May Become a Party.
4. Consider and Act on Internal Personnel and Operational Matters.

OPEN SESSION: (Resumed)

5. Approval of Minutes of June 19–20, 1994 Meeting.
6. Consideration of Update on the Reauthorization Legislative Process.
7. Consider and Act on Proposed Changes to Part 1608 of the Corporation's Regulations.
8. Consider and Act on Proposed Changes to Part 1621 of the Corporation's Regulations.
9. Consider and Act on Proposed Changes to Part 1611 of the Corporation's Regulations.

OPEN SESSION: (Continued)

10. Public Comment.
11. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: **PATRICIA BATIE, (202) 336–8800.**

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: July 5, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–16647 Filed 7–6–94; 9:17 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on July 15, 1994. The meeting will commence at 1:00 p.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of June 17, 1994 Meeting.
3. Presentation by Randi Roth, Farmers' Legal Action Group.
4. Report and Recommendation to the Committee Regarding Monitoring, Evaluation, and Support Functions.
5. Discussion of Issues Related to Program Improvement: Technical Assistance, Training, and Support.
6. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: July 5, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–16648 Filed 7–6–94; 9:17 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on July 16, 1994. The meeting will commence at 8:00 a.m. The substantive, open portion of the meeting (i.e., deliberation of agenda item 10.) will commence at approximately 10:30 a.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., Board Room, 11th Floor, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consider and vote to approve draft minutes of executive sessions held on November 8, 1993; December 6, 1993; April 15, 1994; May 13, 1994, and June 18, 1994. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. The board will also consult with the President on internal personnel and operational matters. Finally, the Board will deliberate regarding internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), and (7)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d), (e), and (f)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.

CLOSED SESSION:

2. Consider and Act on Draft Minutes of the November 8, 1993 Executive Session.
3. Consider and Act on Draft Minutes of the December 6, 1993 Executive Session.
4. Consider and Act on Draft Minutes of the April 16, 1994 Executive Session.
5. Consider and Act on Draft Minutes of the May 13, 1994 Executive Session.
6. Consider and Act on Draft Minutes of the June 18, 1994 Executive Session.
7. Consultation by Board with the President on Internal Personnel and Operational Matters.
   a. Consideration of the Inspector General's Access to Corporation Documents.
8. Consider and Act on Internal Personnel and Operational Matters.
9. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.

OPEN SESSION: (Resumed)

10. Approval of Minutes of June 18, 1994 Meeting.

---

[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), and (7)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d), (e), and (f)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.

CLOSED SESSION:

2. Consider and Act on Draft Minutes of the November 8, 1993 Executive Session.
3. Consider and Act on Draft Minutes of the December 6, 1993 Executive Session.
4. Consider and Act on Draft Minutes of the April 16, 1994 Executive Session.
5. Consider and Act on Draft Minutes of the May 13, 1994 Executive Session.
6. Consider and Act on Draft Minutes of the June 18, 1994 Executive Session.
7. Consultation by Board with the President on Internal Personnel and Operational Matters.
   a. Consideration of the Inspector General's Access to Corporation Documents.
8. Consider and Act on Internal Personnel and Operational Matters.
9. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.

OPEN SESSION: (Resumed)

10. Approval of Minutes of June 18, 1994 Meeting.
11. Chairman's and Members' Reports.
12. President's Report.
13. Presentation by Representatives of the Fundraising Project.
14. Presentation by Linda Rexer, President, National Association of IOLTA Programs.
15. Consideration of Issues Related to the Allocation and Distribution of the Corporation's Fiscal Year 1995 Appropriation.
16. Consider and Act on Proposed Changes to the Corporation's Bylaws.
17. Consider and Act on Operations and Regulations Committee Report.
18. Consider and Act on Provision for the Delivery of Legal Services Committee Report.
19. Consider and Act on Audit and Appropriations Committee Report.
    a. Selection of An Accounting Firm to Conduct the Corporation's Financial Audit for the Fiscal Years 1994–1996.
20. Inspector General's Report.
21. Consideration of the Organization Responsibility for Oversight of Grantee Annual Financial Audits.

OPEN SESSION:

22. Public Comment.
23. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: July 5, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–16649 Filed 7–6–94; 9:17 am]

BILLING CODE 7050–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Tuesday, July 12, 1994.

PLACE: 6th Floor, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Buffalo Crushed Stone Co.*, Docket Nos. YORK 92–117–M, etc. (Issues include whether the judge correctly found that Buffalo Crushed Stone Company's violations of 30 C.F.R. § 56.9301 were not significant and substantial.)

2. *Peabody Coal Co.*, Docket No. LAKE 93–23. (Issues include whether the judge correctly concluded that Peabody Coal Company violated 30 C.F.R. § 75.316 (1991).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–16730 Filed 7–6–94; 8:45 am]

BILLING CODE 6735–01–M

VOL
5 9
ISS
1 3
0
JUL
8
994
UMI

federal register

Friday
July 8, 1994

Part II

Department of Energy

Office of Nonproliferation and National Security

10 CFR Part 710

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material; Final Rule

DEPARTMENT OF ENERGY

Office of Nonproliferation and National Security

10 CFR Part 710

RIN 1992–AA15

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

AGENCY: Office of Nonproliferation and National Security, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby amends its regulations regarding the criteria and process used to review determinations of eligibility for access to classified matter or special nuclear material. The purpose of the rulemaking is to clarify the criteria used to determine access authorization eligibility and implement the Department's decision to reassign personnel security Hearing Officer and Review functions, formerly performed by contractors, to the DOE's Office of Hearings and Appeals.

DATES: These rules become effective August 8, 1994. Stakeholder meetings with Office of Hearings and Appeals and Office of Safeguards and Security staff to discuss procedural and logistical matters that will arise under these regulations will be held in Oak Ridge, Tennessee, on July 12, 1994, and in Albuquerque, New Mexico, on July 19, 1994. These meetings will be open to the public.

FOR FURTHER INFORMATION CONTACT:

A. Barry Dalinsky, Policy, Standards and Analysis Division, Office of Safeguards and Security, Office of Security Affairs, U.S. Department of Energy, Washington, DC 20585, (301) 903–5010

Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094; Thomas.Mann@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Summary of regulations
III. Discussion of comments received on proposed regulations
A. General analytical comments
B. Comments on specific sections of the proposed regulations
IV. Procedural requirements
V. Conclusion

I. Introduction

The DOE has established procedures that govern the resolution of questions concerning the eligibility of individuals who are employed by or applicants for employment with DOE contractors, agents, and DOE access permittees; individuals who are DOE employees or applicants for DOE employment; and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. (This access authorization is commonly referred to as a security clearance.) These procedures are codified in Subpart A of 10 CFR Part 710. Subpart A provides an opportunity for hearing and administrative review in cases when it is determined that questions concerning an individual's eligibility for access authorization cannot be favorably resolved by interview or other action.

For a number of years, the DOE has contracted for the services of Hearing Officers and Personnel Security Review Examiners to implement the regulations. The DOE has decided to use federal employees to perform those functions. The functions have been assigned to the DOE's Office of Hearings and Appeals (OHA), which is a DOE Headquarters office with a staff of professional Hearing Officers experienced in the conduct of adjudicative proceedings. Today's rulemaking implements this change. Concurrent with this change, DOE is making other procedural and substantive changes to the regulations. Each change is discussed below.

A Notice of Proposed Rulemaking was published in the **Federal Register** on December 8, 1993. (58 FR 64509, December 8, 1993). Eighteen comments were received. The issues raised in the comments have been thoroughly considered. As a result of suggestions made in the comments, a number of changes have been made in the proposed regulations. The comments also reflected some confusion in the timing of events that occur under Subpart A. A number of sections in Subpart A have been reorganized to alleviate any ambiguities. The comments are discussed below.

II. Summary of Regulations

As noted above, the regulations being promulgated today utilize Hearing Officers from the OHA in the administrative review process set forth in this subpart. The regulations also replace the review conducted by Personnel Security Review Examiners with a review by the OHA Director. The OHA Director will review the record in the matter, seek any additional information necessary, and issue an opinion. The OHA Director's opinion and the administrative record in the case will be transmitted to the Director of DOE's Office of Security Affairs (SA), who will make the final determination regarding the individual's access authorization.

Also, there are nomenclature changes to conform the regulations to the current DOE organization, and the applicable procedures have been streamlined. Under the previous regulations, only the SA Director had the authority to make the final determination in those cases where derogatory information was received which raised a question concerning the individual's eligibility for DOE access authorization. These regulations delegate the authority to make the final determination on eligibility for DOE access authorization to the local managers of its field offices in those cases where an individual whose request for access authorization is being processed under this subpart does not request a hearing. In all other cases, the SA Director will continue to make the final determination regarding eligibility for DOE access authorization.

The notice being published today also establishes new procedures for processing cases: in which the individual has been arrested for or convicted of a crime punishable by imprisonment for six (6) months or longer (§ 710.4(b)); in which sufficient information about the individual's background cannot be obtained to meet the investigative requirements for the access authorization requested (§ 710.4(c)); in which questions involving an individual's national allegiance are presented (§ 710.4(d)); and in which the individual fails to cooperate in the investigative or administrative review process (§ 710.4(e) and § 710.6). The criteria under § 710.11 in the current regulations have been renumbered as § 710.8, and have been modified. All changes from what was proposed last December are explained below.

Two ancillary issues involve ongoing cases already in process and the publication of OHA opinions. Comments were solicited on both of these issues. The DOE will apply the regulations being promulgated today to cases in which a notification letter is issued on or after the effective date of these rules. The DOE will continue to apply the old regulations to cases in which a notification letter was issued prior to the effective date of the new rules. Finally, the Office of Hearings and Appeals will publish opinions of Hearing Officers and the OHA Director in a commercially available, loose-leaf service in which it routinely publishes its decisions. Appropriate deletions will be made to protect the privacy of the individuals involved. See generally Freedom of Information Act, 552 U.S.C. 552, as implemented by DOE in 10 CFR Part 1004.

III. Discussion of Comments Received on Proposed Regulations

A. General Analytical Comments

Transition for Pending Cases

All cases in which the notification letter has been issued before the effective date of the new rules will be conducted under the old rules. All cases in which the notification letter is issued on or after the effective date of the new rules will be conducted under the new rules. This recognizes the fact that, with the notification letter, a copy of 10 CFR Part 710, Subpart A, is provided to the individual.

Publication of Opinions

A couple of commentors strongly supported the publication of opinions by OHA since they thought it would bring regularity to the process. However, one commentor was concerned about maintaining the privacy of individuals involved. Names, other personal identifiers, and other confidential information will be deleted from published opinions when necessary to protect individual privacy under the Freedom of Information Act. It is not necessary to specify in the regulations that opinions are going to be published. OHA already has a reporter system for its other cases, and Hearing Officer opinions and review opinions in administrative review cases will be published in that reporter, the Federal Energy Guidelines.

Source of Hearings Officers

Several commentors questioned the wisdom of changing from Hearing Officers that are obtained on as-needed contracts to Hearing Officers from the DOE's Office of Hearings and Appeals. Some of those commentors speculate that OHA Hearings Officers will not be as objective as contractor Hearing Officers because they are full time employees of the DOE. The Office of Management and Budget and the General Accounting Office have advised the Secretary of Energy of their view that hearing and review functions in the administrative review of DOE access authorization eligibility are inherently governmental functions that should not be contracted out. Noting the quasi-judicial nature of hearing and review functions under this subpart, they referred the Secretary to OMB Circular No. A–76, ¶ 6e, which specifically includes "judicial functions" as an example of an act of governing that should not be contracted out. It is for

552, as implemented by DOE in 10 CFR Part 1004.

III. Discussion of Comments Received on Proposed Regulations

A. General Analytical Comments

Transition for Pending Cases

All cases in which the notification letter has been issued before the effective date of the new rules will be conducted under the old rules. All cases in which the notification letter is issued on or after the effective date of the new rules will be conducted under the new rules. This recognizes the fact that, with the notification letter, a copy of 10 CFR Part 710, Subpart A, is provided to the individual.

Publication of Opinions

A couple of commentors strongly supported the publication of opinions by OHA since they thought it would bring regularity to the process. However, one commentor was concerned about maintaining the privacy of individuals involved. Names, other personal identifiers, and other confidential information will be deleted from published opinions when necessary to protect individual privacy under the Freedom of Information Act. It is not necessary to specify in the regulations that opinions are going to be published. OHA already has a reporter system for its other cases, and Hearing Officer opinions and review opinions in administrative review cases will be published in that reporter, the Federal Energy Guidelines.

Source of Hearings Officers

Several commentors questioned the wisdom of changing from Hearing Officers that are obtained on as-needed contracts to Hearing Officers from the DOE's Office of Hearings and Appeals. Some of those commentors speculate that OHA Hearings Officers will not be as objective as contractor Hearing Officers because they are full time employees of the DOE. The Office of Management and Budget and the General Accounting Office have advised the Secretary of Energy of their view that hearing and review functions in the administrative review of DOE access authorization eligibility are inherently governmental functions that should not be contracted out. Noting the quasi-judicial nature of hearing and review functions under this subpart, they referred the Secretary to OMB Circular No. A–76, ¶ 6e, which specifically includes "judicial functions" as an example of an act of governing that should not be contracted out. It is for this reason that the Department agreed to federalize these functions.

There is a presumption of regularity for administrative decisions issued by federal officials, and the public can rest assured that administrative review by the OHA will not adversely affect the appeal rights of individuals. The OHA has a reputation for professionalism and independent, high quality decision-making. It is a staff office that reports directly to the Office of the Secretary, and it is separate from the Office of Security Affairs. The OHA has a history of affording individuals an unbiased forum in which every relevant argument can be heard. This certainly will continue to be the case as the OHA assumes its duties in the personnel security administrative review process.

Suggested Additions to Regulations

A number of commentors suggested that additional provisions be incorporated into the administrative review regulations. Two commentors suggested a provision that would prohibit DOE contractors from making employment decisions based upon the security implications of the results of their pre-employment screening of job applicants. This type of provision is unnecessary. By law, only the Department of Energy makes determinations on requests for DOE access authorization. It is DOE policy that contractors are to establish job employment suitability of prospective employees prior to and separate from making a request to DOE for access authorization.

Another commentor suggested a new provision that would state that sexual orientation or preference may not be used as a basis for or negative factor in determining a person's eligibility for access authorization. Under the criteria that exist now and will continue to exist under these regulations, sexual orientation or preference, in and of itself, is not considered a negative factor in determining a person's eligibility for access authorization.

One commentor suggested that the DOE add a regulation that would permit an appeal in these cases to the United States District Courts. It is beyond the scope of the present rulemaking process to incorporate a provision for judicial review in the federal courts of decisions made in DOE administrative review proceedings under this Subpart. Only Congress, acting by statute, has that type of legislative prerogative.

One commentor suggested that the regulations should provide the right to a timely hearing within a specified period of time after an access authorization has been suspended. The proposed regulations do provide for a timely hearing within a specified period of time after access authorization is suspended. The Manager, within 10 days of suspension, must forward the case to the Director, Office of Safeguards and Security (OSS) in Washington, DC, who, within 30 days, must either reinstate access authorization or authorize administrative review. When administrative review is authorized, the Manager must deliver a notification letter to the individual within 30 days. This is usually done in person. Within 20 days after receiving the notification letter, the individual may request a hearing. The Manager must transmit that request on a timely basis to the OHA; the OHA must appoint a Hearing Officer as soon as practicable, and a hearing must be held within 90 days from the date when the individual's request is received by the OHA. Unfortunately, some of these time limits appeared in § 710.7(c)(2) in the "General Provisions" part of the proposed regulations, and others appeared in proposed §§ 710.21, 710.22, and 710.26 in the "Procedures" part. In the final rule, certain provisions in the proposed §§ 710.7(c) and 710.21 have been reorganized and renumbered to state more clearly the time limits that govern the sequence of actions that must be taken by DOE officials before a case is referred to the OHA for a hearing.

One commentor suggested that the regulations provide the right to seek a stay of actions taken under these regulations. The DOE declines to establish procedures for requesting stays of access authorization actions under the same legal standards that govern stays before the Merit Systems Protection Board. Overriding national security concerns do not permit generally applicable federal personnel practices to be substituted for DOE access authorization procedures, which are mandated by Sections 141, 145 and 161 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2161, 2165 and 2201 (reprinted in Appendix A), and Executive Order 10450. Further, it should be noted that most cases involve access authorizations for employees of DOE contractors, not federal employees.

A number of comments dealt with alleged irregularities in the access authorization process and perceptions that actions are or may be taken under these regulations in reprisal for making disclosures protected by law. One commentor suggested that the DOE provide a right for an employee to introduce an affirmative defense challenging alleged irregularities in the process. This change is unnecessary. No express provision in the rules is

required to enable individuals to assert affirmative defenses based on the alleged misconduct of DOE agents or officials during any stage of the process for determining eligibility for access authorization. Specific statutory and regulatory remedies already exist to protect "whistleblowers." The Secretary of Energy is committed to the policy that both DOE Federal and contractor employees must be free to voice their concerns and opinions without fear of reprisal. She has stated that there would be "zero tolerance" for reprisal against whistleblowers. Some whistleblowers have alleged that the administrative review process has been used against them in reprisal for disclosures relating to health and safety concerns, environmental matters, as well as waste, fraud, abuse and mismanagement. Whistleblowing activities have never constituted legitimate grounds for suspension, revocation or denial of a DOE access authorization, and a new provision has been added at § 710.4(b), unambiguously stating the Department's "zero tolerance" policy for reprisals. In addition to the new hearing and review functions that would be assigned to it under this proposed rule, the OHA is responsible for conducting hearings and issuing determinations in whistleblower cases brought under DOE's Contractor Employee Protection Program, codified in 10 CFR Part 708. Since it is adjudicating both types of claims, the OHA is familiar with the applicable rules and will be sensitive to any alleged abuses of the administrative review process in cases involving whistleblowers.

One commentor suggested providing a right to reimbursement of attorneys fees and costs in cases where it is shown that the suspension of access authorization was taken in reprisal for making disclosures protected by law. This change is also unnecessary. Both contractor employee and federal employee whistleblowers who claim to be victims of reprisals already have the right to reimbursement of legal fees under existing DOE regulations, 10 CFR Part 708 (contractor employees) and the Whistleblower Protection Act of 1989 (WPA) (federal employees).

Another commentor suggested review of personnel security actions by the Office of Contractor Employee Protection if an action involves an alleged whistleblower. In addition, this commentor urged that sanctions be imposed against managers who abuse the process for determining eligibility for access authorization. As noted above, DOE is sensitive to the potential for abuses of the administrative review process where whistleblowers are involved. In response to these comments, the new § 710.4(b) expressly authorizes disciplinary action against DOE officers or employees who violate the policy against reprisals for protected whistleblowing activities. In addition, the federal Whistleblower Protection Act provides for sanctions against DOE managers who are shown to have acted against government employees in reprisal for making protected disclosures. Training is being given to security adjudicators to raise their level of sensitivity to this issue. An access authorization case in which reprisal was claimed was recently referred to the DOE Office of Contractor Employee Protection. However, any change in the DOE Contractor Employee Protection Program regulations at Part 708 is beyond the scope of the present rulemaking to revise Subpart A of Part 710.

One commentor suggested a provision that would prohibit the characterization of an individual's invocation of his rights under the Fifth Amendment to the United States Constitution as derogatory information. There is nothing in these regulations that bars an individual from invoking the privilege against self-incrimination to avoid testifying in a DOE personnel security proceeding. However, the invocation of that privilege could be construed as a refusal to cooperate with the process, and therefore constitute a basis for suspension, revocation or denial of an individual's DOE access authorization. In this context, DOE must strike a balance between the protection of individual rights and the overriding national security concerns spelled out in Sections 141, 145 and 161 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2161, 2165 and 2201, Executive Orders 10450 and 12356, and other orders on the protection of classified information and special nuclear material.

Finally, one commentor suggested a provision prohibiting coercion and threatening of witnesses and other misconduct by DOE Counsel and providing for exclusion of any evidence obtained in such manner. Misconduct by DOE Counsel, such as coercion and threatening of witnesses, is against agency policy and will not be tolerated. However, there is no indication of the existence of a systemic problem of this nature, and a regulation addressing this issue is not appropriate. Any alleged instances of misconduct should be brought to the attention of the Chief Counsel in the appropriate field office, the General Counsel, the Office of Safeguards and Security (OSS) Director in Washington, DC, and the OHA Hearing Officer.

Other General Comments

A number of commentors opposed granting the authority to suspend access authorization to the local Directors of Security. At present, this authority is exercised by the Manager of an Operations Office. After considering these comments, DOE has decided not to make the proposed change. Therefore, under the final rule, the Manager of an Operations Office will retain the authority to suspend an individual's access authorization when it is determined that a security concern exists that cannot be favorably resolved by interview or other action. As noted above, suspension of an individual's access authorization will result in the referral of the matter to the OSS Director in Washington, DC. The OSS Director must either reinstate the access authorization, or trigger the administrative review process so that the question regarding the individual's access authorization can be resolved as quickly as possible. DOE recognizes that the order of events described in § 710.7(c) and § 710.21 of the proposed regulations was not clear. Both of these provisions involve actions that occur before administrative review. As a result, § 710.21, "Suspension of Access Authorization" did not belong in the next part of the regulations entitled "Procedures." To make this clear in the final rules, the "Procedures" section is renamed "Administrative Review." The proposed § 710.7(c) is moved and renumbered as § 710.9, entitled "Action on Derogatory Information," and the proposed § 710.21 is moved and renumbered as § 710.10. The rules in the "Procedures" and "Miscellaneous" sections are renumbered accordingly, with the proposed § 710.22 becoming § 710.21 in the final rules, and so forth through the newly renumbered § 710.34, "Time Frames."

Another commentor suggests that the "cold war" aspects of the regulations should be dropped. In response to this comment, DOE is removing the phrase "or in satellites or occupied areas thereof" from the criteria in § 710.8(e), since that language specifically referred to the former Soviet Union.

Another commentor is concerned that dual citizenship will be an automatic bar to access authorization under these regulations. The question of national allegiance for individuals who exercise dual citizenship has always been a concern in the DOE access authorization process, and the purpose of this change is to state that policy explicitly. However, dual citizenship has not been

and will not necessarily be a bar to obtaining access authorization. Accordingly, § 710.4(d) has been amended to clarify that our principal concerns are whether an individual is exercising allegiance to a nation other than the United States, and if so, whether granting access authorization may constitute an unacceptable national security risk. This provision in the new rules will not trigger review of an existing access authorization of a person holding dual citizenship.

Under the proposed regulations, members of the OHA staff would be assigned by the OHA Director to act as Hearing Officers, and the opinions they issue would be subject to review by the OHA Director. Several commentors suggested that the DOE should separate the Hearing Officer function from the review function. These commentors asserted that "the same body of persons will be making both decisions, and not many board members are able to admit error." These fears are based on a lack of understanding of the manner in which the OHA is organized, and the way in which the administrative review functions under Part 710 will be separated. The OHA consists of several different divisions: the Office of the Director, the Office of Management Operations, the Office of Legal Analysis, the Office of Financial Analysis, the Office of Economic Analysis, and the Board of Contract Appeals. The Hearing Officer function will be assigned on a case-by-case basis to attorneys and senior management officials in the Office of the Director and the Offices of Legal, Financial and Economic Analysis, who will be personally responsible for the initial opinions. When an initial Hearing Officer opinion is issued by a member of one OHA office, staff work on any review of that opinion under the auspices of the OHA Director will be assigned to a different OHA office. The OHA Director will be personally responsible for review opinions.

These organizational separations of functions will be more than adequate to protect the due process and other rights of individuals. Similar separations of functions have been successfully used by the OHA in other types of proceedings for the past 19 years. For example, appeals of initial determinations made by OHA Office Directors under the Freedom of Information Act are assigned to the staff of a different OHA Office and appeal decisions are made by the OHA Director. In addition, under 10 CFR Part 205, Subpart D, objections to proposed exception decisions issued by the staff of one OHA Office are assigned to a

and will not necessarily be a bar to obtaining access authorization. Accordingly, § 710.4(d) has been amended to clarify that our principal concerns are whether an individual is exercising allegiance to a nation other than the United States, and if so, whether granting access authorization may constitute an unacceptable national security risk. This provision in the new rules will not trigger review of an existing access authorization of a person holding dual citizenship.

Under the proposed regulations, members of the OHA staff would be assigned by the OHA Director to act as Hearing Officers, and the opinions they issue would be subject to review by the OHA Director. Several commentors suggested that the DOE should separate the Hearing Officer function from the review function. These commentors asserted that "the same body of persons will be making both decisions, and not many board members are able to admit error." These fears are based on a lack of understanding of the manner in which the OHA is organized, and the way in which the administrative review functions under Part 710 will be separated. The OHA consists of several different divisions: the Office of the Director, the Office of Management Operations, the Office of Legal Analysis, the Office of Financial Analysis, the Office of Economic Analysis, and the Board of Contract Appeals. The Hearing Officer function will be assigned on a case-by-case basis to attorneys and senior management officials in the Office of the Director and the Offices of Legal, Financial and Economic Analysis, who will be personally responsible for the initial opinions. When an initial Hearing Officer opinion is issued by a member of one OHA office, staff work on any review of that opinion under the auspices of the OHA Director will be assigned to a different OHA office. The OHA Director will be personally responsible for review opinions.

These organizational separations of functions will be more than adequate to protect the due process and other rights of individuals. Similar separations of functions have been successfully used by the OHA in other types of proceedings for the past 19 years. For example, appeals of initial determinations made by OHA Office Directors under the Freedom of Information Act are assigned to the staff of a different OHA Office and appeal decisions are made by the OHA Director. In addition, under 10 CFR Part 205, Subpart D, objections to proposed exception decisions issued by the staff of one OHA Office are assigned to a different staff, and the final decision is signed by the OHA Director. There has never been any reluctance to reverse or modify a prior decision made by another office where such action is appropriate.

One commentor asserts that DOE has shown that it cannot properly administer this program and it should therefore be removed and placed in a separate organization with oversight from Congress. However, this comment contains no factual basis for its claim, and it is belied by over 40 years of experience by DOE and its predecessors in managing a process that safeguards national security concerns while preserving traditional American concepts of justice and fairness.

Another commentor suggests that the regulations should prohibit the use of contractors to conduct any aspect of access authorization investigations or reviews. As noted above, one of the principal reasons for revising Part 710 is to federalize a number of functions formerly performed by contractors. This transition to Hearing Officer and review functions by federal employees will bring DOE into full compliance with the requirements of OMB Circular No. A–76. Nevertheless, some predecisional functions in the initial phase of the access authorization adjudication process are, and will continue to be, performed by contractors. This is a resource issue, driven by budgetary concerns, and the DOE is not at liberty to change it at this time.

The last general comment suggests that the DOE issue a policy statement implementing the federal "Anti-Gag Law," Aug. 24, 1912, Ch. 389, Section 6, 37 Stat. 555. This law applies to removal of persons in the civil service, and provides that they shall be given notice of the charges against them and an opportunity to answer. The Anti-Gag Law further provides that a person's "right to petition Congress shall not be interfered with." Both of these protections are already afforded to individuals in the DOE access authorization process. The right to petition Congress is protected by the DOE Contractor Employee Whistleblower Program in 10 CFR Part 708, and by the federal Whistleblower Protection Act.

B. Comments on Specific Sections of the Proposed Regulations

The identifiers below reference the section or paragraph identifier in the proposed regulations published in the Notice of Proposed Rulemaking. They do not in all cases reflect the section or paragraph identifier in the final rule because some of the sections and paragraphs have been reorganized in the final rule.

Section 710.1(a). A commentor pointed out that there is no definition for the term "national security information." A definition of that term has been added.

Section 710.4(b). One commentor suggested that a felony conviction should not preclude the approval of access authorization for an individual's entire life. The DOE agrees, and if the section is read carefully, its meaning should become clear.

710.4(c). One commentor suggested that this provision in the proposed regulations was unclear. DOE agrees, and this paragraph has been rewritten to better express its meaning.

710.4(d). A couple of commentors were concerned that this paragraph would prevent a person who holds dual citizenship from obtaining access authorization. This is not intended, and the paragraph has been rewritten to make it clearer.

Section 710.5. One commentor noted that OHA Hearing Officers are not required to be attorneys. Most of those persons are attorneys, but the group also includes some senior OHA management officials who, while not attorneys, have extensive experience in conducting hearings, assembling the record, and writing decisions in adjudicative proceedings. The language in the final rule has been changed so this is clearer.

Two commentors suggested that it be clear that DOE Counsel need not possess an access authorization. DOE Counsel may or may not require access authorization, depending on whether classified information is involved in a case. Past experience shows that in the great majority of administrative review cases, access authorization will not be necessary for DOE Counsel.

Section 710.6. This section generated a large number of comments. Most of the commentors who discussed this section asserted that they believed that the section was coercive in spirit. A number of commentors thought that the term "administrative termination" was vague and needs to be described. This section is designed to give notice to people seeking access authorization that they have an obligation to be honest, forthright, and to answer all questions that the DOE deems to be pertinent to the investigation. This type of cooperation may be essential in obtaining copies of medical or other typically confidential records. However, the DOE is mindful of the possibility that there might be disputes over whether the termination or suspension of further processing is appropriate in a given situation. The section has been

rewritten to allow the individual to file an appeal of such a decision under this section. The appeal must be filed with the Director, Office of Safeguards and Security, at DOE Headquarters. The Director will investigate any claims made and decide within 30 calendar days whether the action was appropriate. If he or she determines that the action was inappropriate, the Director shall direct that the individual continue to be processed for access authorization or that access authorization for the individual be reinstated.

Section 710.7(a). A number of commentors suggested that certain terms used in these paragraphs (such as "common-sense judgment," "seriousness," and "maturity") should be specifically defined. DOE does not agree. These terms do not lend themselves to precise definitions. Moreover, the same basic terminology has been used successfully for over 40 years to describe the type of analysis used to adjudicate requests for DOE access authorization. That language is necessary to impart the degree of flexibility needed to protect both the individuals involved and the national security.

710.7(b). One commentor said that DOE should be required to state the basis for a negative determination on a request for access authorization, and make that determination a part of the administrative record. As noted above, those actions are already required, as stated in the later sections on suspension and notification. To clarify the suspension and notification process, the rule governing suspension has been codified in a new § 710.10, and the notification rule has been codified as § 710.21 in the part on "Administrative Review."

710.7(c)(1). A commentor challenged the constitutionality of these paragraphs in the proposed rule because they do not contain an exhaustive list of all types of derogatory information. This particular language is required by Executive Order 10450, § 8(a), and it provides the flexibility needed to administer the program in a manner consistent with national security concerns.

710.7(d). In response to a comment, this regulation in the final rule has been revised to specify that all DOE decision-makers must apply the criteria in this fashion. It has been renumbered as § 710.7(c) in the final rule.

Section 710.8(a) through (d). These criteria are prescribed in Executive Order 10450 and have been in use for more than 40 years. Since they must cover a wide variety of different situations, the terms by their very nature must be broad enough to provide the flexibility needed for the program. It is important to note that in some cases, national security concerns may prevent certain individuals who choose to exercise First Amendment rights from receiving DOE access authorization. This does not violate the Constitution, as one commentor suggests, since no one has a right to DOE access authorization.

710.8(e). One commentor suggested that there is no rational basis to suggest that persons who have relatives living in countries whose interests are inimical to the United States should be denied DOE access authorizations. There is an obvious rational basis for this paragraph, which focuses, among other things, on the vulnerability of an individual to coercion. Although having relatives living in those countries is a security concern, it does not necessarily constitute a bar to granting an individual access authorization. As noted above, the reference to "satellites or occupied areas" of the former Soviet Union has been deleted.

710.8(f). A number of commentors suggested that this paragraph of the regulations has been used to harass individuals who surface information that may cause embarrassment to management. Any individual who believes the personnel security process is being used to harass him or her for whistleblowing activities has adequate legal remedies under DOE regulations, 10 CFR Part 708 (contractor employees), or the Whistleblower Protection Act of 1989 (federal employees).

710.8(h). Two commentors suggest that only board certified psychiatrists should be able to provide diagnosis of mental conditions and illnesses in these proceedings. The categories of professionals qualified to render diagnoses of mental conditions has been expanded from board certified psychiatrists in conformance with the National Industrial Security Program (NISP) initiative described in Executive Order 12829, 58 FR 3479 (January 6, 1993). The DOE decisionmakers in the administrative review process will give appropriate weight to this type of evidence, depending on the knowledge, training and experience of the person rendering the opinion, and the reasons given by that person in support of the opinion.

710.8(i). One commentor is concerned that a person not be punished for asserting a Fifth Amendment privilege during any phase of the DOE personnel security process. A refusal to answer a question on Fifth Amendment grounds during the process may prevent the processing of a request for access authorization. However, no one has ever been (or will be) punished for invoking the privilege in this context, since the process for determining eligibility for access authorization is not a criminal proceeding.

710.8(j) (alcohol) and (k) (drugs). Commentors have suggested that these related criteria should not include behavior that occurred more than five years in the past. Some confusion may result from the fact that while the "Questionnaire for Sensitive Positions" (Standard Form 86) only deals with conduct within the last five years, the DOE security investigation covers the last ten years of a person's life. However, once a question concerning an individual's alcohol or illegal drug use is uncovered, under these criteria it must be resolved, no matter when it occurred. Of course, the time when such use occurred could be an appropriate fact to be weighed in the decision on an individual's access authorization (see § 710.7(c)).

710.8(l). Several commentors expressed the view that the terms in this criterion were overly vague, and allow too much discretion to DOE security personnel. Another comment asserted that the word "deviant" reflects DOE's "decades-old preoccupation with homosexual conduct." All of these comments ignored the critical first sentence in criterion (l) and focused instead on the second sentence. The first sentence describes derogatory information, in general terms, as any conduct or circumstances that raise a question concerning an individual's honesty, reliability or trustworthiness, or gives reason to believe he or she may be subject to coercion or exploitation. The second sentence includes a partial list of the specific kinds of conduct or circumstances that might raise the concerns stated in the first sentence. However, since there is no general agreement or consensus as to what type of conduct constitutes "deviant sexual activity," we have deleted that term from the final rule. In addition, since "child abuse" and "domestic violence" are subsumed within "criminal activity," we have likewise deleted these terms from the final rule. Finally, it is not possible to list every conceivable kind of conduct that would constitute derogatory information under this criterion, as urged by some commentors. As noted elsewhere in this preamble, some degree of flexibility in the definitions used is necessary to enable the DOE to administer its personnel security program.

Section 710.21(a). Several commentors suggested that the regulations should continue to require the Manager to review the file and the rationale behind the local Director of Security's recommendation for suspension. In response to these comments, this section, renumbered as 710.10, has been rewritten to keep the authority to suspend an individual's access authorization with the Manager.

710.21(c). Several commentors focused on the use of the phrase "in general terms" to describe the notice given by the Manager to the individual upon suspension of the individual's access authorization. DOE added the requirement of a written notice to the individual at this stage in the process in response to a recommendation by the General Accounting Office. For clarity, the language of that sentence has been revised to read as follows: "The individual shall be advised in writing, in general terms, of the reason(s) why the suspension has been effected." DOE's agreement to provide a general description with the suspension action represented a careful balancing of (i) the individual's natural desire for at least some immediate information about the basis for a suspension, and (ii) DOE's need to protect national security interests by effecting the suspension without delay. The moment of suspension is not the time in the process when the individual is notified in detail of the nature of the derogatory information. That occurs in the administrative review process, in which there are much more extensive notice requirements. Those requirements are described in the next part of the regulations entitled "Administrative Review." At that stage, the individual is given notice about the derogatory information "which shall be as comprehensive and detailed as the national interest permits."

Section 710.22(b)(5). A number of commentors misread this paragraph in the proposed regulations to suggest that an individual was being given an option not to respond to a notification letter. Some commentors urged DOE to require specific denial of charges, and deem failure to specifically deny a charge an admission. Others urged that this clause be removed from the regulations and instead stated in the notification letter. This paragraph was drafted to cover the real world situation where the DOE does not receive a written response to the charges contained in a notification letter; it is not meant to convey an option not to respond. In order to protect the individual, a request for a hearing, standing alone, was considered a general denial of the charges in the notification letter. On balance, DOE has decided to continue to urge individuals

regulations should continue to require the Manager to review the file and the rationale behind the local Director of Security's recommendation for suspension. In response to these comments, this section, renumbered as 710.10, has been rewritten to keep the authority to suspend an individual's access authorization with the Manager.

710.21(c). Several commentors focused on the use of the phrase "in general terms" to describe the notice given by the Manager to the individual upon suspension of the individual's access authorization. DOE added the requirement of a written notice to the individual at this stage in the process in response to a recommendation by the General Accounting Office. For clarity, the language of that sentence has been revised to read as follows: "The individual shall be advised in writing, in general terms, of the reason(s) why the suspension has been effected." DOE's agreement to provide a general description with the suspension action represented a careful balancing of (i) the individual's natural desire for at least some immediate information about the basis for a suspension, and (ii) DOE's need to protect national security interests by effecting the suspension without delay. The moment of suspension is not the time in the process when the individual is notified in detail of the nature of the derogatory information. That occurs in the administrative review process, in which there are much more extensive notice requirements. Those requirements are described in the next part of the regulations entitled "Administrative Review." At that stage, the individual is given notice about the derogatory information "which shall be as comprehensive and detailed as the national interest permits."

Section 710.22(b)(5). A number of commentors misread this paragraph in the proposed regulations to suggest that an individual was being given an option not to respond to a notification letter. Some commentors urged DOE to require specific denial of charges, and deem failure to specifically deny a charge an admission. Others urged that this clause be removed from the regulations and instead stated in the notification letter. This paragraph was drafted to cover the real world situation where the DOE does not receive a written response to the charges contained in a notification letter; it is not meant to convey an option not to respond. In order to protect the individual, a request for a hearing, standing alone, was considered a general denial of the charges in the notification letter. On balance, DOE has decided to continue to urge individuals to answer charges in the notification letter, but to retain the provision that a request for a hearing constitutes a general denial.

710.22(b)(6). A number of commentors questioned who would define "convenience" for purposes of scheduling hearings. The OHA Hearing Officers will make that determination on a case-by-case basis. Whenever possible, DOE intends to hold hearings within 90 calendar days of the date on which the individual's request for a hearing is received by the OHA. Due consideration will be given to scheduling concerns of both DOE Counsel and the individual involved.

710.22(b)(7). This provision states that the individual, rather than DOE, must pay for his own counsel if he wishes to be represented at an administrative review hearing. The Equal Access to Justice Act, 28 U.S.C. 2412, does not (as claimed by one commentor) apply to hearings held under Part 710. That Act provides that "[a]n agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust." "Adversary adjudication," in turn, is defined as an adjudication under section 554 of the Administrative Procedure Act (APA), 5 U.S.C. 554, which provides that the formal adjudication requirements of the APA apply only to "every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing" (with certain exceptions not relevant here). Because administrative review hearings under Part 710 are not required by statute to be determined on the record after opportunity for an agency hearing, the APA, and therefore, the Equal Access to Justice Act, do not apply to Part 710 hearings. See *Ardestani* v. *I.N.S.*, 112 S. Ct. 515 (1991). Nevertheless, this provision does not bar an employer, such as a DOE contractor or another federal agency, from hiring an attorney to represent its employee at an administrative review hearing.

Section 710.25(b). Several commentors questioned whether it was necessary for the OHA Hearing Officer to join in any stipulations between DOE Counsel and counsel for the individual. DOE did not intend for the Hearing Officer to enter into stipulations with the parties and the clause that created the confusion has been deleted from the final rule.

Section 710.26(a) and (b). Commentors suggested that the phrases "in a timely manner" and "as soon as practicable" be replaced with an exact timetable for transmittal of a request for hearing to the OHA, and appointment of a Hearing Officer, respectively. The commentors have failed to understand that the language was not inserted as an opportunity for delay, but as guidance to DOE officials that these steps in the administrative process should be completed with dispatch. Since DOE intends to do both of these tasks swiftly, no purpose would be served by establishing a more precise timetable.

710.26(c). One commentor noted the deletion of the procedure in the former rules for requesting recusal of a Hearing Officer, and questioned whether such a motion would still be permitted under the revised rules. Any type of motion that could be made in normal motions practice under the Federal Rules of Civil Procedure will be permitted under the new Subpart A of Part 710.

710.26(d). One commentor suggested that the regulations do not set forth a process to obtain a subpoena and which party will pay to serve the subpoena as well as travel and per diem for the subpoenaed witness. Under the new rules, a party seeking a subpoena need only to request it from the Hearing Officer. The party requesting a subpoena pays for service of the subpoena, as well as the costs of travel and per diem for any witness he or she may call.

710.26(f). Two commentors suggested that a prehearing conference is a formality that is not required in these cases. DOE does not agree. The OHA intends for its Hearing Officers to convene a prehearing telephone conference in every case, to ensure that the hearing will proceed expeditiously, and to dispose of matters that can be more efficiently dealt with before hearings begin. This will require counsel to focus on the case in advance of the hearing date. In most cases, this conference will be brief.

Section 710.27. If classified information is involved in the hearing, it is DOE's practice to process the individual's attorney for access authorization whenever possible so that he or she can have access to the classified material.

710.27(c). One commentor questioned why hearings were presumed closed to the public and the press and suggested that a hearing should be open if either the individual or the DOE Counsel so requests. The regulation in this matter is designed to protect the privacy of the individual involved, and to ensure

decorum at the hearing. There are also space limitations in the rooms where hearings are held. Hearings could be open to a non-participating person if the individual or DOE Counsel so requests. This question will be decided by the Hearing Officer on a case-by-case basis. Of course, any portion of a hearing involving classified information will be closed.

710.27(d). One commentor pointed out that this provision means that the Hearing Officer may have to assist an individual who is not represented by counsel. This is correct. Another commentor suggested that the new role of DOE Counsel would preclude the Counsel from disclosing exculpatory information to the individual. While the DOE Counsel is representing the Department under the regulations, he or she still has a professional and ethical obligation to disclose any and all exculpatory information which is favorable to the individual. Nevertheless, to make this obligation explicit we have added language that requires DOE Counsel to present all evidence, both favorable and unfavorable, to the Hearing Officer that bears on the issues so that the Hearing Officer and the Director of OHA will have a full and complete record on which to base his or her opinion.

710.27(k). One commentor suggested that this paragraph should be deleted because the Hearing Officer should not consider any information that is not reviewable by the individual. This paragraph, which describes highly unusual circumstances, is required by and consistent with the provisions of Executive Order No. 10450. DOE cannot therefore comply with the request of that commentor.

710.27(n). One commentor questioned whether this provision would enable police records to be submitted without authenticating witnesses. The regulation is self-explanatory as written. It covers records compiled in the regular course of business or other physical evidence if furnished to the DOE by an investigative agency (such as the Federal Bureau of Investigation or the Office of Personnel Management) pursuant to its responsibilities to assist the Secretary in safeguarding Restricted Data, national security information, or special nuclear material. In any event, admission of evidence in these proceedings is the prerogative of the Hearing Officer, subject to the usual considerations of relevance and materiality. Since they are informal administrative hearings, the weight to be accorded any evidence is more important than its admissibility.

Section 710.28(e). One commentor maintained that this paragraph should state that the opinion of the Hearing Officer will be provided to the individual at the same time as it is served on the Manager. It is already clear from this provision that the OHA will serve the Hearing Officer's opinion on everyone involved in the case at the same time as it is served on the Manager.

Section 710.29. One commentor urged that the DOE Manager also be given the right to request review of a Hearing Officer's opinion. DOE will decline to adopt this suggestion for the final rule. DOE believes that the procedure in the proposed rule which gives the Office of Security Affairs the right to request review of a favorable Hearing Officer's opinion is adequate to protect national security.

Another commentor argued that the Office of Security Affairs should not be able to appeal a Hearing Officer's opinion to the OHA Director and (through the SA Director) make the final determination regarding an individual's access authorization. The authority to make the final determination on a DOE access authorization has historically been delegated by the Secretary of Energy (and before 1977, by her predecessors in the Energy Research and Development Administration, the Atomic Energy Commission and the Manhattan Engineer District) to the SA Director (and his predecessors in the prior agencies responsible for the nuclear weapons program). In those cases where the SA Director intends to take final action which disagrees with the opinion of the OHA Director, a request will be made to the Office of General Counsel for a legal sufficiency review, prior to a final decision.

710.29(c). There were two comments on this paragraph. The first one said that limiting language should be added to make clear that the "investigation" authorized by the OHA Director at the review stage is not for the purpose of providing a de novo hearing on factual matters that could have been developed during the initial hearing. DOE believes there is no need to specify limits which would unnecessarily confine the flexibility of the process to deal with a wide variety of situations. In some instances, it may be more efficient for the OHA Director to develop the record on minor factual matters; in other instances, it may be better to remand a case to the OHA Hearing Officer for supplementing the record on matters of greater complexity. The second comment observed that there was no reason given for going from three people (the Personnel Security Review Examiners or "PSREs") reviewing the initial opinion to review by the OHA Director. As noted above, in view of the requirement that DOE bring the Hearing Officer and review functions in-house, the Department believes this is the best way to accomplish that goal.

710.30. Some commentors urged DOE to define the term "new evidence." As with many other phrases in Part 710 that are stated in general terms, DOE believes that a more specific definition of this phrase would rob the administrative process of the flexibility needed to deal with a wide variety of different types of individual cases. On our own, we have added a sentence requiring DOE Counsel to notify the individual of any new evidence submitted by DOE.

IV. Procedural Requirements

A. Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's regulations do not affect any traditional State function. There are therefore no substantial direct effects requiring evaluation or assessment under Executive Order 12612.

C. Regulatory Flexibility Analysis

These regulations were reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of a regulatory flexibility analysis for any regulations that will have a significant economic impact on a substantial number of small entities. DOE finds that sections 603 and 604 of that Act do not apply to this rule because it will not have a significant economic impact on a substantial number of small entities. Thus the preparation of a regulatory flexibility analysis is not warranted.

D. NEPA Review

There is no impact on the human environment under the regulatory amendments being issued today. Accordingly, DOE has determined that this is not a major Federal action with significant impact upon the quality of the human environment and, therefore, preparation of an environmental assessment or an environmental impact statement is not required under the National Environmental Policy Act.

E. Paperwork Reduction Act

There will be no additional paperwork burden imposed by the amendments issued today. Therefore, the goals of the Paperwork Reduction Act are not diminished by the amendments.

F. Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The DOE certifies that today's final rule meets the requirements of sections 2 (a) and (b)(2) of Executive Order 12778.

V. Conclusion

The DOE has scheduled two stakeholder meetings to discuss procedural and logistical issues that may arise under these final rules. They will be held at Oak Ridge, Tennessee on July 12, 1994, and at Albuquerque, New Mexico on July 19, 1994. Notice of the specific time and place of each meeting will be published in the Federal Register. Staff members from the Office of Safeguards and Security and the Office of Hearings and Appeals will attend. It is expected that potential DOE Counsels from DOE field facilities will also attend these meetings. These meetings will be open to the public, and the DOE encourages private attorneys and others who may represent individuals in the administrative review process to attend.

D. NEPA Review

There is no impact on the human environment under the regulatory amendments being issued today. Accordingly, DOE has determined that this is not a major Federal action with significant impact upon the quality of the human environment and, therefore, preparation of an environmental assessment or an environmental impact statement is not required under the National Environmental Policy Act.

E. Paperwork Reduction Act

There will be no additional paperwork burden imposed by the amendments issued today. Therefore, the goals of the Paperwork Reduction Act are not diminished by the amendments.

F. Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The DOE certifies that today's final rule meets the requirements of sections 2 (a) and (b)(2) of Executive Order 12778.

V. Conclusion

The DOE has scheduled two stakeholder meetings to discuss procedural and logistical issues that may arise under these final rules. They will be held at Oak Ridge, Tennessee on July 12, 1994, and at Albuquerque, New Mexico on July 19, 1994. Notice of the specific time and place of each meeting will be published in the **Federal Register**. Staff members from the Office of Safeguards and Security and the Office of Hearings and Appeals will attend. It is expected that potential DOE Counsels from DOE field facilities will also attend these meetings. These meetings will be open to the public, and the DOE encourages private attorneys and others who may represent individuals in the administrative review process to attend.

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials.

Issued in Washington, DC, on July 1, 1994.

John G. Keliher,

Director, Office of Nonproliferation and National Security.

For the reasons set forth in the preamble, part 710 of title 10 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for part 710 is revised to read as follows:

Authority: Atomic Energy Act of 1954, sec. 141, 68 Stat. 940, as amended (42 U.S.C. 2161), Atomic Energy Act of 1954, sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); Atomic Energy Act of 1954, sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR, Chap. IV; E.O. 12356, 3 CFR, 1982 comp., p. 166.

§ 710 Heading revised

2. The part heading is revised to read as set forth above.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

3. Subpart A of part 710 is revised to read as set forth below:

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

General Provisions

Sec.
710.1 Purpose.
710.2 Scope.
710.3 Reference.
710.4 Policy.
710.5 Definitions.

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

710.6 Cooperation by the individual.
710.7 Application of the criteria.
710.8 Criteria.
710.9 Action on derogatory information.
710.10 Suspension of access authorization.

Administrative Review

710.20 Purpose of administrative review.
710.21 Notice to individual.
710.22 Additional information.
710.23 Extensions of time by the Operations Office Manager.
710.24 Appointment of DOE Counsel.
710.25 Appointment of Hearing Officer; prehearing conference; commencement of hearings.
710.26 Conduct of hearings.
710.27 Opinion of the Hearing Officer.
710.28 Action on the Hearing Officer's opinion.
710.29 New evidence.
710.30 Action by the Secretary.
710.31 Reconsideration of access eligibility.

Miscellaneous

710.32 Terminations.
710.33 Attorney representation.
710.34 Time frames.

Appendix A to Subpart A of Part 710—Selected Provisions of the Atomic Energy Act of 1954, as Amended, Sec. 141 (42 U.S.C. 2161), Sec. 145 (42 U.S.C. 2165), Sec. 161 (42 U.S.C. 2201)

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

General Provisions

§ 710.1 Purpose.

(a) This subpart establishes the criteria, procedures, and methods for resolving questions concerning the eligibility of individuals who are employed by, or applicants for employment with, Department of Energy (DOE) contractors, agents, and access permittees, individuals who are DOE employees or applicants for DOE employment, and other persons designated by the Secretary of Energy, for access to Restricted Data or special nuclear material, pursuant to the Atomic Energy Act of 1954, as amended, or for access to national security information.

(b) This subpart is published to implement Executive Order 12356, 47 FR 14874 (April 2, 1982), Executive Order 10865, 25 FR 1583 (February 24, 1960), and Executive Order 10450, 18 FR 2489 (April 27, 1954), all as amended.

§ 710.2 Scope.

The criteria and procedures outlined in this subpart shall be used in those cases in which there are questions of eligibility for DOE access authorization involving:

(a) Employees (including consultants) of, and applicants for employment with, contractors and agents of the DOE;

(b) Access permittees of the DOE and their employees (including consultants) and applicants for employment;

(c) Employees (including consultants) of, and applicants for employment with, the DOE; and

(d) Other persons designated by the Secretary of Energy.

§ 710.3 Reference.

The pertinent sections of the Atomic Energy Act of 1954, as amended, relative to this regulation are set forth in Appendix A to this Subpart.

§ 710.4 Policy.

(a) It is the policy of DOE to provide for the security of its programs in a manner consistent with traditional American concepts of justice and fairness. To this end, the Secretary has established criteria for determining eligibility for access authorization and procedures that will afford those individuals described in § 710.2 the opportunity for administrative review of questions concerning their eligibility for access authorization.

(b) It is also the policy of DOE that none of the procedures established by DOE for determining eligibility for access authorization shall be used for an improper purpose, including any attempt to coerce, restrain, threaten, intimidate, or retaliate against individuals for exercising their rights under any statute, regulation or DOE directive. Any DOE officer or employee violating, or causing the violation of this policy, shall be subject to appropriate disciplinary action.

(c) In instances where the individual has been convicted of a crime punishable by imprisonment of six (6) months or longer, or the individual is currently awaiting or serving a form of preprosecution probation, or suspended or deferred sentencing, court ordered probation, or parole in conjunction with an arrest or criminal charges initiated against the individual for a crime that is punishable by imprisonment of six (6) months or longer, the DOE may suspend processing an application for access authorization until such time as the criminal prosecution, suspended sentence, deferred sentencing, probation, or parole has been completed.

(d) DOE may suspend processing an application for access authorization if sufficient information about the individual's background cannot be obtained to meet the investigative scope and extent requirements for the access authorization requested.

(e) DOE may suspend processing an application for access authorization until such time as a question regarding an individual's national allegiance is resolved. For example, if an individual is exercising rights of citizenship conferred by a country other than the United States, DOE will be concerned with whether granting access authorization to that individual constitutes an unacceptable national security risk.

(f) DOE may suspend processing an application for access authorization whenever an individual fails to fulfill the responsibilities described in § 710.6.

§ 710.5 Definitions.

(a) As used in this subpart:

Access authorization means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.

DOE Counsel means a DOE attorney assigned to represent DOE in proceedings under this subpart. DOE Counsel shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

Hearing Officer means a DOE attorney or senior management official appointed by the Director, Office of Hearings and Appeals, pursuant to § 710.25. A Hearing Officer shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

Local Director of Security means the Operations Office or Naval Reactors Office Division Director of Security, or other similar title; for Washington, DC area cases, the Director, Headquarters Operations Division; for the Oak Ridge Operations Office, the Director of Personnel; for the Albuquerque Operations Office, the Director of the Personnel Security Division; for the Savannah River Operations Office, the Director of Internal Security Division; and any person designated in writing to serve in one of the aforementioned positions in an "acting" capacity.

National Security Information means any information that has been determined, pursuant to Executive Order No. 12356 or any predecessor Order, to require protection against unauthorized disclosure and that is so designated.

Operations Office Manager or *Manager* means the Manager of a DOE Operations Office, the Manager of the Rocky Flats Office, the Manager of the Pittsburgh Naval Reactors Office, the Manager of the Schenectady Naval Reactors Office, and, for Washington, DC area cases, the Director, Office of Safeguards and Security.

Secretary means the Secretary of Energy, as provided by section 201 of the Department of Energy Organization Act.

Special nuclear material means plutonium, uranium enriched in the isotope 233, or in the isotope 235, and any other material which, pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or any material artificially enriched by any of the foregoing, not including source material.

(b) Throughout this subpart the use of the male gender shall include the female gender and vice versa.

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

§ 710.6 Cooperation by the individual.

(a) It is the responsibility of the individual to cooperate by providing full, frank, and truthful answers to DOE's relevant and material questions, and when requested, to furnish or authorize others to furnish information that the DOE deems pertinent to the individual's eligibility for DOE access authorization. This obligation to cooperate applies when completing security forms, during the course of a personnel security background investigation or reinvestigation, and at any stage of DOE's processing of the individual's access authorization, including but not limited to, personnel security interviews, DOE-sponsored mental evaluations, and other authorized DOE investigative activities under this subpart. The individual may elect not to cooperate; however, such refusal may prevent DOE from reaching an affirmative finding required for granting or continuing access authorization. In this event, any access authorization then in effect may be terminated, or, for applicants, further processing may be suspended.

(b) If the individual believes that the provisions of paragraph (a) of this section have been inappropriately applied in his case, he may file a written appeal of the action with the Director, Office of Safeguards and Security, DOE Headquarters, within 30 calendar days of the date he was notified of the action.

(c) Upon receipt of the written appeal, the Director, Office of Safeguards and Security, shall conduct an inquiry as to the circumstances involved in the action and shall, within 30 calendar days of receipt of the written appeal, notify the individual, in writing, as to whether the action to terminate or suspend processing of access authorization was appropriate. If the Director, Office of Safeguards and Security, determines that the action was inappropriate, he shall direct that the individual continue to be processed for access authorization, or that access authorization for the individual be reinstated.

§ 710.7 Application of the criteria.

(a) The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.

(b) To assist in making these determinations, on the basis of all the information in a particular case, there are set forth in this subpart criteria consisting of a number of specific types of derogatory information. These criteria are not exhaustive but contain the principal types of derogatory information which create a question as to the individual's eligibility for access authorization. DOE is not limited to these criteria or precluded from exercising its judgment that information or facts in a case under its cognizance are derogatory although at variance with, or outside the scope of, the stated categories. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c) In resolving a question concerning an individual's eligibility for access authorization, all DOE officials involved in the decision-making process shall consider: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

§ 710.8 Criteria.

Derogatory information shall include, but is not limited to, information that the individual has:

(a) Committed, prepared or attempted to commit, or aided, abetted or conspired with another to commit or attempt to commit any act of sabotage, espionage, treason, terrorism, or sedition.

(b) Knowingly established or continued a sympathetic association with a saboteur, spy, terrorist, traitor, seditionist, anarchist, or revolutionist, espionage agent, or representative of a foreign nation whose interests are inimical to the interests of the United States, its territories or possessions, or with any person advocating the use of force or violence to overthrow the Government of the United States or any state or subdivision thereof by unconstitutional means.

authorization would not endanger the common defense and security and would be clearly consistent with the national interest.

(b) To assist in making these determinations, on the basis of all the information in a particular case, there are set forth in this subpart criteria consisting of a number of specific types of derogatory information. These criteria are not exhaustive but contain the principal types of derogatory information which create a question as to the individual's eligibility for access authorization. DOE is not limited to these criteria or precluded from exercising its judgment that information or facts in a case under its cognizance are derogatory although at variance with, or outside the scope of, the stated categories. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c) In resolving a question concerning an individual's eligibility for access authorization, all DOE officials involved in the decision-making process shall consider: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

§ 710.8 Criteria.

Derogatory information shall include, but is not limited to, information that the individual has:

(a) Committed, prepared or attempted to commit, or aided, abetted or conspired with another to commit or attempt to commit any act of sabotage, espionage, treason, terrorism, or sedition.

(b) Knowingly established or continued a sympathetic association with a saboteur, spy, terrorist, traitor, seditionist, anarchist, or revolutionist, espionage agent, or representative of a foreign nation whose interests are inimical to the interests of the United States, its territories or possessions, or with any person advocating the use of force or violence to overthrow the Government of the United States or any state or subdivision thereof by unconstitutional means.

(c) Knowingly held membership in or had a knowing affiliation with, or has knowingly taken action which evidences a sympathetic association with the intent of furthering the aims of, or adhering to, and actively participating in, any foreign or domestic organization, association, movement, group, or combination of persons which advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or Laws of the United States or any state or subdivision thereof by unlawful means.

(d) Publicly or privately advocated, or participated in the activities of a group or organization, which has as its goal, revolution by force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means with the knowledge that it will further those goals.

(e) Parent(s), brother(s), sister(s), spouse, or offspring residing in a nation whose interests may be inimical to the interests of the United States.

(f) Deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31.

(g) Failed to protect classified matter, or safeguard special nuclear material; or violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security; or disclosed classified information to a person unauthorized to receive such information.

(h) An illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability.

(i) Refused to testify before a Congressional Committee, Federal or state court, or Federal administrative body, regarding charges relevant to eligibility for DOE, or another Federal agency's access authorization.

(j) Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

(k) Trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by law.

(l) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.

§ 710.9 Action on derogatory information.

(a) When the reports of investigation of an individual or other reliable information reasonably tend to establish the validity and significance of one or more of the items in the criteria, or of other reliable information or facts which are derogatory, although outside the scope of the stated categories, such information shall be regarded as substantially derogatory and create a question as to the individual's eligibility for access authorization. The Local Director of Security will authorize the conduct of an interview with the individual, or request other appropriate actions, and, on the basis of such interview and/or actions, may authorize the granting or continuation of access authorization. If the question as to the individual's eligibility is not resolved through interview, and/or other actions, which may include a DOE-sponsored mental evaluation, the Local Director of Security will submit the matter to the Manager. If the Manager agrees that unresolved derogatory information is present, and that appropriate attempts to resolve such derogatory information have failed, the Manager shall forward the individual's case to the Director, Office of Safeguards and Security, with a request for authority to conduct an administrative review proceeding. If the Manager believes that the derogatory information has been favorably

resolved, the Manager shall direct that the individual be granted access authorization. A decision in the matter shall be rendered by the Manager within 10 calendar days after receipt. Following the decision of the Manager, the Director, Office of Safeguards and Security, may authorize:

(1) The granting of access authorization,

(2) The institution of administrative review procedures set forth in §§ 710.20 through 710.31, or

(3) Such other action as the Director deems appropriate.

(b) The Director, Office of Safeguards and Security, must authorize one of these options within 30 calendar days of the receipt of the case from the Manager, unless an extension is granted by the Director, Office of Security Affairs.

§ 710.10 Suspension of access authorization.

(a) In those cases where information is received which raises a question concerning the continued eligibility of an individual for DOE access authorization, the Local Director of Security may authorize action(s) to resolve the question pursuant to § 710.9. Such action(s) shall be taken on an expedited basis. If the question as to the individual's continued eligibility for access authorization is not resolved in favor of the individual, the Local Director of Security will submit the matter to the Manager with a recommendation that the individual's DOE access authorization be suspended pending the final determination resulting from the operation of the procedures provided in this subpart.

(b) Within two working days of receipt of the recommendation from the Local Director of Security to suspend the individual's DOE access authorization, the Manager shall review the matter and authorize continuation or suspension of access authorization. The access authorization of an individual shall not be suspended except by the direction of the Manager. This authority to suspend access authorization may not be delegated but may be exercised by a person who has been designated in writing as Acting Manager.

(c) Upon suspension of an individual's access authorization pursuant to paragraph (b) of this section, the individual, the individual's employer, any other DOE Operations Office having an access authorization interest in the individual, and, if known, any other government agency where the individual holds an access authorization, security clearance, or access approval, or to which the DOE has certified the individual's DOE access authorization, shall be notified immediately. The Central Personnel Clearance Index shall also be updated. Notification to the individual shall be made in writing and shall reflect, in general terms, the reason(s) why the suspension has been effected. Pending final determination of the individual's eligibility for access authorization from the operation of the procedures provided in this subpart, the individual shall not be afforded access to classified matter, special nuclear material, or unescorted access to security areas that require the individual to possess a DOE access authorization.

(d) Following the decision to suspend an individual's DOE access authorization, the Manager shall immediately notify the Director, Office of Safeguards and Security, of the action and the reason(s) therefore. In addition, the Manager, within 10 calendar days of the date of suspension, shall submit a request for authority to conduct an administrative review proceeding, accompanied by an explanation of its basis and a duplicate Personnel Security File, to the Director, Office of Safeguards and Security.

Administrative Review

§ 710.20 Purpose of administrative review.

These procedures establish methods for the conduct of the administrative review of questions concerning an individual's eligibility for access authorization when it is determined that such questions cannot be favorably resolved by interview or other action.

§ 710.21 Notice to individual.

(a) When the Director, Office of Safeguards and Security, has authorized the institution of administrative review procedures with respect to an individual's questioned eligibility for access authorization, in accordance with § 710.9, the Manager shall direct the preparation of a notification letter, approved by the local Office of Chief Counsel, or the Office of General Counsel for Headquarters cases, for delivery to the individual within 30 calendar days of the receipt of such directive from the Office of Safeguards and Security, unless an extension has been authorized by the Director, Office of Safeguards and Security. Where practicable, such letter shall be presented to the individual in person.

(b) The letter shall state:

(1) That reliable information in the possession of DOE has created a substantial doubt concerning the individual's eligibility for access authorization.

(2) The information which creates a substantial doubt regarding the individual's eligibility for access authorization (which shall be as comprehensive and detailed as the national interest permits).

(3) That the individual has the option to have the substantial doubt regarding eligibility for access authorization resolved in one of two ways:

(i) By the Manager, without a hearing, on the basis of the existing information in the case;

(ii) By personal appearance before a Hearing Officer (a "hearing").

(4) That, if the individual desires a hearing, the individual must, within 20 calendar days of the date of receipt of the notification letter, indicate this in writing to the Manager from whom the letter was received.

(5) That the individual may also file with the Manager the individual's written answer to the reported information which raises the question of the individual's eligibility for access authorization, and that, if the individual requests a hearing without filing a written answer, the request shall be deemed a general denial of all of the reported information.

(6) That, if the individual so requests, a hearing will be scheduled before a Hearing Officer, with due regard for the convenience and necessity of the parties or their representatives, for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization;

(7) That, if a hearing is requested, the individual will have the right to appear personally before a Hearing Officer; to present evidence in his own behalf, through witnesses, or by documents, or both; and, subject to the limitations set forth in § 710.26(g), to be present during the entire hearing and be accompanied, represented, and advised by counsel or representative of the individual's choosing and at the individual's own expense;

(8) That the individual's failure to file a timely written request for a hearing before a Hearing Officer in accordance with paragraph (b)(4) of this section, unless time deadlines are extended for good cause, will be considered as a relinquishment by the individual of the right to a hearing provided in this subpart, and that in such event a final decision will be made by the Manager; and

(9) That in any proceedings under this subpart DOE Counsel will be participating on behalf of and representing the Department of Energy, and that any statements made by the individual to DOE Counsel may be used in subsequent proceedings.

§ 710.22 Additional information.

The notification letter referenced in § 710.21 shall also:

(a) Describe the individual's access authorization status until further notice;

(b) Advise the individual of the right to counsel at the individual's own expense at each and every stage of the proceeding;

(c) Provide the name and telephone number of the designated DOE official to contact for any further information desired, including an explanation of the individual's rights under the Privacy Act of 1974; and

(d) Include a copy of 10 CFR Part 710, Subpart A.

§ 710.23 Extensions of time by the Operations Office Manager.

The Manager may, for good cause shown, at the written request of the individual, extend the time for filing a written request for a hearing, and/or the time for filing a written answer to the matters contained in the notification letter. The Manager shall notify the Director, Office of Safeguards and Security, when such extensions have been approved.

§ 710.24 Appointment of DOE Counsel.

(a) Upon receipt from the individual of a written request for a hearing, an attorney shall forthwith be assigned by the Manager to act as DOE Counsel.

(b) DOE Counsel is authorized to consult directly with the individual if he is not represented by counsel, or with the individual's counsel or representative if so represented, to clarify issues and reach stipulations with respect to testimony and contents of documents and other physical evidence. Such stipulations shall be binding upon the individual and the DOE Counsel for the purposes of this subpart.

§ 710.25 Appointment of Hearing Officer; prehearing conference; commencement of hearings.

(a) Upon receipt of a request for a hearing, the Manager shall in a timely manner transmit that request to the Office of Hearings and Appeals, and identify the DOE Counsel. The Manager shall at the same time transmit a copy of the notification letter and the individual's response to the Office of Hearings and Appeals.

(b) Upon receipt of the hearing request from the Manager, the Director, Office of Hearings and Appeals, shall appoint, as soon as practicable, a Hearing Officer.

(c) Immediately upon appointment of the Hearing Officer, the Office of Hearings and Appeals shall notify the

§ 710.22 Additional information.

The notification letter referenced in § 710.21 shall also:

(a) Describe the individual's access authorization status until further notice;

(b) Advise the individual of the right to counsel at the individual's own expense at each and every stage of the proceeding;

(c) Provide the name and telephone number of the designated DOE official to contact for any further information desired, including an explanation of the individual's rights under the Privacy Act of 1974; and

(d) Include a copy of 10 CFR Part 710, Subpart A.

§ 710.23 Extensions of time by the Operations Office Manager.

The Manager may, for good cause shown, at the written request of the individual, extend the time for filing a written request for a hearing, and/or the time for filing a written answer to the matters contained in the notification letter. The Manager shall notify the Director, Office of Safeguards and Security, when such extensions have been approved.

§ 710.24 Appointment of DOE Counsel.

(a) Upon receipt from the individual of a written request for a hearing, an attorney shall forthwith be assigned by the Manager to act as DOE Counsel.

(b) DOE Counsel is authorized to consult directly with the individual if he is not represented by counsel, or with the individual's counsel or representative if so represented, to clarify issues and reach stipulations with respect to testimony and contents of documents and other physical evidence. Such stipulations shall be binding upon the individual and the DOE Counsel for the purposes of this subpart.

§ 710.25 Appointment of Hearing Officer; prehearing conference; commencement of hearings.

(a) Upon receipt of a request for a hearing, the Manager shall in a timely manner transmit that request to the Office of Hearings and Appeals, and identify the DOE Counsel. The Manager shall at the same time transmit a copy of the notification letter and the individual's response to the Office of Hearings and Appeals.

(b) Upon receipt of the hearing request from the Manager, the Director, Office of Hearings and Appeals, shall appoint, as soon as practicable, a Hearing Officer.

(c) Immediately upon appointment of the Hearing Officer, the Office of Hearings and Appeals shall notify the individual and DOE Counsel of the Hearing Officer's identity and the address to which all further correspondence should be sent.

(d) The Hearing Officer shall have all powers necessary to regulate the conduct of proceedings under this subpart, including, but not limited to, establishing a list of persons to receive service of papers, issuing subpoenas for witnesses to attend the hearing or for the production of specific documents or other physical evidence, administering oaths and affirmations, ruling upon motions, receiving evidence, regulating the course of the hearing, disposing of procedural requests or similar matters, and taking other actions consistent with the regulations in this Subpart. Requests for subpoenas shall be liberally granted except where the Hearing Officer finds that the grant of subpoenas would clearly result in evidence or testimony that is repetitious, incompetent, irrelevant, or immaterial to the issues in the case. The Hearing Officer may take sworn testimony, sequester witnesses, and control the dissemination or reproduction of any record or testimony taken pursuant to this part, including correspondence, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

(e) The Hearing Officer will determine the day, time, and place for the hearing. Hearings will normally be held at or near the appropriate DOE facility, unless the Hearing Officer determines that another location would be more appropriate. Normally the location for the hearing will be selected for the convenience of all participants. In the event the individual fails to appear at the time and place specified, the record in the case shall be closed and returned to the Manager, who will then make a final determination regarding the eligibility of the individual for DOE access authorization.

(f) At least 7 calendar days prior to the date scheduled for the hearing, the Hearing Officer will convene a prehearing conference for the purpose of discussing stipulations and exhibits, identifying witnesses, and disposing of other appropriate matters. The conference will usually be conducted by telephone.

(g) Hearings shall commence within 90 calendar days from the date the individual's request for hearing is received by the Office of Hearings and Appeals. Any extension of the hearing date past 90 calendar days from the date the request for hearing is received by the Office of Hearings and Appeals shall be approved by the Director, Office of Hearings and Appeals.

§ 710.26 Conduct of Hearings.

(a) In all hearings conducted under this subpart, the individual shall have the right to be represented by a person of his own choosing. The individual is responsible for producing witnesses in his own behalf, including requesting the issuance of subpoenas, if necessary, or presenting other proof before the Hearing Officer to support his defense to the allegations contained in the notification letter. With the exception of procedural or scheduling matters, the Hearing Officer is prohibited from initiating or otherwise engaging in ex parte discussions about the case during the pendency of proceedings under this part.

(b) Unless the Hearing Officer finds good cause for granting a waiver of this paragraph or granting an extension of time, in the event that the individual unduly delays the hearing, such as by failure to meet deadlines set by the Hearing Officer, the record shall be closed, and a final decision shall be made by the Manager on the basis of the record in the case.

(c) Hearings shall be open only to DOE Counsel, duly authorized representatives of the staff of DOE, the individual and his counsel or other representatives, and such other persons as may be authorized by the Hearing Officer. Unless otherwise ordered by the Hearing Officer, witnesses shall testify in the presence of the individual but not in the presence of other witnesses.

(d) DOE Counsel shall assist the Hearing Officer in establishing a complete administrative hearing record in the proceeding and bringing out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Hearing Officer. The individual shall be afforded the opportunity of presenting evidence, including testimony by the individual in the individual's own behalf. The proponent of a witness shall conduct the direct examination of that witness. All witnesses shall be subject to cross-examination, if possible. Whenever reasonably possible, testimony shall be given in person.

(e) The Hearing Officer may ask the witnesses any questions which the Hearing Officer deems appropriate to assure the fullest possible disclosure of relevant and material facts.

(f) During the course of the hearing, the Hearing Officer shall rule on all questions presented to the Hearing Officer for the Hearing Officer's determination.

(g) In the event it appears during the course of the hearing that Restricted Data or national security information may be disclosed, it shall be the duty of the Hearing Officer to assure that disclosure is not made to persons who are not authorized to receive it.

(h) Formal rules of evidence shall not apply, but the Federal Rules of Evidence may be used as a guide for procedures and principles designed to assure production of the most probative evidence available. The Hearing Officer shall admit into evidence any matters, either oral or written, which are material, relevant, and competent in determining issues involved, including the testimony of responsible persons concerning the integrity of the individual. In making such determinations, the utmost latitude shall be permitted with respect to relevancy, materiality, and competency. The Hearing Officer may also exclude evidence which is incompetent, immaterial, irrelevant, or unduly repetitious. Every reasonable effort shall be made to obtain the best evidence available. Subject to §§ 710.26(l), 710.26(m), 710.(n), 710.26(o), hearsay evidence may in the discretion of the Hearing Officer and for good cause shown be admitted without strict adherence to technical rules of admissibility and shall be accorded such weight as the circumstances warrant.

(i) Testimony of the individual and witnesses shall be given under oath or affirmation. Attention of the individual and each witness shall be directed to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(j) The Hearing Officer shall endeavor to obtain all the facts that are reasonably available in order to arrive at findings. If, prior to or during the proceedings, in the opinion of the Hearing Officer, the allegations in the notification letter are not sufficient to cover all matters into which inquiry should be directed, the Hearing Officer shall recommend to the Operations Office Manager concerned that, in order to give more adequate notice to the individual, the notification letter should be amended. Any amendment shall be made with the concurrence of the local Office of Chief Counsel or the Office of General Counsel in Headquarters cases. If, in the opinion of the Hearing Officer, the circumstances of such amendment may involve undue hardships to the individual because of limited time to answer the new allegations in the notification letter, an appropriate adjournment shall be granted upon the request of the individual.

(k) A written or oral statement of a person relating to the characterization in the notification letter of any organization or person other than the individual may be received and considered by the Hearing Officer without affording the individual an opportunity to cross-examine the person making the statement on matters relating to the characterization of such organization or person, provided the individual is given notice that it has been received and may be considered by the Hearing Officer, and is informed of its contents provided such is not prohibited by paragraph (g) of this section.

(l) Any oral or written statement adverse to the individual relating to a controverted issue may be received and considered by the Hearing Officer without affording an opportunity for cross-examination in either of the following circumstances:

(1) The head of the agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of the informant's identity would be substantially harmful to the national interest;

(2) The Secretary or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency as to the reliability of the person and the accuracy of the statement concerned, that:

(i) The statement concerned appears to be reliable and material; and

(ii) Failure of the Hearing Officer to receive and consider such statement would, in view of the access sought to Restricted Data, national security information, or special nuclear material, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify

(A) Due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the individual, or

(B) Due to some other specified cause determined by the head of the agency to be good and sufficient.

(m) Whenever procedures under paragraph (l) of this section are used:

(1) The individual shall be given a summary or description of the information which shall be as comprehensive and detailed as the national interest permits, and

(2) Appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such person(s).

(n) Records compiled in the regular course of business, or other physical evidence other than investigative reports obtained by DOE, may be received and considered subject to rebuttal without authenticating witnesses provided that such information has been furnished to DOE by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary to safeguard Restricted Data, national security information, or special nuclear material.

(o) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the individual, may be received and considered provided that:

(1) The Secretary or his special designee for that particular purpose has made a preliminary determination that such physical evidence appears to be material;

(2) The Secretary or his special designee for that particular purpose has made a determination that failure to receive and consider such physical evidence would, in view of the access sought to Restricted Data, national security information, or special nuclear material sought, be substantially harmful to the national security; and

(3) To the extent that national security permits, a summary or description of such physical evidence is made available to the individual. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency shall be considered.

(p) The Hearing Officer may request the Local Director of Security to arrange for additional investigation on any points which are material to the deliberations of the Hearing Officer and which the Hearing Officer believes need further investigation or clarification. In this event, the Hearing Officer shall set forth in writing those issues upon which more evidence is requested, identifying where possible persons or sources from which the evidence should be sought. The Local Director of Security shall make every effort through appropriate sources to obtain additional information upon the matters indicated by the Hearing Officer.

(q) A written transcript of the entire proceedings shall be made and, except for portions containing Restricted Data or national security information, a copy of such transcript shall be furnished the individual without cost.

(r) Whenever information is made a part of the record under the exceptions

authorized by paragraphs (l) or (o) of this section, the record shall contain certificates evidencing that the determinations required therein have been made.

§ 710.27 Opinion of the Hearing Officer.

(a) The Hearing Officer shall carefully consider the record in view of the standards set forth herein and shall render an initial opinion as to whether the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest. In resolving a question concerning the eligibility of an individual for access authorization under these procedures, the Hearing Officer shall consider the factors stated in paragraph 710.7(c) to determine whether the findings will be adverse or favorable.

(b) In reaching the findings, the Hearing Officer shall consider the demeanor of the witnesses who have testified at the hearing, the probability or likelihood of the truth of their testimony, their credibility, and the authenticity and accuracy of documentary evidence, or lack of evidence on any material points in issue. If the individual is, or may be, handicapped by the non-disclosure to the individual of confidential information or by lack of opportunity to cross-examine confidential informants, the Hearing Officer shall take that fact into consideration. Possible impact of the loss of the individual's access authorization upon the DOE program shall not be considered by the Hearing Officer.

(c) The Hearing Officer shall make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter and the significance which the Hearing Officer attaches to such valid allegations. These findings shall be supported fully by a statement of reasons which constitute the basis for such findings.

(d) The Hearing Officer's opinion shall be predicated upon the Hearing Officer's findings of fact. If, after considering all the factors in light of the criteria set forth in this subpart, the Hearing Officer is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or continue access authorization to the individual, the Hearing Officer shall render a favorable opinion; otherwise, the Hearing Officer shall render an adverse opinion.

(e) The Office of Hearings and Appeals shall issue the opinion of the

authorized by paragraphs (l) or (o) of this section, the record shall contain certificates evidencing that the determinations required therein have been made.

§ 710.27 Opinion of the Hearing Officer.

(a) The Hearing Officer shall carefully consider the record in view of the standards set forth herein and shall render an initial opinion as to whether the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest. In resolving a question concerning the eligibility of an individual for access authorization under these procedures, the Hearing Officer shall consider the factors stated in paragraph 710.7(c) to determine whether the findings will be adverse or favorable.

(b) In reaching the findings, the Hearing Officer shall consider the demeanor of the witnesses who have testified at the hearing, the probability or likelihood of the truth of their testimony, their credibility, and the authenticity and accuracy of documentary evidence, or lack of evidence on any material points in issue. If the individual is, or may be, handicapped by the non-disclosure to the individual of confidential information or by lack of opportunity to cross-examine confidential informants, the Hearing Officer shall take that fact into consideration. Possible impact of the loss of the individual's access authorization upon the DOE program shall not be considered by the Hearing Officer.

(c) The Hearing Officer shall make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter and the significance which the Hearing Officer attaches to such valid allegations. These findings shall be supported fully by a statement of reasons which constitute the basis for such findings.

(d) The Hearing Officer's opinion shall be predicated upon the Hearing Officer's findings of fact. If, after considering all the factors in light of the criteria set forth in this subpart, the Hearing Officer is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or continue access authorization to the individual, the Hearing Officer shall render a favorable opinion; otherwise, the Hearing Officer shall render an adverse opinion.

(e) The Office of Hearings and Appeals shall issue the opinion of the Hearing Officer within 30 calendar days of the receipt of the hearing transcript by the Hearing Officer, or the closing of the record, whichever is later, unless an extension is granted by the Director, Office of Hearings and Appeals. Copies of the Hearing Officer's opinion will be provided to the Office of Security Affairs, the Manager, the individual concerned and his counsel or other representatives, DOE Counsel, and any other party identified by the Hearing Officer. At that time, the individual shall also be notified of his right to request further review of his case pursuant to § 710.28.

(f) In the event the Hearing Officer's opinion is favorable to the individual, a copy of the administrative record in the case shall also be provided to the Office of Security Affairs. The Director, Office of Security Affairs will determine whether:

(1) To grant or reinstate the individual's access authorization, or

(2) To refer the case to the Director, Office of Hearings and Appeals, for further review.

(g) In the event the Hearing Officer's opinion is adverse to the individual, and the individual does not file a request for further review pursuant to § 710.28, a copy of the administrative record shall be provided to the Director, Office of Security Affairs, who shall make a final determination on the basis of the material contained in the administrative record.

§ 710.28 Action on the Hearing Officer's opinion.

(a) The Office of Security Affairs or the individual involved may file a request for review of the Hearing Officer's opinion issued under § 710.27 within 30 calendar days of receipt of the opinion. Any such request shall be filed with the Director, Office of Hearings and Appeals, and served on the other party.

(b) Within 15 calendar days after filing a request for review under this section, the party seeking review shall file a statement identifying the issues on which it wishes the Director, Office of Hearings and Appeals, to focus. A copy of such statement shall be served on the other party, who may file a response within 20 days of receipt of the statement.

(c) The Director, Office of Hearings and Appeals, may initiate an investigation of any statement contained in the request for review and utilize any relevant facts obtained by such investigation in conducting the review of the Hearing Officer's opinion. The Director, Office of Hearings and Appeals, may solicit and accept submissions from either the individual or the Office of Security Affairs, that are relevant to the review. The Director, Office of Hearings and Appeals, may establish appropriate time frames to allow for such responses. In reviewing the Hearing Officer's opinion, the Director, Office of Hearings and Appeals, may consider any other source of information that will advance the evaluation, provided that both parties are afforded an opportunity to respond to all third person submissions. All information obtained under this section shall be made part of the administrative record.

(d) Within 45 days of the closing of the record, the Director, Office of Hearings and Appeals, shall make specific findings disposing of each substantial issue identified in a written statement in support of the request for review and the written response submitted by either the individual or the Office of Security Affairs, and shall predicate his opinion on the administrative record, including any new evidence that may have been submitted pursuant to § 710.29. If, after considering all the factors in light of the criteria set forth in this subpart, the Director, Office of Hearings and Appeals, is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or continue access authorization to the individual, the Director, Office of Hearings and Appeals, shall render an opinion favorable to the individual; otherwise, the Director, Office of Hearings and Appeals, shall render an opinion adverse to the individual. The written opinion of the Director, Office of Hearings and Appeals, shall be provided to the Director, Office of Security Affairs, accompanied by the administrative record in the case. The Director, Office of Hearings and Appeals, shall notify the individual of the foregoing action.

(e) Within 30 calendar days of receipt of the opinion of the Director, Office of Hearings and Appeals, the Director, Office of Security Affairs, will make the final determination, based on a complete review of the record, whether access authorization shall be granted or denied, or reinstated or revoked. If, after considering all of the factors in light of the criteria set forth in this subpart, the Director, Office of Security Affairs, determines that it will not endanger the common defense and security and will be clearly consistent with the national interest, access authorization shall be granted to or reinstated for the individual; otherwise, the Director, Office of Security Affairs, shall determine that access authorization

shall be denied to or revoked for the individual.

(f) The Director, Office of Security Affairs, shall, through the Director, Office of Safeguards and Security, inform the individual involved and his counsel or representative in writing of the final determination and provide a copy of the written opinion rendered by the Director, Office of Hearings and Appeals. Copies of the correspondence shall also be provided to the Director, Office of Hearings and Appeals, the Manager, DOE Counsel, and any other party. In the event of an adverse determination, the correspondence shall indicate the findings by the Director, Office of Security Affairs, with respect to each allegation contained in the notification letter.

§ 710.29 New evidence.

(a) In the event of the discovery of new evidence relevant to the allegations contained in the notification letter prior to final determination of the individual's eligibility for access authorization, such evidence shall be submitted by the offering party to the Director, Office of Safeguards and Security. DOE Counsel shall notify the individual of any new evidence submitted by DOE.

(b) The Director, Office of Safeguards and Security, shall:

(1) Refer the matter to the Hearing Officer appointed in the individual's case if the Hearing Officer has not yet issued an opinion. The Hearing Officer getting the application for the presentation of new evidence shall determine the appropriate form in which any new evidence, and the other party's response, shall be received, e.g., by testimony before the Hearing Officer, by deposition or by affidavit.

(2) In those cases where the Hearing Officer's opinion has been issued, the application for presentation of new evidence shall be referred to the Director, Office of Hearings and Appeals, or the Director, Office of Security Affairs, depending upon where the case resides. In the event that the Director, Office of Hearings and Appeals, or Director, Office of Security Affairs, determines that the new evidence should be received, he shall determine the form in which it, and the other party's response, shall be received.

(c) When new evidence submitted by either party is received into the record, the opposing party shall be afforded the opportunity to cross-examine the source of the new information or to submit a written response, unless the information is subject to the exceptions in § 710.26 (l) or (o).

§ 710.30 Action by the Secretary.

(a) Whenever an individual has not been afforded an opportunity to cross-examine witnesses who have furnished information adverse to the individual under the provisions of § 710.26 (l) or (o), only the Secretary may issue a final determination denying or revoking the access authorization after personally reviewing the record.

(b) When the Secretary makes a final determination regarding the individual's eligibility for DOE access authorization, the individual will be notified, by the Director, Office of Security Affairs, of that decision and of the Secretary's findings with respect to each allegation contained in the notification letter and each substantial issue identified in the statement in support of the request for review.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Secretary to issue subpoenas or to deny or revoke access to Restricted Data, national security information, or special nuclear material if the security of the nation so requires. The Secretary's authority may not be delegated and may be exercised only when the Secretary determines that the procedures prescribed in § 710.26 (l) or (o) cannot be invoked consistent with the national security, and such determination shall be conclusive.

§ 710.31 Reconsideration of access eligibility.

(a) Where, pursuant to the procedures set forth in §§ 710.20 through 710.30, the Director, Office of Security Affairs, or the Secretary has made a determination granting or reinstating access authorization to an individual, the individual's eligibility for access authorization shall be reconsidered as a new administrative review under the procedures set forth in this subpart when previously unconsidered substantially derogatory information is identified, or the individual violates a commitment or promise upon which the DOE previously relied to favorably resolve an issue of access eligibility

(b) Where, pursuant to those procedures, the Manager, Director, Office of Security Affairs, or the Secretary has made a determination denying or revoking access authorization to an individual, the individual's eligibility for access authorization may be reconsidered when there is a bona fide offer of employment requiring access to Restricted Data, national security information or special nuclear material, and there is either:

(1) Material and relevant new evidence which the individual and the individual's representatives are without fault in failing to present earlier, or

(2) Convincing evidence of reformation or rehabilitation.

(c) A request for reconsideration shall be submitted in writing to the Manager having jurisdiction over the position for which access authorization is required. A request for reconsideration shall be accompanied by an affidavit setting forth in detail the new evidence or evidence of reformation or rehabilitation. The Manager shall notify the individual as to whether the individual's eligibility for access authorization will be reconsidered and, if so, the method by which such reconsideration will be accomplished.

(d) Final determinations regarding eligibility for DOE access authorization in reconsideration cases shall be made by the Director, Office of Security Affairs.

Miscellaneous

§ 710.32 Terminations.

In the event the individual is no longer an applicant for access authorization or no longer requires access authorization, the procedures of this subpart shall be terminated without a final determination as to the individual's eligibility for access authorization.

§ 710.33 Attorney representation.

In the event the individual is represented by an attorney or other representatives, the individual shall file with the Hearing Officer and DOE Counsel a document designating such attorney or representatives and authorizing one such attorney or representative to receive all correspondence, transcripts, and other documents pertaining to the proceeding under this subpart

§ 710.34 Time frames.

Statements of time established for processing aspects of a case under this subpart are the agency's desired time frames in implementing the procedures set forth in this subpart. They shall have no impact upon the final disposition of an access authorization by an Operations Office Manager, the Director, Office of Security Affairs, or the Secretary, and shall confer no rights upon an individual whose eligibility for access authorization is being considered

Appendix A to Subpart A of Part 710—Selected Provisions of the Atomic Energy Act of 1954, as Amended, Sec. 141 (42 U.S.C. 2161), Sec. 145 (42 U.S.C. 2165), Sec. 161 (42 U.S.C. 2201)

(By authority of the Department of Energy Organization Act, 42 U.S.C. 7151(a), the Secretary of Energy or her designated representative is to be substituted for the "Commission" and "General Manager" as appropriate.)

Sec. 141. Policy. It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. * * *

Sec. 145. Restriction. (a) No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 141, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(b) Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(c) In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection (b) of this appendix, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

(d) In the event an investigation made pursuant to subsections (a) and (b) of this appendix develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation,

Appendix A to Subpart A of Part 710—Selected Provisions of the Atomic Energy Act of 1954, as Amended, Sec. 141 (42 U.S.C. 2161), Sec. 145 (42 U.S.C. 2165), Sec. 161 (42 U.S.C. 2201)

(By authority of the Department of Energy Organization Act, 42 U.S.C. 7151(a), the Secretary of Energy or her designated representative is to be substituted for the "Commission" and "General Manager" as appropriate.)

Sec. 141. Policy. It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. * * *

Sec. 145. Restriction. (a) No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 141, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(b) Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(c) In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection (b) of this appendix, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

(d) In the event an investigation made pursuant to subsections (a) and (b) of this appendix develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action.

(e) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections (a), (b), and (c) of this appendix be made by the Federal Bureau of Investigation.

(f) Notwithstanding the provisions of subsections (a), (b), and (c) of this appendix, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity, and upon such certification, the investigation and reports required by such provisions shall be made by the Federal Bureau of Investigation.

(g) The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this appendix, that permitting a person access to Restricted Data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the Restricted Data to which access will be permitted.

(h) Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by section 145b, to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

Sec. 161. General provisions. In the performance of its functions the Commission is authorized to:

(a) Establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

(b) Establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property;

(c) Make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this chapter, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection, shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

* * * * *

(i) Prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to the Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, and (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property;

* * * * *

(n) Delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in sections 51, 57b, 61, 108, 123, 145b (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145f, and 161a;

* * * * *

(p) Make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act.

[FR Doc. 94–16580 Filed 7–7–94; 8:45 am]

BILLING CODE 6450–01–P

VOL
59
ISS
1
3
0
JL
8
994
MI

federal register

Federal Register

Friday
July 8, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 23
Airworthiness Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 27805; Notice No. 94–20]

RIN 2120–AE62

Airworthiness Standards; Airframe Proposals Based on European Joint Aviation Requirements Proposals

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes changes to the airframe airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These proposals arise from the joint effort of the Federal Aviation Administration (FAA) and the European Joint Aviation Authorities (JAA) to harmonize the Federal Aviation Regulations (FAR) and the Joint Aviation Requirements (JAR) for airplanes that will be certified in these categories. The proposed changes would provide nearly uniform airframe airworthiness standards for airplanes certificated in the United States under 14 CFR part 23 (part 23) and in the JAA countries under Joint Aviation Requirements 23 (JAR 23) simplifying airworthiness approvals for import and export purposes.

DATES: Comments must be submitted on or before November 7, 1994.

ADDRESSES: Comments on this document should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27805, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27805. Comments may be inspected in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel, ACE–7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the duplicate information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Payauys, ACE–112, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27805." The postcard will be date stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request, from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

At the June 1990 meeting of the JAA Council (consisting of JAA members from European countries) and the FAA, the FAA Administrator committed the FAA to support the harmonization of the FAR with the JAR being developed for use by the European authorities who are members of the JAA. In response to this commitment, the FAA Small Airplane Directorate established an FAA Harmonization Task Force to work with the JAR 23 Study Group to harmonize part 23 and the proposed JAR 23. The General Aviation Manufacturers Association (GAMA) also established a JAR 23/part 23 Committee to provide technical assistance in this effort.

Following a review of the first draft of proposed JAR 23, members of the FAA Harmonization Task Force and the GAMA Committee met in Brussels, Belgium for the October 1990 meeting of the JAR 23 Study Group. Representatives from the Association Europeenne des Constructeures de Material Aerospatial (AECMA), an organization of European airframe manufacturers, also attended. The main agenda item for this meeting was the establishment of procedures to accomplish harmonization of the airworthiness standards for normal, utility, and acrobatic category airplanes. The JAA had decided that its initial rulemaking effort should be limited to these three categories and that commuter category airworthiness standards should be addressed separately.

After that meeting, technical representatives from each of the four organizations (GAMA, AECMA, FAA and JAA) met to resolve differences between the proposed JAR and part 23. This portion of the harmonization effort involved a number of separate meetings of specialists in the flight, airframe, powerplant, and systems disciplines. These meetings showed that harmonization would require revisions to both part 23 and the proposed JAR 23.

Near the end of the effort to harmonize the normal, utility, and acrobatic category airplane airworthiness standards, the JAA requested and received recommendations from its member countries on proposed airworthiness standards for commuter category airplanes. The JAA and the FAA held specialist and study group meetings to discuss these recommendations, which resulted in proposals to revise portions of the part 23 commuter category airworthiness standards.

Unlike the European rules, where commuter category airworthiness standards are separate, for U.S. rulemaking it is advantageous to adopt normal, utility, acrobatic, and commuter category airworthiness standards simultaneously, since commuter category airworthiness standards are already contained in part 23. Accordingly, this NPRM proposes to revise the airframe airworthiness standards for all part 23 airplanes.

During the part 23 harmonization effort, the FAA established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991), which held its first meeting on May 23, 1991. The ARAC on General Aviation and Business Airplane (GABA) Issues was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards in part 23 as well as related provisions of parts 91 and 135 of the regulations.

The FAA announced, on June 2–5, 1992, at the JAA/FAA Harmonization Conference in Toronto, Ontario, Canada, that it would consolidate within the ARAC structure an ongoing objective to "harmonize" the JAR and the FAR. Coinciding with that announcement, the FAA assigned the ARAC on GABA Issues those rulemaking projects related to JAR/part 23 harmonization that were in final coordination between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public as NPRM's. Subsequently, the ARAC on GABA Issues established an ARAC–JAR 23 Study Group.

The JAR 23 Study Group made recommendations to the ARAC on GABA Issues concerning the FAA disposition of the rulemaking issues coordinated between the JAA and the FAA. The draft NPRM's previously prepared by the FAA harmonization team were made available to the harmonization working group to assist them in their effort.

A notice of the formation of the JAR/FAR 23 Harmonization Working Group was published on November 30, 1992 (57 FR 56626). The group held its first meeting on February 2, 1993. These efforts resulted in the proposals for airframe airworthiness standards contained in this notice. The ARAC on GABA Issues agreed with these proposals.

The FAA received unsolicited comments from the JAA dated January 20, 1994, concerning issues that were left unresolved with the JAR 23 Study Group. The JAR/FAR 23 Harmonization Working Group did not address some of the unresolved issues because the JAA had not yet reached positions on those issues. Unresolved issues will be dealt with at future FAR/JAR Harmonization meetings. With respect to other issues unresolved by the JAR 23 Study Group, the JAR/FAR 23 Harmonization Working Group recommendations did not reflect harmonization, but reflected

revise the airframe airworthiness standards for all part 23 airplanes.

During the part 23 harmonization effort, the FAA established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991), which held its first meeting on May 23, 1991. The ARAC on General Aviation and Business Airplane (GABA) Issues was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards in part 23 as well as related provisions of parts 91 and 135 of the regulations.

The FAA announced, on June 2–5, 1992, at the JAA/FAA Harmonization Conference in Toronto, Ontario, Canada, that it would consolidate within the ARAC structure an ongoing objective to "harmonize" the JAR and the FAR. Coinciding with that announcement, the FAA assigned the ARAC on GABA Issues those rulemaking projects related to JAR/part 23 harmonization that were in final coordination between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public as NPRM's. Subsequently, the ARAC on GABA Issues established an ARAC–JAR 23 Study Group.

The JAR 23 Study Group made recommendations to the ARAC on GABA Issues concerning the FAA disposition of the rulemaking issues coordinated between the JAA and the FAA. The draft NPRM's previously prepared by the FAA harmonization team were made available to the harmonization working group to assist them in their effort.

A notice of the formation of the JAR/FAR 23 Harmonization Working Group was published on November 30, 1992 (57 FR 56626). The group held its first meeting on February 2, 1993. These efforts resulted in the proposals for airframe airworthiness standards contained in this notice. The ARAC on GABA Issues agreed with these proposals.

The FAA received unsolicited comments from the JAA dated January 20, 1994, concerning issues that were left unresolved with the JAR 23 Study Group. The JAR/FAR 23 Harmonization Working Group did not address some of the unresolved issues because the JAA had not yet reached positions on those issues. Unresolved issues will be dealt with at future FAR/JAR Harmonization meetings. With respect to other issues unresolved by the JAR 23 Study Group, the JAR/FAR 23 Harmonization Working Group recommendations did not reflect harmonization, but reflected the technical discussion of the merits of each issue that had been thoroughly debated at the JAR/FAR Harmonization meetings. (The Working Group Chairperson had been present at the Harmonization meetings.) The JAA comments have been placed in the docket for this proposal, and will be considered along with those received during the comment period.

Following completion of these harmonization efforts, the FAA determined that the proposed revisions to part 23 were too numerous for a single NPRM. The FAA decided to simplify the issues by issuing four NPRM's. These NPRM's address the airworthiness standards in the specific areas of systems and equipment, powerplant, flight, and airframe. These NPRM's propose changes in all seven subparts of part 23. Since there is some overlap, interested persons are advised to review all four NPRMs to identify all proposed changes to a particular section.

Discussion of Proposals

Section 23.301 Loads

This proposal would amend § 23.301(d) by limiting the applicability of Appendix A to "single-engine, excluding turbines" airplanes rather than the current single-engine limitation. The JAA proposed "single reciprocating engine" instead of "single-engine," which appears in the current regulations. The FAA proposes "single-engine, excluding turbines" for the reasons explained in the preamble to Appendix A. The effect would be to eliminate alternative Appendix A airplane design requirements for turbine engines because the JAA determined, and the FAA agrees, that only single-engine airplanes, excluding turbines, were envisioned when Appendix A was introduced. Turbine airplane designs may continue to be FAA certificated by substantiation to part 23, Subpart C, requirements plus any special conditions as prescribed under § 21.16. The proposed changes to this section clarify that Appendix A applies only to single-engine airplanes, except turbines.

In § 23.301(d), the phrase "For conventional, single-engine airplanes of 6,000 pounds or less" would be replaced by the phrase "For airplane configurations described in Appendix A23.1."

Section 23.335 Design Airspeeds

Portions of § 23.335 would be revised for clarification and harmonization with JAR 23. Paragraph (a)(1) would be revised by adding a definition for W/S as "wing loading at the design maximum takeoff weight." Paragraph (a)(1)(i) and (ii) would be revised to correct the equations for design cruise speed from "33 W/S" to "33 $\sqrt{(W/S)}$" and from "36 $\sqrt{W/S}$" to "36$\sqrt{(W/S)}$."

Section 23.335(b)(4) would be revised by adding a new paragraph (b)(4)(iii) that includes a new mach number speed margin, 0.07M, for commuter category airplanes. Because commuter category airplanes are normally operated at higher altitudes than normal, utility, and acrobatic category airplanes, they experience greater atmospheric variations, such as horizontal gusts and the penetration of jet streams or cold fronts. Therefore, a higher minimum speed margin is required. The JAR proposed adding this mach number speed margin. The original mach number speed margin of 0.05M is retained for normal, utility, and acrobatic category airplanes.

An incorrect equation, $\sqrt{(n_g)}\ V_{S1}$, appears in § 23.335(d)(1). This equation for the design speed for maximum gust intensity, V_B, would be corrected to $V_{S1}\sqrt{n_g}$.

Section 23.337 Limit Maneuvering Load Factors

Section 23.337(a)(1) would be revised by clarifying the equation and by adding a definition for "W." This definition of "W," "design maximum takeoff weight," was requested by the JAA to harmonize with JAR 23.

Section 23.341 Gust Load Factors

Section 23.341 would be reorganized to provide a new paragraph (a) that clarifies that each airplane must be designed to withstand loads on each lifting surface that result from gusts specified in § 23.333(c). Existing paragraphs (a) and (b) would be redesignated as (b) and (c), respectively. The text of the proposed paragraph (b) would be revised to eliminate the phrase, "considering the criteria of § 23.333(c), to develop the gust loading on each lifting surface" since this requirement would be located in proposed paragraph (a). The reference to paragraph (b) in redesignated § 23.341(b) is changed to paragraph (c) to conform. The text for the redesignated paragraph (c) would be revised to delete the phrase "for conventional configurations" because it is no longer accurate, and to revise the definition for wing loading (W/S). These changes are being proposed at the request of the JAA to harmonize with JAR 23.

Section 23.343 Design Fuel Loads

Proposed new § 23.343 would harmonize with the corresponding JAR

except for paragraph (c). This proposed requirement, which is a modified version of § 25.343 that covers transport category, would apply to all part 23 airplane categories, except one paragraph that would be limited to commuter category airplanes.

Airplanes already exist with "maximum zero fuel" weight limits that apply to zero fuel in the airplane (wing, fuselage, and so forth), rather than in the wing only. Therefore, "maximum wing zero fuel" weight was suggested for use when it is appropriate for the type of fuel system in the design.

The FAA agreed, in a JAA/FAA Harmonization Study Group Meeting in Vienna, in July 1992, to propose the requirements in three paragraphs. The JAA would only propose paragraphs (a) and (b) for JAR 23 because they do not have a 45-minute fuel reserve operating rule. Also, the JAA decided to put paragraph (c) into a Notice of Proposed Action (NPA) to await the creation of the necessary operating rule. In February 1993, the same group agreed to have paragraph (b) address "maximum zero wing fuel" weight, instead of "maximum zero fuel" weight as mentioned above. The group agreed not to refer to the Operating Limitation Section of the Airplane Flight Manual (AFM) required by proposed § 23.1583(c)(6) (as presented in the Flight Harmonization NPRM) since that section already contains a reference to § 23.343.

Section 23.345 High Lift Devices

Revised § 23.345(a) would have minor, non-substantive, clarifying changes. The term "fully deflected" would be changed to "fully extended" because it more accurately describes flap conditions and positions. The phrase "resulting in limit load factors" would be removed because the requirement already exists in § 23.301(a). Current paragraph (d) would be redesignated as paragraph (c) without change.

Current paragraph (c) would be redesignated as paragraph (d) and revised by including the requirements of § 23.457. Paragraph (e) would be deleted since it merely references the requirements of § 23.457, which have been moved to § 23.345(d). This arrangement places all "flap" requirements in one location, and would harmonize the requirements with JAR 23.

Section 23.347 Unsymmetrical Flight Conditions

The proposed revision to § 23.347 would redesignate the existing text as paragraph (a) and add a new paragraph (b) that includes requirements for a flick maneuver (snap roll), if requested for aerobatic category airplanes. This change is being made to harmonize with the JAR.

Section 23.349 Rolling Conditions

Section 23.349(a)(2) would be revised to simplify the unsymmetric semispan load assumption to 100 percent and 75 percent for all design weights up through 19,000 pounds. The FAA had suggested varying the latter percentage linearly between 70 percent and 77.5 percent to include aircraft weighing up to 19,000 pounds. After discussion with the JAA, the FAA agrees that 75 percent is an appropriate assumption for all part 23 airplanes.

Section 23.369 Special Conditions for Rear Lift Truss

This proposal would amend § 23.369 by amending the equation and by adding a definition for wing loading (W/S) for clarification and to harmonize with JAR 23.

Section 23.371 Gyroscopic and Aerodynamic Loads

Section 23.371(a) would be revised and reorganized by designating the existing text as paragraph (a) and adding new paragraphs (b) and (c).

Revisions to the text of proposed paragraph (a) would delete the limitation for turbine powered engines; add inertial loads, and replace the word "engines" with "engine(s) and propeller(s), if applicable." These changes would clarify that these requirements apply to all part 23 airplanes.

Proposed new paragraph (b) would clarify and distinguish the requirements for airplanes approved for acrobatic maneuvers. These clarifications are needed to harmonize with the JAR.

Proposed new paragraph (c) would clarify that commuter category airplanes must comply with the gust conditions in § 23.341 in addition to the requirement of § 23.371(a). This clarification is necessary to harmonize with the JAR.

Section 23.391 Control Surface Loads

This proposal would revise § 23.391 by deleting paragraph (b) and removing the designation for paragraph (a). Current paragraph (b) is a reference to alternative values of control loading in Appendix B. Appendix B was previously removed by Amendment No. 23–42 (56 FR 344, January 3, 1991).

Section 23.393 Loads Parallel to Hinge Line

Proposed new § 23.393, as suggested by the JAA, would contain a modified version of the requirement of § 23.657(c) concerning loads parallel to the hinge line, which would be deleted from § 23.657. The requirement would specify minimum inertial load values, and be included in new § 23.393(b) to group the load factors in consecutive sections.

Section 23.399 Dual Control System

Existing § 23.399 does not address the forces exerted on a dual control system when both pilots act together. The JAA has proposed adding a new paragraph (b) to account for these pilot forces. The material in present § 23.399 would be reorganized as paragraph (a), revised to clarify that it is the greater of the forces that apply, and a new paragraph (b) would be added to include the JAA suggestion and harmonize the rules.

Section 23.415 Ground Gust Conditions

This proposal would amend § 23.415 by revising paragraph (a)(2) to add a definition for wing loading (W/S) to harmonize with JAR 23. It would also revise paragraph (c). Before paragraph (c) was added in Amendment No. 23–45, the FAA agreed to a more comprehensive version of the tie-down criteria that was suggested by the JAA. This amendment would implement that agreement and harmonize the rules.

Section 23.441 Maneuvering Loads

The JAA suggested that § 23.441(b) be revised to include a new design requirement for the vertical tail of a commuter category airplane. The JAA determined that the vertical tail structure must be shown to be adequate for the loads imposed when the airplane is yawed by rudder deflection to the maximum attainable angle and is suddenly allowed to return by neutralizing the rudder. The maximum yaw condition is governed by any of several constraining conditions; for example, control surface stops, maximum available booster effort, or the various maximum pilot rudder forces that may be imposed. The JAA stressed that the design yaw excursions need to be examined throughout the full range of speeds of the flight envelope. The FAA agrees. Although this is a significant departure from the structural design philosophy depicted in part 23 (full use of all controls at maneuvering speed) the addition of a similar requirement to part 25 has served to reduce the static overload failures in part 25 airplanes. It is expected that the addition of the proposed requirement to § 23.441(b) would reduce this type failure in commuter category airplanes.

In addition, the permissible overswing angle that may be assumed under § 23.441(a)(2) would be changed from 1.3 to 1.5 times the static sideslip angle of paragraph (a)(3). The JAA suggested that the 1.5 figure more closely represents reality. The FAA agrees and the rule is changed to harmonize with the JAR. Finally, for clarification, the word "resulting" is changed to "overswing" in the first sentence of paragraph (a)(2).

Section 23.443 Gust Loads

Section 23.443(c) would be revised by changing the format of the formula, revising the definition of weight, "W," and correcting the subscripts of the distance to the lift center, "1_{vt}." The current definition reads "W = airplane weight (lbs.)." The proposed definition reads "W = the applicable weight of the airplane in the particular load case (lbs.)." The proposed changes are for clarity and harmonization with JAR 23.

Section 23.455 Ailerons

The heading the precedes § 23.455 would be amended by deleting the term "Wing Flaps" so that the heading reads "AILERONS AND SPECIAL DEVICES." This change reflects the proposed deletion of the wing flap requirements from § 23.457 and their placement in § 23.345.

Section 23.457 Wing Flaps

The FAA proposes to delete this section. As discussed under § 23.345, above, the wing flap requirements have been revised and consolidated in proposed § 23.345 to group these requirements together.

Section 23.473 Ground Load Conditions and Assumptions

The reference in § 23.473(c)(1) would be revised. In amendment No. 23–42 (January 3, 1991, 56 FR 344), § 23.473(c)(1) incorrectly continued to reference "§ 23.67(a) or (b)(1)." The reference in § 23.473(c)(1) should have been changed to "§ 23.67(b)(1)."

The FAA also intends that turbine powered airplanes be included in § 23.473(c)(1) because these airplanes are required to be "climb positive" with one engine inoperative. Therefore, § 23.473(c)(1) must also reference "§ 23.67(c)."

Originally, the FAA intended to harmonize § 23.473(c)(1) by citing only § 23.67. However, after considering the two issues noted above, the FAA has determined that the intent described is lost unless § 23.473(c)(1) specifically includes "§ 23.67(b)(1) or (c)."

Paragraph (f), which addresses energy absorption tests, would be revised to

In addition, the permissible overswing angle that may be assumed under § 23.441(a)(2) would be changed from 1.3 to 1.5 times the static sideslip angle of paragraph (a)(3). The JAA suggested that the 1.5 figure more closely represents reality. The FAA agrees and the rule is changed to harmonize with the JAR. Finally, for clarification, the word "resulting" is changed to "overswing" in the first sentence of paragraph (a)(2).

Section 23.443 Gust Loads

Section 23.443(c) would be revised by changing the format of the formula, revising the definition of weight, "W," and correcting the subscripts of the distance to the lift center, "1_{vt}." The current definition reads "W = airplane weight (lbs.)." The proposed definition reads "W = the applicable weight of the airplane in the particular load case (lbs.)." The proposed changes are for clarity and harmonization with JAR 23.

Section 23.455 Ailerons

The heading the precedes § 23.455 would be amended by deleting the term "Wing Flaps" so that the heading reads "AILERONS AND SPECIAL DEVICES." This change reflects the proposed deletion of the wing flap requirements from § 23.457 and their placement in §-23.345.

Section 23.457 Wing Flaps

The FAA proposes to delete this section. As discussed under § 23.345, above, the wing flap requirements have been revised and consolidated in proposed § 23.345 to group these requirements together.

Section 23.473 Ground Load Conditions and Assumptions

The reference in § 23.473(c)(1) would be revised. In amendment No. 23–42 (January 3, 1991, 56 FR 344), § 23.473(c)(1) incorrectly continued to reference "§ 23.67(a) or (b)(1)." The reference in § 23.473(c)(1) should have been changed to "§ 23.67(b)(1)."

The FAA also intends that turbine powered airplanes be included in § 23.473(c)(1) because these airplanes are required to be "climb positive" with one engine inoperative. Therefore, § 23.473(c)(1) must also reference "§ 23.67(c)."

Originally, the FAA intended to harmonize § 23.473(c)(1) by citing only § 23.67. However, after considering the two issues noted above, the FAA has determined that the intent described is lost unless § 23.473(c)(1) specifically includes "§ 23.67(b)(1) or (c)."

Paragraph (f), which addresses energy absorption tests, would be revised to parallel the language of JAR 23.473(f) with no substantive change from current paragraph (f).

Section 23.497 Supplementary Conditions for Tail Wheels

Proposed new § 23.497(c) would establish design standards for the aft-mounted propellers of § 23.925(b). The FAA has determined that certain portions of the design standards for aft-mounted propellers more properly belong in subpart C on structure. The remainder of the standards would remain in subpart E.

Section 23.499 Supplementary Conditions for Nose Wheels

Proposed new §§ 23.499 (d) and (e) would establish nose wheel conditions for airplanes with a steerable nose wheel controlled by hydraulic or other power and for airplanes with a steerable wheel that has a direct mechanical connection to the rudder pedals. Initial versions of these two paragraphs were introduced at the Second Structures Specialist Meeting, revised, and ratified by the JAR 23 Study Group in April 1991. The new paragraphs codify current certification practice and distinguish the two types of control systems to harmonize with JAR 23.

Section 23.521 Water Load Conditions

This proposal would amend § 23.521 by deleting paragraph (c), which was added by Amendment No. 23–45. The JAA pointed out that paragraph (c) contains requirements already covered in paragraph (a). The FAA agrees, and proposes to delete paragraph (c).

Section 23.561 General

This proposal would amend §§ 23.561 (b), (d), and (e) by revising the existing requirements to harmonize with JAR 23. Revised paragraph (b), concerning occupant protection, proposes language similar to part 25/JAR 25. Paragraph (d), concerning turnovers, would be revised to simplify and clarify the requirements without making substantive changes. Proposed new paragraph (e), concerning supporting structure, would be revised to add references to § 23.561(b)(3) and § 23.787(c) to ensure that items of mass are retained to higher accelerations than the occupant for occupant protection.

Section 23.571 Metallic Pressurized Cabin Structures

Section 23.571 would be revised by changing the heading from "Pressurized cabin" to "Metallic pressurized cabin structure" because nonmetallic structure is addressed in § 23.573(a). The introductory text would be revised to limit the applicability to normal, utility, and acrobatic category only because commuter category airplanes are addressed separately. Paragraph (a) would be revised to require the fatigue strength investigation to show that the structure can withstand repeated loads of variable magnitude expected in service. Currently, fatigue strength may be shown by tests or analysis or both. Under the proposed revision, structural strength must be shown by tests or by analysis supported by test evidence.

Section 23.572 Metallic Wing, Empennage, and Associated Structures

This proposal would revise the heading to add the word "metallic" and revise § 23.572(a) to limit the applicability to normal, utility, and acrobatic category airplanes and to make minor editorial changes. Paragraph (a)(1) is revised to harmonize with JAR 23 by requiring tests or analysis supported by test evidence, as discussed under § 23.571 of this preamble.

Section 23.573 Damage Tolerance and Fatigue Evaluation of Structure

This proposal would amend § 23.573(a)(5) to clarify the regulation because, as written, it could be easily misread. The rewritten requirement uses the word "any" rather than "each" to indicate that another limiting factor exists. It also changes the order of the clauses to prevent the regulation from addressing "failure of the limit load capacity." The rewritten text makes it clear that "Each bonded joint is required to be substantiated by tests" is not the desired result.

The FAA is not proposing a revision to paragraph (b) even though it is not identical in format to JAR 23.573(b). While current FAR § 23.573(b) of title 14 contains two subparagraphs and JAR 23.573(b) (JAR 23-Post Consultation) contains six subparagraphs, the two are technically identical.

This proposal would delete § 23.573(c). Inspections and other procedures would be moved to § 23.575 and be made applicable to four sections pertaining to fatigue evaluation, namely, §§ 23.571, 23.572, 23.573 and 23.574.

Technically, these actions harmonize with the efforts taken by the JAA in similar paragraphs of JAR 23. JAR 23 contains identical inspection requirements in JAR 23.571(b), JAR 23.572(c) and JAR 23.573(c). The FAA format is different from the JAR 23 presentation. JAR 23 uses three paragraphs; proposed § 23.575 uses one section to accomplish the identical end result.

Section 23.574 Metallic Damage Tolerance and Fatigue Evaluation of Commuter Category Airplanes

This proposal would add a new § 23.574 that would delineate the damage tolerance and fatigue evaluation requirement for commuter category airplanes. The United Kingdom Civil Aviation Authority proposed to revise JAR 23.571 and 23.572 to require commuter category airplanes to meet the fail-safe provisions of those sections, and, thus, remove the safe-life provisions. The FAA representative agree with the intent of the proposal but could not agree with any specific recommendation because the FAA was in the process of determining requirements for commuter category airplanes in the aging aircraft program. The majority of the subgroup decided they would not recommend the United Kingdom Civil Aviation Authority proposal.

In the evaluation of aging aircraft, the FAA determined that new commuter category airplanes must meet damage tolerance requirements. The FAA then evaluated the damage tolerance procedures added by Amendment No. 23–44, and the FAA is now proposing to add new § 23.574 that would require commuter category airplanes to comply with the damage tolerance and fatigue evaluation of § 23.573. Accordingly, as discussed previously, §§ 23.571 and 23.572 would be revised to clarify that these sections would apply only to normal, utility, and acrobatic category airplanes. Newly type certificated commuter category airplanes would have to meet proposed § 23.574 instead of §§ 23.571 and 23.572.

JAR 23 Structures Specialists and the JAR 23 Study Group agree with these requirements and consider the impact upon the JAR 23 effort; they decided to place JAR 23.574 on the NPA list. By these actions, the JAA and the FAA will propose the same damage tolerance provisions for newly certificated commuter category airplanes.

Section 23.575 · Inspections and Other Procedures

This proposal would add a new § 23.575 that would clarify that airplane manufacturers are required to provide recommendations for inspection frequencies, locations and methods when the design is approved by the FAA. Whether these inspections and procedures are required has been unclear for the past 20 years. This proposal clarifies that. Both safe-life and damage-tolerant airplane designs would be involved. Also, both composite and metallic airplanes would be included.

Section 23.573(c) would be moved to § 23.575 and revised. The revision consists of naming those requirements that are included, namely §§ 23.571, 23.572, 23.573 and 23.574. These four sections address pressurized cabin, wing, empennage (tail), and associated structures for metallic airplanes. They also provide standards for damage tolerance and fatigue evaluations of both composite and metallic airplane structures. Proposed § 23.575 would harmonize these rules with JAR 23 technically, but a simple format.

Section 23.607 Fasteners

This proposal would amend § 23.607 by changing the section heading, by redesignating the existing requirement as paragraph (c), and by adding new paragraphs (a) and (b) to require the following: if the loss of a non-selflocking fastener would preclude continued safe flight and landing, a locking device must be incorporated, and the fastener must not be adversely affected by environmental conditions such as temperature or vibration. These requirements would be added for harmonization.

Section 23.611 Accessibility Provisions

Structural specialists from both the JAA and FAA agreed that § 23.611, Accessibility, is unclear in its intent and examples would be an aid to understanding.

The proposed revision would clarify the requirement. In the Instructions for Continued Airworthiness required under § 23.1529, recommended or required inspection items to which access must be provided are identified. Following are examples of such items: (1) Principle structural elements and control system components that require inspection; (2) replaceable parts; and (3) parts that require adjustment or lubrication. Section 23.611 requires that, for any part requiring servicing, there must be a means of access incorporated into the aircraft design to allow this servicing to be accomplished. Whether the access provided is appropriate will depend on the nature of the item, and the frequency and complexity of the required inspection or maintenance actions.

Section 23.629 Flutter

Section 23.629 would be revised to require either flight flutter tests and rational analysis or flight flutter tests and compliance with the FAA's "Simplified Flutter Prevention Criteria." Section 23.629 currently requires flutter substantiation by only one of three methods: a rational analysis, flight flutter test, or compliance with the "Simplified Flutter Prevention Criteria." The JAA argues that unless the rational analysis or simplified analysis is verified by some flight flutter tests, the validity of such an analysis is unknown. The JAA also points out that the extent of flight flutter testing depends upon the analysis prepared and the experience with similar designs. The FAA structures specialist agreed with these arguments and with harmonizing this section, even though it would represent an increased requirement for substantiation. These changes would be enacted by proposed revisions to § 23.629 (a), (b), and (c), noting that the designations of paragraphs (b) and (c) would be switched. Paragraph (d)(3)(i) would be revised to change the phrase "T-tail or boom tail" to "T-tail or other unconventional tail configurations" to be more inclusive and to represent the standard used in current certification.

Also, Amendment No. 23–45 added § 23.629 (g) and (h), which contain the phrase "by analysis or test" and is consistent with the original part 23 requirement in § 23.629(a); that is, the applicant is able to choose the method of substantiation. JAR 23.629 (g) and (h) propose that substantiation be done only "by analysis." The JAA argues that the analysis required by the rule must be based upon a previously verified flutter analysis model. The JAA notes that this requirement exists in § 23.629(a), which generally states that full scale flight flutter tests must be conducted when the adequacy of flutter analysis and wind tunnel tests have not been established by previous experience with airplanes having similar design features, and when modifications to the type design have a significant effect upon the critical flutter modes. The FAA proposes to harmonize with JAR 23 by amending § 23.629 (g) and (h) to remove the "or test" phrase. For an airplane that has undergone modification that could affect its flutter characteristics, proposed paragraph (i) would allow freedom from flutter to be shown by tests (under paragraph (a)) or by analysis alone if that analysis is based on previously approved data.

Section 23.657 Hinges

This proposal would amend § 23.657 by deleting paragraph (c), which covers loads parallel to the hinge line. As discussed above, this requirement would be moved to keep the load factors in consecutive regulatory sections.

Section 23.673 Primary Flight Controls

A proposed revision to § 23.673 would delete the requirements for two-control airplanes consistent with actions being taken in the Flight Harmonization

NPRM §§ 23.177 and 23.201. The two-control airplane regulations were introduced in 1945 but no two-control airplanes have been certificated for several decades and no need is foreseen for these regulations. If an applicant proposes a two-control airplane, the FAA would issue special conditions. Accordingly, § 23.673(b) and the paragraph (a) indicator, since it is no longer needed, are deleted.

Additional harmonization with JAR 23 is accomplished by this action.

Section 23.725 Limit Drop Tests

This proposal would amend § 23.725 by adding brackets to clarify the effective weight equation in paragraph (b).

Section 23.755 Hulls

This proposal would amend § 23.755 by deleting paragraph (b), which provides that keels of hull seaplanes or amphibians of less than 1,500 pounds need not be compartmented and which is redundant with paragraph (a). The proposal would also redesignate paragraph (c) as new paragraph (b) and edit it for clarification.

Section 23.865 Fire Protection of Flight Controls, Engine Mounts, and Other Flight Structures

This section on fireproof material and shielding would be revised by changing the words "engine compartment" to "designated fire zones" to be consistent with recent revisions to §§ 23.1203 and 23.1181. The revision would include the phrase "adjacent areas that would be subjected to the effects of fire in the designated fire zones." Adding this phrase clarifies FAA practice that areas in and around a designated fire zone must also be protected, and harmonizes the rule with JAR 23.

Section 23.925 Propeller Clearance

This proposal would amend § 23.925(b), Aft mounted propellers, by removing the requirements on tail wheels, bumpers, and energy absorption devices and moving them to § 23.497, Supplementary conditions for tail wheels, as discussed above. The inspection/replacement criteria for tail wheel, bumper, and energy absorption device would be deleted because the inspection/replacement is required in § 23.1529 and does not need to be repeated here.

Appendix A

Three areas of Appendix A would be revised: (1) A23.1 General; (2) A23.11 Control surface loads, paragraph (c), Surface loading conditions; and (3) Table 2—Average limit control surface

NPRM §§ 23.177 and 23.201. The two-control airplane regulations were introduced in 1945 but no two-control airplanes have been certificated for several decades and no need is foreseen for these regulations. If an applicant proposes a two-control airplane, the FAA would issue special conditions. Accordingly, § 23.673(b) and the paragraph (a) indicator, since it is no longer needed, are deleted.

Additional harmonization with JAR 23 is accomplished by this action.

Section 23.725 Limit Drop Tests

This proposal would amend § 23.725 by adding brackets to clarify the effective weight equation in paragraph (b).

Section 23.755 Hulls

This proposal would amend § 23.755 by deleting paragraph (b), which provides that keels of hull seaplanes or amphibians of less than 1,500 pounds need not be compartmented and which is redundant with paragraph (a). The proposal would also redesignate paragraph (c) as new paragraph (b) and edit it for clarification.

Section 23.865 Fire Protection of Flight Controls, Engine Mounts, and Other Flight Structures

This section on fireproof material and shielding would be revised by changing the words "engine compartment" to "designated fire zones" to be consistent with recent revisions to §§ 23.1203 and 23.1181. The revision would include the phrase "adjacent areas that would be subjected to the effects of fire in the designated fire zones." Adding this phrase clarifies FAA practice that areas in and around a designated fire zone must also be protected, and harmonizes the rule with JAR 23.

Section 23.925 Propeller Clearance

This proposal would amend § 23.925(b), Aft mounted propellers, by removing the requirements on tail wheels, bumpers, and energy absorption devices and moving them to § 23.497, Supplementary conditions for tail wheels, as discussed above. The inspection/replacement criteria for tail wheel, bumper, and energy absorption device would be deleted because the inspection/replacement is required in § 23.1529 and does not need to be repeated here.

Appendix A

Three areas of Appendix A would be revised: (1) A23.1 General; (2) A23.11 Control surface loads, paragraph (c), Surface loading conditions; and (3) Table 2—Average limit control surface loading. A new figure would be added to Appendix A: Figure A7, Chordwise load distribution for stabilizer and elevator, or fin and rudder. These proposed revisions are based upon limitations in JAR 23, Appendix A. They are needed to specify the configurations for which the wing and tail surface loads, required in A23.7, are valid.

The title of Appendix A is revised by removing the words "for conventional, single-engine airplanes of 6,000 pounds or less maximum weight," because the weight limitation is unnecessary in the title and appears in paragraph A23.1(a).

In A23.1, existing paragraph (a) would be revised extensively, and existing paragraph (b) would be deleted and replaced by new paragraph (b). The word "conventional" would be removed and replaced by ten subparagraphs that more accurately describe what is meant by that term. The term "single engine" is changed to "single engine, excluding turbines" to clarify the applicability of the Appendix. This change would permit the use of a rotary engine. Note that this was accomplished in JAR–VLA and AC 23–11 by using the term "single engine (spark- or compression-ignition)." The format differs from that originally proposed and agreed to by JAA/FAA structures specialists. However, the technical content remains the same. The JAA believes that these criteria represent those envisioned when Appendix A was first introduced.

Clarifying changes would be made to A23.11, paragraph (c)(1). Then, six paragraphs and a diagram, with defined terms, would be added to specify and clarify the conditions that apply. Paragraph (d) would be revised to correct a section reference.

The Chordwise Distribution for the Horizontal Tail I portion of Table 2 would be deleted and replaced by the reference "See Figure A7" so that a more appropriate design load may be applied. The Vertical Tail II portion of Table 2 would be corrected by removing the (a) and (b) references, and duplicate statements, so that "Right and Left," "Figure A5 Curve (1)," and "Same as above" remain in the columns.

A new Figure A7 would be added to define both the chordwise load distribution and its corresponding parameters.

Regulatory Evaluation Summary

Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal Agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effects of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) would generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in DOT's Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

Of the part 23 sections that would be amended or added, the FAA has identified only 6 that would result in additional compliance costs, totalling between $12,000 and $20,000 per certification. When amortized over a production run, these costs would have a negligible impact on the cost per airplane. The FAA solicits comments concerning the incremental certification/development costs attributable to the proposed rule.

The primary benefit of the proposed rule would be the cost efficiencies of harmonization with the JAR for those manufacturers who choose to market airplanes in JAA countries as well as to manufacturers in JAA countries who choose to market airplanes in the United States. Other benefits of the proposed rule would be decreased reliance on special conditions, simplification of the certification process through clarification of existing requirements, and increased flexibility through optional designs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that

the proposed amendments would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States. Instead, the proposed airframe certification procedures would be harmonized with those of the JAA and would lessen restraints on trade.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, according to Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA proposes to revise the airframe airworthiness standards for normal, utility, acrobatic, and commuter category airplanes to harmonize them with the standards that were published for the same category airplanes by the Joint Airworthiness Authorities in Europe. If adopted, the proposed revisions would reduce the regulatory burden on United States and European airplane manufacturers by relieving them of the need to show compliance with different standards each time they seek certification approval of an airplane in a different country.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 23 of the Federal Aviation Regulations (14 CFR part 23) as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. app. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

2. Section 23.301 is amended by revising paragraph (d) to read as follows:

§ 23.301 Loads.

* * * * *

(d) Simplified structural design criteria may be used if they result in design loads not less than those prescribed in §§ 23.331 through 23.521. For airplane configurations described in appendix A, section A23.1, the design criteria of appendix A of this part are an approved equivalent of §§ 23.321 through 23.459. If appendix A of this part is used, the entire appendix must be substituted for the corresponding sections of this part.

3. Section 23.335 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i), and (a)(1)(ii); by removing the period and adding "; and either" to the end of paragraph (b)(4)(i); by revising paragraph (b)(4)(ii); by adding a new paragraph (b)(4)(iii); and by revising the introductory text of paragraph (d)(1) to read as follows:

§ 23.335 Design airspeeds.

* * * * *

(a) * * *

(1) Where W/S = wing loading at the design maximum takeoff weight, V_c (in knots) may not be less than—

(i) $33\sqrt{(W/S)}$ (for normal, utility, and commuter category airplanes);

(ii) $36\sqrt{(W/S)}$ (for acrobatic category airplanes).

* * * * *

(b) * * *

(4) * * *

(ii) Mach 0.05 for normal, utility, and acrobatic category airplanes (at altitudes where M_D is established); or

(iii) Mach 0.07 for commuter category airplanes (at altitudes where M_D is established) unless a rational analysis, including the effects of automatic systems, is used to determine a lower margin. If a rational analysis is used, the minimum speed margin must be enough to provide for atmospheric variations (such as horizontal gusts, and the penetration of jet streams or cold fronts), instrument errors, airframe production variations, and must not be less than Mach 0.05.

* * * * *

(d) * * *

(1) V_B may not be less than the speed determined by the intersection of the line representing the maximum positive lift, $C_{N\,MAX}$, and the line representing the rough air gust velocity on the gust V–n diagram, or $V_S\sqrt{n_g}$, whichever is less, where:

* * * * *

4. Section 23.337 is amended by revising paragraph (a)(1) to read as follows:

§ 23.337 Limit maneuvering load factors.

(a) * * *

$$(1)\ 2.1+\frac{24{,}000}{W+10{,}000}\ \text{for normal and commuter category}$$

airplanes, where W = design maximum takeoff weight, except that n need not be more than 3.8;

* * * * *

5. Section 23.341 is amended by redesignating existing paragraphs (a) and (b) as paragraphs (b) and (c), respectively; by adding a new paragraph (a); by revising the redesignated paragraph (b); and by revising the introductory text, the formula, and the definition of "W/S" in the redesignated paragraph (c) to read as follows:

§ 23.341 Gust loads factors.

(a) Each airplane must be designed to withstand loads on each lifting surface resulting from gusts specified in § 23.333(c).

(b) The gust load for a canard or tandem wing configuration must be computed using a rational analysis, or may be computed in accordance with paragraph (c) of this section, provided that the resulting net loads are shown to be conservative with respect to the gust criteria of § 23.333(c).

(c) In the absence of a more rational analysis, the gust load factors must be computed as follows:

$$n = 1+\frac{K_g\,U_{dc}\,V\,a}{498\,(W/S)}$$

* * * * *

W/S=Wing loading (p.s.f.) due to applicable weight of the airplane in the particular load case.

* * * * *

6. A new § 23.343 is added to read as follows:

§ 23.343 Design fuel loads.

(a) The disposable load combinations must include each fuel load in the range from zero fuel to the selected maximum fuel load.

(b) If fuel is carried in the wings, the maximum allowable weight of the airplane without any fuel in the wing tank(s) must be established as "maximum zero wing fuel weight," if it is less than the maximum weight.

(c) For commuter category airplanes, a structural reserve fuel condition, not exceeding fuel necessary for 45 minutes of operation at maximum continuous power, may be selected. If a structural reserve fuel condition is selected, it must be used as the minimum fuel weight condition for showing compliance with the flight load requirements prescribed in this part and—

(1) The structure must be designed to withstand a condition of zero fuel in the wing at limit loads corresponding to:

(i) Ninety percent of the maneuvering load factors defined in § 23.337, and

(ii) Gust velocities equal to 85 percent of the values prescribed in § 23.333(c).

(2) The fatigue evaluation of the structure must account for any increase in operating stresses resulting from the design condition of paragraph (c)(1) of this section.

(3) The flutter, deformation, and vibration requirements must also be met with zero fuel in the wings.

7. Section 23.345 is revised to read as follows:

§ 23.345 High lift devices.

(a) If flaps or similar high lift devices are to be used for takeoff, approach or landing, the airplane, with the flaps fully extended at V_F, is assumed to be subjected to symmetrical maneuvers and gusts within the range determined by—

may be computed in accordance with paragraph (c) of this section, provided that the resulting net loads are shown to be conservative with respect to the gust criteria of § 23.333(c).

(c) In the absence of a more rational analysis, the gust load factors must be computed as follows:

$$n = 1 + \frac{K_g U_{dc} V a}{498 (W/S)}$$

* * * * *

W/S=Wing loading (p.s.f.) due to applicable weight of the airplane in the particular load case.

* * * * *

6. A new § 23.343 is added to read as follows:

§ 23.343 Design fuel loads.

(a) The disposable load combinations must include each fuel load in the range from zero fuel to the selected maximum fuel load.

(b) If fuel is carried in the wings, the maximum allowable weight of the airplane without any fuel in the wing tank(s) must be established as "maximum zero wing fuel weight," if it is less than the maximum weight.

(c) For commuter category airplanes, a structural reserve fuel condition, not exceeding fuel necessary for 45 minutes of operation at maximum continuous power, may be selected. If a structural reserve fuel condition is selected, it must be used as the minimum fuel weight condition for showing compliance with the flight load requirements prescribed in this part and—

(1) The structure must be designed to withstand a condition of zero fuel in the wing at limit loads corresponding to:

(i) Ninety percent of the maneuvering load factors defined in § 23.337, and

(ii) Gust velocities equal to 85 percent of the values prescribed in § 23.333(c).

(2) The fatigue evaluation of the structure must account for any increase in operating stresses resulting from the design condition of paragraph (c)(1) of this section.

(3) The flutter, deformation, and vibration requirements must also be met with zero fuel in the wings.

7. Section 23.345 is revised to read as follows:

§ 23.345 High lift devices.

(a) If flaps or similar high lift devices are to be used for takeoff, approach or landing, the airplane, with the flaps fully extended at V_F, is assumed to be subjected to symmetrical maneuvers and gusts within the range determined by—

(1) Maneuvering, to a positive limit load factor of 2.0; and

(2) Positive and negative gust of 25 feet per second acting normal to the flight path in level flight.

(b) V_F must be assumed to be not less than 1.4 V_S or 1.8V_{SF}, whichever is greater, where—

(1) V_S is the computed stalling speed with flaps retracted at the design weight; and

(2) V_{SF} is the computed stalling speed with flaps fully extended at the design weight.

However, if an automatic flap load limiting device is used, the airplane may be designed for the critical combinations of airspeed and flap position allowed by that device.

(c) In determining external loads on the airplane as a whole, thrust, slipstream, and pitching acceleration may be assumed to be zero.

(d) the flaps, their operating mechanism, and their supporting structures, must be designed to withstand the conditions prescribed in paragraph (a) of this section. In addition, with the flaps fully extended at V_F, the following conditions, taken separately, must be accounted for:

(1) A head-on gust having a velocity of 25 feet per second (EAS), combined with propeller slipstream corresponding to 75 percent of maximum continuous power; and

(2) The effects of propeller slipstream corresponding to maximum takeoff power.

8. Section 23.347 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 23.347 Unsymmetrical flight conditions.

* * * * *

(b) Acrobatic category airplanes certified for flick maneuvers (snap-roll) must be designed for additional asymmetric loads acting on the wing and the horizontal tail.

9. Section 23.349(a)(2) is revised to read as follows:

§ 23.349 Rolling conditions.

* * * * *

(a) * * *

(2) For normal, utility, and commuter categories, in Condition A, assume that 100 percent of the semispan wing airload acts on one side of the airplane and 75 percent of this load on the other side.

* * * * *

10. Section 23.369(a) is revised to read as follows:

§ 23.369 Rear lift truss.

(a) If a rear lift truss is used, it must be designed to withstand conditions of reversed airflow at a design speed of—

$V = 8.7\sqrt{(W/S)} + 8.7$ (knots), where W/S = wing loading at design maximum takeoff weight.

* * * * *

11. Section 23.371 is revised to read as follows:

§ 23.371 Gyroscopic and aerodynamic loads.

(a) Each engine mount and its supporting structure must be designed for the gyroscopic, inertial, and aerodynamic loads that result, with the engine(s) and propeller(s), if applicable, at maximum continuous r.p.m., under either:

(1) The conditions prescribed in § 23.351 and § 23.423; or

(2) All possible combinations of the following—

(i) A yaw velocity of 2.5 radians per second;

(ii) A pitch velocity of 1.0 radian per second;

(iii) A normal load factor of 2.5; and

(iv) Maximum continuous thrust.

(b) For airplanes approved for acrobatic maneuvers, each engine mount and its supporting structures must be designed to withstand the combined maximum yaw velocity, pitch velocity, and corresponding load factors expected during such maneuvers.

(c) For commuter category airplanes, the gust conditions specified in § 23.341 must be added to the conditions required by paragraph (a) of this section.

§ 23.391 [Amended]

12. Section 23.391 is amended by removing paragraph (b) and removing the designation "(a)" from the remaining text.

13. A new § 23.393 is added to read as follows:

§ 23.393 Loads parallel to hinge line.

(a) Control surfaces and supporting hinge brackets must be designed to withstand inertial loads acting parallel to the hinge line.

(b) In the absence of more rational data, the inertial loads may be assumed to be equal to KW, where—

(1) K = 24 for vertical surfaces;

(2) K = 12 for horizontal surfaces; and

(3) W = weight of the movable surfaces.

14. Section 23.399 is revised to read as follows:

§ 23.399 Dual control system.

(a) Each dual control system must be designed to withstand the force of the pilots operating in opposition, using

individual pilot forces not less than the greater of—

(1) 0.75 times those obtained under § 23.395; or

(2) The minimum forces specified in § 23.397(b).

(b) Each dual control system must be designed to withstand the force of the pilots applied together in the same direction, using individual pilot forces not less than 0.75 times those obtained under § 23.395.

15. Section 23.415 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 23.415 Ground gust conditions.

(a) * * *

(2) If pilot forces less than the minimums specified in § 23.397(b) are used for design, the effects of surface loads due to ground gusts and taxiing downwind must be investigated for the entire control system according to the formula:

$$H = K c S q$$

where—

H = limit hinge moment (ft.-lbs.);

c = mean chord of the control surface aft of the hinge line (ft.);

S = area of control surface aft of the hinge line (sq. ft.);

q = dynamic pressure (p.s.f.) based on a design speed not less than $14.6\sqrt{(W/S)} + 14.6$ (f.p.s.) where W/S = wing loading at design maximum weight, except that the design speed need not exceed 88 (f.p.s.);

K = limit hinge moment factor for ground gusts derived in paragraph (b) of this section. (For ailerons and elevators, a positive value of K indicates a moment tending to depress the surface and a negative value of K indicates a moment tending to raise the surface).

* * * * *

(c) At all weights between the empty weight and the maximum weight declared for tie-down stated in the appropriate manual, any declared tie-down points and surrounding structure, control system, surfaces and associated gust locks must be designed to withstand the limit load conditions that exist when the airplane is tied down and that result from wind speeds of up to 65 knots horizontally from any direction.

16. Section 23.441 is amended by revising paragraph (a)(2) and adding a new paragraph (b) to read as follows.

§ 23.441 Maneuvering loads.

(a) * * *

(2) With the rudder deflected as specified in paragraph (a)(1) of this section, it is assumed that the airplane yaws to the overswing sideslip angle. In lieu of a rational analysis, an overswing angle equal to 1.5 times the static sideslip angle of paragraph (a)(3) of this section may be assumed.

* * * * *

(b) For commuter category airplanes, the loads imposed by the following additional maneuver must be substantiated at speeds from V_A to V_D/M_D. When computing the tail loads—

(1) The airplane must be yawed to the largest attainable steady state sideslip angle, with the rudder at maximum deflection caused by any one of the following:

(i) Control surface stops;

(ii) Maximum available booster effort;

(iii) Maximum pilot rudder force as shown below:

BILLING CODE 4910-13-M

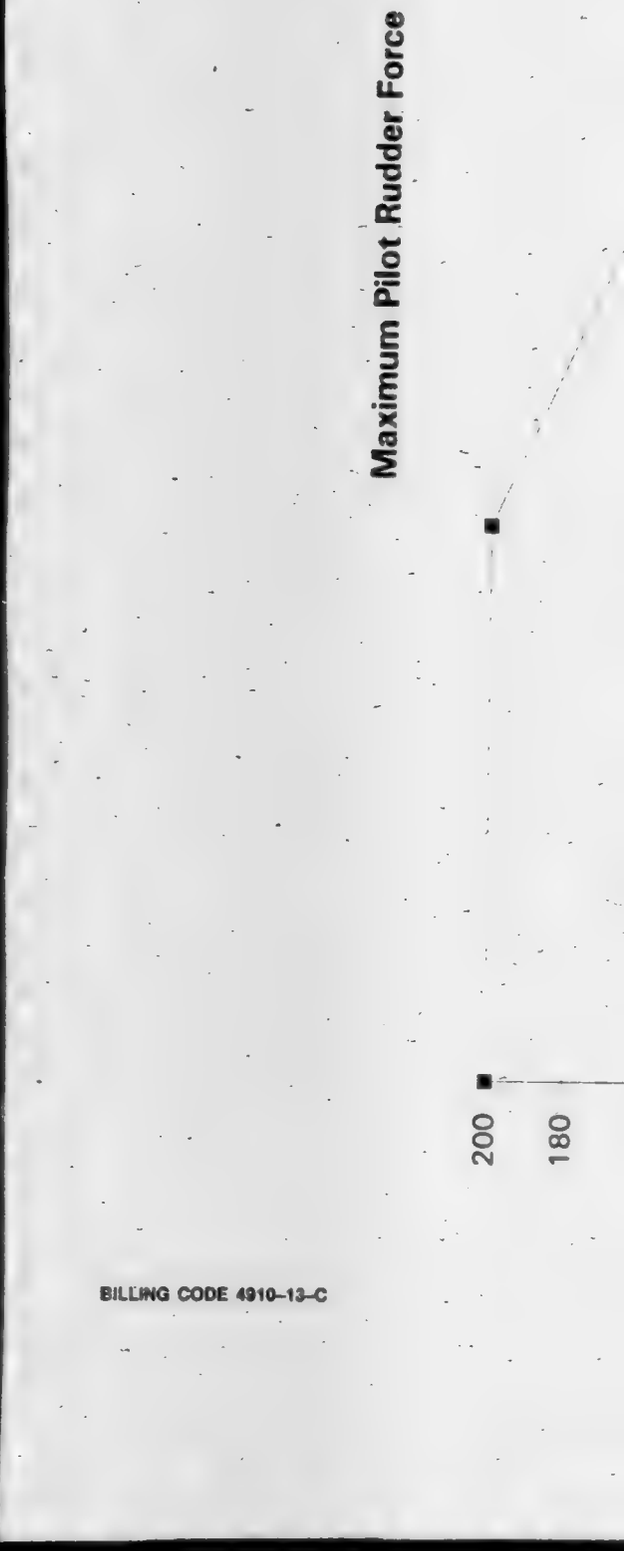

BILLING CODE 4910-13-C

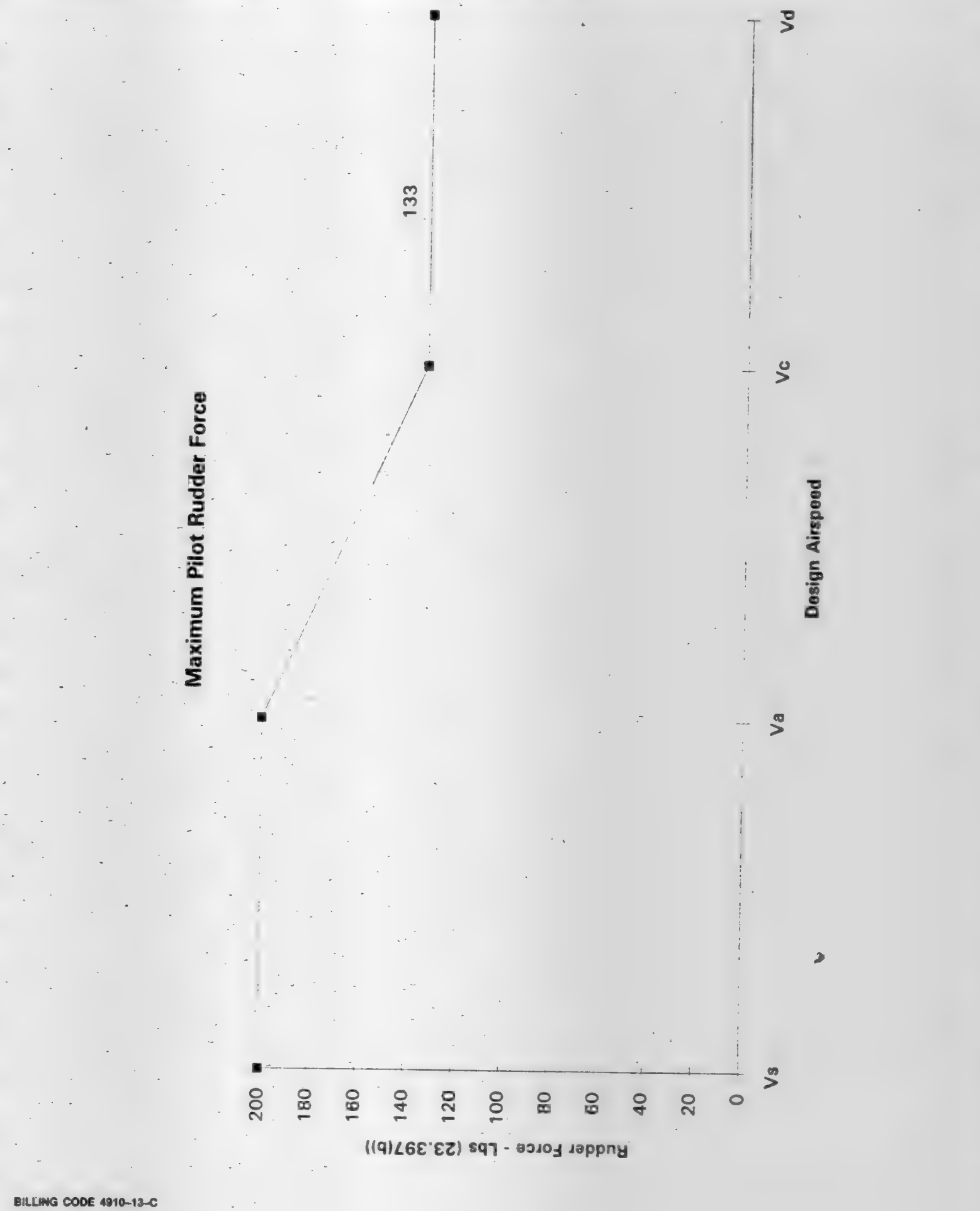

BILLING CODE 4910–13–C

(2) The rudder must be suddenly displaced from the maximum deflection to the neutral position.

* * * * *

17. Section 23.443 is amended by revising paragraph (c) to read as follows:

§ 23.443 Gust loads.

* * * * *

(c) In the absence of a more rational analysis, the gust load must be computed as follows:

$$L_{vt} = \frac{K_{gt}\, U_{de}\, V\, a_{vt}\, S_{vt}}{498}$$

where—

L_{vt}=Vertical surface loads (lbs.);

$k_{gt} = \frac{0.88\,\mu_{gt}}{5.3+\mu_{gt}}$ = gust alleviation factor;

$\mu_{gt} = \frac{2W}{\rho\, c_t\, g\, a_{vt}\, S_{vt}}\left[\frac{K}{l_{vt}}\right]^2$ = lateral mass ratio;

U_{de}=Derived gust velocity (f.p.s.);
ρ=Air density (slugs/cu. ft.);
W=the applicable weight of the airplane in the particular load case (lbs.);
S_{vt}=Area of vertical surface (ft.^{2});
c_t=Mean geometric chord of vertical surface (ft.);
a_{vt}=Lift curve slope of vertical surface (per radian);
K=Radius of gyration in yaw (ft.);
l_{vt}=Distance from airplane c.g. to lift center of vertical surface (ft.);
g=Acceleration due to gravity (ft./sec.^{2}); and
V=Equivalent airspeed (knots).

18. The heading "AILERONS, WING FLAPS, AND SPECIAL DEVICES" that appears between §§ 23.445 and 23.455 is revised to read "AILERONS AND SPECIAL DEVICES".

§ 23.457 [Removed]

19. Section 23.457 is removed.

20. Section 23.473 is amended by revising paragraph (c)(1) and (f) to read as follows:

§ 23.473 Ground load conditions and assumptions.

* * * * *

(c) * * *

(1) The airplane meets the one-engine-inoperative climb requirements of § 23.67(b)(1) or (c); and

* * * * *

(f) If energy absorption tests are made to determine the limit load factor corresponding to the required limit descent velocities, these tests must be made under § 23.723(a).

* * * * *

21. Section 23.497 is amended by adding a new paragraph (c) to read as follows:

§ 23.497 Supplementary conditions for tail wheels.

* * * * *

(c) If a tail wheel, bumper, or an energy absorption device is provided to show compliance with § 23.925(b), the following apply:

(1) Suitable design loads must be established for the tail wheel, bumper, or energy absorption device; and

(2) The supporting structure of the tail wheel, bumper, or energy absorption device must be designed to withstand the loads established in paragraph (c)(1) of this section.

22. Section 23.499 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 23.499 Supplementary conditions for nose wheels.

* * * * *

(d) For airplanes with a steerable nose wheel that is controlled by hydraulic or other power, at design takeoff weight with the nose wheel in any steerable position, the application of 1.33 times the full steering torque combined with a vertical reaction equal to 1.33 times the maximum static reaction on the nose gear must be assumed. However, if a torque limiting device is installed, the steering torque can be reduced to the maximum value allowed by that device.

(e) For airplanes with a steerable nose wheel that has a mechanical connection to the rudder pedals, the steering torque must be designed to withstand the maximum pilot forces specified in § 23.397(b).

§ 23.521 [Amended]

23. Section 23.521 is amended by removing paragraph (c).

24. Section 23.561 is amended by revising the introductory text of paragraph (b); by revising paragraphs (d)(1)(i) through (d)(1)(iv); by removing paragraph (d)(1)(v); and by adding a new paragraph (e) to read as follows:

§ 23.561 General.

* * * * *

(b) The structure must be designed to give each occupant every reasonable chance of escaping serious injury when—

* * * * *

(d) * * *

(1) * * *

(i) The most adverse combination of weight and center of gravity position;

(ii) Longitudinal load factor of 9.0g;

(iii) Vertical load factor of 1.0g; and

(iv) For airplanes with tricycle landing gear, the nose wheel strut failed with the nose contacting the ground.

* * * * *

(e) Except as provided in § 23.787(c), the supporting structure must be designed to restrain, under loads up to those specified in paragraph (b)(3) of this section, each item of mass that could injure an occupant if it came loose in a minor crash landing.

25. Section 23.571 is amended by revising the heading, the introductory text, and paragraph (a), to read as follows:

§ 23.571 Metallic pressurized cabin structures.

For normal, utility, and acrobatic category airplanes, the strength, detail design, and fabrication of the metallic structure of the pressure cabin must be evaluated under one of the following:

(a) A fatigue strength investigation in which the structure is shown by tests, or by analysis supported by test evidence, to be able to withstand the repeated loads of variable magnitude expected in service; or

* * * * *

26. Section 23.572 is amended by revising the heading and by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 23.572 Metallic wing, empennage, and associated structures.

(a) For normal, utility, and acrobatic category airplanes, the strength, detail design, and fabrication of those parts of the airframe structure whose failure would be catastrophic must be evaluated under one of the following unless it is shown that the structure, operating stress level, materials and expected uses are comparable, from a fatigue standpoint, to a similar design that has had extensive satisfactory service experience:

(1) A fatigue strength investigation in which the structure is shown by tests, or by analysis supported by test evidence, to be able to withstand the repeated loads of variable magnitude expected in service; or

* * * * *

27. Section 23.573 is amended by removing the reference in paragraph (b) "§ 23.571(c)" and adding in its place "§ 23.571(a)(3)"; by removing paragraph (c); and by revising the introductory text of paragraph (a)(5) to read as follows:

§ 23.573 Damage tolerance and fatigue evaluation of structure.

(a) * * *

(5) For any bonded joint, the failure of which would result in catastrophic loss of the airplane, the limit load capacity must be substantiated by one of the following methods—

* * * * *

28. A new § 23.574 is added to read as follows:

§ 23.574 Metallic damage tolerance and fatigue evaluation of commuter category airplanes.

For commuter category airplanes—

(a) *Metallic damage tolerance.* An evaluation of the strength, detail design, and fabrication must show that catastrophic failure due to fatigue, corrosion, defects, or damage will be avoided throughout the operational life of the airplane. This evaluation must be conducted in accordance with the provisions of § 23.573, except as specified in paragraph (b) of this section, for each part of the structure that could contribute to a catastrophic failure.

(b) *Fatigue (safe-life) evaluation.* Compliance with the damage tolerance requirements of paragraph (a) of this section is not required if the applicant establishes that the application of those requirements is impractical for a particular structure. This structure must be shown, by analysis supported by test evidence, to be able to withstand the repeated loads of variable magnitude expected during its service life without detectable cracks. Appropriate safe-life scatter factors must be applied.

29. A new § 23.575 is added to read as follows:

§ 23.575 Inspections and other procedures.

Each inspection or other procedure, based on an evaluation required by §§ 23.571, 23.572, 23.573, or 23.574, must be established to prevent catastrophic failure and must be included in the Limitations Section of the Instructions for Continued Airworthiness required by § 23.1529.

30. Section 23.607 is revised to read as follows:

§ 23.607 Fasteners.

(a) Each non-self-locking bolt, screw, nut, pin, or other fastener must, if its loss would preclude continued safe flight and landing, incorporate a locking device.

(b) Fasteners and their locking devices must not be adversely affected by the environmental conditions associated with the particular installation.

(c) No self-locking nut may be used on any bolt subject to rotation in operation unless a non-friction locking device is used in addition to the self-locking device.

31. Section 23.611 is revised to read as follows:

capacity must be substantiated by one of the following methods—

* * * * * *

28. A new § 23.574 is added to read as follows:

§ 23.574 Metallic damage tolerance and fatigue evaluation of commuter category airplanes.

For commuter category airplanes—

(a) *Metallic damage tolerance.* An evaluation of the strength, detail design, and fabrication must show that catastrophic failure due to fatigue, corrosion, defects, or damage will be avoided throughout the operational life of the airplane. This evaluation must be conducted in accordance with the provisions of § 23.573, except as specified in paragraph (b) of this section, for each part of the structure that could contribute to a catastrophic failure.

(b) *Fatigue (safe-life) evaluation.* Compliance with the damage tolerance requirements of paragraph (a) of this section is not required if the applicant establishes that the application of those requirements is impractical for a particular structure. This structure must be shown, by analysis supported by test evidence, to be able to withstand the repeated loads of variable magnitude expected during its service life without detectable cracks. Appropriate safe-life scatter factors must be applied.

29. A new § 23.575 is added to read as follows:

§ 23.575 Inspections and other procedures.

Each inspection or other procedure, based on an evaluation required by §§ 23.571, 23.572, 23.573, or 23.574, must be established to prevent catastrophic failure and must be included in the Limitations Section of the Instructions for Continued Airworthiness required by § 23.1529.

30. Section 23.607 is revised to read as follows:

§ 23.607 Fasteners.

(a) Each non-self-locking bolt, screw, nut, pin, or other fastener must, if its loss would preclude continued safe flight and landing, incorporate a locking device.

(b) Fasteners and their locking devices must not be adversely affected by the environmental conditions associated with the particular installation.

(c) No self-locking nut may be used on any bolt subject to rotation in operation unless a non-friction locking device is used in addition to the self-locking device.

31. Section 23.611 is revised to read as follows:

§ 23.611 Accessibility provisions.

For each part that requires maintenance, inspection, or other servicing, appropriate means must be incorporated into the aircraft design to allow such servicing to be accomplished.

32. Section 23.629 is amended by revising the introductory text of paragraph (a); by redesignating existing paragraph (b) as paragraph (c) and revising it; by redesignating existing paragraph (c) as paragraph (b) and revising its introductory text; by revising paragraph (d)(3)(i); by revising paragraphs (g) and (h); and by adding a new paragraph (i) to read as follows:

§ 23.629 Flutter.

(a) It must be shown by the methods of paragraph (b), and either paragraph (c) or (d) of this section, that the airplane is free from flutter, control reversal, and divergence for any condition of operation within the limit V-n envelope and at all speeds up to the speed specified for the selected method. In addition—

* * * * *

(b) Flight flutter tests must be made to show that the airplane is free from flutter, control reversal and divergence and to show that—

* * * * *

(c) Any rational analysis used to predict freedom from flutter, control reversal and divergence must cover all speeds up to 1.2 V_D.

(d) * * *

(3) * * *

(i) Does not have a T-tail or other unconventional tail configurations;

* * * * *

(g) For airplanes showing compliance with the fail-safe criteria of §§ 23.571 and 23.572, the airplane must be shown by analysis to be free from flutter up to V_D/M_D after fatigue failure, or obvious partial failure of a principal structural element.

(h) For airplanes showing compliance with the damage tolerance criteria of § 23.573, the airplane must be shown by analysis to be free from flutter up to V_D/M_D with the extent of damage for which residual strength is demonstrated.

(i) For modifications to the type design that could affect the flutter characteristics, compliance with paragraph (a) of this section must be shown, except that analysis based on previously approved data may be used alone to show freedom from flutter, control reversal and divergence, for all speeds up to the speed specified for the selected method.

§ 23.657 [Amended]

33. Section 23.657 is amended by removing paragraph (c).

§ 23.673 [Amended]

34. Section 23.673 is amended by removing paragraph (b) and the paragraph designation "(a)" for the remaining paragraph.

35. Section 23.725 is amended by revising the equation in paragraph (b) to read as follows:

§ 23.725 Limit drop tests.

* * * * *

(b) * * *

$$W_c = W\frac{[h+(1-L)d]}{(h+d)}$$

* * * * *

36. Section 23.755 is amended by removing paragraph (b), and by redesignating paragraph (c) as paragraph (b) and revising it to read as follows:

§ 23.755 Hulls.

* * * * *

(b) Watertight doors in bulkheads may be used for communication between compartments.

37. Section 23.865 is revised to read as follows:

§ 23.865 Fire protection of flight controls, engine mounts, and other flight structure.

Flight controls, engine mounts, and other flight structure located in designed fire zones, or in adjacent areas that would be subjected to the effects of fire in the designated fire zones, must be constructed of fireproof material or be shielded so that they are capable of withstanding the effects of a fire. Engine vibration isolators must incorporate suitable features to ensure that the engine is retained if the non-fireproof portions of the isolators deteriorate from the effects of a fire.

38. Section 23.925 is amended by revising paragraph (b) to read as follows:

§ 23.925 Propeller clearance.

* * * * *

(b) *Aft-mounted propellers.* In addition to the clearances specified in paragraph (a) of this section, an airplane with an aft mounted propeller must be designed such that the propeller will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings.

* * * * *

39. Appendix A is amended by revising the title, section A23.1, paragraphs A23.11 (c)(1) and (d), and Table 2; and by adding Figure A7 to the end of the Appendix read as follows:

Appendix A to Part 23—Simplified Design Load Criteria

A23.1 General

(a) The design load criteria in this appendix are an approved equivalent of those in §§ 23.321 through 23.459 of this subchapter for an airplane having a maximum weight of 6,000 pounds or less and the following configuration:

(1) A single engine, excluding turbines;

(2) A main wing located closer to the airplane's center of gravity than the aft, fuselage-mounted, empennage;

(3) A main wing that contains a quarter-chord sweep angle of not more that 15 degrees fore and aft;

(4) A main wing that is equipped with trailing-edge controls (ailerons or flaps, or both);

(5) A main wing aspect ratio not greater than 7;

(6) A horizontal tail aspect ratio not greater than 4;

(7) A horizontal tail volume coefficient not less than 0.34;

(8) A vertical tail aspect ratio not greater than 2;

(9) A vertical tail planform area not greater than 10 percent of the wing planform area; and

(10) Symmetrical airfoils must be used in both the horizontal and vertical tail designs

(b) This appendix A criteria may not be used on any airplane configuration that contains any of the following design features:

(1) Canard, tandem-wing, close-coupled, or tailless arrangements of the lifting surfaces;

(2) Biplane or multiplane wing arrangements;

(3) T-tail, V-tail, or cruciform-tail (+) arrangements;

(4) Highly-swept wing planforms (more than 15-degrees of sweep at the quarter-chord), delta planforms, or slatted lifting surfaces; or

(5) Winglets or other wing tip devices, or outboard fins.

* * * * *

A23.11 Control Surface Loads

* * * * *

(c) * * *

(1) Simplified limit surface loadings for the horizontal tail, vertical tail, aileron, wing flaps, and trim tabs are specified in figures 5 and 6 of this appendix.

(i) The distribution of load along the span of the surface, irrespective of the chordwise load distribution, must be assumed proportional to the total chord, except on horn balanced surfaces.

(ii) The load on the stabilizer and elevator, and the load on fin and rudder, must be distributed chordwise as shown in Figure A7 of this appendix.

(iii) In order to ensure adequate torsional strength and to account for maneuvers and gusts, the most severe loads must be considered in association with every center of pressure position between the leading edge and the half chord of the mean chord of the surface (stabilizer and elevator, or fin and rudder).

(iv) To ensure adequate strength under high leading edge loads, the most severe stabilizer and fin loads must be further considered as being increased by 50 percent over the leading 10 percent of the chord with the loads aft of this appropriately decreased to retain the same total load.

(v) The most severe elevator and rudder loads should be further considered as being distributed parabolically from three times the mean loading of the surface (stabilizer and elevator, or fin and rudder) at the leading edge of the elevator and rudder, respectively, to zero at the trailing edge according to the equation:

$$P(x) = 3(\bar{w})\left[\frac{c - x}{c_f}\right]^2$$

BILLING CODE 4910-13-M

LEADING EDGE OF ELEVATOR AND RUDDER, RESPECTIVELY

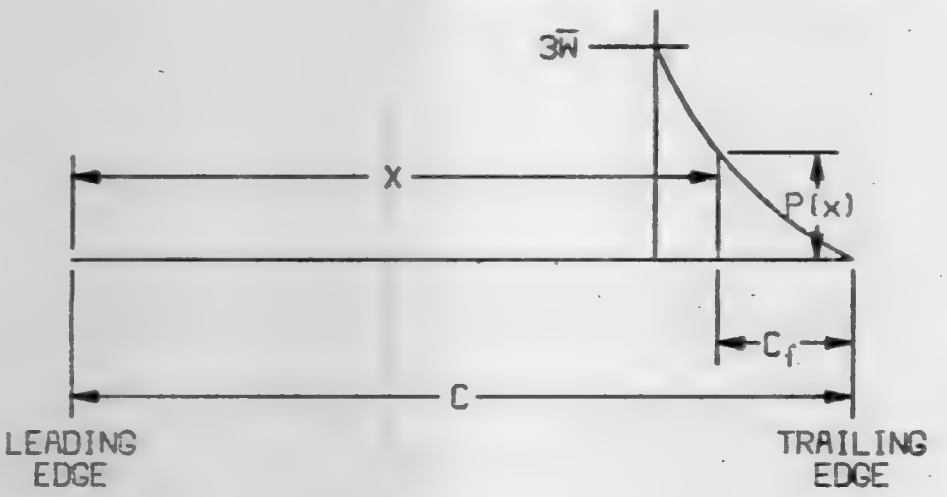

Where—

P(x) = local pressure at the chordwise stations x,

c = chord length of the tail surface,

cf = chord length of the elevator and rudder respectively, and

w = average surface loading as specified in Figure A5.

(vi) The chordwise loading distribution for ailerons, wing flaps, and trim tabs are specified in Table 2 of this appendix.

* * * * *

(d) *Outboard fins.* Outboard fins must meet the requirements of § 23.445

* * * * *

BILLING CODE 4910-13-M

TABLE 2 - Average limit control surface loading

AVERAGE LIMIT CONTROL SURFACE LOADING			
SURFACE	DIRECTION OF LOADING	MAGNITUDE OF LOADING	CHORDWISE DISTRIBUTION
HORIZONTAL TAIL 1	a) Up and Down	Figure A5 Curve (2)	
	b) Unsymmetrical loading	100% on one side of plane	

TABLE 2 - Average limit control surface loading

AVERAGE LIMIT CONTROL SURFACE LOADING			
SURFACE	DIRECTION OF LOADING	MAGNITUDE OF LOADING	CHORDWISE DISTRIBUTION
HORIZONTAL TAIL I	a) Up and Down	Figure A5 Curve (2)	See Figure A7
	b) Unsymmetrical loading (Up and Down)	100% ā on one side airplane & 65% ā on other side airplane & for normal and utility categories. For acrobatic category see A23.11(C)	
VERTICAL TAIL II	a) Right and Left	Figure A5 Curve (1)	Same as (A) above
	b) Right and Left	Figure A5 Curve (1)	Same as (B) above
AILERON III	a) Up and Down	Figure A6 Curve (5)	(C)
WING FLAP IV	a) Up	Figure A6 Curve (4)	(D) 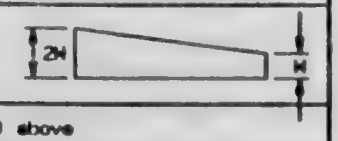
	b) Down	.25 × Up Load (a)	
TRIM TAB V	a) Up and Down	Figure A6 Curve (3)	Same as (D) above

NOTE: The surface loadings I, II, III, and V above are based on speeds V_A min and V_C min. The loading of IV is based on V_F min. If values of speeds greater than these minimums are selected for design, the appropriate surface loadings must be multiplied by the ratio $\left[\frac{V_{selected}}{V_{minimum}}\right]^2$. For conditions I, II, III, and V the multiplying factor used must be the higher of $\left[\frac{V_{A\,sel.}}{V_{A\,min.}}\right]^2$ or $\left[\frac{V_{C\,sel.}}{V_{C\,min.}}\right]^2$.

FIGURE A7 — CHORDWISE LOAD DISTRIBUTION FOR STABILIZER AND ELEVATOR OR FIN AND RUDDER

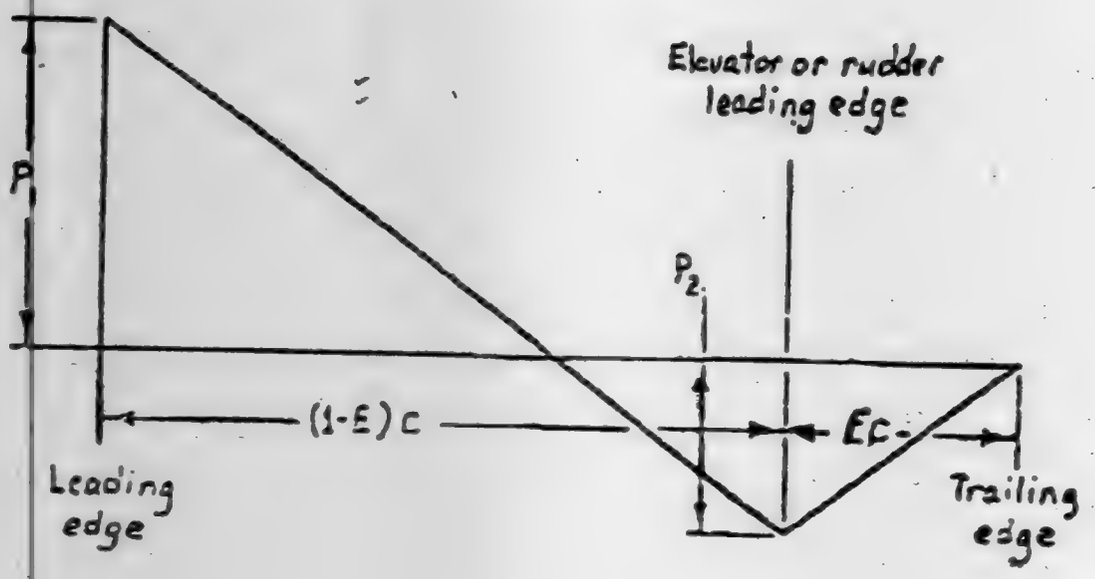

$$P_1 = 2\,(\bar{w})\,\frac{(2 - E - 3d')}{(1 - E)}$$

$$P_2 = 2\,(\bar{w})\,(3d' + E - 1)$$

where:

$\bar{w}$ = average surface loading (as specified in figure A.5)

E = ratio of elevator (or rudder) chord to total stabilizer and elevator (or fin and rudder) chord.

d' = ratio of distance of center of pressure of a unit spanwise length of combined stabilizer and elevator (or fin and rudder) measured from stabilizer (or fin) leading edge to the local chord. Sign convention is positive when center of pressure is behind leading edge.

c = local chord.

Note: Positive values of $\bar{w}$, P_1 and P_2 are all measured in the same direction.

BILLING CODE 4910-13-C

Issued in Washington, DC, on July 5, 1994.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 94-16612 Filed 7-7-94; 8:45 am]

BILLING CODE 4910-13-M

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc.)
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public numbers, Federal Register finding aids, and list o documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and documents on public inspection are available on National Archives fax-on-demand system. You m from a fax machine. There is no charge for the se except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8

Reader Aids

Federal Register

Vol. 59, No. 130

Friday, July 8, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
June 30, 1994.....34341
Proclamations:
6641 (See Proc. 6704).....34329
6704.....34329
6705.....34343
Executive Orders:
12002 (See EO 12923).....34551
12214 (See EO 12923).....34551
12735 (See EO 12923).....34551
12755 (See EO 12923).....34551
12851 (See EO 12923).....34551
12923.....34551

5 CFR

2610.....34755
2634.....34755
2636.....34755
2641.....34755
Proposed Rules:
575.....34393

7 CFR

272.....34553
275.....34553
283.....34553
916.....33897
917.....33897
928.....33898
947.....33900
1205.....33901
1421.....34345
1755.....34353, 34899
Proposed Rules:
1036.....33922

8 CFR

103.....33903
245.....33903
245a.....33903
264.....33903
274a.....33903

9 CFR

92.....34375
97.....34756
Ch. III.....34375
Proposed Rules:
317.....34396

10 CFR

710.....35178
Proposed Rules:
1003.....34767

12 CFR

Proposed Rules:
220.....33923

14 CFR

21.....34572
23.....34572
39.....34574, 34576, 34757, 34758, 34899, 34967
71.....34577, 34758, 34759, 34760
91.....34578
Proposed Rules:
21.....34779
23.....35196
39.....34396, 34584
71.....34192, 34585
93.....34192

16 CFR

2.....34968
4.....34968
305.....34014
Proposed Rules:
300.....34780
301.....34780
303.....34780
1117.....33925
1307.....35058
1500.....33928, 33932

17 CFR

1.....34376
33.....34376
190.....34376
Proposed Rules:
240.....34781

19 CFR

174.....34970

20 CFR

416.....33906

21 CFR

510.....33908
520.....33908
Proposed Rules:
341.....34781

22 CFR

60.....33909
61.....33909
62.....33909
63.....33909
64.....33909
65.....33909
514.....34760

23 CFR

655.....33909

24 CFR

17 34578
3280 34294
Proposed Rules:
43 34300
92 34300
100 34902
570 34300

26 CFR

1 ..... 34971, 35030
602 ..... 34971, 35030
Proposed Rules:
1 ..... 34398, 35066

28 CFR

551 34742

29 CFR

1910 ..... 33910, 34580
Proposed Rules:
Ch. XXVI 35067
Ch. XL 35067
1915 34586

30 CFR

Proposed Rules:
75 35071

32 CFR

90 34382
91 34382
383 34382
389 34382
552 ..... 34581, 34761
706 35033
Proposed Rules:
553 34782

33 CFR

4 34210
130 34210
131 34210
132 34210
137 34210
138 34210
Proposed Rules:
322 34783
334 33939

34 CFR

74 34722
77 34722
641 34198
668 34964
682 34964
685 34278
690 34964
Proposed Rules:
Ch. VI 34398

36 CFR

704 35034

38 CFR

3 34382

39 CFR

111 33911

40 CFR

9 ..... 33912, 34070
52 ..... 33914, 34383, 35035, 35036, 35044
81 35044
85 33912
86 33912
112 34070
141 34320
142 34320
372 34386
600 33912
Proposed Rules:
Ch. I 33940
52 ..... 33941, 34399, 34401, 35072, 35079
81 35079
185 33941

43 CFR

Public Land Order:
7055 34899
7064 34582
7065 35054

45 CFR

Proposed Rules:
615 35079

47 CFR

22 35054
73 ..... 34391, 34766, 35055
Proposed Rules:
61 33947
64 33947
69 33947
73 ..... 34404, 34405, 35081, 35082

49 CFR

392 34708
393 ..... 34708, 34712
1056 34392
Proposed Rules:
541 35082
571 34405

50 CFR

229 34899
651 35056
658 34582
672 35056
675 ..... 33920, 34392, 34583, 35056, 35057
Proposed Rules:
17 ..... 34784, 35069
222 35089
654 33947

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

S. 1904/P.L. 103–271

Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994 (July 1, 1994; 108 Stat. 740; 5 pages)

Last List July 6, 1994

federal register

Revised 1992

The
Feder
What
And
How

Superintend

Order processing code:
*6173

☐ YES, please send me the following:

_____ copies of The Federal Register - Wh

The total cost of my order is $_____
postage and handling and are subject to cha

(Company or Personal Name) (Pl

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other m

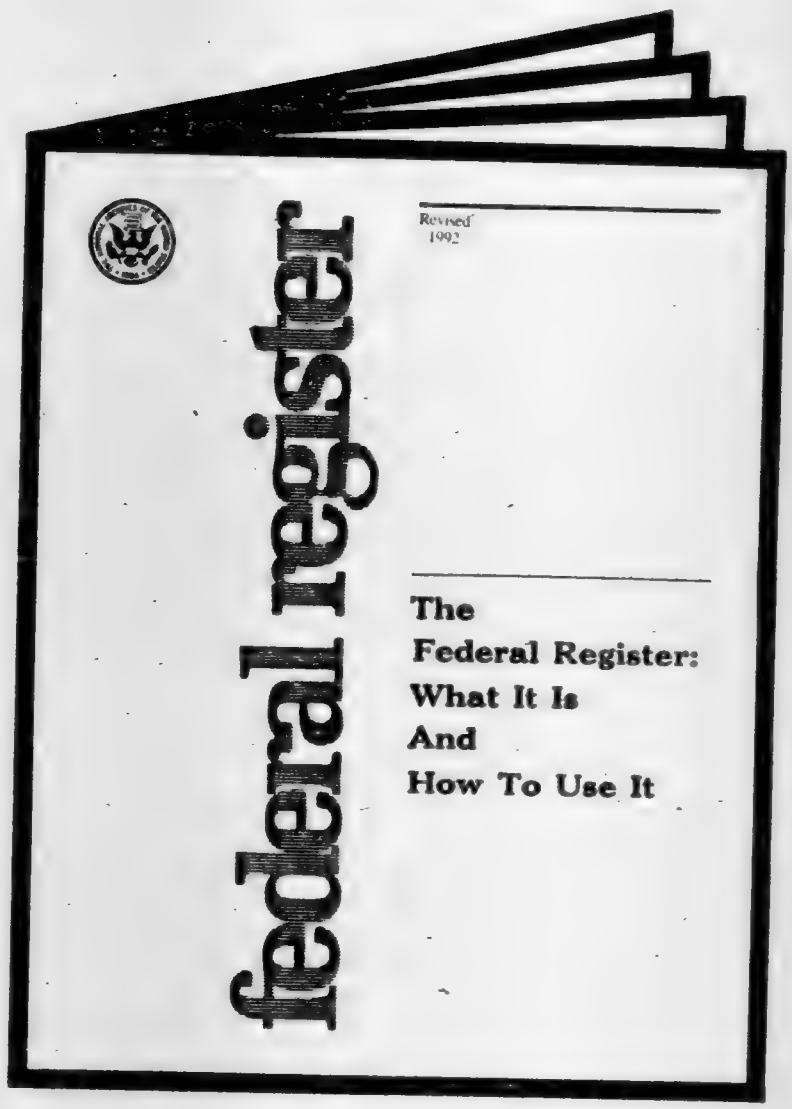

Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order processing code: *6173 P3

☐ **YES**, please send me the following:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202)-512-2250

_____ copies of **The Federal Register - What it is and How To Use It**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Order Now!

The United States Government Manual 1993/94

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$30.00 per copy

Superintendent of Documents **Publications** Order Form

Order Processing Code:
* 6395

Charge your order. It's easy!

To fax your orders (202) 512–2250

☐ **YES,** please send me _____ copies of the **The United States Government Manual, 1993/94** S/N 069–000–00053–3 at $30.00 ($37.50 foreign) each.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

Please choose method of payment:

❑ Check payable to the Superintendent of Documents

❑ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐

❑ VISA ❑ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing signature)

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
59
ISS
1
30
JL
8
994
MI

Printed on recycled paper

VOL
59

ISS
131

JL
11

994

UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7-11-94
Vol. 59 No. 131

Federal Register

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****

A FR UMISE
UMI SERIALS
300 N ZEEB R
PO BOX 1346
ANN ARBOR

7–11–94
Vol. 59 No. 131

federal register

Monday
July 11, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********3-DIGIT 481

A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

VOL
59
ISS
131
JL
11
994
UMI

7-11-94
Vol. 59 No. 131
Pages 35211-35460

7–11–94
Vol. 59 No. 131
Pages 35211–35460

federal register

Monday
July 11, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806

Online:
Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.
Assistance with online subscriptions 202–512–1530

Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803

FEDERAL AGENCIES

Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Agency for Toxic Substances and Disease
NOTICES
Grants and cooperative agreements; availab
Environmental health education activitie
Reports; availability, etc.:
Great Lakes human health effects researc
35367

Agricultural Marketing Service
RULES
Almonds grown in California, 35222–35234

Agriculture Department
See Agricultural Marketing Service
See Cooperative State Research Service
See Foreign Agricultural Service
See Forest Service

Blackstone River Valley National Heritage Commission
NOTICES
Meetings; Sunshine Act, 35409–35410

Centers for Disease Control and Preventio
NOTICES
Grants and cooperative agreements; availabi
State injury intervention program, 35367–

Children and Families Administration
NOTICES
Grants and cooperative agreements; availabi
Head Start science demonstration project,

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Westhampton Beach, NY; safety zone, 352

Commerce Department
See International Trade Administration
See National Institute of Standards and Tech
See National Oceanic and Atmospheric Adm
NOTICES
Agency information collection activities und
review, 35310

Committee for the Implementation of Textil
NOTICES
Cotton, wool, and man-made textiles:
China, 35323–35324
Export visa requirements; certification, waiv
China, 35324—35325
Haiti, 35325

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 35409

Cooperative State Research Service
NOTICES
Grants and cooperative agreements; availabil
National competitive research initiative pr
35423

Contents

Federal Register

Vol. 59, No. 131

Monday, July 11, 1994

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Environmental health education activities, 35364–35367
Reports; availability, etc.:
Great Lakes human health effects research program, 35367

Agricultural Marketing Service
RULES
Almonds grown in California, 35222–35234

Agriculture Department
See Agricultural Marketing Service
See Cooperative State Research Service
See Foreign Agricultural Service
See Forest Service

Blackstone River Valley National Heritage Corridor Commission
NOTICES
Meetings; Sunshine Act, 35409–35410

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
State injury intervention program, 35367–35373

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Head Start science demonstration project, 35347–35363

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Westhampton Beach, NY; safety zone, 35290–35291

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 35310

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 35323–35324
Export visa requirements; certification, waivers, etc.:
China, 35324—35325
Haiti, 35325

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 35409

Cooperative State Research Service
NOTICES
Grants and cooperative agreements; availability, etc.:
National competitive research initiative program, 35422–35423

Defense Department
RULES
Organization, functions, and authority delegations:
Principal Deputy Under Secretary of Defense for Acquisition and Technology, 35261–35262
Under Secretary of Defense for Acquisition and Technology, 35262–35265

Education Department
NOTICES
Meetings:
Federal Interagency Coordinating Council, 35460

Employment and Training Administration
NOTICES
Job Training Partnership Act:
Performance management system and performance standards (1994 and 1995 PYs), 35381–35389

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
See Southeastern Power Administration
See Western Area Power Administration
PROPOSED RULES
Acquisition regulations:
Universities and small disadvantaged concerns, specific types; ten percent goal for prime contract and subcontract awards, 35294–35298
NOTICES
Grant and cooperative agreement awards:
Colorado State University, 35325
Electric Power Research Institute, 35325–35326
Florida Solar Energy Center, 35326
International Geothermal Association, 35326–35327
National Geothermal Association, 35327

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Maryland; correction, 35411
Hazardous waste program authorizations:
Florida, 35266–35267
PROPOSED RULES
Air pollution control:
Ozone Transport Commission; recommendation that EPA adopt low emission vehicle program for Northeast Ozone Transport Region; availability, 35292
NOTICES
Agency information collection activities under OMB review, 35337–35338
Air programs:
Ambient air monitoring reference and equivalent methods—
Partisol Model 2000 Air Sampler, 35338–35339
Confidential business information and data transfer to contractors; correction, 35411
Drinking water:
Public water supply supervision program—
South Carolina, 35339

Grants, State and local assistance:
Grantee performance evaluation reports—
Missouri et al., 35339
Hazardous waste:
Review of Federal authorities for hazardous materials accident safety; report to Congress, 35339–35340
Municipal solid waste landfill permit programs; adequacy determinations:
Florida, 35340–35343

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Beech, 35234–35236
Boeing, 35240–35242
Canadair, 35246–35247
de Havilland, 35242–35245
Fokker, 35237–35238
Jetstream, 35247–35248
Lockheed, 35236–35237
Pratt & Whitney, 35238–35240
Class E airspace, 35248
Standard instrument approach procedures, 35248–35251
PROPOSED RULES
Airworthiness standards:
Special conditions—
General Electric model GE90–75B/–85B/–76B turbofan engines, 35272–35274
NOTICES
Passenger facility charges; applications, etc.:
Asheville Regional Airport, NC, 35403–35404

Federal Communications Commission
RULES
Radio services, special:
Aviation and maritime services—
406 MHz radiobeacons; registration requirements, 35268–35270
Radio stations; table of assignments:
Mississippi, 35268
PROPOSED RULES
Radio stations; table of assignments:
Minnesota, 35292
Mississippi, 35292–35293
Montana, 35293–35294
NOTICES
Agency information collection activities under OMB review, 35343

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 35409

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Public and transmitting utilities; stranded costs recovery, 35274–35289
NOTICES
Electric rate and corporate regulation filings:
Bear Mountain L.P., 35328
Western Systems Power Pool et al., 35328–35329
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 35329
NorAm Gas Transmission Co., 35329

Federal Highway Administration
NOTICES
Infrastructure investments; life-cycle cost analysis; policy statement, 35404–35407

Federal Maritime Commission
NOTICES
Agreements filed, etc., 35343–35344

Federal Railroad Administration
NOTICES
Traffic control systems; discontinuance and removal:
Union Pacific Railroad Co., 35407

Federal Reserve System
PROPOSED RULES
Truth in Savings (Regulation DD):
Credit interest; clarification, 35271–35272
NOTICES
Agency information collection activities under OMB review, 35344–35346
Applications, hearings, determinations, etc.:
Bancorp Connecticut, Inc., et al., 35346
Bank of—
New York Co. Inc. et al., 35346–35347

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc., 35303–35307
Northern copperbelly water snake, 35307–35308
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Cedar Park Waterline, TX; golden-cheeked warbler, 35380

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Fenbendazole, 35251–35252
Tea Importation Act:
Tea standards; establishment, 35252–35253
NOTICES
Anesthesia apparatus checkout recommendations, 1993; document availability, 35373–35374
Biological product licenses:
Clinical Coagulation Laboratory, 35374–35375
Meetings:
Advisory committees, panels, etc., 35375–35376

Foreign Agricultural Service
NOTICES
North American Free Trade Agreement (NAFTA):
Mexican frozen concentrated orange juice; temporary duty imposition, 35309

Foreign Assets Control Office
RULES
Libyan sanctions regulations:
Specially designated Nationals; list, 35259–35261

Forest Service
NOTICES
Meetings:
State Foresters Committee, 35309–35310

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevent
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Social Security Administration

Hearings and Appeals Office, Energy Depa
NOTICES
Special refund procedures; implementation

Housing and Urban Development Departm
RULES
Public and Indian housing:
Housing assistance; budget authority allo 35255
NOTICES
Grants and cooperative agreements; availabi
Public and Indian housing—
Rental voucher and certificate programs

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enfor

Internal Revenue Service
RULES
Income, employment, and excise taxes:
Electronic funds transfer; Federal tax depo 35417
PROPOSED RULES
Income, employment, and excise taxes:
Electronic funds transfer; Federal tax depo reference, 35418–35419

International Trade Administration
NOTICES
Antidumping:
Fresh garlic from—
China, 35310–35312

Justice Department
See Prisons Bureau

Labor Department
See Employment and Training Administratio

Land Management Bureau
RULES
Public land orders:
California, 35267–35268
NOTICES
Closure of public lands:
California, 35380–35381

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 35409

National Archives and Records Administrat
NOTICES
National Audiovisual Center; transfer of func National Technical Information Service,

National Highway Traffic Safety Administrat
PROPOSED RULES
Motor vehicle safety standards:
Air brake systems—
Air-over-hydraulic brake subsystems; de 35298–35300

See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Social Security Administration

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 35329–35332

Housing and Urban Development Department
RULES
Public and Indian housing:
Housing assistance; budget authority allocation, 35253–35255
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Rental voucher and certificate programs, 35426–35454

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income, employment, and excise taxes:
Electronic funds transfer; Federal tax deposits, 35414–35417
PROPOSED RULES
Income, employment, and excise taxes:
Electronic funds transfer; Federal tax deposits; cross reference, 35418–35419

International Trade Administration
NOTICES
Antidumping:
Fresh garlic from—
China, 35310–35312

Justice Department
See Prisons Bureau

Labor Department
See Employment and Training Administration

Land Management Bureau
RULES
Public land orders:
California, 35267–35268
NOTICES
Closure of public lands:
California, 35380–35381

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 35409

National Archives and Records Administration
NOTICES
National Audiovisual Center; transfer of function to National Technical Information Service, 35389

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Air brake systems—
Air-over-hydraulic brake subsystems; definition, 35298–35300
Rearview mirrors—
School bus convex cross view mirrors, 35300–35303

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
COBOL standard, 35312–35315
Reference manual for Ada programming language, 35315–35317
Secure hash standard, 35317–35319
National Fire Codes:
Fire safety standards, 35319–35321
Technical committee reports, 35321–35322
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Radcal Corp., 35322–35323

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 35376
Patents and inventions, Government-owned; grant, denial, interpretation, modification, or termination of licenses; appeals procedures, 35376–35377

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Western Pacific crustacean, 35270
PROPOSED RULES
Fishery conservation and management:
Atlantic billfish, 35308

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 35389
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 35389–35394

Personnel Management Office
RULES
Federal claims collection:
Administrative offset, 35213–35215
Salary offset, 35215–35222

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 35410

Presidential Documents
ADMINISTRATIVE ORDERS
South Africa; determination on eligibility to be furnished with defense articles and services (Presidential Determination No. 94–29 of June 27, 1994), 35211

President's Council on Sustainable Development
NOTICES
Meetings, 35394

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Release preparation program, 35456–35457
NOTICES
Prison institutions; list modification, 35458

Public Health Service
See Agency for Toxic Substances and Disease Registry

See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous materials transportation—
Miscellaneous amendments; correction, 35411

Resolution Trust Corporation
NOTICES
Adverse credit decisions; appeal procedures for non-defaulting commercial borrowers; policy statement, 35394–35396

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 35397–35398
National Association of Securities Dealers, Inc., 35398–35400
Applications, hearings, determinations, etc.:
Public utility holding company filings, 35400–35403
Security Equity Fund et al.; correction, 35411

Social Security Administration
NOTICES
Social security rulings:
Overpayment recovery waiver; notice of appeal and waiver rights; right to pre-recoupment oral hearing before denial of waiver, 35378–35380

Southeastern Power Administration
NOTICES
Georgia-Alabama-South Carolina System of Projects; power marketing policy, 35332–35334

State Justice Institute
NOTICES
Meetings; Sunshine Act, 35410

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Utah, 35255–35259
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 35289–35290

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 35407–35408

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Income exclusions in death cases, 35265–35266

Western Area Power Administration
NOTICES
Provo River Project; project marketing proposal, 35334–35337

Separate Parts In This Issue

Part II
Department of the Treasury, Internal Revenue Service, 35414–35419

Part III
Cooperative State Research Service, 35422–35423

Part IV
Department of Housing and Urban Development, 35426–35454

Part V
Department of Justice, Bureau of Prisons, 35456–35458

Part VI
Department of Education, 35460

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month c
Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 94–29 of June 27, 1994 35211

5 CFR
179 (2 documents) 35213, 35215

7 CFR
981 35222

12 CFR
Proposed Rules:
230 35271

14 CFR
39 (9 documents) 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247
71 35248
97 (2 documents) 35248, 35250
Proposed Rules:
33 35272

18 CFR
Proposed Rules:
35 35274

21 CFR
520 35251
558 35251
1220 35252

24 CFR
791 35253

26 CFR
1 35414
31 35414
40 35414
Proposed Rules:
1 35418
31 35418
40 35418

28 CFR
571 35456

30 CFR
944 35255
Proposed Rules:
920 35289

31 CFR
550 35259

32 CFR
369 35261
384 35262

33 CFR
Proposed Rules:
165 35290

38 CFR
3 35265

40 CFR
52 35411
271 35266
Proposed Rules:
51 35292

43 CFR
Public Land Orders:
7069 35267

47 CFR
73 35268
80 35268
87 .....
Proposed Ru
73 (4 docun

48 CFR
Proposed Ru
926 .....
952 .....
970 .....

49 CFR
172 .....
Proposed Ru
571 (2 docu

50 CFR
681 .....
Proposed Ru
17 (4 docum
3
644 .....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 94–29 of June 27, 1994 35211

5 CFR
179 (2 documents) 35213, 35215

7 CFR
981 35222

12 CFR
Proposed Rules:
230 35271

14 CFR
39 (9 documents) 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247
71 35248
97 (2 documents) 35248, 35250
Proposed Rules:
33 35272

18 CFR
Proposed Rules:
35 35274

21 CFR
520 35251
558 35251
1220 35252

24 CFR
791 35253

26 CFR
1 35414
31 35414
40 35414
Proposed Rules:
1 35418
31 35418
40 35418

28 CFR
571 35456

30 CFR
944 35255
Proposed Rules:
920 35289

31 CFR
550 35259

32 CFR
369 35261
384 35262

33 CFR
Proposed Rules:
165 35290

38 CFR
3 35265

40 CFR
52 35411
271 35266
Proposed Rules:
51 35292

43 CFR
Public Land Orders:
7069 35267

47 CFR
73 35268
80 35268
87 35268
Proposed Rules:
73 (4 documents) 35292, 35293

48 CFR
Proposed Rules:
926 35294
952 35294
970 35294

49 CFR
172 35411
Proposed Rules:
571 (2 documents) 35298, 35300

50 CFR
681 35270
Proposed Rules:
17 (4 documents) 35303, 35304, 35305, 35307
644 35308

VOL
59
ISS
131
JL
11
994
UMI

Federal Register
Vol. 59, No. 131
Monday, July 11, 1994

Pr

Title 3—

The President

Pres

Elig
and
Exp

Mem

Purs
Assi
Cont
to th
State

You
and

THE
Was

[FR Doc. 94–16870
Filed 7–7–94; 4:18 pm]
Billing code 4710–10–M

Editor
p. 136

Federal Register
Vol. 59, No. 131
Monday, July 11, 1994

Presidential Documents

Title 3—

The President

Presidential Determination No. 94–29 of June 27, 1994

Eligibility of South Africa To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Government of South Africa will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 27, 1994.

[FR Doc. 94–16870
Filed 7–7–94; 4:18 pm]
Billing code 4710–10–M

Editorial note: For the President's remarks to the White House Conference on Africa, see p. 1363 of issue 26 of the *Weekly Compilation of Presidential Documents.*

VOL
59
ISS
1
3
1
JL
11
994
UMI

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 179

RIN 3206–AF28

Claims Collection Standards; Debt Collection Act of 1982: Administrative Offset

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to govern the collection of debts owed to the United States which arose from transactions involving OPM's administrative accounts. These regulations implement the debt collection procedures provided under the Debt Collection Act of 1982 (Act). The Act authorizes the Federal Government to collect debts by means of administrative offset from other payments due the debtor from the United States, without the debtor's consent, provided that the debtor is properly notified and given the opportunity to exercise certain administrative rights. OPM's collection of debts due the Retirement and Insurance Group for payment to the Civil Service Retirement and Disability Fund, Employees' Life Insurance Fund, the Retired Federal Employees Health Benefits Fund, or the Employees' Health Benefits Fund is governed by other regulatory provisions.

DATES: These regulations are effective July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Anna Wilson, Chief, Financial Policy Division, Office of the Chief Financial Officer, (CFO) (202) 606–5075.

SUPPLEMENTARY INFORMATION: Section 10 of the Debt Collection Act of 1982 (Act) (Pub. L. 97–365) codified at 31 U.S.C. 3701 *et seq.*, makes several changes in

Rules and Regulations

Federal Register
Vol. 59, No. 131
Monday, July 11, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 179

RIN 3206–AF28

Claims Collection Standards; Debt Collection Act of 1982: Administrative Offset

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to govern the collection of debts owed to the United States which arose from transactions involving OPM's administrative accounts. These regulations implement the debt collection procedures provided under the Debt Collection Act of 1982 (Act). The Act authorizes the Federal Government to collect debts by means of administrative offset from other payments due the debtor from the United States, without the debtor's consent, provided that the debtor is properly notified and given the opportunity to exercise certain administrative rights. OPM's collection of debts due the Retirement and Insurance Group for payment to the Civil Service Retirement and Disability Fund, Employees' Life Insurance Fund, the Retired Federal Employees Health Benefits Fund, or the Employees' Health Benefits Fund is governed by other regulatory provisions.

DATES: These regulations are effective July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Anna Wilson, Chief, Financial Policy Division, Office of the Chief Financial Officer, (CFO) (202) 606–5075.

SUPPLEMENTARY INFORMATION: Section 10 of the Debt Collection Act of 1982 (Act) (Pub. L. 97–365) codified at 31 U.S.C. 3701 *et seq.*, makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect monies owed it.

Under the Act, administrative offset may be initiated when the head of an agency determines that an individual or entity is indebted to the United States, or is notified by the head of another agency that a person or entity is indebted to the United States and that the debtor is owed monies by the United States as a result of transactions with a Federal agency. After the debtor has received certain due process rights, the debt may be collected by administratively offsetting the debt against the amount due.

Under the Act, before the Government may collect a debt by administrative offset, a debtor must be provided with notice that a debt is owed, the opportunity to inspect and copy Government records relating to the debt, the option to enter into a written repayment agreement, and an opportunity for review of the agency's determination concerning the existence of the amount of the debt, or the repayment terms. The debtor must notify the agency of his or her intent to exercise these rights within time periods prescribed in these regulations.

The Act permits the agency to initiate an administrative offset prior to the completion of the due process requirements if failure to do so would substantially jeopardize the agency's ability to collect the debt and if the time remaining before payment is to be made does not reasonably permit completion of the due process procedures. Such prior offset must be followed by completion of the due process procedures.

The Act requires agencies to issue regulations for administrative offset. This final rule establishes the procedures the Office of Personnel Management (OPM) will follow in making an administrative offset from funds paid to a debtor from OPM's administrative accounts. These regulations apply to the collection of debts owed to the United States arising from transactions with OPM other than those involving payments made from the Civil Service Retirement and Disability Fund (the Fund) or where a request for an offset from OPM's administrative accounts—other than the Fund—is received by OPM from another Federal Agency. Regulations for other agencies to request OPM's Retirement and Insurance Group to recover a debt from the Fund are provided at subpart R of part 831 and subpart D of part 845 of title 5, Code of Federal Regulations. These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

OPM has determined that this document is interpretative because it implements a definitive statutory scheme and the requirements contained in regulations promulgated by the Department of Justice and the General Accounting Office. Accordingly, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(b)(A). In addition, because this rule relates to agency management and personnel, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(a)(2). For these reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2).

Analysis and Comments

The Interim Rule was published in the **Federal Register** on November 19, 1993 (58 FR 60991). The comment period closed on January 18, 1994. Two labor organizations responded with comments. OPM has fully considered all of their comments.

Section 179.303 General

One commenter cited 28 U.S.C. 2415 to question the validity of the time allowed for commencing actions brought by the United States (6 years rather than 10 years). Section (i) of 28 U.S.C. 2415 states: "The provisions of this section shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31." That provision precludes agencies from initiating offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, with certain exceptions explained in that section.

Section 179.305 Agency Review

A commenter expressed concern that the discretion allowed to suspend transactions in an alleged debtor's account pending resolution of an appeal

(179.305(c)) would have a "chilling effect on such appeals by depriving appellants of funds that would otherwise be available to them." The intent of the regulations is to suspend transactions in the account(s) to the extent of the debt owed unless there is evidence of fraud. The language has been modified to clarify that intent.

Another commenter requested that we add to the same section: "Upon lifting the suspension * * * any payments, removals, or transfers, as well as lost interest or discounts due to the debtor that had been precluded due to temporary suspension of transactions in any of the debtor's accounts shall be applied retroactively to cover the period of suspension." This authority is not stated in the Debt Collection Act, and without specific authority, OPM is not authorized to take this action.

Section 179.306 Written Agreement for Repayment

A commenter requested an increase in the amount of time allowed for submission of a financial statement from 10 business days to 30 business days (i.e., from 2 weeks to 6 weeks) "to allow the debtor sufficient time to accurately prepare the financial statement." OPM feels that 10 business days is adequate for the average debtor to present a statement of his or her finances. An audited financial statement is not required. Exceptions will have to be considered on a case-by-case basis.

Section 179.308 Accelerated Procedure

A commenter wished to add "with interest" at the end of the paragraph. The Debt Collection Act of 1982 requires the assessment of interest, penalty fees, and administrative costs on delinquent debts as a means of strengthening enforcement of collections; however, it makes no provision to pay interest to the debtor for erroneous collections. OPM is not authorized to make such payments in the absence of a specific statute or authority permitting such payments.

Regulatory Flexibility Act

No notice of proposed rulemaking is required for these regulations, and the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 5 CFR Part 179

Claims.

Office of Personnel Management.

James B. King,

Director

Accordingly, OPM is amending part 179 of title 5 of the Code of Federal Regulations as follows:

PART 179—CLAIMS COLLECTION STANDARDS

1. The authority citation in part 179 is revised to read as follows:

Authority: 31 U.S.C. 952; 5 U.S.C. 1103; Reorganization Plan No. 2 of 1978; 5 U.S.C. 5514; 5 CFR part 550 subpart K; 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3720A.

2. Subpart C, consisting of §§ 179.301 through 179.309, is revised to read as follows:

Subpart C—Administrative Offset

Sec.

179.301 Scope of regulations.
179.302 Definitions.
179.303 General.
179.304 Notification procedures.
179.305 Agency review.
179.306 Written agreement for repayment.
179.307 Administrative offset.
179.308 Accelerated procedures.
179.309 Additional administrative procedures.

Subpart C—Administrative Offset

§ 179.301 Scope of regulations.

These regulations apply to the collection of debts owed to the United States arising from transactions with OPM other than those involving payments made from the Civil Service Retirement and Disability Fund (the Fund), or where a request for an offset from OPM's administrative accounts—other than the Fund—is received by OPM from another Federal agency. Regulations for other agencies to request OPM's Retirement and Insurance Group to recover a debt from the Fund are provided at subpart R of part 831 and subpart D of part 845 of title 5, Code of Federal Regulations. These regulations are consistent with the Federal Claims Collection Standards on Administrative Offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

§ 179.302 Definitions.

Administrative offset, as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

Person, includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government, shall be excluded.

§ 179.303 General.

(a) The Director or his or her designee, after attempting to collect a debt from a person under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interest of the United States to collect the debt by administrative offset because it is less costly and speeds payment of the debt;

(b) The Director, or his or her designee, may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency, or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Director, or his or her designee, may request another agency that holds funds payable to an OPM debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) If the 6-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such action are likely to be less than the amount of the debt.

(e) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting such debt.

(f) These regulations do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(2) Debts owed to OPM by other agencies of the United States or by any State or local government.

§ 179.304 Notification procedures.

Before collecting any debt through administrative offset, a notice of intent to offset shall be sent to the debtor by certified mail, return receipt requested, at the most current address that is available to OPM. The notice shall provide:

(a) A description of the nature and amount of the debt and the intention of OPM to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of OPM with respect to the debt;

(c) An opportunity for review within OPM concerning OPM's determinations with respect to the debt; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

§ 179.305 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of the debt, or the terms of repayment. The request to review a disputed debt must be received by the OPM official identified in the notification within 30 calendar days of the debtor's receipt of the written notice described in § 179.304.

(b) If the debtor requests an opportunity to inspect or copy OPM's records concerning the disputed claim, 10 business days will be granted for the review. The time period will be measured from the time the request for inspection is granted or from the time the copy of the records is received by the debtor.

(c) Pending the resolution of a dispute initiated by the debtor, transactions in any of the debtor's account(s) maintained in OPM may be temporarily suspended to the extent of the debt that is owed. Depending on the type of transaction, the suspension could preclude payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be lifted immediately.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

§ 179.306 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for the repayment of the debt. If the financial condition of the debtor does not support the ability to pay in one lump-sum, reasonable installments may be considered. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of OPM's request for the statement. At OPM's option, a confess-judgment note or bond of indemnity with surety may be required for the

(b) An opportunity to inspect and copy the records of OPM with respect to the debt;

(c) An opportunity for review within OPM concerning OPM's determinations with respect to the debt; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

§ 179.305 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of the debt, or the terms of repayment. The request to review a disputed debt must be received by the OPM official identified in the notification within 30 calendar days of the debtor's receipt of the written notice described in § 179.304.

(b) If the debtor requests an opportunity to inspect or copy OPM's records concerning the disputed claim, 10 business days will be granted for the review. The time period will be measured from the time the request for inspection is granted or from the time the copy of the records is received by the debtor.

(c) Pending the resolution of a dispute initiated by the debtor, transactions in any of the debtor's account(s) maintained in OPM may be temporarily suspended to the extent of the debt that is owed. Depending on the type of transaction, the suspension could preclude payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be lifted immediately.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

§ 179.306 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for the repayment of the debt. If the financial condition of the debtor does not support the ability to pay in one lump-sum, reasonable installments may be considered. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of OPM's request for the statement. At OPM's option, a confess-judgment note or bond of indemnity with surety may be required for the installment agreement. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103 and 31 U.S.C. 3711.

§ 179.307 Administrative offset.

(a) If the debtor does not exercise the right to request a review within the time specified in § 179.305 or, if as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with these regulations without further notice.

(b) Request for offset to a Federal agency: The Director or his or her designee may request that funds due and payable to a debtor by a Federal agency be administratively offset in order to collect a debt owned to OPM by that debtor. In requesting administrative offset OPM, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That OPM has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations, and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(c) Request for offset from a Federal agency: When administrative offset is authorized, any Federal creditor agency may request OPM to make an administrative offset from any OPM funds that are due and payable to a creditor agency's debtor. OPM shall initiate the requested administrative offset only upon:

(1) Receipt of written certification from the creditor agency:

(i) That the debtor owes the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review.

(2) A determination by OPM that collection by offset against funds payable by OPM would not otherwise be contrary to law.

§ 179.308 Accelerated procedures.

OPM may make an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by § 179.304 and § 179.305 if failure to take the offset would substantially jeopardize OPM's ability to collect the debt, and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to OPM shall be promptly refunded.

§ 179.309 Additional administrative procedures.

Nothing contained in this chapter is intended to preclude the use of any other administrative remedy which may be available.

[FR Doc. 94–16632 Filed 7–8–94; 8:45 am]

BILLING CODE 6325–01–M

---

5 CFR Part 179

RIN 3206–AF29

Claims Collection Standards; Debt Collection Act of 1982: Salary Offset

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to govern the collection of debts owed to OPM's administrative accounts by Federal employees. These regulations implement the debt collection procedures provided under the Debt Collection Act of 1982 (Act). The Act authorizes the Federal Government to collect debts by means of offset from the salaries of Federal employees without the employee's consent, provided that the employee is properly notified and given the opportunity to exercise certain administrative rights. OPM's collection of debts due the Retirement and Insurance Group for payment to the Civil Service Retirement and Disability Fund, Employees' Life Insurance Fund, the Retired Federal Employees Health Benefits Fund, or the Employees' Health Benefits Fund is governed by other regulatory provisions.

DATES: These regulations are effective July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Anna Wilson, Chief, Financial Policy Division, Office of the Chief Financial Officer (CFO), (202) 606–5075.

SUPPLEMENTARY INFORMATION: Section 5 of the Debt Collection Act of 1982 (Act) Pub. L. 97–365) codified at 5 U.S.C. 5514, makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect monies owed it.

Under the Act, when the head of an agency determines that an employee of any agency is indebted to the United States, or is notified by the head of another agency that an agency employee is indebted to the United States, the employee's debt may be offset against his/her pay. Before agencies may use the salary offset recovery procedure, certain due process rights must be extended to the debtor.

Before the Government may collect a debt by salary offset, an employee-debtor must be provided with notice of the debt and the opportunity to inspect and copy Government records relating to the debt, enter into a written repayment agreement, and request an impartial hearing on the determination of the agency concerning the existence or the amount of the debt. The employee must notify the agency of his/her intent to exercise these rights within the time period prescribed in the regulations.

The Act requires agencies to issue regulations for salary offset. This final rule establishes the procedures the Office of Personnel Management (OPM) will follow in making a salary offset. OPM has determined that this document is interpretative; it implements a definitive statutory scheme and the requirements contained in regulations promulgated by OPM, codified in 5 CFR part 550, subpart K. Accordingly, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(b)(A). In addition, because this rule relates to agency management and personnel, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(a)(2). For these reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2).

Analysis and Comments

The Interim Rule was published in the **Federal Register** on November 19, 1993 (58 FR 60993). The comment period closed on January 18, 1994. Two labor organizations responded with comments. OPM has fully considered all of their comments.

Section 179.201 Purpose

One commentor requested that we change the 10 years in the second sentence (i.e., the time allowed for commencing actions brought by the United States) to 6 years. They cited no basis for the request. Section 179.201 is based on 31 U.S.C. 3716 which precludes agencies from initiating offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, with certain exceptions explained in that section.

Section 179.202 Scope

In response to a commenter, we corrected the reference "Section 179.207, Notice Requirement" to "Section 179.207, Hearing."

Section 179.206 Notice Requirements Before Offset

(a)(16) One commenter wished to insert "with interest" after the word "employee" in this sentence. While the Debt Collection Act of 1982 requires the assessment of interest, penalty fees, and administrative costs on delinquent debts as a means of strengthening enforcement of collections, it makes no provision to pay interest to the debtor for erroneous collections. OPM is not authorized to make such payments in the absence of a specific statute or authority. This reasoning applies also to the same comment regarding section 179.215 Refunds.

Section 179.207 Hearing

Both commenters objected to the perceived inequity in treatment of parties who fail to appear (§ 179.207(j)). We have inserted the following language:

* * * proceed with the hearing as scheduled and make his/her determination based upon the oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date.

One commenter suggested several other changes to this section, §§ 179.208 and 179.209 but provided no bases for the changes. Since the regulation as published complies with requirements of the Debt Collection Act of 1982, the suggested changes were not made.

Executive Order (E.O.) 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are regulations that will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 179

Claims.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, part 179 as follows:

PART 179—CLAIMS COLLECTION STANDARDS

1. The authority citation for part 179 is revised to read as follows:

Authority: 31 U.S.C. 952; 5 U.S.C. 1103; Reorganization Plan No. 2 of 1978; 5 U.S.C. 5514; 5 CFR part 550 subpart K; 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3720A.

2. Section 179.102 of subpart A is revised to read as follows:

§ 179.102 Delegation of authority.

(a) The Chief Financial Officer and his or her delegates are designated by the Director and authorized to perform all the duties for which the Director is responsible under the Debt Collection Act of 1982 and Office of Personnel Management regulations with the exception of debts arising from the Civil Service Retirement and Disability Fund, the Employees' Life Insurance Fund, the Retired Federal Employees Health Benefits Act (74 Stat. 849), and the Employees Health Benefits Fund. However, the Chief Financial Officer and his or her delegates will request a review by the General Counsel or his or her designee for all claims processed (in amounts of $2500 or more) for compromise, suspension, and termination of collection action.

(b) The Associate Director for Retirement and Insurance and his or her delegates are designated by the Director and authorized to perform all the duties for which the Director is responsible under the Debt Collection Act of 1982 and Office of Personnel Management regulations on debts caused by payments from the Civil Service Retirement and Disability Fund (subchapter III of chapter 83 or chapter 84), claims under the provisions of the Federal Employees' Life Insurance Fund (chapter 87), the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Employees Health Benefits Fund (chapter 89), the Panama Canal Construction Annuity Act (58 Stat. 257), and, the Lighthouse Service Widows' Annuity Act (64 Stat. 465).

3. Subpart B, consisting of §§ 179.201 through 179.218, is revised to read as follows:

Subpart B—Salary Offset

Sec.

179.201 Purpose.
179.202 Scope.
179.203 Definitions.
179.204 Applicability of regulations.
179.205 Waiver requests and claims to the General Accounting Office.
179.206 Notice requirements before offset.
179.207 Hearing.
179.208 Certification.

179.209 Voluntary repayment agreement as alternative to salary offset.
179.210 Special review.
179.211 Notice of salary offset.
179.212 Procedures for salary offset.
179.213 Coordinating salary offset with other agencies.
179.214 Interest, penalties and administrative costs.
179.215 Refunds.
179.216 Request for the services of a hearing official when the creditor agency is not OPM.
179.217 Non-waiver of rights by payments.
179.218 Additional administrative collection action.

Subpart B—Salary Offset

§ 179.201 Purpose.

The purpose of the Debt Collection Act of 1982 (Pub. L. 97–365), is to provide a comprehensive statutory approach to the collection of debts due the Federal Government. These regulations implement section 5 of the Act which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known, and could not reasonably have been known, by the official or officials who were charged with the responsibility for discovery and collection of such debts. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management (OPM) on July 3, 1984 (49 FR 27470) in 5 CFR part 550, subpart K.

§ 179.202 Scope.

(a) These regulations provide procedures for the collection of monies from a Federal employee's pay by salary offset to satisfy certain debts owed the Government.

(b) These regulations apply to all collections by the Director of OPM (except collections involving debts because of payments made from the Civil Service Retirement and Disability Fund, payments made under the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act and the Lighthouse Service Widows' Annuity Act and payments or premiums relating to the Federal Employees' Life Insurance Fund or the Federal Employees Health Benefits Fund) from:

(1) Federal employees who owe debts to OPM; and

(2) OPM employees who owe debts to other agencies.

179.209 Voluntary repayment agreement as alternative to salary offset.
179.210 Special review.
179.211 Notice of salary offset.
179.212 Procedures for salary offset.
179.213 Coordinating salary offset with other agencies.
179.214 Interest, penalties and administrative costs.
179.215 Refunds.
179.216 Request for the services of a hearing official when the creditor agency is not OPM.
179.217 Non-waiver of rights by payments.
179.218 Additional administrative collection action.

Subpart B—Salary Offset

§ 179.201 Purpose.

The purpose of the Debt Collection Act of 1982 (Pub. L. 97–365), is to provide a comprehensive statutory approach to the collection of debts due the Federal Government. These regulations implement section 5 of the Act which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known, and could not reasonably have been known, by the official or officials who were charged with the responsibility for discovery and collection of such debts. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management (OPM) on July 3, 1984 (49 FR 27470) in 5 CFR part 550, subpart K.

§ 179.202 Scope.

(a) These regulations provide procedures for the collection of monies from a Federal employee's pay by salary offset to satisfy certain debts owed the Government.

(b) These regulations apply to all collections by the Director of OPM (except collections involving debts because of payments made from the Civil Service Retirement and Disability Fund, payments made under the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act and the Lighthouse Service Widows' Annuity Act and payments or premiums relating to the Federal Employees' Life Insurance Fund or the Federal Employees Health Benefits Fund) from:

(1) Federal employees who owe debts to OPM; and

(2) OPM employees who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) Section 179.207 does not apply to any adjustment to pay arising from an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) Nothing in these regulations precludes the compromise, suspension, or termination of collection actions, where appropriate, under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*, 4 CFR parts 101–105, 38 CFR 1.900 *et seq.*).

(f) Nothing in these regulations precludes an employee from requesting a waiver of the debt under applicable statute; under the standards and procedures specified by the Federal Claims Collection Standards (FCCS); or waiver of salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, by submitting a subsequent claim to the General Accounting Office in accordance with procedures established by the General Accounting Office.

§ 179.203 Definitions.

As used in this subpart the following definitions shall apply:

Agency means:

(1) An Executive Agency as defined by section 105 of title 5, United States Code;

(2) A military department as defined by section 102 of title 5, United States Code;

(3) An agency or court of the judicial branch including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands and the Judicial Panel and Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

Certification means a written debt claim, as prescribed by § 179.209, that is received from a creditor agency and which requests the paying agency to offset the salary of an employee.

Claim See debt.

Creditor agency means an agency of the Federal Government to which the debt is owed. For purposes of this part *creditor agency* includes OPM, unless otherwise noted.

Debt means money owed by an employee of the Federal Government to an agency of the Federal Government, from sources which include loans insured or guaranteed by the United States and all other amounts due the Government from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines and forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

Delinquent means the failure to pay an obligation or debt by the date specified in the initial notification or applicable contractual agreement, unless other payment arrangements have been agreed to by OPM and the debtor by that date, or if, at any time thereafter, the debtor fails to satisfy the obligations under a payment agreement with the creditor agency.

Director means the Director of OPM or his or her designee.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. OPM shall allow the following deductions, and any others required by law to be withheld, in determining disposable pay subject to salary offset;

(1) Federal employment taxes;

(2) Amounts mandatorily withheld for the U.S. Soldiers' and Airmen's Home;

(3) Fines and forfeitures ordered by a court martial or by a commanding officer;

(4) Federal, state or local income taxes no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(5) Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required by law;

(6) Amounts deducted for Medicare;

(7) Health insurance premiums;

(8) Normal retirement contributions as explained in 5 CFR 581.105(e) (e.g., Civil Service Retirement deductions, Survivor Benefit Plan or Retired Serviceman's Family Protection Plan); and

(9) Normal life insurance premiums (e.g., Serviceman's Group Life Insurance

and basic Federal Employee's Group Life Insurance premiums) exclusive of optional life insurance premiums.

Employee means a current employee of OPM or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

FCCS means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office of 4 CFR 101.1 *et seq.*

Hearing official means an individual (including an administrative law judge) responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of OPM when OPM is the creditor agency.

Notice of intent to offset or *notice of intent* means a written notice from a creditor agency to an employee that states the creditor agency's determination that the employee owes a debt to the creditor agency and apprises the employee of certain administrative rights.

Notice of salary offset means a written notice from the paying agency to an employee after a certification has been issued by the creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

Office means the central and regional offices of the Office of Personnel Management.

Paying agency means the agency of the Federal Government which employs the individual who owes a debt to an agency of the Federal Government. In some cases, OPM may be both the creditor agency and the paying agency.

Payroll office means the payroll office in the paying agency which is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee. Payroll office, with respect to OPM, means the central payroll office.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Salary Offset Coordinator means an official, designated by the Director of OPM, who is responsible for coordinating debt collection activities for OPM.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to OPM or another agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 179.204 Applicability of regulations.

These regulations are to be followed for all OPM collections (except those involving retirement, life, and health insurance debts for recovery by the Associate Director for Retirement and Insurance) in instances where:

(a) OPM is owed a debt by an individual currently employed by another agency;

(b) OPM is owed a debt by an individual who is a current employee of OPM; or

(c) OPM currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, OPM will offset the debtor-employee's salary in accordance with these regulations.

§ 179.205 Waiver requests and claims to the General Accounting Office.

These regulations do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office. These regulations do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debt being collected.

§ 179.206 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency provides the employee with written notice that he/she owes a debt to the Federal government a minimum of 30 calendar days before salary offset is initiated. When OPM is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered at work, or sent by registered mail, return receipt requested, to the employee's most current address that is available to the Office and will state:

(1) That the creditor agency has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The creditor agency's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest are paid in full;

(3) The amount, frequency, beginning date, and duration of the intended deductions;

(4) An explanation of OPM's policy concerning interest, penalties and administrative costs including a statement that such assessments must be made unless excused in accordance with the FCCS, 4 CFR 101.1 *et seq.* (§ 179.214);

(5) The employee's right to inspect and copy all records of the office pertaining to the debt claimed, or to request and to receive copies of such records if personal inspection is impractical;

(6) If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset (4 CFR 102.2(e)). The agreement must contain terms agreeable to the Office and must be in such form that it is legally enforceable. The agreement must:

(i) Be in writing;

(ii) Be signed by both the employee and the creditor agency;

(iii) Specify all the terms of the arrangement for payment; and

(iv) Contain a provision accelerating the debt in the event of a default by the debtor, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to the deduction of a greater amount (5 CFR 550.1104(i)).

(7) The right to a hearing conducted by an impartial hearing official (an administrative law judge, or alternatively, a hearing official not under the supervision or control of the Director) with respect to the existence and amount of the debt claimed, or the repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed in § 179.207;

(8) The method and time period for requesting a hearing;

(9) The name, address and phone number of an official or employee of the Office who may be contacted concerning procedures for requesting a hearing;

(10) The name and address of the office to which the petition for a hearing should be sent;

(11) That a timely and properly filed petition for hearing will stay the commencement of collection proceedings (a timely filing must be received in the office specified under paragraph (a)(10) of this section within 15 calendar days after receipt of such notice of intent to offset);

(12) That the Office will initiate certification procedures to implement a salary offset (which may not exceed 15 percent of the employee's disposable pay) not less than 30 days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if a hearing is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to;

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States code; part 752 of title 5, Code of Federal Regulations; or any other applicable statute or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of title 31, United States Code, or any other applicable statutory authority; and

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States code, or any other applicable statutory authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) That proceedings with respect to such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

(b) The Office is not required to comply with paragraph (a) of this section for any adjustment to pay arising from:

(1) An employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less; or

(2) An employee's consent to make voluntary withholdings from his or her current pay account.

§ 179.207 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the office designated in the notice of intent (§ 179.207(a)(10)). The

salary offset (which may not exceed 15 percent of the employee's disposable pay) not less than 30 days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if a hearing is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to;

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States code; part 752 of title 5, Code of Federal Regulations; or any other applicable statute or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of title 31, United States Code, or any other applicable statutory authority; and

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States code, or any other applicable statutory authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) That proceedings with respect to such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

(b) The Office is not required to comply with paragraph (a) of this section for any adjustment to pay arising from:

(1) An employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less; or

(2) An employee's consent to make voluntary withholdings from his or her current pay account.

§ 179.207 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the office designated in the notice of intent (§ 179.207(a)(10)). The request (or petition) for hearing must be received by the designated office not later than 15 calendar days following the employee's receipt of the notice. The employee's request (or petition) must:

(1) Be signed by the employee;

(2) Fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, that the employee believes support his or her position; and

(3) Specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone (4 CFR 102.3(c)).

(b) *Failure to timely submit.* (1) If the employee files a petition for a hearing after the expiration of the 15 calendar day period provided for in paragraph (a) of this section, the Office may accept the request if the employee can show that the delay was the result of circumstances beyond his of her control or failure to receive actual notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Office offset schedule, if the employee:

(i) Fails to file a timely request for a hearing unless such failure is excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines that failure to appear was due to circumstances beyond the employee's control.

(c) *Representation at the hearing.* The creditor agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her expense.

(d) *Review of Office records related to the debt.* (1) An employee who intends to inspect or copy creditor agency records related to the debt, as provided by § 179.207(a)(5), must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within 15 calendar days after the employee's receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements shall be made to end copies of such records to the employee.

(e) *Hearing official.* The Office may request an administrative law judge to conduct the hearing, or the Office may obtain a hearing official who is not under the supervision or control of the Director of OPM.

(f) *Obtaining the services of a hearing official when OPM is the creditor agency.* (1) When the debtor is not an OPM employee and the Office cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement, the Office may contact an agent of the paying agency designated in 5 CFR part 581, appendix A, or other individual designated by the paying agency, and request a hearing official.

(2) When the debtor is an OPM employee, the Office may contact any agent of another agency designated in 5 CFR part 581, appendix A, or otherwise designated by that agency, to request a hearing official.

(g) *Procedure.*—(1) *General.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g., when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions with an opportunity for oral presentation.

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make a determination based upon a review of the available written record (4 CFR 102.3(c) (2) and (3)).

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart (4 CFR 102.3(c)(1)(ii)). Witnesses who testify in

oral hearings will do so under oath or affirmation.

(h) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In such case the 60-day decision period shall be extended by the number of days by which the hearing was postponed.

(i) *Content of decision.* The written decision shall include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions including a determination whether the debtor's petition for hearing was baseless and resulted from an intent to delay creditor agency collection activity and whether the Office should pursue other actions against the debtor as provided by 5 CFR 550.1104(d)(11); and

(3) The terms of any repayment schedules, if applicable.

(j) *Failure to appear.* In the absence of good cause shown (e.g., illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled and make his/her determination based upon the oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of the new hearing.

§ 179.208 Certification.

(a) OPM salary offset coordinator shall provide a certification to the paying agency in all cases where:

(1) The hearing official determines that a debt exists;

(2) The employee fails to contest the existence and amount of the debt by failing to request a hearing; or

(3) The employee fails to contest the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must state:

(1) That the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Government's right to collect the debt first accrued;

(4) That the Office's regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(5) The date on which payment(s) is due;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment or percentage of disposable pay, and the commencement date of the first installment, if a date other than the next officially established pay period is required; and

(7) The date(s) of any action(s) taken under 5 U.S.C. 5514(b).

§ 179.209 Voluntary repayment agreement as alternative to salary offset.

(a)(1) In response to a notice of intent, an employee may propose to repay the debt by making voluntary installment payments as an alternative to salary offset. An employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt, and the agreement must be in such form that it is legally enforceable. The agreement must:

(i) Be in writing;

(ii) Be signed by both the employee and the creditor agency;

(iii) Specify all the terms of the arrangement for payment; and

(iv) Contain a provision accelerating the debt in the event of default by the debtor, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to deduction of a greater amount (5 CFR 550.1104(i)).

(2) Any proposal under paragraph (a) of this section must be received by the official designated in the notice of intent within 30 calendar days after receipt of the notice.

(b) The creditor agency will review a timely and properly submitted repayment proposal by the employee debtor and notify the employee whether the proposed written agreement for repayment is acceptable. It is within the creditor agency's discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the creditor agency decides that the proposed repayment agreement is unacceptable, the employee will have 15 days from the date he or she received notice of that decision to file a petition for a hearing or a special review as provided by § 179.210.

(d) If the creditor agency decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing, signed by both the employee and the creditor agency designee and meet the other requirements of this section for a voluntary repayment agreement.

§ 179.210 Special review.

(a) An OPM employee subject to salary offset or a voluntary repayment agreement, may, at any time, request a special review by the Office of the amount of the salary offset or voluntary payment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) In determining whether an offset would prevent the employee from meeting essential subsistence expenses (food, housing, clothing, transportation and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

If an OPM employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents (§ 179.210(b)), stating why the current salary offset or payments result in an extreme financial hardship to the employee.

(c) The Director shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an extreme financial hardship on the employee. The Director shall notify the employee in writing of such determination, including, if appropriate, a revised offset or repayment schedule.

(d) If the special review results in a revised offset or repayment schedule, the OPM salary offset coordinator shall provide a new certification to the payroll office.

§ 179.211 Notice of salary offset.

(a) Upon receipt of proper certification from a creditor agency, the OPM payroll office will send the OPM employee, identified in the certification as the debtor, a written notice of salary offset. Such notice shall, at a minimum:

(1) State that OPM has received a properly certified debt claim from a creditor agency;

(2) Contain a copy of the certification received from the creditor agency;

(3) Advise the employee that salary offset will be initiated at the next officially established pay interval; and

(4) State the amount of the claim and amount of deductions.

(b) The payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 179.212 Procedures for salary offset.

(a) The Director or his or her designee shall coordinate salary deductions under this subpart.

(b) OPM payroll office shall determine the amount of an employee's disposable pay and implement the salary offset.

(c) Deductions shall begin effective the pay period following receipt by OPM's payroll office of proper certification of the debt (§ 179.208).

(d) *Types of collection.*—(1) *Lump-sum payment.* A debt will be collected in a lump sum if possible. If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment and, except in rare circumstances, not to exceed 3 years. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. The amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Lump-sum deductions from final check.* A lump-sum deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Lump-sum deductions from other sources.* When an employee subject to salary offset is separated from OPM and the balance of the debt cannot be liquidated by offset of the final salary check, the Office, pursuant to 31 U.S.C. 3716, the FCCS and OPM's implementing regulations, may offset the balance of the debt against any financial payment due the employee from the U.S. Government.

(e) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, OPM payroll office may, at its discretion, determine whether one or more debts should be offset

(4) State the amount of the claim and amount of deductions.

(b) The payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 179.212 Procedures for salary offset.

(a) The Director or his or her designee shall coordinate salary deductions under this subpart.

(b) OPM payroll office shall determine the amount of an employee's disposable pay and implement the salary offset.

(c) Deductions shall begin effective the pay period following receipt by OPM's payroll office of proper certification of the debt (§ 179.208).

(d) *Types of collection.*—(1) *Lump-sum payment.* A debt will be collected in a lump sum if possible. If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment and, except in rare circumstances, not to exceed 3 years. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. The amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Lump-sum deductions from final check.* A lump-sum deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Lump-sum deductions from other sources.* When an employee subject to salary offset is separated from OPM and the balance of the debt cannot be liquidated by offset of the final salary check, the Office, pursuant to 31 U.S.C. 3716, the FCCS and OPM's implementing regulations, may offset the balance of the debt against any financial payment due the employee from the U.S. Government.

(e) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, OPM payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) *Precedence of debts owed to OPM.* For OPM employees, debts owed to the Office generally take precedence over debts owed to other agencies. In the event that a debt to the Office is certified while an employee is subject to a salary offset to repay another agency, the OPM payroll office may decide whether to have that debt repaid in full before collecting its claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Office can be collected in one pay period, the payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the office debt.

(g) When an employee owes two or more debts, the best interests of the Government shall be the primary consideration in determining the order of debt collection. The OPM payroll office, in making this determination, will be guided primarily by the statute of limitations that affects the collection of the debt(s).

§ 179.213 Coordinating salary offset with other agencies.

(a) *Responsibility of OPM as the creditor agency.* (1) The Director or his or her designee shall coordinate debt collections with other agencies and shall, as appropriate:

(i) Arrange for a hearing or special review upon proper petitioning by a Federal employee; and

(ii) Prescribe, upon consultation with the General Counsel, such additional practices and procedures as may be necessary to carry out the intent of this regulation.

(2) The designated salary offset coordinator will be responsible for:

(i) Ensuring that each notice of intent to offset is consistent with the requirements of § 179.206;

(ii) Ensuring that each certification of debt that is sent to a paying agency is consistent with the requirements of § 179.208;

(iii) Obtaining hearing officials from other agencies pursuant to § 179.207(f); and

(iv) Ensuring that hearings are properly scheduled.

(3) *Requesting recovery from current paying agency.* Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Office must:

(i) Certify, in writing, to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Office's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(ii) Advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and commencing date of the installments (if a date other than the next officially established pay period is required);

(iii) Advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) and action(s) was taken (unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency);

(iv) Submit a debt claim certification containing the information specified in paragraphs (a)(3)(i), (a)(3)(ii) and (a)(3)(iii) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency; and

(v) Submit the debt claim, as provided in § 179.208, to the employee's paying agency for collection if the employee is in the process of separating, and has not received a final salary check, or other final payment(s) from the paying agency. The paying agency must certify the total amount of its collection on the debt and send a copy of the certification to the employee and another copy to the creditor agency. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal Government sources, the paying agency will provide written notification of the outstanding debt to the agency responsible for making such other payments to the debtor employee. The written notification shall state that the employee owes a debt (including the amount) and that the provisions of this section have been fully complied with. The Office must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(4) *Separated employee.* If the employee is already separated and all payments due from his or her former paying agency have been paid, the Office may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.* or 5 CFR 845.401 *et seq.*) or other similar funds, be administratively offset to collect the debt (31 U.S.C. 3716 and the FCCS).

(5) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, the Office is not required to repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Office will submit a properly certified claim to the new paying agency and will subsequently review the debt to make sure the collection is resumed by the new paying agency.

(b) *Responsibility of the Office as the paying agency*—(1) *Complete claim.* When the Office receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. Before deductions can begin, the employee must receive written notice from the Office including:

(i) A statement that the Office has received a certified debt claim from the creditor agency;

(ii) The amount of the debt claim;

(iii) The date salary offset deductions will begin, and

(iv) The amount of such deductions.

(2) *Incomplete claim.* When the Office receives an incomplete certification of debt from a creditor agency, the Office must return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1101 *et seq.* must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Office is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Office, the employee transfers from OPM to a different paying agency before the debt is collected in full, the Office will certify the total amount collected on the debt. One copy of the certification will be furnished to the employee and one copy to the creditor agency along with notice of the employee's transfer.

§ 179.214 Interest, penalties and administrative costs.

The office shall assess interest, penalties and administrative costs on debts owed pursuant to 31 U.S.C. 3717 and 4 CFR part 101.1 *et seq.* Penalties and administrative costs will be assessed on all delinquent debts.

(a) In cases of default on a previous repayment agreement, the Office reserves the right to set a new interest rate which reflects the current value of funds to the Treasury at the time a new repayment agreement is executed.

(b) The Office, on a case-by-case basis, may waive all interest accrued on debts paid in full within 60 days of the due date if there is no indication of fault or lack of good faith on the part of the debtor.

(c) The Office may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section under the criteria specified in part 103 of 4 CFR, chapter II, relating to the compromise of claims (without regard to the amount of the debt).

(d) The Office may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section if the Office determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States.

(e) The Office shall waive the accrual of interest pending consideration of a request for reconsideration, administrative review, or waiver of the underlying debt under provisions of a permissive statute providing for such review related to the debt.

(f) The Office shall waive interest on repayment agreements when the amount of interest accruing equals or exceeds the amount of installments the debtor can reasonably afford and there is no indication of fault or lack of good faith on the part of the debtor.

§ 179.215 Refunds.

(a) The Office shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owing the United States (unless expressly prohibited by statute or regulation); or

(2) An administrative or judicial order directs the Office to make a refund.

(b) Unless required or permitted by law or contract, refunds under this subsection shall not bear interest.

§ 179.216 Request for the services of a hearing official when the creditor agency is not OPM.

(a) The Office will provide a hearing official upon request of the creditor agency when the debtor is employed by the Office and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(b) The salary offset coordinator will secure qualified personnel to serve as hearing officials.

(c) Services rendered under this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, *as amended*, 31 U.S.C. 1535.

§ 179.217 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt collected under this subpart must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 179.218 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the use of any other administrative remedy which may be appropriate.

[FR Doc. 94–16633 Filed 7–8–94; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV93–981–2FIR]

Almonds Grown in California; Finalize Revision of Administrative Rules and Regulations Concerning Creditable Promotion and Advertising Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with modifications, the provisions of an interim final rule that changed the focus of the Almond Board of California's (Board) advertising and promotion program by broadening the scope of creditable advertising and promotion activities available to handlers and expanding the Board's ability to engage in a significant generic advertising and promotion program to benefit the entire industry. This action provides for more effective and efficient use of industry advertising and promotion funds.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2536–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, or FAX (202) 720–5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; (209) 487–5901 or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 [7 CFR Part 981], both as amended, hereinafter referred to as the "order" regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary will rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; (209) 487–5901 or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 [7 CFR Part 981], both as amended, hereinafter referred to as the "order" regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary will rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds that are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the almond handlers and producers may be classified as small entities.

This action finalizes an interim final rule which revised § 981.441 of Subpart—Administrative Rules and Regulations and is based on recommendations of the Board, comments received in response to the interim final rule, comments received in response to the reopening of the comment period of the interim final rule, and other available information. The interim final rule was published in the **Federal Register** [58 FR 43500], on August 17, 1993. The rule amended § 981.441 of the rules and regulations in effect under the order. It provided a 30 day comment period which ended September 16, 1993. During this period, one comment was received from Cal-Almond, Inc., an independent almond handler.

On December 22, 1993, the United States Court of Appeals for the Ninth Circuit in California issued a ruling on a district court order involving an action against the Department by three independent almond handlers wherein such handlers alleged, among other things, that the Board's advertising program during the 1980's was unconstitutional because the program violated the handlers' First Amendment Rights. The district court had ruled that the advertising program was constitutional. The Ninth Circuit Court of Appeals acknowledged the substantial public interest in designing effective advertising and promotion programs to stimulate demand and to increase returns to growers but concluded that the almond program in place during the 1980's was sufficiently flawed in that it did not meet the constitutional standards.

In light of the potential effect of the Ninth Circuit Court of Appeal's decision on the newly established Credit-Back advertising and promotion program and on the almond industry as a whole, the Department determined that it was in the public interest to reopen the comment period for the interim final rule. Accordingly, the comment period was reopened on January 31, 1994, [59 FR 4247]. Reopening of the comment period provided interested persons an opportunity to review the rules for the new Credit-Back advertising and promotion program and to submit additional written opinions and information regarding the potential effect of the Court's decision on that program. The Department also sought comments on how to best address the issues raised in the Court's decision. The second comment period closed on March 2, 1994. Seven additional comments were received. All of the comments received on the interim final rule will be discussed herein.

Statutory and Regulatory Background

The Almond Marketing Order is promulgated pursuant to the Agricultural Marketing Agreement Act of 1937 ("Act"). Congress enacted this statute in 1937, a time of economic upheaval for many farmers, in order to stabilize market conditions and ameliorate shortages and surpluses. Congress believed that "establish[ing] and maintain[ing]" such orderly marketing conditions would be in the public interest, ultimately benefitting both farmers and consumers. *See* 7 U.S.C. 602 (declarations of policy).

The principal means by which Congress sought to effectuate these goals is the promulgation of marketing orders under 7 U.S.C. § 608c. Marketing orders are regulations issued by the Secretary of Agriculture, after notice and hearing, and after a finding by the Secretary that the order's terms "will tend to effectuate the declared policy of [the Act]." *See* 7 U.S.C. § 608c(4). Most orders do not become effective until it is approved by two-thirds or more of the affected producers voting in a referendum. *See* 7 U.S.C. §§ 608c (8) and (9). Conversely, a vote of a simple majority of the affected producers can terminate an order. *See* 7 U.S.C. § 608c(16)(B). Although producers vote on the marketing order, the order imposes direct regulatory obligations only on the activities of "handlers" or processors of agricultural commodities. *See* 7 U.S.C. 608c(1).

Section 608c(6)(I) of the Act provides for the "establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of any such commodity or product, the expense of such projects to be paid from funds collected pursuant to the marketing order." Section 608c(6)(I) also provides "[t]hat with respect to orders applicable to almonds * * * such projects may provide for any form of marketing promotion including paid advertising, and with respect to almonds * * * may provide for crediting the pro rata

expense assessment obligations of a handler with all or any portion of his direct expenditures for such marketing promotion including paid advertising as may be authorized by the order * * *"

Pursuant to this statutory scheme, the Secretary has promulgated a marketing order regulating the handlers of almonds grown in California. The Order is administered by the Almond Board of California ("Board"), which is composed of industry representatives, whose function it is to administer the Order and to recommend amendments to the Order. The duties of the Board also include acting as intermediary between the Secretary and industry members; investigating and collecting data on growing, shipping, and marketing conditions with respect to almonds; furnishing pertinent information to the Secretary; and keeping record of its acts and transactions. Funds to cover the Board's expenses are generated by levying assessments on each handler, in proportion to the kernel weight of almonds received.

Background of the California Almond Industry

The California Almond Marketing Order has been in effect since 1950. It provides a means for growers and handlers to work together to address various problems which affect the marketing of California almonds, including varying weather conditions which can lead to annual swings in production.

One way in which the Almond Marketing Order has helped to address problems affecting the industry is by establishing salable and reserve percentages for all almonds received by handlers during a given crop year. The establishment of reserve percentages has allowed the Department to regulate the supply of almonds marketed and avoid dramatic price drops during years of excess production. In years when the anticipated annual crop is large, a reserve percentage may be established and handlers withhold a percentage of the almonds received from growers from the market. Conversely, in years when the annual crop proves to be small, reserve almonds are released for sale. In addition, small quantities of reserve almonds are sometimes used to develop new products or are disposed of in secondary markets such as oil or livestock feed.

The Department has analyzed the production and sale of almonds since the inception of the Almond Marketing Order. Over the past forty years, the production and sale of almonds, both in this country and abroad, have increased dramatically. In the 1950's, almond production grew from 19 million to 84 million pounds per year and the value increased from $15 to $38 million. By 1969, production had reached 132 million pounds per year at a value of $74 million.

During the 1950's and 1960's, the domestic market was the primary outlet for California almonds. Supplies which exceeded the needs of the domestic market were exported or put to other "non-competitive" uses, such as sliced, diced and slivered almonds. In 1969, shipments of almonds to export markets exceeded domestic shipments for the first time. Most export shipments were of reserve almonds which were sold at prices below domestic levels.

The Almond Marketing Order was amended in 1971 to provide for further market development through the establishment of a creditable advertising and generic promotion program. These programs have been in effect since 1972. In recommending that the Almond Marketing Order be amended to authorize advertising and promotion programs, proponents within the almond industry believed that advertising almonds would tend to increase almond consumption and enhance grower returns. The Department's analysis of sales figures for almonds during the last twenty-two years demonstrate that this belief was correct.

The adoption of the creditable advertising and generic promotion programs has fostered a period of steady growth in the demand for almonds, both domestically and abroad. From 1972 to 1992, domestic shipments of almonds increased from 75 million pounds to 186 million pounds and their value increased from $63 million in 1972 to $318 million in 1992. During these years, the creditable advertising and generic promotion programs fostered an even greater rate of growth in the export market. Annual exports of almonds went from 69 million pounds in 1972 to 350 million pounds in 1992 and the value increased from $58 million to $598 million. The industry has benefitted from increased production and sales as consumption grew and almonds expanded into new markets.

Currently, the majority of almonds produced in the United States are sold abroad, with the largest markets in Germany and Japan. The California almond industry has become an established supplier of high quality almonds to markets throughout the world and has maintained a dominant share (over 60%) of the overall world almond market for the past ten years. Substantial growth has also occurred in the demand for sliced, diced and slivered almonds, once considered a secondary almond market. Due to market expansion, shipments of almonds for such uses are now considered normal commercial sales.

The relative proportion of annual crop sold to ingredient manufacturers in bulk quantities has also increased substantially during the last two decades. Currently, the majority of almonds sold in the United States are sold for use as ingredients in candy, cereal, ice cream, baked goods, cookies, granola bars, prepared meals, and other manufactured products. The Department's data on almond sales to export markets also indicates that the vast majority of almonds sold to European countries are intended for use as ingredients.

Since the adoption of the creditable advertising and generic promotion programs there has been an increase in the number of almond handlers operating in the United States. In 1971, there were 15 almond handlers in California and the four largest handled about 95% of the annual crop. By 1991, there were 115 almond handlers in California and the four largest handled 62% of the annual crop. The growth of the almond market has enabled small handlers to enter the industry in greater numbers.

The Former Creditable Advertising Program

At the time of its adoption in 1971, the almond Marketing Order's advertising and promotion program was structured with a strong emphasis on individual handler advertising and promotion, with a complementary generic program conducted by the Board. Since its implementation, the Secretary has instituted numerous rulemaking actions to revise and update the creditable advertising and promotion program to address changing circumstances in the industry.

In revising the program, the Secretary relied, in part, on industry production and sales data and the Board's consistent belief that the industry's advertising and promotion program provided an effective means of increasing almond sales. The Board, on behalf of the industry, responds to changing industry practices and trends by recommending to the Secretary modifications to the Order's implementing regulations and by redesigning its activities to better reflect these changes, thereby ensuring further development of the almond industry. In addition, the Secretary also relied on comments received from almond industry representatives and other interested persons prior to adopting certain amendments to the regulations.

Section 981.41 of the Order provides the Board, with the approval of the Secretary, authority to credit a handler's direct expenditures for marketing promotion, including paid advertising, against the applicable portion of their assessment obligation. The requirements that a handler needed to fulfill before obtaining credit for promotion are set forth in § 981.441 of the Administrative Rules and Regulations. The purpose of these requirements was to ensure that creditable activities undertaken by handlers were forms of promotion recognized and accepted by advertising and promotion industry norms, and could reasonably be expected to increase almond consumption. In addition, the requirements were devised to ensure that creditable activities could be documented and costs could be measured in conformance with industry standards.

From the time of the program's inception, the list of handler activities for which credit could be obtained has frequently been revised and expanded in order to meet the changing needs of the industry. In all, over twenty-five Board recommendations have been made and adopted by the Secretary in an effort to improve the Order's advertising and promotion program. Some examples of these revisions are described below.

On September 16, 1982, [47 FR 40783], the creditable advertising and promotion program was revised in order to allow handlers to receive credit against their creditable assessment obligations for distributing sample packages of almonds to charitable and educational institutions (up to 150% credit allowed depending on volume), and for purchasing almond promotional materials from the Board (100% credit allowed). The Board believed that these revisions would provide handlers with additional opportunities to obtain credit for their promotion of almonds, especially for handlers who did not market almonds under a specific brand name. These revisions were also intended to be advantageous to small handlers.

On April 23, 1987, [52 FR 13427], the program was revised to expand provisions already in place concerning the crediting of certain handler marketing promotion expenditures related to mail order promotions. Specifically, the costs of purchasing mailing lists to conduct mail order promotions and the costs of postage and envelopes to mail printed promotional materials became creditable at a rate of up to $25,000 per crop year. The

interested persons prior to adopting certain amendments to the regulations.

Section 981.41 of the Order provides the Board, with the approval of the Secretary, authority to credit a handler's direct expenditures for marketing promotion, including paid advertising, against the applicable portion of their assessment obligation. The requirements that a handler needed to fulfill before obtaining credit for promotion are set forth in § 981.441 of the Administrative Rules and Regulations. The purpose of these requirements was to ensure that creditable activities undertaken by handlers were forms of promotion recognized and accepted by advertising and promotion industry norms, and could reasonably be expected to increase almond consumption. In addition, the requirements were devised to ensure that creditable activities could be documented and costs could be measured in conformance with industry standards.

From the time of the program's inception, the list of handler activities for which credit could be obtained has frequently been revised and expanded in order to meet the changing needs of the industry. In all, over twenty-five Board recommendations have been made and adopted by the Secretary in an effort to improve the Order's advertising and promotion program. Some examples of these revisions are described below.

On September 16, 1982, [47 FR 40783], the creditable advertising and promotion program was revised in order to allow handlers to receive credit against their creditable assessment obligations for distributing sample packages of almonds to charitable and educational institutions (up to 150% credit allowed depending on volume), and for purchasing almond promotional materials from the Board (100% credit allowed). The Board believed that these revisions would provide handlers with additional opportunities to obtain credit for their promotion of almonds, especially for handlers who did not market almonds under a specific brand name. These revisions were also intended to be advantageous to small handlers.

On April 23, 1987, [52 FR 13427], the program was revised to expand provisions already in place concerning the crediting of certain handler marketing promotion expenditures related to mail order promotions. Specifically, the costs of purchasing mailing lists to conduct mail order promotions and the costs of postage and envelopes to mail printed promotional materials became creditable at a rate of up to $25,000 per crop year. The revision was intended to give all handlers a new opportunity to take advantage of crediting. In 1990, [55 FR 41826] the creditable amount was further relaxed to allow handlers to obtain credit for mail order promotions at a rate of up to $25,000 per crop year or 25 percent of their creditable assessment obligations, whichever was greater.

On October 13, 1987, [52 FR 37926], the program was revised to increase the amount of credit that handlers could obtain for media advertising in certain foreign markets. The revision was made because the export market for California almonds was steadily increasing and the need for advertising in foreign countries was increasing accordingly. Under this revised rule, handlers became eligible to receive a 100% credit for all qualified brand advertising media expenditures conducted in designated foreign markets.

On February 15, 1989, [54 FR 6866], the program was again revised to allow handlers credit against their creditable assessment obligations for payments for in-store supermarket generic or brand advertising using fixed position (i.e. stationary) display advertisements, or video media. In addition, the provisions were further expanded to allow handlers to receive a 150% credit for payments to the Board for the Board's generic advertising and promotion program. These changes gave handlers additional flexibility in meeting their assessment obligations and particularly benefited small handlers which did not have brand names and/or did not market their almonds in retail outlets.

On October 16, 1990, [55 FR 41826], the program was further revised to provide handlers with additional opportunities to receive credit against their creditable assessment obligations for their own branded or generic advertising and promotional activities by (1) allowing credit for in-store supermarket advertisements using light emitting diode (LED) signs (a new form of in-store supermarket advertising which was being offered by advertising firms at that time); (2) expanding the provisions under which handlers could receive credit for in-store supermarket advertisements using fixed position media; (3) allowing handlers credit for brand advertisements in all foreign countries where California almonds were sold; and (4) increasing credit for certain mail order promotion costs. These revisions were intended to better reflect current industry practices as they related to advertising and promotion.

Over the years, other revisions to the program have been adopted in order to expand activities eligible for credit, improve program administration and generally bring the program into line with industry practices. These numerous revisions to the program demonstrate the Board's, as well as the industry's, recognition of changing conditions within the market and their willingness and ability to adapt the almond advertising and promotional program to address these changes.

The Ninth Circuit's Review of the Former Creditable Advertising Program

The Ninth Circuit Court of Appeals recently reviewed the Almond Marketing Order's former creditable advertising and promotion program in *Cal-Almond v. U.S. Department of Agriculture*. The case was brought by three independent almond handlers, each of which challenged the constitutionality of the Almond Marketing Order's former creditable advertising program on the grounds that the mandatory nature of the program violated their First Amendment rights. The Department's Judicial Officer upheld the validity of the Order. The handlers sought review in the United States District Court, which affirmed the Secretary's decision. The handlers then appealed to the Ninth Circuit Court of Appeals.

In reviewing the District Court's decision, the Court of Appeals held that the former advertising and promotion program imposed a burden on almond handlers' First Amendment rights, and, therefore, it was necessary to evaluate the nature and scope of the burden imposed on those rights to determine whether the program was constitutional.

The Ninth Circuit evaluated the constitutionality of the former almond advertising and promotion program under a three-pronged test:

(1) Is the governmental interest in establishing and carrying out an advertising and promotion program substantial?

(2) Does the program directly advance that interest?

(3) Is the program no more extensive than necessary to achieve the government's purpose?

In evaluating the almond program under this test, the Court held that there was in fact a substantial governmental interest in establishing a program that would stimulate the demand for almonds and help maintain and expand markets so as to enhance returns to almond growers. The Court went on to find, however, that there was insufficient record evidence to establish that the former almond advertising and promotion program was effective enough to directly advance the government's interest in increasing

almond sales, and that the rules providing for credit against a handler's assessment obligation for its own advertising were more extensive and cumbersome than necessary. Thus, it held that the advertising regulations were an unconstitutional restriction on the handlers' First Amendment rights.

It is important to note that in *Cal-Almond*, the Ninth Circuit did not find inherent constitutional harm in the establishment of research and promotion programs designed to increase sales and enhance grower returns. In fact, the Court acknowledged the substantial governmental interest in establishing such programs in order to maintain and expand the markets for agricultural commodities. The Court's complaint lay with the unique design of the former almond advertising and promotion program, with the lack of record proof that it directly advanced the stated interests, and with the fact that the former creditable advertising requirements seemed more extensive than necessary to achieve the approved goals.

The New Credit-Back Advertising and Promotion Program

An interim final rule published in the **Federal Register** on August 17, 1993, [57 FR 43500] represents the most recent and extensive revision to the Order's advertising and promotion program. Due to changes in the size and structure of the California almond industry during the 1980's and 1990's, as well as the fact that more handlers were beginning to sell almonds for use as ingredients in manufactured products rather than for direct consumption, there was a general perception within the industry that a new and innovative program needed to be implemented which would be even more effective than the former program in promoting the sale of California almonds.

This prompted the Board and its Public Relations and Advertising Committee to seek to create a new and widely accepted advertising and promotion program designed to aid the further development of the almond industry. On April 20, 1993, by a vote of 9–1, the Board recommended the new Credit-Back advertising and promotion program. The sole Board member opposing the new program was generally opposed to the entire concept of creditable advertising and promotion. This Board member asserted that all handlers should be required to fund a generic promotion program equally and that any brand advertising done on their own should be carried out at their own expense without any type of Board oversight.

The new Credit-Back advertising and promotion program recognizes new marketing techniques which have been developed by the industry over the years, and is intended to work with and complement a strong generic advertising and promotion program which will be undertaken by the Board. The premise of the new program is that individual handlers will be most effective in promoting their own portion of the almond crop while the Board will be the most effective vehicle through which to enhance total demand for almonds through a generic advertising and promotion program. Some of the significant features of the new program are as follows.

Under the new program, as modified in this final rule, handlers conducting their own advertising and promotional activities will receive credit against their Credit-Back assessment up to the amount of the Credit-Back assessment installment due if they conduct and document their advertising and promotional activities at least two weeks prior to assessment billings. If handlers do not conduct any advertising and promotional activities prior to assessment billings, they will be required to submit their advertising and promotional assessment when billed. If handlers conduct advertising and promotional activities after assessment billings and file appropriate documentation, they will be eligible for a refund or Credit-Back. Handlers will be billed in four equal installments during the crop year. Handlers are not obligated to take part in the new program. Each handler must make an individual decision whether or not to participate in the new program.

The new Credit-Back program substantially expands the list of advertising and promotional activities which will be eligible for credit under the regulations. The range of activities eligible for credit cover virtually every sales assistance, promotional, publicity and advertising area which a brand or individual company could use to aid in product sales, with the exception of price reductions. In all, there are now fourteen advertising, promotion and public relations categories of activities which will be eligible for credit. These include marketing research, paid media advertising directed to end-users, trade or industrial users, in-store demonstrations, trade fairs, seminars and exhibits, couponing, sponsorships, printing costs, trade and consumer product publicity, direct mailings, sales and marketing presentation kits, and 50/50 advertising with retailers. Each of these activities are widely used and accepted forms of marketing advertising and promotion.

Another aspect of the new program is the elimination of the 33% discount which was formerly allowed to handlers who paid their assessments directly to the Board by a specified date. Under the former creditable advertising and promotion program, handlers who paid their assessments to the Board by a specific date received a 150% credit against the advertising and promotional portion of their assessments. These payments were then used by the Board for generic advertising and promotion. In effect, this allowed handlers a 33% discount on a portion of their assessments. The purpose of the discount at the time was to encourage smaller handlers which did not have individual advertising and promotional programs to contribute to the Board's generic advertising and promotion program. Many members of the industry believed, however, that handlers who received the benefit of the discount did not always pass it on to growers and thus achieved a competitive advantage over handlers who engaged in individual advertising and promotional programs.

Another feature of the new program is an appeals process whereby handlers have the option of anonymity in the event a claim for a promotional activity is denied. Handlers may request that the Public Relations and Advertising Committee review Board staff decisions concerning denied claims. If not satisfied with that committee's decision, handlers may request that the Board review the issue. Handlers have the option of anonymity when their appeal is brought before the Board. Finally, handlers may request that the Department review the Board's decisions. The Department may review all decisions at any point during the appeals process.

The new Credit-Back program also offers handlers more flexibility in getting credit against their assessments for their own advertising and promotional activities compared with the former creditable advertising and promotion program. Some examples of the ways in which the new Credit-Back program offers handlers more flexibility are as follows.

Under the former program, handlers were denied credit for individual advertisements if those advertisements directed consumers to a specific retail store. Under the new program, this type of activity will be covered under the 14 broad categories for which credit will be allowed. Thus, the new program eliminates previous restrictions on handlers and will allow them greater flexibility in the promotion of their own products.

Also, under the former program credit was denied for advertisements which also promoted competing nuts. Under the new program, advertisements which contain references to almonds as well as competing nuts will be eligible for reimbursement. Any reimbursement will, however, be limited to that percentage of the advertisement's cost which is equal to the percentage of the advertisement which is devoted to almonds or the percentage of the product's weight which is almonds. The Board believes that the percentage rule is logical and fair because the handler credit originates from assessments on almonds, not on other products. The Board believes that to allow more credit than provided in the percentage rule would not serve the best interests of the industry because handlers would receive credit for promoting products which have nothing to do with the almond industry.

Previously, handlers were not allowed credit for advertisements which promoted complementary branded products. Under the new program, credit will be allowed for advertisements that promote both almonds and complementary branded products. For the reasons described above, however, the amount of the reimbursement will be directly related to the percentage of the advertisement which is devoted to the promotion of almonds. This will allow the almond industry to operate under a system which is as unrestricted as possible without sacrificing the objectives of the Almond Marketing Order.

Finally, under the old program, credit was denied for advertisements which promoted products which were less than 50% almonds. Under the new program, credit will be granted for all advertisements of products which contain almonds, regardless of the amount of almonds which are actually in the product. Again, the amount of the reimbursement will be directly related to the percentage of the advertisement which is devoted to the promotion of almonds.

In recommending the new Credit-Back program, the Board concluded that because of the fundamental changes which have occurred in the almond industry in recent years, it has become more difficult for individual handlers to directly reach end consumers through their own advertising and promotion. Therefore, the importance of a collective industry effort to generically promote the overall use of almonds has grown. For these reasons, the Board elected to strengthen its generic promotion

flexibility in the promotion of their own products.

Also, under the former program credit was denied for advertisements which also promoted competing nuts. Under the new program, advertisements which contain references to almonds as well as competing nuts will be eligible for reimbursement. Any reimbursement will, however, be limited to that percentage of the advertisement's cost which is equal to the percentage of the advertisement which is devoted to almonds or the percentage of the product's weight which is almonds. The Board believes that the percentage rule is logical and fair because the handler credit originates from assessments on almonds, not on other products. The Board believes that to allow more credit than provided in the percentage rule would not serve the best interests of the industry because handlers would receive credit for promoting products which have nothing to do with the almond industry.

Previously, handlers were not allowed credit for advertisements which promoted complementary branded products. Under the new program, credit will be allowed for advertisements that promote both almonds and complementary branded products. For the reasons described above, however, the amount of the reimbursement will be directly related to the percentage of the advertisement which is devoted to the promotion of almonds. This will allow the almond industry to operate under a system which is as unrestricted as possible without sacrificing the objectives of the Almond Marketing Order.

Finally, under the old program, credit was denied for advertisements which promoted products which were less than 50% almonds. Under the new program, credit will be granted for all advertisements of products which contain almonds, regardless of the amount of almonds which are actually in the product. Again, the amount of the reimbursement will be directly related to the percentage of the advertisement which is devoted to the promotion of almonds.

In recommending the new Credit-Back program, the Board concluded that because of the fundamental changes which have occurred in the almond industry in recent years, it has become more difficult for individual handlers to directly reach end consumers through their own advertising and promotion. Therefore, the importance of a collective industry effort to generically promote the overall use of almonds has grown. For these reasons, the Board elected to strengthen its generic promotion program while at the same time providing increased opportunities and incentives for handlers who wished to continue to advertise their own brand products in order to receive Credit-Back against their assessments.

The Board believes that the implementation of the new Credit-Back advertising and promotion program will directly advance the industry's collective goal of increasing almond sales and enhancing grower returns. In addition, the new program encourages and empowers handlers to protect their own interests by promoting their own brand of products in order to get Credit-Back. The new program also recognizes that the collective interests of the industry are better served if brand advertising and promotion is combined with the generic advertising and promotion of almonds. Both generic and brand advertising and promotion are proven promotional tools which have fostered the growth of the almond market over the last twenty years.

The new advertising and promotion program has been carefully structured so that the rules which govern its efficient administration are no more extensive than necessary to meet the desired goals of increasing almond sales and enhancing grower returns. Virtually all aspects of the former creditable advertising and promotion program have been modified or eliminated so as to increase efficiency while at the same time imposing a minimum of restrictions on handlers. The Board, the elective body composed of industry representatives, has carefully considered all aspects of this program and believes that its implementation will lead to even greater strides in the development of the almond market.

The new advertising and promotion program is intended to enable the almond industry to have an advertising and promotion program which better reflects its current needs. The Board believes that there is widespread industry support for the new program. Overall, the new Credit-Back program is expected to foster the worldwide demand for California almonds through the provision of a more efficient and effective program which will encompass both generic and brand advertising and promotion.

Discussion of the Comments

As was previously stated, USDA provided two comment periods for the new Credit-Back program. The first comment period ended on September 16, 1993. One comment was received during this period from Cal-Almond, Inc., an independent almond handler.

The second comment period ended on March 2, 1994. During this period, seven comments were received. Five comments were from independent almond handlers. They were Wiggin Farms, Arbuckle, CA; Western Nut Company, Chico, CA; Waterford Nut Company, Waterford, CA; Rotteveel Orchards, Dixon, CA; and Cal-Almond, Inc., Hughson, CA. A sixth comment was received from the U.S. Small Business Administration, Washington, DC. The seventh comment was received from Mr. Rodger Wasson, President and CEO of the Almond Board of California. All of the comments will be discussed below. Because many of the comments by the independent almond handlers contained similar concerns, they have been combined where appropriate and are addressed collectively.

In its first comment submitted on September 14, 1993, Cal-Almond, Inc., stated that the issuance of an interim final rule rather than a proposed rule to establish the new Credit-Back program was arbitrary and capricious. The commenter asserted that the former creditable advertising and promotion program has been substantially altered by the interim final rule and the burden on handlers has been drastically increased.

It is the Department's position that the issuance of the interim final rule met each of the requirements of the Administrative Procedure Act (APA) which pertain to the promulgation of regulations. The Board requested that the new regulations for the Credit-Back program be effective for the 1993–94 crop year. The only way to accomplish this was through the utilization of interim final rulemaking procedures, as authorized by the APA. Also, the Department was advised by the Board that the action was widely supported by the industry. While there was one dissenting vote among the ten Board members who voted on the establishment of the new program, that person was opposed to the imposition of any advertising assessments on members of the industry. The dissenting Board member had no specific criticisms of the new Credit-Back program. Finally, contrary to the commenter's assertion, the interim final rule represented a relaxation of the then-existing regulations. Moreover, the new Credit-Back program, as modified in this final rule, is further relaxed. The new program is carefully structured so that the rules which govern its efficient administration are no more extensive than necessary to meet the desired industry goals of increasing almond sales and enhancing grower returns. The new program substantially increases the

advertising and promotional activities for which handlers can receive credit against their assessment obligations. At the same time, it decreases the number of reporting deadlines and recordkeeping requirements imposed on handlers.

Cal-Almond further asserted that the Department does not have the authority to regulate how handlers pay growers and that the new Credit-Back program's elimination of the provision which allowed handlers to receive a 150% credit against the promotional advertising portion of their assessments because of concerns about grower returns was therefore arbitrary and capricious. The commenter contended that: (1) the Almond Marketing Order does not permit the Department to insure that growers receive a certain amount of returns on their products, and (2) the Order does not permit the Department to become involved in contracts which handlers have with their growers.

Contrary to the commenter's assertions, the interim final rule establishing the new Credit-Back program does not specify how handlers should pay almond growers, nor does it seek to regulate the returns which growers receive for their almonds. It is, however, the Act's intent that marketing orders help growers and handlers to work together to solve problems which affect their industry. Thus, industry practices which have a potentially negative effect on growers should be considered when making recommendations on changes to marketing order regulations.

Cal-Almond and another independent almond handler, Western Nut Company, also commented that the new Credit-Back program requires handlers to make expenditures of $3 in order to get back $1, thus placing an incredible financial burden on handlers. Cal-Almond stated that this, in turn, will reduce handlers' initial payments to growers.

In addition, independent almond handler, John Rotteveel on behalf of Rotteveel Orchards, indicated that he did not believe that the 50% return for creditable activities was enough to warrant any investment in the program. Grant Ecker on behalf of Waterford Nut Company, stated the new Credit-Back program places a larger economic burden on small handlers than the old program did.

Cal-Almond also objected to the new Credit-Back program's imposition of a 50 percent Credit-Back limit for promotional activities in foreign markets. Cal-Almond stated that this is not an expansion of the previous rule, but is instead a restriction because the former rule allowed 100% credit for qualified promotional activities in foreign markets.

The former creditable advertising and promotion program allowed for variable levels of credit for different activities, between 50 percent and 150 percent depending on the activity. The new Credit-Back program is designed to be more equitable because the credit allowed for all activities is the same. The amount of credit granted for foreign advertising expenditures is identical to the amount given for domestic advertising.

The Department believes that having the same credit amount for each activity provides equity for all handlers' advertising and promotional activities. No preference is given in the new Credit-Back program for one type of advertising and promotional activity over another.

The range of Credit-Back activities has been expanded so that handlers will be able to receive credit for 13 additional categories of promotion and advertising. This expansion could offset any increased outlays which handlers must make for brand promotion and advertising projects due to the reduced rate of credit.

The new Credit-Back program is designed to provide handlers with more flexibility in conducting their advertising and promotional activities. The commenters seem to be suggesting that it would be more desirable for the new program to have an increased credit amount than what is currently allowed.

On May 16, 1994, the Board met and discussed possible revisions that could be made to the new Credit-Back program. It was expressed at this meeting that the 50 percent Credit-Back amount may impose a greater financial burden on handlers than was anticipated. The Board unanimously recommended that the Credit-Back amount be modified from 50 percent to 66⅔ percent ($1.00 for every $1.50 spent). It was determined that this amount would provide incentive for handlers to maintain their individual advertising and promotional efforts and still allow adequate funds for the generic portion of the new advertising and promotion program.

The Department believes that the new Credit-Back program's expanded activities along with an increased credit amount will provide handlers with more incentive to maintain and more flexibility to conduct their individual advertising and promotional efforts. Therefore, we are modifying the new Credit-Back program in this final rule by increasing the amount of credit allowed for approved promotional activities from 50 percent to 66⅔ percent.

Cal-Almond also claimed that the requirement that handlers file an application with the Board to obtain pre-approval of creditable activities means that handlers cannot change their advertising plan for the entire year. Cal-Almond also objected to the requirement that handlers submit proof of at least one approved advertising activity by January 15 of each year. Sharon Wiggin, on behalf of Wiggin Farms, also stated that the form filing requirements and deadlines contained in the interim final rule are difficult to meet. The Department has determined that these comments have merit. The purpose of the requirement that handlers file an application with the Board to obtain pre-approval of creditable activities under the new program was to ensure that handlers were aware that the activity was eligible for Credit-Back prior to expending funds for the activity. In the past, the Board occasionally had to reject claims for activities that did not qualify after the promotional activity had already been conducted by the handler. The pre-approval provision was only intended to assist handlers by helping them avoid any unnecessary outlays of funds for activities that did not qualify for credit.

This aspect of the new program was also discussed at the recent Board meeting. The Board unanimously recommended that the pre-approval provision was not essential to the successful administration of the program. As previously explained, this provision was only intended to assist handlers. Handlers will no longer be required to obtain pre-approval of creditable activities from the Board under the new program as modified in this final rule. The Board will continue to assist any handler in determining whether an advertising and promotional activity is eligible for Credit-Back under the new program prior to the handler expending funds for the activity.

Cal-Almond also objected to the provision which allows Credit-Back payments only for the portion of product weight represented by almonds or the handler's actual payment, whichever is less. The commenter claims that this provision works against those handlers who apply for Credit-Back for advertising of processed products that contain only a small percentage of almonds. The new Credit-Back program is, however, intended to allow Credit-Back only for money actually spent for advertising California almonds, not for advertising another product. As discussed previously, the Board believes that the percentage rule is logical and fair because the handler's credit originates from assessments on almonds, not on other products. Without the percentage rule, the best interests of the entire industry would not be served because handlers would receive credit for promoting products which have nothing to do with the almond industry.

Cal-Almond also objected to the provision which requires a handler's name, brand, or the words "California almonds," to appear on the product's primary face label in order for the handler to be eligible for Credit-Back. The commenter contended that, because nearly all almonds produced in the United States are grown in California, the requirement that the word "California" be placed on the label is unnecessary and may limit marketing opportunities for some handlers in their negotiations with product manufacturers. The intent, however, of the new advertising and promotion program is to promote the sale and consumption of "California" almonds, not other ingredients in products or almonds not grown in California. This provision will help ensure that advertising generated by the new Credit-Back program is, indeed, for almonds grown in California. In addition, the provision is not limited to the word "California" being placed on the product's primary face label in order for the handler to be eligible for Credit-Back. Handlers can also negotiate with product manufacturers for the appearance of the handler's name or brand on the primary face label in order to be eligible for Credit-Back. Handlers have three alternatives under the new program, all of which ensure the promotion of "California" almonds.

Cal-Almond, Thomas L. Motta, on behalf of Western Nut Company, Grant Ecker, and Sharon Wiggin objected to handlers being required to expend advertising and promotion funds up-front in order to be eligible for a Credit-Back refund at a later date. Cal-Almond also stated that handlers should not have to wait until February 15 of the crop year to begin receiving Credit-Back refunds and that they should not have to wait 30 days after submission of claims to receive a refund. The Department has determined that these comments have merit. Because payment practices have been changed under the new Credit-Back program, the up-front payment may not provide some handlers with enough flexibility early in the crop year to conduct their advertising and promotional activities.

This aspect of the new program was also discussed at the recent Board meeting. The Board unanimously

is logical and fair because the handler's credit originates from assessments on almonds, not on other products. Without the percentage rule, the best interests of the entire industry would not be served because handlers would receive credit for promoting products which have nothing to do with the almond industry.

Cal-Almond also objected to the provision which requires a handler's name, brand, or the words "California almonds," to appear on the product's primary face label in order for the handler to be eligible for Credit-Back. The commenter contended that, because nearly all almonds produced in the United States are grown in California, the requirement that the word "California" be placed on the label is unnecessary and may limit marketing opportunities for some handlers in their negotiations with product manufacturers. The intent, however, of the new advertising and promotion program is to promote the sale and consumption of "California" almonds, not other ingredients in products or almonds not grown in California. This provision will help ensure that advertising generated by the new Credit-Back program is, indeed, for almonds grown in California. In addition, the provision is not limited to the word "California" being placed on the product's primary face label in order for the handler to be eligible for Credit-Back. Handlers can also negotiate with product manufacturers for the appearance of the handler's name or brand on the primary face label in order to be eligible for Credit-Back. Handlers have three alternatives under the new program, all of which ensure the promotion of "California" almonds.

Cal-Almond, Thomas L. Motta, on behalf of Western Nut Company, Grant Ecker, and Sharon Wiggin objected to handlers being required to expend advertising and promotion funds up-front in order to be eligible for a Credit-Back refund at a later date. Cal-Almond also stated that handlers should not have to wait until February 15 of the crop year to begin receiving Credit-Back refunds and that they should not have to wait 30 days after submission of claims to receive a refund. The Department has determined that these comments have merit. Because payment practices have been changed under the new Credit-Back program, the up-front payment may not provide some handlers with enough flexibility early in the crop year to conduct their advertising and promotional activities.

This aspect of the new program was also discussed at the recent Board meeting. The Board unanimously recommended that handlers conducting their own advertising and promotional activities may now receive credit against their Credit-Back assessment up to the amount of the Credit-Back assessment installment due if they conduct and document their advertising and promotional activities at least two weeks prior to assessment billings.

The Department has determined that in order to allow handlers more flexibility early in the crop year to conduct their advertising and promotional activities, this final rule will be modified to allow handlers to receive credit against their Credit-Back assessment up to the amount of the Credit-Back assessment installment due if they conduct and document their advertising and promotional activities at least two weeks prior to assessment billings.

Cal-Almond also objected to the appeal process for determining whether a handler should receive Credit-Back for a particular promotional activity. The commenter claimed that competitors of some handlers will determine the outcome of their appeals. As previously discussed, handlers have the option of anonymity when their appeal is brought before the Board. In addition, the process allows for further appeal to the Department. The Department also has the right to review all decisions at any point during the appeal process.

During the second comment period, Cal-Almond, as well as another independent almond handler, Rotteveel Orchards, commented that under the new Credit-Back program there are many types of promotional and advertising activities which handlers use to promote their products which will be ineligible for Credit-Back. John Rotteveel, on behalf of Rotteveel Orchards, stated the best forms of advertising for his company—"word-of-mouth" advertising and personal contact with potential buyers—are not creditable activities under the new Credit-Back program. In addition, Rotteveel indicated that he did not believe that the 50% return for creditable activities was enough to warrant any investment in the program.

As has already been pointed out, the range of promotional activities eligible for reimbursement under the new Credit-Back program have been significantly expanded. The Department has also modified the new Credit-Back program in this final rule by increasing the amount of credit allowed for approved promotional activities from 50 percent to 66⅔ percent.

Cal-Almond also objected to the Board's television advertisements because it believes that they have a religious connotation which should not be used to promote almonds. The advertising campaign referred to is not intended to be offensive toward any religion, nor does it contain any negative connotations.

Cal-Almond also objected to the portion of the provision which requires individual handlers to determine and declare, within 15 days after the start of the season, the extent to which they intend to use the advertising program. According to the commenter, a handler should not be required to report a year in advance how he/she intends to advertise over an entire year's period.

The intent of this provision, in part, was to help the Board plan its finances for the upcoming crop year. With this information available, the Board could determine who was participating and who was not participating in the new program for that year. They would know at that time that all handlers who did not declare their intent would be paying the entire assessment to the Board and that amount could be earmarked for the generic advertising and promotion program.

The provision did not require handlers to give a dollar amount or an advertising plan to the Board, but merely an anticipated percentage of their entire advertising assessment they believed would be used under the new program. The deadline was not intended to limit a handler's use of the program. Handlers were not restricted to any types of advertising or any specific amounts. However, the total Credit-Back amount could not exceed the original percentage reported to the Board.

Although Cal-Almond's interpretation of this provision is not accurate, the Department considered all aspects of this provision to determine if there were other ways that the Board could obtain this information without requiring handlers to declare their intent to utilize the program. The new Credit-Back program is intended to provide handlers with more flexibility to conduct their own advertising and promotional activities.

The Department believes that the Board has other alternatives to accomplish the objectives discussed above, such as reviewing handler participation during past years to obtain an estimate of participation in the new Credit-Back program for the new crop year. The Department has determined that in order to allow handlers more flexibility to participate in the new Credit-Back program, this provision should be eliminated from the regulations. Accordingly, this final rule will be revised to reflect that change.

During the second comment period, another independent handler, Wiggin Farms, stated that a referendum should be conducted every three years to offer growers an opportunity to vote on increasing or decreasing advertising expenditures and for voting on continuation of the Order.

The Department notes that the Board currently has the authority to recommend annual changes in program expenditures. Determining the merits of holding periodic continuance referenda is outside the scope of this rulemaking. The referenda issue was addressed last year when the Board and other industry groups recommended, during a formal rulemaking hearing in Modesto, California, that periodic referenda be held. The Department is in the process of reviewing and evaluating the record of the formal rulemaking proceeding.

Many comments, as requested, addressed the Ninth Circuit decision. These comments are as follows:

Cal-Almond stated that all of the rules and regulations contained in the interim final rule deprive handlers of their First Amendment rights and suggested that the entire creditable program be eliminated. The commenter asserted that a determination has never been made by the Board as to whether the Order or individual handlers are better at promoting and advertising almonds. The commenter further stated that there have never been any studies conducted to indicate whether the current advertising program is effective and contended that the Department is unable to show that the regulations are required in order to advance the stated goal of selling more almonds and increasing returns to producers. In addition, the commenter contended that the regulations contained in the interim final rule are more extensive than necessary to serve the governmental interest of increasing almond sales.

One independent almond handler, Thomas Motta on behalf of Western Nut, stated that if the Marketing Order's advertising program is deemed constitutional at some future date, the Secretary should evaluate what type of advertising program best serves the almond industry. Motta further stated that the Ninth Circuit ruled that compelled advertising violates a handler's First Amendment rights and that regardless of what the Board calls it, it is still forced collection. Motta suggested that the advertising provisions of the order be put on hold until they are proven to be beneficial to the industry and are determined to be legal by the appropriate Court.

Another independent almond handler, Grant Ecker on behalf of Waterford Nut Company, stated that he agrees with the Ninth Circuit Court ruling that the regulations hinder handler's efforts to increase sales and returns to growers. He stated that the new Credit-Back program places a larger economic burden on small handlers than the old program did.

John Rotteveel, on behalf of Rotteveel Orchards, stated that the current and former advertising programs violate his constitutional rights. He believes that the program is a waste of money and does nothing to increase the consumption of almonds that almond handlers could not do themselves. Finally, Rotteveel stated that there is no way to prove that the advertising programs have increased world demand for almonds. He believes that growers and handlers are expanding these markets without the help of the Order and does not think that the increase in the number of handlers and growers in the United States can be attributed to the Order. Rotteveel suggested phasing out the Order and letting the almond industry run itself.

It is the Department's position that the former creditable advertising program and the new Credit-Back program meet each of the criteria set forth in the Ninth Circuit decision which pertain to constitutionality. The Department believes that both programs are authorized under the Act and that the regulations do not infringe upon the First Amendment rights of any handler. Importantly, the Court in *Cal-Almond* did not hold that all advertising and promotion programs are unconstitutional or illegal on their face. Rather, the court recognized the substantial government interest in promoting almond consumption in order to stimulate the demand for almonds and enhance grower returns.

As previously discussed, the new Credit-Back advertising and promotion program has been carefully structured so that the rules which govern its efficient administration are no more extensive than necessary to meet the desired goals of increasing almond sales and enhancing grower returns. Virtually all aspects of the former creditable advertising and promotion program have been modified or eliminated so as to increase efficiency while at the same time imposing a minimum of restrictions on handlers.

An additional comment in the form of an exception to another comment was received from Cal-Almond well after the second comment period closed. Because Cal-Almond's comment was received after the close of the comment period, it has not been considered.

Another comment was received from the Office of Chief Counsel for Advocacy of the United States Small Business Administration (SBA). The SBA contended that the Secretary did not comply with the Regulatory Flexibility Act (RFA) in issuing the interim final rule. It recommended that the Department perform a regulatory flexibility analysis, which would study the impact of advertising programs on small handlers and would consider alternatives to the program. The SBA further stated that the Secretary's assertion about small entity orientation and compatibility did not meet the requirements of the RFA. The SBA stated that the RFA does not provide exceptions for statutes that are not compatible with its goals. The SBA commented further that: (1) most small handlers sell to "food processors" and have no reason to promote fresh consumption of almonds, and (2) advertising expenses designed to increase use by ingredient manufacturers were not creditable under the old program and are not creditable under the new program. Finally, the SBA stated that the Credit-Back program was promulgated with no evidence that it would advance the government's interest, or that it is the least restrictive program needed to enhance almond sales.

For these reasons, the SBA indicated that the Secretary should consider alternatives to the current advertising program, including no program at all, or, at a minimum, a program that imposes less restrictions on handlers. The SBA also recommended that promotional efforts targeting ingredient manufacturers should be given the same credit as those targeting fresh consumption.

Advertisements resulting from joint participation by a handler and manufacturers or sellers of two complementary products or commodities were eligible for credit under the former advertising and promotion program provided that the brand name was used.

Under the new Credit-Back program, advertising and promotion activities to trade, industrial or end users are specifically eligible for Credit-Back, with no requirement for a brand name. In addition, the Board's generic program contains consumer advertising designed to communicate the message that almonds enhance any product to which they are added. Research has found such consumer advertising is successful in promoting consumption of products used as ingredients. Increased consumption of almonds benefits the entire industry

The Department disagrees with the SBA's assertion that this action fails to meet the requirements for the Regulatory Flexibility Act. The SBA's concerns regarding the program's impact on small businesses have been properly addressed in this document and the interim final rule.

Finally, a comment was received from Rodger Wasson, CEO of the Almond Board, which supported the new Credit-Back program and supplied documentation to substantiate the Board's position. Mr. Wasson discussed the history of the almond industry and beneficial changes that have taken place since the implementation of the creditable advertising program. He stated that the program has provided a variety of services designed to increase the demand for California almonds. In addition, it has continually been revised to meet the needs of the industry. Mr. Wasson stated that the Credit-Back provisions were recommended in order to more fully address the needs of the changing industry.

He stated there are major differences between the previous creditable advertising program and the new Credit-Back program. Some examples are as follows: (1) The previous program allowed handler credit for paid media advertisements only. There were separate systems for "generic packs" and "150 percent credit". The new Credit-Back program adds 13 advertising, promotion and public relations categories (only travel is excluded across-the-board); (2) The previous program contained many reporting periods, carryovers, and recordkeeping on different systems. Credit-Back is simplified with one system, no carryovers, and a basic report-as-you-go reporting system; (3) The previous program did not allow credit for almonds used as an ingredient if the product contained less than 50 percent of almonds by weight. Credit-Back allows credit for the weight represented by almonds as an ingredient; (4) The previous program did not allow credit for advertisements directing consumers to one or more named retail outlets, other than handler-operated outlets. Credit-Back allows such advertisements if they include mention of almonds; (5) The previous program did not allow credit for advertisements promoting "competing nuts." Credit-Back allows credit for this activity determined by the portion of the product represented by almonds and/or product weight, and (6) The previous program did not allow credit for advertisements that promote more than two complementary products. Credit-

The Department disagrees with the SBA's assertion that this action fails to meet the requirements for the Regulatory Flexibility Act. The SBA's concerns regarding the program's impact on small businesses have been properly addressed in this document and the interim final rule.

Finally, a comment was received from Rodger Wasson, CEO of the Almond Board, which supported the new Credit-Back program and supplied documentation to substantiate the Board's position. Mr. Wasson discussed the history of the almond industry and beneficial changes that have taken place since the implementation of the creditable advertising program. He stated that the program has provided a variety of services designed to increase the demand for California almonds. In addition, it has continually been revised to meet the needs of the industry. Mr. Wasson stated that the Credit-Back provisions were recommended in order to more fully address the needs of the changing industry.

He stated there are major differences between the previous creditable advertising program and the new Credit-Back program. Some examples are as follows: (1) The previous program allowed handler credit for paid media advertisements only. There were separate systems for "generic packs" and "150 percent credit". The new Credit-Back program adds 13 advertising, promotion and public relations categories (only travel is excluded across-the-board); (2) The previous program contained many reporting periods, carryovers, and recordkeeping on different systems. Credit-Back is simplified with one system, no carryovers, and a basic report-as-you-go reporting system; (3) The previous program did not allow credit for almonds used as an ingredient if the product contained less than 50 percent of almonds by weight. Credit-Back allows credit for the weight represented by almonds as an ingredient; (4) The previous program did not allow credit for advertisements directing consumers to one or more named retail outlets, other than handler-operated outlets. Credit-Back allows such advertisements if they include mention of almonds; (5) The previous program did not allow credit for advertisements promoting "competing nuts." Credit-Back allows credit for this activity determined by the portion of the product represented by almonds and/or product weight, and (6) The previous program did not allow credit for advertisements that promote more than two complementary products. Credit-Back allows credit up to the portion represented by almonds.

In addition, Mr. Wasson submitted materials on the benefits of generic advertising. A summary of the materials is as follows.

Generic Advertising and Promotion Programs

Generic advertising, i.e., advertising activities which focus on the general properties of a product such as flavor, nutritional benefits and convenience, rather than touting specific brand names, is a proven promotional tool which is often used to increase demand for agricultural commodities. When used in conjunction with brand name promotion, generic advertising has proven to be highly successful.

For these reasons, generic advertising of agricultural commodities has grown steadily since the first commodity board was created more than 50 years ago. In 1990, about 350 generic promotion programs were in effect at the federal and state levels, covering more than 80 commodities at a cost of over $530 million annually.

Each of the federal programs referred to above are overseen by USDA. The Agricultural Marketing Service ("AMS") of the USDA currently oversees promotional programs contained in various federal marketing orders authorized under the Agricultural Marketing Agreement Act of 1937 (the AMAA). These marketing orders cover fruits, vegetables, specialty crops and milk. In addition, AMS has oversight responsibility for numerous federal statutes which authorize research and promotion programs for a variety of commodities, including beef, cotton, dairy, eggs, honey, limes, mushrooms, pork, potatoes, soybeans, milk, and watermelons.

The success of many of these advertising and promotion programs has been well documented. For instance, an advertising campaign conducted by the Potato Board has yielded dramatic results.

The Potato Board was founded in 1972 at a time when potato consumption was steadily declining. Many people had poor images of potatoes, did not know of their nutritional value and believed that they were fattening. In the years after its formation, the Board initiated numerous advertising campaigns designed to improve the potato's poor reputation and increase consumer sales. As a result, potato consumption has increased by 12% and 96% of the public is now aware that potatoes are a high fiber, low fat food which can be included in any healthy diet.

Efforts of the National Dairy Promotion and Research Board to promote milk and milk products have also met with success. The Board was founded in 1984 and since then has spent more than $75 million annually on the promotion of dairy products. As a result, dairy product consumption rose by 12% between 1983 and 1990.

Another example of a successful generic program is provided by the California Prune Board. In the 1980's, prunes were not a popular fruit and most members of the public had little knowledge of their nutritional value, specifically, their high fiber content. In 1987, the prune Board began a campaign to highlight the link between consumption of high fiber foods (such as prunes, which were marketed as a good tasting, high fiber fruit) and cancer prevention. The program included direct mailings of product samples to physicians, publicity and media appearances by experts about the health benefits of prunes, and sampling programs in shopping malls and on domestic airline flights. Combined with generic advertising and promotion, the program resulted in a 12% increase in prune sales in 1987 alone. To date, the sales of California prunes continue to rise.

The success of certain commodity programs has also been measured through technical economic studies on the effects of generic advertising on industry sales. The results are impressive.

For instance, in a recent study of the Washington apple industry (Olan D. Forker and Ronald W. Ward, 1991) it was estimated that between 1988 and 1991, the industry received a rate of return of $6.63 for every dollar of assessments spent on the promotion of apples. In all, this represented a $133.76 million dollar return on a $17.5 million investment and the market price which Washington apple growers received for their apples between 1988 and 1991 was estimated to be 12.9% higher than it would have been without generic advertising.

Similarly, a recent study sponsored by the Cattlemen's Beef Promotion and Research Board (Ronald W. Ward, 1993) examined the effects of generic advertising on the beef industry. Based on extensive economic analysis, it was estimated that between 1987 and 1992, the beef industry realized an average return rate of $5.80 for every dollar spent on promotional activities. By February 1992, the total economic return to the industry was estimated at $2.99 billion.

A study by Ronald Ward and Bruce Dixon in 1989 provides an economic

analysis of the effects of generic advertising on fluid milk consumption. The authors of this study found that such promotion, authorized under the National Dairy and Tobacco Adjustment Act of 1983, "confirm[s] a statistically significant relationship between fluid milk consumption and generic fluid milk advertising * * *" Other research conducted by O.D. Forker and H.M. Kaiser of Cornell University indicates that between 1984 and 1990, dairy farmers realized a farm level return rate of 4.6 to 1 on investments in generic advertising authorized under the National Dairy Promotion Program.

Mr. Wasson also submitted materials on the benefits of branded advertising. A summary of the materials is as follows.

Branded Advertising

The usefulness of branded advertising to increase the sales of a particular product is also well documented. Within the private sector, companies unfailingly recognize the importance of advertising and collectively spend billions of dollars a year on advertising and promotion activities in order to generate sales. In 1992 alone, the nation's top 20 advertisers spent more than $500 million on advertising. (Advertising Age, August 29, 1993).

Within the agricultural field, brand advertising is also a useful tool which has been found to benefit not only the actual brand advertiser, but the overall industry as well. Through brand advertising, handlers seek to move their own products from the shelf to the consumer. A recent study conducted by an economist at the University of California at Davis, Department of Agricultural Economics (Jason Christian, 1994) concluded that brand advertising has afforded substantial benefits to all California almond growers.

In his analysis, Christian examined the market effects of brand advertising by one large almond cooperative as well as other independent handlers, between 1972 and 1992. Based on Christian's analysis, it was estimated that the average rate of return to the industry as a result of brand advertising by the cooperative was substantial. During the 1980's the average rate of return for each additional dollar spent on advertising expenditures was about $5.00. Aside from the individual brand advertiser, other handlers in the industry also benefited from the advertising because it created an increased demand for *all* almonds. Between 1979 and 1990, the benefits received by other almond handlers actually exceeded the returns received by the brand advertiser.

Mr. Wasson also submitted materials on the effects of almond promotion on the industry, including documentation on imports and exports of almonds and statistical tables on the almond industry. A summary of the materials is as follows.

Effects of Almond Promotion on the Almond Industry

Aside from the studies described above, there are numerous other indications that the combined creditable and generic advertising program administered by the Almond Board has been highly successful. Statistics indicate that both the supply and demand of California almonds have increased significantly since the inception of the Almond Marketing Order's advertising and promotion program.

In the early 1980's the U.S. almond crop averaged about 300 million pounds. By the early 1990's the almond crop averaged about 550 million pounds. Almonds have thus attained a level of market growth which few other agricultural commodities can claim.

Significantly, grower prices for almonds have remained relatively stable throughout these years of increased production. One basic theory of economic analysis is that prices for a product will fall if supply increases without a corresponding increase in demand. The relative stability of prices within the almond industry throughout the years of increased production indicate that demand for California almonds has increased dramatically over the years.

Another measure of the growing popularity of almonds can be obtained through analysis of per capita consumption. USDA figures indicate that the United States' per capita consumption of almonds is well ahead of that of any competing nuts. In 1970–71, the average American's per capita consumption of almonds was about .34 pounds per person. In 1987–88, the average per capita consumption of almonds was .58 pounds per person. By 1991–92, per capita consumption had risen to .82 pounds per person. This represents a 40% increase in per capita consumption between 1987 and 1992. Importantly, no tree nut was promoted more aggressively than almonds during this period. Additionally, the tree nut with the second largest per capita consumption between 1987 and 1992 was walnuts, at just .54 pounds per person.

Further evidence of the growth of the almond industry is provided by the fact that the use of almonds as ingredients in new products continues to increase. In 1992, almonds were most often included in all new foods containing tree nuts or peanuts which were introduced on the market. In all, 35% of all new products containing any type of nuts which were introduced in 1992 contained almonds.

The Department notes that economic studies of the almond industry also show that advertising is a good use of industry funds. In his 1985 study of the relationship between advertising, risk and domestic sales of almonds, Dr. John Baritelle, a research agricultural economist and a professor at the University of California-Riverside, concluded that advertising has been a good investment for the industry.

As the basis for his study, Baritelle posed the initial question, "What does the industry get for its advertising dollar, and what would we get if we advertised even more?" (Non-Technical Statement on Almond Advertising Model and Domestic Sales, at p. 2) (July, 1985). Almond crops for the years 1981 through 1983 were analyzed.

The study found that for the crop year 1981, when almond production was at an all time high of 408 million pounds and the advertising budget was 10.86 million dollars, total estimated returns on advertising ranged from $1.21 to $4.51 for each dollar spent. This figure included the estimated returns that advertising dollars expended in 1981 would yield in 1982 since the study found that advertising has an impact on per capita sales in the year of expenditure as well as in the following year. Importantly, Baritelle found that even if the 1981 advertising budget had been increased by 25% to $13.58 million, the industry would still have received a total return of at least $1.02 on every dollar spent.

In 1982, when almond production returned to more normal levels and the advertising budget was $8.85 million, total estimated returns on advertising ranged from $1.75 to $6.26 for each dollar spent. Again, this figure included the estimated returns that advertising dollars expended in 1982 would yield in 1983. Additionally, Baritelle noted that even if the 1982 budget had been increased by 75% to $15.49 million, the return to the industry would have been at least $1.04 for every dollar spent.

Finally, the Department notes that in 1983, when almond production was low due to poor weather conditions and the advertising budget was $6.10 million, estimated returns ranged from $2.34 to $8.37. Again, this figure took into account returns that were expected to be realized in 1984.

Mr. Wasson went on to state that although investing in the advertisement of almonds is a proven way to increase sales, it is significant that, when compared to other commodity boards, the Almond industry spends relatively little on promotional activities. For instance, the Washington Apple and Almond industries have similar crop sizes—about $1 billion—yet the Almond Board spends substantially less on advertising than the Washington Apple Commission. The Almond Board's promotional budget for the year 1993–94 was $5.4 million. The Washington Apple Commissions' advertising expenses for that same period was a little over $7.0 million.

It is also significant that the Almond Board's lengthy process of developing and implementing generic advertising campaigns is consistent with advertising industry norms. Testing and monitoring is performed at various stages in the development and airing of advertisements and follow-up research on their effectiveness is conducted.

Different concepts regarding the best method of promoting almonds are also explored. For example, focus group concept testing was conducted prior to the 1993–94 advertising campaign, and a concept was chosen from four alternatives. Advertisements were then developed, presented to a consumer audience for reaction, and adjustments and refinements were made before a final product was developed.

After airing an advertisement, consumer awareness is measured since this is a basic measurement of an advertisement's effectiveness. Results of these tests recently showed that the television advertisement approved for use by the Almond Board during the 1993–94 campaign was very successful. In addition, based on the experience gained from the 1993–94 campaign, the Board has conducted research to assist in developing a new program for 1994–95.

The Order and its regulations were initiated by the industry for the benefit of the industry. Without majority industry support, the Order, or any part of it, could have been suspended or terminated. Mr. Wasson concluded by stating that the advertising and promotional programs instituted by the Board have received continual majority support since their inception.

The Department's Conclusion

The Department's experience has been that whenever a segment of any industry is "required" to do certain things in order to make a program work for all, it is not unusual to find members of the industry who do not agree with any or all aspects of the program. There are some who just do not want to

of almonds is a proven way to increase sales, it is significant that, when compared to other commodity boards, the Almond industry spends relatively little on promotional activities. For instance, the Washington Apple and Almond industries have similar crop sizes—about $1 billion—yet the Almond Board spends substantially less on advertising than the Washington Apple Commission. The Almond Board's promotional budget for the year 1993–94 was $5.4 million. The Washington Apple Commissions' advertising expenses for that same period was a little over $7.0 million.

It is also significant that the Almond Board's lengthy process of developing and implementing generic advertising campaigns is consistent with advertising industry norms. Testing and monitoring is performed at various stages in the development and airing of advertisements and follow-up research on their effectiveness is conducted.

Different concepts regarding the best method of promoting almonds are also explored. For example, focus group concept testing was conducted prior to the 1993–94 advertising campaign, and a concept was chosen from four alternatives. Advertisements were then developed, presented to a consumer audience for reaction, and adjustments and refinements were made before a final product was developed.

After airing an advertisement, consumer awareness is measured since this is a basic measurement of an advertisement's effectiveness. Results of these tests recently showed that the television advertisement approved for use by the Almond Board during the 1993–94 campaign was very successful. In addition, based on the experience gained from the 1993–94 campaign, the Board has conducted research to assist in developing a new program for 1994–95.

The Order and its regulations were initiated by the industry for the benefit of the industry. Without majority industry support, the Order, or any part of it, could have been suspended or terminated. Mr. Wasson concluded by stating that the advertising and promotional programs instituted by the Board have received continual majority support since their inception.

The Department's Conclusion

The Department's experience has been that whenever a segment of any industry is "required" to do certain things in order to make a program work for all, it is not unusual to find members of the industry who do not agree with any or all aspects of the program. There are some who just do not want to participate in any advertising or promotion programs. In order for a marketing order to be successful, however, participation by everyone is very important.

With the decision of the Ninth Circuit, the Department's oversight responsibilities of the almond marketing order were carefully analyzed and considered. It was determined that it is in the best interest of the majority of the almond industry that the advertising and promotion program continue as modified herein.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581–0071.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) the new Credit-Back program, as modified herein, will be more beneficial to the industry if it is implemented at the beginning of the 1994–95 crop year which begins July 1, 1994; (2) this action provides handlers with additional flexibility in the types of promotion and advertising allowed for crediting; (3) this action relaxes requirements currently in effect; (4) the interim final rule provided two comment periods which were addressed in this action and modifications were made based on the comments and other relevant information.

After consideration of the all relevant material presented, the information and recommendations submitted by the Board, the comments received, and other information, the Department has determined that finalizing the interim final rule, with modifications, as published in the **Federal Register** [58 FR 43500, August 17, 1993] will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR 981

Almonds, Marketing agreements, Nuts, Reporting and recording requirements.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.441 is revised to read as follows:

§ 981.441 Credit for market promotion activities, including paid advertising.

(a) In order for a handler to receive credit for his/her own promotional activities from his/her pro rata portion of advertising assessment payments, pursuant to § 981.41(c), the Board must determine that such expenditures meet the applicable requirements of this section. Credit will be granted either in the form of a payment from the Board, or as an offset to the advertising assessment if activities are conducted and documented to the satisfaction of the Board at least two weeks prior to assessment billings. Credit, hereinafter termed "Credit-Back", will be granted in an amount not to exceed 66⅔ percent of a handler's proven expenditures for qualified activities.

(b) The portion of the handler assessment for which credit may be received under this section will be billed, and is due and payable, at the same time as the portion of the handler assessment used for the Board's administrative expenses, unless the handler(s) conduct and document activities at least two weeks prior to assessment billings. In the latter case, handlers' advertising assessment obligations will be reduced according to the amount of proven activities approved by the Board.

(c) The Board shall grant Credit-Back for qualifying activities only to the handler who performed such activities and who filed a claim for Credit-Back in accordance with this section.

(d) Credit-Back shall be granted only for qualified promotional activities which are conducted and completed during the crop year for which Credit-Back is requested.

(e) The following requirements shall apply to Credit-Back for all promotional activities:

(1) Credit-Back granted by the Board shall be that which is appropriate when compared to accepted professional practices and rates for the type of activity conducted. In the case of claims for Credit-Back activities not covered by specific and established criteria, the Board shall grant the claim if it is consistent with practices and rates for similar activities. To this end, the Board may issue guidelines for qualifying activities from time to time as warranted. For activities in markets

other than the United States and Canada, paragraph (e)(5) of this section shall also apply.

(2) The clear and evident purpose of each activity shall be to promote the sale, consumption or use of California almonds, and nothing therein shall detract from this purpose.

(3) No Credit-Back will be given for advertising placed in publications that target the farming or grower trade. No Credit-Back shall be given for any outdoor advertising or sponsorships in the California almond growing counties of Butte, Colusa, Fresno, Glenn, Kern, Madera, Merced, Sacramento, San Joaquin, Stanislaus, and Tulare counties, except that, outdoor advertising in these counties which specifically directs consumers to a handler-operated outlet offering direct purchase of almonds will be eligible for Credit-Back.

(4) Credit-Back shall be granted for those qualified activities specified below, except that Credit-Back for travel expenses will not be allowed in any case.

(i) *Paid advertising directed to end-users, trade or industrial users.* Credit-Back shall be granted for money spent on paid advertising space or time including, but not limited to, newspapers, magazines, radio, television, transit and outdoor media, and including the standard agency commission costs not to exceed 15 percent of gross.

(ii) *Other market promotion activities.* Credit-Back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product publicity;

(C) Printing costs for promotional material;

(D) Direct mail printing and distribution;

(E) Retail in-store demonstrations;

(F) Point-of-sale materials (not including packaging);

(G) Sales and marketing presentation kits;

(H) Trade fairs and exhibits;

(I) Trade seminars;

(J) 50/50 advertising with retailers;

(K) Couponing (printing, distribution and handling costs only);

(L) Purchase of Board produced promotional materials; and

(M) Sponsorships

(iii) For any qualified activity involving joint participation by a handler and a manufacturer or seller of a complementary product(s), or a handler selling multiple complementary products, including other nuts, with such activity including the handler's name or brand, or the words "California Almonds", the amount allowed for Credit-Back claim shall reflect that portion of the activity represented by almonds, or the handler's actual payment, whichever is less.

(iv) When products containing almonds are promoted, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. In addition, the product must display the handler's name or brand, or the words "California Almonds" on the primary, face label.

(5) Credit-Back for promotional activities in a foreign market shall be granted at 66⅔ percent of a handler's unreimbursed expenditures for qualified activities in any foreign market, if the handler is promoting pursuant to a contract with the Foreign Agricultural Service, USDA (FAS) and/or the California Department of Food and Agriculture (CDFA). Such activities must also meet the requirements of paragraphs (e) (1), (2), (3), (4), and (6) of this section. Unless the Board is administering the foreign marketing program, such activities shall not be eligible for Credit-Back unless the handler certifies that he/she was not and will not be reimbursed by either FAS or the CDFA for the amount claimed for Credit-Back, and has on record with the Board all claims for reimbursement made to FAS and/or the CDFA. Foreign market expenses paid by third parties as part of a handler's contract with FAS or CDFA will not be eligible for Credit-Back.

(6) A handler must file claims with the Board to obtain Credit-Back for promotional expenditures, as follows:

(i) All claims submitted to the Board for any qualified activity must include:

(A) A description of the activity and when and where it was conducted;

(B) Copies of all invoices from suppliers or agencies;

(C) Copies of all canceled checks issued by the handler in payment of these invoices; and

(D) An actual sample, picture or other physical evidence of the activity.

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due; *Provided:* That the handler submits the required documentation for a qualified activity at least two weeks prior to the mailing of assessment notices from the Board. In all other instances, handlers must remit the advertising assessment to the Board when billed, and a refund will be issued to the extent of proven, qualified activities.

(iii) Checks from the Board in payment of approved Credit-Back claims will be mailed to handlers on February 15, April 15, June 15, and 30 days after submission of final claims for the crop year pursuant to paragraph (e)(6)(iv) of this section. To receive payment on these dates, handler claims must be submitted, with all required elements, at least one month prior to the payment date. A handler can receive Credit-Back for his/her allowable direct expenditures only up to the amount of that portion of the handler's assessment designated for marketing promotion, including paid advertising.

(iv) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after close of that crop year. Final claims must be submitted within 105 days after the close of that crop year.

(f) *Appeals.* If a determination is made by the Board staff that a particular promotional activity is not eligible for Credit-Back because it does not meet the criteria specified herein, or for any other reason, the affected handler may request the Public Relations and Advertising Committee to review the Board staff's decision. If the affected handler disagrees with the decision of the Public Relations and Advertising Committee, the handler may request that the Board review the Committee decision. If the handler disagrees with the decision of the Board, the handler, through the Board, may request that the Secretary review the Board's decision. Handlers have the right to request anonymity in the review of their appeal. The Secretary maintains the right to review any decisions made by the aforementioned bodies at his/her discretion.

Dated: July 6, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–16731 Filed 7–6–94; 4:14 pm]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–18–AD; Amendment 39–8958; AD 94–14–06]

Airworthiness Directives; Beech Model 400A and 400T (Military T–1A) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400A and 400T (military T–1A) airplanes, that requires an inspection of certain flap roller retention components to detect discrepant or missing parts, and replacement of discrepant or missing parts; and installation of new washers on the roller attach bolts. This amendment is prompted by reports of undersized tabs on some lock washers, and tabs or inner tangs missing from the washers installed on the flap roller bolts. Such discrepancies defeat the locking function of the tab washer, and could result in loss of the nut and flap roller. The actions specified by this AD are intended to prevent loss of the main or aft flap surface and subsequent reduced controllability of the airplane.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–120W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech Model 400A and 400T (military T–1A) airplanes was published in the Federal Register on March 15, 1994 (59 FR 11939). That action proposed to require an inspection of certain flap roller retention components to detect discrepant or missing parts, and replacement of discrepant or missing parts with new or serviceable parts; and

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400A and 400T (military T–1A) airplanes, that requires an inspection of certain flap roller retention components to detect discrepant or missing parts, and replacement of discrepant or missing parts; and installation of new washers on the roller attach bolts. This amendment is prompted by reports of undersized tabs on some lock washers, and tabs or inner tangs missing from the washers installed on the flap roller bolts. Such discrepancies defeat the locking function of the tab washer, and could result in loss of the nut and flap roller. The actions specified by this AD are intended to prevent loss of the main or aft flap surface and subsequent reduced controllability of the airplane.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–120W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport; Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech Model 400A and 400T (military T–1A) airplanes was published in the **Federal Register** on March 15, 1994 (59 FR 11939). That action proposed to require an inspection of certain flap roller retention components to detect discrepant or missing parts, and replacement of discrepant or missing parts with new or serviceable parts; and installation of new washers, tab washers, and flat washers on the roller attach bolts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 122 Model Beech 400A and 400T (military T–1A) airplanes of the affected design in the worldwide fleet. The FAA estimates that 102 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $100 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $55,080, or $540 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–14–06 Beech Aircraft Corporation: Amendment 39–8958. Docket 94–NM–18–AD.

Applicability: Model 400A airplanes, serial numbers RK–1 through RK–79 inclusive; and Model 400T (military T–1A) airplanes, serial numbers TT–1 through TT–42 inclusive, and TT–44; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the main or aft flap surface and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Beech Service Bulletin No. 2522, dated January 1994.

(1) Perform an inspection of the flap roller retention components to detect discrepant or missing parts; and, prior to further flight, replace any discrepant or missing part with a new or serviceable part.

(2) Install new washers, new tab washers, and new flat washers on the roller attach bolts.

(b) As of the effective date of this AD, no person shall install a bolt, part number 45A97115–1 or 45A97115–51; or a tab washer, part number 168AS–06–2; on any airplane unless the requirements of paragraph (a)(1) of this AD have been accomplished on that bolt or tab washer.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a

location where the requirements of this AD can be accomplished.

(e) The inspection, replacement, and installation shall be done in accordance with Beech Service Bulletin No. 2522, dated January 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15735 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 93–NM–220–AD; Amendment 39–8961; AD 94–14–09]

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model 382 series airplanes, that requires a revision to the Airplane Flight Manual to require takeoff operation in accordance with revised performance data. This amendment is prompted by a report of a change that had been incorporated into the propeller governor of these airplanes during production, which altered the thrust decay characteristic of the propeller when operating in an engine failure scenario. The actions specified by this AD are intended to ensure that the airplane is operated at sufficient speeds to mitigate the problems associated with a faster thrust decay and to prevent the airplane from departing the side of the runway.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Western Export Company, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Lockheed Model 382 series airplanes was published in the **Federal Register** on March 25, 1994 (59 FR 14124). That action proposed to require a revision to the FAA-approved AFM to require takeoff operation of the airplane in accordance with the revised performance data.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 112 Model 382, 382E, and 382G series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the AFM change, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $990, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–14–09 Lockheed: Amendment 39–8961. Docket 93–NM–220–AD.

Applicability: Model 382, 382E, and 382G series airplanes; equipped with a servo-type valve housing assembly, having part number 714325–2, –3, –5, –6, or –7, installed on any outboard engine; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the airplane is operated at sufficient speeds to mitigate the problems associated with a faster thrust decay and to prevent the airplane from departing the side of the runway, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise the Limitations and Performance Data Sections of the FAA-approved Airplane Flight Manual (AFM) to include the information specified in Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993, and operate the airplane accordingly thereafter. The requirements of this paragraph may be accomplished by inserting AFM Supplement 382–16 into the AFM.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The AFM revision shall be done in accordance with Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Western Export Company, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15736 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 94–NM–21–AD; Amendment 39–8957; AD 94–14–05]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires removal of the actuator from the fuel-ballast transfer valve, and installation of a locking device on the fuel-ballast

include the information specified in Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993, and operate the airplane accordingly thereafter. The requirements of this paragraph may be accomplished by inserting AFM Supplement 382–16 into the AFM.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The AFM revision shall be done in accordance with Lockheed Airplane Flight Manual Supplement 382–16, dated August 11, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Western Export Company, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15736 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–21–AD; Amendment 39–8957; AD 94–14–05]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires removal of the actuator from the fuel-ballast transfer valve, and installation of a locking device on the fuel-ballast transfer valve. This amendment is prompted by a report that the fuel-ballast transfer valve on certain airplanes must be modified to ensure the valve is closed at all times. If the transfer valve is open during flight, the fuel supply to the engines may be reduced during cross-feed operation to the extent that fuel starvation could occur. The actions specified by this AD are intended to prevent engine flameout due to fuel starvation.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on March 30, 1994 (59 FR 14799). That action proposed to require removal of the actuator from the fuel-ballast transfer valve, and installation of a locking device on the fuel-ballast transfer valve.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $250 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,387.50, or $277.50 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-14-05 Fokker: Amendment 39-8957. Docket 94-NM-21-AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11443, 11446 through 11449 inclusive, and 11456; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced fuel flow to the engines during crossfeed operations and the possibility of engine flameout, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove the actuator from the fuel-ballast transfer valve, part number 7933141J, and install a locking device on the fuel-ballast transfer valve, in accordance with Fokker Service Bulletin SBF100-28-029, Revision 1, dated November 30, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and installation shall be done in accordance with Fokker Service Bulletin SBF100-28-029, Revision 1, dated November 30, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1-3	1	November 30, 1993.
4-7	Original	November 10, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-15737 Filed 7-8-94; 8:45 am]

BILLING CODE 4910-13-U

---

14 CFR Part 39

[Docket No. 94-ANE-27; Amendment 39-8964; AD 94-14-16]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) JT8D series engines. This action requires initial and repetitive inspections of the Number 7 fuel nozzle and support assembly, replacement of the Number 7 fuel nozzle and support assembly with a more leak-resistant configuration, and replacement of aluminum oil pressure and scavenge tube fittings with steel fittings. This amendment is prompted by reports of two engine fires initiated by fuel leakage from the Number 7 fuel nozzle and support assembly, ignition of that fuel, melting of aluminum oil pressure and scavenge tube fittings that are in the proximity of the Number 7 nozzle, and augmentation of that fire with the liberated oil. The actions specified in this AD are intended to prevent fuel leakage from the Number 7 fuel nozzle and support assembly, ignition of that leaking fuel, and liberation of oil from melted oil line fittings, which can result in an uncontained engine fire and damage to the aircraft.

DATES: Effective July 26, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket Number 94-ANE-27, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132-30, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7137, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received two reports of uncontained engine fires on Pratt & Whitney (PW) JT8D series engines due to fuel leakage from the Number 7 fuel nozzle and support assembly, ignition of that fuel, melting of aluminum oil pressure and scavenge tube fittings that are in the proximity of the Number 7 nozzle, and augmentation of that fire with the liberated oil. The resulting fire burned through the engine diffuser case and fan ducts, causing an aircraft engine cowl fire. The FAA has determined that the fuel nozzle and support assembly is susceptible to incomplete or improper refurbishment or repair that could result in fuel leaks across the fuel nozzle seals, and that the aluminum oil pressure and scavenge tube fittings have inadequate fire resistance capability. These oil line fittings are in the path of the fuel leaking and associated fire from the Number 7 fuel nozzle and support assembly. Impingement of the fire on these oil fittings causes them to melt, thus causing the oil contained in the oil tubes to escape and to augment the fire. Therefore, this amendment will require the inspection of the Number 7 fuel nozzle and support assembly for evidence of fuel leakage and burning until replacement of the Number 7 fuel nozzle and support assembly with a more leak-resistant configuration. It also requires replacement of the aluminum oil tube fittings with steel fittings. This condition, if not corrected, could result in fuel leakage from the Number 7 fuel nozzle and support assembly, ignition of that leaking fuel, and liberation of oil from melted oil line fittings, which can result in an uncontained engine fire and damage to the aircraft.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6153, Revision 1, dated June 8, 1994, that describes procedures for initial and repetitive borescope inspections of the Number 7 fuel nozzle and support assembly; and ASB No. A6169, Revision 1, dated June 15, 1994, and A6170, dated May 13, 1994, that describe procedures for replacement of the Number 7 fuel nozzle and support assembly with a more leak-resistant configuration and replacement of the aluminum oil tube fittings with steel fittings, respectively.

Since an unsafe condition has been identified that is likely to exist or develop on other PW JT8D series engines of the same type design, this AD is being issued to prevent uncontained engine fire and damage to the aircraft. This AD requires inspection of the Number 7 fuel nozzle and support assembly for evidence of fuel leakage and burning until replacement of the Number 7 fuel nozzle and support assembly with an improved sealing configuration. This AD also requires replacement of the aluminum oil tube fittings with steel fittings. The actions are required to be accomplished in accordance with the alert service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that

assembly; and ASB No. A6169, Revision 1, dated June 15, 1994, and A6170, dated May 13, 1994, that describe procedures for replacement of the Number 7 fuel nozzle and support assembly with a more leak-resistant configuration and replacement of the aluminum oil tube fittings with steel fittings, respectively.

Since an unsafe condition has been identified that is likely to exist or develop on other PW JT8D series engines of the same type design, this AD is being issued to prevent uncontained engine fire and damage to the aircraft. This AD requires inspection of the Number 7 fuel nozzle and support assembly for evidence of fuel leakage and burning until replacement of the Number 7 fuel nozzle and support assembly with an improved sealing configuration. This AD also requires replacement of the aluminum oil tube fittings with steel fittings. The actions are required to be accomplished in accordance with the alert service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–27." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–14–16 Pratt & Whitney: Amendment 39–8964. Docket 94–ANE–27.

Applicability: Pratt & Whitney (PW) Model JT8D–209, –217, –217A, –217C, –219 turbofan engines; and JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines incorporating the original issue or any revision of Pratt & Whitney Service Bulletin No. 5650; and any PW Model JT8D engine with low emissions fuel nozzles, Part Numbers 775485, 809137–01, 802965, and 5004308–02 installed. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 and MD–80 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage from the Number 7 fuel nozzle and support assembly and melting of the oil pressure and scavenge tube fittings, which can result in an uncontained engine fire and damage to the aircraft, accomplish the following:

(a) Inspect Number 7 fuel nozzle and support assemblies in accordance with PW Alert Service Bulletin (ASB) No. A6153, Revision 1, dated June 8, 1994, as follows:

(1) For Number 7 fuel nozzle and support assemblies that have accumulated more than 2,500 hours time in service (TIS) since last fuel nozzle and support assembly overhaul on the effective date of this airworthiness directive (AD), initially inspect for fuel leakage within 700 hours TIS after the effective date of this AD.

(2) For engines with Number 7 fuel nozzle and support assemblies with 2,500 or less hours TIS since fuel nozzle and support assembly overhaul on the effective date of this AD, initially inspect prior to accumulating 3,200 hours TIS since overhaul.

(3) Thereafter, inspect for fuel leakage in accordance with PW ASB A6153, Revision 1, dated June 8, 1994, at intervals not to exceed 700 hours TIS since last inspection.

(4) Remove from service Number 7 fuel nozzle and support assemblies that exhibit evidence of fuel leakage as described in PW ASB No. A6153, Revision 1, dated June 8, 1994, and replace with the improved sealing configuration nozzle in accordance with paragraph (b) of this AD, as follows:

(i) Within 25 hours TIS, or 25 cycles in service (CIS), whichever occurs first, after the inspection performed in paragraph (a)(1), (a)(2), or (a)(3) for aircraft with only one engine exhibiting Number 7 fuel nozzle and support assembly leakage.

(ii) Prior to further flight, on aircraft with two engines exhibiting Number 7 fuel nozzle and support assembly leakage, remove and replace at least one of the leaking Number 7 fuel nozzle and support assemblies. The remaining Number 7 fuel nozzle and support assembly that exhibits leakage shall be removed and replaced in accordance with paragraph (a)(4)(i) of this AD.

(iii) Prior to further flight, on Boeing 727 aircraft, with three engines exhibiting

Number 7 fuel nozzle and support assembly leakage, remove and replace at least two of the leaking Number 7 fuel nozzle and support assemblies. The remaining Number 7 fuel nozzle and support assembly that exhibits leakage shall be removed and replaced in accordance with paragraph (a)(4)(i) of this AD.

Note: Fuel nozzles that have not undergone overhaul do not require inspection in accordance with paragraph (a) of this AD.

(b) At the next accessibility of the diffuser build group after the effective date of this AD, but no later than July 31, 1999, accomplish the following:

(1) Replace the Number 7 fuel nozzle and support assembly with the improved sealing configuration in accordance with Part 1 of PW ASB No. A6169, Revision 1, dated June 15, 1994.

(2) Replace the aluminum pressure and scavenge oil tube fittings with steel fittings in accordance with PW ASB No. A6170, dated May 13, 1994.

Note: Replacement of the following oil tubes with corresponding oil tubes that incorporate steel fittings constitutes compliance with paragraph (b)(2) of this AD:

(i) Outer internal Number 4 and 5 bearing pressure tube assembly for PW JT8D–200 series engines.

(ii) Outer internal main bearing pressure tube assembly for PW JT8D–200 series engines.

(iii) Main bearing pressure manifold assembly for PW JT8D–200 series engines.

(iv) Front Number 4¼ and 6 bearing pressure tube assembly for all other JT8D engines.

(v) Number 4 bearing oil scavenge tube assembly for all other JT8D engines.

(vi) Number 4 bearing oil pressure tube assembly for all other JT8D engines.

(vii) Main bearing pressure manifold assembly for all other JT8D engines.

(c) Incorporation of the hardware required by paragraph (b)(1) of this AD, constitutes terminating action for the inspections required by paragraph (a) of this AD.

(d) For the purpose of this AD, accessibility of the diffuser build group is defined as engine maintenance that entails flange separation of the diffuser case from the combustion chamber outer case.

(e) For the purpose of this AD, fuel nozzle and support assembly overhaul is defined as disassembly of the fuel nozzle from the support assembly that entails removal of the fuel nozzle nut.

(f) For any Number 7 fuel nozzle and support assembly that is removed for evidence of leakage in accordance with paragraph (a) of this AD, submit the following information within 60 days after the removal, to the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299; fax (617) 238–7199:

(1) Fuel nozzle and support assembly part number and serial number.

(2) Fuel nozzle and support assembly time and cycles since overhaul.

(3) Description of fuel nozzle and support assembly distress.

(4) Position of distressed fuel nozzle and support assembly.

(5) Description of any other resultant engine damage.

(6) Engine serial number.

(7) Engine time and cycles since overhaul.

The reporting requirements of this AD terminate after compliance with paragraph (b)(1) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2120–0056.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(i) The inspections and modifications shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
PW ASB No. A6153	1–4	1	June 8, 1994.
	5	Original	February 4, 1994.
	6–8	1	June 8, 1994.
	9–12	Original	February 4, 1994.
Total pages: 12.			
PW ASB No. A6169	1–6	1	June 15, 1994.
	7–16	Original	April 29, 1994.
	17	1	June 15, 1994.
	1–30	Original	April 29, 1994.
Total pages: 30.			
PW ASB No. A6170	1–20	Original	May 13, 1994.
Total pages: 20.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on July 26, 1994.

Issued in Burlington, Massachusetts, on June 29, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–16399 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–61–AD; Amendment 39–8970; AD 94–14–21]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires a revision to the Flap Control Unit input wiring. This amendment is prompted by reports of disconnection of the Landing Gear Module electrical connectors, which can result in the loss of the primary, secondary, and alternate control of the flaps. The actions specified by this AD are intended to prevent the possibility of an all-flaps-up landing due to the loss of control of all flap operations.

DATES: Effective August 10, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathi Ishimaru, Aerospace Engineer, Systems & Equipment Branch, ANM–130S; Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2674; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the Federal Register on May 12, 1994 (59 FR 24671). That action proposed to require a revision to the Flap Control Unit (FCU) input wiring.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, Boeing, requests that the discussion of the addressed unsafe condition that appeared in the preamble to the notice be clarified. In that preamble, the FAA stated that, if the landing gear module connectors become disconnected, all FCU modes of flap operation (primary, secondary, and alternate control of flaps) could be lost. The commenter suggests that the discussion would have been more precise if it had contained information to indicate that the landing gear module includes the ALTN ARM FLAPS switch and the ALTN FLAPS position selector used to control the leading and trailing edge flaps in the alternate mode. The FAA acknowledges this information.

This same commenter requests that the proposal be revised to cite the latest revision of Boeing Service Bulletin 747–27A2346 as the source for modification procedures. The FAA concurs. Since issuance of the notice, the FAA has reviewed and approved Revision 1 of Boeing Service Bulletin 747–27A2346, dated May 19, 1994. This revision

DATES: Effective August 10, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathi Ishimaru, Aerospace Engineer, Systems & Equipment Branch, ANM–130S; Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2674; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the Federal Register on May 12, 1994 (59 FR 24671). That action proposed to require a revision to the Flap Control Unit (FCU) input wiring.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, Boeing, requests that the discussion of the addressed unsafe condition that appeared in the preamble to the notice be clarified. In that preamble, the FAA stated that, if the landing gear module connectors become disconnected, all FCU modes of flap operation (primary, secondary, and alternate control of flaps) could be lost. The commenter suggests that the discussion would have been more precise if it had contained information to indicate that the landing gear module includes the ALTN ARM FLAPS switch and the ALTN FLAPS position selector used to control the leading and trailing edge flaps in the alternate mode. The FAA acknowledges this information.

This same commenter requests that the proposal be revised to cite the latest revision of Boeing Service Bulletin 747–27A2346 as the source for modification procedures. The FAA concurs. Since issuance of the notice, the FAA has reviewed and approved Revision 1 of Boeing Service Bulletin 747–27A2346, dated May 19, 1994. This revision contains a correction to a type of wire that had been called out in the original version of the service bulletin; this correction ensures that the wire and its associated solder sleeve are metalurgically compatible. In order to ensure that the correct wiring modification assembly is installed on the affected airplanes, the FAA has determined that the revised service bulletin should be cited as the appropriate source of service information for complying with the requirements of this rule. The final rule has been revised accordingly. The FAA has confirmed that no U.S. operators have yet modified any affected airplane in accordance with the original service bulletin; therefore, by citing the revised service bulletin, the final rule will impose no additional economic burden on any U.S. operator.

One commenter requests that the compliance time be extended from the proposed 30 days to 90 days, due to a possible parts availability problem. This commenter states that it does not normally stock the required parts and materials to accomplish the proposed requirements of the rule. This commenter has ordered these parts from a supplier and is currently waiting to obtain them. Additionally, this commenter points out that the manufacturer's service bulletin, referenced in the proposal, recommends 60 days for modification. The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The FAA points out that the parts required for the wiring modification are readily available; therefore, obtaining them within the proposed compliance time should not pose a problem for any affected operator. Further, the FAA took into account the 60-day compliance time recommended by the manufacturer, as well as the number of days required for the rulemaking process; in consideration of these factors, the FAA finds that 30 days after the effective date of this final rule will fall approximately at the same time for compliance as recommended by the manufacturer. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 300 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 34 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $200 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,500, or $750 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-14-21 Boeing: Amendment 39-8970. Docket 94-NM-61-AD.

Applicability: Model 747-400 airplanes having line numbers 696 through 1019, inclusive, and 1021 through 1026, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the possibility of an all-flaps-up landing due to the loss of control of flap operations, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Flap Control Unit (FCU) input wiring in accordance with Boeing Alert Service Bulletin 747-27A2346, Revision 1, dated May 19, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The wiring revision shall be done in accordance with Boeing Alert Service Bulletin 747-27A2346, Revision 1, dated May 19, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on July 1, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-16535 Filed 7-8-94; 8:45 am]

BILLING CODE 4910-13-U

---

14 CFR Part 39

[Docket No. 94-NM-76-AD; Amendment 39-8966; AD 94-14-18]

Airworthiness Directives; de Havilland Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-8-100 series airplanes. This action requires repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. This AD also provides an optional terminating action for the repetitive inspections. This amendment is prompted by a report of pilot valve leakage of hydraulic fluid in a landing gear selector valve on a Model DHC-7 series airplane. The actions specified in this AD are intended to prevent inadvertent retraction of the landing gear in the event of a low voltage condition at the selector valve down solenoid.

DATES: Effective July 26, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-76-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6428; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC-8-100 series airplanes. Transport Canada advises that it has received a report of pilot valve leakage of hydraulic fluid in a landing gear selector valve on a Model DHC-7 series airplane. The cause of this leakage has been attributed to a faulty seal. Such leakage, if combined with a low voltage condition at the selector valve down solenoid, could result in inadvertent retraction of the landing gear.

Since the same selector valve that is used on Model DHC-7 series airplanes is installed on Model DHC-8-100 series airplanes, the FAA finds that the latter airplane model also is subject to the addressed unsafe condition. The FAA may consider issuance of parallel rulemaking action to address this unsafe condition on Model DHC-7 series airplanes.

De Havilland, Inc., has issued Alert Service Bulletin S.B. A8-32-117, dated December 11, 1992, that describes procedures for repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF-94-05, dated March 16, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

De Havilland, Inc., also has developed a valve (Modification 8/0530) that incorporates several improvements to minimize pilot valve leakage. This valve is equipped with an improved spring that keeps the valve firmly seated. The improved valve incorporates a reduced rate of opening and further restricts the orifice leading to the landing gear actuators. Replacement of certain valves with these improved valves will minimize the possibility of inadvertent landing gear retraction.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent inadvertent retraction of the landing gear in the event of a low voltage condition at the selector valve down solenoid. This AD requires repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. This AD also provides an optional terminating action for the repetitive inspections. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in

actuators. Replacement of certain valves with these improved valves will minimize the possibility of inadvertent landing gear retraction.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent inadvertent retraction of the landing gear in the event of a low voltage condition at the selector valve down solenoid. This AD requires repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. This AD also provides an optional terminating action for the repetitive inspections. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–76–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–14–18 de Havilland, Inc.: Amendment 39–8966. Docket 94–NM–76–AD.

Applicability: Model DHC–8–100 series airplanes; serial numbers 003 through 038 inclusive; equipped with landing gear selector valve, part number 57420 or 57420–3; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent retraction of the landing gear due to pilot valve leakage, accomplish the following:

(a) Within 300 hours time-in-service after the effective date of this AD, inspect the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, in accordance with the Accomplishment Instructions of de Havilland Alert Service Bulletin S.B. A8–32–117, dated December 11, 1992.

(1) If the rate of leakage is 100 cubic centimeters (cc) per minute or less: Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 10,000 hours time-in-service.

(2) If the rate of leakage is more than 100 cc per minute, but less than 1,000 cc per minute: Within 300 hours time-in-service, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 10,000 hours time-in-service.

(3) If the rate of leakage is 1,000 cc or more per minute, but less than 1,500 cc per minute: Within 50 hours time-in-service, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 10,000 hours time-in-service.

(4) If the rate of leakage is 1,500 cc or more per minute: Prior to further flight, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 10,000 hours time-in-service.

(b) Replacement of the hydraulic selector valve, part number 57420 or 57420–3, with an improved valve (Modification 8/0530), part number 57420–5, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement shall be done in accordance with de Havilland Alert Service Bulletin S.B. A8–32–117, dated December 11, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 26, 1994.

Issued in Renton, Washington, on June 30, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16406 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 94–NM–75–AD; Amendment 39–8967; AD 94–14–19]

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–7 series airplanes. This action requires repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. This AD also provides an optional terminating action for the repetitive inspections. This amendment is prompted by a report of pilot valve leakage of hydraulic fluid in a landing gear selector valve on a Model DHC–7 series airplane. The actions specified in this AD are intended to prevent inadvertent retraction of the landing gear in the event of a low voltage condition at the selector valve down solenoid.

DATES: Effective July 26, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–75–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6428; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–7 series airplanes. Transport Canada Aviation advises that it has received a report of pilot valve leakage of hydraulic fluid in a landing gear selector valve on a Model DHC–7 series airplane. The cause of this leakage has been attributed to a faulty seal. Such leakage, if combined with a low voltage condition at the selector valve down solenoid, could result in inadvertent retraction of the landing gear.

De Havilland, Inc., has issued Alert Service Bulletin S.B. A7–32–97, dated November 10, 1992, that describes procedures for repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–94–04, dated March 16, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

De Havilland, Inc., also has developed a valve (Modification 7/2516) that incorporates several improvements to minimize pilot valve leakage. This valve is equipped with an improved spring that keeps the valve firmly seated. The improved valve incorporates a reduced rate of opening and further restricts the orifice leading to the landing gear actuators. Replacement of certain valves with these improved valves will minimize the possibility of inadvertent landing gear retraction.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent inadvertent retraction of the landing gear in the event of a low voltage condition at the selector valve down solenoid. This AD requires repetitive inspections of the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, and replacement of certain valves with serviceable valves, if necessary. This AD also provides an optional terminating action for the repetitive inspections. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

The FAA is considering the issuance of parallel rulemaking action to address the same unsafe condition on Model DHC–8–100 series airplanes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–75–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26,

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–75–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–14–19 de Havilland, Inc.: Amendment 39–8967. Docket 94–NM–75–AD.

Applicability: Model DHC–7 series airplanes; serial numbers 003 through 110 inclusive; equipped with landing gear selector valve, part number 57420 or 57420–3; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent landing gear retraction due to pilot valve leakage, accomplish the following:

(a) Within 300 hours time-in-service after the effective date of this AD, inspect the hydraulic selector valve to determine the rate of leakage of hydraulic fluid, in accordance with the Accomplishment Instructions of de Havilland Alert Service Bulletin S.B. A7–32–97, dated November 10, 1992.

(1) If the rate of leakage is 100 cubic centimeters (cc) per minute or less: Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 5,400 hours time-in-service.

(2) If the rate of leakage is more than 100 cc per minute, but less than 1,000 cc per minute: Within 300 hours time-in-service, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 5,400 hours time-in-service.

(3) If the rate of leakage is 1,000 cc or more per minute, but less than 1,500 cc per minute: Within 50 hours time-in-service, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 5,400 hours time-in-service.

(4) If the rate of leakage is 1,500 cc or more per minute: Prior to further flight, replace the hydraulic selector valve with a serviceable valve in accordance with the alert service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 5,400 hours time-in-service.

(b) Replacement of the hydraulic selector valve, part number 57420 or 57420–3, with an improved valve (Modification 7/2516), part number 57420–5, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement shall be done in accordance with de Havilland Alert Service Bulletin S.B. A7–32–97, dated November 10, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 26, 1994.

Issued in Renton, Washington, on June 30, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16405 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–222–AD; Amendment 39–8960 AD 94–14–08]

Airworthiness Directives; Canadair Model CL–600–2B16 (CL–601–3A) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair Model CL–600–2B16 series airplanes, that requires inspection to detect chafing of the wiring harness of the air driven generator (ADG), modification of the wiring harness, and repair of any chafed harness. This amendment is prompted by a report that the wiring harness on certain airplanes was produced in a configuration that is subject to chafing and electrical shorting. The actions specified by this AD are intended to prevent chafing or shorting of the wiring harness, which could result in loss of ADG power to the essential bus when the ADG is deployed during an emergency situation.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, H3C 3G9 Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Canadair Model CL–600–2B16 series airplanes was published in the **Federal Register** on March 14, 1994 (59 FR 11735). That action proposed to require inspection to detect chafing and modification of the wiring harness of the air driven generator (ADG), and repair of any chafed harness.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,375, or $55 per airplane.

The FAA estimates that it will take approximately 9 work hours per airplane to accomplish the modification and the average labor rate is $55 per work hour. Required parts will cost approximately $199 per airplane. Based on these figures, the total cost impact of the modification on U.S. operators is estimated to be $17,350, or $694 per airplane.

Based on the figures, above, the total (inspection plus modification) cost impact of the AD on U.S. operators is estimated to be $18,725, or $749 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–14–08 Canadair: Amendment 39–8960. Docket 93–NM–222–AD.

Applicability: Model CL–600–2B16 series airplanes having serial numbers 5099 through 5131, inclusive; certificated in any category.

Note 1: Airplanes having serial numbers 5001 through 5098, inclusive, are subject to the requirements of AD 91–19–01, amendment 39–8026 (which is similar in content to this amendment).

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of emergency power to the essential bus when the air driven generator (ADG) is deployed, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD, inspect to detect chafing of the wiring harness of the ADG in accordance with Canadair Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993. If chafing is found, prior to further flight, repair in accordance with the service bulletin.

(b) Within 60 days after the effective date of this AD, modify the harness installation of the ADG in accordance with Canadair Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and modification shall be done in accordance with Canadair Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, H3C 3G9 Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15732 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 94–NM–15–AD; Amendment 39–8959; AD 94–14–07]

Airworthiness Directives; Jetstream Aircraft Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule..

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Jetstream Model 4101 airplanes, that requires modification of the mounting structure of the elevator controls on the rear pressure bulkhead. This amendment is prompted by the results of a structural analysis which indicate that certain structure in the elevator control system may be subject to deformation when maximum load is exerted by the pilot(s) in the event of a jam in the elevator control cables. The actions specified by this AD are intended to prevent reduced controllability of the airplane due to structural deformation in the elevator control system.

appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and modification shall be done in accordance with Canadair Alert Service Bulletin A601–0370, Revision 1, dated April 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, H3C 3G9 Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15732 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 94–NM–15–AD; Amendment 39–8959; AD 94–14–07]

Airworthiness Directives; Jetstream Aircraft Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Jetstream Model 4101 airplanes, that requires modification of the mounting structure of the elevator controls on the rear pressure bulkhead. This amendment is prompted by the results of a structural analysis which indicate that certain structure in the elevator control system may be subject to deformation when maximum load is exerted by the pilot(s) in the event of a jam in the elevator control cables. The actions specified by this AD are intended to prevent reduced controllability of the airplane due to structural deformation in the elevator control system.

DATES: Effective August 10, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Jetstream Model 4101 airplanes was published in the **Federal Register** on March 15, 1994 (59 FR 11947). That action proposed to require modification of the mounting structure of the elevator control components on the rear pressure bulkhead.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,260, or $907.50 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–14–07 Jetstream Aircraft Limited: Amendment 39–8959. Docket 94–NM–15–AD.

Applicability: All Model 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to structural deformation in the elevator control system, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the mounting structure of the elevator controls on the rear pressure bulkhead in accordance with Jetstream Service Bulletin J41–53–012, dated November 30, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Jetstream Service Bulletin J41–53–012, dated November 30, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 10, 1994.

Issued in Renton, Washington, on June 23, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–15734 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–ANM–7]

Modification of Class E Airspace; Kalispell, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on June 10, 1994, which inadvertently listed incorrect coordinates in the airspace description for Glacier Park International Airport, Kalispell, Montana.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT: James E. Riley, System Management Branch (ANM–530), Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; Telephone: (206) 227–2537

SUPPLEMENTARY INFORMATION:

On June 10, 1994, the Federal Aviation Administration (FAA) published a final rule that amended the Kalispell, Montana, Class E airspace area to accommodate arrival/departure aircraft transitioning between the en route and terminal areas in western Montana. However, that action inadvertently listed incorrect coordinates in the airspace description for Glacier Park International Airport. This action corrects that error.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication in the **Federal Register** on June 10, 1994, (59 FR 29949; **Federal Register** Document 94–14140) and the corresponding description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 29949, in the third column, the description for the Kalispell, Montana, Class E airspace is corrected to read as follows:

ANM MT E5 Kalispell, MT [Revised]

Kalispell, Glacier Park International Airport, MT
(lat. 48°18′41″ N, long. 114°15′18″ W)
Smith Lake NDB
(Lat. 48°06′30″ N, Long. 114°27′40″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Glacier Park International Airport, and within 4.8 miles each side of the 035° and 215° bearing from the Smith Lake NDB extending from the 7-mile radius to 10.5 miles southwest of the NDB; that airspace extending upward from 1,200 feet AGL bounded by a line beginning at lat. 47°30′00″ N., long. 113°30′03″ W.; to lat. 48°30′00″ N., long. 113°30′03″ W.; west along lat. 48°30′00″ N., to the Montana/Idaho state boundary, south along the Montana/Idaho state boundary until intersecting lat. 47°30′00″ N., then to the point of beginning; excluding Federal airways.

Issued in Seattle, Washington, on June 29, 1994.

Charles E. Davis,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–16675 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27813; Amdt. No. 1610]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA Form

documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedures before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedures before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 1, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR; VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective 18 August, 1994

Lompoc, CA, Lompoc, VOR/DME–A, Amdt 4
Daytona Beach, FL, Daytona Beach Regional, NDB OR GPS RWY 7L, Amdt 24
Daytona Beach, FL, Daytona Beach Regional, ILS RWY 7L, Amdt 28
Daytona Beach, FL, Daytona Beach Regional, RADAR–1, Amdt 7
Greenfield, IA, Greenfield Muni, NDB RWY 32, Amdt 1
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, NDB RWY 9, Amdt 12
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, NDB RWY 18R, Amdt 16
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 9, Amdt 14
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 18L, Amdt 3
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 18R, Amdt 17
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 27, Amdt 15
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 36L, Amdt 36
Covington/Cincinnati, OH/KY, Cincinnati/Northern Kentucky INTL, ILS RWY 36R, Amdt 4
Newark, NJ, Newark Intl, ILS RWY 4R, Amdt [illegible]
Gallup, NM, Gallup Municipal, VOR RWY 6, Amdt 7
Gallup, NM, Gallup Municipal, LOC RWY 6, Amdt 3
Farmingdale, NY, Republic, LOC BC RWY 32, Amdt 3, CANCELLED
Farmingdale, NY, Republic, ILS RWY 14, Amdt 5
Middletown, NY, Randall, NDB–A, Orig
Mount Olive, NC, Mount Olive Muni, VOR–A, Amdt 1
Hebron, OH, Buckeye Executive, VOR–A, Amdt 5, CANCELLED
Willoughby, OH, Willoughby Lost Nation Muni, VOR–A, Orig
Willoughby, OH, Willoughby Lost Nation Muni, VOR RWY 27, ORIG
Bellefonte, PA, Bellefonte, VOR–A, Amdt 1
Mount Pocono, PA, Pocono Mountains Muni, VOR RWY 13, Amdt 5
Philadelphia, PA, Philadelphia Intl, ILS RWY 17, Amdt 5
Pittsburgh, PA, Pitttsburgh Metro, VOR RWY 31, Amdt 2, CANCELLED
Jasper, TN, Marion County-Brown Field, NDB RWY 4, Amdt 4
Parsons, TN, Scott Field, VOR/DME–A, Amdt [illegible]
Parsons, TN, Scott Field, VOR/DME–B, Amdt 1
Sevierville, TN, Gatlinburg-Pigeon Forge, VOR/DME or GPS RWY 10, Amdt 5
Beaumont, TX, Beaumont Muni, VOR/DME OR GPS RWY 13, Amdt 2
Beaumont/Port Arthur, TX, Jefferson County, VOR RWY 12, Amdt 9
Dalhart, TX, Dalhart Muni, VOR OR GPS RWY 17, Amdt 11
Dalhart, TX, Dalhart Muni, VOR/DME OR GPS RWY 35, Amdt 1
El Paso, TX, West Texas, VOR/DME–A, Amdt [illegible]
Follette, TX, Follett-Lipscomb County, VOR/DME–A, Amdt 2
Jacksonville, TX, Cherokee County, VOR/DME OR GPS RWY 13, Amdt 3
Jacksonville, TX, Cherokee County, NDB RWY 13, Amdt 5
Jasper, TX, Jasper County-Bell Field, NDB RWY 18, Amdt 7
Liberty, TX, Liberty Muni, VOR–A, Amdt 5
Lufkin, TX, Angelina County, VOR/DME RWY 15, Amdt 3
Lufkin, TX, Angelina County, VOR RWY 33, Amdt 13
Lufkin, TX, Angelina County, NDB RWY 7, Amdt 2

Lufkin, TX, Angelina County, ILS RWY 7, Amdt 1
Lufkin, TX, Angelina County, VOR/DME RNAV RWY 7, Amdt 3
Lufkin, TX, Angelina County, VOR/DME RNAV RWY 15, Amdt 4
Nacogdoches, TX, A. L. Mangham Jr. Regional, ILS RWY 36, Amdt 1
Nacogdoches, TX, A. L. Mangham Jr. Regional, NDB RWY 18, Amdt 1
Nacogdoches, TX, A. L. Mangham Jr. Regional, NDB RWY 36, Amdt 1
Paris, TX, Cox Fld, VOR/DME OR GPS RWY 35, Amdt 10, CANCELLED
Paris, TX, Cox Fld, VOR RWY 35, Orig

* * * *Effective July 21, 1994*

Greenville, ME, Greenville Muni, NDB RWY 14, Amdt 4
Greenville, ME, Greenville Seaplane Base, NDB–A, Amdt 4
Frederick, MD, Frederick Muni, GPS RWY 5, Orig
Dayton, OH, James M. Cox Dayton Intl, Radar–1, Amdt 9
Denton, TX, Denton Muni, GPS RWY 35, Orig
Oshkosh, WI, Wittman Regional, GPS RWY 27, Orig

[FR Doc. 94–16676 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27814; Amdt. No. 1611]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from;

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPS, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on July 1, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing,

FDC Date	State	City
02/08/94 ...	AR	Blytheville .....
06/01/94 ...	SC	Rock Hill .....
06/16/94 ...	LA	Lafayette .....
06/16/94 ...	LA	Lafayette .....
06/16/94 ...	LA	Shreveport .....
06/22/94 ...	FL	Daytona Beach .....
06/22/94 ...	GA	Carrollton .....
06/22/94 ...	GA	Carrollton .....
06/22/94 ...	GA	Vidalia .....
06/22/94 ...	NJ	Newark .....
06/23/94 ...	GA	Cornelia .....
06/23/94 ...	KY	Louisville .....
06/24/94 ...	LA	Baton Rouge .....
06/27/94 ...	KS	Manhattan .....
06/28/94 ...	MA	Boston .....
06/28/94 ...	NM	Farmington .....
06/28/94 ...	NM	Farmington .....
06/28/94 ...	NM	Farmington .....
06/29/94 ...	LA	Baton Rouge .....

[FR Doc. 94–16677 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 558

Animal Drugs, Feeds, and Related Products; Fenbendazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Hoechst-Roussel Agri-Vet Co. One supplemental NADA provides for use of

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on July 1, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 contines to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * EFFECTIVE UPON PUBLICATION

FDC Date	State	City	Airport	FDC No.	SIAP
02/08/94	AR	Blytheville	Arkansas International	FDC 4/0683	ILS/DME Rwy 18 Orig.
06/01/94	SC	Rock Hill	Rock Hill/York County/Bryant Field	FDC 4/2496	VOR/DME RNAV Rwy 2 Amdt 4A.
06/16/94	LA	Lafayette	Lafayette Regional	FDC 4/2771	VOR/DME Rwy 11 Amdt.
06/16/94	LA	Lafayette	Lafayette Regional	FDC 4/2772	VOR Rwy 4R Amdt 1.
06/16/94	LA	Shreveport	Sheveport Regional	FDC 4/2773	ILS Rwy 14 Amdt 21.
06/22/94	FL	Daytona Beach	Daytona Beach Regional	FDC 4/2907	LOC BC Rwy 25R Amdt 14.
06/22/94	GA	Carrollton	West Georgia Regional	FDC 4/2887	LOC Rwy 34, Amdt 1.
06/22/94	GA	Carrollton	West Georgia Regional	FDC 4/2893	NDB OR GPS Rwy 34, Amdt 1.
06/22/94	GA	Vidalia	Vidalia Muni	FDC 4/2886	LOC Rwy 24, Amdt 2.
06/22/94	NJ	Newark	Newark Intl	FDC 4/2898	ILS Rwy 4R Amdt 8B.
06/23/94	GA	Cornelia	Habersham County	FDC 4/2952	NDB Rwy 6 Amdt 1.
06/23/94	KY	Louisville	Standiford Field	FDC 4/2915	ILS Rwy 19, Amdt 9.
06/24/94	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field	FDC 4/2987	ASR Rwy 4L Amdt 9.
06/27/94	KS	Manhattan	Manhattan Muni	FDC 4/2982	NDB OR GPS–A Amdt 19.
06/28/94	MA	Boston	General Edward Lawrence Logan Intl	FDC 4/3092	ILS Rwy 22L Amdt 4.
06/28/94	NM	Farmington	Four Corners Regional	FDC 4/3093	VOR Rwy 25 Amdt 8.
06/28/94	NM	Farmington	Four Corners Regional	FDC 4/3094	ILS Rwy 25 Amdt 6.
06/28/94	NM	Farmington	Four Corners Regional	FDC 4/3095	VOR/DME Rwy 7 Amdt 3.
06/29/94	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field	FDC 4/3136	VOR Rwy 4L Amdt 15.

[FR Doc. 94–16677 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 558

Animal Drugs, Feeds, and Related Products; Fenbendazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Hoechst-Roussel Agri-Vet Co. One supplemental NADA provides for use of fenbendazole granules, the other provides for use of a fenbendazole Type A medicated article to make Type C medicated feed, both products for use as dewormers for zoo and wildlife animals.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Rt. 202–206, P.O. Box 2500, Somerville, NJ 08876–1258, filed a supplement to NADA 121–473 that provides for use of fenbendazole 22.2 percent granules to top dress feed, and a supplement to NADA 131–675 that provides for use of a fenbendazole Type A medicated article (4 percent, 8 percent, and 20 percent) to make Type C medicated feed. The supplements provide for using 2.5 to 10 milligrams of fenbendazole per kilogram of body weight per day for 3 days for removal and control of internal parasites in zoo and wildlife animals.

Supplemental NADA 121–473 is approved as of May 31, 1994, supplemental NADA 131–675 is approved as of July 11, 1994, and the regulations are amended in 21 CFR 520.905b and 558.258 to reflect the approvals.

Approval of NADA 131–675 is for use of fenbendazole Type A medicated article to make Type C medicated feed. Fenbendazole is a Category II drug which, as provided in 21 CFR 558.4, requires an approved form FDA 1900 for making a Type C medicated feed. Therefore, use of fenbendazole Type A medicated articles to make Type C medicated feeds as in NADA 131–675 requires an approved form FDA 1900.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these supplemental approvals qualify for a 3-year period of marketing exclusivity, for supplemental NADA 121–473 for this use beginning May 31, 1994, and for supplemental NADA 131–675 for this use beginning July 11, 1994, because new clinical or field investigations (other than bioequivalence or residue studies) conducted by the sponsor were required for the approvals.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.905b is amended by adding new paragraph (c)(3) to read as follows:

§ 520.905b Fenbendazole granules.

* * * * *

(c) * * *

(3) *Zoo and wildlife animals*—(i) *Amount.* Ten milligrams per kilogram per day for 3 days.

(ii) *Indications for use.* For control of internal parasites of *Felidae* and *Ursidae* as follows:

(A) Lion (*Panthera leo*) and Tiger (*Panthera tigris*): Ascarid (*Toxocara cati, Toxascaris leonina*), Hookworm (*Ancylostoma* spp.).

(B) Cheetah (*Acinonyx jubatus*): Ascarid (*Toxocara cati, Toxascaris leonina*).

(C) Puma (*Felis concolor*), Panther (*Panthera* spp.), Leopard (*Panthera pardus*), Jaguar (*Panthera onca*): Ascarid (*Toxocara cati, Toxascaris leonina*), Hookworm (*Ancylostoma* spp.), Tapeworm (*Taenia hydatigena, T. krabbei, T. taeniaeformis*).

(D) Black Bear (*Ursus americanus*): Ascarid (*Baylisascaris transfuga, Toxascaris leonina*), Hookworm (*Ancylostoma caninum*), Tapeworm (*Taenia hydatigena, T. krabbei*).

(E) Polar Bear (*Ursus maritimus*) and Grizzly Bear (*Ursus horribilis*): Ascarid (*Baylisascaris transfuga, Toxascaris leonina*).

(iii) *Limitations.* Top dress or mix with a small portion of food. Must be fully consumed prior to feeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian. Do not use 14 days before or during the hunting season.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

4. Section 558.258 is amended by adding new paragraph (c)(4) to read as follows:

§ 558.258 Fenbendazole.

* * * * *

(c) * * *

(4) *Zoo and wildlife animals.* For removal and control of internal parasites in hoofed zoo and wildlife animals as follows:

(i) *Feral swine* (*Suis scrofa*): 3 milligrams per kilogram per day for 3 days. Treatment for kidney worm (*Stephanurus dentatus*), roundworm (*Ascaris suum*), nodular worm (*Oesophagostomum dentatum*).

(ii) *Ruminants* (subfamily *Antilopinae, Hippotraginae, Caprinae*): 2.5 milligrams per kilogram per day for 3 days. Treatment for small stomach worm (*Trichostrongylus* spp.), thread necked intestinal worm (*Nematodirus* spp.), barberpole worm (*Haemonchus* spp.), whipworm (*Trichuris* spp.).

(iii) *Rocky mountain bighorn sheep* (*Ovis c. canadensis*): 10 milligrams per kilogram per day for 3 days. Treatment and control of *Protostrongylus* spp.

(iv) *Limitations.* Use as complete feed. Prior withdrawal of feed or water is not necessary. Retreatment may be required in 6 weeks. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism. Do not use 14 days before or during the hunting season.

Dated: June 21, 1994.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 94–16615 Filed 7–8–94; 8:45 am]

BILLING CODE 4160–01–F

---

21 CFR Part 1220

[Docket No. 94N–0148]

Regulations Under the Tea Importation Act; Tea Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of tea standards for the year beginning May 1, 1994, and ending April 30, 1995. The tea standards are provided for under the Tea Importation Act (the Act). The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

DATES: Effective May 1, 1994; written comments by August 10, 1994.

ADDRESSES: Submit written comments to the Docket Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: Because of the unique nature of the decisionmaking process for establishing annual standards for tea, the procedural protections that are part of this process, and the short period within which standards must be set, FDA has never, since the enactment in 1897 of the Act (21 U.S.C. 41), used notice and comment rulemaking for tea standards.

Each final rule setting the standards is based on the recommendations of the Board of Tea Experts (the board), which is comprised of tea experts who are representative of the tea trade. The board selects standards each year according to the provisions of the Act. The board bases its selection on tea samples submitted by members of the tea trade to the board. Relying primarily on organoleptic examination, the board selects one tea to represent the standard for each major type of tea imported into the United States. In choosing a standard, the board tries to select one at least equal in quality to that of the previous year. The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

The annual meeting of the board is open to the public and is announced in advance in the **Federal Register**. At the annual meeting any interested person may present data, information, or views orally or in writing regarding new standards.

The annual tea standards are prepared and submitted to the Secretary of Health and Human Services by the board (21 CFR 1220.41).

Should a tea importer be dissatisfied with an FDA tea examiner's rejection of a shipment of tea, the importer can refer its complaint to the U.S. Board of Tea Appeals and then to the U.S. Court of Appeals. FDA is unaware of any complaints or arguments having ever occurred concerning a designated standard, despite the many years since the enactment of the Act.

FDA concludes that notice and comment rulemaking to set tea standards is impracticable, contrary to the public interest, and unnecessary by virtue of the factors discussed above, i.e., the unique, longstanding procedures that apply to establishing a standard, the fact that standards are based principally on organoleptic examinations by tea experts, the public participation opportunities already provided, and the timeframes required for issuing annual standards. Hence, the agency is not following notice and comment rulemaking procedures in establishing the final tea standards for 1994.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Board of Tea Experts (the board), which is comprised of tea experts who are representative of the tea trade. The board selects standards each year according to the provisions of the Act. The board bases its selection on tea samples submitted by members of the tea trade to the board. Relying primarily on organoleptic examination, the board selects one tea to represent the standard for each major type of tea imported into the United States. In choosing a standard, the board tries to select one at least equal in quality to that of the previous year. The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

The annual meeting of the board is open to the public and is announced in advance in the **Federal Register**. At the annual meeting any interested person may present data, information, or views orally or in writing regarding new standards.

The annual tea standards are prepared and submitted to the Secretary of Health and Human Services by the board (21 CFR 1220.41).

Should a tea importer be dissatisfied with an FDA tea examiner's rejection of a shipment of tea, the importer can refer its complaint to the U.S. Board of Tea Appeals and then to the U.S. Court of Appeals. FDA is unaware of any complaints or arguments having ever occurred concerning a designated standard, despite the many years since the enactment of the Act.

FDA concludes that notice and comment rulemaking to set tea standards is impracticable, contrary to the public interest, and unnecessary by virtue of the factors discussed above, i.e., the unique, longstanding procedures that apply to establishing a standard, the fact that standards are based principally on organoleptic examinations by tea experts, the public participation opportunities already provided, and the timeframes required for issuing annual standards. Hence, the agency is not following notice and comment rulemaking procedures in establishing the final tea standards for 1994.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The impact of this rule on small entities, including small businesses, was reviewed in accordance with the Regulatory Flexibility Act (Pub. L. 96–354) (5 U.S.C. 601). FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

Interested persons may, on or before August 10, 1994, submit to the Dockets Management Branch (address above) written comments regarding this regulation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

List of Subjects in 21 CFR Part 1220

Administrative practice and procedure, Customs duties and inspection, Imports, Public health, Tea.

Therefore, under the authority delegated to the Secretary of Health and Human Services by the Tea Importation Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1220 is amended as follows:

PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

1. The authority citation for 21 CFR part 1220 continues to read as follows:

Authority: 21 U.S.C. 41–50; 19 U.S.C. 1311.

2. Section 1220.40 is amended by revising paragraph (a) to read as follows:

§ 1220.40 Tea standards.

(a) Samples for standards of the following teas, prepared, identified, and submitted by the Board of Tea Experts on February 25, 1994, are hereby fixed and established as the standards of purity, quality, and fitness for consumption under the Tea Importation Act for the year beginning May 1, 1994, and ending April 30, 1995:

(1) Black Tea (for all teas except those from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, Turkey, and Argentina).

(2) Black Tea (for Argentina teas).

(3) Black Tea (for teas from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, and Turkey).

(4) Green Tea (of all origins).

(5) Formosa Oolong.

(6) Canton Oolong (for all Canton types from the People's Republic of China (China) and Taiwan (Formosa)).

(7) Scented Black Tea.

(8) Spiced Tea.

These standards apply to tea shipped from abroad on or after May 1, 1994.

* * * * *

Dated: June 30, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–16616 Filed 7–8–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 791

[Docket No. R–94–1728; FR–3658–I–01]

RIN 2501–AB71

Allocation of Budget Authority for Housing Assistance

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's existing regulations on allocation of budget authority for housing assistance to provide greater flexibility in the provision of housing assistance under the Headquarters Reserve authorized under section 213(d)(4) of the Housing and Community Development Act of 1974, as amended.

DATES: Effective date: August 10, 1994.

Comment due date: September 9, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For the Public and Indian Housing program, and section 8 voucher, certificate, and moderate rehabilitation programs, William R. Minning, Director, Policy Division, Room 4234, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–0713. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–0850.

For other assisted housing programs, Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Room 6130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–4542. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule further implements section 213(d) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 1439(d), so as to maximize flexibility in the provision of the Headquarters Reserve authorized under section 213(d)(4) of the Act.

Section 213(d)(4) permits the Secretary of HUD to retain not more than five percent of the financial assistance that becomes available under all programs authorized under the United States Housing Act of 1937 (except for public housing operating subsidy under section 9 and modernization funding under section 14). However, the current regulation implementing the Headquarters Reserve at § 791.407 is more delimited. It only permits a Headquarters Reserve of five percent of the total amount of budget authority which is "fair shared" pursuant to Part 791, Subpart D. The effect of the regulatory limitation is to narrow considerably the base upon which the five percent reserve is calculated, as compared to what the statute permits.

Under this interim rule, the base would be expanded by including not only the amount of funding which is fair shared pursuant to the formula at § 791.403(b)(2), but also all budget authority allocated for uses that the Secretary determines are incapable of geographic formula, as spelled out at § 791.403(b)(1). Examples of the latter category include amendments of existing contracts, renewals of assistance contracts, the section 8 loan management and property disposition accounts, assistance earmarked by the Congress in appropriation law line items, and uses of budget authority identified in the Department's Operating Plan submitted to the Appropriations Committee.

Although the amount of funding available under the Headquarters Reserve will be increased by this interim rule, the limited statutory purposes for which funding is permissible are maintained. Reserve funding can only be used for unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts.

The tragedies of recent disasters are a highly visible predicate for this interim rule. The confluence in 1993 of Hurricane Andrew, Hurricane Iniki, and Typhoon Omar and this year the Northridge earthquake in California have placed substantial pressure on the Department to provide prompt, efficient assisted housing relief for disaster victims.

Further, the Department finds itself involved in longstanding litigation for which equitable resolution frequently requires the delivery of housing assistance in order to achieve fair, reasonable settlement. Expanding the ranging of the Headquarters Reserve will facilitate handling these unpredictable pressures for disaster relief and litigation settlements, as well as for emergencies.

Precisely because the incidence of these types of housing assistance funding are unpredictable, the availability of readier resources through an increased Reserve is one which HUD will only call upon as needed. That is, although a greater amount of budget authority will be made available under this interim rule than is the case under the current regulation, this does not mean that HUD will use the full statutory maximum in this year or any year. The draw upon the Reserve will be carefully tempered to exigencies and real, immediate need.

HUD notes that the basis upon which the five percent can be calculated does not include the section 202 program of supportive housing for the elderly. Section 801(b) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) removed the section 202 program from coverage under section 213(d). However, NAHA did not repeal a previous amendment to section 213(d)(1)(A)(i) made by section 101 of the Department of Housing and Urban Development Reform Act of 1989. This amendment requires that section 202 assistance be allocated in a manner that ensures that awards of that assistance are made for projects of sufficient size to accommodate facilities with supportive services appropriate to the needs of frail elderly residents. Moreover, the Department has elected to continue the fair sharing of section 202 housing assistance in order to promote fair and balanced geographic diversity. (The fair sharing formula for section 202 assistance is specifically tailored at § 791.402(c)(1) to reflect relevant characteristics of the elderly population.) Notwithstanding this retention of section 202 allocations in part 791, the statutory range for calculation of the five percent Headquarters Reserve is now effectively limited to programs under the United States Housing Act of 1937 which are covered by section 213(d). Therefore, the revision to § 791.407 under this interim rule limits—for calculation purposes—the Reserve to five percent under those 1937 Act programs.

II. Other Matters

A. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. The interim rule revises existing procedures for the allocation of housing assistance funds and for local government and HUD review of applications for housing assistance, but will make no change in the economic impact of these procedures on small entities.

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this interim rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, this interim rule will not substantially alter the established roles of HUD and the States and local governments, including PHAs, in administering the affected programs. As a result, the interim rule is not subject to review under the Order.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule does not have potential for significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

E. Regulatory Agenda

This interim rule was listed as item 1550 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20440), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

F. The Catalog of Federal Domestic Assistance Program Numbers Are as Follows

14.156 Lower Income Housing Assistance Program (Section 8)
14.157 Housing for the Elderly or Handicapped
14.177 Housing Voucher Program
14.850 Public and Indian Housing
14.851 Low-Income Housing—Homeownership Opportunities for Low-Income Families

G. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR Part 10. However, part 10 does provide for exceptions from the general rule

development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, this interim rule will not substantially alter the established roles of HUD and the States and local governments, including PHAs, in administering the affected programs. As a result, the interim rule is not subject to review under the Order.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule does not have potential for significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

E. Regulatory Agenda

This interim rule was listed as item 1550 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20440), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

F. The Catalog of Federal Domestic Assistance Program Numbers Are as Follows

14.156 Lower Income Housing Assistance Program (Section 8)
14.157 Housing for the Elderly or Handicapped
14.177 Housing Voucher Program
14.850 Public and Indian Housing
14.851 Low-Income Housing—Homeownership Opportunities for Low-Income Families

G. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR Part 10. However, part 10 does provide for exceptions from the general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public comment is contrary to the public interest because immediate effectiveness of this interim rule will permit the Department to respond immediately to housing assistance needs brought on by natural and other disasters, housing needs resulting from emergencies arising from unpredictable and sudden circumstances causing housing deprivation or causing an unforeseen and significant increase in lower income housing demands in a housing market, and housing needs resulting from the settlement of litigation.

List of Subjects in 24 CFR Part 791

Grant programs—housing and community development, Intergovernmental relations, Public housing, Rent subsidies.

Accordingly, 24 CFR Part 791 is amended as follows:

PART 791—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

1. The authority citation for Part 791 continues to read as follows:

Authority: 42 U.S.C. 1439; 42 U.S.C. 3535(d).

2. Section 791.407 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 791.407 Headquarters Reserve.

(a) A portion of the budget authority available for the housing programs listed in § 791.101(a), not to exceed an amount equal to five percent of the total amount of budget authority available for the fiscal year for programs under the United States Housing Act of 1937 listed in § 791.101(a), may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities, and may only be used for:

* * * * *

Dated: June 10, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–16639 Filed 7–8–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with an additional requirement, a proposed amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposes revisions to its rules pertaining to the scope of rulemaking and promulgation of rules, petitions to initiate rulemaking, hearing requirements for designating areas unsuitable for coal mining, confidentiality of coal exploration information, permit application requirements pertaining to blasting and hydrology, and mining in special areas, specifically prime farmland and alluvial valley floors. The amendment incorporates the additional flexibility afforded by the revised Federal regulations, clarifies ambiguities, and improves operational efficiency.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program for the regulation of coal exploration and coal mining and reclamation operations on non-Federal and non-Indian lands. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions taken subsequent to approval of the Utah program are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Proposed Amendment

By letter dated August 2, 1993 (administrative record No. UT–851), Utah submitted to OSM a proposed amendment to its program pursuant to SMCRA, 30 U.S.C. 1201–1328, and the Federal regulations at 30 CFR Chapter

VII (the Federal regulations). Utah submitted the proposed amendment at its own initiative. Utah proposed revisions to the Utah Rules of Practice and Procedure of the Board of Oil, Gas and Mining (Board) at Utah Administrative Rules (Utah Admin. R.) 641–112–100, scope of rulemaking, and 641–112–200, promulgation of rules. Utah also proposed revisions to the Utah Coal Mining Rules at Utah Admin. R. 645–100–500, petitions to initiate rulemaking; 645–103–441, hearing requirement for designating areas unsuitable for coal mining and reclamation operations; 645–203–200, confidentiality of coal exploration information; 645–301–524.661, permit application blasting level chart; 645–301–731.760, permit application cross sections and maps showing hydrologic information; and 645–302–314.110 and 645–302–323.310, special areas of mining, specifically prime farmland and alluvial valley floors.

Utah proposed to delete the scope of rulemaking provision at Utah Admin. R. 641–112–100 that requires the Board to promulgate such procedural and substantive rules it deems useful or necessary to implement statutory duties, fulfill its statutory obligations, or interpret the statutory authority under which it operates. At Utah Admin. R. 641–112–200, Utah proposed to revise the procedures for promulgation of rules to provide that the Board will promulgate rules under the authority provided at Utah Code Annotated (UCA) Sections 40–6–5, 40–9–3.5(2), and 40–10–6(1). At Utah Admin. R. 645–100–500, Utah proposed that persons other than the Division of Oil, Gas and Mining (Division) or the Board may petition to initiate rulemaking pursuant to Utah Admin. R. 641 and the Utah Administrative Rulemaking Act, UCA 63–46–8. At Utah Admin. R. 645–103–441, Utah proposed that within 10 months after receipt of a complete petition to designate an area unsuitable for coal mining, the Board shall hold a public hearing in the locality of the area covered by the petition "unless the petitioners and intervenors agree." At Utah Admin. R. 645–203–200, Utah proposed to revise its coal exploration confidentiality provision to require that the Division will not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the information is classified as being protected, private, or controlled under the Utah Government Records Access and Management Act (GRAMA) or confidential under other applicable State or Federal laws, rules, or regulations. At Utah Admin. R 645–301–524.661, Utah proposed to delete the reference to UCA 63–46a–3(7)(a) and reference only Figure 1 in the Federal regulations at 30 CFR 817.67, which shows the maximum allowable ground particle velocity for blasting operations. At Utah Admin. R. 645–301–731.760, Utah proposed to add to its hydrology permit application requirements that the Division may, depending on the structures and facilities located in the permit area, require other relevant cross sections and maps, in addition to those cross sections and maps already specifically required by the State's existing rules. At Utah Admin. R. 645–302–314.110, Utah proposed to revise its prime farmland permit application content requirements to indicate that U.S. Department of Agriculture (USDA) Soils Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual) are incorporated on the effective date, rather than the date of adoption, of Utah Admin. R. 645. Also, at Utah Admin. R. 645–302–314.110, Utah proposed to delete the statement that notices of changes made to the USDA handbooks will be periodically published in the **Federal Register**. At Utah Admin. R. 645–302–323.310, Utah proposed to revise its alluvial valley floor water quality requirement by adding language that incorporates by reference the specific publication by Maas and Hoffman, "Crop Salt Tolerance—Current Assessment," Table 1, "Salt Tolerance of Agricultural Crops."

OSM announced receipt of the proposed amendment in the August 27, 1993, **Federal Register** (58 FR 45305, administrative record No. UT–865), and in the same document, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on September 27, 1993. The public hearing, scheduled for September 21, 1993, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns for (1) Utah Admin. R. 641–112, regarding the incorrect reference to its rulemaking authority at UCA 40–9–3.5(2), which was repealed by Utah in 1993; (2) Utah Admin. R. 645–103–441, regarding the need for agreement between the petitioners and intervenors to change the location of a public hearing on a petition to designate lands unsuitable for mining; (3) Utah Admin. R. 645–203–200, regarding the proposed deletion of the phrase "and the information is confidential," which would impart a change in the criteria for determining coal exploration information that is or is not allowed to be held confidential under the Utah program, and the proposed reference to Utah's GRAMA in that certain aspects of GRAMA were previously found to be less effective than the Federal regulations with regard to the restrictions Utah's GRAMA imposes on the availability of coal exploration information; and (4) Utah Admin. R. 645–302–314.110, regarding the need to use the prime farmland soil survey standards in USDA Handbook 436, as it existed on October 5, 1982, and USDA Handbook 18, as it existed on November 16, 1982. OSM notified Utah of these concerns by letter dated December 9, 1993 (administrative record No. UT–878).

By letter dated January 7, 1994, Utah responded to OSM's concerns by submitting revisions to its proposed program amendment (administrative record No. UT–881). Utah proposed the following revisions to its existing rules. At Utah Admin. R. 641–112, Utah proposed to reference UCA 40–8–6(1), which applies to rulemaking authority under the Utah Mined Land Reclamation Act. At Utah Admin. R. 645–103–441, Utah proposed that (1) unless the petitioners and intervenors agree otherwise, the Board shall hold a public hearing within 10 months after receipt of a complete petition to designate lands unsuitable for mining; (2) if all petitioners and intervenors agree that a public hearing is not needed, the hearing need not be held; and (3) all hearings held under Utah Admin. R. 645–103–441 will be held in the locality of the area covered by the petition. At Utah Admin. R. 645–203–200, Utah proposed to require that the Division will not make coal information available for public inspection if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the information is confidential under the standards of the Federal Act (SMCRA). At Utah Admin. R. 645–302–314.110, Utah proposed to require that USDA Soils Handbooks 436 and 18 are incorporated by reference as they respectively existed on October 5, 1982, and November 16, 1982.

OSM announced receipt of the revised amendment in the January 24, 1994, **Federal Register** (59 FR 3530, administrative record No. UT–887) and in the same document, reopened and extended the public comment period. The comment period closed February 8, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, finds, with an additional requirement, that the proposed program amendment as submitted by Utah on August 2, 1993, and as revised on January 7, 1994, is no less effective than the corresponding Federal regulations.

1. Nonsubstantive Revisions to Utah's Rules

Utah proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial and punctuation changes (corresponding Federal regulations are listed in parentheses):

Utah Admin. R. 645–103–441 (30 CFR 764.17), hearing requirements for designating areas unsuitable for coal mining and reclamation operations,

Utah Admin. R. 645–301–731.760 (30 CFR 779.24, 779.25, and 780.14 for surface mining, and 783.24, 783.25, and 784.23 for underground mining), permit application cross sections and maps showing hydrologic information, and

Utah Admin. R. 645–302–323.310 (30 CFR 785.19), special areas of mining, specifically alluvial valley floors.

Because the proposed revisions to these previously-approved Utah rules are nonsubstantive in nature, the Director finds that these proposed Utah rules are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to Utah's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

In a parenthetical note, existing Utah Admin. R. 645–301–524.661 (1) incorporates by reference Figure 1 in the Federal regulations at 30 CFR 817.67, which shows the maximum allowable ground vibration for blasting operations, (2) cites its administrative procedures statute at UCA 63–46a–3(7)(a) as the authority for incorporating this figure into its rules, and (3) indicates that the figure can be viewed in the Division's office.

Utah proposed to delete the reference to its statutory authority for incorporating the figure from the Federal regulations into its rules. This deletion does not render Utah Admin. R. 645–301–524.661 less effective than the Federal regulations at 30 CFR 816.67(d)(4)(i). In fact, the proposed State rule includes requirements that are substantively identical to the requirements of the Federal regulation. Therefore, the Director approves the proposed rule.

Federal regulations at 30 CFR 732.15 and 732.17, finds, with an additional requirement, that the proposed program amendment as submitted by Utah on August 2, 1993, and as revised on January 7, 1994, is no less effective than the corresponding Federal regulations.

1. Nonsubstantive Revisions to Utah's Rules

Utah proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial and punctuation changes (corresponding Federal regulations are listed in parentheses):

Utah Admin. R. 645–103–441 (30 CFR 764.17), hearing requirements for designating areas unsuitable for coal mining and reclamation operations,

Utah Admin. R. 645–301–731.760 (30 CFR 779.24, 779.25, and 780.14 for surface mining, and 783.24, 783.25, and 784.23 for underground mining), permit application cross sections and maps showing hydrologic information, and

Utah Admin. R. 645–302–323.310 (30 CFR 785.19), special areas of mining, specifically alluvial valley floors.

Because the proposed revisions to these previously-approved Utah rules are nonsubstantive in nature, the Director finds that these proposed Utah rules are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to Utah's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

In a parenthetical note, existing Utah Admin. R. 645–301–524.661 (1) incorporates by reference Figure 1 in the Federal regulations at 30 CFR 817.67, which shows the maximum allowable ground vibration for blasting operations, (2) cites its administrative procedures statute at UCA 63–46a–3(7)(a) as the authority for incorporating this figure into its rules, and (3) indicates that the figure can be viewed in the Division's office.

Utah proposed to delete the reference to its statutory authority for incorporating the figure from the Federal regulations into its rules. This deletion does not render Utah Admin. R. 645–301–524.661 less effective than the Federal regulations at 30 CFR 816.67(d)(4)(i). In fact, the proposed State rule includes requirements that are substantively identical to the requirements of the Federal regulation. Therefore, the Director approves the proposed rule.

3. Utah Admin. R. 641–112, Scope of Rulemaking and Promulgation of Rules

Utah proposed to delete Utah Admin. R. 641–112–100, relating to scope of rulemaking. The effect of this proposed deletion on the Utah program is nonsubstantive because (1) this rule only generally described Utah's authority to promulgate rules for its statutes and (2) the concepts contained in this rule are repeated with more specificity at Utah Admin. R. 641–112–200, which Utah proposed to recodify as Utah Admin. R. 641–112.

Utah proposed to revise recodified Utah Admin. R. 641–112, to indicate that the Board will promulgate rules under the authority of UCA 40–6–5, 40–8–6(1), and 40–10–6(1).

UCA 40–6–5, a provision of the Utah Oil and Gas Conservation Act, provides the statutory authority for jurisdiction of the Board over oil, gas, and mining operations. UCA 40–8–6(1), a provision of the Utah Mined Land Reclamation Act, provides that, in addition to the powers, functions, and duties provided to the Board in UCA 40–6, the Board has the power, function, and duty "to enact rules according to the procedures and requirements of Title 63, Chapter 46a, that are reasonably necessary to carry out the purposes of this chapter." UCA 40–10–6(1), a provision of the Utah Coal Mining and Reclamation Act, provides that, in addition to the powers, functions, and duties of the Board and Division provided in UCA 40–8, the Board and Division have the power, function and duty "to make and promulgate in accordance with Title 63, Chapter 46a, the Utah Administrative Rulemaking Act, such rules as are specifically necessary for the regulation of coal mining operations and reclamation operations."

The proposed references in Utah Admin. R. 641–112 to UCA 40–6–5, 40–8–6(1), and 40–10–6(1), which give the Board the necessary powers to enact rules regulating oil, gas and mining operations, are consistent with the Federal regulation at 30 CFR 732.15(b), which requires a State regulatory authority to possess the authority, under State law, to implement, administer, and enforce all of the applicable requirements of Subchapter K of the Federal regulations. Therefore, the Director approves the proposed rule.

4. Utah Admin. R. 645–100–500, Petition to Initiate Rulemaking

Utah proposed to revise Utah Admin. R. 645–100–500 to provide that "persons other than the Division or Board" may petition to initiate rulemaking pursuant to the Rules of Practice and Procedure of the Board at Utah Admin. R. 641 and the Utah Administrative Rulemaking Act at UCA 63–46–8.

Utah's definition of "person" at UCA 40–10–3(14) is substantively identical to the definition of "person" at section 701(19) of SMCRA. Also, Utah's definition of "person" at Utah Admin. R. 645–100–200 is substantively identical to the definition of "person" in the Federal regulations at 30 CFR 700.5. Both definitions include units and instrumentalities "of Federal, State, or local government," such as the Board and the Division.

The Federal regulations at 30 CFR 700.12 provide that *any* person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of any regulation under SMCRA. Utah's proposed revision would appear to prohibit the Division or Board from petitioning to initiate rulemaking. There is no similar prohibition provided in the Federal regulations at 30 CFR 700.12, which allow any person, including groups, organizations, and other entities, regardless of affiliation, to petition to initiate rulemaking.

However, at UCA 40–10–6(1) (Powers, Functions, and Duties of the Board and Division), the Board and Division have the authority to make and promulgate rules for the regulation of coal mining operations and reclamation operations. Therefore, it is not necessary for either the Board or the Division to have the right to petition to initiate rulemaking. Under UCA 40–10–6(1), the Board and Division, as the governmental entities entrusted with the regulation of surface coal mining in Utah, are the initiators of rulemaking.

OSM specifically interprets the proposed amendment, however, to allow an individual member of the Board or employee of the Division, in his or her capacity as an individual, to petition the Board to initiate rulemaking. Section 102(i) of SMCRA provides that one of its purposes is the protection of the right of the public to participate in the rulemaking process. Utah may not deny any member of the Board or any employee of the Division the right to petition the Board for rulemaking, as such a denial would render the State program inconsistent with section 102(i) of SMCRA.

On this basis, the Director (1) finds that Utah Admin. R. 645–100–500 is no less effective than the Federal regulations at 30 CFR 700.12 and (2) approves the proposed rule.

5. Utah Admin. R. 645–302–314.110, Permit Application Contents for Prime Farmland

Utah proposed to revise Utah Admin. R. 645–302–314.110 to provide that, with respect to prime farmland soil survey standards, the U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they respectively existed on October 5, 1982, and November 16, 1982.

The Federal regulation at 30 CFR 785.17(c)(1)(i) provides that U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they existed on October 5, 1982, and November 16, 1982. Therefore, the USDA handbooks incorporated by reference into Utah Admin. R. 645–302–314.110, and handbooks incorporated by reference into the Federal regulation, are the same. On the basis, the Director (1) finds that Utah Admin. R. 645–302–314.110 is no less effective than the Federal regulation at 30 CFR 785.17(c) (1)(i) and (2) approves the proposed rule.

6. Utah Admin. R. 645–203–200, Confidentiality of Coal Exploration Information

Utah proposed to revise Utah Admin. R. 645–203–200 to provide that the information submitted as part of a coal exploration permit is confidential (1) if the person submitting it requests in writing at the time of submission that it not be disclosed and (2) the information is confidential under the standards of the "Federal Act."

At Utah Admin. R. 645–100–200, Utah defines the "Federal Act" to mean SMCRA. The Federal regulation at 30 CFR 772.15(b), which implements SMCRA and corresponds to Utah's proposed rule, provides that information shall be kept confidential if (1) the person submitting it requests in writing at the time of submission that it not be disclosed and (2) the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

The reference to the "Federal Act" in proposed Utah Admin. R. 645–203–200 lacks specificity and could be interpreted in a manner that is inconsistent with the second part of 30 CFR 772.15(b), which requires that information can be kept confidential only if it concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

The Director, for the reasons stated above, approves proposed Utah Admin. R. 645–203–200, but requires Utah to submit an additional amendment providing that coal exploration permit application information may not be kept confidential unless it concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on Utah's proposed amendment from the Administrator of the U.S. Environmental Protection Agency (EPA), the Secretary of the U.S. Department of Agriculture, and various other Federal agencies with an actual or potential interest in the Utah program.

Mine Safety and Health Administration (MSHA).—By letter dated October 7, 1993, MSHA raised a concern that in one area Utah's proposed rules may conflict with MSHA's 30 CFR part 77 regulations (administrative record No. UT–873). MSHA stated that the proposed rules refer to tables and charts regarding allowable airblast, ground vibration, and particle velocity due to surface blasting but that MSHA's regulations do not specify and/or limit these values for surface blasting. MSHA also stated that, in addition, its regulation at 30 CFR 77.1303(j) provides for the protection of underground miners when surface blasting occurs.

With respect to MSHA's statement that its regulations at 30 CFR part 77 do not limit surface mines for airblast, ground vibration, and particle velocity, the Director, as discussed in finding No. 2, finds that Utah's surface mining blasting limitations at Utah Admin. R. 645–301–524.661 are substantively identical to, and no less effective than, OSM's regulations at 30 CFR 816.67(d).

With respect to MSHA's statement that its regulation at 30 CFR 77.1303(j) provides for the protection of underground miners when surface blasting occurs, the Director notes that existing rules in the Utah program, and the corresponding Federal regulations, provide for such protection.

With respect to MSHA's implication that Utah's surface mine blasting rules should also provide protection for underground miners, Utah Admin. R. 645–301–524 and 524.641, and the Federal regulations at 30 CFR 816.61(d)(1)(ii) and 816.67(d)(1), require that (1) blasting operations conducted within 500 feet of active underground mines must have MSHA approval and (2) underground mines must be protected from damage by establishment of a maximum allowable limit for ground vibration before initiation of blasting.

For the reasons discussed above, the Director is not requiring Utah to modify its rules in response to MSHA's comments.

By letter dated February 28, 1994 (administrative record No. UT–896), MSHA responded to the revisions proposed by Utah in its January 7, 1994, submittal (administrative record No. UT–881), by stating that "it appears there is no conflict with the requirements of 30 CFR."

Other Agencies.—By letters dated August 25, 1993, and January 27, 1994, the U.S. Army Corps of Engineers stated that it found the changes to Utah's regulatory program to be satisfactory (administrative record Nos. UT–863 and UT–890).

By letter dated August 26, 1993, the Bureau of Mines stated that it had no comment because the amendment would not affect minerals other than coal (administrative record No. UT–864).

By letters dated August 27, 1993, and February 1, 1994 (administrative record Nos. UT–867 and UT–892), EPA stated that it had no comments on the proposed amendment.

By letter dated February 14, 1994, the U.S. Fish and Wildlife Service stated it found nothing of significant concern to the Fish and Wildlife Service (administrative record No. UT–895).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to solicit the written concurrence of the Administrator of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its rules pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence with the proposed amendment (administrative record No. UT–857).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendment to the SHPO and the ACHP for comment. Neither the SHPO nor the ACHP provided any comments to OSM.

V. Director's Decision

Based on the above findings, the Director approves, with an additional requirement, the proposed amendment that Utah submitted on August 2, 1993, as subsequently revised on January 7, 1994.

As discussed in finding Nos. 1, 2, 3, 4, and 5, the Director approves Utah Admin. R. 645–103–441, 645–301–731.760, 645–302–323.310; 645–301–524.661; 641–112; 645–100–500; and 645–302–314.110.

As discussed in finding No. 6, the Director approves Utah Admin. R. 645–203–200 but requires Utah to revise it to provide that coal exploration permit application information may not be kept confidential unless it concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

The Director approves the rules as proposed by Utah with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendment to the SHPO and the ACHP for comment. Neither the SHPO nor the ACHP provided any comments to OSM.

V. Director's Decision

Based on the above findings, the Director approves, with an additional requirement, the proposed amendment that Utah submitted on August 2, 1993, as subsequently revised on January 7, 1994.

As discussed in finding Nos. 1, 2, 3, 4, and 5, the Director approves Utah Admin. R. 645–103–441, 645–301–731.760, 645–302–323.310; 645–301–524.661; 641–112; 645–100–500; and 645–302–314.110.

As discussed in finding No. 6, the Director approves Utah Admin. R. 645–203–200 but requires Utah to revise it to provide that coal exploration permit application information may not be kept confidential unless it concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

The Director approves the rules as proposed by Utah with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1291(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

VII. List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (z) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(z) Revisions to the following Utah Administrative Rules, as submitted to OSM on August 2, 1993, and revised on January 7, 1994, are approved effective July 11, 1994.

641–112 Promulgation of Rules
645–100–500 Petitions to Initiate Rulemaking
645–103–441 Hearing Requirements for Designating Areas Unsuitable for Coal Mining and Reclamation Operations
645–203–200 Confidentiality of Coal Exploration Information
645–301–524.661 Permit Application Blasting Level Chart
45–301–731.760 Permit Application Cross Sections and Maps Showing Hydrologic Information
645–302–314.110 Permit Application Contents for Prime Farmland
645–302–323.310 Special Areas of Mining, Specifically Alluvial Valley Floors

3. Section 944.16 is amended by adding paragraph (a) to read as follows:

§ 944.16 Required program amendments.

* * * * *

(a) By September 9, 1994, Utah shall submit a proposed amendment for Utah Admin. R. 645–203–200 to specify that coal exploration permit application information may not be kept confidential unless it concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

* * * * *

[FR Doc. 94–16656 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations; Specially Designated Nationals List

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final Rule; amendments to the list of specially designated nationals.

SUMMARY: The Office of Foreign Assets Control is amending the Libyan Sanctions Regulations to add Arab Turkish Bank and four other entities to appendix A, Organizations Determined to be Within the Term "Government of Libya" (Specially Designated Nationals of Libya), and to add nine individuals to appendix B, Individuals Determined to be Specially Designated Nationals of the Government of Libya.

EFFECTIVE DATE: July 7, 1994.

ADDRESS: Copies of the list of persons whose property is blocked pursuant to the Libyan Sanctions Regulations are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. The full list of persons blocked pursuant to economic sanctions programs administered by the Office of Foreign Assets Control is available electronically on *The Federal Bulletin Board* (see Supplementary Information).

FOR FURTHER INFORMATION CONTACT: J. Robert McBrien, Chief, International Programs Division, Office of Foreign Assets Control, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

The Office of Foreign Assets Control ("FAC") is amending the Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), to add new entries to appendices A and B. Appendix A, Organizations Determined to be Within the Term "Government of Libya" (Specially Designated Nationals of Libya), is a list of organizations determined by the Director of FAC to be within the definition of the term "Government of Libya," as set forth in § 550.304(a) of the Regulations, because they are owned or controlled by or act or purport to act directly or indirectly on behalf of the Government of Libya. Appendix B, Individuals Determined to be Specially Designated Nationals of the Government of Libya, lists individuals determined by the Director of FAC to be acting or purporting to act directly or indirectly on behalf of the Government of Libya, and thus to fall within the term "Government of Libya" in § 550.304(a).

Appendix A to part 550 is amended to provide public notice of the designation of Arab Turkish Bank, Libya Insurance Company, Maghreban International Trade Company, Saving and Real Estate Investment Bank, and Societe Maghrebine d'Investissement et de Participation as Specially Designated Nationals of Libya.

Appendix B to part 550 is amended to provide public notice of nine individuals determined to be Specially Designated Nationals of the Government of Libya: Yousef Abd–El–Razegh Abdelmulla, Ayad S. Dahaim, El Hadi M. El–Fighi, Kamel El–Khallas, Mohammed Mustafa Ghadban, Mohammed Lahmar, Ragiab Saad Madi, Bashir M. Sharif, and Kassem M. Sherlala. Six of these individuals are present or former directors or managers of Arab Turkish Bank.

All prohibitions in the Regulations pertaining to the Government of Libya apply to the entities and individuals identified in appendices A and B. All unlicensed transactions with such entities or persons, or transactions in property in which they have an interest, are prohibited unless otherwise exempted or generally licensed in the Regulations.

Determinations that persons fall within the definition of the term "Government of Libya" and are thus Specially Designated Nationals are effective upon the date of determination by the Director of FAC, acting under authority delegated by the Secretary of the Treasury. Public notice of such a determination is effective upon the date of **Federal Register** publication or upon earlier actual notice.

The list of Specially Designated Nationals in appendices A and B is a partial one, since FAC may not be aware of all agencies and officers of the Government of Libya, or of all persons that might be owned or controlled by, or acting on behalf of the Government of Libya within the meaning of § 550.304(a). Therefore, one may not rely on the fact that a person is not listed in appendix A or B as a Specially Designated National as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. The Treasury Department regards it as incumbent upon all persons governed by the Regulations to take reasonable steps to ascertain for themselves whether persons with whom they deal are owned or controlled by, or acting or purporting to act on behalf of, the Government of Libya, or on behalf of other countries subject to blocking or transactional restrictions administered by FAC.

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, provides for civil penalties not to exceed $10,000 for each violation of the Regulations. Criminal violations of the Regulations are punishable by fines of up to $250,000 or imprisonment for up to 10 years per count, or both, for individuals and criminal fines of up to $500,000 per count for organizations. See 50 U.S.C. 1705; 18 U.S.C. 3571.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 550

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Travel restrictions.

PART 550—LIBYAN SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

1. The authority citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa–8 and 2349aa–9; 3 U.S.C. 301; E.O. 12543, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 3 CFR, 1992 Comp., p. 294.

2. Appendix A to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

APPENDIX A TO PART 550—ORGANIZATIONS DETERMINED TO BE WITHIN THE TERM "GOVERNMENT OF LIBYA" (SPECIALLY DESIGNATED NATIONALS OF LIBYA)

* * * * *

ARAB TURKISH BANK,
(a.k.a. ARAP TURK BANKASI A.S.);
(a.k.a. ATB),
Vali Konagi Cad. No. 10, 80200 Nistantas; Istanbul, Turkey,
P.O. Box 380, 80223 Sisli, Istanbul, Turkey,
Ziyapasa Bulvari No. 14/A, 01130 Adana, Turkey,
P.O. Box 11, 01321, Adana, Turkey,
Havuzlu Sok. No. 3, 06540 Asagi Ayranci, Ankara, Turkey,
P.O. Box 38, 06552 Cankaya, Ankara, Turkey,
Gaziosmanpasa Bulvari No. 10/1, 35210 Alsancak, Izmir, Turkey,
P.O. Box 52, 35212 Pasaport, Izmir, Turkey.

* * * * *

LIBYA INSURANCE COMPANY,
P.O. Box 2438, Usama Bldg., 1st September St., Tripoli, Libya (7 main branches and 58 sub–branches in Libya),
Cyprus Office, Nicosia, Cyprus.

* * * * *

MAGHREBAN INTERNATIONAL TRADE COMPANY,
(a.k.a. MITCO),
25, Avenue Kheireddine Pacha, 1002 Tunis, Tunisia.

* * * * *

SAVING AND REAL ESTATE INVESTMENT BANK,
P.O. Box 2297, Shoman Street, Fashioum, Tripoli, Libya (24 branches in Libya).

* * * * *

SOCIETE MAGHREBINE D'INVESTISSEMENT ET DE PARTICIPATION,
(a.k.a. SMIP),
47, Avenue Kheireddine Pacha, 1002 Tunis, Tunisia.

3. Appendix B to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

APPENDIX B TO PART 550—INDIVIDUALS DETERMINED TO BE SPECIALLY DESIGNATED NATIONALS OF THE GOVERNMENT OF LIBYA

* * * * *

ABDELMULLA, Yousef Abd–El–Razegh,
(a.k.a. ABDULMOLA, Yousef Abd–El–Razegh),
P.O. Box 4538, Maidan Masif El Baladi, Tripoli, Libya.

* * * * *

DAHAIM, Ayad S.,
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey.

* * * * *

EL–FIGHI, El Hadi M.,
P.O. Box 1114, Diplomatic Area, Manama, Bahrain,
Jamal Abdulnasser Street, P.O. Box 262, Nouakchott, Mauritania.

* * * * *

EL–KHALLAS, Kamel,
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey.

* * * * *

GHADBAN, Mohammed Mustafa,
P.O. Box 4647, Shuhada Square, Tripoli, Libya,
P.O. Box 452, Fadiel Abu Omar Square, El–Berkha, Benghazi, Libya,
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey.

* * * * *

LAHMAR, Mohammed,
Dat El Imad Administrative Complex Tower No. 2, P.O. Box 2542, Tripoli, Libya.

* * * * *

P.O. Box 38, 06552 Cankaya, Ankara, Turkey,
Gaziosmanpasa Bulvari No. 10/1, 35210 Alsancak, Izmir, Turkey,
P.O. Box 52, 35212 Pasaport, Izmir, Turkey.

* * * * *

LIBYA INSURANCE COMPANY,
P.O. Box 2438, Usama Bldg., 1st September St., Tripoli, Libya (7 main branches and 58 sub-branches in Libya),
Cyprus Office, Nicosia, Cyprus.

* * * * *

MAGHREBAN INTERNATIONAL TRADE COMPANY,
(a.k.a. MITCO),
25, Avenue Kheireddine Pacha, 1002 Tunis, Tunisia.

* * * * *

SAVING AND REAL ESTATE INVESTMENT BANK,
P.O. Box 2297, Shoman Street, Fashioum, Tripoli, Libya (24 branches in Libya).

* * * * *

SOCIETE MAGHREBINE D'INVESTISSEMENT ET DE PARTICIPATION,
(a.k.a. SMIP),
47, Avenue Kheireddine Pacha, 1002 Tunis, Tunisia.

3. Appendix B to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

APPENDIX B TO PART 550—INDIVIDUALS DETERMINED TO BE SPECIALLY DESIGNATED NATIONALS OF THE GOVERNMENT OF LIBYA

* * * * *

ABDELMULLA, Yousef Abd-El-Razegh,
(a.k.a. ABDULMOLA, Yousef Abd-El-Razegh),
P.O. Box 4538, Maidan Masif El Baladi, Tripoli, Libya.

* * * * *

DAHAIM, Ayad S.,
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey.

* * * * *

EL-FIGHI, El Hadi M.,
P.O. Box 1114, Diplomatic Area, Manama, Bahrain,
Jamal Abdulnasser Street, P.O. Box 262, Nouakchott, Mauritania.

* * * * *

EL-KHALLAS, Kamel,
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey.

* * * * *

GHADBAN, Mohammed Mustafa,
P.O. Box 4647, Shuhada Square, Tripoli, Libya,
P.O. Box 452, Fadiel Abu Omar Square, El-Berkha, Benghazi, Libya,
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey.

* * * * *

LAHMAR, Mohammed,
Dat El Imad Administrative Complex Tower No. 2, P.O. Box 2542, Tripoli, Libya.

* * * * *

MADI, Ragiab Saad,
P.O. Box 2297, Shoman Street, Fashioum, Tripoli, Libya.

* * * * *

SHARIF, Beshir M.,
Dat El Imad Administrative Complex Tower No. 2, P.O. Box 2542, Tripoli, Libya,
Vali Konagi Cad. No. 10, 80200 Nistantas, Istanbul, Turkey.

* * * * *

SHERLALA, Kassem M.,
P.O. Box 2438, Usama Bldg., 1st September St., Tripoli, Libya.

Dated: June 22, 1994.

Steven I. Pinter,

Acting Director, Office of Foreign Assets Control.

Approved: June 22, 1994.

R. Richard Newcomb,

Acting Deputy Assistant Secretary (Law Enforcement).

[FR Doc. 94-16788 Filed 7-7-94; 11:46 am]

BILLING CODE 4810-25-F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 369

[DoD Directive 5134.6]

Principal Deputy Under Secretary of Defense for Acquisition and Technology; Organizational Charter

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part identifies the establishment of the position of Principal Deputy Under Secretary of Defense for Acquisition and Technology PDUSD(A&T) in accordance with 10 U.S.C. 113. The PDUSD (A&T) is empowered to act for the Under Secretary of Defense for Acquisition and Technology as directed by the Under Secretary of Defense or when the Under Secretary is absent or disabled.

EFFECTIVE DATE: June 8, 1994.

FOR FURTHER INFORMATION CONTACT:

Mr. R. Kennedy, Office of Organizational and Management Planning, telephone 703-697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 369

Organization and functions (Government agencies).

Accordingly, Title 32, Chapter I, Subchapter R is amended to add Part 369 to read as follows:

PART 369—PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY (PDUSD(A&T))

Sec.

369.1 Purpose.
369.2 Applicability.
369.3 Responsibilities, functions, relationships, and authorities.

Authority: 10 U.S.C. 113 and 133a.

§ 369.1 Purpose.

Pursuant to 10 U.S.C. 133a and the authority vested in the Secretary of Defense by 10 U.S.C. 113, this part establishes the position of PDUSD(A&T) with the responsibilities, functions, relationships, and authorities, as prescribed in this part.

§ 369.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

§ 369.3 Responsibilities, functions, relationships, and authorities.

The Principal Deputy Under Secretary of Defense for Acquisition and Technology, as the primary assistant of the Under Secretary of Defense for Acquisition and Technology (USD(A&T)), advises and assists the USD(A&T) across the full range of responsibilities in providing staff advice and assistance to the Secretary and Deputy Secretary of Defense, particularly with regard to ensuring the integrity of Major Systems Acquisition oversight and processes, acquisition and procurement policy execution and oversight functions, and by law is empowered to act on behalf of the USD(A&T). As such the PDUSD(A&T) shall:

(a) Assist the USD(A&T) in carrying out the responsibilities, functions, relationships, and authorities contained in law and 32 CFR part 384.

(b) Exercise full power and authority to act for the USD(A&T) and to exercise the powers of the USD(A&T) upon any and all matters concerning which the USD(A&T) is authorized to act pursuant to law and 32 CFR part 384, as directed by the Under Secretary, or when the Under Secretary is absent or disabled.

(c) Exercise authority, direction, and control over organizations designated by the USD(A&T) for supervision by the PDUSD(A&T).

Dated: July 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16686 Filed 7–8–94; 8:45 am]

BILLING CODE 5000-04-M

32 CFR Part 384

[DoD Directive 5134.1]

Under Secretary of Defense for Acquisition and Technology; Organizational Charter

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part is issued to reflect changes in title, functions, responsibilities, and relationships, in organizational changes within the Department of Defense.

EFFECTIVE DATE: June 8, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Office of Organizational and Management Planning, telephone 703–697–1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 384

Organization and functions (Government agencies).

Accordingly, Title 32, Chapter I, Subchapter R is amended to add Part 384 to read as follows:

PART 384—UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY

Sec.

384.1 Purpose.
384.2 Definition.
384.3 Applicability.
384.4 Responsibilities.
384.5 Functions.
384.6 Relationships.
384.7 Authorities.
Appendix A to Part 384—Delegations of Authority.

Authority: 10 U.S.C. 113 and 133.

§ 384.1 Purpose.

Pursuant to 10 U.S.C. 133 and the authority vested in the Secretary of Defense by 10 U.S.C. 113, this part updates the responsibilities, functions, relationships, and authorities of the USD(A&T).

§ 384.2 Definition.

Department of Defense Acquisition System. A single, uniform system whereby all equipment, facilities, and services are planned, designed, developed, acquired, maintained, and disposed of within the Department of Defense. The system encompasses establishing and enforcing policies and practices that govern acquisitions, to include documenting mission needs and establishing performance goals and baselines; determining and prioritizing resource requirements for acquisition programs; planning and executing acquisition programs; directing and controlling the acquisition review process; developing and assessing logistics implications; contracting; monitoring the execution status of approved programs; and reporting to Congress.

§ 384.3 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 384.4 Responsibilities.

The Under Secretary of Defense for Acquisition and Technology, as the senior acquisition executive of the Department of Defense, is the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense for all matters relating to the DoD Acquisition System, research and development, advanced technology, test and evaluation, production, logistics, military construction, procurement, economic security, environmental security, and atomic energy.

(a) The Under Secretary of Defense for Acquisition and Technology shall:

(1) Serve as the Defense Acquisition Executive with responsibility for supervising the performance of the DoD Acquisition System and enforcing the policies and practices in DoD Directive 5000.1 [1] and OMB Circular A–109.[2]

(2) Chair the Defense Acquisition Board (DAB) pursuant to DoD Directive 5000.49.[3]

(3) Serve as the DoD Procurement Executive, with responsibilities as prescribed in E.O. 12352, 47 FR 12125, 3 CFR, 1982 Comp., p. 137, and 41 U.S.C. 401–424.

(4) Serve as the United States representative at the North Atlantic Treaty Organization (NATO) Conference of National Armaments' Directors and other multinational forums of armaments' directors.

(5) Establish and publish policies and procedures governing the operations of the DoD Acquisition System and the administrative oversight of defense contractors.

(6) Prescribe the developmental testing and evaluation program (which excludes those statutory test and evaluation responsibilities assigned to the Director, Operational Test and Evaluation), including establishing and ensuring implementation of policies and program plans, including funding, for ranges and test facilities and also be responsible for the acquisition-related functions of weapons programs, including control of the elements of the OSD performing the acquisition-related function of strategic and theater nuclear forces programs and tactical warfare programs.

(7) Prescribe policies, in coordination with the IG, DoD, and the Comptroller of the Department of Defense (C, DoD), to ensure that audit and oversight of contractor activities are coordinated and carried out in a manner to prevent duplication by different elements of the Department. The exercise of this responsibility shall not affect the authority of the IG, DoD, under the Inspector General Act of 1978 (Pub. L. 95–452, 92 Stat. 1101).

(8) Coordinate research and development programs DoD-wide to eliminate duplication of effort and ensure that available resources are used to maximum advantage.

(9) Establish policies and programs that strengthen DoD Component technology development programs, encourage technical competition and technology-driven prototyping that promise increased military capabilities, and exploit the cost-reduction potential of innovative or commercially developed technologies.

(10) Develop acquisition plans, strategies, guidance, and assessments, including affordability assessments and investment area analyses, in support of the acquisition Milestone review and the Planning, Programming, and Budgeting Systems (PPBS) processes.

(11) Designate major defense acquisition programs as either DAB or Component programs, sign congressional certifications and reports, administer the Selected Acquisition Report and Unit Cost Report systems, and exercise the other specific authorities provided for in the delegations of authority in the Appendix A to this part.

(12) Develop, with the coordination of the Under Secretary of Defense for Policy (USD(P)), agreements with friendly and Allied Nations relating to acquisition matters consistent with DoD Directive 5530.3.[4]

(13) Develop assessments of, and establish policies to maintain the capability of the U.S. defense industry to meet DoD needs.

(14) Supervise the management and performance of the Strategic and Critical Materials Program pursuant to E.O. 12626, 53 FR 47491, 3 CFR, 1988 Comp., p. 585.

(15) Establish policies and procedures, with the coordination of the Under Secretary of Defense (Personnel and Readiness), for the effective management of the acquisition workforce within the Department of Defense, including accession, education, training, and career development.

(16) Advise the Secretary and Deputy Secretary of Defense on technical and programmatic issues arising in Defense Resources Board matters.

(17) Establish and manage the cooperative research and development program.

(18) Manage the OSD Study Program.

(19) Establish policies and procedures for the management of the DoD environmental security strategy for cleanup, compliance, conservation, and pollution prevention.

(20) Supervise the Defense Science Board.

(21) Chair the Nuclear Weapons Council.

(b) For each assigned functional area identified in § 384.5, the Under Secretary of Defense for Acquisition and Technology shall:

(1) Direct planning and analyses activities to assess the technical, economic, and military worth of specific acquisition programs and investment areas.

(2) Establish policies, systems, and standards that promote more effective and efficient administration and management of acquisition resources, and monitor the execution of approved programs to ensure available resources are being applied in accordance with established policies and standards.

(3) Review and evaluate DoD Component plans, programs, and budget submissions to ensure adherence to established priorities, policies and procedures, standards, and resource guidance; and, as appropriate, develop recommended alternatives for Secretary and Deputy Secretary of Defense consideration during all phases of the PPBS process.

(4) Promote coordination, cooperation, and mutual understanding of all matters related to assigned activities, both inside and outside the Department of Defense.

---

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] Copies may be obtained by written request to EOP Publications, 725 17th Street, N.W., New Executive Office Building, Washington, DC 20503.

[3] See footnote 1 to § 384.4(a)(1).

[4] See footnote 1 to § 384.4(a)(1).

acquisition matters consistent with DoD Directive 5530.3.[4]

(13) Develop assessments of, and establish policies to maintain the capability of the U.S. defense industry to meet DoD needs.

(14) Supervise the management and performance of the Strategic and Critical Materials Program pursuant to E.O. 12626, 53 FR 47491, 3 CFR, 1988 Comp., p. 585.

(15) Establish policies and procedures, with the coordination of the Under Secretary of Defense (Personnel and Readiness), for the effective management of the acquisition workforce within the Department of Defense, including accession, education, training, and career development.

(16) Advise the Secretary and Deputy Secretary of Defense on technical and programmatic issues arising in Defense Resources Board matters.

(17) Establish and manage the cooperative research and development program.

(18) Manage the OSD Study Program.

(19) Establish policies and procedures for the management of the DoD environmental security strategy for cleanup, compliance, conservation, and pollution prevention.

(20) Supervise the Defense Science Board.

(21) Chair the Nuclear Weapons Council.

(b) For each assigned functional area identified in § 384.5, the Under Secretary of Defense for Acquisition and Technology shall:

(1) Direct planning and analyses activities to assess the technical, economic, and military worth of specific acquisition programs and investment areas.

(2) Establish policies, systems, and standards that promote more effective and efficient administration and management of acquisition resources, and monitor the execution of approved programs to ensure available resources are being applied in accordance with established policies and standards.

(3) Review and evaluate DoD Component plans, programs, and budget submissions to ensure adherence to established priorities, policies and procedures, standards, and resource guidance; and, as appropriate, develop recommended alternatives for Secretary and Deputy Secretary of Defense consideration during all phases of the PPBS process.

(4) Promote coordination, cooperation, and mutual understanding of all matters related to assigned activities, both inside and outside the Department of Defense.

(c) Perform such other duties as the Secretary or Deputy Secretary of Defense may prescribe.

§ 384.5 Functions.

The USD(A&T) shall carry out the responsibilities described in § 384.3, for the following functional areas:

(a) Acquisition management, including acquisition special access programs.

(b) Science and technology and the defense technology base.

(c) Design and engineering, and the development of weapon systems.

(d) Logistics acquisition and management, to include supply systems, weapons systems logistics elements, items standardization, transportation, energy, warehousing, distribution, and related activities.

(e) Procurement.

(f) Scientific and technical information.

(g) Production and manufacturing.

(h) Industrial base resources and productivity.

(i) Force modernization and sustainability and the availability of fielded major weapons systems.

(j) Developmental test and evaluation, as defined in DoD Directive 5000.1 and, to the extent permitted by law, review and approval of the Test and Evaluation Master Plan.

(k) Environmental policy, services, and related actions.

(l) Assignment and reassignment of research and engineering and acquisition responsibility for programs, systems, and activities.

(m) Codevelopment, coproduction, coprocurement, logistics support, wartime host-nation support, and research interchange with friendly and Allied Nations, in coordination with the Under Secretary of Defense for Policy (USD(P)).

(n) Installation management and base closures.

(o) Construction, including construction funded by host nations under the NATO Infrastructure Program and similar programs with other Allied countries.

(p) Strategic and critical materials, to include the acquisition, retention, and disposal of stocks and the conservation and development of sources of materials.

(q) Unique acquisition matters in support of special operations and low-intensity conflict programs, systems, and activities related to acquisition, in coordination with the USD(P).

(r) Defense Acquisition program protection measures and related counterintelligence and system security activities, in coordination with the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)).

(s) Economic adjustment.

(t) Defense atomic energy, chemical warfare, and biological defense plans and programs.

§ 384.6 Relationships.

(a) In the performance of assigned functions and responsibilities, the USD(A&T) shall:

(1) Take precedence in the Department of Defense on acquisition matters after the Secretary and Deputy Secretary of Defense. On all other matters, the USD(A&T) shall take precedence after the Secretary and Deputy Secretary of Defense and the Secretaries of the Military Departments.

(2) Exercise authority, direction, and control over:

(i) The Principal Deputy Under Secretary of Defense for Acquisition and Technology (PDUSD(A&T)).

(ii) The Director of Defense Research and Engineering (DDR&E).

(iii) The Assistant Secretary of Defense for Economic Security (ASD(ES)).

(iv) The Assistant to the Secretary of Defense for Atomic Energy (ATSD(AE)).

(v) The Director, Advanced Research Projects Agency, through the DDR&E.

(vi) The Director, Defense Logistics Agency.

(vii) The Director, Defense Nuclear Agency, through the ATSD(AE).

(viii) The Director, Ballistic Missile Defense Organization.

(ix) The Director, On-Site Inspection Agency, through the ATSD(AE), to be exercised consistent with DoD Directive TS–5134.2.[5]

(x) The Director of Small and Disadvantaged Business Utilization.

(xi) The Director, Office of Economic Adjustment, through the ASD(ES).

(xii) The President, Defense Acquisition University.

(xiii) The Commandant, Defense Systems Management College.

(xiv) Such other organizations as may be established by the USD(A&T) within resources provided by the Secretary of Defense.

(3) Use existing facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve an appropriate balance among modernization, readiness, sustainability, efficiency, and economy.

(b) The Secretaries of the Military Departments and the heads of other DoD Components shall consult the USD(A&T) before assigning an officer or

[4] See footnote 1 to § 384.4(a)(1).

[5] Classified document. Not releasable.

employee to serve as a Program Executive Officer or a Program Manager, or reassigning an officer or employee so serving, for any program subject to review by the DAB.

(c) The Secretaries of the Military Departments and the heads of other DoD Components shall consult the USD(A&T) on program objectives memoranda and budget estimate submissions that reflect a significant change to any program subject to review by the DAB, before their submission to the OSD.

(d) The USD(A&T) shall work directly with the Service Acquisition Executives.

(e) Other OSD officials and heads of the DoD Components shall coordinate with the USD(A&T) on all matters related to authorities, responsibilities, and functions assigned in this part.

§ 384.7 Authorities.

(a) The USD(A&T) is hereby granted the authority to direct the Secretaries of the Military Departments and heads of all other DoD Components on all matters of acquisition.

(b) The USD(A&T) shall decide upon the appropriate implementing actions to be taken as a result of DAB reviews, to include the establishment of specific exit criteria that must be satisfactorily demonstrated before an effort or program can progress to the next Milestone decision point. The USD(A&T)'s decisions shall be reflected in an Acquisition Decision Memorandum issued by the USD(A&T) for implementation by the heads of the DoD Components.

(c) The C, DoD, shall coordinate with the USD(A&T) prior to approving the transfer or reprogramming of funds into or from a program within the purview of the USD(A&T).

(d) The USD(A&T) may direct the C, DoD, to withhold the release of funds to an acquisition program when the USD(A&T) determines that such direction is necessary to ensure that the program meets the criteria established by DoD Directives for exiting the Milestone and all additional exit criteria for the program established by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(A&T). The USD(A&T) may not delegate the authority granted by this subsection to anyone other than the PDUSD(A&T).

(e) The USD(A&T) shall:

(1) Issue DoD Instructions, DoD Publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M,[6] that implement acquisition policies and procedures for the functions assigned to the USD(A&T). Instructions to the Military Departments shall be issued through the Secretaries of the Military Departments. Instructions to Unified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs to Staff.

(2) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1,[7] as necessary, in carrying out assigned functions.

(3) Communicate directly with the heads of the DoD Components. Communications to Commanders of the Unified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(4) Establish arrangements for DoD participation in nondefense governmental programs for which the USD(A&T) is assigned primary DoD cognizance.

(5) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(6) Coordinate with and exchange information with other DoD officials exercising collateral or related responsibilities.

(7) Exercise the delegations of authority in Appendix A to this part.

(f) Nothing in this part limits or otherwise affects delegations of authority by the Secretary of Defense to the Deputy Secretary of Defense.

Appendix A to Part 384—Delegations of Authority

I. Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, Directives, and Instructions, the USD(A&T) is hereby delegated authority to exercise, within his assigned responsibilities and functional areas, all authority of the Secretary of Defense derived from statute, Executive order, and interagency agreement, except where specifically limited by statute or Executive order to the Secretary of Defense, to include but not limited to:

1. Exercise all authorities delegated to the Secretary of Defense by the Department of Commerce for the Defense Priorities and Allocations System (DPAS Del. No. 1, as amended). In addition, exercise the authorities delegated to the Secretary of Defense by Executive Order 12742, dated January 8, 1991 (3 CFR, 1991 Comp., p. 309)

2. Act for the Secretary of Defense in the exercise of extraordinary contractual action authority under Pub. L. 85–804, as amended by Pub. L. 93–155 (50 U.S.C. 1431–1435), as amended—an Act to authorize the making, amendment, and modification of contracts to facilitate the national defense, August 28, 1958, in accordance with E.O. 10789, November 14, 1958, as amended, 23 FR 8897, 3 CFR, 1954–1958 Comp., p. 426 and 48 CFR part 50.

3. Make Secretarial determinations, justifications, and approvals on behalf of the Advanced Research Projects Agency, Ballistic Missile Defense Organization, Defense Contract Management Command, Defense Logistics Agency, the Defense Nuclear Agency, the On-Site Inspection Agency, the Office of Economic Adjustment, the Defense Acquisition University, and the Defense Systems Management College under title 10, United States Code, with the authority to redelegate to the Heads of those organizations, and other organizations as may be assigned to the USD(A&T), as appropriate.

4. Act for the Secretary of Defense in making determinations and authorizing waivers under the Buy American Act (41 U.S.C. 10a–10d).

5. Act for the Secretary of Defense on delegations of authority to him by the U.S. Trade Representative to waive the prohibition against procurement from certain countries, pursuant to title 3, Pub. L. 96–36, Trade Agreements Act of 1979 (19 U.S.C. 2511 et seq.), and E.O. 12260, December 31, 1980, 46 FR 1653, 3 CFR, 1980 Comp., p. 311.

6. Act for, and exercise the powers of, the Secretary of Defense on requests for waiver of the navigation and vessel inspection laws of the United States under Pub. L. 891, 81st Congress, 2nd Session, December 27, 1950 (64 Stat. 1120), except on those matters that have been delegated by the Secretary of Defense to the Secretary of the Army.

7. Make recommendations to the Department of Energy in connection with facilities for transmission of electric energy and natural gas across borders of the United States, pursuant to the authority given the Secretary of Defense in E.O. 10485, September 3, 1953, 18 FR 5397, 3 CFR, 1949–1953 Comp., p. 70, as amended by E.O. 12038, February 3, 1978, 11 FR 1809, 3 CFR 1943–1948 Comp., p. 508.

8. Exercise all responsibilities and authorities of the Secretary of Defense under 10 U.S.C. 2404, on the acquisition of petroleum.

9. Act for the Secretary of Defense in the implementation of OMB Circular A–109,[1] "Major System Acquisitions," April 5, 1976.

10. Make the determination required by 50 U.S.C. 1512(1), on transportation or testing of any lethal chemical or any biological warfare agent.

11. Make written determinations for conduct of all closed meetings of Federal Advisory Committees under his cognizance as prescribed by section 10(d) of the Act (5 U.S.C. Appendix II, 10(d)).

12. Act for the Secretary of Defense in the implementation of OMB Circular A–76,[2] "Performance of Commercial Activities," as revised, August 4, 1983.

13. With the exception of the determination of highly sensitive classified programs, which is retained by the Secretary of Defense, exercise the responsibilities and authorities of the Secretary of Defense to designate major defense acquisition programs, as defined in title 10, United States Code, section 2430.

14. Act for the Secretary of Defense in preparing and revising an acquisition strategy for a major defense acquisition program throughout the period from the beginning of Full-Scale Development (Engineering and Manufacturing Development) through the end of production under Sections 2438 and 2439 of title 10, United States Code.

15. Act for the Secretary of Defense in making certifications, providing reports, and approving waivers for major defense acquisition programs required by Title 10, United States Code. This authority includes, but is not limited to, the following:

a. Submit Selected Acquisition Reports (SARs) (Section 2432), to include notifications of SAR waivers and research, development, test, and evaluation-only SARs.

b. Make and submit certifications required for Unit Cost Reports (Section 2433).

16. Exercise all authorities delegated to the Secretary of Defense by E.O. 12580, January 23, 1987, 52 FR 2923, 3 CFR, 1977 Comp., p. 193, on responses to releases of hazardous substances for DoD facilities and vessels under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.) as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, October 17, 1986) (100 Stat. 1613).

17. Exercise all responsibilities and authority of the Secretary of Defense under 10 U.S.C. 2701–2707 and 10 U.S.C. 2810 on conduct of the Defense Environmental Restoration Program.

18. Exercise the authority of the Secretary of Defense under 10 U.S.C. 2354 for the DoD Components other than the Military Departments.

19. Serve on and attend meetings of the Federal Acquisition Regulatory Council, established by section 25 of the Office of Federal Procurement Policy Act, as amended. The PDUSD(A&T) shall serve in the absence of the USD(A&T). This authority may be redelegated consistent with section 25 of the Office of Federal Procurement Policy Act, as amended (Pub. L. 93–400, 88 Stat 796), and section 809 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. 102–190 (105 Stat. 1290).

20. Perform the functions and responsibilities set out at section 25(d) of the Office of Federal Procurement Policy Act, as amended. The authority to review and approve or disapprove regulations relating to procurement under subsection 25(d)(1) may not be redelegated to any person outside the Office of the USD(A&T).

21. Exercise the authority of the Secretary of Defense under 10 U.S.C. 2350b with respect to NATO Cooperative Projects as defined in section 27 of the Arms Export Control Act. (Pub. L. 90–629, 82 Stat. 1320) The authority to grant waivers as authorized in subsection 2340b(c) may not be redelegated.

22. Exercise all powers and duties of the Secretary of Defense under 10 U.S.C. 2535 to provide a comprehensive and continuous defense industrial reserve program.

23. Act for the Secretary of Defense in the exercise of authority under the Strategic and

[1] Copies may be obtained by written request to EOP Publications, 725 17th Street, NW., New Executive Office Building, Washington, DC 20503.

[2] See footnote 1 to section 9 of this Appendix.

[6] See footnote 1 to § 384.4(a)(1).

[7] See footnote 1 to § 384.4(a)(1).

designate major defense acquisition programs, as defined in title 10, United States Code, section 2430.

14. Act for the Secretary of Defense in preparing and revising an acquisition strategy for a major defense acquisition program throughout the period from the beginning of Full-Scale Development (Engineering and Manufacturing Development) through the end of production under Sections 2438 and 2439 of title 10, United States Code.

15. Act for the Secretary of Defense in making certifications, providing reports, and approving waivers for major defense acquisition programs required by Title 10, United States Code. This authority includes, but is not limited to, the following:

a. Submit Selected Acquisition Reports (SARs) (Section 2432), to include notifications of SAR waivers and research, development, test, and evaluation-only SARs.

b. Make and submit certifications required for Unit Cost Reports (Section 2433).

16. Exercise all authorities delegated to the Secretary of Defense by E.O. 12580, January 23, 1987, 52 FR 2923, 3 CFR, 1977 Comp., p. 193, on responses to releases of hazardous substances for DoD facilities and vessels under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.) as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, October 17, 1986) (100 Stat. 1613).

17. Exercise all responsibilities and authority of the Secretary of Defense under 10 U.S.C. 2701–2707 and 10 U.S.C. 2810 on conduct of the Defense Environmental Restoration Program.

18. Exercise the authority of the Secretary of Defense under 10 U.S.C. 2354 for the DoD Components other than the Military Departments.

19. Serve on and attend meetings of the Federal Acquisition Regulatory Council, established by section 25 of the Office of Federal Procurement Policy Act, as amended. The PDUSD(A&T) shall serve in the absence of the USD(A&T). This authority may be redelegated consistent with section 25 of the Office of Federal Procurement Policy Act, as amended (Pub. L. 93–400, 88 Stat 796), and section 809 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. 102–190 (105 Stat. 1290).

20. Perform the functions and responsibilities set out at section 25(d) of the Office of Federal Procurement Policy Act, as amended. The authority to review and approve or disapprove regulations relating to procurement under subsection 25(d)(1) may not be redelegated to any person outside the Office of the USD(A&T).

21. Exercise the authority of the Secretary of Defense under 10 U.S.C. 2350b with respect to NATO Cooperative Projects as defined in section 27 of the Arms Export Control Act. (Pub. L. 90–629, 82 Stat. 1320) The authority to grant waivers as authorized in subsection 2340b(c) may not be redelegated.

22. Exercise all powers and duties of the Secretary of Defense under 10 U.S.C. 2535 to provide a comprehensive and continuous defense industrial reserve program.

23. Act for the Secretary of Defense in the exercise of authority under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.) in accordance with E.O. 12626, February 25, 1988, 53 FR 6114, 3 CFR, 1988 Comp., p. 552.

24. Act for the Secretary of Defense, under the authority of Federal Property Management Regulations, 41 CFR 101–33.002, or under nay other Delegation of Authority that may hereafter be made by the Administrator of General Services, to enter into contracts for public utility services for a period not to exceed 10 years. This authority may be delegated.

25. Act for the Secretary of Defense in establishing and exercising policy direction and oversight over a defense technology office in Japan, in compliance with section 248 of the National Defense Authorization Act for fiscal year 1991 (Pub. L. 101–510) (104 Stat. 1485).

26. Exercise the authority of the Secretary of Defense in 10 U.S.C. 2410i, section 9069 of the DoD Appropriations Act, 1993 (Pub. L. 102–396) (106 Stat. 1876), and section 8072A of DoD Appropriations Act, 1992 (Pub. L. 102–172) (105 Stat. 1150) to waive prohibitions on awarding contracts to foreign entities that have not certified that they do not comply with the secondary boycott of Israel.

II. The USD(A&T) may redelegate these authorities, as appropriate, except as otherwise specifically indicated in this Appendix or prohibited by law, Directive, or regulation.

Dated: July 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16685 Filed 7–8–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG70

Exclusions From Income (Just Debts)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning income exclusions in death cases. The purpose of the amendment is to make it clear that secured debts cannot be considered "just debts" for purposes of the income exclusion.

EFFECTIVE DATE: This amendment is effective August 5, 1993, the date of the General Counsel opinion upon which it is based.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: Rates payable under VA's income-based benefit programs, pension and parents' dependency and indemnity compensation, are affected by the claimant's income. As countable income goes up, the rate payable goes down. The law does, however, provide certain exclusions from countable income.

38 U.S.C. 1503(a)(3) excludes amounts paid by a surviving spouse or child of a deceased veteran for the veteran's just debts from countable income; 38 U.S.C. 1315(f)(1)(H) provides a similar exclusion for a dependent parent of a deceased veteran who pays a deceased spouse's just debts. The term "just debts," however, is not currently defined by statute or regulation.

In a precedent opinion dated August 5, 1993 (OGC Prec 5–93), VA's General Counsel held that amounts paid by a surviving spouse on secured obligations incurred for the purchase of real or personal property could not be excluded as "just debts" under 38 U.S.C. 1503(a)(3)(A). Based on the principles in OGC Prec 5–93, we have amended 38 CFR 3.262(m), 3.262(o), and 3.272(h) to state that the term "just debts" does not include secured debts.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 25, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.262, paragraphs (m)(2) and (o)(2) are amended by adding new last sentences as follows:

§ 3.262 Evaluation of income.

* * * * *

(m) * * *

(2) * * * The term "just debts" does not include any debt that is secured by real or personal property. * * *

* * * * *

(o) * * *

(2) * * * The term "just debts" does not include any debt that is secured by real or personal property. * * *

* * * * *

3. In § 3.272, paragraph (h)(1)(ii) is amended by adding a new last sentence as follows:

§ 3.272 Exclusions from income.

* * * * *

(h) * * *

(1) * * *

(ii) * * * The term "just debts" does not include any debt that is secured by real or personal property. * * *

* * * * *

[FR Doc. 94–16625 Filed 7–8–94; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5010–1]

Florida; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Florida has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Florida's revisions consist of the provisions contained in the rules promulgated between July 1, 1989, and June 30, 1990, otherwise known as Non-HSWA Cluster VI. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Florida's application and has made a decision, subject to public review and comment, that the Florida hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Florida's hazardous waste program revisions. Florida's application for program revisions is available for public review and comment.

DATES: Final authorization for Florida's program revisions shall be effective September 9, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Florida's program revision application must be received by the close of business, August 10, 1994.

ADDRESSES: Written comments should be sent to A.R. Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Divison, U.S. EPA, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of Florida's program revision application are available during normal business hours at the following addresses for inspection and copying: Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400, phone (904) 488–0300; U.S. EPA Region IV, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–4216.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Florida

Florida initially received final authorization for its base RCRA program effective on February 12, 1985, (50 FR 3908, January 29, 1985). Florida received authorization for revisions to its program on April 6, 1992, for Non-HSWA III, IV, and V, and on January 10, 1994 for HSWA I without Corrective Action. Today, Florida is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Florida's application and has made an immediate final decision that Florida's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Florida. The public may submit written comments on EPA's immediate final decision up until August 10, 1994. Copies of Florida's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Florida's program revisions shall become effective September 9, 1994, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Florida is today seeking authority to administer the following Federal requirements.

Checklist	D
*64	Delay of Closure Period for Hazardous
65	Mining Waste Exclusion
67	Testing and Monitoring Activities
70	Changes to Part 124
71	Mining Waste Exclusion II
72	Modification of F019 Listing
73	Testing and Monitoring Activities; Techn
76	Criteria for Listing Toxic Wastes; Techn
**78	Land Dispsal Restrictions Third-Third S

*Florida did not adopt 40 CFR 270.42 Appendix 1,
**Only the Non-HSWA portion of Checklist 78 is in

C. Decision

I conclude that Florida's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised, except where otherwise noted.

Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application, its previously approved authorities and where otherwise noted in this Notice. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this

Checklist	Description	FR date and page	Florida rule
*64	Delay of Closure Period for Hazardous Waste Facilities	8/14/89; 54 FR 33376.	17–730.180(1) & (2) FAC 403.721(2) & (6) FS
65	Mining Waste Exclusion	9/1/89; 54 FR 36592.	17–730.030(1) FAC 403.72(1) FS
67	Testing and Monitoring Activities	9/29/89; 54 FR 40260.	17–730.021(1)(a) FAC 17–730.030(1) 403.704(15) FS 403.72(1)
70	Changes to Part 124	Various	17–730.184,220&280 FAC 17–4.080&100 403.704(16), 722FS (1) (3)(5)(a)&(b)(10)(b) 403.061(14)
71	Mining Waste Exclusion II	1/23/90; 55 FR 2322.	17–730.020(1) FAC .030(1), 160(1) 403.704(15) FS 403.72(1) 403.721(2)(3)
72	Modification of F019 Listing	2/14/90; 55 FR 5340.	17–730.030, 021 403.72(1) 403.704(15)
73	Testing and Monitoring Activities; Technical Corrections	3/9/90; 55 FR 8948.	17–730.021(1)(a) FAC 17–730.030(1) FAC 403.704(15) F.S 403.72(1) F.S
76	Criteria for Listing Toxic Wastes; Technical Amendment	5/4/90; 55 FR 18726.	17–730.030(1) 403.72(1)
**78	Land Dispsal Restrictions Third-Third Scheduled Wastes	6/1/90; 55 FR 22520.	17–730.030 403.72(1)

* Florida did not adopt 40 CFR 270.42 Appendix 1, "Permit Modifications for Hazardous Waste Management Facilities.
** Only the Non-HSWA portion of Checklist 78 is included here. The remainder of Checklist 78 will be included in HSWA Cluster II.

C. Decision

I conclude that Florida's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised, except where otherwise noted.

Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application, its previously approved authorities and where otherwise noted in this Notice. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities.

This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: June 22, 1994.

John R. Barker,

Acting Regional Administrator.

[FR Doc. 94–16721 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7069

(CA–940–5440–10–ZBAF; CACA 30534)

Withdrawal of Public Land in Aid of the State of California To Study a Site for the Proposed Ward Valley Low-Level Radioactive Waste Facility, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,000 acres of public land from agricultural entry and mining for a period of 3 years for the Bureau of Land Management to allow the State of California sufficient time to fully study its proposal to site a low-level radioactive waste facility on the land. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Douglas Romoli, BLM California Desert District Office, 6221 Box Springs Blvd., Riverside, California 92507, (909) 697–5237.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement or entry under the agricultural land laws and location under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the land while the State of California conducts a study of the area to determine the feasibility of locating the proposed Ward Valley Low-Level Radioactive Waste Facility at the site, and for other purposes:

San Bernardino Meridian

T. 9 N., R. 19 E.,
Sec. 26, SW¼SW¼;
Sec. 27, S½S½;
Sec. 34;
Sec. 35, W½W½.

The area described contains 1,000 acres in San Bernardino County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 3 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: July 1, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–16682 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–40–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–303; RM–6707, RM–6799, RM–7754, RM–7813, RM–7996, RM–7997, RM–7998 and RM–7999]

Radio Broadcasting Services; Butler, Evergreen and Jackson, AL, and Bay Springs, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document makes changes to the FM Table of Allotments in response to petitions filed by Butler Broadcasting Corp., Cotton Valley Broadcasting Co. and Wolff Broadcasting Corporation. *See* 56 FR 55648, October 29, 1991. We shall substitute Channel 228C2 for Channel 228A, Butler, Alabama, at coordinates 32–08–10 and 88–15–00; substitute Channel 232A for Channel 228A, Bay Springs, Mississippi, at coordinates 31–59–00 and 89–13–50; and substitute Channel 227C1 for Channel 227C2, Evergreen, Alabama, at coordinates 31–14–48 and 86–48–32. In response to a counterproposal filed by Radio Station WHOD, Inc., we will substitute Channel 233C2 for Channel 233C3 at Jackson, Alabama, at coordinates 31–30–35 and 88–02–39. The petition filed by G. Dean Pearce for Ellisville, Mississippi, has been withdrawn. The petition filed by Faulkner-Phillips for Bay Minette, AL, Butler, AL and Waynesboro, MS has also been withdrawn. The counterproposals filed by G. Dean Pearce, James Ducker and Thomas William Hickman, III and Newton Broadcasting Company, Inc., have been dismissed. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–303, adopted June 23, 1994, and released July 6, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 228A and adding Channel 228C2 at Butler, removing Channel 227C2 and adding Channel 227C1 at Evergreen, and removing Channel 233C3 and adding Channel 233C2 at Jackson.

3. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 228A and adding Channel 232A at Bay Springs.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16660 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 80 and 87

[PR Docket No. 93–143; FCC 94–170]

Registration of 406 MHz Radiobeacons in the Marine Services and Aviation Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission will require registration of 406.025 MHz radiobeacons with the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA). This action is in response to a request from the United States Coast Guard (Coast Guard). The registration of 406.025 MHz radiobeacons aid search and rescue personnel.

EFFECTIVE DATE: September 13, 1994.

FOR FURTHER INFORMATION CONTACT: James Shaffer, (202) 632–7197, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* FCC 94–170, adopted June 13, 1994, and released July 6. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Report and Order

1. The United States Coast Guard (Coast Guard) filed a petition (RM–8008), Public Notice No. 1894, requesting that the Commission amend Part 80 of the Rules, 47 CFR Part 80, to require registration of emergency position indicating radiobeacons (EPIRBs) operating on the frequency 406.025 MHz with the National Oceanic and Atmospheric Administration (NOAA). Additionally, in the *Report and Order* in PR Docket No. 92–125 (58 FR 30126, 5/26/93), the Commission stated that it would address separately the issue of mandatory registration of emergency locator transmitters (ELTs) operating on the frequency 406.025 MHz in the Aviation Services.

2. Beacon registration is essential to realize the full benefit of the 406 MHz satellite system. The Air Force, Coast Guard, NOAA and National Aeronautics and Space Administration (NASA) agree that having access to registration information along with the improved location accuracy of the 406 MHz system can result in a reduction of the time needed to complete a SAR operation. NOAA and NASA estimate that registration will save on average 6 hours per mission. Further, NOAA states that its experience with voluntary registration of 406 EPIRBs shows that when 406 EPIRBs are registered in its database the Coast Guard has been able to avoid unnecessarily using SAR resources by screening false distress signals through telephone calls to registered owners. Typical mission costs of launching a single helicopter to locate and investigate a distress signal are approximately $4,000. The potential savings to the Federal government and SAR forces are substantial with no additional cost or burden to manufacturers and little burden to beacon users. The beacon user would be required to mail to NOAA the pre-paid, pre-addressed post card that the manufacturers currently provide requesting registration information. In view of the strong support, and because beacon registration can provide valuable distress information to SAR personnel concerning the type and size of the aircraft/vessel as well as prevent launching potentially dangerous missions on false distress signals, we will require that 406 MHz ELTs and 406 MHz EPIRBs be registered in NOAA's database.

3. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The change proposed herein will have a beneficial effect on the marine and aviation community by enhancing information available to SAR personnel for use in distress situations and will not have a significant economic impact on any entity. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the

stated that it would address separately the issue of mandatory registration of emergency locator transmitters (ELTs) operating on the frequency 406.025 MHz in the Aviation Services.

2. Beacon registration is essential to realize the full benefit of the 406 MHz satellite system. The Air Force, Coast Guard, NOAA and National Aeronautics and Space Administration (NASA) agree that having access to registration information along with the improved location accuracy of the 406 MHz system can result in a reduction of the time needed to complete a SAR operation. NOAA and NASA estimate that registration will save on average 6 hours per mission. Further, NOAA states that its experience with voluntary registration of 406 EPIRBs shows that when 406 EPIRBs are registered in its database the Coast Guard has been able to avoid unnecessarily using SAR resources by screening false distress signals through telephone calls to registered owners. Typical mission costs of launching a single helicopter to locate and investigate a distress signal are approximately $4,000. The potential savings to the Federal government and SAR forces are substantial with no additional cost or burden to manufacturers and little burden to beacon users. The beacon user would be required to mail to NOAA the pre-paid, pre-addressed post card that the manufacturers currently provide requesting registration information. In view of the strong support, and because beacon registration can provide valuable distress information to SAR personnel concerning the type and size of the aircraft/vessel as well as prevent launching potentially dangerous missions on false distress signals, we will require that 406 MHz ELTs and 406 MHz EPIRBs be registered in NOAA's database.

3. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The change proposed herein will have a beneficial effect on the marine and aviation community by enhancing information available to SAR personnel for use in distress situations and will not have a significant economic impact on any entity. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1980).

List of Subjects

47 CFR Part 80

Communications equipment, Marine safety.

47 CFR Part 87

Communications equipment, Aviation safety.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Final Rule

Parts 80 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.215(d) is amended by revising the second sentence in Note 3 to read as follows:

§ 80.215 Transmitter power.

* * * * *

(d) * * *

(1) * * *

Note 3 * * * For cable repair ships operating on radiodetermination frequencies, 15 watts; *see* § 80.375(b).

* * * * *

3. Section 80.1061 is amended by revising the last two sentences of paragraph (e) and revising paragraph (f) to read as follows:

§ 80.1061 Special requirements for 406.025 MHz EPIRBs.

* * * * *

(e) * * * With each marketable EPIRB unit the manufacturer or grantee must include a postage pre-paid registration card printed with the EPIRB identification code addressed to: NOAA/NESDIS, SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233. The registration card must request the owner's name, address, telephone number, type of ship, alternate emergency contact and include the following statement: "WARNING—failure to register this EPIRB with NOAA before installation could result in a monetary forfeiture being issued to the owner."

(f) To enhance protection of life and property it is mandatory that each 406.025 MHz EPIRB be registered with NOAA before installation and that information be kept up-to-date. Therefore, in addition to the identification plate or label requirements contained in §§ 2.925, 2.926 and 2.1003 of this Chapter, each 406.025 MHz EPIRB must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: "The owner of this 406.025 MHz EPIRB must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA, NOAA/SARSAT Operations Division, E/SP3, Federal Building 4, Washington, D.C. 20233." Vessel owners shall advise NOAA in writing upon change of vessel or EPIRB ownership, transfer of EPIRB to another vessel, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

PART 87—AVIATION SERVICES

4. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

5. Section 87.138 is amended by revising paragraph (d) to read as follows:

§ 87.138 Emission limitations.

* * * * *

(d) Except for telemetry in the 1435–1535 MHz band, when the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth for aircraft stations above 30 MHz and all ground stations the attenuation must be at least $43+10 \log_{10} pY$ dB.

* * * * *

6. In Section 87.199 paragraphs (e) and (f) are revised to read as follows:

§ 87.199 Special requirements for 406.025 MHz ELTs.

* * * * *

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.025 MHz COSPAS/SARSAT satellite system, must be programmed in each ELT unit to establish a unique identification for each ELT station. With each marketable ELT unit the manufacturer or grantee

must include a postage pre-paid registration card printed with the ELT identification code addressed to: NOAA/NESDIS, SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233. The registration card must request the owner's name, address, telephone number, type of aircraft, alternate emergency contact and include the following statement: "WARNING—failure to register this ELT with NOAA before installation could result in a monetary forfeiture being issued to the owner."

(f) To enhance protection of life and property it is mandatory that each 406.025 MHz ELT must be registered with NOAA before installation and that information be kept up-to-date. In addition to the identification plate or label requirements contained in §§ 2.925, 2.926 and 2.1003 of this Chapter, each 406.025 MHz ELT must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: "The owner of this 406.025 MHz ELT must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA, NOAA/SARSAT Operations Division, E/SP3, Federal Building 4, Washington, D.C. 20233." Aircraft owners shall advise NOAA in writing upon change of aircraft or ELT ownership, or any other change in registration information. Fleet operators must notify NOAA upon transfer of ELT to another aircraft outside of the owners control, or an other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

[FR Doc. 94–16728 Filed 7–8–94, 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 940690–4190; I.D.061794B]

RIN 0648–AG73

Crustacean Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interpretive rule; regulatory amendment.

SUMMARY: NMFS publishes this interpretive rule to clarify the definition of the landing requirement in Federal regulations implementing the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). The purpose of this action is to remove an unintended barrier to fishermen who might have difficulty renewing their limited entry permits because there was no quota in 1993.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Morgan at (310) 980–4036 or Mr. Alvin Z. Katekaru at (808) 541–2927.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 7 (57 FR 10437, March 26, 1992) to the FMP established a limited entry program for the Northwestern Hawaiian Islands. Among the provisions implemented was the establishment of a landing requirement for renewing permits each year. The Code of Federal Regulations at 50 CFR 681.30(c)(2) states that a permit will be renewed for a subsequent year only if the permitted vessel was used to: (i) land the equivalent of at least four lobsters for each trap normally used, calculated over 1 calendar year (the landing requirement) and (ii) make the landings during at least one of the 2 years prior to the year for which the new permit would be valid.

If a permit were not renewed or were revoked, others could apply for the unused permit. The purpose of the rule was to ensure that only active fishermen held permits, thereby achieving the maximum benefit from the fishery.

Permit holders were notified by letter in December 1992 that the 1992 fishing year would be the first year to be considered as a qualifying year. However, in 1993, the quota was set at zero lobsters because the resource was not of a sufficient size to support a fishery. As a result, those fishermen who had not fished in 1992 would have been required by Federal regulations to land a minimum number of lobsters in 1993 to obtain a permit for the 1994 fishing season, but also were forbidden by Federal regulations to fish. Therefore, the rule is being amended to make the regulations clear that the landing requirement: (1) will not apply until at least 2 years of lobster fishing has occurred beginning in 1992; and (2) must be met in one of the 2 most recent years in which lobster fishing under the limited entry program was authorized. Since lobster fishing under the limited entry program was authorized in 1992, and will be authorized in 1994, the landing requirement will first be applied to permit renewals for the 1995 lobster season.

Classification

This final rule is issued under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

In that this rule merely interprets an existing regulation without creating any new rights or duties, it is not subject to the requirement of notice and an opportunity for public comment under 5 U.S.C. 553(b)(A). Similarly, as an interpretive rule, this rule is not subject to a 30 day delay in effective date pursuant to authority set forth at 5 U.S.C. 553(d)(2).

This rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Dated: July 6, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 681 is amended as follows:

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

1. The authority citation for part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 681.30, paragraph (c)(2)(ii) is revised to read as follows:

§ 681.30 Limited access management program.

* * * * *

(c) * * *

(2) * * *

(ii) Beginning with renewals for the 1995 fishing season, make the landings under paragraph (c)(2)(i) of this section during at least one of the 2 most recent years in which fishing was authorized under § 681.31.

* * * * *

[FR Doc. 94–16740 Filed 7–6–94; 4:42 pm]

BILLING CODE 3510–22–P

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0836]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule and extension of comment period.

SUMMARY: On May 11, 1994, the Board requested comment on a proposal to amend Regulation DD (Truth in Savings) dealing with crediting and compounding practices and having the effect of producing an annual percentage yield (APY) that reflects the time value of money. The Board is extending the comment period for 60 days to give the public additional time to provide comments. In addition, the Board is publishing for comment a further alternative for APY calculations that would allow institutions to disclose an APY equal to the contract interest rate on time accounts with maturities greater than one year that do not compound interest but pay interest at least annually. This alternative would provide the Board with a more modest option as it considers a final resolution to problems with APY calculations.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments should refer to Docket No. R–0836, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

Proposed Rules

Federal Register
Vol. 59, No. 131
Monday, July 11, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0836]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule and extension of comment period.

SUMMARY: On May 11, 1994, the Board requested comment on a proposal to amend Regulation DD (Truth in Savings) dealing with crediting and compounding practices and having the effect of producing an annual percentage yield (APY) that reflects the time value of money. The Board is extending the comment period for 60 days to give the public additional time to provide comments. In addition, the Board is publishing for comment a further alternative for APY calculations that would allow institutions to disclose an APY equal to the contract interest rate on time accounts with maturities greater than one year that do not compound interest but pay interest at least annually. This alternative would provide the Board with a more modest option as it considers a final resolution to problems with APY calculations.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments should refer to Docket No. R–0836, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, Kyung Cho or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for questions associated with the regulatory flexibility analysis, Gregory Elliehausen, Economist, Office of the Secretary, at (202) 452–2504; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Truth in Savings Act (12 U.S.C. 4301 et seq.) requires depository institutions to provide disclosures to consumers about their deposit accounts, including an annual percentage yield (APY) on interest-bearing accounts. The act is implemented by the Board's Regulation DD (12 CFR part 230), which became effective June 21, 1993 (see 57 FR 43337 and 58 FR 15077).

Because the current formula for calculating the APY assumes that interest remains on deposit until maturity, the resulting APY may—but does not always—reflect the time value of money. The formula produces an APY that is less than the contract interest rate for long-term certificates of deposit (CDs) that are noncompounding but pay interest periodically. On December 6, 1993, the Board published a proposal that called for an additional APY formula that would have factored into the APY calculation the specific time intervals for interest paid on the account—that is, the time value of money (58 FR 64190). The proposal was withdrawn on May 11, based on considerations of cost and regulatory burden (59 FR 24376).

In the context of deliberations about the December 1993 proposal, the Board considered related issues regarding depository institutions' compounding and crediting practices. On May 11, 1994, the Board proposed amendments to clarify the relationship between compounding and crediting and provide an alternative basis for eliminating anomalies produced by the current APY formula (59 FR 24378). The Board has received requests for an extension of the proposal's comment period, due to end on July 5, 1994; the Board is extending the comment period to September 6, 1994.

Alternative APY Resolution

In addition to extending the comment period on the current proposal, the Board has decided to solicit comment on an alternative approach for APY calculations. Under this alternative, the only institutions affected would be those offering noncompounding multi-year CDs that pay interest at least annually. Those institutions would disclose an APY equal to the interest rate, regardless of whether interest payments were made annually or more frequently. The APY for all other accounts would reflect the interest rate paid and any compounding. Interest payments by check or transfer would not be factored into the APY calculation.

This alternative (called Approach B in the December 1993 proposal) was considered by the Board in its deliberations on adding a new APY formula. The Board declined to adopt Approach B at that time, mainly based on concerns about the limited resolution of anomalies associated with the APY and costs associated with its implementation.

A number of factors have led the Board to reopen comments on this alternative. The Congress chose the APY as the primary uniform measurement for comparison shopping among deposit accounts. The Board believes the APY formula should produce a mathematical figure that is easily understood and readily reveals to consumers an account's comparative value. The Board also believes that regulatory compliance should be as simple and cost-effective as possible, and that reductions in product variety and consumer choice due to regulatory requirements should be minimized.

Taking all these factors into account, and recognizing that all formulas contain assumptions that are valid in some circumstances and not in others, the Board seeks comment on whether this limited approach would achieve a satisfactory resolution of the competing interests for accuracy, consumer understanding, product flexibility, and ease of compliance.

The Board also solicits comment on whether adoption of such an alternative would reduce the incentive for institutions to offer compounding multi-year CDs. For example, assume two

institutions offer a two-year CD with a 6.00% interest rate; one mandates monthly interest checks, the other offers annual compounding. Both could advertise a 6.00% APY, even though a consumer depositing $1,000 receives $120 if interest checks are paid annually and $123.60 if money is left in the account.

(2) Proposed Regulatory Revisions: Section-by-Section Analysis

A section-by-section description of proposed amendments follows.

Section 230.4—Account Disclosures

Paragraph (b)(6)—Features of Time Accounts

The regulation requires a disclosure for institutions offering time accounts that compound interest and permit a consumer to withdraw accrued interest during the account term. The disclosure states that the APY assumes interest remains on deposit until maturity and that a withdrawal of interest will reduce earnings. The Board request comments on whether a similar disclosure would be helpful to consumers purchasing noncompounding multi-year CDs that pay interest at least annually and disclose an APY equal to the interest rate. For example, the disclosure would alert consumers that dollar earnings will be less than for a multi-year CD with the same maturity (and disclosing the same APY) that compounds annually. The Board solicits suggestions for text that would be most helpful to consumers.

Section 230.8—Advertising

Paragraph (c)(6)—Features of Time Accounts

The regulation requires institutions advertising APYs to disclose other key features about the account. The Board solicits comment on whether institutions advertising an APY equal to the interest rate on noncompounding multi-year accounts that make interest payments annually should be required also to make a disclosure like the one discussed above. If so, the Board solicits suggestions for text that would be helpful to consumers and take into account the constraints of advertising media.

Appendix A to Part 230—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

A. *General rules.* Under the alternative approach, the proposed amendments to Appendix A only affect institutions that offer noncompounding multi-year CDs that pay interest at least annually. A new paragraph E is added to clarify how APYs shall be determined for such accounts. The Board requests comment on the proposed paragraph and accompanying example.

Appendix B—Model Clauses and Sample Forms

The Board solicits comments on model clauses or additional sample forms that may be appropriate if the amendments are adopted.

(3) Form of Comment Letters

Comment letters should refer to Docket No. R–0836, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

(4) Regulatory Flexibility Analysis and Paperwork Reduction Act

The Board's Office of the Secretary previously prepared an economic impact statement on the proposed alternative dealing with noncompounding multi-year CDs that pay interest at least annually. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the proposed revisions will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of comments received during the public comment period.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Deposit accounts, Interest, Interest rates, Truth in savings.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 230 as follows:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 would continue to read as follows:

Authority: 12 U.S.C. 4301, et seq.

2. In Part 230 Appendix A would be amended by revising the second sentence in the introductory text to Part I and the first sentence of paragraph A, and by adding a new paragraph E as follows:

Appendix A to Part 230—Annual Percentage Yield Calculation

* * * * *

Part I. *Annual Percentage Yield for Account Disclosures and Advertising Purposes*

* * * Special rules apply to accounts with tiered and stepped interest rates►, and to certain time accounts with a stated maturity greater than one year◄

A. *General Rules*

►Except as provided in Part I.E. of this appendix, the ◄ [The] annual percentage yield shall be calculated by the formula shown below. * * *

* * * * *

►E. *Time accounts with a stated maturity greater than one year that compound interest less often than annually*

For time accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis, and that require (or permit) the consumer to withdraw interest at least annually, the annual percentage yield shall be equal to the interest rate.

Example:

(1) If an institution offers a $1,000 two-year certificate of deposit that credits interest semi-annually solely by check or transfer, and there is no compounding at a 6.00% interest rate, the annual percentage yield is 6.00%.◄

* * * * *

Board of Governors of the Federal Reserve System, July 5, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–16641 Filed 7–8–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 94–ANE–18; Notice No. 33–08]

Special Conditions; General Electric Aircraft Engines Model(s) GE90–75B/–85B/–76B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This document proposes special conditions for the General Electric (GE) Aircraft Engines Model(s) GE90–75B/–85B/–76B turbofan engines. The Federal Aviation Administration (FAA) has determined that the requirements of Federal Aviation Regulation (FAR) 14 CFR part 33, including the requirements of § 33.94, Blade Containment and Rotor Unbalance Test, relative to the location of fan blade fracture for the containment test, do not contain adequate or appropriate safety standards for the certification of the GE90–75B/–85B/–76B turbofan engines. This finding is based on a novel or unusual design feature of the GE90 fan blade. Therefore, this document proposes special conditions which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the FAR.

DATES: Comments must be submitted on or before August 25, 1994.

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 94–ANE–18, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. 94–ANE–18. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Mouzakis, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, MA 01803–5229; telephone (617) 238–7114; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under **ADDRESSES**. All communications received on or before the closing date for comments, specified under **DATES**, will be considered by the Administrator before taking action on the proposal. The proposal contained in this notice may be changed in light of the comments received.

SUMMARY: This document proposes special conditions for the General Electric (GE) Aircraft Engines Model(s) GE90–75B/–85B/–76B turbofan engines. The Federal Aviation Administration (FAA) has determined that the requirements of Federal Aviation Regulation (FAR) 14 CFR part 33, including the requirements of § 33.94, Blade Containment and Rotor Unbalance Test, relative to the location of fan blade fracture for the containment test, do not contain adequate or appropriate safety standards for the certification of the GE90–75B/–85B/–76B turbofan engines. This finding is based on a novel or unusual design feature of the GE90 fan blade. Therefore, this document proposes special conditions which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the FAR.

DATES: Comments must be submitted on or before August 25, 1994.

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 94–ANE–18, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. 94–ANE–18. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Mouzakis, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, MA 01803–5229; telephone (617) 238–7114; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under **ADDRESSES**. All communications received on or before the closing date for comments, specified under **DATES**, will be considered by the Administrator before taking action on the proposal. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed special conditions. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–ANE–18." The postcard will be date stamped and returned to the commenter.

Background

On December 16, 1991, General Electric Aircraft Engines applied for type certification of Model(s) GE90–75B/–85B/–76B turbofan engines. These engines incorporate a first stage fan blade manufactured using carbon graphite composite material. This unusual design feature results in the GE90 fan blade having significant difference in material property characteristics when compared to conventionally designed fan blades using non-composite materials. For example, the probability that a composite fan blade will fail below the inner flowpath diameter is highly improbable, making inappropriate the requirement contained in § 33.94 paragraph (a) subparagraph (1) to show blade containment after a failure of the blade at the outermost retention feature.

The current requirements of § 33.94 are based on metallic blade characteristics and service history and are not appropriate for the unusual design features of the composite fan blade found on the GE90 series turbofan engines. The FAA has determined that a more realistic blade retention test will be achieved with a fan blade failure at the inner flowpath diameter (complete airfoil) instead of the outermost retention feature as is currently required by § 33.94 paragraph (a) subparagraph (1).

The FAA has also determined that the composite fan blade construction presents other factors that must be considered. Tests and analyses must account for the effects of in-service deterioration of, manufacturing and materials variations in, and environmental effects on the composite material. Further, tests and analyses must show that a lightning strike on the composite fan blade will not result in a hazardous condition to the aircraft and that the engine will meet the requirements of § 33.75. Therefore, these Special Conditions are proposed which define the additional requirements which the Administrator considers necessary to establish a level of safety equivalent to that established by the Airworthiness Standards of part 33.

Type Certification Basis

Under the provisions of § 21.101, General Electric Aircraft Engines must show that the GE Model(s) GE90–75B/–85B/–76B turbofan engines met the requirements of the applicable regulations in effect on the date of the application. Those Federal Aviation Regulations are § 21.21, as amended through Amendment 21–68, August 10, 1990, and part 33, as amended through Amendment 33–14, August 10, 1990.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the GE90 series turbofan engine because of its novel or unusual design feature. Therefore, the Administrator proposes these special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by § 11.28 and § 11.29(b), and become part of the type certification basis in accordance with § 21.101 paragraph (b) subparagraph (2).

Conclusion

This action affects only GE Model(s) GE90–75B/–85B/–76B turbofan engines. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these engines containing this novel or unusual design feature.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g); 14 CFR 21.16, and 14 CFR 11.28.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the General Electric Aircraft Engines GE90 series turbofan engines.

(a) The following must be shown by tests and analyses, or other methods acceptable to the Administrator, that, in

lieu of the fan blade containment test with the fan blade failing at the point specified in § 33.94 paragraph (a) subparagraph (1), a fan blade containment test with the fan blade failing at the inner flowpart diameter demonstrates:

(1) That the disk and fan blade retention system can withstand without failure a centrifugal load equal to two times the maximum load which the engine could experience within approved operating limitations, and

(2) That by a procedure approved by the Administrator an operating limitation must be established which specifies the maximum allowable number of start-stop stress cycles for the fan blade retention system. The fan blade retention system includes the portion of the fan blade from the inner flowpath diameter inward to the blade dovetail, the blade retention components, and the fan disk and fan blade attachment features.

(b) It must be shown that the probability of fan blade retention system failure, for any cause, during the service life of the engine to be extremely improbable.

(c) It must be shown by test or analysis that a lightning strike on the composite fan blade structure will not result in a hazardous condition, and that the engine will meet the requirements of § 33.75.

(d) The tests and analyses required by (a)(1) and (a)(2) of these special conditions must account for the effects of in-service deterioration, manufacturing and materials variations, and environmental effects.

Issued in Burlington, Massachusetts, on June 28, 1994.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94-16678 Filed 7-8-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM94-7-000]

Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

June 29, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to amend its regulations to establish provisions concerning the recovery of wholesale and retail stranded costs by public utilities and transmitting utilities under sections 205, 206, 211 and 212 of the Federal Power Act. The Commission seeks public comment concerning the issues raised by the proposed rulemaking.

DATES: Written comments must be received by the Commission by September 9, 1994. Reply comments must be received by the Commission by October 11, 1994.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

James H. Douglass, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426; Telephone: (202) 208-2143 (legal issues).

Michael A. Coleman, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426; Telephone: (202) 208-1236 (technical issues).

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Notice of Proposed Rulemaking

June 29, 1994.

Table of Contents

I. *Introduction*
II. *Public Reporting Burden*
III. *Discussion*
A. Background
B. Current Stranded Cost Policy
1. *Wholesale Customers Leaving The System*
2. *Retail-Turned-Wholesale Customers Leaving The System*
3. *Retail Customers Leaving The System*
C. The Proposed Regulations
1. *Recovery of Stranded Costs Associated With New Wholesale Power Sales Contracts*
2. *Recovery of Stranded Costs Associated With Existing Wholesale Power Sales Contracts*
3. *Recovery Of Wholesale Stranded Costs In Wholesale Transmission Rates*
4. *Filing Requirements For Wholesale Stranded Cost Recovery*
5. *Evidentiary Demonstration For Wholesale Stranded Cost Recovery*
6. *Recovery Of Retail Stranded Costs*
i. *Jurisdictional Analysis*
ii. *Treatment of Retail Costs*
IV. *Regulatory Flexibility Act*
V. *Environmental Statement*
VI. *Information Collection Statement*
VII. *Public Comment Procedures*
Regulatory Text

I. Introduction

The Federal Energy Regulatory Commission (Commission) seeks public comment on amending its regulations to establish provisions concerning the recovery of wholesale and retail stranded costs by public utilities and transmitting utilities under sections 205, 206, 211 and 212 of the Federal Power Act (FPA).[1] Wholesale stranded costs are defined as any legitimate, prudent and verifiable costs incurred by a public utility or a transmitting utility to provide service to a wholesale requirements customer that subsequently becomes, in whole or in part, an unbundled transmission services customer[2] of that public utility or transmitting utility. Retail stranded costs are defined as any legitimate, prudent and verifiable costs incurred by a public utility or transmitting utility to provide service to a retail franchise customer that subsequently becomes, in whole or in part, directly or indirectly, an unbundled transmission services customer of that public utility or transmitting utility.

For recovery of wholesale stranded costs, the proposed rule distinguishes between stranded costs associated with wholesale requirements contracts executed after the date the proposed rule is published in the **Federal Register** ("new" contracts) and stranded costs associated with wholesale requirements contracts executed on or before that date ("existing" contracts).

The proposed rule would not allow a public utility or transmitting utility to seek recovery of stranded costs associated with "new" wholesale requirements contracts through transmission rates for section 205 or 211 transmission services. Recovery of such costs will not be allowed except through explicit stranded cost provisions contained in new wholesale requirements contracts.

If the seller under a new wholesale requirements contract is a public utility, and the new contract explicitly addresses stranded cost recovery, the public utility may seek recovery, in accordance with the contract, under sections 205-206 of the FPA.[3] The public utility may not seek recovery of wholesale stranded costs through any transmission rate for section 205 or 211 transmission services. If the seller under a new wholesale requirements contract is a transmitting utility subject to the Commission's jurisdiction under section 211, but not also a public utility subject to the Commission's section 205-206 jurisdiction,[4] there will be no Commission forum for addressing wholesale stranded costs associated with the new contract. Such utilities will not be able to seek recovery of wholesale stranded costs associated with such new contracts through rates for transmission services ordered under section 211, and the Commission does not have jurisdiction over their power sales contracts. Therefore, these utilities must address recovery of stranded costs

[1] A public utility is defined under section 201(e) of the FPA as "any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part (other than facilities subject to such jurisdiction solely by reason of section 210, 211, or 212)." A transmitting utility is defined under section 3(23) of the FPA as "any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale." Not all transmitting utilities are public utilities. For instance, a municipally-owned electric utility that owns transmission facilities which are used for the sale of electric energy at wholesale is a transmitting utility, but is not a public utility.

[2] An unbundled transmission services customer is one who purchases transmission as a product that is separate from the purchase of generation.

[3] For example, when a public utility files a new wholesale requirements contract that contains an explicit exit fee amount, it may request that the Commission allow it to recover the fee, in accordance with the contract, without having to make a subsequent section 205 filing, as long as the exit fee provision is sufficiently specific. Customers are contractually obligated to pay such exit fees previously approved by the Commission, and such an exit fee is part of the filed rate.

[4] *Compare* 16 U.S.C. 796(23) *with* 16 U.S.C. 824(e).

costs are defined as any legitimate, prudent and verifiable costs incurred by a public utility or transmitting utility to provide service to a retail franchise customer that subsequently becomes, in whole or in part, directly or indirectly, an unbundled transmission services customer of that public utility or transmitting utility.

For recovery of wholesale stranded costs, the proposed rule distinguishes between stranded costs associated with wholesale requirements contracts executed after the date the proposed rule is published in the **Federal Register** ("new" contracts) and stranded costs associated with wholesale requirements contracts executed on or before that date ("existing" contracts).

The proposed rule would not allow a public utility or transmitting utility to seek recovery of stranded costs associated with "new" wholesale requirements contracts through transmission rates for section 205 or 211 transmission services. Recovery of such costs will not be allowed except through explicit stranded cost provisions contained in new wholesale requirements contracts.

If the seller under a new wholesale requirements contract is a public utility, and the new contract explicitly addresses stranded cost recovery, the public utility may seek recovery, in accordance with the contract, under sections 205–206 of the FPA.[3] The public utility may not seek recovery of wholesale stranded costs through any transmission rate for section 205 or 211 transmission services. If the seller under a new wholesale requirements contract is a transmitting utility subject to the Commission's jurisdiction under section 211, but not also a public utility subject to the Commission's section 205–206 jurisdiction,[4] there will be no Commission forum for addressing wholesale stranded costs associated with the new contract. Such utilities will not be able to seek recovery of wholesale stranded costs associated with such new contracts through rates for transmission services ordered under section 211, and the Commission does not have jurisdiction over their power sales contracts. Therefore, these utilities must address recovery of stranded costs through their new wholesale requirements contracts subject to the appropriate regulatory authority approval.

With regard to stranded costs associated with "existing" wholesale requirements contracts, the proposed rule provides a three-year transition period during which public utilities must attempt and non-public utilities are encouraged to attempt to renegotiate certain existing contracts, and during which they may seek recovery of stranded costs as follows:

(a) If an existing wholesale requirements contract explicitly addresses stranded costs through an exit fee or other stranded cost provision, no public utility or transmitting utility may seek recovery of stranded costs associated with that contract through transmission rates; the utility may recover such costs only as specified in the requirements contract.

(b) If an existing wholesale requirements contract does not explicitly address stranded costs through an exit fee or other stranded cost provision, the parties to the contract, within a three-year transition period, must make a good faith attempt to negotiate a stranded cost amendment to the contract. If the parties are able to negotiate an amendment, and the selling utility under the contract is a public utility, the amendment should be filed for Commission approval under section 205 or 206 of the FPA prior to the end of the three-year period. If the parties to the existing contract are not able to negotiate an amendment, and the selling utility under the contract is a public utility, the public utility may unilaterally file a proposed amendment, under section 205 or 206 of the FPA, prior to the end of the three-year period.[5] If an amendment is not filed and the customer leaves the public utility's system after the end of the three-year transition period, the Commission will deny any extra-contractual stranded cost claim in a section 205 or 206 requirements rate proceeding arising under the contract in question.

(c) If an existing wholesale requirements contract does not explicitly address stranded costs through an exit fee or other stranded cost provision, and if, prior to the end of the three-year transition period, the customer gives notice pursuant to the contract[6] that it will no longer purchase all or part of its requirements from the selling utility but instead will purchase from the selling utility unbundled section 205 or section 211 transmission services[7] that will begin prior to the end of the three-year period, then the selling utility may seek to recover stranded costs from that customer through jurisdictional transmission rates. This is the only circumstance in which the rule proposes to allow wholesale stranded cost recovery through transmission rates.

(d) If a utility does seek recovery of stranded costs as permitted by the proposed rule, and the existing wholesale requirements contract contains a notice provision, there will be a rebuttable presumption that the utility had no legitimate expectation of continuing to serve the customer beyond the period provided for in the notice provision.

With regard to retail stranded costs, the proposed rule adopts a strong policy preference that appropriate State or local regulatory authorities address, in whatever manner they deem appropriate, stranded cost recovery. The proposed rule provides alternative proposals for how the Commission will address retail stranded costs. The Commission expresses no preference in favor of either alternative. Under the first alternative, the rule provides that if the appropriate State or local authority does not explicitly address retail stranded costs,[8] or if there is conflict among authorities within a State or among different States, the Commission will entertain requests to recover stranded costs in section 205–206 rates for wholesale or retail transmission services in interstate commerce,[9] or in section 212 rates for wholesale transmission services ordered under

---

[3] For example, when a public utility files a new wholesale requirements contract that contains an explicit exit fee amount, it may request that the Commission allow it to recover the fee, in accordance with the contract, without having to make a subsequent section 205 filing, as long as the exit fee provision is sufficiently specific. Customers are contractually obligated to pay such exit fees previously approved by the Commission, and such an exit fee is part of the filed rate.

[4] *Compare* 16 U.S.C. 796(23) *with* 16 U.S.C. 824(e).

[5] If the selling utility is a transmitting utility that is not also a public utility, its wholesale requirements contracts are not subject to this Commission's jurisdiction. Therefore, such transmitting utility should within the three-year transition period take whatever steps are permitted or required under its regulatory requirements to unilaterally propose to its regulatory authority a stranded cost provision as an amendment to its existing contract. Under this proposal, it will not be permitted to seek stranded cost recovery from this Commission after the close of the three-year transition period.

[6] This refers to proper notice given in accordance with the contract. If the customer attempts to breach the contract, the utility will have the usual recourse.

[7] *I.e.*, services pursuant to a transmission tariff or agreement on file with the Commission under FPA section 205, or services pursuant to a request for an order under FPA section 211.

[8] *See* discussion, *infra*, section III.C.(6)(ii). regarding mechanisms by which states might explicitly address retail stranded costs.

[9] "Wholesale transmission services" means the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce. This is the definition contained in FPA section 3(24).

For purposes of this proposed rulemaking, "retail transmission services" refers to the transmission of electric energy sold, or to be sold, in interstate commerce directly to a retail customer.

section 211. Under the second alternative, the rule provides that the Commission will not entertain any request for recovery of retail stranded costs. However, the Commission solicits comments on whether there should be exceptions to this alternative rule.

Finally, the proposed rule provides guidance as to the substantive criteria and evidentiary demonstration necessary for wholesale and retail stranded cost recovery.

The Commission requests the general views, comments and analyses of all interested persons, pursuant to the procedures herein. It has set forth enumerated questions in the Appendix attached hereto on which it solicits comment in particular.

II. Public Reporting Burden

The proposed rule specifies filing requirements to be followed by public utilities seeking to recover stranded costs. The information collection requirements of the proposed rule are attributable to FERC–516 "Electric Rate Filings". The current total annual reporting burden for FERC–516 is 783,700 hours.

The proposed rule requires public utilities seeking to recover stranded costs to provide certain information to the Commission. The public reporting burden for the information collection requirements contained in the proposed rule is estimated to average 50 hours per response. This estimate includes time for reviewing the requirements of the Commission's regulations, searching existing data sources, gathering and maintaining the necessary data, completing and reviewing the collection of information, and filing the required information

There are approximately 200 public utilities. The Commission estimates that approximately ten of these utilities will respond to the information collection annually. The respondents would be public utilities who seek to recover stranded costs. The information will be collected on an annual basis. Accordingly, the public reporting burden is estimated to be no more than 500 hours.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission].

III. Discussion

A. Background

Historically, electric utilities entered into long-term contracts to make wholesale requirements sales (bundled sales of generation and transmission) to municipal, cooperative and investor-owned utilities. Under these contracts, utilities often committed to provide all (full requirements) or part (partial requirements) of a customer's power needs for the contract period. Although these wholesale requirements contracts are typically for defined terms, they often were rolled over or extended when the contract term expired.

The historical supply relationship between utilities and their wholesale requirements customers, however, has begun to undergo significant change as a result of increased competition in wholesale power generation and greater customer access to transmission services.

Increased competition in wholesale power generation began with the enactment of the Public Utility Regulatory Policies Act of 1978 (PURPA).[10] PURPA provided incentives for the development of alternative generation sources known as qualifying facilities (QFs). In addition, state-approved competitive bidding programs paved the way for the growth of non-traditional utility generators. Finally, the Energy Policy Act of 1992 (Energy Policy Act) [11] provided regulatory exemptions to encourage a new class of wholesale power producers known as exempt wholesale generators (EWGs).

As competition in wholesale power generation has increased, so has the ability of customers to gain access to the transmission services necessary to reach competing suppliers. In earlier years, a few customers were able to obtain access as a result of court proceedings, beginning with the Supreme Court's decision in *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973). In recent years, a growing number of public utilities voluntarily agreed to file transmission tariffs of general applicability, *i.e.*, tariffs that permit transmission access for any entity that will be making sales for resale of electric energy.[12] In most instances, access was provided in order to obtain Commission approval of a merger or consolidation [13] or Commission authorization of market-based rates for generation services.[14] The Commission, in many instances, conditioned its approval of certain mergers upon transmission access in order to mitigate potential anticompetitive effects.[15]

The trend toward greater transmission access has been accelerated by the passage of the Energy Policy Act, which substantially expanded the Commission's authority to order transmission services. Under amended section 211 of the FPA, the Commission may order wholesale transmission services, upon application, to any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale.[16] Thus far, the Commission has granted requests for mandatory transmission services pursuant to section 211 in five of the six cases it has acted on, including four proposed orders and one final order. In addition, several public utilities have filed voluntary wholesale transmission tariffs subsequent to the passage of the Energy Policy Act.[17]

During the transition to a fully competitive wholesale power market, some utilities may incur stranded costs as wholesale customers leave their systems to purchase power elsewhere. A utility may have built facilities or entered into long-term fuel or purchased power supply contracts with the reasonable expectation, based on historical experience and the behavior of its customer, that its wholesale requirements contract to sell electric energy to that customer would be renewed, and that the customer would pay its proportionate share of long-term investments and other costs incurred. If the customer is able to obtain unbundled transmission service from the utility in order to reach other power suppliers, the utility may have "stranded costs." If the utility does not have an alternative buyer for the power previously sold to the departing wholesale requirements customer, or some other means of mitigating the stranded costs, the costs must be recovered from either thedeparting customer or the remaining customers or borne by the utility's shareholders.

Changes are also occurring in retail electric markets, which could also cause retail stranded costs.[18] For instance, as a result of recent action by the Massachusetts legislature, discussed *infra*, the Massachusetts Bay Transit Authority (MBTA) changed from being a retail franchise customer to a wholesale transmission customer of Massachusetts Electric Company. Another example is the California Public Utilities Commission's recent initiation of a proceeding to consider the restructuring of California's retail electric industry to allow all consumers to obtain direct access to competing generation service providers.[19] The Michigan Public Service Commission is also considering a plan to offer consumer access to competing generation suppliers on a limited basis.[20]

---

[10] 16 U.S.C. 2601, *et seq*

[11] Pub. L. 102–486, 106 Stat. 2776 (1992).

[12] *See, e.g.*, Entergy Services, Inc., 58 FERC ¶ 61,234, *order on reh'g*, 60 FERC ¶ 61,168 (1992), *appeal pending sub nom.* Cajun Electric Power Cooperative, Inc., et al. v. FERC, Nos. 92–1461, *et al.* (D.C. Cir. filed Sept. 24, 1992) (*Entergy*).

[13] *See, e.g.*, Public Service Company of Colorado, 59 FERC ¶ 61,311 (1992), *reh'g denied*, 62 FERC ¶ 61,013 (1993).

[14] *See, e.g.*, Entergy, 58 FERC at 61,740.

[15] *See, e.g.*, Utah Power & Light Company, *et al.*, Opinion No. 318, 45 FERC ¶ 61,095 (1988), *order on reh'g*, Opinion No. 318–A, 47 FERC ¶ 61,209 (1989), *order on reh'g*, Opinion No. 318–B, 48 FERC ¶ 61,035 (1989), *aff'd in relevant part sub nom.* Environmental Action Inc., *et al.* v. FERC, 939 F.2d 1057 (D.C. Cir. 1991); Northeast Utilities Service Company (Re Public Service Company of New Hampshire), Opinion No. 364–A, 58 FERC ¶ 61,070, *reh'g denied*, Opinion No. 364–B, 59 FERC ¶ 61,042, *order granting motion to vacate and dismissing request for rehearing*, 59 FERC ¶ 61,089 (1992), affirmed in relevant part sub nom. Northeast Utilities Service Company v. FERC, Nos. 92–1165, *et al.* (1st Cir. May 19, 1993).

[16] Under section 212(h), no order issued by the Commission shall be conditioned on or require the transmission of electric energy to an ultimate consumer or to a "sham" wholesale customer. However, the Commission may order services to a "non-sham" wholesale customer, *e.g.*, a person having an obligation under State or local law to provide electric services to the public and who would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer.

[17] *See, e.g.*, American Electric Power Service Corporation, 67 FERC ¶ 61,168 (1994); Commonwealth Edison Company, 65 FERC ¶ 61,288 (1993), *order on reh'g*, 67 FERC ¶ 61,325 (1994); Florida Power & Light Company, 64 FERC ¶ 61,361 (1993), order on policy issues, 66 FERC ¶ 61,227 (1994), *order on reh'g*, 67 FERC ¶ xxx (1994); Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin), 67 FERC ¶ 61,240 (1994)

[18] Retail stranded costs may occur when a retail franchise customer of a public utility or transmitting utility obtains unbundled transmission service from the utility; the franchise customer may become a wholesale transmission customer of the utility or a retail transmission customer of the utility. Retail stranded costs may also result from customer "self-help" actions such as customer self-generation, or a customer building its own transmission line, or a customer relocating to another utility's service territory. These types of retail stranded costs have long been a fact of life for utilities. This proceeding is not intended to address stranded costs resulting from customer "self-help" actions.

[19] Order Instituting Rulemaking and Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation, California Public Utilities Commission Nos. R. 94–04–031; I. 94–04–052 (April 20, 1994).

[20] In the matter of the application of the Association of Businesses Advocating Tariff Equity for approval of an experimental retail wheeling tariff for Consumers Power Company, *et al.*, MPSC Case Nos. U–10143 and U–10176 Opinion and Interim Order Remanding to the Administrative

entered into long-term fuel or purchased power supply contracts with the reasonable expectation, based on historical experience and the behavior of its customer, that its wholesale requirements contract to sell electric energy to that customer would be renewed, and that the customer would pay its proportionate share of long-term investments and other costs incurred. If the customer is able to obtain unbundled transmission service from the utility in order to reach other power suppliers, the utility may have "stranded costs." If the utility does not have an alternative buyer for the power previously sold to the departing wholesale requirements customer, or some other means of mitigating the stranded costs, the costs must be recovered from either thedeparting customer or the remaining customers or borne by the utility's shareholders.

Changes are also occurring in retail electric markets, which could also cause retail stranded costs.[18] For instance, as a result of recent action by the Massachusetts legislature, discussed *infra*, the Massachusetts Bay Transit Authority (MBTA) changed from being a retail franchise customer to a wholesale transmission customer of Massachusetts Electric Company. Another example is the California Public Utilities Commission's recent initiation of a proceeding to consider the restructuring of California's retail electric industry to allow all consumers to obtain direct access to competing generation service providers.[19] The Michigan Public Service Commission is also considering a plan to offer consumer access to competing generation suppliers on a limited basis.[20]

In summary, as a result of the transition to a competitive wholesale power market, we must be concerned with three ways in which stranded costs are most likely to occur:

Scenario 1: A wholesale requirements customer (*i.e.*, a wholesale purchaser of bundled generation and transmission services) may obtain unbundled transmission services from its existing supplier in order to reach an alternative generation supplier. It may obtain wholesale transmission services either through a voluntary bilateral agreement or voluntary open-access tariff filed by a utility under FPA section 205, or by obtaining a Commission order under FPA section 211;

Scenario 2: A retail franchise customer (or a group of retail franchise customers) may, through State or local government action, become a wholesale customer who obtains from its existing supplier either voluntary unbundled wholesale transmission services under section 205 agreements or tariffs as described above, or obtains such services pursuant to a Commission order under section 211;

Scenario 3: A retail franchise customer may obtain unbundled retail transmission services from its existing supplier in order to reach a new generation supplier, either through voluntary unbundled retail transmission services or as a result of a State or local action requiring the existing supplier to provide such retail transmission services.[21]

Below we discuss the Commission's precedent for each of these scenarios, and how we propose to deal with such stranded costs in the future.

B. Current Stranded Cost Policy

1. Wholesale Customers Leaving The System

The Commission has always permitted public utilities to include reasonable cancellation provisions in power sales contracts in order to protect themselves from stranded costs and to plan for the future needs of their systems.[22] Reasonable cancellation provisions may include specified "exit fees" or "termination charges" that must be paid by a purchaser if it terminates service prior to a contract's termination date. They may also include requirements that customers provide sufficient prior notice of cancellation to allow utilities to avoid stranded costs.

Contracts negotiated prior to the recent movement toward increased transmission access and competitive bulk power markets may not contain provisions requiring notice of termination and/or allocating responsibility for stranded costs. Accordingly, the Commission has permitted public utilities to include wholesale stranded investment cost recovery provisions in wholesale transmission rates when a public utility has filed a transmission tariff of general applicability.

In *Entergy*, public utilities sought to include provisions for the recovery of wholesale stranded investment costs as part of their proposed transmission tariff of general applicability. In that case, the Commission stated:

> If Entergy has made investment decisions based on a contractual commitment or reasonable expectation at that time that it would continue to serve these customers, it should be able to recover from them the legitimate and verifiable costs invested on their behalf.[23]

The Commission reasoned that the existence of a transmission tariff of general applicability could increase a public utility's risk of stranded investment far beyond what was contemplated when the public utility originally negotiated its power supply contracts.[24] The Commission further observed that public utilities may not voluntarily offer expanded transmission access if doing so means becoming subject to an increased risk of stranded investment.[25] Therefore, the Commission stated that it would be appropriate for Entergy to seek to recover legitimate and verifiable stranded investment costs through transmission rates, if such costs were associated with contracts entered into before the date of the Commission's order. However, the Commission stated that it would not allow the Entergy utilities to seek recovery of stranded costs associated with contracts entered into or extended after that date. The Commission further indicated in *Entergy* that while a public utility may seek to recover stranded costs, recovery

---

[18] Retail stranded costs may occur when a retail franchise customer of a public utility or transmitting utility obtains unbundled transmission service from the utility; the franchise customer may become a wholesale transmission customer of the utility or a retail transmission customer of the utility. Retail stranded costs may also result from customer "self-help" actions such as customer self-generation, or a customer building its own transmission line, or a customer relocating to another utility's service territory. These types of retail stranded costs have long been a fact of life for utilities. This proceeding is not intended to address stranded costs resulting from customer "self-help" actions.

[19] Order Instituting Rulemaking and Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation, California Public Utilities Commission Nos. R. 94–04–031; I. 94–04–052 (April 20, 1994).

[20] In the matter of the application of the Association of Businesses Advocating Tariff Equity for approval of an experimental retail wheeling tariff for Consumers Power Company, *et al.*, MPSC Case Nos. U–10143 and U–10176 Opinion and Interim Order Remanding to the Administrative Law Judge for Further Proceedings, Michigan Public Service Commission, 150 P.U.R.4th 409 (April 11, 1994), *appeal dismissed for lack of jurisdiction*, Attorney General v. Michigan Public Service Commission, No. 175245 (Mich. Ct. App. June 15, 1994).

[21] The Commission takes no position in this proceeding regarding the legal issue of whether States have the authority to order retail wheeling in interstate commerce.

[22] *See* Kentucky Utilities Company, Opinion No. 169, 23 FERC ¶ 61,317 at 61,668, *order on reh'g*, Opinion No. 169–A, 25 FERC ¶ 61,205 (1983), *vacated and remanded on other grounds*, Kentucky Utilities Co. v. FERC, 766 F.2d 239 (6th Cir. 1985) (remanded for lack of evidence supporting the length of the notice provision), *order on remand*, 37 FERC ¶ 61,299 (1986).

[23] *Entergy*, 60 FERC at 61,631.

[24] *Entergy*, 58 FERC at 61,770.

[25] *Id.*

is by no means guaranteed. The public utility bears the heavy burden of showing, among other things, that it made relevant investment decisions based on a "contractual commitment or reasonable expectation" that it would continue to serve its existing wholesale power customers.[26]

2. Retail-Turned-Wholesale Customers Leaving The System

The Commission has been presented with the question of whether it should permit public utilities to seek recovery in *wholesale* transmission rates of stranded investment costs incurred to serve former *retail* franchise customers.[27] In *United Illuminating Company*, the Commission held that retail franchise matters are state matters that should be handled, in the first instance, by the appropriate state regulatory bodies or courts.[28] In *Massachusetts Electric Company*, the Commission accepted for filing and set for hearing the reasonableness of a proposed stranded cost charge involving a utility seeking to recover stranded costs in transmission rates from a former retail franchise customer that became a wholesale requirements customer and then became a transmission-only wholesale customer.[29]

3. Retail Customers Leaving The System

The Commission has not been presented with the question of whether it can or should permit public utilities to seek recovery, in rates for unbundled interstate transmission services provided to *retail* customers, of stranded costs incurred to serve retail franchise customers. However, this issue could arise as a result of voluntary retail wheeling or State or local actions resulting in retail wheeling arrangements such as those being considered in California, Michigan and elsewhere.

C. The Proposed Regulations

Consistent with the policy objectives of Congress in enacting the electric provisions of the Energy Policy Act, the Commission is committed to developing a competitive, open transmission access, wholesale bulk power market. Our goal is to facilitate the development of competitively priced generation supply options, and to ensure that wholesale purchasers of electric energy can reach alternative power suppliers and vice versa. We therefore believe it is important at this stage of the evolution of the electric industry to address stranded costs.

The financial stability of the electric industry during the transition to a competitive wholesale generation market will depend in large part on: (1) Whether the transition to a competitive environment, at either the wholesale or retail level, will leave utility companies without an adequate opportunity to recover costs invested to serve customers under less competitive circumstances; and (2) whether and how regulators address recovery of some or all of those "stranded" costs. While there is no universally accepted estimate of the potential magnitude of stranded costs, some observers have suggested that stranded costs could total tens of billions of dollars, while others have suggested $200 billion or more. These estimates are based, to a large degree, on the difference between the book value of generating assets and their presumed market value.[30]

In addition to concerns about the financial stability of the industry, we believe it is important to provide as much regulatory certainty as possible, as early as possible, to buyers and sellers of electric energy and transmission, regarding the recovery of these potentially significant costs. Buyers seeking competitive generation alternatives need to know the costs associated with leaving their existing suppliers in order to make reasoned decisions. Likewise, sellers need to know the extent, if any, to which they will be obligated to provide requirements service on an extra-contractual basis so that they can plan their participation in competitive generation markets.

Accordingly, the Commission believes it can best fulfill its regulatory responsibilities by addressing the issue of stranded costs during the initial stages of the transition to a competitive wholesale generation market.[31] The Commission therefore is proposing to establish generic policies and procedures covering the treatment of stranded costs by public utilities and transmitting utilities.

The Commission believes that stranded cost recovery is a transition problem. In the past, costs may have been incurred by wholesale suppliers under an implicit regulatory "bargain," *i.e.*, based on a reasonable expectation that captive customers would continue taking service beyond the term of their contracts and that the utility would continue to plan for their needs.[32] This regulatory "bargain," particularly in the context of the recovery of extra-contractual stranded costs, may not be sustainable in the face of wholesale market forces. The expectation is that market forces will ensure adequate supply and wholesale customers will be able to contract for services from alternative suppliers.

Whereas any obligation to serve requirements customers at the wholesale level is a contractual one, the traditional obligation to serve at the retail level arises through utility monopoly franchise rights. The traditional retail regulatory compact has ensured the utility's financial integrity by granting it an opportunity to recover prudently incurred costs plus a fair rate of return, in exchange for regulation by the State regulatory authority and the duty to provide safe, reliable, reasonably priced electric service on demand. Some states have recently considered whether the traditional franchise duty to serve all customers within the boundaries of the designated franchise area ought to evolve and whether this duty should be modified by the State.[33]

The Commission notes that new generating capacity can be built and operated at costs that are less than many utilities' current embedded generating costs. This simple fact of current economic conditions is encouraging many users to seek access to the new lower cost sources of supply. Utilities traditionally have been obligated to serve all retail customers within their franchise territory and all wholesale requirements customers to whom they have contractually agreed to provide service. They have constructed or contracted for generating capacity sufficient to meet these service obligations. If existing customers leave their current utility suppliers, the utilities may not be able to recover all of their prudently incurred costs. In light of the utilities' status as regulated entities with retail franchise service obligations and contractual (and perhaps extra-contractual) wholesale service commitments, the Commission believes it is appropriate to provide a mechanism for utilities to seek to recover prudently incurred costs that are stranded during the transition to a competitive electricity supply market.

However, the amount of and responsibility for any costs stranded in the transition to competitive markets should be resolved in as short a time as possible, so as not to inhibit customers from taking advantage of the competitive market and so that sellers can restructure their marketing strategy to reflect competitive markets.[34]

The Commission assumes that stranded costs will be dominated by generating capacity. However, we believe that it is appropriate to consider stranded costs more broadly, including the possibility that fuel supply costs, purchased power costs, nuclear decommissioning costs, regulatory assets and possibly other costs that the utility seller is obligated to pay may be stranded. *The Commission seeks public comment on what categories of costs, in addition to investment costs, should be eligible for stranded cost recovery. The Commission also seeks comment concerning how stranded costs should be allocated to specific customers.*

The proposed regulations discussed below would allow utilities the opportunity to seek to directly assign stranded costs to the departing wholesale and perhaps retail customers. However, an alternative policy might assign wholesale or retail stranded costs more broadly. For example, some stranded cost proposals would require all transmission customers (including native load which takes bundled service) to pay an access charge related to use of the transmission system. *The Commission invites comments on the direct assignment and alternative methods of stranded cost recovery. The Commission also invites comments on whether alternative methods, e.g., an*

[26] *Entergy*, 60 FERC at 61,031

[27] For example, stranded costs may occur if a newly-formed municipal utility reduces or terminates service from its current supplier

[28] See United Illuminating Company, 63 FERC ¶ 61,212 at 62,583, *reh'g denied*, 64 FERC ¶ 61,087 (1993) (*UI*).

[29] Massachusetts Electric Company, 66 FERC ¶ 61,036 (1994) (*Mass Electric*). The Massachusetts Department of Public Utilities (Massachusetts Commission) recently requested that the Commission suspend the hearing it ordered in this proceeding for six months to allow time for its investigation of the utility's stranded cost claims. On June 6, 1994, the presiding administrative law judge denied the Massachusetts Commission's motion. On June 29, 1994, the Massachusetts Commission filed an interlocutory appeal to the Commission of the presiding judge's June 22, 1994 denial of the motion

[30] These estimates include both wholesale and retail stranded costs. It has been suggested that the potential amount of retail stranded costs may be an order of magnitude larger than the potential amount of wholesale stranded costs, given that only 10–15 percent of generating investment by investor-owned utilities is in wholesale rate base.

[31] Indeed, our experience during the regulatory restructuring of the gas pipeline industry, including the issue of "take-or-pay" contracts, tells us that reasoned decisionmaking requires thorough consideration of the effects of regulatory and statutory changes, including stranded costs. *See* Associated Gas Distributors v. FERC, 824 F.2d 981, 1021–1030 (D.C. Cir. 1987).

[32] *See also* 18 CFR 35.15 (requiring utilities to make a filing with the Commission before terminating a rate schedule); Pacific Gas & Electric Company, 25 FERC ¶ 61,142 at 61,381 (1983) ("termination is a change in service for which notice is statutorily required").

[33] *See, e.g.*, California Commission Order Instituting Rulemaking, *supra*, section III.A. & n.19.

[34] In competitive markets, sellers can recover their costs, whether prudently incurred or not, only up to the market price.

serve all retail customers within their franchise territory and all wholesale requirements customers to whom they have contractually agreed to provide service. They have constructed or contracted for generating capacity sufficient to meet these service obligations. If existing customers leave their current utility suppliers, the utilities may not be able to recover all of their prudently incurred costs. In light of the utilities' status as regulated entities with retail franchise service obligations and contractual (and perhaps extra-contractual) wholesale service commitments, the Commission believes it is appropriate to provide a mechanism for utilities to seek to recover prudently incurred costs that are stranded during the transition to a competitive electricity supply market.

However, the amount of and responsibility for any costs stranded in the transition to competitive markets should be resolved in as short a time as possible, so as not to inhibit customers from taking advantage of the competitive market and so that sellers can restructure their marketing strategy to reflect competitive markets.[34]

The Commission assumes that stranded costs will be dominated by generating capacity. However, we believe that it is appropriate to consider stranded costs more broadly, including the possibility that fuel supply costs, purchased power costs, nuclear decommissioning costs, regulatory assets and possibly other costs that the utility seller is obligated to pay may be stranded. *The Commission seeks public comment on what categories of costs, in addition to investment costs, should be eligible for stranded cost recovery. The Commission also seeks comment concerning how stranded costs should be allocated to specific customers.*

The proposed regulations discussed below would allow utilities the opportunity to seek to directly assign stranded costs to the departing wholesale and perhaps retail customers. However, an alternative policy might assign wholesale or retail stranded costs more broadly. For example, some stranded cost proposals would require all transmission customers (including native load which takes bundled service) to pay an access charge related to use of the transmission system. *The Commission invites comments on the direct assignment and alternative methods of stranded cost recovery. The Commission also invites comments on whether alternative methods, e.g., an access charge, might give customers reasonable certainty on the scope of their stranded cost obligation more quickly than a direct assignment approach would, and thus might expedite the transition to a more competitive wholesale market.*

The proposed regulations are discussed in detail below.

1. Recovery of Stranded Costs Associated With New Wholesale Power Sales Contracts

The Commission believes that future wholesale contracts should explicitly address the mutual obligations of the seller and buyer, including the seller's obligation to continue to serve the buyer, if any, and the buyer's obligation, if any, if it changes suppliers. Therefore, the proposed regulations regarding wholesale stranded costs encourage the resolution of future stranded cost issues through negotiated agreement. At the same time, we are aware that many existing contracts, entered into prior to the time that unbundled transmission access became more widely available, may not have adequately addressed the potential for stranded costs.

The proposed regulations regarding wholesale stranded costs distinguish between new and existing wholesale requirements contracts. New contracts are defined as contracts executed after the date that the proposed rule is published in the **Federal Register**. Existing contracts are defined as contracts executed on or before the date that the proposed rule is published in the **Federal Register**.

The proposed regulations would disallow extra-contractual recovery of wholesale stranded costs associated with any new requirements contract. That is, we will not allow any request for recovery unless the contract contains specific provisions allowing stranded cost recovery when it is accepted by the Commission.[35] In addition, the Commission will not allow any stranded costs associated with new requirements contracts to be recovered through transmission rates.

Therefore, in the future, wholesale power suppliers and their customers must address stranded cost issues by including appropriate notice and exit fee provisions, or any other explicit statement related to stranded cost recovery, in their new requirements contracts. For example, sellers may wish to require adequate notice in contracts to reflect the realities of supply planning, and may wish to include exit fees that buyers would be required to pay if the buyer prematurely exits the system. Similarly, buyers may wish to preserve the rights to exit contracts when market conditions warrant it.

In addition to encouraging parties to explicitly address their mutual obligations in new wholesale requirements contracts, the Commission believes it is important to address any future regulatory obligation to serve at the wholesale level. Competitive generation markets not only require that customers be able to freely shop for competitively priced generation, but that sellers be free to enter new markets and to exit markets. Asymmetrical rights and obligations that allow existing customers to leave their current suppliers consistent with their existing contractual obligations, but that require sellers to continue to serve those customers beyond the terms of their existing contracts, would not be efficient or fair. Therefore, the Commission does not believe that it is appropriate to impose on wholesale requirements suppliers a regulatory obligation to continue to serve their existing requirements customers beyond the end of the contract term. This means that a requirements customer is responsible for planning to meet its power needs beyond the end of the contract term. It may re-contract with its existing supplier, or it may contract with new suppliers, using its existing supplier's transmission system.

The Commission invites public comment on the extent to which there is or should be a regulatory obligation to continue to serve wholesale requirements customers beyond the end of the contract term and the source of any such obligation. The Commission also seeks comment concerning whether section 35.15 of the Commission's regulations, which concerns notice of termination, should be deleted in its entirety, or only in certain circumstances (e.g., when the seller provides transmission access on a comparable basis to the seller's own uses of its system).

2. Recovery of Stranded Costs Associated With Existing Wholesale Power Sales Contracts

Because stranded costs are a transitional problem, and neglecting their recovery could delay the realization of a fully competitive bulk power market, it is important to set a date beyond which the Commission will no longer permit extra-contractual recovery of stranded costs that result from existing requirements contracts.

[34] In competitive markets, sellers can recover their costs, whether prudently incurred or not, only up to the market price.

[35] Proposed provisions to allow stranded cost recovery will, of course, be subject to the approval of the Commission and must be just and reasonable and not unduly discriminatory or preferential.

The proposed regulations would establish a three-year transition period during which utilities must make a good faith effort to negotiate with their customers to add appropriate stranded cost provisions to their existing contracts that do not already contain exit fee or other explicit stranded cost provisions. For purposes of this rule, if an existing contract contains an exit fee provision, that provision will be deemed to be an explicit stranded cost provision which cannot be renegotiated unless explicitly provided for in the contract.

One purpose of setting a time limit for renegotiation is to provide an incentive for utilities and their customers to attempt to promptly renegotiate existing requirements contracts that do not address stranded costs, so that the contracts reflect the new realities of emerging competitive generating markets. In these situations, the Commission expects utilities and their customers to make a good-faith effort to reach a mutually agreeable resolution. If the parties negotiate such a provision and the seller is a public utility, the utility must file the provision as an amendment to the existing power sales contract prior to the end of the three-year period.

If the parties to an existing wholesale requirements contract cannot negotiate a stranded cost provision, the selling utility, if it is a public utility, may, before the end of the three-year transition period, unilaterally file under FPA section 205 or 206 a proposed stranded cost provision as an amendment to the existing contract.[36] This is discussed in further detail below.

Alternatively, as discussed in the following section, if the customer under the existing wholesale requirements contract: (1) Gives notice pursuant to the contract, before the end of the three-year transition period, that it will no longer purchase all or part of its requirements from the selling utility, but instead will purchase unbundled section 205 or section 211 transmission services from the utility in order to reach a different supplier of electric energy; and (2) the transmission services will commence prior to the end of the three-year transition period, the selling utility may file before the end of the three-year transition period a proposal to recover stranded costs through rates for the requested wholesale transmission services. This is the only circumstance under which the Commission will allow utilities to seek wholesale stranded cost recovery through transmission rates.[37]

Existing requirements contracts are highly variable with respect to exit conditions. While some existing contracts may have explicit exit fee or other stranded cost provisions, many others may be totally silent with respect to exit conditions. Yet others may have notice provisions, but may not be explicit as to stranded cost recovery.

If a contract includes an explicit provision for payment of stranded costs or an exit fee, it will be assumed that the parties fully intended the contract to cover the contingency of the buyer leaving the system. Therefore, as a matter of policy announced here, the Commission proposes to reject stranded cost amendments to existing contracts that already contain such provisions. If existing contracts permit renegotiation of existing stranded cost provisions, the parties may renegotiate in accordance with the contract. However, if existing contracts prohibit stranded cost recovery, or explicitly prohibit renegotiation of an existing stranded cost or exit fee provision, or prohibit renegotiation until after the three-year period has expired, the parties will not be required to renegotiate within the three-year period. *The Commission invites comments on what other types of contractual provisions, if any, might demonstrate a sufficient "meeting of the minds" between parties so that renegotiation should be barred. The Commission also solicits comments on whether to apply these rules regarding existing contracts only to contracts between unaffiliated entities.*

If a contract does not include an exit fee or other explicit stranded cost provision, but does contain a notice provision, there will be a rebuttable presumption that the selling utility had no reasonable expectation of continuing to serve the customer beyond the period provided for in the notice provision. This presumption will apply when public utilities propose unilateral amendments to requirements contracts, as described above, as well as when public utilities or transmitting utilities seek stranded cost recovery through transmission rates, as described above. *The Commission solicits comment on whether the rebuttable presumption should also be applied to any contract entered into after the date of enactment of the Energy Policy Act, even though such contract does not contain an exit fee or other explicit stranded cost provision, or a notice provision.*

For existing contracts that do not contain specific exit fee or other explicit stranded cost provisions, the Commission proposes to require parties to make a good faith attempt at renegotiation. This is because many of these contracts were negotiated twenty years ago, or more, when the parties likely did not foresee the advent of competition in wholesale generation markets and the ability of transmission-dependent utilities to gain access to their supplier's transmission system to reach other sellers.

The Commission recognizes that new requirements contracts and renegotiated existing requirements contracts may contain contractual features that have heretofore not been included in requirements contracts. Buyers and sellers will seek to protect themselves from contingencies made more likely as a result of increased competition in power markets. The Commission will not impose a preconceived notion of what those contract provisions should look like, and does not necessarily believe that a "one size fits all" approach is appropriate.

We recognize that some utilities' existing contracts may be *Mobile-Sierra* contracts that prohibit unilateral rate changes.[38] Under the *Mobile-Sierra* doctrine, for instance, a customer may waive its right to challenge the contract and/or the utility may waive its right to make unilateral rate changes. However, the parties may not waive the indefeasible right of the Commission to alter rates that are contrary to the public interest.[39] Accordingly, the Commission could permit public utilities that have contracts containing *Mobile-Sierra* provisions an opportunity to file unilateral rate changes if the Commission finds that such an action is required in the public interest.[40]

The Commission believes that a failure to permit public utilities to address stranded costs through negotiation or unilateral rate changes could harm the public interest in at least two ways. First, the inability to seek recovery of stranded costs could impair the financial ability of a utility to continue to provide reliable service. This will depend on the magnitude of stranded costs and the prospect or lack thereof for recovering such costs from ratepayers. The prospect of not recovering from ratepayers significant amounts of stranded costs could seriously erode a utility's access to capital markets, or could drive the utility's cost of capital to unprecedented levels. This high cost of capital could precipitate other customers leaving the system which, in turn, could cause others to leave. Such a spiral could be difficult to stop once begun. Second, if some customers are permitted to leave their suppliers without paying for stranded costs, this may cause an excessive burden on the remaining customers who for whatever reason cannot leave and therefore may have to bear those costs. For these reasons, our preliminary view is that it is in the public interest to permit public utilities with *Mobile-Sierra* contracts a limited opportunity to unilaterally propose contract changes to address stranded costs, if those contracts do not already explicitly address stranded costs.[41]

We clarify that if a public utility unilaterally files a proposed stranded cost amendment under either section 205 or 206, this does not necessarily mean that the Commission ultimately will find it appropriate to allow any amendment. The same is true for customer complaints under section 206. In addition, the Commission intends to allow the customer to the contract to present any other proposed stranded cost amendment which it believes reasonable.[42] Further, in analyzing what is an appropriate stranded cost amendment in the particular circumstances, we will take into account the other contractual provisions and hear arguments as to why other contractual provisions may also need to be amended.

The Commission invites public comment on the proposal to establish a transition period during which utilities may renegotiate their existing contracts. The Commission also invites public comment on whether public utilities or customers with Mobile-Sierra contracts should be able to make unilateral filings or file complaints. The Commission also invites comments on whether the Commission should make a Mobile-Sierra public interest finding based on

---

[36] *See, supra*, n.5, regarding transmitting utilities that are not also public utilities.

[37] We note that the rebuttable presumption we are proposing for contracts with notice provisions, *infra*, p. 30, also applies in this instance. We clarify further that, under this proposal, in order for utilities to protect themselves against a customer exercising (inside or outside the three-year transition period) a notice of termination provision which takes effect *outside* of the three-year transition period, utilities must propose to change their existing contracts *within* the three-year period. However, the rebuttable presumption will apply in this instance as well.

[38] *See* United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[39] Papago Tribal Utility Authority v. FERC, 723 F.2d at 950, 953 (D.C. Cir. 1983).

[40] 350 U.S. at 355.

[41] Customers with *Mobile-Sierra* contracts that do not explicitly address stranded costs may also file complaints under section 206 of the FPA, within the three-year transition period to propose to address stranded costs in existing contracts.

[42] If the customer is the initial proponent of the change, it will bear the burden under section 206 of the FPA.

This will depend on the magnitude of stranded costs and the prospect or lack thereof for recovering such costs from ratepayers. The prospect of not recovering from ratepayers significant amounts of stranded costs could seriously erode a utility's access to capital markets, or could drive the utility's cost of capital to unprecedented levels. This high cost of capital could precipitate other customers leaving the system which, in turn, could cause others to leave. Such a spiral could be difficult to stop once begun. Second, if some customers are permitted to leave their suppliers without paying for stranded costs, this may cause an excessive burden on the remaining customers who for whatever reason cannot leave and therefore may have to bear those costs. For these reasons, our preliminary view is that it is in the public interest to permit public utilities with *Mobile-Sierra* contracts a limited opportunity to unilaterally propose contract changes to address stranded costs, if those contracts do not already explicitly address stranded costs.[41]

We clarify that if a public utility unilaterally files a proposed stranded cost amendment under either section 205 or 206, this does not necessarily mean that the Commission ultimately will find it appropriate to allow any amendment. The same is true for customer complaints under section 206. In addition, the Commission intends to allow the customer to the contract to present any other proposed stranded cost amendment which it believes reasonable.[42] Further, in analyzing what is an appropriate stranded cost amendment in the particular circumstances, we will take into account the other contractual provisions and hear arguments as to why other contractual provisions may also need to be amended.

The Commission invites public comment on the proposal to establish a transition period during which utilities may renegotiate their existing contracts. The Commission also invites public comment on whether public utilities or customers with Mobile-Sierra contracts should be able to make unilateral filings or file complaints. The Commission also invites comments on whether the Commission should make a Mobile-Sierra public interest finding based on company-specific findings instead of generic industry-wide findings.

The Commission is uncertain how long the proposed transition period should be. On the one hand, the renegotiation process is likely to be time-consuming, since difficult issues are at stake and some utilities have multiple contracts and may therefore be engaged in negotiations with a number of parties at the same time. On the other hand, we do not want to extend the transition period more than is necessary, since the uncertainty concerning stranded cost recovery may inhibit wholesale customers from pursuing more efficient or cheaper supply alternatives. The Commission's preliminary view is that a transition period of three years strikes an appropriate balance. *However, the Commission invites comment on the appropriate length of the proposed transition period.*

The Commission requests that utility commenters include in their comments an estimate of the number of requirements contracts that they would seek to renegotiate to address stranded cost issues. How many of these contracts are silent on this question? How many have notice provisions, and of what duration? The Commission requests that responding utilities estimate the amount of stranded costs associated with such contracts, the relationship of the estimated stranded costs to the utility's total costs or revenues, and the potential cost shift to remaining customers.

3. Recovery of Wholesale Stranded Costs in Wholesale Transmission Rates

The Commission has previously authorized provisions that permit public utilities to seek recovery of stranded costs in wholesale transmission rates in the context of utilities filing transmission tariffs of general applicability, *e.g., Entergy.*

As discussed in the prior section, during the transition period the proposed regulations would permit utilities to file rates for transmission services that include stranded costs associated with existing wholesale requirements contracts, but only if: (1) the wholesale requirements customer gives notice pursuant to the contract, prior to the end of the three-year transition period, that it will no longer purchase all or part of its requirements from the selling utility but instead will purchase unbundled section 205 or section 211 transmission services from the utility in order to reach a different supplier of electric energy and (2) the transmission services will begin prior to the end of the three-year transition period. After the transition period, public utilities and transmitting utilities would no longer be permitted to recover wholesale stranded costs in rates for transmission services under section 205 or 211 of the FPA.

The Commission believes that utilities should retain the option of seeking recovery of stranded costs in rates for transmission services during the transition period, but only in the limited circumstance described.[43] The Commission is proposing this limitation in order to encourage utilities and their customers to negotiate stranded cost provisions in accordance with the other provisions of the proposed regulations.

The Commission proposes to apply the above limitations on recovery of stranded costs in wholesale transmission rates to all utilities, whether or not they currently have on file transmission tariffs containing stranded cost provisions.[44] The Commission seeks comment on this proposal.

Filings to recover stranded costs in transmission rates during the transition period will be permitted regardless of whether the service is voluntarily provided (under section 205 of the FPA pursuant to an open-access tariff, a tariff of general applicability or an individual contract) or mandated under section 211 of the FPA. *However, the Commission invites public comment on the issue of whether stranded cost recovery should be different depending on whether transmission service is under section 205 or 211.*

As noted earlier, *supra*, section III.C., the proposed regulations allow utilities an opportunity to seek direct assignment of stranded costs to the departing wholesale customer. *We request comment on whether, in lieu of direct assignment, utilities should be able to seek a general surcharge to all of their transmission customers to cover the costs stranded by a departing customer.*[45]

The Commission does not in this proposed rulemaking address who will

---

[41] Customers with *Mobile-Sierra* contracts that do not explicitly address stranded costs may also file complaints under section 206 of the FPA, within the three-year transition period to propose to address stranded costs in existing contracts.

[42] If the customer is the initial proponent of the change, it will bear the burden under section 206 of the FPA.

[43] *See also, supra*, n.1 (discussing transmitting utilities that are not public utilities).

[44] *See, e.g., Entergy.*

[45] For example, the Commission followed this type of approach in Order No. 636 with respect to gas supply realignment charges. *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 at 30 457–460 (Apr. 8, 1992), *order on reh'g*, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (Aug. 3 1992), *order on reh'g*, Order No. 636–B, 57 FR 57911 (Dec. 8 1992), 61 FERC ¶ 61,272 (1992), *appeal re-docketed sub nom.*, Atlanta Gas Light Company and Chattanooga Gas Company *et al.* v. FERC No 94–1171 (D.C. Cir. May 27, 1994)

bear the stranded costs caused by a departing customer if the Commission finds that the utility had no reasonable expectation of continuing to serve that customer. Under the proposed rule, the costs cannot be recovered from the departing customer through transmission rates for that customer or through a unilateral exit fee amendment in that customer's power sales contract. We anticipate that in such a case a public utility will seek in subsequent requirements rate cases to have the costs reallocated among the remaining customers on its system.

The Commission recognizes that stranded costs can occur when a customer fails to renew its requirements contract and, instead of obtaining unbundled transmission services from its former requirements supplier, obtains unbundled transmission services from another utility. We anticipate that in such a case any prudent costs that are stranded as a result of the customer's departure would be reallocated to remaining customers in the utility's next requirements rate case. This results in the departing customer bearing none of the costs which it may have caused to be stranded. *We request comments on how the Commission should deal with such costs.*

4. Filing Requirements for Wholesale Stranded Cost Recovery

The Commission proposes to amend Part 35, Chapter I, Title 18 of the *Code of Federal Regulations* to establish filing requirements for public utilities (as defined in FPA section 201(e)) and transmitting utilities (as defined in FPA section 3(23)) that seek stranded cost recovery. Our view is that the only circumstance in which transmitting utilities that are not also public utilities may seek stranded cost recovery from this Commission is through rates for transmission services under FPA sections 211 and 212.

The proposed regulations define "wholesale stranded cost" as "any legitimate, prudent and verifiable cost incurred by a public utility or transmitting utility to provide service to a wholesale requirements customer that subsequently becomes, in whole or in part, an unbundled transmission customer of such public utility or transmitting utility."[46]

The proposed regulations would permit a public utility or transmitting utility to seek recovery of wholesale stranded costs as follows. First, for stranded costs associated with new wholesale requirements contracts (*i.e.*, any wholesale requirements contract executed after the date that this order is published in the **Federal Register**), the proposed regulations would allow recovery of stranded costs only if the contract explicitly provides for recovery of stranded costs.

Second, for existing wholesale requirements contracts (*i.e.*, any wholesale requirements contract executed on or before the date that this order is published in the **Federal Register**), the proposed regulations would specify that a utility may not recover stranded costs associated with such contract if recovery is explicitly prohibited by the contract (including associated settlements) or by any power sales or transmission tariff on file with the Commission.[47]

Third, for existing wholesale requirements contracts that do not address stranded costs through exit fee or other explicit stranded cost provisions, the proposed rule would allow a public utility to seek recovery of stranded costs only if: (1) The existing contract contains a specific provision allowing recovery of stranded costs; or (2) the parties to the existing contract renegotiate the contract in accordance with this rule and file an amendment dealing with stranded costs prior to the expiration of the three-year transition period; or (3) if the parties to the existing contract do not renegotiate a stranded cost amendment, the selling utility unilaterally files, no later than the end of the transition period, a proposed stranded cost amendment to the parties' existing contract; or (4) if the parties to the existing contract do not renegotiate an amendment, the public utility files a request to recover stranded costs in its transmission rates under FPA sections 205–206, or 211–212, under the limited circumstance described in section III.C.(3) herein.

Fourth, if the selling utility under an existing wholesale requirements contract is a transmitting utility but not also a public utility, and the contract does not address stranded costs through an explicit exit fee or other stranded cost provision, the transmitting utility may file a request to recover stranded costs in transmission rates under FPA sections 211–212, as described in section III.C.(3) herein.

5. Evidentiary Demonstration Necessary for Wholesale Stranded Cost Recovery

In *Entergy* and subsequent cases, the Commission provided guidance concerning the evidentiary demonstration that utilities must make to recover stranded costs in wholesale transmission rates. The Commission believes that this demonstration is still relevant and appropriate. We therefore propose to apply it to any proposal for extra-contractual recovery in accordance with this proposed rule.[48]

The following is the proposed demonstration that a public utility or transmitting utility must satisfy in order to recover stranded costs in wholesale transmission rates, and that a public utility must satisfy if it proposes a unilateral amendment to its wholesale requirements contract:

(1) A utility must show that it incurred stranded costs based on an expectation that was reasonable when the costs were incurred that the applicable contract would be extended;

(2) A utility must show that the stranded costs it incurred are not more than the customer would have contributed to the utility had the customer remained a wholesale requirements customer of the utility;

(3) A utility must show that it has taken and will take reasonable and prudent measures to mitigate stranded costs.

The question of whether a utility had a reasonable expectation of continuing to serve a customer is a factual matter that will depend on the evidence produced in each case. Whether the utility's expectation was reasonable will depend on the circumstances at the time that stranded costs were incurred, including, for instance, whether the customer at that time had access to alternative suppliers. A utility also must offer evidence that its expectation was based on the actual conduct or course of dealing of the two parties (the utility and its customer). However, the Commission does not believe it is in the public interest to have prolonged litigation on these issues. Therefore, we will provide general guidance as to the type of evidence that would tend to prove or disprove the existence of a reasonable expectation.

When a public utility seeks to include certain types of construction-work-in-progress (CWIP) in rate base for a particular customer, the utility must use forward-looking cost allocators (estimates of the customer's cost responsibility when the facility will be in service).[49] Therefore, the fact that a utility has recovered CWIP from a particular customer (without the customer's objection) may provide persuasive evidence of a reasonable expectation that it would continue to serve that customer for a certain term. The Commission is aware, however, that few utilities have taken advantage of the CWIP rule, perhaps because few utilities have been undertaking major construction projects.

A reasonable expectation that a contract would be extended could also be shown by communications between supplier and customer concerning system planning. For example, if a buyer has indicated that the seller should continue to include the buyer's load in the seller's resource planning beyond the contract term or has indicated to the seller that it has not taken active steps to secure a new supplier, the seller may have legitimately had a reasonable expectation of continuing the service, particularly if the parties have routinely extended the contract in the past.

On the other hand, a utility very likely would have no reasonable expectation that a contract would be extended if the contract includes a notice of cancellation provision. Therefore, there will be a rebuttable presumption that if a contract contains a notice provision, the utility had no reasonable expectation of serving the customer beyond the period provided for in the notice provision. *The Commission invites comments on all aspects of the evidence necessary to demonstrate a reasonable expectation. We specifically request comments on our proposal that any notice provision creates a rebuttable presumption of no reasonable expectation, or whether we should adopt a minimum notice period that would provide a presumption that the utility had no reasonable expectation of continuing to provide service beyond the notice period, e.g., a five-year notice period.*

The second element described above concerns reasonable compensation for stranded costs. *We request comments on what is reasonable compensation:*

(a) Would it be reasonable for the Commission to limit the annual amount of stranded costs that a former requirements customer must pay to be no more than what the customer would have contributed to the utility's capital (customer revenues minus

[46] In theory, a utility's stranded costs could include transmission and distribution facilities. However, when a customer switches from being a requirements customer and becomes a transmission service-only customer, the public utility or transmitting utility probably will continue to provide roughly equivalent amounts of transmission services and, if relevant, distribution services. Thus, the Commission's preliminary view is that stranded costs will primarily be related to power production, *i.e.*, generation costs.

[47] See Maine Public Service Company 61 FERC ¶ 61 319 (1992) *reh'g denied*, 62 FERC ¶ 61,226 (1993).

[48] This would include public utilities who unilaterally seek to amend an existing wholesale requirements contract as described herein and public utilities and transmitting utilities that seek to recover stranded costs through transmission rates.

[49] See 18 CFR 35.25(c)(4)

progress (CWIP) in rate base for a particular customer, the utility must use forward-looking cost allocators (estimates of the customer's cost responsibility when the facility will be in service).[49] Therefore, the fact that a utility has recovered CWIP from a particular customer (without the customer's objection) may provide persuasive evidence of a reasonable expectation that it would continue to serve that customer for a certain term. The Commission is aware, however, that few utilities have taken advantage of the CWIP rule, perhaps because few utilities have been undertaking major construction projects.

A reasonable expectation that a contract would be extended could also be shown by communications between supplier and customer concerning system planning. For example, if a buyer has indicated that the seller should continue to include the buyer's load in the seller's resource planning beyond the contract term or has indicated to the seller that it has not taken active steps to secure a new supplier, the seller may have legitimately had a reasonable expectation of continuing the service, particularly if the parties have routinely extended the contract in the past.

On the other hand, a utility very likely would have no reasonable expectation that a contract would be extended if the contract includes a notice of cancellation provision. Therefore, there will be a rebuttable presumption that if a contract contains a notice provision, the utility had no reasonable expectation of serving the customer beyond the period provided for in the notice provision. *The Commission invites comments on all aspects of the evidence necessary to demonstrate a reasonable expectation. We specifically request comments on our proposal that any notice provision creates a rebuttable presumption of no reasonable expectation, or whether we should adopt a minimum notice period that would provide a presumption that the utility had no reasonable expectation of continuing to provide service beyond the notice period, e.g., a five-year notice period.*

The second element described above concerns reasonable compensation for stranded costs. *We request comments on what is reasonable compensation:*

(a) Would it be reasonable for the Commission to limit the annual amount of stranded costs that a former requirements customer must pay to be no more than what the customer would have contributed to the utility's capital (customer revenues minus variable costs), or would some alternative concept be appropriate?

(b) Would it be reasonable for the Commission to limit the future time period over which a customer's liability for stranded costs would be determined? That is, the present value of the customer's liability could be the discounted value of an annual amount for a limited time period. This total amount could be paid in a lump sum or over any mutually agreeable period. The limited time period over which the customer's liability is determined could be called the reasonable compensation period. If so:

(i) Would the Commission apply the reasonable compensation period to assess the reasonableness of an exit fee in a revised requirements contract as well as a transmission surcharge?

(ii) How long should such a time period be, e.g., five years or ten years or some other period; and

(iii) When should such a period begin, e.g., if five years is a reasonable time over which a customer is liable for stranded costs, does the five-year period begin when the Commission adopts a final rule or when the utility files for stranded cost recovery in the future?

(c) Should the length of a reasonable compensation period be based on what would constitute a reasonable notice period in requirements contracts or would some other concept be appropriate?

(d) Establishing a reasonable compensation period effectively would also establish a future date beyond which requirements customers would no longer have any liability for stranded costs, either as an exit fee in revised requirements contracts or as a surcharge on transmission rates. Would this be appropriate? In responding, commenters should keep in mind that the concept of a reasonable time period for computing stranded cost liability is independent of the proposed three-year recontracting period for which the Commission is also requesting separate comments.

The third element described above concerns mitigation measures. Adequate mitigation measures might include: (1) Evidence that the utility has tried to market the asset or assets, market the generating capacity, reconfigure or delay investment in or purchase of new generating capacity, or reform fuel supply contracts that form the basis for the stranded costs charge, and that such measures to mitigate stranded costs will continue for the entire period for which the stranded costs charge will be paid; or (2) the utility has given the customer the option to market the generating capacity or supply of fuel or purchased power that forms the basis for the stranded costs charge in order to afford the customer an opportunity to lower its stranded costs charge.

The Commission expects the utility to use its best efforts to market its existing generating capacity as one way of mitigating costs. The Commission would expect to require revenues generated from sales of the capacity to be credited against the stranded costs to be recovered through transmission rates to the departing customer.

The Commission invites comment on the requirement that a utility must demonstrate reasonable measures to mitigate stranded costs and what such measures may include.

The Commission also invites comment on how to determine the amount of stranded costs that the departing customer may be liable to pay. In *Entergy*, the Commission said that stranded costs could be no more than the revenues the departing customer would pay to the seller over the life of the contract. However, given that parties to requirements contracts are encouraged to include exit conditions (including notice provisions) in new contracts and renegotiated existing requirements contracts, it can be argued that stranded cost recovery should be capped at the revenues that the departing customer would pay after having given notice to the seller that it wishes to end all or some portion of its purchase. The problem then becomes what is a reasonable notice period, given the needs of sellers to adequately plan supply and the ability of sellers to find alternative buyers for power not taken by existing buyers. This issue pertains not only to determining stranded cost recovery in transmission rates but also to determining appropriate stranded cost provisions in new requirements contracts. *The Commission invites comments on reasonable notice periods.*

6. Recovery of Retail Stranded Costs

As discussed earlier, there are two general ways in which retail stranded costs are likely to occur:[50] (1) A retail franchise customer may, through State or local government action, become a wholesale customer who can then obtain unbundled transmission services in order to reach a new power supplier;[51] (2) a retail franchise customer may obtain voluntary unbundled retail transmission services from its existing power supplier in order to reach a new power supplier, or there may be a State or local action that results in the existing supplier

[49] *See* 18 CFR 35.25(c)(4).

[50] Retail stranded costs may result from "self-help" actions such as customer self-generation, and this has long been a fact of life for utilities. *See, supra*, n.18. This proceeding does not address these situations.

[51] In addition, certain retail customers may become retail customers of a newly-created wholesale entity.

providing such retail transmission services.

In the first example (a retail franchise customer becomes an unbundled wholesale power and transmission customer), the Commission clearly has exclusive jurisdiction under sections 201, 205 and 206, or section 212 of the FPA, over the rate for the wholesale interstate transmission services[52] used by the new wholesale entity in order to reach its new generation supplier. In the second example, in which a retail franchise customer becomes a retail unbundled transmission customer of its former franchise utility, and a retail power customer of another utility, we conclude that we also have exclusive jurisdiction over the rates, terms and conditions for the retail interstate transmission services.[53]

(i) Jurisdictional Analysis

The Commission's jurisdiction over the rates, terms and conditions of transmission in interstate commerce derives from Congress' power to regulate interstate commerce under the United States Constitution[54] and the FPA. When Congress enacted the FPA, it gave the Commission exclusive jurisdiction over the rates, terms and conditions of transmission in interstate commerce by public utilities. The Supremacy Clause of the Constitution provides that federal laws enacted pursuant to the powers delegated to the federal government by the United States Constitution are the supreme law of the land.[55] Accordingly, to the extent that retail wheeling involves transmission in interstate commerce by public utilities, the rates, terms and conditions of such service are subject to the exclusive jurisdiction of the Commission, and the rates for such service must be filed with the Commission.[56]

Section 201 of the FPA, by its very words, does not limit the Commission's jurisdiction over transmission to transmission of electric energy in interstate commerce sold at wholesale.

Subsection 201(b)(1) of the FPA provides:

> (b)(1) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce * * * The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy * * *

16 U.S.C. § 824(b)(1).

Much of the legislative history of the FPA indicates that Congress intended the Commission's jurisdiction to extend only to those matters which the *Attleboro* decision[57] held to be beyond the reach of the States. For instance, the report accompanying the Senate bill states that subsection (b) "leaves to the States the authority to fix local rates even in cases where the energy is brought in from another state."[58] The Senate report also states:

> The rate-making powers of the Commission are confined to those wholesale transactions which the Supreme Court held in [*Attleboro*] to be beyond the reach of the States. Jurisdiction is asserted also over all interstate transmission lines whether or not there is sale of the energy carried by those lines. * * *

S. Rep. No. 621, 74th Cong., 1st Sess. 48 (1935). Thus, federal jurisdiction over transmission lines is not dependent on whether those lines are used to effect a sale, wholesale or otherwise.

While the provisions of section 201 reserving certain regulatory authority to the States have been interpreted narrowly,[59] the courts have construed "in interstate commerce" broadly. The term does not turn on whether the contract path for a particular power or transmission sale crosses state lines, but rather follows the physical flow of electricity. Because of the highly integrated nature of the electric system, this results in most transmission of electric energy being "in interstate commerce."

For example, in *Jersey Central Power & Light Co.* v. *FPC*, 319 U.S. 61 (1943), the Court stated:

> It is impossible for us to conclude that this definition [of transmission in interstate commerce] means less than it says and applies only to the energy at the instant it crosses the state line and so only to the facilities which cross the line and only to the company which owns the facilities that cross the line.

319 U.S. at 71. Thus, a critical question regarding the jurisdictional status of a wheeling transaction is whether the facilities used to provide the service transmit electric energy in interstate commerce. *See also Connecticut Light & Power Co.* v. *FPC*, 324 U.S. 515 (1945) (*CL&P*); *FPC* v. *Florida Power & Light Co.*, 404 U.S. 453 (1972). In *CL&P*, the Court emphasized that whether certain facilities transmit electric energy in interstate commerce is more a technical than a legal question. The Court stated, "[f]ederal jurisdiction was to follow the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental, test." 324 U.S. at 529.

In all of the above cases, the Court's decisions turned on whether energy flowed in interstate commerce as a technical matter. The decisions did not turn on whether the energy flowing in interstate commerce was being sold for resale or was being sold to an end user. However, under FPA section 201(b), the Commission does not have jurisdiction over facilities used in local distribution. In *CL&P*, the Court stated that local distribution facilities are exempt from Commission jurisdiction even if those facilities "carry no energy except extra-state energy." 324 U.S. at 531. The Court rejected the argument that transmission and local distribution facilities could be distinguished by the proportion or amount of interstate energy that they carried:

> We do not find that Congress has conditioned the jurisdiction of the Commission upon any particular volume or proportion of interstate energy involved, and we do not think it would be appropriate to supply such a jurisdictional limitation by construction.

324 U.S. at 536. The determination of whether facilities are local distribution facilities remains a factual matter to be decided in the first instance by the Commission. *See FPC* v. *Southern California Edison Co.*, 376 U.S. 205 (1964).

While the precise demarcation between transmission and local distribution remains unclear, and the Commission has not yet definitively addressed this issue, there is nothing in the statute, its legislative history, or the case law to indicate that the Commission's jurisdiction over rates, terms and conditions of transmission in interstate commerce extends only to wholesale transmission and not retail transmission.

(ii) Treatment of Retail Costs

Because the Commission has jurisdiction over the rates, terms and conditions of both wholesale and retail transmission services in interstate commerce by public utilities, arguably it may allow retail stranded cost recovery in rates for either wholesale or retail transmission services. There nevertheless may be important legal or policy reasons to exclude retail stranded costs from transmission rates. As noted earlier, however, the Commission has been presented only with the question of whether it should permit public utilities to seek recovery in *wholesale* transmission rates of stranded investment costs incurred to serve former retail customers (Scenario 2, section III.A.). The Commission has not been presented with the question of whether it should permit public utilities to seek recovery in *retail* transmission rates of stranded costs incurred to serve the customer when it was a retail customer (Scenario 3, section III.A.).

While we believe the Commission has the authority to address retail stranded costs through its jurisdiction over the rates, terms and conditions of interstate transmission services used by retail or newly-created wholesale customers, we also believe that the recovery of the costs of transition to competition at the retail level is a matter that should be addressed by State authorities. This is because retail stranded costs will occur primarily as a result of State and local decisionmaking regarding retail franchise areas and the creation of new wholesale entities. In particular, the Commission believes it is incumbent upon states to deal with the consequences of stranded costs that occur as a result of retail wheeling. Our strong policy preference is that states explicitly address the issue. State and local decisionmakers have a first-hand understanding of the regulatory bargain with respect to stranded costs incurred to serve retail customers, and they are familiar with the planning, investment and purchase activities of the utilities they regulate.

There are a number of procedural mechanisms which we believe States can use to address retail stranded costs. For example, a State that permits a retail franchise customer to become a wholesale entity may consider whether to impose an exit fee prior to, or as a condition of, creating the wholesale entity. Similarly, a State may consider whether to require payment of an exit fee prior to a franchise customer being permitted to obtain unbundled retail

---

[52] Under FPA section 211, the Commission's authority to order wheeling does not turn on whether the transmission services will be in interstate commerce.

[53] We make no determination here regarding the physical or jurisdictional distinctions between transmission and local distribution. Section 201(b)(1) of the FPA states that the Commission has no jurisdiction, except as specifically provided in Parts II and III of the FPA, over facilities used for local distribution. Nor do we address here whether States have authority to order retail wheeling in interstate commerce.

[54] U.S. Const. Art. I, § 8, cl.3.

[55] U.S. Const. Art. VI, cl.2.

[56] *See* Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 341 U.S. 246, 251–52 (1951) (*Montana-Dakota*).

[57] Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U.S. 83 (1927) (*Attleboro*). In *Attleboro*, the Supreme Court held that State regulation of the interstate sale of electricity was barred by the Commerce Clause because such regulation would impose a "direct burden" on interstate commerce.

[58] S. Rep. No. 621, 74th Cong., 1st Sess. 48 (1935). *See also* H.R. Rep. No. 1318, 74th Cong., 1st Sess. 8 (1935).

[59] While Congress may exercise its Commerce Clause authority to grant the States that "ability to restrict the flow of interstate commerce that they would not otherwise enjoy," Lewis v. BT Investment Managers, Inc., 447 U.S. 27, 44 (1980), States may not exercise such regulatory powers unless Congress has expressly stated its intention to make such an affirmative grant of power. New England Power Co. v. New Hampshire, 55 U.S. 331, 343 (1982).

wholesale transmission and not retail transmission.

(ii) Treatment of Retail Costs

Because the Commission has jurisdiction over the rates, terms and conditions of both wholesale and retail transmission services in interstate commerce by public utilities, arguably it may allow retail stranded cost recovery in rates for either wholesale or retail transmission services. There nevertheless may be important legal or policy reasons to exclude retail stranded costs from transmission rates. As noted earlier, however, the Commission has been presented only with the question of whether it should permit public utilities to seek recovery in *wholesale* transmission rates of stranded investment costs incurred to serve former retail customers (Scenario 2, section III.A.). The Commission has not been presented with the question of whether it should permit public utilities to seek recovery in *retail* transmission rates of stranded costs incurred to serve the customer when it was a retail customer (Scenario 3, section III.A.).

While we believe the Commission has the authority to address retail stranded costs through its jurisdiction over the rates, terms and conditions of interstate transmission services used by retail or newly-created wholesale customers, we also believe that the recovery of the costs of transition to competition at the retail level is a matter that should be addressed by State authorities. This is because retail stranded costs will occur primarily as a result of State and local decisionmaking regarding retail franchise areas and the creation of new wholesale entities. In particular, the Commission believes it is incumbent upon states to deal with the consequences of stranded costs that occur as a result of retail wheeling. Our strong policy preference is that states explicitly address the issue. State and local decisionmakers have a first-hand understanding of the regulatory bargain with respect to stranded costs incurred to serve retail customers, and they are familiar with the planning, investment and purchase activities of the utilities they regulate.

There are a number of procedural mechanisms which we believe States can use to address retail stranded costs. For example, a State that permits a retail franchise customer to become a wholesale entity may consider whether to impose an exit fee prior to, or as a condition of, creating the wholesale entity. Similarly, a State may consider whether to require payment of an exit fee prior to a franchise customer being permitted to obtain unbundled retail wheeling. In situations in which local distribution facilities are used by a retail wheeling customer, the State may consider whether to allow recovery of stranded costs through rates for local distribution services. If a State decides not to impose exit fees, or a surcharge through distribution rates, it may consider whether to allow recovery of stranded costs from remaining customers.

In situations in which a new wholesale entity obtains ownership or control of a franchise utility's transmission or distribution facilities, it is possible that State condemnation proceedings will provide a forum for a utility to seek recovery of any stranded costs. *What types of payments, if any, do new municipal utilities make to prior service providers? Do these reimbursements allow for recovery of stranded generation costs? Is there variation among the States as to the legal ability of local entities to municipalize? Is there variation among the States as to the payments made by new municipal utilities to previous suppliers?*

There may, of course, be other mechanisms which States can use to determine whether to allow stranded cost recovery, and from whom to allow recovery. *The Commission solicits comments on what other mechanisms might be used, and whether these mechanisms are adequate to deal with retail stranded costs.*

While our strong preference is for States to address retail stranded costs in whatever way they deem appropriate, we are willing to explore whether there are circumstances under which this Commission should consider claims for recovery of retail stranded costs. *We will therefore present two proposed alternatives regarding retail stranded costs, and seek comment on both.* However, as noted above, we express no preference in favor of either alternative.

Under the first alternative, the proposed rule provides that if in a specific circumstance an appropriate State authority explicitly considers and deals with retail stranded costs and there is no conflict within or among State regulatory bodies regarding a State's disposition of the issue, this Commission will not entertain a request for retail stranded cost recovery. However, in the absence of a clear expression by an appropriate State authority that it has dealt with the issue, or in the event of a conflict between States[60] or among State officials within a single state, the Commission proposes to entertain requests to recover retail stranded costs.

Under the second alternative, the proposed rule provides that the Commission will not entertain any request for recovery of retail stranded costs. Under this proposal, State or local authorities will be the only forum for addressing the issue. The aforementioned preference for States to address retail stranded costs in whatever way they deem appropriate, the need for regulatory certainty, and the States' knowledge and expertise regarding utility planning, investment and purchase activities arguably favors the second alterative. *However, we solicit comment on whether there should be limited exceptions to the second alternative rule.*

As to both alternatives, the Commission solicits comments on the following questions.

Are there circumstances under which it is not necessarily appropriate to defer to the States (e.g., where one State takes an action regarding retail stranded costs which has adverse consequences for another State)? Are there circumstances under which a State may not have an adequate mechanism for addressing retail stranded costs, and may want the Commission to provide a forum?

If a State does not explicitly address stranded costs resulting from an action that allows retail customers to purchase from a supplier other than the franchised utility, should this Commission entertain requests from the utilities left with the stranded costs? Beyond silence from the State, are there other factors that the Commission should consider before accepting requests for retail stranded cost recovery? Specifically, would financial health and possible adverse impacts on reliability be sufficient reason for Federal action?

The Commission further solicits comments on the following questions:

(1) Does the Commission have legal authority to allow retail stranded costs in rates for wholesale transmission services? Should the Commission do so as a matter of policy? If so, which costs?

(2) Does the Commission have legal authority to allow retail stranded costs

[60] For example, a conflict between States could result if State A's legislature allows a former retail customer to become a wholesale entity and the wholesale entity obtains transmission services so that it now takes only one half of its 100 MW load from its current utility supplier, which is a multistate utility. As a result of State A's action, the utility has retail stranded costs for 50 MW of generation. State A's commission allocates the utility's retail costs so that State A's retail customers are responsible for only one half of the stranded costs. State B's commission, the other State in which the utility operates, allocates the utility's retail costs so that none of the retail stranded costs are allocated to State B's retail customers.

in rates for retail transmission service? Should the Commission do so as a matter of policy? If so, which costs?

(3) Does FPA section 212 give the Commission legal authority to allow recovery of retail stranded costs in rates for wholesale transmission services under FPA section 211?

(4) Are there legal or policy reasons why in Scenario 2 (p. 15), the Commission should entertain requests for recovery of retail stranded costs in wholesale transmission rates, but should not entertain requests for recovery of retail stranded costs in retail transmission rates in Scenario 3 (section III.A.)?

If the Commission determines that it will entertain requests for recovery of retail stranded costs through rates for wholesale or retail transmission in interstate commerce, the Commission proposes not to apply the "reasonable expectation" test used for wholesale stranded costs. To apply such a test would require a hearing on whether the franchise utility had a reasonable expectation, *e.g.*, of having its franchise renewed, of municipalization occurring, or of a section 212(h) non-sham wholesale entity being created by the State or local authority. No such test appears warranted because, in general, there is at the retail level an obligation to serve which is much stronger than any contractual obligation to serve at the wholesale level. The regulatory compact that has governed provision of retail service includes an implicit obligation to purchase concomitant with the utility's obligation to serve.

The Commission requests comments on whether these assumptions are correct, i.e., is the reasonable expectation test inapplicable to retail stranded costs? Are there situations, for instance, in which utilities could have expected municipalization to occur based on an established course of dealing?

Based on these assumptions, if the Commission determines that it will entertain requests for retail stranded costs, the proposed regulations for retail stranded costs would require only a showing of the dollar amounts that have been stranded as a result of the retail customer no longer taking bundled service from the franchise utility's system. In essence, this results in direct assignment of retail stranded costs to the former franchise customer. *The Commission requests comments on how to determine retail stranded costs as a general matter. Is there a future time when a retail customer's action of leaving a local franchise no longer has any adverse economic consequences on the franchise utility? If so, what is an appropriate way to make such a determination?*

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[61] requires that rulemakings contain either a description and analysis of the effect the proposed rule will have on small entities or a certification that the rule will not have a substantial economic effect on a substantial number of small entities. Because the entities that would be required to comply with the proposed rule are public utilities and transmitting utilities that do not fall within the RFA's definition of small entities,[62] the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

V. Environmental Statement

Commission regulations require the preparation of an environmental assessment or an environmental impact statement for any Commission action that may have a significant effect on the human environment.[63] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[64] No environmental consideration is necessary for the promulgation of a rule that involves electric rate filings submitted by public utilities under sections 205 and 206 of the FPA.[65] The proposed rule specifies the standards and procedures that public utilities must follow in a rate filing proceeding in order to seek recovery of stranded costs. Accordingly, no environmental consideration of the proposed rule is necessary.

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[66] require that OMB approve certain information and recordkeeping requirements imposed by an agency.

The information collection requirements in the proposed regulations are contained in FERC–516, "Electric Rate Filings" (OMB approval No. 1902–0096). The Commission uses the data collected in this information collection to carry out its responsibilities under Part II of the FPA. The Commission's Office of Electric Power Regulation uses the data to review electric rate filings. The data enable the Commission to examine and evaluate the utility's costs and rate of return.

The Commission is submitting notification of this proposed rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of the proposed rule can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

VII. Public Comment Procedures

The Commission invites comments on the proposed rule from interested persons. An original and 14 copies of written comments on the proposed rule must be filed with the Commission no later than September 9, 1994.

The Commission will also permit interested persons to submit reply comments in response to the initial comments filed in this proceeding. Reply comments should be submitted no later than October 11, 1994.

In addition, commenters are requested to submit a copy of their comments on a 3½ inch diskette in ASCII II format. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM94–7–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's public reference room at 941 North Capitol Street, NE., Washington, DC, 20426, during regular business hours.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

---

[61] 5 U.S.C. 601–612.

[62] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632(a).

[63] Regulations Implementing National Environmental Policy Act, FERC Statutes & Regulations ¶ 30,783 (1987), 52 FR 47897 (Dec. 17, 1987).

[64] 18 CFR 380.4.

[65] 18 CFR 380.4(a)(15).

[66] 5 CFR 1320.13.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended by adding § 35.26 consisting of paragraphs (a), (b), (c), and one of two proposed alternative paragraphs (d), to read as follows:

§ 35.26 Recovery of stranded costs by public utilities and transmitting utilities.

(a) *Purpose.* This section establishes the standards that a public utility or transmitting utility must satisfy in order to recover stranded costs.

(b) *Definitions.* (1) *Wholesale stranded cost* means any legitimate, prudent and verifiable cost incurred by a public utility or a transmitting utility to provide service to a wholesale requirements customer that subsequently becomes, in whole or in part, an unbundled transmission services customer of that public utility or transmitting utility.

(2) *Wholesale requirements customer* means a customer for whom a public utility or transmitting utility provides by contract any portion of its bundled wholesale power requirements.

(3) *Wholesale transmission services* has the same meaning as provided in section 3(24) of the Federal Power Act: the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

(4) *Wholesale requirements contract* means a contract under which a public utility or transmitting utility provides any portion of a customer's bundled wholesale power requirements.

(5) *Retail stranded cost* means any legitimate, prudent and verifiable cost incurred by a public utility or transmitting utility to provide service to a retail franchise customer that subsequently becomes, in whole or in part, directly or indirectly, an unbundled transmission services customer of that public utility or transmitting utility.

(6) *Retail transmission services* means the transmission of electric energy sold, or to be sold, in interstate commerce directly to a retail customer.

(7) *New contract* means any contract executed after July 11, 1994.

(8) *Existing contract* means any contract executed on or before July 11, 1994.

(c) *Recovery of Wholesale Stranded Costs.*

(1) *General requirement.* A public utility or transmitting utility will be allowed to seek recovery of wholesale stranded costs only as follows:

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended by adding § 35.26 consisting of paragraphs (a), (b), (c), and one of two proposed alternative paragraphs (d), to read as follows:

§ 35.26 Recovery of stranded costs by public utilities and transmitting utilities.

(a) *Purpose.* This section establishes the standards that a public utility or transmitting utility must satisfy in order to recover stranded costs.

(b) *Definitions.* (1) *Wholesale stranded cost* means any legitimate, prudent and verifiable cost incurred by a public utility or a transmitting utility to provide service to a wholesale requirements customer that subsequently becomes, in whole or in part, an unbundled transmission services customer of that public utility or transmitting utility.

(2) *Wholesale requirements customer* means a customer for whom a public utility or transmitting utility provides by contract any portion of its bundled wholesale power requirements.

(3) *Wholesale transmission services* has the same meaning as provided in section 3(24) of the Federal Power Act: the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

(4) *Wholesale requirements contract* means a contract under which a public utility or transmitting utility provides any portion of a customer's bundled wholesale power requirements.

(5) *Retail stranded cost* means any legitimate, prudent and verifiable cost incurred by a public utility or transmitting utility to provide service to a retail franchise customer that subsequently becomes, in whole or in part, directly or indirectly, an unbundled transmission services customer of that public utility or transmitting utility.

(6) *Retail transmission services* means the transmission of electric energy sold, or to be sold, in interstate commerce directly to a retail customer.

(7) *New contract* means any contract executed after July 11, 1994.

(8) *Existing contract* means any contract executed on or before July 11, 1994.

(c) *Recovery of Wholesale Stranded Costs.*

(1) *General requirement.* A public utility or transmitting utility will be allowed to seek recovery of wholesale stranded costs only as follows:

(i) No public utility or transmitting utility may seek recovery of wholesale stranded costs if such recovery is explicitly prohibited by a contract or settlement agreement, or by any power sales or transmission rate schedule or tariff.

(ii) If wholesale stranded costs are associated with a new wholesale requirements contract containing an exit fee or other explicit stranded cost provision, and the seller under the contract is a public utility, the public utility may seek recovery of such costs, in accordance with the contract, through rates for electric energy under sections 205–206 of the FPA. The public utility may not seek recovery of such costs through any transmission rate for section 205 or 211 transmission services.

(iii) If wholesale stranded costs are associated with a new wholesale requirements contract, and the seller under the contract is a transmitting utility but not also a public utility, the transmitting utility may not seek an order from the Commission allowing recovery of such costs.

(iv) If wholesale stranded costs are associated with an existing wholesale requirements contract, if the seller under such contract is a public utility, and if the contract does not contain an exit fee or other explicit stranded cost provision, the parties to the contract must make a good faith attempt to negotiate an explicit stranded cost amendment to the contract by [a date three years from the date a final rule is published in the **Federal Register**]. If the parties negotiate a proposed amendment, the public utility seller under the contract must file the proposed amendment under section 205 or 206 of the FPA no later than [the end of the three-year period]. If the parties do not negotiate an explicit stranded cost amendment, the public utility seller may unilaterally file a proposed stranded cost amendment no later than [the end of the three-year transition period]. In such case, the customer may propose an alternate amendment. The filing or proposal of such amendment(s) will not affect any contractual rights the customer may have to continue taking service beyond [the end of the three-year transition period].

(v) If a customer under an existing wholesale requirements contract, prior to [the end of the three-year period], gives notice pursuant to the contract that it will no longer purchase requirements service under the contract but will purchase unbundled section 205 or section 211 transmission services from the selling utility in order to reach a different supplier of electric energy, and the transmission services will commence prior to [the end of the transition period], a public utility or transmitting utility may file by [the end of the transition period] a proposal to recover stranded costs in rates for the wholesale transmission services.

(2) *Evidentiary Demonstration for Wholesale Stranded Cost Recovery.* A public utility or transmitting utility seeking to recover wholesale stranded costs in accordance with paragraphs (c)(1) (iv) and (v) of this section must demonstrate that:

(i) it incurred stranded costs on behalf of its wholesale requirements customer based on an expectation that was reasonable when the costs were incurred that the customer's contract would be extended;

(ii) the stranded costs are not more than the customer would have contributed to the utility had the customer remained a wholesale requirements customer of the utility; and

(iii) it has and will take reasonable measures to mitigate stranded costs.

(3) *Rebuttable Presumption.* If a public utility or transmitting utility seeks recovery of wholesale stranded costs associated with an existing contract, as permitted in paragraph(c)(1) of this section, and the existing contract contains a notice provision, there will be a rebuttable presumption that the utility had no reasonable expectation of continuing to serve the customer beyond the term of the notice provision.

Alternative A:

(d) *Recovery of Retail Stranded Costs.*

(1) General requirement.

A public utility or transmitting utility may seek to recover retail stranded costs through rates for wholesale or retail transmission services only if: (i) an appropriate State or local regulatory body has not explicitly considered and addressed retail stranded costs; or (ii) an appropriate State or local regulatory body has explicitly addressed stranded costs, but there is a conflict within or among State regulatory bodies regarding the State or local authority's disposition of the issue.

(2) *Evidentiary Demonstration Necessary for Retail Stranded Cost Recovery.*

A public utility or transmitting utility seeking to recover retail stranded costs must demonstrate that:

(i) the stranded costs are not more than the customer would have contributed to the utility had the customer remained a retail customer of the utility; and

(ii) it has and will take reasonable measures to mitigate stranded costs.

Alternative B:

(d) *Recovery of Retail Stranded Costs.*

(1) General requirement.

No public utility or transmitting utility may seek recovery of retail stranded costs from the Commission.

[Note: The following appendix will not appear in the Code of Federal Regulations.]

Appendix

For the ease of those submitting comments, the following is a compendium of the questions contained in the proposed rule:

Index of Questions

1. What categories of costs, in addition to investment costs, should be eligible for stranded cost recovery? How should stranded costs be allocated to specific customers?

2. The Commission invites comments on the direct assignment and alternative methods of stranded cost recovery. Would alternative methods, *e.g.*, an access charge, give customers reasonable certainty on the scope of their stranded cost obligation more quickly than a direct assignment approach would, and thus expedite the transition to a more competitive wholesale market?

3. To what extent is there or should there be a regulatory obligation to continue to serve requirements customers beyond the end of the contract term and the source of any such obligation? Should section 35.15 of the Commission's regulations, which concerns notice of termination, be deleted in its entirety, or only in certain circumstances (*e.g.*, when the seller provides transmission access on a comparable basis to the seller's own uses of its system)?

4. What types of contractual provisions (in addition to notice provisions), if any, might demonstrate a sufficient "meeting of the minds" between parties so that renegotiation of existing contracts should be barred? Should the proposed rules regarding existing contracts apply only to contracts between unaffiliated entities?

5. Should the rebuttable presumption which would apply to contracts containing notice provisions also be applied to any contract entered into after the date of enactment of the Energy Policy Act, even though such contract does not contain an exit fee or other explicit stranded cost provision, or a notice provision?

6. Should there be a transition period during which utilities may renegotiate their existing contracts? Should utilities or customers with *Mobile-Sierra* contracts be able to make unilateral filings or file complaints? Should the Commission make a *Mobile-Sierra* public interest finding based on company-specific findings instead of generic industry-wide findings?

7. What is the appropriate length for a transition period.

8. The Commission requests that utility commenters include in their comments an estimate of the number of power sales contracts that they would seek to renegotiate to address stranded cost issues. How many of these contracts are silent on this question? How many have notice provisions, and of what duration? The Commission requests that responding utilities estimate the amount of stranded costs associated with such contracts, the relationship of the estimated stranded costs to the utility's total costs or revenues, and the potential cost shift to remaining customers.

9. Should the limitations on recovery of stranded costs in wholesale transmission rates apply to all utilities, whether or not they currently have on file transmission tariffs containing stranded cost provisions?

10. Should stranded cost recovery be different depending on whether transmission service is under section 205 or 211?

11. In lieu of direct assignment, should utilities be able to seek a general surcharge to all of their transmission customers to cover the costs stranded by a departing customer?

12. The Commission recognizes that stranded costs can occur when a customer fails to renew its requirements contract and, instead of obtaining unbundled transmission service from its former requirements supplier, obtains unbundled transmission service from another utility. We anticipate that in such a case any prudent costs that are stranded as a result of the customer's departure would be reallocated to remaining customers in the utility's next requirements rate case. This results in the departing customer bearing none of the costs which it may have caused to be stranded. How should the Commission deal with such costs?

13. The Commission invites comments on all aspects of the evidence necessary to demonstrate a reasonable expectation of continuing to serve a customer beyond the period provided for in a notice provision. Should there be a rebuttable presumption that the existence of a notice provision means the utility had no reasonable expectation of serving the customer beyond the end of that notice period? Should we adopt a minimum notice period that would provide a presumption that the utility had no reasonable expectation of continuing to provide service beyond the notice period, *e.g.*, a five-year notice period?

14. In seeking stranded cost recovery, a utility must show that the stranded costs it incurred are not more than the customer would have contributed to the utility had the customer remained a wholesale requirements customer of the utility. This required evidentiary demonstration concerns the reasonable compensation for stranded costs. We request comments on what is reasonable compensation:

(a) Would it be reasonable for the Commission to limit the annual amount of stranded costs that a power customer must pay to be no more than what the customer would have contributed to the utility's capital (customer revenues minus variable costs), or would some alternative concept be appropriate?

(b) Would it be reasonable for the Commission to limit the future time period over which a customer's liability for stranded costs would be determined? That is, the present value of the customer's liability could be the discounted value of an annual amount for a limited time period. This total amount could be paid in a lump sum or over any mutually agreeable period. The limited time period over which the customer's liability is determined could be called the reasonable compensation period. If so:

(1) Would the Commission apply the reasonable compensation period to assess the reasonableness of an exit fee in a revised power contract as well as a transmission surcharge?

(2) How long should such a time period be, *e.g.*, five years or ten years or some other period; and

(3) When should such a period begin, *e.g.*, if five years is a reasonable time over which a customer is liable for stranded costs, does the five-year period begin when the Commission adopts a final rule or when the utility files for stranded cost recovery in the future?

(c) Should the length of a reasonable compensation period be based on what would constitute a reasonable notice period in power contracts or would some other concept be appropriate?

(d) Establishing a reasonable compensation period effectively would also establish a future date beyond which existing power customers would no longer have any liability for stranded costs, either as an exit fee in revised power contracts or as a surcharge on transmission rates. Would this be appropriate? In responding, commenters should keep in mind that the concept of a reasonable time period for computing stranded cost liability is independent of the proposed three year recontracting period for which the Commission is also requesting separate comments.

15. Should the Commission require that a public utility demonstrate reasonable measures to mitigate stranded costs? What should such measures include?

16. How should the Commission determine the amount of stranded costs that the departing customer may be liable to pay?

17. What are reasonable notice periods for requirements contracts?

18. What types of payments, if any, do new municipal utilities make to prior service providers? Do these reimbursements allow for recovery of stranded generation costs? Is there variation among the States as to the legal ability of local entities to municipalize? Is there variation among the States as to the payments made by new municipal utilities to previous suppliers?

19. What mechanisms can States use to allow retail stranded cost recovery? Are these mechanisms *adequate* to deal with retail stranded costs?

20. The Commission solicits comments on the two proposed alternatives regarding retail stranded costs. The first proposed alternative provides that if in a specific circumstance an appropriate State authority explicitly considers and deals with retail stranded costs and there is no conflict within or among State regulatory bodies regarding a State's disposition of the issue, this Commission will not entertain a request for retail stranded cost recovery. However, in the absence of a clear expression by an appropriate State authority that it has dealt with the issue, or in the event of a conflict between States or among State officials within a single State, the Commission proposes to entertain requests to recover retail stranded costs. Is this proposal reasonable? Is it preferable to the second alternative proposal?

21. Should there be limited exceptions to the second alternative rule?

22. As to both alternatives, the Commission further solicits comments on the following questions.

Are there circumstances under which it is not necessarily appropriate to defer to the States (*e.g.*, where one State takes an action regarding retail stranded costs which has adverse consequences for another State)? Are there circumstances under which a State may not have an adequate mechanism for addressing retail stranded costs, and may want the Commission to provide a forum?

If a State does not explicitly address stranded costs resulting from an action that allows retail customers to purchase from a supplier other than the franchised utility, should this Commission entertain requests from the utilities left with the stranded costs? Beyond silence from the State, are there other factors that the Commission should consider before accepting requests for retail stranded cost recovery? Specifically, would financial health and possible adverse impacts on reliability be sufficient reason for Federal action?

The Commission further solicits comments on the following questions:

(1) Does the Commission have legal authority to allow retail stranded costs in rates for wholesale transmission services? Should the Commission do so as a matter of policy? If so, which costs?

(2) Does the Commission have legal authority to allow retail stranded costs in rates for retail transmission service? Should the Commission do so as a matter of policy? If so, which costs?

(3) Does FPA section 212 give the Commission legal authority to allow recovery of retail stranded costs in rates for wholesale transmission services under FPA section 211?

(4) Are there legal or policy reasons why in Scenario 2, the Commission should entertain requests for recovery of retail stranded costs in wholesale transmission rates, but should not entertain requests for recovery of retail stranded costs in retail transmission rates in Scenario 3?

23. Are the Commission's assumptions concerning the reasonable expectations of utilities with respect to retail customers correct, *i.e.*, is the reasonable expectation test inapplicable to retail stranded costs? Are there situations, for instance, in which utilities could have expected municipalization to occur based on an established course of dealing?

24. The Commission requests comments on how to determine retail stranded costs as a general matter. Is there a future time when a retail customer's action of leaving a local franchise no longer has any adverse economic consequences on the franchise utility? If so, what is an appropriate way to make such a determination?

[FR Doc. 94–16626 Filed 7–8–94; 8:45 am]

BILLING CODE 6717–01–P

22. As to both alternatives, the Commission further solicits comments on the following questions.

Are there circumstances under which it is not necessarily appropriate to defer to the States (*e.g.*, where one State takes an action regarding retail stranded costs which has adverse consequences for another State)? Are there circumstances under which a State may not have an adequate mechanism for addressing retail stranded costs, and may want the Commission to provide a forum?

If a State does not explicitly address stranded costs resulting from an action that allows retail customers to purchase from a supplier other than the franchised utility, should this Commission entertain requests from the utilities left with the stranded costs? Beyond silence from the State, are there other factors that the Commission should consider before accepting requests for retail stranded cost recovery? Specifically, would financial health and possible adverse impacts on reliability be sufficient reason for Federal action?

The Commission further solicits comments on the following questions:

(1) Does the Commission have legal authority to allow retail stranded costs in rates for wholesale transmission services? Should the Commission do so as a matter of policy? If so, which costs?

(2) Does the Commission have legal authority to allow retail stranded costs in rates for retail transmission service? Should the Commission do so as a matter of policy? If so, which costs?

(3) Does FPA section 212 give the Commission legal authority to allow recovery of retail stranded costs in rates for wholesale transmission services under FPA section 211?

(4) Are there legal or policy reasons why in Scenario 2, the Commission should entertain requests for recovery of retail stranded costs in wholesale transmission rates, but should not entertain requests for recovery of retail stranded costs in retail transmission rates in Scenario 3?

23. Are the Commission's assumptions concerning the reasonable expectations of utilities with respect to retail customers correct, *i.e.*, is the reasonable expectation test inapplicable to retail stranded costs? Are there situations, for instance, in which utilities could have expected municipalization to occur based on an established course of dealing?

24. The Commission requests comments on how to determine retail stranded costs as a general matter. Is there a future time when a retail customer's action of leaving a local franchise no longer has any adverse economic consequences on the franchise utility? If so, what is an appropriate way to make such a determination?

[FR Doc. 94–16626 Filed 7–8–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Maryland regulatory program (hereinafter the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment establishes minimum engineering design standards to provide the 1.3 minimum static safety factor for a normal pool with steady state seepage conditions in lieu of engineering tests for small impoundments that are not a safety hazard. The amendment will provide an optional approach to determine the 1.3 minimum static factor for small, non-hazardous impoundments not built of or impounding coal mine waste. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [E.D.T.], August 10, 1994. If requested, a public hearing on the proposed amendment will be held on August 5, 1994. Requests to speak at the hearing must be received by 4:00 p.m., [E.D.T.], on July 26, 1994.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Acting Director, at the address listed below.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

George J. Rieger, Acting Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136.

FOR FURTHER INFORMATION CONTACT: George Rieger, Acting Director, Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.15 and 920.16.

II. Description of the Proposed Amendment

On June 22, 1993, OSM published a final rule (58 FR 33910) for Maryland program amendment (Administrative Record Numbers MD–549.00 and MD–539.16) concerning hydrologic balance, ponds and sediment control measures, and civil penalties. The Director approved the program amendment except for COMAR 08.09.13.24H(3)(c). The intent of proposed 08.09.13.24H(3)(c) was to establish engineering design standards in lieu of engineering tests to ensure a 1.3 minimum safety factor for small non-hazardous impoundments that are not constructed with or impound coal mine waste and not subject to the requirements of 30 CFR 77.216(a).

The Director found that COMAR 08.13.09.24H(3)(c) was deficient in two areas. First, the soil strength values used in the stability analysis defined dry density and optimum moisture content values associated with them but did not specify the moisture content of the fill material necessary to achieve the required density through compaction. Secondly, the phreatic surface defined in the analysis did not reflect normal pool conditions under a "worst case" scenario.

By letters dated May 16, 1994, and June 23, 1994 (Administrative Record Number MD–569.00), Maryland submitted a program amendment to satisfy OSM's concerns delineated in the June 22, 1993, final rule. The amendment adds COMAR 08.13.09.24h(1)(q) requiring the material

used in the construction of the impoundment to have sufficient moisture content to achieve proper compaction. The amendment also revises the stability analysis to support COMAR 08.13.09.24H(3)(c) to represent normal pool conditions under a worst case scenario.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. [E.D.T.] on July 26, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act [42 U.S.C. 4332(2)(C)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–16657 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–94–072]

RIN 2115–AA97

Safety Zone; Fireworks Display, Westhampton Beach, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in Moneybogue Bay, around the Marine Towing Company fireworks barge located approximately in the center of Moneybogue Bay, Westhampton Beach, NY from 9:45 p.m. through 10:45 p.m. on August 20, 1994. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Long Island Sound.

DATES: Comments must be received on or before August 10, 1994.

ADDRESSES: Comments may be mailed to the Captain of the Port, 120 Woodward Avenue, New Haven, CT 06512 or may be delivered to the Port Operations office at the above address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (203) 468–4464.

The Captain of the Port maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the Port Operations office at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking [CGD01 94–072] and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Officer at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LCDR T.V. Skuby, Project Officer, Captain of the Port, Long Island Sound, and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

On May 26, 1994, the sponsor, Mr. Ronald Feldstein, Westhampton Beach, NY requested that a fireworks display be permitted in the port of Westhampton Beach in the vicinity of Moneybogue Bay, Westhampton Beach, NY, from 9:45 p.m. through 10:45 p.m. on August 20, 1994. The safety zone will cover all waters of Moneybogue Bay within a 1200 foot radius of the Marine Towing Company fireworks barge, which will be located approximately in the center of Moneybogue Bay. This zone is required to protect the maritime community from the dangers and potential hazards to navigation associated with the fireworks display. Entry into or movement within this zone will be prohibited unless

The Captain of the Port maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the Port Operations office at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking [CGD01 94–072] and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Officer at the address under "**ADDRESSES**." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LCDR T.V. Skuby, Project Officer, Captain of the Port, Long Island Sound, and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

On May 26, 1994, the sponsor, Mr. Ronald Feldstein, Westhampton Beach, NY requested that a fireworks display be permitted in the port of Westhampton Beach in the vicinity of Moneybogue Bay, Westhampton Beach, NY, from 9:45 p.m. through 10:45 p.m. on August 20, 1994. The safety zone will cover all waters of Moneybogue Bay within a 1200 foot radius of the Marine Towing Company fireworks barge, which will be located approximately in the center of Moneybogue Bay. This zone is required to protect the maritime community from the dangers and potential hazards to navigation associated with the fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on scene representative. Good cause exists for providing a comment period of less than 60 days. Due to the date the application was received, only a 30 day comment period can be provided.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Coast Guard expects the economic impact to be minimal due to the limited duration of the fireworks display, the small size of the safety zone, the low level or nonexistent commercial vessel traffic expected in the area during the effective time of the zone, and the broadcast of marine safety advisories the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–072 is added to read as follows:

§ 165.T01–072 Safety Zone; Fireworks Display, Westhampton Beach, NY.

(a) *Location.* The safety zone includes all waters of Moneybogue Bay within a 1200 foot radius of the Marine Towing Company barge, the fireworks launching platform, which will be located approximately in the center of Moneybogue Bay, Westhampton Beach, NY in approximate position 40°48′05″ N; 072°38′20″ W.

(b) *Effective date.* This section is effective from 9:45 p.m. through 10:45 p.m. on August 20, 1994, unless terminated sooner by the Captain of the Port. In case of inclement weather, this regulation will be effective on the rain date of August 27, 1994, at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in section 165.23 of this part apply.

Dated: June 23, 1994.

T.W. Allen,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 94–16690 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AMS–FRL–5009–5]

Air Pollution Control; Ozone Transport Commission; Recommendation That EPA Adopt Low Emission Vehicle Program for the Northeast Ozone Transport Region; Reopening of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document reopens the public comment period for the proposed rule published on April 26, 1994. The proposal addressed the issues EPA is considering in deciding whether to approve, disapprove, or partially approve and partially disapprove a recommendation by the Ozone Transportation Committee (OTC) that EPA require all State members of the OTC to adopt an Ozone Transport Commission Low Emission Vehicle program for the entire Ozone Transportation Region. The Environmental Protection Agency (EPA) re-opened Air Docket No. A–94–11 on June 8, 1994. This docket includes the OTC recommendation and supporting materials as well as comments submitted by interested parties. The docket was reopened in order to allow interested parties a chance to submit relevant information that might be generated as a result of the series of the public roundtable meetings being held in the Ozone Transport Region this summer. The docket will close on July 20, 1994.

DATES: The comment period is reopened from June 8, 1994 to July 20, 1994.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to the Air and Radiation Docket and Information Center (LE–131), room M–1500, 401 M Street SW., Washington, DC 20460. The phone number of the docket office is (202) 260–7548 or (202) 260–7549, fax number (202) 260–4100. The hours of operation are Monday through Friday, including all non-government holidays, from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Shields, Office of Mobile Sources, U.S. EPA, 401 M Street SW., Washington, DC 20460; telephone (202) 260–3450.

SUPPLEMENTARY INFORMATION: The Agency has previously issued a Federal Register Notice of Proposed Rulemaking describing the framework for EPA's action on the OTC's recommendation as well as the issues EPA is considering in deciding whether to approved, disapprove, or partially approve and partially disapprove the recommendation. See **Federal Register**, Vol. 59, No. 80, Tuesday, April 26, 1994, pp. 21720–21738. Additionally, the Agency has issued a Notice of Round-Table Meetings setting out the various meeting times, places, and agenda for the three rountable meetings to be held in the OTR in June and July. See **Federal Register**, Vol. 59, No. 105, Thursday, June 2, 1994, pp. 28520–28522.

Dated: June 16, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–16710 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–67, RM–8481]

Radio Broadcasting Services; Collegeville, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Saint John's University requesting the allotment of Channel 260A at Collegeville, Minnesota, and reservation of the channel for noncommercial educational use. The coordinates for Channel *260A are 45–31–24 and 94–18–48. There is a site restriction 8.8 kilometers (5.5 miles) southeast of the community.

DATES: Comments must be filed on or before August 27, 1994, and reply comments on or before September 13, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Bodorff, Todd M. Stansbury, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–67, adopted June 23, 1994, and released July 6, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16661 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–73, RM–8489]

Radio Broadcasting Services; Clarksdale, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Leroy P. Jenkins, Jr., d/b/a Delta Blues Broadcasting, proposing the allotment of Channel 221A to Clarksdale, Mississippi, as the community's fourth local FM service. Channel 221A can be allotted to Clarksdale in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) west to avoid a short-spacing conflict with a construction permit for Station WUMS–FM, Channel 221A University, Mississippi. The coordinates for Channel 221A at Clarksdale are 34–11–42 and 90–37–38.

DATES: Comments must be filed on or before August 27, 1994, and reply comments on or before September 13, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Leroy P. Jenkins, Jr., d/b/a Delta Blues Broadcasting, P.O. Box 139, Gunnison, Mississippi 38746 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–73, adopted June 23, 1994, and released July 6, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communication Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16662 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–69, RM–8490]

Radio Broadcasting Services; Grenada, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Delta

comments on or before September 13, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Leroy P. Jenkins, Jr., d/b/a Delta Blues Broadcasting, P.O. Box 139, Gunnison, Mississippi 38746 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–73, adopted June 23, 1994, and released July 6, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communication Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16662 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 94–69, RM–8490]

Radio Broadcasting Services; Grenada, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Delta Radio, Inc., proposing the allotment of Channel 295A to Grenada, Mississippi, as the community's second local FM service. Channel 295A can be allotted to Grenada in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 295A at Grenada are 33–46–36 and 89–48–42.

DATES: Comments must be filed on or before August 27, 1994, and reply comments on or before September 13, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Larry G. Fuss, President, Delta Radio, Inc., P.O. Box 1438, Cleveland, Mississippi 38732 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–69, adopted June 23, 1994, and released July 6, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–16663 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 94–68, RM–8486]

Radio Broadcasting Services; Billings, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bruce L. Erickson proposing the allotment of Channel 286A to Billings, Montana. The coordinates for Channel 286A are 45–46–58 and 108–30–13.

DATES: Comments must be filed on or before August 27, 1994, and reply comments on or before September 13, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John R. Wilner, Bryan Cave, 700 13th Street, NW, Suite 600, Washington, DC 20005–3960.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–68, adopted June 23, 1994, and released July 6, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
John A. Karousos,
Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 94–16664 Filed 7–8–94; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 926, 952, and 970

[Regulatory Information Number: 1991–AB11]

Acquisition Regulation: Implementation of Section 3021 of the Energy Policy Act of 1992

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy proposes to amend the Department of Energy Acquisition Regulation (DEAR) to establish DOE policies and procedures for establishing a program to achieve a ten percent goal for awards of prime contracts and subcontracts for specific types of universities and of small disadvantaged concerns, including women-owned businesses, in the implementation of section 3021 of the Energy Policy Act of 1992.

DATES: Written comments on this proposed rule must be received by September 9, 1994.

ADDRESSES: Comments should be addressed to: Robert M. Webb, Office of Policy (HR–521), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Robert M. Webb, Office of Policy (HR–521), Office of Procurement and Assistance Management, U.S. Department of Energy, Washington, D.C. 20585, (202) 586–8264.

SUPPLEMENTARY INFORMATION:

I. Background
A. Discussion
B. Section-by-Section Analysis
II. Procedural Requirements
A. Regulatory Review
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. National Environmental Policy Act
III. Public Comment
A. Public Hearing
B. Public Comments

I. Background

A. Discussion

Section 3021(a) of Energy Policy Act of 1992 (Pub. L. 102–486) requires that DOE, to the extent practicable, provide that the obligation of not less than 10 percent of the total combined amounts obligated for contracts and subcontracts pursuant to competitive procedures be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals or by women, historically Black colleges and universities, or colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans.

DOE today proposes to amend the DEAR to establish DOE policies and procedures for implementing section 3021 of the Energy Policy Act. The proposed amendments would add a new Part 926, Other Socioeconomic Programs, as the primary regulatory coverage concerning section 3021 requirements. Part 952 would also be amended to add solicitation provisions and contract clauses needed to effect section 3021 requirements in procurement actions. Finally, Part 970 would be amended to address the application of section 3021 to DOE management and operating (M&O) contracts. The specific amendments to the DEAR needed to implement the requirements of section 3021 of the Energy Policy Act are described below. This rulemaking provides changes to the DEAR that will supersede an earlier internal DOE directive that provided guidance to DOE employees on the implementation of section 3021.

The policies implementing the legislation are tailored to achieve the intent of Congress in enacting section 3021, but they go beyond previous contracting and subcontracting mechanisms which have been used to meet participation goals for small disadvantaged business DOE contracts and subcontracts. DOE interprets section 3021 of EPACT as requiring the accomplishment of expanded contracting and subcontracting goals and as providing DOE with the discretion to find appropriate methods to do this.

DOE believes that its approach to implementing the requirements of section 3021 is consistent with both the intent of the Congress in passing the legislation and the long-standing policies of the Government to place a fair proportion of contracts with small businesses and small disadvantaged business and to offer maximum practicable opportunity to those organizations to participate as subcontractors.

B. Section-by-Section Analysis

The regulations at 48 CFR Part 9 are proposed to be amended to add a new part 926, Other Socioeconomic Programs, consisting of Subpart 926.70, Implementation of Section 3021 of the Energy Policy Act of 1992.

A section 926.7001 is proposed to state DOE policy, as set forth in section 3021 of the Energy Policy Act, concerning the award of contracts and subcontracts to organizations meeting the three target group designations. In addition, this section would establish the primary mechanisms that DOE would use in meeting its Energy Policy Act 10 percent goal through the competitive procurement process, as follows:

1. Competitive Energy Policy Act requirements set aside for small disadvantaged businesses, including women-owned businesses, under the Section 8(a) program; and

2. Competitive awards that provide an evaluation preference to offerors from among one of the three Energy Policy Act target groups.

A section 926.7002 is proposed to establish that the requesting organization has the principal obligation to identify which procurements are subject to the Energy Policy Act. In that determination, a program office would use as its standard whether the instant requirement directly satisfies an Energy Policy Act program or requirement.

A section 926.7003 is proposed to direct the use of DOE Small Business/Labor Surplus Area Set-Aside and 8(a) Program Review Procedures as a mechanism to ensure that full consideration be given to identifying entities from among the Energy Policy Act target groups.

A section 926.7004 is proposed to recognize the statutory change (as set forth in section 3021(b) of the Energy Policy Act) to the size standard for engineering services under Energy Policy Act procurements.

A section 926.7005 is proposed to create an evaluation preference to be used in competitive procurements for Energy Policy Act requirements, where such procurements have not been conducted under Section 8(a) competitive procedures. The evaluation preference would take the form of an evaluation criterion providing that award shall be made to an entity from among the Energy Policy Act target groups where such entity is among those under consideration for final selection and is ranked as essentially equal to the best other proposal.

Also, at section 926.7005 it is proposed to provide consideration of the proposer's subcontracting opportunities to entities from among the Energy Policy Act target groups as part of the business management proposal evaluation and, in Energy Policy Act requirements valued at more than $500,000, as part of the evaluation of the Small Business and Small Business Subcontracting Plan.

A section 926.7006 is proposed to provide guidance on reporting requirements needed to measure DOE performance in meeting the 10 percent Energy Policy Act goal. In addition, this section identifies the types of contract awards that will be counted toward the DOE goal.

Instructions pertaining to the use of solicitation provisions and contract clauses relating to DOE section 3021 implementation are proposed to be contained in section 926.7007. The text of the solicitation provisions and contract clauses relating to DOE implementation of section 3021 are provided in Subpart 952.2.

A solicitation provision is proposed at 952.226–70, entitled Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486), to set out the subcontracting evaluation preference. Most importantly, the provision requires offerors, that are not one of the three section 3021 target groups, to propose individual subcontracting goals for each of the three target groups. In addition, the provision explains how the evaluation preference will be applied.

A contract clause at 952.226–72 is proposed to be added to facilitate implementation of the subcontracting program goals and reporting requirements.

A clause is proposed to be added at section 952.226–73, entitled Energy Policy Act Target Group Certification, establishing the certification to be used by entities from among the Energy Policy Act target groups to clearly establish their qualification.

Use of the clause at FAR 52.219–14 in all awards to entities from among the Energy Policy Act target groups would place a contractual limitation on the amount of subcontracting that can be used by a minority college or university or a woman-owned business in performance of a contract for an Energy Policy Act requirement. The limitation, which restricts subcontracted effort to less than 50 percent of the cost incurred for personnel, mirrors a similar provision now applied to small disadvantaged business under the Federal acquisition system.

Also, at section 926.7005 it is proposed to provide consideration of the proposer's subcontracting opportunities to entities from among the Energy Policy Act target groups as part of the business management proposal evaluation and, in Energy Policy Act requirements valued at more than $500,000, as part of the evaluation of the Small Business and Small Business Subcontracting Plan.

A section 926.7006 is proposed to provide guidance on reporting requirements needed to measure DOE performance in meeting the 10 percent Energy Policy Act goal. In addition, this section identifies the types of contract awards that will be counted toward the DOE goal.

Instructions pertaining to the use of solicitation provisions and contract clauses relating to DOE section 3021 implementation are proposed to be contained in section 926.7007. The text of the solicitation provisions and contract clauses relating to DOE implementation of section 3021 are provided in Subpart 952.2.

A solicitation provision is proposed at 952.226–70, entitled Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486), to set out the subcontracting evaluation preference. Most importantly, the provision requires offerors, that are not one of the three section 3021 target groups, to propose individual subcontracting goals for each of the three target groups. In addition, the provision explains how the evaluation preference will be applied.

A contract clause at 952.226–72 is proposed to be added to facilitate implementation of the subcontracting program goals and reporting requirements.

A clause is proposed to be added at section 952.226–73, entitled Energy Policy Act Target Group Certification, establishing the certification to be used by entities from among the Energy Policy Act target groups to clearly establish their qualification.

Use of the clause at FAR 52.219–14 in all awards to entities from among the Energy Policy Act target groups would place a contractual limitation on the amount of subcontracting that can be used by a minority college or university or a woman-owned business in performance of a contract for an Energy Policy Act requirement. The limitation, which restricts subcontracted effort to less than 50 percent of the cost incurred for personnel, mirrors a similar provision now applied to small disadvantaged business under the Federal acquisition system.

Subpart 970.26 provides guidance on the application of section 3021 to M&O contracts which may be used to accomplish DOE responsibilities under the Energy Policy Act.

III. Procedural Requirements

A. Review Under Executive Order 12866

The Department of Energy has determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This proposed rule would, when adopted as a final rule, have no preemptive effect; will not have any effect on existing Federal laws; and would only clarify the existing regulations on this subject. The revised clauses would apply only to contracts which would be awarded after the effective date of the final rule, and, thus, would have no retroactive effect. Therefore, DOE certifies that this proposed rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

This rule will require only an insignificant addition to the data collection required for the Standard Forms 294 and 295. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from NEPA review because they would not individually or cumulatively have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

IV. Public Comment

A. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedures Act (5 U.S.C 553), the Department does not plan to

hold a public hearing on this proposed rule.

B. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

All written comments received within the comment period will be carefully considered prior to publication of this proposed amendment as a final rule. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. The generally applicable procedures of DOE for handling information that has been submitted in a document and may be exempt from public disclosure, are set forth in 10 CFR 1004.11.

List of Subjects in 48 CFR Parts 926, 952, and 970

Government procurement.

Issued in Washington, DC, on June 6, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the Preamble, 48 CFR Chapter 9 is proposed to be amended as set forth below:

1. A new Part 926, Other Socioeconomic Programs, consisting of Subpart 926.70, Implementation of Section 3021 of the Energy Policy Act of 1992, is added to read as set forth below:

PART 926—OTHER SOCIOECONOMIC PROGRAMS

Subpart 926.70—Implementation of Section 3021 of the Energy Policy Act of 1992

Sec.

926.7001 Policy.
926.7002 Responsibilities.
926.7003 Review of the procurement request.
926.7004 Size standard for Energy Policy Act procurements.
926.7005 Preferences under the Energy Policy Act.
926.7006 Goal measurement and reporting requirements.
926.7007 Solicitation provisions and contract clauses.

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 926.70—Implementation of Section 3021 of the Energy Policy Act of 1992

926.7001 Policy.

(a) Pursuant to section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486), the Department of Energy (DOE) shall, to the extent practicable, provide that not less than 10 percent of the total combined amounts obligated for contracts and subcontracts pursuant to competitive procedures be expended with—

(1) small business concerns controlled by socially and economically disadvantaged individuals or by women;

(2) historically Black colleges and universities; or,

(3) colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans.

(b) These three groups are collectively referred to in this section as "Energy Policy Act target groups."

(c) DOE shall vigorously pursue the objectives of section 3021 of the Energy Policy Act in the award of contracts and subcontracts to the Energy Policy Act target groups.

(d) The DOE implementation of the requirements of section 3021 with regard to the award of Energy Policy Act procurements consists of the following, ranked in descending order of preference:

(1) Competitive awards to small disadvantaged businesses, including women-owned businesses, for Energy Policy Act requirements under the Small Business Administration's section 8(a) program;

(2) Competitive awards that provide an evaluation preference, in accordance with 926.7006, to offerors from the Energy Policy Act target groups.

(e) The DOE implementation of section 3021 requirements with regard to the award of subcontracts under Energy Policy Act procurements is discussed at 926.7006.

(f) Competitive procedures, for purposes of Energy Policy Act implementation, are competitive procedures in accordance with FAR 15.6 and DEAR 915.6.

926.7002 Responsibilities.

Offices initiating procurement requests have primary responsibility to identify potential contract requirements falling within the scope of section 3021 of the Energy Policy Act. Identification shall occur at the earliest possible point in time in the acquisition cycle, but not later than the submission of the procurement request to the contracting officer. For purposes of section 3021, a contract requirement is any award that directly satisfies an Energy Policy Act program or requirement.

926.7003 Review of the procurement request.

Any Energy Policy Act procurement, including basic research contracts with educational institutions, shall be reviewed in accordance with the Small Business/Labor Surplus Area Set-Aside and 8(a) Program Review Procedures in order to ensure that full consideration is given to the potential for making Energy Policy Act awards.

926.7004 Size standard for Energy Policy Act procurements.

The size standard for Energy Policy Act engineering services procurements (SIC 8711) shall be the size standard specified for military and aerospace equipment and military weapons.

926.7005 Preferences under the Energy Policy Act.

(a) *Prime contracts.* Solicitations for all competitive Energy Policy Act procurements not for 8(a) firms and in excess of the small purchase threshold shall provide for an evaluation preference for offers received from entities from among the Energy Policy Act target groups. The evaluation criteria shall provide that in instances in which two or more proposals being considered for final selection are ranked as essentially equal, after consideration of all technical and cost evaluation factors, and one of these proposals is from an offeror from among an Energy Policy Act target group, that offeror will be selected for award.

(b) *Subcontracts.* (1) The contracting officer shall assure that all competitive Energy Policy Act solicitations over the small purchase threshold contain:

(i) A solicitation provision providing for consideration, as part of the evaluation of the business management proposal, of the extent to which the offerors have provided for subcontracting opportunities to entities from among the Energy Policy Act target groups; and

(ii) A clause providing for the maximum utilization of entities from among Energy Policy Act target groups in the performance of Energy Policy Act contracts.

(2) The contracting officer shall assure that all competitive Energy Policy Act procurements expected to exceed $500,000 ($1,000,000 for construction) include:

(i) A solicitation provision providing for consideration of the extent to which the offeror has provided for subcontracting opportunities to entities from among the Energy Policy Act target groups before award as part of the effort, and

(ii) A clause for reporting after award as part of the Small Business and Small Disadvantaged Business Subcontracting Plan process.

926.7006 Goal measurement and reporting requirements.

(a) *General.* The following types of contract awards for Energy Policy Act procurements shall be counted toward achievement by DOE of the 10 percent goal:

(1) Any competitive section 8(a) award;

(2) Any competitive award to one of the three target groups under an unrestricted procurement;

(3) Any award to one of the three target groups conducted under small purchase procedures; and,

(4) Any competitively awarded subcontract to one of the three target groups under a prime award.

(b) *Prime contract awards.* Award values and dollars obligated under prime contracts and modifications to prime contracts for Energy Policy Act requirements shall be reported through the Department of Energy Procurement and Assistance Data System.

(c) *Subcontract awards.* The contractor shall be required to report, on an annual Federal Government fiscal year basis, its progress against the section 3021 goals by providing the actual dollar value of subcontract payments, and the relationship of those payments to the incurred contract cost. If the contract includes reporting requirements under FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contractor's progress against the section 3021 goals shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

926.7007 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the provision at 952.226–70,

in the performance of Energy Policy Act contracts.

(2) The contracting officer shall assure that all competitive Energy Policy Act procurements expected to exceed $500,000 ($1,000,000 for construction) include:

(i) A solicitation provision providing for consideration of the extent to which the offeror has provided for subcontracting opportunities to entities from among the Energy Policy Act target groups before award as part of the effort, and

(ii) A clause for reporting after award as part of the Small Business and Small Disadvantaged Business Subcontracting Plan process.

926.7006 Goal measurement and reporting requirements.

(a) *General.* The following types of contract awards for Energy Policy Act procurements shall be counted toward achievement by DOE of the 10 percent goal:

(1) Any competitive section 8(a) award;

(2) Any competitive award to one of the three target groups under an unrestricted procurement;

(3) Any award to one of the three target groups conducted under small purchase procedures; and,

(4) Any competitively awarded subcontract to one of the three target groups under a prime award.

(b) *Prime contract awards.* Award values and dollars obligated under prime contracts and modifications to prime contracts for Energy Policy Act requirements shall be reported through the Department of Energy Procurement and Assistance Data System.

(c) *Subcontract awards.* The contractor shall be required to report, on an annual Federal Government fiscal year basis, its progress against the section 3021 goals by providing the actual dollar value of subcontract payments, and the relationship of those payments to the incurred contract cost. If the contract includes reporting requirements under FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contractor's progress against the section 3021 goals shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

926.7007 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the provision at 952.226–70, Subcontracting Goals under Section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486) (Energy Policy Act), in solicitations for Energy Policy Act procurements.

(b) The Contracting Officer shall insert the clause at 952.226–71, Utilization of Energy Policy Act Target Entities, in contracts for EPACT requirements with an award value in excess of $25,000 but not in excess of $500,000 ($1,000,000 in the case of construction).

(c) The Contracting Officer shall insert the clause at 952.226–72, Energy Policy Act Subcontracting Goals and Reporting Requirements, in contracts for Energy Policy Act requirements with an award value in excess of $500,000 ($1,000,000 in the case of construction.

(d) The Contracting Officer shall insert the provision at 952.226–73, Energy Policy Act Target Group Certification, in solicitations for Energy Policy Act procurements.

(e) The Contracting Officer shall insert the clause at FAR 52.219–14, Limitation on Subcontracting, in contracts for Energy Policy Act requirements with an entity from among the Energy Policy Act target groups.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for Part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

3. Subpart 952.2 is amended by adding sections 952.226–70, 952.226–71, 952.226–72, and 952.226–73 to read as follows:

Subpart 952.2—Text of Provisions and Clauses

* * * * *

Sec.

952.226–70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.

952.226–71 Utilization of Energy Policy Act target entities.

952.226–72 Energy Policy Act subcontracting goals and reporting requirements.

952.226–73 Energy Policy Act target group certification.

* * * * *

952.226–70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.

As prescribed in 926.7007(a), insert the following provision:

Subcontracting Goals Under Section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486) (XXX 199X)

(a) *Definition.—Energy Policy Act target groups,* as used in this provision means:

(1) An institution of higher education that meets the criteria of 34 CFR 602.2(a), and has a student enrollment that consists of at least 20 percent:

(i) Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof, or

(ii) American Indian, Eskimos, Aleuts, native Hawaiians, or any combination thereof.

(2) Institutions of higher learning determined by the Secretary of Education to be Historically Black Colleges and Universities pursuant to 34 CFR 608.2.

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Section 3021 of the Energy Policy Act (Pub. L. 102–486) establishes a goal of award of 10 percent of the contract dollar value for prime and subcontract Energy Policy Act awards to Energy Policy Act target groups.

(c) The offeror, if other than one of the three groups specified in paragraph (a) of this clause, shall submit, as part of its business management proposal or, if this solicitation requires the submission of a Small Business and Small Disadvantaged Business Subcontracting Plan, then as part of that plan, unless otherwise stated in the proposal preparation instructions, individual subcontracting goals for each of the three Energy Policy Act target groups. Individual goals shall be expressed in terms of a percentage of the offeror's proposed contract dollar value. In addition, the offeror shall provide a description of the nature of the effort to be performed by each of the three groups, and if possible, the identity of the contemplated subcontractor(s).

(d) Unless otherwise stated, such goals shall be considered in the evaluation of the Business Management Proposal as discussed in Section M of this solicitation or, if applicable, as part of the evaluation of the Small Business and Small Disadvantaged Business Subcontracting Plan.

(End of provision)

952.226–71 Utilization of Energy Policy Act target entities.

As prescribed in 926.7007(b), insert the following clause:

Utilization of Energy Policy Act Target Entities (XXX 199X)

(a) *Definition.—Energy Policy Act target groups,* as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 602.2(a), and has a student enrollment that consists of at least 20 percent:

(i) Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof, or populations for Hispanic Americans, or

(ii) American Indian, Eskimos, Aleuts, native Hawaiians, or any combination thereof.

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2.

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) *Obligation.* In addition to its obligations under the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts entities from among the Energy Policy Act target groups.

(End of clause)

952.226–72 Energy Policy Act subcontracting goals and reporting requirements.

As prescribed in 926.7007(c), insert the following clause:

Energy Policy Act Subcontracting Goals and Reporting Requirements (XXX 199X)

(a) *Definition.—Energy Policy Act target groups,* as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 602.2(a), and has a student enrollment that consists of at least 20 percent:

(i) Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof, or populations for Hispanic Americans, or

(ii) American Indian, Eskimos, Aleuts, native Hawaiians, or any combination thereof.

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2.

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) *Goals.* The contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities:

(1) Small business concerns controlled by socially and economically disadvantaged individuals or women: * * * percent;

(2) Historically Black colleges and universities: * * * percent;

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: * * * percent.

[* * * These goals will appear elsewhere in this contract.]

(c) *Reporting requirements.* (1) The contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12 month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the Contracting Officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

(End of clause)

952.226–73 Energy Policy Act target group certification.

As prescribed in 926.7007(e), insert the following provision:

Energy Policy Act Target Group Certification (XXX 199X)

(a) *Certification.* The offeror certifies that it is:

(1) _____ An institution of higher education that meets the requirements of 34 CFR 602.2(a), and has a student enrollment that consists of at least 20 percent:

(i) Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof, or populations for Hispanic Americans, or

(ii) American Indian, Eskimos, Aleuts, native Hawaiians, or any combination thereof; or

(2) _____ An institution of higher learning determined to be a Historically Black College and University by the Secretary of Education pursuant to 34 CFR 608.2; or

(3) _____ A small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that is owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637 (d)) or by a woman or women.

(b) By submission of an offer, the offeror agrees to provide to the Contracting Officer, upon request, evidence satisfactory to the Contracting Officer that the offeror is an entity from the Energy Policy Act target group identified.

(End of provision)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS [AMENDED]

4. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), and sec. 1534 of the Department of Defense Authorization Act, 1986, Public Law 99–145 (42 U.S.C. 7256a), as amended.

5. Part 970 is amended to add a new subpart 970.26, Other Socioeconomic Programs, consisting of section 970.2601, Implementation of Section 3021 of the Energy Policy Act of 1992, to read as follows:

Subpart 970.26—Other Socioeconomic Programs

970.2601 Implementation of section 3021 of the Energy Policy Act of 1992.

The goal requirements of section 3021 of the Energy Policy Act of 1992, and the attendant reporting requirements, shall be included in the subcontracting plan for the management and operating contract and shall apply to the annual dollar obligations specifically provided to the M&O contractor for competitively awarded subcontracts that fulfill Energy Policy Act requirements. See 970.7104–12(f).

Subpart 970.71—Management and Operating Contractor Purchasing

6. Section 970.7104–12 is amended by redesignating paragraph (f) as (g) and adding a new paragraph (f) as follows:

970.7104–12 Small business and small disadvantaged business concerns.

* * * * *

(f) Management and operating contractors may provide in their purchasing systems and methods for the application of preferences to Energy Policy Act target groups, taking into consideration the provisions of 926.70, Implementation of Section 3021 of the Energy Policy Act of 1992.

* * * * *

[FR Doc. 94–16701 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–56; Notice 1]

RIN 2127–AF01

Federal Motor Vehicle Safety Standards; Air Over Hydraulic Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice responds to a petition submitted by John Kourik. The notice proposes to amend the requirements in Standard No. 121, *Air Brake Systems,* to include a definition of air-over-hydraulic brake subsystems. The agency believes that this proposed definition would clarify the classification of vehicles equipped with these subsystems and thus eliminate the need for manufacturers to request, and the agency to respond to, interpretations about them.

DATES: *Comments.* Comments must be received on or before September 9, 1994.

Proposed Effective Date. The proposed amendments in this notice would become effective 30 days after publication of a final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Tinto, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5229).

SUPPLEMENTARY INFORMATION:

Background

Air-over-hydraulic brake systems typically consist of an air brake system from the treadle valve to an air brake chamber that provides the mechanical force to actuate a hydraulic-operated master cylinder. In turn, the hydraulic master cylinder actuates the brake shoes or pads. The air brake chamber unit combined with the hydraulic-operated master cylinder is called the "power cluster" and generally serves as the separating point between the air- and hydraulic-actuated portions of the air-over-hydraulic brake system.

Air-over-hydraulic brake systems are installed on about one percent of medium and heavy trucks sold in the United States. This percentage represents about 2,000 vehicles, most of which are Class 6 vehicles with gross vehicle weight ratings (GVWRs) between 19,501 and 26,000 pounds.

Federal motor vehicle safety standard No. 121, *Air brake systems,* currently defines "air brake system" to mean

a system that uses air as a medium for transmitting pressure or force from the driver control to the service brake, but does not include a system that uses compressed air or vacuum only to assist the driver in applying

SUMMARY: This notice responds to a petition submitted by John Kourik. The notice proposes to amend the requirements in Standard No. 121, *Air Brake Systems*, to include a definition of air-over-hydraulic brake subsystems. The agency believes that this proposed definition would clarify the classification of vehicles equipped with these subsystems and thus eliminate the need for manufacturers to request, and the agency to respond to, interpretations about them.

DATES: *Comments.* Comments must be received on or before September 9, 1994.

Proposed Effective Date. The proposed amendments in this notice would become effective 30 days after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Tinto, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5229).

SUPPLEMENTARY INFORMATION:

Background

Air-over-hydraulic brake systems typically consist of an air brake system from the treadle valve to an air brake chamber that provides the mechanical force to actuate a hydraulic-operated master cylinder. In turn, the hydraulic master cylinder actuates the brake shoes or pads. The air brake chamber unit combined with the hydraulic-operated master cylinder is called the "power cluster" and generally serves as the separating point between the air- and hydraulic-actuated portions of the air-over-hydraulic brake system.

Air-over-hydraulic brake systems are installed on about one percent of medium and heavy trucks sold in the United States. This percentage represents about 2,000 vehicles, most of which are Class 6 vehicles with gross vehicle weight ratings (GVWRs) between 19,501 and 26,000 pounds.

Federal motor vehicle safety standard No. 121, *Air brake systems*, currently defines "air brake system" to mean

> a system that uses air as a medium for transmitting pressure or force from the driver control to the service brake, but does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components. (49 CFR § 571.121)

Part 570, *Vehicle In Use Inspection Standards*, defines "Air-over-hydraulic brake system" to mean

> *a subsystem of the air brake* that uses compressed air to transmit a force from the driver control to a hydraulic brake system to actuate the service brakes. (49 CFR Part 570, emphasis added)

The italic portion of the definition of air-over-hydraulic subsystem explicitly states that an air-over-hydraulic brake subsystem means a subsystem of the air brake system.

In initially issuing Standard No. 121, NHTSA stated that "it should be noted that the term 'air brake system' as defined in the standard applies to the brake configuration commonly referred to as 'air-over-hydraulic,' in which failure of either medium can result in complete loss of braking ability." (36 FR 3817, February 27, 1971). The agency reiterated its position that an air-over-hydraulic brake system is subject to Standard No. 121, stating that "Standard No. 105a [Hydraulic Brake Systems] does not apply to vehicles equipped with 'air-over-hydraulic' systems, which remain within the purview of Standard No. 121 * * *." (37 FR 17970, September 2, 1972.) Moreover, NHTSA has issued several interpretations stating that a vehicle equipped with an air-over-hydraulic brake system must comply with the requirements in Standard No. 121.

NHTSA received a petition from Mr. John Kourik, requesting that the agency amend Standard No. 121 to specify that an air-over-hydraulic brake subsystem is subject to that Standard. The petitioner stated that such an amendment would avoid the need for manufacturers to request interpretations about air-over-hydraulic brake systems.

After reviewing the petition, NHTSA has decided to propose amending Standard No. 121 by expanding the current definition of air brake system to incorporate the definition of air-over-hydraulic brake subsystem. The agency notes that even though the definition of an air brake system currently includes a description of an air-over-hydraulic subsystem, it is not explicitly clear on the face of the standard that such a subsystem is classified as an air-braked system and that a vehicle equipped with such a subsystem would thus have to comply with the requirements in Standard No. 121. NHTSA believes that it would be appropriate to clarify the classification of air-over-hydraulic brake systems. By amending the definition of an air brake system to state explicitly that an air-over-hydraulic brake subsystem is classified as an air brake system, the agency would eliminate the need felt by some manufacturers to request interpretations regarding the standard's applicability to vehicles equipped with air-over-hydraulic brake subsystems.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulation Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have no mandatory effects. Instead, the proposal would only codify a longstanding agency interpretation. Therefore, this rulemaking would not have any cost impacts.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically would not qualify as small entities. This amendment would affect small businesses, small organizations, and small governmental units to the extent that these entities purchase vehicles. However, this amendment would have no significant cost impact on vehicles. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles would not be significantly affected by the proposed requirements. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed

rule would not significantly affect the human environment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 121, *Air Brake Systems*, in Title 49 of the Code of Federal Regulations at part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.121, S4 would be amended by revising the definition of "Air Brake System" and by adding the definition of "Air-over-hydraulic brake subsystem" to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S4 * * *

Air brake system means a system, including an air-over-hydraulic brake subsystem, that uses air as a medium for transmitting pressure or force from the driver control to the service brake, but does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components.

* * * * *

Air-over-hydraulic brake subsystem means a subsystem of the air brake that uses compressed air to transmit a force from the driver control to a hydraulic brake system to actuate the service brakes.

Issued on: July 5, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–16613 Filed 7–8–94; 8:45 am]

BILLING CODE 4910-59-P

---

49 CFR Part 571

[Docket No. 89–26; Notice 5]

RIN 2127–AF31

Federal Motor Vehicle Safety Standard; Convex Cross View Mirrors on School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition for rulemaking submitted by the Blue Bird Body Company (Blue Bird), NHTSA has decided to propose amending Standard No. 111, *Rearview Mirrors*, with respect to the field-of-view around school buses. Specifically, the agency is proposing to rescind a provision in the Standard so that certain driving mirrors would no longer be required to provide a field-of-view of the ground forward of cylinders by the bus's rear wheels to areas directly beneath the mirror surface. The agency is concerned that the current requirement may compromise safety either by making it more difficult for the driver to use the driving mirror when the bus is in motion as the result of having a more distorted image from a more convex mirror or by reducing the driver's direct line of sight as the result of creating a larger blind spot near the bus.

DATES: *Comment Date:* Comments must be received by August 10, 1994.

Effective Date: If adopted, the proposed amendments would become effective 30 days following publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–0247.

SUPPLEMENTARY INFORMATION:

I. Previous Agency Rulemakings

On December 2, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 111, *Rear-View Mirrors*, to ensure that a school bus provides an adequate field-of-view around a stopped school bus, thus reducing the risk of school buses striking students as the students are approaching the buses in order to board them or as they are leaving the buses. (57 FR 57015) The final rule requires each school bus to be equipped with two mirror systems on each side of the bus: (1) "System A," which consists of a flat driving mirror of unit magnification and typically a convex driving mirror; and (2) "System B," which consists of convex cross view mirrors for spotting students during the loading and unloading of students. The System A mirror system must provide, among other things, a view of the area of the ground extending rearward from the area below the mirror surface. The System B convex cross view mirrors must provide, among other things, a view of the ground that overlaps with the view of the ground provided by System A. System A and System B mirrors in combination are required to provide the driver with a view of the ground in front of and along both sides of the bus and extending at least 200 feet rearward from the driving mirror. This final rule took effect on December 2, 1993.

NHTSA again evaluated the field-of-view requirements for System A mirrors in response to a petition for reconsideration of the final rule submitted by Ford Motor Company (Ford). (58 FR 60399, November 16, 1993) Ford stated that requiring System A mirrors to provide a view of the ground immediately beneath them fails to meet the need for safety and may make impracticable the use of currently designed flat unit magnification mirrors. Ford requested that NHTSA amend the requirement in Standard No. 111 that System A mirrors provide an extended rearward view of the ground starting from the area beneath the mirror (S9.2(b)(1), (2)).

NHTSA decided not to adopt Ford's requested revision, because the agency was concerned that Ford's suggested System A mirrors might have had blind spots in the area of the ground directly below the driver's mirrors and forward of the rear edge of the side windows. The agency explained that it is permissible to use a combination of convex and flat mirrors to meet the System A requirements, and that the convex portion of the mirror system can be used for the view beneath the System A mirror. 57 FR at 57005.

II. Blue Bird Petition

Blue Bird Body Company (Blue Bird) petitioned the agency to amend Standard No. 111 with respect to the field-of-view requirements for System A mirrors. Blue Bird stated that to comply with the final rule's requirements, either a small radius of curvature convex mirror or a second convex mirror would have to be attached to the System A mirror. Blue Bird argued that either approach would be impracticable and inconsistent with motor vehicle safety. According to the petitioner, a small radius of curvature mirror would provide unreasonably small and distorted images that would be unsafe for driving, while a second convex mirror would create a larger blind spot for the driver. Blue Bird also stated that any convex mirror added to a system A mirror should have a radius of curvature of at least 35 inches, since convex mirrors with low radii of curvature would provide unreasonably small and distorted images thus causing problems for the school bus driver, while the vehicle is in motion.

Blue Bird stated that the requirement, as adopted, is inconsistent with previous agency statements about problems associated with using highly convex mirrors for driving. Blue Bird further stated that none of the discussions in the NPRM explaining the requirements for System A mirrors implies the need for driving mirrors to see the area directly below them. Blue

in response to a petition for reconsideration of the final rule submitted by Ford Motor Company (Ford). (58 FR 60399, November 16, 1993) Ford stated that requiring System A mirrors to provide a view of the ground immediately beneath them fails to meet the need for safety and may make impracticable the use of currently designed flat unit magnification mirrors. Ford requested that NHTSA amend the requirement in Standard No. 111 that System A mirrors provide an extended rearward view of the ground starting from the area beneath the mirror (S9.2(b)(1), (2)).

NHTSA decided not to adopt Ford's requested revision, because the agency was concerned that Ford's suggested System A mirrors might have had blind spots in the area of the ground directly below the driver's mirrors and forward of the rear edge of the side windows. The agency explained that it is permissible to use a combination of convex and flat mirrors to meet the System A requirements, and that the convex portion of the mirror system can be used for the view beneath the System A mirror. 57 FR at 57005.

II. Blue Bird Petition

Blue Bird Body Company (Blue Bird) petitioned the agency to amend Standard No. 111 with respect to the field-of-view requirements for System A mirrors. Blue Bird stated that to comply with the final rule's requirements, either a small radius of curvature convex mirror or a second convex mirror would have to be attached to the System A mirror. Blue Bird argued that either approach would be impracticable and inconsistent with motor vehicle safety. According to the petitioner, a small radius of curvature mirror would provide unreasonably small and distorted images that would be unsafe for driving, while a second convex mirror would create a larger blind spot for the driver. Blue Bird also stated that any convex mirror added to a system A mirror should have a radius of curvature of at least 35 inches, since convex mirrors with low radii of curvature would provide unreasonably small and distorted images thus causing problems for the school bus driver, while the vehicle is in motion.

Blue Bird stated that the requirement, as adopted, is inconsistent with previous agency statements about problems associated with using highly convex mirrors for driving. Blue Bird further stated that none of the discussions in the NPRM explaining the requirements for System A mirrors implies the need for driving mirrors to see the area directly below them. Blue Bird requested the agency immediately amend the wording of S9.2(b)(1) and S9.2(b)(2) to require that System A mirrors provide views of the area of the ground that extend rearward from the test cylinders near the rear axles to not less than 200 feet measured from the rear surface of the mirrors. As the result of such an amendment, the System A mirrors would no longer be required to provide a view of the ground between those cylinders and the ground beneath the mirror.

On January 13, 1994, agency personnel met with representatives of Blue Bird and Mirror Lite Company, a mirror manufacturer, to evaluate the field-of-view provided by various mirror configurations on school buses. At that meeting, Blue Bird stated that the installation and use of a driving mirror with a small radius of curvature may result in unsafe driving practices since it distorts images, thus making it difficult for a driver to judge the distance between his or her bus and following vehicles when the driver is attempting to change lanes. Similarly, Blue Bird alleged that, with a small radius of curvature mirror, other vehicles appear to approach suddenly (*i.e.*, images of oncoming vehicles at the rear of the bus that are very small and difficult to recognize suddenly appear greatly distorted as the vehicles get closer to the mirror).

Thomas Built Bus, another manufacturer of school buses, has contacted the agency to express its opposition to Blue Bird's petition. After spending significant amounts of time and money reconfiguring and retesting its buses and mirrors to comply with the final rule, Thomas Built believes that it would be inappropriate for the agency now to amend the standard to accommodate a specific school bus or mirror design of another manufacturer. Memoranda memorializing these contacts have been placed in the docket.

III. Agency Proposal

After reviewing the petition, NHTSA has decided to propose amending Standard No. 111 so that System A mirrors would no longer be required to provide a field-of-view of the ground forward of cylinders by the bus's rear wheels to areas directly beneath the mirror surface. The agency tentatively believes that the current requirement makes it necessary for school bus manufacturers to install either a small radius of curvature convex mirror or a second convex mirror. NHTSA is concerned that the current requirement may compromise safety either by making it more difficult for the driver to use the driving mirror when the bus is in motion as the result of having a more distorted image from a more convex mirror or by reducing the driver's direct line of sight as the result of creating a larger blind spot near the bus, based on Blue Bird's demonstration and other available information. The agency has tentatively concluded that the driveability problems resulting from requiring System A mirrors to have a view of the ground directly beneath them outweigh the safety benefits obtained by having a redundant view of this area. Specifically, the agency believes that the proposed amendment would not adversely affect pedestrian safety because System B mirrors would still be required to have a view of the ground directly below the System A mirrors, as well as the areas alongside the bus to the rear axles.

NHTSA did not anticipate that there would be a driveability problem associated with the System A mirror requirements when it issued the final rule. The requirement that the driving mirrors provide a view of the ground from beneath the mirror surface to 200 feet rearward was considered necessary because several pedestrian fatalities have occurred near the front entrance doors and the rear tires. In issuing the final rule, NHTSA was aware that the System B convex crossview mirror already provides a view of these areas. The agency's intention was to reduce the number of pedestrian fatalities by providing the school bus driver with the largest field-of-view possible. Redundant views of these areas seemed logical and the view of the test grid was comprehensive. However, the school buses with complying System A mirrors were not actually driven as part of the agency evaluation of the new mirror system requirements in connection with the final rule.

NHTSA requests comments about the potential safety problems discussed in this notice. To what extent does adding a second convex mirror to a System A mirror increase the blind spot? How significant a safety problem is caused by the increase in the blind spot? How significant a safety problem is caused by the driver's inability to use the entire mirror system, particularly with mirrors with a radius of curvature less than 35 inches, while operating a moving bus? If a manufacturer added a second convex mirror to a System A mirror system, couldn't the driver use the preexisting high radius of curvature driving mirror?

As to Blue Bird's request for the agency to "immediately issue" its requested change to the Standard, NHTSA has determined that it cannot legally accommodate Blue Bird's

request. The Administrative Procedure Act generally requires an agency to issue a notice for public comment before issuing a final rule such as a rescission of a requirement. (5 U.S.C 553) There is one narrow exception to this requirement which provides that an agency may forego notice-and-comment procedures upon a finding that such procedures are "impracticable, unnecessary, or contrary to the public interest." (5 U.S.C. 553(b)(B)) However, the courts have construed this exception very narrowly, emphasizing that:

> circumstances justifying reliance on this exception are "indeed rare" and will be accepted only after the court has "examine[d]" closely proffered rationales justifying the elimination of public procedures. *Council of Southern Mountains, Inc.* v. *Donovan*, 653 F.2d 573 (DC Cir. 1981) citing *American Federation of Government Employees* v. *Block*, 655 F.2d 1153 (DC Cir 1981).

This case law and previous agency experience indicate that foregoing notice-and-comment is a disfavored approach to be used only in emergency situations involving great urgency. The agency has determined that the circumstances surrounding Blue Bird's petition do not rise to this level of urgency.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice was not reviewed under E.Q. 12866, "Regulatory Planning and Review." NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures. The agency believes that a full regulatory evaluation is not required because the rule would have only minimal economic impacts. The proposal, if adopted, would not result in any cost savings or cost increases since to comply, the small radius of curvature mirrors would be replaced by larger radius of curvature mirrors.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. School bus manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new school buses. However, any impact on small entities from this action would be minimal since it would make a minimal change that would not impose additional costs. Accordingly, the agency has determined that preparation of a regulatory flexibility analysis is unnecessary.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), NHTSA notes that there are no requirements for information collection associated with this proposed rule.

D. National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicle.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 would be amended, as follows:

1. The authority citation for part 571 of title 49 would continue to read as follows:

> **Authority:** 15 U.S.C 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.111, S9.2, S9.2(a), S9.2(b), S9.2(b)(1), and S9.2(b)(2) would be revised to read as follows:

§ 571.111 Standard No. 111; rearview mirrors.

* * * * *

S9.2 System A shall be located with stable supports so that the portion of the system on the bus's left side, and the portion on its right side, each:

(a) Includes at least one mirror of unit magnification with not less than 322.60 square centimeters (50 square inches) of reflective surface; and

(b) Includes one or more mirrors which together provide, at the driver's eye location, a view of:

(1) For the mirror system on the right side of the bus, the entire top surface of cylinder N in Figure 2, and that area of the ground which extends rearward from cylinder N to a point not less than 60.93 meters (200 feet) from the mirror surface.

(2) For the mirror system on the left side of the bus, the entire top surface of cylinder M in Figure 2, and that area of the ground which extends rearward from cylinder M to a point not less than 60.93 meters (200 feet) from the mirror surface.

* * * * *

Issued on July 5, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–16614 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day and 12-Month Findings on a Petition to Reclassify Spikedace (Meda Fulgida) and Loach Minnow (Tiaroga Cobitis) From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces 90-day and 12-month findings for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The Service finds that the petitioners have presented substantial information indicating reclassification of spikedace and loach minnow from threatened to endangered may be warranted. The Service has previously found that reclassification of spikedace and loach minnow is warranted, but is precluded by work on other pending listing actions of higher priority on which expeditious progress is being made.

DATES: The findings announced in this document were made on June 30, 1994. Comments and materials may be submitted until further notice.

system on the bus's left side, and the portion on its right side, each:

(a) Includes at least one mirror of unit magnification with not less than 322.60 square centimeters (50 square inches) of reflective surface; and

(b) Includes one or more mirrors which together provide, at the driver's eye location, a view of:

(1) For the mirror system on the right side of the bus, the entire top surface of cylinder N in Figure 2, and that area of the ground which extends rearward from cylinder N to a point not less than 60.93 meters (200 feet) from the mirror surface.

(2) For the mirror system on the left side of the bus, the entire top surface of cylinder M in Figure 2, and that area of the ground which extends rearward from cylinder M to a point not less than 60.93 meters (200 feet) from the mirror surface.

* * * * *

Issued on July 5, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–16614 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day and 12-Month Findings on a Petition to Reclassify Spikedace (Meda Fulgida) and Loach Minnow (Tiaroga Cobitis) From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces 90-day and 12-month findings for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The Service finds that the petitioners have presented substantial information indicating reclassification of spikedace and loach minnow from threatened to endangered may be warranted. The Service has previously found that reclassification of spikedace and loach minnow is warranted, but is precluded by work on other pending listing actions of higher priority on which expeditious progress is being made.

DATES: The findings announced in this document were made on June 30, 1994. Comments and materials may be submitted until further notice.

ADDRESSES: Information, comments, or questions concerning the petitioned actions may be submitted to the State Supervisor, Arizona Ecological Services State Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85109. The petitions, findings, supporting information, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud at the above address (Telephone 602/379–4720).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires the Service to make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and notice of the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species involved. Section 4(b)(3)(B) requires that the Service make a further finding as to whether or not a petition presenting substantial information in support of listing, delisting, or reclassification of a species is (i) warranted, (ii) not warranted, or (iii) warranted but precluded by work on other pending listing actions of higher priority on which expeditious progress is being made. This finding is to be made within 12 months of receipt of the petition. Depending upon the conclusion of the finding, the Service must promptly publish in the **Federal Register** either a notice of the finding or a proposal on the petitioned action.

On September 22, 1993, the Department of the Interior received a petition, dated September 17, 1993, from David Hogan, Silver City, New Mexico; Peter Galvin, Silver City, New Mexico; the Greater Gila Biodiversity Project, Silver City, New Mexico; the Southwest Center for Biological Diversity, Phoenix, Arizona; and the Biodiversity Legal Foundation, Boulder, Colorado. The petitioners requested the Service to reclassify the spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*), from threatened to endangered. On November 10, 1993, the Service informed the petitioners that their correspondence had been accepted as a valid petition.

These 90-day and 12-month findings are based on published and unpublished biological and commercial information, inter- and intra-agency communications, and communications with experts. All information used in these findings is on file in the Service's Arizona Ecological Services State Office in Phoenix.

Spikedace and loach minnow are two small minnows which inhabit isolated stretches of stream in the upper reaches of the Gila River basin in Arizona and New Mexico (Minckley 1973, Propst *et al.* 1986, Propst *et al.* 1988, Propst and Bestgen 1991, Rinne 1991). Their historic range included most of the Gila River basin; however, both species have undergone dramatic declines since the late 1800's. These declines were due to water developments such as impoundment, diversion, channelization, and groundwater pumping; to watershed degradation and erosion caused by activities such as livestock grazing, timber harvest, road building, and recreation; and to effects of the introduction and spread of nonnative fish species. Both species live in relatively fast flowing water in perennial stream stretches.

Spikedace are presently known only from isolated stretches of the Gila River, Grant and Catron Counties, New Mexico; Aravaipa Creek, Graham and Pinal Counties, Arizona; Eagle Creek, Greenlee County, Arizona; and the Verde River, Yavapai County, Arizona. Loach minnow are presently known only from isolated stretches of the Gila River, Grant and Catron Counties, New Mexico; Aravaipa Creek, Graham and Pinal Counties, Arizona; the East Fork and mainstem White Rivers, Navajo and Gila Counties, Arizona; the San Francisco and Tularosa Rivers and Dry Blue Creek, Catron County, New Mexico; and the Blue and San Francisco Rivers and Campbell Blue Creek, Greenlee County, Arizona.

The spikedace was listed as a threatened species on July 1, 1986, and the loach minnow was listed as a threatened species on October 28, 1986. Critical habitat was designated for both species on March 8, 1994. A threatened species is defined by the Act as a species "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." An endangered species is defined by the Act as one "which is in danger of extinction throughout all or a significant portion of its range."

In 1991, the status of spikedace and loach minnow were reviewed as part of the 5-year review of the status of listed species as required by section 4(c)(2) of

the Act. That review showed that the status of the two species had become more precarious over the previous five years due to substantial increases in threats. As a result, the Service found that both species met the requirements for endangered status. The Desert Fishes Recovery Team and the Arizona Game and Fish Department have recommended reclassification to endangered for both species.

At the same time that threats to the species are increasing, new genetic information suggests a need to preserve each of the fragmented populations of spikedace and loach minnow in order to maintain as much genetic diversity in the species as possible (Tibbets 1992). Four of the five remaining loach minnow populations have been subjected to genetic analyses and each appears to be distinctive. Genetic analyses on the four remaining spikedace populations indicate that each of the four populations is quite different, with the Verde River population being most distinct.

Petition Findings

After reviewing the petition and all other pertinent information, the Service finds that the petition presents substantial information to indicate that reclassification to endangered may be warranted for spikedace and loach minnow. A positive 90-day finding generally requires that a status review be conducted on the petitioned species. However, as previously mentioned, a status review was conducted in 1991, resulting in a finding that endangered status is appropriate, but that higher-priority listing actions precluded the rulemaking process to reclassify the species.

Benefits to the spikedace and loach minnow from reclassification to endangered status would include recognition of the more precarious status of the species and increased penalties for conducting activities prohibited under section 9 of the Act. However, these benefits would be incremental to the protection under the Act already applied to these threatened species. This incremental protective increase is of lesser priority than providing protection to species with no current legal protection under the Act.

After reviewing all available scientific and commercial information on the spikedace and loach minnow and their status and after consideration of other listing actions and their priorities, the Service finds that the reclassification of spikedace and loach minnow to endangered is warranted, but is precluded by work on pending listing actions of higher priority on which expeditious progress is being made.

References Cited

Minckley, W.L. 1973. Fishes of Arizona. Arizona Game and Fish Department. Phoenix, AZ. 293 pp.

Propst, D.L. and K.R. Bestgen. 1991. Habitat and biology of the loach minnow. Copeia 1991(1):29–38.

Propst, D.L., K.R. Bestgen, and C.W. Painter. 1986. Distribution, status, biology, and conservation of the spikedace (*Meda fulgida*) in New Mexico. U.S. Fish and Wildlife Service Endangered Species Report No. 15. 93 pp.

Propst, D.L., K.R. Bestgen, and C.W. Painter. 1988. Distribution, status, biology, and conservation of the loach minnow, *Tiaroga cobitis* Girard, in New Mexico. U.S. Fish and Wildlife Service Endangered Species Report No. 17. 75 pp.

Rinne, J.N. 1991. Habitat use by spikedace, *Meda fulgida* (Pisces: Cyprinidae) in southwestern streams with reference to probable habitat competition by red shiner, *Notropis lutrensis* (Pisces:Cyprinidae). Southwestern Naturalist 37(2):117–125.

Tibbets, C.A. 1992. Allozyme variation in populations of the spikedace (*Meda fulgida*) and the loach minnow (*Tiaroga cobitis*). Proceedings of the Desert Fishes Council 24:37.

Author

The primary author of this document is Sally Stefferud of the Arizona Ecological Services State Office, Phoenix (see ADDRESSES section).

Authority: The authority for this action is 16 U.S.C. 1531–1544.

Dated: June 30, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–16642 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–55–P

---

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of a Status Review for a Petition To List the Plant Lathyrus Grimesii (Grimes Vetchling)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the plant *Lathyrus grimesii* (Grimes vetchling) under the Endangered Species Act of 1973, as amended (Act). The petition was found to present substantial information indicating the requested action may be warranted. The Service requests information regarding the status of this species.

DATES: The finding announced in this notice was made on June 27, 1994. Comments and information concerning this finding must be submitted by August 10, 1994 to be considered in the 12-month finding for this petition.

ADDRESSES: Data, information, comments, or questions concerning this finding should be sent to the Field Supervisor, Nevada Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Room 125, Reno, Nevada 89502. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Janet J. Bair, Botanist, at the above Nevada Field Office address (702/784–5227).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. This finding is based on information contained in the petition and otherwise available to the Service at the time the finding is made. If the finding is that substantial information was presented, the Service also is required to promptly commence a review of the status of the species involved, if one has not already been initiated under the Service's internal candidate assessment process.

On May 19, 1993, the Service received a petition dated May 10, 1993, from Ms. Mary Pat Matheson, Director of the University of Utah's Red Butte Garden and Arboretum, to list *Lathyrus grimesii* as an endangered species using the emergency provisions of the Act. The Red Butte Arboretum is a Participating Institution of the Missouri Botanic Garden's Center for Plant Conservation, a network of 20 botanical gardens and arboreta dedicated to the conservation of rare and endangered plants in the United States.

A member of the pea family (Fabaceae), *L. grimesii* is a prostrate perennial herb. The distribution and habitat of the species are limited. It is an endemic species, known only from the central portion of the Independence Mountains of Elko County, Nevada. *Lathyrus grimesii* is generally restricted to steep, barren slopes with stony-clay talus substrates at high (7,000 to 8,000 foot) elevations. The species was originally collected in vegetative condition in 1941, but was not recognized as a previously undescribed species until it was collected in reproductive condition in 1980. The technical description of *Lathyrus grimesii* was published in 1989 (Cronquist *et al.* 1989).

At the time the petition was submitted, *L. grimesii* was known from a 1-square mile area in the Dorsey Creek drainage of the Independence Mountains. More recent information indicates that the species' distribution is more extensive. Aerial surveys conducted in August 1993 resulted in new findings north of the Dorsey Creek drainage, in the following drainages and tributaries: Deep Creek, Ott Creek, Sheep Creek, Frost Creek, and Cap Winn Creek; and in the Bull Run Mountains, located west of the Independence Mountains (John C. Parks; Independence Mining Company, Elko, Nevada, in litt.). *Lathyrus grimesii* is located on appropriate substrates scattered within an area of approximately 50 square miles to the north and northwest of the Dorsey Creek drainage, and several isolated populations are located outside of this area.

The petition and accompanying documentation state that the species is subject to impacts by proposed mineral exploration and potential open pit heap leach gold mine development. Mine exploration roads have been constructed through existing populations. With plants occurring on steep, barren slopes at high elevations, disturbance due to further mining exploration and potential development could produce long term destabilization and erosion of slope habitat which would reduce or eliminate populations of *L. grimesii*. The toxic effects of open pit heap leach gold mine development also have the potential to further reduce populations.

Lathyrus grimesii is not currently protected by any regulatory mechanism, as it is not included on the U.S. Forest Service "Sensitive" or State of Nevada "Critically Endangered" species lists. The available information suggests that the species' restricted range and small population size increase the chance of extirpation resulting from stochastic (i.e.

A member of the pea family (Fabaceae), *L. grimesii* is a prostrate perennial herb. The distribution and habitat of the species are limited. It is an endemic species, known only from the central portion of the Independence Mountains of Elko County, Nevada. *Lathyrus grimesii* is generally restricted to steep, barren slopes with stony-clay talus substrates at high (7,000 to 8,000 foot) elevations. The species was originally collected in vegetative condition in 1941, but was not recognized as a previously undescribed species until it was collected in reproductive condition in 1980. The technical description of *Lathyrus grimesii* was published in 1989 (Cronquist *et al.* 1989).

At the time the petition was submitted, *L. grimesii* was known from a 1-square mile area in the Dorsey Creek drainage of the Independence Mountains. More recent information indicates that the species' distribution is more extensive. Aerial surveys conducted in August 1993 resulted in new findings north of the Dorsey Creek drainage, in the following drainages and tributaries: Deep Creek, Ott Creek, Sheep Creek, Frost Creek, and Cap Winn Creek; and in the Bull Run Mountains, located west of the Independence Mountains (John C. Parks; Independence Mining Company, Elko, Nevada, in litt.). *Lathyrus grimesii* is located on appropriate substrates scattered within an area of approximately 50 square miles to the north and northwest of the Dorsey Creek drainage, and several isolated populations are located outside of this area.

The petition and accompanying documentation state that the species is subject to impacts by proposed mineral exploration and potential open pit heap leach gold mine development. Mine exploration roads have been constructed through existing populations. With plants occurring on steep, barren slopes at high elevations, disturbance due to further mining exploration and potential development could produce long term destabilization and erosion of slope habitat which would reduce or eliminate populations of *L. grimesii*. The toxic effects of open pit heap leach gold mine development also have the potential to further reduce populations.

Lathyrus grimesii is not currently protected by any regulatory mechanism, as it is not included on the U.S. Forest Service "Sensitive" or State of Nevada "Critically Endangered" species lists. The available information suggests that the species' restricted range and small population size increase the chance of extirpation resulting from stochastic (i.e. random) or localized events such as rock slides, erosion, disease, toxic effects of contaminant spills, or predation.

The Service has reviewed the petition and other information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds that substantial information has been presented indicating that listing of *Lathyrus grimesii* may be warranted. This species was included as a category 2 candidate for listing in the notice of review published in the **Federal Register** on September 30, 1993 (58 FR 51144). Although a status review of this species was initiated upon its inclusion in category 2, the Service hereby announces its formal review of the species' status pursuant to this 90-day petition finding. The Service requests any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of *L. grimesii*. Of particular interest is information regarding (1) The existence and status of additional populations, (2) environmental factors determining distribution, (3) pollinators, (4) toxic effects of cyanide on the species, and (5) genetic variability in known populations.

References Cited

Cronquist, A., A.H. Holmgren, N.H. Holmgren, J.L. Reveal, and P.K.Holmgren. 1989. Intermountain Flora—Vascular Plants of the Intermountain West, U.S.A. Volume Three, Part B—Fabales by R.C. Barneby. New York Botanical Garden, Bronx, New York. 279 pp.

Author

This notice was prepared by Janet J. Bair, Nevada Field Office (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: June 27, 1994.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94–16644 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–55–P

---

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day and 12-Month Findings for a Petition To List 83 Mollusc Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces 90-day and 12-month findings on a petition to list 83 mollusc species under the Endangered Species Act of 1973, as amended (Act). After careful assessment of the best scientific and commercial information available regarding the present and future threats facing the petitioned species, the Service either finds that the petition did not present substantial information indicating that the requested action may be warranted (90-day finding) or determines that the petitioned action is not warranted at this time (12-month finding).

DATES: The finding announced in this document was made on June 28, 1994. Comments and materials related to this petition finding may be submitted until further notice to the Assistant Regional Director for Ecological Services at the address listed below.

ADDRESSES: Data, information, comments, or questions concerning the status of the petitioned species described below should be submitted to the Assistant Regional Director for Ecological Services, U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Chief, Division of Listing and Recovery, at the address above or 503/231–6131.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Service finds that a petition presents substantial information indicating the requested action may be warranted, then the Service initiates a status review on that species. Section 4 (b)(3)(b) of the Act requires that for any petition that presents substantial scientific and

commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals to list, delist, or reclassify species. Such 12-month findings are to be published promptly in the **Federal Register**.

The Service has made a negative 90-day finding for 75 noncandidate species referenced in a petition to list 83 mollusc species as threatened or endangered. The Service has made a positive 90-day finding, but not warranted 12-month finding for the eight category 2 candidate species contained in the petition to list 83 mollusc species as threatened or endangered. The Service has been assessing the status of these eight species since their designation as category 2 candidates. Minimal new information was received or available to the Service beyond that used to assign these species to category 2. As a result, the Service determines that the petitioned action is not warranted at this time. These eight species will be retained in category 2. This notice also serves to announce a negative 90-day finding on a previous petition to list the giant Columbia River limpet (short-faced lanx) (*Fisherola nuttalli*) as threatened or endangered.

On August 18, 1993, the Service received a petition from the Oregon Natural Resources Council (ONRC) to list 83 mollusc species as threatened or endangered. The petition was dated August 16, 1993. The document used to support the petition was the report "Mollusc Species of Special Concern within the Range of the Northern Spotted Owl" (Frest and Johannes 1993) prepared for the President's Proposed Forest Plan. On November 6, 1987 the Service received a petition from Dr. Peter Bowler of Laguna Beach, California, to list the giant Columbia River limpet as endangered. The giant Columbia River limpet, or short-faced lanx, was one of the species included in the ONRC petition and was evaluated along with the other petitioned species.

The petition involves 36 land snails, 7 slugs, 37 freshwater snails, and 3 freshwater clams. The species are found primarily in the states of Washington, Oregon, California, and Idaho. Most of these species are associated with late-successional forests or riparian areas.

The Service's finding is based on information in the petition, references in the petition, Service files, and consultations with malacologists, Service, and other Federal and State personnel. All documents are on file in the Service's Regional Office in Portland, Oregon.

Adequate rangewide surveys have not been completed for any of the species, except for the Trinity bristlesnail (*Monadenia setosa*) (a category 2 candidate). The Service also lacks evidence of specific threats throughout the ranges of any of the petitioned taxa, especially any threat associated with a population decline. Many of the species covered by this petition may be sensitive to ecological perturbations resulting from the impacts of human activities. However, information was not presented to show correlations between the species' ecological sensitivity and any declines in population numbers. The taxonomic distinctiveness or validity of many of the species has not been determined.

The Service encourages all interested parties to investigate the population status of and threats to all the species considered in this petition. The Service also encourages all interested parties to submit information that may provide additional specific information on the status of these species or specific threats to their survival.

The petition has been reviewed by staff at the Regional Office in Portland, Oregon. The Service finds that the listing of the eight category 2 candidates (Dalles sideband (*Monadenia fidelis minor*), rocky coast sideband (*Monadenia fidelis pronotis*), Trinity bristlesnail, Shasta sideband (*Monadenia troglodytes*), Karok hesperian (*Vespericola karokorum*), Columbia pebblesnail (*Fluminicola columbiana*), California floater (*Anodonta californiensis*), montane peaclam (*Pisidium ultramontanum*) is not warranted at this time. The Service finds that the petitioner has not presented substantial information indicating that listing of the remaining 75 species may be warranted (Hooded lancetooth (*Ancotrema voyanum*), Puget oregonian (*Cryptomastix devia*), Columbia oregonian (*Cryptomastix hendersoni*), mountain shoulderband (*Helminthoglypta arrosa monticola*), Oregon shoulderband (*Helminthoglypta hertleini*), intermediate shoulderband (*Helminthoglypta intercessa*), Klamath shoulderband (*Helminthoglypta talmadgei*), California megomphix (*Megomphix californicus*), Oregon megomphix (*Megomphix hemphilli*), *Monadenia callipeplus* (no common name), short-crested sideband (*Monadenia cristulata*), traveling sideband (*Monadenia fidelis celeuthia*), green sideband (*Monadenia fidelis flava*), *Monadenia fidelis klamathica* (no common name), tawny sideband (*Monadenia fidelis leonina*), yellow-base sideband (*Monadenia fidelis ochromphalus*), Salmon River sideband (*Monadenia fidelis salmonensis*), Wheel sideband (*Monadenia rotifer*), Scott River sideband (*Monadenia scottiana*), Chace sideband (*Monadenia chaceana*), Klamath sideband (*Monadenia churchi*), Chelan mountainsnail (*Oreohelix* n. sp. 1), Crater Lake tightcoil (*Pristiloma arcticum crateris*), crowned tightcoil (*Pristiloma pilsbryi*), Hanna spot (*Punctum hannai*), Shasta chaparral (*Trilobopsis roperi*), Tehama chaparral (*Trilobopsis tehamana*), Hoko vertigo (*Vertigo* n. sp. 1), Dalles hesperian (*Vespericola depressa*), *Vespericola eritrichius* (no common name), large hesperian (*Vespericola euthales*), Marin hesperian (*Vespericola marinensis*), Pressley hesperian (*Vespericola pressleyi*), Shasta hesperian (*Vespericola shasta*), Sasquatch hesperian (*Vespericola* n. sp. 1), Reeves Bar hesperian (*Vespericola* n. sp. 2), Klamath hesperian (*Vespericola* n. sp. 3), Siskiyou hesperian (*Vespericola sierrana*), evening fieldslug (*Deroceras hesperium*), Burrington jumping-slug (*Hemphillia burringtoni*), warty jumping-slug (*Hemphillia glandulosa*), Malone jumping-slug (*Hemphillia malonei*), panther jumping-slug (*Hemphillia pantherina*), blue-grey tail-dropper (*Prophysaon coeruleum*), shortface lanx (*Fisherola nuttalli*), *Klamath pebblesnail (Fluminicola* n. sp. 1), tall pebblesnail (*Fluminicola* n. sp. 2), nerite pebblesnail (*Fluminicola* n. sp. 4) , toothed pebblesnail (*Fluminicola* n. sp. 5), diminutive pebblesnail (*Fluminicola* n. sp. 6), topaz pebblesnail (*Fluminicola* n. sp. 7), Fall Creek pebblesnail (*Fluminicola* n. sp. 8), lunate pebblesnail (*Fluminicola* n. sp. 9), nugget pebblesnail (*Fluminicola* seminalis), Great Basin rams-horn (*Helisoma newberryi*), scalloped juga (*Juga acutifilosa*), topaz juga (*Juga occata*), Dalles juga (*Juga hemphilli dallesensis*) , brown juga (*Juga* n. sp. 1), Chace juga (*Juga chacei*), *Juga* n. sp. 1 (no common name), *Juga* n. sp. 2 (no common name), *Juga* n. sp. 3 (no common name), redwood juga (*Juga orickensis*), highcap lanx (*Lanx alta*), scale lanx (*Lanx klamathensis*), kneecap lanx (*Lanx patelloides*), rotund lanx (*Lanx subrotundata*), Columbia duskysnail (*Lyogyrus* n. sp. 1), Washington duskysnail (*Lyogyrus* n. sp. 2), canary duskysnail (*Lyogyrus* n. sp. 3), Klamath duskysnail (*Lyogyrus* n. sp. 4), nodose duskysnail (*Lyogyrus* n. sp. 5), rotund physa (*Physella (Physella) columbiana*), Archimedes pyrg (*Pyrgulopsis archimedis*), Crooked Creek springsnail (*Pyrgulopsis intermedia*), Klamath rams-horn (*Vorticifex klamathensis*), Sinitsin rams-horn (*Vorticifex klamathensis sinitsini*), knobby rams-horn (*Vorticifex* n. sp.1), nerite rams-horn (*Vorticifex neritoides*), and the Willamette floater (*Anodonta wahlametensis*). This finding is based on the scientific and commercial information contained in the petition, referenced in the petition, and otherwise available to the Service at this time. If information becomes available indicating that listing as endangered or threatened is appropriate, the Service would propose to list any such mollusc.

References Cited

Frest, T. and E. Johannes. 1993. Mollusc species of concern within the range of the northern spotted owl. Deixis Consultants. Seattle, WA. 98 pp. plus addendum.

Author

The primary author of this notice is Allan Pfister, Division of Listing and Recovery, U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181; (503) 231–6131.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 28, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–16650 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Notice of Six-Month Extension and Reopening of Public Comment Period on the Proposed Rule To List the Northern Copperbelly Water Snake (Nerodia Erythrogaster Neglecta) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension and reopening of comment period on proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the deadline to determine whether the northern copperbelly water snake (*Nerodia erythrogaster neglecta*) is a threatened species is being extended to allow time for additional field surveys

klamathensis), Sinitsin rams-horn (*Vorticifex klamathensis sinitsini*), knobby rams-horn (*Vorticifex* n. sp.1), nerite rams-horn (*Vorticifex neritoides*), and the Willamette floater (*Anodonta wahlametensis*). This finding is based on the scientific and commercial information contained in the petition, referenced in the petition, and otherwise available to the Service at this time. If information becomes available indicating that listing as endangered or threatened is appropriate, the Service would propose to list any such mollusc.

References Cited

Frest, T. and E. Johannes. 1993. Mollusc species of concern within the range of the northern spotted owl. Deixis Consultants. Seattle, WA. 98 pp. plus addendum.

Author

The primary author of this notice is Allan Pfister, Division of Listing and Recovery, U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181; (503) 231–6131.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 28, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–16650 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Notice of Six-Month Extension and Reopening of Public Comment Period on the Proposed Rule To List the Northern Copperbelly Water Snake (Nerodia Erythrogaster Neglecta) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension and reopening of comment period on proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the deadline to determine whether the northern copperbelly water snake (*Nerodia erythrogaster neglecta*) is a threatened species is being extended to allow time for additional field surveys and data analysis. This species now persists in isolated populations in southern Michigan and adjacent Indiana and Ohio, as well as southern Indiana, southeastern Illinois, and adjacent Kentucky. It occurs in lowland swamps and adjacent woodland and upland areas. During prior comment periods, new questions were raised by herpetologists and State conservation departments as to the merits of including intergrades in the listing and the sufficiency of information on the boundaries between intergrade and pure populations. The comment period on the proposal is reopened.

DATES: The new deadline for determining whether the northern copperbelly water snake is a threatened species is February 18, 1995. The comment period now closes November 1, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David Hudak, Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Field Office, 620 S. Walker Street, Bloomington, Indiana 47403–2121 (phone 812/334–4261; fax 812/334–4273).

SUPPLEMENTARY INFORMATION:

Background

The northern copperbelly water snake was proposed for listing as a threatened species due to strong evidence that its range and numbers have declined dramatically, primarily as a result of the destruction of its habitat, and that the threats to the habitat and to the snakes are continuing.

The **Federal Register** notice proposing the northern copperbelly water snake for classification as a threatened species was published on August 18, 1993 (58 FR 43860). During the subsequent comment period, the Service received several letters from herpetologists and State conservation departments regarding intergradation between *N. e. neglecta* and *N. e. flavigaster* (yellow-bellied water snake). The latter subspecies occurs in southwestern Illinois and in the western portions of Kentucky and Tennessee, and also is widespread in the Gulf Coast States and the southern Atlantic Coast States.

Where the ranges of the two subspecies come into contact there are numerous individuals having characteristics intermediate between the two subspecies. These individuals are referred to as intergrades. There are also localized populations which are largely composed of intergrades known as intergrade populations.

Some of the concerns that were expressed during the comment period dealt with two inter-related issues: (1) the merits of including intergrade populations and/or intergrade individuals in the listing and thus giving them protection as threatened, and (2) the insufficiency of currently available information on the locations of boundaries between intergrade populations and "pure" populations of *N. e. neglecta*. These concerns are particularly acute in southern Illinois where the Department of Conservation believes that additional surveys are critical to an adequate understanding of the status of *N. e. neglecta* and its relationship to *N. e. flavigaster*. Results from these surveys are expected to be placed on review at the Service Office listed in the **ADDRESSES** section, when they become available.

The Endangered Species Act allows an extension of the normal 1-year deadline for taking final actions on a proposal to list a species for up to 6 months when there is a "substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination." The Service believes that there is substantial disagreement regarding the status of *N. e. neglecta*.

In order to collect additional data on the extent and locations of intergrade populations, to resolve questions regarding the most appropriate taxonomic entity to protect under the Act, and to obtain current data on the status of *N. e. neglecta* in Illinois, the Service is extending the deadline for the listing determination until February 18, 1995.

The comment period on the proposed rule originally closed October 18, 1993. It was reopened March 22 and closed April 22, 1994. The Service is reopening the comment period until November 1, 1994. Written comments should be submitted to the Service office in the Addresses section.

Author

The primary author of this notice is Ronald L. Refsnider, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (phone 612–725–3276; fax 612–725–3526).

Authority: The Authority for this action is: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544;

16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Sta. 3500; unless otherwise noted.

Dated: June 30, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–16643 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[I.D. 070194C]

Atlantic Billfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Date change for scoping meeting, and extension of comment period.

SUMMARY: NMFS previously announced scoping meetings for Atlantic billfish to receive comments concerning the Atlantic billfish fishery from fishery participants and other members of the public regarding a definition of overfishing, reducing fishing mortality, reporting requirements, and other issues. NMFS announces a change of meeting date for a previously announced billfish scoping meeting and extends the comment period for the scoping meetings.

DATES: Written scoping comments must be received by October 1, 1994. The scoping meeting originally announced for August 15, 1994, in Morehead City, NC, will be held on August 3, 1994.

ADDRESSES: Written scoping comments should be sent to Richard B. Stone, Chief, Highly Migratory Species Management Division (F/CM4), Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Room 14853, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Atlantic Billfish Scoping Comments". Input for the issues/options statement may also be provided to the same address, or by sending a fax to C. Michael Bailey at 301–713–1035.

The scoping meeting will be held at the following location:

August 3, 1994, Morehead City, NC, 7 to 10 p.m.

Carteret Community College
Joslyn Hall
3505 Arendale Street
Morehead City, NC 28557–2989.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347 or fax, 301–713–1035.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

NMFS previously announced scoping meetings on February 9, 1994 (59 FR 5978), March 1, 1994 (59 FR 9720), April 5, 1994 (59 FR 15882) and June 16, 1994 (59 FR 30903). Depending upon the interest of the audience, the Meeting Officer may increase the length of the meeting. Additional meetings will be announced at a later date. NMFS is also soliciting written comments on issues of concern in this fishery. NMFS requests input at any time during the scoping process, by mail or by fax. An issues/options statement was prepared for the initial hearing and revised for subsequent hearings, based on written and oral comments. This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Richard B. Stone by July 29, 1994 (see **ADDRESSES**).

Dated: July 6, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16714 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–22–F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Special Provision for Frozen Concentrated Orange Juice Under the North American Free Trade Agreement Implementation Act

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of determination of existence of price conditions necessary for imposition of temporary duty on frozen concentrated orange juice from Mexico.

SUMMARY: Pursuant to Section 309(a) of the North American Free Trade Agreement Implementation Act ("NAFTA Implementation Act"), this is a notification that for 5 consecutive business days the daily price for frozen concentrated orange juice was less than the trigger price.

FOR FURTHER INFORMATION CONTACT: Joseph Somers, Horticultural and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1049 or telephone at (202) 720–2974.

SUPPLEMENTARY INFORMATION: The NAFTA Implementation Act authorizes the imposition of a temporary duty (snapback) for Mexican frozen concentrated orange juice when certain conditions exist. Mexican articles falling under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTS) are subject to the snapback duty provision.

Under Section 309(a) of the NAFTA Implementation Act, certain price conditions must exist before the United States can apply a snapback duty on imports of Mexican frozen concentrated orange juice. In addition, such imports must exceed specified quantities before the snapback duty can be applied. The price conditions exist when for each period of 5 consecutive business days the daily price for frozen concentrated

Notices

Federal Register
Vol. 59, No. 131
Monday, July 11, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Special Provision for Frozen Concentrated Orange Juice Under the North American Free Trade Agreement Implementation Act

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of determination of existence of price conditions necessary for imposition of temporary duty on frozen concentrated orange juice from Mexico.

SUMMARY: Pursuant to Section 309(a) of the North American Free Trade Agreement Implementation Act ("NAFTA Implementation Act"), this is a notification that for 5 consecutive business days the daily price for frozen concentrated orange juice was less than the trigger price.

FOR FURTHER INFORMATION CONTACT: Joseph Somers, Horticultural and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1049 or telephone at (202) 720–2974.

SUPPLEMENTARY INFORMATION: The NAFTA Implementation Act authorizes the imposition of a temporary duty (snapback) for Mexican frozen concentrated orange juice when certain conditions exist, Mexican articles falling under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTS) are subject to the snapback duty provision.

Under Section 309(a) of the NAFTA Implementation Act, certain price conditions must exist before the United States can apply a snapback duty on imports of Mexican frozen concentrated orange juice. In addition, such imports must exceed specified quantities before the snapback duty can be applied. The price conditions exist when for each period of 5 consecutive business days the daily price for frozen concentrated orange juice is less than the trigger price.

For the purpose of this provision, the term "daily price" means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary of Agriculture (the "Exchange"), for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term "business day" means a day in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term "trigger price" means the average daily closing price of the Exchange for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

Price conditions no longer exist when the Secretary determines that for a period of 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price.

Whenever the price conditions are determined to exist or to cease to exist the Secretary is required to immediately notify the Commissioner of Customs of such determination. Whenever the determination is that the price conditions exist and the quantity of Mexican articles of frozen concentrated orange juice entered exceeds (1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002, or (2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007, the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable quantity limitation is reached and before the date of publication in the **Federal Register** of the determination that the price conditions have ceased to exist shall be the lower of—(1) the column 1—General rate of duty in effect for such articles on July 1, 1991; or (2) the column 1—General rate of duty in effect on that day. For the purpose of this provision, the term "entered" means entered or withdrawn from warehouse for consumption in the customs territory of the United States.

Issued at Washington, DC the 28th day of June, 1994.

Richard B. Schroeter,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 94–16638 Filed 7–8–94; 8:45 am]
BILLING CODE 3410–10–M

Forest Service

Committee of State Foresters

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Committee of State Foresters will meet in Washington, DC, on August 10, 1994, from 10 a.m. to 2 p.m. The Committee is comprised of 7 members of the Executive Committee of the National Association of State Foresters. The meeting provides an opportunity for Committee members to consult with the Secretary of Agriculture regarding the administration and application of various parts of the Cooperative Forestry Assistance Act of 1978. The Assistant Secretary for Natural Resources and Environment will chair this meeting. The meeting is open to public attendance; however, participation is limited to Forest Service personnel and Committee members. Persons who wish to bring cooperative forestry matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

DATES: The meeting will be held August 10, 1994.

ADDRESSES: The meeting will be held at the U.S. National Arboretum, 3501 New York Avenue NE., Washington, DC, in the Administration Building Auditorium. Members of the public who wish to attend must register in advance with Jerilyn Levi, Office of the Deputy Chief for State and Private Forestry.

Send written comments to Joan M. Comanor, Executive Secretary, Committee of State Foresters, c/o Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1657.

FOR FURTHER INFORMATION CONTACT: Jerilyn Levi, Office of the Deputy Chief for State and Private Forestry, Forest Service, (202) 205–1041.

Dated: July 5, 1994.
Joan M. Comanor,
Deputy Chief.
[FR Doc. 94–16659 Filed 7–8–94; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: 1995 Census Test – Field Verification Operation.
Form Number(s): DG–121(ADP), DG–131(ADP).
Agency Approval Number: None.
Type of Request: New collection.
Burden: 310 hours.
Number of Respondents: 6,190.
Avg Hours Per Response: 3 minutes.
Needs and Uses: A critical component in conducting a census is a current and accurate address list of all living quarters. The Census Bureau will use two primary methods to create and update its address files: precanvass in urban areas (enumerators systematically canvass census blocks to verify or update addresses on the census address list) and prelist in rural areas (enumerators systematically canvass census blocks to obtain the physical location address and/or the mailing address of all structures where people live or could live). In addition to these methods the Census Bureau will receive additional address update information from outside sources including the United States Postal Service, local governments, and the "Be Counted!" campaign. The added addresses from these outside sources will be field verified to confirm their existence before being added to the census address list. The 1995 Census Test – Field Verification Operation will help verify the accuracy and completeness of the Census Bureau's address control file that we will use for the delivery of census test questionnaires.

Affected Public: Individuals or households.
Frequency: One time only.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 1994.
Gerald Taché,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 94–16713 Filed 7–8–94; 8:45 am]
BILLING CODE 3510–07–F

International Trade Administration

[A–570–831]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Fresh Garlic From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
EFFECTIVE DATE: July 11, 1994.
FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482–3464.

Preliminary Determination

We preliminarily determine that fresh garlic from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

Case History

Since the notice of initiation on February 22, 1994 (59 FR 9470, February 28, 1994), the following events have occurred.

On March 17, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary determination.

Departmental Efforts to Obtain Information

During March and April 1994, the Department requested information relating to producers/exporters of the subject merchandise in the PRC, as follows:

- On March 3, 1994, we sent an abbreviated section A questionnaire to China's Ministry of Foreign Trade and Economic Cooperation (MOFTEC);
- On March 4, 1994, we sent a cable to the American Embassy in Beijing;
- On March 11, 1994, we sent a cable to the American Embassy in Tokyo, and to the U.S. consulate in Hong Kong; and
- On April 7, 1994, we sent an abbreviated section A questionnaire to the China Chamber of Commerce of Imports & Exports of Foodstuffs, Native Produce, and Animal By-Products (China Chamber)

Having received no response to our initial inquiries, follow-up requests for information were made as follows:

- On April 7, 1994, to MOFTEC; and
- On April 15, 1994, to the American Embassies in Beijing and Tokyo, and to the U.S. consulate in Hong Kong.

Respondents and Status of Questionnaires

On May 11 and 12, 1994, the Department received information from MOFTEC and the American Embassy in Beijing, respectively, containing the names and addresses of 40 producers/exporters of the subject merchandise in the PRC. Based on an analysis of ships' manifest data (PIERS), the Department estimated that the named respondents accounted for approximately 40 percent of exports of the subject merchandise to the United States during the period of investigation. Consequently, on May 18, 1994, the Department sent 40 antidumping questionnaires to the named firms, with additional copies sent to MOFTEC and the China Chamber.

Following an entry of appearance by counsel for a previously unnamed producer/exporter, the Department sent a questionnaire to this additional firm on May 31, 1994. Finally, at the request of a second previously unnamed producer/exporter, the Department sent a questionnaire to this additional firm on June 21, 1994.

Other Events

On June 2, 1994, the Department issued a decision memorandum which stated that we would not postpone our preliminary determination.

Based on reasonably supported allegations submitted by petitioner on June 10, 1994, the Department initiated an investigation on June 14, 1994, of whether critical circumstances exist with respect to imports of fresh garlic from the PRC. On June 14 and 21, 1994, the Department requested monthly shipment data for exports to the United States from questionnaire recipients.

Scope of Investigation

The products covered by this investigation are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing and level of decay.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The scope description provided above differs from the scope description used by the Department in its notice of initiation of this investigation (59 FR 9470, February 28, 1994). Changes to the scope include (a) the addition of more concise language (and additional HTS subheadings) related to the packing of the subject merchandise, and (b) additional language to exclude further processed products. The revisions are a result of comments received from the Customs Service on March 17 and June 30, 1994, and from counsel for petitioner on June 29 and 30, 1994.

Period of Investigation

The period of investigation (POI) is August 1, 1993, to January 31, 1994.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of the subject merchandise in this investigation. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, exporters of fresh garlic from the PRC did not respond to our requests for information.

As outlined in the "Case History" section of this notice, the Department made several attempts to obtain information from a number of sources. We have not received any responses to our questionnaire with which to perform our antidumping analysis. Consequently, we based our preliminary determination in this investigation on BIA.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperate in an investigation, and margins based on

or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing and level of decay.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The scope description provided above differs from the scope description used by the Department in its notice of initiation of this investigation (59 FR 9470, February 28, 1994). Changes to the scope include (a) the addition of more concise language (and additional HTS subheadings) related to the packing of the subject merchandise, and (b) additional language to exclude further processed products. The revisions are a result of comments received from the Customs Service on March 17 and June 30, 1994, and from counsel for petitioner on June 29 and 30, 1994.

Period of Investigation

The period of investigation (POI) is August 1, 1993, to January 31, 1994.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of the subject merchandise in this investigation. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, exporters of fresh garlic from the PRC did not respond to our requests for information.

As outlined in the "Case History" section of this notice, the Department made several attempts to obtain information from a number of sources. We have not received any responses to our questionnaire with which to perform our antidumping analysis. Consequently, we based our preliminary determination in this investigation on BIA.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperate in an investigation, and margins based on more adverse assumptions for those respondents who do not cooperate in an investigation. Since the potential respondents in this case have not cooperated, we assigned a BIA margin based on the most adverse assumptions.

In this case, BIA is the highest margin contained in the petition (*see Initiation of Antidumping Duty Investigation: Fresh Garlic from the People's Republic of China*, 59 FR 9470, February 28, 1994), and is listed below for all manufacturers, producers and exporters of fresh garlic in the PRC.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of fresh garlic from the PRC. Section 733(e)(1) of the Act provides that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding criterion (A) above, we normally consider margins of 25 percent or more as sufficient to impute knowledge of dumping. Since the preliminary estimated dumping margin for all exporters of fresh garlic in the PRC is in excess of 25 percent, we can impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act.

Regarding criterion (B) above, pursuant to 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports. If imports during the period immediately following the petition increase by 15 percent over imports during a comparable period immediately preceding the filing of a petition, we consider them massive. Respondents have failed to respond to the Department's questionnaire, as well as to our request for monthly export data. As a result, the Department has assumed, as BIA, that there have been massive imports over a relatively short period of time.

Accordingly, because the dumping margin is sufficient to impute knowledge of dumping, and because we have determined that imports of fresh garlic have been massive, we preliminarily determine that critical circumstances do exist in this investigation.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of fresh garlic from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days before the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percent
All Manufacturers/Producers/Exporters	376.67

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of this determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration by no later than August 26, 1994, and rebuttal briefs by no later than September 2, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 7, 1994, at 10:00 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone, the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in

the **Federal Register**. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: July 6, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16741 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 940684–4184]

RIN 0693–AB32

Proposed Revision of Federal Information Processing Standard (FIPS) 21–3, COBOL

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: This proposed revision of Federal Information Processing Standard (FIPS) 21–3, COBOL, which adopts ANSI X3.23–1985, and ANSI X3.23a 1989, is being proposed for Federal use. This revision will adopt the forthcoming amendment (ANSI X3.23b–1993) to American National Standard for COBOL which adds corrections and clarification to the language. The proposed amendment is upwardly compatible with the current standard except for the reserved word FUNCTION.

Prior to the submission of this proposed revision to FIPS PUB 21–3 to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and state and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications (ANSI X3.23–1985, ANSI X3.23a–1989, and ANSI X3.23b–1993) from American National Standards Institute (ANSI), 11 West 42nd Street, 13th Floor, New York, NY 10036, (212) 642–4900.

DATES: Comments on this proposed revision must be received on or before October 11, 1994.

ADDRESSES: Written comments concerning the adoption of this proposed revision as FIPS 21–4 should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed Revision of FIPS 21–3, COBOL, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Arnold Johnson, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–3247.

Dated: July 5, 1994.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 21–4

[proposed]

Announcing the Standard for COBOL

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. *Name of Standard.* COBOL (FIPS PUBS 21–4)

2. *Category of Standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the adoption of American National Standard COBOL, as specified in ANSI X3.23–1985, X3.23a–1989 and ANSI X3.23b–1993, as a Federal Information Processing Standard (FIPS) This revision supersedes FIPS PUB 21–3 and reflects corrections and clarifications to the COBOL specifications. The American National Standards define the elements of the COBOL programming language and the rules for their use. The purpose of the standards is to promote portability of COBOL programs for use on a variety of data processing systems. The standards are used by implementors as the reference authority in developing processors and by users who need to know the precise syntactic and semantic rules of the standard language.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology (NIST).

6. *Cross Index.*

a. American National Standard for Information Systems—Programming Language—COBOL, ANSI X3.23–1985, ISO 1989–1985.

b. American National Standard for Information Systems—Programming Language—Intrinsic Function Module for COBOL, ANSI X3.23a–1989.

c. American National Standard for Information Systems—Programming Language—Correction and Clarification Amendment for COBOL, ANSI X3.23b–1993.

7. *Related Documents.**

a. Federal Information Resources Management Regulation (FIRMR) Subpart 201.20.303, Standards, and Subpart 201.39.1002, Federal Standards.

b. Federal Information Processing Standards Publication 29, Interpretation Procedures for Federal Information Processing Standards for Software.

c. NBS Special Publication 500–117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems; and

—To protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS COBOL is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS COBOL is especially suited for applications that emphasize the manipulation of characters, records, files, and input/output (in contrast to those primarily concerned with scientific and numeric computations).

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than for which the program is initially written.

—The program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.

* References to most recent revision of FIPS PUBS.

Modul

Required:
- Nucleus
- Sequential I–O
- Relative I–O
- Indexed I–O
- Inter-Program Communication
- Sort-Merge
- Source Text Manipulation
- Intrinsic Function

Optional:
- Report Writer
- Communication
- Debug
- Segmentation

extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS COBOL is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS COBOL is especially suited for applications that emphasize the manipulation of characters, records, files, and input/output (in contrast to those primarily concerned with scientific and numeric computations).

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.
—The application or program is under constant review for updating of the specifications, and changes may result frequently.
—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.
—The program will or might be run on equipment other than for which the program is initially written.
—The program is to be understood and maintained by programmers other than the original ones.
—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.
—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

c. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of report generation, database management, or text processing languages. The use of any facility should be considered in the context of system life, system cost, data integrity, and the potential for data sharing.

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a COBOL source program, then the resulting program should conform to the conditions and specifications of FIPS COBOL.

f. When it is determined that a programming language that has been adopted as a FIPS is to be used for an application or program, a processor conforming to the FIPS programming language shall be used, if available. It is not intended that existing programs be rewritten solely for the purpose of conforming to a FIPS programming language. If a program is to be part of an existing application written in a programming language not conforming to a FIPS, the language processor used for the existing application may be used for the new program.

10. *Specifications.* FIPS COBOL specifications are the same as American National Standard COBOL as specified in ANSI X3.23–1985, ANSI X3.23a–1989 and ANSI X3.23b–1993.

ANSI X3.23–1985, ANSI X3.23a–1989 and ANSI X3.23a–1993 specify the form of a program written in COBOL, formats for data, and rules for program and data interpretation.

The standards do not specify limits on the size of programs, minimum system requirements, the means of supervisory control of programs, or the means of transforming programs internally for processing.

In addition, the following requirements apply:

a. For purposes of FIPS COBOL, the modules defined in ANSI X3.23–1985 and ANSI X3.23a–1989 are combined into three subsets and four optional modules. The three subsets are identified as Minimum, Intermediate, and High. The four optional modules are Report Writer, Communication, Debug, and Segmentation. These four optional modules may be associated with any of the subsets.

The high subset is composed of all language elements of the highest level of all required modules. The intermediate subset is composed of all language elements of level 1 of all required modules except the Intrinsic Function module. The minimum subset is composed of all language elements of level 1 of the Nucleus, Sequential I–O, and Inter-Program Communication modules.

The following table reflects the composition of the required subsets and the relationship of the subsets and the optional modules. The numbers in the table refer to the level within a module as designated in ANSI X3.23–1985 and ANSI X3.23A–1989, and a dash denotes the corresponding module is omitted or may be omitted.

Modules	COBOL subsets		
	Minimum	Intermediate	High
Required:			
Nucleus	1	1	2.
Sequential I–O	1	1	2.
Relative I–O	–	1	2.
Indexed I–O	–	1	2.
Inter-Program Communication	1	1	2.
Sort-Merge	–	1	1.
Source Text Manipulation	–	1	2.
Intrinsic Function	–	–	1.
Optional:			
Report Writer	–, or 1	–, or 1	–, or 1.
Communication	–, 1, or 2	–, 1, or 2	–, 1, or 2.
Debug	–, 1, or 2	–, 1, or 2	–, 1, or 2.
Segmentation	–, 1, or 2	–, 1, or 2	–, 1, or 2.

b. A facility must be available in the processor for the user to optionally specify monitoring of the source program at compile time. The monitoring may be specified for a FIPS COBOL subset, for any of the optional modules, for all of the obsolete language elements included in the processor, or for a combination of a FIPS COBOL subset, optional modules, and all obsolete elements. The monitoring may be specified for any FIPS COBOL subset at or below the highest subset for which the processor is implemented and for a level of an optional module at or below the level of the optional module for which the processor is implemented. The monitoring is an analysis of the syntax used in the source program against the syntax included in the user selected FIPS COBOL subset and optional modules. Any syntax used in the source program that does not conform to that included in the user selected FIPS COBOL subset and optional modules will be diagnosed and identified to the user through a message on the source program listing. Any syntax for an obsolete language element included in the processor and used in the source program will also be diagnosed and identified through a message on the source program listing. The determination of the need to flag any given source program syntax in accordance with these requirements cannot be logically resolved until the syntactic correctness of the source program has been established. The message provided will identify:

—The level indicator, clause, statement or header that directly contains the nonconforming or obsolete syntax. (For the purpose of this requirement the definitions of level indicator, clause, statement and header contained in American National Standard COBOL, ANSI X3.23–1985, Section III, Glossary, and the definition of syntax contained in American National Dictionary for Information Processing Systems, (ANDIS), ANSI X3.172–1990, apply.)

—The source program line and an indication of the beginning location within the line of the level indicator, clause, statement or header which contains the nonconforming or obsolete syntax.

—The syntax as "nonconforming standard" if the nonconforming syntax is included in the processor but is not within the user selected FIPS COBOL subset or optional modules unless monitoring is selected for the obsolete category; in that case obsolete language elements are only flagged as "obsolete".

—The syntax as "nonconforming nonstandard" if the nonconforming syntax is a nonstandard extension included in the processor.

—The syntax as "obsolete" if the syntax identified is in the obsolete category within a FIPS COBOL subset or optional module included in the processor.

11. *Implementation.* The implementation of FIPS COBOL involves three areas of consideration: acquisition of COBOL processors, interpretation of FIPS COBOL, and validation of COBOL processors.

11.1 *Acquisition of COBOL Processors.* This publication is effective [insert a date 90 days after the approval date]. COBOL processors acquired for Federal use after this date should implement at least one of the required subsets of FIPS COBOL. If the functionality of one or more of the optional modules meets programmatic requirements, then those optional modules also should be acquired. Each optional module that is needed to meet programmatic requirements should be explicitly cited as a requirement in the order for the processor. Conformance to FIPS COBOL should be considered whether COBOL processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce COBOL processors conforming to the standard. The transition period begins on the effective date and continues for one (1) year thereafter. The following apply during the transition period:

a. The provisions of FIPS PUB 21–3 apply to processors ordered before the effective date but delivered subsequent to the effective date.

b. The provisions of this publication apply to orders placed after the effective date; however, a processor conforming to FIPS PUB 21–4, if available, may be acquired for use prior to the effective date. If a conforming processor is not available, a processor conforming to FIPS PUB 21–3 may be acquired for interim use during the transition period.

11.2 *Interpretation of FIPS COBOL.* NIST provides for the resolution of questions regarding FIPS COBOL specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS COBOL should be addressed to: National Institute of Standards and Technology, Attn: COBOL Interpretation, Technology Building, Room B–154, Gaithersburg, MD 20899.

11.3 *Validation of COBOL Processors.* NIST provides a service for the purpose of validating the conformance to this standard of processors offered for Federal procurement. The validation system reports the nature of any deviations that are detected. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the Software Standards Validation Group, COBOL Validation, National Institute of Standards and Technology, Gaithersburg, MD 20899 (301) 975–3247.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement-sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 21–4 (FIPSPUB21–4), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 94–16665 Filed 7–8–94; 8:45 am]
BILLING CODE 3510–CN–M

National Institute of Standards and Technology

[Docket No. 940669–4169]

RIN 0693–AB25

Proposed Revision of Federal Information Processing Standards (FIPS) 119, ADA

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: This proposed revision of Federal Information Processing Standard (FIPS) 119, Ada, will adopt the revised voluntary industry specifications, American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994, as a Federal Information Processing Standard (FIPS). American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994, specifies the form and meaning of programs written in Ada. The purpose of the standard is to promote portability of Ada programs for use on a variety of data processing systems. The standard is for use by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 21–4 (FIPSPUB21–4), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 94–16665 Filed 7–8–94; 8:45 am]
BILLING CODE 3510–CN–M

National Institute of Standards and Technology

[Docket No. 940669–4169]

RIN 0693–AB25

Proposed Revision of Federal Information Processing Standards (FIPS) 119, ADA

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: This proposed revision of Federal Information Processing Standard (FIPS) 119, Ada, will adopt the revised voluntary industry specifications, American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994, as a Federal Information Processing Standard (FIPS). American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994, specifies the form and meaning of programs written in Ada. The purpose of the standard is to promote portability of Ada programs for use on a variety of data processing systems. The standard is for use by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

Prior to the submission of this proposed revision to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and state and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the technical specifications from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on this proposed revision must be received on or before October 11, 1994.

ADDRESSES: Written comments concerning the proposed revision should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS 119–1, Ada, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. William H. Dashiell, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–2490.

Dated: June 30, 1994.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication 119–1

DRAFT 1994 June 7 DRAFT

Announcing the Standard for Ada

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949, as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Ada (FIPS PUB 119–1).

2. Category of Standard. Software Standard, Programming Language.

3. Explanation. This publication is a revision of FIPS PUB 119 and supersedes that document in its entirety.

This publication announces the adoption of American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994, as a Federal Information Processing Standard (FIPS). American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994, specifies the form and meaning of programs written in Ada. The purpose of the standard is to promote portability of Ada programs for use on a variety of data processing systems. The standard is for use by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. Cross Index. American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994.

7. Related Documents.

a. Federal ADP and Telecommunications Standards Index, U.S. General Services Administration, Information Resources Management Service, April 1994 (updated periodically).

b. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

c. FIPS PUB 29–3, Interpretation Procedures for FIPS Software, 29 October 1992.

d. NBS Special Publication 500–117, Selection and Use of General-Purpose Programming Languages.

e. NIST, Validated Products List, (republished quarterly). Available by subscription from the National Technical Information Service (NTIS).

f. ISO 6429: 1992(E)—Information Technology—Control Functions for Coded Character Sets.

g. ISO 646 Information Processing—7-bit Single-Byte Coded Character Set.

h. ISO 8859–1:1987(E)—Information Processing—8 bit Single-Byte Coded Character Sets—Part 1: Latin Alphabet No. 1.

i. ISO 10646–1:1993 Information Technology—Universal Multiple-Octet Coded Character Set (UCS)—Part 1: Architecture and Baiic Multilingual Plane.

8. Objectives. Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—To protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. Applicability.

a. Federal standards for high level programming languages should be used for computer applications that are either developed or acquired for government use. FIPS Ada is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS Ada is suitable for use in programming and any applications for which there is no specific language available specifically targeted to that application.

b. The use of FIPS Ada is recommended for the following applications and situations:

—Those involving control of real-time or parallel processes.

—Very large systems.

—Systems with requirements for very high reliability.

—Systems which are to be developed with reusable software packages.

—When it is anticipated that the life of an application will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than that for which the program is initially written.

—The program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language.

—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

10. Specifications. FIPS Ada specifications are the language specifications contained in American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994 standard.

The American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1994 standard document specifies the form of a program written in Ada, the effect of translating and executing a program, predefined library entities that must be supplied, and detection of compilation and/or link errors.

The standard does not specify limits on the size or complexity of programs, the results when the rules of the standard fail to establish an interpretation, the means of supervisory control of programs, or the means of transforming programs for processing.

11. Implementation. The implementation of FIPS Ada involves four areas of consideration: the effective date, acquisition of Ada processors, interpretation of FIPS Ada, and validation of processors.

11.1 Effective Date. This revised standard becomes effective ninety (90) days after the publication in the **Federal Register** announcing approval by the Secretary of Commerce. Ada Processors acquired for Federal use after this date should conform to FIPS PUB 119–1.

A transition period provides time for industry to produce Ada language processors conforming to the standard. The transition period begins on the effective date and ends March 1, 1997. The provisions of FIPS PUB 119–1 apply to orders placed after the effective date of this publication. If, during the transition period, a processor conforming to FIPS PUB 119–1 is not available, a processor conforming to FIPS PUB 119 may be acquired for interim use during the transition period.

This transition period is intended to give implementations that conform to FIPS PUB 119 time to make the enhancements necessary to enable conformance to FIPS PUB 119–1. No further transitional period is necessary.

11.2 Acquisition of Ada Processors. Conformance to FIPS Ada should be considered whether Ada processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services. Recommended terminology for procurement of FIPS Ada is contained in the U.S. General Services Administration publication Federal ADP & Telecommunications Standards Index, Chapter 4 Part 1.

11.3 Interpretation of FIPS Ada. The National Institute of Standards and Technology provides for the resolution of questions (see FIPS PUB 29–3, Interpretation Procedures for FIPS Software, 29 October 1992) regarding the specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this standard should be addressed to: Director, Computer Systems Laboratory, Attn: FIPS Ada Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, FAX: 301–948–6213, e-mail: dashiell@ecf.ncsl.nist.gov.

11.4 Validation of Ada Processors. Implementations of FIPS Ada shall be validated in accordance with the NIST Computer Systems Laboratory (CSL) validation procedures for FIPS Ada. Recommended procurement terminology for validation of FIPS Ada is contained in the U.S. General Services Administration (GSA) publication *Federal ADP & Telecommunications Standards Index*, Chapter 4 Part 2. This GSA publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency shall select the appropriate validation option and shall specify whether a Validation Summary Report or Certificate of Validation is required. The agency shall specify appropriate time frames for validation and correction of nonconformities. The agency is advised to refer to the NIST publication *Validated Products List* for information about the validation status of Ada products. This information may be used to specify validation time frames that are not unduly restrictive of competition.

The agency shall specify the criteria used to determine whether a Validation Summary Report (VSR) or Certificate is applicable to the hardware/software environment of the Ada implementation offered. The criteria for applicability of a VSR or Certificate should be appropriate to the size and timing of the procurement. A large procurement may require that the offered version/release of the Ada implementation shall be validated in a specified hardware/software environment and that the validation shall be conducted with specified hardware/software features or parameter settings; e.g., the same parameter settings to be used in a performance benchmark.

An agency with a single/license procurement may review the *Validated Products List* to determine the applicability of existing VSRs or Certificates to the agency's hardware/software environment.

Ada implementations shall be evaluated using a NIST approved test suite.

For further information contact: Director, Computer Systems Laboratory, Attn: FIPS Ada Validation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, FAX: 301–948–6213, e-mail: dashiell@ecf.ncsl.nist.gov.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may re-delegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government wide savings.

Chapter 4 Part 2. This GSA publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency shall select the appropriate validation option and shall specify whether a Validation Summary Report or Certificate of Validation is required. The agency shall specify appropriate time frames for validation and correction of nonconformities. The agency is advised to refer to the NIST publication *Validated Products List* for information about the validation status of Ada products. This information may be used to specify validation time frames that are not unduly restrictive of competition.

The agency shall specify the criteria used to determine whether a Validation Summary Report (VSR) or Certificate is applicable to the hardware/software environment of the Ada implementation offered. The criteria for applicability of a VSR or Certificate should be appropriate to the size and timing of the procurement. A large procurement may require that the offered version/release of the Ada implementation shall be validated in a specified hardware/software environment and that the validation shall be conducted with specified hardware/software features or parameter settings; e.g., the same parameter settings to be used in a performance benchmark.

An agency with a single/license procurement may review the *Validated Products List* to determine the applicability of existing VSRs or Certificates to the agency's hardware/software environment.

Ada implementations shall be evaluated using a NIST approved test suite.

For further information contact: Director, Computer Systems Laboratory, Attn: FIPS Ada Validation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, FAX: 301–948–6213, e-mail: dashiell@ecf.ncsl.nist.gov.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may re-delegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive classified portions clearly identified, shall be sent to: National Institute of Standards and Technology, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone (703) 487–4650. When ordering, refer to Federal Information Processing Standards Publication 119-1 (FIPSPUB119–1), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 94–16620 Filed 7–8–94; 8:45 am]
BILLING CODE 3510–CN–M

[Docket No. 940675–4175]

RIN 0693–AB33

Proposed Revision of Federal Information Processing Standard (FIPS) 180, Secure Hash Standard

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: A revision of Federal Information Processing Standard (FIPS) 180, Secure Hash Standard (SHS), is being proposed. This proposed revision corrects a technical flaw that made the standard less secure than had been thought. The algorithm is still reliable as a security mechanism, but the correction returns the SHS to the original level of security.

The SHS produces a 160-bit output called a message digest for a message of any size. This message digest can be used with FIPS 186, Digital Signature Standard (DSS), to compute a signature for the message. The same message digest should be obtained by the verifier of the signature when the received version of the message is used as input to the Secure Hash Algorithm (SHA). Any change to the message in transmit should produce a different message digest, indicating to the verifier that a change has been made to the message.

The purpose of this notice is to solicit views from the public, manufacturers, and Federal, state, and local government users prior to submission of this proposed revision to the Secretary of Commerce for review and approval.

The proposed revision contains two sections: (1) An announcement, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) specifications which deal with the technical aspects of the standard. Only the announcement section of the standard is provided in this notice. Interest parties may obtain copies of the specifications section from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on this proposed revision must be received on or before October 11, 1994.

ADDRESSES: Written comments concerning the proposed revision should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed Revision of FIPS 180, SHS, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Mr. Miles Smid, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2938.

SUPPLEMENTARY INFORMATION: NIST has been notified that Department of Defense authorities have approved the use of the SHS with the DSS to sign unclassified data processed by "Warner Amendment" systems (10 U.S.C. 2315 and 44 U.S.C. 3502(2)) as well as classified data in selected applications.

Dated: July 5, 1994.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication 180–1

1994 May 31

Announcing the Secure Hash Standard

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

Name of Standard: Secure Hash Standard.

Category of Standard: Computer Security.

Explanation: This Standard specifies a secure hash algorithm, SHA–1, for computing a condensed representation of a message or a data file. When a message of any length $<2^{64}$ bits is input, the SHA–1 produces a 160-bit output called a message digest. The message digest can then be input to the Digital Signature Algorithm (DSA) which generates or verifies the signature for the message (see Figure 1). Signing the message digest rather than the message often improves the efficiency of the process because the message digest is usually much smaller in size than the message. The same hash algorithm must be used by the verifier of a digital signature as was used by the creator of the digital signature.

The SHA–1 is called secure because it is computationally infeasible to find a message which corresponds to a given message digest, or to find two different messages which produce the same message digest. Any change to a message in transit will, with very high probability, result in a different message digest, and the signature will fail to verify. SHA–1 is a technical revision of SHA (FIPS 180). A circular left shift operation has been added to the specifications in section 7, line b, page 9 of FIPS 180 and its equivalent in section 8, line c, page 10 of FIPS 180.* This revision improves the security provided by this standard. The SHA–1 is based on principles similar to those used by Professor Ronald L. Rivest of MIT when designing the MD4 message:

**Modification*

In Section 7 of [1] (page 9), the line which reads

(b) For t=16 to 79 let $W_t = W_{t-3}$ XOR W_{t-8} XOR W_{t-14} XOR W_{t-16}.

is to be replaced by

(b) For t=16 to 79 let $W_t = S^1(W_{t-3}$ XOR W_{t-8} XOR W_{t-14} XOR $W_{t-16})$.

where S^1 is a left circular shift by one bit as defined in Section 3 of [1] (page 6), namely $S^1(X) = (X << 1) \vee (X >> 31)$.

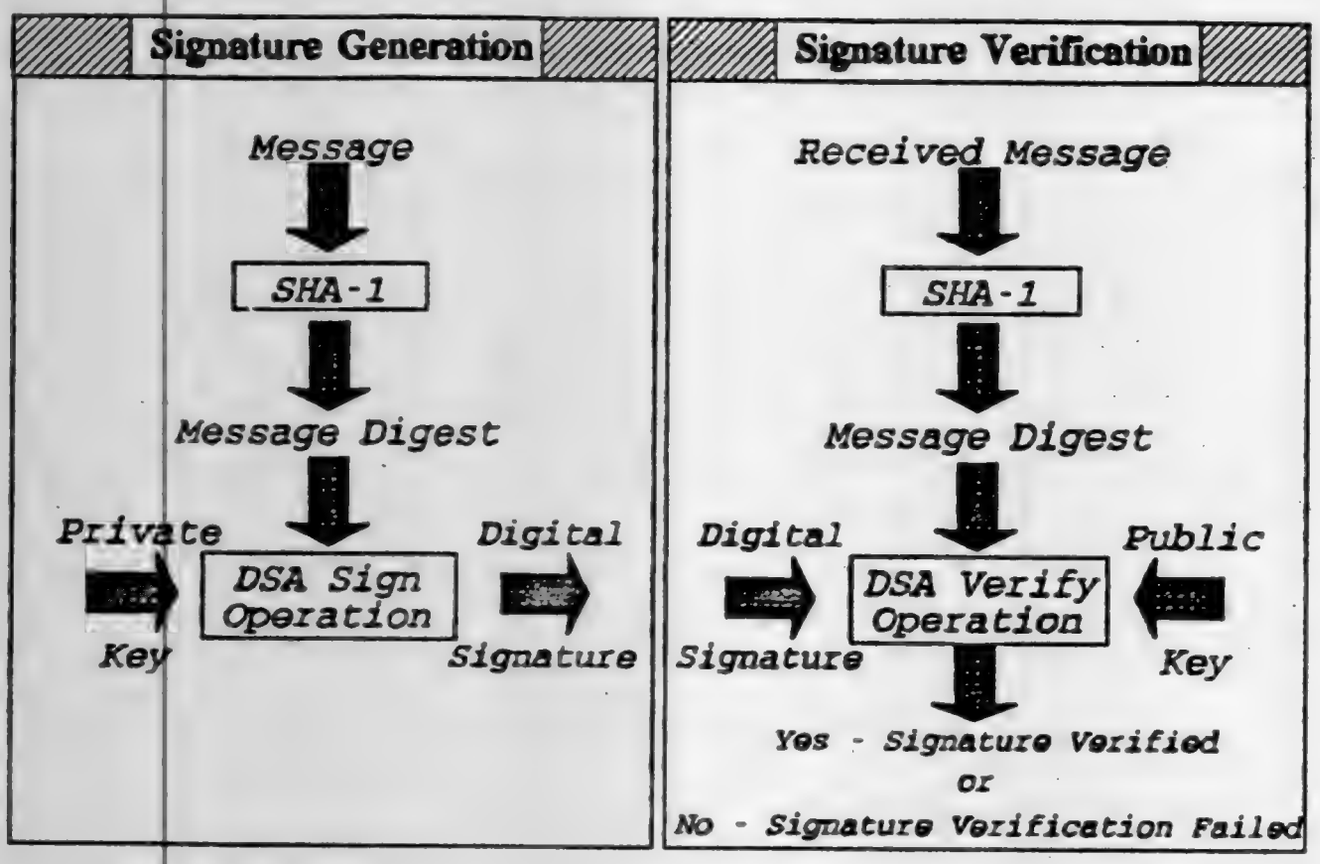

Figure 1: Using the SHA-1 with the DSA

BILLING CODE 3510-CN-C

Applications: The SHA–1 may be used with the DSA in electronic mail, electronic funds transfer, software distribution, data storage, and other applications which require data integrity assurance and data origin authentication. The SHA–1 may also be used whenever it is necessary to generate a condensed version of a message.

Implementations: The SHA–1 may be implemented in software, firmware, hardware, or any combination thereof. Only implementations of the SHA–1 that are validated by NIST will be considered as complying with this standard. Information about the requirements for validating implementations of this standard can be obtained from the National Institute of Standards and Technology, Computer Systems Laboratory, Attn: SHS Validation, Gaithersburg, MD 20899.

Export Control: Implementations of this standard are subject to Federal Government export controls as specified in Title 15, Code of Federal Regulations, Parts 768 through 799. Exporters are advised to contact the Department of Commerce, Bureau of Export Administration for more information.

Patents: Implementations of the SHA–1 in this standard may be covered by U.S. and foreign patents.

Implementation Schedule: This standard becomes effective (insert 90 days after approval by the Secretary of Commerce).

Specifications: Federal Information Processing Standards (FIPS 180–1) Secure Hash Standard (affixed).

Cross Index:

a. FIPS PUB 46–1, Data Encryption Standard.

b. FIPS PUB 73, Guidelines for Security of Computer Applications.

c. FIPS PUB 140–1, Security Requirements for Cryptographic Modules.

d. FIPS PUB 186, Digital Signature Standard.

e. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

Objectives: The objectives of this standard are to:

a. Specify the secure hash algorithm required for use with the Digital Signature Standard (FIPS 186) in the generation and verification of digital signatures;

b. Specify the secure hash algorithm to be used whenever a secure hash algorithm is required for Federal applications; and

c. Encourage the adoption and use of the specified secure hash algorithm by private and commercial organizations.

Applications: The SHA–1 may be used with the DSA in electronic mail, electronic funds transfer, software distribution, data storage, and other applications which require data integrity assurance and data origin authentication. The SHA–1 may also be used whenever it is necessary to generate a condensed version of a message.

Implementations: The SHA–1 may be implemented in software, firmware, hardware, or any combination thereof. Only implementations of the SHA–1 that are validated by NIST will be considered as complying with this standard. Information about the requirements for validating implementations of this standard can be obtained from the National Institute of Standards and Technology, Computer Systems Laboratory, Attn: SHS Validation, Gaithersburg, MD 20899.

Export Control: Implementations of this standard are subject to Federal Government export controls as specified in Title 15, Code of Federal Regulations, Parts 768 through 799. Exporters are advised to contact the Department of Commerce, Bureau of Export Administration for more information.

Patents: Implementations of the SHA–1 in this standard may be covered by U.S. and foreign patents.

Implementation Schedule: This standard becomes effective (insert 90 days after approval by the Secretary of Commerce).

Specifications: Federal Information Processing Standards (FIPS 180–1) Secure Hash Standard (affixed).

Cross Index:

a. FIPS PUB 46–1, Data Encryption Standard.

b. FIPS PUB 73, Guidelines for Security of Computer Applications.

c. FIPS PUB 140–1, Security Requirements for Cryptographic Modules.

d. FIPS PUB 186, Digital Signature Standard.

e. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

Objectives: The objectives of this standard are to:

a. Specify the secure hash algorithm required for use with the Digital Signature Standard (FIPS 186) in the generation and verification of digital signatures;

b. Specify the secure hash algorithm to be used whenever a secure hash algorithm is required for Federal applications; and

c. Encourage the adoption and use of the specified secure hash algorithm by private and commercial organizations.

Qualifications: While it is the intent of this standard to specify a secure hash algorithm, conformance to this standard does not assure that a particular implementation is secure. The responsible authority in each agency or department shall assure that an overall implementation provides an acceptable level of security. This standard will be reviewed every five years in order to assess its adequacy.

Waiver Procedure: Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Waiver shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system; or

b. Compliance with a standard would cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standing cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any accompanying documents, with such deletions as the agency is authorized and decides to make under 5 United States Code Section 552(b), shall be part of the procurement documentation and retained by the agency.

Where to Obtain Copies of the Standard: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 180–1 (FIPS PUB 180–1), and identify the title. When microfiche is desired, this should be specified. Prices are published by NTIS in current catalogs and other issuances. Payment may be made by check, money order, deposit account or charged to a credit card accepted by NTIS.

[FR Doc. 94–16666 Filed 7–8–94; 8:45 am]
BILLING CODE 3510–CN–M

[Docket No. 940689–4189; Notice 2]

National Fire Codes: Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards

as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 PM local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition of each proposal by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Authority: 15 U.S.C. 272.

Dated: July 5, 1994.

Samuel Kramer,

Associate Director.

NFPA No.	Title	Proposal closing date
NFPA 13–1994	Installation of Sprinkler Systems	1/20/95
NFPA 13D–1994	Installation of Sprinklers in One- and Two-Family Dwellings and Manufactured Homes	1/20/95
NFPA 13R–1994	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height	1/20/95
NFPA 14–1993	Installation of Standpipe and Hose Systems	7/15/94
NFPA 15–1990	Water Spray Fixed Systems for Fire Proteciton	7/15/94
NFPA 20–1993	Installation of Centrifugal Fire Pumps	1/20/95
NFPA 22–1993	Water Tanks for Private Fire Protection	7/15/94
NFPA 31–1992	Oil-Burning Equipment	1/20/95
NFPA 32–1990	Drycleaning Plants	1/20/95
NFPA 45–1991	Fire Protection for Laboratories Using Chemicals	1/20/95
NFPA 46–1990	Storage of Forest Products	7/15//94
NFPA 51–1992	Oxygen-Fuel Gas Systems for Welding, Cutting and Allied Processes	5/19/95
NFPA 54–1992	National Fuel Gas Code	1/20/95
NFPA 59A–1994	Liquefied Natural Gas (LNG)	7/15/94
NFPA 68–1994	Venting of Deflagrations	7/21/95
NFPA 69–1992	Explosion Prevention Systems	7/21/95
NFPA 72–1993	National Fire Alarm Code	1/5/95
NFPA 80A–1993	Protection of Buildings from Exterior Fire Exposures	1/20/95
NFPA 81–1985	Fur Storage, Fumigation, and Cleaning	7/15/94
NFPA 92A–1993	Smoke-Control Systems	1/20/95
NFPA 97–1992	Chimneys, Vents, and Heat-Producing Appliances	1/20/95
NFPA 101–1994	Safety to Life from Fire in Buildings and Structures	4/7/95
NFPA 105–1993	Smoke-Control Door Assemblies	1/20/95
NFPA 110–1993	Emergency and Standby Power Systems	7/15/94
NFPA 111–1993	Stored Electrical Energy Emergency and Standby Power Systems	7/15/94
NFPA 121–1990	Self-Propelled and Mobile Surface Mining Equipment	7/15/94
NFPA 140–P*	Motion Picture and Television Industry	7/15/94
NFPA 204M–1991	Smoke and Heat Venting	1/20/95
NFPA 211–1992	Chimneys, Fireplaces, Vents and Solid Fuel-Burning Appliances	1/20/95
NFPA 231E–1989	Storage of Baled Cotton	7/15/94
NFPA 231F–1987	Storage of Roll Paper	7/15/94
NFPA 241–1993	Safeguarding Construction, Alteration, and Demolition Operations	1/20/95
NFPA 268–P*	Ignitibility of Exterior Wall Assemblies Using a Radiant Heat Energy Source	7/15/94
NFPA 321–1991	Classification of Flammable and Combustible Liquids	1/20/95
NFPA 328–1992	Flammable and Combustible Liquids and Gases in Manholes, Sewers, and Similar Underground Structures.	1/15/96
NFPA 329–1992	Underground Releases of Flammable and Combustible Liquids	1/15/96
NFPA 385–1990	Tank Vehicles for Flammable and Combustible Liquids	1/20/95
NFPA 386–1990	Portable Shipping Tanks for Flammable and Combustible Liquids	1/20/95
NFPA 497A–1992	Classification of Class I Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.	1/20/95
NFPA 497B–1991	Classification of Class II Hazardous (Classified) Locations for Electrical Installations in Chemical Processing Plants.	1/20/95
NFPA 497M–1991	Classification of Gases, Vapors, and Dusts for Electrical Equipment in Hazardous (Classified) Locations	1/20/95
NFPA 501C–1993	Recreational Vehicles	7/15/94
NFPA 501D–1993	Recreational Vehicle Parks and Campgrounds	7/15/94
NFPA 502–1992	Limited Access Highways, Tunnels, Bridges, Elevated Roadways, and Air Right Structures	7/15/94
NFPA 505–1992	Powered Industrial Trucks Including Type Designations, Areas of Use, Maintenance, and Operation	1/20/95
NFPA 555–P*	Methods for Decreasing the Probability of Flashover	9/16/94
NFPA 600–1992	Industrial Fire Brigades	7/15/94
NFPA 601–1992	Guard Service in Fire Loss Prevention	7/15/94
NFPA 650–1990	Pneumatic Conveying Systems for Handling Combustible Materials	7/15/94
NFPA 704–1990	Identification of the Fire Hazards of Materials	1/20/95
NFPA 750–P*	Water Mist Systems	1/20/95
NFPA 850–1992	Electric Generating Plants	7/15/94
NFPA 851–1992	Hydroelectric Generating Plants	7/15/94
NFPA 910–1991	Protection of Libraries and Library Collections	1/19/96

NFPA No.	
NFPA 911–1991	Protection of Museums ar
NFPA 1126–1992	Use of Pyrotechnics befor
NFPA 1401–1989	Fire Service Training Rep
NFPA 1404–1989	Fire Department Self-Con
NFPA 1405–1990	Land-Based Fire Fighters
NFPA 1500–1992	Fire Department Occupati
NFPA 1914–1991	Testing Fire Department A
NFPA 1971–1991	Protective Clothing for Str
NFPA 1972–1992	Helmets for Structural Fire
NFPA 1973–1993	Gloves for Structural Fire
NFPA 1974–1992	Protective Footwear for St
NFPA 1976–1992	Protective Clothing for Pro
NFPA 2001–1994	Clean Agent Fire Extinguis
NFPA 8504–1993	Atmospheric Fluidized-Bed

*Proposed NEW drafts are available from the NFI

[FR Doc. 94–16668 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–13–M

[Docket No. 940688–4188; Notice 1]

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1995 Annual Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: The National Electrical Code (NEC) is published in a separate Report on Proposals and is available about June 17, 1994. Comments received on or before October 21, 1994 will be considered by the National Electrical Code Committee before NFPA takes final action on the proposals.

Sixty-one Reports are published in the 1995 Annual Meeting Report on

1995 A

[P=Partial revision; W=

DOC No.	
NFPA 11C	Mobile Foam Apparatus
NFPA 12B	Halon 1211 Fire Extinguishi

NFPA No.	Title	Proposal closing date
NFPA 911–1991	Protection of Museums and Museum Collections	1/20/95
NFPA 1126–1992	Use of Pyrotechnics before a Proximate Audience	1/20/95
NFPA 1401–1989	Fire Service Training Reports and Records	7/15/94
NFPA 1404–1989	Fire Department Self-Contained Breathing Apparatus Program	7/15/94
NFPA 1405–1990	Land-Based Fire Fighters Who Respond to Marine Vessel Fires	7/15/94
NFPA 1500–1992	Fire Department Occupational Safety and Health Program	1/19/96
NFPA 1914–1991	Testing Fire Department Aerial Devices	1/20/95
NFPA 1971–1991	Protective Clothing for Structural Fire Fighting	7/1/94
NFPA 1972–1992	Helmets for Structural Fire Fighting	7/1/94
NFPA 1973–1993	Gloves for Structural Fire Fighting	7/1/94
NFPA 1974–1992	Protective Footwear for Structural Fire Fighting	7/1/94
NFPA 1976–1992	Protective Clothing for Proximity Fire Fighting	7/1/94
NFPA 2001–1994	Clean Agent Fire Extinguishing Systems	7/15/94
NFPA 8504–1993	Atmospheric Fluidized-Bed Boiler Operation	1/20/95

*Proposed NEW drafts are available from the NFPA Standards Administration Department, 1 Batterymarch Park, Quincy, MA 02269.

[FR Doc. 94–16668 Filed 7–8–94; 8:45 am]
BILLING CODE 3510–13–M

[Docket No. 940688–4188; Notice 1]

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1995 Annual Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: The National Electrical Code (NEC) is published in a separate Report on Proposals and is available about June 17, 1994. Comments received on or before October 21, 1994 will be considered by the National Electrical Code Committee before NFPA takes final action on the proposals.

Sixty-one Reports are published in the 1995 Annual Meeting Report on Proposals and will be available on August 5, 1994. Comments received on or before October 14, 1994 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 1995 Annual Meeting Report on Proposals are available from NFPA, Publications Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Report on Proposals.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 14, 1994 for the 1995 Annual Meeting Report on Proposals, and October 21, 1994 for the NEC Report on Proposals, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published at the 1995 Annual Meeting Report on Comments by March 31, 1995, and the NEC Report on Comments by April 14, 1995, prior to the Annual Meeting.

A copy of the Report on Comments will be sent automatically to each commenter. Action on the reports of the Technical Committees (adoption or rejection) will be taken at the Annual Meeting, May 22–25, 1995 in Denver, Colorado, by NFPA members.

Authority: 15 U.S.C. 272.

Dated: July 5, 1994.

Samuel Kramer,

Associate Director.

1995 Annual Meeting Report on Proposals

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

DOC No.	Title	Action
NFPA 11C	Mobile Foam Apparatus	P
NFPA 12B	Halon 1211 Fire Extinguishing Systems	W

1995 ANNUAL MEETING REPORT ON PROPOSALS—Continued

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

DOC No.	Title	Action
NFPA 18	Wetting Agents	R
NFPA 24	Installation of Private Fire Service Mains and Their Appurtenances	P
NFPA 26	Supervision of Valves Controlling Water Supplies for Fire Protection	W
NFPA 33	Spray Application Using Flammable and Combustible Materials	C
NFPA 34	Dipping and Coating Processes Using Flammable or Combustible Liquids	C
NFPA 43A	Liquid and Solid Oxidizers (Will be renumbered NFPA 430	C
NFPA 52	Compressed Natural Gas (CNG) Vehicular Fuel Systems	P
NFPA 61	Standard for the Prevention of Fire and Dust Explosions in Agricultural and Food Product Facilities (Combining and Redesignating NFPA 61A, 61B, 61C and 61D).	C
NFPA 70	National Electrical Code	P
NFPA 75	Electronic Computer/Data Processing Equipment	P
NFPA 80	Fire Doors and Fire Windows	P
NFPA 85C	Furnace Explosions/Implosions in Multiple Burner Boiler-Furnaces (Will be renumbered NFPA 8502)	P
NFPA 86	Ovens and Furnaces	P
NFPA 86C	Industrial Furnaces Using a Special Processing Atmosphere	P
NFPA 86D	Industrial Furnaces Using Vacuum as an Atmosphere	P
NFPA 88A	Parking Structures	P
NFPA 88B	Repair Garages	P
NFPA 92B	Smoke Management Systems in Malls, Atria, and Large Areas	P
NFPA 115	Laser Fire Protection	N
NFPA 130	Fixed Guideway Transit Systems	P
NFPA 150	Fire Safety in Racetrack Stables	P
NFPA 203	Roof Coverings and Roof Deck Constructions	P
NFPA 220	Types of Building Construction	P
NFPA 232	Protection of Records	P
NFPA 232AM	Fire Protection for Archives and Records Centers (Will be renumbered 232A)	P
NFPA 251	Fire Tests of Building Construction and Materials	P
NFPA 253	Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source	P
NFPA 264	Heat Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter	C
NFPA 269	Toxic Hazard Modeling	N
NFPA 291	Fire Flow Testing and Marking of Hydrants	P
NFPA 297	Telecommunications Systems—Principles and Practices for Rural and Forestry Services	C
NFPA 303	Marinas and Boatyards	P
NFPA 307	Marine Terminals, Piers, and Wharves	P
NFPA 312	Vessels During Construction, Repair, and Lay-Up	P
NFPA 407	Aircraft Fuel Servicing	P
NFPA 409	Aircraft Hangars	P
NFPA 414	Aircraft Rescue and Fire Fighting Vehicles	P
NFPA 418	Heliports	P
NFPA 481	Titanium	C
NFPA 560	Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigation	N
NFPA 701	Fire Tests for Flame-Resistant Textiles and Films	C
NFPA 703	Fire Retardant Impregnated Wood and Flame Retardant Coatings for Building Materials	R
NFPA 720	Household Carbon Monoxide (CO) Warning Equipment and Fuel Gas Warning Equipment	N
NFPA 780	Lightning Protection Code	P
NFPA 804	Advance Lightwater Reactor Electric Generating Plants	N
NFPA 820	Wastewater Treatment and Collection Facilities	C
NFPA 901	Uniform Coding for Fire Protection	C
NFPA 902M	Fire Reporting Field Incident Manual	W
NFPA 903	Fire Reporting Property Survey Guide	W
NFPA 904	Incident Follow-up Report Guide	W
NFPA 1051	Wildland Fire Management Personnel Professional Qualifications	N
NFPA 1123	Outdoor Display of Fireworks	P
NFPA 1127	High Power Rocketry	N
NFPA 1561	Fire Department Incident Management System	P
NFPA 1581	Fire Department Infection Control Program	C
NFPA 1583	Fire Fighter Physical Performance	N
NFPA 1600	Disaster Management	N
NFPA 1983	Fire Service Life Safety Rope, Harnesses, and Hardware	C
NFPA 8506	Heat Recovery Steam Generators	N

[FR Doc. 94–16667 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–13–M

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Extension of Time Period for Notice of Prospective Grant of Exclusive Patent License.

SUMMARY: In the Federal Register on January 20, 1994 (59 FR 3072), the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, issued a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that NIST was contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 5,295,176, titled "Method and Apparatus for Precisely Measuring Voltages Applied to X-Ray Sources" to Radcal Corporation, having a place of Business in Monrovia, California. In the course of negotiations with Radcal Corporation, additional matters have arisen which may affect the prospective license, and which NIST wishes to bring to the attention of potential respondents through this notice.

ADDRESSES: Bruce E. Mattson, National Institute of Standards and Technology, Industrial Partnerships Program, Building 221, Room B–256, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson (301) 975–6501.

DATES: Any party wishing to apply for a license under U.S. Patent Number 5,295,176 or wishing to oppose the grant of the license to Radcal Corporation should write to the address shown above no later than August 10, 1994.

SUPPLEMENTARY INFORMATION: As announced in the earlier Federal Register notice, the prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty days from the date of this published notice, NIST receives written evidence and argument that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

NIST now wishes to inform the public that in addition to the above identified license, NIST is willing to enter into a Cooperative Research and Development Agreement ("CRADA") to perform further research on the invention for the purposes of commercialization. This CRADA will be conducted by NIST without any additional charge to whatever party or parties license the patent. Further, NIST is willing to grant to the licensee or licensees an option to negotiate for royalty-free exclusive licenses for any jointly owned patents which occur under the CRADA which are improvements on U.S. Patent Number 5,295,176, as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which occur under the CRADA.

U.S. Patent Number 5,295,176 provides a method of precisely

Technology ("NIST"), U.S. Department of Commerce, issued a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that NIST was contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 5,295,176, titled "Method and Apparatus for Precisely Measuring Voltages Applied to X-Ray Sources" to Radcal Corporation, having a place of Business in Monrovia, California. In the course of negotiations with Radcal Corporation, additional matters have arisen which may affect the prospective license, and which NIST wishes to bring to the attention of potential respondents through this notice.

ADDRESSES: Bruce E. Mattson, National Institute of Standards and Technology, Industrial Partnerships Program, Building 221, Room B–256, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson (301) 975–6501.

DATES: Any party wishing to apply for a license under U.S. Patent Number 5,295,176 or wishing to oppose the grant of the license to Radcal Corporation should write to the address shown above no later than August 10, 1994.

SUPPLEMENTARY INFORMATION: As announced in the earlier Federal Register notice, the prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty days from the date of this published notice, NIST receives written evidence and argument that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

NIST now wishes to inform the public that in addition to the above identified license, NIST is willing to enter into a Cooperative Research and Development Agreement ("CRADA") to perform further research on the invention for the purposes of commercialization. This CRADA will be conducted by NIST without any additional charge to whatever party or parties license the patent. Further, NIST is willing to grant to the licensee or licensees an option to negotiate for royalty-free exclusive licenses for any jointly owned patents which occur under the CRADA which are improvements on U.S. Patent Number 5,295,176, as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which occur under the CRADA.

U.S. Patent Number 5,295,176 provides a method of precisely measuring the accelerating voltage applied to an x-ray tube using a simple apparatus with a direct reading taken from a spectrographic image of the radiation produced by the x-ray tube.

The availability of the invention for licensing was published in the Federal Register, Vol. 58, No. 93 (May 17, 1993). A copy of the patent may be obtained from NIST at the foregoing address.

Dated: June 30, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–16621 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Transshipment Charges for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

July 5, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transshipments to 1994 limits.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a notice published in the **Federal Register** on June 28, 1993 (58 FR 34568), CITA announces that Customs would be conducting other investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that textile products in Categories 339 and 352, produced or manufactured in China and entered into the United States with the incorrect country of origin, were transshipped in circumvention of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China. Consultations were held between the Governments of the United States and the People's Republic of China on this matter on June 9 through 10, 1994. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1994 quota levels for the categories listed below:

Category	Amounts to be charged
339	59,165 dozen of which 55,004 dozen are in Category 339–S.
352	1,343,603 dozen.

As a result of the charges, the current limit for Category 352 will be filled.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register**.

The U.S. Government is taking this action pursuant to the U.S. letters dated July 1, 1994, U.S. diplomatic note, the Memorandum of Understanding dated January 17, 1994 between the Govenments of the United States and the People's Republic of China, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986, December 9, 1992 and December 9, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 5, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Memorandum of Understanding dated January 17, 1994, between the Governments of the United States and the People's Republic of China, I request that, effective on July 11, 1994, you charge the following amounts to the following categories for the 1994 restraint period (see directive dated January 24, 1994):

Category	Amount to be charged to 1994 limit
339	59,165 dozen of which 55,004 dozen are in Category 339–S [1].

Category	Amount to be charged to 1994 limit
352	1,343,603 dozen.

[1] Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

This letter will be published in the **Federal Register**.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 94–16742; Filed 7–8–94; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of a New Export Visa Arrangement for Silk Apparel Produced or Manufactured in the People's Republic of China

July 5, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing export visa requirements for silk apparel.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the People's Republic of China reached agreement, effected by exchange of notes dated June 23, 1994 and June 27, 1994, to establish an export visa arrangement for certain silk apparel products, produced or manufactured in China and exported from China on and after July 15, 1994. Goods exported during the period July 15, 1994 through August 15, 1994 shall not be denied entry for lack of a visa. All goods exported after August 15, 1994 must be accompanied by a visa.

A description of the apparel categories in terms of HTS numbers is available in the 1994 U.S. CORRELATION: Silk Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 15381, published on April 1, 1994).

Interested persons are advised to take all necessary steps to ensure that such silk apparel products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 5, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Silk Visa Arrangement, effected by exchange of notes dated June 23, 1994 and June 27, 1994, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 15, 1994, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of silk apparel products in Categories 733–736, 738–748, 750–752, 758 and 759, produced or manufactured in China and exported from China on and after July 15, 1994 for which the Government of the People's Republic of China has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category(s) or part category(s) shall be included in the coverage of this arrangement on an agreed effective date. Goods exported during the period July 15, 1994 through August 15, 1994 shall not be denied entry for lack of a visa.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original export license/commercial invoice or successor document. The license will be printed on a purple guilloche pattern background. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO)(the code for China is "CN"), and a six digit numerical serial number identifying the shipment; e.g., 4CN123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States (HTS or successor documents) shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 340–510 DOZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as 347/348 or if the shipment consists solely of 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable then a new visa must be obtained from the Government of the People's Republic of China, replacement visa issued by the Embassy of the People's Republic of China in Washington, D.C., or a visa waiver may be issued by the Committee for the Implementation of Textile Agreements at the request of the Embassy of the People's Republic of China in Washington, D.C., and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

The replacement visa shall consist of a Textile Export Visa/Invoice form bearing an official Chinese Embassy embossed stamp on the front and include the standard information required on an export visa and the signature of an official authorized by the Government of the People's Republic of China to issue replacement visas. The signature must match one of two original signatures of authorized officials provided to the Government of the United States by the Government of the People's Republic of China. U.S. Customs shall not permit entry of the shipment if any of the information required on the replacement visa is missing, incorrect or illegible, or has been crossed out or altered in any way.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from the People's Republic of China has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

The complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa shall be provided on the textile visa document.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa for entry.

The visa stamp remains unchanged.

The actions taken concerning the Government of the People's Republic of China with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–16711 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Suspension of Enforcement of Import Restraint Limits, Guaranteed Access Levels and Export Visa Requirements for Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Haiti

July 5, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending the enforcement of limits, guaranteed access levels and export visa requirements.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 12917 of May 21, 1994; Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based on Executive Order 12917, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit the importation of any textile or apparel product, produced or manufactured in Haiti and exported from Haiti to the United States after May 21, 1994. Also, U.S. Customs will neither accept nor

The complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa shall be provided on the textile visa document.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa for entry.

The visa stamp remains unchanged.

The actions taken concerning the Government of the People's Republic of China with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–16711 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Suspension of Enforcement of Import Restraint Limits, Guaranteed Access Levels and Export Visa Requirements for Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Haiti

July 5, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending the enforcement of limits, guaranteed access levels and export visa requirements.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 12917 of May 21, 1994; Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based on Executive Order 12917, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit the importation of any textile or apparel product, produced or manufactured in Haiti and exported from Haiti to the United States after May 21, 1994. Also, U.S. Customs will neither accept nor sign the ITA–370P form for shipments of U.S. formed and cut parts destined for assembly in Haiti and re-entry into the United States under the Special Access Program.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 5, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on July 6, 1994, you are directed to prohibit the importation of any textile or apparel product, produced or manufactured in Haiti and exported from Haiti to the United States.

Also, you are directed to neither accept nor sign the ITA–370P form for shipments of U.S. formed and cut parts destined for assembly in Haiti and re-entry into the United States under the Special Access Program.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–16712 Filed 7–8–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Grant Award to Colorado State University

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Colorado State University, for continuing research in support of the DOE Office of Building Energy Research programs. The project seeks to develop and improve solar domestic hot water systems.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist, 303–275–4748.

SUPPLEMENTARY INFORMATION: The proposed basic research will contribute to the DOE mission by assisting in the development of improved solar water heating technologies for use in buildings.

Successful completion of this research would advance the goal of wide commercialization of solar water heating systems. Deploying these technologies will reduce energy use in buildings which, in the U.S., accounts for about 40% of annual national energy consumption.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE Funding for the Grant is estimated at $212,000 and the anticipated period of performance is twelve (12) months.

Issued in Golden, Colorado on June 28, 1994.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 94–16703 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–M

Pittsburgh Energy Technology Center; Noncompetitive Financial Assistance; Electric Power Research Institute

AGENCY: Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.7(b)(2)(i), it intends to award a Cooperative Agreement to Electric Power Research Institute for "Cofunding of the EPRI Upgraded Coal Interest Group Program" This activity would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of this activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

ADDRESSES: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

FOR FURTHER INFORMATION CONTACT: David L. Hunter, Contract Specialist, 412/892–4872.

SUPPLEMENTARY INFORMATION:

Cooperative Agreement No.: DE–FC22–94PC94153.

Title of Research Effort: Cofunding of the EPRI Upgraded Coal Interest Group Program.

Awardee

Electric Power Research Institute

Term of Assistance Award: 18 months

Cost of Assistance Effort: The total estimated project value is $570,000.

Objective: The objective of this project is to form a working group consisting of electric power producers, state and federal agencies, and private vendors that is interested in funding studies that promote the commercial availability of upgraded coal technologies and utilization of products derived therefrom.

Dated: June 20, 1994.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 94–16702 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Notice of Cooperative Agreement Award to the Florida Solar Energy Center

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a cooperative agreement to the Florida Solar Energy Center, University of Central Florida for continuing research efforts in support of the DOE Office of Building Energy Research programs. The project will assist in developing ratings, standards, labels, installation guidelines and utility monitoring programs for solar domestic hot water systems.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Cidney L. Bippus, Contract Administrator, 303–275–4793. The Contracting Officer is John W. Meeker. The Project Officer is Heather L. Collins, 303–275–4730.

SUPPLEMENTARY INFORMATION: The proposed basic research will contribute to the DOE mission by assisting in the development of improved solar heating technologies for use in buildings. Successful completion of this research would advance the goal of wide commercialization of solar water heating systems. Deploying these technologies will reduce energy use in buildings which, in the U.S., accounts for about 40% of annual national energy consumption.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Cooperative Agreement is estimated at $354,031 and the anticipated period of performance is twelve (12) months.

Issued in Golden, Colorado on June 29, 1994.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 94–16704 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Notice of Financial Assistance Award to International Geothermal Association

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to a non-competitive financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2) is announcing its intention to make a financial assistance award to the International Geothermal Association to organize, convene and market the World Geothermal Congress 1995, which is to be held in Florence, Italy.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, CO 80401, Attention: Ruth E Adams, Contract Specialist, or at phone number (303) 275–4722. The Contracting Officer for this action is John W. Meeker. The Project Officer for this action is Jeff Hahn.

SUPPLEMENTARY INFORMATION: This proposal was a solicited application. The primary purpose of the World Geothermal Conference (WGC) 1995 is to provide a forum for international exchange of scientific and technological information on geothermal development during the period 1990–1995. The International Geothermal Association (IGA) is convening and organizing the WGC. The Department believes that the proposed effort will benefit the public, and that providing financial assistance through a grant mechanism is an appropriate method for providing funding. Through this financial assistance the U.S. Department of Energy will be listed as a sponsor of the WGC. Competition for this effort would have an adverse effect on the urgency and completion of the activities.

The proposed project will contribute to the DOE mission of ". . . providing the scientific and educational foundation and technology . . . necessary to achieve efficiency in energy use, diversity in energy sources, and access to technical information . . .". The IGA will do this by providing a forum on an international scale where the U.S. geothermal industry can exchange scientific and technological information.

The objective of this effort is to convene an international conference where governments and industry can meet and share scientific and technological information as well as their relevant experiences. The WGC '95 will provide the forum for presentations of world-wide electrical and direct use, country updates, reports on international cooperative projects and other invited papers. Pre-congress courses will be taught by experts in the field on subjects such as: Drafting a Geothermal Project for Financing by International Organizations, Injections, Drilling Technology and Regulation, Software for Geothermal Applications, Geothermal Heat Pumps, Small Power Plants, Direct Uses and Environmental Aspects of Geothermal Development

The probability of meeting the objectives listed above are very high, given that the IGA has been successful in the past for similar endeavors.

The staff of the International Geothermal Association is qualified and positioned to provide this service. The IGA is an international association for the geothermal industry. Its membership includes 1,971 organizations and individuals.

The IGA's base of operations is an office in Berkeley, California, and is fully capable of meeting their needs.

The budget proposed for the anticipated work was reviewed and is considered to be appropriate and adequate.

The public benefit to be derived from the World Geothermal Conference is the opportunity for the geothermal industry to meet and exchange information and experiences, as well as to encourage research, development and use of geothermal energy world wide.

The services provided through this proposed grant fully support the program's direction and objectives. The International Geothermal Association is taking the lead role in organizing, convening and marketing the World Geothermal Conference 1995. The IGA is qualified and positioned to undertake this task since they organized the last WGC in New Zealand in 1993. Competition for this effort would have a significant adverse impact on the urgency and completion of the proposed activities.

Issued in Golden, Colorado on: June 23, 1994.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 94–16705 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Notice of Financial Assistance Award to National Geothermal Association

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to a non-competitive financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2) is announcing its intention to make a financial assistance award to the National Geothermal Association to provide a service to the geothermal community and foster business relationships and to distribute informational material.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden CO 80401, Attention: Ruth E. Adams, Contract Specialist or at (303) 275–4722. The Contracting Officer for this action is John W. Meeker. The Project Officer is Jeffrey L. Hahn.

SUPPLEMENTARY INFORMATION: This proposal was a solicited application. The National Geothermal Association (NGA) will be merging with the Geothermal Resources Association (GRA) in the spring of 1994 and together will represent, through membership, practically the entire geothermal industry. The newly formed industry association will be called the Geothermal Energy Association (GEA). The Department believes that the proposed effort will benefit the public, and that providing financial assistance through a grant mechanism is an appropriate method to providing funding. Competition for this effort would have an adverse effect on continuity and completion of the activities.

The proposed project will contribute to the DOE mission of "* * * providing the scientific and educational foundation and technology * * * necessary to achieve efficiency in energy use, diversity in energy sources, and access to technical information * * *" (quotation from the Energy Mission Statement). The National Geothermal Association (NGA) will do this by providing services to support the geothermal industry through various activities and will work

Issued in Golden, Colorado on: June 23, 1994.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 94–16705 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Notice of Financial Assistance Award to National Geothermal Association

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to a non-competitive financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2) is announcing its intention to make a financial assistance award to the National Geothermal Association to provide a service to the geothermal community and foster business relationships and to distribute informational material.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden CO 80401, Attention: Ruth E. Adams, Contract Specialist or at (303) 275–4722. The Contracting Officer for this action is John W. Meeker. The Project Officer is Jeffrey L. Hahn.

SUPPLEMENTARY INFORMATION: This proposal was a solicited application. The National Geothermal Association (NGA) will be merging with the Geothermal Resources Association (GRA) in the spring of 1994 and together will represent, through membership, practically the entire geothermal industry. The newly formed industry association will be called the Geothermal Energy Association (GEA). The Department believes that the proposed effort will benefit the public, and that providing financial assistance through a grant mechanism is an appropriate method to providing funding. Competition for this effort would have an adverse effect on continuity and completion of the activities.

The proposed project will contribute to the DOE mission of "* * * providing the scientific and educational foundation and technology * * * necessary to achieve efficiency in energy use, diversity in energy sources, and access to technical information * * *" (quotation from the Energy Mission Statement). The National Geothermal Association (NGA) will do this by providing services to support the geothermal industry through various activities and will work to create a business environment in which the industry can thrive.

Through this financial assistance the NGA (a non-profit organization) will mount an aggressive campaign of information dissemination, technology transfer and outreach. The objectives for this grant are as follows:

(1) Geothermal Energy Conference—The second annual conference on geothermal energy will be held in the Washington, D.C. area approximately 1 month after this Agreement is in place.

(2) Geothermal EPACT/Climate-Change Action Group—This group will be comprised of representatives of the geothermal industry, the utility industry, utility regulators and environmental- and energy-advocacy groups. The purpose of the group will be to devise initiatives that the geothermal industry and DOE could undertake through cost-sharing arrangements and that address accelerated use of geothermal resources in the United States, thereby helping to reduce greenhouse gases.

(3) Utility Outreach Program—The NGA will provide the data and documentation that utilities and utility commissioners need in order to understand geothermal power generation better and incorporate it into their portfolios.

(4) Develop information on Exporting Goods and Services—Information will be developed that will aid the U.S. geothermal industry in exporting its goods and services.

(5) Environmental Brochure—A brochure will be developed with the theme "Geothermal is Clean Air".

(6) Quarterly Newsletter—A quarterly newsletter on geothermal energy will be published and widely distributed.

(7) Educational Cooperative-Action Alliance—Formation of an alliance to exchange information and coordinate activities of the various entities in the geothermal community who are producing educational materials.

(8) Washington, D.C. Office—The NGA will maintain an office in the Washington, D.C. area. The purpose of this office is to develop and maintain the contacts that are necessary for the operation of a domestic as well as an international export program, to provide educational assistance to various environmental, public interest, and government groups, and to be able to respond rapidly to problems and opportunities that arise in Washington, D.C. No lobbying activities will be supported through the funds provided by this grant.)

The probability of meeting the objectives listed above are very high, given that the NGA has been successful in the past for similar endeavors

The staff of the National Geothermal Association is qualified and positioned to provide this service. The NGA President and President elect, respectively, is Tsvi Meidav and Phillip Michael Wright. After the merger of the NGA and GRA into the Geothermal Energy Association, the Chairman position will be shared jointly by Phillip Michael Wright and David R. Cox (Chairman of the GRA). David Anderson will serve as the Western Executive Director; he has been the Executive Director of the NGA since it was established in 1985. These individuals are highly respected throughout the geothermal industry.

The NGA's base of operation is an office in Davis, California, and is fully capable of meeting their needs.

The budget proposed for the anticipated work was reviewed and is considered to be appropriate and adequate.

The public benefit to be derived from the above mentioned projects and activities are an enhanced awareness of the benefits of geothermal energy. All of the NGA's proposed activities, projects and efforts are to enhance the competitive position of the U.S. geothermal industry in the domestic and international energy markets, to develop and conduct educational programs on geothermal energy and to distribute information. Through this program the NGA will be supporting the U.S. geothermal industry's efforts to bring more clean, domestic geothermal energy on line.

The services provided through the proposed grant fully support the program's direction and objectives. The National Geothermal Association is qualified and positioned to perform the above mentioned tasks. The NGA is an accepted and respected industry association and has about 40 member companies, largely from the geothermal service industries. The NGA has established an information network which is continually growing. Competition for this effort would have a significant adverse impact on the accomplishment and completion of the proposed activities.

Issued at Golden, Colorado, on: June 23, 1994.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 94–16706 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF87-128-001]

Bear Mountain Limited Partnership; Notice of Amendment To Filing

July 5, 1994.

On June 29, 1994, Bear Mountain Limited Partnership (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by July 26, 1994, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16669 Filed 7-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-195-016, et al.]

Western Systems Power Pool, et al.; Electric Rate and Corporate Regulation Filings

June 30, 1994

Take notice that the following filings have been made with the Commission:

1. Western Systems Power Pool

[Docket No. ER91-195-016]

Take notice that on May 21, 1994, the Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order on Rehearing Denying Request Not To Submit Information, and Granting In Part and Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

2. New England Power Co.

[Docket No. ER94-110-000]

Take notice that New England Power Company, on June 24, 1994, tendered an amendment to its filing in this proceeding.

Comment date: July 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Madison Gas & Electric Company

[Docket No. ER94-1147-000]

Take notice that on May 31, 1994, Madison Gas & Electric Company (Madison) tendered for filing an amendment to its April 11, 1994 filing in the above-referenced docket.

Comment date: July 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. C.C. Pace Energy Services, a Division of C.C. Pace Resources, Inc.

[Docket No. ER94-1181-000]

Take notice that on June 21, 1994 and June 23, 1994, C.C. Pace Energy Services, a Division of C.C. Pace Resources, Inc. tendered for filing an amendment and an Application Clarification, respectively in the above-referenced docket.

Comment date: July 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. NorAm Energy Services, Inc.

[Docket No. ER94-1247-000]

Take notice that on June 10, 1994 NorAm Energy Services, Inc. (NES) has tendered for a supplemental filing in support of its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Substitute F.E.R.C. Electric Rate Schedule No. 1 to be effective May 11, 1994.

NES intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where NES sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. NES is not in the business of generating, transmitting, or distributing electric power.

Comment date: July 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Boston Edison Company

[Docket No. ER94-1383-000]

Take notice that on June 20, 1994, Boston Edison Company (Edison) filed a letter agreement between itself and thirteen Massachusetts municipal electric systems further extending the deadline for the Municipal's submission of objections to Edison's 1992 bills for services rendered under each municipal system's Pilgrim power purchase contract in 1992. On May 16, 1994, Boston Edison filed a letter agreement in Docket No. ER94-1269-000 extending the deadline from May 19, 1994 until June 20, 1994 until July 31, 1994. The letter agreement makes no other changes to the rates, terms and conditions of the affected Pilgrim contracts.

Edison states that it has served copies of this filing upon each of the affected customers and upon the three other Pilgrim power purchasers: Reading Municipal Light Department, Montaup Light Department, Montaup Electric Company and Commonwealth Electric Company; as well as the Massachusetts Department of Public Utilities.

Comment date: July 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Dixie Valley, L.P.

[Docket No. QF93-148-000]

On June 27, 1994, Dixie Valley, L.P. tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the technical aspects of the small power production facility. No determination has been made that this submittal constitutes a complete filing.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16627 Filed 7-8-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-639-000]

Columbia Gas Transmission Corp.; Application

July 5, 1994.

Take notice that on July 1, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an application with the Commission in Docket No. CP94-639-000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission and approval to abandon deteriorated pipe on Line 1740 in Doddridge and Harrison Counties, West Virginia, and to replace the abandoned facilities, all as more fully set forth in the application which is open to the public for inspection.

Columbia proposes to abandon approximately 6.5 miles of deteriorated 20-inch diameter pipe [1] in Doddridge and Harrison Counties, and replace with approximately 6.5 miles of 20-inch diameter pipe and 0.1 mile of 16-inch diameter pipe as an auxiliary crossover pipeline on five segments of Line 1740. Columbia does not request authorization for any new or additional service. Columbia states that the proposed pipeline sections would have equivalent design delivery capacity and the facilities proposed for abandonment are obsolete due to class location changes or are physically deteriorated to the extent that replacement is deemed advisable. The proposed construction would cost approximately $6,624,000 and the estimated net debit to retirement associated with the abandonment is $331,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 12, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing

[1] See order at 6 FPC 627 (1947).

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16627 Filed 7–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–639–000]

Columbia Gas Transmission Corp.; Application

July 5, 1994.

Take notice that on July 1, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an application with the Commission in Docket No. CP94–639–000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission and approval to abandon deteriorated pipe on Line 1740 in Doddridge and Harrison Counties, West Virginia, and to replace the abandoned facilities, all as more fully set forth in the application which is open to the public for inspection.

Columbia proposes to abandon approximately 6.5 miles of deteriorated 20-inch diameter pipe [1] in Doddridge and Harrison Counties, and replace with approximately 6.5 miles of 20-inch diameter pipe and 0.1 mile of 16-inch diameter pipe as an auxiliary crossover pipeline on five segments of Line 1740. Columbia does not request authorization for any new or additional service. Columbia states that the proposed pipeline sections would have equivalent design delivery capacity and the facilities proposed for abandonment are obsolete due to class location changes or are physically deteriorated to the extent that replacement is deemed advisable. The proposed construction would cost approximately $6,624,000 and the estimated net debit to retirement associated with the abandonment is $331,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 12, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by §§ 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16670 Filed 7–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–633–000]

NorAm Gas Transmission Co.; Notice of Request Under Blanket Authorization

July 5, 1994.

Take notice that on June 29, 1994, NorAm Gas Transmission Company (NGT), formerly Arkla Energy Resources Company, 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–633–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain facilities in Oklahoma under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT states that it proposes to abandon a 1-inch inactive delivery tap and metering facilities originally installed to serve a customer of Arkansas Louisiana Gas Company, Sunray Midcontinent—T. Lusty Lease, located on NGT's Line 634–8 in Seminole County, Oklahoma.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16628 Filed 7–8–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a total of $521,200.64 (plus accrued interest) in settlement funds to members of the public. The funds are being held in escrow pursuant to settlement agreements involving Western Asphalt Service, Inc., Case No. LEF–0047; Gray Trucking Company, Case No. LEF–0120; and William Valentine & Sons, Inc., Case No. LEF–0123.

DATES AND ADDRESSES: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Nos. LEF–0047 *et al.*

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(b) of the procedural regulations of the

---

[1] *See* order at 6 FPC 627 (1947).

Department of Energy, 10 C.F.R. § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to settlement agreements entered into by the DOE and Western Asphalt Service, Inc., Gray Trucking Company and William Valentine & Sons, Inc., which settled alleged violations of the DOE price regulations involving these firms' sales of crude oil during the period August 19, 1973 through January 27, 1981.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute funds remitted by these firms and being held in escrow. The DOE has proposed to distribute the funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in these proceedings will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: July 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Western Asphalt Service, Inc., Gray Trucking Company, William Valentine & Sons, Inc.

Dates of Filing: July 17, 1992; December 7, 1993; April 13, 1994.

Case Numbers: LEF–0047, LEF–0120, LEF–0123.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed three Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on July 17, 1992, December 7, 1993 and April 13, 1994, respectively. The Petitions request that OHA formulate and implement procedures for the distribution of funds received pursuant to settlement agreements entered into by the DOE and Western Asphalt Service, Inc. (Western), Gray Trucking Company (Gray) and William Valentine & Sons, Inc. (Valentine).

I. Background

During the period of Federal petroleum price controls, Western was engaged in crude oil refining and reselling.[1] The firm was therefore subject to regulations governing the pricing of crude oil set forth at 10 C.F.R. Parts 205, 210, 211, and 212 of the Mandatory Petroleum Price and Allocation Regulations. As a result of an ERA audit of its operations, a Proposed Remedial Order (PRO) was issued to Western on April 4, 1984 pursuant to 10 C.F.R. Part 205, Subpart O (ERA Docket No. 940X00182). The PRO alleged violations of the pricing and certification rules that applied to crude oil resellers. Essentially, the firm was charged with selling price-controlled crude oil as uncontrolled stripper well crude oil at unlawfully high prices in violation of the provisions of 10 C.F.R. Part 212, Subpart L and 10 C.F.R. § 212.131. In another enforcement proceeding, on May 7, 1981, a Notice of Probable Violation was issued to Western which alleged that the firm unlawfully received Small Refiner Bias Entitlements (ERA Docket No. N00S90197) in April and May 1977. These alleged violations of DOE crude oil regulations by Western were settled by a Consent Order between the firm and DOE on May 30, 1984. The PRO was therefore withdrawn and the NOPV was rescinded. Western agreed to remit $300,000, plus interest, to the DOE for deposit in an interest-bearing escrow account. Western has complied with this obligation, remitting a total of $390,059.12 to the DOE. In return, the DOE has released Western from any liability regarding its failure to comply with the Federal petroleum price and allocation regulations during the period August 19, 1973 through January 27, 1981, with the sole exception of any potential violations of the Entitlements Program after September 30, 1980.

Gray was also a crude oil reseller during the period of price controls. On March 29, 1982, Gray and the DOE entered into a Consent Order whereby Gray would remit $31,500, plus interest, to the DOE for deposit in an interest-bearing escrow account. The DOE agreed not to pursue its claim that, during the period March 1977 through January 1980, Gray overcharged its customers by charging unlawfully high prices for crude oil in violation of 10 C.F.R. Part 212, Subparts F and L. Despite its agreement with the terms of the Consent Order, Gray failed to comply fully with its financial obligations to the DOE, and remitted only $4,738.86 to the DOE. On October 15, 1985, the U.S. District Court for the Northern District of Texas, Amarillo Division, granted the DOE an Amended Judgment against Gray for an additional $34,625. However, the Amended Judgment has not resulted in any additional payments to DOE by Gray. ERA has petitioned that the $4,738.86, plus accrued interest, obtained from Gray be distributed by OHA in accordance with the Subpart V regulations.

Valentine was engaged in crude oil reclamation during the period May 1979 through December 1980.[2] Through an unincorporated subsidiary, Big Muddy Oil Processors Inc. (Big Muddy), Valentine obtained waste crude oil from oil spills, pipeline ruptures, waste oil pits and oil tank bottoms. After numerous separation and filtering processes, the waste oil was mixed with various blending agents (naphthas, natural gasoline, natural gas by-products, etc.) and the resulting product was sold as pipeline-quality crude oil. Big Muddy, and by extension Valentine, was therefore a reseller of crude oil, subject to the provisions of 10 C.F.R. Part 212, Subpart L, which governed the resales of crude oil.

An ERA audit uncovered evidence that Valentine sold crude oil at unlawfully high prices during the period May 1979 through December 1980. On December 2, 1987, OHA issued a Remedial Order to Valentine directing the firm to refund $1,454,876 in overcharges, plus interest. *See William Valentine and Sons, Inc.*, 16 DOE ¶ 83,025 (1987). Valentine appealed OHA's determination to the Federal Energy Regulatory Commission (FERC). On March 23, 1989, FERC rejected Valentine's Appeal of the Remedial Order and upheld OHA's findings. *See William Valentine and Sons, Inc.*, 46 FERC ¶ 61,252 (1989). Valentine appealed that decision and, on January 24, 1990, the U.S. District Court for the District of Wyoming ruled that Valentine's challenge to DOE's Remedial Order and to FERC's ruling was without merit. At the same time, the Court also approved a Settlement Agreement in which Valentine agreed to remit to DOE no less than $108,739 plus interest. In return, DOE agreed to deem Valentine in full compliance with the price control program and to release all administrative and civil claims against the firm. Valentine has paid $126,402.66 into an interest-bearing DOE escrow account in compliance with the Settlement Agreement.

II. Jurisdiction and Authority

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (The MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement (the Stripper Well Agreement) in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D.Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the MSRP in all Subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies

[1] Western Asphalt Service, Inc., W.F. Moore and Son, Inc., and Gibson Oil and Refining Company, were all controlled by Wilfred Paige van Loben Sels during the price controls period. Textual references to "Western" in this Decision include all parties to the consent order.

[2] William Valentine and Sons, Inc., Valentine Construction, Inc., Dale L. Valentine, Verna Valentine, and James L. Marchant are collectively referred to as "Valentine" in the text. All are parties to the Settlement Agreement which resolved DOE claims against them.

in overcharges, plus interest. *See William Valentine and Sons, Inc.*, 16 DOE ¶ 83,025 (1987). Valentine appealed OHA's determination to the Federal Energy Regulatory Commission (FERC). On March 23, 1989, FERC rejected Valentine's Appeal of the Remedial Order and upheld OHA's findings. *See William Valentine and Sons, Inc.*, 46 FERC ¶ 61,252 (1989). Valentine appealed that decision and, on January 24, 1990, the U.S. District Court for the District of Wyoming ruled that Valentine's challenge to DOE's Remedial Order and to FERC's ruling was without merit. At the same time, the Court also approved a Settlement Agreement in which Valentine agreed to remit to DOE no less than $108,739 plus interest. In return, DOE agreed to deem Valentine in full compliance with the price control program and to release all administrative and civil claims against the firm. Valentine has paid $126,402.66 into an interest-bearing DOE escrow account in compliance with the Settlement Agreement.

II. Jurisdiction and Authority

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (The MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement (the Stripper Well Agreement) in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D.Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the MSRP in all Subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the Subpart V regulations. 52 Fed. Reg. 11737 (April 10, 1987) (the April Notice).

The OHA has applied these procedures in numerous cases since the April Notice, *e.g.*, *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (*NYP*); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Frank G. Theis issued an Opinion and Order denying the States' Motion in its entirety. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd*, 857 F. 2d 1481 (Temp. Emer. Ct. App. 1988). Judge Theis concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. He also ruled that, as specified in the April Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). After reviewing the records submitted in support of the three Petitions, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the $521,200.64 in funds obtained from Western, Gray and Valentine. We therefore propose to grant the ERA's Petitions and assume jurisdiction over distribution of the funds.

III. Proposed Refund Procedures

A. Refund Claims

We propose to apply the procedures discussed in the April Notice to the crude oil Subpart V proceedings that are the subject of the present determination. As noted above, the monies deposited with the DOE in settlement of the alleged crude oil violations totalling $521,200.64, plus accrued interest, are covered by this Proposed Decision. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or $104,240.13 plus interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g.*, *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes of covered products and prove that they were injured as a result of the alleged violations. Generally, we will presume that an applicant incurred a crude oil overcharge in the purchase of a product if the product was either identified as a covered product in the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §§ 751–760, or if the product was purchased from a crude oil refinery or originated in a crude oil refinery and was purchased from a reseller. *Notice of General Interest Concerning DOE's Crude Oil Overcharge Refund Program*, 57 Fed. Reg. 30731, 30732 (July 10, 1992); *Great Lakes Carbon Corp.*, 22 DOE ¶ 85,248, at 88,662 (1993). Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *See, e.g., A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. *See, e.g., Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the

applicant will be required to produce further evidence of injury. *See, e.g., NYP*, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumption of injury utilized in refund cases involving refined petroleum products. They may, however, use econometric evidence of the type employed in the *OHA Report to the District Court in the Stripper-Well Litigation, reprinted in* 6 Fed. Energy Guidelines ¶ 90,507.

Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for a crude oil refund under Subpart V. *Mid-America Dairyman Inc., v. Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

As we have stated in previous Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. *E.g., Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund Application in the crude oil refund proceedings need not file another Application. That previously filed Application will be deemed to be filed in all crude oil refund proceedings as the procedures are finalized. The DOE has established June 30, 1994 as the final deadline for filing an Application for Refund from the crude oil funds. *Anchor Gasoline Corp.*, 22 DOE ¶ 85,071 (1992); 58 Fed. Reg. 26318 (May 3, 1993). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of $0.0008 per gallon. However, while we anticipate that applicants who filed their claims within the original June 30, 1988 deadline will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds. *See, e.g., Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register**.

B. Payments to the Federal Government and the States

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $416,960.51, plus interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by Western Asphalt Service, Inc., W.F. Moore and Son, Inc., Gibson Oil and Refining Co., and Wilfred Paige van Loben Sels, pursuant to the Consent Order signed on May 30, 1984; by Gray Trucking Company pursuant to the Consent Order signed on March 29, 1982; and by William Valentine and Sons, Inc., Valentine Construction, Inc., Dale L. Valentine, Verna Valentine, and James L. Marchant, pursuant to the Settlement Agreement signed on January 24, 1990, will be distributed in accordance with the foregoing Decision.

[FR Doc. 94–16707 Filed 7–8–94; 8:45 am]

BILLING CODE 5450-01-P

Southeastern Power Administration

Proposed Power Marketing Policy for Georgia-Alabama-South Carolina System of Projects

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice.

SUMMARY: Southeastern has developed the following proposed power marketing policy for its Georgia-Alabama-South Carolina System of Projects pursuant to Notice published in the **Federal Register** of September 8, 1993, 58 FR 47273, and in accordance with Procedure for Public Participation in the Formulation of Marketing Policy published July 6, 1978, 43 FR 29186. In the Notice, Southeastern proposed a System Policy which would deal with the complete Georgia-Alabama-South Carolina System of Projects including systems both east and west of the Savannah River. Based on analysis of proposals and recommendations received, consultations with interested parties and further studies and considerations, Southeastern decided to develop a policy applying to the system effective with the expiration of existing contracts, or as soon thereafter as is practical. The policy, when finalized, will constitute written guidelines for future disposition of power from the system. The policy is developed under authority of Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, and Section 302(a) of the Department of Energy Organization Act of 1977, 42 U.S.C. 7152. Interested persons are invited to submit written comments directly to Southeastern and/or present written or oral views, or data at the public comment forums on the proposed policy.

DATES: Written comments are due on or before September 16, 1994. Public comment forums will be held in Atlanta, Georgia on August 29, 1994, and in Columbia, South Carolina on August 31, 1994.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, 2 South Public Square, Samuel Elbert Building, Elberton, Georgia 30635.

The public comment forums will each begin at 10:30 a.m. at the following locations: August 29, 1994, Sheraton Gateway Hotel, 1900 Sullivan Road, Atlanta, Georgia 30337; August 31, 1994, Sheraton Hotel & Conference Center, 2100 Bush River Road, Columbia, South Carolina 29210.

FOR FURTHER INFORMATION CONTACT: Mr. John A. McAllister, Jr., Administrator, Southeastern Power Administration, Department of Energy, 2 South Public Square, Samuel Elbert Building, Elberton, Georgia 30635, 706–283–9911.

SUPPLEMENTARY INFORMATION: Southeastern received only one response to its September 8, 1993, solicitation for proposed and recommendations contained in its Notice of Intent to Formulate Power Marketing Policy. This response was carefully considered as were facts gathered from those who consulted with Southeastern.

Major issues raised by the proposed policy are determination of marketing area, allocation of power among area customers, handling of energy at pump-storage installations, utilization of area utility systems for power integration, firming, wheeling, exchange and other essential relationships, wholesale rates, handling of resale relationships, and conservation measures. An Environmental Assessment and Finding of No Significant Impact have been prepared indicating that the proposed power marketing policy will not have a significant effect upon the quality of the human environment. A copy may be obtained by contacting the Administrator at the address or telephone number listed above.

The public comment forums will not be adjudicative in nature. The Administrator shall act as or appoint a forum chairman. At the start of the forums the chairman shall briefly explain procedures and rules. Customers and the public shall be allowed to make oral statements and comments, introduce relevant documents, and ask questions regarding the proposed power marketing policy of Southeastern representatives at the forum. Persons requesting to speak shall notify Southeastern at which forum or forums they desire to speak at least 3 days before the particular forum is scheduled so that a list of forum participants can be prepared. If necessary, the chairman may establish time limitations for oral presentations by these participants to assure that all who register to speak shall have an opportunity to do so. Others will be permitted to speak if time allows. Those unable to speak because of time limitations and others who so desire may submit written comments. The chairman and Southeastern representatives may question forum participants and, the chairman, at his discretion, may permit other participants a like privilege. Questions not answered by Southeastern representatives during a forum shall be specifically identified by the chairman in the transcript and shall be subsequently responded to by Southeastern in writing. All documents introduced and written answers to questions shall be available for inspection and copying at Southeastern headquarters in accordance with the Freedom of Information Act. Forum proceedings shall be transcribed. Copies of the transcript may be purchased from the reporter.

Customers and the public may consult or file written comments and questions with Southeastern regarding the proposed marketing policy on or before September 16, 1994. All such questions shall receive expeditious response, September 16, 1994. All such questions shall receive expeditious response, and all such comments, questions and answers shall be available at Southeastern headquarters for inspection or copying in accordance with the Freedom of Information Act. The forum transcripts will likewise be available for inspection at Southeastern headquarters in Elberton, Georgia.

Issued at Elberton, Georgia, June 21, 1994.

John A. McAllister, Jr.,

Administrator.

General. The projects and power subject to this policy are:

forums the chairman shall briefly explain procedures and rules. Customers and the public shall be allowed to make oral statements and comments, introduce relevant documents, and ask questions regarding the proposed power marketing policy of Southeastern representatives at the forum. Persons requesting to speak shall notify Southeastern at which forum or forums they desire to speak at least 3 days before the particular forum is scheduled so that a list of forum participants can be prepared. If necessary, the chairman may establish time limitations for oral presentations by these participants to assure that all who register to speak shall have an opportunity to do so. Others will be permitted to speak if time allows. Those unable to speak because of time limitations and others who so desire may submit written comments. The chairman and Southeastern representatives may question forum participants and, the chairman, at his discretion, may permit other participants a like privilege. Questions not answered by Southeastern representatives during a forum shall be specifically identified by the chairman in the transcript and shall be subsequently responded to by Southeastern in writing. All documents introduced and written answers to questions shall be available for inspection and copying at Southeastern headquarters in accordance with the Freedom of Information Act. Forum proceedings shall be transcribed. Copies of the transcript may be purchased from the reporter.

Customers and the public may consult or file written comments and questions with Southeastern regarding the proposed marketing policy on or before September 16, 1994. All such questions shall receive expeditious response, September 16, 1994. All such questions shall receive expeditious response, and all such comments, questions and answers shall be available at Southeastern headquarters for inspection or copying in accordance with the Freedom of Information Act. The forum transcripts will likewise be available for inspection at Southeastern headquarters in Elberton, Georgia.

Issued at Elberton, Georgia, June 21, 1994.

John A. McAllister, Jr.,

Administrator.

General. The projects and power subject to this policy are:

Projects	Capacity (kw) (name-plate)	Energy (mwh) (av-erage an-nual)
Allatoona	74,000	156,000
Buford	86,000	193,000
Carters:		
(1)	250,000	[3] 198,000
(2)	250,000	
J. Strom Thurmond	280,000	729,000
Hartwell	344,000	483,000
Robert F. Henry	68,000	343,000
Millers Ferry	75,000	397,000
Walter F. George	130,000	436,000
West Point	73,375	208,000
Richard B. Russell:		
(1)	300,000	[3] 484,000
(2)	340,000	

[1] Carters has 2 generating units rated at 125,000 kw each. Russell has 4 generating units rated at 75,000 kw each.

[2] Carters has 2 pumping units rated at 125,000 kw each. Russell has 4 pumping units rated at 85,000 kw each.

[3] Natural stream flow energy only.

There will be one policy for the Georgia-Alabama-South Carolina System of projects progressively implemented. It will become effective upon publication in the **Federal Register** and will be applicable to the sale of system power in respective utility areas as then existing contracts, or necessary extensions, expire.

The policy will be implemented through negotiated contracts for terms not to exceed 10 years.

Transmission facilities owned by utilities within the marketing area will be used for all necessary purposes including transmitting power to load centers. Deliveries may be made at the projects, at utilities' interconnections or at customer substations, as determined by Southeastern. The projects will be hydraulically, electrically, and financially integrated, and will be operated to make maximum contribution to the power supply of the selected utility areas. Preference in the sale of the power shall be given to public bodies and cooperatives.

Marketing Area. The marketing area shall consist of the approximate 112,000 square mile area generally known as The Southern Company service area, and the approximate 40,000 square mile area generally known as the service areas of the South Carolina Public Service Authority and the South Carolina Electric and Gas Company plus that portion of the Duke Power Company's service area within a radius of 150 miles of the Hartwell, Russell or Thurmond projects. Eligible public bodies and cooperatives in this marketing area are listed in Appendix A attached hereto.

Allocations of Existing Power. Existing power available under this policy for allocation from the Georgia-Alabama-South Carolina System will primarily be peaking power. The power will be allocated as follows:

Customer	KW
Alabama Electric Cooperative	91,000
South Carolina Public Service Authority	215,000
South Mississippi Electric Power Association	61,000
Customers in Duke Power Company service area	238,000
Customers in S.C. Electric & Gas Co. service area	16,000
Customers in The Southern Company service area	1,296,000

Except where duplication of allocation would result, each public body and cooperative within the marketing areas as shown in Appendix A will be eligible for an allocation of existing power, except for the City of Oxford, Georgia. No reallocation of existing power for the benefit of Oxford is proposed at this time. Existing preference customers within the marketing area will retain their present allocations of capacity and essentially the same energy accompaniment. It is Southeastern's goal to allocate all available and useful system power (that power remaining after provision for an appropriate capacity margin and losses) to preference customers, except power that may be used for pumping.

Allocation of Power From Russell Pumped Storage Units. Currently, the pump generator units at the Richard B. Russell Project are undergoing a series of environmental tests to meet the requirements of an injunction imposed by the U.S. District Court in the case of *South Carolina Department of Wildlife and Marine Resources* v. *Marsh et al,* 866 F.2d 97 (4th Cir 1989). The first opportunity for commercial operation of the pumping units is after the completion of these tests. The environmental tests and schedules were agreed upon by the Corps of Engineers and the party litigants, and the results of the tests must be approved by the district court before the units become commercially available. Should pumped storage units at the Russell project become commercially available during the tenure of contracts implementing this policy, after the approval of the district court, after further mitigating modifications required by environmental concerns, or by any other means, Southeastern will allocate this additional power as detailed in the Power Marketing Policy for the Georgia-Alabama-South Carolina System of Projects promulgated on October 1, 1980 in the **Federal Register**. The capacity

relative to the Russell pumped storage units will be allocated to the City of Oxford, Georgia, and to the existing customers in The Southern Company service area including Alabama Electric Cooperative and South Mississippi Electric Power Association (130 MW), the Duke Power Company service area (65 MW), the South Carolina Electric and Gas service area (5 MW) and the South Carolina Public Service Authority (60 MW). Adequate capacity has been retained to provide an appropriate capacity margin. Russell pumped storage capacity is predicted a this time on testing accomplished to date and reflects the best estimate at this time. Energy accompaniment to the pumped storage capacity will be sufficient to provide viable peaking capacity. The Russell pumped storage power will be allocated as follows:

Customer	KW
Alabama Electric Cooperative	9,000
South Carolina Public Service Authority	60,000
South Mississippi Electric Power Association	7,000
Customers in Duke Power Company service area	65,000
Customers in S.C. Electric & Gas Co. service area	5,000
Customers in The Southern Company service area	114,000

Power From Pumped Water. Southeastern will utilize its combination pumped storage and generation resources to produce high-value on-peak power. Pumping power, whether generated within the system of projects or obtained by purchasing or exchange agreement, will be used in pumped storage operations, at Southeastern's discretion. Should the purchase alternative be selected, Southeastern will obtain pumping energy from utilities offering the best terms, and/or resulting in the most benefits to the system. Should the exchange alternative be selected, pumped storage operations will be handled with public bodies, cooperatives and the utilities in a manner not involving the direct purchase and sales approach, with preference given to public bodies and cooperatives.

Utilization Of Utility Systems. In the absence of transmission facilities of its own, Southeastern will use area generation and transmission systems to integrate the Government's projects, provide firming, wheeling, exchange and backup services and such other functions as may be necessary to dispose of system power under reasonable and acceptable marketing arrangements. Utility systems providing such services shall be entitled to adequate compensation. Specific terms and conditions of all such arrangements shall be the subject of negotiations between Southeastern and the generation and transmission utilities providing the services. Individual preferred agencies directly affected by the negotiations shall, through representatives selected at the outset of negotiations, be kept currently advised on the status and progress of negotiations. Southeastern also will consult with and seek advice from these affected parties.

Wholesale Rates. Rate schedules shall be drawn to recover all costs associated with producing and transmitting the power in accordance with then current repayment criteria. Production costs will be determined on a system basis and rate schedules will relate to the integrated output of the projects. Rate schedules may be revised periodically.

Resale Rates. Resale rate provisions requiring the benefits of Southeastern power to be passed on to the ultimate consumer will be included in each Southeastern customer contract that provides for Southeastern to supply more than 25 percent of the customers' total power requirements during the term of the contract.

Energy and Economic Efficiency Measures. Each customer who purchases Southeastern's power is encouraged to participate in an integrated resource plan that considers both supply and demand side alternatives. It is recognized that some Southeastern customers are members of a power supply organization that does resource planning for its customers (i.e., power supply cooperatives and joint action agencies). Where a customer, or a power supply organization that does resource planning for a Southeastern customer, is responsible to a regulatory body or another Government agency for an integrated resource plan, the customer will make a copy of such integrated resource plan available to Southeastern. All Southeastern customers shall agree to encourage the efficient use of energy by ultimate customers.

[FR Doc. 94–16708 Filed 7–8–94; 8:45 am]
BILLING CODE 6450–01–M

Western Area Power Administration

Revised Provo River Project Marketing Proposal

AGENCY: Western Area Power Administration, DOE.

ACTION: Revised Provo River Project marketing proposal summary.

SUMMARY: In December 1993, Western Area Power Administration (Western) proposed to change the way it markets power and energy produced by the Provo River Project (PRP) and to include it as one of the Salt Lake City Area/Integrated Projects (Integrated Projects). During the comment period on the proposal, comments were received which indicated that customers of Western's Integrated Projects would not support inclusion of the PRP in the Integrated Projects. Western has decided to modify its original proposal to market this power and energy independent of the Integrated Projects. Capacity and energy produced by the PRP will be allocated to those members of Intermountain Consumers Power Association (ICPA) and Utah Municipal Power Agency (UMPA) located in Utah and Wasatch Counties in Utah. ICPA and UMPA are hereafter referred to as potential contractors. Power would be allocated to these potential contractors proportional to their load. Separate power sales contracts would be offered to the potential contractors. Potential contractors would pay all of the annual powerplant expenses of the PRP including an amount to assist the Provo River Water Users Association (Water Users) repayment of the United States original investment in the PRP. In return, potential contractors would receive all of the marketable output of the PRP.

DATES: Comments on Western's revised proposal must be received on or before August 10, 1994.

A similar notice appears in today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Mr. John Harrington, Acting Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5497, or
Mr. Edmond Chang, Assistant Area Manager for Power Marketing, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493

SUPPLEMENTARY INFORMATION:

Background

In a **Federal Register** notice dated December 13, 1993 (58 FR 65180–65181), Western proposed to include the PRP with the Integrated Projects and to market the power and energy produced by the PRP to members of ICPA and UMPA within a marketing area comprised of Utah and Wasatch Counties, Utah. Western accepted comments on its proposal until January 12, 1994. A public information/comment/scoping meeting was held in Spanish Fork, Utah, on January 4, 1994. As a result of comments received, at both the meeting and in writing, Western is revising its proposed marketing plan for the PRP.

Marketing Issues

One of the commentors, the Colorado River Energy Distributor's Association (CREDA), an organization of many Integrated Projects customers, commented that CREDA believes "the same principles commonly used in other Bureau of Reclamation (Reclamation) water projects having power generation features should be applied to the extent lawful in the instance of PRP." Western's review of the appropriate laws shows that construction of the PRP and the methods of repaying the United States for its investment in the project were first established in 1936, under Contract No. Ilr-874 dated June 27, 1936 (1936 Contract). The 1936 Contract states that surplus revenue from the sale of surplus water and power shall be applied to the repayment obligation of the Water Users. No distinction was made in the contract that this payment was to be for irrigation investment or for investment beyond the irrigators' ability to pay as is common in other Reclamation projects. In fact, from the beginning, almost three-fourths of the water developed by the project was for municipal and industrial use. Western has agreed to pay from power revenues $1.623 million toward the Water Users' obligation by 2008. Of this amount, $191,587 has been paid.

CREDA also stated that it did not believe Western had adequately supported the need to integrate the projects. When Western established the Integrated Projects in 1986, it intended to include the Colorado River Storage Project (CRSP), the Collbran Project, the Rio Grande Project, and the PRP. The PRP was not included because of uncertainty associated with commitments to the Water Users. Western's intent was to bring PRP into the Integrated Projects on an equal basis with the rest of the projects. Western has agreed that it is not necessary to include the PRP in the Integrated Projects.

In a further comment, CREDA objected to all Integrated Projects customers paying costs of the Water Users since these constitute repayment of municipal and industrial water development costs. CREDA had no objection to marketing the PRP resource

Counties, Utah. Western accepted comments on its proposal until January 12, 1994. A public information/comment/scoping meeting was held in Spanish Fork, Utah, on January 4, 1994. As a result of comments received, at both the meeting and in writing, Western is revising its proposed marketing plan for the PRP.

Marketing Issues

One of the commentors, the Colorado River Energy Distributor's Association (CREDA), an organization of many Integrated Projects customers, commented that CREDA believes "the same principles commonly used in other Bureau of Reclamation (Reclamation) water projects having power generation features should be applied to the extent lawful in the instance of PRP." Western's review of the appropriate laws shows that construction of the PRP and the methods of repaying the United States for its investment in the project were first established in 1936, under Contract No. Ilr-874 dated June 27, 1936 (1936 Contract). The 1936 Contract states that surplus revenue from the sale of surplus water and power shall be applied to the repayment obligation of the Water Users. No distinction was made in the contract that this payment was to be for irrigation investment or for investment beyond the irrigators' ability to pay as is common in other Reclamation projects. In fact, from the beginning, almost three-fourths of the water developed by the project was for municipal and industrial use. Western has agreed to pay from power revenues $1.623 million toward the Water Users' obligation by 2008. Of this amount, $191,587 has been paid.

CREDA also stated that it did not believe Western had adequately supported the need to integrate the projects. When Western established the Integrated Projects in 1986, it intended to include the Colorado River Storage Project (CRSP), the Collbran Project, the Rio Grande Project, and the PRP. The PRP was not included because of uncertainty associated with commitments to the Water Users. Western's intent was to bring PRP into the Integrated Projects on an equal basis with the rest of the projects. Western has agreed that it is not necessary to include the PRP in the Integrated Projects.

In a further comment, CREDA objected to all Integrated Projects customers paying costs of the Water Users since these constitute repayment of municipal and industrial water development costs. CREDA had no objection to marketing the PRP resource to ICPA and UMPA under separate contracts from the Integrated Projects. In fact, ICPA and UMPA are both members of CREDA. Western has determined that it can still meet its objectives of beneficially marketing the PRP through separate contractual arrangements and has revised its proposal to do so. This will require development of power sales contracts with potential contractors.

Since the PRP has only been sold to Western's CRSP, a rate for the capacity and energy produced has never been developed. A power repayment study (PRS) has been prepared each year to determine the revenues needed to meet project repayment, including operation, maintenance, and replacement expenses. The CRSP purchased the energy produced by the PRP for this amount. Western now proposes that the PRS still be used to identify the annual revenue requirements of the PRP. Potential contractors would pay their proportional share of one-twelfth of the annual amount each month to Western. In addition, the potential contractors would pay a total of $102,243.80 each year to Reclamation to be applied toward the Water Users' payment obligations.

Two other Integrated Projects customers in Utah, the Weber Basin Water Conservancy District (Weber Basin) and Bountiful City Light and Power (Bountiful), operate generating plants on the Weber River. Both claimed when water is diverted from the Weber River into the Provo River under existing agreements, they incur losses in generation and asked to be compensated for these losses. Western has determined that the water diversions from the Weber River into the Provo River were established before Weber Basin or Bountiful constructed generation on the Weber River. Neither entity had a power right to the waters of the Weber River. PacifiCorp, which is compensated for generating losses, owned an operating generating plant on the Weber River and held power rights to the flows of the river prior to the Provo River diversion. Discussions with Reclamation and examination of Weber Basin and Bountiful contracts have confirmed this position. Weber Basin and Bountiful are not entitled to an allocation of PRP power to compensate them for harm caused by reduced flows in the Weber River because their plants have never been entitled to, or used, the diverted water.

Another commentor, Reclamation, stated that the marketing criteria should consider arrangements for providing assistance to the Water Users. Also, the amount of assistance should be included in the PRP power marketing contracts, and arrangements made so that payment could be made directly to Reclamation on behalf of the Water Users during the contract period.

These issues are still subject to further discussions with the Water Users and Reclamation. However, Western has committed to provide a means for annual payment to be made toward project repayment on behalf of the Water Users by the power purchasers.

Reclamation also noted that the amount of winter season surplus energy is affected by several factors, including the agreement dated May 16, 1986, known as the Interim Operating Agreement of Deer Creek and Strawberry Exchange of Bonneville Unit Water (Interim Operating Agreement), and future agreements on the operation of Deer Creek and Jordanelle Reservoirs.

Reclamation has made it clear that the Interim Operating Agreement and future agreements may severely impact the amount of generation available from the PRP during the winter season. The Interim Operating Agreement anticipated that compensation to PacifiCorp, for energy lost when water is diverted from the Weber River into the Provo River, would be affected and it provided a remedy. However, the Interim Operating Agreement does not address compensation to the Water Users by Central Utah Water Conservancy District (Central Utah) for other winter season generation which would be lost. Draft language on an agreement for joint operation of Deer Creek and Jordanelle Reservoirs provides a means for Central Utah to compensate the Water Users for this reduction. Drafts of this agreement stipulate that a separate agreement among Central Utah, the Water Users, Western, PacifiCorp, and Reclamation will be developed to provide for this compensation. It is anticipated that this agreement will be completed prior to initial service under Western's proposed marketing plan.

The Water Users commented that Western's criteria for marketing the surplus power and energy of the Deer Creek Powerplant must fairly compensate the Water Users for the value of the surplus electric power and energy in the form of assistance on its repayment obligation.

Western's criteria specify that the annual revenue requirements, including Western's commitment to the Water Users, will be recovered from the potential contractors in return for all of the marketable power and energy produced by the PRP.

The Water Users further commented that the rate for nonfirm energy should be the same as the blended rate of firm

energy. Western's revised proposal would eliminate any distinction between firm and nonfirm energy. All energy produced by the PRP would be delivered in return for the potential contractors paying all of the PRP's annual powerplant expenses.

All of the Water Users' comments are concerned with their claim to a contractual obligation that surplus revenue from the sale of power be applied toward the repayment obligation of the Water Users for the PRP. Western has stated that it will consider $1.623 million by 2008 as a repayment assistance to the PRP. The Water Users assert that there is an obligation to develop surplus revenue from power sales that can be applied to the repayment obligation of the Water Users beyond 2008 until all repayment obligations have been met. Western knows of no legal basis for the Water Users' position. Resolution of these issues are outside the scope of this proposed action. These issues have been the focus of several meetings between the Water Users, Western, and Reclamation. Western's proposal would provide a means to ensure that the balance of the $1.623 million commitment is paid in annual increments by 2008.

Other Issues

UMPA states that use of PRP energy in Utah County, Utah, will result in reduced reliance on fossil fuels and will enhance the environment, especially air quality.

This issue will be addressed in the environmental assessment which will be done on the proposed action. However, because of the quantities of energy involved in the proposal, it is unlikely that the action will have a significant impact on air quality in Utah County.

The Stonefly Society (Society), a local environmental organization, commented that operation of the PRP on the Provo, Duchesne, and Weber Rivers has produced devastating impacts on these river systems. Among these are: (1) Destruction of the Provo's natural channel and riparian areas, (2) anoxic water discharge from Deer Creek Reservoir, (3) dewatering of the Weber River, and (4) dewatering of the Duchesne River. They state that three actions should be taken: (1) studies of the environmental impacts of the PRP should be conducted immediately; (2) funds should be allocated from Deer Creek Power revenues to correct these serious problems; and (3) no funds should be allocated to the PRP until these environmental impacts have been both assessed and corrected.

Western's proposal is to only change the way power from the PRP is marketed. It will have no effect on how the PRP is operated. The Society's issues are concerned with the way the project is operated and not on how power is marketed. Therefore, their comments are outside the scope of this proposal.

The Society asked "if the PRP were included in the Integrated Projects, will the powerplant at Deer Creek Reservoir be operated independently or will the operation be integrated with other Western generating facilities? If its operation is integrated, will there be environmental impacts at these other facilities?" Western's proposal is to market the PRP independently of the Integrated Projects. There would be no operation connection between the projects. Furthermore, since Deer Creek Powerplant is not controlled by Western, delivery of power and energy to the customer would be, as always, on a run-of-the-river basis.

Marketing Criteria

a. Applicability

Congress granted to the Secretary of Energy acting by and through Western's Administrator the authority to market Federal power. In response to requests from UMPA and ICPA to receive power produced by the PRP, Western has examined the merits of reorganizing the marketing of the PRP resource. Western believes these proposed marketing changes will benefit both the potential contractors and the Water Users.

b. Marketable Resource

A contract among Reclamation, the Water Users, the Weber River Water Users Association, and PacifiCorp dated December 20, 1938 (1938 Contract), provides for diversion of water from the Weber River into the Provo River for storage in Deer Creek Reservoir and for use by the Water Users. Because PacifiCorp operated generating units on the Weber River below the point of diversion to the Provo River, PacifiCorp's ability to generate was reduced when water was diverted. The 1938 Contract provides that PacifiCorp is to receive all of the electrical generation of the PRP during the period of time that water is diverted. This means that for up to 6 months, from October 15 to April 15 of each year, there may be no marketable energy generated by the PRP. Historically however, marketable energy has averaged 23,000,000 kilowatthours (kWh), with 15,000,000 kWh generated during summer months, and the remaining 8,000,000 kWh from winter surplus energy. Typically, about 3,000,000 kWh are available in each of the 3 peak summer months of June, July, and August; approximately 1,000,000 kWh are available in April; 2,500,000 kWh in May; and another 2,500,000 kWh in September. ICPA and UMPA would receive all of the marketable energy generated by the PRP each year in return for paying all of the PRP powerplant expenses.

c. Marketing Area

Because of the size of the resource, Western proposes to limit the marketing of this resource to preference entities within the drainage area of the Provo River. All eligible utilities are members of ICPA and UMPA, and are located in Utah and Wasatch Counties. Members of ICPA are the cities of Heber City, Lehi, Payson, Springville, and the Strawberry Electric Service District (Strawberry). Affected members of UMPA are the cities of Provo, Salem, and Spanish Fork. It is anticipated that marketing of the PRP resource to these potential contractors would assure that each would receive a beneficial amount of power.

d. Class of Service

PRP generation is dependent upon water releases that are dictated by minimum stream flow requirements and the Water Users' needs. No load following ability exists. Since April 1, 1994, the PRP has been included in Western's Upper Colorado Missouri Basin control area. With the PRP in Western's control area, Western is able to enhance the usability of the product and to allow it to be scheduled, even though it has no control over PRP generation. Western provides control area and regulating services for several other customers and has a developed methodology to share the expenses of operating a control area and providing for regulating capacity. Under the revised proposal, the PRP would be required to pay for its share of these services. These costs will be included in the PRS as an operating expense.

Energy will be scheduled to the potential contractors in megawatts in accordance with anticipated generation levels from the PRP. When variations occur, the hourly schedules will be adjusted to reflect actual operation.

Western will maintain an energy deviation account between the PRP and the Integrated Projects. At the end of each year, an accounting of scheduled and generated energy will be made. Differences between the two projects will be made up by adding to or subtracting from the following year's schedules to the potential contractors. The potential contractors will be responsible for reserves in accordance with Inland Power Pool requirements.

e. Resource Allocation

Western proposes to allocate PRP resources in proportion to the historical sales of each of the ICPA and UMPA members. UMPA members serve approximately 70 percent of the load in the marketing area, and the city of Provo is by far the largest member. ICPA members serve approximately 30 percent of the marketing area load. Proportional allocation of the PRP's average annual output of 23,000,000 kWh would mean UMPA members could expect an average of 16,100,000 kWh and 3,500 kilowatts (kW) of contingent capacity, and ICPA members could expect an average of 6,900,000 kWh and 1,500 kW of contingent capacity. Of ICPA members' 30 percent, Heber City would receive 6 percent, Lehi 2.7 percent, Springville 12.9 percent, Payson 4.8 percent, and Strawberry 3.6 percent. Of UMPA members' 70 percent, Provo would receive 60.9 percent, Salem 1.4 percent, and Spanish Fork 7.7 percent. Western would develop firm power sales contracts with ICPA and UMPA on behalf of their members which would specify the terms and conditions of receiving PRP power. The power sales contracts would be structured such that if a member withdraws from either ICPA or UMPA, it would be able to retain its entitlement of PRP power.

f. Contract Terms

ICPA and UMPA would pay the PRP's total annual powerplant expenses in return for the total marketable PRP production. Each would pay its proportional share of the operation, maintenance, and replacement expenses identified in the PRS in 12 monthly installments. In addition, before January 1 of each year, ICPA would pay $30,685.71 and UMPA $71,600.00 to Reclamation to be applied toward the Water Users annual payment.

g. Term of Contract

The power sales contracts would become effective on October 1, 1994, and terminate on September 30, 2008.

Process

Western will accept comments on its proposed revised marketing plan until August 10, 1994. Following this comment period, Western will prepare the appropriate contracts and other agreements that may be necessary to implement its proposal. A notice in the **Federal Register** will announce Western's final decisions on marketing

The potential contractors will be responsible for reserves in accordance with Inland Power Pool requirements.

e. Resource Allocation

Western proposes to allocate PRP resources in proportion to the historical sales of each of the ICPA and UMPA members. UMPA members serve approximately 70 percent of the load in the marketing area, and the city of Provo is by far the largest member. ICPA members serve approximately 30 percent of the marketing area load. Proportional allocation of the PRP's average annual output of 23,000,000 kWh would mean UMPA members could expect an average of 16,100,000 kWh and 3,500 kilowatts (kW) of contingent capacity, and ICPA members could expect an average of 6,900,000 kWh and 1,500 kW of contingent capacity. Of ICPA members' 30 percent, Heber City would receive 6 percent, Lehi 2.7 percent, Springville 12.9 percent, Payson 4.8 percent, and Strawberry 3.6 percent. Of UMPA members' 70 percent, Provo would receive 60.9 percent, Salem 1.4 percent, and Spanish Fork 7.7 percent. Western would develop firm power sales contracts with ICPA and UMPA on behalf of their members which would specify the terms and conditions of receiving PRP power. The power sales contracts would be structured such that if a member withdraws from either ICPA or UMPA, it would be able to retain its entitlement of PRP power.

f. Contract Terms

ICPA and UMPA would pay the PRP's total annual powerplant expenses in return for the total marketable PRP production. Each would pay its proportional share of the operation, maintenance, and replacement expenses identified in the PRS in 12 monthly installments. In addition, before January 1 of each year, ICPA would pay $30,685.71 and UMPA $71,600.00 to Reclamation to be applied toward the Water Users annual payment.

g. Term of Contract

The power sales contracts would become effective on October 1, 1994, and terminate on September 30, 2008.

Process

Western will accept comments on its proposed revised marketing plan until August 10, 1994. Following this comment period, Western will prepare the appropriate contracts and other agreements that may be necessary to implement its proposal. A notice in the **Federal Register** will announce Western's final decisions on marketing PRP power. The marketing plan will be effective 30 days following publication of that notice. Western intends to begin initial service under these contracts on October 1, 1994.

ENVIRONMENTAL COMPLIANCE: Western will comply with the National Environmental Policy Act of 1969 through preparation of an environmental assessment (EA) on the impacts of the proposed marketing changes.

Western has no operational control over the PRP. Deer Creek Dam is operated primarily for the benefit of water storage and delivery. Power production is a secondary benefit and does not influence dam operations in any manner. Therefore, the proposed PRP marketing changes will have no effect on dam operations.

REGULATORY FLEXIBILITY ANALYSIS: Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when publishing a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the rule on small entities. Western has determined that: (1) This rulemaking relates to services offered by Western and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an allocation from Western would not cause an adverse economic impact to such entities.

DETERMINATION UNDER EXECUTIVE ORDER 12866: DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Issued in Golden, Colorado, June 22, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–16709 Filed 7–8–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5010–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et al.*). this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1414.02; Hazardous Organic NESHAP (HON) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; was approved 05/26/94; OMB No. 2060–0282; expires 05/31/97.

EPA ICR No. 1685.01; U.S. Environmental Protection Agency 1994 Industrial Laundries Industry Questionnaire; was approved 06/06/94; OMB No. 2040–0171; expires 06/30/97.

EPA ICR No. 1012.05; PCB Disposal Permitting Regulation; was approved 06/14/94; OMB No. 2070–0011; expires 06/30/97.

EPA ICR No. 0783.21; Application for Motor Vehicle Emission Certification and Fuel Economy Labeling; was approved 06/03/94; OMB No. 2060–0104; expires 06/30/95.

EPA ICR No. 1061.06; NSPS for the Phosphate Fertilizer industry—49 CFR 60, Subparts T, U, V, W, X; was approved 06/02/94; OMB No. 2060–0037; expires 06/30/97.

OMB Disapprovals

EPA ICR No. 1658.01; Control Technology Determinations for Constructed, Reconstructed, and Modified Major Sources of Hazardous Air Pollutants, Offset Showings for Existing Major Sources; was disapproved 06/03/94.

EPA ICR No. 1669.01; Provision of lead Hazard Information Pamphet Before Renovation of Target Housing; was disapproved 05/09/94. This collection supports the proposed rule

OMB Extensions of Expiration Date

EPA ICR No. 1582.01; Extension of Compliance with Standards for Hazardous Air Pollutions Due to Early Emission Reduction—Reporting and Recordkeeping Requirements; OMB No. 2060–0222; expiration dated extended from 08/31/94 to 11/30/94.

EPA ICR No. 1463.02; National Oil and Hazardous Substances Pollution Contingency Plan (NCP); OMB No. 2050–0096; expiration date extended from 10/31/94 to 01/31/95.

EPA ICR No. 1445.02; Continuous Use Reporting Regulation under CERCLA Final Rule; OMB No. 2050–0086;

expiration date extended from 09/30/94 to 12/31/94.

Dated: June 27, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94-16722 Filed 7-8-94; 8:45 am]

BILLING CODE 6560-50-M

Office of Research and Development

[FRL-5010-5]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another reference method for the determination of ambient concentrations of particulate matter measured as PM_{10}. The new reference method is a gravimetric method which utilizes a specially designed PM_{10} sampler for particle collection. The designated method is identified as follows:

RFPS-0694-098, "Rupprecht & Patashnick Partisol™ Model 2000 Air Sampler", consisting of a Hub Unit and 0, 1, 2, or 3 Satellite Units, with each sampling station used for PM_{10} measurements equipped with a Rupprecht & Patashnick PM_{10} Inlet and operated for continuous 24-hour periods using the Basic, Manual, Time, Analog Input, or Serial Input programming modes, and with or without any of the following options:

Stand for Hub or Satellite.....57-002320
Advanced EPROM.....59-002542
Large Pump (¼ hp), 120 VAC.....10-001403
Hardware for Indoor Installation consisting of:
Temperature Sensor (Extended Length).....51-002638-xxxx
Roof Flange (1¼").....55-001289
Support Tripod for Inlet.....57-000604
Sample Tube Extension (1 m).....57-002526-0001
Sample Tube Extension (2 m).....57-002526-0002
Hardware for Outdoor Installation in Extreme Cold Environments:
Insulating Jacket for Hub Unit.....10-002645

This method is available from Rupprecht & Patashnick Co., Inc. (R&P), 25 Corporate Circle, Albany, New York 12203. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 59, March 30, 1994, page 14853.

The hub unit of the Partisol™ Model 2000 Air Sampler contains a filter holder assembly, the flow control system, the valves to direct the sample flow through the hub or appropriate satellite unit, the sample pump, a microprocessor, keypad, information display, and associated electronics. Each satellite unit contains only a filter holder assembly and is connected to the hub unit through a single flow line. Each sampling station (hub or satellite) used for PM_{10} measurements must be equipped with an R&P PM_{10} inlet (other sampling stations may have other types of inlets). Only one sampling station may operate at a time.

The Model 2000 uses 47mm diameter filters mounted in cassettes. Filter media meeting the minimum requirements specified in appendix J to 40 CFR part 50 (Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere) are available from R&P, or may be obtained from other sources, depending on individual user needs. A 5-place analytical balance is required for weighing filters before and after sampling.

Test samplers representative of this method have been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by States and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in accordance with the guidance in appendix J to 40 CFR part 50 and the specific procedures contained in the operation or instruction manual associated with the method. Use of the method is also subject to any limitations specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any sampler which is identical to the sampler described in the designation. Similar samplers manufactured and sold prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designation status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below for PM_{10} methods:

(1) A copy of the approved operation or instruction manual must accompany the PM_{10} sampler when it is delivered to the ultimate purchaser.

(2) The PM_{10} sampler must not generate any unreasonable hazard to operators or to the environment.

(3) The PM_{10} sampler must function within the limits of the performance specifications given in table D-1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any PM_{10} sampler offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) An applicant who offers PM_{10} samplers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such samplers and to notify them within 30 days if a reference or equivalent method designation applicable to the sampler has been canceled or if adjustment of the samplers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(6) An applicant who modifies PM_{10} sampler previously designated as a reference or equivalent method is not permitted to sell the sampler (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the sampler (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD-77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-2622.

Carl Gerber,

Assistant Administrator for Research and Development.

[FR Doc. 94-16723 Filed 7-8-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5010-8]

Performance Evaluation Reports for Fiscal Year 1993; Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly performance evaluations on the progress of the approved State/EPA Agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available to the public the evaluation reports. EPA has conducted evaluations on the Missouri Department of Natural Resources, Nebraska Department of Environmental Quality, Iowa Department of Natural Resources, and Kansas Department of Health and Environment. These evaluations were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act.

EFFECTIVE DATE: July 11, 1994.

ADDRESSES: Copies of the evaluation reports are available for public inspection at the EPA's Region VII Office, Air and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 551-7610.

Dated: June 13, 1994.

Delores Platt,

Acting Regional Administrator.

[FR Doc. 94-16724 Filed 7-8-94; 8:45 am]

BILLING CODE 6560-50-P

Designation of this reference method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Carl Gerber,

Assistant Administrator for Research and Development.

[FR Doc. 94–16723 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5010–8]

Performance Evaluation Reports for Fiscal Year 1993; Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly performance evaluations on the progress of the approved State/EPA Agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available to the public the evaluation reports. EPA has conducted evaluations on the Missouri Department of Natural Resources, Nebraska Department of Environmental Quality, Iowa Department of Natural Resources, and Kansas Department of Health and Environment. These evaluations were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act.

EFFECTIVE DATE: July 11, 1994.

ADDRESSES: Copies of the evaluation reports are available for public inspection at the EPA's Region VII Office, Air and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 551–7610.

Dated: June 13, 1994.

Delores Platt,

Acting Regional Administrator.

[FR Doc. 94–16724 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5010–7]

Public Water Supply Supervision Program Revision for the State of South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved State Public Water Supply Supervision Primacy Program. South Carolina has adopted drinking water regulations for Volatile Organic Chemicals, Synthetic Organic Chemicals and Inorganic Chemicals (known as Phase II and Phase IIB of the Federal Safe Drinking Water Regulation) and for Lead and Copper. EPA has determined that these State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve the State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by August 10, 1994, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by August 10, 1994, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective August 10, 1994.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Philip H. Vorsatz, EPA, Region IV, Drinking Water Section at the Atlanta address given above or telephone (404) 347–2913.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 141 and 142 of the National Primary Drinking Water Regulations)

Dated: June 1, 1994.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV.

[FR Doc. 94–16727 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5009–9]

Report to Congress: "A Review of Federal Authorities for Hazardous Materials Accident Safety"

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability and Request for Public Input on the Environmental Protection Agency Report to Congress: "A Review of Federal Authorities for Hazardous Materials Accident Safety".

SUMMARY: The purpose of this notice is to announce the availability of the above cited report and provide a public input opportunity on the report's findings.

DATES: Written statements should be submitted on or before August 31, 1994 and should be addressed as indicated below.

ADDRESSES: Requests for the report can be faxed to the Emergency Planning and Community Right-to-Know Hotline at (703) 412–3333 or you may contact the Hotline by phone at 1–800–535–0202 to request a copy. Statements concerning the report should be sent to: David Speights, U.S. Environmental Protection Agency, Chemical Emergency Preparedness and Prevention Office, Mail Code: 5101, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Swack, Chemical Emergency Preparedness and Prevention Office, at (202) 260–3850.

BACKGROUND INFORMATION: Section 112(r)(10) of the Clean Air Act directs the President to conduct a review of release prevention, mitigation, and response authorities across the Federal government. The Environmental Protection Agency, in conjunction with the other member agencies of the Federal National Response Team (NRT),

conducted the review and submitted its report to the Congress in February 1994. The report concludes that while the current hazardous materials safety system achieves its statutory goals to protect public health and safety and the environment, it is overly complex and confusing and, as a result, imposes unnecessary costs on government, industry, and the public. To address these issues and to consider appropriate remedies, the report proposes a second phase involving stakeholder participation that will focus on:

- Streamlining the multiple and overlapping statutory terms for regulated substances and reportable events,
- Harmonizing multiple and/or redundant hazard classification systems,
- Analyzing the efficacy of multiple requirements for facility contingency plans and the desirability of a Federal baseline standard with added components for special concerns,
- Streamlining accident data collection and management systems to improve efficiency, and
- Improving Federal/state/local coordination of emergency planning.

The goal of the second phase of the project is to identify specific administrative and statutory changes that will yield a more coordinated, rational, and efficient approach to hazardous materials safety. The period provided under this notice for statements is designed to provide an opportunity for interested parties to have input into this process and help shape any potential recommendations.

Dated: June 25, 1994.

James L. Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 94–16726 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5010–4]

State of Florida; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Full Program Adequacy for State of Florida's Municipal Solid Waste Landfill Permit Program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised federal MSWLF criteria (40 CFR part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility.

Florida applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Florida's application and proposed a determination that Florida's MSWLF permit program is adequate to ensure compliance with the revised MSWLF criteria. After consideration of all comments received, EPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Florida shall be effective on July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia S. Zweig, Program Coordinator, Office of Solid Waste, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the federal criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised federal criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Florida

On July 20, 1993, Florida submitted an application for adequacy determination for their municipal solid waste landfill permit program. On March 2, 1994, EPA published a tentative determination of adequacy for all portions of Florida's program. Further background on the tentative determination of adequacy appears at 59 FR 9980–9983 (March 2, 1994).

Along with the tentative determination, EPA announced the availability of the application for public comment and a public hearing which was held by EPA—Region IV on April 25, 1994, in Tallahassee, Florida. The public comment period, which originally ended on April 25, 1994, was extended an additional seven (7) days because of public interest. Comments were accepted on the tentative determination through close of business on May 2, 1994.

C. Public Comment

EPA Region IV received written and oral comments during the public comment period and public hearing on the tentative determination of adequacy for Florida. In addition to comments supporting EPA's determination, several issues and concerns were raised, which are outlined and responded to below.

1. Liner design—Comments received during the public comment period presented the following issues regarding Florida's liner designs for municipal solid waste landfills: (1) Florida fails to require adequate liner design criteria which complies with minimum federal requirements and that would reduce leaks and improve leak detection capabilities, (2) Florida's liner designs contemplate the allowance of a double geomembrane liner without a low permeable clay component, (3) many of the assumptions that Florida made in their required MuitiMed modelling efforts were not actually indicative of conditions in Florida or did not present actual "worst-case" conditions, as is required when states submit alternative liner designs for EPA review, and (4) Florida's liner design demonstration was based on a point of compliance nearly 500 feet from the landfill boundary (almost five (5) times the distance allowed by state law).

EPA was charged with reviewing state municipal solid waste landfill permitting programs to determine if they meet the standards presently set forth in the federal criteria for municipal solid waste landfills, which are found at parts 257 and 258 of Chapter 40 of the Code of Federal Regulations (40 CFR 257 and 258). Florida's regulations incorporate ten (10) liner designs to be used in landfills in the state. Nine (9) of the liner designs are single composite systems which incorporate—from top to bottom—a leachate collection system, a flexible synthetic membrane and a layer of compacted soil (the federal standard liner system is also a composite requiring the same components, in the same order). The tenth of Florida's designs is a double liner system, which incorporates—from top to bottom—a leachate collection system, a flexible synthetic membrane, a second leachate collection/detection system, a second

was held by EPA—Region IV on April 25, 1994, in Tallahassee, Florida. The public comment period, which originally ended on April 25, 1994, was extended an additional seven (7) days because of public interest. Comments were accepted on the tentative determination through close of business on May 2, 1994.

C. Public Comment

EPA Region IV received written and oral comments during the public comment period and public hearing on the tentative determination of adequacy for Florida. In addition to comments supporting EPA's determination, several issues and concerns were raised, which are outlined and responded to below.

1. Liner design—Comments received during the public comment period presented the following issues regarding Florida's liner designs for municipal solid waste landfills: (1) Florida fails to require adequate liner design criteria which complies with minimum federal requirements and that would reduce leaks and improve leak detection capabilities, (2) Florida's liner designs contemplate the allowance of a double geomembrane liner without a low permeable clay component, (3) many of the assumptions that Florida made in their required MuitiMed modelling efforts were not actually indicative of conditions in Florida or did not present actual "worst-case" conditions, as is required when states submit alternative liner designs for EPA review, and (4) Florida's liner design demonstration was based on a point of compliance nearly 500 feet from the landfill boundary (almost five (5) times the distance allowed by state law).

EPA was charged with reviewing state municipal solid waste landfill permitting programs to determine if they meet the standards presently set forth in the federal criteria for municipal solid waste landfills, which are found at parts 257 and 258 of Chapter 40 of the Code of Federal Regulations (40 CFR 257 and 258). Florida's regulations incorporate ten (10) liner designs to be used in landfills in the state. Nine (9) of the liner designs are single composite systems which incorporate—from top to bottom—a leachate collection system, a flexible synthetic membrane and a layer of compacted soil (the federal standard liner system is also a composite requiring the same components, in the same order). The tenth of Florida's designs is a double liner system, which incorporates—from top to bottom—a leachate collection system, a flexible synthetic membrane, a second leachate collection/detection system, a second flexible synthetic membrane and a layer of compacted soil. The state of Florida has presented information to satisfactorily demonstrate that each of the liner systems prescribed in their regulations will meet the federal performance standard.

EPA performed an extensive review of Florida's liner requirements and found them to be comparable to the federal criteria at 40 CFR part 258. In addition, EPA Region IV retained an independent contractor to evaluate Florida's liner systems and conferred with an EPA landfill liner expert. After thorough review of all submitted information, the contractor also found Florida's liner systems to be comparable to the federal criteria.

EPA's expert was called upon in the matter of Florida's assumption of 1 cm^2/acre defect density in the flexible membrane portion(s) of their liner system. According to the EPA expert, with appropriate quality assurance/quality control (QA/QC) during installation of the flexible membranes, the referenced defect density is achievable and has been extensively documented. The federal criteria at 40 CFR part 258 contain no specific QA/QC provisions. It is assumed that QA/QC will be ensured prior to disposal of wastes in landfill units. As Florida's QA/QC requirements are quite extensive and as it is the state alternative liner designs and not QA/QC that is being evaluated for comparability, it is appropriate to assume that Florida will ensure that QA/QC requirements are met during installation of municipal solid waste landfill liner systems in their state.

Regarding the distance that Florida used for the point of compliance in their modelling, states must demonstrate to EPA that proposed alternatives meet federal performance standards. The federal performance standard for liner designs is that maximum concentration limits (MCLs) for listed constituents not be exceeded in the uppermost aquifer at the point of compliance, which must be on the landfill owner/operator's property and within 150 meters (approximately 500 feet of the landfill unit boundary). Although Florida requires that MCLs not be exceeded at a maximum distance of 100 feet (which is more restrictive than the federal criteria), utilization of the 500 foot distance is appropriate for Florida's demonstration that their requirements meet the federal performance standards.

2. Authority for and implications of approving alternative liner designs in Florida—Comments were received during the public comment period questioning whether EPA is authorized to allow statewide alternative liner designs and stating that Region IV's decision on Florida's liner designs will have national implications based on the presumption that any alternative liner design that EPA approves for Florida must likewise be approved in other states, "given Florida's extreme vulnerability to groundwater pollution." EPA Headquarters has addressed the issue of EPA's authority to approve statewide alternative liner designs for municipal solid waste landfills. After review of 40 CFR part 258, the preamble to part 258 and EPA Headquarters training materials on the implementation of part 258, EPA Headquarters prepared a memorandum which concluded that the flexibility afforded to an approved State/Tribe allows the application of an alternative liner design on a State/Tribal-wide basis so long as that design meets the performance standard in all locations throughout the State/Tribe.

Regarding the presumption that alternatives approved for Florida will have to be approved for other states, the State/Tribal adequacy review process requires EPA to evaluate each state's municipal solid waste landfill permit program based on the specifics of individual state requirements. Proposed alternatives to any of the federal standards are only to be accepted if the state demonstrates that the alternative(s) would meet federal performance standards. States proposing alternative liner designs are required to present data from analysis via the MultiMed fate and transport model, which requires information that can only be expressed based on particular state conditions (eg., precipitation, hydrologic conditions, etc.). EPA's decision to approve or disapprove a state's alternative liner design weighs heavily on the results of this state-specific modelling. Therefore, approval of an alternative liner design in one state would not automatically make the same liner approvable in another state.

3. Groundwater/Drinking Water—Comments received during the public comment period presented the following concerns regarding the effects of municipal solid waste landfills on groundwater and drinking water in the State of Florida: (1) Florida's present municipal solid waste landfill permit program fails to adequately protect high quality groundwater and the State should prohibit landfills from being located in sensitive areas, such as above underground sources of drinking water, and (2) there is the possibility of leachate discharges from municipal solid waste landfills contaminating drinking water wells.

The federal criteria require that groundwater be monitored for constituents at a distance no more than 150 meters (approximately 500 feet) from the landfill unit boundary or at the landfill facility property boundary, whichever is less. The point at which groundwater is monitored is to be chosen considering several factors, one of which is whether the groundwater is used for drinking water. Florida's program meets these standards. Florida has made revisions to their requirements to include all of the contaminants for which the federal standards require monitoring. Florida also requires periodic sampling of leachate generated by the landfill to determine which contaminants would be of concern in the event of a release to the subsurface. This analysis is not required by the federal criteria. Further, as previously mentioned, Florida requires monitoring of groundwater and corrective action if groundwater is found to be contaminated at a distance not to exceed 100 feet from the landfill unit boundary or at the landfill facility property boundary, whichever is less. Again, Florida's 100 foot distance is more stringent than the federal criteria.

Regarding landfills being sited in the vicinity of drinking water intakes, the federal criteria for locating municipal solid waste landfills are very general and include restrictions (but not necessarily prohibitions) to locating municipal solid waste landfills in floodplains, wetlands, fault areas, seismic impact zones, unstable areas and areas in close vicinity to airports. The State of Florida's regulations have been deemed adequate in that they meet the minimum federal requirements. The federal criteria at 40 CFR part 258 do not address drinking water intakes with respect to locating landfills. Further, EPA cannot *require* Florida to adopt more stringent requirements to receive approval of their program.

4. Health/Risk Assessment—Comments were received during the public comment period presenting the concern that Florida's municipal solid waste landfill permit program fails to adequately assess the adverse impact on human health resulting from exposure to landfill leachate in drinking water. It was suggested that Florida be required to evaluate human health effects from chronic exposure to contaminants released from municipal solid waste.

Addressing this issue was beyond the scope of EPA's review of Florida's municipal solid waste landfill permitting program. However, the types of complex health studies that are referenced are generally conducted as research projects by organizations and health scientists trained in this field. Such work is ongoing in federally-funded laboratories, universities and other research organizations. On occasion, these studies are conducted in community populations that are known to have been exposed to environmental contaminants over an extended period of time and that claim to have a high level of health problems believed to be associated with the contamination. With the multiple stresses and health problems that typically exist in a community, it is extremely difficult to prove a causal association with a specific environmental exposure. Such health studies are complex, difficult to interpret and often inconclusive. Therefore, a requirement for health evaluations are not typically included, per se, in regulatory permit programs but rather these programs use toxicity and risk assessment information to develop the technical permit requirements that would be health protective. Florida's municipal solid waste landfill program was developed in a manner which satisfactorily meets the above requirements.

5. Public Participation—Comments were received during the public comment period petitioning for "corrective action to redress inadequate public participation in development of Florida's Solid Waste Management Plan."

Under EPA's rules for public participation, a state, in its development of rules for a Subtitle D program, has the option of following the requirements of the state's administrative procedures act, if one exists. Florida does have an administrative procedures act and the State complied with its requirements in the rulemaking process. Accordingly, Florida has complied with EPA's rules for public participation. In addition, EPA has provided public participation opportunities in its review of whether the Florida program is adequate when compared to the criteria of 40 CFR Part 258.

6. Environmental Justice—Comments were received during the public comment period suggesting that there should be an evaluation of the environmental justice implications of Florida's municipal solid waste landfill permitting rules prior to approval of Florida's program. There is concern that (1) Florida's program was "developed with grossly inadequate provisions for participation by persons most threatened by toxic pollution of their water supplies" and (2) Florida's present program fails to provide equal protection to people obtaining drinking water from private wells (low-income communities were specifically referenced).

Review of Florida's practices with respect to environmental justice was beyond the scope of this adequacy determination. In an effort to address questions of environmental justice, EPA—Region IV established the Office of Environmental Justice in 1993. In March 1994, President Clinton issued an Executive Order that is designed to focus federal attention on the environmental and human health conditions in minority communities. EPA's primary objectives with respect to environmental justice are: (a) ensure that all EPA Region IV environmental programs do not adversely impact minority populations and persons living at or below the poverty level, (b) address complaints from communities regarding subjection to a disproportionate burden of the pollution generated by industry and municipalities and (c) provide for outreach programs that will bring minority communities, environmental groups, and government together on relevant environmental issues. Guidelines for implementing these objectives and the requirements of the Executive Order within EPA programs are presently being developed at the Regional and Headquarters levels.

7. Mandated Recycling—Comments were received during the public comment period suggesting that Florida be required to mandate separation of recyclables and toxic contaminants from municipal solid waste prior to disposal in landfills. The federal operating criteria for municipal solid waste landfills include procedures for excluding the receipt of regulated hazardous waste, which require implementation of "a program at the facility for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated biphenyls (PCB) wastes". The state's program must incorporate, at a minimum: random inspections of incoming loads, records of inspections, training facility personnel to recognize prohibited wastes and notification of the proper authorities if a regulated hazardous waste or PCB is discovered at the facility. Florida's program meets the federal requirements for exclusion of regulated hazardous substances in municipal solid waste landfills. However, there presently are no federal regulations which mandate recycling. Therefore, requiring separation of recyclables from municipal solid waste streams prior to disposal is a decision which must be made on the state and/or local level.

The State of Florida's rules for municipal solid waste landfills are not enforceable at municipal solid waste landfills located on Indian Lands in the State of Florida.

D. Decision

After reviewing the public comments, I conclude that Florida's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the federal criteria. See 56 *FR* 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended: 42 U.S.C. 6912, 6945, 6949a(c).

enforceable at municipal solid waste landfills located on Indian Lands in the State of Florida.

D. Decision

After reviewing the public comments, I conclude that Florida's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the federal criteria. See 56 *FR* 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945, 6949a(c).

Dated: June 30, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–16725 Filed 7–8–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 5, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0292
Title: Part 69, Access Charges
Action: Extension of a currently approved collection
Respondents: State or local governments and businesses or other for-profit
Frequency of Response: Monthly, semi-annually reporting requirements and one-time requirement
Estimated Annual Burden: 5,832 responses; 5.8 hours average burden per response; 33,825 hours total annual burden
Needs and Uses: Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies on or after January 1, 1984. Part 69 essentially consists of rules or the procedures for the computation of access charges which are not information collections as defined by 5 CFR 1320. Any reporting or disclosure requirements occurs in connection with particular tariff filings with the FCC or other state commissions or with records maintained in accordance to the Uniform Systems of Accounts (USOA). Section 69.3 requires the annual submission of access charge tariffs. Section 69.116(c) and 69.117(c) requires LECs to file information with NECA semi-annually pertaining to the number of lines in their study areas and interexchange carriers to which such lines are presubscribed. This information will be used by NECA to assess revenue requirements needed to fund the Universal Service Fund and Lifeline Assistance Programs. Section 69.104(k)(1) requires that a state or local telephone company wishing to implement an end user common line reduction or waiver for its subscribers file information with the FCC demonstrating that its state lifeline assistance plan meets certain criteria. This is a one-time filing requirement. Section 69.104(l) requires local telephone carriers to calculate for NECA their projected revenue requirements for the lifeline assistance programs. Section 69.605 requires carriers who are participating in the pool to report access revenues and cost data so that NECA may compute monthly pool revenues distributions. The information is used by FCC staff to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither process could be implemented without the information.

Federal Communications Commission

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–16729 Filed 7–8–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each Agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200488–001
Title: Port of Oakland/Yang Ming Marine Transport Corporation.

Parties:
Port of Oakland ("Port")
Yang Ming Marine Transport Corporation ("Yang Ming")

Synopsis: The proposed amendment would authorize the Port to retain ten percent of the full tariff reduction percentage applicable to Yang Ming under the Agreement until the end of each remaining contract year. It also provides for deletion of the provision of the Agreement relating to Yang Ming's payment per TEU for empty containers.

Dated: July 5, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94-16637 Filed 7-8-94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For Further Information Contact:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829).

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revisions, of the following reports:

1. *Report title:* Applications for Membership in the Federal Reserve System
Agency form number: FR 2083, 2083A-2083E
OMB Docket number: 7100-0046
Frequency: On occasion
Reporters: Commercial banks and certain mutual savings banks
Annual reporting hours: 1,988
Estimated average hours per response: 37.5
Number of respondents: 53
Small businesses are not affected.
General description of report: This information collection is required [12 U.S.C. §§ 321-328]. The information in the application is not confidential; however, parts may be given confidential treatment at the applicant's request [5 U.S.C. § 552(b)(4)].

This application provides managerial, financial and structural data necessary for the Federal Reserve System to evaluate a new or existing bank's application for admission to membership in the Federal Reserve System pursuant to criteria established by statute and regulation (Regulation H). The revisions would standardize the format of certain information and clarify the instructions.

2. *Report title:* Senior Loan Officer Opinion Survey on Bank Lending Practices
Agency form number: FR 2018
OMB Docket number: 7100-0058
Frequency: Up to six times per year
Reporters: Large U.S. commercial banks and large U.S. branches and agencies of foreign banks
Annual reporting hours: 1,008
Estimated average hours per response: 2.0
Number of respondents: 84
Small businesses are not affected.
General description of report: This information collection is voluntary [12 U.S.C. §§ 248(a), 263, 335, 3101, 3102, and 3105] and is given confidential treatment [5 U.S.C. § 552(b)(4)].

This survey collects qualitative information about changes in business loan demand and various aspects of bank lending practices from sixty large U.S. commercial banks. The proposed revision will add six U.S. branches and agencies of foreign banks to the current panel. The survey serves as a very important tool for monitoring and understanding the evolution of lending practices at banks and developments in credit markets generally.

3. *Report title:* Application for Prior Approval To Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company
Agency form number: FR Y-3
OMB Docket number: 7100-0171
Frequency: Event-generated
Reporters: Corporations seeking to become bank holding companies, or bank holding companies and state chartered banks that are members of the Federal Reserve System
Annual reporting hours: 27,383
Estimated average hours per response: Section 3(a)(1): 48.5, Section 3(a)(3), and 3(a)(5): 59.0
Number of respondents: Pursuant to Section 3(a)(1): 196. Pursuant to Section 3(a)(3) and 3(a)(5): 303
Small businesses are affected.
General description of report: This report is required and is authorized by law [12 U.S.C. §§ 1842(a)(1), (a)(3), and (a)(5)]. Individual respondent data are available to the public except any portions which have been granted confidential treatment at the applicant's request [5 U.S.C. § 552(b)(4) and (8)].

This application provides systematic data on the structure of the proposal on the formation of a bank holding company through acquisition of one or more banks or the merger of two existing bank holding companies, or for the prior approval of the acquisition of direct or indirect ownership, control, or power to vote a certain percentage of the voting shares of a bank or bank holding company. The application collects financial and managerial information on the applicant and data on competitive and public convenience factors. This report has been renamed and now combines information formerly collected on the Application for Prior Approval to Become a Bank Holding Company (FR Y-1; OMB No. 7100-0119) and the Application for Prior Approval for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y-2; OMB No. 7100-0171).

4. *Report title:* Application for Prior Written Consent to Effect a Bank Merger, Consolidation, Acquisition of Assets or Assumption of Deposit Liabilities
Agency form number: FR 2070
OMB Docket number: 7100-0266
Frequency: On occasion
Reporters: State chartered banks that are members of the Federal Reserve System
Annual reporting hours: 4,680
Estimated average hours per response: 39.0
Number of respondents: 120
Small businesses are affected.
General description of report: This report is required by law [12 U.S.C. § 1828(c)]. Parts may be given confidential treatment at the applicant's request [5 U.S.C. § 552(b)(4)].

This form provides information on the pro forma financial condition of the applicant, a description of the proposed merger and the advantages it offers to the public's needs and convenience. The form is used by the Federal Reserve to evaluate the proposed merger as to financial soundness, competitive acceptability and consistency with the public interest.

This report represents the reinstatement of a previous information collection of the same title, and incorporates information formerly collected on the Application for Prior Approval for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y-2; OMB No. 7100-0171).

Final approval under OMB delegated authority of the extension, without revisions, of the following reports:

1. *Report title:* Domestic Branch Notification
Agency form number: FR 4001
OMB Docket number: 7100-0097
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 415
Estimated average hours per response: expedited notifications 0.5 hours; nonexpedited 1.0 hour
Number of respondents: 684
Small businesses are affected.
General description of report: This information collection is required [12 U.S.C. § 321] and is not given confidential treatment.

Whenever a state member bank wishes to establish a domestic branch, it must receive the approval of the Federal Reserve System by filing a domestic branch application, which is in the form of a letter addressed to the appropriate Federal Reserve Bank.

2. *Report title:* Investment in Bank Premises Notification
Agency form number: FR 4014
OMB Docket number: 7100-0139
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 117
Estimated average hours per response: 0.5
Number of respondents: 234
Small businesses are affected.
General description of report: This information collection is required [12 U.S.C. § 371d] and is not given confidential treatment.

Whenever a new investment in bank premises by a state member bank causes that bank's total dollar investment in bank premises to exceed 100 percent of the bank's capital stock account, the bank is required to send an application to the appropriate Federal Reserve Bank requesting permission from the Federal Reserve System to proceed.

3. *Report title:* Notice of Proposed Stock Redemption
Agency form number: FR 4008
OMB Docket number: 7100-0131
Frequency: On occasion
Reporters: Bank holding companies
Annual reporting hours: 775
Estimated average hours per response: 15.5
Number of respondents: 50
Small businesses are affected.

collection of the same title, and incorporates information formerly collected on the Application for Prior Approval for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y–2; OMB No. 7100–0171).

Final approval under OMB delegated authority of the extension, without revisions, of the following reports:

1. *Report title:* Domestic Branch Notification
Agency form number: FR 4001
OMB Docket number: 7100–0097
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 415
Estimated average hours per response: expedited notifications 0.5 hours; nonexpedited 1.0 hour
Number of respondents: 684
Small businesses are affected.
General description of report: This information collection is required [12 U.S.C. § 321] and is not given confidential treatment.

Whenever a state member bank wishes to establish a domestic branch, it must receive the approval of the Federal Reserve System by filing a domestic branch application, which is in the form of a letter addressed to the appropriate Federal Reserve Bank.

2. *Report title:* Investment in Bank Premises Notification
Agency form number: FR 4014
OMB Docket number: 7100–0139
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 117
Estimated average hours per response: 0.5
Number of respondents: 234
Small businesses are affected.
General description of report: This information collection is required [12 U.S.C. § 371d] and is not given confidential treatment.

Whenever a new investment in bank premises by a state member bank causes that bank's total dollar investment in bank premises to exceed 100 percent of the bank's capital stock account, the bank is required to send an application to the appropriate Federal Reserve Bank requesting permission from the Federal Reserve System to proceed.

3. *Report title:* Notice of Proposed Stock Redemption
Agency form number: FR 4008
OMB Docket number: 7100–0131
Frequency: On occasion
Reporters: Bank holding companies
Annual reporting hours: 775
Estimated average hours per response: 15.5
Number of respondents: 50
Small businesses are affected.
General description of report: This information collection is required [12 U.S.C. § 1844] and is not given confidential treatment; however, parts may be given confidential treatment at the applicant's request [5 U.S.C. §§ 552(b)(4), and (8)].

The filing of this notice is required of a bank holding company proposing to purchase or redeem its shares when the gross consideration to be paid for such purchase or redemption is equal to 10 percent or more of the company's consolidated net worth over any 12-month period.

4. *Report title:* Report on Terms of Credit Card Plans
Agency form number: FR 2572
OMB Docket number: 7100–0239
Frequency: Semiannual
Reporters: Financial institutions
Annual reporting hours: 76.5
Estimated average hours per response: .25
Number of respondents: 153
Small businesses are not affected.
General description of report: The Board is authorized to collect the information contained in this report by Section 5 of the Fair Credit and Charge Card Act of 1988 (Pub. Law No. 100–583, 102 Stat. 2960). Further, the Board may compel creditors to provide the information contained on this report pursuant to Section 136 of the Truth in Lending Act. [15 U.S.C. § 1646(a)].

This semiannual report will collect credit card price and availability information from the largest 153 issuers of bank credit cards. Such issuers include commercial banks as well as thrift organizations (savings and loan associations and savings banks). In addition, the report will include any financial institution that notifies the Federal Reserve Banks that they would like to participate. Financial institutions wishing to file should contact the Federal Reserve Bank located in their district. This information will be assimilated into a report and made available to Congress and the public on a semiannual basis.

5. *Report title:* Survey to Obtain Information on the Relevant Market in Individual Merger Cases
Agency form number: FR 2060
OMB Docket number: 7100–0232
Frequency: On occasion
Reporters: Small businesses and consumers
Annual reporting hours: 55
Estimated average hours per response: 10 minutes for small businesses, 6 minutes for consumers
Number of respondents: 25 small businesses and 50 consumers per survey
Small businesses are affected.
General description of report: This information collection is voluntary [12 U.S.C. § 1828(c)] and is given confidential treatment [5 U.S.C. §§ 552(b)(4) & (b)(6)].

This telephone survey is designed to determine from what sources small businesses and consumers obtain financial services. The information is needed for specific merger and acquisition applications to determine relevant banking markets in the analysis of local market competition.

6. *Report title:* Senior Financial Officer Survey
Agency form number: FR 2023
OMB Docket number: 7100–0223
Frequency: Up to four times per year
Reporters: Commercial banks, other depository institutions, corporations or large money-stock holders
Annual reporting hours: 240
Estimated average hours per response: 1.0
Number of respondents: 60
Small businesses are not affected.
General description of report: This information collection is voluntary [12 U.S.C. §§ 225, 248(a) and 263] and the confidentiality will be determined on a case-by-case basis.

The survey collects qualitative information about deposit relationships and other aspects of bank funding practices from a selection of commercial banks, or if appropriate, other depository institutions, corporations or large money-stock holders. The survey assists the Federal Reserve in its assessment of the monetary aggregate and financial market conditions.

7. *Report title:* Application for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities
Agency form number: FR Y–4
OMB Docket number: 7100–0121
Frequency: Event-generated
Reporters: Bank holding companies
Annual reporting hours: 21,529
Estimated average hours per response: Applications: 59.0, Notifications: 1.5
Number of respondents: Applications: 362, Notifications: 114
Small businesses are affected.
General description of report: This report if required and authorized by law [12 U.S.C. § 1844 4(c)]. Individual respondent data are available to the public except any portions granted confidential treatment at applicant request [5 U.S.C. § 552(b)(4) and (8)].

This form is completed by a bank holding company seeking prior approval to acquire or retain the assets or shares of a nonbank company. The application collects financial and managerial

information on the applicant and data on competitive and public convenience factors.

8. *Report title:* Reports Related to Securities of State Member Banks as Required by Regulation H
Agency form number: N.A.
OMB Docket number: 7100–0091
Frequency: On occasion, quarterly, and annually
Reporters: State member banks with more than 500 shareholders and more than $5 million in total assets
Annual reporting hours: 2,835
Estimated average hours per response: 6.75
Number of respondents: 42
Small businesses are not affected.
General description of report: This information collection is mandatory [15 U.S.C. § 78(i)] and is not given confidential treatment.

Since December 1987 state member banks that meet the shareholder and total asset criteria have been required pursuant to Regulation H to file the same securities forms and reports that bank holding companies and non-bank entities use when they file directly with the Securities and Exchange Commission. Some examples of such reports are Form 10–Q quarterly reports, Form 10–K annual reports, and event-generated Form 3 and Form 4 reports.

Board of Governors of the Federal Reserve System, July 1, 1994.
William W. Wiles,
Secretary of the Board.
[FR Doc. 94–16640 Filed 7–8–94; 8:45 am]
BILLING CODE 6210–01–P

Bancorp Connecticut, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 2, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Bancorp Connecticut, Inc., Southington, Connecticut, to become a bank holding company by acquiring 100 percent of the voting shares of Southington Savings Bank, Southington, Connecticut, which will continue to participate in the Connecticut Savings Bank Life Insurance Program.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. FDH Bancshares, Inc., Little Rock, Arkansas, to acquire 100 percent of the voting shares of Springhill Bancshares, Inc., Springhill, Louisiana, and thereby indirectly acquire Springhill Bank and Trust Company, Springhill, Louisiana.

2. Mercantile Bancorp, Inc., Quincy, Illinois, to acquire 100 percent of the voting shares of Perry Bancshares, Inc., Monroe City, Missouri, and thereby indirectly acquire Perry State Bank, Monroe City, Missouri.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bancorp, Inc., Glendive, Montana, to become a bank holding company by acquiring 100 percent of the voting shares of Glendive Bancorporation, Inc., Glendive, Montana, and thereby indirectly acquire First Fidelity Bank, Glendive, Montana.

2. Community First Bancorp, Inc. Glendive, Montana, to become a bank holding company by acquiring 100 percent of Glendive Bancorporation, Inc., and thereby indirectly acquire First Fidelity Bank, Glendive, Montana.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. DFC Acquisition Corporation II, Kansas City, Missouri, to acquire 100 percent of the voting shares of First American Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire The Home State Bank of Kansas City, Kansas City, Kansas; The Wyandotte Bank, Kansas City, Kansas; The Edwardsville Bank, Edwardsville, Kansas; and First American Bank, N.A., Lenexa, Kansas.

2. First National Corporation of Ardmore, Inc., Ardmore, Oklahoma, to acquire 35 percent of the voting shares of Bank of Love County, Marietta, Oklahoma.

Board of Governors of the Federal Reserve System, July 5, 1994.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 94–16671 Filed 7–8–94; 8:45 am]
BILLING CODE 6210–01–F

The Bank of New York Company Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 2, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bank of New York Company, Inc., New York, New York; Baybanks, Inc., Boston, Massachusetts; The Chase Manhattan Corporation, New York, New York; Chemical Banking Corporation, New York, New York; Citicorp, New York, New York; Fleet Financial Group, Inc., Providence, Rhode Island; HSBC Holdings PLC, London, England; HSBC Holdings BV, The Netherlands; Marine Midland Banks, Inc., Buffalo, New York; Banco de Santander, S.A., Madrid, Spain; The Bank of Boston Corporation, Boston, Massachusetts; First Fidelity Bancorporation, Lawrenceville, Newark, New Jersey; and Shawmut, National Corporation, Hartford, Connecticut, to engage through InfiNet Payment Service, Inc., in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. The applications also may be reviewed at the Federal Reserve Banks of Boston and Philadelphia.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Commonwealth Bancshares, Inc., Shelbyville, Kentucky, to acquire First Security Trust Company, Miami, Florida, and thereby engage in trust company functions, as permitted by § 225.25(b)(3) of the Board's Regulation Y. Commonwealth also proposes to provide portfolio investment advice, pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y. These activities will be conduced in Dade, Palm Beach, and Broward Counties, Florida.

Board of Governors of the Federal Reserve System, July 5, 1994.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 94–16672 Filed 7–8–94; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–HS 93600–941]

A Head Start on Science Demonstration Project; Grant Availability

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

offices of the Board of Governors not later than August 2, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bank of New York Company, Inc., New York, New York; Baybanks, Inc., Boston, Massachusetts; The Chase Manhattan Corporation, New York, New York; Chemical Banking Corporation, New York, New York; Citicorp, New York, New York; Fleet Financial Group, Inc., Providence, Rhode Island; HSBC Holdings PLC, London, England; HSBC Holdings BV, The Netherlands; Marine Midland Banks, Inc., Buffalo, New York; Banco de Santander, S.A., Madrid, Spain; The Bank of Boston Corporation, Boston, Massachusetts; First Fidelity Bancorporation, Lawrenceville, Newark, New Jersey; and Shawmut, National Corporation, Hartford, Connecticut, to engage through InfiNet Payment Service, Inc., in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. The applications also may be reviewed at the Federal Reserve Banks of Boston and Philadelphia.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Commonwealth Bancshares, Inc., Shelbyville, Kentucky, to acquire First Security Trust Company, Miami, Florida, and thereby engage in trust company functions, as permitted by § 225.25(b)(3) of the Board's Regulation Y. Commonwealth also proposes to provide portfolio investment advice, pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y. These activities will be conduced in Dade, Palm Beach, and Broward Counties, Florida.

Board of Governors of the Federal Reserve System, July 5, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16672 Filed 7–8–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–HS 93600–941]

A Head Start on Science Demonstration Project; Grant Availability

AGENCY: Administration on Children, Youth and Families (ACYF), ACF; DHHS.

ACTION: Announcement of financial assistance to a two year or four year college or university for a Head Start on Science demonstration project.

SUMMARY: The Head Start Bureau of the Administration on Children, Youth and Families announces that applications from colleges or universities will be accepted to demonstrate and evaluate a summer institute prototype on their campus during the summers 1995 and 1996 on the topic of "A Head Start on Science", with follow-up assistance to graduates as they implement their new skills at their local Head Start programs. In year two of the grant period, the successful applicant also will recruit, fund and mentor another teacher education college or university to implement the "A Head Start on Science" approach.

DATES: The closing date for submission of applications is August 25, 1994.

ADDRESSES: Submit applications to: Applications may be mailed to the Department of Health and Human Services Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Aerospace Building, 6th Floor, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street SW., Washington DC 20447.

FOR FURTHER INFORMATION CONTACT: Jean Simpson, Head Start Bureau, P.O. Box 1182, Washington, D.C. 20013, Telephone number: (202) 205–8421.

SUPPLEMENTARY INFORMATION:

Part I—General Information

A. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social, and other services. In addition Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves approximately 713,000 children through a network of approximately 1,395 grantees.

While Head Start is targeted primarily toward children whose families have incomes at or below the poverty line or who are eligible for public assistance, regulations permit up to 10 percent of the Head Start children in local programs to be from families which do not meet these low-income criteria. Head Start regulations also require that a minimum of 10 percent of enrollment opportunities in each program be made available to children with disabilities. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-disabled peers, and to receive needed special education and related services.

B. Background on Demonstration Project "A Head Start on Science"

The report from the Advisory Committee on Head Start Quality and Expansion emphasizes that quality services to Head Start families must be given priority attention by all Head Start programs. The report underscored the need for staff development and training and supports initiatives designed to increase staff understanding of concepts and principles which will help them become more effective in early childhood settings.

This project is designed to link colleges and universities to Head Start programs for the purpose of teaching science to Head Start staff. Highly intensive, hands-on instruction will provide teachers, assistants, and home visitors with exposure to the principles of science and increase their insights and skills regarding how to take their college campus experience and create classroom environments which invite child exploration and discovery. The staff will also increase their understanding of the natural learning environment presented by the out-of-doors, and the child's own home. We expect that "A Head Start on Science" model will be developed and documented in suitable printed and visual materials to be used to transmit the concept and approaches to other institutions of higher learning and Head Start communities. Project funds may also be used to present and distribute information at appropriate regional and national Head Start events, and to members of the Head Start training and technical assistance network. Also, it would be appropriate for the grantee to develop strategies and products which will assist other local Head Start programs to negotiate with their local college or university for similar staff training.

We believe that as a result of participating in "A Head Start on Science" demonstration project, Head Start teachers, teacher assistants, and

home visitors will be instrumental in creating a lifelong interest in science both for themselves and for the children and families with whom they work. We believe that staff will be impacted by the knowledge that science is found not only in a laboratory under a microscope, but in the everyday world in which they live. As a result of this experience, teachers, assistants and home visitors' concepts of science and their own scientific abilities will increase and in turn have a powerful effect on their ability to engage in discovery and establish environments in which children and families may explore, discover and interpret scientific activities.

This announcement is soliciting applications from four-year colleges or universities, i.e., institutions of higher learning that grant degrees. Awards, on a competitive basis, will be for a one-year budget period, although projects periods may be for two years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the two year project period will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. The Department of Health and Human Services will award one grant under this announcement. Up to $550,000 will be available for a 24 month project period.

In the first year of the grant, the grantee institution will use these funds to create, demonstrate and evaluate a summer institute prototype on their campus during the summer of 1995 with follow-up assistance to Head Start staff graduates as they implement their new skills at their local programs. Also in year one the grantee will recruit another college or university in which to replicate the model in year two.

In the second year of this grant, the grantee institution will improve the prototype program based on year-one experiences, and will offer the hands-on science program to a new group of Head Start staff during the summer 1996. Also during the second year, the "A Head Start on Science" grantee will fund for one year, and mentor another college or university to: (1) implement the prototype "A Head Start on Science" model in the summer of 1996 and; (2) provide follow-up assistance to the Head Start staff as they plan to implement their new skills in their local programs. The addition of a second institution will provide the opportunity to evaluate the effectiveness and transferability of the concept.

Throughout the grant period, a third party evaluator must be secured by the grantee institution to assess the effectiveness of the approach, content and transferability of the "A Head Start on Science" project. The third party evaluator must not be involved in the conduct of the demonstration. The evaluation of the students in both institutes in the summer of 1996 will be completed by the end of the project period. It should focus on the students' plans for the implementation of the program and principles.

C. Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 et seq.

D. Project Period and Funding

A total of approximately $550,000 in ACF funds will be available to fund the demonstration project for a 24 month period. Applicants must propose how much will be needed for each 12 month period of the project.

The grantee must provide at least 20 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $550,000 in Federal funds (based on an award of approximately $275,000 per budget period) must provide § 137,500 in cash or in-kind contributions (20% of total project costs of $687,500).

E. Eligible Applicants

Applicants must be either two year or four year institutions of higher learning which are colleges or universities having the capability to create, demonstrate and evaluate a summer institute prototype.

Part II—Special Requirements

A. Colleges and universities are eligible to apply for these funds. The college or university must also be able to award college credit to Head Start staff that successfully complete the summer program.

B. The project should be directed toward Head Start teachers, teachers' assistants and/or home visitors.

C. Funds may be used for university operating expenses and related costs. Related costs include such activities as planning and development costs, administration, supplies, insurance, university staff salaries, training provided at Head Start events and the third party evaluation.

D. The university or college institute teaching team will be comprised of individuals with knowledge of science, adult learning, and early childhood education.

Part III—Specific Responsibilities of the Applicant

When submitting an application under this announcement, applicants should include a maximum of 50 typed, doubled-spaced pages. Applicants interested in submitting an application for the training prototype must:

A. Describe the design of the project. Include a description of how the summer institutes will address the unique needs of teachers, teacher assistants and/or home visitors.

B. Provide a sample curriculum for the summer institute participants based on content and approach which will help increase participants' knowledge of science, increase their understanding and skills regarding how to create classroom environments, and capitalize on the out-of-doors and family settings as areas of scientific exploration and learning.

C. List projected field experiences appropriate to the location of the college and Head Start programs. These may include trips to the ocean, visiting a quarry, aquarium, desert, nature trail, or wild life reserve. Information submitted should include the total number of hours of the institute program including a breakout of instruction vs. field trip experiences.

D. Describe a plan for how many participants will be included in each summer program and how these participants will be recruited.

E. Describe what provisions will be made for residential, intensive summer institutes for Head Start teachers, teacher assistants, and/or home visitors.

F. Describe provision of materials, lunch and snacks, stipend or reimbursement, transportation to field activities, entry fees.

G. Describe the college credit to be awarded for work completed during the summer institute and for implementing new knowledge and practice back at local programs.

H. Describe the plan for the extension of the summer institute into Head Start settings and the provision of on-site feedback and ongoing support for adults applying their new skills.

I. Explain the criteria and the approach to be used to recruit, fund, and mentor another teacher education college for the second year of the project.

J. Develop an evaluation of the project to determine the effectiveness of the project. Describe the research questions to be addressed. Describe the evaluation that would be implemented, including the outcomes that would be measured, the evaluation design to be employed, and how the data will be analyzed. The evaluation should also include an analysis of the second summer institutes. The project and the evaluation will be completed by the end of the project period.

K. Provide a description of the qualifications of each key staff member including the third-party evaluator (the evaluator cannot be a member of the demonstration project staff). Include copies of their curriculum vitae.

L. Describe a plan to establish a self sustaining project, since this will be a prototype other colleges and universities may want to adapt. It is expected that the applicant may pay for more activities and services during the first year; however, attempts should be made to run a more self supporting program by year two. Outside resources or Head Start grantees that see these services as a priority can support some of the cost of the training.

Part IV—Evaluation Criteria

In consideration of how applicants will meet the requirements and responsibilities addressed under Parts II and III of this announcement, competing applications from colleges and universities will be reviewed and evaluated against the following criteria.

A. *Objectives and Need for Assistance* (15 points)

The extent to which the applicant identifies any relevant economic, social, financial institutional or other problems requiring a solution: demonstrates the need for the assistance: and states the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant on the need for assistance may be used.

Identify the precise location of the project and the area to be served by the proposed project. Maps and other geographic aids may be attached.

Information provided in response to the following items under "Specific Responsibilities of the Applicant" will be used to review and evaluate applicants on this criterion: Letters A,C,D

B. *Results or Benefits Expected* (15 points)

The extent to which the applicant identifies the results and benefits to be derived which are consistent with the

J. Develop an evaluation of the project to determine the effectiveness of the project. Describe the research questions to be addressed. Describe the evaluation that would be implemented, including the outcomes that would be measured, the evaluation design to be employed, and how the data will be analyzed. The evaluation should also include an analysis of the second summer institutes. The project and the evaluation will be completed by the end of the project period.

K. Provide a description of the qualifications of each key staff member including the third-party evaluator (the evaluator cannot be a member of the demonstration project staff). Include copies of their curriculum vitae.

L. Describe a plan to establish a self sustaining project, since this will be a prototype other colleges and universities may want to adapt. It is expected that the applicant may pay for more activities and services during the first year; however, attempts should be made to run a more self supporting program by year two. Outside resources or Head Start grantees that see these services as a priority can support some of the cost of the training.

Part IV—Evaluation Criteria

In consideration of how applicants will meet the requirements and responsibilities addressed under Parts II and III of this announcement, competing applications from colleges and universities will be reviewed and evaluated against the following criteria.

A. *Objectives and Need for Assistance* (15 points)

The extent to which the applicant identifies any relevant economic, social, financial institutional or other problems requiring a solution: demonstrates the need for the assistance: and states the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant on the need for assistance may be used.

Identify the precise location of the project and the area to be served by the proposed project. Maps and other geographic aids may be attached.

Information provided in response to the following items under "Specific Responsibilities of the Applicant" will be used to review and evaluate applicants on this criterion: Letters A,C,D

B. *Results or Benefits Expected* (15 points)

The extent to which the applicant identifies the results and benefits to be derived which are consistent with the objectives of the proposal and indicates the anticipated contributions to policy, practice, theory and/or research.

Information provided in response to the following items under "Specific Responsibilities of the Applicant" will be used to review and evaluate applicants on this criterion: Letters A,G,H,J

C. *Approach* (40 points)

The extent to which the applicant outlines an acceptable plan of action pertaining to the scope of the project; details how the proposed work will be accomplished and lists each organization, consultant, and other key individuals who will work on the project, along with resumes and a short description of their responsibilities or contribution to the applicant's work plan. Describe the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Information provided in response to the following items under "Specific Responsibilities of the Applicant" will be used to review and evaluate applicants on this criterion: Letters A,B,C,E,F,G,H,I

D. *Staff Background and Organization's Experience* (20 Points)

Identifies the background of the project director/principal investigator and key project staff (including name, address, training, most relevant educational background and other qualifying experiences) and the experience of the college or university to demonstrate the applicant's ability to effectively and efficiently administer this project.

Information provided in response to the following items under "Specific Responsibilities of the Applicant" will be used to review and evaluate applicants on this criterion: Letter K

E. *Budget Appropriateness and Reasonableness* (10 Points)

The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes. The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project.

The extent to which the amount budgeted for the evaluation is sufficient to conduct the evaluation.

Information provided in response to the following items under "Application Requirements" will be used to review and evaluate applicants on this criterion: Letter C,E,F,J,L

Part V—Application Process

A. Availability of Forms

Eligible applicants interested in applying for funds must submit all of the required forms included at the end of this Announcement.

In order to be considered for a grant under this Announcement, an application must be submitted on the Standard Form 424 which has been approved by the Office of Management and Budget (OMB) under Control Number 0348–0043. A copy has been provided (see Appendix B). Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

Appendix C contains certification forms regarding drug free work place, debarment, and lobbying. Only the certification regarding lobbying must be signed and returned with the application. Applications must be prepared in accordance with the guidance provided in this Announcement.

B. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. The program announcement number (ACYF–HS _____) must be clearly identified on the application. Each application must be limited to no more than 50 double-spaced pages of program narrative (not including the forms which make up the SF–424 and resumes) including the one-page project summary. If the application is more that 50 double-spaced pages, the other pages will be removed from the application and not considered by the reviewers.

The application must be paginated beginning with the Form 424 and also contain a table of contents listing each section of the application with the respective pages identified. Only one application per applicant will be accepted.

C. Application Consideration

Applicants will be scored against the evaluation criteria described above. The review will be conducted in Washington, D.C.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, in recommending the project to be funded. The Commissioner of ACYF will make the final selection of the applicants to be funded. An application may be funded in whole or in part, depending on the relative need for

services, applicant ranking, geographic location and funds available.

The Commissioner may also elect not to provide funding to applicants experiencing problems in providing quality services.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, and the total project period for which support is provided.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application plus two copies.
—Application length does not exceed 50 double-spaced pages
—A complete application consists of the following items in this order:
—Application for Federal Assistance (SF 424, REV.4–88); Narrative;
—Staff Resumes;
—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424, REV.4–88);
—Budget information—Non-Construction Programs (SF 424A REV.88);
—Budget justification for Section B—Budget Categories; including subcontract/delegate agency budgets
—Table of Contents;
—Letter from the Internal Revenue Services to prove non-profit status
—Project Summary (not to exceed one page);
—Organization/eligibility information;
—Assurances Non-Construction Programs;
—Certification Regarding Lobbying;

E. Deadlines

Applications shall be considered as meeting an announced deadline if they are either:

1. received on or before the deadline date at a place specified in the program announcement, or

2. sent on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM Chapter 1–62. (Applicants must be cautioned to request a legibly edited U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications: Applications which do not meet the criteria in paragraph A of this section are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0348–0043.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under Executive Order 12372, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alabama, Alaska, Connecticut, Colorado, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 19 jurisdictions areas need not take action regarding Executive Order 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 16a.

SPOCs have 30 days from the application deadline date to comment on applications submitted under this announcement. We are requesting a shortened period for SPOC review. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., 6th floor, Aerospace Building, Washington, D.C. 20447. ACF will notify the State of any application received which has no indication that the State process has had an opportunity for review.

A list of SPOCs for each State and territory is included at Appendix A at the end of this announcement.

H. Effective Date

It is anticipated that successful applications shall be funded no later than September 30, 1994.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: June 28, 1994.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

Appendix A—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson,

Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

Geroge Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640. FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director Office of Policy Research & Coordination Pavilion Office Building, 109 State Street Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street P.O. Box 7864, Madison, Wisconsin 53707 Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002. Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985 Telephone (809) 727–4444

Virgin Islands
Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

BILLING CODE 4184–01–P

Appendix B

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction
5. APPLICANT INFORMATION	
Legal Name:	
Address (give city, county, state, and zip code)	
6. EMPLOYER IDENTIFICATION NUMBER (EIN):	
8. TYPE OF APPLICATION:	☐ New ☐ Continuation
If Revision, enter appropriate letter(s) in box(es)	A Increase Award B Decrease Award C Incre D Decrease Duration Other (specify):
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:	TITLE
12. AREAS AFFECTED BY PROJECT (cities, counties, states etc	

13. PROPOSED PROJECT		14. CONGRESSIONAL
Start Date	Ending Date	a. Applicant

15. ESTIMATED FUNDING	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN T
AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND

a. Typed Name of Authorized Representative

d. Signature of Authorized Representative

Previous Editions Not Usable

Autho

BILLING CODE 4184–01–C

Appendix B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State — H Independent School Dist
B County — I State Controlled Institution of Higher Learning
C Municipal — J Private University
D Township — K Indian Tribe
E Interstate — L Individual
F Intermunicipal — M Profit Organization
G Special District — N Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify)

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF
Start Date	Ending Date	a. Applicant / b. Project

15. ESTIMATED FUNDING	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in a response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect, during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in

544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184–01–P

Appendix C

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, wi
respect to any employee who is so convicted:

(1) Taking appropriate personnel action ag
requirements of the Rehabilitation Act of 197
in a drug abuse assistance or rehabilitation pr
enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to
(b), (c), (d), (e) and (f).

**The grantee may insert in the space prov
connection with the specific grant (use a**

Place of Performance (Street address, City

Check ___ if there are workplaces on file that

Sections 76.630(c) and (d)(2) and 76.635(a
point for STATE-WIDE AND STATE AGEN
For the Department of Health and Human S
Oversight, Office of Management and Acqu
Independence Avenue, S.W., Washington, D.C

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less then $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

DISCLOSURE

Complete this form to disc
(See reve

1. Type of Federal Action:
   - a. contract
   - b. grant
   - c. cooperative agreement
   - d. loan
   - e. loan guarantee
   - f. loan insurance

2. Statu

4. Name and Address of Reporting Entity:
   - Prime
   - Subawardee
     Tier _____, *if know*

Congressional District, *if known*:

6. Federal Department/Agency:

8. Federal Action Number, *if known*:

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

(attach Cont

11. Amount of Payment *(check all that apply)*:
$ _____ actual pl

12. Form of Payment *(check all that apply)*:
   - a. cash
   - b. in-kind; specify: nature _____
     value _____

14. Brief Description of Services Performed or to b
or Member(s) contacted, for Payment Indicated

(attach Conti

15. Continuation Sheet(s) SF-LLL-A attached:

16. Information requested through this form is authorized by title 31
section 1352. This disclosure of lobbying activities is a material repres
of fact upon which reliance was placed by the tier above wh
transaction was made or entered into. This disclosure is required pur
31 U.S.C. 1352. This information will be reported to the Congres
annually and will be available for public inspection. Any person who
file the required disclosure shall be subject to a civil penalty of not l
$10,000 and not more than $100,000 for each such failure.

Federal Use Only:

[FR Doc. 94–16622 Filed 7–8–94; 8:45 am]

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

[FR Doc. 94–16622 Filed 7–8–94; 8:45 am]

Agency for Toxic Substances and Disease Registry

[Announcement 443]

Environmental Health Education Activities for Health Professionals and Communities Concerned With Human Exposure to Hazardous Substances in the Environment

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program to conduct health education activities related to human exposures to hazardous substances in the environment. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Sections 104(i) (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i) (14) and (15)].

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Approximately $1,340,000 is available in FY 1994 to fund approximately 19 awards. It is expected that 10 noncompeting continuation awards will be made for approximately $598,000. Approximately 9 new awards will be made for approximately $742,000. The average new award will be $80,000 ranging from $75,000 to $85,000. It is expected that the awards will begin on or about September 30, 1994, with a 12-month budget period within a project period of 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

Purpose

The overall purpose of the program is to work toward the ultimate goal of reducing exposures to hazardous substances and mitigating potential adverse health effects from such exposures. Applications should describe how progress toward this goal will be measured. This program will assist State health or environmental departments to identify, develop, disseminate, and evaluate appropriate educational materials and programs on the potential health effects, prevention, medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances in the environment. Special emphasis will be placed on exposures found at or near Environmental Protection Agency (EPA) Superfund sites, and other sites identified by ATSDR's Health Activities Recommendation Panel (HARP). See Health Activities Recommendation Panel (HARP) below for a description of HARP. (Superfund sites are defined as sites on, or proposed to be on, the EPA's National Priorities List (NPL)). HARP sites include petitioned sites and consultation sites, in addition to NPL sites. A list of HARP-recommended sites will be included with the application package. Following are definitions or descriptions of the activities to be performed:

Site-Specific Preventive Health Education—An activity designed to address health risks in a community where presenting specific information or recommendations can assist the community in understanding, preventing, or mitigating the health effects of hazardous substances exposure. Target audiences are community members and health professionals. Preventive health education related to sites should be integral to the entire public health activities process and not simply performed when all other activities are completed. Sites for health education should be selected based on public health need.

The following describes the two types of site-specific preventive health education activities.

Community Health Education—Any activity or activities directed toward the community near a site, designed to assist the community in understanding their potential for exposure or assessing adverse health occurrence in their community and to prevent or mitigate exposure to hazardous substances. Activities may include disseminating written materials, presenting coordinated programs involving on-site actions and site-specific materials development (prevention oriented), or supporting an on site health educator. It is assumed that in community health education, community members are involved in the assessment, policy development, and assurance phases of site-specific preventive health education.

Health Professional Education—Any activity or activities directed toward educating public health professionals and the local medical community. The purpose of these activities is to improve the knowledge skill, and behavior of health professionals concerning medical surveillance, screening, and methods of diagnosing, treating, and preventing injury or disease related to exposure to hazardous substances. See *Recipient Activities* for a description of types of activities.

General Environmental Health Education—Programs and materials for health professionals that may not be directly related to a site, but contribute to the base of knowledge in environmental health and help equip health professionals to more effectively address environmental health issues. A partial list of appropriate and inappropriate topics to be addressed by these efforts follows:

Sample of Appropriate Topics: Superfund site hazardous substances on the priority pollutant list (the ranked list of substances prioritized by ATSDR and the EPA appears in **Federal Register** issue 56 FR 52166, October 17, 1991); environmental exposure histories; resources for environmental health information; environmental toxicology; environmental epidemiology; and health risk communication.

Sample of Inappropriate Topics: Occupational health/workplace exposures; radon; indoor air; sick building syndrome; secondhand smoke; ozone; air pollution; carbon monoxide poisoning; childhood lead poisoning (unless site-related); greenhouse effect; insect repellents; and household chemicals.

Health Activities Recommendation Panel (HARP)—This is a multidisciplinary intra-Agency panel established to evaluate the data and information contained in public health assessments, health consultations, public health advisories and other documents developed by ATSDR to determine public health follow-up actions—including environmental health education—needed for communities affected by exposures to hazardous substances present at hazardous waste sites nationwide. States funded under the health education cooperative agreement may be asked to participate in HARP review of selected sites, when appropriate.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and ATSDR shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Site-Specific Preventive Health Education

Site-specific preventive health education includes activities for health professionals, communities, and that apply to both audiences.

a. *Health professionals.* (1) Develop for health professionals site-related educational activities. Sites to be addressed include: sites listed or proposed for the National Priorities List (NPL); HARP-recommended sites; sites that have had consultations or petitions, and other sites where the State and ATSDR determine health education is needed. Activities relevant to hazardous substances found at these sites are also appropriate. Activities include grand rounds, short courses, and workshops.

(2) Develop educational materials to improve the skills and knowledge of health professionals concerning potential exposure to hazardous substances at Superfund (or HARP) sites. If non-printed materials are to be developed, the applicant must thoroughly describe the materials, and justify their superiority over traditional educational materials.

b. *Communities.* Develop and conduct community health education activities and materials related to potential exposure to hazardous substances at sites as described above in 1.a. The recipient should give priority to HARP-recommended sites and those sites where community members can take specific actions to reduce or eliminate exposure to hazardous substances.

c. *Health professionals and communities.* (1) Develop and distribute environmental health information resource guides, for health professionals and communities, that include relevant and up-to-date information concerning Superfund sites and chemicals, including environmental health references and local, State, and Federal resources and contacts.

(2) Assess program effectiveness by implementing an evaluation plan that

health education—needed for communities affected by exposures to hazardous substances present at hazardous waste sites nationwide. States funded under the health education cooperative agreement may be asked to participate in HARP review of selected sites, when appropriate.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and ATSDR shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Site-Specific Preventive Health Education

Site-specific preventive health education includes activities for health professionals, communities, and that apply to both audiences.

a. *Health professionals.* (1) Develop for health professionals site-related educational activities. Sites to be addressed include: sites listed or proposed for the National Priorities List (NPL); HARP-recommended sites; sites that have had consultations or petitions, and other sites where the State and ATSDR determine health education is needed. Activities relevant to hazardous substances found at these sites are also appropriate. Activities include grand rounds, short courses, and workshops.

(2) Develop educational materials to improve the skills and knowledge of health professionals concerning potential exposure to hazardous substances at Superfund (or HARP) sites. If non-printed materials are to be developed, the applicant must thoroughly describe the materials, and justify their superiority over traditional educational materials.

b. *Communities.* Develop and conduct community health education activities and materials related to potential exposure to hazardous substances at sites as described above in 1.a. The recipient should give priority to HARP-recommended sites and those sites where community members can take specific actions to reduce or eliminate exposure to hazardous substances.

c. *Health professionals and communities.* (1) Develop and distribute environmental health information resource guides, for health professionals and communities, that include relevant and up-to-date information concerning Superfund sites and chemicals, including environmental health references and local, State, and Federal resources and contacts.

(2) Assess program effectiveness by implementing an evaluation plan that includes process and impact/outcome measures for educational activities and materials.

2. *General Environmental Health Education*

Up to 20% of health education efforts can be devoted to developing for health professionals general educational materials and programs that may not be directly related to a site, but expand the base of knowledge in the area of environmental health. Types of activities could include grand rounds, short courses, workshops, or curriculum development. Topics, for example, could include materials or programs on: improving the knowledge and skills of health care providers in determining potential hazardous substance exposure as an integral part of their patient workup (i.e., taking exposure histories); environmental toxicology; environmental epidemiology; and health risk communication. General environmental education activities must also be evaluated.

B. ATSDR Activities

1. Site-Specific Preventive Health Education

a. *Health professionals.* (1) Collaborate with the recipient to develop effective methods to enhance skill and knowledge required for appropriate medical surveillance, screening, treatment, and prevention of injury or disease related to exposure to hazardous substances at Superfund sites.

(2) Collaborate with the recipient in developing and reviewing all materials and ensuring scientific consistency. When appropriate, provide the recipient with existing education materials to be used in their programs.

b. *Communities.* Assist in developing appropriate, targeted education activities and materials that address the needs and concerns of communities.

c. *Health professionals and communities.* (1) Collaborate with the recipient in developing an environmental health information resource guide.

(2) Collaborate with the recipient in evaluating the effectiveness of educational materials and activities.

2. *General Environmental Health Education*

Collaborate with the recipient in developing appropriate general environmental health education materials and programs for health professionals.

Evaluation Criteria

1. Review of New Applications

Applications will be reviewed and evaluated according to the following criteria.

A. *Proposed Program—30%*

The extent to which the applicant has:

1. Described project purpose and rationale;

2. Justified the need or problem to be addressed;

3. Described the objectives of the project in specific, measurable terms;

4. Outlined an appropriate and feasible plan of action which describes the scope and detail the proposed work to be accomplished;

5. Described a specific timeline for project activities;

6. Identified results/impact expected and benefits to be derived;

7. Identified specific target group(s) for health education activities;

8. Addressed each of the "recipient activities" listed above (Recipient Activity A.2., General Environmental Health Education, is optional); and

9. Described appropriate content of educational programs (in accordance with the PURPOSE and PROGRAM REQUIREMENTS sections); programs should include both site-specific health professional and site-specific community health education.

B. Program Personnel—20%

Adequacy of the proposal relative to the:

1. Appropriateness of qualifications and experience of proposed program staff;

2. Appropriateness of how staff will be used in relation to the activities to be performed to accomplish the work, and their percentage of time to be spent on the project (at least 1.00 FTE); and

3. Appropriate CVs provided.

C. Capability—10%

Description of the applicant's capability to carry out the proposed project and suitability of facilities and equipment available or to be purchased/leased for the project.

D. Program Evaluation—15%

The adequacy of the proposal relative to:

1. Appropriateness and thoroughness of the methods used to evaluate the project; and

2. Extent to which evaluation plan includes measures of program outcome (i.e., effect of participant's knowledge, attitudes, skills, behaviors, exposure to hazardous substances).

E. Site-Specific Activity Level—25%

The extent to which the proposal has addressed site-specific health education needs at NPL sites in the State. In States with sites recommended for HARP follow-up, such sites should take priority. Sites for health education should be selected based on public health need.

F. Program Budget—(not scored)

The extent to which the budget relates directly to project activities, is clearly justified, and is consistent with intended use of funds.

2. Review of Continuation Applications

Continuation applications within the project period will be reviewed according to the following criteria:

A. Satisfactory progress has been made in meeting project objectives (each objective must be listed, and status toward meeting the objective must be described); if not met, explain;

B. Objectives for the new budget period are realistic, specific, and measurable;

C. Proposed changes in objectives, methods of operation, need for financial support, and/or applicant's evaluation procedures will lead to achievement of project objectives; and

D. The budget request is clearly justified and consistent with the intended use of Federal funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 30 days after the application deadline date. (A waiver for the 60-day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E13, Atlanta, GA 30305. This should be done no later than 30 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.200.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Technical Review

All protocols, studies, and results of research that ATSDR carries out or funds in whole or in part will be peer reviewed to meet the requirements of CERCLA Section 104(i)(13), as amended by SARA.

C. Cost Recovery

CERCLA as amended by SARA, provides for the recovery of costs incurred for response actions at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient would also maintain documentation that describes the site-specific response actions taken with respect to the site, e.g., contracts, work assignments, progress reports, and other documents that describe the work performed at a site. The recipient will retain the documents and records to support these financial transactions and documentation of work performed, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final Financial Status Report (FSR), unless there is litigation, claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

D. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the recipient and the third party.

The written agreement shall at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the terms of the grant and/or cooperative agreement, including requirements concerning technical review (ATSDR selected reviewers), ownership of data, and the arrangement for copyright when publications, data, or other copyrightable works are developed under or in the course of work under a PHS grant-supported project or activity.

2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal government purposes.

3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the government's right in that work.

4. State the activities to be performed the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the recipient of any part of its responsibility or accountability to PHS under the cooperative agreement. The agreement shall, therefore, retain sufficient rights and control to the recipient to enable it to fulfill this responsibility and accountability.

Application Submission and Deadline

The original and two copies of application PHS Form 5161–1 should be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305, on or before August 22, 1994. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305, telephone (404) 842–6797. Programmatic assistance, including current updated lists of HARP-referred sites and the "Guidelines for Planning and Evaluating Environmental Health Education Programs," may be obtained from Ms. Jeannette May, Health Education Specialist, Division of Health Education, Agency for Toxic Substances and Disease Registry, Mailstop E33, 1600 Clifton Road, NE., Atlanta, GA 30333, telephone (404) 639–6205.

Please refer to announcement number 443 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1)

Application Submission and Deadline

The original and two copies of application PHS Form 5161–1 should be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305, on or before August 22, 1994. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305, telephone (404) 842–6797. Programmatic assistance, including current updated lists of HARP-referred sites and the "Guidelines for Planning and Evaluating Environmental Health Education Programs," may be obtained from Ms. Jeannette May, Health Education Specialist, Division of Health Education, Agency for Toxic Substances and Disease Registry, Mailstop E33, 1600 Clifton Road, NE., Atlanta, GA 30333, telephone (404) 639–6205.

Please refer to announcement number 443 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 1, 1994.

Claire V. Broome, M.D.,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–16652 Filed 7–8–94; 8:45 am]

BILLING CODE 4163–70–P

[ATSDR–83]

Availability of the Great Lakes; Human Health Effects Research Program Draft Report

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of the draft ATSDR Annual Report for fiscal year (FY) 1992 of its Great Lakes Human Health Effects Research Program. The public is invited to comment on this annual report.

DATES: Comments must be received on or before August 15, 1994.

ADDRESSES: The draft report is available through the Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333, telephone (404) 639–6300.

Submit written comments relating to the draft report to the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher T. DeRosa, Director, Division of Toxicology, ATSDR; telephone (404) 639–6300.

SUPPLEMENTARY INFORMATION: The Agency for Toxic Substances and Disease Registry Great Lakes Human Health Effects Program is authorized under section 106, Subsection 118(e) of the Great Lakes Critical Programs Act of 1990 [33 U.S.C. 1268(e)(3)], and Sections 104(i)(5)(A) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)(5)(A) and (15)].

Provisions of the Great Lakes Critical Programs Act of 1990 require the Environmental Protection Agency (EPA), in consultation with ATSDR and the Great Lakes States, to initiate a research program and submit a report to Congress assessing the harmful human health effects of water pollutants in the Great Lakes basin. The ATSDR Great Lakes Human Health Effects Research Program focuses on populations that have been identified as having a higher risk of long-term adverse health effects from exposure to Great Lakes contaminants in fish. They include Native Americans, sport anglers, urban poor, and fetuses and nursing infants of mothers who consume contaminated Great Lakes fish.

In FY 1992, ATSDR awarded nine research grants designed to investigate and characterize the association between the consumption of contaminated Great Lakes fish and potential long-term adverse health effects. The draft ATSDR annual report for FY 1992 describes the Great Lakes Human Health Effects Research Program's strategy, and the research activities and status of the nine awarded grants.

Dated: July 1, 1994.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–16651 Filed 7–8–94; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

[Announcement Number 483]

State Injury Intervention Programs; Notice of Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1994 funds for cooperative agreements for State Injury Intervention Programs. These programs will develop, implement, and evaluate multi-faceted, injury prevention and/or surveillance programs to reduce the incidence of injuries and deaths in the following areas: bicycle-related head injuries, fire-related burn injuries, motor vehicle injuries, firearm-related injuries, violence against women, and alcohol-related injuries.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives described in "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. (For ordering a copy of "Healthy People 2000," see the Section **Where to Obtain Additional Information**.)

Authority

This program announcement is authorized under Sections 301, 317, and 391–394 (42 U.S.C. 241, 247b, and 280b–280b–3) of the Public Health Service Act as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. In addition, official public health agencies of county or city governments with jurisdictional populations greater than 3,500,000 (based on 1990 census data) are eligible.

Availability of Funds

Approximately $3,500,000 is available in FY 1994 to fund up to twenty projects to implement and evaluate injury intervention and surveillance programs in five priority areas: bicycle-related head injuries (4–5 to be awarded), fire-related burn injuries (4–5 to be awarded), motor vehicle injuries (4–5 to be awarded), firearm-related injuries (6 to be awarded), and alcohol-related injuries (1 to be awarded). Awards are expected to range from $150,000 to $200,000 with an average award of $175,000 for each 12-month budget period.

In addition, approximately $750,000 will be available to fund up to three projects to perform activities for the prevention of violence against women. Awards are expected to range from $225,000 to $275,000, with an average award of $250,000.

Funds are expected to be awarded on or about September 1, 1994, and will be made for a 12-month budget period. Programs addressing bicycle-related head injuries, fire-related burn injuries, motor vehicle injuries, firearm-related injuries, and alcohol-related injuries will have a 3-year project period and those addressing violence against women will have a 5-year project period. Funding estimates may vary and are subject to change. Continuation awards within the project periods will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Note: At the request of the applicant, Federal personnel may be assigned in lieu of a portion of the financial assistance.

Purpose

The purpose of this cooperative agreement is to enable State public health agencies to implement and evaluate priority injury prevention and control activities. Specifically, State public health agencies may submit applications to develop programs in EACH OR ANY of six areas:

1. Prevention of bicycle-related head injuries through increased usage of bicycle helmets;
2. Prevention of fire-related burns through increased installation and utilization of smoke detectors;
3. Prevention of motor vehicle injuries through increased usage of occupant protection, including seat belts, child safety seats, and air bags;
4. Identification of firearm-related injuries;
5. Identification and prevention of violence against women; and
6. Identification and prevention of alcohol-related injuries.

Programs in any of these six areas will develop, implement, and evaluate targeted activities designed to accurately measure and reduce morbidity, mortality, severity, disability, and costs associated with injuries. This funding will allow the applicant to establish or strengthen a lead capacity for prevention and control of the targeted injury (e.g., bicycle-related head injuries). It is expected that any program developed will function as a component of the public health agency's injury control program, will coordinate related activities both within the agency and within the jurisdiction, and will mobilize, seek input from, and utilize broad coalitions.

Bicycle-Related Head Injuries

Awards for prevention of bicycle-related head injuries are to be used to develop, implement, and evaluate the effectiveness of multi-faceted bicycle injury prevention programs in increasing helmet use and reducing morbidity, mortality, severity, disability, and costs associated with bicycle injuries for which helmets are effective. This program will facilitate the development, expansion, and improvement of bicycle injury control programs, and in particular, bicycle helmet usage programs within State public health agencies. Programs within State public health agencies are expected to define and monitor the extent of the bicycle-related injury problem, develop intervention strategies, including public education programs, and evaluate the program's effectiveness in terms of reduced morbidity, mortality, severity, disability, and cost. Specifically, bicycle helmet usage programs are intended to:

A. Develop or improve injury surveillance activities to identify bicycle-related head injuries, including data describing the magnitude of the problem, who is affected, utilization of bicycle helmets, costs associated with bicycle-related head injuries, and to identify and monitor health outcomes to measure the impact of the program;

B. Implement and evaluate multifaceted prevention activities to address and define the bicycle injury problem using evaluation guidelines for State injury control programs developed by CDC/National Center of Injury Prevention and Control (NCIPC);

C. Enact legislation and implement community-based prevention programs (including educational, promotional and legislative strategies) to encourage the use of bicycle helmets.

D. Determine the effectiveness of strategies for increasing bicycle helmet use.

Fire-Related Burns

Awards for prevention of fire-related burns are to be used to develop, implement, and evaluate the effectiveness of smoke detector promotion programs in increasing installation and utilization of smoke detectors and in reducing morbidity, mortality, severity, disability, and costs associated with fire-related burns which are preventable by utilization of smoke detectors. This program will facilitate the development, expansion, and improvement of smoke detectors programs within State public health agencies. Programs within State public health agencies are expected to define and monitor the fire-related burn problem, develop and implement intervention strategies, including public education programs, and evaluate the program's effectiveness in terms of increased smoke detector installation and use, and reduced morbidity, mortality, severity, disability, and cost of fire-related burns.

Specifically, smoke detector usage programs are intended to:

A. Develop or improve injury surveillance activities for fire-related burn injuries, including data describing the magnitude of the problem, who is affected, and utilization of smoke detectors;

B. Implement and evaluate multi-faceted prevention activities to address and define the fire-related burn problem using evaluation guidelines for State injury control programs developed by CDC/NCIPC.

C. Enact legislation and implement community prevention programs (including educational, promotional, legislative and maintenance strategies) to encourage the use of smoke detectors.

D. Determine the effectiveness of strategies for increasing smoke detector installation and use.

Motor Vehicle Injuries

Awards for prevention of motor vehicle injuries are designed to develop, implement, and evaluate the effectiveness of occupant protection programs in increasing occupant protection and reducing morbidity, mortality, severity, disability, and costs associated with motor vehicle injuries. This program will facilitate the development, expansion, and improvement of programs to increase the use of occupant protection within State public health agencies. Programs within State public health agencies are expected to define and monitor the motor vehicle injury problem, develop intervention strategies, including programs in highway safety, and evaluate the program's effectiveness in terms of increased usage patterns and reduced morbidity, mortality, severity, disability, and cost associated with motor vehicle injuries.

Specifically, occupant protection usage programs are intended to:

A. Develop or improve injury surveillance activities to identify motor vehicle-related injuries, including linkage with other data systems to describe the magnitude and cost of the problem, who is affected, and use of occupant protection (seat belts, child safety seats, air bags, or some combination of these). These data should be collected in a manner that allows for the evaluation of progress toward the Year 2000 Objectives for the nation;

B. Implement and evaluate multi-faceted prevention activities to address and define the motor vehicle injury problem using evaluation guidelines for State injury control programs developed by CDC/NCIPC;

C. Enact and strengthen legislation to cover all ages and seating positions and implement community-based interventions (including education, behavioral change, and policy development) to encourage the use of occupant protection;

D. Determine the effectiveness of specific interventions in increasing occupant protection.

and define the fire-related burn problem using evaluation guidelines for State injury control programs developed by CDC/NCIPC.

C. Enact legislation and implement community prevention programs (including educational, promotional, legislative and maintenance strategies) to encourage the use of smoke detectors.

D. Determine the effectiveness of strategies for increasing smoke detector installation and use.

Motor Vehicle Injuries

Awards for prevention of motor vehicle injuries are designed to develop, implement, and evaluate the effectiveness of occupant protection programs in increasing occupant protection and reducing morbidity, mortality, severity, disability, and costs associated with motor vehicle injuries. This program will facilitate the development, expansion, and improvement of programs to increase the use of occupant protection within State public health agencies. Programs within State public health agencies are expected to define and monitor the motor vehicle injury problem, develop intervention strategies, including programs in highway safety, and evaluate the program's effectiveness in terms of increased usage patterns and reduced morbidity, mortality, severity, disability, and cost associated with motor vehicle injuries.

Specifically, occupant protection usage programs are intended to:

A. Develop or improve injury surveillance activities to identify motor vehicle-related injuries, including linkage with other data systems to describe the magnitude and cost of the problem, who is affected, and use of occupant protection (seat belts, child safety seats, air bags, or some combination of these). These data should be collected in a manner that allows for the evaluation of progress toward the Year 2000 Objectives for the nation;

B. Implement and evaluate multi-faceted prevention activities to address and define the motor vehicle injury problem using evaluation guidelines for State injury control programs developed by CDC/NCIPC;

C. Enact and strengthen legislation to cover all ages and seating positions and implement community-based interventions (including education, behavioral change, and policy development) to encourage the use of occupant protection;

D. Determine the effectiveness of specific interventions in increasing occupant protection.

Firearm-Related Injury Surveillance

Awards for development of firearm-related injury surveillance systems are designed to develop, implement, and evaluate such surveillance systems. This program will enable State public health agencies to define and monitor the firearm-related injury problem in their jurisdictions, and to evaluate the program's effectiveness in terms of surveillance sensitivity, timeliness, representation, predictive value positive, and ability to measure the impact of specific interventions on morbidity, mortality, severity, disability, and cost of firearm-related injury.

Specifically, firearm-related injury surveillance programs are intended to:

A. Develop or improve injury surveillance activities to identify firearm-related injuries, including data describing the magnitude of the problem, who is affected, areas and persons at greatest risk, and the type and source of the firearm and ammunition used;

B. Link data from various sources to form a more complete picture of firearm-related injuries (e.g., linkage of emergency department or hospital discharge data with police data).

C. Measure the effectiveness of specific interventions in reducing firearm-related injuries.

Violence Against Women

Awards for identification and prevention of violence against women are designed to develop, implement, and evaluate a surveillance system for injuries due to violence against women, define the role of the State public health agency in preventing violence against women, and develop, implement and evaluate the effectiveness of strategies to prevent violence against women. Programs will define and monitor this injury problem and evaluate the surveillance system's effectiveness in terms of sensitivity, timeliness, representativeness, and predictive value positive. Programs will evaluate the effectiveness of the interventions in reducing morbidity, mortality, severity, disability, and cost of injury.

Specifically, programs to prevent violence against women are intended to:

A. Identify data sources and develop or improve existing surveillance systems for violence against women. Field test violence against women surveillance guidelines developed by a drafting group convened by CDC/NCIPC.

B. Assess the State public health agency's ability to address violence against women issues, including conducting inventories of existing violence against women prevention programs.

C. Develop collaborative relationships with voluntary, community-based, and public and private organizations already involved in preventing violence against women.

D. Determine the effectiveness of specific interventions in preventing violence against women, including evaluation of existing interventions and development and evaluation of new interventions, and determine how to combine specific interventions into effective programs. (Emphasis should be placed on violence against women that is committed by family members and intimates rather than by strangers.)

Alcohol-Related Injuries

An award for identification and prevention of alcohol-related injuries is designed to develop, implement, and evaluate a surveillance system based at acute care hospitals and to increase the effectiveness of hospital-based screening, intervention, and treatment referral for injured individuals with alcohol problems. This program will establish or strengthen the ability of the State public health agency to work with acute care hospitals and other organizations in efforts to facilitate access and improve treatment outcomes for injured individuals in need of alcohol treatment services. State public health agencies will define the nature and extent of alcohol-related injuries, provide leadership in developing and implementing essential clinical prevention services, and evaluate the effectiveness of these services in terms of their impact on the incidence of alcohol-related injuries.

Specifically, programs to prevent alcohol-related injuries are intended to:

A. Develop or improve surveillance activities to identify alcohol-related injuries treated in inpatient or outpatient departments of acute care hospitals, including data describing the magnitude of the problem, who is affected, and the costs of associated acute care.

B. Promote collaborative working relationships among community and voluntary organizations. State alcohol and drug abuse treatment agencies, treatment providers and other mental health professionals, professional organizations, insurance companies, and other parties involved in delivering or improving clinical prevention services for individuals with alcohol-related injuries.

C. Establish or enhance statewide programs based in acute care hospitals designed to improve identification, reduce alcohol consumption, achieve

necessary referrals to specialized alcohol treatment, and assure continuity of care of drinkers with alcohol-related injuries.

D. Determine the effectiveness of specific components of new or enhanced clinical prevention services provided to patients with alcohol-related injuries, including methods of screening and intervening at acute care hospitals. Emphasis should be placed on using the surveillance system to measure the impact of these services on the incidence of recurrent alcohol-related injuries.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

In conducting activities to achieve the purpose of this program, the recipient shall:

1. For Bicycle-Related Head Injury Prevention Programs

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Define the magnitude of the bicycle-related head injury problem; define the population at risk, and collect adequate injury data. These data include deaths and injuries attributable to bicycle-related head injury, helmet use rates among various age groups in the community, and barriers to helmet use. Potential data sources include: E-coded hospital discharge data, emergency department data, head and spinal cord injury registries, and random digit dial phone surveys of community residents to obtain information on behaviors.

c. Develop and implement community-based prevention programs to encourage the use of bicycle helmets. These include educational, promotional, and legislative strategies utilized in a multifaceted approach.

d. Promote and develop local and statewide legislation requiring bicycle helmet usage for all riders and passengers under 16 years of age.

e. Form partnerships with highway safety officials (e.g., Governor's Highway Safety Representative, police) to promote bicycle helmet usage.

f. Seek community input and generate community support for bicycle helmet usage promotion activities. Coalitions of appropriate individuals, agencies, and organizations with experience and interest in bicycle helmet usage campaigns may be established in support of intervention activities.

g. Evaluate the effectiveness of each intervention activity and the program as a whole using evaluation guidelines for State injury control programs developed by CDC/NCIPC.

h. Perform related injury demonstration projects. These may be related by population at risk, nature of the injury, causal chain, or intervention methodology.

2. For Fire-Related Burn Prevention Programs

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Define the magnitude of the fire-related burn problem; define the population at risk and areas affected, and collect adequate injury data. These data include deaths and injuries attributable to fire-related burns, smoke detector use rates for various geographic areas of the community, and barriers to smoke detector use. Potential data sources include: E-coded hospital discharge data, emergency department data, public safety data (e.g., fire department data), and random digit dial phone surveys of community residents to obtain information on behaviors.

c. Develop and implement community-based prevention programs to encourage the installation, use, and maintenance of smoke detectors. These include promotional, educational, and legislative (State and local) strategies utilized in a multifaceted approach.

d. Form partnerships with public safety officials (e.g., fire departments) to promote smoke detector installation and maintenance.

e. Seek community input and generate community support for smoke detector installation and maintenance. Coalitions of appropriate individuals, agencies, and organizations with experience and interest in smoke detector campaigns may be established in support of fire-related burn prevention activities.

f. Evaluate the effectiveness of each intervention activity and the program as a whole using evaluation guidelines for State injury control programs developed by CDC/NCIPC.

g. Perform related injury demonstration projects. These may be related by population at risk, nature of the injury, causal chain, or intervention methodology.

3. For Motor Vehicle Injury Prevention Programs

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Define the magnitude of the motor vehicle injury problem; define the population at risk and associated costs and collect adequate injury data. These data include deaths and injuries attributable to motor vehicle crashes, use of occupant protection (seat belts, child safety seats, air bags, or a combination of these), and barriers to occupant protection use. These data might best be derived through linkage of various data systems (e.g., hospital discharge and police data).

c. Develop and implement or enhance existing State and community-based programs to encourage the use of occupant protection devices. These include legislative (State and local), promotional, and educational strategies utilized in a multifaceted approach.

d. Form partnerships with highway safety officials (e.g., Governor's Highway Safety Representative, law enforcement) to promote motor vehicle occupant protection use.

e. Seek community input and generate community support for motor vehicle occupant protection. Coalitions of appropriate individuals, agencies, and organizations with experience and interest in prevention of motor vehicle injuries may be established in support of occupant protection campaigns.

f. Evaluate the effectiveness of each intervention activity and the program as a whole using evaluation guidelines for State injury control programs developed by CDC/NCIPC.

g. Perform related injury demonstration projects. These may be related by population at risk, nature of the injury, causal chain, or intervention methodology.

4. For Firearm-Related Injury Surveillance Programs

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Collect adequate injury data on firearm-related injuries. These data include who is affected, areas and persons at greatest risk, the type and source of firearm used, and characteristics of perpetrators.

c. Implement or enhance a surveillance system to define the magnitude of the firearm-related injury problem in at least one of the following areas:

(1) Link vital statistics data with other data (e.g., medical examiner data, police data) to provide a more complete description of firearm-related mortality, or

(2) Conduct surveillance of nonfatal firearm-related injuries (e.g., through hospital emergency department data, E-coded hospital discharge data), or

(3) Define risk behaviors, utilizing risk behavior surveys (e.g., gun carrying, availability, storage practices).

d. Form partnerships with public safety officials (e.g., police) to ensure the completeness of surveillance data.

e. Demonstrate the utility of the surveillance system in measuring the effectiveness of specific interventions designed to reduce firearm-related injuries.

f. Evaluate the surveillance system in terms of sensitivity, timeliness, representation and predictive value positive.

g. Perform related injury demonstration projects. These may be related by nature of the injury or surveillance methodology.

5. For Programs To Prevent Violence Against Women

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Establish an advisory structure to address issues related to violence against women, to ensure community input, and to generate community support. This advisory structure should consist of individuals (internal and external to the State public health agency), agencies, and organizations with experience, expertise and interest in preventing violence against women. If a State Injury Advisory Committee exists, this advisory structure should be constituted as a subcommittee for violence against women issues.

c. Develop collaborative relationships with voluntary, community-based public and private organizations and agencies already involved in preventing violence against women.

d. Conduct an inventory of existing data sources and prevention programs within the State which address violence against women.

e. Assess the State public health agency's organizational capacity and available resources, as well as other public and private resources, to address violence against women.

f. Design, pilot test, and implement a surveillance system to track the incidence of violence against women in selected geographic areas within the State, and expand this surveillance system statewide.

g. Evaluate the usefulness of the surveillance system for assessing violence against women.

h. Identify, implement and evaluate specific interventions to prevent

(2) Conduct surveillance of nonfatal firearm-related injuries (e.g., through hospital emergency department data, E-coded hospital discharge data), or

(3) Define risk behaviors, utilizing risk behavior surveys (e.g., gun carrying, availability, storage practices).

d. Form partnerships with public safety officials (e.g., police) to ensure the completeness of surveillance data.

e. Demonstrate the utility of the surveillance system in measuring the effectiveness of specific interventions designed to reduce firearm-related injuries.

f. Evaluate the surveillance system in terms of sensitivity, timeliness, representation and predictive value positive.

g. Perform related injury demonstration projects. These may be related by nature of the injury or surveillance methodology.

5. For Programs To Prevent Violence Against Women

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Establish an advisory structure to address issues related to violence against women, to ensure community input, and to generate community support. This advisory structure should consist of individuals (internal and external to the State public health agency), agencies, and organizations with experience, expertise and interest in preventing violence against women. If a State Injury Advisory Committee exists, this advisory structure should be constituted as a subcommittee for violence against women issues.

c. Develop collaborative relationships with voluntary, community-based public and private organizations and agencies already involved in preventing violence against women.

d. Conduct an inventory of existing data sources and prevention programs within the State which address violence against women.

e. Assess the State public health agency's organizational capacity and available resources, as well as other public and private resources, to address violence against women.

f. Design, pilot test, and implement a surveillance system to track the incidence of violence against women in selected geographic areas within the State, and expand this surveillance system statewide.

g. Evaluate the usefulness of the surveillance system for assessing violence against women.

h. Identify, implement and evaluate specific interventions to prevent violence against women. Evaluate existing interventions or implement and test new interventions. Examples of existing interventions include, but are not limited to:

(1) Public awareness campaigns to change knowledge, attitudes, and beliefs conducive to violence against women.

(2) School-based curricula that teach strategies for developing and maintaining nonviolent dating relationships.

(3) Home health visitation to reduce partner abuse in targeted families and thereby reduce the likelihood of children witnessing such violence.

(4) Shelters for battered women to reduce prevalence of physical abuse.

(5) Victim identification and referral protocols in hospital emergency rooms, STD clinics, prenatal care clinics, and family planning clinics.

(6) Behavior motivation programs for men.

(7) Rape crisis centers to help in prevention recurrence of sexual assault by someone the victim knows.

(8) Hotlines as tools to provide crisis intervention counseling.

i. Develop, implement, and evaluate multi-faceted programs to prevent violence against women (Year-03 and beyond).

j. Develop and produce replication guidelines describing all aspects of the violence against women program. This includes processes, lessons, results, and products (Year-03 and beyond).

k. Perform related injury demonstration projects. These may be related by population at risk, nature of the injury, causal chain, or surveillance or intervention methodology.

6. For Alcohol-Related Injury Prevention Program

a. Provide a full-time director/coordinator and staff who have authority, responsibility, and expertise to carry out the program.

b. Develop or improve an alcohol-related injury surveillance system to identify alcohol-related injuries treated in inpatient or outpatient departments of acute care hospitals. This includes a definition of the nature and extent of the alcohol-related injury problem. These data include alcohol-related injury rates of various age groups, description of the population at risk, types of injury, and acute care costs.

c. Develop and implement community-based programs located in acute care hospitals which will improve identification of persons at risk for alcohol-related injuries, reduce alcohol consumption in a target group, achieve referrals to specialized alcohol treatment, and assure continuity of care of drinkers with alcohol related injuries.

d. Evaluate the effectiveness of new or enhanced acute care hospital prevention services provided to patients with alcohol-related injuries.

e. Collaborate with community and voluntary organizations, State alcohol and drug abuse treatment agencies, treatment providers and other mental health providers, professional organizations, insurance companies, and others interested in clinical prevention services to coordinate and support alcohol-related injury prevention activities.

f. Perform related injury demonstration projects. These may be related by population at risk, nature of the injury, causal chain, or surveillance or intervention methodology.

B. CDC Activities

1. Collaborate in the design of all phases of the program. Provide consultation on data collection instruments and procedures, and provide coordination and a standardized approach to research, evaluation, and intervention activities between and among the sites for each program topic area.

2. Provide consultation and assistance in problem assessment and target population identification, the evaluation of coverage, cost, and impact of current and potential interventions, and design of scientific protocols.

3. Provide evaluation guidelines for State injury control programs in bicycle-related head injuries, fire-related burn injuries, and motor vehicle occupant protection, and provide violence against women surveillance definition and guidelines.

4. Provide consultation on selection of interventions and future demonstration projects and surveillance systems for State implementation, and an implementing intervention activities and disseminating results.

5. Collaborate in the analysis and dissemination of surveillance data.

6. Provide up-to-date scientific information about injury prevention and coordinate with related activities in CDC's national injury prevention program.

7. Assist in the transfer of information and methods developed in these programs to other prevention programs.

Review and Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (maximum 100 total points):

A. Background and Need (15%)

The extent to which the applicant presents data justifying need for the

program in terms of magnitude of the related injury problem, and identifies suitable target populations. The extent to which a description of current and previous related experiences:

(a) is inclusive in terms of surveillance activities, prevention activities (if applicable) and success, evaluation capability and coordination activities, and (b) demonstrates capacity to conduct the program.

B. Goals and Objectives (10%)

The extent to which the applicant has included goals which are relevant to the purpose of the proposal and feasible to be accomplished during the project period, and the extent to which these are specific and measurable. The extent to which the applicant has included objectives which are feasible to be accomplished during the budget period, and which address all activities necessary to accomplish the purpose of the proposal. The extent to which the objectives are specific, timeframed, and measurable. The extent to which the applicant's intention to undertake related injury demonstration projects, should additional funds become available is documented.

C. Methods (30%)

The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals and which includes designation of responsibility for each action undertaken. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities. The extent to which roles of each unit, organization, or agency are described, and coordination and supervision of staff, organizations and agencies involved in activities is apparent. The extent to which documentation of program organizational location is clear, and shows a coordinated relationship among injury-related components forming the applicant's injury prevention program. The extent to which position descriptions, CVs, and lines of command are appropriate to accomplishment of program goals and objectives. The extent to which concurrence with the applicant's plans by all other involved parties, including consultants, is specific and documented.

D. Evaluation (30%)

The extent to which the proposed evaluation system is detailed and will document program process, effectiveness, impact, and outcome and, if applicable, measure surveillance system sensitivity, timeliness, representativeness, predictive value positive, and ability to detect the impact of specific intervention on morbidity, mortality, severity, disability, and cost of related injuries. The extent to which the applicant demonstrates potential data sources for evaluation purposes, and documents staff availability, expertise, and capacity to perform the evaluation. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included. The extent to which a description of how CDC/NCIPC-developed evaluation guidelines (if applicable) will be utilized is included.

E. Collaboration (15%)

The extent to wh ch relationships between the program and other organizations, agencies, and health department units that will relate to the program or conduct related activities are clear, complete and provide for complementary or supplementary working interactions. The extent to which coalition (if any) membership and roles are clear and appropriate. The extent to which relationships with the Governors Office of Highway Safety, public safety officials, or Maternal and Child Health (MCH) (if applicable), and Injury Control Research Center's (ICRC's) or local academic institutions are completely described, are activity-specific, and show evidence of specific support. The extent to which relationships with local communities, if intervention activities are to be carried out there, are completely described, are activity-specific and show evidence of specific support.

F. Budget and Justification (not weighted)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

Note: At the request of the applicant, Federal personnel may be assigned to a program area in lieu of a portion of the financial assistance.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, no later than 30 days after the application deadline date. (A waiver for the 60-day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before August 1, 1994.

1. Deadlines:

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review committee. For proof of timely mailing, applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. Late Applications:

Applications that do not meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6634. Programmatic assistance may be obtained from James S. Belloni, M.A., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–36, Atlanta, Georgia 30341–3724, telephone (404) 488–4400.

Please refer to Announcement Number 483 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 29, 1994.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16653 Filed 7–8–94; 8:45 am]

BILLING CODE 4163–18–P

1. Deadlines:

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review committee. For proof of timely mailing, applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

2. Late Applications:

Applications that do not meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6634. Programmatic assistance may be obtained from James S. Belloni, M.A., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–36, Atlanta, Georgia 30341–3724, telephone (404) 488–4400.

Please refer to Announcement Number 483 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 29, 1994.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16653 Filed 7–8–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 86B–0058]

Anesthesia Apparatus Checkout Recommendations, 1993; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Anesthesia Apparatus Checkout Recommendations, 1993." The document presents a general checkout and inspection procedure that should be conducted before administration of an anesthesia to ensure that the anesthesia machine, patient breathing system, and monitors, which together comprise the anesthesia system, are correctly interconnected, adjusted, and functioning as intended. The document is a revised version of previously published recommendations documents. This action is part of FDA's commitment to help ensure the safety and effectiveness of medical devices.

ADDRESSES: Submit written request for single copies of the document entitled "Anesthesia Apparatus Checkout Recommendations, 1993" to the Office of Training and Assistance (HFZ–240), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The documents entitled "Anesthesia Apparatus Checkout Recommendations, 1993," and "Anesthesia Apparatus Checkout Recommendations, 1992," and received comments and their analyses are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9:00 a.m. and 4 p.m. Monday through Friday. Single copies of these documents are available upon written request from the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Robert Cangelosi, Center for Devices and Radiological Health (HFZ–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2436.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is committed to carrying out a program to help ensure the safety and effectiveness of medical devices. One aspect of this program involves regulatory activities under the laws administered by the agency concerning the design, manufacture, and distribution of medical devices. Patient safety, however, is dependent on more than properly functioning devices. Although proper operation, maintenance, and periodic inspection of these devices by the user are matters that cannot always be addressed effectively through regulatory action under the laws administered by the agency, they are essential to minimize risks to patients. Consequently, as an important adjunct to its regulatory program, FDA has initiated a variety of educational efforts to aid medical professionals in the safe use of medical devices. These educational endeavors are conducted in cooperation with, and usually with the active participation of, the relevant professional organizations and other groups within the private sector.

For example, to reduce unnecessary retakes in radiology and to improve image quality, FDA, in cooperation with the American College of Radiology and other private sector organizations, developed voluntary recommendations for radiology facilities concerning equipment quality assurance programs ("A Basic Quality Assurance Program for Small Diagnostic Radiology Facilities," FDA 83–8218). In cooperation with the American College of Radiology and numerous other medical professional societies, FDA also fostered the development of guides for clinicians on the effective use of selected diagnostic imaging procedures ("The Selection of Patients for X-ray Examinations," FDA 80–8104; "The Selection of Patients for X-ray Examinations: The Pelvimetry Examination," FDA 81–8174; "The Selection of Patients for X-ray Examinations: Chest X-ray Screening and Examination," FDA 83–8204). As an adjunct to the teaching of medical students and radiology residents, FDA funded the development of a basic teaching system in radiology, "The Radiological Health Sciences Learning File," which is now in use in radiology education and is used in 118 medical schools in the United States and in several foreign medical schools as well. These examples illustrate FDA's commitment to ensuring that users of medical devices are sufficiently educated and motivated to use medical devices safely and effectively.

II. Scope of the 1993 Recommendations Document

The recommendations document that the agency is now making available a revised version of the draft document entitled "Draft Anesthesia Apparatus Checkout Recommendations, 1992," that was announced in the **Federal Register** of October 6, 1992 (57 FR 46033), and that was based on the original document entitled "Draft Anesthesia Apparatus Checkout Recommendations," that was announced in the **Federal Register** of February 27, 1987 (52 FR 5583). FDA also intends to make this document available to anesthesia clinicians through their professional organizations and to anesthesia equipment manufacturers so that they may include it in their user education programs.

The recommendations in "Anesthesia Apparatus Checkout Recommendations, 1993" should be followed for anesthesia systems that conform to current and relevant standards (such as "Standard Specifications for Minimum Performance and Safety Requirements for Components and Systems of Anesthesia Gas Machines," ASTM F–1161–88) and that include an ascending bellows ventilator and at least the following monitors: Capnograph, pulse oximeter, oxygen analyzer, respiratory volume monitor (spirometer) and breathing system pressure monitor with high and low pressure alarms. However, the recommendations document offers guidance that users are encouraged to modify to accommodate differences in equipment design and variations in local clinical practice. Such local modifications should have appropriate peer review. The original recommendations document (52 FR 5583) should be followed for other anesthesia systems. Users should refer to the operators manual for specific procedures and precautions.

In response to the draft document entitled "Anesthesia Apparatus Checkout Recommendations, 1992" (57 FR 46033), eight comments were received and reviewed by the agency. Some minor refinements were made to the checkout recommendations in response to the comments.

FDA believes that the pre-use inspection procedure provided in the checkout recommendations will aid medical professionals in the safe use of anesthesia devices. FDA regards the pre-use inspection procedure to be a recommendation as defined in § 10.90(c) (21 CFR 10.90(c)). Therefore, the checklist is being made available under § 10.90(c) of the agency's administrative practices and procedures regulations. That regulation provides for FDA to formulate and disseminate recommendations about matters that are authorized by, but do not involve direct regulatory action under, the laws administered by the agency.

Dated: June 30, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–16618 Filed 7–8–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0378]

North Carolina Memorial Hospital; Revocation of U.S. License No. 314

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 314) and product license issued to the North Carolina Memorial Hospital, doing business as the Clinical Coagulation Laboratory, for the manufacture of Source Plasma. In a letter to FDA dated February 10, 1993, the firm voluntarily requested revocation of its establishment and product licenses and thereby waived an opportunity for a hearing.

DATES: The revocation of the establishment license (U.S. License No. 314) and product license became effective August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 314) and the product license issued to the North Carolina Memorial Hospital, doing business as the Clinical Coagulation Laboratory, University of North Carolina School of Medicine, Chapel Hill, NC 27514, for the manufacture of Source Plasma.

FDA conducted an inspection of the Clinical Coagulation Laboratory between July 30 and August 15, 1991. The inspection documented serious deviations from the applicable Federal regulations and the biologics standards in the firm's license. Deviations identified during the inspection included, but were not limited to, the following: (1) Failure to adequately determine donor suitability, in that: (a) three donors who admitted to a history of hepatitis, liver disease, or jaundice were regularly accepted for Source Plasma donation (21 CFR 640.63(c)(11)); (b) two donors who previously tested repeatedly reactive for the hepatitis B surface antigen (HBsAg) continued to be accepted for donation, despite having never met the established criteria for donor reentry as described in the December 2, 1987, FDA HBsAg protocol (21 CFR 610.41); (c) two donors who failed to donate for a period of 6 months were not processed as new donors (21 CFR 640.65(b)(1)(iii)); and (d) five donors did not have serum protein electrophoresis testing performed every 4 months (21 CFR 640.65(b)(1)(i)); (2) failure to limit the frequency of Source Plasma donation to two times within a 7-day period, in that at least two donors were allowed to donate three times in a 7-day period (21 CFR 640.65(b)(5)); (3) failure to observe, standardize, and calibrate equipment used in the collection, processing, and distribution of blood components (21 CFR 606.60); (4) failure to maintain adequate and complete standard operating procedures for all steps in the collection, processing, storage, and distribution of blood components (21 CFR 606.100(b)); and (5) failure to report important changes in responsible personnel or manufacturing methods to FDA's Center for Biologics Evaluation and Research (21 CFR 601.12 (a) and (b)).

FDA determined that the deviations from Federal regulations were significant and constituted a danger to public health, warranting a suspension pursuant to 21 CFR 601.6(a). In a letter to the North Carolina Memorial Hospital dated September 3, 1991, FDA detailed the violations noted above and suspended the firm's establishment and product licenses for the manufacture of Source Plasma. In a letter to the firm dated May 20, 1992, FDA indicated that the firm had responded satisfactorily to FDA's September 3, 1991, suspension letter. In the same letter, FDA permitted the firm to resume collecting and storing Source Plasma on a limited basis for the purpose of reinspection to determine compliance.

FDA conducted a followup inspection of the firm between July 27 and July 29, 1992. The inspection documented several continuing deviations from Federal regulations. These deviations included, but were not limited to, the following: (1) Inadequate facilities to provide for the storage of blood or blood components; (2) incomplete or incorrect disposition records; and (3) incomplete or inadequate written procedures. FDA permitted the firm to continue to collect and store Source Plasma on a limited basis, but FDA did not permit the firm to distribute the prepared plasma until otherwise notified by FDA.

FDA attempted to conduct a reinspection of the firm on February 2, 1993, to, in part, determine the firm's status. During this inspection, it was observed that the donor chair had been removed and that no plasma had been collected since the inspection ending July 29, 1992. The inspection was terminated because a meaningful inspection could not be performed.

In a letter to FDA dated February 10, 1993, the firm requested voluntary revocation of its licenses and thereby waived its opportunity for a hearing under 21 CFR 601.5(a). The agency granted the licensee's request by letter dated August 24, 1993, which revoked the establishment license (U.S. License No. 314) and the product license for the manufacture of Source Plasma.

FDA has placed copies of the letters relevant to the license revocation on file under the docket number found in brackets in the heading of this document with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. These documents include the following: FDA letters of September 3, 1991, May 20, 1992, and August 24, 1993; and the firm's letter of February 10, 1993. These documents are available in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m. Monday through Friday.

Accordingly, under section 351 of the Public Health Service Act (42 U.S.C. 262), 21 CFR 601.5, and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 314) and the product license issued to the North Carolina Memorial Hospital, doing business as the Clinical Coagulation Laboratory, for the manufacture of Source Plasma were revoked, effective August 24, 1993.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: June 27, 1994.

Michael G. Beatrice,

Deputy Director, Center for Biologics Evaluation and Research.

[FR Doc. 94–16617 Filed 7–8–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public

FDA attempted to conduct a reinspection of the firm on February 2, 1993, to, in part, determine the firm's status. During this inspection, it was observed that the donor chair had been removed and that no plasma had been collected since the inspection ending July 29, 1992. The inspection was terminated because a meaningful inspection could not be performed.

In a letter to FDA dated February 10, 1993, the firm requested voluntary revocation of its licenses and thereby waived its opportunity for a hearing under 21 CFR 601.5(a). The agency granted the licensee's request by letter dated August 24, 1993, which revoked the establishment license (U.S. License No. 314) and the product license for the manufacture of Source Plasma.

FDA has placed copies of the letters relevant to the license revocation on file under the docket number found in brackets in the heading of this document with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. These documents include the following: FDA letters of September 3, 1991, May 20, 1992, and August 24, 1993; and the firm's letter of February 10, 1993. These documents are available in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m. Monday through Friday.

Accordingly, under section 351 of the Public Health Service Act (42 U.S.C. 262), 21 CFR 601.5, and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 314) and the product license issued to the North Carolina Memorial Hospital, doing business as the Clinical Coagulation Laboratory, for the manufacture of Source Plasma were revoked, effective August 24, 1993.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: June 27, 1994.

Michael G. Beatrice,

Deputy Director, Center for Biologics Evaluation and Research.

[FR Doc. 94–16617 Filed 7–8–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Joint Subcommittee Meeting of the Nonprescription Drugs Advisory Committee and Arthritis Advisory Committee on Over-the-Counter Internal Analgesic, Antipyretic, and Antirheumatic Drug Products

Date, time, and place. September 8 and 9, 1994, 8:30 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, September 8, 1994, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; open committee discussion, September 9, 1994, 8:30 a.m. to 4 p.m., open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committees. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Arthritis Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the joint subcommittee. Those desiring to make formal presentations should notify the contact person before August 15, 1994, and submit a brief statement of the general nature of the information or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their comments. In a subsequent issue of the **Federal Register**, FDA will publish a notice announcing the availability of background information.

Open committee discussion. On September 8 and 9, 1994, the joint subcommittee will discuss effectiveness data requirements and proposed labeling indications for OTC analgesic drug products. The joint subcommittee will address topics such as: (1) Data requirements to support specific types of indications for OTC analgesic drug products; (2) recommendations for labeling indications for OTC analgesics; and (3) the current state of scientific knowledge in the areas of pain receptors, mechanism(s) of pain perception, and the basis for response to analgesic drug classes.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an

opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 5, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–16619 Filed 7–8–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext. 266; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Anti-Retroviral Compounds

Tam, S., Weigle, M., Broder, S., Mitsuya, H. (NCI)
Serial No. 07/064,631
Patent Reissued 14 Apr 92
U.S. Patent No. Re 33,887

Dimeric dideoxynucleosides formed from two different 2',3'-dideoxynucleosides joined by a linking group are useful for treatment of HIV-infection and other retroviral infections. The linked dideoxynucleosides specifically inhibit HIV replication in vitro with less toxicity in human cells. Methods for the synthesis of these compounds are provided.

Method of Inhibiting Viral Replication Using IL–10

Yarchoan, R., Saville, W., Tosato, G., Taga, K. (NCI)
Filed 24 May 93
Serial No. 08/066,785

The use of recombinant human interleukin 10 (rhIL–10) has been discovered to be a new potential means of treating HIV infection. In vitro studies with rhIL–10 have shown it to be an inhibitor of HIV infection in human monocytes and macrophages as well as having activity against HIV in certain T-cell and monocyte cell lines. This activity against HIV occurs both at the time of infection and when added to previously infected cell cultures.

These effects occur at IL–10 concentrations that are lower than those which inhibit other immune functions. In addition, the use of IL–10 to interfere with HIV replication is expected to result in the amelioration of Kaposi's sarcoma.

Novel Nonpeptidic Retroviral Protease Inhibitors

Randad, R., Pan, W., Burt, S., Erickson, J. (NCI)
Filed 8 Aug 93
Serial No. 08/106,686

Novel nonpeptidic compounds designed to be inhibitors of the HIV protease enzyme have been discovered. These compounds thus have potential as possible pharmaceutical compositions for the inhibition HIV replication and the treatment of AIDS. Based upon SS isomers of substituted dibenzyl-5-hydroxyl-2-primidones, these compounds are expected to not have the problems associated with current peptide-based protease inhibitors such as poor oral absorption, poor stability, and rapid metabolism and elimination.

Use of Peptomers Derived From HIV–1 and HIV–2 as Vaccine Candidates

Robey, F., Harris-Kelson, T., Robert-Guroff, M. (NIDR)
Filed 19 Jan 94
Serial No. 08/184,330

Novel conformationally constrained peptide polymer HIV vaccine candidates have been uncovered that generate a strong humoral immune response not seen against monomeric peptides. Termed "peptomers", these candidates are composed of specifically cross-linked synthetic peptide sequences from the highly conserved CD4 binding domains of the gp120 regions of HIV–1 *and* HIV–2. Although peptides from these regions of gp120 do not possess any conformation in solution, the polymerized forms were found to have conformations that resemble the theoretical conformations that might be found in these regions of the native gp120 from HIV–1 and HIV–2. Certain peptomers from HIV–1 and HIV–2 bind CD4, the cell receptor for HIV–1 and HIV–2, and induce antibody responses in rabbits and rhesus monkeys that block in vitro HIV–1 infection.

Dated: June 25, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–16696 Filed 7–8–94; 8:45 am]

BILLING CODE 4140–01–P

Appeals Procedures Related To Licensing of Patents and Inventions Under the Jurisdiction of the Department of Health and Human Services

AGENCY: National Institutes of Health, Public Health Service, HHS

ACTION: Proposed Interim Procedures.

SUMMARY: The National Institutes of Health is proposing for public comment interim appeals procedures under 37 CFR § 404.11 which permits appeals from any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license and specifies the parties who may appeal.

DATES: Written comments on the proposed interim procedure must be received by August 10, 1994.

ADDRESSES: Comments regarding the proposed interim procedure may be submitted to Mr. Arthur J. Cohn, Esq., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Background

This proposed interim procedure implements 35 U.S.C. 207(a), and 209, and the Department of Commerce Regulation in 37 CFR Part 404 dealing with the licensing of federally owned inventions. This interim procedure describes the terms, conditions and procedures under which specified parties may appeal from a decision of the Director of the Office of Technology Transfer, National Institutes of Health, concerning the grant, denial, interpretation, modification or termination of a license of any patent or invention in the custody of the Department of Health and Human Services. Upon promulgation of these procedures, following consideration of the comments made in response to this notice, the procedures will remain in effect until permanent procedures are adopted as a part of comprehensive policies or regulations governing the technology transfer activities of the National Institutes of Health.

Interim Procedure for Appeals From Licensing Decisions by the Department of Health and Human Services

Purpose

In accordance with 37 CFR § 404.11 this interim procedure describes the terms, conditions and procedures under which a party may appeal a decision of the Office of Technology Transfer (OTT) concerning the grant, denial interpretation, modification or termination of a license for any invention in the custody of the Public Health Service (PHS), Department of Health and Human Services (HHS).

Definitions

(a) "OTT Director" means the Director of the Office of Technology Transfer, National Institutes of Health.

(b) "Director," means the Director of the National Institutes of Health (NIH) or any officer or employee of the NIH to whom the authority involved may be delegated.

(c) "Person" means any individual or entity.

(d) "Invention" means any invention or discovery which is or may be patentable or otherwise protected under title 35, United States Code, or any novel variety of plant which is or may

submitted to Mr. Arthur J. Cohn, Esq., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Background

This proposed interim procedure implements 35 U.S.C. 207(a), and 209, and the Department of Commerce Regulation in 37 CFR Part 404 dealing with the licensing of federally owned inventions. This interim procedure describes the terms, conditions and procedures under which specified parties may appeal from a decision of the Director of the Office of Technology Transfer, National Institutes of Health, concerning the grant, denial, interpretation, modification or termination of a license of any patent or invention in the custody of the Department of Health and Human Services. Upon promulgation of these procedures, following consideration of the comments made in response to this notice, the procedures will remain in effect until permanent procedures are adopted as a part of comprehensive policies or regulations governing the technology transfer activities of the National Institutes of Health.

Interim Procedure for Appeals From Licensing Decisions by the Department of Health and Human Services

Purpose

In accordance with 37 CFR § 404.11 this interim procedure describes the terms, conditions and procedures under which a party may appeal a decision of the Office of Technology Transfer (OTT) concerning the grant, denial interpretation, modification or termination of a license for any invention in the custody of the Public Health Service (PHS), Department of Health and Human Services (HHS).

Definitions

(a) "OTT Director" means the Director of the Office of Technology Transfer, National Institutes of Health.

(b) "Director," means the Director of the National Institutes of Health (NIH) or any officer or employee of the NIH to whom the authority involved may be delegated.

(c) "Person" means any individual or entity.

(d) "Invention" means any invention or discovery which is or may be patentable or otherwise protected under title 35, United States Code, or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. § 2321 et seq.).

(e) "Written Objection" means a written objection in response to a notice of a prospective license published in the Federal Register as required by 37 CFR § 404.7(a)(1)(i) or 37 CFR § 404.7(b)(1)(i).

(f) "Appellant" means a person who requests reconsideration or appeals a decision of the OTT in accordance with this subpart.

Licensing Authority

The OTT Director has been delegated authority to make any decision or determination concerning the grant, denial, interpretation, modification or termination of any license for any invention in the custody and control of the PHS. The decision and determination of the OTT Director is final and conclusive on behalf of the Department unless the procedures for reconsideration and appeal set forth below are initiated.

Persons Who May Request Reconsideration and Appeal

Under 37 CFR § 404.11, the following person(s) may request reconsideration by the OTT Director and may subsequently appeal to the Director any decision or determination concerning the grant, denial, interpretation, modification or termination of a license:

(a) A person whose application for a license has been denied;

(b) A licensee whose license has been modified or terminated in whole or in part; or

(c) A person who has timely filed a written objection in response to the notice required by 37 CFR § 404.7(a)(1)(i) or § 404.7(b)(1)(i) and who can demonstrate to the satisfaction of the OTT Director or the Director, as appropriate, that such person may be damaged by the determination of the OTT.

Request for Reconsideration

(a) Prior to appealing a determination by the OTT granting, denying, interpreting, terminating, or modifying a license, the Appellant must request reconsideration by filing with the OTT Director a written request for reconsideration within thirty (30) days after the notice of denial, termination or modification or a response to a Written Objection is sent by the OTT to the Appellant. The request for reconsideration, in concise and brief terms, shall state the grounds for reconsideration and include copies of all pertinent documents. The OTT Director may require submission of additional information or documentation. Upon written request by the Appellant and at the sole discretion of the OTT Director this thirty (30) day period may be extended for good cause.

(b) The OTT Director will make a written determination within sixty (60) days of receiving all required documentation in support of the request for reconsideration. The decision of the OTT Director will be based on all information in the administrative record, including all information submitted with the request for reconsideration.

Appeal

(a) An Appellant, who has received an adverse determination from the OTT Director following a request for reconsideration, may appeal such determination to the Director. The Director may designate another individual from within the NIH to review the notice of appeal and render a decision thereon. The Appellant shall file a written notice of appeal to the Director with two copies to the OTT Director no later than thirty (30) days from the receipt of an adverse decision by the OTT Director following a request for reconsideration unless the Director grants for good cause an extension of time. The notice of appeal, in concise and brief terms, shall state the grounds for appeal and include copies of all pertinent documents. The notice of appeal shall be accompanied by concise arguments as to why the OTT Director's decision should be rejected or modified. Upon review of the notice of appeal, the Director may require submission of additional information or documentation.

(b) The Director will make a written determination within sixty (60) days of receiving all required documentation. The decision of the Director will be based on all the information in the administrative record, including the information submitted by the Appellant and shall constitute a final decision by the agency.

Dated: July 1, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–16697 Filed 7–8–94; 8:45 am]

BILLING CODE 4140–01–P

Social Security Administration

Social Security Ruling 94–4p.; Title II of the Social Security Act and Title IV of the Federal Mine Safety and Health Act of 1977—Waiver of Recovery of Overpayments—Notice of Appeal and Waiver Rights—Right to a Pre-Recoupment Oral Hearing Before Waiver Can Be Denied

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 94–4p. This Ruling states the Social Security Administration's longstanding policy of giving adequate written notice of a determination of overpayment and the right to contest such determination and of providing the person from whom we are seeking recovery with an opportunity for a face-to-face oral hearing before we deny that person's request for waiver of recovery of the overpayment. This policy is based on the 1974 court decision in *Buffington, et al. v. Weinberger*, No. 734–73C2 (W.D. Wash. October 22, 1974), and Supreme Court decision in *Califano v. Yamasaki*, 442 U.S. 682 (1979).

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance; 93.906 Special Benefits for Disabled Coal Miners)

Dated: July 5, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Title II of the Social Security Act and Title IV of the Federal Mine Safety and Health Act of 1977: Waiver of Recovery of Overpayments—Notice of Appeal and Waiver Rights—Right to a Pre-Recoupment Oral Hearing Before Waiver Can be Denied

Purpose: To state the longstanding Social Security Administration (SSA) policy of:

- Giving adequate written notice of a determination of overpayment and the right to contest such determination and request waiver of recovery of the overpayment; and
- Providing the person from whom we are seeking recovery of an overpayment with the opportunity for a face-to-face oral hearing before we deny a request for waiver of recovery of the overpayment.

The policy is based on the court decisions and orders discussed below.

Citations (Authority): Section 204(a) and (b) of the Social Security Act, as amended, and Title IV of the Federal Mine Safety and Health Act of 1977; 20 CFR 404.502a, 404.506, 404.904, 410.561, 410.561a, and 410.620.

Pertinent History: On October 22, 1974, the U.S. District Court for the Western District of Washington in *Buffington, et al. v. Weinberger*, No. 734–73C2 (W.D. Wash. October 22, 1974) stopped SSA from recovering overpaid Social Security benefits without giving each member of the plaintiff class adequate written notice of the overpayment determination, the right to contest such determination and the right to a pre-recoupment hearing. Moreover, the court stopped SSA from taking any action to recover the overpayments before affording the class member the opportunity for a hearing.

The court ordered that the written notice must include:

- A statement of the alleged overpayment, an explanation of the basis for the overpayment and SSA's proposed action to recover the overpayment;
- A statement of the individual's right to a pre-recoupment hearing;
- Instructions and forms for requesting a pre-recoupment hearing;
- An explanation that if the person did not request a pre-recoupment hearing within 30 days of the date of mailing of the overpayment notice, it would be presumed that the person waived his/her right to the hearing and recovery of the alleged overpayment would begin;
- A statement of any other administrative relief available (i.e., reconsideration of the fact and/or amount of overpayment and waiver of recovery of the overpayment); and
- A statement that the local SSA office would help him/her to complete and submit forms for appeal.

The court also ordered the following:

1. SSA had to restore all benefits withheld from the named plaintiffs pending an opportunity for a pre-recoupment hearing. The person had to be given the opportunity to examine his/her claims file at least 5 days prior to the date of the hearing.

2. The pre-recoupment hearing had to be conducted by an SSA employee who had no prior knowledge of the events leading to the overpayment determination and the decision to recover the overpayment. At the hearing the person requesting waiver had to be given the opportunity to:

- Personally appear, testify, and cross-examine any witnesses;
- Be represented by an attorney or other representative; and
- Submit documents for consideration at the hearing.

The court, however, did not require that a transcript be made of the hearing.

3. After the hearing, SSA had to issue a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision to approve or deny waiver and advising of the individual's right to appeal the decision.

In accordance with the court order, SSA began to issue overpayment notices containing all of the aforementioned information and to offer pre-recoupment hearings to all class members.

On June 20, 1979, the Supreme Court held in *Califano v. Yamasaki*, 442 U.S. 682 (1979), that individuals who filed a written request for waiver were entitled to the opportunity for a pre-recoupment oral hearing, but those who requested only reconsideration were not so entitled. Thereafter, SSA applied its revised overpayment notice and pre-recoupment hearing procedures to all individuals who are determined to be overpaid under the title II or Black Lung programs.

On July 31, 1981, the court in *Buffington, et al. v. Schweiker*, No 734–73C2 (W.D. Wash.) required SSA to automatically schedule pre-recoupment hearings for persons whose request for waiver of overpayment recovery could not be approved after initial paper review. On February 10, 1983, the court in *Buffington, et al. v. Schweiker*, No 734–73C2 (W.D. Wash.) approved procedures developed by SSA in response to the 1981 decree whereby pre-recoupment hearings would be automatically scheduled provided that the scheduling would be in writing. The scheduling letter had to contain all the necessary information about the date, time, and place of the hearing; the procedure for reviewing the file prior to the hearing; the procedure for seeking a change in the scheduled date, time, or place; and all other information necessary to fully inform the claimant about the pre-recoupment hearing. SSA began to automatically schedule pre-recoupment hearings in writing in April 1983.

In its order of October 19, 1987, the court in *Buffington, et al. v. Bowen*, No. 734–73C2 (W.D. Wash.) approved SSA's plan to transfer waiver decisionmaking authority from the processing centers to the field offices for Retirement and Survivors Insurance overpayments. SSA implemented this change in July 1988.

Policy Interpretation

Overpayment Notice

In accordance with the court decisions, when an overpayment is discovered, the person is immediately notified. The notice includes:

- The overpayment amount and how and when it occurred;
- A request for full, immediate refund, unless the overpayment can be withheld from the next month's benefit;
- The proposed adjustment of benefits if refund is not received within 30 days after the date of the notice and adjustment of benefits is available;
- An explanation of the availability of a different rate of withholding when full withholding is proposed, installment payments when refund is requested and adjustment is not currently available, and/or cross-program recovery when refund is requested and the person is receiving another type of benefit from SSA (cross-program recovery is not available to residents of New York and Pennsylvania);
- An explanation of the right to request waiver of recovery and the automatic scheduling of a folder review and pre-recoupment hearing (commonly referred to as a personal conference) if a request for waiver cannot be approved after initial paper review;

73C2 (W.D. Wash.) required SSA to automatically schedule pre-recoupment hearings for persons whose request for waiver of overpayment recovery could not be approved after initial paper review. On February 10, 1983, the court in *Buffington, et al. v. Schweiker,* No 734–73C2 (W.D. Wash.) approved procedures developed by SSA in response to the 1981 decree whereby pre-recoupment hearings would be automatically scheduled provided that the scheduling would be in writing. The scheduling letter had to contain all the necessary information about the date, time, and place of the hearing; the procedure for reviewing the file prior to the hearing; the procedure for seeking a change in the scheduled date, time, or place; and all other information necessary to fully inform the claimant about the pre-recoupment hearing. SSA began to automatically schedule pre-recoupment hearings in writing in April 1983.

In its order of October 19, 1987, the court in *Buffington, et al. v. Bowen,* No. 734–73C2 (W.D. Wash.) approved SSA's plan to transfer waiver decisionmaking authority from the processing centers to the field offices for Retirement and Survivors Insurance overpayments. SSA implemented this change in July 1988.

Policy Interpretation

Overpayment Notice

In accordance with the court decisions, when an overpayment is discovered, the person is immediately notified. The notice includes:

- The overpayment amount and how and when it occurred;
- A request for full, immediate refund, unless the overpayment can be withheld from the next month's benefit;
- The proposed adjustment of benefits if refund is not received within 30 days after the date of the notice and adjustment of benefits is available;
- An explanation of the availability of a different rate of withholding when full withholding is proposed, installment payments when refund is requested and adjustment is not currently available, and/or cross-program recovery when refund is requested and the person is receiving another type of benefit from SSA (cross-program recovery is not available to residents of New York and Pennsylvania);
- An explanation of the right to request waiver of recovery and the automatic scheduling of a folder review and pre-recoupment hearing (commonly referred to as a personal conference) if a request for waiver cannot be approved after initial paper review;
- Instructions about the availability of forms for requesting reconsideration and waiver;
- An explanation that if the person does not request waiver or reconsideration within 30 days of the date of the overpayment notice, recovery of the overpayment will begin;
- An explanation of the right to request reconsideration of the overpayment determination;
- A statement that the local SSA office will help him/her to complete and submit forms for appeal; and
- An explanation that the person receiving the notice should notify SSA promptly if reconsideration, waiver, a lesser rate of withholding, repayment by installments, or cross-program adjustment is wanted.

Form SSA–3105

Form SSA–3105 (Important Information About Your Appeal and Waiver Rights) is included with each overpayment notice. The SSA–3105 further explains the pre-recoupment review process and contains a tear-off form which the person may complete and return to SSA if he/she wants reconsideration and/or waiver.

Delaying Recovery of the Overpayment

To ensure meaningful opportunity to contest the correctness of an overpayment determination and/or establish entitlement to waiver, the date on which full refund is due and, if appropriate, the date on which adjustment will begin must be at least 30 days after the date of the overpayment notice. If the individual responds within 30 days after the date of the overpayment notice, SSA must take action to ensure that benefit payments are not interrupted. If the 30-day period cannot be assured, SSA must postpone any proposed recoupment for a longer period. Anytime waiver is requested, SSA stops recovery.

Requesting Waiver

When waiver is requested, the individual gives SSA information (usually on Form SSA–632–BK (Request for Waiver of Overpayment Recovery or Change in Repayment Rate)) to support his/her contention that he/she is without fault in causing the overpayment and that recovery would either cause financial hardship or be inequitable. That information, along with supporting documentation, is reviewed to determine if waiver can be approved.

Reviewing Waiver Request

In Retirement and Survivors Insurance overpayments, the waiver request is reviewed in the field office; in Disability Insurance overpayments, it is reviewed in the processing center. If waiver cannot be approved after review of the claims folder, the person is notified in writing and given necessary information about the dates, times, and place of the folder review and personal conference; the procedure for reviewing the claims folder prior to the personal conference; the procedure for seeking a change in the scheduled dates, times, or place; and all other information necessary to fully inform the person about the personal conference. The folder review is always scheduled at least 5 days before the personal conference.

Folder Review

At the folder review, the person and/or the person's representative has the right to review the claims folder and applicable law and regulations with the decisionmaker or another SSA representative who is prepared to answer questions. The individual can get copies of any requested material from the claims folder or pertinent sections of the law or regulations.

Personal Conference

At the personal conference, the person is given the opportunity to:

- Personally appear, testify, cross-examine any witnesses, and make arguments;
- Be represented by an attorney or other representative; and
- Submit documents for consideration by the decisionmaker.

The decisionmaker:

- Tells the person that the decisionmaker was not previously involved in the issue under review, that the waiver decision is solely the decisionmaker's, and that the waiver decision is based only on the evidence or information presented or reviewed at the conference;
- Ascertains the role and identity of everyone present;
- Indicates whether or not the person reviewed the claims file;
- Explains the provisions of law and regulations applicable to the issue;
- Briefly summarizes the evidence already in file which will be considered;
- Ascertains from the person whether the information presented is correct and whether he/she fully understands it;
- Allows the person and the person's representative, if any, to present the person's case;
- Secures updated financial information, if necessary;
- Allows each witness to present information and allows the person and the person's representative, if any, to question the witness;

- Ascertains whether there is any further evidence to be presented;
- Reminds the person of any evidence promised by the person which has not been presented;
- Lets the person and the person's representative, if any, present any final summary or closing statement;
- Explains that a decision will be made and the person will be notified in writing; and
- Explains further appeal rights in the event the decision is adverse to the person.

Personal Conference Decision

SSA issues a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision to approve or deny waiver and advising of the individual's right to appeal the decision.

Effective Date: This Ruling is effective July 11, 1994.

Cross References: Program Operations Manual System, Part 02, Chapter 022, Subchapter 01, Sections 009, 011, 021, and 023; Subchapter 50, Sections 301, 302, 370, and 390; Subchapter 70, Sections 003–017; SSR 79–30c, Recovery of Overpayment—Prerecoupment Oral Hearings.

[FR Doc. 94–16687 Filed 7–8–94; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the proposed Cedar Park Waterline in Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The City of Cedar Park (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–788842. The requested permit, which is for a period not to exceed 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and operation of a water pipeline, in Travis County, Texas. The proposed development will eliminate about 4.2 acres of occupied and/or potential endangered species habitat.

The Service has prepared an environmental assessment/habitat conservation plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a finding of no significant impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 10, 1994.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Ann Henry, Ecological Services Field Office, U.S. Fish and Wildlife Service, 611 East Sixth Street, Suite 407, Austin, Texas 78701 (512) 482–5436. Documents will be available by written request for public inspection, by appointment, during normal business hours (8:00 to 4:00) at the Southwest Regional Office, Division of Endangered Species/Permits, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, or the Ecological Services Field Office (8:00 to 4:30), U.S. Fish and Wildlife Service, 611 East Sixth Street, Suite 407, Austin, Texas 78701. Written data or comments concerning the application and EA/HCP should be submitted to the State Administrator, Ecological Services Field Office, Austin, Texas (see **ADDRESS** above). Please refer to permit number PRT–788842 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Ann Henry at the above Austin Ecological Services Field Office address.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "Taking" of any endangered species, including the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species if such taking is incidental to, and not the purpose of otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Applicant plans to construct a 20,193-foot long water supply pipeline from Lake Travis eastward to the Williamson County line. An Environmental Assessment/Habitat Conservation Plan has been prepared for the project. As mitigation for the incidental taking of the golden-cheeked warbler, the Applicant proposes to preserve documented perch trees for the warbler along the route; limit clearing to 35 feet wide along the route and two 100 feet by 100 feet staging areas in non-habitat; schedule work during the season when the warblers are absent from the area (August 1 through March 1); and the purchase and dedication of 33 acres of occupied warbler habitat to a conservation organization approved by the Service.

The Applicant considered four alternatives but rejected three because they were not economically viable.

James A. Young,

Assistant Regional Director, Ecological Services, Southwest Region (2).

[FR Doc. 94–16654 Filed 7–8–94; 8:45 am]

BILLING CODE 4310-55-P

Bureau of Land Management

[CA–019–4333–24–1A; 8322.JRMP]

Emergency Closure Order; California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Emergency closure of public lands to all motorized vehicle use in the Joaquin Rocks Management Area and in portions of the Ciervo Hills, Fresno County, California.

SUMMARY: This emergency closure will close all public lands within the Joaquin Rocks Management Area, and portions of the Ciervo Hills in Fresno County, California, to the use or operation of all motorized vehicles except as specified.

The purpose of this emergency closure is to protect sensitive resources from the adverse effects of motorized vehicle use. These resources include soils, vegetation, wildlife and wildlife habitat (including vernal pools and threatened and endangered species), sandstone rock formations, and cultural and historic resources, and wilderness potential.

The authorized officer has determined that past and present unregulated motorized vehicle use has caused and is causing serious adverse effects to these resources.

This closure will include all public lands within:

A. Joaquin Rocks Management Area:

T. 18 S., R. 13 E., MDM
Sections 10, 12, 14, 15, 16, 22, 23, 24, 25, 26, 35, 36.
T. 18 S., R. 14 E., MDM
Sections 18, 19, 20, 22, 26, 28, 29, 30, 31, 32, 33, 34.
T. 19 S., R. 14 E., MDM
Sections 2, 3, 4, 5, 6, 10, 11, 14, 24.

B. Ciervo Hills:

T. 16 S., R. 13 E., MDM
Sections 16, 17, 22, 26
T. 17 S., R. 13 E., MDM
Section 12

A map of the areas affected by this closure order is on file and can be viewed at the Hollister Area Office of the Bureau of Land Management.

The following persons are exempt from this closure order:

(1) Federal, State or Local Law Enforcement Officers, while engaged in the execution of their official duties.

(2) BLM personnel or their representatives while engaged in the execution of their official duties.

(3) Authorized permittees carrying a written letter of authorization from the BLM for a specific activity.

(4) Any member of an organized rescue or fire fighting force while in the performance and execution of an official duty.

SUPPLEMENTARY INFORMATION: This closure is issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7 and 8340.0–7, including a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

DATES: This order is in effect as of 6/20/94. The emergency closure for the Joaquin Rocks Management Area will remain in effect until permanently adopted, amended or rescinded by the Authorized Officer as part of the Activity Plan for this area. The emergency closure of portions of the Ciervo Hills will remain in effect until permanently adopted, amended or rescinded by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Robert E. Beehler, Area Manager, Hollister Resource Area, Bureau of Land Management, 20 Hamilton Court, Hollister, CA 95023, (408) 637–8183.

Dated: May 13, 1994.

Robert E. Beehler,

Area Manager.

[FR Doc. 94–16688 Filed 7–8–94; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Title II–A, Title II–C, Title III, and Section 204(d) Performance Standards for Program Years (PY) 1994 and 1995

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of performance standards for PY 1994–95.

Sections 16, 17, 22, 26
T. 17 S., R. 13 E., MDM
Section 12

A map of the areas affected by this closure order is on file and can be viewed at the Hollister Area Office of the Bureau of Land Management.

The following persons are exempt from this closure order:

(1) Federal, State or Local Law Enforcement Officers, while engaged in the execution of their official duties.

(2) BLM personnel or their representatives while engaged in the execution of their official duties.

(3) Authorized permittees carrying a written letter of authorization from the BLM for a specific activity.

(4) Any member of an organized rescue or fire fighting force while in the performance and execution of an official duty.

SUPPLEMENTARY INFORMATION: This closure is issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7 and 8340.0–7, including a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

DATES: This order is in effect as of 6/20/94. The emergency closure for the Joaquin Rocks Management Area will remain in effect until permanently adopted, amended or rescinded by the Authorized Officer as part of the Activity Plan for this area. The emergency closure of portions of the Ciervo Hills will remain in effect until permanently adopted, amended or rescinded by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Robert E. Beehler, Area Manager, Hollister Resource Area, Bureau of Land Management, 20 Hamilton Court, Hollister, CA 95023, (408) 637–8183.

Dated: May 13, 1994.

Robert E. Beehler,

Area Manager.

[FR Doc. 94–16688 Filed 7–8–94; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Title II–A, Title II–C, Title III, and Section 204(d) Performance Standards for Program Years (PY) 1994 and 1995

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of performance standards for PY 1994–95.

SUMMARY: The Department of Labor is announcing performance standards for Job Training Partnership Act (JTPA) Title II–A (Adult Training), Title II–C (Youth Training), Title III (Dislocated Workers Training), and section 204 (Older Workers Training) for Program Years (PY) 1994–95 (July 1, 1994–June 30, 1996). The proposed issuance appended to this notice contains revised performance standards levels and implementation instructions to conform the Title II performance management system with the Job Training Reform Amendments of 1992.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Aaronson, Chief, Adult and Youth Standards Unit, Telephone (202) 219–5487, extension 107 (this is not a toll-free number).

PAPERWORK REDUCTION ACT: Information collection related to this regulation has been approved previously by the Office of Management and Budget, No. 1205–0321. No further information collections or other paperwork requirements of the public are needed.

SUPPLEMENTARY INFORMATION: Under section 106 of the amended Job Training Partnership Act (JTPA), the Secretary of Labor is required to set performance standards for programs serving: (1) adults and youth under Title II–A and Title II–C; (2) dislocated workers under Title III; and (3) older workers under section 204(d). The Job Training Reform Amendments of 1992 (Amendments) also introduced significant changes in the way job training programs are designed and operated at the local levels. These statutory changes, combined with recent legislative and administrative initiatives to promote high-quality, results-driven, customer-oriented services throughout the Federal Government, are not only reshaping the way JTPA delivers its services, but also how to measure its effectiveness.

National job training objectives have remained unchanged since 1990 and focus on enhancing the long-term employability and economic self-sufficiency of those most at risk of becoming or remaining unemployed. Current measures of the program's progress in achieving these objectives relate directly to near-term employment and earnings levels of adult program completers and levels of employment and skill enhancements of youth program completers. These outcomes do not, by themselves, measure the quality of the services received or the extent to which the program is able to improve upon participants' prior employment, earnings and welfare dependency.

For this reason, the Department will be undertaking a comprehensive review of its performance standards over the next year to examine alternative program measures and more cost efficient ways of assessing the program's long-term effects on its graduates. Ongoing surveys of JTPA's customers will also provide invaluable feedback on how helpful JTPA services are to its users, what other services are needed but not provided by the program, and the extent to which good outcomes are related to levels of customer satisfaction. Finally, the Employment and Training Administration will initiate a nationwide JTPA Report Card that will highlight programs showing the greatest returns on their human resource investments in terms of obtaining high-quality employment for those participants most at-risk of failure.

Outcome measures for Title II–A and C will be retained until this performance standards review is completed. Numerical levels for these core standards have been updated to reflect the most recent JTPA program experience.

The Department is also undertaking a comprehensive review of its Title III programs; therefore, changes in outcome measures will be deferred until the results of this critical assessment are available. Governors will continue to be required to set an entered employment rate standard for their Title III programs and are encouraged to establish an average wage at placement goal. At the same time, the Department will be exploring ways to use performance standards to improve the quality of services provided to dislocated workers, and to achieve higher levels of customer satisfaction.

Under section 204(d) of JTPA, older worker programs are now subject to performance standards. However, no incentive awards or sanctions are associated with these standards. Outcomes for these programs focus on increasing employment and earnings similar to those programs serving other disadvantaged adults. Because field evidence suggests that older workers are much more likely to remain employed once they are placed in jobs, employment and wages will be measured at program completion rather than at a later follow-up period. Together, these measures underscore the employment focus of the program, particularly in jobs that are higher paying.

To comply with the legislative provisions, the Department considered adding specific outcome measures for hard-to-serve participants and separate outcomes for in-school and out-of-

school youth. In the interest of avoiding a proliferation of performance measures and limiting local flexibility in programming, additional measures for these three separate groups were not established. Rather, the requirement to promote services to hard-to-serve individuals will be addressed from an incentive policy perspective and the issue of in-school and out-of-school standards will continue to be addressed through the performance standards adjustment process. When judging service delivery area (SDA) performance and awarding incentive funds, States will need to design incentive policies that will promote more effective services to out-of-school youth and reward placements into jobs with employer-assisted benefits.

The policy of excluding cost measures from incentive awards will remain unchanged; however, States are reminded of the integral role of financial oversight in program management. States are also encouraged to utilize available administrative data to relate overall costs of job training to more direct measures of long-term employment, earnings and reductions in welfare. The Office of the Inspector General will be collaborating with ETA in developing a mechanism for measuring the program's return on its investments. The wider JTPA community will also be invited to participate in this effort.

Discussion of Comments

On March 1, 1994, proposed revisions to the performance standards for JTPA Title II–A, Title II–C, Title III, and newly instituted section 204(d) performance standards were published in the **Federal Register** at 59 FR 9910. Interested parties were invited to submit written comments through March 31, 1994.

The Department of Labor (DOL) received 96 written comments on the proposed performance standards issuance. Eighteen of the letters explicitly endorsed the overall direction which the Department is taking in establishing performance standards policy for Program Years 1994 and 1995. In general, the majority of comments requested clarifications or raised issues about specific aspects of the proposed requirements. While the concept of imposing a hard-to-serve "gate" for incentive awards eligibility received support, its application to terminees rather than enrollments drew considerable local and State criticism.

The following summarizes the major issues raised by the commenters and the Department's respective responses.

Use of Participants Rather Than Terminees as the Basis for Determining SDA Eligibility for Incentive Awards

The Department specifically sought comments on whether the hard-to-serve "gate" for incentive award eligibility fully addresses the need to emphasize this population in the performance standards system, and whether compliance with the gate should be measured against those enrolled in training or those completing the program. A majority of those commenting on this issue agreed with the Department's approach of restricting eligibility for incentive awards to those programs that enroll in training at least a minimum (65%) hard-to-serve adults as well as youth.

However, fully three-fourths of States and SDAs submitting comments specifically recommended that the basis for the gate should be participants (all individuals served during the year, including those still enrolled at the end of the program year) rather than terminees. Basing the 65% hard-to-serve level on program terminees was seen as pressuring SDAs to "manipulate" their terminations. Local programs can manage the recruitment process to ensure that adequate numbers of hard-to-serve are enrolled. Ensuring comparable numbers of hard-to-serve individuals will graduate each year is more problematic because of the clients' varying training needs. Participants with multiple barriers typically need to remain in programs longer than those with fewer barriers.

The Department concurs with the arguments made for changing the basis of the incentive award "gate" from terminations to participants. Particularly compelling is the rationale that hard-to-serve participants need longer-term interventions and the adverse effects that such a gate might create in prompting SDAs to terminate participants prematurely. Thus, beginning in FY 1994 for SDAs to become eligible for incentives, at least 65 percent of *both* the SDAs' Title II–A *and* Title II–C (in-school and out-of-school combined) participants receiving training, and/or other services beyond objective assessment, must be hard-to-serve. For the purpose of determining compliance with this requirement, those individuals with SDA-defined barriers that have been approved by the Governor are to be included as well as participants in school-wide projects under section 263(g) and participants in five percent-funded projects.

To further reinforce JTPA's focus on serving hard-to-serve participants, the Department encourages Governors to design incentive policies that explicitly promote increased service to that group. For example, Governors may wish to adjust themselves based on the degree to which SDAs exceed the incentive eligibility "gate" or on a sliding scale of continuous improvement.

Improved Service to Out-of-School Youth and Employer-Assisted Benefits Incentive Award Criteria

About 30 percent of all commenters mentioned this issue. Most of the comments requested additional guidance and clarification on how these two items could be incorporated into incentive award policies and asked whether Governors could ignore or "zero weight" either one of them in the awarding of incentives. The Department is sensitive to concerns about establishing incentive criteria without sufficient information on the program's prior experience in placing individuals in jobs with employer-assisted benefits; or in the case of out-of-school youth, in the absence of effective program models that have a positive impact on a youth's long-term earnings potential.

In response to the field comments several changes have been made to the incentive policy guidance as originally proposed. First, Governors will be encouraged, but not required, to include these criteria in State incentive policy for PY 1994. States will be required to incorporate these criteria (i.e., they cannot be zero-weighted) beginning in PY 1995. In the interim States can use data from the Standardized Program Information Reports (SPIR) for PYs 1992 and 1993 to establish performance benchmarks for programs serving out-of-school youth and job placements providing employer-assisted benefits. Therefore, the Department is giving Governors maximum flexibility in terms of how these criteria may be applied. Suggested approaches for rewarding improved service to out-of-school youth and placements in jobs providing employer-assisted benefits will be included in the Training and Employment Guidance Letter appended to this Notice.

Several commenters noted that the intent of the incentive provisions is to encourage service to more out-of-school youth; thus, SDAs should be rewarded solely on the extent to which they exceed the statutory minimum service levels. The Department's position is that rewarding SDAs simply on the basis of increasing the numbers of out-of-school youth does not go far enough in addressing the disappointing findings from the National JTPA study. Thus, while SDAs will not be exempted from the statutory requirement to serve at least 50% out-of-school youth, ETA is encouraging States to use incentive funds to pilot innovative youth models and to evaluate and replicate promising strategies.

20-Hour Requirement

Section 106(k) of JTPA requires for performance standards purposes that employment be for at least 20 or more hours per week. This requirement applies to Title II–A (adults), Title II–C (youth), Section 204(d) (older workers), and Title III (dislocated workers) programs. About 15 percent of the comments questioned the reasonableness of this requirement for in-school youth, older workers, or disabled participants, and requested that the Department waive it in these cases. Since this requirement is explicitly defined *in the statute*, it cannot be waived.

Several commenters also requested clarification about the reference period, i.e., whether a "week" means 5 or 7 days and whether follow-up is needed to verify that an individual actually worked for at least 20 hours. For determining compliance with this provision, a "week" means a period of 7 consecutive days, and the 20 or more hours is to be understood as a condition of employment. (See section 5 of the attached TEGL.) No formal verification is required, but the Department encourages States to set up a system that would, at a minimum, provide for random checking to assess compliance by SDAs.

Definition of "Failure to Meet Standards"

Section 106(j)(i)(A) of JTPA requires the Secretary to establish uniform criteria of determining whether a service delivery area fails to meet performance standards. To comply with this provision, the Department specified the number of failed standards which constitute overall failure. Commenters generally agreed with the concept of a uniform definition of performance failure; however, there was minor opposition to defining overall failure as missing a combination of any three standards or simply missing both youth standards. The Department was criticized for placing too much weight on the youth standards. Given Congressional interest in improving the quality of service to youth, as reflected in various provisions in the amended JTPA, and given the need to respond to the programmatic issues raised by the National JTPA Study, the Department believes its emphasis on youth program performance is appropriate.

least 50% out-of-school youth, ETA is encouraging States to use incentive funds to pilot innovative youth models and to evaluate and replicate promising strategies.

20-Hour Requirement

Section 106(k) of JTPA requires for performance standards purposes that employment be for at least 20 or more hours per week. This requirement applies to Title II–A (adults), Title II–C (youth), Section 204(d) (older workers), and Title III (dislocated workers) programs. About 15 percent of the comments questioned the reasonableness of this requirement for in-school youth, older workers, or disabled participants, and requested that the Department waive it in these cases. Since this requirement is explicitly defined *in the statute*, it cannot be waived.

Several commenters also requested clarification about the reference period, i.e., whether a "week" means 5 or 7 days and whether follow-up is needed to verify that an individual actually worked for at least 20 hours. For determining compliance with this provision, a "week" means a period of 7 consecutive days, and the 20 or more hours is to be understood as a condition of employment. (See section 5 of the attached TEGL.) No formal verification is required, but the Department encourages States to set up a system that would, at a minimum, provide for random checking to assess compliance by SDAs.

Definition of "Failure to Meet Standards"

Section 106(j)(i)(A) of JTPA requires the Secretary to establish uniform criteria of determining whether a service delivery area fails to meet performance standards. To comply with this provision, the Department specified the number of failed standards which constitute overall failure. Commenters generally agreed with the concept of a uniform definition of performance failure; however, there was minor opposition to defining overall failure as missing a combination of any three standards or simply missing both youth standards. The Department was criticized for placing too much weight on the youth standards. Given Congressional interest in improving the quality of service to youth, as reflected in various provisions in the amended JTPA, and given the need to respond to the programmatic issues raised by the National JTPA Study, the Department believes its emphasis on youth program performance is appropriate.

Several commenters requested clarification on whether SDAs had to fail the same standards two consecutive years to trigger a reorganization. The sanction policy does not apply to the same standards over the two-year period. Thus, for the purpose of identifying whether an SDA has failed to meet performance standards for two consecutive years, overall failure means failing any three core standards or both youth standards for two consecutive years. Definitions for meeting and failing *individual* standards will be established by Governors.

Performance Standards for Older Worker Programs Under Section 204(d)

The other major area of comment involved the performance standards for older worker programs under Section 204(d). A total of 27 letters was received from advocates/service providers and State agencies on aging. These letters questioned the methodology and data used for setting the performance standards levels. Many indicated that the proposed levels were too high, particularly the level of the average wage at placement standard.

Since March 1, 1994, when the notice appeared in the **Federal Register**, additional data became available from the PY 1992 SPIR. Reported information on the Section 204(d) Older Worker program was analyzed and used to establish revised levels for the standards that are more closely related to actual experience for that program. This has resulted in a lower entered employment rate standard, but the average wage at placement standard remains unchanged. It should be remembered, however, that the Secretary's standards are merely *departure points* which will be adjusted to account for local economic conditions and the characteristics of the terminees. The Department will be providing States with a methodology for making these adjustments.

Performance Standards Levels

A total of 9 comments was received about the overall performance levels for Titles II–A and II–C standards. Comments were mixed with hard-to-serve advocates supporting both higher and lower levels. The majority of comments advocating lower levels were from youth advocates who felt that the standard for youth employment was too high given the recent decline in the rate of placing youth in jobs.

The numerical values of the standards are generally set so that if local programs continue to perform unchanged from the prior program year, 75 percent of the system are expected to exceed their standards. The proposed numerical standards for five of the six core measures (all but the YEER) and the Title III Entered Employment Rate measure are set in this manner, using PY 1992 performance. Further adjustments were made to reflect the new 20 hour per week minimum requirement for employment. To arbitrarily raise the level of all standards, as suggested by certain advocate groups, appeared counterproductive when the Department was imposing new targeting requirements and employment caveats.

One exception is the numerical standard for the YEER which if similarly set, would lead to reduced standards for SDAs. The recently published 30-month results from the National JTPA Study suggest that employment and earnings experienced by out-of-school youth in JTPA fall short of acceptable levels. Therefore, to foster improved services to out-of-school youth, the numerical standard for the YEER will remain at its current level of 41 percent.

The Secretary's standards for the new older worker performance measures were derived from an analysis of available PY 1992 Section 204(d) data from the SPIR. The same general rules that were used for setting the levels for the Titles II–A, II–C, and III programs, including the adjustment for 20-hour employment, were used for the Section 204(d) program. Again, it must be emphasized that these national standards are merely departure points and States must make adjustments to account for local conditions.

Certifications

This issuance is procedural in character and gives directions to States and local service deliverers on the implementation of performance standards under Title II–A, Title II–C Section 204(d), and Title III of JTPA. Therefore, it is not classified as "major" under Executive Order 12291 and no impact analysis is required. This issuance has been assessed according to the Federalist policymaking criteria outlined in Executive Order 12612. The Department believes that this issuance will not materially limit the policymaking discretion of the States. This issuance both addresses Departmental policy objectives and permits States discretionary authority in the application of performance standards. The procedural framework included in this issuance enables States to better assist localities in more effective and efficient program design and management.

Signed at Washington, DC, this 5th day of July, 1994.

Doug Ross,

Assistant Secretary of Labor.

Appendix—Revisions to the Performance Management System, and Performance Standards for Program Years (PY's) 1994 and 1995

Training and Employment Guidance Letter_____

Training and Employment Guidance Letter No. _____

From: Barbara Ann Farmer, Administrator for Regional Management

Subject: Job Training Partnership Act (JTPA) Title II and Title III Performance Standards for PY's 1994–1995

1. *Purpose.* To transmit guidance on the Secretary's required performance measures and the Secretary's implementing instructions for performance standards for Program Years (PY's) 1994 and 1995 (July 1, 1994–June 30, 1995; July 1, 1995–June 30, 1996).

2. *Background.* Sec. 106 of JTPA, as amended, directs the Secretary to establish performance standards for adult, youth, and dislocated worker programs. These standards may be updated every two years based on the most recent JTPA program experience, as well as program emphases and goals established by the Department of Labor. The Secretary also issues instructions for implementing standards and parameter criteria for States to follow in adjusting the Secretary's standards for service delivery areas (SDAs) and substate areas (SSAs).

The Job Training Reform Amendments (JTRA) of 1992 mandated significant changes in the design and operation of local job training programs, as well as the criteria used to assess their performance. Revised Section 106 requires that performance standards for Title II–A, Title II–C, Section 204(d) and Title III programs measure the number of job placements that provide a minimum of 20 hours of work per week, and that programs be rewarded based on high performance, increased service to the "hard-to-serve," and quality job placements that are both high-paying and offer employer-assisted benefits. Incentive and sanction policies are to be structured around more explicit criteria, and performance standards failure is now federally defined to ensure greater uniformity in assessing underperformance nationwide. As a result of the JTPA amendments, section 204(d) now mandates performance measures for the older worker program.

To assist the Department in responding to the substantive changes required in the section 106 amendments, a Technical Workgroup was convened in Washington, DC, in mid-July 1993. The workgroup had representatives from State and local JTPA programs; public interest groups, including the Partnership for Training and Employment Careers; the U.S. Conference of Mayors; the National Association of Counties; the National Governors' Association; and the National Council on the Aging; and staff from the Department of Labor (DOL) Office of the Inspector General. This Guidance Letter incorporates, to a large extent, the workgroup's findings.

3. *Performance Management Goals for PY's 1994–1995.* Departmental goals, initially established for PY 1990 in anticipation of the amendments, remain unchanged and are as follows:

—Targeting services to a more at-risk population;

—Improving the quality and intensity of services that lead to skills acquisition, long-term employability and increased earnings;

—Placing greater emphasis on basic skills acquisition to qualify for employment or advanced education or training; and

—Promoting comprehensive, coordinated human resource programs to address the multiple needs of at-risk populations.

In addition, with the passage of the 1992 JTPA Amendments, the performance management system has been tasked, through its performance incentive policies, to improve service to out-of-school youth and also to foster employment in better quality jobs which offer high wages and employer-assisted benefits.

These goals are reflected in the Secretary's six Title II–A and Title II–C (core) measures, national numerical standards for these measures, new incentive award criteria, and associated reporting requirements. Governors still retain authority to establish additional standards which reflect State policy and to develop the specific approach to determining incentive awards.

This issuance specifies the national standards for PY's 1994–1995 and introduces the new criteria which must be a part of State incentive grant policies. Data to support additional non-cost measures will continue to be reported and Governors may use these measures, or others in making State incentive award determinations. Data on costs together with program performance will provide critical information for State monitoring, fiscal oversight, and assist States in measuring returns on their human resource investments.

The Department has identified two additional goals for PY 1994–1995. These are:

—Establishing a strong customer focus and orientation toward improving the program's responsiveness in meeting the individual needs of participants; and

—Seeking and using customer feedback to monitor the appropriateness of JTPA services and to promote continuous program improvements.

States and SDAs are encouraged to survey customers on a regular basis as an integral part of their program oversight to identify program weaknesses and to improve program services. Technical assistance will be made available on cost-effective ways to gather and utilize such information.

4. *Secretary's National Standards for PY's 1994–1995.* The Secretary's performance measures and national standards for Title II–A, Title II–C, section 204(d), and Title III (all of section 302(c)(1) State activities, and sections 302(c)(2) and 302(d) substate area activities) are as follows:

PY 1994–1995 Performance Standards

Title II–A

Adult Follow-up Employment Rate	59%
Adult Weekly Earnings at Follow-up	$245
Welfare Follow-up Employment Rate	47%
Welfare Weekly Earnings at Follow-up	$223

Title II–C

Youth Entered Employment Rate	41%
Youth Employability Enhancement Rate	40%

Section 204(d) Older Worker Programs

Entered Employment Rate	52%
Average Hourly Wage at Placement	$5.45

Title III

Entered Employment Rate	67%
Average Wage at Placement	State Determined

The Title II–A adult and welfare follow-up measures will continue to be based on individuals who terminate during the first three quarters of the program year and the last quarter of the previous program year.

5. *Explanation of Performance Standards Levels.* The Title II–A and II–C numerical standards were derived from PY 1992 aggregate performance data reported on the JTPA Annual Status Report (JASR) and are generally set at a minimally-acceptable level that approximately 75% of the SDA's can be expected to exceed.

Revising the numerical standard for the Youth Entered Employment Rate (YEER) in the same way would lead to reduced standards for SDAs. However, recent National JTPA Study results suggest that employment and earnings experienced by out-of-school youth in JTPA fall short of acceptable levels. Therefore, to encourage improved services to out-of-school youth, the numerical standard for the YEER will remain at its current level of 41 percent.

Earnings standards have been adjusted to account for expected future inflation. Finally, an additional special adjustment has been made to employment-related standards to account for the requirement in section 106(k) that permits credit, for performance standards purposes, only for employment that is scheduled for 20 or more hours per week.

Similar to the Title II–A and Title II–C standards, the Title III standard was derived from PY 1992 performance data reported on the Worker Adjustment Program Annual Program Report (WAPR). This standard is set at a level that, approximately, 75 percent of the substate areas can be expected to exceed. As with the employment measures for Titles II–A and II–C, an adjustment has been made to take into account the 20-hour per week employment requirement.

Since discrete aggregate data were not available for PY 1992 Section 204(d) Older Worker program performance, available SPIR data were used to assist in setting performance standards levels for that program. As with the employment measures for Titles II–A, II–C, and III, an adjustment has been made to take into account the 20-hour per week employment requirement.

Note: Programs operated under section 204(d) are State programs even though they may be managed by various local entities. Therefore, performance standards will be applied to the total older worker programs State-wide. Unlike the adult and youth programs under Title II–A/C, however, no incentive awards or sanctions are associated with these standards.

6. *Implementing Provisions.* The following implementing requirements must be followed:

A. *Required Standards.* For Titles II–A and II–C, Governors are required to set, for each SDA, a numerical performance standard for each of the six Secretary's measures; for the Older Worker program, Governors are required to set numerical Entered Employment Rate and Average Wage at Placement standards for programs operated under section 204(d); for Title III, Governors are required to set for each substate area a numerical performance standard for the Entered Employment Rate and are encouraged to establish an Average Wage at Placement goal

recent National JTPA Study results suggest that employment and earnings experienced by out-of-school youth in JTPA fall short of acceptable levels. Therefore, to encourage improved services to out-of-school youth, the numerical standard for the YEER will remain at its current level of 41 percent.

Earnings standards have been adjusted to account for expected future inflation. Finally, an additional special adjustment has been made to employment-related standards to account for the requirement in section 106(k) that permits credit, for performance standards purposes, only for employment that is scheduled for 20 or more hours per week.

Similar to the Title II–A and Title II–C standards, the Title III standard was derived from PY 1992 performance data reported on the Worker Adjustment Program Annual Program Report (WAPR). This standard is set at a level that, approximately, 75 percent of the substate areas can be expected to exceed. As with the employment measures for Titles II–A and II–C, an adjustment has been made to take into account the 20-hour per week employment requirement.

Since discrete aggregate data were not available for PY 1992 Section 204(d) Older Worker program performance, available SPIR data were used to assist in setting performance standards levels for that program. As with the employment measures for Titles II–A, II–C, and III, an adjustment has been made to take into account the 20-hour per week employment requirement.

Note: Programs operated under section 204(d) are State programs even though they may be managed by various local entities. Therefore, performance standards will be applied to the total older worker programs State-wide. Unlike the adult and youth programs under Title II–A/C, however, no incentive awards or sanctions are associated with these standards.

6. *Implementing Provisions.* The following implementing requirements must be followed:

A. *Required Standards.* For Titles II–A and II–C, Governors are required to set, for each SDA, a numerical performance standard for each of the six Secretary's measures; for the Older Worker program, Governors are required to set numerical Entered Employment Rate and Average Wage at Placement standards for programs operated under section 204(d); for Title III, Governors are required to set for each substate area a numerical performance standard for the Entered Employment Rate and are encouraged to establish an Average Wage at Placement goal

B. *Setting the Standards.* Consistent with new legislative provisions, Governors are now *required* to adjust the Secretary's performance standards to reflect local area circumstances (section 106(d)). Such adjustments apply to Title II–A, Title II–C, section 204(d) and Title III programs, and must conform to the Secretary's parameters described below:

1. Procedures must be:
   —Responsive to the intent of the Act,
   —Consistently applied among the SDA's/SSA's,
   —Objective and equitable throughout the State,
   —In conformance with widely accepted statistical criteria;
2. Source data must be:
   —Of public use quality,
   —Available upon request;
3. Results must be:
   —Documented,
   —Reproducible; and
4. Adjustment factors must be limited to:
   —Economic factors,
   —Labor market conditions,
   —Geographic factors,
   —Characteristics of the population to be served,
   —Demonstrated difficulties in serving the population (this adjustment factor is new), and
   —Type of services to be provided.

The Department offers Governors an adjustment methodology that conforms both to these parameters and to the requirement in section 106(d). This methodology covers Title II–A, Title II–C Section 204(d), and Title III programs and will be provided to States in a soon-to-be issued Training and Employment Information Notice. Should the Governor choose to use an alternate methodology, or make adjustments not addressed by the Departmental model, it must conform to the parameter criteria and be documented in the Governor's Coordination and Special Services Plan (GCSSP) prior to the program year to which it applies. The State Job Training Coordinating Council and, where appropriate, the State Human Resources Investment Council must have an opportunity to consider adjustments to the Secretary's standards and to recommend variations. To determine whether an SDA has met or exceeded a performance standard, Governors must use actual end-of-year program data to recalculate the performance standards.

C. *Performance Standards Definitions.* Governors must calculate the performance of their SDA's, SSA's, and section 204(d) programs according to the definitions included in the Attachments.

D. *Titles II–A and II–C Incentive and Sanction Policies.* Performance standards are to be established for programs funded under Titles II and III of the Act. In applying the Secretary's standards for Titles II–A and II–C, Governors *must use* the six core measures and also consider criteria relating to programs successfully serving out-of-school youth and placement in jobs providing employer-assisted benefits. Governors are encouraged to begin using these criteria in PY 1994 incentive policies; these criteria are required (i.e., they cannot be zero-weighted) to be incorporated into State incentive policies beginning in PY 1995. Governors may select additional non-cost measures, such as increased service to hard-to-serve participants, to form the basis of incentive policies as long as the following criteria are met:

1. As the basis for making incentive awards, the Governors must use *all* (i.e., cannot "zero weight" *any*) of the six Secretary's core measures. Beginning in PY 1995, Governors will also be required to reward innovative out-of-school youth program models either identified by the Department of Labor or recognized by the State as having a demonstrated record of success, and placements in jobs providing employer-assisted benefits. Although successful programs for out-of-school youth remain the cornerstone of out-of-school incentives, SDA's will still be expected to exceed the 50 percent minimum service level to be rewarded under that criterion. Governors have considerable flexibility in implementing the new incentive criteria. Suggested approaches to addressing these criteria are included as Attachments 3 and 4 to this TEGL. Decisions regarding the *relative* weight or emphasis of each core measure (e.g., the Youth Entered Employment Rate) and incentive criterion (e.g., placement in jobs with employer-assisted benefits) in a State's incentive award formula rest with the Governor.

The core measures will be the basis for identifying SDA's that are candidates for technical assistance and for imposing sanctions. At least 75 percent of the funds set aside for performance incentives must be related to these measures and the out-of-school youth and employer-assisted benefits criteria in accordance with section 106(b)(7)(E).

2. Cost standards cannot be used for incentive award purposes. However, States are reminded of the integral role of financial reviews in program management. States are encouraged to explore ways of relating overall costs of job training to more direct measures of long-term employment, earnings and reductions in welfare.

3. Incentive policies may include adjustments to incentive award amounts

based upon factors such as grant size, additional services to the hard-to-serve, intensity of service, and expenditure level.

4. A Secretary's standard for service to the hard-to-serve, as required by section 106(b)(7)(B) of JTPA, has been established in the form of a stand-alone eligibility criterion ("gate") for incentive awards. In order for an SDA to be eligible to receive *any* incentive award, at least 65 percent of *both* the SDA's (a) Title II–A *and* (b) Title II–C (in-school and out-of-school youth combined) participants receiving training and/or other service beyond objective assessment must be hard-to-serve. The definitions of hard-to-serve are to be consistent with the definitions in sections 203(b), 263(b), and 263(d) of the Act. For the purpose of determining compliance with this requirement, Governors are to include any SDA-defined barriers that have been approved by the Governor, as well as the characteristics of participants in school-wide projects under section 263(g) and participants in five percent-funded projects.

5. For those SDA's that successfully "pass through" the gate, three criteria (in addition to any funds set aside for Governors' standards) will determine the *amount* of the incentive award: (1) exceeding the Secretary's performance standards, (2) providing quality service to out-of-school youth, and (3) placing participants in employment that provides employer-assisted benefits.

—The definition of "employer-assisted benefits" is to be consistent with the SPIR definition (see Attachment 4). For the purposes of reporting and performance standards, fringe benefits count so long as they are an acknowledged component of employment conditions, whether actually received at the time of placement or not. Thus, State incentive policies will be structured to include benefit information for those participants who entered employment at termination, and Governors will have considerable latitude in implementing this incentive policy requirement.

6. Consistent with present DOL policy, SDA's that pass through the "gate" and exceed all six of the Secretary's Titles II–A and II–C standards *must* receive an incentive award.

7. Determination of an SDA's failure to meet these standards and the consequent imposition of technical assistance and reorganization requirements under section 106(j) will be based only on the Secretary's Title II–A and Title II–C core measures.

—"Meeting Performance Standards" overall is defined as meeting at least four of the six core standards, one of which must be a youth standard. Conversely, overall "Failure" is defined as failing *any* three (3) or more of the core standards *or* failing both youth standards. Definitions for meeting and failing *individual* standards will be established by Governors.

—Failure for the first year precludes an SDA from receiving *any* incentive awards and requires Governors to provide technical assistance to the underperforming SDA.

—Failure in the second consecutive year precludes an SDA from receiving *any* incentive award and requires Governors to impose a reorganization plan.

8. Section 106(j)(3) requires each State to report to the Secretary, not later than 90 days after the end of each program year, the actual performance and performance standards for each SDA within that State. Within the same timeframe, technical assistance plans developed by the State are required for each SDA "failing" for the first year. A 90-day timeframe also applies to the imposition of a reorganization plan, which is mandatory when an SDA "fails" for a second consecutive year. Specific procedures for the formal performance standards report and required State action will be provided under separate cover. However, in addition to the formal annual process, there should be ongoing oversight of SDA performance and continuous technical assistance and capacity-building aimed at addressing areas where program performance can be improved. In addition, the Employment and Training Administration will initiate a national JTPA Report Card that will highlight programs showing the greatest returns on their human resource investments in terms of high-quality employment (type of job, wages and fringe benefits) for those participants most at-risk of failure. Further information on the content and procedures for preparing the "report card" will be provided separately.

9. Governors must specify in the GCSSP their incentive award policy under section 202(c)(1)(B) and 202(c)(3)(A) and imposition of sanctions policy under section 106(j). It is recognized that the timing of this issuance may preclude some States from submitting complete incentive policies with their PY 1994–95 GCSSPs. States are to provide as much information as possible in compliance with required due dates and submit a GCSSP amendment containing complete information no later than August 31, 1994.

10. In PY 1994 and 1995, Governors will continue to have the authority to exclude pilot projects serving "hard-to-serve" individuals funded from the 5 percent incentive fund set-aside in computing their standards and actual performance. States and SDA's are encouraged to use such funds to develop or replicate model programs serving out-of-school youth, particularly those based on contextual learning models.

Note: For those SDA's in which "incentive projects" are indistinguishable from those that provide general training, these programs would *not* be considered exempt from performance standards.

7. *State Action.* States are to distribute this Guidance Letter to all officials within the State who need such information to implement the new performance standards policies and requirements for PY 1994–95. It is especially critical that States, State Councils, Private Industry Councils and SDA operational staff become thoroughly familiar with the new provisions concerning incentive and sanctions policies.

A copy of this Guidance Letter is also being sent to your State JTPA Liaison, the State Wagner-Feyser Administering Agency, and the State Worker Adjustment Liaison.

8. *Inquiries.* Questions concerning this issuance may be directed to Steven Aaronson at (202) 219–5487, ext. 107.

9. *Attachments.*

1. Definitions for Performance Standards;
2. Youth Employability Enhancement Definitions;
3. Rewarding Model Programs for Out-of-School Youth;
4. Rewarding Placements in Jobs Providing Employer-Assisted Benefits.

Attachment 1—Definitions for Performance Standards

Those terminees who receive only objective assessment and/or supportive services (or only objective assessment and/or supportive services and entered employment) are to be excluded from the calculation of performance outcomes for Title II–A, Title II–C, and section 204(d) older worker programs. Participants in special 5-percent-funded projects may, at the discretion of the Governor, also be excluded from the calculation of performance outcomes for Title II–A and Title II–C.

The following defines the Title II–A performance standards:

1. *Adult Follow-Up Employment Rate*—Total number of adult respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult respondents (i.e., terminees who completed follow-up interviews).

2. *Adult Follow-Up Weekly Earnings*—Total weekly earnings for all adult respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult respondents employed (for at least 20 hours per week) at the time of follow-up.

Welfare

3. *Welfare Follow-Up Employment Rate*—Total number of adult welfare respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult welfare respondents (i.e., terminees who completed follow-up interviews).

4. *Welfare Follow-Up Weekly Earnings*—Total weekly earnings for all adult welfare respondents employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult welfare respondents employed (for at least 20 hours per week) at the time of follow-up.

Note: The Title II–A adult and welfare follow-up employment measures will continue to be based on individuals who terminate during the first three quarters of the program year and the last quarter of the previous program year. If the response rates for those employed at termination and those not employed at termination in an SDA differ by more than 5 percentage points in either the adult or welfare samples, then the calculations of the follow-up outcomes for that group must be modified to adjust for non-response bias. The following defines the Title II–C performance standards:

5. *Youth Entered Employment Rate (YEER)*—Total number of youth who entered employment at termination (for at least 20 hours per week), divided by the total number of youth who terminated, excluding those potential dropouts who are reported (on the Standardized Program Information Report [SPIR]) as remained-in-school and dropouts who are reported (on the SPIR) as returned-to-school.

Note: As in past practice, youth terminees who remain-in-school or return-to-school *and* who also enter employment will *not* be excluded from the termination pool reflected in the denominator of the Youth Entered Employment Rate. However, only employment of at least 20 hours per week satisfies the requirement for "employment."

6. *Youth Employability Enhancement Rate (YEEN)*—Total number of youth who attained one of the employability enhancements at termination, whether

least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult respondents (i.e., terminees who completed follow-up interviews).

2. *Adult Follow-Up Weekly Earnings*—Total weekly earnings for all adult respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult respondents employed (for at least 20 hours per week) at the time of follow-up.

Welfare

3. *Welfare Follow-Up Employment Rate*—Total number of adult welfare respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult welfare respondents (i.e., terminees who completed follow-up interviews).

4. *Welfare Follow-Up Weekly Earnings*—Total weekly earnings for all adult welfare respondents employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult welfare respondents employed (for at least 20 hours per week) at the time of follow-up.

Note: The Title II–A adult and welfare follow-up employment measures will continue to be based on individuals who terminate during the first three quarters of the program year and the last quarter of the previous program year. If the response rates for those employed at termination and those not employed at termination in an SDA differ by more than 5 percentage points in either the adult or welfare samples, then the calculations of the follow-up outcomes for that group must be modified to adjust for non-response bias. The following defines the Title II–C performance standards:

5. *Youth Entered Employment Rate (YEER)*—Total number of youth who entered employment at termination (for at least 20 hours per week), divided by the total number of youth who terminated, excluding those potential dropouts who are reported (on the Standardized Program Information Report (SPIR)) as remained-in-school and dropouts who are reported (on the SPIR) as returned-to-school.

Note: As in past practice, youth terminees who remain-in-school or return-to-school *and* who also enter employment will *not* be excluded from the termination pool reflected in the denominator of the Youth Entered Employment Rate. However, only employment of at least 20 hours per week satisfies the requirement for "employment."

6. *Youth Employability Enhancement Rate (YEEN)*—Total number of youth who attained one of the employability enhancements at termination, whether or not they also obtained a job, divided by the total number of youth who terminated.

Youth Employability Enhancements include:

a. Attained (two or more) PIC-recognized Youth Employment Competencies.

b. Completed major level of education following participation of at least 90 calendar days or 200 hours in JTPA activity.

c. Entered and retained for at least 90 calendar days or 200 hours in non-Title II training or received a certification of occupational skill attainment.

Note: It is expected that the *ultimate* result of this outcome will be the attainment of a job-specific skill competency on the part of the terminee.

d. Returned to and retained in full-time school (dropouts only) for one semester or at least 120 calendar days, attained a basic or job-specific skill competency, and made satisfactory progress.

Note: For the purposes of this outcome, and the remained in school outcome described below, "school" *includes alternative schools*, defined as a specialized, structured curriculum offered inside or outside of the public school system which may provide work/study and/or General Educational Development (GED) test preparation.

e. Remained in school for one semester or at least 120 calendar days (for youth at risk of dropping out of school), attained a basic or job-specific skill competency, and made satisfactory progress.

Note: For youth aged 14 and 15, the acceptable competencies will be basic skills or pre-employment/work maturity.

The following defines Section 204(d) Older Worker program performance standards:

1. *Entered Employment Rate*—Total number of individuals who entered employment of at least 20 hours per week at termination, divided by the number of total terminations.

2. *Average Wage at Placement*—Total hourly wage rate of all terminees who entered employment of at least 20 hours per week at termination, divided by the number of terminees who entered employment of at least 20 hours per week at termination.

The following defines the Title III performance standard:

1. *Entered Employment Rate*—Total number of individuals who entered employment of at least 20 hours per week at termination, excluding those who were recalled or retained by the original employer after receipt of a layoff notice, divided by the total terminations, excluding those who were recalled or retained by the original employer after receipt of a layoff notice.

Note: As indicated in the definitions listed above, for performance standards purposes, the term "employment" means employment for 20 or more hours per week. For determining compliance with this provision, a "week" means a period of 7 consecutive days, and the 20 or more hours is to be understood as a condition of the employment. No formal verification is required, but the Department encourages States to set up a system that would, at a minimum, provide for random checking to assess compliance by SDA's.

Attachment 2—Youth Employability Enhancement Definitions

"Youth Employability Enhancement" means an outcome for youth, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment. Outcomes which meet this requirement shall be restricted to the following:

(1) Attained PIC-Recognized Youth Employment Competencies (two or more reported from SPIR items 36a, 36d, and 36e);

(2) Returned to Full-Time School;

(3) Remained in School;

(4) Completed Major Level of Education; or

(5) Entered Non-Title II Training.

1. *Attained PIC-Recognized Youth Employment Competencies*—The total number of youth who demonstrated proficiency, as defined by the PIC in *two or more* of the following three skill areas *in which the terminee was deficient at enrollment:* (1) pre-employment/work maturity (SPIR item 36a); (2) basic education (SPIR item 36d); or (3) job-specific skills (SPIR item 36e). Competency gains must be achieved through program participation and be tracked through sufficiently developed systems that must include: quantifiable learning objectives, related curricula/training modules, pre and post-assessment, employability planning, documentation, and certification.

The completely detailed definition for Youth Employment Competency systems is located in the Standardized Program Information Reporting System (SPIR) instructions.

2. *Returned to Full-Time School*—The total number of youth who: (1) had returned to full-time secondary school (e.g., junior high school, middle school and high school) including an alternative school if, at the time of intake, the participant was not attending school (exclusive of summer school) and had not obtained a high school diploma or equivalent; and (2) prior to

termination, had been retained in school for one semester or at least 120 calendar days.

Alternative School—A specialized, structured curriculum offered inside or outside of the public school system which may provide work/study and/or GED preparation.

Note: To obtain credit for *Returned to Full-Time School* and *Remained in School* (described below), SDA's must be prepared to demonstrate that retention results from continuing, active participation in JTPA activities and the youth *must:* (1) be making satisfactory progress in school; and (2) (for youth aged 16–21) attain a PIC-approved Youth Employment Competency in Basic Skills or Job-Specific Skills; or (3) (for youth aged 14–15) attain a PIC-approved Youth Employment Competency in Pre-employment/Work Maturity or Basic Skills.

Satisfactory Progress in School—An SDA, in cooperation with the local school system, must develop a written policy that defines an individual standard of progress for each participant that he or she is required to meet. Such a standard should, at a minimum, include both a qualitative element of a participant's progress (e.g., performance on a criterion-referenced test or a grade point average) and a quantitative element (e.g., a time limit for completion of the program or course of study). This policy may provide for exceptional situations in which students who do not meet the standard of progress are nonetheless making satisfactory progress during a probationary period because of mitigating circumstances.

3. *Remained in School*—The total number of youth who, prior to termination, had been retained in full-time secondary school, including alternative school, for one semester or at least 120 calendar days. A youth may be reported as Remained-in-School only if he/she was attending school at the time of intake, had not received a high school diploma or its equivalent, and was considered "at risk of dropping out of school," as defined by the Governor in consultation with the State Education Agency.

4. *Completed Major Level of Education*—The total number of adults/youth who, prior to termination, had completed, during enrollment in the program, a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and post-secondary. Completion standards shall be governed by State standards and shall include a high school diploma, GED Certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the post-secondary level.

Note: To obtain credit, completion of a major level of education must result primarily from active JTPA program participation of at least 90 calendar days *or* 200 hours, usually prior to the completion of the major level of education.

5. *Entered Non-Title II Training*—The total number of adults/youth who, prior to termination, had entered an occupational skills employment/training program not funded under Title II of the JTPA, that builds upon and *does not duplicate* training received under Title II.

Note: To obtain credit, the participant must have been retained in that program for at least 90 calendar days OR 200 hours *or* must have received a certification of occupational skill attainment. During the period the participant is in non-Title II training, he/she may or may not have received JTPA services. It is expected that the *ultimate* result of this outcome will be the attainment of a job-specific skill competency on the part of the terminee.

Attachment 3—Rewarding Model Programs for Out-of-School Youth

One of the Department of Labor's high priorities is to improve the effectiveness of JTPA programs for out-of-school youth. Results from the National JTPA Study show that outcomes achieved by out-of-school youth 30 months after entering the program are disappointing. To implement section 107(b)(7)(C) of the amended JTPA, the Department encourages in PY 1994, and *will require* in PY 1995, that Governors reward out-of-school youth programs that are identified by the Department or recognized by the State as having a demonstrated record of success. States need to develop ways to identify such programs. Possible approaches include:

—Using outcomes achieved to identify successful programs. Outcomes could include both the two youth performance measures and measures such as learning gains and earnings/retention in full-time employment.

—Alternatively, States could offer SDA's "seed money" from incentive funds to plan/operate programs that provide innovative or high-quality training to out-of-school youth based on criteria established by the Governor. Examples of such criteria include training that integrates occupational and basic skills training, and training that emphasizes acquiring job skills in demand in the emerging workplace.

Note: Whatever method is used to reward successful out-of-school youth programs, access to such incentives must be limited to those SDA's that serve in excess of 50 percent out-of-school youth in their overall Title II–C program.

Attachment 4—Rewarding Placements in Jobs Providing Employer-Assisted Benefits

PY 1994 is the first year Governors are asked to reward SDA's for placements in jobs with employer-assisted benefits, including health benefits. (Governors will be *required* to do so beginning in PY 1995.) Rewarding such placements is intended to increase the focus on overall job quality. To include placements in jobs with employer-assisted benefits in their incentive policies, States will need to:

1. Specify how the criterion will be measured. The definition must be consistent with that for SPIR Item 35c (i.e., consisting of, at a minimum, health insurance benefits and coverage under Social Security or an equivalent pension plan). Note that it is not necessary for an individual to actually receive benefits when employment begins as long as they are an acknowledged component of employment conditions. For example, health benefits available after a waiting-period and benefits that are refused because of availability from another source both count as employer-assisted benefits. Examples of measures of jobs with benefits, using data from SPIR Item 35c are:

—among terminees who enter employment, the percent who are in jobs providing employer-assisted benefits; and

—among *all* terminees, the percent who enter employment and are in jobs providing employer-assisted benefits.

2. Determine how to reward placement in jobs with employer-assisted benefits. One possible approach would require the State to determine a departure point or benchmark to use in setting rewards levels for benefits. This departure point would serve the same function served by the numerical national standards for the Secretary's core measures. It would be the level that, before any adjustment for local factors, identifies rewardable performance. Under this approach, a State would also decide whether and how the departure point should be adjusted for local clientele and economic conditions when setting reward levels for each SDA.

Rather than setting reward levels for employer-assisted benefits using a process akin to setting standards for the Secretary's core measures, States may choose a simpler approach. Because there are no sanctions based on this criterion, it is not absolutely necessary to set a minimally acceptable performance level. It is possible to reward SDA's at all levels of performance on employer-assisted benefits. One way to do this would be to set aside a portion of incentive funds to reward such placements. This reward pool could be divided among SDA's based on their proportionate share of all placements in jobs with employer-assisted benefits. This procedure is equivalent to giving a fixed amount for each placement (i.e., the amount is the value of the pool divided by the total number of placements into jobs with benefits in the State.

Because this approach may be viewed as favoring SDA's in areas where benefits are widely prevalent, it should be viewed as interim until better data on employer-assisted benefits are available.

[FR Doc. 94–16698 Filed 7–8–94; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Notice of Transfer of Function to NTIS

In the spirit of the National Performance Review, the U.S. Department of Commerce, National Technical Information Service (NTIS) and the National Archives and Records Administration (NARA) will team up to demonstrate how government can operate more effectively.

The National Audiovisual Center at NARA will be transferred to NTIS under an agreement which will consolidate much of the Federal government's capability for audio, visual, and multimedia materials production and dissemination.

At a time when NARA has developed a strategic vision of its future calling for a sharpening of its focus on the archival aspects of its programs, the need for service support for audiovisual and multimedia across government is rapidly increasing. Merging the complimentary strengths of the NARA National Audiovisual Center with the existing NTIS which has been congressionally mandated to collect and disseminate scientific and technical information will result in better services to agencies and the public.

The new National Audiovisual Center at NTIS will be ideally positioned to serve as a hub for access to Federally developed media and training materials. By combining resources with the NARA center, NTIS will now be able to provide Federal training technology transfer services to both the public and private sectors.

The transfer of the National Audiovisual Center from NARA to NTIS will be effective October 1, 1994.

Written questions regarding this functional transfer may be sent to

benefits. One way to do this would be to set aside a portion of incentive funds to reward such placements. This reward pool could be divided among SDA's based on their proportionate share of all placements in jobs with employer-assisted benefits. This procedure is equivalent to giving a fixed amount for each placement (i.e., the amount is the value of the pool divided by the total number of placements into jobs with benefits in the State.

Because this approach may be viewed as favoring SDA's in areas where benefits are widely prevalent, it should be viewed as interim until better data on employer-assisted benefits are available.

[FR Doc. 94–16698 Filed 7–8–94; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Notice of Transfer of Function to NTIS

In the spirit of the National Performance Review, the U.S. Department of Commerce, National Technical Information Service (NTIS) and the National Archives and Records Administration (NARA) will team up to demonstrate how government can operate more effectively.

The National Audiovisual Center at NARA will be transferred to NTIS under an agreement which will consolidate much of the Federal government's capability for audio, visual, and multimedia materials production and dissemination.

At a time when NARA has developed a strategic vision of its future calling for a sharpening of its focus on the archival aspects of its programs, the need for service support for audiovisual and multimedia across government is rapidly increasing. Merging the complimentary strengths of the NARA National Audiovisual Center with the existing NTIS which has been congressionally mandated to collect and disseminate scientific and technical information will result in better services to agencies and the public.

The new National Audiovisual Center at NTIS will be ideally positioned to serve as a hub for access to Federally developed media and training materials. By combining resources with the NARA center, NTIS will now be able to provide Federal training technology transfer services to both the public and private sectors.

The transfer of the National Audiovisual Center from NARA to NTIS will be effective October 1, 1994.

Written questions regarding this functional transfer may be sent to Charles W. Bender, Deputy Assistant Archivist for Public Programs (NE), National Archives, 7th & Pennsylvania Avenue NW., Washington, DC 20408.

Dated: June 30, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–16655 Filed 7–8–94; 8:45 am]
BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revised, or extension: Revision.

2. The title of the information collection: Proposed amendments of 10 CFR 35.75, "Criteria for the Release of Patients Administered Radioactive Material."

3. The form number if applicable: Not applicable.

4. How often is the collection required: On occasion; upon release of a patient whose dose to another individual is likely to exceed 1 millisievert (0.1 rem) in a year.

5. Who will be required or asked to report: Medical licensees administering radiopharmaceuticals and permanent implants and releasing patients under the provisions of 10 CFR 35.75.

6. An estimate of the number of respondents: Approximately 1,350 NRC and Agreement State licensees.

7. An estimate of the number of hours annually needed to complete the requirement or request: 25,833 hours (includes NRC and Agreement State licensees).

8. The average annual burden per respondent: 19.14 hours.

9. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Applicable.

10. Abstract: The Nuclear Regulatory Commission (NRC) is proposing to amend the criteria for release of patients administered radioactive material under 10 CFR Part 35. The proposed amendment requires the licensee to provide the patient with instructions on how to maintain doses to other individuals as low as reasonably achievable, and to maintain a record of the released patient and the calculated total effective dose equivalent to the individual likely to receive the highest dose. These requirements are necessary to ensure adequate protection of the public health and safety, and that dose limits to other individuals are maintained as low as reasonably achievable.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (lower level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs, (3150–0010), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7232.

Dated at Rockville, Maryland, this 30th day of June 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–16692 Filed 7–8–94; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. STN 50–456]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–72 issued to Commonwealth Edison Company (CECo, the licensee) for operation of the Braidwood Station, Unit 1, located in Will County, Illinois.

The proposed amendment would revise the Braidwood, Unit 1, Technical Specifications (TSs) to remove the condition limiting operation of the facility to 100 days during the present fuel cycle when T_{hot} is greater than 500°F and to restore the reactor coolant dose equivalent Iodine-131 limit to 1 microcurie per gram of coolant from the present value of 0.35. Both the limit on permissible operational time and the reduction in the permissible level of Iodine-131 were incorporated into the TSs by Amendment No. 50 issued to Facility Operating License No. NPF–72

for Braidwood Station, Unit 1, on May 7, 1994.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Braidwood Unit 1 TS Amendment 50 imposed a 100 calendar days with T_{hot} greater than 500°F operating limit on Unit 1. This limitation was a consequence of the amount of main steam line break (MSLB) leakage predicted in Braidwood Station's April 30, 1994, submittal. These predictions were made using the Log-Logistic method of draft NUREG 1477, "Voltage Based Interim Plugging for Steam Generator Tubes—Task Group Report," with the Dose Equivalent Iodine-131 limit of Specification 3.4.8 reduced from 1.0 microcurie per gram (μCi/gm) to 0.35 μCi/gm. However, WCAP 14046; "Braidwood Unit 1 Technical Support for Cycle 5 Steam Generator Interim Plugging Criteria" (WCAP–14046), docketed June 10, 1994, as required by Braidwood Station's April 25, 1994, submittal, has shown using the Electric Power Research Institute (EPRI) Leakrate Correlation that projected End Of Cycle (EOC)–5 MSLB leakage is 3.1 gallons per minute (gpm) which is less than the allowable limit of 9.1 gpm for Braidwood Unit 1. This analysis is discussed in detail in WCAP–14046.

Thus the Unit 1 100-day operating limit and reactor coolant dose equivalent iodine restriction imposed by Amendment 50 on the basis of MSLB leakage is no longer required.

In addition to the 100-day, leakage based limit, the Nuclear Regulatory Commissions (NRC) Safety Evaluation Report (SER), issued May 7, 1994, in support of Braidwood Station's Unit 1 TS Amendment 50 discusses a 4.6 month (138 day) limit derived from a deterministic assessment of SG tube burst probability. To address the issue of tube burst for full cycle operation Braidwood Station's April 25, 1994, submittal provided a probabilistic risk assessment which is restated below.

As part of ComEd's evaluation of the operability of Braidwood Unit 1 Cycle 5, a risk evaluation was completed. The objective of this evaluation was to compare core damage frequency, with containment bypass, with and without the interim plugging criteria applied at Braidwood 1.

ComEd has evaluated the impact of operation using the proposed interim plugging criteria against the results of insights from the draft Braidwood Individual Plant Examination (IPE). Braidwood Station is scheduled to docket its IPE June 30, 1994. Byron Station's IPE was docketed April 20, 1994. The SG sections of these documents are identical.

While the Braidwood IPE is not in its final form, it is believed that the quantification in hand is sufficiently robust to allow a validation assessment of the impact of such operation. The ComEd evaluation parallels that described in the NRC Staff's SER for Palo Verde Unit 2 dated August 19, 1993.

The values calculated in WCAP–14046, for Beginning of Cycle (BOC) 5 and EOC 5 using 0.6 Probability Of Detection (POD) were used to develop a cycle average burst probability. Another BOC 5 burst probability assuming a POD of 0.6 for indications less than 3 volts and 1.0 for indications greater than 3 volts was used to evaluate the impact of POD on core damage frequency.

The total Braidwood core damage frequency is estimated to be 2.74E–5 per reactor year with a total contribution from containment bypass sequences of 2.9E–8 per reactor year in the current IPE. Operation with the alternate repair criteria with a variable POD is expected to increase the MSLB with containment bypass sequence frequency contribution by a factor of only 10%. An upper bound increase of a factor of two is derived when the fixed POD of 0.6 is employed in the calculation. Neither increase is significant from a risk perspective.

The reason for a reduced core damage frequency with a higher POD is that large voltage indications have a high assurance of being identified and removed from service during inspection. Therefore, the calculation of burst probability during MSLB changes because of differences in the assumed distribution of indications left in service at BOC. The EOC burst probability also changes because the growth distribution is added to the new BOC distribution of indications. The result of this change is a significant reduction in burst probability during MSLB.

Therefore, the operation of Braidwood Unit 1 Cycle 5 for a complete 18 month fuel cycle with the application of the one volt IPC does not significantly increase the core damage frequency even with the conservative assumption of a POD of 0.6 and application of the full growth rate distribution observed during Cycle 4.

To further address SG tube burst probability, the following qualitative discussion of limited tube support plate (TSP) displacement is provided. As part of ComEd's technical support for the implementation of IPC at Braidwood Unit 1, numerous quantitative analyses were completed to assure the structural integrity of the SG tubing. These quantitative determinations were provided as part of WCAP–14046. These analyses focused on the quantifiable elements of the IPC to evaluate the impact of crack length on steam generator tube leakage and burst, and were completed consistent with the guidance provided in draft RG 1.121, "Bases for Plugging Degraded SG Tubes."

The bases for these calculations are the analyses completed by the utility industry and reported to the NRC in the EPRI Draft Report TR–100407, "PWR Steam Generator Tube Repair Limits—Technical Support Document for Outside Diameter Stress Corrosion Cracking at Tube Support Plates", Revision 1, August 1993. As explained in this document, the analyses have been completed to assure that the general design criteria and the requirements of RG 1.121 are met during plant operation.

In the preparation of these industry documents and the Braidwood Unit 1 specific WCAP–14046, all analyses for leakage and burst potential were completed using the extremely conservative assumption that all Outside Diameter Stress Corrosion Cracking (ODSCC) indications occur on the tubing freespan. In fact, as indicated in both WCAP–14046 and EPRI Draft Report TR–100407, ODSCC degradation is confined to the region of the tube/TSP intersection. The burst capability of a section of tube containing ODSCC indications and located within the tube/TSP intersection substantially exceeds the burst capability of a freespan tube section without ODSCC indications. Therefore, tubing left in service by Braidwood's Unit 1 IPC amendment will not burst when confined by the tube support plates.

In fact, it is highly unlikely that a section of tubing within the tube support plate will leak, even with through wall cracks.

To assure structural integrity of the tubing, even during a MSLB accident, ComEd undertook extensive analyses, presented as part of WCAP–14046, to show analytically that the TSP's do not move far enough during a MSLB to allow degraded tubes to uncover, and subsequently, result in increased leakage.

A Generic Model D–4 SG Limited Support Plate Motion Analysis is also being conducted and should be submitted to the NRC by the end of August, 1994.

This analysis is being performed using the following assumptions:

1. The TSP crevices are clean,
2. The TSPs are free to move, depending on applied loads, along the length of the SG tube, and
3. Movement of the TSPs along the length of the tube is not restricted by bending or distortion of the SG tube hole.

Each of these base assumptions is extremely conservative in its own right:

1. For assumption 1, visual inspections of the secondary side of the tube bundles of Braidwood Unit 1 SGs show some quality of deposits in the tube to TSP crevice, and along the length of the tube. Since these deposits are considered to be a possible factor in causing ODSCC, it is likely that any tube having ODSCC indications has deposits in the tube/TSP intersection. These deposits would tend to close the tube to TSP crevice, restricting by friction the ability of the TSP to move along the tubes as loads are applied to the TSP during a MSLB.

2. With regards to assumptions 2 and 3, the TSPs tend to flex and in some locations, are constrained by tie-rods and wedges attached to the tube bundle shroud. These constraints tend to cause the TSPs to ripple under the applied loads as indicated in WCAP–14046. This effect tends to distort the shape of the tube holes, which are fitted to a tight tolerance around the tubes. Therefore, any distortion of these tube holes caused by motion of the TSP will tend to cause the TSP to bind against the outside diameter of the tube, further constraining its movement away from the degraded area of the tubing.

The impact of these facts will lessen the ability of the TSP to move, thereby significantly reducing the possibility that a degraded section of tubing would become uncovered during a MSLB.

not burst when confined by the tube support plates.

In fact, it is highly unlikely that a section of tubing within the tube support plate will leak, even with through wall cracks.

To assure structural integrity of the tubing, even during a MSLB accident, ComEd undertook extensive analyses, presented as part of WCAP–14046, to show analytically that the TSP's do not move far enough during a MSLB to allow degraded tubes to uncover, and subsequently, result in increased leakage.

A Generic Model D–4 SG Limited Support Plate Motion Analysis is also being conducted and should be submitted to the NRC by the end of August, 1994.

This analysis is being performed using the following assumptions:

1. The TSP crevices are clean;

2. The TSPs are free to move, depending on applied loads, along the length of the SG tube, and

3. Movement of the TSPs along the length of the tube is not restricted by bending or distortion of the SG tube hole.

Each of these base assumptions is extremely conservative in its own right:

1. For assumption 1, visual inspections of the secondary side of the tube bundles of Braidwood Unit 1 SGs show some quality of deposits in the tube to TSP crevice, and along the length of the tube. Since these deposits are considered to be a possible factor in causing ODSCC, it is likely that any tube having ODSCC indications has deposits in the tube/TSP intersection. These deposits would tend to close the tube to TSP crevice, restricting by friction the ability of the TSP to move along the tubes as loads are applied to the TSP during a MSLB.

2. With regards to assumptions 2 and 3, the TSPs tend to flex and in some locations, are constrained by tie-rods and wedges attached to the tube bundle shroud. These constraints tend to cause the TSPs to ripple under the applied loads as indicated in WCAP–14046. This effect tends to distort the shape of the tube holes, which are fitted to a tight tolerance around the tubes. Therefore, any distortion of these tube holes caused by motion of the TSP will tend to cause the TSP to bind against the outside diameter of the tube, further constraining its movement away from the degraded area of the tubing.

The impact of these facts will lessen the ability of the TSP to move, thereby significantly reducing the possibility that a degraded section of tubing would become uncovered during a MSLB.

Thus, this proposed license amendment request does not result in any increase in the probability or consequences of an accident previously evaluated within the Braidwood Updated Final Safety Analysis Report (UFSAR).

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Approval of this proposed change does not introduce any significant changes to the plant design basis. Removal of the Amendment 50 and SER operating limits for Unit 1 does not provide a mechanism which could result in a new or different kind of accident. Neither a single or multiple tube rupture event would be expected in a SG in which the IPC has been applied.

ComEd has implemented a maximum leakage rate limit of 150 gallons per day (gpd) through any one SG to help preclude the potential for excessive leakage during all plant conditions. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture during faulted plant conditions. The 150 gpd limit will provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible free span crack length. Since tube burst is precluded during normal operation due to the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during MSLB conditions, the leakage from the maximum permissible crack must preclude tube burst at MSLB conditions. Thus, the 105 gpd limit provides for plant shutdown prior to reaching critical crack lengths for MSLB conditions.

As SG tube integrity will continue to be maintained upon approval of this amendment request through inservice inspection and primary-to-secondary leakage monitoring, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

Braidwood Unit 1 TS Amendment 50 imposed a 100 calendar days with T_{hot} greater than 500°F operating limit on Unit 1. This limitation was a consequence of the amount of MSLB leakage predicted in Braidwood Station's April 30, 1994, submittal. These predictions were made using the Log-Logistic method of draft NUREG 1477, with the Dose Equivalent Iodine-131 limit of Specification 3.4.8 reduced from 1.0 μCi/gm to 0.35 μCi/gm. However, WCAP 14046, docketed June 10, 1994, as required by Braidwood Station's April 25, 1994, submittal, has shown using the EPRI Leakrate Correlation that projected EOC–5 MSLB leakage is 3.1 gpm which is less than the allowable limit of 9.1 gpm for Braidwood Unit 1. This analysis is discussed in detail in WCAP–14046.

Thus the Unit 1 operating limit imposed by Amendment 50 on the basis of MSLB leakage is no longer required.

In addition to the 100 day, leakage based limit, the Nuclear Regulatory Commissions (NRC) Safety Evaluation Report (SER), issued May 7, 1994, in support of Braidwood Station's Unit 1 TS Amendment 50 discusses a 4.6 month (138 day) limit derived from a deterministic assessment of SG tube burst probability. To address the issue of tube burst for full cycle operation Braidwood Station's April 25, 1994, submittal provided a probabilistic risk assessment which is restated below.

As part of ComEd's evaluation of the operability of Braidwood Unit 1 Cycle 5, a risk evaluation was completed. The objective of this evaluation was to compare core damage frequency, with containment bypass, with and without the interim plugging criteria applied at Braidwood 1.

ComEd has evaluated the impact of operation using the proposed interim plugging criteria against the results of insights from the draft Braidwood IPE. Braidwood Station is scheduled to docket its IPE June 30, 1994. Byron Station's IPE was docketed April 20, 1994. The SG sections of these documents are identical. While the Braidwood IPE is not in its final form, it is believed that the quantification in hand is sufficiently robust to allow a validation assessment of the impact of such operation. The ComEd evaluation parallels that described in the NRC Staff's SER for Palo Verde Unit 2 dated August 19, 1993.

The values calculated in WCAP–14046, for BOC 5 and EOC 5 using 0.6 POD were used to develop a cycle average burst probability. Another BOC 5 burst probability assuming a POD of 0.6 for indications less than 3 volts and 1.0 for indications greater than 3 volts was used to evaluate the impact of POD on core damage frequency.

The total Braidwood core damage frequency is estimated to be 2.74E–5 per reactor year with a total contribution from containment bypass sequences of 2.9E–8 per reactor year in the current IPE. Operation with the alternate repair criteria with a variable POD is expected

to increase the MSLB with containment bypass sequence frequency contribution by a factor of only 10%. An upper bound increase of a factor of two is derived when the fixed POD of 0.6 is employed in the calculation. Neither increase is significant from a risk perspective.

The reason for a reduced core damage frequency with a higher POD is that large voltage indications have a high assurance of being identified and removed from service during inspection. Therefore, the calculation of burst probability during MSLB changes because of differences in the assumed distribution of indications left in service at BOC. The EOC burst probability also changes because the growth distribution is added to the new BOC distribution of indications. The result of this change is a significant reduction in burst probability during MSLB.

Therefore, the operation of Braidwood Unit 1 Cycle 5 for a complete 18 month fuel cycle with the application of the one volt IPC does not significantly increase the core damage frequency even with the conservative assumption of a POD of 0.6 and application of the full growth rate distribution observed during Cycle 4.

To further address SG tube burst probability, the following qualitative discussion of limited TSP displacement is provided.

As part of ComEd's technical support for the implementation of IPC at Braidwood Unit 1, numerous quantitative analyses were completed to assure the structural integrity of the SG tubing. These quantitative determinations were provided as part of WCAP–14046. These analyses focused on the quantifiable elements of the IPC to evaluate the impact of crack length on steam generator tube leakage and burst, and were completed consistent with the guidance provided in draft RG 1.121.

The bases for these calculations are the analyses completed by the utility industry and reported to the NRC in the EPRI draft report TR–100407. As explained in this document, the analyses have been completed to assure that the general design criteria and the requirements of RG 1.121 are met during plant operation.

In the preparation of these industry documents and the Braidwood Unit 1 specific WCAP–14046, all analyses for leakage and burst potential were completed using the extremely conservative assumption that all ODSCC indications occur on the tubing freespan. In fact, as indicated in both WCAP–14046 and EPRI Draft Report TR–100407, ODSCC degradation is confined to the region of the tube/TSP intersection. The burst capability of a section of tube containing ODSCC indications and located within the tube/TSP intersection substantially exceeds the burst capability of a freespan tube section without ODSCC indications. Therefore, tubing left in service by Braidwood's Unit 1 IPC amendment will not burst when confined by the tube support plates.

In fact, it is highly unlikely that a section of tubing within the tube support plate will leak, even with through wall cracks.

To assure structural integrity of the tubing, even during a MSLB accident, ComEd undertook extensive analyses, presented as part of WCAP–14046, to show analytically that the TSPs do not move far enough during a MSLB to allow degraded tubes to uncover, and subsequently, result in increase leakage.

A Generic Model D–4 SG Limited Support Plate Motion Analysis is also being conducted and should be submitted to the NRC by the end of August, 1994.

This analysis is being performed using the following assumptions:

1. The TSP crevices are clean,
2. The TSPs are free to move, depending on applied loads, along the length of the SG tube, and
3. Movement of the TSPs along the length of the tube is not restricted by bending or distortion of the SG tube hole.

Each of these base assumptions is extremely conservative in its own right:

1. For assumption 1, visual inspections of the secondary side of the tube bundles of Braidwood Unit 1 SGs show some quantity of deposits in the tube to TSP crevice, and along the length of the tube. Since these deposits are considered to be a possible factor in causing ODSCC, it is likely that any tube having ODSCC indications has deposits in the tube/TSP intersection. These deposits would tend to close the tube to TSP crevice, restricting by friction the ability of the TSP to move along the tubes as loads are applied to the TSP during a MSLB.

2. With regards to assumptions 2 and 3, the TSPs tend to flex and in some locations, are constrained by tie-rods and wedges attached to the tube bundle shroud. These constraints tend to cause the TSPs to ripple under the applied loads as indicated in WCAP–14046. This effect tends to distort the shape of the tube holes, which are fitted to a tight tolerance around the tubes. Therefore, any distortion of these tube holes caused by motion of the TSP will tend to cause the TSP to bind against the outside diameter of the tube, further constraining its movement away from the degraded area of the tubing.

The impact of these facts will lessen the ability of the TSP to move, thereby significantly reducing the possibility that a degraded section of tubing would become uncovered during a MSLB.

This evidence, in conjunction with the probability of occurrence of a MSLB, and the probabilistic assessment of the consequences of a MSLB, results in the substantially increased assurance that the consequences of a MSLB will be significantly less severe than those assessed in WCAP–14046 and the generic Model D–4 SG Limited Support Plate Motion Analyses.

Thus, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the pertinent portions of the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. This staff finding is partially based on the licensee's usage of a constant value for the Probability of Detection (POD) of 0.6 as recommended in draft NUREG–1447. This is consistent with the staff's position in the Safety Evaluation (SE) it issued in support of Amendment No. 50 to the Braidwood, Unit 1, operating license. While the licensee also discussed in its analysis the usage of a higher value for the POD, the staff did not rely on this. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 10, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be

take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 10, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 20, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 1st day of July 1994.

For the Nuclear Regulatory Commission.

Ramin R. Assa,

Acting Project Manager, Project Directorate III–2, Division of Reactor Projects—IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16695 Filed 7–8–94; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

Office of Policy Development

The Fifth Meeting of the President's Council on Sustainable Development (PCSD) in Chicago, IL

SUMMARY: The Council will witness, both first-hand and through interaction with citizens, elected officials and community and business leaders, how the Great Lakes region is working to address sustainability issues.

DATE/TIME: Thursday, July 21—9:00 a.m.–5:00 p.m.; Friday, July 22, 1994—9:00 a.m.–12:00 p.m.

PLACE: Hyatt Regency Hotel, 151 East Wacker Drive, Regency Rooms C & D, Chicago, Illinois.

STATUS: Open to the Public.

AGENDA:

Thursday, July 21

- Opening Statements
- Energy Task Force Discussion
- Sustainable Agriculture Scoping Task Force Report
- Discussion by Council Members to Determine the Future Work of the Council and Time Lines
- Public Comment
- Great Lakes Overview

PCSD Policy Roundtables/Site Visits

The public is invited to attend but must provide own transportation.

Directions will be available the day of the meeting.

Site 1: Grand Calumet, Marquette Pavilion, Gary, Indiana

or

Site 2: Southside Chicago

Friday, July 22

- Task Force Reports
- Non-Point Source Pollution Discussion
- Council of Great Lakes Governors and Environmental Defense Fund
- Great Printers Project
- The Role of Science in Sustainable Development; National Science Technology Council
- Public Comment

Contact: Sarah McCourt, Director of Communications, President's Council on Sustainable Development, (202) 208–7411.

Molly Harriss Olson,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 94–16623 Filed 7–8–94; 8:45 am]

BILLING CODE 1100–14–M

RESOLUTION TRUST CORPORATION

Policy Statement on Procedures for Non-Defaulting Commercial Borrowers To Appeal Adverse Credit Decisions of the RTC Acting as Conservator

AGENCY: Resolution Trust Corporation.

ACTION: Policy statement.

SUMMARY: In accordance with § 21A(b)(4)(C) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(b)(4)(C), the Resolution Trust Corporation (RTC) announces the establishment of a procedure for non-defaulting commercial borrowers to appeal decisions by the RTC, when acting as conservator of an insured depository institution, which have the effect of terminating or otherwise adversely affecting credit agreements.

EFFECTIVE DATE: This policy is effective on July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Henry W. Abbot, Senior Asset Specialist, Office of Asset Management, (202) 416–7132; Robert Gunter, Chief of Conservatorship/Receivership Operations Unit, Conservatorship Operations, (202) 416–7257; William I. Jones, Counsel, Division of Legal Services, (202) 736–3106; Resolution Trust Corporation, 801 17th Street NW., Washington, DC 20434.

SUPPLEMENTARY INFORMATION:

Introduction and Authority

Section 3(b) of the Resolution Trust Corporation Completion Act (RTC Completion Act), Public Law No. 93–204, enacted on December 17, 1993, added a new subparagraph (C) to § 21A(b)(4) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(b)(4), which requires the RTC to implement and maintain a program, in a manner acceptable to the Thrift Depositor Protection Oversight Board (Oversight Board), to provide an appeals process for business and commercial borrowers to appeal decisions by the RTC, when acting as conservator of an insured depository institution, which would have the effect of terminating or otherwise adversely affecting credit or loan agreements, lines of credit, and similar arrangements with such borrowers who have not defaulted on their obligations to the institution in conservatorship.

The RTC submitted this Policy on Procedures for Non-defaulting Commercial Borrowers to Appeal Adverse Credit Decisions of the RTC Acting as Conservator to the Oversight Board for consideration at its June 16, 1994 meeting. The Oversight Board adopted a resolution approving the policy at that meeting. In that resolution the Oversight Board suggested that the RTC make the public aware of the new policy through publication in the **Federal Register**.

The RTC is rapidly resolving the remaining institutions it operates in conservatorships. Inasmuch as the policy affects only the operation of those institutions in conservatorship, there is a critical need to make the public aware of this new policy quickly.

In light of the request of the Oversight Board and the need to publicize the policy quickly, the RTC has concluded that publication in the **Federal Register** would be the best means of disseminating the new policy to members of the public with an interest in the subject matter.

Policy on Procedures for Non-Defaulting Commercial Borrowers to Appeal Adverse Credit Decisions of the RTC Acting as Conservator

The RTC is issuing procedures which provide a process for non-defaulting business and commercial borrowers to appeal the RTC's decisions (when acting as a conservator) which terminate or otherwise adversely affect credit or loan agreements, lines of credit or other similar arrangements.

I. Scope

The appeals process outlined herein pertains to adverse credit decisions affecting a non-defaulting commercial borrower made by the RTC as conservator for an insured depository institution for which the RTC was acting as conservator on or after December 17, 1993. These procedures shall only apply to adverse credit decisions affecting a non-defaulting commercial borrower made on or after December 17, 1993 by the RTC as conservator for an insured depository institution and only during the period for which the RTC acts as conservator for such insured depository institution. The appeals process is not intended to deny borrowers any rights otherwise provided under law.

The appeals process described in this policy does not limit or affect the exercise by the RTC, as conservator or receiver, of its authority to repudiate contracts pursuant to 12 U.S.C. § 1821(e).

II. Background

Generally, a predecessor institution retains the obligation to fund unfunded or partially funded loan commitments, and such obligations are not transferred to or assumed by the new savings association which the RTC operates in conservatorship. However, it has also been the RTC's policy for the conservator to consider funding partially funded loan commitments, as generally outlined in the Asset Management and Disposition Manual, Circular 10100.1, Change-One, Section F(3), and as further detailed with respect to the handling of construction loans in Circular 10100.32, Subject: "Funding of ADC Loan Commitments," which can be obtained upon request to one of the above listed contacts or from one of the public reading rooms of the RTC. These practices will continue. Pursuant to Section 21A(b)(4)(C) of the Federal Home Loan Bank Act, as added by Section 3(b) of the RTC Completion Act, effective December 17, 1993, whenever the RTC acting as conservator decides to deny an extension of credit to a non-defaulting commercial borrower, the borrower shall have an opportunity to appeal the decision to the next level of authority above the initial decision maker, as described below.

III. Definitions

The following definitions shall apply for purposes of this policy:

A. *Adverse Credit Decision*—a decision, made by the RTC as conservator of an insured depository institution, to deny funds or a request for a new extension of credit for commercial or business purposes to a non-defaulting commercial borrower.

B. *Credit Agreement*—a construction loan agreement, commercial mortgage agreement, commercial business loan agreement, line of credit agreement or other commercial credit agreement for commercial or business purposes.

C. *Non-defaulting Commercial Borrower*—a person or entity,

(1) who entered into a credit agreement with either:

(a) the predecessor institution prior to the appointment of the RTC as receiver of the predecessor institution, or

(b) the depository institution in conservatorship prior to the appointment of the RTC as conservator, where there is no predecessor institution, and

(2) who is not in default of any obligations owed to the predecessor institution or the institution in conservatorship.

D. *Predecessor Institution*—the insured depository institution in

II. Background

Generally, a predecessor institution retains the obligation to fund unfunded or partially funded loan commitments, and such obligations are not transferred to or assumed by the new savings association which the RTC operates in conservatorship. However, it has also been the RTC's policy for the conservator to consider funding partially funded loan commitments, as generally outlined in the Asset Management and Disposition Manual, Circular 10100.1, Change-One, Section F(3), and as further detailed with respect to the handling of construction loans in Circular 10100.32, Subject: "Funding of ADC Loan Commitments," which can be obtained upon request to one of the above listed contacts or from one of the public reading rooms of the RTC. These practices will continue. Pursuant to Section 21A(b)(4)(C) of the Federal Home Loan Bank Act, as added by Section 3(b) of the RTC Completion Act, effective December 17, 1993, whenever the RTC acting as conservator decides to deny an extension of credit to a non-defaulting commercial borrower, the borrower shall have an opportunity to appeal the decision to the next level of authority above the initial decision maker, as described below.

III. Definitions

The following definitions shall apply for purposes of this policy:

A. *Adverse Credit Decision*—a decision, made by the RTC as conservator of an insured depository institution, to deny funds or a request for a new extension of credit for commercial or business purposes to a non-defaulting commercial borrower.

B. *Credit Agreement*—a construction loan agreement, commercial mortgage agreement, commercial business loan agreement, line of credit agreement or other commercial credit agreement for commercial or business purposes.

C. *Non-defaulting Commercial Borrower*—a person or entity,

(1) who entered into a credit agreement with either:

(a) the predecessor institution prior to the appointment of the RTC as receiver of the predecessor institution, or

(b) the depository institution in conservatorship prior to the appointment of the RTC as conservator, where there is no predecessor institution, and

(2) who is not in default of any obligations owed to the predecessor institution or the institution in conservatorship.

D. *Predecessor Institution*—the insured depository institution in receivership from which the assets, deposits and certain other liabilities were transferred to the depository institution in conservatorship which made the adverse credit decision.

IV. General Policies

A. Right of Appeal

A non-defaulting commercial borrower shall have the right to appeal an adverse credit decision made by a Managing Agent or other person or entity authorized to act on behalf of the RTC as conservator of an insured depository institution.

B. Notice to Non-Defaulting Commercial Borrower

A Managing Agent or other person or entity authorized to act on behalf of the RTC as conservator shall give notice to a non-defaulting commercial borrower of (1) any adverse credit decision within the scope of this directive as outlined in the Paragraph I above, and (2) the right to appeal such decision. The notice should be sent via certified/registered mail-return receipt requested to document receipt by the borrower. (Two sample forms of such notice are included as Appendices A and B.) This notice is in addition to any notice by the conservator terminating a line of credit, or other credit agreement, or notice by the receiver of the predecessor institution repudiating a loan commitment or other credit agreement.

C. Procedure for the Appeal

(1) The Senior Credit Review Committee of the field office with jurisdiction over the conservatorship shall normally decide the appeal of the non-defaulting commercial borrower. However, if the adverse credit decision under appeal was made by a field office's Senior Review Committee, or by a person or entity at a level of authority above the field office Senior Credit Review Committee, then the person or entity at the next level of authority above the initial decision maker, as determined by the RTC's delegations of authority, shall decide the appeal of the non-defaulting borrower. (The person or entity deciding the appeal is hereafter referred to as the "hearer of the appeal.")

(2) A non-defaulting commercial borrower must file an appeal, in writing, with the hearer of the appeal within 60 calendar days of receipt of the notice described in subparagraph IV.B above.

(3) A non-defaulting commercial borrower must state the grounds for the appeal. The non-defaulting commercial borrower may submit only documentary evidence in support of the appeal.

(4) The hearer of the appeal shall make a good faith effort to decide the appeal within 30 calendar days of receipt of the appeal and all documentation necessary to act on the appeal.

(5) (a) The record of an appeal shall consist of the written appeal and documentary evidence submitted by the non-defaulting commercial borrower and any other evidence and information within the possession or control of the RTC that relates to the appeal.

(b) The non-defaulting commercial borrower shall have the right to review any documentation submitted by such borrower, along with the appeal or prior to the filing of the appeal, for purposes of determining the accuracy of the RTC's records. The hearer of the appeal may extend the period for deciding the appeal of such reasonable time as may be necessary to permit any such review of the documentation submitted by the borrower.

(6) The hearer of the appeal may reverse an adverse credit decision if the hearer determines that (a) the extension of credit is likely to reduce a conservatorship's overall losses, or (b) the extension of credit would not be likely to increase the conservatorship's overall losses.

(7) As a condition to reversing the adverse credit decision, the hearer of the appeal may require the non-defaulting commercial borrower to release any related claim against the receiver for a predecessor institution, in whole or in part.

(8) The hearer of the appeal shall provide written notice of the decision, including an explanation of any negative ruling, to the relevant Managing Agent, Field Office Claims Department, and to the non-defaulting commercial borrower. The RTC will make a good faith effort to provide such notice within 30 calendar days of receiving the Appeal Letter and all other information necessary to act on the appeal.

D. Appeal Log

A log should be maintained in each conservatorship to track each appeal under this procedure. Entries in the log, to be initiated upon receipt of the borrower's appeal, shall include the following items: borrower's name, date of credit application, date of adverse credit decision, decision by whom, date borrower's appeal received, hearer the of appeal, date of hearer's decision, date borrower notified of decision, and remarks.

E. Appointment of Receiver

Upon the appointment of a receiver for the depository institution operated in conservatorship by the RTC, with respect to such institution, the right of all non-defaulting commercial borrowers to appeal (and any pending appeal) under this process terminates. Thereafter, any rights of the non-defaulting commercial borrowers, with respect to such depository institution, are governed by 12 U.S.C. § 1821(d).

F. No Further Appeal

A non-defaulting commercial borrower shall have no right to appeal the decision of the hearer of the appeal within the RTC or to any court.

G. No Effect on RTC's Rights as Receiver or Conservator

Nothing contained in this policy shall be construed to waive or alter the rights of the RTC as conservator or receiver with respect to any commercial borrower or any insured depository institution. Such rights include, by way of illustration only, the rights to repudiate contracts, to leave obligations and liabilities with the receiver of the predecessor institution and to require non-defaulting commercial borrowers to adhere to the receivership claims procedures of the RTC.

The filing of an appeal with the hearer of the appeal in accordance with the appeal procedures outlined in subparagraph IV.C above does not preserve, and does not substitute for, the requirement that a claim be filed and the claims process be pursued with respect to any claim against: (1) the receiver for any predecessor institution, or (2) the receiver for the depository institution operated in conservatorship if a receiver is appointed for such institution.

V. Responsibility

RTC Field Office Vice Presidents are responsible for ensuring that all conservatorships, SAMDA contractors, commercial loan servicers, other commercial loan managers, and appropriate RTC staff are aware of and comply with this policy.

By Order of John E. Ryan, Deputy and Acting Chief Executive Officer.

Dated at Washington, D.C., this 5th day of July, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

Appendix A—Notice of Adverse Decision and Right To Appeal

[For Use Where Conservator Does Not Assume Obligation To Fund and/or Where the Receiver of Predecessor Institution Repudiates]

[date]

[Name of Borrower]
[Address of Borrower]
Dear _____:

Effective [date], the Office of Thrift Supervision appointed the Resolution Trust Corporation as Receiver for [Predecessor Institution]. Concurrently with such appointment, a new federal mutual association was formed, [name of de novo institution], and the Resolution Trust Corporation was appointed Conservator of the [name of de novo institution] (the "Conservator"). Most of the assets of [Predecessor Institution] were acquired by the Conservator in consideration of the assumption by the Conservator of some, but not all, of the liabilities of the [Predecessor Institution]. The Conservator DID NOT, however, assume the obligation to continue to fund your loan{, and as you were informed in another letter the Receiver for [Predecessor Institution] has repudiated the loan agreement and terminated any obligation to continue to fund your loan}.[1] You may have a claim against the Receiver of [Predecessor Institution] for the unfunded loan amount. You must follow any instructions from the receiver regarding the filing of such claim.

Notwithstanding that the Conservator has no obligation to continue to fund your loan, the Conservator has the discretion to provide funds to you through a new extension of credit, when the Conservator determines, in its sole discretion, that it is in the best interest of the Conservator to provide those funds. However, the Conservator has decided not to provide funds to you.

Because you are a non-defaulting commercial borrower of [name of the predecessor institution], section 21A(b)(4)(C) of the Federal Home Loan Bank Act provides you with an opportunity to appeal this adverse credit decision of the Conservator. You must submit your appeal in writing to the hearer of the appeal, set forth below, within 60 days of receipt of this notice, stating the grounds for your appeal. In support of your appeal, you may submit documentary evidence, which must be submitted at the same time as your letter of appeal. The hearer of the appeal will conduct no evidentiary hearing. A copy of the RTC's policy on borrower appeals is attached for your information.

You should know that the hearer of the appeal may only reverse the adverse credit decision if the hearer determines that to do so would reduce, or would not increase, the overall losses to the RTC as Conservator.

Your appeal should be submitted to:

[Name of Hearer of the Appeal]
[Address of Hearer]
Attention: _____

The filing of an appeal with the hearer of the appeal does not preserve your claim with the receiver of [Predecessor Institution] or affect in any way the right of the Receiver to repudiate your credit agreement.

Sincerely,

[Managing Agent or other official]

Appendix B—Notice of Adverse Decision and Right To Appeal

[For Use]

(1) Where Credit Agreement Transferred to Conservator and Conservator Terminated Agreement in Accordance With Its Terms, or

(2) Where Non-Defaulting Commercial Borrower Has Made an Application for a New Loan or a New Line of Credit.]

[date]

[Name of Borrower]
[Address of Borrower]

Dear _____:

The Resolution Trust Corporation acting as Conservator of [name of de novo] (the "Conservator") has [reviewed your application for credit and has] decided not to provide funds to you. Section 21A(b)(4)(C) of the Federal Home Loan Bank Act provides you with an opportunity to appeal this adverse credit decision of the Conservator. You must submit your appeal in writing to the hearer of the appeal, set forth below, within 60 days of receipt of this notice, stating the grounds for your appeal. In support of your appeal, you may submit documentary evidence, which must be submitted at the same time as your letter of appeal. The hearer of the appeal will conduct no evidentiary hearing. A copy of the RTC's policy on borrower appeals is attached for your information.

You should know that the hearer of the appeal may only reverse the adverse credit decision if the hearer determines that to do so would reduce, or would not increase, the overall losses to the RTC as Conservator.

Your appeal should be submitted to:

[Name of Hearer of the Appeal]
[Address of Hearer]
Attention: _____

Sincerely yours,

[Managing Agent or other official]

[FR Doc. 94–16658 Filed 7–8–94; 8:45 am]

BILLING CODE 6714–01–M

[1] To be used when a repudiation occurs.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34238; File No. SR–Amex–94–13]

Self-Regulatory Organizations; The American Stock Exchange, Inc.; Filing and Order Granting Approval on an Accelerated Basis of a Proposed Rule Change Relating to Trade-Day Comparison

July 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission") on May 6, 1994, the proposed rule change (File No. SR–Amex–94–13) as described in Items I and II below. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow Amex to implement a program, in conjunction with the New York Stock Exchange, Inc. ("NYSE") and the National Securities Clearing Corportion ("NSCC"), to compare all Amex equity trades on trade date. Amex will phase-in the program commencing June 30, 1994, with full implementation scheduled for June 30, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since 1988, Amex has sought to improve its clearing operations and to reduce exposure to loss through market volatility by reducing the comparison cycle in stocks and in options. The

[1] 15 U.S.C. 78s(b)(1) (1988).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34238; File No. SR-Amex-94-13]

Self-Regulatory Organizations; The American Stock Exchange, Inc.; Filing and Order Granting Approval on an Accelerated Basis of a Proposed Rule Change Relating to Trade-Day Comparison

July 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission") on May 6, 1994, the proposed rule change (File No. SR-Amex-94-13) as described in Items I and II below. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow Amex to implement a program, in conjunction with the New York Stock Exchange, Inc. ("NYSE") and the National Securities Clearing Corportion ("NSCC"), to compare all Amex equity trades on trade date. Amex will phase-in the program commencing June 30, 1994, with full implementation scheduled for June 30, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since 1988, Amex has sought to improve its clearing operations and to reduce exposure to loss through market volatility by reducing the comparison cycle in stocks and in options. The Amex has reduced the comparison times first from five business days to three business days and then to one business day after the trade date. For the past five years, the Amex, in conjunction with the NYSE, has been working with the member firm community and the NSCC to establish operational parameters, systems, and rules for shortening trade comparison time frames. In 1989, the Amex adopted Rule 719, which requires next-day comparison ("T+1") of exchange transactions, and developed its Intra-Day Comparison ("IDC") System, which is an electronic system designed to match trade sides and to resolve uncompared trades known as "don't knows" or "DKs."[2] The IDC System is used by Amex for both equities and options.

The Amex now proposes to implement, again in conjunction with NYSE and NSCC, trade-date comparison of Amex equity transactions. Trade-date comparison will be implemented in phases with a final target date of June 30, 1995. The first phase of this program is scheduled to be implemented by the end of June 1994. When the first phase has been implemented, the Amex will require all member firms to input equity trade data into the IDC System every two hours on the date of the trade rather than once daily. Input times will be 12:00 noon, 2:00 p.m., 4:00 p.m., and 6:00 p.m. Amex member firms already are submitting option trade data into the IDC System on trade-date on an hourly basis. The IDC System will continue to be the main processor of the comparison data. The Amex will transmit the compared trades to a registered clearing agency in order to complete the process.

The Amex is not proposing any written changes to its rules at this time. Amex Rule 719(a), which currently requires each transaction effected on the Amex to be compared or closed out no later than close-of-business on T+1, will remain in effect for the present time. The Amex believes that its Rule 719(c), which requires members to submit trade data as may be required by the Amex, provides it with sufficient authority to require clearing members to submit trade data in listed stocks and options for comparison by such times as Amex may prescribe. However, as the final implementation date of June 30, 1995, approaches, Amex will file any other rule changes with the Commission pursuant to Section 19(b) of the Act[3] and Rule 19b-4 thereunder[4] as are necessary or appropraite to implement the trade-date comparison program. As indicated above, any such Amex rule changes will be developed in conjunction with the NYSE and NSCC, and Amex will work with the NYSE and NSCC to achieve uniformity and to monitor the implementation of each phase of this program.

The Amex states that it believes the proposed rule change is consistent with Section 6(b) of the Act[5] in general and with Section 6(b)(5)[6] in particular because it will help prevent fraudulent and manipulative acts and practices, will promote just and equitable principles of trade, and will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule changes will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Amex has neither solicited nor received any comments from its members, participants, or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

For the reasons discussed below, the Commission believes the proposal is consistent with Section 6(b) of the Act. Section 6(b)(5) of the Act[7] states that exchange rules should be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities transactions and to protect investors and the public interest.

The risks posed by uncompared trades and by the long span of time between trade execution and trade comparison (as long as five business days for equity transactions until 1990) came under intense scrutiny after the Market Break of October 1987. The leading studies of the Market Break of 1987 identified uncompared trades as a major stress point in post-trade processing which, together with the unprecedented trading volume and the

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 27851 (March 27, 1990), 55 FR 12759 [File No. SR-Amex-89-05] (order approving proposed rule change).

[3] *Supra*, note 1.

[4] 17 CFR 240.19b-4 (1993).

[5] 15 U.S.C. 78f (1989).

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] *Id.*

unprecedented price volatility during the Market Break, posed an unacceptable threat to the marketplace.[8] The Commission, in its recommendations to Congress in February of 1988, proposed that markets accelerate their efforts to compare all trades on trade date.[9]

Since 1988, the Amex, among others, has sought to improve clearing operations and to reduce exposure to losses associated with market volatility occurring during the period between execution and settlement. The Amex reduced its comparison cycle in stocks first from T+5 to T+3 and then to T+1 in 1990.[10]

As stated above, the Commission believes that the proposed rule change which shortens the Amex comparison cycle from T+1 to trade date will make Amex's comparison process safer in terms of the risks resulting from market price volatility and more efficient in terms of the time and expense involved in post-trade processing. The Commission believes that the proposal will offer additional protection to investors, brokers, and other persons that safeguard investors' funds and facilitate investors' transactions. In the Commission's view, this proposal will provide fundamental and important improvements to the marketplace.

The Amex has requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filings in the **Federal Register**. Trade-date comparison is to be phased-in by both Amex and NYSE on a parallel schedule, and the NYSE has begun some aspects of its phase-in program.[11] Accelerated approval of this proposal will permit Amex, as well as the NYSE and NSCC, to provide their clearing members with a more coordinated implementation of trade-date comparison. Furthermore, because neither the Commission nor NYSE received any written comments on the NYSE's proposal, which was very similar to the Amex's proposal, and because the Amex did not receive any comments from its members in response to its Information Circular,[12] the Commission does not expect to receive any comments on this proposal. Therefore, the Commission believes there is good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–13 and should be submitted by August 1, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[13] that the above-mentioned proposed rule changes (File No. SR–Amex–94–13) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16629 Filed 7–6–94, 8:45 am]

BILLING CODE 8010–01–M

[8] For an analysis of the 1987 Market Break and the changes in clearance and settlement effected in response, refer to Division of Market Regulation, *Market Analysis of October 13 and 16, 1989*, 118–129 (December 1990).

[9] Testimony on the Securities and Exchange Commission's Recommendations Regarding the October 1987 Market Break delivered by David S. Ruder, Chairman, Commission, before the Senate Committee on Banking, Housing, and Urban Affairs at 23–24 (February 3, 1988).

[10] *Supra* note 2.

[11] For a discussion of the NYSE's implementation of trade-date comparison, refer to Securities Exchange Act Release No. 34153 (June 3, 1994), 59 FR 30071 [File No. SR–NYSE–94–08] (order approving proposed rule change).

[12] "Implementation of Equity Trade Date Comparison," Amex Information Circular #94–147 (April 6, 1994).

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34297; File No. SR–NASD–94–39]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Security Application Fee for The PORTAL Market

July 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 22, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend The PORTAL Market Rules, Schedule I to the NASD By-Laws ("PORTAL Rules") to add a security application fee with respect to securities submitted for designation in The PORTAL Market. Below is the text of the proposed rule change. Proposed new language is in italics.

The PORTAL Market

Schedule I to the NASD By-Laws

* * * * *

PART VI

PORTAL MARKET TRANSACTIONS

* * * * *

Sec. 4 PORTAL Fees

PORTAL participants shall pay to the Association a fee for PORTAL transactions or such other fees as determined by the Association, *which are set forth in Part IX of the PORTAL Rules*. The Board of Governors shall have the power to impose, alter, or amend such fees from time to time pursuant to Article VI, Section 1 of the By-Laws.

* * * * *

PART IX

PORTAL FEES

Sec. 1. Entry Fee

When a PORTAL participant submits an application for designation of any class of securities as a PORTAL security, it shall pay to the Corporation a filing fee of $2,000 per class of security covered by the security application submitted plus $200 per assigned security symbol that is in addition to the first symbol assigned.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The PORTAL Market is the market operated by The Nasdaq Stock Market, Inc., for the quotation of securities that are restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933 ("Securities Act"), or are securities that are treated as if restricted.[1] In order to qualify for inclusion in The PORTAL Market, a security that is restricted or treated as if restricted must be eligible to be sold pursuant to Rule 144A under the Securities Act,[2] be in negotiable form, and be assigned a CUSIP or other security identification number that is different from any identification number assigned to any unrestricted securities of the same class.

The PORTAL Market has processed over one thousand applications for designation as a PORTAL security. Designation of a security as a PORTAL security permits the security to be assigned a CUSIP number by Standard & Poor's Corporation and be cleared and settled through the Depository Trust

[1] Part II, PORTAL Rules, provides that to qualify for initial designation and continued designation in the PORTAL Market, a security shall be either a restricted security, as defined in Rule 144(a)(3) under the Securities Act, or a security that upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, Rule 114A, or Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 of the Securities Act and not involving any public offering.

[2] This provision requires that the security meet the requirements of Rule 144A(d)(3) and (4) under the Securities Act, which are, respectively, the "fungibility" and "information delivery requirement" conditions of Rule 114A.

fee of $2,000 per class of security covered by the security application submitted plus $200 per assigned security symbol that is in addition to the first symbol assigned.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The PORTAL Market is the market operated by The Nasdaq Stock Market, Inc., for the quotation of securities that are restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933 ("Securities Act"), or are securities that are treated as if restricted.[1] In order to qualify for inclusion in The PORTAL Market, a security that is restricted or treated as if restricted must be eligible to be sold pursuant to Rule 144A under the Securities Act, [2] be in negotiable form, and be assigned a CUSIP or other security identification number that is different from any identification number assigned to any unrestricted securities of the same class.

The PORTAL Market has processed over one thousand applications for designation as a PORTAL security. Designation of a security as a PORTAL security permits the security to be assigned a CUSIP number by Standard & Poor's Corporation and be cleared and settled through the Depository Trust Company. Section 2 of the PORTAL Rules permits any PORTAL participant to submit an application for security designation, rather than the issuer of the security. "PORTAL participants" include PORTAL dealers, PORTAL brokers, and PORTAL investors. The first two categories of PORTAL participants are required to be brokers and dealers registered with the Commission under Section 15 of the Exchange Act and members of the NASD. The third category of PORTAL participants are institutional investors that are not members of the NASD that meet the definition of "qualified institutional buyer" under Rule 144A.

The NASD has operated The PORTAL Market since it initiated operations in June 1990 without the imposition of any fees on users. The NASD is proposing to adopt a filing fee of $2,000 per security application submitted plus $200 for each security identification symbol assigned after the first symbol. Many private offerings of securities are of securities that are sold in multiple tranches, each of which is treated as a separate security, even though part of a single private offering, and assigned a separate identification symbol by The PORTAL Market.

The NASD believes that the imposition of a PORTAL filing fee will assist The Nasdaq Stock Market, Inc. to cover continuing costs associated with the operation of the PORTAL Market, including significant costs associated with the processing of security applications. The processing of security applications for The PORTAL Market requires an immediate review of all applications, as private placements are usually on a very short time schedule. Such review must ensure that the security meets all of the requirements in Part II of the PORTAL Rules, as set forth above.

Applications are generally submitted the day prior to commencing the private placement or the day prior to conducting a "road show," if such a road show is used, and approval is necessary within one or two days at the most.[3] In addition, because of a continuing lack of knowledge regarding the procedures for obtaining approval for PORTAL designation, Depository Trust Company book-entry approval, and the issuance of a CUSIP number from Standard & Poor's, The Nasdaq Stock Market, Inc. staff must work closely with the applicant to complete the process. Further, private offerings that rely on Rule 144A for redistribution of the securities to qualified institutional buyers are many times unique in their structure, as well as frequently involving issues related to SEC Regulation S and compliance with the CUSIP identification number requirement when an offshore offering occurs simultaneously with a U.S. private placement. Finally, there are many issues with multiple tranches, each of which must be assigned a separate security symbol. Given the efforts required by The Nasdaq Stock Market, Inc. staff, the NASD belies that the fees as proposed are appropriate.

(b) Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Exchange Act,[4] which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls in that the proposed rule change equitably applies a filing fee to all applications submitted by PORTAL dealers, PORTAL brokers, and PORTAL qualified investors for the designation of securities in The PORTAL Market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

[1] Part II, PORTAL Rules, provides that to qualify for initial designation and continued designation in the PORTAL Market, a security shall be either a restricted security, as defined in Rule 144(a)(3) under the Securities Act, or a security that upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, Rule 114A, or Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 of the Securities Act and not involving any public offering.

[2] This provision requires that the security meet the requirements of Rule 144A(d)(3) and (4) under the Securities Act, which are, respectively, the "fungibility" and "information delivery requirement" conditions of Rule 114A.

[3] In the case of private offerings, such a "road show" is quite abbreviated as the number of potential investors is generally no more than 75.

[4] 15 U.S.C. 78*o*–3 (1988).

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16630 Filed 7–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26078]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 1, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 25, 1994 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Connecticut Light and Power Company (70–7320)

Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, an electric public-utility subsidiary company of Northwest Utilities, a registered holding company, has filed a post-effective amendment under Sections 6(a) and 7 of the Act and rule 54 thereunder to its declaration previously filed under Sections 6(a) and 5 of the Act and rule 50(a)(5) thereunder.

By order dated December 16, 1986 (HCAR No. 24263), the Commission authorized CL&P, among other things, to issue a promissory note up to an aggregate principal amount of $25 million to the Industrial Development Authority of the State of New Hampshire ("IDA"). The note evidenced IDA's loan to CL&P of the proceeds from pollution control revenue bonds ("Bonds") issued by IDA to finance the cost of acquiring, constructing and installing certain pollution control facilities and/or sewage or solid waste disposal facilities at the Seabrook Nuclear Power Station, Unit No. 1 in Seabrook, New Hampshire.

In an effort to improve the credit ratings of the Bonds, CL&P obtained a letter of credit ("LOC") from the Long-Term Credit Bank of Japan Limited ("Credit Bank"). Subsequent to the issuance of the Bonds, Credit Bank's rating in the financial markets deteriorated. CL&P has been informed that many institutional investors that otherwise would be interested in purchasing the bonds will not purchase securities secured by letters of credit issued by the Credit Bank, and investors that are still willing to purchase the Bonds are demanding an interest rate premium that is causing CL&P's effective interest cost to be higher than it would have otherwise been using a bank with a higher rating.

CL&P now seeks authority to: (1) replace Credit Bank LOC and the Bank Reimbursement Agreement with a new Letter of Credit and Reimbursement Agreement ("Substitute Agreement"); (2) replace the LOC with a new letter of Credit ("New LOC"); and subsequently thereto (3) extend, modify, or replace the Substitute Agreement and the New LOC from time to time during the term of the bonds supported thereby. The terms of any such extensions, modifications or replacements, including the New LOC and the Substitute Agreement, shall provide that (a) the total amount available to be drawn under any such extended, modified or replacement letter of credit does not exceed $16.2 million, representing principal in the amount of $15.4 million and interest in the amount of $800,000 calculated at the maximum rate of 15% for 123 days, (b) the annual letter of credit costs applicable to any such extension, modification, or replacement do not exceed 1% per annum of the total amount available to be drawn under the extended, modified or replacement letter of credit, and (c) the reimbursement agreement applicable to any such extension, modification or replacement shall provide (or shall afford CL&P the option to elect) that tender advances tear interest until paid at a rate not to exceed the higher of the prime rate plus 2% or the federal funds rate plus 2%, (d) such extension, modification or replacement is otherwise on terms that are substantially similar in all material respects to those applicable to the New LOC and Substitute Agreement (or previous extensions or modifications thereof or replacements therefore proposed to be entered into in connection with the replacement of Credit Bank, and (e) CL&P shall have obtained all necessary State Commission approvals applicable to such extension, modification or replacement.

Consolidated Natural Gas Company (70–8167)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a post-effective amendment under Sections 6 and 7 of the Act and Rule 54 thereunder to its declaration previously filed under Sections 6 and 7 of the Act and Rule 50(a)(5) thereunder.

By order dated April 21, 1993 (HCAR No. 25800) ("April Order"), the Commission authorized CNG to issue and sell on or before June 30, 1995 up to $400 million principal amount of debentures ("Debentures") in one or more series at a price, exclusive of accrued interest, which would be not less than 98% nor more than 101% of the principal amount and at an interest rate which would be a multiple of ⅛, 1/10, or 1/20 of 1%. The Debentures would mature in not more than thirty years and would be issued in accordance with the indenture between CNG and Chemical Bank (successor by merger to Manufacturers Hanover Trust Company), as Trustee, dated May 1, 1971 ("Indenture"). CNG has sold $300 million of Debentures under the April Order, thus $100 million of Debentures remains authorized for issue and sale.

CNG now proposes to change its Indenture by adding section 4.02 so that it may reserve the right, without the consent of the holders of future debenture issues sold under the April Order, to amend sections 6.06 and 6.07 of the Indenture. New section 4.02 provides:

> The Company reserves the right, subject to appropriate corporate action, but without consent, approval or other action by holders of debentures of any series created after May 1, 1994, to make such amendments to the Indenture, as heretofore supplemented and amended, as shall be necessary in order to amend Sections 6.06 and 6.07 thereof so as to modify or eliminate the provisions or requirements of such Sections, or any part thereof and the definition of any term used in either of such Sections or related thereto, as the Company may determine in its sole discretion.

Section 6.06 provides that funded debt (as defined) cannot be incurred and subsidiary preferred stock cannot be issued unless: (1) The consolidated income available for interest and subsidiary preferred stock dividends of CNG and its subsidiaries for any 12 consecutive months within 15 months immediately preceding the date additional funded debt is incurred is not less than 2½ times the sum of the total annual interest charges and the total subsidiary preferred stock dividends, assuming the incurrence of such additional funded debt or issuance of such preferred stock, as the case may be; and (2) after giving effect to the incurring of the additional funded debt and issuance of preferred stock, the sum of the outstanding consolidated debt of CNG and its subsidiaries and the amount of outstanding subsidiary preferred stock shall not be more than 60% of the consolidated net tangible assets of CNG and its subsidiaries. Section 6.07 provides that a subsidiary of CNG cannot incur funded debt or issue preferred stock to a third party unless funded debt and preferred stock of the subsidiary will not exceed 60% of the total capitalization of the subsidiary, and the principal amount of funded debt and amount of preferred stock of all subsidiaries of CNG shall not exceed 15% of consolidated net tangible assets.

1/10, or 1/20 of 1%. The Debentures would mature in not more than thirty years and would be issued in accordance with the indenture between CNG and Chemical Bank (successor by merger to Manufacturers Hanover Trust Company), as Trustee, dated May 1, 1971 ("Indenture"). CNG has sold $300 million of Debentures under the April Order, thus $100 million of Debentures remains authorized for issue and sale.

CNG now proposes to change its Indenture by adding section 4.02 so that it may reserve the right, without the consent of the holders of future debenture issues sold under the April Order, to amend sections 6.06 and 6.07 of the Indenture. New section 4.02 provides:

> The Company reserves the right, subject to appropriate corporate action, but without consent, approval or other action by holders of debentures of any series created after May 1, 1994, to make such amendments to the Indenture, as heretofore supplemented and amended, as shall be necessary in order to amend Sections 6.06 and 6.07 thereof so as to modify or eliminate the provisions or requirements of such Sections, or any part thereof and the definition of any term used in either of such Sections or related thereto, as the Company may determine in its sole discretion.

Section 6.06 provides that funded debt (as defined) cannot be incurred and subsidiary preferred stock cannot be issued unless: (1) The consolidated income available for interest and subsidiary preferred stock dividends of CNG and its subsidiaries for any 12 consecutive months within 15 months immediately preceding the date additional funded debt is incurred is not less than 2½ times the sum of the total annual interest charges and the total subsidiary preferred stock dividends, assuming the incurrence of such additional funded debt or issuance of such preferred stock, as the case may be; and (2) after giving effect to the incurring of the additional funded debt and issuance of preferred stock, the sum of the outstanding consolidated debt of CNG and its subsidiaries and the amount of outstanding subsidiary preferred stock shall not be more than 60% of the consolidated net tangible assets of CNG and its subsidiaries. Section 6.07 provides that a subsidiary of CNG cannot incur funded debt or issue preferred stock to a third party unless funded debt and preferred stock of the subsidiary will not exceed 60% of the total capitalization of the subsidiary, and the principal amount of funded debt and amount of preferred stock of all subsidiaries of CNG shall not exceed 15% of consolidated net tangible assets.

CNG also requests authorization to extend the expiration date for the issuance and sale of the remaining $100 million principal amount of Debentures under the April Order from June 30, 1995 to June 30, 1996.

The Columbia Gas System, Inc., et al. (70–8219)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company; Columbia's public utility subsidiary companies, Columbia Gas of Pennsylvania, Inc., Columbia Gas of Ohio, Inc. ("Ohio"), Columbia Gas of Maryland, Inc., Columbia Gas of Kentucky, Inc., and Commonwealth Gas Services, Inc., each located at 200 Civic Center Drive, Columbus, Ohio 43215; and Columbia's nonutility subsidiary companies, Columbia Gas System Service Corporation, Columbia LNG Corporation, Columbia Atlantic Trading Corporation, TriStar Ventures Corporation, TriStar Capital Corporation, each located at 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Natural Resources, Inc., Columbia Coal Gasification Corporation, both located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corporation, 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gulf Transmission Company, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Columbia Gas Development Corporation, 5847 San Felipe, Houston, Texas 77057; Commonwealth Propane, Inc., and Columbia Propane Corporation, located at 800 Moorefield Park Drive, Richmond, Virginia 23236 (collectively, "Applicants"), have filed a post-effective amendment to their application-declaration under Sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Act and Rules 43 and 45 thereunder.

By order dated September 29, 1993 (HCAR No. 25896) ("September Order"), the Commission authorized Applicants, among other things, to engage in financing from September 30, 1993 through December 31, 1994 of up to $629.9 million. At that time, the Commission authorized Ohio to engage in long-term financing of up to $73.1 million and short-term financing of up to $162 million, and authorized Columbia to provide $398.7 million in short-term financing to its subsidiaries.

Columbia now proposes to increase the amount of short-term financing for Ohio $40 million. These short-term borrowings will have the same terms and conditions as those authorized by the September Order. Thus, Ohio proposes to borrow the funds directly from Columbia and/or from certain other subsidiaries of Columbia through Columbia's intrasystem money pool ("Money Pool"), and Columbia requests authority to loan to its subsidiaries an additional $40 million for short-term borrowings.

The Money Pool provides a vehicle by which Columbia and its subsidiary companies loan their excess cash to their associate companies. Funds would be advanced, repaid, and reborrowed as required through December 31, 1994, with all such advances to be fully repaid by April 30, 1995. All short-term borrowings from Columbia and/or the Money Pool will be evidenced by a promissory note ("Short-Term Note" and "Money Pool Note", respectively). A default rate of 2% per annum above the pre-default rate on unpaid principal or interest amounts will be assessed if any interest or principal payment becomes past due.

The interest rate charged on all Short-Term Notes and Money Pool Notes, and the investment rate earned on moneys invested in the Money Pool, will be the interest rate per annum equal to the composite weighted average effective rate on short-term transactions of Columbia and/or the Money Pool short-term investment rate. During any month, this composite rate may be based on one or any combination of: (1) The cost of Columbia's borrowings under its bank facility; (2) the interest rate earned by Columbia on invested excess cash; and/or (3) the interest rate earned by subsidiaries on investments of excess Money Pool funds.

The Southern Company (70–8421)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

Southern proposes to acquire the securities of one or more companies ("Project Parents") engaged directly or indirectly, and exclusively, in the business of owning and holding the securities of "foreign utility companies" ("FUCOs"), as defined in Section 33(a) of the Act, and "exempt wholesale generators" ("EWGs"), as defined in Section 32(a) of the Act. Southern requests that the authorization for its proposals remain effective until the earlier of: (i) December 31, 1996; and (ii) the effective date of any rule of general applicability adopted by the Commission that would exempt the acquisition of any securities of any

Project Parent from the requirements of Sections 9(a) and 10 of the Act.

Southern states that a Project Parent may be organized at the time of, and in order to facilitate: the making of bids or proposals to acquire an interest in any EWG or FUCO ("Exempt Subsidiaries"); after the award of a bid proposal, in order to facilitate closing on the purchase or financing of any such Exempt Subsidiary; or at any time subsequent to the consummation of an acquisition of an interest in an Exempt Subsidiary. A Project Parent would be formed after the acquisition of an Exempt Subsidiary in order to: effect an adjustment in the respective ownership interests in any Exempt Subsidiary held by Southern and unaffiliated co-investors; facilitate a partial sale of an interest in any such Exempt Subsidiary; comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; or, to limit Southern's exposure to U.S. and foreign taxes as part of tax planning.

Southern requests authority to make direct or indirect investments in Project Parents in an aggregate amount at any one time outstanding not to exceed $400 million. Any such direct or indirect investment by Southern in any Project Parent would be consummated only if, at the time thereof, and giving effect thereto, Southern's "aggregate investment," determined in accordance with Rule 53(a)(1)(i), in all FUCOs, EWGs and Project Parents would not exceed 50% of Southern's "consolidated retained earnings," as defined in Rule 53(a)(1)(ii). In addition, any such investment in any particular Project Parent would be limited to an amount no greater than the amount reasonably required in connection with making the underlying investment in any Exempt Subsidiary (or Exempt Subsidiaries) with respect to which such Project Parent was organized or formed, taking into account development expenditures, working capital needs, and cash reserves required to be maintained in accordance with financing documents. Southern states that it will also comply with all other applicable rules under the Act, including, without limitation, such rules as may be promulgated in the future pursuant to Sections 32 and 33.

It is proposed that investments by Southern in any Project Parents may take the form of any combination of the following: (i) Ppurchases of capital shares, partnership interests, trust certificates, or the equivalent of any of the foregoing under the laws of foreign jurisdictions, if applicable; (ii) cash capital contributions or open account advances; (iii) loans evidenced by promissory notes; and (iv) guaranties by Southern of the principal of or interest on any promissory notes or other evidences of indebtedness of any Project Parent issued to lenders other than Southern.

Southern proposes that any investment in the capital shares or other equity securities of a Project Parent that have a stated par value will be in an amount equal to or greater than such par value, and that any open account advance made by Southern to a Project Parent be non-interest bearing and repayable within one year of the date of the advance. Southern also proposes that any promissory note issued by a Project Parent to Southern, and any promissory note or similar evidence of indebtedness with respect to which Southern may issue a guaranty, would mature not later than 30 years after the date of insurance, and would bear interest at a rate: (a) Not greater than the prime rate at a bank to be designated by Southern in the case of any promissory note issued to Southern, and (b) not greater than 3% over such prime rate in the case of any note or similar evidence of indebtedness guarantied by Southern.

Any promissory note issued to Southern by any Project Parent may, at Southern's option, be converted to a capital contribution to such Project Parent through Southern's forgiveness of the indebtedness evidenced thereby.

Funds for any direct or indirect investment by Southern in any Project Parent (including the guaranty of any securities of any Project Parent) will be derived from: (i) The sale of common stock or the issuance of guarantees (within the limitations of HCAR No. 25980 (January 25, 1994), or in any future authorization obtained from the Commission); (ii) bank borrowings or commercial paper sales (within the limitations of HCAR No. 26004 (March 15, 1994), or any future authorization obtained from the Commission); and, (iii) available cash. Southern is not requesting the authority to issue any additional securities for the purpose of financing investments in any Project Parents.

Southern states that it is currently investigating potential opportunities to acquire or construct electric generation, transmission or distribution facilities in Europe, Asia, Australia and South America. Southern believes that, in almost all cases, such facilities will qualify as facilities that a FUCO may own or operate.[1] Southern states that it has been Southern's experience, in connection with its foreign project development activities to date, including the preparation and submission of bid proposals in foreign government privatization programs, that the formation and acquisition of one or more Project Parents (usually, but not always, foreign corporations or the equivalent thereof) is necessary or desirable to facilitate the acquisition and ownership of a FUCO. For example, laws of some foreign countries may require that the bidder in a privatization program be a domestic company. In such cases, it would be necessary for Southern to form a foreign subsidiary as the entity submitting the bid or other proposal.

Southern states that there would typically be other business reasons for creating Project Parents. Southern states that, for example, the interposition of one or more wholly-owned Project Parents may be necessary to minimize U.S. income taxes (e.g., by deferring repatriation of foreign source income, or in order to take full advantage of favorable tax treaties among foreign countries). Further, Project Parents are useful in cases in which Southern may bid as a part of a consortium of companies, since each member of the consortium will typically want to have at least one consolidated subsidiary in the final FUCO ownership structure for tax and accounting purposes. Finally, Project Parents serve to isolate business risks and facilitate subsequent adjustments to or sales of interests among or by the members of the ownership group.

Southern proposes herein that a Project Parent may also acquire and hold direct or indirect interests in both FUCOs and EWGs.[2] The ability to combine ownership of both FUCOs and EWGs under a single company will enable Southern to minimize the number of separate intermediate subsidiaries needed in connection with its investments in EWGs and FUCOs.

Southern states that, within 45 days after Southern determines that the purposes for owning any Project Parent no longer exists, it shall liquidate or dissolve such Project Parent, unless, within that time, Southern determines that such Project Parent may be used in conjunction with a proposal or plan to acquire an interest in a different Exempt Subsidiary. Southern requests authority to liquidate or dissolve any Project Parent under such circumstances.

Southern also requests approval for any Project Parent to issue equity securities and debt securities to persons other than Southern (and with respect to which there is no recourse to Southern), including banks, insurance companies, and other financial institutions, exclusively for the purpose of financing (including any refinancing of) investments in Exempt Subsidiaries. Such securities may be issued in one or more transactions from time to time through the earlier to occur of (i) December 31, 1996, and (ii) the effective date of any rule of general applicability adopted by the Commission exempting such transaction from the application requirements under the Act. It is proposed that the aggregate principal amount of non-recourse debt securities issued by Project Parents to persons other than Southern will not exceed $800 million at any one time outstanding. No more than $200 million principal amount of such non-recourse debt securities at any time outstanding may be denominated in currencies other than U.S. dollars. In any case in which Southern directly or indirectly owns less than all of the equity interests of a Project Parent, only that portion of the non-recourse indebtedness of such Project Parent equal to Southern's equity ownership percentage shall be included for purposes of the foregoing limitations.

Equity securities issued by any Project Parent to any party other than Southern may include capital shares, partnership interests, trust certificates, or the equivalent of any of the foregoing under applicable foreign law. Non-recourse debt securities issued to parties other than Southern may include secured and unsecured promissory notes, subordinated notes, bonds, or other evidence of indebtedness. Securities issued by Project Parents may be denominated in either U.S. dollars or foreign currencies.

Southern states that the amount and type of such securities, and the terms thereof, including interest rate, maturity, prepayment or redemption privileges, and the terms of any collateral security granted with respect thereto, would be negotiated on a case by case basis, taking into account differences from project to project in optimum debt-equity ratios, projections of earnings and cash flow, depreciation lives, and other similar financial and performance characteristics of each project. Accordingly, Southern requests

---

[1] In some instances, a foreign utility facility may also qualify as an "eligible facility," as defined in Section 32(a)(2) of the Act. Depending upon various facts and circumstances, Southern may in the future pursue any particular foreign utility investment opportunity as an EWG rather than as a FUCO, in which case the requisite filing or filings would be made with the Federal Energy Regulatory Commission.

[2] An entity engaged exclusively in the business of holding the securities of one or more EWGs may itself seek a determination of EWG status from the Federal Energy Regulatory Commission. However, such an entity could not hold the securities of both EWGs and FUCOs.

conjunction with a proposal or plan to acquire an interest in a different Exempt Subsidiary. Southern requests authority to liquidate or dissolve any Project Parent under such circumstances.

Southern also requests approval for any Project Parent to issue equity securities and debt securities to persons other than Southern (and with respect to which there is no recourse to Southern), including banks, insurance companies, and other financial institutions, exclusively for the purpose of financing (including any refinancing of) investments in Exempt Subsidiaries. Such securities may be issued in one or more transactions from time to time through the earlier to occur of (i) December 31, 1996, and (ii) the effective date of any rule of general applicability adopted by the Commission exempting such transaction from the application requirements under the Act. It is proposed that the aggregate principal amount of non-recourse debt securities issued by Project Parents to persons other than Southern will not exceed $800 million at any one time outstanding. No more than $200 million principal amount of such non-recourse debt securities at any time outstanding may be denominated in currencies other than U.S. dollars. In any case in which Southern directly or indirectly owns less than all of the equity interests of a Project Parent, only that portion of the non-recourse indebtedness of such Project Parent equal to Southern's equity ownership percentage shall be included for purposes of the foregoing limitations.

Equity securities issued by any Project Parent to any party other than Southern may include capital shares, partnership interests, trust certificates, or the equivalent of any of the foregoing under applicable foreign law. Non-recourse debt securities issued to parties other than Southern may include secured and unsecured promissory notes, subordinated notes, bonds, or other evidence of indebtedness. Securities issued by Project Parents may be denominated in either U.S. dollars or foreign currencies.

Southern states that the amount and type of such securities, and the terms thereof, including interest rate, maturity, prepayment or redemption privileges, and the terms of any collateral security granted with respect thereto, would be negotiated on a case by case basis, taking into account differences from project to project in optimum debt-equity ratios, projections of earnings and cash flow, depreciation lives, and other similar financial and performance characteristics of each project. Accordingly, Southern requests the authority to negotiate the terms and conditions of such securities without further approval by the Commission.

Notwithstanding the foregoing, Southern states that no equity security having a stated par value would be issued or sold by a Project Parent for a consideration that is less than such par value. Southern also states that no note, bond or other evidence of indebtedness issued or sold by any Project Parent will mature later than 30 years from the date of issuance thereof, and will bear interest at a rate exceeding the following: (i) if such note, bond or other indebtedness is U.S. dollar denominated, at a fixed rate not to exceed 6.5% over the yield to maturity on an actively traded, non-callable, U.S. Treasury note having a maturity equal to the average life of such note, bond or other indebtedness ("Applicable Treasury Rate"),[3] or at a floating rate not to exceed 6.5% over the then applicable prime rate at a U.S. money center bank to be designated by Southern ("Applicable Prime Rate"); and (ii) if such note, bond or other indebtedness is denominated in the currency of a country other than the United States, at a fixed or floating rate which, when adjusted (i.e., reduced) for the prevailing rate of inflation in such country, as reported in official indices published by such country, would be equivalent to a rate on a U.S. dollar denominated borrowing of identical average life that does not exceed 10% over the Applicable Treasury Rate or Applicable Prime Rate, as the case may be.

In connection with the issuance of any non-recourse debt securities by any Project Parent, it is anticipated that such Project Parent may grant security in its assets. Such security interest may take the form of a pledge of the shares or other equity securities of an Exempt Subsidiary that it owns, including a security interest in any distributions from any such Exempt Subsidiary, or a collateral assignment of its rights under and interests in other property, including rights under contracts. It is also anticipated that fees in the form of placement or commitment fees, or other similar fees, would be paid to lenders, placement agents, or others in connection with the issuance of any such non-recourse debt securities. Southern requests authority for any Project Parent to agree in any case to pay placement or commitment fees, and other similar fees, in connection with any borrowing, provided that the effective annual interest charge on any indebtedness evidencing such borrowing is not greater than 115% of the stated interest rate thereon.

In connection with investments in Exempt Subsidiaries, Southern states that it is typical that a portion of the capital requirements of any such Exempt Subsidiary would be obtained through non-recourse financing involving borrowings from banks and other financial institutions. Southern also states that, in some cases, however, it may be necessary or desirable to structure an investment in an Exempt Subsidiary such that the obligations created are not those of the Exempt Subsidiary, but instead those of its parent companies. For example, in a consortium of non-affiliated companies bidding to purchase the securities or assets of an EWG or FUCO, each of the consortium members would be obligated to fund its respective share of the proposed purchase price. If external sources of funds are needed for this purpose, a participant in the consortium may choose to engage in non-recourse financing through one or more single-purpose subsidiaries that would then utilize the proceeds of the financing to acquire an ownership interest in the Exempt Subsidiary.[4]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16631 Filed 7–8–94; 8:45 am]

BILLING CODE 8010–01–M

[3] If there is no actively traded U.S. Treasury note with a maturity equal to the average life of such note, bond or other evidence of indebtedness, then the Applicable Treasury Rate would be determined by interpolating linearly with reference to the yields to maturity on actively traded, non-callable, Treasury notes having maturities near (i.e., both shorter and longer than) such average life.

[4] Typically, the capital shares or other equity interests in the Exempt Subsidiary would be pledged to secure the securities issued by the Project Parent.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Asheville Regional Airport, Asheville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Asheville

Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 10, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Atlanta Airports District Office, 1680 Phoenix Boulevard, Suite 101, College Park, Georgia 30349.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to James C. Parker, Jr., Airport Director, of the Asheville Regional Airport Authority at the following address: 708 Airport Road, Fletcher, North Carolina 28732.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Asheville Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Thomas M. Roberts, Atlanta Airports District Office, 1680 Phoenix Boulevard, Suite 101, College Park, Georgia 39349—telephone 404/994–5306. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Asheville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 30, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Asheville Regional Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 28, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: November 1, 1994
Proposed charge expiration date: October 31, 2000
Total estimated PFC revenue: $5,066,760

Brief description of proposed projects: Terminal Building Expansion-Second Level; Land Acquisition (28± Acres for Runway Protection Zone and 46± Acres Borrow Area); Construction of Two (2) Helipads; Master Plan Update; Installation of Runway Lights; Phase I Runway 34 Extended Runway Safety Area; Install Security System (Part 107); Rehabilitate Aircraft Rescue and Fire Fighting Vehicle; Phase II Runway 34 Extended Runway Safety Area; Land Acquisition (50 Acres Borrow Area); Aircraft Rescue and Fire Fighting Building Expansion; Taxiway Signage Upgrade; Widen Parallel Taxiway; Seal Coat General Aviation Apron; Expand Equipment Storage Building; Terminal Access Improvements; Acquire Snow Equipment; Non-Destrustive Testing Pavement Evaluation; Resurface and Groove Runway 16/34; Replace Concrete Slabs and Joint Seal Ramp; Resurface Taxiways, Acquire Snow Removal Equipment; Land Acquisition (100+ Acres); Terminal Building Expansion; Perimeter Security Road; Construct Aircraft Rescue and Fire Fighting Road.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: air taxi/commercial operators filing FAA 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Asheville Regional Airport Authority.

Issued in College Park, Georgia, on June 30, 1994.

Samuel F. Austin,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 94–16679 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 94–15]

Life-Cycle Cost Analysis

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim policy statement; request for comments.

SUMMARY: This FHWA policy statement on life-cycle cost analysis (LCCA) helps fulfill Federal management responsibilities for analyzing life-cycle cost aspects of infrastructure investment decisions under Executive Order 12893, "Principles of Federal Infrastructure Investment." The policy statement establishes LCCA principles to be applied by FHWA in infrastructure investment analyses, and in evaluating the adequacy of State highway agency procedures used in conducting required LCCA for investments funded through the Federal-aid highway program. States and local agencies are expected to apply these principles in evaluating program and project level investment decisions involving Federal-aid highway funds as required under applicable FHWA regulations. Comments are solicited on potential problems in implementing provisions of this policy statement and specific needs for training and technical assistance in LCCA.

DATES: This interim policy statement is effective on July 11, 1994. Comments on the interim policy statement must be received on or before October 11, 1994. A final LCCA policy statement will be published that takes into consideration comments received on this interim statement.

ADDRESSES: Submit written, signed comments concerning this interim policy statement to FHWA Docket No. 94–15, Federal Highway Administration, room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington D.C. 20590. In addition to specific comments on this policy statement, comments are requested on training and technical assistance needed to implement LCCA. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. e.t. Monday through Friday, except legal Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James W. March, Chief, Systems Analysis Branch, (202) 366–9237, or Mr. Steven M. Rochlis, Legislation and Regulations Division, (202) 366–1395, Federal Highway Administration, 400 Seventh Street SW., Washington D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

There is an increasing recognition that total life-cycle costs of highway and transportation investments must be given greater consideration in all phases of highway programs. Executive Order 12893, "Principles of Federal Infrastructure Investment," requires that benefits and costs of infrastructure investment be measured and appropriately discounted over the full life cycle of each project. Sections 1024 and 1025 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 1977) also require consideration of "the use of life-cycle cost in the design and engineering of bridges, tunnels, or pavement." Subpart B of the interim final rule on implementation of ISTEA management systems (23 CFR 500.207) requires use of LCCA for pavement management systems (PMS) and Subpart C (23 CFR 500.307) requires use of LCCA or comparable techniques for bridge management systems (BMS).

Life-cycle cost analysis is an economic evaluation of all current and future costs associated with investment alternatives. It is a valuable economic analysis technique for evaluating highway and other transportation programs and projects that require long-term capital and maintenance expenditures over the extended lives of facilities. Future costs are discounted using an appropriate discount rate to compare costs incurred at different points in time.

Life-cycle cost analysis principles and techniques are used in many types of economic analysis to compare benefits and costs arising at different points in time. Benefit-cost analysis and cost effectiveness analysis, for instance, use life-cycle cost analysis principles to discount future benefits and costs of investment alternatives over the lives of alternatives being evaluated.

Life-cycle cost analysis is used to evaluate programs of pavement and bridge improvements as well as individual projects. It is an important input to estimates of future funding requirements and to the development of improvement programs, especially when there are budget constraints.

The use of value engineering is receiving increased attention as a technique for analyzing the functions of a program, project, system, product, or service to identify opportunities to significantly lower costs while still achieving the essential functions. Life-cycle costs are often analyzed to ensure that unnecessary costs are avoided by considering future operations, maintenance, and reconstruction requirements.

Total life-cycle costs of specific facilities may be many times the initial construction costs when user costs are considered. It is essential that a long term perspective be taken in programming improvements, selecting among alternative maintenance, rehabilitation, and reconstruction strategies, and designing pavements, structures, and other highway elements. Longer design lives may have to be considered, and traditional strategies for programming maintenance and rehabilitation activities may have to be reevaluated to determine whether they

design and engineering of bridges, tunnels, or pavement." Subpart B of the interim final rule on implementation of ISTEA management systems (23 CFR 500.207) requires use of LCCA for pavement management systems (PMS) and Subpart C (23 CFR 500.307) requires use of LCCA or comparable techniques for bridge management systems (BMS).

Life-cycle cost analysis is an economic evaluation of all current and future costs associated with investment alternatives. It is a valuable economic analysis technique for evaluating highway and other transportation programs and projects that require long-term capital and maintenance expenditures over the extended lives of facilities. Future costs are discounted using an appropriate discount rate to compare costs incurred at different points in time.

Life-cycle cost analysis principles and techniques are used in many types of economic analysis to compare benefits and costs arising at different points in time. Benefit-cost analysis and cost effectiveness analysis, for instance, use life-cycle cost analysis principles to discount future benefits and costs of investment alternatives over the lives of alternatives being evaluated.

Life-cycle cost analysis is used to evaluate programs of pavement and bridge improvements as well as individual projects. It is an important input to estimates of future funding requirements and to the development of improvement programs, especially when there are budget constraints.

The use of value engineering is receiving increased attention as a technique for analyzing the functions of a program, project, system, product, or service to identify opportunities to significantly lower costs while still achieving the essential functions. Life-cycle costs are often analyzed to ensure that unnecessary costs are avoided by considering future operations, maintenance, and reconstruction requirements.

Total life-cycle costs of specific facilities may be many times the initial construction costs when user costs are considered. It is essential that a long term perspective be taken in programming improvements, selecting among alternative maintenance, rehabilitation, and reconstruction strategies, and designing pavements, structures, and other highway elements. Longer design lives may have to be considered, and traditional strategies for programming maintenance and rehabilitation activities may have to be reevaluated to determine whether they adequately consider future costs, including user delay-related costs.

Increasing congestion on important highways in urban areas and some rural areas makes it critical to fully consider life-cycle costs of investment decisions. Safety concerns and auxiliary construction costs to maintain, rehabilitate, or reconstruct congested highways and bridges under traffic are very high. User costs and delays around work zones in congested areas may be even higher and represent significant inefficiencies that may adversely affect economic productivity, especially on the National Highway System (NHS). These delays can erode productivity gains realized by the growing number of industries using just-in-time and other advanced logistics strategies that depend on efficient and predictable transportation.

Regardless of whether user costs are included in a formal LCCA, most States already implicitly consider user costs when they choose to pay premiums to maintain traffic through work zones or design more durable pavements in congested urban areas. Including user costs in LCCA makes these implicit considerations explicit, and may help identify other opportunities to reduce overall agency and user costs.

Recognition of the high future costs to maintain and rehabilitate highways, bridges and tunnels, and their associated traffic control, safety, environmental, and hydraulic components has led to increased interest in the potential for LCCA to improve investment productivity and reduce public and private costs of highway and other transportation programs. The FHWA and the American Association of State Highway and Transportation Officials (AASHTO) jointly sponsored a symposium in December 1993 to learn more about LCCA practices among the States and to identify research, training, technical assistance, and policy-related needs to improve LCCA application. An important input to that symposium was an AASHTO survey of State LCCA practices.

Many specific LCCA issues and research needs were identified at the symposium. Key technical issues included how to establish the appropriate analysis period, how to value and properly consider user costs, and how to choose the appropriate discount rate. Participants also identified important research and data needed to predict pavement and bridge performance and forecast future traffic.

An important policy issue raised at the symposium was the recognition that results of LCCA may favor selection of improvements with higher initial costs in order to achieve significant long term savings in overall investment requirements. It may indicate, for instance, that more projects warrant reconstruction rather than rehabilitation strategies, that early intervention with preventive maintenance is cost effective, or that somewhat higher designs or levels of service may be appropriate for some facilities. The FHWA recognizes that LCCA, thus, may result in proposals for greater expenditures up front. At the same time virtually all transportation agencies will continue to face budgetary limitations at least over the short term. Life-cycle cost analysis will help agencies identify and explain the real costs borne by transportation users of inadequate infrastructure funding. Furthermore, LCCA can assist agencies that face fiscal constraints in making the best use of available funds. Several States already use LCCA in developing network improvement programs as part of their pavement and bridge management systems. Eventually it is desirable for all States to have such capabilities.

The following paragraphs highlight key principles of good LCCA practice. Applying these principles generally will allow States and local agencies to identify investment alternatives that will minimize total life-cycle costs. While their use is not mandatory in all instances, States are strongly encouraged to apply these principles in conducting life-cycle cost analyses unless there are unique characteristics of particular programs or projects that require principles to be modified. Life-cycle cost analysis, of course, is only one consideration in many investment decisions, but it certainly is one of the most important for NHS routes and other high volume roads in light of the costs and lost productivity associated with future maintenance and rehabilitation actions.

In general there are no hard and fast rules concerning the appropriate length of the analysis period. The analysis period will vary depending on the type of improvement (bridge, versus tunnel, versus pavement), the location (urban versus rural), the highway system (NHS versus other), and the design lives of all appropriate alternatives. In general, longer design lives should be considered for improvements on the NHS and other high volume urban roadways because future agency and user costs associated with maintenance and rehabilitation activities may be so high. For pavement improvements on the NHS, design lives of 50 years may be reasonable while bridge and tunnel improvements may have design lives of

100 or more years. The consideration of longer design lives will require longer analysis periods in LCCA. Analysis periods for projects involving other modes generally should be long enough to cover the full life expectancy of the investment—the time until facilities would have to be reconstructed if initially constructed to an optimum design. These lives would vary according to the modal alternative being examined. Analysis periods for all project alternatives should be the same length.

The inclusion of user costs in LCCA is particularly controversial among some States. Part of the controversy over user costs is the fact that they often are many times higher than agency costs and can critically influence decisions. While all motorists do not value costs of delays as highly as do commercial travelers, the costs and lost productivity to businesses of delays around work zones are simply too high to ignore. In fact, such delays arguably have a greater impact on business than delays associated with inadequate capacity because businesses factor normal congestion costs into their plans, but delays around work zones generally cannot be foreseen and thus are more disruptive. Technical advisories to be developed on estimating user operating and delay costs will address this issue in greater detail.

In addition to increased delay and vehicle operating costs, rehabilitation and maintenance activities may result in increased accident costs around work zones. Technical advisories will be developed to assist in estimating increases in accident rates associated with different types of rehabilitation and maintenance activities. The most comprehensive information on the costs of motor vehicle accidents is contained in the National Highway Traffic Safety Administration's publication, "The Economic Cost of Motor Vehicle Crashes, 1990." A copy of this document is available in the public docket for this notice.

The proper use of the discount rate has been an issue for LCCA, cost-benefit analysis and other types of economic analysis as well. Among the issues are the relationship between the discount rate and inflation, factors that affect the choice of rates, and how to establish rates over a long analysis period. Office of Management and Budget (OMB) Circular A–94, "Guidelines and Discount Rate for Benefit-Cost Analysis of Federal Programs," provides guidance on selecting appropriate discount rates for economic analyses. Since the choice of discount rate can affect relative life-cycle costs, sensitivity analysis may be appropriate if two or more alternatives are close in cost, if streams of costs and benefits among alternatives vary significantly over time, or if the discount rate is outside the range of discount rates recommended by OMB.

The FHWA will develop training and technical assistance materials to address issues in LCCA. These materials should supplement guidance on economic analysis techniques contained in AASHTO's 1977 publication, "A Manual on User Benefit Analysis of Highway and Bus-Transit Improvements,"[1] the "Red Book," in the forthcoming update to that publication which was developed under National Cooperative Highway Research Program Project 7–12, and in other guidance on LCCA issues. While additional materials are being developed, this interim policy statement provides guidance on LCCA principles applicable to highway and structure design.

The FHWA is reviewing its policy on alternative bridge designs (53 FR 21637, June 9, 1988) for consistency with this interim life-cycle cost analysis policy as well as with Executive Order 12893.

Policy

The following is FHWA's LCCA policy for infrastructure investment analyses. It represents good practice that should be followed by States and local transportation agencies in making program and project investment decisions:

1. Life-cycle costs are an important consideration in all highway investment decisions.

2. The level of detail in LCCA should be commensurate with the level of investment involved and the types of alternatives being analyzed. Investments on the NHS generally warrant more detailed analysis than investments on non-NHS routes. Similarly, evaluation of decisions whether to reconstruct or rehabilitate a facility warrants more detailed analysis than consideration of alternative maintenance strategies.

3. Typical life-cycle cost analysis profiles may be developed and used as the basis for evaluating alternatives for general types of improvements, such as, consideration of alternative pavement designs or different types of bridges on various functional class highways. Major programs and projects, however, often will require consideration of a broad range of alternative rehabilitation and reconstruction options and more detailed analysis of potential alternatives. The potential applicability and use of LCCA profiles will be discussed in greater detail in future technical advisories.

4. Other factors, including budgetary, environmental, and safety considerations, legitimately influence highway investment decisions and should be considered along with the results of LCCA in evaluating investment alternatives. Life-cycle cost analysis principles should be used in conjunction with other appropriate economic analysis techniques in pavement and bridge management systems. Systemwide or network objectives as well as project level concerns should be considered in decisionmaking, and both levels of analysis should consider life-cycle costs.

5. Analysis periods should be for the life of the facility or system of facilities being evaluated and should account for costs of foreseeable future actions. Analysis periods should not be less than 75 years for major bridge, tunnel, or hydraulic system investments, and not less than 35 years for pavement investments. Longer design lives may be appropriate for the NHS or other major routes or corridors.

6. All appropriate agency costs anticipated during the analysis period should be considered in the analysis, including traffic control costs during maintenance and rehabilitation, costs of special construction procedures required to maintain traffic, and agency operating costs for such things as tunnel lighting and ventilation. In those cases where the agency required to operate a facility is not the one making the investment decision, it is important for the funding agency to include operating costs borne by other organizations responsible for operating the facilities.

7. User costs including increased vehicle operating costs, accident costs, and delay-related costs incurred throughout the analysis period should be considered in LCCA. Increased costs due to deteriorated riding surfaces, circuitous routings, and accidents and delays around and through maintenance and construction work zones are all important.

8. Future agency and user costs should be discounted to net present value or converted to equivalent uniform annual costs using appropriate discount rates. Discount rates selected should be consistent with guidance provided in OMB Circular A–94.

Technical advisories on these and other technical issues in the application of LCCA will be issued by FHWA in the future.

Issued on: June 30, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–16719 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–22–P

[1] This document is available for inspection as prescribed at 49 CFR Part 7, Appendix D. It may be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 225, Washington DC 20001. A copy also will be available in the public docket for this notice.

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3294

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of controlled signal HIE and the associated traffic control system, on the departure track, between CP 211 and Signal HIE, at East Pocatello, Idaho, milepost 211.0, on the Pocatello Subdivision.

The reason given for the proposed changes is to eliminate delays to yard movements.

BS–AP–No. 3295

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the two main tracks, between milepost 783.6 and milepost 785.4, near Salt Lake City, Utah, on the Salt Lake Subdivision; consisting of the discontinuance and removal of signals 7839, 7844, and 7849.

The reason given for the proposed changes is that the signals are no longer needed and eliminate delays to yard movements.

Technical advisories on these and other technical issues in the application of LCCA will be issued by FHWA in the future.

Issued on: June 30, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–16719 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–22–P

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3294

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of controlled signal HIE and the associated traffic control system, on the departure track, between CP 211 and Signal HIE, at East Pocatello, Idaho, milepost 211.0, on the Pocatello Subdivision.

The reason given for the proposed changes is to eliminate delays to yard movements.

BS–AP–No. 3295

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the two main tracks, between milepost 783.6 and milepost 785.4, near Salt Lake City, Utah, on the Salt Lake Subdivision; consisting of the discontinuance and removal of signals 7839, 7844, and 7849.

The reason given for the proposed changes is that the signals are no longer needed and eliminate delays to yard movements.

BS–AP–No. 3296

Applicant: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202

CSX Transportation, Incorporated (CSX) seeks approval of the proposed modification of the traffic control system, on the two main tracks, at MD Cabin, milepost CD 46.4, near Marion, Ohio, Huntington Division, Columbus Subdivision; consisting of the discontinuance and removal of four controlled signals associated with the retirement of the power-operated turnout connections between the center siding and Track No. 1 at East End MD Cabin and West End MD Cabin.

The reason given for the proposed changes is that the holding signals are no longer needed for present day operation.

BS–AP–No. 3297

Applicant: Southern Pacific Lines, Mr. J.A. Turner, Engineer—Signals Southern Pacific Building, One Market Plaza, San Francisco, California 94105

The Southern Pacific Lines seeks approval of the proposed discontinuance and removal of the electric locks from the hand-operated switches, on the single main track, at Prosser Interlocking, milepost TSP–120.3, near Lufkin, Texas, on the Lufkin District, Gulf Coast Regions.

The reason given for the proposed changes is that the electric locks are no longer needed due to changes in operations and traffic levels.

BS–AP–No. 3298

Applicant: Norfolk Southern Railway Company, Central of Georgia Railroad, Mr. J.W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, S.W., Atlanta, Georgia 30303

The Norfolk Southern Railway Company, Central of Georgia Railroad seeks approval of the proposed discontinuance and removal of Muscogee Junction Interlocking, milepost M288.1 and the automatic block signal system between milepost 289.6 and milepost 287.9, near Columbus, Georgia, on the Alabama Division, Columbus and Norris Yard District.

The reason given for the proposed changes is to improve safety of operations and reduce maintenance costs.

BS–AP–No. 3299

Applicant: CSX Transportation, Inc., Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202

CSX Transportation, Inc. (CSX) seeks approval of the proposed discontinuance and removal of two control signals, on single main track, at South Junta, Georgia, milepost WA 47.1, Atlanta Division, W&A Subdivision.

The reason given for the proposed changes is that the holding signals are no longer needed for present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on July 5, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–16680 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 1, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (USCS)

OMB Number: 1515–0022.

Form Number: CF 4315.
Type of Review: Reinstatement.
Title: Application for Allowance in Duties.
Description: This document is submitted by the importer or his agent when applying for duty allowance due to damaged or defective merchandise.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 12,000.
Estimated Burden Hours Per Recordkeeper: 8 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1,600 hours.
Clearance Officer: LaVerne Williams (202) 927–1555, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 94–16683 Filed 7–8–94; 8:45 am]
BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

July 1, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0085.
Form Number: IRS Form 1040A, Schedule 1 (Form 1040A), Schedule 2 (Form 1040A), Schedule 3 (Form 1040A), and Schedule EIC (Form 1040A)
Type of Review: Revision.
Title: U.S. Individual Income Tax Return.
Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form is correct and are also for statistical use.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 26,544,784.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1040A	Sch. 1 (1040A)	Sch. 2 (1040A)	Sch. 3 (1040A)	Sch. EIC (1040A)
Recordkeeping	1 hr., 3 min	20 min	33 min	13 min	0 min.
Learning about the law or the form.	2 hr., 15 min	4 min	11 min	14 min	2 min.
Preparing the form	2 hr., 52 min	10 min	41 min	28 min	4 min.
Copying, assembling, and sending the form to the IRS.	35 min	20 min	28 min	35 min	20 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 219,904,045 hours.

OMB Number: 1545–0998.
Form Number: IRS Form 8615.
Type of Review: Extension.
Title: Tax for Children Under Age 14 Who Have Investment Income of More Than $1,000.
Description: Under section 1(g) of the Internal Revenue Code, children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to figure the child's tax on his or her unearned income and earned income, if any.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 500,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 minutes.
Learning about the law or the form.	12 minutes.
Preparing the form	45 minutes.
Copy, assembling, and sending the form to the IRS.	17 minutes.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 730,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 94–16684 Filed 7–8–94; 8:45 am]
BILLING CODE 4830–01–P

Sunshine Act Meetin

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 11:00 a.m., Tuesday, July 26, 1994.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule Enforcement Review.
CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,
Deputy Secretary of the Commission.
[FR Doc. 94–16792 Filed 7–7–94; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 10:30 a.m., Tuesday, July 26, 1994.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Quarterly Review.
CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,
Deputy Secretary of the Commission.
[FR Doc. 94–16791 Filed 7–7–94; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 10:00 a.m., Tuesday, July 26, 1994.
PLACE: 2033 K St. NW., Washington, DC, Lower Level Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED: Quarterly review, 3rd quarter FY 1994.
CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,
Deputy Secretary of the Commission.
[FR Doc. 94–16790 Filed 7–7–94; 10:57 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION
TIME AND DATE: 10 a.m. Tuesday, July 19, 1994.
PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.
STATUS: Closed.

Sunshine Act Meetings

Federal Register
Vol. 59, No. 131
Monday, July 11, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, July 26, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 94–16792 Filed 7–7–94; 10:57 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, July 26, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Quarterly Review.

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 94–16791 Filed 7–7–94; 10:57 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 26, 1994.

PLACE: 2033 K St. NW., Washington, DC, Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Quarterly review, 3rd quarter FY 1994.

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 94–16790 Filed 7–7–94; 10:57 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m. Tuesday, July 19, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Lynn K. Gilbert, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 94–16789 Filed 7–7–94; 10:57 am]

BILLING CODE 6351–01–M

LEGAL SERVICES CORPORATION

Audit and Appropriations Committee Meeting Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published July 8, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Audit and Appropriations Committee will be held on July 14–15, 1994. The meeting will commence at 6:00 p.m., on July 14, 1994, and at 9:00 a.m., on July 15, 1994.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: Legal Service Corporation, 750 First Street, N.E., 10th Floor, Office of Program Services Conference Room, Washington, DC 20002, (202) 336–8800.

CHANGES IN THE MEETING: _____.

STATUS OF MEETING: The correct exemptions for closure of that portion of the meeting noticed previously are the Government in the Sunshine Act, 5 U.S.C. Sections 552(b)(4), (6), and (9)(B); and the corresponding regulation of the Legal Services Corporation, 45 C.F.R. Sections 1622.5(c), (e), and (g).

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: July 7, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–16807 Filed 7–7–94; 11:02 am]

BILLING CODE 7050–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Wednesday, July 6, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate and supervisory activities.

Matters relating to the probable failure of certain insured depository institutions.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Ms. Susan F. Krause, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,

Acting Assistant Executive Secretary.

[FR Doc. 94–16833 Filed 7–7–94; 2:00 pm]

BILLING CODE 6714–01–M

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

NOTICE OF PUBLIC MEETING

The Blackstone River Valley National Heritage Corridor Commission will HOLD A PUBLIC MEETING TO solicit comments on the proposed Boundary expansion of the Blackstone River Valley National Heritage Corridor.

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that this meeting will be held. The Commission was established pursuant to Public Law 99–647, in order to establish a management framework to protect, enhance and interpret the nationally significant resources in the Blackstone Valley.

The meeting will be held at Smithfield Town Hall, Smithfield, RI. It will be at 7:00 PM on Thursday, July 21, 1994.

The Public is invited to discuss the boundary expansion at the meeting and/or provide written comments at that time.

James R. Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor.

[FR Doc. 94–16828 Filed 7–7–94; 2:00 pm]

BILLING CODE 4310–70–P

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., July 29, 1994
9:00 a.m. to 12:00 p.m., July 30, 1994

PLACE: Teton Pines, 3450 N. Clubhouse Drive, Jackson, Wyoming 83001.

MATTERS TO BE CONSIDERED: Requests for FY 1994 grants, FY 1995 Grant Guideline, internal Institute business.

PORTIONS OPEN TO THE PUBLIC: Board of Directors' consideration of grant requests, Grant Guideline and non-personnel-related Institute business.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters and Board committee meetings.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 94–16864 Filed 7–7–94; 3:40 pm]

BILLING CODE 6820–SC–M

POSTAL RATE COMMISSION

TIME AND DATE: 2:30 p.m., July 12, 1994.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. R94–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94–16866 Filed 7–7–94; 3:54 pm]

BILLING CODE 7715–01–P

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD23-1-6369; FRL-4893-9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Stage II Vapor Recovery at Gasoline Dispensing Facilities

Correction

In rule document 94-14084, appearing on page 29730, in the issue of June 9, 1994, make the following correction:

In the second column under the **EFFECTIVE DATE:** heading, the date reads June 10, 1994." The date should read "July 11, 1994".

BILLING CODE 1505-01-D

Corrections

Federal Register
Vol. 59, No. 131
Monday, July 11, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD23-1-6369; FRL-4893-9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Stage II Vapor Recovery at Gasoline Dispensing Facilities

Correction

In rule document 94-14084, appearing on page 29730, in the issue of June 9, 1994, make the following correction:

In the second column under the **EFFECTIVE DATE:** heading, the date reads June 10, 1994." The date should read "July 11, 1994".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4887-3]

EPA Region III Comprehensive Environmental Response, Compensation and Liability Act Program; Transfer and Disclosure of Information to Contractors and Subcontractors

Correction

In notice document 94-12773, appearing on page 27013 in the issue of May 25, 1994, make the following correction:

On page 27013, in the third column under the **DATES** heading, "until" was inadvertently omitted from the second sentence. The second sentence should read "Comments concerning CBI access will be accepted until June 24, 1994.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-20308; 812-8878]

Security Equity Fund, et al.; Notice of Application

Correction

In notice document 94-12939 beginning on page 27643 in the issue of Friday, May 27, 1994, make the following correction:

On page 27644, in the first column, before the FR Doc. line insert the following:

Margaret McFarland,
Deputy Secretary.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-166Z; Amdt. No. 172-134]
RIN 2137-AC46

Transportation of Hazardous Materials; Miscellaneous Amendments

Correction

In rule document 94-13138 beginning on page 28487 in the issue of Thursday, June 2, 1994 make the corrections:

§ 172.101 [Corrected]

On page 28492, in the table, in the second column, the second entry should be italized as follows: *Ammonium nitrate fertilizers: uniform non-segregating mixtures of ammonium nitrate with added matter which is inorganic and chemically inert towards ammonium nitrate, with not less than 90% ammounium nitrate and not more than 0.2% combustible material (including organic material calculated as carbon), or the more than 70% but less than 90% ammonium nitrate and not more than 0.4% total combustible material.*

BILLING CODE 1505-01-D

VOL
59
ISS
1
3
1
JUL
11
994
UMI

Federal Register

Monday
July 11, 1994

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1 et al.

Federal Tax Deposits by Electronic Funds Transfer; Temporary Regulation and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 40

[TD 8553]

RIN 1545–AS80

Federal Tax Deposits by Electronic Funds Transfer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the deposit of taxes by electronic funds transfer. The temporary regulations describe the taxpayers that must make deposits by means of electronic funds transfer, the types of taxes that must be so deposited, and when the deposits must commence. The temporary regulations reflect changes to the Internal Revenue Code made by section 523 of the North American Free Trade Agreement Implementation Act (NAFTA). The text of the temporary regulations also serves as the text of the cross-reference notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These temporary regulations are effective July 11, 1994.

For dates of applicability, see § 31.6302–1T(h) of these regulations.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, 202–622–6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 523 of NAFTA amended section 6302 of the Internal Revenue Code of 1986 (Code) by enacting a new subsection (h) authorizing the Secretary of the Treasury to prescribe such regulations as may be necessary for the development and implementation of an electronic funds transfer (EFT) system to be used for the collection of depository taxes. The depository taxes are the taxes required to be deposited with an authorized financial institution or Federal Reserve bank pursuant to any regulations prescribed by the Secretary (generally FICA and railroad retirement taxes, income tax withheld, corporate income and estimated taxes, and various Federal excise taxes). The new system will be designed to ensure that the depository taxes are credited to the Treasury's general account by the due date of the deposit.

Explanation of Provisions

A. Current Tax Deposit System

At present, taxpayers are required to deposit taxes with an authorized government depository (generally, a commercial bank or savings institution or a Federal Reserve bank) by various dates specified in regulations. Each deposit must be accompanied by Form 8109, Federal Tax Deposit Coupon, which contains the taxpayer's name, identification number, the amount and type of tax being deposited, and the tax period for which the deposit is being made. The government depository forwards the coupon to the appropriate IRS Service Center. The Service Center compares the information entered on the coupon with the liabilities reported by the taxpayer on the return for the applicable tax period. The funds are transferred by the depository to the Treasury on the business date following the date of the deposit.

B. An Electronic Tax Deposit System

Section 6302(h) of the Code authorizes a new system which will allow for the transfer of tax deposit amounts electronically from taxpayer accounts to the Treasury's general account. The new system will be phased in over a period of several fiscal years, beginning with fiscal year 1994 (October 1, 1993, to September 30, 1994), by gradually increasing the percentage of the total depository taxes required to be collected by EFT. The temporary regulations implement this phase-in by gradually increasing the number of taxpayers that must deposit all of their depository taxes by EFT.

The requirement to deposit by EFT under these temporary regulations applies only to those taxpayers required to make deposits pursuant to regulations under section 6302 of the Code, and only for those taxes required to be deposited. At present, many small taxpayers are excluded from the various deposit requirements imposed by regulations under section 6302. For example, filers of Form 720, Quarterly Federal Excise Tax Return, are not required to make deposits for any calendar quarter in which the net tax liability reported on the Form 720 does not exceed $2,000. Similarly, filers of Form 941, Employer's Quarterly Federal Tax Return, are not required to make deposits for any calendar quarter in which the liability reported on the Form 941 is less than $500.

The temporary regulations, with one exception, do not apply to taxes with respect to wages for domestic service in the private home of an employer because these taxes are not required to be deposited but are remitted quarterly with Form 942, Employer's Quarterly Federal Tax Return for Household Employees. The sole exception is if the employer is a sole proprietor filing Form 941, Employer's Quarterly Federal Tax Return, who chooses to report wages to household employees on that form.

In order to achieve an expedited and orderly conversion to an EFT system, NAFTA prescribed a schedule of minimum percentages of taxes that must be deposited by EFT during a phase-in period. These percentages depend in part on whether the taxes are: (a) The taxes imposed by chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Tax Act), and 24 (Collection of Income Tax at Source on Wages) of the Code, or (b) "other" depository taxes (generally corporate income taxes and various excise taxes). The statutorily prescribed minimum percentages for each year are as follows:

Fiscal year	Chapter 21, 22, & 24 taxes (percent)	Other taxes (percent)
1994	3	3
1995	16.9	20
1996	20.1	30
1997 & 1998	58.3	60
1999 and later	94	94

For the period prior to January 1, 1995, the first step of the phase-in of the EFT system will be carried out through binding agreements entered into between the Commissioner of Internal Revenue and certain third party bulk data processors (processors) under which the processors have committed to make deposits of Federal depository taxes of certain of their customers by EFT in such a manner as to ensure that the amounts are credited to the general account of the Treasury by the deposit due date. These agreements will take effect beginning in the latter part of fiscal year 1994 and will continue for a period of time into fiscal year 1995. A taxpayer who is a customer of a processor that is a party to one of these agreements may have its deposits that are subject to such an agreement made by the processor pursuant to the terms of the agreement until the expiration or termination of the agreement. However, the taxpayer continues to be responsible for the deposit of those depository taxes that are not subject to such agreement. If a taxpayer whose deposits are being made by a processor pursuant to such an agreement becomes required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h)(1)(ii) of these temporary regulations, the taxpayer is responsible for making deposits by electronic funds transfer of those depository taxes not subject to the agreement.

For periods after December 31, 1994, the temporary regulations require that deposits be made by EFT based on the taxpayer's total deposits of taxes imposed by chapters 21, 22, and 24 during certain "determination" periods. If a taxpayer's total deposits of the taxes imposed by chapters 21, 22, and 24 during the determination period exceed a prescribed dollar threshold, the taxpayer must begin depositing by EFT on and after the applicable effective date prescribed in the regulations, unless otherwise exempted. (A taxpayer will become subject to the EFT requirement for the applicable effective date "January 1, 1996" by exceeding the threshold amount during either calendar years 1993 or 1994). The phase-in schedule is as follows:

Threshold amount	Determination period	Applicable effective date
$78 million	1–1–93 to 12–31–93.	January 1, 1995.
47 million	1–1–93 to 12–31–93.	January 1, 1996.
47 million	1–1–94 to 12–31–94.	January 1, 1996.
50 thousand	1–1–95 to 12–31–95.	January 1, 1997.
50 thousand	1–1–96 to 12–31–96.	January 1, 1998.
20 thousand	1–1–97 to 12–31–97.	January 1, 1999.

The thresholds set forth in this phase-in schedule have been set by taking into account the minimum percentages prescribed by NAFTA, the need for administrative convenience and simplicity, and the potential need for exemptions from the EFT system for certain small businesses. Therefore, the thresholds for the January 1, 1995 and January 1, 1996 effective dates were specifically set to satisfy the statutory minimum percentages. The $50,000 threshold for the January 1, 1997 effective date will result in receipts of depository taxes somewhat in excess of the percentage prescribed by NAFTA. For purposes of administrative convenience and simplicity, this threshold was adopted to require the participation of an entire class of taxpayers, that is, those taxpayers that are classified as "semi-weekly" depositors of employment taxes (the taxes imposed by chapters 21, 22, and 24). Finally, the $20,000 threshold for the January 1, 1999 effective date was set to satisfy the statutory percentage while allowing for the possibility that the smallest of depositors will be exempted from the EFT system. As

deposits by electronic funds transfer of those depository taxes not subject to the agreement.

For periods after December 31, 1994, the temporary regulations require that deposits be made by EFT based on the taxpayer's total deposits of taxes imposed by chapters 21, 22, and 24 during certain "determination" periods. If a taxpayer's total deposits of the taxes imposed by chapters 21, 22, and 24 during the determination period exceed a prescribed dollar threshold, the taxpayer must begin depositing by EFT on and after the applicable effective date prescribed in the regulations, unless otherwise exempted. (A taxpayer will become subject to the EFT requirement for the applicable effective date "January 1, 1996" by exceeding the threshold amount during either calendar years 1993 or 1994). The phase-in schedule is as follows:

Threshold amount	Determination period	Applicable effective date
$78 million	1–1–93 to 12–31–93.	January 1, 1995.
47 million	1–1–93 to 12–31–93.	January 1, 1996.
47 million	1–1–94 to 12–31–94.	January 1, 1996.
50 thousand .	1–1–95 to 12–31–95.	January 1, 1997.
50 thousand .	1–1–96 to 12–31–96.	January 1, 1998.
20 thousand :	1–1–97 to 12–31–97.	January 1, 1999.

The thresholds set forth in this phase-in schedule have been set by taking into account the minimum percentages prescribed by NAFTA, the need for administrative convenience and simplicity, and the potential need for exemptions from the EFT system for certain small businesses. Therefore, the thresholds for the January 1, 1995 and January 1, 1996 effective dates were specifically set to satisfy the statutory minimum percentages. The $50,000 threshold for the January 1, 1997 effective date will result in receipts of depository taxes somewhat in excess of the percentage prescribed by NAFTA. For purposes of administrative convenience and simplicity, this threshold was adopted to require the participation of an entire class of taxpayers, that is, those taxpayers that are classified as "semi-weekly" depositors of employment taxes (the taxes imposed by chapters 21, 22, and 24). Finally, the $20,000 threshold for the January 1, 1999 effective date was set to satisfy the statutory percentage while allowing for the possibility that the smallest of depositors will be exempted from the EFT system. As described in paragraph C of this preamble, the IRS solicits comments on the impact of these regulations on small businesses. Based on those comments, the IRS will determine those categories of small businesses, if any, that should be exempted from the EFT requirements, and may adjust the threshold for the January 1, 1999 effective date to bring in additional taxpayers while at the same time accommodating any appropriate exemptions.

Although only the taxes imposed by chapters 21, 22, and 24 are used to determine whether a taxpayer is subject to the EFT deposit requirement, the requirement, once triggered, applies to all federal taxes (not just the taxes imposed by chapters 21, 22, and 24) that the taxpayer is required to deposit pursuant to regulations prescribed under section 6302 of the Code. Once a taxpayer becomes subject to the EFT deposit requirement, the taxpayer must continue to deposit by EFT.

At present the IRS has in place a voluntary electronic funds transfer (EFT) system in which a taxpayer may by telephone or computer effectuate an electronic funds transfer through the use of one of two payment options: debit and credit. The debit option is effected by using a Financial Agent of the Department of Treasury. The taxpayer requests the Financial Agent to initiate the transfer of funds from the taxpayer's bank account(s) to Treasury's general account and transmit the related tax payment data, supplied by the taxpayer, to the IRS. The credit option is effected by using the taxpayer's financial institution. The taxpayer requests the financial institution to initiate the transfer of funds to the Treasury's general account and submit the related tax data, supplied by the taxpayer, to a Financial Agent for transmission to the IRS. The EFT system required to be used in connection with these regulations will employ similar options and procedures.

C. Exemptions

Section 6302(h)(1)(B) of the Code, as added by NAFTA, provides that the regulations may contain such exemptions as the Secretary may deem appropriate. The Senate Report accompanying section 6302(h) strongly encourages the Secretary of the Treasury to consider the impact of the regulations on small businesses. S. Rep. No. 103–189, 103d Cong., 1st Sess., at 61 et. seq. (1993). The report recommends that the regulations should not create hardships for small businesses and that no small business should be required to purchase computers or gain access to any electronic equipment other than a touch-tone telephone. Further, the report urges the Secretary to take into account the specific needs of small employers, including possible exemption for the very smallest businesses from the new electronic funds transfer system. The phase-in schedule included in the temporary regulations defers use of the EFT system by the smallest businesses until at least calendar year 2000. The IRS welcomes comments about the impact of the temporary regulations on small businesses and will consider any suggestions regarding how small businesses should be treated under the regulations in order to implement Congressional intent. Based on the comments and suggestions received, the IRS will determine those categories of small businesses, if any, that should be exempted from the EFT requirements and publish such determinations in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(*b*)).

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 40 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Sections 1.6302–1T, 1.6302–2T and 1.6302–3T also issued under 26 U.S.C. 6302(h). * * *

Par. 2. Section 1.6302–1T is added to read as follows:

§ 1.6302–1T Use of Government depositaries in connection with corporation income and estimated income taxes and certain taxes of tax-exempt organizations—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (b)(1) [Reserved].

(b)(2) *Deposits by electronic funds transfer.* For the requirement to deposit corporation income and estimated income taxes and certain taxes of tax-exempt organizations by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 1.6302–1(b).

Par. 3. Section 1.6302–2T is added to read as follows:

§ 1.6302–2T Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (b) [Reserved].

(c) *Deposits by electronic funds transfer.* For the requirement to deposit taxes withheld on nonresident aliens and foreign corporations by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 1.6302–2(b).

Par. 4. Section 1.6302–3T is added to read as follows:

§ 1.6302–3T Use of Government depositaries in connection with estimated taxes of certain trusts—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (b) [Reserved].

(c) *Cross-references.* For further guidance and instructions for certain banks and financial institutions acting as fiduciaries with respect to taxable trusts, see Revenue Procedure 89–49, 1989–2 C.B. 615 (see § 601.601(d)(2) of this chapter) or any successor revenue procedure. For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see § 31.6302–1T(h) of this chapter.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 5. The authority citation for part 31 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 31.6302–1T also issued under 26 U.S.C. 6302(h). * * *

Section 31.6302(c)–3T also issued under 26 U.S.C. 6302(h). * * *

Par. 6. Section 31.6302–1T is added to read as follows:

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA)—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (g) [Reserved].

(h) *Time and manner of deposit—deposits required to be made by electronic funds transfer*—(1) *In general.* Section 6302(h) of the Internal Revenue Code requires the Secretary to prescribe regulations as may be necessary for the development and implementation of an electronic funds transfer system to be used for the collection of depository taxes as described in paragraph (h)(2) of this section. Section 6302(h)(2) of the Code provides a phase-in schedule which sets forth escalating minimum percentages of those depository taxes to be deposited by electronic funds transfer, starting with the fiscal year beginning October 1, 1993, and ending September 30, 1994. This section prescribes the rules necessary for implementing an electronic funds transfer system for collection of depository taxes and for effecting an orderly and expeditious phase-in of that system.

(i) *Period prior to January 1, 1995.* The Commissioner of Internal Revenue has entered into binding agreements with third party bulk data processors. These agreements require that the third party bulk processors deposit certain depository taxes of certain of their customers by electronic funds transfer in a manner designed to ensure that those amounts are credited to the general account of the Treasury by the deposit due date. A taxpayer who is a customer of a third party bulk data processor that is a party to such an agreement may have its deposits that are subject to such agreement made by the processor until the expiration or termination of the agreement. However, the taxpayer continues to be responsible for the deposit of those depository taxes that are not subject to such agreement.

(ii) *Periods after December 31, 1994.* (A) Taxpayers whose aggregate deposits of the taxes imposed by Chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Tax Act), and 24 (Collection of Income Tax at Source on Wages) of the Internal Revenue Code during a 12-month determination period exceed the applicable threshold amount are required to deposit all depository taxes (as described in paragraph (h)(2) of this section) due on and after the applicable effective date by electronic funds transfer (as defined in paragraph (h)(3) of this section) unless exempted under paragraph (h)(4) of this section. In general, each applicable effective date has one 12-month determination period. However, for the applicable effective date January 1, 1996, there are two determination periods. If the applicable threshold amount is exceeded in either of those determination periods, the taxpayer becomes subject to the requirement to deposit by electronic funds transfer, effective January 1, 1996. The threshold amounts, determination periods, and applicable effective dates are as follows:

Threshold amount	Determination period	Applicable effective date
$78 million	1–1–93 to 12–31–93	January 1, 1995.
47 million	1–1–93 to 12–31–93	January 1, 1996.
47 million	1–1–94 to 12–31–94	January 1, 1996.
50 thousand	1–1–95 to 12–31–95	January 1, 1997.
50 thousand	1–1–96 to 12–31–96	January 1, 1998.
20 thousand	1–1–97 to 12–31–97	January 1, 1999.

(B) Once a taxpayer is required to deposit by electronic funds transfer pursuant to paragraph (h)(1)(ii) of this section, the taxpayer will continue to deposit by electronic funds transfer. Until such time as a taxpayer is required by this section to deposit by electronic funds transfer, the taxpayer may voluntarily make deposits by electronic funds transfer, or must make deposits following the rules of § 31.6302–1(h), pertaining to deposits by Federal tax deposit (FTD) coupon.

(C) Any taxpayer whose deposits are being made by a third party bulk data processor pursuant to an agreement described in paragraph (h)(1)(i) of this section, and who is required to deposit by electronic funds transfer pursuant to this paragraph (h)(1)(ii), may have its deposits that are subject to such agreement made by the third party bulk data processor until the expiration or termination of the agreement. The taxpayer, however, is responsible for making deposits by electronic funds transfer of those depository taxes not subject to such agreement.

(2) *Taxes required to be deposited by electronic funds transfer.* Any taxpayer who is required under paragraph (h)(1)(ii) of this section to deposit by electronic funds transfer the taxes imposed by chapters 21, 22, and 24 of the Internal Revenue Code must also deposit by electronic funds transfer, beginning with the same applicable effective date, the taxes required to be deposited under §§ 1.6302–1, 1.6302–2, 1.6302–3 of this chapter, 31.6302(c)–3, and 40.6302(c)–1 of this chapter.

(3) *Electronic funds transfer defined.* For purposes of this section, an *electronic funds transfer* is any transfer of depository taxes made in accordance with Revenue Procedure 94–48, 1994–29 I.R.B. (see § 601.601(d)(2) of this chapter), or in accordance with procedures subsequently published by the Commissioner.

(4) *Exemptions.* The Commissioner of Internal Revenue will identify by

(B) Once a taxpayer is required to deposit by electronic funds transfer pursuant to paragraph (h)(1)(ii) of this section, the taxpayer will continue to deposit by electronic funds transfer. Until such time as a taxpayer is required by this section to deposit by electronic funds transfer, the taxpayer may voluntarily make deposits by electronic funds transfer, or must make deposits following the rules of § 31.6302–1(h), pertaining to deposits by Federal tax deposit (FTD) coupon.

(C) Any taxpayer whose deposits are being made by a third party bulk data processor pursuant to an agreement described in paragraph (h)(1)(i) of this section, and who is required to deposit by electronic funds transfer pursuant to this paragraph (h)(1)(ii), may have its deposits that are subject to such agreement made by the third party bulk data processor until the expiration or termination of the agreement. The taxpayer, however, is responsible for making deposits by electronic funds transfer of those depository taxes not subject to such agreement.

(2) *Taxes required to be deposited by electronic funds transfer.* Any taxpayer who is required under paragraph (h)(1)(ii) of this section to deposit by electronic funds transfer the taxes imposed by chapters 21, 22, and 24 of the Internal Revenue Code must also deposit by electronic funds transfer, beginning with the same applicable effective date, the taxes required to be deposited under §§ 1.6302–1, 1.6302–2, 1.6302–3 of this chapter, 31.6302(c)–3, and 40.6302(c)–1 of this chapter.

(3) *Electronic funds transfer defined.* For purposes of this section, an *electronic funds transfer* is any transfer of depository taxes made in accordance with Revenue Procedure 94–48, 1994–29 I.R.B. (see § 601.601(d)(2) of this chapter), or in accordance with procedures subsequently published by the Commissioner.

(4) *Exemptions.* The Commissioner of Internal Revenue will identify by guidance published in the Internal Revenue Bulletin those categories of taxpayers, if any, that are to be exempted from the requirement to deposit by electronic funds transfer. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

(5) *Separation of deposits.* A deposit for one return period must be made separately from a deposit for another return period.

(6) *Payment of balance due.* If the aggregate amount of taxes reportable on the applicable tax return for the return period exceeds the total amount deposited by the taxpayer with regard to the return period, then the balance due must be remitted in accordance with the applicable form and instructions.

(7) *Time deemed deposited.* A deposit by electronic funds transfer will be deemed made—

(i) At the time a debit is made (the amount is withdrawn from the taxpayer's account) if the Government's authorized financial agent debits the taxpayer's account; or

(ii) In all other cases, at the time the funds are credited to Treasury's general account.

(8) *Time deemed paid.* In general, amounts deposited under this paragraph (h) will be considered paid at the time deemed deposited under paragraph (h)(7) of this section, or on the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), whichever is later. In the case of the taxes imposed by chapters 21 and 24 of the Internal Revenue Code, for purposes of section 6511 and the regulations thereunder (relating to the period of limitation on credit or refund), if an amount is deposited prior to April 15th of the calendar year immediately succeeding the calendar year that includes the period for which the amount was deposited, the amount will be considered paid on April 15th.

Par. 7. Section 31.6302(c)–3T is added to read as follows:

§ 31.6302(c)–3T Use of Government depositaries in connection with tax under the Federal Unemployment Tax Act—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (b) [Reserved].

(c) *Manner of deposit—deposits required to be made by electronic funds transfer.* For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see § 31.6302–1T(h). A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) remains subject to the rules of § 31.6302(c)–3(b).

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Par. 8. The authority citation for part 40 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 40.6302(c)–1T also issued under 26 U.S.C. 6302 (a) and (h). * * *

Par. 9. Section 40.6302(c)–1T is added to read as follows:

§ 40.6302(c)–1T Use of Government depositaries—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

(a) through (d)(1) [Reserved].

(d)(2) *Deposits by electronic funds transfer.* For the requirement to deposit excise taxes by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 40.6302(c)–1(d).

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: June 27, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–16477 Filed 7–6–94; 1:01 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31 and 40

[IA–03–94]

RIN 1545–AS79

Federal Tax Deposits by Electronic Funds Transfer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance relating to the deposit of taxes by electronic funds transfer under section 6302(h) of the Internal Revenue Code. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by September 12, 1994. Outlines of topics to be discussed at the public hearing scheduled for October 3, 1994, beginning at 10:00 a.m. must be received by September 12, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IA–03–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (IA–03–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. The public hearing will be held in the IRS Auditorium.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Vincent G. Surabian, 202–622–6232 (not a toll-free number). Concerning submissions and the public hearing, Michael Slaughter 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 8553) published in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR part 1), the Regulations on Employment Taxes and Collection of Income Tax at the Source (26 CFR part 31), and the Excise Tax Procedural Regulations (26 CFR part 40). These amendments relate to the deposits of taxes by electronic funds transfer. The final regulations that will result from the regulations proposed in this notice would be based on the text of the temporary regulations and would provide rules for the gradual phase-in of the requirement for taxpayers to deposit certain taxes by electronic funds transfer.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these rules and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 3, 1994, beginning at 10:00 a.m. at the IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by September 12, 1994, and submit an outline of the topics to be discussed and the time to be devoted to each topic by September 12, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving comments has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31 and 40 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry "Section 1.6302–1(a)" and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6302–1 also issued under 26 U.S.C. 6302 (c) and (h).

Sections 1.6302–2 and 1.6302–3 also issued under 26 U.S.C. 6302(h). * * *

Par. 2. Section 1.6302–1 is amended as follows:

1. The heading for paragraph (b) is revised.

2. The text of paragraph (b) is redesignated paragraph (b)(1) and a heading for (b)(1) is added.

3. Paragraph (b)(2) is added.

4. The revised and added provisions read as follows:

§ 1.6302–1 Use of Government depositaries in connection with corporation income and estimated income taxes and certain taxes of tax-exempt organizations.

* * * * *

(b) *Manner of deposit*—(1) *Deposit by Federal tax deposit coupon.* * * *

(2) *Deposit by electronic funds transfer.* For the requirement to deposit corporation income and estimated income taxes and certain taxes of tax-exempt organizations by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 1.6302–(b)(1).

* * * * *

Par. 3. Section 1.6302–2 is amended as follows:

1. The heading for paragraph (b) is revised.

2. Paragraph (c) is redesignated paragraph (b)(6).

3. A new paragraph (c) is added.

4. The revised and added provisions read as follows:

§ 1.6302–2 Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations.

* * * * *

(b) *Deposits by Federal tax deposit coupon.* * * *

(c) *Deposits by electronic funds transfer.* For the requirement to deposit taxes withheld on nonresident aliens and foreign corporations by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 1.6302–2(b).

* * * * *

Par. 4. In § 1.6302–3, paragraph (c) is revised to read as follows:

§ 1.6302–3 Use of Government depositaries in connection with estimated taxes of certain trusts.

* * * * *

(c) *Cross-references.* For further guidance and instructions for certain banks and financial institutions acting as fiduciaries with respect to taxable trusts, see Revenue Procedure 89–49, 1989–2 C.B. 615 (see § 601.601(d)(2) of this chapter) or any successor revenue procedure. For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see § 31.6302–1T(h) of this chapter.

pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 1.6302–(b)(1).

* * * * *

Par. 3. Section 1.6302–2 is amended as follows:

1. The heading for paragraph (b) is revised.

2. Paragraph (c) is redesignated paragraph (b)(6).

3. A new paragraph (c) is added.

4. The revised and added provisions read as follows:

§ 1.6302–2 Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations.

* * * * *

(b) *Deposits by Federal tax deposit coupon.* * * *

(c) *Deposits by electronic funds transfer.* For the requirement to deposit taxes withheld on nonresident aliens and foreign corporations by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 1.6302–2(b).

* * * * *

Par. 4. In § 1.6302–3, paragraph (c) is revised to read as follows:

§ 1.6302–3 Use of Government depositaries in connection with estimated taxes of certain trusts.

* * * * *

(c) *Cross-references.* For further guidance and instructions for certain banks and financial institutions acting as fiduciaries with respect to taxable trusts, see Revenue Procedure 89–49, 1989–2 C.B. 615 (see § 601.601(d)(2) of this chapter) or any successor revenue procedure. For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see § 31.6302–1T(h) of this chapter.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 5. The authority citation for part 31 is amended by removing the entry "Sections 31.6302–1 through 31.6302–3" and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 31.6302–1 through 31.6302–3 also issued under 26 U.S.C. 6302(a), (c) and (h). * * *

Section 31.6302(c)–3 also issued under 26 U.S.C. 6302(h).

Par. 6. In § 31.6302–1, paragraph (h) is redesignated paragraph (i) and new paragraph (h) is added to read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

[The text of proposed paragraph (h) is the same as the text of § 31.6302–1T(h) published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 31.6302(c)–3 is amended as follows:

1. The heading for paragraph (b) is revised.

2. Paragraph (c) is revised.

3. Paragraph (d) is added.

4. The revised and added provisions read as follows:

§ 31.6302(c)–3 Use of Government depositaries in connection with tax under the Federal Unemployment Tax Act.

* * * * *

(b) *Manner of deposit—deposits required to be made by Federal tax deposit (FTD) coupon.* * * *

(c) *Manner of deposit—deposits required to be made by electronic funds transfer.* For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see § 31.6302–1T(h). A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) remains subject to the rules of § 31.6302(c)–3(b).

(d) *Effective date.* The provisions of paragraphs (a) and (b) of this section apply with respect to calendar quarters beginning after December 31, 1969. The provisions of paragraph (c) of this section apply with respect to calendar quarters beginning on or after January 1, 1995.

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Par. 8. The authority citation for part 40 is amended by removing the entry "Sections 40.6302(c)–1, 40.6302(c)–2, 40.6302(c)–3 and 40.6302(c)–4" and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 40.6302(c)–1 also issued under 26 U.S.C. 6302 (a) and (h).

Sections 40.6302(c)–2, 40.6302(c)–3 and 40.6302(c)–4 also issued under 26 U.S.C. 6302(a).

Par. 9. Section 40.6302(c)–1 is amended as follows:

1. The text of paragraph (d) is redesignated paragraph (d)(1) and a paragraph heading is added for (d)(1).

2. Paragraph (d)(2) is added.

3. The added provisions read as follows:

§ 40.6302(c)–1 Use of Government depositaries.

* * * * *

(d) *Remittance of deposits—*(1) *Deposits by Federal tax deposit coupon* * * *

(2) *Deposits by electronic funds transfer.* For the requirement to deposit excise taxes by electronic funds transfer, see § 31.6302–1T(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302–1T(h) of this chapter remains subject to the rules of § 40.6302(c)–1(d)(1).

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 94–16478 Filed 7–6–94; 1:01 pm]

BILLING CODE 4830–01–U

VOL
5 9
ISS
1
3
1
JL
1 1
1 1
994
IMI

federal reserve

Federal Register

Monday
July 11, 1994

Part III

Department of Agriculture

Cooperative State Research Service

National Competitive Research Initiative Grants Program (Competitive Research Grants Program) Fiscal Year 1994: Supplementary Solicitation for Applications; Solar Ultraviolet Radiation Monitoring; Notice

VOL 59 ISS 131 JL 11 994 UMI

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Competitive Research Initiative Grants Program (Competitive Research Grants Program) Fiscal Year 1994: Supplementary Solicitation for Applications; Solar Ultraviolet Radiation Monitoring

Applications are invited for competitive grant awards in agricultural, forest, and related environmental sciences under the National Competitive Research Initiative Grants Program (NCRIGP) administered by the Office of Grants and Program Systems, Cooperative State Research Service (CSRS), for fiscal year 1994. This solicitation is supplementary to those previously released in the **Federal Register** on September 7, 1993 (58 FR 47184) and on October 8, 1993 (58 FR 52570).

Authority

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture (USDA). Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Pursuant to Section 719 of Public Law No. 103–111, (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994), funds available in Fiscal Year 1994 to pay indirect costs on research grants awarded competitively by CSRS may not exceed 14 per centum of the total Federal funds provided under each award.

In addition, pursuant to Section 727 (b) of Public Law No. 103–111, in case any equipment or products may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations and Statutory Guidance

Regulations applicable to this program include, but are not limited to, the following: (a) the regulations governing the NCRIGP, 7 CFR Part 3200, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR Part 3016; (d) Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), which sets forth purposes that research supported by the NCRIGP should address; and (e) Section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3103), which defines "sustainable agriculture."

RESEARCH PROGRAM TO BE SUPPORTED (Supplementary to those published in the September 7, 1993 **Federal Register** (58 FR 47184) and in the October 8, 1993 **Federal Register** (58 FR 52570)):

CSRS is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following Research Program:

Solar Ultraviolet Radiation Monitoring

The total amount available in fiscal year 1994 for grant awards in the research program area of Solar Ultraviolet Radiation Monitoring is approximately $800,000.

The National Research Initiative Competitive Grants Program, in addition to providing support for research on biological response to predicted effects of stratospheric ozone depletion, invited applications in 1991 for development of instrumentation for a solar ultraviolet radiation monitoring network. Based on the results now available from that earlier activity, the Department desires to support continued development of high quality spectroradiometers for measurements of ultraviolet-B radiation and utilization of the spectroradiometers in research to accurately determine ultraviolet-B radiation at ground level. Such information will more accurately document levels of UV radiation reaching the Earth's surface. Such knowledge is needed in order to develop an understanding of the response of living systems to current conditions, to forecast future effects, and to develop response strategies for mitigating effects resulting from any future increases in UV radiation. The following specific program area and guidelines are provided as a base from which proposals may be developed.

Proposals developed for the Solar Ultraviolet Radiation Monitoring program should include field instrumentation for high quality spectral irradiance measurements and a research plan for data collection, analysis, and use. Emphasis should be placed on the following instrumentation specifications and operating protocols:

General: The instrument should measure the global horizontal terrestrial solar UV–B spectral irradiance over the spectral wavelength region from 280–400 nm. Overall network radiometric uncertainty should be no more than 10% (3 sigma) at 295 nm decreasing to less than 5% (3 sigma) at 340 nm. These and following specifications are applicable over the ambient range of temperature, humidity, and pressure found in northern temperate latitudes.

Wavelength range: 280–400 nm.

Dynamic range: Spectral irradiance measurements are to be made over a maximum solar signal of 1.0 W/m^2 nm at 400 nm decreasing to less than 10^{-6} W/m^2 nm at 290 nm.

Accuracy and precision: Instruments must maintain their calibration in the field without shelter up to 40° Celsius for a month time period.

Wavelength:

a. Resolution of wavelength setting (smallest setable difference): ±0.02 nm;

b. Repeatability: ±0.02 nm;

c. Accuracy: ±0.02 nm;

d. Bandpass: <=0.3 nm;

e. Straylight: < 10^{-8} at greater than +5 bandwidths from center wavelength.

Intensity:

a. Resolution: is to be 0.001 of full scale from all decade ranges from 1 to 1×10^{-5} W/m^2 nm and 2×10^{-8} W/m^2 nm for ranges less than or equal to 1×10^{-6}.

b. Repeatability: must be within 0.2% of the decade range value.

c. Accuracy: instrument shall hold a calibration to an accuracy of ± 1% of signal level between 1.0 W/m^2 nm and 10^{-6} W/m^2 nm.

Finally, instrument calibration and characterization with regard to the criteria specified herein, and standardization among the several instruments, is considered critical. The research plan should give consideration to data collection, storage, retrieval, processing, and statistical analysis. It is expected that these data will be handled in a manner appropriate for use by the U.S. and international scientific communities; for support of atmospheric science research; model development and validation; and documentation of UV–B climatology

In accordance with Section 2(b)(7) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)), funds will not be awarded for the planning, repair, rehabilitation or acquisition, or construction of a building or facility or purchase or installation of fixed equipment.

Proposals are invited from investigator(s) at a single or multiple institutions with the proper competence and facilities to accomplish the objectives.

Investigators are encouraged to contact the Program Director at 202–401–4871 prior to developing a proposal for this program.

When to Submit

To be considered for funding during fiscal year 1994, proposals submitted in

In accordance with Section 2(b)(7) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)), funds will not be awarded for the planning, repair, rehabilitation or acquisition, or construction of a building or facility or purchase or installation of fixed equipment.

Proposals are invited from investigator(s) at a single or multiple institutions with the proper competence and facilities to accomplish the objectives.

Investigators are encouraged to contact the Program Director at 202–401–4871 prior to developing a proposal for this program.

When to Submit

To be considered for funding during fiscal year 1994, proposals submitted in response to this announcement must be postmarked by August 15, 1994. It is preferable that proposals be submitted via Express Mail or overnight courier to assure their prompt receipt. The bill of lading for such submissions must be dated no later than the above postmark date.

Where to Obtain Additional Materials

The solicitation, which contains Research Program descriptions and detailed instructions on how to apply, may be obtained by contacting the office indicated below. Please note that Part 1 of the Program Description is necessary for preparing a proposal. If you do not already have Part 1, please request that document as well.

NRICGP, c/o Proposal Services Branch
AMD/CSRS/USDA, Room 303
Aerospace Center, AG BOX 2245,
Washington, DC 20250–2245,
Telephone: (202) 401–5048

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail), phone number, and list of materials that you are requesting to psb@csrs.esusda.gov. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Done at Washington, DC, this 5th day of July 1994.

William D. Carlson,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 94–16689 Filed 7–8–94; 8:45 am]

BILLING CODE 3410–22–M

VOL
5 9
ISS
1
3
1
JL
11
994
MI

federal register

federal register

Monday
July 11, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Notice of Fund Availability for the Rental Voucher Program and Rental Certificate Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3789; FR–3705–N–01]

NOFA for the Rental Voucher Program and Rental Certificate Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability for FY 1994 and procedures for allocating funds and approving housing agency applications.

SUMMARY: The purpose of the Rental Voucher and the Rental Certificate Programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing. This notice states the fund allocation available for award of "fair share" rental vouchers and rental certificates. The notice identifies the amount of housing assistance budget authority available for each allocation area and HUD State or Area Office jurisdiction during Fiscal Year 1994.

This notice also:

(1) Invites Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs), herein referred to as housing agencies (HAs), to submit applications for housing assistance funds;

(2) Provides instructions to HAs governing the submission of applications; and

(3) Describes procedures for rating, ranking, and approving HA applications.

DATES: Applications for all funding under this NOFA must be received in the HUD State or Area Office/Native American Programs Office by 3:00 p.m. local time (i.e., time at the office where the application is submitted) on August 25, 1994.

ADDRESSES: The basic application, Form HUD–52515, and all other necessary application materials may be obtained from, and completed applications are to be submitted to, the appropriate HUD State or Area Office/Native American Programs Office for the jurisdiction in which the applicant is located (see Section II, Application Processing, of the NOFA).

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Room 4220, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2577–0169.

I. Purpose and Substantive Description

A. Authority

The regulations governing the Rental Certificate and the Rental Voucher Programs are published at 24 CFR parts 882 and 887, respectively. The regulations for allocating housing assistance budget authority under section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, subpart D.

B. Allocation Amounts

(1) Housing Needs Formula

In this fiscal year, approximately $975 million of budget authority for the rental voucher and certificate programs is available for fair share formula allocation. (This amount may be reduced by up to $100 million (or some other amount) to increase the level of funding for litigation or desegregation.) This funding will support additional units for HA rental voucher and rental certificate programs. Of this amount, approximately $624 million is for rental vouchers and approximately $351 million is for rental certificates. This budget authority is being allocated to HUD State or Area Office and allocation areas under this NOFA, using the housing needs factors established in accordance with 24 CFR 791.402. For purposes of this NOFA, the Department is using the metropolitan area designations that were in effect prior to December 31, 1992, since detailed census data tabulations for the new metropolitan area designations are not available, yet. In addition, $51.3 million is retained in a Headquarters Reserve which will not be allocated by formula.

(2) Metropolitan/Non-Metropolitan Mix

Separate housing needs factors were developed for the metropolitan and non-metropolitan allocation areas within each HUD State or Area Office jurisdiction. On a nationwide basis, approximately 90 percent of the Fiscal Year 1994 "fair share" budget authority for the Rental Voucher Program and Rental Certificate Program is designated for metropolitan areas. The metropolitan housing needs factors were applied to the housing assistance budget authority available for use in metropolitan areas and the non-metropolitan housing needs factors were applied to the housing assistance budget authority available for use in non-metropolitan areas.

The allocation areas were established by the HUD field offices to ensure sufficient competition among HAs (including State and regional or multi-county HAs) operating housing programs within the HUD-established allocation areas.

(3) Program Type

This notice announces the fair share allocation of housing assistance budget authority (See Attachment 1) for the Rental Voucher Program and for the Rental Certificate Program to each HUD State or Area Office for designated allocation areas, based on the housing needs factors. The allocation of housing assistance budget authority to each allocation area, however, is the total for both programs. The allocations have been structured to give HUD State or Area Offices flexibility in approving HA applications for the rental voucher program or the rental certificate program. It is not necessary that each allocation area within a HUD State or Area Office jurisdiction be provided both rental vouchers and rental certificates. This notice also provides, for each allocation area, an estimate of the total number of rental vouchers and rental certificates that could be funded from the housing assistance available in the allocation area. These estimates are based on the average fair market rents for two-bedroom units in the HUD State or Area Office's jurisdiction. The actual number of units assisted will vary from these estimates in the actual bedroom size mix that is funded in a given area.

(4) Potential Additional Funding

If additional rental voucher or rental certificate funding becomes available for incremental use during Fiscal Year 1994, the Department plans to distribute any additional funding to HUD State or Area Offices using the same percentage distribution as reflected in Attachment 1 to this NOFA. Any additional funding will be used under the competitive requirements of this NOFA to fund HA applications which were approvable but not funded, or approved and funded at less than 100 percent of the requested amount.

C. Family Self-Sufficiency Program

Unless specifically exempted by HUD, any rental voucher or rental certificate funding reserved in FY 94 (except funding for renewals or amendments) will be used to establish the minimum size of a PHA's FSS program.

D. HA Eligibility

All HAs are invited by this notice to submit applications for the incremental funding for the Rental Voucher Program (24 CFR part 887) and the Rental Certificate Program (24 CFR part 882).

II. Application Process

A. Application Requirements

All the items in Section III of this NOFA must be included in the application submitted to the HUD State or Area Office/Native American Programs Office. The application may include an explanation of how the application meets, or will meet, the selection criteria listed in this NOFA. The maximum point total available under the selection criteria in this NOFA is 95.

B. Selection Criteria/Rating Factors

(1) Selection Criterion 1

HA Administrative Capability (40 points).

(a) Description: Overall HA administrative capability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs is either excellent or good. Administrative Capability is evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), compliance with the portability requirements for rental vouchers and rental certificates, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, timely submission of budgets and financial statements, and rent reasonableness requirements. For purposes of this NOFA, an HA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, HUD will rate HA administration of the Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, Moderate Rehabilitation, Public Housing or Indian Housing Program, HUD will assess the administrative capability of the HA based on such factors as experience of staff, support of the HA by the local government, and the HA's administrative experience with non-HUD housing programs.

funding reserved in FY 94 (except funding for renewals or amendments); will be used to establish the minimum size of a PHA's FSS program.

D. HA Eligibility

All HAs are invited by this notice to submit applications for the incremental funding for the Rental Voucher Program (24 CFR part 887) and the Rental Certificate Program (24 CFR part 882).

II. Application Process

A. Application Requirements

All the items in Section III of this NOFA must be included in the application submitted to the HUD State or Area Office/Native American Programs Office. The application may include an explanation of how the application meets, or will meet, the selection criteria listed in this NOFA. The maximum point total available under the selection criteria in this NOFA is 95.

B. Selection Criteria/Rating Factors

(1) Selection Criterion 1:

HA Administrative Capability (40 points).

(a) Description: Overall HA administrative capability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs is either excellent or good. Administrative Capability is evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), compliance with the portability requirements for rental vouchers and rental certificates, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, timely submission of budgets and financial statements, and rent reasonableness requirements. For purposes of this NOFA, an HA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program; HUD will rate HA administration of the Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, Moderate Rehabilitation, Public Housing or Indian Housing Program, HUD will assess the administrative capability of the HA based on such factors as experience of staff, support of the HA by the local government, and the HA's administrative experience with non-HUD housing programs.

(b) Rating and Assessment:

(i) HUD review of HA Operations:

- 8 Points—Assign 8 points if HA has no review findings outstanding, or all review findings have been corrected, for HUD HA management reviews, Fair Housing & Equal Opportunity reviews, or Inspector General audits as of the deadline date for submission of applications under this NOFA.
- 5 Points—Assign 5 points if HA has less than five review findings outstanding and all findings are being addressed.
- 2 Points—Assign 2 points if HA has five or more review findings outstanding and all findings are being addressed.
- 0 Points—Assign 0 points if HA has any review findings outstanding and the findings are not being addressed.

(ii) Compliance with Section 8 Portability rules:

- 8 Points—Assign 8 points if HA is in compliance with all provisions of the portability rules.
- 5 Points—Assign 5 points if HA is in general compliance with portability rules, but has some minor compliance issues.
- 2 Points—Assign 2 points if HA has some major compliance issues under portability which are being addressed.
- 0 Points—Assign 0 points if HA is not in compliance with portability rules and issues are not being addressed.

(iii) Housing Quality Standards (HQS) Inspections:

- 8 Points—Assign 8 points if HA had more than 95% of its units pass HQS inspections by HUD at the last review or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 95% or more.
- 6 Points—Assign 6 points if HA had more than 90% of its units pass HQS inspections by HUD at the last review, or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 90% or more.
- 4 Points—Assign 4 points if HA had more than 85% of its units pass HQS inspections by HUD at the last review, or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 85% or more.
- 2 Points—Assign 2 points if HA had more than 80% of its units pass HQS inspections by HUD at the last review, or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 80% or more.
- 0 Points—Assign 0 points if HA had 80% or less of its units pass HQS inspections by HUD at the last review and HUD is not aware of actions taken by the HA to improve the number of units that pass HQS inspections to 80% or more.

(iv) Percentage of Units Leased as of September 30, 1993. HUD staff should use the percentage of units under ACC for a period of one year for the tenant-based rental assistance programs administered by an HA. HUD may use a report on leasing for another period if the September 30, 1993, report is not reflective of HA performance.

- 8 Points—Assign 8 points if HA had 98% or more of its rental certificates and rental vouchers under lease.
- 6 Points—Assign 6 points if HA had 96% or more of its rental certificates and rental vouchers under lease.
- 4 Points—Assign 4 points if HA had 94% or more of its rental certificates and rental vouchers under lease.
- 2 Points—Assign 2 points if HA had 90% or more of its rental certificates and rental vouchers under lease.
- 0 Points—Assign 0 points if HA had less than 90% of its rental certificates and rental vouchers under lease.

(v) Timely Submission of HA Budget and Financial Statements to HUD.

- 8 Points—Assign 8 points if the HA submitted both its most recent fiscal year Section 8 budget at least 30 days prior to the start of the HA fiscal year and its year-end Section 8 annual financial statements within the required 45 days of the end of the HA's fiscal year.
- 4 Points—Assign 4 points if the HA submitted either its most recent fiscal year budget at least 30 days prior to the start of the HA's fiscal year or its year-end Section 8 annual financial statements within the required 45 days of the end of the HA fiscal year.
- 0 Points—Assign 0 points if the HA is unable to document the timely submission of the budget and financial statements.

(2) Selection Criterion 2: Underfunding of Housing Needs (45 points):

(a) Description: The degree to which the housing needs of the primary area specified in the HA's application from which the HA draws families to assist (primary area) have previously been underfunded, relative to the needs of other localities within the same allocation area, taking into account such factors as the number of assisted housing units and the number of very low-income renter households with housing problems, eligible for such assistance. The HUD State or Area Office/Native American Programs Office will, wherever practicable, consider needs being met by all Federally assisted rental housing programs, including the FmHA Section 515 Rural Rental Housing program, but will, as a minimum, consider assistance provided under the Rental Voucher Program, the

Rental Certificate Program, other Section 8 Programs, and the Public or Indian Housing Program.

In accordance with Notice PIH 91–45 (HUD), the HUD State or Area Office/ Native American Programs Office will notify FmHA of applications it receives and ask that FmHA provide advisory comments concerning the market for additional assisted housing or the possible impact the proposed units may have on FmHA projects. Applications for which FmHA has provided comments expressing concerns about market need or the continued stability of existing FmHA projects, with which HUD agrees, will receive zero points for this criterion.

(b) Rating and Assessment: To receive points under this criterion, an application must propose funding in an area which has been previously underfunded or proportionately funded relative to the need for housing in the same allocation area.

The assignment of points is based on the degree to which the needs in the primary area specified in the application have been underfunded, taking into account the number of assisted housing units and the number of very low-income renter households with housing problems. The determination of point values will be based on a comparison of the percentage of housing need served in the primary area specified in the application to the percentage of need served in the allocation area since the 1990 census. The percentages for the allocation areas and the primary areas are to be rounded to the nearest whole number.

The HUD State or Area Office/Native American Programs Office will evaluate whether housing need in the primary area specified in the application has been underfunded and will assign one of the three point-values, as follows:

- 45 Points. Housing need in the primary area specified in the application has been severely underfunded. A primary area with a percentage of need served that is equal to or less than one-third the allocation area's percentage will be determined to be severely underfunded.
- 30 Points. Housing need in the primary area specified in the application has been moderately underfunded. An application with a percentage of need served that is greater than one-third the allocation area's percentage but equal to or less than two-thirds of the allocation area percentage will be determined to be moderately underfunded.
- 15 Points. Housing need in the primary area specified in the application has been proportionately funded. An application with a percentage of need served that is greater than two-thirds the allocation area's percentage but equal to or less than the allocation area percentage will be determined to be proportionately funded.
- 0 Points. Housing need in the primary area specified in the application has been overfunded. A primary area with a percentage of need served that is greater than the allocation area percentage will be determined to have been overfunded.

(3) Selection Criterion 3: Local Initiatives (5 points).

(a) Description. The application must describe the extent to which HAs demonstrate locally initiated efforts in support of their Rental Voucher and Rental Certificate Programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by the extent to which a locality is able to provide services or cash contributions or demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(b) Rating and Assessment. The HUD State or Area Office/Native American Programs Office will assign one of two point-values, as follows:

- 5 points: The State or locality provides significant local support (e.g., financial, manpower for inspection services) to its Rental Voucher or Rental Certificate Program.
- 2 points: The State or locality provides minimal local support to its Rental Voucher or Rental Certificate Program.
- 0 points: The State or locality does not provide support to the HA's Rental Voucher or Rental Certificate Program.

(4) Selection Criterion 4: Efforts of HAs to Establish a Family Self-Sufficiency Program (10 points Deduction).

(a) Description: The application must describe the efforts undertaken by the PHA to establish a Section 8 Family Self-Sufficiency (FSS) program including (1) submission to HUD of an Action Plan, and (2) creation of a Program Coordinating Committee. If a PHA is not administering a Rental Voucher or Rental Certificate Program, the HUD State or Area Office will rate HA administration of the Public Housing FSS program, if applicable. All activities rated under this criterion must have been completed prior to the submission of an application under this NOFA. The score of the PHA application must be reduced if the PHA received an FSS Incentive award of Section 8 funding in FY 1992 and the PHA has failed to complete the required implementation steps as described below. Also, the score of a PHA application must be reduced if the PHA received funding in FY 1993 (unless the HUD State or Area Office granted a total exception to the FSS program requirement) and the PHA has failed to complete the required implementation steps as described below.

(b) Rating and Assessment: The HUD State or Area Office must deduct point values as shown below:

- 10 point Deduction—Deduct 10 points if (1) the HA has failed to establish a Program Coordinating Committee and provide the names, duties and experience of all members (24 CFR 984.202(a) & (b)) to HUD, and (2) the HA has failed to submit an Action Plan to HUD within 90 days of notification by HUD of approval of the PHA's application for units under the FY 91/92 FSS incentive award competition or HUD approval of the HA's first application, commencing in FY 93, for rental certificates or rental vouchers (24 CFR 984.201(c)(1)).
- 5 point Deduction—Deduct 5 points if (1) the HA has failed to establish a Program Coordinating Committee and provide the names, duties and experience of all members or (2) the HA has failed to submit an Action Plan in accordance with 24 CFR 984.201(c)(1).

(5) Selection Criterion 5: Efforts of HA to Provide Area-Wide Housing Opportunities for Families (5 points).

(a) Description: Many HAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. HAs in metropolitan and non-metropolitan areas are eligible for points under this criterion. These HAs have established cooperative agreements with other HAs or created a consortium of HAs in order to facilitate the transfer of families and their rental assistance between HAs. In addition, HAs have established relationships with non-profit groups to provide families with additional counseling to increase the likelihood of a successful move by the families to low-poverty areas.

(b) Rating and Assessment: The HUD State or Area Office/Native American Programs Office will assign point values as shown below:

- 5 points—Assign 5 points if the HA documents that it has taken steps to increase area-wide housing opportunities for families such as being a member of an established consortium of HAs including at least 50 percent of the HAs in its housing market, providing extra counseling to families, establishing a relationship with other groups including non-profit agencies, or participating in other activities that facilitate area-wide housing opportunities for families.
- 0 Points—Assign 0 points if the HA is unable to document area-wide efforts as shown in this criterion.

C. Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period (refer to Section IV, Corrections to Deficient Applications, of this NOFA), the HUD State or Area Office/Native American Programs Office will disapprove HA applications that it determines are not acceptable for processing (refer to Section III(F), Checklist of Technical Requirements, of this NOFA). The HUD State or Area Office/Native American Programs Office notification of rejection letter must state the basis for the decision.

(2) Applications that fall into any of the following categories will not be processed:

(a) The Department of Justice has brought a civil rights suit against the applicant HA, and the suit is pending.

(b) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with a court order, or implementing a HUD approved resident selection and assignment plan or compliance agreement designed to correct the areas of noncompliance.

(c) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of non-compliance.

(d) HUD has denied application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(e) The HA has serious unaddressed, outstanding Inspector General audit findings, fair housing and equal opportunity monitoring review findings, or HUD State or Area Office/Native American Programs Office management review findings for one or more of its Rental Voucher, Rental Certificate, or Moderate Rehabilitation Programs, or, in the case of an HA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation

participating in other activities that facilitate area-wide housing opportunities for families.

• 0 Points—Assign 0 points if the HA is unable to document area-wide efforts as shown in this criterion.

C. Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period (refer to Section IV, Corrections to Deficient Applications, of this NOFA), the HUD State or Area Office/Native American Programs Office will disapprove HA applications that it determines are not acceptable for processing (refer to Section III(F), Checklist of Technical Requirements, of this NOFA). The HUD State or Area Office/Native American Programs Office notification of rejection letter must state the basis for the decision.

(2) Applications that fall into any of the following categories will not be processed:

(a) The Department of Justice has brought a civil rights suit against the applicant HA, and the suit is pending.

(b) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with a court order, or implementing a HUD approved resident selection and assignment plan or compliance agreement designed to correct the areas of noncompliance.

(c) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of non-compliance.

(d) HUD has denied application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(e) The HA has serious unaddressed, outstanding Inspector General audit findings, fair housing and equal opportunity monitoring review findings, or HUD State or Area Office/Native American Programs Office management review findings for one or more of its Rental Voucher, Rental Certificate, or Moderate Rehabilitation Programs, or, in the case of an HA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program.

(f) The leasing rate for rental vouchers and rental certificates under ACC for at least one year is less than 85 percent, or, in the case of an HA not currently administering a Rental Voucher or Rental Certificate Program, the leasing rate for all units available for occupancy in the Public or Indian Housing Program is less than 85 percent. (For a State or regional HA, the HUD State or Area Office/Native American Programs Office shall determine the HA's combined leasing rate for metropolitan and non-metropolitan areas, and shall use the combined rate in determining whether to accept the application under this paragraph.);

(g) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers or rental certificates.

D: Local Government Comments

Section 213 of the Housing and Community Development Act of 1974 requires that HUD independently determine that there is a need for the housing assistance requested in applications, and solicit and consider comments relevant to this determination from the chief executive officer of the unit of general local government. The HUD State or Area Office/Native American Programs Office will obtain Section 213 comments from the unit of general local government in accordance with 24 CFR part 791, subpart C, Applications for Housing Assistance in Areas Without Housing Assistance Plans. Comments submitted by the unit of general local government must be considered before an application can be approved.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with Section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the Section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the local unit of government.

E. Funding Applications

(1) *Maximum Funding Allowed.* The HUD State or Area Office/Native American Programs Office may not approve funding for an HA under this NOFA for more than the greater of 10 percent of the HA rental vouchers and rental certificates under reservation or 50 units.

(2) *Minimum Funding Allowed.* The HUD State or Area Office/Native American Programs Office may not approve funding for an HA under this NOFA for less than 25 units, unless:

(a) The HA requests fewer than 25 units; or

(b) The residual budget authority in using the rank order funding process after funding higher ranked applications is insufficient to fund at least 25 units; or

(c) The total budget authority available to the allocation area will fund less than 25 units.

(3) *Funding Procedure.* The HUD State or Area Office must develop a procedure for approval of applications (including applications rated by the Native American Programs Office) for each allocation area in rank order until all the housing assistance budget authority is used. Where a HUD State or Area Office funds applications according to rank order for each allocation area, only to find it has some number of units left, but not enough to fund the next fundable application in its entirety or for the minimum of 25 units, that application can be funded to the extent of the number of units available.

The HUD State or Area Office may elect to approve 100 percent of the units requested in all applications that score above a HUD State or Area Office-determined funding cut-off, up to the maximum number of units allowed.

The HUD State or Area Office may elect to approve less than 100 percent of the units requested in all applications for each allocation area that score above a HUD State or Area Office-determined funding cut-off, up to the maximum number of units allowed.

If applications are to be funded at less than 100 percent of the units requested in the applications, the HUD State or Area Office must either (i) approve the same percentage of the number of units requested in each application or (ii) divide approvable applications into two or more categories, for example, those scoring over 80 points, and those scoring between 50 and 80 points.

If the HUD State or Area Office elects to divide applications into two categories, the HUD State or Area Office may choose to approve a different percentage for applications in each of the two ranking categories so that a higher percentage of units requested would be approved for all applications in the higher category and a lower percentage of units requested would be approved for all applications in the

lower category. The HUD State or Area Office must approve the same percentage of each application within each of the two ranking categories unless there are insufficient funds to approve the minimum 25 units. If the HUD State or Area Office is unable to fund all the applications for the minimum funding allowed in either of the two categories, the HUD State or Area Office must reduce the applicable percentage factor in the category in order to fund all applications for the minimum 25 units (unless the HA requested less than 25 units or the total budget authority available to the allocation area will fund less than 25 units).

If an HA applies for a specific program (i.e., rental vouchers or rental certificates) and funding for the specified program is not available in the metropolitan area or non-metropolitan allocation area, the HUD State or Area Office will award the available form of assistance, even though not specifically requested by the applicant.

The HUD State or Area Office must promptly notify the applicable Native American Programs Office for each allocation area as to the status of any applications from IHAs and, if applicable, the amount of budget authority to be made available for IHA applications that were rated high enough to receive funding.

F. Reallocations of Funds

Each HUD State or Area Office must make every reasonable effort to use all available funds. It may be necessary, however, to reallocate funds from one HUD State or Area Office to another when the funds are not likely to be used in the HUD State or Area Office to which they were initially assigned. In such cases, the following procedures shall be followed:

(1) *Reallocations Within the Same State.* If the allocation of funds to a HUD State or Area Office cannot be awarded within the office jurisdiction during Fiscal Year 1994, Headquarters will reallocate those funds to another HUD State or Area Office in the same State where they can be used during Fiscal Year 1994.

(2) *Reallocations Between States.* If a HUD State or Area Office cannot use funds within the same State, Headquarters will reallocate those funds to another HUD State or Area Office for use in a State where they can be used during Fiscal Year 1994.

(3) *Reallocations Between Metropolitan and Non-metropolitan Areas.* The HUD State or Area Office must follow the original fund assignments for metropolitan and non-metropolitan areas when it reallocates unused budget authority among allocation areas. If there are not enough approvable applications for the designated metropolitan or non-metropolitan budget authority, the HUD State or Area Office may switch the budget authority between a metropolitan and a non-metropolitan area within the same State, provided that an offsetting switch can be made in another State within the HUD State or Area Office. If an offsetting switch cannot be made and the metropolitan or non-metropolitan amounts require changes to the fund assignments, the HUD State or Area Office must obtain the approval of the Budget Division, Office of Management and Policy, Office of Public and Indian Housing, before switching budget authority between a metropolitan and a non-metropolitan area.

(4) A request for Headquarters approval of a reallocation within or between States must explain the reasons that funds cannot be used in the original State, the amount being withdrawn from the original State, the program type, and the metropolitan/non-metropolitan mix, and the amount to be reallocated. These requests must be submitted to Headquarters (ATTENTION: Budget Division, Office of Management and Policy, Office of Public and Indian Housing) for approval.

G. Notification of Funds Awarded

(1) After the HUD State or Area Offices have reviewed, rated, and ranked applications, and the HUD State or Area Offices and Native American Programs Offices have approved the applications, each HUD State or Area Office and each Native American Programs Office must submit to Headquarters a list of all approved applications. The application approval list is due in Headquarters (ATTENTION: Rental Assistance Division, Office of Public and Indian Housing) on the tenth working day following the date set by Headquarters for completion of application ranking and selections.

(2) The Offices must provide the following information for each application approved:

(a) The name and address of the HA,

(b) The project number, and the number of rental vouchers and the number of rental certificates, as applicable, approved for the HA; and

(c) The amount of contract authority and budget authority, stated separately for rental vouchers and rental certificates.

H. Administrative Fees

(1) The administrative fees for incremental units in the Fiscal Year 1994 appropriations are specified as follows:

(a) *FY 1994 Incremental (Fees Provided by FY 1994 Appropriation):*

	Rental vouchers	Rental certificates
(1) On-going	8.2%	8.2%
(2) Preliminary	$275	$275
(3) Hard-to-House	$45	$45

(b) *FY 1994 Opt-outs/Public Housing Demolition (Replacements and Relocation) Section 23 Conversions:*

	Rental vouchers	Rental Certificates
(1) On-going	6.5%	7.65%
(2) Preliminary	$215	$250
(3) Hard-to-House	$45	$45

(c) *Renewal of Rental Vouchers and Rental Certificates:*

	Rental vouchers	Rental certificates
(1) On-going	6.5%	7.65%
(2) Preliminary	$0	$0
(3) Hard-to-House	$45	$45

(2) For budget preparation, submission of requisitions, and approving year-end operating statements, HAs should use the March 2, 1994, Notice PIH 94–9, Administrative Fee Requirements for the Section 8 Rental Voucher and Rental Certificate Programs, to determine the blended rate for all rental voucher or rental certificate increments for a given HA.

I. Headquarters Reserve

The Department is retaining in a Headquarters Reserve approximately $51.3 million of the $1.0 billion of budget authority available for allocation by formula for rental vouchers and rental certificates. Funds in the Headquarters Reserve will not be allocated by formula because these funds will be used in connection with natural disasters, litigation, desegregation, and other housing emergencies, consistent with 24 CFR 791.407. Headquarters will notify HAs when they are eligible to receive assistance from the Headquarters Reserve and may invite the HAs to submit applications.

J. Other Allocations

In addition to the budget authority for "fair share" rental vouchers and rental certificates, additional budget authority (including carryover budget authority) is available for allocation in Fiscal Year 1994 for rental vouchers and rental certificates for the following purposes:

(1) Relocation, Demolition and Disposition (HOPE I, II, Section 5(h), Section 18 and Urban Revitalization)

Headquarters will allocate funds directly to the HUD State or Area Offices to assist families living in public housing projects that are being demolished or disposed with HUD approval; to provide replacement housing in connection with Section 18, Urban Revitalization, HOPE I or Section 5(h) activities; or relocation assistance to families affected by HOPE I, HOPE II, and Section 5(h) activities; or assistance to non-purchasing families affected by HOPE II activities. HUD State or Area Office/Native American Programs Office requests for funding under this category will be approved on a first-come, first-served basis after notification by HUD that an application for public housing demolition or disposition, Section 18, Urban Revitalization, HOPE I, HOPE II, or Section 5(h) was approved. HUD State or Area Office/Native American Programs Office requests should include all data pertinent to determining the eligibility of the request for funding under the appropriate program and the amount of funds required. Replacement housing assistance will be provided in the form of 5-year rental voucher or rental certificate funding. (Approximately 2,988 units and $99.852 million in budget authority.)

(2) Rental Voucher and Rental Certificate Renewals

Headquarters will allocate funds directly to the HUD State or Area Offices/Native American Programs Offices for the renewal of rental voucher and rental certificate funding increments expiring in Fiscal Year 1994. Renewal funding will be provided in-kind (i.e., rental voucher funding for expiring rental voucher increments, and rental certificate funding for expiring rental certificate increments). (Approximately 177,000 units and $4.7 billion in budget authority.)

(3) Section 23 Conversions

Headquarters will allocate rental certificate funds directly to the HUD State or Area Offices for tenant-based rental assistance to residents of Section 23 leased housing for which leases are expiring. HUD State or Area Office requests for funding under this category

J. Other Allocations

In addition to the budget authority for "fair share" rental vouchers and rental certificates, additional budget authority (including carryover budget authority) is available for allocation in Fiscal Year 1994 for rental vouchers and rental certificates for the following purposes:

(1) Relocation, Demolition and Disposition (HOPE I, II, Section 5(h), Section 18 and Urban Revitalization)

Headquarters will allocate funds directly to the HUD State or Area Offices to assist families living in public housing projects that are being demolished or disposed with HUD approval; to provide replacement housing in connection with Section 18, Urban Revitalization, HOPE I or Section 5(h) activities; or relocation assistance to families affected by HOPE I, HOPE II, and Section 5(h) activities; or assistance to non-purchasing families affected by HOPE II activities. HUD State or Area Office/Native American Programs Office requests for funding under this category will be approved on a first-come, first-served basis after notification by HUD that an application for public housing demolition or disposition, Section 18, Urban Revitalization, HOPE I, HOPE II, or Section 5(h) was approved. HUD State or Area Office/Native American Programs Office requests should include all data pertinent to determining the eligibility of the request for funding under the appropriate program and the amount of funds required. Replacement housing assistance will be provided in the form of 5-year rental voucher or rental certificate funding. (Approximately 2,988 units and $99.852 million in budget authority.)

(2) Rental Voucher and Rental Certificate Renewals

Headquarters will allocate funds directly to the HUD State or Area Offices/Native American Programs Offices for the renewal of rental voucher and rental certificate funding increments expiring in Fiscal Year 1994. Renewal funding will be provided in-kind (i.e., rental voucher funding for expiring rental voucher increments, and rental certificate funding for expiring rental certificate increments). (Approximately 177,000 units and $4.7 billion in budget authority.)

(3) Section 23 Conversions

Headquarters will allocate rental certificate funds directly to the HUD State or Area Offices for tenant-based rental assistance to residents of Section 23 leased housing for which leases are expiring. HUD State or Area Office requests for funding under this category will be approved on a first-come, first-served basis. HUD State or Area Offices must include all data necessary to determine the amount of funds required. (Approximately 374 units and $7.4 million in budget authority.)

(4) Section 8 Amendments

Headquarters will allocate Rental Certificate Program cost amendments to provide budget authority increases to HA rental certificate programs. Headquarters will allocate the funds on an as needed basis. (Approximately $289.6 million in budget authority.)

(5) HA Portability Fees

Headquarters will allocate these funds to pay special preliminary fees to HAs under Rental Voucher and Rental Certificate Program portability provisions. The Department issued a HUD Notice PIH 92–14 (PHA), dated April 22, 1992, that describes administrative procedures for requesting the special preliminary fees. These funds will be allocated to the HAs on a first-come, first-served basis. (Approximately $6 million in budget authority.)

(6) Litigation

Headquarters will allocate funding to meet the anticipated needs in settlement of litigation. (Approximately 1,312 units and $43.8 million in budget authority.)

(7) Moving to Opportunity Demonstration—National Competition

Headquarters will allocate funding to assist families with children to move out of areas with high concentrations of persons living in poverty through contracts with nonprofit organizations. Appropriations were provided for rental certificates and rental vouchers to be used in a demonstration limited to cities with populations over 350,000 in metropolitan areas of over 1,500,000 population. HUD will conduct a national competition for Section 8 funding. The criteria will be published in a NOFA. (Approximately 4,364 units and $164 million in budget authority.)

(8) Family Unification Demonstration—National Competition

Headquarters will allocate funding to assist families with children for whom the lack of adequate shelter is a primary factor which would result in the imminent placement of the family's child, or children, in out-of-home care or delay in the discharge of the child, or children, to the family from out-of-home care. HUD will conduct a national competition for Section 8 funding. The criteria will be published in a NOFA. (Approximately 2,200 units and $77.4 million in budget authority.)

(10) Veterans Affairs Supportive Housing—National Competition

Headquarters will allocate funding under this joint effort between HUD and the Department of Veterans Affairs whereby rental vouchers are provided to assist homeless veterans to obtain rental housing after they have received treatment from a Veterans Affairs (VA) medical facility. HUD is conducting a national competition. The criteria will be published in a NOFA. (Approximately 700 units and $18.35 million in budget authority.)

(12) Disaster Funding for Northridge, CA Earthquake

Headquarters allocated funding from a supplemental appropriation from Congress for rental certificates to assist very low-income families who were involuntarily displaced from their homes as a result of the Northridge earthquake in the Los Angeles area. (Approximately 15,000 units and $200 million in budget authority.)

III. Checklist of Application Submission Requirements

A. Obtaining Application Materials

An Application Kit, which includes Form HUD–52515, Application for Existing Housing, may be obtained from the local HUD State or Area Office/Native American Programs Office. (Except as provided for Indian Housing Authorities in Section III(B), Submitting Applications, of this NOFA, only an original application and one copy should be submitted; it is not necessary to submit additional copies of the application.) In addition, the basic application and other required submissions are available from the HUD State or Area Office, as follows: Form HUD–52515; Certification for a Drug-Free Workplace; Text for the Certification Regarding Lobbying; and Standard Form LLL, Disclosure of Lobbying Activities.

B. Submitting Applications

HA applications must be received in the HUD State or Area Office/Native American Programs Office by 3:00 p.m. local time (i.e., the time at the office where the application is to be submitted) on August 25, 1994.

The Native American Programs Office is the place of official receipt for IHA applications. An IHA also must submit, at the same time, a copy of its application to the HUD State or Area Office that has jurisdiction over the portion of the State in which the IHA is located. HUD State or Area Offices/

Native American Programs Offices will be responsible for notifying their HAs of the exact address and room number where applications are to be submitted. Copies transmitted via facsimile (FAX) transmission will not be accepted for processing.

C. General

(1) Applications must be submitted to the local HUD State or Area Office/ Native American Programs Office on Form HUD–52515 in accordance with the applicable program regulations.

(2) The application should include a narrative description of how the application meets, or will meet, the application selection criteria. Failure to submit a narrative description is not cause for application rejection; however, the HUD State or Area Office/Native American Programs Office can only rate and rank the application based on information the Office has on-hand.

(3) Attachment 1 at the end of this notice lists the HUD State or Area Offices and the number of units and budget authority available for each allocation area. HAs should limit their applications for the "fair share" program to a reasonable number of rental vouchers and rental certificates, based on the capacity of the HA to lease all the units within 12 months of ACC execution. The number of units on the HA application may not exceed the greater of: (a) Ten percent (10%) of the total rental vouchers and rental certificates under reservation for the HA; or (b) 50 units.

(4) HAs shall submit only one application (Form HUD–52515) for an allocation area. If both rental vouchers and rental certificates are requested on the same application, then the application will be given two project numbers, one for the Rental Voucher Program and one for the Rental Certificate Program. The total number of units applied for may not exceed the ten percent or 50-unit limitation.

(5) Regional and State-wide HAs may submit one application for each allocation area, and each application will be considered separately. Each regional or State-wide HA application may request up to ten percent (10%) of the total rental vouchers and rental certificates the HA has under reservation for each allocation area as applicable, or 50 units, whichever is greater.

(6) The HUD State or Area Office/ Native American Programs Office will reduce the number of units requested in any application that exceeds the ten percent or 50-unit limit to the greater of ten percent (10%) of the total number of rental vouchers and rental certificates identified on the latest HUD-approved budget for the HA.

D. Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

E. Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, (31 U.S.C. 1352) (the Byrd Amendment) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA (other than an IHA that meets the definition of "person" in 24 CFR 87.105) submitting an application under this NOFA for more than $100,000 of budget authority assistance must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist HAs, the texts for the Certification Regarding Lobbying and Standard Form LLL, Disclosure Form to Report Lobbying are available from the HUD State or Area Office.

F. Checklist for Technical Requirements

The following checklist specifies the required information that must be submitted in the HA's application. It is recommended, but not required, that the application contain a narrative explaining how the application meets the selection criteria.

INITIAL SCREENING CHECKLIST—APPLICATION FOR RENTAL VOUCHERS AND RENTAL CERTIFICATES

Housing agency		HUD state or area office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application contains a completed Form HUD 52515.
☐	☐	☐	☐	The application specifies the number of rental vouchers and/or rental certificates requested.
☐	☐	☐	☐	The application states by number of bedrooms the total number of units requested by the HA (i.e., one bedroom units, two bedroom units).
☐	☐	☐	☐	The application demonstrates that it is responsive to the condition of the housing stock in the community and the housing assistance needs of low income families (including the elderly, handicapped, disabled, large families and those displaced) residing in or expected to reside in the community.
☐	☐	☐	☐	The application demonstrates that the applicant qualifies as a public housing agency and is legally qualified and authorized to participate in the rental assistance programs for the area in which the programs are to be carried out. Such demonstration includes: (i) The relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the HUD State or Area Office/Native American Programs Office, they do not have to be resubmitted.
☐	☐	☐	☐	The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 and/or 24 CFR 887.251 or that variations in the Acceptability Criteria are proposed or have been approved by the HUD State or Area Office/ Native American Programs Office. In the latter case, each proposed variation shall be specified and justified.

Housing agency		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The app of uni progra must ACC
☐	☐	☐	☐	The app justed

REQUIREMENT FOR DRUG-FREE WORKPL

Housing agency		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The app F. (Th
☐	☐	☐	☐	The app bying than $ dian t IHAs an An

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the appropriate HUD State or Area Office/ Native American Programs Office no later than the date and time specified in Section II of this NOFA. The HUD State or Area Office/Native American Programs Office will initially screen all applications and notify HAs of technical deficiencies by letter.

If an application has technical deficiencies, the HA will have 14 calendar days from the date of the issuance of written notification to submit the missing or corrected information to the HUD State or Area Office and/or Native American Programs Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate HUD State or Area Office/Native American Programs Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete. All HAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. An HA application that does not comply with

Housing agency		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application contains the HA schedule of leasing, which must provide for the expeditious leasing of units in the program. In developing the schedule, an HA must specify the number of units in the program that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD.
☐	☐	☐	☐	The application (for rental vouchers and/or rental certificates) contains estimates of the average adjusted income for prospective participants for each bedroom size.

REQUIREMENT FOR DRUG-FREE WORKPLACE CERTIFICATION, AND ANTI-LOBBYING CERTIFICATION AND DISCLOSURE STATEMENT

Housing agency		Field office		
Yes	No	Yes	No	
☐	☐	☐	☐	The application meets HUD's drug-free workplace requirements set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace.)
☐	☐	☐	☐	The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR 87. The anti-lobbying requirements apply to applications that, if approved, would result in the HA obtaining more than $100,000 in budget authority. The Department has determined that IHAs established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage. To comply, HAs must submit an Anti-lobbying Certification and, if warranted, a Disclosure of Lobbying Activities.

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the appropriate HUD State or Area Office/ Native American Programs Office no later than the date and time specified in Section II of this NOFA. The HUD State or Area Office/Native American Programs Office will initially screen all applications and notify HAs of technical deficiencies by letter.

If an application has technical deficiencies, the HA will have 14 calendar days from the date of the issuance of written notification to submit the missing or corrected information to the HUD State or Area Office and/or Native American Programs Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate HUD State or Area Office/Native American Programs Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete. All HAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. An HA application that does not comply with the requirements of 24 CFR 882.204(a) or 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification/ disclosure requirements, after the expiration of the 14-day cure period will be rejected from processing.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of the Department, the States, and local governments, including HAs.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This is a funding notice and does not alter program requirements concerning family eligibility.

D. Section 102 of the HUD Reform Act: Documentation and Public Access Requirements.

HUD Responsibilities

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a)

and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) was published on May 13, 1991 (56 FR 22088), and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her HUD State or Area Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

G. Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be forwarded to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (TDD/Voice) (this is not a toll-free number). Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: 42 U.S.C. 1437a, 1437c, 1437f.

Dated: July 1, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210-33-P

PAGE 01

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION
DOLLARS UNITS-COMPONENT PARTS OF ALLOCATION AREA

HUD REGION I (BOSTON)

BOSTON, MASSACHUSETTS OFFICE
METROPOLITAN ALLOCATION AREAS
Western Massachusetts

4 032 028	90	BERKSHIRE county towns of: Cheshire, Dalton, Hinsdale Lanesborough, Lee, Lenox, Pittsfield, Richmond, Stockbridge
		HAMPDEN county towns of: Agawam, Chicopee, East Longmeadow Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery Palmer, Russell, Southwick, Springfield, Westfield
		West Springfield, Wilbraham, HAMPSHIRE county towns of: Belchertown, Easthampton, Granby, Huntington, Northampton Southampton, South Hadley
3 240 331	73	MIDDLESEX county towns of: Ashby, WORCESTER county towns of: Ashburnham, Fitchburg, Leominster, Lunenburg, Westminster
		WORCESTER county towns of: Auburn, Barre, Boylston, Brookfield Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton Holden, Leicester, Millbury, Northborough, Northbridge North Brookfield, Oxford, Paxton, Princeton, Rutland Shrewsbury, Spencer, Sterling, Sutton, Uxbridge, Webster

Worcester County.

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION. PAGE 01

HUD REGION I (BOSTON)

DOLLARS UNITS-COMPONENT PARTS OF ALLOCATION AREA

BOSTON, MASSACHUSETTS OFFICE

METROPOLITAN ALLOCATION AREAS			
Western Massachusetts	4 032,028	90	BERKSHIRE county towns of: Cheshire, Dalton, Hinsdale Lanesborough, Lee, Lenox, Pittsfield, Richmond, Stockbridge HAMPDEN county towns of: Agawam, Chicopee, East Longmeadow Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery Palmer, Russell, Southwick, Springfield, Westfield West Springfield, Wilbraham, HAMPSHIRE county towns of: Belchertown, Easthampton, Granby, Huntington, Northampton Southampton, South Hadley
Worcester County	3.240.331	73	MIDDLESEX county towns of: Ashby, WORCESTER county towns of: Ashburnham, Fitchburg, Leominster, Lunenburg, Westminster WORCESTER county towns of: Auburn, Barre, Boylston, Brookfield Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton Holden, Leicester, Millbury, Northborough, Northbridge North Brookfield, Oxford, Paxton, Princeton, Rutland Shrewsbury, Spencer, Sterling, Sutton, Uxbridge, Webster Westborough, West Boylston, Worcester
Boston	21.035.088	474	BRISTOL county towns of: Mansfield, Norton, Raynham, ESSEX county towns of: Lynn, Lynnfield, Nahant, Saugus, MIDDLESEX county towns of: Acton, Arlington, Ashland, Ayer, Bedford Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord Everett, Framingham, Groton, Holliston, Hopkinton, Hudson Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard Medford, Melrose, Natick, Newton, North Reading, Reading Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury Townsend, Wakefield, Waltham, Watertown, Wayland, Weston Wilmington, Winchester, Woburn, NORFOLK county towns of: Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham Dover, Foxborough, Franklin, Holbrook, Medfield, Medway Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth Wrentham, PLYMOUTH county towns of: Carver, Duxbury, Hanover Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield Middleborough, Norwell, Pembroke, Plymouth, Plympton, Rockland Scituate, SUFFOLK county towns of: Boston, Chelsea, Revere Winthrop, WORCESTER county towns of: Berlin, Bolton, Harvard Hopedale, Lancaster, Mendon, Milford, Southborough, Upton
Northeast	4.348,168	97	ESSEX county towns of: Amesbury, Andover, Boxford, Georgetown Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury Newburyport, North Andover, Salisbury, West Newbury, MIDDLESEX county towns of: Billerica, Chelmsford, Dracut, Dunstable Lowell, Pepperell, Tewksbury, Tyngsborough, Westford, ESSEX county towns of: Beverly, Danvers, Essex, Gloucester, Hamilton Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport Rowley, Salem, Swampscott, Topsfield, Wenham
Southeast	3,892,539	[illegible]	BRISTOL county towns of: Easton, NORFOLK county towns of: Avon PLYMOUTH county towns of: Abington, Bridgewater, Brockton East Bridgewater, Halifax, West Bridgewater, Whitman, BRISTOL county towns of: Fall River, Somerset, Swansea, Westport BRISTOL county towns of: Acushnet, Dartmouth, Fairhaven

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 02

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Freetown, New Bedford, PLYMOUTH county towns of: Marion Mattapoisett, Rochester, BRISTOL county towns of: Attleboro North Attleborough, Rehoboth, Seekonk, NORFOLK county towns of: Plainville, WORCESTER county towns of: Blackstone Millville
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Statewide	1,850,564	44	BARNSTABLE, BERKSHIRE county towns of: Adams, Alford, Becket Clarksburg, Egremont, Florida, Great Barrington, Hancock Monterey, Mount Washington, New Ashford, New Marlborough North Adams, Otis, Peru, Sandisfield, Savoy, Sheffield Tyringham, Washington, West Stockbridge, Williamstown, Windsor BRISTOL county towns of: Berkley, Dighton, Taunton, DUKES FRANKLIN, HAMPDEN county towns of: Blandford, Brimfield Chester, Granville, Holland, Tolland, Wales, HAMPSHIRE county towns of: Amherst, Chesterfield, Cummington, Goshen, Hadley Hatfield, Middlefield, Pelham, Plainfield, Ware, Westhampton Williamsburg, Worthington, NANTUCKET, PLYMOUTH county towns of: Wareham, WORCESTER county towns of: Athol, Gardner Hardwick, Hubbardston, New Braintree, Oakham, Petersham Phillipston, Royalston, Southbridge, Sturbridge, Templeton Warren, West Brookfield, Winchendon
HARTFORD, CONNECTICUT OFFICE			
METROPOLITAN ALLOCATION AREAS			
Bridgeport-Milford, Norwalk, Stamford	4,137,069	93	FAIRFIELD county towns of: Bridgeport, Easton, Fairfield Monroe, Shelton, Stratford, Trumbull, NEW HAVEN county towns of: Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour FAIRFIELD county towns of: Norwalk, Weston, Westport, Wilton FAIRFIELD county towns of: Darien, Greenwich, New Canaan Stamford
Bristol, Danbury, New Britain, Waterbury	2,052,334	65	HARTFORD county towns of: Bristol, Burlington, LITCHFIELD county towns of: Plymouth, FAIRFIELD county towns of: Bethel Brookfield, Danbury, New Fairfield, Newtown, Redding Ridgefield, Sherman, LITCHFIELD county towns of: Bridgewater New Milford, HARTFORD county towns of: Berlin, New Britain Plainville, Southington, LITCHFIELD county towns of: Bethlehem Thomaston, Watertown, WOODbury, NEW HAVEN county towns of: Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Wolcott
Hartford	4,212,220	94	HARTFORD county towns of: Avon, Bloomfield, Canton East Granby, East Hartford, East Windsor, Enfield, Farmington Glastonbury, Granby, Hartford, Manchester, Marlborough Newington, Rocky Hill, Simsbury, South Windsor, Suffield West Hartford, Wethersfield, Windsor, Windsor Locks LITCHFIELD county towns of: Barkhamsted, New Hartford MIDDLESEX county towns of: East Haddam, NEW LONDON county towns of: Colchester, TOLLAND county towns of: Andover, Bolton Columbia, Coventry, Ellington, Hebron, Somers, Stafford Tolland, Vernon, Willington
Middletown, N.London, Norwich, N. Haven-Marid	4,687,148	106	MIDDLESEX county towns of: Cromwell, Durham, East Hampton Haddam, Middlefield, Middletown, Portland, NEW LONDON county towns of: Bozrah, East Lyme, Franklin, Griswold, Groton Ledyard, Lisbon, Montville, New London, North Stonington Norwich, Old Lyme, Preston, Salem, Sprague, Stonington

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 03

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Waterford, WINDHAM county towns of: Canterbury, MIDDLESEX county towns of: Clinton, Killingworth, NEW HAVEN county towns of: Bethany, Branford, Cheshire, East Haven, Guilford, Hamden Madison, Meriden, New Haven, North Branford, North Haven Orange, Wallingford, West Haven, Woodbridge
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Connecticut Statewide	865,952	22	HARTFORD county towns of: Hartland, LITCHFIELD county towns of: Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent Litchfield, Morris, Norfolk, North Canaan, Roxbury, Salisbury Sharon, Torrington, Warren, Washington, Winchester, MIDDLESEX county towns of: Chester, Deep River, Essex, Old Saybrook Westbrook, NEW LONDON county towns of: Lebanon, Lyme Voluntown, TOLLAND county towns of: Mansfield, Union, WINDHAM county towns of: Ashford, Brooklyn, Chaplin, Eastford, Hampton Killingly, Plainfield, Pomfret, Putnam, Scotland, Sterling Thompson, Windham, Woodstock
MANCHESTER, NEW HAMPSHIRE OFFICE			
METROPOLITAN ALLOCATION AREAS			
Vermont - Burlington	747,257	18	CHITTENDEN county towns of: Burlington, Charlotte, Colchester

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Waterford, WINDHAM county towns of: Canterbury, MIDDLESEX county towns of: Clinton, Killingworth, NEW HAVEN county towns of: Bethany, Branford, Cheshire, East Haven, Guilford, Hamden Madison, Meriden, New Haven, North Branford, North Haven Orange, Wallingford, West Haven, Woodbridge
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Connecticut Statewide	865,952	22	HARTFORD county towns of: Hartland, LITCHFIELD county towns of: Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent Litchfield, Morris, Norfolk, North Canaan, Roxbury, Salisbury Sharon, Torrington, Warren, Washington, Winchester, MIDDLESEX county towns of: Chester, Deep River, Essex, Old Saybrook Westbrook, NEW LONDON county towns of: Lebanon, Lyme Voluntown, TOLLAND county towns of: Mansfield, Union, WINDHAM county towns of: Ashford, Brooklyn, Chaplin, Eastford, Hampton Killingly, Plainfield, Pomfret, Putnam, Scotland, Sterling Thompson, Windham, Woodstock
MANCHESTER, NEW HAMPSHIRE OFFICE METROPOLITAN ALLOCATION AREAS			
Vermont - Burlington	747,057	18	CHITTENDEN county towns of: Burlington, Charlotte, Colchester Essex, Hinesburg, Jericho, Milton, Richmond, St George Shelburne, South Burlington, Williston, Winooski, FRANKLIN county towns of: Georgia, GRAND ISLE county towns of: Grande Isle, South Hero
Metropolitan New Hampshire	2,522,874	62	ROCKINGHAM county towns of: Atkinson, Brentwood, Danville Derry, East Kingston, Hampstead, Kingston, Newton, Plaistow Salem, Sandown, Seabrook, Windham, HILLSBOROUGH county towns of: Bedford, Goffstown, Manchester, MERRIMACK county towns of: Allenstown, Hooksett, ROCKINGHAM county towns of: Auburn Candia, HILLSBOROUGH county towns of: Pelham, HILLSBOROUGH county towns of: Amherst, Brookline, Hollis, Hudson Litchfield, Merrimack, Milford, Mont Vernon, Nashua, Wilton ROCKINGHAM county towns of: Londonderry, ROCKINGHAM county towns of: Exeter, Greenland, Hampton, New Castle, Newfields Newington, Newmarket, North Hampton, Portsmouth, Rye, Stratham STRAFFORD county towns of: Barrington, Dover, Durham Farmington, Lee, Madbury, Milton, Rochester, Rollinsford Somersworth
Metropolitan Maine	2,273,683	56	PENOBSCOT county towns of: Bangor, Brewer, Eddington, Glenburn Hampden, Hermon, Holden, Kenduskeag, Old Town, Orono Orrington, Penobscot Indian I, Veazie, WALDO county towns of: Winterport, ANDROSCOGGIN county towns of: Auburn, Greene Lewiston, Lisbon, Mechanic Falls, Poland, Sabattus, CUMBERLAND county towns of: Cape Elizabeth, Cumberland, Falmouth Freeport, Gorham, Gray, North Yarmouth, Portland, Raymond Scarborough, South Portland, Standish, Westbrook, Windham Yarmouth, YORK county towns of: Buxton, Hollis Old Orchard Beach, YORK county towns of: Berwick, Eliot Kittery, North Berwick, South Berwick, Wells, York
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Vermont Statewide	1,000,402	31	ADDISON, BENNINGTON, CALEDONIA, CHITTENDEN county towns of: Bolton, Buels, Huntington, Underhill, Westford, ESSEX FRANKLIN county towns of: Bakersfield, Berkshire, Enosburg

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 04

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Fairfax, Fairfield, Fletcher, Franklin, Highgate, Montgomery Richford, St. Albans, St. Albans, Sheldon, Swanton, GRAND ISLE county towns of: Alburg, Isle La Motte, North Hero; LAMOILLE
Nonmetropolitan New Hampshire Statewide	1,107,176	34	ORANGE, ORLEANS, RUTLAND, WASHINGTON, WINDHAM, WINDSOR BELKNAP, CARROLL, CHESHIRE, COOS, GRAFTON, HILLSBOROUGH county towns of: Antrim, Bennington, Deering, Francestown, Greenfield Greenville, Hancock, Hillsborough, Lyndeborough, Mason New Boston, New Ipswich, Peterborough, Sharon, Temple, Weare Windsor, MERRIMACK county towns of: Andover, Boscawen, Bow Bradford, Canterbury, Chichester, Concord, Danbury, Dunbarton Epsom, Franklin, Henniker, Hill, Hopkinton, Loudon, Newbury New London, Northfield, Pembroke, Pittsfield, Salisbury Sutton, Warner, Webster, Wilmot, ROCKINGHAM county towns of: Chester, Deerfield, Epping, Fremont, Hampton Falls, Kensington Northwood, Nottingham, Raymond, South Hampton, STRAFFORD county towns of: Middleton, New Durham, Strafford, SULLIVAN
Nonmetropolitan Maine Statewide	1,682,575	50	ANDROSCOGGIN county towns of: Durham, Leeds, Livermore Livermore Falls, Minot, Turner, Wales, AROOSTOOK, CUMBERLAND county towns of: Baldwin, Bridgton, Brunswick, Casco Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago FRANKLIN, HANCOCK, KENNEBEC, KNOX, LINCOLN, OXFORD, PENOBSCOT county towns of: Alton, Argyle, Bradford, Bradley, Burlington Carmel, Carroll, Charleston, Chester, Clifton, Corinna Corinth, Dexter, Dixmont, Drew, East Millinocket, Edinburg Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush Greenfield, Howland, Hudson, Kingman, Lagrange, Lakeville, Lee Levant, Lincoln, Lowell, Mattawamkeag, Maxfield, Medway Milford, Millinocket, Mount Chase, Newburgh, Newport North Penobscot, Passadumkeag, Patten, Plymouth, Prentiss Seboeis, Springfield, Stacyville, Stetson, Summit, Twombly Webster, Whitney, Winn, Woodville, PISCATAQUIS, SAGADAHOC SOMERSET, WALDO county towns of: Belfast, Belmont, Brooks Burnham, Frankfort, Freedom, Islesboro, Jackson, Knox, Liberty Lincolnville, Monroe, Montville, Morrill, Northport, Palermo Prospect, Searsmont, Searsport, Stockton Springs, Swanville Thorndike, Troy, Unity, Waldo, WASHINGTON, YORK county towns of: Acton, Alfred, Arundel, Biddeford, Cornish, Dayton Kennebunk, Kennebunkport, Lebanon, Limerick, Limington, Lyman Newfield, Parsonfield, Saco, Sanford, Shapleigh, Waterboro
PROVIDENCE, RHODE ISLAND OFFICE			
METROPOLITAN ALLOCATION AREAS			
Statewide Metropolitan Allocation Area	4,983,364	130	NEWPORT county towns of: Little Compton, Tiverton, WASHINGTON county towns of: Hopkinton, Westerly, PROVIDENCE county towns of: Burrillville, Central Falls, Cumberland, Lincoln North Smithfield, Pawtucket, Smithfield, Woonsocket, BRISTOL county towns of: Barrington, Bristol, Warren, KENT county towns of: Coventry, East Greenwich, Warwick, West Warwick NEWPORT county towns of: Jamestown, PROVIDENCE county towns of: Cranston, East Providence, Foster, Glocester, Johnston North Providence, Providence, Scituate, WASHINGTON county towns of: Exeter, Narragansett, North Kingstown, Richmond South Kingstown

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 05

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
NONMETROPOLITAN ALLOCATION AREAS			
Statewide Nonmetropolitan Allocation Area	275,435	5	KENT county towns of: West Greenwich, NEWPORT county towns of: Middletown, Newport, Portsmouth, WASHINGTON county towns of: Charlestown, New Shoreham.
HUD REGION II (NEW YORK)			
BUFFALO, NEW YORK OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALBANY-SCHENECTADY-TROY/GLENS FALLS, NY	3,338,035	107	ALBANY, GREENE, MONTGOMERY, RENSSELAER, SARATOGA, SCHENECTADY WARREN, WASHINGTON
BUFFALO-NIAGARA FALLS/JAMESTOWN-DUNKIRK, NY	5,207,802	166	ERIE, NIAGARA, CHAUTAUQUA
SYRACUSE/UTICA-ROME/BINGHAMTON/ELMIRA, NY	4,710,672	151	MADISON, ONONDAGA, OSWEGO, HERKIMER, ONEIDA, BROOME, TIOGA CHEMUNG
ROCHESTER, NY	4,527,865	144	LIVINGSTON, MONROE, ONTARIO, ORLEANS, WAYNE
NONMETROPOLITAN ALLOCATION AREAS			
NORTHEAST NEW YORK	1,079,030	36	CLINTON, ESSEX, FRANKLIN, FULTON, HAMILTON, JEFFERSON, LEWIS ST LAWRENCE
SOUTHEAST NEW YORK	1,408,754	47	TOMPKINS, CAYUGA, CORTLAND, COLUMBIA, CHENANGO, DELAWARE OTSEGO, SCHOHARIE

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
NONMETROPOLITAN ALLOCATION AREAS			
Statewide Nonmetropolitan Allocation Area	275,435	5	KENT county towns of: West Greenwich, NEWPORT county towns of: Middletown, Newport, Portsmouth, WASHINGTON county towns of: Charlestown, New Shoreham.
HUD REGION II (NEW YORK)			
BUFFALO, NEW YORK OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALBANY-SCHENECTADY-TROY/GLENS FALLS, NY	3,330,035	107	ALBANY, GREENE, MONTGOMERY, RENSSELAER, SARATOGA, SCHENECTADY WARREN, WASHINGTON
BUFFALO-NIAGARA FALLS/JAMESTOWN-DUNKIRK, NY	5,207,802	166	ERIE, NIAGARA, CHAUTAUQUA
SYRACUSE/UTICA-ROME/BINGHAMTON/ELMIRA, NY	4,710,672	151	MADISON, ONONDAGA, OSWEGO, HERKIMER, ONEIDA, BROOME, TIOGA CHEMUNG
ROCHESTER, NY	4,527,865	138	LIVINGSTON, MONROE, ONTARIO, ORLEANS, WAYNE
NONMETROPOLITAN ALLOCATION AREAS			
NORTHEAST NEW YORK	1,079,030	36	CLINTON, ESSEX, FRANKLIN, FULTON, HAMILTON, JEFFERSON, LEWIS ST LAWRENCE
SOUTHEAST NEW YORK	1,408,754	47	TOMPKINS, CAYUGA, CORTLAND, COLUMBIA, CHENANGO, DELAWARE OTSEGO, SCHOHARIE
SOUTHWEST NEW YORK	746,580	26	ALLEGANY, CATTARAUGUS, GENESEE, SCHUYLER, SENECA, STEUBEN WYOMING, YATES
NEW YORK, NEW YORK OFFICE			
METROPOLITAN ALLOCATION AREAS			
Nassau County	3,858,285	90	NASSAU
Suffolk County	3,219,702	76	SUFFOLK
New York Pmsa	129,045,515	3037	NEW YORK, PUTNAM, ROCKLAND, WESTCHESTER
Dutchess & Orange Counties	2,422,528	57	ORANGE, DUTCHESS
NONMETROPOLITAN ALLOCATION AREAS			
Sullivan & Ulster Counties	612,650	17	SULLIVAN, ULSTER
NEWARK, NEW JERSEY OFFICE			
METROPOLITAN ALLOCATION AREAS			
BERGEN-PASSAIC NJ	8,654,717	187	BERGEN, PASSAIC
JERSEY CITY NJ	8,136,908	177	HUDSON
NEWARK NJ	15,174,068	329	ESSEX, MORRIS, SUSSEX, UNION, WARREN
SOUTHERN NEW JERSEY	6,563,333	143	ATLANTIC, BURLINGTON, CAMDEN, CAPE MAY, CUMBERLAND, GLOUCESTER SALEM
CENTRAL NEW JERSEY	8,289,382	180	HUNTERDON, MERCER, MIDDLESEX, MONMOUTH, OCEAN, SOMERSET
HUD REGION III (PHILADELPHIA)			
BALTIMORE, MARYLAND OFFICE			
METROPOLITAN ALLOCATION AREAS			
MARYLAND METROPOLITAN	12,879,135	357	ANNE ARUNDEL, BALTIMORE, CARROLL, HARFORD, HOWARD QUEEN ANNE'S, BALTIMORE, ALLEGANY, WASHINGTON, CALVERT CHARLES, FREDERICK, CECIL
NONMETROPOLITAN ALLOCATION AREAS			
MARYLAND NON METROPOLITAN	700,687	20	CAROLINE, DORCHESTER, GARRETT, KENT, ST MARY'S, SOMERSET TALBOT, WICOMICO, WORCESTER
CHARLESTON, WEST VIRGINIA OFFICE			

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
METROPOLITAN ALLOCATION AREAS			
ALL METRO COUNTIES	2,035,809	08	KANAWHA, PUTNAM, MINERAL, CABELL, WAYNE, WOOD, BROOKE, HANCOCK MARSHALL, OHIO
NONMETROPOLITAN ALLOCATION AREAS			
ALL NONMETRO COUNTIES	2,088,637	80	BARBOUR, BERKELEY, BOONE, BRAXTON, CALHOUN, CLAY, DODDRIDGE FAYETTE, GILMER, GRANT, GREENBRIER, HAMPSHIRE, HARDY, HARRISON JACKSON, JEFFERSON, LEWIS, LINCOLN, LOGAN, MCDOWELL, MARION MASON, MERCER, MINGO, MONONGALIA, MONROE, MORGAN, NICHOLAS PENDLETON, PLEASANTS, POCAHONTAS, PRESTON, RALEIGH, RANDOLPH RITCHIE, ROANE, SUMMERS, TAYLOR, TUCKER, TYLER, UPSHUR WEBSTER, WETZEL, WIRT, WYOMING
PHILADELPHIA, PENNSYLVANIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALLENTOWN/BETHLEHEM	2,233,466	62	CARBON, LEHIGH, NORTHAMPTON
HARRISBURG/LEBANON/CARLISLE	2,977,027	63	CUMBERLAND, DAUPHIN, LEBANON, PERRY
LANCASTER/READING/YORK	4,147,784	117	LANCASTER, BERKS, ADAMS, YORK
PHILADELPHIA/WILMINGTON	16,592,847	465	BUCKS, CHESTER, DELAWARE, MONTGOMERY, PHILADELPHIA, NEW CASTLE
SCRANTON/WILKES-BARRE/STATE COL./WILLIAMSPORT	3,453,027	97	COLUMBIA, LACKAWANNA, LUZERNE, MONROE, WYOMING, CENTRE LYCOMING
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN DELAWARE/PENNSYLVANIA	1,752,713	57	BRADFORD, CLINTON, FRANKLIN, JUNIATA, MIFFLIN, MONTOUR NORTHUMBERLAND, PIKE, SCHUYLKILL, SNYDER, SULLIVAN SUSQUEHANNA, TIOGA, UNION, WAYNE, KENT, SUSSEX
PITTSBURGH, PENNSYLVANIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALL METRO COUNTIES	9,501,121	340	BLAIR, BEAVER, ERIE, CAMBRIA, SOMERSET, ALLEGHENY, FAYETTE WASHINGTON, WESTMORELAND, MERCER
NONMETROPOLITAN ALLOCATION AREAS			
ALL NONMETRO COUNTIES	1,706,835	59	ARMSTRONG, BEDFORD, BUTLER, CAMERON, CLARION, CLEARFIELD CRAWFORD, ELK, FOREST, FULTON, GREENE, HUNTINGDON, INDIANA JEFFERSON, LAWRENCE, MCKEAN, POTTER, VENANGO, WARREN
RICHMOND, VIRGINIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Richmond-Petersburg-Hopewell, VA MSA	2,810,937	89	CHARLES CITY, CHESTERFIELD, DINWIDDIE, GOOCHLAND, HANOVER HENRICO, NEW KENT, POWHATAN, PRINCE GEORGE, COLONIAL HEIGHTS HOPEWELL, PETERSBURG, RICHMOND
Norfolk-Virginia Beach-Newport News, Va MSA	4,049,964	131	GLOUCESTER, JAMES CITY, YORK, CHESAPEAKE, HAMPTON NEWPORT NEWS, NORFOLK, POQUOSON, PORTSMOUTH, SUFFOLK VIRGINIA BEACH, WILLIAMSBURG
All Other MSAs	2,320,071	75	ALBEMARLE, FLUVANNA, GREENE, CHARLOTTESVILLE, PITTSYLVANIA DANVILLE, AMHERST, CAMPBELL, LYNCHBURG, SCOTT, WASHINGTON BRISTOL, BOTETOURT, ROANOKE, ROANOKE, SALEM, STAFFORD
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetro Portion of Virginia	2,800,786	108	ACCOMACK, ALLEGHANY, AMELIA, APPOMATTOX, AUGUSTA, BATH BEDFORD, BLAND, BRUNSWICK, BUCHANAN, BUCKINGHAM, CAROLINE CARROLL, CHARLOTTE, CLARKE, CRAIG, CULPEPER, CUMBERLAND DICKENSON, ESSEX, FAUQUIER, FLOYD, FRANKLIN, FREDERICK, GILES GRAYSON, GREENSVILLE, HALIFAX, HENRY, HIGHLAND, ISLE OF WIGHT KING AND QUEEN, KING GEORGE, KING WILLIAM, LANCASTER, LEE LOUISA, LUNENBURG, MADISON, MATHEWS, MECKLENBURG, MIDDLESEX

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			MONTGOMERY, NELSON, NORTHAMPTON, NORTHUMBERLAND, NOTTOWAY ORANGE, PAGE, PATRICK, PRINCE EDWARD, PULASKI, RAPPAHANNOCK RICHMOND, ROCKBRIDGE, ROCKINGHAM, RUSSELL, SHENANDOAH, SMYTH SOUTHAMPTON, SPOTSYLVANIA, SURRY, SUSSEX, TAZEWELL, WARREN WESTMORELAND, WISE, WYTHE, BEDFORD, BUENA VISTA, CLIFTON FORGE COVINGTON, EMPORIA, FRANKLIN, FREDERICKSBURG, GALAX HARRISONBURG, LEXINGTON, MARTINSVILLE, NORTON, RADFORD SOUTH BOSTON, STAUNTON, WAYNESBORO, WINCHESTER
WASHINGTON, D C OFFICE			
METROPOLITAN ALLOCATION AREAS			
Washington, D C	20,302,293	392	MONTGOMERY, PRINCE GEORGE'S, WASHINGTON, ARLINGTON, FAIRFAX LOUDOUN, PRINCE WILLIAM, ALEXANDRIA, FAIRFAX, FALLS CHURCH MANASSAS, MANASSAS PARK
HUD REGION IV (ATLANTA)			
ATLANTA, GEORGIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
GA METRO ALLOCATION AREA NO 1	7,226,426	232	FULTON, DE KALB, FAYETTE, PAULDING, CHEROKEE

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			MONTGOMERY, NELSON, NORTHAMPTON, NORTHUMBERLAND, NOTTOWAY ORANGE, PAGE, PATRICK, PRINCE EDWARD, PULASKI, RAPPAHANNOCK RICHMOND, ROCKBRIDGE, ROCKINGHAM, RUSSELL, SHENANDOAH, SMYTH SOUTHAMPTON, SPOTSYLVANIA, SURRY, SUSSEX, TAZEWELL, WARREN WESTMORELAND, WISE, WYTHE, BEDFORD, BUENA VISTA, CLIFTON FORGE COVINGTON, EMPORIA, FRANKLIN, FREDERICKSBURG, GALAX HARRISONBURG, LEXINGTON, MARTINSVILLE, NORTON, RADFORD SOUTH BOSTON, STAUNTON, WAYNESBORO, WINCHESTER
WASHINGTON, D C OFFICE			
METROPOLITAN ALLOCATION AREAS			
Washington, D C	20,302,293	392	MONTGOMERY, PRINCE GEORGE'S, WASHINGTON, ARLINGTON, FAIRFAX LOUDOUN, PRINCE WILLIAM, ALEXANDRIA, FAIRFAX, FALLS CHURCH MANASSAS, MANASSAS PARK
HUD REGION IV (ATLANTA)			
ATLANTA, GEORGIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
GA METRO ALLOCATION AREA NO 1	7,335,436	233	FULTON, DE KALB, BARROW, BUTTS, CHEROKEE, CLAYTON, COBB COWETA, DOUGLAS, FAYETTE, FORSYTH, GWINNETT, HENRY, NEWTON PAULDING, ROCKDALE, SPALDING, WALTON
GA METRO ALLOCATION AREA NO 2	5,482,172	174	BIBB, CHATTAHOOCHEE, HOUSTON, JONES, MUSCOGEE, PEACH, CATOOSA CHATHAM, CLARKE, COLUMBIA, DADE, DOUGHERTY, EFFINGHAM, JACKSON LEE, MCDUFFIE, MADISON, OCONEE, RICHMOND, WALKER
NONMETROPOLITAN ALLOCATION AREAS			
GA NONMETRO ALLOCATION AREA NO 1	3,875,138	182	APPLING, ATKINSON, BACON, BAKER, BALDWIN, BANKS, BARTOW BEN HILL, BERRIEN, BLECKLEY, BRANTLEY, BROOKS, BRYAN, BULLOCH BURKE, CALHOUN, CAMDEN, CANDLER, CARROLL, CHARLTON, CHATTOOGA CLAY, CLINCH, COFFEE, COLQUITT, COOK, CRAWFORD, CRISP, DAWSON DECATUR, DODGE, DOOLY, EARLY, ECHOLS, ELBERT, EMANUEL, EVANS FANNIN, FLOYD, FRANKLIN, GILMER, GLASCOCK, GLYNN, GORDON GRADY, GREENE, HABERSHAM, HALL, HANCOCK, HARALSON, HARRIS HART, HEARD, IRWIN, JASPER, JEFF DAVIS, JEFFERSON, JENKINS JOHNSON, LAMAR, LANIER, LAURENS, LIBERTY, LINCOLN, LONG LOWNDES, LUMPKIN, MCINTOSH, MACON, MARION, MERIWETHER, MILLER MITCHELL, MONROE, MONTGOMERY, MORGAN, MURRAY, OGLETHORPE PICKENS, PIERCE, PIKE, POLK, PULASKI, PUTNAM, QUITMAN, RABUN RANDOLPH, SCHLEY, SCREVEN, SEMINOLE, STEPHENS, STEWART, SUMTER TALBOT, TALIAFERRO, TATTNALL, TAYLOR, TELFAIR, TERRELL, THOMAS TIFT, TOOMBS, TOWNS, TREUTLEN, TROUP, TURNER, TWIGGS, UNION UPSON, WARE, WARREN, WASHINGTON, WAYNE, WEBSTER, WHEELER WHITE, WHITFIELD, WILCOX, WILKES, WILKINSON, WORTH
BIRMINGHAM, ALABAMA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	1,221,059	38	DALE, HOUSTON, AUTAUGA, ELMORE, MONTGOMERY, RUSSELL
METROPOLITAN ALLOCATION AREA 2	1,058,232	43	BALDWIN, MOBILE
METROPOLITAN ALLOCATION AREA 4	3,032,469	121	CALHOUN, BLOUNT, JEFFERSON, ST CLAIR, SHELBY, WALKER TUSCALOOSA
METROPOLITAN ALLOCATION AREA 3	1,502,748	59	MADISON, COLBERT, LAUDERDALE, LAWRENCE, MORGAN, ETOWAH
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN ALLOCATION AREA 1	460,735	22	COFFEE, PIKE, LEE, HENRY, GENEVA, CRENSHAW, BULLOCK, BARBOUR

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 08

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			CHAMBERS
NON-METROPOLITAN ALLOCATION AREA 2	347,524	17	BUTLER, LOWNDES, MACON, COVINGTON, DALLAS
NON-METROPOLITAN ALLOCATION AREA 3	379,495	18	JACKSON, MARSHALL, DE KALB, CHEROKEE, WINSTON, LIMESTONE LAMAR, FRANKLIN, CULLMAN
NON-METROPOLITAN ALLOCATION AREA 4	408,480	19	CLEBURNE, CLAY, COOSA, TALLADEGA, TALLAPOOSA, RANDOLPH, HALE GREENE, FAYETTE, BIBB, CHILTON
NON-METROPOLITAN ALLOCATION AREA 5	338,805	16	CHOCTAW, CLARKE, CONECUH, ESCAMBIA, MARENGO, MARION, MONROE PERRY, PICKENS, SUMTER, WASHINGTON, WILCOX
CARIBBEAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO #1	2,192,451	81	FLORIDA MUNICIPIO, HORMIGUEROS MUNICIPIO, LUQUILLO MUNICIPIO BARCELONETA MUNICIPIO, QUEBRADILLAS MUNICIPIO ANASCO MUNICIPIO, AGUAS BUENAS MUNICIPIO LAS PIEDRAS MUNICIPIO, NARANJITO MUNICIPIO, GURABO MUNICIPIO CAMUY PUEBLO, LOIZA MUNICIPIO, JUNCOS MUNICIPIO DORADO MUNICIPIO, HATILLO MUNICIPIO, MOCA MUNICIPIO COROZAL MUNICIPIO, VEGA ALTA MUNICIPIO, CATANO MUNICIPIO SAN GERMAN MUNICIPIO, SAN LORENZO MUNICIPIO, CIDRA MUNICIPIO AGUADA MUNICIPIO, CANOVANAS MUNICIPIO, FAJARDO MUNICIPIO CABO ROJO MUNICIPIO, MANATI MUNICIPIO, ISABELA MUNICIPIO TOA ALTA MUNICIPIO, JUANA DIAZ MUNICIPIO, RIO GRANDE MUNICIPIO CAYEY MUNICIPIO, HUMACAO MUNICIPIO, VEGA BAJA MUNICIPIO
METRO #2	1,394,340	51	TOA BAJA MUNICIPIO, GUAYNABO MUNICIPIO, ARECIBO MUNICIPIO MAYAGUEZ MUNICIPIO, CAGUAS MUNICIPIO, AGUADILLA MUNICIPIO TRUJILLO ALTO MUNICIPIO
METRO #3	3,273,508	123	PONCE MUNICIPIO, BAYAMON MUNICIPIO, SAN JUAN MUNICIPIO CAROLINA MUNICIPIO
NONMETROPOLITAN ALLOCATION AREAS			
Caribbean - Nonmetropolitan Areas	1,046,831	40	ADJUNTAS MUNICIPIO, AIBONITO MUNICIPIO, ARROYO MUNICIPIO BARRANQUITAS MUNICIPIO, CEIBA MUNICIPIO, CIALES MUNICIPIO COAMA MUNICIPIO, COMERIO MUNICIPIO, CULEBRA MUNICIPIO GUANICA MUNICIPIO, GUAYAMA MUNICIPIO, GUAYANILLA MUNICIPIO JAYUYA MUNICIPIO, LAJAS MUNICIPIO, LARES MUNICIPIO LAS MARIAS MUNICIPIO, MARICAO MUNICIPIO, MAUNABO MUNICIPIO MOROVIS MUNICIPIO, NAGUABO MUNICIPIO, OROCOVIS MUNICIPIO PATILLAS MUNICIPIO, PENUELAS MUNICIPIO, RINCON MUNICIPIO SABANA GRANDE MUNICIPIO, SALINAS MUNICIPIO SAN SEBASTIAN MUNICIPIO, SANTA ISABEL MUNICIPIO UTUADO MUNICIPIO, VIEQUES MUNICIPIO, VILLALBA MUNICIPIO YABUCOA MUNICIPIO, YAUCO MUNICIPIO, VIRGIN ISLANDS
COLUMBIA, SOUTH CAROLINA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area 1	4,674,527	179	ANDERSON, AIKEN, BERKELEY, CHARLESTON, DORCHESTER, YORK LEXINGTON, RICHLAND, FLORENCE, GREENVILLE, PICKENS SPARTANBURG
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area 1	1,920,311	89	ABBEVILLE, ALLENDALE, BAMBERG, BARNWELL, BEAUFORT, CALHOUN CHEROKEE, CHESTER, CHESTERFIELD, CLARENDON, COLLETON DARLINGTON, DILLON, EDGEFIELD, FAIRFIELD, GEORGETOWN GREENWOOD, HAMPTON, HORRY, JASPER, KERSHAW, LANCASTER, LAURENS LEE, MCCORMICK, MARION, MARLBORO, NEWBERRY, OCONEE, ORANGEBURG

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 09

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			SALUDA, SUMTER, UNION, WILLIAMSBURG
GREENSBORO, NORTH CAROLINA OFFICE			
METROPOLITAN ALLOCATION AREAS			
CHARLOTTE-GASTONIA MSA	2,421,534	89	CABARRUS, GASTON, LINCOLN, MECKLENBURG, ROWAN, UNION
GREENSBORO--WINSTON-SALEM--HIGH POINT MSA	2,119,091	78	DAVIDSON, DAVIE, FORSYTH, GUILFORD, RANDOLPH, STOKES, YADKIN
RALEIGH-DURHAM MSA	2,103,476	78	DURHAM, FRANKLIN, ORANGE, WAKE
ALL OTHER METROPOLITAN AREAS, N.C.	2,139,129	79	BUNCOMBE, ALAMANCE, CUMBERLAND, ALEXANDER, BURKE, CATAWBA ONSLOW, NEW HANOVER
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN COUNTIES, WESTERN N.C.	2,053,961	87	ALLEGHANY, ANSON, ASHE, AVERY, CALDWELL, CASWELL, CHATHAM CHEROKEE, CLAY, CLEVELAND, GRAHAM, GRANVILLE, HAYWOOD HENDERSON, IREDELL, JACKSON, JOHNSTON, LEE, MCDOWELL, MACON MADISON, MITCHELL, MONTGOMERY, MOORE, PERSON, POLK, RICHMOND ROCKINGHAM, RUTHERFORD, STANLY, SURRY, SWAIN, TRANSYLVANIA VANCE, WARREN, WATAUGA, WILKES, YANCEY
NON-METROPOLITAN COUNTIES, EASTERN N.C.	2,487,736	107	BEAUFORT, BERTIE, BLADEN, BRUNSWICK, CAMDEN, CARTERET, CHOWAN COLUMBUS, CRAVEN, CURRITUCK, DARE, DUPLIN, EDGECOMBE, GATES

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			SALUDA, SUMTER, UNION, WILLIAMSBURG
GREENSBORO, NORTH CAROLINA OFFICE			
METROPOLITAN ALLOCATION AREAS			
CHARLOTTE-GASTONIA MSA	2,421,534	89	CABARRUS, GASTON, LINCOLN, MECKLENBURG, ROWAN, UNION
GREENSBORO--WINSTON-SALEM--HIGH POINT MSA	2,119,091	78	DAVIDSON, DAVIE, FORSYTH, GUILFORD, RANDOLPH, STOKES, YADKIN
RALEIGH-DURHAM MSA	2,103,476	78	DURHAM, FRANKLIN, ORANGE, WAKE
ALL OTHER METROPOLITAN AREAS, N.C.	2,139,129	79	BUNCOMBE, ALAMANCE, CUMBERLAND, ALEXANDER, BURKE, CATAWBA ONSLOW, NEW HANOVER
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN COUNTIES, WESTERN N.C.	2,053,061	87	ALLEGHANY, ANSON, ASHE, AVERY, CALDWELL, CASWELL, CHATHAM CHEROKEE, CLAY, CLEVELAND, GRAHAM, GRANVILLE, HAYWOOD HENDERSON, IREDELL, JACKSON, JOHNSTON, LEE, MCDOWELL, MACON MADISON, MITCHELL, MONTGOMERY, MOORE, PERSON, POLK, RICHMOND ROCKINGHAM, RUTHERFORD, STANLY, SURRY, SWAIN, TRANSYLVANIA VANCE, WARREN, WATAUGA, WILKES, YANCEY
NON-METROPOLITAN COUNTIES, EASTERN N.C.	2,487,736	107	BEAUFORT, BERTIE, BLADEN, BRUNSWICK, CAMDEN, CARTERET, CHOWAN COLUMBUS, CRAVEN, CURRITUCK, DARE, DUPLIN, EDGECOMBE, GATES GREENE, HALIFAX, HARNETT, HERTFORD, HOKE, HYDE, JONES, LENOIR MARTIN, NASH, NORTHAMPTON, PAMLICO, PASQUOTANK, PENDER PERQUIMANS, PITT, ROBESON, SAMPSON, SCOTLAND, TYRRELL WASHINGTON, WAYNE, WILSON
JACKSON, MISSISSIPPI OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area No. 1	1,864,193	67	HANCOCK, HARRISON, HINDS, MADISON, RANKIN, DE SOTO, JACKSON
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area No. 1	3,379,216	159	ADAMS, ALCORN, AMITE, ATTALA, BENTON, BOLIVAR, CALHOUN CARROLL, CHICKASAW, CHOCTAW, CLAIBORNE, CLARKE, CLAY, COAHOMA COPIAH, COVINGTON, FORREST, FRANKLIN, GEORGE, GREENE, GRENADA HOLMES, HUMPHREYS, ISSAQUENA, ITAWAMBA, JASPER, JEFFERSON JEFFERSON DAVIS, JONES, KEMPER, LAFAYETTE, LAMAR, LAUDERDALE LAWRENCE, LEAKE, LEE, LEFLORE, LINCOLN, LOWNDES, MARION MARSHALL, MONROE, MONTGOMERY, NESHOBA, NEWTON, NOXUBEE OKTIBBEHA, PANOLA, PEARL RIVER, PERRY, PIKE, PONTOTOC PRENTISS, QUITMAN, SCOTT, SHARKEY, SIMPSON, SMITH, STONE SUNFLOWER, TALLAHATCHIE, TATE, TIPPAH, TISHOMINGO, TUNICA UNION, WALTHALL, WARREN, WASHINGTON, WAYNE, WEBSTER, WILKINSON WINSTON, YALOBUSHA, YAZOO
JACKSONVILLE, FLORIDA OFFICE			
METROPOLITAN ALLOCATION AREAS			
MIAMI-HIALEAH	12,192,996	347	DADE
WEST PALM BEACH-FT PIERCE	2,131,035	60	PALM BEACH, MARTIN, ST LUCIE
TAMPA-ST PETERSBURG-CLEARWATER	4,990,520	142	HERNANDO, HILLSBOROUGH, PASCO, PINELLAS
JACKSONVILLE-OCALA-DAYTONA BEACH-GAINESVILLE	4,954,567	141	CLAY, DUVAL, NASSAU, ST JOHN, MARION, VOLUSIA, ALACHUA BRADFORD
ORLANDO-MELBOURNE	2,957,541	84	ORANGE, OSCEOLA, SEMINOLE, BREVARD
PENSACOLA-FT WALTON-PANAMA CITY-TALLAHASSEE	2,262,865	63	ESCAMBIA, SANTA ROSA, OKALOOSA, BAY, GADSDEN, LEON
LAKELAND-BRADENTON-NAPLES-SARASOTA-FT MYERS	2,627,996	75	POLK, MANATEE, COLLIER, SARASOTA, LEE
FT LAUDERDALE-HOLLYWOOD	2,742,254	78	BROWARD
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA 1	1,419,010	50	BAKER, CALHOUN, CHARLOTTE, CITRUS, COLUMBIA, DE SOTO, DIXIE

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 10

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			FLAGLER, FRANKLIN, GILCHRIST, GLADES, GULF, HAMILTON, HARDEE HENDRY, HIGHLANDS, HOLMES, INDIAN RIVER, JACKSON, JEFFERSON LAFAYETTE, LAKE, LEVY, LIBERTY, MADISON, MONROE, OKEECHOBEE PUTNAM, SUMTER, SUWANNEE, TAYLOR, UNION, WAKULLA, WALTON WASHINGTON
LOUISVILLE, KENTUCKY OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	3,341,798	126	BOURBON, BULLITT, CLARK, FAYETTE, JEFFERSON, JESSAMINE, OLDHAM SCOTT, SHELBY, WOODFORD
METROPOLITAN ALLOCATION AREA 2	1,556,010	59	BOONE, BOYD, CAMPBELL, CARTER, CHRISTIAN, DAVIESS, GREENUP HENDERSON, KENTON
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA - NORTHEAST	342,060	16	BRACKEN, ROBERTSON, MASON, FLEMING, LEWIS, MONTGOMERY, BATH ROWAN, POWELL, MENIFEE, MORGAN, ELLIOTT, LAWRENCE, JOHNSON MARTIN
NONMETROPOLITAN ALLOCATION AREA - SOUTH CENTR	578,271	27	ANDERSON, FRANKLIN, HARRISON, NICHOLAS, CUMBERLAND, ADAIR GREEN, TAYLOR, CLINTON, RUSSELL, WAYNE, MCCREARY, PULASKI CASEY, LINCOLN, GARRARD, MADISON
NONMETROPOLITAN ALLOCATION AREA - SOUTHEAST	896,115	40	ESTILL, LEE, WOLFE, MAGOFFIN, FLOYD, PIKE, JACKSON, LAUREL WHITLEY, KNOX, BELL, CLAY, LESLIE, HARLAN, OWSLEY, BREATHITT PERRY, KNOTT, LETCHER, ROCKCASTLE
NONMETROPOLITAN ALLOCATION AREA - MIDWEST	453,950	20	UNION, WEBSTER, MCLEAN, HANCOCK, OHIO, BUTLER, LOGAN, SIMPSON WARREN, ALLEN, MONROE, METCALFE, BARREN, HART, EDMONSON
NONMETROPOLITAN ALLOCATION AREA - FAR WEST	426,729	18	FULTON, BALLARD, CARLISLE, HICKMAN, MCCRACKEN, GRAVES CALLOWAY, MARSHALL, LIVINGSTON, CRITTENDEN, LYON, TRIGG CALDWELL, HOPKINS, MUHLENBERG, TODD
NONMETROPOLITAN ALLOCATION AREA - NORTH CETN\	465,133	22	GRAYSON, BRECKINRIDGE, MEADE, HARDIN, LARUE, NELSON, MARION WASHINGTON, SPENCER, TRIMBLE, HENRY, CARROLL, GALLATIN, OWEN GRANT, PENDLETON, MERCER, BOYLE
KNOXVILLE, TENNESSEE OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	3,136,440	122	HAMILTON, MARION, SEQUATCHIE, CARTER, HAWKINS, SULLIVAN UNICOI, WASHINGTON, ANDERSON, BLOUNT, GRAINGER, JEFFERSON KNOX, SEVIER, UNION
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN ALLOCATION AREA 1	727,560	33	BLEDSOE, BRADLEY, CAMPBELL, CLAIBORNE, COCKE, CUMBERLAND FENTRESS, GREENE, GRUNDY, HAMBLEN, HANCOCK, JOHNSON, LOUDON MCMINN, MEIGS, MONROE, MORGAN, PICKETT, POLK, RHEA, ROANE SCOTT
NASHVILLE, TENNESSEE OFFICE			
METROPOLITAN ALLOCATION AREAS			
MEMPHIS-JACKSON TN. ALLOCATION AREA	3,307,061	117	SHELBY, TIPTON, MADISON
NASHVILLE-CLARKSVILLE TN. ALLOCATION AREA	2,984,674	105	CHEATHAM, DAVIDSON, DICKSON, ROBERTSON, RUTHERFORD, SUMNER WILLIAMSON, WILSON, MONTGOMERY
NONMETROPOLITAN ALLOCATION AREAS			
WEST TN. ALLOCATION AREA	635,470	30	BENTON, CARROLL, CHESTER, CROCKETT, DECATUR, DYER, FAYETTE GIBSON, HARDEMAN, HARDIN, HAYWOOD, HENDERSON, HENRY, LAKE LAUDERDALE, MCNAIRY, OBION, WEAKLEY
MIDDLE TN. ALLOCATION AREA	740,271	33	BEDFORD, CANNON, CLAY, COFFEE, DE KALB, FRANKLIN, GILES HICKMAN, JACKSON, LAWRENCE, LEWIS, LINCOLN, MACON, MARSHALL

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 11

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			MAURY, MOORE, OVERTON, PERRY, PUTNAM, SMITH, VAN BUREN, WARREN WAYNE, WHITE, STEWART, HOUSTON, HUMPHREYS, TROUSDALE
HUD REGION V (CHICAGO)			
CHICAGO, ILLINOIS OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO I CHICAGO	37,054,158	932	COOK
METRO II CHICAGO COLLAR COUNTIES	4,086,318	103	LAKE, KANE, KENDALL, GRUNDY, WILL, MCHENRY, DU PAGE
METRO III ROCKFORD	1,917,770	49	BOONE, WINNEBAGO
METRO IV BLOOMINGTON CHAMPAIGN DECATUR KANKE.	2,101,299	52	MCLEAN, CHAMPAIGN, MACON, KANKAKEE
METRO V PEORIA ROCK ISLAND SPRINGFIELD	2,467,582	60	PEORIA, TAZEWELL, WOODFORD, HENRY, ROCK ISLAND, MENARD SANGAMON
METRO VI ST. LOUIS-ILLINOIS PORTION	2,145,712	54	CLINTON, JERSEY, MADISON, MONROE, ST CLAIR
NONMETROPOLITAN ALLOCATION AREAS			
NON-METRO I	1,105,294	40	ADAMS, BROWN, BUREAU, CALHOUN, CARROLL, CASS, FULTON, GREENE HANCOCK, HENDERSON, JO DAVIESS, KNOX, LEE, MARSHALL, MCDONOUGH MERCER, OGLE, PIKE, PUTNAM, SCHUYLER, SCOTT, STARK, STEPHENSON WARREN, WHITESIDE

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			MAURY, MOORE, OVERTON, PERRY, PUTNAM, SMITH, VAN BUREN, WARREN WAYNE, WHITE, STEWART, HOUSTON, HUMPHREYS, TROUSDALE
HUD REGION V (CHICAGO)			
CHICAGO, ILLINOIS OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO I CHICAGO	37,054,158	932	COOK
METRO II CHICAGO COLLAR COUNTIES	4,086,318	103	LAKE, KANE, KENDALL, GRUNDY, WILL, MCHENRY, DU PAGE
METRO III ROCKFORD	1,917,770	49	BOONE, WINNEBAGO
METRO IV BLOOMINGTON CHAMPAIGN DECATUR KANKE.	2,101,299	52	MCLEAN, CHAMPAIGN, MACON, KANKAKEE
METRO V PEORIA ROCK ISLAND SPRINGFIELD	2,467,582	60	PEORIA, TAZEWELL, WOODFORD, HENRY, ROCK ISLAND, MENARD SANGAMON
METRO VI ST. LOUIS-ILLINOIS PORTION	2,145,712	54	CLINTON, JERSEY, MADISON, MONROE, ST CLAIR
NONMETROPOLITAN ALLOCATION AREAS.			
NON-METRO I	1,105,294	40	ADAMS, BROWN, BUREAU, CALHOUN, CARROLL, CASS, FULTON, GREENE HANCOCK, HENDERSON, JO DAVIESS, KNOX, LEE, MARSHALL, MCDONOUGH MERCER, OGLE, PIKE, PUTNAM, SCHUYLER, SCOTT, STARK, STEPHENSON WARREN, WHITESIDE
NON-METRO II	1,415,316	55	BOND, CHRISTIAN, COLES, DE KALB, DE WITT, DOUGLAS, EFFINGHAM FAYETTE, FORD, IROQUOIS, LA SALLE, LIVINGSTON, LOGAN, MACOUPIN MASON, MONTGOMERY, MORGAN, MOULTRIE, PIATT, SHELBY, VERMILION
NON-METRO III	1,031,626	39	ALEXANDER, CLARK, CLAY, CRAWFORD, CUMBERLAND, EDGAR, EDWARDS FRANKLIN, GALLATIN, HAMILTON, HARDIN, JACKSON, JASPER JEFFERSON, JOHNSON, LAWRENCE, MARION, MASSAC, PERRY, POPE PULASKI, RANDOLPH, RICHLAND, SALINE, UNION, WABASH, WASHINGTON WAYNE, WHITE, WILLIAMSON
CINCINNATI, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
CINCINNATI OFFICE - METROPOLITAN	7,131,800	252	BUTLER, CLERMONT, GREENE, HAMILTON, MIAMI, MONTGOMERY, WARREN
NONMETROPOLITAN ALLOCATION AREAS			
CINCINNATI OFFICE - NONMETROPOLITAN	403,560	16	ADAMS, BROWN, CLINTON, DARKE, HIGHLAND, PREBLE
CLEVELAND, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
AKRON-CANTON MSA Area	2,381,426	82	PORTAGE, SUMMIT, CARROLL, STARK
CLEVELAND-STEUBENVILLE-YOUNGSTOWN METRO Area	8,435,254	290	CUYAHOGA, GEAUGA, LAKE, MEDINA, JEFFERSON, MAHONING, TRUMBULL
LORAIN-TOLEDO-MANSFIELD MSA AREA	2,764,172	95	FULTON, LUCAS, WOOD, RICHLAND, LORAIN
NONMETROPOLITAN ALLOCATION AREAS			
Cleveland Nonmetro Area	1,383,326	54	ASHLAND, ASHTABULA, COLUMBIANA, CRAWFORD, DEFIANCE, ERIE HANCOCK, HARRISON, HENRY, HOLMES, HURON, OTTAWA, PAULDING SANDUSKY, SENECA, TUSCARAWAS, WAYNE, WILLIAMS, WYANDOT
COLUMBUS, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
COLUMBUS OFFICE - METROPOLITAN	5,404,979	193	LAWRENCE, DELAWARE, FAIRFIELD, FRANKLIN, LICKING, MADISON PICKAWAY, UNION, CLARK, ALLEN, AUGLAIZE, WASHINGTON, BELMONT
NONMETROPOLITAN ALLOCATION AREAS			
COLUMBUS OFFICE - NONMETROPOLITAN SOUTH	834,234	33	ATHENS, FAYETTE, GALLIA, HOCKING, JACKSON, MEIGS, MORGAN PERRY, PIKE, ROSS, SCIOTO, VINTON
COLUMBUS OFFICE - NONMETROPOLITAN NORTH	731,165	30	CHAMPAIGN, COSHOCTON, GUERNSEY, HARDIN, KNOX, LOGAN, MARION MERCER, MONROE, MORROW, MUSKINGUM, NOBLE, PUTNAM, SHELBY

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			VAN WERT
DETROIT, MICHIGAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
ANN ARBOR,FLINT,SAGINAW-BAY-MIDLAND MSAs	3,624,098	116	WASHTENAW, GENESEE, BAY, MIDLAND, SAGINAW
WAYNE COUNTY	9,130,366	290	WAYNE
DETROIT PMSA LESS WAYNE COUNTY	4,236,415	135	LAPEER, LIVINGSTON, MACOMB, MONROE, OAKLAND, ST CLAIR
NONMETROPOLITAN ALLOCATION AREAS			
DETROIT OFFICE NON-METRO	512,699	21	ALCONA, ALPENA, ARENAC, GLADWIN, HURON, IOSCO, LENAWEE MONTMORENCY, OGEMAW, OSCODA, PRESQUE ISLE, SANILAC, SHIAWASSEE TUSCOLA
GRAND RAPIDS, MICHIGAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
GRAND RAPIDS--LANSING-E. LANSING MSAs	2,856,440	98	KENT, OTTAWA, CLINTON, EATON, INGHAM
CALHOUN,BERRIEN,JACKSON,KALAMAZOO&MUSKEGON CO	2,250,122	77	CALHOUN, BERRIEN, JACKSON, KALAMAZOO, MUSKEGON
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan All	1,863,930	68	ALGER, ALLEGAN, ANTRIM, BARAGA, BARRY, BENZIE, BRANCH, CASS CHARLEVOIX, CHEBOYGAN, CHIPPEWA, CLARE, CRAWFORD, DELTA DICKINSON, EMMET, GOGEBIC, GRAND TRAVERSE, GRATIOT, HILLSDALE HOUGHTON, IONIA, IRON, ISABELLA, KALKASKA, KEWEENAW, LAKE LEELANAU, LUCE, MACKINAC, MANISTEE, MARQUETTE, MASON, MECOSTA MENOMINEE, MISSAUKEE, MONTCALM, NEWAYGO, OCEANA, ONTONAGON OSCEOLA, OTSEGO, ROSCOMMON, ST JOSEPH, SCHOOLCRAFT, VAN BUREN WEXFORD
INDIANAPOLIS, INDIANA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO NORTH	2,869,560	99	LAKE, PORTER, ST JOSEPH, ELKHART, ALLEN, DE KALB, WHITLEY
METRO CENTRAL	4,220,282	144	TIPPECANOE, HOWARD, TIPTON, BOONE, HAMILTON, HANCOCK HENDRICKS, JOHNSON, MARION, MORGAN, SHELBY, MADISON, DELAWARE
METRO SOUTH	2,628,947	89	CLAY, VIGO, MONROE, DEARBORN, POSEY, VANDERBURGH, WARRICK CLARK, FLOYD, HARRISON
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO NORTH	600,629	27	NEWTON, BENTON, JASPER, LA PORTE, STARKE, PULASKI, WHITE CARROLL, MARSHALL, FULTON, CASS, KOSCIUSKO, MIAMI, WABASH HUNTINGTON, WELLS, ADAMS, LAGRANGE, NOBLE, STEUBEN
NONMETRO CENTRAL	618,415	26	WARREN, VERMILLION, FOUNTAIN, PARKE, MONTGOMERY, PUTNAM CLINTON, GRANT, BLACKFORD, JAY, RANDOLPH, HENRY, WAYNE, RUSH FAYETTE, UNION
NONMETRO SOUTH	747,164	34	SULLIVAN, KNOX, GIBSON, OWEN, GREENE, DAVIESS, MARTIN, PIKE DUBOIS, SPENCER, PERRY, LAWRENCE, ORANGE, CRAWFORD, BROWN JACKSON, WASHINGTON, BARTHOLOMEW, DECATUR, JENNINGS, SCOTT JEFFERSON, RIPLEY, FRANKLIN, OHIO, SWITZERLAND
MILWAUKEE, WISCONSIN OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area #1	2,841,942	94	CALUMET, OUTAGAMIE, WINNEBAGO, DOUGLAS, CHIPPEWA, EAU CLAIRE BROWN, LA CROSSE, ST CROIX, SHEBOYGAN, MARATHON
Metropolitan Allocation Area #2	2,831,576	92	ROCK, KENOSHA, DANE, RACINE
Metropolitan Allocation Area #3	5,729,722	187	MILWAUKEE, OZAUKEE, WASHINGTON, WAUKESHA
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area #1	785,088	32	COLUMBIA, CRAWFORD, DODGE, GRANT, GREEN, IOWA, JEFFERSON

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			LAFAYETTE, RICHLAND, SAUK, VERNON, WALWORTH
Nonmetropolitan Allocation Area #2	796,053	35	ASHLAND, BARRON, BAYFIELD, BUFFALO, BURNETT, CLARK, DUNN, IRON JACKSON, JUNEAU, MONROE, PEPIN, PIERCE, POLK, PRICE, RUSK SAWYER, TAYLOR, TREMPEALEAU, WASHBURN, WOOD
Nonmetropolitan Allocation Area #3	858,214	35	ADAMS, DOOR, FLORENCE, FOND DU LAC, FOREST, GREEN LAKE KEWAUNEE, LANGLADE, LINCOLN, MANITOWOC, MARINETTE, MARQUETTE OCONTO, ONEIDA, PORTAGE, SHAWANO, VILAS, WAUPACA, WAUSHARA MENOMINEE
MINNEAPOLIS-ST. PAUL, MINNESOTA OFFICE			
METROPOLITAN ALLOCATION AREAS			
MINNEAPOLIS/ST. PAUL MSA	8,437,673	231	ANOKA, CARVER, CHISAGO, DAKOTA, HENNEPIN, ISANTI, RAMSEY SCOTT, WASHINGTON, WRIGHT
GREATER MINNESOTA METRO	1,806,401	50	ST LOUIS, OLMSTED, CLAY, BENTON, SHERBURNE, STEARNS
NONMETROPOLITAN ALLOCATION AREAS			
NORTHERN MINNESOTA	822,079	32	KITTSON, ROSEAU, MARSHALL, PENNINGTON, RED LAKE, POLK, NORMAN LAKE OF THE WOODS, BELTRAMI, CLEARWATER, MAHNOMEN, HUBBARD BECKER, WILKIN, OTTER TAIL, GRANT, DOUGLAS, TRAVERSE, STEVENS POPE, KOOCHICHING, ITASCA, AITKIN, CARLTON, LAKE, COOK, CASS CROW WING, WADENA, TODD, MORRISON, MILLE LACS, KANABEC, PINE

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			LAFAYETTE, RICHLAND, SAUK, VERNON, WALWORTH
Nonmetropolitan Allocation Area #2	796,053	35	ASHLAND, BARRON, BAYFIELD, BUFFALO, BURNETT, CLARK, DUNN, IRON JACKSON, JUNEAU, MONROE, PEPIN, PIERCE, POLK, PRICE, RUSK SAWYER, TAYLOR, TREMPEALEAU, WASHBURN, WOOD
Nonmetropolitan Allocation Area #3	858,214	35	ADAMS, DOOR, FLORENCE, FOND DU LAC, FOREST, GREEN LAKE KEWAUNEE, LANGLADE, LINCOLN, MANITOWOC, MARINETTE, MARQUETTE OCONTO, ONEIDA, PORTAGE, SHAWANO, VILAS, WAUPACA, WAUSHARA MENOMINEE
MINNEAPOLIS-ST. PAUL, MINNESOTA OFFICE			
METROPOLITAN ALLOCATION AREAS			
MINNEAPOLIS/ST. PAUL MSA	8,437,673	231	ANOKA, CARVER, CHISAGO, DAKOTA, HENNEPIN, ISANTI, RAMSEY SCOTT, WASHINGTON, WRIGHT
GREATER MINNESOTA METRO	1,806,401	50	ST LOUIS, OLMSTED, CLAY, BENTON, SHERBURNE, STEARNS
NONMETROPOLITAN ALLOCATION AREAS			
NORTHERN MINNESOTA	822,079	32	KITTSON, ROSEAU, MARSHALL, PENNINGTON, RED LAKE, POLK, NORMAN LAKE OF THE WOODS, BELTRAMI, CLEARWATER, MAHNOMEN, HUBBARD BECKER, WILKIN, OTTER TAIL, GRANT, DOUGLAS, TRAVERSE, STEVENS POPE, KOOCHICHING, ITASCA, AITKIN, CARLTON, LAKE, COOK, CASS CROW WING, WADENA, TODD, MORRISON, MILLE LACS, KANABEC, PINE
SOUTHWESTERN MINNESOTA	446,319	17	BIG STONE, SWIFT, CHIPPEWA, LAC QUI PARLE, YELLOW MEDICINE KANDIYOHI, MEEKER, RENVILLE, MCLEOD, LINCOLN, LYON, REDWOOD PIPESTONE, MURRAY, COTTONWOOD, ROCK, NOBLES, JACKSON
SOUTHEASTERN MINNESOTA	755,626	30	SIBLEY, NICOLLET, LE SUEUR, BROWN, WATONWAN, BLUE EARTH WASECA, MARTIN, FARIBAULT, RICE, GOODHUE, WABASHA, STEELE DODGE, WINONA, FREEBORN, MOWER, FILLMORE, HOUSTON
HUD REGION VI (FORT WORTH)			
FORT WORTH, TEXAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
DALLAS, TEXAS	5,726,442	185	COLLIN, DALLAS, DENTON, ELLIS, KAUFMAN, ROCKWALL
CENTRAL TEXAS	1,742,996	55	BELL, CORYELL, TOM GREEN, MCLENNAN
EAST TEXAS	1,266,254	40	GREGG, HARRISON, GRAYSON, BOWIE, SMITH
FORT WORTH-ARLINGTON	2,374,403	76	JOHNSON, PARKER, TARRANT
FAR WEST TEXAS	3,559,141	115	EL PASO, MIDLAND, ECTOR
WEST TEXAS	1,800,405	56	TAYLOR, POTTER, RANDALL, LUBBOCK, WICHITA
NEW MEXICO	2,336,087	75	BERNALILLO, DONA ANA, LOS ALAMOS, SANTA FE
NONMETROPOLITAN ALLOCATION AREAS			
WEST TEXAS NONMETRO	1,478,579	54	MILAM, LAMPASAS, SAN SABA, HAMILTON, MILLS, HILL, KIMBLE REAGAN, MASON, COKE, SUTTON, CONCHO, SCHLEICHER, CROCKETT MARTIN, MENARD, STERLING, IRION, NOLAN, KENT, BROWN, JONES STONEWALL, HASKELL, STEPHENS, FISHER, SCURRY, EASTLAND, KNOX COMANCHE, RUNNELS, COLEMAN, MITCHELL, SHACKELFORD THROCKMORTON, CALLAHAN, REEVES, ANDREWS, MARION, HOWARD, PECOS GAINES, TERRELL, CRANE, UPTON, LOVING, WARD, DAWSON, GLASSCOCK BORDEN, WINKLER, BAILEY, KING, COCHRAN, LAMB, DICKENS, LYNN GARZA, MOTLEY, HOCKLEY, TERRY, FLOYD, CROSBY, HALE, YOAKUM HUDSPETH, JEFF DAVIS, CULBERSON, BREWSTER, PRESIDIO, JACK YOUNG, HARDEMAN, ARCHER, CLAY, MONTAGUE, FOARD, COTTLE, BAYLOR WILBARGER, HEMPHILL, HANSFORD, HALL, SWISHER, GRAY, ROBERTS DONLEY, OLDHAM, DEAF SMITH, MOORE, DALLAM, HUTCHINSON COLLINGSWORTH, WHEELER, CHILDRESS, PARMER, CASTRO, LIPSCOMB

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 14

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			CARSON, SHERMAN, HARTLEY, OCHILTREE, BRISCOE, ARMSTRONG MCCULLOCH
EAST TEXAS NONMETRO	1,088,285	48	LIMESTONE, BOSQUE, FREESTONE, FALLS, HUNT, PALO PINTO, WISE ERATH, HOOD, SOMERVELL, NAVARRO, FANNIN, COOKE, FRANKLIN HOPKINS, TITUS, DELTA, MORRIS, RED RIVER, LAMAR, CASS HENDERSON, CAMP, RAINS, CHEROKEE, VAN ZANDT, RUSK, ANDERSON WOOD, UPSHUR, PANOLA
NEW MEXICO NONMETRO	989,332	39	CATRON, CHAVES, COLFAX, CURRY, DE BACA, EDDY, GRANT, GUADALUPE HARDING, HIDALGO, LEA, LINCOLN, LUNA, MCKINLEY, MORA, OTERO QUAY, RIO ARRIBA, ROOSEVELT, SANDOVAL, SAN JUAN, SAN MIGUEL SIERRA, SOCORRO, TAOS, TORRANCE, UNION, VALENCIA
HOUSTON, TEXAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
SOUTHEAST TEXAS	2,496,677	85	HARDIN, JEFFERSON, ORANGE, BRAZORIA, BRAZOS, GALVESTON
HOUSTON PMSA	8,445,142	285	FORT BEND, HARRIS, LIBERTY, MONTGOMERY, WALLER
NONMETROPOLITAN ALLOCATION AREAS			
HOUSTON AREA NONMETRO	902,919	37	ANGELINA, AUSTIN, BURLESON, CHAMBERS, COLORADO, GRIMES HOUSTON, JASPER, LEON, MADISON, MATAGORDA, NACOGDOCHES, NEWTON POLK, ROBERTSON, SABINE, SAN AUGUSTINE, SAN JACINTO, SHELBY TRINITY, TYLER, WALKER, WASHINGTON, WHARTON
LITTLE ROCK, ARKANSAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
ARK-METRO	2,520,058	95	WASHINGTON, CRAWFORD, SEBASTIAN, FAULKNER, LONOKE, PULASKI SALINE, CRITTENDEN, JEFFERSON, MILLER
NONMETROPOLITAN ALLOCATION AREAS			
NW	637,252	29	BAXTER, BENTON, BOONE, CARROLL, MADISON, MARION, NEWTON SEARCY, CLARK, CONWAY, GARLAND, HOT SPRING, JOHNSON MONTGOMERY, PERRY, PIKE, POPE, YELL, FRANKLIN, LOGAN, POLK SCOTT
NE	466,163	24	CLEBURNE, FULTON, INDEPENDENCE, IZARD, JACKSON, SHARP, STONE VAN BUREN, WHITE, WOODRUFF, CLAY, CRAIGHEAD, GREENE, LAWRENCE RANDOLPH
E	575,297	27	MISSISSIPPI, POINSETT, MONROE, PRAIRIE, CROSS, LEE, PHILLIPS ST FRANCIS
S	504,332	26	ARKANSAS, ASHLEY, BRADLEY, CHICOT, CLEVELAND, DESHA, DREW GRANT, LINCOLN, CALHOUN, COLUMBIA, DALLAS, HEMPSTEAD, HOWARD LAFAYETTE, LITTLE RIVER, NEVADA, OUACHITA, SEVIER, UNION
NEW ORLEANS, LOUISIANA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Baton Rouge Metro Area	1,188,307	43	ASCENSION PARISH, EAST BATON ROUGE PARISH, LIVINGSTON PARISH WEST BATON ROUGE PARISH
South-Western Louisiana Metro Areas	1,708,299	62	LAFOURCHE PARISH, TERREBONNE PARISH, LAFAYETTE PARISH ST MARTIN PARISH, CALCASIEU PARISH
North-Central Louisiana Metro Areas	1,693,645	62	BOSSIER PARISH, CADDO PARISH, OUACHITA PARISH, RAPIDES PARISH
New Orleans Metro Area	5,618,410	205	JEFFERSON PARISH, ORLEANS PARISH, ST BERNARD PARISH ST CHARLES PARISH, ST JOHN THE BAPTIST PAR ST TAMMANY PARISH
NONMETROPOLITAN ALLOCATION AREAS			
North-Western Louisiana	413,252	20	WEBSTER PARISH, CLAIBORNE PARISH, LINCOLN PARISH BIENVILLE PARISH, DE SOTO PARISH, RED RIVER PARISH

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 15

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			WINN PARISH, SABINE PARISH, NATCHITOCHES PARISH, GRANT PARISH VERNON PARISH
South-Western Louisiana	652,769	32	BEAUREGARD PARISH, ALLEN PARISH, EVANGELINE PARISH ST LANDRY PARISH, JEFFERSON DAVIS PARISH, ACADIA PARISH CAMERON PARISH, VERMILION PARISH, IBERIA PARISH ST MARY PARISH, ASSUMPTION PARISH
North-Eastern Louisiana	347,772	18	UNION PARISH, MOREHOUSE PARISH, EAST CARROLL PARISH WEST CARROLL PARISH, JACKSON PARISH, RICHLAND PARISH MADISON PARISH, CALDWELL PARISH, FRANKLIN PARISH TENSAS PARISH, LA SALLE PARISH, CATAHOULA PARISH CONCORDIA PARISH, AVOYELLES PARISH
South-Eastern Louisiana	435,172	21	POINTE COUPEE PARISH, WEST FELICIANA PARISH EAST FELICIANA PARISH, ST HELENA PARISH, TANGIPAHOA PARISH WASHINGTON PARISH, ST JAMES PARISH, PLAQUEMINES PARISH IBERVILLE PARISH
OKLAHOMA CITY, OKLAHOMA OFFICE			
METROPOLITAN ALLOCATION AREAS			
WESTERN METRO	2,598,550	102	COMANCHE, CANADIAN, CLEVELAND, LOGAN, MCCLAIN, OKLAHOMA POTTAWATOMIE, GARFIELD

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			WINN PARISH, SABINE PARISH, NATCHITOCHES PARISH, GRANT PARISH VERNON PARISH
South-Western Louisiana	652,769	32	BEAUREGARD PARISH, ALLEN PARISH, EVANGELINE PARISH ST LANDRY PARISH, JEFFERSON DAVIS PARISH, ACADIA PARISH CAMERON PARISH, VERMILION PARISH, IBERIA PARISH ST MARY PARISH, ASSUMPTION PARISH
North-Eastern Louisiana	347,772	18	UNION PARISH, MOREHOUSE PARISH, EAST CARROLL PARISH WEST CARROLL PARISH, JACKSON PARISH, RICHLAND PARISH MADISON PARISH, CALDWELL PARISH, FRANKLIN PARISH TENSAS PARISH, LA SALLE PARISH, CATAHOULA PARISH CONCORDIA PARISH, AVOYELLES PARISH
South-Eastern Louisiana	435,172	21	POINTE COUPEE PARISH, WEST FELICIANA PARISH EAST FELICIANA PARISH, ST HELENA PARISH, TANGIPAHOA PARISH WASHINGTON PARISH, ST JAMES PARISH, PLAQUEMINES PARISH IBERVILLE PARISH
OKLAHOMA CITY, OKLAHOMA OFFICE			
METROPOLITAN ALLOCATION AREAS			
WESTERN METRO	2,588,550	102	COMANCHE, CANADIAN, CLEVELAND, LOGAN, MCCLAIN, OKLAHOMA POTTAWATOMIE, GARFIELD
EASTERN METRO	1,471,716	58	CREEK, OSAGE, ROGERS, TULSA, WAGONER, SEQUOYAH
NONMETROPOLITAN ALLOCATION AREAS			
NONMET WESTERN NONMETRO	1,044,593	48	ALFALFA, BEAVER, BECKHAM, BLAINE, CADDO, CARTER, CIMARRON COTTON, CUSTER, DEWEY, ELLIS, GARVIN, GRADY, GRANT, GREER HARMON, HARPER, JACKSON, JEFFERSON, JOHNSTON, KAY, KINGFISHER KIOWA, LINCOLN, LOVE, MAJOR, MARSHALL, MURRAY, NOBLE, PAYNE PONTOTOC, ROGER MILLS, SEMINOLE, STEPHENS, TEXAS, TILLMAN WASHITA, WOODS, WOODWARD
NONMET EASTERN NONMETRO	758,744	38	ADAIR, ATOKA, BRYAN, CHEROKEE, CHOCTAW, COAL, CRAIG, DELAWARE HASKELL, HUGHES, LATIMER, LE FLORE, MCCURTAIN, MCINTOSH, MAYES MUSKOGEE, NOWATA, OKFUSKEE, OKMULGEE, OTTAWA, PAWNEE PITTSBURG, PUSHMATAHA, WASHINGTON
SAN ANTONIO, TEXAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Area A	2,315,609	78	HIDALGO, CAMERON, WEBB
Metropolitan Area B	3,591,880	121	BEXAR, COMAL, GUADALUPE
Metropolitan Area C	2,205,161	75	TRAVIS, WILLIAMSON, HAYS
Metropolitan Area D	1,413,740	48	VICTORIA, NUECES, SAN PATRICIO
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Area A	381,533	17	VAL VERDE, EDWARDS, REAL, KERR, BANDERA, KINNEY, UVALDE MEDINA, MAVERICK, ZAVALA, FRIO, DIMMIT, LA SALLE
Nonmetropolitan Area B	372,456	17	ATASCOSA, MCMULLEN, LIVE OAK, BEE, REFUGIO, ARANSAS, DUVAL JIM WELLS, KLEBERG, ZAPATA, JIM HOGG, BROOKS, KENEDY, STARR WILLACY
Nonmetropolitan Area C	420,511	20	CALHOUN, GOLIAD, JACKSON, KARNES, DE WITT, LAVACA, WILSON GONZALES, KENDALL, GILLESPIE, LLANO, BURNET, BLANCO, CALDWELL BASTROP, LEE, FAYETTE
HUD REGION VII (KANSAS CITY)			
DES MOINES, IOWA OFFICE			
METROPOLITAN ALLOCATION AREAS			

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 16

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
Metro-East	2,054,651	67	BLACK HAWK, BREMER, DUBUQUE, JOHNSON, LINN, SCOTT
Metro-West	1,552,645	51	DALLAS, POLK, POTTAWATTAMIE, WARREN, WOODBURY
NONMETROPOLITAN ALLOCATION AREAS			
Non-Metro-East	920,410	30	ALLAMAKEE, BENTON, BUCHANAN, BUTLER, CEDAR, CHICKASAW, CLAYTON CLINTON, DELAWARE, DES MOINES, FAYETTE, GRUNDY, HARDIN, HENRY HOWARD, IOWA, JACKSON, JONES, LEE, LOUISA, MARSHALL, MUSCATINE POWESHIEK, TAMA, WASHINGTON, WINNESHIEK
Non-Metro-Northwest/Central	872,043	37	AUDUBON, BUENA VISTA, CALHOUN, CARROLL, CERRO GORDO, CHEROKEE CLAY, CRAWFORD, DICKINSON, EMMET, FLOYD, FRANKLIN, GREENE GUTHRIE, HAMILTON, HANCOCK, HUMBOLDT, IDA, KOSSUTH, LYON MITCHELL, MONONA, O'BRIEN, OSCEOLA, PALO ALTO, PLYMOUTH POCAHONTAS, SAC, SIOUX, WEBSTER, WINNEBAGO, WORTH, WRIGHT
Non-Metro-Southwest/Central	881,550	37	ADAIR, ADAMS, APPANOOSE, BOONE, CASS, CLARKE, DAVIS, DECATUR FREMONT, HARRISON, JASPER, JEFFERSON, KEOKUK, LUCAS, MADISON MAHASKA, MARION, MILLS, MONROE, MONTGOMERY, PAGE, RINGGOLD SHELBY, STORY, TAYLOR, UNION, VAN BUREN, WAPELLO, WAYNE
KANSAS CITY, MISSOURI OFFICE			
METROPOLITAN ALLOCATION AREAS			
WESTERN MISSOURI METROPOLITAN ALLOCATION AREA	4,152,988	140	BUCHANAN, CASS, CHRISTIAN, CLAY, GREENE, JACKSON, JASPER LAFAYETTE, NEWTON, PLATTE, RAY
KANSAS METROPOLITAN ALLOCATION AREA	3,110,165	108	BUTLER, DOUGLAS, HARVEY, JOHNSON, LEAVENWORTH, MIAMI, SEDGWICK SHAWNEE, WYANDOTTE
NONMETROPOLITAN ALLOCATION AREAS			
KANSAS NON METROPOLITAN ALLOCATION AREA	1,599,185	58	ALLEN, ANDERSON, ATCHISON, BARBER, BARTON, BOURBON, BROWN CHASE, CHAUTAUQUA, CHEROKEE, CHEYENNE, CLARK, CLAY, CLOUD COFFEY, COMANCHE, COWLEY, CRAWFORD, DECATUR, DICKINSON DONIPHAN, EDWARDS, ELK, ELLIS, ELLSWORTH, FINNEY, FORD FRANKLIN, GEARY, GOVE, GRAHAM, GRANT, GRAY, GREELEY, GREENWOOD HAMILTON, HARPER, HASKELL, HODGEMAN, JACKSON, JEFFERSON JEWELL, KEARNY, KINGMAN, KIOWA, LABETTE, LANE, LINCOLN, LINN LOGAN, LYON, MCPHERSON, MARION, MARSHALL, MEADE, MITCHELL MONTGOMERY, MORRIS, MORTON, NEMAHA, NEOSHO, NESS, NORTON OSAGE, OSBORNE, OTTAWA, PAWNEE, PHILLIPS, POTTAWATOMIE, PRATT RAWLINS, RENO, REPUBLIC, RICE, RILEY, ROOKS, RUSH, RUSSELL SALINE, SCOTT, SEWARD, SHERIDAN, SHERMAN, SMITH, STAFFORD STANTON, STEVENS, SUMNER, THOMAS, TREGO, WABAUNSEE, WALLACE WASHINGTON, WICHITA, WILSON, WOODSON
WESTERN MISSOURI NON METROPOLITAN ALLOCATION	778,131	35	ANDREW, ATCHISON, BARRY, BARTON, BATES, BENTON, CALDWELL CAMDEN, CARROLL, CEDAR, CHARITON, CLINTON, DADE, DALLAS DAVIESS, DE KALB, GENTRY, GRUNDY, HARRISON, HENRY, HICKORY HOLT, JOHNSON, LACLEDE, LAWRENCE, LINN, LIVINGSTON, MCDONALD MERCER, MILLER, MORGAN, NODAWAY, PETTIS, POLK, PULASKI, PUTNAM ST CLAIR, SALINE, STONE, SULLIVAN, TANEY, VERNON, WEBSTER WORTH
OMAHA, NEBRASKA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metro-Nebraska	2,103,995	74	DAKOTA, DOUGLAS, LANCASTER, SARPY, WASHINGTON
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Nebraska	1,245,915	51	ADAMS, ANTELOPE, ARTHUR, BANNER, BLAINE, BOONE, BOX BUTTE BOYD, BROWN, BUFFALO, BURT, BUTLER, CASS, CEDAR, CHASE, CHERRY CHEYENNE, CLAY, COLFAX, CUMING, CUSTER, DAWES, DAWSON, DEUEL

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 17

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			DIXON, DODGE, DUNDY, FILLMORE, FRANKLIN, FRONTIER, FURNAS GAGE, GARDEN, GARFIELD, GOSPER, GRANT, GREELEY, HALL, HAMILTON HARLAN, HAYES, HITCHCOCK, HOLT, HOOKER, HOWARD, JEFFERSON JOHNSON, KEARNEY, KEITH, KEYA PAHA, KIMBALL, KNOX, LINCOLN LOGAN, LOUP, MCPHERSON, MADISON, MERRICK, MORRILL, NANCE NEMAHA, NUCKOLLS, OTOE, PAWNEE, PERKINS, PHELPS, PIERCE PLATTE, POLK, RED WILLOW, RICHARDSON, ROCK, SALINE, SAUNDERS SCOTTS BLUFF, SEWARD, SHERIDAN, SHERMAN, SIOUX, STANTON THAYER, THOMAS, THURSTON, VALLEY, WAYNE, WEBSTER, WHEELER YORK
ST. LOUIS, MISSOURI OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area	6,027,745	202	BOONE, FRANKLIN, JEFFERSON, ST CHARLES, ST LOUIS, ST LOUIS
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area	1,360,337	60	ADAIR, AUDRAIN, BOLLINGER, BUTLER, CALLAWAY, CAPE GIRARDEAU CARTER, CLARK, COLE, COOPER, CRAWFORD, DENT, DOUGLAS, DUNKLIN GASCONADE, HOWARD, HOWELL, IRON, KNOX, LEWIS, LINCOLN, MACON MADISON, MARIES, MARION, MISSISSIPPI, MONITEAU, MONROE MONTGOMERY, NEW MADRID, OREGON, OSAGE, OZARK, PEMISCOT, PERRY

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			DIXON, DODGE, DUNDY, FILLMORE, FRANKLIN, FRONTIER, FURNAS GAGE, GARDEN, GARFIELD, GOSPER, GRANT, GREELEY, HALL, HAMILTON HARLAN, HAYES, HITCHCOCK, HOLT, HOOKER, HOWARD, JEFFERSON JOHNSON, KEARNEY, KEITH, KEYA PAHA, KIMBALL, KNOX, LINCOLN LOGAN, LOUP, MCPHERSON, MADISON, MERRICK, MORRILL, NANCE NEMAHA, NUCKOLLS, OTOE, PAWNEE, PERKINS, PHELPS, PIERCE PLATTE, POLK, RED WILLOW, RICHARDSON, ROCK, SALINE, SAUNDERS SCOTTS BLUFF, SEWARD, SHERIDAN, SHERMAN, SIOUX, STANTON THAYER, THOMAS, THURSTON, VALLEY, WAYNE, WEBSTER, WHEELER YORK
ST. LOUIS, MISSOURI OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area	6,027,745	202	BOONE, FRANKLIN, JEFFERSON, ST CHARLES, ST LOUIS, ST LOUIS
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area	1,360,337	60	ADAIR, AUDRAIN, BOLLINGER, BUTLER, CALLAWAY, CAPE GIRARDEAU CARTER, CLARK, COLE, COOPER, CRAWFORD, DENT, DOUGLAS, DUNKLIN GASCONADE, HOWARD, HOWELL, IRON, KNOX, LEWIS, LINCOLN, MACON MADISON, MARIES, MARION, MISSISSIPPI, MONITEAU, MONROE MONTGOMERY, NEW MADRID, OREGON, OSAGE, OZARK, PEMISCOT, PERRY PHELPS, PIKE, RALLS, RANDOLPH, REYNOLDS, RIPLEY STE GENEVIEVE, ST FRANCOIS, SCHUYLER, SCOTLAND, SCOTT SHANNON, SHELBY, STODDARD, TEXAS, WARREN, WASHINGTON, WAYNE WRIGHT
HUD REGION VIII (DENVER)			
DENVER, COLORADO REGIONAL OFFICE			
METROPOLITAN ALLOCATION AREAS			
DENVER COLORADO PMSA	4,409,783	149	ADAMS, ARAPAHOE, DENVER, DOUGLAS, JEFFERSON
COLORADO NORTHERN FRONT RANGE METRO	1,703,011	59	BOULDER, LARIMER, WELD
COLORADO SOUTHERN FRONT RANGE METRO	1,213,278	41	EL PASO, PUEBLO
MONTANA/WYOMING METRO	867,023	29	YELLOWSTONE, CASCADE, NATRONA, LARAMIE
NORTH/SOUTH DAKOTA METRO	1,156,031	38	BURLEIGH, MORTON, CASS, GRAND FORKS, PENNINGTON, MINNEHAHA
UTAH METRO AREAS	3,229,477	107	UTAH, DAVIS, SALT LAKE, WEBER
NONMETROPOLITAN ALLOCATION AREAS			
COLORADO/UTAH NONMETRO	1,069,073	48	ALAMOSA, ARCHULETA, BACA, BENT, CHAFFEE, CHEYENNE, CLEAR CREEK CONEJOS, COSTILLA, CROWLEY, CUSTER, DELTA, DOLORES, EAGLE ELBERT, FREMONT, GARFIELD, GILPIN, GRAND, GUNNISON, HINSDALE HUERFANO, JACKSON, KIOWA, KIT CARSON, LAKE, LA PLATA LAS ANIMAS, LINCOLN, LOGAN, MESA, MINERAL, MOFFAT, MONTEZUMA MONTROSE, MORGAN, OTERO, OURAY, PARK, PHILLIPS, PITKIN PROWERS, RIO BLANCO, RIO GRANDE, ROUTT, SAGUACHE, SAN JUAN SAN MIGUEL, SEDGWICK, SUMMIT, TELLER, WASHINGTON, YUMA, BEAVER BOX ELDER, CACHE, CARBON, DAGGETT, DUCHESNE, EMERY, GARFIELD GRAND, IRON, JUAB, KANE, MILLARD, MORGAN, PIUTE, RICH SAN JUAN, SANPETE, SEVIER, SUMMIT, TOOELE, UINTAH, WASATCH WASHINGTON, WAYNE
MONTANA/WYOMING NONMETRO	1,963,043	65	BEAVERHEAD, BIG HORN, BLAINE, BROADWATER, CARBON, CARTER CHOUTEAU, CUSTER, DANIELS, DAWSON, ANACONDA-DEER LODGE COUN FALLON, FERGUS, FLATHEAD, GALLATIN, GARFIELD, GLACIER GOLDEN VALLEY, GRANITE, HILL, JEFFERSON, JUDITH BASIN, LAKE LEWIS AND CLARK, LIBERTY, LINCOLN, MCCONE, MADISON, MEAGHER

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			MINERAL, MISSOULA, MUSSELSHELL, PARK, PETROLEUM, PHILLIPS PONDERA, POWDER RIVER, POWELL, PRAIRIE, RAVALLI, RICHLAND ROOSEVELT, ROSEBUD, SANDERS, SHERIDAN, BUTTE-SILVER BOW STILLWATER, SWEET GRASS, TETON, TOOLE, TREASURE, VALLEY WHEATLAND, WIBAUX, YELLOWSTONE NATIONAL PAR, ALBANY, BIG HORN CAMPBELL, CARBON, CONVERSE, CROOK, FREMONT, GOSHEN HOT SPRINGS, JOHNSON, LINCOLN, NIOBRARA, PARK, PLATTE SHERIDAN, SUBLETTE, SWEETWATER, TETON, UINTA, WASHAKIE, WESTON
NORTH/SOUTH DAKOTA NONMETRO	1,783,875	49	ADAMS, BARNES, BENSON, BILLINGS, BOTTINEAU, BOWMAN, BURKE CAVALIER, DICKEY, DIVIDE, DUNN, EDDY, EMMONS, FOSTER GOLDEN VALLEY, GRANT, GRIGGS, HETTINGER, KIDDER, LA MOURE LOGAN, MCHENRY, MCINTOSH, MCKENZIE, MCLEAN, MERCER, MOUNTRAIL NELSON, OLIVER, PEMBINA, PIERCE, RAMSEY, RANSOM, RENVILLE RICHLAND, ROLETTE, SARGENT, SHERIDAN, SIOUX, SLOPE, STARK STEELE, STUTSMAN, TOWNER, TRAILL, WALSH, WARD, WELLS, WILLIAMS AURORA, BEADLE, BENNETT, BON HOMME, BROOKINGS, BROWN, BRULE BUFFALO, BUTTE, CAMPBELL, CHARLES MIX, CLARK, CLAY, CODINGTON CORSON, CUSTER, DAVISON, DAY, DEUEL, DEWEY, DOUGLAS, EDMUNDS FALL RIVER, FAULK, GRANT, GREGORY, HAAKON, HAMLIN, HAND HANSON, HARDING, HUGHES, HUTCHINSON, HYDE, JACKSON, JERAULD JONES, KINGSBURY, LAKE, LAWRENCE, LINCOLN, LYMAN, MCCOOK MCPHERSON, MARSHALL, MEADE, MELLETTE, MINER, MOODY, PERKINS POTTER, ROBERTS, SANBORN, SHANNON, SPINK, STANLEY, SULLY, TODD TRIPP, TURNER, UNION, WALWORTH, YANKTON, ZIEBACH
HUD REGION IX (SAN FRANCISCO)			
HONOLULU, HAWAII OFFICE			
METROPOLITAN ALLOCATION AREAS			
HONOLULU, HI MSA	6,012,398	109	HONOLULU
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA	1,743,902	34	HAWAII, KAUAI, MAUI, GUAM
LOS ANGELES, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Los Angeles County, CA	80,107,162	1559	LOS ANGELES
Orange County, CA	10,727,583	222	ORANGE
Riverside and San Bernardino Counties, CA	7,845,138	162	RIVERSIDE, SAN BERNARDINO
Kern-Ventura-Santa Barbara Counties, CA	7,707,265	160	KERN, VENTURA, SANTA BARBARA
San Diego County, CA	13,642,881	283	SAN DIEGO
NONMETROPOLITAN ALLOCATION AREAS			
S.Luis Obispo-Imperial-Inyo-Mono Counties, CA	1,367,966	34	SAN LUIS OBISPO, IMPERIAL, INYO, MONO
PHOENIX, ARIZONA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ARIZONA	6,014,104	199	MARICOPA, PIMA, YUMA, LA PAZ
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ARIZONA ALLOCATION AREA EAST	637,516	21	APACHE, COCHISE, GILA, GRAHAM, GREENLEE, PINAL, SANTA CRUZ
NONMETROPOLITAN ARIZONA ALLOCATION AREA WEST	497,613	17	COCONINO, MOHAVE, NAVAJO, YAVAPAI
SACRAMENTO, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	4,309,707	123	SACRAMENTO, SAN JOAQUIN

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
METROPOLITAN ALLOCATION AREA 2	1,370,486	40	YOLO, SUTTER, YUBA
METROPOLITAN ALLOCATION AREA 3	1,269,501	37	BUTTE, SHASTA
METROPOLITAN ALLOCATION AREA 4	544,252	16	EL DORADO, PLACER
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA 1	787,207	23	ALPINE, AMADOR, CALAVERAS, COLUSA, GLENN, LASSEN, MODOC NEVADA, PLUMAS, SIERRA, SISKIYOU, TEHAMA, TRINITY, TUOLUMNE
SAN FRANCISCO, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	7,581,652	152	FRESNO, MERCED, STANISLAUS, TULARE
METROPOLITAN ALLOCATION AREA 2	14,132,349	283	ALAMEDA, CONTRA COSTA
METROPOLITAN ALLOCATION AREA 3	17,807,618	357	MARIN, SAN FRANCISCO, SAN MATEO
METROPOLITAN ALLOCATION AREA 4	11,634,758	233	MONTEREY, SANTA CLARA, SANTA CRUZ
METROPOLITAN ALLOCATION AREA 5	3,960,322	79	SONOMA, NAPA, SOLANO
METROPOLITAN ALLOCATION AREA 6	3,925,885	79	CLARK, WASHOE
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA	2,150,467	83	CHURCHILL, DOUGLAS, ELKO, ESMERALDA, EUREKA, HUMBOLDT, LANDER LINCOLN, LYON, MINERAL, NYE, PERSHING, STOREY, WHITE PINE CARSON CITY, DEL NORTE, HUMBOLDT, KINGS, LAKE, MADERA MARIPOSA, MENDOCINO, SAN BENITO

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
METROPOLITAN ALLOCATION AREA 2	1,370,486	40	YOLO, SUTTER, YUBA
METROPOLITAN ALLOCATION AREA 3	1,269,501	37	BUTTE, SHASTA
METROPOLITAN ALLOCATION AREA 4	544,252	16	EL DORADO, PLACER
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA 1	787,207	23	ALPINE, AMADOR, CALAVERAS, COLUSA, GLENN, LASSEN, MODOC NEVADA, PLUMAS, SIERRA, SISKIYOU, TEHAMA, TRINITY, TUOLUMNE
SAN FRANCISCO, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	7,581,652	152	FRESNO, MERCED, STANISLAUS, TULARE
METROPOLITAN ALLOCATION AREA 2	14,132,349	283	ALAMEDA, CONTRA COSTA
METROPOLITAN ALLOCATION AREA 3	17,807,618	357	MARIN, SAN FRANCISCO, SAN MATEO
METROPOLITAN ALLOCATION AREA 4	11,634,758	233	MONTEREY, SANTA CLARA, SANTA CRUZ
METROPOLITAN ALLOCATION AREA 5	3,960,322	79	SONOMA, NAPA, SOLANO
METROPOLITAN ALLOCATION AREA 6	3,925,885	79	CLARK, WASHOE
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA	2,150,467	60	CHURCHILL, DOUGLAS, ELKO, ESMERALDA, EUREKA, HUMBOLDT, LANDER LINCOLN, LYON, MINERAL, NYE, PERSHING, STOREY, WHITE PINE CARSON CITY, DEL NORTE, HUMBOLDT, KINGS, LAKE, MADERA MARIPOSA, MENDOCINO, SAN BENITO
HUD REGION X (SEATTLE)			
ANCHORAGE, ALASKA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Anchorage	597,272	16	ANCHORAGE BOROUGH
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetro Alaska	851,972	18	ALEUTIAN ISLANDS CENSUS, BETHEL CENSUS AREA BRISTOL BAY BOROUGH, DILLINGHAM CENSUS AREA FAIRBANKS NORTH STAR BOR, HAINES BOROUGH, JUNEAU BOROUGH KENAI PENINSULA BOROUGH, KETCHIKAN GATEWAY BOROUG KOBUK CENSUS AREA, KODIAK ISLAND BOROUGH MATANUSKA-SUSITNA BOROUG, NOME CENSUS AREA NORTH SLOPE BOROUGH, PRINCE OF WALES-OUTER KE, SITKA BOROUGH SKAGWAY-YAKUTAT-ANGOON C, SOUTHEAST FAIRBANKS CENS VALDEZ-CORDOVA CENSUS AR, WADE HAMPTON CENSUS AREA WRANGELL-PETERSBURG CENS, YUKON-KOYUKUK CENSUS ARE
PORTLAND, OREGON OFFICE			
METROPOLITAN ALLOCATION AREAS			
Portland/Vancouver	5,502,573	170	CLACKAMAS, MULTNOMAH, WASHINGTON, YAMHILL, CLARK
Ida-Ore Metro	2,799,715	85	ADA, JACKSON, LANE, MARION, POLK
NONMETROPOLITAN ALLOCATION AREAS			
Idaho Nonmetro	1,667,396	51	ADAMS, BANNOCK, BEAR LAKE, BENEWAH, BINGHAM, BLAINE, BOISE BONNER, BONNEVILLE, BOUNDARY, BUTTE, CAMAS, CANYON, CARIBOU CASSIA, CLARK, CLEARWATER, CUSTER, ELMORE, FRANKLIN, FREMONT GEM, GOODING, IDAHO, JEFFERSON, JEROME, KOOTENAI, LATAH, LEMHI LEWIS, LINCOLN, MADISON, MINIDOKA, NEZ PERCE, ONEIDA, OWYHEE PAYETTE, POWER, SHOSHONE, TETON, TWIN FALLS, VALLEY WASHINGTON
OREGON NONMETRO	2,297,294	71	KLICKITAT, SKAMANIA, BAKER, BENTON, CLATSOP, COLUMBIA, COOS CROOK, CURRY, DESCHUTES, DOUGLAS, GILLIAM, GRANT, HARNEY HOOD RIVER, JEFFERSON, JOSEPHINE, KLAMATH, LAKE, LINCOLN, LINN

FISCAL YEAR 1994 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION — PAGE 20

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			MALHEUR, MORROW, SHERMAN, TILLAMOOK, UMATILLA, UNION, WALLOWA WASCO, WHEELER
SEATTLE, WASHINGTON OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO-1	6,917,858	195	KING, SNOHOMISH
METRO-2	3,402,052	97	PIERCE, WHATCOM, KITSAP, THURSTON
METRO-3	2,778,316	79	SPOKANE, BENTON, FRANKLIN, YAKIMA
NONMETROPOLITAN ALLOCATION AREAS			
WASHINGTON NONMETRO	2,128,743	65	ADAMS, ASOTIN, CHELAN, CLALLAM, COLUMBIA, COWLITZ, DOUGLAS FERRY, GARFIELD, GRANT, GRAYS HARBOR, ISLAND, JEFFERSON KITTITAS, LEWIS, LINCOLN, MASON, OKANOGAN, PACIFIC PEND OREILLE, SAN JUAN, SKAGIT, STEVENS, WAHKIAKUM WALLA WALLA, WHITMAN

[FR Doc. 94-16717 Filed 7-8-94, 8:45 am]
BILLING CODE 4210-33-C

federal register

Federal Register

Monday
July 11, 1994

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 571
Release Preparation Program; Final Rule

List of Bureau of Prisons Institutions; Notice

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1018–F]

RIN 1120–AA24

Release Preparation Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is revising its regulations on inmate release preparation to provide for greater standardization for institution programs and to make various editorial or organizational changes. As revised, this program is intended to enhance the likelihood that sentenced inmates will successfully reintegrate into the community upon their release from incarceration.

EFFECTIVE DATE: August 10, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Pre-Release Program (28 CFR part 571, subpart A), which will now be entitled Release Preparation Program. A final rule on this subject was published in the Federal Register June 30, 1980 (45 FR 44234) and was amended on September 30, 1983 (48 FR 45053).

The primary change in these amendments is to provide for greater standardization in release preparation programming at Bureau institutions. New section 571.13 contains the core curriculum of topics/courses to be offered. Other amendments are primarily editorial in nature and make no change in the intent of the regulations. For ease of use, the entire subpart is being revised. A summary of the changes follows.

As noted above, the title of the program has been changed from "pre-release program" to "release preparation program". This change is reflected in revised § 571.10, § 571.11 (b) and (d) (formerly § 571.11(a) (2) and (4)), § 571.12 (a) and (b).

Section 571.10 is further amended to reflect the Bureau's recognition of the continuity of an inmate's needs for release preparation and to standardize the release preparation program for all sentenced inmates reintegrating into the community from Bureau facilities.

Section 571.11 is further amended by adjusting the codification for the purpose of editorial consistency. Former paragraph (a)(1) has been removed. This provision is addressed more completely in new § 571.13 (b). As revised, the introductory text and paragraph (a) of new § 571.11 specify that a designated staff member has the responsibility to determine the general release needs of the inmate population. These provisions replace the provisions of former paragraphs (a) introductory text and (a)(2). Former paragraphs (a) (3) and (4) are revised as paragraphs (b) and (d), and a new paragraph (c) is added specifying that the designated staff member chairs the institution's Release Preparation Program Committee.

In § 571.12, paragraph (b) has been revised to remove reference to requirements for inmate participation in a specific number of sessions. The intent of the revised paragraph is that the inmate is responsible for registering in recommended release preparation courses. Documentation of the inmate's participation in the program serves to help staff measure the institutional adjustment of the inmate.

The provisions in former paragraphs (c), (d), and (e) of § 571.12 have been revised as paragraphs (c), (d), and (e) of a new § 571.13 on the institution release preparation program. New paragraph (a) of § 571.13 specifies that the institution's release preparation program shall be administered by the Release Preparation Program Committee. New paragraph (b) of § 571.13 states the core curriculum of the institution program: health and nutrition, employment, personal finance/consumer skills, information/community resources, release requirements and procedures, and personal growth and development.

Because these changes are administrative in nature and do not impose further restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 571

Prisoners.

Wade B. Houk,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 571 in subchapter D of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

1. The authority citation for 28 CFR part 571 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

2. Subpart B, consisting of §§ 571.10 through 571.12, is revised to consist of §§ 571.10 through 571.13 and reads as follows:

Subpart B—Release Preparation Program

Sec.

571.10 Purpose and scope.
571.11 Program responsibility.
571.12 General characteristics.
571.13 Institution release preparation program.

Subpart B—Release Preparation Program

§ 571.10 Purpose and scope.

The Bureau of Prisons recognizes that an inmate's preparation for release begins at initial commitment and continues throughout incarceration and until final release to the community. This policy establishes a standardized release preparation program for all sentenced inmates reintegrating into the community from Bureau facilities.

§ 571.11 Program responsibility.

The Warden shall designate to a staff member the responsibility to:

(a) Determine the general release needs of the inmate population;

(b) Coordinate the institution release preparation program;

(c) Chair the Release Preparation Program Committee;

(d) Contact and schedule volunteers from the local community to participate in the release preparation program.

§ 571.12 General characteristics.

(a) Staff shall structure the release preparation program to make extensive use of staff, inmate, and community resources.

(b) Staff shall strongly encourage and support an inmate's participation in the institution release preparation program. Staff shall document the inmate's participation in the program in the inmate's central file.

(a) Determine the general release needs of the inmate population;

(b) Coordinate the institution release preparation program;

(c) Chair the Release Preparation Program Committee;

(d) Contact and schedule volunteers from the local community to participate in the release preparation program.

§ 571.12 General characteristics.

(a) Staff shall structure the release preparation program to make extensive use of staff, inmate, and community resources.

(b) Staff shall strongly encourage and support an inmate's participation in the institution release preparation program. Staff shall document the inmate's participation in the program in the inmate's central file.

§ 571.13 Institution release preparation program.

(a) The institution release preparation program shall be administered by the Release Preparation Program Committee.

(b) The institution release preparation program will be based on a core curriculum of topics/courses organized into six broad categories. The six categories are:

(1) Health and nutrition.
(2) Employment.
(3) Personal finance/consumer skills.
(4) Information/community resources.
(5) Release requirements and procedures.
(6) Personal growth and development.

(c) To assist in the release process, the Warden may, in accordance with the Bureau of Prisons' rule on furloughs, grant an inmate a furlough for release preparation purposes.

(d) Staff shall help an inmate obtain proper identification (social security card, driver's license, birth certificate, and/or any other documents needed by the inmate) prior to release.

(e) An inmate who is not being released through a Community Corrections Center (CCC) may ask staff to request the assistance of a United States Probation Officer in establishing a release plan. Bureau staff are to encourage the inmate to give at least one employment lead or contact. Where the inmate or the inmate's family has already identified employment, the case manager shall notify the United States Probation Officer so that the usual verification of release plans may be made. Where employment has not been identified, the case manager shall notify the United States Probation Officer of the employment need. This notification should ordinarily occur at least six weeks prior to the inmate's release.

[FR Doc. 94–16693 Filed 7–8–94; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: In this document, the Bureau of Prisons is publishing a consolidated listing of its institutions. The following institutions have been added to the listing: Federal Correctional Institutions at Cumberland, Maryland; Greenville, Illinois; and Pekin, Illinois; a Federal Medical Center at Carswell, Texas; and a Federal Transportation Center at Oklahoma City, Oklahoma. The former Federal Correctional Institution at Fort Worth, Texas has been redesignated as a Federal Medical Center. The Federal Prison Camp at Tyndall Air Force Base and the Federal Medical Center at Carville, Louisiana have been closed and consequently have been removed from the listing. Finally, the names of certain Bureau institutions located on military reservations have been shortened for the sake of consistency and ease of reference.

ADDRESS: Office of General Counsel, Bureau of Prisons, 320 First Street NW., HOLC Room 754, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, (202) 514–6655.

SUPPLEMENTARY INFORMATION: Attorney General Order No. 646–76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960–81, Reorganization Regulations, published in the **Federal Register** October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), the authority to establish and designate Bureau of Prisons institutions. The last listing of the Bureau's institutions was published in the **Federal Register** on August 20, 1993 (58 FR 44424).

This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, Sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4081, and 4082 (repealed in part October 12, 1984) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(q), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Allenwood, Pennsylvania;
(2) Atlanta, Georgia;
(3) Florence, Colorado;
(4) Leavenworth, Kansas;
(5) Lewisburg, Pennsylvania;
(6) Lompoc, California;
(7) Marion, Illinois; and
(8) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

(1) Allenwood, Pennsylvania (Low Security);
(2) Allenwood, Pennsylvania (Medium Security);
(3) Ashland, Kentucky;
(4) Bastrop, Texas;
(5) Big Spring, Texas;
(6) Butner, North Carolina;
(7) Cumberland, Maryland;
(8) Danbury, Connecticut;
(9) Dublin, California;
(10) El Reno, Oklahoma;
(11) Englewood, Colorado;
(12) Estill, South Carolina;
(13) Fairton, New Jersey;
(14) Florence, Colorado;
(15) Fort Dix, New Jersey;
(16) Greenville, Illinois;
(17) Jessup, Georgia;
(18) La Tuna, Texas;
(19) Lompoc, California;
(20) Loretto, Pennsylvania;
(21) Manchester, Kentucky;
(22) Marianna, Florida;
(23) McKean, Pennsylvania;
(24) Memphis, Tennessee;
(25) Milan, Michigan;
(26) Morgantown, West Virginia;
(27) Oakdale, Louisiana (formerly Oakdale I);
(28) Otisville, New York;
(29) Oxford, Wisconsin;
(30) Pekin, Illinois;
(31) Petersburg, Virginia;
(32) Phoenix, Arizona;
(33) Ray Brook, New York;
(34) Safford, Arizona;
(35) Sandstone, Minnesota;
(36) Schuylkill, Pennsylvania;
(37) Seagoville, Texas;
(38) Sheridan, Oregon;
(39) Talladega, Alabama;
(40) Tallahassee, Florida;
(41) Terminal Island, California;
(42) Texarkana, Texas;
(43) Three Rivers, Texas; and
(44) Tucson, Arizona.

C. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Alderson, West Virginia;
(2) Allenwood, Pennsylvania;
(3) Boron, California;
(4) Bryan, Texas;
(5) Duluth, Minnesota;
(6) Eglin, Florida;
(7) El Paso, Texas;
(8) Montgomery, Alabama;
(9) Millington, Tennessee;
(10) Nellis, Nevada;
(11) Pensacola, Florida;
(12) Seymour-Johnson, North Carolina; and
(13) Yankton, South Dakota.

D. The Bureau of Prisons institutions at the following locations house inmates who are primarily pre-trial detainees and are designated as:

Federal Detention Center

(1) Oakdale, Louisiana (formerly Oakdale II).

Metropolitan Correctional Centers

(1) Chicago, Illinois;
(2) Miami, Florida;
(3) New York, New York; and
(4) San Diego, California.

Metropolitan Detention Centers

(1) Brooklyn, New York;
(2) Guaynabo, Puerto Rico; and
(3) Los Angeles, California.

E. The Bureau of Prisons institution at Springfield, Missouri is designated as the U. S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons institutions at the following locations are designated as Federal Medical Centers:

(1) Carswell, Texas;
(2) Fort Worth, Texas;
(3) Lexington, Kentucky; and
(4) Rochester, Minnesota.

G. The Bureau of Prisons institution at Oklahoma City, Oklahoma is designated as the Federal Transportation Center.

Wade B. Houk,

Acting Director, Federal Bureau of Prisons.

[FR Doc. 94–16694 Filed 7–8–94; 8:45 am]

BILLING CODE 4410–05–P

Monday
July 11, 1994

Part VI

Department of Education

Federal Interagency Coordinating Council Meeting; Notice

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: July 28, 1994, from 1 p.m. to 4:30 p.m.

ADDRESS: Hubert H. Humphrey Building, room 703A/727A, 200 Independence Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 400 Maryland Avenue SW., room 4613, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications or regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) Update the membership on the IDEA reauthorization process; and (2) discuss innovations in the use of information-highway technology by children with disabilities and their families.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 400 Maryland Avenue SW., room 4613, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Thomas F. Hehir,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–16634 Filed 7–8–94; 8:45 am]

BILLING CODE 4000–01–M

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc.
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public numbers, Federal Register finding aids, and list o documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and documents on public inspection are available on National Archives fax-on-demand system. You mu from a fax machine. There is no charge for the se except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11

Reader Aids

Federal Register

Vol. 59, No. 131

Monday, July 11, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:
No. 94–29 of June 27, 1994.....35211

Memorandums:
June 30, 1994.....34341

Proclamations:
6641 (See Proc. 6704).....34329
6704.....34329
6705.....34343

Executive Orders:
1919½ (Revoked in part by PLO 7065).....35054
12002 (See EO 12923).....34551
12214 (See EO 12923).....34551
12735 (See EO 12923).....34551
12755 (See EO 12923).....34551
12851 (See EO 12923).....34551
12923.....34551

5 CFR

179.....35213, 35215
2610.....34755
2634.....34755
2636.....34755
2641.....34755

Proposed Rules:
575.....34393

7 CFR

272.....34553
275.....34553
283.....34553
916.....33897
917.....33897
928.....33898
947.....33900
981.....35222
1205.....33901
1421.....34345
1755.....34353, 34899

Proposed Rules:
1036.....33922

8 CFR

103.....33903
245.....33903
245a.....33903
264.....33903
274a.....33903

9 CFR

92.....34375
97.....34756
Ch. III.....34375

Proposed Rules:
317.....34396

10 CFR

710.....35178

Proposed Rules:
1003.....34767

12 CFR

Proposed Rules:
220.....33923
230.....35271

14 CFR

21.....34572
23.....34572
39.....34574, 34576, 34757, 34758, 34899, 34967, 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247
71.....34577, 34758, 34759, 34760, 35248
91.....34578
97.....35248, 35250

Proposed Rules:
21.....34779
23.....35196
33.....35272
39.....34396, 34584
71.....34192, 34585
93.....34192

16 CFR

2.....34968
4.....34968
305.....34014

Proposed Rules:
300.....34780
301.....34780
303.....34780
1117.....33925
1307.....35058
1500.....33928, 33932

17 CFR

1.....34376
33.....34376
190.....34376

Proposed Rules:
240.....34781

18 CFR

Proposed Rules:
35.....35274

19 CFR

174.....34970

20 CFR

416.....33906

21 CFR

510.....33908
520.....33908, 35251
558.....35251
1220.....35252
Proposed Rules:
341.....34781

22 CFR

60.....33909
61.....33909
62.....33909
63.....33909
64.....33909
65.....33909
514.....34760

23 CFR

655.....33909

24 CFR

17.....34578
791.....35253
3280.....34294
Proposed Rules:
43.....34300
92.....34300
100.....34902
570.....34300

26 CFR

1.....34971, 35030, 35414
31.....35414
40.....35414
602.....34971, 35030
Proposed Rules:
1.....34398, 35066, 35418
31.....35418
40.....35418

28 CFR

551.....34742
571.....35456

29 CFR

1910.....33910, 34580
Proposed Rules:
Ch. XXVI.....35067
Ch. XL.....35067
1915.....34586

30 CFR

944.....35255
Proposed Rules:
75.....35071
920.....35289

31 CFR

550.....35259

32 CFR

90.....34382
91.....34382
869.....35261
383.....34382
384.....35262
389.....34382
552.....34581, 34761
706.....35033
Proposed Rules:
553.....34782

33 CFR

4.....34210
130.....34210
131.....34210
132.....34210
137.....34210
138.....34210
Proposed Rules:
165.....35290
322.....34783
334.....33939

34 CFR

74.....34722
77.....34722
641.....34198
668.....34964
682.....34964
685.....34278
690.....34964
Proposed Rules:
Ch. VI.....34398

36 CFR

704.....35034

38 CFR

3.....34382, 35265

39 CFR

111.....33911

40 CFR

9.....33912, 34070
52.....33914, 34383, 35035, 35036, 35044, 35411
81.....35044
85.....33912
86.....33912
112.....34070
141.....34320
142.....34320
271.....35266
372.....34386
600.....33912
Proposed Rules:
Ch. I.....33940
51.....35292
52.....33941, 34399, 34401, 35072, 35079
81.....35079
185.....33941

43 CFR

Public Land Order:
7055.....34899
7064.....34582
7065.....35054
7069.....35267

45 CFR

Proposed Rules:
615.....35079

47 CFR

22.....35054
73.....34391, 34766, 35055, 35268
80.....35268
87.....35268
Proposed Rules:
61.....33947
64.....33947
69.....33947
73.....34404, 34405, 35081, 35082, 35292, 35293

48 CFR

Proposed Rules:
926.....35294
952.....35294
970.....35294

49 CFR

172.....35411
392.....34708
393.....34708, 34712
1056.....34392
Proposed Rules:
541.....3508
571.....34405, 35298, 35300

50 CFR

229.....34899
651.....35056
658.....34582
672.....35056
675.....33920, 34392, 34583, 35056, 35057
681.....35270
Proposed Rules:
17.....34784, 35089, 35303, 35304, 35305, 35307
222.....35089
644.....35308
654.....33947

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 1758/P.L. 103–272

To revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V-X of title 49, United States Code, "Transportation", and to make other technical improvements in the Code. (July 5, 1994; 108 Stat. 745; 657 pages)

H.R. 2559/P.L. 103–273

To designate the Federal building located at 601 East 12th Street in Kansas City, Missouri, as the "Richard Bolling Federal Building" and the United States Courthouse located at Ninth and Locust Streets, in Kansas City, Missouri, as the "Charles Evans Whittaker United States Courthouse". (July 5, 1994; 108 Stat. 1402; 1 page)

H.R. 3724/P.L. 103–274

To designate the United States courthouse located in Bridgeport, Connecticut, as the "Brien McMahon Federal Building". (July 5, 1994; 108 Stat. 1403; 1 page)

H.R. 4568/P.L. 103–275

Making supplemental appropriations for the Department of Housing and Urban Development for the fiscal year ending September 30, 1994, and for other purposes. (July 5, 1994; 108 Stat. 1404; 2 pages)

H.R. 4581/P.L. 103–276

To provide for the imposition of temporary fees in connection with the handling of complaints of violations of the Perishable Agricultural Commodities Act, 1930. (July 5, 1994; 108 Stat. 1406; 1 page)

H.R. 4635/P.L. 103–277

To extend the Export Administration Act of 1979. (July 5, 1994; 108 Stat. 1407, 1 page)

Last List July 8, 1994

CFR CHECKLIST

This checklist, prepared by the Office of the Federal R published weekly. It is arranged in the order of CFR ti numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been iss week and which is now available for sale at the Gove Office.

A checklist of current CFR volumes comprising a com also appears in the latest issue of the LSA (List of CF Affected), which is revised monthly.

The annual rate for subscription to all revised volume domestic, $207.25 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn P.O. Box 371954, Pittsburgh, PA 15250–7954. All orc accompanied by remittance (check, money order, GP Account, VISA, or Master Card). Charge orders may b to the GPO Order Desk, Monday through Friday, at (2 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your to (202) 512-2233.

Title	Stock Number	Price
1, 2 (2 Reserved)	(869–022–00001–2)	$5.0
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.0
4	(869–022–00003–9)	5.5
5 Parts:		
1–699	(869–022–00004–7)	22.0
700–1199	(869–022–00005–5)	19.0
1200–End, 6 (6 Reserved)	(869–022–00006–3)	23.0
7 Parts:		
0–26	(869–022–00007–1)	21.0
27–45	(869–022–00008–0)	14.0
46–51	(869–022–00009–8)	20.0
52	(869–022–00010–1)	30.0
53–209	(869–022–00011–0)	23.0
210–299	(869–022–00012–8)	32.0
300–399	(869–022–00013–6)	16.0
400–699	(869–022–00014–4)	18.0
700–899	(869–022–00015–2)	22.0
900–999	(869–022–00016–1)	34.0
1000–1059	(869–022–00017–9)	23.0
1060–1119	(869–022–00018–7)	15.0
1120–1199	(869–022–00019–5	12.0
1200–1499	(869–022–00020–9)	30.0
1500–1899	(869–022–00021–7)	30.0
1900–1939	(869–022–00022–5)	15.0
1940–1949	(869–022–00023–3)	30.0
1950–1999	(869–022–00024–1)	35.0
2000–End	(869–022–00025–0)	14.0
8	(869–022–00026–8)	22.0
9 Parts:		
1–199	(869–022–00027–6)	29.0
200–End	(869–022–00028–4)	23.0
10 Parts:		
0–50	(869–022–00029–2)	29.0
51–199	(869–022–00030–6)	22.0
200–399	(869–022–00031–4)	15.0
400–499	(869–022–00032–2)	21.0
500–End	(869–022–00033–1)	37.0
11	(869–022–00034–9)	14.0
12 Parts:		
1–199	(869–022–00035–7)	12.0
200–219	(869–022–00036–5)	16.0
*220–299	(869–022–00037–3)	28.0
300–499	(869–022–00038–1)	22.0
500–599	(869–022–00039–0)	20.0
600–End	(869–022–00040–3)	32.0
13	(869–022–00041–1)	30.0

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $829.00 domestic, $207.25 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2233**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
4	(869–022–00003–9)	5.50	Jan. 1, 1994
5 Parts:			
1–699	(869–022–00004–7)	22.00	Jan. 1, 1994
700–1199	(869–022–00005–5)	19.00	Jan. 1, 1994
1200–End, 6 (6 Reserved)	(869–022–00006–3)	23.00	Jan. 1, 1994
7 Parts:			
0–26	(869–022–00007–1)	21.00	Jan. 1, 1994
27–45	(869–022–00008–0)	14.00	Jan. 1, 1994
46–51	(869–022–00009–8)	20.00	[6] Jan. 1, 1993
52	(869–022–00010–1)	30.00	Jan. 1, 1994
53–209	(869–022–00011–0)	23.00	Jan. 1, 1994
210–299	(869–022–00012–8)	32.00	Jan. 1, 1994
300–399	(869–022–00013–6)	16.00	Jan. 1, 1994
400–699	(869–022–00014–4)	18.00	Jan. 1, 1994
700–899	(869–022–00015–2)	22.00	Jan. 1, 1994
900–999	(869–022–00016–1)	34.00	Jan. 1, 1994
1000–1059	(869–022–00017–9)	23.00	Jan. 1, 1994
1060–1119	(869–022–00018–7)	15.00	Jan. 1, 1994
1120–1199	(869–022–00019–5	12.00	Jan. 1, 1994
1200–1499	(869–022–00020–9)	30.00	Jan. 1, 1994
1500–1899	(869–022–00021–7)	30.00	Jan. 1, 1994
1900–1939	(869–022–00022–5)	15.00	Jan. 1, 1994
1940–1949	(869–022–00023–3)	30.00	Jan. 1, 1994
1950–1999	(869–022–00024–1)	35.00	Jan. 1, 1994
2000–End	(869–022–00025–0)	14.00	Jan. 1, 1994
8	(869–022–00026–8)	22.00	Jan. 1, 1994
9 Parts:			
1–199	(869–022–00027–6)	29.00	Jan. 1, 1994
200–End	(869–022–00028–4)	23.00	Jan. 1, 1994
10 Parts:			
0–50	(869–022–00029–2)	29.00	Jan. 1, 1994
51–199	(869–022–00030–6)	22.00	Jan. 1, 1994
200–399	(869–022–00031–4)	15.00	[6] Jan. 1, 1993
400–499	(869–022–00032–2)	21.00	Jan. 1, 1994
500–End	(869–022–00033–1)	37.00	Jan. 1, 1994
11	(869–022–00034–9)	14.00	Jan. 1, 1994
12 Parts:			
1–199	(869–022–00035–7)	12.00	Jan. 1, 1994
200–219	(869–022–00036–5)	16.00	Jan. 1, 1994
*220–299	(869–022–00037–3)	28.00	Jan. 1, 1994
300–499	(869–022–00038–1)	22.00	Jan. 1, 1994
500–599	(869–022–00039–0)	20.00	Jan. 1, 1994
600–End	(869–022–00040–3)	32.00	Jan. 1, 1994
13	(869–022–00041–1)	30.00	Jan. 1, 1994
14 Parts:			
1–59	(869–022–00042–0)	32.00	Jan. 1, 1994
60–139	(869–022–00043–8)	26.00	Jan. 1, 1994
140–199	(869–022–00044–6)	13.00	Jan. 1, 1994
200–1199	(869–022–00045–4)	23.00	Jan. 1, 1994
1200–End	(869–022–00046–2)	16.00	Jan. 1, 1994
15 Parts:			
0–299	(869–022–00047–1)	15.00	Jan. 1, 1994
300–799	(869–022–00048–4)	26.00	Jan. 1, 1994
800–End	(869–022–00049–7)	23.00	Jan. 1, 1994
16 Parts:			
0–149	(869–022–00050–1)	6.50	Jan. 1, 1994
150–999	(869–022–00051–9)	18.00	Jan. 1, 1994
1000–End	(869–022–00052–7)	25.00	Jan. 1, 1994
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–019–00055–1)	23.00	June 1, 1993
240–End	(869–019–00056–9)	30.00	June 1, 1993
18 Parts:			
1–149	(869–019–00057–7)	16.00	Apr. 1, 1993
150–279	(869–022–00058–6)	19.00	Apr. 1, 1994
280–399	(869–019–00059–3)	15.00	Apr. 1, 1993
400–End	(869–022–00060–8)	11.00	Apr. 1, 1994
19 Parts:			
1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–022–00062–4)	12.00	Apr. 1, 1994
20 Parts:			
1–399	(869–022–00063–2)	20.00	Apr. 1, 1994
400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
500–End	(869–022–00065–9)	31.00	Apr. 1, 1994
21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
100–169	(869–019–00067–4)	21.00	Apr. 1, 1993
170–199	(869–019–00068–2)	20.00	Apr. 1, 1993
200–299	(869–022–00069–1)	7.00	Apr. 1, 1994
300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
500–599	(869–019–00071–2)	21.00	Apr. 1, 1993
*600–799	(869–022–00072–1)	8.50	Apr. 1, 1994
800–1299	(869–019–00073–9)	22.00	Apr. 1, 1993
1300–End	(869–022–00074–8)	13.00	Apr. 1, 1994
22 Parts:			
1–299	(869–019–00075–5)	30.00	Apr. 1, 1993
300–End	(869–022–00076–4)	23.00	Apr. 1, 1994
23	(869–019–00077–1)	21.00	Apr. 1, 1993
24 Parts:			
0–199	(869–019–00078–0)	38.00	Apr. 1, 1993
200–499	(869–019–00079–8)	36.00	Apr. 1, 1993
500–699	(869–022–00080–2)	20.00	Apr. 1, 1994
700–1699	(869–019–00081–0)	39.00	Apr. 1, 1993
1700–End	(869–019–00082–8)	15.00	Apr. 1, 1993
25	(869–019–00083–6)	31.00	Apr. 1, 1993
26 Parts:			
§§ 1.0-1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–019–00085–2)	37.00	Apr. 1, 1993
§§ 1.170–1.300	(869–019–00086–1)	23.00	Apr. 1, 1993
§§ 1.301–1.400	(869–019–00087–9)	21.00	Apr. 1, 1993
§§ 1.401–1.440	(869–019–00088–7)	31.00	Apr. 1, 1993
§§ 1.441–1.500	(869-019-00089-5)	23.00	Apr. 1, 1993
§§ 1.501–1.640	(869–019–00090–9)	20.00	Apr. 1, 1993
§§ 1.641–1.850	(869–019–00091–7)	24.00	Apr. 1, 1993
§§ 1.851–1.907	(869–019–00092–5)	27.00	Apr. 1, 1993
§§ 1.908–1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
§§ 1.1001–1.1400	(869–019–00094–1)	22.00	Apr. 1, 1993
§§ 1.1401–End	(869–019–00095–0)	31.00	Apr. 1, 1993
2–29	(869–019–00096–8)	23.00	Apr. 1, 1993
30–39	(869–019–00097–6)	18.00	Apr. 1, 1993
40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–019–00099–2)	13.00	Apr. 1, 1993
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–022–00101–9)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600-End	(869-019-00102-6)	8.00	Apr. 1, 1993
27 Parts:			
1-199	(869-019-00103-4)	37.00	Apr. 1, 1993
200-End	(869-022-00104-3)	13.00	Apr. 1, 1994
28 Parts:			
1-42	(869-019-00105-1)	27.00	July 1, 1993
43-end	(869-019-00106-9)	21.00	July 1, 1993
29 Parts:			
0-99	(869-019-00107-7)	21.00	July 1, 1993
100-499	(869-019-00108-5)	9.50	July 1, 1993
500-899	(869-019-00109-3)	36.00	July 1, 1993
900-1899	(869-019-00110-7)	17.00	July 1, 1993
1900-1910 (§§ 1901.1 to 1910.999)	(869-019-00111-5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869-019-00112-3)	21.00	July 1, 1993
1911-1925	(869-019-00113-1)	22.00	July 1, 1993
1926	(869-019-00114-0)	33.00	July 1, 1993
1927-End	(869-019-00115-8)	36.00	July 1, 1993
30 Parts:			
1-199	(869-019-00116-6)	27.00	July 1, 1993
200-699	(869-019-00117-4)	20.00	July 1, 1993
700-End	(869-019-00118-2)	27.00	July 1, 1993
31 Parts:			
0-199	(869-019-00119-1)	18.00	July 1, 1993
200-End	(869-019-00120-4)	29.00	July 1, 1993
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-019-00121-2)	30.00	July 1, 1993
191-399	(869-019-00122-1)	36.00	July 1, 1993
400-629	(869-019-00123-9)	26.00	July 1, 1993
630-699	(869-019-00124-7)	14.00	[5] July 1, 1991
700-799	(869-019-00125-5)	21.00	July 1, 1993
800-End	(869-019-00126-3)	22.00	July 1, 1993
33 Parts:			
1-124	(869-019-00127-1)	20.00	July 1, 1993
125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-019-00129-8)	24.00	July 1, 1993
34 Parts:			
1-299	(869-019-00130-1)	27.00	July 1, 1993
300-399	(869-019-00131-0)	20.00	July 1, 1993
400-End	(869-019-00132-8)	37.00	July 1, 1993
35	(869-019-00133-6)	12.00	July 1, 1993
36 Parts:			
1-199	(869-019-00134-4)	16.00	July 1, 1993
200-End	(869-019-00135-2)	35.00	July 1, 1993
37	(869-019-00136-1)	20.00	July 1, 1993
38 Parts:			
0-17	(869-019-00137-9)	31.00	July 1, 1993
18-End	(869-019-00138-7)	30.00	July 1, 1993
39	(869-019-00139-5)	17.00	July 1, 1993
40 Parts:			
1-51	(869-019-00140-9)	39.00	July 1, 1993
52	(869-019-00141-7)	37.00	July 1, 1993
53-59	(869-019-00142-5)	11.00	July 1, 1993
60	(869-019-00143-3)	35.00	July 1, 1993
61-80	(869-019-00144-1)	29.00	July 1, 1993
81-85	(869-019-00145-0)	21.00	July 1, 1993
86-99	(869-019-00146-8)	39.00	July 1, 1993
100-149	(869-019-00147-6)	36.00	July 1, 1993
150-189	(869-019-00148-4)	24.00	July 1, 1993
190-259	(869-019-00149-2)	17.00	July 1, 1993
260-299	(869-019-00150-6)	39.00	July 1, 1993
300-399	(869-019-00151-4)	18.00	July 1, 1993
400-424	(869-019-00152-2)	27.00	July 1, 1993
425-699	(869-019-00153-1)	28.00	July 1, 1993
700-789	(869-019-00154-9)	26.00	July 1, 1993
790-End	(869-019-00155-7)	26.00	July 1, 1993
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-019-00156-5)	10.00	July 1, 1993
101	(869-019-00157-3)	30.00	July 1, 1993
102-200	(869-019-00158-1)	11.00	[5] July 1, 1991
201-End	(869-019-00159-0)	12.00	July 1, 1993
42 Parts:			
1-399	(869-019-00160-3)	24.00	Oct. 1, 1993
400-429	(869-019-00161-1)	25.00	Oct. 1, 1993
430-End	(869-019-00162-0)	36.00	Oct. 1, 1993
43 Parts:			
1-999	(869-019-00163-8)	23.00	Oct. 1, 1993
1000-3999	(869-019-00164-6)	32.00	Oct. 1, 1993
4000-End	(869-019-00165-4)	14.00	Oct. 1, 1993
44	(869-019-00166-2)	27.00	Oct. 1, 1993
45 Parts:			
1-199	(869-019-00167-1)	22.00	Oct. 1, 1993
200-499	(869-019-00168-9)	15.00	Oct. 1, 1993
500-1199	(869-019-00169-7)	30.00	Oct. 1, 1993
1200-End	(869-019-00170-1)	22.00	Oct. 1, 1993
46 Parts:			
1-40	(869-019-00171-9)	18.00	Oct. 1, 1993
41-69	(869-019-00172-7)	16.00	Oct. 1, 1993
70-89	(869-019-00173-5)	8.50	Oct. 1, 1993
90-139	(869-019-00174-3)	15.00	Oct. 1, 1993
140-155	(869-019-00175-1)	12.00	Oct. 1, 1993
156-165	(869-019-00176-0)	17.00	Oct. 1, 1993
166-199	(869-019-00177-8)	17.00	Oct. 1, 1993
200-499	(869-019-00178-6)	20.00	Oct. 1, 1993
500-End	(869-019-00179-4)	15.00	Oct. 1, 1993
47 Parts:			
0-19	(869-019-00180-8)	24.00	Oct. 1, 1993
20-39	(869-019-00181-6)	24.00	Oct. 1, 1993
40-69	(869-019-00182-4)	14.00	Oct. 1, 1993
70-79	(869-019-00183-2)	23.00	Oct. 1, 1993
80-End	(869-019-00184-1)	26.00	Oct. 1, 1993
48 Chapters:			
1 (Parts 1-51)	(869-019-00185-9)	36.00	Oct. 1, 1993
1 (Parts 52-99)	(869-019-00186-7)	23.00	Oct. 1, 1993
2 (Parts 201-251)	(869-019-00187-5)	16.00	Oct. 1, 1993
2 (Parts 252-299)	(869-019-00188-3)	12.00	Oct. 1, 1993
3-6	(869-019-00189-1)	23.00	Oct. 1, 1993
7-14	(869-019-00190-5)	31.00	Oct. 1, 1993
15-28	(869-019-00191-3)	31.00	Oct. 1, 1993
29-End	(869-019-00192-1)	17.00	Oct. 1, 1993
49 Parts:			
1-99	(869-019-00193-0)	23.00	Oct. 1, 1993
100-177	(869-019-00194-8)	30.00	Oct. 1, 1993
178-199	(869-019-00195-6)	20.00	Oct. 1, 1993
200-399	(869-019-00196-4)	27.00	Oct. 1, 1993
400-999	(869-019-00197-2)	33.00	Oct. 1, 1993
1000-1199	(869-019-00198-1)	18.00	Oct. 1, 1993
1200-End	(869-019-00199-9)	22.00	Oct. 1, 1993
50 Parts:			
1-199	(869-019-00200-6)	20.00	Oct. 1, 1993
200-599	(869-019-00201-4)	21.00	Oct. 1, 1993
600-End	(869-019-00202-2)	22.00	Oct. 1, 1993
CFR Index and Findings Aids	(869-022-00053-5)	38.00	Jan. 1, 1994

Title	Stock Number	Price
Complete 1994 CFR set		829.00
Microfiche CFR Edition:		
Complete set (one-time mailing)		188.00
Complete set (one-time mailing)		188.00
Complete set (one-time mailing)		223.00
Subscription (mailed as issued)		244.00

Title	Stock Number	Price	Revision Date
Complete 1994 CFR set		829.00	1994
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
Complete set (one-time mailing)		223.00	1993
Subscription (mailed as issued)		244.00	1994
Individual copies		2.00	1994

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before this date.

```
AFR  SMITH212J                DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before this date.

```
AFRDO  SMITH212J              DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code
* 5468

Superintendent of Documents Subscription Order Form

Charge your order.
It's easy!

To fax your orders (202) 512–2233

☐**YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and LSA List of Code of Federal Regulations Sections Affected, at $490 ($612.50 foreign) each per year.

____ subscriptions to **Federal Register,** *daily only* (FRDO), at $444 ($555 foreign) each per year.

The total cost of my order is $_____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/94

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
59
ISS
1
3
1
JL
11
994
UMI

Printed on recycled paper

VOL
59

ISS
132

JL
12

994

UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7-12-94
Vol. 59 No. 132

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS-
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****

A FR UMISE
UMI SERIALS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR
227

7–12–94
Vol. 59 No. 132

Federal Register

Tuesday
July 12, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********3-DIGIT 481

A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106
227

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
5 9

ISS
1
3
2

JL
1 2

994

UMI

7-12-94
Vol. 59 No. 132
Pages 35461-35606

7–12–94
Vol. 59 No. 132
Pages 35461–35606

federal register

Tuesday
July 12, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche — 202–512–1800
Assistance with public subscriptions — 512–1806

Online:
Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.
Assistance with online subscriptions — 202–512–1530

Single copies/back copies:
Paper or fiche — 512–1800
Assistance with public single copies — 512–1803

FEDERAL AGENCIES

Subscriptions:
Paper or fiche — 523–5243
Assistance with Federal agency subscriptions — 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
Meetings:
White House Conference on Aging Polic
35519–35520

Agricultural Marketing Service
PROPOSED RULES
Perishable Agricultural Commodities Act:
Coverage extension to include oil-blanch
frozen fruits and vegetables, includi
fried potato products, 35487–35488

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection S
See Cooperative State Research Service
See Rural Electrification Administration

Animal and Plant Health Inspection Servi
RULES
Plant-related quarantine, foreign:
Potatoes from Canada
Correction, 35564

Centers for Disease Control and Preventi
NOTICES
Grants and cooperative agreements; availab
Acquired Immunodeficiency Syndrome
AIDS surveillance activities using 199
definition and reporting system; e
impact, 35520–35522
Hantavirus pulmonary syndrome immun
investigations, 35522–35524
Health promotion and disease preventio
program for African-Americans, 355
Meetings:
Savannah River Site, S.C.—
Environmental dose reconstruction pro
35527

Children and Families Administration
NOTICES
Grants and cooperative agreements; availab
Youth gang drug prevention program, 35

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Institute of Standards and Tec
See National Oceanic and Atmospheric Ad

Committee for the Implementation of Text
NOTICES
Cotton, wool, and man-made textiles:
El Salvador; 35501

Contents

Federal Register

Vol. 59, No. 132

Tuesday, July 12, 1994

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
Meetings:
White House Conference on Aging Policy Committee, 35519–35520

Agricultural Marketing Service
PROPOSED RULES
Perishable Agricultural Commodities Act:
Coverage extension to include oil-blanched fresh and frozen fruits and vegetables, including frozen french fried potato products, 35487–35488

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Cooperative State Research Service
See Rural Electrification Administration

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, foreign:
Potatoes from Canada
Correction, 35564

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Acquired Immunodeficiency Syndrome (AIDS)—
AIDS surveillance activities using 1993 AIDS case definition and reporting system; evaluation of impact, 35520–35522
Hantavirus pulmonary syndrome immunologic investigations, 35522–35524
Health promotion and disease prevention initiative program for African-Americans, 35524–35526
Meetings:
Savannah River Site, S.C.—
Environmental dose reconstruction project, 35526–35527

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Youth gang drug prevention program, 35520

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
El Salvador, 35501

Cooperative State Research Service
NOTICES
Meetings:
National Agricultural Research and Extension Users Advisory Board, 35498–35499

Defense Department
RULES
Base closure communities revitalization and community assistance; meeting, 35463–35464
Organization, functions, and authority delegations:
Defense Office of Hearings and Appeals, 35464

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Arenol Chemical Corp., 35530
Warren, Steven E., M.D., 35530–35532

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
State postsecondary review program (SPRP), 35501–35502

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Meetings:
Human Radiation Experiments Advisory Committee, 35502–35503

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Meetings:
Electronics Technical Advisory Committee, 35499
Regulations and Procedures Technical Advisory Committee, 35499
Transportation and Related Equipment Technical Advisory Committee, 35499–35500

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Airbus Industrie, 35488–35490
British Aerospace, 35490–35492
Class E airspace, 35492–35493
NOTICES
Environmental statements; availability, etc.:
Kinston Regional Jetport, NC, 35555
Exemption petitions; summary and disposition; correction, 35564
Passenger facility charges; applications, etc.:
Morgantown Municipal Airport, WV, 35555–35556
Tompkins County Airport, NY, 35556–35557

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 35562

Federal Deposit Insurance Corporation
PROPOSED RULES
Ethical conduct for employees; supplemental standards, 35480–35487

Federal Emergency Management Agency
NOTICES
Senior Executive Service:
Performance Review Board; membership, 35515

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Electronic Bulletin Boards Standards Filings, 35462–35463
NOTICES
Electric rate and corporate regulation filings:
CMS Generation Cebu Limited Duration Co. et al., 35503–35505
Entergy Services, Inc., et al., 35505–35506
Environmental statements; availability, etc.:
Northwest Pipeline Corp., 35506–35507
Virginia Electric & Power Co., 35507
Meetings; Sunshine Act, 35560–35562
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 35507
Cambridge Electric Light Co., 35507–35508
Carnegie Natural Gas Co., 35508
CNG Transmission Corp., 35508
Eastern Shore Natural Gas Co., 35508–35509
Florida Power & Light Co., 35509
Mississippi River Transmission Corp., 35509
Natural Gas Pipeline Co. of America, 35509–35510
Panhandle Eastern Pipe Line Co., 35510
Southern Natural Gas Co., 35511
South Georgia Natural Gas Co., 35510–35511
Stingray Pipeline Co., 35511
Texas Eastern Transmission Corp., 35511–35512
Texas Gas Transmission Corp., 35512
Transcontinental Gas Pipe Line Corp., 35512–35513
Trunkline Gas Co., 35513
Williston Basin Interstate Pipeline Co., 35513

Federal Highway Administration
PROPOSED RULES
Engineering and traffic operations:
Construction and maintenance—
Quality assurance procedures for construction on Federal-aid highway projects, 35493–35496

Federal Maritime Commission
NOTICES
Agreements filed, etc., 35515–35516

Federal Reserve System
NOTICES
Bank holding companies engaged in underwriting and dealing in securities; ten percent revenue limit, 35516–35519
Meetings; Sunshine Act, 35562

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Bald Eagle; reclassify, 35584–35594
Findings on petitions, etc., 35496–35497
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 35566–35577

Food and Drug Administration
NOTICES
Human drugs:
New drug applications—
Sandoz Pharmaceuticals Corp. et al.; approval withdrawn, 35527–35528

Health and Human Services Department
See Aging Administration
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Health, 35528

Health Care Financing Administration
NOTICES
Organization, functions, and authority delegations, 35528

Indian Affairs Bureau
PROPOSED RULES
Indian tribal forest enterprises, lumber and forest products; sales terms and conditions, 35580
Red Lake Indian Mills, MN; forest products sales terms and conditions, 35580–35581

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Applications, hearings, determinations, etc.:
University of—
California et al.; correction, 35564

Interstate Commerce Commission
NOTICES
Meetings; Sunshine Act, 35562
Railroad operation, acquisition, construction, etc.:
Broe, Patrick D., et al., 35530

Justice Department
See Drug Enforcement Administration

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
PROPOSED RULES
Rights-of-way; fair market rent schedule; communication usage, 35596–35606
NOTICES
Environmental statements; availability, etc.:
Great Falls resource area, MT, 35528–35529
Survey plat filings:
Minnesota, 35529

National Institute of Standards and Techn
NOTICES
Inventions, Government-owned; availabilit 35500

National Oceanic and Atmospheric Admin
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfi
Marine mammals:
North Pacific fur seals—
Subsisting taking; Pribilof Islands, AK,
Pacific Halibut Commission, International:
Pacific halibut fisheries, 35474–354756

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 35529–35530
Native American human remains and asso objects:
Anchorage Museum of History and Art, A correction, 35564

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 35562

Nuclear Regulatory Commission
RULES
Production and utilization facilities; domes
Advanced nuclear power plants; policy st 35461–35462
NOTICES
Meetings; Sunshine Act, 35562–35563
Applications, hearings, determinations, etc.
Philadelphia Electric Co., 35533–35534

Occupational Safety and Health Administra
NOTICES
Meetings:
Occupational Safety and Health National Committee, 35532–35533

Office of United States Trade Representati
See Trade Representative, Office of United S

Personnel Management Office
NOTICES
Retirement:
Civil Service Retirement System—
Annuity factors; alternative forms, 3553
Federal Employees Retirement System—
Annuity factors; alternative forms, 3553

Public Health Service
See Centers for Disease Control and Prevent
See Food and Drug Administration

Research and Special Programs Administra
RULES
Pipeline safety:
Hazardous liquid transportation; pipelines percent or less of specified minimum 35465–35471

National Institute of Standards and Technology
NOTICES
Inventions, Government-owned; availability for licensing, 35500

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 35476–35479
Marine mammals:
North Pacific fur seals—
Subsisting taking; Pribilof Islands, AK, 35471–35474
Pacific Halibut Commission, International:
Pacific halibut fisheries, 35474–354756

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 35529–35530
Native American human remains and associated funerary objects:
Anchorage Museum of History and Art, AK; headdress; correction, 35564

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 35562

Nuclear Regulatory Commission
RULES
Production and utilization facilities; domestic licensing:
Advanced nuclear power plants; policy statement, 35461–35462
NOTICES
Meetings; Sunshine Act, 35562–35563
Applications, hearings, determinations, etc.:
Philadelphia Electric Co., 35533–35534

Occupational Safety and Health Administration
NOTICES
Meetings:
Occupational Safety and Health National Advisory Committee, 35532–35533

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
Retirement:
Civil Service Retirement System—
Annuity factors; alternative forms, 35534
Federal Employees Retirement System—
Annuity factors; alternative forms, 35534–35535

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Research and Special Programs Administration
RULES
Pipeline safety:
Hazardous liquid transportation; pipelines operating at 20 percent or less of specified minimum yield strength, 35465–35471

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
Arizona Electric Power Cooperative, Inc., 35498

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes
American Stock Exchange, Inc., 35547–35548
Boston Stock Exchange, Inc., 35548–35549; 35550–35551
Chicago Board Options Exchange, Inc., 35536–35539
Chicago Stock Exchange, Inc., 35535–35536
Municipal Securities Rulemaking Board, 35539–35542
National Association of Securities Dealers, Inc., 35543–35545
National Securities Clearing Corp., 35542–35543
Pacific Stock Exchange, Inc., 35545–35546
Philadelphia Stock Exchange, 35549–35550
Philadelphia Stock Exchange, Inc., 35551–35554
Applications, hearings, determinations, etc.:
Dean Witter Equity Income Trust, 35554–35555

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 35555

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
NOTICES
Receiver appointments:
Altus Federal Savings Bank, 35557
Columbia Banking Federal Savings Association, 35557
Cooper River Federal Savings Association, 35557
Encino Savings Bank, FSB, 35557
Franklin Federal Savings Association, 35557
John Hanson Federal Savings Bank, 35557
Ukrainian Federal Savings & Loan Association, 35557
United Federal Savings Association of Iowa, 35557–35558
Applications, hearings, determinations, etc.:
Forrest City Savings & Loan Association, F.A., 35558
Jefferson Federal Mutual Holding Co., 35558

Trade Representative, Office of United States
NOTICES
Intellectual property rights protection, countries denying, policies and practices:
Priority foreign countries identification, 35558–35559

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration

Treasury Department
See Thrift Supervision Office

United States Information Agency
NOTICES
Meetings:
Public Diplomacy, U.S. Advisory Commission, 35558

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Inclusion of ischemic heart disease in statutory term "beriberi heart disease", 35464–35465

Western Area Power Administration
NOTICES
Power rate adjustments:
Provo River Project, UT, 35513–35515

Separate Parts In This Issue

Part II
Department of the Interior, Fish and Wildlife Service, 35566–35577

Part III
Department of the Interior, Bureau of Indian Affairs, 35580–35581

Part IV
Department of the Interior, Fish and Wildlife Service, 35584–35594

Part V
Department of the Interior, Bureau of Land Management, 35596–35606

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month c
Reader Aids section at the end of this issue

5 CFR
Proposed Rules:
3201 35480

7 CFR
319 35564
Proposed Rules:
46 35487

10 CFR
50 35461

12 CFR
Proposed Rules:
336 35480

14 CFR
Proposed Rules:
39 (2 documents) 35488, 35490
71 35492

18 CFR
284 35462

23 CFR
Proposed Rules:
637 35493

25 CFR
Proposed Rules:
164 35580
165 35580

32 CFR
90 35463
91 35463
155 35464

38 CFR
3 35464

43 CFR
Proposed Rules.
2800 35596
2810 35596
2880 35596

49 CFR
195 35465

50 CFR
215 35471
301 (2 documents) 35474, 35475
675 35476
Proposed Rules:
17 (2 documents) 35496, 35584
20 35566

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue

5 CFR
Proposed Rules:
3201 35480

7 CFR
319 35564
Proposed Rules:
46 35487

10 CFR
50 35461

12 CFR
Proposed Rules:
336 35480

14 CFR
Proposed Rules:
39 (2 documents) 35488, 35490
71 35492

18 CFR
284 35462

23 CFR
Proposed Rules:
637 35493

25 CFR
Proposed Rules:
164 35580
165 35580

32 CFR
90 35463
91 35463
155 35464

38 CFR
3 35464

43 CFR
Proposed Rules.
2800 35596
2810 35596
2880 35596

49 CFR
195 35465

50 CFR
215 35471
301 (2 documents) 35474, 35475
675 35476
Proposed Rules:
17 (2 documents) 35496, 35584
20 35566

VOL
59
ISS
1
3
2
JL
12
994
UMI

Rules and Regulation

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Regulation of Advanced Nuclear Power Plants; Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Policy Statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) intends to improve the licensing environment for advanced nuclear power reactors to minimize complexity and uncertainty in the regulatory process. This statement gives the Commission's policy regarding the review of, and desired characteristics associated with, advanced reactors. This policy statement is a revision of the final policy statement titled "Regulation of Advanced Nuclear Power Plants, Statement of Policy" that was published on July 8, 1986. The purpose of this revision is to update the Commission's policy statement on advanced reactors to reference the Commission's metrication policy.

EFFECTIVE DATE: July 12, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen P. Sands, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–3154.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1986 (51 FR 24643), the Commission published its final policy statement on advanced reactors in the **Federal Register**. The Commission's primary objectives in issuing the advanced reactor policy statement were threefold:

- First, to maintain the earliest possible interaction of applicants, vendors, and government agencies, with the NRC;
- Second, to provide all interested parties, including the public, with the

Rules and Regulations

Federal Register
Vol. 59, No. 132
Tuesday, July 12, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Regulation of Advanced Nuclear Power Plants; Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Policy Statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) intends to improve the licensing environment for advanced nuclear power reactors to minimize complexity and uncertainty in the regulatory process. This statement gives the Commission's policy regarding the review of, and desired characteristics associated with, advanced reactors. This policy statement is a revision of the final policy statement titled "Regulation of Advanced Nuclear Power Plants, Statement of Policy" that was published on July 8, 1986. The purpose of this revision is to update the Commission's policy statement on advanced reactors to reference the Commission's metrication policy.

EFFECTIVE DATE: July 12, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen P. Sands, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–3154.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1986 (51 FR 24643), the Commission published its final policy statement on advanced reactors in the **Federal Register**. The Commission's primary objectives in issuing the advanced reactor policy statement were threefold:

- First, to maintain the earliest possible interaction of applicants, vendors, and government agencies, with the NRC;
- Second, to provide all interested parties, including the public, with the Commission's views concerning the desired characteristics of advanced reactor designs; and
- Third, to express the Commission's intent to issue timely comment on the implications of such designs for safety and the regulatory process.

On August 10, 1988, Congress passed the Omnibus Trade and Competitiveness Act [the Act], (19 U.S.C. 2901 *et seq.*), which amended the Metric Conversion Act of 1975, (15 U.S.C. 205a *et seq.*). Section 5164 of the Act (15 U.S.C. 205a) designates the metric system as the preferred system of weights and measures for U.S. trade and commerce.

In an effort to effect an orderly change to the metric system, the Act requires that all Federal agencies convert to the metric system of measurement in their procurement, grants, and other business-related activities by the end of fiscal year 1992, "except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms, such as when foreign competitors are producing competing products in non-metric units," Section 5614(b)(2).

In response to the Act, the NRC published its metrication policy statement for comment in the **Federal Register** on February 10, 1992 (57 FR 4891). The purpose of the metrication policy statement was to inform NRC licensees and the public how the Commission intended to meet its obligations under the Act. Comments on the draft statement were submitted by 12 responders, including 5 power reactor licensees, 3 standards organizations, a reactor vendor, a materials licensee, the Nuclear Management and Resources Council, and a joint letter submitted by three individuals. All commenters supported the Commission's position and the final policy statement was published on October 7, 1992 (57 FR 46202).

The Commission supports and encourages the use of the metric system of measurement by NRC licensees and applicants. However, Commission experience to date in design certification reviews is that it is impracticable and uneconomical to convert a design to the metric system late in the design process and that applicants should consider metrication early in the design process. Therefore, the Commission is revising the advanced reactor policy statement to incorporate its policy on metrication to encourage licensees and license applicants to employ the metric system of measurement wherever and whenever its use is not potentially detrimental to the public health and safety or is not economically impracticable.

Commission Policy

Consistent with its legislative mandate, the Commission's policy with respect to regulating nuclear power reactors is to ensure adequate protection of the public health and safety and the environment. Regarding advanced reactors, the Commission expects, as a minimum, at least the same degree of protection of the public and the environment that is required for current-generation light water reactors. Furthermore, the Commission expects that advanced reactors will provide enhanced margins of safety and/or utilize simplified, inherent, passive, or other innovative means to accomplish their safety functions. The Commission also expects that advanced reactor designs will comply with the Commission's safety goal policy statement and the policy statement on conversion to the metric system.

Among the attributes that could assist in establishing the acceptability or licensability of a proposed advanced reactor design, and that therefore should be considered in advanced designs, are:

- Highly reliable and less complex shutdown and decay heat removal systems. The use of inherent or passive means to accomplish this objective is encouraged (negative temperature coefficient, natural circulation, etc.).
- Longer time constants and sufficient instrumentation to allow for more diagnosis and management before reaching safety systems challenge and/or exposure of vital equipment to adverse conditions.
- Simplified safety systems that, where possible, reduce required operator actions, equipment subjected to severe environmental conditions, and components needed for maintaining safe shutdown conditions. Such simplified systems should facilitate operator comprehension, reliable system function, and more straightforward engineering analysis.
- Designs that minimize the potential for severe accidents and their consequences by providing sufficient inherent safety, reliability, redundancy,

diversity, and independence in safety systems.

- Designs that provide reliable equipment in the balance of plant (BOP) (or safety-system independence from BOP) to reduce the number of challenges to safety systems.
- Designs that provide easily maintainable equipment and components.
- Designs that reduce potential radiation exposures to plant personnel.
- Designs that incorporate defense-in-depth philosophy by maintaining multiple barriers against radiation release, and by reducing the potential for and consequences of severe accidents.
- Design features that can be proven by citation of existing technology or that can be satisfactorily established by commitment to a suitable technology development program.

If specific advanced reactor designs with some or all of the above foregoing attributes are brought to the NRC for comment and/or evaluation, the Commission can develop preliminary design safety evaluation and licensing criteria for their safety-related aspects. Combination of some or all of the above attributes may help obtain early licensing approval with minimum regulatory burden. Designs with some or all of these attributes are also likely to be more readily understood by the general public. Indeed, the number and nature of the regulatory requirements may depend on the extent to which an individual advanced reactor design incorporates general attributes such as those listed above. However, until such time as conceptual designs are submitted, the Commission believes that regulatory guidance must be sufficiently general to avoid placing unnecessary constraints on the development of new design concepts.

To provide for more timely and effective regulation of advanced reactors, the Commission encourages the earliest possible interaction of applicants, vendors, other government agencies, and the NRC to provide for early identification of regulatory requirements for advanced reactors, and to provide all interested parties, including the public, with a timely, independent assessment of the safety characteristics of advanced reactor designs. Such licensing interaction and guidance early in the design process will contribute toward minimizing complexity and adding stability and predictability in the licensing and regulation of advanced reactors.

While the NRC itself does not develop new designs, the Commission intends to develop the capability for timely assessment and response to innovative and advanced designs that might be presented for NRC review. Prior experience has shown that new reactor designs—even variations of established designs—may involve technical problems that must be solved in order to ensure adequate protection of the public health and safety. The earlier such design problems are identified, the earlier satisfactory resolution can be achieved. Prospective applicants are reminded that, while the NRC will undertake to review and comment on new design concepts, the applicants are responsible for documentation and research necessary to support a specific license application. (NRC research is conducted to provide the technical bases for rulemaking and regulatory decisions, to support licensing and inspection activities, and to increase NRC's understanding of phenomena for which analytical methods are needed in regulatory activities.)

During the initial phase of advanced reactor development, the Commission particularly encourages design innovations that enhance safety and reliability (such as those described above) and that generally depend on technology that is either proven or can be demonstrated by a straightforward technology development program. In the absence of a significant history of operating experience on an advanced concept reactor, plans for innovative use of proven technology and/or new technology development programs should be presented to the NRC for review as early as possible, so that the NRC can assess how the proposed program might influence regulatory requirements. To achieve these broad objectives, the Advanced Reactor Projects Directorate (PDAR) was established in the Office of Nuclear Reactor Regulation. This group is the focal point for NRC interaction with the Department of Energy, reactor designers, and potential applicants, and coordinates the development of regulatory criteria and guidance for proposed advanced reactors. In addition, the group maintains knowledge of advanced reactor designs, developments, and operating experience in other countries, and provides guidance on an NRC-funded advanced reactor safety research program to ensure that it supports, and is consistent with, the Commission's advanced reactor policy. The PDAR also provides guidance regarding the timing and format of submittals for review. The Advisory Committee on Reactor Safeguards plays a significant role in reviewing proposed advanced design concepts and supporting activities.

The NRC believes that conversion to the metric system is important to the national interest. The Commission strongly encourages its licensees and license applicants to employ the metric system of measurement wherever and whenever its use is not potentially detrimental to the public health and safety or is not economically infeasible. In order to facilitate use of the metric system by licensees and applicants, the NRC began publishing, as of January 7, 1993, the following documents in dual units: new regulations, major amendments to existing regulations, regulatory guides, NUREG-series documents, policy statements, information notices, generic letters, bulletins, and all written communications directed to the public. Licensees and applicants should follow the guidance outlined in the Commission's position and final policy statement on metrication published on October 7, 1992 (57 FR 46202).

Dated at Rockville, Maryland, this 5th day of July, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–16818 Filed 7–11–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–003; Order No. 563–B]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued: July 1, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order denying clarification and rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order denying a request for clarification and rehearing of Order No. 563–A with respect to a proposed Index of Purchasers. The Commission finds the request is premature because the Commission has not made a final determination on this issue.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order Denying Clarification and Rehearing; Order No. 563–B

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

[Docket No. RM93–4–003]

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Issued: July 1, 1994.

On June 1, 1994, ANR Pipeline Company (ANR) filed a request for clarification or, in the alternative, for rehearing of Order No. 563–A.[1] ANR

[1] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A,

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order Denying Clarification and Rehearing; Order No. 563–B

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

[Docket No. RM93–4–003]

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Issued: July 1, 1994.

On June 1, 1994, ANR Pipeline Company (ANR) filed a request for clarification or, in the alternative, for rehearing of Order No. 563–A.[1] ANR seeks clarification that the Commission will not require all pipelines to provide an electronic Index of Purchasers, or, in the alternative, rehearing of the Commission's decision adopting this requirement. The Commission denies the request for clarification and rehearing as premature.

Background

In Order No. 563, the Commission adopted a final rule establishing standards governing the electronic dissemination of information relating to transportation of natural gas. The standards generally reflected consensus agreements reached by industry Working Groups composed of members from all facets of the gas industry.

Parties had proposed to include in the standards an electronic Index of Purchasers which would disclose certain information about the capacity rights of shippers on pipelines. The Working Groups, however, were unable to reach consensus on an approach, and a number of participants submitted alternative approaches. One proposal, supported by 44 participants, was to replace some of the Commission's reporting requirements relating to firm and interruptible transportation with an electronic Index composed of nine data elements, available in downloadable form.[2]

In Order No. 563–A, the Commission found that this proposal had significant merit because it would provide useful information to the market about capacity, while setting the stage for reducing filing burdens and streamlining the Commission's reporting requirements. The Commission expressed interest in pursuing this proposal further and instructed Commission staff to work with the industry Working Groups to develop a final proposal by September 30, 1994.

ANR contends the Commission's order is not clear on whether the Index of Purchasers will be adopted upon the submission of the September 30, 1994 report, without an opportunity for further comment. It argues that the Commission should clarify whether this proposal is still open for discussion.

In addition, ANR questions whether the Index of Purchasers is needed to promote the Commission's capacity release objectives. It agrees that such an Index does offer the advantage of reducing reporting and tariff requirements, but maintains that, if the Commission adopts the Index for that reason, it should do so only if it concomitantly eliminates the other reporting requirements. Finally, ANR argues that if the Commission requires information not covered by the existing reporting requirements, the Commission must justify the inclusion of such information. In particular, ANR contends the Commission should not require dissemination of competitively sensitive information.

Discussion

The Commission denies ANR's request that the Commission clarify that pipelines will not have to adopt the Index of Purchasers and ANR's alternative request for rehearing. ANR's requests at this point are premature.

In Order No. 563–A, the Commission only expressed interest in pursuing the Index of Purchasers proposal, but did not make a final determination on the issue. After receiving the September 30, 1994 report from the Working Group, the Commission will evaluate the proposal and determine how best to proceed. As the Commission stated in Order No. 563–A, the Commission will comply with the Administrative Procedure Act and will provide notice and an opportunity for comment prior to making any changes or revisions to the standards.[3] Thus, ANR will have the opportunity to have its views considered at the appropriate time.

The Commission orders:

The request for clarification and rehearing is denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16843 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994).

[2] The proposal would replace the Commission's initial and subsequent reports (but not the annual reports and bypass reports) and the requirement to include an Index of Purchasers in pipeline tariffs.

[3] Order No. 563–A, III FERC Stats. & Regs. Preambles at 31,036–37.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 90 and 91

RIN 0790–AF61 and RIN 0790–AF64

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Interim final rule; notice of public hearing.

SUMMARY: The Department of Defense will hold a public hearing to receive

comments on the interim final rule regarding Revitalizing Base Closure Communities published in the **Federal Register** on April 6, 1994 (59 FR 16123). On Tuesday, July 5, 1994 (59 FR 34382), the Department of Defense published in the **Federal Register**, an extension of public comment period through August 5, 1994, to accommodate this public hearing.

DATES: Friday, August 5, 1994, 9:30 a.m. to 12:30 p.m.

ADDRESSES: General Services Administration Headquarters Auditorium, 18th and F Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven Kleiman or Frank Savat, telephone 703–614–5356.

Dated: July 7, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16839 Filed 7–11–94; 8:45 am]

BILLING CODE 5000–04–M

32 CFR Part 155

Defense Industrial Personnel Security Clearance Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This rule is published to make administrative amendments to reflect an organizational name change within the Department of Defense.

EFFECTIVE DATE: May 20, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. L. Schachter, telephone 703–696–4599.

List of Subjects in 32 CFR Part 155

Administrative practice and procedure; Business and industry; Classified information.

Accordingly, 32 CFR part 155 is amended as follows:

PART 155—[AMENDED]

1. The authority citation for part 155 continues to read as follows:

Authority: 10 U.S.C. 139; E.O. 10865, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398.

§ 155.2 [Amended]

2. Section 155.2 is amended in paragraph (c) by revising "Directorate for Industrial Security Clearance Review (DISCR)" to read "Defense Office of Hearings and Appeals (DOHA)"

§ 155.5 [Amended]

3. Section 155.5 is amended by revising "(DISCR)" to read "(DOHA)" in paragraph (b)(2), paragraph (b)(3), paragraph (b)(7), paragraph (b)(8), paragraph (b)(9), paragraph (b)(10), paragraph (b)(12), paragraph (b)(14), paragraph (b)(15), paragraph (b)(19), paragraph (c), and paragraph (d) both times.

§ 155.6 [Amended]

4. Section 155.6 is amended by revising "(DISCR)" to read "(DOHA)" in paragraph (b), introductory text, both times and in paragraph (b)(3), both times.

Appendix A to Part 155 [Amended]

5. Appendix A to Part 155 is amended by revising "(DISCR)" to read "(DOHA)" in section 1., section 2., section 4. both times, section 5., section 8., section 11., section 26., section 27., paragraph 36.f., section 37., section 38., section 39., section 40. both times, section 42., section 43., section 44., introductory text, and section 46.

Dated: July 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–16840 Filed 7–11–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG76

Diseases Specific as to Former Prisoners of War

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations concerning diseases subject to presumptive service connection in former prisoners of war by stating that the statutory term "beriberi heart disease" includes ischemic heart disease in former prisoners of war who had experienced localized edema during captivity. The effect of this amendment is to broaden VA's interpretation of that term based upon new epidemiological evidence.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Donald England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In 1970, Congress passed Public Law 91–376, § 3, 84 Stat. 787, 788 (1970), which established a presumption of service connection for seven categories of diseases and conditions, including "beriberi (including beriberi heart disease)," developing to a ten-percent degree of disability at any time after active service in the case of a veteran held as a prisoner of war in World War II, the Korean Conflict, or the Vietnam War who suffered from dietary deficiencies, forced labor, or inhumane treatment in violation of the Geneva Conventions. The intent of Congress was to recognize diseases suffered by former prisoners of war during captivity for which there is no medical documentation.

Concern remained, however, as to the problems encountered by these veterans in their efforts to prove service connection for disabilities attributable to the conditions of their capture and imprisonment. Some claimed that their ability to prove service connection for disabilities was hampered because there are inadequate medical records and that certain disabilities which were considered to be minor at the time of release from service were becoming more serious. Congress therefore enacted the Former Prisoner of War Benefits Act of 1981, Public Law 97–37, 95 Stat. 935, which eliminated the requirement that former prisoners of war must have suffered from dietary deficiencies, forced labor, or inhumane treatment during confinement in order to qualify for the presumption of service connection.

Beriberi is a disease caused by a deficiency of thiamine (vitamin B1). Early thiamine deficiency is characterized by anorexia, irritability, and weight loss. Later, patients experience weakness, peripheral neuropathy, headache, and tachycardia. Advanced thiamine deficiency presents with involvement of two major organ systems predominantly: the cardiovascular system (the syndrome known as "wet beriberi," i.e., beriberi heart disease) and the nervous system, both central and peripheral (known as "dry beriberi"). *Cecil Textbook of Medicine* 1171 (James B. Wyngaarden, M.D., Lloyd H. Smith, Jr., M.D., J. Claude Bennett, M.D., ed., 1992).

In 1992, the Medical Follow-up Agency of the Institute of Medicine, National Academy of Sciences, issued a study entitled "The Health of Former Prisoners of War" which reported the results of a medical examination survey of former World War II and Korean Conflict POWs and comparable control groups. That study found what it termed a noteworthy association between ischemic heart disease and earlier reporting of localized edema of feet, ankles and legs—presumably due to beriberi heart disease (wet beriberi)—while in captivity. While there is no known satisfactory explanatory biological mechanism linking beriberi or malnutrition and subsequent chronic heart disease, the examination data from the current study provides epidemiological evidence to suggest there is a connection between conditions during captivity and the later development of ischemic heart disease. According to the study, the reporting of edema in prison camp indicates a specific nutritional deficiency, beriberi, and the location of edema in the feet, ankles and legs is presumably related to beriberi heart disease in prison camp which is caused by thiamine deficiency.

After reviewing this study the Secretary has determined, in keeping with the intent of Congress to provide a presumption of service connection for former prisoners of war who have diseases which result from dietary inadequacies or unsanitary conditions and for which service connection may be difficult to establish, that the term beriberi heart disease found at 38 U.S.C. 1112(b)(2) includes ischemic heart disease if the former prisoner of war suffered localized edema during captivity. We have amended 38 CFR 3.309(c) accordingly.

This amendment is effective August 24, 1993, the date of the Secretary's decision. Since this amendment is an interpretation of existing law, publication as a proposal is not required and the amendment is being issued as a final rule.

Because no notice of proposed rulemaking is required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. et seq.). Further, the rule will not directly affect any small entities; only VA beneficiaries could be directly affected.

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866 of September 30, 1993, entitled Regulatory Planning and Review.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

while in captivity. While there is no known satisfactory explanatory biological mechanism linking beriberi or malnutrition and subsequent chronic heart disease, the examination data from the current study provides epidemiological evidence to suggest there is a connection between conditions during captivity and the later development of ischemic heart disease. According to the study, the reporting of edema in prison camp indicates a specific nutritional deficiency, beriberi, and the location of edema in the feet, ankles and legs is presumably related to beriberi heart disease in prison camp which is caused by thiamine deficiency.

After reviewing this study the Secretary has determined, in keeping with the intent of Congress to provide a presumption of service connection for former prisoners of war who have diseases which result from dietary inadequacies or unsanitary conditions and for which service connection may be difficult to establish, that the term beriberi heart disease found at 38 U.S.C. 1112(b)(2) includes ischemic heart disease if the former prisoner of war suffered localized edema during captivity. We have amended 38 CFR 3.309(c) accordingly.

This amendment is effective August 24, 1993, the date of the Secretary's decision. Since this amendment is an interpretation of existing law, publication as a proposal is not required and the amendment is being issued as a final rule.

Because no notice of proposed rulemaking is required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. et seq.). Further, the rule will not directly affect any small entities; only VA beneficiaries could be directly affected.

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866 of September 30, 1993, entitled Regulatory Planning and Review.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved June 27, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted

§ 3.309 [Amended]

2. In § 3.309(c), add a note at the end of the paragraph preceding the authority citation to read as follows:

Note: For purposes of this section, the term *beriberi heart disease* includes ischemic heart disease in a former prisoner of war who had experienced localized edema during captivity.

[FR Doc. 94-16624 Filed 7-11-94, 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS-117; Amdt. 195-53]

RIN 2137-AB86

Transportation of Hazardous Liquids at 20 Percent or Less of Specified Minimum Yield Strength

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Final Rule.

SUMMARY: RSPA's hazardous liquid pipeline safety regulations do not apply to steel pipelines that operate at 20 percent or less of specified minimum yield strength (SMYS). This final rule extends the regulations to three groups of these pipelines: pipelines that transport highly volatile liquids, pipelines or pipeline segments in populated areas; and pipelines or pipeline segments in navigable waterways. Accidents have shown that regulating these pipelines or pipeline segments would be in the interest of public safety. Moreover, the Pipeline Safety Act of 1992 provides that DOT may not exclude hazardous liquid pipelines from regulation based solely on operation at low internal stress. The final rule responds to this statutory prohibition and will reduce the risk that hazardous liquid pipelines present to public safety and the environment.

EFFECTIVE DATE: August 11, 1994.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392, regarding the subject matter of this final rule. Contact the Dockets Unit, (202) 366-4453, for copies of the final rule or other docket material. Contact the Transportation Safety Institute, Pipeline Safety Division, 6500 South MacArthur Boulevard, Oklahoma City, OK 73125, (405) 680-4643, for a copy of 49 CFR part 195.

SUPPLEMENTARY INFORMATION:

I. Background

RSPA's hazardous liquid pipeline safety regulations do not apply to pipelines operating at a stress level of 20 percent or less of SMYS (hereafter "low-stress pipelines") (see 49 CFR 195.1(b)(3)). DOT excluded these pipelines from part 195 when it first issued the regulations (34 FR 15473, October 4, 1969). However, serious accidents have occurred on low-stress pipelines, suggesting that this blanket exclusion is no longer in the interest of public safety. Moreover, Section 206 of the Pipeline Safety Act of 1992 (PSA) (Pub. L. 102-508; October 24, 1992), amended § 203(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 App. U.S.C. 2002(b)) to provide that "[i]n exercising any discretion under this Act, the Secretary shall not provide an exception to regulation under this Act for any pipeline facility solely on the basis of the fact that such pipeline facility operates at low internal stress."

On October 31, 1990, RSPA published an advance notice of proposed rulemaking on low-stress pipelines (55 FR 45822). The notice described accidents and rulemaking recommendations.

We analyzed data received in response to that notice to learn the benefits and costs of regulating low-stress pipelines. The analysis showed that many operators could face costs disproportionate to benefits if RSPA regulated all low-stress pipelines subject to the HLPSA. So we focused on those low-stress pipelines that pose a higher risk to people and the environment. We identified the commodity in transportation and the location of the pipeline as significant risk factors.

RSPA then published a notice of proposed rulemaking (NPRM) (58 FR 12213; March 3, 1993) that addressed these risk factors. The NPRM proposed to apply the safety standards in part 195 and the drug testing rules in 49 CFR part

199 to low-stress pipelines that transport highly volatile liquids (HVL), traverse populated areas, or traverse navigable waterways. These pipelines were targeted because failures of HVL pipelines usually result in more deaths and injuries than other pipeline failures, and failures in populated areas and navigable waterways generally result in more damages to people and the environment. Furthermore, the risk of outside force damage, a major cause of pipeline accidents, is greater in populated areas and navigable waterways, making failures there somewhat more likely.

The proposed rules would address the statutory restriction (quoted above) on administrative discretion in regulating hazardous liquid pipelines. The proposed rules also would respond to the Oil Pollution Act of 1990 (Pub. L. 101–380), which requires DOT to regulate oil pipelines to prevent pollution of navigable waters.

The NPRM proposed regulating four kinds of pipelines operating at 20 percent or less of SMYS: gathering lines, trunk lines, inter-facility lines, and delivery lines. Unaffected were pipelines that part 195 does not cover for a reason besides low operating stress. For example, the NPRM did not propose regulating low-stress rural gathering lines. Part 195 does not apply to petroleum gathering lines in rural areas, regardless of the pipeline's operating stress level (see § 195.1(b)(4)). Also, with regard to low-stress pipelines that do not transport HVL, the proposed rules did not affect pipelines or pipeline segments that lie outside populated areas or navigable waterways. However, controls or equipment on excepted segments that are necessary for the safe operation of pipeline segments inside populated areas or navigable waterways (e.g., pressure controls) would have to meet part 195 requirements.

II. Response to Comments

A. Introduction

This section of the preamble summarizes and discusses the major written comments RSPA received on the proposed rules. Comments related to the draft economic evaluation of costs and benefits are discussed in the Final Regulatory Evaluation, which is in the docket.

B. Extent and Nature of Comments

The NPRM requested comments by May 3, 1993. RSPA received 13 written comments. The comments came from seven pipeline operators, one pipeline trade association (the American Petroleum Institute (API)), three state pipeline safety agencies, one federal agency (the National Transportation Safety Board (NTSB)), and one public interest organization (the Natural Resources Defense Council (NRDC)).

NTSB, two state agencies, and one operator voiced general support for the NPRM. The rest of the commenters directed their remarks to specific issues. Those issues are discussed below.

C. Rural Pipelines

NRDC and a state agency suggested that RSPA should not continue to except non-HVL low-stress pipelines in rural areas from part 195. These commenters argued that people and the environment in rural areas deserve the same protection as people and the environment in populated areas. They also said that serious accidents have occurred in rural areas, and that low stress is not necessarily an indicator of low risk.

Although RSPA appreciates these commenters' concerns, we have decided not to expand the present rulemaking to include the regulation of additional low-stress pipelines in rural areas. However, the need to regulate rural low-stress pipelines not covered by the present rulemaking will be considered in upcoming proceedings.

Apart from production lines (which are not subject to the HLPSA), most low-stress pipelines in rural areas probably are gathering lines. Until passage of the PSA, rural gathering lines were not subject to regulation under the HLPSA. However, the PSA enlarged RSPA's regulatory authority under the HLPSA to include, with certain exceptions, those rural gathering lines that warrant regulation based on location and other risk factors. As required by Section 208 of the PSA, RSPA will consider regulation of those lines in a future notice of proposed rulemaking.

In addition, we will consider the need to regulate rural low-stress pipelines that are not gathering lines principally on the basis of the risk the low-stress lines pose to the environment. Through response planning in cooperation with other federal and state agencies under the Oil Pollution Act, we are developing a better concept of what constitutes an environmentally-sensitive area for purposes of pipeline environmental regulation. This planning should provide the groundwork both for the future notice of proposed rulemaking on rural gathering lines and for a rulemaking on other rural low-stress pipelines.

D. Adequacy of NPRM

API commented on the impact of the proposed rules on inter-facility lines and delivery lines. It said the proposed rules would significantly affect non-pipeline companies, such as refineries, petrochemical plants, and terminals. But, according to API, these companies may not have been aware of the NPRM. API advised RSPA to publish a separate NPRM directed at inter-facility and delivery lines, with at least a 6-month comment period.

RSPA does not agree that another rulemaking notice is needed.

The published NPRM clearly discussed the proposed applicability of part 195 to inter-facility lines and delivery lines. The NPRM gave all interested persons, including non-pipeline companies, an adequate opportunity to comment on the proposed extension of part 195 to cover these low-stress pipelines. In addition, some non-pipeline companies were aware of the NPRM, because representatives of refineries submitted comments. Other non-pipeline companies should have been aware that RSPA was considering the need to regulate low-stress pipelines. As stated above, RSPA published an advance notice of proposed rulemaking on low-stress pipelines. Also, we specifically invited representatives of the chemical, refining, and terminal industries to attend a meeting on low-stress pipelines (56 FR 23538; May 22, 1991). At that meeting, RSPA staff described all low-stress pipelines excluded from part 195.

E. Economically Marginal Gathering Lines

The NPRM requested comment on whether economically marginal gathering lines (i.e., lines which have little profit) in populated areas should receive separate treatment under the final rules. One operator wanted to exclude from regulation petroleum gathering lines that operate at less than 5 percent of SMYS and transport mostly sediment and water. The operator said these lines present little or no risk, but the cost of regulation would be high because of the large number of lines.

API and an operator said many low-stress pipelines in populated areas are associated with mature wells of diminishing production. These commenters argued regulation would accelerate the marginal economic status of the lines. They also suggested that more truck transportation would follow, with greater risk to the public. The operator particularly asked RSPA not to regulate low-stress pipelines transporting crude oil that has a high flash point. These lines, the commenter said, do not present a high enough risk to public safety to make regulation cost/effective.

API commented that RSPA should apply just a few regulations to pipelines made economically marginal by depleted oil fields and low oil prices. It suggested that regulations applicable to leak detection would be enough. The remaining regulations could be waived, API said, based on evidence of negative economic impact and low risk to the area. An operator also suggested RSPA consider granting waivers for marginal systems based on evidence of a satisfactory safety program.

NTSB said regulation of a class of pipelines should be based solely on the threat to public safety and the environment.

An operator of economically marginal lines said that if safety is the goal of regulation, then profitable and marginal lines should be treated alike.

To resolve the issue of economically marginal gathering lines, we looked at the number of lines involved, the burden of the final rule, and alternative transportation. The record shows that gathering lines in populated areas comprise less than 10 percent of low-stress pipelines subject to the final rule. Based on the comments, we believe only a small fraction of this number is economically marginal, transporting small volumes of oil from older, declining wells. These pipelines would be subject to the part 195 regulations, which, on the whole, parallel the industry standards in the American Society of Mechanical Engineers' B31.4 code, *Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols*. The compliance burden, therefore, would be similar to the burden of meeting the minimum standards the pipeline industry has set for itself. Alternative rail or truck transportation, although perhaps more expensive, is generally available to replace any gathering line transportation that might be shut down. Thus, we do not believe regulation of economically marginal low-stress gathering lines will cause a significant hardship to much of the industry. Also, the potential safety and environmental risks of economically marginal gathering lines is probably higher than that of more profitable lines because of the increased incentive to save costs. Consequently, we decided not to include special provisions in part 195 for economically marginal low-stress gathering lines.

Nevertheless, consistent with API's comment and RSPA's statutory authority, we will consider requests for waiver of particular requirements. Any request should be based on evidence of significantly adverse economic impact,

API commented that RSPA should apply just a few regulations to pipelines made economically marginal by depleted oil fields and low oil prices. It suggested that regulations applicable to leak detection would be enough. The remaining regulations could be waived, API said, based on evidence of negative economic impact and low risk to the area. An operator also suggested RSPA consider granting waivers for marginal systems based on evidence of a satisfactory safety program.

NTSB said regulation of a class of pipelines should be based solely on the threat to public safety and the environment.

An operator of economically marginal lines said that if safety is the goal of regulation, then profitable and marginal lines should be treated alike.

To resolve the issue of economically marginal gathering lines, we looked at the number of lines involved, the burden of the final rule, and alternative transportation. The record shows that gathering lines in populated areas comprise less than 10 percent of low-stress pipelines subject to the final rule. Based on the comments, we believe only a small fraction of this number is economically marginal, transporting small volumes of oil from older, declining wells. These pipelines would be subject to the part 195 regulations, which, on the whole, parallel the industry standards in the American Society of Mechanical Engineers' B31.4 code, *Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols*. The compliance burden, therefore, would be similar to the burden of meeting the minimum standards the pipeline industry has set for itself. Alternative rail or truck transportation, although perhaps more expensive, is generally available to replace any gathering line transportation that might be shut down. Thus, we do not believe regulation of economically marginal low-stress gathering lines will cause a significant hardship to much of the industry. Also, the potential safety and environmental risks of economically marginal gathering lines is probably higher than that of more profitable lines because of the increased incentive to save costs. Consequently, we decided not to include special provisions in part 195 for economically marginal low-stress gathering lines.

Nevertheless, consistent with API's comment and RSPA's statutory authority, we will consider requests for waiver of particular requirements. Any request should be based on evidence of significantly adverse economic impact, low risk, and adequate operation and maintenance practices.

F. Compliance Time

1. Amount of Time

Proposed § 195.1(d) would have allowed operators of existing low-stress pipelines 1 year after publication of the final rule to comply with parts 195 and 199. However, the NPRM requested comment on whether 1 year would be enough time to prepare existing pipelines for compliance.

An operator said 1 year would not be enough unless RSPA excludes certain economically marginal gathering lines and accepts previous hydrostatic testing. Otherwise the operator said 2 years would be needed to establish an adequate compliance program. One operator said 1 year would be all right for HVL and trunk lines, but 3 years would be needed for other lines. Another operator recommended 3 to 5 years for low-stress pipelines that present a low risk because they carry crude oil with a high flash point. Still another operator said that because many distinct pipelines would be brought under the regulations (possibly 3,000), the minimum compliance period should be 5 years. API and an operator argued that 3, 4, or 5 years would be needed to carry out all the requirements.

NTSB argued that 1 year would be sufficient because many operators of low-stress pipelines have other pipelines that are subject to parts 195 and 199. Also, NTSB said compliance would mostly involve procedural changes. It further said written procedures and documentation are readily available for operators not already involved with parts 195 and 199. A state agency also said 1 year would be sufficient for operators to prepare for compliance.

In view of the diversity of conditions and importance of plans, procedures, and testing, RSPA agrees that many operators will need more than 1 year to complete the steps necessary for existing pipelines to meet parts 195 and 199. Of particular concern is the time needed to craft plans and procedures that address the individual conditions of the many distinct pipelines to which the final rule applies. However, operators should not need more than 90 days to learn about the new requirements and begin reporting accidents that might occur on low-stress pipelines. Also, within 90 days operators should be able to meet part 195 design, construction, and hydrostatic testing requirements on portions of existing pipelines that they replace, relocate, or otherwise change after the effective date of the final rule. Therefore, final § 195.1(c) allows existing low-stress pipelines 2 years from today to comply with parts 195 and 199. However, accident reporting under subpart B of part 195 begins 90 days from today. Also, replacements, relocations, and other changes made to existing pipelines on or after 90 days from today must meet the design, construction, and hydrostatic testing requirements of part 195 before operation.

Note that the allowable compliance time for existing low-stress pipelines is stated in final § 195.1(c), instead of § 195.1(d) as proposed. We made this change because under existing § 195.1(c), the deadline has passed for carbon dioxide pipelines to comply with part 195 (July 12, 1992). Accordingly, the compliance time for carbon dioxide pipelines is being removed from § 195.1(c). This change makes § 195.1(c) available to state the compliance time for low-stress pipelines.

G. Populated Area

RSPA proposed to define "populated area" as "any onshore area other than a rural area." Section 195.2 defines "rural area" as "outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development." So a populated area would be an onshore area inside such political, residential, or commercial area.

One operator suggested we exclude industrial areas from the definition of populated area. Because of the lack of residential housing and associated small businesses and shopping centers in these areas, the operator said regulation would not increase safety. RSPA strongly disagrees, however, because the rules in parts 195 and 199 protect people at large, not just people in residential communities. Plant personnel and the environment in industrial areas are at risk from low-stress pipelines.

An operator asked if part 195 would apply to an entire line section between block valves if only part of the line section crosses a populated area. As previously explained, the pipeline segment inside the populated area and any equipment and controls located elsewhere that are necessary for operation of the segment would have to meet part 195.

Part 195 currently uses the term "populated area" in §§ 195.234(e)(5), 195.260(c), and 195.306 (b)(1) and (c)(1). We did not intend that the definition of

"populated area" proposed in the NPRM affect these rules. We proposed the definition merely to clarify the proposed applicability of part 195 to low-stress pipelines. Therefore, the final rule does not contain a definition of populated area. Instead, final § 195.1(b)(3), which defines the applicability of part 195 to low-stress pipelines, incorporates the substance of the proposed definition.

For similar reasons, we revised § 195.1(b)(3) to include the substance of the proposed definition of "navigable waterway." Section 195.412(b) uses this term, but we intended the proposed definition to clarify only the proposed applicability of part 195 to low-stress pipelines.

H. Definition of Highly Volatile Liquid

Section 195.2 defines a "highly volatile liquid" as a hazardous liquid that will form a vapor cloud when released to the atmosphere and that has a vapor pressure exceeding 276 kPa (40 psia) at 37.8°C (100°F). A "hazardous liquid" is defined as petroleum, petroleum products, or anhydrous ammonia.

One commenter thought RSPA should amend the current definition of "highly volatile liquid" to exclude gas saturated petroleum/water mixtures if the liquid remaining after release of the gas has a vapor pressure of 40 psia or less at 100°F. However, the definition does not cover such mixtures. The deciding factors in the definition are (1) the vapor pressure of the hazardous liquid in transportation; and (2) whether that liquid will evaporate into a vapor cloud upon release to the atmosphere. In the commenter's example, the gas in the mixture is not relevant in determining the vapor pressure of the hazardous liquid in transportation. Since the mixture without the gas has a vapor pressure of 40 psia or less, it is not a highly volatile liquid.

I. Hydrostatic Testing

The NPRM proposed to require that operators hydrostatically test new low-stress pipelines and existing low-stress pipelines that are replaced, relocated, or otherwise changed. In addition, the NPRM proposed that within 1 year after publication of the final rule, existing low-stress pipelines transporting HVL must have been hydrostatically tested under subpart E of part 195 or not operate above 80 percent of a previous qualified test or operating pressure (proposed § 195.302(c)).

API suggested that RSPA allow 2 years instead of 1 year to complete the testing of existing HVL low-stress pipelines. Considering the total effort companies will need to meet parts 195 and 199, RSPA agrees that 2 years is more reasonable than 1 year to prepare for compliance. As stated above, final § 195.1(c) provides a 2-year compliance time for existing low-stress pipelines. This compliance time applies to testing existing HVL low-stress pipelines under subpart E of part 195. Therefore, a compliance time is not separately stated in final § 195.302(c).

Except for low-stress pipelines that are replaced, relocated, or otherwise changed, the NPRM did not propose to require operators to hydrostatically test existing non-HVL low-stress pipelines. Furthermore, the NPRM explained that non-HVL low-stress pipelines were not subject to the hydrostatic testing proposal in Docket PS–121 (56 FR 23538), which affected many older existing hazardous liquid pipelines.

However, under proposed § 195.406(a)(6), any non-HVL low-stress pipeline not tested to subpart E standards could not be operated at more than "80 percent of the test pressure or 100 percent of the highest operating pressure to which the pipeline was subjected for four or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted." One operator suggested that proposed § 195.406(a)(6) would have the effect of requiring hydrostatic testing of existing non-HVL low-stress pipelines. Testing could be necessary if the requisite documentation were not available, or planned operations were not consistent with prior documented test or operating pressures. RSPA did not intend this result. In fact, we proposed § 195.406(a)(6) to assure that non-HVL low-stress pipelines could continue to operate without hydrostatic testing under subpart E. Upon further consideration, RSPA believes proposed § 195.406(a)(6) is unnecessary for that purpose, since § 195.302 clearly states which pipelines are subject to testing. So we have not adopted proposed § 195.406(a)(6) in the final rule.

Also, § 195.406(a)(5) covers the substance of proposed § 195.406(a)(7), concerning the operating pressure of HVL low-stress pipelines not tested to subpart E. Therefore, we have not adopted proposed § 195.406(a)(7) in the final rule.

One operator thought the proposed rules did not clearly state the proposed exclusion of existing non-HVL low-stress pipelines from hydrostatic testing requirements. RSPA agrees that subpart E should clearly state the applicability of testing requirements to low-stress pipelines. Thus, we revised existing § 195.302, General requirements, to clarify the exception of non-HVL low-stress pipelines from testing under subpart E.

J. Pneumatic Testing

The NPRM requested comment on whether pneumatic testing should be allowed as an alternative to hydrostatic testing. API and a state agency favored pneumatic testing as an alternative.

Three operators and a state agency encouraged RSPA to allow pneumatic testing as an alternative to hydrostatic testing. They pointed out that pneumatic testing is permissible for low-stress pipelines in petroleum service under the ASME B31.4 Code (section 437.4.3; 1989 edition). Two of these operators also favored pneumatic testing because it would eliminate the need to collect and treat test water.

One operator saw little advantage in pneumatically testing new low-stress pipelines, because the cost of waste water disposal is not high for new lines. Two operators thought pneumatic testing would be hazardous for existing low-stress pipelines because of the potential to mix hydrocarbons and air inside the pipeline.

Part 195 now permits pneumatic testing as an alternative to hydrostatic testing (§ 195.306(c)) for carbon dioxide pipelines. Also, RSPA's gas pipeline safety standards allow pneumatic testing as an alternative to hydrostatic testing (49 CFR 192.503). In view of these standards, the environmental advantages of pneumatic testing, and the acceptability of pneumatic testing under the ASME B31.4 code, we believe subpart E of part 195 should allow operators the option of pneumatically testing low-stress pipelines. Therefore, the final rule amends § 195.306 to allow pneumatic testing as an alternative to hydrostatic testing on low-stress pipelines.

RSPA recognizes that a mixture of air and residual hydrocarbons could create a potential hazard if operators pneumatically test an existing low-stress pipeline with air instead of inert gas. However, this risk has not been a significant safety problem for gas pipelines under 49 CFR part 192. It is common practice for operators to use proper precautions if air is the test medium.

K. Environmentally Sensitive Areas

As stated in the NPRM, we have deferred proposing to regulate non-HVL low-stress pipelines in rural "environmentally sensitive areas" because we have not yet developed a suitable definition of "environmentally sensitive area." We also need time to learn the extent to which pipeline spills

affect such areas. Although the definition of "environmentally sensitive area" in the oil spill response plan regulations (49 CFR part 194) has been used for planning purposes, we believe that definition is too broad to use under part 195. A definition of "environmentally sensitive area" under part 195 must be specific enough to distinguish pipelines and segments of pipeline that are subject to the regulations.

As required by § 202 of the PSA, RSPA has scheduled publication of a notice of proposed rulemaking to define environmentally sensitive areas, high density population areas, and navigable waterways. (See the "Semiannual Regulatory Agenda" at 59 FR 20662; April 25, 1994). We also intend to propose, as required by the PSA, to require all operators of hazardous liquid pipelines (including low-stress pipelines) to identify and inventory their pipelines located in those areas and waterways.

NRDC commented that there is ample evidence of pipeline damage in rural environmentally sensitive areas outside navigable waterways, so RSPA should not postpone regulation of low-stress pipelines in those areas. NRDC suggested that RSPA use a broad definition of environmentally sensitive area for purposes of regulating low-stress pipelines, pending adoption of a definition required by the PSA. RSPA has not expanded the final rule to cover low-stress pipelines in environmentally sensitive areas outside the proposed areas of regulation, because the NPRM did not propose regulation of those pipelines at this time. However, we agree with NRDC's concerns about environmental risks, and we will consider those concerns in future rulemaking proceedings on rural low-stress pipelines. As mentioned above, our increased understanding of environmentally sensitive area in the pipeline context should provide a basis for future notices of proposed rulemaking on rural gathering lines and other rural low-stress pipelines.

One operator thought RSPA should postpone the regulation of low-stress pipelines entirely until it proposes regulations for non-HVL low-stress pipelines in rural environmentally sensitive areas. This operator said additional work and effort could be avoided if it could identify pipelines in environmentally sensitive areas before establishing a compliance program for part 195. The commenter, however, did not address the potential loss of benefits that would result if regulation of low-stress pipelines were deferred pending decisions on environmentally sensitive

affect such areas. Although the definition of "environmentally sensitive area" in the oil spill response plan regulations (49 CFR part 194) has been used for planning purposes, we believe that definition is too broad to use under part 195. A definition of "environmentally sensitive area" under part 195 must be specific enough to distinguish pipelines and segments of pipeline that are subject to the regulations.

As required by § 202 of the PSA, RSPA has scheduled publication of a notice of proposed rulemaking to define environmentally sensitive areas, high density population areas, and navigable waterways. (See the "Semiannual Regulatory Agenda" at 59 FR 20662: April 25, 1994). We also intend to propose, as required by the PSA, to require all operators of hazardous liquid pipelines (including low-stress pipelines) to identify and inventory their pipelines located in those areas and waterways.

NRDC commented that there is ample evidence of pipeline damage in rural environmentally sensitive areas outside navigable waterways, so RSPA should not postpone regulation of low-stress pipelines in those areas. NRDC suggested that RSPA use a broad definition of environmentally sensitive area for purposes of regulating low-stress pipelines, pending adoption of a definition required by the PSA. RSPA has not expanded the final rule to cover low-stress pipelines in environmentally sensitive areas outside the proposed areas of regulation, because the NPRM did not propose regulation of those pipelines at this time. However, we agree with NRDC's concerns about environmental risks, and we will consider those concerns in future rulemaking proceedings on rural low-stress pipelines. As mentioned above, our increased understanding of environmentally sensitive area in the pipeline context should provide a basis for future notices of proposed rulemaking on rural gathering lines and other rural low-stress pipelines.

One operator thought RSPA should postpone the regulation of low-stress pipelines entirely until it proposes regulations for non-HVL low-stress pipelines in rural environmentally sensitive areas. This operator said additional work and effort could be avoided if it could identify pipelines in environmentally sensitive areas before establishing a compliance program for part 195. The commenter, however, did not address the potential loss of benefits that would result if regulation of low-stress pipelines were deferred pending decisions on environmentally sensitive areas. Nevertheless, RSPA believes that once compliance programs are in place, extending the programs to cover additional pipeline segments, if required, should not be too difficult. Furthermore, there is nothing to prevent an operator from bringing all segments of a pipeline into compliance with part 195 and immediately achieving the benefits.

L. Single Public Thoroughfare

In the NPRM (at 12215), RSPA mentioned that "intra-facility piping connecting adjacent facilities separated by navigable waterways or separated by third party property other than single public thoroughfares in populated areas would be subject to the regulations." A state agency and an operator asked us to clarify this single-public-thoroughfare exception.

The intra-facility piping mentioned in the NPRM is functionally equivalent to in-plant piping, which is excluded from regulation under § 195.1(b)(6). Essentially, intra-facility piping is transfer piping used for plant processes. However, plants may be divided by a single public thoroughfare, and transfer piping crosses the thoroughfare. A public thoroughfare includes any road, from a country lane to an interstate highway, but not a railroad or navigable waterway. Because the operating conditions of transfer piping that crosses such thoroughfares are comparable in most respects to those of other in-plant piping, RSPA considers thoroughfare crossings to be in-plant piping. This interpretation of § 195.1(b)(6) is in effect now. We will apply it to low-stress pipelines under this final rule. The thoroughfare exception does not apply to inter-facility lines or delivery lines, because these lines are different from in-plant piping.

One commenter, representing a refining department, suggested that plant transfer piping that crosses property other than a thoroughfare right-of-way, such as industrial property, should also qualify as in-plant piping under § 195.1(b)(6). This commenter also suggested that RSPA exclude inter-facility lines in industrial areas from regulation. Neither comment was adopted. We addressed the need to regulate low-stress pipelines in industrial areas under the subheading "G. Populated Areas" supra.

M. Offshore Pipelines

One operator commented that the NPRM lacked justification for the proposed regulation of offshore low-stress pipelines. RSPA disagrees because the accident consequences discussed in the NPRM and the advance notice of proposed rulemaking could occur offshore. Also, the NPRM discussed the need to prevent pollution of navigable waterways, which includes offshore areas. In the final rule, § 195.1(b)(3) clarifies the coverage of offshore low-stress pipelines.

N. Drug Testing

One refinery operator suggested that RSPA except non-pipeline companies from part 199, if they have a comparable drug program and few low-stress pipelines. This commenter's primary concern was the cost of administering two separate anti-drug programs, the company's own program and another to satisfy part 199. RSPA believes this commenter may have overestimated the burden of compliance with part 199. Operators with comparable programs need not begin a separate part 199 program. They could modify their present programs as necessary to meet part 199 standards. Separate plans would not be required, although the parts of a single plan intended to meet part 199 would have to be clear and distinct from separate company requirements. Separate tests and analyses would be required only if the company's program required testing for drugs not covered by part 199. Considering the savings in compliance costs for operators with comparable programs and the continuing concern that illegal drug use may adversely affect the safe operation of pipelines, we did not adopt the refinery operator's comment.

O. Marine Terminal Piping

One operator pointed out that the US Coast Guard already regulates certain low-stress pipelines at marine terminals. This commenter recommended that RSPA continue to except these pipelines from part 195. Alternatively, the operator suggested RSPA establish a jurisdictional boundary with the Coast Guard to avoid duplication of agency efforts. A boundary, said the operator, also would eliminate the confusion over which DOT regulations apply to low-stress pipelines at marine terminals.

In port areas, RSPA and the US Coast Guard have independent regulatory missions, as assigned by federal statutes So, hazardous liquid pipelines in port areas come under a combination of RSPA and Coast Guard regulations. At present, we know of no conflicts or undue burdens created by these separate regulatory programs. If such difficulties surface with respect to low-stress pipelines, we will work with the Coast Guard to minimize their impact.

P. Miscellaneous Clarifications

1 Pipelines Subject to Regulations

Commenting on low-stress pipelines that cross navigable waterways in rural areas, API and an operator suggested that the final rule clarify how much of the entire pipeline the regulations cover. The operator thought only that part of the pipeline that actually crosses the waterway should be covered.

As stated above, for non-HVL low-stress pipelines, we intended to apply the regulations only to that part of the pipeline in the populated area or navigable waterway. Final § 195.1(b)(3) clarifies this intended application by including "or pipeline segments" immediately after "pipelines."

One operator thought the wording of the proposed compliance period (proposed § 195.1(d)) was inconsistent with the proposed revision of § 195.1(b)(3). The operator thought proposed § 195.1(d) implied that operators of non-HVL low-stress pipelines located outside populated areas and navigable waterways would have to comply with the regulations within 1 year. To avoid this misconception, we changed proposed § 195.1(d) (now § 195.1(c)) to show that the compliance period applies only to existing low-stress pipelines covered by part 195. We also clarified the wording of proposed § 195.1(b)(3) to better identify low-stress pipelines that part 195 does not cover.

2. Definition of Low-Stress Pipeline

Another operator suggested the final rule define the various kinds of low-stress pipelines covered. As stated above, the proposed rules affected several kinds of distinct pipelines that operate over their full length at 20 percent or less of SMYS, such as trunk lines and inter-facility lines. Nevertheless, since the final rules do not refer to low-stress pipelines by kind, there is no need to define each kind of low-stress pipeline the rules cover.

We have, however, added a definition of the term "low-stress pipeline" to § 195.2, based on the present wording of § 195.1(b)(3). The definition enabled us to clarify that a pipeline (in the sense of a continuing run of pipe and components used for transportation) must operate from beginning to end at 20 percent or less of SMYS to qualify as a low-stress pipeline. In drafting the final rules, the definition also allowed us to simplify the wording of several proposed rules.

3. Applicability of Design and Construction Standards

One proposed rule simplified by using the term "low-stress pipeline" was § 195.401(c)(5). The purpose of this proposed rule was to state that the design and construction requirements of part 195 would not apply to low-stress pipelines on which construction begins before the effective date of the final rule. Several commenters thought proposed § 195.401(c)(5) lacked clarity. So we revised it in the style of similar provisions of § 195.401(c).

In addition, one commenter pointed out that proposed § 195.401(c)(5) would not except existing low-stress pipelines from design and construction rules applicable to certain interstate and intrastate pipelines under §§ 195.401(c)(1)-(3). The final rule resolves this drafting problem by excluding low-stress pipelines from the interstate and intrastate designations under §§ 195.401(c)(1)-(3).

4. Cathodic Protection

Section 195.414, Cathodic protection, is amended in paragraphs (b) and (c). We separated requirements applicable to low-stress pipelines from existing requirements applicable to interstate and intrastate pipelines.

III. Advisory Committee

The Technical Hazardous Liquid Pipeline Safety Standards Committee is a federal advisory committee established under Section 204 of the HLPSA (49 App. U.S.C. 2003). The committee advises DOT on the feasibility, reasonableness, and practicability of standards proposed under the HLPSA.

On August 4, 1993, the Committee met in Washington, D.C. and discussed the NPRM. After due deliberation, the committee voted unanimously in favor of the proposed rules. The Committee's report and a transcript of the meeting are available for inspection in the docket.

IV. Regulatory Analyses and Notices

A. Paperwork Reduction Act

This final rule will increase current information collection burdens under parts 195 and 199. The Office of Management and Budget (OMB) has approved this increased burden under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. Chap. 35). The OMB approval numbers are 2137–0047, 2137–0578, 2137–0579, and 2137–0587

B. Executive Order 12866 and DOT Policies and Procedures

OMB considers this final rule a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has reviewed this final rule. DOT considers this final rule significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

The comments RSPA received on the draft regulatory evaluation of costs and benefits are summarized and discussed in the final regulatory evaluation. The final evaluation, which shows that this final rule will result in net benefits to society, is available for review in the docket.

C. Regulatory Flexibility Act

Based on the facts available about the anticipated impact of this rulemaking action, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that the action will not have a significant economic impact on a substantial number of small entities. Few small entities operate low-stress pipelines subject to this final rule.

D. Executive Order 12612

RSPA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685). RSPA has determined that the action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 195 is amended as follows:

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2001 *et seq.*; 49 CFR 1.53

2. In § 195.1, the introductory text of paragraph (b) is republished, paragraphs (b)(3) and (c) are revised to read as follows:

§ 195.1 Applicability.

* * * * *

(b) This part does not apply to—

* * * * *

(3) Transportation of non-HVL through low-stress pipelines, except for any pipeline or pipeline segment that is located—

(i) In an onshore area other than a rural area;

(ii) Offshore; or

(iii) In a waterway that is navigable in fact and currently used for commercial navigation;

* * * * *

(c) A low-stress pipeline to which this part applies that exists on July 12, 1994 need not comply with this part or part 199 of this chapter until July 12, 1996, except as follows:

(1) Subpart B of this part applies beginning on October 10, 1994; and

(2) Any replacement, relocation, or other change made to existing pipelines after October 9, 1994 must comply with Subparts A and C through E of this part.

3. In § 195.2, the following definition is added:

§ 195.2 Definitions.

* * * * *

Low-stress pipeline means a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe.

* * * * *

4. In § 195.302, paragraph (b) and the introductory text of paragraph (c) are revised to read as follows:

§ 195.302 General requirements.

* * * * *

(b) Except for pipelines converted under § 195.5, the following pipelines may be operated without pressure testing under this subpart:

(1) Any hazardous liquid pipeline whose maximum operating pressure is established under § 195.406(a)(5) that is—

(i) An interstate pipeline constructed before January 8, 1971;

(ii) An interstate offshore gathering line constructed before August 1, 1977;

(iii) An intrastate pipeline constructed before October 21, 1985; or

(iv) A low-stress pipeline constructed before August 11, 1994 that transports HVL.

(2) Any carbon dioxide pipeline constructed before July 12, 1991, that—

(i) Has its maximum operating pressure established under § 195.406(a)(5); or

(ii) Is located in a rural area as part of a production field distribution system.

(3) Any low-stress pipeline constructed before August 11, 1994 that does not transport HVL.

(c) Except for pipelines that transport HVL onshore and low-stress pipelines, the following compliance deadlines apply to pipelines under paragraphs (b)(1) and (b)(2)(i) of this section that have not been pressure tested under this subpart:

* * * * *

(iii) In a waterway that is navigable in fact and currently used for commercial navigation;

* * * * *

(c) A low-stress pipeline to which this part applies that exists on July 12, 1994 need not comply with this part or part 199 of this chapter until July 12, 1996, except as follows:

(1) Subpart B of this part applies beginning on October 10, 1994; and

(2) Any replacement, relocation, or other change made to existing pipelines after October 9, 1994 must comply with Subparts A and C through E of this part.

3. In § 195.2, the following definition is added:

§ 195.2 Definitions.

* * * * *

Low-stress pipeline means a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe.

* * * * *

4. In § 195.302, paragraph (b) and the introductory text of paragraph (c) are revised to read as follows:

§ 195.302 General requirements.

* * * * *

(b) Except for pipelines converted under § 195.5, the following pipelines may be operated without pressure testing under this subpart:

(1) Any hazardous liquid pipeline whose maximum operating pressure is established under § 195.406(a)(5) that is—

(i) An interstate pipeline constructed before January 8, 1971;

(ii) An interstate offshore gathering line constructed before August 1, 1977;

(iii) An intrastate pipeline constructed before October 21, 1985; or

(iv) A low-stress pipeline constructed before August 11, 1994 that transports HVL.

(2) Any carbon dioxide pipeline constructed before July 12, 1991, that—

(i) Has its maximum operating pressure established under § 195.406(a)(5); or

(ii) Is located in a rural area as part of a production field distribution system.

(3) Any low-stress pipeline constructed before August 11, 1994 that does not transport HVL.

(c) Except for pipelines that transport HVL onshore and low-stress pipelines, the following compliance deadlines apply to pipelines under paragraphs (b)(1) and (b)(2)(i) of this section that have not been pressure tested under this subpart:

* * * * *

5. In § 195.306, paragraph (a) is revised and paragraph (d) is added, to read as follows:

§ 195.306 Test medium.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, water must be used as the test medium.

* * * * *

(d) Air or inert gas may be used as the test medium in low-stress pipelines.

6. Section 195.401(c) is revised to read as follows:

§ 195.401 General requirements.

* * * * *

(c) Except as provided in § 195.5, no operator may operate any part of any of the following pipelines unless it was designed and constructed as required by this part:

(1) An interstate pipeline, other than a low-stress pipeline, on which construction was begun after March 31, 1970, that transports hazardous liquid.

(2) An interstate offshore gathering line, other than a low-stress pipeline, on which construction was begun after July 31, 1977, that transports hazardous liquid.

(3) An intrastate pipeline, other than a low-stress pipeline, on which construction was begun after October 20, 1985, that transports hazardous liquid.

(4) A pipeline on which construction was begun after July 11, 1991, that transports carbon dioxide.

(5) A low-stress pipeline on which construction was begun after August 10, 1994.

8. Sections 195.414(b) and (c) are revised to read as follows:

§ 195.414 Cathodic protection.

* * * * *

(b) Each operator shall electrically inspect each bare hazardous liquid interstate pipeline, other than a low-stress pipeline, before April 1, 1975; each bare hazardous liquid intrastate pipeline, other than a low-stress pipeline, before October 20, 1990; each bare carbon dioxide pipeline before July 12, 1994; and each bare low-stress pipeline before July 12, 1996 to determine any areas in which active corrosion is taking place. The operator may not increase its established operating pressure on a section of bare pipeline until the section has been so electrically inspected. In any areas where active corrosion is found, the operator shall provide cathodic protection. Section 195.416(f) and (g) apply to all corroded pipe that is found.

(c) Each operator shall electrically inspect all breakout tank areas and buried pumping station piping on hazardous liquid interstate pipelines, other than low-stress pipelines, before April 1, 1973; on hazardous liquid intrastate pipelines, other than low-stress pipelines, before October 20, 1988; on carbon dioxide pipelines before July 12, 1994; and on low-stress pipelines before July 12, 1996 as to the need for cathodic protection, and cathodic protection shall be provided where necessary.

Issued in Washington, DC, on July 5, 1994

Ana Sol Gutiérrez,

Acting Administrator.

[FR Doc. 94-16720 Filed 7-11-94; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 940414-4191; I.D. 032494B]

Marine Mammals; Subsistence Taking of Northern Fur Seals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; fur seal subsistence harvest estimates on the Pribilof Islands.

SUMMARY: Pursuant to the regulations governing the subsistence taking of northern fur seals, NMFS is required to publish an estimate of the number of seals expected to be harvested in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, AK. Additionally, this document amends existing fur seal regulations, making the subsistence harvest take estimates applicable for 3 years instead of 1 year. The intended effect of this rule is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents while minimizing negative effects on the seal population.

EFFECTIVE DATE: This final notice of subsistence need estimates is effective July 12, 1994, and applies to the harvest beginning June 23, 1994. The final rule that amends existing fur seal regulations, making the harvest estimates applicable for 3 years instead of 1 year, is effective August 11, 1994.

ADDRESSES: Dr. William W. Fox, Jr., Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steve Zimmerman, (907) 586-7235,

Margot Bohan or Michael Payne, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

The northern fur seal (*Callorhinus ursinus*) population is considered depleted under the Marine Mammal Protection Act (MMPA) (50 CFR 216.15(c)). The subsistence harvest of northern fur seals on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215, Subpart D—Taking for Subsistence Purposes, and has been regulated to minimize negative effects on the population. These regulations were published under the authority of the Fur Seal Act, 15 U.S.C. 1151 *et seq.*, and the MMPA, 16 U.S.C. 1361 *et seq.* (see 51 FR 24828, July 9, 1986).

The purpose of these regulations is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof Aleuts while using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes.

The St. Paul and St. George Islands' harvest estimates are given as a range, the lower end of which can be exceeded if NMFS is given notification and the Assistant Administrator for Fisheries, NOAA (AA), determines that the subsistence needs of the Aleut residents from either of the islands have not been satisfied. Conversely, the harvest can be terminated before the lower range of the estimate is reached if it is determined that the subsistence needs of the Pribilof Aleuts have been met or the harvest has been conducted in a wasteful manner.

NMFS published a summary notice of the 1993 fur seal harvest on November 1, 1993 (58 FR 58297). The proposed estimates for the 1994 fur seal subsistence harvest and the proposed rule to make the harvest take estimates applicable for 3 years instead of 1 year were published on May 13, 1994 (59 FR 25024). Following acceptance and consideration of public comments on this proposal, NMFS is publishing this final notice of the expected harvest levels for 1994, as follows: St. Paul Island: 1,645–2,000; St. George Island: 281–500. In addition, this document amends existing fur seal regulations, making these take estimates applicable for 3 years instead of 1 year.

Comments

NMFS received four sets of comments on the proposed harvest estimates and the proposed rule.

Comment: One commenter opposed the proposed amendment to the existing fur seal regulations. The commenter stated that NMFS continues to allow the wasteful taking of fur seals on the Pribilof Islands, and that the proposed rule change would place NMFS in the position of endorsing and authorizing wasteful take for an extended period. The commenter asserted that rather than addressing the wasteful seal killing that has persisted on those islands for years, NMFS, to the contrary, now proposes to institutionalize this improper conduct for 3 years without further question.

Another commenter voiced support for the regulatory amendment. The commenter reasoned that the take has been relatively stable and the upper and lower limits of the estimate range were wide enough to allow change, and, therefore, as the populations of animals and people vary, so can the target goals for future harvests.

Response: Regulations on subsistence taking of northern fur seals have been devised to limit take to a level providing for legitimate subsistence needs of the Pribilof Natives while minimizing negative effects on the seal population. These regulations are intended, thus, as preventative measures against wasteful taking and improper conduct within each harvest season. (Wasteful taking is discussed in greater detail at 58 FR 42027, August 6, 1993.) The rationale behind the 3 year estimate of subsistence need versus an annual estimate was explained in the proposed estimates of subsistence need (59 FR 25024, May 13, 1994). NMFS has recognized the need to reevaluate the regulatory issues regarding subsistence (57 FR 34081, August 3, 1992). As a first step towards addressing this need, NMFS proposed that § 215.32(b) of the fur seal regulations be applicable for a 3-year period, beginning in 1994. The regulatory amendment is based on the fact that the actual number of fur seals harvested each year since 1989 has been relatively consistent, and the fur seal take has never exceeded the upper limit of the estimated range for subsistence need within any year of the harvest. NMFS anticipates that the subsistence needs of the Pribilof Island residents may increase during the next 3 years. However, based on historical evidence to date, the year-to-year subsistence needs are not expected to increase to levels exceeding the range established in this final estimate.

Comment: One commenter supported the implementation of a cooperative management plan as a means of protecting the fur seal. The cooperative plan would expand governmental conservation efforts, and involve local people on the islands to a larger extent in fur seal management issues. The commenter requested that particular effort be made to establish a structure that will enable the residents of the Pribilof Islands to more actively participate in the monitoring and regulating of the harvest.

Response: NMFS agrees with the commenter's suggestions. Section 119 of the recently reauthorized MMPA allows for NMFS to enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and to provide for a co-management of subsistence use by Alaska Natives. NMFS intends to pursue the development of such a program that would further the goal of cooperative management and monitoring with the Alaskan native organizations.

Comment: One commenter stated that the 1994 subsistence estimates are too high because they are based on historically wasteful seal killing practices carried over from the period of commercial harvest when only the choicest cuts of meat were taken for human consumption. The commenter continued by stating that through the adoption of these estimates, NMFS further institutionalizes waste and sanctions a level of seal killing known to reflect wasteful practices.

Response: This comment is similar to the one presented and discussed in the final subsistence estimates for 1993 (58 FR 42027, August 6, 1993). In that final notice, a commenter maintained that the present harvest level did not reflect the true subsistence need on the Pribilof Islands. However, available information indicates that the present number of fur seals taken for subsistence on the Pribilof Islands is not higher than necessary to provide for subsistence needs. During one of the last periods when fur seals were taken solely for subsistence purposes on St. Paul Island, 1912–16, the number of fur seals taken each year (range 1,764–3,483) was significantly higher than it is at present, even though the human population on St. Paul Island at that time was less than one-half of the present population. Therefore, the commenter has inaccurately assumed that practices carried over from the commercial harvest have resulted in a level of subsistence use greater than that used historically on the Pribilof Islands.

Comment: A commenter stated that there is no basis for setting the lower end of the estimated subsistence range based on the greatest number of seals killed during any year over the past 6 years.

Response: NMFS believes that the present range of fur seal subsistence estimates used on St. Paul and St. George Islands are justified. During the past 3 years the number of seals taken in the subsistence harvest has stabilized, ranging from 1,482 to 1,645 takes each year on St. Paul Island and from 194 to 319 each year on St. George Island. Generally, the lower limits of the estimate ranges for the islands have been approached during each of the past 3 years, but a difference of 1 or 2 actual days of harvest between years can result in the difference observed between the estimated number and actual number of seals taken within any one season. The apparent trend toward stability in the harvest totals on St. Paul and St. George Islands indicates to NMFS that the proposed estimates of annual need accurately reflect the actual subsistence requirements on the islands.

Comment: One commenter stated that the estimate of need should not be based on numbers of seals. Rather, it should be based on the quantity of meat that is required for subsistence needs. The commenter provided data indicating that, by its calculations, approximately 450–570 fewer seals could have been harvested on St. Paul Island in 1993 had the harvest estimates been based on the amount of meat required by residents of St. Paul, rather than based on a number of seals required.

Response: The commenter's estimate of the number of seals that need not have been killed in 1993 (450–570) was based on an average maximum percent-use value of 60 percent. This value was a result of a 1987 study in which 83 seals were weighed before and after virtually all consumable parts (including many parts that are only marginally edible, such as connective tissues, etc.) had been removed (i.e., everything was taken except for the pelt, blubber, skull, neck, inedible internal organs, and body fluids). This butchering technique is referred to as a whole cut, and a mean 53.3 percent of each animal (maximum approximately 60 percent) was dressed out under these circumstances (53 FR 17773, May 18, 1988).

During the 1987 harvest, 101 carcasses were also weighed before and after butchering had removed only the front flippers, shoulders, breasts, hearts and livers (referred to as the butterfly cut), the parts historically eaten. A mean 29.1 percent of each animal was dressed out under these circumstances (53 FR 17773, May 18, 1988). Thus, it was determined that the range of percent-use values between animals that have been butchered to remove only selected parts, and animals that have been butchered to remove virtually all consumable parts (including many parts only marginally edible), lies between 29.1 and 53.3 percent of the initial carcass weight. Whether the harvest is being conducted

in the subsistence harvest has stabilized, ranging from 1,482 to 1,645 takes each year on St. Paul Island and from 194 to 319 each year on St. George Island. Generally, the lower limits of the estimate ranges for the islands have been approached during each of the past 3 years, but a difference of 1 or 2 actual days of harvest between years can result in the difference observed between the estimated number and actual number of seals taken within any one season. The apparent trend toward stability in the harvest totals on St. Paul and St. George Islands indicates to NMFS that the proposed estimates of annual need accurately reflect the actual subsistence requirements on the islands.

Comment: One commenter stated that the estimate of need should not be based on numbers of seals. Rather, it should be based on the quantity of meat that is required for subsistence needs. The commenter provided data indicating that, by its calculations, approximately 450–570 fewer seals could have been harvested on St. Paul Island in 1993 had the harvest estimates been based on the amount of meat required by residents of St. Paul, rather than based on a number of seals required.

Response: The commenter's estimate of the number of seals that need not have been killed in 1993 (450–570) was based on an average maximum percent-use value of 60 percent. This value was a result of a 1987 study in which 83 seals were weighed before and after virtually all consumable parts (including many parts that are only marginally edible, such as connective tissues, etc.) had been removed (i.e., everything was taken except for the pelt, blubber, skull, neck, inedible internal organs, and body fluids). This butchering technique is referred to as a whole cut, and a mean 53.3 percent of each animal (maximum approximately 60 percent) was dressed out under these circumstances (53 FR 17773, May 18, 1988).

During the 1987 harvest, 101 carcasses were also weighed before and after butchering had removed only the front flippers, shoulders, breasts, hearts and livers (referred to as the butterfly cut), the parts historically eaten. A mean 29.1 percent of each animal was dressed out under these circumstances (53 FR 17773, May 18, 1988). Thus, it was determined that the range of percent-use values between animals that have been butchered to remove only selected parts, and animals that have been butchered to remove virtually all consumable parts (including many parts only marginally edible), lies between 29.1 and 53.3 percent of the initial carcass weight. Whether the harvest is being conducted in a wasteful versus non-wasteful manner focuses on whether or not the butterfly cut method of butchering is interpreted as a wasteful manner as defined in the regulations. NMFS determined, based on a 1992 study, that the butterfly cut does not represent a wasteful manner of taking (discussed in greater detail at 58 FR 42027, August 6, 1993).

During the 1992 harvest, NMFS weighed the whole carcass, as well as the weight of each major body part (breast, shoulder, arm, ribs, backbone, and hindquarter as well as heart, liver, front flippers, rear flippers, head, guts and pelt), to determine the proportion of edible meat that was available from the different parts of the body for each of six fur seals. In summary, the mean weight of the parts taken in a whole cut totaled 54.9 percent of the beginning weight of the seals, and the mean weight for the parts constituting a butterfly cut was 32.5 percent, indicating a mean percent-use difference of approximately 22 percent. However, using mean values from the 1992 study, the total amount of edible meat (excluding bone, minimally edible connective tissue, and inedible tissue) available from a whole cut seal was 29.6 percent (range 26.8–31.6) of the beginning weight of the animal compared to 21.1 percent (range 18.9–23.4) taken from a butterfly cut seal. Therefore, the average difference in the amount of edible meat between the two butchering techniques is approximately 8–9 percent of the original body weight of the animal, not the 22 percent difference that has been widely used to characterize the two different techniques, and that was used in the commenters calculations. As NMFS explained in the 1993 document of final subsistence estimates, while a whole cut does result in more meat being made available for subsistence use than does the butterfly cut, both cuts result in a substantial portion of the edible parts of the seal being used for subsistence, and the real difference in edible meat being made available to the user has been greatly exaggerated.

Comment: One commenter cautioned that NMFS must guard against economic incentives that might lead to higher harvest levels. The commenter continued to state that NMFS should retrieve all seal penis bones or bacula to assure that potential trade in these items will not result in excessive seal killing. The commenter did not feel that this was either unreasonable or burdensome on the part of NMFS. Moreover, some Pribilof residents have suggested this approach as a means to reassure concerned parties that the commercial value of seal bacula is not an incentive for harvesting fur seals.

Response: NMFS' position is that the subsistence harvest and the estimates of subsistence needs must not be based upon commercial interests. There is no indication that the harvest is being driven by commercial interests; however, NMFS will continue to monitor the disposal of carcasses, and the removal of bacula from animals taken in the harvest, to ensure that commercial interests are not factors in the subsistence harvest.

Comment: One commenter stated that the subsistence harvest methods used by the Aleut sealers do not need to be monitored or regulated to ensure compliance with NMFS' standards for substantial use of seal carcasses.

Response: The regulations governing the subsistence harvest of fur seals require that NMFS' representatives monitor the harvest and collect information on the number of seals taken and the extent of utilization of the fur seals taken (51 FR 24832, July 9, 1986). NMFS believes that alternatives to the present fur seal management regime should be considered and discussed during the development of a cooperation management program under section 119 of the MMPA. The commenters' concerns will be considered further in these discussions and in any future rulemaking to revise these regulations.

Subsistence Harvest Estimates for 1994 Through 1996

NMFS published a document proposing a range of subsistence need estimates for 1994–96 based on the results of the 1992–93 harvests (59 FR 25024, May 13, 1994). NMFS proposed that the lower bound of the harvest estimate for northern fur seals on St. Paul Island for each year, 1994–96, remain at 1,645 (the same as that in 1992 and 1993). If the Aleut residents of St. Paul Island reach the lower limit of the estimated range of animals during the harvest, and still have unmet subsistence needs, they may request an additional number of seals, up to a harvest total of 2,000 fur seals. For St. George Island, NMFS also proposed that the lower bound of the estimate of subsistence need for each year, 1994–96, remain at the 1992 and 1993 level of 281 fur seals. If the Aleut residents of St. George Island reach the lower level of estimated need during the 1994 harvest, and still have unmet subsistence needs, they may request an additional number of seals up to a harvest total of 500 (the upper bound estimated for the 1991–93 harvests).

The Aleut residents of St. Paul and St. George Islands may harvest up to the lower bound of the applicable estimate between June 23 and August 8 of each year, 1994–96. If, at any time during the harvest, the lower estimate of subsistence need for an island is reached, the harvest must be suspended for no longer than 48 hours, pursuant to 50 CFR 215.32(e)(1)(iii), pending a review of the harvest data to determine if the subsistence needs of the island residents have been met. At such time, the Pribilof Aleuts may submit information indicating that subsistence needs (for either island) have not been met. This information should be submitted as quickly as possible, optimally just prior to the time that notification is given that the lower end of the harvest estimate has been reached in order to assure that the required harvest suspension lasts no longer than 48 hours. If the Pribilof Aleuts substantiate an additional need for seals, and there has been no indication of waste, the AA must provide a revised estimate of the number of seals required for subsistence purposes. If additional information is not submitted by the Pribilof Aleuts, the AA will consider only the information in the record at the time of the suspension. It is likely, under such circumstances, that the revised subsistence estimate would remain the same as the original estimate. If that is the case, no additional takings would be authorized.

Classification

NMFS has determined that the approval and implementation of this document and amendment to the current regulation will not significantly affect the human environment, and that preparation of an Environmental Impact Statement on this is not required by section 102(2) of the National Environmental Policy Act or its implementing regulations. This rule makes only minor changes to the regulations governing the taking of fur seals for subsistence purposes; this action does not entail significant substantive revision. Because this rule does not alter the conclusions of previous environmental impact analyses and environmental assessments (EA), it is categorically excluded by NOAA Administrative Order 216–6 from the requirement to prepare an EA.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The General Counsel, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published with the proposed rule and harvest estimates (see 59 FR 25024, May 13, 1994). Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

Dated: July 6, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 215, subpart D, is to be amended as follows:

PART 215—PRIBILOF ISLANDS

1. The authority citation for part 215 continues to read as follows:

Authority: 16 U.S.C. 1151–1175, 16 U.S.C. 1361–1384.

2. Section 215.32 is amended by revising paragraph (b) to read as follows:

§ 215.32 Restrictions on taking.

* * * * *

(b) By April 1 of every third year, beginning April 1994, the Assistant Administrator will publish in the **Federal Register** a summary of the preceding 3 years of harvesting and a discussion of the number of seals expected to be taken annually over the next 3 years to satisfy the subsistence requirements of each island. This discussion will include an assessment of factors and conditions on St. Paul and St. George Islands that influence the need by Pribilof Aleuts to take seals for subsistence uses and an assessment of any changes to those conditions indicating that the number of seals that may be taken for subsistence each year should be made higher or lower. Following a 30-day public comment period, a final notification of the expected annual harvest levels for the next 3 years will be published.

* * * * *

[FR Doc. 94–16849 Filed 7–7–94; 3:02 pm]

BILLING CODE 3510–22–W

---

50 CFR Part 301

[Docket No. 931235–4107; I.D. 062994D]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907-586-7221; Gary Smith, 206-526-6140; or Donald McCaughran, 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State (59 FR 22522, May 2, 1994). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 7

North Washington Coast Sport Fishery Closes

A 3-day extension of the north Washington coast (waters west of the Bonilla-Tatoosh line and south to the Queets River) sport halibut fishery during June 9 through June 11 resulted in a harvest of 10,649 lb (4.83 mt). This brings the season harvest to 65,298 lb (29.62 mt), 2,741 lb (1.24 mt) shy of the 68,039 lb (30.86 mt) catch limit. The remaining catch limit is too small to allow for a full day of fishing without exceeding the catch limit. Therefore, the sport halibut fishery in this area will remain closed for the remainder of 1994.

Anglers landing in Neah Bay have caught an estimated 13,000 lb (5.90 mt) of Pacific halibut from Canadian waters. Fishing remains open in Canadian waters with a two-fish daily bag limit and no size restriction. Anglers desiring to fish in Canadian waters are strongly urged to contact Canada Department of Fisheries and Oceans at (604) 666-0383/0583 for sport fishing information concerning licensing and the nautical description of closed areas.

South Washington Coast Sport Fishery Closes

Higher than expected effort in the south Washington coast (Queets River to Cape Falcon) sport halibut fishery led to 14,149 lb (6.42 mt) of halibut harvested in the June 2 and June 9 openings. This far exceeds the 5,670–lb (2.57 mt) catch limit; therefore sport fishing for halibut in this area will remainclosed for the remainder of 1994.

Strait of Juan de Fuca and Puget Sound Sport Fishery Remains Open

Sport fishing for halibut remains open in the Strait of Juan de Fuca and Puget Sound (waters east of a line from Bonilla Point, lat. 48°35′44″ N., long. 124°43′00″ W., to the buoy adjacent to Duntz Rock, lat. 48°24′55″ N., long. 124°44′50″ W., to Tatoosh Island lighthouse, lat. 48°23′30″ N., long. 124°44′00″ W., to Cape Flattery, lat. 48°22′55″ N., long. 124°43′42″ W.). The daily bag limit is one halibut of any size per person and is open 6 days a week (closed Wednesdays). This fishery will close, as scheduled, at 11:59 p.m. on July 5, 1994.

Area	
2C	
3A	
3B	
4A	
Total	

Canadian Commercial Fishery

Canadian halibut landings from Area 2B total 5.8 million lb (2,630 mt) through June 20, leaving 4.2 million lb (1910 mt) of the catch limit to be caught. The fishery will continue until all

Fishing period	
Duration	
Opening (ADT*)	
Closing (ADT*)	

*Alaska Daylight Time

concerning licensing and the nautical description of closed areas.

South Washington Coast Sport Fishery Closes

Higher than expected effort in the south Washington coast (Queets River to Cape Falcon) sport halibut fishery led to 14,149 lb (6.42 mt) of halibut harvested in the June 2 and June 9 openings. This far exceeds the 5,670–lb (2.57 mt) catch limit; therefore sport fishing for halibut in this area will remainclosed for the remainder of 1994.

Strait of Juan de Fuca and Puget Sound Sport Fishery Remains Open

Sport fishing for halibut remains open in the Strait of Juan de Fuca and Puget Sound (waters east of a line from Bonilla Point, lat. 48°35′44″ N., long. 124°43′00″ W., to the buoy adjacent to Duntz Rock, lat. 48°24′55″ N., long. 124°44′50″ W., to Tatoosh Island lighthouse, lat. 48°23′30″ N., long. 124°44′00″ W., to Cape Flattery, lat. 48°22′55″ N., long. 124°43′42″ W.). The daily bag limit is one halibut of any size per person and is open 6 days a week (closed Wednesdays). This fishery will close, as scheduled, at 11:59 p.m. on July 5, 1994.

Dated: July 6, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16853 Filed 7–11–94; 8:45 am]

BILLING CODE 3510–22–F

---

50 CFR Part 301

[Docket No. 931235–4107; I.D. 062994C]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the United States Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: June 21, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; Gary Smith, 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State (59 FR 22522, May 2, 1994). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 6

June Alaska Commercial Fishery

The IPHC estimates the following catches for the June 6 through 7 fishing period in Alaskan waters. The Area 2C catch includes the catch, to date, from the Annette Islands Reserve halibut fishery. If fishing period limits are needed in any of Areas 2C, 3A, or 3B, they will be announced at a later date.

Area	Catch (millions of lb/mt)	Catch limit (millions of lb/mt)	Remaining catch limit (millions of lb/mt)
2C	5.0/2,270	11.0/4,990	6.0/2,720
3A	17.8/8,070	26.0/11,790	8.2/3,720
3B	1.9/860	4.0/1,810	2.1/950
4A	0.13/60	1.8/820	1.67/760
Total	24.83/11,260	42.8/19,410	17.97/8,150

Canadian Commercial Fishery

Canadian halibut landings from Area 2B total 5.8 million lb (2,630 mt) through June 20, leaving 4.2 million lb (1910 mt) of the catch limit to be caught. The fishery will continue until all individual vessel quotas have been filled, or November 15, whichever is earlier.

August Fishing Periods in Areas 4A, 4B, and 4D

The IPHC has determined that fishing period limits will not be needed during the August 15 opening in Areas 4A, 4B, and 4D. The duration of the fishing period in each area is as follows:

	Area 4A	Area 4B	Area 4D
Fishing period	8/15	8/15–8/19	8/15–8/16.
Duration	12 hours	96 hours	30 hours.
Opening (ADT*)	8:00 a.m.	12 Noon	9:00 a.m.
Closing (ADT*)	8:00 p.m.	12 Noon	3:00 p.m.

*Alaska Daylight Time

The fishing periods are designed to provide maximum fishing time without exceeding the catch limit in each area. In the event that the catch limit in one or more of the three areas is not attained, and sufficient poundage remains to permit further fishing, the next scheduled fishing period is August 30.

Dated: July 6, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16852 Filed 7–11–94; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 675

[Docket No. 940687–4187; I.D. 062194A]

RIN 0648–AG72

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS has determined that an emergency exists in the groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI). An unusually large number of salmon other than chinook ("other" salmon) were caught incidentally by trawl catcher vessels operating in the catcher vessel operational area (CVOA) during the 1993 pollock non-roe season. In 1993, the number of "other" salmon caught incidentally in the BSAI groundfish fisheries was 245,000 fish—approximately six times the bycatch level estimated for each of the previous 2 years and triple the previous highest bycatch amount. Approximately 95 percent of this catch is chum salmon. If not controlled, a large number of chum salmon could be incidentally caught again during the 1994 pollock non-roe season, potentially causing serious conservation and management problems. NMFS is implementing by emergency rule, certain management measures necessary to address this problem. These measures are intended to accomplish the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to fisheries management in the BSAI.

DATES: Effective August 15, 1994 through November 12, 1994. Comments must be received by July 27, 1994.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel. Copies of the Environmental Assessment (EA) prepared for the emergency rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI. The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 675. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

At times, amendments to an FMP or its implementing regulations are necessary to respond to fishery conservation and management problems that cannot be addressed within the time frame of the normal procedures provided for by the Magnuson Act. Section 305(c) of the Magnuson Act authorizes the Secretary to implement emergency regulations necessary to address these situations. These emergency regulations may remain in effect for not more than 90 days after date of publication in the **Federal Register**, with a possible 90-day extension.

In 1993, the number of "other" salmon caught incidentally in the BSAI groundfish fisheries increased significantly over the 1991 and 1992 amounts of 36,000 and 39,000 fish, respectively. The 1993 total "other" salmon bycatch amount was 245,000 fish—approximately six times the bycatch level estimated for each of the previous 2 years and triple the previous highest bycatch amount of 72,000 "other" salmon estimated in the 1984 foreign trawl fishery. "Other" salmon bycatch was estimated to be below 10,000 fish, both prior to 1983 and between 1987 and 1990. "Other" salmon is defined as salmon other than chinook salmon. Historical data indicate that approximately 95 percent of the "other" salmon bycatch in the Bering Sea is chum salmon.

Poor returns of chum salmon to western Alaska river systems during 1993 caused the Alaska Department of Fish and Game (ADF&G) to close commercial, sport, and subsistence fisheries in several western Alaska districts. Projections for 1994 are for below average returns in many districts. The salmon caught as bycatch in the 1993 pollock non-roe season were primarily in the size range of 3-year-old fish, which would have matured in 1994. Little information exists about the potential effect the 1993 chum salmon bycatch will have on the 1994 returns in western Alaska because stock composition of the chum salmon bycatch during the pollock non-roe season is unknown. However, the magnitude of the 1993 chum salmon bycatch in the pollock non-roe season is of concern, regardless of the origin of these fish.

To respond to this concern, NMFS, in consultation with the Council, implements the following three measures under emergency rulemaking, to address the chum salmon bycatch problem in the 1994 BSAI pollock non-roe season:

1. Establishment of a 42,000 "other" salmon bycatch limit in the CVOA which, when reached, closes a portion of the CVOA to vessels using trawl gear;

2. Requirement for two observers on mothership processor vessels that receive groundfish caught in the CVOA during the 1994 pollock non-roe season; and

3. Requirement for electronic communication capabilities for each mothership processor vessel required to carry two observers under this emergency rule and for each shoreside facility that receives pollock harvested from the CVOA during the 1994 pollock non-roe season that is required to have 100 percent observer coverage under 50 CFR 672.27 or 675.25.

These measures are described in detail and justified below.

Salmon Savings Area

At its April 1994 meeting, the Council requested that NMFS prepare emergency rulemaking that would provide the authority to close an area within the CVOA to all vessels using trawl gear if the "other" salmon bycatch in the CVOA during 1994 reaches 42,000 fish. This measure is intended to prevent 1994 chum salmon bycatch numbers from approaching the level experienced in the 1993 fishery. Establishing the bycatch limit at 42,000 "other" salmon accommodates pre-1993 levels while preventing excessive bycatch.

This closure area (the salmon savings area) is defined by straight lines connecting the following coordinates in the order listed:

56°00′ N., 167°00′ W.;
56°00′ N., 165°00′ W.;
55°30′ N., 165°00′ W.;
55°30′ N., 164°00′ W.;
55°00′ N., 164°00′ W.;
55°00′ N., 167°00′ W.;
56°00′ N., 167°00′ W.

If the "other" salmon bycatch limit established for the CVOA is taken, NMFS will close the salmon savings area to all vessels using trawl gear through November 12, 1994—the expiration date of this emergency rule. The salmon savings area historically has accounted for a large proportion of "other" salmon bycatch and a relatively small proportion of groundfish harvest. The recommended 42,000 "other" salmon bycatch limit represents 50 percent of the 1991, 1992, and 1993 average of "other" salmon bycatch in the CVOA. The 42,000 "other" salmon limit approximates the 1991 and 1992 bycatch, while providing some buffer to accommodate slight increases in bycatch.

This action is intended to prevent a recurrence of the high 1993 chum salmon bycatch experienced during the BSAI pollock non-roe season. The bycatch of "other" salmon appears to be a function of the time of year, distribution of fishing effort, and spatial distribution of salmon. Historical data indicate that "other" salmon bycatch is reduced generally during the winter months and elevated during the months of July through October. Approximately 67 percent of all "other" salmon bycatch in observed hauls during 1991 was taken during August, and 40 percent and 62 percent of the 1992 and 1993 "other" salmon bycatch, respectively, was taken during the month of September. Starting in 1993, the opening of the pollock non-roe season was delayed from June 1 until August 15 (58 FR 30997, May 28, 1993). This delay was implemented to achieve increased revenues from the harvest of BSAI pollock during the non-roe season and to provide participants in the pollock non-roe fishery increased opportunities to fish in other groundfish fisheries. Although the delay of the pollock non-roe season until August 15 was expected to increase chum salmon bycatch, the magnitude of the 1993 bycatch amount was not anticipated. Spatially, the number of "other" salmon appears to be highest south of 57° N. lat. and east of 168° W. long. Consistent with historical data, about 80 percent of the 1993 BSAI "other" salmon bycatch was taken in the CVOA.

Analysis of historical observer data relative to the 1993 pollock non-roe

connecting the following coordinates in the order listed:

56°00′ N., 167°00′ W.;
56°00′ N., 165°00′ W.;
55°30′ N., 165°00′ W.;
55°30′ N., 164°00′ W.;
55°00′ N., 164°00′ W.;
55°00′ N., 167°00′ W.;
56°00′ N., 167°00′ W.

If the "other" salmon bycatch limit established for the CVOA is taken, NMFS will close the salmon savings area to all vessels using trawl gear through November 12, 1994—the expiration date of this emergency rule. The salmon savings area historically has accounted for a large proportion of "other" salmon bycatch and a relatively small proportion of groundfish harvest. The recommended 42,000 "other" salmon bycatch limit represents 50 percent of the 1991, 1992, and 1993 average of "other" salmon bycatch in the CVOA. The 42,000 "other" salmon limit approximates the 1991 and 1992 bycatch, while providing some buffer to accommodate slight increases in bycatch.

This action is intended to prevent a recurrence of the high 1993 chum salmon bycatch experienced during the BSAI pollock non-roe season. The bycatch of "other" salmon appears to be a function of the time of year, distribution of fishing effort, and spatial distribution of salmon. Historical data indicate that "other" salmon bycatch is reduced generally during the winter months and elevated during the months of July through October. Approximately 67 percent of all "other" salmon bycatch in observed hauls during 1991 was taken during August, and 40 percent and 62 percent of the 1992 and 1993 "other" salmon bycatch, respectively, was taken during the month of September. Starting in 1993, the opening of the pollock non-roe season was delayed from June 1 until August 15 (58 FR 30997, May 28, 1993). This delay was implemented to achieve increased revenues from the harvest of BSAI pollock during the non-roe season and to provide participants in the pollock non-roe fishery increased opportunities to fish in other groundfish fisheries. Although the delay of the pollock non-roe season until August 15 was expected to increase chum salmon bycatch, the magnitude of the 1993 bycatch amount was not anticipated. Spatially, the number of "other" salmon appears to be highest south of 57° N. lat. and east of 168° W. long. Consistent with historical data, about 80 percent of the 1993 BSAI "other" salmon bycatch was taken in the CVOA.

Analysis of historical observer data relative to the 1993 pollock non-roe season chum salmon bycatch was not available prior to the Council's April 1994 meeting. Therefore, the recently discovered circumstances surrounding the 1993 chum salmon bycatch problem provided little opportunity for the Council to respond through normal rulemaking before the opening of the 1994 pollock non-roe season on August 15.

The Council considered seven different alternatives for time/area closures to limit chum salmon bycatch during the 1994 pollock non-roe season. The recommended area was chosen as a minimum closure area that would provide the most consistent protection to "other" salmon during the pollock non-roe season, but would still allow access to productive pollock fishing grounds. During the period July through October, the recommended salmon savings area accounted for 1.0, 0.8, and 7.0 percent of the total annual observed groundfish catch in the BSAI pollock and Pacific cod trawl fisheries during 1991, 1992, and 1993, respectively. During the period July through October of 1991, 1992, and 1993, this area accounted for 38, 40, and 54 percent, respectively, of the total annual "other" salmon bycatch. During the period July through October 1993, the salmon savings area had the highest "other" salmon bycatch rate of the areas analyzed—approximately 1.2 "other" salmon per metric ton of groundfish.

Increased Observer Coverage and Electronic Transmission of Observer Data

NMFS must rely on data collected by NMFS-certified observers to manage the 1994 "other" salmon bycatch limit of 42,000 fish. Currently, one observer is required on each mothership processor vessel participating in either the inshore or offshore component of the pollock fishery. Under a regulatory amendment effective May 20, 1994 (59 FR 18757, April 20, 1994), all salmon taken in BSAI trawl operations must be retained until the number of salmon is determined by a NMFS-certified observer. NMFS intends to use these observed counts to monitor the "other" salmon bycatch limit, unless other information indicates that these numbers do not provide the best information available on salmon bycatch. To monitor the chum salmon bycatch limit effectively and to prevent the 42,000 fish bycatch limit from being exceeded, NMFS must receive daily reports of salmon bycatch numbers. NMFS typically receives weekly reports on groundfish catch and on prohibited species bycatch to monitor the fisheries. The time required to process these reports results in a delay between the receipt of reports and determination of overall catch statistics that provide the basis for determining whether a closure is required. If the "other" salmon bycatch in 1994 were to proceed at the 1993 rate (i.e., approximately 39,000 fish in week 1; 26,000 fish in week 2; and 47,000 fish in week 3), weekly reporting would not be sufficient to prevent the 42,000 "other" salmon limit from being exceeded.

Effective monitoring of the bycatch limit requires a second observer on each mothership processor vessel that receives fish from catcher boats fishing in the CVOA during the pollock non-roe season. This is necessary to ensure accurate and timely counts of salmon bycatch, without compromising the other groundfish sampling duties of the observer. Observers onboard mothership processor vessels currently sample approximately two out of every ten hauls. The time required to count salmon bycatch under the May 20, 1994, regulatory amendment, and to transmit these data on a daily basis, places an extra burden on observers stationed on mothership processor vessels. According to 1993 records, the salmon bycatch rate was greater for mothership processor vessels (0.813 "other" salmon/mt groundfish) than for shoreside plants (0.343 "other" salmon/mt groundfish). NMFS will require the additional observers to remain onboard the mothership processor vessels until either (1) the salmon savings area is closed, or (2) the salmon bycatch rates are sufficiently low such that daily observer reports are no longer needed to monitor the "other" salmon bycatch limit established for the CVOA.

The observer requirements and the requirements for electronic communication capabilities are necessary for NMFS to monitor the "other" salmon bycatch limit effectively. The affected mothership processing vessels and processors must obtain for observers' use the data entry software program provided by the Regional Director. To enable the observers to report haul-by-haul statistics and salmon bycatch numbers on a daily basis, the operator of each mothership processor vessel that receives fish harvested in the CVOA must provide INMARSAT Standard A satellite communication capabilities and associated software (cc:Mail remote and a data entry program provided by the Regional Director) for observers' use. Each mothership processor vessel must also have the following equipment or equipment compatible therewith and having the ability to operate the NMFS-supplied data entry software program: a

personal computer (PC) with a 386 or better processing chip, a DOS version 3.0 operating system, and 5 megabytes of free hard disk storage available for the observers' use. Each shoreside facility that receives pollock harvested in the CVOA during the 1994 pollock non-roe season and that is required to have 100-percent observer coverage under 50 CFR 672.27 and 675.25, must have the capability to transmit data over telephone lines using a computer modem. These processors will make available to observers the following equipment or equipment compatible therewith: a PC with a 386 or better processing chip, with at least a 9600 baud modem, and a phone line. The PC must be equipped with a mouse, Windows version 3.1 or a program having the ability to operate the NMFS-supplied data entry software program, and have at least 5 megabytes of free hard disk storage.

Economic Considerations

Pollock harvests during the non-roe season are apportioned between the "inshore" and the "offshore" components. During the 1993 non-roe season, the inshore component was comprised of seven shoreside processing plants, one mothership processor vessel, and five trawl catcher/processors. These processors processed approximately 235,000 mt of pollock. The offshore component was comprised of three mothership processors and 52 trawl catcher/processors. Sixteen of these trawl catcher/processors also received pollock deliveries from catcher vessels. The offshore component harvested about 414,000 mt of pollock during the directed non-roe season fishery.

Sixty-five trawl catcher vessels delivered pollock to shoreside processing plants and 25 trawl catcher vessels delivered pollock to mothership processors. These 90 catcher vessels delivered about 233,000 mt of pollock to shoreside processing plants and 121,000 mt to mothership processor vessels, for a total of about 354,000 mt of pollock Therefore, trawl catcher vessels harvested about 55 percent of the pollock during the 1993 non-roe season and trawl catcher/processors harvested about 45 percent.

The salmon savings area is completely within the CVOA. Closure of this area would affect only the pollock harvest areas available to trawl catcher vessels delivering to shoreside processing plants and mothership processor vessels. Most of the harvest by these catcher vessels during the 1993 non-roe season occurred within the CVOA. Preliminary examination of 1993 ADF&G fish tickets indicates that at least five out of seven shoreside processing plants received some pollock harvested within the salmon savings area during the 1993 pollock non-roe season. Harvests within the salmon savings area represented about 10 percent of the total 1993 non-roe season pollock harvests by trawl catcher vessels delivering to shoreside processing plants.

Closure of the salmon savings area would only occur if the salmon bycatch limit was reached and would not affect significantly the opportunity available to catcher vessels to harvest available pollock TAC. Most of the area within the CVOA that is currently available to the catcher vessels would remain open to pollock fishing. Based on 1993 non-roe season fishing patterns, closure of the salmon savings area would have resulted in relocation of catcher vessels within the Bering Sea for less than 10 percent of their pollock harvests.

The observer and equipment requirements of this action apply only to mothership processing vessels or shoreside processing plants receiving fish caught by catcher vessels from the CVOA. Direct costs are limited to those participants, estimated to be four mothership processing vessels and seven shoreside processing plants.

Direct costs for observer coverage are estimated to be about $200 per day per observer. The cost of a second observer on the four mothership processor vessels would depend on the number of days the additional observer was required. The number of observer days for each mothership processor vessel during the 1993 non-roe season ranged from 39 to 58 days. Based on the observer coverage requirements for 1993, a second observer during the 1994 non-roe season could cost from $7,800 (39 days x $200/day) to $11,600 (58 days x $200/day) per mothership processor vessel. Based on the actual number of fishing days, the total cost for all four mothership processor vessels would be $37,400 (187 days x $200/day), if the second observer were required for the same amount of observer coverage days as during the 1993 non-roe season. If the second observer is required for only a portion of the 1994 non-roe season, additional observer costs would be $200 per day per mothership processor.

Costs could also be incurred for the acquisition of electronic mail software and a personal computer that satisfies the hardware requirements detailed above. The cost for these items could range from $200–1200. Mothership processing vessels have the INMARSAT A satellite communication capabilities and necessary computer hardware, and most shoreside facilities have the necessary computer hardware for electronic transmission of data. NMFS will supply the necessary data entry software and will provide installation free of charge.

Closure of the salmon savings area to vessels using trawl gear will also affect any trawl vessels that may have otherwise fished in this area in non-pollock target fisheries. However, examination of 1993 catch information indicates that no significant amounts of other groundfish fishing or pollock Community Development Quota fishing occurred in the salmon savings area subsequent to closure of the directed inshore and offshore component pollock fisheries.

Management measures responding to the information recently presented to the Council are necessary to mitigate potentially adverse impacts of chum salmon bycatch on western Alaska salmon resources and to reduce chum salmon bycatch in 1994. NMFS is implementing this emergency action for the 1994 pollock non-roe season because the high chum salmon bycatch occurred primarily in the pollock non-roe season in 1993 and a large proportion of this bycatch occurred in the salmon savings area.

NMFS concurs that the above regulatory measures must be implemented by emergency rulemaking to prevent high bycatch of chum salmon by catcher vessels fishing for groundfish in the CVOA during the 1994 pollock non-roe season.

Classification

This rule is exempt from the requirements of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis, because it is issued without opportunity for prior public comment, and none has been prepared.

This rule has been determined to be not significant for purposes of E.O. 12866.

NMFS finds that the immediate need to protect and conserve the "other" salmon population in the CVOA, as explained in the preamble to this rule, constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment, pursuant to authority set forth at 5 U.S.C. § 553(b)(B), as such procedures would be contrary to the public interest.

List of Subjects in 50 CFR Part 675

Fisheries, Recordkeeping and reporting requirements.

Dated: July 5, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 675 is amended effective August 15, 1994 through November 12, 1994, as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In section 675.22, paragraph (h) is added to read as follows:

§ 675.22 Time and area closures.

* * * * *

(h) *Salmon savings area.* When the Regional Director determines that 42,000 non-chinook salmon have been caught by vessels using trawl gear during 1994 in the catcher vessel operational area, defined in paragraph (g) of this section, NMFS will prohibit fishing with trawl gear, through November 12, 1994, in the area defined by straight lines connecting the following coordinates in the order listed:

56°00′ N., 167°00′ W.;
56°00′ N., 165°00′ W.;
55°30′ N., 165°00′ W.;
55°30′ N., 164°00′ W.;

Dated: July 5, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 675 is amended effective August 15, 1994 through November 12, 1994, as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In section 675.22, paragraph (h) is added to read as follows:

§ 675.22 Time and area closures.

* * * * *

(h) *Salmon savings area.* When the Regional Director determines that 42,000 non-chinook salmon have been caught by vessels using trawl gear during 1994 in the catcher vessel operational area, defined in paragraph (g) of this section, NMFS will prohibit fishing with trawl gear, through November 12, 1994, in the area defined by straight lines connecting the following coordinates in the order listed:

56°00′ N., 167°00′ W.;
56°00′ N., 165°00′ W.;
55°30′ N., 165°00′ W.;
55°30′ N., 164°00′ W.;
55°00′ N., 164°00′ W.;
55°00′ N., 167°00′ W.;
56°00′ N., 167°00′ W.

3. In § 675.25, the existing text is suspended and new paragraphs (a) through (d) are added to read as follows:

§ 675.25 Observers.

(a) Observer requirements authorized under the observer plan are set out at § 672.27 of this chapter and paragraphs (b) through (d) of this section.

(b) Each mothership processor vessel that receives groundfish harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g), during the 1994 second pollock season that starts on August 15 under § 675.23(e), is required to have a second NMFS-certified observer onboard, in addition to the observer required under § 672.27(c)(1)(iii) (A) and (B) of this chapter. Two observers must be onboard for each day of the 1994 second pollock season until either the salmon savings area is closed under § 675.22(h) or the Regional Director determines that the bycatch rates of non-chinook salmon are sufficiently low such that daily observer reports are no longer needed to monitor the 1994 non-chinook salmon bycatch amounts.

(c) Each mothership processor vessel must be equipped with INMARSAT Standard A satellite communication capabilities, cc:Mail remote, and the data entry software provided by the Regional Director, for use by the observers. The operator of each mothership processing vessel shall also make available for the observers' use the following equipment or equipment compatible therewith and having the ability to operate the NMFS-supplied data entry software program: a personal computer with a 386 or better processing chip, a DOS 3.0 operating system, and 5 megabytes of free hard disk storage.

(d) Each shoreside processing facility that is required to have 100 percent observer coverage under § 672.27(c)(2) of this chapter and that receives groundfish harvested in the catcher vessel operational area, defined at § 675.22(g), during the second pollock season that starts on August 15, under § 675.23(e), must make available to the observer the following equipment or equipment compatible therewith: a personal computer with a minimum of a 386 processing chip with at least a 9600-baud modem and a telephone line. The personal computer must be equipped with a mouse, Windows version 3.1 or a program having the ability to operate the NMFS-supplied data entry software program, 5 megabytes of free hard disk storage, and the data entry software provided by the Regional Director for use by the observers.

[FR Doc. 94–16745 Filed 7–11–94; 8:45 am]
BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 59, No. 132
Tuesday, July 12, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

5 CFR Part 3201

12 CFR Part 336

RIN: 3064–AA08

Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation)

ACTION: Proposed rule.

SUMMARY: The Federal Deposit Insurance Corporation, with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for the employees of the Corporation which would supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) issued by OGE. The proposed rule is a necessary supplement to the Executive Branch-wide Standards and has been designed to address the specialized functions and operations of the Corporation. The proposed rule would establish: prohibitions on borrowing and extensions of credit; prohibitions on the ownership of certain financial interests; prohibitions on the purchase of property controlled by the Corporation or the Resolution Trust Corporation (RTC); limitations on official dealings with former employers and clients; disqualification requirements relating to employment of family members outside the Corporation; and limitations on outside employment activities.

DATES: Comments must be received on or before September 12, 1994.

ADDRESSES: Send comments to Robert E. Feldman, Acting Executive Secretary, FDIC, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to room 400, 1776 F Street, NW, Washington, DC 20429 on business days between 8:30 a.m. and 5 p.m. [FAX number: (202) 898–3838].

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Assistant Executive Secretary (Ethics), (202) 898–7272; Richard M. Handy, Ethics Program Manager, (202) 898–7271; or Paul A. Jeddeloh, Senior Program Attorney, (202) 898–7161, all at the FDIC.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct For Employees of the Executive Branch. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with an additional grace period extension at 59 FR 4779–4780. The Executive Branch-wide Standards, now codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct for executive branch employees.

With the concurrence of the OGE, 5 CFR 2635.105 and the Resolution Trust Corporation Completion Act (P.L. 103–204) authorize the Corporation to publish agency-specific supplemental regulations necessary to implement its ethics programs. The Corporation and OGE have determined that the following supplemental regulations contained in the proposed rule are necessary to successfully continue the Corporation's ethics program in light of the Corporation's unique programs and operations. The proposed supplemental rule addresses issues relevant to the Corporation's specialized roles as the insurer, conservator, receiver, liquidator, organizer of bridge banks, and regulator or back-up enforcement agency for FDIC-insured depository institutions. Upon finalization of the supplemental regulation, the Corporation will, as proposed, delete those portions of 12 CFR part 336 that are superseded by the Executive Branch-wide Standards and the supplemental regulations.

II. Analysis of Regulation

The following regulations are proposed to appear in new part 3201 of 5 CFR chapter XXII.

Section 3201.101 General

(a) *Purpose.* Proposed § 3201.101(a) explains that the regulations would apply to all Corporation employees and would supplement the Executive Branch-wide Standards. Because they are covered under rules applicable to the Department of the Treasury, two members of the Board of Directors, the Comptroller of the Currency and the Director of the Office of Thrift Supervision, would be covered only by those provisions of the supplemental regulation specifically made applicable to them in connection with their activities as members of the Corporation's Board of Directors.

(b) *Corporation ethics officials.* Proposed § 3201.101(b) explains that the Designated Agency Ethics Official would be the Executive Secretary and that the Alternate Agency Ethics Official would be the Assistant Executive Secretary (Ethics) of the FDIC. This provision would delegate authority to the Executive Secretary and the Assistant Executive Secretary (Ethics) to act in such capacities as contemplated under 5 CFR part 2638. The provision would continue the designations currently found at 12 CFR part 336, as updated to accommodate organizational changes.

(c) *Agency designees.* Proposed § 3201.101(c) specifies those employees who would hold the authority to act as agency designees under the Executive Branch-wide Standards and the supplemental regulation. It also explains that only the Ethics Counselor or Alternate Ethics Counselor would be able to delegate authority to act as agency designees and that such delegation would have to be in writing and could not be re-delegated.

(d) *Definitions.* Proposed § 3201.101(d) would include as an *affiliate* those companies which control, are controlled by, or are under common control with, an FDIC-insured depository institution. The definition for *affiliate* was taken from the Bank Holding Company Act of 1956 and is intended to be broadly interpreted and include any holding companies, subsidiaries, or other affiliated companies of an FDIC-insured depository institution.

The term *appropriate director* would include the heads of offices and divisions in the Washington office, the highest ranking officials in each division in the regional offices, and the Ethics Counselor.

The term *covered employee* would include all employees of the Corporation required to file confidential

or public financial disclosure reports under 5 CFR part 2634 or 5 CFR part 3202.

Under the proposed regulation, the term *employee* would include all persons, other than special Government employees, employed by the Corporation. Pursuant to the Resolution Trust Corporation Completion Act (P.L. 103–204), the Corporation is also required to consider the employees of contractors as employees of the Corporation for certain purposes. Therefore, the term *employee* would include, for purposes of 5 CFR part 2635 and §§ 3201.103 and 3201.104 of this part, any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation. The term *employee* would not include independent contractors who are not deemed to be employees under 12 U.S.C. 1822(f)(1)(B). In the case of members of the Board of Directors, it would include only the three members appointed by the President under 12 U.S.C. 1812(a)(1)(C).

The proposed regulation provides a broad definition of the term *security* which includes an interest in debt or equity instruments such as, for example, stocks, bonds, and commercial paper. However, the term *security* would not include a deposit account.

The term *State nonmember bank* is a statutory term taken from 12 U.S.C. 1813 and would include all State banks that are not members of the Federal Reserve System.

The definition of *subsidiary* was taken from section 3(w) of the Federal Deposit Insurance Act, codified to 12 U.S.C. 1813(w), and would include all companies owned or controlled directly or indirectly by another company.

Section 3201.102 Extensions of Credit From FDIC-Insured Depository Institutions

The proposed rules on extensions of credit from FDIC-insured depository institutions provide the conditions under which certain specified categories of Corporation employees can obtain credit from depository institutions insured by the Corporation. Restrictions on the availability of credit to Corporation employees are necessary for several reasons. First, 5 CFR 2635.403(a) permits the Corporation to prohibit or restrict the acquisition or holding of a financial interest or class of financial interests by Corporation employees, and the spouses and minor children of those employees, when the Corporation has made the determination that the

or public financial disclosure reports under 5 CFR part 2634 or 5 CFR part 3202.

Under the proposed regulation, the term *employee* would include all persons, other than special Government employees, employed by the Corporation. Pursuant to the Resolution Trust Corporation Completion Act (P.L. 103–204), the Corporation is also required to consider the employees of contractors as employees of the Corporation for certain purposes. Therefore, the term *employee* would include, for purposes of 5 CFR part 2635 and §§ 3201.103 and 3201.104 of this part, any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation. The term *employee* would not include independent contractors who are not deemed to be employees under 12 U.S.C. 1822(f)(1)(B). In the case of members of the Board of Directors, it would include only the three members appointed by the President under 12 U.S.C. 1812(a)(1)(C).

The proposed regulation provides a broad definition of the term *security* which includes an interest in debt or equity instruments such as, for example, stocks, bonds, and commercial paper. However, the term *security* would not include a deposit account.

The term *State nonmember bank* is a statutory term taken from 12 U.S.C. 1813 and would include all State banks that are not members of the Federal Reserve System.

The definition of *subsidiary* was taken from section 3(w) of the Federal Deposit Insurance Act, codified to 12 U.S.C. 1813(w), and would include all companies owned or controlled directly or indirectly by another company.

Section 3201.102 Extensions of Credit From FDIC-Insured Depository Institutions

The proposed rules on extensions of credit from FDIC-insured depository institutions provide the conditions under which certain specified categories of Corporation employees can obtain credit from depository institutions insured by the Corporation. Restrictions on the availability of credit to Corporation employees are necessary for several reasons. First, 5 CFR 2635.403(a) permits the Corporation to prohibit or restrict the acquisition or holding of a financial interest or class of financial interests by Corporation employees, and the spouses and minor children of those employees, when the Corporation has made the determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which Corporation programs are administered, and 5 CFR 2635.403(c) specifically provides that the term *financial interest* may include an indebtedness relationship. For purposes of the extensions of credit covered by § 3201.102 (a) through (d), the Corporation has made such a determination. These prohibitions and restrictions on employees entering into financial arrangements with institutions over which the Corporation has regulatory and resolution authority are necessary to prevent loss of public confidence in the integrity of the Corporation. In addition, the borrowing prohibition would incorporate the substance of the statutory prohibition at 18 U.S.C. 213 on bank examiners accepting certain loans. Finally, limitations on borrowing from FDIC-insured depository institutions would avoid a high number of employee disqualifications that would have a detrimental effect on the Corporation's administration of its multifaceted responsibilities.

Under proposed § 3201.102(a), a current or contingent financial obligation of an employee is considered a financial obligation for purposes of the prohibition, disqualification, and retention provisions of proposed § 3201.102. A current or contingent financial obligation of a spouse or minor child is attributed to the employee for purposes of this section since the Corporation has determined, pursuant to 5 CFR 2635.403(a), that there is a direct and appropriate nexus between the efficiency of the service and the prohibitions and restrictions in § 3201.102 as applied to the spouses and minor children of Corporation employees.

Under proposed § 3201.102(b), members of the Board of Directors and other Corporation officials who are in top management positions would be prohibited from incurring financial obligations with an institution over which the Corporation has primary Federal supervisory authority or a subsidiary of such an institution. A deputy or an assistant to the Board of Directors or to an individual board member, a covered employee who is an assistant to such deputy or assistant, the director of a Washington office or division (other than the Division of Supervision), and a covered employee immediately subordinate to such a director would be included in the restricted class. The prohibition would not apply to credit extended through an ordinary credit card relationship due to the standardized handling and low credit amounts customary in such relationship.

Under § 3201.102(c), depository institutions examination staff, including all covered employees assigned to the Division of Supervision, would be prohibited from obtaining credit from an FDIC-insured State nonmember bank, the class of FDIC-insured depository institutions for which the FDIC has primary supervisory responsibility, any subsidiary of such bank, or any person employed by such bank. An exception would be carved out for an ordinary credit card relationship but, for those employees assigned to regional or field offices, the exception would be limited to credit cards offered by FDIC-insured State nonmember banks located outside the employee's region of assignment. The rule, which is substantially the same as 12 CFR 336.16(a), is consistent with 18 U.S.C. 213 which prohibits examiners from accepting credit from institutions which they have examined. Under the proposed rule, an employee would be required to file a report upon obtaining a credit card from a State nonmember bank located outside the employee's region of assignment.

Proposed § 3201.102(d) would impose a two-year prohibition on an employee in the Division of Finance, the Division of Depositor and Asset Services, the Division of Resolutions, or the Legal Division, or who is a member of a standing committee of the Board of Directors obtaining credit from an FDIC-insured depository institution or its subsidiary when the employee has participated personally and substantially in certain matters affecting the institution, its predecessor or successor, or an affiliate of such institution. This prohibition would be applicable to the universe of FDIC-insured depository institutions and would be limited to those Corporation employees who perform functions associated with the audit, resolution, liquidation, supervision, or agency deliberation affecting a specific FDIC-insured depository institution. The two-year prohibition has been designed to eliminate concerns over potential benefits that an employee holding a sensitive non-examiner position could derive through a financial relationship with an institution that has close business ties to the Corporation. An exception has been made for an ordinary credit card relationship. The definition of *personally and substantially* can be found at 5 CFR 2635.402(b)(4) of the Executive Branch-wide Standards.

Proposed § 3201.102(e)(1) would prohibit a member of the depository

institution's examination staff, including senior level staff, from participating in the supervisory review of any institution with which they hold an extension of credit. No exceptions to this rule have been provided due to the sensitive nature of the duties involved.

Under proposed § 3201.102(e)(2)–(4), a covered employee and the Comptroller of the Currency and the Director of the Office of Thrift Supervision would be prohibited from participating in matters affecting persons with whom the employee has an outstanding extension of credit. Exceptions have been provided for ordinary credit card relationships or when the agency designee, with the concurrence of the appropriate director, determines that participation by the employee would be appropriate under the standard outlined under 5 CFR 2635.502(d).

Proposed § 3201.102(f) would clarify that an employee may retain certain extensions of credit that he or she would be prohibited from obtaining anew. For example, an employee who had obtained an extension of credit prior to employment with the Corporation would not be required to refinance the credit. Any extension of credit retained under this section would be required to be reported to an agency designee. An employee would not be allowed to renew or renegotiate the credit without the consent of the agency designee and appropriate director or, in the case of certain higher-level officials, without the consent of the Ethics Counselor. This provision is substantially the same as current 12 CFR 336.16(d), and extensions of credit which were permissibly held under such provision could be retained under the new provision.

Section 3201.103 Prohibitions on Ownership of Securities of FDIC-Insured Depository Institutions

The Corporation has determined that, in light of its sensitive and diverse mission involving the institutions that it insures, restrictions on employee ownership of securities in such institutions are necessary in order to maintain public confidence in the impartiality and objectivity with which the Corporation executes its various functions; eliminate concerns by private entities that sensitive information provided to the Corporation might be used for private gain; and avoid the widespread disqualification of employees from their duties which could result in the Corporation having difficulty in performing its mission. Under proposed § 3201.103(a), an employee would be prohibited from having a direct or indirect ownership interest in a security of an FDIC-insured depository institution or an affiliate of such institution.

As proposed, the exceptions in § 3201.103(b) would allow an employee to acquire, own or control certain direct and indirect ownership interests in an FDIC-insured depository institution. For example, an employee would be permitted to retain an interest which had been acquired prior to employment with the Corporation or involuntarily acquired by the employee such as by gift, stock split, or through a merger of a company. An employee could also acquire, own or control an interest in an FDIC-insured depository institution through the investment vehicle of a publicly traded or available diversified investment fund when the fund does not have an objective or practice of concentrating its investments in securities of the financial services sector. An employee who owned securities of an FDIC-insured depository institution under one of the exceptions in proposed § 3201.103(b) would be disqualified under 5 CFR 2635.402 from participating in any particular matter that, by reason of his or her ownership of those securities, affects his or her financial interests or those of his or her spouse or minor child.

Under proposed § 3201.103(c), the Ethics Counselor could require an employee, or the spouse or minor child of an employee, to divest an ownership interest that would otherwise be allowed to be retained under § 3201.103(b) using the standard set forth in 5 CFR 2635.403(b).

Section 3201.104 Restrictions Concerning the Purchase of Property Held by the Corporation or the RTC as Conservator, Receiver, or Liquidator of the Assets of an Insured Depository Institution, or by a Bridge Bank Organized by the Corporation

In order to avoid any self-dealing, appearance of self-dealing, adversarial relationship with the Corporation, or diminution of public confidence in the Corporation's ability to accomplish its mission, an employee, or the spouse or minor child of an employee, would be prohibited under § 3201.104(a) from purchasing assets held by the Corporation or the Resolution Trust Corporation (RTC) as conservator, receiver, or liquidator or held by a bridge bank organized by the Corporation. In such roles, the Corporation and the RTC generally act as a fiduciary to the creditors of failed depository institutions. Property held by the RTC has been included in the proposed prohibition because of the RTC's significant ties with the Corporation.

As proposed, § 3201.104(b) would disqualify an employee involved in the disposition of the assets of a failed insured depository institution from participation in the disposition of such assets when the employee knows that a person with whom he or she holds a covered relationship intends to purchase such assets. Written notification of the disqualification would be required to be made by the employee to his or her immediate supervisor and the agency designee.

Section 3201.105 Prohibition on Dealings With Former Employers, Associates, and Clients

In order to avoid the appearance of favoritism and maintain the integrity of the Corporation's regulatory oversight, insurance assessments, and resolution and liquidation transactions, proposed § 3201.105(a) would prohibit an employee, for a period of one year after entering on duty with the Corporation, from participating in official Corporation matters involving an employer with whom the employee worked during the year preceding the employee's entry on duty with the Corporation. Proposed § 3201.105(b) would include within the definition of the term employer a broad range of persons, as defined in 5 CFR 2635.502, with whom the employee has a covered relationship. In an individual case, § 3201.105(c) would give the agency designee discretion to extend the prohibition beyond the one year period that would automatically apply to all new Corporation employees.

Section 3201.106 Employment of Family Members Outside the Corporation

As proposed, § 3201.106 would continue the Corporation's requirement at 12 CFR 336.21 that an employee be disqualified from participation in particular matters involving employers of family members or members of the employee's household. It would also require the employee to report the employment of family members or members of the employee's household by FDIC-insured depository institutions or companies that have business, or are seeking to do business, with the Corporation. This requirement eliminates the potential for any appearance of preferential treatment in those instances where employment of a family member or a member of the employee's household would be likely to raise questions regarding the appropriateness of actions taken by the employee or the Corporation.

Section 3201.107 Outside Employment and Other Activities

Proposed § 3201.107(a) would prohibit an employee from providing services, for compensation, to an FDIC-insured depository institution or to a person employed by such institution. The prohibition is based, in part, on 18 U.S.C. 1909, which prohibits an examiner from performing any service for compensation for any FDIC-insured depository institution or for any person connected therewith.

Similarly, proposed § 3201.107(b) would restrict an employee from using certain professional licenses in compensated outside activities when the employee's duties to the Corporation involve those activities. The areas involved in the prohibition have been limited to areas identified as especially sensitive and critical to corporate operations.

Proposed § 3201.107(c) would make it the responsibility of the employee to consult with an agency designee concerning outside employment or activities that could result in disqualification of the employee from his or her official duties.

Section 3201.108 Related Statutory and Regulatory Authorities

This section sets forth additional statutory and regulatory authorities with which an employee should be familiar.

Section 3201.109 Provisions of 5 CFR Part 2635 Not Applicable to Corporation Employees

Certain provisions of the Standards of Ethical Conduct have been determined by the Corporation to be inapplicable to its employees based on the Corporation's status as a mixed-ownership Corporation. To avoid confusion, the authorities which are not applicable to the Corporation and its employees would be listed in § 3201.109 (b) through (e). Proposed § 3201.109(a) would caution examiners that they may not use the gift exceptions in 5 CFR 2635.204 to accept a gift that would violate the criminal prohibitions in 18 U.S.C. 213 against examiners accepting gifts or gratuities from the institutions they examine.

III. Removal of FDIC Employees Responsibilities and Conduct Regulations and Related Modifications

On the effective date of the final rule, the Employee Responsibilities and Conduct regulation, 12 CFR part 336, will be amended to remove and reserve subparts A, B, C, E, and F, §§ 336.1–336.23 and 336.29–336.37, and remove the appendix to part 336. As proposed, a new § 336.1 will be added to provide

Section 3201.107 Outside Employment and Other Activities

Proposed § 3201.107(a) would prohibit an employee from providing services, for compensation, to an FDIC-insured depository institution or to a person employed by such institution. The prohibition is based, in part, on 18 U.S.C. 1909, which prohibits an examiner from performing any service for compensation for any FDIC-insured depository institution or for any person connected therewith.

Similarly, proposed § 3201.107(b) would restrict an employee from using certain professional licenses in compensated outside activities when the employee's duties to the Corporation involve those activities. The areas involved in the prohibition have been limited to areas identified as especially sensitive and critical to corporate operations.

Proposed § 3201.107(c) would make it the responsibility of the employee to consult with an agency designee concerning outside employment or activities that could result in disqualification of the employee from his or her official duties.

Section 3201.108 Related Statutory and Regulatory Authorities

This section sets forth additional statutory and regulatory authorities with which an employee should be familiar.

Section 3201.109 Provisions of 5 CFR Part 2635 Not Applicable to Corporation Employees

Certain provisions of the Standards of Ethical Conduct have been determined by the Corporation to be inapplicable to its employees based on the Corporation's status as a mixed-ownership Corporation. To avoid confusion, the authorities which are not applicable to the Corporation and its employees would be listed in § 3201.109 (b) through (e). Proposed § 3201.109(a) would caution examiners that they may not use the gift exceptions in 5 CFR 2635.204 to accept a gift that would violate the criminal prohibitions in 18 U.S.C. 213 against examiners accepting gifts or gratuities from the institutions they examine.

III. Removal of FDIC Employees Responsibilities and Conduct Regulations and Related Modifications

On the effective date of the final rule, the Employee Responsibilities and Conduct regulation, 12 CFR part 336, will be amended to remove and reserve subparts A, B, C, E, and F, §§ 336.1–336.23 and 336.29–336.37, and remove the appendix to part 336. As proposed, a new § 336.1 will be added to provide a cross-reference to the Corporation's supplemental ethical conduct regulation, to be codified at 5 CFR part 3201, the Corporation's supplemental financial disclosure regulation at 5 CFR part 3202, and to the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635. 12 CFR part 336, subpart D, §§ 336.24 through 336.28, was removed and reserved by action of the Board of Directors of the Corporation dated November 24, 1992, 57 FR 39628.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

This proposed rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 60-day comment period.

Regulatory Flexibility Act

The Board of Directors has concluded that the proposed rule will not impose a significant economic hardship on small institutions. Therefore, the Board of Directors hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposed rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The Board of Directors has determined that this proposed regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects

5 CFR Part 3201

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

12 CFR Part 336

Conflict of interests, Government employees.

Dated at Washington, D.C. this 14th day of June, 1994.

By Order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

Concurred in this 1st day of July, 1994.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation, with the concurrence of the Office of Government Ethics, is proposing to amend title 5, Chapter XXII, of the Code of Federal Regulations and title 12, Chapter III, of the Code of Federal Regulations as follows:

5 CFR CHAPTER XXII—FEDERAL DEPOSIT INSURANCE CORPORATION

1. A new part 3201 is added to 5 CFR Chapter XXII to read as follows:

PART 3201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

Sec.

3201.101 General.
3201.102 Extensions of credit from FDIC-insured depository institutions.
3201.103 Prohibitions on ownership of securities of FDIC-insured depository institutions.
3201.104 Restrictions concerning the purchase of property held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation.
3201.105 Prohibition on dealings with former employers, associates, and clients.
3201.106 Employment of family members outside the Corporation.
3201.107 Outside employment and other activities.
3201.108 Related statutory and regulatory authorities.
3201.109 Provisions of 5 CFR part 2635 not applicable to Corporation employees.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a), 1822; 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.502, and 2635.803.

§ 3201.101 General.

(a) *Purpose.* The regulations in this part apply to employees of the Federal Deposit Insurance Corporation (Corporation) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Where specified, these regulations also apply to the Comptroller of the Currency and the Director of the Office of Thrift Supervision in connection with their activities as members of the Corporation's Board of Directors.

(b) *Corporation ethics officials.* The Executive Secretary of the Corporation shall act as the Corporation's Ethics Counselor and as its Designated Agency Ethics Official under 5 CFR part 2638. The Assistant Executive Secretary (Ethics) shall act as the Corporation's Alternate Ethics Counselor and as the Alternate Agency Ethics Official.

(1) The Ethics Counselor or Alternate Ethics Counselor may delegate authority to one or more employees to serve as Deputy Ethics Counselors.

(2) The delegation to a Deputy Ethics Counselor shall be in writing and cannot be redelegated.

(c) *Agency designees.* The Ethics Counselor and Alternate Ethics Counselor shall serve as the agency designee for purposes of making the determinations, granting the approvals, and taking other actions required by an agency designee under part 2635 and this part. The Ethics Counselor or Alternate Ethics Counselor may delegate authority to Deputy Ethics Counselors or to other employees to serve as agency designees for specified purposes. The delegation to any agency designee shall be in writing and cannot be redelegated.

(d) *Definitions.* For purposes of this part:

(1) *Affiliate,* as defined in 12 U.S.C. 1841(k), means any company that controls, is controlled by, or is under common control with another company.

(2) *Appropriate director* means the head of a Washington office or division or the highest ranking official assigned to a regional office in each division or the Ethics Counselor.

(3) *Covered employee* means an employee of the Corporation required to file a public or confidential financial disclosure report under 5 CFR part 2634 or 5 CFR part 3202.

(4) *Employee* means an officer or employee, other than a special Government employee, of the Corporation including a member of the Board of Directors appointed under the authority of 12 U.S.C. 1812(a)(1)(C), and a liquidation graded employee. For purposes of 5 CFR part 2635 and §§ 3201.103 and 3201.104, *employee* includes any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation.

(5) *Security* includes an interest in debt or equity instruments. The term includes, without limitation, a secured or unsecured bond, debenture, note, securitized assets, commercial paper, and all types of preferred and common stock. The term includes an interest or right in a security, whether current or contingent, a beneficial or legal interest derived from a trust, the right to acquire or dispose of any long or short position, an interest convertible into a security, and an option, right, warrant, put, or call with respect to a security. The term *security* does not include a deposit account.

(6) *State nonmember bank* means any State bank as defined in 12 U.S.C. 1813(e) which is not a member of the Federal Reserve System.

(7) *Subsidiary,* as defined in 12 U.S.C. 1813(w), means any company which is owned or controlled directly or indirectly by another company.

§ 3201.102 Extensions of credit from FDIC-insured depository institutions.

(a) *Credit subject to this section.* The prohibition, disqualification, and retention provisions of this section apply to a current or contingent financial obligation of the employee. For purposes of this section, a current or contingent financial obligation of an employee's spouse or minor child is considered to be an obligation of the employee.

(b) *Prohibition on acceptance of credit from FDIC-insured State nonmember banks applicable to certain high-level officials.* (1) An employee described in paragraph (b)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured State nonmember bank or its subsidiary, except credit extended through the use of a credit card under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (b)(1) of this section applies to:

(i) An employee who is a member of the Board of Directors, an assistant or deputy to the Board of Directors or to an appointed Board member, and a covered employee who is an assistant to such person; and

(ii) The director of a Washington office or of a division, other than the Division of Supervision, and a covered employee who holds a position immediately subordinate to such director.

(c) *Prohibition on acceptance of credit from FDIC-insured State nonmember banks for employees assigned to the Division of Supervision.* (1) An employee described in paragraph (c)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured State nonmember bank or from an officer, director, employee, or subsidiary of such bank, except:

(i) For an employee assigned to the Washington office, credit extended through the use of a credit card on the same terms and conditions as are offered to the general public; and

(ii) For an employee assigned to other than the Washington office, credit extended by an FDIC-insured State nonmember bank headquartered outside the employee's region of official assignment through the use of a credit card on the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (c)(1) of this section applies to the Executive Director for Supervision and Resolutions, the Director of the Division of Supervision, a covered employee immediately subordinate to the Director of the Division of Supervision and the following employees assigned to the Division of Supervision: an Assistant Director, Regional Director, Deputy Regional Director, Assistant Regional Director, examiner, assistant examiner, review examiner, compliance examiner, assistant compliance examiner, and a covered employee.

(3) Upon accepting credit extended by a credit card in accordance with paragraphs (c)(1)(i) or (c)(1)(ii) of this section, the employee shall be disqualified in accordance with paragraph (e)(1) of this section, and, within 30 days of accepting such credit, shall file with the appropriate director a Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification.

(d) *Two-year prohibition on acceptance of credit from FDIC-insured depository institutions.* (1) An employee described in paragraph (d)(2) of this section shall not, directly or indirectly, accept or become obligated on an extension of credit from an FDIC-insured depository institution or its subsidiary for a period of two years from the date of the employee's last personal and substantial participation in an audit, resolution, liquidation, supervisory proceeding, or internal agency deliberation affecting that particular institution, its predecessor or successor, or any subsidiary of such institution. This prohibition does not apply to credit obtained through the use of a credit card under the same terms and conditions as are offered to the general public.

(2) The prohibition in paragraph (d)(1) of this section applies to an employee in the Division of Finance, Division of Depositor and Asset Services, Division of Resolutions, Legal Division, or who is a member of a standing committee of the Board of Directors whose official duties include:

(i) Audit of insured depository institutions for deposit insurance assessment purposes;

(ii) Resolution or liquidation of failed or failing insured depository institutions;

(iii) Participation in the supervision of insured depository institutions or enforcement proceedings under the Federal Deposit Insurance Act; or

(iv) Internal agency deliberations affecting a particular insured depository institution, its predecessor or successor, or a subsidiary of such institution.

(e) *Employee disqualification.* (1) An employee described in paragraph (c)(2) of this section shall not participate in an examination, audit, visitation, review, or investigation, or other particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(2) A covered employee, other than an employee who is described in paragraph (c)(2) of this section, shall not participate in any particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(3) Disqualification is not required under paragraph (e)(2) of this section:

(i) If the credit was extended through the use of a credit card on the same terms and conditions as are offered to the general public; or

(ii) When the agency designee, with the concurrence of the appropriate director, has authorized the employee to participate in the matter using the standard set forth in 5 CFR 2635.502(d).

(4) The Comptroller of the Currency and the Director of the Office of Thrift Supervision shall be disqualified from matters pending before the Board of Directors to the same extent as a covered employee subject to paragraph (e)(2) of this section.

(f) *Retention and renegotiation of pre-existing extensions of credit.* (1) Nothing in this section prohibits the retention of a pre-existing extension of credit that an employee would be prohibited from accepting by § 3201.102 (b) or (c) if the extension of credit was permitted to be retained under 12 CFR part 336 prior to the adoption of this regulation or if the employee's acceptance of the extension of credit was proper at the time the obligation was incurred, as in the case of an extension of credit incurred prior to commencement of employment or reassignment to another division or location. Subsequent action affecting the status of the creditor, such as merger, acquisition, or transaction under 12 U.S.C. 1823, does not change the character of an extension of credit that was proper when incurred. An employee who retains a pre-existing extension that he or she would be prohibited from accepting by § 3201.102 (b) or (c) shall report the pre-existing extension of credit to the appropriate director or agency designee within 30 days from the following event, as appropriate:

(i) Adoption of this part;

(iv) Internal agency deliberations affecting a particular insured depository institution, its predecessor or successor, or a subsidiary of such institution.

(e) *Employee disqualification.* (1) An employee described in paragraph (c)(2) of this section shall not participate in an examination, audit, visitation, review, or investigation, or other particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(2) A covered employee, other than an employee who is described in paragraph (c)(2) of this section, shall not participate in any particular matter involving an FDIC-insured depository institution or other person with whom the employee has an outstanding extension of credit.

(3) Disqualification is not required under paragraph (e)(2) of this section:

(i) If the credit was extended through the use of a credit card on the same terms and conditions as are offered to the general public; or

(ii) When the agency designee, with the concurrence of the appropriate director, has authorized the employee to participate in the matter using the standard set forth in 5 CFR 2635.502(d).

(4) The Comptroller of the Currency and the Director of the Office of Thrift Supervision shall be disqualified from matters pending before the Board of Directors to the same extent as a covered employee subject to paragraph (e)(2) of this section.

(f) *Retention and renegotiation of pre-existing extensions of credit.* (1) Nothing in this section prohibits the retention of a pre-existing extension of credit that an employee would be prohibited from accepting by § 3201.102 (b) or (c) if the extension of credit was permitted to be retained under 12 CFR part 336 prior to the adoption of this regulation or if the employee's acceptance of the extension of credit was proper at the time the obligation was incurred, as in the case of an extension of credit incurred prior to commencement of employment or reassignment to another division or location. Subsequent action affecting the status of the creditor, such as merger, acquisition, or transaction under 12 U.S.C. 1823, does not change the character of an extension of credit that was proper when incurred. An employee who retains a pre-existing extension that he or she would be prohibited from accepting by § 3201.102 (b) or (c) shall report the pre-existing extension of credit to the appropriate director or agency designee within 30 days from the following event, as appropriate:

(i) Adoption of this part;

(ii) Commencement of employment;

(iii) Assignment to another division or location; or

(iv) Action affecting the status of the creditor.

(2) Any renegotiation of a pre-existing extension of credit shall be treated as a new extension of credit that is subject to the prohibitions contained in § 3201.102 (b) through (d). An employee may request that an exception be made to the prohibitions to permit renegotiation of a pre-existing extension of credit. Any such request shall be made in writing to the appropriate director and agency designee, or in the case of an employee described in paragraph (b)(2) (i) and (ii) of this section, to the Ethics Counselor, stating:

(i) The purpose of the renegotiation;

(ii) The terms and conditions of the original extension of credit;

(iii) The terms and conditions now available to the general public;

(iv) The terms and conditions now offered to the employee;

(v) The action the employee has taken to move the loan to an institution from which an employee would not be prohibited from accepting an extension of credit; and

(vi) The financial hardship, if any, denial of the request will cause.

(3) After submission of the request, the appropriate director and agency designee, or the Ethics Counselor, may grant the employee's request based upon a written determination that the request is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of the misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered..

§ 3201.103 Prohibitions on ownership of securities of FDIC-insured depository institutions.

(a) *Prohibition on ownership.* Except as permitted by this section, an employee or the spouse or minor child of an employee, shall not acquire, own, or control, directly or indirectly, a security of an FDIC-insured depository institution, or an affiliate of an FDIC-insured depository institution.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits an employee, or the spouse or minor child of an employee, from:

(1) Acquiring, owning or controlling the securities of certain publicly traded bank holding companies or their nonbank subsidiaries where the bank holding company is not primarily engaged in banking and either the bank holding company or the bank it holds is exempt under the provisions of the Bank Holding Company Act of 1956 and which are identified as such by the Board of Governors of the Federal Reserve System (a list of exempt institutions can be obtained from the Corporation's Ethics Section);

(2) Acquiring, owning, or controlling the securities of certain nonfinancial savings association holding companies whose principal business is unrelated to the financial services industry and which are identified as such by the Office of Thrift Supervision pursuant to 5 CFR 3101.109(b)(3)(ii) (a list of such institutions can be obtained from the Corporation's Ethics Section);

(3) Retaining a security of an FDIC-insured depository institution or an affiliate of an FDIC-insured depository institution if the security was permitted to be retained by the employee under 12 CFR part 336 prior to the adoption of this regulation, was obtained prior to commencement of employment with the Corporation, or was acquired by a spouse prior to marriage to the employee;

(4) Acquiring, owning, or controlling a security of an FDIC-insured depository institution or the affiliate of an FDIC-insured depository institution where the security was acquired by inheritance, gift, stock split, involuntary stock dividend, merger, acquisition, or other change in corporate ownership, exercise of preemptive right, or otherwise without specific intent to acquire the security. This provision permits the retention of any such interest only where:

(i) The employee makes full, written disclosure on FDIC form 2410/07 to the Ethics Counselor within 30 days of commencing employment or acquiring the interest; and

(ii) The employee is disqualified in accordance with 5 CFR part 2635, subpart D, from participating in any particular matter that affects his or her financial interests, or that of his or her spouse or minor child;

(5) Acquiring, owning, or controlling an interest in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in the financial services sector and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund; or

(6) Using an FDIC-insured depository institution or an affiliate of an FDIC-insured depository institution as custodian or trustee of accounts

containing tax-deferred retirement funds.

(c) *Divestiture.* Based upon a determination of substantial conflict under 5 CFR 2635.403(b), the Ethics Counselor may require an employee, or the spouse or minor child of an employee, to divest a security he or she is otherwise authorized to retain under paragraph (b) of this section.

§ 3201.104 Restrictions concerning the purchase of property held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation.

(a) *Prohibition on purchase of property.* An employee, and an employee's spouse or minor child shall not, directly or indirectly, purchase or acquire any property held or managed by the Corporation or the Resolution Trust Corporation (RTC) as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation, regardless of the method of disposition of the property.

(b) *Disqualification.* An employee who is involved in the disposition of assets held by the Corporation or the RTC as conservator, receiver, or liquidator of the assets of an insured depository institution, or by a bridge bank organized by the Corporation shall not participate in the disposition of assets held in such capacities when the employee knows that any party with whom the employee has a covered relationship, as defined in 5 CFR 2635.502(b)(1), is or will be attempting to acquire such assets. The employee shall provide written notification of the disqualification to his or her immediate supervisor and the agency designee.

§ 3201.105 Prohibition on dealings with former employers, associates, and clients.

(a) An employee is prohibited for one year from the date of entry on duty with the Corporation from participating in a particular matter when an employer, or the successor to the employer, for whom the employee worked at any time during the one year preceding the employee's entrance on duty is a party or represents a party to the matter.

(b) For purposes of this section, the term *employer* means a person with whom the employee served as officer, director, trustee, general partner, agent, attorney, accountant, consultant, contractor, or employee.

(c) The one-year period of disqualification imposed by paragraph (a) of this section may be extended in an individual case based on a written determination by the agency designee that, under the particular circumstances, the employee's participation in the particular matter would cause a reasonable person with knowledge of the facts to question his or her impartiality.

§ 3201.106 Employment of family members outside the Corporation.

(a) *Disqualification of employees.* An employee shall not participate in an examination, audit, investigation, application, contract, or other particular matter if the employer of the employee's spouse, child, parent, brother, sister, or a member of the employee's household is a party or represents a party to the matter, unless an agency designee authorizes the employee to participate using the standard in 5 CFR 2635.502(d).

(b) *Reporting certain relationships.* A covered employee shall make a written report to an agency designee within 30 days of the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's household by:

(1) An FDIC-insured depository institution or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the Corporation has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the Corporation.

§ 3201.107 Outside employment and other activities.

(a) *Prohibition on employment with FDIC-insured depository institutions.* An employee shall not provide service for compensation, in any capacity, to an FDIC-insured depository institution or an employee or person employed by or connected with such institution.

(b) *Use of professional licenses.* A covered employee who holds a license related to real estate, appraisals, securities, or insurance and whose official duties with the Corporation require personal and substantial involvement in matters related to, respectively, real estate, appraisal, securities, or insurance is prohibited from using such license, other than in the performance of his or her official duties, for the production of income. The appropriate director, in consultation with an agency designee, may grant exceptions to this prohibition based on a finding that the specific transactions which require use of the license will not create an appearance of loss of impartiality or use of public office for private gain.

(c) *Responsibility to consult with agency designee.* An employee who engages in, or intends to engage in, any outside employment or other activity that may require disqualification from the employee's official duties shall consult with an agency designee prior to engaging in or continuing to engage in the activity.

§ 3201.108 Related statutory and regulatory authorities.

(a) 18 U.S.C. 213, which prohibits an examiner from accepting a loan or gratuity from an FDIC-insured depository institution examined by him or her or from any person connected with such institution.

(b) 18 U.S.C. 1906, which prohibits disclosure of information from a bank examination report except as authorized by law.

(c) 17 CFR 240.10b-5 which prohibits the use of manipulative or deceptive devices in connection with the purchase or sale of any security.

(d) 18 U.S.C. 1909, which prohibits examiners from providing any service for compensation for any bank or person connected therewith.

§ 3201.109 Provisions of 5 CFR part 2635 not applicable to Corporation employees.

The following provisions of 5 CFR part 2635 are not applicable to employees of the Corporation:

(a) Because of the restrictions imposed by 18 U.S.C. 213 on examiners accepting loans or gratuities, an examiner in the Division of Supervision may not use any of the gift exceptions at 5 CFR 2635.204 to accept a gift from an FDIC-insured depository institution examined by him or her or from any person connected with such institution.

(b) Provisions of 41 U.S.C. 423 (Procurement integrity) and the implementing regulations at 48 CFR 3.104 (of the Federal Acquisition Regulation) applicable to procurement officials referred to in:

(1) 5 CFR 2635.202(c)(4)(iii);

(2) The note following 5 CFR 2635.203(b)(7);

(3) Example 5 following 5 CFR 2635.204(a);

(4) Examples 2 and 3 following 5 CFR 2635.703(b)(3);

(5) 5 CFR 2635.902(f), (h), (l), and (bb);

(c) Provisions of 31 U.S.C. 1353 (Acceptance of travel and related expenses from non-Federal sources) and the implementing regulations at 41 CFR part 304–1 (Acceptance of payment from a non-Federal source for travel expenses) referred to in 5 CFR 2635.203(b)(8)(i).

(d) Provisions of 41 CFR Chapter 101 (Federal Property Management Regulations) referred to in 5 CFR 2635.205(a)(4).

(e) Provisions of 41 CFR Chapter 201 (Federal Information Resources Management Regulation) referred to in Example 1 following 5 CFR 2635.704(b)(2).

12 CFR CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

2. The authority citation for part 336 is revised to read as follows:

Authority: 5 U.S.C. 7301; 12 U.S.C. 1819(a).

3. Section 336.1 is revised to read as follows:

§ 336.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Federal Deposit Insurance Corporation (Corporation) are subject to the Executive Branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Corporation regulation at 5 CFR part 3201 which supplements the Executive Branch-wide Standards, the Executive Branch-wide financial disclosure regulations at 5 CFR part 2634, and the Corporation regulation at 5 CFR part 3202 which supplements the Executive Branch-wide financial disclosure regulations.

§§ 336.2–336.23, 336.29–336.37 [Removed]

Appendix to Part 336—[Removed]

4. Sections 336.2 through 336.23 and 336.29 through 336.37 and all subpart headings are removed and the appendix to part 336 is removed.

[FR Doc. 94–16557 Filed 7–11–94; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

RIN 0581–AB28

[Docket No. FV93–353]

Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930 (PACA)

AGENCY: Agricultural Marketing Service (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would invite comments extending PACA coverage to include fresh and frozen fruits and vegetables that are oil-blanched, including frozen french fried

(e) Provisions of 41 CFR Chapter 201 (Federal Information Resources Management Regulation) referred to in Example 1 following 5 CFR 2635.704(b)(2).

12 CFR CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

2. The authority citation for part 336 is revised to read as follows:

Authority: 5 U.S.C. 7301; 12 U.S.C. 1819(a).

3. Section 336.1 is revised to read as follows:

§ 336.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Federal Deposit Insurance Corporation (Corporation) are subject to the Executive Branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Corporation regulation at 5 CFR part 3201 which supplements the Executive Branch-wide Standards, the Executive Branch-wide financial disclosure regulations at 5 CFR part 2634, and the Corporation regulation at 5 CFR part 3202 which supplements the Executive Branch-wide financial disclosure regulations.

§§ 336.2–336.23, 336.29–336.37 [Removed]

Appendix to Part 336—[Removed]

4. Sections 336.2 through 336.23 and 336.29 through 336.37 and all subpart headings are removed and the appendix to part 336 is removed.

[FR Doc. 94–16557 Filed 7–11–94; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

RIN 0581–AB28

[Docket No. FV93–353]

Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930 (PACA)

AGENCY: Agricultural Marketing Service (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would invite comments extending PACA coverage to include fresh and frozen fruits and vegetables that are oil-blanched, including frozen french fried potato products. Under previous regulations, suppliers of these commodities suffered considerable financial losses because oil-blanched products were excluded from the PACA. This proposed rule would grant dealers in frozen oil-blanched products the same rights afforded dealers whose frozen product is water blanched.

DATES: Comments must be received on or before August 11, 1994.

ADDRESSES: All comments concerning this proposed rule should be addressed to USDA, AMS, F&V DIVISION, PACA BRANCH, Room 2095–S. Building, P.O. Box 96456, 14th & Independence Avenue, S.W., Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: J.R. Frazier, Assistant Chief, PACA Branch, at 202–720–4180.

SUPPLEMENTARY INFORMATION: The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 1650 of the Act, a person subject to the Plan may file a petition with the Secretary stating that the Plan or any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law and requesting a modification of the Plan or an exemption from the Plan. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The proposed rule would extend PACA coverage to include frozen fruits and vegetables that are oil-blanched, especially frozen french fried potato products. Under previous regulations, suppliers of these commodities suffered considerable financial losses because oil-blanched products were excluded from the PACA. This proposed rule would grant dealers in frozen oil-blanched products the same rights afforded dealers whose frozen product is water blanched.

The PACA establishes a code of fair trading by prohibiting certain unfair practices in the marketing of fresh or frozen fruits and vegetables. The law requires that parties fulfill their contractual obligations, and provides a forum wherein persons who suffer damages can recover their losses.

The PACA also impresses a statutory trust, for the benefit of unpaid sellers or suppliers, on all perishable agricultural commodities received by a commission merchant, dealer or broker and all inventories of food or other products derived from the sale of such commodities or products. Sellers who preserve their eligibility are entitled to payment ahead of other creditors, from trust assets of money owed on past due accounts.

As indicated in documents submitted to this Agency by the Frozen Potato Products Institute, frozen potato products represent the largest single frozen commodity shipped in the United States. These documents further state that potatoes cannot be economically frozen and shipped long distances unless they first undergo oil blanching. To exclude such a substantial portion of the frozen food industry is inconsistent with the intent of the PACA to protect dealers in fresh or frozen fruits and vegetables.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 46 of the Code of Federal Regulations is proposed to be amended as follows:

PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE) UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

1. The authority citation for Part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. Section 46.2, paragraph (u) is revised to read as follows:

§ 46.2 Definitions.

* * * * *

(u) *Fresh fruits and fresh vegetables* include all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, but do not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character. The effects of the following operations shall not be considered as changing a commodity into a food of a different kind or character: Water, steam, or oil blanching, chopping, color adding, curing, cutting, dicing, drying for the removal of surface moisture; fumigating, gassing, heating for insect control, ripening and coloring; removal of seeds, pits, stems, calyx, husk, pods, rind, skin, peel, et cetera; polishing, precooling, refrigerating, shredding, slicing, trimming, washing with or without chemicals; waxing, adding of sugar or other sweetening agents; adding ascorbic acid or other agents used to retard oxidation; mixing of several kinds of sliced, chopped, or diced fruits or vegetables for packaging in any type of containers; or comparable methods of preparation.

* * * * *

Dated: July 6, 1994.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 94–16758 Filed 7–11–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–56–AD]

Airworthiness Directives; Airbus Industrie Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300–600 series airplanes. This proposal would require inspections to detect cracks in certain bolt holes where certain parts of the main landing gear (MLG) are attached to the rear spar, and repair, if necessary. This proposal is prompted by a report that cracks emanating from certain bolt holes in the rear spar were found during full scale fatigue testing. The actions specified by the proposed AD are intended to prevent unnecessary degradation of the structural integrity of the airframe due to cracks in the rear spar.

DATES: Comments must be received by August 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113; FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–56–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A300–600 series airplanes. The DGAC advised that, during full-scale fatigue testing, cracks were discovered in the rear spar emanating from certain bolt holes where the main landing gear (MLG) forward pick-up fitting and the MLG rib 5 aft are attached to the rear spar on Model A300–600 series airplanes. This condition, if not corrected, could result in degradation of the structural integrity of the airframe.

Airbus Industrie has issued Service Bulletin A300–57–6017, dated November 22, 1993, that describes procedures for repetitive high frequency eddy current (HFEC) rototest inspections to detect cracks in certain bolt holes where the MLG forward pick-up fitting and the MLG rib 5 aft are attached to the rear spar. This service bulletin also references Airbus Industrie Service Bulletin A300–57–6020, dated November 22, 1993, as an additional source of service information for accomplishment of certain repair and inspection procedures. The DGAC has classified Airbus Service Bulletin A300–57–6017 as mandatory and has issued French airworthiness directive 94–031–155(B), dated February 2, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive HFEC rototest inspections to detect cracks in certain bolt holes where the MLG forward pick-up fitting and the MLG rib 5 aft are attached to the rear spar, and repair, if necessary. The inspections would be required to be accomplished in accordance with Airbus Industrie Service Bulletin A300–57–6017.

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 240 work hours per airplane to accomplish the proposed actions (including time to gain access and close up), and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $330,000, or $13,200 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The FAA recognizes that the proposed inspections and repair would require a large number of work hours to accomplish. However, the compliance times in this proposed AD should allow ample time for the inspection and repair to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive HFEC rototest inspections to detect cracks in certain bolt holes where the MLG forward pick-up fitting and the MLG rib 5 aft are attached to the rear spar, and repair, if necessary. The inspections would be required to be accomplished in accordance with Airbus Industrie Service Bulletin A300–57–6017.

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 240 work hours per airplane to accomplish the proposed actions (including time to gain access and close up), and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $330,000, or $13,200 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The FAA recognizes that the proposed inspections and repair would require a large number of work hours to accomplish. However, the compliance times in this proposed AD should allow ample time for the inspection and repair to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 94–NM–56–AD.

Applicability: Model A300–600 series airplanes on which Airbus Industrie Production Modification No. 07601 has not been accomplished prior to delivery; manufacturer's serial numbers (MSN) 252 through 553 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural integrity of the airframe due to cracks in the rear spar, accomplish the following:

(a) Perform a high frequency eddy current (HFEC) rototest inspection to detect cracks in certain bolt holes where the main landing gear (MLG) forward pick-up fitting and MLG rib 5 aft are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993.

Note 1: This service bulletin also references Airbus Industrie Service Bulletin A300–57–6020, dated November 22, 1993, as an additional source of service information.

(1) For airplanes that have accumulated 17,300 total landings or less as of the effective date of this AD: Inspect prior to the accumulation of 12,300 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 17,301 or more total landings, but less than 19,300 total landings as of the effective date of this AD: Inspect within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 19,300 or more total landings as of the effective date of this AD: Inspect within 750 landings after the effective date of this AD.

(b) If no crack is found during the inspection required by paragraph (a) of this AD, repeat that inspection thereafter at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Industrie Modification 07716 (as described in Airbus Industrie Service Bulletin A300–57–6020) has not been accomplished, inspect at the time specified in paragraph (b)(1)(i) or (b)(1)(ii) of this AD, as applicable.

(i) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 13,000 landings.

(ii) For airplanes having MSN 252 through 464 inclusive: Repeat the inspection at intervals not to exceed 8,400 landings.

(2) For airplanes on which Airbus Industrie Modification 07716 has been accomplished, inspect at the time specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 11,800 landings.

(ii) For airplanes having MSN 252 through 464 inclusive. Repeat the inspection within 10,700 landings following the initial inspection required by paragraph (a) of this AD, and thereafter at intervals not to exceed 7,500 landings.

(c) If any crack is found during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish the requirements of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Industrie Modification 07716 has not been accomplished: Accomplish the applicable repair requirements of paragraph (c)(1)(i) or (c)(1)(ii) of this AD. After repair, repeat the inspections as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph.

(i) If the crack measures 1mm or less: repair in accordance with Airbus Industrie Service Bulletin A300–57–6020, dated November 22, 1993.

(ii) If the crack measures more than 1mm, repair in accordance with a method approved by the Manager, Standardization Branch ANM–113, FAA, Transport Airplane Directorate.

(2) For airplanes on which Airbus Industrie Modification 07716 has been accomplished: Repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After repair, repeat the inspections as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–112. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 6, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16813 Filed 7–11–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–02–AD]

Airworthiness Directives: British Aerospace, Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede two existing AD's that require repetitively inspecting the universal joints and universal rivets on British Aerospace (BAe), Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes, and replacing any damaged part, and limiting the in-service life of the torque tube shaft assembly. Jetstream Aircraft Limited has introduced an improved flap torque shaft assembly that includes universal joints that are not life limited. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require installing this improved flap torque shaft assembly in place of the repetitive inspection and life limit requirements of the two existing AD's. The actions specified by the proposed AD are intended to prevent failure of the flap torque shaft assembly, which could result in asymmetric flap deployment and less of control of the airplane.

DATES: Comments must be received on or before September 26, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–02–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–02–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–02–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could eliminate, or, in certain instances, reduce the number of critical repetitive inspections.

In 1991, the FAA issued a notice of proposed rulemaking (NPRM) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an airworthiness directive (AD) that would apply to BAe, Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes. This NPRM (56 FR 11976, March 21, 1991) proposed inspecting the flap torque shaft to identify all Type "F" universal joints, and replacing these universal joints with Type "M" or part number A16123 universal joints.

Since issuance of the notice of proposed rulemaking (NPRM), Jetstream Aircraft Limited has introduced an improved flap torque shaft assembly that includes universal joints that are not life limited, and that incorporates the actions proposed in the referenced NPRM and required by the following AD's:

- AD 87–04–04, Amendment 39–5529, which requires limiting the in-service life of the torque tube shaft assembly on BAe HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes; and
- AD 89–16–02, Amendment 39–6273, which requires repetitively inspecting the universal joints and universal joint rivets on BAe HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes, and replacing any damaged part.

Jetstream Aircraft Limited has issued Service Bulletin (SB) No. 27–JA 920340, which incorporates the following pages:

Pages	Revision level	Date
1 through 6 and 9 through 16.	2	Dec. 21, 1993.
7, 8, and 17 through 28.	Original issue.	Sept. 2, 1992.

This service information specifies procedures for installing the improved flap torque shaft assembly.

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that (1) installing the new improved flap torque shaft assemblies incorporates the actions proposed in the previously referenced NPRM and AD 87–04–04 and AD 89–16–02, and replaces critical repetitive inspections with a design modification; and (2) AD action should be taken to prevent failure of the flap torque shaft assembly, which could result in asymmetric flap deployment and loss of control of the airplane. With this in mind, the FAA issued a document, withdrawing the previously referenced NPRM, on February 14, 1994 (59 FR 8878, February 24, 1994).

Since an unsafe condition has been identified that is likely to exist or develop in other BAe, Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes of the same type design, the proposed AD would supersede both AD 87–04–04 and AD 89–16–02 with a new AD that would require installing this improved flap torque shaft assembly in place of the repetitive inspection and life limit requirements of the two existing AD's. The proposed actions would be accomplished in accordance with Jetstream Aircraft Limited SB No. 27–JA 920340.

The subsequent final rule action (if promulgated) would have an effective date of 12 months after publication in the Federal Register and a compliance time of 50 hours time-in-service after the effective date. This would allow operators time to schedule the flap torque shaft assembly replacement. The requirements of AD 87–04–04 and AD 89–16–02 would remain in effect until this date.

The FAA estimates that 245 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 31 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1010 per airplane.

Jetstream Aircraft Limited has issued Service Bulletin (SB) No. 27–JA 920340, which incorporates the following pages:

Pages	Revision level	Date
1 through 6 and 9 through 16.	2	Dec. 21, 1993.
7, 8, and 17 through 28.	Original issue.	Sept. 2, 1992.

This service information specifies procedures for installing the improved flap torque shaft assembly.

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that (1) installing the new improved flap torque shaft assemblies incorporates the actions proposed in the previously referenced NPRM and AD 87–04–04 and AD 89–16–02, and replaces critical repetitive inspections with a design modification; and (2) AD action should be taken to prevent failure of the flap torque shaft assembly, which could result in asymmetric flap deployment and loss of control of the airplane. With this in mind, the FAA issued a document, withdrawing the previously referenced NPRM, on February 14, 1994 (59 FR 8878, February 24, 1994).

Since an unsafe condition has been identified that is likely to exist or develop in other BAe, Regional Aircraft Limited, HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes of the same type design, the proposed AD would supersede both AD 87–04–04 and AD 89–16–02 with a new AD that would require installing this improved flap torque shaft assembly in place of the repetitive inspection and life limit requirements of the two existing AD's. The proposed actions would be accomplished in accordance with Jetstream Aircraft Limited SB No. 27–JA 920340.

The subsequent final rule action (if promulgated) would have an effective date of 12 months after publication in the **Federal Register** and a compliance time of 50 hours time-in-service after the effective date. This would allow operators time to schedule the flap torque shaft assembly replacement. The requirements of AD 87–04–04 and AD 89–16–02 would remain in effect until this date.

The FAA estimates that 245 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 31 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1010 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $665,175. This figure is based on the assumption that none of the affected airplane operators have accomplished the proposed actions. In addition, this action would eliminate the repetitive inspections required by AD 87–04–04 and AD 89–16–02. The FAA has no way of determining the operation levels of each individual operator of the affected airplanes, and subsequently cannot determine the repetitive inspections costs that would be eliminated by the proposed action. The FAA estimates these costs to be substantial over the long-term.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing both AD 87–04–04, Amendment 39–5529, and AD 89–16–02, Amendment 39–6273, and by adding a new airworthiness directive to read as follows:

British Aerospace, Regional Aircraft Limited: Docket No. 94–CE–02–AD. Supersedes AD 87–04–04, Amendment 39–5529, and AD 89–16–02, Amendment 39–6273.

Applicability: HP 137 Mk1, Jetstream Models 200, 3101, and 3201 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent failure of the flap torque shaft assembly, which could result in asymmetric flap deployment and loss of control of the airplane, accomplish the following:

(a) Install an improved torque shaft assembly in accordance with Part 1 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Aircraft Limited Service Bulletin (SB) No. 27–JA 920340; or modify the existing torque shaft assembly in accordance with Part 2 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Aircraft Limited SB No. 27–JA 920340, which incorporates the following pages:

Pages	Revision level	Date
1 through 6 and 9 through 16.	2	Dec. 21, 1993.
7, 8, and 17 through 28.	Original issue.	Sept. 2, 1992.

(b) The life limit requirements of the torque tube shaft assembly required by AD 87–04–04, and the repetitive inspections of the universal joints and universal joint rivets required by AD 89–16–02 remain mandatory until the effective date of this AD or upon accomplishing the installation or modification referenced by paragraph (a) of this AD, whichever occurs first.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes both AD 87–04–04, Amendment 39–5529, and AD 89–16–02, Amendment 39–6273.

Issued in Kansas City, Missouri, on July 6, 1994.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16814 Filed 7–11–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 71

[Airspace Docket No. 94–AGL–21]

Proposed Establishment of Class E Airspace; Muskegon, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish a Class E airspace area at Muskegon County Airport, Muskegon, MI. Presently, this area is designated as Class D airspace when the associated control tower is operational. However, controlled airspace to the surface is needed when the control tower located at this area is closed. The intended affect of this proposal is to provide adequate Class E airspace for instrument flight rule (IFR) operations when this control tower is closed.

DATES: Comments must be received on or before August 30, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–21, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Angeline Perri, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7571.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Muskegon County Airport, Muskegon, MI. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Muskegon County Airport, Muskegon, MI, when the control tower is closed.

The intended affect of this action is to provide adequate Class E airspace for IFR operations at this airport when the control tower is closed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Muskegon, MI [New]

Muskegon County Airport, MI
(lat. 43°10'10" N., long. 86°14'18" W.)

Within a 4.2-mile radius of Muskegon County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter, be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plains, Illinois on June 29, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–16829 Filed 7–11–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

23 CFR Part 637

[FHWA Docket No. 94–13]

RIN 2125–AD35

Quality Assurance Procedures for Construction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is requesting comments on proposed revisions to its regulation which establishes general requirements for quality assurance procedures for construction on Federal-aid highway projects. The proposed revisions will clarify existing policy and procedures and provide additional guidance on the use of contractor-supplied test results in acceptance plans and qualifications of laboratories and testing personnel.

DATES: Comments must be received on or before September 12, 1994.

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Muskegon, MI [New]

Muskegon County Airport, MI
(lat. 43°10'10" N., long. 86°14'18" W.)

Within a 4.2-mile radius of Muskegon County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter, be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plains, Illinois on June 29, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–16829 Filed 7–11–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

23 CFR Part 637

[FHWA Docket No. 94–13]

RIN 2125–AD35

Quality Assurance Procedures for Construction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is requesting comments on proposed revisions to its regulation which establishes general requirements for quality assurance procedures for construction on Federal-aid highway projects. The proposed revisions will clarify existing policy and procedures and provide additional guidance on the use of contractor-supplied test results in acceptance plans and qualifications of laboratories and testing personnel.

DATES: Comments must be received on or before September 12, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 94–13, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rafalowski, Office of Engineering, HNG–23, 202–366–1571; or Mr. Wilbert Baccus, Office of the Chief Counsel, HCC–32, 202–366–0780; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The current regulations on sampling and testing of materials and construction appear in 23 CFR Part 637 (1993), Construction Inspection and Approval. These regulations were last revised in January of 1987. The regulations were written around the traditional approach of the State performing all the sampling and testing. The regulations do not address the use of contractor testing. As a result, a number of questions arose in those States and Federal Highway Administration (FHWA) Federal Lands Highway offices which were using contractor testing in their quality control/quality assurance (QC/QA) programs.

Since the existing regulations do not recognize the use of contractor testing results in the acceptance program, which is the process of accepting materials and construction, an internal committee was established in 1992 to study the ramifications of using contractor-performed sampling and testing results. The committee released the results of its study in a report, "Limits of Use of Contractor Performed Sampling and Testing," dated July 1, 1993. (A copy of the report is available in the docket for inspection and copying.) One of the report's recommendations indicates that contractor sampling and testing can be used in acceptance programs provided that adequate checks and balances are in place to protect the public investment. The revisions that are proposed in this NPRM would implement the committee's recommendations.

The NPRM, if promulgated, would replace the existing acceptance and independent assurance sampling and testing programs with a comprehensive system of checks and balances. Acceptance of materials and construction would not be based solely on any one set of data and would specifically require the State to monitor and inspect the contractors' quality control program. The State's verification sampling and testing would be used to ensure the quality of the product. In addition, the system would provide for using results from the contractors' quality control sampling and testing program in the acceptance program if those results are validated by the State's verification sampling and testing system. The verification sampling and testing would be performed on independent samples obtained by the State to verify the contractors' quality control data. If the results from the contractors' quality control program and the State's verification sampling and testing program do not agree a dispute resolution system will be used to determine payment to the contractor.

The requirement for an independent assurance (IA) program would remain in place. The IA program would use witnessing, split samples, proficiency samples and equipment calibration as an independent check of the field sampling and testing procedures and equipment to assure the testing is being performed properly by both the State and the contractor personnel.

The major changes in the regulation would be as follows:

1. The use of contractor testing results in the overall acceptance program would be allowed, provided certain checks and balances are in place.

2. The traditional type of acceptance program with the State performing all of the testing would be allowed.

3. The IA program could be performed either on a system basis or on a project by project basis. In a system approach, all equipment and testing personnel would be assessed on a time frequency, regardless of the specific project on which the testing occurs. The system approach would allow the State to assess testing equipment and testing personnel regardless of project location. This approach would ensure that the testing on small projects is assessed and would also ensure that all testing personnel are reviewed.

4. If the system approach to the IA program is used, an annual report on the IA program would be required instead of a statement in the project materials certificate concerning the IA program.

5. Qualified, designated agents of the State would be permitted to perform the IA testing.

6. All testing personnel and laboratories would be required to be qualified using State procedures. It is anticipated this provision will have an effective date two years after the publication of the final rule.

7. The State Highway Agency's (SHA) central laboratory would be required to become accredited by the American Association of State Highway and Transportation Officials (AASHTO) Accreditation Program. It is also anticipated this provision will have an effective date two years after the publication of the final rule.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA, at 23 CFR 637, currently has regulations covering sampling and testing. The proposed revisions would merely update these regulations to accommodate contractor-performed sampling and testing and reinforce existing policy. Therefore, it is anticipated that the economic impact of this rulemaking will be minimal and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (U.S.C. 601–612), the FHWA has evaluated the effects of this proposal on small entities. The FHWA concluded that this action would in fact provide some small testing firms with an opportunity to perform more work than was allowed by the previous regulations. Although the regulation would have a positive impact on these testing firms, the number of firms affected would be small and the amount of additional work would be insignificant. Therefore, the FHWA hereby certifies that this rulemaking would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

This rulemaking does not have any effect on the environment. It does not constitute a major action having a significant effect on the environment, and therefore does not require the preparation of an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 637

Grant programs—transportation, Highways and roads, Quality assurance, Materials sampling and testing.

Issued on: June 30, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 637 by revising subpart B to read as follows:

Subchapter G—Engineering and Traffic Operations

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

Subpart B—Quality Assurance Procedures for Construction

Sec.

637.201 Purpose.
637.203 Definitions.
637.205 Policy.
637.207 Quality assurance program.
637.209 Laboratory and sampling and testing personnel qualifications.

Appendix A to Subpart B—Guide Letter of Certification by SHA Engineer

Authority: 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

§ 637.201 Purpose.

To prescribe policies, procedures, and guidelines to assure the quality of materials and construction in all Federal-aid highway projects on the National Highway System.

§ 637.203 Definitions.

Acceptance program. All factors that comprise the SHA's determination of the quality of the product as specified in the contract requirements. These factors include verification sampling, testing and inspection and may include validated results of quality control sampling and testing.

Independent assurance program. Activities that are an unbiased and independent evaluation of all the sampling and testing procedures used in the acceptance program which are performed outside the SHA's central laboratory.

Proficiency samples. Homogeneous samples that are distributed and tested by two or more laboratories. The test results are compared to assure that the laboratories are obtaining the same results.

Qualified laboratories. Laboratories that are accredited through appropriate programs as determined by each SHA. As a minimum, the qualifications shall be consistent with the equipment calibration and verification requirements stipulated in sections 5.4 and 5.8 of AASHTO R–18, Establishing and Implementing a Quality System for Construction Materials Testing Laboratories.

Qualified sampling and testing personnel. Personnel who are certified through appropriate programs defined by each State Highway Agency (SHA).

Quality assurance. All those planned and systematic actions necessary to provide confidence that a product or service will satisfy given requirements for quality.

Quality control. All contractor/vendor operational techniques and activities that are performed or conducted to fulfill the contract requirements.

Verification sampling and testing. Sampling and testing performed to validate the quality of the product. If quality control sampling and testing is used in the acceptance program, verification sampling and testing will also be used to validate the quality control sampling and testing.

§ 637.205 Policy.

(a) *Quality assurance program.* Each SHA shall develop a quality assurance program which will assure that the materials and workmanship incorporated in each Federal-aid highway construction project are in reasonably close conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in § 637.207 and be approved by the FHWA.

(1) Independent assurance program. The results of independent assurance (IA) tests are not to be used as a basis for material acceptance. Independent samples and tests or other procedures shall be performed by qualified sampling and testing personnel who do not have direct responsibility for quality control and verification sampling and testing.

(2) Verification sampling and testing. The verification sampling and testing are to be performed by the SHA or its designated agent excluding the contractor and/or vendor.

(b) *Laboratory accreditation program.* Each SHA shall be accredited by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

§ 637.207 Quality assurance program.

(a) Each SHA's quality assurance program shall provide for an acceptance program and an independent assurance program consisting of the following:

(1) Acceptance program. Each SHA's acceptance program shall consist of the following:

(i) Frequency guide schedules for verification sampling and testing which will give general guidance to personnel responsible for the program and allow adaptation to specific project conditions and needs.

(ii) Identification of the specific location in the construction or

through appropriate programs defined by each State Highway Agency (SHA).

Quality assurance. All those planned and systematic actions necessary to provide confidence that a product or service will satisfy given requirements for quality.

Quality control. All contractor/vendor operational techniques and activities that are performed or conducted to fulfill the contract requirements.

Verification sampling and testing. Sampling and testing performed to validate the quality of the product. If quality control sampling and testing is used in the acceptance program, verification sampling and testing will also be used to validate the quality control sampling and testing.

§ 637.205 Policy.

(a) *Quality assurance program.* Each SHA shall develop a quality assurance program which will assure that the materials and workmanship incorporated in each Federal-aid highway construction project are in reasonably close conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in § 637.207 and be approved by the FHWA.

(1) Independent assurance program. The results of independent assurance (IA) tests are not to be used as a basis for material acceptance. Independent samples and tests or other procedures shall be performed by qualified sampling and testing personnel who do not have direct responsibility for quality control and verification sampling and testing.

(2) Verification sampling and testing. The verification sampling and testing are to be performed by the SHA or its designated agent excluding the contractor and/or vendor.

(b) *Laboratory accreditation program.* Each SHA shall be accredited by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

§ 637.207 Quality assurance program.

(a) Each SHA's quality assurance program shall provide for an acceptance program and an independent assurance program consisting of the following:

(1) Acceptance program. Each SHA's acceptance program shall consist of the following:

(i) Frequency guide schedules for verification sampling and testing which will give general guidance to personnel responsible for the program and allow adaptation to specific project conditions and needs.

(ii) Identification of the specific location in the construction or production operation at which verification sampling and testing is to be accomplished.

(iii) The SHA shall inspect the product or construction or both for attributes that are detrimental to the performance of the finished product.

(iv) Quality control sampling and testing results may be used as part of the acceptance decision provided that:

(A) The quality control program is approved and monitored by the SHA;

(B) The sampling and testing has been performed by qualified laboratories and qualified sampling and testing personnel;

(C) The results have been validated by the verification sampling and testing. The validation of the quality control sampling and testing shall be performed by using standard statistical tests. Both the means and variances of the results from the quality control tests and verification tests shall be compared to ensure that both sets of data are testing the same population. The comparison procedures shall provide equivalent or better reliability than those obtained with the F-test for variances and the t-test for the means; and

(D) The quality control sampling and testing is evaluated by an IA program.

(v) If the results from the quality control sampling and testing are used in the acceptance program the SHA shall establish a dispute resolution system. The dispute resolution system shall address the resolution of discrepancies occurring between the verification sampling and testing and the quality control sampling and testing. The dispute resolution system may be administered entirely within the SHA.

(2) The IA program shall evaluate the qualified sampling and testing personnel and the testing equipment. The program shall cover sampling procedures, testing procedures, and testing equipment. The program shall be performed by the SHA or its designated agent. Each IA program shall include the following:

(i) A schedule of frequency for IA evaluation. The schedule may be established based on either a project basis or a system basis. The frequency can be based on either a unit of production or on a unit of time.

(ii) The testing equipment can be evaluated by using frequent calibration checks, split samples, or proficiency samples.

(iii) Split samples or proficiency samples shall be used to evaluate testing personnel. A reasonable amount of the evaluations shall include observation of the sampling and testing procedures.

(iv) A prompt comparison and documentation shall be made of test results obtained by the tester being evaluated and the IA tester. The SHA shall develop guidelines for the comparison of test results.

(v) If the SHA uses the system approach to the IA program the SHA shall provide an annual report to the FHWA summarizing the results of the IA program.

(3) The preparation and submission of a materials certification, conforming in substance to Appendix A of this regulation, to the FHWA Division Administrator for each construction project which is subject to FHWA construction oversight activities.

(b) [Reserved]

§ 637.209 Laboratory and sampling and testing personnel qualifications.

(a) *Laboratories.* After (*2 years after the date of publication of the final rule in the* **Federal Register**),

(1) All contractor, vendor, and SHA testing shall be performed by qualified laboratories.

(2) Each SHA shall have its central laboratory accredited by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(3) Any non-SHA designated laboratory which performs IA sampling and testing shall be accredited in the testing to be performed by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(4) Any laboratory that is used in dispute resolution sampling and testing shall be accredited in the testing to be performed by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(b) *Sampling and testing personnel.* After (*2 years after the date of publication of the final rule in the* **Federal Register**), all sampling and testing performed for the contractor/vendor and the SHA shall be executed by qualified sampling and testing personnel.

(c) *Conflict of interest.* In order to avoid an appearance of a conflict of interest, any non-SHA qualified laboratory shall perform only one of the following types of testing on the same project: verification testing, quality control testing, IA testing, or dispute resolution testing.

Appendix A to Subpart B—Guide Letter of Certification by SHA Engineer

Date _____

Project No. _____

This is to certify that:

The results of the tests used in the acceptance program indicate that the

materials incorporated in the construction work, and the construction operations controlled by sampling and testing, were in conformity with the approved plans and specifications. (The following sentence should be added if the IA testing frequencies are based on project quantities. All independent assurance samples and tests compare favorably to the samples and tests that are used in the acceptance program.)

Exceptions to the plans and specifications are explained on the back hereof (or on attached sheet).

Director of SHA Laboratory or other appropriate SHA Official.

[FR Doc. 94–16718 Filed 7–11–94; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Notice of Finding on a Petition to Emergency List the Rocky Mountain Capshell as an Endangered Species Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-Month Petition Finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The Service finds that listing the Rocky Mountain capshell (*Acroloxus coloradensis*) as endangered is not warranted.

DATES: The finding announced in this document was approved on July 5, 1994.

ADDRESSES: Questions or comments concerning this finding should be sent to U.S. Fish and Wildlife Service, 730 Simms Street, Suite 290, Golden, Colorado 80401. The petition, finding, and supporting data are available for public inspection by appointment during normal business hours at the above office.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson, Field Supervisor, at the above address or telephone (303) 231–5280.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (i) not warranted, (ii) warranted, or (iii) warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species. Notice of the finding is to be published promptly in the **Federal Register**. This notice meets the latter requirement for the 12-month finding made earlier for the petition discussed below. Information contained in this notice is a summary of the information in the 12-month finding, which is the Service's decision document.

A petition dated September 30, 1992, was received from the Biodiversity Legal Foundation and Dr. Shi-Kuei Wu of the University of Colorado on October 5, 1992. The petitioners requested the Service to emergency list the Rocky Mountain capshell (*Acroloxus coloradensis*) as endangered and to designate critical habitat concurrently with the listing. The petitioners submitted biological, distributional, historical, and other information and scientific references in support of the petition. The notice of a 90-day finding was published in the **Federal Register** on May 14, 1993 (58 FR 28543), indicating that the petitioners provided substantial information to warrant the requested action. Concurrent with publishing the notice, the Service initiated a status review.

When the 90-day finding was completed, the Rocky Mountain capshell was thought to be restricted to only two populations in the United States and five in Canada. In the United States, one population existed at Peterson Lake, Boulder County, Colorado, and the other at Glacier National Park in Montana. In Canada, the Rocky Mountain capshell was known to occur in three lakes in Quebec and two ponds in Ontario. The species was presumed extirpated from two lakes in Jasper National Park, Alberta (Clarke 1992a).

During the summer of 1993, an extensive survey effort in Colorado increased the number of known Rocky Mountain capshell populations in Colorado from one to five, with four of these populations apparently in "good health" and occurring on National Park Service or U.S. Forest Service lands (Pioneer Environmental Services 1993, Riebesell and Kovalak 1993). The fifth population is located on privately owned land and appears to be the only Colorado population that is in peril.

A status survey conducted at Lost Lake, Montana in September 1992 found that Rocky Mountain capshell population to be stable. This population is estimated to contain between 20,000 and 40,000 individuals, based on the number of snails found per square meter and the amount of available habitat (A.H. Clark, Ecosearch Inc., *in litt.*, 1992).

New information provided by Jasper National Park personnel in Canada indicates at least one Rocky Mountain capshell population still exists within the Park and there is the likelihood a second population (N. Manners, Jasper National Park, *in litt.*, 1993). A few specimens were also found under a bridge in another area outside the Park in 1991 (Paul and Clifford, 1991). Thus, Alberta appears to harbor at least two, and possibly three, Rocky Mountain capshell populations.

A previously unreported Rocky Mountain capshell population appears to occur at Purden Lake, British Columbia (Clarke 1992b). However, the Service has been unable to obtain any information on its population status. The three populations previously reported to occur in Quebec and the two in Ontario apparently still exist, but the status of each population is not known.

With the discovery of 4 new populations in Colorado, 1 in Alberta, and 1 in British Columbia, and the possibility of 1 or 2 populations still existing in Jasper National Park, the number of reported Rocky Mountain capshell populations has increased from 7 to at least 14 in less than 1 year.

Summary of Factors Affecting the Species

The following information is a summary and discussion of the five factors or listing criteria as set forth in section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act and their applicability to the current status of the Rocky Mountain capshell.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Peterson Lake, Colorado, population may be nearly extirpated and a survey in June found only three live specimens and one empty shell after 12 hours of intensive searching (Clarke 1992a). Subsequent surveys found a few more individuals, some were at deeper depths than found previously (Pioneer Environmental Services 1993; G. Hopkins, Pioneer Environmental Services, *in litt.*, 1993).

Activities which might have caused the decline of the population in Peterson Lake include road maintenance (salting/sanding and grading), ski resort activities (water depletion and treated waste water discharge into the lake), landscaping, mining, lake drawdowns, and dam raising which resulted in the subsequent flooding of the enlarged lake basin. Since the present management of Eldora Mountain Resort took over operation of the ski area in 1991, the water quality of the lake has improved. Present information indicates that the species may again be increasing due to an improvement in the water quality of the lake. Future surveys will be necessary to verify this.

Aside from the population at Peterson Lake, none of the other 13 remaining populations are thought to be significantly impacted by the present or threatened destruction, modification, or curtailment of habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Some of the lakes inhabited by the Rocky Mountain capshell receive fishing, camping, and swimming activities; but this factor is not thought to be a threat to the continued existence of the Rocky Mountain capshell

C. Disease or Predation

The introduction of trout may have been one of the factors that contributed to the decline of the Rocky Mountain capshell in Peterson Lake. Aside from this population, disease or predation is presently not a threat to any of the other 13 Rocky Mountain capshell populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The Service believes that the four newly discovered populations in Colorado are safe from human impacts since they occur on National Park Service and U.S. Forest Service lands.

The population in Glacier National Park is protected by Park Service regulations. With the exception of the one or two populations within Jasper National Park, the Canadian populations apparently do not have any regulatory protection. The lack of regulatory mechanisms is not known to be a threat at this time, but could change at some point in the future.

Peterson Lake include road maintenance (salting/sanding and grading), ski resort activities (water depletion and treated waste water discharge into the lake), landscaping, mining, lake drawdowns, and dam raising which resulted in the subsequent flooding of the enlarged lake basin. Since the present management of Eldora Mountain Resort took over operation of the ski area in 1991, the water quality of the lake has improved. Present information indicates that the species may again be increasing due to an improvement in the water quality of the lake. Future surveys will be necessary to verify this.

Aside from the population at Peterson Lake, none of the other 13 remaining populations are thought to be significantly impacted by the present or threatened destruction, modification, or curtailment of habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Some of the lakes inhabited by the Rocky Mountain capshell receive fishing, camping, and swimming activities; but this factor is not thought to be a threat to the continued existence of the Rocky Mountain capshell.

C. Disease or Predation

The introduction of trout may have been one of the factors that contributed to the decline of the Rocky Mountain capshell in Peterson Lake. Aside from this population, disease or predation is presently not a threat to any of the other 13 Rocky Mountain capshell populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The Service believes that the four newly discovered populations in Colorado are safe from human impacts since they occur on National Park Service and U.S. Forest Service lands.

The population in Glacier National Park is protected by Park Service regulations. With the exception of the one or two populations within Jasper National Park, the Canadian populations apparently do not have any regulatory protection. The lack of regulatory mechanisms is not known to be a threat at this time, but could change at some point in the future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

At Peterson Lake, severe drought coupled with the winter water drawdown form the lake by Eldora Ski Resort, has on occasion lowered the water level dramatically. These events have exposed the Rocky Mountain capshell to dehydration and freezing conditions. In 1979, the existing access road adjacent to Peterson Lake was paved. This expedited runoff, thus increased the natural sedimentation process plus adding an influx of possible salt and sand contaminants into the lake.

When the 90-day finding was made, the Service believed that the two populations in Jasper National Park had been extirpated due to the lakes they inhabited being poisoned. However, new information has shown that neither lake was poisoned.

The Rocky Mountain capshell population in Peterson Lake may be threatened by natural or manmade factors, but none of the other 13 known populations are thought to be threatened by any of these factors.

Finding

Emergency listing is allowed under the Act whenever immediate protection is needed to prevent extirpation of a species. For an invertebrate species, endangerment must be considered throughout the range of the species rather than for a single population.

Considering information previously discussed in this notice, only the Peterson Lake population of the 14 known Rocky Mountain capshell populations is thought to be subject to possible endangerment or extinction in the foreseeable future. Also, in less than one year's time, the number of reported populations increased from 7 to 14. Since little is known about the biology, ecology, and distribution of the Rocky Mountain capshell, and since recently discovered populations in Colorado, Alberta, and British Columbia point to a wider geographical distribution than previously thought, the Service believes that additional populations exist in suitable habitat in the United States and in Canada.

After reviewing the petition, accompanying documentation, references cited therein, and research findings, the Service concludes that the petition requesting that the Rocky Mountain capshell be listed as an endangered species on an emergency basis throughout its range is not warranted. The petitioners also requested that critical habitat be designated. In the future, if a warranted finding is made for the species, then designation of critical habitat would be addressed in the subsequent proposed rule. After arriving at the not warranted finding, the Service changed the species' candidate status from category 2 to category 3C.

The Service's 12-month finding contains more detailed information regarding the above decisions. A copy may be obtained from the Service's Golden office (see **ADDRESSES** above)

References Cited

Clark, A.H. 1992a. Third progress report of status survey of selected invertebrates of Utah. U.S. Fish and Wildlife Service Contract 14–16–0006–91. Ecosearch; Inc., Portland Texas. 6 pp

Clark, A.H. 1992b. Fourth progress report of status survey of selected invertebrates of Utah. U.S. Fish and Wildlife Service Contract 14–16–0006–91. Ecosearch, Inc., Portland Texas. 2 pp.

Paul, A.J., and H.F. Clifford. 1993. *Acroloxus coloradensis* (Henderson), a rare North American freshwater limpet. The Nautilus 105(4): 173–174.

Pioneer Environmental Services, Inc. 1993. Results of survey for the Rocky Mountain capshell snail in Colorado alpine lakes. Prepared for Eldora Enterprises Limited Liability Company, Lake Eldora Corporation and Colorado Division of Wildlife. 12 pp plus appendix.

Riebesell, J.F., and W.P. Kovalak. 1993. Finch Lake sampling summary. Report to Rocky Mountain National Park, Estes Park Colorado. 8 pp

Author

This notice was prepared by Jose Bernardo Garza (see **ADDRESSES** section)

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544)

List of Subjects in 50 CFR Part 17

Endangered and threatened species Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 5, 1994

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–16847 Filed 7–11–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 59, No. 132
Tuesday, July 12, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Arizona Electric Power Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has amended its finding of no significant impact (FONSI) dated February 3, 1993, with respect to the potential environmental impact resulting from a proposal by Arizona Electric Power Cooperative, Inc. (AEPCO), to construct and operate a new ash and scrubber waste disposal facility adjacent to its Apache Generating Station.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The Apache Generating Station is located approximately 11 miles southeast of the Town of Willcox in Cochise County, Arizona. The proposed project consists of constructing a 285-acre disposal facility that will include two ash pond cells, an evaporation pond, and a scrubber sludge disposal pond. Due to site topography, the above ground height of the disposal facility's exterior dikes will range from 5 feet along the western border to 30 feet along the eastern border. The dike side slopes and pond bottoms will be lined with high density synthetic polyethylene flexible membrane liners. Above ground pipelines will be used to sluice the ash and scrubber wastes from the plant to the disposal facility. The facility is designed as a no discharge system.

Alternatives considered to the proposed project included reconstruction of the existing ash and sludge ponds (no action), total conversion of the Station to burn natural gas, sale of the ash and scrubber sludge, dry disposal of ash and scrubber sludge, and construction of new disposal facilities at a different location. REA considered these alternatives and concluded in a FONSI published in the **Federal Register** on February 12, 1993 that constructing new ash and scrubber waste disposal facilities at the AEPCO's proposed site was the preferred alternative to ensure continued operation of the Apache Station's coal-fired units and compliance with recent aquifer protection legislation.

Subsequent to REA's previous action, an earth fissure was identified within the boundaries of AEPCO's preferred site. This issue was considered significant enough for the Arizona Department of Environmental Quality (ADEQ) to require an onsite investigation. REA decided to reevaluate the proposed project based on the results of that investigation. The amended FONSI is based on a review of the following information: (1) Combustion Waste Disposal Facility Fissure Investigation; (2) Public Hearing Transcript on the draft Aquifer Protection Permit (APP); (3) Responsiveness Summary prepared by the ADEQ in response to public comments on the draft APP; (4) Final APP issued on April 22, 1994; and (5) other permits and approvals issued for the proposed facility and referenced in the FONSI. REA independently evaluated the above listed documents and other available information and believes that modified design and additional monitoring requirements included in the APP will ensure that future expansion or movement of the fissure and associated seepage from the ponds is detected. These measures should preclude the potential for adverse impacts to groundwater quality in the vicinity of the proposed facility.

In accordance with REA Environmental Policies and Procedures for Electric and Telephone Borrowers, 7 CFR Part 1794, AEPCO published notices in the *San Pedro Valley News Sun* and the *Willcox Range News* on May 5 and 12, 1994. The notices announced REA's decision to reassess its FONSI determination of February 12, 1993, described the documentation upon which the reassessment would be based, and identified locations within Cochise County at which these materials could be reviewed. The comments received did not identify any issues or concerns relating to the project that: (1) had not been addressed by the appropriate regulatory authority; or (2) had not been previously brought to REA's attention.

A copy of the amended finding of no significant impact is available for review at, or can be obtained from, REA at the address provided herein or from Mr. Mark W. Schwirtz, Arizona Electric Power Cooperative, Inc., 1000 South Highway 80, P.O. Box 670, Benson, Arizona 85602, during normal business hours.

Dated: July 1, 1994.

Adam M. Golodner,

Deputy Administrator, Program Operations

[FR Doc. 94–16732 Filed 7–11–94; 8:45 am]

BILLING CODE 3410–15–P

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board (hereafter referred to as the UAB)
Date: August 18–20, 1994
Time: August 18—8 a.m.–4:30 p.m.
August 19—8 a.m.–4:30 p.m.
August 20—8 a.m.–12 noon
Place: August 18 (site visits); Colorado State University, Fort Collins, Colorado
August 19; Colorado Water Resources Institute (8 a.m.–11:30 a.m.), 410 University Services Center, Fort Collins, Colorado
Agicultural Research, Development, Education Center (1 p.m.–2:30 p.m.), 4616 NE Frontage Road, Fort Collins, Colorado
USDA–ARS National Seed Storage Laboratory (3 p.m.–4:30 p.m.), 111 South Mason, Fort Collins, Colorado
August 20; Rocky Mountain Forest and Range, Experiment Station (8 a.m.–12 noon), 240 West Prospect Road, Fort Collins, Colorado
Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person named below.
Purpose: Review agricultural, forestry, and range research and extension programs conducted by the Colorado State University College of Agricultural Sciences, USDA Agricultural Research Service National Seed Laboratory, and USDA Forest Service Rocky Mountain Forest and Range Experiment Station
Contact Person for Agenda and More Information: Ms. Marshall Tarkington, Executive Director, Science and Education Advisory Committees, Room 316A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; Telephone (202) 720–3684

Done in Washington, D.C. this 1st day of July 1994.

John Patrick Jordan,

Administrator.

[FR Doc. 94–16845 Filed 7–11–94; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronics Technical Advisory Committee; Closed Meeting

A meeting of the Electronics Technical Advisory Committee will be held August 3, 1994, at 9 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act

noon), 240 West Prospect Road, Fort Collins, Colorado

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: Review agricultural, forestry, and range research and extension programs conducted by the Colorado State University College of Agricultural Sciences, USDA Agricultural Research Service National Seed Laboratory, and USDA Forest Service Rocky Mountain Forest and Range Experiment Station

Contact Person for Agenda and More Information: Ms. Marshall Tarkington, Executive Director, Science and Education Advisory Committees, Room 316A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; Telephone (202) 720–3684

Done in Washington, D.C. this 1st day of July 1994.

John Patrick Jordan,

Administrator.

[FR Doc. 94–16845 Filed 7–11–94, 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronics Technical Advisory Committee; Closed Meeting

A meeting of the Electronics Technical Advisory Committee will be held August 3, 1994, at 9 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, call 202–482–2583.

Dated: July 7, 1994

Betty Ferrell,

Director, Technical Advisory Committee Unit

[FR Doc. 94–16803 Filed 7–11–94; 8:45 am]

BILLING CODE 3510–DT–M

Regulations and Procedures Technical Advisory Committee; Partially Closed Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held August 2, 1994 at 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis on implementation of the Export Administration Regulations (EARS), and provides for continuing review to update the EARS as needed.

Agenda

General Session

1. Opening remarks by the Chairman
2. Presentation of papers or comments by the public
3. Reports from RPTAC working groups
4. Update on Export Administration Act (EAA) and Bureau of Export Administration (BXA) reorganization
5. Update on Export Administration Regulations (EAR) and other issues
6. Discussion on foreign policy controls (State Department)

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, TAC Unit/ODAS/EA, Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 18, 1993, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: July 7, 1994.

Betty Ferrell,

Director, Technical Advisory Committee Unit

[FR Doc. 94–16804 Filed 7–11–94, 8:45 am]

BILLING CODE 3510–DT–M

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held August 4, 1994, 9 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street and Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

General Session

1. Opening Remarks by the Chairman
2. Introduction of Members and Visitors
3. Presentation of Papers or Comments by the Public
4. Discussion of recent revisions to the Export Administration Regulations (EAR)
5. Discussion of BXA reorganization

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with U.S. and COCOM control program and strategic criteria related thereto

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, TAC Unit/QAS/EA, Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1), shall be exempt from the provisions relating to public meetings found in sections 10 (a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call (202) 482–2583.

Dated: July 7, 1994

Lee Ann Carpenter,

Acting Director, Technical Advisory Committee Unit.

[FR Doc. 94–16854 Filed 7–11–94; 8:45 am]

BILLING CODE 3510–DT–M

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, Room B–256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 91–001

Title: Improved Oscillating Tube Densimeter

Description: The oscillating tube densimeter provides a unique measurement of fluid density. The invention consists of an electrically conducting tube, through which the fluid is passed, surrounded by a magnet. A current passed through the tube thus generates electromagnetic forces. These forces, in turn, generate a resonant frequency in the tube which can be accurately determined through a measurement of the induced voltage. Since the resonant frequency is dependent on the density of the fluid, it can thus be correlated to this induced voltage.

NIST Docket No. 92–008

Title: Sensing of Gas Metal Arc Welding Process Characteristics for Welding Process Control

Description: A method of monitoring and controlling the gas metal arc welding process. The weld electrical signals contain information on the welding process characteristics. This invention monitors the welding process using a personal computer and develops control responses from the information contained in these signals.

NIST Docket No. 92–036

Title: Oxygen-Containing Organic Compounds As Boundary Lubricants for Silicon Nitride Ceramics

Description: Several oxygen-containing compounds have been identified as having boundary lubricating capability with silicon nitride ceramics. Effective lubrication can be obtained over a range of molecular weight and concentration, with some compounds suitable at concentrations of as little as 1% in a paraffinic oil.

NIST Docket No. 92–038

Title: Optical Technique for Monitoring Electrochemical Interfaces

Description: This invention allows real time measurement of the progress of a chemical reaction at an electrochemical interface. This is done by utilizing a coherent light source, without removing the solid interface from the sample and without stopping the chemical reaction. The light sources used in the invention, which can include a helium neon laser or a solid state laser, monitor the progress of a reaction by detecting changes in reactionary surface roughness and polarizability. A wide range of chemical reactions may be measured, including, for example, metal finishing, electrochemical machining, corrosion protection, metal deposition, electrochemical production, waste water treatment, or electrowining.

NIST Docket No. 92–050

Title: Compton Scattering Tomography

Description: New NIST technology generates tomographic images of solid objects that can only be examined from a single side. Based on Compton scattering of gamma rays of X-rays, the NIST-generated images reveal different densities within a material.

NIST Docket No. 92–051

Title: Methods and Electrolytic Compositions for Electrodepositing Chromium Coatings

Description: A new NIST process deposits chromium plating up to 600 microns thick, without using or generating carcinogenic byproducts. The plating process uses non-toxic trivalent chromium and the plating is three to four times harder, after heating, than depositions using hexavalent chromium.

NIST Docket No. 92–052

Title: Contactless Magnetically Coupled Linewidth System

Description: Linewidth measurements are made on integrated circuit test structures via magnetic coupling, removing the need for electrical contacts. A potential source of contamination is eliminated which reduces the possibility of circuit damage during testing.

Dated: July 6, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–16846 Filed 7–11–94; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

July 6, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no agreement was reached in recent consultations on a mutually satisfactory solution on Categories 340/640, the United States Government has decided to control imports in these categories for the twelve-month period beginning on April 25, 1994 and extending through April 24, 1995.

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of El Salvador, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

July 6, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no agreement was reached in recent consultations on a mutually satisfactory solution on Categories 340/640, the United States Government has decided to control imports in these categories for the twelve-month period beginning on April 25, 1994 and extending through April 24, 1995.

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of El Salvador, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 23830, published on May 9, 1994.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 13, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the twelve-month period beginning on April 25, 1994 and extending through April 24, 1995, in excess of 373,803 dozen [1].

Textile products in Categories 340/640 which have been exported to the United States prior to April 25, 1994 shall not be subject to the limit established in this directive.

Textile products in Categories 340/640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

For the import period April 25, 1994 through May 16, 1994, you are directed to charge 5,258 dozen to Category 340 under the limit established in this directive. There are zero charges for Category 640 for the same period.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1)

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–16759 Filed 7–11–94; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after April 24, 1994.

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

State Postsecondary Review Program

AGENCY: Department of Education.

ACTION: Notice of closing date for receipt of State applications for fiscal year 1994.

SUMMARY: The Secretary gives notice of the closing date for receipt of State applications for fiscal year 1994 funds under the State Postsecondary Review Program (SPRP). Under this program, a State enters into an agreement with the Secretary under which a State Postsecondary Review Entity (SPRE) designated by the State conducts or coordinates reviews of certain institutions of higher education that are either referred to the SPRE by the Secretary or selected by the State. To the extent of available appropriations, and a State's allotment from those appropriations, the Secretary reimburses a State for the costs incurred in carrying out its agreement.

A State that desires to receive its allotment under the SPRP for this fiscal year must have an agreement with the Secretary, as provided under 34 CFR 667.3 of the SPRP regulations, and must submit an application to the Secretary.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands (Palau), provided it remains a Trust Territory. (The future eligibility of the Republic of Palau will be determined by the provisions of the Compact of Free Association.) Authority for this program is contained in sections 494 through 494C of the Higher Education Act of 1965, as amended (HEA).

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS: An application for fiscal year 1994 SPRP funds must be mailed or hand-delivered by September 30, 1994.

APPLICATION FORM: The required application form for receiving SPRP funds will be mailed to officials of the appropriate SPRE in each State at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. *See*, in particular, 34 CFR 667.12.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail must be addressed to: Mr. Kenneth Waters, Branch Chief, State Liaison Branch,

Department of Education, 400 Maryland Avenue, S.W., Room 3036, ROB 3 Washington, D.C. 20202–5244.

The Secretary will accept the following proof of mailing: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. The Department of Education encourages applicants to use registered or at least first-class mail

APPLICATIONS DELIVERED BY HAND: An application that is hand-delivered must be taken to Mr. Kenneth Waters, Branch Chief, State Liaison Branch, Office of Postsecondary Education, Department of Education, National Capital Region Building, Room 3036, 7th and D Streets, S.W., Washington, D.C. 20202–5244 Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

PROGRAM INFORMATION: Under 34 CFR 667.12, for each fiscal year for which funds are appropriated to carry out the SPRP, a State must submit an application to the Secretary to receive its allotment. The Secretary approves a State's application under the provisions in § 667.13. In the application, each State must submit a plan to carry out SPRP activities and budget for those activities that does not exceed the State's allotment. A table of allotments is provided to each State in the application package. The Secretary determines a State's allotment according to the funding formula in 34 CFR 667.11.

In fiscal year 1993, 59 States, the District of Columbia, and the Commonwealth of Puerto Rico received funds under the SPRP.

AVAILABLE FUNDS: For fiscal year 1994, the Congress appropriated $21.25 million for the SPRP.

PROJECT PERIOD: The Secretary does not reimburse a State for costs incurred under an approved application unless those costs were incurred by the State (1) After the effective date of the State's agreement with the Secretary, and (2) on or before June 30, 1995.

APPLICABLE REGULATIONS: The following regulations are applicable to the State Postsecondary Review Program:

(1) The State Postsecondary Review Program regulations in 34 CFR part 667, as published in the **Federal Register** on April 29, 1994 (59 FR 22286);

(2) The following provisions in the Education Department General Administrative Regulations (EDGAR), in 34 CFR parts 76 and 80:

(i) 34 CFR 76.2, and 76.50 of subpart A;

(ii) 34 CFR 76.500 through 76.534, 76.560, 76.561, 76.563, and 76.580 through 76.592 of subpart F;

(iii) 34 CFR 76.701, 76.702, 76.703, 76.707, 76.720, 76.730, 76.731, 76.734, 76.760, and 76.761 of subpart G;

(iv) 34 CFR 80.22 of subpart A;

(v) 34 CFR 80.43 and 80.44 of subpart C;

(vi) 34 CFR 80.50 through 80.52 of subpart D;

(3) The Student Financial Assistance General Provisions in 34 CFR part 668, as published in the **Federal Register** on April 29, 1994 (59 FR 22348); and

(4) The Institutional Eligibility Provisions in 34 CFR part 600, as published in the **Federal Register** on April 29, 1994 (59 FR 22324).

Note: For purposes of the SPRP, the term "grantee," as defined and used in 34 CFR parts 76 and 80, refers only to a State Postsecondary Review Entity.

FOR FURTHER INFORMATION CONTACT: John Kolotos, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4318, ROB–3, Washington, D.C. 20202–5346. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(20 U.S.C. 1099a–1099a–3)

(Catalog of Federal Domestic Assistance Number 84.267, State Postsecondary Review Program)

Dated: July 6, 1994

David A. Longanecker,

Assistant Secretary for Postsecondary Education

[FR Doc. 94–16760 Filed 7–11–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Advisory Committee on Human Radiation Experiments

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Date and Time: July 25, 1994, 9 a.m.–5 p.m.; July 26, 1994, 9 a.m.–3 p.m.

Place: Stouffer Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW., Suite 600, Washington, DC 20036. Telephone (202) 254–9795.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891; January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Monday, July 25, 1994

9 a.m. Call to Order and Opening Remarks
9:10 a.m. Briefing on Background Issues, Advisory Committee Members
10:45 a.m. Break
11 a.m. Briefing on Background Issues, Advisory Committee Members (continued)
12:15 p.m. Lunch
1:30 p.m. Discussion, Status and Strategies of Document Collection and Review
3 p.m. Break
3:15 p.m. Discussion, Status and Strategies of Document Collection and Review (continued)
4 p.m. Public Comment (5 minute rule)
5 p.m. Meeting Adjourned

Tuesday, July 26, 1994

9 a.m. Opening Remarks
9:15 a.m. Discussion, Status of Document Collection and Review
10:45 a.m. Break
11 a.m. Discussion, Status of Document Collection and Review (continued)
12:15 p.m. Lunch
1:30 p.m. Discussion, Status of Document Collection and Review (continued)
3 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a 5 minute oral statement should contact the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript

Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 7, 1994

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–16850 Filed 7–11–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG94–69–000, et al.]

CMS Generation Cebu Limited Duration Company, et al. Electric Rate and Corporate Regulation Filings

July 5, 1994.

Take notice that the following filings have been made with the Commission:

1. CMS Generation Cebu Limited Duration Co.

[Docket No. EG94–69–000]

On June 24, 1994, CMS Generation Cebu Limited Duration Company, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

According to the application, CMS Generation Cebu Limited Duration Company is a Cayman Islands limited duration company that is an affiliate of CMS Generation Co., a Michigan corporation, which in turn is a wholly-owned subsidiary of CMS Enterprises Company, a Michigan corporation. CMS Enterprises Company is a wholly-owned subsidiary of CMS Energy Corporation, also a Michigan corporation.

Public Participation

The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a 5 minute oral statement should contact the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript

Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 7, 1994

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–16850 Filed 7–11–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG94–69–000, et al.]

CMS Generation Cebu Limited Duration Company, et al. Electric Rate and Corporate Regulation Filings

July 5, 1994.

Take notice that the following filings have been made with the Commission:

1. CMS Generation Cebu Limited Duration Co.

[Docket No. EG94–69–000]

On June 24, 1994, CMS Generation Cebu Limited Duration Company, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

According to the application, CMS Generation Cebu Limited Duration Company is a Cayman Islands limited duration company that is an affiliate of CMS Generation Co., a Michigan corporation, which in turn is a wholly-owned subsidiary of CMS Enterprises Company, a Michigan corporation. CMS Enterprises Company is a wholly-owned subsidiary of CMS Energy Corporation, also a Michigan corporation.

The application states that CMS Generation Cebu Limited Duration Company will acquire an interest in Toledo Power Co., a Philippine partnership which will own and operate two power plants with a combined maximum capacity of 140 MW. The plants will be located in Toledo City on the Island of Cebu in the Philippines and the power generated by the plants will be sold to the National Power Corporation and to Cebu Electric Cooperative III. Coal and fuel oil will be burned by the plants.

Comment date: July 19, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Les Developpements Hydroelectrique CHI International, Inc.

[Docket No. EG94–70–000]

On June 28, 1994, Les Developpements Hydroelectrique CHI International, Inc., 4269 St. Catherine St., W, Suite 600, Westmount, Quebec Canada H3Z 1P7, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant, a Quebec corporation, will be operating hydroelectric facilities owned by Abitibi-Price, Inc. located on the Iroquois River in Iroquois Falls, Ontario, and having a total capacity of 80,135 kW.

Comment date: July 25, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Consolidated Hydro, Inc.

[Docket No. EG94–71–000]

On June 28, 1994, Consolidated Hydro, Inc., 4269 St. Catherine St., W, Suite 600, Westmount, Quebec Canada H3Z 1P7, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant, a Delaware corporation, will be operating hydroelectric facilities owned by Abitibi-Price, Inc. located on the Iroquois River in Iroquois Falls, Ontario, and having a total capacity of 80.135 kW.

Comment date: July 25, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Hermiston Power Partnership

[Docket No. EG94–72–000]

On June 28, 1994, Hermiston Power Partnership, c/o Hermiston Power Company, P.O. Box 7867, Boise, ID 83707, filed with the Federal Energy Regulatory Commission ("Commission") an application for exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Hermiston Power Partnership intends to own and operate a multi-unit, natural gas-fired combined-cycle cogeneration facility with automatic generation control and related transmission and interconnection equipment and with a maximum net electric power production capacity of 461 megawatts. All of the facility's electric power net of the facility's operating electric power will be sold at wholesale to the Bonneville Power Administration, acting on behalf of the United States Department of Energy.

Comment date: July 25, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Maine Yankee Atomic Power Company

[Docket Nos. EL93–22–005 and ER94–922–002]

Take notice that on May 23, 1994 the Maine Yankee Atomic Power Company (Maine Yankee) tendered a compliance filing pursuant to the Commission's Order Accepting Rates for Filing, Approving Settlement, and Granting Clarification dated March 31, 1994. The compliance filing contains a refund report associated with the reduction in the rate of return on common equity components for June 14, 1993.

Comment date: July 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Kentucky Utilities Company

[Docket No. ER94–209–001]

Take notice that on June 14, 1994 Kentucky Utilities Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: July 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Public Service Company

[Docket No. ER94–1244–000]

Take notice that on June 23, 1994, Southwestern Public Service Company,

tendered for filing supplemental information to its May 11, 1994 filing in this docket.

Comment date: July 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Cenergy, Inc.

[Docket No. ER94-1402-000]

Take notice that on June 28, 1994 Cenergy, Inc. (Cenergy), tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure and § 35.12 of the Commission's regulations, a petition for a disclaimer of jurisdiction under § 201 of the Federal Power Act, for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule FERC No. 1 to be effective as of November 1 1994. Cenergy is a wholly-owned subsidiary of Northern States Power Company (Minnesota).

Cenergy intends to engage in electric power and energy transactions as a broker and a marketer. Cenergy will function as a broker in transactions where it does not take title to power or energy. Cenergy will act as a marketer in transactions where it purchases power, capacity and related services from producers and resells such power to other purchasers.

Rate Schedule FERC No. 1 provides for the sale of capacity and energy at agreed prices. Rate Schedule FERC No. 1 also provides that (1) no sales may be made to affiliates, (2) no sales of power purchased from an affiliate may be made, and (3) no resales of power to the original seller or its affiliates may be made.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Canal Electric Company

[Docket No. ER94-1405-000]

Take notice that on June 29, 1994, Canal Electric Company (Canal) filed six documents under § 205 of the Federal Power Act: (1) two Capacity Disposition Commitments between itself and Commonwealth, which implement the terms of the Capacity Acquisition and Disposition Agreement (FERC Rate Schedule No. 21, Supplement No. 25) with respect to the assignment by Commonwealth to Canal of a portion of Commonwealth's entitlement in Canal Unit No. 2. Canal will sell a portion of Commonwealth's entitlement to the output of Canal Unit No. 2 to Hudson Light and Power Department (HL&P) and United Illuminating (UI) over the period July 1, 1994 through November 1, 1998. Each buyer's entitlement is referred to herein as the Quota; (2) two Power Contracts between itself and Commonwealth, which provide that Canal will credit all revenues from the sale of the HL&P Quota and/or the UI Quota to Commonwealth; and (3) two Power Sale Agreements between itself and HL&P and itself and UI with respect to the sale of each buyer's Quota.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Appalachian Power Company

[Docket No. ER94-1406-000]

Take notice that on June 29, 1994, Appalachian Power Company (APCo), tendered for filing with the Commission June 2, 1994 Addenda to the existing Electric Service Agreements between APCo and Black Diamond Power Company, Union Power Company and War Light & Power Company, respectively, which increase APCo's maximum capacity commitments from 80 kW to 95 kW at Black Diamond Power Company's single delivery point; from 275 kW to 340 kW at Union Power Company's Pierpont Delivery Point; and from 3,500 kW to 4,000 kW at War Light & Power Company's single delivery point.

APCo proposes an effective date of September 1, 1994, and states that a copy of its filing was served on the affected customer and the Public Service Commission of West Virginia.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Appalachian Power Company

[Docket No. ER94-1407-000]

Take notice that on June 29, 1994, Appalachian Power Company (APCo), tendered for filing with the Commission a May 11, 1994 Addendum to the existing Electric Service Agreement between APCo and Craig-Botetourt Electric Cooperative, Inc. (Craig-Botetourt), which increases APCo's maximum capacity commitment from 5,500 kW to 6,500 kW at Craig-Botetourt's Meadow Creek Delivery Point and from 4,900 to 6,000 kW at its Stone Coal Gap Delivery Point.

APCo proposes an effective date of September 1, 1994, and states that a copy of its filing was served on the affected customer and the Virginia State Corporation Commission.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Appalachian Power Company

[Docket No. ER94-1408-000]

Take notice that on June 29, 1994, Appalachian Power Company (APCo), tendered for filing with the Commission a May 24, 1994 Addendum to the existing Electric Service Agreement between APCo and West Virginia Power, a Division of Utilicorp United Inc. (West Virginia Power), which increases APCo's maximum capacity commitment to West Virginia Power from 18,900 kW to 24,000 kW at its Hinton Delivery Point.

APCo proposes an effective date of September 1, 1994, and states that a copy of its filing was served on the affected customer and the Public Service Commission of West Virginia.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of Oklahoma

[Docket No. ER94-1410-000]

Take notice that on June 29, 1994, Public Service Company of Oklahoma (PSO) tendered for filing a Coordination Sales Tariff. Under the Coordination Sales Tariff, PSO will make Economy Energy, Short-Term Power and Energy, General Purpose Energy and Emergency Energy Service available to customers upon mutual agreement.

PSO seeks an effective date of August 31, 1994. Copies of this filing were served on the Oklahoma Corporation Commission and are available for public inspection at PSO's offices in Tulsa, Oklahoma.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Atlantic City Electric Company

[Docket No. ER94-1411-000]

Take notice that on June 29, 1994, Atlantic City Electric Company (ACE) tendered for filing an Agreement for Short-Term Energy Transactions between ACE and Consolidated Edison Company of New York, Inc. ACE requests that the Agreement be accepted to become effective July 1, 1994.

Copies of the filing were served on the New Jersey Board of Regulatory Commissioners and the New York Public Service Commission.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER94-1412-000]

Take notice that on June 30, 1994, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, the First Amendment to Transmission Service and Operating Agreement between Utah Associated Municipal Power Systems (UAMPS) and PacifiCorp dated June 28, 1994.

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of July 1, 1994 be assigned to the filing.

Copies of this filing were supplied to UAMPS, the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Arizona Public Service Company

[Docket No. ER94-1413-000]

Take notice that on June 30, 1994, Arizona Public Service Company (APS) tendered for filing revised Exhibit I's to the Lease Power Agreement between APS and Electrical District No. 3 (District) (APS-FPC Rate Schedule No. 12).

A copy of this filing has been served on the District and the Arizona Corporation Commission.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER94-1414-000]

Take notice that on June 30, 1994, Arizona Public Service Company (APS) tendered for filing a Letter Agreement (Agreement) between APS and Maricopa County Municipal Water Conservation District Number One (MWD). The Agreement provides for transmission and supplemental wholesale power services to MWD's Lake Pleasant Property.

Copies of this filing have been served upon MWD and the Arizona Corporation Commission.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Power Systems (UAMPS) and PacifiCorp dated June 28, 1994.

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of July 1, 1994 be assigned to the filing.

Copies of this filing were supplied to UAMPS, the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Arizona Public Service Company

[Docket No. ER94–1413–000]

Take notice that on June 30, 1994, Arizona Public Service Company (APS) tendered for filing revised Exhibit I's to the Lease Power Agreement between APS and Electrical District No. 3 (District) (APS–FPC Rate Schedule No. 12).

A copy of this filing has been served on the District and the Arizona Corporation Commission.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER94–1414–000]

Take notice that on June 30, 1994, Arizona Public Service Company (APS) tendered for filing a Letter Agreement (Agreement) between APS and Maricopa County Municipal Water Conservation District Number One (MWD). The Agreement provides for transmission and supplemental wholesale power services to MWD's Lake Pleasant Property.

Copies of this filing have been served upon MWD and the Arizona Corporation Commission.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16761 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC92–21–000, et al.]

Entergy Services, Inc. and Gulf States Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

July 1, 1994.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc. and Gulf States Utilities Company

[Docket Nos. EC92–21–000 and ER92–806–004]

Take notice that on June 16, 1994 Entergy Services, Inc. and Gulf States Utilities Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Power Co.

[Docket No. ER94–566–000]

Take notice that on June 17, 1994 Consumers Power Company (Consumers) acting on behalf of itself and as agent for The Detroit Edison Company (Detroit Edison), tendered for filing various materials amending and supplementing the original December 30, 1993 filing in this docket.

Copies of the filing were served upon the Michigan Public Service Commission, Consumers and Detroit Edison.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Company

[Docket No. ER94–1204–000]

Take notice that on June 28, 1994, Wisconsin Power and Light Company (WP&L) tendered for filing an amendment to its Bulk Power Sales Tariff, originally filed on April 29, 1994. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 15, 1994.

WP&L states that copies of this filing have been served on the Public Service Commission of Wisconsin.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Company

[Docket No. ER94–1398–000]

Take notice that on June 27, 1994, Pennsylvania Power & Light Company (PP&L), tendered for filing an Electrical Output Sales Agreement (Agreement) between PP&L and Public Service Electric & Gas Company (PSE&G) dated June 17, 1994. The Agreement provides for the sale by PP&L to PSE&G of electrical output solely for PSE&G's system use.

PP&L has requested an effective date of August 26, 1994 for the Agreement. PP&L has not requested any notice period waivers.

PP&L states that a copy of its filing was provided to PSE&G and to the Pennsylvania Public Utility Commission.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Public Service Company

[Docket No. ER94–1400–000]

Take notice that on June 28, 1994, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to the Agreement for Wholesale Full Requirements Electric Power Service to Lea County Electric Cooperative, Inc.

The amendment reflects an extension in the term of the original agreement to December 31, 2014. No other changes in rates or services is proposed. Southwestern seeks waiver of the 60-day notice so that the agreement may become effective on August 1, 1994. Lea County agrees with the filing and request for waiver as indicated in their certificate of concurrence.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. ER94–1401–000]

Take notice that on June 28, 1994, PSI Energy, Inc. (PSI), tendered for filing an Interchange Agreement, dated June 1, 1994, between PSI and Louis Dreyfus Electric Inc. (Dreyfus).

The Interchange Agreement provides for the following service between PSI and Dreyfus:

1. Exhibit A—Power Sales by Dreyfus
2. Exhibit B—Power Sales by PSI

PSI and Dreyfus have requested an effective date of July 1, 1994.

Copies of the filing were served on Louis Dreyfus Electric Power Inc., Connecticut Department of Public Utility Control and the Indiana Utility Regulatory Commission.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER94-1374-000]

Take notice that on June 14, 1994, New England Power Pool (NEPOOL) tendered for filing a letter requesting that the Commission determine that its approval is not required for NEPOOL's resignation as a member of the Interregional Transmission Coordination Forum.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER94-1399-000]

Take notice that on June 27, 1994, Union Electric Company (Union) tendered for filing a Notice of Cancellation of an Electric Service Agreement for Wholesale Electric Service between Union and the City of Kennett, Missouri.

Comment date: July 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-16762 Filed 7-11-94, 8:45 am]

BILLING CODE 6717-01-P

[Docket Nos. CP93-613-000 and -001; CP93-673-000 and -001]

Northwest Pipeline Corp.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Northwest Expansion II Projects

July 6, 1994.

On November 10, 1993 the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Intent To Prepare a Draft Environmental Impact Statement (EIS) for the Northwest Expansion II Projects in the above dockets and related projects proposed by Paiute Pipeline Company (Paiute) in Docket Nos. CP93-751-000 and CP94-29-000 (Paiute Expansion II Projects). The purpose of the notice was to request comments on environmental issues.

On June 14 and June 15, 1994 Northwest Pipeline Corporation (Northwest) filed amendments to its two original applications that represent a change in the scope of the Northwest Expansion II Projects. Based on the changes in the amended filings, we have determined that an environmental assessment (EA), rather than an EIS is the more appropriate document for analyzing the potential environmental impacts associated with Northwest's projects. The cooperating Federal agencies agree with this strategy. From the standpoint of the environmental analysis the important changes are:

- The deletion of 8 pipeline loops from the projects, which reduces the total miles of pipeline construction from 177.2 miles to 54.9 miles;
- The deletion of 11 compressor station modifications, which reduces the required compression from 88,235 horsepower (hp) to 14,820 hp;
- The addition of 5.8 miles of 20-inch-diameter loop in Marion County, Oregon (the Salem Loop) and 1,070 hp at the existing Pegram Compressor Station in Bear Lake County, Idaho that were not part of the original proposals;
- The deletion of 26 of the 37 originally proposed meter station modifications;
- The change in pipeline routing of both the Gresham Loop and Weyerhaeuser Lateral; and
- The termination of service agreements by all shippers that had proposed to have Northwest deliver gas to Paiute for ultimate delivery to customers in Nevada.

The list of facilities proposed in the amended filings are in appendix 1 and maps showing the location of the Salem Loop, the Pegram Compressor Station, and the amended routing for the Gresham Loop and Weyerhaeuser Lateral are attached as appendix 2.[1]

For the purposes of the environmental analysis Northwest's two applications will be considered together because the construction of the Gresham Loop is common to both applications.[2] The facilities proposed in Docket No. CP93-613-001 include the increase in compression at the Washougal Compressor Station; the construction of the Gresham Loop, 1.3 miles of the Salem Loop (milepost 64.1 to 65.3), and the Johnson Creek Meter Station; and the upgrading of six existing meter stations. The remaining facilities are part of Docket No. CP93-673-000.

The termination of all contracts that called for Northwest to deliver gas to Paiute effectively severs the connection between Northwest's and Paiute's proposals; therefore, only Northwest's proposed facilities will be included in the EA.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from a major Federal action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. Our EA will give the Commission the information it needs to do that. If the EA concludes that the projects would result in significant environmental impacts, we will prepare an environmental impact statement. Otherwise we will prepare a Finding of No Significant Impact.

NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues, and to separate these from issues that are insignificant and do not require detailed study. Local scoping meetings have already been held for the original projects. Additional scoping meetings are not planned. We are asking for comments *only* on those portions of the projects where the routing has been changed or the facilities were *not* part of the original proposal.

The EA will discuss impacts that *could* occur as a result of the construction and operation of the proposed projects under these general subject headings:

- Geology and paleontology
- Endangered and threatened species
- Visual resources
- Water resources
- Vegetation
- Land use
- Air quality and noise
- Wetland and riparian habitat
- Cultural resources
- Fish and wildlife
- Socioeconomics
- Soils

We will also evaluate possible alternatives to the projects, or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will result in the publication of the EA which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings.

Public Participation

You can make a difference by sending a letter with your specific comments or concerns about the projects. You should focus on the potential environmental effects of the new portions of the proposal. You do not need to re-submit comments if you have already done so. We are particularly interested in alternatives to the proposals (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.
- Reference Docket Nos. CP93-613-001 and/or CP93-673-001;
- Send a *copy* of your letter to: Ms. Lauren O'Donnell, Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and
- Mail your comments so they will be received in Washington, DC, on or before August 11, 1994.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceedings or an "intervenor". Among

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426 or call (202) 208-1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] The length and location of the Gresham Loop is the same in both applications; however, in Docket No. CP93-613-001 Northwest proposes using 20-inch-diameter pipeline, while Docket No. CP93-673-00 proposes using 30-inch-diameter pipeline.

The EA will discuss impacts that *could* occur as a result of the construction and operation of the proposed projects under these general subject headings:

- Geology and paleontology
- Endangered and threatened species
- Visual resources
- Water resources
- Vegetation
- Land use
- Air quality and noise
- Wetland and riparian habitat
- Cultural resources
- Fish and wildlife
- Socioeconomics
- Soils

We will also evaluate possible alternatives to the projects, or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will result in the publication of the EA which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings.

Public Participation

You can make a difference by sending a letter with your specific comments or concerns about the projects. You should focus on the potential environmental effects of the new portions of the proposal. You do not need to re-submit comments if you have already done so. We are particularly interested in alternatives to the proposals (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.
- Reference Docket Nos. CP93–613–001 and/or CP93–673–001;
- Send a *copy* of your letter to: Ms. Lauren O'Donnell, Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and
- Mail your comments so they will be received in Washington, DC, on or before August 11, 1994.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceedings or an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) which is attached as appendix 3. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

If you don't want to send comments at this time but still want to receive a copy of the EA, please return the Information Request (see appendix 4). If you have previously returned the Information Request you don't need to do so again.

Additional information about the proposed projects is available from Ms. Lauren O'Donnell, EA Project Manager, at (202) 208–0325.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16763 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2009–003 North Carolina]

Virginia Electric and Power Company; Change in Location of Scoping Meeting

July 6, 1994.

By notice dated July 1, 1994, the Commission indicated three scoping meetings related to the application for Non-project Use of Project Lands and Waters at the Gaston and Roanoke Rapids Project (FERC No. 2009), located on the Roanoke River.

The third scoping meeting was originally scheduled at the: OMNI Waterside Mall, 770 Waterside Drive, Norfolk, VA 23510.

The location of the third scoping meeting has been changed to: Sheraton Inn, 3601 Atlantic Avenue, Virginia Beach, VA 23451.

The time and date of the third scoping meeting have not changed.

Any questions concerning the scoping process for the Non-project Use of Project Lands and Waters at the Gaston and Roanoke Rapids Project should be directed to Steve Edmondson at (202) 219–2653.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–16842 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–304–000]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on June 30, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with an effective date of July 1, 1994:

Original Sheet No. 98D
Tenth Revised Sheet No. 20A

Algonquin states that the purpose of this filing is to flow through a refund related to Texas Eastern Transmission Corporation's stranded Account No. 858 costs. Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent that may be necessary to place these tariff sheets into effect as requested.

Algonquin states that copies of the filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16764 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1409–000]

Cambridge Electric Light Company; Filing

July 6, 1994.

Take notice that on June 29, 1994, Cambridge Electric Light Company (Cambridge) submitted for filing a proposed Transmission Service Agreement (Agreement) between itself and the Town of Belmont, Massachusetts (Belmont), as well as an accompanying Explanatory Statement. The Agreement, upon its effectiveness,

will cancel and supersede the existing transmission service agreement between Cambridge and Belmont pursuant to Cambridge's FERC Electric Tariff for Firm Transmission Service. Cambridge respectfully requests that the Commission accept this proposed Transmission Service Agreement and permit it to take effect without suspension, condition or modification, as of August 28, 1994. In addition, Cambridge requests waiver by the Commission of any requirements of the Commission's rules and regulations, as well as any authorizations as may be necessary or required to permit the Agreement to become effective in the manner proposed in the Agreement and to permit the cancellation and termination of the existing firm transmission service agreement as of the effective date of the Agreement.

Copies of the filing were served upon the Town of Belmont and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16765 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–310–000]

Carnegie Natural Gas Company; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on July 1, 1994, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of August 1, 1994:

Fifth Revised Sheet No. 7

Carnegie states that it is filing the above tariff sheet pursuant to § 32.2(c) of the General Terms and Conditions of its FERC-approved tariff as a Periodic Transportation Cost Rate (TCR) Filing to reflect a change in the calculated projection of the costs of unassigned upstream pipeline capacity held by Carnegie on Texas Eastern Transmission Corporation (Texas Eastern) in excess of $0.10/Dth. This filing reflects a revision to the projection Carnegie made in its Mid-Cycle TCR Filing, which was filed on March 31, 1994 and accepted by the Commission on April 29, 1994. The filing reflects a change in the Gas Supply Realignment surcharge charged to Carnegie by Texas Eastern, which will be effective July 1, 1994.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16766 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–300–000]

CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on June 30, 1994, CNG Transmission Corporation (CNG), pursuant to Section 4 of the Natural Gas Act and § 18.1 of the General Terms and Conditions of its tariff (General Terms), tendered for filing as part of its FERC Gas Tariff Second Revised Volume No. 1, Second Revised Sheet No. 58, with a proposed effective date of July 30, 1994.

CNG states that the proposed tariff sheet reflects the second direct bill for collection of Account Nos. 191 and 186 transition costs.

The direct bill mechanism was approved as part of the Stipulation and Agreement filed March 15, 1993, as supplemented on June 15, 1993, and approved by the Commission in CNG's restructuring proceeding in Docket No. RS92–14. CNG states that its filing includes a schedule showing the activity in Account Nos. 191 and 186 since its initial transition cost filing.

Section 18.1 of the General Terms allows CNG to make future fillings to recover additional unamortized Account No. 191 and 186 costs, particularly during the next 18-month adjustment period.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16767 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–308–000]

Eastern Shore Natural Gas Company; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on July 1, 1994 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1994.

Eastern Shore states that the purpose of the filing is to place tariff sheets into effect establishing a procedure by which Eastern Shore may recover from its jurisdictional customers the monthly Account No. 191 Transition Costs directly billed to Eastern Shore by Columbia Gas Transmission Corporation (Columbia), one of Eastern Shore's upstream pipeline suppliers.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16768 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ94–6–23–000 and TM94–11–23–000]

Eastern Shore Natural Gas Company; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on July 1, 1994 Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1994.

ESNG states that the above-referenced tariff sheets are being filed pursuant to Section 154.308 of the Commission's regulations and Sections 21, 23 and 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional sales rates.

ESNG states that the sales rates set forth thereon reflects an overall decrease of ($0.0016) per dt in the Commodity Charge and an overall decrease of ($0.7287) per dt in the Demand Charge, as measured against ESNG's previous quarterly purchased gas cost adjustment, Docket No. TQ94–5–23–000, *et al.*, filed on March 31, 1994 and proposed to be effective on May 1, 1994.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions

to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16768 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ94–6–23–000 and TM94–11–23–000]

Eastern Shore Natural Gas Company; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on July 1, 1994 Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1994.

ESNG states that the above-referenced tariff sheets are being filed pursuant to Section 154.308 of the Commission's regulations and Sections 21, 23 and 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional sales rates.

ESNG states that the sales rates set forth thereon reflects an overall decrease of ($0.0016) per dt in the Commodity Charge and an overall decrease of ($0.7287) per dt in the Demand Charge, as measured against ESNG's previous quarterly purchased gas cost adjustment, Docket No. TQ94–5–23–000, *et al.*, filed on March 31, 1994 and proposed to be effective on May 1, 1994.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16769 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1298–000]

Florida Power & Light Company; Filing

July 6, 1994.

Take notice that on June 17, 1994, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16770 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–306–000]

Mississippi River Transmission Corporation; Proposed Changes in FERC Tariff

July 6, 1994.

Take notice that on June 30, 1994, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 6
Fourth Revised Sheet No. 7
Fourth Revised Sheet No. 10
Third Revised Sheet No. 11
2 Sub. First Revised Sheet No. 195

MRT states that the purpose of this filing is to adjust its rates to reflect additional Gas Supply Realignment Costs (GSRC) of $1,190,048, plus applicable interest, pursuant to Section 16.3 of the General Terms and Conditions of MRT's Tariff. MRT states that its filing includes the "Price Differential" cost of continuing to perform under certain gas supply contracts during the months of January through March 1994 and GSRC Buyout/Buydown costs incurred during the period December, 1993 through April, 1994.

MRT states that it is also proposing a revision to § 16.3(b)(ii) of the General Terms and Conditions of its tariff to specify the index which must be used in the calculation of price differential costs for MRT gas supplies connected to Koch Gateway Pipeline Company.

MRT requests an effective date of July 1, 1994 for these tariff sheets, except for Sheet No. 195 for which MRT requests an effective date of November 1, 1993.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions and protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16771 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–56–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on July 1, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the below listed

tariff sheets to be effective August 1, 1994:

Third Revised Sheet Nos. 602 through 606
Third Revised Sheet No. 611

Natural states that the purpose of the filing is to update the Index of Purchasers contained in Natural's Tariff in accordance with § 154.41(a) of the Commission's Regulations.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective August 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16772 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–305–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on June 30, 1994 Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Seventh Revised Sheet No. 14 and Sixth Revised Sheet No. 25, to be effective August 1, 1994.

Natural states that the filing is being submitted to commence recovery, effective August 1, 1994, of $2,066,473 net premium paid for coal gasification supplies which is part of its gas supply realignment program.

Natural requested whatever waivers may be necessary to permit the tariff sheets as submitted herein to become effective August 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Natural states that it has reached a tentative settlement with members of the Natural Customer Group (NCG) regarding recovery from them of GSR costs. Natural suggests that members of the NCG may preserve their rights by filing an abbreviated protest which may be supplemented if the settlement is not approved.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16773 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–6–28–000]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

July 6, 1994

Take notice that on July 1, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A all of which are proposed to become effective August 1, 1994.

Panhandle states that this filing is being submitted pursuant to the requirements of Section 26 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 which requires that at least 30 days prior to August 1 of each year Panhandle make a filing with the Commission to reflect the adjustment, if any, required to Panhandle's Base Transportation and Storage Rates to reflect the result of the Interruptible Revenue Credit Adjustment.

Panhandle states that no adjustment is required to Base Transportation Rates for Rate Schedules FT, EFT and SCT and that a (.10¢) reduction is required in the maximum Capacity Charge for storage service under Rate Schedules IOS, WS, PS and FS.

Panhandle states that copies of this filing have been sent to all affected customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room

Lois D. Cashell.

Secretary

[FR Doc. 94–16774 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–8–000]

South Georgia Natural Gas Company; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on June 29, 1994, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 2, Eighteenth Revised Sheet Nos. 76 and 106, with an effective date of May 1, 1993.

South Georgia states that the proposed revised tariff sheets would flow through to South Georgia's two gas storage customers increased storage transportation charges billed to South Georgia by Southern Natural Gas Company (Southern).

South Georgia states that the Commission's August 22, 1980 order in the captioned proceeding permits South Georgia to flow through to its two storage customers any changes in the amounts which the Commission authorizes Southern to charge South Georgia for storage transportation services. South Georgia further states that the Commission recently accepted for filing to be effective May 1, 1993, subject to refund, revised tariff sheets filed by Southern which increased Southern's storage transportation charges to South Georgia.

South Georgia requests waivers of Section 154.51 of the Commission's Regulations and any other waivers necessary to make the revised tariff sheets effective as of May 1, 1993, the date of the increase in Southern's charges to South Georgia.

South Georgia states that copies of this filing were served on the two jurisdictional customers affected by the filing, interested state commissions and all parties in the captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to interview. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16775 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–307–000 and RP94–264–002]

Southern Natural Gas Company; GSR Revised Tariff Sheets

July 6, 1994.

Take notice that on June 30, 1994, Southern Natural Gas Company (Southern) submitted for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect a change in GSR billing units and the FERC interest rate effective July 1, 1994:

Second Substitute Ninth Revised Sheet No. 15
Second Substitute Ninth Revised Sheet No. 17
Second Substitute Seventh Revised Sheet No. 18
Seventh Revised Sheet No. 29
Seventh Revised Sheet No. 30
Seventh Revised Sheet No. 31

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211

Regulations and any other waivers necessary to make the revised tariff sheets effective as of May 1, 1993, the date of the increase in Southern's charges to South Georgia.

South Georgia states that copies of this filing were served on the two jurisdictional customers affected by the filing, interested state commissions and all parties in the captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to interview. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16775 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–307–000 and RP94–264–002]

Southern Natural Gas Company; GSR Revised Tariff Sheets

July 6, 1994.

Take notice that on June 30, 1994, Southern Natural Gas Company (Southern) submitted for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect a change in GSR billing units and the FERC interest rate effective July 1, 1994:

Second Substitute Ninth Revised Sheet No. 15
Second Substitute Ninth Revised Sheet No. 17
Second Substitute Seventh Revised Sheet No. 18
Seventh Revised Sheet No. 29
Seventh Revised Sheet No. 30
Seventh Revised Sheet No. 31

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16776 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–301–000]

Stingray Pipeline Company; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on June 30, 1994, Stingray Pipeline Company (Stingray) tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, to become effective August 1, 1994.

Stingray states that the filing reflects a base period encompassing the twelve months ended February 28, 1994, adjusted for known and measurable changes anticipated to occur during the nine month period ended November 30, 1994. Stingray further states that the filing reflects the utilization of a straight fixed-variable rate design, an equity return allowance of 15%, existing depreciation rate for transmission plant (3.1%), a higher negative salvage rate for transmission plant (from .35% to .60%), increased operation and maintenance expenses when compared to the level established in Stingray's last rate case settlement at Docket No. RP91–212, the elimination of its revenue sharing mechanism and a proposal to implement on a prospective basis after final settlement rates are determined an 80% load factor rate for service under Rate Schedule ITS.

In addition, Stingray states that the filing reflects the continuation of Stingray's market-based interruptible rate program established in its settlement at Docket No. RP91–212.

Stingray states that a copy of this filing was mailed to Stingray's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedures. All such petitions or protests must be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16777 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–5–17–000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on June 30, 1994, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing. The proposed effective date of these revised tariff sheets is August 1, 1994.

Texas Eastern states that these revised tariff sheets are filed pursuant to section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that section 15.1 provides that Texas Eastern shall file to be effective each August 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers.

Texas Eastern states that these revised tariff sheets are being filed to reflect changes in Texas Eastern's projected expenditures for electric power for the twelve month period beginning August 1, 1994 based upon the latest available actual expenditures for the twelve month period ending May 31, 1994, which is the first full twelve month period of experience under Texas Eastern's Order No. 636 tariff.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and current interruptible shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16778 Filed 7–11–94 8 45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–303–000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on June 30, 1994, Texas Eastern Transmission Corporation (Texas Eastern) filed a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. Section 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover stranded Account No. 858 costs (Stranded Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states that it is filing to recover Stranded Costs pursuant to Section 15.2(D) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume 1

Original Sheet No. 189
Original Sheet No. 190
Original Sheet No. 191
Original Sheet No. 192
Sheet Nos. 193–199

The proposed effective date of these tariff sheets is August 1, 1994.

Texas Eastern states that by this filing it seeks to recover known and measurable Stranded Costs totalling $1,492,538.37 incurred from March 1, 1994 through May 31, 1994. Interest of $21,891.24 at the current FERC annual rate of 6.00% is included for the carrying charges from the date of payment of the costs to the projected date of payment by the Customers.

Texas Eastern states that Stranded Costs shall be allocated to Texas Eastern's Customers under Rate Schedules CDS, FT–1 and SCT in accordance with the methodology specified in Section 15.2 (D) of the General Terms and Conditions. At each customer's individual option, payment of these Stranded Costs amounts may be amortized over as much as a twelve month period with carrying charges calculated on amounts uncollected pursuant to Section 154.305 of the Commission's Regulations.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16779 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–302–000]

Texas Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on June 30, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of August 1, 1994:

First Revised Sheet No. 231
Original Sheet No. 231A
Original Sheet No. 231B
Original Sheet No. 231C
Original Sheet No. 231D

Texas Gas states that the revised tariff sheets are being filed to initiate a Section 4 proceeding to establish provisions for final resolution of Historical Imbalances (pre-Order 636) on the Texas Gas system. Texas Gas further states that the tariff sheets generally define such imbalances and provide methods for reconciliation and final resolution of the historical imbalances.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected firm jurisdictional customers, those appearing on the applicable service lists, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room

Lois D. Cashell,

Secretary.

[FR Doc. 94–16780 Filed 7–11–94; 8.45 a

BILLING CODE 6717–01–M

[Docket No. TM94–14–29–000]

Transcontinental Gas Pipe Line Corporation; Proposed Changes In FERC Gas Tariff

July 6, 1994.

Take notice that on July 1, 1994 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Ninth Revised Sheet No. 60, which tariff sheet is proposed to be effective on August 1, 1994.

TGPL states that the instant filing is submitted pursuant to Section 39 of the General Terms and Conditions of TGPL's FERC Gas Tariff which provides that TGPL will file to adjust its Great Plains Volumetric Surcharge (GPS) 30 days prior to each GPS Annual Period beginning August 1. The GPS Surcharge is designed to recover: (i) The cost of gas purchased from Great Plains Gasification Associates (or its successor) which exceeds the Spot Index (as defined in Section 39 of the General Terms), and (ii) the related cost of transporting such gas.

The revised GPS Surcharge included therein consists of two components—the Current GPS Surcharge calculated for the period August 1, 1994 through July 31, 1995 plus the Great Plains Deferred Account Surcharge (Deferred Surcharge). The determination of the Deferred Surcharge is based on the balance in the current GPS subaccount plus accumulated interest at April 30, 1994.

TGPL states that included in Appendix A attached to the filing are workpapers supporting the calculation of the revised GPS Surcharge of $0.0287 per dt reflected on the tariff sheet included therein.

TGPL states that copies of the filing are being mailed to its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16781 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–55–000]

Trunkline Gas Company; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on June 30, 1994 Trunkline Gas Company (Trunkline) tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 as listed on Appendix No. 1 attached to the filing. Trunkline proposes that the revised tariff sheets listed on Appendix No. 1 become effective September 1, 1993, November 1, 1993, December 1, 1993, January 1, 1994, February 1, 1994, March 1, 1994, April 1, 1994, May 1, 1994 and June 1, 1994, respectively.

Trunkline states that this filing is being made in compliance with section 154.41(b) of the Commission's Regulations. The revised tariff sheets reflect updates to the Index of Firm Customers in Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that copies of this filing are being mailed to affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion

plus accumulated interest at April 30, 1994.

TGPL states that included in Appendix A attached to the filing are workpapers supporting the calculation of the revised GPS Surcharge of $0.0287 per dt reflected on the tariff sheet included therein.

TGPL states that copies of the filing are being mailed to its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16781 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–55–000]

Trunkline Gas Company; Proposed Changes in FERC Gas Tariff

July 6, 1994.

Take notice that on June 30, 1994 Trunkline Gas Company (Trunkline) tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 as listed on Appendix No. 1 attached to the filing. Trunkline proposes that the revised tariff sheets listed on Appendix No. 1 become effective September 1, 1993, November 1, 1993, December 1, 1993, January 1, 1994, February 1, 1994, March 1, 1994, April 1, 1994, May 1, 1994 and June 1, 1994, respectively.

Trunkline states that this filing is being made in compliance with section 154.41(b) of the Commission's Regulations. The revised tariff sheets reflect updates to the Index of Firm Customers in Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that copies of this filing are being mailed to affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16782 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–6–49–000]

Williston Basin Interstate Pipeline Company; Fuel Reimbursement Charge Filing

July 6, 1994.

Take notice that on July 1, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, with a proposed effective date of August 1, 1994:

Second Revised Volume No. 1
Sixth Revised Sheet No. 15
Third Revised Sheet No. 15A
Sixth Revised Sheet No. 16
Third Revised Sheet No. 16A
Sixth Revised Sheet No. 18
Third Revised Sheet No. 18A
Third Revised Sheet No. 19
Third Revised Sheet No. 20
Sixth Revised Sheet No. 21
Original Volume No. 2
Fifty-third Revised Sheet No. 10
Fifty-second Revised Sheet No. 11B.

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, and the calculation of new fuel reimbursement surcharges to amortize its Unrecovered Fuel Reimbursement Accounts in accordance with Subsection 38 of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16783 Filed 7–11–94; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Provo River Project—Proposed Rate Methodology of Annual Charges

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Provo River Project Rate Methodology of Annual Charges.

SUMMARY: The Western Area Power Administration (Western) is proposing a methodology to determine annual charges to accompany the independent marketing of Provo River Project (PRP) resources. A previous proposal to integrate this project and its resources with Western's Salt Lake City Area/Integrated Projects (Integrated Projects) was not supported by customers. To date, PRP's resources have been sold to the Colorado River Storage Project (CRSP) at a rate to cover project costs. Western proposes that capacity and energy produced by the PRP be marketed to those members of two Western customers, Intermountain Consumers Power Association (ICPA) and Utah Municipal Power Agency (UMPA), located in the area of the Provo River drainage, in Utah and Wasatch Counties in Utah. Power will be allocated to these two customers proportional to the electrical sales of their members who meet the criteria for receiving it. These customers will pay all of the annual expenses of the PRP, including an amount to be used to assist the Provo River Water Users Association's (Water Users) timely repayment of the original Federal investment in the PRP. In return, these customers will receive all of the total marketable output of the PRP.

The proposed rate methodology constitutes a minor rate adjustment as defined by the procedures for public participation in general rate adjustments covered in 10 CFR 903.2(f). The PRP annual sales are less than 100 million

kilowatthours and installed capacity is less than 20,000 kilowatts. A 30-day comment period will begin with the publication of this **Federal Register** notice and end 30 days thereafter. After review of public comments, Western will recommend a proposed rate methodology for establishing the annual charge to be approved on an interim basis by the Deputy Secretary of DOE. The proposed rate methodology will be sent to the Federal Energy Regulatory Commission for approval on a final basis. The proposed rate methodology for marketing capacity and energy is expected to become effective November 1, 1994, and it will remain in effect until October 31, 1999, unless superseded by another rate action.

At present there is no existing PRP rate. Energy has been sold to the CRSP at an amount that meets the PRP's annual revenue requirements for expenses and repayment obligations.

The following table shows the investment repayment status:

COST EVALUATION PERIOD

	Total	Estimated paid through FY 1994	Estimated paid from FY 1995–99	Estimated unpaid balance at the end of FY 1999
Project & Additions	$1,070,952	$1,070,952	$0	$0
Replacements through 1994	521,989	85,593	62,340	374,056
Projected Replacements 1995–1999	98,385	N/A	8,918	89,467
Total	1,691,326	1,156,545	71,258	463,523

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end August 11, 1994.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

A related notice appears in today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Acting Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493.

Background Information

Construction of the PRP was begun in May 1938, with the powerplant completed in 1958. It has a present generating capacity of 5 megawatts of power. The Water Users, a corporation of stockholders owning prorated water entitlements, executed contract No. Ilr–874 in 1936, with the Federal Government to construct and repay project facilities. Contract No. Ilr–1082, dated December 20, 1938, established a contract among several entities to compensate the Utah Power and Light Company with PRP power in exchange for power foregone at its powerplant. Only energy excess to project purposes has been available for Federal marketing. Since 1963, CRSP has needed additional energy and has purchased the available PRP energy at an amount established annually for the PRP to cover its costs, including operation, maintenance, and replacement costs and repayment expenses. These expenses have included $1.623 million of irrigation assistance to the Water Users. PRP's original power investment has been repaid.

In December 1993, Western proposed to change the way it marketed power and energy produced by PRP in response to customer interest in its available resources. The part of the proposal that suggested inclusion of the PRP in the Integrated Projects was not supported by customers for various reasons, thereby requiring Western to modify its original proposal to one which will market PRP's power and energy independent of the Integrated Projects. Two Western customers, ICPA and UMPA, pursued acquiring the available PRP capacity and energy. The members of these customers are located in the PRP drainage area in Utah and Wasatch Counties. Western proposes that these customers receive all of the total marketable output, with the power allocated proportionally to their eligible members' energy sales. ICPA and UMPA would pay all of the annual expenses of the project. An amount to meet the repayment assistance to the Water Users would be recovered under separate agreement.

Proposed Methodology

If Western adopts the proposal, Western will prepare a power repayment study (PRS) annually for PRP to establish the revenue needed to meet annual costs, including operation, maintenance, and replacement repayment costs and interest. Budgeted estimates of these future costs will be used in the PRS. The power assistance to the Water Users will not be included in the PRS but will, instead, be paid under a separate arrangement among the Bureau of Reclamation, Western, ICPA, UMPA, and the Water Users which will provide for equal annual installments of $102,285.71 over 14 years.

If the proposed methodology is adopted and PRP energy is no longer sold to the CRSP, it will be necessary to collect the PRP's share of transmission costs in Utah under contract No. 2436 with PacifiCorp. Assigning proportional shares of Western's Tier 1 and Tier 2 costs will result in an annual transmission expense of approximately $30,348. This amount also will be included as an annual expense of the PRP. The annual revenue requirement of the PRP, as determined by the PRS, will then be prorated between ICPA and UMPA and divided by 12 for monthly billing to the customers. The rate methodology used to determine the annual revenue requirement will be recalculated each year during the 5-year period that the methodology is proposed to be in effect.

SUPPLEMENTARY INFORMATION: The PRP rate methodology is established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902, 32 U.S.C. § 388 *et seq.*, as amended and supplemented by subsequent enactments, particularly § 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 58716), the Secretary of Energy delegated (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rate methodology for capacity and energy are and will be made available for inspection and copying at the Salt Lake City Area Office located at 257 East 200 South, Salt Lake City, Utah.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the PRP rate proposal is related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the PRP capacity and energy rate methodology is of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Issued in Golden, Colorado, June 24, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–16844 Filed 7–11–94; 8:45 am]

BILLING CODE 6450–01–P

disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rate methodology for capacity and energy are and will be made available for inspection and copying at the Salt Lake City Area Office located at 257 East 200 South, Salt Lake City, Utah.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the PRP rate proposal is related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the PRP capacity and energy rate methodology is of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Issued in Golden, Colorado, June 24, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–16844 Filed 7–11–94; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Members of Senior Executive Service Performance Review Board

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice lists the names of the members of the FEMA Senior Executive Service Performance Review Board.

EFFECTIVE DATE: June 29, 1994.

FOR FURTHER INFORMATION CONTACT: Denise R. Yachnik, Executive Coordinator, Office of Human Resources Management, 500 C Street, SW., Washington, DC 20472, 202–646–3040.

SUPPLEMENTARY INFORMATION: The names of members of the FEMA Senior Executive Service Performance Review Board established under 5 U.S.C. 4314(c)(4) are: G. Clay Hollister, John D. Hwang, Catherine H. Light, Gary D. Johnson, Robert P. Fletcher, Robert R. Boyer, John P. Carey, and Dennis E. Owens.

Dated: July 6, 1994.

John P. Carey,

General Counsel.

[FR Doc. 94–16734 Filed 7–11–94; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–002744–079.
Title: West Coast of South America Agreement.
Parties:
A.P. Moller-Maersk
Compania Chilena de Navigacion Interoceania, S.A.
Compania Sud Americana de Vapores, S.A.
Crowley American Transport, Inc.
Flota Mercante Grancolombiana, S.A.
Lykes Bros. Steamship Co., Inc.
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
South Pacific Shipping Company Ltd.

Synopsis: The proposed amendment provides that a Member may establish no more than two CY's and two CFS's in the commercial zones of ports in Florida and U.S. Gulf Coast ports.

Agreement No.: 202–003103–110.
Title: Japan-Atlantic & Gulf Freight Conference.
Parties:
Hapag-Lloyd AG
Mitsui O.S.K. Line, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Nippon Yusen Kaisha
Wilhelmsen Lines AS

Synopsis: The proposed amendment modifies Article 8(d)(2)(d) by deleting the requirement of voting by secret ballot and permitting changes in service contract rates to be decided by a two-thirds majority of all votes actually cast.

Agreement No.: 202–011102–022.
Title: U.S. Atlantic & Gulf/Western Mediterranean Rate Agreement.
Parties:
A.P. Moller-Maersk Line
Evergreen Marine Corporation (Taiwan) Ltd.
Italia di Navigazione, S.p.A.
Lykes Bros. Steamship Co., Inc.
Nedlloyd Lines
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would permit the Agreement members to take independent action on rate or service items that are exempted from the tariff filing requirements of section 8 of the Shipping Act on or after January 1, 1995.

Agreement No.: 202–011375–013.
Title: Trans-Atlantic Agreement.
Parties:
Atlantic Container Line AB
Cho Yang Shipping Co. Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Nedlloyd Lijnen BV
Hapag Lloyd AG
Mediterranean Shipping Company, S.A.
DSR/Senator Joint Service
Polish Ocean Lines
Orient Overseas Container Line (UK) Ltd.
Transportation Maritima Mexicana, S.A. de C.V.
P&O Containers Limited

Nippon Yusen Kaisha
Tecomar S.A. de C.V.

Synopsis: The proposed amendment eliminates the rate committee/non-rate committee status, reduces the specific I/A notice, changes to the service contract provisions, and restructures the framework of the capacity management program. In addition, the Agreement name has been changed to "Trans-Atlantic Conference Agreement" and the Agreement has been restated to reflect these and other non-substantive changes.

Agreement No.: 203–011460.
Title: Systems and Logistics Agreement.
Parties:

Atlantic Container Line
Blue Star (North America) Ltd.
Cho Yang Shipping Col Ltd.
Senator Linie GMBH & Co. KG

Synopsis: The proposed Agreement authorizes the parties to discuss, exchange documents and information and cooperate in the development, and use of uniform and or compatible systems in accounting, inland transportation, logistics, "in transit" handling of containers, ATFI-related matters, booking and documentation, and equipment utilization, between world-wide ports and points.

Agreement No.: 224–200872.
Title: Port of San Diego/Tenth Avenue Cold Storage Company Facility Operating Contract.
Parties:

Port of San Diego ("Port")
Tenth Avenue Cold Storage Company

Synopsis: The proposed Agreement authorizes the Port to retain a contractor to operate and maintain the Tenth Avenue Cool/Cold Storage Facility.

Agreement No.: 224–200873.
Title: Port of Houston Authority/Port-Cooper/T. Smith Stevedoring Company Terminal Agreement.
Parties:

Port of Houston ("Port")
Port-Cooper/T. Smith Stevedoring Company ("P–C/TSSC")

Synopsis: The proposed Agreement authorizes P–C/TSSC to perform freight handling services at the Port's Open Areas 8 and 9 and Transit Shed Number 9.

Dated: July 7, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–16834 Filed 7–11–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0841]

10 Percent Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments.

SUMMARY: In 1987 and 1989 the Board authorized bank holding companies to establish separate nonbank subsidiaries ("section 20 subsidiaries") to underwrite and deal in securities that a bank may not underwrite and deal in directly ("ineligible securities"). In order to ensure compliance with section 20 of the Glass-Steagall Act (12 U.S.C. 377), the Board required that the amount of revenue a section 20 subsidiary derives from ineligible securities underwriting and dealing activities may not exceed 10 percent of the total revenue of the subsidiary. Section 20 prohibits a member bank of the Federal Reserve System from being affiliated with a company that is "engaged principally" in underwriting and dealing in securities.

In January 1993, after notice and the opportunity for public comment, the Board authorized section 20 subsidiaries to use an alternative indexed method to compute compliance with the 10 percent revenue limitation to account for unusual changes in the level and structure of interest rates since 1989, when the 10 percent limit was adopted. When the Board adopted the indexed revenue test, the Board deferred adoption of another alternative test for the 10 percent limit that would be based on assets, rather than revenue. Inasmuch as the Board has had increased experience in reviewing and monitoring the operations and activities of the section 20 subsidiaries, and in order to allow these subsidiaries additional flexibility in the conduct of their securities operations, the Board now proposes to modify its orders approving the establishment of the section 20 subsidiaries to allow such subsidiaries the option of using an alternative measure to the revenue-based tests for assessing compliance with the 10 percent limit. The Board requests comment on whether asset values, sales volume data, or both measures should be used as a new alternative to the revenue test.

DATES: Comments must be received by August 12, 1994.

ADDRESSES: Comments, which should refer to Docket No. R–0841, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m. weekdays, except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Associate General Counsel (202/452–3750), Thomas M. Corsi, Senior Attorney (202/452–3275), Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202/452–2781), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorthea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION:

1. Background

A. Ten Percent Limit on Ineligible Securities Activities of Section 20 Subsidiaries

Beginning with orders issued in 1987, the Board has authorized bank holding companies to establish nonbank subsidiaries ("section 20 subsidiaries") to underwrite and deal in securities that a bank may not underwrite and deal in directly ("ineligible securities").[1] In order to assure compliance with section 20 of the Glass-Steagall Act, the Board limited the amount of ineligible securities that these section 20 subsidiaries could underwrite and deal in. Section 20 provides that a member bank may not be affiliated with a company that is "engaged principally" in underwriting and dealing in securities.[2] In particular, the Board determined that a bank affiliate would not be "engaged principally" in ineligible securities activities for purposes of section 20 if those activities were not substantial relative to the other activities of the subsidiary. The Board ruled that ineligible securities activities are not a substantial part of a subsidiary's business if the gross revenue derived from those activities does not exceed 10 percent of the total gross revenues of the subsidiary, when revenue is averaged over a rolling 8-quarter period. Subject to this limitation, the Board has approved the establishment of over 30 section 20 subsidiaries, several of which are authorized to underwrite and deal in debt and equity securities generally.

B. Adoption of Alternative Indexed Revenue Test

In July 1992, the Board proposed to establish two alternative methods that a section 20 subsidiary could elect to use to determine compliance with the 10 percent limit on ineligible securities activities in place of the gross revenue test.[3] In proposing these alternative tests, the Board noted that historically unusual changes in the level and structure of interest rates have distorted the revenue test as a measure of the relative importance of ineligible securities activities in a manner that was not anticipated when the 10 percent limit was adopted in 1989.[4] To address this problem, the Board first proposed an alternative revenue test indexed to interest rate changes that would allow for adjustment of the current revenue of a section 20 subsidiary to account for the unanticipated interest rate conditions. In January 1993, the Board adopted an optional alternative indexed revenue test.[5]

[1] *E.g., Citicorp*, 73 Federal Reserve Bulletin 473 (1987), *aff'd, Securities Industry Association* v. *Board of Governors*, 839 F.2d 47 (2d Cir.), *cert. denied*, 486 U.S. 1059 (1988).

[2] 12 U.S.C. 377. The Board and the courts have ruled that section 20 does not prohibit a member bank from being affiliated with a company that is engaged principally in underwriting and dealing in securities that banks may underwrite and deal in directly ("eligible securities"). *See Citicorp, supra.*

[3] 57 FR 33507, July 29, 1992.

[4] The Board pointed out that, in contrast to conditions in 1989, there was an unusually wide difference between short- and long-term rates. Since eligible securities tend to be shorter term than ineligible securities, the unusually sharp increase in the steepness of the yield curve had the effect of making it appear, based on revenue data, that the eligible securities activities of at least some section 20 subsidiaries had been reduced, even though the relative proportion of eligible and ineligible securities activities being conducted by those subsidiaries remained essentially the same.

[5] 79 Federal Reserve Bulletin 226 (1993). Under the indexed revenue test, current interest and dividend revenues from eligible and ineligible activities for each quarter are increased or decreased by an adjustment factor provided by the Board based on the average duration of a section 20 subsidiary's eligible and ineligible securities portfolio. The adjustment factors, which vary according to specific time periods of average duration, represent the ratio of interest rates on Treasury securities in the most recent quarter to those in September 1980.

determined that a bank affiliate would not be "engaged principally" in ineligible securities activities for purposes of section 20 if those activities were not substantial relative to the other activities of the subsidiary. The Board ruled that ineligible securities activities are not a substantial part of a subsidiary's business if the gross revenue derived from those activities does not exceed 10 percent of the total gross revenues of the subsidiary, when revenue is averaged over a rolling 8-quarter period. Subject to this limitation, the Board has approved the establishment of over 30 section 20 subsidiaries, several of which are authorized to underwrite and deal in debt and equity securities generally.

B. Adoption of Alternative Indexed Revenue Test

In July 1992, the Board proposed to establish two alternative methods that a section 20 subsidiary could elect to use to determine compliance with the 10 percent limit on ineligible securities activities in place of the gross revenue test.[3] In proposing these alternative tests, the Board noted that historically unusual changes in the level and structure of interest rates have distorted the revenue test as a measure of the relative importance of ineligible securities activities in a manner that was not anticipated when the 10 percent limit was adopted in 1989.[4] To address this problem, the Board first proposed an alternative revenue test indexed to interest rate changes that would allow for adjustment of the current revenue of a section 20 subsidiary to account for the unanticipated interest rate conditions. In January 1993, the Board adopted an optional alternative indexed revenue test.[5]

C. Proposed Asset-Based Test

At the same time that the indexed revenue test was proposed, the Board also proposed an alternative asset-based test. Specifically, the Board proposed that the 10 percent limit would be computed by using average daily assets held in connection with ineligible securities activities and with other activities. The Board recognized that in 1987, when it initially decided to use revenue as the appropriate measure of the section 20 limit on ineligible securities activities, the Board had expressed two concerns about a test based on average assets. One concern was that an asset-based test might be manipulated, for example, through "matched book" repurchase and reverse repurchase agreements for government securities. The second concern was that an average asset test, even if computed on a daily basis, would not include securities that were underwritten by the section 20 subsidiary but that were held only for a few hours, which is typical in many underwriting transactions. Accordingly, when the Board proposed an alternative asset-based test in 1992, the Board requested comment on possible modifications to address these concerns.

A number of banking organizations commenting on the Board's proposal supported adoption of an asset-based alternative measure for computing the 10 percent limit. These comments stated that, like the indexed revenue proposal, a limit based on assets would be less susceptible than the unadjusted revenue test to unusual changes in interest rate conditions. Those supporting the asset-based test also stated that this test would be easier and less costly to apply than a measure that required adjustments to revenue data and would allow for greater predictability in the management of the operations of the subsidiary.

Many commenters also opposed establishing any specific restrictions to address the potential for manipulative transactions. These commenters believed that the capital and funding requirements needed to support such transactions, as well as earnings considerations and market-imposed credit risk constraints, would effectively curtail the excessive use of asset transactions conducted solely to increase the level of eligible assets. Commenters also observed that implementation of such separate limits would be difficult in practice.

On the question of the treatment of intra-day holdings of securities that are being underwritten, while there was some support for including the value of such securities for purposes of applying an asset-based test, other comments opposed counting the value of such holdings on the grounds that the 10 percent limit should measure only assets that pose a risk to the section 20 subsidiary.

After considering these comments, the Board decided to defer adoption of an alternative asset-based test, noting that the Board was not then able to assess the potential practical effect of the test.

II. Proposed Alternative Test

A. Need for an Improved Alternative to the Gross Revenue Test

Since the decision to defer consideration of the asset-based test, the Board has had a greater opportunity to review and analyze the operations of section 20 subsidiaries. At the outset, the Board notes that, during this time period and in the entire seven year period since the Board first approved the creation of section 20 subsidiaries, the Board has not uncovered evidence of unsafe or unsound practices, conflicts of interest, or other conduct related to the operations of these subsidiaries that has impaired the condition of the affiliated depository institutions or the banking organizations as a whole. The available evidence further suggests that these subsidiaries have exerted a beneficial procompetitive influence on the securities markets in which they compete.

When the section 20 subsidiaries were first authorized, the Board selected revenue, rather than asset values or sales volume, as the best overall measure of ineligible securities activities because the Board believed that such a test would pose the fewest operational difficulties and provide the most accurate indication of the relative importance of specific activities. The Board also noted that although the applicants had argued that a variety of factors could be used to judge "engaged principally" status, a single uniform standard was desirable.[6]

However, subsequent events have shown that the susceptibility of results from the gross revenue measure to distortion caused by changes in interest rate conditions casts doubt on the appropriateness of that test. Although the indexed revenue test addresses these concerns, it necessarily involves increased operational difficulties. For some section 20 subsidiaries, the costs and resources needed to implement the indexed revenue test, with the need for complicated duration models and the calculation of the duration of all

---

[3] 57 FR 33507, July 29, 1992.

[4] The Board pointed out that, in contrast to conditions in 1989, there was an unusually wide difference between short- and long-term rates. Since eligible securities tend to be shorter term than ineligible securities, the unusually sharp increase in the steepness of the yield curve had the effect of making it appear, based on revenue data, that the eligible securities activities of at least some section 20 subsidiaries had been reduced, even though the relative proportion of eligible and ineligible securities activities being conducted by those subsidiaries remained essentially the same.

[5] 79 Federal Reserve Bulletin 226 (1993). Under the indexed revenue test, current interest and dividend revenues from eligible and ineligible activities for each quarter are increased or decreased by an adjustment factor provided by the Board based on the average duration of a section 20 subsidiary's eligible and ineligible securities portfolio. The adjustment factors, which vary according to specific time periods of average duration, represent the ratio of interest rates on Treasury securities in the most recent quarter to those in September 1986.

[6] *Citicorp, supra*, 73 Federal Reserve Bulletin at 484.

securities in a section 20 subsidiary's portfolio on a regular basis, may provide a disincentive for using that test.[7]

Accordingly, and in order to provide additional flexibility to section 20 subsidiaries in the conduct of authorized activities, the Board now believes it is desirable to consider adoption of another optional measure in addition to revenue for applying 10 percent limit on ineligible securities activities. The Board believes that either asset values or sales volume, or a combination of both measures, should be considered as a new alternative measure.

B. Asset-Based Test as an Alternative Measure

Any asset-based test would limit a section 20 subsidiary's average daily assets held in connection with underwriting and dealing in ineligible securities to 10 percent of its total average daily assets, computed on a rolling 8-quarter basis. Because, as the Board observed when an asset-based test was previously proposed, a measure relying on asset values would be less sensitive to unanticipated changes in interest rate conditions than a test based on revenues, such a test would address these distortions. Also, it appears that for at least some section 20 subsidiaries a test relying on asset values may be easier in practice to apply than the indexed revenue test. Moreover, as explained below, in light of its greater experience with the operations of the section 20 subsidiaries, the Board is now of the view that the concerns previously expressed about the operation of an asset-based test can be appropriately mitigated.

The Board believes that the use of assets acquired in connection with particular types of securities activities may represent a permissible measure of compliance with the statutory limitation in section 20 on ineligible securities activities. Asset values do provide a rough approximation of risk to the section 20 subsidiary, and risk to banking organizations was one of the concerns behind passage of the Glass-Steagall Act. The Board notes that the New York State Banking Department, in applying a state law restriction on the level of ineligible securities activities of affiliates of state-chartered banks, allows the use of either assets or revenue as a measure of compliance with the law.[8]

Underwriting

The Board believes that, if an asset-based test is adopted as an alternative measure, the value of any securities underwritten by a subsidiary would have to be accounted for in computing average daily assets, even where the securities are disposed of prior to the end of the day. The literal language of section 20 covers any underwriting activity. Thus, under the proposed asset-based test, if securities underwritten by a section 20 subsidiary are recorded as assets of the subsidiary, but are disposed of before the end of the day on which underwriting activity takes place, then the securities would be treated as if they were carried as assets on the books of the subsidiary as of the end of that day. If securities are underwritten by the section 20 subsidiary on a "best efforts" or agency basis the securities would be treated as assets of the subsidiary for each day that underwriting activity occurs with respect to that particular security.[9]

Anti-Manipulation Limits

Should an asset-based test be adopted as an alternative measure, the Board does not propose that any specific limits be incorporated to address the potential for manipulative transactions carried out solely to inflate artificially a section 20 subsidiary's base of eligible assets. Many of the comments on the previously proposed asset-based test stated that there are sufficient financial and market constraints on the holding of excessive eligible securities solely to support increased ineligible securities activities. Even in the case of matched book-type transactions, counterparties typically impose limits on the amount of transactions they will engage in with any particular section 20 subsidiary, in order to control credit risk. The Board's minimum consolidated leverage ratio and the SEC's net capital rule, which is applicable to a section 20 subsidiary, would impose additional constraints. In addition, the acquisition of significant amounts of eligible securities by a section 20 subsidiary in matched book or similar transactions would also tend to have an overall negative impact on the earnings performance of the consolidated bank holding company organization, given the small profit margins typical in such transactions. Finally, the Board believes that it has the authority to take appropriate corrective action where manipulative transactions are detected.

C. Sales Volume Test as Alternative Measure

The Board is also requesting comment on adoption of sales volume as an alternative measure. If sales volume data is used as the measure of an alternative test for applying the 10 percent limit, then the dollar volume of a section 20 subsidiary's sales of ineligible securities as a result of underwriting and dealing in such securities could not be allowed to exceed 10 percent of its total sales volume over a rolling 8-quarter period.

The Board believes that the value of various types of securities and other assets sold by a section 20 subsidiary bears a relationship to the subsidiary's level of activity with respect to each type of security or other asset. Use of such data is thus consistent with the statutory requirements. Under a sales volume test, intra-day transactions like underwriting and dealing sales would be automatically covered, even if the assets involved were not recorded on the subsidiary's books at the end of the day. In addition, like an asset-based test, a sales volume test would be less sensitive to changes in interest rate relationships. Such a test may also be easier to comply with than the current alternative of indexed revenues.

Repurchase Transactions and Other Sales Transactions

One question raised by the use of sales volume as a test of the 10 percent limit is whether securities repurchase agreements ("repo transactions") should be treated as "sales" and therefore covered under such a test. Repo transactions are hybrids, having some characteristics of collateralized lending and some characteristics of an outright sale of securities. The Federal Reserve, for purposes of open market operations, has taken the position that repo transactions are sales rather than loans. The Board requests comment on how repo transactions should be treated for purposes of a sales volume test, if such a test were adopted as an appropriate alternative measure.

In addition, the Board invites comments concerning reporting and other administrative issues associated with implementing a sales volume test. The Board specifically requests comment on how sales volume should be computed for various types of transactions involving the same kinds of underlying securities in different market places. For example, Treasury bonds may be sold in the cash market, on a "When Issued" basis, on a forward contract basis, or indirectly, by purchasing a put option or selling a futures contract. Although each type of transaction may be reported differently for balance sheet purposes, all of the various kinds of transactions may have an identical impact on the section 20 subsidiary's risk profile.

The Board is considering adopting instructions similar to those contained in the current Federal Reserve Report Series Form FR 2004, Schedule B "Weekly Report of Cumulative Dealer Transactions" for collection of sales volume information. Accordingly, comments are requested concerning whether the instructions and definitions for reporting sales volume data in the FR 2004 would provide an adequate basis for developing sales volume reporting for section 20 subsidiaries. Comments are also requested concerning the definition and reporting of various types of transactions that are not addressed in the existing FR 2004 report instructions.

Manipulative Transactions

When the Board first approved the establishment of the section 20 subsidiaries, it considered and rejected using a sales volume test, on the ground that the eligible securities sales volume of a section 20 subsidiary, like asset values, could be easily inflated by repeated matched book transactions intended for no other purpose than to inflate the subsidiary's eligible sales volume base.[10] As noted above, many of the comments on the previously proposed asset-based test pointed out the credit risk and market limitations on the extent to which a section 20 subsidiary may engage in matched book or similar transactions. While these limits may be less effective where a section 20 subsidiary engages in unusual sales of securities with its own affiliate, rather than with a third party, solely for the purpose of increasing the volume of eligible securities sales, these matters can be addressed during the examination process and, as noted above, corrective action can be taken where manipulative transactions are found.

D. Compliance With Both Measures

A possible means for addressing the disadvantages of asset values and sales volume alone as appropriate measures is to require a section 20 subsidiary electing an alternative test to comply with both measures. The Board seeks comment on this possible requirement.

[7] At present only four section 20 subsidiaries are using the indexed revenue test.

[8] *E.g.*, letter, dated December 23, 1986, from New York Superintendent of Banks to Morgan Guaranty Trust Company and Bankers Trust Company.

[9] Under an asset-based alternative measure, similar treatment would be accorded an entire issue of privately-placed securities when any portion of the issue is taken into inventory pursuant to SEC Rule 144A.

[10] *Citicorp, supra*, 73 Federal Reserve Bulletin at 484.

purchasing a put option or selling a futures contract. Although each type of transaction may be reported differently for balance sheet purposes, all of the various kinds of transactions may have an identical impact on the section 20 subsidiary's risk profile.

The Board is considering adopting instructions similar to those contained in the current Federal Reserve Report Series Form FR 2004, Schedule B "Weekly Report of Cumulative Dealer Transactions" for collection of sales volume information. Accordingly, comments are requested concerning whether the instructions and definitions for reporting sales volume data in the FR 2004 would provide an adequate basis for developing sales volume reporting for section 20 subsidiaries. Comments are also requested concerning the definition and reporting of various types of transactions that are not addressed in the existing FR 2004 report instructions.

Manipulative Transactions

When the Board first approved the establishment of the section 20 subsidiaries, it considered and rejected using a sales volume test, on the ground that the eligible securities sales volume of a section 20 subsidiary, like asset values, could be easily inflated by repeated matched book transactions intended for no other purpose than to inflate the subsidiary's eligible sales volume base.[10] As noted above, many of the comments on the previously proposed asset-based test pointed out the credit risk and market limitations on the extent to which a section 20 subsidiary may engage in matched book or similar transactions. While these limits may be less effective where a section 20 subsidiary engages in unusual sales of securities with its own affiliate, rather than with a third party, solely for the purpose of increasing the volume of eligible securities sales, these matters can be addressed during the examination process and, as noted above, corrective action can be taken where manipulative transactions are found.

D. Compliance With Both Measures

A possible means for addressing the disadvantages of asset values and sales volume alone as appropriate measures is to require a section 20 subsidiary electing an alternative test to comply with both measures. The Board seeks comment on this possible requirement.

[10] *Citicorp, supra*, 73 Federal Reserve Bulletin at 484.

E. Implementation of Any Alternative Test

The Board notes that comments received on the asset-based test previously proposed suggested that, if such a test were adopted, some section 20 subsidiaries may not have access to sufficiently detailed asset data for earlier quarters to allow computation of such a test on a rolling 8-quarter basis and may not be able to obtain this information easily. Therefore, the Board proposes that, if an alternative measure is adopted using either asset values or sales volume, or a combination of both measures, a section 20 subsidiary would be allowed, at its election, initially to comply with such a test on a prospective basis only for the first two-year period. The Board followed this approach when the indexed revenue test was adopted.

As was also the case with respect to adoption of the indexed revenue test, the Board proposes that, regardless of which test may be adopted as an alternative measure, any section 20 subsidiary electing to use a new test would be required to continue using that test for a period of at least two years, in order to prevent frequent switching between tests that would impair an accurate assessment of the relative importance of the subsidiary's ineligible securities activities.

F. Proposed Elimination of Indexed Revenue Test

The Board also seeks comment as to why, if a new alternative measure is adopted, the indexed revenue test should not be eliminated because there would no longer be a need for that alternative measure. However, a section 20 subsidiary would be allowed to continue to elect to use the unadjusted revenue test, if the subsidiary wishes to avoid the costs associated with converting to any new test.

G. Proposed Modification of Board Orders

The Board proposes that its orders approving the establishment of section 20 subsidiaries be modified to provide that a section 20 subsidiary may elect, as an alternative to the existing revenue tests, to apply an asset-based test to assess compliance with the 10 percent limit on ineligible securities activities. Under such a test, a section 20 subsidiary would be viewed as in compliance with that section for any quarter if the average daily assets held in connection with underwriting and dealing in ineligible securities for that quarter, when added to the average daily assets held in connection with ineligible securities activities for the previous seven quarters, does not exceed 10 percent of the average daily total assets of the subsidiary for that quarter and for the seven previous quarters.[11]

In the alternative, the Board proposes that section 20 subsidiaries be authorized to elect to apply, as an alternative to the existing revenue test, a sales volume test to assess compliance with the 10 percent limit. Under such a test, a section 20 subsidiary would be viewed as in compliance with that section for any quarter if the total dollar volume of sales of ineligible securities from underwriting and dealing activities for that quarter, when added to the total dollar volume of such sales for the previous seven quarters, does not exceed 10 percent of the total dollar volume of sales of all securities and other assets by the subsidiary for that quarter and for the seven previous quarters.

Finally, as a third alternative, the Board proposes that section 20 subsidiaries be authorized to apply an alternative test measured by both asset values and sales volume. Under such a test, a section 20 subsidiary would be viewed as in compliance with section 20 for any quarter if the subsidiary simultaneously satisfied both the asset-based and sales volume measures described above

By order of the Board of Governors of the Federal Reserve System, July 6, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–16820 Filed 7–11–94; 8:45 am]

BILLING CODE 6210–01–P

[11] Securities underwritten by the subsidiary, including securities taken into inventory in a private placement pursuant to SEC Rule 144A, would be treated as assets of the subsidiary for each day underwriting activity takes place with respect to such securities.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

White House Conference on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Title II of the Older Americans Act Amendments of 1987, Public Law 100–175 as amended by Public Law 102–375 and Public Law 103–171, that the 1995 White House Conference on Aging Policy Committee will hold a meeting on Wednesday, July

27, 1994, from 1 P.M. to 4 P.M. The meeting will be held in Room 216, Hart Senate Office Building, Constitution and Delaware Avenues NE, Washington, DC 20510.

The meeting of the Committee shall be open to the public. The proposed agenda includes the establishment of the date, time and location of the 1995 White House Conference on Aging and the number of delegates.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 501 School Street, SW 8th floor Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Kenton Williams, White House Conference on Aging, 501 School St. SW., 8th Floor, Washington, DC 20024, 202–245–7116.

Dated: July 6, 1994.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 94–16822 Filed 7–11–94; 8:45 am]

BILLING CODE 4130–02–M

Administration for Children and Families

[Program Announcement No. ACF–94–X]

Administration on Children, Youth and Families; Youth Gang Drug Prevention Program; Availability of Fiscal Year 1994 Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF); Administration for Children and Families (ACF); HHS.

ACTION: Extension of closing date for submittal of applications under the Youth Gang Drug Prevention program announcement cited above.

SUMMARY: On May 9, 1994, the Administration on Children, Youth and Families published a program announcement in the **Federal Register** (59 FR 23867).

The announcement solicited applications from eligible agencies and organizations to conduct community-based, comprehensive and coordinated activities to reduce and prevent the involvement of youth in gangs that engage in illicit drug-related activities.

Because of recent flooding in the Southeastern United States, which disrupted normal work schedules, we are allowing all prospective applicants more time to submit their applications. Therefore, we are extending the due date for submission of applications by two business days. The due date is extended from July 8 to July 12, 1994.

(Catalog of Federal Domestic Assistance Number 93.660, Youth Gang Drug Prevention Program)

Dated: July 7, 1994.

Joseph A. Mottola,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 94–16865 Filed 7–11–94; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

[Announcement 447]

Evaluation of the Impact of the 1993 AIDS Case Definition

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a competitive cooperative agreement program to study the quality of AIDS surveillance using the 1993 AIDS case definition and reporting system to determine methods that increase the efficiency of AIDS surveillance activities.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (To order a copy of "Healthy People 2000," see the section Where To Obtain Additional Information.)

Authority: These cooperative agreements are authorized under Sections 301(a) and 311 of the Public Health Service Act [42 U.S.C. 241(a) and 243], as amended. Applicable program regulations are found in 42 CFR Part 52, Grants for Research Projects.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to official public health agencies of States and their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and the following cities and county only: the cities of Chicago, Houston, Philadelphia, New York, San Francisco, and the County of Los Angeles.

Availability of Funds

Approximately $1,200,000 is available in FY 1994 to fund four to six awards. It is expected that the average award will be $250,000, ranging from $200,000 to $300,000. It is expected that the awards will begin on or about September 30, 1994, and will be for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within a project period will be based on satisfactory progress and the availability of funds.

Purpose

The purpose of these awards is to assist State and local health departments in: (1) Determining the sensitivity, timeliness, and validity of the AIDS surveillance system; (2) Improving the efficiency of AIDS surveillance by evaluating a variety of case ascertainment methods; and (3) Identifying the information collected as part of AIDS surveillance that is most useful for planning and evaluating HIV-related treatment and preventive services.

All activities should be implemented under various reporting alternatives (provider-based vs. lab-initiated reporting) through a population-based retrospective study.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for activities under A., below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Conduct a retrospective evaluation of medical and laboratory records to obtain histories of CD4+ and HIV testing, the occurrence of opportunistic infections (OIs) among persons reported to AIDS surveillance, and the number and type of sites that provide care for HIV-infected persons to determine the sensitivity, validity, and timeliness of AIDS surveillance and the ability to effectively monitor the epidemic using the 1993 AIDS surveillance definition and reporting system. As needed, conduct personal interviews with all, or a sample of, persons who are reported with AIDS to retrospectively collect data on dates and results of all prior CD4+ and HIV tests, OIs, receipt of treatment and prophylaxis, and degree of access to the health care system. If the cases being investigated received treatment in multiple health facilities, as many records as possible should be pursued.

2. Propose alternative surveillance methods to increase the cost effectiveness, quality, and efficiency of case-finding. For example, areas with provider-based surveillance can pilot a laboratory-initiated reporting system and compare this activity to existing surveillance methods. For areas with both provider and laboratory-initiated case-finding methods, evaluative methods may include comparing data from these sources to alternative data bases. The alternative data bases used for evaluation should not currently be linked to case-finding activities, and may vary by State (e.g., death certificates are used for case-finding in most areas, and are therefore not useful for evaluation activities). Other methods to increase efficiency may be explored in comparison to existing case-finding methods, including: sampling for risk information; reporting only from laboratory and alternative data bases, such as death registries; and conducting active surveillance for preventable opportunistic infections only.

3. Collect data in the treatment and services referral section of the adult HIV/AIDS confidential case report form on all or a representative sample of persons reported to AIDS surveillance, describe the data sources, the collection methods, and determine resources needed to obtain these data. Develop measures to assess the usefulness of these data for the planning of prevention activities by the local health department and community planning bodies.

4. Participate in meetings to plan and develop standardized evaluation protocols and to discuss progress and methodologic issues. If travel is needed it will be supported through specific funds awarded in this cooperative agreement.

5. Ensure confidentiality of information collected from persons with AIDS and persons with confirmed or suspected HIV infection.

6. Maintain responsibility for analysis and presentation of data collected for local purposes.

7. Demonstrate coordination with existing HIV/AIDS surveillance activities.

8. Identify and select appropriate staff.

B. CDC Activities

1. Provide oversight and technical assistance as the project progresses.

2. Assist the participant in planning and implementing the evaluation, including providing technical guidance

investigated received treatment in multiple health facilities, as many records as possible should be pursued.

2. Propose alternative surveillance methods to increase the cost effectiveness, quality, and efficiency of case-finding. For example, areas with provider-based surveillance can pilot a laboratory-initiated reporting system and compare this activity to existing surveillance methods. For areas with both provider and laboratory-initiated case-finding methods, evaluative methods may include comparing data from these sources to alternative data bases. The alternative data bases used for evaluation should not currently be linked to case-finding activities, and may vary by State (e.g., death certificates are used for case-finding in most areas, and are therefore not useful for evaluation activities). Other methods to increase efficiency may be explored in comparison to existing case-finding methods, including: sampling for risk information; reporting only from laboratory and alternative data bases, such as death registries; and conducting active surveillance for preventable opportunistic infections only.

3. Collect data in the treatment and services referral section of the adult HIV/AIDS confidential case report form on all or a representative sample of persons reported to AIDS surveillance describe the data sources, the collection methods, and determine resources needed to obtain these data. Develop measures to assess the usefulness of these data for the planning of prevention activities by the local health department and community planning bodies.

4. Participate in meetings to plan and develop standardized evaluation protocols and to discuss progress and methodologic issues. If travel is needed it will be supported through specific funds awarded in this cooperative agreement.

5. Ensure confidentiality of information collected from persons with AIDS and persons with confirmed or suspected HIV infection.

6. Maintain responsibility for analysis and presentation of data collected for local purposes.

7. Demonstrate coordination with existing HIV/AIDS surveillance activities.

8. Identify and select appropriate staff.

B. CDC Activities

1. Provide oversight and technical assistance as the project progresses.

2. Assist the participant in planning and implementing the evaluation, including providing technical guidance in the development of data collection instruments, outcome measures, reporting protocols, training, and pretesting methods. Coordinate activities among project participants to promote information sharing and ensure comparability of data collection.

3. Compile, analyze, and report results of aggregate data in collaboration with participating sites.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The quality of the plan to evaluate the 1993 surveillance case definition and the impact of the case definition on AIDS surveillance. (10 points)

2. Descriptions of the alternative data bases that will be used and how they will be used. (10 points)

3. The applicant's current activities in the surveillance of AIDS and HIV infection and past or ongoing research projects to evaluate sensitivity, representativeness, and validity of reporting. (10 points)

4. The number and distribution of recent AIDS cases collected by the health department and their representativeness of minority populations, women, heterosexual transmission cases, and geographic areas with the largest increases in the number of cases reported. (25 points)

5. The applicant's willingness to cooperate in the project with CDC and other participants. (5 points)

6. The applicant's ability to obtain data from charts or interviews with patients directly or in association with personnel *not currently responsible for the reporting of AIDS cases*, and the ability to manage, analyze, and use surveillance data. (10 points)

7. Description of methods for evaluating project activities and for modifying activities based on evaluation findings. (5 points)

8. The extent to which the proposal describes how the project will be administered, including the size, qualifications, commitment, and time allocation of the proposed staff; the availability of facilities to be used during the project and a schedule for accomplishing activities. (10 points)

9. The applicant's ability to mobilize resources effectively to ensure the quality and quantity of data needed to implement this evaluation. (5 points)

10. A plan to protect the confidentiality of all surveillance data and a description of the applicant's authority to collect data from patients, alternate sources, and medical records. (10 points)

11. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not Weighted)

Funding Priorities

Cooperative agreement recipients reporting at least 4,500 cumulative cases of AIDS to CDC through December 31, 1993 (as provisionally reported in the draft CDC HIV/AIDS Surveillance Report, 1993 Year-End Edition, released in March 1994), will be given priority for funding. In addition, the final selection of applications for this project must include at least one of each group of States representing these categories: (1) Laboratory-initiated HIV or CD4 reporting implemented by January 1 1994, by law or regulation, and (2) provider-initiated reporting only. This approach is justified since the objective of the project is to evaluate the attributes of surveillance systems under various reporting alternatives.

Interested persons are invited to comment on the proposed funding priority. All comments received on or before August 11, 1994, will be considered before the final funding priority should change as a result of any comments received, a revised Announcement will be published in the **Federal Register** prior to the final selection of awards.

Written comments should be addressed to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314 Mailstop E–18, Atlanta, Georgia 30305.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East

Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 94.944.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

HIV/AIDS Requirements

Recipients must comply with the document entitled "Content of HIV/AIDS-related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions," (June 1992), a copy of which is included in the application kit. To meet the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a State or local health department. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants in June 1994.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistant may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6508.

Programmatic technical assistance may be obtained from R. Monina Klevens, D.D.S., M.P.H., Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–47, Atlanta, Georgia 30333, telephone (404) 639–2050.

Please refer to Announcement Number 447 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 6, 1994.

Martha Katz,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16805 Filed 7–11–94; 8:45 am]

BILLING CODE 4163–18–P

[Announcement Number 491]

Hantavirus Pulmonary Syndrome (HPS)/Immunology Cooperative Agreement

Introduction

The Centers for Disease Control and Prevention (CDC) announces a program for competitive fiscal year (FY) 1994 funds to conduct Hantavirus Pulmonary Syndrome (HPS) Immunologic Investigations. These activities are intended to focus on the role of immunopathology and its role in induction of HPS. These investigations will provide the basis for further work in understanding the pathogenesis of HPS and provide additional avenues for progress in clinical management, treatment, and vaccine development.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (To order a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.**)

Authority: This program is authorized under Section 301(a) [42 U.S.C. 241(a)], 311 [42 U.S.C. 243], and 317(k)(3) [42 U.S.C. 247b(k)(3)] of the Public Health Service Act, as amended. Application program regulations are found in 42 CFR Part 52—Grants for Research Projects.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, including State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $250,000 is available in FY 1994 to fund one award. It is expected that the award will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this cooperative agreement is to assist researchers in studies of the immunology and immunopathology of hantavirus infections that focus on the role of cellular immune response. The overall goals of this program are to facilitate: (1) Development of information that can guide future strategies for vaccine development, and (2) Identification of immunopathologic disease processes which can lead to the development of therapeutic approaches for blocking these processes.

Program Requirements

In conducting activities to achieve the purpose of this agreement, the recipients shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Prepare and evaluate bulk cultures of specific T lymphocytes and T cell clones from humans and/or non-human primates. Include evaluation of functional capabilities, phenotype, major histocompatibility complex restriction, and epitope specificity. Focus on understanding the role of T cells in protection against HPS.

2. Investigate the relative roles of cellular and humoral immunity in recovery from hantaviral disease in general and HPS in particular. Investigate the ongoing antibody response, T cell infiltrates in the alveolar septae of the lung in deceased patients, and the non-cytopathic replication of HPS viruses in causing disease.

3. In accordance with current hantavirus biosafety procedures, perform studies in appropriate BSL–3 and BSL–4 containment facilities.

4. Analyze all results in collaboration with CDC. Present/publish all significant findings.

B. CDC Activities

1. Until commercially available, provide inactivated antigens, expression vectors containing viral genes, and sera from HPS patients.

2. Provide access to CDC's BSL–4 laboratory facilities and BSL–3 laboratory as necessary (CDC has one of only two BSL–4 laboratories in the United States).

3. Provide fresh or appropriately frozen lymphocytes from immune humans or nonhuman primates, as available.

4. Provide technical support as necessary.

Purpose

The purpose of this cooperative agreement is to assist researchers in studies of the immunology and immunopathology of hantavirus infections that focus on the role of cellular immune response. The overall goals of this program are to facilitate: (1) Development of information that can guide future strategies for vaccine development, and (2) Identification of immunopathologic disease processes which can lead to the development of therapeutic approaches for blocking these processes.

Program Requirements

In conducting activities to achieve the purpose of this agreement, the recipients shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Prepare and evaluate bulk cultures of specific T lymphocytes and T cell clones from humans and/or non-human primates. Include evaluation of functional capabilities, phenotype, major histocompatibility complex restriction, and epitope specificity. Focus on understanding the role of T cells in protection against HPS.

2. Investigate the relative roles of cellular and humoral immunity in recovery from hantaviral disease in general and HPS in particular. Investigate the ongoing antibody response, T cell infiltrates in the alveolar septae of the lung in deceased patients, and the non-cytopathic replication of HPS viruses in causing disease.

3. In accordance with current hantavirus biosafety procedures, perform studies in appropriate BSL–3 and BSL–4 containment facilities.

4. Analyze all results in collaboration with CDC. Present/publish all significant findings.

B. CDC Activities

1. Until commercially available, provide inactivated antigens, expression vectors containing viral genes, and sera from HPS patients.

2. Provide access to CDC's BSL–4 laboratory facilities and BSL–3 laboratory as necessary (CDC has one of only two BSL–4 laboratories in the United States).

3. Provide fresh or appropriately frozen lymphocytes from immune humans or nonhuman primates, as available.

4. Provide technical support as necessary.

Evaluation Criteria

All applications will be reviewed and evaluated according to the following criteria:

A. Background and Need

Extent to which applicant demonstrates a clear understanding of the purpose and objectives of this proposed cooperative agreement. Extent to which applicant demonstrates a clear understanding of the requirements, responsibilities, interactions, problems, constraints, complexities, etc., that may be encountered in conducting the project and performing the studies. (30 points)

B. Capacity

Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed in this cooperative agreement as evidenced by curriculum vitae, publications, etc. (35 points)

C. Objectives and Technical Approach

Extent to which applicant describes objectives of the proposed project which are consistent with the purpose and program requirements of this cooperative agreement and which are measurable and time-phased. Extent to which applicant presents a detailed plan for initiating and conducting the project. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. Extent to which applicant describes adequate collaboration with CDC during various phases of the project. Extent to which applicant provides a detailed plan for evaluating study results and for evaluating progress towards achieving project objectives. (35 points)

D. Budget

Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds. (Not Weighted)

Executive Order 12372

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305. The due date for State process recommendations is 30 days after the application deadline date for new and competing continuation awards. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305. This should be done no later than 30 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Application Submission and Deadline

The original and two copies of the application, Form PHS–5161–1 (Revised 7/92), must be submitted to Edwin L. Dixon, Grants Management Officer,

Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, on or before August 22, 1994.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications shall not be considered in the current competition for funding and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6508.

Programmatic technical assistance may be obtained from Kathleen F. Cavallaro, Operations and Management, Hantavirus Task Force, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop A–26, Atlanta, GA 30333, telephone (404) 639–1511.

Please refer to Announcement Number 491 when requesting information regarding this program.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1), referenced in the Introduction, through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 6, 1994.

Martha Katz,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16808 Filed 7–11–94; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 454]

Cooperative Agreement To Establish a Health Promotion and Disease Prevention Initiative Program for African-Americans

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program to develop a health promotion and disease prevention initiative to reduce preventable death, sickness, and disability; to reduce disparities in health; and to enhance the quality of life among African-Americans.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to all the priority areas of Healthy People 2000 as well as the 1985 Secretary's Task Force Report on Black and Minority Health. (For ordering a copy of "Healthy People 2000" or the "Report of the Secretary's Task Force on Black and Minority Health," see the section **Where to Obtain Additional Information**.)

Authority

This program is authorized under Sections 301 (42 U.S.C. 241) and 317(k)(2) (42 U.S.C. 247b(k)(2)) of the Public Health Service Act, as amended, and the President's Executive Order 12876 of 1993.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are National Minority Organizations (NMOs) and/or Regional Minority Organizations (RMOs) which principally serve African-American populations. The African-American population is very diverse and more targeted strategies and activities are needed to reduce the growing health gap among this group. Consistent with the 1985 Secretary's Task Force Report on Black and Minority Health, excess mortality, morbidity and disability continues to disproportionately affect African-Americans. A more current update of that report documents continuing excess deaths specifically for African-Americans. Eligible applicants must submit documentation to demonstrate that they comply with the following:

1. Are an established tax-exempt organization (a nongovernmental, tax-exempt corporation or association whose net earnings in no part lawfully accrue to the benefit of private shareholders or individuals). The following is acceptable evidence of tax-exempt status: (i) A reference to the applicant's organization in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code; or (ii) a copy of a currently valid IRS tax exemption certificate.

2. Have a governing body or board that is composed of more than 50% racial or ethnic minority group members who are representative of the population to be served.

3. Have a minimum of 12 months documented experience in operating and centrally administering a coordinated public health or related program serving racial or ethnic minority populations within a major portion or region (multistate or multiterritory) of the United States through its own offices, organizational affiliates, or the participation of other minority organizations.

4. Have a specific charge from the Articles of Incorporation or Bylaws or a resolution from its governing body or board to operate nationally or regionally (multistate or multiterritory) within the United States and its Territories.

5. Organizations participating in the program must have agreements with their affiliates, chapters, or other minority organizations that each organization must have a governing body or board whose membership is composed of more than 50% racial or ethnic minority group members who are representative of the population to be served.

Availability of Funds

A minimum of $100,000 is available in FY 1994 to fund one award. Additional funds are expected. It is expected that the award will begin on or about September 30, 1994, for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The principal purpose of the cooperative agreement is to assist an NMO or RMO to establish the following three components: a Health Program Unit, a Speakers Bureau, and a National Health Network. This will allow the awardee to use these components for the following:

Health Program Unit: The awardee will implement preventive strategies to improve the health of African-Americans by targeting the seven leading causes of excess deaths in this population. The Health Program Unit will also develop and implement strategies to improve the utilization of community health resources by African-Americans.

Speakers Bureau: The awardee will organize a National Speakers Bureau of health professionals and other professionals to provide oral presentations on salient health promotion and disease prevention topics relating to African-Americans at national, State, and local meetings. Other organizations will have ready access to the Speakers Bureau to assist in improving disease prevention and health promotion activities in their areas.

National Health Network: The awardee will assist minority organizations to: (1) Expand their internal and external organizational networks, and (2) facilitate the dissemination of health promotion and disease prevention information to African-Americans. This network will use the communication systems that already exist in the community to assist in reaching the target audience.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities).

A. Recipient Activities

1. The Health Program Unit

a. Communicate science-based health promotion and disease prevention strategies developed with CDC throughout African-American communities to improve the environment and personal health behaviors of those living in these communities.

b. Assess ongoing health related activities in various communities to

project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The principal purpose of the cooperative agreement is to assist an NMO or RMO to establish the following three components: a Health Program Unit, a Speakers Bureau, and a National Health Network. This will allow the awardee to use these components for the following:

Health Program Unit: The awardee will implement preventive strategies to improve the health of African-Americans by targeting the seven leading causes of excess deaths in this population. The Health Program Unit will also develop and implement strategies to improve the utilization of community health resources by African-Americans.

Speakers Bureau: The awardee will organize a National Speakers Bureau of health professionals and other professionals to provide oral presentations on salient health promotion and disease prevention topics relating to African-Americans at national, State, and local meetings. Other organizations will have ready access to the Speakers Bureau to assist in improving disease prevention and health promotion activities in their areas.

National Health Network: The awardee will assist minority organizations to: (1) Expand their internal and external organizational networks, and (2) facilitate the dissemination of health promotion and disease prevention information to African-Americans. This network will use the communication systems that already exist in the community to assist in reaching the target audience.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities).

A. Recipient Activities

1. The Health Program Unit

a. Communicate science-based health promotion and disease prevention strategies developed with CDC throughout African-American communities to improve the environment and personal health behaviors of those living in these communities.

b. Assess ongoing health related activities in various communities to determine if African-Americans are involved, and to determine if the activities are appropriate for the target audience (i.e., immunization, STD/HIV prevention).

c. Focus on the seven leading causes of deaths in African-American populations, and help design health promotion and disease prevention materials relevant to the populations served.

d. Improve the utilization of the community health resources by African-Americans.

e. Develop and disseminate audio-visual and written health promotion material for the target population.

f. Develop quality of life measures for community members through a consensus building process (e.g., oral health, mental health). Inform the target group about health promotion and disease prevention activities related to the seven leading causes of deaths among African-Americans that were found in the community.

2. The Speakers Bureau

a. Establish a Speakers Bureau that will improve the information available to minority organizations concerning health promotion and disease prevention activities among African-Americans.

b. Design a strategy to access and/or create a reservoir of professional speakers to address local, State and national audiences on health promotion and disease prevention needs and practices among African-Americans.

c. Develop culturally specific measures to encourage African-Americans to improve their health.

d. Identify subject area experts who will address and integrate the structural units of health: physical, social, and psychological well-being. Develop a consensus building strategy to educate the community about the overlapping influence of these three health components.

e. Develop an effective mechanism through community based organizations (CBOs), radio, television, or open forum to communicate current/updated information on health promotion and disease prevention to individuals and groups in African-American communities.

f. Develop a mechanism to advance health promotion and disease prevention activities among members of community groups, health practitioners, educators, advocacy groups, health professions, health professional schools, and public schools. Share the information at national conventions and meetings.

3. The National Health Network

a. Identify national, State/district and local African-American groups to collaborate with the CDC and State and local health departments.

b. Establish a distribution system to disseminate health promotion and disease prevention information.

c. Collaborate with national minority health professional associations, community based organizations, and PHS agencies to develop an effective plan to implement health promotion and disease prevention activities in the African-American communities (e.g., immunization).

B. CDC Activities

1. Provide consultation, assistance and support to the grantee in planning, implementing and evaluating all aspects of the agreement.

2. Collaborate with the grantee in identifying areas of the project that need evaluation.

3. Collaborate with grantee in identifying priority needs for public health programs at the local, State, and national levels.

4. Collaborate with the grantee in developing, testing and validating more effective and efficient disease prevention and health promotion models to African-Americans.

5. Collaborate with grantee and other concerned parties in workshops and conferences to exchange current information, opinions and findings in fields of public health and minority health.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Applicant's Understanding of the Problem (15%)

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of the complexities surrounding health promotion, health disparities and health promotion issues, that have an impact in the African-American community.

B. Organizational Experience (30%)

The extent to which the applicant has demonstrated skill and experience in working effectively with community based projects, and has the ability to establish meaningful relationships with various community based organizations. The applicant must demonstrate experience in providing leadership for community projects at the national,

State and local levels. The applicant must provide proof of experience in sharing financial or technical resources with CBOs, affiliates, and chapters that provide a variety of services directly to racial and ethnic minority populations.

C. Approach and Capability (40%)

The extent to which the applicant has included a description of their approach and track record on developing a network which includes the various segments of the African-American community at national, State and local levels. The grantee must demonstrate geographical distributions, and their ability to influence policy of the various community groups.

D. Program Personnel (15%)

The adequacy of the description for present staff and capabilities of the organization to assemble culturally competent and trained staff to conduct all three components proposed in this health promotion and disease prevention initiative. The applicant shall identify all current and potential personnel who will be utilized to work on this cooperative agreement, including qualifications and specific experience as it relates to the requirements set forth in this request. The organization must provide proof that their program and administrative staff and the program and administrative staff of affiliates and participating organizations involved in the project are representative of the communities and population to be served.

E. Budget Justification and Adequacy of Facilities (not scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

F. Evidence of Compliance With Eligibility Requirements

Each applicant must provide documentation that they comply with all eligibility requirements specified under the "Eligible Applicants" section. Failure to provide this documentation will result in disqualification. It is suggested that each applicant provide a separate section in their application entitled "eligibility narrative."

Executive Order 12372

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirement

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Mail Stop E–15, Atlanta, GA 30305, on or before August 15, 1994.

1. *Deadlines:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned unread to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, application package and business management technical assistance may be obtained from Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Mail Stop E–15, Atlanta, Georgia 30305, telephone (404) 842–6872. Programmatic technical assistance may be obtained from Karen Harris, Staff Specialist for Minority Health, Office of the Director, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mail Stop D–39, Atlanta, GA 30333, telephone (404) 639–0029.

Please refer to Announcement Number 454 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0), "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) or "Report of the Secretary's Task Force on Black and Minority Health" (Full report, Stock No. 491–313–44706) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC, 20402–9325, telephone (202) 783–3238.

Dated: July 6, 1994.

Martha Katz,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16809 Filed 7–11–94; 8:45 am]

BILLING CODE 4163–18–P

Savannah River Site Environmental Dose Reconstruction Project; Public Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Savannah River Site Environmental Dose Reconstruction Project.

Time and Date: 5:30 p.m.–9:30 p.m., July 27, 1994.

Place: Savannah Public Library, 2002 Bull Street, Savannah, Georgia 31499.

Status: Open to the public for observation and comment, limited only by space available.

Purpose: Under a Memorandum of Understanding (MOU) with the Department of Energy (DOE), the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between the Agency for Toxic Substances and Disease Registry (ATSDR) and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Community involvement is a critical part of the HHS energy-related research and activities. With an environmental dose reconstruction for DOE's Savannah River Site near Augusta, Georgia, as well as a worker study at the same site, the availability of a formal site-specific advisory committee composed of South Carolina and Georgia citizens to provide consensus advice to CDC and ATSDR regarding these projects is necessary. CDC and ATSDR are currently taking steps to obtain authorization for a "Citizens' Advisory Committee on Public Health Service Activities and

Application No.	Dru
AADA, 62–025 ..	Griseofulvin, U.S.P. (Nonsterile
AADA, 62–323 ..	Amoxicillin Oral Suspension, U milliliters (mL) and 250 mg/5
AADA, 62–541 ..	Nystatin Oral Suspension, U.S.P
AADA, 62–616 ..	Erythromycin Topical Solution,
AADA, 62–694 ..	Ampicillin Trihydrate, U.S.P. (No
AADA, 62–728 ..	Amphotericin B for Injection, U.S
AADA, 63–219 ..	Amoxicillin Trihydrate, U.S.P. (N
ANDA, 71–038 ..	Lorazepam Tablets, U.S.P., 1 m
ANDA, 71–039 ..	Lorazepam Tablets, U.S.P., 2 m
ANDA, 80–431 ..	Metaraminol Bitartrate Injection,
ANDA, 80–446 ..	Reserpine Tablets, U.S.P., 0.25
ANDA, 80–563 ..	Prednisone Tablets, U.S.P., 2.5
ANDA, 84–035 ..	Phentermine Hydrochloride Tabl
ANDA, 86–867 ..	Prednisone Tablets, U.S.P., 50
ANDA, 87–556 ..	Reserpine, Hydralazine Hydrochlorothiazide Tablets, U
ANDA, 87–674 ..	Phenylbutazone Tablets, U.S.P.,
ANDA, 88–087 ..	Proparacaine Hydrochloride O 0.5%.
ANDA, 89–572 ..	Pyridostigmine Bromide Tablets,

In addition, an MOU was signed in October 1990 and renewed in November 1992 between the Agency for Toxic Substances and Disease Registry (ATSDR) and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Community involvement is a critical part of the HHS energy-related research and activities. With an environmental dose reconstruction for DOE's Savannah River Site near Augusta, Georgia, as well as a worker study at the same site, the availability of a formal site-specific advisory committee composed of South Carolina and Georgia citizens to provide consensus advice to CDC and ATSDR regarding these projects is necessary. CDC and ATSDR are currently taking steps to obtain authorization for a "Citizens' Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites" to be chartered under the Federal Advisory Committee Act.

The draft charter for this proposed committee states, "Because of the varying concerns within communities at each DOE site, operational guidelines at each site must be developed separately to clarify the scope of activities and the responsibilities of the committee members and agencies." Therefore, CDC and ATSDR are holding a series of public meetings to begin developing operational guidelines at specific DOE sites. The purpose of this meeting will be to update the public on the status of CDC's and ATSDR's community involvement plans and to seek individual advice and recommendations from interested parties concerning selection criteria and operating procedures.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Paul Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F-35), Atlanta, Georgia 30341-3724, telephone (404) 488-7040.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-16806 Filed 7-11-94; 8:45 am]

BILLING CODE 4163-18-M

Food and Drug Administration

[Docket No. 94N-0249]

Sandoz Pharmaceuticals Corp., et al.; Withdrawal of Approval of 7 Abbreviated Antibiotic Applications and 11 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 7 abbreviated antibiotic applications (AADA's) and 11 abbreviated new drug applications (ANDA's). The holders of these applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: August 11, 1994.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1038.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application No.	Drug	Applicant
AADA, 62-025	Griseofulvin, U.S.P. (Nonsterile bulk)	Sandoz Pharmaceuticals Corp., 59 Rt. 10, East Hanover, NJ 07936-1080.
AADA, 62-323	Amoxicillin Oral Suspension, U.S.P., 125 milligrams (mg)/5 milliliters (mL) and 250 mg/5 mL.	Apothecon, Inc., P.O. Box 4500, Princeton, NJ 08543-4500
AADA, 62-541	Nystatin Oral Suspension, U.S.P., 100,000 units/mL	Pharmafair, Inc., 110 Kennedy Dr., Hauppauge, NY 11788
AADA, 62-616	Erythromycin Topical Solution, U.S.P., 2%	Do.
AADA, 62-694	Ampicillin Trihydrate, U.S.P. (Nonsterile bulk)	Sandoz Pharmaceuticals Corp.
AADA, 62-728	Amphotericin B for Injection, U.S.P., 50 mg/vial	Fujisawa USA, Inc., Parkway North Center, Three Parkway North, Deerfield, IL 60015-2548.
AADA, 63-219	Amoxicillin Trihydrate, U.S.P. (Nonsterile bulk)	Sandoz Pharmaceuticals Corp.
ANDA, 71-038	Lorazepam Tablets, U.S.P., 1 mg	Warner Chilcott Laboratories, 201 Tabor Rd., Morris Plains, NJ 07950.
ANDA, 71-039	Lorazepam Tablets, U.S.P., 2 mg	Do.
ANDA, 80-431	Metaraminol Bitartrate Injection, U.S.P., 10 mg/mL	Fujisawa USA, Inc.
ANDA, 80-446	Reserpine Tablets, U.S.P., 0.25 mg	Solvay Pharmaceuticals, Inc., 901 Sawyer Rd., Marietta, GA 30062.
ANDA, 80-563	Prednisone Tablets, U.S.P., 2.5 mg and 5 mg	MK Labs, 11 Fairway Lane, Trumbull, CT 06611.
ANDA, 84-035	Phentermine Hydrochloride Tablets, U.S.P., 8 mg	Solvay Pharmaceuticals, Inc.
ANDA, 86-867	Prednisone Tablets, U.S.P., 50 mg	Danbury Pharmacal, Inc., 131 West St., Danbury, CT 06810
ANDA, 87-556	Reserpine, Hydralazine Hydrochloride, and Hydrochlorothiazide Tablets, U.S.P., 0.1 mg/25 mg/15 mg.	Do.
ANDA, 87-674	Phenylbutazone Tablets, U.S.P., 100 mg	Do.
ANDA, 88-087	Proparacaine Hydrochloride Ophthalmic Solution, U.S.P., 0.5%.	Pharmafair, Inc.
ANDA, 89-572	Pyridostigmine Bromide Tablets, U.S.P., 30 mg	Solvay Pharmaceuticals, Inc.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed above, and all amendments and supplements thereto, is hereby withdrawn, effective August 11, 1994.

Dated: June 25, 1994.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 94–16735 Filed 7–11–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority; Reorganization of the Medicaid Bureau

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 59, No. 60, pp. 14629 and 14633, dated March 29, 1994, is amended to reflect a reorganization within the Medicaid Bureau. The Medicaid Bureau's Medicaid Special Program Initiatives Staff (MSPIS) is abolished and replaced with a new Office of Planning and Special Initiatives (OPSI). OPSI will assume the duties previously performed in MSPIS to serve as the focal point for all HCFA Medicaid activities in the area of maternal and infant health care, children preventive care services, and Acquired Immune Deficiency-infected recipients. In addition, OPSI will be responsible for coordinating and monitoring the Bureau's activities involving States' health reform initiatives.

The specific amendments to Part F are described below:

Section F.10., Health Care Financing Administration (Organization), paragraph A.5.b., Medicaid Special Program Initiatives Staff (FAB–2) is deleted and replaced by a new paragraph A.5.b., Office of Planning and Special Initiatives (FAB3).

Section F.20., Health Care Financing Administration (Functions), paragraph A.5.b., Medicaid Special Program Initiatives Staff (FAB–2) is deleted and replaced by the following new paragraph A.5.b., Office of Planning and Special Initiatives (FAB3).

The new functional statement reads as follows:

b. Office of Planning and Special Initiatives (FAB3)

- Promotes and supports States' development of Medicaid program transitions to health system reform.
- Represents the Medicaid Bureau in coordinating activities related to the impact on the Medicaid program of State-initiated interim health system reforms accomplished through Statewide Section 1115 projects.
- Serves as clearinghouse for information on the nature, scope, and status of State Medicaid initiatives.
- Identifies States' needs and coordinates initiatives for technical assistance, information exchange, and capacity building to further States' progress toward program improvements and reforms.
- Develops multi-faceted initiatives focused on priority program areas and the special needs of subpopulations of Medicaid beneficiaries.
- Collaborates with federal and State agencies and private organizations to improve health services for Medicaid beneficiaries.
- Supports management of Medicaid strategic planning through analysis of data, trends and external forces, assessment of program activities in light of planned objectives, and coordination of Medicaid planning activities with other agencies and organizations.
- Serves as the Medicaid Bureau focal point for data applications relevant to Medicaid program interests and populations.

Dated: June 28, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–16821 Filed 7–11–94; 8:45 am]

BILLING CODE 4120–01–P

Statement of Organization, Functions, and Delegations of Authority

Section F.50 of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (49 FR 35247, dated September 6, 1984) is hereby amended to add a new paragraph, F.50.2.g., to indicate that the authorities under Section 1928 of Title XIX of the Social Security Act as added by Section 13631 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66), as amended hereafter, excluding subsections 1928(a)(2)(B) and 1928(c)(2)(c)(ii) have been delegated to the Assistant Secretary for Health. The new paragraph reads as follows:

g. The Assistant Secretary for Health shall exercise all the authorities under Section 1928 of Title XIX of the Social Security Act as added by Section 13631 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 100–66), as amended hereafter, excluding subsections 1928(a)(2)(B) and 1928(c)(2)(c)(ii).

Dated: June 30, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–16737 Filed 7–11–94; 8:45 am]

BILLING CODE 4120–03–M

Public Health Service

Omnibus Budget Reconciliation Act of 1993; Delegations of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Section 1928 of Title XIX of the Social Security Act as added by Section 13631 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66, as amended hereafter, excluding subsections 1928(a)(2)(B) and 1928(c)(2)(C)(ii).

The Secretary reserves the authority under Subsections 1928(a)(2)(B) "Special Rules Where Vaccine Is Unavailable"; and the authority to promulgate regulations and to submit reports to the Congress.

In addition, Section 1928(c)(2)(C)(ii) is vested with the Administrator for the Health Care Financing Administration.

This delegation is effective upon date of signature. It is to be carried out in cooperation with the Health Care Financing Administration. In addition, I hereby affirm and ratify any actions taken by you or your subordinates which involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: June 30, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–16736 Filed 7–11–94; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–03–4110–03]

Notice of Intent To Prepare a Supplement to the Blackleaf Environmental Impact Statement To Analyze a Drilling Proposal in the Blackleaf Unit

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a supplement to the Blackleaf Environmental Impact Statement (EIS) for a drilling proposal in the Blackleaf Gas Field, Teton County, Montana.

SUMMARY: On January 20, 1994, the Bureau of Land Management (BLM) received a Notice of Staking (NOS) for a proposed well in the Blackleaf Unit. The proposed well is located in northwestern Teton County about 25 miles northwest of Choteau, Montana. The NOS is the first step in the process and allows an operator to survey a location and access route to a proposed well. An Application for Permit to Drill (APD) including the subsurface plan (which details the drilling program) and the surface use plan (which describes any surface disturbances) will be submitted to BLM following an onsite inspection. Upon receipt of the APD, the BLM will analyze the proposal

DATES: A public scoping meeting has been scheduled for August 15th and 16th, 1994, in the American Room of the Heritage Inn, 1700 Fox Farm Road, in Great Falls, Montana.

ADDRESS: Comments should be sent to Richard L. Hopkins, Area Manager, Great Falls Resource Area, 812 14th St N., Great Falls, MT 59401, 406–727–0503.

FOR FURTHER INFORMATION CONTACT: Tad Day, Great Falls Resource Area, 812 14th St. N., Great Falls, MT 59401, 406–727–0503.

SUPPLEMENTARY INFORMATION: The BLM issued a final Blackleaf EIS in June 1992 which analyzed the impacts of reasonably foreseeable oil and gas development activities in the Blackleaf Unit. A record of decision was not prepared, pending receipt of a proposal for oil and gas activity within the Blackleaf Unit.

Upon completion of the analysis for the proposal, the BLM will issue a decision on the APD and the final Blackleaf EIS.

Dated: July 1, 1994

David L. Mari,

Lewistown District Manager.

[FR Doc. 94–16836 Filed 7–11–94; 8:45 am]

BILLING CODE 4310–DN–P

[ES–960–4950–10–4377] ES–046872, Group 159, Minnesota; 4–00157–ILM)

Filing of Plat of the Dependent Resurvey, Survey of the Subdivision of Sections 13, 15 and 23, and Metes-and-Bounds Survey

The plat of the dependent resurvey of a portion of the subdivisional lines, and a portion of the subdivision of section

ACTION: Notice of intent to prepare a supplement to the Blackleaf Environmental Impact Statement (EIS) for a drilling proposal in the Blackleaf Gas Field, Teton County, Montana.

SUMMARY: On January 20, 1994, the Bureau of Land Management (BLM) received a Notice of Staking (NOS) for a proposed well in the Blackleaf Unit. The proposed well is located in northwestern Teton County about 25 miles northwest of Choteau, Montana. The NOS is the first step in the process and allows an operator to survey a location and access route to a proposed well. An Application for Permit to Drill (APD) including the subsurface plan (which details the drilling program) and the surface use plan (which describes any surface disturbances) will be submitted to BLM following an onsite inspection. Upon receipt of the APD, the BLM will analyze the proposal

DATES: A public scoping meeting has been scheduled for August 15th and 16th, 1994, in the American Room of the Heritage Inn, 1700 Fox Farm Road, in Great Falls, Montana.

ADDRESS: Comments should be sent to Richard L. Hopkins, Area Manager Great Falls Resource Area, 812 14th St N., Great Falls, MT 59401, 406–727–0503.

FOR FURTHER INFORMATION CONTACT: Tad Day, Great Falls Resource Area, 812 14th St. N., Great Falls, MT 59401, 406–727–0503.

SUPPLEMENTARY INFORMATION: The BLM issued a final Blackleaf EIS in June 1992 which analyzed the impacts of reasonably foreseeable oil and gas development activities in the Blackleaf Unit. A record of decision was not prepared, pending receipt of a proposal for oil and gas activity within the Blackleaf Unit.

Upon completion of the analysis for the proposal, the BLM will issue a decision on the APD and the final Blackleaf EIS.

Dated: July 1, 1994

David L. Mari,

Lewistown District Manager.

[FR Doc. 94–16836 Filed 7–11–94; 8:45 am]

BILLING CODE 4310–DN–P

[ES–960–4950–10–4377] ES–046872, Group 159, Minnesota; 4–00157–ILM]

Filing of Plat of the Dependent Resurvey, Survey of the Subdivision of Sections 13, 15 and 23, and Metes-and-Bounds Survey

The plat of the dependent resurvey of a portion of the subdivisional lines, and a portion of the subdivision of section 15; reestablishment of the record meander line in section 13; survey of the subdivision of sections 13, 15 and 23, and the metes-and-bounds survey of a portion of the public highway in sections 14, 15 and 23, Township 115 North, Range 39 West, Fifth Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 25, 1994.

The survey was made upon request by the Bureau of Indian Affairs. All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153 prior to 7:30 a.m., August 25, 1994.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy

Dated: June 30, 1994

Carson W. Culp, Jr.,

State Director

[FR Doc. 94–16739 Filed 7–11–94; 8:45 am]

BILLING CODE 4310–GJ–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 2, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 27, 1994

Beth Boland,

Acting Chief of Registration, National Register.

ALABAMA

Mobile County

Roberts House, 3 Wimbledon Dr., Mobile, 94000789

CONNECTICUT

Middlesex County

Clinton Village Historic District, Along Cemetery Rd., Church, E. Main and Liberty Sts., Old Post Rd. and Waterside Ln., Clinton, 94000788

FLORIDA

Monroe County

SAN FELIPE Shipwreck Site, Address Restricted, Islamorada vicinity, 94000794

Polk County

Fort Meade Historic District, Roughly bounded by N. 3rd St., Orange Ave., S. 3rd St. and Sand Mountain Rd., Fort Meade, 94000781

GEORGIA

De Kalb County

South Candler Street—Agnes Scott College Historic District, Roughly bounded by E. College, S. McDonough, S. Candler, E. Hall and E. Davis Sts., Decatur, 94000787

MARYLAND

Frederick County

Harris Farm, Jct. of Devilbiss and Glade Rds., Walkersville vicinity, 94000799

Somerset County

Ward Brothers' House and Shop, 8199 Sackertown Rd., Crisfield, 94000796

MINNESOTA

Wabasha County

Kuehn, Lucas, House (Red Brick Houses in Wabasha, Minnesota, Associated with Merchant-Tradesmen MPS), 306 E. Main St., Wabasha, 89000369

MONTANA

Deer Lodge County

Methodist Episcopal Church of Anaconda, Jct. of Oak and E. Third Sts., Anaconda, 94000783

Gallatin County

Flaming Arrow Lodge, 15521 Bridger Canyon Rd., Bozeman, 94000784

Ravalli County

DeNover House (Stevensville MPS), 347 Main, Stevensville, 94000782

NEW YORK

Suffolk County

Suffolk County Historical Society Building, 300 W. Main St., Riverhead, 94000786

TEXAS

Galveston County

Hutchings, Sealy, House, 2805 Ave. I, Galveston, 94000796

UTAH

San Juan County

Hyland Hotel, 116 S. 300 West, Monticello, 94000785

VIRGINIA

Caroline County

Riverview, Water St., Port Royal, 94000795
Townfield, Water St., Port Royal, 94000797

Bristol Independent City

King-Lancaster-McCoy-Mitchell House, 54 King St., Bristol (Independent City), 94000793

WASHINGTON

Clallam County

Hyer, John A., Farm, Address Restricted, Sequim vicinity, 94000797

Spokane County

Hotel Upton (Single-Room Occupancy Hotels in Spokane's Central Business District MPS), S. 106 Cedar St., Spokane, 94000798
Spokane Club Building—Legion Building, 108 N. Washington St., Spokane, 94000800

Whitman County

Swain, William, House, Address Restricted, Pullman vicinity 94000801

[FR Doc. 94–16841 Filed 7–11–94; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32531]

Patrick D. Broe, The Broe Companies, The Great Western Railway Company, Railco Inc., Chicago West Pullman Transportation Corp., et al.—Corporate Family Reorganization Exemption

On June 9, 1994, Patrick D. Broe (Mr. Broe), The Broe Companies, Inc. (BCI), The Great Western Railway Company (GWR), Railco Inc. (Railco), Chicago West Pullman Transportation Corp. (CWPT), OmniTRAX, Inc. (OmniTRAX), and their carrier subsidiaries jointly filed a notice of exemption under 49 CFR 1180.2(d)(3) to reorganize the carrier subsidiaries and for OmniTRAX, a noncarrier holding company, to control the carrier subsidiaries.

Mr. Broe is a noncarrier individual who directly controls Panhandle Northern Railroad Company (PNR) and Central Kansas Railway Limited Liability Company (CKR) and who also owns and controls BCI and OmniTRAX. BCI is a noncarrier holding company that directly controls the noncarriers GWR and Railco. GWR directly controls the carriers Great Western Railway of Colorado, Inc. (GWRC), Great Western Railway Company of Iowa, Inc. (GWRI), and Great Western Railway of Oregon, Inc. (GWRO). Railco controls the noncarrier CWPT, which in turn controls six class III railroads: the Chicago, West Pullman & Southern Railroad Company (CWP&S); the Georgia Woodlands Railroad Company (GWRR); The Newburgh & South Shore Railroad Company (NSR); Chicago Rail Link (CRL); Manufacturers' Junction Railway Company (MJR); and Kansas Southwestern Railway Company (KSW).

Under the reorganization, MJR, CWP&S, GWRR, KSW, CRL, GWRI, PNR and GWRC will be reformed as limited liability companies. GWRO will remain a corporation. NSR will be reformed as a limited liability partnership. BCI will convey its interest in GWR, Railco and CWPT to OmniTRAX and the GWR, Railco and CWPT holding companies will be dissolved. Mr. Broe will transfer his direct controlling interests in PNR and CKR to OmniTRAX. As a result of these transactions, OmniTRAX will control all 11 rail carriers (MJR, CWP&S, GWRR, KSW, CRL, GWRI, PNR, GWRC, NSR, CKR and GWRO). Mr Broe will continue to control OmniTRAX.

The parties intend to consummate the transactions on or after June 15, 1994.

These transactions are within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties say that the transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The stated purpose of the reorganization is to obtain better tax treatment, to facilitate estate planning, and to simplify the corporate structure, which should allow a more efficient operation.

As a condition to use of this exemption, any employees adversely affected by the transactions will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transactions. Pleadings must be filed with the Commission and served on: Karl Morell, Ball, Janik & Novack, Suite 1035, 1101 Pennsylvania Ave., NW., Washington, DC 20004.

Decided: July 6, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16837 Filed 7–11–94; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 27, 1994, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 11, 1994.

Dated: July 1, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–16811 Filed 7–11–94; 8:45 am]
BILLING CODE 4410–09–M

[Docket No. 93–9]

Steven E. Warren, M.D.; Revocation of Registration

On October 5, 1992, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Steven E. Warren, M.D. (Respondent), of Salt Lake City, Utah, proposing to revoke his DEA Certificate of Registration, AW1662609, and to deny any pending applications for registration as a practitioner. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4), in that the Respondent was personally abusing narcotic controlled substances and obscured this use from others; that Respondent misused his registration privilege to obtain Schedule II controlled substances for other than legitimate medical purposes; that Respondent failed to maintain complete and accurate controlled substance records; that Respondent failed to account for 40 to 50 multi-dose vials of Demerol; that Respondent added saline solution to a commercial vial of Demerol in an effort to mislead investigators; and that Respondent distributed controlled substance samples without a legitimate medical purpose.

Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration, AW1662609, during the pendency of these proceedings. 21 U.S.C. 824(d).

The Respondent, by counsel, responded to the Order to Show Cause and requested a hearing. The matter was docketed before Administrative Law Judge Paul A. Tenney. A hearing was held in Salt Lake City, Utah on July 28, 1993.

On October 6, 1993, the administrative law judge issued his findings of fact, conclusions of law, and recommended ruling in which he recommended, *iner alia*, that the Respondent's DEA registration be revoked and that any pending applications be denied. The administrative law judge also recommended that the Administrator grant the Respondent alternative relief in the form of a waiver of DEA regulations to permit the San Juan County Hospital to employ Respondent and permit him to order controlled substances for hospital patients. The Government filed exceptions to this recommendation, and the Respondent filed a response to the Government's exceptions. The administrative law judge transmitted the record to the Acting Administrator on November 8, 1993. The Deputy Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Respondent graduated from medical school with the assistance of a National Service Corps scholarship, and was subsequently assigned to a remote county in Utah to complete his four year obligation to the Federal Government. After completion of his obligation, Respondent continued to practice in the area. For a period of approximately two years, Respondent was the only physician in the county.

In 1991 and 1992, Utah State licensing authorities initiated an investigation into the Respondent's prescribing practices by conducting audits of two local pharmacies. No violations were found. However, in June 1992, after anonymous complaints that the Respondent was receiving injections during his medical practice, the state

investigators; and that Respondent distributed controlled substance samples without a legitimate medical purpose.

Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration, AW1662609, during the pendency of these proceedings. 21 U.S.C. 824(d).

The Respondent, by counsel, responded to the Order to Show Cause and requested a hearing. The matter was docketed before Administrative Law Judge Paul A. Tenney. A hearing was held in Salt Lake City, Utah on July 28, 1993.

On October 6, 1993, the administrative law judge issued his findings of fact, conclusions of law, and recommended ruling in which he recommended, *iner alia*, that the Respondent's DEA registration be revoked and that any pending applications be denied. The administrative law judge also recommended that the Administrator grant the Respondent alternative relief in the form of a waiver of DEA regulations to permit the San Juan County Hospital to employ Respondent and permit him to order controlled substances for hospital patients. The Government filed exceptions to this recommendation, and the Respondent filed a response to the Government's exceptions. The administrative law judge transmitted the record to the Acting Administrator on November 8, 1993. The Deputy Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Respondent graduated from medical school with the assistance of a National Service Corps scholarship, and was subsequently assigned to a remote county in Utah to complete his four year obligation to the Federal Government. After completion of his obligation, Respondent continued to practice in the area. For a period of approximately two years, Respondent was the only physician in the county.

In 1991 and 1992, Utah State licensing authorities initiated an investigation into the Respondent's prescribing practices by conducting audits of two local pharmacies. No violations were found. However, in June 1992, after anonymous complaints that the Respondent was receiving injections during his medical practice, the state initiated a new investigation and determined that the Respondent was unable to account for quantities of Demerol, a Schedule II narcotic controlled substance. Additionally, investigators determined that improper transfers of Demerol from the local hospital to the Respondent's medical office had been made.

At the DEA administrative hearing, Respondent testified that he had started self-administering Demerol for shoulder pain and migraine headaches after a fall off the roof of his home. Subsequently, the Respondent was exposed to a contaminated needle in the course of his practice, became ill, and was admitted to a hospital for several days. There, he discussed his addiction with physicians, who arranged his admission to a five-week rehabilitative program. The Respondent surrendered his state controlled substance license in October 1992.

The administrative law judge found that the Respondent used Demerol, without a legitimate medical purpose, and became addicted during the summer of 1992. To obscure his use of the drug from hospital and clinic personnel, the Respondent used Demerol from the hospital inventory, wrote false prescriptions, and, at least once, injected saline solution into a Demerol vial. Additionally, the Respondent failed to keep complete and accurate records of his acquisition, disposition, and inventory of controlled substances. The administrative law judge found that the Respondent's demanding work schedule, his spouse's health problems, and a shoulder injury predisposed the Respondent to Demerol addiction.

The Respondent was charged, under Utah State law, with possessing and distributing a counterfeit substance, possession of a controlled substance without a valid prescription, possession of a false prescription and failure to make a record for prescribing and administering controlled substances. On May 3, 1993, before the Seventh Judicial District Court for San Juan County, Utah, the Respondent pled guilty to five felony counts. The Respondent's sentence included a fine, imprisonment not to exceed five years, and a one-year suspension of his medical license. The Court's Judgment and Order stayed the sentence for a period of five years and the Respondent was placed on probation with conditions, which included a two year prohibition from reapplying for a state controlled substance license. On May 5, 1993, the State of Utah Division of Occupational and Professional Licensing issued a Stipulation and Order with terms similar to that of the Judgment and Order, including a provision that the Respondent complete a rehabilitation program.

The administrative law judge found that the Respondent participated in an aftercare recovery program, attending Alcoholics Anonymous meetings; agreed to random drug screening all of which were negative; and was complying with or working on the conditions imposed in his probation agreement and in his licensing board stipulations. The administrative law judge concluded that the Respondent had made substantial efforts at rehabilitation, is presently in recovery, and that his prognosis for a full recovery is good.

Under 21 U.S.C. 824(a), the Deputy Administrator of the Drug Enforcement Administration may revoke the registration of a practitioner "* * * upon a finding that the registrant—

(1) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance;

(3) has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority;

(4) has committed such acts as would render his registration under Section 823 of this title inconsistent with the public interest as determined under such section; or

(5) has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42."

The administrative law judge determined that subsections (2), (3), and (4) provide a basis for revocation based on Respondent's conviction of five felony counts relating to controlled substances, his surrender of his state controlled substance license, and the public interest factors.

Under 21 U.S.C. 824(a)(4), and pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors shall be considered

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. *Henry J. Schwarz, Jr., M.D.*, 54 FR 16422 (1989).

The administrative law judge found that all of the factors listed in 21 U.S.C. 823(f) are relevant. Respondent surrendered his state controlled substance license and the State of Utah has recommended that he not apply for reinstatement for a period of time. Respondent admitted to wrongfully obtaining Demerol for his own use, and he pled guilty to five felony counts relating to controlled substances. As to factor (5), the administrative law judge found that the public health and safety are not at risk, since the Respondent has made progress in his rehabilitation and both the criminal plea agreement and medical board agreement require that the Respondent comply with numerous conditions to ensure that he will not suffer a relapse in his recovery.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized by the state to dispense controlled substances. DEA has consistently held that termination of a registrant's state authority to handle controlled substances requires that DEA revoke the registrant's DEA Certificate of Registration. *Bobby Watts, M.D.*, 53 FR 11919 (1987). Based on the foregoing, the Deputy Administrator concludes that the Respondent's registration must be revoked. 21 U.S.C. 824(a) (2), (3) and (4).

As an additional issue, the administrative law judge found that the Respondent presented evidence that the local community has suffered by the lack of Respondent's ability to practice in the hospital emergency room. The Respondent and the San Juan County Hospital entered into a protocol in which the Respondent would be able to write hospital patient prescriptions for controlled substances under the hospital's DEA number. This agreement is contingent on the successful application to the Deputy Administrator of the DEA by the hospital for a waiver of the provisions of 21 CFR 1301.76(a), which precludes the hospital from employing an individual with access to controlled substances if that individual has been convicted of a controlled substance related felony. The San Juan County Hospital requested that the Deputy Administrator grant a waiver to allow the employment of the Respondent. The administrative law judge recommended that such a waiver be granted by the Deputy Administrator pursuant to his authority under 21 CFR 1307.03.

The Government filed an exception to the recommendation of the administrative law judge that a waiver of 21 CFR 1301.76(a) be granted contending that since the Respondent has no underlying state controlled substance license nor a DEA registration, he should not be permitted to handle controlled substances under any circumstance. The Respondent, in response to the Government exception, presented a letter from the Utah Attorney General's office permitting the Respondent, with the appropriate DEA exemption, to order controlled substances for hospital patients, until such time as the Utah State Division of Occupational and Professional Licensing arrived at a formal opinion on this issue.

The Deputy Administrator disagrees with the administrative law judge's recommendation with regard to a waiver or exemption from regulations and agrees with the Government's contention that such a waiver should not be granted. In fact, on December 7, 1993, DEA previously denied the request of San Juan Hospital that it be granted an exemption from the regulations to allow the Respondent's employment with access to controlled substances.

The Deputy Administrator adopts the findings of fact, conclusions of law, and recommended ruling of Administrative Law Judge Tenney, except as otherwise noted herein. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, AW1662609, previously issued to Steven E. Warren, M.D., be, and it hereby is, revoked, and that any pending applications for registration, be, and they hereby are, denied. This order is effective July 12, 1994.

Dated: July 5, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94-16738 Filed 7-11-94; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the Administration of the Act, will meet on July 28–29, 1994 at the Bureau of Labor Statistics Conference and Training Center, Postal Square Building, 2 Massachusetts Avenue NE, Room G440 (meeting rooms 2 & 3), Washington, DC. The meeting is open to the public and will begin at 8:30 a.m. on each day.

At this first meeting and swearing-in of the newly appointed committee, members will establish committee goals, plan for future meetings, discuss OSHA's standards setting process, and hear about the current agenda and direction of OSHA.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Joanne Goodell before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Person who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chair of the Advisory Committee. Individuals with disabilities who need special accommodations should contact Tom Hall by July 23 at the address indicated below.

An official record of the meeting will be available for public inspection through Tom Hall, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue, NW., Washington, DC, 20210, telephone 202-219-8615.

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N-3641, 200 Constitution Avenue, NW., Washington, DC, 20210, telephone 202-219-8021.

Signed at Washington, DC, this 7th day of July 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94-16851 Filed 7-11-94; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-277]

In the Matter of: Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Unit 2)

Exemption

I

Philadelphia Electric Company (the licensee), is the holder of Facility Operating License No. DPR-44, which authorizes operation of the Peach Bottom Atomic Power Station (PBAPS), Unit 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The PBAPS, Unit 2 facility consists of a boiling water reactor located in York County, Pennsylvania.

II

In its letter dated April 18, 1994, the licensee requested an exemption from the Commission's regulations. The subject exemption is from a requirement in Appendix J to 10 CFR Part 50 that Type B and C containment penetration leak rate tests be performed at intervals no greater than 2 years. The exemption would allow a one-time 60-day extension of the 2-year requirement. Hence, this one-time exemption would allow the licensee to perform the testing in Sections III.D.2.(a) and III.D.3 during Unit 2's Cycle 10 refueling outage scheduled to begin no later than September 24, 1994.

The licensee is utilizing a new core design at PBAPS, Unit 2, which allows the intervals between reactor shutdowns for refueling to extend beyond the maximum allowable 2-year interval. Accordingly, the licensee is unable to comply with the testing intervals specified in Appendix J of 10 CFR Part 50. Prior to the current operating cycle, local leak rate tests were performed in conjunction with an operating cycle of

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue, NW., Washington, DC. 20210, telephone 202–219–8021.

Signed at Washington, DC. this 7th day of July 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–16851 Filed 7–11–94; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–277]

In the Matter of: Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Unit 2)

Exemption

I

Philadelphia Electric Company (the licensee), is the holder of Facility Operating License No. DPR–44, which authorizes operation of the Peach Bottom Atomic Power Station (PBAPS), Unit 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The PBAPS, Unit 2 facility consists of a boiling water reactor located in York County, Pennsylvania.

II

In its letter dated April 18, 1994, the licensee requested an exemption from the Commission's regulations. The subject exemption is from a requirement in Appendix J to 10 CFR Part 50 that Type B and C containment penetration leak rate tests be performed at intervals no greater than 2 years. The exemption would allow a one-time 60-day extension of the 2-year requirement. Hence, this one-time exemption would allow the licensee to perform the testing in Sections III.D.2.(a) and III.D.3 during Unit 2's Cycle 10 refueling outage scheduled to begin no later than September 24, 1994.

The licensee is utilizing a new core design at PBAPS, Unit 2, which allows the intervals between reactor shutdowns for refueling to extend beyond the maximum allowable 2-year interval. Accordingly, the licensee is unable to comply with the testing intervals specified in Appendix J of 10 CFR Part 50. Prior to the current operating cycle, local leak rate tests were performed in conjunction with an operating cycle of 18 months. The 18-month operating cycle was more conducive to the 2-year testing interval.

Use of extended cycle core designs has been recognized as a growing trend in the industry as discussed in the staff's Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," dated April 2, 1991. The staff previously granted the licensee two license amendments to allow PBAPS, Unit 2 to perform selected surveillances on a 24-month interval (see Amendment 169 dated August 19, 1992, and Amendment 179 dated August 2, 1993). However, the regulations cited by the licensee in the exemption request have not yet been revised to reflect the use of a 24-month operating cycle by some licensees. Therefore, the licensee has requested an exemption in order to avoid a premature shutdown, which would be needed to accomplish the testing, and also to properly schedule the testing during the refueling outage.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. * * *"

The underlying purpose of the requirement to perform Type B and Type C containment leak rate tests at intervals not to exceed 2 years, is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or being unknown, and long enough to allow the tests to be conducted during scheduled refueling outages. This interval was originally published in Appendix J when refueling cycles were conducted at approximately annual intervals and has not been changed to reflect 18-month or 2-year operating cycles. It is not the intent of the regulation to require a plant shutdown solely for the purpose of conducting the periodic leak rate tests.

Based on the information presented in the licensee's application, the proposed extended test interval would not result in a non-detectable leakage rate in excess of the value established by 10 CFR Part 50, Appendix J, or in any changes to the containment structure or plant systems. Therefore, the containment integrity would be maintained. As a result, the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

On this basis, the NRC staff finds that the licensee has demonstrated that special circumstances are present as required by 10 CFR 50.12(a)(2)(ii). Since the licensee has justified the leaktight integrity of the containment based on previous leakage test results, the staff concludes that a one-time extension of no more than 60 days beyond the 2-year permitted interval will not have a significant safety impact. Therefore, the staff also finds that extending the interval between tests will not present an undue risk to the public health and safety.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR Part 50, Appendix J, Sections III.D.2(a) and III.D.3 are not necessary in order to achieve the underlying purpose of this regulation; and hereby grants the following exemption with respect to the requirements of 10 CFR Part 50, Appendix J, Sections III.D.2.(a) and III.D.3.

For the Peach Bottom Atomic Power Station, Unit 2, the testing intervals specified in 10 CFR Part 50, Appendix J, Sections III.D.2.(a) and III.D.3 are extended to allow the testing to be performed during the Unit 2 cycle 10 refueling outage. This one-time extension is granted for a maximum of 60 days from the 2 year interval required by 10 CFR Part 50, Appendix J, Sections III.D.2.(a) and III.D.3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (59 FR 33312).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of July 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16819 Filed 7–11–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System; Alternative Forms of Annuity Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to employees who elect the alternative form of annuity under section 8343a of title 5, United States Code. This notice is necessary to conform the present value factors to changes in economic assumptions approved by the Board of Actuaries.

EFFECTIVE DATE: Revised present value factors will apply to anyone whose annuity commences October 1, 1994, or later.

ADDRESSES: Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Section 831.2205(a) of Title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8343a. That reduction is required in order to produce an annuity that is actuarially equivalent to the annuity of a retiree who does not elect an alternative form of annuity. The present value factors currently used to compute the reduction were published by OPM (56 FR 7424) on February 22, 1991.

On September 20, 1993, OPM published (58 FR 49066) a notice in the **Federal Register** to revise the normal cost percentage under the FERS Act of 1986, Pub. L. 99–335, based on changed economic assumptions approved by the Board of Actuaries. Those changed economic assumptions require corresponding changes in the present value factors used to compute an alternative form of annuity. The changed factors will also be used, in accordance with 5 U.S.C. 8334(d)(2), to compute the annuity of an employee whose annuity commences on or after October 1, 1994, and who retires while owing a redeposit of a refund for service that ended before October 1, 1990. OPM is, therefore, revising the table of present value factors to read as follows:

CSRS PRESENT VALUE FACTORS

Age at retirement	Present value of a monthly annuity	Age at retirement	Present value of a monthly annuity
40	294.4	66	156.0
41	290.0	67	150.7
42	285.5	68	145.4
43	280.8	69	140.2
44	276.2	70	134.7
45	270.4	71	129.4
46	264.7	72	124.0
47	259.2	73	118.8
48	253.5	74	113.6
49	247.2	75	108.5
50	240.4	76	103.5
51	235.0	77	98.7
52	229.8	78	93.9
53	224.4	79	89.4
54	218.6	80	84.9
55	212.6	81	80.5
56	207.5	82	76.3
57	202.4	83	72.3
58	197.0	84	68.4
59	192.3	85	64.7
60	188.3	86	61.2
61	182.9	87	57.9
62	177.0	88	54.7
63	171.9	89	51.8
64	166.5	90	48.9
65	161.1		

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–16715 Filed 7–11–94; 8:45 am]

BILLING CODE 6325–01–M

Federal Employees Retirement System; Alternative Forms of Annuity Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to employees who elect the alternative form of annuity under section 8343a of title 5, United States Code. This notice is necessary to conform the present value factors to changes in economic assumptions approved by the Board of Actuaries.

EFFECTIVE DATE: Revised present value factors will apply to anyone whose annuity commences October 1, 1994, or later.

ADDRESSES: Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Section 842.706(a) of Title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8420a. That reduction is required in order to produce an annuity that is actuarially equivalent to the annuity of a retiree who does not elect an alternative form of annuity. The present value factors currently used to compute the reduction were published by OPM (56 FR 8223) on February 27, 1991.

On September 20, 1993, OPM published (at 58 FR 49066) a notice in the **Federal Register** to revise the normal cost percentage under the FERS Act of 1986, Pub. L. 99–335, based on changed economic assumptions approved by the Board of Actuaries. Those changed economic assumptions require corresponding changes in the present value factors used to compute an alternative form of annuity. OPM is, therefore, revising the tables of present value factors to read as follows:

TABLE I.—FERS PRESENT VALUE FACTORS APPLICABLE TO ALL RETIREES EXCEPT THOSE DESCRIBED IN TABLE II

Age at retirement	Present value of a monthly annuity	Age at retirement	Present value of a monthly annuity
40	169.2	66	143.6
41	168.8	67	139.1
42	168.4	68	134.6
43	168.1	69	130.1
44	167.7	70	125.4
45	166.9	71	120.7
46	166.1	72	116.0
47	165.4	73	111.4
48	164.7	74	106.8
49	163.7	75	102.2
50	162.4	76	97.8
51	161.9	77	93.5
52	161.6	78	89.2
53	161.2	79	85.0
54	160.6	80	80.9
55	160.0	81	77.0
56	160.0	82	73.1
57	160.2	83	69.4
58	160.4	84	65.8
59	161.2	85	62.4
60	162.7	86	59.1
61	163.5	87	56.0
62	161.3	88	53.0
63	157.1	89	50.2
64	152.5	90	47.5
65	148.0		

TABLE II.—FERS PRESENT VALUE FACTORS APPLICABLE TO INDIVIDUALS RETIRING BEFORE AGE 62 WHO ARE ELIGIBLE FOR COLA'S [1]

Age at retirement	Present value of a monthly annuity
40	245.2
41	241.9
42	238.5
43	235.0
44	231.5
45	227.9
46	224.2
47	220.3
48	216.5
49	212.6
50	208.6
51	204.5
52	200.3
53	196.1
54	191.8
55	187.4
56	183.1
57	178.6
58	174.2
59	169.7
60	165.1
61	160.4

[1] In Accordance with 5 U.S.C. 8462(C)(3)(B)(ii); i.e., Military Reserve Technicians Who Retire Under 5 U.S.C. 8414(C) by Reason of Disability, Law Enforcement Officers, Firefighters, And Air Traffic Controllers.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–16716 Filed 7–11–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34314; File No. SR–CHX–94–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. To Waive Exchange Transaction Fees on Trades in the Chicago Stock Basket

July 5, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 30, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

TABLE II.—FERS PRESENT VALUE FACTORS APPLICABLE TO INDIVIDUALS RETIRING BEFORE AGE 62 WHO ARE ELIGIBLE FOR COLA'S [1]

Age at retirement	Present value of a monthly annuity
40	245.2
41	241.9
42	238.5
43	235.0
44	231.5
45	227.9
46	224.2
47	220.3
48	216.5
49	212.6
50	208.6
51	204.5
52	200.3
53	196.1
54	191.8
55	187.4
56	183.1
57	178.6
58	174.2
59	169.7
60	165.1
61	160.4

[1] In Accordance with 5 U.S.C. 8462(C)(3)(B)(ii); i.e., Military Reserve Technicians Who Retire Under 5 U.S.C. 8414(C) by Reason of Disability, Law Enforcement Officers, Firefighters, And Air Traffic Controllers.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–16716 Filed 7–11–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34314; File No. SR–CHX–94–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. To Waive Exchange Transaction Fees on Trades in the Chicago Stock Basket

July 5, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 30, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to waive, through September 30, 1994, Exchange transaction fees for trades in the Chicago Stock Basket ("CXM"). This would extend a waiver currently in effect through June 30, 1994.[1] Proposed new language is italicized and deleted language is bracketed:

(c) Transaction Fee Schedule Round Lots/Mixed Lots
45 cents per 100 shares $100 maximum per trade
Odd Lots
35 cents per trade
$400 maximum monthly fee

The above fees shall not apply to transactions in the Chicago Basket ("CXM") through [June 30, 1994] *September 30, 1994.*

II. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to extend the waiver of certain Exchange fees for trades in the CXM through September 30, 1994.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among members using its facilities.

[1] This waiver became effective in Securities Exchange Act Release No. 33056 (October 15, 1993), 58 FR 54387 (October 21, 1993) (File No. SR–CHX–93–24), and subsequently was extended in Securities Exchange Act Release Nos. 33381 (December 23, 1993), 58 FR 69415 (December 30, 1993) (File No. SR–CHX–93–34); and 33836 (March 30, 1994), 59 FR 16248 (April 6, 1994) (File No. SR–CHX–94–08).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance on the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–16 and should be submitted by August 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-16750 Filed 7-11-94 8:45 am]

BILLING CODE 8010-01-M

[Release No. 43-34306; File No. SR-CBOE-94-05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options and Regular and Reduced-Value Long-Term Options on the CBOE Real Estate Investment Trust Index

July 5, 1994

I. Introduction

On March 8, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide for the listing and trading of options and long-term options ("LEAPS")[3] on the CBOE's Real Estate Investment Trust ("REIT") Index ("REIT Index" or "Index"), and LEAPS on a reduced-value REIT Index. On June 14, 1994, the CBOE filed Amendment No. 1 to the proposed rule change.[4]

Notice of the Exchange's proposed rule change appeared in the **Federal Register** on April 19, 1994.[5] No comment letters were received on the proposal. This order approves the proposal and Amendment No. 1 thereto.

II. Description of the Proposal

A. General

The CBOE proposes to list and trade options on the REIT Index, a new securities index developed by the CBOE and based on REITs that are traded on the New York Stock Exchange, Inc. ("NYSE") and American Stock Exchange, Inc. ("Amex"). The CBOE also proposes to list LEAPS on the full-value Index and LEAPS on a reduced-value Index that will be computed at one-tenth of the value of the REIT Index. REIT Index LEAPS will trade independent of and in addition to regular REIT Index options traded on the Exchange;[6] however, as discussed below, position and exercise limits of Index LEAPS and regular Index options will be aggregated.

B. Composition of the Index

The Index is based on securities representing 25 REIT stocks that the Exchange believes are representative of the REIT markets. The CBOE represents that the 25 REIT stocks have invested a preponderance of their assets in real property (typically at least 75 percent), and the property portfolios owned by these REITs constitute a diverse pool of income-earning real estate investments.

Twenty-three of the REIT stocks currently trade on the NYSE, and two trade on the Amex. All component stocks are "reported securities," as that term is defined in Rule 11Aa3-1 under the Act.[7] The Index is price-weighted and will be calculated on a real-time basis using last sale prices.

As of the close of trading on June 10, 1994, the Index was valued at 212.55.[8]

As of the close of trading on February 14, 1994, the market capitalizations of the individual securities in the Index ranged from a high of $1.1 billion (New Plan Reality) to a low of $220.2 million (Western Investment Real Estate Trust), with a mean and median of $541.9 million and $518.7 million, respectively. The total market capitalization of the securities in the Index was $13.5 billion. The total number of shares outstanding for the REITs in the Index ranged from a high of 49.1 million shares (New Plan Realty) to a low of 10.9 million shares (BRE Properties). The average price per share of the securities in the Index, for the six-month period preceding February 14, 1994,[9] ranged from a high of $39.90 (Weingarten Realty Investors) to a low of $6.99 (Rockefeller Center Properties). In addition, the average daily trading volume of the REITs in the Index ranged from a high of 560,210 shares per day (Simon Property Group)[10] to a low of 15,330 shares per day (BRE Properties), with the mean and median being 94,900 and 49,100 shares, respectively. Lastly, no one REIT accounted for more than 6.5 percent of the Index's total value (Weingarten Realty Investors and Nationwide Health Properties), and the percentage weighting of the five largest issues in the Index accounted for 30.2 percent of the Index's value. The percentage weighting of the lowest weighted component was 1.1 percent of the Index (Rockefeller Center Properties) and the percentage weighting of the five smallest issues accounted for 10.2 percent of the Index's value.

Four of the component stocks are currently the subject of trading in equity options, and the balance of the component stocks meet the criteria for allowing the listing of equity options under CBOE Rule 5.3.

C. Maintenance

The Index will be maintained by the CBOE. The CBOE may change the composition of the Index at any time subject to compliance with the maintenance criteria discussed herein to reflect conditions in REIT markets. If it becomes necessary to replace a security in the Index, the Exchange represents that it will make every effort to add new REITs that are representative of REIT markets as a whole and will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement security. Further, securities may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. If, however, the Exchange determines to increase the number of Index component securities to greater than 33 or reduce the number of Index component securities to fewer than 17, the CBOE will seek and obtain Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price or expiration month series of REIT Index options and Index LEAPS. In addition, in choosing replacement securities for the Index, the CBOE will be required to ensure that at least 90 percent of the weight of the Index continues to be comprised of REITs that are eligible for standardized options trading.[11]

D. Applicability of CBOE Rules Regarding Index Options

The rules in Chapter XXIV of the CBOE Rules will be applicable to REIT Index options and full-value and reduced-value Index LEAPS. Those rules address, among other things, the applicable position and exercise limits, policies regarding trading halts and suspensions, and margin treatment for narrow-based index options.

E. Calculation of the Index

The REIT Index is a price-weighted index and reflects changes in the prices of the Index component securities relative to the Index's base date of January 3, 1994. Specifically, the Index value is calculated by adding the prices of the component REITs and then dividing this summation by a divisor that is equal to the number of components of the Index to get the average price. To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes that

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] "LEAPS" is an acronym for Long-Term Equity Anticipation Securities. LEAPS are long-term index option series that expire from 12 to 36 months from their date of issuance. *See* CBOE Rule 24.9(b)(1).

[4] In Amendment No. 1, the CBOE (1) advised that surveillance procedures currently used to monitor trading in each of the Exchange's other index options also will be used to monitor trading in regular Index options and in full-value and reduced-value LEAPS on the Index, and (2) advised that the REIT Index will be calculated and disseminated to the Options Price Reporting Authority ("OPRA") every 15 seconds by the CBOE based on the last-sale prices of the component stocks, and that OPRA in turn will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron. *See* Letter from Scott Lyden, Senior Research Analyst, CBOE, to Thomas McManus, Division of Market Regulation, Commission, dated June 13, 1994.

[5] *See* Securities Exchange Act Release No. 33872 (April 7, 1994), 59 FR 17804 (April 14, 1994).

[6] According to the CBOE, the REIT Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, the CBOE concludes, should offer investors a low-cost means of achieving diversification or to tilt their portfolios toward, or away from, real estate investments. The CBOE believes that the Index will provide retail and institutional investors with a means of benefitting from their forecasts about the financial performance of REITS and their underlying real estate assets. Options on the Index also may be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively and actively managed REITS, as well as a means of hedging the risks of investing in real estate generally, the REIT stocks in particular.

[7] *See* 17 CFR 240.11Aa3-1. A "reported security" is defined in paragraph (a)(4) of this rule as "any listed equity security or Nasdaq security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan." A "transaction reporting plan" is defined in paragraph (a)(2) of this rule as "any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of, this section."

[8] The index value was set to equal 200.00 on the base date of the Index, January 3, 1994. *See* Letter from Dan W. Schneider, Schiff Hardin & Waite, to Thomas McManus, Branch of Options Regulation, Division of Market Regulation, Commission, dated March 22, 1994.

[9] Trading data for these preceding six months were available for nineteen of the REIT stocks in the Index. Six of the component REIT stocks commenced trading at various points of time within that six month period.

[10] Simon Property Group commenced trading on December 14, 1993. The highest average daily trading volume for a REIT stock which traded for the full six month period prior to February 14, 1994 was [illegible] (Rockefeller Center Properties).

[11] The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 shareholders; (3) trading volume must have been at least 2.4 million shares over the preceding 12 months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE Rule 5.3.

security in the Index, the Exchange represents that it will make every effort to add new REITs that are representative of REIT markets as a whole and will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement security. Further, securities may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. If, however, the Exchange determines to increase the number of Index component securities to greater than 33 or reduce the number of Index component securities to fewer than 17, the CBOE will seek and obtain Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price or expiration month series of REIT Index options and Index LEAPS. In addition, in choosing replacement securities for the Index, the CBOE will be required to ensure that at least 90 percent of the weight of the Index continues to be comprised of REITs that are eligible for standardized options trading.[11]

D. Applicability of CBOE Rules Regarding Index Options

The rules in Chapter XXIV of the CBOE Rules will be applicable to REIT Index options and full-value and reduced-value Index LEAPS. Those rules address, among other things, the applicable position and exercise limits, policies regarding trading halts and suspensions, and margin treatment for narrow-based index options.

E. Calculation of the Index

The REIT Index is a price-weighted index and reflects changes in the prices of the Index component securities relative to the Index's base date of January 3, 1994. Specifically, the Index value is calculated by adding the prices of the component REITs and then dividing this summation by a divisor that is equal to the number of components of the Index to get the average price. To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes that may result in divisor adjustments include, but are not limited to, removal and replacement of a component REIT stock, component stock splits, and the financial restructuring of a component stock.

The Index will be calculated continuously and will be disseminated to OPRA every 15 seconds by the CBOE, based on the last-sale prices of the component REITs.[12] OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron.

F. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[13] Standard options trading hours (8:30 a.m. to 3:10 p.m. Central Standard Time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be $5.00 for full-value Index options with a duration of one year or less to expiration.[14] In addition, pursuant to CBOE Rule 24.9, there may be up to six expiration months outstanding at any given time. Specifically, there may be up to three expiration months from the March, June, September, and December cycle, plus up to three additional near-term months so that the two nearest-term months will always be available. As described in more detail below, the Exchange also intends to list several Index LEAPS series that expire from 12 to 36 months from the date of issuance.

G. Settlement of Index Options

Options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"), and the last trading day for an expiring Index option series will normally be the second to last business day before Expiration Friday (normally a Thursday). The Index value for purposes of settling outstanding regular Index options and Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component securities in their primary market on the last trading day prior to expiration (*i.e.*, Expiration Friday). Once all of the component REITs have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component REITs do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, normally a Thursday) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component security for purposes of determining the settlement value of the Index, the CBOE will wait until the end of the trading day on Expiration Friday.

H. Listing of Long-Term Options on the Full-Value or Reduced-Value REIT Index

The Exchange's proposal provides that the Exchange may list LEAPS that expire from 12 to 36 months from the listing based on the full-value REIT Index or a reduced-value REIT Index that will be computed at one-tenth the value of the full-value Index, subject to existing Exchange requirements applicable to full-value and reduced-value LEAPS.[15] The current and closing Index value for reduced-value REIT Index LEAPS will be computed by dividing the value of the full-value Index by ten and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 212.55 would be 21.26 for the reduced-value Index LEAPS, and 212.54 would become 21.25. The reduced-value Index LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all of the Exchange's index options, including sales practice rules, margin requirements, and floor trading procedures. Pursuant to CBOE Rule 24.9, the strike price interval for the reduced-value Index LEAPS will be no less than $2.50, instead of $5.00.

I. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is classified as an "industry index" under CBOE rules,[16] Exchange rules that are applicable to the trading of options on narrow-based indexes will apply to the trading of REIT Index options and LEAPS. Specifically, Exchange rules governing margin requirements,[17] position and

[11] The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 shareholders; (3) trading volume must have been at least 2.4 million shares over the preceding 12 months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE Rule 5.3.

[12] For purposes of the daily dissemination of the Index value, if a REIT included in the Index has not opened for trading, the CBOE will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[13] A European-style option can be exercised only during a specified period before the option expires.

[14] For a description of the strike price intervals for regular and reduced-value Index LEAPS, *see infra* Section II.H.

[15] *See* CBOE Rule 24.9(b).

[16] *See* CBOE Rule 24.1(i).

[17] Pursuant to CBOE Rule 24.11, the margin requirements for the Index options will be: (1) for short options positions, 100 percent of the current market value of the options contract plus 20 percent of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10 percent of the underlying aggregate Index value;

Continued

exercise limits,[18] and trading halt procedures [19] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. For purposes of determining whether a given position in reduced-value Index LEAPS complies with applicable position and exercise limits, positions in reduced-value Index LEAPS will be aggregated with positions in the full-value Index options.[20] For these purposes, ten reduced-value contracts will equal one full-value contract.

J. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options also will be used to monitor trading in regular Index options and in full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[21]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[22] Specifically, the Commission finds that the trading of REIT Index options, including full-value and reduced-value REIT Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with REIT securities.[23]

However, the trading of options on the REIT Index, including full-value and reduced-value LEAPS on the Index, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE has adequately addressed these concerns.

A. Index Design and Structure

The Commission finds that the REIT Index is a narrow-based index. The REIT Index is composed of only 25 securities, all of which are REIT stocks.[24] Accordingly, the Commission believes that it is appropriate for the CBOE to apply its rules governing narrow-based index options to trading in the Index options.[25]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component securities significantly minimize the potential for manipulation of the Index. First, the majority of the components that comprise the Index are actively-traded, with a mean and median average daily trading volume of 94,900 and 49,100 shares, respectively.[26] Second, the market capitalizations of the securities in the Index are very large, ranging from a high of $1.1 billion to a low of $220.2 million, as of February 14, 1994, with the mean and median being $541.9 million and $518.7 million, respectively. Third, although the Index is only comprised of 25 component securities, no one particular security or group of securities dominates the Index. Specifically, no individual REIT stock comprises more than 6.5 percent of the Index's total value, and the percentage weighting of the five largest issues in the Index account for 30.2 percent of the Index's value.[27] Fourth all of the securities in the Index are eligible for standardized options trading (four of which currently underlie exchange-listed options).[28] The proposed CBOE maintenance requirement that at least 90 percent of the weighting of the Index be comprised of securities that are eligible for options trading will ensure that the Index is always substantially comprised of options eligible securities. Fifth, if the CBOE increases the number of component securities to more than 33 or decreases that number to less than 17, the CBOE will be required to seek Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price or expiration month series of REIT Index options and Index LEAPS. This will help protect against material changes in the composition and design of the Index that might adversely affect the CBOE's obligations to protect investors and to maintain fair and orderly markets in REIT Index options and Index LEAPS. Sixth, the CBOE will be required to ensure that each component of the Index is subject to last sale reporting requirements in the United States. This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that the expense of attempting to manipulate the value of the REIT Index in any significant way through trading in component REITs, coupled with existing mechanisms to monitor trading activity in those securities, as discussed below, will help deter such illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as REIT Index options (including full-value and reduced-value Index LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in REIT Index options and full-value and reduced-value REIT Index LEAPS.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation.[29] In this regard, the NYSE and the Amex, which currently are the primary markets for the REITs comprising the Index, are both members of the ISG, which provides for the exchange of all necessary surveillance information.[30]

D. Market Impact

The Commission believes that the listing and trading on the CBOE of options on the REIT Index, including full-value and reduced-value Index LEAPS, will not adversely impact the

---

and (2) for LEAPS positions, 100 percent of the options premium paid.

[18] Pursuant to CBOE Rules 24.4A and 24.5, respectively, the position and exercise limits for the Index options will be 10,500 contracts, unless the Exchange determines, pursuant to Rules 24.4A and 24.5, that a lower limit is warranted.

[19] Pursuant to CBOE Rule 24.7, the trading on the CBOE of Index options may be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20 percent of the Index value is halted or suspended.

[20] *See* CBOE Rule 24.4A(c).

[21] The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983, among other things, to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, dated July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to Intermarket Surveillance Group Agreement, dated January 29, 1990. The members of the ISG are: the Amex, the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock, and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[22] 15 U.S.C. 78f(b)(5) (1988).

[23] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed index options and full-value index LEAPS on the REIT Index will provide investors with a hedging vehicle that should reflect the overall movement of REIT securities in the U.S. securities markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions in the REIT sector of the U.S. securities markets, allowing them to establish positions or increase existing positions in such markets in a cost-effective manner. Moreover, the Commission believes that the reduced-value Index LEAPS, which will be traded on an index computed at one-tenth the value of the REIT index, will serve the needs of retail investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.

[24] The reduced-value REIT Index, which is composed of the same component securities as the Index, is identical to the REIT Index, except that it is calculated by dividing the Index value by ten.

[25] *See supra* notes 16 through 20, and accompanying text.

[26] In addition, for the six month period prior to February 14, 1994, no component of the Index had an average daily trading volume of less than 15,300 shares per day.

[27] For an index with a significantly greater number of securities than 25 issues, the Commission might come to a different conclusion if only a few securities accounted for a significant portion of the index's weighting. Further, if an index contained only a few stocks, the Commission might question whether it could be traded as an index product.

[28] *See supra* note 11.

[29] Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[30] *See supra* note 21.

monitor trading activity in those securities, as discussed below, will help deter such illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as REIT Index options (including full-value and reduced-value Index LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in REIT Index options and full-value and reduced-value REIT Index LEAPS.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation.[29] In this regard, the NYSE and the Amex, which currently are the primary markets for the REITs comprising the Index, are both members of the ISG, which provides for the exchange of all necessary surveillance information.[30]

D. Market Impact

The Commission believes that the listing and trading on the CBOE of options on the REIT Index, including full-value and reduced-value Index LEAPS, will not adversely impact the underlying securities markets.[31] First, as described above, for the most part no one security or group of securities dominates the Index. Second, because at least 90 percent of the numerical value of the Index must be accounted for by securities that meet the Exchange's options listing standards, the component securities generally will be actively-traded, highly-capitalized securities. Third, the 10,500 contract position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by The Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring REIT Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.[32]

E. Accelerated Approval of Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 to the Exchange's proposed rule change prior to the thirtieth day after the date of publication on notice of filing thereof in the **Federal Register**. Amendment No. 1 merely clarifies the proposed rule change by making specific representations with respect to surveillance and Index value dissemination. These representations are identical in all material respects to those made by the Exchange in connection with similar proposals to list options on stock indexes.[33] Therefore, the Commission finds that no new regulatory issues are raised by Amendment No. 1. Accordingly, the Commission believes it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 1 to the Exchange's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the foregoing that are filed with the Commission, and all written communications relating to the foregoing between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W. Washington, D.C. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–94–05, and should be submitted by August 2, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (File No. SR–CBOE–94–05), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16749 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34296; File No. SR–MSRB–94–3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Procedures in Connection With the Administration of Board Rules

July 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 14, 1994, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared

---

[29] Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[30] *See supra* note 21.

[31] In addition, the CBOE has represented that the CBOE and OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of options and LEAPS on the REIT Index. *See* Letter from Joseph P. Corrigan, Executive Director, OPRA, to Eileen Smith, CBOE, dated February 25, 1994.

[32] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[33] *See, e.g.*, Securities Exchange Act Release No. 33962 (April 25, 1994), 59 FR 22874 (May 3, 1994).

[34] 15 U.S.C. 78s(b)(2) (1988).

[35] 17 CFR 200.30–3(a)(12) (1993).

by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to establish a method by which the Board may, from time to time, prescribe and amend procedures relating to the administration of Board rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

The text of the proposed rule change is as follows (additions are italicized): [1]

Rule A–8. Rulemaking Procedures

(a) (no change.)

(b) (no change.)

(c) *Procedures.*

The Board may from time to time prescribe and amend procedures relating to the administration of Board rules. Such procedures and amendments may be approved by the Board pursuant to rule A–4(d).

Each broker, dealer and municipal securities dealer shall be subject to such procedures and amendments thereto in the same manner as the broker, dealer and municipal securities dealer is subject to the rules of the Board.

Procedures and amendments thereto shall become effective no earlier than 10 business days after publication of such procedures and amendments.

(*d*) Access to Board Rules and Other Action. (No change.)

[1] The Commission notes that the reference to "publication" in proposed rule A–8(c) refers to publication in the *MSRB Reports*. Telephone conversation between Diane Klinke, MSRB, and Elizabeth MacGregor, Branch Chief, Commission, on June 30, 1994.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Board believes that the proposed rule change would increase the efficiency of both the implementation and operation of Board rules involving the submission of information to the Board. The "procedures" contemplated by the proposed rule change would concern only matters of a technical nature. The proposed rule change further provides that any procedures, or amendment thereto, may be approved by the Board without the necessity of a formal Board meeting, pursuant to existing rule A–4(d). Rule A–4(d) provides a mechanism by which action, "other than action on proposed rules or proposed amendment to rules of the Board," may be taken by written consent of the Board or by telephone poll of all Board members.[2] Of course, the Board will continue to file any matters with the Commission, as required, pursuant to Section 19(b)(1) of the Act, and Rule 19b–4 thereunder.[3]

On April 7, 1994, the Commission approved Board rule G–37, concerning political contributions and prohibitions on municipal securities business.[4] This rule, among other things, requires dealers to submit certain information "to the Board on Form G–37, in accordance with Board rule G–37 filing procedures, quarterly with due dates determined by the Board. * * *"[5] In its filing with the Commission, the Board noted that it "is in the process of developing appropriate rule G–37 filing procedures to allow for public access to the information to be submitted on Form G–37, as well as indexing, record storage, etc. * * *"[6] In the present filing, the Board discussed these rule G–37 filing procedures as an example of the types of procedures to which the instant proposed rule change would apply. The Board will submit to the Commission another proposed rule change relating to rule G–37 filing procedures.[7]

2. Statutory Basis

The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Act which provides that the Board's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general to protect investors and the public interest. * * *

In addition, Section 15B(b)(2)(I) authorizes the Board to adopt rules which provide for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[2] Rule A–4(d) provides that: Action by the Board, other than action on proposed rules or proposed amendments to rules of the Board, may be taken without a meeting by written consent of the Board setting forth the action so taken or by telephone poll of all members of the Board, provided that, in the case of action taken by telephone, the Board, at a meeting, or the Chairman of the Board authorizes the action to be taken by such means. The Executive Director shall transmit to each Board member, as soon as practicable after a telephone poll is taken, a written statement setting forth the questions or questions with respect to which the telephone poll was taken and the results of the telephone poll. Such statements shall also be entered in the minutes of the next Board meeting. In the case of action taken without a meeting by written consent or telephone poll, an affirmative vote of a majority of the whole Board is required.

[3] The Commission notes that the present proposal is intended to expedite Board consideration of matters that are technical in nature, and is not intended to affect the types of proposals that the Board files with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19(b)(4) thereunder. Telephone conversation, *supra* note 1.

[4] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994).

[5] Rule G–37(e)(ii).

[6] File No. SR–MSRB–94–2, at page 16.

[7] See Securities Exchange Act Release No. 34827 (May 9, 1994), 59 FR 25136 (notice of filing and order granting accelerated approval of File No. SR–MSRB–94–04). In addition, in order to assist dealer compliance with the filing requirements of rule G–37, the Board intends to develop an informal "Procedures Manual" for the relevant forms and procedures, and periodically to update or to amend the manual. The manual also would include forms and other filing information regarding rule G–36 on delivery of official statements and advance refunding documents to the Board. In the future, the Board also may adopt procedures regarding technical matters relating to the Board's Continuing Disclosure Information system, as well as any transaction reporting system the Board may develop.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–94–3 and should be submitted by August 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16751 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–94–3 and should be submitted by August 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16751 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34310; File No. SR–MSRB–94–8]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–15(a) on Customer Confirmations

July 5, 1994

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT"),[1] notice is hereby given that on June 7, 1994, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSRB has filed an interpretation regarding Rule G–15(a). The new interpretation of the rule allows dealers under certain circumstances to satisfy the Rule G–15(a)'s requirement that municipal securities customers be provided a "written" confirmation by using the Thomson Financial Services, Inc. ("TFS") OASYS Global System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV, below. MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MSRB's rule change allows the requirement of Rule G–15(a), that customers be provided "written" confirmation at or before the completion of a transaction in municipal securities, to be satisfied by a contract confirmation message ("CCM") sent through the TFS OASYS Global System. The following conditions must be met before the OASYS Global System may be used: (i) The customer and dealer have both agreed to use the OASYS Global system for purposes of confirmation delivery; (ii) the CCM includes all information required by Rule G–15(a); and (iii) all other applicable requirements and conditions concerning the OASYS Global system expressed in the Commission's October 8, 1993, no-action letter concerning Securities Exchange Act Rule 10b–10 must continue to be met.[2]

MSRB understands that TFS's OASYS Global system is not a registered securities clearing agency and is not linked with other registered securities clearing agencies for purposes of automated confirmation/acknowledgment required under Rule G–15(d). Therefore, under these circumstances, use of the OASYS system will not constitute compliance with Rule G–15(d) regarding automated confirmation/acknowledgement.[3]

MSRB has adopted the rule change pursuant to Section 15B(b)(2)(C) of the Act, which provides that MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The no-action letter of October 8, 1993, stated that the Commission staff will not recommend enforcement action to the Commission if broker-dealers rely on the OASYS Global system's CCMs to satisfy the requirements of a confirmation of Rule 10b–10 of the Act provided (i) The CCMs can be printed or downloaded by the participants, (ii) the recipient of a CCM must respond through the system affirming or rejecting the trade, (iii), the CCMs will not be automatically deleted by the system, and (iv) the use of the system by the participants ensures that both parties to the transaction have the capacity to receive the CCMs. Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to MariAnne Pisarri, Esq., Pickard and Djinis (October 8, 1993).

[3] MSRB Rule 15(d)(ii) states, among other things, that no broker, dealer, or municipal securities dealer who is or whose clearing agent is a participant in a clearing agency registered with the Commission shall effect a transaction in any municipal security to which a CUSIP number has been assigned on a delivery-versus-payment basis or on a receipt-versus-payment basis for the account of a customer whose clearing agent with respect to such transfer is a participant in such a clearing agency or in a clearing agency interfaced or otherwise linked with such a clearing agency unless the facilities of such clearing agency or the facilities of a clearing agency interfaced or otherwise linked with such a clearing agency are used for the confirmation and acknowledgment of such transaction.

general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSRB does not believe that the rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it will apply equally to all brokers, dealers, and municipal securities dealers. Moreover, the rule change only applies when dealers and customers agree between themselves to use TFS's OASYS Global system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MSRB has not solicited or received comments on the proposed rule change. MSRB's consideration of the proposed rule change was prompted by an interpretive inquiry from TFS regarding the interpretation of Rule G–15(a).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e)(1) of Rule 19b–4 thereunder because it relates to the interpretation of the meaning of an existing rule. At any time within sixty days of filing of the rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at MSRB's principal offices. All submissions should refer to File No. SR–MSRB–94–8 and should be submitted by August 2, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16752 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–31–M

[Release No. 34–34304; File No. SR–NSCC–94–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Limiting the Use of Letters of Credit To Collateralize Clearing Fund Contributions

July 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 17, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–94–10) as described below. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through September 30, 1994.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change[2] increases the minimum cash clearing fund contribution for those members who use letters of credit as clearing fund collateral and sets a limit on the amount of a member's required clearing fund contribution that may be collateralized with letters of credit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC is seeking permanent approval of a proposed rule change that modifies the amount of a member's required clearing fund deposit that may be collateralized by letters of credit. Specifically, the proposed rule change increases the minimum cash contribution for those members who use letters of credit from $50,000 to the greater of $50,000 or 10% of their required clearing fund deposit up to a maximum of $1,000,000. In addition, the rule change provides that only 70% of a member's required clearing fund deposit may be collateralized with letters of credit. The rule change also adds headings to the clearing fund formula section for purposes of clarity and includes other nonsubstantive drafting changes. The effect of the proposed rule change is to increase the liquidity of the clearing fund and to limit NSCC's exposure to unusual risks resulting from the reliance on letters of credit.

Since obtaining temporary approval of the original filing, NSCC has filed clearing fund composition reports with the Commission. NSCC states that since December 31, 1989, as a result of the new requirements, it has observed the following changes in the composition of the clearing fund:

1. Cash deposits have increased by approximately 225%;

2. The value of securities deposited has increased by approximately 205%;[3] and

3. Letter of credit deposits have declined by approximately 40%.[4]

NSCC states that the proposal is consistent with its requirements under Section 17A of the Act because it enhances NSCC's ability to safeguard securities and funds in its custody or under its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No new written comments have been solicited or received.[5] NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that a clearing agency's rules be designed, among other things, to ensure the safeguarding of securities and funds in its possession or control or for which it is responsible and to protect investors and the public interest.[6] NSCC's proposal to limit the use of letters of credit to collateralize clearing fund obligations will make NSCC's clearing fund more liquid. A liquid clearing fund is necessary to ensure the safety and soundness of a clearing agency. NSCC's proposal is therefore consistent with the requirements under the Act with regard to NSCC's obligation to safeguard securities and funds and to protect the interests of investors and of the public.

Although letters of credit are a useful means of funding clearing agency guarantee deposits, their unrestricted use may present risks to clearing agencies. Because letters of credit reflect the issuer's promise to pay funds upon presentation of stipulated documents by

---

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The proposed rule change was originally filed on October 27, 1989 and was approved temporarily through December 31, 1990. Securities Exchange Act Release No. 27664 (January 31, 1990), 55 FR 4297 (File No. SR–NSCC–89–16). Subsequently, the Commission granted a number of extensions to the temporary approval to allow the Commission and NSCC sufficient time to review and assess the use of letters of credit as clearing fund collateral. Most recently temporary approval was granted until June 30, 1994. Securities Exchange Act Release No 32551 (June 29, 1993), 58 FR 36727 (File No SR–NSCC–93–5).

[3] Securities eligible for deposit as clearing fund collateral include U.S. or municipal bonds in the first or second rating of any nationally known statistical service. NSCC Rule 4, § 1.

[4] In October of 1989 when the Commission initially granted temporary approval of NSCC's proposal, letters of credit accounted for 76% of the total dollar value of required clearing fund deposits. By May 28, 1993, letters of credit accounted for less than 30%. During the period from June 1, 1992 to May 28, 1993, letters of credit accounted for an average of 30.49% of the total dollar value of required clearing fund deposits, and for no month during that period did the portion of letters of credit used for required clearing fund deposits rise above 34%. Letter from Karen L. Saperstein, Vice President/Director of Legal & Associate General Counsel, NSCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (June 10, 1993).

[5] Since the initial filing of the proposed rule change NSCC has received one letter of comment. In the letter Wedbush Morgan Securities, Inc. opposed the NSCC's proposal because they believe it would increase the cost of posting collateral. Letter from Edward W. Wedbush, President, Wedbush Morgan Securities, Inc., to David F. Hoyt, Assistant Secretary, NSCC (November 9, 1989).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

NSCC states that the proposal is consistent with its requirements under Section 17A of the Act because it enhances NSCC's ability to safeguard securities and funds in its custody or under its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No new written comments have been solicited or received.[5] NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that a clearing agency's rules be designed, among other things, to ensure the safeguarding of securities and funds in its possession or control or for which it is responsible and to protect investors and the public interest.[6] NSCC's proposal to limit the use of letters of credit to collateralize clearing fund obligations will make NSCC's clearing fund more liquid. A liquid clearing fund is necessary to ensure the safety and soundness of a clearing agency. NSCC's proposal is therefore consistent with the requirements under the Act with regard to NSCC's obligation to safeguard securities and funds and to protect the interests of investors and of the public.

Although letters of credit are a useful means of funding clearing agency guarantee deposits, their unrestricted use may present risks to clearing agencies. Because letters of credit reflect the issuer's promise to pay funds upon presentation of stipulated documents by the holder, a clearing agency holding letters of credit will be exposed to risk should the issuer refuse to honor its promise to pay. Furthermore, because under the Uniform Commercial Code the issuer may defer honoring a payment request until the close of business on the third banking day following receipt of the required documents, the clearing agency either may have to await payment or may have to seek alternative short-term financing. This waiting period could reduce a clearing agency's liquidity and thereby could hinder its ability to meet its payment obligations on a timely basis.

As indicated above, since the proposal first received temporary approval, NSCC has experienced over a 200% increase in the deposit of cash and securities deposited as clearing fund collateral. Because cash and securities are generally more liquid than letters of credit, the enhanced level of such deposits helps to ensure the liquidity of the clearing fund in the event of a major member insolvency, catastrophic loss, or major settlement loss. By reducing the risk associated with the use of letters of credit, the proposal is consistent with NSCC's responsibilities under the Act to safeguard securities or funds in its custody or control and to protect investors and the public in general.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving because accelerated approval of the proposal will keep effective NSCC's rules that help reduce the exposure of NSCC's clearing fund to the potential liquidity risks associated with using letters of credit to collateralize members' clearing fund obligations. Moreover, since it was first introduced in 1989, NSCC's proposal has been open for public comment and has elicited only one opposing comment. Thus the Commission does not foresee that approval of the proposal will elicit further opposition.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–94–10 and should be submitted by August 2, 1994.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule filing is consistent with the Act and in particular with Section 17A of the Act.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NSCC–94–10) be, and hereby is approved through September 30, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16753 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34321; File No. SR–NASD–94–36]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Small Order Execution System Tier Size Classifications

July 6, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

---

proposal, letters of credit accounted for 76% of the total dollar value of required clearing fund deposits. By May 28, 1993, letters of credit accounted for less than 30%. During the period from June 1, 1992 to May 28, 1993, letters of credit accounted for an average of 30.49% of the total dollar value of required clearing fund deposits, and for no month during that period did the portion of letters of credit used for required clearing fund deposits rise above 34%. Letter from Karen L. Saperstein, Vice President/Director of Legal & Associate General Counsel, NSCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (June 10, 1993).

[5] Since the initial filing of the proposed rule change NSCC has received one letter of comment. In the letter Wedbush Morgan Securities, Inc. opposed the NSCC's proposal because they believe it would increase the cost of posting collateral. Letter from Edward W. Wedbush, President, Wedbush Morgan Securities, Inc., to David F. Hoyt, Assistant Secretary, NSCC (November 9, 1989).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s ("Nasdaq") periodic reclassification of Nasdaq National Market ("NNM") securities into appropriate tier sizes for purposes of the maximum order size tiers for Nasdaq's Small Order Execution System ("SOES") and the minimum quote size requirements for Nasdaq market makers in NNM securities. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of the maximum order size tiers for SOES and the minimum quote size requirements for Nasdaq market makers in NNM securities. Nasdaq reviews the tier level applicable to each security periodically (approximately every six months) to determine if the trading characteristics of the issue have changed so as to warrant a tier level adjustment. Such a review was conducted as of February 28, 1994, using the following established criteria:[1]

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 500 shares;[2]

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 500 NNM securities will be reclassified effective July 11, 1994. These 500 NNM securities are set out in the NASD's *Notice To Members* 94–48 (June 1994).

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with two exceptions. First, an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted. In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and minimize market maker exposure in issues for which the tier size level increased. Second, for eight securities priced below $1 where the reclassification called for a reduction in tier size, Nasdaq determined not to recommend a decline in tier size given the low price of these securities and the negligible effect on market maker exposure. As a result, five securities that would have been reduced to a tier size of 200 shares from 500 shares remained at 500 shares and three securities that would have been reduced to a tier size of 500 shares from 1,000 shares remained at 1,000 shares.

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6) and 15A(b)(11) of the Act. Section 15A(b)(6) requires, among other things, that the rules of the NASD be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Section 15A(b)(11) applies to the form and content of quotations. Section 15A(b)(11) requires that rules relating to quotations must be fair and informative so as to promote orderly procedures for collecting, distributing and publishing quotations. The NASD believes that the reassignment of NNM securities within SOES tier size levels and minimum quotation size levels will further these ends by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and providing investors with the assurance that they can effect trades up to a certain size at the quotations displayed on Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective immediately pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4 because the reranking of NNM securities into appropriate order size tiers and quotation size requirements was done pursuant to the NASD's stated policy and practice with respect to the administration and enforcement of two existing NASD rules. Further, in the SOES Tier Size Order,[3] the Commission requested that the NASD provide this information as an interpretation of an existing NASD rule under section 19(b)(3)(A) of the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–36 and should be submitted by August 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16823 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

---

[1] The classification criteria is set forth in footnote 1 to Section (a)(7) of the SOES Rules and Section 2(a) of Part V of Schedule D to the NASD By-Laws.

[2] On December 23, 1993, the Commission approved a reduction in the maximum SOES tier size to 500 shares from 1,000 shares. *See* Securities Exchange Act Release No. 33327 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993). Even though the maximum order size for SOES is now 500 shares, Nasdaq has continued to classify NNM securities within the 1,000 share tier size because Nasdaq market makers must continue to display a size of 1,000 shares in their quotations for these securities and remain firm for a minimum of 1,000 shares at their publicized quotations in these securities for orders outside of SOES.

[3] *See* Securities Exchange Act Release No. [illegible] (June 9, 1988), 53 FR 22568 (June 16, 1988).

[4] 17 CFR 200.30–3(a)(12).

[Release No. 34–34320; File No. SR–PSE–94–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to the Fine Schedule for the Rule on Dissemination of Quotations in Local Issues

July 6, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–36 and should be submitted by August 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16823 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34320; File No. SR–PSE–94–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to the Fine Schedule for the Rule on Dissemination of Quotations in Local Issues

July 6, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[4] 17 CFR 200.30–3(a)(12).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its fine schedule for violations of Equity Floor Procedure Advice 2–B, relating to the dissemination of quotations in local issues.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Equity Floor Procedure Advice ("EFPA") 2–B of the Rules of the Pacific Stock Exchange is designed to enforce the requirement that PSE specialists disseminate quotations in their assigned local issues every day. Specifically, the specialist must disseminate a quote prior to one-half (½) hour after the PSE opening.

In order to enforce this requirement, EFPA 2–B has a schedule that requires that all specialists be monitored daily on a rotating quarterly basis. Failure to satisfy the requirement currently results in a $25 fine for each violation beginning with the sixth violation.

At this time, the PSE is proposing to amend this rule to provide that the fine be changed to $100 with an implementation upon the third violation. It is the position of the Exchange that this will provide an effective deterrent and reflect a more appropriate penalty for non-compliance with EFPA 2–B.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, is general, and Sections 6(b)(5) and 6(b)(6), in particular, in that it is designed to protect investors and the public interest, to promote just and equitable principles of trade, and to assure that Exchange members are appropriately disciplined.

B. Self-Regulatory Organization's Statements on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–94–13 and should be submitted by August 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16825 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34317; File No. SR–PSE–94–21]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Incorporated, Relating to a One Hundred Twenty (120) Day Extension of Municipal Bond Trading Pilot Program

July 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 1, 1994, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and simultaneously publishing an order granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or "Exchange") proposes to extend the municipal bond trading pilot program for an additional 120 days until November 2, 1994.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 7, 1994, the Commission approved an Exchange proposal to establish new rules for the listing and trading of municipal securities on the Exchange.[1] The Commission approved the pilot for an interim period of 120 days through July 5, 1994.[2] The Exchange is now requesting a 120-day extension of the pilot in order to provide additional time for evaluation of the program.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, and, in general will contribute to the protection of investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice in the **Federal Register**. PSE believes it appropriate to approve the proposed rule change so that it may have time to evaluate its program for listing qualified municipal securities. The Commission finds that the proposed rule change extending the PSE pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the PSE and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of the notice of filing thereof in that PSE requires additional time to evaluate the pilot before it can file a request for permanent approval of the listing of municipal securities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–94–21 and should be submitted by August 2, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved through November 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16824 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

---

[1] See Exchange Act Release No. 33721 (March 7, 1994), 59 FR 11636 (March 11, 1994) (granting temporary accelerated approval to File No. SR–PSE–94–05).

[2] *Id.*, 59 FR at 11638.

[Release No. 34–34316; File No. SR–Amex–93–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Specialist Participation in the After-Hours Trading Facility in Portfolio Depositary Receipts and Investment Trust Securities Based on Stock Indexes

July 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The filing requested: (1) Permanent approval of the After-Hours Trading ("AHT") Facility; and (2) approval on a pilot basis for specialists in investment trust securities based on stock indexes to participate in the AHT Facility. The Commission approved the portion of the filing that requested permanent approval of the AHT Facility in Securities Exchange Act Release No. 33993.[3] On August 3, 1993, the Exchange amended the filing to request that specialists in Portfolio Depository Receipts ("PDRs") also be permitted to participate in the AHT Facility.[4] On July 5, 1994, the Exchange amended the proposed rule change to eliminate the migration of limit orders for PDRs and investment trust securities from the specialist's limit order book to the AHT Facility.[5] The Commission is publishing this notice to solicit comments from interested persons on specialist participation in the AHT Facility in Portfolio Depository Receipts and investment trust securities based on Stock Indexes.

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] As originally filed, File No. SR–Amex–93–15 requested permanent approval of Amex's pilot After-Hours Trading facility. On January 4, 1994, the Amex amended the filing to request a three-month extension of the pilot until April 30, 1994. On May 2, 1994, the Commission granted permanent approval to that portion of File No. SR–Amex–93–15 concerning the Amex's After-Hours Trading facility, not including the specialist participation request. *See* Securities Exchange Act Release No. 33993 (May 2, 1994), 59 FR 23902 (May 9, 1994).

[4] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Diana Luka-Hopson, SEC, dated August 3, 1993.

[5] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Sandra Sciole, Special Counsel, SEC, dated July 1, 1994.

[Release No. 34–34316; File No. SR–Amex–93–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Specialist Participation in the After-Hours Trading Facility in Portfolio Depositary Receipts and Investment Trust Securities Based on Stock Indexes

July 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The filing requested: (1) Permanent approval of the After-Hours Trading ("AHT") Facility; and (2) approval on a pilot basis for specialists in investment trust securities based on stock indexes to participate in the AHT Facility. The Commission approved the portion of the filing that requested permanent approval of the AHT Facility in Securities Exchange Act Release No. 33993.[3] On August 3, 1993, the Exchange amended the filing to request that specialists in Portfolio Depository Receipts ("PDRs") also be permitted to participate in the AHT Facility.[4] On July 5, 1994, the Exchange amended the proposed rule change to eliminate the migration of limit orders for PDRs and investment trust securities from the specialist's limit order book to the AHT Facility.[5] The Commission is publishing this notice to solicit comments from interested persons on specialist participation in the AHT Facility in Portfolio Depository Receipts and investment trust securities based on Stock Indexes.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] As originally filed, File No. SR–Amex–93–15 requested permanent approval of Amex's pilot After-Hours Trading facility. On January 4, 1994, the Amex amended the filing to request a three-month extension of the pilot until April 30, 1994. On May 2, 1994, the Commission granted permanent approval to that portion of File No. SR–Amex–93–15 concerning the Amex's After-Hours Trading facility, not including the specialist participation request. *See* Securities Exchange Act Release No. 33993 (May 2, 1994), 59 FR 23902 (May 9, 1994).

[4] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Diana Luka-Hopson, SEC, dated August 3, 1993.

[5] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Sandra Sciole, Special Counsel, SEC, dated July 1, 1994.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit specialists in Portfolio Depositary Receipts and investment trust securities to participate in the Exchange's After-Hours Trading ("AHT") facility for a one year pilot period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange requests Commission approval for specialists in Portfolio Depositary Receipts ("PDRs") and investment trust securities listed pursuant to Section 118B of the Exchange's Listing Guidelines[6] to participate in the AHT facility to "clean-up" order imbalances in the AHT facility by entering an order for the specialist's account. For example, if there were single sided orders to buy 10,000 and sell 20,000 SPDRs immediately prior to the 5:00 p.m. close of the AHT facility, the specialist would be permitted under the Exchange's proposed rule amendments to enter an order for its account to buy up to 10,000 SPDRs in order to eliminate the sell side order imbalance.

The Exchange also seeks Commission approval for specialists in PDRs and investment trust securities to participate in a coupled closing price order so long as the other side of the order is not for an account in which a member or member organization has a direct or indirect interest. For example, under the Exchange's proposal, the specialist in SPDRs would be permitted to agree prior to the 4:15 close of the regular trading session for such securities to take the other side of a customer order to buy or sell SPDRs for execution in the AHT facility as a closing price coupled order. Such a capability would conform the trading of PDRs and investment trust securities to the practices of the "basket" market for equities where it is customary for a dealer to agree prior to the close of the regular trading session to take the contra side of a customer basket order and the closing index value. Specialists on the New York Stock Exchange, Inc. ("NYSE") currently are permitted to take the contra side of a customer order to buy or sell a particular equity security and enter such order into the NYSE's Off-Hours Trading facility as a closing price coupled order. The Exchange seeks a similar capability for specialists in PDRs and investment trust securities to conform the trading of these listed instruments to the practices of the basket market.

The Exchange believes that permitting specialists in PDRs and investment trust securities to participate in the AHT facility in order to "clean-up" order imbalances and effect closing price coupled orders would benefit investors by providing additional liquidity to the listed cash market for derivative securities based upon well known market indexes, such as those described above. The market price of these securities is based upon transactions largely effected in markets other than the Amex. The specialist in such securities has no unique access to market sensitive information regarding the market for the underlying securities or closing index values. The Exchange, therefore, believes that specialist participation in the AHT facility in PDRs and investment trust securities in the manner described above does not raise any market integrity issues. In addition, should a customer not care for an execution at the closing price, the rules of the Exchange's AHT facility permit cancellation of an order up to the close of the AHT session at 5:00 p.m. (orders in the AHT facility are not executed until the 5:00 p.m. close of the after-hours session.) A customer, therefore, will have approximately 40 minutes to determine if an execution at the closing price suits its needs, and may cancel its order if it believes that the closing price does not suit its objectives.

The Exchange also proposes to eliminate the migration of limit orders for PDRs and investment trust securities from the specialist's limit order book to the AHT facility to eliminate any concern with the handling of such orders.

[6] The Exchange currently lists one Portfolio Depositary Receipt, *viz.*, Standard and Poor's Depositary Receipts ("SPDRs"); and two investment trust securities pursuant to Section 118B of the Exchange's Listing Guidelines: LOR Index Trust SuperUnits and LOR Money Market SuperUnits.

The Exchange proposes that the Commission approve the Exchange's application to permit specialist participation in the AHT facility for PDRs and investment trust securities on a pilot basis, during which time the Exchange will study the operation of the facility to determine if there are any additional issues that need to be addressed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect of the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–93–15 and should be submitted by August 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16746 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34309; File No. SR–BSE–94–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Additions to Its Minor Rule Violation Plan

July 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 6, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks to amend its Minor Rule Violation Plan ("Plan") to provide for the imposition of summary fines for violation of certain specified Exchange rules and policy by revising the List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Section 4 of Chapter XVIII ("List") for the imposition of fines by adding the following rule and policy violations: [1]

1. Failure to Promptly Respond to Exchange Blue Sheet Requests or File Regularly Scheduled Financial (FOCUS, SIPC) and/or Regulatory Reports (Specialist Performance Evaluation Questionnaire, Quarterly Option Report);
2. Improper Use of the ITS Administrative Message Function; and
3. Failure to Register Floor Employees and Complete Appropriate Forms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Plan provides that the Exchange may impose a fine, not to exceed $2,500, on any member, member organization, allied member, approved person, registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.[2]

The purpose of the Plan is to provide for a response to a rule violation when a sanction is appropriate but when initiation of a full disciplinary proceeding is not suitable because such proceeding would be more costly and onerous than would be warranted given the minor nature of the violation. The Plan provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures.

In the Exchange's initial filing which set forth the provisions and procedures of the Plan, the Exchange indicated that it periodically would amend the list of rules subject to the Plan as the Exchange deemed appropriate. The Exchange now seeks to add the aforementioned rules and policy to the List.

2 Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(6) of the Act, in that its members and persons associated with its members will be appropriately disciplined for violation of rules and policies where the Exchange has determined that such violation is minor in nature. In accordance with Sections 6(b)(7) and 6(d)(1) of the Act, the Plan provides for a fair disciplinary procedure for the imposition of sanctions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

---

[7] 17 CFR 200.30–3(a)(12) (1991).

[1] The BSE also has requested approval, under Rule 19d–1(c)(2), 17 CFR 240.19–1(c)(2), to amend its Rule 19d–1 minor rule violation enforcement and reporting plan to include these policy violations. *See* letter from Karen Aluise, Staff Attorney, to Sandy Sciole, Special Counsel, Division, dated April 28, 1994.

[2] The BSE's Plan for enforcing and reporting minor disciplinary rule violations was approved by the Commission in Securities Exchange Act Release No. 26737 (April 17, 1989), 54 FR 16438–1 (April 24, 1989) (File No. SR–BSE–88–2).

deemed appropriate. The Exchange now seeks to add the aforementioned rules and policy to the List.

2 Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(6) of the Act, in that its members and persons associated with its members will be appropriately disciplined for violation of rules and policies where the Exchange has determined that such violation is minor in nature. In accordance with Sections 6(b)(7) and 6(d)(1) of the Act, the Plan provides for a fair disciplinary procedure for the imposition of sanctions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–08 and should be submitted by August 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16747 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34307; File No. SR–Phlx–94–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange Relating to the Listing and Trading of Options on the Semiconductor Index

July 5, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 5, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to list and trade options on the Semiconductor Index ("Index"), an index developed by the Phlx and comprised of sixteen of the most highly capitalized and widely-held U.S. stocks representing the semiconductor industry.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Phlx proposes to list for trading American-style options[3] on the Index, a price-weighted index composed of sixteen highly capitalized and widely held common stocks of U.S. companies that are primarily involved in the design, manufacture, sale and distribution of semiconductors used in computer and other electronic device manufacturing.[4] The Exchange proposes classifying the Index as a narrow-based industry index.

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] On January 14, 1994, the Phlx submitted Amendment No. 1 to the proposal: (1) To correct the description of the formula for calculating the value of the Index; (2) to set the exercise prices at 5 point intervals instead of 2½ point intervals; (3) to provide that if the number of components in the Index increases to more than 21 components or decreases to less than 11 components, the Exchange shall submit a rule filing to the Commission pursuant to Section 19(b)(4) of the Act; and (4) to require that the components of the Index will be required to be listed for trading on the New York Stock Exchange or the American Stock Exchange, or traded as National Market securities through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation system. *See* Letter from William Uchimoto, General Counsel, Phlx, to Richard Zack, Branch Chief, Office of Derivatives and Equity Oversight ("ODEO"), Division of Market Regulation ("Division"), SEC, dated January 14, 1994. On April 26, 1994, the Phlx filed Amendment No. 2 to the proposal which: (1) provides that the index will be updated during the trading day at least once every 15 seconds, rather than once every minute; (2) specifies that the expiration cycle applicable to options of the Index will be three expiration months from the March, June, September, December cycle plus two additional near-term months; (3) provides that additional exercise prices will be added pursuant to Rule 1101A rather than Rule 1012; and (4) clarifies the Exchange's obligations with respect to delisting and replacing components of the Index. *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Branch Chief, ODEO, Division, SEC, dated April 26, 1994. The Exchange filed Amendment No. 3 to the proposal on May 20, 1994, to provide that the Index will be maintained so that if at any time, less than 90% of the component issues by weight are eligible for exchange options trading, the Exchange will submit a Rule 19b–4 filing to the Commission before opening any new series of options on the Index for trading. *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Attorney, ODEO, Division, SEC, dated May 20, 1994.

[3] An American-style option can be exercised at any time before the option expires

[4] The components of the Index are: Advanced Micro Devices; Analog Devices; Applied Materials; Cypress Semiconductor; Integrated Device Technology; Intel Corp. International Rectifier Corp.; Lattice Semiconductor Corp.; LSI Logic Corp.; Micron Technology Inc.; Motorola Inc.; National Semiconductor Corp.; Novellus Systems, Inc.; Teradyne, Inc.; Texas Instruments, Inc.; and VLSI Technology, Inc.

The formula for calculating the Index is as follows:

$$\frac{(SP1\times100)+(SP2\times100)+\ldots\ldots(SP16\times100)}{BASE}$$

where:
SP=Current stock price for each component.
BASE=Base Value; Number by which the Index is initially normalized to a value of 200.

The current price of each component issue is multiplied by 100 shares. The resulting market values are added to determine the current aggregate market value of the issues in the Index. To compute the current Index value, the aggregate market value is divided by the base divisor. The value of the Index was set to equal 200 on December 1, 1993.

Adjustments in the value of the Index which are necessitated by the addition and/or deletion of an issue from the Index are made by adding and/or subtracting the market value (current stock price × 100 shares) of the relevant issues.

The Index value will be updated dynamically at least once every 15 seconds during the trading day. The Phlx has retained Bridge Data, Inc. to compute the value of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority. The Index value will also be available on broker/dealer interrogation devices to subscribers of the option information.

In accordance with Phlx Rule 1009A, if any change in the nature of any stock in the Index occurs as a result of delisting, merger, acquisition or otherwise, the Exchange will take appropriate steps to delete this stock from the Index and replace it with another stock which the Exchange believes would be compatible with the intended market character of the Index. In making replacement determinations, the Exchange will also take into account the capitalization, liquidity, and volatility of a particular stock.

Index options will be traded pursuant to the current Phlx rules governing the trading of index options, particularly Phlx Rules 1000A through 1103A, and generally, Phlx Rules 1000 through 1070.

The settlement value for Index options will be based on the opening values of the component securities on the date prior to expiration. Index options will expire on the Saturday following the third Friday of the expiration month, and the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

The Phlx proposes to employ position and exercise limits pursuant to Phlx Rule 1001A(b) (i) and 1002A, respectively. Exercise price intervals will be initially set at 5 point intervals and additional exercise prices will be added in accordance with Phlx Rule 1101A(a).

The Phlx will trade consecutive and cycle month series pursuant to Phlx Rule 1101A. Specifically, there will be three expiration months from the March, June, September, December cycle plus two additional near-term months so that the three nearest term months will always be available.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and with Section 6(b)(5),[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–02 and should be submitted by August 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16754 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34312; File No. SR–BSE–94–6]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Chapter XV ("Dealer-Specialists")

July 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On June 23, 1994, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend Chapter XV of its Rule regarding Dealer-Specialists.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to make certain structural and technical changes to Chapter XV ("Dealer-Specialists"). Primarily, the Exchange seeks to provide paragraph numbering for ease of reference. In addition, the Exchange seeks to remove outdated and repetitive language, such as reference to the Business Conduct Committee which is now the Market Performance Committee. Certain paragraphs have been relocated to sections which are more applicable, and clarifying language has been added to certain sections.

[1] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Sandra Sciole, Special Counsel, SEC, dated June 22, 1994. Amendment No. 1 made certain clarifying changes to the proposal.

[2] The exact language of the proposal was included as Exhibit 1 to File No. SR–BSE–94–6 and can be examined at the locations specified in Item IV below.

hereby given that on June 20, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On June 23, 1994, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend Chapter XV of its Rule regarding Dealer-Specialists.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to make certain structural and technical changes to Chapter XV ("Dealer-Specialists"). Primarily, the Exchange seeks to provide paragraph numbering for ease of reference. In addition, the Exchange seeks to remove outdated and repetitive language, such as reference to the Business Conduct Committee which is now the Market Performance Committee. Certain paragraphs have been relocated to sections which are more applicable, and clarifying language has been added to certain sections.

(2) Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(5) in that the rule is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–6 and should be submitted by August 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16748 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

[1] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Sandra Sciole, Special Counsel, SEC, dated June 22, 1994. Amendment No. 1 made certain clarifying changes to the proposal.

[2] The exact language of the proposal was included as Exhibit 1 to File No. SR–BSE–94–6 and can be examined at the locations specified in Item IV below.

[Release No. 34–34308; International Series Release No. 679; File No. SR–Phlx–94–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to European-Term and Cross-Rate Customized Foreign Currency Options

July 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 12, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend pending new Rule 1069[1] to provide for the ability to: (1) Trade European-term option contracts on any foreign currency on which the Phlx currently trades foreign currency options ("FCOs"); (2) trade cross-rate FCOs on any two such approved currencies; and (3) allow users to quote all customized FCOs in percentage terms. Proposed Rule 1069, as well as existing Rules 1000, 1009, 1014, 1033, and 1034, would be

[1] See Securities Exchange Act Release No. 33959 (April 25, 1994), 59 FR 22698 (May 2, 1994) ("File No. SR–Phlx–94–11").

amended accordingly. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

On March 4, 1994, the Phlx filed with the Commission a proposal (File No. SR–Phlx–94–11)[2] to allow FCO traders and their customers to have the ability, within specified limits, to designate their own option exercise price parameters on a trade. In that filing, the Exchange proposed to allow its users to dictate the specific strike price of an FCO contract that they would like to buy or sell without requiring the Exchange to continuously disseminate quotes for these options. For example, if the Exchange has listed June .5450 and .5500 Deutsche mark calls and the customer wants to trade June .5487 Deutsche mark calls, the customer could request a quote in this option and the trade could occur. The Exchange, however, would not have to continuously disseminate quotes for this option until expiration because this may be the only trade that ever occurs in this series.

The Exchange is now proposing to expand upon its proposed FCO customization contained in File No. SR–Phlx–94–11. If File No. SR–Phlx–94–11 as well as the present proposal are approved, the Exchange would be able to offer the ability for its participants to trade non-standardized strike prices on existing series of FCOs as well as "inverse" or European-term contracts on those currencies presently listed on the Exchange, and cross-rate contracts on any two of the existing eight currencies on which the Exchange presently lists FCOs (*i.e.*, the British pound, Swiss franc, French franc, Deutsche mark, Japanese yen, Australian dollar, Canadian dollar, and European Currency Unit).

European-Term FCOs

The first addition to the array of previously proposed customized FCOs that the Exchange now proposes to offer is the European-term contract. The Exchange presently lists options on eight foreign currencies. Each of these FCO contracts is structured so that the trading currency is the U.S. dollar (*e.g.*, French franc/U.S. dollar). The option is quoted in U.S. dollars per unit of the relevant foreign currency and the premium is paid in U.S. dollars. Upon exercise of a call option, for example, the relevant foreign currency would be delivered.

The European-term customized FCO contract would be the inverse of the FCO contracts just described (*e.g.*, U.S. dollar/French franc). The option will be quoted in units of the foreign currency per U.S. dollar and the premium will be paid in the foreign currency. Because the underlying currency is the U.S. dollar, U.S. dollars will be delivered upon exercise of a call option. The title of proposed Rule 1069[3] will be changed to "Customized Options" to reflect the fact that users will be able to customize FCO contracts in more aspects than merely the strike price. Exchange Rule 1000(13), which provides the definition of "foreign currency," will also be amended to include the U.S. dollar so that U.S. dollars may be considered an underlying foreign currency under all applicable Exchange rules. Similarly, Rule 1009, which lists all of the approved underlying foreign currencies would also be amended, as well as the definitions of "spot sales price" and "forward sales price" in Rules 1000(16) and 1000(17).

Cross-Rate FCOs

The second proposed addition to the customized FCO facility proposed in File No. SR–Phlx–94–11 would allow the Exchange to offer the ability to trade any cross-rate FCO contract on any two foreign currencies approved for trading on the Exchange pursuant to Rule 1009.[4] For example, an option on the Swiss franc/Canadian dollar could be traded. The Exchange believes, however, that it would be inefficient to disseminate updated quotes on all of the possible combinations of cross-rate FCOs that could be created by all of the listed currencies now available. The Exchange believes that most will not be of wide spread interest but may appeal to only a limited number of customers or be active for only brief periods of time due to unpredictable political or economic events in the U.S. and abroad.

Alternative Order Formats

Finally, the Exchange proposes to offer the ability to request quotes and receive quotes in terms of a percentage of the underlying currency in addition to the present unit of currency format (*i.e.*, cents per unit of the underlying currency). Percentage quoting would be offered on all FCOs available through the proposed customized FCO facility. The Exchange represents that many users of FCOs have requested this quotation method and the Exchange believes it is appropriate to offer it in this limited fashion through the proposed customized FCO facility. Unit of currency quotations will also still be available for the proposed customized FCOs.

The Exchange states that the over-the-counter ("OTC") market has traditionally given its users the ability to customize FCO contracts by allowing them to designate many if not all of the terms of the FCO contracts. The participants in the OTC market, according to the Exchange, are typically institutional investors, corporations, and banks, who buy and sell FCOs in large size transactions in order to hedge risks relating to fluctuating exchange rates. By trading in the OTC market, these users do not benefit from the advantages offered by an organized exchange, such as, transparency, margin and collateral, and secondary market liquidity. The Exchange is now proposing to give these users the flexibility of the OTC market by allowing them to trade and quote FCO contracts tailored to their specifications but within the confines of an exchange environment. By having the Options Clearing Corporation ("OCC") as the issuer and guarantor of the customized FCOs, it will eliminate concern over contra-party creditworthiness and assure performance upon exercise of the customized FCOs. Finally, the Exchange believes that transparency will be achieved by the real time dissemination of the quotes, requests for quotes, and last sale information through the Options Price Reporting Authority ("OPRA").

Applicability of Existing Exchange Rules

European-term and cross-rate customized FCOs would be subject to all Exchange rules and regulations regarding surveillance and sales practice. Unless specifically exempted, all floor trading procedures will also be adhered to. Examples of different procedures for the proposed European-term and cross-rate customized FCOs include no continuous quoting, no opening or closing rotations, size restrictions as to exercise, new minimum fractional changes, and new maximum quote spread parameters. Position and exercise limits for European-term customized FCOs would be the same as those applicable to FCOs on the same foreign currency and positions in these options will be aggregated with existing FCOs in calculating position and exercise limits. For example, U.S. dollar/Deutsche mark FCOs will be aggregated with Deutsche mark/U.S. dollar FCO positions. The Exchange will establish separate position limits for the cross-rate customized FCOs.

The minimum quote and transaction sizes that the Exchange proposed in File No. SR–Phlx–94–11 for customized strike FCOs will also apply to customized European-term and cross-rate FCOs.[5] Specifically, quotes may not be requested and trades may not be executed in a series with no open interest for less than 300 contracts. Responsive quotes for series with no open interest must be at least 300 contracts for assigned ROTs and 100 contracts for non-assigned ROTs. Responsive quotes and transactions in currently opened series may be the lesser of 100 contracts or the remaining number of contracts for all participants.

Financial Responsibility

The Exchange will impose higher net capital requirements for ROTs trading in customized FCOs. Assigned ROTs will be subject to a $1 million minimum net liquid assets requirement and all other ROTs will be subject to a $250,000 minimum net liquid assets requirement. European-term customized FCOs will be margined in the same fashion as existing FCO contracts. The Exchange proposes to allow spread margin treatment for European-term contracts offset against corresponding standardized contracts in instances in which the long notional value of either the European-term or standardized contract equals or exceeds the short national value of the other side.

---

[2] *Id.*

[3] *Id.*

[4] The Exchange presently offers two standardized cross-rate FCOs, the Deutsche mark/Japanese yen and the British pound/Deutsche mark. The Exchange also has approval to trade the British pound/Japanese yen, however, it has not yet been made available for trading. *See* Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 58109 (November 15, 1991).

[5] *See* File No. SR–Phlx–94–11, *supra* note 1.

Applicability of Existing Exchange Rules

European-term and cross-rate customized FCOs would be subject to all Exchange rules and regulations regarding surveillance and sales practice. Unless specifically exempted, all floor trading procedures will also be adhered to. Examples of different procedures for the proposed European-term and cross-rate customized FCOs include no continuous quoting, no opening or closing rotations, size restrictions as to exercise, new minimum fractional changes, and new maximum quote spread parameters. Position and exercise limits for European-term customized FCOs would be the same as those applicable to FCOs on the same foreign currency and positions in these options will be aggregated with existing FCOs in calculating position and exercise limits. For example, U.S. dollar/Deutsche mark FCOs will be aggregated with Deutsche mark/U.S. dollar FCO positions. The Exchange will establish separate position limits for the cross-rate customized FCOs.

The minimum quote and transaction sizes that the Exchange proposed in File No. SR–Phlx–94–11 for customized strike FCOs will also apply to customized European-term and cross-rate FCOs.[5] Specifically, quotes may not be requested and trades may not be executed in a series with no open interest for less than 300 contracts. Responsive quotes for series with no open interest must be at least 300 contracts for assigned ROTs and 100 contracts for non-assigned ROTs. Responsive quotes and transactions in currently opened series may be the lesser of 100 contracts or the remaining number of contracts for all participants.

Financial Responsibility

The Exchange will impose higher net capital requirements for ROTs trading in customized FCOs. Assigned ROTs will be subject to a $1 million minimum net liquid assets requirement and all other ROTs will be subject to a $250,000 minimum net liquid assets requirement. European-term customized FCOs will be margined in the same fashion as existing FCO contracts. The Exchange proposes to allow spread margin treatment for European-term contracts offset against corresponding standardized contracts in instances in which the long notional value of either the European-term or standardized contract equals or exceeds the short national value of the other side.

[5] *See* File No. SR–Phlx–94–11, *supra* note 1.

Cross-rate customized FCOs will be margined using a three tier system. The Exchange will look at the correlation coefficients between any two currency combinations for each of the 28 possible (non-U.S. dollar) cross-rates in order to determine whether the two currencies have high, low, or negative correlations. Margin levels will be set by using a tier system based upon the degree of correlation between the different currencies. Historically, for example, the Exchange states that there has been a very high correlation between the French franc, Swiss franc, Deutsche mark, and the European Currency Unit (Tier I). Thus, the margin levels necessary for a cross-rate based on any two of these currencies should, the Exchange believes, be low. The correlations between any Tier I currency and either the British pound or the Japanese yen (Tier II) are, according to the Exchange, slightly lower and would, therefore, require higher margin levels. Finally, the Exchange states that the correlations between any of the currencies in Tiers I or II and either the Canadian dollar or the Australian dollar (Tier III) are extremely low or negative, thereby requiring a higher margin level than the other two. Accordingly, the Exchange proposes to establish margin levels of 2% for cross-rate FCOs based upon any two currencies within Tier 1; 4% for cross-rate FCOs based on one Tier I currency and one Tier II currency or two Tier II currencies; and 6% for FCOs based on one Tier III currency and one Tier I or Tier II currency or two Tier III currencies. After the cross-rate customized FCOs are trading, the Exchange will review the correlations quarterly to see if any of the currencies are eligible for placement in another tier based upon the correlation over the prior quarter.

Transparency

When a request for a customized FCO quote is voiced in the trading crowd, it will be displayed and all responsive quotes will also be displayed. Once a trade is consummated, it will be reported to OPRA and disseminated as an administrative text message over the OPRA system. The Exchange will not be obligated to make continuous markets in customized FCOs, even where open interest has been created. OCC will clear and settle the customized FCOs. Because quotes in these options will not be continuously updated or otherwise priced by the Exchange, OCC will generate a theoretical price based on the prices and quotes of the customized FCOs, prices of standardized series and the closing value of the underlying foreign currency. OCC will use this price to mark the FCOs daily and calculate margin requirements.

Miscellaneous Corrections

Because this rule filing is proposing to change language in Rules 1009 and 1033, the Exchange is also proposing to correct some inaccurate or redundant information contained in those rules. First, the Exchange believes that Commentary .01(6) of Rule 1009 is almost identical to subsection (c) of that rule and is therefore proposed to be deleted. Secondly, the contract size of the British pound and the French franc, as approved by the Commission, are 31,250 pounds[6] and 250,000 francs,[7] not 12,500 pounds and 125,000 francs as currently stated in Phlx's rules. These sizes and corresponding examples of how to calculate the premium on these FCOs are being corrected in Rule 1033.

The Exchange believes that the foregoing rule change proposal is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information, and facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by providing foreign currency option market participants with strike prices more closely suited to their trading strategies.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of the notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[6] *See* Securities Exchange Act Release No. 26088 (September 16, 1988), 53 FR 36931 (September 22, 1988).

[7] *See* Securities Exchange Act Release No. 26478 (January 19, 1989), 54 FR 4362 (January 30, 1989).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Pubic Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will all be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–18 and should be submitted by August 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16755 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20382; File No. 811–4127]

Dean Witter Equity Income Trust; Application for Deregistration

July 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Dean Witter Equity Income Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

[6] 17 CFR 200.30–3(a)(12) (1993).

FILING DATE: The application on Form N–8F was filed on May 17, 1994 and amended on June 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 26, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202) 942–0570, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On October 12, 1984, applicant registered under the Act and filed a registration statement pursuant to section 8(b) of the Act. The registration statement became effective on December 21, 1984, and the initial public offering commenced on January 25, 1985.

2. At a Special Meeting held on December 2, 1993, the board of trustees of applicant voted to approve an Agreement and Plan of Reorganization (the "Plan") and called a Special Meeting of the shareholders of applicant to vote on the Plan. Pursuant to the Plan, the assets of applicant were transferred to Dean Witter Value-Added Market Series, a Massachusetts business trust ("Value-Added") in exchange for shares of Value-Added (the "Reorganization").

3. In approving the Reorganization, the directors considered a number of factors, including, (a) the comparative investment performance and past growth in assets of applicant and Value-Added, (b) the comparative expenses of applicant and Value-Added, (c) the impact on applicant's security holders if applicant were not reorganized or were liquidated, (d) the compatibility of the investment objectives, policies, restrictions, and portfolios of applicant and Value-Added, (e) the terms and conditions of the Reorganization that would affect the price of Value-Added shares to be issued in the Reorganization, (f) the tax-free nature of the Reorganization, and (g) any direct or indirect costs to be incurred by applicant and Value-Added in connection with the Reorganization.

4. Applicant and Value-Added could be deemed affiliated persons of each other within the meaning of the Act. In accordance with rule 17a–8, the board of trustees of applicant determined that the sale of applicant's assets to Value-Added was in the best interests of applicant and applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result of applicant effecting the transaction.

5. Preliminary proxy materials were filed on December 3, 1993, as part of Value-Added's registration statement on Form N–14. Definitive proxy materials relating to the Reorganization were filed on February 25, 1993. Applicant's shareholders voted to approve the Plan on April 14, 1994.

6. As of April 15, 1994, applicant had 12,702,132.755 shares outstanding, at a net asset value of $8.38 per share and an aggregate net asset value of $106,440,011.49. Pursuant to the Plan, the assets of applicant were transferred to Value-Added in exchange for shares of beneficial interest of Value-Added. The aggregate net asset value of shares of Value-Added issued in the Reorganization was equal to the value of applicant's assets on April 15, 1994 (the business day immediately preceding the Reorganization) less applicant's liabilities. Applicant thereafter distributed the Value-Added shares it received to its security holders by crediting each security holder with a *pro rata* portion of Value-Added shares equal to the security holder's investment in applicant.

7. No brokerage commissions were paid in connection with the Reorganization. The cost of printing and mailing the proxy statement and any additional material relating to the stockholder meeting at which the Plan and the Reorganization were approved, and the cost of soliciting proxies, including legal and accounting fees in connection with the preparation of the proxy statement, was paid by applicant. Any expenses related to the shareholders of Value-Added, in connection with the Reorganization, were paid by Value-Added.

8. At the time of the application, applicant had no security holders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not now engaged in, and does not propose to engage in, any business activities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16756 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2033]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 AM on Thursday, September 15, Thursday, October 20, Thursday, November 17, and Thursday, December 15, 1994. Meetings previously scheduled for September 28 and October 26, 1994, are canceled. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, S.W., Washington, DC 20950. The purpose of these meetings is to discuss the papers received and the draft U.S. positions in preparation for the 40th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications which is scheduled for January 1995, at the IMO headquarters in London, England.

Among other things, the item of particular interest is:

—The implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing: Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters, Commandant (G–TTM), Room 6311, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–1389.

connection with the Reorganization, were paid by Value-Added.

8. At the time of the application, applicant had no security holders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not now engaged in, and does not propose to engage in, any business activities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16756 Filed 7–11–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2033]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 AM on Thursday, September 15, Thursday, October 20, Thursday, November 17, and Thursday, December 15, 1994. Meetings previously scheduled for September 28 and October 26, 1994, are canceled. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, S.W., Washington, DC 20950. The purpose of these meetings is to discuss the papers received and the draft U.S. positions in preparation for the 40th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications which is scheduled for January 1995, at the IMO headquarters in London, England.

Among other things, the item of particular interest is:

—The implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing: Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters, Commandant (G–TTM), Room 6311, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–1389.

Dated: June 28, 1994.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 94–16743 Filed 7–11–94; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement; North Carolina Global TransPark Located at the Kinston Regional Jetport; Kinston, North Carolina

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration in cooperation with the U.S. Army Corps of Engineers announces that it will prepare an Environmental Impact Statement (EIS) for the proposed North Carolina Global TransPark (GTP) located at the Kinston Regional Jetport.

FOR FURTHER INFORMATION CONTACT: Thomas M. Roberts, Federal Aviation Administration, Atlanta Airports District Office, 1680 Phoenix Parkway, Suite 101, College Park, GA 30349 (404) 994–5306.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration in cooperation with the U.S. Army Corps of Engineers will prepare an environmental impact statement for the Global TransPark and Section 404 Permit application. The EIS will investigate the expansion of the existing Kinston Regional Jetport to accommodate the GTP. The proposed improvements consist of providing for the construction and operation of a new 11,500-foot runway, together with related taxiways, and other related facilities, along with land acquisition and land use planning. The proposed project also includes other primary infrastructure, such as roadway improvements, areas for industrial development and a central cargo facility to move products in and out of the complex.

The EIS is anticipated to address impacts on wetlands, historic properties, and so forth.

The EIS will also evaluate cumulative impacts anticipated to occur as a result of the implementation of other foreseeable improvements at the GTP in the future.

The North Carolina Global TransPark Authority (Authority) issued a Request For Proposals inviting local governments and other public and/or private groups interested in being the site for GTP to present written proposals of their qualifications of the site and surrounding area. The RFP requested that the proponent furnish information on environmental factors as well as services, quality of life, zoning and permitting, and financial participations on the site and area. Eleven proposals were received and, following an extensive review, the Lenoir County site (Kinston Regional Jetport) was identified as the preferred site. An Airport Master Plan was developed for the GPT which investigated several runway layouts and a draft environmental assessment was prepared and coordinated with Federal and state environmental agencies for their review and comments.

PUBLIC SCOPING: The Federal Aviation Administration and the U.S. Army Corps of Engineers will hold a scoping meeting to solicit input from Federal, state and local agencies which have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the project. In addition, the public may submit written comments on the scope of the environmental study to the address identified in **FOR FURTHER INFORMATION CONTACT.** A Public Notice issued at a later date will provide the date, time and place of the scoping meeting and the period for written comments.

Issued in Southern Region, Atlanta, Georgia, June 28, 1994.

Samuel F. Austin,

Manager, Atlanta Airports District Office.

[FR Doc. 94–16830 Filed 7–11–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Morgantown Municipal (Hart Field) Airport, Morgantown, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Morgantown Municipal (Hart Field) Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 11, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Elonza Turner, Beckley Airports Field Office, Main Terminal building, 469 Airport Circle, Beaver, West Virginia 25813–6216.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bill Plutt, Airport Manager for the City of Morgantown at the following address: Hart Field, Morgantown, West Virginia 26505.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Morgantown under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Elonza Turner, Project Manager, Beckley Airports Field Office, Main Terminal building, 469 Airport Circle, Beaver, West Virginia 25813–6216 (Tel. 304–252–6216). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Morgantown Municipal (Hart Field) Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 25, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Morgantown was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 13, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $2.00
Proposed charge effective date: October 1, 1994
Proposed charge expiration date: September 30, 1999
Total estimated PFC revenue: $223,000

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following proposed AIP projects.

—Re-roof South Terminal
—Construct Public Facilities within North Terminal
—Purchase ARFF Vehicle
—Public Parking Expansion
—Short Terminal Parking Area
—Sealcoat to Asphalt Surface of Aircraft Parking Ramp
—Construct Baggage Handling System
—Rehabilitate Taxiway A North (Impose Only)
—Construct Parallel Taxiway for Runway 5/23 (Impose Only)
—Purchase Snow Removal Equipment (Impose Only)
—Overlay Taxiway A South (Impose Only)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airport office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Morgantown, West Virginia.

Issued in Jamaica, New York State on July 1, 1994.

A.H. DeGraw,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 94–16831 Filed 7–11–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenues From a Passenger Facility Charge (PFC) at Tompkins County Airport, Ithaca, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenues from a PFC at Tompkins County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 11, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: New York Airports District Office, 181 South Franklin Avenue, Room 315, Valley Stream, New York 11581.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert A. Nicholas, Airport Manager of the Tompkins County Airport, at the following address: County of Tompkins, 320 North Tioga Street, Courthouse, Ithaca, NY 14850.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tompkins County Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Philip Brito, Manager, New York Airports District Office 181 South Franklin Avenue, Room 315, Valley Stream, New York, 11581. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenues from a PFC at Tompkins County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 3, 1994, the FAA determined that the application to impose a PFC submitted by The County of Tompkins, New York was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 28, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: January 1, 1993
Proposed charge expiration date: December 31, 2003
Total estimated PFC revenue: $3,850,000
Brief description of proposed project(s):

—Construct New Passenger Terminal including access road, Ramp and taxiway modifications, relocation of T-hangars, site preparation and utilities relocation.
—Construct 800′ extension to Runway 6/24 including extension of parallel Taxiway and Distance to go signs.
—Purchase New Snow Plow
—Extend ARFF storage building
—Overlay Runway 14/32

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial operators filing FAA 1800–31

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at The County of Tompkins.

Issued in New York City, New York, on June 27, 1994.

A.H. DeGraw,

Acting Manager, Airport Division, Eastern Region.

[FR Doc. 94–16832 Filed 7–11–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Altus Federal Savings Bank, Mobile, Alabama; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Altus Federal Savings Bank, Mobile, Alabama ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 20, 1994.

Dated: July 6, 1994.

By the Office of Thrift Supervision,

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16799 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

Columbia Banking Federal Savings Association, Rochester, NY; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Columbia Banking Federal Savings Association, Rochester, New York ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 3, 1994.

Dated: July 6, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16796 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at The County of Tompkins.

Issued in New York City, New York, on June 27, 1994.

A.H. DeGraw,

Acting Manager, Airport Division, Eastern Region.

[FR Doc. 94–16832 Filed 7–11–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Altus Federal Savings Bank, Mobile, Alabama; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Altus Federal Savings Bank, Mobile, Alabama ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 20, 1994.

Dated: July 6, 1994.

By the Office of Thrift Supervision,

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16799 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

Columbia Banking Federal Savings Association, Rochester, NY; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Columbia Banking Federal Savings Association, Rochester, New York ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 3, 1994.

Dated: July 6, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16796 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

Cooper River Federal Savings Association, North Charleston, South Carolina; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of § 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Cooper River Federal Savings Association, North Charleston, South Carolina ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 3, 1994.

Dated: July 6, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16798 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

Encino Savings Bank, FSB, Van Nuys, California; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Encino Savings Bank, FSB, Van Nuys, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 3, 1994.

Dated: July 6, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16797 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

Franklin Federal Savings Association, Ottawa, Kansas; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Franklin Federal Savings Association, Ottawa, Kansas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 10, 1994.

Dated: July 6, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16795 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

John Hanson Federal Savings Bank, Beltsville, MD; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator John Hanson Federal Savings Bank, Beltsville, Maryland ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 10, 1994.

Dated: July 6, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16802 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

Ukrainian Federal Savings & Loan Association, Philadelphia, Pennsylvania; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Ukrainian Federal Savings & Loan Association, Philadelphia, Pennsylvania ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 24, 1994.

Dated: July 6, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16793 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

United Federal Savings Association of Iowa, Des Moines, Iowa; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of the Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator United Federal Savings Association of Iowa, Des Moines, Iowa ("Association"), with the Resolution

Trust Corporation as sole Receiver for the Association on June 24, 1994.

Dated: July 6, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16794 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–44; OTS No. 02407]

Forrest City Savings & Loan Association, F.A., Forrest City, AR; Approval of Conversion Application

Notice is hereby given that on June 10, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Forrest City Savings and Loan Association, F.A., Forrest City, Arkansas, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: July 7, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16801 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–43; OTS No. 05704]

Jefferson Federal Mutual Holding Company, Gretna, LA; Approval of Conversion Application

Notice is hereby given that on June 30, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Jefferson Federal Mutual Holding Company, Gretna, Louisiana, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: July 7, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–16800 Filed 7–11–94; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on July 13 in Room 600, 301 4th Street, S.W., Washington, D.C. from 9:45 a.m.–12:00 p.m.

The Commission will meet with Betty Tseu, Director, China Service, Voice of America; John Harbaugh, China Service, Voice of America; George Beasley, Director, Office of East Asia and Pacific Affairs; Richard Stites, China Desk Officer, Office of East Asia and Pacific Affairs; James R. Lilley, former U.S. Ambassador to China; David M. Lampton, President, National Committee on U.S.-China Relations; Peter Geithner, Director, Asia Programs, Ford Foundation; and Richard Bush, aide to Congressman Lee Hamilton (D-IN). Participants will discuss USIA's policies and programs in China, U.S. broadcasting to China, and how NGOs contribute to democratization and support for civil society in China.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: July 6, 1994.

Rose Royal,

Management Analyst.

[FR Doc. 94–16744 Filed 7–11–94; 8:45 am]

BILLING CODE 8230–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–92]

Identification of Priority Foreign Country and Initiation of Section 302 Investigation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the identification of China as a priority foreign country pursuant to section 182(c) of the Trade Act of 1974, as amended (Trade Act), the initiation of an investigation pursuant to section 302(b)(2)(A) of the Trade Act, and request for public comment.

SUMMARY: Pursuant to section 182(c) of the Trade Act (19 U.S.C. 2242), the USTR has identified China as a priority foreign country based on its failure to provide adequate and effective protection of intellectual property rights and fair and equitable market access to persons relying on intellectual property protection. Pursuant to section 302(b)(2)(A) of the Trade Act (19 U.S.C. 2412(b)(2)(A)), the USTR has initiated an investigation of the acts, policies and practices that led to the identification of China as a priority foreign country.

EFFECTIVE DATE: The USTR's identification of China and initiation of the related investigation took place on June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Lee Sands, Deputy Assistant USTR for China and Mongolian Affairs (202) 395–5050, Deborah Lehr, Director for China and Mongolian Affairs (202) 395–5050, or Thomas Robertson, Assistant General Counsel (202) 395–6800, 600 17th Street, N.W., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: Section 182(a) of the Trade Act requires the USTR annually to identify foreign countries that deny adequate and effective protection or enforcement of intellectual property rights or that deny fair and equitable market access to persons that rely on intellectual property protection. On April 30, 1994, the USTR identified China as being among the group of 36 foreign countries that fall into this category. At that time, the USTR noted that China's failures in this regard were particularly problematic, and that its status under special 301 would be reviewed again in 60 days. A U.S. government interagency team traveled to China in June to seek elimination or modification of the acts, policies, and practices of concern, but found little movement from the Chinese government on these issues.

Section 182(c) of the Trade Act permits the USTR at any time during the year to identify as priority foreign countries those trading partners that have the most onerous or egregious acts, policies, and practices that have the greatest adverse impact (actual or potential) on relevant U.S. products. Section 302(b)(2)(A) of the Trade Act requires the initiation of an investigation of the acts, policies, and practices which were the basis for the priority foreign country identification unless the acts, policies, and practices are already the subject of an

investigation or action under the section 301 provisions of the Trade Act.

Because of the severe problems with intellectual property protection and market access for persons that rely on intellectual property protection in China, and the unwillingness of the Chinese government to address these problems through productive consultations over the last 60 days, the USTR has designated China a priority foreign country and has initiated an investigation under section 301 of the Trade Act of its acts, policies, and practices in this area.

While China has implemented most of its commitments under the 1992 Memorandum of Understanding Between the Government of the United States of America and the Government of the People's Republic of China on the Protection of Intellectual Property, it has failed to create an effective intellectual property rights enforcement regime. Copyright piracy in China is particularly acute, and trademark infringement remains a serious concern, with little indication of their willingness to address these problems. Appropriate implementation of China's new patent law and administrative protection program for pharmaceuticals and agricultural chemicals is also of concern. Particular problems with China's present enforcement regime include, among other things, internally inconsistent laws; a lack of transparency in the enforcement structure; a lack of protection for existing works; gaps in responsibility in the enforcement structure; a lack of consistent application of the laws throughout the central, provincial and local governments; a lack of funding, training and education; the absence of clear and effective criminal penalties; possible

investigation or action under the section 301 provisions of the Trade Act.

Because of the severe problems with intellectual property protection and market access for persons that rely on intellectual property protection in China, and the unwillingness of the Chinese government to address these problems through productive consultations over the last 60 days, the USTR has designated China a priority foreign country and has initiated an investigation under section 301 of the Trade Act of its acts, policies, and practices in this area.

While China has implemented most of its commitments under the 1992 Memorandum of Understanding Between the Government of the United States of America and the Government of the People's Republic of China on the Protection of Intellectual Property, it has failed to create an effective intellectual property rights enforcement regime. Copyright piracy in China is particularly acute, and trademark infringement remains a serious concern, with little indication of their willingness to address these problems. Appropriate implementation of China's new patent law and administrative protection program for pharmaceuticals and agricultural chemicals is also of concern. Particular problems with China's present enforcement regime include, among other things, internally inconsistent laws; a lack of transparency in the enforcement structure; a lack of protection for existing works; gaps in responsibility in the enforcement structure; a lack of consistent application of the laws throughout the central, provincial and local governments; a lack of funding, training and education; the absence of clear and effective criminal penalties; possible conflicts of interest; burdensome and discriminatory agency requirements; overly-broad compulsory licensing provisions; a failure of enforcement authorities to coordinate; and the absence of an effective border control mechanism.

China also fails to provide fair and equitable market access for persons who rely on intellectual property protection. The most serious market access problems are found in the areas of audiovisual products, sound recordings, and published written materials. Particular concerns include a hidden system of internal quotas, a lack of transparency, a lack of consistency in application, monopoly control over the importation and distribution of products embodying intellectual property, and a prohibition on the production or distribution of products embodying intellectual property that is not related to the content of those products.

Pursuant to section 303(a) of the Trade Act, USTR has requested consultations with the Chinese government concerning the issues under investigation. USTR will seek information and advice from the appropriate committees established pursuant to section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Within 6 months after the date on which this investigation was initiated (i.e., on or before December 30, 1994), pursuant to section 304 of the Trade Act, the USTR must determine on the basis of the investigation and the consultations, whether any act, policy or practice described in section 301 of the Trade Act exists and, if that determination is affirmative, decide what action, if any, to take under section 301 of the Trade Act. The deadline for making those determinations may be extended up to 9 months after the initiation of the investigation if the USTR determines that certain conditions are met.

Requirements for Submissions

Interested persons are invited to submit written comments on the acts, policies or practices of the Chinese government that are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies or practices, and the determinations required under section 304 of the Trade Act.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and are due no later than 12 noon, Monday, August 8, 1994. Comments must be in English and provided in twenty copies to: Chairman, section 301 Committee, Room 223, USTR, 600 17th St., NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–92) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of the twenty copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the Docket open to public inspection.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 94–16826 Filed 7–11–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 132
Tuesday, July 12, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: July 13, 1994, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 613th Meeting—July 13, 1994, Regular Meeting (10:00 a.m.)

CAH–1.
Docket No. EL94–32–001, Master Power Corporation, Inc.
CAH–2.
Project No. 2114–029 and Docket No. E–9569–004, Public Utility District No. 2 of Grant County, Washington
CAH–3.
Project No. 8459–013, Geoffrey Shadroui
CAH–4.
Project Nos. 2570–018, 019 and 020, Ohio Power Company
CAH–5.
Project No. 3083–060, Oklahoma Municipal Power Authority

Consent Agenda—Electric

CAE–1.
Docket No. ER94–1019–000, Delmarva Power & Light Company
CAE–2.
Omitted
CAE–3.
Docket No. ER94–1290–000, Rayburn Country Electric Cooperative, Inc.
CAE–4.
Docket No. ER94–804–001, Midwest Power Systems, Inc.
CAE–5. Docket No. EL94–24–001, Consumer Advocate Division of the Public Service Commission of West Virginia, Maryland People's Counsel and Pennsylvania Office of Consumer Advocate v. Allegheny Generating Company
CAE–6.
Docket No. ER93–932–001, Central Vermont Public Service Corporation
CAE–7.
Omitted
CAE–8.
Docket No. ER92–517–004, Southern Company Services, Inc.
CAE–9.
Docket No. EL94–39–001, City of Orangeburg, South Carolina v. South Carolina Electric & Gas Company
CAE–10.
Omitted
CAE–11.
Docket No. EG94–67–000, Electricidad De Cortes S. De R.L.
CAE–12.
Docket No. EG94–66–000, Compania De Electricidad De Puerto Plata, S.A.
CAE–13.
Docket No. EG94–65–000, 1069284 Ontario Inc.
CAE–14.
Omitted
CAE–15.
Docket No. EL94–60–000, Kansas City, Board of Public Utilities
Docket No. EL94–61–000, Okanogan County Public Utility District
CAE–16.
Docket Nos. EL94–20–000, QF92–166–003 and QF92–167–003, Gordonsville Energy, L.P.
CAE–17.
Docket No. EL94–69–000, Cogenerators of Southern California, Midway-Sunset Cogeneration Company, Harbor Cogeneration Company, Kern River Cogeneration Company and Sycamore Cogeneration Company
CAE–18.
Docket No. EL91–32–002, Power Authority of the State of New York v. Long Island Lighting Company
Docket No. EL91–34–002, Municipal Electric Utilities Association of the State of New York v. Long Island Lighting Company
CAE–19.
Docket No. EL93–52–000, Wholesale Power Services, Inc.

Consent Agenda—Oil and Gas

CAG–1.
Docket No. PR94–6–000, Red River Pipeline, L.P.
CAG–2.
Docket No. PR94–7–000, Associated Louisiana Intrastate Pipe Line Company
CAG–3.
Docket No. PR94–8–000, Louisiana Intrastate Gas Company, L.L.C.
CAG–4.
Docket No. PR94–9–000, Michigan Consolidated Gas Company
CAG–5.
Docket No. RP94–293–000, Granite State Gas Transmission, Inc.
CAG–6.
Docket No. TM94–6–4–000, Granite State Gas Transmission, Inc.
CAG–7.
Docket No. RP94–294–000, Panhandle Eastern Pipe Line Company
CAG–8.
Docket No. RP89–161–030, *et al.*, ANR Pipeline Company
CAG–9.
Docket Nos. RP93–61–003 and RP93–176–000, U-T Offshore System
CAG–10.
Docket Nos. RP93–70–003, CP93–441–000 and CP75–93–000, Black Marlin Pipeline Company
CAG–11.
Docket Nos. RP94–125–003 and 005, Texas Gas Transmission Corporation
CAG–12.
Omitted
CAG–13.
Docket Nos. RP93–59–003 and RP93–177–001, High Island Offshore System
CAG–14.
Docket No. RP94–281–000, Pacific Interstate Transmission Company
CAG–15.
Omitted
CAG–16.
Docket No. FA90–65–002, Northern Border Pipeline Company
CAG–17.
Docket No. RP85–177–121, Texas Eastern Transmission Corporation
CAG–18.
Docket No. RP93–3–011, NorAm Gas Transmission Company
CAG–19.
Docket No. RP94–199–001, Texas Gas Transmission Corporation
CAG–20.
Docket Nos. RP94–172–002 and RP94–205–002, Williams Natural Gas Company
CAG–21.
Omitted
CAG–22.
Omitted
CAG–23.
Docket Nos. OR92–8–004, OR93–5–002, OR94–3–001 and OR94–4–001, SFPP, L.P.
CAG–24.
Docket Nos. TM91–6–37–002 and TM92–7–37–000, Northwest Pipeline Corporation
CAG–25.
Docket No. CP88–391–014, Transcontinental Gas Pipe Line Corporation
CAG–26.
Docket No. RM94–18–000, Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production
CAG–27.
Docket Nos. IS92–3–000, IS93–6–000 and IS94–10–000, Amerada Hess Pipeline Corporation
Docket Nos. IS92–4–000, IS93–7–000 and IS94–11–000, ARCO Transportation Alaska, Inc.
Docket Nos. IS92–5–000, IS93–8–000 and IS94–12–000, BP Pipelines (Alaska) Inc.
Docket Nos. IS92–6–000, IS93–9–000 and IS94–14–000, Exxon Pipeline Company
Docket Nos. IS92–7–000, IS93–10–000, IS93–38–000, IS94–3–000, IS94–13–000 and IS94–15–000, Mobil Alaska Pipeline Company
Docket Nos. IS92–8–000, IS93–11–000 and IS94–16–000, Phillips Alaska Pipeline Corporation
Docket Nos. IS92–9–000, IS93–12–000, IS94–17–000 and IS94–31–000, Unocal Pipeline Company
Docket No. OR92–2–000, ARCO Alaska, Inc. v. Amerada Hess Pipeline Corporation, *et al.*
Docket No. OR92–5–000, Conoco Inc. v. Amerada Hess Pipeline Corporation, *et al.*
CAG–28.
Omitted
CAG–29.
Omitted
CAG–30.
Docket No. MG88–14–003, Black Marlin Pipeline Company
Docket No. MG88–7–005, Northern Natural Gas Company
Docket Nos. MG88–9–006 and 007, Transwestern Pipeline Company
CAG–31.
Docket No. MG94–4–000, Alabama-Tennessee Natural Gas Company
CAG–32.
Docket No. MG88–35–005, Northern Border Pipeline Company
Docket No. MG88–47–006, Texas Gas Transmission Corporation
CAG–33.
Docket Nos. CP92–498–000 and 004, Trunkline Gas Company
CAG–34.
Docket Nos. CP93–57–002 and CP92–189–002, Superior Offshore Pipeline Company
CAG–35.
Docket No. CP93–79–003, Mid Louisiana Gas Company and Fairbanks Gathering Company
CAG–36.
Docket No. CP93–326–001, Eastern American Energy Corporation
Docket No. CP93–328–001, Columbia Gas Transmission Corporation
CAG–37.
Docket No. CP93–361–002, SunShine Interstate Transmission Company
CAG–38.
Docket No. CP94–36–001, Arkla Gathering Services Company
CAG–39.
Docket No. CP94–68–001, Transcontinental Gas Pipe Line Corporation
CAG–40.
Docket No. CP93–147–001, Williams Natural Gas Company

Docket No. RM94–18–000. Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production

CAG–27.
Docket Nos. IS92–3–000, IS93–6–000 and IS94–10–000, Amerada Hess Pipeline Corporation
Docket Nos. IS92–4–000, IS93–7–000 and IS94–11–000, ARCO Transportation Alaska, Inc.
Docket Nos. IS92–5–000, IS93–8–000 and IS94–12–000, BP Pipelines (Alaska) Inc.
Docket Nos. IS92–6–000, IS93–9–000 and IS94–14–000, Exxon Pipeline Company
Docket Nos. IS92–7–000, IS93–10–000, IS93–38–000, IS94–3–000, IS94–13–000 and IS94–15–000, Mobil Alaska Pipeline Company
Docket Nos. IS92–8–000, IS93–11–000 and IS94–16–000, Phillips Alaska Pipeline Corporation
Docket Nos. IS92–9–000, IS93–12–000, IS94–17–000 and IS94–31–000, Unocal Pipeline Company
Docket No. OR92–2–000, ARCO Alaska, Inc. v. Amerada Hess Pipeline Corporation, *et al.*
Docket No. OR92–5–000, Conoco Inc. v. Amerada Hess Pipeline Corporation, *et al.*

CAG–28.
Omitted

CAG–29.
Omitted

CAG–30.
Docket No. MG88–14–003, Black Marlin Pipeline Company
Docket No. MG88–7–005, Northern Natural Gas Company
Docket Nos. MG88–9–006 and 007, Transwestern Pipeline Company

CAG–31.
Docket No. MG94–4–000, Alabama-Tennessee Natural Gas Company

CAG–32.
Docket No. MG88–35–005, Northern Border Pipeline Company
Docket No. MG88–47–006, Texas Gas Transmission Corporation

CAG–33.
Docket Nos. CP92–498–000 and 004, Trunkline Gas Company

CAG–34.
Docket Nos. CP93–57–002 and CP92–189–002, Superior Offshore Pipeline Company

CAG–35.
Docket No. CP93–79–003, Mid Louisiana Gas Company and Fairbanks Gathering Company

CAG–36.
Docket No. CP93–326–001, Eastern American Energy Corporation
Docket No. CP93–328–001, Columbia Gas Transmission Corporation

CAG–37.
Docket No. CP93–361–002, SunShine Interstate Transmission Company

CAG–38.
Docket No. CP94–36–001, Arkla Gathering Services Company

CAG–39.
Docket No. CP94–68–001, Transcontinental Gas Pipe Line Corporation

CAG–40.
Docket No. CP93–147–001, Williams Natural Gas Company
Docket No. CP93–163–001, Kansas Gas Supply Corporation

CAG–41.
Omitted

CAG–42.
Docket No. CP93–567–000, Texas Gas Transmission Corporation

CAG–43.
Docket No. CP93–281–000, Paiute Pipeline Company

CAG–44.
Docket No. CP93–477–000, CNG Transmission Corporation

CAG–45.
Docket No. CP94–164–000, Florida Gas Transmission Company

CAG–46.
Docket No. CP94–227–000, Trunkline Gas Company

CAG–47.
Docket Nos. CP93–431–001 and 000, Questar Pipeline Company

CAG–48.
Docket No. CP94–107–000, NorAM Gas Transmission Company
Docket No. CP94–201–000, BCF, Inc.

CAG–49.
Docket No. CP93–198–000, Big Sandy Gas Company
Docket No. CP93–200–000, CNG Transmission Corporation

CAG–50.
Omitted

CAG–51.
Docket No. CP93–327–000, Williams Natural Gas Company
Docket No. CP93–329–000, Williams Gas Processing-Wamsutter Company

Hydro Agenda

H–1.
(A) Project Nos. 2436–010, 2447–009, 2448–016, 2449–008, 2450–006, 2451–006, 2452–013, 2453–004, 2468–006, 2580–017, 2599–007, Consumers Power Company. Order on offer of settlement.
(B) Project No. 2436–007, Consumers Power Company. Order on application for new major license.
(C) Project No. 2447–008, Consumers Power Company. Order on application for new major license.
(D) Project No. 2448–011, Consumers Power Company. Order on application for new major license.
(E) Project No. 2449–007, Consumers Power Company. Order on application for new major license.
(F) Project No. 2450–005, Consumers Power Company. Order on application for new major license.
(G) Project No. 2451–004, Consumers Power Company. Order on application for new major license.
(H) Project No. 2452–007, Consumers Power Company. Order on application for new major license.
(I) Project No. 2453–003, Consumers Power Company. Order on application for new major license.
(J) Project No. 2468–003, Consumers Power Company. Order on application for new major license.
(K) Project No. 2580–015, Consumers Power Company. Order on application for new major license.
(L) Project No. 2599–005, Consumers Power Company. Order on application for new major license.

H–2.
Project No. 11090–000, Tunbridge Mill Corporation. Order on application for minor license.

H–3.
(A) Project Nos. 2287–004 and 2288–005, Public Service Company of New Hampshire Project Nos. 2300–004, 2311–004, 2326–004, 2327–005 and 2422–006, James River-New Hampshire Electric, Inc. Order on applications for new license.
(B) Project No. 2287–003, Public Service Company of New Hampshire. Order on application for new license.
(C) Project No. 2288–004, Public Service Company of New Hampshire. Order on application for new license.
(D) Project No. 2300–002, James River-New Hampshire Electric, Inc. Order on application for new license.
(E) Project No. 2311–001, James River-New Hampshire Electric, Inc. Order on application for new license.
(F) Project No. 2326–002, James River-New Hampshire Electric, Inc. Order on application for new license.
(G) Project No. 2327–002, James River-New Hampshire Electric, Inc. Order on application for new license.
(H) Project No. 2422–004, James River-New Hampshire Electric, Inc. Order on application for new license.

Electric Agenda

E–1.
Docket No. TX94–2–000, El Paso Electric Company and Central and South West Services, Inc., as agent for Public Service Company of Oklahoma, West Texas Utilities Company, Southwestern Electric Power Company and Central Power and Light Company v. Southwestern Public Service Company. Whether the Commission should order wheeling for El Paso under section 211 of the Federal Power Act.

E–2.
Docket No. EC94–7–000, El Paso Electric Company and Central and South West Services, Inc.
Docket No. ER94–898–000, Central and South West Services, Inc. Whether the Commission should approve a merger and amendment to system agreement that will allow El Paso to emerge from bankruptcy and become part of Central & Southwest.

E–3.
Docket No. TX94–3–000, Minnesota Municipal Power Agency v. Southern Minnesota Municipal Power Agency. Whether the Commission should issue a final order under sections 211 and 212 of the Federal Power Act directing Southern Minnesota Municipal Power Agency to provide transmission service to Minnesota Municipal Power Agency and Establishing rates, terms and conditions of such service.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.

Omitted

II. Restructuring Matters

RS–1.

Reserved

III. Pipeline Certificate Matters

PC–1.

Reserved

Dated: July 6, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16907 Filed 7–8–94; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, July 14, 1994

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 14, 1994, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: MCI Communications Corporation and British Telecommunications' Joint Petition for Declaratory Ruling Concerning Section 310 (b)(4) and (d) of the Communications Act (File No. ISP–93–013). Summary: The Commission will consider a joint petition for declaratory ruling on the MCI and BT alliance.

2—Common Carrier—Title: Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions (CC Docket No. 91–273). Summary: The Commission will consider action on network outage reporting requirements.

3—Common Carrier—Title: Expanded Interconnection with Local Telephone Company Facilities (CC Docket No. 91–141). Summary: The Commission will consider addressing its expanded interconnection policy in light of the court's decision in *Bell Atlantic Telephone Companies* v. *FCC*, No. 92–1619 (DC Cir., June 10, 1994).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Audrey Spivack or Susan Lewis Sallet, Office of Public Affairs, telephone number (202) 418–0500.

Dated: July 7, 1994.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–16935 Filed 7–8–94; 10:39 am]

BILLING CODE 6712–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, July 11, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed response to the Department of the Treasury's Electronic Federal Tax Payment System Invitation for Expressions of Interest. This item was originally announced for a closed meeting on July 7, 1994.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 7, 1994

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16908 Filed 7–8–94; 8:45 am]

BILLING CODE 6210–01–P

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 19, 1994.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Docket No. 41191, *West Texas Utilities Company v. Burlington Northern Railroad Company.*

Finance Docket No. 31922 (Sub-No. 1), *Wisconsin Central Ltd.—Purchase Exemption—Soo Line Railroad Company Line Between Superior and Ladysmith, WI.*

Finance Docket No. 32395, *City of Stafford, Texas v. Southern Pacific Transportation Company.*

Ex Parte No. 346 (Sub-No. 30), *Rail General Exemption Authority—Exemption of Rock Salt, Salt.*

Ex Parte No. 346 (Sub-No. 31), *Rail General Exemption Authority—Exemption of Grease or inedible Tallow, etc.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16827 Filed 7–7–94; 1:02 pm]

BILLING CODE 7035–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, July 19, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The first item is open to the public. The last item is closed to the public under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

6170A—Marine Accident Report: Grounding of the Passenger Vessel *Yorktown Clipper* in Glacier Bay, Alaska, August 18, 1993

6388—Opinion and Order: Administrator v. Hampton, Dockets SE–13099 and –12130; disposition of respondent's appeal

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Ray Smith, (202) 382–6527.

Dated: July 8, 1994.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 94–17014 Filed 7–8–94; 3:53 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of July 11, 18, 25, and August 1, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 11

Wednesday, July 13

2:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Week of July 18—Tentative

Tuesday, July 19

10:00 a.m.
Briefing on Fuel Cycle and Waste Management Activities in France (Public Meeting)

Wednesday, July 20

10:30 a.m.
Discussion of Mangement Issues (Closed)—Ex. 2 and 6)
3:00 p.m.
Briefing on Proposed Changes to 10 CFR 50.36—Technical Specifications (Public Meeting)
(Contact: Christopher Grimes, 301–504–1161)
4:30 p.m.
Affirmation/Discussion And Vote (Public Meeting)

Thursday, July 21

3:00 p.m.
Briefing on Decommissioning Process (Public Meeting)
(Contact: David Futoma, 301–504–1621)

Week of July 25—Tentative

There are no meetings scheduled for the Week of July 25.

Week of August 1—Tentative

There are no meetings scheduled for the Week of August 1.

ADDITIONAL INFORMATION: By a vote of 3–0 (Commissioner Rogers not present) on June 29, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Amendments to 10 CFR Part 73 to Protect Against Malevolent

There are no meetings scheduled for the Week of July 25.

Week of August 1—Tentative

There are no meetings scheduled for the Week of August 1.

ADDITIONAL INFORMATION: By a vote of 3–0 (Commissioner Rogers not present) on June 29, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Amendments to 10 CFR Part 73 to Protect Against Malevolent Use of Vehicles at Nuclear Power Plants" (Public Meeting) be held on June 30, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: July 8, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–17013 Filed 7–8–94; 3:52 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 59, No. 132
Tuesday, July 12, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 93-021-3]

RIN 0579-AA60

Importation of Potatoes From Canada

Correction

In rule document 94-4725 beginning on page 9917 in the issue of Wednesday, March 2, 1994 make the following correction:

§ 319.37-2 [Corrected]

On page 9918, in § 319.37-2, in the table, in the entry for "Solanum spp.", in the third column, insert "* * *".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 94-15532 beginning on page 32955 in the issue of Monday, June 27, 1994, make the following correction:

On page 32955, in the third column, "*Docket Number*: 9409004: *Applicant*: University of California, and *Docket Number*: 949008. *Applicant*: University of Florida," should read "*Docket Number*: 940-004: *Applicant*: University of California, and *Docket Number* 94-008: *Applicant*: University of Florida".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Anchorage Museum of History and Art, Anchorage, Alaska

Correction

In notice document 94-16457 appearing on page 34862 in the issue of Thursday, July 7, 1994, in the third column, beginning in the fifth line, "[*thirty days following publication of this notice*]" should read "August 8, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-94-24]

Petitions for Exemption Summary of Petitions Received; Dispositions of Petitions Issued

Correction

In notice document 94-15511 beginning on page 33036 in the issue of Monday, June 27, 1994, make the following correction:

On page 33036, in the first column, under **Petitions for Exemption**, "*Docket No.* 27660" should read "27650".

BILLING CODE 1505-01-D

Federal Register

Tuesday
July 12, 1994

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Proposed Rule

VOL 59 ISS 132 12 1994 JL UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1994–95 early-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions.

DATES: The comment period for proposed early-season frameworks will end on July 21, 1994; and for late-season proposals on August 29, 1994. A public hearing on late-season regulations will be held on August 4, 1994, starting at 9 a.m.

ADDRESSES: The August 4 public hearing will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on these proposals and notice of intention to participate in the late-season hearing should be sent in writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1994

On April 7, 1994, the Service published for public comment in the **Federal Register** (59 FR 16762) a proposal to amend 50 CFR part 20, with comment periods ending as noted earlier. On June 8, 1994, the Service published for public comment a second document (59 FR 29700) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 23, 1994, a public hearing was held in Washington, DC, as announced in the April 7 and June 8 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons.

This document is the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with proposed frameworks for early-season regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1994–95 season. All pertinent comments received through June 23, 1994, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. Final regulatory frameworks for early seasons are scheduled for publication in the **Federal Register** on or about August 16, 1994.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published in the April 7 **Federal Register**. The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available about the status of waterfowl populations and habitat conditions on the breeding grounds.

Presentations at Public Hearing

Four Service employees presented reports on the status of various migratory bird species for which early hunting seasons are being proposed. These reports are briefly reviewed as a matter of public information.

Dr. John Bruggink, Woodcock Specialist, reported on the 1994 status of American woodcock. Age-ratio information from harvested woodcock indicated that the 1993 recruitment index (ratio of immatures to adult females) was 23.5 percent below the long-term average in the Eastern Region and 11.8 percent lower than the long-term average in the Central Region. Daily hunting success in the Eastern Region decreased from 2.0 woodcock bagged per hunter in 1992 to 1.9 woodcock bagged per hunter in 1993 (–5 percent). The seasonal-hunting-success index decreased from 9.7 to 7.0 woodcock per hunter (–27.8 percent). In the Central Region, the daily-success index decreased from 2.4 birds per hunter in 1992 to 2.3 birds per hunter in 1993 (–4.2 percent), and the seasonal success index decreased from 11.7 to 11.0 woodcock bagged per hunter (–6 percent). Analysis of data from the Singing-ground Survey indicated that the number of woodcock declined between 1993 and 1994 in the Eastern and Central Regions. Ten-year (1985–94) trends from the Singing-ground Survey also indicated declining populations. Since 1968, breeding population indices declined 1.9 percent per year in the Eastern Region and 1.1 percent per year in the Central Region.

Mr. David Dolton, Dove Specialist, presented the status of mourning doves in 1994. The report summarized call-count information gathered over the past 29 years. Trends were calculated for the most recent 10–year interval and for the entire 29–year period. Between 1993 and 1994, the average number of doves heard per route did not significantly change in any of the 3 management units. No significant trend was found in doves heard in the Eastern or Central Units for either the 10– or 29–year time frames. In the Western Unit, no trend was evident over the most recent 10 years, but there has been a significant decline over the past 29 years. Trends for doves seen at the unit level over the 10– and 29–year periods agreed with trends for doves heard.

Mr. Dolton also presented the status of western white-winged doves in Arizona. Whitewing populations declined rapidly in the 1970's, and have since remained relatively stable at a reduced level. In 1993, the Arizona whitewing harvest of 91,000 birds declined 3.7 percent from the harvest in 1992 and was 30 percent below the 1980–89 mean. The 1994 whitewing call-count survey indicated an 18 percent decrease from 1993.

Mr. Dolton then reported on the status of eastern white-winged doves and white-tipped doves in Texas. Results of the 1994 whitewing call-count survey indicated that 615,000 birds were nesting in the Lower Rio Grande Valley in Starr, Hidalgo, Cameron, and Willacy Counties. This estimate represents a 40 percent increase from 1993 and is 22 percent above the 33-year average of 501,000. In upper south Texas, more than 577,000 whitewings were nesting throughout a 19–county area. This is a 20 percent increase over last year's population and marks the sixth year of a population expansion in this portion of the State. West Texas supports a small population of whitewings. The 1994 estimate of 17,000 birds was 10 percent below the 1993 estimate. For white-tipped doves, an average of 0.78 birds were heard per stop in both brush and citrus locations in 1994. This is 30 percent below the 1993 level.

Finally, Mr. Dolton presented population and harvest information for band-tailed pigeons. This species is managed as two separate populations: the Coastal Population (California, Nevada, Oregon, and Washington) and the Four-Corners or Interior Population (Arizona, Colorado, New Mexico and Utah). For the Coastal Population, the Breeding Bird Survey (BBS) indicated a significant decline between 1968 and 1993. However, the population apparently has stabilized in the 9 years from 1985 to 1993. Mineral-spring counts conducted in Oregon suggest that bandtails experienced a precipitous decline in 1973 and again in 1985. Since 1985, these counts indicate that the population has been increasing gradually, but it remains at a lower level than during the 1970's. The 1993 count decreased 1.6 percent from 1992. Washington's call-count survey yielded a 1993 index 44 percent above that of 1992, although this change was not statistically significant. Two indirect population estimates in 1992 suggested that the population ranged between 2.4 and 3.1 million birds. The estimated harvest in 1993 was 6,000 birds in California and 3,200 in Oregon. Washington did not have a bandtail season in 1993.

In the Four-Corners area, BBS data indicated a stable population between 1968 and 1993. The combined harvest for all four States in 1993 was 828 birds. This was a decrease of 60 percent from more than 2,000 bandtails harvested in 1992.

Dr. Jim Dubovsky, Waterfowl Specialist, presented information on 1994 habitat conditions for waterfowl and preliminary estimates of blue-winged teal abundance and harvests. A video was shown depicting wetland and upland conditions in the Dakotas and the Prairie Provinces of Canada. Generally, nesting conditions were favorable throughout most of the survey area, with abundant wetlands and improved upland cover. Biologists in several regions stated that conditions were the best they have observed since the 1970's. There were approximately 6 million ponds in Prairie Canada and the northcentral U.S. This estimate is significantly greater than the estimate for 1993 and the long-term average.

The 1994 May breeding population survey yielded an estimate of 4.6 million blue-winged teal, 45 percent higher than the 1993 estimate of 3.2 million. The 1994 estimate was also 14

percent below the 1993 estimate. For white-tipped doves, an average of 0.78 birds were heard per stop in both brush and citrus locations in 1994. This is 30 percent below the 1993 level.

Finally, Mr. Dolton presented population and harvest information for band-tailed pigeons. This species is managed as two separate populations: the Coastal Population (California, Nevada, Oregon, and Washington) and the Four-Corners or Interior Population (Arizona, Colorado, New Mexico and Utah). For the Coastal Population, the Breeding Bird Survey (BBS) indicated a significant decline between 1968 and 1993. However, the population apparently has stabilized in the 9 years from 1985 to 1993. Mineral-spring counts conducted in Oregon suggest that bandtails experienced a precipitous decline in 1973 and again in 1985. Since 1985, these counts indicate that the population has been increasing gradually, but it remains at a lower level than during the 1970's. The 1993 count decreased 1.6 percent from 1992. Washington's call-count survey yielded a 1993 index 44 percent above that of 1992, although this change was not statistically significant. Two indirect population estimates in 1992 suggested that the population ranged between 2.4 and 3.1 million birds. The estimated harvest in 1993 was 6,000 birds in California and 3,200 in Oregon. Washington did not have a bandtail season in 1993.

In the Four-Corners area, BBS data indicated a stable population between 1968 and 1993. The combined harvest for all four States in 1993 was 828 birds. This was a decrease of 60 percent from more than 2,000 bandtails harvested in 1992.

Dr. Jim Dubovsky, Waterfowl Specialist, presented information on 1994 habitat conditions for waterfowl and preliminary estimates of blue-winged teal abundance and harvests. A video was shown depicting wetland and upland conditions in the Dakotas and the Prairie Provinces of Canada. Generally, nesting conditions were favorable throughout most of the survey area, with abundant wetlands and improved upland cover. Biologists in several regions stated that conditions were the best they have observed since the 1970's. There were approximately 6 million ponds in Prairie Canada and the northcentral U.S. This estimate is significantly greater than the estimate for 1993 and the long-term average.

The 1994 May breeding population survey yielded an estimate of 4.6 million blue-winged teal, 45 percent higher than the 1993 estimate of 3.2 million. The 1994 estimate was also 14 percent above the long-term average. The estimated harvest of blue-winged teal during the 1993 September teal season was approximately 134,000 birds, 30 percent below the outcome of the 1992 teal season. The combined September and regular-season harvest of all teal was approximately 1.03 million, 42 percent below the 1985–87 average. Harvest rates of blue-winged teal remained low during 1993–94 and were not different from those of last year or the 1985–87 period.

Mr. David Sharp, Central Flyway Representative, reported on the status and harvests of sandhill cranes. The Mid-Continent Population appears to have stabilized following dramatic increases in the early 1980's. The preliminary 1994 spring index for the Central Platte River Valley, uncorrected for visibility, was about 384,850. This index is 52 percent larger than the 1993 index of 253,800. The photo-corrected 3–year average for the 1991–93 period was 375,300, which is within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, elected to allow crane hunting in portions of their respective States in 1993–94; about 19,000 permits were issued and approximately 7,200 permittees hunted one or more times. Compared to the previous year's seasons, the number of permittees increased about 10 percent and active hunters increased 35 percent. About 19,000 cranes were harvested in 1993–94, a 53 percent increase from the 12,433 harvested in 1992–93. In Canada, the retrieved harvest fell (51%) from 5,600 in the 1992–93 seasons to 2,800 in the 1993–94 seasons. Also, Mid-Continent cranes are hunted in Alaska and Mexico. Data for these areas are not yet available, but the combined harvest should not exceed 3,500 during the 1993–94 seasons. The total North American sport harvest was estimated to be about 30,200 cranes, which is near (–5%) the record high reported in the 1990–91 seasons (31,700), and only the second time the total has exceeded the 30,000 level.

Annual surveys of the Rocky Mountain Population, which migrates through the San Luis Valley of Colorado in March, suggest that the population has been relatively stable since 1984. The 1994 index of 17,214 cranes (uncorrected for visibility bias) was near the established objective range of 18,000–22,000. Limited special seasons were held during 1993 in portions of Arizona, Montana, New Mexico, Utah, and Wyoming, and resulted in an estimated harvest of 704 cranes.

Comments Received at Public Hearing

Mr. Charles D. Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, reiterated the request made by a majority of States in the Southeast to prohibit dove hunting over top-sown wheat and urged the Service to include this prohibition in its final revision of the Code of Federal Regulations (50 CFR). He also expressed opposition to the proposed inclusion of wounded birds in the daily bag limit.

Mr. Ron Stromstad, representing the Central Flyway Council and the North Dakota Game and Fish Department, stated that he appreciated the work of the Service Regulations Committee in developing this year's annual hunting-season proposals. He indicated that the Central Flyway Council looked forward to working with the recently established Mid-Continent Population Sandhill Crane Working Group to revise the harvest strategy for this population. He supported the Central Flyway Council's recommendations regarding the conduct of September teal seasons and emphasized that evaluation of any proposed changes to these seasons should be undertaken on a flyway basis. He supported the Texas request for dove hunting during 3 time periods in the Central and Southern Zones. He appreciated the proposed change in the aggregate bag limit for white-winged doves from 2 to 6 in the Lower Rio Grande Valley. He noted that over the past 3 years, whitewings have expanded their range and populations have grown significantly. In the Rio Grande Valley, numbers are now well above average. With regard to the proposed revision of 50 CFR, he encouraged the Service to proceed slowly in the development of the proposed rule and suggested that the Service continue to work closely with the States. He supported the recommendations from the other Flyway Councils, with the exception of the proposed changes in the woodcock season in Tennessee. He emphasized that the record should clearly indicate that the Conservation Reserve Program, administered by the U.S. Department of Agriculture, is providing secure nesting habitats for grassland-nesting migratory birds. Improved water conditions on the prairies, coupled with the millions of acres of secure nesting cover, will undoubtedly have a significant beneficial effect on this year's recruitment of nesting birds in the northcentral States.

Written Comments Received

The preliminary proposed rulemaking, which appeared in the April 7 **Federal Register**, opened the

public comment period for migratory game bird hunting regulations. As of June 23, 1994, the Service had received 22 comments; 6 of these specifically addressed early-season issues. These early-season comments are summarized below and numbered in the order used in the April 7 **Federal Register**. Only the numbered items pertaining to early seasons for which written comments were received are included. The Service received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is also assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

General

Written Comments: An individual from Minnesota expressed concern that the Service is de-emphasizing waterfowl in terms of habitat, predator control, enforcement of regulations, and support for the North American Waterfowl Management Plan. He noted that waterfowl hunters help pay for management programs through purchase of "duck stamps," excise taxes, and donations to private conservation organizations.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

G. Special Seasons/Species Management

i. September Teal Seasons

In the April 9, 1993, **Federal Register** (58 FR 37830), the Service reiterated that, consistent with the strategy for the use of shooting hours developed by the Service in 1990, shooting hours will begin at sunrise unless States can demonstrate that the impact of presunrise shooting hours on nontarget duck species is negligible. States will be allowed to continue presunrise shooting hours during their September seasons under the condition that they conduct studies or provide information that demonstrates a negligible impact on nontarget duck species during the one-half hour period prior to sunrise. Three States in the Mississippi Flyway (Alabama, Mississippi, and Louisiana) and five in the Central Flyway (Colorado, Oklahoma, Texas, Kansas, and New Mexico) conducted hunter observations during the 1993 September teal season that demonstrated that the attempted harvest of non-target species was no different between pre- and post-sunrise periods.

Council Recommendations:

The Central Flyway Council recommended that September teal season shooting hours begin one-half hour before sunrise to sunset without further evaluation for all non-production Central Flyway States.

The Central Flyway Council recommended that the Service review the guidelines for establishing a September teal season for any new requests for seasons.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that Michigan be permitted to hold an experimental September teal season in southeastern portions of the State.

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that September teal season shooting hours beginning one-half hour before sunrise be made operational and that no further evaluation of shooting hours be required.

Written Comments: An individual representing a group of duck hunters from Wisconsin expressed concern that some States with a September teal season are allowed shooting hours that begin one-half hour before sunrise. He believes that hunters are unable to identify ducks and that most crippling loss occurs prior to sunrise.

The Michigan Department of Natural Resources requested that Michigan be allowed to conduct a teal season in areas where teal concentrate. They proposed limiting the season to no more than 2,000 hunters and believed that hunters' skills at identifying waterfowl are better now than they were during initial evaluations of teal seasons in the 1960's. Four individuals from Michigan supported the proposed September teal season for portions of Michigan.

ii. September Duck Seasons

A cooperative Wood Duck Initiative undertaken by the Service and the Atlantic and Mississippi Flyway Councils in 1991 is designed to improve banding programs and evaluate techniques for obtaining estimates of breeding population size and production. The Service does not propose to discontinue the September wood duck/teal seasons in Kentucky, Tennessee, and Florida or expand seasons elsewhere until this initiative has been completed. Furthermore, the Service requests an updated report on these seasons for Kentucky, Tennessee, and Florida, by February 1, 1995. These reports should contain wood duck recovery and survival rates, harvest, and the derivation of banded birds harvested during these seasons.

The Service has published a strategy concerning shooting hours which indicates that during species-specific duck seasons, shooting hours will begin at sunrise unless States can demonstrate that the impact of presunrise shooting hours on nontarget duck species is negligible. The Service received information from Kentucky, Tennessee, and Florida regarding the effect of presunrise shooting hours. This information was deemed sufficient to demonstrate a negligible impact of presunrise shooting hours on nontarget duck species during seasons directed at both teal and wood ducks. Therefore, Florida, Kentucky, and Tennessee will be allowed to continue presunrise shooting hours during their September seasons without further evaluation.

Council Recommendations: The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that Iowa be permitted to hold a portion of their regular duck season in September to increase harvest opportunity on blue-winged teal.

Written Comments: One individual and a petition with 467 signatures requested nine additional days of duck hunting in Wisconsin. The request notes that the efforts of duck hunters, the Wisconsin Department of Natural Resources, Ducks Unlimited, and various sportsmen's organizations have resulted in record levels of duck production. The additional nine days of duck hunting would make Wisconsin's season equal in length to certain other States in the Mississippi Flyway that are permitted a September teal season.

3. Sea Ducks

Since 1992, the Service has expressed its concern about the status of sea ducks and the potential impact that increased hunting activity could have on these species. In 1993, the Service reduced bag limits on scoters from 7 to 4 within an overall 7–bird sea duck limit. Although data needed to monitor these species remain less than satisfactory, the Service reiterates its request that the Flyway Councils continue to review the status of sea ducks and complete management plans. States are asked to participate in improving population surveys, harvest estimates, and production indices.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that West Virginia be permitted to initiate a 3-year experimental resident Canada goose season during September 1–15.

The Atlantic Flyway Council recommended modifications to hunt zones for September seasons on resident Canada geese in Maryland, North Carolina, Pennsylvania (Northwestern and Southeastern Zones), and Virginia. These proposed changes would be experimental.

The Upper-Region Regulations Committee of the Mississippi Flyway Council made the following recommendations pertaining to special Canada goose seasons:

In Indiana, expand the September season hunting area to Statewide with a September 1–15 framework. The proposed changes would not be experimental.

In Michigan, extend the seasons in the northern Lower Peninsula and Upper Peninsula for 2 additional years and expand the zone in the Upper Peninsula to approximately the eastern half of the Peninsula; change the season length in the southern part of the Lower Peninsula from 10 to 15 days (September 1–15) for 3 years and include the southern portions of Tuscola and Huron Counties. The proposed changes would be experimental.

In Minnesota, expand the Fergus Falls/Alexandria Zone and extend the framework for the 10-day season to September 1–16 for 3 years. The proposed changes would be experimental.

In Ohio, expand the September-season hunting area to Statewide with a September 1–15 framework. The proposed changes would not be experimental.

In Wisconsin, enlarge the size of the Southeastern Wisconsin Zone and continue as a special season with a September 1–13 framework. The proposed changes would not be experimental.

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service closely monitor all Canada goose seasons and fully analyze data from existing special or experimental seasons before expanding seasons that

management plans. States are asked to participate in improving population surveys, harvest estimates, and production indices.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that West Virginia be permitted to initiate a 3-year experimental resident Canada goose season during September 1–15.

The Atlantic Flyway Council recommended modifications to hunt zones for September seasons on resident Canada geese in Maryland, North Carolina, Pennsylvania (Northwestern and Southeastern Zones), and Virginia. These proposed changes would be experimental.

The Upper-Region Regulations Committee of the Mississippi Flyway Council made the following recommendations pertaining to special Canada goose seasons:

In Indiana, expand the September season hunting area to Statewide with a September 1–15 framework. The proposed changes would not be experimental.

In Michigan, extend the seasons in the northern Lower Peninsula and Upper Peninsula for 2 additional years and expand the zone in the Upper Peninsula to approximately the eastern half of the Peninsula; change the season length in the southern part of the Lower Peninsula from 10 to 15 days (September 1–15) for 3 years and include the southern portions of Tuscola and Huron Counties. The proposed changes would be experimental.

In Minnesota, expand the Fergus Falls/Alexandria Zone and extend the framework for the 10-day season to September 1–16 for 3 years. The proposed changes would be experimental.

In Ohio, expand the September-season hunting area to Statewide with a September 1–15 framework. The proposed changes would not be experimental.

In Wisconsin, enlarge the size of the Southeastern Wisconsin Zone and continue as a special season with a September 1–13 framework. The proposed changes would not be experimental.

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service closely monitor all Canada goose seasons and fully analyze data from existing special or experimental seasons before expanding seasons that cumulatively might increase harvest of the Southern James Bay Population. Also, current special seasons should adhere to present criteria designed by the Service.

The Lower-Region Regulations Committee of the Mississippi Flyway Council also requested that a 3-year experimental, 10-day September Canada goose season be permitted in the eastern portion of Tennessee.

B. Regular Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the early-season frameworks provide for the opening of regular goose seasons in Wisconsin and the Upper Peninsula of Michigan as early as September 24.

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service closely monitor all Canada goose seasons and fully analyze data from existing special or experimental seasons before expanding seasons that cumulatively might increase harvest of the Southern James Bay Population of Canada geese.

The Pacific Flyway Council seeks a limited resumption of cackling Canada goose hunting throughout their range and recommends that the Service provide an expedited review of their recommended changes in cackling Canada goose regulations for impacts on Aleutian Canada geese under the Section 7 consultation process.

Written Comments: The Michigan Department of Natural Resources believes that regular goose seasons should be allowed to open as early as September 24 in the Upper Peninsula of Michigan. They noted that significant numbers of migrant geese begin arriving in the Upper Peninsula during September 20–24 in most years. They anticipate that harvest in this region would remain small compared to the rest of the State. They also believe that nearly all Canada geese harvested in this region are of the giant subspecies or the Mississippi Valley Population. Finally, they noted that allowing a September 24 opening would provide equitable hunting opportunity compared to other areas because most geese leave this region by early November.

The Association of Village Council Presidents, representing Native American interests in the Yukon-Kuskokwim Delta area, supported modest liberalizations of white-fronted goose seasons in Alaska and Washington. However, they did not support further liberlizations in Oregon or California, noting that liberalizations occurred during each of the preceding years and that it was difficult to measure the effects of these incremental changes.

9. Sandhill Cranes

In 1993, the Central and Pacific Flyways completed a revision of the Cooperative Management Plan for the Mid-Continent Population of sandhill cranes. This revision established a goal of a stable population at levels observed during the 1982–92 period and removed the harvest threshold (25,000) that had been in place since 1981. The Service believes that future management actions for Mid-Continent cranes should be based on the recognition of biologically discrete subpopulations, which would necessitate the development of data collection efforts at the subspecies level. In the April 9, 1993, **Federal Register** (59 FR 16765), the Service reiterated its concern that overall harvest levels should not be increased and that there should be no increase or shift in harvest toward the Gulf Coast Subpopulation or to the greater sandhill crane component.

Council Recommendations: The Central Flyway Council recommended no changes in the Federal frameworks for the hunting of Mid-Continent cranes during the 1994–95 seasons.

Written Comments: The Texas Parks and Wildlife Department responded to statements in the April 7, 1994, **Federal Register** (59 FR 16765) that indicated that there should be no increase or shift in crane harvest toward the Gulf Coast Subpopulation of Mid-Continent Sandhill Cranes and especially the greater sandhill crane component. They noted that the Central Flyway Council did not propose any framework changes for the 1994–95 seasons and asked for clarification of the reasons for this concern, especially since the population remains stable. In this regard, they suggested that the Service provide a harvest objective, rationale and method of evaluation of any harvest reduction proposed. Furthermore, the appropriate level of management should be clearly identified, i.e. population, subpopulation, or subspecies level. Biologists working in Texas support management at the population or subpopulation level. They indicated that zoning for the hunting of cranes could not be attempted until these issues had been resolved.

14. Woodcock

The Service is concerned about the gradual long-term declines in woodcock populations in both the Eastern and Central Management Regions. Although habitat changes appear to be the primary

factor in the declines, adjustment of harvest opportunities may be appropriate in light of current population trends. The Service and Flyway Councils should review the status of woodcock and cooperatively develop a harvest-management strategy.

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that Tennessee be allowed to divide the State into 2 zones (East and West) for woodcock hunting.

16. Mourning Doves

Council Recommendations: The Central Flyway Council recommended that Texas be allowed an increase in the number of segments from 2 to 3 in 2 of the 3 mourning dove hunting zones now offered to Texas.

17. White-winged and White-tipped doves

In the August 23, 1993, Federal Register (58 FR 44501), the Service stated that with continued improvement in the whitewing population in the Lower Rio Grande Valley of Texas, serious consideration would be given to a request to increase the number of whitewings in the aggregate bag limit in the special white-winged dove area in 1994 from 2 to 6 during the regular mourning dove season.

Council Recommendations: The Central Flyway Council recommended that the number of white-winged doves allowed in the 12-bird aggregate bag limit during the mourning dove season be increased from 2 to 6 in the Texas Counties of Cameron, Hidalgo, Starr, and Willacy.

18. Alaska

The Service proposed in the April 9, 1993, **Federal Register** (58 FR 19008-19012) to manage the harvest of canvasbacks based on a single, continental breeding population. The Service does not envision that full-season bag limits of 2 canvasbacks per day could be offered nationwide in the foreseeable future. Therefore, the Service proposes to reduce the bag limit in Alaska from 2 to 1 canvasback per day.

Council Recommendations: The Pacific Flyway Council recommended that Alaska be allowed no more than 1 Canada goose in the daily bag for Unit 9E and the western portions of Unit 18.

The Pacific Flyway Council recommended that the Statewide closure on cackling Canada geese be removed.

The Pacific Flyway Council recommended removal of restrictive bag limits for white-fronted geese in Units 1–9 and 14–18 in Alaska. The goose limit will be 6 daily and 12 in possession, of which no more than 4 daily and 8 in possession could be any combination of Canada or white-fronted geese.

Written Comments: The Association of Village Council Presidents, representing Native American interests in the Yukon-Kuskokwim Delta area, supported modest liberalizations of white-fronted goose seasons in Alaska and Washington.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore solicits the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634, Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge comments received, but substantive responses to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds" (FSES 88-14), filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

The Division of Endangered Species is completing a biological opinion on the proposed action. As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. The Service's biological opinions resulting from consultations under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species (room 432) and the Office of Migratory Bird Management (room 634), Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the **Federal Register** dated April 7, 1994 (59 FR 16762), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), and publication of a summary of the latter. This information is included in the present document by reference. This action was not subject to review by the Office of Management and Budget under E.O. 12866. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rulemaking is Robert J. Blohm, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1994–95 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a—d and e—j).

Dated: June 30, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 1994–95 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director approved the following proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for certain migratory game birds between September 1, 1994, and March 10, 1995.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area, Zone, and Unit Descriptions: Geographic descriptions that differ from those published in the August 23, 1993, **Federal Register** (58 FR 44576) are contained in a later portion of this document.

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rulemaking is Robert J. Blohm, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1994–95 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a—d and e—j).

Dated: June 30, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 1994–95 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director approved the following proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for certain migratory game birds between September 1, 1994, and March 10, 1995.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area, Zone, and Unit Descriptions: Geographic descriptions that differ from those published in the August 23, 1993, **Federal Register** (58 FR 44576) are contained in a later portion of this document.

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days, with a daily bag limit of 4 teal.

Shooting Hours: One-half hour before sunrise to sunset, except in Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida: An experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Kentucky and Tennessee: In lieu of a special September teal season, an experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 17, 1994), with daily bag and possession limits being the same as those in effect during the 1994 regular duck season. The remainder of the regular duck season may not begin before October 15.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and must be included in the regular duck season daily bag and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

Hunting Seasons: Experimental Canada goose seasons may be selected by Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Virginia, and West Virginia. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Outside Dates: Between September 1 and September 10, except that the closing date is September 15 in Maryland, Massachusetts, New Jersey, New York, southeastern Pennsylvania, Virginia, and West Virginia and September 30 in North Carolina.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

Hunting Seasons: Experimental Canada goose seasons may be selected by Indiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Outside Dates: September 1–10 in the North and Middle Zones in Michigan; September 1–13 in Wisconsin; September 1–15 in Indiana, Ohio, and the South Zone in Michigan; September 1–16 in Minnesota; September 1–30 in Tennessee; and October 1–15 in Missouri.

Season Length: Not to exceed 10 days except in Indiana, Ohio, and the South Zone in Michigan, where the season may extend for 15 days.

Daily Bag Limits: Not to exceed 5 Canada geese.

Pacific Flyway

Wyoming may select a September season on Canada geese subject to the following conditions:

1. The season must be concurrent with the September portion of the sandhill crane season.
2. Hunting will be by State permit.
3. No more than 150 permits, in total, may be issued.

4. Each permittee may take no more than 2 Canada geese per season.

Oregon, in the Lower Columbia River Zone, may select a season on Canada geese subject to the following conditions:

1. The season length is 12 days during September 1–12.
2. The daily bag limit is 3 Canada geese.

Oregon, in the Northwest Zone, may select an experimental season on Canada geese subject to the following conditions:

1. The season length is 12 days during September 1–12.
2. Hunting will be by State permit.
3. Each permittee may take no more than 2 Canada geese per day.

Washington may select a season on Canada geese, subject to the following conditions, in the Lower Columbia River Zone:

1. The season length is 12 days during September 1–12.
2. The daily bag limit is 3 Canada geese.

Regular Goose Seasons

Regular goose seasons in Wisconsin and the Upper Peninsula of Michigan may open as early as September 24. Season lengths and bag and possession limits will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane-hunting permit in his possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils. All hunts except those in Arizona, New Mexico, Utah, and Wyoming will be experimental.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into two segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into two segments.

Daily Bag Limits:

Clapper and King Rails - In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails - In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28. Except, in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1 and January 31. States in the Central and Mississippi Flyways may select hunting seasons between September 1 and January 31.

Hunting Seasons and Daily Bag Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with a daily bag limit of 3; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with a daily bag limit of 5. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 35 days.

Band-tailed Pigeons

Pacific Coast States: California, Oregon, Washington, and Nevada.

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

Permit Requirement: The appropriate State agency must issue permits, and report on harvest and hunter participation to the Service by June 1 of the following year, or participate in the Migratory Bird Harvest Information Program.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 7.

Four-Corners States: Arizona, Colorado, New Mexico, and Utah.

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Permit Requirement: The appropriate State agency must issue permits, and report on harvest and hunter participation to the Service by June 1 of the following year, or participate in the Migratory Bird Harvest Information Program.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit (All States east of the Mississippi River, and Louisiana)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 6 of which may be white-winged doves and no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit (All States east of the Mississippi River, and Louisiana)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 6 of which may be white-winged doves and no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)

Hunting Seasons and Daily Bag Limits:

Idaho, Nevada, Oregon, Utah, and Washington - Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California - Not more than 60 days which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-winged and White-tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which not more than 6 may be white-winged doves and not more than 2 may be white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged,mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession limits:

Ducks—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The basic limits may include no more than 2 pintails daily and 6 in possession, and 1 canvasback daily and 3 in possession.

In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6, of which not more than 4 may be greater white-fronted or Canada geese, singly or in the aggregate of these species, except that the daily bag limit on Canada geese in Game Management Units 9E and 18 is 1.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—A daily bag limit of 3.

Tundra swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued in GMU 22, authorizing each permittee to take 1 tundra swan per season.

2. No more than 500 permits may be issued during the experimental season in GMU 18. No more than 1 tundra swan may be taken per permit.

3. The seasons must be concurrent with other migratory bird seasons.

4. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1 of the following year.

Hawaii

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days (70 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 3.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks:

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 3 ducks.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Central Flyway portion of the following States consists of:

Colorado: That area lying east of the Continental Divide.

Montana: That area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

New Mexico: That area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Wyoming: That area lying east of the Continental Divide.

The remaining portions of these States are in the Pacific Flyway.

Mourning and White-winged Doves

Alabama:

South Zone - Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone - Remainder of the State.

California:

White-winged Dove Open Areas - Imperial, Riverside, and San Bernardino Counties.

Florida:

Northwest Zone - The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone - Remainder of State.

Georgia:

Zone 1 - That portion of the State lying north of U.S. 280 or east of I–75.

Zone 2 - That portion of the State lying south of U.S. 280 and west of I–75.

Louisiana:

North Zone - That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone - The remainder of the State.

Mississippi:

North Zone - That portion of the State lying north of U.S. Highway 84.

South Zone - The remainder of the State.

Nevada:

White-winged Dove Open Areas - Clark and Nye Counties.

Texas:

North Zone - That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions - Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone - That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California:

North Zone - Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone - The remainder of the State.

New Mexico:

North Zone - North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone - Remainder of the State.

Washington:

Western Washington - The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone - That portion of the State north of NJ 70.

South Zone - The remainder of the State.

Special September Goose Seasons

Atlantic Flyway

Maryland

Open Area - Counties of Allegany, Anne Arundel, Baltimore, Calvert, Charles, Carroll, Dorchester, Frederick,

west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions - Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone - That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California:

North Zone - Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone - The remainder of the State.

New Mexico:

North Zone - North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone - Remainder of the State.

Washington:

Western Washington - The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone - That portion of the State north of NJ 70.

South Zone - The remainder of the State.

Special September Goose Seasons

Atlantic Flyway

Maryland

Open Area - Counties of Allegany, Anne Arundel, Baltimore, Calvert, Charles, Carroll, Dorchester, Frederick, Garret, Harford, Howard, Montgomery, Prince George's, St. Mary's, Somerset, Washington, Wicomico, and Worcester.

Massachusetts

Western Zone - That portion of the State west of a line extending from the Vermont line at I–91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

New Jersey

Open Area - That portion of New Jersey within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Parkway to its intersection with Route 70; then west on Route 70 to its intersection with Route 206; then south on Route 206 to its intersection with Route 54; then south on Route 54 to its intersection with Route 40; then west on Route 40 to its intersection with the New Jersey Turnpike; then south on the Turnpike to the Delaware State boundary line; then north on the Delaware State boundary line to its intersection with the Pennsylvania State boundary; then north on the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary.

New York

Northern Area - All or portions of St. Lawrence County; see State hunting regulations for area descriptions.

Western Area - Counties of Erie, Cattaraugus, Chautauqua, Niagara, Orleans, and Genesee, and portions of Wyoming, Livingston, Allegany and Steuben Counties.

Southeastern Area - All of Rockland, Westchester, Orange, Putnam, Dutchess, Columbia, and Rensselaer Counties, and portions of Sullivan, Delaware, Ulster, Greene, Albany, Schenectady, Saratoga, Warren, and Washington Counties.

North Carolina

Early-season Canada Goose Area - That portion of the State west and east of I–95; see State hunting regulations for area descriptions.

Pennsylvania

Northwestern Early-Season Goose Area - Counties of Allegheny, Armstrong, Beaver, Butler, Cambria, Crawford, Erie, Greene, Fayette, Indiana, Lawrence, Mercer, Somerset, Venango, Washington, and Westmoreland.

Southeastern Early-Season Goose Area - Counties of Berks, Bucks, Chester, Delaware, Lehigh, Monroe, Montgomery, Northampton, Pike and Wayne.

Virginia

Open Area - Counties of Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Buckingham, Caroline, Charles City, Chesterfield, Clarke, Culpepper, Cumberland, Fairfax, Fauquier, Frederick, Fluvanna, Goochland, Greene, Hanover, Henrico, Highland, Isle of Wight, James City, King William, Loudoun, Louisa, Madison, Nelson, New Kent, Northampton, Orange, Page, Powhatan, Prince George, Prince William, Rappahannock, Rockbridge, Rockingham, Shenandoah, Spotsylvania, Stafford, Surry, Warren and York.

West Virginia - Statewide.

Mississippi Flyway

Indiana - Change from one zone to Statewide.

Michigan

Upper Peninsula - That portion of the Upper Peninsula outside the AuTrain Basin Waterfowl Project in Alger County (described below) and east of a line described as follows: Beginning at the point where the meridian line 87°30′ intersects the United States-Canada border, then south along the 87°30′ meridian line to the 47°00′ parallel, west along the 47°00′ parallel to a point directly north of County Road 550 in the village of Big Bay in Marquette County, southerly along this line and County 550 through Big Bay to County 510, southerly along County 510 to Michigan Highway 28/U.S. Highway 41, westerly along M-28/U.S. 41 to M-35, southerly along M-35 to the Delta County line, westerly and southerly along the Delta County line to the Lake Michigan shoreline, then southeasterly along the Central-Eastern time zone boundary to the Wisconsin border in Green Bay. The AuTrain Basin Waterfowl Project is bounded on the north by M-94, on the south by Trout Lake Road, on the east by County 509 (Rapid River Truck Trail), and on the west by M-67.

Northern Lower Peninsula - Bay, Isabella, Mecosta, Midland, Newaygo, and Oceana Counties and all counties north thereof.

Southern Lower Peninsula - The remainder of the Lower Peninsula, excluding Huron, Saginaw, and Tuscola Counties.

Minnesota

Fergus Falls/Benson Zone - That area encompassed by a line beginning on State Trunk Highway (STH) 55 at the Minnesota border, then south along the Minnesota border to a point due south of the intersection of STH 7 and County State Aid Highway (CSAH) 7 in Big Stone County, north to the STH 7/CSAH 7 intersection and continuing north

along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. Highway 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to the Swift County border, east along the south border of Swift County and north along the east border of Swift County to the south border of Pope County, east along the south border of Pope County and north along the east border of Pope County to STH 28, west along STH 28 to CSAH 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the east border of Otter Tail County, north along the east border of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then west along STH 55 to the point of beginning.

Ohio - Change from two zones to statewide.

Tennessee

Anderson, Blount, Campbell, Claiborne, Knox, Loudon, Monroe, Roane, and Union Counties and those portions of Meigs and Rhea Counties north of Highway 68.

Wisconsin

Early-Season Subzone - That area encompassed by a line beginning at the Illinois border on the Lake Michigan shore, then east to the Michigan border in Lake Michigan, north along the Michigan border in Lake Michigan to a point due east of Wisconsin State Highway 23, then due west to the Lake Michigan shore in Sheboygan and continuing west along State 23 to State 67, then southerly along State 67 to Sheboygan County Highway E, then southerly along County E to State 28, then south and west along State 28 to U.S. Highway 41, then southerly along U.S. 41 to State 33, then westerly along State 33 to State 26, then southerly along State 26 to U.S. 12, then southerly along U.S. 12 to State 89, then southerly along State 89 to U.S. 14, then southerly along U.S. 14 to the Illinois border.

Pacific Flyway

Oregon

Lower Columbia River Zone - Those portions of Clatsop, Columbia, and Multnomah Counties within the following boundary: beginning at Portland, Oregon, at the south end of the Interstate 5 Bridge; south on I–5 to Highway 30; west on Highway 30 to the town of Svensen; south from Svensen to Youngs River Falls; due west from Youngs River Falls to the Pacific Ocean coastline; north along the coastline to a point where Clatsop Spit and the South Jetty meet; due north to the Oregon-Washington border; east and south along the Oregon-Washington border to the I–5 Bridge; south on the I–5 Bridge to the point of beginning.

Northwest Oregon Zone - All of Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties; except for the Lower Columbia River Zone.

Utah

Early-season Canada Goose Area - Cache County

Washington

Lower Columbia River Zone - Beginning at the Washington-Oregon border on the I–5 Bridge near Vancouver, Washington; north on I–5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Wyoming

Bear River Area - That portion of Lincoln County described in State regulations.

Salt River Area - That portion of Lincoln County described in State regulations.

Eden-Farson Area - Those portions of Sweetwater and Sublette Counties described in State regulations.

Sandhill Cranes

Central Flyway

Colorado

Regular-Season Open Area - The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Regular Season Open Area - That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area - Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area - The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone - Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area - That portion of the State west of I–35.

Texas

Regular-Season Open Area - That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I–35 to the Texas-Oklahoma border.

North Dakota

Regular-Season Open Area - That portion of the State west of U.S. 281.

South Dakota

Regular-Season Open Area - That portion of the State west of U.S. 281.

Montana

Regular-Season Open Area - The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area - Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit - Portions of Fremont County.

Pacific Flyway

Arizona

Special-Season Area - Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area - See State regulations.

Utah

Special-Season Area - Rich and Cache Counties.

Wyoming

Bear River Area - That portion of Lincoln County described in State regulations.

Salt River Area - That portion of Lincoln County described in State regulations.

Eden-Farson Area - Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone - State Game Management Units 11–13 and 17–26.

Gulf Coast Zone - State Game Management Units 5–7, 9, 14–16, and 10 - Unimak Island only.

Southeast Zone - State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone - State Game Management Unit 10 - except Unimak Island.

Kodiak Zone - State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area - The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area - All of the Municipality of Culebra.

Desecheo Island Closure Area - All of Desecheo Island.

North Zone - State Game Management Units 11–13 and 17–26.

Gulf Coast Zone - State Game Management Units 5–7, 9, 14–16, and 10 - Unimak Island only.

Southeast Zone - State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone - State Game Management Unit 10 - except Unimak Island.

Kodiak Zone - State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area - The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area - All of the Municipality of Culebra.

Desecheo Island Closure Area - All of Desecheo Island.

Mona Island Closure Area - All of Mona Island.

El Verde Closure Area - Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas - All of Cidra Municipality and portions of Aguas, Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of beginning.

[FR Doc. 94–16812 Filed 7–11–94, 8:45 am]

BILLING CODE 4310–55–F

VOL
5 9
ISS
1
3
2
JL
1 2
994
JMI

federal reserve

Federal Register

Tuesday
July 12, 1994

Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 164 and 165

Sale of Lumber and Other Forest Products by Indian Enterprises and Sale of Forest Products, Red Lake Indian Reservation, MN; Proposed Rules

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 164

RIN: 1076–AC77

Sale of Lumber and Other Forest Products Produced by Indian Enterprises From the Forests on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to delete regulations which govern the terms and conditions under which forest products produced by Indian tribal forest enterprises from the forests of Indian Reservations may be sold. The BIA is proposing to delete these regulations because the "General Forest Regulations," prescribe a similar policy for sales of Indian forest products in the section, "Indian Tribal Forest Enterprise Operations." Therefore, the proposed deletion is necessary to eliminate redundancy and potential confusion in forestry program regulations.

DATES: Comments must be received on or before September 12, 1994.

ADDRESSES: Mail or hand deliver comments to: Mr. Jim Stires, Billings Area Office, BIA, Branch of Forestry, 316 North 26th Street, Billings, Montana; or Mr. Bill Downes, Division of Forestry, 1849 C Street NW., Mail Stop 4545 MIB, Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Stires, Billings Area Office, Bureau of Indian Affairs, Branch of Forestry at (406) 657–6358.

SUPPLEMENTARY INFORMATION: This action, deleting 25 CFR part 164, results from the BIA's need to eliminate the redundancy and potential confusion arising from having two regulations governing the same operation in the 25 CFR Indian forestry program regulations. The BIA recognizes that provisions in § 163.13 of the revision of 25 CFR part 163, "General Forest Regulations," are adequate to govern the sale of Indian forest products and, as a result, that 25 CFR part 164 is no longer needed.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the addresses section of this document.

This rule is not considered a significant regulatory action under the criteria of Executive Order 12866. Therefore, review by the Office of Management and Budget is not required prior to publication in the **Federal Register**.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the sale of lumber and forest products produced by Indian enterprises will be conducted as in the past.

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

In accordance with Executive Order 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects.

The deletion of 25 CFR part 164, "Sale of Lumber and Other Forest Products Produced by Indian Enterprises from Forests on Indian Reservations," will not create information collection or record keeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Mr. Jim Stires, Forester, in the Billings Area Office, BIA, Branch of Forestry, Billings, Montana.

List of Subjects in 25 CFR Part 164

Forests and forest products; Indian—lands.

For the reasons set forth in the preamble, Part 164 of Chapter I, Title 25 of the Code of Federal Regulations is proposed to be removed.

Dated: May 16, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–16815 Filed 7–11–94; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Indian Affairs

25 CFR Part 165

RIN: 1076–AC75

Sale of Forest Products, Red Lake Indian Reservation, Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to delete regulations which govern the terms and conditions under which forest products produced by the Red Lake Indian Mills may be sold. The BIA is proposing to delete these regulations because the Red Lake Indian Mills no longer exists and the revision of the "General Forest Regulations," prescribes policy for the sale of forest products produced by other Indian forest product enterprises on the Red Lake Indian Reservation. Therefore, this proposed deletion is necessary to eliminate redundancy and potential confusion in forestry program regulations.

DATES: Comments must be received on or before September 12, 1994.

ADDRESSES: Mail or hand deliver comments to: Mr. Jim Stires, Billings Area Office, BIA, Branch of Forestry, 316 North 26th Street, Billings, Montana; or Mr. Bill Downes, Division of Forestry, 1849 C Street NW., Mail Stop 4545 MIB, Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Stires, Billings Area Office, Bureau of Indian Affairs, Branch of Forestry, telephone (406) 657–6358.

SUPPLEMENTARY INFORMATION: Deletion of 25 CFR part 165 will eliminate potential confusion because the Red Lake Indian Mills, which are the subject of the regulation, no longer exist. This deletion also will eliminate a perceived redundancy because provisions in § 163.13 of the revision of 25 CFR part 163, "General Forest Regulations," are adequate to govern the sale of Indian forest products by Indian forest enterprises on the Red Lake Indian Reservation.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the **ADDRESSES** section of this document.

This rule is not considered a significant regulatory action under the criteria of Executive Order 12866. Therefore, review by the Office of Management and Budget is not required prior to publication in the **Federal Register**.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the sale of lumber and forest products produced by Indian enterprises will be conducted as in the past.

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The Department has certified to the Office of Management and Budget that

prior to publication in the **Federal Register**.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the sale of lumber and forest products produced by Indian enterprises will be conducted as in the past.

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

In accordance with Executive Order 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects.

The deletion of 25 CFR part 165, "Sale of Forest Products, Red Lake Indian Reservation Minnesota," will not create information collection or record keeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Mr. Jim Stires, Forester, in the Billings Area Office, BIA, Branch of Forestry, Billings, Montana.

List of Subjects in 25 CFR Part 165

Forests and forest products; Indian—lands.

For the reasons set forth in the preamble, Part 165 of Chapter I, Title 25 of the Code of Federal Regulations is proposed to be removed.

Dated: May 16, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–16816 Filed 7–11–94; 8:45 am]

BILLING CODE 4310–02–P

VOL
59
ISS
1
3
2
JUL
12
1994
MI

Federal Register

Tuesday
July 12, 1994

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reclassify the Bald Eagle From Endangered to Threatened in Most of the Lower 48 States; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC48

Endangered and Threatened Wildlife and Plants; Reclassify the Bald Eagle From Endangered to Threatened in Most of the Lower 48 States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The bald eagle (*Haliaeetus leucocephalus*) is listed as endangered under the Endangered Species Act of 1973 (Act) in the lower 48 States, except Washington, Oregon, Minnesota, Wisconsin, and Michigan, where it is listed as threatened. The bald eagle also occurs in Alaska and Canada, where it is not at risk and is not protected under the Act, and exists in small numbers in northern Mexico. The Fish and Wildlife Service (Service) proposes to reclassify the bald eagle from endangered to threatened in the lower 48 States except in certain portions of the American Southwest and to classify those eagles in adjacent Mexico as endangered. The bald eagle would remain threatened in the five States where it is currently listed as threatened. The special rule for threatened bald eagles would be revised. This action would not alter those conservation measures already in force to protect the species and its habitats. The Service seeks comments from the public on this proposed reclassification.

DATES: Comments from all interested parties must be received by October 11, 1994. Public hearing requests must be received by August 26, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to Chief, Division of Endangered Species, Fish and Wildlife Service, 1 Federal Drive, Whipple Federal Building, Fort Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jody Gustitus Millar, Bald Eagle Recovery Coordinator, Fish and Wildlife Service, 4469–48th Avenue Court, Rock Island, Illinois 61201 (309/793–5800).

SUPPLEMENTARY INFORMATION:

Background

Literally translated, *Haliaeetus leucocephalus* means white-headed sea eagle. This large, powerful brown bird with a white head and tail is well known as our Nation's symbol. Young bald eagles are mostly dark brown until they reach 4 to 6 years in age and may be confused with the golden eagle (*Aquila chrysaetos*). The bald eagle is the only sea eagle regularly occurring on the North American continent (American Ornithologists' Union 1983). Its range extends from central Alaska and Canada to northern Mexico.

The bald eagle is a bird of aquatic ecosystems (Marshall and Nickerson 1976). It frequents estuaries, large lakes, reservoirs, major rivers, and some seacoast habitats. However, such areas must have an adequate food base, perching areas, and nesting sites meeting certain requirements to support bald eagles. In winter, bald eagles often congregate at specific wintering sites that are generally close to open water and that offer good perch trees and night roosts. Bald eagle habitats encompass both public and private lands.

The bald eagle was first described in 1766 as *Falco leucocephalus* by Linnaeus. This South Carolina bird was later renamed as the southern bald eagle, subspecies *Haliaeetus leucocephalus leucocephalus* (Linnaeus), when, in 1897, Townsend identified the northern bald eagle as *Haliaeetus leucocephalus alascanus* (American Ornithologists' Union 1957). These two subspecific names were in use when the southern bald eagle (arbitrarily declared to occur south of the 40th parallel) was listed (March 11, 1967; 32 FR 4001) as endangered under the Endangered Species Protection Act of 1966 (16 U.S.C. 668aa–668cc). By the time the bald eagle was listed (February 14, 1978; 43 FR 6233) for the entire lower 48 States, the subspecies were no longer recognized by ornithologists.

The bald eagle historically ranged throughout North America except extreme northern Alaska and Canada and central and southern Mexico. Bald eagles nest on both coasts from Florida to Baja California, in the south, and from Labrador to the western Aleutian Islands, Alaska, in the north (formerly to the Commander Islands, western Bering Sea). In many of these areas they were abundant.

Gerrard and Bortolotti (1988) describe early population trends. When Europeans first arrived on the North American continent, there were an estimated quarter- to a half-million bald eagles. The first major decline in the bald eagle population probably began in the mid to late 1800's. It coincided with declines in numbers of waterfowl and shorebirds and other major prey species. Direct eagle killing was also prevalent, and, coupled with loss of nesting habitat, these factors reduced bald eagle numbers until the 1940's.

In 1940, the Bald Eagle Protection Act (16 U.S.C. 668) was passed. This law prohibits the take, possession, sale, purchase, barter, offer to sell, purchase or barter, transport, export or import, of any bald eagle, alive or dead, including any part, nest, or egg, unless allowed by permit; "take" includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb.

The Bald Eagle Protection Act and increased public awareness of the bald eagle resulted in a partial recovery or a slower decline of the species in most areas of the country. However, persecution continued, notably in Alaska, which was exempted from the Bald Eagle Protection Act and maintained a bounty on bald eagles. In 1952, after lengthy studies demonstrated that bald eagles were not affecting salmon numbers, Alaska was no longer exempted.

Shortly after World War II, the use of dichloro-diphenyl-trichloroethane (DDT) and other organochlorine compounds became widespread. Initially, DDT was sprayed extensively along coastal and other wetland areas to control mosquitos (Carson 1962). Later it was used as a general insecticide. As DDT accumulated in individual bald eagles from ingesting contaminated food, the species' reproduction plummeted. In the late 1960s and early 1970s, it was determined that dichlorophenyl-dichloroethylene (DDE), the principal metabolite of DDT, accumulated in the fatty tissues of the adult females and impaired calcium release for egg shell formation, thus inducing thin shells and reproductive failure.

In response to the decline following World War II, on March 11, 1967 (32 FR 4001), the Secretary of the Interior listed bald eagles south of the 40th parallel as endangered under the Endangered Species Preservation Act of 1966. The northern bald eagle was not included in that action primarily because the Alaskan and Canadian populations were not considered endangered in 1967. On December 31, 1972, DDT was banned from use in the United States.

In 1973, the Endangered Species Act (16 U.S.C. 1531 *et seq.*) was passed. Among other provisions, it allowed the listing of distinct populations of animal species and the addition of a new category, "threatened." The Act defines an endangered species as a species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is defined as any species that is likely to become an endangered species (but is not in danger

of extinction) throughout all or a significant portion of its range.

A nationwide bald eagle survey by the Service and a number of other agencies and conservation groups in 1974 revealed that, in parts of the northern half of the lower 48 States, bald eagle populations and reproductive success were lower than in certain southern areas. Thus, in 1978, the Service listed the bald eagle, *Haliaeetus leucocephalus* (no subspecies referenced) throughout the lower 48 States as endangered except in Michigan, Minnesota, Wisconsin, Washington, and Oregon, where it was designated as threatened (February 14, 1978; 43 FR 6233).

Restoring endangered and threatened animals and plants to the point where they are again viable, self-sustaining members of their ecosystems is the main goal of the Endangered Species Act. Thus, the Act contains recovery as well as listing and protection provisions. To effect recovery, section 4(f) of the Act provides for the development and implementation of recovery plans for listed species. According to the Act, a recovery plan is a plan for the conservation and survival of the species. It identifies, describes, and schedules the actions necessary to restore endangered and threatened species to a more secure biological condition.

In establishing a recovery program for the species in the mid-1970s, the Service divided the bald eagles of the lower 48 States into five recovery populations, based on geographic location, termed Recovery Regions. A

of extinction) throughout all or a significant portion of its range.

A nationwide bald eagle survey by the Service and a number of other agencies and conservation groups in 1974 revealed that, in parts of the northern half of the lower 48 States, bald eagle populations and reproductive success were lower than in certain southern areas. Thus, in 1978, the Service listed the bald eagle, *Haliaeetus leucocephalus* (no subspecies referenced) throughout the lower 48 States as endangered except in Michigan, Minnesota, Wisconsin, Washington, and Oregon, where it was designated as threatened (February 14, 1978; 43 FR 6233).

Restoring endangered and threatened animals and plants to the point where they are again viable, self-sustaining members of their ecosystems is the main goal of the Endangered Species Act. Thus, the Act contains recovery as well as listing and protection provisions. To effect recovery, section 4(f) of the Act provides for the development and implementation of recovery plans for listed species. According to the Act, a recovery plan is a plan for the conservation and survival of the species. It identifies, describes, and schedules the actions necessary to restore endangered and threatened species to a more secure biological condition.

In establishing a recovery program for the species in the mid-1970s, the Service divided the bald eagles of the lower 48 States into five recovery populations, based on geographic location, termed Recovery Regions. A recovery plan was prepared for each population by separate recovery teams composed of species experts in each geographic area. The teams set forth goals for recovery and identified tasks to achieve those goals. Coordination meetings were held regularly among the five teams to exchange data and other information. The five recovery regions and the dates of their approved recovery plans are as follows: Chesapeake Bay (1982, revised 1990); Pacific (1986); Southeastern (1984, revised 1989); Northern States (1983); and Southwestern (1982). The last two plans are under active revision and expected to be available for public review within the next 12 months. Many of the tasks described within these recovery plans have been funded and carried out by the Service and other Federal, State, and private organizations. Annual expenditures for the recovery and protection of the bald eagle by public and private agencies have exceeded $1 million each year for the past decade (Service files).

In the 16 years since it was listed throughout the conterminous 48 States, the bald eagle population has clearly improved. The improvement is a direct result of the banning of DDT and other persistent organochlorines and from recovery efforts. In 1963, a National Audubon Society survey reported only 417 active nests in the lower 48 States, with an average of 0.59 young produced per active nest. In 1993, about 4,000 occupied breeding areas were reported by the States with an estimated average young per occupied territory of 0.93. Compared to 1974, for example, the number of occupied breeding areas in the lower 48 States has increased by 408 percent, and since 1990, there has been a 32 percent increase. The species is doubling its breeding population every 6–7 years since the late 1970s.

TABLE 1.—NUMBER OF BALD EAGLE PAIRS COUNTED IN LOWER 48 STATES, 1963–1993

[Incomplete data for missing years]

Year	Number
1963	417
1974	791
1981	1,188
1984	1,757
1986	1,875
1988	2,475
1989	2,680
1990	3,020
1991	3,391
1992	3,747
1993	4,016

The Act requires periodic review of the status of listed species. The Service has reviewed the status of the bald eagle and is proposing reclassification in all or portions of four Recovery Regions. The review recognized the achievement of specific recovery plan reclassification goals. The biological basis for the recovery goals is described in each recovery plan.

The recovery plans were first approved in the early 1980's. The five Recovery Regions are illustrated on the following map:

BILLING CODE 4310–55–P

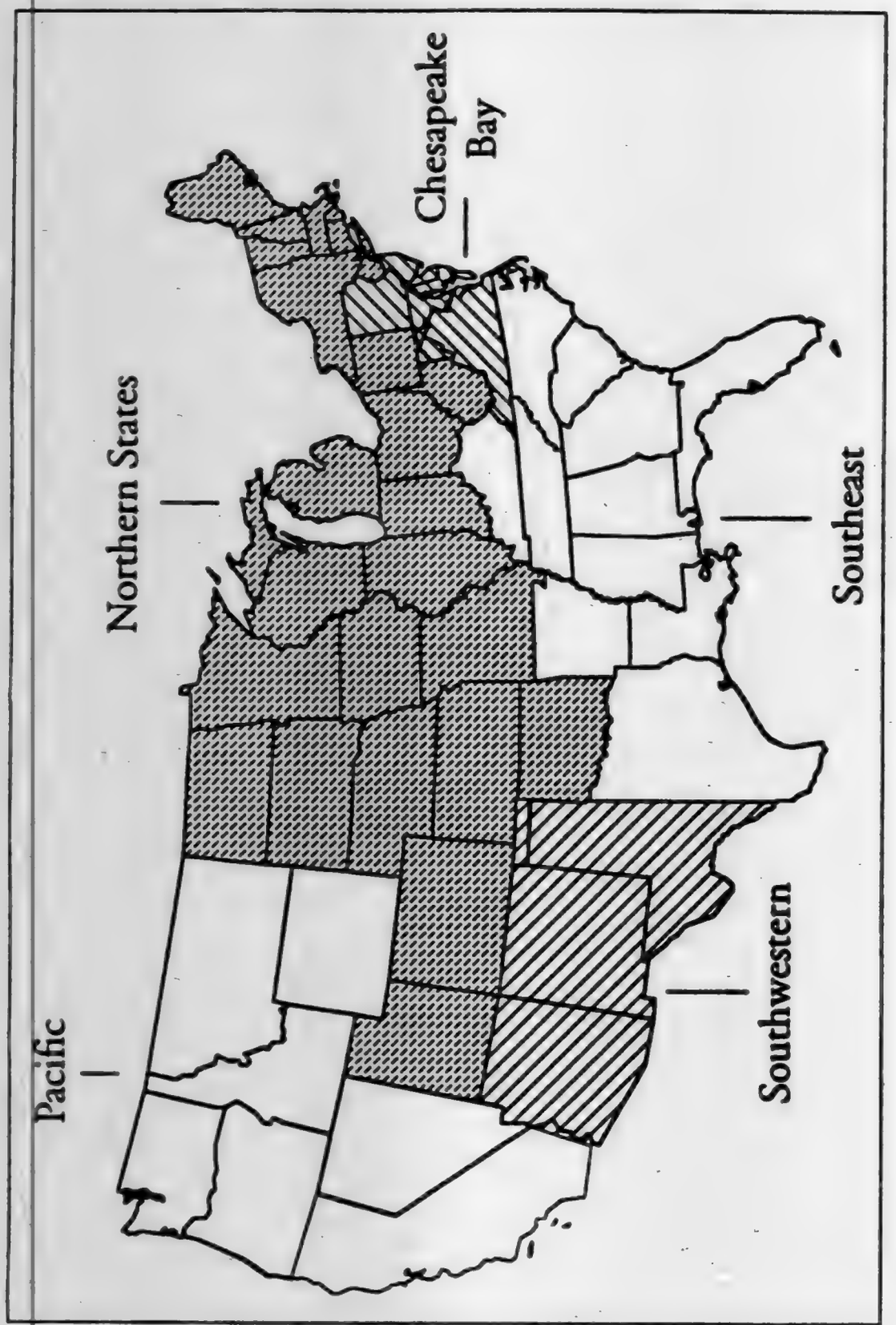

BILLING CODE 4310-55-C

A summary follows of each Recovery Region's reclassification and delisting goals, an estimation of progress to date in achieving those goals, and proposed Service action. The terms "occupied breeding areas" and "occupied territories" are used interchangeably. Either term indicates that a pair of bald eagles has established a breeding territory and a nest site but was not necessarily successful in producing young. All numbers are based upon known eagle nests and not estimates; surveys, particularly those before the late 1970s, miss some pairs, so all counts are considered minimums.

Chesapeake Recovery Region

Threatened Goals: Sustaining 175–250 breeding pairs with a productivity level of 1.1 young per active nest, concurrent with sustained progress in habitat protection measures.

Delisting Goals: Sustaining 300–400 pairs with an average productivity of 1.1 young per active nest over 5 years with permanent protection of sufficient habitat to support this nesting population and enough roosting and foraging habitat to support population levels commensurate with increases throughout the Atlantic coastal area.

Progress to Date: 329 reported occupied breeding areas and 1.12 young per occupied area in 1993. Progress in habitat protection has been sustained and additional habitat is being protected. There have been in excess of 175 known occupied breeding areas since 1988; 1992 was the first year in which there were more than 300. Threatened goals have been met, delisting goals have not.

Service Proposal: Reclassify to threatened.

Northern Recovery Region

Threatened Goals: No goal for reclassification to threatened status in present plan.

Delisting Goals: 1,200 occupied breeding areas over a minimum of 16 States with an average annual productivity of at least 1.0 young per occupied nest.

Progress to Date: In 1993, there were 1602 known occupied breeding areas distributed over 21 States with 0.95 young per occupied breeding area. Productivity was 1.00 in 1990, 0.97 in 1991, and 1.01 in 1992. (Productivity estimates exclude nest data from Minnesota and Wisconsin in 1992, and from Wisconsin in 1990 and 1991, because there were no productivity surveys done in these States during those years.) Delisting goals have been met for occupied breeding areas and are close to being met for productivity.

A summary follows of each Recovery Region's reclassification and delisting goals, an estimation of progress to date in achieving those goals, and proposed Service action. The terms "occupied breeding areas" and "occupied territories" are used interchangeably. Either term indicates that a pair of bald eagles has established a breeding territory and a nest site but was not necessarily successful in producing young. All numbers are based upon known eagle nests and not estimates; surveys, particularly those before the late 1970s, miss some pairs, so all counts are considered minimums.

Chesapeake Recovery Region

Threatened Goals: Sustaining 175–250 breeding pairs with a productivity level of 1.1 young per active nest, concurrent with sustained progress in habitat protection measures.

Delisting Goals: Sustaining 300–400 pairs with an average productivity of 1.1 young per active nest over 5 years with permanent protection of sufficient habitat to support this nesting population and enough roosting and foraging habitat to support population levels commensurate with increases throughout the Atlantic coastal area.

Progress to Date: 329 reported occupied breeding areas and 1.12 young per occupied area in 1993. Progress in habitat protection has been sustained and additional habitat is being protected. There have been in excess of 175 known occupied breeding areas since 1988; 1992 was the first year in which there were more than 300. Threatened goals have been met, delisting goals have not.

Service Proposal: Reclassify to threatened.

Northern Recovery Region

Threatened Goals: No goal for reclassification to threatened status in present plan.

Delisting Goals: 1,200 occupied breeding areas over a minimum of 16 States with an average annual productivity of at least 1.0 young per occupied nest.

Progress to Date: In 1993, there were 1602 known occupied breeding areas distributed over 21 States with 0.95 young per occupied breeding area. Productivity was 1.00 in 1990, 0.97 in 1991, and 1.01 in 1992. (Productivity estimates exclude nest data from Minnesota and Wisconsin in 1992, and from Wisconsin in 1990 and 1991, because there were no productivity surveys done in these States during those years.) Delisting goals have been met for occupied breeding areas and are close to being met for productivity.

Service Proposal: Reclassify to threatened; the species would remain threatened where it now has that status. The recovery plan describes the delisting goals as initial and tentative. The Northern States Bald Eagle Recovery Team has reconvened for the purpose of reviewing the plan and revising the goals, if necessary.

Pacific Recovery Region

Threatened Goals: Nesting populations continue to increase annually for the 5 years beginning with 1986 nesting season.

Delisting Goals: A minimum of 800 nesting pairs with an average reproductive rate of 1.0 fledged young per pair with an average success rate per occupied site of not less than 65% over a 5-year period. Attainment of breeding population goals should be met in at least 80% of management zones. Wintering populations should be stable or increasing.

Progress to Date: In 1993, 1066 occupied breeding areas were reported with 0.86 young per occupied breeding area. The number of occupied breeding areas has consistently increased since 1986 and exceeded 800 for 4 of the 5 years beginning in 1990 when 861 were reported. Productivity has averaged about 1.0 since 1990. Threatened goals have been met. Should this trend continue, the delisting goals for number of nesting pairs and productivity may be met in the near future. At present, less than 80 percent of the 37 specified management zones have met their delisting goals. In 1993, 20 of those zones had met or exceeded their recovery goals, and four other zones in addition to the original 37 had nesting eagles that are not part of the recovery goals for this region.

Threatened goals have been met. Delisting goals are close to being met for all criteria except attainment of breeding population goals for 80 percent of the management zones. About 10 more zones need to meet their goals to fulfill this criterion.

Service Proposal: Reclassify to threatened in California (except the 10-mile strip along the Colorado River), Idaho, Montana, Nevada, and Wyoming; the species would remain threatened where it now has that status.

Southeastern Recovery Region

Threatened Goals: 600 occupied breeding areas distributed over at least 75 percent of the historic range contingent upon greater than 0.9 young per occupied nest, greater than 1.5 young per successful nest, and at least 50 percent of the nests successful in raising at least one young; based on a 3-year average and documentation of population vigor and adequate support habitat. Individual State goals are given.

Delisting Goals: Delisting may be considered if the recovery trend continues for 5 years after reclassification goals are met. The criteria for delisting will be developed when the species is reclassified from endangered to threatened.

Progress to Date: 982 occupied breeding areas were reported with an average of 1.02 young per occupied territory in 1993. Nesting is distributed over all 11 Southeastern States. The number of occupied breeding areas reached 601 in 1991 and has exceeded 600 for three successive years. Reproductive success for the years 1990–1993 averaged 1.53 young per successful nest (or 1.04 young per occupied territory), and 68 percent of the nests were successful in raising at least one young. Seven of eleven individual State goals have been met but these are considered guidelines rather than requirements. Existing habitat is deemed to be adequate to support and exceed overall recovery plan goals. Threatened goals have been met and delisting goals will be met in 5 years if the trend continues.

Service Proposal: Reclassify to threatened.

Southwestern Recovery Region

Threatened Goals: 10–12 young per year over a 5-year period; population range has to expand to include one or more river drainages in addition to the Salt and Verde Systems.

Delisting Goals: None given.

Progress to Date: 29 occupied breeding areas were reported for 1993 with 27 young produced. Since 1988, the number of occupied breeding areas has increased by about 26 percent (six occupied territories) in the Southwestern Region. Nationwide, occupied breeding areas have increased by 62 percent (1540 occupied territories) in the same time period. Some of the increase in the Southwestern Region is due to finding previously unrecorded nest sites. Ten or more young have been produced every year since 1981. Productivity has increased 10–20 percent through the assistance of the Arizona Nest Watch program (Hunt et al. 1992).

Information to date indicates that breeding has expanded beyond the Salt and Verde River systems. Eagles are now nesting in the Gila and Bill Williams river systems in Arizona and the Rio Grande in New Mexico. Thus, the threatened criteria have been fully met.

The population remains small, localized, with variable productivity, and low adult survival. This population faces numerous and increasing impacts from a rapidly growing human population. These impacts include continued loss and modification of riparian habitat, disturbance at nest sites, entanglement of nestlings in fish line, and other human-caused influences.

The Southwestern Recovery Plan is undergoing revision to incorporate new information gained from recent investigations by Hunt et al. (1992). This research indicates that birds dispersing into west Texas and Oklahoma are more likely to be bald eagles of the Southeastern Region population than those of the Southwestern Region. Thus, the revised recovery plan may propose the elimination of west Texas and the western panhandle of Oklahoma from the Southwestern Recovery Region. The plan revision will also consider the addition of southern Utah and Mexico.

For the purposes of this reclassification proposal, however, the boundaries for the Southwestern Recovery Region will remain as stated in the recovery plan (U.S. Fish and Wildlife Service 1982). That is, the Southwestern Region includes Arizona, New Mexico, and those portions of Texas and Oklahoma west of the 100th meridian, and southeast California within 10 miles of the Colorado River or its mainstem reservoirs.

Service Action: Retain as endangered. Despite attaining all recovery plan goals, current information indicates that the population is at risk and remains in danger of extinction due to excessively low survival rates and the need for intensive management, particularly at nest sites.

Mexico

There are a small number of eagles nesting in Baja California and Sonora, Mexico. In January 1994, a minimum of eight active pairs were known with additional adults reported that may represent more active pairs with undetected nests (Henny et al. 1993, Service files). Productivity has been relatively high with more than 1.0 young per nest for those years that data have been collected (Henny et al. 1993, Service files). Although this population appears to be relatively stable, such low numbers are clearly not sufficient to prevent any sudden adverse environmental change to cause the extirpation of these few pairs. These birds are presumed to be associated with the Southwestern population and are considered in danger of extinction. Threats to these birds include loss of habitat and disturbance from human encroachment with the increasing population (particularly tourists and recreational housing development) and potential for inbreeding from such low numbers of breeding birds.

In summary, the Service is proposing to reclassify the bald eagle from endangered to threatened in the Chesapeake and Southeastern Recovery Regions and those portions of the Northern States and Pacific Recovery Regions where it is currently classified as endangered. No changes are proposed for the Southwestern Recovery Region, where the bald eagle will remain classified as endangered. The Service is not proposing to delist the bald eagle anywhere in the lower 48 States at this time. The Service is also proposing to list those bald eagles in Mexico as endangered.

On February 7, 1990, the Service published (55 FR 4209) an Advance Notice of a Proposed Rule (ANPR) to announce that consideration was being given to the possible reclassification or delisting of the bald eagle in all or part of its range in the lower 48 States.

Summary of Comments and Recommendations Resulting From Advance Notice

The responses received to the ANPR generally reflected the Service's announcement that delisting, as well as reclassification, was under consideration for the entire lower 48-State area. Not all responses specifically addressed delisting or reclassification. Nevertheless, the responses were useful in the formulation of the present reclassification proposal.

Many responses reflected the writers' strong personal feelings and concerns for bald eagles. Many respondents related the importance and value of their personal bald eagle experiences. Further, they expressed their desire that bald eagles be properly cared for and that the opportunity to view wild eagles not be lost. The bald eagle's position as our national bird was frequently mentioned.

In response to the ANPR, the Service received 4 responses from other Federal government offices, 22 responses from State conservation agencies, 23 responses from citizen groups, and 140 responses from individuals.

Based on reclassification goals contained in the five regional Bald Eagle Recovery Plans, one Federal agency favored reclassification to threatened only in Florida and the development of State-by-State recovery plans/criteria, with subsequent State-by-State reclassification and delisting decisions.

Another Federal agency recommended reclassification to threatened in selected areas based on circumstances in the individual recovery regions, rather than for the nation as a whole, and recommended against delisting.

A third Federal agency recommended reclassification of the bald eagle to threatened in Arizona based on achievement of the Southwestern Recovery Plan reclassification goals and on protection and management measures presently in place.

The last Federal agency favored reclassification to threatened in those recovery regions where the recovery plans' reclassification goals have been met.

The Service received responses to the 1990 ANPR from 22 State natural resource agencies. Seven State agencies concurred with reclassification to or retention as threatened, including Michigan, Minnesota, and Wisconsin, the three Northern Region States where the bald eagle is presently designated as threatened. The remaining 15 responding States recommended against delisting and/or reclassification in their States.

Of the 140 individual responses (some signed by more than one individual), 135 opposed reclassification or delisting in some or all areas of the lower 48 States; of the 23 citizen group responses, 19 opposed reclassification or delisting in some or all areas of the lower 48 States.

Individuals and citizen groups suggested that it would be inappropriate to delist or reclassify the bald eagle to threatened while direct and indirect impacts such as contaminants and development on non-Federal lands remain a threat. The Service recognizes that habitat loss is a major challenge to the recovery of the bald eagle. The Service also recognizes that non-Federal, as well as Federal, habitat must be protected from contaminants, disturbance, and development or the secure population size will be diminished. However, reclassification to threatened would not reduce present Federal legal protection on non-Federal land nor would it allow habitat loss that could not otherwise occur.

A concern expressed by 62 individuals and 11 citizen groups was that bald eagle populations were below the higher levels of America's pre-settlement days or other former era, or that populations did not meet the abundance, distribution, or productivity goals for delisting or reclassification contained in the bald eagle recovery plans. The Act's designations of endangered and threatened are based on the present or foreseeable threat of extinction of the species, not historical levels. Recovery plan goals for reclassification have been met at this time.

One individual suggested that the Service conduct a population viability analysis (PVA) of the bald eagle, including a determination of the minimum viable population (MVP). The Service recognizes PVA and MVP as analytical tools and has funded and participated in the production of PVA's for several endangered species. For the present reclassification decision, however, it is unnecessary because the bald eagles of the Chesapeake, Northern, Southeastern, and Pacific Recovery Regions have reached the recovery plans' reclassification goals. Those goals are conservative and meet the Act's definition of threatened.

The appearance of a lowered level of Federal legal protection was a concern in 26 individual responses and in one citizen group response. The prohibitions of section 9 of the Act are the same for threatened and endangered species, with the exception that with reclassification to threatened, the Service could issue permits for limited exhibition and educational purposes, for selected research work not directly related to the conservation of the species, and for other special purposes consistent with the Act (50 CFR 17.32, 17.41). All requirements of the Act under section 7 still apply. No changes in other protective provisions of the Act would result, nor would any other Federal law protecting bald eagles be affected.

Thirteen of the 135 individuals and 2 of the 19 citizen groups recommending against reclassification or delisting were concerned that the Service's own efforts for bald eagle recovery, habitat management, habitat protection, and law enforcement might be diminished. The Service's obligations to protect bald eagles under the Endangered Species Act, the Migratory Bird Treaty Act, the Bald Eagle Protection Act, and all other applicable laws will remain undiminished by the proposed reclassification.

Seven individuals and one citizen group recommending against reclassification or delisting suggested that the Service might be either collaborating with or yielding to economic interests who want development restrictions relaxed in areas presently used by bald eagles. The proposed reclassification eases no restrictions on the development of bald eagle habitat because the Act and regulations adopted under it make no distinction in the protection given to

the present or foreseeable threat of extinction of the species, not historical levels. Recovery plan goals for reclassification have been met at this time.

One individual suggested that the Service conduct a population viability analysis (PVA) of the bald eagle, including a determination of the minimum viable population (MVP). The Service recognizes PVA and MVP as analytical tools and has funded and participated in the production of PVA's for several endangered species. For the present reclassification decision, however, it is unnecessary because the bald eagles of the Chesapeake, Northern, Southeastern, and Pacific Recovery Regions have reached the recovery plans' reclassification goals. Those goals are conservative and meet the Act's definition of threatened.

The appearance of a lowered level of Federal legal protection was a concern in 26 individual responses and in one citizen group response. The prohibitions of section 9 of the Act are the same for threatened and endangered species, with the exception that with reclassification to threatened, the Service could issue permits for limited exhibition and educational purposes, for selected research work not directly related to the conservation of the species, and for other special purposes consistent with the Act (50 CFR 17.32, 17.41). All requirements of the Act under section 7 still apply. No changes in other protective provisions of the Act would result, nor would any other Federal law protecting bald eagles be affected.

Thirteen of the 135 individuals and 2 of the 19 citizen groups recommending against reclassification or delisting were concerned that the Service's own efforts for bald eagle recovery, habitat management, habitat protection, and law enforcement might be diminished. The Service's obligations to protect bald eagles under the Endangered Species Act, the Migratory Bird Treaty Act, the Bald Eagle Protection Act, and all other applicable laws will remain undiminished by the proposed reclassification.

Seven individuals and one citizen group recommending against reclassification or delisting suggested that the Service might be either collaborating with or yielding to economic interests who want development restrictions relaxed in areas presently used by bald eagles. The proposed reclassification eases no restrictions on the development of bald eagle habitat because the Act and regulations adopted under it make no distinction in the protection given to habitats of threatened and endangered species.

Seven individual and two citizen group respondents suggested that the Service might be delisting or reclassifying the bald eagle to enhance its reputation or for other self-serving purposes. This proposal to reclassify the bald eagle from endangered to threatened is undertaken in fulfillment of section 4(c) of the Act, which requires the Service to periodically review each listed species and to change classifications when appropriate, to maintain the integrity of the Act's endangered and threatened categories. Since the bald eagle has met its recovery plan goals, the Service is now taking this action.

One individual and two citizen groups, in addition to the Maine and New Hampshire State conservation agencies, suggested that the northeastern part of the Northern States Recovery Region be separated and considered distinct. The Northern States Recovery Team, which has representation from the Northeast, has also considered this question and does not recommend separating the northeastern States from the present Northern States Recovery Region. The Service concurs with the Northern States Recovery Team.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for reclassifying species on the Federal lists. A species may be listed or reclassified as threatened or endangered due to one or more of the five factors described in section 4(a)(1). These five factors and their application to the bald eagle are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The bald eagle is associated with aquatic ecosystems throughout most of its range. Nesting almost never occurs farther than 3 km (2 miles) from water (Gerrard and Bortolotti 1988). Fish predominate in the typical diet of eagles. Many other types of prey are also taken, including waterfowl and small mammals depending on location, time of year, and population cycles of prey species. Dead animals or carrion, especially in the wintering areas, are also taken when readily available (Lincer et al. 1979).

Nest sites are usually in large trees along shorelines in relatively remote areas. The trees must be sturdy and open to support a nest that is often 2–3 m (6–9 ft) across and more than a meter (3 ft) thick (Bent 1938). Bald eagles also select cliffs or rock outcrops for nest sites where large trees are not available. This dependence upon very large trees associated with water makes the eagle vulnerable to water-associated development pressures.

One of the two major threats to the bald eagle at present and for the foreseeable future is destruction and degradation of its habitat (the other major threat is environmental contaminants—see Factor E below). This occurs through direct cutting of trees for shoreline development, human disturbance associated with recreational use of shorelines and waterways, and contamination of waterways from point and non-point sources of pollution. Contamination enters bald eagles through the food chain and may impair individual birds' reproductive success and health. It may also reduce the abundance of preferred prey.

Steps to reduce these threats are underway at all levels of government and public organizations nationwide. Increased protection of nesting habitat and winter roost sites have occurred in many areas throughout the country. Guidelines to minimize human disturbance around nesting and winter roost sites have been developed in all parts of the country. Areas of contamination continue to be identified and reduced. Rehabilitation, captive propagation reintroduction, and transplanting programs have all worked toward increasing the viability of the U.S. bald eagle population.

Current threats to the bald eagle's habitat and range in the United States by Recovery Region are as follows:

Chesapeake Bay Region: Buehler et al. (1991) reported that the bald eagle feeding and resting use of Chesapeake Bay shoreline was directly related to the distance of development from the shoreline. Eagles tended to avoid shorelines with nearby pedestrian or boat traffic. With human activity and development increasing, preferred bald eagle habitat is diminishing. Associated land clearing reduces bald eagle nesting and perching sites.

To offset these impacts, the Service has expanded its National Wildlife Refuge System around the Chesapeake Bay area to protect bald eagle habitat. For example, the Service acquired 3,500 acres of nesting and roosting habitat in the James River area of Chesapeake Bay in 1991 to be protected and managed for bald eagles. Acquisition of an additional 600 acres is planned. The Blackwater National Wildlife Refuge, which

provides important eagle habitat on Chesapeake Bay, is also proposing to acquire more land. Nickerson (1989) estimates that enough suitable unoccupied nesting habitat remains that, if unaltered, it could sustain continued growth of the bald eagle population through the remainder of the 20th century.

Northern States Recovery Region: Development, particularly near urban areas, remain as a primary threat. In spite of these localized problems, bald eagle nesting activity in the Northern States Recovery Region has more than doubled in the past 10 years from fewer than 700 to over 1600 territories known to be occupied. There also is ample unoccupied habitat still available throughout this region.

In the Great Plains States, loss of wintering habitat is a major concern. Wintering areas have been lost through development of riparian areas for recreational, agricultural, and urban uses. Loss of wintering habitat also occurs due to lack of cottonwood regeneration. This results from changes in floodplain hydrology from construction of reservoirs and dam operations. Grazing also inhibits regeneration. A threat to some wintering populations of eagles in the Great Plains States is the destruction of prairie dog colonies and other important foraging areas (U.S. Fish and Wildlife Service 1992).

However, management measures, reforestation, improved water quality, and a reduction in pesticide contamination (see factor E below) have enabled the Northern States populations to increase substantially overall. Much eagle nesting and wintering habitat is on publicly owned lands. Many of these lands are protected by habitat management plans and strict eagle nest protection and management guidelines.

Pacific Recovery Region: Development-related habitat loss continues to be the single greatest factor limiting the abundance and distribution of the species in the Pacific Recovery Region (U.S. Fish and Wildlife Service 1986). Habitat conservation efforts, including laws and management practices by Federal and State agencies and efforts by private organizations, have helped to facilitate bald eagle population increases in the Pacific Recovery Region since the 1960's. For example, interagency working teams in six of the seven Pacific Recovery Region States have developed implementation plans to address local issues more specifically than the recovery plan. Bald eagle habitat guidelines have also been incorporated into development covenants and land use. California and Washington have rules relating to bald eagles on private lands to encourage landowners to maintain nesting territory habitat.

Southeastern Recovery Region: The accelerated pace of development activities within eagle habitat and the extensive area involved are the most significant limiting factors in the Southeastern Region. The cumulative effects of many water development projects impinge on the ability to maintain current nesting populations and ultimately may limit the extent to which recovery may occur.

To reduce these threats, habitat management guidelines are used to minimize development disturbance in and around nests. Several counties and municipalities have adopted the guidelines in their land use and zoning policies. In addition, a significant amount of new habitat has been created in the form of manmade reservoirs. Reservoirs primarily provide wintering and non-nesting habitat, but are used by nesting eagles as well (U.S. Fish and Wildlife Service 1984, 1989).

In addition, many of the States have or have had active hacking/reintroduction programs. Rehabilitation and release of injured eagles occurs throughout the Southeastern Region (U.S. Fish and Wildlife Service 1984, 1989). As a result of these and other efforts, the bald eagle nesting population in the Southeastern Region has more than doubled in the past 10 years.

Southwestern Recovery Region: In addition to threats common with other Recovery Regions, such as human disturbance and availability of adequate nesting and feeding habitat, the bald eagles of the Southwestern Recovery Region are subjected to a high adult rate of mortality, isolation, heat stress, and nest parasites. The Arizona Bald Eagle Nestwatch Program has significantly increased survival of young by minimizing human disturbance during important incubation periods, and by removing harmful material such as parasites and fishing line debris from nests. However, the high death rate of adults and nestlings and the lack of gene exchange with any adjacent nesting populations, which may cause inbreeding to adversely affect the population's long-term survival, remain limiting; this population continues to require intensive management, particularly around each nest site.

Hunt et al. (1992) estimate a minimum annual mortality rate of 16 to 22 percent of adult breeding birds and believe it to be much higher. Bald eagles commonly live 20 years in the wild and up to 50 years in captivity (Stalmaster 1987). In the Southwestern Region, adult life expectancy may not exceed 10–12 years (Hunt et al, 1992).

Historically, the bald eagle in Arizona was more widely distributed but probably was never abundant (Hunt et al. 1992). Prior to 1970, records can be found for 19 pairs of nesting bald eagles in Arizona (Hunt et al. 1992). In 1993, 27 occupied territories were reported for Arizona and 2 for New Mexico totalling 29 for the Southwestern Recovery Region.

Research to date indicates there has been no immigration to this population of bald eagles. According to Hunt et al., this small population is isolated and thus is subject to the genetic, demographic, and environmental threats known to be associated with small populations. For these reasons, the population is in continued need of strict protection and intensive management.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no legal commercial or recreational use of bald eagles. The Service considers present legal and enforcement measures sufficient to prevent bald eagle extinction or a need to reclassify as endangered. The Service exercises very strict control over scientific, educational, and Native American religious activities involving bald eagles or their parts. With reclassification to threatened, the Service could issue permits for limited exhibition and educational purposes, for selected research work not directly related to the conservation of the species, and for other special purposes consistent with the Act (50 CFR 17.32 and 17.41(a)).

C. Disease or Predation

Predation is not a significant problem for bald eagle populations. Incidents of mortality due to territory disputes between bald eagles have been reported. Diseases such as avian cholera, avian pox, aspergillosis, tuberculosis, and botulism may affect individual eagles, but are not considered to be a significant threat to the population. In the Southwestern population, the Mexican chicken bug, when abundant, is known to occasionally kill young. According to the National Wildlife Health Research Center, National Biological Survey, Wisconsin, only 2.7 percent of bald eagles submitted to the Center between 1985 and 1990 died from infectious disease.

D. The Inadequacy of Existing Regulatory Mechanisms

The bald eagle is protected by the following Federal wildlife laws in the U.S.:

* Sections 7 and 9 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) protect individual bald eagles (threatened or endangered) and their active nests on public and private land.
* The Bald Eagle Protection Act (16 U.S.C. 668) prohibits without specific authorization the possession, transport, or take of any bald or golden eagle, their parts, nests or eggs.
* The Migratory Bird Treaty Act (16 U.S.C. 703) prohibits without specific authorization the possession, transport, or take of any migratory bird (including bald eagles), their parts, nests or eggs.
* The Lacey Act (16 U.S.C. 3372 and 18 U.S.C. 42–44) among other provisions, makes it unlawful to export, import, transport, sell, receive, acquire, or purchase any bald eagle, (1) taken or possessed in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law or (2) to be taken, sold, or transported in interstate or foreign commerce, in violation of any law or regulation of any state or in violation of any foreign law.

This species is afforded uncommonly comprehensive statutory and regulatory protection under Federal and State authorities.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Contaminants may affect the survival as well as the reproductive success and health of the bald eagle. The abundance, and potentially more important, the quality of prey may be seriously affected by environmental contamination. Although many of the compounds implicated in reduced reproductive rates and direct mortality are no longer used, contaminants continue to be a major problem. Pesticides in recent times have not impacted the bald eagle on a population level; however, individual poisonings still occur.

Carcasses baited with poison may attract bald eagles as well as target animals such as coyotes. Poisonings may occur secondarily when predatory animals are poisoned and subsequently eaten by eagles. Crop insecticides may be taken up by prey animals and may also result in eagle mortality. Organophosphates and carbamates are sometimes used illegally for animal poison. The National Wildlife Health Research Center has diagnosed over 100 cases of pesticide poisonings in bald eagles in the past 15 years.

The western plains and Rocky Mountain States are reported to have

D. The Inadequacy of Existing Regulatory Mechanisms

The bald eagle is protected by the following Federal wildlife laws in the U.S.:

* Sections 7 and 9 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) protect individual bald eagles (threatened or endangered) and their active nests on public and private land.

* The Bald Eagle Protection Act (16 U.S.C. 668) prohibits without specific authorization the possession, transport, or take of any bald or golden eagle, their parts, nests or eggs.

* The Migratory Bird Treaty Act (16 U.S.C. 703) prohibits without specific authorization the possession, transport, or take of any migratory bird (including bald eagles), their parts, nests or eggs.

* The Lacey Act (16 U.S.C. 3372 and 18 U.S.C. 42–44) among other provisions, makes it unlawful to export, import, transport, sell, receive, acquire, or purchase any bald eagle, (1) taken or possessed in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law or (2) to be taken, sold, or transported in interstate or foreign commerce, in violation of any law or regulation of any state or in violation of any foreign law.

This species is afforded uncommonly comprehensive statutory and regulatory protection under Federal and State authorities.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Contaminants may affect the survival as well as the reproductive success and health of the bald eagle. The abundance, and potentially more important, the quality of prey may be seriously affected by environmental contamination. Although many of the compounds implicated in reduced reproductive rates and direct mortality are no longer used, contaminants continue to be a major problem. Pesticides in recent times have not impacted the bald eagle on a population level; however, individual poisonings still occur.

Carcasses baited with poison may attract bald eagles as well as target animals such as coyotes. Poisonings may occur secondarily when predatory animals are poisoned and subsequently eaten by eagles. Crop insecticides may be taken up by prey animals and may also result in eagle mortality. Organophosphates and carbamates are sometimes used illegally for animal poison. The National Wildlife Health Research Center has diagnosed over 100 cases of pesticide poisonings in bald eagles in the past 15 years.

The western plains and Rocky Mountain States are reported to have 300–600 bald eagle deaths each year in the past decade on western rangelands due, in part, to illegal use of pesticides such as famphur, phorate, and carbofuran, and highly restricted chemicals, such as strychnine, Compound 1080 and others (Tom Jackson, Fish and Wildlife Service, Denver, pers. comm.). This mortality on western rangelands corresponds with the primary wintering areas for most western bald eagles (other than Pacific coast birds). Some illegal uses of pesticides are targeted at bald and golden eagles. Cases of suspected intentional mortality through baiting of carcasses with pesticides has occurred in all western States and may occur in other States. Reducing this level of illegal mortality is important for the complete recovery of the species.

Chronic long-term exposure to contaminants is a much more extensive problem than direct mortality. Lifetime exposure to contaminants may limit the eagles' reproductive capabilities, alter their behavior and foraging abilities, and increase their susceptibility to diseases. (Organochlorines, such as DDT, are no longer legally used in the United States. Their presence in bald eagles is generally a consequence of their long persistence in the environment. Consequently, residues of such compounds from historic uses can still contaminate prey animals and be passed to eagles). Exposure to these compounds is also occurring at an early age. For example, approximately 90% of the eaglets sampled in Maine in 1992 had detectable levels of DDE in their blood.

In the Chesapeake Bay Region, Delaware Bay and the James River below Richmond continue to be a source of organochlorine and heavy metal contaminants that may impact eagle reproduction (U.S. Fish and Wildlife Service 1990). However, DDE concentrations in addled bald eagle eggs in Chesapeake Bay have declined significantly from 1969–84 (Wiemeyer et al. 1993).

In parts of the Northern States Region, contamination is depressing bald eagle productivity. This occurs notably in the coastal areas of the Great Lakes, those rivers accessible by anadromous fishes of the Great Lakes, and in parts of Maine. Research on bald eagle productivity in the vicinity of Great Lakes shorelines indicates significantly lower productivity than for inland breeding birds. The reduced productivity is correlated with concentrations of PCB's, DDE, dieldrin, and other organochlorine compounds in addled eggs (Best et al. in press).

Bald eagles of the Pacific Recovery Region nesting near the Columbia River estuary and Hood Canal, which is adjacent to Puget Sound, repeatedly have low reproductive success. DDE and PCB's have had a deleterious effect on the reproduction of bald eagles in the Columbia River estuary (Anthony et al. 1993). Wiemeyer et al. (1993) found addled bald eagle eggs collected from Oregon ranked second (behind Maine) in DDE concentrations among the fifteen States sampled. However, concentrations of other contaminants in the Oregon eggs were low. In spite of localized reproductive impairment, the Pacific Recovery Region population has increased by about 68 percent in the past 10 years. Contaminants are not known to be a significant problem for eagles in the Southwestern Recovery Region or Mexico.

Lead poisoning has also contributed to bald eagle mortality. The National Wildlife Health Research Center has diagnosed lead poisoning in more than 225 bald eagles during the last 15 years. Lead can poison bald eagles when they ingest prey items that contain lead shot or lead fragments or where the prey has assimilated lead into its own tissues. In winter, eagles frequently feed on waterfowl that are dead or dying from lead poisoning or upon waterfowl crippled in the hunting season. Lead poisoning of eagles was a primary reason the Service required the nationwide use of non-toxic shot for waterfowl hunting. The requirement for use of non-toxic shot was phased in over a period of 5 years, and its use became mandatory for all waterfowl hunting in 1991. Use of lead shot is still permitted in many parts of Canada.

Of particular concern for bald eagles in the Southeastern Region and in Maine are the toxic effects of mercury (Wiemeyer et al. 1993, C. Facmire, pers. comm.). High levels of mercury affect eagles with a variety of neurological problems, where flight and other motor skills can be significantly altered, and with reduced hatching rates of eggs. Mercury has entered the waterways as air emissions from solid waste incineration sites and other point and non-point sources. Impacts from mercury to bald eagles are currently under investigation in the Southeastern Region.

Illegal shooting still poses threats to individual birds. Improved law enforcement and public awareness has reduced shooting impacts from a cause of large scale mortality in the first half of this century to the deaths of occasional individuals at present. From 1985 to 1990, the National Wildlife Health Research Center has diagnosed over 150 bald eagle deaths due to gunshot. Hunter education courses

routinely include bald eagle identification material to educate hunters about bald eagles and the protections that the species is afforded.

Electrocutions occur on power poles and lines that are not yet configured for the protection of raptors. Much research has been done in this area, and generally new poles and lines are configured to reduce raptor electrocutions.

Human disturbance also remains a long-term threat. Significant declines in eagle use of the Skagit River, Washington, were noted in response to recreational activity (Stalmaster 1989). Human disturbance can be harmful during egg incubation and young brooding periods because disturbance can flush adults from nests.

Land management practices can reduce or eliminate these disturbance problems. Management of bald eagle nesting sites has progressed in some areas to include zones of protection extending up to 2.5 miles (U.S. Fish and Wildlife Service 1986). In the Bear Valley National Wildlife Refuge, Oregon, for example, public access is restricted from November 1 through March 30 to prevent human disturbance to wintering bald eagles.

Despite these various threats to the bald eagle in the area proposed for reclassification, none are of sufficient magnitude, individually or collectively, to place the species at risk of extinction. Over most of the 48 States, the population is doubling every 6 or 7 years.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to reclassify the bald eagle from endangered to threatened in the lower 48 States except the southwestern population in Arizona, New Mexico, the southeast corner of California within 10 miles of the Colorado River or the river's mainstem reservoirs, and those portions of Texas and the panhandle of Oklahoma that are west of the 100th meridian. The latter population appears to be isolated, to suffer from lower survival rates, and to require intensive management to ensure nesting success. The bald eagle would remain threatened in the five States where it is currently listed as threatened and be listed as endangered in Mexico under this proposal.

Recognition of Distinct Population of the Southwestern Recovery Region

In 1978, the Service recognized distinct population segments of this species on the basis of State boundaries, with bald eagles in five northern States listed as threatened, and those in the remainder of the lower 48 States listed as endangered. The distinctness of these population segments is questionable, given the dispersal capabilities of the species across State lines.

In this proposal, the recognition of the southwest bald eagle population as distinct from eagles elsewhere in the lower 48 States is based on evidence that it appears to be reproductively isolated. Thus, for purposes of this proposed rule, the Service still recognizes two populations of bald eagles in the lower 48 States. Should this proposed rule become final, the southwest population segment would remain endangered, the adjacent Mexico population segment would be included in the Southwestern population as endangered, and the remaining population segment in the lower 48 States would be reclassified to threatened.

Special Rule

The Act allows special rules to be adopted for threatened species as needed for the species' conservation; such special rules are typically provided to reduce those protections afforded to endangered species under the Act. Section 17.41(a) is a special rule adopted at the time of the 1978 reclassification of the bald eagle. The original intent was to reduce the number of permits required for researchers working on threatened eagles (i.e., Oregon, Washington, Minnesota, Wisconsin, and Michigan) under both § 17.32 and 50 CFR parts 21 and 22 (bird banding and eagle permits). The present special rule at § 17.41(a) reads as follows:

(a) Bald eagles (*Haliaeetus leucocephalus*) found in Washington, Oregon, Minnesota, Wisconsin, and Michigan.

(1) *Applicable provisions.* The provisions of §§ 17.31 and 17.32 shall apply to bald eagles specified in paragraph (a) of this section to the extent such provisions are consistent with the Bald Eagle Act (16 U.S.C. 668–668d), the Migratory Bird Treaty Act (16 U.S.C. 703–711), and the regulations issued thereunder.

The Service proposes to clarify the language of this special rule for threatened bald eagles. If the proposed special rule is adopted, only a permit issued under the authority of 50 CFR 21.22 or 50 CFR part 22 (subpart C) would be needed for such purposes as banding (§ 21.22); scientific study or exhibition (§ 22.21), which includes taking, possession, rehabilitation, and transport; native American religious (§ 22.22); and depredation (§ 22.23). A permit under § 17.32 would only be required when a permit under parts 21 and 22 do not provide for an otherwise lawful activity. The issuance of all such permits would remain subject to section 7 of the Act and part 402 of this title.

Effects of This Rule

As a result of the proposed reclassification, prohibitions outlined under 50 CFR 17.41(a) would apply to bald eagles of the population reclassified as threatened. Prohibitions under §§ 17.21 and 17.22 would continue to apply to the endangered population. The Service could issue permits for exhibition and educational purposes, for selected research work (including banding and marking) not directly related to the conservation of the species, and for other special purposes. In allowing for a single permit, the Service seeks to foster further research and other uses of bald eagles consistent with the Act and the purposes of the Migratory Bird Treaty Act and the Bald Eagle Act (50 CFR 17.32, 17.41(a), 21.22, 22.21–22.23).

Requirements of the Act under section 7 still apply to all Federal agencies. There are no distinctions made in the Act or supporting regulations (part 402) between endangered and threatened species. The consultation and other requirements under section 7 apply equally to species with either classification.

Public Comments Solicited

The Service intends that the proposed reclassification correctly reflect the bald eagle's status according to the Act's definition of endangered and threatened and based upon the reclassification guidelines for each bald eagle recovery region. Therefore, information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are sought concerning:

(1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) the location of any additional nests or roosting sites of this species, especially in the Southwestern Recovery Region;

(3) the appropriateness of the proposed limits and status of the endangered population in the American Southwest and Mexico;

(4) additional information concerning the past and present range, distribution, and population size of this species; and

(5) current or planned activities within the lower 48 States and Mexico that might have possible long-term impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal, including the possible complete reclassification to threatened for all eagles south of Canada.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Chief, Division of Endangered Species, Fish and Wildlife Service, 1 Federal Drive, Whipple Federal Building, Fort Snelling, Minnesota 55111–4056 (FAX: 612–725–3526).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

American Ornithologists' Union. 1957. Check-list of North American birds. 5th Ed. Port City Press, Baltimore. 691 pp.

American Ornithologists' Union. 1983. Check-list of North American birds. 6th Ed. Allen Press, Lawrence, Kansas. 877 pp.

Anthony, R.G., M.G. Garrett, and C.A. Schuler. 1993. Environmental contaminants in bald eagles in the Columbia River estuary. Journal Wildlife Management 57(1):10–19.

Bent, A.C. 1938. Life histories of North American birds of prey. Smithsonian Institution, U.S. National Museum, Bulletin No. 170, Washington.

Best, D.A., W.W. Bowerman, T.J. Kubiak, S.R. Winterstein, S. Postupalsky, M.C. Shieldcastle and J.P. Giesy. In Press. Reproductive impairment of bald eagles along the Great Lakes shorelines of

into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal, including the possible complete reclassification to threatened for all eagles south of Canada.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Chief, Division of Endangered Species, Fish and Wildlife Service, 1 Federal Drive, Whipple Federal Building, Fort Snelling, Minnesota 55111–4056 (FAX: 612–725–3526).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

American Ornithologists' Union. 1957. Check-list of North American birds. 5th Ed. Port City Press, Baltimore. 691 pp.

American Ornithologists' Union. 1983. Check-list of North American birds. 6th Ed. Allen Press, Lawrence, Kansas. 877 pp.

Anthony, R.G., M.G. Garrett, and C.A. Schuler. 1993. Environmental contaminants in bald eagles in the Columbia River estuary. Journal Wildlife Management 57(1):10–19.

Bent, A.C. 1938. Life histories of North American birds of prey. Smithsonian Institution, U.S. National Museum, Bulletin No. 170, Washington.

Best, D.A., W.W. Bowerman, T.J. Kubiak, S.R. Winterstein, S. Postupalsky, M.C. Shieldcastle and J.P. Giesy. In Press. Reproductive impairment of bald eagles along the Great Lakes shorelines of Michigan and Ohio. IV World Conference Birds of Prey and Owls.

Buehler, D.A., T.J. Mersmann, J.D. Fraser, and Janis K.D. Seegar. 1991. Effects of human activity on bald eagle distribution on the northern Chesapeake Bay. Journal Wildlife Management 55(2):282–290.

Carson, R.L. 1962. Silent spring. Houghton Mifflin Co., New York.

Gerrard, J.M., and G.R. Bortolotti. 1988. The bald eagle: haunts and habits of a wilderness monarch. Smithsonian Institution Press, Washington and London.

Henny, C.J., B. Conant, and D.W. Anderson. 1993. Recent distribution and status of nesting bald eagles in Baja California, Mexico. Journal of Raptor Research 27(4):203–209.

Hunt, W.G., D.E. Driscoll, E.W. Bianchi, and R.E. Jackman. 1992. Ecology of bald eagles in Arizona. Report to U.S. Bureau of Reclamation, Contract 6–CS–30–04470. Biosystems Analysis, Inc., Santa Cruz, CA.

Lincer, J.L., W.S. Clark, and M.N. LeFranc, Jr. 1979. Working bibliography of the bald eagle. National Wildlife Federation. Scientific/Technical Series, no. 2, Washington. pp.217 + appendix.

Marshall, D.B., and P.R. Nickerson. 1976. The bald eagle: 1776–1976. National Parks and Conservation Magazine. July: 14–19.

Nickerson, P.R. 1989. Bald eagle status report. Proceedings of northeast raptor management symposium and workshop. National Wildlife Federation, Washington. Pp. 30–36.

Stalmaster, M.V. 1987. The bald eagle. Universe Books, New York. 22 pp.

Stalmaster, M.V. 1989. Effects of recreational activity on wintering bald eagles on the Skagit wild and scenic river system, Washington. Technical Report U.S. Forest Service. 15pp.

U.S. Fish and Wildlife Service. 1982. Southwestern bald eagle recovery plan. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 74pp.

U.S. Fish and Wildlife Service. 1983. Northern states region bald eagle recovery plan. U.S. Fish and Wildlife Service, Twin Cities, Minnesota. 76pp.

U.S. Fish and Wildlife Service. 1984. Southeastern states region bald eagle recovery plan. U.S. Fish and Wildlife Service, Atlanta, Georgia. 63pp.+ app.

U.S. Fish and Wildlife Service. 1986. Pacific bald eagle recovery plan. U.S. Fish and Wildlife Service, Portland, Oregon. 160pp.

U.S. Fish and Wildlife Service. 1989. Southeastern states region bald eagle recovery plan. First revision. U.S. Fish and Wildlife Service, Atlanta, Georgia. 41pp.+ app.

U.S. Fish and Wildlife Service. 1990. Chesapeake Bay region bald eagle recovery plan: First revision. U.S. Fish and Wildlife Service, Hadley, Massachusetts. 80pp.

U.S. Fish and Wildlife Service. 1992. The potential effects of Rocky Mountain Arsenal clean-up and Denver Metropolitan Transportation development on bald eagles. Final Study Report. Rocky Mountain Arsenal, Commerce City, Colorado. 148pp.

Wiemeyer, Stanley N., Christine M. Bunck, and Charles J. Stafford. 1993. Environmental contaminants in bald eagle eggs—1980–84—and further interpretations of relationships to productivity and shell thickness. Archives Environmental Contamination and Toxicology 24:213–227.

Author

The primary author of this notice is Jody Gustitus Millar, Bald Eagle Recovery Coordinator, Fish and Wildlife Service, 4469–48th Avenue Court, Rock Island, Illinois 61201 (309/793–5800).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, the Service proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by revising the entries for "Eagle, bald" under BIRDS, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	•
BIRDS							
•	•	•	•	•	•	•	•
Eagle, bald	*Haliaeetus leucocephalus.*	North America south to Mexico.	U.S.A. (AZ, NM, TX and OK west of 100° W, and CA within 10 mi. Colorado R. or mainstem reservoirs), Mexico.	E	1, 34	NA	NA
Do	....do	....do	U.S.A. (conterminous 48 States, except where endangered).	T	1, 34	NA	17.41(a)

3. Section 17.41(a) is revised to read as follows:

§ 17.41 Special rules—birds.

(a) Bald eagles (*Haliaeetus leucocephalus*) wherever listed as threatened under § 17.11(h).

(1) *Applicable provisions.* All prohibitions and measures of §§ 17.31 and 17.32 shall apply to any threatened bald eagle, *except* that any permit issued under § 21.22 or part 22 of this chapter shall be deemed to satisfy all requirements of §§ 17.31 and 17.32 for that authorized activity, and a second permit shall not be required under § 17.32. A permit would still be required under § 17.32 for any activity not covered by any permit issued under § 21.22 or part 22 of this chapter.

(2) [Reserved]

* * * * *

Dated: June 27, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–16848 Filed 7–11–94; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday
July 12, 1994

Part V

Department of the Interior

Bureau of Land Management

43 CFR Parts 2800, et al.
Rights-of-Way, Rental Schedule for Communication Uses; Proposed Rule

VOL 59 ISS 132 JL 12 994 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2810, 2880

[WO-260-4210-02-24 1A]

RIN 1004-AC12

Rights-of-Way, Rental Schedule for Communication Uses

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule

SUMMARY: The Bureau of Land Management (BLM) requests comments on proposed amendments of right-of-way regulations containing procedures for setting fair market rent for communication uses located on public lands. The proposed rule would establish rental schedules and procedures for 11 categories of communication service for which fair market value is required for the use of public lands. The proposed schedule has been developed in cooperation with the Forest Service (FS).

The proposed schedule is an attempt to improve the processing of right-of-way authorizations for communications use of public lands and reduce agency appraisal costs associated with setting and updating rental payments on approximately 1,500 authorized communications uses for which rent is currently required.

DATES: Comments should be submitted by September 12, 1994. Comments received or postmarked after the above date may not be considered in the decisionmaking process on issuance of a final rule.

ADDRESSES: Comments should be submitted to: Director (140), Bureau of Land Management, Room 5555 MIB, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David Cavanaugh (202) 452-7774.

SUPPLEMENTARY INFORMATION: The proposed rental schedule is applicable to commercial and private communication uses authorized by a BLM right-of-way authorization. The uses include television broadcast, FM radio broadcast, rebroadcast devices, cable television, commercial mobile radio service, private mobile communication, cellular telephone, common carrier microwave, private microwave, facility manager, and miscellaneous uses. The proposed rule also would require payment of a percentage of the sublease rent collected by the holder from its tenants. Rental payments are waived for applicants or holders who provide public telecommunication services and are licensed by the Federal Communications Commission (FCC) as a noncommercial, educational radio or television station.

The following objectives have been adopted to guide development of the rental schedule and implementation of procedures to balance carefully the public's interest in obtaining fair market rent: (1) Allow the continued growth of communication markets and services, especially in rural areas; (2) design a process that is cost effective, sets rental payments that are predictable and can be easily updated; (3) provide incentive for improved management of communication sites.

The proposed rule takes into consideration recommendations of the Radio and Television Broadcast Use Fee Advisory Committee, information provided by users, industry groups, private appraisers, and comments received by the FS in response to their proposed policy published in the **Federal Register** on July 13, 1993.

Comparative information provided by BLM and private appraisers was screened carefully only to include examples of land rent. The rent paid does not include any payment for services such as power, access, building and/or tower space, or maintenance. Information used was provided by the principals in those transactions.

The proposed procedures will provide a consistent approach for the administration and assessment of rental payments for communication uses on public lands. The schedule provides incentives for co-locating single users within existing facilities under a multiple use right-of-way authorization. The rule also outlines a process for setting and updating rental payments and phasing in substantial increases in rental payments.

Background

The BLM's process for setting fair market rent for communication uses has been directly influenced by FS efforts to set a rental payment schedule. In a 1983 administrative appeal decision, the FS determined that the formula used to determine fair market rental for communication site use was not in compliance with the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*). The formula used at that time was two-tenths (0.2) of 1 percent of the permittee's investment plus 5 percent of the rental fees received by the FS permittee.

The formula has remained unchanged for about 40 years, as have FS rental payments.

In 1985, the FS adopted a new policy for setting rental payments. Under that policy, communication use rental fees were to be based on (1) a fee schedule, (2) individual site appraisals, or (3) competitive bidding. In 1989, the FS implemented regional schedules under that policy. Proposed rentals generated opposition from industry groups—primarily television and radio broadcasters—and complaints to Congress. At the same time, efforts by certain BLM State Offices to increase rental payments caused similar complaints to Congress.

To forestall significant increases in rental payments, Congress enacted a moratorium prohibiting any increases in rental fees above those in effect on January 1, 1989. This affected both agencies. The FS was also asked to review the schedules, with particular emphasis on their impact on rural communities in the Western United States, and to report their findings to the congressional Appropriations Committees. The report was submitted to Congress in 1991.

The BLM and FS entered into a Memorandum of Understanding (MOU) in April 1991. The MOU provides for cooperation to develop and implement similar methods for determining rental fees.

In November 1991, the Department of the Interior and Related Agencies Appropriations Act limited increases in communication site fees in Fiscal Year 1992 to 15 percent over the levels in effect on January 1, 1989. The conference report also directed both the FS and BLM jointly to establish a broad-based advisory group.

Pursuant to that direction, an advisory group, the Radio and Television Broadcast Use Fee Advisory Committee, was established, which included BLM, FS, and representatives from the broadcast industry (users of both public and private communication sites). The advisory committee prepared and submitted a report to the Secretaries of the Interior and Agriculture in December 1992.

The advisory committee report made several recommendations. These included use of rental schedules instead of individual appraisals for setting rental payments, acceptance of industry-recognized market ranking systems, a phase-in period for rent increases greater than $1,000, a provision for charging 25 percent of the gross sublease income, and annual increases based on the Consumer Price Index (Urban Consumer, U.S. City Average).

The advisory committee also recommended a specific rental schedule. The schedule included a discount of 30 percent from estimated rental value to account for perceived difficulties in obtaining use authorizations on Federal lands. The advisory committee report indicated that the rental schedule did not reflect fair market value, and it was required to be amended by BLM.

On July 13, 1993, the FS published a **Federal Register** notice of proposed policy ("Fee Schedule for Communication Uses") and invited comments. The FS proposed to adopt a revised rental schedule for television broadcast, FM radio broadcast, commercial mobile radio, and cellular telephone uses on National Forest System lands. The proposed schedule would supplement individual FS regional schedules adopted in 1989 and modified in 1992. The regional schedules of the FS recognize 13 types of communication uses. They include (1) radio broadcast, (2) television broadcast, (3) broadcast translator, (4) cable and subscription television, (5) mobile radio-commercial communications, (6) cellular telephone, (7) common carrier microwave relay, (8) industrial microwave relay, (9) mobile radio-internal communications, (10) natural resource/environmental monitoring, (11) passive reflector, (12) amateur radio, and (13) personal/private receive only.

In August 1993, the Omnibus Budget Reconciliation Act (Act) was signed into law. The Act directed the BLM and FS to assess and collect in 1994 an annual rental payment 10 percent above the rent paid in 1993. For most right-of-way holders required to pay rent, this was the first increase since 1989.

Summary of Comments Received by the Forest Service

The FS received 84 letters providing suggestions and comments regarding the proposed schedule. In general, the comments reflected confusion over the definition of uses covered, how geographic areas would be determined, and rents calculated. Comments also suggested that the proposed rents were excessive, that the information relied upon was not representative, and that provisions regarding indexing and revenue sharing (25 percent of the gross sublease income) were not commonplace in the private rental market. Many comments expressed concern that adoption of the schedule would have an adverse impact on small businesses.

based on the Consumer Price Index (Urban Consumer, U.S. City Average).

The advisory committee also recommended a specific rental schedule. The schedule included a discount of 30 percent from estimated rental value to account for perceived difficulties in obtaining use authorizations on Federal lands. The advisory committee report indicated that the rental schedule did not reflect fair market value, and it was required to be amended by BLM.

On July 13, 1993, the FS published a **Federal Register** notice of proposed policy ("Fee Schedule for Communication Uses") and invited comments. The FS proposed to adopt a revised rental schedule for television broadcast, FM radio broadcast, commercial mobile radio, and cellular telephone uses on National Forest System lands. The proposed schedule would supplement individual FS regional schedules adopted in 1989 and modified in 1992. The regional schedules of the FS recognize 13 types of communication uses. They include (1) radio broadcast, (2) television broadcast, (3) broadcast translator, (4) cable and subscription television, (5) mobile radio-commercial communications, (6) cellular telephone, (7) common carrier microwave relay, (8) industrial microwave relay, (9) mobile radio-internal communications, (10) natural resource/environmental monitoring, (11) passive reflector, (12) amateur radio, and (13) personal/private receive only.

In August 1993, the Omnibus Budget Reconciliation Act (Act) was signed into law. The Act directed the BLM and FS to assess and collect in 1994 an annual rental payment 10 percent above the rent paid in 1993. For most right-of-way holders required to pay rent, this was the first increase since 1989.

Summary of Comments Received by the Forest Service

The FS received 84 letters providing suggestions and comments regarding the proposed schedule. In general, the comments reflected confusion over the definition of uses covered, how geographic areas would be determined, and rents calculated. Comments also suggested that the proposed rents were excessive, that the information relied upon was not representative, and that provisions regarding indexing and revenue sharing (25 percent of the gross sublease income) were not commonplace in the private rental market. Many comments expressed concern that adoption of the schedule would have an adverse impact on small businesses.

Comments provided several suggestions. Several suggested that additional price levels be added to improve fairness and reduce impact on permit holders in rural areas. Several comments suggested that commercial mobile radio users should not be subject to paying 25 percent of the gross sublease income when their primary business, or only use of the facility, is to rent space to other customers. With respect to television and FM radio, most of the comments suggested that the advisory committee report be the basis for setting rental payments. Several comments provided information on rents currently being paid and suggested what are considered to be reasonable rental payments.

The BLM proposed schedule has been developed considering comments received by the FS, and the comments have been adopted or incorporated as appropriate.

Statutory Requirements

43 U.S.C. 1701(a)(9) states that it is the policy of the United States to receive the fair market value of the use of the public lands and their resources unless otherwise provided by statute.

43 U.S.C. 1761(a) gives the Secretary of the Interior authority to grant, issue, or renew rights-of-way for communication uses, including systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals.

43 U.S.C. 1764(g) requires the payment of a rental. The holder is required to pay in advance the fair market value as determined by the Secretary granting, issuing, or renewing such right-of-way. The Secretary may waive part or all of the payment when it is found to be equitable and in the public interest. Rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way. The regulations implementing right-of-way provisions of FLPMA are found in 43 CFR part 2800. Provisions regarding rental payments are found in 43 CFR subpart 2803, and state in part that the holder of a right-of-way grant or temporary use permit is required to pay annually, in advance, with certain exceptions, the fair market value rental. This is determined by the authorized officer, applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices.

Factors Considered in Developing the Proposed Rental Schedule

The proposed schedule takes into consideration a variety of factors. These factors include (1) recommendations of the Radio and Television Broadcast Use Fee Advisory Committee, (2) market information provided by users, industry groups, private and Government appraisers, and (3) practical considerations associated with developing a cost-effective method for setting and collecting fair market value for communication site use of public lands.

The BLM has incorporated many of the recommendations of the Radio and Television Broadcast Use Fee Advisory Committee regarding use of a schedule instead of individual appraisals to set rental payments, a phase-in period, use of an index to update annual rental payments, and a provision for charging 25 percent of the gross sublease rent. However, the BLM amended the recommended rental schedule.

The television schedule recommended by the advisory committee was based on a market ranking system that is no longer published, and the rental payments did not represent fair market value. The advisory committee schedules were based on setting the highest rent for the largest market and for each smaller market dividing the rent in half. The rent suggested by the advisory committee was further reduced by 30 percent to reflect what a majority of members of the advisory committee believed to be the difference between a private lease and BLM or FS authorization. The advisory committee schedule would have resulted in a reduction in current revenues from radio and television use on public lands.

The proposed rental schedule for television and radio is higher for certain markets, and lower for others, than the schedule recommended by the advisory committee. This reflects comparable market information, elimination of the suggested 30 percent discount, and an effort to develop a reasonable schedule that covers markets ranging from small rural ones in Montana and Wyoming to larger ones serving Phoenix, Las Vegas, and Reno. To increase fairness, the proposed schedule includes 9 rent levels instead of 6 as recommended by the advisory committee.

Market information was obtained from industry groups, individual users, appraisers, and other persons responding to the FS notice. Market information compiled by BLM and FS appraisers was carefully screened to exclude from the rents reported any payment for services such as power, access, building and/or tower space, or maintenance. This information has been compiled by each BLM State Office for

purposes of preparing individual appraisals. Since very few appraisals have been prepared over the last 5 years, some of the information is outdated. Therefore, BLM considered more than market information. The public is requested to provide information as to communication site rentals on private land established within the last 3 years. This information would be considered in adjusting the rental schedules proposed in this rule.

A representative sampling of reliable market information to develop a national schedule for a variety of communication uses is difficult to obtain. The information is not readily available, the number of recent transactions is relatively small, and often the information is incomplete or conflicting. Generally, information provided by appraisers is the most complete and has supplemented information provided by various industry groups. This variety of information has been used to establish relative values for various communication uses, depending on population or location criteria.

Comparable private leases reflect several factors relevant to market value. One, strategically located mountaintops are valuable for communication purposes. Mountaintop sites allow users to send signals from point to point or deliver a signal that covers a geographical area. Mountaintop communication sites often provide better coverage, and are less expensive to develop, than other alternatives for reaching the same area population.

Two, rental payments for broadcast uses are related to the population served by the television or radio transmitter. Strategically located mountaintops serving larger populated areas are generally more valuable than those serving smaller markets. Locations within the same market that provide the best coverage will also rent for more than secondary locations. It should be noted that not all mountaintops have value for broadcast use. The proposed schedule attempts to reflect the rent for typical locations on BLM administered lands, rather than rentals set for specific authorizations and established by appraisals.

Three, there is competition for strategically located mountain sites. Private or public mountain locations close to populated areas that have access and power are preferred by broadcast users. There are few places where there is direct competition between private and public sites. The sites used are those that provide the best coverage. However, in many areas rents charged on private lands are higher than rents charged for similarly located sites on public land.

Four, mountaintops generally are intensively developed and often command premium rental payments when compared to single use sites. The multiple user sites provide a mixture of high and low power communication uses, including radio, television, and mobile radio and cellular. These sites often include large buildings, a variety of towers, and well maintained public or private roads.

Five, various nonbroadcast uses are not dependent upon the population served. These uses include microwave, cellular, and mobile radio facilities in rural areas. Rental payments for these uses are related to general real estate values in the immediate area of the site.

Six, there is little difference in the rental payment for single use sites in small rural markets. Often rent paid in the private rural market does not vary significantly among the various communication uses. This is due to local economic conditions and forces within the market to provide a basic level of communication service.

In developing the schedule, consideration was given to current assessed rent. Since current BLM rentals are based on individual appraisals, rental payments established in the last 5 years were considered to reflect fair market value. This information was used as a benchmark for assessing reasonableness and providing a measure of consistency in areas where there was little direct market information.

Industry groups have objected to use of market information for setting rental payments on public lands. They argue that the rights authorized under terms of a BLM or FS grant are different than those provided under a private lease, and that private landowners provide more service and do not require compliance with stringent environmental requirements. They also argue that television and radio broadcasters provide a public service and, therefore, that rental payments should be partially or totally waived. The few cases in which there has been competitive bidding for communication uses on Federal or State lands do not support these contentions.

Practical considerations also contributed to development of a rental schedule. The FS has been engaged in a 10-year effort, which BLM joined in 1990, to determine fair market rent for communication site uses. In addition, both the BLM and the FS have supported the use of a regulatory schedule to reduce the costs and delays associated with obtaining individual appraisals. It is estimated that the annual costs of updating and appraising BLM right-of-way grants for communication use would be $3–4 million. This is approximately double the current annual revenues from communication site rights-of-way. Use of a schedule would be more cost effective.

Rents charged in the private market are not based upon schedules. Instead, rents are based upon negotiations between the landowner and the prospective user. The rent is set on a individual basis, depending on the use and the terms and conditions of the lease agreement.

To the extent practicable, the schedules proposed attempt to approximate a reasonable rent for the authorized use. They do not attempt to replicate site-specific appraisal values. Instead, the schedule merely establishes a reasonable amount of rent to be assessed for the type of authorized use based on location or population criteria. Therefore, the BLM believes the proposed rental schedule reflects fair market value.

Bureau of Land Management Communication Use Program

The BLM currently administers approximately 3,200 communication use authorizations. In accordance with agency regulations, approximately 50 percent of the authorizations pay no rent. Right-of-way holders not required to pay annual rent include Federal, State, and local government agencies. The remaining communication use right-of-way holders pay an annual rental based upon agency-approved appraisals. Generally, communication use authorizations are reappraised every 5 years and new rental payments are established. However, for a variety of reasons, most of the communication use rental fees are currently out of date.

Section 2803.1–2(c)(3)(i) of 43 CFR states that the rental shall be based on either a market survey of comparable rentals; or on a value determination for specific parcels or groups of parcels. Most communication use rental fees are based upon individual appraisals prepared by agency staff appraisers. Some BLM State Offices have instituted market surveys or administrative schedules for setting rental payments. Current regulations also allow use of competitive bidding for purposes of determining rental for the use of public lands. Bids less than fair market rental value of the lands are not considered.

The proposed rule would establish a rental payment schedule for various communication uses for which fair market rental is required. However, with the concurrence of the BLM State Director, the authorized officer may reduce or waive the rental when it is determined that the rental will cause undue hardship on the holder/applicant and that it is in the public interest to waive the rental payment. Current right-of-way rental waiver policy is not affected by this proposed schedule.

The proposed schedule reflects rental values for BLM-authorized communication uses. The BLM right-of-way authorization is similar to a private lease for communication purposes. The authorization is for 30 years or the life of the project, and contains provisions regarding renewal, termination, assignment, and liability. Other provisions may include subleasing and bonding. New applicants for use of public lands are subject to application and processing fees associated with complying with environmental requirements. New and existing users may be subject to reimbursement of reasonable costs associated with agency monitoring of use. Therefore, the proposed schedule reflects a reasonable estimate of the fair market rental value for communication uses on public lands.

Impacts on industry and users paying rental vary. Television and radio broadcasters in large markets, or users whose rent has not been adjusted for 5, 10, or more years, may experience a significant increase. However, there are several situations where rental payments will decline. The best estimate is that total revenues from BLM-authorized communication uses will be approximately the same. However, costs associated with individual billing and preparing and updating appraisals will be significantly reduced. Although rental increases may be significant in some cases, they will be phased in over a 5-year period. In addition, the current regulations include a provision (43 CFR 2803.1–2(b)(2)(iv)) allowing partial waiver or deferral of rental by the authorized officer based on a claim of hardship.

Finally, the provision for rounding of right-of-way rental payments would be removed in the proposed rule. This would simplify the calculation of rental payments by BLM and their payment by right-of-way holders. The rounding provision has unnecessarily complicated the calculation of rental fees, and increased billing errors, with little or no benefit to the customer. The rounding provision and its removal are revenue neutral. Revenues would be neither enhanced nor diminished.

Director, the authorized officer may reduce or waive the rental when it is determined that the rental will cause undue hardship on the holder/applicant and that it is in the public interest to waive the rental payment. Current right-of-way rental waiver policy is not affected by this proposed schedule.

The proposed schedule reflects rental values for BLM-authorized communication uses. The BLM right-of-way authorization is similar to a private lease for communication purposes. The authorization is for 30 years or the life of the project, and contains provisions regarding renewal, termination, assignment, and liability. Other provisions may include subleasing and bonding. New applicants for use of public lands are subject to application and processing fees associated with complying with environmental requirements. New and existing users may be subject to reimbursement of reasonable costs associated with agency monitoring of use. Therefore, the proposed schedule reflects a reasonable estimate of the fair market rental value for communication uses on public lands.

Impacts on industry and users paying rental vary. Television and radio broadcasters in large markets, or users whose rent has not been adjusted for 5, 10, or more years, may experience a significant increase. However, there are several situations where rental payments will decline. The best estimate is that total revenues from BLM-authorized communication uses will be approximately the same. However, costs associated with individual billing and preparing and updating appraisals will be significantly reduced. Although rental increases may be significant in some cases, they will be phased in over a 5-year period. In addition, the current regulations include a provision (43 CFR 2803.1–2(b)(2)(iv)) allowing partial waiver or deferral of rental by the authorized officer based on a claim of hardship.

Finally, the provision for rounding of right-of-way rental payments would be removed in the proposed rule. This would simplify the calculation of rental payments by BLM and their payment by right-of-way holders. The rounding provision has unnecessarily complicated the calculation of rental fees, and increased billing errors, with little or no benefit to the customer. The rounding provision and its removal are revenue neutral. Revenues would be neither enhanced nor diminished.

Communication Uses Covered by Proposed Schedule

The proposed schedule is applicable to the communication uses described below. The proposed rental schedule is not applicable to holders of facilities authorized under terms of a right-of-way grant to public telecommunications service operators providing public television or radio broadcast service. However, such holders would be responsible for paying a percentage of the gross sublease rent received from tenants in the facility that do not qualify as nonprofit entities. The term "primary use" is the predominant use of the facility by the holder authorized under terms of the right-of-way authorization. The term "facility" is defined as the building, tower, and other related incidental improvements authorized under terms of the right-of-way authorization.

Television Broadcast

This category includes right-of-way holders that operate facilities authorized by the Federal Communication Commission (FCC) that primarily broadcast UHF and VHF audio and video signals for general public reception. The schedule is applicable to primary transmitters that principally serve a community (city, cities, metro area, or county) reached by the transmitter. Principal communities covered do not include outlying areas served by translators. This category does not include stations licensed by the FCC as a Low Power Television (LPTV) or rebroadcast devices such as translators, or transmitting devices such as microwave relays serving broadcast translators.

FM Radio Broadcast

This category includes right-of-way holders that operate FCC licensed facilities primarily used to broadcast frequency modulation (FM) audio signals for general public reception. The schedule is applicable to primary transmitters that principally serve communities reached by the primary transmitter. Principal communities covered do not include areas reached by broadcast translators. This category is not applicable to stations licensed by the FCC as low power FM radio, and does not include rebroadcast devices such as translators, boosters or AM synchronous transmitters or microwave relays serving broadcast translators.

Rebroadcast Devices

This category includes right-of-way holders that operate FCC licensed facilities primarily used to rebroadcast a signal from its point of origin. This category includes translators and low power television, low power FM radio, and microwave relays. Microwave as used in conjunction with LPTV and broadcast translators are included in this category.

A translator is a rebroadcast device that transmits signals of a primary TV or FM station to another location that would not otherwise receive the original signal. The schedule is applicable to rebroadcast devices licensed to the principal community or other political subdivision which it primarily serves. Translators are generally located in the same service area and are inherently low power in nature.

LPTV refers to television translator stations that are permitted to originate programming for broadcast to the general public. They are limited to 10 watts VHF and 1000 watts UHF.

Cable Television

This category includes right-of-way holders that operate FCC licensed facilities that primarily transmit video programming to multiple subscribers in a community over a wired network. Cable television includes head-end microwave or satellite antennas and receiver systems used for television reception that retransmit by cable or microwave (wireless cable) methods. These systems usually operate as a commercial entity within an authorized franchise area, providing their services to subscribers who pay a periodic fee. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, or personal or internal antenna systems such as private systems serving hotels or residences.

Commercial Mobile Radio Service (CMRS)

This category includes right-of-way holders that operate an FCC-licensed commercial mobile radio facility providing primarily mobile communication service to individual customers. The right-of-way holder owns the facility (building and tower) and operates, maintains, rents, or sells commercial mobile radio equipment in the facility. Although the primary use of the building is to provide communication service to customers for a fee, a portion of the income to the owner may be derived from renting space for other communication uses unrelated to the primary use of the facility. Primary services generally include two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, and

public switched network (telephone/data) interconnect service.

Private Mobile Communications

This category includes right-of-way holders that operate FCC licensed private mobile radio systems primarily used by a single entity for the purposes of internal communications. This use is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. Services generally include private local radio dispatch and private paging services.

Cellular Telephone

This category includes right-of-way holders that operate FCC-licensed systems primarily used for mobile communications, using a blend of radio and telephone switching technology. They provide public switched network services to fixed and mobile users within a tightly defined geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radios, telephone equipment, and often microwave communications link equipment. The cell sites are linked to a mobile telephone switching office, often via microwave, and at that point into the Public Switched Network. This category includes Personal Communication Systems, a digital mobile telephone service, and enhanced specialized mobile radio.

Common Carrier Microwave

This category includes right-of-way holders who operate FCC-licensed facilities primarily used for long-line intrastate and interstate telephone, television, information, and data transmissions. These uses are regulated by State public utility commissions and are required to provide service to any consumer with the ability to pay according to published rate schedules. The microwave system is an integral part of the company's primary business of providing communication service.

Private Microwave

This category includes right-of-way holders that operate FCC-licensed facilities primarily used by pipeline and power companies, railroads, and land resource management companies. Communication services associated with this category may include private mobile service, private two-way dispatch service, private paging, supervisory remote control/sensing, and microwave voice/video/data services. This use is solely in support of the holder's primary business activity. The use is not regulated by the State public utilities commission because the service is not for sale and is used solely for internal purposes.

Facility Manager

This category includes right-of-way holders that operate a facility primarily owned, operated, and maintained by a holder who may or may not have an FCC license, but does not operate telecommunications equipment. The primary purpose of the facility is to rent or sublease space to a variety of tenants for telecommunication purposes. The building owner generally provides space in the building and/or tower, and utilities, access, security, and backup generator services.

Communication services provided by the tenants of a facility manager may include TV or FM radio broadcast, cable television, microwave, cellular telephone, amateur radio operators, and mobile radio. Mobile radio uses include two-way voice and paging services such as community repeaters, trunked radio, and two-way radio dispatch, and Public Switched Network (telephone/data) interconnect service. Tenants hold lease agreements with the facility manager. Microwave facilities used in conjunction with broadcast uses and mobile radio are included in this category.

Other Communication Uses

This category includes other FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, passive reflectors, and natural resource and environmental monitoring equipment.

Amateur radio includes equipment used by individuals or groups licensed as amateur radio operators.

Personal/private receive-only includes radio and TV receiving antennas, satellite dishes, and other equipment and/or facilities designed for the reception of electronic signals, to serve private homes, including recreation residences. These facilities are personally owned and are not operated for profit.

Passive reflectors include devices used to bend or ricochet electronic signals between active relay stations or a relay station and a terminal.

Natural resource and environmental monitoring includes the transmission of telemetry data from a remote site to a central receiving station. Uses may include weather stations, streamflow gauges, seismic stations, wildlife monitoring, and snow measurement devices.

General Application of Proposed Schedule

The proposed rental schedule applies to right-of-way holders who are authorized to operate and maintain communication facilities on public lands. The proposed base rent charged is for the primary use of the building. The primary use is defined as the predominant use of the facility by the holder and authorized under terms of the right-of-way authorization. The use may be classified as television broadcast, FM radio broadcast, rebroadcast devices, cable television, cellular telephone, commercial mobile radio, private mobile radio, private microwave, common carrier microwave, facility manager, or be included under the miscellaneous category. Tenants occupying space in the facility under terms of the authorization will not be required to have a separate BLM authorization.

The proposed rental schedules will be applicable to new and existing communication use authorizations requiring annual payment of fair market rental as of the date of publication of the final rule. However, the authorized officer may use other methods including individual appraisals or competitive bidding for new sites, or existing sites where it is shown that the rental schedule does not represent fair market value. Rental payments covering portions of calendar years will be prorated.

There are three major categories of use: broadcast, nonbroadcast, and other.

Broadcast includes television, FM radio, rebroadcast devices, and cable television. The proposed rent for broadcast categories will be based on the following procedures:

1. The right-of-way holder will provide a 1-millivolt contour map or statement to BLM identifying the principal community (city, cities, metro area, or county) served by the transmitter. Communities served do not include areas served by translators.

2. Rent for television, FM radio, and rebroadcast devices (translators and low power television) will be based on the population of the principal community or communities the transmitter primarily serves. The population of the principal community will be based on the most recent United States census information.

3. Rent for cable television will be based on total basic subscribers as reported by the holder.

4. Rent for rebroadcast devices will be based on the U.S. census population of the principal community identified in the FCC license that is served by the transmitter.

The following examples are provided to illustrate how the base rent for a broadcast use would be calculated.

A television facility in Clark County, Nevada, principally serving the communities of Las Vegas (pop. 258,259), North Las Vegas (pop. 47,707), Henderson (pop. 64,942), and Boulder City (pop. 12,567) would pay a proposed annual rental of $16,000 per year. This is based on total population of the principal communities of 370,908.

An FM radio facility in Imperial County, California, principally serves El Centro (pop. 31,384), Yuma, Arizona (pop. 106,895), and San Luis Rio Colorado, Mexico (pop. 76,684). The annual rent would be calculated based on the total population of the communities. The proposed annual rent would be $4,000 per year, based on the population of its principal communities of 214,983.

The rent for nonbroadcast uses—commercial mobile radio service, private mobile communication, cellular telephone, common carrier microwave, private microwave, facility manager and miscellaneous uses—will be assessed on a different basis. Rent will be based on county population where the transmitter is located or the population of an adjacent or nearby county served by the transmitter, whichever is greater.

The following examples are provided to illustrate how the base rent for nonbroadcast uses would be calculated.

The proposed rent for a right-of-way holder owning a facility in Pershing County, Nevada, (pop. 4,436) primarily used for common carrier microwave would be assessed $1,500.

A commercial mobile radio service facility in Madison County, Idaho (23,674), serving the Idaho Falls community in Bonneville County, Idaho (72,207), would be assessed a proposed rent of $1,500. Since the transmitter serves a trade area that is predominately in the adjacent county, the Bonneville County population would be used to determine the rental payment.

A holder owning a commercial mobile radio service facility used primarily to provide mobile radio service in the San Diego County (pop. 2,498,016) market would pay a proposed rent of $12,000.

The third major category is miscellaneous communication uses. These uses include amateur radio, personal/private receive-only, passive reflectors, and natural resource and environmental monitoring equipment. These uses may be permanent or temporary and the rent is either a flat rent of $75 for a full year or a prorated rent if the term is less than a year.

The following examples are provided to illustrate how the base rent for a broadcast use would be calculated.

A television facility in Clark County, Nevada, principally serving the communities of Las Vegas (pop. 258,259), North Las Vegas (pop. 47,707), Henderson (pop. 64,942), and Boulder City (pop. 12,567) would pay a proposed annual rental of $16,000 per year. This is based on total population of the principal communities of 370,908.

An FM radio facility in Imperial County, California, principally serves El Centro (pop. 31,384), Yuma, Arizona (pop. 106,895), and San Luis Rio Colorado, Mexico (pop. 76,684). The annual rent would be calculated based on the total population of the communities. The proposed annual rent would be $4,000 per year, based on the population of its principal communities of 214,983.

The rent for nonbroadcast uses—commercial mobile radio service, private mobile communication, cellular telephone, common carrier microwave, private microwave, facility manager and miscellaneous uses—will be assessed on a different basis. Rent will be based on county population where the transmitter is located or the population of an adjacent or nearby county served by the transmitter, whichever is greater.

The following examples are provided to illustrate how the base rent for nonbroadcast uses would be calculated.

The proposed rent for a right-of-way holder owning a facility in Pershing County, Nevada, (pop. 4,436) primarily used for common carrier microwave would be assessed $1,500.

A commercial mobile radio service facility in Madison County, Idaho (23,674), serving the Idaho Falls community in Bonneville County, Idaho (72,207), would be assessed a proposed rent of $1,500. Since the transmitter serves a trade area that is predominately in the adjacent county, the Bonneville County population would be used to determine the rental payment.

A holder owning a commercial mobile radio service facility used primarily to provide mobile radio service in the San Diego County (pop. 2,498,016) market would pay a proposed rent of $12,000.

The third major category is miscellaneous communication uses. These uses include amateur radio, personal/private receive-only, passive reflectors, and natural resource and environmental monitoring equipment. These uses may be permanent or temporary and the rent is either a flat rent of $75 for a full year or a prorated rent if the term is less than a year.

Additional Users

The fair market rent depends on the type of communication use and the demand for it in a local market. Therefore, the market value may change if there is a significant change from a single use to a multiple use facility.

Authorized holders may allow other users in their building under terms of their right-of-way authorization. Additional users will not be required to have a separate right-of-way authorization.

It is proposed that all categories of use be subject to a provision regarding the payment of a percentage of gross rent received from the sublease rent of space in the facility. The facility owner will be responsible for paying the base rent for the authorized primary use of the facility, plus a percent of gross sublease rent for tenants within the facility. Gross sublease rent is defined as the rent received by the holder of the communication use right-of-way grant from tenants for space in the building or on the tower. Gross sublease rent does not include road or building maintenance or service fees for power and backup generators.

The BLM proposes to assess all users holding a right-of-way authorization a base rent plus 15 percent, for the first 5 years, of the annual gross receipts received from renting space in the facility. In the sixth year after the effective date of this rule, the percentage would be increased to 25 percent. This provision would apply to any use co-located in the facility for which the owner is receiving a sublease rental payment. The following procedures will be used to calculate the rent:

1. BLM will initiate a billing for the annual base rent calculated from the proposed schedule; and

2. When making the assessed annual base rent payment, the holder will submit a certified statement to the BLM regarding rent collected from tenants during the previous year, and include the required precentage of gross rental with the total payment.

The proposed rental payment required for the category of facility manager is also based on a base rent plus 15 percent of gross receipts from rental of space in the facility. In the sixth year after the effective date of this rule, the percentage would be increased to 25 percent. The percentage applies to all population strata for that category.

Annual Fee Updating

Under current procedures rental payments are updated every 5 years. During the 1980's, the increases were often fairly substantial and resulted in complaints and increased appeals. In many cases rental payments had not been updated for 10 to 15 years. Limitations on the agency's authority to increase rent over the last 4 years have exacerbated the problem.

The base rent proposed in the schedule will be updated annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U), U.S. City Average, published in July of each year. Calculating the amount of the annual adjustment involves changing the previous year's rental by the change in the level of the CPI–U for the current year. The following example illustrates the computation of percent change:

CPI–U, U.S. City Average	136.0
Less CPI for previous period	129.9
Equals index point change	6.1
Divide by previous period CPI	129.9
Equals	0.047
Result multiplied by 100	0.047×100
Equals percent change	4.7

Market information regarding use of an index was mixed. However, more recent transactions indicate that increases in annual rent are linked to changes in the Consumer Price Index instead of increases in land value. This reflects the desire of property owners to maintain the relative value of the annual payments in terms of annual inflation.

Comments received by the FS expressed concern that the Consumer Price Index may dramatically increase rents beyond the ability of right-of-way holders to pass on the increases to their customers. These correspondents also were concerned that the increases over time would be higher than normal increases in land rents in the private market. The BLM agrees with the comments and proposes to limit annual increases based on the CPI–U to no more than 5 percent.

Phase In

To reduce potential impact of large increases in rent, BLM proposes to phase in substantial increases in the base rent and percentage of gross rental receipts. Additional rent based upon a percentage of gross rent for space rental in the facility will not be phased in. Initial increases in the base rental payments in excess of $1,000 or 20 percent of the current rent, whichever is greater, will be phased in over a 5-year period. Subsequent increases in rent above the first year will be based on an equal annual installment, plus the inflation adjusted increase.

As an example, if the current base rent is $700 and the new rent based on the schedule is $2,700, the first year's rent would be $1,700 plus the inflation-adjusted increase, and the rent for years

2 through 5 would be increased $250 per year. Assuming a 2 percent increase in the CPI–U during the 5 year phase-in period, the base rents would be calculated as follows:

Year 1 ($700×1.02)+$1,000=
$714+$1,000=$1,714
Year 2 ($1,714×1.02)+$250=
$1,748+$250=$1,998
Year 3 ($1,998×1.02)+$250=
$2,038+$250=$2,288
Year 4 ($2,288×1.02)+$250=
$2,334+$250=$2,583
Year 5 ($2,583×1.02)+$250=
$2,635+$250=$2,885
Year 6 $2,885×1.02=$2,943

Additional rent based on a percentage of gross rent received from tenants covered by the right-of-way authorization would also be phased in. The percentage would be set at 15 percent during the first 5 years after the effective date of this rule, and 25 percent thereafter.

Exceptions

The proposed rental payments only apply to those communication users that are required to pay a fair market rental. Current regulations exempt Federal, State, or local government agencies or instrumentalities thereof, except municipal utilities and cooperatives whose principal source of revenue is customer charges. Also exempt are rights-of-way authorized under a statute that explicitly does not require payment of a rental, and facilities constructed under the Rural Electrification Act of 1936, as amended.

The BLM proposes to close a loophole through which "exempt" agencies derive revenue from the rental of space within their facility or the area authorized. Section 2803.1–2(b)(1)(i) would be amended to require "exempt" agencies to pay fair market rent for those uses from which they derive revenue from the rental of space.

It is BLM's intent to use the rental fee schedule for all existing communication uses covered by the proposed rule. However, when it is determined by the authorized officer that the rental payment schedule does not reasonably reflect fair market rent, other reasonable means will be used to estimate the rental payment. The BLM reserves the right to use individual appraisals or other valuation procedures to calculate rental payments for communication uses.

Periodic Review of Rental Schedule

The communication use rental schedule will be re-evaluated, and if necessary, revised periodically to ensure that rentals are fair. Schedules based on county population will be re-evaluated after completion of the next census in 2000. The updated county population information will be substituted for 1990 county population figures.

Partial Waiver of Rent

43 U.S.C. 1764(g) provides authority to charge less than fair market value if the holder provides at reduced or no charge a valuable benefit to the public or to the programs of the Secretary concerned. Actions taken by the holder at no cost or reduced costs to the public may be considered in granting a temporary, partial, or full waiver. Any requirement placed on the applicant or holder as a condition of granting or renewing the authorization is required to be legal and not result in additional costs unrelated to the use authorized. Therefore, requirements that the building owner set aside 10 percent of its space for Government use or that Federal agencies be granted free use in the building should be considered in setting fair market rent.

Basis for Rental Schedule

In developing the schedule, the BLM has considered information from a variety of sources. This includes information provided by industry groups, existing BLM rents that are believed to reflect fair market value, data and information provided by BLM appraisers, and information gathered by the FS in preparing their schedule. The BLM has also taken into consideration the recommendations of the Radio and Television Broadcast Use Fee Advisory Committee. The rental schedules are included in the proposed regulatory text.

Public Comment

The BLM is requesting public comment on all aspects of this proposed rule as well as comments on specific questions. Specific comments are requested regarding the following questions:

1. Is the proposed schedule reasonable? If not, what information can you provide that would help in setting a fair and reasonable schedule?
2. Are the proposed phase-in methods for base rents and percentage of gross rental receipts reasonable? If not, please suggest a method that can be easily implemented.
3. Are the categories clearly defined? Would there be any potential problems in determining the category of use? Please provide suggestions to improve the description of each category of use.
4. Are there any potential problems in setting the base rent for commercial mobile radio services based on the population of the county in which the transmitter is located or the nearby or adjacent county predominantly served by the transmitter, whichever is greater? Please suggest alternative methods.

To conform with the format requirements of the Code of Federal Regulations, the Note at the beginning of Group 2800 is being removed, and the information provided there is being included in new sections 2800.0–9, 2810.0–9, and 2880.0–9. There is no substantive change involved.

The principal author of this final rule is David Cavanaugh of the Division of Lands, BLM, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule has been reviewed under Executive Order 12866.

The rule will bring annual rental fees charged holders of authorizations for communications sites on public lands, which have been held to artificially low levels for many years, to fair market value as required by statute and administrative direction.

The fees that would be placed in effect by this proposed rule would bring existing rental charges for communications sites authorization holders on the public lands more into line with those who lease land from private landowners. The increased revenues resulting from this fee schedule will result in increased payments to States and counties in which the public lands containing the

authorized facilities are located under current statutory authorities.

Moreover, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule, with its fee schedule, affects only that segment of the communications industry operating on the public lands. There are 57 FM radio broadcast sites, 26 television broadcasting facilities, and approximately 3,200 other permits in effect on these lands. Available records do not indicate how many of these permits are held by small entities. The phase-in of annual fees proposed in this rule will allow any small entities that may be affected to adjust to the new fees over a period of time and thereby minimize the risk of adverse impact due to the magnitude of some fee increases under the rule.

Because the rule will result in no taking of private property and no impairment of property rights, the Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights, as required by Executive Order 12630.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 2800

Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way, Reporting and recordkeeping requirements.

43 CFR Parts 2810 and 2880

Public lands—rights-of-way, Reporting and recordkeeping requirements.

Under the authority of sections 303, 310, and 501–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1740, and 1760–1771), Part 2800, Group 2800, Subchapter B, of Chapter II of the Code of Federal Regulations, is proposed to be amended as follows:

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

1. The Note at the beginning of Group 2800 is removed.

authorized facilities are located under current statutory authorities.

Moreover, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule, with its fee schedule, affects only that segment of the communications industry operating on the public lands. There are 57 FM radio broadcast sites, 26 television broadcasting facilities, and approximately 3,200 other permits in effect on these lands. Available records do not indicate how many of these permits are held by small entities. The phase-in of annual fees proposed in this rule will allow any small entities that may be affected to adjust to the new fees over a period of time and thereby minimize the risk of adverse impact due to the magnitude of some fee increases under the rule.

Because the rule will result in no taking of private property and no impairment of property rights, the Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights, as required by Executive Order 12630.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 2800

Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way, Reporting and recordkeeping requirements.

43 CFR Parts 2810 and 2880

Public lands—rights-of-way, Reporting and recordkeeping requirements.

Under the authority of sections 303, 310, and 501–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1740, and 1760–1771), Part 2800, Group 2800, Subchapter B, of Chapter II of the Code of Federal Regulations, is proposed to be amended as follows:

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

1. The Note at the beginning of Group 2800 is removed.

2. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, and 1760–1771.

Subpart 2800—Rights-of-Way; General

3. Section 2800.0–5 is amended by revising paragraph (j) and adding paragraphs (aa) through (cc) to read as follows:

§ 2800.0–5 Definitions.

* * * * *

(j) *Facility* means an improvement constructed or to be constructed or used within a right-of-way pursuant to a right-of-way grant. For purposes of communication site rights-of-way, facility means the building, tower, and/or other related incidental improvements authorized under terms of the right-of-way grant.

* * * * *

(aa) *Base rent* means the amount required to be paid by the holder of a right-of-way on public lands for the primary use authorized under terms of the right-of-way grant.

(bb) *Gross rent* means the rent received by the holder from tenants for space in the building or on the tower. Gross rent does not include road or building maintenance or service fees for power and back-up generators.

(cc) *Primary use* means the predominant use of the facility by the holder authorized under terms of the right-of-way grant.

3. Section 2800.0–9 is added to read as follows:

§ 2800.0–9 Information collection.

(a) The information collection requirements contained in part 2800 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

(b) Public reporting burden for this information is estimated to average 41.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0102 or 1004–0107, Washington, DC 20503.

Subpart 2803—Administration of Rights Granted [Amended]

4. Section 2803.1–2 is amended by revising paragraph (b)(1)(i), paragraph (c)(1)(iv), and the first and third sentences of paragraph (c)(3)(i), and adding paragraph (e), to read as follows:

§ 2803.1–2 Rental.

* * * * *

(b)(1) * * *

(i) The holder is a Federal, State, or local government or agency or instrumentality thereof, except government entities granting space to other parties who are using the space for commercial purposes, and municipal utilities and cooperatives whose principal source of revenue is customer charges:

* * * * *

(c)(1) * * *

(iv) Rental for the ensuing calendar year for any single right-of-way grant or temporary use permit shall be the rental per acre from the current schedule times the number of acres embraced in the grant or permit, unless such rental is reduced or waived as provided in paragraph (b)(2) of this section.

* * * * *

(3)(i) The rental for linear right-of-way grants and temporary use permits not covered by the linear right-of-way schedule set out above in this paragraph, including those determined by the authorized officer to require an individual appraisal under paragraph (c)(1)(v) of this section, and for communication uses covered by the schedule and nonlinear right-of-way grants and temporary use permits (e.g., reservoir sites, plants sites, and storage sites) shall be determined by the authorized officer and paid annually in advance. * * * All such rental determinations shall be documented, supported, and approved by the authorized officer. * * *

* * * * *

(e) The annual rental payment for communication uses listed below shall be based on rental payment schedules. The rental schedules apply to right-of-way holders authorized to operate and maintain communication facilities on public lands, and state the base rent charged for the primary use of the building. They do not apply to rights-of-way granted to public telecommunications service operators

providing public television or radio broadcast services. The schedules do not include the percentage of the gross rent required by paragraph (e)(6) to be paid by the holder.

(1) The schedules are applicable to communication uses providing the following services:

(i) Television broadcast includes facilities primarily used to broadcast UHF and VHF audio and video signals for general public reception. This category does not include stations licensed by the FCC as a Low Power Television (LPTV) or rebroadcast devices such as translators, or transmitting devices such as microwave relays serving broadcast translators.

(ii) FM radio broadcast includes right-of-way holders that operate FCC-licensed facilities primarily used to broadcast frequency modulation (FM) audio signals for general public reception. This category is not applicable to stations licensed by the FCC as a low power FM radio. This category does not include rebroadcast devices such as translators, boosters or AM synchronous transmitters or microwave relays serving broadcast translators.

(iii) Rebroadcast devices include FCC-licensed facilities primarily used to rebroadcast a signal from its point of origin. This category includes translators and low power television, low power FM radio, and microwave relays. Microwave facilities used in conjunction with LPTV and broadcast translators are included in this category.

(iv) Cable television includes FCC-licensed facilities that primarily transmit video programming to multiple subscribers in a community over a wired network. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, personal or internal antenna systems such as private systems serving hotels or residences.

(v) Commercial mobile radio service includes FCC-licensed commercial mobile radio facilities primarily providing mobile communication service to individual customers. Such services generally include two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, and public switched network (telephone/data) interconnect service.

(vi) Cellular telephone includes FCC-licensed systems primarily used for mobile communications using a blend of radio and telephone switching technology, and providing public switched network services to fixed and mobile users within a tightly defined geographic area. This category includes Personal Communication Systems, a digital mobile telephone service.

(vii) Common carrier microwave includes FCC-licensed facilities primarily used for long-line intrastate and interstate public telephone, television, information, and data transmissions.

(viii) Private microwave includes FCC-licensed facilities primarily used by pipeline and power companies, railroads, and land resource management companies. Communication services associated with this category may include private mobile service, private two-way dispatch service, private paging, supervisory remote control/sensing, and microwave voice/video/data services. This use is solely in support of the holder's primary business activity.

(ix) Facility manager includes holders who may or may not have FCC licenses, but do not operate telecommunications equipment. The primary purpose of their facilities is to lease or sublease space for a variety of tenants who engage in telecommunication activities. The building owner generally provides space in the building and/or tower, and utilities, access, security, and backup generator services.

(x) Other communication uses include FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, passive reflectors, and natural resource and environmental monitoring equipment.

(2) The rental schedules will be updated annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U, U.S. City Average, published in July of each year).

(3) Increases in base rental payments over 1994 levels in excess of $1,000, or 20 percent of the 1994 rent, whichever is greater, will be phased in over a 5-year period. In 1995, the rental payment will be the 1994 rental, plus $1,000 or 20 percent of the 1994 rental, whichever is greater, plus the annual adjustment under paragraph (e)(2). The amount exceeding the above $1,000 or 20 percent threshold will be divided into 4 equal installments, and beginning in 1996 the installment, plus the annual adjustment in the total rent, will be added to the previous year's rent.

(4) With the concurrence of the BLM State Director, the authorized officer may use other reasonable measures to determine fair market rent when it is determined by the authorized officer that the estimated rental payment does not reasonably reflect fair market rent for the individual authorized use.

(5) Annual rental payments shall be calculated and submitted based on the following schedules:

BROADCAST ANNUAL BASE RENTAL SCHEDULE

	Population [1]	Television [2]	FM radio [2]	Rebroadcast devices [3]	Examples of principal community & population served [4]
2,000,000+		$45,000	$34,000	$22,000	Los Angeles.
2,000,000–1,000,000		30,000	21,000	15,000	
999,999–500,000		24,000	18,000	12,000	Phoenix 983,403.
					Salt Lake 725,956.
499,999–250,000		16,000	11,000	7,000	Tucson 405,390.
					Albuquerque 384,736.
					Las Vegas 258,295.
249,999–100,000		6,000	4,000	3,000	Reno 133,850.
					Boise 125,738.
					Yuma 106,895.
99,999–60,000		4,000	3,000	2,000	Las Cruces 62,126.
59,999–30,000		2,500	2,000	1,000	Pocatello 46,080.
					Idaho Falls 43,828.
					Farmington 33,997.
29,999–15,000		2,000	1,500	500	Grand Junction 29,034.

BROADCAS

Population [1]	
0–14,999	

[1] Population is based on U.S. Census informati transmitter.

[2] In addition to the base rent, the holder shall p and 25 percent of the gross rent thereafter. The r cipally serve a community (city, cities, metro area areas served by translators.

[3] Base rent based on city of license.

[4] The population shown is for the principal comm the total population would be used. If the principal

CABL

200 or less	
201–500	
501–1500	
1501–2500	
2500+	

[1] In addition to the base rent, the holder shall p after the effective date of this rule, and 25 percent

Population	Com. mobile radio service [2]
2,000,000+	$12,000
1,999,999–1,000,000	10,000
999,999–500,000	7,000
499,999–250,000	5,000
249,999–100,000	4,000
99,999–60,000	1,500
59,999–30,000	1,000
29,999–15,000	600
0–14,999	600

[1] In addition to the base rent, the holder shall pay and 25 percent of the gross rent thereafter.

[2] Rental payments for commercial mobile radio is the adjacent or nearby county predominantly served Idaho, principally serves the Idaho Falls area in Bo based on the base rent for Bonneville County.

[3] Population based on 1990 census.

BROADCAST ANNUAL BASE RENTAL SCHEDULE—Continued

Population [1]	Television [2]	FM radio [2]	Rebroadcast devices [3]	Examples of principal community & population served [4]
0–14,999	600	450	75	Twin Falls 27,591 Montrose 24,423 Dillon, MT 3,991. Forsyth, MT 2,178.

[1] Population is based on U.S. Census information for principal community (city, cities, metropolitan area, county, or counties) served by the transmitter.

[2] In addition to the base rent, the holder shall pay 15 percent of the gross rent received from space rented in the facility for the first 5 years, and 25 percent of the gross rent thereafter. The rental schedule for FM radio and television uses is applicable to primary transmitters that principally serve a community (city, cities, metro area, or county) reached by the transmitter. Principal communities covered do not include outlying areas served by translators.

[3] Base rent based on city of license.

[4] The population shown is for the principal community served. If the transmitter principally serves two cities such as Idaho Falls and Pocatello, the total population would be used. If the principal community served included the entire county, the county population would be used.

CABLE TELEVISION ANNUAL RENTAL SCHEDULE

Total basic subscribers	Base rent [1]
200 or less	$400
201–500	700
501–1500	1400
1501–2500	2000
2500+	2400

[1] In addition to the base rent, the holder shall pay 15 percent of the gross rent received from space rented in the facility for the first 5 years after the effective date of this rule, and 25 percent thereafter.

NONBROADCAST RENTAL SCHEDULE [1]

Population	Com. mobile radio service [2]	Private mobile use	Cellular telephone	Private microwave	Common carrier microwave	Facility manager	Examples of county served and population [3]
2,000,000+	$12,000	$10,000	$10,000	$10,000	$10,000	$9,000	• San Diego 2,498,016.
1,999,999–1,000,000	10,000	6,000	7,500	6,000	7,500	7,500	• Maricopa, AZ 2,122,101. • Riverside, CA 1,170,413.
999,999–500,000	7,000	4,000	5,000	4,000	5,000	5,000	• San Bernardino, CA. • Salt Lake, UT 725,996.
499,999–250,000	5,000	2,400	5,000	2,000	2,500	3,500	• Pima, AZ 666,880. • Kern, CA 543,981. • Bernalillo, NM 480,577.
249,999–100,000	4,000	1,800	2,500	1,500	2,500	2,500	• Marion, OR 228,483. • Washoe, NV 254,667. • Ada, ID 205,775.
99,999–60,000	1,500	1,200	2,500	1,500	1,500	1,200	• Butte, CA 182,120. • Santa Fe 117,043. • Yuma, AZ 106,895. • Mesa, CO 93,145.
59,999–30,000	1,000	800	2,500	1,500	1,500	600	• San Juan, NM 91,605. • Bonneville, ID 72,207. • Bannock, ID 66,026. • Flat Head, MT 59,218.
29,999–15,000	600	500	2,500	1,000	1,500	800	• Chaves, NM 57,849. • Twin Falls, ID 53,580. • Gila, AZ 40,216. • Garfield, CO 29974.
0–14,999	600	300	2,500	1,000	1,500	300	• Malheur, OR 26038. • Carbon, WY 16659. • Socorro, NM 14,764. • Mariposa, CA 14,302. • Big Horn, WY 10,525. • Harney, OR 7060.

[1] In addition to the base rent, the holder shall pay 15 percent of the gross rent received from space rented in the facility for the first 5 years, and 25 percent of the gross rent thereafter.

[2] Rental payments for commercial mobile radio is based on the population of the county in which the transmitter is located or the population of the adjacent or nearby county predominantly served by the transmitter, whichever is greater. As an example, Relay Ridge in Madison County, Idaho, principally serves the Idaho Falls area in Bonneville County. Although the transmitter is located in Madison County, the rent would be based on the base rent for Bonneville County.

[3] Population based on 1990 census.

RENTAL SCHEDULE—OTHER COMMUNICATION USES

Use	Base rent
Amateur Radio	$.75
Personal/Private Receive Only-Antenna.	75
Local Exchange Carriers [1]—Population Served:	
0–100	100
101–300	250
301–500	400
501–1000	600
6001+	Common Carrier Schedule
Passive Reflectors	75
Environmental Monitoring Equipment.	75

[1] A radio service that provides basic wireless telephone service, primarily to isolated private areas.

(6) In addition, the right-of-way holder shall submit a certified statement regarding rent collected from tenants during the previous year, and pay 15 percent of the gross rent received from the authorized rental of space within the facility each calendar year from 1995 through 1999, and 25 percent of such rent each calendar year thereafter. Tenants occupying space in the facility under terms of the authorization will not be required to have a separate BLM authorization.

(7) The television and FM radio broadcast right-of-way holder will provide a 1-millivolt contour map or statement to BLM identifying the principal community (city, cities, metro area, or county) served by the transmitter.

PART 2810—TRAMLOADS AND LOGGING ROADS

Subpart 2812—Over O. and C. and Coos Bay Revested Lands

5. Section 2812.0–9 is added to read as follows:

§ 2812.0–9 Information collection.

The information collection requirements contained in part 2810 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

Subpart 2880—Oil and Natural Gas Pipelines and Related Facilities: General

6. Section 2880.0–9 is added to read as follows:

§ 2880.0–9 Information collection.

The information collection requirements contained in part 2880 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0102 and 1004–0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for rights-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

Dated: July 1, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–16934 Filed 7–8–94; 1:13 pm]

BILLING CODE 4310–84–P

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public numbers, Federal Register finding aids, and list o documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and documents on public inspection are available on National Archives fax-on-demand system. You m from a fax machine. There is no charge for the se except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11
35461–35606.....12

Reader Aids

Federal Register

Vol. 59, No. 132

Tuesday, July 12, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342	1
34343–34552	5
34553–34754	6
34755–34966	7
34967–35210	8
35211–35460	11
35461–35606	12

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
No. 94–29 of June 27, 1994 35211
Memorandums:
June 30, 1994 34341
Proclamations:
6641 (See Proc. 6704) 34329
6704 34329
6705 34343
Executive Orders:
1919½ (Revoked in part by PLO 7065) 35054
12002 (See EO 12923) 34551
12214 (See EO 12923) 34551
12735 (See EO 12923) 34551
12755 (See EO 12923) 34551
12851 (See EO 12923) 34551
12923 34551

5 CFR

179 ..... 35213, 35215
2610 34755
2634 34755
2636 34755
2641 34755
Proposed Rules:
575 34393
3201 35480

7 CFR

319 35564
272 34553
275 34553
283 34553
916 33897
917 33897
928 33898
947 33900
981 35222
1205 33901
1421 34345
1755 ..... 34353, 34899
Proposed Rules:
46 35487
1036 33922

8 CFR

103 33903
245 33903
245a 33903
264 33903
274a 33903

9 CFR

92 34375
97 34756
Ch. III 34375
Proposed Rules:
317 34396

10 CFR

50 35461
710 35178
Proposed Rules:
1003 34767

12 CFR

Proposed Rules:
220 33923
230 35271
336 35480

14 CFR

21 34572
23 34572
39 ..... 34574, 34576, 34757, 34758, 34899, 34967, 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247
71 ..... 34577, 34758, 34759, 34760, 35248
91 34578
97 ..... 35248, 35250
Proposed Rules:
21 34779
23 35196
33 35272
39 ..... 34396, 34584, 35488, 35490
71 ..... 34192, 34585, 35492
93 34192

16 CFR

2 34968
4 34968
305 34014
Proposed Rules:
300 34780
301 34780
303 34780
1117 33925
1307 35058
1500 ..... 33928, 33932

17 CFR

1 34376
33 34376
190 34376
Proposed Rules:
240 34781

18 CFR

284 35462

Proposed Rules:
35.....35274

19 CFR
174.....34970

20 CFR
416.....33906

21 CFR
510.....33908
520.....33908, 35251
558.....35251
1220.....35252
Proposed Rules:
341.....34781

22 CFR
60.....33909
61.....33909
62.....33909
63.....33909
64.....33909
65.....33909
514.....34760

23 CFR
655.....33909
Proposed Rules:
637.....35493

24 CFR
17.....34578
791.....35253
3280.....34294
Proposed Rules:
43.....34300
92.....34300
100.....34902
570.....34300

25 CFR
Proposed Rules:
164.....35580
165.....35580

26 CFR
1.....34971, 35030, 35414
31.....35414
40.....35414
602.....34971, 35030
Proposed Rules:
1.....34398, 35066, 35418
31.....35418
40.....35418

28 CFR
551.....34742
571.....35456

29 CFR
1910.....33910, 34580
Proposed Rules:
Ch. XXVI.....35067
Ch. XL.....35067
1915.....34586

30 CFR
944.....35255
Proposed Rules:
75.....35071
920.....35289

31 CFR
550.....35259

32 CFR
90.....34382, 35463
91.....34382, 35463
155.....35464
369.....35261
383.....34382
384.....35262
389.....34382
552.....34581, 34761
706.....35033
Proposed Rules:
553.....34782

33 CFR
4.....34210
130.....34210
131.....34210
132.....34210
137.....34210
138.....34210
Proposed Rules:
165.....35290
322.....34783
334.....33939

34 CFR
74.....34722
77.....34722
641.....34198
668.....34964
682.....34964
685.....34278
690.....34964
Proposed Rules:
Ch. VI.....34398

36 CFR
704.....35034

38 CFR
3.....34382, 35265, 35464

39 CFR
111.....33911

40 CFR
9.....33912, 34070
52.....33914, 34383, 35035, 35036, 35044, 35411
81.....35044
85.....33912
86.....33912
112.....34070
141.....34320
142.....34320
271.....35266
372.....34386
600.....33912
Proposed Rules:
Ch. I.....33940
51.....35292
52.....33941, 34399, 34401, 35072, 35079
81.....35079
185.....33941

43 CFR
Public Land Order:
7055.....34899
7064.....34582
7065.....35054
7069.....35267
Proposed Rules:
2800.....35596
2810.....35596
2880.....35596

45 CFR
Proposed Rules:
615.....35079

47 CFR
22.....35054
73.....34391, 34766, 35055, 35268
80.....35268
87.....35268
Proposed Rules:
61.....33947
64.....33947
69.....33947
73.....34404, 34405, 35081, 35082, 35292, 35293

48 CFR
Proposed Rules:
926.....35294
952.....35294
970.....35294

49 CFR
172.....35411
195.....35465
392.....34708
393.....34708, 34712
1056.....34392
Proposed Rules:
541.....3508
571.....34405, 35298, 35300

50 CFR
215.....35471
229.....34899
301.....35474, 35475
651.....35056
658.....34582
672.....35056
675.....33920, 34392, 34583, 35056, 35057, 35476
681.....35270
Proposed Rules:
17.....34784, 35089, 35303, 35304, 35305, 35307, 35496, 35584
20.....35566
222.....35089
644.....35308
654.....33947

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 11, 1994

Superintendent of Documents Order F
Order Processing Code:
* 7296
❑ YES, send me ___ subscriptions t
S/N 069–000–00056–8, at $20.00 ($25.0
The total cost of my order is $ ___
Company or personal name (Please
Additional address/attention line
Street address
City, State, Zip code
Daytime phone including area code
Purchase order number (optional)

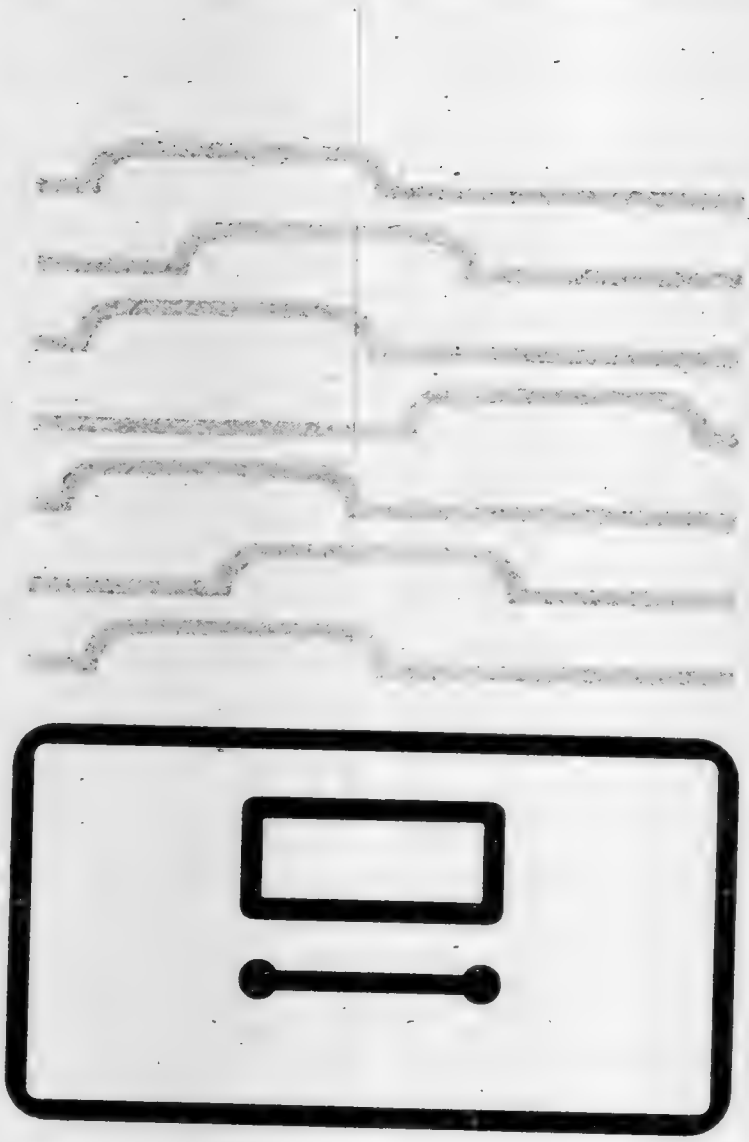

NEW EDITION

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1994

The GUIDE is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Order Form

Order Processing Code:
* 7296

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512-2250

❑ **YES,** send me ____ subscriptions to **1994 Guide to Record Retention Requirements in the CFR,** S/N 069–000–00056–8, at $20.00 ($25.00 foreign) each.

The total cost of my order is $ _____ **(Includes regular shipping and handling.)** Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

Check method of payment:

❑ Check payable to Superintendent of Documents

❑ GPO Deposit Account _____–__

❑ VISA ❑ MasterCard ____ (expiration date)

_____

Thank you for your order!

Authorizing signature 4/94

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

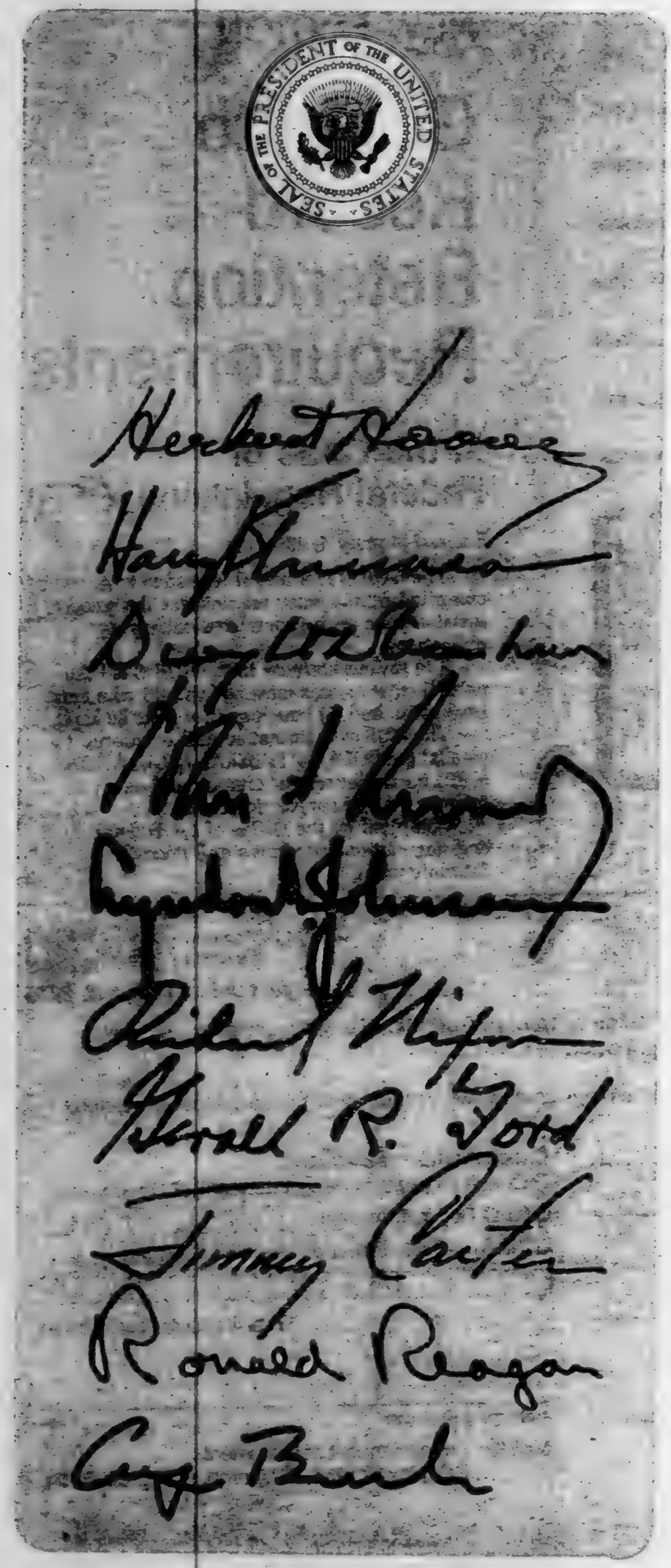

Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

Ronald Reagan		George Bush	
1983 (Book I)	$31.00	1989 (Book I)	$38.00
1983 (Book II)	$32.00	1989 (Book II)	$40.00
1984 (Book I)	$36.00	1990 (Book I)	$41.00
1984 (Book II)	$36.00	1990 (Book II)	$41.00
1985 (Book I)	$34.00	1991 (Book I)	$41.00
1985 (Book II)	$30.00	1991 (Book II)	$44.00
1986 (Book I)	$37.00	1992 (Book I)	$47.00
1986 (Book II)	$35.00	1992 (Book II)	$49.00
1987 (Book I)	$33.00		
1987 (Book II)	$35.00		
1988 (Book I)	$39.00		
1988–89 (Book II)	$38.00		

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

(Rev. 1/94)

federal register

Document Drafting Handbook

Superintendent

Order processing code: *6133

☐ YES, please send me the followir

_____ copies of DOCUMENT DRA

1. The total cost of my order is $_____ F
All prices include regular domestic postage an

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

( )
(Daytime phone including area code)

4. Mail To: New Orders, Superintendent of Doc

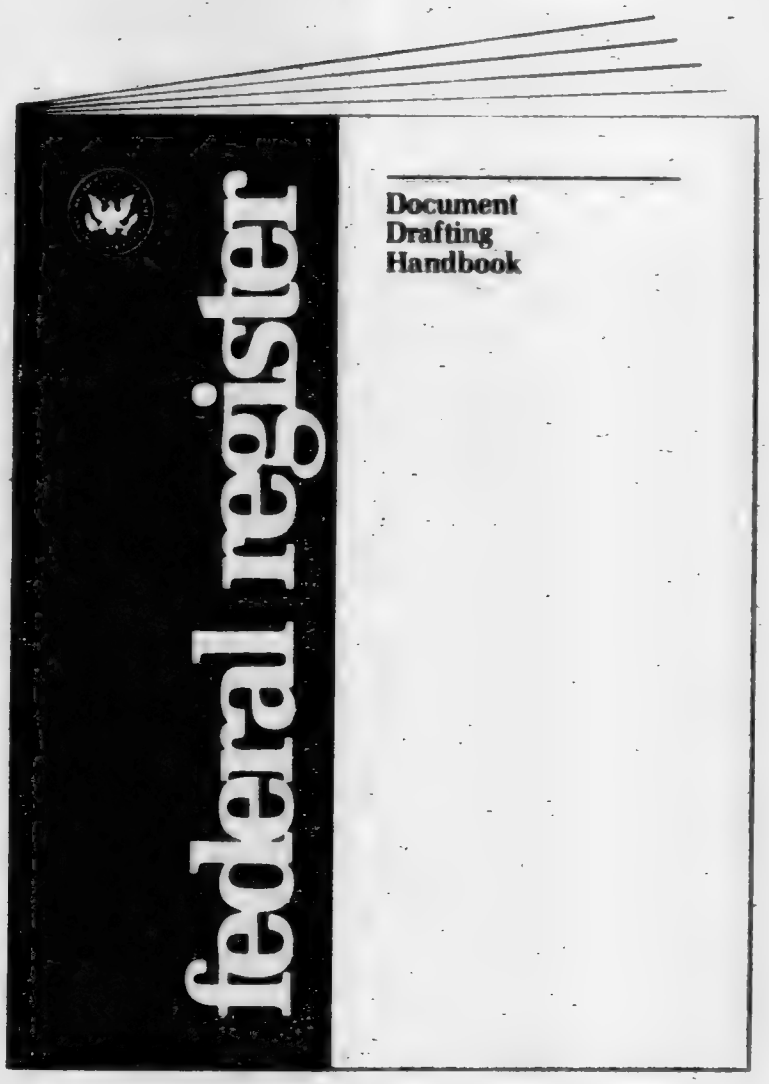

Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy!

To fax your orders and inquiries – (202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069–000–00037–1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%
All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

( )
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev 12/91)

4. **Mail To:** New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

103d Congress, 2d Session, 1994

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 2d Session, 1994.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws.)

Superintendent of Documents **Subscriptions** Order Form

S3

Order Processing Code:
* 6216

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512-2233

☐ **YES**, enter my subscription(s) as follows:

subscriptions to **PUBLIC LAWS** for the 103d Congress, 2d Session, 1994 for $156 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (1 94)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

S3
SA
233
ts
for
der!
(1 94)

VOL
59

ISS
1
3
2

JL
12

994

UMI

Printed on recycled paper

VOL
59
ISS
133
JL
13
994
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7–13–94
Vol. 59 No. 133

Federal Register

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****

A FR UMISE
UMI SERIALS
300 N ZEEB R
PO BOX 1346
ANN ARBOR
227

7–13–94
Vol. 59 No. 133

Federal Register

Wednesday
July 13, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********3-DIGIT 481

A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106
227

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
59 9
ISS
1
3
3
JL
1 3
994
MI

7-13-94
Vol. 59 No. 133
Pages 35607–35846

federal register

7–13–94
Vol. 59 No. 133
Pages 35607–35846

Federal Register

Wednesday
July 13, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806

Online:
Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.
Assistance with online subscriptions 202–512–1530

Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803

FEDERAL AGENCIES

Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations

WASHINGTON, DC

WHEN: July 28 at 9:00 am
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Agriculture Department
See Animal and Plant Health Inspection Ser
See Federal Crop Insurance Corporation
See Food Safety and Inspection Service
See Forest Service
See Soil Conservation Service

Alcohol, Tobacco and Firearms Bureau
RULES
Alcoholic beverages:
Distilled spirits; labeling and advertising—
United States-European Union agreemen
standards, 35623–35624

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and anim
(quarantine):
Brucellosis surveillance; market cattle iden
reactor prevalence rates, 35615–35618
Overtime services relating to imports and ex
Commuted traveltime allowances, 35612–3
Plant-related quarantine, domestic:
Mediterranean fruit fly, 35611–35612

Antitrust Division
NOTICES
Competitive impact statements and proposed
judgments:
Broadcast Music, Inc., et al., 35752
Morton Plant Health System, Inc., et al., 35

Army Department
NOTICES
Patent licenses; non-exclusive, exclusive, or p
exclusive:
Self-actuated rotor system et al., 35696

Arts and Humanities, National Foundation
See National Foundation on the Arts and the

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
Association of State and Territorial Chronic
Program Directors, 35735–35736
North Carolina Department of Environment,
Natural Resources, 35736–35738

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Sheffield Island, CT; safety zone, 35661–356

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Admin

Contents

Federal Register

Vol. 59, No. 133

Wednesday, July 13, 1994

Agriculture Department
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Food Safety and Inspection Service
See Forest Service
See Soil Conservation Service

Alcohol, Tobacco and Firearms Bureau
RULES
Alcoholic beverages:
Distilled spirits; labeling and advertising—
United States-European Union agreement; identity standards, 35623–35624

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Brucellosis surveillance; market cattle identification reactor prevalence rates, 35615–35618
Overtime services relating to imports and exports:
Commuted traveltime allowances, 35612–35613
Plant-related quarantine, domestic:
Mediterranean fruit fly, 35611–35612

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Broadcast Music, Inc., et al., 35752
Morton Plant Health System, Inc., et al., 35752–35758

Army Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Self-actuated rotor system et al., 35696

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
Association of State and Territorial Chronic Disease Program Directors, 35735–35736
North Carolina Department of Environment, Health, and Natural Resources, 35736–35738

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Sheffield Island, CT; safety zone, 35661–35662

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
PROPOSED RULES
Hazardous substances:
Crib toys; strangulation hazards to children; labeling and other requirements; withdrawn, 35657–35661

Copyright Office, Library of Congress
NOTICES
Digital audio recording distribution proceedings, 1992, 1993 and 1994; consolidation, 35762–35766

Defense Department
See Army Department

Economic Development Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
University center technical assistance program, 35840–35843

Education Department
RULES
Postsecondary education:
Federal family education loan program
Correction, 35624–35625
NOTICES
Grants and cooperative agreements; availability, etc.:
Cooperative demonstration program
Correctional education, 35788–35809
National Institute on Disability and Rehabilitation Research—
Knowledge dissemination and utilization program, 35812–35831

Energy Department
See Federal Energy Regulatory Commission
See Southeastern Power Administration
NOTICES
Grant and cooperative agreement awards:
Babcock & Wilcox, 35696
Materials Technologies of Virginia, Inc., 35696–35697
MCR Enterprises, 34697
University of—
Arizona, 35697
Meetings:
Inertial Confinement Fusion Advisory Committee/Defense Programs, 35697–35698
National Electric and Magnetic Fields Advisory Committee, 35698–35699
Natural gas exportation and importation:
Pennzoil Gas Marketing Co., 35699

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Carbophenothion, 35629–35630
Glufosinate ammonium, 35627–35629
N,N-Bis 2-(omega-hydroxypolyoxyethylene/polyoxypropylene) ethyl alkylamine, 35629

PROPOSED RULES
Pesticide programs:
Federal Insecticide, Fungicide, and Rodenticide Act—
Plant-pesticides, 35662–35663
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Triasulfuron, 35663–35664
NOTICES
Pesticide, food, and feed additive petitions:
Rhone-Poulenc Ag Co. et al., 35717–35720
Pesticides; experimental use permits, etc.:
Abbott Laboratories et al., 35712–35714
Pesticides; receipts of State registration, 35714–35717
Pesticides; temporary tolerances:
Fenoxaprop-ethyl, 35714
Toxic and hazardous substances control:
Interagency Testing Committee—
Report, 35720–35728

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 35783

Federal Communications Commission
RULES
Common carrier services:
Depreciation prescription process simplification, 35632–35635
Radio broadcasting:
Experimental, auxiliary, and special broadcast and other program distributional services—
Instructional television fixed service; purpose and permissible service; frequency use, 35635–35636
Television broadcasting:
Cable Television Consumer Protection and Competition Act of 1992—
Video sports programming migration from broadcast to subscription television; Section 26 implementation; final report, 35631–35632
PROPOSED RULES
Radio services, special:
Commercial mobile service providers; equal access obligations, local exchange carriers obligations, and interconnection obligations, 35664–35665
Radio stations; table of assignments:
Iowa; correction, 35785
Television broadcasting:
Experimental, auxiliary, and special broadcast and other program distributional services; instructional television fixed services filing procedures, 35665–35670
NOTICES
Agency information collection activities under OMB review, 35728–35729
Common carrier services:
Work force reduction programs; uniformity in accounting; correction, 35785
Public safety radio communications plans:
Iowa, 35729
Rulemaking proceedings; petitions filed, granted, denied, etc., 35729

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Nursery crop, 35613–35614

Federal Election Commission
RULES
Special fundraising projects and other use of candidate names by unauthorized committees
Correction, 35785

Federal Emergency Management Agency
RULES
Preparedness:
National Earthquake Hazards Reduction Program; gifts, requests, or services criteria, 35630–35631

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
University of Massachusetts, MA, 35699
Natural gas certificate filings:
El Paso Natural Gas Co. et al., 35699–35701
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 35701–35702
Cranberry Pipeline Corp., 35702
KN Interstate Gas Transmission Co., 35702
Mississippi Valley Gas Co., 35702
National Fuel Gas Supply Corp. et al., 35702–35703
Southern Natural Gas Co. et al., 35703–35704
Tennessee Gas Pipeline Co., 35704
Texas Eastern Transmission Corp., 35704–35705
Williston Basin Interstate Pipeline Co., 35705

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Prince William County, VA, 35779–35780

Federal Railroad Administration
NOTICES
Traffic control systems; discontinuance and removal:
Southern Pacific Lines, 35780

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 35783
Applications, hearings, determinations, etc.:
Community Bankshares, Inc., et al., 35729–35730
Jones, William R. and Elizabeth J., et al., 35730
PBT Bancshares, Inc., et al., 35730

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 35783

Federal Trade Commission
PROPOSED RULES
Industry guides:
Hosiery, 35661
NOTICES
Prohibited trade practices:
Kiwi Brands Inc., et al., 35730–35735

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Jaguar, 35674–35679

NOTICES
Cooperative bird breeding program; applica
approval:
Pike, Dan L., 35742
Endangered and threatened species permit
35742
Environmental statements; availability, etc.
Guam National Wildlife Refuge, GU, 357

Food and Drug Administration
NOTICES
Meetings:
Advisory committees, panels, etc., 35738

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Poultry species post-mortem inspection s
35657

Forest Service
NOTICES
Committees; establishment, renewal, termin
Federal Livestock Grazing Fee Incentive
Advisory Committee, 35680

General Services Administration
NOTICES
Environmental statements; availability, etc.
Santa Ana, CA; Ronald Reagan Federal B
Courthouse; correction, 35735

Health and Human Services Department
See Centers for Disease Control and Prevent
See Food and Drug Administration
See Health Care Financing Administration

Health Care Financing Administration
PROPOSED RULES
Medicare:
Intermediary and carrier functions, 35664
NOTICES
Agency information collection activities un
review, 35739

Housing and Urban Development Departm
PROPOSED RULES
Public and Indian housing:
Obsolete housing; major reconstruction, 3
NOTICES
Grants and cooperative agreements; availabi
Public and Indian housing—
Drug elimination program; correction, 3
Low income housing:
Housing assistance payments (Section 8)—
Fair market rent schedules for rental ce
management and property dispositi
rehabilitation, and rental voucher p
35739–35740

Immigration and Naturalization Service
RULES
Guam visa waiver program; Taiwan, 35614–

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (ca
Sisseton-Wahpeton Tribe, ND, 35846

NOTICES
Cooperative bird breeding program; applications for approval:
Pike, Dan L., 35742
Endangered and threatened species permit applications, 35742
Environmental statements; availability, etc.:
Guam National Wildlife Refuge, GU, 35742–35743

Food and Drug Administration
NOTICES
Meetings:
Advisory committees, panels, etc., 35738–35739

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Poultry species post-mortem inspection system, 35639–35657

Forest Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Federal Livestock Grazing Fee Incentive Program Advisory Committee, 35680

General Services Administration
NOTICES
Environmental statements; availability, etc.:
Santa Ana, CA; Ronald Reagan Federal Building-U.S. Courthouse; correction, 35735

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration

Health Care Financing Administration
PROPOSED RULES
Medicare:
Intermediary and carrier functions, 35664
NOTICES
Agency information collection activities under OMB review, 35739

Housing and Urban Development Department
PROPOSED RULES
Public and Indian housing:
Obsolete housing; major reconstruction, 35834–35838
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Drug elimination program; correction, 35740–35741
Low income housing:
Housing assistance payments (Section 8)—
Fair market rent schedules for rental certificate, loan management and property disposition, moderate rehabilitation, and rental voucher programs, 35739–35740

Immigration and Naturalization Service
RULES
Guam visa waiver program; Taiwan, 35614–35615

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Sisseton-Wahpeton Tribe, ND, 35846

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service

International Trade Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Automotive Parts Advisory Committee, 35696

International Trade Commission
NOTICES
Import investigations:
Sebacic acid from—
China, 35750
Sweaters wholly or in chief weight of manmade fibers from—
Hong Kong, et al., 35750–35751

Interstate Commerce Commission
NOTICES
Environmental statements; availability, etc.:
Consolidated Rail Corp. et al., 35751
Railroad operation, acquisition, construction, etc.:
Shenandoah Valley Railroad Co. et al., 35751

Justice Department
See Antitrust Division
See Immigration and Naturalization Service
NOTICES
Agency information collection activities under OMB review, 35751–35752

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Wyoming, 35741
Committees; establishment, renewal, termination, etc.:
Federal Livestock Grazing Fee Incentive Program Advisory Committee, 35680
Realty actions; sales, leases, etc.:
Alaska, 35741
Survey plat filings:
Oregon and Washington, 35741–35742

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 35783–35784

Library of Congress
See Copyright Office, Library of Congress

Management and Budget Office
NOTICES
Metropolitan Statistical Areas; definition standards for 1990s; update, 35770–35771

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Western Gulf of Mexico—
Lease sale, 35743–
Leasing systems, 35743–35749

National Aeronautics and Space Administration
RULES
Boards and committees:
Inventions and Contributions Board, 35623

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 35766

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Seat belt assemblies, 35636–35638
PROPOSED RULES
Motor vehicle safety standards:
Air brake systems—
Control line pressure balance, 35672–35674
Seat belt assembly anchorages, 35670–35672

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 35638
PROPOSED RULES
Grants:
West Coast salmon fisheries; disaster relief, 35674

National Park Service
NOTICES
Vehicular tour route designations:
Southwestern Pennsylvania Industrial Heritage Route, 35749–35750

National Science Foundation
NOTICES
Meetings:
Advanced Scientific Computing Special Emphasis Panel, 35766
Geosciences Special Emphasis Panel, 35766
Microelectronic Information Processing Systems Special Emphasis Panel, 35766
Polar Programs Special Emphasis Panel, 35767
Undergraduate Education Special Emphasis Panel, 35767

Nuclear Regulatory Commission
RULES
Licensee data submittal in computer-readable form, 35618–35623
NOTICES
Applications, hearings, determinations, etc.:
Arizona Public Service Co., 35767–35769
GPU Nuclear Corp., 35769–35770
Tennessee Valley Authority, 35770
Washington Public Power Supply System, 35770

Office of Management and Budget
See Management and Budget Office

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Knoxville Surgical Group et al., 35759–35760
Thomas G. Soper, M.D., S.C., 35760–35762

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Strang, NB, 35771

Postal Service
RULES
Privacy Act; implementation, 35625–35627

Presidential Documents
ADMINISTRATIVE ORDERS
Haitian refugees; funds for processing, repatriation, resettlement, and assistance expenses (Presidential Determination No. 94–31 of July 1, 1994), 35609
Palestine Liberation Organization; suspension of restrictions on relations with U.S. (Presidential Determination No. 94–30 of June 30, 1994), 35607

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 35771–35773
Midwest Clearing Corp., 35773–35774
Midwest Securities Trust Co., 35774–35775
New York Stock Exchange, Inc., 35775–35776
Pacific Stock Exchange, Inc., 35776–35779

Sentencing Commission, United States
See United States Sentencing Commission

Soil Conservation Service
NOTICES
Hydric soils of United States; list availability, 35680–35696

Southeastern Power Administration
NOTICES
Power rates:
Cumberland Basin System of Projects, 35705–35712

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 35779

Transportation Department
See Coast Guard
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Air South, Inc., 35779

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
RULES
Financial assistance to local governments; antirecession fiscal assistance to State, Territorial and local governments, 35624

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy statements for Federal courts, 35780–35782

Veterans Affairs Department
NOTICES
Meetings:
Special Medical Advisory Group, 35782
Vietnam and Other War Veterans Readjus
Committee, 35782

Separate Parts In This Issue

Part II
Department of Education, 35788–35809

Part III
Department of Education, 35812–35831

Part IV
Department of Housing and Urban Developm
35838

Veterans Affairs Department
NOTICES
Meetings:
Special Medical Advisory Group, 35782
Vietnam and Other War Veterans Readjustment Advisory Committee, 35782

Separate Parts In This Issue

Part II
Department of Education, 35788–35809

Part III
Department of Education, 35812–35831

Part IV
Department of Housing and Urban Development, 35834–35838

Part V
Department of Commerce, Economic Development Administration, 35840–35843

Part VI
Department of the Interior, Bureau of Indian Affairs, 35846

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue

3 CFR
Administrative Orders:
Presidential Determinations:
No. 94–30 of June 30, 1994 35607
No. 94–31 of July 1, 1994 35609

7 CFR
301 35611
354 35612
406 35613

8 CFR
212 35614

9 CFR
78 35615
Proposed Rules:
381 35639

10 CFR
40 35618
72 35618
74 35618
75 35618
150 35618

11 CFR
102 35785

14 CFR
1209 35623

16 CFR
Proposed Rules:
Chapter II 35657
22 35661

24 CFR
Proposed Rules:
941 35834

27 CFR
5 35623

31 CFR
51 35624
52 35624

33 CFR
Proposed Rules:
165 35661

34 CFR
682 35624

39 CFR
266 35625

40 CFR
180 (3 documents) 35627, 35629
185 35629
186 35629
Proposed Rules:
152 35662
174 35662
180 35663

42 CFR
Proposed Rules:
421 35664

44 CFR
362 35630

47 CFR
Chapter I 35631
43 35632
74 35635
Proposed Rules:
Chapter I 35664
73 35785
74 35665

49 CFR
571 35636
Proposed Rules:
571 (2 documents) 35670, 35672

50 CFR
675 35638
Proposed Rules:
Chapter II 35674
17 35674

Federal Register
Vol. 59, No. 133
Wednesday, July 13, 1994

Title 3—

The President

Pre

Presid

Suspe Pales

Memo

Pursua Act of Years

(1) of the

(A) 22 tio

(B) Ye res wi

(C) Ye

(D) 28 zat spo

(2) c by its of Isra Norway of Princ 13, 199

You are gress an

THE W *Washin*

[FR Doc. 94–17156
Filed 7–11–94; 4:07 pm]
Billing code 4710–10–M

Federal Register
Vol. 59, No. 133
Wednesday, July 13, 1994

Presidential Documents

Title 3—

The President

Presidential Determination No. 94–30 of June 30, 1994

Suspending Restrictions on U.S. Relations With the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Middle East Peace Facilitation Act of 1994, part E of title V, Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236, I hereby:

(1) certify that it is in the national interest to suspend the application of the following provisions of law until January 1, 1995:

(A) Section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(B) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(C) Section 1003 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 5202); and

(D) Section 37 of the Bretton Woods Agreement Act (22 U.S.C. 286w), as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund.

(2) certify that the Palestine Liberation Organization continues to abide by its commitments: in its letter of September 9, 1993, to the Prime Minister of Israel; in its letter of September 9, 1993, to the Foreign Minister of Norway; and in, and resulting from, the implementation of the Declaration of Principles on Interim Self-Government Arrangements signed on September 13, 1993.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 30, 1994.

[FR Doc. 94–17156
Filed 7–11–94; 4:07 pm]
Billing code 4710–10–M

VOL
59
ISS
1
3
3
JL
13
994
UMI

Pre

Pres

Dete
Mig

Mem

Purs
of 19
impo
the
urge
used
ties
of th
coun
uted
nong

You
the
autho

THE
Wash

[FR Doc. 94–17157
Filed 7–11–94; 4:08 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 94–31 of July 1, 1994

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that $7,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of Haitian migrants. These funds are to be used for refugee processing, repatriation, resettlement, and assistance activities as well as related Department of State administrative expenses. A part of the funds may be contributed bilaterally to the governments in whose countries related operations are being conducted. These funds may be contributed to foreign governments, international organizations, governmental, and nongovernmental agencies.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 1, 1994.

[FR Doc. 94–17157
Filed 7–11–94; 4:08 pm]
Billing code 4710–10–M

VOL
59
ISS
133
JUL
13
1994
UMI

Rules and Regulatio

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–14]

Mediterranean Fruit Fly; Removal From the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in Riverside County, CA, from the list of quarantined areas. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: Interim rule effective July 7, 1994. Consideration will be given only to comments received on or before September 12, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–155–14. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations,

Rules and Regulations

Federal Register
Vol. 59, No. 133
Wednesday, July 13, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–14]

Mediterranean Fruit Fly; Removal From the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in Riverside County, CA, from the list of quarantined areas. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: Interim rule effective July 7, 1994. Consideration will be given only to comments received on or before September 12, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–155–14. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding to or removing from the list of quarantined areas certain portions of Los Angeles, Santa Clara, Orange, Riverside, San Bernardino, and San Diego Counties, CA. Amendments affecting the quarantined areas in California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, September 15, October 8, November 22, and December 16, 1993; and on January 10, February 14, and March 4, 1994 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6; 58 FR 49186–49190, Docket No. 91–155–7; 58 FR 53105–53109, Docket No. 91–155–8; 58 FR 63027–63031, Docket No. 91–155–9; 58 FR 67627–67630, Docket No. 91–155–10; 59 FR 2281–2283, Docket No. 91–155–11; 59 FR 7895–7896, Docket No. 91–155–12; and 59 FR 11177–11180, Docket No. 91–155–13).

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and California State and county agency inspectors, that the Medfly has been eradicated from the quarantined area in Riverside County, CA. The last finding of the Medfly thought to be associated with the infestation in this area was made on December 17, 1993. Since then, no evidence of infestation has been found in this area. We have determined that the Medfly no longer exists in this area, and we are therefore removing it from the list of areas in § 301.78–3(c) quarantined because of the Mediterranean fruit fly. As a result of this action there are no longer any quarantined areas in Riverside County. Portions of Los Angeles, Orange, and San Bernardino Counties remain quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The area in California affected by this document was quarantined due to the possibility that the Mediterranean fruit fly could spread to noninfested areas of the United States. Since this situation no longer exists, and the continued quarantined status of this area would impose unnecessary regulatory restrictions on the public, immediate action is warranted to remove restrictions from the noninfested area.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from the Corona area of Riverside County, CA. There are approximately 93 small entities that could be affected, including 66 fruit sellers, 14 nurseries, 6 growers, 4 vendors, and 3 swapmeets.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the sale of these articles would not be affected by this interim regulation.

Therefore, termination of the quarantine in the Riverside County area should have a minimal economic effect on the few small entities operating there. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in subpart 301.78 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas is amended by removing the entry for Riverside County.

Done in Washington, DC, this 7th day of July, 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–16966 Filed 7–12–94; 8:45 am]

BILLING CODE 3410–34–P

---

7 CFR Part 354

[Docket No. 94–062–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by adding a commuted traveltime allowance for travel between two locations in Indiana. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime between these locations.

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Assistant to the Deputy Administrator, Plant Protection and Quarantine, APHIS, USDA, room 458, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding a commuted traveltime allowance for travel between two locations in Indiana. The amendment is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding in the table, in alphabetical order, under Indiana, the following entry to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding in the table, in alphabetical order, under Indiana, the following entry to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
[Add]			
. . .	. .	.	. .
Indiana:			
Burns Harbor (including Gary).	Frankfort ..		5
. . .	. .	.	. .

Done in Washington, DC, this 7th day of July 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–16968 Filed 7–12–94; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 406

Nursery Crop Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Nursery Crop Insurance regulations, effective for the 1995 and succeeding crop years, by making a change in the policy to clarify the method of determining loss.

The Nursery policy contains the term "said damaged crop" which has been interpreted, in some forums, to refer to specific damaged portion of the crop instead of the unit as was the intent.

EFFECTIVE DATE: This regulation is effective on June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Federal Crop Insurance Corporation, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Department Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of this regulation under those procedures. The sunset review date established for these regulations is March 31, 1999.

This rule has been determined to be "not significant" for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

This action will not have a significant economic effect on a substantial number of small entities. This action does not increase the paperwork burden on the reinsured company because the reinsured company must already provide the additional information required by this regulation to the state in which it is licensed. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety, Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR 400.169 must be exhausted before judicial action may be brought.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

On April 25, 1994, the FCIC published a proposed rule at 59 FR 19661 proposing to amend the nursery policy to clarify the method of determining loss. Comments were requested for 30 days after the publication of said rule, in which time no comments were received. Therefore, the FCIC hereby adopts the proposed rule published at 59 FR 19661 as final without changes.

The date by which all changes in this policy must be final is June 30. All present insureds under the policy and all applicants have been specifically advised of the changes herein. Additionally, changes have been placed in the agents' office prior to the contract change date. Good cause is thereby found to make this rule final in less than 30 days.

List of Subjects in 7 CFR Part 406

Crop insurance, Nursery.

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Nursery Crop Insurance Regulations (7 CFR part 406) effective for the 1995 crop year as follows:

1. The authority citation for 7 CFR part 406 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 406.7 is amended in the contract by revising subsection 9.d(1) to read as follows:

§ 406.7 The application and policy.

* * * * *

9. Claim for Indemnity

* * * * *

d. * * *

(1) The amount of insurance applicable to the unit less 90% of the value of the crop remaining on the unit after the loss; or

* * * * *

§ 406.7 [Amended]

3. Section 406.7 is amended in the contract by revising subsection 17, redesignating paragraphs e through m as f through n, and by inserting a new paragraph e to read as follows:

17. Meaning of Terms

* * * * *

e. Crop means all plants eligible for insurance on the unit as reported on the nursery crop report.

* * * * *

Done in Washington, DC, on June 30, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–16992 Filed 7–12–94; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1398–92]

RIN 1115–AA75

Guam Visa Waiver Program; Taiwan

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by amending the one-year restriction on Taiwan's inclusion in the Guam Visa Waiver Program, and by removing the requirement that residents of Taiwan who are in possession of Taiwan National Identity Cards traveling to Guam, do so on a direct, nonstop flight. The removal of the restriction is the result of an evaluation conducted by the Service that indicated that there were only two instances of abuse of the Guam Visa Waiver Program by non-Taiwan residents detected by the Service since Taiwan was temporarily added to the Program on July 15, 1993. This rule facilitates the travel of certain residents of Taiwan to visit Guam under certain conditions. It enables holders of Taiwan passports who begin their travel in Taiwan and who are in possession of Taiwan National Identity Cards to visit Guam as nonimmigrant visitors for up to 15 days for business or pleasure without first obtaining a nonimmigrant visitor visa at an American consulate abroad.

EFFECTIVE DATE: This rule is effective July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Ronald J. Hays, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, Telephone number: (202) 514–0912.

SUPPLEMENTARY INFORMATION: Under section 212(1)(1) of the Immigration and Nationality Act (Act), certain visitors from designated countries may visit Guam for up to 15 days without having to obtain nonimmigrant visitor visas from American consulates outside the United States.

First implemented on October 1, 1988, this program resulted in thousands of nonimmigrant visitors from Australia, Brunei, Burma, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, the Republic of Korea, Singapore, the Solomon Islands, the United Kingdom (including citizens of the colony of Hong Kong), Vanuatu and Western Samoa, visiting Guam under the conditions mentioned in the summary.

On July 15, 1993, the Service published an interim rule with request for comments, in the **Federal Register**, at 58 FR 38045–38046, temporarily adding Taiwan through July 15, 1994, to the list meeting the eligibility criteria for the Guam Visa Waiver Program, implemented under the Omnibus Territories Act of 1986, Public Law 99–396. This rule removes the one-year restriction on Taiwan's inclusion in the program.

Since the Service was concerned about potential abuse by non-Taiwan residents attempting to enter the United States illegally, only residents of Taiwan in possession of Taiwan National Identity Cards, in addition to valid Taiwan passports with valid re-entry permits issued by the Taiwan Ministry of Foreign Affairs, were included in the Guam Visa Waiver Program. In addition, there was a further restriction that persons must travel on a direct, nonstop flight from Taiwan to Guam.

Since Taiwan's inclusion in the program, only two instances of abuse of the Guam Visa Waiver Program, by non-Taiwan residents, were detected by the Service. However, the requirement that Taiwan residents seeking to enter Guam under this program do so on a direct non-stop flight from Taiwan had an unforeseeable impact on the tourist industry in the Commonwealth of the Northern Marianas when the air carrier serving Guam from Taiwan via Saipan eliminated the Saipan stop. Four comments were received by the Service concerning the change of service to the Northern Marianas. These comments all came from the Office of the Governor, Commonwealth of the Northern Marianas, protesting that the non-stop requirement of the interim rule negatively affected tourism in the Commonwealth because Taiwan residents could no longer travel easily to the Commonwealth.

The Service agrees with these comments and has amended the rule to remove the direct non-stop flight requirement. However, to address the potential for abuse by non-Taiwan residents seeking to enter the United States, the rule will be amended to reflect that only holders of Taiwan passports who are residents of Taiwan who begin their travel to Guam in Taipei and arrive in Guam without an intermediate layover will be eligible to participate in the Guam Visa Waiver Program. Such travellers will be further restricted to those who arrive on a flight which has not had an intermediate stop except in a territory of the United States. The Service reserves the right to reinstate the direct non-stop flight requirement by means of a notice in the **Federal Register** should the percentage of inadmissible passengers arriving in Guam who have transited a territory of the United States enroute to Guam exceed 20 percent of all inadmissible passengers arriving in Guam for two consecutive months.

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors: this rule merely removes a restriction on travel, and will have a positive economic impact for Guam by increasing tourism.

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

The regulations adopted herein will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will enhance family well-being by allowing eligible Taiwan families to readily come to Guam on vacation.

List of Subjects in 8 CFR Part 212

Administrative practice and procedures, Aliens, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, the interim rule published at 58 FR 38045–38046, on July 15, 1993, amending 8 CFR part 212 is adopted as a final rule with the following changes:

The Service reserves the right to reinstate the direct non-stop flight requirement by means of a notice in the **Federal Register** should the percentage of inadmissible passengers arriving in Guam who have transited a territory of the United States enroute to Guam exceed 20 percent of all inadmissible passengers arriving in Guam for two consecutive months.

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors: this rule merely removes a restriction on travel, and will have a positive economic impact for Guam by increasing tourism.

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

The regulations adopted herein will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will enhance family well-being by allowing eligible Taiwan families to readily come to Guam on vacation.

List of Subjects in 8 CFR Part 212

Administrative practice and procedures, Aliens, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, the interim rule published at 58 FR 38045–38046, on July 15, 1993, amending 8 CFR part 212 is adopted as a final rule with the following changes:

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

2. In § 212.1, paragraph (e)(3) is revised to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(e) * * *

(3)(i) The following geographic areas meet the eligibility criteria as stated in paragraph (e)(2) of this section: Australia, Brunei, Burma, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Solomon Islands, Taiwan (residents thereof who begin their travel in Taiwan and who travel on direct flights from Taiwan to Guam without an intermediate layover or stop except that the flights may stop in a territory of the United States enroute), the United Kingdom (including the citizens of the colony of Hong Kong), Vanuatu, and Western Samoa. The provision that flights transporting residents of Taiwan to Guam may stop at a territory of the United States enroute may be rescinded whenever the number of inadmissible passengers arriving in Guam who have transited a territory of the United States enroute to Guam exceeds 20 percent of all the inadmissible passengers arriving in Guam within any consecutive two-month period. Such rescission will be published in the **Federal Register**.

(ii) For the purposes of this section, the term *citizen of a country* as used in 8 CFR 212.1(e)(1) when applied to Taiwan refers only to residents of Taiwan who are in possession of Taiwan National Identity Cards and a valid Taiwan passport with a valid re-entry permit issued by the Taiwan Ministry of Foreign Affairs. It does not refer to any other holder of a Taiwan passport or a passport issued by the People's Republic of China.

* * * * *

Dated: June 10, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

Dated: June 21, 1994.

Mary A. Ryan,

Assistant Secretary of State for Consular Affairs, Department of State.

Dated: June 23, 1994.

Leslie M. Turner,

Assistant Secretary for Territorial and International Affairs, Department of the Interior.

[FR Doc 94–16965; Filed 7–12–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93–024–3]

Brucellosis Surveillance; MCI Reactor Prevalence Rates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations to eliminate the requirement that States maintain specified Market Cattle Identification (MCI) reactor prevalence rates to maintain their official classifications. We are instead requiring the States to successfully close (epidemiologically investigate and resolve) certain percentages of cases detected through the MCI program. We believe these amendments will better serve Federal and State animal health officials in their efforts to prevent the interstate spread of brucellosis.

EFFECTIVE DATE: August 12, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis Epidemiologist, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4918.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is an infectious disease of certain animals and humans. In its principal animal hosts, it is characterized by abortion and impaired fertility. Through a cooperative Federal-State effort, the United States is now approaching total eradication of the field strain *Brucella abortus* in domestic cattle and bison herds. As of June 1994, there were only 235 known infected

cattle and bison herds, and the U.S. Department of Agriculture (USDA) had declared 33 States, Puerto Rico, and the U.S. Virgin Islands free of the disease. Fewer than 400 new infected herds were identified last year.

The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine to prevent the spread of brucellosis.

On January 14, 1994, we published in the **Federal Register** (59 FR 2312–2316, Docket No. 93–024–1) a proposal to eliminate the requirement in the regulations that States meet specific MCI reactor prevalence rates to maintain their official classifications. We also proposed to require that to maintain their official classifications, States must successfully close a specified percentage of MCI reactor cases.

We solicited comments concerning our proposal for a 30-day comment period ending February 14, 1994. On February 11, 1994, we published in the **Federal Register** a notice extending the comment period to March 14, 1994 (59 FR 6593, Docket No. 93–024–2). We received four comments by that date, three from Federal veterinarians and one from the American Veterinary Medical Association (AVMA). We carefully considered all of the comments we received. They are discussed below:

The AVMA comment supported the proposal as written. The other three comments all suggested that language in a particular paragraph in the proposal be deleted.

The language in question occurs in the definition of "Class A State or area" in § 78.1(a)(2)(ii)(B)*(2)*, and is repeated in the definitions "Class B State or area," "Class C State or area," and "Class Free State or area." The issue at hand is what action a designated epidemiologist must take after determining that brucellosis reactors are present in a herd. The regulations require that such herds must be subjected to herd blood tests or quarantined unless:

(*2*) Evidence indicates that the brucellosis reactor is from a herd that no longer presents a risk of spreading brucellosis, or is from a herd that is unlikely to be infected with brucellosis. Such evidence could include, but is not limited to, situations where:

(*i*) The brucellosis reactor is traced back to a herd that has been sold for slaughter in entirety;

(*ii*) The brucellosis reactor is traced back to a herd that is certified brucellosis free and is 100-percent vaccinated; or,

(*iii*) The brucellosis reactor showed a low titer in the MCI test and is traced back to a dairy herd that is 100 percent vaccinated and has tested negative to the most recent brucellosis ring test required by this section for herds producing milk for sale.

Three commenters opposed inclusion of the language in (*i*), (*ii*), and (*iii*) that provides guidance to designated epidemiologists on how to determine that a herd where a positive MCI blood sample was collected no longer presents a risk of spreading brucellosis, or is unlikely to be infected with brucellosis.

The commenters made the point that designated epidemiologists are highly trained professionals who are responsible, among other duties, for determining when a herd situation presents a risk of spreading brucellosis. The commenters believe that designated epidemiologists are fully capable of determining what evidence is relevant to such a decision, and interpreting the evidence. As one commenter put it, "each individual situation should be evaluated with sound epidemiological principles which cannot be adequately enumerated by a 'predetermined list'."

We agree that no list of risk scenarios in the regulations, however extensive, could substitute for the professional judgment and experience of a designated epidemiologist. We rely on continuing education programs the Animal and Plant Health Inspection Service (APHIS) mandates for designated epidemiologists, and review of their decisions by other USDA epidemiologists, to ensure they make reasonable determinations with regard to brucellosis risks. We did not attempt to provide a "cookbook" list in the regulations to substitute for this system of professional judgment backed by continuing education and review by professional peers.

The proposed language cites three situations that *could* provide evidence that a herd that no longer presents a risk of spreading brucellosis, or is unlikely to be infected with brucellosis. These examples were provided by epidemiologists from their own experience as examples of frequently occurring situations where the risk of spreading brucellosis is mitigated. The proposed language specifically says that "evidence could include, but is not limited to" the described situations. The examples were provided not for the benefit of designated epidemiologists, who are well aware of their relevance, but for the benefit of members of the public who may be affected by the regulations. We believe it will aid public understanding of the regulations to see some examples of situations that could provide evidence that a herd with an MCI reactor no longer presents a risk of spreading brucellosis, or is unlikely to be infected with brucellosis.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Only State animal health agencies will be affected by this rule; it will have no effect on the private sector. State animal health officials will need to provide other States with information on only the MCI reactors detected each month instead of total numbers of MCI test cattle slaughtered. They will also need to maintain records of the numbers of MCI reactor cases that are successfully closed and report the percentage of successfully closed cases annually to APHIS. The States are already required to carry out the activities that constitute successful case closure.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with it; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 78.1 is amended as follows:

a. In the definition of *Class A State or area*, paragraph (a)(2)(ii) is revised to read as set forth below and paragraph (c) is removed.

b. In the definition of *Class B State or area*, paragraph (a)(2)(ii) is revised to read as set forth below and paragraph (c) is removed.

c. In the definition of *Class C State or area*, paragraph (a)(2)(ii) is revised to read as set forth below, paragraph (c) is removed, and paragraph (d) is redesignated as paragraph (c).

d. In the definition of *Class Free State or area*, paragraph (a)(2)(ii) is revised to read as set forth below and paragraph (c) is removed.

e. A new definition of *Successfully closed case* is added, in alphabetical order, to read as set forth below.

§ 78.1 Definitions.

* * * * *

Class A State or area. * * *

(a) * * *

(2) * * *

(ii) *Brucellosis reactors.*

(A) *Tracebacks.* At least 90 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin.

(B) *Successfully closed cases.* The State or area must successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12-consecutive-month period immediately prior to the most recent anniversary of the date the State or area was classified Class A. To successfully close an MCI reactor case, State representatives or APHIS representatives must conduct an epidemiologic investigation at the farm of origin within 15 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. Herd blood tests must be conducted or the herd must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test,

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 78.1 is amended as follows:

a. In the definition of *Class A State or area*, paragraph (a)(2)(ii) is revised to read as set forth below and paragraph (c) is removed.

b. In the definition of *Class B State or area*, paragraph (a)(2)(ii) is revised to read as set forth below and paragraph (c) is removed.

c. In the definition of *Class C State or area*, paragraph (a)(2)(ii) is revised to read as set forth below, paragraph (c) is removed, and paragraph (d) is redesignated as paragraph (c).

d. In the definition of *Class Free State or area*, paragraph (a)(2)(ii) is revised to read as set forth below and paragraph (c) is removed.

e. A new definition of *Successfully closed case* is added, in alphabetical order, to read as set forth below.

§ 78.1 Definitions.

* * * * *

Class A State or area. * * *

(a) * * *

(2) * * *

(ii) *Brucellosis reactors.*

(A) *Tracebacks.* At least 90 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin.

(B) *Successfully closed cases.* The State or area must successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12-consecutive-month period immediately prior to the most recent anniversary of the date the State or area was classified Class A. To successfully close an MCI reactor case, State representatives or APHIS representatives must conduct an epidemiologic investigation at the farm of origin within 15 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. Herd blood tests must be conducted or the herd must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test, unless a designated epidemiologist determines that:

(*1*) The brucellosis reactor is located in a herd in a different State than the State where the MCI blood sample was collected. In such cases a State representative or APHIS representative must give written notice of the MCI test results to the State animal health official in the State where the brucellosis reactor is located; or

(*2*) Evidence indicates that the brucellosis reactor is from a herd that no longer presents a risk of spreading brucellosis, or is from a herd that is unlikely to be infected with brucellosis. Such evidence could include, but is not limited to, situations where:

(*i*) The brucellosis reactor is traced back to a herd that has been sold for slaughter in entirety;

(*ii*) The brucellosis reactor is traced back to a herd that is certified brucellosis free and is 100-percent vaccinated; or

(*iii*) The brucellosis reactor showed a low titer in the MCI test and is traced back to a dairy herd that is 100 percent vaccinated and has tested negative to the most recent brucellosis ring test required by this section for herds producing milk for sale.

* * * * *

Class B State or area. * * *

(a) * * *

(2) * * *

(ii) *Brucellosis reactors.*

(A) *Tracebacks.* At least 80 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin.

(B) *Successfully closed cases.* The State or area must successfully close at least 90 percent of the MCI reactor cases traced to the farm of origin during the 12-consecutive-month period immediately prior to the most recent anniversary of the date the State or area was classified Class B. To successfully close an MCI reactor case, State representatives or APHIS representatives must conduct an epidemiologic investigation at the farm of origin within 30 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. Herd blood tests must be conducted or the herd must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test, unless a designated epidemiologist determines that:

(*1*) The brucellosis reactor is located in a herd in a different State than the State where the MCI blood sample was collected. In such cases a State representative or APHIS representative must give written notice of the MCI test results to the State animal health official in the State where the brucellosis reactor is located; or

(*2*) Evidence indicates that the brucellosis reactor is from a herd that no longer presents a risk of spreading brucellosis, or is from a herd that is unlikely to be infected with brucellosis. Such evidence could include, but is not limited to, situations where:

(*i*) The brucellosis reactor is traced back to a herd that has been sold for slaughter in entirety;

(*ii*) The brucellosis reactor is traced back to a herd that is certified brucellosis free and is 100-percent vaccinated; or

(*iii*) The brucellosis reactor showed a low titer in the MCI test and is traced back to a dairy herd that is 100 percent vaccinated and has tested negative to the most recent brucellosis ring test required by this section for herds producing milk for sale.

* * * * *

Class C State or area. * * *

(a) * * *

(2) * * *

(ii) *Brucellosis reactors.*

(A) *Tracebacks.* At least 80 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin.

(B) *Successfully closed cases.* The State or area must successfully close at least 90 percent of the MCI reactor cases traced to the farm of origin during the 12-consecutive-month period immediately prior to the most recent anniversary of the date the State or area was classified Class C. To successfully close an MCI reactor case, State representatives or APHIS representatives must conduct an epidemiologic investigation at the farm of origin within 30 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. Herd blood tests must be conducted or the herd must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test, unless a designated epidemiologist determines that:

(*1*) The brucellosis reactor is located in a herd in a different State than the State where the MCI blood sample was collected. In such cases a State representative or APHIS representative must give written notice of the MCI test results to the State animal health official in the State where the brucellosis reactor is located; or

(*2*) Evidence indicates that the brucellosis reactor is from a herd that no

longer presents a risk of spreading brucellosis, or is from a herd that is unlikely to be infected with brucellosis. Such evidence could include, but is not limited to, situations where:

(*i*) The brucellosis reactor is traced back to a herd that has been sold for slaughter in entirety;

(*ii*) The brucellosis reactor is traced back to a herd that is certified brucellosis free and is 100-percent vaccinated; or

(*iii*) The brucellosis reactor showed a low titer in the MCI test and is traced back to a dairy herd that is 100 percent vaccinated and has tested negative to the most recent brucellosis ring test required by this section for herds producing milk for sale.

* * * * *

Class Free State or area. * * *

(a) * * *

(2) * * *

(ii) *Brucellosis reactors.*

(A) *Tracebacks.* At least 90 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin.

(B) *Successfully closed cases.* The State or area must successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12-consecutive-month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free. To successfully close an MCI reactor case, State representatives or APHIS representatives must conduct an epidemiologic investigation at the farm of origin within 15 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. Herd blood tests must be conducted or the herd must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test, unless a designated epidemiologist determines that:

(*1*) The brucellosis reactor is located in a herd in a different State than the State where the MCI blood sample was collected. In such cases a State representative or APHIS representative must give written notice of the MCI test results to the State animal health official in the State where the brucellosis reactor is located; or

(*2*) Evidence indicates that the brucellosis reactor is from a herd that no longer presents a risk of spreading brucellosis, or is from a herd that is unlikely to be infected with brucellosis. Such evidence could include, but is not limited to, situations where:

(*i*) The brucellosis reactor is traced back to a herd that has been sold for slaughter in entirety;

(*ii*) The brucellosis reactor is traced back to a herd that is certified brucellosis free and is 100-percent vaccinated; or

(*iii*) The brucellosis reactor showed a low titer in the MCI test and is traced back to a dairy herd that is 100 percent vaccinated and has tested negative to the most recent brucellosis ring test required by this section for herds producing milk for sale.

* * * * *

Successfully closed case. Follow up of an MCI reactor traceback with an epidemiologic investigation which results in brucellosis testing or quarantine of the herd of origin, or a determination by a designated brucellosis epidemiologist that justification exists for not testing or quarantining the herd of origin.

* * * * *

Done in Washington, DC, this 7th day of July 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–16967 Filed 7–12–94; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 72, 74, 75, 150

RIN 3150–AE35

Licensee Submittal of Data in Computer-Readable Form

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to require certain licensees to submit data to the NRC in computer-readable format. The final rule streamlines the collection of nuclear material transaction data and increases the accuracy of the reported information. The final rule will save money for both NRC and licensees in the data collection process.

EFFECTIVE DATE: October 11, 1994.

FOR FURTHER INFORMATION CONTACT: Richard H. Gramann, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–8118.

SUPPLEMENTARY INFORMATION:

Background

The NRC has a major interest in the potential use for computer-readable submittal. This innovation not only can result in monetary savings, but also can increase efficiency and accuracy of data collection efforts. In the past, the NRC has permitted the use of computer-readable forms as well as the use of computer generated facsimiles of the printed forms. Many licensees now generate their own facsimiles. The latest revision of "Personal Computer Data Input for NRC Licensees" (Nuclear Materials Management and Safeguards System (NMMSS) Report D–24) contains specific procedures for submitting in computer-readable format: DOE/NRC Form 741, "Nuclear Material Transaction Report"; DOE/NRC Form 741A, "Nuclear Material Transaction Report (Continuation Page)"; DOE/NRC Form 740M, "Concise Note"; DOE/NRC Form 742, "Material Balance Report"; and DOE/NRC Form 742C, "Physical Inventory Listing." The amendments make mandatory the reporting in computer-readable format prescribed by the D–24 document. These amendments eliminate the need for paper forms, thus providing a cost saving for the NRC in satisfying its statutory and treaty obligations.

The amendments affect each licensee who transfers, receives, or adjusts the inventory, in any manner, of uranium or thorium source material of foreign origin by 1 kilogram or more. Each specific licensee who transfers or receives 1 gram or more of contained uranium-235, uranium-233, or plutonium would also be affected.

These amendments are intended only to take advantage of current computer technology and to make the data collection process more efficient and less costly. The Commission believes there will be minimal costs associated with the implementation of these amendments. Many licensees already have their material accounting automated and can generate computer-readable reports. For those licensees who have not yet automated their reporting, a diskette with the appropriate formats and user prompts may be obtained from the NRC to facilitate this process. Licensees may obtain a copy of the NMMSS report or the diskette by writing the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001.

On January 26, 1993 (58 FR 6098), the Commission published a proposed rule in the **Federal Register** to make mandatory licensee submittal in

computer-readable format. A 90-day comment period expired on April 26, 1993. Comments were received from nine respondents. Two comments were not in favor of the amendments, whereas the others expressed approval and encouragement to take advantage of today's technology. Several constructive suggestions were made and are included in the summary of public comments.

Summary of Public Comment

A summary of the public comments and a clarifying response follows:

(1) *Continued requirement for hard copy forms.* Several respondents expressed the continued need for hard copy forms. One commenter stated their material control and accounting (MC&A) program is based upon a "paper trail" utilizing the DOE/NRC Form 741. Another commenter stated the continued requirement for submitting hard copies to various Department of Energy contractors. Another commenter raised the question of storage of records for a period of time specified by Commission regulations. Concern also was expressed regarding secondary distribution requirements of hard copy DOE/NRC Form 741 for certain domestic transactions and all import and export transactions. Finally one commenter stated the current requirements, which provide for both computer-readable and hard copy, are the more acceptable.

The final amendments require licensees to submit computer-readable reports to the NRC in a format prescribed in NMMSS Report D–24. The amendments do not preclude other formats used for other purposes. Many licensees already generate facsimile reports for satisfying given requirements. Licensees that have no capability to produce these facsimiles may use the diskette provided by the NRC which can generate a facsimile (either hard copy or disk file for storage) of all forms subject to these amendments. With regard to records retention, the NRC permits the storage of records on electronic media with the capability for producing legible, accurate, and complete records during the required retention period. This would include computer generated facsimiles of forms subject to these amendments. For the reporting system to operate efficiently, computer-readable submittal for NRC's use is necessary.

(2) *Accepting shipper's values.* A respondent suggested that the action code and date on the computer-readable DOE/NRC Form 741 for a shipment can be easily changed by the recipient to reflect accepting shipper's values.

computer-readable format. A 90-day comment period expired on April 26, 1993. Comments were received from nine respondents. Two comments were not in favor of the amendments, whereas the others expressed approval and encouragement to take advantage of today's technology. Several constructive suggestions were made and are included in the summary of public comments.

Summary of Public Comment

A summary of the public comments and a clarifying response follows:

(1) *Continued requirement for hard copy forms.* Several respondents expressed the continued need for hard copy forms. One commenter stated their material control and accounting (MC&A) program is based upon a "paper trail" utilizing the DOE/NRC Form 741. Another commenter stated the continued requirement for submitting hard copies to various Department of Energy contractors. Another commenter raised the question of storage of records for a period of time specified by Commission regulations. Concern also was expressed regarding secondary distribution requirements of hard copy DOE/NRC Form 741 for certain domestic transactions and all import and export transactions. Finally one commenter stated the current requirements, which provide for both computer-readable and hard copy, are the more acceptable.

The final amendments require licensees to submit computer-readable reports to the NRC in a format prescribed in NMMSS Report D–24. The amendments do not preclude other formats used for other purposes. Many licensees already generate facsimile reports for satisfying given requirements. Licensees that have no capability to produce these facsimiles may use the diskette provided by the NRC which can generate a facsimile (either hard copy or disk file for storage) of all forms subject to these amendments. With regard to records retention, the NRC permits the storage of records on electronic media with the capability for producing legible, accurate, and complete records during the required retention period. This would include computer generated facsimiles of forms subject to these amendments. For the reporting system to operate efficiently, computer-readable submittal for NRC's use is necessary.

(2) *Accepting shipper's values.* A respondent suggested that the action code and date on the computer-readable DOE/NRC Form 741 for a shipment can be easily changed by the recipient to reflect accepting shipper's values.

The diskette that is available from the NRC includes a program for editing the file of a computer-readable DOE/NRC Form 741 to edit the action code and date to reflect accepting shipper's values.

(3) *Telecommunication of licensee submittal.* Four respondents urged the transmission of the computer-readable files over a modem instead of using diskettes.

There is no disagreement with the commenters that modem transmission is desirable. Transmitting files by modem to satisfy reporting requirements is an option of these amendments. The NRC will work with any licensee desiring this option.

(4) *Revision of guidance documents.* Several respondents noted the need to revise the guidance documents: NUREG/BR–0006, "Instructions for Completing Nuclear Material Transaction Reports and Concise Note Forms"; NUREG/BR–0007, "Instructions for Completing Material Balance Report and Physical Inventory Listing"; and NMMSS Report D–24, "Personal Computer Data Input for NRC Licensees," to be compatible with the submittal of computer-readable formats.

NMMSS Report D–24 has been revised to include all the forms required in these amendments. The other guidance documents will be revised, as needed, to reflect the use of computer-readable forms to replace the paper forms.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in the categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0003, –0057, –0004, and –0058.

Because the rule will eliminate the need for certain paper forms, the public burden for this collection of information is expected to be reduced. The reduction in burden for the DOE/NRC Forms 741, 741A, 742, and 740M is estimated to average .25 hours per response. The reduction in burden for the DOE/NRC Form 742C is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for further reducing reporting burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0003, –0004, –0057, and –0058), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

These final amendments have no significant impact on State and local governments and geographical regions. They have a significant positive impact on the efficiency and accuracy of the data collection process. The final amendments do not have a significant impact on health, safety, and the environment. This rule requires that all licensees submit computer-readable reports regarding special nuclear material transactions. The NRC will realize a significant cost savings. Licensees have already demonstrated their computer expertise by generating near-perfect copies of the current forms on Laser Jet printers. Generating computer-readable data in accordance with a prescribed format offers less burden than producing these near-perfect copies. The rule will facilitate the collection of data by the NRC to satisfy its statutory and treaty obligations. This constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this change does not have a significant economic impact on a substantial number of small entities. This final rule affects all licensees required to report special nuclear material transactions using DOE/NRC Forms 741, 741A, 742, 742C, and 740M. Owners of nuclear power plants and fuel fabrication plants have already automated most, if not all, of their material accounting program and can easily generate computer-readable reports. Other affected licensees include laboratories, universities, colleges, medical clinics and hospitals, some of which may fall within the scope of the NRC's size standards for determination of which NRC licensees qualify as small entities (December 9, 1985; 50 FR 50241).

One commenter stated that the proposed rule would increase the burden for licensees with manual accountability systems by requiring manual entry of data to diskette and a hard-copy data check for accuracy. Entities that may not yet have automated their reporting may obtain a diskette from the NRC to assist them in satisfying their reporting requirements. No respondent has stated a lack of computer capability to use such a diskette, and the likelihood of such a need is remote in view of the types of affected licensees. In addition, NRC staff experience with computer readable transfer of information indicates less burden and more efficiency for licensees and the NRC than transfer of hard-copy information. For these reasons, any initial cost associated with preparation of computer readable reports should be minimal and lead to a reduction in reporting burden for all affected licensees.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 150

Criminal penalties, Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 40, 72, 74, 75, and 150.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, Sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 40.64, paragraph (a) is revised to read as follows:

§ 40.64 Reports.

(a) Except as specified in paragraphs (d) and (e) of this section, each specific licensee who transfers, receives, or adjusts the inventory, in any manner, of uranium or thorium source material of foreign origin by 1 kilogram or more or who imports or exports 1 kilogram of uranium or thorium source material of any origin shall complete a Nuclear Material Transaction Report in computer-readable format in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which has been previously submitted in paper form.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

3. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, Sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

4. In § 72.76, paragraph (a) is revised to read as follows:

§ 72.76 Material status reports.

(a) Except as provided in paragraph (b) of this section, each licensee shall complete in computer-readable format and submit to the Commission a material status report in accordance with instructions (NUREG/BR–0007 and NMMSS Report D–24 "Personal Computer Data Input for NRC

Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. These reports provide information concerning the special nuclear material contained in the spent fuel possessed, received, transferred, disposed of, or lost by the licensee. Material status reports must be made as of March 31 and September 30 of each year and filed within 30 days after the end of the period covered by the report. The Commission may, when good cause is shown, permit a licensee to submit material status reports at other times. The Commission's copy of this report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 742 which has been previously submitted in paper form.

* * * * *

5. Section 72.78 is revised to read as follows:

§ 72.78 Nuclear material transfer reports.

(a) Except as provided in paragraph (b) of this section, whenever the licensee transfers or receives spent fuel, the licensee shall complete in computer-readable format a Nuclear Material Transaction Report in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24, "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. Each ISFSI licensee who receives spent fuel from a foreign source shall complete both the supplier's and receiver's portion of the Nuclear Material Transaction Report, verify the identity of the spent fuel, and indicate the results on the receiver's portion of the form. These prescribed computer-readable forms replace the DOE/NRC Form 741 which has been previously submitted in paper form.

(b) Any licensee who is required to submit Nuclear Material Transactions Reports pursuant to § 75.34 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit the reports only as provided in that section instead of as provided in paragraph (a) of this section.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

6. The authority citation for part 74 continues to read as follows:

Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. These reports provide information concerning the special nuclear material contained in the spent fuel possessed, received, transferred, disposed of, or lost by the licensee. Material status reports must be made as of March 31 and September 30 of each year and filed within 30 days after the end of the period covered by the report. The Commission may, when good cause is shown, permit a licensee to submit material status reports at other times. The Commission's copy of this report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 742 which has been previously submitted in paper form.

* * * * *

5. Section 72.78 is revised to read as follows:

§ 72.78 Nuclear material transfer reports.

(a) Except as provided in paragraph (b) of this section, whenever the licensee transfers or receives spent fuel, the licensee shall complete in computer-readable format a Nuclear Material Transaction Report in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24, "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. Each ISFSI licensee who receives spent fuel from a foreign source shall complete both the supplier's and receiver's portion of the Nuclear Material Transaction Report, verify the identity of the spent fuel, and indicate the results on the receiver's portion of the form. These prescribed computer-readable forms replace the DOE/NRC Form 741 which has been previously submitted in paper form.

(b) Any licensee who is required to submit Nuclear Material Transactions Reports pursuant to § 75.34 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit the reports only as provided in that section instead of as provided in paragraph (a) of this section.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

6. The authority citation for part 74 continues to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

7. In § 74.13, paragraph (a)(1) is revised to read as follows:

§ 74.13 Material status reports.

(a)(1) Each licensee authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall complete and submit in computer-readable format material balance reports concerning special nuclear material received, produced, possessed, transferred, consumed, disposed of, or lost by it. These prescribed computer-readable reports replace the DOE/NRC Form 742 which has been previously submitted in paper form. Each nuclear reactor licensee, as defined in §§ 50.21 and 50.22 of this chapter, also shall prepare in computer-readable format a statement of the composition of the ending inventory. The inventory composition report must be submitted with each material balance report. This prescribed computer-readable report replaces the DOE/NRC Form 742C which has been previously submitted in paper form. Each licensee shall prepare and submit the reports described in this paragraph in accordance with instructions (NUREG/BR–0007 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. Each licensee shall compile a report as of March 31 and September 30 of each year and file it within 30 days after the end of the period covered by the report. The Commission may permit a licensee to submit the reports at other times when good cause is shown.

* * * * *

8. Section 74.15 is revised to read as follows:

§ 74.15 Nuclear material transfer reports.

(a) Each licensee who transfers and each licensee who receives special nuclear material shall complete in computer-readable format a Nuclear Material Transaction Report. This should be done in accordance with instructions whenever the licensee transfers or receives a quantity of special nuclear material of 1 gram or more of contained uranium-235, uranium-233, or plutonium. Copies of these instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees") may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. This prescribed computer-readable format replaces the DOE/NRC Form 741 which has been previously submitted in paper form.

(b) Each licensee who receives 1 gram or more of contained uranium-235, uranium-233, or plutonium from a foreign source shall:

(1) Complete in computer-readable format both the supplier's and receiver's portion of the Nuclear Material Transaction Report;

(2) Perform independent tests to assure the accurate identification and measurement of the material received, including its weight and enrichment; and

(3) Indicate the results of these tests on the receiver's portion of the form.

(c) Any licensee who is required to submit inventory change reports pursuant to § 75.34 of this chapter (pertaining to implementation of the US/International Atomic Energy Agency (IAEA) Safeguards Agreement) shall prepare and submit these reports only as provided in that section (instead of as provided in paragraphs (a) and (b) of this section).

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

9. The authority citation for part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

10. Section 75.31 is revised to read as follows:

§ 75.31 General requirements.

Each licensee who has been given notice by the Commission in writing that its installation has been identified under the Agreement shall make an initial inventory report in computer-readable format, and thereafter shall make accounting reports, with respect to such installation and, in addition, licensees who have been given notice, pursuant to § 75.41, that their installations are subject to the application of IAEA safeguards, shall make the special reports described in

§ 75.36. These reports must be based on the records kept in accordance with § 75.21. At the request of the Commission, the licensee shall amplify or clarify any report with respect to any matter relevant to implementation of the Agreement. Any amplification or clarification must be in writing and must be submitted, to the address specified in the request, within twenty (20) days or other time as may be specified by the Commission.

11. In § 75.32, paragraph (b) is revised to read as follows:

§ 75.32 Initial inventory report.

* * * * *

(b) The initial inventory report, to be submitted to the Commission in computer-readable format, in accordance with instructions (NUREG/BR–0007 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"), must show the quantities of nuclear material contained in or at an installation as of the initial inventory reporting date. The information in the initial inventory report may be based upon the licensee's book record.

* * * * *

12. In § 75.33, paragraph (a) is revised to read as follows:

§ 75.33 Accounting reports.

(a)(1) The accounting reports for each IAEA material balance area must consist of

(i) Computer-readable Nuclear Material Transaction Reports (Inventory Change Reports) and

(ii) Computer-readable Material Balance Reports showing the material balance based on a physical inventory of nuclear material actually present.

(2) These prescribed computer-readable forms replace the following forms which have been submitted in paper form:

(i) The DOE/NRC Form 741; and

(ii) The DOE/NRC Form 742.

* * * * *

13. Section 75.34 is revised to read as follows:

§ 75.34 Inventory change reports.

(a) Nuclear Material Transaction Reports (Inventory Change Reports) in computer-readable format to be completed in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"), must specify identification and batch data for each batch of nuclear material, the date of the inventory change, and, as appropriate,

(1) The originating IAEA material balance area or the shipper; and

(2) The receiving IAEA material balance area or the recipient.

Each licensee who receives special nuclear material from a foreign source shall complete both the supplier's and receiver's portion of the form.

(b) Nuclear Material Transactions Reports (Inventory Change Reports), when appropriate, must be accompanied by computer-readable Concise Notes, completed in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. This prescribed computer-readable format replaces the DOE/NRC Form 740M which has been previously submitted in paper form. This Concise Note is used in:

(1) Explaining the inventory changes on the basis of the operating records provided for under § 75.23; and

(2) Describing, to the extent specified in the license conditions, the anticipated operational program for the installation, including particularly, but not exclusively, the schedule for taking physical inventory.

14. In § 75.35, paragraph (a) is revised to read as follows:

§ 75.35 Material status reports.

(a) A material status report must be submitted for each physical inventory which is taken as part of the material accounting and control procedures required by § 75.21. The material status report must include a computer-readable Material Balance Report and a computer-readable Physical Inventory Listing which lists all batches separately and specifies material identification and batch data for each batch. When appropriate, the material status report must be accompanied by a computer-readable Concise Note. The reports described in this section must be prepared and submitted in accordance with instructions (NUREG/BR–0007, NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. These prescribed computer-readable formats replace the DOE/NRC Forms 742, 742C, and 740M which have been submitted in paper form.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

15. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

16. In § 150.16, paragraph (a) is revised to read as follows:

§ 150.16 Submission to Commission of nuclear material transfer reports.

(a) Each person who transfers and each person who receives special nuclear material pursuant to an Agreement State license shall complete and submit in computer-readable format Nuclear Material Transaction Reports in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees") whenever transferring or receiving a quantity of special nuclear material of 1 gram or more of contained uranium-235, uranium-233, or plutonium. Each person who transfers this material shall submit in accordance with instructions the computer-readable format promptly after the transfer takes place. Each person who receives special nuclear material shall submit in accordance with instructions the computer-readable format within ten (10) days after the special nuclear material is received. Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. These prescribed computer-readable formats replace the DOE/NRC Form 741 which have been previously submitted in paper form.

* * * * *

17. In § 150.17, paragraph (a) is revised to read as follows:

§ 150.17 Submission to Commission of source material reports.

(a) Except as specified in paragraph (d) of this section and § 150.17a, each person who, pursuant to an Agreement State specific license, transfers or receives or adjusts the inventory in any manner by 1 kilogram or more of uranium or thorium source material of foreign origin or who imports 1 kilogram or more of uranium or thorium source material of any origin shall complete and submit in computer-readable format Nuclear Material Transaction Reports in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. Each person who receives the material shall submit in accordance with instructions the computer-readable format within ten (10) days after the material is received.

* * * * *

Dated at Rockville, MD, this 7th day of July, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–16941 Filed 7–12–94; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1209

RIN 2700–AB70

Boards and Committees

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending subpart 1209.4, "Inventions and Contributions Board," to reflect the current organizational structure. This regulation describes the functions, authority, and membership of the NASA Inventions and Contributions Board.

EFFECTIVE DATE: June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Paul A. Curto, 202–358–2279.

SUPPLEMENTARY INFORMATION: NASA published 14 CFR Part 1209, subpart 1209.4, on January 31, 1986 (51 FR 3945). This amendment revises section 1209.403 to make an organizational change and makes editorial corrections to section 1209.402.

Since this action is internal and administrative in nature and does not effect existing regulations, no public comment period is required.

NASA has determined that this regulation does not constitute a major rule for the purposes of Executive Order 12866, and it will not have a significant

receives or adjusts the inventory in any manner by 1 kilogram or more of uranium or thorium source material of foreign origin or who imports 1 kilogram or more of uranium or thorium source material of any origin shall complete and submit in computer-readable format Nuclear Material Transaction Reports in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. Each person who receives the material shall submit in accordance with instructions the computer-readable format within ten (10) days after the material is received.

* * * * *

Dated at Rockville, MD, this 7th day of July, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–16941 Filed 7–12–94; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1209

RIN 2700–AB70

Boards and Committees

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending subpart 1209.4, "Inventions and Contributions Board," to reflect the current organizational structure. This regulation describes the functions, authority, and membership of the NASA Inventions and Contributions Board.

EFFECTIVE DATE: June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Paul A. Curto, 202–358–2279.

SUPPLEMENTARY INFORMATION: NASA published 14 CFR Part 1209, subpart 1209.4, on January 31, 1986 (51 FR 3945). This amendment revises section 1209.403 to make an organizational change and makes editorial corrections to section 1209.402.

Since this action is internal and administrative in nature and does not effect existing regulations, no public comment period is required.

NASA has determined that this regulation does not constitute a major rule for the purposes of Executive Order 12866, and it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 1209

Boards and committees, Organizations and functions (Government agencies).

PART 1209—BOARDS AND COMMITTEES

For reasons set forth in the Preamble, 14 CFR Part 1209, subpart 1209.4, is amended as follows:

Subpart 4—Inventions and Contributions Board

1. The authority citation for subpart 1209.4 of 14 CFR part 1209 continues to read as follows:

Authority: 42 U.S.C. 2457(f) and 2458.

2. In § 1209.402, paragraph (c)(1) is revised to read as follows:

§ 1209.402 Responsibilities.

* * * * *

(c) *Monetary awards for scientific and technical contributions.* (1) Under the authority of 42 U.S.C. 2458 and pursuant to 14 CFR Part 1240, the Board will receive and evaluate each application for award for any scientific or technical contribution to the Administration which is determined to have significant value in the conduct of aeronautical and space activities, will accord each applicant an opportunity for a hearing upon such application, and will then transmit to the Administrator its recommendation as to the amount of the monetary award and terms of the award, if any, to be made for such contribution.

* * * * *

3. § 1209.403 is revised to read as follows:

§ 1209.403 Organizational location.

The Board is established within the Office of Policy Coordination and International Relations.

Dated: June 28, 1994.

Daniel S. Goldin,

Administrator.

[FR Doc. 94–16872 Filed 7–12–94; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 5

RIN 1512–AB22

Agreement Between the United States (US) and the European Union (EU): Geographical Designations

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Department of the Treasury.

ACTION: Interpretation of agency regulations.

SUMMARY: The purpose of this document is to inform industry members and the public of an ATF Ruling implementing a recently negotiated distilled spirits agreement between the United States (US) and the European Union (EU).

DATES: The ATF Ruling reproduced in this document became effective on June 9, 1994.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to a bilateral agreement, the United States has agreed to restrict, within its regulatory framework of 27 CFR 5.22, the use of the product designations "Scotch whisky," "Irish whisky/Irish whiskey," "Cognac," "Armagnac," "Calvados," and "Brandy de Jerez" to distilled spirits products produced in certain Member States of the EU. Under the agreement, the EU agreed to restrict, within its regulatory framework of Council Regulation (EU) No. 1576/89, the use of the product designations "Tennessee whisky/Tennessee whiskey," "Bourbon whisky/Bourbon whiskey," and "Bourbon" to distilled spirits products of the United States. In both situations, the products remain subject to all of the labeling requirements of the United States and the EU, respectively.

In implementing the bilateral agreement, the United States believes that an administrative interpretation of the existing regulations is sufficient to afford the restrictive recognition required by the agreement for "Armagnac," "Calvados," and "Brandy de Jerez." The reference to administrative measures in the agreement authorizes the ruling approach for implementing the agreement.

The regulations currently provide restrictive recognition to "Irish whisky/

Irish whiskey," "Scotch whisky," and "Cognac."

The ruling will appear in a future issue of the ATF bulletin. The full and exact text of the ATF Ruling follows for the information and reference of the industry and the public.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

ATF Ruling 94–5

27 CFR 5.22(k)(3): Class 11; geographical designations.

The requirements in 27 CFR 5.22(k)(3) provide that geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. The names "Armagnac," "Calvados," and "Brandy de Jerez" are geographical names within section 5.22(k)(3) and shall not apply to distilled spirits products other than those produced in the particular place or region indicated by such names. Further, such "Armagnac" (France), "Calvados" (France), and "Brandy de Jerez" (Spain) must be produced in accordance with the regulations of the European Union and the laws of the Member States in which those products originate.

In recent negotiations concluding in an exchange of letters between the United States (US) and European Union (EU) regarding distilled spirits, the US agreed to restrict, within its regulatory framework of 27 CFR 5.22 (or equivalent successor regulation) the use of the product designations "Armagnac," "Calvados," "Cognac," "Brandy de Jerez," "Irish whisky/Irish whiskey," and "Scotch whisky" to distilled spirits products of the Member States of the EU, produced in compliance with Council Regulation (EU) No. 1576/89 and with the laws of the Member States in which those products originate. Further, it is recognized that these products shall continue to be subject to all of the labeling requirements of the US for products imported into the US.

In like manner, the EU agreed to restrict, within its regulatory framework of Council Regulation (EU) No. 1576/89, Article 11 (or equivalent successor regulation), the use of the product designations "Bourbon," "Bourbon whisky/Bourbon whiskey," and "Tennessee whisky/Tennessee whiskey," to distilled spirits products of the US, produced in compliance with the laws and regulations (27 CFR 5.22 or equivalent successor regulation) of the US. Further, it is recognized that these products shall continue to be subject to all of the labeling requirements of the EU for products imported into the EU.

The names "Cognac," "Irish whisky/Irish whiskey," and "Scotch whisky" are already restricted to products of France, Republic of Ireland or in Northern Ireland, and Scotland, respectively, by the standard of identity regulations for distilled spirits in 27 CFR 5.22.

Section 5.22(k)(3) of the distilled spirits regulations establishes a standard of identity for products having geographical designations. Under this section, geographical names that are not distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name.

Held: The names "Armagnac," "Calvados," and "Brandy de Jerez" are geographical designations within section 5.22(k)(3) and shall not apply to distilled spirits products other than those produced in the particular place or region indicated by such name. Further, such "Armagnac" (France), "Calvados" (France), and "Brandy de Jerez" (Spain) must be produced in accordance with regulations of the EU and the laws of the Member States in which those products originate.

Held further: "Armagnac," "Calvados," "Cognac," "Brandy de Jerez," "Irish whisky/Irish whiskey," and "Scotch whisky" imported into the US shall continue to be subject to all of the labeling requirements for distilled spirits under 27 CFR Part 5.

July 6, 1994.

Daniel R. Black,

Acting Director.

[FR Doc. 94–16940 Filed 7–12–94; 8:45 am]

BILLING CODE 4810–31–P

Office of the Secretary

31 CFR Parts 51 and 52

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: In view of the repeal of the Revenue Sharing Act, 31 CFR Part 51, "Financial Assistance to Local Governments," and 31 CFR Part 52, "Antirecession Fiscal Assistance to State, Territorial and Local Governments," are being removed.

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas P. O'Malley, Director, Management Programs Directorate, Room 6100, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Telephone Number: (202) 622–0510.

SUPPLEMENTARY INFORMATION: Title XIV of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272 (COBRA), provided for the repeal of the Revenue Sharing Act (31 U.S.C. 6701–6724) effective October 18, 1986. The operations of the Office of Revenue Sharing ceased on the last day of Fiscal Year 87.

Therefore, in accordance with Treasury Order 101–17, "Disestablishment of the Office of Revenue Sharing and Reorganization of Domestic Finance Functions," dated March 24, 1987, which delegated authority for the orderly disestablishment of the Office of Revenue Sharing, 31 CFR Part 51, "Financial Assistance to Local Governments," and 31 CFR Part 52, "Antirecession Fiscal Assistance to State, Territorial and Local Governments," are removed.

Dated: June 29, 1994.

George Muñoz,

Assistant Secretary (Management)/Chief.

[FR Doc. 94–16987 Filed 7–12–94; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840-AA96

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: This document corrects errors in the final regulations for the Federal Family Education Loan Program published in the **Federal Register** on May 17, 1994 (59 FR 25744). The document published on May 17, 1994 contained various corrections and technical changes to the final regulations published on December 18, 1992 (57 FR 60280). However, several amendments included in the May 17, 1994 document did not reflect the publication of intervening amendments. This document therefore corrects the May 17, 1994 final regulations by removing these amendments.

EFFECTIVE DATE: This correction is effective May 17, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Moran or Patricia Beavan, Policy Section, Loans Branch, Policy Development Division, Policy, Training, and Analysis Service, Department of Education, 400 Maryland Avenue SW., (room 4310, ROB–3) Washington, DC 20202. Telephone 202–708–8242. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: July 7, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The following corrections are made in FR Doc. 94-11656, published on May 17, 1994 (59 FR 25744):

1. On page 25745, columns 2 and 3, the amendments to § 682.202 in item 7 are removed.

2. On page 25746, column 3, the amendments to § 682.402 in item 17 are removed.

3. On page 25747, column 1, in the amendments to § 682.410 in item 20, remove "; in paragraph (b)(6)(iii)(A) before the semicolon, add ', unless the notice was previously sent pursuant to paragraph (b)(5)(ii) of this section' ".

4. On page 25747, column 2, the amendments to § 682.413 in item 22 are removed.

[FR Doc. 94–16904 Filed 7–12–94; 8:45 am]

BILLING CODE 4000–01–P

POSTAL SERVICE

39 CFR Part 266

Revision of Regulations To Exempt Privacy Act Systems of Records

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Postal Service regulations exempt certain systems of records that it maintains from certain provisions of the Privacy Act. This rule does not alter past application of exemptions but merely provides an explanation of the reasons for applying specific exemptions to certain systems of records.

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Officer, (202) 268–2924.

May 17, 1994 final regulations by removing these amendments.

EFFECTIVE DATE: This correction is effective May 17, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Moran or Patricia Beavan, Policy Section, Loans Branch, Policy Development Division, Policy, Training, and Analysis Service, Department of Education, 400 Maryland Avenue SW., (room 4310, ROB–3) Washington, DC 20202. Telephone 202–708–8242. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: July 7, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The following corrections are made in FR Doc. 94-11656, published on May 17, 1994 (59 FR 25744):

1. On page 25745, columns 2 and 3, the amendments to § 682.202 in item 7 are removed.

2. On page 25746, column 3, the amendments to § 682.402 in item 17 are removed.

3. On page 25747, column 1, in the amendments to § 682.410 in item 20, remove "; in paragraph (b)(6)(iii)(A) before the semicolon, add ', unless the notice was previously sent pursuant to paragraph (b)(5)(ii) of this section' ".

4. On page 25747, column 2, the amendments to § 682.413 in item 22 are removed.

[FR Doc. 94–16904 Filed 7–12–94; 8:45 am]

BILLING CODE 4000–01–P

POSTAL SERVICE

39 CFR Part 266

Revision of Regulations To Exempt Privacy Act Systems of Records

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Postal Service regulations exempt certain systems of records that it maintains from certain provisions of the Privacy Act. This rule does not alter past application of exemptions but merely provides an explanation of the reasons for applying specific exemptions to certain systems of records.

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Officer, (202) 268–2924.

SUPPLEMENTARY INFORMATION: Postal Service regulations (39 CFR 266.9) exempt certain systems of records from specific provisions of the Privacy Act. This rule amends those regulations to include the reasons for applying the exemptions. Those reasons were stated in the preamble of the notice of proposed rulemaking at the time the Postal Service adopted the exemptions. 40 FR 37227 (August 26, 1975).

The proposed rule with invitation to comment was published in the **Federal Register**. 59 FR 17749 (April 14, 1994). No comments were received.

List of Subjects in 39 CFR Part 266

Privacy.

For the reasons set out in this document, the Postal Service amends part 266 of 39 CFR as follows:

PART 266—PRIVACY OF INFORMATION

1. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. Section 266.9 is revised to read as follows:

§ 266.9 Exemptions.

(a) Subsections 552a(j) and (k) of title 5, U.S.C., empower the Postmaster General to exempt systems of records meeting certain criteria from various other subsections of section 552a. With respect to systems of records so exempted, nothing in this part shall require compliance with provisions hereof implementing any subsections of section 552a from which those systems have been exempted.

(b) At paragraph (b)(1) of this section is a summary of the Act's provisions for which exemption is claimed pursuant to, and to the extent permitted by, subsections 552a(j) and (k) of title 5, U.S.C., for some systems of records. Paragraphs (b)(2) through (6) of this section identify the exempted systems of records, the exemptions applied to each, and the reasons for the exemptions:

(1) *Explanation of the Act's provisions for which an exemption is claimed in the systems discussed below.* (i) Subsection (c)(3) requires an agency to make available to the individual named in the records an accounting of each disclosure of records.

(ii) Subsection (c)(4) requires an agency to inform any person or other agency to which a record has been disclosed of any correction or notation of dispute the agency has made to the record in accordance with subsection (d) of the Act.

(iii) Subsection (d)(1)–(4) requires an agency to permit an individual to gain access to records about the individual, to request amendment of such records, to request a review of an agency decision not to amend such records, and to provide a statement of disagreement about a disputed record to be filed and disclosed with the disputed record.

(iv) Subsection (e)(1) requires an agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose required by statute or executive order of the President.

(v) Subsection (e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs.

(vi) Subsection (e)(3) requires an agency to inform each person whom it asks to supply information of the authority under which the information is sought, the purposes for which the information will be used, the routine uses that may be made of the information, whether disclosure is mandatory or voluntary, and the effects of not providing the information.

(vii) Subsection (e)(4) (G) and (H) requires an agency to publish a **Federal Register** notice of its procedures whereby an individual can be notified upon request whether the system of records contains information about the individual, how to gain access to any record about the individual contained in the system, and how to contest its content.

(viii) Subsection (e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual.

(ix) Subsection (e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(x) Subsection (f) requires an agency to establish procedures whereby an individual can be notified upon request if any system of records named by the individual contains a record pertaining to the individual, obtain access to the record, and request amendment.

(xi) Subsection (g) provides for civil remedies if an agency fails to comply with the access and amendment

provisions of subsections (d)(1) and (d)(3), and with other provisions of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

(xii) Subsection (m) requires an agency to cause the requirements of the Act to be applied to a contractor operating a system of records to accomplish an agency function.

(2) *Inspection Requirements—Investigative File System, USPS 080.010; Inspection Requirements—Mail Cover Program, USPS 080.020.* These systems of records are exempt from 5 U.S.C. 552a (c) (3) and (4), (d)(1)–(4), (e)(1)–(3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g), and (m). The reasons for exemption follow:

(i) Disclosure to the record subject pursuant to subsections (c)(3), (c)(4), or (d)(1)–(4) could (A) Alert subjects that they are targets of an investigation or mail cover; (B) alert subjects of the nature and scope of the investigation, and of evidence obtained; (C) enable the subject of an investigation to avoid detection or apprehension; (D) subject confidential sources, witnesses, and law enforcement personnel to harassment or intimidation if their identities were released to the target of an investigation; (E) constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation; (F) intimidate potential witnesses and cause them to be reluctant to offer information; (G) lead to the improper influencing of witnesses, the destruction or alteration of evidence yet to be discovered, the fabrication of testimony, or the compromising of classified material; and (H) seriously impede or compromise law enforcement, mail cover, or background investigations that might involve law enforcement aspects as a result of the above.

(ii) Application of subsections (e)(1) and (e)(5) is impractical because the relevance, necessity, or correctness of specific information might be established only after considerable analysis and as the investigation progresses. As to relevance (subsection (e)(1)), effective law enforcement requires the keeping of information not relevant to a specific Postal Service investigation. Such information may be kept to provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the Postal Inspection Service and/or other agencies. As to accuracy (subsection (e)(5)), the correctness of records sometimes can be established only in a court of law.

(iii) Application of subsections (e)(2) and (e)(3) would require collection of information directly from the subject of a potential or ongoing investigation. The subject would be put on alert that he or she is a target of an investigation or mail cover, enabling avoidance of detection or apprehension, thereby seriously compromising law enforcement, mail cover, or background investigations involving law enforcement aspects. Moreover, in certain circumstances the subject of an investigation is not required to provide information to investigators, and information must be collected from other sources.

(iv) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the individual access and amendment provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(v) Application of subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(vi) The provisions of subsection (g) do not apply because exemption from the provisions of subsection (d) renders the provisions on suits to enforce subsection (d) inapplicable.

(vii) If one of these systems of records is operated in whole or in part by a contractor, the exemptions claimed herein shall remain applicable to it (subsection (m)).

(3) *Personnel Records—Preemployment Investigation Records, USPS 120.110; Personnel Records—Postmaster Selection Program Records, USPS 120.130.* These systems of records are exempt from 5 U.S.C. 552a(d)(1)–(4) and (e)(1) to the extent that information in the system is subject to exemption under 5 U.S.C. 552a(k)(5) as relating to the identity of a source who furnished information to the government in confidence as a part of an investigation conducted solely for the purpose of determining suitability, eligibility, or qualifications of an individual for employment. The reasons for exemption follow:

(i) During its investigation and evaluation of an applicant for a position, the Postal Service contacts individuals who, without an assurance of anonymity, would refuse to provide information concerning the subject of the investigation. If a record subject were given access pursuant to subsection (d)(1)–(4), the promised confidentiality would be breached and the confidential source would be identified. The result would be restriction of the free flow of information vital to a determination of an individual's qualifications and suitability for appointment to or continued occupancy of his position.

(ii) In collecting information for investigative and evaluative purposes, it is impossible to determine in advance what information might be of assistance in determining the qualifications and suitability of an individual for appointment. Information that seems irrelevant, when linked with other information, can sometimes provide a composite picture of an individual that assists in determining whether that individual should be appointed to or retained in a position. For this reason, exemption from subsection (e)(1) is claimed.

(4) *Personnel Records—Personnel Research and Test Validation Records, USPS 120.120; Personnel Records—Career Development and Training Records, USPS 120.152.* These systems of records are exempt from 5 U.S.C. 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(6) as relating to the compromise of the objectivity or fairness of the testing or examination process. The reasons for exemption follow:

(i) These systems contain questions and answers to standard testing materials, the disclosure of which would compromise the fairness of the future use of these materials. It is not feasible to develop entirely new examinations after each administration as would be necessary if questions or answers were available for inspection and copying. Consequently, exemption from subsection (d) is claimed.

(ii) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply to these systems for which exemption from subsection (d) of the Act has been claimed. Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access to system records that do not compromise the objectivity or fairness of the testing examination process is appropriate in some cases.

(5) *Personnel Records—Recruiting, Examining, and Appointment Records, USPS 120.151.* This system is exempt from 5 U.S.C. 552a(d)(1)–(4), (e)(1), (e)(4)(G) and (H), and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5) as relating to the identity of a source who has furnished information to the government in confidence as part of an investigation conducted solely for the purpose of determining suitability, eligibility, or qualifications of an individual for employment; and to exemption pursuant to subsection 5

U.S.C. 552a(k)(6) as relating to the compromise of the objectivity or fairness of the testing or examination process. The reasons for exemption follow:

(i) To the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5), application of the provisions at subsection (d)(1)–(4) would reveal to the applicant whose suitability is being investigated the identity of individuals who supplied information under a promise of anonymity. As a result, the Postal Service's promise of confidentiality would be breached, its ability to obtain information in the future would be diminished, and the information source could be subjected to harassment by the applicant. To the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(6), the requirements of the exemption at subsection (d)(1)–(4) and the reasons for exempting information relating to the compromise of the objectivity or fairness of the testing or examination process are the same as those given in paragraph (b)(5)(i) of this section.

(ii) The reasons for exempting this system of records from subsection (e)(1) are the same as those given in paragraph (b)(4)(ii) of this section.

(iii) The requirements of subsections (e) (4) (G) and (H), and (f) do not apply to this system for which exemption from subsection (d) of the Act has been claimed. Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access to system records that do not compromise the objectivity or fairness of the testing or examination process or reveal the identity of a confidential is appropriate in some cases.

(6) *Equal Employment Opportunity—EEO Discrimination Complaint Investigations, USPS 030.010.* This system is exempt from 5 U.S.C. 552a(d) (1)–(4), (e) (4) (G) and (H), and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2) as material compiled for law enforcement purposes and subsection (k)(5) as relating to the identity of a source who has furnished information to the government in confidence as a part of an investigation conducted solely for the purpose of determining suitability, eligibility, or qualifications of an individual for employment. The reasons for exemption follow.

(i) To the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2), application of the requirements of the

U.S.C. 552a(k)(6) as relating to the compromise of the objectivity or fairness of the testing or examination process. The reasons for exemption follow:

(i) To the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5), application of the provisions at subsection (d)(1)–(4) would reveal to the applicant whose suitability is being investigated the identity of individuals who supplied information under a promise of anonymity. As a result, the Postal Service's promise of confidentiality would be breached, its ability to obtain information in the future would be diminished, and the information source could be subjected to harassment by the applicant. To the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(6), the requirements of the exemption at subsection (d)(1)–(4) and the reasons for exempting information relating to the compromise of the objectivity or fairness of the testing or examination process are the same as those given in paragraph (b)(5)(i) of this section.

(ii) The reasons for exempting this system of records from subsection (e)(1) are the same as those given in paragraph (b)(4)(ii) of this section.

(iii) The requirements of subsections (e) (4) (G) and (H), and (f) do not apply to this system for which exemption from subsection (d) of the Act has been claimed. Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access to system records that do not compromise the objectivity or fairness of the testing or examination process or reveal the identity of a confidential is appropriate in some cases.

(6) *Equal Employment Opportunity—EEO Discrimination Complaint Investigations, USPS 030.010.* This system is exempt from 5 U.S.C. 552a(d)(1)–(4), (e) (4) (G) and (H), and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2) as material compiled for law enforcement purposes and subsection (k)(5) as relating to the identity of a source who has furnished information to the government in confidence as a part of an investigation conducted solely for the purpose of determining suitability, eligibility, or qualifications of an individual for employment. The reasons for exemption follow.

(i) To the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2), application of the requirements of the exemption at subsection (d)(1)–(4) would cause disruption of enforcement of the laws relating to equal employment opportunity (EEO). To the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5), application of the provisions at subsection (d)(1)–(4) would reveal to the EEO complainant the identity of individuals who supplied information under a promise of anonymity. It is essential to the integrity of the EEO complaint system that information collected in the investigative process not be prematurely disclosed and that witnesses be free from restraint, interference, coercion, or reprisal.

(ii) The requirements of subsections (e) (4) (G) and (H), and (f) do not apply to this system for which exemption from subsection (d) of the Act has been claimed. Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access to system records that do not compromise the investigative process or reveal the identity of confidential sources is appropriate in some cases.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–16875 Filed 7–12–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3607/R2071; FRL–4900–3]

RIN 2070–AB78

Pesticide Tolerances for Glufosinate Ammonium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances for residues of the herbicide glufosinate ammonium [ammonium DL-homoalanine-4-yl-(methyl phosphinate)] and its metabolite, 3-methylphosphinico-propionic acid, in or on raw agricultural commodities (RAC's) apples and grapes at 0.05 part per million (ppm) and tree nuts group (except almonds) at 0.1 ppm. Hoechst Celanese Corp. (now AgrEvo) requested these tolerances in petitions submitted to EPA.

EFFECTIVE DATES: This regulation becomes effective July 13, 1994. The tolerances will expire July 13, 1999.

ADDRESSES: Written objections, identified by the document control number, [PP 8F3607/R2071], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Product Manager (PM) 23, (7505C), Registration Division, Environmental Protection Agency, 401 M St., Washington, DC 20460. Office location and telephone number: Rm 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 25, 1988 (53 FR 18897), EPA issued a notice announcing that Hoechst Celanese Corp., Route 202-208 North, Sommerville, NJ 08878, had submitted a pesticide petition (PP 8F3607) proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a, to permit the residues of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)-butanoate (expressed as 2-amino-4-(hydroxymethylphosphinyl)-butanoic acid) and 3-methylphosphinicopropionic acid (expressed as 2-amino-4-(hydroxymethylphosphinyl)-butanoic acid), in or on soybean seed, apples, grapes, field corn (grain, forage, silage, and fodder), and nuts at 0.05 ppm and almond hulls at 0.50 ppm. This petition was assigned the number 8F3607. The proposed analytical method for determining residues was high-pressure liquid chromatography.

There were no comments of request for referral to an advisory committee received in response to the notice of filing.

The petitioner subsequently amended the petition by withdrawing the tolerance proposal for residues of the active ingredient and its metabolite in or on soybean seed, field corn grain, field corn forage, field corn silage, and field corn fodder. Since this revision decreases the pesticide burden on the environment, it was not published for comment.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. A battery of acute toxicity studies placing technical glufosinate-ammonium in Toxicity Categories II and III.

2. A 90-day feeding study in rats at dietary intakes of 0, 0.52, 4.1, 32, or 263 mg/kg/day with a no-observed-effect level (NOEL) of 4.1 mg/kg/day. The lowest-observed-effect level (LOEL) was

established at 32 mg/kg/day based on increased absolute and relative kidney weights.

3. A 90-day feeding study in mice at dietary intakes of 0, 16.6, 67.1, or 278 mg/kg/day with a NOEL of 16.6 mg/kg/day and a LOEL of 67.1 mg/kg/day based on increased absolute and relative liver weights (both sexes) and an increase in serum potassium levels (males).

4. Three teratology studies in rats at doses from 0.5 to 250 mg/kg/day with no teratogenic effects occurring up to and including 250 mg/kg/day. A NOEL for developmental toxicity was 2.24 mg/kg/day, based upon an increase in the incidence of dilated renal pelvis with hydroureter in the fetuses at 10 mg/kg/day. The maternal NOEL was also 2.24 mg/kg/day.

5. A teratology study in rabbits at doses of 0, 2, 6.3, or 20 mg/kg/day with no teratogenic effects occurring up to and including 20 mg/kg/day, and a maternal NOEL of 6.3 mg/kg/day and a developmental NOEL of 20 mg/kg/day, the highest dose tested.

6. A two-generation reproduction study in rats at dietary concentrations of 0, 40, 120, or 360 ppm with a NOEL for reproductive effects at 120 ppm (equivalent to 12 mg/kg/day) based upon reduced number of pups in the high dose group. The NOEL for parental toxicity was also 120 ppm based upon increased kidney weights in the high-dose group.

7. A 12-month feeding study in dogs at doses of 0, 2, 5, or 8.5 mg/kg/day. The NOEL was 5.0 mg/kg/day based upon the death of one male and one female dog at 8.5 mg/kg/day with no other treatment-related toxicity.

8. A mouse carcinogenicity study at doses of 0, 2.8, 10.8, or 22.7 mg/kg/day in males and 0, 4.2, 16.2, or 64.0 mg/kg/day in females for 104 weeks with no carcinogenic effects observed under the conditions of the study up to and including 64 mg/kg/day and a systemic NOEL of 10.8 and 16.2 for males and females, respectively, based on the dose-related increase in mortality.

9. A chronic feeding/carcinogenicity study in rats at dietary doses of 0, 2.5, 8.8, or 31.5 mg/kg/day (males) and 0, 2.4, 8.2, or 28.7 mg/kg/day (females) with a NOEL of 2.1 mg/kg/day for systemic effects based on an increase in mortality rate in females at the two higher doses. There were no treatment-related carcinogenic effects at any dose level.

10. Acceptable studies on gene mutation (Salmonella, E. coli, and mouse lymphoma assays), structural chromosomal aberration (*in vivo* micronucleus assay in mice), and other genotoxic effects (unscheduled DNA synthesis assay with rat hepatocytes) yielded negative results.

11. Pharmacokinetic and metabolism studies which indicated that approximately 80 to 90 percent of the orally administered dose of glufosinate ammonium remained unabsorbed and was eliminated in the feces. Approximately 10 to 15 percent was eliminated in the urine. The major metabolic pathway is oxidative deamination yielding the metabolite, 3-methyl-phospinico propionic acid.

The chronic analysis used a Reference Dose (RfD) of 0.02 mg/kg body weight/day, based on a NOEL of 2.1 mg/kg/day and an uncertainty factor of 100. The NOEL is based on a 2-year rat feeding study that demonstrated increased absolute and relative kidney weight in males as an endpoint effect.

Using tolerance-level residues and assumptions that 100 percent of every crop for which glufosinate-ammonium has a proposed use is treated, the total Theoretical Maximum Residue Contribution (TMRC) for the general population and the highest exposed subgroup in DRES are as follows (as percents of RFD): General population, 0.3 percent; nonnursing infants less than 1 year old, 2.1 percent.

A data gap currently exists for a rat carcinogenicity study. The tolerances will be time-limited because of this gap. The time limitation allows for development and review of the data.

The analysis for glufosinate-ammonium using tolerance level residues suggests that the proposed uses on apples, grapes, and nuts (excluding almonds) will not cause exposure to exceed the levels at which the Agency believes there is an appreciable risk. All DRES subgroups are below 100 of the RfD for chronic effects.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residue is adequately understood for the purpose of establishing these tolerances. Adequate analytical methodology (gas chromatography with flame photometric detection of phosphorus) is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch, Field Operations Division (7506C), Office of Pesticide Programs. Environmental Protection Agency, 401 M St., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

There are currently no actions pending against the registration of this chemical. There is no reasonable expectation that secondary residues will occur in meat, fat, and meat byproducts of cattle, goats, hogs, horses, sheep, or poultry, nor is there any reasonable expectation that secondary residues will occur in eggs or milk.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by amending 40 CFR part 180 will protect the public health; therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue (s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 1798.32

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerance or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 1, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.473, to read as follows:

§ 180.473 Glufosinate ammonium; tolerances for residues.

(a) Tolerances, to expire on July 13, 1999, are established for residues of the herbicide glufosinate ammonium [ammonium DL-homoalanine-4-yl-(methyl phosphinate)] and its metabolite, 3-methylphosphinico-propionic acid, in or on the following raw agricultural commodities:

Commodity	Parts per million
Apples	0.05
Grapes	0.05
Tree nuts group (except almonds)	0.1

(b) Residues in these commodities not in excess of the established tolerance resulting from the use described in paragraph (a) of this section remaining after expiration of time-limited tolerance will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of the above regulation.

[FR Doc. 94–16857 Filed 7–12–94; 8:45 am]

BILLING CODE 6560–60–F

40 CFR Part 180

[OPP–300304A; FRL–4896–7]

RIN 2070–AB78

N,N-Bis 2-(Omega-Hydroxypolyoxyethylene/Polyoxypropylene) Ethyl Alkylamine; Tolerance Exemption; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 1, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.473, to read as follows:

§ 180.473 Glufosinate ammonium; tolerances for residues.

(a) Tolerances, to expire on July 13, 1999, are established for residues of the herbicide glufosinate ammonium [ammonium DL-homoalanine-4-yl-(methyl phosphinate)] and its metabolite, 3-methylphosphinico-propionic acid, in or on the following raw agricultural commodities:

Commodity	Parts per million
Apples	0.05
Grapes	0.05
Tree nuts group (except almonds)	0.1

(b) Residues in these commodities not in excess of the established tolerance resulting from the use described in paragraph (a) of this section remaining after expiration of time-limited tolerance will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of the above regulation.

[FR Doc. 94–16857 Filed 7–12–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300304A; FRL–4896–7]

RIN 2070–AB78

N,N-Bis 2-(Omega-Hydroxypolyoxyethylene/ Polyoxypropylene) Ethyl Alkylamine; Tolerance Exemption; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: This document corrects the amendatory language to an amendment to a listing for *N,N-bis* 2-(*omega*-hydroxypolyoxyethylene/ polyoxypropylene) ethyl alkylamine in 40 CFR 180.1001(d) table to stipulate that a revision of the already existing entry was to be made, not the addition of a new entry, and to correct "360 moles" in the table entry to read "3-60 moles."

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In FR Doc. 94-277 in the **Federal Register** of January 7, 1994, the amendatory language at page 952 in the second column incorrectly stated that the entry was to be added. The amendatory language is corrected to state that the entry was to be revised. The entry in the § 180.1001(d) table also incorrectly stated "360 moles" but the preexisiting entry had clearly stated that the proper amount is 3-60 moles: the 360 mole amount is the result of an inadvertently omitted hyphen. Therefore, the entry is corrected to state "3-60 moles."

Dated: June 21, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–16858 Filed 7–12–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180, 185, and 186

[OPP–300323; FRL–4759–3]

RIN 2070–AC18

Carbophenothion; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes all food tolerances for residues of the insecticide carbophenothion, all food additive tolerances, and all feed tolerances. EPA is taking this action because all registered uses of carbophenothion on these commodities have been cancelled.

EFFECTIVE DATE: This regulation becomes effective July 13, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number [OPP-300323], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and should also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7605C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver objections and hearing requests filed with the Hearing Clerk to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA, Headquarters Accounting Operations Branch, OPP (tolerance fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Paul Parsons, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 2800 Crystal Drive, Arlington, VA (703-308-8037).

SUPPLEMENTARY INFORMATION: This document announces the revocation of tolerances established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346(a) and 348), for residues of the insecticide carbophenothion in or on the commodities listed in 40 CFR 180.156, 40 CFR 185.700, and 40 CFR 186.700. These commodities are: alfalfa (fresh and hay); almond hulls; apples; apricots; beans (dry); beans, lima (succulent); beans, snap (succulent); bean straw; beets, garden (root and top); blueberries; cantaloupe; cattle fat; cherries; clover (fresh and hay); corn (kernels plus cob with husks removed); corn forage; cottonseed, undelinted; crabapples; cucumbers; eggplants; figs; goats, fat; grapefruit; grapes; hogs, fat; lemons; limes; milk; nectarines; olives; onions (dry bulb and green); oranges; peaches; pears; peas (succulent); pecans; peppers; pimentos; plums (fresh prunes); quinces; sheep, fat; sorghum, forage; sorghum, grain; soybeans (succulent); spinach; strawberries; sugarbeets (roots and tops); summer squash; tangerines; tomatoes; walnuts and watermelons (180.156); dried tea (185.700); and dehydrated citrus pulp and citrus meal for cattle feed (186.700).

EPA issued a proposed rule, published in the **Federal Register** of October 21, 1993 (58 FR 54316), which proposed the revocation of tolerances

for residues of carbophenothion in or on various commodities. The Agency's decision to revoke these tolerances was based on the fact that all registered uses of carbophenothion products have been cancelled and any provision for sales and/or distribution of stocks has expired.

The Agency believes that sufficient time has passed for legally treated agricultural commodities to have gone through the channels of trade. Since it is unlikely that carbophenothion, which is not a persistent pesticide, would persist in soil more than 4 years, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels are being recommended to replace these revoked tolerances. No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking. Therefore, based on the information considered by the Agency and discussed in detail in the October 21, 1993 proposal and in this final rule, the Agency is hereby revoking the tolerances listed in 40 CFR 180.156, 40 CFR 185.700 and 40 CFR 186.700.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competiton, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 1994.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR parts 180, 185, and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.156 [Removed]

b. Section 180.156 *Carbophenothion; tolerances for residues* is removed.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.700 [Removed]

b. Section 185.700 *Carbophenothion; tolerances for residues* is removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 186.700 [Removed]

b. Section 186.700 *Carbophenothion; tolerances for residues* is removed.

[FR Doc. 94-16856 Filed 7-12-94; 8:45 am]
BILLING CODE 8560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 362

RIN 3067-AB84

National Earthquake Hazards Reduction Program; Criteria for Acceptance of Gifts, Bequests, or Services

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule establishes criteria for determining whether the Director of FEMA may accept gifts, bequests or donations of services, money or property for the National Earthquake Hazards Reduction Program (NEHRP).

EFFECTIVE DATE: August 12, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Summers Taylor, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3079.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) published a proposed rule, "National Earthquake Hazards Reduction Program; Criteria for Acceptance of Gifts, Bequests, or Services," on July 9, 1992, 57 FR 30455. Comments from the public were invited but, since publication, none have been received. The Agency is now publishing the final rule with minor editorial changes in the preamble.

Under 31 U.S.C. 1342, officers and employees of the United States Government may not accept voluntary services or employ personal services exceeding those authorized by law except for emergencies involving the safety of human life or the protection of property. Unless expressly authorized by law to do so, Federal officers and employees may not accept gifts or bequests of property or money. The general rule is that appropriations may not be augmented with funds or property from private sources unless specifically authorized by law.

Under section 9 of the National Earthquake Hazards Reduction Program Reauthorization Act, 42 U.S.C. 7705c, the Director of FEMA may accept and use bequests, gifts, or donations of services, money or property. Section 9(b) of the Act requires the Director to establish by regulation criteria for accepting such bequests, gifts, or donations, and to take into consideration the impact of such acceptance on the Director's ability to conduct business fairly and objectively, or its impact on the integrity of the National Earthquake Hazards Reduction Program (NEHRP). This authority is similar to that granted by other statutes to other agencies in the NEHRP and the Federal Government.

These regulations establish the required criteria for determining whether to accept bequests, gifts, or donations of services, money or property to further the purposes of the NEHRP.

National Environmental Policy Act. This rule is categorically excluded from the requirements for environmental assessments of 44 C.F.R. part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule states how FEMA will administer acceptance of gifts, bequests, or services, defines the criteria for acceptance of gifts, bequests, or services to the National earthquake Hazards Reduction Program, and is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities.

Regulatory Planning and Review. This rule is not a significant regulatory action under Executive Order 12866 of September 30, 1994, Regulatory Planning and Review, 58 FR 51735. To the extent possible this final rule adheres to the principles of regulation as set forth in Executive Order 12866.

services or employ personal services exceeding those authorized by law except for emergencies involving the safety of human life or the protection of property. Unless expressly authorized by law to do so, Federal officers and employees may not accept gifts or bequests of property or money. The general rule is that appropriations may not be augmented with funds or property from private sources unless specifically authorized by law.

Under section 9 of the National Earthquake Hazards Reduction Program Reauthorization Act, 42 U.S.C. 7705c, the Director of FEMA may accept and use bequests, gifts, or donations of services, money or property. Section 9(b) of the Act requires the Director to establish by regulation criteria for accepting such bequests, gifts, or donations, and to take into consideration the impact of such acceptance on the Director's ability to conduct business fairly and objectively, or its impact on the integrity of the National Earthquake Hazards Reduction Program (NEHRP). This authority is similar to that granted by other statutes to other agencies in the NEHRP and the Federal Government.

These regulations establish the required criteria for determining whether to accept bequests, gifts, or donations of services, money or property to further the purposes of the NEHRP.

National Environmental Policy Act. This rule is categorically excluded from the requirements for environmental assessments of 44 C.F.R. part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule states how FEMA will administer acceptance of gifts, bequests, or services, defines the criteria for acceptance of gifts, bequests, or services to the National earthquake Hazards Reduction Program, and is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities.

Regulatory Planning and Review. This rule is not a significant regulatory action under Executive Order 12866 of September 30, 1994, Regulatory Planning and Review, 58 FR 51735. To the extent possible this final rule adheres to the principles of regulation as set forth in Executive Order 12866.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 362

Disaster assistance, Earthquakes, Government property.

Accordingly, 44 CFR part 362 is added to read as follows:

PART 362—CRITERIA FOR ACCEPTANCE OF GIFTS, BEQUESTS, OR SERVICES

Sec.
362.1 Purpose.
362.2 Definitions.
362.3 Criteria for determining acceptance.

Authority: 42 U.S.C. 7701, 7705c.

§ 362.1 Purpose.

This part establishes criteria for determining whether the Director may accept gifts, bequests, or donations of services, money or property for the National Earthquake Hazards Reduction Program (NEHRP), under section 9 of the National Earthquake Hazards Reduction Program Reauthorization Act, 42 U.S.C. 7705c.

§ 362.2 Definitions.

As used in this part—

Gifts of property means a gratuitous, voluntary transfer or conveyance of ownership in property by one person to another without any consideration, including transfer by donation, devise or bequest.

Gifts of services means a gratuitous, voluntary offer of labor or professional work by one person to another without any compensation for that labor or professional work.

Program Agencies means the Federal Emergency Management Agency, the United States Geological Survey, the National Science Foundation, and the National Institute of Standards and Technology.

Property means real or personal property, tangible or intangible, including money, certificates of stocks, bonds, or other evidence of value.

Services means labor or professional work performed for the benefit of another or at another's command.

Solicit means to endeavor to obtain by asking or pleading.

§ 362.3 Criteria for determining acceptance.

The following criteria shall be applied whenever a gift of property or gift of services is offered to the Director for the benefit of the National Earthquake Hazards Reduction Program.

(a) The gift of property or gift of services must clearly and directly further the objectives of the National Earthquake Hazards Reduction Program, as defined in 42 U.S.C. 7702.

(b) All gifts of property must be offered unconditionally, with sole discretion of use, administration and disposition of such property to be determined by the Director or his designee.

(c) The Director may accept and use gifts of services of voluntary and uncompensated personnel, and may provide transportation and subsistence as authorized by 5 U.S.C. 5703 for persons serving without compensation.

(d) Employees of FEMA or the Program agencies may not solicit gifts of property, or gifts of services.

(e) Acceptance of gifts of property, or gifts of services must first be approved by the Office of the General Counsel, FEMA, for conformance with all applicable laws and regulations.

(f) In all cases where it is determined that the acceptance of a gift may create a conflict of interest, or the appearance of a conflict of interest, the gift will be declined.

Dated: July 1, 1994.

James Lee Witt,

Director.

[FR Doc. 94–16733 Filed 7–12–94; 8:45 am]

BILLING CODE 6718–21–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PP Docket No. 93–21; FCC 94–149]

Sports Programming Migration

AGENCY: Federal Communications Commission.

ACTION: Final report.

SUMMARY: The *Final Report* of the FCC's sports migration inquiry finds that there has not been significant migration of sports programming from broadcast to subscription media, but expresses concern about a decline in broadcast coverage of college football games in some markets. In the *Final Report*, the Commission states its intention to monitor sports programming availability and to act promptly, consistent with its statutory authority, should any

significant threat to that availability develop.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, Office of Plans and Policy, (202) 418–2048.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Final Report* in PP Docket No. 93–21, adopted June 9, 1994 and released June 30, 1994. The complete text of this *Final Report* is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., at 1919 M Street NW., room 246, Washington, DC 20554 (telephone: (202) 857–3800).

In section 26 of the 1992 Cable Act, Congress instructed the Commission to conduct an examination of "the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services," and "the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations" or are prohibited by existing statutes. Congress directed the FCC to submit to it an *Interim Report* by July 1, 1993 (see 58 FR 38088, July 15, 1993) and a *Final Report* by July 1, 1994, including legislative or regulatory recommendations as appropriate.

The Commission defined sports programming migration as "the movement of sports programming from broadcast television to a subscription medium (*i.e.*, one for which viewers pay a fee)." The inquiry focused on professional baseball, football, basketball and hockey and college football and basketball. The Commission looked at the time period from 1980 to the present and examined local and national telecasts.

The Commission found no evidence of migration of National Football League or college basketball games. At the national level, it saw no evidence of migration of professional basketball or hockey games. In fact, it found instances of "reverse migration" in hockey at the national level. At the local level, there have been some declines in broadcast coverage of professional basketball and hockey, but no overall pattern of migration.

The inquiry determined that national broadcast coverage of regular season Major League Baseball games has declined, but found evidence that the drop is due to reduced demand rather than migration. Local broadcast coverage of baseball has increased for most teams, but declined significantly in a few cases. The Commission concluded that there was no pattern of migration of local baseball games. ESPN provides some national cable coverage of regular season baseball games. While ESPN has exclusivity *vis-a-vis* local broadcasters on Wednesday nights, this appears to have had little effect on total games broadcast. Rather, it has been associated with an increase in games televised on days other than Wednesday.

The Commission found evidence of a decline in college football broadcasts in some markets between 1984 and 1993, but could not isolate the cause of the decline. The Commission expressed concern about the decline, but noted that new college football contracts now being negotiated may lead to an increase in network coverage.

"Preclusive contracts" are defined in the 1992 Cable Act as contracts between college athletic conferences and video programming vendors that prohibit local television stations from broadcasting live games of local college teams that are not carried live by a local cable system or prohibit tape delay broadcasts of local college games that are not carried live or on tape delay by a local cable system.

The Commission's inquiry found no evidence of such preclusive contracts for college basketball, but questions were raised in the case of college football. In the *Interim Report* the Commission noted that it would use the "rule of reason" framework to analyze contracts of this type, as suggested to it by the Department of Justice. The Commission's analysis of typical contract terms suggested that, without the sort of factual evidence presented at a full-scale trial, it could not determine whether the contracts violated the antitrust laws. There was no suggestion that the contracts might violate other statutes.

The Commission found that there is a substantial amount of sports programming available on broadcast television, including the "marquee" events of all the major sports. Because the Commission's interest in the availability to the public of a diverse menu of programming encompasses both sports and non-sports programming, the *Final Report* concluded that additional government intervention to promote free access to sports programming, whether via regulation of preclusive contracts or by some other means, is not warranted at this time.

Although it found that no legislative or regulatory recommendations in the area of sports programming migration are necessary, the Commission noted its continuing concern regarding broad and economical public access to sports programming and said it would take action if any significant threat to such access developed in the future. Moreover, the Commission urged interested parties to file legitimate complaints in the event that current or future college football contracts artificially and unfairly constrain local stations' access to local teams' games and committed itself to pursue such complaints vigorously and promptly. In addition, the Commission said it would transmit the *Final Report* to the Department of Justice and the Federal Trade Commission.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–16878 Filed 7–12–94; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 43

[CC Docket No. 92–296; FCC 94–174]

Simplification of the Depreciation Process

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is adopting range for the underlying factors that are used to compute depreciation rates for the local exchange carriers (LECs) regulated under the price cap incentive regulatory plan. This *Second Report and Order* establishes ranges for 22 of the 33 depreciation rate categories. LECs may make streamlined filings for changes in depreciation rates for these categories, if their underlying factors fall within the prescribed ranges. The rule change will lessen the depreciation prescription burden on price caps LECs in light of regulatory and market changes without sacrificing protection for consumers.

EFFECTIVE DATE: August 12, 1994.

FOR FURTHER INFORMATION CONTACT: Fatina K. Franklin or John Hays, Common Carrier Bureau, accounting and Audits Division, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order* in the Simplification of the Depreciation Prescription Process, CC Docket No. 92–296, FCC 94–174, adopted June 22 1994 and released June 28, 1994. The full text of this Commission decision in available for

inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., Washington, DC. The full text will be published in the FCC Record and may also be purchased from the Commission's copy contractor, International Transcription Services, room 246, 1919 M Street, NW., Washington, DC 20554.

Paperwork Reduction Act

The Federal Communications Commission has submitted the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 322, New Executive Office Building, Washington, DC 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 632–7513.

Please note: The Commission has requested emergency review of this collection by July 22, 1994, under the provisions of 5 C.F.R. Section 1320.18.

Title: Section 43.43—Report of Proposed Changes in Depreciation Rates.

OMB Control No.: 3060–0168.

Action: Revised collection.

Respondents: Businesses or other for-profit entities.

Frequency of Response: On occasion; Triennially; Annually.

Estimated Annual Burden: 12 responses; 7500 hours per response; 90,000 hours total.

Needs and Uses: In the *Report and Order* in CC Docket No. 92–296 (released 10/20/93), the Commission streamlined its depreciation prescription process for local exchange carriers (LECs) regulated under its price cap regulatory scheme by adopting a modified form of the basic factor range option. The *Second Report and Order* adopts the initial set of accounts and ranges for the price caps LECs. The Commission has modified its information collection requirements whereby large LECs must submit analyses on proposed changes in depreciation rates. The changes should reduce by 25% the amount of time needed to prepare and review these analyses. The information will be used by the Commission staff to establish proper depreciation rates to be charged by the carriers pursuant to Section 220(b) of the Communications Act, as amended. 47 U.S.C. § 220(b).

The foregoing estimates include the time for reviewing instructions,

inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., Washington, DC. The full text will be published in the FCC Record and may also be purchased from the Commission's copy contractor, International Transcription Services, room 246, 1919 M Street, NW., Washington, DC 20554.

Paperwork Reduction Act

The Federal Communications Commission has submitted the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 322, New Executive Office Building, Washington, DC 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 632–7513.

Please note: The Commission has requested emergency review of this collection by July 22, 1994, under the provisions of 5 C.F.R. Section 1320.18.

Title: Section 43.43—Report of Proposed Changes in Depreciation Rates.

OMB Control No.: 3060–0168.

Action: Revised collection.

Respondents: Businesses or other for-profit entities.

Frequency of Response: On occasion; Triennially; Annually.

Estimated Annual Burden: 12 responses; 7500 hours per response; 90,000 hours total.

Needs and Uses: In the *Report and Order* in CC Docket No. 92–296 (released 10/20/93), the Commission streamlined its depreciation prescription process for local exchange carriers (LECs) regulated under its price cap regulatory scheme by adopting a modified form of the basic factor range option. The *Second Report and Order* adopts the initial set of accounts and ranges for the price caps LECs. The Commission has modified its information collection requirements whereby large LECs must submit analyses on proposed changes in depreciation rates. The changes should reduce by 25% the amount of time needed to prepare and review these analyses. The information will be used by the Commission staff to establish proper depreciation rates to be charged by the carriers pursuant to Section 220(b) of the Communications Act, as amended. 47 U.S.C. § 220(b).

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, DC 20554 and to the Office of the Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Summary

1. On September 23, 1993, we adopted streamlined depreciation prescription procedures for the local exchange carriers ("LECs") regulated under our price cap incentive regulatory plan.[1] These procedures require us to establish ranges for the underlying factors that are used to compute depreciation rates for plant categories. The new procedures generally will permit carriers to make streamlined filings for changes in depreciation rates for these categories, as long as their underlying factors fall within the prescribed ranges. By adopting these streamlined procedures, we hoped to simplify the depreciation process, achieve administrative savings, and allow the LECs greater flexibility[2] in the depreciation process, while remaining consistent with the public interest.

2. We further concluded that the streamlined procedures should be implemented as soon as practicable. To that end, we decided to implement the new procedures in two phases. In phase one, we directed the Common Carrier Bureau to identify the accounts most readily adaptable to the range approach and propose ranges for them. In phase two, we will esteblish ranges for the remaining, more complex accounts, to the extent feasible.

3. On November 8, 1993, we adopted an *Order Inviting Comment*[3] on 22 plant categories selected by the Bureau for initial implementation of the streamlined procedures. These categories represent two-thirds of the 33 plant categories for which carriers currently submit depreciation studies. In addition, the *OIC* sought comments on the proposed projection life and future net salvage ranges proposed by the Bureau for these categories.

4. In response to the *OIC*, the LECs and the United States Telephone Association (USTA) maintained that, to maximize the benefits of the simplification procedures, ranges should be established for all accounts as quickly as possible. They argued that the limited number of accounts for which ranges have been proposed in phase one severely restricts the benefits of streamlining depreciation. On the other hand, MCI, the National Association of Regulatory Utility Commissioners (NARUC) and the state commissions supported the 22 plant categories proposed in the *OIC* for implementation in phase one of the simplification process.

5. We agree with the commenters that the ranges should be established as soon as possible. However, to begin the simplification process in 1994, it is necessary to implement the streamlined depreciation procedures in two phases and to limit the initial phase to certain categories of plant readily adaptable to the range approach. As we stated in the *Depreciation Simplification Order*, this schedule will make the most efficient use of our limited resources. To change our plans at this time and to perform the thorough analyses required to establish appropriate ranges for additional plant accounts would delay unnecessarily the use of the new procedures for the depreciation categories identified in the *OIC*. The commenting parties have presented no new information or arguments that would warrant a change in our plans.

6. Prior to the release of the *Notice of Proposed Rulemaking* in this proceeding, the staff of the Common Carrier Bureau had been considering ways to improve and to streamline the depreciation prescription process. The staff collected a substantial amount of data and performed analyses to determine the difficulty of establishing ranges for various accounts. Based on these analyses, it concluded that the 22 plant categories proposed in the *OIC* were the categories most adaptable to the range approach, because their life and salvage factors did not vary substantially among the carriers, or over time. The commenting state commissions generally concur with this conclusion.

7. We estimate that instituting these procedures for the 22 categories selected for phase one will reduce the size of a typical depreciation study by 50%. We recognize that a 50% reduction in the size of the study will not necessariy

---

[1] Simplification of the Depreciation Prescription Process, *Report and Order*, 58 FR 58788 (1993) (*Depreciation Simplification Order*).

[2] Flexibility allows a LEC to select, within established ranges, the life and salvage factors it uses in prescribed depreciation rates without undergoing the expense of submitting studies to justify its specification of those factors. In addition, under the new procedures, the LECs can change their basic factors annually, as opposed to the current triennial represcription cycle.

[3] Simplification of the Depreciation Prescription Process, *Order Inviting Comments*, 58 FR 62083 (1993) (*OIC*).

result in a reduction of the workload by 50%. Nevertheless, in our view, the elimination of so much of the detailed analyses currently required in the studies will produce a substantial administrative savings for both the LECs and our staff. Moreover, we plan to propose ranges for additional accounts later this year, and to adopt ranges for these accounts early in 1995. As a result, we expect that the simplification procedures will be in place for all accounts, to the extent feasible, for the 1995 depreciation prescription review process. The ranges we establish in this *Second Report and Order* will be used to establish depreciation rates for 1994. Considering that ranges for additional accounts will take effect in 1995, we believe that our two-phase plan will allow us to achieve a major improvement in the depreciation prescription process in a very short period of time.

8. In the *OIC*, we proposed to establish ranges at the account level for sixteen plant accounts and at a rate category level for four additional accounts. The majority of parties commenting on this matter supported our proposal. Pacific Bell further suggested that, where a carrier maintains levels of categorization more detailed than those proposed by the Commission, it should be allowed to use the streamlined procedures, if the "composite" factors of its individual rate categories are within the ranges established for the category as a whole. In addition, NYNEX made a special request that the Commission establish a separate rate category with appropriate ranges for interoffice cable plant, because it contends the life characteristics of this plant are significantly different from those of subscriber cables.

9. Based on these comments, we have decided to adopt the ranges for the 22 rate categories as proposed in the *OIC* (see Appendix below). As NARUC observed, establishing ranges at these levels should not require any additional record keeping or substantial effort on the part of the LECs, since they are presently required to maintain their accounting records at these levels under Part 32.[4]

10. We have decided not to develop special ranges for LECs that have chosen to study rate categories at levels not listed in the Appendix. The application of our range approach is based on national averages of prescribed depreciation factors. Consequently, to develop special ranges would slow the process significantly as it would be necessary to require many carriers to submit large amounts of data which we would then have to analyze in order to establish appropriate ranges. This would place an undue burden on the majority of the carriers that do not study the plant investment at the levels of detail desired by those LECs that seek ranges for additional categories.

11. Nevertheless, we will consider requests from LECs like Pacific, that study an account listed in the Appendix at a more detailed level than shown, but wish to qualify within the established range for that account. During the prescription process, we will consider their proposals on a case-by-case basis to use the basic factors computed at the more detailed levels to satisfy the range requirements.

12. In the *OIC*, we solicited comments on a specific set of proposed ranges for the future net salvage and projection life factors for 22 plant categories. USTA and the LECs argued that the proposed ranges are too narrow, because the LECs will be able to use the streamlined procedures for fewer than 50% of the 22 plant categories. They argued that the ranges should be expanded in order to streamline the process significantly. In addition, for a few of the plant categories, they argued that the proposed life ranges are too high. They suggested that, because of the rapid changes in technology, certain plant accounts should be written off more quickly. However, GSA, MCI, NARUC and most of the state commission commenters support the ranges proposed in the *OIC*. California CATV and GSA believe that the objections to the proposed ranges raised by the LECs are aimed at obtaining higher depreciation rates, rather than streamlining the depreciation process.

13. In the *Depreciation Simplification Order*, we set forth the specific data that should be considered in establishing the projection life and future net salvage ranges, and we used these data in proposing ranges in the *OIC*. We based the ranges on statistical studies of the most recently prescribed factors. These statistical studies required detailed carrier-by-carrier analyses of the most recent plant retirement patterns, the carriers' plans, and the current technological developments and trends. Because the proposed ranges reflect these data, we believe that the ranges provide a reasonable degree of confidence that the basic factors falling within their bounds will produce depreciation rates accurately reflecting plant retirements, company plans, and technological trends. Moreover, they allow the LECs sufficient flexibility in the selection of the final factors.

14. Furthermore, we do not believe that the ranges are too high, or too low, as some of the commenters contend. Our objective was not to change the depreciation rates, but to streamline the process used by the Commission to prescribe those rates. Consequently, we will not at this time modify any of the proposed ranges. We believe that some experience with the ranges should be developed before we consider modifying them. If changing conditions require revisions in the ranges, we can modify them at that time.

15. The LECs' assertion that they will be able to use the streamlined procedures for fewer than 50% of the 22 rate categories is incorrect.[5] We have studied the potential application of the ranges to every carrier for which the Commission prescribes depreciation rates. We have found that today over two-thirds of the carriers would qualify for the streamlined procedures for the 22 proposed rate categories. Furthermore, our most recent depreciation rate reviews indicate that the proportion should increase over the next few years.

16. In the past, we allowed two informal, alternative streamlined procedures for plant accounts representing less than 3% of a carrier's total depreciable investment in a jurisdiction. We are replacing these informal streamlined study procedures with the adoption of our range option. To have several streamlined procedures in place at the same time could prove confusing and could negate any streamlining achieved by the Commission. Moreover, these previous procedures had a minimal streamlining effect as compared with the new streamlined procedures. To illustrate, they only reduce the studies by 3 or 4 pages per category, whereas our new procedures reduce them by 15 pages. Therefore, we have decided to employ only the streamline range option adopted in our *Depreciation Simplification Order*.

17. Under our depreciation prescription process, one-third of the carriers for which we prescribe depreciation rates have their rates reviewed each year. In the *Depreciation Simplification Order*, we stated that price cap LECs scheduled for review in 1995 and 1996 could file for changes in their depreciation rates for 1994 as long as they used basic factors within the ranges we selected. These carriers must file these depreciation rate changes in a timely manner in accordance with the requirements set forth in the *Depreciation Simplification Order*.

18. Accordingly, *it is ordered*, pursuant to Section 4(i), 201–205 and 220(b), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201–205 and 220(b), that the ranges for

[4] 47 C.F.R. 32.12(b). The LECs for which we prescribe depreciation rates are Class A companies and must keep all the Class A accounts prescribed in Part 32.

[5] In the *Depreciation Simplification Order*, the Commission decided that "if a LEC's current basic factors for any one account do not both fall within the established ranges for that account, the LEC may not use the range approach for that account."

APPENDIX—ACCO

Account No.	Account name
2112	Motor Vehicles
2113	Aircraft
2114	Special Purpose Vehicles
2115	Garage Work Equipment
2116	Other Work Equipment
2122	Furniture
2123.1	Office Support Equip
2123.2	Co. Communications Equip
2124	Gen. Purpose Computers
2231	Radio Systems
2232	Circuit Equipment
2232	Circuit Equipment
2311	Station Apparatus
2341	Large PBX
2351	Public Telephone
2362	Other Terminal Equipment
2421	Aerial Cable
2422	Underground Cable
2422	Underground Cable
2423	Buried Cable
2424	Submarine Cable
2441	Conduit Systems

[FR Doc. 94–16948 Filed 7–11–94; 10:29 am]
BILLING CODE 6712–01–M

47 CFR Part 74

[MM Docket No. 93–106, FCC 94–147]

Use of the Frequencies in the Instructional Television Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC amended the Instructional Television Fixed Service (ITFS) rules to permit licensees to utilitize channel loading in meeting their basic educational programming requirements. Channel loading is the scheduling, or "loading," of the requisite amount of ITFS programming onto fewer than the authorized channels in a four-channel ITFS group. It represents a cost-free means of freeing up ITFS channels for full-time commercial programming by wireless cable operators who lease excess capacity from ITFS licensees.

as they used basic factors within the ranges we selected. These carriers must file these depreciation rate changes in a timely manner in accordance with the requirements set forth in the *Depreciation Simplification Order.*

18. Accordingly, *it is ordered,* pursuant to Section 4(i), 201–205 and 220(b), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201–205 and 220(b), that the ranges for the future net salvage and the projection life factors for the accounts listed in the Appendix are *hereby adopted* as specified in the Appendix.

19. *It is further ordered,* that this order is effective thirty days after publication in the **Federal Register.**

20. *It is further ordered,* that carriers may use the ranges established herein for federal filing purposes prior to the effective date of this order.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

APPENDIX—ACCOUNTS AND RANGES FOR PHASE ONE IMPLEMENTATION

Account No.	Account name	Depreciation rate category	Projection life range (years)		Future net salvage range (percent)	
			Low	High	Low	High
2112	Motor Vehicles	Motor Vehicles	7.5	9.5	10	20
2113	Aircraft	Aircraft	7	10	30	[illegible]
2114	Special Purpose Vehicles	Special Purpose Vehicles	12	18	[illegible]	10
2115	Garage Work Equipment	Garage Work Equipment	12	18	[illegible]	10
2116	Other Work Equipment	Other Work Equipment	12	18	[illegible]	10
2122	Furniture	Furniture	15	20	[illegible]	10
2123.1	Office Support Equip	Office Support Equip	10	15	0	10
2123.2	Co. Communications Equip	Co. Communications Equip	7	10	−5	10
2124	Gen. Purpose Computers	Gen. Purpose Computers	6	[illegible]	0	5
2231	Radio Systems	Radio Systems	9	15	−5	5
2232	Circuit Equipment	Digital Data Service	7	11	−5	10
2232	Circuit Equipment	Analog	[illegible]	11	−5	0
2311	Station Apparatus	Station Apparatus	5	8	−5	5
2341	Large PBX	Large PBX	5	[illegible]	−5	5
2351	Public Telephone	Public Telephone	7	10	0	10
2362	Other Terminal Equipment	Other Terminal Equipment	5	[illegible]	−5	5
2421	Aerial Cable	Non-Metallic	25	30	−25	−10
2422	Underground Cable	Non-Metallic	25	30	−20	−5
2422	Underground Cable	Metallic	25	30	−30	−5
2423	Buried Cable	Non-Metallic	25	30	−10	[illegible]
2424	Submarine Cable	Submarine Cable	25	30	−5	[illegible]
2441	Conduit Systems	Conduit Systems	50	60	−10	0

[FR Doc. 94–16948 Filed 7–11–94; 10:29 am]
BILLING CODE 6712–01–M

47 CFR Part 74

[MM Docket No. 93–106, FCC 94–147]

Use of the Frequencies in the Instructional Television Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC amended the Instructional Television Fixed Service (ITFS) rules to permit licensees to utilitize channel loading in meeting their basic educational programming requirements. Channel loading is the scheduling, or "loading," of the requisite amount of ITFS programming onto fewer than the authorized channels in a four-channel ITFS group. It represents a cost-free means of freeing up ITFS channels for full-time commercial programming by wireless cable operators who lease excess capacity from ITFS licensees.

EFFECTIVE DATE: August 12, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Lucey, Mass Media Bureau, Video Services Division, Distribution Services Branch, (202) 418–1630.

SUPPLEMENTARY INFORMATION: This is the Commission's *Report and Order* in MM Docket No. 93–106, adopted on June 9, 1994 and released on July 6, 1994.

The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, at the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Report and Order

1. Forming the nucleus of the channel-loading rules are the five elements of an industry-wide agreement reached late last summer by educators and wireless cable operators; *see* 58 FR 42522 (August 10, 1993), with some minor modifications designed to provide additional assurances that the primary educational purpose of ITFS will be preserved.

2. First, licensees wishing to lease excess capacity must provide for the continued minimum total of 160 hours per week of ITFS programming, or 40 hours per channel per week, composed of 80 hours to be immediately used and the remaining 80 hours to be subject to ready recapture by the ITFS licensee, in the event it wishes to expand its educational programming.

3. Second, as agreed to in the compromise, licensees must transmit the minimum total of 80 hours per week over only their authorized ITFS channels. Licensees may "load" this amount of programming onto fewer than their four channels. However, the rules will not permit licensees utilizing channel loading to transmit the reduced amount of 12 hours per channel per week, an allowance now made for licensees during their first two years of operation. The Commission views

channel loading as an alternative to the two-year, 12-hour minimum programming option.

4. Third, a licensee may agree to the transmission of its 80 hours of ready recapture programming over any channel in a market-wide wireless system, whether it be an ITFS or MMDS channel. The licensee will have the right to recapture time on up to four channels to air simultaneously 20 additional hours of educational programming per channel. This time may be recaptured upon six months' written notification to the wireless cable operator, rather than the one-year notice now required. The Commission deemed this shortened notice period an appropriate trade-off for wireless cable operators, who now will have the flexibility to transmit the recaptured ITFS programming on any channel in their systems rather than being limited to leased ITFS channels, as before.

5. Fourth, an ITFS applicant seeking four channels, proposing 80 hours of programming per week and providing in its lease agreement for an additional 80 hours of ready recapture is presumed to have demonstrated its need for those channels. Applicants must continue to submit programming grids and schedules, but these must now reflect, as nearly as possible, the nature and timing of educational programming planned for the first year of operation. This will permit the Commission to verify that programming aired outside the traditional school day is in fact directed to legitimate educational needs. Compliance with the above will be reviewed at renewal time. Moreover, those applicants proposing to channel load in accordance with the rules adopted by the Commission will not be disadvantaged for electing to do so in the comparative selection procedure utilized by the Commission in selecting a licensee between mutually exclusive applicants.

6. Fifth, the Commission noted that no reallocation of ITFS spectrum, of either loaded or non-loaded channels, is intended or effected by the adoption of channel loading. Rather, the Commission stated that channel loading provides ITFS licensees with an option, which will enhance the value of leasing arrangements both to ITFS licensees and wireless cable lessees.

7. Finally the Commission will allow the channel loading rules to remain in effect until the Commission assesses the impact of digital compression on the ITFS service, through a future notice and comment rule making proceeding.

8. The Commission applied the rules and standards adopted for channel loading to channel mapping. Channel mapping, a complex and costly switching technology that is functionally equivalent to channel loading, was recognized by the Commission in 1991 as a legitimate means of accommodating the joint programming needs of ITFS licensees and their wireless cable lessees.

9. For further information concerning this *Report and Order*, contact Anne Lucey (202–418–1630), Mass Media Bureau, Video Services Division, Distribution Services Branch, Federal Communications Commission, Washington, DC 20554.

List of Subjects in 47 CFR Part 74

Radio broadcasting.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Rules Changes

Part 74 of title 47 of the Code of Federal Regulations is amended as follows:

PART 74—[AMENDED]

1. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1062, as amended; 47 U.S.C. 154, 303, 554.

2. Section 74.902 is amended by redesignating paragraph (d) as paragraph (d)(1) and adding paragraph (d)(2) to read as follows:

§ 74.902 Frequency assignments.

* * * * *

(d) * * *

(2) An applicant leasing excess capacity and proposing a schedule which complies in all respects with the requirements of Section 74.931(e) will have presumptively demonstrated need, in accordance with paragraph (d)(1) of this section, for no more than four channels, all part of the same Group listed in paragraph (a) of this section. This presumption is rebuttable by demonstrating that the application does not propose to comport with our educational programming requirements, that is, to transmit some formal educational programming, as defined in Section 74.931(a), and to transmit the requisite minimum programming of Section 74.931(e) for genuinely educational purposes and to receive sites when students are there.

3. Section 74.931 is amended by revising paragraph (a)(1) and adding paragraph (e)(9) to read as follows:

§ 74.931 Purpose and permissible service.

(a)(1) Instructional television fixed stations are intended primarily to provide a formal educational and cultural development in aural and visual form, to students enrolled in accredited public and private schools, colleges and universities. Authorized instructional television fixed station channels must be used to transmit formal educational programming offered for credit to enrolled students of accredited schools, with limited exceptions as set forth in paragraph (e)(9) of this section and Secs. 74.990 through 74.992.

* * * * *

(e) * * *

(9) A licensee may shift its requisite ITFS programming onto fewer than its authorized number of channels, via channel mapping technology or channel loading, so that it can lease full-time channel capacity to a wireless cable operator, subject to the condition that it provide a total average of at least 20 hours per channel per week of ITFS programming on its authorized channels. The licensee also retains the unabridgeable right to recapture, subject to six months' written notification to the wireless cable operator, an average of an additional 20 hours per channel per week for simultaneous programming on the number of channels for which it is authorized. The licensee may agree to the transmission of this recapture time on channels not authorized to it, but which are included in the wireless system of which it is a part.

* * * * *

[FR Doc. 94–16879 Filed 7–12–94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 90]

RIN 2127–AE79

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule, technical amendment, date for early optional compliance.

SUMMARY: On April 15, 1994, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection, and Federal Motor Vehicle Safety Standard No. 209, Seat Belt Assemblies. It gave manufacturers of replacement seat belt assemblies intended for use only in specifically identified motor vehicles a choice of two means of providing information about the seating positions and vehicle models for which the assemblies are appropriate. The information may be provided either on the assembly itself or in the installation instruction sheet required to accompany the assembly. The final rule also provided that the labeling requirement does not apply to two types of seat belt assemblies when they are installed as original equipment in a new motor vehicle. The final rule is effective October 12, 1994.

General Motors (GM) petitioned for reconsideration, requesting that manufacturers be allowed to delete information that will no longer be required now instead of waiting until October 12, 1994. This notice provides the requested relief.

DATES: The amendments to Section 571.208 (49 CFR 571.208) and Section 571.209 (49 CFR 571.209), published at 59 FR 17992, April 15, 1994, continue to be effective October 12, 1994.

Seat belt assemblies and vehicles manufactured before October 12, 1994, may voluntarily comply on July 8, 1994, with those rules instead of the requirements currently in effect.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel S. Cohen, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4911.

SUPPLEMENTARY INFORMATION: On April 15, 1994, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection, and Federal Motor Vehicle Safety Standard No. 209, Seat Belt Assemblies, to allow manufacturers of all replacement seat belt assemblies intended for use only in specifically identified motor vehicles a choice of two means of providing information regarding the seating positions and vehicle models for which the assemblies are appropriate (59 FR 17992). The information may be provided either on the assembly itself or in the installation instruction sheet currently required to accompany the assembly. The final rule also narrowed the applicability of the labeling requirement so that it does not apply to two types of seat belt assemblies when they are installed as original equipment in a new motor vehicle. NHTSA amended Standards Nos. 208 and 209 because the new requirement will provide manufacturers more flexibility in the manner of providing installation information without decreasing the likelihood that

assemblies intended for use only in specifically identified motor vehicles a choice of two means of providing information about the seating positions and vehicle models for which the assemblies are appropriate. The information may be provided either on the assembly itself or in the installation instruction sheet required to accompany the assembly. The final rule also provided that the labeling requirement does not apply to two types of seat belt assemblies when they are installed as original equipment in a new motor vehicle. The final rule is effective October 12, 1994.

General Motors (GM) petitioned for reconsideration, requesting that manufacturers be allowed to delete information that will no longer be required now instead of waiting until October 12, 1994. This notice provides the requested relief.

DATES: The amendments to Section 571.208 (49 CFR 571.208) and Section 571.209 (49 CFR 571.209), published at 59 FR 17992, April 15, 1994, continue to be effective October 12, 1994.

Seat belt assemblies and vehicles manufactured before October 12, 1994, may voluntarily comply on July 8, 1994, with those rules instead of the requirements currently in effect.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel S. Cohen, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4911.

SUPPLEMENTARY INFORMATION: On April 15, 1994, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection, and Federal Motor Vehicle Safety Standard No. 209, Seat Belt Assemblies, to allow manufacturers of all replacement seat belt assemblies intended for use only in specifically identified motor vehicles a choice of two means of providing information regarding the seating positions and vehicle models for which the assemblies are appropriate (59 FR 17992). The information may be provided either on the assembly itself or in the installation instruction sheet currently required to accompany the assembly. The final rule also narrowed the applicability of the labeling requirement so that it does not apply to two types of seat belt assemblies when they are installed as original equipment in a new motor vehicle. NHTSA amended Standards Nos. 208 and 209 because the new requirement will provide manufacturers more flexibility in the manner of providing installation information without decreasing the likelihood that belts will be correctly installed. The final rule is effective October 12, 1994.

On May 2, 1994, General Motors (GM) petitioned for reconsideration of the April 15 final rule. Specifically, GM requested an amendment to the effective date to allow manufacturers to begin now to delete information that will no longer be required. In the absence of this relief, the manufacturers will have to continue providing the information until the October 12, 1994 effective date.

Prior to October 12, 1994, Standard No. 209 will continue to specify three different sets of requirements for the provision by manufacturers of replacement seat belt assemblies of information regarding the vehicle models and seating positions for which the assemblies are appropriate. The standard requires some seat belt assemblies to be labeled, some to be both labeled and accompanied by an installation instruction sheet, and some simply to be accompanied by an installation instruction sheet. A complete discussion of which requirement applies to which type of belt can be found in the April 15 final rule. The April 15 final rule replaced these three different sets of requirements with the single provision described above.

Since the April 15 final rule was intended to ease the burden on manufacturers, by providing manufacturers with more flexibility and deleting redundant requirements, the agency is adopting the requested amendment.

NHTSA finds for good cause that this final rule can be made effective immediately. This final rule imposes no duties or responsibilities on any party. Manufacturers may continue to comply with the current requirements until the previously established effective date of the April 15, 1994 final rule. As an alternative, this final rule gives manufacturers the option of complying instead with the requirements of Standard No. 208 and Standard No. 209, as amended by the April 15, 1994 final rule, which will become effective October 12, 1994.

Accordingly, under the authority of 49 U.S.C. 322, 30111, 30115, 30117, and 30166, and the delegation of authority at 49 CFR 1.50, the amendments to Section 571.208 (49 CFR 571.208) and Section 571.209 (49 CFR 571.209), published at 59 FR 17992, April 15, 1994, continue to be effective October 12, 1994. Seat belt assemblies and vehicles manufactured before October 12, 1994, may voluntarily comply on July 8, 1994, with those rules, in lieu of the requirements currently in effect.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action was not reviewed under the Executive Order. NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures and determined that this action is not significant within the meaning of those policies and procedures. This final rule gives manufacturers the option of complying either with the current requirements of Standard No. 209, or the requirements of Standard No. 209 as amended by the April 15, 1994 final rule, which will be effective October 12, 1994. Accordingly, this final rule will not impose any costs on manufacturers The impacts are thus so minimal that a full regulatory evaluation was not prepared.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, the agency has determined that this final rule will not have any cost impacts. Accordingly, a regulatory evaluation has not been prepared for this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect

of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Issued on July 8, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–17000 Filed 7–12–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 931100–4043; I.D. 070694A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the sharpchin/northern rockfish species category in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the sharpchin/northern rockfish total allowable catch (TAC) in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Sloan, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii) the sharpchin/northern TAC for the AI was established by the final groundfish specifications (59 FR 7656, February 16, 1994) as 4,820 metric tons (mt). The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the sharpchin/northern rockfish TAC in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 4,320 mt, with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the AI.

The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the sharpchin/northern rockfish species category in the AI, effective from 12 noon, A.l.t., July 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 7, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–16863 Filed 7–7–94; 4:03 pm]

BILLING CODE 3510–22–F

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 94–016P]

RIN 0583–AB79

Enhanced Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service is proposing to amend the poultry products inspection regulations to implement a new system of post-mortem inspection for all poultry species. The proposed system contains several innovations to provide assurances that USDA-inspected and passed poultry products will be free of visible contamination and will require the use of approved antimicrobial treatments in all official establishments. The proposed system would replace all existing systems of poultry post-mortem inspection with a single system in which two FSIS inspectors would staff each poultry processing line and examine carcasses for disease and visible contamination. The proposed regulation would not mandate a reduction in maximum linespeeds. The proposed system would place additional responsibility on official establishments to assure that the poultry they process is wholesome and free of disease. Establishment personnel, positioned before the on-line post-mortem FSIS inspector, would check carcasses prior to inspection and present for inspection only those poultry that are free of disease. Additionally, they would identify all poultry requiring off-line trim, salvage or reprocessing prior to presentation to FSIS for inspection. A second FSIS inspector would be positioned at a new inspection station that would incorporate that portion of the processing line between viscera harvest and the chiller. This is a location where contamination can occur

Proposed Rules

Federal Register
Vol. 59, No. 133
Wednesday, July 13, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 94–016P]

RIN 0583–AB79

Enhanced Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service is proposing to amend the poultry products inspection regulations to implement a new system of post-mortem inspection for all poultry species. The proposed system contains several innovations to provide assurances that USDA-inspected and passed poultry products will be free of visible contamination and will require the use of approved antimicrobial treatments in all official establishments. The proposed system would replace all existing systems of poultry post-mortem inspection with a single system in which two FSIS inspectors would staff each poultry processing line and examine carcasses for disease and visible contamination. The proposed regulation would not mandate a reduction in maximum linespeeds. The proposed system would place additional responsibility on official establishments to assure that the poultry they process is wholesome and free of disease. Establishment personnel, positioned before the on-line post-mortem FSIS inspector, would check carcasses prior to inspection and present for inspection only those poultry that are free of disease. Additionally, they would identify all poultry requiring off-line trim, salvage or reprocessing prior to presentation to FSIS for inspection. A second FSIS inspector would be positioned at a new inspection station that would incorporate that portion of the processing line between viscera harvest and the chiller. This is a location where contamination can occur but where there is currently no on-line inspection taking place. Finished Product Standards would be revised to eliminate process tolerances for fecal contamination. Recordkeeping and verification procedures would be required so that establishment process control could be assured. Additionally, all contaminated poultry that are reprocessed would be reinspected on the main processing line by the second FSIS inspector and antimicrobial treatments would required to be applied to carcasses before the chilling operation.

DATES: Comments must be received on or before October 11, 1994.

ADDRESSES: Written comments to Policy Evaluation and Planning Staff, Attn: Diane Moore, Room 3171 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided under the Poultry Products Inspection Act, should be directed to Dr. Isabel Arrington, at the address given below. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Dr. Isabel Arrington, Staff Officer, Inspection Management Program, Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 720–7905.

SUPPLEMENTARY INFORMATION:

Comments

The Agency recognizes that there may be additional information that was not available for its consideration at the time this proposal was written. Therefore, the Agency is conducting further analysis of the benefits and costs of the proposal and also is soliciting additional information on this proposal. In particular, FSIS is interested in receiving information on inspector sequence, benefits, and costs of the proposed rule. FSIS expects that this information will be submitted in the form of comments from the public.

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Evaluation and Planning Staff and should refer to the docket number that appears in the heading of this document. Any person desiring opportunity for oral presentation of views, as provided under the Poultry Products Inspection Act, must make such request to Dr. Arrington so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 4:00 p.m., Monday through Friday.

Additionally, FSIS will collect data by pilot testing this proposal during the comment period. The Agency will comply with all bargaining obligations under the National Basic Agreement and the Federal Service Labor Management Relations Statute relating to the impact any Poultry Enhancement Inspection System pilot test would have on employee working conditions.

To the extent that the further analysis conducted by USDA and the comments solicited by this proposal contain meritorious alternatives, information, or data not previously considered, the Agency may decide to propose changes to specific provisions of this proposed rule. In this event, the Agency is committed to supplement this rulemaking to provide the public an opportunity to comment on the specific revised regulatory provisions.

Background

Introduction

The Secretary of Agriculture is charged by the Poultry Products Inspection Act (PPIA—21 U.S.C. 451 *et seq.*) with carrying out a mandatory poultry products inspection program. The purpose of this inspection is to assure that poultry products in interstate and foreign commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. The Act prohibits the shipment in commerce of poultry products that are adulterated or misbranded (21 U.S.C. 458), including any poultry products that bear or contain any poisonous or deleterious substance that may render them injurious to health (21 U.S.C. 453(g)(1)) or that for any other reason are unsound, unhealthful, unwholesome, or otherwise unfit for human food (21 U.S.C. 453(g)(3)). The Act requires post-mortem inspection of all carcasses of slaughtered poultry subject to the Act and such reinspection as deemed necessary (21 U.S.C. 455(b)). The Secretary is authorized to promulgate such rules and regulations

as are necessary to carry out the provisions of the Act (21 U.S.C. 463(b)).

FSIS has stationed about 2,705 inspectors in 300 poultry slaughtering establishments nationwide. They are responsible for ante-mortem and post-mortem inspection, and the inspection of further processed products at these establishments. They are also responsible for assuring that facilities and equipment are sanitary and the plant environment conducive to the manufacture of a wholesome product.

To meet the PPIA requirement for post-mortem inspection of every poultry carcass, FSIS stations inspectors on every slaughter line throughout every working shift. Most poultry slaughtering establishments operate moving production lines that carry the poultry through all the stages of processing from that of the live bird to the finished, ready-to-cook stage.

Slaughter and Dressing Process

Currently, live birds are brought to the plant and hung upside-down on shackles on the moving conveyor line. They are moved first to the stunning and slaughtering area, where they are bled out. Next, they are moved into scalding vats where the feathers are loosened. They are then conveyed to automatic defeathering machines (called "pickers"), where the feathers are taken off the carcass by rapidly moving rubber "fingers." After this operation, the birds pass through a hock removal area. Then they pass to the evisceration area of the plant, where the birds are eviscerated by automatic machinery. Evisceration is usually accomplished by cutting the bird's abdomen and "scooping" out the organs with metal "spoons" or paddles.

The viscera are left attached to and suspended outside the carcass throughout post-mortem inspection. The birds are presented for inspection with the hanging viscera suspended to one side of the carcass. The inspector conducts a post-mortem examination for signs of disease or abnormality by holding open the abdominal cavity with one hand and viewing its interior and then quickly manipulating the viscera with the other hand. At the same time, the inspector observes the external surfaces of the carcass for signs of disease, abnormality, or contamination. The inspector also points out to establishment employees lesions or other conditions that may be removed by trimming.

Birds that do not pass post-mortem inspection are either removed from the processing line and placed on a hang-back rack for veterinary disposition or they are designated for off-line trimming, salvage, or reprocessing, or condemned. Birds that are inspected and passed by FSIS move on to the next operations, which include viscera removal, giblet harvest, and final trimming and washing. The carcasses then proceed to the chilling operation, where usually they are immersed in ice and cold water tanks to bring the carcass temperature down to acceptable levels and to retard bacterial growth. The chilled birds are then packaged and readied for shipment or further processed.

Basis of Inspection

All post-mortem inspection is based on the use of an organoleptic method of inspection. That is, inspectors and veterinarians rely on the use of their five senses in making decisions regarding the disposition of poultry carcasses and their parts. Additionally, FSIS personnel monitor chemical residues and microbial baselines by taking random samples of inspected birds for laboratory microbiological or chemical analyses. Laboratory analysis can be utilized to confirm post-mortem dispositions or suspected chemical residues.

The organoleptic method has proven reliable over many years in the detection of diseases or abnormalities that could be dangerous and are certainly objectionable to consumers. Nevertheless, the organoleptic method is not capable of detecting microbial pathogens that may be present on raw, ready-to-cook product. Because of the continuing and increasing threat of foodborne pathogens, including pathogens known to be carried on the surfaces of dressed poultry carcasses and in feces, the focus of meat and poultry inspection must shift towards enhancing public health.

Pathogen Reduction Initiatives

In this regard other FSIS initiatives include prevention programs for use on the farm and during live-animal transit, the development of rapid detection methods using the latest technologies, the collection of microbiological baseline data, the development of risk analysis methods applicable to meat and poultry inspection, microbial detection and reduction activities in both slaughtering and processing plants, and an intensified education program directed at retail outlets, food handlers, and consumers.

Some of these initiatives will obviously take longer than others to carry out. Some in-plant activities will depend on the development of new technology. Even though all critical research questions have not yet been answered, FSIS recognizes and accepts its obligation to proceed with activities that are likely to succeed based on current theories about pathogen control. The agency also has the opportunity to introduce useful microbial detection technologies into the present inspection program as they become available, not waiting for the fully developed new system.

This proposal includes several activities which are based on present knowledge, especially that which suggests that pathogen presence on carcasses is likely associated with fecal contamination and that careful process control can reduce the potential for contamination.

Current Inspection Systems

Several poultry post-mortem inspection systems are currently operated in federally inspected establishments—traditional, New Line Speed (NELS), New Turkey Inspection System (NTIS), and the Streamlined Inspection System (SIS). Within each of these current systems no product with visible fecal contamination is permitted to enter the chiller, but the assurance of this standard is based on monitoring samples; inspectors do not have the opportunity to continuously verify that fecal contamination doesn't enter the chiller.

Traditional

Under traditional inspection, the oldest system, one inspector examines a whole bird and is responsible for its proper disposition, including directing and verifying any required trimming by an establishment employee who is the "inspector's helper," before the bird leaves the area of inspection. A sample of inspected product is reinspected for processing nonconformances through an acceptable quality level (AQL) statistical program. Line speeds for traditional inspection were based on work-measurement studies and were set at the limit at which an inspector could carry out the organoleptic examination and manipulation of each carcass presented for inspection. Also, industry was not capable of producing birds at a higher speed and therefore, these line speeds were acceptable.

SIS

In the mid-1970's, the development of automated evisceration equipment, as well as improvements in genetics, nutrition, health, and flock management, allowed the poultry industry to present uniform lots of birds to inspectors faster than inspectors could inspect using traditional methods. In 1978, the FSIS approved the use of a new inspection method known as Modified Traditional Inspection (MTI). MTI allowed industry to run an eviscerating line at speeds of up to 70 birds per minute.

In 1985, USDA designed a new system to replace MTI that would permit the industry to continue to operate at 70 birds per minute but require fewer on-line inspectors. This system became known as the Streamlined Inspection System (SIS). SIS, which is currently the standard form of inspection for young chickens, requires one or two inspectors to be positioned on each processing line after the birds have been eviscerated. Each inspector performs a whole-bird inspection involving the examination of the outside, inside, and viscera of the birds presented for inspection. The one-inspector form of SIS is known as SIS–1; the two-inspector version, called SIS–2, is the most widely used (about 140 plants, compared with only about 3 plants for SIS–1).

Inspection under both SIS–1 and SIS–2 is conducted in two phases—a post-mortem inspection phase and a reinspection phase. In the inspection phase, inspectors determine which birds must be salvaged, reprocessed, condemned, retained for veterinary disposition, or allowed to be moved down the line as a passed bird subject to reinspection.

The reinspection station or stations are located both before and after each chiller. At the prechill station, inspectors examine carcasses by visually monitoring, checking quality control data, or sampling product at the station. SIS incorporates a finished product standards (FPS) program by which product is evaluated and the results tracked with the aid of the CUSUM statistical method. The tabulation and charting of CUSUM results enables the establishment and FSIS inspectors to determine whether the establishment's processes are under control, and hence, whether the process will produce consistently sound, wholesome product.

NELS

During the 1970's and 1980's the industry continued to make significant technological advances and were capable of better process control. The FSIS inspection procedure became the limiting factor on industry productivity. In 1981, the Agency developed a new procedure, New Line Speed (NELS), that shifted quality control responsibilities to the plant and relied more heavily on monitoring and verification than in the past. This is a voluntary program, and, if approved the establishment can

Modified Traditional Inspection (MTI). MTI allowed industry to run an eviscerating line at speeds of up to 70 birds per minute.

In 1985, USDA designed a new system to replace MTI that would permit the industry to continue to operate at 70 birds per minute but require fewer on-line inspectors. This system became known as the Streamlined Inspection System (SIS). SIS, which is currently the standard form of inspection for young chickens, requires one or two inspectors to be positioned on each processing line after the birds have been eviscerated. Each inspector performs a whole-bird inspection involving the examination of the outside, inside, and viscera of the birds presented for inspection. The one-inspector form of SIS is known as SIS–1; the two-inspector version, called SIS–2, is the most widely used (about 140 plants, compared with only about 3 plants for SIS–1).

Inspection under both SIS–1 and SIS–2 is conducted in two phases—a post-mortem inspection phase and a reinspection phase. In the inspection phase, inspectors determine which birds must be salvaged, reprocessed, condemned, retained for veterinary disposition, or allowed to be moved down the line as a passed bird subject to reinspection.

The reinspection station or stations are located both before and after each chiller. At the prechill station, inspectors examine carcasses by visually monitoring, checking quality control data, or sampling product at the station. SIS incorporates a finished product standards (FPS) program by which product is evaluated and the results tracked with the aid of the CUSUM statistical method. The tabulation and charting of CUSUM results enables the establishment and FSIS inspectors to determine whether the establishment's processes are under control, and hence, whether the process will produce consistently sound, wholesome product.

NELS

During the 1970's and 1980's the industry continued to make significant technological advances and were capable of better process control. The FSIS inspection procedure became the limiting factor on industry productivity. In 1981, the Agency developed a new procedure, New Line Speed (NELS), that shifted quality control responsibilities to the plant and relied more heavily on monitoring and verification than in the past. This is a voluntary program, and, if approved the establishment can operate at a maximum rate of 91 birds per minute.

NELS combines SIS post-mortem inspection procedures with an establishment-operated slaughter quality control program that is monitored by FSIS. The Agency permits the NELS system in appropriately equipped establishments that have requested and been approved for the system. The NELS inspection system consists of three FSIS inspectors performing the NELS whole-bird post-mortem inspection procedure and at least one inspector monitoring the application of an FSIS-approved, plant-operated slaughter quality control (QC) program. The QC program is designed to assure that the processing system is under control.

NTIS

The above discussion regarding MTI, SIS, and NELS is specific to the development of inspection systems for young chickens, the largest segment of the poultry industry. Other classes of poultry have not evolved through the same inspection procedures. However, as the turkey industry began to grow and become more automated, merely expanding traditional procedures was impractical and inefficient. Therefore, in 1985, FSIS established the New Turkey Inspection (NTI) system which was based on the concepts and procedures used in NELS system.

This system calls for one or two inspectors on each inspection line to inspect the inside, outside, and viscera of each bird presented, with establishment employees responsible for trimming passed carcasses. The adequacy of the trimming is assured through an establishment-operated quality control and finished product standards (FPS) program that is monitored by FSIS personnel.

Poultry Enhancement Program

Introduction

Experience has shown that there are two points on the poultry main processing line where birds are more likely to become contaminated. The first of these is at evisceration, when improperly adjusted equipment may perforate or burst the intestines as the viscera is "scooped" out, resulting in fecal contamination on the interior surface of the carcass. The second point where contamination may occur is where the viscera are separated from the carcass. Unless the viscera harvest is properly carried out, the interior surface of carcasses can become contaminated with feces. In March, the Secretary of Agriculture announced a series of measures that are intended to strengthen poultry products inspection and reduce the occurrence of pathogens on raw product. The initiatives included a better method for enforcing "zero tolerance" for fecal contamination on raw product by changing the inspection sequence to provide on-line inspection checks for contamination, which is not provided by current systems. Also included among the initiatives are the use of approved antimicrobial treatments on carcasses and the 100% reinspection of reprocessed carcasses. Because these initiatives would change procedures that are already authorized or required by the regulations, it is necessary to amend the regulations to carry them out.

The proposal would implement a new system of post mortem inspection, require re-inspection of all reprocessed birds on the main processing line, revised the existing finished product standards program, and require the use of an antimicrobial treatment before the chilling operation. The proposed new inspection system is intended to assure that only uncontaminated poultry would enter the chiller and the required antimicrobial treatment is applied to every carcass. A benefit of these is to reduce the chance of cross-contamination in the chilling operation.

Inspection Sequence Changes

The proposal would replace all existing systems of poultry post-mortem inspection with a single system in which two FSIS inspectors would staff each poultry processing line. The first inspector would examine eviscerated poultry at an "on-line post-mortem inspection station," located at or near the present post-mortem inspection position. This inspector would assure that carcasses sorted by the establishment are free of condemnable pathology or are properly designated for off-line trim, salvage, or reprocessing.

The second inspection station, the "on-line/off-line carcass inspection station," would be positioned just before the chiller. The inspector at this station would perform on-line inspection for fecal contamination thus ensuring that no visible fecal contamination is present on carcasses entering the chiller. This inspector would also be responsible for observing plant operations between the viscera harvest and the final wash and for reinspecting all reprocessed birds on the line.

The Agency requests that comments on the proposal include information and data on this proposed inspector sequence, or information and data

relative to any alternatives to this proposed inspector sequence.

Establishment Responsibilities

Establishment personnel, known as sorters, would be positioned before the first FSIS inspector. This position will be a reassignment of duties for the current plant presenters and inspector helpers. The establishment sorters differ in responsibility from the inspectors' helpers under the current regulations because the sorters would be more active in detecting disease and abnormality and sorting birds affected by such conditions from normal birds.

The required establishment sorter or sorters would be responsible for assuring that no diseased poultry requiring condemnation are presented for FSIS inspection. They would designate poultry for off-line salvage, trimming, or reprocessing, or condemn the birds prior to presentation for inspection, and they would be required to record all condemnations on a disposition reporting form required for the purpose. Only those birds without condemnable conditions would be permitted to reach the post-mortem inspection station, except for those designated and marked for reprocessing, knife-salvage, or other off-line procedures. These would be removed from the evisceration line only after the bird passed the FSIS post-mortem inspector at the on-line post-mortem inspection station but before the viscera harvest.

Under the proposal, as is currently required, the establishment would have to position an employee after the post-mortem inspector and before the viscera harvest. This employee would be required to perform duties such as removing carcasses marked for salvage or reprocessing, or placing birds on hangback racks for veterinary disposition or correlation.

The establishment also would continue to be required to position one or more trimmers after the giblet harvest and before the final wash. These trimmers would continue to perform the duties required by the current regulations, but they would have the additional responsibility of removing for reprocessing birds that are contaminated with feces on the inner surfaces and assuring that only birds that are properly trimmed are presented to the FSIS inspector at the on-line/off-line carcass inspection station.

Reprocessing

Currently, reinspection of reprocessed birds by FSIS is done by random sampling of lots. The proposed system would require all reprocessed birds to be returned to the main processing line at a point before the second FSIS inspector to assure that they are reinspected. If any reprocessed bird were found with fecal contamination, all birds remaining in the reprocessed lot would be returned to the establishment's reprocessing station for rework.

Equipment and Facilities Requirements

All poultry slaughtering establishments would be required to comply with the same equipment and facility requirements, which would be essentially those of the present SIS, NELS, and NTIS inspection systems, extended to accommodate inspection at the proposed on-line/off-line inspection station. For example, establishments would have to furnish adjustable inspection stands and shadow-free lighting with a minimum intensity of 200 foot candles and a color rendering index of 85 at the inspection stations. Also, guidebars would have to be installed at both inspection stations in all establishments to permit birds to be moved smoothly and consistently to the edge of the trough running below the conveyor so that birds would be properly presented to the FSIS inspector.

Linespeed

Maximum linespeeds allowed under optimal conditions would remain the same under the proposed system. The proposed system does not prescribe specific hand motions which in the past have been a determining factor in the rate at which an inspector could inspect each bird. This system would allow the inspector flexibility in the technique used to inspect each bird. Also, this proposal would eliminate the presentation for FSIS inspection of those birds with condemnable conditions.

FSIS also considered the impact linespeeds have on the safety and wholesomeness of poultry. A study was conducted between June 1990 and May 1991 at a poultry establishment to determine if the microbiological quality of poultry carcasses was different when processed at varying linespeeds. The general conclusion was that mean bacterial counts and *Salmonella* prevalence did not change significantly with varying processing linespeeds.[1]

Also, there are data to support the incidence of *Salmonella* on whole broiler carcasses declined from 36.9% to 25.0% between 1979 and 1992 irrespective of changes in linespeeds.[2]

Other factors do impact the microbiological quality of the product such as chlorine and other antimicrobial treatments as well as process control and the adherence to good manufacturing practices by the establishment.[3]

Based on this information, maximum inspection rates for young chickens would remain at 70 birds per minute for establishments without approved slaughter PQC programs and at 91 birds per minute for establishments with approved slaughter PQC programs. The rates for turkeys with J-type opening cuts and weighing under 16 lbs. would be 20 birds per minute at establishments without such PQC programs and 51 birds per minute at establishments operating such PQC programs. The rates for such turkeys weighing more than 16 lbs. would be 16 birds per minute without such PQC and 41 birds per minute with such PQC. The rates for turkeys with bar-type opening cuts weighing under 16 lbs. would be 20 birds per minute at establishments without PQC programs and 45 birds per minute at establishments operating PQC programs. The corresponding rates for such turkeys weighing over 16 lbs. would be 16 birds per minute without a PQC program and 35 birds per minute with a PQC program. (See Table 1.)

[1] Study conducted by USDA, FSIS, Science and Technology. The study is available for review at the Hearing Clerk's Office.

[2] Study conducted by USDA, FSIS, Science and Technology. A copy of this study is available in the office of the FSIS Hearing Clerk.

[3] "Effects of countercurrent scalding and postscald spray on the bacteriologic profile of raw chicken carcasses." 1992. W. James et al. Journal of the American Veterinary Medical Association. Vol. 201, No. 5, pages 705–708. A copy of this document is available from the FSIS Hearing Clerk, Washington, DC.

Class of pou	T
Young chickens	
Young turkeys:	
Less than 16 pounds	
More than 16 pounds	
Less than 16 pounds	
More than 16 pounds	

Under the proposal, the FSIS inspector in charge (IIC) or his/her designee would retain the responsibility for determining whether conditions permit adequate post-mortem inspection at the maximum rates. Criteria for justifying linespeed reductions would include the inability of the official establishment to present carcasses so that internal and external surfaces and organs can be inspected, remove condemnable birds from the line, and properly identify contaminated birds for trimming or knife salvage.

Finished Product Standards Revisions

The FPS now provided in the regulations would be updated and tightened to reflect more accurately the current conditions in the poultry industry.

The current FPS program was developed on the basis of 1983 in-house data. Since the standards were adopted, the program has proven more effective in preventing nonconformances than the AQL it supplanted. However, experience in applying the FPS has disclosed certain limitations involving the application of testing rules and actions. The proposed revised FPS would overcome these limitations while preserving the advantages of the current FPS. The strength of both the current program and the proposed revised FPS is the effectiveness of on-line quality control in maintaining processing control. Processing control, which focuses on prevention rather than the detection of nonconformances, would continue to be the guiding concept of the FPS.

The proposed FPS program would incorporate the following changes to the current FPS processing control monitoring program:

(1) Consolidation of nonconformance categories.

(2) Elimination of feces from reinspection categories.

(3) Elimination of post-chill testing.

TABLE 1.—MAXIMUM PRODUCTION RATES

Class of poultry	Birds per minute	
	With PQC	Without PQC
Young chickens	91	70
Young turkeys:		
	J-type opening cut	3-point suspension
Less than 16 pounds	51	20
More than 16 pounds	41	16
	Bar-type opening cut	3-point suspension
Less than 16 pounds	45	20
More than 16 pounds	35	16

Under the proposal, the FSIS inspector in charge (IIC) or his/her designee would retain the responsibility for determining whether conditions permit adequate post-mortem inspection at the maximum rates. Criteria for justifying linespeed reductions would include the inability of the official establishment to present carcasses so that internal and external surfaces and organs can be inspected, remove condemnable birds from the line, and properly identify contaminated birds for trimming or knife salvage.

Finished Product Standards Revisions

The FPS now provided in the regulations would be updated and tightened to reflect more accurately the current conditions in the poultry industry.

The current FPS program was developed on the basis of 1983 in-house data. Since the standards were adopted, the program has proven more effective in preventing nonconformances than the AQL it supplanted. However, experience in applying the FPS has disclosed certain limitations involving the application of testing rules and actions. The proposed revised FPS would overcome these limitations while preserving the advantages of the current FPS. The strength of both the current program and the proposed revised FPS is the effectiveness of on-line quality control in maintaining processing control. Processing control, which focuses on prevention rather than the detection of nonconformances, would continue to be the guiding concept of the FPS.

The proposed FPS program would incorporate the following changes to the current FPS processing control monitoring program:

(1) Consolidation of nonconformance categories.

(2) Elimination of feces from reinspection categories.

(3) Elimination of post-chill testing.

(4) Setting nonconformances tolerances at same level for all poultry classes.

(5) Separation of the trimmable lesion/condition category from processing/trim categories.

(6) Simplification of on-line processing control monitoring rules.

Consolidation of Nonconformance Categories

The proposed revised FPS nonconformance categories (Table 1 at proposed 9 CFR 381.76(h)) would be fewer than the existing FPS nonconformance categories and the testing procedure would be simpler. The proposed category changes would make testing easier and provide earlier feedback. Appropriate preventive and corrective actions could be initiated because the carcass nonconformance would be based on ready-to-cook (RTC) requirements and sanitary dressing procedures.

The current finished product standards (FPS) program has 20 prechill processing, 14 prechill trim, and 3 post-chill categories (37 categories). These groupings are based on the type of nonconformances found on carcasses. The proposed FPS program would have 8 nonconformance categories and 1 separate trimmable lesion/condition category. The nonconformances would be assigned to common groups with respect to control, origin, prevention, or removal. Prechill processing and trim categories would be combined on one test form to simplify the testing process so that only one cumulative summation (CUSUM) would be calculated.

The relative risk of nonconformances would be the same for each poultry class. Because the comparative risk between categories is not known, the new nonconformance categories would be weighted equally (each having a weight factor of one). This change would also eliminate any tendency to correct only those nonconformances with higher weights.

Elimination of Feces From the Nonconformance Categories

One goal of the FPS program would be to ensure that poultry carcasses are free of feces. To emphasize the Agency's determination to enforce the "zero tolerance" for such contamination, feces would no longer be listed among nonconformance categories. Any finding of fecal contamination during an FPS check would require an immediate line speed reduction. On-line processing control by the establishment is necessary to exclude fecal contamination from product ready to enter the chilling system.

There are two operations in the slaughtering process where there is a greater chance for carcass contamination. These operations are evisceration and viscera harvest. Under this proposal, FSIS inspectors would be stationed after each of these operations to ensure only non-contaminated carcasses proceed down the line.

Elimination of Post-Chill Testing

One goal of the proposed FPS reinspection test would be to ensure that the establishment keeps its evisceration process under control with emphasis on preventing fecal contamination from entering the carcass chilling system. All carcasses would be subject to sampling using the proposed FPS test, which includes a modified extraneous material category, prior to entering the chill system; therefore, these defects should not enter the chill system. The current FPS post-chill test focuses on the detection of extraneous material nonconformances too late in the slaughtering and dressing procedure to provide information that could be used to improve evisceration controls.

Setting Tolerances at the Same Level for All Poultry Classes

It is reasonable to set one tolerance to provide a uniform standard for evaluating all poultry carcasses after slaughter and dressing since ready-to-cook (RTC) requirements and the same

nonconformances apply to all poultry classes. Established tolerances for poultry carcasses are already approaching uniformity. The current FPS pre-chill trim nonconformance limits for young chickens and turkeys are already the same. The FPS pre-chill processing and post-chill nonconformance limits for young chickens and young turkeys are almost the same.

Ideally, if optimal processing controls were maintained, poultry would be nonconformance-free. Nonconformance-free product may be theoretically achievable but is not likely to be commercially feasible. A reasonable tolerance would allow for the presence of a few accidental nonconformances incidental to the process and, at the same time, define acceptable quality levels. Establishing a new tolerance for all poultry classes along with changes in the testing rules would encourage continual improvement in processing control. Periodic re-evaluation of these limits would be essential to encouraging the trend toward the production of poultry that is free of nonconformances.

The current FPS tolerances and action numbers are based on data collected in 1983. The Agency is now offering for comment the modifications of these standards that field inspection experience has shown to be necessary. Even so, the Agency will be especially attentive to comments addressing the proposed FPS standards.

Currently, the FPS upper limit of acceptability of a 10-bird test sample is called the subgroup absolute limit. The subgroup absolute limit is defined by the tolerance number plus 5 (T+5). The "plus 5" is the expected normal variance in a process under control. In the proposed FPS program, the need for the subgroup absolute limit (T+5) is eliminated by incorporating normal process variability within tolerance. Following the cumulative summation (CUSUM) method, the process variability exceeding tolerance is recorded. The proposed FPS program uses CUSUM to determine when the process is out of control and to identify product requiring rework. Tolerance levels for nonconformances would ensure appropriate corrective actions at the control points. In recent years, a zero CUSUM has been achieved consistently by establishments under the current FPS program—evidence that nonconformance process control has improved. A zero CUSUM over time is not expected. Because of process variation, a certain number of tests are expected to exceed tolerance and cause an increase in the CUSUM. The FPS tolerance numbers for nonconformances were set at such a level that one test in 20 would be expected to exceed the tolerance number plus 5. Under the present FPS program, exceeding the subgroup absolute limit (T+5) is usually the only cause for corrective action or testing. Maintaining a zero CUSUM does not encourage further improvement in process control.

Separation of the Trimmable Lesion/Condition Category From the Processing/Trim Categories

One goal of the proposed revised FPS program would be to ensure process control with a statistically valid method of identifying trimmable lesions and conditions and product requiring rework. The confidence level of the proposed *on-line* test ensures a standard of no tolerance for trimmable lesions and conditions. The test would be objective and would result in actions that are firm, fair, and consistent. The standard for trimmable lesion/condition nonconformances is met through testing and actions independent of the other proposed FPS nonconformance categories.

Separating the trimmable lesion/condition category from the other proposed FPS nonconformance categories allows independent actions which include: (a) Monitoring a statistically valid number of carcasses on-line; (b) notifying the IIC immediately of trimmable lesion/condition nonconformance; (c) accurately identifying product with trimmable lesion/condition nonconformance for rework; (d) recording and evaluating corrective actions taken.

The current finished product standards (FPS) program assigns a point value to the trimmable lesion/condition nonconformances found during a 10-bird monitoring test. These points are included in the CUSUM calculation for the pre-chill trim test. At the same time, trimmable lesion/condition nonconformances have a "zero tolerance." That is, an immediate retest involving an additional 10-bird sample is required when a trimmable lesion/condition is detected. The 10-bird retest is not a statistically valid number of carcasses. The probability that trimmable lesions and conditions will be found through such 10-bird tests is low, even when the process is out of control. Thus, the testing does not result in identifying product for rework.

The proposed on-line verification test is statistically based to ensure processing control and takes a reasonably short time to perform. The test would be conducted by the establishment on a 300-bird sample taken after the final wash at the reinspection sample collection site. An FSIS floor inspector would typically perform verification sampling for the Agency. A line-stop button would be required to facilitate the removal of carcasses with trimmable lesions and conditions during the on-line test.

Simplifcation of Rules for Monitoring On-Line Processing Control

An additional goal of the proposed revised FPS program would be to modify testing rules and procedures to ensure that testing is sensitive and specific enough to identify loss of processing control. A high probability of identifying product requiring rework would be associated with actions taken on the basis of the tests.

As mentioned, testing rules in the current FPS program are cumbersome and result in repeated testing which rarely results in identifying product for rework. When pre-chill nonconformances reach action levels, immediate multiple location testing and retesting is required at pre-chill, post-chill, and on-line control points. This increase in simultaneous testing is labor-intensive for both the establishment and inspection. This labor-intensive effort rarely results in the identification of product for rework. There is little incentive to do testing that almost never leads to regulatory action. The program requirements generate a lot of paper work, while the intended effect on processing control is difficult to quantify.

The proposed revised FPS program would identify when the establishment's processing is out of control and product requires rework. All monitoring tests would be applied at pre-chill. Under the current FPS program, product is tested at post-chill using pre-chill standards to identify product requiring rework. At post-chill, product from multiple evisceration lines is sometimes commingled in one chiller. This commingling dilutes nonconformances and decreases the probability of identifying product for rework when tested post-chill. With the proposed FPS, all affected carcasses would be subject to reinspection, identified at pre-chill, and segregated for rework.

The proposed revised FPS is easily applied even when carcasses go directly to further processing. The proposed categories (Table 1 at proposed 9 CFR 381.76(h)) are designed to provide feedback to the establishment to ensure processing control.

Corrective Actions

If the on-line postmortem inspector observed a bird that should have been condemned or designated and marked for off-line knife-salvage, trimming, or reprocessing, the inspector would stop the processing line to make a proper disposition. The inspector would have the bird condemned, removed from the line, or, if the condition of the bird was found to be questionable, placed on a hang-back rack for veterinary disposition.

If the on-line/off-line carcass inspector observes any fecally contaminated birds, the line would be stopped and the bird removed for reprocessing. Additionally, a mandatory linespeed reduction would be required. The linespeed would be reduced to the extent necessary to ensure process control in preventing/eliminating all feces and for such duration until it is determined by FSIS that the process can be maintained in compliance with the no visible fecal contamination standard.

If any reprocessed bird is found with fecal contamination, the on-line/off-line inspector will require all birds remaining in the reprocessed lot to be returned to the establishment's reprocessing station for rework.

Any finding of fecal contamination during a Finished Product Standard check would require an immediate linespeed reduction and reprocessing of the contaminated carcass.

Antimicrobial Treatments

In spite of the best efforts to reduce or eliminate visible contamination through the measures that this proposal would require, poultry would still harbor bacteria. The numbers of these invisible contaminants can only be reduced through antimicrobial treatments. With this proposed rulemaking, the Agency would require, for the first time, that poultry slaughtering establishments provide antimicrobial interventions before the carcasses enter the chilling system.

Thus, in addition to changing post-mortem inspection staffing and procedures and reinspection criteria, this proposed rulemaking would mandate the use of an approved antimicrobial treatment for poultry. The treatments could be applied at any point preceding the chilling operation. Many establishments would already be in compliance with this provision of the proposed regulations because they routinely apply a 20-ppm chlorinated spray at the final wash. Spoilage and pathogenic bacteria naturally reside on the surface of raw poultry. It has been assumed that a certain level of bacteria

Corrective Actions

If the on-line postmortem inspector observed a bird that should have been condemned or designated and marked for off-line knife-salvage, trimming, or reprocessing, the inspector would stop the processing line to make a proper disposition. The inspector would have the bird condemned, removed from the line, or, if the condition of the bird was found to be questionable, placed on a hang-back rack for veterinary disposition.

If the on-line/off-line carcass inspector observes any fecally contaminated birds, the line would be stopped and the bird removed for reprocessing. Additionally, a mandatory linespeed reduction would be required. The linespeed would be reduced to the extent necessary to ensure process control in preventing/eliminating all feces and for such duration until it is determined by FSIS that the process can be maintained in compliance with the no visible fecal contamination standard.

If any reprocessed bird is found with fecal contamination, the on-line/off-line inspector will require all birds remaining in the reprocessed lot to be returned to the establishment's reprocessing station for rework.

Any finding of fecal contamination during a Finished Product Standard check would require an immediate linespeed reduction and reprocessing of the contaminated carcass.

Antimicrobial Treatments

In spite of the best efforts to reduce or eliminate visible contamination through the measures that this proposal would require, poultry would still harbor bacteria. The numbers of these invisible contaminants can only be reduced through antimicrobial treatments. With this proposed rulemaking, the Agency would require, for the first time, that poultry slaughtering establishments provide antimicrobial interventions before the carcasses enter the chilling system.

Thus, in addition to changing post-mortem inspection staffing and procedures and reinspection criteria, this proposed rulemaking would mandate the use of an approved antimicrobial treatment for poultry. The treatments could be applied at any point preceding the chilling operation. Many establishments would already be in compliance with this provision of the proposed regulations because they routinely apply a 20-ppm chlorinated spray at the final wash. Spoilage and pathogenic bacteria naturally reside on the surface of raw poultry. It has been assumed that a certain level of bacteria present on carcass surfaces was unavoidable due to the inherent characteristics of animals and raw poultry meat and the nature of the slaughter and processing operation. Consequently, organoleptic inspection procedures were designed to detect obvious carcass diseases or abnormalities. FSIS is expanding its inspection activities to address increasing concern by the scientific community and the public about the threat of foodborne illness from consumption of meat and poultry products. Pathogens of concern in poultry include *Salmonella* and *Campylobacter*, which are frequently carried on raw poultry. These bacteria cannot be detected by sight, smell, or taste.

Salmonellae, found in the intestinal tract and waste of most warm-blooded animals, are the most important cause of bacterial foodborne illness with a 0.1 percent case fatality rate and highest average cost per case.[4] Foods of animal origin, particularly meat and poultry, are considered to be the primary source of human salmonellosis. The organisms are present in the skin and feathers of live birds whose carcasses can also become contaminated during slaughter from intestinal tract contents of otherwise healthy animals. Cross contamination of cooked foods from raw meat and poultry, kitchen utensils, or surfaces has been frequently described as a cause of salmonellosis.

Campylobacter jejuni lives naturally as a harmless inhabitant in the intestinal tract of many warm-blooded animals, including poultry. In many countries the incidence of *Campylobacter* infection is higher than that for *Salmonella*. In North America, campylobacteriosis is believed to be the principal cause of foodborne enteritis, accounting for the highest number of cases.[5] Poultry meat is most often implicated as the primary source of infection.

From 1983 to 1987, 2,397 foodborne disease outbreaks were reported to the Centers for Disease Control (CDC), representing 91,678 cases. CDC defined an outbreak as an incident in which two or more persons experience a similar illness and food is implicated. The etiology was unknown in the majority of outbreaks. Among outbreaks in which etiology was determined, bacterial pathogens caused the largest number of outbreaks (66 percent) and cases (92 percent). During the five-year interval, meat and poultry accounted for approximately 16 percent of the bacterial disease outbreaks. *Salmonella* was the most frequently reported pathogen each year.[6]

FSIS recognizes that the technologies now available for reducing bacterial contamination on raw poultry carcasses are limited. There are currently no approved antimicrobial agents for use pre-chill listed in the poultry inspection regulations, although several compounds appear promising. Described below are a few alternative treatment methods available to the poultry industry for use or further development.

Trisodium phosphate is approved by FDA for use as a processing aid on raw poultry. It is listed in the FDA regulations as generally recognized as safe (GRAS) for multiple purpose use in accordance with good manufacturing practice (21 CFR 182.1778). FSIS has granted approval for testing of trisodium phosphate at pre-chill and post-chill locations and has begun rulemaking procedures to include this compound and its use conditions in the table of substances in 9 CFR 381.147(f)(4). Trisodium phosphate has been shown to reduce microbial contamination on poultry carcasses when applied by spraying or dipping carcasses for up to 30 seconds in an 8- to 12-percent solution. Industry studies show a one to one and one-half logarithm reduction in the number of *Salmonella* and other bacteria on carcass surfaces when carcasses are dipped in or sprayed with trisodium phosphate.[7]

Several organic acid compounds, including lactic acid and acetic acid, have antimicrobial effects and are listed in the FDA regulations as GRAS. Although listed in 21 CFR, conditions-of-use have not been established for use of these compounds on poultry products. Researchers have obtained varying degrees of microbial reductions when treating carcasses with organic acid compounds. Early studies indicated changes in carcass skin color when carcasses were treated with organic acid compounds. More recent studies provide data supporting the effectiveness of organic acid compounds at concentrations that do not

[4] Agricultural Outlook, Economic Research Service, USDA, AO–197 (June 1993), pp. 32–36. A copy is available for review in the FSIS Hearing Clerk's office.

[5] Agricultural Outlook, Economic Research Service, USDA, AO–197 (June 1993), pp. 32–36. A copy is available for review in the FSIS Hearing Clerk's office.

[6] MMWR (Morbidity and Mortality Weekly Report), Vol. 39/No. SS–1: "CDC Surveillance Summaries, March 1990." This document is available for review at the FSIS Hearing Clerk's office.

[7] Study conducted by the Rhone-Poulenc Company. The study is available for review at the Hearing Clerk's Office.

compromise the sensory properties of the meat.[8]

The washing of carcasses with chlorinated water to reduce the numbers of spoilage and pathogenic bacteria on carcasses is a longtime practice in the poultry industry. As early as 1951, researchers noted the effectiveness of in-plant chlorination in lowering bacteria counts on product, increasing shelf life, reducing odors in the establishment, and reducing slime on equipment.[9] Chlorine is used now in most poultry establishments, primarily in chill water, to prevent bacterial cross-contamination and as an effective sanitizing agent on facilities and equipment usually at levels of 20 to 50 parts per million available chlorine.[10] A 1992 FSIS study showed significant microbial reductions on raw chicken carcasses and giblets immersed in chlorinated chill water.[11]

Manufacturers of chlorine dioxide have petitioned FDA to permit the use of this compound to disinfect waters contacting fresh meat, fresh poultry, processed meat, and processed poultry.[12] Studies have shown that chlorine dioxide used at lower concentrations is as effective as chlorine in reducing bacterial levels on poultry."[13]

Mechanical process modifications have also been studied. Good effects in reducing bacterial levels on carcasses have been obtained when conventional scald and chilling systems have been replaced with countercurrent scald and chilling systems. In countercurrent systems, carcasses exit from the system where the water is the cleanest.[14] In 1991, the industry conducted a major study that showed that a combination countercurrent scald system, post-scald rinse, and chlorination at several control points on the evisceration line effectively reduced the number of spoilage and pathogenic organisms on carcass surfaces.[15]

Washing the carcass more often during the slaughter and dressing operation has been shown to reduce the levels of bacteria on carcass surfaces. Researchers theorize that spray washing at critical points during the process creates a water film between the bacteria and the carcass surface which prevents bacteria from attaching to carcass surfaces. Simply washing carcasses with hot water has also been shown to be effective in reducing the levels of bacteria on carcass surfaces.[16]

FSIS is studying the use of the Hazard Analysis Critical Control Point (HACCP) concept in official establishments as an effective means of improving the process and reducing bacterial loads on carcasses. Using HACCP in poultry inspection was proposed by the National Academy of Science in a 1985 study, "Meat and Poultry Inspection: The Scientific Basis of the Nation's Program."[17] The first step in developing an effective HACCP plan is to define the hazards. Microbiological hazards are defined as "the unacceptable survival by microorganisms of concern to safety or spoilage and/or the unacceptable production or persistence in foods of products of microbial metabolism." After hazards are identified, critical control points are established. The critical control point describes the location or points in the process which, if not correctly controlled, could lead to contamination with unacceptable growth.[18]

The use of an antimicrobial treatment on raw poultry carcasses would not eliminate the need for continued careful handling of raw poultry products, but would reduce the levels of bacteria that may be present. Establishments have several options to use as effective treatments in reducing bacterial contamination on carcass surfaces. Some treatments will require further development as indicated. Finding practical ways to reduce bacterial contamination on raw poultry products will continue to be a top priority in the agency.

Anticipated Improvements

Inspectors and veterinarians would be free to concentrate their attention on disease problems, on more intensive inspection of various on-line and off-line plant operations and on microbial controls. The Agency could more effectively utilize its inspection resources to maintain bird-by-bird inspection at this time, particularly for pathology and disease conditions, while enhancing and increasing its use of a comprehensive program of sampling and quality assurance. This proposal would also allow the Agency to begin to lay the groundwork necessary for further training of personnel to perform monitoring and prevention activities needed to implement the Hazard Analysis and Critical Control Points System in the future. The poultry enhancement initiatives included in this proposal are intended to improve the current inspection system and not be a substitute for inspection. A comparison of the current and proposed systems is summarized in Table 2.

[8] "Natural Lactic acid: a natural solution." J. Bacus. 1987. The National Provisioner. June 13, 1987. Pages 19–21. This document is available for review in the FSIS Hearing Clerk's office.

[9] "In-Plant Chlorination Does a 3-Way Job." H. Gorseline. 1951. U.S. Egg and Poultry Magazine. April. Pages 12, 13, 29–31. This document is available for review in the Hearing Clerk's office.

[10] "List of Proprietary Substances and Nonfood Compounds," USDA, FSIS, Miscellaneous Publication No. 1419, January 1, 1994. Page II–vi. This document is available for review in the FSIS Hearing Clerk's office.

[11] "Effects of chlorination of chill water on the bacteriologic profile of raw chicken carcasses and giblets." 1992. W. James et al. Journal of the American Veterinary Medical Association. Vol. 200. No. 1, pages 60–63.

[12] "Rio Linda Chemical Co., Inc.; Filing of Food Additive Petition." Notice was published in the Federal Register, Vol. 59, No. 22, by FDA on February 2, 1994. A copy is available for review in the FSIS Hearing Clerk's office.

[13] "Effect on Broiler Carcasses and Water of Treating Chiller Water with Chlorine or Chlorine Dioxide." H.S. Lillard. 1980. Poultry Science, Vol. 59, pages 1761–1766. A copy is available for review in the FSIS Hearing Clerk's office.

[14] "Effects of countercurrent scalding and postscald spray on the bacteriologic profile of raw chicken carcasses." 1992. W. James et al. Journal of the American Veterinary Medical Association. Vol. 201, No. 5, pages 705–708. A copy of this document is available from the FSIS Hearing Clerk, Washington, DC.

[15] "Effects of Six Modifications on the Incidence and Levels of Spoilage and Pathogenic Organisms on Commercially Processed Postchill Broilers." 1992. Amy L. Waldroup et al. Journal of Applied Poultry Science. Res. 1:226–234. A copy of this document is available for review at the FSIS Hearing Clerk's office.

[16] "Salmonella Savvy." R. Mulder. 1987. Poultry Processing. December 1987. Pages 72–74. This document is available for review in the FSIS Hearing Clerk's office.

[17] This document is available for review at the Hearing Clerk's Office, Washington, DC.

[18] "The Use of HACCP in the Production of Meat and Poultry Products." R. Tompkin. 1990. Journal of Food Protection, Vol. 53, No. 9, pages 795–803. A copy is available for review in the FSIS Hearing Clerk's office.

TABLE 2.—COMPA

	Number of carcass/viscera postmortem inspectors	Number of prechill carcass inspectors	Pre-chill clea carcass enforcement
TRAD.	Varies	0	Monitoring O Line
SIS–1	1	0	Monitoring O Line
SIS–2	2	0	Monitoring O Line
NELS	3	0	Monitoring O Line
NTIS–1	1	0	Monitoring O Line
NTIS–2	2	0	Monitoring O Line
PEP	1	1	Monitoring O Line and On-Line In-spection

There are currently a total of 8382 in-plant inspector positions, including poultry and meat inspectors. These proposed enhancements would not have any impact on the total number of inspector positions. There are 424 total

TABLE 3a.—INSPECTION POSITION CH

	Inspect
SIS	
NELS	
NTIS	
Traditional	
Total	

TABLE 3b.—TOTAL IN-PLANT INSPECTION POSITIONS UNDER CURRENT SYSTEM AND PEP

Number of USDA inspection positions in poultry slaughter establishments	Current system	PEP
Veterinarians	456	456
On-line Inspectors	2,161	2,022
Off-line Inspectors	502	641
Total	3,119	3,119

Currently, the average net increase in in-plant inspector positions is 55–57 per year. The majority of increased positions have resulted from industry growth. It is projected that the growth of the poultry industry will continue and possibly increase. Additionally, FSIS expects an increased need for inspectors

TABLE 2.—COMPARISON OF CURRENT AND PROPOSED INSPECTION SYSTEMS

	Number of carcass/viscera postmortem inspectors	Number of pre-chill carcass inspectors	Pre-chill clean carcass enforcement	Plant pre-sorting of product	Maximum line speed	Reprocessed product	Process corrective action for finding of feces	Mandatory antimicrobial locations	FPS fecal tolerance
TRAD.	Varies	0	Monitoring Off-Line	No	Varies	Monitoring	Varies	Reprocessing Equipment	Yes.
SIS–1	1	0	Monitoring Off-Line	No	35	Monitoring	Retest	Reprocessing Equipment	Yes.
SIS–2	2	0	Monitoring Off-Line	No	70	Monitoring	Retest	Reprocessing Equipment	Yes.
NELS	3	0	Monitoring Off-Line	No	91	Monitoring	Retest	Reprocessing Equipment	Yes.
NTIS–1	1	0	Monitoring Off-Line	No	Range 17–26	Monitoring	Retest	Reprocessing Equipment	Yes.
NTIS–2	2	0	Monitoring Off-Line	No	Range 35–51	Monitoring	Retest	Reprocessing Equipment	Yes.
PEP	1	1	Monitoring Off-Line and On-Line Inspection	Yes	See Table #1	100% Re-inspection.	Automatic Line Speed Reduction.	Reprocessing Equipment Carcasses	No.

There are currently a total of 8382 in-plant inspector positions, including poultry and meat inspectors. These proposed enhancements would not have any impact on the total number of inspector positions. There are 424 total in-plant inspector vacancies. FSIS has requested funds for 200 additional inspectors for FY95 to help fill some of these vacancies. The implementation of these poultry enhancement changes would not have an impact on the number of vacancies.

The total number of inspectors available for off-line duties as a result of the proposed poultry enhancement program would be 139. (See Tables 3a. and 3b.)

TABLE 3a.—INSPECTION POSITION CHANGES RESULTING FROM CONVERTING TO ENHANCED POULTRY INSPECTION

Inspection system	Total plants	Total lines	Current on-line inspectors	On-line inspectors under PEP
SIS	139	367	1,275	1,266
NELS	45	118	630	414
NTIS	27	46	88	124
Traditional	79	96	168	218
Total	290	627	2,161	2,022

TABLE 3b.—TOTAL IN-PLANT INSPECTION POSITIONS UNDER CURRENT SYSTEM AND PEP

Number of USDA inspection positions in poultry slaughter establishments	Current system	PEP
Veterinarians	456	456
On-line Inspectors	2,161	2,022
Off-line Inspectors	502	641
Total	3,119	3,119

Currently, the average net increase in in-plant inspector positions is 55–57 per year. The majority of increased positions have resulted from industry growth. It is projected that the growth of the poultry industry will continue and possibly increase. Additionally, FSIS expects an increased need for inspectors for HACCP monitoring and additional microbiological duties. The 139 inspection personnel resulting from the implementation of the enhanced poultry inspection system could fill the new positions resulting from industry growth, as well as the new positions created for HACCP monitoring and additional microbiological duties. Other positions considered could include permanent relief inspector positions or additional off-line inspector positions.

Although not available for the present rulemaking, new microbiological tests and sampling programs are under development. The proposed system requires inspection at a point where FSIS expects some microbiological testing to occur. Research is aimed at determining typical microbial conditions at various in-plant and in-process locations. On the basis of such information, it is hoped, criteria can be developed for determining when plant processes are in control and in compliance with a standard, based on microbiological test results. In the future, with the aid of rapid in-plant tests, inspectors and veterinarians should be able to determine more precisely the source and nature of microbial threats to public health.

Executive Order 12866

FSIS has determined that this proposed rule is significant, but does not believe it to be economically significant, for the purposes of Executive Order 12866, because it raises significant policy issues arising out of legal mandates and the Administration's priorities, which include a regulatory

system that improves, protects, and maintains public health and safety without imposing unacceptable costs on the private sector.

The proposed rulemaking would meet the objectives of the Secretary of Agriculture to enhance poultry inspection by enforcing a more stringent policy for the removal of feces from dressed poultry carcasses and by requiring the application of antimicrobial treatments. It is thereby intended to improve public health and safety and strengthen consumer confidence in poultry products.

While the proposed rulemaking would impose initial costs and additional responsibilities on the regulated industry, the Agency's assessment indicates that the proposed rulemaking is cost-effective as compared to the alternatives considered. There would be no reduction in maximum poultry production linespeeds currently allowed under optimal conditions, but the proposed regulation would provide inducements to industry to improve processing controls and further ensure the quality and safety of outgoing product.

At the same time, the proposed rulemaking would apply the President's regulatory philosophy by addressing a compelling public need "- - - to protect or improve the health and safety of the public . . . or the well-being of the people." (E.O. 12866, section 1(a).) This need is evidenced by epidemiological and economic studies carried out in recent years that show the presence of microbial pathogens on raw poultry products to be a continuing and possibly an increasing threat to the public health and the economy of the nation.[19]

Preliminary assessment by FSIS indicates that this proposal is consistent with other planned regulatory actions and with Administration policy goals. For example, this proposed rulemaking would be both compatible with and a precursor of the planned mandatory Hazard Analysis and Critical Control Points (HACCP) programs for meat and poultry establishments. The inspection and plant sorting stations to be provided for control of disease and contamination would be consistent with certain control points that would be chosen for monitoring under a HACCP system. The proposal is also intended to contribute to the fulfillment of the Administration's public health objectives as set forth in the Healthy People 2000 initiative.

Benefits of Proposed Rule

The benefits to be derived from the proposed rule include potential reductions in the microbial profile of dressed, ready-to-cook poultry, including both pathogens and other bacterial organisms. A reduction in visible contamination, combined with antimicrobial treatments, can result in a decrease in the microbial load on dressed poultry carcasses.[20]

Foodborne illness exacts a significant annual toll on the American people and economy. An estimated 6.5 million to 33 million people in the United States become ill and 6,000 to 9,000 die each year from foodborne illness. Meat, poultry, dairy, and seafood products are the foods most likely to contain contaminants. Microbial foodborne disease causes an estimated $2.5 billion to $3.4 billion in medical costs and reduced productivity to be spent each year for four major bacterial pathogens and $2.6 billion each year for parasitic diseases.[21]

Of the four bacterial pathogens, *Salmonella, Campylobacter jejuni, Listeria monocytogenes,* and *Escherichia coli* 0157:H7, the first three are found on poultry. In as many as 17.2 percent of salmonellosis cases, poultry products have been implicated as the vehicle (immediate source of infection). Annual medical costs attributable to salmonellosis range from $1.2 billion to $1.6 billion. The costs associated with campylobacteriosis cases are in the neighborhood of $1 billion per year. More than 40 percent of campylobacteriosis cases can be attributed to the consumption of improperly handled chicken. Productivity losses from such cases are estimated at over $400 million for 1992.[22] The growing proportion of the U.S. population that is compromised by immunologic deficiencies and age exacerbates the problem because these subpopulations are more susceptible to infection and death resulting from infection.

The costs associated with foodborne illness attributable to improperly handled poultry are thus substantial in both human and monetary terms, and the Department has undertaken a comprehensive program of research, regulation, and consumer education to try to improve the situation. The reduction of foodborne pathogens on meat, meat food, and poultry products remains the Agency's highest research priority. Eight of the Agency's "top ten" research topics concern aspects of this problem. FSIS is developing a number of regulations, including this proposed rule, to deal comprehensively with the problems associated with pathogens on raw meat and poultry. For example, the Agency recently promulgated a regulation requiring safe handling labeling on all meat and poultry products that are raw or have not been subjected to a process that would make them ready-to-eat. A vigorous consumer education campaign is underway to publicize the safe handling labels and to remind consumers of the importance of food safety practices.

The proposed rule would strengthen the Department's pathogen reduction effort by providing enhanced assurance that ready-to-cook poultry are free of disease and visible contamination that may harbor pathogens. This would be accomplished, first, by requiring official establishments to meet their responsibility to present for post-mortem inspection only birds that have been presorted for condemnable conditions. Second, FPS process tolerances for fecal contamination would be eliminated. The effort to reduce such contamination is likely to yield corresponding reductions in harmful bacteria on dressed poultry carcasses.

Third, the on-line/off-line carcass inspector, provided by the proposal, would be able to increase FSIS oversight over establishment dressing procedures, such as viscera harvest, and on-line trimming. Inspectors would now have the opportunity to inspect every carcass after the viscera harvest operation. Because, under the current inspection systems, there is no on-line inspection position after viscera removal, Federal inspectors are not able to view every carcass at the end of the production line before the carcasses enter the chiller. This proposal would correct that situation.

Fourth, all reprocessed poultry would be reinspected. Added assurance would thus be provided that reprocessed poultry are free of visible contamination and unlikely to be a cause of cross contamination when introduced into the chill system.

Fifth, a pre-chill antimicrobial treatment step would be required. This would help assure lower microbial populations on raw carcasses.

The additional assurance of poultry wholesomeness provided by the proposed regulation would increase consumer confidence in the U.S. poultry supply, with further increases in the domestic and export markets for U.S. poultry a likely result.

Another benefit of the proposed regulation would be improved safety and health conditions for FSIS inspectors. The new inspection procedures to be implemented by this proposal would result in the elimination of most repetitive inspector hand motions, and this would lead in turn to a dramatic reduction in repetitive motion disorder among FSIS poultry inspectors—including days off from work for medical consultation and treatment. Annual claims reported by FSIS inspectors (both poultry and red meat) to the Office of Workers Compensation Programs of the Department of Labor have amounted to over $500,000 per year for repetitive motion disorder. In addition to such well-publicized conditions as carpal tunnel syndrome and tendinitis, inspector have reported cases of epicondylitis, ganglionic cyst, and other

TABLE 4.—COSTS TO ESTABLISHMENTS UNDER INSPE

Current system	Inspection stands and guidebars, installation
Traditional	$792,160
SIS–1	23,880
SIS–2	716,440
NELS	231,280
NTIS–1	95,520
NTIS–2	270,640
Column totals	2,129,920

* Indicates per-annum cost; other costs computed

The figures listed in Table 4 take into account the number of federally inspected poultry slaughter establishments currently in operation and the number of slaughtering lines for each inspection system. The estimates provided for inspection stand purchase and installation are based on consultation with several equipment manufacturers. Most of the approximately 186 establishments currently operating under SIS–2 and NELS may be able to use or move existing inspection stands at a cost of no more than $1,000 each. For example, an establishment currently operating under

[19] Agricultural Outlook, Economic Research Service, AO–198 (July 1993), pp. 33–38.

Healthy People 2000. Department of Health and Human Services. 1994. Food and Drug Safety: Health Status Objective 12.1.

Copies of these documents are available for review in the office of the FSIS Hearing Clerk.

[20] "Comparison of the Microbiological Quality of Inspection-Passed and Fecal Contamination-Condemned Broiler Carcasses." L.C. Blankenship, et al. 1975. Journal of Food Science, Vol. 40, pages 1236–1238. A copy of this article is available for review in the office of the FSIS Hearing Clerk.

[21] USDA, Economic Research Service, Agriculture Information Bulletin No. 664–53, September 1993. A copy of this publication is available in the office of the FSIS Hearing Clerk.

[22] Agriculture Outlook, Economic Research Service, USDA, AO–198 (July 1993), pp. 33–36.

would help assure lower microbial populations on raw carcasses.

The additional assurance of poultry wholesomeness provided by the proposed regulation would increase consumer confidence in the U.S. poultry supply, with further increases in the domestic and export markets for U.S. poultry a likely result.

Another benefit of the proposed regulation would be improved safety and health conditions for FSIS inspectors. The new inspection procedures to be implemented by this proposal would result in the elimination of most repetitive inspector hand motions, and this would lead in turn to a dramatic reduction in repetitive motion disorder among FSIS poultry inspectors—including days off from work for medical consultation and treatment. Annual claims reported by FSIS inspectors (both poultry and red meat) to the Office of Workers Compensation Programs of the Department of Labor have amounted to over $500,000 per year for repetitive motion disorder. In addition to such well-publicized conditions as carpal tunnel syndrome and tendinitis, inspector have reported cases of epicondylitis, ganglionic cyst, and other conditions imposing compensation costs of $4,000 to $5,000 per case.

Finally, the proposed regulation would establish a single, uniform inspection system for all classes of poultry that are subject to the PPIA. Poultry processors would have added assurance that—no matter what kind of poultry they market—the standards and procedures by which the poultry are inspected are the same, and that all birds are expected to meet uniform requirements. All establishments would be able to maintain, and some establishments would be able to increase, their production rates.

The Agency would gain short-term flexibility in assigning inspectors from some line positions to existing vacancies in the inspection program, and long-run flexibility to train personnel in a uniform methodology and to assign or reassign them more readily to locations where they are most needed. Implementation of enhanced poultry inspection would benefit the Agency by helping to offset the need for more inspectors to meet industry growth, fulfill HACCP monitoring requirements, and carry out microbiological sampling programs. Finally, consumers would gain the assurance that the same dressing and contamination standards had been applied to all types of federally inspected poultry.

The Agency requests that comments on these and other benefits be submitted to help evaluate the advantages that could be expected from implementation of a final rule.

Costs of Proposed Rule

The major impacts of the proposal on the poultry industry would be the one-time costs associated with installing new facilities and equipment and the on-going costs associated with information collections and the 100-percent reinspection of reprocessed birds. Preliminary estimates of these costs are summarized in Table 4. The Agency requests that comments on the proposal include information on the costs to the extent it is available. These comments would help evaluating the costs in the final rule. As indicated in the section of this preamble concerning the Paperwork Reduction Act, a detailed analysis of the information collection requirements of the proposal is being submitted to the Office of Management and Budget.

TABLE 4.—COSTS TO ESTABLISHMENTS UNDER CURRENT INSPECTION SYSTEMS OF CONVERTING TO ENHANCED POULTRY INSPECTION, BY SYSTEM AND COST CATEGORY

Current system	Inspection stands and guidebars, installation	Lighting	Training, hiring of additional establishment employees	Reprocessing inspection cost to industry *	Reconfiguration	Antimicrobial treatment	Information collection	Total
Traditional	$792,160	$96,000	$179,000	$196,000	$40,000	$24,000	$395,000	$1,722,160
SIS–1	23,880	3,000	15,000	6,700	3,000	1,000	15,000	67,580
SIS–2	716,440	0	223,000	1,056,720	182,000	41,000	680,000	2,898,160
NELS	231,280	0	75,000	809,340	60,000	14,000	225,000	1,414,620
NTIS–1	95,520	12,000	20,000	30,240	6,000	3,000	35,000	201,760
NTIS–2	270,640	0	32,500	73,920	17,000	6,000	100,000	500,060
Column totals	2,129,920	110,000	544,500	2,172,920	308,000	89,000	1,450,000	6,804,340

* Indicates per-annum cost; other costs computed on one-time-only basis.

The figures listed in Table 4 take into account the number of federally inspected poultry slaughter establishments currently in operation and the number of slaughtering lines for each inspection system. The estimates provided for inspection stand purchase and installation are based on consultation with several equipment manufacturers. Most of the approximately 186 establishments currently operating under SIS–2 and NELS may be able to use or move existing inspection stands at a cost of no more than $1,000 each. For example, an establishment currently operating under the NELS inspection system may be able to provide a reconfigured inspection line by moving an inspection stand from the post-mortem inspection area to the pre-chiller carcass inspection station. Some plants, however, would have to purchase or construct and install at least one new inspection stand at a cost of $6,000 to $10,000 per installation. A guidebar would have to be installed at each on-line post-mortem inspection station to permit eviscerated birds to be presented to the inspector for examination.

The estimates for installation of 200 foot-candle lighting take into account the fact that establishments operating under several of the current inspection systems (SIS, NELS, and NTIS) are already provided with enhanced lighting. Establishments operating under traditional inspection (as many as 96 lines) would have to install new lighting at a cost of about $1,000 per purchase and installation. The enhanced lighting is necessary to ensure the effectiveness of post-mortem inspection and the FPS checks under the new system.

As noted, most projected costs are one-time only. A few establishments may have to hire new personnel to staff some poultry slaughter lines. Additional

expenses for retraining establishment personnel are likely to be incurred by all establishments. In addition, most establishments affected by this proposal would incur miscellaneous line reconfiguration expenses involving space reallocation at an estimated $1,000 per establishment.

To meet the requirement for antimicrobial treatment before the chiller, approximately 30 percent of poultry plants would have to install equipment. Most poultry establishments would not be affected immediately by the requirement because their final washers are already using an antimicrobial agent. Those establishments that are not using their final washes to add an antimicrobial agent could do so for approximately $500 per processing line simply connecting their existing chlorine supply to their final carcass wash equipment.

The industry would incur additional annual costs in connection with the 100-percent on-line reinspection of reprocessed birds. These costs have been computed on the basis of the average linespeeds for the different inspection systems and the assumption of a 2-percent overall rate of reprocessing. It has also been assumed that most reinspection of reprocessed carcasses would result in overtime hours and that a labor cost would be incurred for rehanging birds on the processing line. Overtime salaries for Federal inspectors (paid by affected establishments) and wages for establishment personnel have been factored into the estimates. The 2-percent reprocessing rate is based on approximately two years of in-plant data collection and represents the national average. Through a combination of process control, good husbandry practices, and good manufacturing practices individual establishments can lower this rate thereby decreasing this on-going cost.

Also, an allowance for minor plant reconfigurations has been made. It is expected that some establishments would have to move equipment and rearrange their slaughtering lines to a limited extent to make room for inspection locations.

Below are estimated costs to the poultry industry of converting to enhanced poultry inspection:

Inspection and plant sorter stands and guidebars for at most 643 lines: $2,129,920
Enhanced lighting for as many as 100 lines: $110,000
Expenses for training and hiring new establishment personnel: $544,500
Cost of inspection of reprocessed carcasses: $2.2 million
Miscellaneous processing line reconfiguration costs: $308,000
Cost of minimal equipment installations to meet final wash antimicrobial treatment requirement: $89,000
Estimated annual cost of information collections: $1.4 million
Total estimated direct impact on federally inspected establishments: $6.8 million
Estimated direct impact on (approx. 160) State-inspected establishments operating under "at least equal to" programs: $3.4 million
Estimated direct impact on poultry industry: $10.2 million

The Agency does not expect economic losses to occur as a result of slowing linespeeds due to proposed corrective action. As indicated earlier in the preamble to this rule, maximum linespeeds allowed under optimal conditions would remain the same. If establishment sorters fulfill their responsibility, as outlined in this proposal, then maximum linespeeds should be attainable. Establishments currently operating under traditional inspection may be able to achieve increases in linespeeds under this proposal but such action could only occur if quality and safety of the outgoing product was ensured. As indicated by this analysis, the industry could operate with maximum effectiveness with a small investment in personnel and training. As currently allowed, the FTIS inspector in charge or his/her designee would retain the discretion to reduce linespeeds when necessary.

Alternatives Considered

FSIS considered two alternatives to this proposal that would meet the Secretary's objectives. The first of the alternatives would involve detaching the viscera from poultry carcasses prior to inspection and presenting the organs and the carcass for inspection at the same time, but separated. A separate belt or tray would be provided for the viscera to prevent the viscera from contaminating the carcass. However, the cost to industry would be approximately $140 million for new equipment. In addition, downtime for construction and installation could cost the industry as much as $780 million.

Under the second alternative, the current post-mortem inspection procedures would be retained utilizing existing inspection techniques, but with an inspector at the end of the line after the viscera have been removed from the carcasses to examine each carcass for fecal contamination. This could be accomplished either by moving an existing inspector to the end of the line, or by adding a new inspector to every line, or by a combination of both arrangements. However, this would mean that the Government could incur additional personnel costs of approximately $16 million per annum. Further, production rates could be reduced by 30 to 50 percent if the inspectors tasks remained identical, but fewer inspectors were used to perform those functions. The impact of the slowed linespeeds could reach $5.2 billion per year for chickens and turkeys.

In the judgment of the Agency, either of these alternatives would impose unacceptable costs.

Executive Order 12778

This proposed rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the PPIA from imposing any requirements with respect to federally inspected premises and facilities, and operations of such establishments, that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions are also preempted under the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over poultry products that are outside official establishments for the purpose of preventing the distribution of poultry products that are misbranded or adulterated under the PPIA or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. States and local jurisdictions may also make requirements or take other actions that are consistent with the PPIA, with respect to any other matters regulated under the PPIA.

Under the PPIA, States that maintain poultry product inspection programs must impose requirements on State-inspected products and establishments that are at least equal to those required under the PPIA. These States may, however, impose more stringent requirements on such State-inspected products and establishments.

In the event of its adoption, no retroactive effect would be given to this proposed rule, no administrative procedures must be exhausted before any judicial challenge can be taken to the application of these provisions.

Effect on Small Entities

The Administrator has determined that this proposed rule will not have a significant effect on a substantial number of small entities. The small entities affected by this proposal are small poultry slaughtering establishments operating one or two slaughtering lines each staffed by one FSIS food inspector. They include establishments operating under the SIS–1 and NTIS–1 inspection systems, and some small entities operating under the traditional inspection procedures; these account for 75 of the approximately 300 poultry slaughtering establishments that would be affected by the proposed rule. Thus, the proposed rule would affect a substantial number of small entities.

It may be assumed that each establishment with only one single-inspector processing line would be required to make a one-time investment of about $10,000 for an inspection platform and installation, enhanced lighting, equipment installation to meet the requirement for antimicrobial treatment of dressed poultry, and training of establishment personnel. Each establishment with two lines could incur expenses of as much as $17,000.

Also, every establishment would be required to operate a finished product standards program. Establishments now operating under traditional inspection would thus assume a modest information collection burden.

However, there would be no production rate reductions and, in fact, small establishments could benefit from increases in production rates. For example, some processing lines staffed by a single FSIS inspector would now be staffed by two inspectors and plant sorters. That means that, consistent with physical plant limitations, the class of poultry processed, market demand for poultry products (which has been steadily increasing in recent decades), and the establishment's ability to maintain processing controls and quality standards, production rates on these processing lines could be increased with the adoption of the proposed rule. In the most favorable scenario, an establishment currently operating under traditional inspection and processing young chickens at the rate of 25 per minute would be able to increase its production rate up to 70 birds per minute. The increase in annual returns resulting from such a production-rate increase would more than offset any necessary one-time investment.

In addition, for reasons given in this notice in support of changes to the FPS, there would be greater assurances of

Effect on Small Entities

The Administrator has determined that this proposed rule will not have a significant effect on a substantial number of small entities. The small entities affected by this proposal are small poultry slaughtering establishments operating one or two slaughtering lines each staffed by one FSIS food inspector. They include establishments operating under the SIS–1 and NTIS–1 inspection systems, and some small entities operating under the traditional inspection procedures; these account for 75 of the approximately 300 poultry slaughtering establishments that would be affected by the proposed rule. Thus, the proposed rule would affect a substantial number of small entities.

It may be assumed that each establishment with only one single-inspector processing line would be required to make a one-time investment of about $10,000 for an inspection platform and installation, enhanced lighting, equipment installation to meet the requirement for antimicrobial treatment of dressed poultry, and training of establishment personnel. Each establishment with two lines could incur expenses of as much as $17,000.

Also, every establishment would be required to operate a finished product standards program. Establishments now operating under traditional inspection would thus assume a modest information collection burden.

However, there would be no production rate reductions and, in fact, small establishments could benefit from increases in production rates. For example, some processing lines staffed by a single FSIS inspector would now be staffed by two inspectors and plant sorters. That means that, consistent with physical plant limitations, the class of poultry processed, market demand for poultry products (which has been steadily increasing in recent decades), and the establishment's ability to maintain processing controls and quality standards, production rates on these processing lines could be increased with the adoption of the proposed rule. In the most favorable scenario, an establishment currently operating under traditional inspection and processing young chickens at the rate of 25 per minute would be able to increase its production rate up to 70 birds per minute. The increase in annual returns resulting from such a production-rate increase would more than offset any necessary one-time investment.

In addition, for reasons given in this notice in support of changes to the FPS, there would be greater assurances of processing stability and product quality under the proposed rule. Identification of product requiring rework would be more certain. Resulting efficiencies could be expected to yield returns that, combined with productivity gains, would offset outlays for equipment in the near term for most establishments.

For these reasons, therefore, the proposed rule would not have a significant net effect on a substantial number of small entities.

Paperwork Requirements

This proposed rule requires paperwork and recordkeeping activities that would provide FSIS with information to ensure that establishments are in compliance with the proposed regulations.

Each day, establishments would complete a form that reports that day's poultry condemnations. Also, under the proposed FPS program, establishments would report data on only one form. Under the current FPS system, establishments complete three forms to report data from FPS checks.

Establishments using chlorinated water to meet the proposed antimicrobial treatment requirements would be required to monitor the concentration by testing three times a shift and keeping on file records of the test results.

Any establishment wishing to operate an approved PQC program would have to send a copy of the program to the Administrator for approval. Additionally, an establishment wishing to use antimicrobial compounds not listed in the table of approved substances may request, in writing, approval for use of such compounds from the Administrator.

The paperwork requirements contained in this proposal have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the paperwork burden of this proposed rule should be sent to: Office of Management and Budget, Desk Officer for FSIS, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and to the Clearance Office, Room 404–W, Administration Building, Washington, DC 20250.

List of Subjects in 9 CFR Part 381

Poultry inspection, Poultry and poultry products.

Proposed Rule

For the reasons set forth in the preamble, FSIS is proposing to amend 9 CFR part 381 of the poultry products inspection regulations as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138F; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

2. Section 381.36 would be amended by removing paragraphs (d) and (e) and by revising paragraph (c) to read as follows:

§ 381.36 Facilities required.

* * * * *

(c) *Facilities for post-mortem inspection.* The following facility requirements for post-mortem inspection are in addition to the other requirements to obtain a grant of inspection.

(1) The following provisions shall apply to every inspection station:

(i) The conveyor line shall be level for the entire length of the inspection. The vertical distance from the bottom of the shackles to the top of the adjustable platform (paragraph (c)(1)(iv) of this section) in its lowest position shall not be less than 60 inches.

(ii) Floor space shall consist of 4 feet along the conveyor line for each inspector, with a total of 8 feet for the two inspection stations, and 4 feet for the inspector helper provided by the establishment as required under § 381.76(d).

(iii) Guidebars shall be installed in all establishments so that the inspector will receive birds on at least 6-inch centers for young chicken lines and at least 12-inch centers for turkey lines. The guidebar must move the bird to the edge of the trough for the inspector, and provide smooth, steady, and consistent movement through both the on-line post-mortem inspection station and the on-line/off-line carcass inspection station.

(iv) The on-line post-mortem inspection station and the on-line/off-line carcass inspection station shall meet the requirements specified in § 381.53. Each inspection station shall have a platform that is slip-resistant and can be safely accessed by the inspector. The platform shall be designed so that it can be easily and rapidly adjusted for a minimum of 14 inches vertically while standing on the platform. The platform shall be a minimum length of 4 feet and have a minimum width of 2 feet; the platform shall be designed with a 42-inch high rail on the back side and with ½ inch foot bumpers on both sides and front to allow safe working conditions. The platform must have a safe lift

mechanism and be large enough for the inspector to sit on a stool and to change stations during breaks or inspector rotation.

(v) Conveyor line stop/start switches shall be located within easy reach of each inspector.

(vi) A trough or other facilities complying with § 381.53(g)(4) shall extend beneath the conveyor at all places where processing operations are conducted from the point where the carcass is opened to the point after the second inspector. The trough must be of sufficient width to preclude trimmings, drips, and debris from accumulating on the floor or platforms. The clearance between the suspended carcasses and the trough must be sufficient to preclude contamination of carcasses by splash.

(vii) A minimum of 200 footcandles of shadow-free lighting with minimum color rendering index value of 85 [1] where the birds are inspected to facilitate inspection, notwithstanding the requirements of § 381.52(b).

(viii) "On-line" handrinsing facilities with a continuous flow of water conforming to § 381.51(f) shall be provided for and within easy reach of each inspector and each establishment employee working on the line.

(ix) Hangback racks shall be provided for and positioned within easy reach of the inspector.

(x) The on-line post-mortem inspection station shall be provided with receptacles for condemned carcasses and parts. Such receptacles shall conform to the requirements of § 381.53(m).

(2) In addition to the requirements prescribed in paragraph (c)(1) of this section, the establishment shall provide safely accessible space for the on-line/off-line carcass inspector to perform on-line inspection checks of carcasses between the viscera harvest and the final wash.

(3) Reinspection stations for Finished Product Standards (FPS) monitoring, as prescribed in § 381.76(h), are required. The Agency will determine the number of stations needed in those establishments having more than one processing line or more than one chiller. One or more FPS reinspection stations shall be conveniently located at the end of the line or lines prior to chilling. Each reinspection station must meet the following provisions:

(i) Floor space shall consist of 3 feet along each conveyor line. The space shall be level and protected from all traffic and overhead obstructions.

(ii) A table at least 2 feet wide and 2 feet deep and 3 feet in height shall be provided for reinspecting the sampled carcasses, except that such a table shall be at least 3 feet wide and 2 feet deep in establishments processing turkeys. All such tables shall be designed to be readily cleanable and drainable.

(iii) A minimum of 200 footcandles of shadow-free lighting with a minimum color rendering index of 85 [1] on the table surface shall be provided.

(iv) A separate clip board holder shall be provided for holding the recording sheets.

(v) Hangback racks designed to hold 10 carcasses shall be provided for and positioned within easy reach of persons at the station.

3. Section 381.67 would be revised to read as follows:

§ 381.67 Maximum post-mortem inspection rates.

(a) The maximum post-mortem inspection rates for the classes of poultry are specified in the following table. Establishments that operate under an approved partial quality control (PQC) program, as prescribed in § 381.76(i), may operate at higher production rates when optimum conditions are met. These maximum rates shall not be exceeded.

MAXIMUM PRODUCTION RATES

Class of poultry	Birds per minute	
	With PQC	Without PQC
Young chickens	91	70
Young turkeys:		
	J-type opening cut	3-point suspension
Less than 16 pounds	51	20
More than 16 pounds	41	16
	Bar-type opening cut	3-point suspension
Less than 16 pounds	45	20
More than 16 pounds	35	16

(b) The inspector in charge or his or her designee shall be responsible for reducing production rates where, in the inspector's judgment, the post-mortem inspection procedure cannot be adequately performed with the time available because of either of the following conditions:

(1) The official establishment cannot present the birds in such a manner that the carcasses including both internal and external surfaces and all organs, are readily accessible for inspection, or

(2) The establishment cannot properly remove diseased birds or properly identify contaminated birds and birds for off-line trimming or knife salvage.

4. Section 381.68 would be removed and reserved.

5. Subpart I would be amended by adding a new § 381.69 to read as follows:

§ 381.69 Treating carcasses to reduce bacterial contamination.

(a) *General.* Raw, unchilled poultry carcasses shall be treated at any point during the slaughter and dressing operation to reduce levels of bacterial contamination on carcass surfaces.

(b) *Treatment methods.* Official establishments shall use any of the following treatment methods to reduce bacterial contamination, provided that the equipment used to apply the treatment has been approved under § 381.53, the operation of the method results in full compliance with the Act and this part, and that the method permits effective and efficient monitoring by program employees.

(1) Any chlorine compound approved by the Administrator and administered to raw, unchilled whole poultry carcasses or major carcass portions at 20 to 50 parts per million (ppm) in the intake water at the final wash. The Administrator will prepare a list containing compounds approved for use in official establishments. A copy of the list may be obtained from the Compounds and Packaging Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700.

(i) The establishment must conduct three tests per 8-hour shift on the intake water of each final washer using a starch-iodide titration test kit, or any other chlorine analysis method acceptable to the IIC, to assure that chlorine intake levels are within the range prescribed above. An initial test must be conducted at the start of the shift before the first carcass enters the final washer. The two other tests must be conducted at randomly selected times during the shift. Records of chlorine test results that specify the time of the test, chlorine concentration levels, and the name and position of the person administering the test shall be on file in the establishment and shall be made available to program employees, upon request.

(ii) If the chlorine level is above or below the range of 20 to 50 ppm available chlorine in the final wash water, the establishment shall adjust the chlorine level to an acceptable level within 15 minutes. If adjustments are not made within 15 minutes, the establishment shall suspend the treatment and shall not permit any carcasses to enter the final washer until the chlorine level is within the prescribed range.

(2) Any antimicrobial compound listed in the table in § 381.147(f)(4) permitted for use on poultry products may be used under the conditions specified therein.

(3) Any compound previously approved for use in poultry or poultry products as a food additive or processing aid by the Food and Drug Administration (FDA) and listed in title 21 of the Code of Federal Regulations, parts 73, 74, 81, 172, 173, 182, or 184 may be used, provided the owner or operator has received approval for such use from the Administrator in accordance with section 381.147(f)(1). The owner or operator shall submit to the Administrator information and data indicating the site of application and that the substance is effective in reducing bacterial contamination on carcass surfaces, and its use is in compliance with applicable FDA requirements and will not render the carcass adulterated or misbranded or otherwise not in compliance with the requirements of the Act.

(4) Any countercurrent scalder, designed such that potable water enters

[1] This requirement may be met by deluxe cool white type of fluorescent lighting.

containing compounds approved for use in official establishments. A copy of the list may be obtained from the Compounds and Packaging Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700.

(i) The establishment must conduct three tests per 8-hour shift on the intake water of each final washer using a starch-iodide titration test kit, or any other chlorine analysis method acceptable to the IIC, to assure that chlorine intake levels are within the range prescribed above. An initial test must be conducted at the start of the shift before the first carcass enters the final washer. The two other tests must be conducted at randomly selected times during the shift. Records of chlorine test results that specify the time of the test, chlorine concentration levels, and the name and position of the person administering the test shall be on file in the establishment and shall be made available to program employees, upon request.

(ii) If the chlorine level is above or below the range of 20 to 50 ppm available chlorine in the final wash water, the establishment shall adjust the chlorine level to an acceptable level within 15 minutes. If adjustments are not made within 15 minutes, the establishment shall suspend the treatment and shall not permit any carcasses to enter the final washer until the chlorine level is within the prescribed range.

(2) Any antimicrobial compound listed in the table in § 381.147(f)(4) permitted for use on poultry products may be used under the conditions specified therein.

(3) Any compound previously approved for use in poultry or poultry products as a food additive or processing aid by the Food and Drug Administration (FDA) and listed in title 21 of the Code of Federal Regulations, parts 73, 74, 81, 172, 173, 182, or 184 may be used, provided the owner or operator has received approval for such use from the Administrator in accordance with section 381.147(f)(1). The owner or operator shall submit to the Administrator information and data indicating the site of application and that the substance is effective in reducing bacterial contamination on carcass surfaces, and its use is in compliance with applicable FDA requirements and will not render the carcass adulterated or misbranded or otherwise not in compliance with the requirements of the Act.

(4) Any countercurrent scalder, designed such that potable water enters at or near the point where carcasses exit the scalder, overflow outlets are located at or near the point where carcasses enter the scalder, and exiting carcasses do not come in contact with overflow water, that is used concurrently with a post-scald rinse may be used, provided the equipment is evaluated and found acceptable by the Administrator. The Administrator will prepare a list containing each model approved for use in official establishments. A copy of the list may be obtained from the Facilities, Equipment, and Sanitation Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700.

(5) Any mechanical process modifications, other than that listed in paragraph (b)(4) of this section, such as hot water rinses, used singly or in combination with approved antimicrobial compounds may be used, provided the owner or operator has received approval for such use from the Administrator. The owner or operator shall submit to the Administrator information and data indicating that the proposed method is effective in reducing bacterial contamination on carcass surfaces, and it will not render the carcass adulterated or misbranded or otherwise not in compliance with the requirements of the Act.

6. Section 381.76 would be amended by adding a heading for paragraph (a), revising paragraphs (b) and (c), and adding new paragraphs (d) through (h) to read as follows:

§ 381.76 Post-mortem inspection, when required; extent; rate of inspection.

(a) *General.* * * *

(b) *Line configuration.* There are two inspection stations located on each post-mortem inspection line. The first inspection station is located immediately after the establishment sorter or sorters who are positioned immediately after evisceration. This is known as the "on-line post-mortem inspection station." The second inspection station is located after the final wash and prior to the chiller. This is known as the "on-line/off-line carcass inspection station."

(c) *Presentation.* (1) The establishment is responsible for presenting to the on-line post-mortem inspector only carcasses that are free of pathology and disease that would result in condemnation, in accordance with this part, designated for trimming or knife salvage of such conditions, or designated for reprocessing. The establishment shall present each carcass to the on-line post-mortem inspector properly eviscerated with the back side toward the inspector and the viscera uniformly trailing or leading.

(i) The establishment shall place a sorter or sorters immediately after evisceration and prior to the on-line post-mortem inspector to sort the carcasses and remove and condemn the carcasses, as necessary, or designate the carcasses for knife salvage, off-line trimming, or reprocessing. The establishment sorter or sorters shall be positioned on the processing line in a manner that does not impede inspection. The establishment records the reason for condemnation of every carcass for each sorter.

(ii) The on-line post-mortem inspector shall assure that carcasses are appropriately designated for knife salvage, off-line trimming, or reprocessing, and that condemnable carcasses are condemned.

(iii) If the on-line post-mortem inspector finds any birds on the processing line that should have been condemned or designated for knife salvage, off-line trimming, or reprocessing, he or she shall stop the line for proper disposition, and require removal of such birds, and recording of condemned birds by the establishment. The on-line post-mortem inspector shall retain questionable birds for disposition by the inspector in charge.

(iv) Carcasses with certain defects not requiring condemnation of the entire carcass that were not designated by the establishment sorter for off-line trimming, knife salvage, or reprocessing shall be passed by the on-line post-mortem inspector, but he or she shall stop the line and the establishment shall be required to remove them for off-line trimming or knife salvage.

(v) Carcasses that are designated for off-line trimming shall be removed from the processing line by the establishment after the on-line post-mortem inspector and prior to viscera harvest.

(vi) Carcasses that are designated for knife salvage shall be removed from the processing line by the establishment after the on-line post-mortem inspector and before the viscera harvest.

(vii) Carcasses that are designated for reprocessing shall be removed from the processing line by the establishment after the on-line post-mortem inspector and prior to the viscera harvest and reprocessed at an approved reprocessing station, as prescribed in § 381.91(b). Such reprocessed birds shall be returned to the processing line by the establishment after viscera harvest and prior to the on-line/off-line carcass inspector for reinspection.

(2) The establishment is responsible for presenting to the on-line/off-line carcass inspector only carcasses that are

free of fecal contamination and have been properly trimmed or reprocessed.

(i) The establishment shall position a trimmer or trimmers between the viscera harvest and the final wash to trim carcasses for trimmable lesions and quality defects, and to remove for reprocessing carcasses that are contaminated on inner surfaces with feces. The trimmer or trimmers shall be positioned on the processing line in a manner that does not impede inspection.

(ii) If the on-line/off-line carcass inspector finds any carcasses on the processing line that should have been designated for reprocessing, he or she shall stop the line for proper disposition, and require removal of the carcasses, and recording of any such carcasses condemned by the establishment. Carcasses that are reprocessed by the establishment shall be returned to the processing line by the establishment at a point after the viscera harvest and prior to the on-line/off-line carcass inspector.

(iii) If the on-line/off-line carcass inspector finds any fecal contamination on a reprocessed carcass, the establishment shall be required to rework all remaining reprocessed carcasses in that reprocessed lot which shall be identified as prescribed in § 381.91(b).

(iv) Under the following conditions, the establishment's production rate shall be reduced immediately to the extent necessary to ensure process control in preventing fecal contamination, and for such duration, until FSIS determines that the establishment can demonstrate process control at the higher production rate:

(A) When the on-line/off-line carcass inspector finds any fecal contamination on a carcass, other than reprocessed carcasses, or

(B) When the establishment or the inspector finds any fecal contamination on a carcass during testing under the Finished Product Standards Program, as prescribed in paragraph (h) of this section.

(d) *Inspector helper.* The on-line post-mortem inspector shall be flanked by an establishment employee assigned to duties such as removing carcasses previously designated by the establishment for knife salvage, off-line trimming, or reprocessing or, as directed by the inspector, removing birds for veterinary disposition or correlation.

(e) *Inspection rates.* (1) Establishments shall operate at the rates prescribed in § 381.67. Establishments that operate under an approved PQC program, as prescribed in paragraph (i) of this section, may operate at higher rates than establishments operating without PQC.

(2) For the establishment to run its production line at maximum speed, optimal conditions must be maintained so that inspection may be conducted efficiently. The inspector in charge or his or her designee determines the speed at which each processing line may be operated to permit inspection. A variety of conditions may affect this determination including the health of each flock and the manner in which birds are being presented to the inspector for inspection and the accuracy of the establishment sorters.

(f) *Facilities.* Each inspection station must comply with the facility requirements in § 381.37(c).

(g) *Recordkeeping.* Establishments shall record information pertaining to the birds that are condemned.

(h) *Finished Product Standards.* The Finished Product Standards (FPS) shall be conducted in all poultry slaughter establishments.

(1) For purposes of this paragraph (h), the following definitions shall apply:

(i) *Cumulative sum (CUSUM).* A statistical concept used by the establishment and monitored by the inspector whereby compliance is determined based on sample results collected over a period of time. For purposes of determining compliance with the finished product standards, the CUSUM is equal to the sum of prior test results plus a measure of the current test minus the tolerance, with the condition that the resulting CUSUM cannot go below zero.

(ii) *Tolerance number.* A measure that equates to product being produced at a national product quality level.

(iii) *Action number.* A level reached by the CUSUM where the process is out of control and product action is required by the establishment or the inspector.

(iv) *Start number.* A value halfway between zero and the action number. The start number is used to determine the starting CUSUM for the first subgroup of a shift and to reset the CUSUM value if the CUSUM is equal to or greater than the action number.

(v) *Subgroup.* A 10-bird sample collected before product enter the chiller.

(vi) *FPS testing.* Testing conducted by the establishment to determine the CUSUM on consecutive 10-bird subgroup samples collected prior to product entering the chilling system.

(vii) *Rework.* Reconditioning the product to correct the condition or conditions causing the nonconformances listed in Table 1.

(2) Finished Product Standards are criteria applied to processed birds to ensure the product consistently meets ready-to-cook requirements. The FPS Program is designed to monitor the quality and effectiveness of the dressing and evisceration procedures. The criteria consist of nonconformances (see Table 1 of this section), the incidence of which is determined from 10-bird subgroup samples, reduced to a CUSUM number, and measured against the standards (see Table 2 of this section). Standards are applied to permit the Agency to estimate when the production process is in control and when it is out of control. The establishment is responsible for maintaining the FPS Program which, in turn, is monitored by the inspector. If an out-of-compliance condition is found, the product is segregated for rework, reworked, and retested before it may proceed into commerce.

(i) *Actions to be taken when the process is in control.* If the CUSUM is less than the action number and the most recent subgroup sample is tolerance or below, the process is judged to be in control.

(A) *Establishment actions.* The establishment shall:

(*1*) Randomly select and record subgroup sampling times for each production unit of time before product reaches the FPS reinspection station on the production line. In no case shall the time between tests exceed 1 hour of production time.

(*2*) Conduct a 10-bird subgroup test at a random time on each poultry slaughter line. These times are preselected by the establishment and available to the inspector prior to the start of the shift/day's operation. All 10 samples of the subgroup shall be collected at the random time.

(*3*) Record the test results. If the subgroup total is tolerance or below, conduct the next randomly scheduled subgroup test.

(B) *Inspector actions.* The inspector shall:

(*1*) Select random times for monitoring subgroup tests for each half-shift on the evisceration line. In establishments that have multiple evisceration lines on a production shift, monitor all lines of product at the random times.

(*2*) Collect the subgroup samples to be monitored at preselected times. All 10 samples of the subgroup shall be collected at the random time selected.

(*3*) Conduct the 10-bird monitoring subgroup test. Record the test results. If the subgroup total is tolerance or below, conduct the next randomly scheduled subgroup test.

(ii) *Actions to be taken with rising CUSUM.* If the establishment or inspection subgroup test result is above tolerance, the process is judged to be under questionable process control.

(A) *Establishment actions.* The establishment shall:

(*1*) Immediately notify the inspector in charge and the production supervisor responsible for the affected evisceration line.

(*2*) Take specific process corrective actions for each FPS category with nonconformances to prevent the process from yielding product requiring rework. These actions are recorded on the FPS form.

(*3*) Suspend random time FPS testing. Conduct additional subgroup tests a minimum of 15 and a maximum of 30 minutes apart at the reinspection station to determine the adequacy of process corrective actions. Include the test results in the CUSUM. If the testing results in an additional subgroup total exceeding tolerance or CUSUM equals or exceeds the action number, identify subsequent product for rework and follow procedures for process out of control.

(*4*) If two consecutive additional subgroup tests a minimum of 15 and a maximum of 30 minutes apart demonstrate process control with subgroup totals equal to or less than tolerance, but they do not cause CUSUM to fall to the start line or below, reset CUSUM at the start number.

(*5*) Resume random time subgroup testing as set forth in actions to be taken when the process is in control.

(B) *Inspector actions.* The inspector shall monitor product and the effectiveness of process corrective actions by making spot-check observations to ensure that all program requirements are met.

(iii) *Actions to be taken when the CUSUM reaches the action number.* If the subgroup test results in CUSUM equal to or exceeding the action number, or results in a rising CUSUM and a subsequent subgroup test above tolerance, the process is judged not in control.

(A) *Establishment actions.* The establishment shall:

(*1*) Identify subsequent product for rework.

(*2*) Immediately notify the inspector in charge and production supervisor responsible for the affected evisceration line.

(*3*) Take specific process corrective actions for each FPS category with nonconformances to regain process control and minimize rework. These actions shall be recorded on the FPS form.

(*4*) Suspend random time testing. Conduct additional subgroup tests at the

inspection subgroup test result is above tolerance, the process is judged to be under questionable process control.

(A) *Establishment actions.* The establishment shall:

(*1*) Immediately notify the inspector in charge and the production supervisor responsible for the affected evisceration line.

(*2*) Take specific process corrective actions for each FPS category with nonconformances to prevent the process from yielding product requiring rework. These actions are recorded on the FPS form.

(*3*) Suspend random time FPS testing. Conduct additional subgroup tests a minimum of 15 and a maximum of 30 minutes apart at the reinspection station to determine the adequacy of process corrective actions. Include the test results in the CUSUM. If the testing results in an additional subgroup total exceeding tolerance or CUSUM equals or exceeds the action number, identify subsequent product for rework and follow procedures for process out of control.

(*4*) If two consecutive additional subgroup tests a minimum of 15 and a maximum of 30 minutes apart demonstrate process control with subgroup totals equal to or less than tolerance, but they do not cause CUSUM to fall to the start line or below, reset CUSUM at the start number.

(*5*) Resume random time subgroup testing as set forth in actions to be taken when the process is in control.

(B) *Inspector actions.* The inspector shall monitor product and the effectiveness of process corrective actions by making spot-check observations to ensure that all program requirements are met.

(iii) ***Actions to be taken when the CUSUM reaches the action number.*** If the subgroup test results in CUSUM equal to or exceeding the action number, or results in a rising CUSUM and a subsequent subgroup test above tolerance, the process is judged not in control.

(A) *Establishment actions.* The establishment shall:

(*1*) Identify subsequent product for rework.

(*2*) Immediately notify the inspector in charge and production supervisor responsible for the affected evisceration line.

(*3*) Take specific process corrective actions for each FPS category with nonconformances to regain process control and minimize rework. These actions shall be recorded on the FPS form.

(*4*) Suspend random time testing. Conduct additional subgroup tests at the reinspection station to determine the adequacy of process corrective actions. Include the test results in the CUSUM.

(*5*) After two consecutive subgroup tests at least 30 minutes apart result in subgroup totals equal to or less than tolerance, identify product that will mark the end of the rework action.

(*6*) If two consecutive additional subgroup tests demonstrate process control with subgroup totals equal to or less than tolerance, but they do not cause CUSUM to fall to the start line or below, reset CUSUM at the start number.

(*7*) Resume random time subgroup testing as set forth in actions to be taken when the process is in control.

(B) *Inspector action.* The inspector shall monitor product and the effectiveness of process corrective actions by making spot-check observations to ensure that all program requirements are met.

(iv) *Off-line rework of product.* (A) When the product has been identified as having been produced when the process was not in control, off-line product corrective actions must take place. All corrective actions such as identifying affected product, segregating product, and maintaining control through rework actions are the establishment's responsibility.

(B) The inspector shall spot check the establishment's identification, segregation, and control of reworked product to ensure that program requirements are met. If the establishment fails in its responsibilities, the inspector shall identify, segregate, and retain affected product to prevent adulterated product from reaching consumers.

(C) Reworked product must be tested by the establishment with a randomly selected subgroup test of the accumulated reworked lot. Before product is released, the subgroup test must be less than or equal to tolerance. If the subgroup test of the reworked lot exceeds tolerance, the lot must be reworked again before another subgroup test is selected. The following actions are required.

(*1*) *Establishment actions.* The establishment shall:

(*i*) Select the 10-bird subgroup from throughout the lot only after the total lot has been reworked.

(*ii*) Conduct the 10-bird test.

(*iii*) Release the lot if the subgroup test is less than or equal to tolerance.

(*iv*) Identify and control the lot to be reworked again if the subgroup again exceeds tolerance.

(*2*) *Inspector actions.* The inspector shall spot check the rework procedure and testing to ensure that establishment monitoring and production meet the requirements of the program.

(*3*) *Trimmable Lesion/Condition Testing and Actions.* The trimmable lesion/condition test is designed to monitor the establishment's ability to remove trimmable lesions and conditions from inspected and passed carcasses. The trimmable lesions and conditions in this category include, but are not limited to, the definition of trimmable lesion/condition nonconformances (see Table 1). A 300-bird test is conducted on-line at the reinspection collection site at the end of the slaughter process. The test follows the same random schedule selected for FPS category testing and is conducted immediately following the FPS 10-bird test. Zero tolerance for trimmable lesion/condition nonconformances is met through testing and actions independent of the other FPS nonconformance categories. Trimmable lesions and conditions detected on carcasses through the FPS 10-bird test are removed before carcasses are returned to product flow. All product identified through the 300-bird on-line test as having trimmable lesions or conditions is retained, reworked, and retested before proceeding into commerce.

(i) *Actions to be taken when the process is in control.* When no trimmable lesions or conditions are found on the 300-bird on-line test, the process is judged in control.

(A) *Establishment actions.* The establishment shall:

(*1*) Randomly select and record subgroup sampling times for each production unit of time before product reaches the reinspection station on each production line. In no case shall a test represent more than 1 hour of production.

(*2*) Conduct 300-bird on-line test at random selected time on each poultry slaughter line. Record the test results. If no trimmable lesion/condition is detected, continue the random scheduled time 300-bird on-line testing.

(B) *Inspector actions.* The inspector shall:

(*1*) Select random times for 300-bird on-line tests for a minimum of each half-shift on each evisceration line. In establishments that have multiple evisceration lines on a production shift, monitor all lines of product at the random times.

(*2*) Conduct the 300-bird on-line test at random selected time on each poultry slaughter line. Record the test results. If no trimmable lesion/condition is detected, conduct the next 300-bird on-line test at random scheduled time.

(3) If either establishment or inspection monitoring finds a trimmable lesion/condition during a 300-bird on-line test, the process is judged out of control.

(ii) *Actions to be taken when the process is out of control.* When any trimmable lesions or conditions are found on the 300-bird on-line test, the process is judged out of control.

(A) *Establishment actions.* The establishment shall:

(1) Immediately identify subsequent product for rework.

(2) Immediately notify the inspector in charge of trimmable lesion/condition.

(3) Record specific process corrective actions taken for the trimmable lesion/condition category on the test sheet.

(4) Suspend random time testing for the trimmable lesion/condition category.

(5) Conduct additional 300-bird on-line tests after the final wash to determine the adequacy of process corrective actions.

(6) After a 300-bird on-line test is free of any trimmable lesion/condition:

(i) Identify product that will mark the end of the rework action.

(ii) Resume random time 300-bird on-line testing as set forth in actions to be taken when the process is in control.

(B) *Inspector actions.* The inspector shall monitor product and the effectiveness of process corrective actions by making spot-check observations to ensure that all program requirements are met.

(iii) *Off-line rework of product.* (A) When the product has been identified as having been produced when the process was not in control, off-line product corrective actions must take place. All corrective actions such as identifying affected product, segregating product, and maintaining control through rework actions are the establishment's responsibility.

(B) The inspector shall spot check the establishment's identification, segregation, and control of reworked product to ensure that program requirements are met. If the establishment fails in its responsibilities, the inspector shall identify, segregate, and retain affected product to prevent adulterated product from reaching consumers.

(C) Reworked product must be tested by the establishment with a randomly selected subgroup test of the accumulated reworked lot. Before product is released, the subgroup test must be free of any trimmable lesion/condition. If the subgroup test of the reworked lot detects a trimmable lesion/condition, the lot must be reworked again before another subgroup test is conducted. The following actions are required.

(1) *Establishment actions.* The establishment shall:

(i) Select a subgroup sample from throughout the lot only after the total lot has been reworked.

(ii) Conduct the rework subgroup test.

(iii) Release the lot if no trimmable lesion/condition is found in the reworked lot.

(iv) Identify and control the lot to be reworked again if any trimmable lesion/condition is found in the reworked lot.

(2) *Inspector actions.* The inspector shall monitor product and the effectiveness of process corrective actions by making spot-check observations to ensure that all program requirements are met.

Table 1—Finished Product Standards Definitions of Nonconformances

1 Bruises ≥½"

—Blood clumps or clots in the superficial layers of tissue, skin, muscle or loose subcutaneous tissue may be slit and the blood completely washed out. When the bruise extends into the deeper layers of muscle, the affected tissue must be removed. Very small bruises less than ½" (dime size) and areas showing only slight reddening need not be counted as defects.
—Black/green bruises are bruises that have changed from red to a black/blue or green color due to age.
—Factor is one.
—A maximum of three incidents per carcass.

Breast Blister

—Inflammatory tissue, fluid, or pus between the skin and keel must be trimmed if membrane "slips" or if firm nodule is greater than ½" in diameter (dime size).
—Factor is one.
—A maximum of one incident per carcass.

Sores, Scabs, Etc.

—Any defects such as sores, abscesses, scabs, wounds, dermatitis.
—Factor is one.
—A maximum of three incidents per carcass.

Untrimmed Short Hocks

—Factor is one.
—A maximum of two incidents per carcass.

2 Hair >¼" 26 or more

—Hair which is one-fourth inch long or longer measured from the top of the follicle to the end of the hair. 26 or more hairs equal one incident.
—Factor is one.
—A maximum of one incident per carcass.

Feathers and/or Pinfeathers

—Attached feathers or protruding pinfeathers. Scored 1 to 5 per carcass as one incident, 5 to 10 per carcass as two incidents, and 11 or more as three incidents.
—Factor is one.
—A maximum of three incidents per carcass.

Long Shank—Both Condyles Covered

—Factor is one.
—A maximum of two incidents per carcass.

3 Compound Fracture

—Any bone fracture (i.e., leg, wing, or wingtip) that has caused an opening through the skin. May be accompanied with a bruise, but not always. Do not count the bruise in line 3 if it is associated with the compound fracture.
—Factor is one.
—A maximum of three incidents per carcass.

Note: Bruises not associated with the fracture should be recorded in the appropriate lines.

External Mutilation

—Mutilation to the skin and/or muscle that is caused by the slaughter, dressing, or eviscerating processes. Skinned elbows (bucked wings) do not require trim unless affected wing joint capsule is also opened.
—Factor is one.
—A maximum of three incidents per carcass.

4 Oil Glands Remnant or Whole

—Recognizable fragment(s) up to a whole of one or both oil glands equals one incident.
—Factor is one.
—Maximum of one incident per carcass.

5 Intestine

—Any identifiable portion of the terminal portion of the intestinal tract with a lumen (closed circle) present, or split piece of intestine large enough to be closed to form a lumen.
—Factor is one.
—A maximum of one incident per carcass.

Cloaca

—Any identifiable portion of the terminal portion of the intestinal tract with mucosal lining.
—Factor is one.
—A maximum of one incident per carcass.

Bursa of Fabricius

—A whole rosebud, or identifiable portion with two or more mucosal folds.
—Factor is one.
—A maximum of one incident per carcass.

6 Lung

—Any portion of a lung equals one incident.
—Factor is one.
—A maximum of one incident per carcass.

7 Esophagus

—Any portion of the esophagus with identifiable mucosal lining.
—Factor is one.
—A maximum of one incident per carcass.

Crop

—Any portion of the crop that includes the mucosal lining or any complete crop.
—Factor is one.
—A maximum of one incident per carcass.

Trachea

—Identifiable portion of trachea.
—Factor is one.
—A maximum of one incident per carcass.

8 Extraneous Material

—Include any specks, tiny smears, or stains of material that measure 1/16" or less in the greatest dimension.

Examples: Ingesta, unattached feathers, grease, and bile remnants, and/or whole gall bladder or spleen, embryonic yolk, etc.

—Factor is one.
—1 to 5 = 1 defect; 6 to 10 = 2 defects; 11 or more = 3 defects. A maximum of three incidents per carcass.

Extraneous Material >1/16"

—The same material as Extraneous material <1/16" but measuring >1/16" in the longest dimension.
—Any occurrence equals one incident.
—Factor is one.
—A maximum of three incidents per carcass.

9 Trimmable Lesions/Condition

—A trimmable tumor or identifiable portion of a tumor on any part of the carcass.
—Trimmable synovitis/airsacculitis (saddle/frog) lesions that have not been removed.
—Lesion/condition subject to removal following an approved cleanout process.

Examples: Salpingitis, nephritis, spleen, or liver conditions requiring removal of the kidneys.

Bursa of Fabricius

—A whole rosebud, or identifiable portion with two or more mucosal folds.
—Factor is one.
—A maximum of one incident per carcass.

6 Lung

—Any portion of a lung equals one incident.
—Factor is one.
—A maximum of one incident per carcass.

7 Esophagus

—Any portion of the esophagus with identifiable mucosal lining.
—Factor is one.
—A maximum of one incident per carcass.

Crop

—Any portion of the crop that includes the mucosal lining or any complete crop.
—Factor is one.
—A maximum of one incident per carcass.

Trachea

—Identifiable portion of trachea.
—Factor is one.
—A maximum of one incident per carcass.

8 Extraneous Material

—Include any specks, tiny smears, or stains of material that measure 1/16" or less in the greatest dimension.

Examples: Ingesta, unattached feathers, grease, and bile remnants, and/or whole gall bladder or spleen, embryonic yolk, etc.

—Factor is one.
—1 to 5 = 1 defect; 6 to 10 = 2 defects; 11 or more = 3 defects. A maximum of three incidents per carcass.

Extraneous Material >1/16"

—The same material as Extraneous material <1/16" but measuring >1/16" in the longest dimension.
—Any occurrence equals one incident.
—Factor is one.
—A maximum of three incidents per carcass.

9 Trimmable Lesions/Condition

—A trimmable tumor or identifiable portion of a tumor on any part of the carcass.
—Trimmable synovitis/airsacculitis (saddle/frog) lesions that have not been removed.
—Lesion/condition subject to removal following an approved cleanout process.

Examples: Salpingitis, nephritis, spleen, or liver conditions requiring removal of the kidneys.

—All kidneys from mature poultry.

Note: All establishments shall develop and maintain a permanent marking system that identifies carcasses with removable lesions/conditions on the inside surfaces. When removable lesions/conditions are identified inside the carcass by the establishment sorter, the sorter will apply the permanent mark. When removable inside lesions/conditions are found on a subgroup sample without the permanent mark, the error is not recorded. The affected carcass(es) will be hung back for IIC disposition and corrective action.

Table 2—Finished Product Standards Limits

Tolerance number (T)	25
Action number	10
Start number	5

(i) *Partial quality control program.* (1) Any owner or operator of an official establishment preparing poultry products who wishes to operate under an approved PQC program must submit to the Administrator a partial quality control program designed to assure that poultry is wholesome and properly prepared and shall request a determination as to whether or not that program is adequate to result in product being in compliance with the requirements of the Act and therefore qualify for the higher inspection rates specified in § 381.67.

(2) The approved quality control program for the establishment shall include control points on the line, which shall be monitored by the inspector.

(3) Establishment quality control employees shall operate the poultry carcass on-line quality control program and shall make immediately available to inspection personnel any and all data collected and maintained under the approved partial quality control program.

(4) An inspector shall monitor the establishment's application of the poultry carcass on-line quality control program and shall take corrective action when he or she determines that the establishment has failed to maintain or correct its process as described in the approved quality control program.

(5) The application, evaluation, and termination procedures for a PQC program are prescribed in § 381.145. If approval of the PQC program has been terminated in accordance with the provisions of § 381.145(g), an application and request for approval of the same or modified quality control program will not be evaluated by the Administrator for at least 2 months from the termination date. In order for the Department to provide the Federal inspection required under the Act, ar establishment whose PQC program has been terminated will be allowed to continue operating at maximum inspection rates for establishments without PQC programs as prescribed in § 381.67, provided all requirements of the Act and regulations thereunder are met.

7. Section 381.91 would be amended by revising the last sentence of paragraph (b)(1), by redesignating paragraph (b)(2) as paragraph (b)(3), and by adding a new paragraph (b)(2) to read as follows:

§ 381.91 Contamination.

* * * * *

(b)(1) * * * All visible specks of contamination must be removed, and, if the inner surfaces are reprocessed other than solely by trimming, all surfaces of the carcass shall be treated with chlorinated water containing 20 ppm available chlorine or with any compound that is approved for poultry processing by the Food and Drug Administration and listed in title 21 of the Code of Federal Regulations, chapter I.

(2) When reprocessing carcasses, the establishment shall:

(i) Identify all reprocessed carcasses by lot in a manner acceptable to the inspector in charge,

(ii) Return each reprocessed lot to the processing line at a location after viscera harvest and before the on-line/off-line carcass inspector for reinspection, and

(iii) Comply with the general chilling time and temperature requirements prescribed in § 381.66(b)(2).

* * * * *

Done at Washington, DC, on July 7, 1994.

Patricia A. Jensen,

Acting Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 94–16817 Filed 7–11–94; 8:45 am]

BILLING CODE 3410–DM–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Strangulation Hazards Associated With Crib Toys; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission has decided to terminate a proceeding for the development of requirements to address strangulation

hazards to children associated with crib toys.[1] The Commission began this proceeding by publication of an advance notice of proposed rulemaking (ANPR) on October 19, 1990.

On October 26, 1993, the Commission voted to terminate this proceeding and to withdraw the ANPR published in 1990. The Commission took this action after considering written comments received in response to the ANPR and correspondence concerning this proceeding; information about strangulation deaths and injuries to children from January, 1973, through February, 1993; annual sales of crib toys and the number of crib toys currently in use; the potential effectiveness of labeling and other mandatory requirements to reduce strangulation deaths and injuries to children associated with crib toys; other written materials prepared by the Commission staff; an oral briefing presented by the Commission staff; and other information.

The Commission concluded that evidence is not available at this time to demonstrate that crib toys present an unreasonable risk of strangulation death or injury to children. The Commission also concluded that such evidence would not likely be developed if the proceeding were continued.

FOR FURTHER INFORMATION CONTACT: Celestine M. Trainor, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0468.

SUPPLEMENTARY INFORMATION:

A. Background

In 1990, the Commission granted a petition which requested issuance of a rule to address risks of strangulation deaths and injuries to children associated with certain crib toys and crib mobiles (1).[2] The petition used the term "crib toy" to describe a variety of toys which are intended to be strung across a crib or play pen or attached to the side of a crib or play pen and which are intended to be manipulated by infants. "Crib mobiles" are decorative articles which are designed to hang above a crib or play pen, but are not intended to be touched or manipulated by infants. The petition requested issuance of a rule to:

- Require that a crib gym or similar manipulative toy intended to be strung across the top of a crib must have a rigid horizontal suspension member attachable at or above the height of the crib side rails with no vertical protrusions;
- Prohibit any crib toy from having any protrusions which can catch clothing or any other item worn by an infant;
- Limit the length of any vertical string on any crib toy to six inches;
- Prohibit on any crib toy any cords or other components which form a perimeter greater than 14 inches;
- Prohibit on any crib toy any pull ring attached to a cord;
- Ban any crib mobile that can be located within reach of an infant who is not capable of pushing up on his or her hands and knees inside a crib;
- Require labeling and instructions for various crib toys and crib mobiles to warn of strangulation hazards associated with those products.

On October 19, 1990, the Commission published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (55 FR 42402) under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 et seq.) to begin a proceeding to develop the rule requested by the petition (2).

B. Statutory Authority

Section 2(f)1(D) of the FHSA (15 U.S.C. 1261(f)1(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present a "mechanical hazard." Section 2(s) of the FHSA (15 U.S.C. 1261(s)) provides that a toy or children's article may be determined to present a

> mechanical hazard if, in normal use or * * * reasonably foreseeable * * * abuse, its design or manufacture presents an unreasonable risk of personal injury * * * from * * * points or other protrusions, * * * openings, or closures, * * * or * * * because of any other aspect of the article's design or manufacture.

The Commission may make a determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3(e) through (i) of the FHSA (15 U.S.C. 1262(e)–(i)). A toy or children's article which is the subject of a rule issued in accordance with provisions of sections 3(e) through (i) and which fails to comply with all requirements of such a rule is a "banned hazardous substance" as that term is defined by section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)). The introduction into interstate commerce of a banned hazardous substance is prohibited by section 4 of the FHSA (15 U.S.C. 1263).

Section 3(f) of the FHSA (15 U.S.C. 1262(f)) requires publication of an ANPR to begin a proceeding for issuance of a rule in accordance with sections 3(e) through (i) to make a determination that a toy or children's article presents a "mechanical hazard." Section 3(f) also sets forth requirements for the content of the ANPR.

In accordance with section 3(f) of the FHSA, the ANPR for crib toys identified the products and the risk of injury which are the subject of the rulemaking proceeding, and set forth the regulatory options under consideration by the Commission. The ANPR stated that the Commission was considering issuance of any or all of the requirements requested by the petition. The ANPR also summarized provisions applicable to crib toys in a voluntary standard published by ASTM (formerly the American Society for Testing and Materials), designated F963–86, Standard Consumer Safety Specification for Toy Safety. In addition, the ANPR stated that the Commission was also considering the possibility that this voluntary standard could be revised to address additional hazards associated with crib toys, or that a new voluntary standard could be developed to address those hazards (2).

As required by section 3(f) of the FHSA, the ANPR solicited comments from interested persons about the products and risk of injury under consideration; invited interested persons to submit an existing standard as the proposed regulation; and invited interested persons to submit a statement of intention to develop or modify a voluntary standard to address risks of strangulation death and injury associated with crib toys. (2) In response to the ANPR, the Commission received comments from 17 organizations and individuals (3–19). The Commission also received a joint-communication from six organizations concerning the proceeding for crib toys after the close of the comment period for the ANPR (20).

On September 21, 1993, the Commission staff transmitted to the Commissioners a briefing package of information concerning the development of requirements to address strangulation hazards associated with crib toys (21). On October 22, 1993, the staff presented an oral briefing to the Commission concerning this proceeding.

C. Action by the Commission

On October 26, 1993, the Commission voted to terminate the rulemaking proceeding applicable to crib toys and to withdraw the ANPR published on October 19, 1990.

To make a determination that a product presents an "unreasonable risk of injury" under the FHSA, the Commission considers:

- The nature and severity of the risk of injury associated with the product;
- The potential of mandatory requirements for the product to reduce the frequency and severity of the injury; and
- The effect of mandatory requirements on the cost, utility, or availability of the product.

Additionally, section 3(i) of the FHSA (15 U.S.C. 1262(i)) provides that in order to issue a final rule expressing the Commission's determination that a toy presents a "mechanical hazard," the Commission must prepare a regulatory analysis which includes a description of potential benefits and potential costs of the rule and identifies those parties likely to receive the benefits and to bear the costs. Section 3(i) provides further that the Commission may not issue a final rule unless it makes a finding that "the benefits expected from the regulation bear a reasonable relationship to its costs."

Applying the factors involved in the determination of an unreasonable risk of injury to the information developed during this proceeding, the Commission finds the following:

The Nature and Severity of the Risk of Injury

The nature of the risk of injury associated with crib toys is strangulation on the product. Strangulation injuries may result in death or permanent brain damage. For this reason, strangulation injuries have the potential to be of the utmost severity.

However, the likelihood of a strangulation incident involving a crib toy is relatively small. During the period from January, 1973, through February, 1993, 28 children died in strangulation accidents associated with crib toys, an average of three deaths every two years (22). During the same period, one child sustained permanent brain damage from a strangulation accident associated with a crib toy (22). At the same time, however, an estimated 10 to 25 million crib toys were sold each year, and an estimated 50 million crib toys were in use on any given date (23).

---

[1] The Commission approved publication of this notice by a 2–1 vote, with Chairman Ann Brown dissenting. A copy of Chairman Brown's separate statement is available upon request from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800.

[2] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading Room, 4330 East West Highway, Bethesda, Maryland, room 419, or by calling the Office of the Secretary at (301) 492–0800.

C. Action by the Commission

On October 26, 1993, the Commission voted to terminate the rulemaking proceeding applicable to crib toys and to withdraw the ANPR published on October 19, 1990.

To make a determination that a product presents an "unreasonable risk of injury" under the FHSA, the Commission considers:

- The nature and severity of the risk of injury associated with the product;
- The potential of mandatory requirements for the product to reduce the frequency and severity of the injury; and
- The effect of mandatory requirements on the cost, utility, or availability of the product.

Additionally, section 3(i) of the FHSA (15 U.S.C. 1262(i)) provides that in order to issue a final rule expressing the Commission's determination that a toy presents a "mechanical hazard," the Commission must prepare a regulatory analysis which includes a description of potential benefits and potential costs of the rule and identifies those parties likely to receive the benefits and to bear the costs. Section 3(i) provides further that the Commission may not issue a final rule unless it makes a finding that "the benefits expected from the regulation bear a reasonable relationship to its costs."

Applying the factors involved in the determination of an unreasonable risk of injury to the information developed during this proceeding, the Commission finds the following:

The Nature and Severity of the Risk of Injury

The nature of the risk of injury associated with crib toys is strangulation on the product. Strangulation injuries may result in death or permanent brain damage. For this reason, strangulation injuries have the potential to be of the utmost severity.

However, the likelihood of a strangulation incident involving a crib toy is relatively small. During the period from January, 1973, through February, 1993, 28 children died in strangulation accidents associated with crib toys, an average of three deaths every two years (22). During the same period, one child sustained permanent brain damage from a strangulation accident associated with a crib toy (22). At the same time, however, an estimated 10 to 25 million crib toys were sold each year, and an estimated 50 million crib toys were in use on any given date (23).

The Potential of Mandatory Requirements To Reduce the Frequency and Severity of the Risk of Injury

The information considered by the Commission indicates that the potential of mandatory requirements to reduce risks of strangulation death and injury associated with crib toys is limited.

A 1987 analysis of strangulation injuries associated with crib toys identified three hazard patterns involved in 32 fatalities. In seven of these fatalities, an article worn by the child, such as a bib or a necklace, caught on a protrusion of a crib toy (24). After publication of the ANPR, the Commission undertook additional work to identify characteristics of hazardous protrusions. However, the Commission has not been able to develop an objective test to distinguish those protrusions which present a strangulation hazard from those which do not (21, 25).

Another hazard pattern identified in the 1987 analysis was that of postural strangulation. In six of the fatalities described in that analysis, the child's head and neck were suspended over a horizontal cord. All but one of these cases involved crib gyms. The 1987 analysis recommended that the horizontal member of a crib gym should consist of a rigid structure rather than a cord, and that the design of a crib gym should not allow installation of the product below the height of the top rails of the crib sides (24). These recommendations were intended to eliminate the risk of postural strangulation associated with a crib gym left in a crib occupied by a child who is able to push up on his or her hands and knees (typically, a child older than five months of age).

However, after consideration of more recently developed information, the Commission is concerned that a design requirement for a rigid horizontal member on a crib gym could create other risks of injury to a child who is able to push up on his or her hands and knees. If one end of a crib gym with a rigid horizontal member became detached from the side of the crib and rested on the crib mattress, the crib gym might provide a means by which such a child could climb over the side rail of the crib (21). Additionally, if a crib gym with a rigid horizontal member were installed near the end panel of a crib, another risk of strangulation injury might result if that placement created an opening which would be large enough to allow a child's head to enter, but which would be too small for the head to exit if turned to another orientation (21).

The third hazard pattern discussed in the 1987 analysis of strangulation incidents associated with crib toys resulted when a child's neck became entangled in one or more strings or cords of a crib toy. Four of the fatalities discussed in that analysis resulted when a child's neck became entangled in two or more cords attached to a stuffed toy animal (24). A comment on the ANPR from an association of toy manufacturers observed that stuffed animal toys with attached suspension cords are prohibited by the voluntary toy safety standard, and that such toys have not been manufactured for several years (8). Two other fatalities discussed in the 1987 analysis resulted when a child's neck became entangled in a single vertical cord which extended from a crib toy (24). To address that risk of strangulation, the 1987 analysis recommended that the length of any vertical string attached to a crib toy should not exceed six inches. However, the comment from the association of toy manufacturers states that no report of any fatality resulting from entanglement in a single vertical cord extending from a crib toy has been received since 1986 when the voluntary toy safety standard was revised to restrict the length of such cords to less than 12 inches. (8)

The 1987 analysis of crib toy strangulation incidents also recommended that crib mobiles should be labeled to warn that the article should be kept out of the reach of infants, and should be removed when the infant attains the age of five months or is able to push up on his or her hands and knees. That analysis further recommended instructions accompanying crib toys should include warnings to place the crib mattress in one of the lower positions and to raise the crib drop side when attaching a crib toy. (24) However, the Commission has received newer information indicating that labeling alone cannot be expected to reduce strangulation hazards associated with crib toys (25).

The Effect of Mandatory Requirements on the Cost, Utility, and Availability of the Product

The Commission was unable to obtain information about the costs which might result to manufacturers or consumers from imposing any of the requirements for crib toys discussed in the ANPR. The Commission did not attempt to make cost estimates because of uncertainty about the numbers and specific kinds of crib toys which might be affected by each of the requirements discussed in the ANPR.

D. Voluntary Standard

The Commission also considered alternatives to development of mandatory requirements for crib toys. These alternatives included existing provisions of a voluntary standard for toy safety intended to address risks of strangulation injury associated with crib toys, and revisions of that voluntary standard which were under consideration at the time the Commission decided to terminate this proceeding.

The proposed revisions included the addition of design guidelines to the voluntary standard to minimize strangulation hazards from protrusions on crib toys. The guidelines are intended to be used by manufacturers in the development of crib toys (27, 28).

As noted above, the Commission staff was not able to devise objective criteria to identify protrusions on crib toys which present a strangulation hazard. In the absence of objective criteria to identify hazardous protrusions, the Commission concludes that addition of the proposed design guidelines to the voluntary standard would be worthwhile (27).

The revisions of the voluntary standard under consideration also included:

- Language to limit to 14 inches the perimeter formed by strings or cords which can tangle to form a loop;
- Improved warning labels concerning strangulation hazards associated with crib gyms and similar toys intended to be strung across the top of a crib or playpen;
- Addition of labeling requirements for crib mobiles to advise parents of precautions needed to minimize strangulation hazards associated with those products;

Addition of language to the instructions to accompany crib gyms and similar toys to advise parents of precautions to be taken to minimize strangulation hazards associated with those products. (27)

After considering information about the voluntary standard and proposed revisions of that standard, the Commission concludes that the proposed changes would adequately address the hazards identified in the ANPR.

Section 3(g)(2) of the FHSA requires the Commission to terminate a proceeding for the development of a rule to address an unreasonable risk of injury associated with a toy or children's article if the Commission determines that a voluntary standard developed or modified after publication of the ANPR adequately addresses the risk of injury under consideration and that substantial compliance with such a voluntary standard is likely to be achieved.

However, provisions of section 3(g)(2) apply only to a voluntary standard which has been "finally approved" by the organization which developed the standard. The proposed revisions of the ASTM voluntary standard for toys discussed above have not yet been finally approved by ASTM. For that reason, the Commission is not required by section 3(g)(2) of the FHSA to terminate this proceeding.

E. Conclusions by the Commission

From its consideration of all available information about risks of strangulation injuries to children associated with crib toys and mandatory requirements to address those risks, the Commission concludes that:

(1) To date, information has not been developed to establish that crib toys present an unreasonable risk of strangulation injury to children;

(2) Consequently, information has not been developed to establish that issuance of a mandatory rule for crib toys to address that risk of injury is reasonably necessary; and

(3) If this proceeding were continued, such information would not likely be developed.

The Commission also concludes that information is not now available or likely to be developed to support a finding that the expected benefits from a mandatory rule to address strangulation hazards associated with crib toys would bear a reasonable relationship to the costs imposed by such a rule. Such a finding is required by section 3(i) of the FHSA to issue a rule for crib toys.

Accordingly, the Commission hereby withdraws the ANPR published in the **Federal Register** of October 19, 1993 (55 FR 42402) to initiate a proceeding for development of requirements to address risks of strangulation deaths and injuries associated with crib toys.

Dated: July 7, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Petition from Consumer Federation of America and the New York State Attorney General's Office requesting issuance of a rule to ban certain crib toys, 74 pages, November 17, 1988.

2. **Federal Register** notice, "Strangulation Hazards Associated With Crib Toys; Advance Notice of Proposed Rulemaking," published by the Consumer Product Safety Commission, 4 pages, October 19, 1990 (55 F.R. 42402).

3. Comment from Daniel Chaucer, P.E., 3 pages, October 28, 1990.

4. Comment from Sligo International, 1 page, November 6, 1990.

5. Comment from The First Years, 2 pages, December 5, 1990.

6. Comment from U.S. Public Interest Research Group, 3 pages, December 12, 1990.

7. Comment from Fisher-Price, 8 pages, December 13, 1990.

8. Comment from Toy Manufacturers of America, Inc., 17 Pages, October 19, 1990.

9. Comment from Oregon State Public Interest Research Group, 4 pages, December 14, 1990.

10. Comment from Dolly, Inc., 2 pages, December 17, 1990.

11. Comment from Massachusetts Public Interest Research Group, 2 pages, December 17, 1990.

12. Comment from the Coalition for Consumer Health & Safety, 2 pages, December 18, 1990.

13. Comment from Consumer Federation of America, 9 pages, December 18, 1990.

14. Comment from Marcella V. Ridenour, 1 page, December 1, 1990.

15. Comment from Jolly Jumper, Inc., 2 pages, December 17, 1990.

16. Comment from J. M. Miller Engineering, Inc., 6 pages, November 17, 1990.

17. Comment from Allegheny County Health Department, 2 pages, December 18, 1990.

18. Comment from American Society of Safety Engineers, 2 pages, December 19, 1990.

19. Comment from Dorothy A. Drago, 2 pages, January 8, 1991.

20. Letter from Consumer Federation of America, Consumes Union, The Danny Foundation, National Safe Kids Campaign, Public Citizen Congress Watch, and U.S. Public Interest Research Group to Jacqueline Jones-Smith, Chairman, Consumer Product Safety Commission, 4 pages, October 25, 1993.

21. Memorandum from Celestine Trainor, Project Manager, to the Commission, subject "Options on Crib Toys," 15 Pages, September 21, 1993.

22. Memorandum from Suzanne P. Cassidy, EPHA, and Debbie Tinsworth, EPHA, to Celestine Trainor, EPHF, subject "Crib Toys—Data Update and Response to ANPR Comments on Strangulation Hazards," 2 pages, March 27, 1993.

23. Memorandum from Anthony C. Homan, ECPA, to Celestine Trainor, Project Manager, subject "Crib Toys—Regulatory Discussion," 2 pages, April 19, 1993.

24. Human Factors Evaluation of Provisions Which Address Crib Toy Strangulations in the Toy Safety Voluntary Standard," by Shelley Waters Deppa, 20 pages, July, 1987.

25. "Characteristics of Catch Point Incidents Contributing to Strangulation on Crib Toys and Other Children's Products," by Shelley Waters Deppa, 30 pages, October, 1992.

26. Letter from John Preston, ESME, to Charles A. Brooks, Fisher-Price, 2 pages, February 17, 1993.

27. Memorandum from Celestine Trainor, EPHF, to Jacqueline Elder, Director, EPHF, subject "Comparison of Current and Proposed Voluntary Standard Requirements for Crib Toys and Staff Response," 6 pages, July 7, 1993.

28. Design Criteria, 1 page.

29. Press Release of Chairman Jacqueline Jones-Smith on Strangulation Hazards Associated with Crib Toys, 1 page, October 16, 1993.

30. Statement of Commissioner Carol G. Dawson on The Termination of Rulemaking on Crib Toys, 2 pages, October 26, 1993.

31. Statement of Mary Sheila Gall on Termination of the Rulemaking Proceedings Related to Crib Toys, 1 page, October 26, 1993.

[FR Doc. 94–16876 Filed 7–12–94; 8:45 am]

BILLING CODE 6355–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 22

Guides for the Hosiery Industry, Extension of Time Within Which To File Public Comments

AGENCY: Federal Trade Commission.

ACTION: Extension of time within which to file public comments.

SUMMARY: The Federal Trade Commission (the "Commission") has requested public comments on its Guides for the Hosiery Industry (59 FR 18004, April 15, 1994). The Commission solicited the comments as part of its periodic review of rules and guides.

DATES: Written comments will be accepted until July 14, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Submissions should be marked "Guides for the Hosiery Industry, 16 CFR Part 22—Comment."

FOR FURTHER INFORMATION CONTACT: Ann M. Guler, Investigator, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Suite 13209, Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION: As part of the on-going regulatory review of its rules and guides, the Commission on April 15, 1994, published a request for comments on its Guides for the Hosiery Industry (59 FR 18004). The comments were to be accepted until June 14, 1994.

On June 2, 1994, the Commission received a letter from the Idaho State Treasurer seeking to extend the time period within which to submit comments. The letter states that the Office of the State Treasurer has "conducted extensive research in regard to the Hosiery Industry since 1990." To obtain the benefit of this research and to

subject "Comparison of Current and Proposed Voluntary Standard Requirements for Crib Toys and Staff Response," 6 pages, July 7, 1993.

28. Design Criteria, 1 page.

29. Press Release of Chairman Jacqueline Jones-Smith on Strangulation Hazards Associated with Crib Toys, 1 page, October 16, 1993.

30. Statement of Commissioner Carol G. Dawson on The Termination of Rulemaking on Crib Toys, 2 pages, October 26, 1993.

31. Statement of Mary Sheila Gall on Termination of the Rulemaking Proceedings Related to Crib Toys, 1 page, October 26, 1993.

[FR Doc. 94–16876 Filed 7–12–94; 8:45 am]

BILLING CODE 6355–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 22

Guides for the Hosiery Industry, Extension of Time Within Which To File Public Comments

AGENCY: Federal Trade Commission.

ACTION: Extension of time within which to file public comments.

SUMMARY: The Federal Trade Commission (the "Commission") has requested public comments on its Guides for the Hosiery Industry (59 FR 18004, April 15, 1994). The Commission solicited the comments as part of its periodic review of rules and guides.

DATES: Written comments will be accepted until July 14, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Submissions should be marked "Guides for the Hosiery Industry, 16 CFR Part 22—Comment."

FOR FURTHER INFORMATION CONTACT: Ann M. Guler, Investigator, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Suite 13209, Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION: As part of the on-going regulatory review of its rules and guides, the Commission on April 15, 1994, published a request for comments on its Guides for the Hosiery Industry (59 FR 18004). The comments were to be accepted until June 14, 1994.

On June 2, 1994, the Commission received a letter from the Idaho State Treasurer seeking to extend the time period within which to submit comments. The letter states that the Office of the State Treasurer has "conducted extensive research in regard to the Hosiery Industry since 1990." To obtain the benefit of this research and to allow all interested persons the opportunity to supply information to the Commission, the Commission hereby extends the period within which to comment until July 14, 1994.

Authority: 15 U.S.C. 68 *et seq.*

List of Subjects in 16 CFR Part 22

Advertising, labeling, hosiery.

By direction of the Commission.

Donald S. Clark,

Secretary

[FR Doc. 94–16949 Filed 7–12–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–94–064]

RIN 2115–AA97

Safety Zone; Widmann Wedding Fireworks Display, Sheffield Island, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in Sheffield Harbor, around the fireworks barge C–33 located approximately 1200 feet northwest of the abandoned lighthouse on Sheffield Island, Norwalk, CT from 9:15 p.m. through 10 p.m. on September 17, 1994. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Long Island Sound.

DATES: Comments must be received on or before August 12, 1994.

ADDRESSES: Comments may be mailed to the Captain of the Port, 120 Woodward Avenue, New Haven, CT 06512 or may be delivered to the Port Operations office at the above address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (203) 468–4464.

The Captain of the Port maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the Port Operations office at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Due to the limited amount of time available prior to the event, only a 30 day comment period can be provided. Persons submitting comments should include their name and address, identify this rulemaking [CGD01–94–064] and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Officer at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LCDR T.V. Skuby, Project Officer, Captain of the Port, Long Island Sound, and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

The sponsor, Jim Widmann, President of CT Pyro Display Company, South Norwalk, CT has requested that a fireworks display be permitted in the port of Norwalk in the vicinity of Sheffield Island, Norwalk, CT, from 9:15 p.m. through 10 p.m. on September 17, 1994. The fireworks display is scheduled to celebrate the sponsor's wedding. The safety zone will cover all waters of Sheffield Harbor within a 1200 foot radius of the fireworks barge C–33, which will be located approximately 1200 feet northwest of the abandoned lighthouse on Sheffield Island, Norwalk, CT. This zone is required to protect the maritime community from the dangers and potential hazards to navigation associated with the fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on scene representative.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of

Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Coast Guard expects the economic impact to be minimal due to the limited duration of the fireworks display, the small size of the safety zone, the low level or non existent commercial vessel traffic expected in the area during the effective time of the zone, and the broadcast of marine safety advisories the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–064 is added to read as follows:

§ 165.T01–064 Safety Zone; Widmann Wedding Fireworks Display, Sheffield Island, CT.

(a) *Location.* The safety zone includes all waters of Sheffield Harbor within a 1200 foot radius of the barge C–33, the fireworks launching platform, which will be located approximately 1200 feet northwest of the abandoned lighthouse on Sheffield Island, Norwalk, CT in approximate position 41°03′ N; 073°25.5′ W.

(b) *Effective date.* This section is effective from 9:15 p.m. through 10 p.m. on September 17, 1994, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations covering safety zones contained in section 165.23 of this part apply.

Dated: June 23, 1994.

T.W. Allen,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 94–16947 Filed 7–12–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 174

[OPP–250095; FRL–4874–9]

Notification to the Secretary of Agriculture of a Proposed Rule on Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture, as required by section 25(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), a proposed rule under sections 3 and section 25(a) and (b) of FIFRA. EPA proposes to amend an existing regulation and to create a new regulation to clarify the relationship between plants and plant-pesticides and their regulatory status under FIFRA. EPA also proposes to exempt from FIFRA requirements classes of plant-pesticides that the Agency has determined pose low probability of risk and are not likely to cause unreasonable adverse affects on the environment. Recognizing the unique characteristics of plant-pesticides, the Agency proposes to create a new part in the CFR for regulations unique to plant-pesticides.

FOR FURTHER INFORMATION CONTACT: By mail: Bernice Slutsky, Science and Policy Staff, Office of Prevention, Pesticides and Toxic Substances (7101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. E–627, 401 M St., SW., Washington, DC, (202–260–6900).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime thereafter. As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

List of Subjects in Parts 152 and 174

Environmental protection, Biotechnology, Pesticides, Plants, Plant-pesticides, Reporting and recordkeeping requirements.

Dated: June 16, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–16859 Filed 7–12–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 8F3658/P584; FRL–4871–2]

RIN 2070–AC18

Pesticide Tolerances for Triasulfuron

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to extend the tolerances for residues of the herbicide triasulfuron [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-chloroethoxy)phenylsulfonyl]urea] in or on barley and wheat grain at 0.02 part per million (ppm); barley and wheat straw at 2.0 ppm; barley and wheat forage at 5.0 ppm; meat, fat and meat by products (excluding kidney) of cattle, goats, hogs, horses, and sheep; kidney of cattle, goats, horses, and sheep at 0.2 ppm; and milk at 0.02 ppm. The Agency has not completed the regulatory assessment of our science findings; therefore, the Agency is proposing to extend these tolerances for 1 year.

DATES: Comments, identified by the document control number [PP 8F3658/P584), must be received on or for August 12, 1994. These tolerances will expire on March 13, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by making any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in public record. Information not marked confifidential may be disclosed pubicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Dated: June 16, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–16859 Filed 7–12–94; 8:45 am]

BILLING CODE 6560–50–F

---

40 CFR Part 180

[PP 8F3658/P584; FRL–4871–2]

RIN 2070–AC18

Pesticide Tolerances for Triasulfuron

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to extend the tolerances for residues of the herbicide triasulfuron [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-chloroethoxy)phenylsulfonyl]urea] in or on barley and wheat grain at 0.02 part per million (ppm); barley and wheat straw at 2.0 ppm; barley and wheat forage at 5.0 ppm; meat, fat and meat by products (excluding kidney) of cattle, goats, hogs, horses, and sheep; kidney of cattle, goats, horses, and sheep at 0.2 ppm; and milk at 0.02 ppm. The Agency has not completed the regulatory assessment of our science findings; therefore, the Agency is proposing to extend these tolerances for 1 year.

DATES: Comments, identified by the document control number [PP 8F3658/P584], must be received on or for August 12, 1994. These tolerances will expire on March 13, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by making any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in public record. Information not marked confifidential may be disclosed pubicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFROMATION: In the **Federal Register** of March 13, 1992 (57 FR 8844), EPA issued a final rule which established tolerances for residues of the herbicide triasulfuron [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-chloroethoxy)phenylsulfonyl]urea] in or on barley and wheat grain at 0.02 ppm; barley or wheat forage at 5.0 ppm; barley and wheat straw at 20 ppm; meat, fat, and meat byproducts (excluding kidney) of cattle, goats, hogs, horses, and sheep at 0.1 ppm; and milk at 0.02 ppm, with an expiration date of March 13, 1995. These tolerances with an expiration date were required by EPA to allow the petitioner, Ciba-Geigy Corp. to submit additional data required in the area of environmental fate and groundwater, and to allow the Agency to complete the regulatory assessment of its scientific findings. The petitioner has submitted all the required data. Because the Agency has not completed the regulatory assessment of its scientific findings, EPA is amending 40 CFR 180.459 to extend the expiration date for these tolerances until March 13, 1996.

Based on the information cited above and in the document establishing the time-limiting tolerance for triasulfuron (57 FR 8844, March 13, 1992), the Agency has determined that when used in accordance with good agricultural practice, this ingredient is useful and the tolerances will protect the public health. Therefore, EPA is proposing to extend the tolerances as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 8F3658/P584]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or establishing exemptions from tolerance requirements do not have a significant impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Enviromental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 27, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.459, to read as follows:

§ 180.459 Trisulfuron; tolerances for residues.

Tolerances, to expire on March 13, 1996, are established for residues of the herbicide triasulfuron [3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-(2-(2-chloroethoxy)phenylsulfonyl]urea] in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, forage	5.0
Barley, grain	0.02
Barley, straw	2.0
Cattle, fat	0.1
Cattle, kidney	0.2
Cattle, mbyp (except kidney)	0.1
Cattle, meat	0.1
Goats, fat	0.1
Goats, kidney	0.2
Goats, mbyp (except kidney)	0.1
Goats, meat	0.1
Hogs, fat	0.1
Hogs, kidney	0.2
Hogs, mbyp (except kidney)	0.1
Hogs, meat	0.1
Horses, fat	0.1

Commodity	Parts per million
Horses, kidney	0.2
Horses, mbyp (except kidney)	0.1
Horses, meat	0.1
Milk	0.02
Sheep, fat	0.1
Sheep, kidney	0.2
Sheep, mbyp (except kidney)	0.1
Sheep, meat	0.1
Wheat, forage	5.0
Wheat, grain	0.02
Wheat, straw	2.0

[FR Doc. 94–16860 Filed 7–12–94; 8:45 am]
BILLING CODE 8580–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 421

[BPO–111–N]

RIN 0938–AG06

Medicare Program; Intermediary and Carrier Functions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period on the proposed rule we published in the **Federal Register** on February 22, 1994 concerning Medicare intermediary and carrier functions.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m., by October 11, 1994. Comments received after the original comment period ending date of April 26, 1994 and before July 13, 1994 also will be considered.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–111–P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) transmissions. In commenting, please refer to file code BPO–111–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (410) 966–7411). This notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Alan Bromberg, (410) 966–7441.

SUPPLEMENTARY INFORMATION: On February 22, 1994 (59 FR 8446), we published a proposed rule in the **Federal Register**, that would revise the list of mandatory functions included in agreements with Medicare fiscal intermediaries pursuant to section 1816 of the Social Security Act. We would require that the intermediary agreements include, as functions, the statutory requirements that intermediaries determine proper payment amounts and pay bills. All other functions would be optional. We proposed that all functions included in contracts with Medicare carriers be optional, since section 1842 of the Act does not list mandatory functions. These changes would provide us with the flexibility to transfer functions from one intermediary or carrier to another or to otherwise limit the functions an intermediary or carrier performs when we determine to do so would result in more effective and efficient program administration. The comment period for the February 22, 1994 proposed rule ended on April 25, 1994. We are extending the comment period and will consider comments if we receive them at the appropriate address, as provided in the February 22, 1994 proposed notice, by October 11, 1994. All comments received between April 26, 1994, and the date of publication of this notice will be accepted.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93–774, Medicare—Supplementary Medical Insurance Program)

Dated: May 18, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 30, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–16885 Filed 7–12–94; 8:45 am]
BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 94–54; FCC 94–145]

Equal Access Obligations of Commercial Mobile Radio Service Providers; Interconnection Obligations of Local Exchange Carriers to Commercial Mobile Radio Service Providers; Interconnection Obligations of Commercial Mobile Radio Service Providers

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making; Notice of Inquiry.

SUMMARY: This Notice of Proposed Rule Making (NPRM) initiates a rule making proceeding to examine whether equal access obligations should be imposed on commercial mobile radio service (CMRS) providers, and whether the interconnection arrangements between local exchange carriers (LECs) and CMRS providers should be tariffed. The Notice of Inquiry (NOI) initiates a broad inquiry into whether the Commission should impose interconnection obligations on CMRS providers. The NOI also explores resale obligations and asks parties to address the extent to which those obligations should be imposed on CMRS providers.

DATES: Comments must be filed on or before August 30, 1994, and reply comments on or before September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Esbin, Common Carrier Bureau, Tariff Division, (202) 418–1520.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Notice of Inquiry (*Notice*) in CC Docket No. 94–54, FCC 94–145, adopted June 9, 1994, and released July 1, 1994.

The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), at (202) 857–3800, 1919 M Street, NW., Room 246, Washington, DC 20554.

Synopsis of Notice

1. The *Notice* tentatively concludes that the Commission has authority under Section 201 of the Communications Act to order equal access when it is in the public interest. The Notice also tentatively concludes that the public interest evaluation depends upon an analysis of market power, as well as other important factors such as customer choice, increased end user access to networks, access to a wider array of IXC service offerings, and elimination of the different regulatory treatment of the Bell Operating Company affiliated cellular carriers. The *Notice* seeks comment on these tentative conclusions regarding the relevant legal standard and public interest criteria, and invites parties to suggest other relevant factors or policy goals that should be included in the public interest analysis under Section 201.

2. This *Notice* proposes to require that cellular licensees provide equal access to interexchange carriers (IXCs) and seeks comment on whether equal access obligations should be imposed on other CMRS providers, including resellers of CMRS. Currently, the Commission does not require CMRS providers to provide equal access.

3. The *Notice* notes that the Commission has a more fully developed record on the issue of equal access for cellular service than for any other CMRS provider and observes that cellular service is an established, rapidly growing service that provides many customers with alternate access to networks and services. Because of the limited record as to the service characteristics of other CMRS providers, such as those that will provide PCS, specialized mobile radio service or improved mobile telephone services, the *Notice* reaches no tentative conclusions for other CMRS providers. Rather, it seeks comment on whether the public interest would be served if equal access obligations were extended to CMRS providers other than cellular providers.

4. The *Notice* tentatively concludes that the Commission should adopt a service area boundary definition for purposes of the equal access obligation, and seeks comment on the circumstances under, or point at which, a cellular carrier must hand off a call to an interexchange carrier.

5. The *Notice* also tentatively concludes that any equal access obligation should be implemented on a gradual, phased-in basis and seeks comment on the method that should be employed. In addition, it seeks comment on service characteristics and other technical issues related to the implementation of equal access and related cost issues.

under Section 201 of the Communications Act to order equal access when it is in the public interest. The Notice also tentatively concludes that the public interest evaluation depends upon an analysis of market power, as well as other important factors such as customer choice, increased end user access to networks, access to a wider array of IXC service offerings, and elimination of the different regulatory treatment of the Bell Operating Company affiliated cellular carriers. The *Notice* seeks comment on these tentative conclusions regarding the relevant legal standard and public interest criteria, and invites parties to suggest other relevant factors or policy goals that should be included in the public interest analysis under Section 201.

2. This *Notice* proposes to require that cellular licensees provide equal access to interexchange carriers (IXCs) and seeks comment on whether equal access obligations should be imposed on other CMRS providers, including resellers of CMRS. Currently, the Commission does not require CMRS providers to provide equal access.

3. The *Notice* notes that the Commission has a more fully developed record on the issue of equal access for cellular service than for any other CMRS provider and observes that cellular service is an established, rapidly growing service that provides many customers with alternate access to networks and services. Because of the limited record as to the service characteristics of other CMRS providers, such as those that will provide PCS, specialized mobile radio service or improved mobile telephone services, the *Notice* reaches no tentative conclusions for other CMRS providers. Rather, it seeks comment on whether the public interest would be served if equal access obligations were extended to CMRS providers other than cellular providers.

4. The *Notice* tentatively concludes that the Commission should adopt a service area boundary definition for purposes of the equal access obligation, and seeks comment on the circumstances under, or point at which, a cellular carrier must hand off a call to an interexchange carrier.

5. The *Notice* also tentatively concludes that any equal access obligation should be implemented on a gradual, phased-in basis and seeks comment on the method that should be employed. In addition, it seeks comment on service characteristics and other technical issues related to the implementation of equal access and related cost issues.

6. The *Notice* seeks comment on whether the Commission should require LECs to offer interconnection under tariff, or whether the Commission should retain its current requirement that LECs establish, through good faith negotiations with CMRS providers, the rates, terms and conditions of interconnection.

7. The *Notice* also seeks comment on whether in lieu of imposing a tariff filing obligation, the Commission should revise the good faith negotiation requirement by adding two new safeguards against unreasonably discriminatory rates or conditions.

8. The NOI portion of the *Notice* asks for comment on the issue of whether the Commission should require CMRS providers to furnish interconnection to other mobile service providers. The NOI states that if the Commission determines that imposing interconnection obligations would be in the public interest, Section 201(a) of the Communications Act gives the Commission the authority to order CMRS providers to establish physical connections with other carriers. The NOI seeks comment on whether there are public interest concerns that would justify imposing interstate interconnection obligations regardless of whether CMRS providers control bottleneck facilities. Further, the NOI seeks comment on whether, if the Commission concludes that imposition of CMRS interconnection obligations is not necessary at this time, it should examine the future need for such obligations as part of an effort to monitor the CMRS marketplace. The NOI requests parties to comment on the nature and scope of interconnection obligations the Commission should establish if the Commission decides to impose such obligations. The NOI also seeks comment on whether some or all CMRS providers other than cellular licensees should be required to resell service to facilities-based or non-facilities based CMRS competitors.

Ex Parte Rules

9. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules.[1]

Regulatory Flexibility Act

10. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et. seq.* (1981), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of the policies and rules proposed in this Notice on small entities. The IRFA is contained in Appendix B to the *Notice*. The Secretary shall cause a copy of this *Notice*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

[1] See generally, Section 1.1206(a) of the Commission's Rules, 47 C.F.R. 1.1206(a).

Authority

11. This action is taken pursuant to Sections 1, 4(i), 4(j), 201, 202, 208, 332, and 403 Communications Act as amended; 47 U.S.C. 154(i), 201, 202, 208, 332, and 403.

12. Accordingly, it is ordered that notice is hereby given of the proposed regulatory changes described above, and that comment is sought on these proposals.

13. It is further ordered that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, comments shall be filed with William F. Caton, Acting Secretary, Federal Communications Commission, Washington, DC 20554 on or before August 30, 1994, and reply comments shall be filed with the Secretary on or before September 29, 1994. To file formally in this proceeding, parties must file an original and five copies of all comments, reply comments, and supporting comments. Parties wishing each Commissioner to receive a personal copy of their comments must file an original plus nine copies.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–16881 Filed 7–12–94; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 74

[MM Docket No. 93–24, FCC 94–148]

Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; ITFS Filing Window

AGENCY: Federal Communications Commission.

ACTION: Order and Further Notice of Proposed Rulemaking.

SUMMARY: This *Order and Further Notice Proposed Rulemaking* seeks comments on issues relating to the filing of applications for new Instructional Television Fixed Service (ITFS) facilities, applications for major changes in existing facilities, and major

amendments to pending applications. Earlier in this proceeding, the Commission solicited comments on a proposal to institute a window filing procedure for such applications, in order to stem the processing backlog. The *Order and Further Notice of Proposed Rulemaking* seeks comment on how the Commission's Rules might be revised to enhance the efficiency of a window filing system. It also lifts the freeze on the filing of applications of major changes to licensed facilities. The *Order and Further Notice of Proposed Rulemaking* responds to the comments received in response to the *Notice of Proposed Rulemaking* in this proceeding.

DATES: Comments are due by August 29, 1994 and reply comments are due by September 28, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, Video Services Division, (202) 418–1630.

SUPPLEMENTARY INFORMATION: This is synopsis of the Commission's *Order and Further Notice of Proposed Rulemaking* in MM Docket No. 93–34, adopted on June 9, 1994, and released on July 6, 1994. The *Notice of Proposed Rulemaking* initiating this proceeding may be found at 58 FR 12011 (March 2, 1993).

The complete text of this *Order and Further Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, at the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of Order and Further Notice of Proposed Rulemaking

1. This *OFNPRM* further considers amending the Commission's rules to alter the procedures governing the acceptance of applications for new Instructional Television Fixed Service (ITFS) stations, major amendments to such applications, or major changes in existing stations. We also seek comment on several additional proposals put forth by the commenters and on our motion intended to increase the efficiency and curtail potential abuse of our application processes. Finally, we modify the freeze on the filing of major change applications, which we adopted earlier in this proceeding, to permit the filing of major change applications and any competing applications thereto.

2. Our goal in this proceeding is to enhance the efficiency of our processing of ITFS applications. The *Notice* asserted that changes in the ITFS service in the last decade have fostered a substantial increase in the rate of applications filed for new ITFS stations or major changes in existing stations, creating a significant backlog. The *Notice* tentatively concluded that the existing cut-off filing system, which requires each application to be processed twice, significantly exacerbates the backlog. We proposed a window filing procedure for applications for new facilities, applications for major changes in existing facilities, and major amendments to pending applications. We would accept such applications only during specific times, or "windows." This would allow us to eliminate the duplicative processing and control the flow of applications, thereby improving processing efficiency. *Notice of Proposed Rulemaking* in MM Docket No. 93–24, 58 FR 12011 (March 2, 1993).

3. While most commenters agree that the current filing system is inefficient and unnecessary, they are divided on the adoption of a window filing procedure. Supporters of the proposal generally agree that a window filing procedure will help eliminate the inefficiencies resulting from the A/B cut-off system that were discussed in the *Notice*. Under the A/B cut-off system, educators with wireless cable lessees would at times file applications simply to be mutually exclusive with applicants listed on an "A" cut-off list. The proposed window filing procedure would eliminate this practice.

4. However, several commenters argue that the adoption of a filing window system without concomitant safeguards against abuse would not increase processing efficiency. According to these parties, a window filing system would encourage some wireless cable entities to persuade educational institutions to submit excessively large and unrealistic numbers of applications, thereby allowing the wireless cable entity to warehouse spectrum. They assert that such wireless cable entities do not intend to construct, but rather seek a profitable bargaining position with allegedly "legitimate" wireless cable developers. The commenters add that a wireless cable operator that plans to construct may not be ready during a filing window to associate with schools and prepare its applications. Alternatively, they assert that wireless cable operators that do intend to construct would have to file applications in every market in which they hope eventually to operate, in order to protect themselves from spectrum speculators, diminishing processing efficiency.

5. Some parties argue that a window filing system is inappropriate for educational applicants not associated with a wireless cable lessee, because they require up to 18 months to approve the project and authorize the funds needed for construction. Thus, NIA states that such institutions would not be able to respond in time to a Public Notice of a window. Also, several parties assert that any window filing procedure must account for the annual January grant application deadline of the National Telecommunications and Information Administration (NTIA).[1]

6. *Discussion* Under the existing cut-off filing system, each application must undergo a substantive engineering analysis upon filing, simply to allow the release of an "A" cut-off list. No applications are granted or denied in this stage of processing. Subsequently, each application undergoes a second technical analysis in order to determine whether it is grantable. Because each of these analyses requires significant resources, the elimination of the duplicative step would substantially improve processing efficiency. Moreover, a window filing procedure would deny frequency speculators with no intention to construct the opportunity to file against applications on an "A" cut-off list. These benefits would significantly improve the Commission's workflow management.

7. In addition, the record reflects that educators would be able to prepare adequately for each subsequent filing period, due especially but not solely to the significant involvement of wireless cable operators in financing and constructing the facilities. Most of these wireless cable operators have substantial experience in filing for Commission licenses. The record reflects no reason why educators without excess capacity leases will not be able to prepare as before for the financing and construction of an ITFS facility. An ongoing series of filing windows will still ensure an opportunity for such educators to file when they are ready. Indeed, because "A" cut-off lists are not announced in advance or released pursuant to a formal schedule, these educators would be in the same position under the window system as they are now. Consequently, educators that do not rely on excess capacity lessees will not be disadvantaged by the change to a window filing system. for the same reason, the consequences are identical as under the existing system for parties simply not prepared to file during a window.

8. Also, in order not to obstruct NTIA grants, we propose allowing each December the tendering of applications that rely upon NTIA funding. We would consider such applications, if filed outside a window period, as having been filed during the immediately following window.

9. Accordingly, we are inclined to adopt the window filing procedure. We also acknowledge the concerns of the commenters that the window filing procedure may not by itself alleviate the problems faced by applicants and the Commission. Thus, as discussed further below, we seek comment on how we can achieve the significant benefits of a window filing system while minimizing filing practices that impede efficient processing.

Proposals To Improve the Application Process

10. *Financial Qualifications* To deter a significant number of ITFS speculators, some commenters advocate requiring applicants or their proposed wireless cable lessees to submit with their applications proof of their financial ability to construct.[2] Moreover, they propose requiring separate financial documentation for each station applied for, and making the wireless cable lessee submit the documentation when it is paying for construction of the facilities.

11. We request comment on this proposal. We believe that its adoption may deter a significant number of speculative applications. However, we recognize that adoption would entail significant costs. Compiling the necessary documentation could impose a significant burden on educational institutions, especially those not leasing their excess capacity. Further, any enhanced efficiency might be eviscerated by our having to allocate substantial staff resources to the analysis of each financial submission. In addition, the requirement could become a basis for the filing of frivolous petitions, further delaying the grant of applications. We seek comment on how to balance these costs and benefits. Moreover, we note that wireless cable lessees are not parties to ITFS applications. Thus, we ask commenters to address whether it would be

[1] NTIA provides grants to educational institutions for the construction of ITFS facilities.

[2] Currently, applicants are required to certify their financial ability.

capacity lessees will not be disadvantaged by the change to a window filing system. for the same reason, the consequences are identical as under the existing system for parties simply not prepared to file during a window.

8. Also, in order not to obstruct NTIA grants, we propose allowing each December the tendering of applications that rely upon NTIA funding. We would consider such applications, if filed outside a window period, as having been filed during the immediately following window.

9. Accordingly, we are inclined to adopt the window filing procedure. We also acknowledge the concerns of the commenters that the window filing procedure may not by itself alleviate the problems faced by applicants and the Commission. Thus, as discussed further below, we seek comment on how we can achieve the significant benefits of a window filing system while minimizing filing practices that impede efficient processing.

Proposals To Improve the Application Process

10. *Financial Qualifications* To deter a significant number of ITFS speculators, some commenters advocate requiring applicants or their proposed wireless cable lessees to submit with their applications proof of their financial ability to construct.[2] Moreover, they propose requiring separate financial documentation for each station applied for, and making the wireless cable lessee submit the documentation when it is paying for construction of the facilities.

11. We request comment on this proposal. We believe that its adoption may deter a significant number of speculative applications. However, we recognize that adoption would entail significant costs. Compiling the necessary documentation could impose a significant burden on educational institutions, especially those not leasing their excess capacity. Further, any enhanced efficiency might be eviscerated by our having to allocate substantial staff resources to the analysis of each financial submission. In addition, the requirement could become a basis for the filing of frivolous petitions, further delaying the grant of applications. We seek comment on how to balance these costs and benefits. Moreover, we note that wireless cable lessees are not parties to ITFS applications. Thus, we ask commenters to address whether it would be appropriate to require lessees to routinely submit demonstrations of their financial ability. Commenters should also address whether our existing rules and policies on misrepresentation sufficiently prohibit parties from falsely certifying their financial ability to construct.

12. *Application Caps* Next, we turn to two related proposals by the Educational Parties. The first is a cap of three to five applications that an individual nonlocal ITFS entity could file during a window. Such applicants, according to the Educational Parties, often work with frequency speculators and, backed by these wireless cable entities, submit a number of applications simply to bargain with other wireless cable entities seeking to construct a viable wireless cable system. Second, they propose an additional cap of 25 applications associated with the same wireless cable entity, including any entity with direct or indirect common ownership or control. According to the Educational Parties, wireless cable lessees should have to file with their associated ITFS applications information detailing who has any direct or indirect interest in the wireless cable lessee, including any interests as an owner, officer, or director.

13. We invite comments on whether circumstances at this time warrant inquiry into either of the proposed measures. Adoption of either proposal might diminish the number of applications submitted, thereby easing the processing burden substantially. In addition, it would likely limit multiple filings by frequency speculators and their affiliated applicants. However, wireless cable operators require a minimum number of channels with which to operate a viable wireless cable system. Thus, stringent caps could obstruct the rapid development of robust wireless cable systems that can vigorously compete in the rapidly expanding video marketplace. They could also retard the development of ITFS systems, which often obtain funding from the wireless cable lessees. Also, commenters should address how to justify the proposed discrimination against nonlocal applicants. We note that such entities establish eligibility through letters of intended use from an official of each receive site, and through the service on a local programming committee of an official of each receive site. Thus, we invite commenters to address whether and what kinds of limitations would promote both ITFS and wireless cable development. How can we balance the efficiencies of such limitations with the costs they might impose? If an application ceiling would serve the public interest, how many applications associated with one entity should we allow per window? How would we define common control for the purpose of either ITFS or wireless cable? Should we base our definition on actual control, or on attribution of ownership?

14. *Expedited Consideration of Applications* The Educational Parties and WCA propose that, under certain circumstances, we give expedited consideration to ITFS applications in return for the applicant's agreeing to an accelerated construction schedule. WCA suggests that a wireless cable lessee be able to request and obtain expedited consideration of an application with which it is associated, if the lessee has access to a certain minimum number of channels in the area.[3] In return, grantees would be required to order their equipment within 21 days of Public Notice of the grant, and construct the facilities within six months. Extensions would be granted only under compelling circumstances, such as the inability of the manufacturer to deliver timely ordered equipment, or accidental damages to essential equipment. WCA claims that adoption of the proposal would accelerate the development of both ITFS and wireless cable systems. In addition, the Educational Parties propose that educators without excess capacity leases also have access to such expedited consideration.

15. While we do not now view the implementation of the proposal as practical, we invite comments on the proposal and how it might be implemented. The staff may have to expend substantial resources determining which applications were eligible for expedited consideration, enforcing the requirement for ordering equipment, and enforcing the construction deadline, thereby delaying service to the public. Also, would the public be served if we denied an extension request when construction is nearly complete at the end of the six months? Finally, the likely substantial number of applicants requesting expedited consideration could defeat the purpose of the proposal. In the alternative, would processing efficiency be adequately improved by a stricter enforcement of the existing requirements for extensions of time?

[2] Currently, applicants are required to certify their financial ability.

[3] WCA proposes expedited consideration only if the wireless cable lessee already has 12 channels, at least 4 of which are MDS. This would include licensed access to MDS or ITFS stations, cut-off non-mutually exclusive proposed MDS facilities, and/or proposed ITFS stations (including the ones at issue). WCA Comments at 7.

16. *Assignment of Construction Permits* We now turn to a related proposal to diminish the incentive of frequency speculators to submit applications for permits that they intend to later assign for profit. We propose to formalize our current practice of limiting the allowable consideration for unbuilt ITFS facilities to out-of-pocket expenses, as is now applied to the sale of broadcast construction permits. We seek comment on the proposal.

17. *Application of the Four-Channel Rule* Section 74.902(d) of the Commission's Rules generally limits an ITFS licensee to four channels for use in a single area of operation. However, we have not clearly defined what constitutes an "area of operation" for the purpose of the rule. A clear benchmark would make the standard easier for applicants to comply with and would also increase the speed of processing.

18. The staff has considered a single area of operation for this purpose to extend no farther than 20 miles from the transmitter site. We seek comment on whether we should adopt that figure as a rule. Commenters should address whether an educational institution is likely to routinely serve an area extending beyond that radius. Alternatively, should we instead define an area of operation in terms of interference, rather than of distance? Specifically, we seek comment on whether we should consider two sites to be in different areas of operation, as long as one could operate at maximum authorized power on the same channel at each site without co-channel interference.

19. *Offset* We next turn to our policies toward offset.[4] Currently, we apply the 28dB D/U ratio standard to determine co-channel interference. However, we do not require offset if an objection is raised by one of the affected parties. Instead, we have encouraged privately negotiated agreements to use offset to resolve interference. Consequently, we must decide between two mutually exclusive applications when, if the applicants used offset, both could serve the public without objectionable co-channel interference. To require offset between otherwise grantable mutually exclusive ITFS applicants would help maximize the number of educational entities that can avail themselves of the service. Thus, we propose requiring the use of offset in such circumstances when all affected transmitters are capable of handling frequency offset stability requirements. Such a requirement, we believe, would both accelerate the granting of applications and allow for a greater number of ITFS licensees, thereby increasing service to the public. Also, although we currently require new applicants to use equipment capable of utilizing offset, we have not always done so. Accordingly, we would not apply the proposed rule to facilities predating the requirement that lack offset capability.

20. *Protected Service Areas.* In addition to receive site protection, ITFS applicants can request interference protection for a service area.[5] We provide such protection only at an applicant or licensee's request. Generally, such protection benefits the wireless cable lessee, because the protected service area ensures interference protection within an area where receive sites are not specified, or extended protection over an area where receive sites are not currently located. Moreover, the protection is afforded only during the hours that the wireless cable entity is using the channels.

21. Protected service areas are intended to provide a measure of protection to wireless cable lessees, in order to promote the inauguration of new or improved wireless cable service. However, the protected service area has frequently been used in ways that we had not contemplated. Specifically, applicants for new facilities often request and receive interference protection that restricts an existing licensee from seeking certain modifications to its facilities. In addition, otherwise grantable ITFS applications in adjacent communities often obtain interference protection, causing them to become mutually exclusive with a previously filed application. At the same time, an existing facility that has not requested such protection often, upon learning that an application for a nearby operation has been filed, requests interference protection and thereby obstructs the new applicant. We believe that these practices may be an abuse of our processing system driven by certain wireless cable lessees, designed to prevent or dilute competition. Further, this practice significantly impacts our processing and delays the inauguration of new or improved service to the public. Moreover, such practices unfairly disrupt existing operations and already-proposed facilities.

22. In order to hasten service to the public, then, we propose to modify our application of interference protection. Specifically, we propose to apply such protection only prospectively. Thus, it would be effective only with regard to applications filed after the protection request. Commenters are invited to address whether our proposal would sufficiently diminish the disruption and delay resulting from the current method of granting interference protection. We also seek comment on a particular application of the proposed rule. Specifically, if two applications submitted during the same filing window, otherwise grantable, are mutually exclusive only because both applicants request a protected service area, we propose to consider them as mutually exclusive. We invite comments on this proposal.

23. *Receive-Site Interference Protection.* Pursuant to § 74.903 (d) and (e) of the Commission's Rules, an ITFS licensee, permittee, or applicant may request interference protection for its receive sites. The rule does not expressly limit the distance a receive site may be from the transmitter in order to receive such protection. As a result, we have received numerous applications in which interference protection has been requested for receive sites that appear to be beyond the reasonable coverage ability of an educational institution. We believe that such requests are an abuse of our processes, designed to increase artificially the service area of the wireless cable lessee. We also believe that the elimination of this practice would significantly increase the efficiency of our processing of applications, thereby hastening service to the public.

24. Given an ITFS facility's height, power, frequency, and mode of transmission, our experience suggests that it is generally unlikely that an educational institution would reasonably serve a receive site that is more than 35 miles from the transmitter. Thus, absent a showing of unique circumstances, we propose to provide protection only for those receive sites 35 miles or less from the transmitter. Further, we propose that an applicant not be able to claim eligibility for a license by use of any receive site more than 35 miles from the transmitter. Applicants are invited to address this proposal.

25. *Major Modifications.* We classify applications to modify an existing ITFS facility or to amend a pending application as either major or minor, attaching different procedural rules to each.[6] We generally define major modifications as those that significantly impact an existing or proposed facility. Pursuant to the window proposal, the Commission will accept major amendments and applications for major modifications only during an open window period.

26. However, the current definition of minor changes, we believe, does not realistically take into account the impact that the proposed change would have on the facility in question, nearby facilities, or proposed facilities.[7] Applicants frequently submit applications for changes that would substantially affect the operations of such facilities, yet we now treat many of these changes as minor. Accordingly, we propose to reclassify certain changes as major. Consequently, we would accept amendments and applications for such changes only during a window filing period. We believe that this action would more accurately reflect the impact of a proposed change.

27. We have had an informal policy of considering proposals to relocate a facility's transmitter site by 10 miles or more as a major change. We now propose to modify our rules to make this policy formal. In addition, we propose to reclassify as a major change any application or amendment involving: (1) Any polarization change; (2) the addition of any receive site that would experience interference from any licensee or applicant on file prior to the submission of the amendment; (3) an increase in the EIRP in any direction by more than 1.5 dB;[8] (4) an increase of 25 feet or more in the transmitting antenna height; or (5) any change that would cause interference to any previously proposed application or existing facility. We note that by limiting the opportunity to file the above types of applications, adoption of the proposal would appear to somewhat diminish a licensee or applicant's flexibility to respond to changing needs and circumstances. At the same time, however, we believe that adoption of the proposed rules would make our classification of changes more consistent. By doing so, we believe, we would enhance the efficiency of the window filing system. Thus, it appears that the benefits gained from the rule would outweigh the costs. We seek comment on our analysis. Finally, we propose to exempt from the new rule any change that resolves mutually

[4] A licensee utilizing offset operates at a frequency either slightly higher or slightly lower than the standard frequency for that channel. Specifically, such a licensee operates its facilities with a carrier frequency ± 10 kHz from the nominal carrier frequency.

[5] Sections 74.903 (d) and (e) of the Commission's Rules.

[6] Section 74.911 of the Commission's Rules, 47 CFR 74.911.

[7] Section 74.911 classifies a small number of specified changes as major and defines all other changes as minor.

[8] Thus, TPO would no longer be the deciding factor in determining whether a change is major.

each.[6] We generally define major modifications as those that significantly impact an existing or proposed facility. Pursuant to the window proposal, the Commission will accept major amendments and applications for major modifications only during an open window period.

26. However, the current definition of minor changes, we believe, does not realistically take into account the impact that the proposed change would have on the facility in question, nearby facilities, or proposed facilities.[7] Applicants frequently submit applications for changes that would substantially affect the operations of such facilities, yet we now treat many of these changes as minor. Accordingly, we propose to reclassify certain changes as major. Consequently, we would accept amendments and applications for such changes only during a window filing period. We believe that this action would more accurately reflect the impact of a proposed change.

27. We have had an informal policy of considering proposals to relocate a facility's transmitter site by 10 miles or more as a major change. We now propose to modify our rules to make this policy formal. In addition, we propose to reclassify as a major change any application or amendment involving: (1) Any polarization change; (2) the addition of any receive site that would experience interference from any licensee or applicant on file prior to the submission of the amendment; (3) an increase in the EIRP in any direction by more than 1.5 dB;[8] (4) an increase of 25 feet or more in the transmitting antenna height; or (5) any change that would cause interference to any previously proposed application or existing facility. We note that by limiting the opportunity to file the above types of applications, adoption of the proposal would appear to somewhat diminish a licensee or applicant's flexibility to respond to changing needs and circumstances. At the same time, however, we believe that adoption of the proposed rules would make our classification of changes more consistent. By doing so, we believe, we would enhance the efficiency of the window filing system. Thus, it appears that the benefits gained from the rule would outweigh the costs. We seek comment on our analysis. Finally, we propose to exempt from the new rule any change that resolves mutually exclusive applications without creating new frequency conflicts.

28. *FAA Authorization.* Pursuant to Section 17.4 of the Commission's Rules, we do not grant or modify a license until the Federal Aviation Administration (FAA) has determined that the proposed transmitter site will not pose a hazard to air navigation. Applicants now state in their applications that they have applied for FAA clearance. However, once that clearance is obtained, applicants are not required to inform the Commission. To hasten the time that our staff learns of the FAA's hazard determinations, we propose to require the applicant to inform the Commission of the FAA's determination. We believe that this would accelerate service to the public. Commenters are invited to address the costs and benefits of adopting the proposal.

29. *Interference Studies.* Applicants often claim that their proposed facilities will cause no harmful interference, based either on their being beyond the radio horizon or on their signal being blocked by nearby terrain. However, such applicants frequently provide no terrain profiles to support such claims. Furthermore, whenever an applicant files a proposal claiming that no interference will be cause due to the signal's being blocked by the surrounding terrain, a question almost always arises as to the amount of signal that will be blocked. Many applicants conclude that any terrain obstruction, regardless of degree, completely blocks the signal. Our experience has demonstrated that this conclusion is not necessarily true.

30. Accordingly, we propose to amend the rules to require the submission of terrain profiles and a quantitative analysis of any additional signal loss calculated by using the Longley-Rice propagation model, Version 1.2.2, in the point-to-point mode. Adoption of the proposal would make mandatory a technical analysis that many applicants already use. The Longley-Rice model was derived from NBS Technical Note 101 and updated in 1982 by G. A. Hufford. Version 1.2.2 incorporated modifications described in a memorandum by Hufford in 1985. Terrain elevations used as input to the model should be from the United States Geological Survey three-second or 30-second digitized terrain databases. Further, we propose to disregard any claim of signal blockage caused by artificial structures. Such claims usually make impossible any quantitative analysis. Accordingly, we seek comment on these proposals.

31. *Reasonable Assurance of Receive Sites.* We have received a number of applications in which some of the schools listed as receive sites have subsequently informed us that they had, in fact, not agreed to participate in the proposed ITFS system. This practice forces the Commission to allocate its scarce resources processing an inaccurate application, then reprocessing it (and related mutually exclusive applications) when the information is corrected. Such duplicative processing significantly delays the final disposition of all ITFS applications. Therefore, we seek comment on how an applicant should demonstrate reasonable assurance of a receive site's legitimacy. We propose requiring a letter of assurance from the applicant, listing the receive sites' contact people, titles, and telephone numbers. With regard to noncompliance with any new requirement, should we automatically decline to consider any proposed receive site without adequate assurance?

32. *Accreditation of Applicants* Currently, pursuant to Section 74.932 of the Commission's Rules, an applicant to construct new facilities must report whether it, its members, or the receive sites it serves are accredited. The application form does not require the educator to specify whether it is the applicant or its members that are accredited. This ambiguity has opened the door to abuse of our procedures. Consequently, we have received applications in which the applicant is an accredited organization, but it proposes receive sites at non-accredited institutions. Applicants often evade the intent of the rule by having only one receive site out of many accredited, thereby defeating the fundamental purpose of the service, which is to serve the educational needs of accredited institutions.

33. Thus, we propose to require applicants to state whether and by whom each school listed as a receive site in accredited. We also propose not to consider in a tie-breaking proceeding a receive site that lacks this accompanying information, or that is unaccredited, as that would allow it unwarranted comparative consideration. Commenters are invited to address other ways we should utilize the additional information. Should we require a majority of receive sites to be accredited in order for the application to be grantable? Should we deny interference protection for any unaccredited receive site? We invite commenters to address any or all of the above proposals. However, we do not wish to limit the range of comments in this area. Thus,

[6] Section 74.911 of the Commission's Rules, 47 CFR 74.911.

[7] Section 74.911 classifies a small number of specified changes as major and defines all other changes as minor.

[8] Thus, TPO would no longer be the deciding factor in determining whether a change is major.

we welcome other proposals besides those discussed above that would safeguard both the efficiency of a window filing system and the integrity of our processes.

Freeze of New Applications

34. In the *Notice* we announced that, for a period of time, we would not accept applications for new ITFS facilities or for major changes to existing facilities. We expressed our concern that potential applicants would inundate the Commission with applications while the old cut-off rule was still in effect, thereby defeating the purpose of the proposed rulemaking. However, we stated that we would continue to accept (but not process) applications in which the applicant relies on NTIA for construction funds. We have also continued to accept major change proposals where they are filed in the same market to accommodate settlement agreements among applicants that have previously achieved cut-off status and where the settlement resolves mutually exclusive applications.

35. Upon publication of this *Order and Further Notice* in the **Federal Register**, we shall instruct the staff to begin accepting applications for major changes to existing facilities, and any mutually exclusive applications thereto. Such applications will be processed under the existing A/B cut-off rules. We believe that this will ease the burden that the freeze has caused to educational institutions that seek to alter their existing facilities. Licensees and those filing competing applications may file such applications until the effective date of any window filing rules. We note that this *Order and Further Notice* contemplates modifying our definition of a major change. For the purposes of modifying the freeze, we shall use the existing definition of the term. Any pending major modification application not cut off as of the adoption of this *Order and Further Notice* will be considered in conjunction with the newly submitted applications.

Administrative Matters

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. 1.415 and 1.419, interested parties may file comments on or before August 29, 1994, and reply comments on or before September 28, 1994. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, at the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 74

Instructional Television Fixed Service, Television broadcasting.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–16880 Filed 7–12–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–57; Notice 01]

RIN 2127–AF33

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This notice proposes to amend Standard No. 210 to require the installation of anchorages for either a Type 1 or a Type 2 seat belt assembly at any seating position for which Standard No. 208 requires the installation of a Type 1 or a Type 2 seat belt. Anchorages required by Standard No. 210 must meet the strength, location and other performance requirements of that standard. Currently, S4.1.2 of Standard No. 210 requires the installation of an anchorage for a Type 1 or a Type 2 seat belt assembly for all designated seating positions, except positions already required by section 4.1.1 of Standard No. 210 to have an anchorage for a Type 2 seat belt assembly and except passenger seats in buses. The practical effect of Standard No. 210's not requiring anchorages for the bus passenger seats is that the anchorages for the Type 1 seat belt assemblies required at passenger seats in small buses are not currently required to comply with the performance requirements of that Standard. This notice will correct this oversight.

DATES: *Comment date:* Comments must be received by September 12, 1994.

Proposed effective date: If adopted, the proposed amendments would become effective 30 days following publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–4916.

SUPPLEMENTARY INFORMATION: On November 2, 1989, NHTSA published a final rule amending Standard No. 208, *Occupant Crash Protection*, to require the installation of Type 2 (lap/shoulder) seat belts at all forward-facing rear outboard seating positions in all vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, other than school buses (54 FR 46257). The final rule also required Type 2 seat belts at all front outboard seating positions in small buses and Type 1 (lap) seat belts at all other seating positions in small buses.

In the preamble to the final rule, effective September 1, 1991, the agency stated that it did not need to amend Standard No. 210, *Seat Belt Assembly Anchorages*, to require the installation of anchorages for Type 2 seat belt assemblies at the affected seating positions because S4.1.1 already required the installation of anchorages for a Type 2 seat belt assembly whenever Standard No. 208 required the installation of a Type 2 seat belt.

In making this statement, the agency overlooked the exceptions in S4.1.2 of Standard No. 210. That section requires the installation of anchorages for a Type 1 or a Type 2 seat belt assembly for all designated seating positions, except positions required to have an anchorage for a Type 2 seat belt assembly and except for passenger seats in buses. Thus, the anchorages for the Type 1 seat belt assemblies required at passenger seats in small buses by the November 2, 1989 final rule are not currently required to comply with Standard No. 210. To correct this oversight, this notice proposes to amend Standard No. 210 to require the installation of anchorages for either a Type 1 or a Type 2 seat belt assembly at any seating position for which Standard No. 208 requires the installation of a Type 1 or a Type 2 seat belt.

Since NHTSA believes that the anchorages currently being installed by the manufacturers comply with the requirements of Standard No. 210, NHTSA is proposing that if this proposal is adopted as a final rule, it would become effective 30 days after publication.

The agency proposes to simplify the language of S4.1 and to reword it to eliminate the possibility of similar oversights in the future. The proposed regulatory language in this notice combines the requirements of current S4.1.1 and S4.1.2 into one section. Further, it makes clear that anchorages for either a Type 1 or a Type 2 seat belt assembly are required whenever Standard No. 208 requires either a Type 1 or a Type 2 seat belt assembly. This change will eliminate the need for further amendment of Standard No. 210 if the seat belt requirements of Standard No. 208 are amended in the future.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures and determined that the action is not "significant" under those policies and procedures. While these anchorages are not currently required to comply with Standard No. 210, NHTSA believes that manufacturers do design these anchorages to comply with these requirements. Thus, NHTSA does not expect any impact from this proposed rule. Therefore, preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate any impact from this proposed rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and

Since NHTSA believes that the anchorages currently being installed by the manufacturers comply with the requirements of Standard No. 210, NHTSA is proposing that if this proposal is adopted as a final rule, it would become effective 30 days after publication.

The agency proposes to simplify the language of S4.1 and to reword it to eliminate the possibility of similar oversights in the future. The proposed regulatory language in this notice combines the requirements of current S4.1.1 and S4.1.2 into one section. Further, it makes clear that anchorages for either a Type 1 or a Type 2 seat belt assembly are required whenever Standard No. 208 requires either a Type 1 or a Type 2 seat belt assembly. This change will eliminate the need for further amendment of Standard No. 210 if the seat belt requirements of Standard No. 208 are amended in the future.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures and determined that the action is not "significant" under those policies and procedures. While these anchorages are not currently required to comply with Standard No. 210, NHTSA believes that manufacturers do design these anchorages to comply with these requirements. Thus, NHTSA does not expect any impact from this proposed rule. Therefore, preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate any impact from this proposed rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. This section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 would be revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.210 [Amended]

2. Section 571.210 would be amended by revising S4.1.1, removing existing S4.1.2, redesignating existing S4.1.3(a) as S4.1.2(a) and redesignating existing S4.1.3(b) as S4.1.2(b) and revising it, to read as follows:

§ 571.210 Standard No. 210; Seat belt assembly anchorages.

* * * * *

S4.1.1 Seat belt anchorages for a Type 1 or a Type 2 seat belt assembly shall be installed for each designated seating position for which a Type 1 or a Type 2 seat belt assembly is required by Standard No. 208 (49 CFR 571.208). Seat belt anchorages for a Type 2 seat belt assembly shall be installed for each designated seating position for which a Type 2 seat belt assembly is required by Standard No. 208 (49 CFR 571.208).

S4.1.2(a) * * *

(b) The requirement in S4.1.1 of this standard that seat belt anchorages for a Type 1 or a Type 2 seat belt assembly shall be installed for certain designated seating positions does not apply to any such seating positions that are equipped

with a seat belt assembly that meets the frontal crash protection requirements of S5.1 of Standard No. 208 (49 CFR 571.208).

* * * * *

Issued on July 7, 1994.

Patricia P. Breslin,

Acting Associate Administrator for Rulemaking.

[FR Doc. 94–16912 Filed 7–12–94; 8:45 am]

BILLING CODE 4910-59-P

49 CFR Part 571

[Docket No. 85–07; Notice 9]

RIN 2127–AF23

Federal Motor Vehicle Safety Standards; Air Brake Systems Control Line Pressure Balance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to a petition for rulemaking submitted by Sealco Air Controls, Inc., this notice proposes to amend the control line pressure differential requirements in Standard No. 121, *Air Brake Systems*, for converter dollies and trailers designed to tow another vehicle equipped with air brakes. The agency has tentatively concluded that the proposed amendments would improve the braking compatibility of such vehicles by allowing the use of a relay valve known as a spool-type low opening valve. The agency does not anticipate any adverse safety consequences resulting from amending the pressure differential requirements.

DATES: *Comments.* Comments must be received on or before September 12, 1994.

Proposed effective date. The proposed amendments in this notice would become effective 30 days after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Tinto, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (202–366–6761).

SUPPLEMENTARY INFORMATION: Standard No. 121, *Air Brake Systems*, establishes performance and equipment requirements for braking systems on vehicles equipped with air brakes, including requirements for pneumatic timing. For purposes of compliance testing, the pneumatic timing tests for trailers, including trailer converter dollies, are conducted with the trailer connected to a test rig rather than an actual tractor. The test rig delivers air to, and releases air from, the trailer during the timing test. The timing tests for vehicles designed to tow trailers are conducted with a 50 cubic inch reservoir connected to rear control line coupling. This reservoir represents the control line volume of the control trailer used in the compliance testing.

On August 21, 1992, NHTSA published a final rule amending the pneumatic timing requirements of Standard No. 121 with respect to the control signal pressure balance for tractor trailer combinations. (57 FR 37902). The agency added S5.3.5 which specifies a new test procedure for determining the control line pressure differential in converter dollies and trailers designed to tow another trailer equipped with air brakes. Specifically, the rule requires that the pressure differential between the control line input coupling and a 50 cubic inch test reservoir shall not exceed 1 psi at all input pressures between 5 psi and 20 psi and 2 psi at all input pressures greater than 20 psi. Agency research indicates that input pressures below 20 psi represent routine braking applications, input pressures between 20 psi and 40 psi represent moderate to heavy braking applications, and input pressures above 40 psi represent severe braking applications. As explained below, NHTSA is proposing to modify the limit above 40 psi to allow a 5 percent differential (which at higher pressures exceeds the current limit of 2 psi) based on the Society of Automotive Engineer's (SAE's) Recommended Practice SAE J1505, *Brake Force Distribution Test Code Commercial Vehicles.*

The agency explained that the amendment is designed to ensure that the control signal "passes" through a towing trailer or dolly without being altered along the way. Since the control signal passes through unaltered, each vehicle in a combination unit receives the same brake control signal. This serves to increase the braking compatibility of combination vehicles since each vehicle in a combination has comparable braking performance.

Sealco Petition

On June 18, 1993, Sealco Air Controls, Inc. (Sealco), a valve manufacturer, submitted to NHTSA a rulemaking petition to amend Standard No. 121 with respect to the control line pressure differential requirements in S5.3.5. Specifically, it requested that NHTSA amend these requirements to permit the manufacture of its low opening valves that serve to adjust air flow in control lines. These valves are used as control line relay valves and service line relay valves in trailers and converter dollies. The petitioner stated that unlike other relay valves that use a common poppet,[1] the low opening valves have a balanced spool technology[2] that incorporates a low pressure at which the valve initially opens (i.e., crack pressure) of 1.5 psi. According to Sealco, the spool technology enables the valve to track closer between the input control air pressure and the output delivered air pressure. As a result, it claimed that hysteresis[3] is not so prevalent with low operating valves as with the high crack pressure poppet design valves.

Hysteresis in a valve may cause the valve not to track (i.e., follow closely) the control line pressure properly, which may cause the brakes in the trailer to lag behind the control signal. For example, when the driver applies the brakes, the valve's hysteresis may not allow the same pressure to be applied to the trailer brakes, which will cause less braking in the trailer and cause the trailer to "push" the tractor. Similarly, when the driver releases the brake, the hysteresis in the valve may not allow the brakes in the trailer to be released quickly enough and will still have the brakes applied while the driver is trying to accelerate, causing the kingpin to jerk on the inside of the fifth wheel. On more extreme conditions where the driver goes through several fast brake applications and releases in rapid succession, the jerking and pushing of the trailer or trailers could be difficult to control.

Sealco stated that the use of low operating valves would further NHTSA's goal of ensuring balanced braking in combination vehicles.

[1] A rising and falling valve consisting of a disc at the end of a vertically set stem.

[2] A valve whose primary means of diverting pressure or flow is through movement of a cylindrical valve mechanism along its axis.

[3] The time lag in a system in reacting to changes in the forces affecting it. With respect to braking, the relay valve's output (apply pressure) lags more than a few psi behind ascending control line (treadle) pressure, and stays more than one or two psi above descending control line pressure. Complications may arise when a second brake application is made before the first one is fully released.

However, the petitioner claimed that while its valve meets the amendment's application requirements, it does not meet the provision requiring release at high pressure ranges, given the valve's mechanics. To comply with the amendment, Sealco has drilled a hole in the valves' piston, thereby allowing pressure to bleed to the supply side. This action prevents the valves from cracking open when tested according to S5.3.5. Sealco believes that this modification to allow compliance with the amendment has reduced the valves' effectiveness. Sealco also criticized the test procedure which it believed did not simulate actual braking conditions. It stated that slow and fast ascending and descending control line pressures should be used to check the valves' ability to respond appropriately.

Agency's Decision To Issue Proposal

After reviewing the petition, NHTSA has decided to propose an amendment to Standard No. 121 to permit the use of low operating valves. Specifically, the agency is proposing to amend S5.3.5 to account for input pressures over 40 psi. Under the proposal, the pressure differential would not be permitted to exceed 2 psi at any input pressure between 20 psi and 40 psi and it would not be permitted to exceed 5 percent at any pressure over 40 psi. In other words, the pressure differential requirements would remain the same, except for applications resulting in pressures over 40 psi. The agency requests comments about whether the modification to pressure levels over 40 psi is appropriate.

NHTSA is proposing the value of 40 psi based on SAE J1505, *Brake Force Distribution Test Code Commercial Vehicles.* The agency has tentatively determined that the safety problem addressed by the requirement in S5.3.5, i.e., slow heat build up and brake fade caused by long gradual down hill runs at relatively low air pressure, is not a problem for severe brake applications over 40 psi. In formulating this proposal, NHTSA contacted all the major valve manufacturers. Other than Sealco, no other valve manufacturer stated that they had to drill holes in the valve or otherwise modify the valve in a way that might adversely affect their real-world dynamic braking performance in order to comply with the test in S5.3.5. Aside from Sealco, the valve manufacturers believed that the existing test was a realistic, reasonable assessment of low pressure differential performance.

NHTSA has tentatively determined that this amendment would facilitate the use of spool valve technology, while

However, the petitioner claimed that while its valve meets the amendment's application requirements, it does not meet the provision requiring release at high pressure ranges, given the valve's mechanics. To comply with the amendment, Sealco has drilled a hole in the valves' piston, thereby allowing pressure to bleed to the supply side. This action prevents the valves from cracking open when tested according to S5.3.5. Sealco believes that this modification to allow compliance with the amendment has reduced the valves' effectiveness. Sealco also criticized the test procedure which it believed did not simulate actual braking conditions. It stated that slow and fast ascending and descending control line pressures should be used to check the valves' ability to respond appropriately.

Agency's Decision To Issue Proposal

After reviewing the petition, NHTSA has decided to propose an amendment to Standard No. 121 to permit the use of low operating valves. Specifically, the agency is proposing to amend S5.3.5 to account for input pressures over 40 psi. Under the proposal, the pressure differential would not be permitted to exceed 2 psi at any input pressure between 20 psi and 40 psi and it would not be permitted to exceed 5 percent at any pressure over 40 psi. In other words, the pressure differential requirements would remain the same, except for applications resulting in pressures over 40 psi. The agency requests comments about whether the modification to pressure levels over 40 psi is appropriate.

NHTSA is proposing the value of 40 psi based on SAE J1505, *Brake Force Distribution Test Code Commercial Vehicles*. The agency has tentatively determined that the safety problem addressed by the requirement in S5.3.5, i.e., slow heat build up and brake fade caused by long gradual down hill runs at relatively low air pressure, is not a problem for severe brake applications over 40 psi. In formulating this proposal, NHTSA contacted all the major valve manufacturers. Other than Sealco, no other valve manufacturer stated that they had to drill holes in the valve or otherwise modify the valve in a way that might adversely affect their real-world dynamic braking performance in order to comply with the test in S5.3.5. Aside from Sealco, the valve manufacturers believed that the existing test was a realistic, reasonable assessment of low pressure differential performance.

NHTSA has tentatively determined that this amendment would facilitate the use of spool valve technology, while not being detrimental to safety. The agency's primary concern in these rulemakings addressing control line pressure differentials is brake performance in the low end of the air pressure range since the vast majority of stopping occurs there. Specifically, in the August 1992 rule, the agency sought to improve low end brake performance with respect to slow heat build up and brake fading brought about by relatively low brake applications during long gradual downhill descents.

After further review, the agency now believes that the current requirement may unnecessarily extend the 2 psi requirement into the higher pressure ranges where it is not necessary for safety. As noted above, the requirement is designed to prevent brake fade during relatively low brake applications below 20 psi and is not applicable to hard brake applications, i.e., those exceeding 40 psi. Accordingly, the agency has tentatively decided to modify the differential requirements at levels over 40 psi. Notwithstanding the agency's tentative conclusion, the agency request comments about whether this amendment poses any risk of adverse safety consequences.

However, NHTSA disagrees with Sealco's statements that the test procedure in S5.3.5 does not simulate actual braking conditions. The agency notes that this test procedure was based on the agency's own testing and extensive test data and recommendations by trailer manufacturers in response to previous agency proposals. Specifically, the agency disagrees with Sealco's statement that "Slow and fast ascending and descending control line pressures should be used to check CLV performance." As discussed in earlier notices, NHTSA sought pressure rises and decays that were neither too fast nor too slow. As trailer manufacturers and other commenters to the earlier proposal stated, if the pressure rise were too slow, test personnel would waste time waiting for the event to occur, and if the pressure rise were too rapid, pressure differentials could not be read quickly enough. In addition, pressure surges from a fast rate would likely result in a loss of normal valve hysteresis and subsequent errors in crack pressure readings. Accordingly, the agency believes that the test accurately evaluates real-world dynamic braking without creating any significant negative safety effects.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have no mandatory effects. Instead, the proposal would permit spool valve technology. Therefore, this rulemaking would not have any cost impacts.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically would not qualify as small entities. This amendment would affect small businesses, small organizations, and small governmental units to the extent that these entities purchase vehicles. However, this amendment would not have any cost impact on vehicles. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles would not be significantly affected by the proposed requirements. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111),

whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend 49 CFR Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would be revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571 121. S5.3.5 introductory text and S5.3 5(a) would be revised to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.3. Control signal pressure differential—converter dollies and trailers designed to tow another vehicle equipped with air brakes.

(a) For a trailer designed to tow another vehicle equipped with air brakes, the pressure differential between the control line input coupling and a 50 cubic inch test reservoir attached to the control line output coupling shall not exceed the values specified in S5.3.5(a) (1) and (2) under the conditions specified in S5.3.5(b) (1) through (4)—

(1) 1 p.s.i. at all input pressures equal to or greater than 20 p.s.i., but not greater than 20 p.s.i.; and

(2) 2 p.s.i. at all input pressures from 20 p.s.i. to 40 p.s.i.; and

(3) not more than a 5 percent differential at any input pressures above 40 p.s.i.

* * * * *

Issued on July 6, 1994.

Patricia P. Breslin,

Acting Associate Administrator for Rulemaking.

[FR Doc. 94–16913 Filed 7–12–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter II

[Docket No. 940558–4158; I.D. 052394B]

West Coast Salmon Fisheries; Disaster Relief

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; modification of comment period.

SUMMARY: NMFS is reducing the comment period on the advance notice of proposed rulemaking regarding appropriate limitations, terms, and conditions the agency should use in providing proposed assistance to person engaged in commercial fisheries for uninsured losses resulting from the west coast salmon fisheries resource disaster.

DATES: Comments must be received by July 15, 1994.

ADDRESSES: Comments should be sent to Bruce Morehead, Office of Trade and Industry Services, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Bruce Morehead, 301/713–2358.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking, requesting public comment over a 60-day period, was published in the **Federal Register** on June 3, 1994, at 59 FR 28838. In addition to the comment period on the advance notice of proposed rulemaking, NOAA/NMFS held a series of meetings with the affected public and received numerous comments that it is crucial to expedite the development and publication of the proposed and final rule for the disaster assistance program. NMFS agrees with the need to act quickly and believes that the public will not be disadvantaged by the shortened comment period because of the public meetings and the fact that there will be additional opportunity to comment on the proposed rule.

Dated: July 7, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–16874 Filed 7–7–94; 4:27 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC61

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Jaguar in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to extend endangered status to the jaguar (*Panthera onca*) throughout its range under the authority of the Endangered Species Act of 1973, as amended (Act). The Service finds that the petitioned action is warranted. The jaguar is currently listed as endangered from Mexico southward to Central and South America. In the United States the primary threat to this species is from shooting. Loss and modification of the jaguar's habitat may have also contributed to its decline. While no breeding population of the jaguar is known to survive in the U.S., the species is present in northern Mexico, and wandering individuals occasionally cross the border. A minimum of 64 jaguars have been killed in Arizona since 1900. The most recent was in 1986. This proposal, if made final, will extend Federal protection provided by the Act for such dispersing animals. Critical habitat is not being proposed. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 12, 1994. Public hearing requests must be received by August 29, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Arizona Ecological Services State Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sam Spiller, State Supervisor, at the above address, or telephone 602/379–4720.

SUPPLEMENTARY INFORMATION:

Background

The jaguar (*Panthera onca*) is the largest species of cat native to the Western Hemisphere. Jaguars are muscular cats with relatively short, massive limbs and a deep-chested body. They are cinnamon-buff in color with many black spots. Their range in North America includes Mexico and portions of the southwestern United States (Hall 1981). A number of records of jaguars are known for Arizona, New Mexico, and Texas. Additional reports exist for California and Louisiana. Records of the jaguar in Arizona and New Mexico have been attributed to the subspecies *Panthera onca arizonensis*. The type specimen of this subspecies was collected in Navajo County, Arizona, in 1924 (Goldman 1932). Nelson and Goldman (1933) described the

finding on a petition to extend endangered status to the jaguar (*Panthera onca*) throughout its range under the authority of the Endangered Species Act of 1973, as amended (Act). The Service finds that the petitioned action is warranted. The jaguar is currently listed as endangered from Mexico southward to Central and South America. In the United States the primary threat to this species is from shooting. Loss and modification of the jaguar's habitat may have also contributed to its decline. While no breeding population of the jaguar is known to survive in the U.S., the species is present in northern Mexico, and wandering individuals occasionally cross the border. A minimum of 64 jaguars have been killed in Arizona since 1900. The most recent was in 1986. This proposal, if made final, will extend Federal protection provided by the Act for such dispersing animals. Critical habitat is not being proposed. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 12, 1994. Public hearing requests must be received by August 29, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Arizona Ecological Services State Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sam Spiller, State Supervisor, at the above address, or telephone 602/379–4720.

SUPPLEMENTARY INFORMATION:

Background

The jaguar (*Panthera onca*) is the largest species of cat native to the Western Hemisphere. Jaguars are muscular cats with relatively short, massive limbs and a deep-chested body. They are cinnamon-buff in color with many black spots. Their range in North America includes Mexico and portions of the southwestern United States (Hall 1981). A number of records of jaguars are known for Arizona, New Mexico, and Texas. Additional reports exist for California and Louisiana. Records of the jaguar in Arizona and New Mexico have been attributed to the subspecies *Panthera onca arizonensis*. The type specimen of this subspecies was collected in Navajo County, Arizona, in 1924 (Goldman 1932). Nelson and Goldman (1933) described the distribution of this subspecies as the mountainous parts of eastern Arizona north to the Grand Canyon, the southern half of western New Mexico, northeastern Sonora, and, formerly, southeastern California. The records for Texas have been attributed to *P. o. veraecrucis*. Nelson and Goldman (1933) described the distribution of this subspecies as the Gulf slope of eastern and southeastern Mexico from the coast region of Tabasco, north through Vera Cruz and Tamaulipas, to central Texas.

Swank and Teer (1989) indicated the historical range of the jaguar included portions of the states of Arizona, New Mexico, and Texas. These authors consider the current range to occur from central Mexico through Central America and into South America as far as northern Argentina. They stated that the United States no longer contains established breeding populations, which probably disappeared from the United States in the 1960s. They also maintained that the jaguar prefers a warm tropical climate, is usually associated with water, and is only rarely found in extensive arid areas.

Brown (1983) presented an analysis suggesting there was a resident breeding population of jaguars in the southwestern United States at least into the 20th century. The Service (U.S. Fish and Wildlife Service 1990) recognized that the jaguar continues to occur in the American Southwest as an occasional wanderer from Mexico.

Previous Federal Action

The jaguar is listed as endangered from the U.S. and Mexico border southward to include Central and South America (37 FR 6476, March 30, 1972; 50 CFR 17.11, July 15, 1991). The species was originally listed as endangered in accordance with the Endangered Species Conservation Act of 1969 (ESCA). Pursuant to the ESCA, two separate lists of endangered wildlife were maintained, one for foreign species and one for species native to the United States. The jaguar appeared only on the List of Endangered Foreign Wildlife. In 1973, the Endangered Species Act superseded the ESCA. The foreign and native lists were replaced by a single "List of Endangered and Threatened Wildlife," which was first published in the Federal Register on September 26, 1975 (40 FR 44412–44429).

On July 25, 1979, the Service published a notice (44 FR 43705) stating that, through an oversight in the listing of the jaguar and six other endangered species, the United States populations of these species were not protected by the Act. The notice asserted that it was always the intent of the Service that all populations of the seven species deserved to be listed as endangered, whether they occurred in the United States or in foreign countries. Therefore, the notice stated that the Service intended to take action as quickly as possible to propose inclusion of the United States portions of the species' range for listing.

On July 25, 1980, the Service published a proposed rule (45 FR 49844–49847) to list the jaguar and four of the other species referred to above in the United States. The proposal for listing the jaguar and three other species was withdrawn on September 17, 1982 (47 FR 41145). The notice issued by the Service stated that the Act mandated withdrawal of proposed rules to list species that have not been finalized within 2 years of the proposal.

On August 3, 1992, the Service received a petition from the instructor and students of the American Southwest Sierra Institute and Life Net to list the jaguar (*Panthera onca*) as endangered in the United States. The petition was dated July 26, 1992. Two subspecies of jaguar (*P. o. arizonensis* and *P. o. veraecrucis*) are recognized as occurring in the United States. Therefore both subspecies are encompassed by this proposed rule to revise the listed range of *Panthera onca*.

On April 13, 1993 (58 FR 19216–19220), the Service published a finding that the petition presented substantial information indicating that the petitioned action may be warranted and requested public comments and biological data on the status of the jaguar. Section 4(b)(3) of the Act requires the Secretary of the Interior to reach a final decision on any petition accepted for review within 12 months of its receipt. This proposal constitutes the final finding on the petitioned action.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal "List of Endangered and Threatened Wildlife and Plants." A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the jaguar (*Panthera onca*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Within the United States, jaguars have been recorded most commonly from Arizona, but there are also records from California, New Mexico, and Texas, and reports from Louisiana. Currently there is no known resident population of jaguars in the United States, though they still occur in northern Mexico.

Arizona

Goldman (1932) believed that the jaguar was a regular, but not abundant, resident in southeastern Arizona. Hoffmeister (1986) considered the jaguar an uncommon resident species in Arizona. He concluded that the reports of jaguars between 1885 and 1965 indicated that a small but resident population once occurred in southeastern Arizona. Brown (1983) suggested that the jaguar in Arizona ranged widely throughout a variety of habitats from Sonoran desertscrub upward through subalpine conifer forest. Most of the records were from Madrean evergreen-woodland, shrub-invaded semidesert grassland, and along rivers.

The most recent records of jaguars in the United States are from Arizona. In 1971, a jaguar was taken east of Nogales and, in 1986, one was taken from the Dos Cabezas Mountains. The latter individual reportedly had been in the area for about a year before it was killed (Ronald M. Nowak, U.S. Fish and Wildlife Service, pers. comm., 1992).

The Arizona Game and Fish Department (AGFD) (1988) cited two recent reports of jaguars in Arizona. The individuals were considered to be transients from Mexico. One of the reports was from 1987 from an undisclosed location. The other report was from 1988, when tracks were observed for several days prior to the treeing of a jaguar by hounds in the Altar Valley, Pima County. An unconfirmed report of a jaguar at the Coronado National Monument was made in 1991 (Ed Lopez, Coronado National Monument, pers. comm., 1992).

Finally, there is a report of a jaguar sighted in December, 1993, on the Buenos Aires National Wildlife Refuge in the Baboquivari Mountains of southern Arizona. Refuge personnel believe that the chances are "very good" that this was a reliable sighting.

California

Merriam (1919) summarized several accounts of jaguars, from various locations in California, which were obtained from documents published between 1814 and 1860. Strong (1926) provided evidence that the Cahuilla Indians of the Coachella Valley and San Jacinto and Santa Rosa Mountains of southern California were familiar with the jaguar. Nowak (1975) mentioned reports of jaguars in the Tehachapi Mountains from 1855, and the last known individual from California was killed near Palm Springs in 1860 (Strong 1926). Nowak speculated that the animal may have been a breeding individual.

Louisiana

Nowak (1973) speculated on the occurrence of jaguars east of Texas. Several early accounts mentioned jaguars and tigers. He cited Baird (1859) who believed that specimens had been taken from Louisiana. Nowak also discussed the killing of what was probably a jaguar near New River, Ascension Parish, Louisiana in 1886. Lowery (1974) mentioned this killing and included the jaguar in the fauna of Louisiana on a provisional basis.

New Mexico

Barber (1902) speculated that jaguars made their way into the Mogollon Mountains of New Mexico by ascending the Gila River. Bailey (1931) suggested that jaguars seemed to be native in southern New Mexico, but were regarded as wanderers from across the United States-Mexico border. He listed nine reports of jaguars in New Mexico from 1855 to 1905. Brown (1983) stated that the last record from New Mexico was from 1905. Nowak (1975) mentioned reports of jaguars along the Rio Grande from as late as 1922. Halloran (1946) reported that dogs "jumped" a jaguar in the San Andres Mountains in 1937. Findley *et al.* (1975) stated that jaguars once occurred as far north as northern New Mexico.

Texas

Bailey (1905) stated that the jaguar was once reported as common in southern and eastern Texas but had become extremely rare. Nowak (1975) believed that an established population once occurred in the dense thickets along the lower Nueces River and northeast to the Guadalupe River. He suggested that jaguars probably continued to wander from Mexico into the brush country of the southernmost part of the State. However, brush clearing has possibly reduced chances for reestablishment of the species in Texas.

Mexico

Leopold (1959) believed the distribution of the jaguar in Mexico included the tropical forests of southeastern Mexico, the coastal plains to the mouth of the Rio Grande on the Gulf of Mexico side, and the Sonoran foothills of the Sierra Madre Occidental on the Pacific side. The highest densities of jaguars were found along heavily forested flatlands and foothills of southern Sinaloa, the swamps of coastal Nayarit, the remaining uncut forests along the Gulf coast as far east as central Campeche, and the great rain forests of northern Chiapas. He indicated that occasional wandering individuals were found far from these areas; some followed tropical gorges far into mountains. He believed that jaguars followed big rivers on their northern movements; they traveled up the Brazos, Pecos, Rio Grande, Gila, and Colorado Rivers. He mentioned a 1955 record of a jaguar near the southern tip of the San Pedro Martir range, Baja California. Leopold asserted that this individual was 500 miles from regularly occupied jaguar habitat.

Swank and Teer (1989) described the distribution of the jaguar in North America as a broad belt from central Mexico to Central America. They found that the most northerly established populations, as reported by Mexican officials, were in southern Sinaloa and southern Tamaulipas.

Brown (1991) did not believe that the jaguar was extirpated from northern Mexico. Although jaguars were considered relatively common in Sonora in the 1930s and 1940s, he cited the most northern officially reported population as about 800 miles south of the United States-Mexico border. However, Brown suggested that there may be more jaguars in Sonora than are officially reported. He mentioned reports of two jaguars that were killed in central Sonora around 1970. He also discussed assertions by the local Indians that both male and female jaguars still occurred in the Sierra Bacatete. Brown speculated that if a reproducing population of jaguars is still present in these mountains, it may be the source of individuals that travel northward through the Sierra Libre and Sierra Madera until they reach Arizona. Nowak (pers. comm., 1992) reiterated that as late as 1987 the species was still considered common in the Sierra Bacatete near Guaymas, Sonora, which is about 200 miles south of Arizona.

Brown (1989) reported that biologists from Mexico have stated that at least two jaguars have been killed in Chihuahua. In 1987, Nowak (pers. comm., 1992) claimed that jaguars were still regularly present along the Soto la Marina River of central Tamaulipas, which is about 150 miles from the southern tip of Texas. He also hypothesized that jaguars may be entering Arizona from Mexico as a result of habitat destruction in Sonora. Large stretches of natural forest have been cleared in central Tamaulipas. In Arizona, by contrast, jaguar prey populations have increased, and large tracts of brush and canyon woodland are still available to provide cover for jaguars. Listing will provide protection for individuals, which may lead to recolonization of currently unoccupied habitat and reestablishment of the species in portions of its historical Arizona range in the United States.

Clearing of habitat, destruction of riparian areas, and fragmentation or blocking of corridors may prevent jaguars from recolonizing previously inhabited areas. Although there is currently no known resident population of jaguars in the United States, wanderers from Mexico may cross the border and take up residency in available habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In Arizona, the jaguar's gradual decline was concurrent with predator control associated with the settlement of land and the development of the cattle industry (Brown 1983, Service 1990). Lange (1960) summarized the jaguar records from Arizona known up to that time. Between 1885 and 1959, the reports consisted of 45 jaguars killed, 6 sighted, and 2 recorded by sign.

Brown (1991) related that the accumulation of all known records indicated a minimum of 64 jaguars were killed in Arizona after 1900. When plotted at ten-year intervals, records of jaguars reported killed in Arizona and New Mexico between 1900 and 1980 demonstrated "a decline characteristic of an over-exploited resident population" (Brown 1983). Brown (1983) argued that if the jaguars killed during this period originated in Mexico, the numbers of killings should not suggest a pattern but should rather be irregular and erratic.

Bailey (1905) listed seven reports of jaguars killed in Texas between 1853 and 1903. Schmidly (1983) reported another jaguar shot in Mills County in 1904. Taylor (1947) mentioned a jaguar killed near Lyford, Willacy County, in 1912. Brown (1991) indicated jaguars were common in Texas until 1870. The last reports from Texas were of individuals killed in 1946 (San Benito,

comm., 1992) claimed that jaguars were still regularly present along the Soto la Marina River of central Tamaulipas, which is about 150 miles from the southern tip of Texas. He also hypothesized that jaguars may be entering Arizona from Mexico as a result of habitat destruction in Sonora. Large stretches of natural forest have been cleared in central Tamaulipas. In Arizona, by contrast, jaguar prey populations have increased, and large tracts of brush and canyon woodland are still available to provide cover for jaguars. Listing will provide protection for individuals, which may lead to recolonization of currently unoccupied habitat and reestablishment of the species in portions of its historical Arizona range in the United States.

Clearing of habitat, destruction of riparian areas, and fragmentation or blocking of corridors may prevent jaguars from recolonizing previously inhabited areas. Although there is currently no known resident population of jaguars in the United States, wanderers from Mexico may cross the border and take up residency in available habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In Arizona, the jaguar's gradual decline was concurrent with predator control associated with the settlement of land and the development of the cattle industry (Brown 1983, Service 1990). Lange (1960) summarized the jaguar records from Arizona known up to that time. Between 1885 and 1959, the reports consisted of 45 jaguars killed, 6 sighted, and 2 recorded by sign.

Brown (1991) related that the accumulation of all known records indicated a minimum of 64 jaguars were killed in Arizona after 1900. When plotted at ten-year intervals, records of jaguars reported killed in Arizona and New Mexico between 1900 and 1980 demonstrated "a decline characteristic of an over-exploited resident population" (Brown 1983). Brown (1983) argued that if the jaguars killed during this period originated in Mexico, the numbers of killings should not suggest a pattern but should rather be irregular and erratic.

Bailey (1905) listed seven reports of jaguars killed in Texas between 1853 and 1903. Schmidly (1983) reported another jaguar shot in Mills County in 1904. Taylor (1947) mentioned a jaguar killed near Lyford, Willacy County, in 1912. Brown (1991) indicated jaguars were common in Texas until 1870. The last reports from Texas were of individuals killed in 1946 (San Benito, Cameron County) and 1948 (Kleburg County). Nowak (1975) identified killing of jaguars for commercial sale of their furs as a factor in the extermination of a substantial resident population in central Texas during the late 19th century.

Although the demand for jaguar pelts has diminished, it still exists along with the business of hunting jaguars. In 1992, AGFD personnel infiltrated a ring of wildlife profiteers. That operation resulted in the March, 1993, seizure of three jaguar specimens, one of which was allegedly taken from the Dos Cabezas Mountains in Arizona in 1986. Two of the specimens had been covertly purchased from the suspects. During the investigation, several ties to Mexico jaguar hunting were discovered. Hounds bred and trained in the United States were sold to Mexican nationals for the purpose of hunting jaguars. Also, Mexican nationals prosecuted by the Service in 1989 for illegally importing jaguar pelts into the United States were continuing the practice of providing jaguar hunts in Mexico (Terry B. Johnson, Arizona Game and Fish Department, *in litt.*, 1993).

C. Disease or Predation

The Service is unaware of any known diseases or predators that threaten the jaguar at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

State Regulations

Jaguars are listed as endangered by the State of Arizona. In general, violations of Arizona Game and Fish Laws (AGFD 1991) are class 2 misdemeanors. The Arizona Game and Fish Commission may, through civil action, seek to recover a minimum of $750 for each endangered species unlawfully taken, wounded or killed. Special permits may be issued for taking depredating wildlife. The AGFD offered a reward of $4,000 for information leading to a conviction for the reported killing of a jaguar in 1986. However, a conviction has yet to be obtained for that incident.

Under the California Code of Regulations, it is prohibited to import, transport, or possess jaguars. In Louisiana the jaguar receives no official protection from the State (Fred Kimmel, Louisiana Department of Wildlife and Fisheries, pers. comm., 1993). The jaguar is not listed as an endangered species, a game animal, or a fur-bearing animal by the State of New Mexico; it receives no official protection from New Mexico (Sartor O. Williams III, New Mexico Department of Game and Fish, *in litt.*, 1992).

The jaguar is listed as endangered by the State of Texas (Texas Parks and Wildlife Department 1987). It is unlawful to take, possess, transport, export, process, sell or offer for sale, or ship jaguars in Texas. However, some of the above actions may be allowed for zoological gardens, and scientific, commercial, and propagation purposes with the proper permits. A first violation of the regulations or a permit is a Texas Parks and Wildlife Code C misdemeanor, which carries a fine of $25 to $500 (Capt. Harold Oates, Texas Parks and Wildlife, pers. comm., 1994).

In summary, although some States provide limited protection to the jaguar, illegal taking continues to occur. Listing the species under the Act would result in protective measures beyond those provided by the States.

Federal Protection

The jaguar is currently listed under the Act as an endangered species only in Mexico and southward to include Central and South America. Jaguars that may occur in, or immigrate into, the United States are not currently protected by the Act. The jaguar is on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). However, that listing does not prohibit the act of taking, possessing or transporting a jaguar within the United States and its territories.

The subspecies *Panthera onca veraecrucis*, with historical range in Texas and eastern Mexico, is designated by the United States government as a peripheral animal of concern in a provisional list for the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (Nowak, pers. comm., 1992). *Panthera onca arizonensis* is not so designated. This Convention, as implemented by sections 2 and 8(A) of the Act, does not require the protection of species listed only on a provisional basis. Therefore, neither *P. o. veraecrucis* nor *P. o. arizonensis* are currently protected.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

M–44 ejector devices with cyanide capsules used in Animal and Plant Health Inspection Service animal damage control programs to accommodate concerns of livestock owners over predator losses may be a threat to the jaguar (Terry B. Johnson, *in litt.*, 1993). Jaguars may also be victims of traps targeted for other predators such as bears and cougars.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to propose the jaguar (*Panthera onca*) as endangered throughout its range. The lack of protection under the Act for jaguars in the United States is due to an uncorrected technicality, rather than to any scientific information that jaguars do not require protection in the U.S. A decision to take no action would exclude the jaguar in the U.S. from needed protection pursuant to the Act. A decision to propose only threatened status would not adequately express the drastic distributional decline of the species and the continued jeopardy of any individuals in the U.S. Therefore, no action or listing as threatened would be contrary to the intent of the Act. Critical habitat is not being proposed at this time for the jaguar for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent or determinable for this species. Specific habitat used by jaguars in the United States is unknown. It would be possible to delineate some general areas that the species would be most likely to use. However, the lack of knowledge on the species' habitat use makes critical habitat undeterminable.

The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. As discussed in factor "B" above, the jaguar is highly threatened by taking. Jaguars are still in demand for hunts and as trophies and pelts. The last verified jaguar in Arizona was hunted and killed in 1986 approximately one year after it was known to be in the area. Publication of detailed critical habitat maps and descriptions in the **Federal Register** would likely make the species more vulnerable to activities prohibited under section 9 of the Act. In addition, since the primary threat to the species in the United States is direct taking rather than habitat destruction, designation of critical habitat would not lessen, and may increase, the primary threat to the jaguar. Therefore, it would not be prudent to propose critical habitat for the jaguar at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal actions that may affect the jaguar include clearing of habitat, destruction of riparian areas, fragmentation or blocking of corridors that jaguars may use to cross from Mexico to the United States, and any trapping or animal control activities designed to target the jaguar or other large predators.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. Permits may be sought since there are some zoos that have jaguars on display.

On July 1, 1975, the jaguar was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that both export and import permits are generally required before international shipment may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival. Generally, import or export cannot be allowed if it is for primarily commercial purposes. Requests for copies of the regulations on protected wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 420C, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Arizona State Supervisor (See **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental

Species		
Common name	Scientific name	
MAMMALS		
Jaguar	*Panthera onca*	U.S. N C

Dated: June 29, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–16911 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–55–P

habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Arizona State Supervisor (See **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available on request from the State Supervisor, Arizona Ecological Services State Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Lorena L. L. Wada of the Arizona Ecological Services State Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entry for the jaguar (*Panthera onca*) under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Jaguar	*Panthera onca*	U.S.A. (AZ, CA, LA, NM, TX), Mexico, C. and S. America.	Entire	E	5. _____	NA	NA

Dated: June 29, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–16911 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 133
Wednesday, July 13, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM WO-220-4320-02241A]

Establishment of the Federal Livestock Grazing Fee Incentive Program Advisory Committee

AGENCY: Bureau of Land Management, Interior Forest Service, USDA.

ACTION: Notice; establishment of advisory committee.

SUMMARY: This notice announces the establishment of the Federal Livestock Grazing Fee Incentive Program Advisory Committee (Committee) by the Secretaries of the Interior and Agriculture (Secretaries) in accordance with the provisions of the Federal Advisory Committee Act (FACA). The Secretaries have determined that the Committee is necessary and in the public interest. The Committee shall terminate in two years or upon the submission of a report on aspects of an incentive-based grazing fee to the Secretaries of the Interior and Agriculture, whichever occurs first. Copies of the Committee's charter will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA.

FOR FURTHER INFORMATION CONTACT: Lee Otteni, Strategic Planner, Bureau of Land Management, 1849 C Street N.W., Washington, D.C. 20240–1050, (202) 208–6932. Jerry McCormick, Range Specialist, Forest Service, 201 14th Street, S.W., Box 96090, Washington, D.C. 20090–6090, (202) 205–1746.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Secretaries of the Interior and Agriculture on aspects of incentive-grazing fees, including: The types of livestock grazing activities or activities associated with livestock grazing that would provide incentives to encourage the proper stewardship of rangeland resources; the criteria by which eligibility for an incentive-based grazing fee should be determined; and, implementation options the agencies might consider.

The Secretaries will jointly appoint the members of the Committee. To achieve a balance of stakeholder views, members will be representative of the livestock industry, natural resource or natural science academia, environmental or resource conservation groups, employees of the agencies, and employees of State agencies with jurisdiction over matters related to livestock grazing, public land management, fish and wildlife conservation, or environmental protection. Membership will include individuals who have expertise, through education or practical experience, in livestock production, rangeland sciences, natural resources management, or similar disciplines.

Certification

I hereby certify that the Federal Livestock Grazing Fee Incentive Program Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of Agriculture and the Department of the Interior by the Taylor Grazing Act, 43 U.S.C. 315 *et seq.*, the Granger-Thye Act, 16 U.S.C. 580 *et seq.*, the National Forest Management Act, 16 U.S.C. 1600 *et seq.*, the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and the Public Rangelands Improvement Act, 43 U.S.C. 1901 *et seq.*, and the Independent Offices Appropriations Act, 31 U.S.C. 9701 *et seq.*

Bruce Babbitt,

Secretary of the Interior.

Wardell C. Townsend, Jr.,

Assistant Secretary of Agriculture for Administration.

[FR Doc. 94–16810 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–84–M

Soil Conservation Service

Changes in Hydric Soils of the United States

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of change.

SUMMARY: Pursuant to 7 CFR 12.31(a)(3)(i), the Soil Conservation Service, United States Department of Agriculture gives notice of a change in the Hydric Soils of the United States as listed in the third edition of the Hydric Soils of the United States, Miscellaneous Publication 1491, U.S. Department of Agriculture, Soil Conservation Service, June 1991.

FOR FURTHER INFORMATION CONTACT: Craig A. Ditzler, Chair, National Technical Committee for Hydric Soils, National Soil Survey Center, Soil Conservation Service, room 152, Federal Building, 100 Centennial Mall N., Lincoln, NE 68508–3866, Telephone (402) 437–5353.

SUPPLEMENTARY INFORMATION: The third edition of the Hydric Soils of the United States was published June 1991, and a notice of change published in the **Federal Register**, October 11, 1991, Vol. 56, No. 198, page 51371. Changes to this document were made in 1993 and published in the **Federal Register**, October 6, 1993, Vol. 58, No. 192, page 52078. The changes published herein reflect soils added and deleted since the 1991 publication.

The national list of hydric soils changes as additional soil series are recognized and defined and/or properties of existing soil series are updated based on additional data. These changes reflect refinements in knowledge of the soils of the United States. New soil series are recognized as soils are mapped in previously unmapped areas. These new series have always met hydric soil criteria, whether recognized as series or not, and thus represent an insignificant change in acreage of hydric soils. Soils that are removed from the list are mostly dry phases of existing hydric soils. These dry phases would not have met wetland hydrology criteria, thus represent an insignificant change in acreage of wetlands.

The list of hydric soils is computer generated using the hydric soil criteria and a database of properties of each soil series in the United States. The database is also used to generate interpretations of how soils perform for many land uses. Therefore, some changes in the list of hydric soils result from adding phases for a hydric soil to refine another interpretation. This split or addition of a hydric phase causes an increase in the number of hydric soils, but does not affect the acres of the hydric soil. Data for all soil series are in the Soil Interpretations Record and may be reviewed by contacting a local office of the Soil Conservation Service in the appropriate State.

The National Technical Committee also modified the definition of hydric soils as given in Miscellaneous Publication 1491 to "A hydric soil is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part." The change in the definition does not affect the National List of Hydric Soils. The change aligns the definition more closely with *Soil Taxonomy* and clarifies that artificially drained phases are hydric soils if the soil in its undisturbed state meets the criteria.

Dated: June 29, 1994.

Richard W. Arnold,

Director, Soil Survey Division.

Briefing Paper

National List of Hydric Soils

Prepared by: Maurice J. Mausbach, May 1993

Background

—The National List of Hydric Soils is:

*published by the Soil Conservation Service.

SIR No.	Soil series
	Soils Add
IA0619	Afton, undrained
CA2505	Alamo, rarely flooded
MS0130	Alligator, commonly flooded
MS0131	Alligator, ponded
CO3356	Apishapa, dry
DE0005	Assawoman
MI0664	Barry, low precipitation
ID1876	Bear Lake, gravelly substratum
ID1874	Bear Lake, occasionally flooded
MS0014	Belden
WA0770	Bellingham, drained
MN0695	Berner, wet
NJ0114	Berryland, ponded
MT1460	Bigsandy, heavy metals
MN0456	Biscay, sloping
ID1789	Blackotter
ID1784	Blackotter, frequently flooded
CA2536	Blavo
CA2538	Blavo, overwash
CA2537	Blavo, ponded
IA0616	Blend, undrained
OK0402	Bocox

is also used to generate interpretations of how soils perform for many land uses. Therefore, some changes in the list of hydric soils result from adding phases for a hydric soil to refine another interpretation. This split or addition of a hydric phase causes an increase in the number of hydric soils, but does not affect the acres of the hydric soil. Data for all soil series are in the Soil Interpretations Record and may be reviewed by contacting a local office of the Soil Conservation Service in the appropriate State.

The National Technical Committee also modified the definition of hydric soils as given in Miscellaneous Publication 1491 to "A hydric soil is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part." The change in the definition does not affect the National List of Hydric Soils. The change aligns the definition more closely with *Soil Taxonomy* and clarifies that artificially drained phases are hydric soils if the soil in its undisturbed state meets the criteria.

Dated: June 29, 1994.

Richard W. Arnold,

Director, Soil Survey Division.

Briefing Paper

National List of Hydric Soils

Prepared by: Maurice J. Mausbach, May 1993

Background

—The National List of Hydric Soils is:

*published by the Soil Conservation Service.

*revised annually and notice is filed in **Federal Register**.

*generated from Soil Interpretations Records in the National Soil Database.

—The National Technical Committee for Hydric Soils reviews and concurs with changes to the National List of Hydric Soils.

—The Soil Interpretations Records for soil series are:

*continuously updated as data is collected on soil properties.

*reviewed by the soil survey quality assurance staff at the National Soil Survey Center.

*used in all aspects of the Soil Survey Program *of which hydric soils are a small part.*

Reasons for Changes in the Hydric Soil List

—Addition of new soil series due to:

*newly mapped areas (soils have always been hydric but have not previously been recognized as soil series).

*narrowing of an existing series into two soils. An example being a series that is both hydric and nonhydric being split into their respective parts.

—Result from new phases being added to an existing soil series. Phases are added for many reasons and include:

*flooding and ponding phases of which some may be hydric and others nonhydric. Many of these changes are made to accommodate nonhydric interpretations of soil use.

*surface texture or depth phases both of which are not related to change in hydric soil status but are needed for other interpretations.

*wetness or water table phases of which some may be hydric and others nonhydric. Some of these changes are made to accommodate other interpretations of soil use.

—Result from change in flooding, ponding, water table, or drainage class as a result of new information. Soils are added and deleted from the list due to these changes.

Summary of Changes to 1991 National List

—116 entries (soils) added of which

*36 are phases of existing hydric soils. These are new phase names for existing hydric soils.

*61 are new soil series established from new soil mapping. These areas of hydric soils which are given new names are previously unmapped and thus have *no* affect on acres of hydric soils or acres of wetlands.

*8 series that was split—one part being hydric and the other part nonhydric. The whole series has been considered hydric, but the nonhydric portion would not have met hydrology criteria. Because only part of the original series met wetland hydrology criteria, this change has little affect on acres of wetlands.

*1 soil series was changed from nonhydric to hydric because of new information on water table.

—14 entries (soils) were deleted of which

*4 result from new technical data. These have been borderline hydric soils and would not have met wetland hydrology criteria. The change slightly reduces the acres of hydric soils.

*5 records were dropped because of non use.

*5 series was split and made nonhydric. Other phases were added for the hydric part of the soil.

SIR No.	Soil series	Reason
	Soils Added to the National List of Hydric Soils in 1993 Justification	
IA0619	Afton, undrained	New phase for hydric part of soil.
CA2505	Alamo, rarely flooded	New phase of existing hydric soil.
MS0130	Alligator, commonly flooded	New phase of existing hydric soil.
MS0131	Alligator, ponded	New phase of existing hydric soil.
CO3356	Apishapa, dry	New phase of existing hydric soil.
DE0005	Assawoman	New soil series.
MI0664	Barry, low precipitation	New phase of existing hydric soil.
ID1876	Bear Lake, gravelly substratum	New phase of existing hydric soil.
ID1874	Bear Lake, occasionally flooded	New phase of existing hydric soil.
MS0014	Belden	New phase for long duration flooding.
WA0770	Bellingham, drained	New phase of existing hydric soil.
MN0695	Berner, wet	New phase for wet portion of soil.
NJ0114	Berryland, ponded	New phase of existing hydric soil.
MT1460	Bigsandy, heavy metals	New phase of existing hydric soil.
MN0456	Biscay, sloping	New phase of existing hydric soil.
ID1789	Blackotter	New soil series.
ID1784	Blackotter, frequently flooded	New soil series.
CA2536	Blavo	New soil series.
CA2538	Blavo, overwash	New soil series.
CA2537	Blavo, ponded	New soil series.
IA0616	Blend, undrained	New phase for hydric part of soil.
OK0402	Bocox	New soil series.

SIR No.	Soil series	Reason
FL0139	Bodiford	New soil series.
ID1810	Bootjack, stratified substratum	New phase of existing hydric soil.
WA0047	Bow	New soil series.
WA0803	Briscot, drained	New phase of existing hydric soil.
DE0010	Broadkill	New soil series.
MT1392	Bushong	New soil series.
MI0399	Caffey	New soil series.
IA0620	Calcousta, undrained	New phase for hydric part of soil.
WI0511	Capitola, very stony	New phase of existing hydric soil.
WA2039	Carrolls	New phase of existing hydric soil.
WA2040	Carrolls, overwash	New phase of existing hydric soil.
OR1567	Cashner	New soil series.
NY0435	Churubusco	New soil series.
PR0076	Ciales	New soil series.
MI0671	Colwood, bedrock substratum	New soil series.
ID1790	Cookcan	New soil series.
WA0854	Coveland	New soil series.
MN0690	Danielson	New soil series.
MN0694	Danube	New soil series.
MI0668	Dawson, flooded	New phase of existing hydric soil.
MI0649	Deerheart	New soil series.
NY0446	Deinache	New soil series.
PA0161	Edgemere, stony	New soil series.
CA2486	Egbert, moderately wet	New phase of existing hydric soil.
CA2531	Esquon	New soil series.
MT1467	Fairbirch	New soil series.
MN0709	Giese	New soil series.
MO0200	Gifford, sandy substratum	New phase of existing hydric soil.
NY0447	Gougeville	New soil series.
MI0672	Granby, low ppt	New phase of existing hydric soil.
OR1579	Grande Ronde, wet	New phase of existing hydric soil.
AK0385	Helm	New phase of existing hydric soil.
MN0666	Hillview	New soil series.
CA2543	Holillipah, flooded	New phase of existing hydric soil.
PR0199	Icacos	New soil series.
MN2051	Jarola, MAP>16	New phase of existing hydric soil.
MN0711	Jevne	New soil series.
WA1990	Joseph, frequently flooded	New phase of existing hydric soil.
NV2676	Jubilee, moderately wet	New phase of existing hydric soil.
PA0163	Knauers	New soil series.
AK0406	Kuslina, thin surface	New phase of existing hydric soil.
CO3376	Las Animas, poorly drained	New phase of existing hydric soil.
ID1777	Lemhi	New soil series.
DE0012	Lenape	New soil series.
ND0434	Lindaas, moraine	New phase of existing hydric soil.
CA2532	Lofgren, ponded	New soil series.
CA2533	Lofgren, ponded	New soil series.
UT1879	Logan, commonly flooded	New phase of existing hydric soil.
MI0669	Loxley, flooded	New phase of existing hydric soil.
NY0438	Lyonmounten	New soil series.
NY0439	Lyonmounten, stony	New soil series.
TX1266	Manco	New soil series.
NJ0104	Mannington	New soil series.
MT1399	Mannixlee	New soil series.
TX1268	Mattex	New soil series.
NE0411	McCuligan	New soil series.
ND0384	McKenzie, calcareous	New phase of existing hydric soil.
OH0397	Millgrove, clayey substratum	New phase of existing hydric soil.
PR0201	Moteado	New soil series.
WI0520	Muskego, flooded	New phase of existing hydric soil.
CA2535	Neerdobe	New soil series.
CA2534	Neerdobe, overwash	New soil series.
OR1581	Nestucca, wet	New phase of existing hydric soil.
MN0732	Nielsville	New soil series.
OR1527	Olallie	New soil series.
PR0204	Palm, rubbly	New soil series.
MI0606	Pickford, mucky surface	New phase of existing hydric soil.
MT1393	Poronto	New soil series.
PR0206	Prieto	New soil series.
MN0739	Reis	New soil series.
TX0696	Satatton	Properties changed soil is now hydric.
WA0060	Scamman	New soil series.
WA1987	Semiahmoo, partially drained	New phase of existing hydric soil.
FL0138	Shired	New soil series.

SIR No.	Soil series
MI0620	Spot
WA1860	Stallard
UT1902	Steed, loamy
ND0430	Stirum, MAP13–17
MN0696	Strathcona, very wet
ID1832	Tepete, loamy subsoil
WA2006	Toppenish, cool
CO0445	Uncompahgre
CO0051	Vasquez
CO7281	Vastine, gravelly substratum
CO3293	Vastine, MAP>16
TX1261	Victine, depressional
MT1464	Villmeagher
MT1465	Villsprings
MI0646	Wakeley
WA2046	Wanser, moderately wet
MN0680	Wealthwood
FL0134	Yellowjacket
FL0136	Yellowjacket, limestone substratum
ID1780	Zeph
	Soils Delet
IA0130	Afton, drained
TX0609	Aufco
IA0104	Blend, drained
IA0312	Calcousta, drained
WI0470	Fordum, gravelly substratum
CA1304	Holillipah
FL0564	Leon, hydric
WI0002	Newson, mucky surface
MD0003	Rutlege
MD0102	Rutlege, ponded
TX1158	Tobosa, depressional
TX1029	Verhalen, depressional
TX0283	Victine
TX0753	Zilaboy

SIR No.	Soil series	Reason
MI0620	Spot	New soil series.
WA1860	Stallard	New soil series.
UT1902	Steed, loamy	New phase of existing hydric soil.
ND0430	Stirum, MAP13–17	New phase of existing hydric soil.
MN0695	Strathcona, very wet	New soil series.
ID1832	Tepete, loamy subsoil	New phase of existing hydric soil.
WA2006	Toppenish, cool	New phase of existing hydric soil.
CO0445	Uncompahgre	New soil series.
CO0051	Vasquez	New soil series.
CO7281	Vastine, gravelly substratum	New phase of existing hydric soil.
CO3293	Vastine, MAP>16	New phase of existing hydric soil.
TX1261	Victine, depressional	New phase for hydric part of soil.
MT1464	Villmeagher	New soil series.
MT1465	Villsprings	New soil series.
MI0545	Wakeley	New soil series.
WA2046	Wanser, moderately wet	New phase of existing hydric soil.
MN0680	Wealthwood	New soil series.
FL0134	Yellowjacket	New soil series.
FL0136	Yellowjacket, limestone substratum	New soil series.
ID1780	Zeph	New soil series.
	Soils Deleted From the National List of Hydric Soils in 1992 Justification	
IA0130	Afton, drained	Non hydric phase of soil.
TX0609	Aufco	Ponding was revised to brief based on observations.
IA0104	Blend, drained	Non hydric phase, hydric phase was added.
IA0312	Calcousta, drained	Non hydric phase, hydric phase was added.
WI0470	Fordum, gravelly substratum	SIR record not used and was deleted.
CA1304	Holillipah	Soil has rare flooding, frequently flooded phase was added.
FL0564	Leon, hydric	Duplicate record was deleted.
WI0002	Newson, mucky surface	SIR record not used and was deleted.
MD0003	Rutlege	SIR record transfered to SC.
MD0102	Rutlege, ponded	SIR record transfered to SC.
TX1158	Tobosa, depressional	Ponding is brief soil deleted from list.
TX1029	Verhalen, depressional	Ponding is brief soil deleted from list.
TX0283	Victine	Ponding is brief, phase added for long duration ponding.
TX0753	Zilaboy	Soil is moderately well drained and classification was changed.

SOILS ON THE JANUARY 94 HYDRIC LIST, BUT NOT ON THE OCTOBER 91 HYDRIC LIST

[The "Hydric criteria number" column indicates what caused the soil to be included in the Hydric list. See the "Criteria for Hydric soils" to determine the meaning of this column. (Revised January 31, 1993)]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Adder (WI0491) terric medisaprists	Mesic	VP	+1 – 1.0	Sep–Jun	<6.0	Frequent	Long	Oct–Jun	1, 3, 4	Drained	4W
										Undrained	5W
Afton, undrained (IA0619) cumulic endoaquolls[1].	Mesic	P	0 – 2.0	Nov–Jul	<6.0	Common	V Brief	Feb–Nov	2B3	All	5W
Ajax (ID1703) cumulic haplaquolls	Frigid	P	0.5–1.5	Mar–Jul	<6.0	Occasional	Brief	Jun–Jun	2B3	All	5W
Alamo, rarely flooded (CA2505) typic duraquolls.	Thermic	P	0 – 1.0	Dec–Apr	<6.0	Rare			2B3	ETA<12	4W
Albaton, dry (IA0107) vertic fluvaquents	Mesic	VP	+4. – 2.0	Nov–Jul	<6.0	Frequent	Brief	Mar–Oct	2B3,3	All	6W
Alligator, commonly (MS0130) alic dystraquerts.	Thermic	P	0 – 1.0	Dec–Apr	<6.0	Common	Brief-V Long.	Dec–Jul	2B3,4	Occas	4W
										Freq	5W
										Occas.	4W
										Undulating	5W
										Freq, undulating.	
Alligator, ponded (MS0131) alic dystraquerts	Thermic	P	+3 – 2.0	Jan–Dec	<6.0	None			2B3,3	All	4W
Alvodest, somewhat poorly drained (OR1467) natric camborthids[1].	Mesic	SP	+.5 – 3.0	Dec–Apr	<6.0	Rare			3	All	7W
Anan (AK0362) typic cryaquents	Cryic	VP,P	0.5–1.0	Jan–Dec	<6.0	Frequent	Long	Jul–Nov	2B3,4	0.2%	6W
Apishapa, dry (C03356) vertic fluvaquents	Mesic	P	1.0 – 3.0	May–Aug	<6.0	Occasional	Brief	May–Jul	2B3	0 – 6%	6W
										LS	6W
Assawoman (DE0005) typic psammaquents	Mesic	P	0 – 1.0	Dec–May	>=6.0	None-rare			2B2	Drained	3W
										Undrained	4W
Auganaush (MN0635) mollic ochraqualfs	Frigid	P	1.0 – 3.0	Nov–Jun	<6.0	None			2B3	Drained	2W
										Undrained	4W
Balize, drained (LA0195) typic hydraquents	Thermic	P	0.5 – 1.5	Jan–Dec	<6.0	Rare			2B3	All	4W
Bardwell, winter flooding (KY0192) fluventic hapludolls[2].	Thermic	W	3.0 – 6.0	Feb–Mar	<6.0	Frequent	Long	Dec–May	4	0–6%	3W
										6–12%	2E
										12–20%	4E
										20–25%	6E
Barry, low precipitation (MI0564) typic argiaquolls.	Mesic	P	1.0 – 2.5	Nov–Jul	<6.0	None			2B3	0–2%	2W
Bayvi, limestone substratum (FL0563) cumulic haplaquolls.	Thermic	VP	0 – 1.0	Jan–Dec	<6.0	Frequent	V Brief	Jan–Dec	2B3	All	8W
Bear Lake, gravelly substratum (ID1876) typic calciaquolls.	Frigid	P	+.5–1.5	Feb–Jul	<6.0	Occasional	Brief	Feb–Apr	2B3,3	0–2%	5W
Bear Lake, occasionally flooded (ID1874) typic calciaquolls.	Frigid	P	+.5–1.5	Feb–Jul	<6.0	Occasional	Brief	Feb–Apr	2B3,3	0–2%	5W
Bear Lake, very poorly drained (ID1699) typic calciaquolls.	Frigid	VP	+2–1.0	Dec–Aug	<6.0	Frequent	V Long	Dec–Sep	2B3,3,4	0–1%	5W
Belden (MS0014) aeric fluvaquents[2]	Thermic	SP	1.0–1.5	Jan–Mar	<6.0	Frequent	Long	Jan–Mar	4	Freq	4W
Bellingham, drained (WA0770) mollic haplaquepts.	Mesic	P	0.5–3.0	Nov–Jun	<6.0	None			2B3	All	3W
Bellslake (ID6023) fluvaquentic humaquepts	Frigid	VP	+1.–1.5	Oct–Aug	<6.0	Frequent	V Long	Dec–Jun	2B3,3,4	All	5W
Bemis, stony (ME0139) aerica cryaquepts	Cryic	P	0–1.0	Sep–Jun	<6.0	None			2B3	All	7S
Berner (MN0628) terric borosaprists	Frigid	VP	+1.–2.0	Nov–Jun	<6.0	None			1	Drained	4W
										Undrained	6W
Berner, wet (MN0695) terric borosaprists	Frigid	VP	0–2.0	Jan–Dec	<6.0	None			1	All	6W

Berryland, ponded (NJ0114) typic haplaquods	Mesic	VP	+.5–0.5	Nov–May	<6.0	None			2B3,3	0–2% Drained.	4W
										0–2% Undrained	5W
Bigsag (MT1077) typic halaquepts	Frigid	P	1.0–3.0	Dec–Jun	<6.0	Rare-Occassional.	Brief-Long	Mar–May	2B3	Rare	7W
										Occas.	7W
Bigsandy, heavy metals (MT1460) typic fluvaquents.	Frigid	P	1.0–2.0	Dec–Jun	<6.0	Rare-Occassional.	Long	Apr–Jun	2B3	All	7E
Bigsandy, saline (MT1335) typic fluvaquents	Frigid	P	1.0–2.0	Dec–Jun	<6.0	Occasional	Long	Apr–Jun	2B3	All	7W
Biscay, sloping (MN0456) typic endoaquolls	Mesic	P	0–1.5	Nov–Jun	<6.0	None			2B3	All	6W
Blackcreek (MT1361) typic haplaquepts	Frigid	P	1.0–4.0	Apr–Jul	<6.0	Rare			2B3	0–2%	5W
Blacklake (MT1350) histic haplaquands	Frigid	VP	+2–1.0	Jan–Dec	<6.0	None			2B3,3	0–1%	5W
Blackotter (ID1789) aeric calciaquolls	Frigid	P	0–1.5	Dec–May	<6.0	Rare			2B3	0–2%	5W
Blackotter, frequently flooded (ID1784) aeric calciaquolls.	Frigid	P	0–1.5	Feb–Jun	<6.0	Frequent	Long	Jan–Jun	2B3,4	0–2%	5W
Blavo (CA2536) typic duraquerts	Thermic	SP	+1–3.5	Dec–Mar	<6.0	Rare			2A,3	All	3W

Berner, wet (MN0695) terric borosaprists	Frigid	VP	0–2.0	Jan–Dec	<6.0	None			1	Undrained	6W
										All	6W
Berryland, ponded (NJ0114) typic haplaquods	Mesic	VP	+.5–0.5	Nov–May	<6.0	None			2B3,3	0–2% Drained.	4W
										0–2% Undrained	5W
Bigsag (MT1077) typic halaquepts	Frigid	P	1.0–3.0	Dec–Jun	<6.0	Rare-Occassional.	Brief-Long	Mar–May	2B3	Rare	7W
										Occas.	7W
Bigsandy, heavy metals (MT1460) typic fluvaquents.	Frigid	P	1.0–2.0	Dec–Jun	<6.0	Rare-Occassional.	Long	Apr–Jun	2B3	All	7E
Bigsandy, saline (MT1335) typic fluvaquents	Frigid	P	1.0–2.0	Dec–Jun	<6.0	Occasional	Long	Apr–Jun	2B3	All	7W
Biscay, sloping (MN0456) typic endoaquolls	Mesic	P	0–1.5	Nov–Jun	<6.0	None			2B3	All	6W
Blackcreek (MT1361) typic haplaquepts	Frigid	P	1.0–4.0	Apr–Jul	<6.0	Rare			2B3	0–2%	5W
Blacklake (MT1360) histic haplaquands	Frigid	VP	+2–1.0	Jan–Dec	<6.0	None			2B3,3	0–1%	5W
Blackotter (ID1789) aeric calciaquolls	Frigid	P	0–1.5	Dec–May	<6.0	Rare			2B3	0–2%	5W
Blackotter, frequently flooded (ID1784) aeric calciaquolls.	Frigid	P	0–1.5	Feb–Jun	<6.0	Frequent	Long	Jan–Jun	2B3,4	0–2%	5W
Blavo (CA2536) typic duraquerts	Thermic	SP	+1–3.5	Dec–Mar	<6.0	Rare			2A,3	All	3W
Blavo, overwash (CA2538) typic duraquerts	Thermic	SP	+1–3.5	Dec–Mar	<6.0	Occasional	Brief	Jan-Mar	2A,3	Map>16	3W
Blavo, ponded (CA2537) typic duraquerts	Thermic	SP	+1–3.5	Dec–Mar	<6.0	Occasional	Long	Dec–Apr	2A,3	All	3W
Blend, undrained (IA0616) fluvaquentic endoaquolls [1].	Mesic	P	0–2.0	Nov–Jul	<6.0	Rare			2B3	Sic	3W
										Sicl	5W
Bocox (OK0402) aquic arenic hapludalfs	Thermic	VP	+1–1.5	Oct–Jan	<6.0	None			2B3,3	All	5W
Bodiford (FL0139) arenic edoaqualfs	Thermic	VP	+2–0	Feb–Oct	<6.0	Frequent	Long	Feb–Oct	2B3,3,4	All	5W
Boley (OK0362) aeric fluvaquents	Thermic	P	0–1.0	Nov–Jun	<6.0	Frequent	V Brief-Brief.	Apr–Sep	2B3	All	7W
Bootjack, stratified substratum (ID1810) aeric cryaquepts.	Cryic	P	0–1.5	Apr–Jun	<6.0	Frequent	Long	Apr–Jun	2B3,4	All	5W
Borah (ID1639) aquic calcixerolls [1]	Frigid	P	1.0–2.0	Apr–Aug	<6.0	Occasional	Brief	Apr–May	2B3	All	5W
Boulder Lake, poorly drained (NV2551) aquic chromoxererts.	Frigid	P	+.5–1.5	Dec–Jun	<6.0	None			2B3,3	All	6W
BOW (WA0047) aquic palexeralfs [1]	Mesic	SP	0–1.5	Nov–May	<6.0	None			2A	0–3%	3W
										3–8%	3W
										8–20%	3E
										20–30%	4E
										30+%	6E
										0–8% GR	3W
										8–15% GR	3E
										15–30% GR.	4E
										0–8% Low PPT.	3W
										8–20% Low PPT	3E
Brandsvold (MN0625) typic argiaquolls	Frigid	P	1.0–3.0	Mar–Jun	<6.0	None			2B3	All	2W
Brinnum, alkali (NV2573) typic halaquepts [1]	Mesic	VP	0.5–1.5	Sep–May	<6.0	Occasional	Long	Oct–May	2B3	0–2%	5W
Briscot, drained (WA0803) aeric fluvaquents	Mesic	P	1.0–3.0	Nov–Apr	<6.0	Rare			2B3	All	2W
Broadkill (DE0010) typic sulfaquents	Mesic	VP	+1–0	Jan–Dec	<6.0	Frequent	V brief	Jan–Dec	2B3,3	All	8W
Bushong (MT1392) aeric endoaquents	Frigid	P	1.0–2.0	Apr–Aug	<6.0	None-rare			2B3	0–4%	6W
Caffey (MI0399) aeric endoaquents	Frigid	P,VP	+1–1.0	Oct–May	<6.0	None			2B3,3	All	5W
Calcousta, undrained (IA0620) typic endoaquolls [1].	Mesic	VP	+1–1.0	Nov–Jul	<6.0	None			2B3,3	Undrained	5W
Canburn, stratified substratum (UT1B25) cumulic haplaquolls.	Frigid	P	1.0–2.0	Apr–Jul	<6.0	Occasional	V brief	Jul–Sep	2B3	0–2%	3W
Capitola (WI0423) Mollic Epiaqualfs	Frigid	P,VP	+1–1.0	Oct–Jun	<6.0	None			2B3,3	Drained	3W
										Undrained	6W

SOILS ON THE JANUARY 94 HYDRIC LIST, BUT NOT ON THE OCTOBER 91 HYDRIC LIST—Continued

[The "Hydric criteria number" column indicates what caused the soil to be included in the Hydric list. See the "Criteria for Hydric soils" to determine the meaning of this column. (Revised January 31, 1993)]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Capitola, very stony (WI0511) mollic epiaqualfs.	Frigid	P,VP	+1–1.0	Sep–Jun	<6.0	None			2B3,3	All	7W
Carrolls (WA2039) typic psammaquents [1]	Mesic	SP	0–1.0	Nov–Apr	<6.0	None				Undrained	6W
Carrolls, overwash (WA2040) typic psammaquents [1].	Mesic	SP	+.5–1.5	Nov–May	<6.0	Rare			2A	All	4W
Cashner (OR1567) typic duraquods	Isomesic	P	0.5–1.5	Nov–Apr	<6.0	None			2A,3	All	4W
Cathro, frequently flooded (MI0108) terric borosaprists.	Frigid	VP	+2–1.0	Jan–Dec	<6.0	Frequent	Brief-V long.	Mar–May	2B3	ALL	4W
Chaires, hydric (FL0121) alfic haplaquods [1]	Thermic	P	0–0.5	Mar–Sep	>=6.0	None			1,3	All	4W
Cheniere, frequently flooded (LA0202) typic udipsamments [1 2].	Thermic	SE	>6.0		<6.0	Frequent	Long	Jan–Dec	2B1	All	4W
Chichagof (AK0348) histic cryaquepts	Cryic	VP	0–1.0	Jan–Dec	<6.0	Occasional	V brief	Oct–Apr	4	Freq	5W
Chippewa, friable substratum (NY0522) typic fragiaquepts.	Mesic	P,VP	+.5–0.5	Nov–May	<6.0	None			2B3	All	7W
Chunilna (AK0352) typic cryaquands	Cryic	VP	0–1.5	Apr–Sep	<6.0	None			2B3,3	All	7S
Churubusco (NY0435) lithic borosaprists	Frigid	VP	+1–1.0	Nov–Jun	<6.0	None			2B3	0–7%	6W
Claies (PR0076) aeric epiaquults	Isothermic	P	0.5–2.0	Jan–Dec	<6.0	None			1	All	7W
Citypoint (WI0441) typic borosaprists	Frigid	VP	+1–1.0	Nov–Jun	<6.0	None			2B3	All	7E
Clara (FL0560) spodic psammaquents	Thermic	P	0–1.0	Jun–Dec	>=6.0	None-Common.	Brief	Jan–Mar	1	All	7W
									2B1	None, Rare.	4W
										Common	6W
Clara (FL0561) spodic psammaquents	Thermic	VP	+2–0	Jan–Dec	>=6.0	None			2B1,3	All	6W
Clear Lake, MAP>16 (CA2484) typic palloxererts [1].	Thermic	P	+1–6.0	Dec–Mar	<6.0	Rare			2B3,3	Map>16	3W
Clearwater, depressional (MN0670) typic haplaquolls.	Frigid	VP	+1–1.0	Jan–Dec	<6.0	None-rare			2B3,3	Drained	3W
Cohoctah, low precipitation (MI0279) fluvaquentic haplaquolls.	Mesic	P,VP	+1–3.0	Nov–Jul	<6.0	Common	Brief-long	Apr–Nov	2B3,3,4	Undrained	6W
Colvin, occasionally flooded (ND0417) typic calciaquolls.	Frigid	P	0–1.0	Mar–Jun	<6.0	Occasional	Brief	Mar–June	2B3	All	6W
Colwood, bedrock substratum (MI0671) typic haplaquolls.	Mesic	P	+1–1.0	Oct–May	<6.0	None			2B3,3	All	3W
Cookcan (ID1790) aeric calciaquolls	Frigid	P	0–1.5	Dec–May	<6.0	Rare			2B3	All	2W
Cormant (MN0002) mollic psammaquents	Frigid	P	0.5–2.5	Apr–Jul	>=6.0	None			2B3	0–2%	4W
Coveland (WA0854) aquic palexeralfs [1]	Mesic	SP	0–2.0	Nov–Mar	<6.0	None			2B2	All	4W
									2A	0–8%	3W
										8+%	3E
Cradlebaugh (NV2678) duric haplaquolls [1]	Mesic	P	1.0–2.0	Dec–May	<6.0	Occasional	Brief	Dec–Mar	2B3	SLI SAL–ALK.	6W
										STR SAL–ALK	7W
Danielson (MN0690) cumulic endoaquolls	Mesic	P	1.0–3.0	Nov–Jul	<6.0	None			2B3	All	2W
Danube (MN0694) typic calciaquolls	Mesic	P	1.0–3.0	Nov–Jun	<6.0	None			2B3	Drained	2W
										Undrained	6W
Dawsil (WI0490) terric borosaprists	Frigid	VP	+1–1.0	Sep–Jun	<6.0	None			1	All	7W
Dawson, flooded (MI0668) terric borosaprists	Frigid	VP	+1–1.0	Sep–Jun	<6.0	Common	V Long	Oct–Jun	1	All	7W
Deerheart (MI0649) aeric endoaquepts	Frigid	P,VP	+1–1.0	Oct–May	<6.0	None			SB3,3	Drained	2W
										Undrained	5W

Degarmo, Wet (OR1386) cumulic haplaquolls [1]	Frigid	P	1.0–4.0	Mar–Sep	<6.0	Frequent	Brief	Mar–Jun	2B3	All	5W
Deinache (NY0446) mollic psammaquents	Frigid	P	0–1.0	Nov–May	>=6.0	None			2B2	Drained	3W
										Undrained	4W
Dosa (CA2426) Aquic chromoxererts	Mesic	SP	+.5–2.5	Dec–Apr	<6.0	None			2A,3	0–2%	5W
Downata, ponded (ID1785) cumulic haplaquolls.	Frigid	VP	+1. –1.5	Jan–Jun	<6.0	Frequent	Brief	Jan–Jun	2B3,3	All	5W
Duckston, ponded (NC0269) typic psammaquents.	Thermic	P	+1.–0	Jan–Dec	>=6.0	None–common.	Brief	Jan–Dec	2B1,3	All	7W
Eagleton (MT1345) cumulic haplaquolls	Frigid	P	1.0–2.0	Nov–Jun	<6.0	Occasional	Brief	Apr–Jun	2B3	All	5W
Edgemere, Stony ((PA0161) typic fragiaquepts	Mesic	VP,P	0–0.5	Nov–May	<6.0	None			2B3	All	7S
Edina, ponded (MO0343) typic argialbolls	Mesic	P	+.5–1.0	Nov–Apr	<6.0	None			2B3,3	All	3W
Edwards, Sandy substratum (MI0616) limnic medisaprists.	Mesic	VP	+1–1.0	Sep–Jun	<6.0	None			1,3	All	5W
Egbert, moderately wet (CA2486) cumulic haplaquolls [1, 3].	Thermic	A,P	1.0–3.0	Jan–Dec	<6.0	Rare			2B3	Rare	4W
Egglake (MN0654) mollic ochraqualfs	Frigid	P	1.0–3.0	Oct–Jul	<6.0	None			2B3	All	2W
Esquon (CA2531) xeric epiaquerts	Thermic	SP	+1–3.5	Dec–Mar	<6.0	None-rare			2A,3	All	3S
Fairbirch (MT1467) fluvaquentic endoaquolls	Frigid	P	1.0–2.0	Apr–Jul	<6.0	Occasional	Brief	Apr–Jun	2B3	All	6W
Fredon, poorly drained (NJ0138) aeric haplaquepts [1].	Mesic	P	0–0.5	Oct–Jun	<6.0	None-Occasional.	Brief	Jan–Apr	2B3	0–3%	3W
										Drained	4W

Degarmo, Wet (OR1386) cumulic haplaquolls[1]	Frigid	P	1.0–4.0	Mar–Sep	<6.0	Frequent	Brief	Mar–Jun	2B3	All	5W
Dainache (NY0446) mollic psammaquents	Frigid	P	0–1.0	Nov–May	>=6.0	None			2B2	Drained	3W
										Undrained	4W
Dosa (CA2426) Aquic chromoxererts	Mesic	SP	+.5–2.5	Dec–Apr	<6.0	None			2A,3	0–2%	5W
Downata, ponded (ID1785) cumulic haplaquolls.	Frigid	VP	+1. –1.5	Jan–Jun	<6.0	Frequent	Brief	Jan–Jun	2B3,3	All	5W
Duckston, ponded (NC0269) typic psammaquents.	Thermic	P	+1.–0	Jan–Dec	>=6.0	None–common.	Brief	Jan–Dec	2B1,3	All	7W
Eagleton (MT1345) cumulic haplaquolls	Frigid	P	1.0–2.0	Nov–Jun	<6.0	Occasional	Brief	Apr–Jun	2B3	All	5W
Edgemere, Stony ((PA0161) typic fragiaquepts	Mesic	VP,P	0–0.5	Nov–May	<6.0	None			2B3	All	7S
Edina, ponded (MO0343) typic argialbolls	Mesic	P	+.5–1.0	Nov–Apr	<6.0	None			2B3,3	All	3W
Edwards, Sandy substratum (MI0616) limnic medisaprists.	Mesic	VP	+1–1.0	Sep–Jun	<6.0	None			1,3	All	5W
Egbert, moderately wet (CA2486) cumulic haplaquolls[1, 3].	Thermic	A,P	1.0–3.0	Jan–Dec	<6.0	Rare			2B3	Rare	4W
Egglake (MN0654) mollic ochraqualfs	Frigid	P	1.0–3.0	Oct–Jul	<6.0	None			2B3	All	2W
Esquon (CA2531) xeric epiaquerts	Thermic	SP	+1–3.5	Dec–Mar	<6.0	None-rare			2A,3	All	3S
Fairbirch (MT1467) fluvaquentic endoaquolls	Frigid	P	1.0–2.0	Apr–Jul	<6.0	Occasional	Brief	Apr–Jun	2B3	All	6W
Fredon, poorly drained (NJ0138) aeric haplaquepts[1].	Mesic	P	0–0.5	Oct–Jun	<6.0	None-Occasional.	Brief	Jan–Apr	2B3	0–3% Drained.	3W
										Undrained	4W
Frost, Ponded (LA0087) typic glossaqualfs	Thermic	P	+2–0	Jan–Dec	<6.0	Frequent	V Long	Jan–Dec	2B3,3,4	All	7W
Galt, cool (CA2475) typic chromoxererts[1]	Thermic	MW	+1–0.5	Dec–Mar	<6.0	None-rare			3	MAP15–18	3W
Giese (MN0709) mollic epiaqualfs	Frigid	VP	+1–1.0	Jan–Dec	<6.0	None			2B3,3	Drained	4W
										Undrained	6W
Giffford, sandy substratum (MO0200) vertic epiaqualfs.	Mesic	P	0.5–1.5	Nov–Apr	<6.0	Rare			2B3	2–5%	2E
										5–9%	3E
Gothenburg, sandy (NE0392) typic psammaquents.	Mesic	P	0–2.0	Nov–Jun	>=6.0	Common	Brief	Jan–Jun	2B2	All	7W
Gougeville (NY0447) mollic psammaquents	Mesic	P,VP	+.5–1.0	Nov–Jun	<6.0	None			2B3,3	Drained	3W
										Undrained	4W
										MK, Drained.	4W
										MK, Undrained	5W
Granby, clayey substratum (MI0623) typic haplaquolls.	Mesic	P,VP	+1–1.0	Nov–Jun	>=6.0	None			2B2,3	Drained	4W
										Undrained	5W
Granby, low PPT (MI0672) typic haplaquolls	Mesic	P,VP	+1–1.0	Nov–Jun	<6.0	None			2B3,3	Drained	4W
										Undrained	5W
Grande Ronde, wet (OR1579) aquic dystrochrepts[1].	Mesic	SP	0–0.5	Dec–Apr	<6.0	None			2A	All	3W
Haggerty, clayey surface (LA0203) aeric ochraquults.	Thermic	SP	0–1.5	Nov–Jun	<6.0	Rare-Common.	V Long	Nov–Jul	2A,4	Freq	5W
										Rare, Sicl	2W
										Rare, Sic	3W
										Occas, Sicl	3W
										Occas, Sic	4W
Hallock, thick surface (NV2558) cumulic haplaquolls[1,2].	Frigid	P	1.5–2.5	Feb–Jul	<6.0	Frequent	Long	Mar–Jun	4	Freq	5W
Haslie (MN0629) limnic borosaprists	Frigid	VP	0–1.0	Nov–Jul	<6.0	None			1	Drained	4W
										Undrained	6W
Haslie, ponded (MN0630) limnic borosaprists	Frigid	VP	+2–0	Jan–Dec	<6.0	None			1,3	All	8W
Hedman (MN0661) typic calciaquolls	Frigid	P	0–2.0	Apr–Jul	<6.0	None			2B3	Drained	2W
										Undrained	4W
Hedman, depressional (MN0662) typic calciaquolls.	Frigid	VP	+2–0.5	Apr–Jul	<6.0	None			2B3,3	Drained	3W
										Undrained	6W

SOILS ON THE JANUARY 94 HYDRIC LIST, BUT NOT ON THE OCTOBER 91 HYDRIC LIST—Continued

[The "Hydric criteria number" column indicates what caused the soil to be included in the Hydric list. See the "Criteria for Hydric soils" to determine the meaning of this column. (Revised January 31, 1993)]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Helm (AK0385) histic lithic cryaquepts	Cryic	P	0.5–1.5	Jan–Dec	<6.0	None			2B3	5–7%	5W
										7–30%	6W
										30–99%	7W
Herdcamp (SD0489) typic haplaquolls	Mesic	VP	0–1.0	Apr–Oct	<6.0	Frequent	Brief	Mar–Nov	2B3	All	6W
Hershal, occasionally flooded (OR1473) cumulic haplaquolls.	Mesic	P	0.5–1.5	Mar–Jun	<6.0	Occasional	Brief	Mar–Jun	2B3	All	3W
Hillview (MN0666) mollic endoaqualfs	Frigid	P	0.5–3.0	Nov–Jul	<6.0	None			2B3	All	2W
Holillipah, flooded (CA2543) typic xerofluvents [1 2].	Thermic	SE	<6.0		<6.0	Frequent	Long	Dec–Apr	4	Freq	4W
Hosford (FL0571) cumulic humaquepts	Thermic	VP	0–0.5	Dec–Sep	>=6.0	None			2B2	2–8%	6W
										8–12%	7W
Hulderman (NV2655) duric haplaquolls [2]	Mesic	P	1.5–2.0	Mar–Jun	<6.0	Frequent	Long	Mar–Jun	4	Nirr	7W
Icacos (PR0199) typic fluvaquents	Isothermic	P	0.5–1.0	Apr–Dec	<6.0	Occasional	Brief	Jan–Dec	2B3	All	7W
Iksgiza (AK0371) histic pergelic cryaquepts	Cryic	P	0–1.5	Jan–Dec	<6.0	None			2B3	0–7%	5W
										7–30%	6W
Isanti, depressional (MN0651) typic haplaquolls.	Frigid	VP	+1–1.0	Oct–Jun	>=6.0	None			2B2,3	Drained	4W
										Undrained	6W
Jacktone, ponded (CA2466) typic pelloxererts [1].	Thermic	SP	+1–0	Dec–Apr	<6.0	Occasional	Long	Dec–Apr	2A,3	All	3W
Jacktone, ponded, protected (CA2467) typic pelloxererts [1].	Thermic	SP	+1–0	Dec–Apr	<6.0	Rare			2A,3	All	3W
Jarola, Map>16 (NM2051) typic argialbolls	Frigid	P	1.0–3.0	Mar–Jun	<6.0	Rare			2B3	All	4C
Jebavy (MI0617) aeric haplaquods	Mesic	P	+1–1.0	Oct–Jun	>=6.0	None			2B1,3	Drained	4W
										Undrained	5W
Jebavy, sandy surface (MI0633) aeric haplaquods.	Mesic	P	+1–1.0	Oct–Jun	>=6.0	None			2B1,3	Drained	4W
										Undrained	5W
Jevne (MN0711) mollic endoaqualfs	Frigid	P	1.0–3.0	Nov–Jun	<6.0	None			2B3	Drained	2W
										Undrained	4W
Joseph, frequently flooded (WA1990) aquic xerofluvents [1].	Mesic	MW	3.0–5.0	Dec–Jun	>=6.0	Frequent	Long	Dec–Jun	4	0–2%	6S
Jubilee, moderately wet (NV2676) typic endoaquolls [1].	Mesic	P, VP	1.0–2.5	Dec–Jun	<6.0	Rare			2B3	V poorly dr	5W
										Poorly dr	5W
Kanona, poorly drained (NY0058) aeric haplaquepts [1].	Mesic	P	0–0.5	Dec–Jun	<6.0	None			2B3	Undrained	3W
										Drained	3W
Kechumstuk (AK0378) histic cryaquepts	Cryic	VP	0–1.0	Jan–Dec	<6.0	None-rare			2B3	0–2%	5W
Kechumstuk, gravelly substratum (AK0379) histic cryaquepts.	Cryic	VP	0–1.0	Jan–Dec	<6.0	None-rare			2B3	0–2%	5W
Keys, terrace (CA2471) abruptic durixeralfs [1]	Thermic	MW	+1–1.5	Dec–Mar	<6.0	None			3	2–5%	4S
										5–15%	4E
Kezan, overwash (NE0383) mollic fluvaquents	Mesic	P	1.0–3.0	Nov–Jun	<6.0	Common	Brief	Mar–Jul	2B3	Occas	4W
										Channeled, freq	5W
Kindamina (AK0372) pergelic cryaquepts	Cryic	P	0–1.5	Jan–Dec	<6.0	None			2B3	0–7%	5W
										7–30%	6W
										30–35%	7W
Knauers (PA0163) typic fluvaquents	Mesic	P	+.5–0.5	Sep–Jun	<6.0	Common	V brief	Nov–Jun	2B3,3	All	4W
Kolda, drained (NV2672) typic haplaquolls	Mesic	VP	+1–2.0	Apr–Jun	<6.0	None			2B3,3	All	5W
Kolda, ponded (NV2673) typic haplaquolls	Mesic	VP	+3–0	Jan–Dec	<6.0	None			2B3,3	All	5W
Kratka, stratified substratum (MN0640) typic haplaquolls.	Frigid	P	1.0–5.0	Apr–Jul	<6.0	None			2B3	All	3W
Kratka, stratified substratum, depressional (MN0641) typic haplaquolls.	Frigid	VP	+1–1.0	Apr–Jul	<6.0	None			2B3,3	Drained	4W
										Undrained	6W
Kuslina, thin surface (AK0406) histic pergelic cryaquepts.	Cryic	P	0–1.5	Jan–Dec	<6.0	None			2B3	All	6W
Lamoose, calcareous (MT1325) typic haplaquolls.	Frigid	P	0.5–2.0	Apr–Jul	<6.0	None–rare			2B3	0–2%	5W
Lamson, MAAT<50, mucky surface (NY0079) aeric haplaquepts.	Mesic	P,VP	+1–0.5	Dec–May	<6.0	None			2B3,3	All	5W
Langless (ID1756) typic calciaquolls	Mesic	P	1.0–1.5	Oct–Jun	<6.0	Frequent	V long	Oct–Jun	2B3,4	0–2%	5W
Las animas, poorly drained (CO3376) typic fluvaquents [1].	Mesic	P	1.0–3.0	May–Jul	<6.0	Occasional	Brief	May–Aug	2B3	High PE	4W
										Dry	6W
Laugenour, flooded (CA2485) aeric fluvaquents [1].	Thermic	P	1.0–2.0	Dec–Mar	<6.0	Frequent	V long	Dec–Mar	2B3,4	Map>16	4W
Leafriver, high PPT (MN0652) histic humaquepts.	Frigid	VP	+1–1.0	Nov–Jul	<6.0	None			2B3,3	Undrained	6W
										Drained	4W
Leaksville (NC0118) typic albaqualfs	Themic	P	0–1.0	Dec–Mar	<6.0	None			2B3	All	3W
Lemhi (ID1777) cumulic craquolls	Cryic	P	1.0–1.5	Apr–Jun	<6.0	Occasional	Brief	Jan–Jun	2B3	0–2%	4W
Lenape (DE0012) teric medisaprists	Mesic	VP	+1.–0.5	Jan–Dec	<6.0	Frequent	V brief	Jan–Dec	1,3	All	8W

nauers (PA0163) typic fluvaquents	Mesic	P	+.5–0.5	Sep–Jun	<6.0	Common	V brief	Nov–Jun	2B3,3	30–35%	7W
Kolda, drained (NV2672) typic haplaquolls	Mesic	VP	+1–2.0	Apr–Jun	<6.0	None			2B3,3	All	4W
										All	5W
Kolda, ponded (NV2673) typic haplaquolls	Mesic	VP	+3–0	Jan–Dec	<6.0	None			2B3,3	All	5W
Kratka, stratified substratum (MN0640) typic haplaquolls.	Frigid	P	1.0–5.0	Apr–Jul	<6.0	None			2B3	All	3W
Kratka, stratified substratum, depressional (MN0641) typic haplaquolls.	Frigid	VP	+1–1.0	Apr–Jul	<6.0	None			2B3,3	Drained	4W
										Undrained	6W
Kuslina, thin surface (AK0406) histic pergelic cryaquepts.	Cryic	P	0–1.5	Jan–Dec	<6.0	None			2B3	All	6W
Lamoose, calcareous (MT1325) typic haplaquolls.	Frigid	P	0.5–2.0	Apr–Jul	<6.0	None–rare			2B3	0–2%	5W
Lamson, MAAT<50, mucky surface (NY0079) aeric haplaquepts.	Mesic	P,VP	+1–0.5	Dec–May	<6.0	None			2B3,3	All	5W
Langless (ID1756) typic calciaquolls	Mesic	P	1.0–1.5	Oct–Jun	<6.0	Frequent	V long	Oct–Jun	2B3,4	0–2%	5W
Las animas, poorly drained (CO3376) typic fluvaquents [1].	Mesic	P	1.0–3.0	May–Jul	<6.0	Occasional	Brief	May–Aug	2B3	High PE	4W
										Dry	6W
Laugenour, flooded (CA2485) aeric fluvaquents [1].	Thermic	P	1.0–2.0	Dec–Mar	<6.0	Frequent	V long	Dec–Mar	2B3,4	Map>16	4W
Leafriver, high PPT (MN0652) histic humaquepts.	Frigid	VP	+1–1.0	Nov–Jul	<6.0	None			2B3,3	Undrained	6W
										Drained	4W
Leaksville (NC0118) typic albaqualfs	Themic	P	0–1.0	Dec–Mar	<6.0	None			2B3	All	3W
Lemhi (ID1777) cumulic craquolls	Cryic	P	1.0–1.5	Apr–Jun	<6.0	Occasional	Brief	Jan–Jun	2B3	0–2%	4W
Lenape (DE0012) terric medisaprists	Mesic	VP	+1.–0.5	Jan–Dec	<6.0	Frequent	V brief	Jan–Dec	1,3	All	8W
Leon, depressional (FL0501) aeric haplaquods	Thermic	VP	+2–0	Jan–Sep	<6.0	None			2B3,3	All	7W
Leon, hydric (FL0093) aeric haplaquods	Thermic	P	0–0.5	Feb–Sep	<6.0	None			2B3	All	4W
Limerick, sandy substratum (VT0122) typic fluvaquents.	Mesic	P	0–1.5	Nov–May	<6.0	Frequent	Brief	Nov–May	2B3	Drained	3W
										Undrained	4W
Lindaas, moraine (ND0434) typic argiaquolls	Frigid	P	1.0–3.0	Oct–Jul	<6.0	None			2B3	All	2W
Lodgepole, ponded (NE0414) typic argiaquolls	Mesic	SP	+2–1.0	Mar–Jul	<6.0	None			2A,3	All	5W
Lofgren, ponded (CA2532) xeric epiaquerts	Thermic	SP	+1–3.5	Dec–Mar	<6.0	None-Rare			2A,3	All	3S
Lofgren, ponded (CA2533) xeric epiaquerts	Thermic	SP	+1–3.5	Dec–Mar	<6.0	Occasional	Long	Dec–Apr	2A,8	All	3S
Logan, commonly flooded (UT1872) typic calciaquolis [1].	Mesic	P	1.0–1.5	Apr–Jun	<6.0	Common	Brief	Mar–May	2B3	all	5W
Logan, commonly flooded (UT1879) typic calciaquolis [1].	Mesic	P	1.0–1.5	Apr–Jun	<6.0	Common	Brief	Mar–May	2B3	All	5W
Loxley, flooded (MI0669) typic brosaprists	Frigid	VP	+1–1.0	Nov–May	<6.0	Common	V long	Oct–Jun	1	All	7W
Lyonmounten (NY0438) typic humaquepts	Frigid	P	0–1.0	Nov–May	<6.0	None			2B3	Drained	3W
										Undrained	4W
Lyonmounten, stony (NY0438) typic humaquepts.	Frigid	P	0–1.0	Nov–May	<6.0	None			2B3	0–3% STV	5S
										3–8% STV	6S
										0–8% STX	7S
Madalin, gravelly substratum (NY0518) mollic ochraqualfs.	Mesic	P, VP	+.5–0	Nov–Jun	<6.0	None			2B3,3	SICL, SIL, SIC.	4W 5W
										MK	
Malin, rarely flooded (OR1495) fluvaquentic haplaquolls.	Mesic	P	+1–4.0	Mar–Jun	<6.0	Rare			2B3,3	All	4W
Manco (TX1266) aeric fluvaquents	Thermic	SP	1.0–1.5	Dec–May	<6.0	Frequent	Long	Nov–May	4	All	5W
Mannington (NJ0104) typic hydraquents	Mesic	VP	+1–0.5	Jan–Dec	<6.0	Frequent	V brief	Jan–Dec	2B3,3	All	8W
Mannixlee (MT1399) cumulic edoaquolls	Frigid	P	1.0–2.0	Apr–Aug	<6.0	None			2B3	0–4%	5W
Marcuse (CA0360) vertic haplaquepts	Themic	VP,P	1.0–3.0	Dec–Mar	<6.0	None-rare			2B3	Mod alkali	4W
										str alkali	6W
Marcuse, sodic overwash (CA1405) vertic haplaquepts.	Thermic	P	1.0–3.0	Dec–Mar	<6.0	None-rare			2B3	All	4W
Mariel (OR1515) sapric borohemists	Frigid	VP	+2.–0.5	Jan–Dec	<6.0				1,3	All	5W
Markey, commonly flooded (MI0635) terric borosaprists	Frigid	VP	+1–1.0	Nov–Jun	<6.0	Common	Brief	Mar–Nov	1	All	6W
Markey, frequently flooded (MI0619) terric borosaprists.	Frigid	VP	0–2.0	Nov–Jun	<6.0	Common	Long	Mar–Jun	1	All	6W

SOILS ON THE JANUARY 94 HYDRIC LIST, BUT NOT ON THE OCTOBER 91 HYDRIC LIST—Continued

[The "Hydric criteria number" column indicates what caused the soil to be included in the Hydric list. See the "Criteria for Hydric soils" to determine the meaning of this column. (Revised January 31, 1993)]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Markey, MAAT<44 (MI0629) terric borosaprists.	Frigid	VP	+1 – 1.0	Nov–Jun	<6.0	None			1	Undrained	5W
Massena, poorly drained (NY002[illegible]) aeric haplaquepts [1].	Mesic	P	0 – 1.0	Nov–May	<6.0	None			2B3	Drained 0–8% drained. 8–15% 0–8% undrained.	4W 3W 3E 4W
Mattex (TX1268) aeric fluvaquents	Thermic	SP	1.0–2.5	Dec–Mar	<6.0	Frequent	Long	Dec–Mar	4	All	5W
Mazie (ID1350) typic unbraqualfs	Frigid	VP	0 – 1.5	Feb–Jun	<6.0	Frequent	Long	Feb–May	2B3,4	All	5W
McCulligan (NE0411) mollic fluvaquents	Mesic	P	0 – 1.5	Nov–Apr	<6.0	Occasional	Brief	Feb–Jul	2B3	All	5W
McKenzie, clacareous (ND0384) typic argiaquallis.	Frigid	P	+.5 – 1.0	Mar–Jun	<6.0	None			2B3,3	All	4W
Meadowbrook, limestone substratum, flooded (FL0567) grossarenic ochraqualfs [1].	Thermic	VP	0 – 0.5	June–Dec	>=6.0	Common	Long	Jul–Nov	2B1,4	All	5W
Merryville (LA0206) typic glossaqualfs	Thermic	P	0 – 1.5	Dec–Apr	<6.0	Rare-occasional.	Brief-long	Dec–Apr	2B3	Rare Occas	3W 4W
Millgrove, clayey substratum (OH0397) typic argiaquolls.	Mesic	VP	+1 – 1.0	Nov–May	<6.0	None			2B3,3	All	2W
Minter, ponded (AL0149) typic ochraqualfs	Thermic	P	+3 – 1.0	Jan–Dec	<6.0	None-frequent.	Brief-long	Dec–Apr	2B3,3,4	All	7W
Mistoguay (MI0611) aeric haplaquepts	Mesic	P	0 – 1.0	Oct–May	<6.0	Rare-common.	Brief-V long.	Oct–Jun	2B3,4	Rare, drained. Freq, drained. Occas, drained. undrained.	3W 3W 3W 5W
Mollville, loamy substratum (TX1252) typic glossaqualfs.	Thermic	P	+.5 – 1.0	Nov–Jun	<6.0	None			2B3, 3	All	4W
Monarda, rubbly (ME0136) aeric haplaquepts	Frigid	P	0 – 1.5	Oct–Jun	<6.0	None			2B3	All	7S
Moteado (PR0201) humic hhaplquox	Isothermic	P	0 – 1.0	Jan–Dec	<6.0	None			2B3	3–15% 15–30%	7W 7E
Mullers (SC0147) aeric fluvaquents [2]	Thermic	SP	0.5–1.5	Nov–May	<6.0	Frequent	Long	Dec–Apr	4	Freq	6W
Muskego, flooded (WI0520) limnic medisaprists.	Mesic	VP	+3 – 1.5	Nov–Aug	<6.0	Common	Long	Apr–Jul	1,3,4	All	8W
Naconiche (TX1236) cumulic humaquepts	Thermic	VP	0 – 1.0	Jan–Dec	<6.0	Frequent	Long-V long.	Jan–Dec	2B3,4	All	7W
Neerdobe (CA2535) typic duraquerts	Thermic	SP	+1 – 3.5	Dec–Mar	<6.0	Rare			2A,3	All	3W
Neerdobe, overwash (CA2534) typic duraquerts.	Thermic	SP	+1 – 3.5	Dec–Mar	<6.0	None-Rare			2A,3	MAP>16	3W
Nestucca, wet (OR1581) aerid tropaquepts [1]	Isomesic	SP	0 – 0.5	Nov–Apr	<6.0	Frequent.	Brief	Nov–Apr	2A	All	3W
Nowlang (WI0472) humaqueptic psammaquents.	Mesic	P, VP	+1 – 1.0	Nov–Jun	<6.0	Occasional	Brief	Apr–Jun	2B3,3	Drained Undrained	4W 6W
Niblack (AK0368) lithic cryosaprists	Cryic	VP	0 – 1.0	Jan–Dec	>=6.0	None			1	0–45%	7W
Nielsville (MN0732) typic calciaquolls	Frigid	P	1.0–3.0	Apr–Jun	<6.0	None-Rare			2B3	Drained	2W
Niklavar (AK0357) typic cryaquents	Cryic	VP	1.0–2.0	Apr–Oct	<6.0	Occasional	Brief-long	Apr–Oct	2B3	0–3%	4W
Normal (IL0447) argiaquic argialbolls	Mesic		1.0–3.0	Mar–Jun	<6.0	None			2B3	0–2% 2–4% 2E	2W
Oaky (FL0108) mollic albaqualfs	Thermic	P	0.5–1.5	Mar–Sep	<6.0	None			2B3	None	4W
Okaw, nonflooded (IL0445) typic albaqualfs	Mesic	P,VP	+.5–1.0	Mar–Jun	<6.0	None			2B3,3	0–2%	3W
Olallie (OR1527) cumulic endoaquolls	Mesic	P	0 – 0.5	Mar–Jun	<6.0	Rare			2B3	All	3W
Overcup (AR0131) vertic albaqualfs	Thermic	P	0 – 1.0	Dec–Apr	<6.0	None			2B3	0–1% 1–3% 0–3%	3W 3E 3W
Ozamis, saline (OR1384) fluvaquentic hapaquolls [1].	Mesic	P	1.0–4.0	Mar–Jun	<6.0	Rare			2B3	All	5W
Palm, rubbly (PR0204) aeric tropaquepts	Isothermic	P	0 – 1.0	Jan–Dec	<6.0	None			2B3	All	7S
Pamlico, loamy substratum, ponded (NC0270) terric medisaprists.	Thermic	VP	+2.–0	Jan–Dec	<6.0	Rare			1,3	All	7W
Perrine, drained (FL0572) typic fluvaquents	Hyperthermic.	P	0 – 1.0	Jun–Nov	<6.0	None			2B3	All	3W
Perry (LA0091) vertic haplaquepts	Thermic	P	0 – 2.0	Dec–Jun	<6.0	Common	Brief-V long.	Dec–Jun	2B3,4	Occas Freq	4W 5W
Pickford, mucky surface, (MI0606) aeric epiaquepts.	Frigid	P	+1 – 1.0	Nov–Jun	<6.0	None			2B3,3	All	5W

Niblack (AK0368) lithic cryosaprists	Cryic	VP	0–1.0	Jan–Dec	>=6.0	None			1	Undrained	6W
Nielsville (MN0732) typic calciaquolls	Frigid	P	1.0–3.0	Apr–Jun	<6.0	None-Rare			2B3	0–45%	7W
Niklavar (AK0357) typic cryaquents	Cryic	VP	1.0–2.0	Apr–Oct	<6.0	Occasional	Brief-long	Apr–Oct	2B3	Drained	2W
										0–3%	4W

Normal (IL0447) argiaquic argialbolls	Mesic		1.0–3.0	Mar–Jun	<6.0	None			2B3	0–2%	2W
										2–4%	
										2E	
Oaky (FL0108) mollic albaqualfs	Thermic	P	0.5–1.5	Mar–Sep	<6.0	None			2B3	None	4W
Okaw, nonflooded (IL0445) typic albaqualfs	Mesic	P,VP	+.5–1.0	Mar–Jun	<6.0	None			2B3	0–2%	3W
Olallie (OR1527) cumulic endoaquolls	Mesic	P	0–0.5	Mar–Jun	<6.0	Rare			2B3,3	All	3W
Overcup (AR0131) vertic albaqualfs	Thermic	P	0–1.0	Dec–Apr	<6.0	None			2B3	0–1%	3W
										1–3%	3E
										0–3%	3W
Ozamis, saline (OR1384) fluvaquentic hapaquolls [1].	Mesic	P	1.0–4.0	Mar–Jun	<6.0	Rare			2B3	All	5W
Palm, rubbly (PR0204) aeric tropaquepts	Isothermic	P	0–1.0	Jan–Dec	<6.0	None			2B3	All	7S
Pamlico, loamy substratum, ponded (NC0270) terric medisaprists.	Thermic	VP	+2.–0	Jan–Dec	<6.0	Rare			1,3	All	7W
Perrine, drained (FL0572) typic fluvaquents	Hyper-thermic.	P	0–1.0	Jun–Nov	<6.0	None			2B3	All	3W
Perry (LA0091) vertic haplaquepts	Thermic	P	0–2.0	Dec–Jun	<6.0	Common	Brief-V long.	Dec–Jun	2B3,4	Occas	4W
										Freq	5W
Pickford, mucky surface, (MI0606) aeric epiaquepts.	Frigid	P	+1–1.0	Nov–Jun	<6.0	None			2B3,3	All	5W
Pit, overwash (CA2440) chromic pelloxererts	Mesic	P	+5.–3.0	Dec–May	<6.0	Rare			2B3,3	All	5W
Pit, partially drained (CA2441) chromic pelloxererts.	Mesic	P	0.5–4.0	Dec–May	<6.0	Rare			2B3	All	4W
Pit, rarely flooded (CA2348) chromic pelloxererts.	Mesic	P	+.5–3.0	Dec–May	<6.0	Rare			2B3,3	All	5W
Ponycreek (WI0434) humaqueptic psammaquents.	Frigid	P,VP	+1.–1.0	Nov–Jun	<6.0	None			2B3,3	Undrained	6W
										Drained	6W
Poronto (MT1393) typic endoaquolls	Frigid	P	1.0–2.0	Apr–Aug	<6.0	None-rare			2B3	Mod temp	6W
Pottsburg, hydric (FL0098) grossarenic haploaquods [1].	Thermic	P	0–0.5	Feb–Sep	>=6.0	None-occasional.	V brief	Feb–Sep	2B1	All	4W
Prieto (PR0206) typic tropaquepts	Isohyperthermic.	P	0–1.0	Jan–Dec	<6.0	None			2B3	3–15% CB.	7W
										15–75% CB.	7E
										CBV	7S
Racing (OR1512) typic cryaquods	Cryic	P	+1.–1.0	Jan–Dec	<6.0	Occasional	Brief	Nov–Apr	2B3,3	All	6W
Rawhide (FL0110) typic argiaquolls	Thermic	VP	+2–0	Jun–Apr	<6.0	None-common.	Long	Jun–Apr	2B3,4	All	7W
Rawhide, limestone substratum (FL0113) typic argiaquolls.	Thermic	VP	+2.–0	Jun–Apr	<6.0	None-common.	Long	Jun–Apr	2B3,3,4	All	7W
Raynham, calcareous substratum (VT0121) aeric haplaquepts.	Mesic	P,SP	0–2.0	Nov–May	<6.0	None-rare			2B3	Drained	3W
										Undrained	4W
Reese, none-rarely flooded (NV2566) aeric halaquepts [1].	Mesic	P	1.0–3.0	Mar–Jul	<6.0	None-rare			2B3	All	6S
Reese, ponded (NV2567) aeric halaquepts [1]	Mesic	P	+1–2.0	Nov–Aug	<6.0	Rare			2B3,3	All	6W
Reis (MN0739) typic calciaquolls	Frigid	P	1.0–3.0	Apr–Jun	<6.0	None			2B3	C, SIC, SICL drained.	2W
										CL, L, SC drained.	3W
										C, SIC, SICL undrained.	
										CL, L, SCL undrained	3W

SOILS ON THE JANUARY 94 HYDRIC LIST, BUT NOT ON THE OCTOBER 91 HYDRIC LIST—Continued

[The "Hydric criteria number" column indicates what caused the soil to be included in the Hydric list. See the "Criteria for Hydric soils" to determine the meaning of this column. (Revised January 31, 1993)]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class, and subclass
Rodney (IA0605) mollic fluvaquents	Mesic	P	1.0–3.0	Nov–Jul	<6.0	Rare-occasional.	Brief	Feb–Nov	2B3	Rare	1
										Occas	2W
Roscommon, nonponded (MI0422) mollic psammaquents.	Frigid	P	0–1.0	Sep–Jun	>=6.0	None			2B2	All	4W
Rubylake (NV2645) mollic fluvaquents [1]	Mesic	P	1.0–2.0	Mar–Jun	<6.0	Rare			2B3	All	5W
Rutlege (SC0148) typic humaquepts	Thermic	VP	0–0.5	Dec–May	>=6.0	None-common.	Brief	Dec–May	2B2	Drained	4W
										Undrained	5W
Rutlege, ponded (SC0149) typic humaquepts	Thermic	VP	+2–1.0	Dec–May	>=6.0	None			2B2,3	Drained	4W
										Undrained	7W
Sabattis (NY0401) histic humaquepts	Frigid	P, VP	0–1.0	Nov–May	<6.0	None			2B3	Undrained	4W
										Drained	3W
Sabittis, Stony (NY0405) histic humaquepts	Frigid	P,VP	0–1.0	Nov–May	<6.0	None			2B3	STV, BYV	6S
										STX, BYX	7S
Sahkahtay (MN0869) mollic ochraqualfs	Frigid	P	0.5–1.5	Apr–Jun	<6.0	None			2B3	Drained	3W
										Undrained	4W
Sailboat, cool, (CA2478) aquic xerofluents [1]	Thermic	SP	3.0–5.0	Dec–Mar	<6.0	Frequent	Long	Dec–Mar	4	Map>16	4W
Samsula, flooded (FL0112) terric medisaprists	Hyper-thermic.	VP	0–0.5	Mar–Sep	>=6.0	Frequent	Brief-long		1	All	7W
Sapelo, hydric (GA0100) ultic haplaquods [1]	Thermic	P	0–0.5	Nov–Apr	<6.0	None			2B3	All	4W
Satilla (GA0067) thapto-histic fluvaquents	Thermic	VP	0–1.5	Nov–May	<6.0	None-common.	Long	Dec–Apr	2B3,4	None, rare	4W
										Freq	7W
Satatton (TX0696) typic salorthids	Hyper-thermic.	P	0–1.5	Jan–Dec	>=6.0	Frequent	V Brief	Aug–May	2B1	All	8S
Scamman (WA0060) aquic palexeralfs	Mesic	SP	0–1.5	Nov–Apr	<6.0	None			2A	0–8%	3W
										8–20%	3E
										20–30%	4E
										30–40%	6E
										40+%	7E
Semiahmoo, partially drained (WA1987) typic medisaprists.	Mesic	P	+.5–1.0	Dec–Apr	<6.0	None			1,3	All	3W
Settlement, stratified substratum (NV5407) aeric halaquepts.	Mesic	P	1.0–2.5	Feb–Jun	<6.0	Frequent	Long	Mar–Jun	2B3,4	All	7W
Settlemeyer, wet (NV2677) fluvaquentic haplaquolls [1].	Mesic	P	1.0–2.5	Feb–Jul	<6.0	Rare			2B3	All	5W
Shigh (OR1484) aeric albaquults	Isomesic	P	0.5–1.0	Nov–Apr	<6.0	None			2B3	All	6E
Shired (FL0138) typic argiaquolls	Thermic	VP	+2.–0	Feb–Oct	<6.0				2B3,3	All	7W
Spot (M10620) typic endoaquods	Frigid	P	+1–1.0	Sep–Jun	<6.0	None			2B3,3	All	5W
Springerton (IL0428) typic haplaquolls	Mesic	P	+.5–2.0	Feb–Jun	<6.0	None-rare			2B3,3	All	2W
Stallard (WA1860) duric endoaquolls	Mesic	P	+2.–4.0	Dec–Jul	<6.0	Frequent	Long–V long.	Feb–Jun	2B3,3,4	0–3%	5W
Steed, loamy (UT1902) entic haploxerolls [1]	Mesic	W	>4.0	Apr–Jun	<6.0	Frequent	Long	Mar–Jun	4	L	6S
										CB–L	6S
Stirum, map 13–17 (ND0430) typic natraquolls	Frigid	P	1.0–3.0	Apr–Jul	<6.0	None-common.	Long	Apr–Jun	2B3,4	0–3%	6S
Stockton, cool (CA2482) typic pelloxererts [1]	Thermic	SP	+1–1.0	Dec–Mar	<6.0	Occasional	Brief	Jan–Mar	2A,3	Map>16	3W
Stockton, map>16 (CA2481) typic pelloxererts [1]	Thermic	SP	+1–1.0	Dec–Mar	<6.0	None-rare			2A,3	Map>16	3W

Stockton, ponded (CA2469) typic pelloxererts [1]	Thermic	SP	+1–0	Nov–Mar	<6.0	Occasional	Long	Dec–Apr	2A,3	All	3S
Stockton, ponded, protected (CA2468) typic pelloxererts [1].	Thermic	SP	+1–0	Nov–Mar	<6.0	None-rare			2A,3	All	3S
Strathcona (MN0633) typic calciaquolls	Frigid	P	1.0–3.0	Apr–Jul	<6.0	None			2B3	Drained	2W
										Undrained	4W
Strathcona depressional (MN0634) typic calciaquolls.	Frigid	VP	+1.–1.0	Jan–Dec	<6.0	None			2B3,3	Drained	3W
										Undrained	6W
Strathcona, very wet (MN0696) typic calciaquolls.	Frigid	VP	+0.–1.0	Jan–Dec	<6.0	None			2B3,3	All	6W
Swedegrove (MN0673) typic haplaquolls	Mesic	P	1.0–3.0	Nov–Jul	<6.0	None			2B3	All	2W
Talmoon (MN0592) mollic ochraqualfs	Frigid	P	1.0–3.0	Nov–Jun	<6.0	None			2B3	All	2W
Talmoon stratified substratum (MN0664) mollic ochraqualfs.	Frigid	P	1.0–3.0	Nov–Jun	<6.0	None			2B3	All	2W
Tanacross (AK0383) histic pergelic cryaquepts	Cryic	P	0–1.0	Jan–Dec	<6.0	None-rare			2B3	0–3%	5W
Tennille (FL0084) lithic psammaquents	Thermic	P	0.5–1.5	Mar–Sep	>=6.0	None			2B2	All	4W
Tennille hydric (FL0088) lithic psammaquents	Thermic	P	0–0.5	Jun–Mar	>=6.0	None-common.	Brief	Jan–Mar	2B2	None, rare common.	6W
Tepete, loamy subsoil (ID1832) terric borohemists.	Frigid	VP	+5–1.5	Jan–Dec	<6.0	None-common.	Brief	May–Jul	1,3	All	5W
Tetlin (AK0381) pergelic cryaquepts	Cryic	P	0–3.5	Jan–Dec	<6.0	None			2B3	3–7%	5W

Stockton, ponded (CA2469) typic pelloxererts [1]	Thermic	SP	+1–0	Nov–Mar	<6.0	Occasional	Long	Dec–Apr	2A,3	All	3S
Stockton, ponded, protected (CA2468) typic pelloxererts [1].	Thermic	SP	+1–0	Nov–Mar	<6.0	None-rare			2A,3	All	3S
Strathcona (MN0633) typic calciaquolls	Frigid	P	1.0–3.0	Apr–Jul	<6.0	None			2B3	Drained	2W
										Undrained	4W
Strathcona depressional (MN0634) typic calciaquolls.	Frigid	VP	+1.–1.0	Jan–Dec	<6.0	None			2B3,3	Drained	3W
										Undrained	6W
Strathcona, very wet (MN0696) typic calciaquolls.	Frigid	VP	+0.–1.0	Jan–Dec	<6.0	None			2B3,3	All	6W
Swedegrove (MN0673) typic haplaquolls	Mesic	P	1.0–3.0	Nov–Jul	<6.0	None			2B3	All	2W
Talmoon (MN0592) mollic ochraqualfs	Frigid	P	1.0–3.0	Nov–Jun	<6.0	None			2B3	All	2W
Talmoon stratified substratum (MN0664) mollic ochraqualfs.	Frigid	P	1.0–3.0	Nov–Jun	<6.0	None			2B3	All	2W
Tanacross (AK0383) histic pergelic cryaquepts	Cryic	P	0–1.0	Jan–Dec	<6.0	None-rare			2B3	0–3%	5W
Tennille (FL0084) lithic psammaquents	Thermic	P	0.5–1.5	Mar–Sep	>=6.0	None			2B2	All	4W
Tennille hydric (FL0088) lithic psammaquents	Thermic	P	0–0.5	Jun–Mar	>=6.0	None-common.	Brief	Jan–Mar	2B2	None, rare common.	6W
Tepete, loamy subsoil (ID1832) terric borohemists.	Frigid	VP	+5–1.5	Jan–Dec	<6.0	None-common.	Brief	May–Jul	1,3	All	5W
Tetlin (AK0381) pergelic cryaquepts	Cryic	P	0–3.5	Jan–Dec	<6.0	None			2B3	3–7%	5W
										7–30%	6E
										30–50%	7E
Tiocano (TX1254) udic pellusterts	Hyper-thermic	SP	+1 –2.0	Sep–May	<6.0	None			2A,3	All	4W
Toba (NV2658) aquic calciorthids [2]	Mesic	P	1.5–2.0	Mar–Jun	<6.0	Frequent	Long	Mar–Jun	4	Freq	5W
Totness (SC0144) typic psammaquents	Thermic	P	0–1.0	Nov–Apr	>=6.0	Frequent	Brief-long	Nov–May	2B2,4	All	6W
Toppenish, cool (WA2006) fluvaquentic haplaquolls [1 2].	Mesic	SP	1.0–2.0	Nov–May	<6.0	Frequent	Long	Nov–Apr	4	Freq	6W
Tughill, bouldery (NY0431) histic humaquepts	Frigid	VP	+1–0.5	Nov–Jun	<6.0	None			2B3,3	All	7S
Turrah (MT0625) cumulic haplaquolls	Frigid	P	1.0–3.0	May–Jul	<6.0	None-rare			2B3	All	5W
Uncompahgre (CO0445) fluvaquentic haplaquolls [3].	Mesic	SP,P	0.5–1.5	Apr–Jun	<6.0	Occasional	Brief	Apr–Jun	2B3	All	6W
Uniongrove (MN0674) typic haplaquolls	Mesic	P	1.0–3.0	Nov–Jul	<6.0	None			2B3	All	2W
Vasquez (CO0051) humic pergelic cryaquepts [3].	Cryic	SP,P	0.5–2.0	Mar–Jul	<6.0	None			2B3	0.5%	5W
										5–30%	6W
Vassalboro (ME0142) typic borofibrists	Frigid	VP	0–0.5	Sep–Jul	<6.0	None-rare			1	All	8W
Vastine, gravelly substratum (CO7281) typic endoaquolls.	Frigid	P	1.0–2.0	Jun–Aug	<6.0	Common	Brief	May–Jul	2B3	0–5%	5S
Vastine, MAP>16 (CO3293) typic endoaquolls	Frigid	P	1.0–3.0	Mar–May	<6.0	Rare			2B3	All	4C
Victine, depressional (TX1261) udic pellusterts [1].	Hyper-thermic.	SP	+.5–0.5	Oct–Apr	<6.0	None			2A,3	All	6S
Villmeagher (MT1464) typic endoaquepts	Frigid	P	1.0–2.0	Apr–Jul	<6.0	Occasional	Brief	May–Jun	2B3	All	6W
Villsprings (MT1465) typic endoaquepts	Frigid	P	1.0–2.0	Apr–Jul	<6.0	Occasional	Brief	May–Jun	2B3	All	6W
Wakeley (MI0646) aeric epiaquents	Frigid	P,VP	+1–1.0	Oct–May	>=6.0	None			2B2,3	All	5W
Waldron, loamy substratum (MO0213) aeric fluvaquents [2].	Mesic	SP	1.0–3.0	Nov–May	<6.0	Frequent	Long	Dec–May	4	Freq, long	5W
Wanser, moderately wet (WA2046) typic psammaquents [1].	Mesic	P	0.5–1.0	May–Nov	>=6.0	Rare-occasional.	Brief	Jan–May	2B2	All	6W
Wareham (MA0052) humaqueptic psammaquents [3].	Mesic	SP,P	0.5–1.5	Sep–Jun	<=6.0	None			2B2	All	3W
Warman (MN0639) typic haplaquolls	Frigid	P	1.0–2.0	Apr–Jun	<6.0	None			2B3	All	3W
Waucedah, clayey substratum (MI0485) histic humaquepts.	Frigid	P,VP	+2–1.0	Jan–Dec	>6.0	Frequent	Brief-V long.	Mar–May	2B3,3,4	All	5W
Wealthwood (MN0680) arenic ochraqualfs	Frigid	P	0.5–2.0	Apr–Jun	<=6.0	None			2B2	All	4W
Wekoda, flooded (CA2456) aquic chromoxererts [1 2].	Thermic	P	1.5–3.0	Dec–Apr	<6.0	Frequent	Long	Dec–Apr	4	Freq	4W
Welch, ponded (NV2572) cumulic haplaquolls [1].	Frigid	VP	+1–1.5	Nov–Jun	<6.0	None			2B3,3	All	5W

SOILS ON THE JANUARY 94 HYDRIC LIST, BUT NOT ON THE OCTOBER 91 HYDRIC LIST—Continued

[The "Hydric criteria number" column indicates what caused the soil to be included in the Hydric list. See the "Criteria for Hydric soils" to determine the meaning of this column. (Revised January 31, 1993)]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Wicklup (OR0200) aquic cryorthents	Cryic	P	0–2.5	Mar–Oct	>=6.0	None			2B2	All	6W
Wizard (OR1331) aquic vitrixerands	Frigid	SP	0–2.0	Apr–Jun	<6.0	None			2A	All	6E
Watab (MN0284) arenic ochraqualfs	Frigid	P	0.5–2.0	Mar–Jun	>=6.0	None			2B2	All	3W
Wheatbelt (MT1353) udorthentic pellusterts	Frigid	P	+.5–1.0	Apr–Sep	<6.0	None			2B3,3	0–1%	6W
Yearian (ID1531) typic haplaquolls	Frigid	P	0.5–1.5	Apr–Jun	<6.0	Occasional	Brief	Apr–Jun	2B3	0–4%	5W
Yearian, sloping (ID1800) typic haplaquolls	Frigid	P	1.0–1.5	Jan–Jun	<6.0	None			2B3	All	5W
Yellowjacket (FL0134) terric medisaprists	Thermic	VP	0–0.5	Jan–Dec	>=6.0	Frequent	Long	Jan–Mar	1,4	All	7W
Yellowjacket, limestone substratum (FL0136) terric medisaprists.	Thermic	VP	+2–0	Feb–Oct	>=6.0	None			1,3	All	7W
Yogaville (VA0379) fluvaquentic haplaquolls	Thermic	P	0–1.0	Dec–May	<6.0	Common	V Brief-brief.	Dec–May	2B3	Occas, drained.	2W
										Occas, undrained.	4W
										Freq, drained.	3W
										Freq, undrained	6W
Zeegee (ID1697) typic haplaquolls	Frigid	P	0.5–1.5	Mar–Jul	<6.0	Occasional	Brief	Apr–Jun	2B3	All	5W
Zeph (ID1780) aeric fluvaquents	Frigid	P	0.5–1.5	Mar–Jun	<6.0	Occasional	Brief	Jan–Jun	2B3	All	4W
Zipp, loamy substratum, flooded (IN0550) typic haplaquepts.	Mesic	VP	+.5–1.0	Dec–May	<6.0	Frequent	Brief	Dec–May	2B3,3	All	3W

[1] Some soil interpretation records representing phases of this series are not hydric.
[2] Some phases of this soil are not frequently flooded of long duration.
[3] Some drainage classes for this soil are not hydric.

SOILS ON THE OCTOBER 91 HYDRIC LIST, BUT NOT ON THE JANUARY 93 HYDRIC LIST

[The "Hydric criteria number" column indicates what caused the soil to be included in the hydric list. See the "Criteria for hydric soils" to determine the meaning of this column. (Revised January 31, 1993)]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria No.	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Afton, drained (IA0130) cumulic endoaquolls	Mesic	P	3.0–4.0	Nov–Jul	<6.0	Common	V brief	Feb–Nov		All	2W
Altoona (WI0263) [4]											
Aufco (TX0609) aquic ustochrepts	Thermic	SP	2.0–3.5	Dec–Apr	<6.0	Frequent	Brief	Nov–May		All	5W
Blend, drained (IA0104) fluvaquentic endoaquolls [1]	Mesic	P	3.0–4.0	Nov–Jul	<6.0	Rare				Sic	3W
Bivans (FL0378) typic albaqualfs [2]	Hyperthermic.	SP	1.0–1.5	Jun–Sep	<6.0	None				Sicl	3W
										0–5%	3W
										5–8%	4W
Boulogne (FL0498) typic haplaquods	Thermic	P	0.5–1.5	Mar–Sep	<6.0	None				8–12%	6W
										All	3W
Calcousta, drained (IA0312) typic endoaquolls	Mesic	VP	2.0–3.0	Nov–Jul	<6.0	None				Drained	3W
Chaires (FL0251) alfic haplaquods	Thermic	P	0.5–1.5	Mar–Sep	>=6.0	None				All	4W
Dusler (MN0160) aeric glossaqualfs	Frigid	SP	1.5–3.0	Oct–Jun	<6.0	None				All	2W
Flemington (FL0017) typic albaqualfs	Hyperthermic.	SP	1.0–1.5	Jun–Sep	<6.0	None				0–5%	3W
										5–8%	4W
										8–12%	6W
Fordum, gravelly substratum (WI0470) [4]											
Fredon (NJ0038) aeric haplaquepts	Mesic	SP	0.5–1.5	Oct–Jun	<6.0	None-occasional.	Brief	Jan–Apr		0–3%	3W
										3–8%	3W
Gansner, ponded [4] (CA1438)											
Holillipah (CA1304) typic xerofluvents	Thermic	SE	>6.0		<5.0	Rare				Rare, SL	3S
										Rare, LS	4S
Lynne (FL0009) ultic haplaquods	Hyperthermic.	P	0.5–1.5	Jul–Sep	>=5.0	None				All	3W
Newson, mucky surface (WI0002) [4]											
Oakhurst (TX0896) vertic albaqualfs	Thermic	MW	>6.0		<6.0	None				1–3%	3E
										3–5%	4E
										5–8%	6E
Olustee (FL0048) ultic haplaquods	Thermic	P	0.5–1.5	Mar–Sep	<6.0	None					

Boulogne (FL0498) typic haplaquods	Thermic	P	0.5–1.5	Mar–Sep	<6.0	None				5–8%	4W
										8–12%	6W
										All	3W
Calcousta, drained (IA0312) typic endoaquolls	Mesic	VP	2.0–3.0	Nov–Jul	<6.0	None				Drained	3W
Chaires (FL0251) alfic haplaquods	Thermic	P	0.5–1.5	Mar–Sep	>=6.0	None				All	4W
Dusler (MN0160) aeric glossaqualfs	Frigid	SP	1.5–3.0	Oct–Jun	<6.0	None				All	2W
Flemington (FL0017) typic albaqualfs	Hyper-thermic	SP	1.0–1.5	Jun–Sep	<6.0	None				0–5%	3W
										5–8%	4W
										8–12%	6W
Fordum, gravelly substratum (WI0470) [4]											
Fredon (NJ0038) aeric haplaquepts	Mesic	SP	0.5–1.5	Oct–Jun	<6.0	None-occasional.	Brief	Jan–Apr		0–3%	3W
										3–8%	3W
Gansner, ponded [4] (CA1438)											
Holillipah (CA1304) typic xerofluvents	Thermic	SE	>6.0		<6.0	Rare				Rare, SL	3S
										Rare, LS	4S
Lynne (FL0009) ultic haplaquods	Hyper-thermic	P	0.5–1.5	Jul–Sep	>=6.0	None				All	3W
Newson, mucky surface (WI0002) [4]											
Oakhurst (TX0896) vertic albaqualfs	Thermic	MW	>6.0		<6.0	None				1–3%	3E
										3–5%	4E
										5–8%	6E
Olustee (FL0048) ultic haplaquods	Thermic	P	0.5–1.5	Mar–Sep	<6.0	None				All	3W
Pledger (TX0304) typic pelluderts	Thermic	MW	>6.0		<6.0	Rare-common.	Brief	Jan–Dec		Rare	2W
										Freq	5W
										Occas	2W
Prebish, stony [4] (MN0563)											
Ravendale (CA1027) entic chromoxererts	Mesic	MW	>6.0		<6.0	Rare-occasional.	Brief-long	Jan–Apr		0–2%	6S
Rutlege (MD0003)											
Rutlege, ponded (MD0102)											
Sapelo (GA0049) ultic haplaquods	Thermic	SP	0.5–1.5	Nov–Apr	<6.0	None					
Saugatuck (MI0045) aeric haplaquods	Mesic	SP	0.5–2.0	Nov–May	<6.0	None				All	3W
Talquin (FL0248) entic haplaquods	Thermic	P	0.5–1.5	Mar–Sep	>=6.0	None				All	4W
Tobosa, depressional (TX1158) typic haplusterts	Thermic	W	+.5–0.5	Jul–Oct	<6.0	None				All	4W
Tooles (FL0468) arenic albaqualfs	Thermic	P	0.5–1.0	Feb–Sep	>=6.0	None				All	6W
Verhalen, depressional (TX1029) typic haplotorrerts	Thermic	MW	+.5–2.0	Jul–Oct	<6.0	None				All	3W
Victine, (TX0283) udic pellusterts	Hyper-thermic	SP	0.5–0.5	Oct–Apr	<6.0	None				All	6W
Zilaboy (TX0753) oxyaquic hapluderts	Thermic	MW	0–3.0	Oct–May	<6.0	Frequent	Brief	Sep–May		All	4S
										Freq	5W

[1] Some soil interpretation records representing phases of this series are not hydric.
[2] Some phases of this soil are not frequently flooded of long duration.
[3] Some drainage classes for this soil are not hydric.
[4] This soil record has been removed from the database since it last appeared in the hydric list.

[FR Doc. 94–16835 Filed 7–12–94; 8:45 am]
BILLING CODE 3410–18–M

DEPARTMENT OF COMMERCE

International Trade Administration

Re-Establishment

Having determined that the committee's work continues to be in the public interest in connection with the performance of duties imposed on the Department by law, the Secretary of Commerce re-established the U.S. Automotive Parts Advisory Committee (APAC). The re-establishment of the committee is in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 41 CFR Parts 101–6.10 (1990), Federal Advisory Committee Management Rule.

The APAC was established by the Secretary of Commerce on June 6, 1989, to advise Department of Commerce officials on issues related to sales of U.S.-made auto parts to Japanese markets. Authority for the committee is contained in 15 U.S.C. 4704, as amended by section 510 of Public Law 103–236 (April 29, 1994).

The committee functions as an advisory body in accordance with the Federal Advisory Committee Act. Additional information may be obtained from Stuart Keitz, U.S. Department of Commerce, International Trade Administration, (202) 482–0719.

Dated: July 7, 1994.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 94–16974 Filed 7–12–94; 8:45 am]
BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Patents Available for Licensing

AGENCY: U.S. Army Aviation and Troop Command, DOD.

ACTION: Notice of Availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patents. Any licenses granted shall comply with 35 USC 209 and 37 CFR Part 404.

Issued patent	Title	Issue date
5,263,846	Self-Actuated Rotor System	11/23/93
5,255,875	Protective Hardside Covers for Surfaces	10/26/93

ADDRESSES: Intellectual Property Law Branch, U.S. Army Aviation and Troop Command, 4300 Goodfellow Blvd., St. Louis, Missouri 63120–1798.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Hamming, patent Attorney, (314) 263–9150 or DSN 693–9150.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–16973 Filed 7–12–94; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award to Babcock and Wilcox (Grant)

AGENCY: Morgantown Energy Technology Center (METC), U. S. Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for Grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i), (D) the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a nine month Grant to Babcock and Wilcox, Barberton, Ohio in the amount of $200,000. DOE will fund $100,000 with Babcock and Wilcox sharing the remaining $100,000.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, IO7, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone (304) 291–4386, Procurement Request No. 21–94MC31172.000.

SUPPLEMENTARY INFORMATION: The participant will operate an experimental Diesel Coal Combined Cycle (DCCC) facility which will demonstrate an alternative process to burn fossil fuels in an economical and environmentally responsible way. The proposed coal technology will improve efficiency and reduce emissions from coal-fired power plants.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 94–16984 Filed 7–12–94; 8:45 am]
BILLING CODE 6450–01–P

Financial Assistance Award: Materials Technologies of Virginia, Inc. (MATVA)

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Materials Technologies of Virginia, Inc. (MATVA) under Grant Number DE–FG01–94CE15599. The proposed grant will provide funding in the estimated amount of $155,728 (DOE contributing $99,862 and MATVA contributing $55,866) for MATVA to use a new whisker growing technique to make and test a high temperature heat exchanger prototype. The subject invention, "An In-Situ Whisker Reinforced Glass Ceramic" is a patented process for creating glass ceramic materials with acicular (needle-shaped) titanium oxide reinforcing whiskers grown in-site in one step. This new process is an enabling technology that could permit rapid and inexpensive production of titanium oxide whisker reinforced materials at much lower energy, labor, and health related costs.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by the Materials Technologies of Virginia, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique device for conserving energy by greatly reducing energy costs during fabrication, and by making superior materials available for use in more efficient devices such as the heat exchangers for construction under this project which will be submitted as prototypes for third party testing. The use of this device has a strong possibility for future reductions in the Nation's energy consumption. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the program, the Energy-Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Linda S. Sapp, HR–531.23, 1000 Independence Avenue, SW., Washington, DC 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

Issued in Washington, DC on June 23, 1994.

Scott Sheffield,

Director, Headquarters Operation Division B, Office of Placement and Administration.

[FR Doc. 94–16985 Filed 7–12–94; 8:45 am]
BILLING CODE 6450–01–P

Financial Assistance Award: MCR Enterprises

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to MCR Enterprises under Grant Number DE–FG01–94CE15609. The proposed grant will provide funding in the estimated amount of $99,500 for MCR Enterprise to further develop alternate pipe cutting methods by the Radial Cutting Torch (RCT), a patented pyrotechnic cutter, for use in downhole tubular cutting operations in the petroleum industry. This tool can cut stainless steel, exotic alloy pipes, different pipe sizes and has the potential to operate in high-pressure and high-temperature environments, even in the presence of drilling mud.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by the MCR Enterprises is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique device for reducing the overall cost of pipe cutting. The use of this device has the potential to provide a cleaner cut which does not require subsequent deburring or machining steps; does not damage the exterior pipe; is reliable and provides a high level of safety. The proposed project is not eligible for financial assistance under a recent, current or

solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Linda S. Sapp, HR–531.23, 1000 Independence Avenue, SW., Washington, DC 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

Issued in Washington, DC on June 23, 1994.

Scott Sheffield,

Director, Headquarters Operation Division B, Office of Placement and Administration.

[FR Doc. 94–16985 Filed 7–12–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: MCR Enterprises

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to MCR Enterprises under Grant Number DE–FG01–94CE15609. The proposed grant will provide funding in the estimated amount of $99,500 for MCR Enterprise to further develop alternate pipe cutting methods by the Radial Cutting Torch (RCT), a patented pyrotechnic cutter, for use in downhole tubular cutting operations in the petroleum industry. This tool can cut stainless steel, exotic alloy pipes, different pipe sizes and has the potential to operate in high-pressure and high-temperature environments, even in the presence of drilling mud.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by the MCR Enterprises is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique device for reducing the overall cost of pipe cutting. The use of this device has the potential to provide a cleaner cut which does not require subsequent deburring or machining steps; does not damage the exterior pipe; is reliable and provides a high level of safety. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the program, the Energy-Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Linda S. Sapp, HR–531.23, 1000 Independence Avenue, SW., Washington, DC 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

Issued in Washington, DC on June 30, 1994.

Richard G. Lewis,

Contracting Officer, Headquarters Operation Division B, Office of Placement and Administration.

[FR Doc. 94–16986 Filed 7–12–94; 8:45 am]

BILLING CODE 6450–01–M

Pittsburgh Energy Technology Center; Noncompetitive Financial Assistance Award

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of Noncompetitive Financial Assistance Grant Award to the University of Arizona.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i) under criteria (a), that it intends to award a noncompetitive financial assistance (Grant) to the University of Arizona. This award is for continuation of their research effort entitled "Regeneration of FGD Waste Liquors: Production of Ammonium and Postassium Sulfate Mixed Fertilizer".

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: Cynthia Y. Mitchell, Contract Specialist (412) 892–4862.

SUPPLEMENTARY INFORMATION:

Grant Number: DE–FG22–93PC92582

Title of Research Effort

"Regeneration of FGD Waste Liquors: Production of Ammonium and Potassium Sulfate Mixed Fertilizer."

Awardee: University of Arizona.

Term of Assistance Effort: Twelve (12) months.

Grant Estimated Total Value: $73,899.

Objective: Based upon the authority of 10 CFR 600.7(b)(2), the objective of this grant is for Arizona University to continue research in the regeneration process for treating the waste scrubbing liquor produced by a thiosorbic lime SO pilot tests and to produce an ammonia and potassium sulfate mixed fertilizer product. This process involves the precipitation of the N–S compounds followed by their hydrolysis. The magnesium wet scrubbing process is presently being developed for the simultaneous removal of SO–2 and NO_x from the flue gas produced by a coal-fired power plant. In the course of scrubbing, nitrogen-sulfur (N–S) compounds accumulate and degrade the scrubbing liquor. The primary objective of this project is to develop a regeneration process through which the N–S compounds in the scrubbing liquors are removed and then converted to a marketable byproduct. The proposed work is considered to be relevant to the DOE mission in that the program will provide a mechanism for communication, interaction and research between DOE and Arizona University in the continuous process for the regeneration of waste scrubber liquors from the combined SO_x–NO_x scrubbing systems. The development of this technology would assist utilities in complying with the 1990 Clean Air Act, while still encouraging and enhancing the use of coal, which is a major goal of the DOE Flue Gas Cleanup program.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 94–16987 Filed 7–12–94; 8:45 am]

BILLING CODE 6450–01–M

Inertial Confinement Fusion Advisory Committee Defense/Programs; Partially Closed Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Inertial Confinement Fusion Advisory Committee/Defense Programs.

Date and Time: Agenda Is Subject To Revision

Tuesday, August 2, 1994, 3:00 p.m.–6:15 p.m.—Open

Tuesday, August 2, 1994, 7:45 p.m.–9:30 p.m.—Closed

Wednesday, August 3, 1994, 8:30 a.m.–5:30 p.m.—Closed

Thursday, August 4, 1994, 8:30 a.m.–5:00 p.m.—Closed

Thursday, August 4, 1994, 5:00 p.m.–5:30 p.m.—Open

Place: Los Alamos National Laboratory, Los Alamos, New Mexico Technical Area 3; Building 207; Room 216.

Contact: Marshall M. Sluyter, Designated Federal Officer, Office of Research and Inertial Fusion (DP–11), Office of Defense Programs, Washington, DC 20585, Telephone: (301) 903–3345.

Persons wishing to attend the meeting should submit their names to Jean Stark at the Los Alamos National Laboratory, (505) 667–6574, on or before July 25, 1994, to obtain visitor passes to the meeting room.

Purpose of the Committee: To provide advice and guidance to the Assistant Secretary for Defense Programs on both technical and management aspects of the Inertial Confinement Fusion program.

Purpose of the Meeting: To assess the technical applicability and readiness of the Inertial Confinement Fusion program to support the Defense Programs Stockpile Stewardship Program Strategy and the National Security Strategic Plan. Also, to identify and evaluate the significance and the relative importance of each of the ICF program elements to the overall Inertial Confinement Fusion program, to the National Security Strategic Plan, and to the Stockpile Stewardship Program.

Tentative Agenda: Subject to Revision

August 2, 1994

3:00 p.m.—LANL Welcoming Remarks
3:30 p.m.—Introduction and Summary of Recent Events
4:00 p.m.—Stockpile Stewardship Program Strategy and National Security Strategic Plan
5:00 p.m.—ICF Program Mission, Priorities, and Objectives
5:45 p.m.—Public Comment Opportunity
7:45 p.m.—Closed Meeting

August 3, 1994

8:30 a.m.—Closed Meeting

August 4, 1994

8:30 a.m.—Closed Meeting
5:00 p.m.—Committee Discussions, Wrap-up, and Adjournment

Open to the Public: On August 2, 1994, from 3:00 p.m. to 6:15 p.m., and on August 4, 1994, from 5:00 p.m. until adjournment, the meeting is open to the public. The Chairman of the Committee is empowered to guide the meeting in a manner that will, in the Chairman's judgement, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number shown above. Requests must be received before 3:00 p.m. (eastern standard time) Thursday, July 28, 1994. Reasonable provisions will be made to include the presentation during the public comment period. Oral presenters are asked to provide 25 copies of their statements at the time of their presentations.

Written statements pertaining to agenda items may also be submitted prior to the meeting. Written statements must be received by the Designated Federal Officer at the address shown above before 3:00 p.m. (eastern standard time) Thursday, July 28, 1994, to assure they are considered by the committee during the meeting.

Closed Meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (title 5, United States Code, App. 2), section 7234(b), title 42, United States Code, and section 552b(c)(1), title 5, United States Code, the portions of the meeting from 7:45 p.m. until 9:30 p.m. on August 2, 1994; from 8:30 a.m. until 5:30 p.m. on August 3, 1994; and from 8:30 a.m. until 5:00 p.m. on August 4, 1994, will be closed to the public in the interest of national security.

Minutes: Minutes of the open portions of the meeting will be available for public view and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, Room 1E–190, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 8, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–16988 Filed 7–12–94; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee for National Electric and Magnetic Fields Research and Public Information Dissemination Program

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of a meeting of the National Electric and Magnetic Fields Advisory Committee.

DATES: Monday, August 2, 1994: 1:30 p.m.–4:30 p.m.; Tuesday, August 3, 1994: 9:00 a.m.–4:30 p.m.

ADDRESSES: National Institute for Environmental Health Sciences, Building 101, South Campus, 111 Alexander Avenue, Research Triangle Park NC, 27709.

FOR FURTHER INFORMATION CONTACT: Robert Brewer, Director, Utility Systems Division, EE–141, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2828.

SUPPLEMENTARY INFORMATION: The National Electric and Magnetic Fields Advisory Committee advises the Department of Energy and the National Institute of Environmental Health Sciences on the design and implementation of a five-year, national electric and magnetic fields research and public information dissemination program. The Secretary of Energy, pursuant to Section 2118 of the Energy Policy Act of 1992, P.L. 102–486, has overall responsibility for establishing the national program which includes health effects research, development of technologies to assess and manage exposures, and dissemination of information.

Tentative Agenda

Tuesday, August 2, 1994

10:30 a.m.
Welcome and introductions
Review of minutes for 3/2/94 meeting
10:45 a.m
Presentation and discussion of the Interagency Committee Research Agenda for the RAPID program
Presentation and discussion of the Interagency Committee Coordination Guidelines for the RAPID program
12:00 noon Lunch
1:30 p.m.
Presentation and discussion of Implementation Plans for the RAPID program
3:00 p.m. Break
3:30 p.m. Further discussions
5:00 p.m. Adjourn

Wednesday, August 3, 1994

8:30 a.m.
Report and discussion on NIEHS grants for the RAPID program
10:30 a.m. Break
10:45 a.m.
Report on establishment of Replication Facilities
Further discussions
12:30 noon Open time for public comments
1:30 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Robert Brewer at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcript and Minutes: A transcript and minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, DC, on July 8, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–16989 Filed 7–12–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 94–42–NG]

Pennzoil Gas Marketing Company, Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pennzoil Gas Marketing Company blanket authorization to import and export up to a combined total of 80 billion cubic feet (Bcf) of natural gas from and to Canada, and to import and export up to a combined total of 80 Bcf of natural gas from and to Mexico, over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 27, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–16990 Filed 7–12–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 5946–007 Massachusetts]

University of Massachusetts, Lowell; Notice of Availability of Environmental Assessment

July 7, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 F.R. 47897), the Commission's Office

SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, DC, on July 8, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–16989 Filed 7–12–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 94–42–NG]

Pennzoil Gas Marketing Company, Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pennzoil Gas Marketing Company blanket authorization to import and export up to a combined total of 80 billion cubic feet (Bcf) of natural gas from and to Canada, and to import and export up to a combined total of 80 Bcf of natural gas from and to Mexico, over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 27, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–16990 Filed 7–12–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 5946–007 Massachusetts]

University of Massachusetts, Lowell; Notice of Availability of Environmental Assessment

July 7, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed an application for surrender of license for the Lowell Atlantic Hydroelectric Project, No. 5946–007. The Lowell Atlantic Hydroelectric Project is located on the Lowell Canal System, off the Merrimack River in Middlesex County, Massachusetts. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application for surrender of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16920 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–625–000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

July 6, 1994.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

Docket No. CP94–625–000

Take notice that on June 23, 1994, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP94–625–000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point to provide firm transportation and delivery of natural gas to Southwest Gas Corporation (Southwest) under El Paso's blanket certificate issued in Docket Nos. CP82–435–000 and CP88–433–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

El Paso proposes to construct and operate a delivery point on the 20" O.D. Maricopa County Line of its North System Mainline to provide firm transportation of natural gas to Southwest. El Paso states that Southwest would then deliver the gas to the residential and commercial customers located in the Garden Lakes area of Maricopa County, Arizona. El Paso estimates the cost of the proposed delivery point would be $93,400 and states that Southwest has agreed to reimburse El Paso for the expenses.

El Paso reports that it has sufficient capacity to accomplish the proposed deliveries without detriment to its other existing customers.

Comment date: August 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Newfield Exploration Company

Docket No. CP94–636–000

Take notice that on June 30, 1994, Newfield Exploration Company (Newfield), 363 N. Sam Houston Pkwy E., Suite 2020, Houston, Texas 77060, filed a petition for declaratory order in Docket No. CP94–636–000 requesting that the Commission declare that, following Newfield's purchase of certain offshore facilities from Texas Eastern Transmission Corporation (Texas Eastern), that those facilities are gathering facilities exempt from the Commission's Regulations pursuant to Section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Newfield states that the facilities consist of one currently-certificated supply line owned by Texas Eastern along with an associated metering facility. It is indicated that the supply line consists of a 4.8 mile, 8-inch lateral that connects Newfield's oil and gas production platform in the Eugene Island Block 182–A area to the facilities of Sea Robin Pipeline Company (Sea Robin) in Eugene Island Block 197 in offshore Louisiana. It is indicated that on June 16, 1993, Texas Eastern ceased purchasing the Newfield production gathered by the facilities to be purchased, but did continue transporting Newfield's production through the facilities for redelivery to the transmission facilities of Sea Robin.

Newfield asserts that the primary function of the facilities to be acquired is gathering as set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,023 (1983), as later modified by *Amerada Hess Corp., et al*, 52 FERC ¶ 61,268 (1990), (*Amerada Hess*). It is indicated that under that test the Commission applies six criteria to determine the jurisdictional status of a facility: (1) the diameter and length of a facility; (2) the extension of facilities beyond a central point in the field; (3) the geographic configuration of the system; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facility; and (6) the operating pressure of the line. In *Amerada Hess*, the Commission indicated that it would consider other factors, in addition to the *Farmland* criteria, especially for offshore facilities, including the changing technical and geographic nature of exploration and

production, the purpose, location and operation of the facility, the general business activity of the facility, and whether the jurisdictional determination is consistent with the objectives of the Natural Gas Act and the Natural Gas Policy Act of 1978.

Newfield asserts that there can be doubt that the primary function of the facilities is gathering. It is stated that the facilities connect directly to producing wells and were constructed to gather gas produced from those wells for delivery into transmission facilities currently owned by Sea Robin. Newfield also states that the facilities are short in length and small in diameter, do not extend beyond the production area, and are located upstream of processing or dehydration facilities and therefore are gathering facilities. Newfield also points out that an application of the non-physical factors set out in *Amerada Hess* demonstrates that the facilities should be classified as gathering facilities. It is stated that the sole purpose of the facilities is to gather gas produced by Newfield as the sole working interest owner in the wells for delivery to transmission facilities owned by Sea Robin. Newfield also states that its general business activity is the exploration and production of natural gas.

Newfield requests that the petition be considered contemporaneously with Texas Eastern's application in Docket No. CP94–567–000 to abandon the facilities to be sold to Newfield.

Comment date: July 27, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gulf Transmission Company

Docket No. CP94–640–000

Take notice that on July 1, 1994, Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–640–000, an abbreviated application pursuant to Sections 7(b) and (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain replacement natural gas facilities and an order granting permission and approval to abandon the facilities being replaced, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Columbia Gulf proposes to construct and operate approximately 1.2 miles of 30-inch pipeline crossing the Mississippi River replacing approximately 1.2 miles of duel 24-inch crossing which ruptured in 1993 in East Carroll Parish, Louisiana. Columbia Gulf states that this river crossing is part of Columbia Gulf's Mainline 200 30-inch pipeline. Columbia Gulf further states that the Mainline 200 operates as part of a looped system in conjunction with Columbia Gulf's Mainline 100 30-inch and Mainline 300 36-inch extending from southern Louisiana to northeastern Kentucky. Columbia Gulf states that the proposed crossing, when operated as part of Columbia Gulf's looped pipeline system, will have equivalent designed delivery capacity to that of the facilities being replaced.

Columbia Gulf states that the estimated cost of the proposed construction is $5,747,000. Columbia Gulf states that it will finance the construction with funds generated from internal sources.

Columbia Gulf requests that this application be processed pursuant to section 385.802 of the Commission's Rules of Practice and Procedure and hereby waives oral hearing and the opportunity for filing exceptions to the decision of the Commission and requests the Commission to omit the intermediate decision procedure.

Comment date: July 27, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

Docket No. CP94–641–000

Take notice that on July 1, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP94–641–000 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act for authorization to construct and operate certain replacement natural gas facilities and for authorization to abandon the facilities being replaced, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to construct and operate approximately 4.9 miles of 12-inch transmission pipeline replacing approximately 4.9 miles of deteriorating and obsolete 12-inch pipeline (Line A–5) in seven sections in Broome and Tioga Counties, New York.

Columbia states that it is not requesting authorization for any new or additional service. Columbia also states that the sections of pipeline to be constructed will have equivalent designed delivery capacity and that the facilities being replaced have become obsolete and/or physically deteriorated to the extent that the replacement is deemed advisable. The estimated cost of the proposed construction is $5,061,000 and the estimated net debit to retirement associated with the abandonment is $655,000.

Comment date: July 26, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16921 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. MT88–15–006]

CNG Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1994.

Take notice that on June 30, 1994, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet No. 312
First Revised Sheet No. 313
First Revised Sheet No. 314

The proposed effective date of these revised tariff sheets is July 1, 1994.

CNG states that the purpose of this filing is to revise the standards of conduct stated in the General Terms and Conditions of CNG's FERC Gas Tariff, Section 11C. According to CNG, new Section 11C.6. incorporates the Commission's stated provisions to ensure nondiscriminatory access with regard to CNG's gathering affiliate(s).

CNG states that copies of this filing are being served upon parties to the captioned proceedings, and upon CNG's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16923 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–M

time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16921 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. MT88–15–006]

CNG Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1994.

Take notice that on June 30, 1994, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet No. 312
First Revised Sheet No. 313
First Revised Sheet No. 314

The proposed effective date of these revised tariff sheets is July 1, 1994.

CNG states that the purpose of this filing is to revise the standards of conduct stated in the General Terms and Conditions of CNG's FERC Gas Tariff, Section 11C. According to CNG, new Section 11C.6. incorporates the Commission's stated provisions to ensure nondiscriminatory access with regard to CNG's gathering affiliate(s).

CNG states that copies of this filing are being served upon parties to the captioned proceedings, and upon CNG's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16923 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–96–005]

CNG Transmission Corp.; Notice of Compliance Filing and Motion

July 7, 1994.

Take notice that on June 30, 1994, CNG Transmission Corporation (CNG) pursuant to Section 4 of the Natural Gas Act and Section 154.63 of the Commission's Regulations, filed proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1 to become effective on July 1, 1994, subject to refund. Also take notice that CNG submitted a motion to make the revised tariff sheets effective on July 1, 1994, at the close of the suspension period in this case.

CNG states that the filing addresses the various adjustments required by the January 31, 1994, and April 6, 1994, orders in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before July 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16924 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–213–001]

CNG Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1994.

Take notice that on June 30, 1994, CNG Transmission Corporation (CNG), filed for inclusion in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 31
First Revised Sheet Nos. 200–207, Sheet No. 208
First Revised Sheet Nos. 255, 272, 274, 284, and 344
Second Revised Sheet Nos. 345, 346, 347, 349, and 350
First Revised Sheet No. 443

The proposed effective date of these tariff sheets is July 1, 1994.

CNG states that these revised tariff sheets contain modifications to CNG's Rate Schedule MCS, Market Center Services, conforming references in the General Terms and Conditions of CNG's tariff, and one revision to the form of agreement applicable to CNG's market center services.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR Section 385.211. All such protests should be filed on or before July 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 94–16925 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–638–000]

CNG Transmission Corporation; Request Under Blanket Authorization

July 7, 1994.

Take notice that on July 1, 1994, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP94–638–000 a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216(b)) for authorization to abandon two metering and regulation stations (known as the Mars and Gibsonia M&R Stations) located in Butler County, Pennsylvania, under the blanket certificate issued in Docket No. CP82–537–000, pursuant to Section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG is seeking abandonment authority in order to be able to sell the stations to The Peoples Natural Gas Company, an affiliate of CNG. CNG states that it no longer needs the measurement and regulation equipment at Mars and Gibsonia because the Stull M & R Station now performs those duties. It is indicated that Peoples is the only customer served through the Mars and Gibsonia taps and would like to purchase the metering and auxiliary equipment. CNG proposes to sell the facilities at the net book values, which

are $56,571.55 for the Gibsonia and $17,211.13 for the Mars Station.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16922 Filed 7–12–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR94–18–000]

Cranberry Pipeline Corp.; Notice of Petition for Rate Approval

July 7, 1994.

Take notice that on June 17, 1994, Cranberry Pipeline Corporation (Cranberry) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. Cranberry requests that the Commission approve as fair and equitable a systemwide rate of $0.773 per Mcf for transportation services to be performed on its integrated (Meadville) Pennsylvania system under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Cranberry states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates discrete pipeline facilities in the States of West Virginia and Pennsylvania. Cranberry proposes an effective date of June 17, 1994.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before July 22, 1994. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16926 Filed 7–12–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94–93–003]

K N Interstate Gas Transmission Co.; Notice of Motion To Place Rates Into Effect

July 7, 1994.

Take notice that on June 29, 1994, K N Interstate Gas Transmission Co. (KNI) filed a Motion to Place Rates and Tariff Sheets into Effect on July 1, 1994. By its motion, KNI places into effect, on July 1, 1994, rates and revised tariff sheets to Second Revised Volume No. 1–A of its FERC Gas Tariff. KNI states that copies of the revised tariff sheets being moved into effect were appended to KNI's Motion.

KNI states that all persons designated on the service list in this proceeding have been served with this filing as well as affected public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16927 Filed 7–12–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR94–17–000]

Mississippi Valley Gas Co.; Notice of Petition for Rate Approval

July 7, 1994.

Take notice that on June 13, 1994, Mississippi Valley Gas Company (Mississippi Valley) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.2907 per MMBtu for transportation of natural gas on Mississippi Valley's system under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). Mississippi Valley's entire company service area is within the State of Mississippi.

Mississippi Valley states that it does not choose to make an election under Section 284.123(b)(1) and instead applies for Commission approval of the $0.2907 general system rate proposed herein. Mississippi Valley's current maximum interruptible transportation rate is also $0.2907 per MMBtu and was approved by letter order dated December 26, 1991 in Docket No. PR91–21–000 for a three-year period ending June 16, 1994. For competitive reasons, Mississippi Valley seeks to justify continuation of the current rate even though a higher $.506 rate is supported by this filing.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before July 22, 1994. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16928 Filed 7–12–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94–631–000]

National Fuel Gas Supply Corporation and Laurel Fields Storage Company; Notice of Application

July 7, 1994.

Take notice that on June 28, 1994, National Fuel Gas Supply Corporation (National) 10 Lafayette Square, Buffalo, New York 14203, and Laurel Fields Storage Company (Laurel Fields), a partnership to be formed by National or its affiliate and other equity participants following the receipt of Securities and Exchange Commission approval, filed in Docket No. CP94–631–000, a joint application, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Subpart A of Part 157 and Subpart G of Part 284 of the Commission's Regulations, for a certificate of public convenience and necessity, blanket certificates, and abandonment authorization.

Specifically, Laurel Fields seeks a certificate of public convenience and necessity authorizing: (1) Conversion of the Callen Run production field, located in Jefferson County, Pennsylvania, to an interstate natural gas storage field; (2) the acquisition of the Limestone Storage Field (formally the Allegheny State Park storage field) located in Cattaraugas County, New York, from National; (3) the construction and operation of the necessary facilities to develop the Callen Run Storage Field and to expand the capacity of the Limestone Storage Field; (4) participation in a no-fee exchange with National solely for the purpose of maintaining gas service to four retail customers who now receive gas off production lines in the Callen Run field that will be replaced by new storage pipelines; and (5) the abandonment of existing pipelines and a compressor facility that will be replaced with new facilities at the Limestone Storage Field.

Laurel Fields also seeks blanket certificates under Subpart F, Part 157 and Subpart G, Part 284 of the Commission's Regulations.

Laurel Fields has proposed to develop the Callen Run field into an underground natural gas storage field with 12.1 Bcf of working gas capacity and states that the injection of an estimated 10.3 Bcf of base gas will be required, and that the field will yield an estimated 130 MMcf per day of peak withdrawal deliverability. The total cost of the Callen Run facilities is estimated to be $76,043,000. It also has proposed to further develop the Limestone Storage Field and expand its working gas capacity to 7 Bcf, which will require the injection of an estimated 3.5 Bcf of additional base gas, and will yield a total peak withdrawal deliverability of 77 MMcf per day. The estimated cost of facilities for the Limestone Storage Field is $48,687,000. Thus, the entire Laurel Fields Storage Project will have a working gas storage capacity of 19.1 Bcf with a peak withdrawal rate of approximately 207 MMcf per day with a total estimated cost of $124,730,000.

New York 14203, and Laurel Fields Storage Company (Laurel Fields), a partnership to be formed by National or its affiliate and other equity participants following the receipt of Securities and Exchange Commission approval, filed in Docket No. CP94–631–000, a joint application, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Subpart A of Part 157 and Subpart G of Part 284 of the Commission's Regulations, for a certificate of public convenience and necessity, blanket certificates, and abandonment authorization.

Specifically, Laurel Fields seeks a certificate of public convenience and necessity authorizing: (1) Conversion of the Callen Run production field, located in Jefferson County, Pennsylvania, to an interstate natural gas storage field; (2) the acquisition of the Limestone Storage Field (formally the Allegheny State Park storage field) located in Cattaraugas County, New York, from National; (3) the construction and operation of the necessary facilities to develop the Callen Run Storage Field and to expand the capacity of the Limestone Storage Field; (4) participation in a no-fee exchange with National solely for the purpose of maintaining gas service to four retail customers who now receive gas off production lines in the Callen Run field that will be replaced by new storage pipelines; and (5) the abandonment of existing pipelines and a compressor facility that will be replaced with new facilities at the Limestone Storage Field.

Laurel Fields also seeks blanket certificates under Subpart F, Part 157 and Subpart G, Part 284 of the Commission's Regulations.

Laurel Fields has proposed to develop the Callen Run field into an underground natural gas storage field with 12.1 Bcf of working gas capacity and states that the injection of an estimated 10.3 Bcf of base gas will be required, and that the field will yield an estimated 130 MMcf per day of peak withdrawal deliverability. The total cost of the Callen Run facilities is estimated to be $76,043,000. It also has proposed to further develop the Limestone Storage Field and expand its working gas capacity to 7 Bcf, which will require the injection of an estimated 3.5 Bcf of additional base gas, and will yield a total peak withdrawal deliverability of 77 MMcf per day. The estimated cost of facilities for the Limestone Storage Field is $48,687,000. Thus, the entire Laurel Fields Storage Project will have a working gas storage capacity of 19.1 Bcf with a peak withdrawal rate of approximately 207 MMcf per day with a total estimated cost of $124,730,000.

Laurel Fields intend to offer firm and interruptible storage services on an open access, non-discriminatory basis in compliance with the Commission's blanket certificate regulations at Section 284.221. Laurel Fields proposes two firm storage services, Rate Schedules SS–110 and SS–60, and one interruptible storage service, Rate Schedule SSI. The rates proposed to be charged are cost-based in nature. Laurel Fields has filed a *pro forma* tariff consisting of the aforementioned rate schedules, General Terms and Conditions, and forms of service agreements.

National seeks permission and approval to (1) abandon its interests in the Limestone Storage Field, by assignment to Laurel Fields; (2) abandon four delivery points and to relocate one delivery point off production pipelines located in the Callen Run Storage Field that will be abandoned during the development of the field; and (3) to participate in the no-fee exchange with Laurel Fields; as previously described.

In addition, National and Laurel Fields seek any authorizations required from the Commission to effectuate a lease of the storage capacity (including injection and withdrawal deliverability) in the Limestone Storage Field from Laurel Fields to National during the construction phase of the project, which is proposed to commence during the Spring of 1996. It is also stated that National will require the capacity in the Limestone Storage Field until April 15, 1996, in order to meet existing contractual service obligations.

The applicants will be conducting an open season beginning August 1, 1994 and ending September 1, 1994, during which it will accept nominations for firm storage service. The application includes one (1) precedent agreement for 2.5 MMDth of long-term storage service with National Fuel Gas Distribution Corporation.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 28, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National and Laurel Fields to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16929 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–183–002]

Southern Natural Gas Company; South Georgia Natural Gas Company; Filing of Revised Tariff Sheets

July 7, 1994.

Take notice that on July 5, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 2A, the tariff sheets listed on Exhibit A hereto, to be effective August 5, 1994. Also, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 2, the tariff sheets listed on Exhibit B hereto, to be effective August 5, 1994.

Southern and South Georgia state that the purpose of this filing is to revise the Rate Schedules applicable to the offsystem storage service they provide through use of storage facilities and services rendered by ANR Pipeline Company and ANR Storage Company. The changes to the Rate Schedules on the tariff sheets filed propose certain adjustments and procedures in the Rate Schedules which would allow for the customers to elect to take assignment from Southern each Customer's percentage in the ANR Pipeline Company and/or the ANR Storage Company transportation and storage agreements and/or the South Georgia Customer's percentages in the South

Georgia service agreement with Southern.

Southern and South Georgia state that the filing also includes a description of how the transportation charges to be paid by the customers for the transportation of the gas by Southern and South Georgia from storage will be billed to the Customers. The transportation charges will be the applicable commodity rates under Southern and South Georgia's Rate Schedules FT or IT. Such filing has been made in compliance with the Federal Energy Regulatory Commission's ("Commission") order issued on May 4, 1994, in the above captioned proceeding. Southern and South Georgia have requested that the revised tariff sheets be made effective as of August 5, 1994.

Southern and South Georgia also request clarification from the Commission that their certificate applications in Docket Nos. CP79–374 and CP79–382, respectively, have been effectively amended by the terms of the May 4 Order to incorporate the changes provided in the tariff sheets herein. Further, Southern and South Georgia seek pre-granted abandonment authority, upon election by any of the customers, to make the assignments required by the May 4 Order, to abandon Southern's obligation in the ANR Storage and/or ANR Pipeline Transportation agreement as of the date of the assignment and to abandon South Georgia's obligations in the Southern Storage agreement upon assignment.

Southern and South Georgia state that copies of the filing will be served upon their customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

Exhibit A—Southern Natural Gas Company

Docket No., RP94–183–002

July 5, 1994.

First Revised Sheet No. 18
First Revised Sheet No. 28
First Revised Sheet No. 29
First Revised Sheet No. 30
First Revised Sheet No. 50
First Revised Sheet No. 60
First Revised Sheet No. 61
First Revised Sheet No. 62
First Revised Sheet No. 85
Second Revised Sheet No. 86
Second Revised Sheet No. 87
Second Revised Sheet No. 88
Second Revised Sheet No. 89
Second Revised Sheet No. 90
First Revised Sheet No. 91
First Revised Sheet No. 92
Original Sheet No. 92a
First Revised Sheet No. 93
Original Sheet No. 93a
Nineteenth Revised Sheet No. 94
Original Sheet No. 94a
Original Sheet No. 94b
Second Revised Sheet No. 96
First Revised Sheet No. 98
First Revised Sheet No. 99
First Revised Sheet No. 100
First Revised Sheet No. 104
Original Sheet No. 104a

Exhibit B—South Georgia Natural Gas Company

Docket No. RP94–183–002

July 5, 1994.

First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 49
First Revised Sheet No. 50
Second Revised Sheet No. 69
Second Revised Sheet No. 70
First Revised Sheet No. 71
Second Revised Sheet No. 72
Second Revised Sheet No. 74
Second Revised Sheet No. 75
Nineteenth Revised Sheet No. 76
Second Revised Sheet No. 78
First Revised Sheet No. 81
First Revised Sheet No. 82
First Revised Sheet No. 83
Second Revised Sheet No. 99
Second Revised Sheet No. 100
First Revised Sheet No. 101
Second Revised Sheet No. 102
Second Revised Sheet No. 104
Second Revised Sheet No. 105
Nineteenth Revised Sheet No. 106
Second Revised Sheet No. 108
First Revised Sheet No. 110
First Revised Sheet No. 112

[FR Doc. 94–16930 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–309–000]

Tennessee Gas Pipeline Company; Proposed Changes in FERC Gas Tariff

July 7, 1994.

Take notice that on July 1, 1994, Tennessee Gas Pipeline Company filed a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c, and the rules and regulations of the Federal Energy Regulatory Commission promulgated thereunder to recover gas supply realignment costs (GSR costs) associated with the period January 1, 1994 through March 31, 1994. Tennessee proposes that the filing be made effective August 1, 1994. The tariff sheets identified below set forth Tennessee's GSR-related charges:

Fourth Revised Sheet No. 22
Fourth Revised Sheet No. 24
Seventh Revised Sheet No. 30

Tennessee states that the purpose of the filing in this docket is to implement its recovery, effective August 1, 1994, of GSR costs associated with the period January through March 1994. The GSR costs sought to be recovered include pricing differentials costs associated with Tennessee's performance under certain of its remaining gas supply contracts and Canadian demand charges.

Tennessee states that copies of the filing were mailed to all affected customers of Tennessee and interested state regulatory commissions.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16931 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–314–000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 7, 1994.

Take notice that on July 1, 1994, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of August 1, 1994:

First Revised Sheet No. 351
Original Sheet No. 351A
First Revised Sheet No. 353
Original Sheet No. 354
Sheet Nos. 355–358
First Revised Sheet No. 360
Original Sheet No. 360A
First Revised Sheet No. 362
Original Sheet No. 363
Sheet Nos. 364–367

Texas Eastern states such tariff sheets restate the procedures for firming up capacity for those customers and their assignees that, prior to implementation of Order No. 636, received interruptible transportation under Rate Schedules SS–2 and SS–3. Texas Eastern notes that such firm-up elections are limited to the interruptible capacity rights of customers under Rate Schedule SS–2 and SS–3 immediately prior to June 1, 1993, which is the date Order No. 636 was implemented on Texas Eastern's system. Texas Eastern states that these tariff sheets are supported by The Brooklyn Union Gas Company, Elizabethtown Gas Company, PECO Energy Company, and UGI Utilities, Inc.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16932 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–34–011]

Williston Basin Interstate Pipeline Company; Compliance Filing

July 7, 1994.

Take notice that on July 5, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing, under protest certain revised tariff sheets to First Revised Volume No. 1 and Original Volume Nos. 1–A, 1–B and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's "Order Affirming in Part and Reversing in Part Initial Decision" issued May 3, 1994 in

Original Sheet No. 360A
First Revised Sheet No. 362
Original Sheet No. 363
Sheet Nos. 364–367

Texas Eastern states such tariff sheets restate the procedures for firming up capacity for those customers and their assignees that, prior to implementation of Order No. 636, received interruptible transportation under Rate Schedules SS–2 and SS–3. Texas Eastern notes that such firm-up elections are limited to the interruptible capacity rights of customers under Rate Schedule SS–2 and SS–3 immediately prior to June 1, 1993, which is the date Order No. 636 was implemented on Texas Eastern's system. Texas Eastern states that these tariff sheets are supported by The Brooklyn Union Gas Company, Elizabethtown Gas Company, PECO Energy Company, and UGI Utilities, Inc.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16932 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–34–011]

Williston Basin Interstate Pipeline Company; Compliance Filing

July 7, 1994.

Take notice that on July 5, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing, under protest certain revised tariff sheets to First Revised Volume No. 1 and Original Volume Nos. 1–A, 1–B and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's "Order Affirming in Part and Reversing in Part Initial Decision" issued May 3, 1994 in Docket Nos. RP89–34–000, RP89–257–000 and RP90–2–000 and the Commission's "Notice of Extension of Time" issued May 24, 1994 in Docket Nos. RP89–34–009, RP89–257–002 and RP90–2–012 as more fully described in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16933 Filed 7–12–94; 8:45 am]

BILLING CODE 6717–01–M

Southeastern Power Administration

Cumberland Basin System of Projects

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice.

SUMMARY: On June 29, 1994, the Deputy Secretary, Department of Energy, confirmed and approved, on an interim basis, Rate Schedules CBR–1–C, CSI–1–C, CEK–1–C, CM–1–C, CC–1–D, CK–1–C, AND CTV–1–C for the Cumberland Basin System of Project's power. The rates were approved on an interim basis through June 30, 1999, and are subject to confirmation and approval by the Federal Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Director, Power Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued September 26, 1989, in Docket No. EF89–3031–000, confirmed and approved Wholesale Power Rate Schedules CBR–1–B, CSI–1–B, CEK–1–B, CC–1–C, CM–1–B, CK–1–B, and CTV–1–B through June 30, 1994. Rate Schedules CBR–1–C, CSI–1–C, CEK–1–C, CM–1–C, CC–1–D, CK–1–C, AND CTV–1–C replace these rate schedules.

System Development: Nine projects make up the Cumberland system. The Cumberland projects are: Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, Cordell Hull and Laurel.

The projects were developed by the U.S. Army Corps of Engineers for the comprehensive development of the Cumberland River Basin. Project purposes include hydroelectric power, navigation, flood control, recreation, pollution abatement, and economic development. Collectively the projects provide 5.1 million acre feet of flood control storage and 380 miles of navigation channel. Each of the nine reservoirs have specific recreational facilities which attract millions of visitors annually. The total installed capacity of the projects is 914 MW which generate an average of 3,271,000 MWH annually.

Issued in Washington, DC, June 29, 1994

William H. White,

Deputy Secretary.

Order Confirming and Approving Power Rates on an Interim Basis

In the Matter of: Southeastern Power Administration—Cumberland Basin Projects Power Rates. Rate Order No. SEPA–33.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 F.R. 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis or to disapprove rates developed by the Administrator under the delegation. On November 4, 1993, the Secretary of Energy issued Amendment No. 3 to Delegation Order No. 0204–108, [58 F.R. 59716; November 10, 1993] granting the Deputy Secretary authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. This rate order is issued pursuant to the delegation to the Deputy Secretary.

Background

Projects

Power from 8 of the 9 projects in the Cumberland Basin Projects (Wolf Creek, Center Hill, Dale Hollow, Old Hickory, Cheatham, Barkley, J. Percy Priest, Cordell Hull and Laurel) is sold through the transmission system of the Tennessee Valley Authority (TVA). TVA has contracted to purchase 405,000 KW to preference customers outside the service area and to firm up the 70,000 KW from the Laurel Project. The Laurel Project is located in the service area of and delivered to East Kentucky Power Cooperative. Cumberland Basin power not sold to East Kentucky Power for the use of its preference customers is sold to eight municipalities in the Mississippi Power and Light area via a contract with the Municipal Energy Agency of Mississippi; seven cooperatives in the Mississippi Power and Light area via a contract with South Mississippi Electric Power Association; Big Rivers Electric Corporation; the City of Henderson Kentucky; East Kentucky power Cooperative; Southern Illinois Power Cooperative; and one municipality and two cooperatives in the western portion of the Carolina Power and Light Company (CP&L) service area via transmission over TVA's and CP&L's transmission system. Currently 62 MW of the power to be marketed outside the TVA area is temporarily being marketed to TVA for the use of its preference customers pending completion of arrangements to market the power to preference customers in the Kentucky Utilities Company area. The projects were developed by the U. S. Army Corps of Engineers for the comprehensive development of the Cumberland River Basin. Project purposes include hydroelectric power, navigation, flood control, recreation, pollution abatement, and economic development. Collectively the projects provide 5.1 million acre feet of flood control storage and 380 miles of navigation channel. Each of the 9 projects have specific recreation facilities which attract millions of visitors annually. Total installed capacity of the projects is 914 MW which generate an average of 3,271,000 MWH annually. The power generated at the projects in operation during fiscal year 1993 was sold to 293 customers. Southeastern cannot furnish the entire capacity and energy needs of any of its customers. Capacity and energy requirements in excess of that available from Southeastern's resources must be acquired from other sources.

Transmission

Under the Notice of Issuance Final Power Marketing Policy, Cumberland System of Projects 58 FR 41762; August 5, 1993, 475 MW of capacity is made available to SEPA's customers outside the TVA region from the Cumberland Projects. Under TVA's firm commitment of transmission service provided for in the marketing agreement, TVA makes the amounts SEPA schedules (as much of the 475 MW as Southeastern indicates) available across the TVA system to the points selected by Southeastern on the periphery of the system. Under the Power Marketing policy, 405 MW is allocated to TVA for the benefit of 160 preference customers located on the TVA system. According to the marketing policy, TVA is to receive a monthly credit for delivering Cumberland system capacity and energy to SEPA's preference customers outside the TVA region. The credit is applied each month against charges to TVA for Cumberland River system capacity and energy provided TVA under the marketing agreement. Since 1984 this monthly credit has been $500,000 for 475 MW to be delivered to the periphery of the TVA system. This monthly credit is reduced for each MW of capacity that Southeastern is unable to sell to its customers outside the TVA area. Therefore, TVA's monthly credit has been reduced in the past by $80,600 for the 62 MW of capacity that SEPA has been unable to sell due to Kentucky Utilities Company's refusal to wheel such power to preference customers located in its area. TVA has received an annual credit of approximately $5,032,800 which will increase to $6,032,800 under the negotiated settlement which is described in this document.

Current Rates

Power from the Cumberland Basin Projects is presently sold under Wholesale Power Rate Schedules CBR–1–B, CSI–1–B, CEK–1–B, CC–1–C, CM–1–B, CK–1–B and CTV–1–B. Wholesale Power Rate Schedules CBR–1–B, CSI–1–B, CEK–1–B, CC–1–C, CM–1–B, CK–1–B and CTV–1–B were confirmed and approved by the Federal Energy Regulatory Commission by order issued September 16, 1989, for a period beginning July 1, 1989, and ending June 30, 1994.

Discussion

System Repayment

An examination of Southeastern's system power repayment study prepared in May 1994 for the Cumberland Basin Projects reveals that with an annual revenue increase of $2,211,000, over the current revenues shown in the previous February 1994 repayment study, all system power costs are paid within their repayment life. Wholesale Power Rate Schedules CBR–1–C, CSI–1–C, CEK–1–C, CC–1–D, CM–1–C, CK–1–C and CTV–1–C are designed to produce adequate revenue to recover all system power costs on a timely basis. The Administrator of Southeastern has certified that the rates are consistent with the applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Rate Design

A repayment study was prepared using present contract rates. The repayment study demonstrated that rates were not high enough to repay all investments within their repayment life. Southeastern proposed a 6 percent rate increase that would meet repayment criteria. The Tennessee Valley Authority (TVA) responded by increasing their transmission charge from $6 to $12.1 million. Southeastern held a Public Comment forum on March 10, 1994 to give opportunity for review and comment of proposed rates. Southeastern announced a revised rate increase of 24 percent for all customers. At the Public Comment Forum TVA asserted that the rate design used to calculate the 24 percent rate increase failed to compensate TVA for the use of its transmission facilities and that TVA customers were paying for transmission service twice.

The 160 preference customers inside TVA are represented by the Tennessee Valley Public Power Association (TVPPA). The TVPPA is a service organization that, among other duties, negotiates rates with TVA. Power requirements of TVPPA members are provided exclusively by TVA.

The TVPPA rates committee questioned the allocation of costs between capacity and energy. Previous rate filings allocated 40 percent of the generation costs to capacity and 60 percent to energy. The 40/60 allocation was criticized by TVA for allocating too much of the generation cost to energy. TVPPA felt that more of the cost should be placed on the capacity component of the rate and that the energy component should cover O&M. Customers outside the TVA system criticized Southeastern's Cumberland marketing plan for giving too much energy to TVA.

After the public comment forum Southeastern met with TVA and the outside customers in an attempt to negotiate a settlement. Southeastern agreed to change the rate design. The new rate design eliminates the capacity/energy split and allocates the TVA transmission charge to the outside customers. All customers pay a capacity charge that includes 1500 hours energy with each kilowatt of capacity. Residual energy is sold to TVA with an additional energy charge. This eliminated the disagreement regarding the 40/60 split.

Initially TVA proposed a $12.1 million transmission charge. Southeastern and TVA agreed to a negotiated settlement of $7 million per year for transmission. The settlement results in a 5.1% rate increase to TVA and a 9.5% increase to outside customers. This amount is reduced further by a $967,200 credit for power that is allocated, but not delivered to customers in the Kentucky Utilities service area. While neither TVA nor outside customers are completely satisfied with this settlement, Southeastern does not believe either will intervene against this rate.

A copy of the Public Comments and Responses (Exhibit A–5 of the Rate Filing) is attached to clarify any issues that may not be fully addressed in the main body of this document.

Public Notice and Comment

Opportunities for public review and comment on Wholesale Power Rate Schedules CBR–1–C, CSI–1–C, CEK–1–C, CC–1–D, CM–1–C, CK–1–C and CTV–1–C, proposed for use during the period July 1, 1994, through June 30, 1999, were announced by Notice published in the **Federal Register** on February 7, 1994. All customers were notified by mail. A Public Information and Comment Forum was held in Nashville, Tennessee, on March 10, 1994, and written comments were invited by the Notice through May 3, 1989. Oral comments were presented at the forum and written comments were received prior to May 10, 1994. There were twelve (12) substantive comments received and all comments were evaluated. Comments and questions from four sources were received at the Public Comment Forum held in Nashville on March 10, 1994. These are included in the Forum transcripts which are included as exhibit A–4. Written comments and questions from four sources were received by mail and facsimile during the comment period and are attached. The comments were received pursuant to **Federal Register** Notice 59 F.R. 5581 dated February 7, 1994. The following substantive issues contained in the comments were considered. A summary of written comments, written responses, and the

new rate design eliminates the capacity/energy split and allocates the TVA transmission charge to the outside customers. All customers pay a capacity charge that includes 1500 hours energy with each kilowatt of capacity. Residual energy is sold to TVA with an additional energy charge. This eliminated the disagreement regarding the 40/60 split.

Initially TVA proposed a $12.1 million transmission charge. Southeastern and TVA agreed to a negotiated settlement of $7 million per year for transmission. The settlement results in a 5.1% rate increase to TVA and a 9.5% increase to outside customers. This amount is reduced further by a $967,200 credit for power that is allocated, but not delivered to customers in the Kentucky Utilities service area. While neither TVA nor outside customers are completely satisfied with this settlement, Southeastern does not believe either will intervene against this rate.

A copy of the Public Comments and Responses (Exhibit A–5 of the Rate Filing) is attached to clarify any issues that may not be fully addressed in the main body of this document.

Public Notice and Comment

Opportunities for public review and comment on Wholesale Power Rate Schedules CBR–1–C, CSI–1–C, CEK–1–C, CC–1–D, CM–1–C, CK–1–C and CTV–1–C, proposed for use during the period July 1, 1994, through June 30, 1999, were announced by Notice published in the **Federal Register** on February 7, 1994. All customers were notified by mail. A Public Information and Comment Forum was held in Nashville, Tennessee, on March 10, 1994, and written comments were invited by the Notice through May 3, 1989. Oral comments were presented at the forum and written comments were received prior to May 10, 1994. There were twelve (12) substantive comments received and all comments were evaluated. Comments and questions from four sources were received at the Public Comment Forum held in Nashville on March 10, 1994. These are included in the Forum transcripts which are included as exhibit A–4. Written comments and questions from four sources were received by mail and facsimile during the comment period and are attached. The comments were received pursuant to **Federal Register** Notice 59 F.R. 5581 dated February 7, 1994. The following substantive issues contained in the comments were considered. A summary of written comments, written responses, and the oral comments follows this discussion of the substantive issues.

Comment 1: The allocation of the TVA transmission credit does not recognize that the schedules to outside preference customers cannot be met without the entire TVA transmission system and fails to compensate TVA for the use of its transmission facilities for the delivery of these schedules.

Response: Lacking its own transmission system, transmission services are required from TVA to deliver capacity and energy allocations to customers outside the TVA system. Rates that have been in effect since July 1, 1989 allocate some of the TVA transmission charge to the TVA area customers. This rate design was originally proposed in order to reallocate what Southeastern viewed as an excess transmission charge by TVA. The rate design was not contested at FERC by TVA. Southeastern's rate proposal that is effective July 1, 1994 includes a $7,000,000 credit for TVA's transmission service. TVA area customers will not pay a portion of this transmission charge and the entire amount will be paid by customers outside the TVA system. This is the amount agreed to by Southeastern and TVA after weeks of negotiations subsequent to the March 10, 1994 public information and comment forum. This issue is further discussed in the Rate Adjustment Process and Design section of the Rate Order.

Comment 2: TVA's customers are being charged for service provided by their own system. In effect, they are paying for a portion of the TVA system twice.

Response: The issue of paying for a portion of the TVA system twice was reconciled in the negotiated settlement. Customers outside of the TVA system bear the full amount of transmission services provided by TVA.

Comment 3: The TVA transmission cost of $12 million which was originally proposed by TVA resulted in a rate of $2 per kilowatt per month and 1 mill per kilowatt-hour. This rate is too high, not justified, and would not pass FERC scrutiny.

Response: The negotiated settlement between Southeastern and TVA allocated reduced the transmission cost from $12 million to $7 million.

Comment 4: SEPA should not include TVA's increase in their charge for transmission services in SEPA's rates until preference customers have had ample opportunity to make comments or intervene in some way.

Response: This objection was addressed in the negotiated rate settlement.

Comment 5: TVA is overcompensated on the amount of energy they get with each KW of capacity they receive.

Response: This comment is understood to address the Cumberland Basin Power Marketing Policy which sets forth, among other things, capacity and energy allocations in the Cumberland Basin. The Power Marketing Policy is set forth in 58 F.R. 41702 published August 5, 1993. Cumberland Basin System marketing arrangements provide all customers with 1,500 hours of energy for each kilowatt of capacity allocated by Southeastern. TVA receives 1,500 hours of energy per KW and is also allowed to purchase any residual system energy which averages 5,000 hours per KW per year.

Comment 6: Energy should be prorated to all customers and the rate increase should be shared among all customers.

Response: Power allocation is addressed in the power marketing policy for the Cumberland system and was not addressed in this rate filing. As the result of the negotiated settlement, the transmission charge to outside customers was reduced from $12 million to $7 million per year.

Comment 7: East Kentucky should not pay TVA wheeling on the portion of its capacity allocation it receives at the Laurel project.

Response: The Laurel Project is located in the service territory of East Kentucky Power Cooperative. All of the output of Laurel is delivered to East Kentucky and therefore no other customer receives any benefit from this project. Even though TVA does not have an interconnection with the Laurel Project bus bar, TVA has interconnections with East Kentucky that facilitate the delivery of power from elsewhere in the system to provide firming support.

The Laurel Project was integrated into the Cumberland Basin System for repayment in 1984. While the Laurel Project is the highest cost project in the Cumberland Basin System, financially integrating the project into the system effectively lowers capacity and energy charges for East Kentucky and raises the charges for other preference customers. Including power from the Laurel Project in the allocation of the TVA transmission charge has a similar but opposite impact. The transmission charge is lowered for other customers and increased for East Kentucky.

The net impact of these complicated financial and physical arrangements provides the lowest possible rates to all of the preference customers in the Cumberland Basin system within the

meaning of Section 5 of the Flood Control Act of 1944.

Comment 8: The Corps O&M costs are too high.

Response: The Flood Control Act of 1944 requires Southeastern to recover Corps Operation & Maintenance costs allocated to power. Such costs are included in this rate. Southeastern agrees that these costs are too high and will continue to work with the customers and the Corps in an effort to lower the O&M costs on Corps hydropower projects.

Comment 9: Southeastern's deviation from standard allocation method for allocating generation costs places an undue cost burden on preference customers in the TVA area.

Response: Southeastern believes that a standard allocation method, where fixed costs are charged to capacity and variable costs are charged to energy, is inappropriate for a hydro system because most of the costs of a hydro system are fixed. In designing the proposed rates in 1984, Southeastern compared utilities in the TVA area and attempted to emulate the capacity energy split used in their sales for resale. In 1984 Southeastern determined that, on average, most utilities in the TVA area charged 40 per cent to capacity and 60 per cent to energy. We continued this arrangement in 1989. The 1994 rate design, agreed to as the result of the negotiated settlement, does not continue the 60/40 split but establishes a rate for a kilowatt of capacity that includes 1,500 kwh's of energy. Southeastern believes that this new rate design will eliminate the disagreement between TVA and SEPA on capacity energy split of costs.

Comment 10: Since the resources are used primarily for peaking purposes, a greater portion of the rate should be allocated to the fixed or demand component.

Response: Power is marketed from the Cumberland Basin System for different purposes. In accordance with the Final Power Marketing Policy for the Cumberland System of Projects adopted August 5, 1993, 58 F.R. 41762, customers outside the TVA system receive a base of 1,500 hours of energy per kilowatt per year, which makes their allocation peaking power. Similarly, in accordance with said policy, customers inside the TVA system receive an average of 5,000 additional hours energy per kw of capacity, which makes their power similar to a combination of peaking and intermediate power. Allocating all costs on the assumption that all power from the Cumberland Basin System is a peaking resource would have the effect of shifting costs from the inside customers to the outside customers. Southeastern does not believe that this would be equitable. As a result of the settlement, Southeastern developed a new rate design which charges customers inside and outside TVA a base rate for a KW of capacity which includes 1,500 KWH. An excess energy charge is levied on customers inside TVA that receive residual system energy.

Comment 11: The methodology used by Southeastern in determining the capacity/energy split includes power sales that are not comparable to the type of sales made by Southeastern from the Cumberland River System.

Response: Southeastern has developed a new rate design which deletes the separate change for capacity and energy and eliminates this argument.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of this rate adjustment and has concluded that the increased rates would not significantly impact the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. The proposed rate adjustment is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rate schedules, including studies, and other supporting documentation is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Washington Liaison Office, James Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning July 1, 1994, and ending no later than June 30, 1999.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective July 1, 1994, attached Wholesale Power Rate Schedules CBR–1–C, CSI–1–C, CEK–1–C, CC–1–D, CM–1–C, CK–1–C and CTV–1–C. The rate schedules shall remain in effect on an interim basis through June 30, 1999, unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves it or substitute rate schedules on a final basis.

Issued in Washington, DC, June 29, 1994.

William H. White,

Deputy Secretary.

Wholesale Power Rate Schedule CTV–1–C

Availability: This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

Applicability: This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the "Cumberland Projects") and the Laurel Project sold under agreement between the Department of Energy and TVA.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 Hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Monthly Rates: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.668 per kilowatt/month of total demand as determined by the agreement between the Department of Energy and TVA.

Energy Charge: None.

Additional Energy Charge: 7.247 mills per kilowatt-hour.

Energy to be Made Available: The Department of Energy shall determine the energy that is available from the projects for declaration in the billing month.

To meet the energy requirements of the Department of Energy's customers outside the TVA area (hereinafter called Other Customers), 749,400 megawatt-hours of net energy shall be available annually (including 36,900 megawatt-hours of annual net energy to supplement energy available at Laurel Project) provided, that if additional energy is required to make a marketing arrangement viable for other customers which do not own generating facilities and which are within service areas of Kentucky Utilities Company and Carolina Power & Light Company, Western Division, such additional energy required shall be made available from the Cumberland Projects and shall not exceed 300 kilowatt-hours per kilowatt per year. The energy requirement of the Other Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 220 hours per kilowatt of total Other Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Other Customers demand.

In the event that any portion of the capacity allocated to Other Customers is not initially delivered to the Other Customers as of the beginning of a full contract year (July through June), the 1500 hours, plus any such additional energy required as discussed above, shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) an adjustment

Number of kilowatts unavailable for at least 12 day.

The agreement capacity related to the 76,000 kilowatts of capacity allocated to the Other Customers in the Carolina Power & Light Company and Kentucky Utilities service areas shall, irrespective of sale to Other Customers, remain in effect in the formula throughout the term of this rate schedule.

Power Factor: TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

Dated: July 1, 1994.

Wholesale Power Rate Schedule CBR–1–C

Availability: This rate schedule shall be available to Big Rivers Electric Corporation and includes the City of Henderson, Kentucky, (hereinafter called the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called

kilowatt per year. The energy requirement of the Other Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 220 hours per kilowatt of total Other Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Other Customers demand.

In the event that any portion of the capacity allocated to Other Customers is not initially delivered to the Other Customers as of the beginning of a full contract year (July through June), the 1500 hours, plus any such additional energy required as discussed above, shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) an adjustment for fast or slow meters, if any, (2) an adjustment for Barkley-Kentucky Canal of 15,000 megawatt-hours of energy each month which is delivered to TVA under the agreement from the Cumberland Projects without charge to TVA, (3) the energy scheduled by the Department of Energy in said month for the Other Customers plus losses of two (2) percent, and (4) station service energy furnished by TVA.

Each kw of capacity received by TVA includes 1500 kwh of energy. Energy received in excess of 1500 kwh will be subject to an additional energy charge identified in the monthly rates section of this rate schedule.

Billing Month: The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Contract Year: For purposes of this rate schedule, a contract year shall be as in Section 13.1 of the Southeastern Power Administration—Tennessee Valley Authority Contract.

Service Interruption: When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system which are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to TVA will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

		Monthly capacity charge		Agreement capacity
Number of kilowatts unavailable for at least 12 hours in any calendar day.	×	Number of days in billing month	×	880,000 kilowatts.

The agreement capacity related to the 76,000 kilowatts of capacity allocated to the Other Customers in the Carolina Power & Light Company and Kentucky Utilities service areas shall, irrespective of sale to Other Customers, remain in effect in the formula throughout the term of this rate schedule.

Power Factor: TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

Dated: July 1, 1994.

Wholesale Power Rate Schedule CBR–1–C

Availability: This rate schedule shall be available to Big Rivers Electric Corporation and includes the City of Henderson, Kentucky, (hereinafter called the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery: Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $2.738 per kilowatt/month of total contract demand.

Energy Charge: None.

Energy to be Furnished by the Government: The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service: The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

	Monthly capacity charge		Contract demand
Number of kilowatts unavailable for at least 12 hours in any calendar day.	× Number of days in billing month	×	*880,000 kilowatts.

Dated: July 1, 1994.

Wholesale Power Rate Schedule CSI–1–C

Availability: This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery: Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $2.738 per kilowatt/month of total contract demand.

Energy Charge: None.

Energy to be Furnished by the Government: The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

	Monthly capacity charge		Contract demand
Number of kilowatts unavailable for at least 12 hours in any calendar day.	× Number of days in billing month	×	*880,000 kilowatts.

Dated: July 1, 1994.

Wholesale Power Rate Schedule CEK–1–C

Availability: This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and power available from the Laurel Project and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

Points of Delivery: The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule from the Cumberland Projects shall be:

Demand Charge: $2.738 per kilowatt/month of total contract demand.

Energy Charge: None.

Energy to be Furnished by the Government: The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand plus 369 kilowatt-hours of energy delivered for each kilowatt of contract demand to supplement energy

available at the Laurel Project. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA

Number of kilowatts unavailable for at least 12 h day.

Dated: July 1, 1994.

Wholesale Power Rate Schedule CM–1–C

Availability: This rate schedule shall be available to the South Mississippi Electric Power Association and Municipal Energy Agency of Mississippi (hereinafter called the Customers).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery: The points of delivery will be at interconnection points of the Tennessee Valley Authority system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Number of kilowatts unavailable for at least 12 ho day.

available at the Laurel Project. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service: The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

		Monthly capacity charge		Contract demand
Number of kilowatts unavailable for at least 12 hours in any calendar day.	×	Number of days in billing month	×	880,000 kilowatts.

Dated: July 1, 1994.

Wholesale Power Rate Schedule CM–1–C

Availability: This rate schedule shall be available to the South Mississippi Electric Power Association and Municipal Energy Agency of Mississippi (hereinafter called the Customers).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects [all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery: The points of delivery will be at interconnection points of the Tennessee Valley Authority system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $2.738 per kilowatt/month of total contract demand.

Energy Charge: None.

Energy to be Furnished by the Government: The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

		Monthly capacity charge		Contract demand
Number of kilowatts unavailable for at least 12 hours in any calendar day.	×	Number of days in billing month	×	880,000 kilowatts.

Dated: July 1, 1994.

Wholesale Power Rate Schedule CC–1–D

Availability: This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & Light Company, Western Division.

Points of Delivery: The points of delivery will be at interconnecting points of the Tennessee Valley Authority system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $3.116 per kilowatt/month of total contract demand.

Energy Charge: None.

Transmission Charge: $1.6254 per kilowatt of total contract demand.

The transmission rate is subject to annual adjustment on April 1 of each year and will be computed subject to the formula in Appendix A attached to the Government—Carolina Power & Light Company contract.

Energy to be Furnished by the Government: The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Carolina Power & Light Company (less six percent (6%) losses). The Customer's contract demand and accompanying energy allocation will be divided pro rate among its individual delivery points served from the Carolina Power & Light Company's, Western Division transmission system.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Dated: July 1, 1994.

Wholesale Power Rate Schedule CK–1–C

Availability: This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company, (hereinafter called the Customers.)

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Kentucky Utilities Company.

Points of Delivery: The points of delivery will be at interconnecting points between the Tennessee Valley Authority system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $2.738 per kilowatt/month of total contract demand.

Energy Charge: None.

Additional Energy Charge: 7.247 mills per kilowatt-hour.

Transmission Charge: The transmission charge will be that negotiated between the Government and Kentucky Utilities Company and will be subject to adjustment according to the terms of the contracts.

Energy to be Furnished by the Government: The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

For billing purposes, each kilowatt of capacity will include 1500 kilowatt-hours energy per year. Customers will pay for additional energy at the additional energy rate.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

[FR Doc. 94–16991 Filed 7–12–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50790; FRL–4866–9]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275–EUP–79. Issuance. Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064. This experimental use permit allows the use of 191.00 pounds of the herbicide gibberellic acid on 1,800 acres of stone fruits to evaluate the improvement of fruit quality and thinning of stone fruits. The program is authorized only in the States of California, Georgia, Illinois, Indiana, Michigan, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, and West Virginia. The experimental use permit is effective from February 25, 1994 to September 30, 1994. Permanent tolerances for residues of the active ingredient in or on stone fruits have been established (40 CFR 180.224). (Cynthia Giles-Parker, PM–22, Rm. 229, CM #2, (703–305–5540))

62719–EUP–27. Issuance. DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268–1189. This experimental use permit allows the use of 112.76 pounds of the herbicide N-(2,6-difluorophenyl)-5-methyl-1,2,4-triazole-[1,5a]-pyrimidine-2-sulfonamide, 303.13 pounds of the herbicide 3,6-dichloro-2-pyridinecarboxylic acid, and 606.25 pounds of the herbicide 2,4-dichlorophenoxyacetic acid on a total of 4,850 acres of field corn to evaluate the control of various broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, and Wisconsin. The experimental use permit is effective from April 28, 1994 to December 31, 1995. Temporary tolerances for residues of the active ingredients in or on corn have been established. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–305–7830))

524–EUP–80. Issuance. Monsanto Company, The Agricultural Group, Suite 1100, 700 14th St., NW., Washington, DC 20005. This experimental use permit allows the use of 8,172 pounds of the hybridizing agent 2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt on 1,495 acres of wheat to screen a wide variety of germplasm as possible parental varieties, determine the effects of environment on efficacy, and to develop application techniques for large-scale field use. The program is authorized only in the States of Arkansas, Colorado, Illinois, Indiana, Kansas, Michigan, Minnesota, Montana, North Dakota, Ohio, Oregon, and Texas. The experimental use permit is effective from March 4, 1994 to March 4, 1995. Temporary tolerances for residues of the active ingredient in or on wheat [forage, grain, and straw] have been established. (Cynthia Giles-Parker, PM–22, Rm. 229, CM #2, (703–305–5540))

thinning of stone fruits. The program is authorized only in the States of California, Georgia, Illinois, Indiana, Michigan, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, and West Virginia. The experimental use permit is effective from February 25, 1994 to September 30, 1994. Permanent tolerances for residues of the active ingredient in or on stone fruits have been established (40 CFR 180.224). (Cynthia Giles-Parker, PM–22, Rm. 229, CM #2, (703–305–5540))

62719–EUP–27. Issuance. DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268–1189. This experimental use permit allows the use of 112.76 pounds of the herbicide N-(2,6-difluorophenyl)-5-methyl-1,2,4-triazole-[1,5a]-pyrimidine-2-sulfonamide, 303.13 pounds of the herbicide 3,6-dichloro-2-pyridinecarboxylic acid, and 606.25 pounds of the herbicide 2,4-dichlorophenoxyacetic acid on a total of 4,850 acres of field corn to evaluate the control of various broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, and Wisconsin. The experimental use permit is effective from April 28, 1994 to December 31, 1995. Temporary tolerances for residues of the active ingredients in or on corn have been established. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–305–7830))

524–EUP–80. Issuance. Monsanto Company, The Agricultural Group, Suite 1100, 700 14th St., NW., Washington, DC 20005. This experimental use permit allows the use of 8,172 pounds of the hybridizing agent 2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt on 1,495 acres of wheat to screen a wide variety of germplasm as possible parental varieties, determine the effects of environment on efficacy, and to develop application techniques for large-scale field use. The program is authorized only in the States of Arkansas, Colorado, Illinois, Indiana, Kansas, Michigan, Minnesota, Montana, North Dakota, Ohio, Oregon, and Texas. The experimental use permit is effective from March 4, 1994 to March 4, 1995. Temporary tolerances for residues of the active ingredient in or on wheat (forage, grain, and straw) have been established. (Cynthia Giles-Parker, PM–22, Rm. 229, CM #2, (703–305–5540))

264–EUP–91. Issuance. Rhone-Poulenc AG Company, P.O. Box 12014, Research Triangle Park, NC 27709. This experimental use permit allows the use of 2,992 pounds (1,496 pounds each year) of the fungicide aluminum tris (O-ethyl phosphonate) and 1,496 pounds (748 pounds each year) of the fungicide 3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide on 7,480 acres (3,740 acres each year) of cotton to evaluate the control of various cotton diseases. The program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from November 9, 1993 to November 1, 1995. Temporary tolerances for residues of the active ingredients in or on cotton have been established. (Cynthia Giles-Parker, PM–22, Rm. 229, CM #2, (703–305–5540))

264–EUP–92. Issuance. Rhone-Poulenc, P.O. Box 12014, Research Triangle Park, NC 27709. This experimental use permit allows the use of 198.00 pounds of the herbicides octanoic acid ester of bromoxynil, heptanoic acid ester of bromoxynil, and isooctyl ester of 2-methyl-chlorophenoxyacetic acid on 792 acres of wheat to evaluate the control of certain broadleaf weeds. The program is authorized only in the States of Colorado, Idaho, Kansas, Minnesota, Montana, Nebraska, North Dakota, South Dakota, and Washington. The experimental use permit is effective from May 4, 1994 to May 4, 1995. (Robert Taylor, PM 25, Rm. 243, CM #2, (703–305–6800))

707–EUP–121. Renewal. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 453.5 pounds of the fungicide alpha-[2-(4-chlorophenyl)ethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile on 605 acres (each year) of stone fruits to evaluate product performance, to conduct residue studies, to define optimum use rates, and to define and demonstrate product performance characteristics. The program is authorized only in the States of Alabama, Arkansas, California, Colorado, Delaware, Georgia, Idaho, Illinois, Louisiana, Maryland, Michigan, Missouri, Montana, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from November 22, 1993 to November 7, 1995. Temporary tolerances for residues of the active ingredient in or on stone fruits have been established. (Cynthia Giles-Parker, PM–22, Rm. 229, CM #2, (703–305–5540))

707–EUP–125. Extension. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 200 pounds of the fungicide alpha-[2-(4-chlorophenyl)ethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile on 200 acres of pecans to evaluate product performance and to define optimum use rates. The program is authorized only in the States of Alabama, Georgia, Louisiana, Mississippi, Oklahoma, and Texas. The experimental use permit is effective from December 20, 1993 to January 4, 1995. A temporary tolerance for residues of the active ingredient in or on pecans has been established. (Cynthia Giles-Parker, PM–22, Rm. 229, CM #2, (703–305–5540))

612–EUP–1. Renewal. Unocal Agriproducts, c/o Delta Analytical Corp., 7910 Woodmont Ave., Suite 100, Bethesda, MD 20814. This experimental use permit allows the use of 1,057,400 pounds (528,700 pounds each year) of the nematicide and fungicide sodium tetrathiocarbonate on 3,700 acres (1,850 acres each year) of almonds, apricots, grapefruit, oranges, peaches, plums, prunes, and tomatoes to evaluate the control of various nematodes, oak root fungus, and phytophthora root rot. The program is authorized only in the States of Arizona, California, Florida, and Texas. The experimental use permit is effective from February 28, 1994 to December 15, 1995. Temporary tolerances for residues of the active ingredient in or on almonds, apricots, peaches, plums, prunes, and tomatoes have been established. Permanent tolerances for residues of the active ingredient in or on grapefruit and oranges have been established (40 CFR 180.467). (Cynthia Giles-Parker, PM–22, Rm. 229, CM #2, (703–305–5540))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136

List of Subjects

Environmental protection, Experimental use permits.

Dated: June 22, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–16981 Filed 7–12–94; 8:45 am]

BILLING CODE 6560–50–F

[PP 4G3927/T665; FRL 4897–6]

Fenoxaprop-ethyl; Extension of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended a temporary tolerance for the combined residues of the herbicide fenoxaprop-ethyl and its metabolites in or on the raw agricultural commodity barley, grain at 0.05 part per million (ppm).

DATES: This temporary tolerance expires May 13, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7830.

SUPPLEMENTARY INFORMATION: EPA issued a notice under (PP) 1G3927, which was published in the **Federal Register** of May 19, 1993 (58 FR 29217), announcing the establishment of a temporary tolerance for the combined residues of the herbicide fenoxaprop-ethyl ((±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy] propanoate and its metabolites 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy] propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one in or on the raw agricultural commodity barley, grain at 0.05 part per million (ppm). This tolerance is issued under pesticide petition (PP) 4G3927. Hoechst Celanese Corporation, Little Falls Center One, 2711 Centerville Rd., Wilmington, DE 19808, submitted both petitions.

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 8340-EUP-13, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Hoechst Celanese Corp., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires May 13, 1995. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 30, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–16862 Filed 7–12–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–240105; FRL–4866–2]

State Registrations of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 28 States and Puerto Rico. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

DATES: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Daria Mills, Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 216, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7406.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in December of 1993 through March of 1994. Receipts-of-State registrations will be published periodically. Of the following registrations, nine involve a changed-use pattern (CUP). The term "changed use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

1. *EPA SLN No. AL 94 0001.* Valent U.S.A. Corp. Registration is for Acephate to be used on peanut seed treatment to control thrips. March 8, 1994.

Arizona

2. *EPA SLN No. AZ 93 0017.* FMC Corp. Registration is for Bifenthrin to be used on potting media to control imported fire ant. December 6, 1993.

3. *EPA SLN No. AZ 93 0018.* FMC Corp. Registration is for Bifenthrin to be used on potting media to control imported fire ant. December 6, 1993.

4. *EPA SLN No. AZ 93 0019.* Rohm & Hass Co. Registration is for Oxyfluorfen to be used on noncrop rights-of-way to control weeds. January 3, 1994.

5. *EPA SLN No. AZ 94 0001.* Gowan Co. Registration is for Bensulide to be used on onions grown for seed to control weeds. February 8, 1994. (CUP)

6. *EPA SLN No. AZ 94 0002.* Valent U.S.A. Corp. Registration is for Acephate to be used on peppers to control thrips. February 3, 1994.

Arkansas

7. *EPA SLN No. AR 94 0001.* Valent U.S.A. Corp. Registration is for Thiobencarb to be used on rice to control barnyardgrass, junglerice, and redstem. December 1, 1993.

8. *EPA SLN No. AR 94 0002.* Valent U.S.A. Corp. Registration is for Thiobencarb to be used on rice to control annual grasses and aquatic weeds. December 1, 1993.

9. *EPA SLN No. AR 94 0003.* Valent U.S.A. Corp. Registration is for Thiobencarb to be used on rice to control annual grasses and aquatic weeds. December 1, 1993.

10. *EPA SLN No. AR 94 0004.* FMC Corp. Registration is for Permethrin to be used on conifer nurseries to control regeneration weevil. December 1, 1993.

11. *EPA SLN No. AR 94 0005.* DowElanco. Registration is for Chlorpyrifos to be used on cotton to control plantbugs and fleahoppers. January 1, 1994.

California

12. *EPA SLN No. CA 93 0022.* California Dept. of Food and Agriculture. Registration is for Chlorophacinone to be used on artichokes to control meadow voles. January 3, 1994.

13. *EPA SLN No. CA 93 0023.* Gowan Co. Registration is for Botran 75W to be used on fennel (sweet anise) to control white mold. January 1, 1994.

14. *EPA SLN No. CA 94 0001.* DowElanco. Registration is for Chlorpyrifos to be used on brassica (cole) to control aphids and worms. January 4, 1994.

15. *EPA SLN No. CA 94 0002.* Gowan Co. Registration is for Trifluralin to be used on clover grown for seed to control weeds. January 1, 1994.

Arizona

2. *EPA SLN No. AZ 93 0017.* FMC Corp. Registration is for Bifenthrin to be used on potting media to control imported fire ant. December 6, 1993.

3. *EPA SLN No. AZ 93 0018.* FMC Corp. Registration is for Bifenthrin to be used on potting media to control imported fire ant. December 6, 1993.

4. *EPA SLN No. AZ 93 0019.* Rohm & Haas Co. Registration is for Oxyfluorfen to be used on noncrop rights-of-way to control weeds. January 3, 1994.

5. *EPA SLN No. AZ 94 0001.* Gowan Co. Registration is for Bensulide to be used on onions grown for seed to control weeds. February 8, 1994. (CUP)

6. *EPA SLN No. AZ 94 0002.* Valent U.S.A. Corp. Registration is for Acephate to be used on peppers to control thrips. February 3, 1994.

Arkansas

7. *EPA SLN No. AR 94 0001.* Valent U.S.A. Corp. Registration is for Thiobencarb to be used on rice to control barnyardgrass, junglerice, and redstem. December 1, 1993.

8. *EPA SLN No. AR 94 0002.* Valent U.S.A. Corp. Registration is for Thiobencarb to be used on rice to control annual grasses and aquatic weeds. December 1, 1993.

9. *EPA SLN No. AR 94 0003.* Valent U.S.A. Corp. Registration is for Thiobencarb to be used on rice to control annual grasses and aquatic weeds. December 1, 1993.

10. *EPA SLN No. AR 94 0004.* FMC Corp. Registration is for Permethrin to be used on conifer nurseries to control regeneration weevil. December 1, 1993.

11. *EPA SLN No. AR 94 0005.* DowElanco. Registration is for Chlorpyrifos to be used on cotton to control plantbugs and fleahoppers. January 1, 1994.

California

12. *EPA SLN No. CA 93 0022.* California Dept. of Food and Agriculture. Registration is for Chlorophacinone to be used on artichokes to control meadow voles. January 3, 1994.

13. *EPA SLN No. CA 93 0023.* Gowan Co. Registration is for Botran 75W to be used on fennel (sweet anise) to control white mold. January 1, 1994.

14. *EPA SLN No. CA 94 0001.* DowElanco. Registration is for Chlorpyrifos to be used on brassica (cole) to control aphids and worms. January 4, 1994.

15. *EPA SLN No. CA 94 0002.* Gowan Co. Registration is for Trifluralin to be used on clover grown for seed to control weeds. January 1, 1994.

16. *EPA SLN No. CA 94 0003.* Gowan Co. Registration is for Trifluralin to be used on bermuda grass to control annual grasses and broadleaf weeds. February 5, 1994.

17. *EPA SLN No. CA 94 0004.* Uniroyal Chemical Co., Inc. Registration is for Diflubenzuron to be used on walnuts to control codling moths. January 5, 1994.

18. *EPA SLN No. CA 94 0005.* FMC Corp. Registration is for Carbofuran to be used on grapevines to control grape phyloxera. February 9, 1994.

19. *EPA SLN No. CA 94 0008.* Uniroyal Chemical Co., Inc. Registration is for Propargite to be used on roses to control spider mites. March 8, 1994.

Delaware

20. *EPA SLN No. DE 93 0004.* DowElanco. Registration is for Chorpyrifos to be used on sweet corn to control armyworms and corn earworm larvae. January 4, 1994.

Florida

21. *EPA SLN No. FL 94 0001.* Florida Tropical Fish Farms Association. Registration is for Bayluscide to be used on fresh-water ponds to control fresh-water snails. February 7, 1994.

Georgia

22. *EPA SLN No. GA 93 0008.* American Liquid Fertilizer Co., Inc. Registration is for Permethrin to be used on conifer nurseries to control regeneration weevils. December 8, 1993.

23. *EPA SLN No. GA 94 0001.* Valent U.S.A. Corp. Registration is for Acephate to be used on peanuts to control thrips. February 1, 1994.

24. *EPA SLN No. GA 94 0002.* FMC Corp. Registration is for Bifenthrin to be used on turfgrass to control insects. February 5, 1994.

25. *EPA SLN No. GA 94 0003.* FMC Corp. Registration is for Bifenthrin to be used on turfgraass to control insects. February 5, 1994.

26. *EPA SLN No. GA 94 0004.* Rohm & Haas Co. Registration is for Mancozeb to be used on tobacco to control blue mold and damping-off. February 8, 1994.

27. *EPA SLN No. GA 94 0005.* Unocal Petroleum Products, Chemicals Div. Registration is for Wilthin to be used on peaches to control blooms. March 1, 1994.

28. *EPA SLN No. GA 94 0006.* Zeneca, Inc. Registration is for Gramoxone Extra Herbicide to be used on cotton to control weeds. March 4, 1994.

Idaho

29. *EPA SLN No. ID 93 0005.* U. S. Dept. of Agriculture. Registration is for Zinc Phosphide to be used on wheat to control field mice. February 4, 1994.

30. *EPA SLN No. ID 93 0010.* Hoechst-Roussel Agri-Vet Co. Registration is for Tralomethrin to be used on alfalfa grown for seed to control insects. February 4, 1994.

31. *EPA SLN No. ID 93 0011.* Setre Chemical Co. Registration is for Dimethoate to be used on lentils to control aphids. February 4, 1994. (CUP)

Kentucky

32. *EPA SLN No. KY 93 0002.* FMC Corp. Registration is for Clomazone to be used on winter squash to control grasses and broadleaf weeds. March 5, 1994.

33. *EPA SLN No. KY 94 0001.* FMC Corp. Registration is for Ferbam to be used on tobacco seedlings to control tobacco blue mold. February 8, 1994.

34. *EPA SLN No. KY 94 0002.* Rohm & Haas Co. Registration is for Mancozeb to be used on tobacco seedlings to control tobacco plant bed disease. March 9, 1994.

Louisiana

35. *EPA SLN No. LA 93 0022.* PBI Gordon Corp. Registration is for Hi-Dep Broadleaf to be used on preplant rice to control annual and perennial weeds. December 1, 1993.

36. *EPA SLN No. LA 93 0026.* Monsanto Agricultural Co. Registration is for Roundup D-Pak Herbicide to be used on sugarcane to control weeds. January 1, 1994.

Maine

37. *EPA SLN No. ME 94 0001.* Pro Serve, Inc. Registration is for Hexazinone to be used on nonbearing blueberry to control annual grasses. February 4, 1994. (CUP)

38. *EPA SLN No. ME 94 0002.* Rohm & Haas Co. Registration is for Mancozeb to be used on potatoes to control late blight. February 5, 1994.

39. *EPA SLN No. ME 94 0003.* Rohm & Haas Co. Registration is for Mancozeb to be used on potatoes to control late blight. February 5, 1994.

40. *EPA SLN No. ME 94 0004.* FMC Corp. Registration is for Clomazone to be used on winter squash to control grasses and broadleaves. March 1, 1994.

Michigan

41. *EPA SLN No. MI 94 0001.* DowElanco. Registration is for Chlorpyrifos to be used on grapes to control climbing cutworms. February 3, 1994.

42. *EPA SLN No. MI 94 0002.* DowElanco. Registration is for Chlorpyrifos to be used on onions (dry bulb) to control onion maggot. February 3, 1994.

43. *EPA SLN No. MI 94 0003.* Rohm & Haas Co. Registration is for Pronamide to be used on rhubarb to control weeds. March 9, 1994.

Minnesota

44. *EPA SLN No. MN 94 0001.* Rohm & Haas Co. Registration is for Oxyfluorfen to be used on windbreaks to control weeds. March 4, 1994.

45. *EPA SLN No. MN 94 0002.* Nortech Forest Products, Inc. Registration is for Denatonium Benzoate to be used on shrubs and conifers to control deer. March 9, 1994.

46. *EPA SLN No. MN 94 0003.* Micro-Flo Co. Registration is for Malathion to be used on wild rice to control wild rice worm. March 9, 1994.

Mississippi

47. *EPA SLN No. MS 94 0001.* Rohm & Haas Co. Registration is for Oxyfluorfen to be used on fallow beds preplant to control weeds. February 5, 1994.

48. *EPA SLN No. MS 94 0002.* Albaugh, Inc. Registration is for 2,4-D Amine 4 to be used on rice in late tillery to control weeds. February 3, 1994.

Missouri

49. *EPA SLN No. MO 93 0008.* Wilbur-Ellis Co. Registration is for Chlorothalanil to be used on assorted deciduous, bare foot, ornamental nursery stock to control fungi. January 1, 1993.

50. *EPA SLN No. MO 94 0001.* DowElanco. Registration is for Chlorpyrifos to be used on grapes to control cutworms. January 1, 1994.

Montana

51. *EPA SLN No. MT 93 0008.* Gustafson, Inc. Registration is for Tops MZ to be used on potato seed pieces to control fusarium. December 8, 1993.

52. *EPA SLN No. MT 94 0001.* E. I. Du Pont De Nemours & Co., Inc. Registration is for Hexazinone to be used on forage alfalfa to control weeds. March 1, 1994.

New Jersey

53. *EPA SLN No. NJ 94 0001.* Gustafson, Inc. Registration is for Carboxin to be used on onion seed to control onion smut. February 8, 1994.

54. *EPA SLN No. NJ 94 0002.* Miles, Inc. Registration is for Guthion to be used on parsley to control carrot weevil. March 1, 1994.

55. *EPA SLN No. NJ 94 0003.* Miles, Inc. Registration is for Guthion to be used on parsley to control carrot weevil. March 1, 1994.

New York

56. *EPA SLN No. NY 94 0001.* E. I. Du Pont De Nemours & Co., Inc. Registration is for Nicosulfuron to be used on field corn to control weeds. February 3, 1994.

North Carolina

57. *EPA SLN No. NC940001.* Rohm & Haas Co. Registration is for Mancozeb to be used on tobacco seedlings to control tobacco plant bed disease. March 9, 1994.

Oregon

58. *EPA SLN No. OR 93 0007.* Ciba-Geigy Corp. Registration is for Methidathion to be used on alfalfa to control insects. December 6, 1993.

59. *EPA SLN No. OR 93 0008.* Gustafson, Inc. Registration is for Thiabendazole to be used on chickpeas to control ascochyta blight. December 9, 1993.

60. *EPA SLN No. OR 93 0009.* Zeneca, Inc. Registration is for Paraquat Dichloride to be used on hops to control weeds and for chemical pruning. December 1, 1993.

61. *EPA SLN No. OR 93 0010.* Zeneca, Inc. Registration is for Captan to be used on raspberries and blackberries to control anthracnose and botryti. December 3, 1993.2

62. *EPA SLN No. OR 93 0011.* Zeneca, Inc. Registration is for Captan to be used on raspberries and blackberries to control anthracnose and botryti. December 3, 1993.

63. *EPA SLN No. OR 93 0012.* Miles, Inc. Registration is for Triadimefon to be used on poplar trees to control leaf rust. December 1, 1993.

64. *EPA SLN No. OR 93 0013.* Round Butte Seed Growers, Inc. Registration is for Orthene to be used on seed carrots to control lygus bugs. December 7, 1993.

65. *EPA SLN No. OR 93 0014.* Central Oregon Seed, Inc. Registration is for Orthene 75S to be used on seed carrots to control lygus bugs. December 7, 1993.

66. *EPA SLN No. OR 93 0016.* Isk Biotech Corp. Registration is for Maneb, Copper Oxychloride to be used on bulbing ornamentals to control diseases. December 8, 1993.

67. *EPA SLN No. OR 93 0017.* Elf Atochem North America, Inc. Registration is for Ziram to be used on apples and pears to control scab and bulls eye rot. December 1, 1993. (CUP)

68. *EPA SLN No. OR930018.* Zeneca, Inc. Registration is for Diquat Dibromide to be used on potato plants for potato plant desiccation. December 8, 1993.

69. *EPA SLN No. OR 93 0019.* Zeneca, Inc. Registration is for Paraquat and Diquat to be used on alfalfa for preharvest desiccant. December 8, 1993. (CUP)

70. *EPA SLN No. OR 93 0020.* E. I. Du Pont De Nemours & Co., Inc. Registration is for Diuron to be used on fine fescue seeds to control weeds. January 3, 1994.

71. *EPA SLN No. OR 93 0021.* E. I. Du Pont De Nemours & Co., Inc. Registration is for Sulfometuron Methyl to be used on ponderosa pine to control weeds. December 1, 1993.

72. *EPA SLN No. OR 93 0022.* Oregon Meadowfoam Growers Association. Registration is for Metolachlor to be used on meadowfoam to control weeds. December 1, 1993.

73. *EPA SLN No. OR 93 0023.* Drexel Chemical Co. Registration is for Diuron to be used on grass grown for seed to control weeds. December 1, 1993.

74. *EPA SLN No. OR 93 0024.* Gustafson, Inc. Registration is for Tops MZ to be used on potato seed pieces to control fungal diseases. December 1, 1993.

Pennsylvania

75. *EPA SLN No. PA 94 0001.* FMC Corp. Registration is for Carbofuran to be used on cucurbits and melons to control striped cucumber beetle. February 8, 1994.

76. *EPA SLN No. PA 94 0002.* Platte Chemical Co., Inc. Registration is for Ethalfluralin to be used on cucumbers and melons to control broadleaf weeds March 8, 1994.

Puerto Rico

77. *EPA SLN No. PR 93 0004.* Ochoa Fertilizer Co., Inc. Registration is for Sethoxydim to be used on seed corn to control weeds. January 5, 1994.

South Carolina

78. *EPA SLN No. SC 94 0001.* Zeneca, Inc. Registration is for Fomesafen to be used on pine seedling nursery to control yellow nutsedge. January 1, 1994.

79. *EPA SLN No. SC 94 0002.* Rohm & Haas Co. Registration is for Oxyfluorfen to be used on conifer seedbeds to control grassy and broadleaf weeds. March 1, 1994.

80. *EPA SLN No. SC 94 0003.* Zeneca, Inc. Registration is for Diquat Dibromide to be used on tomato vines to control sweet potato whitefly. March 7, 1994.

81. *EPA SLN No. SC 94 0005.* FMC Corp. Registration is for Carbofuran to be used on cucurbits to control striped cucumber beetles. March 2, 1994.

Tennessee

82. *EPA SLN No. TN 94 0001.* DowElanco. Registration is for Chlorpyrifos to be used on grapes to control grape root borer. January 1, 1994.

83. *EPA SLN No. TN 94 0002.* Elf Atochem North America, Inc. Registration is for Aquathol K Aquatic H to be used on aquatic places to control weeds. February 7, 1994.

84. *EPA SLN No. TN 94 0003.* Zeneca, Inc. Registration is for Paraquat to be used on no-till cotton to control annual grass and broadleaf weeds. March 4, 1994.

85. *EPA SLN No. TN 94 0004.* Rohm & Haas Co. Registration is for Mancozeb to be used on tobacco seedlings to control tobacco plant bed disease. March 8, 1994.

86. *EPA SLN No. TN 94 0005.* E. I. Du Pont De Nemours & Co., Inc. Registration is for Cyanazine to be used on no-till cotton to control weeds. March 4, 1994.

Texas

87. *EPA SLN No. TX 93 0025.* Soil Chemicals Corp. Registration is for Methyl Bromide to be used as commodity fumigant to control insects. December 6, 1993. (CUP)

Utah

88. *EPA SLN No. UT 93 0005.* Clarke Mosquito Control Products Co., Inc. Registration is for Chlorpyrifos to be used on noncrop standing water to control mosquito larvae. December 8, 1993.

Vermont

89. *EPA SLN No. VT 94 0001.* Platte Chemical Co., Inc. Registration is for Ethalfluralin to be used on winter pumpkins and summer squash to control weeds. March 1, 1994.

Washington

90. *EPA SLN No. WA 93 0025.* Gustafson, Inc. Registration is for Thiolphanate-methyl to be used on potato seed pieces to control fusarium and rhizoctonia. December 6, 1993.

91. *EPA SLN No. WA 93 0026.* Rhone-Poulenc Ag Co. Registration is for Iprodione to be used for treating seed peas to control ascochyta blight. December 4, 1993.

92. *EPA SLN No. WA 93 0027.* Rhone-Poulenc Ag Co. Registration is for Iprodione to be used on seed peas for export to control ascochyta blight. December 2, 1993.

93. *EPA SLN No. WA 94 0001.* Rhone-Poulenc Ag Co. Registration is for Iprodione to be used on carrot seed to control fungi. January 1, 1994.

94. *EPA SLN No. WA 94 0002.* DowElanco. Registration is for Chlorpyrifos to be used on carrots to control cutworms, lygus. January 6, 1994.

95. *EPA SLN No. WA 94 0003.* DowElanco. Registration is for

83. *EPA SLN No. TN 94 0002.* Elf Atochem North America, Inc. Registration is for Aquathol K Aquatic H to be used on aquatic places to control weeds. February 7, 1994.

84. *EPA SLN No. TN 94 0003.* Zeneca, Inc. Registration is for Paraquat to be used on no-till cotton to control annual grass and broadleaf weeds. March 4, 1994.

85. *EPA SLN No. TN 94 0004.* Rohm & Haas Co. Registration is for Mancozeb to be used on tobacco seedlings to control tobacco plant bed disease. March 8, 1994.

86. *EPA SLN No. TN 94 0005.* E. I. Du Pont De Nemours & Co., Inc. Registration is for Cyanazine to be used on no-till cotton to control weeds. March 4, 1994.

Texas

87. *EPA SLN No. TX 93 0025.* Soil Chemicals Corp. Registration is for Methyl Bromide to be used as commodity fumigant to control insects. December 6, 1993. (CUP)

Utah

88. *EPA SLN No. UT 93 0005.* Clarke Mosquito Control Products Co., Inc. Registration is for Chlorpyrifos to be used on noncrop standing water to control mosquito larvae. December 8, 1993.

Vermont

89. *EPA SLN No. VT 94 0001.* Platte Chemical Co., Inc. Registration is for Ethalfluralin to be used on winter pumpkins and summer squash to control weeds. March 1, 1994.

Washington

90. *EPA SLN No. WA 93 0025.* Gustafson, Inc. Registration is for Thiolphanate-methyl to be used on potato seed pieces to control fusarium and rhizoctonia. December 6, 1993.

91. *EPA SLN No. WA 93 0026.* Rhone-Poulenc Ag Co. Registration is for Iprodione to be used for treating seed peas to control ascochyta blight. December 4, 1993.

92. *EPA SLN No. WA 93 0027.* Rhone-Poulenc Ag Co. Registration is for Iprodione to be used on seed peas for export to control ascochyta blight. December 2, 1993.

93. *EPA SLN No. WA 94 0001.* Rhone-Poulenc Ag Co. Registration is for Iprodione to be used on carrot seed to control fungi. January 1, 1994.

94. *EPA SLN No. WA 94 0002.* DowElanco. Registration is for Chlorpyrifos to be used on carrots to control cutworms, lygus. January 6, 1994.

95. *EPA SLN No. WA 94 0003.* DowElanco. Registration is for Chlorpyrifos to be used on grapes to control cutworms. January 6, 1994.

96. *EPA SLN No. WA 94 0004.* DowElanco. Registration is for Chlorpyrifos to be used on strawberries to control garden symphylans. January 6, 1994.

97. *EPA SLN No. WA 94 0005.* Amvac Chemical Corp. Registration is for Metam 426 to be used on fruit orchards to control replant diseases. January 1, 1994.

98. *EPA SLN No. WA 94 0006.* Rhone-Poulenc Ag Co. Registration is for Iprodione to be used on carrot seed to control fungi. February 1, 1994.

99. *EPA SLN No. WA 94 0007.* U.S. Hop Industry. Registration is for Propargite to be used on hops to control two-spotted spider mites. February 8, 1994. (CUP)

100. *EPA SLN No. WA 94 0008.* E. I. Du Pont De Nemours & Co., Inc. Registration is for Mancozeb to be used on pears to control pear psylla nymphs. February 9, 1994. (CUP)

101. *EPA SLN No. WA 94 0009.* Gowan Co. Registration is for Botran 75W Fungicide to be used on potatoes to control white mold. February 5, 1994.

102. *EPA SLN No. WA 94 0010.* Gowan Co. Registration is for Bensulide to be used on bulb onions to control watergrass and pigweed. February 5, 1994.

103. *EPA SLN No. WA 94 0011.* Zeneca, Inc. Registration is for Fonofos to be used on irish potatoes to control wireworms. February 3, 1994.

104. *EPA SLN No. WA 94 0012.* Zeneca, Inc. Registration is for Fonofos to be used on asparagus to control garden symphylans. February 3, 1994.

105. *EPA SLN No. WA 94 0013.* ISK Biotech Corp. Registration is for Chlorothalonil to be used on ornamental bulbs to control rot. March 2, 1994. (CUP)

106. *EPA SLN No. WA 94 0014.* Rohm & Haas Co. Registration is for Mancozeb to be used on pears to control psylla nymphs. March 6, 1994.

107. *EPA SLN No. WA 94 0015.* E. I. Du Pont De Nemours & Co., Inc. Registration is for Metsulfuron Methyl to be used on winter wheat and barley to control potential drifting. March 9, 1994.

108. *EPA SLN No. WA 94 0016.* E. I. Du Pont De Nemours & Co., Inc. Registration is for Diuron to be used on peppermint to control weeds. March 1, 1994.

109. *EPA SLN No. WA 94 0018.* DowElanco. Registration is for Ethalfluralin to be used on alfalfa grown for seed to control nightshade and dodder. March 8, 1994.

110. *EPA SLN No. WA 94 0021.* Rhone-Poulenc Ag Co. Registration is for Carbaryl to be used on apples to control fruit thinning. March 1, 1994.

Wisconsin

111. *EPA SLN No. WI 94 0001.* Ciba-Geigy Corp. Registration is for Metolachlor to be used on cabbage to control weeds. December 2, 1993.

112. *EPA SLN No. WI 94 0002.* ISK Biotech Corp. Registration is for Chlorothalonil to be used on cranberries to control fungi. December 1, 1993.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, State registrations.

Dated: June 28, 1994.

Norman W. Chlosta,

Acting Director, Program Management and Support Division, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–16982 Filed 7–12–94; 8:45 am]
BILLING CODE 6560–50–F

[PF–600; FRL–4871–5]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions and food/feed additive petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities. The notice also announces the withdrawal of a food/feed additive petition (FAP).

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential

may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attention: [Product Manager (PM) named in the petition], Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/ telephone number	Address
George LaRocca (PM-13).	Rm. 204, CM #2, 703-305-5100.	1921 Jefferson Davis Hwy., Arlington, VA.
Phil Hutton (PM-18).	Rm. 213, CM #2, 703-305-7690.	Do.
Dennis Edwards (PM-19).	Rm. 207, CM #2, 703-305-5386.	Do.
Steve Robbins (Acting PM-21).	Rm. 259, CM #2, 703-305-6900.	Do.
Cynthia Giles-Parker (PM-22).	Rm. 229, CM #2 703-305-5540.	Do.
Joanne Miller (PM-23).	Rm. 237, CM #2, 703-305-7830.	Do.
Robert Taylor (PM-25).	Rm. 241, CM #2, 703-305-6800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food/feed additive (FAP) petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities. There is also one petition withdrawal.

Initial Filings

1. *PP 4F4281.* Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.399 by establishing a tolerance to permit combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on canola (rape seed) at 0.1 part per million (ppm). (PM-21)

2. *PP 4F4285.* Miles, Inc., Agricultural Division, 84 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180 by establishing a tolerance to permit combined residues of imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl moiety in or on mango at 0.25 ppm. (PM-19)

3. *PP 4F4291.* FMC Corp., Agricultural Chemicals Group, 1735 Market St., Philadelphia, PA 19103, proposes to amend 40 CFR 180.418 by establishing a tolerance to permit residues of the insecticide cypermethrin [(±) *alpha*-cyano-(3-phenoxyphenyl)methyl (±)*cis*, *trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] in or on the brassica crop grouping: 2.0 ppm in or on head and stem brassicas and 14.0 ppm in or on leafy brassicas. (PM-13)

4. *PP 4F4293.* Du Pont, Agricultural Products, Barley Mill Plaza, P. O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR 180.184 by amending the existing tolerance residue of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) in or on wheat straw from 0.5 ppm to 2.0 ppm. (PM-25)

5. *PP 4F4309.* Miles, Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR 180.436 by establishing a tolerance to permit residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on sweet corn, forage at 54.0 ppm; alfalfa, hay at 10.0 ppm; soybean, forage at 10.0 ppm; alfalfa, forage at 5.0 ppm; soybean, hay at 1.5 ppm; sunflower, forage at 1.0 ppm; sweet corn at 0.05 ppm; soybean, bean at 0.03 ppm; and sunflower, seed at 0.02 ppm. (PM-13)

6. *PP 4F4312.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR 180.364 by establishing a tolerance to permit combined residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid (AMPA) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on alfalfa, hay at 200 ppm and alfalfa, forage at 75 ppm. (PM-25)

7. *PP 4F4313.* Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR 180.436 by establishing a tolerance to permit residues of the insecticide cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate, in or on citrus, fruits at 0.2 ppm. (PM-13)

8. *PP 4F4314.* D–1–1–4, Inc., 15401 Cartwright Rd., Boise, ID 83703, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for the plant growth regulator 1,4-dimethylnaphthalene in or on stored commodities when used post harvest as a sprout inhibitor for stored commodities. (PM-22)

9. *PP 4F4315.* Ciba Plant Protection, Ciba-Geigy Corp., P. O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR part 180 by establishing a tolerance to permit residues of [4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, proposed common name fludioxonil, in or on sorghum, grain at 0.1 ppm, corn grain at 0.04 ppm, corn forage at 0.04 ppm, corn fodder at 0.04 ppm, sweet corn (kernels plus cob with husks removed) at 0.04 ppm, sorghum, forage at 0.04 ppm, and sorghum, fodder at 0.04 ppm. (PM-25)

10. *PP 4F4316.* Rhone-Poulenc Ag Co., P. O. Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.399 by establishing a tolerance to permit the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(methylethyl)-2,4-dioxo-1-imidazolidinecarboximide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on grapes at 10 ppm. (PM-21)

11. *PP 4F4318.* Mycotech Corp., 630 Utah Ave., P.O. Box 4109, Butte, MT 59701, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the insecticide *Beauveria bassiana*, Strain GHA, in or on alfalfa, corn, potatoes, rapeseed (canola), safflower, small grain crops, soybeans, sugarbeets, and sunflower. (PM-18)

12. *PP 4F4320.* Miles, Inc., P.O. Box 4913, 8400 Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180 by establishing a tolerance to permit combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-yl)-1,3-butanediol, calculated as triadimenol, in or on barley, straw at 0.2 ppm; oats, straw at 0.2 ppm; and wheat, straw at 0.2 ppm. (PM-22)

13. *PP 4F4322.* Du Pont, Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE, proposes to amend 40 CFR part 180 by establishing a tolerance to permit residues of the herbicide tribenuron (methyl 2[[[[*N*-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino]carbonyl] amino] sulfonyl] benzoate) in or on grass, seed; grass, seed straw; grass, seed cleanings (screenings) at 0.04 ppm. (PM-23)

14. *PP 4F4324.* Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 180 by establishing a tolerance to permit the residues of the fungicide mancozeb in or on almond hulls at 10 ppm and almond nut at 0.1 ppm. (PM-21)

15. *PP 4F4327.* Valent, USA, Corp., 1333 North California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, proposes to amend 40 CFR part 180 by establishing a tolerance to permit residues of the insecticide fenpropathrin [*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate] in or on peanuts, vines and peanuts, hay (dried) at 20 ppm; milk fat at 2.0 ppm (reflecting 0.08 ppm in whole milk); fat (cattle, goats, hogs, horses, and sheep) at 1.0 ppm; peanut hull at 0.3 ppm; meat and meat byproducts (cattle, goats, hogs, horses, and sheep) at 0.1 ppm; poultry meat, fat, meat byproducts and eggs at 0.05 ppm; and peanut nut meat at 0.01 ppm. (PM-13)

16. *PP 4F4329.* DuPont Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes conversion of fenvalerate tolerances (40 CFR 180.379, 185.1300, 186.1300) to esfenvalerate tolerances, *S-alpha*-cyano(3-phenoxyphenyl)methyl *S*-4-chloro-*alpha*-(1-methylethyl)benzeneacetate, in or on the following RAC's (current fenvalerate tolerance followed by proposed esfenvalerate tolerance in parts per million): Carrots 0.5, 0.5; potatoes 0.02, 0.02; radish, roots 0.3, 0.3; turnip, roots 8.0, 3.0; turnip, tops 20.0, 7.0; broccoli 2.0, 1.0; cabbage 10.0, 3.0; cauliflower 0.5, 0.5; collards 10.0, 3.0; beans, snap 2.0, 1.0; beans, dried 0.25, 0.25; peas 1.0, 1.0; peas, dried 0.25, 0.25; soybeans 0.05, 0.05; eggplant 1.0, 0.5; peppers 1.0, 0.5; tomatoes 1.0, 0.5; cucumbers 0.5, 0.5; pumpkins 1.0, 0.5; winter squash 1.0, 0.5; summer squash 0.5, 0.5; cantaloupes 1.0, 0.5; honeydew melons 1.0, 0.5; muskmelons 1.0, 0.5; watermelon 1.0, 0.5; apples 2.0,

butanediol, calculated as triadimenol, in or on barley, straw at 0.2 ppm; oats, straw at 0.2 ppm; and wheat, straw at 0.2 ppm. (PM-22)

13. *PP 4F4322*. Du Pont, Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE, proposes to amend 40 CFR part 180 by establishing a tolerance to permit residues of the herbicide tribenuron (methyl 2[[[[*N*-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino]carbonyl] amino] sulfonyl] benzoate) in or on grass, seed; grass, seed straw; grass, seed cleanings (screenings) at 0.04 ppm. (PM-23)

14. *PP 4F4324*. Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 180 by establishing a tolerance to permit the residues of the fungicide mancozeb in or on almond hulls at 10 ppm and almond nut at 0.1 ppm. (PM-21)

15. *PP 4F4327*. Valent, USA, Corp., 1333 North California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, proposes to amend 40 CFR part 180 by establishing a tolerance to permit residues of the insecticide fenpropathrin [*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate] in or on peanuts, vines and peanuts, hay (dried) at 20 ppm; milk fat at 2.0 ppm (reflecting 0.08 ppm in whole milk); fat (cattle, goats, hogs, horses, and sheep) at 1.0 ppm; peanut hull at 0.3 ppm; meat and meat byproducts (cattle, goats, hogs, horses, and sheep) at 0.1 ppm; poultry meat, fat, meat byproducts and eggs at 0.05 ppm; and peanut nut meat at 0.01 ppm. (PM-13)

16. *PP 4F4329*. DuPont Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes conversion of fenvalerate tolerances (40 CFR 180.379, 185.1300, 186.1300) to esfenvalerate tolerances, *S-alpha*-cyano(3-phenoxyphenyl)methyl *S*-4-chloro-*alpha*-(1-methylethyl)benzeneacetate, in or on the following RAC's (current fenvalerate tolerance followed by proposed esfenvalerate tolerance in parts per million): Carrots 0.5, 0.5; potatoes 0.02, 0.02; radish, roots 0.3, 0.3; turnip, roots 8.0, 3.0; turnip, tops 20.0, 7.0; broccoli 2.0, 1.0; cabbage 10.0, 3.0; cauliflower 0.5, 0.5; collards 10.0, 3.0; beans, snap 2.0, 1.0; beans, dried 0.25, 0.25; peas 1.0, 1.0; peas, dried 0.25, 0.25; soybeans 0.05, 0.05; eggplant 1.0, 0.5; peppers 1.0, 0.5; tomatoes 1.0, 0.5; cucumbers 0.5, 0.5; pumpkins 1.0, 0.5; winter squash 1.0, 0.5; summer squash 0.5, 0.5; cantaloupes 1.0, 0.5; honeydew melons 1.0, 0.5; muskmelons 1.0, 0.5; watermelon 1.0, 0.5; apples 2.0, 1.0; pears 2.0, 1.0; stone fruit 10.0, 3.0; blueberries 3.0, 1.0; caneberries 3.0, 1.0; currants 3.0, 1.0; elderberries 3.0, 1.0; gooseberries 3.0, 1.0; huckleberries 3.0, 1.0; almonds 0.2, 0.2; almond hulls 15.0, 5.0; filberts 0.2, 0.2; pecans 0.2, 0.2; English 0.2, 0.2; corn, grain 0.02, 0.02; corn, sweet 0.1, 0.1; corn, fodder 50.0, 15.0; corn, forage 50.0, 15.0; cottonseed 0.2, 0.2; peanuts 0.02, 0.02; peanut hulls 0.10, 0.10; sugarcane 2.0, 1.0; sunflower seed 1.0, 0.5; artichokes 0.2, 0.2. (PM 13)

17. *PP 4F4330*. Miles, Inc., Agricultural Division, 8400 Hawthorn Rd.; P.O. Box 4915, Kansas City, MO 64120-0013, proposes to amend 40 CFR 180.436 by establishing a tolerance to permit residues of the insecticide cyfluthrin, *cyano*-(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate, in or on potatoes at 0.01 ppm. (PM-13)

18. *PP 4F4333*. Rohm & Haas Co., 100 Independence Mall West, Philadelphia, PA 19106, proposes to amend 40 CFR part 180 by establishing a tolerance to permit the residues of mancozeb in or on broccoli at 13 ppm, cabbage at 10 ppm, lettuce at 10 ppm, and peppers at 7 ppm. (PM-21)

19. *FAP 4H5681*. Hoechst-Roussel Agri-Vet Co., Route 202-206, P.O. Box 2500, Somerville, NJ 08876-1258, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit combined residues of the insecticide tralomethrin, (*S*)*alpha*-*cyano*-3-phenoxybenzyl(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate, and its metabolites, *cis*-deltamethrin, (*S*)-*alpha*-*cyano*-3-phenoxybenzyl(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate, and trans-deltamethrin, (*S*)*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate, calculated as parent, in sorghum grain bran, dry, at 2.5 ppm, sorghum grain bran, wet, at 20.0 ppm, and sorghum grain dust at 5.0 ppm. (PM-13)

20. *FAP 4H5683*. Du Pont Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0083, proposes to amend 40 CFR parts 185 and 186 by establishing food/feed additive tolerances for residues of the herbicide hexazinone, [3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione], in or on sugarcane bagasse at 0.5 ppm and sugarcane molasses at 5 ppm. (PM-23)

21. *FAP 4H5684*. BASF Corp., Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR 186.2275 to increase the feed additive tolerance for residues of mepiquat chloride (1,1-dimethylpiperidinium chloride) on cottonseed meal from 3.0 ppm to 4.0 ppm. (PM-22)

22. *FAP 4H5686*. Miles, Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR 186.1250 by establishing a feed additive regulation to permit the residues of the insecticide cyfluthrin (*cyano*(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl cyclopropane carboxylate) in sunflower, hulls at 2.5 ppm and soybean, hulls at 0.1 ppm. (PM-13)

23. *FAP 4H5687*. Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR 185.1250 and 186.1250 by establishing a food/feed additive regulation to permit the residues of the insecticide cyfluthrin, (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl cyclopropane carboxylate, in or on citrus, oil at 1.0 ppm, citrus, dried pulp at 1.0 ppm, and citrus, molasses at 0.5 ppm. (PM-13)

24. *FAP 4H5689*. Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit combined residues of fenbuconazole, *alpha*-[2-(4-chlorophenyl)ethyl]-*alpha*-phenyl-1*H*-1,2,4-triazole-1-propanenitrile, and its diastereomeric metabolites *cis*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-yl-methyl)-2-(3*H*)-furanone], *trans*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole1-yl-methyl)-2-(3*H*)-furanone, in or on dried prunes at 7.0 ppm. (PM-22)

25. *FAP 4H5690*. Valent U.S.A. Corp., 1333 N. California Blvd., Walnut Creek, CA 94596-8025, proposes to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit the residues of fenpropathrin, *alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate, in peanut oil at 0.05 ppm and peanut soapstock at 0.02 ppm. (PM-13)

26. *FAP 4H5691*. Rhone-Poulenc Ag Co., P. O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit the combined residues of aldicarb, aldicarb sulfoxide, and algicarb sulfone in or on wheat and barley straw at 0.06 ppm. (PM-19)

27. *FAP 4H5692.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR 186.3500 by establishing a feed additive regulation to permit the combined residues of the herbicide glyphosate, *N*-(phosphonomethyl)(glycine), and its metabolite aminomethylphosphonic acid (AMPA) in alfalfa meal at 400 ppm. (PM-25)

28. *FAP 4H5693.* Merck & Co., Inc.; P.O. Box 450, Three Bridges, NJ 08887-0450, proposes to amend 40 CFR 186.300 by establishing a feed additive regulation to permit combined residues of abamectin and its delta 8,9 isomer in or on apples, wet pomace at 0.10 ppm. (PM-13)

Withdrawn Petition

29. *FAP 9H5575.* Notice appeared in the **Federal Register** of March 23, 1989 (54 FR 12010), that Mobay Corp., (now Miles, Inc.), P.O. Box 4913, Kansas City, MO 64120-0013, proposed to amend 40 CFR parts 185 and 186 by establishing a regulation to permit the residues of the fungicide terbuconazole (*α*-[2-(4-chlorophenyl)ethyl]-*α*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on barley milled fractions (except flour) at 1.0 ppm, wheat milled fractions (except flour) at 1.0 ppm, grape pomace (dry) at 12.0 ppm, and raisin waste at 6.0 ppm. Miles, Inc., has requested that the petition be withdrawn without prejudice to future filing. (PM 21)

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food and feed additives, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: June 27, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-16861 Filed 7-12-94; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-41041; FRL-4870-4]

Thirty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The TSCA Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Thirty-Fourth Report to the Administrator of EPA on May 17, 1994. As noted in this Report, which is included with this notice, the ITC revised the *Priority Testing List* by: (1) changing a recommendation for one chemical, white phosphorus, to a designation, (2) recommending two chemicals, ethyl tert-butyl ether and tert-amyl methyl ether, and (3) removing eight chemicals from the *List*. The eight chemicals being removed from the *List* are: methyl methacrylate, diethyl phthalate, *N*-phenyl-1-naphthylamine, acetophenone, phenol, *N,N*-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol. The Report states the reasons for the removal of these chemicals from the *List*. EPA invites interested persons to submit written comments on the Report.

In addition, EPA is soliciting interested parties for participation in or monitoring of a TSCA section 4 testing consent agreement development process for white phosphorus that was designated for amphibian, reptile, wild mammal, and aquatic plant acute toxicity testing; and terrestrial plant uptake and translocation testing. EPA is also inviting manufacturers and/or processors of white phosphorus who wish to participate in testing negotiations for white phosphorus to develop and submit testing agreement proposals to EPA.

EPA has already solicited interested parties in developing testing agreements for ethyl tert-butyl ether and tert-amyl methyl ether (59 FR 18399, April 18, 1994).

DATES: Written comments on the 34th ITC Report should be submitted by August 12, 1994. Written testing proposals must be received by September 12, 1994. Written notice of interest in being designated an "interested party" to the development or monitoring of a consent agreement for white phosphorus must be received by September 12, 1994. Those submitting written testing proposals will be considered "interested parties" and do not have to submit separate written notice. EPA will contact all "interested parties" and advise them of meeting dates.

ADDRESSES: Send six copies of written submissions to: TSCA Public Docket Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. B-607 NEM, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS-41041; FRL-4870-4).

The public record supporting this action, including comments, is available for public inspection in Rm. B-607 NEM at the address noted above from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. E-543B, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's Thirty-Fourth Report to the Administrator.

I. Background

TSCA (Pub. L. 94-469, 90 Stat. 2003 et seq; 15 U.S.C. 2601 et seq.) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the Interagency Testing Committee to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months. The most recent revisions to this *List* are included in the ITC's Thirty-Fourth Report. The Report was received by the Administrator on May 17, 1994, and is included in this Notice. The Report changes a recommendation for one chemical, recommends two chemicals, and removes eight chemicals from the TSCA section 4(e) *Priority Testing List*.

II. Written and Oral Comments

EPA invites interested persons to submit detailed comments on the ITC's Report. All submissions should bear the identifying docket number (OPPTS-41041).

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice will be published at a later date in the **Federal Register** adding the substances recommended in the ITC's ThirtyFourth Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals.

III. Status of List

The ITC's Thirty-Fourth Report notes the change of a recommendation for one chemical to a designation, the recommendation of two chemicals, and the removal of eight chemicals from the *Priority Testing List*. The current TSCA section 4(e) *Priority Testing List* contains 12 chemicals and 12 chemical groups, with 2 chemical groups and 3 chemicals designated for testing.

IV. Testing Consent Agreements

1. *Solicitation of interested parties.* EPA's procedures for requiring the testing of chemical substances under section 4 of TSCA include the adoption of enforceable consent agreements and the promulgation of test rules. These processes are found at 40 CFR 790.20. EPA has on numerous occasions been approached by chemical companies interested in negotiating consent agreements for testing ITC chemicals or chemical groups. As a result of these requests, EPA is now inviting persons interested in participating in or monitoring negotiations on the chemical designated in the Thirty-Fourth ITC Report to notify EPA in writing. Those who respond to this solicitation by the deadline established in this notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties."

2. *Solicitation of testing proposals for consent agreement negotiations.* EPA is also now soliciting testing proposals for a consent agreement to perform amphibian, reptile, wild mammal, and aquatic plant acute toxicity testing; and terrestrial plant uptake and translocation testing on white phosphorus. Following publication of this notice, manufacturers and/or processors have 60 days to develop and submit testing proposals that they wish EPA to consider as candidates for consent agreement negotiations for white phosphorus. Testing guidelines for the designated tests include: (1) Lemna Acute Toxicity Test at 40 CFR 797.1160, (2) Plant Uptake and Translocation Test at 40 CFR 797.2850, (3) Amphibian Acute Toxicity Test, (4) Reptilian Acute Toxicity Test, (5) Wild Mammal Acute Toxicity Test. These guidelines are available to the public through the TSCA Public Docket Office and the Environmental Assistance Division listed above. These guidelines should be reviewed before submitting

health and safety studies on the listed chemicals.

III. Status of List

The ITC's Thirty-Fourth Report notes the change of a recommendation for one chemical to a designation, the recommendation of two chemicals, and the removal of eight chemicals from the *Priority Testing List*. The current TSCA section 4(e) *Priority Testing List* contains 12 chemicals and 12 chemical groups, with 2 chemical groups and 3 chemicals designated for testing.

IV. Testing Consent Agreements

1. *Solicitation of interested parties.* EPA's procedures for requiring the testing of chemical substances under section 4 of TSCA include the adoption of enforceable consent agreements and the promulgation of test rules. These processes are found at 40 CFR 790.20. EPA has on numerous occasions been approached by chemical companies interested in negotiating consent agreements for testing ITC chemicals or chemical groups. As a result of these requests, EPA is now inviting persons interested in participating in or monitoring negotiations on the chemical designated in the Thirty-Fourth ITC Report to notify EPA in writing. Those who respond to this solicitation by the deadline established in this notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties."

2. *Solicitation of testing proposals for consent agreement negotiations.* EPA is also now soliciting testing proposals for a consent agreement to perform amphibian, reptile, wild mammal, and aquatic plant acute toxicity testing; and terrestrial plant uptake and translocation testing on white phosphorus. Following publication of this notice, manufacturers and/or processors have 60 days to develop and submit testing proposals that they wish EPA to consider as candidates for consent agreement negotiations for white phosphorus. Testing guidelines for the designated tests include: (1) Lemna Acute Toxicity Test at 40 CFR 797.1160, (2) Plant Uptake and Translocation Test at 40 CFR 797.2850, (3) Amphibian Acute Toxicity Test, (4) Reptilian Acute Toxicity Test, (5) Wild Mammal Acute Toxicity Test. These guidelines are available to the public through the TSCA Public Docket Office and the Environmental Assistance Division listed above. These guidelines should be reviewed before submitting any testing proposals in response to this notice.

For additional technical information on these testing guidelines contact Dr. Barnett Rattner, Department of The Interior, (301) 497–5671.

All testing proposals submitted should describe the testing to be performed and explain any deviations from the test protocols.

EPA will review the submissions and select the most promising submissions as candidates for negotiation. Submissions that fully address the ITC's concerns will have a higher chance of success than those that do not fully address all data needs.

3. *Negotiation of testing program and development of a testing consent agreement.* EPA will follow the negotiation procedures under 40 CFR 790.22, and to the extent feasible, the timetable outlined in 40 CFR part 790, appendix A to subpart B.

For additional information about process or negotiations contact Frank Kover, Chief, Chemical Testing and Information Branch, (202) 260–8130.

Authority: 15 U.S.C. 2603.

Dated: June 30, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Thirty-Fourth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

SUMMARY: This is the 34th Report of the TSCA Interagency Testing Committee (ITC) to the Administrator of the U.S. Environmental Protection Agency (EPA). The ITC is revising its *Priority Testing List* by changing a recommendation for one chemical, white phosphorus, to a designation for action by the Administrator within 12 months, recommending two chemicals, ethyl *tert*-butyl ether and *tert*-amyl methyl ether and by removing eight chemicals. White phosphorus is being designated to meet the data needs of the Department of Interior (DOI); discussions are ongoing with the Agency for Toxic Substances and Disease Registry (ATSDR), the Department of Defense (DOD), and EPA to coordinate their data needs with those of DOI. Ethyl *tert*-butyl ether and *tert*-amyl methyl ether are being recommended for health effects testing because EPA needs these data for ongoing assessments. Methyl methacrylate and diethyl phthalate are being removed from the *List* because dermal absorption rate data are available that are likely to satisfy the data needs of the Occupational Health and Safety Administration (OSHA). *N*-Phenyl-1-naphthylamine is being removed from the *List* because studies reviewed by the ITC did not increase concerns for cancer and the ITC's priorities do not include designating the chemical at this time. Acetophenone, phenol, N,*N*-dimethylaniline, ethyl acetate and 2,6-dimethylphenol are being removed from the *List* because EPA proposed the testing designated by the ITC in its 27th Report in a test rule that was published on November 22, 1993 (58 FR 61654).

I. Background

The TSCA Interagency Testing Committee (ITC) was established by section 4(e) of the Toxic Substances Control Act (TSCA):

> ...to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months..., the Committee shall make such revisions in the *List* as it determines to be necessary and to transmit them to the Administrator together with the Committee's reasons for the revisions...
>
> (Public Law 94–469, 90 Stat. 2003 et seq., 15 U.S.C. 2601 et seq.).

Since its creation in 1976, the ITC has submitted 33 semi-annual Reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. These Reports have been published in the **Federal Register** (FR) and are available from the ITC. The ITC meets monthly and produces its revisions with the help of staff and technical contract support provided by EPA. ITC membership and support personnel are listed at the end of this Report.

Following receipt of the ITC's Report and the addition of chemicals to the *Priority Testing List*, the EPA's Office of Pollution Prevention and Toxics adds these chemicals to TSCA section 8(a) and 8(d) rules that require manufacturers, processors, and/or distributors of these chemicals to submit production and exposure data (8a), and health and safety studies (8d), within 2 months of the rules' effective date. The submissions are indexed and maintained by EPA. The ITC reviews the 8(a) and 8(d) information and other available data on chemicals and chemical groups (e.g., TSCA section 8(e) "substantial risk" studies, "For Your Information" (FYI) submissions to EPA and published papers) to determine if revisions to the *Priority Testing List* are necessary. Revisions can include changing a recommendation to a designation for action by the Administrator within 12 months, modifying the recommended testing, or

removing the chemical or chemical group from the *List*.

II. Revisions to the TSCA Section 4(e) Priority Testing List

The ITC's revisions to its TSCA Section 4(e) *Priority Testing List* are summarized in the following Table 1.

TABLE 1. CHEMICALS DESIGNATED, RECOMMENDED AND REMOVED FROM THE TSCA SECTION 4(E) PRIORITY TESTING LIST

CAS No.	Chemical/Group	Action	Date
7723–14–0	White phosphorus	Designate Previously Recommended Chemical for Amphibian, Reptile, Wild Mammal, and Aquatic Plant Acute Toxicity Testing; and Terrestrial Plant Uptake and Translocation Testing.	5/94
637–92–3	Ethyl *tert*-butyl ether	Recommend for health effects testing	5/94
994–05–8	Tert-amyl methyl ether	Recommend for health effects testing	5/94
80–62–6	Methyl methacrylate	Remove Previously Recommended Chemical	5/94
84–66–2	Diethyl phthalate	Remove Previously Recommended Chemical	5/94
90–30–2	*N*-Phenyl-1-naphthylamine	Remove Previously Recommended Chemical	5/94
98–86–2	Acetophenone	Remove Previously Designated Chemical	5/94
108–95–2	Phenol	Remove Previously Designated Chemical	5/94
121–69–7	*N,N*-Dimethylaniline	Remove Previously Designated Chemical	5/94
141–78–6	Ethyl acetate	Remove Previously Designated Chemical	5/94
576–26–1	2,6–Dimethylphenol	Remove Previously Designated Chemical	5/94

III. Rationale for the revisions

A. ITC's Activities During this Reporting Period

During the 6 months covered by this Report, November 1993 through April 1994, the ITC reviewed the TSCA section 8(a) and section 8(d) submissions and other available data for white phosphorus and *N*-phenyl-1-naphthylamine and dermal absorption data for diethyl phthalate and methyl methacrylate, and made decisions with respect to their dispositions on the *Priority Testing List*.

B. Specific Rationales

1. *Designated chemical — White phosphorus—a. Background.* Thousands of ducks in wetlands at an artillery impact area have been poisoned by white phosphorus. The Department of Interior (DOI) is concerned about the persistence of white phosphorus in wetland sediments, the adverse effects of white phosphorus on wildlife, and the indirect effects of white phosphorus on endangered species that feed on carcasses of white phosphorus-poisoned wildlife.

In November 1991, based on DOI's data needs, the ITC recommended testing to determine the persistence of white phosphorus in surface waters and sediments and the toxicity to migratory birds and other wildlife (see the ITC's 29th Report in 56 FR 67424, December 30, 1991). Since that recommendation, the DOI has considered these and other data needs. Discussions at ITC meetings, are ongoing with the Agency for Toxic Substances and Disease Registry (ATSDR), the Department of Defense (DOD), and the U.S. Environmental Protection Agency (EPA) to coordinate their data needs with those of DOI. Several Federal Government organizations have past and ongoing activities that could result in the identification of additional data needs for white phosphorus and more ITC testing designations. Some of these activities are described below.

ATSDR is drafting a toxicological profile on white phosphorus. DOD is supporting studies on white phosphorus because it is detected in wetlands on DOD munitions testing sites. In 1990, EPA published a Drinking Water Health Advisory for white phosphorus (Ref. 20). In 1992 and 1993, EPA obtained 1991 and 1992 data under the Toxics Release Inventory (TRI), indicating that during each of these years about 300,000 pounds of white phosphorus were released to land (Ref. 17). These releases are an order of magnitude lower than reported for previous years (56 FR 67424) and reflect, in part, more accurate record keeping by white phosphorus manufacturers. In 1993, EPA and DOD conducted 4 seminars on "technologies for remediating sites contaminated with explosive and radioactive wastes" (Ref. 21). In 1993, EPA also prepared a handbook entitled "Approaches for the Remediation of Federal Sites Contaminated with Explosive and Radioactive Wastes" (Ref. 22). White phosphorus was extensively discussed in the seminars and the handbook. EPA is making a determination of whether there are health effects data needed for white phosphorus under Title III of the Clean Air Act. ITC will coordinate ATSDR, DOD and EPA data needs with those of DOI and determine if additional testing needs to be designated in a future ITC report.

The Chemical Abstracts Service (CAS) has two Registry numbers for white phosphorus: 7723–14–0, as a general number for white, yellow, black and red phosphorus, and 12185–10–3 specifically for white phosphorus. The ITC used CAS No. 7723–14–0 in the 29th Report, because it is the most commonly used for white phosphorus. It is used to record production volume and environmental release data as well as most published and unpublished studies. In response to the ITC's 29th Report testing recommendations, EPA promulgated TSCA section 8(a) and 8(d) rules for CAS No. 7723–14–0 on March 12, 1993, and for CAS No. 12185–10–3 on December 27, 1993. The manufacturers, processors and distributors of white phosphorus submitted section 8(a) reports and section 8(d) studies only for 7723–14–0.

Therefore, the ITC is only designating white phosphorus as CAS No. 7723–14–0 and requesting that EPA remove CAS No. 12185–10–3 from the TSCA section 8(d) rule.

b. *Designated testing.* To meet the data needs of DOI, the ITC is designating white phosphorus for amphibian, reptile, wild mammal and aquatic plant acute toxicity testing, and terrestrial plant uptake and translocation testing.

c. *Rationale for designation.* DOI reviewed the submitted section 8(a) and 8(d) data as well as TSCA section 8(e), FYI, and published papers for white phosphorus. It continues to be concerned about the persistence of white phosphorus in wetland sediments, adverse effects on wildlife that feed on white phosphorus-contaminated sediments, and the potential adverse effects on endangered species that feed on carcasses of wildlife that die from white phosphorus poisoning. Although DOI is working with DOD to conduct and coordinate testing and field investigations of white phosphorus, DOI has data needs that are not included in this coordinated, government-funded program. These additional data are needed by DOI to assess the ecological risks posed by white phosphorus.

d. *Supporting information.* DOI nominated white phosphorus to the ITC in 1991 because persistence and ecotoxicity data were needed to assess the ecological risks posed by white phosphorus. The results of studies submitted under TSCA section 8(d) and section 8(e), other relevant data, and ongoing activities are presented below along with the specific rationales for the designated tests.

(1) *Exposure information—production/use/disposal/exposure/release.* In 1990, approximately 700 million pounds of white phosphorus were produced (Ref. 2). Based on 1991 and 1992 TRI data, about 300,000 pounds are released annually from production facilities (Ref. 17). The amounts of white phosphorus released during munitions testing, pesticides manufacturing and other uses is unknown to the ITC.

Every year since 1980, up to 3,000 waterfowl (dabbling ducks), 50 swans, and an undetermined number of shorebirds appear to have died from white phosphorus poisoning at an artillery impact area in the estuarine wetlands of Eagle River Flats, Cook Inlet, Alaska. This wildlife mortality continues despite the fact that on September 10, 1991, the Assistant Secretary of the Army (Installations, Logistics, and Environment) suspended

Therefore, the ITC is only designating white phosphorus as CAS No. 7723–14–0 and requesting that EPA remove CAS No. 12185–10–3 from the TSCA section 8(d) rule.

b. *Designated testing.* To meet the data needs of DOI, the ITC is designating white phosphorus for amphibian, reptile, wild mammal and aquatic plant acute toxicity testing, and terrestrial plant uptake and translocation testing.

c. *Rationale for designation.* DOI reviewed the submitted section 8(a) and 8(d) data as well as TSCA section 8(e), FYI, and published papers for white phosphorus. It continues to be concerned about the persistence of white phosphorus in wetland sediments, adverse effects on wildlife that feed on white phosphorus-contaminated sediments, and the potential adverse effects on endangered species that feed on carcasses of wildlife that die from white phosphorus poisoning. Although DOI is working with DOD to conduct and coordinate testing and field investigations of white phosphorus, DOI has data needs that are not included in this coordinated, government-funded program. These additional data are needed by DOI to assess the ecological risks posed by white phosphorus.

d. *Supporting information.* DOI nominated white phosphorus to the ITC in 1991 because persistence and ecotoxicity data were needed to assess the ecological risks posed by white phosphorus. The results of studies submitted under TSCA section 8(d) and section 8(e), other relevant data, and ongoing activities are presented below along with the specific rationales for the designated tests.

(1) *Exposure information—production/use/disposal/exposure/release.* In 1990, approximately 700 million pounds of white phosphorus were produced (Ref. 2). Based on 1991 and 1992 TRI data, about 300,000 pounds are released annually from production facilities (Ref. 17). The amounts of white phosphorus released during munitions testing, pesticides manufacturing and other uses is unknown to the ITC.

Every year since 1980, up to 3,000 waterfowl (dabbling ducks), 50 swans, and an undetermined number of shorebirds appear to have died from white phosphorus poisoning at an artillery impact area in the estuarine wetlands of Eagle River Flats, Cook Inlet, Alaska. This wildlife mortality continues despite the fact that on September 10, 1991, the Assistant Secretary of the Army (Installations, Logistics, and Environment) suspended the Army's firing of white phosphorus munitions in wetland areas.

White phosphorus has been detected in water samples (0.013–0.069 µg/L) from Eagle River Flats (Ref. 10). White phosphorus particles have been visually identified and chemically-confirmed at concentrations of 10 ppm in sediments (Refs. 11 and 23). White phosphorus has been isolated from the gizzards of dead mallard ducks, *Anas platyrhynchos* (Ref. 11). Exposure of at least a dozen avian species has been documented through chemical detection of white phosphorus in gizzard, liver, muscle, fat or skin (Refs. 11, 13, and 23).

White phosphorus contamination at artillery impact areas is currently being investigated by Simmers et al. (Ref. 14). Sampling results from 21 of the 23 DOD installations indicate that white phosphorus was detected (detection limit of 1 µg/kg) at seven of the installations (Ref. 3).

(2) *Chemical fate information.* Degradation rates of white phosphorus solutions have been characterized in an aqueous *in vitro* test system (Ref. 4), and appear to be dependent on dissolved oxygen, pH and temperature. Under aerobic conditions, solutions of white phosphorus are rapidly oxidized (or possibly hydrolyzed or volatilized; Ref. 15) and its concentration decreases monotonically with time (282 to 1762 µg/L yielded a half-life of 3 hours for the initial 24 hour period). However, degradation rates are reduced at temperatures below 22 °C and in closed (non-aerated) test systems. Under such conditions, white phosphorus half-life increases from hours to weeks. When sediments were tested in a modified aqueous *in vitro* test system, degradation rates of white phosphorus were slower in sediment than in water (Ref. 5).

White phosphorus in sediments at the estuarine wetlands of Eagle River Flats, Alaska is often found as particulates, ranging in diameter from 0.15 to 3.5 mm (corresponding to the size range of food items and gizzard material selected by many species of waterfowl), and at sediment depths of up to 30 cm (Ref. 10). White phosphorus particles appear to be quite persistent in the saturated saline sediments of Eagle River Flats, but volatilize as sediments dry below 20 percent moisture (Ref. 23). Factors that affect persistence of white phosphorus in sediments include sediment porosity, moisture content and temperature, all of which interact to determine the rate of sublimation. Oxygen may slow sublimation by the formation of oxidation products around the particles that impose a diffusion barrier to white phosphorus vapor. Using data on the dissolution rate of white phosphorus particles in water (Ref. 15), Walsh (Ref. 23) estimated the dissolution of a 1 mm diameter white phosphorus sphere to be 8 years. The extent of particulate white phosphorus contamination in the United States remains largely unknown.

The rate of oxidation of white phosphorus particles in aerated-soil is highly variable depending on environmental conditions (Refs. 1, 12 and 24). Using a model to estimate the fate of white phosphorus particles in soil, Spanggord et al. estimated that particles buried in soil could persist for several years, and if an "oxidized coat" were formed, particles could persist for thousands of years (Ref. 15).

These data demonstrate the persistence of white phosphorus in sediments. Therefore, the ITC is not designating further chemical fate testing of white phosphorus at this time.

(3) *Health effects information.* The ITC's 29th Report summarized available health effects data for white phosphorus. These data indicate that white phosphorus is highly toxic to humans and laboratory animals (56 FR 67424; December 30, 1991). As noted in the summary of this 34th Report, discussions are ongoing with ATSDR, DOD and EPA to coordinate their data needs with those of DOI. The ITC is not designating further health effects testing at this time because those discussions have not been completed.

(4) *Ecological effects information—Acute and subchronic effects (short-term).* The ITC's 29th Report summarized laboratory and field studies for white phosphorus. These studies indicated that white phosphorus is highly toxic to aquatic organisms (56 FR 67424, December 30, 1991).

Thirty-day bioassays are currently being conducted by the U.S. Army Environmental Hygiene Agency to measure the toxicity of white phosphorus contaminated sediments from Eagle River Flats to the crustacean, *Hyallela azteca* and the midge larve, *Chironomus riparius* (Ref. 10).

The median lethal dose for adult male and juvenile mallard ducks gavaged with white phosphorus dissolved in corn oil vehicle was 6.5 mg/kg (Ref. 10). Signs of toxicity include slow rhythmic lateral head shaking, and lethargy, followed by convulsions. Birds often succumb within 1 to 2 hours, but in other instances may linger for up to 55 hours prior to death. Concentrations of white phosphorus in dosed mallards exceed 0.25 µg/g in fat, skin and liver (Refs. 10 and 11).

The acute median lethal dose of white phosphorus in female mallards is being estimated by Sparling (Ref. 16). The

females appear to be slightly more tolerant than male and juvenile birds (LD50>10 mg/kg) (Ref. 16). An estimation of the lowest observable effect level (LOEL) will be determined by Sparling (Ref. 16) using white phosphorus pellets without vehicle, because a corn oil vehicle may affect absorption and toxicity.

Increasing evidence suggests the potential for widespread white phosphorus pollution in wetlands. While white phosphorus toxicity data have been or are being developed for aquatic and avian species that inhabit wetlands. There are no white phosphorus toxicity data for amphibians, reptiles, and wild mammals that frequent temperate zone wetland habitats. In addition, some mammals, including furbearers (e.g., mink), frequent wetlands and are known to be far more sensitive to certain environmental pollutants (e.g., PCBs) than laboratory rodents. For these reasons, DOI needs amphibian, reptile, and wild mammal acute toxicity test data for its white phosphorus risk assessment.

Based on limited available data and DOI's data needs, the ITC is designating white phosphorus for amphibian, reptile, and wild mammal acute toxicity testing.

Chronic (long-term) effects. The ITC's 29th Report described laboratory studies that demonstrated the chronic toxicity of white phosphorus to aquatic organisms (56 FR 67424, December 30, 1991).

Based on these data and ongoing DOI studies, the ITC is not designating further chronic aquatic toxicity testing at this time.

Metabolism and pharmacokinetics. Data for laboratory mammals were summarized in the ITC's 29th Report (56 FR 67424, December 30, 1991). Recent studies suggest that acute white phosphorus toxicity in warm-blooded animals may be due to the nonenzymatic metabolism of white phosphorus to phosphine (Ref. 8).

A recent publication described the uptake and loss of white phosphorus in American kestrels or sparrow hawks (Falco sparverius) (Ref. 9). This study indicated that although uptake of white phosphorus was rapid, bioaccumulation is limited in American kestrels because of chemical or enzymatic degradation.

Uptake and depuration studies of white phosphorus administered to mallards below the LD50 will be studied by Sparling (Ref. 16). Pharmacokinetics will be studied by Sparling (Ref. 16) at various intervals for a 10–day period in breast muscle, gizzard, abdominal fat, skin, liver, pancreas and blood. Sparling (Ref. 16) will also study histopathological and biochemical biomarkers of exposure.

Based on these data and ongoing DOI studies, the ITC is not designating further metabolism and pharmacokinetic testing at this time.

Reproductive effects. In rats, 75 µg/kg/day of white phosphorus reduced pregnancy rates (Ref. 6), increased death rates of females in late gestation (Ref. 7), increased parturition-related difficulties (Ref. 18), and increased the number of dead pups at birth (Ref. 19). The birth defects caused by white phosphorus, and the presence of white phosphorus in herring gull eggs collected in Eagle River Flats (Ref. 8), suggest the need for reproductive effects studies in birds. DOI is planning preliminary studies to investigate fertility rates of male and female mallards repeatedly gavaged (chronic exposure) with low doses of white phosphorus (Ref. 16).

Based on the studies conducted by Monsanto and planned DOI studies, the ITC is not designating further reproductive effects testing at this time.

Other ecological effects. Predation of ducks poisoned by white phosphorus was systematically monitored at Eagle River Flats in the spring and fall of 1991 (Ref. 13). Twenty-four instances of predation of sick or dead dabbling ducks by bald eagles (*Haliaetus leucocephalus*), herring gulls (*Larus argentatus*) and common ravens (*Corvus corax*) were observed. Other predators, including northern harrier (*Circus cyaneus*) and coyotes (*Canis latrans*) have been observed to hunt over the Flats. Many decaying bald eagle carcasses have been found at or near Eagle River Flats, and the single carcass tested was positive for white phosphorus in fatty tissues (Refs. 10 and 13). Based on these observations, and the risk assessment of Roebuck et al. (Ref. 13), there is considerable potential for secondary poisoning of predators, including endangered species.

DOI will investigate secondary poisoning of predators (raptors and other scavengers) using captive American kestrels fed northern bobwhite quail chicks (Colinus virginianus) that had been gavaged with 1 mg/kg pelletized white phosphorus for a 10–day period (Ref. 16). Mortality, biochemical and histopathological biomarkers of toxicity, and white phosphorus burdens in kestrels will be studied (Ref. 16).

Based on data published by Racine (Ref. 10) and Roebuck (Ref. 13) and planned DOI studies, the ITC is not designating other ecological effects testing at this time.

Bioconcentration and food chain transport. The 29th ITC Report noted that bioconcentration of white phosphorus was studied in three species of fish, six species of invertebrates and in two species of seaweed (56 FR 67424; December 30, 1991). Fish and invertebrates have been collected at Eagle River Flats by Racine for determination of white phosphorus uptake (Ref. 10).

A recent study suggested that large predators such as bald eagles, that have the ability to ingest whole gizzards of prey birds, could bioaccumulate white phosphorus because the amount ingested could exceed the degradation capacity (Ref. 9).

Few data are available on bioconcentration and food chain transport of white phosphorus by plants. This data need concerns DOI because white phosphorus has been detected in or on the roots of salt marsh plants at Eagle River Flats (Ref. 10), and because many herbivorous wildlife species could be exposed to, and be adversely affected by, white phosphorus as a result of uptake and bioconcentration by plants.

Based on DOI's data needs, the ITC is designating white phosphorus for aquatic plant toxicity and terrestrial plant uptake and translocation testing.

2. *Recommended chemicals — Ethyl tert-butyl ether and tert-amyl methyl ether*— a. *Background.* The ITC designated methyl *tert*-butyl ether (MTBE) for health effects testing in its 20th Report because of concerns for widespread human exposure to low level fugitive emissions of MTBE at gasoline pumps and the need for chronic health effects data (52 FR 19020; May 20, 1987). In response to the ITC's designation, EPA and MTBE manufacturers negotiated a TSCA section 4 enforceable consent agreement to develop pharmacokinetics, genotoxicity, subchronic toxicity, reproductive effects, developmental toxicity, neurotoxicity, and oncogenicity data (53 FR 10391, March 31, 1988). EPA is evaluating the data from the completed MTBE testing program.

EPA needs health effects data for two other fuel oxygenates, ethyl *tert*-butyl ether (ETBE) and *tert*-amyl methyl ether (TAME) and is soliciting interest in developing testing agreements for these chemicals (59 FR 18399, April 18, 1994).

b. *Recommended testing.* Ethyl *tert*-butyl ether and *tert*-amyl methyl ether are being recommended for health effects testing because EPA needs these data for ongoing assessments.

c. *Rationale for recommendation.* The use of ETBE and TAME to augment or substitute for MTBE as fuel oxygenates and the health effects data needs of ETBE and TAME are of concern to EPA and the ITC. Therefore, the ITC is recommending testing to obtain TSCA section 8(d) health and safety data on ETBE and TAME to support EPA's ongoing assessments of the potential hazards/risks posed by these two chemical substances. The ITC will share the data with EPA and other interested U.S. Government organizations represented on the ITC and will review these data to determine whether ETBE and TAME should be designated for testing or removed from the *Priority Testing List.* The ITC is also requesting data on acute toxicity of gasoline mixtures containing ETBE and/or TAME. The ITC's process of recommending ETBE and TAME and then making decisions following data review is consistent with the process used for MTBE. MTBE was recommended in ITC's 19th Report (51 FR 41417, November 14, 1986) and designated in ITC's 20th Report, following ITC's review of voluntarily submitted and TSCA section 8(d) data.

d. *Supporting information.* EPA's recent **Federal Register** notice provides supporting information (59 FR 18399, April 18, 1994).

The requirements of the Clean Air Act (CAA), 42 U.S.C. 7401–7671q, along with reports of adverse human health effects associated with the use of MTBE in winter-blend gasoline, have contributed to the need for health effects testing of ETBE and TAME.

MTBE, ETBE, and TAME are fuel oxygenates which may be used to satisfy the following requirements under the CAA. Under section 211(m) of the CAA, 42 U.S.C. 7545, States which have certain attainment areas for carbon monoxide (CO) must require that any gasoline sold or dispensed to ultimate customers in a specified portion of the nonattainment area be blended, during wintertime, to contain not less than 2.7 percent oxygen by weight (or applicable percentage to meet the national primary air quality standard for CO by the established attainment date). Under section 211(k), reformulated gasoline must be used in nonattainment areas in nine major metropolitan areas that are designated as ozone nonattainment areas as well as various nonattainment "opt-in" areas by 1995 and the oxygen content of this gasoline must be equal to or exceed 2 percent by weight. See Final Rule, Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline, February 16, 1994 (59 FR 7716). In addition, a proposed regulation [by EPA's Office of Air and Radiation] would require that at least 30 percent of the oxygen content of reformulated gasoline come from renewable oxygenates, which would include ETBE. See OAR/EPA Notice of Proposed Rulemaking, regulation of Fuels and Additives: Renewable Oxygenate

substitute for MTBE as fuel oxygenates and the health effects data needs of ETBE and TAME are of concern to EPA and the ITC. Therefore, the ITC is recommending testing to obtain TSCA section 8(d) health and safety data on ETBE and TAME to support EPA's ongoing assessments of the potential hazards/risks posed by these two chemical substances. The ITC will share the data with EPA and other interested U.S. Government organizations represented on the ITC and will review these data to determine whether ETBE and TAME should be designated for testing or removed from the *Priority Testing List*. The ITC is also requesting data on acute toxicity of gasoline mixtures containing ETBE and/or TAME. The ITC's process of recommending ETBE and TAME and then making decisions following data review is consistent with the process used for MTBE. MTBE was recommended in ITC's 19th Report (51 FR 41417, November 14, 1986) and designated in ITC's 20th Report, following ITC's review of voluntarily submitted and TSCA section 8(d) data.

d. *Supporting information.* EPA's recent **Federal Register** notice provides supporting information (59 FR 18399, April 18, 1994).

The requirements of the Clean Air Act (CAA), 42 U.S.C. 7401–7671q, along with reports of adverse human health effects associated with the use of MTBE in winter-blend gasoline, have contributed to the need for health effects testing of ETBE and TAME.

MTBE, ETBE, and TAME are fuel oxygenates which may be used to satisfy the following requirements under the CAA. Under section 211(m) of the CAA, 42 U.S.C. 7545, States which have certain attainment areas for carbon monoxide (CO) must require that any gasoline sold or dispensed to ultimate customers in a specified portion of the nonattainment area be blended, during wintertime, to contain not less than 2.7 percent oxygen by weight (or applicable percentage to meet the national primary air quality standard for CO by the established attainment date). Under section 211(k), reformulated gasoline must be used in nonattainment areas in nine major metropolitan areas that are designated as ozone nonattainment areas as well as various nonattainment "opt-in" areas by 1995 and the oxygen content of this gasoline must be equal to or exceed 2 percent by weight. See Final Rule, Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline, February 16, 1994 (59 FR 7716). In addition, a proposed regulation [by EPA's Office of Air and Radiation] would require that at least 30 percent of the oxygen content of reformulated gasoline come from renewable oxygenates, which would include ETBE. See OAR/EPA Notice of Proposed Rulemaking, regulation of Fuels and Additives: Renewable Oxygenate Requirement for Reformulated Gasoline, December 27, 1993 (58 FR 68343).

Recently, there have been reports from the State of Alaska and several areas in the lower 48 states of adverse human health effects [(e.g., headache, nausea, general malaise)] associated with the use of MTBE in winter-blend gasoline. (See Assessment of Potential Health Risks of Gasoline Oxygenated with MTBE, Office of Research and Development, U.S. EPA, November 1993.)

EPA believes that additional health effects test data on fuel oxygenates are needed to allow government agencies and industry to compare the health risks associated with the use of these substances to augment or substitute for MTBE as a fuel oxygenate....

(1) *Exposure information—production/use/disposal/exposure/release.* Estimates published in 1991 indicate that by 1995, annual production volumes of ETBE and TAME are expected to exceed 26 million pounds (Refs. 29 and 30) and 6 billion pounds (Ref. 35), respectively. Estimates published in 1994 indicate that by 1995, about 335,000 barrels per day (32 billion pounds per year) of oxygenates will be needed to meet oxygenated-and reformulated-fuel mandates (Ref. 28). Consumer, occupational or environmental exposures to ETBE or TAME could be substantial based on their use as fuel oxygenates.

(2) *Physical and chemical information.* ETBE has a molecular weight of 102.18, a melting point of -97 °C (Ref. 26), a boiling point of 72 to 73 °C (Ref. 26), a log octanol/water partition coefficient of 1.58 (Ref. 31), a water solubility of 12,000 mg/L at 20 °C (Ref. 32), a vapor pressure of 130 mm Hg at 25 °C (Ref. 32), and a Henry's Law constant of 1.45×10^{-3} atm-m^3/mole at 25 °C (Ref. 34).

TAME has a molecular weight of 102.18, a boiling point of 85 to 86 °C (Ref. 25), a log octanol/water partition coefficient of 1.58 (Ref. 31), a water solubility of 11,500 mg/L at 20 °C (Ref. 32), a vapor pressure of 75 mm Hg at 25 °C (Ref. 32), and a Henry's Law Constant of 9.15×10^{-1} atm-m^3/mole at 25 °C (Ref. 10).

(3) *Chemical fate information.* The estimated atmospheric half-life of ETBE is 1.9 /days based on a hydroxyl radical concentration of 5×10^5 OH/cm^3 and a rate constant of 8.5×10^{-12} atm-m^3/molecule-sec developed by Japar et al. (Ref. 29). The estimated atmospheric half-life of TAME is 2.3 days based on a hydroxyl radical concentration of 5×10^5 OH/cm^3 and a rate constant of 7.91×10^{-12} atm-m^3/molecule-sec estimated by Atkinson (Ref. 27).

The ITC is not recommending chemical fate testing, because it is not a high priority data need at this time.

(4) *Health effects information.* The ITC is recommending health effects testing to meet EPA's data needs.

(5) *Ecological effects information.* The ITC is not recommending ecological effects testing, because it is not a high priority data need at this time.

3. *Removal of chemicals from the Priority Testing List—* a.*Methyl methacrylate and diethyl phthalate.* In its 32nd Report, the ITC designated methyl methacrylate (CAS No. 80–62–6) and diethyl phthalate (CAS No. 84–66–2) for dermal absorption testing to meet the data needs of the Occupational Safety and Health Administration (OSHA) (58 FR 38490, July 16, 1993). These chemicals were added to the *Priority Testing List* as members of a 34-chemical group that had inadequate dermal absorption rate data. OSHA nominated these chemicals to the ITC to obtain data for OSHA to determine whether skin notations should be assigned to these chemicals.

The ITC obtained dermal absorption rate data for methyl methacrylate (Ref. 37) and diethyl phthalate (Ref. 36) that are likely to meet OSHA's data needs. As a result, the ITC is removing methyl methacrylate and diethyl phthalate from the *Priority Testing List* and making the data publicly available by including the references in the EPA docket for this 34th Report and transmitting the data to OSHA and other interested U.S. Government organizations. As a result of finding that these data are likely to meet OSHA's data needs, the ITC requested EPA to remove these chemicals from its TSCA section 8(a) and/or section 8(d) rules before the May 10, 1994 reporting deadline. EPA removed methyl methacrylate and diethyl phthalate from these TSCA section 8 rules on May 2, 1994 (59 FR 22519, May 2, 1994).

b. *N*-Phenyl-1-naphthylamine. In its 27th Report, the ITC recommended *N*-phenyl-1-naphthylamine (CAS No. 90–30–2) for carcinogenicity testing to meet the data needs of OSHA and for chemical fate and ecological effects testing, because of ITC concerns for environmental persistence and aquatic toxicity (56 FR 9534, March 6, 1991).

OSHA was concerned about potential occupational exposures to *N*-phenyl-1-naphthylamine in hydraulic fluids and other mixtures, and the potential carcinogenicity of this *N*-substituted aromatic amine. As noted in ITC's 27th Report, OSHA's exposure concerns were based on 1981–1983 National Occupational Exposure Survey estimates that 96,478 workers were potentially exposed to *N*-phenyl-1-naphthylamine almost exclusively through trade name products. After

reviewing the TSCA section 8(a) production and exposure data, ITC Members met with the U.S. manufacturer of *N*-phenyl-1-naphthylamine. At the meeting and during subsequent discussions, the ITC Members were provided with estimates that 800 to 900 workers were exposed to technical grade *N*-phenyl-1-naphthylamine during manufacturing and processing, and specifications showing that concentrations of *N*-phenyl-1-naphthylamine in formulated lubricants were generally less than four percent (Ref. 39).

ITC Members also reviewed the TSCA section 8(d) health and safety studies and other toxicity data on *N*-phenyl-1-naphthylamine that were obtained after the 27th Report was published. Most of these studies were conducted on formulated products that did not specify the amount of technical grade *N*-phenyl-1-naphthylamine in the product. The aquatic toxicity studies indicated that formulated products containing *N*-phenyl-1-naphthylamine were several orders of magnitude less toxic than pure *N*-phenyl-1-naphthylamine, which, as reported in ITC's 27th Report, was highly toxic to aquatic organisms and teratogenic to frogs (56 FR 9534, March 6, 1991). The biodegradation studies on formulated products containing *N*-phenyl-1-naphthylamine confirmed its potential environmental persistence. The health effects studies on formulated products containing *N*-phenyl-1-naphthylamine did not suggest concerns for carcinogenicity. The results from testing a structurally-related chemical, *N*-phenyl-2-naphthylamine (CAS No. 135–88–6) by the National Toxicology Program (NTP) showed it to be noncarcinogenic in rats and mice (Ref. 40). Based on the available health effects data and structure-activity considerations, there is no reason to believe that *N*-phenyl-1-naphthylamine would have a greater carcinogenic potential than *N*- phenyl-2-naphthylamine.

The ITC is removing *N*-phenyl-1-naphthylamine from the *Priority Testing List* because the available data did not increase concern for carcinogenicity, and the changing priorities of the ITC do not warrant designating the chemical for testing at this time. This decision is consistent with the April 1993 decision by the German Advisory Committee on Existing Chemicals of Environmental Relevance (BUA) to not conduct priority carcinogenicity investigations of *N*-phenyl-1-naphthylamine (Ref. 38).

The ITC has completed its review of TSCA section 8(d) information for *N*-phenyl-1-naphthylamine, and requests that EPA remove it from the TSCA section 8(d) rule.

c. *Acetophenone, phenol, N,N*-dimethylaniline, ethyl acetate and 2,6-dimethylphenol. In its 27th Report, the ITC designated acetophenone, phenol, N,*N*-dimethylaniline, ethyl acetate and 2,6-dimethylphenol to meet EPA's data needs (56 FR 9534, March 6, 1991). The ITC is removing these chemicals from the *Priority Testing List* because EPA proposed a test rule on November 22, 1993 to implement the testing (58 FR 61654, November 22, 1993).

References

(1) Bohn, H.I., Johnson, G.V. and Cliff, J.H. "Detoxification of white phosphorus in soil." *Journal of Agricultural and Food Chemistry.* 18:1172–1173 (1970).

(2) CMR (Chemical Marketing Reporter). Chemical Profile: Phosphorus. February 18, 1991.

(3) Daniels, J. D. Letter from James D. Daniels, Project Engineer, U.S. Army Environmental Center, Aberdeen Proving Ground, MD to Barnett A. Rattner, Deputy Chief, Branch of Environmental Contaminants Research, Patuxent Wildlife Research Center, National Biological Survey, Department of the Interior. Preliminary report of results from the survey of range impact areas of 23 installations. Dated February 28, 1994.

(4) Lai, M.G. "Characterization of white phosphorus in water. II. Degradation of white phosphorus in aqueous system." Naval Surface Weapons Center, Silver Spring, MD. NSWC TR 79–5 (1979).

(5) Lai, M.G. "Characterization of white phosphorus in water. II. Behavior of white phosphorus in the water-sediment interface." Naval Surface Weapons Center, Silver Spring, MD. NSWC TR 81–87 (1981).

(6) Monsanto Company. "Letter from Monsanto Company to the U.S. EPA submitting information on elemental phosphorus with attachments." TSCA 8e submission 88–890000065, microfiche number OTS–051825, Washington, DC: OPPT, U.S. EPA (1989).

(7) Monsanto Company. "A one-generation reproduction study in rats with elemental phosphorus conducted by gavage in rats (pathology report) with cover letter dated 020591." TSCA 8e submission 87–910000168, microfiche number OTS–0518525–3, Washington, DC: OPPT, U.S. EPA (1991).

(8) Nam, S.I., Roebuck, B.D., Walsh, M.E. and Racine, C. "Biotransfer and accumulation of white phosphorus." Thirteenth Annual Meeting of the Society of Environmental Toxicology and Chemistry. Abstract 256 (1992).

(9) Nam, S.I., Roebuck, B.D. and Walsh, M.E. "Uptake and loss of white phosphorus in American kestrels." *Environmental Toxicology and Chemistry.* 13:637–641 (1994).

(10) Racine, C.H. "Eagle River Flats Progress Report." Department of the Army, Cold Regions Research and Engineering Laboratory, Corps of Engineers, Hanover, New Hampshire. 18 pp., November 12, 1993.

(11) Racine, C.H., Walsh, M.E., Roebuck, B.D., Collins, C.M., Calkins, D., Reitsma, L., Buchli, P., and Goldfarb, G. "White phosphorus poisoning of waterfowl in an Alaskan salt marsh." *Journal of Wildlife Diseases.* 28:669–673 (1992).

(12) Rodrigues, A., Bohn, H.L. and Johnson, G.V. "White phosphorus as a phosphatic fertilizer." *Soil Science Proceedings.* 36:364–366 (1972).

(13) Roebuck, B.D., Walsh, M.E., Racine, C.H., Reitsma, L., Steele, B., and Nam, S. "Predation of ducks poisoned by white phosphorus: Exposure and risk to predators." *Environmental Toxicology and Chemistry.* In Press.

(14) Simmers, J.W., Price, R.A., and Bird, S.T. "Assessment of white phosphorus contamination of artillery impact areas." Fourteenth Annual Meeting of the Society of Environmental Toxicology and Chemistry. Abstract P509 (1993).

(15) Spanggord, R.J., Rewick, R., Chou, T.-W., Wilson, R. Podoll, R.T., Mill, T. Parnas, T., Platz, R. and Roberts, D.L. "Environmental fate of white phosphorus/felt and red phosphorus/butyl rubber military screening smokes: Final report." SRI International, Menlo Park, CA. ADA176922 (1985).

(16) Sparling, D.W. "Occurrence of white phosphorus in food chains within Eagle River Flats and its toxicity to waterfowl." U.S. Department of the Interior, National Biological Survey, Patuxent Wildlife Research Center, Laurel, MD. Study Plan and Modification 30030.23 (1994).

(17) TRI (Toxics Release Inventory). Database retrieval 3/21/94. U.S. Environmental Protection Agency (1994).

(18) U.S. EPA. "U.S. EPA Status Report: elemental phosphorus with cover letter dated 112989." TSCA FYI submission FYI-OTS–0785–0423, microfiche number OTS–0000423–1, Washington, DC: OPPT, U.S. Environmental Protection Agency (1989a).

(19) U.S. EPA. "U.S. EPA Status Report: elemental phosphorus with cover letter dated 112989." TSCA 8e submission 8EHQ–0889–0820, microfiche number OTS–0518525–1, Washington, DC: OPPT, U.S. Environmental Protection Agency (1989b).

(20) U.S. EPA. "White Phosphorus Health Advisory." U.S. Environmental Protection Agency's Office of Drinking Water. NTIS PB 91–161025 (1990).

(21) U.S. EPA. "Seminar on technologies for remediating sites contaminated with explosive and radioactive wastes." U.S. Environmental Protection Agency's Office of Research and Development and Department of Defense. EPA/625/K–93/001 (1993).

(22) U.S. EPA. "Handbook: approaches for the remediation of Federal facility sites contaminated with explosive or radioactive wastes." U.S. Environmental Protection Agency's Office of Research and Development. EPA/625/R–93/013 (1993).

(23) Walsh, M.E. "White phosphorus: An environmental contaminant." Master of Science Thesis. Thayer School of Engineering, Dartmouth College, Hanover, New Hampshire. 119 pp. (1993).

(24) Warnock, R.E. "Escape of elemental phosphorus from soil applied as white phosphorus or the phosphorus-sulfur eutectic solution." *Journal of Environmental Quality* 1:311–314 (1972).

(25) Aldrich. Catalog of Fine Chemicals 1990–1991 Milwaukee, WI: Aldrich Chem CO. p. 98 (1990).

(26) Aldrich. Catalog of Fine Chemicals 1990–1991 Milwaukee, WI: Aldrich Chem CO. p. 239 (1990).

(27) Atkinson, R. "Kinetics and Mechanisms of the Gas-Phase Reactions of the Hydroxyl Radical with Organic Compounds." *Journal of Physical Chemical Reference Data.* D.R. Lide, Jr., Ed. American Chemical Society. p. 142 (1989).

(28) Chemical Engineering. "The drive for cleaner-burning fuel." *Chemical Engineering.* p. 61, January 1994.

(29) Chemicalweek. "ETBE gains presence in reformulated fuel." *Chemicalweek.* p. 9, July 31, 1991.

(30) Chemicalweek. "Clean air drives the MTBE race." *Chemicalweek.* p. 22, July 31, 1991.

(31) CLOGP. CLOGP-PCGEMS-Graphic Exposure Modeling System. CLOGP, U.S.EPA (1986).

THE TSCA

Report	Date	
23	November 1988	Butyraldehyd
23	November 1988	Tetrakis(2-ch
		Tris(1,3-dichl
		Tris(1-chloro-
		Tris(2-chloro
		Tris(2-chloroe
26	May 1990	Isocyanates
27	November 1990	Aldehydes
27	November 1990	Sulfones
27	November 1990	Substantially icity testing
28	May 1991	Acetone
28	May 1991	Thiophenol
28	May 1991	*m*-Dinitroben
28	May 1991	Cyanoacrylat
29	November 1991	Alkyl-, bromo
30	May 1992	Siloxanes
30	May 1992	Chloroalkyl p
31	January 1993	OSHA chemi
31	January 1993	Propylene gl
31	January 1993	Methyl ethyle
32	May 1993	OSHA chemi
34	May 1994	White phosph
34	May 1994	Ethyl *tert*-buty
34	May 1994	Tert-amyl me

The following table list the members of the TSCA Interagency Testing Committee.

Statutory Organizations and Their Representatives

Council on Environmental Quality
Elisabeth Blaug, Member

Department of Commerce
Edward White, Member
Willie E. May, Alternate

Environmental Protection Agency
David R. Williams, Member
Lois Dicker, Alternate

eutectic solution." *Journal of Environmental Quality* 1:311–314 (1972).

(25) Aldrich. Catalog of Fine Chemicals 1990–1991 Milwaukee, WI: Aldrich Chem CO. p. 98 (1990).

(26) Aldrich. Catalog of Fine Chemicals 1990–1991 Milwaukee, WI: Aldrich Chem CO. p. 239 (1990).

(27) Atkinson, R. "Kinetics and Mechanisms of the Gas-Phase Reactions of the Hydroxyl Radical with Organic Compounds." *Journal of Physical Chemical Reference Data*. D.R. Lide, Jr., Ed. American Chemical Society. p. 142 (1989).

(28) Chemical Engineering. "The drive for cleaner-burning fuel." *Chemical Engineering*. p. 61, January 1994.

(29) Chemicalweek. "ETBE gains presence in reformulated fuel." *Chemicalweek*. p. 9, July 31, 1991.

(30) Chemicalweek. "Clean air drives the MTBE race." *Chemicalweek*. p. 22, July 31, 1991.

(31) CLOGP. CLOGP-PCGEMS-Graphic Exposure Modeling System. CLOGP, U.S.EPA (1986).

(32) Evans, T.W. Edlund, K.R. "Tertiary Alkyl Ethers Preparation and Properties." *Industrial and Engineering Chemistry*. 28:1186 (1936).

(33) Japar, S.M., Wallington, T.J., Rudy, S.J., Chang, T.Y. "Ozone-Forming Potential of a Series of Oxygenated Organic Compounds. *Environmental Science Technology*. 25:415–420 (1991).

(34) Lyman, W.J., Reehl, W.F., and Rosenblatt, D.H. Handbook of Chemical Property Estimation Methods. Environmental Behavior of Organic Compounds. Washington, DC: American Chemical Society. pp. 4–9, 5–4, 5–10, 7–4, 7–5, 15–15 to 15–32 (1990).

(35) NFR. "Over half-million B/D of oxygenate may be needed to supply demand due to CAA." New Fuels Report. p. 12, February 25, 1991.

(36) Scott, R.C., Dugard, P.H., Ramsey, J.D. and Rhodes, C. "*In vitro* absorption of some o-phthalate diesters through human and rat skin." *Environmental Health Perspectives*. 74:223–227 (1987).

(37) Zeneca. "Methyl methacrylate: *In vitro* absorption through human epidermis." Zeneca Central Toxicology Laboratory Report No. CTL/P/4025 provided by the Methacrylate Producers Association, Washington, D.C. (1993).

(38) BUA. "*N*-phenyl-1-naphthylamine, BUA-Stoffbericht 113, Stand: April 1993 (In German)." BUA, Stuttgart (1993).

(39) Carlton, B.D. September 7, 1993 letter from Dr. Betsy D. Carlton, Rhone-Poulenc to Dr. John D. Walker, TSCA Interagency Testing Committee. Rhone-Poulenc, Research Triangle Park, N.C. (1993).

(40) NTP (National Toxicology Program). "Toxicology and carcinogenesis studies of *N*-phenyl-2-napthylamine (CAS No. 135–88–6) in F344/N rats and B6C3F1 mice (feed studies)." NTP TR 333. Research Triangle Park, NC: U.S. Department of Health and Human Services, National Institutes of Health (January 1988).

IV. The TSCA Section 4(e) Priority Testing List, as Revised (May 1994)

THE TSCA SECTION 4(e) Priority Testing List (May 1994)

Report	Date	Chemical/Group	Action
23	November 1988	Butyraldehyde	Recommended
23	November 1988	Tetrakis(2-chloroethyl)ethylene diphosphate Tris(1,3-dichloro-2-propyl) phosphate. Tris(1-chloro-2-propyl) phosphate. Tris(2-chloro-1-propyl) phosphate. Tris(2-chloroethyl)-phosphate.	Recommended with intent-to-designate
26	May 1990	Isocyanates	Recommended with intent-to-designate
27	November 1990	Aldehydes	Recommended with intent-to-designate
27	November 1990	Sulfones	Recommended
27	November 1990	Substantially produced chemicals in need of subchronic toxicity testing.	Recommended
28	May 1991	Acetone	Designated
28	May 1991	Thiophenol	Designated
28	May 1991	*m*-Dinitrobenzene	Recommended
28	May 1991	Cyanoacrylates	Recommended
29	November 1991	Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers	Recommended
30	May 1992	Siloxanes	Recommended
30	May 1992	Chloroalkyl phosphates	Recommended
31	January 1993	OSHA chemicals with no dermal toxicity data	Designated
31	January 1993	Propylene glycol ethers and esters (revised)	Recommended
31	January 1993	Methyl ethylene glycol ethers and esters (revised)	Recommended
32	May 1993	OSHA chemicals with insufficient dermal absorption data	Designated
34	May 1994	White phosphorus	Designated
34	May 1994	Ethyl *tert*-butyl ether	Recommended
34	May 1994	Tert-amyl methyl ether	Recommended

The following table list the members of the TSCA Interagency Testing Committee.

Statutory Organizations and Their Representatives

Council on Environmental Quality
Elisabeth Blaug, Member

Department of Commerce
Edward White, Member
Willie E. May, Alternate

Environmental Protection Agency
David R. Williams, Member
Lois Dicker, Alternate

National Cancer Institute
Thomas P. Cameron, Member
Richard Adamson, Alternate

National Institute of Environmental Health Sciences
Errol Zeiger, Member

National Institute for Occupational Safety and Health
Robert W. Mason, Member
Henryka Nagy, Alternate

National Science Foundation
Linda Duguay, Member

Occupational Safety and Health Administration
Christine Whittaker, Member, Chair

Liaison Organizations and Their Representatives

Agency for Toxic Substances and Disease Registry
William Cibulas, Member

Consumer Product Safety Commission
Val Schaeffer, Member
Lakshmi C. Mishra, Alternate

Department of Agriculture
Donald Derr, Member
Clifford Rice, Alternate

Department of Defense
David A. Macys, Member
James N. McDougal, Alternate

Department of the Interior
Barnett A. Rattner, Member

Food and Drug Administration
Edwin J. Matthews, Member
Raju Kammula, Alternate

National Library of Medicine
Vera Hudson, Member

National Toxicology Program
Victor A. Fung, Member

Counsel
Mary Ellen Levine, Office of General Counsel, EPA

Technical Support Contractor
Syracuse Research Corporation

Committee Staff
John D. Walker, Executive Director
Norma S.L. Williams, Executive Assistant, TSCA Interagency Testing Committee U.S. EPA/OPPT (MC/7401) 401 M St., SW., Washington, DC 20460, (202) 260–1825, Fax (202) 260–1764

[FR Doc. 94–16983 Filed 7–12–94; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 11, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

Note: The Commission requested expedited review of this item by July 11, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: None.
Title: Voluntary Customer Survey for Private Land Mobile Radio Users:
Action: New collection.
Respondents: Individuals or households, state or local governments, federal agencies or employers, non-profit institutions, and businesses or other for-profit (including small businesses).
Frequency of Response: One time survey.
Estimated Annual Burden: 30 responses; 2 hours average burden per response; 60 hours total annual burden.
Needs and Uses: The FCC will conduct a voluntary customer survey to improve customer service to Private Land Mobile Radio applicants and licensees. The FCC will conduct focus groups as well as administering written questionnaires. Focus groups will provide the Commission with preliminary data which will be used to develop questions for the written questionnaire. Licensees, frequency coordinators, law firms, vendors, and license groups from the Metropolitan area will be invited to participate in the focus groups. Three two-hour focus groups will be conducted whereby participants will be asked nine open-ended questions. Participants will respond verbally. Participants will not be given these questions in advance. Out-of-pocket expenses that result from focus group participation will not be reimbursed. During the focus groups, data will be gathered on (1) problems, (2) suggestions to improve services, (3) services customers would like, and (4) services customers do not want. This data will be used to develop customer service standards.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Language for Customer Segment

Hello, my name is _____ and I am calling from the FCC.

The Federal Communications Commission is conducting a survey of their customers to determine the kind and quality of services they want and their level of satisfaction with existing services. You've been identified as having recently been through the FCC's licensure application process. Is this correct? (If yes, continue, if no, indicate we are only looking for people who have been through the licensure process and thank them for their time.)

As a customer of the Private Radio Bureau within the FCC, we would like to share your comments and ideas at a focus group. We are inviting various types of customers, like yourself, that have recently gone through the licensure process at FCC. We've hired the consulting firm of Booz, Allen & Hamilton to conduct these focus groups. We hope that you will come and comment on the experiences you have had while obtaining a license from the FCC and to describe the kind of quality of services you need from the Private Radio Bureau. We will use the results of the focus groups to set customer service standards and to develop a customer service plan.

We will be holding the focus groups at the Booz, Allen & Hamilton offices in Bethesda, MD on the following dates _____. During the focus groups, you will be asked a series of questions relating to the licensure application process at the FCC, your particular experiences with the FCC and what types of improvements you would recommend. We expect the focus groups to last approximately two hours. Will you be able to attend? Which date is best for you? We will send you a confirmation letter that includes directions to the Booz, Allen & Hamilton offices. Thank you for your time. We look forward to hearing your suggestions.

June _____, 1994.

Dear _____

Thank you for agreeing to participate in the FCC Customer Service Focus Group to be held on July _____, 1994. As we mentioned during our phone call, FCC is conducting a survey of their customers to determine the kind and quality of services they need and their level of satisfaction with existing services. We have hired the consulting firm of Booz, Allen & Hamilton to conduct the focus groups. The focus group will begin at _____ at the Booz, Allen & Hamilton offices located at 4330 East-West Highway, Bethesda, Maryland. We have enclosed directions for your convenience.

Please go to the North tower of East-West Towers and report to the receptionist located on the 10th floor. We look forward to hearing your suggestions.

Sincerely,

Focus Groups Questions for Five PRB Customer Groups

(Licensees, Frequency Coordinators, Law Firms, Vendors, and Licensee Representatives)

Introduction

Why FCC is surveying customers:
—National Performance Review
—Executive Order #12862
—Align services with customer needs

What this surveying entails:
—Talking with customers directly to assess their customer service needs
—Obtaining customer evaluation of current FCC services provided
—Developing customer service standards to ensure appropriate level of service to customers

Question 1: What services have you required from the FCC?
Question 2: During what points of the license application process did you interact directly with the FCC?
Question 3: Which office at the FCC did you interact with?
Question 4: What positive experiences have you had in your interactions with the FCC?
Question 5: Have there been any issues or significant problems with the services provided to you by the FCC? If so, with what services?
Question 6: How would you suggest the FCC improve their services?
Question 7: What kinds of services should the FCC provide for you?
Question 8: Do you currently have any need of services not currently provided by the FCC?
Question 9: Does the FCC currently provide a service that is not particularly useful to you?
Wrap-up of discussion and thank-you for participating.

[FR Doc. 94–17108 Filed 7–12–94; 8:45 am]
BILLING CODE 6712–01–M

[PR Docket No. 92–288; DA 94–683]

Private Land Mobile Radio Services; Iowa Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for Iowa (Region 15). As a result of accepting the amendment for the Plan for Region 15, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 20, 1994.
Released: July 5, 1994.

By the Depury Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Iowa (Region 15) Public Safety Plan (Plan) on February 10, 1993, 8 FCC Rcd 985 (1993).

2. By letter dated February 3, 1994, the Region proposed to amend its Plan. The proposed amendment would reserve all unassigned channels for the State of Iowa. The Commission placed the letter on Public Notice for comments

Question 3: Which office at the FCC did you interact with?

Question 4: What positive experiences have you had in your interactions with the FCC?

Question 5: Have there been any issues or significant problems with the services provided to you by the FCC? If so, with what services?

Question 6: How would you suggest the FCC improve their services?

Question 7: What kinds of services should the FCC provide for you?

Question 8: Do you currently have any need of services not currently provided by the FCC?

Question 9: Does the FCC currently provide a service that is not particularly useful to you?

Wrap-up of discussion and thank-you for participating.

[FR Doc. 94–17108 Filed 7–12–94; 8:45 am]
BILLING CODE 6712–01–M

[PR Docket No. 92–288; DA 94–683]

Private Land Mobile Radio Services; Iowa Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for Iowa (Region 15). As a result of accepting the amendment for the Plan for Region 15, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 20, 1994.
Released: July 5, 1994.

By the Depury Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Iowa (Region 15) Public Safety Plan (Plan) on February 10, 1993, 8 FCG Rcd 985 (1993).

2. By letter dated February 3, 1994, the Region proposed to amend its Plan. The proposed amendment would reserve all unassigned channels for the State of Iowa. The Commission placed the letter on Public Notice for comments due on May 16, 1994, 59 FR 17784 (April 14, 1994). One comment was received from the Wisconsin Department of Transportation requesting that coordination be made with Wisconsin when any of the frequencies in question will be used within 75 miles of the Wisconsin border of if there is a possibility that a 40 dbu contour will extend into Wisconsin. The State of Iowa has agreed to this coordination.

3. We have reviewed the proposed amendment to the Region 15 Plan and conclude it furthers the interests of the eligible entities within the Region.

4. Accordingly, it is ordered, That the Public Safety Radio Plan for Iowa (Region 15) is amended, as set forth in the Region's letter of February 3, 1994. This Amendment is effective immediately.

Federal Communications Commission.

Edward R. Jacobs,

Deputy Chief, Land Mobile and Microwave Division.

[FR Doc. 94–16883 Filed 7–12–94; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 2021]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

July 7, 1994.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed July 28, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992. Compatibility Between Cable Systems and Consumer Electronics Equipment. (ET Docket No. 93–7) Number of Petitions Filed: 10

Subject: Amendment of Sections 73.202(b), Table of Allotments, FM Broadcast Stations. (Wickenburg, Arizona) (MM Docket No. 93–71, RM No. 8134) Number of Petitions Filed: 1.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–16884 Filed 7–12–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Community Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1342(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 6, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Bankshares, Inc., Cornelia, Georgia, to acquire 100 percent of the voting shares of The Bank of Troup County, LaGrange, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First National Bancorp, Inc., Joliet, Illinois, to acquire 100 percent of the voting shares of Community Bank of Plano, Plano, Illinois, and thereby indirectly acquire Plano Bancshares, Inc., Plano, Illinois.

2. Panhandle Aviation, Inc., Clarinda, Iowa, to acquire 100 percent of the voting shares of Bank Altoona, Altoona, Iowa, a *de novo* bank.

3. Peotone Bancorp, Inc., Peotone, Illinois, to acquire by merger through its subsidiary Southwest Bancorp, Inc., Worth, Illinois, 100 percent of the voting shares of Minooka Bancorp, Inc., Minooka, Illinois, and thereby indirectly acquire 100 percent of the voting shares of Tri-County Bank of Minooka, Minooka, Illinois; 100 percent of Westbanco Bancorp, Inc., Westville, Illinois, and thereby indirectly acquire at least 82.02 percent of First National Bank of Westville, Westville, Illinois; and an additional 4.7 percent, for a total of 19.61 percent, of the voting shares of Founders Bancorp, Inc., Scottsdale, Arizona, and thereby indirectly acquire Founders Bank of Arizona, Scottsdale, Arizona.

4. Philipps Investment Company Limited Partnership, Spring Hill, Florida, to become a bank holding company by acquiring 53 percent of the voting shares of Gratiot Bancshares, Inc., Gratiot, Wisconsin, and thereby indirectly acquire Gratiot State Bank, Gratiot, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Community Bancshares, Inc., Irvington, Illinois, to become a bank holding company by acquiring 100 percent of the voting shares of Community Trust Bank, Irvington, Illinois.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Southeast Bancshares, Inc., Chanute, Kansas, to acquire 82.5 percent of the voting shares of Fall River State Bank, Fall River, Kansas. Comments regarding this application must be received no later than July 22, 1994.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Community Bancorporation, Orem, Utah, to become a bank holding company by acquiring 100 percent of the voting shares of Western Community Bank, Orem, Utah.

2. Salinas Valley Bancorp, Salinas, California, to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Salinas, Salinas, California.

Board of Governors of the Federal Reserve System, July 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-16895 Filed 7-12-94; 8:45 am]

BILLING CODE 6210-01-F

William R. Jones and Elizabeth J. Jones, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 2, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. William R. Jones and Elizabeth J. Jones, Fortville, Indiana; to retain 18.02 percent of the voting shares of North Salem State Bancorporation, North Salem, Indiana, and thereby indirectly acquire The North Salem State Bank, North Salem, Indiana.

2. Robert G. Porter, North Salem, Indiana; to retain 10.45 percent of the voting shares of North Salem State Bancorporation, North Salem, Indiana, and thereby indirectly acquire The North Salem State Bank, North Salem, Indiana.

Board of Governors of the Federal Reserve System, July 7, 1994

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-16957 Filed 7-12-94; 8:45 am]

BILLING CODE 6210-01-F

PBT Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 5, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. PBT Bancshares, Inc., McPherson, Kansas; to acquire 100 percent of the voting shares of Nickerson Bankshares, Inc., Nickerson, Kansas, and thereby indirectly acquire Nickerson State Bank, Nickerson, Kansas.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Myers Bancshares, Inc., Dallas, Texas; to acquire 100 percent of the voting shares of Woodhaven National Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, July 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-16958 Filed 7-12-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 921 0023]

Kiwi Brands Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Pennsylvania-based subsidiary of Sara Lee Corporation and manufacturer of shoe care products to divest its Esquire and Griffin brands and related assets to Hickory Industries within one month after the order becomes final. If the sale to Hickory Industries is not accomplished within one month, the proposed agreement would require Kiwi and Sara Lee to divest the assets to another Commission approved acquirer within twelve months or else the Commission would be entitled to appoint a trustee to sell the assets to a Commission approved acquirer in a manner approved by the Commission.

DATES: Comments must be received on or before August 12, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Naomi Licker, FTC/S–2115, Washington, DC 20580. (202) 326–2851.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the acquisition by Kiwi Brands Inc. ("Kiwi"), a wholly-owned subsidiary of Sara Lee Corporation ("Sara Lee"), of certain assets of Knomark, Inc., at the time of the acquisition a wholly-owned subsidiary of Papercraft Corporation, and of certain assets of Reckitt and Colman plc, and it now appearing that Kiwi and Sara Lee, hereinafter sometimes referred to as proposed Respondents, are willing to enter into an agreement containing an order to divest certain assets and providing for other relief:

It is hereby agreed by and between proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Kiwi is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 447 Old Swede Road, Douglassville, Pennsylvania 19518–1239.

after the order becomes final. If the sale to Hickory Industries is not accomplished within one month, the proposed agreement would require Kiwi and Sara Lee to divest the assets to another Commission approved acquirer within twelve months or else the Commission would be entitled to appoint a trustee to sell the assets to a Commission approved acquirer in a manner approved by the Commission.

DATES: Comments must be received on or before August 12, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Naomi Licker, FTC/S–2115, Washington, DC 20580. (202) 326–2851.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the acquisition by Kiwi Brands Inc. ("Kiwi"), a wholly-owned subsidiary of Sara Lee Corporation ("Sara Lee"), of certain assets of Knomark, Inc., at the time of the acquisition a wholly-owned subsidiary of Papercraft Corporation, and of certain assets of Reckitt and Colman plc, and it now appearing that Kiwi and Sara Lee, hereinafter sometimes referred to as proposed Respondents, are willing to enter into an agreement containing an order to divest certain assets and providing for other relief:

It is hereby agreed by and between proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Kiwi is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 447 Old Swede Road, Douglassville, Pennsylvania 19518–1239.

2. Proposed Respondent Sara Lee is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 3 First National Plaza, Chicago, Illinois 60602–4260.

3. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposes Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed Respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed Respondents' addresses as stated in this agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed Respondents have read the draft of complaint and order contemplated hereby. Proposed Respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it became final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Kiwi" means Kiwi Brands, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Kiwi, and their respective directors, officers, employees, agents, representatives, and their respective successors and assigns.

B. "Sara Lee" means Sara Lee Corporation, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Sara Lee, and their respective directors, officers, employees, agents, representatives, and their respective successors and assigns.

C. "Respondents" means Kiwi Brands, Inc. and Sara Lee Corporation.

D. "Chemical shoe care products" means all chemical products used in the maintenance, cleaning, and protection of shoes, including, but not limited to, aerosol, liquid, wax, and cream products.

E. "Sales through the mass market" means all sales through grocery stores, drug stores, and mass merchandisers.

F. "Knomark acquisition" means the 1987 acquisition in which Sara Lee acquired the "Esquire" brand of chemical shoe care products, among other assets, from Knomark, Inc., a wholly-owned subsidiary of Papercraft Corporation.

G. "Reckitt and Colman acquisition" means the 1991 acquisition in which

Sara Lee acquired the "Griffin" brand of chemical shoe care products, among other assets, from Reckitt and Colman plc.

H. "Commission" means the Federal Trade Commission.

I. "Griffin and Esquire assets" means all assets, tangible or intangible, acquired by Sara Lee in the Knomark acquisition and owned by Sara Lee as of January 1, 1994, relating to the production or sale of chemical shoe care products in North and South America, and all assets, tangible or intangible, acquired by Sara Lee in the Reckitt & Colman acquisition and owned by Sara Lee as of January 1, 1994, relating to the production or sale of chemical shoe care products in North and South America under the "Griffin" brand name; provided, however, that "Griffin and Esquire assets" excludes equipment and formulas used in the production of chemical shoe care products under the "Kiwi" brand. The Griffin and Esquire assets include, but are not limited to, registered and unregistered trademarks; formulas and other trade secrets; raw materials, finished goods, packaging materials, and other inventories (excluding inventories of raw materials and packaging materials for any products to be manufactured by Kiwi for Hickory Industries, Inc., after the divestiture); customer lists; and business and financial records, relating to the "Griffin" or "Esquire" brands.

II

It is further ordered that Respondents shall divest, absolutely and in good faith, the Griffin and Esquire assets.

The Griffin and Esquire assets shall be divested either: (1) within one (1) month of the date this order becomes final, to Hickory Industries, Inc. ("Hickory"), pursuant to the November 30, 1993, Asset Purchase Agreement between Kiwi and Hickory, as amended by Amendment One to November 30, 1993, Asset Purchase Agreement, dated March 8, 1994, attached hereto as a Confidential Appendix; or (2) within twelve (12) months of the date the order becomes final, to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The purpose of the divestiture is to assure the continuing use of the Griffin and Esquire assets in an ongoing, independent, viable operation engaged in the sale of chemical shoe care products in the United States, and to remedy the lessening of competition resulting from the Knomark acquisition and the Reckitt and Colman acquisition as alleged in the Commission's complaint. Provided, however, that if Respondents divest pursuant to Paragraph II (1) of this order, in no event shall Respondents' enforcement of any security interest contained in the Asset Purchase Agreement referred to in Paragraph II (1) of this order be construed to not require the Commission's prior approval, pursuant to Paragraph V of this order, if such approval would otherwise be required.

III

It is further ordered that:

A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Griffin and Esquire assets within twelve months of the date this order becomes final, the Commission may appoint a trustee to divest the Griffin and Esquire assets. In the event that the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by Respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III A. of this order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Griffin and Esquire assets.

3. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III B. 8. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Griffin and Esquire assets, or to any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

5. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Griffin and Esquire assets.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. Within ten (10) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III A. of this order.

10. The Commission or, in the case of a court-appointed trustee; the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that pending divestiture of the Griffin and Esquire assets, Respondents shall maintain the viability and marketability of the Griffin and Esquire assets and shall not cause or permit the destruction, removal, wasting, deterioration or impairment of the Griffin and Esquire assets.

V

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Respondents shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, presently engaged in or within the two years

compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Griffin and Esquire assets.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. Within ten (10) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III A. of this order.

10. The Commission or, in the case of a court-appointed trustee; the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that pending divestiture of the Griffin and Esquire assets, Respondents shall maintain the viability and marketability of the Griffin and Esquire assets and shall not cause or permit the destruction, removal, wasting, deterioration or impairment of the Griffin and Esquire assets.

V

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Respondents shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, presently engaged in or within the two years preceding such acquisition engaged in the manufacture of chemical shoe care products in the United States, or the distribution or sale of chemical shoe care products through the mass market in the United States; provided, however, that an acquisition will be exempt from the requirements of this paragraph if it is solely for the purpose of investment and Respondents will hold no more than one percent of the shares of any class of security traded on a national securities exchange or authorized to be quoted in an interdealer quotation system of a national securities association registered with the United States Securities and Exchange Commission; or

B. Acquire any assets used for, or previously used for (and still suitable for use for) the manufacture of chemical shoe care products in the United States, or the distribution or sale of chemical shoe care products through the mass market in the United States (including, but not limited to, brand or trade names), except in the ordinary course of business, from any concern, corporate or non-corporate, presently engaged in, or within the two years preceding such acquisition engaged in the manufacture of chemical shoe care products in the United States, or the distribution or sale of chemical shoe care products through the mass market in the United States; provided, however, that an acquisition of assets will be exempt from the requirements of this paragraph if the purchase price of the assets-to-be-acquired is less than $100,000, and the purchase price of all assets used for, or previously used for (and still suitable for use for) the manufacture of chemical shoe care products in the United States, or the distribution or sale of chemical shoe care products through the mass market in the United States that Respondents have acquired from the same person (as that term is defined in the premerger notification rules, 16 CFR 801.1(a)(1)) in the twelve-month period preceding the proposed acquisition, when aggregated with the purchase price of the to-be-acquired assets, does not exceed $100,000.

VI

It is further ordered that, for a period of ten (10) years from the date this order becomes final, unless Respondents are required to seek prior approval from the Commission pursuant to Paragraph V, Respondents shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, presently engaged in, or within the two years preceding such acquisition engaged in the manufacture, distribution, or sale of chemical shoe care products in the United States; provided, however, that an acquisition will be exempt from the requirements of this paragraph if it is solely for the purpose of investment and Respondents will hold no more than one percent of the shares of any class of security traded on a national securities exchange or authorized to be quoted in an interdealer quotation system of a national securities association registered with the United States Securities and Exchange Commission; or

B. Acquire any assets used or previously used (and still suitable for use) in the manufacture, distribution, or sale of chemical shoe care products, except in the ordinary course of business, from any concern, corporate or non-corporate, presently engaged in, or within the two years preceding such acquisition engaged in the manufacture, distribution, or sale of chemical shoe care products in the United States.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"). Respondents shall provide to the Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"), both the Notification and supplemental information either in Respondents' possession or reasonably available to Respondents. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of each Respondent and of the firm Respondents desire to acquire who negotiated the acquisition agreement; and any management or strategic plans discussing the proposed acquisition. If, within the first waiting period, representatives of the Commission make a written request for additional information, Respondents shall not consummate the acquisition until twenty days after submitting such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976. 15 U.S.C. 18a.

VII

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every

sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraph II or III of this order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II and III of this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture. Provided, however, that if, prior to the date the first report required by this paragraph is due, Respondents have consummated the acquisition described in Paragraph II (1) of this order, Respondents shall, in lieu of the report or reports and documentary attachments required by this Paragraph, submit to the Commission, within thirty (30) days of consummation of the acquisition, a verified statement that Respondents have complied with Paragraph II of this order, including the date of consummation.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with Paragraphs V and VI of this order.

VIII

It is further orderded that each of the Respondents shall notify the Commission at least thirty days prior to any proposed change in such Respondent, such as dissolution, assignment or sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries or any other change in such Respondent that may affect compliance obligations arising out of this order.

IX

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request, each of the Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such Respondent relating to any matters contained in this order; and

B. Upon five (5) days notice to such Respondent and without restraint or interference from it, to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission ("the Commission") has accepted, for public comment, from Kiwi Brands Inc. ("Kiwi") and Sara Lee Corporation ("Sara Lee") an agreement containing consent order. This agreement has been placed on the public record for thirty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns Sara Lee's and Kiwi's 1987 acquisition of the "Esquire" brand of chemical shoe care products and related assets from Knomark, Inc., then a subsidiary of Papercraft Corporation, and Sara Lee's and Kiwi's 1991 acquisition of the "Griffin" brand of chemical shoe care products and related assets from Reckitt & Colman.

The agreement containing consent order would, if finally accepted by the Commission, settle charges alleged in the Commission's complaint that the acquisitions substantially lessened competition in the sale in the United States of chemical shoe care products used in the maintenance, cleaning, and protection of shoes, through grocery stores, drug stores, and mass merchandisers, sometimes referred to as the mass market channel, and that Sara Lee undertook the acquisitions with the intention and effect of restraining, lessening, or eliminating competition, or acquiring or maintaining market power in the same market. The Commission's complaint further alleges that the acquisitions had and will have anticompetitive effects and that, in making the acquisitions, Sara Lee and Kiwi violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The order accepted for public comment contains provisions that would require that Sara Lee and Kiwi divest the "Esquire" and "Griffin" brand names and related assets to Hickory Industries, Inc., within one month of the date the order becomes final. If the transaction with Hickory Industries, Inc., is not consummated within one month of the date the order becomes final, then the order would require Sara Lee and Kiwi to divest the Esquire and Griffin assets to an acquirer that receives the prior approval of the Commission and in a manner approved by the Commission within twelve months of the date the order becomes final. The purpose of the divestiture is to assure the continuing use of the Esquire and Griffin assets in an ongoing, independent, viable operation engaged in the sale of chemical shoe care products in the United States, and to remedy the lessening of competition resulting from each of the acquisitions.

If Sara Lee and Kiwi do not divest the Esquire and Griffin assets within the time periods described above, the Commission would be entitled to appoint a trustee to effect the divestiture of the Esquire and Griffin assets to an acquirer or acquirers approved by the Commission and in a manner approved by the Commission.

For a period of ten years from the date the order becomes final, the order would also prohibit Kiwi and Sara Lee from acquiring, without prior Commission approval, stock in or assets of an entity engaged in the manufacture of chemical shoe care products in the United States, or the distribution or sale of chemical shoe care products through the mass market in the United States. Acquisitions, for investment purposes only, of less than 1 percent of the outstanding stock of a publicly-traded company would be exempt from the prior approval provision. Acquisitions of certain assets valued at less than $100,000 would also be exempt from the prior approval provision.

For acquisitions of stock in or assets of an entity engaged in the manufacture, distribution, or sale of chemical shoe care products in the United States by Sara Lee or Kiwi for which prior approval would not otherwise be required by the order, the order would require that Sara Lee and Kiwi give notice to the Commission before consummating the acquisition. Acquisitions, for investment purposes only, of less than 1 percent of the outstanding stock of a publicly-traded company would be exempt from the prior notice provision, in addition to being exempt from the prior approval provision.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 94–16950 Filed 7–12–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Proposed Ronald Reagan Federal Building-United States Courthouse, City of Santa Ana, California

Correction to the Notice of Availability (NOA) for a Final Environmental Impact Statement (FEIS)

This notice is to correct the General Services Administration notice published in the 59 **Federal Register**, dated June 21, 1994, page 31996. The corrected notice is as follows:

Notice of Availability for a Final Environmental Impact Statement (FEIS)

The U.S. General Services Administration (GSA) hereby gives notice that a FEIS for the Ronald Reagan Federal Building-U.S. Courthouse has been prepared and filed with the U.S. Environmental Protection Agency (EPA).

The proposed action would include the construction of a new Federal Building-U.S. Courthouse with approximately 347,498 square feet of occupiable space and 214 onsite parking spaces within the Central Business Area (CBA) of the City of Santa Ana, California. In addition to the proposed action, the FEIS examined three alternatives including the expansion of court operations into a leased facility, construction at an alternate site, and "no action" (e.g., status quo). The FEIS prepared by GSA addressing this action is on file and may be obtained from:

The U.S. General Services Administration, Region 9, Public Buildings Service, Attn: Ms. Mitra K. Nejad, Planning Staff (9PL), 525 Market Street, 35th floor, San Francisco, CA 94105–2799, Phone number (415) 744–5252.

A limited number of copies of the FEIS are available to fill single copy requests. Loan copies of the FEIS are available for review at the City of Santa Ana Central Library, and the Chet

being exempt from the prior approval provision.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 94–16950 Filed 7–12–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Proposed Ronald Reagan Federal Building-United States Courthouse, City of Santa Ana, California

Correction to the Notice of Availability (NOA) for a Final Environmental Impact Statement (FEIS)

This notice is to correct the General Services Administration notice published in the 59 **Federal Register**, dated June 21, 1994, page 31996. The corrected notice is as follows:

Notice of Availability for a Final Environmental Impact Statement (FEIS)

The U.S. General Services Administration (GSA) hereby gives notice that a FEIS for the Ronald Reagan Federal Building-U.S. Courthouse has been prepared and filed with the U.S. Environmental Protection Agency (EPA).

The proposed action would include the construction of a new Federal Building-U.S. Courthouse with approximately 347,498 square feet of occupiable space and 214 onsite parking spaces within the Central Business Area (CBA) of the City of Santa Ana, California. In addition to the proposed action, the FEIS examined three alternatives including the expansion of court operations into a leased facility, construction at an alternate site, and "no action" (e.g., status quo). The FEIS prepared by GSA addressing this action is on file and may be obtained from:

The U.S. General Services Administration, Region 9, Public Buildings Service, Attn: Ms. Mitra K. Nejad, Planning Staff (9PL), 525 Market Street, 35th floor, San Francisco, CA 94105–2799, Phone number (415) 744–5252.

A limited number of copies of the FEIS are available to fill single copy requests. Loan copies of the FEIS are available for review at the City of Santa Ana Central Library, and the Chet Holifield Federal Building, Laguna Niguel Field Office, 24000 Avila Road, Suite 4100, Laguna Niguel, CA 92656.

Dated: July 1, 1994.

Aki Nakao,

Acting Regional Administrator (9A).

[FR Doc. 94–16909 Filed 7–12–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC—480]

Announcement of Cooperative Agreement to the Association of State and Territorial Chronic Disease Program Directors

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a sole source cooperative agreement with the Association of State and Territorial Chronic Disease Program Directors (ASTCDPD) to provide State and national leadership to develop programs for the control and prevention of chronic disease and to prevent the development of behaviors that contribute to the development of chronic disease. Approximately $200,000 is available in FY 1994 to fund this award. It is expected that the award will begin on or about September 30, 1994, and will be for a 12-month budget period within a project period of up to 5 years. This funding estimate may vary and is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this cooperative agreement is to assist ASTCDPD to periodically determine the status of State and local chronic disease programs and provide appropriate professional expertise to implement informational and programmatic activities to enhance the delivery of comprehensive chronic disease prevention and control services.

The CDC will collaborate in designing survey techniques, analyzing data, and developing informational, educational, and programmatic approaches to enhance national, State, and local comprehensive chronic disease programming; designing profiles of ASTCDPD membership and organizational resources available to assist health care agencies and organizations; developing communications systems; and providing scientific and operational updates in the areas of categorical and comprehensive chronic disease prevention and control.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Physical Activity and Fitness, Heart Disease and Stroke, Nutrition, Diabetes, Cancer, and Tobacco. (For ordering a copy of "Healthy People 2000," see the Section **Where To Obtain Additional Information.**)

Authority: This program is authorized under section 317 (k)(2), [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to ASTCDPD. No other applications are solicited. The Program Announcement and the application kit have been sent to ASTCDPD.

Eligibility is limited to ASTCDPD because of its unique relationship with both the Association of State and Territorial Health Officials (ASTHO) and State chronic disease prevention and health promotion programs. ASTCDPD is an affiliate of the ASTHO and is the officially designated organization to advise and represent the interest of State health officials in comprehensive chronic disease prevention and control activities. ASTCDPD is the only national nonprofit chronic disease organization of which program directors and staff representing all States and territories are members. ASTCDPD is organized specifically, to serve as a convener of activities relative to State chronic disease programs.

The mission of ASTCDPD is to provide State and national leadership to develop programs for the control and prevention of chronic disease conditions and to prevent the development of behaviors that contribute to the development of chronic disease conditions. ASTCDPD is uniquely capable of analyzing, advising, and fulfilling liaison responsibilities for comprehensive chronic disease

prevention and control activities among such broad-based specialties as Health Education/Risk Reduction, Diabetes, Physical Activity and Fitness, Heart Disease and Stroke, Cancer, Nutrition, and Tobacco. ASTCDPD has served as a policy development and capacity-building organization in public health matters since 1988 and has as one of its major objectives the sharing of information within and between State health departments.

In collaboration with other national organizations, ASTCDPD accomplishes its mission by disseminating information on chronic disease program needs and services, recommending and advocating improved policies and programs. ASTCDPD also provides consultation and guidance to State programs in the establishment of statewide systems of coordinated, community-based prevention and individual care for persons with chronic or disabling conditions, and for persons with limited access to services. All of these activities are accomplished through cooperation and collaboration with national, State, and local partners in the public and private sectors.

Although other organizations may possess some of these abilities and/or perform some of these roles, no other organization has ASTCDPD's unique characteristics. ASTCDPD is comprised of State chronic disease program directors, who are necessary to effectively carry out the activities entailed in this program.

Executive Order 12372 Review

This program is not subject Executive Order 12372 review.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 480 and contact Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6508, for business management technical assistance. Programmatic technical assistance may be obtained from Gary C. Hogelin, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop K–30, Atlanta, GA 30341–3724, telephone (404) 488–5270.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 7, 1994.

Martha Katz,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16960 Filed 7–12–94; 8:45 am]

BILLING CODE 4163–18–P

[CDC–435]

Announcement of Cooperative Agreement to the State of North Carolina Department of Environment, Health, and Natural Resources

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program for Diabetes Intervention: Reaching and Educating Communities Together (Project DIRECT) with the State of North Carolina Department of Environment, Health, and Natural Resources (DEHNR) to further develop and carryout multi-level, community-based interventions to reduce the burden of diabetes and its complications in an African-American community.

Project DIRECT is a multiyear demonstration project of the Division of Diabetes Translation (DDT), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), CDC, incorporating the principal translation functions of the division of: (1) Defining the burden of diabetes, (2) developing innovative approaches to the prevention and control of diabetes, (3) implementing these approaches through the State-based diabetes control programs, and (4) coordinating national, State, and local resources for improved diabetes care.

Approximately $650,000 is available in FY 1994 to fund this program. This funding is to support administrative start-up costs, to include staffing and awarding competitive subcontracts with community institutions and organizations conducting specific work related to the execution of the intervention plan. Operational funding for intervention and evaluation is expected to increase in years 02 through 05.

It is expected that the award will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to 5 years. This funding estimate may vary and is subject to change.

The purpose of Project DIRECT is to: (1) Improve the health-related quality of life of an African-American community by reducing the burden of diabetes and its complications through a multilevel, community-based intervention(s), and (2) develop, carry out, and evaluate strategies that will be incorporated into State-based diabetes control programs nationwide. The research design of the project is to conduct a baseline population survey of a predominantly urban and suburban African-American community, implement targeted interventions for at least 5 years, monitor a longitudinal cohort of persons with diabetes, and conduct a follow-up survey at the end of the intervention phase to detect and document community level changes. There will also be a comparison community that will be surveyed at baseline and at follow-up. This multilevel community intervention will be conducted by a consortium of public and private agencies and organizations with management and leadership provided by the official State health department.

The CDC will assist in the design of interventions and evaluation protocols used in conducting and evaluating the project, provide technical assistance in the design of demonstration protocols, provide programmatic consultation and guidance in support of the project, coordinate with DEHNR in sharing and distributing information, data, and successful strategies and interventions to States and other appropriate organizations, agencies, and institutions. CDC will also provide DIRECT Intervention Plan guidelines and assist in the development of a plan for Diabetes Care, Outreach, and Health Promotion interventions.

The Public Health Service (PHS) is committed to achieving the health

promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Diabetes and Chronic Disabling Conditions, with particular attention to populations at disproportionate risk of developing diabetes, including minorities and the elderly. (For ordering a copy of "Healthy People 2000," see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority: This program is authorized under Section 301(a) and 317(k), 42 U.S.C. 241(a) and 247b, of the Public Health Service Act, as amended.

SMOKE-FREE WORKPLACE: The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

ELIGIBLE APPLICANT: Assistance will be provided only to DEHNR for this project. No other applications are solicited. The Program Announcement and application kit have been sent to DEHNR.

DEHNR and North Carolina are uniquely situated to conduct this project for the following reasons:

A. In 1990, following an open competition, a contract for the pilot phase of Project DIRECT was awarded to a research institution in North Carolina. Developmental activities associated with Project DIRECT have been conducted in Wake County, North Carolina. Considerable community organization and development have occurred to ensure community support and involvement in Project DIRECT. A community advisory board of over 30 local representatives have been actively involved in the project since March 1992. Regular coverage through all media channels that serve this community has occurred and widespread name recognition of the project has been achieved in this community.

B. A survey of over 900 randomly sampled households in Wake County, North Carolina, is complete, and over 250 extensive medical examinations were performed on a subsample of the household respondents. Response rates exceeded 80%, indicating that expanded survey work is feasible in this community. There is no other community in the United States for which this type of data exists. Replication of work completed to date in another community could only be

promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Diabetes and Chronic Disabling Conditions, with particular attention to populations at disproportionate risk of developing diabetes, including minorities and the elderly. (For ordering a copy of "Healthy People 2000," see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority: This program is authorized under Section 301(a) and 317(k), 42 U.S.C. 241(a) and 247b, of the Public Health Service Act, as amended.

SMOKE-FREE WORKPLACE: The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

ELIGIBLE APPLICANT: Assistance will be provided only to DEHNR for this project. No other applications are solicited. The Program Announcement and application kit have been sent to DEHNR.

DEHNR and North Carolina are uniquely situated to conduct this project for the following reasons:

A. In 1990, following an open competition, a contract for the pilot phase of Project DIRECT was awarded to a research institution in North Carolina. Developmental activities associated with Project DIRECT have been conducted in Wake County, North Carolina. Considerable community organization and development have occurred to ensure community support and involvement in Project DIRECT. A community advisory board of over 30 local representatives have been actively involved in the project since March 1992. Regular coverage through all media channels that serve this community has occurred and widespread name recognition of the project has been achieved in this community.

B. A survey of over 900 randomly sampled households in Wake County, North Carolina, is complete, and over 250 extensive medical examinations were performed on a subsample of the household respondents. Response rates exceeded 80%, indicating that expanded survey work is feasible in this community. There is no other community in the United States for which this type of data exists. Replication of work completed to date in another community could only be achieved at considerable cost to the government.

C. The data gathered through the household and medical examinations, along with information from a community resource analysis for Wake County, provides the database from which a comprehensive, multilevel community intervention plan has been developed. The intervention strategies match closely with the health care and educational needs of this community and the resources available to support the interventions in Wake County.

D. CDC's traditional constituency is State health departments, and the intervention components of Project DIRECT are intended to serve as model programs for eventual implementation by other official State health departments. This cooperative agreement with DEHNR allows CDC to evaluate the effectiveness of Project DIRECT in a State health department, and to identify the additional liaisons that will be required to ensure the viability of diabetes control programs in State health departments in a reformed health system. DEHNR has expertise, administrative and technical capacity, and public health orientation represented in State health departments nationally.

E. DEHNR has collaborated successfully with universities and research institutions in the State. These are important liaisons for the successful implementation of Project DIRECT. DEHNR presently has established contractual relationships with these academic institutions:

- East Carolina University to develop and teach an introductory course in the etiology and management of diabetes mellitus.
- The Cancer Control Program at Duke University.
- The Department of Nutrition at the University of North Carolina-School of Public Health.
- The Department of Ophthalmology at the University of North Carolina-School of Medicine to implement the eye care objectives for Diabetes 2000.

F. DEHNR has an Office of Minority Health that can provide policy and programmatic technical assistance to Project DIRECT.

G. DEHNR participated as a member of the DIRECT Community Advisory Board during the pilot phase of the project and they are familiar with the philosophy and design of this complex community intervention.

Executive Order 12372 Review

This application is subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. The applicant should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective application and receive any necessary instructions on the State process. A current list of SPOCs is included in the application kit. If the SPOC has any State process recommendations on the application submitted to CDC, they should send them to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

OTHER REQUIREMENTS:

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

WHERE TO OBTAIN ADDITIONAL INFORMATION: If you are interested in obtaining additional information regarding this project, please refer to Announcement 435 and contact Bernice

A. Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 305, Mailstop E–16, Atlanta, GA 30305, telephone (404) 842–6802.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the **SUMMARY** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 7, 1994.

Martha Katz,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16961 Filed 7–12–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Drug Abuse Advisory Committee

Date, time, and place. August 1, 2, and 3, 1994, 9 a.m., Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, August 1, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m; open committee discussion, August 2, 1994, 9 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m; open public hearing, August 3, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Ermona B. McGoodwin or Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–009), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 25, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On August 1, 1994, the committee will discuss the abuse liability assessment and related issues of the new drug application (NDA) 20–385, nicotine nasal spray, Kabi Pharmacia, Inc., an aid to smoking cessation. On August 2, 1994, the committee will discuss issues related to nicotine and smoking, including the relationship between nicotine dose and addiction in smokers. On August 3, 1994, the committee will discuss the abuse liability assessment of NDA 20–281, Ultram® (tramadol hydrochloride tablets), R. W. Johnson Pharmaceutical Research Institute, for treatment of pain.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 7, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–16936 Filed 7–8–94; 12:48 pm]

BILLING CODE 4160–01–F

HEALTH CARE FINANCING ADMINISTRATION

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Current Beneficiary Survey-Rounds 10–18; *Form No.:* HCFA–P–15; *Use:* Rounds 10–18 of the Current Beneficiary Survey will collect cost and utilization data for community and industrial populations. Information collection includes: inpatient hospitalization, emergency care, outpatient clinics, medical equipment cost, and other sources of payment to be collected; *Frequency:* Quarterly; *Respondents:* Businesses, Nonprofit institutions, Individuals or households; *Estimated Number of Responses:* 16,500; *Average Hours Per Response:* 1 hour; *Total Estimated Burden Hours:* 50,738.

2. *Type of Request:* Revision; *Title of Information Collection:* Medicare Independent Renal Dialysis Facility Cost Report; *Form No.:* HCFA–265–94; *Use:* The Medicare Independent Renal Dialysis Facility cost report provides for determination and allocation of costs to the components of the facility in order to establish a proper basis for Medicare payment. This version has been revised to reflect questions in transplant statistics and home program dialysis; *Frequency:* Annually; *Respondents:* Businesses or other for profit, small businesses or organizations; *Estimated Number of Responses:* 380,560; *Average Hours Per Response:* 196; *Total Estimated Burden Hours:* 329,672.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer

Dated: July 7, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–16936 Filed 7–8–94; 12:48 pm]

BILLING CODE 4150–01–F

HEALTH CARE FINANCING ADMINISTRATION

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Current Beneficiary Survey-Rounds 10–18; *Form No.:* HCFA–P–15; *Use:* Rounds 10–18 of the Current Beneficiary Survey will collect cost and utilization data for community and industrial populations. Information collection includes: inpatient hospitalization, emergency care, outpatient clinics, medical equipment cost, and other sources of payment to be collected; *Frequency:* Quarterly; *Respondents:* Businesses, Nonprofit institutions, Individuals or households; *Estimated Number of Responses:* 16,500; *Average Hours Per Response:* 1 hour; *Total Estimated Burden Hours:* 50,738.

2. *Type of Request:* Revision; *Title of Information Collection:* Medicare Independent Renal Dialysis Facility Cost Report; *Form No.:* HCFA–265–94; *Use:* The Medicare Independent Renal Dialysis Facility cost report provides for determination and allocation of costs to the components of the facility in order to establish a proper basis for Medicare payment. This version has been revised to reflect questions in transplant statistics and home program dialysis; *Frequency:* Annually; *Respondents:* Businesses or other for profit, small businesses or organizations; *Estimated Number of Responses:* 380,560; *Average Hours Per Response:* 196; *Total Estimated Burden Hours:* 329,672.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, DC 20503.

Dated: July 5, 1994.

Kathleen Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–16919 Filed 7–12–94; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–94–3754; FR–3699–N–02]

Section 8 Housing Assistance Payments Program—Fair Market Rent (FMR) Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice to extend FMR public comment period.

SUMMARY: This Notice advises the public that HUD is extending the public comment period for the FMRs until October 14, 1994 in order to give PHAs in FMR areas with small rental housing inventories the opportunity to use the new survey guide HUD has recently developed.

HUD is also announcing in this Notice that there will be two final FMR publications again this year. The first publication will make the proposed FMRs for all areas effective on October 1, 1994. The second publication, to be issued late in the year, will announce revised final FMRs for the areas for which HUD has made a determination that the rental housing surveys submitted provided a sufficient basis for such revision.

DATES: Comments are due October 14, 1994.

ADDRESSES: Interested persons are invited to submit comments to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. To expedite processing, each commenter is requested to simultaneously submit a copy of its comments to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708–0577 (TDD: (202) 708–0770). (Telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs periodically, but not less frequently than annually, to be effective on October 1 of each year. On June 23, 1994, HUD published the proposed Fiscal Year (FY) 1995 FMRs with a 60-day public comment period to August 22, 1994.

With this Notice, HUD is extending the public comment period until October 14, 1994 to ensure that PHAs and other interested parties who wish to use the new rental housing survey guide will have sufficient time to do so.

The guide is intended for PHAs administering Section 8 programs in small FMR areas, for whom the formal Random Digit Dialing (RDD) methodology would not be cost effective. It enables a PHA to carry out a rental housing survey by itself, for a fraction of the cost of a formal RDD. The guide provides instruction on how to choose the best, most cost-effective means of surveying the rental housing stock in the FMR area. It describes survey options and provides specific advice and guidelines for conducting valid surveys and submitting comments in accordance with statistical requirements. The simplified methods presented in this guide offer the least costly means of obtaining valid FMR estimates for public housing agencies that manage under 500 Section 8 units in FMR areas with under 5,000 total rental units. Even the smallest PHAs might wish to review this guide for its suggestions on how to develop representative samples and conduct statistically acceptable surveys.

HUD is not mandating use of the new guide for PHAs in small FMR areas or use of the RDD method for larger areas. However, it is strongly urged that commenters consider these approaches because they are much more likely to result in an end product that is acceptable to HUD.

Copies of the new survey guide are available from HUD USER, at (800) 245–2691. Questions concerning the guide

may be directed to HUD field office economists.

Dated: July 8, 1994.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 94–16977 Filed 7–12–94; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3737; FR–3659–C–02]

Notice of Correction for the Public and Indian Housing Drug Elimination Program (PHDEP)—FY 1994 Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Notice of Correction to the Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1994.

SUMMARY: On April 1, 1994, HUD published a NOFA that announced FY 1994 funding of $231,978,631 under the Public and Indian Housing Drug Elimination Program (PHDEP) for use in eliminating drug-related crime. The purpose of this notice is to make corrections to the section specifying eligible applicants for one of the activities under the NOFA and to the number of points in one of the selection criteria.

DATES: The original application deadline date is not changed. Applications must be received at the local HUD Field Office on or before *Friday, July 29, 1994, at 3:30 PM, local time.* This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. A FAX is not acceptable.

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM, PUBLIC HOUSING, CONTACT: The local HUD Category A or B Field Office, Public Housing Division, or Malcolm E. Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM FOR NATIVE AMERICAN PROGRAMS CONTACT: The local HUD Category A or B Field Office, Administrator, Office of Native Americans, or Dominic Nessi, Director, Office of Native American Programs, Public and Indian Housing, Department of Housing and Urban Development, Room 4140, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1015. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: A Notice of Funding Availability (NOFA) announcing HUD's FY 1994 funding of $231,978,631 under the Public and Indian Housing Drug Elimination Program (PHDEP) was published on April 1, 1994 (59 FR 15574). Paragraph I.(c)(1)(ii) of the NOFA, under the heading *Employment of Housing Authority Police*, which listed housing authorities eligible to apply because they have their own housing authority (HA) police department, omitted from the list the HA of the City of Waterbury, Waterbury, CT, and the Buffalo HA, Buffalo, NY, and incorrectly included the Newark Housing Authority, Newark, NJ. In addition, the listing for the New York City Department of Housing Preservation and Development, NYC, NY, should have read: New York City Public Housing Authority, NYC, NY. This notice corrects the April 1, 1994 PHDEP NOFA by republishing the entire list of eligible applicants under paragraph I.(c)(1)(ii) to add the two omitted HAs to the list, to delete the one incorrectly listed, and to amend the listing for the New York City Public Housing Authority.

This notice also corrects the number of points that will be awarded under the first selection criterion of the NOFA. Specifically, five points are added to the subcriteria at sections I.(d)(1) (v) and (vi), raising each to 15 points, and raising the total number of points to 130.

Accordingly, the following technical correction is made in FR Doc. 94–7781 to the NOFA titled, "NOFA for the Public and Indian Housing Drug Elimination Program (PHDEP)—FY–1994", published on April 1, 1994 (59 FR 15574):

1. On page 15577, the list of eligible applicants in paragraph I.(c)(1)(ii), which appears in the first column, is revised to read as follows:

Baltimore HA and Community Development, Baltimore, MD
Boston HA, Boston, MA
Buffalo HA, Buffalo, NY
Chicago HA, Chicago, IL
Cuyahoga Metropolitan HA, Cleveland, OH
HA of the City of Los Angeles, LA, CA
HA of the City of Waterbury, Waterbury, CT
HA of the City of Oakland, Oakland, CA
HA of the City of Pittsburgh, Pittsburgh, PA
New York City Public HA, NYC, NY
Philadelphia HA, Philadelphia, PA

2. On page 15582, the first full paragraph in the first column, which is a part of paragraph I.(d), is revised to read as follows:

The number of points that an application receives will depend on the extent to which the application is responsive to the information requested in the selection criteria. An application *must* receive a score of at least 80 points out of the maximum of 130 points that may be awarded under this competition to be eligible for funding.

3. On page 15583, paragraph I.(1)(d)(1)(v), which appears in the first column, is revised to read as follows:

(v) In awarding points, HUD will evaluate and assign points between zero (0) and fifteen (15) according to the per capita incidence of robbery and homicide in their community relative to their per capita incidence on a nationwide basis. Data on robbery and homicide incidence were chosen because of the demonstrated relationship of a substantial portion of these crimes with drug abuse. The community data will be taken from the Uniform Crime Reports (UCRs) of the U. S. Department of Justice (FBI crime data) and will be at the city level, when available, or at the county level. The crime incidence data and the point values will be computed by HUD. (Maximum Points: 15)

4. On page 15583, paragraph I.(1)(d)(1)(vi), which appears in the first column, is revised to read as follows:

(vi) In awarding points, HUD will evaluate and assign points between zero (0) and fifteen (15) according to the per capita incidence of drug arrests. In instances where the Department of Justice records do not contain community submission data, points will be assigned based on state metropolitan and nonmetropolitan averages relevant to such areas. (Maximum Points: 15)

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et. seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 7, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–16917 Filed 7–12–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–03–4120–03]

AGENCY: Bureau of Land Management, Interior.

ACTION: Invitation for Coal Exploration License, WYW133297.

SUMMARY: Cordero Mining Co., a wholly owned subsidiary of Kennecott Coal Co., hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Campbell County, Wyoming:

T. 46 N., R. 71 W., 6th P.M., Wyoming
Sec. 1: Lot 18;
Sec. 4: Lots 11 and 17;
Sec. 5: Lots 11 and 16;
Sec. 7: Lot 7;
Sec. 8: Lots 5 and 9;
Sec. 12: Lots 9 and 10;
Sec. 17: Lot 8;
Sec. 18: Lots 12 and 15;
Sec. 19: Lot 10;
Sec. 22: Lots 1 and 6;
Sec. 23: Lots 11 and 15.
Containing 769.69 acres.

All of the coal in the above land consists of unleased Federal coal within the Powder River Basin Known Coal Resource Area. The purpose of the exploration program is to conduct exploration drilling on the above listed land.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number *WYW133297*): BLM, WSO, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82003; *and,* BLM, CDO, Branch of Solid Minerals, 1701 East "E" Street, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the News-Record of Gillette, WY, once each week for two (2) consecutive weeks and is expected to begin on July 13, 1994, and in the **Federal Register**. Any party electing to participate in this exploration program must sent written notice to both the BLM *and* the Cordero Mining Co., no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: BLM, WSO (WSO 925–9),

Dated: July 7, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–16917 Filed 7–12–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–03–4120–03]

AGENCY: Bureau of Land Management, Interior.

ACTION: Invitation for Coal Exploration License, WYW133297.

SUMMARY: Cordero Mining Co., a wholly owned subsidiary of Kennecott Coal Co., hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Campbell County, Wyoming:

T. 46 N., R. 71 W., 6th P.M., Wyoming
Sec. 1: Lot 18;
Sec. 4: Lots 11 and 17;
Sec. 5: Lots 11 and 16;
Sec. 7: Lot 7;
Sec. 8: Lots 5 and 9;
Sec. 12: Lots 9 and 10;
Sec. 17: Lot 8;
Sec. 18: Lots 12 and 15;
Sec. 19: Lot 10;
Sec. 22: Lots 1 and 6;
Sec. 23: Lots 11 and 15.
Containing 769.69 acres.

All of the coal in the above land consists of unleased Federal coal within the Powder River Basin Known Coal Resource Area. The purpose of the exploration program is to conduct exploration drilling on the above listed land.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number *WYW133297*): BLM, WSO, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82003; *and*, BLM, CDO, Branch of Solid Minerals, 1701 East "E" Street, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the News-Record of Gillette, WY, once each week for two (2) consecutive weeks and is expected to begin on July 13, 1994, and in the **Federal Register**. Any party electing to participate in this exploration program must sent written notice to both the BLM *and* the Cordero Mining Co., no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: BLM, WSO (WSO 925–9), Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, WY 82003–1828, Cordero Mining Co., Attn: Mr. Bob Green, HSEQ Supervisor, P.O. Box 1449, Gillette, WY 82717–1449, *and* Kennecott Energy Co., Attn: Mr. Richard Pearce *or* Mr. John Trummel, Caller Box 3009, Gillette, WY 82716–3009. The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, Section 3410.2–1(c)(1).

Lynn E. Rust,

Chief, Branch of Mining Law and Solid Minerals.

[FR Doc. 94–16962 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–22–M

[AK–070–04–4230–23; F–91212]

Permit of Public Land, Titna River, Alaska

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal for a three year renewable permit to Nathan D. Turner. The permit is intended to authorize construction, maintenance and operation of a commercial use cabin for trapping purposes in the Titna River drainage approximately 140 air miles southwesterly of Nenana and 110 air miles southeasterly of Galena, Alaska.

DATES: Comments and an application must be received by August 29, 1994.

ADDRESSES: Comments and an application must be submitted to the Kobuk District Manager, 1150 University Avenue, Fairbanks, Alaska 99709–3899.

FOR FURTHER INFORMATION CONTACT: Dave Mobraten—(907) 474–2330.

SUPPLEMENTARY INFORMATION: The site examined and found suitable for permitting under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR Part 2920, is described as within:

Section 17 & 20, T. 13 S., R. 28 E.

Kateel River Meridian, Alaska

An application will only be accepted from Nathan D. Turner who presently uses this area for trapping. Comments and the application must include reference to this notice. A category II processing fee of $300 must be submitted with the application and a monitoring fee of $75 will be due prior to issuance of the permit. Annual rental shall be fair market value as determined by appraisal.

Dated: June 30, 1994.

Helen M. Hankins,

Kobuk District Manager.

[FR Doc. 94–16899 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–JA–M

[OR–942–00–4730–02; G4–212]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 37 S., R. 20 E., accepted May 27, 1994;
T. 17 S., R. 47 E., accepted June 6, 1994;
T. 16 S., R. 2 W., accepted June 6, 1994;
T. 38 S., R. 3 W., accepted June 6, 1994 (2 Sheets);
T. 24 S., R. 6 W., accepted June 27, 1994;
T. 33 S., R. 7 W., accepted June 7, 1994;
T. 9 S., R. 9 W., accepted June 29, 1994;
T. 30 S., R. 9 W., accepted June 7, 1994;
T. 10 S., R. 10 W., accepted June 29, 1994

Washington

T. 32 N., R. 18 E., accepted June 16, 1994;
T. 21 N., R. 4 W., accepted May 27, 1994

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 N.E. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 N.E. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: July 1, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–16914 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Notice of Receipt of Applications for Approval

The following applicants have applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Dan L. Pike, Edmonds, WA. The applicant wishes to establish a cooperative breeding program for the European sparrowhawk (*Accipiter nisus*) and the European goshawk (*Accipiter gentilis*). The applicant wishes to be an active participant in this program with two other private individuals who are members of the Washington Falconers Association. The Washington Falconers Association has assumed responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 8, 1994.

Mark Phillips,

Acting Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 94–16997 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–55–P

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Donald Levatino, Baton Rouge, LA, PRT–791845

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Pine Louw, "Bankfontein" Springfontein, Republic of South Africa, for the purpose of enhancement of survival of the species.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: National Biological Survey, Sirenia Project, Gainesville, FL, PRT–791721

Type of Permit: Scientific Research.

Name and Number of Animals: West Indian manatee (*Trichechus manatus*), 200.

Summary of Activity to be Authorized: The applicant requests a permit to (1) radio tag up to 60 manatees per year, (2) PIT tag up to 30 manatees per year, (3) tail-notch up to 50 manatees per year, (4) freeze-brand up to 45 manatees per year, (5) conduct up to 5 non-harmful, non-invasive behavioral and physiological studies on captive manatees, (6) conduct up to 10 non-harmful, non-invasive behavioral and physiological studies on free-ranging manatees, (7) collect dead manatees and those obtained from carcass examinations, and (8) export and import parts of salvaged dead manatees.

Source of Marine Mammals for Research: Wild and captive manatees of all sexes and ages to be used in the research throughout its range.

Period of Activity: Through 1999.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of the application from the National Biological Survey to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420(c), Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing under the Marine Mammal Protection Act should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: July 8, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–16975 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–55–P

Availability of the Draft Environmental Assessment for the Issuance of a Special Use Permit to the Government of Guam for the Proposed Ritidian Point Territorial Park, Guam National Wildlife Refuge, Dededo, Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the draft Environmental Assessment (EA) for the issuance of a Special Use Permit to the Government of Guam for the proposed Ritidian Point Territorial Park on the Guam National Wildlife Refuge, Dededo, Guam is available for public review.

WRITTEN COMMENTS INFORMATION: Interested agencies, organizations, and individuals are encouraged to provide written comments to the Fish and Wildlife Service within 30 days after publication of this Notice. Address comments to the Field Supervisor as shown below:

FOR FURTHER INFORMATION CONTACT: Jerry Leinecke Field Supervisor, Refuges, Hawaiian and Pacific Islands NWR Complex, P.O. Box 50167, Honolulu, HI 96850, (808) 541–1201.

Individuals wishing copies of this draft EA for review should immediately contact the above named individual.

SUPPLEMENTARY INFORMATION: Field Supervisor, Jerry Leinecke, Hawaiian and Pacific Islands NWR Complex, is the primary author of this document. The Fish and Wildlife Service, Department of the Interior, has prepared a draft EA on its proposal to issue a Special Use Permit to the Government of Guam for the proposed Ritidian Point Territorial Park within the Guam National Wildlife Refuge.

The Government of Guam proposes to establish and operate the Ritidian Point Territorial Park (RPTP) within an approximate 20.24 ha (50 acres) site of the Ritidian Point Unit of the Guam National Wildlife Refuge (NWR). The RPTP would be operated by the Guam Department of Parks and Recreation with the biological support of the Guam Department of Agriculture, Division of Aquatic and Wildlife Resources, in coordination with the U.S. Fish and Wildlife Service (Service). The proposed RPTP would provide the public with natural history educational and recreational opportunities within the setting of the Ritidian Point Unit of the Guam NWR. The proposed RPTP would be managed to be compatible with the purposes for which the Guam NWR was established and in accordance with a Special Use Permit issued by the Service to the Government of Guam for the use of the approximate 20.24 ha site within the Ritidian Point Unit.

The proposed action is anticipated to have only minimal direct, indirect, and cumulative effects on the human environment. The establishment, operation and maintenance of the park will occur on a site that has been previously disturbed by construction of fields, pavilions, shelters and Navy buildings and by the past use of the area for recreational purposes by the Navy.

The major alternatives under consideration that were analyzed and evaluated during planning are: (A) PREFERRED ALTERNATIVE, establishment of the proposed RPTP on an approximate 20.24 ha (50 acre) site within the Ritidian Point Unit by the Guam Department of Parks and Recreation; (Alternative 2) establishment of a Territorial Park at Tarague Basin, South Finegayan, Falcona Beach, or the Anao Conservation Area at the present time; (Alternative 3) establishment of a public use area at the Ritidian Point Unit by the Service; (Alternative 4) which is the No Action alternative.

Staffs of the Government of Guam, Department of Parks and Recreation and the U.S. Fish and Wildlife Service jointly cooperated to plan, prepare and evaluate the proposals and prepare this draft EA. Detailed information concerning consultation and.

and Pacific Islands NWR Complex, is the primary author of this document. The Fish and Wildlife Service, Department of the Interior, has prepared a draft EA on its proposal to issue a Special Use Permit to the Government of Guam for the proposed Ritidian Point Territorial Park within the Guam National Wildlife Refuge.

The Government of Guam proposes to establish and operate the Ritidian Point Territorial Park (RPTP) within an approximate 20.24 ha (50 acres) site of the Ritidian Point Unit of the Guam National Wildlife Refuge (NWR). The RPTP would be operated by the Guam Department of Parks and Recreation with the biological support of the Guam Department of Agriculture, Division of Aquatic and Wildlife Resources, in coordination with the U.S. Fish and Wildlife Service (Service). The proposed RPTP would provide the public with natural history educational and recreational opportunities within the setting of the Ritidian Point Unit of the Guam NWR. The proposed RPTP would be managed to be compatible with the purposes for which the Guam NWR was established and in accordance with a Special Use Permit issued by the Service to the Government of Guam for the use of the approximate 20.24 ha site within the Ritidian Point Unit.

The proposed action is anticipated to have only minimal direct, indirect, and cumulative effects on the human environment. The establishment, operation and maintenance of the park will occur on a site that has been previously disturbed by construction of fields, pavilions, shelters and Navy buildings and by the past use of the area for recreational purposes by the Navy.

The major alternatives under consideration that were analyzed and evaluated during planning are: (A) PREFERRED ALTERNATIVE, establishment of the proposed RPTP on an approximate 20.24 ha (50 acre) site within the Ritidian Point Unit by the Guam Department of Parks and Recreation; (Alternative 2) establishment of a Territorial Park at Tarague Basin, South Finegayan, Falcona Beach, or the Anao Conservation Area at the present time; (Alternative 3) establishment of a public use area at the Ritidian Point Unit by the Service; (Alternative 4) which is the No Action alternative.

Staffs of the Government of Guam, Department of Parks and Recreation and the U.S. Fish and Wildlife Service jointly cooperated to plan, prepare and evaluate the proposals and prepare this draft EA. Detailed information concerning consultation and coordination is contained in Section VII of the draft EA.

All agencies and individuals are urged to provide comments and suggestions for improving this EA as soon as possible. All comments received during the designated comment period will be considered in preparation of the final EA for this proposed action.

Dated: June 28, 1994.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–16971 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico; Notice of Leasing Systems, Sale 150

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register**:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding systems to be used.* In the Outer Continental Shelf (OCS) Sale 150, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12½-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding with a 16⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding with a 12½-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 150) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow-water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the same blocks under a 16⅔-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. *Designation of Blocks.* The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico Lease Sale 150—Final Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Dated: June 27, 1994.

Tom Fry,

Director, Minerals Management Service.

Approved:

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 94–16900 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–MR–P

Outer Continental Shelf, Western Gulf of Mexico, Gas and Oil Lease Sale 150

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of sale.

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, (1988)), and the regulations issued thereunder (30 CFR Part 256).

2. *Filing of Bids.* Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals

Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m. Central Standard Time (c.s.t.)) until the bid submission deadline at 10 a.m., Tuesday, August 16, 1994. Hereinafter, all times cited in this Notice refer to c.s.t. unless otherwise stated. Bids will not be accepted the day of bid opening, Wednesday, August 17, 1994. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10 a.m., Tuesday, August 16, 1994. Bid opening time will be 9 a.m., Wednesday, August 17, 1994, at the Sheraton Hotel, 500 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the **Federal Register** at 59 FR 14425, published March 28, 1994.

3. *Method of Bidding.* A separate signed bid in a sealed envelope labeled "Sealed Bid for Gas and Oil Lease Sale 150, not to be opened until 9 a.m., c.s.t., Wednesday, August 17, 1994," must be submitted for each block bid upon. The sealed envelope and the bid should contain the following information: the company name, qualification number, area number and/or name (abbreviations acceptable), and the block number of the block bid upon. In addition, the total amount bid must be in whole dollar amounts.

Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. For identification purposes, the company name and company qualification number should also appear on the check or draft together with the bid block identification (abbreviations acceptable). No bid for less than all of the unleased portions of a block will be considered.

All documents must be executed in conformance with signatory authorizations on file in the Gulf of Mexico regional office. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

4. *Bidding, Yearly Rental, and Royalty Systems.* The following bidding, yearly rental, and royalty systems apply to this sale:

(a) *Bidding Systems.* All bids submitted at this sale must provide for a cash bonus in the amount of $25 or more per acre or fraction thereof.

(b) *Yearly Rental.* All leases awarded will provide for a yearly rental payment of $5 per acre or fraction thereof.

(c) *Royalty Systems.* All leases will provide for a minimum royalty of $5 per acre or fraction thereof. The following royalty systems will be used in this sale:

(1) *Leases With a 12½-Percent Royalty.* This royalty rate applies to blocks in water depths of 400 meters or greater as shown on the Stipulations, Lease Terms, and Bidding Systems map (see paragraph 13(a)). Leases issued on the blocks offered in this area will have a fixed royalty rate of 12½ percent.

(2) *Leases With a 16 ⅔-Percent Royalty.* This royalty rate applies to blocks in water depths of less than 400 meters (see aforementioned map). Leases issued on blocks offered in this area will have a fixed royalty rate of 16 ⅔ percent.

5. *Equal Opportunity.* The certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985), must be on file in the Gulf of Mexico regional office prior to lease award (see paragraph 14(e)).

6. *Bid Opening.* Bid opening will begin at the bid opening time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of bid opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit Of Payment.* Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal Of Blocks.* The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. *Acceptance, Rejection, Or Return Of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid may be accepted, and no lease for any block will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. See **Federal Register** at 58 FR 45255, published August 27, 1993.

11. *Leasing Maps and Official Protraction Diagrams.* Blocks offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) OCS Leasing Maps—Texas Nos. 1 through 8. This is a set of 16 maps which sells for $18.00.

(b) OCS Official Protraction Diagrams. These diagrams sell for $2.00 each.

NG 14–3 Corpus Christi (revised 01/27/76)
NG 14–6 Port Isabel (revised 01/15/92)
NG 15–1 East Breaks (revised 01/27/76)
NG 15–2 Garden Banks (revised 10/19/81)
NG 15–4 Alaminos Canyon (revised 04/27/89)
NG 15–5 Keathley Canyon (revised 04/27/89)
NG 15–8 (No Name) (revised 04/27/89)

(c) A complete set of all the above OCS Leasing Maps and Official Protraction Diagrams is available on microfiche for $5.00 per set.

12. *Description Of the Areas Offered for Bids.*

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is included in the following document available from the Gulf of Mexico regional office: Western Gulf of Mexico Lease Sale 150—Final. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease.

(b) *Blocks not available for leasing:* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11 (a), (b), and (c), except for those blocks or partial blocks already under lease, as listed below, and blocks deferred from bidding as follows:

(1) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, no bids will be accepted on Blocks A–375 and A–398 (at the Flower Garden Banks).

(2) No bids will be accepted on the following blocks located off Corpus Christi which have been identified by the Navy as needed for testing equipment and training mine warfare personnel: Mustang Island Area Blocks 793, 799, and 816.

(3) No bids will be accepted on Block A–125, as shown on Leasing Map No. 6A, Galveston, South Addition, the status of which is currently under appeal.

(4) Western Gulf of Mexico Leased Lands—Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted:

South Padre Island

1030, 1040, 1043, 1044, 1052, 1059, 1060, 1073, 1111, 1112, 1122, 1125, 1134, 1166.

North Padre Island

886, 887, 908, 927, 956, 957, 967, 968, 969, 976, 987, 988, 989.

North Padre Island, East Addition

891, 892, 911, 932, 951, 952, 970, 974, 975, 990, 993, 995, 996, 1011, 1018, A–6, A–9, A–10, A–11, A–27, A–38, A–42, A–43, A–48, A–55, A–59, A–64, A–69, A–70, A–72, A–75, A–76, A–86, A–87.

Mustang Island

738, 739, 740, 742, 743, 752, 754, 755, 756, 757, 758, 759, 762, 763, 764, 765, 767, 768, 769, 778, 779, 781, 782, 783, 784, 785, 786, 787, 789, 790, 791, 801,

12. *Description Of the Areas Offered for Bids.*

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is included in the following document available from the Gulf of Mexico regional office: Western Gulf of Mexico Lease Sale 150—Final. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease.

(b) *Blocks not available for leasing:* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11 (a), (b), and (c), except for those blocks or partial blocks already under lease, as listed below, and blocks deferred from bidding as follows:

(1) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, no bids will be accepted on Blocks A–375 and A–398 (at the Flower Garden Banks).

(2) No bids will be accepted on the following blocks located off Corpus Christi which have been identified by the Navy as needed for testing equipment and training mine warfare personnel: Mustang Island Area Blocks 793, 799, and 816.

(3) No bids will be accepted on Block A–125, as shown on Leasing Map No. 6A, Galveston, South Addition, the status of which is currently under appeal.

(4) Western Gulf of Mexico Leased Lands—Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted:

South Padre Island

1030, 1040, 1043, 1044, 1052, 1059, 1060, 1073, 1111, 1112, 1122, 1125, 1134, 1166.

North Padre Island

886, 887, 908, 927, 956, 957, 967, 968, 969, 976, 987, 988, 989.

North Padre Island, East Addition

891, 892, 911, 932, 951, 952, 970, 974, 975, 990, 993, 995, 996, 1011, 1018, A–6, A–9, A–10, A–11, A–27, A–38, A–42, A–43, A–48, A–55, A–59, A–64, A–69, A–70, A–72, A–75, A–76, A–86, A–87.

Mustang Island

738, 739, 740, 742, 743, 752, 754, 755, 756, 757, 758, 759, 762, 763, 764, 765, 767, 768, 769, 778, 779, 781, 782, 783, 784, 785, 786, 787, 789, 790, 791, 801, 802, 803, 804, 805, 806, 807, 809, 811, 812, 813, 814, 822, 823, 824, 825, 826, 828, 830, 831, 837, 846, 847, 849, 850, 851, 858, 868, 869, 870, 871, 872, 873, 875, 876, A–2 (NE¼ NW¼ NE¼; NE¼ NW¼; NE¼ SE¼ NW¼; W½ NW¼ NE¼), A–3, A–5, A–6, A–7, A–10, A–11, A–15, A–16, A–17, A–21, A–22, A–26, A–27, A–30, A–31, A–32, A–33, A–38.

Mustang Island, East Addition

736, 760, A–46, A–47, A–51, A–53, A–57, A–61, A–65, A–70, A–71, A–85, A–86, A–96, A–97, A–110, A–111, A–112, A–119, A–121, A–122, A–124, A–135, A–138, A–149.

Matagorda Island

487, 518, 519, 520, 526, 527, 528, 529 (Landward of 8(g) Line), 555, 556, 557, 564, 565, 566, 567, 568, 587, 588, 589, 591, 592, 599, 600, 601, 602, 603, 604, 605, 606, 607, 616, 617, 618, 619, 620, 622, 623, 624, 632, 633, 634 (Seaward of 8(g) Line), 635, 636, 637, 638, 639, 640, 641, 649, 650, 651, 652, 653, 654, 656, 657, 658, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 674, 676, 678, 680, 681, 682, 683, 685, 686, 687, 688, 689, 696, 699, 700, 701, 703, 704, 705, 707, 709, 710, 712, 713, 714, 715, 716, A–4, A–7, A–8.

Brazos

341, 342, 364 (Landward of 8(g) line), 365, 375, 376, 378, 396, 397, 398, 399, 411, 412, 413, 415, 416, 417, 431, 432, 435 (Seaward of 8(g) Line), 436, 437, 439, 449, 451, 452 (E½), 453, 454, 455, 456, 457, 458, 466, 468, 469, 470, 471, 473, 474, 475, 476, 477, 488, 491, 492, 493, 494, 495, 496, 498, 501, 502, 504, 506, 507, 509, 510, 514, 515, 516, 517, 531, 532, 533, 534, 535, 537, 538, 539, 542, 543, 544, 546, 549, 550, 552, 570, 571, 572, 576, 577, 578, 580, 584, 608, 613, 614, 615, A–2, A–3, A–6, A–7, A–9, A–10, A–14, A–17, A–19, A–20, A–21, A–22, A–23, A–24, A–25, A–31, A–36, A–37, A–38, A–39, A–40, A–41, A–43.

Brazos, South Addition

A–46, A–47, A–51, A–52, A–53, A–61, A–62, A–65, A–66, A–70, A–71, A–76, A–77, A–84, A–85, A–101, A–102, A–104, A–105, A–106, A–110, A–111, A–127, A–128, A–132, A–133.

Galveston

144, 151, 152, 180, 181, 182, 189, 190, 191, 192, 209, 210, 211, 213, 223, 225, 227, 237, 238, 239, 240, 241, 242 (Landward of 8(g) Line), 243, 252, 253, 255, 256, 257, 258, 265, 266, 267, 268, 270, 271, 272, 273, 274, 281, 283, 284, 285, 288, 289, 290, 291, 294, 295 (S½ NE¼ NE¼; NW¼ NE¼; W½ SW¼ NE¼; NE¼ SW¼ NE¼; N½ SE¼ NE¼; W½; W½ NW¼ SE¼; S½ SE¼), 296 (NE¼; NE¼ NE¼ NW¼; S½ NE¼ NW¼; SE¼ NW¼; S½ SW¼ NW¼; N½ SW¼; NE¼ SW¼ SW¼; N½ SE¼ SW¼; N½ SE¼; N½ SW¼ SE¼; SE¼ SE¼), 297, 298, 299, 301, 302, 303, 304, 305, 312, 313, 314, 318, 319, 320, 321, 322, 324, 325, 326, 328, 329, 330, 331, 332, 333, 343, 344, 345, 346, 347, 348, 349, 350, 351, 354, 356, 357, 358, 359, 360, 361, 363, 379, 380, 383, 384, 385, 386, 389, 390, 391, 392, 393, 394, 395, 418, 420, 421, 428, 429, 460, 503, A–2; A–15, A–16, A–18, A–21, A–24, A–34, A–35, A–39, A–40, A–41, A–42, A–49, A–50, A–86, A–101, A–105, A–110, A–111.

Galveston, South Addition

A–122, A–142, A–143, A–144, A–145, A–218.

High Island

19, 20, 21, 22, 34, 36, 52, 53, 67, 68, 69, 70, 71, 73, 86, 87, 88, 89, 90, 93, 97, 98, 105, 106, 108, 109, 110, 111, 113, 115, 116, 117, 134, 135 (N½; N½ S½; SW¼ SW¼; W½ SE¼ SW¼; NE¼ SE¼ SW¼; N½ S½ SE¼), 136 (E½; E½ NE¼ SW¼; S½ SE¼ SW¼), 137, 138 (N½), 139, 140, 143, 153, 154, 155 (W½), 156, 160 (NE¼; NE¼ NW¼; E½ SE¼ NW¼; N½ SE¼; N½ SE¼ SE¼), 161 (NW¼ NE¼ NW¼; S½ NE¼ NW¼; W½ NW¼; SE¼ NW¼; NE¼ NE¼ SW¼; W½ NE¼ SW¼; NW¼ SW¼; NW¼ SW¼ SW¼), 162, 164, 165, 169, 170, 171, 175, 176, 177, 178, 179, 193, 194, 195, 196, 197, 199, 200, 201, 204, 206, 207, 208, 228, 229, 230, 231, 232, 234, 235, 236, 261, 262, A–1, A–2, A–3, A–5, A–6, A–7, A–9, A–12, A–16, A–17, A–18, A–19, A–20, A–21, A–22, A–23, A–26, A–30, A–36, A–37, A–38, A–39, A–42, A–44, A–45, A–46, A–50, A–52, A–53, A–60, A–61, A–63, A–64, A–68, A–69, A–73, A–74, A–77, A–78, A–83, A–87, A–100, A–122, A–123, A–125, A–127, A–128, A–129, A–130, A–133, A–137.

High Island, South Addition

A–411, A–412, A–417, A–421, A–422, A–424, A–434, A–435, A–438, A–441, A–442, A–443, A–444, A–446, A–447, A–448, A–462, A–465, A–466, A–467, A–468, A–469, A–470, A–471, A–472, A–474, A–475, A–477, A–479, A–486, A–488, A–489, A–490, A–491, A–494, A–496, A–497, A–499, A–500, A–501, A–503, A–506, A–510, A–511, A–512, A–513, A–515, A–517, A–518, A–519, A–520, A–521, A–523, A–524, A–528, A–530, A–531, A–532, A–535, A–536, A–537, A–538, A–539, A–540, A–545, A–547, A–548, A–549, A–550, A–551, A–552, A–553, A–555, A–556, A–557, A–558, A–560, A–561, A–562(SW¼),

A–563, A–564, A–568, A–570, A–571, A–572, A–573, A–574, A–576, A–577, A–582, A–585, A–587, A–588, A–589, A–593, A–595, A–596.

High Island, East Addition

39, 45, 46, 74, 75, 76, 85, 120, 128, 129, 166, 167, A–168, A–169, A–171, A–172, A–173, A–174, A–175, A–176, A–185, A–187, A–192, A–195, A–200, A–201, A–224, A–231, A–233, A–244, A–245, A–246, A–247, A–250, A–253.

High Island, East Addition, South Extension

A–263, A–269, A–270, A–271, A–272, A–274, A–279, A–280, A–281, A–282, A–283, A–285, A–286, A–287, A–293, A–295, A–299, A–300, A–301, A–302, A–303, A–305, A–309, A–310, A–313, A–314, A–315, A–316, A–317, A–323, A–325, A–327, A–329, A–330, A–331, A–332, A–334, A–335, A–339, A–340, A–341, A–343, A–349, A–350, A–351, A–352, A–355, A–356, A–359, A–362, A–365, A–368, A–369, A–370, A–371, A–372, A–373, A–374, A–376, A–377, A–378, A–379, A–382, A–383, A–384, A–385, A–389, A–391, A–392, A–393, A–395, A–396, A–397, A–402, A–403.

Sabine Pass

17, 18, 40

East Breaks

109, 110, 112, 117, 122, 125, 154, 156, 157, 158, 159, 160, 161, 165, 166, 167, 168, 169, 171, 172, 173, 209, 215, 216, 237, 238, 246, 254, 255, 260, 290, 303, 329, 330, 342, 343, 344, 345, 386, 388, 389, 392, 393, 402, 403, 430, 431, 437, 462, 473, 474, 475, 476, 477, 506, 507, 518, 520, 562, 563, 564, 565, 566, 593, 598, 599, 602, 604, 605, 607, 608, 609, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 653, 654, 683, 684, 685, 686, 688, 689, 690, 691, 692, 728, 729, 732, 739, 740, 741, 783, 784, 785, 901, 902, 904, 943, 944, 945, 946, 947, 948, 949, 987, 988, 989, 990, 991, 992, 994.

Garden Banks

21, 22, 26, 28, 29, 69, 70, 71, 72, 73, 75, 76, 80, 83, 84, 103, 117, 119, 120, 123, 126, 127, 128, 134, 135, 136, 141, 142, 144, 145, 147, 157, 158, 161, 162, 164, 165, 166, 167, 168, 170, 171, 172, 180, 183, 186, 188, 189, 190, 191, 192, 200, 201, 202, 203, 206, 207, 208, 209, 210, 211, 212, 213, 215, 216, 217, 224, 225, 233, 234, 235, 236, 237, 240, 248, 250, 252, 253, 254, 255, 257, 258, 259, 260, 261, 269, 276, 277, 278, 279, 287, 289, 290, 291, 298, 299, 300, 302, 304, 319, 322, 323, 329, 330, 331, 333, 342, 343, 344, 345, 353, 354, 361, 362, 363, 365, 366, 368, 371, 374, 375, 376, 377, 379, 381, 382, 386, 387, 388, 389, 397, 398, 405, 406, 407, 413, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 463, 464, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 498, 499, 506, 507, 508, 512, 513, 514, 515, 516, 517, 535, 543, 544, 549, 550, 554, 555, 556, 557, 558, 559, 562, 563, 593, 598, 599, 600, 601, 602, 603, 622, 623, 629, 630, 638, 639, 644, 645, 646, 653, 674, 682, 683, 694, 697, 726, 727, 738, 739, 740, 741, 754, 767, 768, 769, 771, 772, 782, 783, 784, 785, 798, 803, 804, 806, 811, 812, 813, 814, 815, 816, 817, 826, 831, 832, 833, 848, 849, 850, 855, 856, 860, 875, 876, 877, 885, 902, 903, 919, 920, 921, 929, 930, 938, 939, 940, 947, 963, 964, 974, 975.

Port Isabel

39, 40, 81, 82, 125, 126, 130, 131, 174, 175, 216, 218, 393, 436, 437, 438, 481, 482, 483, 524, 525, 526, 568, 569, 570, 610, 611, 613, 653, 654, 655, 656, 657, 696, 697, 698, 700, 701, 740, 741.

Alaminos Canyon

20, 21, 22, 23, 24, 25, 26, 65, 133, 192, 236, 237, 261, 280, 305, 336, 337, 380, 398, 441, 442, 485, 489, 490, 491, 533, 534, 556, 557, 558, 599, 600, 601, 602, 644, 645, 646, 647, 648, 687, 691, 719, 720, 726, 730, 731, 734, 735, 736, 763, 764, 766, 767, 770, 774, 775, 780, 781, 810, 811, 813, 814, 818, 827, 854, 856, 857, 900, 901, 903, 904, 947, 951, 954.

Keathley Canyon

6, 7, 133, 134, 155, 156, 157, 158, 159, 177, 178, 179, 199, 200, 201, 202, 212, 221, 242, 243, 245, 246, 255, 256, 324, 377, 421, 422, 476, 522, 523, 567, 568, 583, 584, 603, 604, 647, 648, 695.

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have initial terms as shown on the Stipulations, Lease Terms, and Bidding Systems map applicable to this Notice and will be issued on Form MMS–2005 (March 1986). Copies of the map and lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on the aforementioned map and as supplemented by references in this Notice.

Stipulation No. 1—Protection of Archaeological Resources

(This stipulation will apply to all blocks offered for lease in this sale. Bidders should refer also to paragraph 14(g) of this Notice for specific survey requirements. See also paragraph 14(i).)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be, or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2—Protection of Topographic Features

(This stipulation will be included in leases located in the areas so indicated in the Biological Stipulation Map Package associated with this Notice which is available from the Gulf of Mexico regional office. See paragraph 14(a).)

The banks which cause this stipulation to be applied to blocks of the Western Gulf are:

Bank name	No activity zone defined by isobath (meters)
Shelf Edge Banks:	
West Flower Garden Bank[1] (defined by ¼ ¼ system).	100
East Flower Garden Bank[1] (defined by ¼ ¼ system).	100
MacNeil Bank	82
29 Fathom Bank	64
Rankin Bank	85
Geyer Bank	85
Elvers Bank	85
Bright Bank[2]	85
McGrail Bank[2]	85
Rezak Bank[2]	85
Sidner Bank[2]	85
Parker Bank[2]	85
Stetson Bank	62
Applebaum Bank	85
Low Relief Banks:[3]	
Mysterious Bank	74, 76, 78, 80, 84
Coffee Lump	Various
Blackfish Ridge	70
Big Dunn Bar	65
Small Dunn Bar	65
32 Fathom Bank	52
Claypile Bank[4]	50
South Texas Banks:[5]	
Dream Bank	78, 82
Southern Bank	80
Hospital Bank	70
North Hospital Bank	68
Aransas Bank	70
South Baker Bank	70
Baker Bank	70

[1] Flower Garden Banks—In paragraph (c) a "4-Mile Zone" rather than a "1-Mile Zone" applies.

[2] Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in the Western Gulf of Mexico.

[3] Low Relief Banks—Only paragraph (a) applies.

[4] Claypile Bank—Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.

[5] South Texas Banks—Only paragraphs (a) and (b) apply.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown in the aforementioned Biological Stipulation Map Package) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance,

Mexico regional office. See paragraph 14(a).)

The banks which cause this stipulation to be applied to blocks of the Western Gulf are:

Bank name	No activity zone defined by isobath (meters)
Shelf Edge Banks:	
West Flower Garden Bank[1] (defined by 1/4 1/4 system).	100
East Flower Garden Bank[1] (defined by 1/4 1/4 system).	100
MacNeil Bank	82
29 Fathom Bank	64
Rankin Bank	65
Geyer Bank	85
Elvers Bank	85
Bright Bank[2]	85
McGrail Bank[2]	85
Rezak Bank[2]	85
Sidner Bank[2]	85
Parker Bank[2]	85
Stetson Bank	62
Applebaum Bank	85
Low Relief Banks:[3]	
Mysterious Bank	74, 76, 78, 80, 84
Coffee Lump	Various
Blackfish Ridge	70
Big Dunn Bar	65
Small Dunn Bar	65
32 Fathom Bank	52
Claypile Bank[4]	50
South Texas Banks:[5]	
Dream Bank	78, 82
Southern Bank	80
Hospital Bank	70
North Hospital Bank	68
Aransas Bank	70
South Baker Bank	70
Baker Bank	70

[1] Flower Garden Banks—In paragraph (c) a "4-Mile Zone" rather than a "1-Mile Zone" applies.

[2] Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in the Western Gulf of Mexico.

[3] Low Relief Banks—Only paragraph (a) applies.

[4] Claypile Bank—Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.

[5] South Texas Banks—Only paragraphs (a) and (b) apply.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown in the aforementioned Biological Stipulation Map Package) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1-Mile Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000 Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 3—Military Warning Areas

(This stipulation will be included in leases located within Warning Areas as shown on the map described in paragraph 13(a).)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS; if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the table below.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee; and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the appropriate military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of its officers, agents, or employees; and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors, or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the table below to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors, or subcontractors will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat, ship, or aircraft traffic into the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following list, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats, ships, and aircraft operating into the warning areas at all times.

Warning Areas' Command Headquarters for Western Planning Area:

W–228—Chief, Naval Air Training, Naval Air Station, Office No. 206, Corpus Christi, Texas 78419–5100, Telephone: (512) 939–3862/2621.

W–602—Headquarters ACC/DOSR, Detachment 1, Operations Headquarters, Air Combat Command, Offutt AFB, Nebraska 68113–5550, Telephone: (402) 294–2334.

Stipulation No. 4—Operations in the Naval Mine Warfare Area

(This stipulation will apply to Mustang Island Area East Addition blocks 732, 733, and 734.)

(a) The placement, location, and planned periods of operation of surface structures on this lease during the exploration stage are subject to approval by the Regional Director (RD), Minerals Management Service Gulf of Mexico Region, after the review of an operator's Exploration Plan (EP). Prior to approval of the EP, the RD will consult with the Commander, Mine Warfare Command, in order to determine the EP's compatibility with scheduled military operations. No permanent structures nor debris of any kind shall be allowed in the area covered by this lease during exploration operations.

(b) To the extent possible, sub-seafloor development operations for resources subsurface to this area should originate outside the area covered by this lease. Any above-seafloor development operations within the area covered by this lease must be compatible with scheduled military operations as determined by the Commander, Mine Warfare Command. The lessee will consult with and coordinate plans for above sea-floor development activities (including abandonment) with the Commander, Mine Warfare Command. The Development Operations Coordination Document (DOCD) must contain the locations of any permanent structures, fixed platforms, pipelines, or anchors planned to be constructed or placed in the area covered by this lease as part of such development operations. The DOCD must also contain the written comments of the Commander, Mine Warfare Command on the proposed activities. Prior to approval of the DOCD, the RD will consult with the Commander in order to determine the DOCD's compatibility with scheduled military operations.

For more information, consultation, and coordination, the lessee must contact:

Commander, Mine Warfare Command, 325 Fifth Street, SE., Corpus Christi, Texas 78419–5032, Phone: (512) 939–4895.

14. *Information to Lessees.*

(a) *Supplemental Documents.* For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, either in writing or by telephone at (504) 736–2519 or (800) 200–GULF. For additional information, contact the Regional Supervisor for Leasing and Environment at the above address or by telephone at (504) 736–2759.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended.

U.S. Corps of Engineers (COE) permits are required for the construction of any artificial islands, installations, and other devices temporarily or permanently attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander Ken Parris, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, telephone (504) 589–6901. For COE information, prospective bidders should contact Mr. Dolan Dunn, Chief Evaluation Section, Regulatory Branch, P.O. Box 1229, Galveston, Texas 77553, telephone (409) 766–3935.

(c) *Offshore Pipelines.* Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) *8-Year Leases.* Bidders are advised that any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated; or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria; or if there is not a suspension of operations in effect, etc. Bidders are referred to 30 CFR 256.37.

(e) *Affirmative Action.* Revision of the Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see **Federal Register** of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS–2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60–1.5(a)(1) and 60–1.7(a)(1). Submission of Form MMS–2032 (June 1985) and Form MMS–2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) *Ordnance Disposal Areas.* Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on the map described in paragraph 13(a). These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards.

(g) *Archaeological Resources.* Bidders are advised of the Notice to Lessees (NTL) affecting the historic shipwreck requirements published December 20, 1991, in the **Federal Register** pages 66076–66082 with an effective date of February 17, 1992. This NTL details the survey methodology, including a more intensive survey with line spacing 50 meters apart, and report writing requirements. A Letter to Lessees (LTL) of November 30, 1990, lists those blocks identified as having a high probability for encountering historic shipwrecks. Copies of the NTL and LTL are available from the MMS Public Information Unit. See paragraph 14(a).

(h) *Proposed Rigs To Reefs.* Bidders are advised that there are OCS artificial reef sites and planning sites for the Gulf of Mexico. These are generally located in water depths of less than 200 meters. While all existing and proposed sites require a permit from the U.S. Army Corps of Engineers, this "Rigs to Reefs" program is implemented through State sponsorship through the following State Coordinators:

Alabama: Mr. Walter M. Tatum (205) 968–7578.

Louisiana: Mr. Rick Kasprzac (504) 765–2375.

Mississippi: Mr. Mike Buchanan (601) 385–5868.

Texas: Ms. Jan Coulbertson (512) 389–4863.

For more information on artificial reef sites, prospective bidders should contact the above listed State Artificial Reef Coordinator for their areas of interest.

(i) *Archaeological Surveys and Reports.* Bidders are advised that a Proposed Rule has been published in the **Federal Register** dated Tuesday, October 12, 1993, which proposes to grant specific authority to each MMS Regional Director to require archaeological surveys and reports (under 30 CFR 250.26). This proposed rule specifically states the authority of MMS and conditions for requiring lessees or operators to conduct archaeological resource surveys and submit the reports prior to exploration, development and production, or installation of pipelines. This rule, when adopted, may apply to all blocks leased in this sale.

Dated: June 27, 1994.

Tom Fry,

Director, Minerals Management Service.

Approved:

Nancy K. Hayes,

Acting Assistant Secretary—Land and Minerals Management.

[FR Doc. 94–16901 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–MR–P

Southwestern Pennsylvania Industrial Heritage Preservation Commission

Southwestern Pennsylvania Industrial Heritage Route; Designation of Vehicular Tour Route

AGENCY: Southwestern Pennsylvania Heritage Preservation Commission, Interior.

ACTION: Notice of designation of the Southwestern Pennsylvania Industrial Heritage Route.

SUMMARY: This notice, issued in accordance with the provisions of Public Law 100–698, which established the Southwestern Pennsylvania Heritage Preservation Commission ("Commission"), announces the designation of the Southwestern Pennsylvania Industrial Heritage Route.

ADDRESSES: Southwestern Pennsylvania Heritage Preservation Commission, P.O. Box 565, Hollidaysburg, PA 16648.

FOR FURTHER INFORMATION CONTACT: Karl King, Projects Manager, Southwestern Pennsylvania Heritage

Louisiana: Mr. Rick Kasprzac (504) 765–2375.
Mississippi: Mr. Mike Buchanan (601) 385–5868.
Texas: Ms. Jan Coulbertson (512) 389–4863.

For more information on artificial reef sites, prospective bidders should contact the above listed State Artificial Reef Coordinator for their areas of interest.

(i) *Archaeological Surveys and Reports.* Bidders are advised that a Proposed Rule has been published in the **Federal Register** dated Tuesday, October 12, 1993, which proposes to grant specific authority to each MMS Regional Director to require archaeological surveys and reports (under 30 CFR 250.26). This proposed rule specifically states the authority of MMS and conditions for requiring lessees or operators to conduct archaeological resource surveys and submit the reports prior to exploration, development and production, or installation of pipelines. This rule, when adopted, may apply to all blocks leased in this sale.

Dated: June 27, 1994.

Tom Fry,

Director, Minerals Management Service.

Approved:

Nancy K. Hayes,

Acting Assistant Secretary—Land and Minerals Management.

[FR Doc. 94–16901 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–MR–P

Southwestern Pennsylvania Industrial Heritage Preservation Commission

Southwestern Pennsylvania Industrial Heritage Route; Designation of Vehicular Tour Route

AGENCY: Southwestern Pennsylvania Heritage Preservation Commission, Interior.

ACTION: Notice of designation of the Southwestern Pennsylvania Industrial Heritage Route.

SUMMARY: This notice, issued in accordance with the provisions of Public Law 100–698, which established the Southwestern Pennsylvania Heritage Preservation Commission ("Commission"), announces the designation of the Southwestern Pennsylvania Industrial Heritage Route.

ADDRESSES: Southwestern Pennsylvania Heritage Preservation Commission, P.O. Box 565, Hollidaysburg, PA 16648.

FOR FURTHER INFORMATION CONTACT: Karl King, Projects Manager, Southwestern Pennsylvania Heritage Preservation Commission, telephone 814–696–9380.

SUPPLEMENTARY INFORMATION: Pub L. 100–698 established the Commission to provide, "the means by which the cultural heritage of the 9-county region in southwestern Pennsylvania associated with the three basic industries of iron and steel, coal and transportation may be recognized, preserved, promoted, interpreted, and made available for the benefit of the public." Title II, Sec. 201 of Pub. L. 100–698 provides that the Secretary of the Interior, with the concurrence of the agency having jurisdiction over such roads, shall designate, by publication in the **Federal Register**, a vehicular tour route along existing public roads linking historic, cultural, natural, scenic and recreational sites in southwestern Pennsylvania. Following a period of planning by the Denver Service Center of the National Park Service with substantial input from the public and the Pennsylvania Department of Transportation (herein referred to as "PennDOT"), the Secretary has designated, with the concurrence of PennDOT, the Southwestern Pennsylvania Industrial Heritage Route (herein referred to as the "Heritage Route"). The Heritage Route encompasses a distance of approximately 500 miles using existing roads through Bedford, Blair, Cambria, Fayette, Fulton, Huntingdon, Indiana, Somerset and Westmoreland Counties. The Secretary, in accordance with Pub. L. 100–698, Sec. 201.(a), and with concurrence of PennDOT and local entities having jurisdiction over the designated roads, shall erect signs and informational devices displaying the Heritage Route marker, also known as the "Path of Progress", along the designated roads. A list of the designated roads is published in its entirety below. A complete description and map of the Heritage Route system as well as a description of the "Path of Progress" markers is available through the Commission.

Cambria County

From Indiana County, on PA 56 (through *Westmoreland County*) and PA 403 to the Johnstown area.

Johnstown area: Through Johnstown on PA 56 (Haws Pike, Harold St., Strayer St., Fairfield Ave.—Cambria City area) or PA 403 (Cramer Pike, Cooper Ave., Broad St.) to Broad St. (PA 56/403), to Roosevelt Blvd., to Washington St. (downtown), to Clinton St., to Bedford St. (SR 3016/PA 756).

Leaving the Johnstown area on Bedford St. to Scalp Avenue (SR 3016, becoming PA 56 at US 219); to Windber (*Somerset County*) at 21st St. (PA 160); to Graham Ave. (PA 160); to 9th St. (PA 160); leaving Windber on PA 160 (re-entering *Cambria County*) to PA 869; PA 869; to SR 3024; to PA 53; to SR 2019 to SR 2014 (at Summit) to US 22; US 22 to PA 2016; to PA 1015; to PA 4008, entering Blair County.

Blair County

From Cambria County, SR 4008 to the Altoona/Hollidaysburg area.

Altoona/Hollidaysburg: Through Altoona on 40th St. to Beale Ave.; on Beale Ave. to Union Ave., becoming 18th St.; to 12th Ave.; to 12th St.; to 11th Ave.; to 16th St.; to 10th Ave.; to 17th St.; to 7th Ave. (becoming 6th Ave.); to Logan Blvd. (SR 4003, to PA 36) to Hollidaysburg on PA 36 (Penn St.) to Allegheny St.; to Bedford St. (at US 22/Broad St.); to PA 36; to Blair St. (US 22), leaving Hollidaysburg.

From Hollidaysburg, US 22 to Huntingdon County.

Huntingdon County

From Blair County on US 22; to SR 4014, becoming SR 4004 into Alexandria; to SR 305, returning to US 22; to PA 26 through Smithfield; to Penn Street (PA 26) through Huntingdon; to 2nd St., returning to US 22; to US 522 into Fulton County.

Fulton County

From Huntingdon County, US 522 to McConnellsburg; entering McConnellsburg on 2nd St. (US 522); to Market St.; to 3rd St.; to Lincoln Way (Old US 30/Lincoln Highway), becoming SR 1004; to US 30; US 30 to Bedford County.

Bedford County

From Fulton County, US 30 to Everett; Business US 30 (SR 1044) through Everett; US 30 to Bedford; Business US 30 (SR 4010/Pitt Street) into Bedford; to Penn St. (SR 4008); to West St., returning to Pitt St./Business US 30 (SR 4010); returning to US 30; to Somerset County.

Somerset County

From Bedford County on US 30; to PA 985; to PA 601; PA 601, entering Somerset to Center Ave. (PA 601); to Main St. (PA 31); to Harrison Ave. (PA 31); to Tayman Ave. (PA 281); PA 281 to PA 523; to US 40; to SR 3002 (through Addison); to US 40, into Fayette County.

Fayette County

From Somerset County on US 40, entering Uniontown; to Business US 40 (E. Main St.); to Pittsburgh St. (PA 51);

to US 119; to Bute Rd./SR 1051, leaving Uniontown; to PA 711 through Connellsville; to US 119; to SR 1029 through Everson, into Westmoreland County.

Extension to Ohiopyle State Park & Fallingwater: From US 40 at Farmington, to PA 381 (through Ohiopyle State Park) to Fallingwater.

Extension to Friendship Hill NHS: From downtown Uniontown, to Morgantown Rd. (SR 3019/Business US 119); to US 119; to PA 166; to Friendship Hill National Historic Site.

Extension to Searights Tollhouse & Brownsville: From downtown Uniontown, W. Main St.; to US 40 into Brownsville.

Westmoreland County

From Fayette County on SR 1029/3087; to SR 819 through Scottdale; to PA 31 through Mt. Pleasant; to PA 711 through Donegal; to US 30 through Ligonier; to PA 981 into Latrobe; to Lloyd Ave.; to Main St.; to Alexandria St.; to Thompson St.; to PA 981; to PA 286; to Indiana County.

Extension to Tunnelton/Indiana County: From PA 981, between New Alexandria Borough and PA 286; Township Road #939; to SR 3003, into Tunnelton.

Indiana County

From Westmoreland County, PA 286 through Saltsburg, to Indiana Borough, becoming Oakland Ave.; to Philadelphia St. (PA 286/954); to Sixth St. (PA 954); to Wayne Ave. (SR 4005) leaving Indiana Borough; to US 119 through Homer City; to PA 56 into Cambria County.

Dated: July 5, 1994.

Denis P. Galvin,

Acting Director, National Park Service.

[FR Doc. 94–16918 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–653 (Final)

Sebacic Acid From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury[3] by reason of imports from the People's Republic of China of sebacic acid, provided for in subheading 2917.13.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective January 4, 1994, following a preliminary determination by the Department of Commerce that imports of sebacic acid from the People's Republic of China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 9, 1994 (59 F.R. 6044). The hearing was held in Washington, DC, on May 24, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 5, 1994. The views of the Commission are contained in USITC Publication 2793 (July 1994), entitled Sebacic Acid from the People's Republic of China: Investigation No. 731–TA–653 (Final).

By order of the Commission.

Issued: July 7, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16994 Filed 7–12–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Watson and Commissioner Rohr dissenting.

[3] Vice Chairman Nuzum, Commissioner Newquist, and Commissioner Bragg determine that an industry in the United States is threatened with material injury. Commissioner Crawford determines that an industry in the United States is materially injured.

Investigations Nos. 731–TA–448–450 (Final) (Remand)

Sweaters Wholly or in Chief Weight of Manmade Fibers From Hong Kong, the Republic of Korea and Taiwan

AGENCY: U.S. International Trade Commission.

ACTION: Notice of Remand Determination.

SUMMARY: The Commission hereby gives notice of a final court decision affirming its final negative determinations, made pursuant to court remand, in the above-identified antidumping duty investigations.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; (202) 205–3105. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

SUPPLEMENTARY INFORMATION: On September 19, 1990, the Commission published its determinations that an industry of the United States was materially injured by reason of imports of manmade fiber ("MMF") sweaters from Hong Kong, Korea, and Taiwan. 55 Fed. Reg. 38588 (Sept. 19, 1990); *Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan,* Invs. Nos. 731–TA–448–450 (Final), USITC Pub. 2312 (Sept. 1992). The Hong Kong, Korean and Taiwanese producers of the subject MMF sweaters sought review of those final determinations in the Court of International Trade (CIT).

On July 28, 1992, the CIT issued an Order, finding that the Commission's final injury determinations were unsupported by substantial evidence and otherwise not in accordance with law, and remanding the determinations to the Commission for further proceedings. *Chung Ling Co. v. United States,* 805 F. Supp. 45 (CIT 1992). On November 23, 1992, the Commission submitted its remand determinations to the CIT, finding on remand that an industry in the United States was not materially injured or threatened with material injury by reason of imports of the subject MMF sweaters, which the Department of Commerce ("Commerce") had determined are sold at less than fair value. *Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan,* Invs. Nos. 731–TA–448–450 (Final) (Remand), USITC Pub. 2577 (Nov. 1992).

The trade association representing the domestic sweaters producers, the National Knitwear and Sportswear Association ("NKSA") challenged the remand determinations before the CIT. On August 11, 1993, the CIT issued an order finding that the Commission's remand determinations fell within the scope of the remand order, and were supported by substantial evidence and otherwise in accordance with law.

Accordingly, the CIT sustained the Commission's remand determinations. *Chung Ling Co. v. United States,* 829 F. Supp. 1353 (CIT 1993).

Notice of the CIT's decision was published by Commerce, pursuant to 19 U.S.C. 1516a(c)(1), on November 12, 1993. 58 Fed. Reg. 59987 (Nov. 12, 1992). In accordance with *Timken Co. v. United States,* 893 F.2d 337 (Fed. Cir. 1990), Commerce stated that it would continue the suspension of liquidation of the subject merchandise. Commerce's notice also indicated that, if the CIT decision was affirmed on appeal, the antidumping duty orders would be revoked.

Thereafter, NKSA appealed the CIT's judgment to the United States Court of Appeals for the Federal Circuit. On June 15, 1994, the Court of Appeals affirmed, without opinion, the CIT's final judgment upholding the Commission's negative remand determinations. *Chung Ling Co. v. USITC,* No. 94–1028 (Fed. Cir. June 15, 1994). On July 6, 1994, the Court of Appeals issued its mandate. The judicial proceedings having ended and the final court decision having been issued, the Commission now, pursuant to 19 U.S.C. 1516a(e), publishes notice of the final court decision affirming its negative remand determinations.

By order of the Commission.

Issued: July 6, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16995 Filed 7–12–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–167 (SUB-NO. 1140X), CONSOLIDATED RAIL CORPORATION —ABANDONMENT EXEMPTION—IN

Accordingly, the CIT sustained the Commission's remand determinations. *Chung Ling Co. v. United States*, 829 F. Supp. 1353 (CIT 1993).

Notice of the CIT's decision was published by Commerce, pursuant to 19 U.S.C. 1516a(c)(1), on November 12, 1993. 58 Fed. Reg. 59987 (Nov. 12, 1992). In accordance with *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), Commerce stated that it would continue the suspension of liquidation of the subject merchandise. Commerce's notice also indicated that, if the CIT decision was affirmed on appeal, the antidumping duty orders would be revoked.

Thereafter, NKSA appealed the CIT's judgment to the United States Court of Appeals for the Federal Circuit. On June 15, 1994, the Court of Appeals affirmed, without opinion, the CIT's final judgment upholding the Commission's negative remand determinations. *Chung Ling Co. v. USITC*, No. 94–1028 (Fed. Cir. June 15, 1994). On July 6, 1994, the Court of Appeals issued its mandate. The judicial proceedings having ended and the final court decision having been issued, the Commission now, pursuant to 19 U.S.C. 1516a(e), publishes notice of the final court decision affirming its negative remand determinations.

By order of the Commission.

Issued: July 6, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16995 Filed 7–12–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–167 (SUB-NO. 1140X), CONSOLIDATED RAIL CORPORATION —ABANDONMENT EXEMPTION—IN ORANGE COUNTY, NEW YORK. EA available 7/8/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–398 (SUB-NO. 3X), SAN JOAQUIN VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN FRESNO COUNTY, CALIFORNIA AB–402 (SUB-NO. 2X), FOX VALLEY & WESTERN LTD.—ABANDONMENT EXEMPTION—IN KEWAUNEE COUNTY, WI. EA available 7/8/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16955 Filed 7–12–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32470]

Greater Shenandoah Valley Development Company, d/b/a Shenandoah Valley Railroad Company, and Buckingham Branch Railroad Company—Operation Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343 the operation by Buckingham Branch Railroad Company of Greater Shenandoah Valley Development Company's 20.2-mile line of railroad in Rockingham and Augusta Counties, VA, subject to standard labor protective conditions.

DATES: This exemption will be effective on July 23, 1994. Petitions for stay must be filed by July 15, 1994. Petitions to reopen must be filed by July 18, 1994.

ADDRESSES: Send pleadings, referring to Finance Docket No. 32470 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; (2) Victor J. Ludlum, Shenandoah Valley Railroad Company, P.O. Box 8100, Harrisonburg, VA 22801; and (3) Robert E. Bryant, Buckingham Branch Railroad Company, P.O. Box 336, Dillwyn, VA 23936.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: June 30, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16956 Filed 7–12–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems

Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Freedom of Information Act/Privacy Act (FOIPA) Customer Service Feedback Plan.
(2) Executive Officer of the United States Attorney's.
(3) On Occasion.
(4) Individuals or households, Business or other for profit, Non-profit institutions, Small business or organizations. The Freedom of Information Act/Privacy Act (FOIPA) Customer Service Team seeks to survey Department of Justice Freedom of Information and Privacy Act requesters to determine their expectation of services and their level of satisfaction with existing services. Based on the information collected, the Department of Justice components may change policies or procedures to enhance or streamline their Freedom of Information/Privacy Act operations.
(5) 5,000 respondents @ .25 hours per response.
(6) 1,025 annual burden hours.
(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: July 7, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16938 Filed 7–12–94; 8:45 am]

BILLING CODE 4410–07–M

Antitrust Division

Proposed Modification of Final Judgment

Notice is hereby given that defendant Broadcast Music, Inc. ("BMI") has filed with the United States District Court for the Southern District of New York a motion to modify the Final Judgment in *United States v. Broadcast Music, Inc. et al.*, 64 Civ. 3787, and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to modification of the Final Judgment, but has reserved the right to withdraw its consent based on public comments or for other reasons. The Complaint in this case (filed on December 10, 1964) alleged that BMI and 517 broadcasters who owned its voting stock constituted a combination to restrain and monopolize, and an attempt to monopolize, the business of acquiring and licensing to broadcasters copyrighted music rights, in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1 and 2.

The Final Judgment (entered on December 29, 1966) provides, among other things, that any licenses obtained by BMI from composers for music performance rights must be non-exclusive, that BMI must offer through-to-the-viewer and per-program licenses to radio and television networks and cable programming services, and that BMI's license rates and terms must be non-discriminatory. Unlike the similar decree in *U.S. v. ASCAP* Civ. No. 13–95 (WCC), however, the BMI Judgment has no provision for court adjudication of license fees for music performing rights where BMI and a potential licensee are unable to reach agreement.

The Department has filed with the Court a memorandum setting forth the reasons why it believes that modification of the Final Judgment to provide a rate court for the adjudication of disputed license fees would be in the public interest. Copies of the Complaint, the Final Judgment, the defendant's motion papers, the Stipulation containing the Government's tentative consent, the Department's memorandum, and all further papers filed with the Court in connection with this motion will be available for inspection at Room 3235, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (Telephone: (202) 514–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department regulations.

Interested persons may submit comments to the Department regarding the proposed modification of the Final Judgment. Such comments must be received within the sixty-day period established by court order, and will be filed with the Court by the Department. Comments should be addressed to Gail Kursh, Chief, Professions and Intellectual Property Section, Antitrust Division, Department of Justice, 555 Fourth Street, NW., Washington, DC 20001 (telephone: (202) 307–5799).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–16915 Filed 7–12–94; 8:45 am]

BILLING CODE 4410–01–M

United States and State of Florida v. Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc., No. 94–748–CIV–T–23E (M.D. Fla., Filed May 5, 1994)

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act. 15 U.S.C. 16(b)–(h), that a proposed Final Consent Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Middle District of Florida in the above-captioned case.

On May 5, 1994, the United States and State of Florida filed a complaint to block the proposed combination of the two largest general acute care hospitals in North Pinellas County, Florida. Morton Plant Health System, Inc. ("MPHS") owns and operates Morton Plant Hospital ("Morton Plant") in Clearwater, and Trustees of Mease Hospital, Inc. ("TMH") owns and operates the Mease hospitals in Dunedin and Safety Harbor ("Mease"). The Complaint alleges that the combination of Morton Plant and Mease may substantially lessen competition in the provision of acute inpatient hospital services in North Pinellas County, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Consent Judgment prohibits the consolidation of Morton Plant and Mease and requires that they remain as independent, competing hospitals. It also, however, permits MPHS and TMH to form a partnership in which they may jointly own and operate certain acute care and administrative services. The partnership would sell its services at cost to each hospital, which would market and price all of its services—both those owned separately and those jointly owned and operated through the partnership—independently and in competition with the other. The proposed Judgment permits MPHS and TMH to achieve substantial efficiencies while preserving the vigorous competition between them that has restrained their prices to managed care and other health insurance plans.

Public comment is invited within the statutory 60-day period. Such comments will be published in the **Federal Register** and filed with the Court. Comments should be addressed to Gail Kursh, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 9903, Washington, DC 20001 (phone 202/307–5799).

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States District Court for the Middle District of Florida, Tampa Division

United States of America and State of Florida, Plaintiffs, v. Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc., Defendants. Civ. No. 94–748–CIV–T–23E, Judge Steven D. Merryday, Filed: June 17, 1994.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Middle District of Florida;

2. The parties consent that a Final Consent Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiffs have not withdrawn their consent, which they may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Consent Judgment pending its approval by the Court. If either plaintiff withdraws its consent, or if the proposed Final Consent Judgment is not entered pursuant to the terms of the Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated: June 17, 1994.

9903, Washington, DC 20001 (phone 202/307–5799).

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States District Court for the Middle District of Florida, Tampa Division

United States of America and State of Florida, Plaintiffs, v. Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc., Defendants. Civ. No. 94–748–CIV–T–23E, Judge Steven D. Merryday, Filed: June 17, 1994.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Middle District of Florida;

2. The parties consent that a Final Consent Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiffs have not withdrawn their consent, which they may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Consent Judgment pending its approval by the Court. If either plaintiff withdraws its consent, or if the proposed Final Consent Judgment is not entered pursuant to the terms of the Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated: June 17, 1994.

For Plaintiffs:

Robert A. Butterworth,

Attorney General.

Jerome W. Hoffman,

Chief, Antitrust Section.

Lizabeth A. Leeds,

Assistant Attorney General, FL Bar # 0457991.

Office of the Attorney General, State of Florida, The Capitol, Tallahassee, FL 32399–1050, (904) 488–9105, (904) 488–9134 (fax).

Anne K. Bingaman,

Assistant Attorney General.

Steven C. Sunshine,

Deputy Assistant Attorney General.

Constance K. Robinson,

Director of Operations.

Gail Kursh,

Chief, Professions and Intellectual Property Section.

K. Craig Wildfang,

Special Counsel to the Assistant Attorney General, Antitrust Division.

Anthony E. Harris, Trial Counsel

Jon B. Jacobs

Jessica N. Cohen

M. Lee Doane

U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 9901, Washington, DC 20001, (202) 307–0951, (202) 514–1517 (fax).

For Defendants:

Emil C. Marquardt, Jr., Esquire,

McFarlane Ausley Ferguson & McMullen, 400 Cleveland Street, P.O. Box 1669, Clearwater, FL 34617, (813) 441–8966, (813) 422–8470 (fax).

United States of America and State of Florida, Plaintiffs v. Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc., Defendants. Civil No. 94–748–CIV–T–23E, Judge Steven D. Merryday, Filed: June 17, 1994.

Final Consent Judgment

Plaintiffs, the United States of America and the State of Florida, having filed their Verified Complaint on May 5, 1994, and Plaintiffs and Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc., by their respective attorneys, having consented to the entry of this Final Consent Judgment without trial or adjudication of any issue of fact or law, and without this Final Consent Judgment constituting evidence against or admission by any party with respect to any issue of fact or law;

NOW, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law, it is hereby ORDERED, ADJUDGED AND DECREED:

I

Jurisdiction

This Court has jurisdiction of the subject matter and each of the parties to this action. The Verified Complaint states a claim upon which relief may be granted against Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc. under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II

Definitions

As used in this Final Consent Judgment:

(A) *Eligible Partnership Patient Care Services* means the following patient care services that Morton Plant and Mease may elect to own, manage, operate or provide by the Partnership described herein:

(1) all patient care services provided by Morton Plant or Mease on an outpatient basis that are generally capable of being provided outside of a general acute care hospital;

(2) open-heart surgery and/or services or procedures that require the immediate availability of an open-heart surgery unit;

(3) robotically assisted prosthetic implantation and special spinal instrumentation procedures involving the insertion of multiple rods in the spinal cord;

(4) stem cell procedures, advanced linear accelerator equipment and procedures, and HDR brachy therapy;

(5) stereotactic radio therapy;

(6) inpatient and outpatient diagnostic and therapeutic radiology services (e.g., CAT scans, MRI, X-ray, ultrasound, nuclear angiography);

(7) inpatient and outpatient laboratory services;

(8) neonatal level III services;

(9) inpatient and outpatient mental health services; and

(10) home health care, home infusion services, durable medical equipment, rehabilitative services, skilled nursing, retirement facilities and long-term care.

(B) *Eligible Partnership Administrative Services* means the following administrative services that Morton Plant and Mease may elect to own, manage, operate or provide by the Partnership described herein:

(1) human resources (except management positions at the hospital level with responsibility for management, marketing, planning, pricing or managed care contracting);

(2) medical staff organization and development, including medical staff development and recruitment, physician organization structure, advising on practice acquisition, governance and credentialing;

(3) information services;

(4) telephone and other communication services;

(5) accounting, billing and collection;
(6) housekeeping and laundry;
(7) medical records;
(8) materials management and plant maintenance;
(9) support services for charitable foundations; and
(10) all miscellaneous services not related to patient care and not exceeding an expenditure of $250,000 annually.

(C) *Independent Services* means all services other than those carried out by the Partnership under this Final Consent Judgment.

(D) *Managed Care Plan* means a health maintenance organization, preferred provider organization, or other health services purchasing program that uses financial or other incentives to prevent unnecessary services and includes some form of utilization review.

(E) *Mease* means the Trustees of Mease Hospital, Inc. and all subsidiaries and affiliates.

(F) *Morton Plant* means Morton Plant Health System, Inc. and all subsidiaries and affiliates.

(G) *Partnership* means the nonprofit, tax-exempt organization that Morton Plant and Mease may create and operate in accordance with this Final Consent Judgment.

III

Applicability

This Final Consent Judgment applies to Morton Plant and Mease, to the Partnership created by them, to Morton Plant's and to Mease's officers, directors, trustees, administrators, agents, employees, successors and assigns and to all other persons in active concert or participation with any of them who receive actual notice of this Final Consent Judgment pursuant to F.R.C.P. 65(d).

IV

Prohibited Conduct

Morton Plant and Mease shall not consummate their agreement to consolidate as set forth in their Letter of Intent, dated October 19, 1993, or any other agreement to merge, consolidate, or combine, except in accordance with the terms of this Final Consent Judgment.

V

Bona Fide Partnership

Morton Plant and Mease may enter into a Partnership in which they consolidate and jointly operate certain patient care services and administrative services under the following conditions:

(A) Morton Plant and Mease may agree to consolidate and jointly operate any Eligible Partnership Patient Care Services and any Eligible Partnership Administrative Services.

(B) The Partnership may own and operate any Eligible Partnership Patient Care Service and any Eligible Partnership Administrative Service and may provide such service to Morton Plant and Mease. The Partnership shall sell each service to Morton Plant and Mease on the same terms and conditions in an amount equal to cost. The Partnership shall conduct an annual cost accounting.

(C) Morton Plant and Mease may appoint members to a Partnership board, which individuals may be members of each hospital's board. Executives at Morton Plant and Mease may also serve as executives of the Partnership and on the boards of their respective hospitals and of the Partnership. The Partnership board will govern the services provided by the Partnership. The Partnership board and its executives may not discuss Independent Services, managed care contracting for Morton Plant or Mease, or the marketing or pricing of any services, including Eligible Partnership Patient Care Services or Eligible Partnership Administrative Services, with the following exception: the Partnership may market and price those services set out in Paragraph II(A)(10) as long as Morton Plant and Mease continue their present practice of providing their patients and physicians with information on other providers of these services in the market. The Partnership board may request Morton Plant and Mease to contribute capital to the Partnership, but each hospital shall exercise its own independent judgment on how much capital to contribute.

(D) Morton Plant and Mease shall provide plaintiffs with written notification of their intent to consolidate and jointly operate any additional or new services (such as pediatrics and neonatal level II services) through the Partnership under the terms of this Final Consent Judgment. Morton Plant and Mease shall also provide any information reasonably necessary for plaintiffs to assess the competitive impact of adding such services to the Partnership. Morton Plant and Mease may consolidate and jointly operate the additional or new services unless either plaintiff provides a written objection within 120 days of receiving the necessary information. Notwithstanding the foregoing, Morton Plant and Mease may jointly operate through the Partnership any new service not currently provided by Morton Plant or Mease by providing plaintiffs with at least 90-days' notice, so long as the new service is a specialized inpatient procedure commonly recognized in the medical community as "tertiary" or higher, and is performed only by physician subspecialists with specialized support staff and expensive equipment.

(E) Morton Plant may lend or grant Mease up to $21 million for Mease's planned expansion under terms preventing Morton Plant from obtaining any control or leverage over Mease's management or operations.

(F) Morton Plant, Mease and the Partnership may become obligated parties, guarantors or co-makers on debt instruments and the assets of Morton Plant, Mease and the Partnership may be pledged as security for such debt instruments so long as all such obligations are approved separately by Morton Plant and Mease. Neither Morton Plant nor Mease shall unreasonably withhold consent to, impose conditions on, or attempt to influence the use of funds obtained by the other hospital through such financing for Independent Services. In the event that Morton Plant or Mease believes the other has unreasonably withheld such consent, the matter shall be submitted to binding arbitration under the American Arbitration Association Rules.

(G) Nothing in this Final Consent Judgment is intended to prevent Morton Plant, Mease and/or the Partnership from participating in lawful integrated delivery networks such as accountable health partnerships, physician organizations and physician networks of their medical staff; provided that participation decisions shall be made independently by Morton Plant, Mease and the Partnership.

(H) In the event that federal or state legislation enacted subsequent to the entry of the Final Consent Judgment permits conduct prohibited by this Judgment, Morton Plant and Mease may move for and plaintiffs will reasonably consider an appropriate modification of the Final Consent Judgment. This provision in no way limits Morton Plant's or Mease's right to seek any modification of this Final Consent Judgment.

(I) The Partnership shall establish adequate protections to keep information concerning pricing, managed care contracts, negotiations with managed care plans, and marketing and planning of Morton Plant and Mease separate and to insure that the information of one hospital is not transmitted to or received by the other hospital directly or indirectly. Adequate protections shall include, at a minimum, confidentiality agreements for employees with access to such information and protocols for preparation of separate reports for Morton Plant, Mease, and the Partnership.

(J) The Partnership may make any lawful acquisition of physician practices. However, in the event that a practice is acquired that admits patients to either hospital for Independent Services, Morton Plant and Mease shall allow each such physician to determine in his or her sole discretion to which hospital to admit such patients.

VI

Independent Activities

(A) Morton Plant and Mease shall continue as separate and competing corporate entities, with separate Boards of Trustees and executive management, and shall separately own and operate their respective Independent Services. Marketing, pricing, and managed care negotiating and contracting decisions shall remain Independent Services to be considered only in each hospital board's respective meeting. Each board shall adhere to a separate agenda and will record such meeting in separate minutes.

(B) Morton Plant and Mease shall each price and sell its services, both those owned and operated and operated separately and those purchased from the Partnership, in active competition with each other. Morton Plant and Mease shall each exercise its own independent judgment on how to market and price its patient care services and shall not discuss, communicate, or exchange with each other or any other hospital information relating to the marketing, pricing, negotiating, or contracting of any patient care services, including those purchased from the Partnership.

(C) Morton Plant or Mease shall be free to offer any patient care service or administrative service provided through the Partnership independently and in competition with any other provider and may end its provision of any such service through the Partnership.

(D) Morton Plant and Mease shall negotiate and contract independently with health care purchasers such as Managed Care Plants. Morton Plant and Mease may contract with the same Managed Care Plan or any other health care purchaser so long as they do so independently; provided, that Morton Plant and Mease may independently enter into similar but separate contracts with the same Managed Care Plan.

for employees with access to such information and protocols for preparation of separate reports for Morton Plant, Mease, and the Partnership.

(J) The Partnership may make any lawful acquisition of physician practices. However, in the event that a practice is acquired that admits patients to either hospital for Independent Services, Morton Plant and Mease shall allow each such physician to determine in his or her sole discretion to which hospital to admit such patients.

VI

Independent Activities

(A) Morton Plant and Mease shall continue as separate and competing corporate entities, with separate Boards of Trustees and executive management, and shall separately own and operate their respective Independent Services. Marketing, pricing, and managed care negotiating and contracting decisions shall remain Independent Services to be considered only in each hospital board's respective meeting. Each board shall adhere to a separate agenda and will record such meeting in separate minutes.

(B) Morton Plant and Mease shall each price and sell its services, both those owned and operated and operated separately and those purchased from the Partnership, in active competition with each other. Morton Plant and Mease shall each exercise its own independent judgment on how to market and price its patient care services and shall not discuss, communicate, or exchange with each other or any other hospital information relating to the marketing, pricing, negotiating, or contracting of any patient care services, including those purchased from the Partnership.

(C) Morton Plant or Mease shall be free to offer any patient care service or administrative service provided through the Partnership independently and in competition with any other provider and may end its provision of any such service through the Partnership.

(D) Morton Plant and Mease shall negotiate and contract independently with health care purchasers such as Managed Care Plants. Morton Plant and Mease may contract with the same Managed Care Plan or any other health care purchaser so long as they do so independently; provided, that Morton Plant and Mease may independently enter into similar but separate contracts with the same Managed Care Plan.

VII

Compliance Program

Morton Plant and Mease shall maintain an antitrust compliance program, which shall include:

(A) Distributing within 60 days from the entry of this Final Consent Judgment, a copy of the Final Consent Judgment and Competitive Impact Statement to all officers, directors, trustees and administrators;

(B) Distributing in a timely manner a copy of the Final Consent Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph VII(A);

(C) Briefing annually those persons designated in Paragraph VII(A) on the meaning and requirements of this Final Consent Judgment, penalties for violation thereof and the antitrust laws, including potential antitrust concerns raised by hospitals;

(D) Obtaining from the officers and administrators an annual written certification that he or she has read, understands and agrees to abide by this Final Consent Judgment and in not aware of any violation of this Final Consent Judgment; and

(E) Maintaining for inspection by plaintiffs a record of recipients to whom this Final Consent Judgment and Competitive Impact Statement have been distributed.

VIII

Certifications

(A) Within 75 days after the entry of this Final Consent Judgment, Morton Plant and Mease shall each certify to plaintiffs whether it has made the distribution of this Final Consent Judgment in accordance with Paragraph VII(A) above.

(B) For five years after the entry of this Final Consent Judgment, on or before its anniversary date, Morton Plant and Mease shall each certify annually to plaintiffs whether it has complied with the provisions of Paragraph VII.

IX

Plaintiffs' Access

For the sole purpose of determining or securing compliance with this Final Consent Judgment, and subject to any recognized privilege, authorized representatives of the United States Department of Justice or the Office of the Attorney General, State of Florida, upon written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Florida, respectively, shall on reasonable notice be permitted:

(A) Access during regular business hours of Morton Plant and Mease to inspect and copy all records and documents relating to any matters contained in this Final Consent Judgment;

(B) To interview Morton Plant and Mease officers, directors, trustees, administrators, and employees, who may have counsel present, concerning such matters; and

(C) To obtain written reports from Morton Plant and Mease relating to any of the matters contained in the Final Consent Judgment.

X

Jurisdiction Retained

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Consent Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Consent Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

XI

Expiration of Final Consent Judgment

This Final Consent Judgment shall expire 5 years from the date of entry; provided that, before the expiration of this Final Consent Judgment, either plaintiff, after consultation with Morton Plant and Mease and in each plaintiff's sole discretion, may extend the Judgment for an additional five years.

XII

Public Interest Determination

Entry of this Final Consent Judgment is in the public interest.

Steven D. Merryday,

United States District Judge.

United States of America and State of Florida, Plaintiffs, v. Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc., Defendants. Civ. No. 94–748–CIV–T–23E; Judge Steven D. Merryday, June 30, 1994.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Consent Judgment (or "the Judgment") submitted for entry against Morton Plant Health System, Inc. ("MPHS") and Trustees of Mease Hospital, Inc. ("TMH") in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

The United States of America and the State of Florida, acting under the direction of their respective Attorneys General, filed this civil antitrust suit on May 5, 1994, alleging that the proposed combination of MPHS and TMH, owners of the two largest general acute care hospitals in North Pinellas County, Florida, violates Section 7 of the Clayton Act, 15 U.S.C. 18.

MPHS owns and operates Morton Plant Hospital in Clearwater, Florida ("Morton Plant"), the largest general acute care hospital in North Pinellas County. TMH owns and operates the Mease hospitals in Dunedin and Safety Harbor, Florida ("Mease"), which together constitute the second-largest general acute care hospital in North Pinellas County.

The Verified Complaint alleges that the combination of these principal competitors under common ownership may substantially lessen competition in the provision of acute inpatient hospital services in North Pinellas County and likely increase prices for those services to health care consumers. These higher prices will be paid by health care purchasers, particularly health insurance plans, employers, and unions and ultimately result in an increase in prices individual consumers pay for health insurance coverage.

The prayer for relief seeks: (1) A judgment that the proposed consolidation of MPHS and TMH violates Section 7 of the Clayton Act; (2) preliminary and permanent injunctions preventing defendants from consummating their agreement to consolidate or from going forward with any other plan by which Morton Plant would be combined with Mease; (3) attorneys fees; and (4) costs.

II

The Practices and Events Giving Rise to the Alleged Clayton Act Violation

A. Background

Morton Plant and Mease are the two largest general acute care hospitals in North Pinellas County. Morton Plant, with 672 licensed acute care hospital beds, generated about $130 million in net inpatient revenues in fiscal year 1993. Mease, with a total of 358 licensed acute care hospital beds on two campuses, generated about $75 million in net inpatient revenues in fiscal year 1993.

Morton Plant and Mease, like other general acute care hospitals, receive the bulk of their revenues from the provision of acute inpatient hospital services—*i.e.*, services provided for the diagnosis and treatment of patients who require an overnight hospital stay. Acute inpatient hospital services include room and board, medical and surgical services, around-the-clock monitoring and observation, nursing care, and laboratory, x-ray and support services.

Acute inpatient hospital services are sold to a variety of purchasers, including managed care health insurance plans such as health maintenance organizations and preferred provider organizations (colloquially known as HMOs and PPOs). These plans contract with a select number of competing hospitals and employ financial incentives to encourage plan enrollees to use the contracted facilities. Hospitals reduce the prices of services provided to managed care plan enrollees in return for the plans' commitment to increase the volume of patients hospitals receive.

Managed care plans and other price-sensitive health care purchasers rely on competition among hospitals to obtain hospital services at competitive rates. This, in turn, permits managed care plans to offer health insurance to consumers at lower prices. Managed care plans constitute a significant, and growing, percentage of Morton Plant's and Mease's revenues from patient care.

B. Product Market

The Verified Complaint alleges that the appropriate product market within which to assess the competitive effect of the proposed combination of Morton Plant and Mease is the provision of acute inpatient hospital services. A relevant product market consists of those products that are reasonably interchangeable by consumers for the same purpose. The pivotal question in the determination is whether a small but significant increase in the price of one product would cause enough buyers to turn to other products so as to make the price increase unprofitable.

It is well established that acute inpatient services constitute a relevant product market for analyzing a merger of general acute care hospitals. The market for acute inpatient services is separate from the market for outpatient services, which general acute care hospitals also provide. Patients whose treatment or condition requires an overnight hospital stay cannot be safely or effectively treated on an outpatient basis. For this reason, health care purchasers, including managed care plans, do not view outpatient services as substitutes for acute inpatient services. General acute care hospitals profitably could increase the price of acute inpatient hospital services without causing a significant number of health care purchasers to switch to outpatient services.[1]

C. Geographic Market

The Verified Complaint alleges that North Pinellas County, the portion of Pinellas County north of Ulmerton Road, is the relevant geographic market.

Pinellas County is the most densely populated county in Florida. A long, narrow peninsula, surrounded on three sides by large bodies of water, the Gulf of Mexico and Tampa Bay, Pinellas County is geographically isolated from Tampa, the area's major city. In addition, because few major highways connect communities in the northern and southern ends of the County, it is extremely difficult to travel between North and South Pinellas County, a problem which is much worse during the winter months when the area's population swells with a seasonal influx of tourists and winter residents.

For these reasons, residents of North Pinellas, physicians practicing in North Pinellas, and health care purchasers such as managed care plans with North Pinellas enrollees strongly prefer to use or contract with general acute care hospitals in North Pinellas for acute inpatient hospital services. In 1992, over 85 percent of North Pinellas County residents who were hospitalized were admitted to general acute care hospitals in North Pinellas. Very few physicians who practice at hospitals in North Pinellas admit patients to hospitals in other areas. Health care purchasers such as managed care plans do not consider hospitals in other areas to be good substitutes for North Pinellas hospitals. Therefore, general acute care hospitals in North Pinellas County profitably could increase the price of acute inpatient hospital services without losing a significant number of patients to hospitals in other areas.

D. Effect of the Combination

As the largest general acute care hospitals in North Pinellas County, Morton Plant and Mease control, respectively, about 38% and 20% of all general acute care hospital beds in that area. Together, Morton Plant and Mease would dominate the market for the provision of acute inpatient hospital services with a combined share of 58%. The market is highly concentrated by any measure of hospital capacity or output, and market concentration would increase substantially as a result of the proposed combination.

Health care purchasers such as managed care plans have secured competitive rates for acute inpatient hospital services because Morton Plant and Mease have vigorously competed for their business. A full-fledged merger of Morton Plant and Mease, in which they would market and price all of their services together, would eliminate that competitive rivalry, significantly reduce the ability of managed care plans to bargain for competitive rates, and permit the combination to increase prices for acute inpatient hospital services to the detriment of health care purchasers and consumers.

[1] Moreover, mergers between general acute care hospitals typically do not raise competitive concerns in the market for outpatient services because hospitals compete with many other providers (such as clinics, ambulatory surgery centers, and physicians' offices) in the provision of those services.

III

Explanation of the Proposed Final Consent Judgment

The United States, the State of Florida and Morton Plant and Mease have stipulated that the Court may enter the proposed Final Consent Judgment at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h). The Judgment provides that its entry does not constitute any evidence or admission by any party with respect to any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the Judgment may not be entered unless the Court finds entry is in the public interest. Section XII of the proposed Judgment sets forth such a finding.

A. Terms

The proposed Final Consent Judgment prohibits Morton Plant and Mease from merging and requires them to remain as separate, competing hospitals. Morton Plant and Mease may, however, enter into a Partnership in which they consolidate and jointly operate certain general acute care and administrative services under specified terms. The proposed Judgment is designed to permit Morton Plant and Mease to achieve substantial efficiencies while preserving maximum competition between them.

The acute care (or "patient") services eligible for Partnership operation include: outpatient services; laboratory services; mental health services; diagnostic and therapeutic radiology services; and certain inpatient services that are commonly recognized as "tertiary" services—*i.e.*, those procedures performed by physician subspecialists with specialized support staff and expensive equipment. The

any measure of hospital capacity or output, and market concentration would increase substantially as a result of the proposed combination.

Health care purchasers such as managed care plans have secured competitive rates for acute inpatient hospital services because Morton Plant and Mease have vigorously competed for their business. A full-fledged merger of Morton Plant and Mease, in which they would market and price all of their services together, would eliminate that competitive rivalry, significantly reduce the ability of managed care plans to bargain for competitive rates, and permit the combination to increase prices for acute inpatient hospital services to the detriment of health care purchasers and consumers.

III

Explanation of the Proposed Final Consent Judgment

The United States, the State of Florida and Morton Plant and Mease have stipulated that the Court may enter the proposed Final Consent Judgment at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h). The Judgment provides that its entry does not constitute any evidence or admission by any party with respect to any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the Judgment may not be entered unless the Court finds entry is in the public interest. Section XII of the proposed Judgment sets forth such a finding.

A. Terms

The proposed Final Consent Judgment prohibits Morton Plant and Mease from merging and requires them to remain as separate, competing hospitals. Morton Plant and Mease may, however, enter into a Partnership in which they consolidate and jointly operate certain general acute care and administrative services under specified terms. The proposed Judgment is designed to permit Morton Plant and Mease to achieve substantial efficiencies while preserving maximum competition between them.

The acute care (or "patient") services eligible for Partnership operation include: outpatient services; laboratory services; mental health services; diagnostic and therapeutic radiology services; and certain inpatient services that are commonly recognized as "tertiary" services—*i.e.*, those procedures performed by physician subspecialists with specialized support staff and expensive equipment. The tertiary services eligible for Partnership operation include: neonatal level III services; open heart surgery and similar procedures; robotically assisted prosthetic implantation and special spinal instrumentation procedures; stem cell procedures, HDR brachy therapy and advanced linear accelerator equipment and procedures; and stereotactic radio therapy. The Partnership also may own and operate home health care, home infusion services, durable medical equipment, rehabilitative services, skilled nursing, retirement facilities and long-term care. (Section II(A)).

The eligible Partnership administrative services include: human resources (with some exceptions); medical staff organization and development; information services; telephone and other communication services; accounting, billing and collection; housekeeping and laundry; medical records; materials management and plant maintenance; support services for charitable foundations; and certain miscellaneous services. (Section II(B)).[2]

Section V sets forth the conditions under which the Partnership may operate. Morton Plant and Mease may agree to consolidate and jointly operate any eligible Partnership patient care and administrative service. (Section V(A)). They may appoint a Partnership board, which may consist of individuals from each hospital's board. (Section V(C)). The Partnership must sell its services to Morton Plant and Mease on the same terms and conditions in an amount equal to cost. (Section V(B)).

All services other than those eligible for consolidation through the Partnership are defined as "Independent Services." (Section II(C)). Morton Plant and Mease must continue to operate these services separately. (Section VI(A)). Specifically, all marketing, managed care contracting and pricing decisions must remain independent. (*Id.*) Each hospital must price and sell all services (both Independent and Partnership Services) in active competition with the other. (Section VI(B)). The Partnership board may not discuss Independent Services, managed care contracting for the hospitals, or the pricing of any service with the individual hospital boards with minor exceptions. (Section V(C)).[3]

Additionally, the Judgment provides that Morton Plant may lend or grant Mease up to $21 million for Mease's planned expansion under terms preventing Morton Plant from obtaining any control or leverage over Mease's management or operations. (Section V(E)). Moreover, Morton Plant, Mease and the Partnership may become obligated parties, guarantors or co-makers on debt instruments and their assets may be pledged as security for such instruments so long as such obligations are approved separately. Neither Morton Plant nor Mease shall unreasonably withhold consent to, impose conditions on, or attempt to influence the use of funds obtained by the other hospital through such financing for Independent Services. (Section V(F)). The Judgment directs Morton Plant and Mease to establish adequate protections to ensure that the hospitals do not share competitively sensitive information concerning pricing, managed care contracts, and marketing and planning functions. These protections shall include, at a minimum, confidentiality agreements for employees with access to such information and protocols for preparation of separate reports for Morton Plant, Mease, and the Partnership. (Section V(I)). The Judgment also requires Morton Plant and Mease to maintain an antitrust compliance program and annually certify compliance with the Judgment, and permits plaintiffs access to monitor compliance. (Sections VII, VIII, and IX).

B. Effect on Competition

The Court's entry of this proposed Judgment would be a "double win" for consumers. First, the Judgment preserves the vigorous competitive rivalry between Morton Plant and Mease, thereby insuring that consumers will continue to reap the benefits of competition in the form of lower prices and better services. Second, the Judgment permits Morton Plant and Mease to achieve substantial cost savings by combining and jointly operating certain services through a Partnership. The preservation of competition between Morton Plant and

[2] Services currently provided by one of the hospitals may be added to the Partnership if plaintiffs are provided with written notification and any information reasonably necessary for them to assess the competitive impact of adding such services and they do not object within 120 days. (Section V(D)). Any new service not currently provided by either Morton Plant or Mease may be combined and jointly operated by the Partnership with at least 90 days notice, so long as the new service is a specialized inpatient procedure commonly recognized in the medical community as tertiary or higher and is performed only by physician subspecialists with specialized support staff and expensive equipment. (*Id.*).

[3] The Partnership may market and price home health care, home infusion services, durable medical equipment, rehabilitative services, skilled nursing retirement facilities and long term care as long as Morton Plant and Mease continue their present practice of providing patients and physicians with information on other providers of the services in the market.

Mease will insure that these savings will be passed on to consumers.

The Partnership is unlikely to result in a lessening of competition. The proposed Judgment permits Morton Plant and Mease to consolidate only those services for which consolidation would pose few, if any, competitive concerns. The services eligible for inclusion in the Partnership can be roughly grouped into three categories: outpatient, tertiary, and administrative.

A consolidation of Morton Plant's and Mease's outpatient services would pose no significant competitive risk because there are a very large number of providers of such services in North Pinellas County. In addition to general acute care hospitals, other providers of outpatient services include physician offices, clinics, and ambulatory surgery centers. Furthermore, in North Pinellas County it is relatively easy for new providers of outpatient services to enter the market.

Nor would a consolidation of certain tertiary services offered by Morton Plant or Mease threaten competition. For some of these services, a consolidation would have no effect because only one of the hospitals currently provides that service. For example, open-heart surgery is currently provided by Morton Plant, but not by Mease. Even for services in which the hospitals currently compete, persons are typically willing to travel greater distances for highly sophisticated, tertiary-level care than they are for more routine medical care. Therefore, Morton Plant and Mease compete in providing these services in a geographic market much broader than North Pinellas County. For example, the geographic market for level III neonatal care includes at least several major hospitals in South Pinellas County, and the same is true for other tertiary services that the Judgment permits Morton Plant and Mease to consolidate.

Finally, the proposed Judgment protects against anticompetitive harm from the joint ownership and operation of certain administrative services. Services such as human resources, information services, accounting, billing, and collection, are only a part of the inputs into Morton Plant's and Mease's provision of acute care services. Currently, Morton Plant and Mease independently decide how to allocate their administrative costs in pricing their acute care services to managed care plans and other health care purchasers, and they will continue to do so under the Judgment.[4] Moreover, the proposed Judgment requires the Partnership to establish protections to ensure that the joint operation of administrative services does not result in any sharing of information such as pricing or managed care contracting for Morton Plant and Mease, thus guarding against the risk of "spillover" of competitively sensitive information from the Partnership to the independent hospitals. (Section V(I)).

In addition to these protections, the proposed Judgment requires Morton Plant and Mease to market, price and sell all of their services—even those jointly owned and operated through the Partnership—in competition with each other and other hospitals.[5] This ensures that both hospitals will remain as separate and viable competitors and permits them the maximum flexibility in competing for managed care contracts in the future.

IV

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Consent Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against Morton Plant or Mease in this matter.

V

Procedures Available for Modification of the Proposed Final Consent Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposal Final Consent Judgment should be modified may submit written comments to Gail Kursh, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW, Room 9903, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to a stipulation signed by the United States and Morton Plant and Mease, to withdraw its consent to the Judgment at any time prior to entry. Section X of the Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Judgment.

VI

Determinative Materials/Documents

No materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Consent Judgment.

VII

Alternative to the Proposed Final Consent Judgment

The alternative to the proposed Judgment is a full trial on the merits. While the Department is confident of its ability to succeed in such a trial, the litigation involves difficult issues of law and fact. A favorable outcome is not a certainty. Had the Department won a litigated judgment, at most the Court would have barred the combination. The consent judgment agreed to by the parties achieves the same underlying objective—preserving the vigorous competitive rivalry between Morton Plant and Mease—by requiring them to continue competing for all general acute care services, including those consolidated through the Partnership. It has the additional advantage, which a litigated judgment in favor of plaintiffs would not, of allowing defendants to achieve potential efficiencies and cost savings.

Respectfully submitted,

Anthony E. Harris,
Trial Counsel.
Jon B. Jacobs
Jessica N. Cohen
M. Lee Doane

Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Rm. 9901, Washington, DC 20001, 202/307–0951, 202/514–1517 (fax).

[FR Doc. 94–16910 Filed 7–12–94; 8:45 am]
BILLING CODE 4410–01–M

[4] Of course, Morton Plant and Mease also "compete" in purchasing these administrative services, but they do so in a geographic market much larger than North Pinellas County. The consolidation would not lessen competition in that market to any substantial degree.

[5] The minor exceptions to this would be home health care, home infusion services, durable medical equipment, rehabilitative services, skilled nursing retirement facilities and long term care, for which the markets are very competitive in North Pinellas County. (Section V(C)).

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–53; Exemption Application No. D–9486, et al.]

Grant of Individual Exemptions; Knoxville Surgical Group Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–53; Exemption Application No. D–9486, et al.]

Grant of Individual Exemptions; Knoxville Surgical Group Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Knoxville Surgical Group Profit Sharing Plan (the Plan) Located in Knoxville, Tennessee

[Prohibited Transaction Exemption 94–53; Exemption Application No. D–9486]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the: (1) the lease (the Lease) of certain real property (the Condominium) by the Plan to Knoxville Surgical Group, P.C. (the Employer), the Plan sponsor and a party in interest with respect to the Plan, following the exchange (the Swap) of real property owned by the Plan for the Condominium owned by Fort Sanders Medical Center, an unrelated party; and (2) a future exercise of (a) a certain indemnity agreement (the Indemnity Agreement) between the Employer and the Plan; and (b) a certain guarantee (the Guarantee) of Lease payments to the Plan by the principals of the Employer; provided that the following conditions are satisfied:

(1) all terms and conditions of the Swap, the Lease, the Indemnity Agreement, and the Guarantee are at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) the fair market value of the Condominium will be determined by an independent qualified appraiser at the time the Swap transaction is consummated;

(3) with respect to the Lease, the fair market rental amount has been determined by an independent qualified appraiser, and will never be below the initial fair market annual rental amount of $75,000;

(4) the Condominium will be appraised by an independent qualified appraiser each time that the Renewal option (the Renewal) on the Lease is exercised.

(5) the fair market value of the Condominium will at no time exceed 25% of the Plan's total assets;

(6) the Lease is a triple net lease under which the Employer is obligated for all costs of maintenance and repair, and all taxes, insurance, utilities and condominium fees related to the Condominium;

(7) the fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Employer or related parties, will not exceed 1% of his annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein;

(8) the independent fiduciary evaluated the transactions described herein and deemed them to be administratively feasible, protective and in the interest of the Plan;

(9) the independent fiduciary will monitor the terms and the conditions of the exemption and the Lease throughout its initial term plus the two Renewal terms and will take whatever action is necessary to protect the Plan's rights;

(10) the Plan will bear no costs or expenses with respect to the transactions described herein; and

(11) the Employer will file form 5330 and pay the appropriate excise taxes for the period beginning June 9, 1989, to the date this exemption, if granted, is published in the **Federal Register**, within ninety (90) days of the publication date.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1994 at 59 FR 24739/24741.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number).

Radiation Medical Group Inc. Profit Sharing—401(k) Salary Savings Plan (the Original Plan), and Radiology Medical Group, Inc. 401(k) Salary Savings Plan (the New Plan; together, the Plans) Located in San Diego, California

[Prohibited Transaction Exemption 94–54; Exemption Application Nos. D–9343 & D–9344]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the transfer by the Original Plan of a 57 percent interest (the Interest) in certain real property (the Property), including a 57 percent lessor's interest, to the New Plan; and (2) the leases of the Property (the New Leases) by the Original Plan and the New Plan to Radiology Medical Group, Inc., and Radiation Medical Group, Inc. (together, the Employers), the sponsors of the Plans; provided the following conditions are satisfied:

(A) All terms of the transactions are no less favorable to the Plans than those

which the Plans could obtain in arms-length transactions with unrelated parties;

(B) The interests of the Plans under the New Leases are represented by an independent fiduciary, the Union Bank of San Diego, California (the Fiduciary), which will monitor the Employers' performance of obligations under the New Leases and compliance with the conditions of this exemption, including all actions necessary to enforce such obligations and conditions;

(C) At all times under the New Leases, the Plans receive rent which is no less than the fair market rental value of the Property and which is net of all real estate taxes and costs of repair, maintenance and insurance;

(D) At all times under the New Leases, each Plan's interest in the Property constitutes less than twenty-five percent of the total value of all assets held by the Plan; and

(E) Any extension or renewal of the New Leases beyond the initial terms is expressly approved by the Fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 12, 1994 at 59 FR 24736.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Hartford Life Insurance Company (Hartford Life) and Hartford Investment Management Company (HIMCO) Located in Hartford, Connecticut

[Prohibited Transaction Exemption 94–55; Exemption Application Nos. D–9458 and D–9459]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to sales and transfers of assets of employee benefit plans (the Plans) to Hartford Life pursuant to the terms of a synthetic guaranteed investment contract (Synthetic GIC) entered into by the Plan with Hartford Life and HIMCO, provided the following conditions have been met: (a) prior to the execution of such Synthetic GIC, an independent fiduciary of such Plan receives a full and detailed written disclosure of all material features of the Synthetic GIC, including all applicable fees and charges; (b) following receipt of such disclosure, the Plan's independent fiduciary approves in writing the execution of the Synthetic GIC on behalf of the Plan; (c) all fees and charges imposed under such Synthetic GIC are reasonable; (d) each Synthetic GIC will specifically provide for an objective means for determining the fair market value of the securities owned by the Plan pursuant to the Synthetic GIC; (e) Hartford Life will maintain books and records of all transactions which will be subject to annual audit by independent certified public accountants selected by and responsible solely to the Plan; and (f) the Synthetic GIC will be offered only in principal amounts of $50 million or more.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 12, 1994 at 59 FR 24731.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 8th day of July, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–16979 Filed 7–12–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9703]

Proposed Exemptions; Thomas G. Soper, M.D., S.C. Employees' Pension Plan and Trust

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Thomas G. Soper, M.D., S.C. Employees' Pension Plan and Trust (the Plan) Located in Evanston, Illinois

[Application No. D–9703]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A)

Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Thomas G. Soper, M.D., S.C. Employees' Pension Plan and Trust (the Plan) Located in Evanston, Illinois

[Application No. D–9703]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of certain real property (the Property) by the Plan to Thomas E. Soper, a disqualified person with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not experience any loss nor incur any expenses in the proposed transaction; and (3) the Plan receives as consideration the greater of either the fair market value of the Property as determined by an independent appraiser on the date of the Sale, or receives an amount equal to all the funds expended by the Plan in acquiring and maintaining the Property.

Summary of Facts and Representations

1. The Plan is a defined contribution plan that is designated as a money purchase pension plan. It has one participant, Thomas G. Soper, M.D., and as of December 31, 1993, it had total assets of $355,000. The fiduciaries of the Plan, who have investment discretion, are Thomas G. Soper, M.D. and his wife, Julie Kelly Soper. Dr. Soper and his wife are the parents of Thomas E. Soper, the proposed purchaser of the Property, and are the applicants of the exemption.

The sponsoring employer of the Plan is an Illinois professional corporation, Thomas G. Soper, M.D., S.C., which is engaged in the practice of medical surgery in Evanston, Illinois. It is wholly owned by Thomas G. Soper, M.D., who is its president and sole director.[1]

2. The Property is located at 2428 Grant Street in Evanston, Illinois and is approximately 150 feet in depth and 49.5 feet in width. The improvements on the Property consist of a one and one-half story frame residence with a detached garage at the back of the lot. The residence, which is 76 years old, is in need of extensive repairs. Its kitchen and first floor bathroom are unfinished and unusable. The basement floor has been removed and currently consists of a one-inch gravel base over clay and soil. There is a need for repairs to the walls of the basement because of recent flooding.

Eleanor N. Hall of Cyrus Realtors located in Evanston, Illinois represents that she evaluated the Property with the intent to present the Property for sale and, although she found the Property to be in a good location, amid higher priced houses, and situated on a well landscaped lot, she determined at this time that without a kitchen the Property is unmarketable.

The Property was purchased by the Plan for the consideration of $167,000 on September 5, 1991, from the conservator of the estate of an elderly individual, who had no relationship with respect to the Plan or the participant. During the occupancy of the previous owner, the Property had deteriorated so that by September 1991 the Property was experiencing foundation and structural faults, unsafe wiring, and roofing defects. The Plan purchased the Property with the understanding that because of its desirous location it could be rehabilitated and resold for a substantial gain. The Plan has made no attempt to find tenants for the Property because of the dilapidated condition of the Property; however, rehabilitation of the Property was commenced upon its purchase by the Plan. Although approximately 85 percent of the repairs are completed, delays have occurred because of the need for engineering studies and the procurement of permits from regulatory agencies of the city or county, and because of the additional structural damage to the Property from a broken water main during January 1994.

The applicants represent that from September 5, 1991, to June 6, 1994, the Plan incurred expenses of $34,126 from improving and maintaining the Property. These expenses included (a) Homeowners Insurance, totalling $1,276 for the years 1991 through 1993; (b) Real Estate taxes, totalling $15,375 for the years 1991 through 1993; (c) Drywall in October 1991, totalling $5,150; (d) Landscape expenses, totalling $4,000; (e) Kitchen Cabinets (not installed), totalling $915; and (f) Electrical expenses, totalling $7,380.

The Property was appraised by Richard Anselmo, Certified General Appraiser, State Certification #153–000832, of Bulthuis Realty Consultants, Oakbrook, Illinois, who determined the fair market value of the Property to be $215,000, as of May 28, 1994.

3. Cognizant that the Property's fair market value represents approximately 60 percent of the total assets of the Plan,[2] the applicants propose selling the Property to their son for cash as soon as possible following the issuance of the requested exemption. Their son, Thomas E. Soper, is unmarried and has recently returned from living in California. He is presently residing with

[1] Since Dr. Soper is the sole shareholder of the sponsor of the Plan and the only participant of the Plan, there is no jurisdiction under Title I of the Act, pursuant to 29 CFR 2510.3–3(c)(1). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[2] In this proposed exemption the Department expresses no opinion with respect to the Plan's lack of diversification of investments caused by the acquisition and holding of the Property.

his parents and intends to finish rehabilitating the Property.

Thomas G. Soper, M.D., the sole participant of the Plan is planning to retire from his practice by the end of 1994 or early in 1995. His primary source of retirement income will be from the assets of the Plan and a profit sharing plan, also sponsored by his professional corporation.

The applicants represent that it is in the best interests of the Plan and its sole participant to sell the Property in its present condition as soon as possible in order to avoid additional expenses to the Plan and to generate liquid assets that can produce earnings for the distribution of benefits to the participant upon his contemplated retirement.

4. In summary, the applicants represent that the proposed transaction will satisfy the criteria of section 4975(c)(2) of the Code because (a) the Sale of the Property involves a one-time transaction for cash; (b) the Plan will not incur any expenses incidental to the Sale; (c) the Plan will receive as consideration for the Sale the greater of either the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser, or will receive all of the funds expended by the Plan in obtaining and maintaining the Property; (d) the Sale will permit the Plan to reinvest illiquid assets into income producing, liquid assets; and (e) the Plan will avoid the expenses and risks involved in retaining and developing the Property.

NOTICE TO INTERESTED PERSONS: Since the applicants and their son are the only persons affected by the proposed transaction, there is no need to distribute notice to interested persons. Comments are due 30 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 8th day of July, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–16980 Filed 7–12–94; 8:45 am]

BILLING CODE 4510–29–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 94–2B CARP–DD]

Consolidation of 1992, 1993 and 1994 Digital Audio Recording Distribution Proceedings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of consolidation of proceedings, royalty distribution, and public meeting.

SUMMARY: The Copyright Office is granting a motion to consolidate the 1992, 1993, and 1994 digital audio recording (DART) distribution proceedings which will begin in 1995. In addition, the Office will make distribution of the 1992 and 1993 Nonfeatured Musicians and Nonfeatured Vocalists DART subfunds in July. The Office will hold a public meeting to discuss the best evidence for the distribution of DART royalties in September.

DATES: (1) The distribution of the royalties in the 1992 and 1993 Nonfeatured Musicians and Nonfeatured Vocalists DART subfunds will take place July 28, 1994. (2) The public meeting to discuss best evidence for distribution of royalties will take place 10 a.m., Tuesday, September 27, 1994.

ADDRESSES: The public meeting will take place at the temporary CARP hearing room, Suite 921, 1825 Connecticut Avenue, N.W., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Acting General Counsel, U.S. Copyright Office, Department 17, Library of Congress, Washington, DC 20540. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION:

I. Background

On December 17, 1993, Congress passed the Copyright Royalty Tribunal Reform Act of 1993. This legislation dissolved the Tribunal and established a new system of copyright arbitration royalty panels (CARPs) to be supported by the Library of Congress and the Copyright Office.

The first proceeding to be initiated under the new CARP system was the distribution of the 1992 and the 1993 digital audio recording technology (DART) royalties. The 1992 DART distribution proceeding was begun by the Tribunal but was suspended when the Tribunal was abolished, and needed to be started anew. The 1993 DART distribution was begun by the Copyright Office under the new authority conferred by the Copyright Royalty Tribunal Reform Act of 1993. On March 1, 1994, 59 FR 9773, we began the process of distributing DART royalties by asking the claimants to the 1992 and 1993 DART funds for comments on the following questions:

(a) Do any controversies exist concerning the distribution of 1992 and/or 1993 DART royalties?

(b) If controversies do exist, which subfunds do they exist in?

(c) If settlements have been reached, which parties have reached settlement and which have not?

(d) Do the claimants believe it would be advisable to consolidate the 1992 DART proceeding with the 1993 DART proceeding?

In addition, in the March 1, 1994, notice and in a subsequent notice appearing May 16, 1994, 59 FR 25506, the Library of Congress and the Copyright Office established the initial procedural dates that would apply to the 1992 and 1993 DART proceedings, as follows:

June 10, 1994—comments from claimants due on whether controversies exist in the distribution of 1992 and 1993 DART funds, and whether the 1992 and 1993 DART distribution proceedings should be consolidated.

June 15, 1994—precontroversy motions, and/or objections to any listed arbitrators due from claimants who will be participating in the 1992 and/or 1993 DART distribution proceedings.

June 30, 1994—declaration by the Librarian of Congress to be made as to whether any controversies exist in the distribution of 1992 and 1993 DART royalties, and, if they do, a declaring of the initiation of CARP proceedings.

August 1, 1994—authorization by the Copyright Office of the distribution of any royalties found not to be in controversy.

II. The Commentators

We received comments from the following claimants:

The Alliance of Artists and Recording Companies (AARC)
Ymistye L. White
Alicia Carolyn Evelyn
Eugene (Lambchops) Curry
James Cannings
Gear Publishing Company
Hideout Productions on behalf of Punch Enterprises, Inc. and Bob Seger
Sword and Stone Publishing, Inc.
Bopp du Wopp, Inc.
Jointly, the independent administrator of the Nonfeatured Musicians and the Nonfeatured Vocalists subfund; the American Federation of Musicians (AFM); the American Federation of Television and Radio Artists (AFTRA); and the Recording Industry Association of America (RIAA).
Jointly, AARC, American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI); Copyright Management, Inc. (CMI), Gospel Music Coalition (GOSPEL); The Harry Fox Agency, Inc. (HFA); SESAC, Inc. (SESAC), and the Songwriters Guild of America (SGA).

(b) If controversies do exist, which subfunds do they exist in?

(c) If settlements have been reached, which parties have reached settlement and which have not?

(d) Do the claimants believe it would be advisable to consolidate the 1992 DART proceeding with the 1993 DART proceeding?

In addition, in the March 1, 1994, notice and in a subsequent notice appearing May 16, 1994, 59 FR 25506, the Library of Congress and the Copyright Office established the initial procedural dates that would apply to the 1992 and 1993 DART proceedings, as follows:

June 10, 1994—comments from claimants due on whether controversies exist in the distribution of 1992 and 1993 DART funds, and whether the 1992 and 1993 DART distribution proceedings should be consolidated.

June 15, 1994—precontroversy motions, and/or objections to any listed arbitrators due from claimants who will be participating in the 1992 and/or 1993 DART distribution proceedings.

June 30, 1994—declaration by the Librarian of Congress to be made as to whether any controversies exist in the distribution of 1992 and 1993 DART royalties, and, if they do, a declaring of the initiation of CARP proceedings.

August 1, 1994—authorization by the Copyright Office of the distribution of any royalties found not to be in controversy.

II. The Commentators

We received comments from the following claimants:

The Alliance of Artists and Recording Companies (AARC)
Ymistye L. White
Alicia Carolyn Evelyn
Eugene (Lambchops) Curry
James Cannings
Gear Publishing Company
Hideout Productions on behalf of Punch Enterprises, Inc. and Bob Seger
Sword and Stone Publishing, Inc.
Bopp du Wopp, Inc.
Jointly, the independent administrator of the Nonfeatured Musicians and the Nonfeatured Vocalists subfund; the American Federation of Musicians (AFM); the American Federation of Television and Radio Artists (AFTRA); and the Recording Industry Association of America (RIAA).
Jointly, AARC, American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI); Copyright Management, Inc. (CMI), Gospel Music Coalition (GOSPEL); The Harry Fox Agency, Inc. (HFA); SESAC, Inc. (SESAC), and the Songwriters Guild of America (SGA).
Jointly, ASCAP, BMI, CMI, GOSPEL, HFA, SESAC, and the SGA.

III. Motion to Consolidate and Stay Procedural Dates

The comments indicated that, while many settlements were reached, there still existed some unresolved controversies in each of the subfunds. Rather than requesting the immediate initiation of a CARP proceeding to resolve these controversies, a joint motion was filed by AARC, ASCAP, BMI, CMI, GOSPEL, HFA, SESAC, and SGA requesting that the Librarian of Congress and the Copyright Office consolidate the 1992 and the 1993 DART distribution proceedings with the 1994 DART distribution proceedings that will start next year, and defer all consideration of DART distributions until 1995.

As a consequence of their motion to consolidate, the joint commentators also requested that the initial DART procedural dates of June 15 (precontroversy motions and objections), June 30 (initiation of proceedings), and August 1 (authorization of distributions) be stayed until after the 1994 claims are filed in 1995.

A. Justification of Motion to Consolidate and Stay of Procedural Dates

In support of their motion to consolidate, the joint commentators noted that the 1992 and the 1993 DART funds, which are the first funds to be collected under the Audio Home Recording Act that took effect on October 28, 1992, are quite small: a little over $100,000 for 1992, and less than $500,000 for 1993. They anticipate that, because the DART fund is new, many issues of first impression will have to be resolved, but that the costs of such action will be such as to consume most, if not all, of the fund. The joint commentators observed that the costs borne by the copyright owners in a DART proceeding are not only their own costs, but the costs of the Library of Congress, the Copyright Office, and the arbitrators. In the interest of economy, therefore, the joint commentators requested that the 1992 and 1993 distribution proceedings be consolidated with the 1994 proceeding.

In addition, the joint commentators noted that the Library of Congress and the Copyright Office have endeavored to adopt regulations to govern the new CARP proceedings, but that the current regulations are interim rules. Comments on the interim rules were due June 15, 1994, and reply comments are due July 15, 1994. The joint commentators would prefer that a DART proceeding operate under the final rules that result from these latest rounds of comments, rather than proceed under the interim rules.

Last, the joint commentators stated that they will endeavor to use the time between now and 1995 to gather the best information and data relevant to a DART distribution proceeding, and to continue to work for more settlements in each of the subfunds. To the extent that more settlements are reached, fewer controversies will need to be brought before the arbitrators, and fewer royalties will have to be spent on the expense of a CARP proceeding.

B. Grant of Motion to Stay Procedural Dates and Establishment of Comment Period

On June 21, 1994, the Library of Congress and the Copyright Office issued an Order finding good cause to grant the motion to stay the procedural dates of June 15, June 30, and August 1, established in this proceeding.

Concerning the motion to consolidate the 1992, 1993, and 1994 distribution proceedings, the Order gave those persons who did not join in the joint motion until June 24, 1994, to respond to it, as provided by § 251.45 of the Copyright Office rules.[1]

C. Responses to the Motion to Consolidate Proceedings

Responses to the joint motion to consolidate proceedings were filed by James Cannings, Eugene Curry, and Alicia Carolyn Evelyn.

Mr. Cannings agreed with the consolidation of the 1992, 1993 and 1994 proceedings provided that the distribution methodology proposed by Bopp du Wopp, Inc. is considered as one possible method by the claimants. Mr. Cannings urged diligent and good faith efforts at settlement before 1995.

Mr. Curry questioned whether the proposed consolidation of 1992, 1993 and 1994 would lead to another consolidation next year, then the year after that, ad infinitum. Mr. Curry would agree to future years being consolidated, i.e., 1994, 1995, and 1996, but wanted an immediate distribution of 1992 and 1993 moneys this August.

Ms. Evelyn stated that she would object to the motion to consolidate so long as public performance royalty issues she has raised with BMI and ASCAP remain unresolved. She joined with Mr. Cannings in support of Bopp du Wopp, Inc.'s proposed distribution methodology.

---

[1] Section 251.45 provides that the comment period for precontroversy motions is two weeks from the filing of the motion.

IV. Grant of Motion to Consolidate

The Library of Congress and the Copyright Office agree with the arguments made by the joint commentators and hereby grant the motion to consolidate the 1992, 1993, and 1994 DART royalty distribution proceedings into one proceeding that will begin in 1995.

As we discussed in our notice of March 1, 1994, the Audio Home Recording Act established certain statutory deadlines for the commencement of DART distribution proceedings which, as the agency delegated the responsibility, we were prepared to meet. However, as observed by the Administrative Conference of the United States, 1 C.F.R. 305.78–3, there are special circumstances when the meeting of a statutory deadline would not serve the public interest. Here, the majority of the claimants themselves have asked for a waiving of the statutory dates so that they might realize the economies that would accrue from a consolidation of proceedings, and so that they might continue settlement talks that could potentially avoid the cost of a CARP proceeding altogether. Under these circumstances, to initiate a CARP proceeding immediately will only serve to spend the claimants' royalties needlessly, and will likely result in the claimants receiving fewer royalties today than if they waited until 1995.[2] In addition, we see no financial harm in waiting until 1995. The claimants' royalties will remain invested in United States Treasury securities, and will continue to earn interest.

The objection of Mr. Curry to consolidation is based on a concern that consolidations will happen every year, and no moneys will ever be distributed. We do not see that occurring. Our goal, and, we believe that of the moving parties, is economy, not delay. The moving parties do not want to see their royalties remaining with the government and neither do we.

The objection of Ms. Evelyn is tied to her other issues with ASCAP and BMI, and are not relevant to our consideration here.

As stated earlier, in our Order, dated June 21, 1994, we granted the joint commentators' motion to stay all previously announced procedural dates intended to govern a 1992 and 1993 DART royalty distribution proceeding.[3] Consistent with our ruling today to consolidate the 1992, 1993, and 1994 proceedings, new procedural dates will be established in 1995, in accordance with our yearly statutory obligation under Chapter 10 of the Copyright Code to ascertain DART controversies and to initiate DART proceedings.

V. Inquiry Into Best Evidence

The concerns expressed by the commentators about the potential for the costs of a DART proceeding to use up most or all of the DART royalties available for distribution are valid, and are very much shared by the Library and the Copyright Office. Two scenarios especially concern us. One, there is the possibility of holding extensive hearings for controversies where the amounts in dispute are ultimately determined to be quite small. Two, even if the amounts in controversy are sizable, there is the possibility of holding months-long hearings about the validity of the evidence offered by the parties, which again would ultimately use up the bulk of the royalties in the DART funds, and the time allotted for arbitration. This is especially likely because DART proceedings have never been held, and there is no precedent concerning what is the most relevant evidence. We note that at a similar stage in its regulatory history, the issue of the best evidence for distributing jukebox royalties was the subject of a full evidentiary hearing at the Copyright Royalty Tribunal, but, nevertheless, resulted in the Tribunal deciding that no distribution determination could be reached without further efforts at producing better evidence.[4] This is a situation we should like to avoid.

Consequently, the Library of Congress and the Copyright Office will hold a public meeting at 10 a.m., Tuesday, September 27, 1994 at the temporary CARP hearing room, Suite 921, 1825 Connecticut Avenue, N.W., Washington, D.C. 20009. The purpose of the meeting is to discuss what would be the best evidence for distribution of the Sound Recordings Fund and the Musical Works Fund.

We note that section 1006(c) of the Copyright Code states that the allocation of the Sound Recordings Fund shall be made according to the extent sound recordings were distributed, and that the allocation of the Musical Works Fund shall be made according to the extent musical works were distributed or disseminated to the public in transmissions. We should like, therefore, to know:

(a) Do industry data exist, or can industry data be produced, that will demonstrate validly the distribution of sound recordings in the United States?

(b) Do industry data exist, or can industry data be produced, that will demonstrate validly the dissemination of musical works to the public in transmissions in the United States?

(c) How should "distributed" be defined given the practice of allowable returns? Should the arbitrators employ the rule adopted by the Copyright Office with respect to section 115?[5]

(d) If methodologies exist for the production of data relating to (a) and (b), what are the drawbacks of such methodologies?

(e) If methodologies exist for the production of data relating to (a) and (b), would the data cover all distributions and all public disseminations so that even the smallest or most specialized claimant can be compared mathematically to the larger claimants?

(f) If the methodologies cannot cover the smaller claimants, what measurements can be proposed to cover them?

(g) If conflicting methodologies exist, how do the parties propose to resolve the conflicts?

We emphasize that we are not asking these questions to decide distribution issues. Distribution issues are properly for the CARP arbitrators. But if we can in any way help to focus and sharpen the proceedings, the savings in time and expense before a CARP panel will far outweigh the cost of this one public meeting. The public meeting will give the parties an opportunity to explore the positions of each claimant, facilitate concentrating on solving the evidentiary problems, and reveal what further steps need to be taken. A public record of the meeting will be made for those who do not attend, and for the benefit of the CARP panel, if one is ultimately convened.

VI. The Nonfeatured Musicians and the Nonfeatured Vocalists Subfunds

A. Background—1993

The Audio Home Recording Act established two funds: the Sound Recordings Fund and the Musical Works Fund. Within the Sound Recordings Fund, the Act further established four subfunds: the Copyright Owners Subfund, the Featured Artists Subfund, the Nonfeatured Musicians Subfund, and the Nonfeatured Vocalists Subfund.

With regard to the Nonfeatured Musicians Subfund and the Nonfeatured Vocalists Subfund, the Act outlined certain specific procedures. It required that "2⅔ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians or any successor entity) who have performed on sound recordings distributed in the United States." Similarly, "1⅓ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation [of] Television and Radio Artists or any successor entity) who have performed on sound recordings distributed in the United States." 17 U.S.C. 1006.

In 1993, the Copyright Royalty Tribunal adopted a regulation, ultimately reissued by the Library of Congress and the Copyright Office when the Tribunal was abolished, that required the independent administrator to give notice to the government of his or her selection by March 31 of each year. 37 C.F.R. 311.4; 58 FR 53822 (1993).

In the same rulemaking, the Tribunal determined that it did not have the

---

[2] When confronted with the question of whether to nullify the Copyright Royalty Tribunal's cable rate adjustment because the Tribunal missed its statutory deadline by 28 days, the Court of Appeals for the District of Columbia stated that "Statutes that, for guidance of a government official's discharge of duties, propose to secure order, system, and dispatch in proceedings, are usually construed as directory, whether or not worded in the imperative, especially when the alternative is harshness or absurdity." The Court also noted that "agencies rigidly tied to a deadline * * * would become Penelopes, forever engaged in unraveling the webs they wove." *National Cable Television Association v. Copyright Royalty Tribunal*, 724 F. 2d 176, 189, fn. 23 (D.C. Cir. 1983).

[3] As discussed below, in part VI, we are making a full distribution of the Nonfeatured Musicians Subfund and the Nonfeatured Vocalists Subfund on July 28, 1994. *See*, discussion below, at VI.

[4] "The Tribunal considers that the record of the current proceeding is insufficient as a basis on which we can make a distribution of the 1979 jukebox royalties. * * * The Tribunal, therefore, has elected not to make a distribution in this proceeding." *1979 Jukebox Royalty Distribution*, 46 FR 58139, 58142 (Nov. 30, 1981).

[5] With respect to the 17 U.S.C. 115 mechanical license, "distributed" is defined as occurring when "the person exercising the compulsory license has voluntarily and permanently parted" with possession of the phonorecord. The Copyright Office has taken the position that permanent distribution of phonorecords occurs one year from the date that the compulsory licensee parts with possession, or at the time when a sale of the phonorecord is recognized in accordance with generally accepted accounting principles, or according to the IRS' practices, whichever of these events comes earlier. 42 FR 64889, 64892 (Dec. 29, 1977).

concentrating on solving the evidentiary problems, and reveal what further steps need to be taken. A public record of the meeting will be made for those who do not attend, and for the benefit of the CARP panel, if one is ultimately convened.

VI. The Nonfeatured Musicians and the Nonfeatured Vocalists Subfunds

A. Background—1993

The Audio Home Recording Act established two funds: the Sound Recordings Fund and the Musical Works Fund. Within the Sound Recordings Fund, the Act further established four subfunds: the Copyright Owners Subfund, the Featured Artists Subfund, the Nonfeatured Musicians Subfund, and the Nonfeatured Vocalists Subfund.

With regard to the Nonfeatured Musicians Subfund and the Nonfeatured Vocalists Subfund, the Act outlined certain specific procedures. It required that "2⅔ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians or any successor entity) who have performed on sound recordings distributed in the United States." Similarly, "1⅓ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation [of] Television and Radio Artists or any successor entity) who have performed on sound recordings distributed in the United States." 17 U.S.C. 1006.

In 1993, the Copyright Royalty Tribunal adopted a regulation, ultimately reissued by the Library of Congress and the Copyright Office when the Tribunal was abolished, that required the independent administrator to give notice to the government of his or her selection by March 31 of each year. 37 C.F.R. 311.4; 58 FR 53822 (1993).

In the same rulemaking, the Tribunal determined that it did not have the jurisdiction to decide controversies within the two subfunds that were administered by an independent administrator. The Tribunal reasoned that, according to the wording of section 1006(a), its authority over the distribution of royalties extended only to "interested copyright parties" and that nonfeatured performers, whether musicians or vocalists, were not defined under the Audio Home Recording Act as "interested copyright parties." 58 FR 53822, 53824 (Oct. 18, 1993).

Therefore, the Tribunal concluded that its role in handling the moneys for the two nonfeatured performer subfunds was simply a ministerial task of distributing the royalties to the independent administrator when a distribution was ready to be made. *Id.*

B. Background—1994

After the Tribunal's abolition, the Copyright Office began to receive claims for 1993 DART royalties during January-February, 1994. One claimant, Eugene Curry, filed a claim for the Nonfeatured Musicians Subfund. Subsequently, the Office was informed that Edward Peters had been appointed the independent administrator for both the Nonfeatured Musicians Subfund and the Nonfeatured Vocalists Subfund.

The Copyright Office sent a letter to Mr. Curry and Mr. Peters asking three questions: (a) who were the interested copyright parties that participated in the selection of the independent administrator?; (b) is there any controversy between Mr. Curry and Mr. Peters about the distribution of Nonfeatured Musicians Subfund?; and (c) if there is a controversy, how would Mr. Curry and Mr. Peters recommend the resolution of the controversy? Letter, dated May 4, 1994.

Mr. Curry responded that there was a controversy between him and Mr. Peters on the distribution of the subfund.

Mr. Peters responded that he was selected by RIAA and AFM[6]; that, according to the Copyright Code and Tribunal precedent, the Copyright Office has no authority to resolve disputes in the nonfeatured subfunds; that, because the Copyright Office has no authority, Mr. Curry should not have filed a claim with the Copyright Office nor should the Office have processed his claim; that Mr. Curry will be treated properly by Mr. Peters; and the fact of his non-union membership will have no relevance whatever in the ultimate distribution of the subfund.

Separately, the Copyright Office received a joint comment from Mr. Peters, AFM, AFTRA, and the RIAA arguing in greater detail that the Audio Home Recording Act and the Tribunal's decision in 1993 support the conclusion that the independent administrator is to receive the allocated royalties for the two nonfeatured performers subfunds directly, and is not subject to the authority of the Copyright Office or the CARP panel in resolving disputes in those subfunds.

C. Discussion

The Library of Congress and the Copyright Office have reviewed the Audio Home Recording Act and the Tribunal's 1993 decision, and agree with the joint commentators, AFM, AFTRA, RIAA and Mr. Peters, that the independent administrator is to receive the royalties from the two nonfeatured performers subfunds directly from the Copyright Office, and that disputes as to his (or her) distribution of those funds are not subject to the jurisdiction of a CARP panel.

Our purpose in sending the May 4 letter to Mr. Curry and Mr. Peters was to facilitate a settlement. The provisions of the Audio Home Recording Act are unique among other provisions governing statutory royalties in that they open up the possibility of a dispute in a royalty fund without offering an administrative remedy. How to handle such a dispute was not a question that was faced by the Tribunal in 1993, because in that year there were no claims filed at all in the nonfeatured performers subfunds. This year, Mr. Curry's claim, and his subsequent notice that he is in controversy, presents the issue foursquare.

Recognizing the plain meaning of the statute, we agree that the royalties in the two nonfeatured performers subfunds are to be distributed directly to the independent administrator. We also recognize that claimants to those two subfunds do not file claims with the Copyright Office. They need to contact the independent administrator directly.

But we believe there is a function for the Copyright Office to perform. Each year, to the extent that the Copyright Office receives expressions of interest to receive royalties from those two subfunds, we will forward the names to the independent administrator.[7] In

[6] RIAA, as a representative of copyright owners in sound recordings, is entitled to participate in the selection of the independent administrator. Other claimants to the Copyright Owners Subfund of the Sound Recordings Fund are also entitled to participate.

[7] This year, in addition to Mr. Curry, James Cannings filed a claim for the Nonfeatured Musicians Subfund and the Nonfeatured Vocalists Subfund. Mr. Cannings' claims were filed after the February 28, 1994 deadline, and would have been

Continued

addition, the Copyright Office will maintain a public file that will consist of (a) the names of those expressing interest in the subfunds; (b) the notice of the independent administrator; (c) any correspondence concerning the two subfunds; and (d) any notification of the final disposition of any dispute within the subfunds. The notification is not required, but is being requested to complete the public record. It is also noted that we are not asking for a notification of the disposition of all moneys in the subfunds, just those is dispute. We recognize and will continue the Tribunal's policy of not inquiring into the distribution of *settled* claims.

D. Distribution Notice

In light of the above discussion, we are ordering a full distribution of the royalties available in the 1992 and 1993 Nonfeatured Musicians and Nonfeatured Vocalists Subfunds to Mr. Edward Peters, the independent administrator, on July 28, 1994. This distribution will constitute the final distribution in those subfunds, except (a) in the event that there are any late payments, a subsequent distribution will be made to the independent administrator that represents those subfunds' share of the late payment; and (b) in the event that any refund is ultimately found to be required, the independent administrator will need to repay the Office the subfunds' share of the refund.

Dated: July 7, 1994.

Barbara Ringer,

Acting Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–16963 Filed 7–12–94; 8:45 am]

BILLING CODE 1410–09–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting; Change in Program Panel Meeting

AGENCY: National Endowment for the Humanities.

The meeting of the Humanities Panel scheduled for July 12, 1994, and published in the **Federal Register** on June 30, 1994 at page 33791 has been changed to July 15, 1994, in room M–07 from 8:30 a.m. to 3 p.m. The meeting will review applications submitted to Humanities Projects in Media program during the July 8, 1994 deadline concerning the Request for Proposals on the National Conversation.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94–16877 Filed 7–12–94; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing.

Date and Time: August 2 and 3, 1994, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1150 and 1120, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Richard Hirsh, Deputy Division Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Telephone: (703) 306–1970.

Purpose of Meeting: To provide advice and recommendations concerning Metacenter Regional Alliances proposals submitted to NSF for financial support.

Agenda: To review and evaluate Metacenter Regional Alliances proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 7, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16890 Filed 7–12–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (#1756).

Date and Time: July 26–29, 1994; 8:30 AM–5:00 PM.

Place: Rooms 310 (T), 370 (T–R), 365 (T–W), 380 (T–P), and 390 (T–R), Stafford Place, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Ocean Sciences Research Section (OSRS) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16964 Filed 7–12–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Microelectronic Information Processing Systems

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Microelectronic Information Processing Systems.

Date and Time: August 4, 1994 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Conference Room: 375.

Type of Meeting: Closed.

Contact Person: Dr. Michael Foster, Program Director, Microelectronic Information Processing Systems Division, National Science Foundation, Room 1155, Telephone Number: 703–306–1936.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in the area of rapid prototyping.

Reason for Closing: The proposals being reviewed include information of a confidential nature including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 7, 1994.

M. R. Winkler,

Committee Management Officer.

[FR Doc. 94–16892 Filed 7–12–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Polar Programs (#1209).

Date and Time: July 28–29, 1994; 8 a.m. to 5 p.m. each day.

Place: Room 755, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Guy G. Guthridge, Polar Programs, NSF, 4201 Wilson Blvd., Arlington, Va. 22230, telephone: 703 306–1031.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Antarctic Artists & Writers Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 7, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16891 Filed 7–12–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Date and Time: August 03, 1994; 7:30 p.m. to 9:00 p.m., August 04, 1994; 8:30 a.m. to 5:00 p.m., August 05, 1994; 8:30 a.m. to 5:00 p.m., August 06, 1994; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Terry Woodin, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1667.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Collaborative for Excellence in Teacher Preparation (CETP) Program Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including

returned as untimely filed if they were claims subject to the Copyright Office's jurisdiction. However, in light of our ruling today, the statutory deadline in 17 U.S.C. 1007(a)(1) does not apply to claims beyond the Copyright Office's jurisdiction. Therefore, his claims are also being forwarded to the independent administrator for resolution.

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Polar Programs (#1209).

Date and Time: July 28–29, 1994; 8 a.m. to 5 p.m. each day.

Place: Room 755, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Guy G. Guthridge, Polar Programs, NSF, 4201 Wilson Blvd., Arlington, Va. 22230, telephone: 703 306–1031.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Antarctic Artists & Writers Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 7, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16891 Filed 7–12–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Date and Time: August 03, 1994; 7:30 p.m. to 9:00 p.m., August 04, 1994; 8:30 a.m. to 5:00 p.m., August 05, 1994; 8:30 a.m. to 5:00 p.m., August 06, 1994; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Terry Woodin, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1667.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Collaborative for Excellence in Teacher Preparation (CETP) Program Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 7, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–16893 Filed 7–12–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–528]

Arizona Public Service Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–51 issued to Arizona Public Service Company (the licensee) for operation of the Palo Verde Nuclear Generating Station, Unit 2 located in Maricopa County, Arizona.

The proposed amendment would modify Technical Specification Figure 3.2–1, Reactor Coolant Cold Leg Temperature Vs. Core Power Level. Specifically, the minimum cold leg temperature for core power levels between 90 percent and 100 percent would be changed to 552°F, (which is a reduction of 10°F from the previous TS requirement). This TS change permits reactor operation at full power with a lower reactor coolant temperature to minimize potential steam generator tube degradation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Peak pressure events were reanalyzed and LOCA events were partially reanalyzed, and these reanalyses confirmed that the existing safety analysis for cycle 5 for PVNGS Unit 2 remains valid for a 10°F reduction in RCS temperature. The Unit 2 LOCA and non-LOCA reanalyses were performed to account for additional steam generator tube plugging (1100 total plugged tubes with no restriction on the number of plugged tubes in each steam generator for LOCA analysis, and 2000 total plugged tubes with a maximum of 1000 plugged tubes in each steam generator for non-LOCA analysis).

2. The proposed change does not create the possibility of a new or different kind of accident from any other previously evaluated.

This amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The reanalyses performed demonstrated that the current licensing basis analyses results remain valid with a 10°F reduction in RCS temperature, and that the safety system settings remain unchanged.

3. The proposed changes do not involve a significant reduction in a margin of safety.

This amendment request will not involve a significant reduction in a margin of safety. There is no reduction in the margin of safety since the changes apply only to the reactor coolant cold leg temperature, the safety analyses have been reevaluated (and reperformed where necessary) using the new temperature, and the results remain valid. All other safety limits and safety system settings remain unchanged; therefore, there is no reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 12, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct on the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 1, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 7th day of July 1994.

For the Nuclear Regulatory Commission.

Linh N. Tran,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16942 Filed 7–12–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16 issued to GPU Nuclear Corporation (GPUN, the licensee) for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would delete Technical Specification Section 2.3.0 and its associated bases. The proposed amendment removes the limiting safety system setting for a high recirculation flow reactor scram based on a maximum attainable recirculation flow analysis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 12, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 1, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 7th day of July 1994.

For the Nuclear Regulatory Commission.

Linh N. Tran,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16942 Filed 7–12–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16 issued to GPU Nuclear Corporation (GPUN, the licensee) for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would delete Technical Specification Section 2.3.0 and its associated bases. The proposed amendment removes the limiting safety system setting for a high recirculation flow reactor scram based on a maximum attainable recirculation flow analysis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 12, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 24, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 6th day of July 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16943 Filed 7–12–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Tennessee Valley Authority (the licensee) to withdraw its November 18, 1992 application for proposed amendments to Facility Operating License Nos. DPR–77 and DPR–79 for the Sequoyah Nuclear Plant, Units 1 and 2, located in Soddy Daisy, Tennessee.

The proposed changes would have modified the facility technical specifications pertaining to alternate steam generator tube plugging criteria that was designed to take into account the reinforcing effect that the steam generator tubesheet has on the external surface of expanded steam generator tubes referred to as Westinghouse Explosive Tube Expansion (WEXTEX) region. The new criteria was designed to reduce the need for repairing or plugging steam generator tubes having indications that exceed the current technical specification depth-based plugging limit.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 3, 1993 (58 FR 7006). However, by letter dated June 28, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 18, 1992 (which was supplemented by letter dated January 8, 1993), and the licensee's letter dated June 28, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland this 5th day of July 1994.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16944 Filed 7–12–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Washington Public Power Supply System (the licensee) for an amendment to Facility Operating License No. NPF–21 issued to the licensee for operation of the Washington Nuclear Project No. 2, located in Benton County, Washington.

The purpose of the licensee's amendment request was to revise the operating license to permanently utilize the present reactor water cleanup system design without postulation of a high-energy line break at the terminal end of valve RWCU–FCV–33.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated July 7, 1994.

By August 12, 1994, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M.H. Philips, Jr., Esq., Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated December 3, 1993, and (2) the Commission's letter to the licensee dated July 7, 1994.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 7th day of July 1994.

For the Nuclear Regulatory Commission.

James W. Clifford,

Acting Project Director, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16945 Filed 7–12–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Updated Statistical Definitions of Metropolitan Areas (MAs)

AGENCY: Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

ACTION: Updated statistical definitions of Metropolitan Areas as of July 1, 1994.

SUMMARY: Under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504) and 31 U.S.C. 1104(d) and E.O. No. 10253 (June 11, 1951), the Office of Management and Budget (OMB) defines Metropolitan Areas (MAs) for statistical purposes in accordance with a set of standards published in the **Federal Register** (55 FR 12154–12160, March 30, 1990).

On July 1, 1994, OMB updated the MA definitions in OMB Bulletin No. 94–01. One new metropolitan statistical area (MSA) was defined based on the standards and the 1992 official population estimates. Hattiesburg, Mississippi MSA (FIPS Code 3285) was defined as of July 1, 1994, comprising Forrest County and Lamar County.

The complete announcement presenting all MA definitions can be obtained through the National Technical Information Service (NTIS) by calling (703) 487–4650 and ordering Accession Number PB94–165–628.

For further information on the statistical uses of MA definitions please call Marie E. Gonzalez (202) 395–7313. For information concerning the use of MA definitions in a particular Federal agency program, please contact the sponsoring agency directly.

Leon E. Panetta,

Director.

[FR Doc. 94–16972 Filed 7–12–94; 8:45 am]

BILLING CODE 3110–01–M

POSTAL RATE COMMISSION

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Before Commissioners: Edward J. Gleiman, Chairman; W. H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

In the Matter of: Strang, Nebraska 68444 (Ruth E. Hobbs, Petitioner), Docket No. A94–13.

Issued July 7, 1994.

Docket Number: A94–13
Name of Affected Post Office: Strang, Nebraska 68444
Name(s) of Petitioner(s): Ruth E. Hobbs
Type of Determination: Consolidation
Date of Filing of Appeal Papers: July 1, 1994
Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in

published in the **Federal Register** (55 FR 12154–12160, March 30, 1990).

On July 1, 1994, OMB updated the MA definitions in OMB Bulletin No. 94–01. One new metropolitan statistical area (MSA) was defined based on the standards and the 1992 official population estimates. Hattiesburg, Mississippi MSA (FIPS Code 3285) was defined as of July 1, 1994, comprising Forrest County and Lamar County.

The complete announcement presenting all MA definitions can be obtained through the National Technical Information Service (NTIS) by calling (703) 487–4650 and ordering Accession Number PB94–165–628.

For further information on the statistical uses of MA definitions please call Marie E. Gonzalez (202) 395–7313. For information concerning the use of MA definitions in a particular Federal agency program, please contact the sponsoring agency directly.

Leon E. Panetta,

Director.

[FR Doc. 94–16972 Filed 7–12–94; 8:45 am]

BILLING CODE 3110–01–M

POSTAL RATE COMMISSION

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Before Commissioners: Edward J. Gleiman, Chairman; W. H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

In the Matter of: Strang, Nebraska 68444 (Ruth E. Hobbs, Petitioner), Docket No. A94–13.

Issued July 7, 1994.

Docket Number: A94–13
Name of Affected Post Office: Strang, Nebraska 68444
Name(s) of Petitioner(s): Ruth E. Hobbs
Type of Determination: Consolidation
Date of Filing of Appeal Papers: July 1, 1994
Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by July 18, 1994.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

July 1, 1994—Filing of Appeal letter
July 7 , 1994—Commission Notice and Order of Filing of Appeal
July 26, 1994—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)]
August 5, 1994—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)]
August 25, 1994—Postal Service's Answering Brief [*see* 39 CFR 3001.115(c)]
September 9, 1994—Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)]
September 16, 1994—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116]
October 28, 1994—Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 94–16894 Filed 7–12–94; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34323; File No. SR–CBOE–94–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Solicited Transactions

July 6, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 3, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new Rule 6.9 that would regulate the execution of "solicited orders," as that term is defined in the rule; would set forth specific priority principles applicable to such orders; and would restrict trading by members and associated persons possessing knowledge of imminent undisclosed solicited transactions.

The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

The purpose of the proposed rule change is to regulate the execution of "solicited" transactions in options, *i.e.*, options transactions having terms that are pre-negotiated prior to the time the orders comprising the transaction are exposed to the trading crowd on the CBOE floor. The proposed rule change also restricts trading in any class of an option, as well as trading in the underlying security or any "related instrument," by CBOE members and their associated persons who have knowledge of an imminent solicited transaction in options of that class. This

[1] 15 U.S.C. 78s(b)(1).

prohibition applies until all terms are disclosed to the trading crowd or until execution of the solicited transaction cannot reasonably be considered imminent given the passage of time since the transaction was agreed upon.

The Exchange believes that it is appropriate to permit solicitation between potential buyers and potential sellers of options in advance of the time they send actual orders to the trading crowd on the Exchange. The Exchange states that complex options orders, such as spreads, straddles and combination orders, as well as stock-option orders, often require the "advance shopping" that is characteristic of a solicited transaction. The Exchange believes that such interactions between buyers and sellers and the resulting solicited transactions can enhance liquidity and depth at the CBOE by bringing orders to the floor that might otherwise be difficult to effect.

Nevertheless, if the orders that comprise a solicited transaction are not suitably exposed to the order interaction process on the CBOE floor, the execution of such orders would not be consistent with CBOE rules designed to promote order interaction in an open-outcry auction. For example, Rule 6.43 requires bids and offers to be made at the post by public outcry, and Rule 6.74 imposes specific order exposure requirements on floor brokers seeking to cross-buy orders with sell orders. Solicited transactions by definition entail negotiation, and if the orders that comprise a solicited transaction are not adequately exposed to the floor auction, the crowd cannot have sufficient time to digest and react to those orders' terms. The pre-negotiation inherent in the solicitation process thus can enable the parties to a solicited transaction to preempt the crowd to an execution at the pre-negotiated price.

Proposed Rule 6.9 is intended to preserve the right to solicit orders in advance of submitting a proposed trade to the crowd, while at the same time assuring that original orders that are the subject of a solicitation are exposed to the auction market in a meaningful way. For instance, the proposed rule change would require a member representing an original order that is the subject of a solicitation to disclose the terms of the original order to the crowd before the original order can be executed. CBOE believes that such disclosure would eliminate the unfairness that can be associated with pre-negotiated transactions and would subject the order that is the subject of the solicitation to full auction interaction with other orders in the crowd.

To promote disclosure at the inception of a solicitation period, rather than later, and to encourage solicited persons to bid or offer at prices that improve the current market, CBOE's rule change would establish a series of priority principles for solicited transactions. Priority would be accorded depending on whether the original order is disclosed throughout the solicitation period; whether the solicited order improves the best bid or offer in the crowd; and whether the solicited order matches the original order's limit. Thus, when the original order is disclosed in advance of the solicitation and the solicited order both matches the disclosed original order's limit and improves the market, the solicited order will have priority over other orders in the crowd and may trade with the original order at the improved bid or offered price, subject to the customer limit order book priorities set forth in Rule 6.45. When a solicited order does not match the original order's limit and does not improve the market, however, it will not have priority over other bids and offers represented in the crowd even if the original order was disclosed to the crowd for the full solicitation period. A responsive solicited order will not have priority to trade with the original order even if the solicited order improves the market; instead, in that instance, others in the crowd may trade ahead of the solicited person at the improved price.

In addition to requiring disclosure of original orders and clarifying the priority principles applicable to solicited transactions, proposed Rule 6.9(e) would make it prohibited conduct, inconsistent with just and equitable principles of trade, for any member or associated person who has knowledge of all the material terms of an original order and a solicited order that matches the original order's price, to enter an order to buy or sell an option of the same class as any option that is the subject of the solicitation prior to the time the original order's terms are disclosed to the crowd or the execution of the solicited transaction can no longer reasonably be considered imminent. This prohibition would extend to orders to buy or sell the underlying security or any "related instrument," as that term is defined in the Rule. The CBOE believes that these prophylactic requirements are necessary to prevent members and associated persons from using undisclosed information about imminent solicited option transactions to trade the relevant option or any closely-related instrument in advance of persons represented in the relevant options crowd.

The CBOE believes that proposed Rule 6.9 will improve the CBOE auction by clarifying the requirements applicable to solicited transactions and by enabling the Exchange to initiate enforcement proceedings in appropriate cases under specific rules. The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trades and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–94–15 and should be submitted by August 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16951 Filed 7–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34326; File No. SR–MCC–94–08]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Waive Certain Fees

July 7, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 30, 1994, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MCC–94–08) as described in Items I, II, and III below, which Items have been prepared primarily by MCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to continue to waive through September 30, 1994, (1) Trade recording fees for trades in Chicago Stock Exchange's Chicago Basket ("CXM") and (2) secondary account maintenance fees for market-maker accounts opened for trading in the CXM.[2]

[2] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release Nos. 33156 (November 4, 1993), 58 FR 60076 [File No. SR–MCC–93–06] (waiver of fees through December 31, 1993); 33601 (February 8, 1994), 59 FR 7275 [File No. SR–MCC–93–10] (waiver of fees through March 31, 1994); and 33828 (March 28, 1994), 59 FR 15956 [File No. SR–MCC–94–05] (waiver of fees through June 30, 1994).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–94–15 and should be submitted by August 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16951 Filed 7–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34326; File No. SR–MCC–94–08]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Waive Certain Fees

July 7, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 30, 1994, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MCC–94–08) as described in Items I, II, and III below, which Items have been prepared primarily by MCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to continue to waive through September 30, 1994, (1) Trade recording fees for trades in Chicago Stock Exchange's Chicago Basket ("CXM") and (2) secondary account maintenance fees for market-maker accounts opened for trading in the CXM.[2]

[2] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release Nos. 33156 (November 4, 1993), 58 FR 60076 [File No. SR–MCC–93–06] (waiver of fees through December 31, 1993); 33601 (February 8, 1994), 59 FR 7275 [File No. SR–MCC–93–10] (waiver of fees through March 31, 1994); and 33828 (March 28, 1994), 59 FR 15956 [File No. SR–MCC–94–05] (waiver of fees through June 30, 1994).

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MCC proposes to amend a portion of its Services and Schedule of Charges by waiving certain fees associated with trades in the CXM through September 30, 1994. Proposed additions are italicized and proposed deletions are bracketed:

ACCOUNT MAINTENANCE

	Charge/month
Participant Account Maintenance Fee:	
(Local and Out of Town Accounts)	$170.00
(Specialist, Trading and Market Maker Accounts)	160.00
Secondary Account (Specialist, Trading and Market Maker Accounts)	125.00
MCC Only Settlement Fee	200.00

Secondary Account Maintenance Fees for market maker accounts opened for trading in the Chicago Basket ("CXM") shall be waived through [June 30, 1994] September 30, 1994.

Trade Recording

In addition, a discount of $0.15 per trade side recorded will be applied to the trade recording fees for trades of 1,000 shares and larger when a participant exceeds 10,000 recorded trade sides each month (excluding inbound RIO trades).

All trade recording fees shall be waived for trades in the Chicago Basket ("CXM") through [June 30, 1994] September 30, 1994.

The proposed rule change is consistent with Section 17A of the Act[3] in that it provides for the equitable allocation of a reasonable fee among MCC's clearing members as required by Section 17A(b)(3)(D) of the Act.[4]

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–1(b)(3)(D).

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder because the proposed rule change establishes or changes a due, fee, or other charge imposed by MCC. At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of MCC. All submissions should refer to File No. SR–MCC–94–08 and should be submitted by August 3, 1994.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2) (1993).

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16952 Filed 7–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34324; File No. SR–MSTC–94–04]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving a Proposed Rule Change Relating to Limited Purpose Participants

July 6, 1994.

I. Introduction

On February 3, 1994, the Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR–MSTC–94–04) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on April 1, 1994, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal.

II. Description of the Proposal

The purpose of the proposed rule change is to create a Limited Purpose Participant Program. On October 8, 1993, the Commodity Futures Trading Commission ("CFTC") issued an order approving the Chicago Mercantile Exchange's ("CME") proposal to revise the program whereby the CME accepts stock as clearing house performance bond margin. Under the revised program, all stock pledged as performance bond margin is maintained at MSTC.[3] In order to carry out the revised program, the CME became a pledgee participant at MSTC.[4] Clearing members of the CME that are also participants at MSTC have been able to take advantage of this program by utilizing MSTC's existing Automated Pledge Loan Program. Because futures commission merchants ("FCMs") who are not registered as broker-dealers ("BDs") do not meet MSTC's existing qualifications to be MSTC participants, they have been unable to participate in the current CME program. MSTC is establishing the Limited Purpose Participant Program to accommodate those CME clearing members registered solely as FCMs.

Limited purpose participants will be limited to FCMs that are clearing members of a futures exchange. The activities at MSTC for which a limited purpose participant will be eligible will be limited to making or receiving free depository delivery instructions ("DDIs") of securities, maintaining segregated positions for the purpose of effecting free pledges of securities to a specified pledgee participant (*i.e.*, the futures exchange of which they are a clearing member), receiving a return of the securities from that pledgee participant, and receiving credits from MSTC for any cash dividends received on those securities. Limited purpose participants will not be able to make physical deposits or physical withdrawals of securities. Limited purpose participants will not be eligible for any other service offered by MSTC.

In order to deposit securities in the limited purpose program, custodial banks or broker-dealers, acting on behalf of limited purpose participants, will transfer book-entry positions to the participants' limited purpose accounts at MSTC. Movements of positions from limited purpose accounts into the CME's pledge accounts will only occur by order of the limited purpose participants, and only the CME may release positions from its pledge accounts to the limited purpose accounts. If limited purpose participants no longer wish to pledge securities held in the limited purpose accounts, such participants will instruct MSTC to move the positions out of their limited purpose accounts to their designated bank or broker-dealer account at MSTC for further disposition.

In creating the CME clearing member stock pledge program,[5] CME and MSTC entered into an agreement clarifying certain points not covered in either MSTC's Automated Pledge Loan Program Agreement or in MSTC's Rules.[6] In general, MSTC acknowledges the following.

(1) MSTC will comply with any instructions received from CME related to the pledged securities, notwithstanding any conflicting instructions received from any clearing member or in any pending proceeding under the Bankruptcy Code except to the extent that there is an effective written order issued by a court of competent jurisdiction.

(2) MSTC will not permit a limited purpose participant to pledge to a CME pledge account (a) Any security not on the list of eligible securities that CME will provide to MSTC; (b) any security whose closing price on the day preceding the day of the attempted pledge was not at least $10.00; (c) any security with respect to which MSTC has actual knowledge of an existing encumbrance at the time of the attempted pledge; or (d) any security against which MSTC may assert a lien.

(3) MSTC has been advised by the CME that customer securities in the CME pledge account are required to be segregated in accordance with the provisions of the Commodity Exchange Act and that prior to the first pledge of customer securities, MSTC will execute an agreement that the funds and securities in the segregated customer pledge account will not be subject to any lien or offset or liability owing to MSTC by the CME or any other person and that such funds shall not be applied by MSTC to any such indebtedness or liability.

(4) MSTC acknowledges the provisions dealing with MSTC's rights and obligations set forth in CFTC's order approving the CME's stock pledge program.

To accommodate the proposed rule change, MSTC added to Article I ("Definitions and General Provisions") of its rules definitions of Limited Purpose Participants and Limited Purpose Account, added to Article II ("Settlement Services") Rule 7 which describes the Limited Purpose Participant Program, and added to Article V ("Participants") Rule 1 ("Qualifications of Applicants to Become a Participant") paragraph (i) which sets forth the qualifications of a limited purpose participant.

III. Discussion

The Commission believes the proposal is consistent with the purposes and requirements of Section 17A of the Act.[7] In particular, the Commission believes the proposal meets the requirement of Sections 17A(b)(3) (A) and (F) that a clearing agency be organized and have the capacity to safeguard securities and funds in its custody or control or for which it is responsible.[8]

In approving MSTC's rule change creating a limited purpose participant, the Commission recognizes the desire of market participants, even in the CFTC regulated futures market, to meet their margin requirements with assets other than cash or government securities. The MSTC proposal extends the use of equity securities as margin to FCM's that are also clearing members of a board of trade.[9] MSTC has structured the proposal to limit the services available to limited purpose participants so that only those services necessary to pledge securities to CME's pledge account may be accessed. In addition, the CME has agreed to indemnify MSTC for and from all claims, losses, liabilities, and expenses arising from any actions MSTC takes or does not take in accordance with the instructions received from CME.[10]

The Commission believes that the structure of the program and the safeguards that MSTC has built into the program should reduce the risk to MSTC in holding securities pledged to CME. In light of the fact that the CME clearing house, not MSTC, bears the risk of loss on the futures positions creating the performance bond requirements, the Commission believes the proposed rule change satisfies MSTC's obligation to safeguard securities and funds in its custody or control or for which it is responsible.

IV. Conclusion

For the reasons stated above, the Commission finds that MSTC's proposal is consistent with Section 17A of the Act.[11]

---

[7] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 33820 (March 25, 1994), 59 FR 15469 (notice of filing of proposed rule change).

[3] Previously, CME clearing members who wished to use equity securities to satisfy their performance bond margin requirements deposited those securities with the CME's settlement banks or with other qualified depositories selected by the CME.

[4] Pledgee participants under MSTC rules are participants who maintain accounts established with MSTC to reflect such participants' interest as a pledgee or holder of securities transferred from one or more depository accounts.

[5] The CFTC approved CME stock pledge program will only permit clearing members to deposit equity securities as performance bond margin to meet a reserve requirement, an amount assessed in excess of the ordinary prudential core margin requirement. The core requirement is intended to cover at least 95% of all anticipated one-day price moves in the applicable contract. Reserve requirements likely will be set at levels that reflect those noneconomic factors that the CME may determine are necessary. If the loss associated with a clearing member default was expected to exceed the proceeds that the CME would receive from the liquidation of core performance bond assets, reserve performance bond assets would be liquidated and applied against any such excess losses.

[6] Letter agreement between the CME and MSTC (October 5, 1993).

[7] 15 U.S.C. 78q–1 (1988).

[8] 15 U.S.C. 78q–1(b)(3)-(A) and (F) (1988).

[9] CME Rule 901 sets forth the requirements and obligations for clearing member status at the CME. A clearing member must demonstrate financial capitalization commensurate with the CME's requirements, and a clearing member must continue to maintain such financial requirements or suffer suspension and revocation of its clearing house membership. If the CME were to revoke the clearing membership of a FCM, that FCM will not be eligible for MSTC's limited purpose program.

[10] Point 1 of letter agreement between CME and MSTC (October 5, 1993).

[11] 15 U.S.C. 78q–1 (1988).

III. Discussion

The Commission believes the proposal is consistent with the purposes and requirements of Section 17A of the Act.[7] In particular, the Commission believes the proposal meets the requirement of Sections 17A(b)(3) (A) and (F) that a clearing agency be organized and have the capacity to safeguard securities and funds in its custody or control or for which it is responsible.[8]

In approving MSTC's rule change creating a limited purpose participant, the Commission recognizes the desire of market participants, even in the CFTC regulated futures market, to meet their margin requirements with assets other than cash or government securities. The MSTC proposal extends the use of equity securities as margin to FCM's that are also clearing members of a board of trade.[9] MSTC has structured the proposal to limit the services available to limited purpose participants so that only those services necessary to pledge securities to CME's pledge account may be accessed. In addition, the CME has agreed to indemnify MSTC for and from all claims, losses, liabilities, and expenses arising from any actions MSTC takes or does not take in accordance with the instructions received from CME.[10]

The Commission believes that the structure of the program and the safeguards that MSTC has built into the program should reduce the risk to MSTC in holding securities pledged to CME. In light of the fact that the CME clearing house, not MSTC, bears the risk of loss on the futures positions creating the performance bond requirements, the Commission believes the proposed rule change satisfies MSTC's obligation to safeguard securities and funds in its custody or control or for which it is responsible.

IV. Conclusion

For the reasons stated above, the Commission finds that MSTC's proposal is consistent with Section 17A of the Act.[11]

[7] 15 U.S.C. 78q–1 (1988).

[8] 15 U.S.C. 78q–1(b)(3)-(A) and (F) (1988).

[9] CME Rule 901 sets forth the requirements and obligations for clearing member status at the CME. A clearing member must demonstrate financial capitalization commensurate with the CME's requirements, and a clearing member must continue to maintain such financial requirements or suffer suspension and revocation of its clearing house membership. If the CME were to revoke the clearing membership of a FCM, that FCM will not be eligible for MSTC's limited purpose program.

[10] Point 1 of letter agreement between CME and MSTC (October 5, 1993).

[11] 15 U.S.C. 78q–1 (1988).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that MSTC's proposed rule change (File No. SR–MSTC–94–04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16953 Filed 7–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34325; File No. SR–NYSE–94–18]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the Allocation Policy and Procedures

July 7, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 26, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Exchange's Allocation Policy and Procedures.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1992).

[1] The exact text of the proposed rule change was attached as Exhibit A to File No. SR–NYSE–94–18 and can be obtained at the places specified in Item IV below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The intent of the Exchange's Allocation Policy and Procedures ("Policy") is to ensure that each security is allocated in the fairest manner possible to the best specialist unit for that security. In order to enhance its stock allocation decisions, the Exchange conducts a periodic review of its allocation process. As the result of the Exchange's most recent review, a number of changes to the Policy, discussed below, are being proposed.

The Exchange proposes to change the composition of the Allocation Committee (the committee that determines which specialist unit will specialize in a particular security). The Committee, which consists of nine members, would include three broker Governors[2] (one of whom may be an independent/two-dollar broker),[3] four other Floor brokers from the Allocation Panel (one of whom must be an independent/two-dollar broker), and two allied members[4] from the Market Performance Committee or the Panel. For options allocations, only one Governor would sit on the Committee. Currently, only one Governor sits as a member of the Allocation Committee, and the policy does not require that one member of the Committee be an independent/two-dollar broker.

The Exchange is proposing to change the quorum requirement for the Allocation Committee to require that at least two Floor Broker Governors be present out of the seven member quorum. For options allocations, a quorum would include one Governor. Currently, only one Governor is required for a quorum.

The Exchange is proposing to allow Governors to serve as chairman of the Allocation Committee. Currently, they are not eligible to serve. The Policy would also be amended to require all candidates for chairman to have prior experience on the Allocation Committee.

The Exchange proposes to amend the Policy to state that all incoming

[2] A Floor Governor is an individual, designated as such by the Chairman of the Exchange's Board of Directors, who is empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Director as prescribed by the rules of the Exchange's Board of Directors.

[3] The Exchange defines an "independent/two-dollar broker" as a member on the Exchange floor acting as a broker for other members.

[4] An allied member is a general partner, principal executive officer or employee who controls a member firm or member organization.

Allocation Committee members are expected to observe as many Committee meetings as possible prior to beginning their terms as Committee members.

The Exchange is proposing to change the composition of the Allocation Panel (the 36 member group from which the Allocation Committee is drawn). The panel would be composed of 36 members, including 28 Floor brokers and eight allied members, plus the eight broker Governors and four allied members serving on the Exchange's Market Performance Committee. Currently, the four allied members of the Market Performance Committee do not serve on the Panel.

Selection to the Allocation Panel currently occurs through an annual appointment process which utilizes input from the membership. The Exchange is proposing to amend the Policy to require Panel members to be nominated by the Exchange membership.

To be eligible to serve on the Allocation Panel, the Exchange currently requires Floor brokers to have five years of trading Floor experience. The Policy also states that to the maximum extent possible, the Panel should consist of a core group of experienced, senior professionals, such as former Allocation Committee chairmen, senior Floor Officials, and current and former Floor Governors. In the case of allied members, the member organization is appointed to the Panel and it selects a representative to serve. The Exchange is proposing to amend the Policy to require that the allied members chosen to serve have at least five years of experience in trading listed equities and have a senior position on the trading desk. The Policy would also be amended to permit allied members to designate one alternate who meets the Panel qualifications, subject to approval by the Floor Directors.

The Exchange is proposing to amend the Policy to provide for a four month term of service on the Allocation Committee for all members, including Governors. The current terms are six months for non-Governor members and two months for Governors. The Exchange is also proposing to codify the existing practice of permitting Panel members to serve a maximum of six consecutive one year terms and to stagger terms so that every two months four or five members would rotate from the Allocation Committee.

Finally, the Exchange is proposing to codify its practice on the allocation of merging listed companies. The Policy would be amended to state that when two listed companies merge, the new entity would be assigned to the specialist in the company determined to be the surviving/dominant company. If no surviving/dominant company could be identified, the entity would be referred to the Allocation Committee for allocation. Currently, the Market Performance Committee, with the assistance of Exchange Counsel and the Marketing Division, makes the determination of which company is the surviving/dominant company.

(2) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general, to protect investors and the public interest. The proposed amendments are consistent with these objectives in that they enable the Exchange to further enhance the process by which stocks are allocated to ensure fairness and equal opportunity in the process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–18 and should be submitted by August 11, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16896 Filed 7–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34328; File No. SR–PSE–92–42]

Self-Regulatory Organizations; Filing of Amendment Nos. 2 and 3 to Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Listing and Trading of SCOR Securities on the Exchange

July 7, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 2, 1994 [1] and July 7, 1994 the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment Nos. 2 and 3 to File No. SR–PSE–92–42 [2] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the amendment to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is amending its proposal to list and trade Small Corporate Offering Registration ("SCOR") securities on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is amending its proposal to list securities under the SCOR designation. The amendment is partly based upon discussions the Exchange has held, subsequent to the initial filing, with committees of the North American Securities Administrations Association, Inc. ("NASAA"),[3] the California Department of Corporations, and leaders from the small business community. The Exchange believes that the proposal, as amended, satisfactorily addresses the mutual concerns of these individuals and organizations.

Inclusion of Preferred Stock

The Exchange notes that many companies, particularly in the high-technology sector, have a capital structure consisting of two classes of capital stock, *i.e.*, a single class each of common and preferred. The class of common stock is privately held by insiders and, generally, is not transferable, while the preferred stock is issued to qualified public investors. Under this structure, holders of preferred stock have preference over common shareholders in the event of liquidation. The Exchange has determined, accordingly, that it would

---

[1] The Exchange subsequently filed Exhibit 1 to the Amendment (form of notice for **Federal Register**) with the Commission on June 15 and June 22, 1994.

[2] The proposed rule change was published for public comment in Exchange Act Release No. 32514 (June 25, 1993), 58 FR 35496 (July 1, 1993).

[3] The Exchange consulted extensively with the Small Business Capital Formation and the Small Business Sales Practices committees of NASAA.

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is amending its proposal to list and trade Small Corporate Offering Registration ("SCOR") securities on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is amending its proposal to list securities under the SCOR designation. The amendment is partly based upon discussions the Exchange has held, subsequent to the initial filing, with committees of the North American Securities Administrations Association, Inc. ("NASAA"),[3] the California Department of Corporations, and leaders from the small business community. The Exchange believes that the proposal, as amended, satisfactorily addresses the mutual concerns of these individuals and organizations.

Inclusion of Preferred Stock

The Exchange notes that many companies, particularly in the high-technology sector, have a capital structure consisting of two classes of capital stock, *i.e.*, a single class each of common and preferred. The class of common stock is privately held by insiders and, generally, is not transferable, while the preferred stock is issued to qualified public investors. Under this structure, holders of preferred stock have preference over common shareholders in the event of liquidation. The Exchange has determined, accordingly, that it would consider listing a company's preferred stock under the SCOR program if the company's overall capital structure and corporate governance policies were sufficiently designed to protect the interests of public investors.

Initial Listing Requirements

The Exchange's initial filing proposed that each issuer of a SCOR security have a public float of at least 200,000 shares and a market capitalization of $1 million. Since the $1 million market capitalization requirement also represents the maximum offering amount allowable under Rule 504, the Exchange is proposing to lower the effective market capitalization threshold to $750,000, with a corresponding reduction in public float to 150,000 shares and in net worth to $750,000. This reduction would provide a viable range of $750,000 to $1 million for SCOR offerings, making allowances for potential costs associated with the offering. The Exchange believes that, with these modifications, the SCOR listing program will be more viable in enabling bona fide companies to raise capital pursuant to Rule 504. The Exchange also believes that these proposed changes to the initial listing requirements for SCOR securities will continue to ensure adequate public distribution, and will not inhibit the growth of the trading markets or negatively influence specialists' abilities to maintain fair and orderly markets. The public float requirement of 150,000 shares exceeds the NASDAQ Small Cap initial listing standard of 100,000 shares. Moreover, the Exchange's calculation of public float is more stringent than that of the NASD in that it excludes any concentrated holdings of 5% or more.[4] Finally, because certain SCOR offerings may be "integrated,"[5] it is conceivable that the applicant issuer may have a greater public distribution than initially expected and, therefore, would further exceed the minimum requirements.

Net Worth and Net Tangible Assets

To prevent a company that has no tangible assets net of liabilities from being listed, the Exchange will apply both net worth and net tangible assets as a test. Accordingly, proposed Rule 3.2(t)(2) would require that a company have both net tangible assets of at least $500,000 and a total net worth of at least $750,000.

Audited Financial Statements

Proposed Rule 3.2(t)(4) provides that, at the time of its application, the issuer must provide the Exchange with audited financial statements for the most recent fiscal year-end (and unaudited interim financial statements), and that such statements must be prepared in accordance with generally accepted accounting principles.

Qualitative Listing Requirements

Proposed Rule 3.2(t)(6) sets forth additional qualitative requirements in determining a company's listing eligibility. The fact that an applicant may meet the numerical requirements does not mean that its application will be approved. The Exchange recognizes the potential for investor risk in SCOR securities; however, the Exchange is confident that through a rigorous merit review process, it can attain the mutual goals of supporting small business capital formation while providing sufficient protection for the investing public.

Preferred Stock—Anti-Dilution Clause

The Exchange is proposing in Commentary .04 to Rule 3.2(t) to provide that it will not list convertible preferred issues containing a provision that permits the company, at its discretion, to reduce the conversion price of its stock other than in accordance with the terms of the company's articles of incorporation or any amendments thereof made contemporaneously with the offering under which the issuer is applying for listing.

Representations of Approval for Listing

The Exchange has added language that clearly prohibits a company or broker-dealer from misrepresenting SCOR securities as having been approved for Exchange listing when, in fact, they have not been approved. Accordingly, the Exchange is proposing to add Commentary .05 to Rule 3.2(t) stating that any reference to this Exchange made either by the issuer or the underwriter of the issuer in any prospectus, offering circular, or similar document that reasonably implies endorsement or listing approval by the Exchange, and which is made without the prior consent to the Exchange, is prohibited.[6]

---

[3] The Exchange consulted extensively with the Small Business Capital Formation and the Small Business Sales Practices committees of NASAA.

[4] The NASD excludes concentrated holdings of more than 10 percent. *See* NASD By-Laws, Schedule D, Part II, Sec. 1(c)(7).

[5] Factors to be considered in determining whether offerings should be "integrated" are whether the offerings: (1) Involve the same class of security, (2) involve the same type of consideration, (3) are part of a single plan of financing, (4) are made at or about the same time, and (5) are made for the same general purpose. *See* Securities Act Release Nos. 4434 (1961) and 4552 (1963).

[6] If the Exchange finds that a company or broker-dealer has engaged in such conduct, it will

Continued

Delisting

Proposed Rule 3.5(r), Commentary .01, has been revised to incorporate specific times required for compliance with certain maintenance requirements once a deficiency has occurred. The commentary now states that a company with a deficiency in either market value of public float or minimum bid price for ten consecutive business days shall have 90 days thereafter in which to comply with the maintenance requirements. It further states that, should the deficiency continue beyond the prescribed period, the Exchange shall delist the security.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Commission published the Exchange's rule proposal to list SCOR securities in July 1993.[7] Several comment letters were received by the Commission, including comments from the California Department of Corporations[8] and NASAA's Small Business Capital Formation Committee.[9] While these comment letters generally supported the Exchange's overall policy objectives to facilitate capital formation for small companies and to provide public investors in those securities with more liquidity, the agencies recommended that revisions be made to the Exchange's rule proposal to strengthen the qualitative listing requirements in order to ensure adequate investor protection. They also suggested that more precise language be incorporated to assure that the listings requirements would not be waived.

In the months that followed (September 1993 through May 1994) the Exchange consulted extensively with the California Department of Corporations and NASAA[10] to resolve the above-mentioned comments as well as other questions that were subsequently raised during this time interval. After careful review and consideration of all the information received from the aforementioned parties, the Exchange incorporated new language into the rules that the Exchange Staff believes satisfactorily addresses these comments. A number of minor changes have been made throughout the filing for stylistic and clarification purposes.

The most substantive comments received by the Exchange that precipitated this amendment are categorically discussed below.

Representations of Approval for Listing

In the original proposal, NASAA was troubled by the lack of a definitive enforcement standard precluding companies (or underwriters) from falsely claiming in a prospectus that the securities being offered were approved for listing on the Exchange. The Exchange appreciated NASAA's concerns that a company or broker-dealer may employ such a scheme to defraud any prospective investor by misrepresenting that SCOR securities have been approved for listing. To address this concern, the Exchange has added more precise language that clearly prohibits this practice.[11]

Qualitative Listing Requirements

As mentioned above, the California Department of Corporations and NASAA suggested that the Exchange incorporate additional qualitative factors that would be evaluated in determining a company's listing eligibility. Therefore, the Exchange expanded and provided further specificity to the guidelines to be considered in the review of any listing application. The standards set forth in proposed Rules 3.2(a) and 3.2(t)(6) are intended to provide guidelines that will be strictly enforced. The fact that an applicant may meet the numerical requirements does not mean that its application will be necessarily approved.

Compliance with Listing Requirements for Minimum Price and Market Capitalization

In a letter dated March 21, 1994, the California Department of Corporations questioned how and when the initial listing requirement for market capitalization would be calculated. In order to eliminate any potential confusion in determining whether the issuer satisfies the initial price per share and market capitalization requirements, the Exchange decided to provide further specificity to the pricing guidelines.[12] The Exchange felt that any direct reference to the term "market value" as proposed in the original rule filing would be inappropriate because there is no practical means to establish how and when market value is calculated.

Trading Environment

The Exchange received comment letters from the California Department of Corporations and NASAA, dated March 21 and April 13, 1994, respectively, which expressed similar concerns regarding the role and obligations of the specialist in trading SCOR securities. On May 2, 1994, the Exchange provided the California Department of Corporations with a formal response to their inquiry and cited specific provisions of Exchange regulations governing a specialist's trading obligations, capital requirements, and performance standards. In this letter, the Exchange made a strong commitment toward ensuring that their SCOR listing policies and trading procedures would be effectively applied and well administered.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–92–42 and should be submitted by August 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16954 Filed 7–12–94; 8:45 am]

BILLING CODE 8010–01–M

---

immediately report the matter to the appropriate state regulatory agency and to the Commission.

[7] *See* Exchange Act Release No. 32514 (June 25, 1993), 58 FR 35496 (July 1, 1993).

[8] *See* letter from Brian A. Thompson, Acting Commissioner of Corporations, State of California, to Jonathan G. Katz, Secretary, SEC, dated July 21, 1993.

[9] *See* letter from Neal E. Sullivan, Chairman, NASAA's Small Business Capital Formation Committee, to Jonathan G. Katz, Secretary, SEC, dated July 30, 1993. The Commission also received 15 supportive comment letters from small companies and individuals.

[10] In February 1994, the Exchange was advised by Barry Guthary, Chairman of NASAA's Small Business Capital Formation Committee, that our initiative to list SCOR securities would be more appropriately reviewed by the NASAA Small Business Sales Practices Committee chaired by Deborah Bortner, Assistant Securities Administrator, State of Washington Securities Division. Consequently, since March 1994, the Exchange has received constructive and valuable input from this committee. In a letter dated April 14, 1994, the Exchange received a formal response from Ms. Bortner's committee regarding the Exchange's amended rule proposal.

[11] *See* proposed Rule 3.2(t), Commentary .0b.

[12] *See* proposed Rule 3.2(t)(3) and subsections (iv) and (v) of proposed Rule 3.2(t)(6).

DEPARTMENT OF STATE

[Public Notice 2034]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Thursday, August 3, 1994, in room 6103 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting is to prepare for the 40th session of the Subcommittee on Safety of Navigation of the International Maritime Organization (IMO) which is scheduled for September 5–9, 1994, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Decisions of other IMO bodies

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–92–42 and should be submitted by August 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–16954 Filed 7–12–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2034]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Thursday, August 3, 1994, in room 6103 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting is to prepare for the 40th session of the Subcommittee on Safety of Navigation of the International Maritime Organization (IMO) which is scheduled for September 5–9, 1994, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Decisions of other IMO bodies
—Role of the human element in maritime casualties
—Routing of ships
1. Prevention of strandings at sea
2. Navigational risks in the Malacca Strait
3. Mandatory routing
4. Amendments to the General Provisions of Ships' Routing

—Review of resolution A.578(14)
—Requirements for ship reporting
—Navigational aids and related equipment:
1. worldwide navigation system
2. updating information for electronic navigation charts
3. electronic chart display and information systems
4. review and revision of resolutions [A.342(IX)], A.422(XI), [A.477(XII)] and A.478(XII). Development performance standards for radars, ARPA, gyro compasses and automatic pilots for high speed craft
5. International Telecommunications Union (ITU) matters, including Radiocommunication Study Group 8
6. Approval and performance standards for non-compulsory shipborne navigational equipment

—Revision of SOLAS chapter V
—Review of existing ship's safety standards
—Officer of the navigational watch acting as the sole lookout in periods of darkness
—Bridge procedures and revision of Standards of Training, Certification, and Watchkeeping (STCW) regulation II/1 and Standards of Training and Watchkeeping (STW) Conference resolution 1
—International Code of Signals
—Review of World Meteorological Organization (WMO) handbooks on navigation in areas affected by sea-ice
—Standardization of essential bridge and engine room instrumentation
—Ergonomic criteria for bridge equipment
—IMO standard communication phrases
—Removal of wreck and towage of offshore installations, structures, and platforms
—Code for the Safe Carriage of Irradiated Nuclear Fuel
—Operational aspects of ekranoplanes
—Use and application of onboard computers
—Participation in the World Meteorological Organization (WMO) Voluntary Observing Ships Scheme
—Work program
—Any other business

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–NSR–3), Room 1416, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: July 1, 1994.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 94–16970 Filed 7–12–94; 8:45 am]

BILLING CODE 4710–7–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Air South, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 94–7–7) Docket 49500.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Air South, Inc., fit, willing, and able and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than July 18, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 49500 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: July 7, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–16998 Filed 7–12–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement: I–66 Access Study, Haymarket, Prince William County, VA

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed highway improvements on Interstate Route 66 in Prince William County, Virginia. These improvements will provide access to transportation facilities and related development in the area including the proposed Disney development. The pending FHWA action is a decision on a VDOT proposal for (1) a new interchange access to I–66 west of the existing I–66/Route 15 interchange, (2) modifications to the existing I–66/Route 15 interchange and (3) modifications to the existing I–66/Route 29 Interchange. There are no federal funds involved in the proposed transportation improvements at these sites.

FOR FURTHER INFORMATION CONTACT: Robert E. Gatz, Director, Office of Planning and Program Development, Region 3, Federal Highway Administration, Suite 4000, 10 S. Howard Street, Baltimore, Maryland 21201; Telephone: (410) 962–3742 or Earl Robb, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219: Telephone (804) 786–4559.

SUPPLEMENTARY INFORMATION: The FHWA, participating with the Virginia Department of Transportation (VDOT), will prepare an environmental impact statement (EIS) on the federal actions which include modifications to the existing I–66/Route 15 interchange, modifications to the existing I–66/Route 29 interchange and a new access point to I–66 west of Route 15 interchange. In addition, the EIS will include a discussion of: (1) The widening of I–66 from Route 234 to approximately 2 miles west of the existing interchange with Route 15, a distance of approximately 8.5 miles (the proposed improvements are considered necessary to improve traffic flow along the I–66 corridor, accommodate current and projected traffic demands, to serve existing and future access needs in the region and to improve transportation safety); (2) the widening of Route 15 and (3) the relocation of portions of Routes 55 and 681 near the I–66 interchange.

Alternatives under consideration include, but are not limited to: (1) Taking no action (no build); (2) Transportation System Management Activities (improving present systems); (3) transit options; (4) upgrading existing roadways and build alternatives based on variations of typical section, grade and alignment and (5) combinations of alternatives.

The subject areas to be studied in the EIS process will include, but are not limited to: traffic and transportation service, air quality, noise, surface and groundwater resources, soils and geology, wetlands, vegetation and wildlife, farmlands, visual, community impacts, historic sites and structures and archaeological resources, parks, wildlife refuges and recreational areas, construction impacts, secondary impacts of the proposed transportation project and cumulative impacts.

Information describing the proposed action and study will be provided to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have an interest in this project to solicit their comments. An extensive public and interagency involvement process will be maintained throughout the EIS process. Public meetings will be held at a number of locations. In addition, a formal public hearing will also be held after the issuance of the draft EIS. The draft EIS will be available for public and agency review and comment prior to the formal public hearing. Public notice will be given of the time and place of these meetings and of the hearing. A decision has been made to conduct scoping for this project and following publication of this Notice of Intent, the FHWA and VDOT will begin the scoping process in accordance with 40 CFR 1501.7. Times and locations of the scoping meetings have not yet been set. To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or to the VDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 5, 1994.

Robert E. Gatz,

Director, Office of Planning and Program Development, Region Three, FHWA, Baltimore, Maryland.

[FR Doc. 94–16871 Filed 7–12–94; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[BS–AP–NO. 3289]

Southern Pacific Lines; Cancellation of Public Hearing

The Federal Railroad Administration (FRA) has cancelled the public hearing on the captioned block signal application because the application has been withdrawn by the railroad. The hearing had been scheduled for July 28, 1994, in Eugene, Oregon.

In the now withdrawn application the Southern Pacific Lines petitioned the FRA seeking approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Ashland, milepost C–429 and Glendale, milepost C–510, Oregon, on the Siskiyou District, Pacific Region, a distance of approximately 81 miles. (See 59 FR 31669, June 20, 1994).

The FRA regrets any inconvenience occasioned by the cancellation of this hearing.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–16999 Filed 7–12–94; 8:45 am]

BILLING CODE 4910–06–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of priority areas for Commission research and amendment study. Request for public comment.

SUMMARY: As part of its continuing analysis of sentencing issues, including the operation of the federal sentencing guidelines, the Commission has identified certain priorities as the principal focus of its work in the coming year and, in some cases, beyond. Following the practice of past years, the Commission invites comment on the identified priorities (including the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to an identified priority). The Commission also invites comment on any other aspect of guideline application that it should address during the coming year.

DATES: Public comment should be received not later than August 31, 1994, to be considered by the Commission in shaping its work during the next amendment cycle.

ADDRESSES: Send comment to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Information—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is empowered under 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to review and revise promulgated guidelines periodically and authorizes it to submit guideline amendments to the Congress not later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As in previous years, by this announcement the Commission begins the amendment cycle by soliciting formal and informal comment regarding certain areas upon which the Commission expects to concentrate its attention during the coming year. This notice provides interested persons with an early opportunity to inform the Commission of legal, operational, or policy concerns within the identified areas relating to the guidelines and to suggest specific solutions and alternative approaches. In late 1994 or early 1995, the Commission expects to publish in the **Federal Register** a formal notice of proposed amendments and amendment issues and will invite comment on those proposals.

Following are the priority areas for amendment study, research, or other planned actions identified by the Commission. Where possible, a general timeframe for the initiative is indicated. These timeframes should be considered subject to change as the Commission deems necessary.

- Implementation of the 1994 crime bill directives—Implementation of the crime bill (expected to be finalized by Congress in the summer of 1994) will be the Commission's most time-sensitive project. A substantial number of provisions in the bill can be expected to require Commission attention, some involving proposed guideline amendments and others entailing study, e.g., a study of crack and powder cocaine. The Commission expects these implementation efforts to be its top priority, with an anticipated completion date of December 1, 1994, or as directed by the statute.
- Comprehensive review and revision of the drug offense guidelines—Based

ADDRESSES: Send comment to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Information—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is empowered under 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to review and revise promulgated guidelines periodically and authorizes it to submit guideline amendments to the Congress not later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As in previous years, by this announcement the Commission begins the amendment cycle by soliciting formal and informal comment regarding certain areas upon which the Commission expects to concentrate its attention during the coming year. This notice provides interested persons with an early opportunity to inform the Commission of legal, operational, or policy concerns within the identified areas relating to the guidelines and to suggest specific solutions and alternative approaches. In late 1994 or early 1995, the Commission expects to publish in the **Federal Register** a formal notice of proposed amendments and amendment issues and will invite comment on those proposals.

Following are the priority areas for amendment study, research, or other planned actions identified by the Commission. Where possible, a general timeframe for the initiative is indicated. These timeframes should be considered subject to change as the Commission deems necessary.

- Implementation of the 1994 crime bill directives—Implementation of the crime bill (expected to be finalized by Congress in the summer of 1994) will be the Commission's most time-sensitive project. A substantial number of provisions in the bill can be expected to require Commission attention, some involving proposed guideline amendments and others entailing study, e.g., a study of crack and powder cocaine. The Commission expects these implementation efforts to be its top priority, with an anticipated completion date of December 1, 1994, or as directed by the statute.
- Comprehensive review and revision of the drug offense guidelines—Based on Commission discussion of amendments, continuing issues in the courts, and debate on the 1994 crime bill, it is clear that the sentences of drug offenders, who represent nearly 50 percent of defendants in federal courts, remain a major issue of concern. In particular, the appropriate weight to assign to drug quantity in relation to other factors, such as role and violence, remains a critical issue for Commission investigation in the upcoming amendment cycle.
- Symposium on organizational guidelines—At Commission direction, a staff working group is creating an agenda for a symposium/workshop on organizational guidelines. The completed agenda with proposed program participants will be submitted to the Commission at its September meeting.
- Implementation of the new ASSYST and Automated Order of Judgment in a Criminal Case computer programs—These programs will reach the field implementation stage in the coming year. Field testing of the Automated Order of Judgment in a Criminal Case began in June 1994. An updated version of ASSYST (a computer program to help users apply the guidelines) will be ready for field distribution in October 1994.
- Real offense conduct data collection—The 1994 Annual Report will include information from the Commission's newly developed real offense conduct module now undergoing final testing and development.
- Substantial assistance working group—This ongoing working group will proceed immediately with the data collection portion of its study effort. A preliminary report should be submitted to the Commission in December 1994.
- Comprehensive guideline simplification—A long-term staff working group will focus on simplification of the guidelines. The working group will develop a plan for Commission consideration by December 1, 1994.
- Plea bargaining—The Commission's Office of Policy Analysis will design a follow-up study of the results reported by Commissioner Ilene H. Nagel and Professor Stephen Schulhofer, examining changes that have occurred since the conclusion of their study. This new study, in combination with the Commission's guideline evaluation work and the Nagel/Schulhofer findings, should form the basis for a reassessment of the initial policy statements in Chapter Six of the Guidelines Manual. The research design should be complete by January 1, 1995.
- Just punishment study—Data collection for the Commission's statutorily directed study of the just punishment purpose of sentencing has been completed. The complete report should be received by the Commission by January 1, 1995.
- Crime mix study—A crime mix study by the Commission's research staff examined the nature of offenses occurring over the past several years. The research question asks whether criminal offenses and offenders have become more serious over time, thus providing additional explanation for the increase in incarceration rates. Data collection is complete, and the report is in the drafting stage. The Commission expects to receive a final draft of the report by September 30, 1994.
- Review of policy statements for revocation of probation and supervised release (Chapter Seven of the Guidelines Manual)—Anticipating the passage of legislation as part of the crime bill to address a number of problem areas affecting revocation of probation and supervised release, the Commission expects to begin a review of the revocation policy statements to determine whether they should be promulgated as guidelines. Toward that end, the Commission expects to increase efforts during the coming year to collect data from all districts and assess how the policy statements are operating.
- Joint Bureau of Prisons/Administrative Office/Federal Judicial Center/Sentencing Commission group to study retroactivity issues—The Judicial Conference Criminal Law Committee, at its June meeting, authorized Federal Judicial Center staff to convene an interagency group to examine a broad spectrum of issues related to retroactivity of amended guidelines and resentencing, undoubtedly bringing policy issues to the Commission and the Criminal Law Committee for consideration at some future date.
- Departures—In the summer of 1994 Commissioners Ilene Nagel and Michael Gelacak are expected to submit a preliminary analysis of departure decisions involving six judicial circuits.
- Commission operating rules and procedures—As authorized by statute and recommended by a number of groups, the Commission intends to develop, publish for comment, and adopt additional internal rules of procedure governing such matters as the conduct of Commission meetings, the amendment process, and operation of advisory committees. Preliminary work on these rules will begin immediately.
- Geriatric offenders—Preliminary work is underway on issues related to sentencing and sentence administration

of geriatric offenders. The Commission's Policy Analysis group will complete preliminary data analysis within the next several months, and the Commission will continue to work cooperatively with the Bureau of Prisons on these issues.

• Criminal history—Considerable research related to criminal history currently is underway by the Commission to assist in reevaluating original policy choices reflected in the criminal history guidelines. Commission staff will report the results of various relevant studies over the course of the coming year. The criminal history guidelines will also be studied for ways to simplify them.

• Organizational guidelines for environmental and food and drug offenses—Guideline development for organizational defendants convicted of environmental and food and drug offenses will proceed deliberately pending appointment of a full slate of Commissioners.

The Commission welcomes comment about the aforementioned issues as well as any other aspect of guideline application or implementation of the Sentencing Reform Act.

William W. Wilkins, Jr.,

Chairman.

[FR Doc. 94–16898 Filed 7–12–94; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

Meeting of Special Medical Advisory Group; Subcommittee on Eye Care in VA

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is given that, under Public Law 92–463, there will be a meeting of the Special Medical Advisory Group Subcommittee on Eye Care in VA. The purpose of the Special Medical Advisory Group Subcommittee on Eye Care in VA is to advise the Secretary and Under Secretary for Health relative to the eye care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration. All sessions will be open to the public up to the seating capacity of the meeting room.

DATES: The meeting will be held August 30, 1994. The session will convene at 8 a.m. Because there will be limited seating capacity, those wishing to attend should contact Charles F. Mullen, O.D., Director, Optometry Service, 810 Vermont Avenue, NW., Washington, DC 20420, 202–535–7242 or 410–687–8375, prior to August 24, 1994.

ADDRESSES: The meeting will be held at the Washington Vista Hotel, 1400 "M" Street, NW., Sherwood Room, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Charles F. Mullen, O.D., Director, Optometry Service, Department of Veterans Affairs, 202–535–7242 or 410–687–8375.

SUPPLEMENTARY INFORMATION: None.

Dated: June 24, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–16888 Filed 7–12–94; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on the Readjustment of Vietnam and Other War Veterans; Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on the Readjustment of Vietnam and Other War Veterans will be held July 21 and 22, 1994. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for Vietnam and other war veterans, to review Committee work in progress and to formulate Committee recommendations and objectives. The meeting on both days will be held at the American Legion, Washington Office, 1608 K Street, NW, Washington, DC. The meeting on both days will commence at 8:30 and adjourn at 4:30 p.m.

The agenda for July 21 will begin with a review of Committee special projects and reports. The first day's agenda will also cover a review of the Readjustment Counseling Service Vet Centers, a meeting with VA's Chief Minority Affairs Officer of the Office of Policy and Planning to review and discuss VA services to minority veterans and a presentation by and discussion with the Director of Mental Health and Behavioral Sciences Service to review current VA mental health and post-traumatic stress disorder programs.

On July 22 the Committee will review pending legislation of importance for the readjustment of war veterans. The second day's agenda will also include a briefing on the status and plans of VA's Women Veterans Program Office of the Office of Policy and Planning.

Both day's meeting will be open to the public up to the meeting capacity of the room. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Department of Veterans Affairs (phone number: 202–535–7554).

Dated: June 23, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–16889 Filed 7–12–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meeting

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 14, 1994, from 10 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Director and Senior Officer Compensation [12 CFR Parts 611, 618, 620] (Final).

b. Capital (Phase I) Regulations [12 CFR Part 615] (Final).

Date: July 11, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–17129 Filed 7–11–94; 3:52 pm]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, July 18, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

Sunshine Act Meetings

Federal Register
Vol. 59, No. 133
Wednesday, July 13, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 14, 1994, from 10 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Director and Senior Officer Compensation [12 CFR Parts 611, 618, 620] (Final).

b. Capital (Phase I) Regulations [12 CFR Part 615] (Final).

Date: July 11, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–17129 Filed 7–11–94; 3:52 pm]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, July 18, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–17036 Filed 7–8–94; 4:27 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10 a.m., July 18, 1994.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the June 20, 1994, Board meeting.

2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 11, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–17061 Filed 7–11–94; 12:32 pm]

BILLING CODE 6760–01–M

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 35174, July 8, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Operations and Regulations Committee will be held on July 15, 1994. The meeting will commence at 9 a.m., on July 15, 1994.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: Legal Services Corporation, 750 First Street, NE., 11th floor, Board Room, Washington, DC 20002, (202) 336–8800.

CHANGES IN THE MEETING: Agenda item number 10 has been added, and the items formerly numbered 10 and 11 have been renumbered 11 and 12. The amended agenda appears below.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.

Closed Session:

2. Approval of Minutes of June 19, 1994 Executive Session.

3. Consider and Act on General Counsel's Report on Litigation to Which the Corporation is or May Become a Party.

4. Consider and Act on Internal Personnel and Operational Matters.

Open Session: (Resumed)

5. Approval of Minutes of June 19–20, 1994 Meeting.

6. Consideration of Update on the Reauthorization Legislative Process.

7. Consider and Act on Proposed Changes to Part 1608 of the Corporation's Regulations.

8. Consider and Act on Proposed Changes to Part 1621 of the Corporation's Regulations.

9. Consider and Act on Proposed Changes to Part 1611 of the Corporation's Regulations.

10. Consider and Act on Proposed Changes to the Corporation's Bylaws.

11. Public Comment.

12. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: July 8, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–17038 Filed 7–8–94; 4:46 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 35174, July 8, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE: A meeting of the Legal Services

Corporation Board of Directors will be held on July 16, 1994. The meeting will commence at 8 a.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: Legal Services Corporation, 750 First Street, NE., 11th Floor, Board Room, Washington, DC 20002, (202) 336–8800.

CHANGES IN THE MEETING: New agenda items 7, 8, and 9 have been added and the remaining (original) items have been renumbered. The revised notice is as follows.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consider and vote to approve draft minutes of executive sessions held on November 8, 1993; December 6, 1993; April 15, 1994; May 13, 1994, June 18, 1994; and executive sessions held by the Presidential Search Committee on June 16, 1994, and June 17, 1994. The Board will consult with the President and General Counsel on the matter of *Wilkinson* v. *LSC*. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. The Board will also consult with the President on internal personnel and operational matters. Finally, the Board will deliberate regarding internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2) (5), (6), (7), and (10)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5 (a), (d), (e), (f), and (h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda

Closed Session:

2. Consider and Act on Draft Minutes of the November 8, 1993 Executive Session.
3. Consider and Act on Draft Minutes of the December 6, 1993 Executive Session.
4. Consider and Act on Draft Minutes of the April 16, 1994 Executive Session.
5. Consider and Act on Draft Minutes of the May 13, 1994 Executive Session.
6. Consider and Act on Draft Minutes of the June 18, 1994 Executive Session.
7. Consider and Act on Draft Minutes of the June 16, 1994 Presidential Search Committee Meeting Executive Session.
8. Consider and Act on Draft Minutes of the June 17, 1994 Presidential Search Committee Meeting Executive Session.
9. Consult with the President and General Counsel on the Matter of *Wilkinson v. LSC*.
10. Consultation by Board with the President on Internal Personnel and Operational Matters.
a. Consideration of the Inspector General's Access to Corporation Documents.
11. Consider and Act on Internal Personnel and Operational Matters.
12. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.

Open Session: (Resumed)

13. Approval of Minutes of June 18, 1994 Meeting.
14. Chairman's and Members' Reports.
15. President's Report.
16. Presentation by Representatives of the Fundraising Project.
17. Presentation by Linda Rexer, President, National Association of IOLTA Programs.
18. Consideration of Issues Related to the Allocation and Distribution of the Corporation's Fiscal Year 1995 Appropriation.
19. Consider and Act on Proposed Changes to the Corporation's Bylaws.
20. Consider and Act on Operations and Regulations Committee Report.
21. Consider and Act on Provision for the Delivery of Legal Services Committee Report.
22. Consider and Act on Audit and Appropriations Committee Report.
a. Selection of An Accounting Firm to Conduct the Corporation's Financial Audit for the Fiscal Years 1994–1996.
23. Inspector General's Report.
24. Consideration of the Organizational Responsibility for Oversight of Grantee Annual Financial Audits.
25. Public Comment.
26. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: July 8, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–17039 Filed 7–8–94; 4:46 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published on July 13, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Operations and Regulations Committee will be held on July 15, 1994. The meeting will commence at 9 a.m., on July 15, 1994.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: Legal Services Corporation, 750 First Street, NE., 11th Floor, Board Room, Washington, DC 20002, (202) 336–8800.

CHANGES IN THE MEETING:

LOCATION OF MEETING: Washington Court Hotel, 525 New Jersey Avenue, NW., the Montpelier Room, Washington, DC 20001, (202) 628–2100.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: July 11, 1994.

Patricia D. Batie,

Corporate Secretary.

The Legal Services Corporation's billing code number is #7050–01.

[FR Doc. 94–17155 Filed 7–11–94; 3:53 pm]

BILLING CODE 7050–01–M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-35, RM-8442]

Radio Broadcasting Services; Muscatine, IA

Correction

In proposed rule document 94-12064 appearing on page 25874 in the issue of Wednesday, May 18, 1994, in the

Corrections

Federal Register

Vol. 59, No. 133

Wednesday, July 13, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-35, RM-8442]

Radio Broadcasting Services; Muscatine, IA

Correction

In proposed rule document 94-12064 appearing on page 25874 in the issue of Wednesday, May 18, 1994, in the heading, the Docket No. should have appeared as set forth above.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

[RAO Letter 24 DA 94-268]

Responsible Accounting Officers: Accounting for Work Force Reduction Programs

Correction

In notice document 94-7886 appearing on page 15729 in the issue of Monday, April 4, 1994, make the following correction:

On page 15729, in the third column, beginning in the tenth line, remove "When the restructuring expenses are actually paid Nonoperating Income.".

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Part 102

[Notice 1994-5]

Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees

Correction

In rule document 94-8690 beginning on page 17267 in the issue of Tuesday, April 12, 1994 make the following correction:

§ 102.14 [Corrected]

On page 17269, in the third column, in § 102.14, paragraph (b)(3), in the third line, remove the "§ ".

BILLING CODE 1505-01-D

VOL
569
ISS
133
JUL
13
1994
MI

federal register

Wednesday
July 13, 1994

Part II

Department of Education

Cooperative Demonstration Program (Correctional Education); Notices

DEPARTMENT OF EDUCATION

Cooperative Demonstration Program (Correctional Education)

AGENCY: Department of Education.

ACTION: Notice of final priorities, required activities, selection criteria, and other requirements for grants to be made in fiscal year 1995.

SUMMARY: The Secretary announces priorities for awards to be made in fiscal year (FY) 1995 using funds appropriated in FY 1994 under the Cooperative Demonstration Program, which is authorized by the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act). Under the absolute priority, funds under this competition would be reserved for applications proposing to demonstrate successful cooperation between the private sector and public agencies in vocational education programs that serve criminal offenders under the supervision of the justice system. In addition, the Secretary particularly invites applications that, within the absolute priority on correctional education, incorporate one or more of the following invitational priorities: (1) advanced technologies; (2) community-based correctional education; and (3) juvenile justice education. The Secretary also imposes requirements related to the priorities and other matters, and will use new selection criteria in evaluating applications submitted for this competition only.

EFFECTIVE DATE: The provisions in this notice take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you wish to know the effective date, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Gail M. Schwartz or Christopher Koch, U.S. Department of Education, 400 Maryland Avenue, SW., room 4529, Switzer Building, Washington, DC. 20202–7242. Telephone: (202) 205–5621. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Cooperative Demonstration Program provides financial assistance for, among other things, model projects that demonstrate successful cooperation between the private sector (including employers, consortia of employers, labor organizations, building trade councils, and private agencies, organizations, and institutions) and public agencies in vocational education (including State boards for vocational education, State or local corrections or correctional education agencies, or eligible recipients as defined in 34 CFR 400.4). This program can help further the purposes of the National Education Goals; specifically, the correctional education priority directly supports the Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The designation of correctional education as a priority under the Cooperative Demonstration program is based on the critical problems of illiteracy and recidivism pervading our Nation's adult and juvenile corrections population. The U.S. Department of Education's National Adult Literacy Survey Report, "Literacy Behind Prison Walls" described a 70 percent illiteracy rate among a sample of prisoners as follows:

> About seven in ten prisoners * * * are apt to experience difficulty in performing tasks that require them to integrate or synthesize information from complex or lengthy texts or to perform quantitative tasks that involve two or more sequential operations and that require the individual to set up the problem (1993, p. vi).

Additionally, a recent study, "Vocational and Academic Indicators of Parole Success," published in the *Journal of Correctional Education*, found that inmates who had received academic and vocational training while in prison were more likely to be employed and less likely to commit crimes after their release than other inmates (Schumacker, et al., 1990).

Academic and vocational training is also critical for probationers and parolees, since the majority of the Nation's criminal offenders are serving sentences within community corrections settings. According to the Bureau of Justice Statistics, there were about 3.5 million adults under correctional supervision in the United States at the beginning of 1993. Of these, 2.6 million, or 74 percent, were under active probation or parole supervision within the community.

Educational programs for criminal offenders that use applied learning strategies to teach life skills, job skills, and literacy can reduce the likelihood that the offenders will return to the criminal justice system. After completing their sentences, ex-offenders often have limited opportunities for meaningful employment and lack necessary basic life skills, including the job-seeking and job-retention skills needed to obtain and maintain employment. Without basic literacy and job skills, it is unlikely that these persons will become fully productive members of society.

On April 6, 1994, the Secretary published a notice of proposed priorities, required activities, selection criteria, and other requirements for the Cooperative Demonstration Program (Correctional Education) in the **Federal Register** (59 FR 16192).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, 18 parties submitted comments. An analysis of the specific comments follows:

Absolute and Invitational Priorities

Comments: One commenter recommended that priority be given to programs that build on correctional education projects previously funded under the Cooperative Demonstration Program.

Discussion: The Secretary intended that previously funded correctional education demonstration grants, awarded in September 1992, include plans for continuing after Federal funding ends, as demonstrated by the selection criteria used in the earlier competition. The Secretary believes that while expanding previously funded programs may indeed be worthwhile, other projects should be afforded the opportunity to compete for these limited Federal funds. Nevertheless, previously funded projects are eligible to apply for funds under this competition on the same basis as other projects.

Changes: None.

Comments: Several commenters made suggestions for more comprehensive services to be identified under the proposed priorities, including: pre-vocational assessment, individual training plans for students, case management as an approach to providing social services for released offenders, student retention as an outcome measure, use of support systems in the community, and the availability of non-traditional vocational training programs for female offenders. One commenter recommended that invitational priorities be created for offenders with special learning needs and histories of substance abuse. One commenter also recommended that the coordination of the academic, vocational, and substance abuse treatment components be an integral feature of the funded projects.

Discussion: The Secretary acknowledges that all of these components would provide more comprehensive services and, under the existing priority, they may be included in an application at the applicant's discretion. The priority has been designed to allow an applicant flexibility and creativity to meet the needs that exist in its own institution or community.

Changes: None.

Comments: One commenter suggested that eligibility be expanded to include those who are not former offenders. This commenter also proposed that Federal funds be used to pay for internships in for-profit institutions.

Discussion: The Secretary believes that this competition should be limited to projects that will serve criminal offenders under the supervision of the justice system, including those on probation and parole. As discussed elsewhere in this notice, this priority was chosen based on the critical problems of literacy and recidivism pervasive among the adult and juvenile corrections population.

With respect to the comment concerning the use of Federal funds to pay for internships in for-profit institutions, the Secretary does not believe that this type of assistance is necessary for the successful completion of projects that address the absolute priority established in this notice.

Changes: None.

Comments: One commenter suggested aligning the priority with the School-to-Work Opportunities Act and national skill standards. In addition, the commenter recommended that the priority reflect current U.S. Department of Labor policy regarding education and workforce development.

Discussion: The Secretary believes the priority is consistent with the School-to-Work Opportunities Act and the Goals 2000: Educate America Act. For example, the priority includes such components as work-based and school-based learning, transition activities, and partnerships between public and private agencies, required in the School-to-Work Opportunities Act. The priority also targets the National Education Goals of adult literacy and life long learning.

The Goals 2000: Educate America Act established a Skills Standards Board. A primary responsibility of the Board will be to coordinate the development of voluntary national skill standards. At this time, national skill standards do not exist; therefore, applicants are

vocational, and substance abuse treatment components be an integral feature of the funded projects.

Discussion: The Secretary acknowledges that all of these components would provide more comprehensive services and, under the existing priority, they may be included in an application at the applicant's discretion. The priority has been designed to allow an applicant flexibility and creativity to meet the needs that exist in its own institution or community.

Changes: None.

Comments: One commenter suggested that eligibility be expanded to include those who are not former offenders. This commenter also proposed that Federal funds be used to pay for internships in for-profit institutions.

Discussion: The Secretary believes that this competition should be limited to projects that will serve criminal offenders under the supervision of the justice system, including those on probation and parole. As discussed elsewhere in this notice, this priority was chosen based on the critical problems of literacy and recidivism pervasive among the adult and juvenile corrections population.

With respect to the comment concerning the use of Federal funds to pay for internships in for-profit institutions, the Secretary does not believe that this type of assistance is necessary for the successful completion of projects that address the absolute priority established in this notice.

Changes: None.

Comments: One commenter suggested aligning the priority with the School-to-Work Opportunities Act and national skill standards. In addition, the commenter recommended that the priority reflect current U.S. Department of Labor policy regarding education and workforce development.

Discussion: The Secretary believes the priority is consistent with the School-to-Work Opportunities Act and the Goals 2000: Educate America Act. For example, the priority includes such components as work-based and school-based learning, transition activities, and partnerships between public and private agencies, required in the School-to-Work Opportunities Act. The priority also targets the National Education Goals of adult literacy and life long learning.

The Goals 2000: Educate America Act established a Skills Standards Board. A primary responsibility of the Board will be to coordinate the development of voluntary national skill standards. At this time, national skill standards do not exist; therefore, applicants are encouraged to use common standards that have been developed by trade and professional associations, such as the National Occupational Competency Testing Institute and the Vocational-Technical Education Consortium of States, or other standards that are being utilized in current training programs, including those being developed by organizations under contract with the Departments of Education and Labor.

Changes: None.

Comments: One commenter stated that, as currently written, the absolute priority rendered them ineligible because their State legislature mandates that instruction be separate from custody.

Discussion: The Secretary acknowledges the unique circumstances surrounding education and vocational training programs for incarcerated and detained individuals. This competition, however, is specifically designed to include all criminal offenders including those in community corrections settings and, therefore, does not exclude State systems that separate custody from instruction, as long as a private sector entity is involved in the proposed project as well.

Changes: None.

Definitions

Comments: One commenter requested that the definition of "community corrections" be expanded to include individuals who may not be under the supervision of a parole or probation officer and are in the community, e.g., halfway house residents, pre-release residents, or work release program participants.

Discussion: Under the absolute priority, individuals under the supervision of the criminal justice system, including halfway house residents, pre-release residents and work release program participants, are eligible to be served. (34 CFR 400.4 defines "criminal offender" as any individual who is charged with, or convicted of, any criminal offense, including a youth offender or a juvenile offender and "correctional institution" as any prison, jail, reformatory, work farm, detention center, or halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.) Only invitational priority 2—community corrections is limited to criminal offenders under the supervision of a parole or probation officer.

Changes: None.

Comments: One commenter suggested that the definition of "life skills" be aligned with the recommendations in a report issued by the Department of Labor, the Secretary's Commission on Achieving Necessary Skills (SCANS). The commenter suggested that the life skills definition be expanded to include a number of basic, thinking, interpersonal, and resource management skills including moral, social and religious values, managing personal finances, and human resources management.

Discussion: The definition of "life skills" is consistent with many of the workplace competencies identified in SCANS. In this notice, "life skills" is broadly defined to include self-development, communication, job development, and education; however, certain limitations do exist. For example, "life skills" does not include moral, social and religious values, personal finances, and human resource management because these activities are not the types of assistance that are necessary for the success of projects that address the absolute priority established in this notice. Therefore, these are not included in the definition of "life skills."

Changes: None.

Selection Criteria

Comments: One commenter believed the State's colleges would be ineligible for assistance under the priority because the "Program Factors" selection criterion rewards correctional education programs that provide learning situated at worksite locations outside of institutions and requires interdisciplinary staff in-service education that includes security personnel.

Discussion: The purpose of this competition is to demonstrate successful cooperation between the private sector and public agencies in vocational education programs, and to provide transition from correctional education programs to productive employment. This includes, among other things, work experience or employment based learning programs. The priority and selection criteria, however, do not stipulate where the work experience is to occur or how it may be accomplished, thus allowing the applicant creativity and flexibility in developing a model.

Interdisciplinary staff in-service education involving security personnel is an important component found in comprehensive correctional education programs already funded by the Department of Education and, for this reason, is reflected in the selection criteria. Such interaction supports team building and an education system that

is mutually beneficial to both education and corrections staff.

Changes: None.

Other Requirements

Comments: Two commenters expressed concern regarding the requirement that projects funded under this competition not spend more than 10 percent of their grant funds for equipment. The commenters indicated that the Secretary's invitational priority for applications that incorporate the use of interactive instructional technologies, such as distance learning, in the context of both student learning and staff in-service training, would require a substantial investment in equipment.

Discussion: The Secretary believes that limiting the amount of Federal funds used to purchase equipment to a maximum of 10 percent is appropriate for this competition. The Secretary also emphasizes that, while the use of Federal funds for equipment is limited to not more than 10 percent, matching funds may be used for this purpose.

The primary purpose of this competition is to enhance, expand, and demonstrate successful training programs. If more than 10 percent of the Federal funds were to be used to purchase equipment, the intended purpose of the projects would be diminished. This restriction will help ensure that the funds available are used where they are needed most to train students.

Projects funded under the Cooperative Demonstration Program must be capable of wide replication. If a large percentage of Federal funds are used to purchase equipment, the possibilities for replication become limited. The Secretary therefore, believes it is necessary to limit the use of Federal funds for equipment purchases, to ensure that project replication is possible and to improve accountability of funds for direct training of students.

Changes: None.

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only model projects that demonstrate ways in which public agencies in vocational education and the private sector can work together effectively to assist vocational education students who are criminal offenders under the supervision of the justice system to attain the advanced level of skills they need to make a successful transition from correctional education programs to productive employment including—

(a) Work experience or apprenticeship programs;

(b) Transitional worksite job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(c) Placement services in occupations that the students are preparing to enter;

(d) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas; or

(e) Employment-based learning programs.

Required Activities

The Secretary requires that any projects funded under this competition—

(a) Coordinate with community agencies that furnish transitional supportive services to criminal offenders such as individual and family counseling, housing assistance, transportation, and social and cultural activities;

(b) Include a well-designed staff inservice education component to insure the effective implementation of the program;

(c) Address the special learning needs of offenders;

(d) Use applied learning strategies to teach life skills, jobs skills, and literacy;

(e) If applicable, provide for a transition from institutional environments to community settings;

(f) Address State and local labor shortages and consult the State Occupational Information Coordinating Committee or State Labor Market Information Unit in making this determination; and

(g) Must submit proof of committed partnerships between public agencies and the private sector. The definitions of "private" and "public" contained in 34 CFR 77.1 do not include entities under the supervision or control of the Federal Government; thus, Federal entities, including Federal prisons, are not eligible members of the partnerships required by 34 CFR 426.4(b).

This program activity is authorized by section 420A(a)(2) of the Perkins Act (Pub. L. 101–392, 104 Stat. 753 (1990)).

Invitational Priorities

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Advanced Technologies

Projects that incorporate the use of interactive instructional technologies, such as distance learning, in the context of both student training and staff inservice training.

Invitational Priority 2—Community Corrections

Projects that provide integrated vocational and academic education to individuals on probation or parole in community corrections.

Invitational Priority 3—Juvenile Justice Education

Projects that provide integrated vocational and academic education to students in the juvenile justice system. This may include youth placed in detention centers, training schools, boot camps, or community-based programs.

Definitions

As used in this notice—

"Applied learning" is actively student-oriented, characterized by lively classroom discussions, absorbing group projects, meaningful homework assignments, laboratory experiments, live and videotaped presentations, and other hands-on activities. The purpose of applied learning is to create an environment that actively engages students and teachers in a collaborative learning process.

"Community corrections" refers to programs serving probationers and parolees.

"Life skills" includes self-development, communication skills, job development, and education.

"Literacy" means an individual's ability to read, write, and speak in English and compute and solve problems, at levels of proficiency necessary to function on the job and in society, to achieve one's goals, and to develop one's knowledge and potential.

Criteria for Evaluating Applications

For the FY 1995 grant competition under the Cooperative Demonstration program (Correctional Education) only, the Secretary uses the selection criteria and assigned points in 34 CFR 426.21 with the exception of 34 CFR 426.21(a) and (b), which are replaced with the following:

(a) *Program factors.* (25 points) The Secretary reviews the application to assess the quality of the proposed project, including the extent to which the proposed project will provide—

(1) Integrated academic and vocational activities that reflect current and projected labor market trends and are based upon the Secretary of Labor's Commission on Achievement of Necessary Skills (SCANS) report recommendations;

(2) Transition from correctional education programs to productive employment including one or more of the following:

(i) Work experience or apprenticeship projects.

(ii) Transitional worksite job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient.

(iii) Placement services in occupations that the students are preparing to enter.

(iv) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas.

(v) Employment-based learning programs.

(3) Post-sentence transitional services and follow-up assistance;

(4) Interdisciplinary staff in-service education that includes security personnel;

(5) Inmate assessment that addresses academic, vocational and special learning needs;

(6) Ongoing occupational counseling to assist with the development of an individual vocational plan;

(7) Coordination with community agencies that furnish transitional supportive services to criminal offenders such as individual and family counseling, housing assistance, transportation, and social and cultural activities;

(8) Coordination with the State Occupational Information Coordinating Committee or State Labor Market Information Unit in determining State and local labor shortages; and

(9) Adequate and appropriate involvement and cooperation of the public and private sectors in the projects, including—

(i) A clear identification of the public and private sector involvement in the planning of the project;

(ii) A description of public and private sector involvement in the planning of the project including letters of commitment; and

(iii) A description of public and private sector involvement in the operation of the project.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of education for criminal offenders;

Commission on Achievement of Necessary Skills (SCANS) report recommendations;

(2) Transition from correctional education programs to productive employment including one or more of the following:

(i) Work experience or apprenticeship projects.

(ii) Transitional worksite job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient.

(iii) Placement services in occupations that the students are preparing to enter.

(iv) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas.

(v) Employment-based learning programs.

(3) Post-sentence transitional services and follow-up assistance;

(4) Interdisciplinary staff in-service education that includes security personnel;

(5) Inmate assessment that addresses academic, vocational and special learning needs;

(6) Ongoing occupational counseling to assist with the development of an individual vocational plan;

(7) Coordination with community agencies that furnish transitional supportive services to criminal offenders such as individual and family counseling, housing assistance, transportation, and social and cultural activities;

(8) Coordination with the State Occupational Information Coordinating Committee or State Labor Market Information Unit in determining State and local labor shortages; and

(9) Adequate and appropriate involvement and cooperation of the public and private sectors in the projects, including—

(i) A clear identification of the public and private sector involvement in the planning of the project;

(ii) A description of public and private sector involvement in the planning of the project including letters of commitment; and

(iii) A description of public and private sector involvement in the operation of the project.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of education for criminal offenders;

(2) To use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(3) To base the proposed project on successfully designed, established, and operated model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data that demonstrate impact from those programs in factors such as—

(i) Student performance and achievement;

(ii) GED completion; and

(iii) Post-sentence employment or enrollment in education or training programs or both.

Other Requirements

Purchase of Equipment

The projects funded under this competition may expend up to 10 percent of Federal funds for equipment as defined in 34 CFR 74.132 and 80.3.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR Parts 400 and 426.

Program Authority: 20 U.S.C. 2420a.

(Catalog of Federal Domestic Assistance Number 84.199D Cooperative Demonstration Program)

Dated: July 6, 1994.

Augusta Souza Kappner,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 94–16902 Filed 7–12–94; 8:45 am]

BILLING CODE 4000-01-P

[CFDA No.: 84.199D]

Cooperative Demonstration Program (Correctional Education); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Cooperative Demonstration Program (Correctional Education) provides financial assistance for the development of model projects that would demonstrate successful cooperation between the private sector and public agencies in vocational education programs that serve criminal offenders under the supervision of the criminal justice system.

Eligible Applicants: (1) State educational agencies; (2) local educational agencies; (3) postsecondary educational institutions; (4) institutions of higher education; and (5) other public and private agencies, organizations, and institutions.

Deadline for Transmittal of Applications: September 2, 1994.

Deadline for Intergovernmental Review: November 1, 1994.

Available Funds: $2,000,000.

Estimated Range of Awards: $300,000– $600,000.

Estimated Average Size of Awards: $500,000 for project period.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR Parts 400 and 426.

Priorities

The priorities in the notice of final priority, required activities, and selection criteria for the Cooperative Demonstration Program (Correctional Education), as published elsewhere in this issue of the **Federal Register**, apply to this competition.

Selection Criteria

For the FY 1995 grant competition (for awards to be made in FY 1995 using FY 1994 funds) under the Cooperative Demonstration Program (Correctional Education), the Secretary uses the following selection criteria to evaluate applications for new grants for this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Program factors.* (25 points) The Secretary reviews the application to assess the quality of the proposed project, including the extent to which the proposed project will provide—

(1) Integrated academic and vocational activities that reflect current and projected labor market trends and are based upon the Secretary of Labor's Commission on Achievement of Necessary Skills (SCANS) report recommendations;

(2) Transition from correctional education programs to productive employment including one or more of the following:

(i) Work experience or apprenticeship projects.

(ii) Transitional worksite job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient.

(iii) Placement services in occupations that the students are preparing to enter.

(iv) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas.

(v) Employment-based learning programs.

(3) Post-sentence transitional services and follow-up assistance;

(4) Interdisciplinary staff in-service education that includes security personnel;

(5) Inmate assessment that addresses academic, vocational and special learning needs;

(6) Ongoing occupational counseling to assist with the development of an individual vocational plan;

(7) Coordination with community agencies that furnish transitional supportive services to criminal offenders such as individual and family counseling, housing assistance, transportation, and social and cultural activities;

(8) Coordination with the State Occupational Information Coordinating Committee or State Labor Market Information Unit in determining State and local labor shortages; and

(9) Adequate and appropriate involvement and cooperation of the public and private sectors in the projects, including—

(i) A clear identification of the public and private sector involvement in the planning of the project;

(ii) A description of public and private sector involvement in the planning of the project including letters of commitment; and

(iii) A description of public and private sector involvement in the operation of the project.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of education for criminal offenders;

(2) To use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(3) To base the proposed project on successfully designed, established, and operated model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data that demonstrate impact from those programs in factors such as—

(i) Student performance and achievement;

(ii) GED completion; and

(iii) Post-sentence employment or enrollment in education or training programs or both.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Disseminating the results of the project in a manner that would meet the requirement in 34 CFR 426.31.

(3) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(4) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(5) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(6) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which the—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which the—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

Cost Sharing

A recipient of an award under this competition must provide not less than 25 percent of the total cost (the sum of the Federal and non-Federal shares) of the project it conducts. The non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on May 3, 1994 (59 FR 22904–22905).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.199D, U.S. Department of Education, Room 4161, 400 Maryland Avenue, S.W., Washington, D.C. 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.199D), Washington, D.C. 20202–4725 or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.199D), Room 3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C. 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

To apply for an award under this program competition, applications must be organized in the following order and include the following five parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)).

Part II: Budget Information.
Part III: Budget Narrative.
Part IV: Program Narrative.
Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL-A) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

All forms and instructions are included as Appendix A of this notice.

To assist potential applicants, questions and answers pertaining to this program are included as Appendix B.

All applicants must submit ONE *original signed application*, including ink signatures on all forms and assurances and six *copies of the application*. Please mark each application as original or copy. Local or State agencies may choose to submit two copies with the original.

No grant may be awarded unless a *completed* application form has been received. (20 U.S.C. 1241–1391)

For Further Information Contact: Gail M. Schwartz, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512—MES), Washington, DC 20202–7242. Telephone (202) 205–5621. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Gopher Server at GOPHER.ED.GOV (under announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 2420(a).

Dated: July 6, 1994.

Augusta Souza Kappner,

Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction
5. APPLICANT INFORMATION	
Legal Name:	
Address (give city, county, state, and zip code):	
6. EMPLOYER IDENTIFICATION NUMBER (EIN):	
8. TYPE OF APPLICATION: ☒ New ☐ Continuat	
If Revision, enter appropriate letter(s) in box(es): ☐ A Increase Award B Decrease Award D Decrease Duration Other (specify):	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4	
TITLE: Cooperative Demonstration (Correctional Education)	
12. AREAS AFFECTED BY PROJECT (cities, counties, state	
13. PROPOSED PROJECT: Start Date / Ending Date	14. CONGRESS: a. Applicant
15. ESTIMATED FUNDING:	
a. Federal	$
b. Applicant	$
c. State	$
d. Local	$
e. Other	$
f. Program Income	$
g. TOTAL	$
16. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DAT AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT	
a. Typed Name of Authorized Representative	
c. Signature of Authorized Representative	

Previous Editions Not Usable

A

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State · H Independent School Dist.
B County · I State Controlled Institution of Higher Learning
C Municipal · J Private University
D Township · K Indian Tribe
E Interstate · L Individual
F Intermunicipal · M Profit Organization
G Special District · N Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award · B Decrease Award · C Increase Duration
D Decrease Duration · Other (specify): _____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 9 9D

TITLE: Cooperative Demonstration Program (Correctional Education)

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by

1.	Personnel
2.	Fringe Benefits (Rate
3.	Travel
4.	Equipment
5.	Supplies
6.	Contractual
7.	Other
8.	Total, Direct Cost (lines 1 through 7)
9.	Indirect Cost (Rate %)
10.	Training Costs/Stipends
11.	TOTAL, Federal Funds Req (lines 8 through 10)

SECTION B - Cost Sharing Summa

1.	Cash Contribution
2.	In-Kind Contribution (only costs specifically for this project)
3.	TOTAL, Cost Sharing (Rat

NOTE: For FULLY-FUNDED P
12-month budget per
budget period; and

For MULTI-YEAR PRO
month budget perio
budget period; Col
period; and Column
period.

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C	D
1. Personnel				
2. Fringe Benefits (Rate %)				
3. Travel				
4. Equipment				
5. Supplies				
6. Contractual				
7. Other				
8. Total, Direct Cost (lines 1 through 7)				
9. Indirect Cost (Rate %)				
10. Training Costs/Stipends				
11. TOTAL, Federal Funds Requested (lines 8 through 10)				

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C	D
1. Cash Contribution				
2. In-Kind Contribution (only costs specifically for this project)				
3. TOTAL, Cost Sharing (Rate %)				

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; Column C to record the third 12-month budget period; and Column D to record the fourth 12-month budget period.

Section C - Budget Estimates (Federal Funds Only) For Balance of Project Budget Periods

Second	Third	Fourth	Fifth

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personnel property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST, not of Federal funds.

BILLING CODE 4000-01-C

Instructions for Part III—Budget Narrative

Prepare a detailed Budget Narrative for the first year of the project that justifies, and/or clarifies the budget figures shown in Section A. Explain:

1. How personnel costs are calculated—provide yearly and/or hourly rates; for other than full-time staff, provide hours per day, week, month, and year.
2. The basis used to estimate certain costs (professional personnel, consultants, travel, indirect costs) and any other cost that may appear unusual;
3. How the major cost items relate to the proposed project activities (refer to application page);
4. The costs of the project's evaluation component;
5. What matching occurs in each budget category; and provide estimated budget totals for the second, third, fourth, and fifth years of the project.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the *selection criteria*. Because your application will be reviewed and rated by a review panel

Instructions for Part III—Budget Narrative

Prepare a detailed Budget Narrative for the first year of the project that justifies, and/or clarifies the budget figures shown in Section A. Explain:

1. How personnel costs are calculated—provide yearly and/or hourly rates; for other than full-time staff, provide hours per day, week, month, and year.
2. The basis used to estimate certain costs (professional personnel, consultants, travel, indirect costs) and any other cost that may appear unusual;
3. How the major cost items relate to the proposed project activities (refer to application page);
4. The costs of the project's evaluation component;
5. What matching occurs in each budget category; and provide estimated budget totals for the second, third, fourth, and fifth years of the project.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the *selection criteria*. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly requests you limit the program narrative to no more than 30 double-spaced, typed pages (on one side only), although the Secretary will consider your application if it is longer. Be sure to number consecutively *ALL* pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

You are advised that:

(a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (EDGAR Sec. 75.217)

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments which pertain to the established technical review criteria, such as commitment and resources.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, D.C. 20503.
(Information collection approved under OMB control number 1830–0013. Expiration date: 2/28/95.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with fl
purchase requirements of Section
Flood Disaster Protection Act of 197
which requires recipients in a specia
area to participate in the program
flood insurance if the total cost
construction and acquisition is $10,0

11. Will comply with environmental st
may be prescribed pursuant to the
institution of environmental qu
measures under the National E
Policy Act of 1969 (P.L. 91-190) a
Order (EO) 11514; (b) notificatio
facilities pursuant to EO 11738; (c)
wetlands pursuant to EO 11990; (d)
flood hazards in floodplains in accor
11988; (e) assurance of project con
the approved State manageme
developed under the Coastal Zone
Act of 1972 (16 U.S.C. §§ 1451
conformity of Federal actions to Sta
Implementation Plans under Sectio
Clear Air Act of 1955, as amended
7401 et seq.); (g) protection of underg
of drinking water under the Safe Dr
Act of 1974, as amended, (P.L. 93-
protection of endangered specie
Endangered Species Act of 1973, as a
93-205).

12. Will comply with the Wild and Scen
of 1968 (16 U.S.C. §§ 1271 et seq
protecting components or potential c
the national wild and scenic rivers sy

SIGNATURE OF AUTHORIZED CERTIFYING OFFI
APPLICANT ORGANIZATION

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. N
include the identification number(s) of each affe

(f) Taking one of the following actions, within 30
of receiving notice under subparagraph (d)(2), w
any employee who is so convicted–

(1) Taking appropriate personnel action against
employee, up to and including termination, cons
requirements of the Rehabilitation Act of 1973, a

(2) Requiring such employee to participate satisf
drug abuse assistance or rehabilitation program
such purposes by a Federal, State, or local health
enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to mai
drug-free workplace through implementation of
(a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided
site(s) for the performance of work done in conne
specific grant:

Place of Performance (Street address, city, county
code)

Check ☐ if there are workplaces on file that are n
here.

As the duly authorized representative of the appli

NAME OF APPLICANT
PRINTED NAME AND TITLE OF AUTHORIZED
SIGNATURE

ED 80-0013

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSU

Complete this form to
(See r

1. Type of Federal Action:
   - a. contract
   - b. grant
   - c. cooperative agreement
   - d. loan
   - e. loan guarantee
   - f. loan insurance

2.

4. Name and Address of Reporting Entity:
   - Prime
   - Subawardee
     Tier _____, if

Congressional District, *if known*:

6. Federal Department/Agency:

8. Federal Action Number, *if known*:

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

(attach

11. Amount of Payment *(check all that apply)*:
$ _____ actual

12. Form of Payment *(check all that apply)*:
- a. cash
- b. in-kind; specify: nature _____
  value _____

14. Brief Description of Services Performed or
or Member(s) contacted, for Payment Indic

(attach

15. Continuation Sheet(s) SF-LLL-A attached:

16. Information requested through this form is authorized by t
section 1352. This disclosure of lobbying activities is a mate
of fact upon which reliance was placed by the tier above wh
transaction was made or entered into. This disclosure is req
31 U.S.C.1352. This information will be reported to the Co
annually and will be available for public inspection. Any pe
file the required disclosure shall be subject to a civil penalty
$10,000 and not more than $100,000 for each such failure.

Federal Use Only:

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSU

Reporting Entity: _____

BILLING CODE 4000-01-C

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

BILLING CODE 4000-01-C

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of applications is optional.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the requirements of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous preapplication consultation is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we will request the project directors and evaluators of funded projects to attend an annual project directors meeting, you should include annual trips for each to Washington, DC., in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," simply state in writing that you are meeting a proscribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC. 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act) (Public Law 101–392, 104 Stat. 753 (1990)).

(2) State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education Final Regulations, 34 CFR Parts 400 and 426.

(3) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Q. What are the Department of Education's Program Effectiveness Panel and National Diffusion Network?

A. The Program Effectiveness Panel (PEP) is the Department of Education's primary mechanism for validating the effectiveness of educational programs developed by schools, universities, and other agencies. The National Diffusion Network (NDN) is a Federally funded dissemination system that helps public and private schools, colleges, and other educational institutions improve by sharing successful education programs, products, and processes.

Regulations governing PEP and NDN are codified at 34 CFR Parts 785–789. For information about PEP, prospective applicants may wish to read *Making the Case: Evidence of Effectiveness in Schools and Classrooms*, which contains criteria and guidelines for submitting project results to PEP. This publication, as well as information about NDN, is available from RMC Research Corporation, 1000 Market Street, Portsmouth, New Hampshire 03801. Telephone 1–800–258–0802. RMC Research Corporation can also provide information about consultants who have conducted evaluations that have been approved by PEP.

[FR Doc. 94–16903 Filed 7–12–94; 8:45 am]

BILLING CODE 4000–01–P

who have conducted evaluations that have been approved by PEP.

[FR Doc. 94–16903 Filed 7–12–94; 8:45 am]
BILLING CODE 4000–01–P

VOL
5 9
ISS
1
3
3
JL
1 3
994
IM I

federal register

federal register

Wednesday
July 13, 1994

Part III

Department of Education

Notices of Fund Availability and Inviting Applications for a New Award Under the Knowledge Dissemination and Utilization Program

VOL 59 ISS 133 13 JL 1994 UMI

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of a final funding priority for fiscal year 1994–1995 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary announces a funding priority for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

EFFECTIVE DATE: This priority take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland. Telephone: (202) 205–9739. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains a priority for a project to support the international exchange of information and experts.

Authority for the D&U program is contained in sections 202 and 204(a) and 204(b)(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations.

This priority supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 355.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priority in this notice is consistent with the long-range planning process.

On May 16, 1994 the Secretary published a notice of proposed priorities in the **Federal Register** at (59 FR 25528). The Department of Education received 12 letters commenting on the proposed priorities. Modifications were made to the priorities as a result of those comments. The comments, and the Secretary's responses to them, are discussed in an appendix to this notice.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

PRIORITY: Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this program only applications that meet this absolute priority:

Priority: International Exchange of Information and Experts

Background

Since 1973, NIDRR has had statutory authority to conduct international research and development and to exchange rehabilitation and special education experts with other nations. International research and development activities significantly can change the perspectives of service providers and researchers, provide data for the evaluation of domestic programs, and offer new insights and new practices that can solve some of the old rehabilitation problems. Learning about the technical and cultural aspects of other countries' rehabilitation practices may assist U.S. rehabilitation practioners to improve the effectiveness of the services they provide, especially for minority and immigrant populations.

In the past, NIDRR approached international activities in two ways. NIDRR funded two projects to facilitate fellowships of non-governmental experts to other countries to gather data on practices, legislation, and policy. NIDRR also engaged in international activities on a government-to-government basis, participating in international policy and data generation through international organizations such as the U.N., Federal agencies such as the Department of State and the Peace Corps, direct grants to foreign research agencies, participation in foreign research consortia and conferences, and facilitation of site visits and study tours for foreign visitors.

In order to enhance the impact of international activities on the U.S. rehabilitation field, NIDRR now seeks to fund a single project that will facilitate the exchange of both domestic and foreign experts in rehabilitation research and technical assistance; facilitate international conferences; disseminate useful information to rehabilitation personnel and researchers, independent living centers, and families; assist in relevant site visitations by foreign government officials; and develop training modules that increase participation in international activities by rehabilitation practitioners, policymakers, and individuals with disabilities.

Priority

A project on the international exchange of information and experts shall—

- Gather information on international rehabilitation issues, legislation, and programs, and maintain a database of such information that is available to relevant research projects and training projects, including those supported by NIDRR, the Office of Special Education Programs (OSEP), and the Rehabilitation Services Administration (RSA);
- Include individuals with disabilities to the maximum extent possible in all project activities;
- Facilitate small annual conferences to explore international issues or to share rehabilitation information and data with other governments;
- Assist foreign and domestic professionals or consumers to plan trips by identifying potential sites and contact persons at each site;
- Establish an international exchange of research and technical assistance experts between foreign nations and the U.S.;
- Share information with other Federal government agencies in order to assist them in the development of their research priorities in the area of disability;
- Publish and disseminate data and information to relevant target audiences on relevant policy issues and legislation, which are identified in conjunction with NIDRR;
- Develop training activities and materials to sensitize rehabilitation personnel, including special education personnel, to cultural differences that can affect rehabilitation needs and approaches; and
- Develop training activities and materials on comparative research techniques, bilateral consultation and technical assistance, utilizing the different international and cultural perspectives.

APPLICABLE PROGRAM REGULATIONS: 34 CFR Parts 350 and 355. Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Dated: June 7, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Analysis of Comments and Changes

The Department received 12 letters in response to the Notice of Proposed Priority. This Appendix contains an analysis of the comments and of the changes in the priority since the publication of the Notice of Proposed Priority. The Appendix does not address technical changes, suggested changes the Secretary is not legally authorized to make under applicable statutory authority, and comments that are outside the scope of the proposed priority such as the size of the award, the length of the project period, or the number of projects that will be awarded.

Comment: One commenter suggested that the project research employment systems in the other countries.

Discussion: The Secretary believes that applicants may propose to address employment systems that are related to rehabilitation issues, legislation, and programs. The Secretary believes that applicants should be given the discretion to propose issues that the project will address.

Changes: None.

Comment: One commenter suggested that the project should work in collaboration with other countries.

Discussion: The Secretary agrees and points out that the priority requires the project to "Establish an international exchange of research and technical assistance experts between foreign nations and the U.S." The Secretary does not believe any further requirements are necessary.

Changes: None.

Comment: Three commenters observed that the requirement to maintain a library was a significant expense that would consume a disproportionate amount of the project's resources. The commenters suggested requiring that the project maintain a database instead of a library.

Discussion: The Secretary agrees that maintaining a library may be beyond the resources available to the project. The Secretary also agrees with the suggestion to require the project to maintain a database instead of a library.

Changes: The project is required to maintain a database instead of a library.

Comment: Two commenters suggested that the project's various activities address policy as well as programmatic issues.

Discussion: The Secretary believes that the priority provides the project with the authority to address policy and

Dated: June 7, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Analysis of Comments and Changes

The Department received 12 letters in response to the Notice of Proposed Priority. This Appendix contains an analysis of the comments and of the changes in the priority since the publication of the Notice of Proposed Priority. The Appendix does not address technical changes, suggested changes the Secretary is not legally authorized to make under applicable statutory authority, and comments that are outside the scope of the proposed priority such as the size of the award, the length of the project period, or the number of projects that will be awarded.

Comment: One commenter suggested that the project research employment systems in the other countries.

Discussion: The Secretary believes that applicants may propose to address employment systems that are related to rehabilitation issues, legislation, and programs. The Secretary believes that applicants should be given the discretion to propose issues that the project will address.

Changes: None.

Comment: One commenter suggested that the project should work in collaboration with other countries.

Discussion: The Secretary agrees and points out that the priority requires the project to "Establish an international exchange of research and technical assistance experts between foreign nations and the U.S." The Secretary does not believe any further requirements are necessary.

Changes: None.

Comment: Three commenters observed that the requirement to maintain a library was a significant expense that would consume a disproportionate amount of the project's resources. The commenters suggested requiring that the project maintain a database instead of a library.

Discussion: The Secretary agrees that maintaining a library may be beyond the resources available to the project. The Secretary also agrees with the suggestion to require the project to maintain a database instead of a library.

Changes: The project is required to maintain a database instead of a library.

Comment: Two commenters suggested that the project's various activities address policy as well as programmatic issues.

Discussion: The Secretary believes that the priority provides the project with the authority to address policy and programmatic issues. The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: Two commenters observed that the requirement to "Assist both foreign and domestic professionals or consumers to plan trips * * * through the development and listing of potential sites" was a significant expense that would consume a disproportional amount of the project's resources.

Discussion: The Secretary believes that the requirement to *develop* (emphasis added) and list potential sites may be interpreted to require the project to undertake activities that are beyond the resources that will be available to the project. The Secretary believes that the project should assist professionals and consumers to plan trips by identifying potential sites and contact persons at each site.

Changes: The project is required to assist foreign and domestic professionals or consumers to plan trips by identifying potential sites and contact persons at each site.

Comment: One commenter recommended that the priority be revised to require that the majority of people who are exchanged be individuals with disabilities. A second commenter observed that project activities that are directed by individuals with disabilities are the most effective.

Discussion: The Secretary believes that the project should include individuals with disabilities to the maximum extent possible in all aspects of the project.

Changes: The priority has been revised to require that the project include individuals with disabilities to the maximum extent possible in all project activities.

Comment: One commenter suggested that the project provide training to mainstream international educational exchange programs on equalizing opportunities for young persons with disabilities to participate in existing international educational opportunities.

Discussion: The Secretary recognizes the need to increase opportunities for young persons with disabilities to participate in existing international educational opportunities. However, the Secretary believes that such an activity is outside the scope of the priority.

Changes: None.

Comment: One commenter suggested that the international exchange of experts and technical assistance should address skills needed for creating policy and writing and passing legislation.

Discussion: The Secretary believes that the priority authorizes an applicant to address creating policy and writing and passing legislation that bears upon rehabilitation issues. The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: One commenter suggested that special emphasis should be given to activities that teach technical skills and provide employment opportunities for individuals with disabilities and that produce assistive technology that will improve access for individuals with disabilities. The commenter also suggested that special emphasis should be given to leadership training activities for individuals with disabilities and to women with disabilities in exchanges of information and expertise.

Discussion: The Secretary believes that the areas of special emphasis suggested by the commenter are authorized by the priority. However, the Secretary believes that applicants should have the discretion to propose a special emphasis on one or more selected issues.

Changes: None.

Comment: One commenter suggested revising the priority to clarify whether the primary purpose of the project is to acquire knowledge which can be applied to the U.S., and not to disseminate knowledge from the U.S. to other countries.

Discussion: The Secretary points out that the Background statement indicates that the purpose of this project is to "assist U.S. rehabilitation practioners to improve the effectiveness of the services they provide * * *" and "enhance the impact of international activities on the rehabilitation field." The Secretary agrees there is a need to clarify that the reference to the rehabilitation field is to the U.S.

Changes: The Background statement has been revised to clarify that the purpose of the project is to enhance the impact of international activities on the U.S. rehabilitation field.

Comment: One commenter suggested that the project should use the potential for continued relationships at the institutional level as a criterion for selecting individuals for an exchange. The same commenter suggested that "provision should be made" for funding joint projects of mutual benefit to U.S. and foreign institutions, "taking advantage of previous contacts made through earlier study visits."

Discussion: The Secretary believes that on-going relationships at the institutional level and joint projects would be desirable outcomes. However, the Secretary believes that applicants should be given the discretion to propose the process and the criteria that

will be used to select projects and individuals for an exchange.

Changes: None.

Comment: One commenter suggested revising the priority to encourage "greater integration of the international program with NIDRR's domestic program."

Discussion: The Secretary believes that the project should make its database available to domestic research projects and training projects, including those supported by NIDRR, OSEP, and RSA.

Changes: The priority has been revised to require the project to make its database on international rehabilitation issues, legislation, and programs available to relevant research projects and training projects, including those supported by NIDRR, the Office of Special Education Programs (OSEP), and the Rehabilitation Services Administration (RSA).

[FR Doc. 94–16905 Filed 7–12–94; 8:45 am]
BILLING CODE 4000–01–P

[CFDA No.: 84.133D]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research

Notice Inviting Applications for a New Award Under the Knowledge Dissemination and Utilization Program for Fiscal Year (FY) 1994

NOTE TO APPLICANTS: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under this competition. The final priority for the Knowledge Dissemination and Utilization program is published in this issue of the **Federal Register**. This consolidated application package includes the closing date, estimated funding, and application forms necessary to apply for an award under this program's competition. Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their applications.

The estimated funding level in this notice does not bind the Department of Education to make awards or to any specific number of awards or funding levels.

Note: The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals from minority backgrounds who have disabilities. Before your application can be reviewed, it must include this description. Applications for which this information is not received will not be reviewed.

Successful applicants that provide services to individuals with disabilities will be required to advise these individuals, or as appropriate, the parents, family guardians, advocates, or authorized representatives of these individuals, of the availability and purposes of the State Client Assistance Program (CAP), including information on means of seeking assistance under such programs. A list of State CAPs will be provided to successful applicants when they are notified of their award.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

If you need further information about these requirements, please contact Betty Jo Berland at (202) 205–9739. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: August 26, 1994.

APPLICATIONS AVAILABLE: July 13, 1994.

AVAILABLE FUNDS: $400,000.

ESTIMATED NUMBER OF AWARDS: 1.

PROJECT PERIOD: Up to 60 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR Parts 350 and 355; and (c) the notice of final priority as published elsewhere in this issue of the **Federal Register**.

PURPOSE OF PROGRAM: The Knowledge Dissemination and Utilization program is designed to support activities that ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families. This notice invites applications for a project to support the international exchange of information and experts. The final priority for this award is published in this issue of the **Federal Register**. Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their applications.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Potential Impact of Outcomes:* Importance of Program (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target populations;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes:* Dissemination/Utilization (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of Achieving Proposed Outcomes; Program/Project Design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound;

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of Achieving Proposed Outcomes:* Key Personnel (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of Achieving Proposed Outcomes:* Key Personnel (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program/Project Management: (Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the projects(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

Eligible Applicants: Parties eligible to apply for grants under this program are public and private nonprofit and for-profit organizations, including institutions of higher education and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 761a and 762.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions:

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non—Non Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free WorkPlace Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form ED 80–0014) and instructions. (NOTE: ED Form ED–80–0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

Information about the Department's funding opportunities, including copies

of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED BOARD), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, Room 3417 Switzer Building, 400 Maryland Avenue, S.W., Washington, D.C. 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Program Authority: 29 U.S.C. 760–762.

Dated: June 7, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR, and Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

10. How Soon After Submitting My Application Can I Find Out if It Will be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR to Find Out If My Application is Being Funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

13. Will All Approved Applications be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

3. DATE

4. DATE

5. APPLICANT INFORMATION

Legal Name:

Address (give city, county, state, and zip code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A Increase Award B Decrease Award C Increase
D Decrease Duration Other (specify):

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

TITLE:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DIS
a. Applicant

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16.

17.

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS A
AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE

a. Typed Name of Authorized Representative

d. Signature of Authorized Representative

Previous Editions Not Usable

Authoriz

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit
Address *(give city, county, state, and zip code)*	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*: _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget			
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separated for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object classes shown in Lines a-k of Section B.

Section A, Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* Federal grant program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to *multiple* programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective catalog number on each line in *Column* (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for each applicable funding period (usually a year).

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, D.C. 20503.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flo
purchase requirements of Section
Flood Disaster Protection Act of 1973
which requires recipients in a special
area to participate in the program an
flood insurance if the total cost o
construction and acquisition is $10,00

11. Will comply with environmental sta
may be prescribed pursuant to the
institution of environmental qua
measures under the National En
Policy Act of 1969 (P.L. 91-190) an
Order (EO) 11514; (b) notification
facilities pursuant to EO 11738; (c)
wetlands pursuant to EO 11990; (d)
flood hazards in floodplains in accord
11988; (e) assurance of project cons
the approved State managemen
developed under the Coastal Zone
Act of 1972 (16 U.S.C. §§ 1451
conformity of Federal actions to Stat
Implementation Plans under Section
Clear Air Act of 1955, as amended
7401 et seq.); (g) protection of undergr
of drinking water under the Safe Dri
Act of 1974, as amended, (P.L. 93-5
protection of endangered species
Endangered Species Act of 1973, as an
93-205).

12. Will comply with the Wild and Sceni
of 1968 (16 U.S.C. §§ 1271 et seq.
protecting components or potential c
the national wild and scenic rivers sys

SIGNATURE OF AUTHORIZED CERTIFYING OFFIC
APPLICANT ORGANIZATIO

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

CERTIFICATIONS REGARDING RESPONSIBILITY MATTERS;

Applicants should refer to the regulations cited belo
should also review the instructions for certification
provides for compliance with certification requirem
"Government-wide Debarment and Suspension (No
(Grants)." The certifications shall be treated as a ma
of Education determines to award the covered trans

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Co
plemented at 34 CFR Part 82, for persons entering
or cooperative agreement over $100,000, as defined
Part 82, Sections 82.105 and 82.110, the applicant c

(a) No Federal appropriated funds have been paid
paid, by or on behalf of the undersigned, to any pe
fluencing or attempting to influence an officer or e
any agency, a Member of Congress, an officer or e
Congress, or an employee of a Member of Congres
tion with the making of any Federal grant, the ente
any cooperative agreement, and the extension, con
renewal, amendment, or modification of any Feder
cooperative agreement;

(b) If any funds other than Federal appropriated fu
been paid or will be paid to any person for influenc
tempting to influence an officer or employee of any
Member of Congress, an officer or employee of Co
employee of a Member of Congress in connection w
Federal grant or cooperative agreement, the unders
complete and submit Standard Form - LLL, "Disclo
to Report Lobbying," in accordance with its instruc

(c) The undersigned shall require that the language
tification be included in the award documents for a
awards at all tiers (including subgrants, contracts u
and cooperative agreements, and subcontracts) and
subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OT RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment a
sion, and implemented at 34 CFR Part 85, for prosp
ticipants in primary covered transactions, as define
Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, propose
ment, declared ineligible, or voluntarily excluded fr
covered transactions by any Federal department or

(b) Have not within a three-year period preceding t
tion been convicted of or had a civil judgment rend
against them for commission of fraud or a criminal
connection with obtaining, attempting to obtain, or
a public (Federal, State, or local) transaction or cont
a public transaction; violation of Federal or State an
statutes or commission of embezzlement, theft, forg
bribery, falsification or destruction of records, maki
statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise crimi
civilly charged by a governmental entity (Federal, S
local) with commission of any of the offenses enume
paragraph (1)(b) of this certification; and

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

DISCLOSURE

Complete this form to disc
(See reve

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Statu
☐

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, if know

Congressional District, if known:

5. Federal Department/Agency:

6. Federal Action Number, if known:

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

(attach Con

11. Amount of Payment (check all that apply):
$ _____ ☐ actual ☐ p

12. Form of Payment (check all that apply):
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

14. Brief Description of Services Performed or to b
or Member(s) contacted, for Payment Indicate

(attach Con

15. Continuation Sheet(s) SF-LLL-A attached: ☐

16. Information requested through this form is authorized by title 3
section 1352. This disclosure of lobbying activities is a material repre
of fact upon which reliance was placed by the tier above wh
transaction was made or entered into. This disclosure is required pu
31 U.S.C. 1352. This information will be reported to the Congr
annually and will be available for public inspection. Any person who
file the required disclosure shall be subject to a civil penalty of not l
$10,000 and not more than $100,000 for each such failure.

Federal Use Only:

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOS

Reporting Entity: _____

[FR Doc. 94–16906 Filed 7–12–94; 8:45 am]
BILLING CODE 4000–01–C

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

[FR Doc. 94–16906 Filed 7–12–94; 8:45 am]
BILLING CODE 4000–01–C

VOL
59
ISS
1
3
3
JL
13
994
MI

federal register

Wednesday
July 13, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 941

Public Housing Development; Major Reconstruction of Obsolete Public Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 941

[Docket No. R–94–1737; FR–3621–P–01]

RIN 2577–AB41

Public Housing Development; Major Reconstruction of Obsolete Public Housing (MROP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new subpart F to the Department's regulations at 24 CFR part 941, which govern public housing development by public housing agencies. The new subpart F would set forth the requirements and procedures applicable to the major reconstruction of obsolete public housing (MROP) projects. This proposed rule also would implement the provisions of section 111 of the Housing and Community Development Act of 1992 which pertain to MROP projects. The specific provisions that would comprise subpart F are discussed in the Supplementary Information section of this document.

DATES: Comment Due Date: September 12, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Comments should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Director, Office of Construction, Rehabilitation, and Maintenance, Public and Indian Housing, Department of Housing and Urban Development, Room 4230, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–1015. (This is not a toll-free number.) Hearing- or speech-impaired individuals may contact this office via TDD by calling (202) 708–9300 (which is not a toll-free number) or 1–800–877–8339 (which is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in part 941 have been previously approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, and assigned the stated OMB approval numbers:

New rule section	Rule section	Approval No.
941.606	941.302, 402, 403, 406.	2577–0033, 0164, 0104.
941.607	941.404	2577–0033, 0024, 0036.

II. Background

Sections 4 and 5 of the United States Housing Act of 1937 (42 U.S.C. 1437b, 1437c and 1437g) (the Act) authorize the Department to provide technical and financial assistance to public housing agencies (PHAs) for the development of low income housing projects, including the major reconstruction of obsolete public housing projects. The Department's regulations at 24 CFR part 941 establish: the requirements and procedures for the development of low-income housing (excluding Indian housing) by PHAs; development methods to be utilized for public housing projects; PHA eligibility requirements; the application and proposal procedures and other program requirements, which include a number of Federal statutory and administrative requirements applicable to public housing development.

The Department will in the future publish under a separate proposed rule comprehensive changes to part 941 that reflect the Department's redesign of the public housing development program.

This proposed rule is more limited and would only add a new subpart F to the existing part 941 to address the requirements and procedures applicable to the major reconstruction of obsolete public housing (MROP) projects. Section 111(a) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (the 1992 Act) amends section 5(j)(2) of the Act regarding MROP projects. Section 5(j)(2), among other things, provides a definition for "obsolete public housing project or building"; specifies that funding for MROP will be distributed on the basis of competition; and lists the criteria by which PHAs will be awarded funds. In accordance with sections 111(c) and 191 of the 1992 Act, which provide for rulemaking to implement section 111, this proposed rule would implement the provisions of section 111(a). The regulatory sections that would comprise subpart F are as follows:

Section 941.601. This section would provide that subpart F sets forth the basic policies and general requirements applicable to MROP projects. With respect to applicability, this section would provide that, unless otherwise stated, subpart F would apply to all MROP projects funded in Federal Fiscal Year 1995 and thereafter.

Section 941.602. This section would address MROP funding by providing that any notice of funding availability (NOFA) issued under 24 CFR part 941, subpart F, will reflect the current statutory requirements applicable to MROP projects.

Section 941.603. This section would describe the criteria a project must meet to be eligible for MROP funding. Some of the eligibility requirements, listed in this section, include the following: the project must be a rental project, and not a homeownership project; the project must have been financed under section 5 of the Act and be under an Annual Contributions Contract (ACC), or be a section 23 bond financed leased housing project which meets certain conditions; the existing project must have had an approved actual development cost certificate (ADCC) for five years before the application submission deadline; and the project must be determined to be obsolete. With respect to the determination of obsolete, the requirements of section 5(j)(2) of the Act, as added by section 111 of the 1992 Act are being incorporated.

In accordance with section 5(j)(2)(E) of the Act, § 941.603 would prohibit MROP assistance to any project or building assisted within five years of the MROP application by Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP) modernization funds under section 14 of the Act (through inclusion in an approved "annual statement of work"). A proposed MROP which received emergency modernization funding within the time frame is excluded from the five-year prohibition stated above.

Section 941.604. This section would address the limitations imposed on the use of MROP funds.

Section 941.605. This section would describe the general requirements applicable to the MROP program; these include (1) those set forth in subpart A of part 941, with the exception that MROP projects may only be developed by: (a) sealed bid method with award to the lowest responsible bidder; or (b) competitive proposal method whereby the PHA would execute a fixed price contract in which the contractor would be responsible for design of specific work items in the Request for Proposals, soliciting and contracting for construction work, contract administration and construction administration and construction inspection; the contract would either provide progress payments, or a lump sum payment after successful completion of all work; and (2) the requirements set forth in subpart B, with certain exceptions. With respect to the new MROP cost limit system required by section 5(j)(2)(D) of the Act, a methodology is proposed in this section.

Section 941.606. This section would describe the application submission requirements of the MROP program.

Section 941.607. This section would address the MROP proposal and would provide that MROP proposals must comply with the provisions of § 941.404.

Section 941.608. This section would address MROP project development and would provide for compliance with the procedures and requirements of subpart E, except as modified by § 941.608.

In the regulatory text that follows the preamble section "Other Matters," the reader should note that the terms "Act" and "ACC" are not defined in subpart F, because these terms are defined in subpart A of part 941. The "Act" refers, as previously noted, to the United States Housing Act of 1937, and "ACC" refers to Annual Contributions Contract.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication, and, by approving it, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule's major effect is on public housing agencies (PHAs) which are state and local governmental entities. The proposed rule adds a new subpart for the major reconstruction of obsolete

the lowest responsible bidder; or (b) competitive proposal method whereby the PHA would execute a fixed price contract in which the contractor would be responsible for design of specific work items in the Request for Proposals, soliciting and contracting for construction work, contract administration and construction administration and construction inspection; the contract would either provide progress payments, or a lump sum payment after successful completion of all work; and (2) the requirements set forth in subpart B, with certain exceptions. With respect to the new MROP cost limit system required by section 5(j)(2)(D) of the Act, a methodology is proposed in this section.

Section 941.606. This section would describe the application submission requirements of the MROP program.

Section 941.607. This section would address the MROP proposal and would provide that MROP proposals must comply with the provisions of § 941.404.

Section 941.608. This section would address MROP project development and would provide for compliance with the procedures and requirements of subpart E, except as modified by § 941.608.

In the regulatory text that follows the preamble section "Other Matters," the reader should note that the terms "Act" and "ACC" are not defined in subpart F, because these terms are defined in subpart A of part 941. The "Act" refers, as previously noted, to the United States Housing Act of 1937, and "ACC" refers to Annual Contributions Contract.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication, and, by approving it, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule's major effect is on public housing agencies (PHAs) which are state and local governmental entities. The proposed rule adds a new subpart for the major reconstruction of obsolete public housing projects, as required by the Act, and incorporates provisions requested by industry groups; as such, it is anticipated that it will be considered beneficial to PHAs.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612, *Federalism*, has determined that this proposed rule would not have a substantial, direct effect on the States or their political subdivisions or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. No significant change in the relationships or responsibilities of the various levels of government will result from this proposed rule.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule would not have a potential for significant impact on family formation, maintenance, and general well-being and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This proposed rule was listed as sequence number 1684 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20469) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance Programs

The Catalog of Federal Domestic Assistance Program title and number is 14.850, Public and Indian Housing.

List of Subjects in 24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

Accordingly, 24 CFR part 941 would be amended as follows:

PART 941—PUBLIC HOUSING DEVELOPMENT

1. The authority citation for part 941 would continue to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, and 1437g; 42 U.S.C. 3535(d).

2. A new subpart F, consisting of §§ 941.601–941.608, would be added to read as follows:

Subpart F—Major Reconstruction of Obsolete Public Housing (MROP) Projects

Sec.

941.601 Scope and applicability.
941.602 MROP funding.
941.603 MROP eligibility criteria.
941.604 Uses of MROP funding.
941.605 General program requirements.
941.606 MROP application.
941.607 MROP proposal.
941.608 MROP project development.

Subpart F—Major Reconstruction of Obsolete Public Housing (MROP) Projects

§ 941.601 Scope and applicability.

(a) *Scope.* This subpart F sets forth the basic policies and general requirements for the public housing Major Reconstruction of Obsolete Public Housing (MROP) projects program originally instituted pursuant to the FY 1986 HUD-Independent Agencies Appropriations Act, and thereafter covered by section 5(j), as amended by section 111 of the Housing and Community Development Act of 1992 (42 U.S.C. 1437c(j)(2)). Unless otherwise stated in this subpart F, subparts A through E of part 941 apply to MROPs.

(b) *Applicability.* Unless otherwise stated herein, this subpart applies in its entirety to all MROP projects funded in FY 1995 and thereafter, beginning with their current development processing and monitoring stage. All MROP projects funded prior to the effective date of this regulation shall continue to comply with the criteria on which their selection for funding was based.

(c) *PHA Eligibility.* PHAs eligible for MROP funding are those which have the required legal authority and local cooperation stated under § 941.201. An eligible PHA may include a troubled PHA, and if included, the criteria which a troubled PHA must meet to be eligible for funding will be specified in the notice of funding availability issued in accordance with this subpart.

§ 941.602 MROP funding.

While section 5(j)(2) of the Act limits MROP funding to no more than 20 percent of available funding, recent Appropriation Acts have provided that HUD may approve applications for development and/or MROP based on applications submitted, or pursuant to a statutory funding set-aside. As a result, any notice of funding availability (NOFA) issued pursuant to 24 CFR part 941 will reflect the applicable statutory requirements.

VOL 59 ISS 133 JUL 13 1994 UMI

§ 941.603 MROP eligibility criteria.

To be eligible for MROP funding, a project must meet the following criteria:

(a) *Rental.* The project must be rental and not homeownership.

(b) *Federally assisted PHA-owned.* The project must have been financed under section 5 of the Act and under ACC; or be a section 23 bond financed leased housing project which was converted to public housing by ACC amendment and is now covered by a cooperation agreement, has clear title vested in the PHA, and there are no legal obstacles affecting the PHA's use of the project during the required additional 40-year term of the ACC.

(c) *Five-year ADCC.* The existing project must have had an approved actual development cost certificate (ADCC) for five years or more prior to the application submission deadline of the NOFA.

(d) *Obsolete project.* The existing project must be determined to be obsolete; i.e., the project, or that portion designated to comprise the MROP project, must have design or marketability problems that have resulted in:

(1) Current vacancies of more than 25 percent of the units available for occupancy; or

(2)(i) Estimated costs for redesign, reconstruction or redevelopment (including any costs for lead-based paint abatement activities) that exceed 70 percent of the total current development cost limits for new construction of similar units in the area, but not more than 100 percent of the maximum cost based on the most recently issued MROP limits issued pursuant to section 5(j)(2)(D) of the Act (see § 941.605(b)(2)); and

(ii) The project or building has: an occupancy density or a building height that is significantly in excess of that which prevails in the neighborhood; or a bedroom configuration that could be altered to better serve the needs of families seeking occupancy to public housing; significant security problems in and around the project; or significant physical deterioration or inefficient energy and utility systems.

(3) The deficiencies must have been determined correctable under the Comprehensive Grant Program (CGP) or the Comprehensive Improvement Assistance Program (CIAP) procedures (see 24 CFR part 968 and related issuances to ensure long-term viability).

(e) *Long-term viability.* The project must be determined to have long-term viability (i.e., a useful life with full occupancy) of more than 20 years after completion of reconstruction, and the ACC for the MROP project must remain in effect for 40 years.

(f) *MROP project composition.* (1) An MROP project may consist of one or more or all of the buildings of a single existing public housing project, provided that the funds reserved are sufficient to complete all the necessary redesign, reconstruction, or redevelopment for the entire structure(s) designated for the MROP project. Where funds available in a given year are insufficient or would require a disproportionate amount to fund all of the buildings of an existing project, staging over several years is not permitted, and the existing project must be separated by buildings (individually or in a combination) into portions to establish separate MROP projects, each to be funded separately, and each having a separate project number. The funds for each MROP project must be kept separate and may not be commingled.

(2) If a PHA submits an MROP application for an entire project and it is determined to be approvable under a NOFA published after the effective date of this regulation, but because of funding limitations only a part of the project is funded, if funds become available in a future fiscal year, additional buildings of the project may be approved for MROP without regard to vacancy, cost and viability criteria of paragraph (e) of this section under a subsequent NOFA, provided that:

(i) An application for a separate MROP project, or any portion of the project not funded, is submitted in response to a subsequent NOFA, and meets threshold approvability, and all other NOFA requirements, except for vacancy, cost and viability requirements; and

(ii) Is selected on the basis of its rating and ranking among other MROP applications submitted in response to the NOFA.

(g) *MROP with modernization.* MROP assistance may not be provided for any project or building assisted within five years of the MROP application by CGP or CIAP modernization funds under section 14 of the Act (through inclusion in an approved "annual statement of work") or HOPE VI under the FY 1993 and 1994 Appropriation Acts.

(h) *MROP with Demo/Dispo.* Demolition/disposition (demo/dispo) of existing units may be included as part of an MROP only if required to meet the long-term viability requirement; however, 75 percent of the units in the project or portion of the project which comprise the MROP application must be reconstructed. An MROP application which involves partial demo/dispo must either indicate the date that a demo/dispo application was approved by HUD, or the date the demo/dispo application was submitted. If the demo/dispo application was not approved by the date of the MROP application, the MROP application must be accompanied by evidence of the approval by the unit of general local government in which the project is located; this approval may be obtained from the Chief Executive Officer.

(i) *MROP with unit conversions.* Conversions are not subject to section 18 of the Act; however, a proposed conversion must be approved before an MROP involving a conversion may be approved, or an application for said conversion must have been submitted (see § 941.604(d)).

§ 941.604 Uses of MROP funding.

The following establish limitations on the use of MROP funds:

(a) *Management improvements.* Management improvements limited to the MROP project are eligible costs under MROP to the extent that such proposed management improvement is necessary for the viability of the project; i.e., to maintain the proposed physical improvements of the MROP project.

(b) *Development and property acquisition.* Development of additional units is an ineligible cost under MROP.

(c) *Demo/dispo and replacement.* The MROP project may include the cost of approved demo/dispo pursuant to § 941.603(h). MROP funds may not be used for replacement housing.

(d) *MROP conversion of units.* Costs of converting existing dwelling units to different bedroom sizes or to nondwelling space are eligible MROP costs only as follows:

(1) It must be demonstrated that the units proposed for conversion are in excess of the needs of the PHA and there is a greater need for the proposed converted units; and

(2) The proposed conversion must not result in a net reduction greater than that permitted under § 941.603(h).

(e) *MROP conversion of non-dwelling space.* Conversion from non-dwelling use to dwelling use is permitted under MROP. Conversion in use of non-dwelling space (e.g., community to management or vice versa) is eligible under MROP.

(f) *Duplicate funding.* The PHA shall not receive duplicate funding for the same work item or activity under any circumstance, and shall establish controls to assure that any activity, program, or project that is funded under any other HUD program, shall not be funded by MROP.

§ 941.605 General program requirements.

(a) *Subpart A.* Subpart A of part 941 is applicable to the MROP program, except that MROP projects may only be developed by:

(1) Sealed bid procurement method with award to the lowest responsible bidder; or

(2) Competitive proposal method, whereby the PHA would execute a fixed price contract in which the contractor would be responsible for design of specific work items identified in the Request for Proposals, soliciting and contracting for construction work, contract administration and construction inspection; the contract could either provide for progress payments, as in the sealed bid method, or a lump sum after successful completion of all work.

(b) *Subpart B.* Subpart B of this part applies to the MROP program, except:

(1) Since the site is already owned and the structures are already present, the following provisions of subpart B are not applicable to the MROP program: § 941.202 (concerning site and neighborhood standards); § 941.203 (a), (e) and (f) (concerning certain requirements of the design and construction standards); § 941.206 (concerning eligible properties); and § 941.405(b)(1) (concerning the section 213 review). Instead, the modernization and energy conservation standards set forth in 24 CFR part 968 are applicable and the environmental requirements must be met before an MROP application may be approved, as under CIAP (24 CFR part 968). The Intergovernmental Review under Executive Order 12372 (see § 941.405(b)(2)) must be completed before an MROP application may be approved.

(2) Pursuant to section 5(j)(2)(D) of the Act, HUD will establish limitations on the total costs for MROP recognizing the higher direct costs of MROP work as related to new development and modernization, and the requirements of § 941.204 are therefore modified. The total MROP cost (TMC) limitations which HUD establishes will be used as a maximum for the purpose of reserving the funds for MROP projects and represent the maximum TMC that may be approved and included in the ACC for an MROP project.

(i) As in the case of the total development cost (TDC) limitations under § 941.204, the TMC limitations are established for specific unit sizes (i.e., number of bedrooms) and structure types (i.e., detached, semi-detached, row, walk-up and elevator), and market areas (which are areas where trade conditions and economic influences

§ 941.605 General program requirements.

(a) *Subpart A.* Subpart A of part 941 is applicable to the MROP program, except that MROP projects may only be developed by:

(1) Sealed bid procurement method with award to the lowest responsible bidder; or

(2) Competitive proposal method, whereby the PHA would execute a fixed price contract in which the contractor would be responsible for design of specific work items identified in the Request for Proposals, soliciting and contracting for construction work, contract administration and construction inspection; the contract could either provide for progress payments, as in the sealed bid method, or a lump sum after successful completion of all work.

(b) *Subpart B.* Subpart B of this part applies to the MROP program, except:

(1) Since the site is already owned and the structures are already present, the following provisions of subpart B are not applicable to the MROP program: § 941.202 (concerning site and neighborhood standards); § 941.203 (a), (e) and (f) (concerning certain requirements of the design and construction standards); § 941.206 (concerning eligible properties); and § 941.405(b)(1) (concerning the section 213 review). Instead, the modernization and energy conservation standards set forth in 24 CFR part 968 are applicable and the environmental requirements must be met before an MROP application may be approved, as under CIAP (24 CFR part 968). The Intergovernmental Review under Executive Order 12372 (see § 941.405(b)(2)) must be completed before an MROP application may be approved.

(2) Pursuant to section 5(j)(2)(D) of the Act, HUD will establish limitations on the total costs for MROP recognizing the higher direct costs of MROP work as related to new development and modernization, and the requirements of § 941.204 are therefore modified. The total MROP cost (TMC) limitations which HUD establishes will be used as a maximum for the purpose of reserving the funds for MROP projects and represent the maximum TMC that may be approved and included in the ACC for an MROP project.

(i) As in the case of the total development cost (TDC) limitations under § 941.204, the TMC limitations are established for specific unit sizes (i.e., number of bedrooms) and structure types (i.e., detached, semi-detached, row, walk-up and elevator), and market areas (which are areas where trade conditions and economic influences tend to make costs substantially the same); they will be issued periodically by notice sent to all PHAs; and any donations will be treated in the same way as stated in § 941.204(d).

(ii) The TMC limitations shall be determined by doubling the average of two nationally recognized residential construction cost indices for good and sound quality housing.

(3) Since eligibility for MROP is based on different cost requirements, § 941.406(a)(1), which concerns maximum TDC at fund reservation, is modified to provide that the total MROP project cost that may be approved with HUD funds at the time of initial fund reservation, is limited to at least 70 percent of the maximum TDC based on the most recently issued TDC limitations for new construction of similar units in the area, but not more than 100 percent of the maximum TMC based on the MROP limitations most recently issued pursuant to section 5(j)(2)(D) of the Act (see § 941.605(b)(2)), except that the reservation amount will be trended by projected construction cost increases over the next 18 months. In addition, § 941.406(a)(2) which concerns maximum TDC after fund reservation, is inapplicable; there will be no amendment funds to increase the original amount of the MROP activities fund reservation.

(4) A development project for MROP activities must have long-term viability (see § 941.603(e)) after completion of reconstruction and the annual contributions contract (ACC) for the MROP project must remain in effect for 40 years. In determining viability, the PHA must have a comprehensive plan (funded from other sources such as CIAP, CGP or donations, etc.) for the project for which the development funds for MROP activities are being requested. The comprehensive plan for the project may be part of the PHA's comprehensive plan for modernization. The comprehensive plan must demonstrate a strategy which will assure that the entire development will be viable for a minimum period of 20 years. This strategy may include, but not be limited to, an estimate of the required amount needed for rehabilitation of the remaining portion of the development to the extent additional rehabilitation is required; sources of funding for any additional work; any proposed demolition/disposition that may be planned; and written evidence of local government and resident support for the strategy.

§ 941.606 MROP application.

Eligibility for MROP application approval shall be determined using the CIAP application and procedures under 24 CFR part 968, as modified by the regulations of this part.

(a) *Application submission.* To apply for MROP funds, an eligible PHA shall submit a CIAP application in the form prescribed by HUD to the appropriate HUD Office in response to an issued NOFA. The application must identify the entire existing project, the portion proposed as the MROP project, explain how the PHA and the requested MROP meet the eligibility, rating and other criteria of the NOFA, identify the proposed physical and management improvement needs, estimated costs and funding sources.

(1) The application must include a statement of the PHA's priorities for receiving funding, and if it is submitting more than one application, whether it will accept funding for fewer units than requested (refusal to accept fewer units may result in application non-funding due to a disproportionate requirement for funds), and indicate whether the application should be considered for CIAP funding, if appropriate, if the project is determined ineligible for MROP.

(2) The application must be accompanied by a PHA Resolution and certifications required under the NOFA that the PHA will comply with the requirements of 24 CFR part 941.

(3) If demo/dispo or conversion is needed for long-term viability after reconstruction, the PHA must so state in its MROP application and advise as to the status of its demo/dispo or conversion application (see 24 CFR 941.603 (h) and (i)).

(b) *Application receipt and processing.* HUD Offices will receive, screen applications, and notify PHAs under the deficiency notice procedure set forth in the NOFA issued for fund availability under 24 CFR part 941.

(1) Review, rating and ranking, and selection for funding shall occur in accordance with the criteria stated in the published NOFA, which for MROP shall be largely based on the PHA's management capability to carry out the proposed MROP activities (considering the PHA's latest rating under the Public Housing Management Assessment Program), the expected term of useful life of the project or building after completion of proposed MROP activities, the likelihood of achieving full occupancy within the project or building after completion of MROP activities, and such other factors as the Secretary may determine, including statutory provisions which may cause the above factors to change.

(2) Funds shall be reserved in accordance with § 941.605(b)(2), and

PHAs shall be notified in accordance with the NOFA issued for funding availability under 24 CFR part 941.

§ 941.607 MROP proposal.

Following application approval and fund reservation, MROP projects will be processed under the development procedures and a project planning conference to discuss program requirements and the time schedule shall be held. The PHA shall incorporate its approved application into a proposal described in § 941.404, and upon its approval, an ACC will be executed in the form prescribed by HUD.

§ 941.608 MROP project development.

MROP project development shall proceed in accordance with subpart E, with the following modifications:

(a) *No site/property acquisition.* Since the property is already owned, § 941.501 is inapplicable.

(b) *Development method.* If the sealed bid method is used (as described in § 941.605) only §§ 941.502 (a) and (b) are applicable; however, no cost adjustments shall be made. If the competitive proposal method is used, § 941.502 is inapplicable, and § 941.605(a)(2) shall be followed.

(c) *Reconstruction, acceptance of contract work, and completion.* Sections 941.503 (concerning reconstruction requirements), 941.504 (concerning acceptance of contract work), and 941.505 (concerning completion of development) are applicable to MROP projects, except that there shall be no initial operating period or cost as under § 941.505(a) since the PHA will be receiving operating subsidy for the units under the original project until completion of the MROP project. A Date of Full Availability (DOFA) shall be established as the last day of the month in which substantially all the units in the MROP project are available for occupancy after reconstruction; the PHA and HUD will execute an amendment to the ACC to remove the units of the MROP project from the original development project, and initiate the operating subsidy for the MROP project units, both effective as the end of the quarter in which DOFA was achieved. Changes to applicable data systems shall also be effective as of that date.

Dated: June 13, 1994.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–16916 Filed 7–12–94; 8:45 am]

BILLING CODE 4210–33–P

federal register

Wednesday
July 13, 1994

Part V

Department of Commerce

Economic Development Administration

University Center Technical Assistance Program; Availability of Funds; Notice

VOL 59 ISS 133 JUL 13 1994 UMI

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 940661–4161]

University Center Technical Assistance Program; Availability of Funds

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice.

SUMMARY: On March 30, 1994, the Economic Development Administration (EDA) published a Notice in the **Federal Register** (59 FR 14996) on the availability of funds for FY 1994. This Notice supplements that earlier notice by providing information on the University Center Technical Assistance program for FY 1994. This program helps colleges and universities mobilize their own and other resources to address economic development problems, especially in distressed areas. Funds for this program are available under Public Law 103–121.

DATES: This announcement is effective July 13, 1994. Colleges and universities seeking initial funding under this program must submit proposals in accordance with criteria listed in this notice no later than August 29, 1994. (Note: Colleges and universities currently participating in the program will be advised by the appropriate EDA regional office of the procedures to follow in applying for continued funding and the corresponding deadline dates.)

ADDRESSES: Proposals which seek funding to provide technical assistance in a single state or portion of a single state must be submitted to the appropriate Economic Development Representative (EDR) and EDA regional office. Proposals with a national service area should be submitted to the Technical Assistance and Research Division in Washington, D.C. Addresses for these offices are listed at the end of this announcement at Appendix A.

FOR FURTHER INFORMATION CONTACT: See listing in Appendix A.

SUPPLEMENTARY INFORMATION: Refer to the Notice published on March 30, 1994, in the **Federal Register** (59 FR 14996) for information on EDA's general policies.

Authority

Support for this program is authorized under section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Catalog of Federal Domestic Assistance (CFDA)

The University Center Technical Assistance program is listed under CFDA 11.303, Economic Development—Technical Assistance.

Program Description

This program helps educational institutions establish and maintain outreach programs which permit them to be active and on-going participants in economic development. The objective of the program is to use the resources of the educational institutions to provide technical assistance to alleviate or prevent conditions of excessive unemployment or underemployment and problems of distressed populations in individual states or substate areas. The technical assistance provided under this program must be directed to clients outside the institution of higher education.

Funding Availability

The FY 1994 budget for this program is $7.57 million. While the expected funding range for each award is $75,000 to $150,000, circumstances may warrant funding projects at higher or lower levels. In FY 1993, EDA provided funding to 64 colleges and universities under this program.

Matching Requirements

A minimum match, equal to 25 percent of the total project cost, is required.

Type of Funding Instrument

This program uses grants as its funding instrument.

Eligibility Criteria

Eligible applicants for this program are accredited institutions of higher education.

Award Period

The project period for grants awarded under this program generally will not exceed twelve months.

Indirect Costs

EDA encourages applicants to waive indirect costs for this program. No more than 20 percent of the Federal grant and nonfederal share may be allocated for indirect costs.

Application Forms and Kit

This program uses Standard Form (SF) 424 (4/92), Application for Federal Assistance; SF–424A (4/92), Budget Information—Non-Construction Programs; and SF–424B (4/92), Assurances—Non-Construction Programs. In addition to the forms listed above, the following forms are required: CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying; CD–512, Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying; CD–346 (8/88), Applicant for Funding Assistance; SF–LLL, Disclosure of Lobbying Activities; and SF–LLL–A, Disclosure of Lobbying Activities Continuation Sheet. Applicants must provide an original and two (2) copies of the applications and supporting documentation.

Project Funding Priorities

Innovative proposals with a variety of economic development foci are welcome. However, applicants should note that EDA will not award University Center Technical Assistance program funds to provide general business assistance (e.g., preparing business plans) in areas served by Small Business Development Centers (SBDCs), Minority Business Development Centers (MDBCs), or Trade Adjustment Assistance Centers (TAACs). Most successful proposals funded in the recent past have emphasized providing technical assistance to public sector and nonprofit organizations related to economic development planning and projects or helping private sector firms use technology to solve manufacturing or processing problems.

Evaluation Criteria

For existing University Centers, EDA will primarily consider past performance in determining whether to continue the award and the amount of funding to be offered. In judging a proposal for new University Center funding, EDA will consider whether it:

1. Addresses the economic development needs of the service area;
2. Complements the activities of other organizations in the proposed service area that are engaged in economic development;
3. Has the commitment of the highest management levels of the sponsoring institution;
4. Provides evidence of adequate nonfederal financial support, either from the sponsoring institution or other sources;
5. Outlines activities consistent with the expertise of the proposed University Center staff and the academic programs and other available resources within the sponsoring institution;
6. Complements and supports the local, regional or state economic development strategies in the service area;
7. Presents a reasonable budget, including both the Federal and nonfederal shares;
8. Documents past experience of the sponsoring institutions in operating technical assistance programs; and
9. Adds to the geographic distribution of University Centers across the country.

Evaluation criteria are not assigned weights, as all factors are equally important and contribute to the overall quality of the proposals.

All proposals must include a work program organized under the following categories: (1) Providing technical assistance; (2) conducting applied research; and (3) disseminating results of the University Center activities. For this program, technical assistance is defined as an activity carried out by the University Center in response to a direct request from a client outside the sponsoring educational institution. Applied research is defined as an economic development activity undertaken by the University Center at its own initiative.

All proposals must include quantitative and qualitative evaluation criteria for each activity listed under the three categories of the work program. These criteria, when accepted by EDA, will be the primary guide used in judging the performance of the University Center.

All proposals must include a program budget that, at a minimum, indicates the Federal and nonfederal funds allocated to each of the three work program categories. At least 70 percent of the direct costs of the project budget must be allocated to the first category of the work program, providing technical assistance to clients outside the sponsoring institutions.

Selection Procedures

The EDA regional offices (or the Technical Assistance and Research Division in Washington for National University Centers), reviews the proposals and makes recommendations for funding to the Assistant Secretary for Economic Development, who makes the final decisions based on the relative merits of the applications.

Other Requirements

Refer to the Notice published on March 30, 1994, in the **Federal Register** (59 FR 14996) for information on EDA's general policies.

1. Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and DoC

development strategies in the service area;

7. Presents a reasonable budget, including both the Federal and nonfederal shares;

8. Documents past experience of the sponsoring institutions in operating technical assistance programs; and

9. Adds to the geographic distribution of University Centers across the country.

Evaluation criteria are not assigned weights, as all factors are equally important and contribute to the overall quality of the proposals.

All proposals must include a work program organized under the following categories: (1) Providing technical assistance; (2) conducting applied research; and (3) disseminating results of the University Center activities. For this program, technical assistance is defined as an activity carried out by the University Center in response to a direct request from a client outside the sponsoring educational institution. Applied research is defined as an economic development activity undertaken by the University Center at its own initiative.

All proposals must include quantitative and qualitative evaluation criteria for each activity listed under the three categories of the work program. These criteria, when accepted by EDA, will be the primary guide used in judging the performance of the University Center.

All proposals must include a program budget that, at a minimum, indicates the Federal and nonfederal funds allocated to each of the three work program categories. At least 70 percent of the direct costs of the project budget must be allocated to the first category of the work program, providing technical assistance to clients outside the sponsoring institutions.

Selection Procedures

The EDA regional offices (or the Technical Assistance and Research Division in Washington for National University Centers), reviews the proposals and makes recommendations for funding to the Assistant Secretary for Economic Development, who makes the final decisions based on the relative merits of the applications.

Other Requirements

Refer to the Notice published on March 30, 1994, in the **Federal Register** (59 FR 14996) for information on EDA's general policies.

1. Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and DoC policies, regulations, and procedures applicable to Federal financial assistance awards.

2. Past Performance. Unsatisfactory performance under prior Federal awards may result in an application not be considered for funding.

3. Preaward Activities. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DoC to cover preaward costs.

4. No Obligation for Future Funding. If an applicant is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC.

5. Delinquent Federal Debts. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

i. the delinquent account is paid in full;

ii. a negotiated repayment schedule is established and at least one payment is received, or

iii. other arrangements satisfactory to DoC are made.

6. Name Check Review. Officials acting on behalf of an accredited institution of higher education are exempt from the name check review process.

7. Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

i. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

ii. Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

iii. Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

iv. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying and Activities," as required under 15 CFR Part 28, Appendix B.

8. Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

9. False Statements. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

10. Intergovernmental Review. Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Dated: July 1, 1994.

William W. Ginsberg,

Assistant Secretary for Economic Development.

Appendix A

For further information about University Center Technical Assistance contact the Technical Assistance and Research Division, Economic Development Administration, Room H7315, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 482–2127, or the appropriate regional/field office, or economic development representative (EDR) listed below.

EDRs	States Covered
ATLANTA REGIONAL OFFICE 401 West Peachtree Street, NW., Suite 1820 Atlanta, Georgia 30308–3510 Telephone: (404) 730–3002	
Burnette, F. Wayne, Aronov Building, Room 134, 474 South Court Street, Montgomery, AL 36104, Telephone: (205) 223–7008.	Alabama
Smith, Lola B., Federal Building, Room 423, 80 North Hughey Avenue, Orlando, FL 32801, Telephone: (407) 648–6572.	Florida
Day, William J., Jr., 401 West Peachtree Street, NW., Suite 1820, Atlanta, GA 30308–3510, Telephone: (404) 730–3000.	Georgia
Hunter, Bobby D., 771 Corporate Drive, Suite 200, Lexington, KY 40503–5477, Telephone: (606) 233–2596	Kentucky
Ainsworth, Bob, 221 Federal Building, 100 West Capital Street, Jackson, MS 39269, Telephone: (601) 965–4342	Mississippi
Jones, Dale L., P.O. Box 2522, Raleigh, NC 27601, Telephone: (919) 856–4570	North Carolina
Dixon, Patricia M., Strom Thurmond Federal Building, 1835 Assembly Street, Room 840, Columbia, SC 29201, Telephone: (803) 765–5676.	South Carolina
Parks, Mitchell S., 261 Cumberland Bend Drive, Nashville, TN 37228, Telephone: (615) 736–5911	Tennessee
AUSTIN REGIONAL OFFICE Suite 201, Grant Building 611 East Sixth Street Austin, Texas 78701–3748 Telephone: (512) 482–5461	
Spearman, Sam, Room 2509, Federal Building, 700 West Capitol, Little Rock, AR 72201, Telephone: (501) 324–5637.	Arkansas
Davidson, Pamela, 412 North Fourth Street, Room 104, Baton Rouge, LA 70802–5523, Telephone: (504) 389–0227.	Louisiana
Swearingen, James, P.O. Box 2662, Santa Fe, NM 87504, Telephone: (505) 988–6557	New Mexico
Waters, Alvin X. Jr., 5500 North Western, Suite 148, Oklahoma City, OK 73118–4011, Telephone: (405) 231–4198	Oklahoma
Ramirez, Roy, Suite 201, Grant Building, 611 East Sixth Street, Austin, TX 78701–3748, Telephone: (512) 482–5118.	Texas (south)
Jacob Lawrence, Suite 201, Grant Building, 611 East Sixth Street, Austin, TX 78701–3748, Telephone: (512) 482–5119.	Texas (north)
CALIFORNIA FIELD OFFICE Oakland Federal Building 1301 Clay Street, Suite 675N Oakland, California 94612–5217 Telephone: (510) 637–2988	
Sosson, Deena R., 1345 J Street, Suite B, Sacramento, CA 95814, Telephone: (916) 551–1541	California (northern)
Lewis, William J., 1345 J Street, Suite A, Sacramento, CA 95814, Telephone: (916) 551–2160	California (central)
Oaks, Charles W., 11000 Wilshire Boulevard, Room 11105, Los Angeles, CA 90024, Telephone: (310) 575–7286	California (southern)
CHICAGO REGIONAL OFFICE 111 North Canal Street, Suite 855 Chicago, IL 60606–7204 Telephone: (312) 353–7706	
Casals, Alfred L., 509 West Capitol, Suite 204, Springfield, IL 62704, Telephone: (217) 492–4224	Illinois
Henderson, Richard L., Federal Building Courthouse, Room 402, 46 East Ohio Street, Indianapolis, IN 46204, Telephone: (317) 226–6104.	Indiana
Collison, James L., 100 North Warren Avenue, Room 1018, Saginaw, MI 48606–0867, Telephone: (517) 758–4097.	Michigan
Arnold, John B. III, 104 Federal Building, 515 West First Street, Duluth, MN 55802, Telephone: (218) 720–5326	Minnesota
Hickey, Robert F., Federal Building, Room 607, 200 North High Street, Columbus, Ohio 43214, Telephone: (614) 469–7314.	Ohio
Price, Jack D., 1320 W. Clairemont Ave., Suite 114, Eau Claire, WI 54701, Telephone: (715) 834–4079	Wisconsin
DENVER REGIONAL OFFICE 1244 Speer Boulevard, Room 670 Denver, Colorado 80204 Telephone: (303) 844–4714	
Zender, John, 1244 Speer Boulevard, Room 632, Denver, CO 80204, Telephone: (303) 844–4902	Colorado, Kansas
Cecil, Robert, Federal Building, Room 593A, 210 Walnut Street, Des Moines, IA 50309, Telephone: (515) 284–4746.	Iowa
Koch, Forrest E., Robert A. Young Building, Room 8.308H, 1222 Spruce Street, St. Louis, MO 63103, Telephone: (314) 539–2321.	Missouri
Rogers, John C., Federal Building, Room 196, Drawer 10074, Helena, MT 59626, Telephone: (406) 449–5074	Montana
Albertson, Warren A., Federal Building, Room 219, Pierre, SD 57501, Telephone: (605) 224–8280	Nebraska, South Dakota
Grant, Cornelius P., P.O. Box 1911, Bismarck, ND 58501, Telephone: (701) 250–4321	North Dakota
Ockey, Jack, Federal Building, Room 2414, 125 South State Street, Salt Lake City, UT 84138, Telephone: (801) 524–5119.	Utah, Wyoming

Hammarlund, C.N. Jr., Federal Office Building, Ro
240–3256.
Flynn, Patricia A., 2568 Riva Road, 2nd Floor, Ann

Blitz, Sandford, Federal Building, Room 410D, 40
8271.
Fitzhenry, William A., Boston Federal Office Bui
02222–1036, Telephone: (617) 565–7235.
Potter, Rita V., 143 North Main Street, Suite 209,
Rossignol, Clifford J., 44 South Clinton Avenue, Ro
Marshall, Harold J. II, 620 Erie Boulevard West, Su
Pecone, Anthony M., 1933A New Berwick Highway
Cruz, Ernesto L., Federal Office Building, Room
Telephone: (809) 766–5187.
Noyes, Neal E., 700 Centre Building, Room 230,
771–2061.
Davis, R. Byron, Rose City Press Building, 550
(304) 347–5252.

Richert, Bernhard E. Jr., 605 West 4th Avenue, Ro
2274.
Perot, C. Antony, 2901 North Central Avenue, Ph
640–2541.

McChesney, Frank, P.O. Box 50264, Federal Buil
3391.

Ames, Aldred F., Room 441, 304 North 8th Street,

Berblinger, Anne S., One World Trade Center, 12
phone: (503) 326–3078.
Kirry, Lloyd P. (acting), Jackson Federal Building,
phone: (206) 220–7682.

[FR Doc. 94–16939 Filed 7–12–94; 8:45 am]
BILLING CODE 3510–24–P

EDRs	States Covered
PHILADELPHIA REGIONAL OFFICE Curtis Center Independence Square West Suite 140 South Philadelphia, PA 19106 Telephone: (215) 597–4603	
Hammarlund, C.N. Jr., Federal Office Building, Room 453, 450 Main Street, Hartford, CT 06103, Telephone: (203) 240–3256.	Connecticut, Rhode Island
Flynn, Patricia A., 2568 Riva Road, 2nd Floor, Annapolis, MD 21401, Telephone: (410) 962–2513	Delaware, Maryland, District of Columbia
Blitz, Sandford, Federal Building, Room 410D, 40 Western Avenue, Augusta, ME 04330, Telephone: (207) 622–8271.	Maine
Fitzhenry, William A., Boston Federal Office Building, 10 Causeway Street, Room 420 (Box 2), Boston, MA 02222–1036, Telephone: (617) 565–7235.	Massachusetts
Potter, Rita V., 143 North Main Street, Suite 209, Concord, NH 03301, Telephone: (603) 225–1624	New Hampshire, Vermont
Rossignol, Clifford J., 44 South Clinton Avenue, Room 703, Trenton, NJ 08609, Telephone: (609) 989–2192	New Jersey
Marshall, Harold J. II, 620 Erie Boulevard West, Suite 104, Syracuse, NY 13204, Telephone: (315) 423–5203	New York
Pecone, Anthony M., 1933A New Berwick Highway, Bloomsburg, PA 17815, Telephone: (717) 389–7560	Pennsylvania
Cruz, Ernesto L., Federal Office Building, Room 620, 150 Carlos Chardon Avenue, Hato Rey, PR 00918–1738, Telephone: (809) 766–5187.	Puerto Rico, Virgin Islands
Noyes, Neal E., 700 Centre Building, Room 230, 704 E. Franklin Street, Richmond, VA 23219, Telephone: (804) 771–2061.	Virginia
Davis, R. Byron, Rose City Press Building, 550 Eagan Street, Room 305, Charleston, WV 25301, Telephone: (304) 347–5252.	West Virginia
SEATTLE REGIONAL OFFICE Jackson Federal Building, Room 1856 915 Second Avenue Seattle, Washington 98174 Telephone: (206) 220–7660	
Richert, Bernhard E. Jr., 605 West 4th Avenue, Room G–80, Anchorage, AK 99501–7594, Telephone: (907) 271–2274.	Alaska
Perot, C. Antony, 2901 North Central Avenue, Phoenix Plaza, Suite 965, Phoenix, AZ 85012, Telephone: (602) 640–2541.	Arizona, Nevada (except Elko, Eureka and White Pine Counties)
McChesney, Frank, P.O. Box 50264, Federal Building, Room 4106, Honolulu, HI 96850, Telephone: (808) 541–3391.	Hawaii, Guam, American Samoa, Marshall Islands, Micronesia, Northern Marianas
Ames, Aldred F., Room 441, 304 North 8th Street, Boise, ID 83702 Telephone: (208) 334–1533	Idaho, Nevada, (counties of Elko, Eureka & White Pine)
Berblinger, Anne S., One World Trade Center, 121 S.W. Salmon Street, Suite 244, Portland, OR 97204, Telephone: (503) 326–3078.	Oregon
Kirry, Lloyd P. (acting), Jackson Federal Building, 915 Second Avenue, Room 1856, Seattle, WA 98174, Telephone: (206) 220–7682.	Washington

[FR Doc. 94–16939 Filed 7–12–94; 8:45 am]
BILLING CODE 3510–24–P

VOL
5 9
SS
1
3
3
JL
1 3
994
MI

federal register

federal register

Wednesday
July 13, 1994

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Gaming Compact Between the Sisseton-Wahpeton Tribe and the State of North Dakota, which was executed on May 5, 1994.

DATES: This action is effective July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Emily Ramirez, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: July 1, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–16937 Filed 7–12–94; 8:45 am]

BILLING CODE 4310–02–P

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public numbers, Federal Register finding aids, and list o documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and documents on public inspection are available on National Archives fax-on-demand system. You m from a fax machine. There is no charge for the se except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33397–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11
35461–35606.....12
35607–35846.....13

Reader Aids

Federal Register

Vol. 59, No. 133

Wednesday, July 13, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342 1
34343–34552 5
34553–34754 6
34755–34966 7
34967–35210 8
35211–35460 11
35461–35606 12
35607–35846 13

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
No. 94–29 of June 27, 1994 35211
No. 94–30 of June 30, 1994 35607
No. 94–31 of July 1, 1994 35609
Memorandums:
June 30, 1994 34341
Proclamations:
6641 (See Proc. 6704) 34329
6704 34329
6705 34343
Executive Orders:
1919½ (Revoked in part by PLO 7065) 35054
12002 (See EO 12923) 34551
12214 (See EO 12923) 34551
12735 (See EO 12923) 34551
12755 (See EO 12923) 34551
12851 (See EO 12923) 34551
12923 34551

5 CFR

179 ..... 35213, 35215
2610 34755
2634 34755
2636 34755
2641 34755
Proposed Rules:
575 34393
3201 35480

7 CFR

272 34553
275 34553
283 34553
301 35611
319 35564
354 35612
406 35613
916 33897
917 33897
928 33898
947 33900
981 35222
1205 33901
1421 34345
1755 ..... 34353, 34899
Proposed Rules:
46 35487
1036 33922

8 CFR

103 33903
212 35614
245 33903
245a 33903
264 33903
274a 33903

9 CFR

78 35615
92 34375
97 34756
Ch. III 34375
Proposed Rules:
317 34396
381 35639

10 CFR

40 35618
50 35461
72 35618
74 35618
75 35618
150 35618
710 35178
Proposed Rules:
1003 34767

11 CFR

102 35785

12 CFR

Proposed Rules:
220 33923
230 35271
336 35480

14 CFR

21 34572
23 34572
39 ..... 34574, 34576, 34757, 34758, 34899, 34967, 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247
71 ..... 34577, 34758, 34759, 34760, 35248
91 34578
97 ..... 35248, 35250
1209 35623
Proposed Rules:
21 34779
23 35196
33 35272
39 ..... 34396, 34584, 35488, 35490
71 ..... 34192, 34585, 35492
93 34192

16 CFR

2 34968
4 34968
305 34014

Proposed Rules:
Chapter II 35657
22 35661
300 34780
301 34780
303 34780
1117 33925
1307 35058
1500 ..... 33928, 33932

17 CFR
1 34376
33 34376
190 34376
Proposed Rules:
240 34781

18 CFR
284 35462
Proposed Rules:
35 35274

19 CFR
174 34970

20 CFR
416 33906

21 CFR
510 33908
520 ..... 33908, 35251
558 35251
1220 35252
Proposed Rules:
341 34781

22 CFR
60 33909
61 33909
62 33909
63 33909
64 33909
65 33909
514 34760

23 CFR
655 33909
Proposed Rules:
637 35493

24 CFR
17 34578
791 35253
3280 34294
Proposed Rules:
43 34300
92 34300
941 35834
100 34902
570 34300

25 CFR
Proposed Rules:
164 35580
165 35580

26 CFR
1 ..... 34971, 35030, 35414
31 35414
40 35414
602 ..... 34971, 35030
Proposed Rules:
1 ..... 34398, 35066, 35418
31 35418
40 35418

27 CFR
5 35623

29 CFR
551 34742
571 35456

29 CFR
1910 ..... 33910, 34580
Proposed Rules:
Ch. XXVI 35067
Ch. XL 35067
1915 34586

30 CFR
944 35255
Proposed Rules:
75 35071
920 35289

31 CFR
51 35624
52 35624
550 35259

32 CFR
90 ..... 34382, 35463
91 ..... 34382, 35463
155 35464
369 35261
383 34382
384 35262
389 34382
552 ..... 34581, 34761
706 35033
Proposed Rules:
553 34782

33 CFR
4 34210
130 34210
131 34210
132 34210
137 34210
138 34210
Proposed Rules:
165 ..... 35290, 35661
322 34783
334 33939

34 CFR
74 34722
77 34722
641 34198
668 34964
682 ..... 34964, 35624
685 34278
690 34964
Proposed Rules:
Ch. VI 34398

36 CFR
704 35034

38 CFR
3 ..... 34382, 35265, 35464

39 CFR
111 33911
266 35625

40 CFR
9 ..... 33912, 34070
52 ..... 33914, 34383, 35035, 35036, 35044, 35411
81 35044
85 33912
86 33912
112 34070
141 34320
142 34320
180 ..... 35627, 35629
185 35629
186 35629
271 35266
372 34386
600 33912
Proposed Rules:
Ch. I 33940
51 35292
52 ..... 33941, 34399, 34401, 35072, 35079
81 35079
152 35662
174 35662
180 35663
185 33941

42 CFR
Proposed Rules:
421 35664

43 CFR
Public Land Order:
7055 34899
7064 34582
7065 35054
7069 35267
Proposed Rules:
2800 35596
2810 35596
2880 35596

44 CFR
362 35630

45 CFR
Proposed Rules:
615 35079

47 CFR
Chapter I 35631
22 35054
43 35632
73 ..... 34391, 34766, 35055, 35268
74 35635
80 35268
87 35268
Proposed Rules:
Chapter I 35664
61 33947
64 33947
69 33947
73 ..... 34404, 34405, 35081, 35082, 35292, 35293, 35785
74 35665

48 CFR
Proposed Rules:
926 35294
952 35294
970 35294

49 CFR
172 35411
195 35465
392 34708
393 ..... 34708, 34712
571 35636
1056 34392
Proposed Rules:
541 3508
571 ..... 34405, 35298, 35300, 35670, 35672

50 CFR
215 35471
229 34899
301 ..... 35474, 35475
651 35056
658 34582
672 35056
675 ..... 33920, 34392, 34583, 35056, 35057, 35476, 35638
681 35270
Proposed Rules:
Chapter II 35674
17 ..... 34784, 35089, 35303, 35304, 35305, 35307, 35496, 35584, 35674
20 35566
222 35089
644 35308
654 33947

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 11, 1994

federal register

Revised

The
Federal
What It
And
How To

Superintenden

Order processing code:
*6173
☐ YES, please send me the following:

_____ copies of The Federal Register - What it

The total cost of my order is $_____, I
postage and handling and are subject to chang

(Company or Personal Name) (Please

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mail

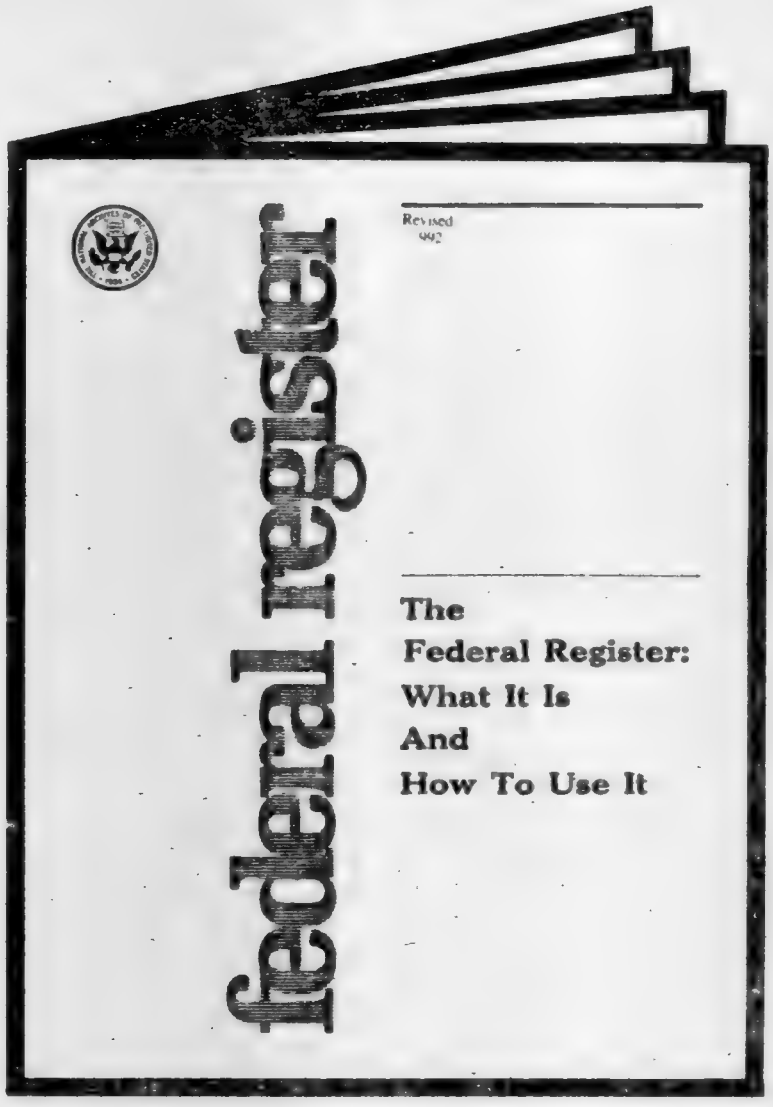

Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents Publications Order Form

Order processing code:
*6173

☐ **YES**, please send me the following:

Charge your order. It's Easy!
To fax your orders (202)-512-2250

_____ copies of **The Federal Register - What it is and How To Use it**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐ – ☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (Rev 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

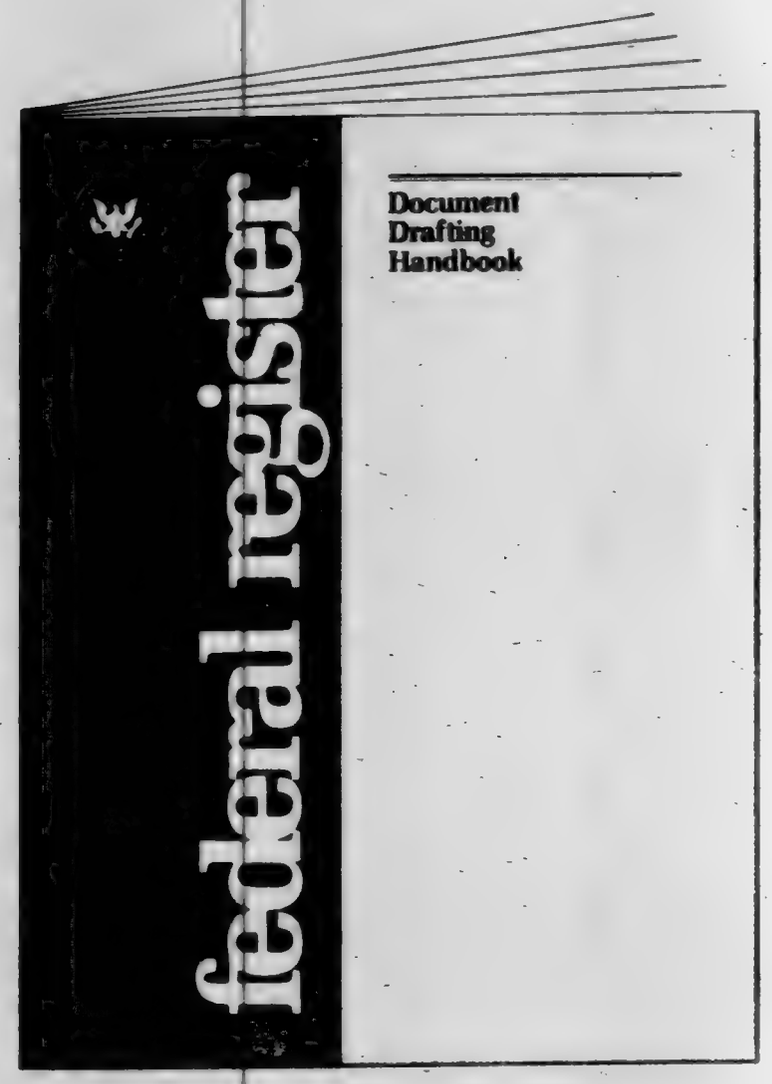

Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy!

To fax your orders and inquiries—(202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069-000-00037-1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%. All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature) (Rev 12/91)

4. Mail To: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954

Pu

Pamphlet prints of public laws
laws upon enactment and a
Legislative history references
issued irregularly upon enactm

(Individual laws also may be p
20402-9328. Prices vary. See
newly enacted laws.)

Superintendent

Order Processing Code:
* 6216

☐ **YES**, enter my subscription(s) as follo

subscriptions to **PUBLIC LAWS** for

The total cost of my order is $_____. I
postage and handling and are subject to chang

_____
(Company or Personal Name) (Pleas

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

_____
(Daytime phone including area code)

_____
(Purchase Order No.)

May we make your name/address available to other m

Public Laws

103d Congress, 2d Session, 1994

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 2d Session, 1994.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws.)

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

S3

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512-2233

☐ **YES**, enter my subscription(s) as follows:

subscriptions to **PUBLIC LAWS** for the 103d Congress, 2d Session, 1994 for $156 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (1 93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

VOL
59
ISS
1
33
JL
13
994
UMI

Order Now!

The United States Government Manual 1993/94

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$30.00 per copy

Superintendent of Documents **Publications** Order Form

Order Processing Code
* **6395**

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2250

☐ **YES,** please send me _____ copies of the **The United States Government Manual, 1993/94** S/N 069–000–00053–3 at $30.00 ($37.50 foreign) each.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

Please choose method of payment:

❑ Check payable to the Superintendent of Documents

❑ GPO Deposit Account ☐☐☐☐☐☐ – ☐

❑ VISA ❑ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing signature) (Rev 9/93)

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Superinte

Order Processing Code:
*6962

Please Type or Print (Form is aligned f
Prices include regular domestic postage
Information Desk at 202–783–3238 to ve

Qty.	Stock Number	
1	021–602–00001–9	Catalo

(Company or personal name) (Ple

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

New Publication

List of CFR Sections Affected

1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16) $27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27) $25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41) $28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50) $25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code:
***6962**

Charge your order. it's easy!

To fax your orders and inquiries–(202) 512-2250

Please Type or Print (Form is aligned for typewriter use.)
Prices include regular domestic postage and handling and are good through 12/92. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog–Bestselling Government Books	FREE	FREE
			Total for Publications	

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) ***Thank you for your order!***

(Signature)

Rev 6-92

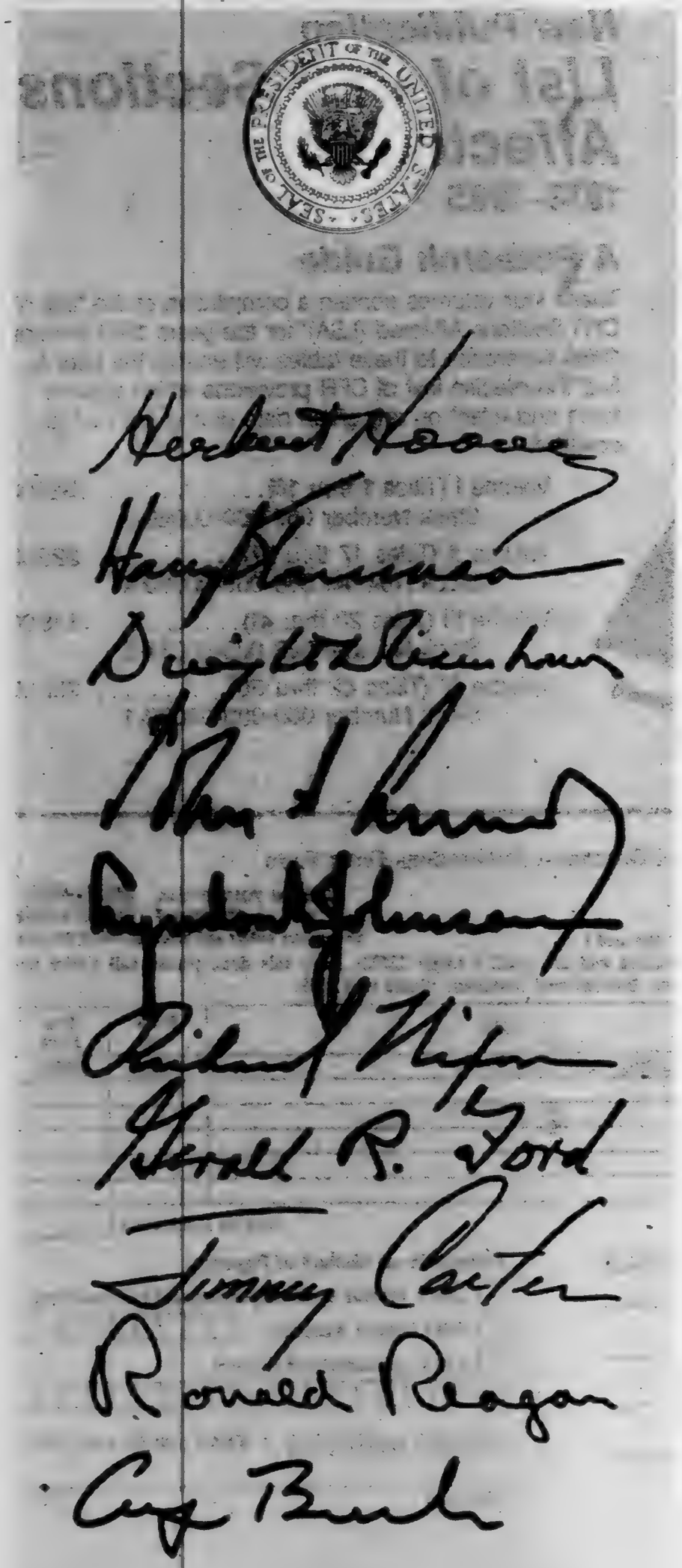

Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House

Volumes for the following years are available; other volumes not listed are out of print

Ronald Reagan		George Bush	
1984 (Book II)	$36.00	1989 (Book I)	$38.00
1985 (Book I)	$34.00	1989 (Book II)	$40.00
1985 (Book II)	$36.00	1990 (Book I)	$41.00
1986 (Book I)	$37.00	1990 (Book II)	$41.00
1986 (Book II)	$35.00	1991 (Book I)	$41.00
1987 (Book I)	$33.00	1991 (Book II)	$44.00
1987 (Book II)	$35.00	1992 (Book I)	$47.00
1988 (Book I)	$39.00	1992–93 (Book II)	$49.00
1988–89 (Book II)	$38.00		

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

s

s

ther

....$38.0

.....$40.0

....$41.0

....$41.0

....$41.0

....$44.0

$47.0

$49.0

National

ents
7954

VOL
59
ISS
1
3
3
JL
13
994
UMI

Printed on recycled paper

VOL
59

ISS
134

JL
14

994

UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7–14–94
Vol. 59 No. 134

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****

A FR UMISE
UMI SERIALS
300 N ZEEB R
PO BOX 1346
ANN ARBOR
227

7–14–94
Vol. 59 No. 134

federal register

Thursday
July 14, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********3-DIGIT 481

A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106
227

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

VOL
59
ISS
134
JL
14
994
UMI

7-14-94
Vol. 59 No. 134
Pages 35847-36016

7–14–94
Vol. 59 No. 134
Pages 35847–36016

Federal Register

Thursday
July 14, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $[illegible] for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806

Online:
Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.
Assistance with online subscriptions 202–512–1530

Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803

FEDERAL AGENCIES

Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

African Development Foundation
NOTICES
Meetings; Sunshine Act, 35976

Agency for Health Care Policy and Rese
NOTICES
Meetings:
Health Care Policy and Research Specia 35930

Agricultural Marketing Service
RULES
Almonds grown in California, 35847–358

Agriculture Department
See Agricultural Marketing Service
See Forest Service

Antitrust Division
NOTICES
Competitive impact statements and propo judgments:
Combustion Engineering, Inc., 35950–3

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, exclusive:
Prophylaxis and treatment of cryptospo

Centers for Disease Control and Prevent
NOTICES
Grant and cooperative agreement awards:
World Health Organization, 35932–3593
Grants and cooperative agreements; availa
Postdoctoral fellowship training progra diseases, 35930–35932

Coast Guard
NOTICES
Committees; establishment, renewal, termi
Cook Inlet Regional Citizens' Advisory C correction, 35972

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Ad
See Patent and Trademark Office
See Travel and Tourism Administration

Committee for the Implementation of Tex
NOTICES
Cotton, wool, and man-made textiles:
Costa Rica, 35913
Hungary, 35913–35914
Malaysia, 35914

Defense Department
See Army Department
See Engineers Corps

Contents

Federal Register

Vol. 59, No. 134

Thursday, July 14, 1994

African Development Foundation
NOTICES
Meetings; Sunshine Act, 35976

Agency for Health Care Policy and Research
NOTICES
Meetings:
Health Care Policy and Research Special Emphasis Panel, 35930

Agricultural Marketing Service
RULES
Almonds grown in California, 35847–35848

Agriculture Department
See Agricultural Marketing Service
See Forest Service

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Combustion Engineering, Inc., 35950–35951

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Prophylaxis and treatment of cryptosporidiosis, 35914

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
World Health Organization, 35932–35933
Grants and cooperative agreements; availability, etc.:
Postdoctoral fellowship training program in infectious diseases, 35930–35932

Coast Guard
NOTICES
Committees; establishment, renewal, termination, etc.:
Cook Inlet Regional Citizens' Advisory Council; correction, 35972

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
See Travel and Tourism Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Costa Rica, 35913
Hungary, 35913–35914
Malaysia, 35914

Defense Department
See Army Department
See Engineers Corps
See Navy Department
PROPOSED RULES
Acquisition regulations:
Indefinite quantity contracts and Federal supply schedule order restrictions; debarment and suspension, 35895

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Fund for innovation in education—
Innovation in education program, 36004–36005
Postsecondary education—
State postsecondary review program, 35914–35915

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Savannah River Site, SC—
Bridge restoration and preservation, 35915–35916

Energy Efficiency and Renewable Energy Office
NOTICES
Consumer product test procedures; waiver petitions:
Evcon Industries, Inc., 35916–35918
York International Corp., 35918–35920

Engineers Corps
RULES
Danger zones and restricted areas:
Gulf Coast Homeport, Mobile, AL, 35850–35851

Environmental Protection Agency
RULES
Clean Air Act:
Fuel and fuel additives; highway diesel fuel sold in 1993 and later calendar years fuel quality regulations, 35854–35859
Superfund program:
National oil and hazardous substances contingency plan—
Cooperative agreements and State contracts for Superfund response actions, 35852–35854
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado, 35875–35883
Maryland, 35883
Wisconsin, 35883–35891
Drinking water:
National primary and secondary drinking water regulations—
Regulated drinking water contaminants; analytical methods, 35891–35893
NOTICES
Agency information collection activities under OMB review, 35926–35927
Committees; establishment, renewal, termination, etc.:
Environmental Policy and Technology National Advisory Council, 35927

Meetings:
Science Advisory Board, 35927–35928
Small Town Environmental Planning Task Force, 35928

Executive Office of the President
See Management and Budget Office
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Meetings:
Telecommunications Equipment Technical Advisory Committee, 35908

Federal Aviation Administration
PROPOSED RULES
Federal regulatory review, 35868–35869
Jet routes, 35869–35871
NOTICES
Meetings:
RTCA, Inc., 35972–35973

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Alabama, 35894
Texas, 35893–35895

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 35976

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 35976

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Gordonsville Energy, L.P., et al., 35920–35921
North Little Rock Cogeneration, L.P., et al., 35921–35922
Weyerhaeuser Co., 35926
Environmental statements; availability, etc.:
Virginia Electric & Power Co., 35926
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 35922
Columbia Gulf Transmission Co., 35922
KN Interstate Gas Transmission Co., 35923
Natural Gas Pipeline Co. of America, 35923
North East Heat & Light Co. et al., 35923
Northern Natural Gas Co., 35923–35924
Panhandle Eastern Pipe Line Co., 35924
Tennessee Gas Pipeline Co., 35924
Texas Eastern Transmission Corp., 35924
Transcontinental Gas Pipe Line Corp., 35924–35926

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Aurora, CO, 35973–35974
Del Norte County, CA, 35973

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Solmar Logistics, Inc., 35928

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 35976
Applications, hearings, determinations, etc.:
First of America Bank Corp., 35928–35929
North Bank Employee Stock Ownership Plan et al., 35929
Peoples Bancorp, Inc., et al., 35929
Richey Bancorporation, Inc., et al., 35929

Fish and Wildlife Service
RULES
Endangered and threatened species:
Water howellia, 35860–35864
PROPOSED RULES
Endangered and threatened species:
Cumberland elktoe, etc. (five freshwater mussels), 35900–35906
Steller's eider; Alaska breeding population, 35896–35900
NOTICES
Endangered and threatened species:
Recovery plans—
Ouachita rock-pocketbook, 35948–35949

Food and Drug Administration
RULES
Organization, functions, and authority delegations:
Center for Devices and Radiological Health, 35848–35849
NOTICES
Food additive petitions:
Ramico Foods Inc., 35933

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 35976–35977

Forest Service
NOTICES
Environmental statements; availability, etc.:
Eldorado National Forest, CA, 35907–35908

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Public Health Service
See Social Security Administration

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Medicare:
Fiscal intermediaries and carriers; data, standards, and methodology (1994 FY budget), 35933
Medicare Secondary payment; guidelines, 35933–35936

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
NOTICES
Grant and cooperative agreement awards:
Fair housing initiatives program, 35942–35945

Grants and cooperative agreements; availab
Housing assistance payments (Section 8)
Homeless veterans with severe psychia abuse disorders, 36008–36015
Public and Indian housing—
Family investment centers, 35945–359

Immigration and Naturalization Service
RULES
Immigration and nationality forms; listing
Correction, 35978
PROPOSED RULES
Nonimmigrant classes:
Temporary alien workers—
Graduate medical education or training H, 35866–35867

Inspector General Office, Health and Hum Department
NOTICES
Program exclusions; list, 35941–35942

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enfor

International Trade Administration
NOTICES
Antidumping:
Calcium aluminate flux from—
France, 35908–35909
Ferrite cores from—
Japan, 35909
Sebacic acid from—
China, 35909–35910
Sweaters wholly or in chief weight of ma from—
Hong Kong et al., 35911
Applications, hearings, determinations, etc
Texas A&M University, et al., 35910–359

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Indiana Harbor Belt Railroad Co., 35949–
St. Louis Southwestern Railway Co., 3595

Justice Department
See Antitrust Division
See Foreign Claims Settlement Commission
See Immigration and Naturalization Service
See Juvenile Justice and Delinquency Preve

Juvenile Justice and Delinquency Preventi
NOTICES
Grants and cooperative agreements; availabi
Competitive discretionary assistance prog application kit (1994 FY), 35980–360

Land Management Bureau
RULES
Public land orders:
Montana, 35859–35860
New Mexico, 35859
NOTICES
Closure of public lands:
Oregon, 35946

Grants and cooperative agreements; availability, etc.:
Housing assistance payments (Section 8)—
Homeless veterans with severe psychiatric or substance abuse disorders, 36008–36015
Public and Indian housing—
Family investment centers, 35945–35946

Immigration and Naturalization Service
RULES
Immigration and nationality forms; listing update
Correction, 35978
PROPOSED RULES
Nonimmigrant classes:
Temporary alien workers—
Graduate medical education or training; classification H, 35866–35867

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 35941–35942

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Calcium aluminate flux from—
France, 35908–35909
Ferrite cores from—
Japan, 35909
Sebacic acid from—
China, 35909–35910
Sweaters wholly or in chief weight of man-made fiber from—
Hong Kong et al., 35911
Applications, hearings, determinations, etc.:
Texas A&M University, et al., 35910–35911

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Indiana Harbor Belt Railroad Co., 35949–35950
St. Louis Southwestern Railway Co., 35950

Justice Department
See Antitrust Division
See Foreign Claims Settlement Commission
See Immigration and Naturalization Service
See Juvenile Justice and Delinquency Prevention Office

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Competitive discretionary assistance program and application kit (1994 FY), 35980–36002

Land Management Bureau
RULES
Public land orders:
Montana, 35859–35860
New Mexico, 35859
NOTICES
Closure of public lands:
Oregon, 35946
Coal leases, exploration licenses, etc.:
North Dakota, 35946–35947
Environmental statements; availability, etc.:
Stateline Resource Area, NV, 35947
Recreation management restrictions, etc.:
Wild Cow Springs Recreation Site, AZ; supplementary conduct rules, 35947–35948
Survey plat filings:
Idaho, 35948

Management and Budget Office
NOTICES
Race and ethnicity Federal data: classification standards, 35954

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
Lykes Bros. Steamship Co., LTD., 35974–35975

National Archives and Records Administration
NOTICES
Agency information collection activities under OMB review, 35951–35952

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
HIV–1 vaccine development novel approaches; biomedical use, 35938–35939
Lentivirus vaccine development novel approaches: biomedical use, 35939–35940
Meetings:
National Heart, Lung, and Blood Institute, 35941
National Institute on Alcohol Abuse and Alcoholism, 35937–35938
National Institute on Deafness and Other Communication Disorders, 35940

National Oceanic and Atmospheric Administration
RULES
Marine mammals:
Yellowfin tuna; import definition, 35864–35865
NOTICES
Marine mammals:
Commercial fishing operations; incidental taking and importing—
Yellowfin tuna, 35911–35912

National Park Service
NOTICES
Environmental statements; availability, etc.:
Bent's Old Fort National Historic Site, CO, 35949

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Paul Hamilton, 35849–35850

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Nebraska Public Power District, 35952–35953
Applications, hearings, determinations, etc.:
Florida Power & Light Co., 35954

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Intellectual Property Rights Working Group: report and comment request, 35912

Postal Service
RULES
Organization and administration:
Forfeited property disposition; charitable organization donation provision; removal, 35851–35852
PROPOSED RULES
Domestic Mail Manual:
Weight and preparation standards for barcoded letter mail, 35873–35875

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
National practioner data bank:
User fees, 35936–35937

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 35977
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 35954–35956
National Association of Securities Dealers, Inc.; correction, 35978
New York Stock Exchange, Inc., 35956–35957, 35959–35965
Pacific Stock Exchange, Inc., 35958–35959, 35965–35967
Applications, hearings, determinations, etc.:
Thornburg Income Trust et al., 35967–35970

Social Security Administration
NOTICES
Meetings:
Social Security Advisory Council, 35942

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Utah, 35871–35873

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Annual review (1993)—
Petitions accepted, 35970–35972

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration

Travel and Tourism Administration
NOTICES
Meetings:
Travel and Tourism Advisory Board, 35912–35913

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Examinations acceptable for VA rating purposes, 35851

Separate Parts In This Issue

Part II
Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 35980–36002

Part III
Department of Education, 36004–36005

Part IV
Department of Housing and Urban Development, 36008–36015

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month c
Reader Aids section at the end of this issue.

7 CFR
981.....35847
8 CFR
299.....35978
Proposed Rules:
214.....35866
14 CFR
Proposed Rules:
Ch. I.....35868
71.....35869
21 CFR
5.....35848
30 CFR
Proposed Rules:
944.....35871
32 CFR
706.....35849
33 CFR
334.....35850
38 CFR
3.....35851
39 CFR
233.....35851
Proposed Rules:
111.....35873
40 CFR
35.....35852
80.....35854
300.....35852
Proposed Rules:
52 (3 documents).....35875, 35883,
141.....35891
143.....35891
43 CFR
Public Land Orders:
7067.....35859
7068.....35859
47 CFR
Proposed Rules:
73 (4 documents).....35893, 35894
48 CFR
Proposed Rules:
209.....35895
252.....35895
50 CFR
17.....35860
216.....35864
Proposed Rules:
17 (2 documents).....35896, 35900

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
981.....35847

8 CFR
299.....35978

Proposed Rules:
214.....35866

14 CFR

Proposed Rules:
Ch. I.....35868
71.....35869

21 CFR
5.....35848

30 CFR

Proposed Rules:
944.....35871

32 CFR
706.....35849

33 CFR
334.....35850

38 CFR
3.....35851

39 CFR
233.....35851

Proposed Rules:
111.....35873

40 CFR
35.....35852
80.....35854
300.....35852

Proposed Rules:
52 (3 documents) 35875, 35883,
141.....35891
143.....35891

43 CFR

Public Land Orders:
7067.....35859
7068.....35859

47 CFR

Proposed Rules:
73 (4 documents) 35893, 35894

48 CFR

Proposed Rules:
209.....35895
252.....35895

50 CFR
17.....35860
216.....35864

Proposed Rules:
17 (2 documents) 35896, 35900

VOL
59
ISS
134
JUL
14
994
UMI

Rules and Regulatio

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV94–981–1IFR]

Almonds Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 981 for the 1994–95 crop year. Authorization of this budget enables the Almond Board of California (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning July 1, 1994, through June 30, 1995. Comments received by August 15, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Martin Engeler, California

Rules and Regulations

Federal Register
Vol. 59, No. 134
Thursday, July 14, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV94–981–1IFR]

Almonds Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 981 for the 1994–95 crop year. Authorization of this budget enables the Almond Board of California (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning July 1, 1994, through June 30, 1995. Comments received by August 15, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Martin Engeler, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981, both as amended [7 CFR part 981], regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California almonds are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds handled during the 1994–95 crop year, which begins July 1, 1994, and ends June 30, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A), any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 7,000 producers of California almonds under this marketing order, and approximately 115 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California almond producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 crop year was prepared by the Almond Board of California, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected receipts of California almonds. Because that rate will be applied to handlers' actual receipts, a rate must be established that will provide sufficient income to pay the Board's budgeted expenses.

The Board met on May 16, 1994, and unanimously recommended a 1994–95 budget of $9,435,262, $1,631,808 more than the previous year. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Research conference, $25,000 ($12,000), office

rent, $90,000 ($73,672), Board's financial audit, $12,500 ($9,900), data processing, $6,000 ($5,000), telephone, $31,000 ($30,000), utilities, $13,500 ($10,000), postage and delivery, $32,000 ($30,000), repairs and maintenance, $12,500 ($9,000) miscellaneous expenses, $10,000 ($5,000), dues, subscriptions, and registration fees $7,500 ($5,000), alliances with other organizations to provide information on almonds to consumers, $20,000 ($5,000), production research, $489,134 ($485,854), promotional activities, $6,575,000 ($5,400,000), crop estimate, $85,600 ($75,000), office equipment, $15,000 ($7,000), and the addition of $35,310 for an acreage survey, $300,000 for reserve replenishment, $150,000 for program accountability analyses to assess the effectiveness of the advertising and market development programs, and $50,000 for new product and issues research, for which no funding was recommended last year. Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Salaries, $795,318 ($796,378), travel, $100,000 ($126,500), Board travel, $22,500 ($25,000), meetings, $35,000 ($40,000), equipment rent, $5,000 ($8,000), Board insurance, $40,000 ($45,000), security, $2,500 ($3,000), office supplies, $15,000 ($20,000), printing, $12,000 ($18,000), publications, $3,500 ($3,750), newsletter and releases, $25,000 ($35,000), econometric model and statistical analysis, $40,000 ($75,000), vehicles, $15,000 ($29,500), computers and software, $25,000 ($40,000), and furniture and fixtures, $10,000 ($46,500).

The Board also unanimously recommended an assessment rate of 2.25 cents per kernel pound, the same as last year. The Board further recommended that handlers should be eligible to participate in credit-back for their own market promotion activities for up to 1.00 cent of the 2.25 cents assessment rate, the same as last year. Revenues are expected to be $7,396,250 from administrative assessments (591,700,000 pounds @ 1.25 cents per pound), $1,065,060 from the portion of assessments eligible for credit but received by the Board from handlers who do not obtain credit for their own activities, $40,000 from interest, and $16,000 from the almond industry conference, for a total of $8,517,310.

These projections would result in a $917,952 shortfall in revenue based on current estimates of the 1994 crop yield. In light of this projected revenue shortfall, the Board recommended that any shortfall of up to $150,000 be applied against reserve replenishment and that the amount of money for this item be reduced accordingly. The Board also recommended that any additional shortfall be applied against its consumer TV activities and that the amount of money spent for these activities be reduced accordingly. However, the Board decided not to reduce the total amount for these two items by the amount of the expected shortfall because it expects additional revenue to accrue if the crop is larger than estimated. In the event a larger crop results in revenue in excess of the $9,435,261.77 budgeted, the Board recommended that consumer public relations activities be increased up to a total of $840,000, from $650,000.

Unexpended funds from 1994–95 may be carried over to cover expenses during the first four months of the 1995–96 crop year.

This action will impose an obligation to pay assessments on handlers. The assessments are uniform for all handlers and are the same as those imposed last year. The assessment cost will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year begins on July 1, 1994, and the marketing order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 981.341 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 981.341 Expenses and assessment rate.

Expenses of $9,435,262 by the Almond Board of California are authorized for the crop year ending June 30, 1995. An assessment rate for the crop year payable by each handler in accordance with § 981.81 is fixed at 2.25 cents per kernel pound of almonds. Of the 2.25 cents assessment rate, 1.00 cent per kernel pound of almonds is available for handler credit-back pursuant to § 981.441.

Dated: July 8, 1994.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–17109 Filed 7–13–94; 8:45 am]

BILLING CODE 3410–02–P5

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to the authority of the Commissioner of Food and Drugs (the Commissioner) to issue certificates to mammography facilities. This authority is being redelegated to the Director and Deputy Director for Regulations and Policy, Center for Devices and Radiological Health (CDRH), the Director, Office of Health Information Programs (OHIP), CDRH, and the Director, Division of Mammography Quality and Radiation Programs, OHIP, CDRH. This delegation excludes the authority to submit reports to the Congress.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: On June 10, 1993, the Acting Assistant Secretary for Health delegated to the Commissioner certain authorities under the Mammography Quality Standards Act of 1992 (Pub. L. 102–539), which amends Title III of the Public Health Service Act (42 U.S.C. 263b). As provided for in the delegation from the Acting Assistant Secretary for Health, the Commissioner is further redelegating to CDRH the authority to issue certificates to mammography facilities.

FDA is amending the delegations of authority under 21 CFR part 5 by adding new § 5.85 *Authority to issue certificates to mammography facilities* (21 CFR 5.85), which will give the Director and Deputy Director for Regulations and Policy, CDRH, the Director, OHIP, CDRH, and the Director, Division of Mammography Quality and Radiation Programs, OHIP, CDRH, authority to issue certificates relating to the certification of mammography facilities. This authority is directly related to current CDRH operations and programs.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 is revised to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301,

CDRH. This delegation excludes the authority to submit reports to the Congress.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: On June 10, 1993, the Acting Assistant Secretary for Health delegated to the Commissioner certain authorities under the Mammography Quality Standards Act of 1992 (Pub. L. 102–539), which amends Title III of the Public Health Service Act (42 U.S.C. 263b). As provided for in the delegation from the Acting Assistant Secretary for Health, the Commissioner is further redelegating to CDRH the authority to issue certificates to mammography facilities.

FDA is amending the delegations of authority under 21 CFR part 5 by adding new § 5.85 *Authority to issue certificates to mammography facilities* (21 CFR 5.85), which will give the Director and Deputy Director for Regulations and Policy, CDRH, the Director, OHIP, CDRH, and the Director, Division of Mammography Quality and Radiation Programs, OHIP, CDRH, authority to issue certificates relating to the certification of mammography facilities. This authority is directly related to current CDRH operations and programs.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 is revised to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. New § 5.85 is added to subpart B to read as follows:

§ 5.85 Authority to issue certificates to mammography facilities.

The following officials are authorized to issue certificates to mammography facilities under the relevant provisions of the Public Health Service Act (as amended by the Mammography Quality Standards Act of 1992 (Pub. L. 102–539)). The delegation excludes the authority to submit reports to Congress.

(a) The Director and Deputy Director for Regulations and Policy, Center for Devices and Radiological Health (CDRH).

(b) The Director, Office of Health Information Programs (OHIP), CDRH.

(c) The Director, Division of Mammography Quality and Radiation Programs, OHIP, CDRH.

Dated: July 5, 1994.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 94–17074 Filed 7–13–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS PAUL HAMILTON (DDG 60) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval guided missile destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Captain R.R. ROSSI, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PAUL HAMILTON (DDG 60) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction; and Rule 21(a), pertaining to the masthead light unbroken arc of visibility over an arc of the horizon of 225 degrees and visibility from right ahead to abaft the beam of 22.5 degrees, without interfering with its special function as a naval guided missile destroyer. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by:

a. Adding the following vessel to Paragraph 15:

Vessel	No.	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS PAUL HAMILTON	DDG 60	1.88 meters.

b. Adding the following vessel to Paragraph 16:

Vessel	No.	Obstruction angle relative ship's headings
USS PAUL HAMILTON	DDG 60	101.35 thru 112.50 degree.

§ 706.2 [Amended]

3. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS PAUL HAMILTON	DDG 60	X	X	X	13.9

Dated: June 28, 1994.

H.E. Grant,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 94–17037 Filed 7–13–94; 8:45 am]

BILLING CODE 3810–AE–P

Department of the Army

Corps of Engineers

33 CFR Part 334

Restricted Area for Gulf Coast Homeport at Mobile, AL

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is revoking the regulations which establish a naval restricted area in the waters of the Gulf of Mexico at the Naval Homeport located at Mobile, Alabama. The Naval Station Mobile has operationally closed and the restricted area is no longer needed. The restricted area was established to reduce safety hazards, security risks, and protect persons and property from the dangers encountered in the vicinity of the Naval Station.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps established restricted areas at each of the Navy Gulf Coast Homeports located at Ingleside, Texas; Mobile, Alabama; and Pascagoula, Mississippi on October 8, 1992 (57 FR 46303). The Naval Station in Mobile, Alabama is closed and accordingly, the restricted area established in 33 CFR 334.782 is no longer needed. The restricted areas in Ingleside, Texas and Pascagoula, Mississippi are not affected by the revocation of the Mobile Naval Station restricted area regulations.

Economic Assessment and Certification

This rule is being issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12291 do not apply.

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small government jurisdictions). It has been determined that these final rules will relieve a restriction on an area in the navigable waters of the United States and will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

We have determined that notice of proposed rulemaking and public procedures, thereto, are unnecessary and impractical, because the revocation of these rules in 33 CFR 334.782 will not have any affect on the public except that a water area will be reopened to use by the public.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation. Danger zones.

In consideration of the above, the Corps is amending part 334 of Title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

§ 334.782 [Removed]

2. Section 334.782 is removed.

Dated: July 1, 1994.

Approved:

Stanley G. Genega,

Major General, U.S. Army Director of Civil Works.

[FR Doc. 94–17116 Filed 7–13–94; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG50

Examinations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning examinations acceptable for VA rating purposes. The amendment increases the number of situations in which a private physician's statement may be accepted as a VA examination. The intended effect is to allow earlier rating action on acceptable medical evidence with no additional burden to either the claimant or VA.

EFFECTIVE DATE: This amendment is effective August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420. telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 1, 1994, VA published a proposal to amend 38 CFR 3.326 to permit acceptance of a private physician's statement for rating purposes in claims for increased compensation due to the increased severity of service-connected

that a water area will be reopened to use by the public.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation. Danger zones.

In consideration of the above, the Corps is amending part 334 of Title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

§ 334.782 [Removed]

2. Section 334.782 is removed.

Dated: July 1, 1994.

Approved:

Stanley G. Genega,

Major General, U.S. Army Director of Civil Works.

[FR Doc. 94–17116 Filed 7–13–94; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG50

Examinations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning examinations acceptable for VA rating purposes. The amendment increases the number of situations in which a private physician's statement may be accepted as a VA examination. The intended effect is to allow earlier rating action on acceptable medical evidence with no additional burden to either the claimant or VA.

EFFECTIVE DATE: This amendment is effective August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 1, 1994, VA published a proposal to amend 38 CFR 3.326 to permit acceptance of a private physician's statement for rating purposes in claims for increased compensation due to the increased severity of service-connected disabilities. Interested persons were invited to submit written comments, suggestions, or objections on or before April 4, 1994. One comment was received. The commenter expressed his strong support for the proposal, stating that it sought to streamline part of the VA benefits process by allowing a claimant greater flexibility in securing medical documentation. He praised the proposal as an example of reinventing VA at the highest levels. We thank the commenter for his statement and deeply appreciate his support. Our proposal also clarified the other types of claims in which a private physician's statement may be accepted for rating purposes and made technical corrections to VA regulations. No comments were received on these issues. Therefore, we have adopted the proposed amendment without change.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: July 1, 1994.

Jesse Brown,

Secretary of Veterans Affairs

For the reasons set forth in the preamble, 38 CFR Part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.326 [Amended]

2. In § 3.326, paragraph (b) is amended by removing the last sentence.

3. In § 3.326, paragraph (d) is revised and an authority citation is added at the end of the paragraph to read as follows:

§ 3.326 Examinations.

* * * * *

(d) A statement from a private physician that includes clinical manifestations and substantiation of diagnosis by findings of diagnostic techniques generally accepted by medical authorities, such as pathological studies, X-rays, and laboratory tests as appropriate, may be accepted for rating the following claims without further examination, provided it is otherwise adequate for rating purposes:

(1) A veteran's claim for increased compensation based either on the increased severity of a service-connected disability or on his or her spouse's need for aid and attendance under 38 U.S.C. 1115(1)(E);

(2) A veteran's pension claim, including housebound and aid and attendance benefits;

(3) A surviving spouse's claim for housebound or aid and attendance benefits;

(4) A surviving parent's claim for aid and attendance benefits; or

(5) A claim by or on behalf of a child based on permanent incapability of self-support (see § 3.356).

(Authority: 38 U.S.C. 501(a)).

§ 3.351 [Amended]

4. In § 3.351(a)(2), the authority citation is revised to read as follows:

(Authority: 38 U.S.C. 1115(1)(E)).

[FR Doc. 94–16946 Filed 7–13–94; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 233

Removal of Donation to a Charitable Organization From the Provisions for the Disposition of Forfeited Property

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: To be consistent with current statutory provisions for the disposition of forfeited property, this final rule amends Postal Service regulations by removing the provision that forfeited property may be donated to a charitable organization.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Postal Inspector-Attorney Frederick J. Rosenberg, (202) 268–5477.

SUPPLEMENTARY INFORMATION: Postal Service regulations concerning the disposition of forfeited property acquired by the Postal Inspection Service are published in title 39 of the

Code of Federal Regulations (CFR) as § 233.7(i). It is necessary to amend the section to remove paragraph (1)(v), donation of forfeited property to a charitable organization, to make the section consistent with current statutory provisions that authorize methods for the disposition of forfeited property.

Section 233.7(i)(1) is amended by: (1) adding "or" to paragraph (iv); (2) removing the text of paragraph (v); and (3) renumbering paragraph (vi) as paragraph (v).

List of Subjects in 39 CFR Part 233

Crime, Law enforcement, Postal Service, seizures and forfeitures.

Accordingly, 39 CFR part 233 is amended as set forth below.

PART 233—INSPECTION SERVICE/ INSPECTOR GENERAL AUTHORITY

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Inspector General Act of 1978, as amended (Pub. L. 95–4542, as amended), 5 U.S.C. App. 3.

2. Section 233.7 is amended by revising paragraphs (i)(1)(iv) and (v) and removing paragraph (i)(1)(vi) to read as follows:

§ 233.7 Forfeiture authority and procedures.

* * * * *

(i) * * *

(iv) Destroy the property; or

(v) Dispose of the property as otherwise permitted by law.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–17008 Filed 7–13–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35 and 300

[FRL–5011–8]

National Oil and Hazardous Substances Pollution Contingency Plan; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating largely technical revisions to four sections of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA is also promulgating conforming revisions to two sections of the administrative requirements for CERCLA-funded Cooperative Agreements and Superfund State Contracts for Superfund Response Actions.

The first NCP revision clarifies that EPA may acquire an interest in real estate in order to conduct a Superfund (Fund)-financed remedial action only if the State in which the interest is located agrees to accept transfer of that interest upon completion of the remedial action. The second revision clarifies that a Federal agency has discretionary authority over the expenditure of its funds when acting as an expert agency providing assistance in a cleanup. The third revision explains that when EPA extends the operational and functional period of a remedial action, it will fund such extensions as part of the remedial action. The fourth revision clarifies that an on-scene coordinator (OSC) may be authorized to coordinate and direct appropriate response action, not merely a removal action.

EFFECTIVE DATE: This final rule is effective August 15, 1994.

ADDRESSES: The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection, by appointment only (telephone—202–260–3046), between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (Mail Code—5203G), at (703) 603–8769, or the RCRA/Superfund Hotline at 1–800–424–9346 (in Arlington, Virginia at (703) 920–9810).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
II. Response to Comments
III. Summary of Supporting Analyses

I. Background

The Environmental Protection Agency (EPA or the Agency) is today promulgating largely technical revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA is also promulgating conforming changes to two sections of 40 CFR part 35, subpart O (hereafter subpart O), the administrative requirements for CERCLA-funded Cooperative Agreements and Superfund State Contracts. The rationale for the rule and a discussion of its background may be found in the preamble to the proposed rule, at 58 FR 53688, October 18, 1993. Two commenters submitted comments concerning two of the proposed revisions. A discussion of those comments follows.

II. Response to Comments

EPA proposed to change the definition of "On-scene coordinator" in NCP section 300.5 to mean the Federal official predesignated by EPA or the USCG to coordinate and direct Federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal or other response actions under subpart E of the NCP. One commenter opposed EPA's proposed revision of the definition. The commenter believes that "EPA is moving towards eliminating the distinction between remedial project managers (RPMs) and having only site managers." He further argued, that "considering existing contracts and differences in the programs," that he would "not like to see the day * * * where an individual is an OSC on one site and an RPM on the next on a routine basis."

In response, EPA notes that it proposed to revise the definition of "On-scene Coordinator" (OSC) in NCP section 300.5 to make clear only that the OSC *may* be authorized in appropriate cases, not that the OSC *must* be authorized in all cases, to implement any necessary response action, not merely a removal action. The rule change was not intended to eliminate the distinction between RPMs and OSCs, but was proposed to promote efficiency in the management of remedial action projects, to avoid the necessity of assigning both an OSC *and* an RPM to sites where multiple types of response action are necessary. The Agency also expressed belief in the preamble to the proposed rule that it is important to have the flexibility to assign one "site manager" to a site—either an OSC or an RPM—and for the OSC and RPM to have the ability to supervise both removal and remedial actions, as circumstances warrant. In response to the commenter's objection that existing contracts and differences in the programs made the proposed change an inappropriate idea, EPA acknowledged in the preamble to the proposed rule that cross-training of OSCs and RPMs may be needed to implement this idea. OSCs will continue to be primarily charged with overseeing removal actions; however, in appropriate cases (e.g., where multiple actions are necessary), the OSC may be authorized to oversee the remedial action activities. Thus, EPA is making no change to the rule language proposed.

EPA proposed to revise NCP section 300.510(f) to provide that, in the case of a Fund-financed remedial action, a State would be required to accept the transfer of an interest in real estate acquired "upon completion of the remedial action." One commenter asserted that EPA's preamble discussion of "completion of the remedial action" as "the point at which O&M measures would be initiated if started in a timely fashion," itself creates an ambiguity. The commenter notes that, "aside from the obvious subjectivity of the definition, it is contrary to the definition of when O&M starts under 40 CFR 300.435(f)." The commenter argued that to "remedy this discrepancy, EPA should not establish a separate definition to 'completion of the remedial action,'" but should "simply specify 'the remedial action is complete when O&M starts pursuant to 40 CFR 300.435(f).'"

In response, EPA agrees with the commenter and will change the final rule to provide that "completion of the remedial action" means the point at which O&M measures would be initiated pursuant to section 300.435(f). For sites other than ground or surface-water sites, O&M would generally begin when the remedy has been constructed, is operational and functional, and has attained ROD objectives (e.g., the landfill and leachate collection system are built as called for in the ROD, are operational, and need only be maintained). For ground- and surface-water restoration remedies, O&M begins after up to 10 years of restoration measures. *See* NCP section 300.435(f). (Note; however, that the requirement of a State assurance with respect to transfer of real property is not limited to sites at which the State would be conducting O&M; the definition of the O&M initiation point in NCP section 300.435(f) is used to identify the point at which transfer would occur regardless of whether the State or some other entity is in fact responsible for conducting O&M at the site.) The final rule, like the present rule, allows for earlier transfers if agreed to in writing by EPA and the State. *See* 55 FR 8779 (March 8, 1990). ("Completion of the remedial action," for purposes of NCP section 300.510(f) should not be confused with "construction completion," which occurs at an earlier point in the process. *See* 58 FR 12142,

overseeing removal actions; however, in appropriate cases (e.g., where multiple actions are necessary), the OSC may be authorized to oversee the remedial action activities. Thus, EPA is making no change to the rule language proposed.

EPA proposed to revise NCP section 300.510(f) to provide that, in the case of a Fund-financed remedial action, a State would be required to accept the transfer of an interest in real estate acquired "upon completion of the remedial action." One commenter asserted that EPA's preamble discussion of "completion of the remedial action" as "the point at which O&M measures would be initiated if started in a timely fashion," itself creates an ambiguity. The commenter notes that, "aside from the obvious subjectivity of the definition, it is contrary to the definition of when O&M starts under 40 CFR 300.435(f)." The commenter argued that to "remedy this discrepancy, EPA should not establish a separate definition to 'completion of the remedial action,'" but should "simply specify 'the remedial action is complete when O&M starts pursuant to 40 CFR 300.435(f).'"

In response, EPA agrees with the commenter and will change the final rule to provide that "completion of the remedial action" means the point at which O&M measures would be initiated pursuant to section 300.435(f). For sites other than ground or surface-water sites, O&M would generally begin when the remedy has been constructed, is operational and functional, and has attained ROD objectives (e.g., the landfill and leachate collection system are built as called for in the ROD, are operational, and need only be maintained). For ground- and surface-water restoration remedies, O&M begins after up to 10 years of restoration measures. *See* NCP section 300.435(f). (Note; however, that the requirement of a State assurance with respect to transfer of real property is not limited to sites at which the State would be conducting O&M; the definition of the O&M initiation point in NCP section 300.435(f) is used to identify the point at which transfer would occur regardless of whether the State or some other entity is in fact responsible for conducting O&M at the site.) The final rule, like the present rule, allows for earlier transfers if agreed to in writing by EPA and the State. *See* 55 FR 8779 (March 8, 1990). ("Completion of the remedial action," for purposes of NCP section 300.510(f) should not be confused with "construction completion," which occurs at an earlier point in the process. *See* 58 FR 12142, (March 2, 1993). It is also not relevant to determining the date at which all response action has been completed for purposes of the statute of limitations in 40 U.S.C. 9613(g).)

III. Summary of Supporting Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). EPA may certify, however, that the rule will not have a significant economic impact on a substantial number of entities.

This final rule will not have a significant economic impact on small entities since its effect would be largely to clarify EPA's original intent under the 1990 NCP. There is no additional impact on the regulated community due to today's final rule, and no new obligations would be imposed on any party. Accordingly, EPA hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

There are no information collection requirements imposed by this rule.

List of Subjects

40 CFR Part 35

Environmental protection, Accounting, Administrative practice and procedures, Financial administration, Grant programs (Cooperative Agreements and Superfund State Contracts), Government procurement requirements, Property requirements, Reporting and recordkeeping requirements, Superfund.

40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Incorporation by reference, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 30, 1994.

Carol M. Browner,

Administrator

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35 continues to read as follows:

Authority: 42 U.S.C. 9601 *et seq.*

2. Section 35.6105 of subpart O is amended by revising paragraph (b)(5) to read as follows:

§ 35.6105 State-lead remedial Cooperative Agreements.

(b) * * *

(5) *Real property acquisition.* If EPA determines in the remedy selection process that an interest in real property must be acquired in order to conduct a response action, such acquisition may be funded under a Cooperative Agreement. EPA may acquire an interest in real estate for the purpose of conducting a remedial action only if the State provides assurance that it will accept transfer of such interest in accordance with 40 CFR 300.510(f). The State must provide this assurance even if it intends to transfer this interest to a third party. (See § 35.6400 of this subpart for additional information on real property acquisition requirements.)

* * * * *

3. Section 35.6400 of subpart O is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 35.6400 Acquisition and transfer of interest.

(a) * * *

(1) If the recipient acquires real property in order to conduct the response, the recipient with jurisdiction over the property must agree to hold the necessary property interest.

(2) If it is necessary for the Federal Government to acquire the interest in real estate to permit conduct of a remedial action, the acquisition may be made only if the State, or Indian Tribe to the extent of its legal authority, provides assurance that it will accept transfer of the acquired interest in accordance with 40 CFR 300.510(f). States and Indian Tribes must follow the requirements in §§ 35.6105(b)(5) and 35.6110(b)(2) respectively, of this subpart.

* * * * *

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657, 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Section 300.5 of subpart B is amended by revising the definition for On-scene Coordinator (OSC) to read as follows:

§ 300.5 Definitions.

* * * * *

On-scene Coordinator (OSC) means the Federal official predesignated by EPA or the USCG to coordinate and direct Federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal or other response actions under subpart E of the NCP.

* * * * *

3. Section 300.160 of subpart B is amended by revising paragraph (c) to read as follows:

§ 300.160 Documentation and cost recovery.

* * * * *

(c) Response actions undertaken by the participating agencies shall be carried out under existing programs and authorities when available. Federal agencies are to make resources available, expend funds, or participate in response to discharges and releases under their existing authority. Interagency agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a discharge or release. In cases where a Federal agency is asked to provide expert assistance for a response action, the ultimate decision as to the appropriateness of expending funds with respect to such assistance rests with the agency that is held accountable for such expenditures. Further funding provisions for discharges of oil are described in § 300.335.

* * * * *

4. Section 300.510 of subpart F is amended by revising paragraphs (c)(2) and (f) to read as follows:

§ 300.510 State assurances.

* * * * *

(c)(1) * * *

(2) After a joint EPA/State inspection of the implemented Fund-financed remedial action under § 300.515(g), EPA may share, for any extension period established in § 300.435(f)(2), in the cost of the operation of the remedy to ensure that the remedy is operational and functional. In the case of restoration of ground or surface water, EPA shall share in the cost of the State's operation of ground- or surface-water restoration remedial actions as specified in § 300.435(f)(3).

* * * * *

(f) EPA may determine that an interest in real property must be acquired in order to conduct a response action. However, as provided in CERCLA section 104(j)(2), EPA may acquire an interest in real estate in order to conduct a remedial action only if the State in which the interest to be acquired is located provides assurances, through a contract, cooperative agreement or otherwise, that the State will accept transfer of the interest upon completion of the remedial action. For purposes of this paragraph, "completion of the remedial action" is the point at which operation and maintenance (O&M) measures would be initiated pursuant to § 300.435(f): The State may accept a transfer of interest at an earlier point in time if agreed upon in writing by the State and EPA. Indian tribe assurances are to be provided as set out at 40 CFR part 35, subpart O, § 35.6110(b)(2).

[FR Doc. 94–17004 Filed 7–13–94; 8:45 am]

BILLING CODE: 6560–50–P

40 CFR Part 80

[AMS–FRL–5012–8]

Regulation of Fuels and Fuel Additives; Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; Interim Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: EPA regulations currently require that diesel fuel for use in motor vehicles ("on-highway") meet a sulfur content standard, as well as standards for cetane index or in the alternative for aromatic content, and be free of visible evidence of the blue dye, 1,4-dialkylamino-anthraquinone. This rule implements provisions to change the blue dye specified in EPA's regulations to the red dye solvent red 164. The use of dye solvent red 164 for high sulfur diesel would mitigate aviation safety concerns raised because of the use of blue dye in certain aviation gasoline. Based on the time needed for refiners and importers to obtain adequate supplies of dye solvent red 164 for diesel fuel and deplete current inventories of blue dye held by the oil industry, this rule provides that after October 1, 1994 no refiner or importer shall add blue dye to off-highway diesel fuel. Until that date either blue or dye solvent red 164 could be used to dye high sulfur off-highway diesel fuel. Under this rule, downstream parties can continue to use existing supplies of blue dyed diesel fuel. This timing represents a balance between the need to address the safety issue as quickly as possible and provide a reasonable lead time for the affected industries to implement this change. This rule also provides requirements and defenses related to violations based on the presence of dye solvent red 164 in on-highway diesel fuel, including an exception for certain tax-exempt on-highway fuel dyed red pursuant to Internal Revenue Service (IRS) regulations. IRS regulations generally require tax-exempt high sulfur diesel fuel to be dyed blue. In a related rulemaking, and for similar reasons, the IRS is changing its regulations to call for the use of dye solvent red 164 instead of blue dye.

DATES: As discussed more fully herein, EPA is issuing this as an interim final rule effective July 14, 1994 except for § 80.29(c). The information requirements in 40 CFR 80.29(c) have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them and an announcement of effective date is published in the **Federal Register**. EPA will accept written comments on any appropriate changes to this rule up to 30 days from July 14, 1994.

ADDRESSES: Written comments on this rule should be submitted to Public Docket A–94–36 at the following address. Materials relevant to this rule change are also contained in Public Docket A–94–36, located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Paul N. Argyropoulos, Field Operations and Compliance Policy Branch, Field Operations and Support Division, U.S. Environmental Protection Agency, (202) 233–9004.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA regulations currently require that diesel fuel for use in motor vehicles ("on-highway") meet a sulfur content standard, as well as standards for cetane index or in the alternative for aromatic content, and be free of visible evidence of the blue dye, 1,4-dialkylamino-anthraquinone. These requirements apply at all points in the distribution system. The regulations also provide that diesel fuel which is free of visible evidence of the blue dye shall be considered available for use in motor vehicles and therefore subject to the low sulfur and other standards. Diesel fuel that is not for use in motor vehicles ("off-highway") is not subject to these standards, and the blue dye is typically added by the refiner or importer to differentiate it from the diesel fuel subject to the low-sulfur standard.

Aviation gasoline (avgas) is dyed to ensure that pilots, maintenance personnel, vendors and fuel handlers correctly service piston powered aircraft. Although red dye is also used, more than 90% of all avgas is dyed blue or green. Blue dyes now being injected into off-highway diesel fuels create fuels which may be similar in color to either blue or green avgas. The aviation community, through the Federal Aviation Administration (FAA), has raised concerns that the blue dyed diesel fuel might be confused with blue or green avgas, leading to aircraft misfueling and result in a serious aviation accident.

them and an announcement of effective date is published in the Federal Register. EPA will accept written comments on any appropriate changes to this rule up to 30 days from July 14, 1994.

ADDRESSES: Written comments on this rule should be submitted to Public Docket A–94–36 at the following address. Materials relevant to this rule change are also contained in Public Docket A–94–36, located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Paul N. Argyropoulos, Field Operations and Compliance Policy Branch, Field Operations and Support Division, U.S. Environmental Protection Agency, (202) 233–9004.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA regulations currently require that diesel fuel for use in motor vehicles ("on-highway") meet a sulfur content standard, as well as standards for cetane index or in the alternative for aromatic content, and be free of visible evidence of the blue dye, 1,4-dialkylamino-anthraquinone. These requirements apply at all points in the distribution system. The regulations also provide that diesel fuel which is free of visible evidence of the blue dye shall be considered available for use in motor vehicles and therefore subject to the low sulfur and other standards. Diesel fuel that is not for use in motor vehicles ("off-highway") is not subject to these standards, and the blue dye is typically added by the refiner or importer to differentiate it from the diesel fuel subject to the low-sulfur standard.

Aviation gasoline (avgas) is dyed to ensure that pilots, maintenance personnel, vendors and fuel handlers correctly service piston powered aircraft. Although red dye is also used, more than 90% of all avgas is dyed blue or green. Blue dyes now being injected into off-highway diesel fuels create fuels which may be similar in color to either blue or green avgas. The aviation community, through the Federal Aviation Administration (FAA), has raised concerns that the blue dyed diesel fuel might be confused with blue or green avgas, leading to aircraft misfueling and result in a serious aviation accident.

This rule is designed to quickly resolve the safety concerns regarding the potential misidentification of diesel fuel as avgas, based on the similar dye color used in these fuels. EPA's rule changes the dye used in the diesel fuel program from a blue color to a red color, and prohibits refiners and importers from producing diesel fuel with the use of the blue dye after October 1, 1994 in on-highway diesel fuel. However, under this rule, downstream parties can continue to use existing supplies of blue dyed diesel fuel. EPA believes this provides a reasonable time period to address the safety concern and for industry to obtain dye solvent red 164 and draw down supplies of blue dye. The IRS is undertaking a similar rulemaking to change the color of dye used in tax-exempt high sulfur diesel fuel from blue to red. Since, under IRS regulations all fuel is dyed, some of which can be used on-highway, EPA's rule also contains an exception allowing the use of red dye in this small category of on-highway diesel fuel, if certain conditions are met.

EPA is taking this action after extensive discussion with the FAA, IRS, and the affected industries, including dye manufacturers. This rule reflects a reasonable balancing of the various interests involved, giving primary importance to the aviation safety issue. EPA invites comment on all issues raised by this rule, however, because of the critical safety issue involved, it is necessary to promulgate a final rule requiring the color change as quickly as possible and therefore without prior formal notice and comment. It is EPA's intention to expeditiously review all comments and determine whether it would be appropriate to make any change to this final rule.

II. Background

EPA published regulations concerning diesel fuel on August 21, 1990. 54 FR 35276. Under these regulations, beginning October 1, 1993, the sulfur content of on-highway diesel fuel could not exceed 0.05 wt. percent. EPA also specified standards for cetane index or aromatic content and required that on-highway diesel fuel be free of visible evidence of the blue dye 1,4-dialkylamino-anthraquinone. The standards established by EPA are designed to help control air pollution, especially particulate emissions from diesel motor vehicles and engines, and to coincide with EPA's heavy duty engine particulate standards which begin with the 1994 model year engines.

EPA's regulations do not require the dyeing of off-highway diesel fuel. Instead, all diesel fuel that is free of visible evidence of the blue dye is presumed to be available for use in motor vehicles and, therefore, subject to the sulfur content and other standards. Refiners and others routinely dye off-highway diesel fuel to identify it as such, and avoid being subject to the standards applicable to on-highway diesel fuel.

This program began in the fall of 1993, with the industry quickly achieving a high rate of compliance with all of the requirements. In early January 1994, EPA staff was contacted by individuals in the aviation community raising concerns that blue dyed diesel fuel might be mistaken for blue avgas, resulting in aircraft misfueling and a potentially serious aviation accident. This was identified as a particular concern in small and/or remote airfields where small aircraft operate and the handling procedures for fuel are less sophisticated or controlled. EPA was informed that the incident which triggered this concern occurred when a fuel handler on an airfield in Alaska encountered a delivery of blue fuels and claimed that he could not determine with any certainty which was diesel or avgas.

Concern over this issue escalated quickly and EPA and various segments of the aviation community, including the FAA, various aviation associations, several airlines, the Coordinating Research Council (CRC) of the American Society of Testing and Materials (ASTM) and others quickly began to investigate this matter. FAA issued a "Notice to Airmen" on January 7, 1994 and subsequent safety notice on January 11, 1994 to alert the aviation community to this concern. However, EPA, the FAA and others believed a more permanent solution was necessary.

The aviation industry has used dyes in aviation fuels since the early 1940's to ensure the proper fueling of aircraft. Aircraft engines are particularly sensitive to engine wear problems and performance requirements specified by the manufacturers and thus it is critical that the proper fuel be used at all times. Aviation gasolines are currently dyed red, green or blue, at relatively low concentrations, to distinguish grades by octane and other specifications. Blue avgas is the most predominant and widely used in the United States. In addition, the dyeing of avgas provides an obvious distinction from jet fuel which is clear kerosene type fuel and is often located in the proximity of avgas. Standard aircraft pre-flight procedures require a fuel color check to ensure proper fueling because of this particular sensitivity.

While there is no specific federal requirement for the dyeing of aviation fuel, industry practice is to follow the aviation fuel dye specifications in the ASTM Standard D 910. The ASTM standard specifies dye color and concentration and other critical aviation gasoline properties, including octane. Further requirements regarding fuels, transportation and storage apply under the National Fire Protection Association Standard 207.

Dyeing of certain motor vehicle fuels is a relatively common practice. In the United States, however, on-highway and off-highway diesel fuel have generally not been dyed, except for the limited use of specific dyes in certain premium diesel fuels by various segments of the industry. Diesel fuels are commonly dyed in other countries, including Canada. The term diesel fuel covers a relatively broad spectrum of fuels, with a wide range of base colors. For example, undyed diesel fuel may vary from clear to a brownish color with nearly every shade in between. EPA's regulations have led to widespread use of the blue dye in off-highway diesel fuel, comprising approximately one half of all diesel fuel. In addition, IRS regulations issued on November 30, 1993 (58 FR 63069) and subsequently amended December 27, 1993 (58 FR 68304) adopt EPA's blue dye requirement to identify tax-exempt high sulfur diesel. The IRS regulations specify minimum dye concentration levels in order to meet the additional purposes of the IRS tax program.

The tax exemption for diesel fuel applies primarily to off-highway fuel, but also includes a small segment of on-highway diesel fuel use such as for certain buses, vehicles operated by state and local governments and non-profit educational organizations. Tax exempt uses comprise approximately 5% of the total diesel fuel market. Only a portion of this fuel will be dyed where downstream facilities have installed and utilize dye injection equipment. Motor fuel highway tax must be paid on this on-highway diesel fuel unless it is dyed. Under the IRS regulations, this on-highway fuel may be dyed with the dye solvent red 164 at minimum specified concentrations. If sold undyed, taxes must be paid and the appropriate parties can apply for tax refunds.

The safety issue described earlier arises even though blue or green avgas may not look very similar to the majority of blue dyed diesel fuel. Some off-highway diesel fuels, including home heating oils, when dyed blue may look very similar to blue or green avgas. This diesel fuel may also be used in and around small airfields. The inadvertent mixing of diesel fuels with avgas is of particular concern since even small levels of contamination can cause aviation engine failures.

III. Discussion of EPA's Rule

EPA and other federal agencies have been examining various possible options to resolve the safety issue raised by the use of blue dye in diesel fuel. EPA and the other federal agencies considered whether the dye used in avgas should be changed given the much greater quantity of diesel fuel used annually than avgas. However, any change to the avgas colors was rejected since it is unlikely that the substantial understanding of fuel colors developed by pilots, fuel handlers, vendors and maintenance crews over nearly 50 years could be quickly undone without creating additional and possibly even greater safety risks. EPA and the other agencies, therefore, focused on the range of possible diesel fuel dye color changes.

EPA believes a dye should meet two significant criteria for use in its diesel fuel program. These are (1) Dyed diesel fuel should be clearly distinguishable from undyed fuel throughout the range of base colors found in diesel fuel, and (2) dyed diesel fuel must be clearly distinguishable from any of the avgas colors. IRS has an additional requirement that the dye must be discernible in diesel fuel when diluted by a factor of five with undyed diesel throughout the range of base diesel colors. This additional criteria is important to the purpose of the IRS program since potential tax evaders can realize significant illegal profits by mixing taxed and untaxed fuels in those proportions. EPA's regulatory program is structured differently. The requirement that on-highway diesel fuel be free of visible evidence of the dye applies not just to a single taxpayer, but to all persons in the distribution chain. This builds a strong incentive into the program to not mix dyed and un-dyed diesel fuel. Other issues of concern in choosing an appropriate dye include cost, health effects, equipment compatibility, pipeline concerns and availability to the public of the dye(s) to be selected. At the concentrations required to meet EPA's standard of "visible evidence" which is approximately one pound per thousand barrels, these concerns are not significant since industry has been using dyes in diesel fuels for some time at concentrations of approximately three pounds per thousand barrels without significant adverse effects in these areas.

EPA staff, other government officials, and industry experts have examined hundreds of dyed and undyed fuel samples. At several large meetings of industry and government personnel, diesel fuels dyed red, green and purple were studied in various concentration levels throughout the range of possible base colors. In addition, EPA and IRS field compliance personnel as well as aviation fuel users examined fuel samples from the perspective of each agency's program purposes. Industry experts provided further analyses of the colors and concentration options considered from the perspective of various industry concerns.

After considering all the evidence, EPA believes that red dye for high sulfur diesel fuel is the most appropriate for meeting the different agency concerns. It is easily distinguishable from undyed fuel, and from avgas at the concentrations that IRS requires. Purple was considered but rejected, because it was only distinguishable in very light base diesel fuel colors. At sufficient concentrations in darker base colors, purple creates significant routine product quality test problems for pipeline carriers. Green was also seriously considered, but was also rejected because it very closely resembled many of the undyed diesel fuels when diluted five times and is often too close in color to green avgas. The aviation community did not consider red to have the same problem at the concentrations considered since "red" avgas is actually pink and readily distinguishable from red dyed diesel fuel. The ASTM is currently preparing to rename red avgas pink. Since EPA's dye standard is based on the lack of "visible evidence", the dye requirement is easily met at relatively low concentrations.[1]

With respect to cost, EPA does not believe the change from blue to red dye would cause any significant increase in cost, given the amount that would be used and the comparative cost of the dyes. Based on industry information, the cost of the red dye as specified, dye solvent red 164, is slightly less than the blue at similar concentrations, it is non-proprietary and is currently available from both Morton International and United Color Manufacturing. Based on discussions with these manufacturers, EPA believes that October 1, 1994 is a feasible date by which adequate supplies of the red dye can be manufactured and distributed, and

[1] Under the current regulations for diesel fuel, refiners use approximately 1 lb of blue dye per 1000 barrels of diesel fuel. EPA expects that approximately the same amount of red dye would be used under this final regulation to show visible evidence of the red dye.

made ready for use in dyeing off-highway diesel fuel.

Similarly, EPA believes that an October 1, 1994 date for a changeover from blue to red dye will allow a reasonable period of time for refiners and others that use the blue dye to use up most, if not all, of their current inventory of blue dye. This is based on discussions with representatives of the oil industry. EPA does not expect that equipment compatibility will be a problem for the pipelines and others that transport and store diesel fuel based on the relatively low concentration needed to show visible evidence of the dye. Pipeline representatives have indicated their support for this belief at meetings on these issues. While EPA has not conducted testing of the effects of the dye solvent red 164 on boilers, furnaces, and other equipment that use off-highway diesel fuel, EPA is not aware of any indications that the red dye would cause problems, or would be any different in that regard than blue dye. Finally, with respect to health effects, EPA has preliminarily looked at this issue but has not reached any conclusion that dye solvent red 164 is either better or worse compared to the blue dye currently specified in EPA's regulations, or compared to other possible substitutes for blue dye.

It is worth noting that blue dyed diesel fuel will continue to be in existence in storage facilities at all levels significantly past the October 1, 1994 date even though refiners and importers are prohibited from adding blue dye to off-highway diesel fuel. Therefore, these regulations do not make downstream parties liable for the continued use of existing supplies of blue dyed diesel fuel nor the mixtures of blue and red that will result. This diesel fuel could remain available for off-highway use for a period of time and, therefore, presents some risk to aviation safety. However, EPA is not aware of any feasible way to remove the blue dyed diesel fuel from the distribution and storage system. This rule is therefore aimed not at removing already dyed diesel fuel from the system, but at changing the practice of dyeing diesel fuel blue and thereby preventing the creation of additional supplies of this fuel. The EPA and other federal agencies encourage the rapid depletion of existing supplies of blue dyed diesel and the use of dye solvent red 164 as soon as possible.

EPA believes this change over from blue to red dye as of October 1, 1994 is reasonable in light of all of the above factors. It quickly moves to address the safety issue, while recognizing the need for a reasonable period of time for

made ready for use in dyeing off-highway diesel fuel.

Similarly, EPA believes that an October 1, 1994 date for a changeover from blue to red dye will allow a reasonable period of time for refiners and others that use the blue dye to use up most, if not all, of their current inventory of blue dye. This is based on discussions with representatives of the oil industry. EPA does not expect that equipment compatibility will be a problem for the pipelines and others that transport and store diesel fuel based on the relatively low concentration needed to show visible evidence of the dye. Pipeline representatives have indicated their support for this belief at meetings on these issues. While EPA has not conducted testing of the effects of the dye solvent red 164 on boilers, furnaces, and other equipment that use off-highway diesel fuel, EPA is not aware of any indications that the red dye would cause problems, or would be any different in that regard than blue dye. Finally, with respect to health effects, EPA has preliminarily looked at this issue but has not reached any conclusion that dye solvent red 164 is either better or worse compared to the blue dye currently specified in EPA's regulations, or compared to other possible substitutes for blue dye.

It is worth noting that blue dyed diesel fuel will continue to be in existence in storage facilities at all levels significantly past the October 1, 1994 date even though refiners and importers are prohibited from adding blue dye to off-highway diesel fuel. Therefore, these regulations do not make downstream parties liable for the continued use of existing supplies of blue dyed diesel fuel nor the mixtures of blue and red that will result. This diesel fuel could remain available for off-highway use for a period of time and, therefore, presents some risk to aviation safety. However, EPA is not aware of any feasible way to remove the blue dyed diesel fuel from the distribution and storage system. This rule is therefore aimed not at removing already dyed diesel fuel from the system, but at changing the practice of dyeing diesel fuel blue and thereby preventing the creation of additional supplies of this fuel. The EPA and other federal agencies encourage the rapid depletion of existing supplies of blue dyed diesel and the use of dye solvent red 164 as soon as possible.

EPA believes this change over from blue to red dye as of October 1, 1994 is reasonable in light of all of the above factors. It quickly moves to address the safety issue, while recognizing the need for a reasonable period of time for refiners and importers to obtain supplies of dye solvent red 164 and draw down the inventory of blue dye. The red dye is considered the best choice as a substitute for blue dye, given the information EPA has available at this time regarding coloring characteristics, cost, equipment compatibility, non-proprietary nature of the dye and health effects.

The use of red dye for off-highway diesel fuel involves an additional concern for EPA with respect to that segment of on-highway diesel fuel that is tax-exempt and also dyed red under IRS regulations. EPA would prefer a unique color for the tax-exempt low sulfur fuel so as to retain a clear distinction from the dyed high sulfur as does various segments of the industry which supply and/or use this product under the IRS regulations. However, this is not feasible because, as discussed earlier, there was no other color that met all of the criteria adequately so as to meet the different agency requirements.

Under EPA's current regulations, on-highway diesel fuel for certain tax-exempt users must be free of visible evidence of blue dye, however, the IRS regulations allow for this fuel to be dyed red. As a result, EPA is providing a limited exemption that would allow this tax-exempt on-highway diesel fuel to be dyed red under certain conditions. Specifically, EPA will allow distributors to supply low sulfur on-highway diesel fuel that is dyed red if it meets the following conditions: (1) It must be provided for tax exempt use under IRS rules, (2) the diesel fuel must meet the standards for sulfur content and cetane index or aromatic content. In addition, supplier must provide transfer documents which certify that the fuel meets the applicable standards and the party receiving such fuel must retain these documents. Suppliers of red dyed diesel fuel for use in motor vehicles would have to provide and retain such transfer documents and suppliers and users of this fuel would also have to present such documents to establish a defense under the regulations if EPA discovers a violation. EPA does not believe that this creates a significant additional burden since bills of lading, invoices or some form of transfer document is already standard industry practice and this would merely require the additional designation on this documentation indicating the fuel meets EPA standards. In any case, a terminal has the option to either dye the on-highway diesel fuel red or in the alternative pay the required taxes and seek a refund. If regulated parties instead choose to dye the diesel fuel, or accept dyed diesel fuel for use in motor vehicles, and not pay the tax, the above requirements establish a reasonable structure that places the burden on the user or supplier to show the exception applies in their case.

IV. Environmental and Economic Impact

The environmental impact of this rule would not differ in any significant way from the current regulations. EPA expects that this rule change will provide a reasonable resolution to the aviation safety concerns caused by the use of blue dye in diesel fuel. Given the comparable cost of the two dyes, and the leadtime allowed to obtain supplies of dye solvent red 164 and draw down supplies of blue, EPA believes there is no significant economic impact associated with the use of red rather than blue dye. Since fuel suppliers already provide transfer documents to customers, it will require only a minimal additional effort to indicate on such invoices that the fuel meets EPA requirements. Therefore, EPA believes that there will also be no significant economic impact associated with that requirement.

V. Public Participation

EPA is issuing this final rule without prior notice and comment. This expedited rulemaking procedure is based on the need to act expeditiously to resolve the aviation safety risk caused by the presence of blue dyed diesel fuel and avgas. In support of this action, EPA has contacted and received detailed input from a significant number of interested parties, including other federal agencies. EPA believes these circumstances provide good cause under 5 U.S.C. 553(b) and CAA § 307(d)(1) to expedite this rulemaking. EPA finds that notice and comment procedures under § 307(d) are impracticable and contrary to the public interest based on these circumstances.

At the same time EPA is providing 30 days for submission of public comments. EPA will consider all written comments submitted in the allotted time period to determine if any change to this rule is necessary.

Any proprietary information being submitted for the Agency's consideration should be clearly distinguished from other submittals and clearly labeled "Confidential Business Information." Proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that it is not inadvertently placed in the docket. Information thus labeled and directed shall be covered by a claim of confidentiality and will be disclosed by

EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, it may be made available to the public without further notice to the submitter.

For the aviation safety reasons noted above, this rule is effective upon publication. EPA finds these circumstances provide good cause under 5 U.S.C. 553(d) for this expedited effective date.

VI. Statutory Authority

The authority for this action is sections 114, 211, and 301 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7545, and 7601.

VII. Administrative Designation and Regulatory Analysis

A. Executive Order 12866

Pursuant to Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant action" because this rule might interfere with an action taken or planned by another agency. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, et seq., requires that federal agencies examine the effects of this proposal and identify significant adverse impacts of federal regulations on a substantial number of small entities. However, Section 605(b) of the RFA provides that an analysis is not required when the head of an agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Because the RFA does not provide concrete definitions of "small entity," "significant impact," or "substantial number," EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses.[2] For purposes of this rule, a small entity is any business which is independently owned and operated and not dominant in its field as defined by SBA regulations under section 3 of the Small Business Act.

Pursuant to section 605(b) of the Regultory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects primarily petroleum refiners and suppliers of the required dye. While some of these parties may have existing inventories of blue dye after October 1, 1994, this rule will not adversely affect a significant number of small entities. However, EPA invites comment on the question of significant impacts on small entities.

C. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information requirements are not effective until OMB approves them and a technical amendment is published in the **Federal Register**. A separate **Federal Register** notice will be published requesting comments on the information collection.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Diesel fuel, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

[2] U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Compliance with the Regulatory Flexibility Act," EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act," Office of Policy, Planning, and Evaluation, 1992.

Dated: July 7, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA is amending part 80 of title 40 of the Code of Federal Regulations as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.29 is revised to read as follows:

§ 80.29 Controls and prohibitions on diesel fuel quality.

(a) *Prohibited activities.*

(1) Beginning October 1, 1993, no person, including but not limited to, refiners, importers, distributors, resellers, carriers, retailers or wholesale purchaser-consumers, shall manufacture, introduce into commerce, sell, offer for sale, supply, dispense, offer for supply or transport any diesel fuel for use in motor vehicles unless the diesel fuel:

(i) Has a sulfur percentage, by weight, no greater than 0.05 percent;

(ii)(A) Has a cetane index of at least 40; or

(B) Has a maximum aromatic content of 35 volume percent; and

(iii) Is free of visible evidence of:

(A) The dye 1,4-dialkylamino-anthraquinone; and

(B) Beginning October 1, 1994;

(*1*) The dye solvent red 164; unless

(*2*) It is used in a manner that is tax-exempt as defined under § 4082 of the Internal Revenue Code.

(2) In the case of any diesel fuel not intended for use in motor vehicles, no refiner or importer shall add or introduce any amount of the dye 1,4-dialkylamino-anthraquinone into such fuel beginning October 1, 1994.

(b) *Determination of compliance.* Any diesel fuel which does not show visible evidence of being dyed with either 1,4-dialkylamino-anthraquinone (which has a characteristic blue-green color in diesel fuel) or dye solvent red 164 (which has a characteristic red color in diesel fuel) shall be considered to be available for use in diesel motor vehicles and motor vehicle engines, and shall be subject to the prohibitions of paragraph (a) of this section. Compliance with the standards listed in paragraph (a) of this section shall be determined by use of one of the sampling methodologies specified in appendix G to this part.

(c) *Transfer documents.*

(1) Any person that transfers custody or title of diesel fuel for use in motor vehicles which contains visible evidence of the dye solvent red 164 shall provide documents to the transferee which state that such fuel meets the applicable standards for sulfur and cetane index or aromatic content under these regulations and is only for tax-exempt use in diesel motor vehicles as defined under § 4082 of the Internal Revenue Code.

(2) Any person that is the transferor or the transferee of diesel fuel for use in motor vehicles which contains visible evidence of the dye solvent red 164, shall retain the documents required under paragraph (c)(1) of this section for a period of five years from the date of transfer of such fuel and shall provide such documents to the Administrator or the Administrator's representative upon request.

(d) *Liability.* Liability for violations of paragraph (a)(1) of this section shall be determined according to the provisions of § 80.30. Any person that violates paragraphs (a)(2) or (c) of this section shall be liable for penalties in accordance with paragraph (e) of this section.

(e) *Penalties.* Penalties for violations of paragraphs (a) or (c) of this section shall be determined according to the provisions of § 80.5.

3. Section 80.30 is amended by adding paragraph (g)(7) as follows:

§ 80.30 Liability for violations of diesel fuel control and prohibitions.

* * * * *

(g) * * *

(7) In the case of any distributor or reseller that would be in violation under paragraph (e)(2) or (f)(2) of this section or any wholesale purchaser-consumer or retailer that would be in violation under paragraph (e)(1) or (f)(1) of this section for diesel fuel for use in motor vehicles which contains visible evidence of the dye solvent red 164, the distributor or reseller or wholesale purchaser-consumer or retailer shall not be deemed in violation if he can:

(i) Demonstrate that the violation was not caused by him or his employee or agent,

(ii) Demonstrate that the fuel has been supplied, offered for supply, transported or available for tax-exempt use as defined under § 4082 of the Internal Revenue Code, and

(iii) Provide evidence from the supplier in the form of documentation that the fuel met the applicable standards under paragraph (a)(1) of this section for sulfur and cetane index or

(c) *Transfer documents.*

(1) Any person that transfers custody or title of diesel fuel for use in motor vehicles which contains visible evidence of the dye solvent red 164 shall provide documents to the transferee which state that such fuel meets the applicable standards for sulfur and cetane index or aromatic content under these regulations and is only for tax-exempt use in diesel motor vehicles as defined under § 4082 of the Internal Revenue Code.

(2) Any person that is the transferor or the transferee of diesel fuel for use in motor vehicles which contains visible evidence of the dye solvent red 164, shall retain the documents required under paragraph (c)(1) of this section for a period of five years from the date of transfer of such fuel and shall provide such documents to the Administrator or the Administrator's representative upon request.

(d) *Liability.* Liability for violations of paragraph (a)(1) of this section shall be determined according to the provisions of § 80.30. Any person that violates paragraphs (a)(2) or (c) of this section shall be liable for penalties in accordance with paragraph (e) of this section.

(e) *Penalties.* Penalties for violations of paragraphs (a) or (c) of this section shall be determined according to the provisions of § 80.5.

3. Section 80.30 is amended by adding paragraph (g)(7) as follows:

§ 80.30 Liability for violations of diesel fuel control and prohibitions.

* * * * *

(g) * * *

(7) In the case of any distributor or reseller that would be in violation under paragraph (e)(2) or (f)(2) of this section or any wholesale purchaser-consumer or retailer that would be in violation under paragraph (e)(1) or (f)(1) of this section for diesel fuel for use in motor vehicles which contains visible evidence of the dye solvent red 164, the distributor or reseller or wholesale purchaser-consumer or retailer shall not be deemed in violation if he can:

(i) Demonstrate that the violation was not caused by him or his employee or agent,

(ii) Demonstrate that the fuel has been supplied, offered for supply, transported or available for tax-exempt use as defined under § 4082 of the Internal Revenue Code, and

(iii) Provide evidence from the supplier in the form of documentation that the fuel met the applicable standards under paragraph (a)(1) of this section for sulfur and cetane index or aromatics content for use in motor vehicles.

[FR Doc. 94–17001 Filed 7–13–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7067

[NM–920–4210–06; NMNM 88049]

Withdrawal of National Forest System Land for the Guadalupe Canyon Zoological Botanical Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 3,980.08 acres of National Forest System land from mining for a period of 50 years to protect the unique flora and fauna and critical habitat for threatened and endangered plants and animals within the Guadalupe Canyon Zoological Botanical Area. Most of the land lies within the Bunk Robinson Wilderness Study Area.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, P.O.Box 27115, Santa Fe, New Mexico 87502, 505–438–7594.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the unique flora and fauna and critical habitat for threatened and endangered plants and animals within the Guadalupe Canyon Zoological Botanical Area:

New Mexico Principal Meridian

Coronado National Forest

T. 33 S., R. 21 W.,
- Sec. 17, SW¼NW¼, W½SW¼, and W½SE¼SW¼;
- Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 20, W½NE¼NW¼, and W½W½;
- Sec. 29, NW¼NW¼, S½NW¼, and SW¼;
- Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 31, lots 1 to 4, inclusive, NE¼, E½W½, N½SE¼, and SW¼SE¼;
- Sec. 32, NE¼NW¼, and W½NW¼.

T. 33 S., R. 22 W.,
- Sec. 24, NE¼NW¼, and S½SE¼;
- Sec. 25, E½, E½E½NW¼, and E½NE¼SW¼;
- Sec. 36, E½E½, NW¼NE¼, and SW¼SE¼.

The area described contains 3,980.08 acres in Hidalgo County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: July 1, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–17120 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–FB–P

43 CFR Public Land Order 7068

[MT–930–4210–06; MTM 40470 and MTM 60199]

Opening of Lands Under Section 24 of the Federal Power Act, In Executive Order Dated July 2, 1910, Which Established Powersite Reserve No. 9, and Executive Order Dated March 14, 1911, Which Established Powersite Reserve No. 177; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, 70.27 acres of public lands withdrawn by Executive orders which established the Bureau of Land Management's Powersite Reserve Nos. 9 and 177. This action will permit disposal of the lands through exchange and retain the power rights to the United States. The lands have been and will remain open to mining, under the provisions of the Mining Claims Rights Restoration Act of 1955, and to mineral leasing.

EFFECTIVE DATE: July 29, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818 (1988), and pursuant to the determination by the Federal Energy Regulatory Commission in DVMT–242, it is ordered as follows:

1. At 9 a.m. on July 29, 1994, the following described public lands withdrawn by Executive Order dated March 14, 1911, which established Powersite Reserve No. 177, will be opened to disposal by land exchange subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVMT–242, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Principal Meridian

T. 3 N., R. 2 E.,
Sec. 12, lots 6 and 7.

The area described contains 57.27 acres in Broadwater County.

2. At 9 a.m. on July 29, 1994, the following described public lands withdrawn by Executive Order dated July 2, 1910, which established Powersite Reserve No. 9, will be opened to disposal by land exchange subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVMT–242, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Principal Meridian

T. 4 N., R. 2 E.,
Sec. 12, lot 6.

The area described contains 13 acres in Broadwater County.

3. The State of Montana was afforded timely notice to file an application for a reservation to the State for any lands required as a right-of-way for a highway, or as a source of materials for the construction and maintenance of such highways in accordance with the provisions of Section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818 (1988).

Dated: July 1, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–17113 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–DN–P

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; The Plant, Water Howellia (Howellia Aquatilis), Determined To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines *Howellia aquatilis* (water howellia) a wetlands plant, to be a threatened species. Populations of *H. aquatilis* are extant in Montana, Washington, and Idaho, but this aquatic plant has bee extirpated from California, Oregon, and some sites in Washington and Idaho. The species is threatened by loss of wetland habitat and habitat changes due to timber harvesting, livestock grazing, residential development, and competition by introduced plant species. Listing *H. aquatilis* will afford this species protection under the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: August 15, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Office of the Field Supervisor, U.S. Fish and Wildlife Service, Montana State Office, 100 North Park Avenue, Suite 320, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Dale Harms at the above address (406/449–5225).

SUPPLEMENTARY INFORMATION:

Background

Howellia aquatilis (water howellia) is a monotypic genus in the bellflower family (Campanulaceae). The plant was first described by Grey in 1879 from specimens collected in Multnomah County near Portland, Oregon. Water howellia is described as an aquatic annual plant that grows 10–60 cm (4–24 in) in height. It has extensively branched, submerged or floating stems with narrow leaves 1–5 cm (0.4–2 in) in length. Two types of flowers are produced: small, inconspicuous flowers beneath the water's surface, and emergent white flowers 2–2.7 mm (0.08–0.11 in) in length. The plant is predominantly self-pollinating, and each fruit contains up to 5 large (2–4 mm; 0.08–1.6 in) brown seeds (Shelly and Moseley 1988).

Water howellia historically occurred over a large area of the Pacific Northwest region of the United States, but today the species is found only in specific habitats within the Pacific Northwest (Shelly and Moseley 1988; Gamon 1992). It has been reported from Mendocino County, California; Clackamas, Marion, and Multnomah Counties, Oregon; Mason, Thurston, Clark, and Spokane Counties, Washington; Kootenai and Latah Counties, Idaho; and Lake and Missoula Counties, Montana (Jokerst 1980; Shelly and Moseley 1988; Oregon Natural Heritage Program 1991; Gamon 1992). Distribution of howellia in eastern Washington, Idaho, and Montana is most likely related to the glacial history of these areas (Shelly and Moseley 1988; Gamon 1992). Populations in Oregon and in Clark County, Washington, occur within the floodplains of the lower Columbia and Willamette Rivers.

Howellia grows in firm consolidated clay and organic sediments that occur in wetlands associated with ephemeral glacial pothole ponds and former river oxbows (Shelly and Moseley 1988; Lesica 1992). These wetland habitats are filled by spring rains and snowmelt run-off; and depending on temperature and precipitation, exhibit some drying during the growing season. This plant's microhabitats include shallow water, and the edges of deep ponds that are partially surrounded by deciduous trees (Shelly and Moseley 1988; Gamon 1992; N. Curry, U.S. Fish and Wildlife Service, in litt., 1993).

Howellia reproduces entirely from seed and germination only occurs when ponds dry out and the seeds are exposed to air (Lesica 1990, 1992). The size of a population is affected by the extent of drying the previous growing season (Lesica 1992). Thus, populations vary in annual abundance (Lesica 1992; Roe and Shelly 1992), and exceedingly wet or dry seasons can have a detrimental effect on plant numbers the following year. The length of time seeds remain viable is unknown. However, seeds that remain in the soil longer than 8 months have shown decreased rates of germination and vigor (Lesica 1992).

Genetic variability in howellia populations is low throughout its range (Lesica et al. 1988). This suggests that all populations of howellia most likely represent a single, narrowly adapted genotype. This low rate of genetic variability within populations may explain why the species is restricted to a highly specific habitat.

Only seventy-nine small populations of this aquatic plant were known to exist when the proposed rule to list the species was published (58 FR 19795). Subsequent inventories conducted for howellia in the State of Washington

located 28 new sites in Spokane County alone, thus expanding the number of known populations to 107 (Roe and Shelly 1992; N. Curry, in litt., 1993; J. Gamon, Washington Natural Heritage Program in litt., 1993; R. Moseley, Idaho Conservation Data Center, in litt. 1993). In Montana, this aquatic plant has been found in only 13.5 percent of 437 potential habitats that have been surveyed since 1987 (Roe and Shelly 1992). Howellia appears to be extirpated from California and Oregon and from Mason, and Thurston Counties in Washington, and Kootenai County in Idaho (Jokerst 1980; Shelly and Moseley 1988; Oregon Natural Heritage Program 1991; Gamon 1992).

Nearly all of the remaining populations of howellia are clustered in two main population centers or metapopulations. Within these areas, individual populations occur primarily in clusters of closely adjacent ponds, although some ponds within the range of these metapopulations are unoccupied. One metapopulation near Spokane, Washington, consists of 46 individual populations in Spokane County, Washington, and one in Latah County, Idaho. A second metapopulation is found in the drainage of the Swan River in northwestern Montana (Lake and Missoula Counties), where 59 individual populations are found. In addition to metapopulations, a third site near Vancouver in southwestern Washington (Clark County) contains two small populations that are in close proximity of each other (Gamon 1992).

The large fluctuations in annual numbers, the low genetic variability, and habitat specificity indicates that isolated populations of howellia may be vulnerable to extirpation (Lesica 1992). However, the individual populations within the metapopulations appear interdependent, and may act as founders (Lesica 1992; S. Shelly, pers. comm., 1991). Most populations are extremely small. The fifty-nine populations found in Montana cover an area of only about 51 ha (127 acres). Of this area, one population occurs in a 12-ha (30-acre) pond, one in a 2-ha (5-acre) pond, one in a 1.6-ha (4-acre) pond, 4 in 1.2 ha (3 acres) of ponds, 24 in ponds of 0.4 to 0.8 ha (1 to 2 acres) in size, and the remaining 28 are in ponds of 0.4 ha (1 acre) or less (Shelly and Moseley 1988; Schassberger and Shelly 1991). The U.S. Forest Service (Forest Service) estimates total area of occupied and suitable unoccupied habitat on Forest Service lands to be less than 80 ha (200 acres) (J. Overbay, U.S. Forest Service, in litt., 1993).

located 28 new sites in Spokane County alone, thus expanding the number of known populations to 107 (Roe and Shelly 1992; N. Curry, in litt., 1993; J. Gamon, Washington Natural Heritage Program in litt., 1993; R. Moseley, Idaho Conservation Data Center, in litt. 1993). In Montana, this aquatic plant has been found in only 13.5 percent of 437 potential habitats that have been surveyed since 1987 (Roe and Shelly 1992). Howellia appears to be extirpated from California and Oregon and from Mason, and Thurston Counties in Washington, and Kootenai County in Idaho (Jokerst 1980; Shelly and Moseley 1988; Oregon Natural Heritage Program 1991; Gamon 1992).

Nearly all of the remaining populations of howellia are clustered in two main population centers or metapopulations. Within these areas, individual populations occur primarily in clusters of closely adjacent ponds, although some ponds within the range of these metapopulations are unoccupied. One metapopulation near Spokane, Washington, consists of 46 individual populations in Spokane County, Washington, and one in Latah County, Idaho. A second metapopulation is found in the drainage of the Swan River in northwestern Montana (Lake and Missoula Counties), where 59 individual populations are found. In addition to metapopulations, a third site near Vancouver in southwestern Washington (Clark County) contains two small populations that are in close proximity of each other (Gamon 1992).

The large fluctuations in annual numbers, the low genetic variability, and habitat specificity indicates that isolated populations of howellia may be vulnerable to extirpation (Lesica 1992). However, the individual populations within the metapopulations appear interdependent, and may act as founders (Lesica 1992; S. Shelly, pers. comm., 1991). Most populations are extremely small. The fifty-nine populations found in Montana cover an area of only about 51 ha (127 acres). Of this area, one population occurs in a 12-ha (30-acre) pond, one in a 2-ha (5-acre) pond, one in a 1.6-ha (4-acre) pond, 4 in 1.2 ha (3 acres) of ponds, 24 in ponds of 0.4 to 0.8 ha (1 to 2 acres) in size, and the remaining 28 are in ponds of 0.4 ha (1 acre) or less (Shelly and Moseley 1988; Schassberger and Shelly 1991). The U.S. Forest Service (Forest Service) estimates total area of occupied and suitable unoccupied habitat on Forest Service lands to be less than 80 ha (200 acres) (J. Overbay, U.S. Forest Service, in litt., 1993).

Populations of howellia occur both on private and public lands. Of the 59 known populations in Montana, 21 (36 percent) are found on private lands, 34 (57 percent) occur on lands administered by the Forest Service, and 4 (7 percent) occur on a mixture of private and Forest Service lands (Schassberger and Shelly 1991). In Washington, 34 of the 47 populations (72 percent) are found on Service administered lands, 11 (24 percent) occur on private lands, 1 (2 percent) is on State land, and 1 (2 percent) is on Bureau of Land Management land (J. Gamon, in litt., 1993). The one population in Idaho occurs solely on private property (Shelly and Moseley 1988).

In the February 21, 1990, Notice of Review, the species was reclassified from a Category 2 to a Category 1 species because: (1) It has been extirpated from a large portion of its previously known range, (2) it has narrow ecological requirements, (3) it has a low degree of inter- and intrapopulation genetic variation, and (4) habitat alteration is presently continuing throughout a major portion of its range (Shelly and Moseley 1988).

On October 30, 1991, the Service was petitioned by the Biodiversity Legal Foundation to list howellia as an endangered species. A petition finding and proposed rule to list *H. aquatilis* as a threatened species without designating critical habitat was published in the April 16, 1993, **Federal Register** (58 FR 19795).

Summary of Comments and Recommendations

A proposed rule to list this aquatic plant was published on April 16, 1993 (58 FR 19795). In that rule, all interested parties were requested to submit any reports or information that might contribute to the development of a final rule. Newspaper notices inviting public comment were published in six different newspapers in Washington, Idaho, and Montana (from May 5 to May 7, 1993). The Service received 12 comments from 2 Federal and 3 State agencies, and 7 from private organizations, companies, and individuals. Ten comments were in support of the listing, one was opposed, and one did not state a position.

Comments pertinent to this rulemaking on whether *Howellia aquatilis* merits listing and if critical habitat should be designated are discussed in the following summary:

Issue 1: One individual representing a cattlemen's association opposed the listing of howellia due to the potential economic effects it may have on private landowners on whose property it is located, especially if this land is used for livestock grazing.

Response: The Service is required to evaluate five listing criteria in making a decision on whether a species should be listed as threatened or endangered. During this evaluation, the Service did determine that livestock grazing is a threat to the plant and its habitat. However, listing this species as threatened does not preclude livestock grazing by private landowners on their property.

Issue 2: Two individuals believe that critical habitat should be designated since it would protect the mosaic of ponds necessary for the long-term survival of howellia.

Response: The Service finds that designation of critical habitat is not prudent at this time. The Service is concerned that publication of site-specific maps of critical habitat might increase take and vandalism at these sites. Only federally authorized, permitted, or funded activities that would destroy or adversely modify critical habitat would be precluded if critical habitat were designated. The Service believes that section 7 consultation without critical habitat designation will sufficiently protect those populations that occur on Federal lands.

Summary of Factors Affecting the Species

The Service has determined that howellia should be listed as a threatened species based on a thorough review and consideration of all available information. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the act. These factors and their application to *Howellia aquatilis* (water howellia) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Howellia aquatilis has narrow ecological requirements and any subtle changes in its habitat could devastate a population. Any disturbance that alters the surface or subsurface hydrology of the habitat can negatively influence a population. Activities that affect the ecology of a wetland bottom habitat also may affect wetland succession and the survival of howellia populations.

Howellia aquatilis and its wetlands habitats are being threatened by *Phalaris arundinacea* (reed canary grass), a highly competitive, robust grass that invades wetlands. Reed canary grass has the potential to extirpate howellia

populations due to its ability to rapidly form dense monocultures, causing the decline of nearly all other plants in a wetland (Apfelbaum and Sams 1987). This exotic grass accelerates the rate of wetland succession causing significant changes in substrate and water table levels (Gamon 1992).

Both native and exotic varieties of this grass occur in North America and it is not known whether the variety that occurs in wetlands within the range of howellia is native or exotic (Lackschewitz 1991; L. Kunze, Washington Natural Heritage Program, pers. comm., 1993). However, due to the pernicious characteristic of the invasions, and the lack of historical records of its presence in this region, some ecologists in the Pacific northwest believe this invasive variety of *P. arundinacea* is an exotic form that was introduced by humans (L. Kunze, pers. comm, 1993; S. Vrilakas, Oregon Natural Heritage Program, pers. comm., 1993).

Howellia is most abundant in areas with little or no other aquatic vegetation, since it does not compete well with other plants (Gamon 1992). Howellia has been observed growing amongst reed canary grass stands, but only where these stands are sparse or in openings (N. Curry, in litt., 1993). Reed canary grass is considered a major threat to howellia in the State of Washington since it occurs in 83 percent of the ponds where howellia is present. This exotic also threatens the howellia population in Idaho since it is present in nearby ponds (R. Moseley, in litt., 1993). Reed canary grass has also been found in several of the Montana ponds occupied by howellia (Shelly and Moseley 1988).

Lythrum salicaria (purple loosestrife), another aggressive exotic plant, also poses a threat to howellia (Gamon, in litt., 1993), because it can out-compete and eliminate other aquatic plants (West 1990). Purple loosestrife is present in Lake County, Montana, and also in the immediate vicinity of the Spokane howellia metapopulation (West 1990; N. Curry, pers. comm., 1993).

Impacts associated with timber harvest also pose a threat to *H. aquatilis* populations. Of the 59 populations of howellia in the Swan Valley, Montana, 22 (37 percent) occur within areas where logging has occurred around the wetland margins (Shelly and Moseley 1988). In Montana, 58 percent of the populations of howellia occur on Forest Service lands, and an additional 7 percent occur on lands partially owned by the Forest Service (Schassberger and Shelly 1991). Thirty-eight percent of the private lands in Montana where howellia occurs are owned by the Plum Creek Timber Company (Shelly and Moseley 1988). Timber harvest has been increasing within the area of the Spokane metapopulation (Gamon 1992).

The removal of trees from around ponds may cause an increase in water temperatures and evaporation, thus increasing wetland drying and influencing plant succession. Increased siltation occurs in wetlands where logging or associated road building and maintenance is conducted, also impacting bottom substrates and the vegetational composition of the sites. Water howellia occurs most frequently in ponds with firm, consolidated organic clay bottom sediments. It also is found in more open areas within these ponds. An increase in bottom sedimentation and subsequent competition from other vegetation could have an adverse effect on *H. aquatilis* populations.

Livestock, by their grazing and trampling, can also adversely affect howellia populations due to the disturbance of shorelines and associated vegetation. Trampling of bottom sediments adversely affects the seed bank and the consolidated substrate which appears to be necessary for germination. Additionally, livestock waste increases nutrient loading in wetlands causing a change in the water quality that may alter pond vegetation composition. It is not known how much grazing impact can be tolerated by *H. aquatilis*, although the plant still exists in ponds that have been disturbed by grazing (N. Curry, pers. comm., 1993; B. Wiseman, Ridgefield National Wildlife Refuge, pers. comm., 1992). The timing, magnitude, and duration of grazing evidently influences the plant's ability to withstand grazing. The cumulative impacts of grazing and other human-induced disturbances threaten a number of populations.

The California population may have been eliminated by cattle grazing and trampling (Griggs and Dibble 1979), and two wetlands on private lands in Montana with populations of *H. aquatilis* have been heavily impacted by domestic livestock, especially horses (Shelly and Moseley 1988). In Washington, 23 percent of the populations occur on private lands (J. Gamon, pers. comm. 1991), many of which are subject to grazing. Additionally, grazing occurred on some of the lands administered by the Service until 1993 (N. Curry, pers. comm. 1993). In Spokane County, Washington, several of the ponds containing *H. aquatilis* have been significantly altered by past and current grazing practices.

Sites where howellia was historically found in Oregon have been converted to urban areas, and an increase in residential development is occurring in the Spokane metapopulation area (Gamon 1992). Additionally, the construction of dams along the Columbia and Willamette Rivers has led to a loss of suitable wetland habitats (Shelly and Moseley 1988; Gamon 1992). Many wetlands within the historic range of *H. aquatilis* have been drained, filled, or excavated for other uses (Gamon 1992).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, recreational, scientific, or educational purposes is presently not a threat to *H. aquatilis*. However, listing the species due to its taxonomic status as a monotypic genus may generate increased public interest. The Service has not designated critical habitat because the publication of precise maps and descriptions of critical habitat in the **Federal Register** could lead to increased take and vandalism (Gamon 1992).

C. Disease or Predation

Howellia aquatilis may be subject to foraging by native and domestic animals, but it was found that domestic livestock do not feed on *H. aquatilis* in Idaho (Shelly and Moseley 1988). Incidence of disease is not known.

D. The Inadequacy of Existing Regulatory Mechanisms

Some protection already exists for this species since it is contained on the U.S. Forest Service's list of sensitive species for the Pacific Northwest region. A sensitive species designation may help control the use of the species and its habitat. Federal laws, such as the Clean Water Act and the Food Security Act, and some State laws protect wetlands. However, it is doubtful that these laws are adequate to protect howellia and its habitats. Populations that occur entirely on private lands receive no Federal protection.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The lack of genetic variation between populations of *H. aquatilis*, and its extremely specialized habitat requirements add to the vulnerability of the species. Because of its low genetic variability, howellia may be less able to adapt to abrupt environmental changes (Lesica et al. 1988). As a result, this species may be vulnerable to random environmental events and/or habitat alterations.

Short- and long-term climatic changes could affect *H. aquatilis* by influencing the drying patterns of wetlands. Successive years of exceedingly wet or dry weather are expected to cause declines or even extirpation of some of the populations. Long-term climatic changes could also cause these shallow wetlands to dry up, ultimately causing expiration of the species.

Natural wetland succession due to sediment deposition may in turn affect the existing plant community. This natural succession could cause the extirpation of *H. aquatilis* populations (Jokerst 1980; Shelly and Moseley 1988; Gamon 1992).

The Service has assessed the best scientific and commercial information available regarding past, present, and future threats to this species in determining to publish this rule final. Based on this evaluation, the preferred action is to list *Howellia aquatilis* (water howellia) as a threatened species. The Service has determined that, although it is not in immediate danger of extinction, howellia is likely to become an endangered species in the foreseeable future if the present threats and declines continue.

Howellia has been extirpated from over one-third of its known range (Shelly and Moseley 1988). Although additional populations of this plant have recently been discovered, the Service does not believe that the overall status of the species has changed as a result of these recent discoveries. Nearly all known howellia populations are clustered within two areas of the northwestern United States, and these populations exhibit little genetic variation between or among populations. This highly specialized aquatic is vulnerable to both natural and human disturbances which if continued, will lead to its eventual extinction. For the reasons given below, it is not prudent to designate critical habitat for howellia at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is presently not prudent for the species because it could lead to increased take and vandalism. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would likely contribute to vandalism of the species or its habitat (Gamon 1992)

environmental events and/or habitat alterations.

Short- and long-term climatic changes could affect *H. aquatilis* by influencing the drying patterns of wetlands. Successive years of exceedingly wet or dry weather are expected to cause declines or even extirpation of some of the populations. Long-term climatic changes could also cause these shallow wetlands to dry up, ultimately causing expiration of the species.

Natural wetland succession due to sediment deposition may in turn affect the existing plant community. This natural succession could cause the extirpation of *H. aquatilis* populations (Jokerst 1980; Shelly and Moseley 1988; Gamon 1992).

The Service has assessed the best scientific and commercial information available regarding past, present, and future threats to this species in determining to publish this rule final. Based on this evaluation, the preferred action is to list *Howellia aquatilis* (water howellia) as a threatened species. The Service has determined that, although it is not in immediate danger of extinction, howellia is likely to become an endangered species in the foreseeable future if the present threats and declines continue.

Howellia has been extirpated from over one-third of its known range (Shelly and Moseley 1988). Although additional populations of this plant have recently been discovered, the Service does not believe that the overall status of the species has changed as a result of these recent discoveries. Nearly all known howellia populations are clustered within two areas of the northwestern United States, and these populations exhibit little genetic variation between or among populations. This highly specialized aquatic is vulnerable to both natural and human disturbances which if continued, will lead to its eventual extinction. For the reasons given below, it is not prudent to designate critical habitat for howellia at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is presently not prudent for the species because it could lead to increased take and vandalism. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would likely contribute to vandalism of the species or its habitat (Gamon 1992).

The proper Federal, State, and local agencies have been notified of the locations and management needs of this plant. Landowners have been notified of the location and importance of protecting habitat of this species. Protection of its habitat will be addressed through the recovery process and through the section 7 consultation process. The Service believes that Federal involvement can be effective without the designation of critical habitat and finds that designation of critical habitat for this plant is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Listing encourages conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal Agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

In the case of howellia, Federal activities that might be affected by listing this plant as threatened include timber harvest, livestock grazing, road construction, and filling of wetlands. Such Federal activities may be subject to section 7 review.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 for threatened species set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person, subject to the jurisdiction of the United States, to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale, this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. In some instances permits may be issued for a specified time to relieve undue economic hardship. The Service anticipates that few trade permits would ever be sought or issued because *H. aquatilis* is not utilized in trade. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia, 22203–3507 (703/358–2104).

National Environmental Policy Act

The Service has determined that listing actions pursuant to section 4(a) of the Endangered Species Act of 1973, as amended, do not require an Environmental Assessment as defined under the authority of the National Environmental Policy Act of 1969. A notice outlining the Service's reasons for this determination was published in the October 25, 1983 **Federal Register** (48 FR 49244).

References Cited

Apfelbaum, S.I. and C.E. Sams. 1987. Ecology and control of reed canary grass (*Phalaris arundinacea L.*). Natural Areas Journal. 7:69–74.

Gamon, J. 1992. Report on the status in Washington of *Howellia aquatilis* Gray. Unpublished Report, Washington Natural Heritage Program, Olympia. 46pp.

Griggs, F.T. and J.E. Dibble. 1979. Status Report, *Howellia aquatilis* Gray, for the Mendocino National Forest. Unpublished report, Mendocino National Forest, California. 12pp.

Jokerst, J.D. 1980. Status report *Howellia aquatilis* Gray for the Mendocino National Forest. Unpublished report. California State University, Chico. 18pp.

Lackschewitz, K. 1991. Vascular plants of west-central Montana—identification guidebook. U.S.D.A. Forest Service, Intermountain Research Station, General Technical Report INT–277, 44pp.

Lesica, P. 1990. Habitat requirements, germination behavior and seed bank dynamics of *Howellia aquatilis* in the Swan Valley, Montana. Unpublished report; Flathead National Forest, Kalispell, Montana. 48pp.

Lesica, P. 1992. Autecology of the endangered plant *Howellia aquatilis*; implications for management and reserve design. Ecological Applications 2:411–421.

Lesica, P., R.F. Leary, F.W. Allendorf, and D.E. Bilderback. 1988. Lack of genic diversity within and among populations of an endangered plant, *Howellia aquatilis*. Conservation Biology 2:275–282.

Oregon Natural Heritage Program. 1991. Rare, threatened and endangered plants and animals of Oregon. Oregon Natural Heritage Program, Portland. 64pp.

Roe, L.S. and J.S. Shelly. 1992. Update to the status review of *Howellia aquatilis*: field surveys, monitoring studies and transplant experiments, U.S.D.A. Forest Service, Flathead National Forest. Montana Natural Heritage Program, Helena. 51pp.

Schassberger, L.A. and J.S. Shelly. 1991. Update to the status review of *Howellia aquatilis*: field surveys, monitoring studies, and transplant experiments 1990. Unpublished report, U.S. Forest Service, Flathead National Forest, Kalispell, MT. 57pp.

Shelly, J.S. and R. Moseley. 1988. Report on the conservation status of *Howellia aquatilis*, a candidate threatened species. Unpublished Report, Montana Natural Heritage Program, Helena, Montana. 166pp.

West, B. 1990. We've got trouble right here in River City. Proceeding of the 28th Annual Meeting of the Montana Chapter of The Wildlife Society, Lewiston (Abstract).

Author

The primary author of this proposed rule is Lori H. Nordstrom, Montana State Office (See **ADDRESSES** section). Harold M. Tyus, Denver Regional Office, U.S. Fish and Wildlife Service, Denver, Colorado served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. § 17.12(h) is amended by adding the following, in alphabetical order under Campanulaceae—Bellflower family, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
.	.	.	.	.	.	.
Campanulaceae—Bellflower family:						
.	.	.	.	.	.	.
Howellia aquatilis	Water howellia	U.S.A. (MT, ID, WA, OR, T CA).			NA	NA
.	.	.	.	.	.	.

Dated: June 30, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–17134 Filed 7–13–94; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 931056–4173; I.D. 092093D]

RIN 0648–AG07

Taking and Importing of Marine Mammals; Yellowfin Tuna Purse Seine Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to codify the definition of "import" as used in the regulations restricting imports into the United States of yellowfin tuna and certain other fish and fish products for purposes of limiting mortality to marine mammals taken during commercial fishing operations. The definition clarifies that a fish importation occurs under the Marine Mammal Protection Act (MMPA), when fish or fish products are released for entry into a nation by that nation's customs authority, and not simply upon physical entry into its territory.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: LT Dana S. Wilkes, NOAA, (310) 980–4000, FAX (310) 980–4047.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule (58 FR 59007, November 5, 1993) provided background as to why NMFS considers it useful to codify the definition of "import". The definition of "import" is relevant both to shipments into the United States, and to shipments from one foreign nation to another. Although previous regulations have not defined "import", NMFS determined that tuna and tuna products that were transshipped through a nation without being released from the customs custody of that nation, would not be considered as having been imported by that nation. In other words, a fish or fish product is not "imported" until it is released for entry by a nation's customs authorities.

No comments were received on the proposed rule. Accordingly, it is adopted as final with only minor editorial changes.

Classification

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: July 7, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: July 7, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3, a new definition of "import" is added in alphabetical order to read as follows:

§ 216.3 Definitions.

* * * * *

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the Customs laws of the United States; except that, for the purpose of any ban issued under 16 U.S.C. 1371(a)(2) on the importation of fish or fish products, the definition of "import" in § 216.24(e)(1)(ii) shall apply.

* * * * *

3. In § 216.24, paragraph (e)(1) is redesignated as paragraph (e)(1)(i), and a new paragraph (e)(1)(ii) is added to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) * * *

(1)(i) * * *

(ii) For purposes of this paragraph (e), and in applying the definition of an "intermediary nation", an import occurs when the fish or fish product is released from a nation's Customs' custody and enters into the territory of the nation. For other purposes, "import" is defined in § 216.3.

* * * * *

[FR Doc. 94–17066 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 59, No. 134
Thursday, July 14, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1654–94]

RIN 1115–AD66

Temporary Alien Workers Seeking H Classification for the Purpose of Obtaining Graduate Medical Education or Training

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations with regards to the treatment of certain foreign medical graduates seeking nonimmigrant classification under the H–1B classification as amended by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA). This rule will prohibit a foreign medical graduate from seeking H–1B classification for the purpose of taking a medical residency in the United States. It will also modify the eligibility standards for foreign medical graduates and clarify for businesses and the general public the requirements for medical graduates' classification and admission.

DATES: Written comments must be submitted on or before September 12, 1994.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling please reference the INS number 1654–94 on your correspondence.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7215, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: Prior to the enactment of the Immigration Act of 1990 (IMMACT), Public Law 101–649, with certain limited exceptions, graduates of foreign medical schools seeking to come to the United States to perform services in the medical professions could obtain H–1B classification only if they were coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency to teach or conduct research, or both, at or for such an institution or agency. This requirement was deleted by Public Law 101–649 which allowed for the admission of foreign medical graduates under the H–1B nonimmigrant classification to perform any and all services, including direct patient care, in the medical professions.

The Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102–232, December 12, 1991, established, among other things, new criteria for the admission of foreign educated physicians coming to the United States to perform services in the medical professions. Public Law 102–232 amended section 212(j)(2) of the Act to provide that these aliens could obtain H–1B classification in either of two ways as follows:

First, (mirroring the pre-IMMACT language), an alien can be accorded H–1B classification if the alien is coming to the United States pursuant to an invitation from a public or nonprofit private educational or research institution or agency to teach or conduct research, or both, at or for such institution or agency.

Second, an alien may be accorded H–1B classification if he or she has passed the Federation Licensing Examination (FLEX) or an equivalent examination as determined by the Secretary of Health and Human Services. Eligibility under this criterion also requires a demonstration that the alien has competency in oral and written English or that the alien has graduated from a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education.

Since the enactment of MTINA, a number of questions have been raised concerning the legality of graduates of foreign medical schools taking graduate medical education or training, also known as residencies or internships, as H–1B nonimmigrant aliens. It has been argued that a medical residency constitutes "services in the medical professions" since a portion of the residency involves providing direct patient care. It has also been argued that a medical residency meets the definition of the term "specialty occupation" as contained in section 214(i)(1) of the Act since the position requires the theoretical and practical application of a body of highly specialized knowledge, and a bachelor's or higher degree in the specific specialty is a minimum requirement for entry into the occupation.

It is the opinion of the Service that Congress did not intend the H–1B nonimmigrant classification to be utilized by graduates of foreign medical schools coming to the United States to undertake medical residencies or otherwise receive graduate medical education or training. The Service believes that graduates of medical schools coming to the United States to take medical residencies or otherwise receive graduate medical education or training must seek classification as J–1 nonimmigrant aliens.

The rationale behind this opinion requires an examination of the prior legislation in this area. Congress enacted the Health Professionals Education Assistance Act of 1976 (HPEAA), Public Law 94–484, in response to a number of problems with foreign medical graduates in the United States. This legislation established the J–1 classification as the sole vehicle for graduates of medical schools to obtain graduate medical education or training in the United States, which clearly includes medical residencies. See sections 101(a)(15)(J) and 212(j)(1) of the Act; see also pre-IMMACT section 101(a)(15)(H)(i) of the Act. Section 212(j)(1) of the Act describes the various requirements for foreign medical graduates coming to the United States to receive graduate medical education or training. Although sections 303(a)(5) (A) and (B) of MTINA provided an avenue for foreign medical graduates to enter the United States in H–1B status to perform services in the medical professions by amending sections 101(a)(15)(H)(i)(b) and 212(j)(2) of the Act, MTINA did not alter the requirements for graduate medical education or training contained in section 212(j)(1) of the Act. It is our opinion that Congress would not place in juxtaposition two such clearly different statutory provisions as section 212(j)(1) and section 212(j)(2) of the Act if it intended the H–1B and J–1 classifications to overlap with respect to foreign medical graduates seeking graduate medical education or training.

Nothing in the legislative history of either IMMACT of MTINA indicates that Congress intended graduates of medical schools to obtain graduate medical education or training under the H–1B classification. In the absence of clear legislative language to the contrary, it is the opinion of the Service that graduates of foreign medical schools must utilize the J–1 classification to undertake medical residencies. Therefore, those aliens who were previously accorded H–1B classification in order to take a medical residency will be required to seek a change of nonimmigrant classification to that of the J–1 nonimmigrant alien.

This rule proposes to amend paragraph (h)(2)(ii) by removing the last two sentences of the paragraph. The change will allow a petitioner to file a single petition for multiple beneficiaries even when the beneficiaries on the petition will be applying for visas at more than one consulate or port-of-entry. Under the prior regulation, the Service required separate petitions for the beneficiaries where the aliens desired to apply for nonimmigrant visas at different consulates or where the alien beneficiaries were going to seek entry at more than one port-of-entry. This proposed revision will save petitioners the time and expense of filing multiple petitions for a group of aliens since, under the proposed rule, only a single petition will be required. The Service will, of course, notify each consular post or port-of-entry listed on the petition of the approval of the petition. The other requirements of the paragraph, *i.e.*, that the aliens will be performing the same service or receiving the same training, for the same period of time and in the same location, have not been changed.

This rule also proposes to amend paragraph (h)(13)(iv), which discusses the limitations on admission for H–2B and H–3 nonimmigrant aliens, by adding a sentence differentiating between an H–3 alien trainee and an H–3 participant in a "special education exchange visitor program." As contained in the previous regulation, any H–3 alien who had spent 18 months in the United States as an H or L nonimmigrant alien could not seek

requirements for graduate medical education or training contained in section 212(j)(1) of the Act. It is our opinion that Congress would not place in juxtaposition two such clearly different statutory provisions as section 212(j)(1) and section 212(j)(2) of the Act if it intended the H–1B and J–1 classifications to overlap with respect to foreign medical graduates seeking graduate medical education or training.

Nothing in the legislative history of either IMMACT of MTINA indicates that Congress intended graduates of medical schools to obtain graduate medical education or training under the H–1B classification. In the absence of clear legislative language to the contrary, it is the opinion of the Service that graduates of foreign medical schools must utilize the J–1 classification to undertake medical residencies. Therefore, those aliens who were previously accorded H–1B classification in order to take a medical residency will be required to seek a change of nonimmigrant classification to that of the J–1 nonimmigrant alien.

This rule proposes to amend paragraph (h)(2)(ii) by removing the last two sentences of the paragraph. The change will allow a petitioner to file a single petition for multiple beneficiaries even when the beneficiaries on the petition will be applying for visas at more than one consulate or port-of-entry. Under the prior regulation, the Service required separate petitions for the beneficiaries where the aliens desired to apply for nonimmigrant visas at different consulates or where the alien beneficiaries were going to seek entry at more than one port-of-entry. This proposed revision will save petitioners the time and expense of filing multiple petitions for a group of aliens since, under the proposed rule, only a single petition will be required. The Service will, of course, notify each consular post or port-of-entry listed on the petition of the approval of the petition. The other requirements of the paragraph, *i.e.*, that the aliens will be performing the same service or receiving the same training, for the same period of time and in the same location, have not been changed.

This rule also proposes to amend paragraph (h)(13)(iv), which discusses the limitations on admission for H–2B and H–3 nonimmigrant aliens, by adding a sentence differentiating between an H–3 alien trainee and an H–3 participant in a "special education exchange visitor program." As contained in the previous regulation, any H–3 alien who had spent 18 months in the United States as an H or L nonimmigrant alien could not seek extension, change status, or be readmitted to the United States unless the alien had spent 6 months outside the United States. This paragraph is inconsistent with paragraph (h)(9)(iii)(D)(*1*) which provides that an H–3 petition for an alien trainee shall be valid for a period of two years.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities. The regulation merely clarifies certain provisions of the MTINA relating to physicians desiring to take medical residencies in this country and modifies certain filing procedures for petitions to reduce filing fees.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Organization and functions (Government agencies).

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Revising paragraph (h)(2)(ii);

b. Adding paragraph (h)(4)(viii)(D); and by

c. Revising paragraph (h)(13)(iv), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(2) * * *

(ii) *Multiple beneficiaries.* More than one beneficiary may be included in an H–2A, H–2B, or H–3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period of time, and in the same location.

* * * * *

(4) * * *

(viii) * * *

(D) *Aliens coming to the United States to receive graduate medical education or training.* Aliens coming to the United States to receive graduate medical education or training are not eligible for H–1B classification. Such aliens must seek classification pursuant to section 101(a)(15)(J) of the Act.

* * * * *

(13) * * *

(iv) *H–2B and H–3 limitation on admission.* An H–2B alien who has spent three years in the United States under section 101(a)(15) (H) and/or (L) of the Act; an H–3 alien participant in a special education program who has spent 18 months in the United States under section 101(a)(15) (H) and/or (L) of the Act; and an H–3 alien trainee who has spent 24 months in the United States under section 101(a)(15) (H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15) (H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior six months.

* * * * *

Dated: June 9, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–17009 Filed 7–13–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter 1

Regulatory Review

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Regulatory review.

SUMMARY: This document summarizes the major comments the FAA received in response to its notice requesting that the public identify regulations that it believes should be amended or eliminated to reduce undue regulatory burdens, consistent with the FAA's statutory safety, security, and other public interest responsibilities. The information is needed from the commenters to help the FAA respond to the Administration's direction to design regulations in the most effective manner to achieve their regulatory objective.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Christie, Director, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9677.

SUPPLEMENTARY INFORMATION: On January 10, 1994, the FAA published a request that the public identify regulations that it believes should be amended or eliminated to reduce undue regulatory burdens, if any, consistent with the FAA's statutory safety, security, and other public interest responsibilities. This notice responded to the recommendation of the 15-member National Commission to Ensure a Strong Competitive Airline Industry, the recommendations of the Vice President's National Performance Review, and DOT and FAA regulatory initiatives. The FAA also noted that it intends to use the responses to this request to facilitate the regulatory review I envisioned by Executive Order No. 12866, "Regulatory Planning and Review," (September 30, 1993). The order requires agencies periodically to review their existing significant regulations to determine whether any should be modified or eliminated to make the agency's regulatory program more effective and less burdensome.

The FAA requested that commenters focus their recommendations on up to three regulations they believe to be of primary concern—rather than catalogue all rules that they may view to be objectionable in some respects. This request was made to facilitate the development of a manageable overall proposal. Commenters also were asked to rank in priority order the regulations that the commenters believed the agency should address first. In addition, each submission was to include an explanation of: (1) How the identified regulatory requirement is burdensome; (2) how the requirement should be changed or deleted, including, where possible, suggested draft substitutes; (3) how a regulatory change would benefit the public; and (4) how a proposed regulatory change would provide an adequate level of safety, security, or environmental protection. The FAA also noted that specific economic information to support a reliable cost/benefit analysis of the proposed change would be of assistance.

The FAA received more than 400 comments from 184 commenters. The agency has completed its initial review of these comments and is considering each in the light of the agency's safety priorities. The appropriate FAA program office is preparing a response to each of these comments, and a comprehensive document containing the FAA's responses will be available to the public through an announcement in the Federal Register later this year.

The commenters represented:

- Air carriers, including professional trade associations.
- Air taxi/commercial operators, including professional trade associations.
- General aviation, including professional trade associations.
- Rotorcraft, including professional trade associations.
- Manufacturers.
- State transportation agencies/airport authorities.
- Repair facilities.
- Aviation-related businesses.
- Flight schools.
- Public interest group.
- Intergovernmental organization.
- Aviation foundation.
- Union.
- Individiduals.

Comments received addressed 40 parts of the Federal Aviation Regulations (FAR), 4 FAA Orders, 7 Notices of Proposed Rulemaking (NPRMs), 4 sections of Chapter 49 of the U.S. Code, 5 Advisory Circulars, 2 Special Federal Aviation Regulations (SFAR), the Airman's Information Manual, an Airworthiness Directive, an Action Notice, the Freedom of Information Act, and the Notices to Airmen (NOTAMs) System. The following Federal Aviation Regulations were addressed most frequently:

FAR Part

Part 11—General Rulemaking Procedures
Part 21—Certification Procedures for Products and Parts
Part 23—Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes
Part 25—Airworthiness Standards: Transport Category Airplanes
Part 43—Maintenance, Preventive Maintenance, Rebuilding and Alteration
Part 61—Certification: Pilots and Flight Instructors
Part 91—General Operating and Flight Rules
Part 107—Airport Security
Part 121—Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft
Part 135—Air Taxi Operators and Commercial Operators

Following are the primary segments of the public whose comments reflected common themes, and the main issues they addressed:

Air Carriers

- *Aging Aircraft.* Commenters stated that regulations that have been proposed by the FAA to require aircraft operators to ensure that airworthiness requirements applicable to older aircraft continue to be met should be withdrawn or modified prior to implementation, and that air carriers should be permitted to develop their own specific programs for dealing with corrosion. Some commenters stated that the FAA has over-utilized Airworthiness Directives (ADs) to implement the aging aircraft program, and that such programs have become unduly broad and burdensome.
- *Airport security.* Commenters stated that regulations that limit access to certain secure areas of airports have proven much more costly to air carriers than the FAA had forecasted, and should be modified and standardized.
- *Drug testing.* Industry commenters asserted that random drug testing should be reduced to 10 percent of employees per year, rather than the current 50 percent.
- *Aircraft simulation.* Commenters addressed various aspects of simulator training and recommended revising part 121, Appendix H, Advanced Simulation Plan, to take into account advances in simulator sophistication and capability.

Air Taxi and Commercial Operators

- *Single-engine Instrument Flight Rules (IFR).* Commenters recommended eliminating the current prohibition of passenger-carrying operations in single-engine airplanes for compensation or hire under IFR conditions, particularly for turbine-powered aircraft.
- *Weather reports and forecasts.* Certain operators wanted more flexibility in evaluating weather conditions at destination airports prior to departure, and to expand the number of sources of approved weather reporting. The issue was raised by helicopter operators, including air ambulance services, as well as by other certificate holders.
- *Maintenance.* Certain operators stated that pilots who have appropriate training but who are not certificated mechanics should be permitted to perform certain maintenance functions such as the reconfiguration of aircraft seating.

General Aviation

- *Medical certification requirements.* Commenters supported eliminating or relaxing medical certificate requirements for pilots whose pilot certificates currently require a third-class medical certificate. One common recommendation was to extend the duration of a third-class medical certificate from 2 years to 4 years.
- *Biennial flight review.* Commenters made a number of recommendations to eliminate the requirement for the biennial flight review, either for all pilots or for certain pilots based on their experience or the nature of their flight operations.
- *Aircraft annual inspections.* Commenters recommended several approaches to relaxing the current requirements for annual inspections, including extending the inspection requirement to every 2 years, particularly for aircraft not flown for compensation or hire.
- *Aircraft simulation.* Certain commenters disagreed with the FAA's interpretation requiring that a flight instructor certify training in flight simulation in order for a pilot to log that time.

Manufacturers

- *Emergency landing dynamic conditions.* Commenters requested that the FAA standardize its position regarding pass/fail criteria for transport category airplane seats. Commenters also requested modification to proposals and current regulations affecting emergency landing dynamic conditions criteria for airplane seats.
- *High intensity radiated fields (HIRF).* Commenters requested that the FAA modify the procedures for establishing requirements for HIRF and lightning effects to enable manufacturers to identify these requirements early in an aircraft certification program.

Airport/State Agencies

- *Airport Security.* Commenters stated that operators of small airports are particularly concerned about the costs of controlling access to areas identified as critical for security reasons. Commenters referred to what

helicopter operators, including air ambulance services, as well as by other certificate holders.

• *Maintenance.* Certain operators stated that pilots who have appropriate training but who are not certificated mechanics should be permitted to perform certain maintenance functions such as the reconfiguration of aircraft seating.

General Aviation

• *Medical certification requirements.* Commenters supported eliminating or relaxing medical certificate requirements for pilots whose pilot certificates currently require a third-class medical certificate. One common recommendation was to extend the duration of a third-class medical certificate from 2 years to 4 years.

• *Biennial flight review.* Commenters made a number of recommendations to eliminate the requirement for the biennial flight review, either for all pilots or for certain pilots based on their experience or the nature of their flight operations.

• *Aircraft annual inspections.* Commenters recommended several approaches to relaxing the current requirements for annual inspections, including extending the inspection requirement to every 2 years, particularly for aircraft not flown for compensation or hire.

• *Aircraft simulation.* Certain commenters disagreed with the FAA's interpretation requiring that a flight instructor certify training in flight simulation in order for a pilot to log that time.

Manufacturers

• *Emergency landing dynamic conditions.* Commenters requested that the FAA standardize its position regarding pass/fail criteria for transport category airplane seats. Commenters also requested modification to proposals and current regulations affecting emergency landing dynamic conditions criteria for airplane seats.

• *High intensity radiated fields (HIRF).* Commenters requested that the FAA modify the procedures for establishing requirements for HIRF and lightning effects to enable manufacturers to identify these requirements early in an aircraft certification program.

Airport/State Agencies

• *Airport Security.* Commenters stated that operators of small airports are particularly concerned about the costs of controlling access to areas identified as critical for security reasons. Commenters referred to what are described as excessive restrictions on public access at certain airport facilities, such as fixed base operators.

• *Airport aid.* Commenters requested better access to information on the FAA Airport Aid Program, changes in certain funding criteria, and greater consideration to costs of compliance with AC criteria.

• *Private pilot privileges and limitations.* Commenters requested that part 61 of the FAR be amended to permit the reimbursement of private pilots for fuel and oil expenses for search and rescue operations without requiring the pilots to have a commercial pilot certificate.

Certain issues were mentioned relatively prominently by more than one segment of the aviation community. These issues included the following:

• *Airworthiness Directives/Advisory Circulars.* Commenters cited costs associated with compliance with ACs (which are not mandatory) and ADs (which are regulatory). Commenters suggested treating certain issues through the regulatory process rather than through ACs, and also suggested modifications to the AD process, including compliance schedules.

• *Flight time limitations and rest requirements.* Commenters suggested changes to pilot requirements under part 135 and to requirements under part 121 applicable to supplemental air carriers.

• *Inoperative instruments and equipment/MEL.* Commenters cited restrictions affecting air carrier and small aircraft MELs and requested greater flexibility in operating aircraft with inoperative instruments and equipment that they described as non-essential.

• *Major repairs and alterations.* Commenters requested relief from various requirements of part 43, Appendix A, Major Alterations, Major Repairs, and Preventive Maintenance, as well as Appendix B, Recording of Major Repairs and Major Alterations.

Many issues in these areas are being addressed by the FAA in ongoing rulemaking initiatives. Other issues, such as the harmonization of American and European aircraft certification standards, currently are being addressed by the Aviation Rulemaking Advisory Committee (ARAC).

In addition, a number of commenters state that FAA's rulemaking process should be streamlined and that regulatory analysis and evaluation—the study of economic costs and benefits of proposed regulations or amendments—should be improved. The FAA is reviewing the rulemaking process and is examining several new methods for improving and speeding the rulemaking process. The FAA also continues to modify the ARAC process to make this approach to rulemaking more efficient and better able to meet its original objective of speeding the rulemaking process and expanding public involvement. The FAA Office of Aviation Policy, Plans, and Management Analysis, which conducts regulatory evaluations and analyses, is working with industry to improve methodologies for economic analysis. These efforts include finding means to obtain better cost data from industry, to improve the methodology used, and to improve communication between the FAA, DOT, and Congress on the costs and benefits of anticipated rulemaking projects. The FAA also is participating in a government-wide project to improve the use of regulatory cost and benefit analyses.

The FAA recognizes the value of evaluating current and proposed regulations in terms of safety and other benefits against their potential cost to the public. Public comment in response to NPRMs, as well as during the ARAC process, ensure that the FAA will receive public input on specific regulatory proposals. This regulatory review has afforded the FAA an opportunity to understand further the public's viewpoints and concerns about current and proposed regulations as well as the regulatory process. The FAA expects to complete its review of all comments received and make available a report responding to all comments within the next few months.

Issued in Washington, DC, on July 7, 1994.

Chris A. Christie,

Director, Office of Rulemaking.

[FR Doc. 94–17021 Filed 7–13–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 94-ASW-2]

Proposed Alteration of Jet Routes; LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would realign five jet routes located in Louisiana. The New Orleans Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) will be decommissioned because the platform on which it is located is deteriorating. As a result, the Harvey, LA, (VORTAC) will be upgraded to a high class navigational aid and the five jet routes would be realigned to use the

Harvey, LA, VORTAC. This action would enhance air traffic procedures and accommodate concerns of airspace users.

DATES: Comments must be received on or before August 30, 1994

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Air Traffic Division, ASW-500

Docket No. 94-ASW-2,
Federal Aviation Administration,
4400 Blue Mound Road,
Fort Worth, TX 76193-0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-ASW-2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign five jet routes located in Louisiana. The New Orleans VORTAC will be decommissioned because it is located on a platform which is deteriorating. As a result, Harvey VORTAC will be upgraded to a high class navigational aid and the five jet routes would be realigned to use the Harvey, LA, VORTAC. This action would enhance air traffic procedures and accommodate concerns of airspace users. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet routes listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore - (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71 - [AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004-Jet Routes

* * * * *

J-2 [Revised]
From Mission Bay, CA, via Imperial, CA; Bard, AZ; INT of the Bard 089 and Gila Bend, AZ, 261 radials; Gila Bend, Cochise, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Semmes, AL; Crestview, FL; INT of the Crestview 091 and the Tallahassee, FL, 290 radials; Tallahassee, FL; to Taylor, FL.

* * * * *

J-31 [Revised]
From Leeville, LA; Harvey, LA; Meridian, MS; to Vulcan.

* * * * *

J-35 [Revised]
From McComb, MS; Leeville, LA; Sidon, MS; Memphis, TN;
Farmington, MO; St. Louis, MO; Capital, IL; Pontiac, IL;
Joliet, IL; to Northbrook, IL.

* * * * *

J-37 [Revised]
From Hobby, TX, via INT of the Hobby 084°T(081°M) and Harvey, LA, 265°T(263°M) radials; Harvey; Semmes, AL; Montgomery, AL; Spartanburg, SC; Lynchburg, VA; Gordonsville, VA; Brooke, VA; INT Brooke 067 and Coyle, NJ, 226 radials; to Coyle.
From Kennedy, NY; Kingston, NY; Albany, NY; Massena, NY, to the INT of the Massena 037 radial and the United States/Canadian Border.

* * * * *

J-58 [Revised]
From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Farmington, NM; Las Vegas, NM; Amarillo, TX; Wichita Falls, TX; Dallas-Fort Worth, TX; Alexandria, LA; Harvey, LA; INT of Grand Isle, LA, 104 and Crestview, FL, 201 radials; INT of Grand Isle 104 and Sarasota, FL, 286 radials; Sarasota; Lee County, FL; to the INT Lee County 118 and Palm Beach, FL, 184 radials.

* * * * *

Issued in Washington, DC, on July 6, 1994

Harold W. Becker

Manager, Airspace-Rules and Aeronautical Information Division

[FR Doc. 94-17012 Filed 7-13-94, 8:45 am]

Billing Code 4910-13-F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions pertaining to a previously proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Utah's proposed rules pertain to Utah's general backfilling and grading requirements; previously and continuously mined areas; and approximate original contour (AOC). The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t. July 29, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

* * * * *

J-58 [Revised]
From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Farmington, NM; Las Vegas, NM; Amarillo, TX; Wichita Falls, TX; Dallas-Fort Worth, TX; Alexandria, LA; Harvey, LA; INT of Grand Isle, LA, 104 and Crestview, FL, 201 radials; INT of Grand Isle 104 and Sarasota, FL, 286 radials; Sarasota; Lee County, FL; to the INT Lee County 118 and Palm Beach, FL, 184 radials.

* * * * *

Issued in Washington, DC, on July 6, 1994

Harold W. Becker

Manager, Airspace-Rules and Aeronautical Information Division

[FR Doc. 94-17012 Filed 7-13-94, 8:45 am]

Billing Code 4910-13-F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions pertaining to a previously proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Utah's proposed rules pertain to Utah's general backfilling and grading requirements; previously and continuously mined areas; and approximate original contour (AOC). The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t. July 29, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 766–1486.

Utah Coal Regulatory Program, Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, UT 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated November 12, 1993, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–875). Utah submitted the proposed amendment in response to the required program amendments at 30 CFR 944.16 (a), (b), (c), and (d) and at its own initiative. The provisions of the Utah Administrative Rules (Utah Admin. R.) that Utah proposed to revise and add were: Utah Admin. R. 645–301–553.200, spoil and waste; Utah Admin. R. 645–301–553.252, refuse piles; Utah Admin. R. 645–301–553.500 to read, previously mined areas; Utah Admin. R. 645–301–553.520, continuously mined areas; Utah Admin. R. 645–301–553.523, applying the stability criteria of proposed Utah Admin. R. 645–301–553.523 to the AOC criteria at Utah Admin. R. 645–301–553.650; Utah Admin. R. 654–301–553.600 and .620, AOC variances for incomplete elimination of highwalls in previously mined areas or continuously mined areas; Utah Admin. R. 654–301–553.650 applying the stability requirements of Utah Admin. R. 645–301–553.523 and the AOC criteria of Utah Admin. R. 645–301–553.651 through .655 to retained highwalls; Utah Admin. R. 645–301–651, height restrictions for retained highwalls; Utah Admin. R. 645–301–553.652, the applicability date of Utah's AOC standards at Utah Admin. R. 645–301–553.651 through .655; Utah Admin. R. 645–301–553.653, the restoration of retained highwalls to cliff-type habitats required by the flora and fauna existing prior to mining; and Utah Admin. R. 645–301–553.654, compatibility of retained highwalls with both the approved postmining land use and the visual attributes of the area.

OSM announced receipt of the proposed amendment in the December 8, 1993, **Federal Register** (58 FR 64529), provided an opportunity for a public hearing of meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–879). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 7, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of Utah Admin. R. 645–301–553.110, backfilling and grading of disturbed areas; Utah Admin. R. 645–301–553.500 and .600, the organization of Utah's rules pertaining to retained highwalls; Utah Admin. R. 645–301–553.510 and .522, general backfilling and grading requirements; Utah Admin. R. 645–301–553.522, slope stability and drainage; Utah Admin. R. 645–301–553.500 and .523, stability criteria for retained highwalls; Utah Admin. R. 645–301–553.620, AOC variances; Utah Admin. R. 645–301–553.650, AOC and stability requirements for highwall retention; Utah Admin. R. 645–301–553.651, height and length of retained highwalls; Utah Admin. R. 645–301–553.652, the applicability date of Utah's AOC alternative; and various editorial comments concerning Utah Admin. R. 645–301–553.120, .631, .650, and .655. OSM notified Utah of the concerns by letter dated March 31, 1994 (administrative record No. UT–908).

Utah responded in a letter dated April 18, 1994, by requesting a meeting between the Utah Division of Oil, Gas and Mining (Division) and OSM for the purpose of addressing the issues set forth by OSM in the March 31, 1994, letter (administrative record No. UT–918). On May 12, 1994, an executive session between the Division and OSM was held at the Western Support Center in Denver, Colorado to discuss Utah's revised program amendment regarding highwall retention. Notice of the executive session was posted in the lobby of the Western Support Center (administrative record No. UT–925). A summary of the executive session was recorded by OSM and entered into the

administrative record (administrative record UT–942).

Utah responded to the concerns identified in OSM's March 31, 1994, letter and the issues discussed at the May 12, 1994, meeting in a letter dated June 28, 1994, by submitting the revised amendment that is the subject of this notice (administrative record No. UT–941).

Utah proposes revisions to Utah Admin. R. 645–100–200, concerning continuously mined areas; Utah Admin. R. 645–301–553 through 553.552, concerning general backfilling and grading requirements; Utah Admin. R. 645–301–553.600, concerning previously and continuously mined areas; and Utah Admin. R. 645–301–553.650, concerning Utah's AOC provisions.

Specifically, Utah proposes to revise Utah Admin. R. 645–100–200 by creating a definition of the term "continuously mined areas."

Utah proposes to revise Utah Admin. R. 645–301–553.100 by entitling the section "Disturbed areas."

With the intended purposes of clarification and program consistency, Utah proposes to revise Utah Admin. R. 645–301–553 through 553.552 by recodifying and grouping the general backfilling and grading requirements together.

Utah proposes to revise Utah Admin. R. 645–301–553.500 by entitling the section "Previously Mined Areas (PMA's), Continuously Mined Areas (CMA's) and Areas with remaining Highwalls Subject to the Approximate Original Contour (AOC) Provisions."

Utah proposes to revise Utah Admin. R. 645–301–553.510 by requiring that, in addition to remining operations on continuously mined and previously mined areas, remining operations on areas with remaining highwalls subject to the AOC provisions also comply with other cross-referenced program requirements.

Utah proposes to revise Utah Admin. R. 645–301–553.650 by recodifying it as Utah Admin. R. 645–301–553.600, entitling it as "Previously Mined Areas (PMA's) and Continuously Mined Areas (CMA's)," and separating and recodifying the existing requirements for highwall treatment on previously mined and continuously mined areas from treatment on other areas.

Utah proposes to create new section Utah Admin. R. 645–301–553.650, which addresses the requirements for highwall management under the Utah AOC provisions, and to separate and recodify the following existing requirements at Utah Admin. R. 645–301–553.650, .651, .652, .653, .654, and .655 as Utah Admin. R. 645–301–553.652, 553.652.100, 553.652.200, 553.652.300, 553.652.400, and 553.652.500.

Utah proposes to create new section Utah Admin. R. 645–301–553.651 to require that non-mountaintop removal mining operations on steep-slopes must be approved under Utah Admin. R. 645–301–553–270, and are subject to highwall management under the Utah AOC provisions.

Utah proposes to create new section Utah Admin. R. 645–301–553.653 to require that any mining and reclamation plan approved or permit issued by the Division after December 13, 1982, for the reclamation or reduction of highwalls resulting from coal mining will be subject to the current Utah Admin. R. 645–301–553 rules concerning general highwall provisions and backfilling and grading.

Throughout the revised amendment, Utah proposes to use the acronyms "CMA" for continuously mined areas and "PMA" for previously mined areas and, for purposes of clarification, avoids the use of the phrases "Highwall Remnant" and "Retained Highwall."

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Utah program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h) OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 7, 1994.

Russel F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–17062 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Revisions to Weight and Preparation Standards for Barcoded Letter Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The U.S. Postal Service proposes to amend its regulations to increase temporarily the maximum weight of barcoded mailpieces acceptable at Barcoded letter rates for test purposes, subject to additional preparation standards.

DATES: Comments must be received on or before August 29, 1994.

ADDRESSES: Written comments should be directed to Manager, Customer Mail Preparation, USPS Headquarters, 475 L'Enfant Plaza SW, Washington, DC 20260–2401. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 5621 at the above address.

FOR FURTHER INFORMATION CONTACT: Anthony M. Pajunas, (202) 268–3669.

SUPPLEMENTARY INFORMATION: For a period of up to 1 year, the U.S. Postal Service (USPS) proposes conducting a live test of barcoded letters weighing between 3.0 and 3.3067 ounces (for third-class regular rate) and 3.0 and 3.3363 ounces (for first- and second-class and third-class nonprofit rate).

Since implementing the current Barcoded rates for letter-size mail in February 1991, the USPS has been engaged in reassessing the eligibility criteria for those rates in order to increase mailer participation in barcoding. Initially, the maximum weight for all automation-rate letters (ZIP+4 and Barcoded rates) was set at 2.5 ounces based on engineering tests. In response to mailer concerns that this weight limit presented a major barrier to mailer participation in the USPS barcoding program, the USPS and mailing industry representatives formed

assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 7, 1994.

Russel F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–17062 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Revisions to Weight and Preparation Standards for Barcoded Letter Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The U.S. Postal Service proposes to amend its regulations to increase temporarily the maximum weight of barcoded mailpieces acceptable at Barcoded letter rates for test purposes, subject to additional preparation standards.

DATES: Comments must be received on or before August 29, 1994.

ADDRESSES: Written comments should be directed to Manager, Customer Mail Preparation, USPS Headquarters, 475 L'Enfant Plaza SW, Washington, DC 20260–2401. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 5621 at the above address.

FOR FURTHER INFORMATION CONTACT: Anthony M. Pajunas, (202) 268–3669.

SUPPLEMENTARY INFORMATION: For a period of up to 1 year, the U.S. Postal Service (USPS) proposes conducting a live test of barcoded letters weighing between 3.0 and 3.3067 ounces (for third-class regular rate) and 3.0 and 3.3363 ounces (for first- and second-class and third-class nonprofit rate).

Since implementing the current Barcoded rates for letter-size mail in February 1991, the USPS has been engaged in reassessing the eligibility criteria for those rates in order to increase mailer participation in barcoding. Initially, the maximum weight for all automation-rate letters (ZIP+4 and Barcoded rates) was set at 2.5 ounces based on engineering tests. In response to mailer concerns that this weight limit presented a major barrier to mailer participation in the USPS barcoding program, the USPS and mailing industry representatives formed a working group to examine whether the 2.5-ounce weight limit could be relaxed. This issue was successfully resolved by increasing the maximum weight for Barcoded rate mailpieces to 3.0 ounces. (The limit for ZIP+4 rate mail remained at 2.5 ounces based on the different capabilities of the optical character reader (OCR) equipment used to process that mail.)

Recently, a segment of the third-class mailing industry has indicated that its participation in automation would increase if the weight limit for barcoded letters were raised once again. With the implementation of automated processing using a delivery point barcode, the USPS believes that now may be the time to explore new opportunities for both mailers and the USPS by which additional benefits may be derived from automation, because, in a delivery point barcode environment, it is essential that all non-carrier-route presort letter-size mail be barcoded as early in the processing stream as possible.

When the USPS moved to a mechanized environment for processing mail, it gained experience over a 20-year period in determining which types of mail could be efficiently processed on multiposition letter sorting machines (MPLSMs). Initially, heavier pieces were excluded from MPLSM processing, but as experience was gained with the equipment, modifications were adopted that allowed the equipment to process a larger percentage of letter-size mail. Similarly, the USPS believes that it may now have an opportunity to process more letter-size mail on automated equipment by including heavier letter-size mailpieces, even though the candidate volume is small.

Preliminary testing of pieces weighing between 3 and 4 ounces indicated that the USPS may benefit from raising the maximum weight for barcoded letters from 3.0 to 3.3 ounces. Currently, the majority of these heavier-weight pieces are processed on mechanization or manually and never receive a delivery point barcode. Thus, even though the processing of 3.3-ounce letter-size barcoded mail on barcode sorters resulted, when tested, in lower throughput on automation than with lighter pieces, the USPS believes that any decrease in barcode sorter efficiency will likely be offset by other processing gains due to moving this mail into the delivery point sequence (DPS) mailstream—thereby avoiding numerous handlings through mechanization, manual sorting, and manual carrier casing, that must now be incurred.

However, USPS preliminary testing also revealed that some additional preparation restrictions would need to be imposed on 3.3-ounce pieces for this mail to be handled effectively on automation. When these heavier barcoded pieces were tested, USPS barcode sorters were unable to read barcodes located in the lower right barcode clear zone because of distortion caused by the edge curvature of thicker pieces. Accordingly, pieces could only be processed effectively when the barcode was located in the address block.

In addition, USPS preliminary testing indicated a higher potential for damage to pieces weighing more than 3.0 ounces, particularly in the case of pieces with an open address window. Damage problems were magnified as the thickness of the piece increased. Based on these results, the USPS does not believe that it can effectively process barcoded pieces weighing over 3.0 ounces if they have open (i.e., uncovered) windows.

Finally, the USPS has concluded that, if pieces weighing more than 3.0 ounces are to be included in a Barcoded rate mailing, that mailing must be 100 percent delivery point barcoded because these heavier pieces cannot be processed on optical character readers to have barcodes applied.

Given the preliminary results described above, the USPS has determined that further testing of heavier barcoded pieces is warranted in hopes that it can eliminate or reduce the separate manual/mechanized letter stream that runs parallel to the delivery point barcode and carrier route presort mailstreams. To that end, the USPS proposes to examine the impacts on mail processing from heavier barcoded letters in a "live mail" environment, including the benefits of giving this mail to the carrier in delivery point sequence so that it does not require manual casing.

Accordingly, the USPS proposes to increase temporarily the maximum weight for Barcoded rate letter-size mailpieces from 3.0 to 3.3363 ounces (or 3.3067 ounces for pieces mailed at regular bulk third-class rates). Although the engineering tests suggested a maximum weight of 3.3 ounces, the USPS is setting the maximum weight for purposes of this test at 3.3363 ounces based on the current "break point" between nonprofit bulk third-class minimum per-piece rates and the two-part piece/pound rates. If the maximum weight were set at 3.3 ounces, a small amount of letter-size minimum per-piece rate mail would be excluded (by an almost immeasurable weight) from

the rates otherwise available to letter mail. To avoid the potential administrative complications of this situation, the "break point" was chosen as the maximum weight. For simplicity and consistency, the maximum weight for first- and second-class barcoded letter mail is also set at 3.3363 ounces. For regular bulk third-class rate letter mail only, the maximum is set at 3.3067 ounces, which is its "break point." The decision to align the maximum weight for barcoded mail with the "break point" at this time is based on the current proximity of the two values and the consequent opportunity to avoid an otherwise potentially burdensome and confusing administrative problem. If the proposed test or changes in the "break point" indicate that this alignment is not in the best interest of the USPS, the maximum weight will be adjusted accordingly.

In addition to meeting all other applicable Domestic Mail Manual (DMM) standards, barcoded mailpieces claimed at Barcoded rates, and that weigh between 3.0 and 3.3363 ounces, must:

(1) Be part of a mailing that is 100 percent delivery point barcoded.

(2) Bear barcodes placed in the address block.

(3) Be in envelopes that have no open windows.

(4) Not be bound or have stiff enclosures.

Upon adoption of this proposal as an interim rule, the USPS will initiate a test period of up to 1 year for processing heavy letters and evaluating the results of that test to determine whether permanent adoption of an increased weight for barcoded mail is in the best interests of the USPS and its affected customers.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the USPS invites comments on the following proposed revisions of the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201-3219, 3403–3406, 3621, 3626, 5001.

2. Revise the Domestic Mail Manual as noted below:

C810 Letters and Cards

1.0 GENERAL DIMENSIONS

* * * * *

1.5 Barcoded

The weight of each piece in a Barcoded rate mailing must not exceed 3 ounces, except that until [6 months after the beginning of the test], the maximum weight is 3.3363 ounces (or 3.3067 ounces if mailed at regular bulk third-class rates).

1.6 Heavy Letter Mail

Heavy letter mail (pieces weighing more than 3 ounces) must be prepared in an envelope and must meet the additional barcoding standards in C840.

2.0 PROHIBITIONS

* * * * *

2.3 Heavy Letter Mail

Heavy letter mail (as defined in 1.6) may not be prepared as a self-mailer or bound or booklet-type mailpiece.

* * * * *

C840 Barcoded Mailpieces

* * * * *

2.0 BARCODE LOCATION

* * * * *

2.2 Letter-Size Barcoded Rate Mailings

Except for pieces subject to 2.3, pieces may bear a DPBC within either the address block or the barcode clear zone in the lower right corner of the address side. * * * [Renumber existing 2.3 through 2.10 as 2.4 through 2.11, respectively; add new 2.3, and revise renumbered 2.9, as follows:]

2.3 Heavy Letter Mail

Heavy letter mail (letter-size pieces weighing more than 3 ounces up to the maximum weight for barcoded pieces) must bear a DPBC in the address block, subject to 2.9.

* * * * *

2.9 Placement in Address Block

* * * * *

d. [Replace the last sentence with the following:] Address block windows on heavy letter mail (as defined in 2.3) must be covered; such windows may be covered on other mail. Covers for address block windows are subject to 6.3.

* * * * *

6.0 ADDITIONAL STANDARDS FOR WINDOWS (LETTER-SIZE MAIL)

* * * * *

6.2 Window Construction

Barcode windows must extend fully to the lower edge of the envelopes, must be of wraparound construction, and must be covered subject to 6.3.

6.3 Window Covers

Window covers must be a nontinted clear or transparent material (e.g., cellophane or polystyrene), whose edges are securely glued to the envelope, and that permits the barcode and its background, as viewed through the window material, to meet the reflectance standards in 4.0.

* * * * *

E144 Barcoded Rate (Letters and Cards)

1.0 BASIC STANDARDS

* * * * *

1.2 Rate Application

* * * * *

c. Meets the applicable standards in 1.3 through 1.8.

1.3 Barcode Window

A mailpiece weighing 3 ounces or less, meeting the standards in 1.1 and 1.2, but with a barcode window in the lower right corner, may be eligible for Barcoded rates only if the correct delivery point barcode appears through the window.

1.4 5-Digit Barcodes

Subject to 1.8, barcoded rate mailings may include pieces with correct 5-digit barcodes if those pieces meet the standards in 1.1 and the standards for 5-digit barcodes in C840. * * *

1.5 ZIP+4 Barcodes

Subject to 1.8, barcoded rate mailings may include pieces with correct ZIP+4 barcodes if those pieces meet the standards in 1.1 and the standards for ZIP+4 barcodes in C840. * * *

1.6 85% Rule

Subject to 1.8, at least 85% of all pieces in a Barcoded rate mailing (regardless of presort or rate) must bear the correct delivery point barcode for the delivery address, as defined by the standards for address quality and coding accuracy in A950. * * *

* * * * *

1.8 100% Barcoding

Each piece must bear the correct delivery point barcode:

a. In 5-digit trays in a tray-based mailing under M814.

b. In 5-digit packages in a package-based mailing under M815 or M816.

c. In any mailing containing heavy letters (as defined in C810).

* * * * *

E244 Barcoded Discounts (Letter-Size Pieces)

1.0 BASIC STANDARDS

* * * * *

1.2 Rate Application

* * * * *

c. Meets the applicable standards in 1.3 through 1.8.

* * * * *

1.3 Barcode Window

A mailpiece weighing 3 ounces or less, meeting the standards in 1.1 and 1.2, but with a barcode window in the lower right corner, may be eligible for Barcoded rates only if the correct delivery point barcode appears through the window.

1.4 5-Digit Barcodes

Subject to 1.8, barcoded rate mailings may include pieces with correct 5-digit barcodes if those pieces meet the standards in 1.1 and the standards for 5-digit barcodes in C840. * * *

1.5 ZIP+4 Barcodes

Subject to 1.8, barcoded rate mailings may include pieces with correct ZIP+4 barcodes if those pieces meet the standards in 1.1 and the standards for ZIP+4 barcodes in C840. * * *

Weight not over (ounces)	Presorted
4 [ounces]	$0.887 (Weight not to exceed 3.3

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–17105 Filed 7–13–94; 8:45 am]

BILLING CODE 7710–12–P

c. In any mailing containing heavy letters (as defined in C810).

* * * * *

E244 Barcoded Discounts (Letter-Size Pieces)

1.0 BASIC STANDARDS

* * * * *

1.2 Rate Application

* * * * *

c. Meets the applicable standards in 1.3 through 1.8.

* * * * *

1.3 Barcode Window

A mailpiece weighing 3 ounces or less, meeting the standards in 1.1 and 1.2, but with a barcode window in the lower right corner, may be eligible for Barcoded rates only if the correct delivery point barcode appears through the window.

1.4 5-Digit Barcodes

Subject to 1.8, barcoded rate mailings may include pieces with correct 5-digit barcodes if those pieces meet the standards in 1.1 and the standards for 5-digit barcodes in C840. * * *

1.5 ZIP+4 Barcodes

Subject to 1.8, barcoded rate mailings may include pieces with correct ZIP+4 barcodes if those pieces meet the standards in 1.1 and the standards for ZIP+4 barcodes in C840. * * *

1.6 85% Rule

Subject to 1.8, at least 85% of all pieces in a Barcoded rate mailing (regardless of presort or rate) must bear the correct delivery point barcode for the delivery address, as defined by the standards for address quality and coding accuracy in A950. * * *

* * * * *

1.8 100% Barcoding

Each piece must bear the correct delivery point barcode:

a. In 5-digit trays in a tray-based mailing under M814.

b. In 5-digit packages in a package-based mailing under M815 or M816.

c. In any mailing containing heavy letters (as defined in C810).

* * * * *

E344 Barcoded Discounts (Letter-Size Pieces)

1.0 BASIC STANDARDS

* * * * *

1.2 Rate Application

* * * * *

c. Meets the applicable standards in 1.3 through 1.8.

* * * * *

1.3 Barcode Window

A mailpiece weighing 3 ounces or less, meeting the standards in 1.1 and 1.2, but with a barcode window in the lower right corner, may be eligible for the Barcoded rates only if the correct delivery point barcode appears through the window.

1.4 5-Digit Barcodes

Subject to 1.8, barcoded rate mailings may include pieces with correct 5-digit barcodes if those pieces meet the standards in 1.1 and the standards for 5-digit barcodes in C840. * * *

1.5 ZIP+4 Barcodes

Subject to 1.8, barcoded rate mailings may include pieces with correct ZIP+4 barcodes if those pieces meet the standards in 1.1 and the standards for ZIP+4 barcodes in C840. * * *

1.6 85% Rule

Subject to 1.8, at least 85% of all pieces in a Barcoded rate mailing (regardless of presort or rate) must bear the correct delivery point barcode for the delivery address, as defined by the standards for address quality and coding accuracy in A950. * * *

* * * * *

1.8 100% Barcoding

Each piece must bear the correct delivery point barcode:

a. In 5-digit trays in a tray-based mailing under M814.

b. In 5-digit packages in a package-based mailing under M815 or M816.

c. In any mailing containing heavy letters (as defined in C810).

* * * * *

R100 First-Class Mail

* * * * *

[Revise the Summary of First-Class Rates chart as follows:]

Weight not over (ounces)	Presorted 3-digit barcoded	Presorted 5-digit barcoded
.	.	.
4 [ounces]	$0.887 (Weight not to exceed 3.3363 ounces.)	$0.881 (Weight not to exceed 3.3363 ounces.)
.	.	.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–17105 Filed 7–13–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO37–1–6290; FRL–5012–5]

Conditional Approval and Promulgation of Air Quality Implementation Plans; Colorado; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to conditionally approve a vehicle inspection and maintenance State Implementation Plan (SIP) revision based on the Governor's June 24, 1994 commitment to adopt final regulations for dealership self-testing within one year of the conditional approval. If this commitment is not met, the conditional approval will automatically convert to a disapproval. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in the Denver and Boulder urbanized areas,

including all or part of the Colorado counties of Adams, Arapahoe, Boulder, Denver County, Douglas, Jefferson. This action is being taken under Section 110 of the Clean Air Act.

DATES: Comments must be received on or before August 15, 1994.

ADDRESSES: Comments may be mailed to Mr. Douglas M. Skie at U.S. EPA Region 8, (8ART–AP), 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Mr. Scott P. Lee, at (303) 293–1887.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxide (NO_x) emissions. An important control measure to reduce these emissions is the implementation of a motor vehicle inspection and maintenance (I/M) program. Despite being subject to the most rigorous vehicle pollution control program in the world, cars and trucks still create about half of the ozone air pollution and nearly all of the carbon monoxide air pollution in United States cities, as well as toxic contaminants. Of all highway vehicles, passenger cars and light trucks emit most of the vehicle-related carbon monoxide and ozone-forming hydrocarbons. They also emit substantial amounts of nitrogen oxides and air toxics. Although the U.S. has made progress in reducing emissions of these pollutants, total fleet emissions remain high. This is because the number of vehicle miles travelled on U.S. roads has doubled in the last 20 years to 2 trillion miles per year, offsetting much of the technological progress in vehicle emission control over the same two decades. Projections indicate that the steady growth in vehicle travel will continue. Ongoing efforts to reduce emissions from individual vehicles will be necessary to achieve our air quality goals.

Today's cars are dependent on properly functioning emission control systems, to keep pollution levels low. Effective I/M programs can identify problem cars and ensure that cars are properly maintained. I/M produces emission reduction results soon after the program is put in place.

The Clean Air Act as amended in 1990 (the Act) requires that most polluted cities adopt either "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone areas with existing I/M programs, fall under the "basic" I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; CO areas that exceed a 12.7 parts per million (ppm) design value [1] with urbanized populations of 200,000 or more; and all metropolitan statistical areas with a population of 100,000 or more in the Northeast Ozone Transport Region.

"Basic" and "enhanced" I/M programs both achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An "enhanced" program employs inspection methods which are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area required to have an I/M program to incorporate this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350–51.373).

Under sections 182(c)(3), 187(a)(6) and 187(b)(1) of the Act, any area having a 1980 Bureau of Census-defined urbanized area population of 200,000 or more and either: (1) designated as serious or worse ozone nonattainment or (2) moderate or serious CO nonattainment area with design value greater than 12.7 ppm, shall implement enhanced I/M in the 1990 Census-defined urbanized area. The Act also established the ozone transport region (OTR) in the northeastern United States, which includes the States of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware and Maryland and Northern Virginia and the District of Columbia. Sections 182(c)(3) and 184(b)(1)(A) of the Act require the implementation of enhanced I/M programs in all metropolitan statistical areas (MSAs) located in the Ozone Transport Region which have a population of 100,000 or more people.

The Act requires basic I/M programs to be implemented in the 1990 Census-defined urbanized area of the following nonattainment areas: (1) any area which is classified as moderate ozone nonattainment and is not required to implement enhanced I/M or (2) any area outside the OTR that is classified as serious or worse ozone nonattainment or moderate or serious CO nonattainment with a design value greater than 12.7 ppm and having a 1990 Census-defined urbanized area population of less than 200,000. Any areas classified as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 ppm or less shall continue operating existing programs that are part of an approved SIP as of November 15, 1990 and shall update the program to meet the basic I/M requirements set forth in 40 CFR Parts 51.350–373.

The I/M regulation establishes minimum performance standards for basic and enhanced I/M programs, as well as requirements for the following: Network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Clean Air Act. The performance standard for enhanced I/M programs is based on a high-technology test, known as IM240, for new technology vehicles (i.e., those with closed-loop control and, especially, fuel injected engines), including a transient loaded exhaust short test incorporating hydrocarbons (HC), CO and NO_x cutpoints, an evaporative system integrity (pressure) test and an evaporative system performance (purge) test.

[1] The air quality design value is estimated using EPA guidance. Generally, the fourth highest monitored value with 3 complete years of data is selected as the ozone design value because the standard allows one exceedance for each year. The highest of the second high monitored values with 2 complete years of data is selected as the carbon monoxide design value.

II. Background

On January 14, 1994, and on June 24, 1994, the State of Colorado submitted its enhanced I/M SIP revision for the Denver and the Boulder urbanized areas. Public hearings were held on November 12, 1993, and December 16, 1993, for the January 14, 1994 SIP submittal, and are to be held on September 15, 1994, for the June 24, 1994, SIP submittal, as detailed in the Governor's June 24, 1994 letter.

The January 14, 1994, submittal included authorizing legislation (HB1340 adopted by the House and Senate and signed by the Governor); Colorado Air Quality Control Commission (AQCC) Regulation Number 11; Motor Vehicle Emissions Inspection Program, adopted and effective as an emergency rule December 16, 1993, and the SIP narrative with appendices entitled, "State of Colorado Motor Vehicle Emissions Inspection and Maintenance State Implementation Plan", adopted by the AQCC on November 12, 1993, and again on December 16, 1993, with no substantive changes. EPA reviewed the January 14, 1994, submittal and identified aspects which the State would need to address prior to EPA approval. EPA's primary concerns concentrated on: the need for the State to submit a final binding regulation to replace the since-lapsed, December 16, 1993, emergency rule; limiting dealers self-testing to non-consecutive test-cycles; and modeling reflecting the compliance commitments in the SIP narrative.

Governor Romer's June 24, 1994, submittal included a binding regulation adopted by the State on March 17, 1994, changes to the SIP narrative addressing EPA's comments, and proposed revisions to Regulation Number 11 limiting dealer self-testing, as adopted for public hearing on June 16, 1994. The Governor's submittal includes the State's anticipated schedule for the adoption of the proposed revisions to Regulation Number 11. EPA has interpreted the submittal of this anticipated schedule to represent a commitment by the State to adopt a regulation addressing dealer self-testing within one year of conditional approval of Colorado's I/M SIP.

The I/M SIP submittals provide for the implementation of an enhanced I/M program in the Denver-Boulder carbon

especially, fuel injected engines), including a transient loaded exhaust short test incorporating hydrocarbons (HC), CO and NO_x cutpoints, an evaporative system integrity (pressure) test and an evaporative system performance (purge) test.

II. Background

On January 14, 1994, and on June 24, 1994, the State of Colorado submitted its enhanced I/M SIP revision for the Denver and the Boulder urbanized areas. Public hearings were held on November 12, 1993, and December 16, 1993, for the January 14, 1994 SIP submittal, and are to be held on September 15, 1994, for the June 24, 1994, SIP submittal, as detailed in the Governor's June 24, 1994 letter.

The January 14, 1994, submittal included authorizing legislation (HB1340 adopted by the House and Senate and signed by the Governor); Colorado Air Quality Control Commission (AQCC) Regulation Number 11; Motor Vehicle Emissions Inspection Program, adopted and effective as an emergency rule December 16, 1993, and the SIP narrative with appendices entitled, "State of Colorado Motor Vehicle Emissions Inspection and Maintenance State Implementation Plan", adopted by the AQCC on November 12, 1993, and again on December 16, 1993, with no substantive changes. EPA reviewed the January 14, 1994, submittal and identified aspects which the State would need to address prior to EPA approval. EPA's primary concerns concentrated on: the need for the State to submit a final binding regulation to replace the since-lapsed, December 16, 1993, emergency rule; limiting dealers self-testing to non-consecutive test-cycles; and modeling reflecting the compliance commitments in the SIP narrative.

Governor Romer's June 24, 1994, submittal included a binding regulation adopted by the State on March 17, 1994, changes to the SIP narrative addressing EPA's comments, and proposed revisions to Regulation Number 11 limiting dealer self-testing, as adopted for public hearing on June 16, 1994. The Governor's submittal includes the State's anticipated schedule for the adoption of the proposed revisions to Regulation Number 11. EPA has interpreted the submittal of this anticipated schedule to represent a commitment by the State to adopt a regulation addressing dealer self-testing within one year of conditional approval of Colorado's I/M SIP.

The I/M SIP submittals provide for the implementation of an enhanced I/M program in the Denver-Boulder carbon monoxide nonattainment area beginning on January 1, 1995 in Adams, Arapahoe, Denver, Douglas, and Jefferson Counties. Boulder County will implement an enhanced I/M program beginning July 1, 1995. In these areas, Colorado will be implementing a test-only network which requires pre-1982 vehicles to be tested annually, and post-1981 vehicles to be tested on a biennial schedule. Colorado's program meets the requirements of EPA's performance standard and other requirements contained in the Federal I/M rule in the applicable urbanized areas. Testing will be overseen by Colorado Departments of Health and Revenue. Other aspects of the Colorado enhanced I/M program include: IM240 testing of 1982 and later light-duty vehicles and trucks and 2-speed idle/idle testing of pre-1982 vehicles and all heavy duty trucks; evaporative emission testing for 1975 and later model year vehicles; a test fee to ensure the State has adequate resources to implement the program; enforcement by registration denial and vehicle inspection stickers; a repair effectiveness program; contractual requirements for testing convenience; quality assurance; data collection; waiver provisions; reporting and record keeping requirements; test equipment and test procedure specifications; public information and consumer protection; inspector training and certification; penalties for inspector incompetence; and on-road testing program; and emission recall enforcement. An analysis of how the Colorado enhanced I/M program meets the Federal SIP requirements by section of the Federal I/M rule is provided below. Parties desiring additional details on the Federal I/M regulation are referred to the November 5, 1992 **Federal Register** notice (57 FR 52950) or 40 CFR Parts 51.350–51.373.

III. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). Section 110(k)(4) of the Act authorizes EPA to approve plan revisions based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than one year after the date of conditional approval of the plan revision. Section 110(k)(4) further provides that any such conditional approval shall be treated as a disapproval if the State fails to comply with the commitment.

EPA proposes conditional approval of Colorado's enhanced I/M SIP based on the Governor's June 24, 1994 commitment to adopt final regulations limiting dealership self-testing to one inspection cycle within one year of the date of conditional approval. If this commitment is not met, the conditional approval will automatically convert to a disapproval.

IV. EPA's Analysis of the Colorado Enhanced I/M Program

As discussed above, sections 182(c)(3), 184(b)(1)(A), 187(a)(6) and 187(b)(1) of the Act require that states adopt and implement regulations for an enhanced I/M program in certain areas. The following sections of this notice summarize the requirements of the Federal I/M regulations and address whether the elements of the State's submittal comply with the Federal rule.

Applicability—40 CFR 51.350

Under the requirements of the Clean Air Act, an enhanced I/M program is required in the Denver urbanized area, which includes the following five counties: Adams, Arapahoe, Denver, Douglas and Jefferson. The State has included the implementation of an enhanced I/M program in Boulder County to ensure that high emitting vehicles commuting from Boulder County to the Denver metropolitan area are identified and repaired. Boulder County is part of the Denver-Boulder carbon monoxide nonattainment area, but is not required to implement enhanced I/M because it contains no urbanized area with a population greater than 200,000.

The State's submittal contains the legal authority and regulations establishing the program boundaries for enhanced I/M. The included population is adequate to meet the urbanized area coverage requirement under section 51.350 of the I/M rule and is approvable.

The Federal I/M regulation requires that the State program must stay effective until it is no longer necessary. The attainment date for the Denver-Boulder carbon monoxide nonattainment area is December 31, 1995. However, the AQCC adopted a CO SIP on June 16, 1994, to be submitted to EPA, that includes a request to reclassify the Denver-Boulder CO nonattainment area to serious, extending its attainment date to December 31, 2000. In either case, Colorado's legislation provides authority for the I/M program through December 31, 2001, which extends beyond the "moderate" or "serious" CO attainment deadlines set by the Act. EPA believes this legal authority is approvable.

Enhanced I/M Performance Standard—40 CFR 51.351

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel parameters, and the following model enhanced I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device checks, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the State's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Colorado submittal, the most current version was MOBILE5a. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. The Colorado submittal must meet the performance standard for CO only.

The Colorado submittal includes the following program design parameters:

Network type—Test-only
Test frequency—1982 and newer vehicles; biennial; 1981 and older vehicles: annual
Model year coverage—all excluding newest four model years
Vehicle type coverage—all light-duty and heavy-duty gasoline powered vehicles
Exhaust emission test type—1982 and newer light-duty vehicles: IM240; 1981 and older light-duty vehicles: 2-speed idle all heavy-duty vehicles: idle-test
Emission standards—20 grams per mile CO
Emission control device checks—oxygen sensor, air pump, catalyst, inlet restrictor
Evaporative system pressure check—1975 and newer
Evaporative system purge check—1982 and newer
Stringency (pre-1981 failure rate)—20%
Waiver rate (pre-1981/1981 and newer)—3% & 3%
Compliance rate—96.4%
Evaluation date(s)—January 1, 2001

The Colorado program design meets the enhanced I/M performance standard. The modeling analysis reflects no benefit from dealer and fleet self-testing and the four model year exemption. If more emissions are lost from the dealer self-testing provisions than expected, other aspects of the program will need to be strengthened to ensure that the enhanced performance standard target is still being met.

Network Type and Program Evaluation—40 CFR 51.353

Enhanced I/M programs shall be operated in a centralized test-only format, unless the State can demonstrate that a decentralized program is equally effective in achieving the enhanced I/M performance standard. The enhanced program shall include an ongoing evaluation to quantify the emission reduction benefits of the program and to determine if the program is meeting the requirements of the Act and the Federal I/M regulation. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports, data from a state-monitored or state-administered mass emission test of at least 0.1% of the vehicles subject to inspection each year, description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program.

The State legislative authority and the State I/M regulations provide for a test-only network. Colorado's enhanced I/M network consists of centralized contractor-run test-only facilities for 1982 and newer vehicles, and a decentralized test-only network of independently owned facilities serving 1981 and older vehicles. Legislation prohibits owners, operators, and employees of inspection facilities from engaging in motor vehicle repair, service, parts sales, or sale or lease of motor vehicles and from referring vehicle owners to particular providers of motor vehicle repair services. This decentralized test-only network design is acceptable under the "presumptive equivalency" provisions of the I/M rule, and meets EPA's performance standard. The submittal includes provisions for and a commitment to an ongoing program evaluation which will include the random selection of at least 0.1% of vehicles for IM240 testing throughout the year under carefully controlled conditions, overseen by the State, as well as a commitment to submit the analysis and reports required by the EPA rule.

Adequate Tools and Resources—40 CFR 51.354

The Federal regulation requires that states demonstrate that adequate funding of the program exists. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if demonstrated that the funding can be maintained. Reliance on funding from the state or local general fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The Colorado enhanced I/M program will be funded by fees assessed at the time of vehicle registration: a $1.50 fee per vehicle in the program area, which is dedicated funding for the enhanced I/M program; and an additional 50 cent fee per vehicle statewide, which may be used for the enhanced I/M program. Additional funding for the enhanced I/M program is generated from a 25 cent charge per emissions sticker supplied to inspection stations. Many of the resource requirements including remote sensing, quality assurance equipment, and technical and consumer assistance are to be supplied by the State's enhanced I/M contractor. The program includes 36 full-time equivalent (FTE) staff and 4 additional contractor staff for consumer and technician assistance. Covert audit vehicles are to be provided by the State Patrol. EPA believes that the State submittal meets the adequate tools and resources requirements set forth in the Federal I/M regulations.

Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Colorado enhanced I/M regulation provides for a combination of annual and biennial testing based on the model year of the subject vehicle. Pre-1982 vehicles are required to be tested annually, while post-1981 vehicles are required to be inspected on a biennial schedule. The Colorado legislation and the State I/M regulation provide the legal authority to implement and enforce the test frequency as outlined. Regulation 11 specifies the assignment of test dates in various scenarios that might otherwise lead to vehicles getting off schedule. The Colorado Request for Proposal, which is included in the SIP, specifies convenience factors including a maximum average wait time of 15 minutes and an absolute maximum of 40 minutes, with monitoring and penalties. The Colorado program provides sufficient evidence that convenient services will be provided to the motorist. The Colorado submittal meets the test frequency and convenience requirements of the Federal I/M regulations and is approvable.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles (LDV) and light duty trucks (LDT) up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Fleet vehicles may be inspected outside of the normal enhanced I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR 51.353(a). Alternatively, fleet vehicles may be exempted under Section 51.356 of the rule, which allows for exemptions provided a demonstration is made that the performance standard will be met. Vehicles which are operated on Federal installations located within an enhanced I/M program area are to be tested, regardless of whether the vehicles are registered in the state or local enhanced I/M area.

The Federal I/M regulation requires the SIP to include a description of the number and types of vehicles to be covered by the program and a description of any special exemptions including the percentage and number of vehicles to be impacted.

The Colorado I/M legislation and regulation provide legal authority for the enforcement and implementation of a program that includes the coverage of all gasoline-powered LDV, LDT, and HDV greater than four model years old, which are registered or required to be registered in the enhanced I/M program area.

Colorado allows for fleet self-testing and claims no credit for these vehicles in the demonstration of compliance with the performance standard, i.e., for

of test dates in various scenarios that might otherwise lead to vehicles getting off schedule. The Colorado Request for Proposal, which is included in the SIP, specifies convenience factors including a maximum average wait time of 15 minutes and an absolute maximum of 40 minutes, with monitoring and penalties. The Colorado program provides sufficient evidence that convenient services will be provided to the motorist. The Colorado submittal meets the test frequency and convenience requirements of the Federal I/M regulations and is approvable.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles (LDV) and light duty trucks (LDT) up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Fleet vehicles may be inspected outside of the normal enhanced I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR 51.353(a). Alternatively, fleet vehicles may be exempted under Section 51.356 of the rule, which allows for exemptions provided a demonstration is made that the performance standard will be met. Vehicles which are operated on Federal installations located within an enhanced I/M program area are to be tested, regardless of whether the vehicles are registered in the state or local enhanced I/M area.

The Federal I/M regulation requires the SIP to include a description of the number and types of vehicles to be covered by the program and a description of any special exemptions including the percentage and number of vehicles to be impacted.

The Colorado I/M legislation and regulation provide legal authority for the enforcement and implementation of a program that includes the coverage of all gasoline-powered LDV, LDT, and HDV greater than four model years old, which are registered or required to be registered in the enhanced I/M program area.

Colorado allows for fleet self-testing and claims no credit for these vehicles in the demonstration of compliance with the performance standard, i.e., for purposes of demonstrating compliance with the enhanced I/M performance standard and other I/M rule requirements, these fleet self-tested vehicles are considered exempt. These non-dealership fleet vehicles are required to be tested in the test-only network upon change of ownership. Fleet owners may arrange to have fleet vehicles tested in the test-only network if desired.

Similarly, Colorado's I/M legislation allows dealer vehicles to be tested by a non-independent third party (EPA considers this to be dealer-self testing), but claims no credit for self-tested dealership vehicles in the demonstration of compliance with the performance standard. Dealers may arrange to have their vehicles tested in the test-only network if desired. Because EPA's I/M Rule requires an independent third party to conduct dealer testing, EPA is conditionally approving Colorado's I/M SIP based the State's commitment to adopt regulations to prohibit dealerships from testing vehicles two test-cycles in a row. This will help prevent creative noncompliers from consistently escaping a test-only independent test. EPA has determined that this is sufficient to meet the goal of requiring independent third parties to conduct dealer testing. Changes to Colorado's I/M regulations were proposed for hearing, but have not yet been fully and finally adopted. The State has submitted to EPA a schedule for adoption of these regulations. EPA has interpreted this submission as a commitment to adopt the necessary changes within one year of conditional approval. Without this regulation change, or an alternative that addresses the economic incentives towards improper testing, such as a contract with protective mechanisms, the dealership self-testing provisions will not be approvable and final action to conditionally approve the SIP will convert to disapproval following the course of action described in the proposed action portion of this notice. For further discussion of the fleet and dealership self-testing issue, see "Emission Credits for Dealer and Fleet Self-Testing in Enhanced I/M Areas", Memorandum from Dick Wilson to the Air Division Directors, dated March 29, 1993, available in the docket.

Additionally, the State regulation provides a program exemption for farm vehicles and vehicles with two-stroke engines. These exemptions impact 0.79% of the subject fleet. The Colorado program meets the enhanced I/M performance standard, reflecting no emission reduction benefits from the exempted vehicles.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA document entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", EPA–AA–EPSD–IM–93–1, finalized in April of 1994.

The State I/M regulation includes a description of the test procedure for transient (IM240), two speed idle, idle, evaporative system purge, evaporative system pressure testing, and for a visual emission control device inspection. These test procedures reference EPA-approved test procedures and guidance and are approvable. The State enhanced I/M regulation establishes HC, CO, CO_2 and NO_x maximum allowable exhaust standards for all test procedures for each applicable model year and vehicle type. The State commits to implementing EPA recommended exhaust standards at least on test-cycle prior to the evaluation year, no later than January 1, 1999. The State I/M regulation establishes evaporative purge and/or pressure test standards. EPA believes the purge and pressure standards are lenient, though recognizing that purge and pressure testing are not required as an element of the enhanced I/M program for the State of Colorado. Purge and pressure testing address evaporative hydrocarbon emission, while Colorado is only required to meet the carbon monoxide performance standard. The emission reductions for the purge and pressure test will be evaluated at some future date if the State chooses to include these measures as part of an ozone redesignation/maintenance plan.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The Federal I/M regulation requires that the State SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The State regulation and Request for Proposal (contained in the SIP submittal appendices) contain the written technical specifications for test equipment to be used in the program. The specifications require the use of

computerized test systems. The specifications also include performance features and functional characteristics of the computerized test systems which meet the Federal I/M regulations and are approvable.

Quality Control—40 CFR 51.359

Pursuant to the Federal I/M Rule, quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

The appendices of the State submittal contain procedures which describe and establish quality control measures for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements. This portion of the State submittal complies with the quality control requirements set forth in the Federal I/M regulation and is approvable.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The Federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI), as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician to be applicable towards the minimum repair expenditure. The Federal regulation allows for compliance via a diagnostic inspection in special circumstances. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

Colorado's legislation provides the necessary authority to issue waivers, set and adjust cost limits, and administer and enforce the waiver system. The Colorado legislation sets a $450 cost minimum and allows for an annual adjustment of the cost limit to reflect the change in the CPI, as compared to the CPI in 1989 in the enhanced I/M program. The regulation includes provisions which address waiver criteria and procedures, including cost limits, tampering and warranty related repairs, quality control and administration. Fleet and dealer-owned vehicles are not eligible to comply with the I/M requirements via certificates of waiver. These vehicles must be repaired to comply with the test requirements independent of cost, or registration will be denied. These provisions meet the Federal I/M regulations requirements and are approvable. The State regulation allows for compliance via diagnostic inspection and the policies and procedures outlined in the submittal meet Federal I/M regulations and are approvable. The State has set a maximum waiver rate of 3% for both pre-1981 and for 1981 and later vehicles and has described corrective actions to be taken if the waiver rate exceeds 3%. This waiver rate has been used in the performance standard modeling demonstration and is approvable. Thus, EPA has determined that the waiver provisions of the SIP are approvable.

Motorist Compliance Enforcement—40 CFR 51.361

The Federal regulation requires that motorist compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs, unless an exception for use of an existing alternative is approved. The I/M rule requires the use of mandatory meaningful fines to deter motorist compliance and requires States to undertake activities limiting the loopholes available to motorists. The SIP submittal is to include a description of the enforcement process, legal authority to enforce compliance, and a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

Colorado's legislative authority and I/M regulation provide the legal authority to implement registration denial and sticker-based enforcement. The Colorado SIP commits to a compliance rate of 96.4%, as used in the performance standard modeling demonstration. Penalties for failure to comply with the program are described in the authorizing legislation and the Colorado Revised Statutes. Fines of up to $1,000 can be imposed in cases where motorists are involved in fraudulently obtaining certificates of compliance, stickers, or registrations. Failure to register a vehicle also results in significant penalties, as described in the Colorado Revised Statutes regarding registration penalties. The State of Colorado has met EPA's requirements for the imposition of mandatory fines. The State commits to corrective action if a compliance rate of 96.4% is not maintained in practice.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The Federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate, and enforce the program.

The Colorado I/M legislation, regulation, and SIP narrative and appendices describe how the enforcement program oversight is quality controlled and quality assured and includes the establishment of an information management system. The enforcement program oversight activities included in the submittal meet the Federal I/M regulation requirements and are approvable.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program, which includes written procedure manuals on the above discussed items, must be submitted as part of the SIP.

The Colorado legislation, regulation, and SIP narrative and appendices include a quality assurance program which describe details and procedures for implementing inspector records audits, and equipment audits, as well as providing formal training to all state enforcement officials. Performance audits of inspectors will consist of both covert and overt audits. These procedures meet the Federal I/M regulation requirements and are approvable.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations or contractors, and inspectors shall include swift, sure, effective, and consistent penalties for violation of

program requirements. The Federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits. An official opinion explaining state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

The Colorado submittal includes the legal authority to establish and impose penalties against stations, contractors and inspectors. The I/M SIP and regulations include penalty provisions for stations, contractors, and inspectors. These penalty schedules meet the Federal I/M regulation requirements and are approvable. The State I/M regulation gives the state auditor the authority to temporarily suspend station and inspector licenses or certificates immediately upon finding a violation. The submittal includes a description of administrative and judicial procedures relevant to the enforcement process which meet Federal I/M regulations and are approvable.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an enhanced I/M program. The Federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

The State regulation requires the collection of data on each individual test conducted and describes the type of data to be collected. The type of test data collected meets the Federal I/M regulation requirements and is approvable. The appendices to the I/M SIP submittal contain a procedure manual that details the gathering and reporting requirements of the State and the State's contractor required under 40 CFR 51.359 and is approvable.

program requirements. The Federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits. An official opinion explaining state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

The Colorado submittal includes the legal authority to establish and impose penalties against stations, contractors and inspectors. The I/M SIP and regulations include penalty provisions for stations, contractors, and inspectors. These penalty schedules meet the Federal I/M regulation requirements and are approvable. The State I/M regulation gives the state auditor the authority to temporarily suspend station and inspector licenses or certificates immediately upon finding a violation. The submittal includes a description of administrative and judicial procedures relevant to the enforcement process which meet Federal I/M regulations and are approvable.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an enhanced I/M program. The Federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

The State regulation requires the collection of data on each individual test conducted and describes the type of data to be collected. The type of test data collected meets the Federal I/M regulation requirements and is approvable. The appendices to the I/M SIP submittal contain a procedure manual that details the gathering and reporting requirements of the State and the State's contractor required under 40 CFR 51.359 and is approvable.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the State and EPA. The Federal I/M regulation requires annual reports to be submitted to EPA which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The State enhanced I/M legislation and regulation provide for the analysis and reporting of data for the testing program, quality assurance program; quality control program, and the enforcement program. The State will submit annual reports on the I/M programs to EPA by July of the subsequent year. Additionally, the State will submit a biennial report detailing changes to and deficiencies in the State's I/M program. The appendices to the I/M SIP submittal contain procedure manuals that detail the gathering, analysis, and reporting requirements of the State and the State's contractor. The type of data to be gathered, analyzed, and reported to EPA meets the Federal I/M regulation requirements and is approvable.

Inspector Training and Licensing or Certification—40 CFR 51.376

The Federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

The State I/M regulation requires all inspectors to receive formal training, and to be certified by the Colorado Department of Revenue. The State submittal includes a description of and the information covered in the training program, a description of the written and hands-on tests and a description of the certification process. The SIP meets the Federal I/M regulation requirements for inspector training and certification and is approvable.

Public Information and Consumer Protection—40 CFR 51.368

The Federal I/M regulation requires the SIP to include public information and consumer protection programs. The State submittal includes contract provisions for a public information program which educates the public on enhanced I/M, State and Federal regulations, air quality and the role of motor vehicles in the air pollution problem, and other items as described in the Federal rule. The consumer protection program includes provisions which allow for vehicle owners to challenge the results of vehicle testing through the use of State-run referee stations, and protection of whistle blowers. In addition, the State provides assistance to motorists in obtaining warranty-covered repairs. The public information and consumer protection programs contained in the SIP submittal meet the Federal regulations and are approvable.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The Federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the Federal regulation and a description of the repair technician training resources available in the community.

The State I/M legislation and regulation require the implementation of a technical assistance program, which includes a contractor-operated hot line service to assist repair technicians, state technical diagnostic centers, and a method of regularly informing the repair facilities of changes in the program, training courses, and common repair problems. The I/M contractor will be responsible initially for development of an emission repair technician training program. The State envisions that eventually this function will be taken over by vocational and community educational facilities in the area. A repair facility performance monitoring program will provide motorists whose vehicles fail the test a summary of local repair facilities performance. The State revised the January 14, 1994 SIP to commit to providing performance statistics on all repair facilities that perform I/M emission repairs upon request. The State will provide regular feedback to each facility on their repair performance. The submittal of a completed repair form at the time of retest is required. The repair effectiveness improvement plan meets the criteria described in the Federal regulation and is approvable.

Compliance With Recall Notices—40 CFR 51.370

The Federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in a emission related recall receive the required repairs prior to completing the emission test or renewing the vehicle registration.

The Colorado legislation provides the legal authority to require owners to comply with emission related recalls before completing the emission test and prior to being eligible for registration renewal. The SIP appendices detail procedures to be used to incorporate national database recall information into the State inspection/registration database and quality control methods to insure recall repairs are properly documented and tracked. The submittal includes a requirement to submit an annual report to EPA which includes the information as required in 40 CFR Part 51.370(c). The recall compliance program contained in the SIP submittal meets the Federal requirements and is approvable.

On-Road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the Federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of a on-road test shall be required to pass an out-of-cycle test.

Legal authority to implement the on-road testing program and enforce off-cycle inspection and repair requirements is contained in the State legislation. The SIP submittal requires on-road testing of 0.5% of the subject fleet per year in the Denver-Boulder nonattainment area to be implemented by the contractor or its subcontractor. A description of the program, which includes test limits and criteria, and methods of collecting, analyzing and reporting the results of the testing is detailed in the submittal. The on-road testing program described in the SIP meets Federal requirements and is approvable.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–373

The Federal regulation requires enhanced I/M programs to be implemented by January 1, 1995 except for: (1) Existing test-and-repair programs which may test 30% of the subject fleet in the test-only system during 1995 and test all subject vehicles in the test-only system beginning January 1, 1996 (during the phase-in period, existing requirements may continue to apply for the test-and-repair portion of the program until it is phased out by January 1, 1996) or (2) Areas starting new test-only programs and those with existing test-only programs may phase in the new test procedures between January 1, 1995 and January 1, 1996; however, all other program requirements must be fully implemented by January 1, 1995.

The Colorado submittal included binding State I/M regulations, legislative authority to implement the program, final specifications, a final RFP, procedural documents, a modeling demonstration showing that the program design meets the performance standard, evidence of adequate funding and resources to implement the program, and a detailed discussion on each of the required program design elements. The submittal states that all inspectors and stations will be certified by December 31, 1994, mandatory testing will begin on January 1, 1995, and the start date for implementation of full-stringency cutpoints will be no later than January 1, 1999. The submittal also includes a commitment to include onboard diagnostic checks in the enhanced I/M program within 2 years after promulgation of onboard diagnostic check regulations for I/M programs. The SIP meets the SIP submission and Implementation deadline requirements set forth in the Federal I/M regulation.

V. Request for Comments

EPA is proposing to conditionally approve the Colorado SIP revision for an enhanced I/M program, which was submitted on January 14, and June 24, 1994. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

VI. Proposed Action

EPA is proposing to conditionally approve the Colorado I/M program. Revisions to the SIP were submitted on January 14, 1994, and June 24, 1994. Conditional approval is based on the State's commitment to satisfy conditions no later than one year from the date of final conditional approval. If such conditions are not met by this date, the conditional approval will automatically become a disapproval.

VII. Executive Order 12866

The OMB has exempted this rule from the requirements of Section 6 of Executive Order 12866.

VIII. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, Part D of the Act and conditional SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k)(4), the disapproval will not affect any existing state requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that such disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing state requirements nor substitute a new Federal requirement.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 30, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–17005 Filed 7–13–94; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[SIPTRAX NO. MD26–1–6081; FRL–5011–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland: Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published May 25, 1994 (59 FR 26994). On May 25, 1994, EPA proposed limited approval/disapproval of a State Implementation Plan (SIP) revision submitted by the State of Maryland regarding its new source review regulations (COMAR 26.11.02 and 26.11.17) and associated definitions (COMAR 26.11.01.01). At the request of Maryland, EPA is extending the comment period until July 11, 1994.

DATES: Comments must be received on or before July 11, 1994.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337.

Dated: July 1, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 94–17088 Filed 7–13–94; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[W142–01–6260; FRL–5012–4]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve portions and to conditionally

and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 30, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–17005 Filed 7–13–94; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[SIPTRAX NO. MD26–1–6081; FRL–5011–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland: Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published May 25, 1994 (59 FR 26994). On May 25, 1994, EPA proposed limited approval/disapproval of a State Implementation Plan (SIP) revision submitted by the State of Maryland regarding its new source review regulations (COMAR 26.11.02 and 26.11.17) and associated definitions (COMAR 26.11.01.01). At the request of Maryland, EPA is extending the comment period until July 11, 1994.

DATES: Comments must be received on or before July 11, 1994.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337.

Dated: July 1, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 94–17088 Filed 7–13–94; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[W142–01–6260; FRL–5012–4]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve portions and to conditionally approve other portions of a State Implementation Plan (SIP) revision submitted by the State of Wisconsin on November 15, 1993, if the State submits certain items prior to final action. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in the Milwaukee Severe ozone nonattainment area, which has 17 years to attain the National Ambient Air Quality Standards (NAAQS) pursuant to section 181(a)(2) of the Clean Air Act (Act), and the Sheboygan Moderate ozone nonattainment area. This action is being taken under section 110 of the Act. Should the State fail to timely submit the items described below, EPA is proposing in the alternative to disapprove or conditionally approve the SIP.

DATES: Comments must be received on or before August 15, 1994.

ADDRESSES: Comments may be mailed to: Carlton Nash, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: John M. Mooney, (312) 886–6043.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxide (NO_x) emissions. An important control measure to reduce these emissions is the implementation of a motor vehicle inspection and maintenance (I/M) program. Despite being subject to the most rigorous vehicle pollution control program in the world, cars and trucks still create about half of the ozone air pollution and nearly all of the carbon monoxide and other toxic contaminant air pollution in U.S. cities. Of all highway vehicles, passenger cars and light trucks emit most of the vehicle-related carbon monoxide and ozone-forming hydrocarbons. They also emit substantial amounts of nitrogen oxides and air toxics. Although the U.S. has made progress in reducing emissions of these pollutants, total fleet emissions remain high. This is because the number of vehicle miles travelled on U.S. roads has doubled in the last 20 years to 2 trillion miles per year, offsetting much of the technological progress in vehicle emission control over the same 2 decades. Projections indicate that the steady growth in vehicle travel will continue.

Today's cars are absolutely dependent on properly functioning emission controls to reduce pollution levels. Minor malfunctions in the emission control system can increase emissions significantly, and the average car on the road emits three to four times the new car standard. Major malfunctions in the emission control system can cause emissions to skyrocket. As a result, 10 to 30 percent of cars are causing a significantly larger percentage of the vehicle-related pollution problem. Unfortunately, it is rarely obvious which cars fall into this category, as the emissions themselves may not be noticeable and emission control malfunctions do not necessarily affect the performance of the vehicle.

Effective I/M programs, however, can identify these problem cars and assure their repair. I/M programs ensure that cars are properly maintained, producing emission reductions soon after the program is put in place.

EPA projects that "enhanced" I/M programs in the most polluted cities around the country would cut vehicle VOC emissions by 32 percent, at a cost of about $12.50 per vehicle per year. This represents a major step toward fulfilling, at a relatively low cost, the Act's (the Act) requirement that the most seriously polluted cities achieve a 24 percent overall emissions reduction by 2000.

The Clean Air Act as amended in 1990 requires that most polluted cities adopt either "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. The Moderate ozone nonattainment areas, as well as Marginal ozone areas with existing or previously required I/M programs, fall under the "basic" I/M requirements. Enhanced programs will be required in serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; CO areas that exceed a 12.7 parts per million (ppm) design value [1] with urbanized populations of 200,000 or more; and all metropolitan statistical areas (MSA) with populations of

[1] The air quality design value is estimated using EPA guidance. Generally, the fourth highest monitored value with 3 complete years of data is selected as the ozone design value because the standard allows one exceedance for each year. The highest of the second high monitored values with 2 complete years of data is selected as the carbon monoxide design value.

100,000 or more in the Northeast Ozone Transport Region (OTR).

"Basic" and "enhanced" I/M programs both achieve their objectives by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An "enhanced" program covers more of the vehicles in operation, employs inspection methods better suited to finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired.

The Act requires States to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act requires EPA to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area required to have an I/M program to incorporate this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) parts 51.350–51.373).

Under sections 182(c)(3), 187(a)(6) and 187(b)(1) of the Act, any area having a 1980 Bureau of Census-defined urbanized area population of 200,000 or more and that is designated as either: (1) a serious or worse ozone nonattainment area or (2) a moderate or serious CO nonattainment areas with a design value greater than 12.7 ppm, shall implement enhanced I/M in the 1990 Census-defined urbanized area.

The Act requires basic I/M programs to be implemented in the 1990 Census-defined urbanized area of the following nonattainment areas: (1) Any area which is classified as moderate ozone nonattainment and is not required to implement enhanced I/M, or (2) any area outside the OTR that is classified as serious or worse ozone nonattainment or moderate or serious CO nonattainment with a design value greater than 12.7 ppm and having a 1990 Census-defined urbanized area population of less than 200,000. Any areas classified as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 ppm or less shall continue operating existing programs that are part of an approved SIP as of November 15, 1990, or implement the basic program required for the area by the pre-Amended Act, and shall update the program to meet the basic I/M requirements set forth in 40 CFR parts 51.350–373.

The I/M regulation establishes minimum performance standards for basic and enhanced I/M programs as well as requirements for the following: network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Act. The performance standard for enhanced I/M programs is based on a high-technology test, known as IM240, for new technology vehicles (i.e., those with closed-loop control and, especially, fuel-injected engines), including a transient loaded exhaust short test incorporating hydrocarbons (HC), CO and NO_x cutpoints, an evaporative system integrity (pressure) test and an evaporative system performance (purge) test. The Federal regulation requires enhanced I/M programs to be implemented by January 1, 1995, except for: (1) Existing test-and-repair programs which may test 30 percent of the subject fleet in the test-only system during 1995 and test all subject vehicles in the test-only system beginning January 1, 1996 (during the phase in period, existing requirements may continue to apply for the test-and-repair portion of the program until it is phased out by January 1, 1996) or (2) Areas starting new test-only programs and those with existing test-only programs may phase in the new test procedures between January 1, 1995 and January 1, 1996; however, all other program requirements must be fully implemented by January 1, 1995.

II. Background

The State of Wisconsin currently contains 2 ozone nonattainment areas which are required to implement I/M programs in accordance with the Act. The Milwaukee severe-17 ozone nonattainment area contains the Milwaukee-Racine MSA which has a 1980 Census-defined population of 1,572,000 and therefore must implement an enhanced I/M program. The Sheboygan moderate ozone nonattainment area contains the Sheboygan MSA and, as a result, is subject to the basic I/M requirements. 40 CFR part 51 372(b)(2)) requires affected States to submit full I/M SIP revisions that meet the requirements of the Act to EPA by November 15, 1993.

On November 15, 1993, the Wisconsin Department of Natural Resources (WDNR) submitted to EPA a revised SIP for an enhanced I/M program to cover areas where both the basic and the enhanced requirements apply. The revision included Wisconsin Statutes Sections 110.20 and 144.42 and Chapter 341; Wisconsin Administrative Code Chapters TRANS 131 and NR 485; and the "Wisconsin Motor Vehicle Inspection Program Request for Proposal for the Establishment and Operation of Motor Vehicle Inspection Program Facilities." The State I/M regulations were adopted by WDNR in June 1993 and became effective on July 1, 1993.

EPA's summary of the requirements of the Federal I/M regulations as found in 40 CFR part 51.350–51.373 and its analysis of the State submittal are below. A more detailed analysis of the State submittal is contained in a Technical Support Document (TSD) dated June 6, 1994, which is available from the Region 5 office, listed in the **ADDRESSES** section. Parties desiring additional details on the Federal I/M regulation are referred to the November 5, 1992 **Federal Register** notice (57 FR 52950) or 40 CFR parts 51.350–51.373.

III. EPA's Analysis of Wisconsin's Enhanced I/M Program

Applicability—40 CFR 51.350

Section 182(c)(3) of the Act and 40 CFR 51.350(a) require States which contain areas classified as serious or worse ozone nonattainment and containing MSAs with a population of 200,000 or more to implement an enhanced I/M program. As noted above, the State of Wisconsin contains the Milwaukee-Racine MSA in its Milwaukee Severe-17 ozone nonattainment area. In addition, section 182(b)(4) of the Act and 40 CFR part 51.530(a) require States with moderate ozone nonattainment areas containing 1990 Census-defined urbanized areas to implement a basic I/M program. The State of Wisconsin contains the Sheboygan urbanized area where this requirement applies.

There are 6 counties in Wisconsin that are required to implement an enhanced I/M program: Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties. There is one county, Sheboygan County, that is required to implement a basic I/M program. The State has, however, expanded the existing program in the Milwaukee area to cover Sheboygan.

The State submittal does contain the legal authority necessary to establish the program boundaries for enhanced I/M. The program boundaries meet the Federal I/M requirements under section 51.350 and are approvable. Wisconsin legislation provides that the I/M program shall apply where an area will not be able to attain the National Ambient Air Quality Standards (NAAQS) without it, and that such coverage can be deleted if demonstrated that the area will attain the NAAQS. This provision allows Wisconsin to add areas to the existing program but does not limit the applicability of the program in the required areas.

The Federal I/M regulation requires that the State program shall not terminate until it is no longer necessary. EPA has determined that a SIP which does not terminate prior to the attainment deadline for each applicable area (i.e., 2007 for the Milwaukee severe-17 ozone nonattainment area, and 1996 for the Sheboygan moderate ozone nonattainment area) satisfies this requirement. The Wisconsin program does not contain a termination provision and is therefore approvable.

Enhanced I/M Performance Standard—40 CFR 51.351

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both NO_x and VOCs. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and model I/M program parameters for the following: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Wisconsin

Washington, and Waukesha Counties. There is one county, Sheboygan County, that is required to implement a basic I/M program. The State has, however, expanded the existing program in the Milwaukee area to cover Sheboygan.

The State submittal does contain the legal authority necessary to establish the program boundaries for enhanced I/M. The program boundaries meet the Federal I/M requirements under section 51.350 and are approvable. Wisconsin legislation provides that the I/M program shall apply where an area will not be able to attain the National Ambient Air Quality Standards (NAAQS) without it, and that such coverage can be deleted if demonstrated that the area will attain the NAAQS. This provision allows Wisconsin to add areas to the existing program but does not limit the applicability of the program in the required areas.

The Federal I/M regulation requires that the State program shall not terminate until it is no longer necessary. EPA has determined that a SIP which does not terminate prior to the attainment deadline for each applicable area (i.e., 2007 for the Milwaukee severe-17 ozone nonattainment area, and 1996 for the Sheboygan moderate ozone nonattainment area) satisfies this requirement. The Wisconsin program does not contain a termination provision and is therefore approvable.

Enhanced I/M Performance Standard—40 CFR 51.351

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both NO_x and VOCs. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and model I/M program parameters for the following: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Wisconsin submittal the most current version was MOBILE5a.

The Wisconsin submittal includes the following program design parameters:

network type—centralized
start date—1984 for exhaust testing; 1995 for evaporative testing
test frequency—biennial
model year coverage—1968+
vehicle type coverage—LDGV, LDGT1, LDGT2, & HDGV
exhaust emission test type—IM240 on 1968+ model years
emission standards—0.8/20/2.0 gms/mile for HC/CO/NO_x to year 2000; 0.6/15/1.5 gms/mile for HC/CO/NO_x after year 2000
emission control device visual inspection—none
evaporative system function checks—pressure and purge on 1971+ model years
stringency (pre-1981 failure rate)—40%
waiver rate (pre-1981/1981 and newer)—3%
compliance rate—96%
evaluation date(s)—2000, 2003, 2006, 2008

The Wisconsin program design parameters meet the Federal I/M regulations and are approvable.

The emission levels achieved by the State were modeled using MOBILE5a. The modeling demonstration was performed correctly, used local characteristics and demonstrated that the program design will exceed the minimum enhanced I/M performance standard, expressed in gpm, for VOCs and NO_x for each milestone and for the attainment deadline. As noted below, this modeling demonstration does not account for the impact of vehicle exemptions. In addition, this modeling demonstration was not included in the State's November 15, 1993, submittal and has yet to be formally submitted to EPA as a revision to the SIP. In order to receive full approval of its SIP, the State must revise its modeling demonstration to account for exempted vehicles and must formally submit this demonstration in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period which is 30 days following the publication of this notice.

Network Type and Program Evaluation—40 CFR 51.353

Enhanced I/M programs shall be operated in a centralized test-only format, unless the State can demonstrate that a decentralized program is equally effective in achieving the enhanced I/M performance standard. The enhanced program shall include an ongoing evaluation to quantify the emission reduction benefits of the program and to determine if the program is meeting the requirements of the Act and the Federal I/M regulation. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports, data from a State monitored or administered mass emission test of at least 0.1 percent of the vehicles subject to inspection each year, description of the sampling methodology, the data collection and analysis system and the legal authority enabling the evaluation program.

The State legislative authority and the State I/M regulations provide for a centralized, test-only network. Wisconsin's centralized, test-only network type is approvable. The submittal does not, however, include provisions for ongoing program evaluation and, as a result, does not meet the Federal I/M regulations. In order to receive final full approval of its program, the State must submit to EPA provisions for ongoing program evaluation satisfying all of the requirements of 40 CFR part 51.353. Specifically, the State must submit schedules for program evaluation and methodologies by which this biennial program evaluation will be carried out, as required by 40 CFR part 51.353. EPA proposes to approve the Wisconsin enhanced I/M SIP if the State submits these provisions in time to allow EPA to place them in the docket for public comment at least 2 weeks prior to the close of the public comment period.

Adequate Tools and Resources—40 CFR 51.354

The Federal regulation requires the State to demonstrate that adequate funding of the program is available. A portion of the test fee or a separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if it is demonstrated that the funding can be maintained. Reliance on funding from the State or local General Fund is not acceptable unless doing otherwise would be a violation of the State's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The Wisconsin submittal does not contain a description of funding sources for the I/M program. In order to receive full approval, the State must submit to EPA a description of the method by which the program will be funded. This description must demonstrate that sufficient funds, equipment and personnel have been appropriated to meet the program operation requirements of the I/M rule and must be submitted prior to EPA's final rulemaking on this submittal. EPA proposes to approve the SIP if Wisconsin submits this description in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual test frequency; however, other schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, shall State how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations, or contract provisions necessary to implement and enforce the test frequency requirement. The program shall be designed to provide convenient service to the motorist by ensuring short waiting times, short driving distances and regular testing hours.

The Wisconsin enhanced I/M regulation provides for a biennial test frequency. Based on the performance standard modeling provided by the State, the enhanced I/M program meets the performance standard accounting for the biennial test frequency. On April 13, 1994, The Wisconsin State Legislature enacted legislation which provides the legal authority to implement and enforce the biennial test frequency. This newly adopted legislation has not yet been formally submitted to EPA as a revision to the SIP, however, once submitted, this authority will be acceptable. EPA proposes to approve the Wisconsin SIP if the State formally submits this revised legislation prior to EPA's final action. EPA has included this legislation in the docket for this proposed rulemaking. The Wisconsin I/M Request for Proposal (RFP) provides sufficient evidence that convenient services will be provided to the motorist. The Wisconsin submittal will meet the test frequency and convenience requirements of the Federal I/M regulations and is approvable upon EPA's receipt of the state's newly enacted legislation.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR part 51.353(a).

The Federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

The Wisconsin enhanced I/M legislation, enacted April 13, 1994, requires coverage of all 1968 and newer light duty vehicles and trucks up to 14,000 pounds GVWR, which are registered or required to be registered in the I/M program area. The Wisconsin legislation and the state's I/M regulations provide the legal authority to implement and enforce the vehicle coverage. This level of coverage is approvable because it provides the necessary emission reductions. The State RFP also describes general requirements related to vehicle coverage. The State submittal does not contain estimates of the number of registered or unregistered vehicles in the area or methods for identifying subject vehicles. These items will be described in more detail in the states final, signed I/M contract, which must be submitted to EPA prior to EPA's final rulemaking, in order to receive full approval on its submittal. EPA proposes to approve the SIP if Wisconsin submits the contract in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

The state's November 15, 1993, SIP submittal does not adequately address fleet testing requirements. Existing regulations allow for the self testing and repair of fleets and directly contradict the requirements of the final I/M rule. The State is moving forward to amend its TRANS 131 rule to establish detailed provisions for the testing of fleets in accordance with EPA's final rule. In its submittal, the State indicates that these rule changes cannot be completed prior to EPA's final action. EPA proposes to conditionally approve this portion of the state's submittal if the State commits prior to final rulemaking to completing these amendments within one year of EPA's final conditional approval. The state's plan for testing fleet vehicles must meet the requirements of the Federal I/M regulation.

The State regulation provides for limited special exemptions. In its submittal the State did not provide a description of the exemptions' impact on the subject fleet. In addition, the modeling demonstration submitted by the State does not account for these exemptions in the emission reduction analysis. The State must describe the extent of the exemptions impact in accordance with 40 CFR part 51.356 in order for EPA to fully approve the state's submittal. EPA proposes to approve the SIP if the State submits, in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period, a description that indicates that the performance standard will not be adversely affected.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR part 51.357 and in the EPA document entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", EPA–AA–EPSD–IM–93–1, dated July 1993.

The State I/M RFP includes a general provision for loaded tailpipe emission, evaporative system purge, and evaporative system pressure testing. Detailed descriptions of the test procedures and standards will be contained in the state's final, signed I/M contract. After reviewing the state's RFP, EPA believes that these test procedures and standards will conform to EPA approved test procedures and will be approvable. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.357 to EPA prior to final rulemaking. EPA proposes to approve the SIP if Wisconsin submits the contract in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

In addition, the State is currently in the process of amending its rule NR 485 to establish a series of increasingly stringent emission limits (cutpoint schedule) for VOC and NO_x to correspond to those used in the state's modeling demonstration. In its submittal, the State indicates that these rule changes cannot be completed prior to EPA's final action. EPA proposes to conditionally approve this portion of the state's submittal if the State submits a commitment to EPA prior to final rulemaking committing to complete these amendments within one year of EPA's final conditional approval.

The State is also in the process of applying for an exemption from NO_x control requirements under section 182(f) of the Act. The state's contract and regulations should contain provisions for establishing a NO_x testing requirement, however, these provisions may allow for establishing the NO_x cutpoint in accordance with EPA's action on the section 182(f) petition. If EPA approves this petition for exemption, the I/M rule does not require NO_x emission reductions from the program but the program must be designed to offset NO_x increases resulting from HC and CO failures pursuant to 40 CFR part 51.351(d). EPA proposes to approve this portion of the SIP if the State submits the final contract containing NO_x provisions consistent with this discussion in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

The State RFP also contains provisions requiring vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be tested in the same manner as other subject vehicles. However, detailed descriptions of these procedures will be contained in the state's final, signed I/M contract. After reviewing the state's RFP, EPA believes that these test procedures and standards will conform to EPA approved test procedures and will be approvable. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.357 to EPA prior to final rulemaking. EPA proposes to approve

to EPA approved test procedures and will be approvable. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.357 to EPA prior to final rulemaking. EPA proposes to approve the SIP if Wisconsin submits the contract in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

In addition, the State is currently in the process of amending its rule NR 485 to establish a series of increasingly stringent emission limits (cutpoint schedule) for VOC and NO_x to correspond to those used in the state's modeling demonstration. In its submittal, the State indicates that these rule changes cannot be completed prior to EPA's final action. EPA proposes to conditionally approve this portion of the state's submittal if the State submits a commitment to EPA prior to final rulemaking committing to complete these amendments within one year of EPA's final conditional approval.

The State is also in the process of applying for an exemption from NO_x control requirements under section 182(f) of the Act. The state's contract and regulations should contain provisions for establishing a NO_x testing requirement, however, these provisions may allow for establishing the NO_x cutpoint in accordance with EPA's action on the section 182(f) petition. If EPA approves this petition for exemption, the I/M rule does not require NO_x emission reductions from the program but the program must be designed to offset NO_x increases resulting from HC and CO failures pursuant to 40 CFR part 51.351(d). EPA proposes to approve this portion of the SIP if the State submits the final contract containing NO_x provisions consistent with this discussion in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

The State RFP also contains provisions requiring vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be tested in the same manner as other subject vehicles. However, detailed descriptions of these procedures will be contained in the state's final, signed I/M contract. After reviewing the state's RFP, EPA believes that these test procedures and standards will conform to EPA approved test procedures and will be approvable. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.357 to EPA prior to final rulemaking. EPA proposes to approve the SIP if Wisconsin submits the contract in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The Federal I/M regulation requires that the State SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The State RFP contains general specifications for test equipment to be used in the program. The specifications require the use of computerized test systems. The specifications will be further developed in the final I/M contract. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.358 to EPA prior to final rulemaking. The contract must include performance features and functional characteristics of the computerized test systems which meet the Federal I/M regulations. EPA proposes to approve the SIP if Wisconsin submits the contract in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

The State RFP contains general provisions for the establishment of quality control measures for the emission measurement equipment, record keeping requirements, and measures to maintain the security of all documents used to establish compliance with the inspection requirements. These measures and practices will be further developed in the state's final I/M contract. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.359 to EPA prior to final rulemaking. EPA proposes to approve the SIP if Wisconsin submits the contract in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The Federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The Federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that must be taken if the waiver rate exceeds that committed to in the SIP.

The legislative authority and State regulation provides the necessary authority to issue waivers, set and adjust cost limits, and administer and enforce the waiver system. The Wisconsin I/M regulation sets a $450 cost limit and allows for an annual adjustment of the cost limit to reflect the change in the CPI as compared to the CPI in 1989 for the 6 county Milwaukee nonattainment area and a $200 cost limit for 1981 and newer models and a $75 cost limit for vehicles older than model year 1981 in Sheboygan county. Although amended legislative authority requires actual expenditure of funds to qualify towards the cost limit, existing regulations still allow estimates of repair costs to qualify. The provisions of the Wisconsin legislative authority override the previous administrative rule in this situation. In addition, Wisconsin is amending its regulations to correct this contradiction. EPA proposes to conditionally approve the SIP based on Wisconsin's commitment to adopt and submit these regulatory amendments within one year of final action. The State must submit this commitment to EPA prior to final action in order to receive conditional approval. The regulation and RFP include provisions which address waiver criteria and procedures, including cost

limits, tampering and warranty related repairs, quality control and administration. These provisions will be further developed in the final, signed I/M contract. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.360 to EPA prior to final rulemaking. The contract must require repairs for vehicles to be performed by a recognized or certified repair technician. The contract may allow for compliance via diagnostic inspection provided the policies and procedures outlined in the submittal meet Federal I/M regulations. The State regulation allows for time extensions. The contract must specify the criteria for allowing time extensions and for tracking extensions.

The State has set a maximum waiver rate of 3 percent for both pre-1981 and for 1981 and later vehicles. While the State has a good history of maintaining the program's waiver rate, EPA is concerned that the State may have a problem maintaining the 3 percent waiver rate given the lower expenditure waiver limit in Sheboygan county (i.e., $450 versus $200). Therefore, in order to receive full approval the State must describe corrective actions to be taken if the waiver rate exceeds 3 percent. This waiver rate has been used in the performance standard modeling demonstration and is approvable. However, in its SIP submittal, the State did not include a formal commitment to the waiver and compliance rates used in the modeling demonstration. EPA proposes to approve the SIP if Wisconsin submits the contract, description of corrective actions, and appropriate commitments in time to allow EPA to place them in the docket 2 weeks prior to the close of the public comment period.

Motorist Compliance Enforcement—40 CFR 51.361

The Federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in enhanced I/M programs unless an exception for use of an existing alternative is approved. Registration denial enforcement consists of rejecting an application for initial registration or reregistration of a used vehicle unless the vehicle has complied with the I/M requirement prior to the granting of the application. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

Wisconsin's legislative authority and I/M regulations provide the legal authority to implement a registration denial system. Wisconsin has set a compliance rate of 96 percent, which was used in the performance standard modeling demonstration. However, in its SIP submittal, the State did not include a formal commitment to this compliance rate. The submittal includes detailed information concerning the registration denial enforcement process which meets the Federal I/M regulation requirements and is approvable. The State has not submitted a detailed penalty schedule including a description of mandatory, meaningful fines for the program. The State is in the process of amending its TRANS 131 rule to establish a more thorough penalty schedule. In its submittal, the State indicates that these rule changes cannot be completed prior to EPA's final action. EPA proposes to conditionally approve this portion of the state's submittal if the State submits a commitment to EPA prior to final rulemaking committing to completing these amendments within one year of EPA's final conditional approval. The state's penalty schedule must meet the requirements of the Federal I/M regulation.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The Federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The Wisconsin RFP contains general provisions for quality control of the enforcement program and includes the establishment of an information management system. These provisions will be further developed in the final, signed I/M contract. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.362 to EPA prior to final rulemaking. EPA proposes to approve the SIP if Wisconsin submits the contract in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all State I/M enforcement officials and auditors. The State must submit a description of the quality assurance program, including written procedure manuals on the above discussed items, as part of the SIP.

The Wisconsin RFP includes general provisions for a quality assurance program. The final, signed I/M contract will provide specific details and procedures for inspections, records, equipment audits, and formal training for all State enforcement officials will be specified by the final, signed I/M contract.

In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.360 to EPA prior to final rulemaking. Detailed procedures for performing overt and covert audits are being developed separately from the final, signed I/M contract. The State must submit a description of these procedures to EPA in order to receive full approval of its submittal. EPA proposes to approve the SIP if Wisconsin submits the contract and description of audit procedures in time to allow EPA to place them in the docket 2 weeks prior to the close of the public comment period.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations or contractors and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The Federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases, the resources to be allocated to this function, and the source of those funds.

The Wisconsin submittal includes the legal authority to establish and impose penalties against stations, contractors and inspectors. The State I/M regulation and legislation includes general penalty provisions for stations, contractors and inspectors. Specific penalty schedules will be detailed in the final signed, I/M contract. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.364 to EPA prior to final rulemaking. In addition, the submittal does not include a description of administrative and judicial procedures relevant to the enforcement process which meets Federal I/M regulations. The State must submit this documentation to EPA in order for the submittal to be fully approved. EPA proposes to approve the SIP if Wisconsin submits the contract and description of administrative and judicial procedures in time to allow EPA to place them in the docket 2 weeks prior to the close of the public comment period.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The Federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR part 51.359.

The RFP contains provisions regarding the collection of data on each individual test conducted and generally describes the type of data to be collected. These provisions will be further developed in the final, signed I/M contract. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.365 to EPA prior to final rulemaking. The submittal also commits to gather and report the results of the quality control checks required under 40 CFR part 51.359 and will be approvable upon EPA's receipt of the final, signed I/M contract. EPA proposes to approve the SIP if Wisconsin submits the contract in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring an evaluation of the program by the State and EPA. The Federal I/M regulation requires annual reports to be submitted that provide information and statistics and summarize activities performed for each of the following programs: testing,

The Wisconsin submittal includes the legal authority to establish and impose penalties against stations, contractors and inspectors. The State I/M regulation and legislation includes general penalty provisions for stations, contractors and inspectors. Specific penalty schedules will be detailed in the final signed, I/M contract. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.364 to EPA prior to final rulemaking. In addition, the submittal does not include a description of administrative and judicial procedures relevant to the enforcement process which meets Federal I/M regulations. The State must submit this documentation to EPA in order for the submittal to be fully approved. EPA proposes to approve the SIP if Wisconsin submits the contract and description of administrative and judicial procedures in time to allow EPA to place them in the docket 2 weeks prior to the close of the public comment period.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The Federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR part 51.359.

The RFP contains provisions regarding the collection of data on each individual test conducted and generally describes the type of data to be collected. These provisions will be further developed in the final, signed I/M contract. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.365 to EPA prior to final rulemaking. The submittal also commits to gather and report the results of the quality control checks required under 40 CFR part 51.359 and will be approvable upon EPA's receipt of the final, signed I/M contract. EPA proposes to approve the SIP if Wisconsin submits the contract in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring an evaluation of the program by the State and EPA. The Federal I/M regulation requires annual reports to be submitted that provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July of each year and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA that addresses changes in program design, regulations, legal authority, program procedures, any weaknesses in the program found during the previous two-year period and how these problems will be or were corrected.

The RFP provides general provisions for the analysis and reporting of data for the testing program, quality assurance program, quality control program and the enforcement program. These provisions will be further developed in the final, signed I/M contract. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR 51.364 to EPA prior to final rulemaking. The State must also commit to submit annual reports on these programs to EPA by July of the subsequent year. A commitment to submit a biennial report to EPA, which addresses reporting requirements set forth in 40 CFR 51.366(e), must also be submitted to EPA in order to receive full approval. EPA proposes to approve the SIP if Wisconsin submits the contract, a commitment to submit annual reports and a biennial report in time to allow EPA to place them in the docket 2 weeks prior to the close of the public comment period.

Inspector Training and Licensing or Certification—40 CFR 51.376

The Federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

The RFP contains general provisions regarding requirements for inspectors' formal training, certification and licensing. The signed contract will include a description of the training program, the written and hands-on tests, and the licensing, certification processes. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.376 to EPA prior to final rulemaking. EPA proposes to approve the SIP if Wisconsin submits the contract in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

Public Information and Consumer Protection—40 CFR 51.368

The Federal I/M regulation requires the SIP to include public information and consumer protection programs. The RFP includes a public information program, which educates the public on I/M, State and Federal regulations, air quality, the contribution of motor vehicles to the air pollution problem, and other items as described in the Federal rule. The consumer protection program, which includes provisions for a challenge mechanism, protection of whistle blowers and assistance to motorists in obtaining warranty covered repairs, will be further developed in the final contract. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.364 to EPA prior to final rulemaking. EPA proposes to approve the SIP if Wisconsin submits the contract in time to allow EPA to place them in the docket 2 weeks prior to the close of the public comment period.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The Federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The State shall provide the repair industry with information and assistance related to vehicle inspection diagnosis and repair. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the Federal regulation and a description of the repair technician training resources available in the community.

The RFP includes general provisions for the implementation of a technical assistance program, which includes a hot line service to assist repair technicians and a method of regularly informing the repair facilities of changes in the program, training courses, and common repair problems. A repair facility performance monitoring program is also included in the RFP. This program provides the motorist whose vehicle fails the test a summary of local repair facilities' performances, and requires the submittal of a completed repair form at the time of retest. The program also provides feedback to each repair facility on its repair performance. These provisions will be further developed in the final, signed I/M contract. In order to receive full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.369 to EPA prior to final rulemaking. The State must also submit a description of available repair technician training

resources. EPA proposes to approve the SIP if Wisconsin submits the contract and description of training resources in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period.

Compliance With Recall Notices—40 CFR 51.370

The Federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in a emission related recall receive the required repairs prior to completing the emission test or renewing the vehicle registration.

The Wisconsin legislation provides the legal authority to require owners to comply with emission related recalls before completing the emission test. Specific procedures to be used to incorporate national database recall information into the State inspection database and quality control methods to insure that recall repairs are properly documented and tracked will be provided in the final, signed I/M contract, and will also be specified through amendments to the state's TRANS 131 rule. The submittal does not include a commitment to submit an annual report to EPA that includes the information required in 40 CFR part 51.370(c). In its submittal, the State indicates that these rule changes cannot be completed prior to EPA's final action. EPA proposes to conditionally approve this portion of the state's submittal if the State submits a commitment to EPA prior to final rulemaking committing to completing these amendments and submitting annual reports within one year of EPA's final conditional approval.

On-Road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the Federal regulations. The program must include on-road testing of 0.5 percent of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of a on-road test shall be required to pass an out-of-cycle test.

Legal authority to implement the on-road testing program and enforce off-cycle inspection and repair requirements is contained in the State legislation. The SIP submittal requires the use of RSD and roadside pullovers to test at least 0.5 percent of the subject fleet per year in the I/M program area. A description of the program which includes test limits and criteria, resource allocations, and methods of collecting, analyzing and reporting the results of the testing will be detailed in the final I/M contract and amendments to the state's TRANS 131 rule. In its submittal, the State indicates that these rule changes cannot be completed prior to EPA's final action. EPA proposes to conditionally approve this portion of the state's submittal if the State submits a commitment to EPA prior to final rulemaking committing to completing these amendments within one year of EPA's final conditional approval.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–373

The Federal regulation requires enhanced I/M programs to be implemented by January 1, 1995 except for: (1) Existing test-and-repair programs, which may test 30 percent of the subject fleet in the test-only system during 1995 and test all subject vehicles in the test-only system beginning January 1, 1996 (during the phase-in period, existing requirements may continue to apply for the test-and-repair portion of the program until it is phased out by January 1, 1996) or (2) Areas starting new test-only programs and those with existing test-only programs may phase in the new test procedures between January 1, 1995 and January 1, 1996; however, all other program requirements must be fully implemented by January 1, 1995.

The Wisconsin submittal included final State I/M regulations, preliminary legislative authority to implement the program, final specifications, a final RFP, procedural documents, and a discussion on each of the required program design elements. The submittal states that all inspectors and stations will be certified, that mandatory testing has already started, and that the start date for implementation will be July 3, 1995. The submittal also includes a commitment to include onboard diagnostic checks in the I/M program within 2 years after promulgation of onboard diagnostic check regulations for I/M programs. As noted in this proposed rulemaking, the State must timely submit its final, signed I/M contract, most recent changes to its I/M legislation enacted on April 13, 1994, final modeling demonstration, narrative descriptions of certain program elements, commitments to minimum compliance and enforcement related activity levels, and final rule changes or appropriate commitments prior to EPA's final rulemaking in order to receive final approval and conditional approval of its I/M submittal.

EPA's review of the material indicates that, subject to the conditions and contingencies noted above, the State has adopted an enhanced I/M program in accordance with the requirements of the Act. EPA is proposing to approve and conditionally approve the Wisconsin SIP revision for an enhanced I/M program, which was submitted on November 15, 1993, contingent on the timely receipt of the materials noted above from the State. EPA is soliciting public comments on the issues discussed in this notice and the additional material to be placed in the docket during the public comment period, or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to approve portions and conditionally approve other portions of this revision to the Wisconsin SIP for an enhanced I/M program. In the alternative, if Wisconsin fails to timely submit the materials discussed above, or if such materials do not meet the requirements of the Federal I/M rule, EPA proposes to disapprove the SIP or to conditionally approve these portions of the plan if the State submits the appropriate commitment(s) to remedy any deficiencies within one year of final conditional approval.

I. Basis for Conditional Approval

The EPA believes conditional approval is appropriate in this case because the State has developed final, fully adopted rules for the enhanced I/M program and needs only to amend these rules to address a number of enhanced I/M program requirements. As a condition of the U.S. EPA's proposed conditional approval, the State must submit final, fully adopted rules to EPA no later than one year after EPA's final conditional approval.

II. Statement of Approvability

Under the authority of the Governor, the Wisconsin Department of Natural Resources submitted a SIP revision to satisfy the requirements of the I/M regulation to the EPA on November 15, 1993. The Agency has reviewed this submittal and is proposing to approve portions and proposing to conditionally approve other portions of it pursuant to Sections 110(k) of the Act, on the condition that the portions of the I/M program noted above are adopted and/

or submitted on the schedules noted in this proposed rulemaking.

If the State fails to timely submit the required regulations and other material or commit to do so within one year of EPA's final conditional approval, EPA proposes in the alternative to disapprove the SIP as failing to comply with section 110 and Part D.

If the EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt and submit the final rule amendments within one year of the conditional approval. Once the EPA has conditionally approved this committal, if the State fails to adopt or submit the required rules to EPA, final approval will become a disapproval. EPA will notify the State by letter to this effect. Once the SIP has been disapproved, these commitments will no longer be a part of the approved nonattainment area SIPs. The EPA subsequently will publish a notice to this effect in the notice section of the **Federal Register** indicating that the commitment or commitments have been disapproved and removed from the SIP. If the State adopts and submits the final rule amendments to the EPA within the applicable time frame, the conditionally approved commitments will remain part of the SIP until the EPA takes final action approving or disapproving the new submittal. If the EPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

If after considering comments on the proposal, the EPA issues a final disapproval or if the conditional approval portions are converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin on the effective date of the final disapproval or at the time the EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit and the EPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, the EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval starts the 24 month clock for the imposition of a section 110(c) Federal Implementation Plan. Finally, under section 110(m) the EPA has discretionary authority to impose sanctions at any time after a final disapproval.

Procedural Background

The OMB has exempted this action rule from Executive Order 12866 review.

or submitted on the schedules noted in this proposed rulemaking.

If the State fails to timely submit the required regulations and other material or commit to do so within one year of EPA's final conditional approval, EPA proposes in the alternative to disapprove the SIP as failing to comply with section 110 and Part D.

If the EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt and submit the final rule amendments within one year of the conditional approval. Once the EPA has conditionally approved this committal, if the State fails to adopt or submit the required rules to EPA, final approval will become a disapproval. EPA will notify the State by letter to this effect. Once the SIP has been disapproved, these commitments will no longer be a part of the approved nonattainment area SIPs. The EPA subsequently will publish a notice to this effect in the notice section of the **Federal Register** indicating that the commitment or commitments have been disapproved and removed from the SIP. If the State adopts and submits the final rule amendments to the EPA within the applicable time frame, the conditionally approved commitments will remain part of the SIP until the EPA takes final action approving or disapproving the new submittal. If the EPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

If after considering comments on the proposal, the EPA issues a final disapproval or if the conditional approval portions are converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin on the effective date of the final disapproval or at the time the EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit and the EPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, the EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval starts the 24 month clock for the imposition of a section 110(c) Federal Implementation Plan. Finally, under section 110(m) the EPA has discretionary authority to impose sanctions at any time after a final disapproval.

Procedural Background

The OMB has exempted this action rule from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental Protection, Air Pollution Control, Carbon Monoxide, Nitrogen oxide, Ozone, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 24, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–17006 Filed 7–13–94; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Parts 141 and 143

[WH-FRL–5011–2]

National Primary and Secondary Drinking Water Regulations: Analytical Methods for Regulated Drinking Water Contaminants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: EPA is making available to the public a study that reports that a new analytical method, the Colisure test, is at least as good as EPA's previously approved methods for detecting total coliform bacteria and the bacterium, *Escherichia coli*, in drinking water. Both organisms must be monitored under EPA's drinking water regulations on total coliforms. The Agency evaluated the Colisure test and found the test to be at least as good as EPA's "reference" methods. Along with other changes relating to analytical test methods recently proposed, the Agency intends to amend regulations to approve the Colisure test as an option for detecting total coliforms and *E. coli* in drinking water. In addition to the Colisure test, the Agency is making performance data available that supports approval of EPA Method 504.1 for the analysis of 1,2,3-trichloropropane, EPA Method 200.7 for the analysis of sodium, EPA Method 200.8 for the analysis of mercury, Method 3111B in *Standard Methods* for the analysis of sodium, and withdrawal of approval for a number of outdated EPA chemistry methods. EPA invites public comment on whether the Agency should approve the Colisure test and other new and updated methods, and withdraw approval from other indicated methods.

DATES: Comments should be postmarked or delivered by hand on or before August 15, 1994.

ADDRESSES: Send written comments on this notice of availability to Chemistry Methods Docket Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, DC 20460. Please submit any references cited in your comments. EPA would appreciate an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

The document cited in this notice and any public comments received are available for review at EPA's Water Docket at the address above. For access to Docket materials, call (202) 260–3027 between 9 am and 3:30 pm Eastern Time for an appointment.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 am to 5:30 pm Eastern Time. For technical questions on chemical methods, contact Richard Reding, Ph.D., Office of Ground Water and Drinking Water (TSD), U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, telephone (513) 569–7946. For technical questions on the Colisure test, contact Paul S. Berger, Ph.D., Office of Ground Water and Drinking Water (MC–4603), U.S. Environmental Protection

Agency, 401 M Street SW., Washington DC 20460, telephone (202) 260–3039.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1993, EPA proposed to amend regulations to approve several new analytical methods and update previously approved methods for a number of regulated chemical, microbiological, and physical contaminants in drinking water (58 FR 65622). The Agency also proposed to withdraw approval for outdated methods and outdated versions of the same method. Since publication of the proposal, the Agency completed evaluation of an additional microbiology method, referred to as the Colisure Test. Performance data indicate to EPA that the Colisure test is at least as good as analytical methods already approved for the detection of total coliforms and *E. coli* and consequently should be approved for inclusion under § 141.21(f)(3). This test is described in the next section.

In addition, since the December 15 proposal, EPA completed evaluation of EPA Method 504.1 for the analysis of 1,2,3-trichloropropane, an "unregulated" volatile organic compound. Performance data suggests that this method, already approved for the analytical determination of ethylene dibromide and dibromochloropropane, is also suitable for analysis of 1,2,3-trichloropropane under § 141.24(e) and § 141.40(g). EPA Method 504.1 has a substantially lower detection limit than the methods already approved for this compound. If approved, laboratories may either use this test or any other approved test for the analytical determination of 1,2,3-trichloropropane in drinking water.

Thirdly, EPA is making available data to support expanding the scope of EPA Method 200.8 to include mercury under § 141.23(k)(l). This expansion would allow a laboratory to analyze mercury and several other inorganic contaminants with a single method. The Agency believes that data support the use of EPA Method 200.8 as an alternative analytical test for the analysis of mercury in drinking water. If the Agency approves EPA Method 200.8 for mercury, the final rule would update the citation for this method from "Methods for the Determination of Metals in Environmental Samples" (EPA–600/4–91–010, June 1991) to "Methods for the Determination of Metals in Environmental Samples—Supplement" (1994). The update would not differ from the earlier publication except that it would include mercury and would be editorially revised to conform with a new EPA format for methods.

The data made available in today's notice supports approval of these three tests. The data is available for review at EPA's Water Docket at the address above. In addition, "Methods for the Determination of Metals in Environmental Samples—Supplement" (1994) also is available in the Docket.

In addition to these three tests, as a result of public comments and additional internal review, EPA is considering amending the drinking water regulations to withdraw the following methods:

(1) EPA Methods 206.2 (arsenic), 208.2 (barium), and 354.1 (nitrite) under § 141.23(k) because those methods are outdated and the Agency has either proposed or already approved equivalent, updated versions of these methods that are published in the American Society for Testing and Materials (ASTM) and 18th edition of Standard Methods for the Examination of Water and Wastewater.

(2) EPA Methods 220.1 and 220.2 (copper), 150.1 and 150.2 (pH), 215.1 and 215.2 (calcium), 239.2 (lead), 120.1 (conductivity), 310.1 (alkalinity), 365.2 and 365.3 (orthophosphate), and 370.1 (silica) under § 141.89(a). When EPA published the December 15, 1993, **Federal Register** proposal, the Agency anticipated imminent publication of another rulemaking associated with the lead and copper rule that would have accomplished this. This other rulemaking, however, has been delayed and consequently EPA now believes it would be appropriate to invite public comment on withdrawal of these outdated EPA methods (or outdated versions of approved methods) in the present notice. EPA has already approved equivalent updated versions of these methods in Standard Methods (18th edition) and ASTM that use the same equipment, procedures, and technology.

(3) EPA Methods 110.2 (color), 220.1 and 220.2 (copper), 425.1 (foaming agents), 140.1 (odor), 150.1 and 150.2 (Ph) and 160.1 (total dissolved solids). EPA no longer intends to recommend these methods for the analysis of secondary contaminants under § 143.4 because these methods are outdated and the Agency already recommends equivalent updated versions in Standard Methods and ASTM.

(4) EPA Method 273.1, EPA Method 273.2, Method 320A (flame photometric method) in the 14th edition of Standard Methods, and ASTM method D1428–64. The Agency would replace these four outdated methods for sodium determinations under § 141.41(d) with method 3111B (direct atomic absorption) in the 18th edition of Standard Methods and EPA Method 200.7 (inductively coupled plasma), which is contained in "Methods for the Determination of Metals in Environmental Samples—Supplement" (1994). Both of these methods are currently approved for several contaminants under §§ 141.23(k), 141.89(a), and 143.4(b).

The present notice indicates the availability of data supporting withdrawal of approval of the above EPA methods. The data is available for review at EPA's Water Docket at the address above.

Finally, the **Federal Register** notice of December, 15, 1993, proposed to approve EPA Methods 100.2 (asbestos) and 525.2 (several organic chemicals) as updates to previous versions. The notice cited two draft publications, "Method for the Determination of Asbestos Structure over 10μm in Length in Drinking Water" and "EPA Method 525.2". EPA has completed these two draft publications, which are available for public review and comment in EPA's Water Docket. The June 1994 version of 100.2 differs from the proposed draft by including editorial clarifications that were suggested by public commenters. The March 1994 version of Method 525.2 differs from the earlier draft by increasing the holding times for samples and sample extracts, and including data that supports this increase.

II. Description of the Colisure Test

The Colisure test simultaneously determines the presence of total coliforms and *E. coli*, both of which must be monitored under the Total Coliform Rule (40 CFR 141.21). The Colisure test involves the addition of a 100-ml drinking water sample, either as a single volume or as five 20-ml volumes, to a specially formulated dehydrated medium. After incubation for 24–28 hours at 35°C, the tube or bottle is examined. If total coliforms are present, the medium changes from a yellow color to a red or magenta color. If *E. coli* are also present, the medium will emit a bright blue fluorescence when subjected to ultraviolet light.

The Colisure test is based on the detection of two enzymes, beta-galactosidase and beta-glucuronidase, which are characteristic of total coliforms and *E. coli*, respectively. For the detection of the enzyme beta-galactosidase, the test medium includes a chromogenic enzyme substrate, chlorophenol red beta-galactopyranoside. If beta-galactosidase is present, the substrate is hydrolyzed to form chlorophenol red, which is responsible for the color change. For beta-glucuronidase detection, the medium includes a fluorogenic enzyme substrate, 4-methylumbelliferyl-beta-D-glucuronide (MUG). If this enzyme is present, MUG is hydrolyzed, thereby releasing 4-methylumbelliferone which fluoresces when exposed to ultraviolet light.

Test Results

The Agency, after reviewing the data supporting the Colisure test, found the test to be equivalent in performance to EPA's reference methods (the Fermentation Tube Technique for total coliforms, EC–MUG for *E. coli*). With regard to specificity, 21 primary effluent samples from 7 different geographical sites were analyzed for total coliforms and *E. coli* by the Colisure test. Positive and negative cultures were then validated by other, more standard tests. These results indicated that the Colisure test had a false-positive rate of 3.5% and 4.3%, respectively, for total coliforms and *E. coli*. The false-negative rate was 0% and 2.4%, respectively. EPA believes that these results show that the specificity of the Colisure test as an alternative analytical test method for total coliforms and *E. coli* is reasonable.

With regard to performance comparability, investigators collected 31 primary effluent samples from 6 different locations and compared the Colisure method with EPA's reference methods for the detection of chlorine-injured total coliforms and *E. coli*. After 28 hours, the Colisure test had an average of 1.6 times more total coliform-positive responses than the reference method, and 1.76 times more *E. coli*-positive responses than the reference method. This study suggests that the Colisure test could recover chlorine-injured coliforms to a greater extent than EPA's reference methods.

The above studies suggest that the Colisure test performs satisfactorily, and its performance is at least as good as the reference methods for total coliforms and *E. coli*. The Agency requests public comment on the suitability of this test. If the Agency decides to approve the Colisure test, it will probably do so as part of the final rulemaking that promulgates the regulatory revisions proposed in the **Federal Register** on December 15, 1993. If approved, laboratories may either use this test or any other approved test for total coliforms or *E. coli* in drinking water.

form chlorophenol red, which is responsible for the color change. For beta-glucuronidase detection, the medium includes a fluorogenic enzyme substrate, 4-methylumbelliferyl-beta-D-glucuronide (MUG). If this enzyme is present, MUG is hydrolyzed, thereby releasing 4-methylumbelliferone which fluoresces when exposed to ultraviolet light.

Test Results

The Agency, after reviewing the data supporting the Colisure test, found the test to be equivalent in performance to EPA's reference methods (the Fermentation Tube Technique for total coliforms, EC–MUG for *E. coli*). With regard to specificity, 21 primary effluent samples from 7 different geographical sites were analyzed for total coliforms and *E. coli* by the Colisure test. Positive and negative cultures were then validated by other, more standard tests. These results indicated that the Colisure test had a false-positive rate of 3.5% and 4.3%, respectively, for total coliforms and *E. coli*. The false-negative rate was 0% and 2.4%, respectively. EPA believes that these results show that the specificity of the Colisure test as an alternative analytical test method for total coliforms and *E. coli* is reasonable.

With regard to performance comparability, investigators collected 31 primary effluent samples from 6 different locations and compared the Colisure method with EPA's reference methods for the detection of chlorine-injured total coliforms and *E. coli*. After 28 hours, the Colisure test had an average of 1.6 times more total coliform-positive responses than the reference method, and 1.76 times more *E. coli*-positive responses than the reference method. This study suggests that the Colisure test could recover chlorine-injured coliforms to a greater extent than EPA's reference methods.

The above studies suggest that the Colisure test performs satisfactorily, and its performance is at least as good as the reference methods for total coliforms and *E. coli*. The Agency requests public comment on the suitability of this test. If the Agency decides to approve the Colisure test, it will probably do so as part of the final rulemaking that promulgates the regulatory revisions proposed in the **Federal Register** on December 15, 1993. If approved, laboratories may either use this test or any other approved test for total coliforms or *E. coli* in drinking water.

Dated: July 5, 1994.

Robert Perciasepe,

Assistant Administrator.

[FR Doc. 94–17090 Filed 7–13–94; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[MM Docket No. 94–66, RM–8469]

Radio Broadcasting Services; Tyler, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Gleiser Communications, Inc., license of Station KDOK–FM, Channel 221A, Tyler, Texas, proposing the substitution of Channel 221C3 for Channel 221A at Tyler, Texas, and the modification of Station KDOK–FM's license to specify operation on the higher powered channel. In order to accommodate the upgrade at Tyler, we also propose to substitute Channel 256A for Channel 221A at Fairfield, Texas, and the modification of Station KNES–FM's license; the substitution of Channel 277A for Channel 221A at Commerce, Texas, and the modification of Station KEMM–FM's license accordingly. See Supplementary Information, *infra*.

DATES: Comments must be filed on or before August 31, 1994, and reply comments on or before September 18, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: M. Scott Johnson, Esq., Gardner, Carton & Douglas, 1301 K Street, N.W., Suite 900E, Washington, D.C. 20005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 94–66, adopted June 23, 1994, and released July 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Channels 221C3, 256A, and 277A can be allotted to Tyler, Fairfield and Commerce, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 221C3 can be allotted to Tyler with a site restriction of 1.6 kilometers (1.0 miles) west to accommodate Gleiser's desired site. The coordinates for Channel 221C3 at Tyler are North Latitude 32–20–42 and West Longitude 95–10–08. Channel 256A and Channel 277A can be allotted to Fairfield and Commerce, respectively, at the transmitter sites specified in Station KNES–FM's and Station KEMM–FM's authorizations. The coordinates for Channel 256A at Fairfield, Texas, are North Latitude 31–41–52 and West Longitude 96–09–44. The coordinates for Channel 277A at Commerce, Texas, are North Latitude 33–11–40 and West Longitude 96–01–20.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17034 Filed 7–13–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–72, RM–8479]

Radio Broadcasting Services; Odessa and Los Ybanez, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ruben Velasquez, permittee of Station KADM–FM, Channel 299C2 at Odessa, Texas, proposing the substitution of Channel 300C1 for Channel 299C2 at Odessa and

modification of Station KADM–FM's construction permit to specify operation on the higher powered channel. In order to accommodate the upgrade at Odessa, we also propose to substitute Channel 253C2 for Channel 300C2 at Los Ybanez, Texas, and to modify the license of Station KYMI–FM accordingly. *See* Supplemental Information, *infra*.

DATES: Comments must be filed on or before August 31, 1994, and reply comments on or before September 18, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Wells King, Esq., Haley, Bader & Potts, 4350 North Fairfax Drive, Suite 900, Arlington, Virginia 22203–1633 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–72, adopted June 23, 1994, and released July 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Channel 300C1 and Channel 253C2 can be allotted to Odessa and Los Ybanez, Texas, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 300C1 can be allotted to Odessa without the imposition of a site restriction. The coordinates for Channel 300C1 are 31–51–30 and 102–22–30. Channel 253C2 can be allotted to Los Ybanez at the transmitter site specified in Station KYMI–FM's license. The coordinates for Channel 253C2 are 32–43–22 and 102–01–50. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 300C1 at Odessa or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. Furthermore, since Odessa and Los Ybanez are located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been solicited.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17035 Filed 7–13–94; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 94–79, RM–8493]

Radio Broadcasting Services; Pine Hill, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by R.J. Miller, requesting the allotment of FM Channel 244A to Pine Hill, Alabama, as that community's first local aural transmission service. Coordinates used for this proposal are North Latitude 32–01–38 and West Longitude 87–37–23.

DATES: Comments must be filed on or before September 1, 1994, and reply comments on or before September 16, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: R.J. Miller, Route 1, Box 242, Letohatchee, AL 36047.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–79, adopted June 29, 1994, and released July 11, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor's, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public school note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17078 Filed 7–13–94; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 94–57, RM–8467]

Radio Broadcasting Services; Sanger and Sherman, TX

AGENCY: Federal Communications Commission.

ACTION: Proposal rule.

SUMMARY: The Commission requests comments on a petition filed by Harmon G. Husbands and Durant Broadcasting Corporation, seeking the substitution of Channel 281C3 for Channel 281A at Sherman, Texas, the reallotment of Channel 281C3 from Sherman to Sanger, Texas, and the modification of Station KWSM–FM's license to specify Sanger as the station's community of license. Channel 281C3 can be allotted to Sanger in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.3 kilometers (6.4 miles) northwest. The coordinates for Channel 281C3 are 33–25–10 and 97–15–28. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 281C3 at Sanger or require the petitioners to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 1, 1994, and reply comments on or before September 16, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard M. Riehl, Esq., Haley, Bader & Potts, 4350 North Fairfax Drive, Suite 900, Arlington, Virginia 22203–1633 (Counsel for petitioners).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–57, adopted June 7, 1994, and released July 11, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17079 Filed 7–13–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 252

Defense Federal Acquisition Regulation Supplement; Debarment and Suspension

AGENCY: Department of Defense.

availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 1, 1994, and reply comments on or before September 16, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard M. Riehl, Esq., Haley, Bader & Potts, 4350 North Fairfax Drive, Suite 900, Arlington, Virginia 22203–1633 (Counsel for petitioners).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–57, adopted June 7, 1994, and released July 11, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17079 Filed 7–13–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 252

Defense Federal Acquisition Regulation Supplement; Debarment and Suspension

AGENCY: Department of Defense.

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council is proposing to amend the Defense Federal Acquisition Regulation Supplement to add restrictions on placing orders against indefinite quantity contracts and Federal supply schedule contracts in instances in which the contractor has been debarred, suspended, or proposed for debarment.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 12, 1994, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mrs. Linda Holcombe, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 604–5971. Please cite DFARS Case 93–D018 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda Holcombe, (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule is intended to address issues raised by the General Accounting Office in a February 1987 report on debarment and suspension that identified improvements needed to debarment and suspension procedures. One recommendation in that report was to clarify that under certain types of contracts, agencies are not required to place orders for supplies with a debarred or suspended contractor. The proposed rule adds restrictions on placing orders against indefinite quantity contracts and schedule contracts and the exercise of options under contracts, when the contractor was debarred, suspended, or proposed for debarment.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it adds restrictions which were already discretionary under the Federal Acquisition Regulation (FAR). The FAR currently permits discontinuation of current contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment when directed by the acquiring agency's head or a designee. The proposed rule removes the requirement for this direction for the Department of Defense. No new requirements are being imposed on the public. An initial Regulatory Flexibility Analysis has therefore not been performed. The proposed rule applies to both large and small businesses. Comments are invited from small businesses and other interested parties. Comments from small entities will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 93–D018 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose reporting or recordkeeping requirements which require the approval of the OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 209

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 209 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 209 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR part 1.

PART 209–CONTRACTOR QUALIFICATIONS

2. Section 209.405–1 is added to read as follows:

§ 209.405–1 Continuation of current contracts.

(a) Unless the agency head makes a written determination that a compelling reason exists to do so, ordering activities shall not—

(i) Place orders exceeding the guaranteed minimum under indefinite quantity contracts; or

(ii) When the agency is an optional user, place orders against Federal supply schedule contracts.

(b) This includes exercise of options.

[FR Doc. 94–17094 Filed 7–13–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC19

Endangered and Threatened Wildlife and Plants; Proposed Rule to List Alaska Breeding Population of the Steller's Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Alaska breeding population of the Steller's eider (*Polysticta stelleri*) as threatened pursuant to the Endangered Species Act of 1973, as amended. Critical habitat is not being proposed at this time.

DATES: Comments from all interested parties relating to this proposal must be received by November 14, 1994. Public hearing requests relating to the proposed rule must be received by September 12, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Fairbanks Ecological Services Field Office, Endangered Species, U.S. Fish and Wildlife Service, 1412 Airport Way, Fairbanks, Alaska 99701, telephone (907) 456–0427 or facsimile (907) 456–0346. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Skip Ambrose, Endangered Species Specialist, at the above address (telephone 907/456–0427).

SUPPLEMENTARY INFORMATION:

Petition Background

On December 10, 1990, the Service received a petition from Mr. James G. King of Juneau, Alaska, dated December 1, 1990, to list the Steller's eider as endangered throughout its range and to designate critical habitat on the Yukon Delta National Wildlife Refuge and the National Petroleum Reserve in Alaska. Pursuant to Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), the Service determined on May 8, 1992, that listing the Steller's eider was warranted, but precluded by listing actions for higher priority species.

The Service completed the 1993 annual status review on Steller's eiders in August 1993 (Quakenbush and Cochrane 1993) and concluded that current information does not support listing range-wide, but does support listing the Alaska breeding population. This conclusion was based on the following reasons: (1) The number of Steller's eiders that breed in Alaska has declined during the last few decades; (2) the species' nesting range in Alaska has constricted substantially; and (3) the remaining breeding population in northern Alaska may be vulnerable to extirpation.

This proposal to list Steller's eiders that breed in Alaska is based on various documents, including published and unpublished studies, agency documents, and literature syntheses. Researchers, wildlife managers, and local residents familiar with the species were interviewed. This proposed rule constitutes the final finding for the petitioned action, in accordance with Section 4 of the Act.

Species Description

The Steller's eider is the smallest of four eider species. It was first described by Pallas in 1769 as *Anas stelleri* and was subsequently grouped with the other eiders in the genus *Somateria*. Steller's eider is now recognized as a monotypic genus, *Polysticta stelleri* (American Ornithologist's Union 1983).

The adult male Steller's eider has a white head with a greenish tuft and a small black eye patch, a black back, white shoulders, and a chestnut breast and belly with a black spot on the side. The Inupiat Eskimo name for this eider is Iginikkauktuk or "the bird that sat in the campfire," referring to the burnt appearance of the brown breast and belly of the male. The Yup'ik Eskimo name is Anarnissaguq. Adult females and juveniles are mottled dark brown. Both adult sexes have a blue wing speculum with a white border.

Steller's eiders are marine, diving ducks that feed primarily on mollusks and crustaceans by diving and dabbling in shallow water habitats (Petersen 1980). Principal foods of wintering Steller's eiders include the common blue mussel (*Mytilus edulis*) and the sand-hopper (*Anisogammarus pugettensis*) (Petersen 1980, Troy and Johnson 1987). During the breeding season, they feed on insects, primarily chironomid larvae, and plant materials in addition to crustaceans and mollusks (Cottam 1939, Quakenbush and Cochrane 1993). Steller's eiders nest on tundra, adjacent to shallow ponds or within drained lake basins (King and Dau 1981, Flint et al. 1984, Quakenbush and Cochrane 1993).

The current breeding range of Steller's eiders includes the arctic coastal plain in northern Alaska, the arctic coast in Russia from the Chukotski Peninsula west to the Kheta River (American Ornithologist's Union 1983), and the western Siberian coast at Taimyr, Gaydan and Yamal peninsulas (Yesou and Lappo 1992). Most of the world's Steller's eiders winter along the Alaska Peninsula from the eastern Aleutian Islands to southern Cook Inlet in shallow, near-shore marine waters. Steller's eiders wander occasionally to the western Aleutian Islands and along the Pacific coast south to California (American Ornithologist's Union 1983). Wintering areas are also known in Russia, the Baltic States and Scandinavia (Dement'ev and Gladkov 1967, Frantzen 1985, Petraitis 1991, Frantzen and Henricksen 1992).

In Alaska, the breeding range of Steller's eiders formerly extended discontinuously from the eastern Aleutian Islands, the Alaska Peninsula, around the west and northern coasts of Alaska to the Yukon Territory border (Murie 1959, American Ornithologist's Union 1983; Kertell 1991). Historical breeding records exist from the 1800's for southwestern Alaska at Unalaska Island, the southern Alaska Peninsula, Seward Peninsula, and St. Lawrence Island (Gabrielson and Lincoln 1959, Fay and Cade 1959, Murie 1959, Kessel 1989). In Alaska, Steller's eiders now breed exclusively on the arctic coastal plain, migrate south in the fall, and probably molt along the Alaska coast from Nunivak Island to Cold Bay.

Species Status, World-wide

In the 1960's, the world-wide population of Steller's eiders was estimated to be up to 400,000 by Palmer (1976) and 500,000 by Uspenski (1972 cited by Kertell 1991). Another estimate suggested that as many as 400,000 Steller's eiders wintered in Alaska alone (King and Dau 1981). Recent estimates, however, indicate that as few as 150,000–200,000 Steller's eiders currently remain range-wide. This recent estimate is based on a count of 138,000 individuals wintering in Alaska in 1992 (Bill Larned, U.S. Fish and Wildlife Service, pers. comm., *in litt.*, 1992); Kistchinski's (1973) estimate of 15,000–20,000 wintering in eastern Russia in the early 1970's; and 10,000–20,000 that winter in Norway (Frantzen and Henricksen 1992).

The decline of approximately 50 percent in the world-wide population is further supported by two long-term data sets from Alaska. Estimates of Steller's eiders on the Alaska Peninsula, based on numbers observed during fall emperor goose (*Philacte canagica*) surveys, have declined from approximately 200,000 in 1965 (Jones 1965) to a maximum count of about 126,000 between 1980 and 1991 (Rod King, U.S. Fish and Wildlife Service, pers. comm., *in litt*, 1993). Additional population trend data are available from Izembek Lagoon. Aerial waterfowl surveys at Izembek Lagoon from the period 1986–1990, when compared to surveys during the period 1975–1980, show a decline in the number of Steller's eiders seen of more than 50 percent (Kertell 1991).

Species Status, Western Alaska

Steller's eiders were locally common breeders at several central Yukon-Kuskokwim Delta sites during biological surveys before the 1950's (Murie 1924, Conover 1926, Brandt 1943). Kessel *et al.* (1964), Johnsgard (1964), and Holmes and Black (1973) recorded no Steller's eiders at some of the same areas during subsequent surveys in the 1950's and 1960's, indicating the population declined between the 1920's and 1960's. Kertell (1991) estimated that 3,500 pairs may have nested on the Delta in the 1950's and early 1960's; however, the historical population may have been greater since the number of pairs apparently declined before 1950. No nests have been located on the Yukon-Kuskokwim Delta since 1975 despite extensive waterfowl research in suitable habitats (Kertell 1991).

No Steller's eiders were seen in a 1992 aerial survey of suitable nesting habitat along the entire western Alaska coast, including former nesting range on the Yukon-Kuskokwim Delta and Seward Peninsula, and from Icy Cape to Barrow (Larned *et al.* 1993). In 1993, no Steller's eiders were observed during waterfowl surveys on the Seward Peninsula and along the coast north to Point Hope (Greg Balogh, U.S. Fish & Wildlife Service, pers. comm., 1993). Only two Steller's eiders have been seen during intensive waterfowl breeding pair surveys flown annually over the Yukon-Kuskokwim Delta coast since 1988 (William Butler, Jr., U.S. Fish and Wildlife Service, pers. comm., *in litt.*, 1993).

Species Status, Northern Alaska

Accurate historical data are lacking for northern Alaska. Miscellaneous observations indicate that Steller's eiders nested in suitable habitats across the North Slope from Wainwright to Demarcation Point (Gabrielson and Lincoln 1959, Palmer 1976, Bellrose 1980, North 1990, Kertell 1991). Native residents report that Steller's eiders were common breeders in the 1930's on the central North Slope at the Colville Delta and on the eastern North Slope at Camden Bay (P. Sovalik, cited by Myres

1965) to a maximum count of about 126,000 between 1980 and 1991 (Rod King, U.S. Fish and Wildlife Service, pers. comm., *in litt*, 1993). Additional population trend data are available from Izembek Lagoon. Aerial waterfowl surveys at Izembek Lagoon from the period 1986–1990, when compared to surveys during the period 1975–1980, show a decline in the number of Steller's eiders seen of more than 50 percent (Kertell 1991).

Species Status, Western Alaska

Steller's eiders were locally common breeders at several central Yukon-Kuskokwim Delta sites during biological surveys before the 1950's (Murie 1924, Conover 1926, Brandt 1943). Kessel *et al.* (1964), Johnsgard (1964), and Holmes and Black (1973) recorded no Steller's eiders at some of the same areas during subsequent surveys in the 1950's and 1960's, indicating the population declined between the 1920's and 1960's. Kertell (1991) estimated that 3,500 pairs may have nested on the Delta in the 1950's and early 1960's; however, the historical population may have been greater since the number of pairs apparently declined before 1950. No nests have been located on the Yukon-Kuskokwim Delta since 1975 despite extensive waterfowl research in suitable habitats (Kertell 1991).

No Steller's eiders were seen in a 1992 aerial survey of suitable nesting habitat along the entire western Alaska coast, including former nesting range on the Yukon-Kuskokwim Delta and Seward Peninsula, and from Icy Cape to Barrow (Larned *et al.* 1993). In 1993, no Steller's eiders were observed during waterfowl surveys on the Seward Peninsula and along the coast north to Point Hope (Greg Balogh, U.S. Fish & Wildlife Service, pers. comm., 1993). Only two Steller's eiders have been seen during intensive waterfowl breeding pair surveys flown annually over the Yukon-Kuskokwim Delta coast since 1988 (William Butler, Jr., U.S. Fish and Wildlife Service, pers. comm., *in litt.*, 1993).

Species Status, Northern Alaska

Accurate historical data are lacking for northern Alaska. Miscellaneous observations indicate that Steller's eiders nested in suitable habitats across the North Slope from Wainwright to Demarcation Point (Gabrielson and Lincoln 1959, Palmer 1976, Bellrose 1980, North 1990, Kertell 1991). Native residents report that Steller's eiders were common breeders in the 1930's on the central North Slope at the Colville Delta and on the eastern North Slope at Camden Bay (P. Sovalik, cited by Myres 1958; Bill Patkotak, pers. comm., 1993). However, Anderson (cited by Bailey 1948) considered it "a rare straggler east of Barrow."

Steller's eiders were observed during waterfowl surveys flown over the arctic coastal plain in 1986–93, but only in small numbers and all were seen west of the Colville River (Brackney and King 1993; Rod King, pers. comm., 1993). Aerial surveys for eiders were flown over the arctic coastal plain in 1992 and 1993 but very few Steller's eiders were seen (Larned *et al.* 1993; Bill Larned, pers. comm., 1993). A female Steller's eider with young was seen along the Colville River in 1987 (unpublished Service data) and several adults were seen in the Prudhoe Bay area in the 1980's and in 1993 (Declan Troy, Troy Ecological Research Assoc., pers. comm., 1993), indicating that birds still visit these areas.

Recent Steller's eider population size estimates for the North Slope are based on a few sightings during aerial waterfowl breeding pair surveys. No Steller's eiders were observed in 1986–88 (Brackney and King 1993). Population estimates ranged from about 2,000 to 7,000 individuals from 1989–1992 (Brackney and King 1993). Due to large standard error in the visibility correction factor for Steller's eiders, the confidence intervals for these estimates are very wide (Rod King, pers. comm., 1993). As a result, these estimates are very imprecise.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Steller's eider (*Polysticta stelleri*) Alaska breeding population are as follows:

A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Much of the former Steller's eider breeding range in western Alaska is within the Yukon Delta National Wildlife Refuge and is protected from major development. However, some of the former breeding range is on Alaskan Native land where protection is limited. The current breeding range in northern Alaska is largely contained within the National Petroleum Reserve—Alaska (NPR–A), which was set aside for oil and gas resource development. The coastal area in NPR–A may be leased for oil development, and leasing and development of other coastal areas is likely. Potential impacts of oil and gas exploration and development on nesting Steller's eiders are not known.

The only known regularly occupied nesting area of Steller's eiders in Alaska is near Barrow, the largest Native village in Alaska. The human population of Barrow increased 58 percent in 10 years, from 2267 in 1980 to 3469 in 1990 (Harcharek 1992), and village expansion is likely in the near future. Housing developments, gas field access and development, and conveyance of land from the Ukpeagvik Inupiat Corporation to shareholders could lead to nesting habitat loss and disturbance to nesting birds.

Wintering habitat is largely undisturbed and substantial portions are protected from development within National Wildlife Refuges, State Game Refuges, or State Critical Habitat Areas. In winter, Steller's eiders concentrate in sheltered bays and lagoons. These shallow and biologically productive waters are vulnerable to oil spills and other pollution from vessels. Steller's eiders often feed in large, dense rafts that dive and surface simultaneously. Therefore, an oil spill could adversely affect a large portion of the world's Steller's eider population. Marine traffic through the Aleutian Islands and along the Alaska Peninsula coast could result in pollution from bilge waste pumping and vessel groundings. Wintering birds may also be disturbed by commercial and recreational boats traveling through protected lagoons near the Alaska Peninsula, Kodiak or Cook Inlet communities.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Due to small numbers taken, overutilization is unlikely to have caused the decline of Alaska Steller's eiders or their extirpation from the Yukon-Kuskokwim Delta. In the past, some Steller's eider eggs were collected in Alaska for avicultural exhibition and trade. Although the Service has received requests for avicultural collecting of Steller's eiders, no permits have been issued since 1987 (James Sheridan, U.S. Fish and Wildlife Service, pers. comm., 1993).

A few dozen Steller's eiders were taken annually before 1991 by collectors or incidental to other sport waterfowl hunting on the Alaska Peninsula and Kodiak and Nunivak islands (Robin West, U.S. Fish and Wildlife Service, pers. comm., 1991). The sport hunting

season was closed in 1991. An undetermined number were taken illegally on Kodiak Island for the taxidermy trade in 1991 (Stephen Tuttle, U.S. Fish and Wildlife Service, pers. comm., 1991).

C. Disease or Predation

Disease is not known to be affecting the population at present, but small, restricted population size increases the risk that future disease outbreaks could decimate the nesting population.

Natural predators of Steller's eiders in Alaska include raptors, gulls, jaegers, ravens, and foxes. These predators have not been shown to significantly affect Steller's eiders at the population level. However, arctic foxes (*Alopex lagopus*) may have contributed to the extirpation of Steller's eiders on the Yukon-Kuskokwim Delta. During the 1960's, major goose populations decreased substantially in this area and foxes may have switched to alternative summer food supplies including Steller's eiders (Kertell 1991).

Some predators may be increasing in number as a result of human habitation and development. Predators and scavengers such as foxes, gulls, and ravens have increased in number due to the availability of refuse and handouts (Paul O'Neil, Animal and Plant Health Inspection Service, Animal Damage Control, pers. comm., 1993). These animals are effective predators of eider eggs, young, and adults. Increased predation is likely to be exaggerated near communities where refuse is available and could significantly affect eiders in these areas.

D. The Inadequacy of Existing Regulatory Mechanisms

Steller's eider hunting is regulated under authority of the Migratory Bird Treaty Act (16 U.S.C. 703–711). The U.S. sport hunting season on Steller's eiders has been closed since 1991 as a result of depressed population numbers. Historically, Alaskan Natives hunted Steller's eiders and their eggs for food, but in far fewer numbers than the three, larger *Somateria* eider species (Klein 1966, Nelson 1969, Johnson 1971). Steller's eiders are not a preferred species for subsistence hunting (Quakenbush and Cochrane 1993). In recent years, a few Steller's eiders were reported taken for subsistence at various villages (Braund *et al.* 1989; Wentworth 1993; James Sheridan, pers. comm., 1993). Many villages along the Steller's eider migration route have not been surveyed, therefore, the total annual subsistence harvest is unknown (Cynthia Wentworth, U.S. Fish and Wildlife Service, pers. comm., 1993). Because of their far greater abundance along migration routes, most subsistence take is probably of Steller's eiders that nest in Russia.

Spring and summer subsistence hunting of eiders in Alaska is currently in violation of the Migratory Bird Treaty Act, which prohibits hunting for most migratory birds between March 10 and September 1. The Service recognizes, however, that residents of certain rural areas in Alaska depend on waterfowl as a customary and traditional source of food.

While not an important subsistence species, Steller's eiders are occasionally killed incidental to hunting of more important subsistence waterfowl species. Although apparently limited, this take may threaten the small breeding segment near Barrow.

The Service has initiated an information and education program to gain support in Native villages for protection of Steller's eider and spectacled eiders (*Somateria spectabilis*).

E. Other Natural or Manmade Factors Affecting its Continued Existence

Some natural or manmade factor(s), currently unknown, is causing a decline in the number of Steller's eiders and a contraction of their breeding range in Alaska.

Interspecific competition on the wintering range may be affecting Steller's eiders. Nearshore benthic communities have been restructured by feeding pressure from increasing sea otter (*Enhydra lutris*) populations (Kvitek *et al.* 1992), with documented effects on local populations of common eiders (*Somateria mollissima*) and scoters (*Melanitta* sp.) in the Gulf of Alaska and Aleutian Islands (David Irons, U.S. Fish and Wildlife Service, pers. comm., 1991).

Summary

Steller's eiders may have historically numbered 400,000–500,000 individuals world-wide (Palmer 1976, Uspenski 1972 cited by Kertell 1991). Current estimates are 150,000 to 200,000, and most of these birds nest in Russia and winter in Alaska. In North America, Steller's eiders no longer nest in historical breeding range on the Yukon-Kuskokwim Delta or in other western Alaska habitats or the eastern North Slope. Current Alaska nesting range is small and restricted to northern Alaska. Causes for the decline world-wide and the reduction in the Alaskan breeding population are not known.

Steller's eiders that nest on Alaska's North Slope are the only breeding population in North America and the only breeding population within United States jurisdiction. Environmental conditions in the arctic are severe and variable. Low numbers and restricted breeding range place populations at risk from natural and human-induced factors (Kertell 1991). Major storms, predation or disturbance could severely deplete Steller's eiders numbers on the North Slope and precipitate extirpation of this remnant population.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Steller's eider Alaska breeding population as threatened. The small, reduced population that nests within a restricted range on the northwestern North Slope warrants threatened status. While probably not in immediate danger of extinction, Steller's eiders that breed in Alaska could become endangered in the foreseeable future if the population declines further.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary proposes critical habitat at the time a species is proposed to be listed as endangered or threatened. The prudence of designation is decided on the basis of net conservation benefit to the species concerned.

Regulations at 50 CFR 424.22(a)(2) specify that designation of critical habitat is not prudent when such designation would not be beneficial to the species. Since habitat requirements for recovery and threats to the Steller's eider have not been identified, designation of current or former Steller's eider breeding and wintering grounds as critical habitat would not likely alleviate threats affecting the decline of the species and could actually impair recovery efforts by implying in a misleading way that threats are centered on breeding and/or wintering habitat. Any designation of former breeding habitat would also be subject to great uncertainty concerning its historical contribution to maintenance of the population or its possible role in restoration. Conservation efforts for the species would address a wide variety of federally funded or authorized activities (summarized in the **Available Conservation Measures** section of this proposed rule) that affect the quality of habitat available to the species.

The Service therefore finds that designation of critical habitat for the Steller's eider would not be prudent at this time because it would not provide a net conservation benefit to the species. However, if new information indicates that designation of critical habitat may be prudent, the Service will consider proposing critical habitat at that time.

Available Conservation Measures

Conservation measures provided for species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and local governments and private organizations, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If an action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service anticipates consultation with the U.S. Army Corps of Engineers and the U.S. Department of Transportation to avoid impacts to Steller's eiders from wetland fill permitting and other activities on the North Slope. Consultations to identify potential effects on Steller's eiders are also expected with the U.S. Bureau of Land Management for NPR–A lands issues, the Minerals Management Service for outer continental shelf oil and gas lease sales, and National Marine Fisheries Service for commercial fishing regulations. Reasonable and prudent

this time because it would not provide a net conservation benefit to the species. However, if new information indicates that designation of critical habitat may be prudent, the Service will consider proposing critical habitat at that time.

Available Conservation Measures

Conservation measures provided for species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and local governments and private organizations, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If an action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service anticipates consultation with the U.S. Army Corps of Engineers and the U.S. Department of Transportation to avoid impacts to Steller's eiders from wetland fill permitting and other activities on the North Slope. Consultations to identify potential effects on Steller's eiders are also expected with the U.S. Bureau of Land Management for NPR–A lands issues, the Minerals Management Service for outer continental shelf oil and gas lease sales, and National Marine Fisheries Service for commercial fishing regulations. Reasonable and prudent alternatives may be implemented for Federally-funded or permitted projects to avoid causing jeopardy to the Alaska breeding population of Steller's eiders.

The Service will convene a recovery team and develop a recovery plan for the Steller's eider promptly upon listing. An information and education program to gain public support for the protection of Steller's eiders has already been initiated and will be carried out cooperatively with affected communities. The recovery plan will establish recovery goals and set recovery task priorities.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10(e) of the Act exempts any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska, or any non-native permanent resident of an Alaskan Native village, from the aforementioned prohibitions on taking any endangered or threatened species if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to section 10(e) may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that provisions of this subsection shall not apply to any non-native resident of an Alaskan Native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

Regulations prohibiting or limiting subsistence harvest by any Indian, Aleut, Eskimo, or non-native permanent resident of an Alaskan Native village may be established pursuant to section 10(e)(4) of the Act if the Secretary determines that such taking materially and negatively affects the threatened or endangered species and holds hearings on the proposed harvest regulations in the affected judicial districts of Alaska. The Service is not currently promulgating special regulations for Steller's eiders under section 10(e)(4) of the Act, but may do so if appropriate.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are in 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. Such permit applications are not expected, however, since the Steller's eider is not presently in commercial trade in the United States. For the same reason, the Service does not anticipate requesting that the Steller's eider be included under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional breeding populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received

within 60 days of the date of publication of this proposal. Such requests must be made in writing (includes facsimile) and addressed to Skip Ambrose (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all the references cited herein, as well as others, is available upon request from the Fairbanks Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Skip Ambrose, Janey Fadely, Ted Swem, and Lori Quakenbush (see **ADDRESSES** section), and Jean Fitts Cochrane, Anchorage Ecological Services, 605 West 4th Avenue, Anchorage, Alaska, 99501 (907) 271–2778.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Birds, to the listing of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
Eider, Steller's	*Polysticta stelleri*	U.S.A. (AK), Russia	U.S.A. (AK breeding population only).	T		NA	NA

Dated: July 5, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–17132 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AC64

Endangered and Threatened Wildlife and Plants; Proposal to List the Cumberland Elktoe, Oyster Mussel, Cumberlandian Combshell, Purple Bean, and Rough Rabbitsfoot as Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list five freshwater mussels (Cumberland elktoe *(Alasmidonta atropurpurea)*, oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*)) as endangered species under the Endangered Species Act of 1973, as amended (Act). All five species have undergone significant reductions in range and now exist as relatively small, isolated populations. The Cumberland elktoe exists in very localized portions of the Cumberland River system in Kentucky and Tennessee. The oyster mussel and Cumberland combshell persist at extremely low numbers in portions of the Cumberland and Tennessee River basins in Kentucky, Tennessee, and Virginia. The purple bean and rough rabbitsfoot currently survive in a few river reaches in the Tennessee River system in Tennessee and Virginia. These species were historically eliminated from much of their range by impoundments. Presently, they and their habitat are impacted by deteriorated water quality, primarily resulting from poor land use practices.

DATES: Comments from all interested parties must be received by September 12, 1994. Public hearing requests must be received by August 29, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address or telephone (704/665–1195, Ext. 228).

SUPPLEMENTARY INFORMATION:

Background

Cumberland Elktoe (*Alasmidonta Atropurpurea*)

The Cumberland elktoe, described by Rafinesque (1831), has a thin but not fragile shell. The shell's surface is smooth, somewhat shiny, and covered with greenish rays. Young specimens have a yellowish-brown shell and the shells of adults are generally black. The inside of the shell is shiny with a white, bluish-white, or sometimes peach or salmon color. (See Clarke (1981) for a more complete description of species.)

The Cumberland elktoe is endemic to the Cumberland River system in Tennessee and Kentucky and is considered endangered in the State of Kentucky (Kentucky State Nature Preserve Commission 1991). Historic records exist from the Cumberland River and from Cumberland River tributaries entering from the south between the Big South Fork Cumberland River upstream to Cumberland Falls. Specimens have also been taken from Marsh Creek above Cumberland Falls. Old records of a related species, *Alasmidonta marginata*, exist from other creeks above Cumberland Falls; and there is speculation that these specimens were probably the Cumberland elktoe (Gordon 1991). Because the area above the falls has been severely impacted by coal mining, any populations of *A. atropurpurea* that might have existed there were likely lost (Gordon 1991). A record of one fresh dead specimen exists from the Collins River, Grundy County, Tennessee. However, extensive searches of the collection site and other sites in the Collins River and adjacent rivers have failed to find another specimen. If the species did exist in the Collins River, it has likely been extirpated.

Presently, three populations of the Cumberland elktoe are known to persist. The species survives in the middle sections of Rock Creek, McCreary County, Kentucky; the upper portions of the Big South Fork Cumberland River basin in McCreary County, Kentucky, and Scott, Fentress, and Morgan Counties, Tennessee; and in Marsh Creek, McCreary County, Kentucky (Gordon 1991).

Any Cumberland elktoe populations that may have existed in the main stem of the Cumberland River were likely lost when Wolf Creek Dam was completed. Other tributary populations were likely lost due to the impacts of coal mining, pollution, and spills from oil wells. The upper Big South Fork basin population is threatened by coal mining and could be threatened by an impoundment that is under consideration for a tributary (the North Prong of Clear Fork Creek) in the basin. The Marsh Creek population has been adversely affected and is still threatened by spills from oil wells. The Rock Creek population could be threatened by logging. All three populations, especially Rock Creek and Marsh Creek, are restricted to such short stream reaches that they could be eliminated by toxic chemical spills.

Oyster Mussel (*Epioblasma Capsaeformis*)

The oyster mussel (Lea 1834) has a dull to sub-shiny yellowish to green colored shell with numerous narrow dark green rays. The shells of females are slightly inflated and quite thin towards the shell's posterior margin. The inside of the shell is whitish to

Kentucky (Kentucky State Nature Preserve Commission 1991). Historic records exist from the Cumberland River and from Cumberland River tributaries entering from the south between the Big South Fork Cumberland River upstream to Cumberland Falls. Specimens have also been taken from Marsh Creek above Cumberland Falls. Old records of a related species, *Alasmidonta marginata*, exist from other creeks above Cumberland Falls; and there is speculation that these specimens were probably the Cumberland elktoe (Gordon 1991). Because the area above the falls has been severely impacted by coal mining, any populations of *A. atropurpurea* that might have existed there were likely lost (Gordon 1991). A record of one fresh dead specimen exists from the Collins River, Grundy County, Tennessee. However, extensive searches of the collection site and other sites in the Collins River and adjacent rivers have failed to find another specimen. If the species did exist in the Collins River, it has likely been extirpated.

Presently, three populations of the Cumberland elktoe are known to persist. The species survives in the middle sections of Rock Creek, McCreary County, Kentucky; the upper portions of the Big South Fork Cumberland River basin in McCreary County, Kentucky, and Scott, Fentress, and Morgan Counties, Tennessee; and in Marsh Creek, McCreary County, Kentucky (Gordon 1991).

Any Cumberland elktoe populations that may have existed in the main stem of the Cumberland River were likely lost when Wolf Creek Dam was completed. Other tributary populations were likely lost due to the impacts of coal mining, pollution, and spills from oil wells. The upper Big South Fork basin population is threatened by coal mining and could be threatened by an impoundment that is under consideration for a tributary (the North Prong of Clear Fork Creek) in the basin. The Marsh Creek population has been adversely affected and is still threatened by spills from oil wells. The Rock Creek population could be threatened by logging. All three populations, especially Rock Creek and Marsh Creek, are restricted to such short stream reaches that they could be eliminated by toxic chemical spills.

Oyster Mussel (*Epioblasma Capsaeformis*)

The oyster mussel (Lea 1834) has a dull to sub-shiny yellowish to green colored shell with numerous narrow dark green rays. The shells of females are slightly inflated and quite thin towards the shell's posterior margin. The inside of the shell is whitish to bluish-white in color. (See Johnson (1978) for a more complete description of species.) The species is considered endangered in the States of Kentucky (Kentucky State Nature Preserve Commission 1991) and Virginia (Neves 1991; Sue Bruenderman, Virginia Department of Game and Inland Fisheries, *in litt.*, 1992).

This species historically occurred throughout much of the Cumberlandian region of the Tennessee and Cumberland River drainages in Alabama, Kentucky, Tennessee, and Virginia (Gordon 1991), and Ortmann (1918) considered the species to be very abundant in the upper Tennessee River drainage.

Currently, within the Cumberland River, the oyster mussel survives as a very rare component of the benthic community in Buck Creek, Pulaski County, Kentucky; and it still survives in a few miles of the Big South Fork Cumberland River, McCreary County, Kentucky, and Scott County, Tennessee (Bakaletz 1991). Within the Tennessee River system, only small populations survive at a few sites in the Powell River, Lee County, Virginia and Hancock and Claiborne Counties, Tennessee; in the Clinch River system, Scott County, Virginia, and Hancock County, Tennessee; Copper Creek (a Clinch River tributary), Scott County, Virginia; and Duck River, Marshall County, Tennessee. Although not seen in recent years, the species may still persist at extremely low numbers in the lower Nolichucky River, Cocke and Hamblem Counties, Tennessee, and in the Little Pigeon River, Sevier County, Tennessee (Gordon 1991).

Much of the oyster mussel's historic range has been impounded by the Tennessee Valley Authority (TVA) and the U.S. Army Corps of Engineers (Corps). Other populations were lost due to various forms of pollution and siltation. The present populations are threatened by the adverse impacts of coal mining, poor land use practices, and pollution, primarily from non-point sources. The Duck River population could be lost if the proposed Columbia Dam on the Duck River at Columbia, Tennessee, is completed as presently proposed. All the known populations are small and could be decimated by toxic chemical spills.

Cumberlandian Combshell (*Epioblasma Brevidens*)

The Cumberlandian combshell (Lea 1831) has a thick, solid shell with a smooth to cloth-like outer surface. It is yellow to tawny-brown in color with narrow green broken rays. The inside of the shell is white. The shells of females are inflated with serrated teeth-like structures along a portion of the shell margin. (See Johnson (1978) for a more complete description of species.) The species is considered endangered in the States of Kentucky (Kentucky State Nature Preserve Commission 1991) and Virginia (Neves 1991; Bruenderman, *in litt.*, 1992) and a species of special concern in Tennessee (Bogan and Parmalee 1983).

The Cumberlandian combshell historically existed throughout much of the Cumberlandian portion of the Tennessee and Cumberland River systems in Alabama, Kentucky, Tennessee, and Virginia (Gordon 1991). Presently, it survives in the Cumberland River basin, as a very rare component of the benthic community in Buck Creek, Pulaski County, Kentucky, and in a few miles of the Big South Fork Cumberland River, McCreary County, Kentucky, and Scott County, Tennessee (Bakaletz 1991). A few old, non-reproducing individuals may also survive in Old Hickory Reservoir on the Cumberland River, Smith County, Tennessee (Gordon 1991).

Within the Tennessee River basin, the species still survives in very low numbers in the Powell and Clinch Rivers, Lee and Scott Counties, Virginia; and Claiborne and Hancock Counties, Tennessee. The Clinch and Powell River populations are very small and in decline (Neves 1991; Richard Neves, Virginia Cooperative Fish and Wildlife Research Unit, personal communication, 1991).

Many of the Cumberlandian combshell's historic populations were lost when impoundments were constructed on the Tennessee and Cumberland Rivers by TVA and the Corps. Other populations were lost due to various forms of pollution and siltation. The present populations are threatened by the adverse impacts of coal mining, poor land use practices, and pollution, primarily from non-point sources. All the known populations are small and could be decimated by toxic chemical spills.

Purple Bean (*Villosa Perpurpurea*)

The purple bean mussel (Lea 1861) has a small to medium-sized shell. The shell's outer surface is usually dark brown to black with numerous closely-spaced fine green rays. The inside of the shell is purple, but the purple may fade to white in dead specimens. (See Bogan and Parmalee (1983) for a more complete description of species.) The species is considered endangered in Tennessee (Bogan and Parmalee 1983) and Virginia (Neves 1991; and Bruenderman, *in litt.*, 1992).

The purple bean historically occupied the upper Tennessee River basin in Tennessee and Virginia upstream of the confluence of the Clinch River (Gordon 1991). Ortmann (1918) considered the species "not rare" in Virginia. Presently, it survives in limited numbers at a few locations in the upper Clinch River, Scott, Tazwell, and Russell Counties, Virginia; Copper Creek (a Clinch River tributary), Scott County, Virginia; Obed River, Cumberland and Morgan Counties, Tennessee; Emory River just below its confluence with the Obed River, Morgan County, Tennessee; and Beech Creek, Hawkins County, Tennessee (Gordon 1991).

The purple bean populations in the lower Clinch, Powell, and Holston River were extirpated by reservoirs. The decline of the species throughout the rest of its range was likely due to the adverse impacts of coal mining, poor land use practices, and pollution, primarily from non-point sources. The population centers that remain are so limited that they are very vulnerable to toxic chemical spills.

Rough Rabbitsfoot (*Quadrula Cylindrica Strigillata*)

The rough rabbitsfoot (Wright 1898) has an elongated heavy, rough textured, yellow to greenish colored shell. The shell's surface is covered with green rays, blotches, and chevron patterns. The inside of the shell is silvery to white with an iridescence in the posterior area of the shell. (See Bogan and Parmalee (1983) for a more complete species' description.) The species is considered threatened in Virginia (Neves 1991; Bruenderman, *in litt.*, 1992) and a species of special concern in Tennessee (Bogan and Parmalee 1983).

Historically, this mussel was restricted to the upper Tennessee River basin in the Clinch, Powell, and Holston River systems (Gordon 1991). It still survives in all three of these systems, but only in limited areas and at low population levels. Populations persist in the Powell River, Lee County, Virginia; and Claiborne and Hancock Counties, Tennessee; Clinch River, Scott County, Virginia, and Hancock County, Tennessee; Copper Creek (a Clinch River tributary), Scott County, Virginia; and North Fork Holston River, Washington County, Virginia (Gordon 1991).

The rough rabbitsfoot populations in the lower Clinch, Powell, and Holston River systems were extirpated by reservoirs. The decline of the species throughout the rest of its range was likely due to the adverse impacts of coal mining, poor land use practices, and pollution, primarily from non-point sources. The population centers that remain are so limited that they are vulnerable to extirpation from toxic chemical spills.

In the Service's notice of review for animal candidates, published in the **Federal Register** of November 21, 1991 (56 FR 58804), the Cumberland elktoe, oyster mussel, Cumberlandian combshell, purple bean, and rough rabbitsfoot are included as category 2 species. A category 2 species is one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife. These mussels were approved for elevation to category 1 candidate status by the Service on August 30, 1993. A category 1 species is a species for which the Service has sufficient information to propose it for protection under the Act. On August 25, 1992, the Service notified, by mail (129 letters), potentially affected Federal and State agencies and local governments within the species' present range, and interested individuals that a status review of the above mentioned five mussels and the slabside pearlymussel (*Lexingtonia dolabelloides*) was being conducted. (The slabside pearlymussel has not been included in this proposed rule. Additional populations of this species were discovered and further evaluation is needed before a decision can be made regarding the species' need for Federal protection.)

Seven agencies responded to the August 25, 1992, notification. The U.S. Soil Conservation Service stated: "It is not anticipated that any planned or current activities will adversely affect these species or their habitat." The Kentucky State Nature Preserve Commission, the Kentucky Department of Environmental Protection, Tennessee Wildlife Resources Agency, Virginia Department of Conservation and Recreation, and Virginia Department of Game and Inland Fisheries provided information on the decline and status of the species in their States.

The Duck River Agency (DRA) provided comments on the status of the oyster mussel in the Duck River. It stated that as the Duck River population of the oyster mussel is extremely small, it is believed highly unlikely that the stream supports a viable population of *E. capsaeformis*. In contrast to DRA's statement, Don Hubbs (Tennessee Wildlife Resources Agency, *in litt.*, 1992) stated that fresh dead oyster mussel individuals (from young and older cohorts) were not uncommon in muskrat middens on the Duck River in Marshall County, Tennessee. The Service, however, currently has insufficient information to judge the species' long-term viability either in the Duck River or on a range-wide basis.

The DRA took issue with the Service's statement in the notification that the proposed Columbia Dam on the Duck River could eliminate the oyster mussel from the Duck River. It stated that current project alternatives under consideration by the DRA and TVA could result in a project that would flood less that one third of the area and would enhance the future viability of the population segment above the pool. The Service agrees that a smaller Columbia Dam pool would reduce the amount of the oyster mussel population lost to the direct effects of the dam. However, the details of these Columbia Dam alternatives have not been provided to the Service. Thus, the Service stands by its statement that the Columbia Dam project as presently planned could eliminate the oyster mussel from the Duck River.

The DRA commented that statements in the mussel species accounts (Gordon 1991) that were used as an information source to prepare the August 25, 1992, notification, contained language that appeared to indicate that the Service had already made a decision to list the species prior to receiving any comments from the notification. The Service agrees that the species accounts, which were prepared by a non-Service biologist under contract to the Service, contain language regarding the need to reverse the species' decline as a means to preserve and recover the mussels. However, these statements, made by a Service contractor, do not represent a predecisional statement by the Service. Statements in the species accounts will be considered along with all presently available information on these species, as well as information obtained through the notification and this proposed rule when making the final decision regarding the status of the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot

(*Quadrula cylindrica strigillata*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Mussel populations throughout the Central and Eastern United States have been declining since modern civilization began to significantly alter aquatic habitats. The Ohio River drainage, which includes the Tennessee and Cumberland Rivers, was a center for freshwater mussel evolution and historically contained about 127 distinct mussel species and subspecies. Of this once rich mussel fauna, 11 mussels are extinct, 28 mussels are classified as Federal endangered species, and 18 others, including the 5 species covered in this proposed rule, are candidates for addition to the Federal List of Endangered and Threatened Wildlife. In less than 100 years, 44 percent of the Ohio River system's mussel fauna has either become extinct, recognized as endangered, or decimated to the point that Federal protection is being considered. No other wide-ranging faunal group in the continental United States has experienced this degree of loss within the last 100 years.

The mussel fauna in most streams of the Ohio River basin has been directly impacted by impoundments, siltation, channelization, and water pollution. Reservoir construction is the most obvious cause of the loss of mussel diversity in the basin's larger rivers. Most of the main stem of both the Tennessee and Cumberland River and many of their tributaries are impounded. For example: over 2,300 river miles or about 20 percent of the Tennessee River and its tributaries with drainage areas of 25 square miles or greater are impounded (Tennessee Valley Authority 1971). In addition to the loss of riverine habitat within impoundments, most impoundments also seriously alter downstream aquatic habitat; and mussel populations upstream of reservoirs may be adversely affected by changes in the fish fauna essential to a mussel's reproductive cycle.

Coal mining related siltation and associated toxic runoff have adversely impacted many stream reaches. Numerous streams have experienced mussel and fish kills from toxic chemical spills, and poor land use practices have fouled many waters with silt. Runoff from large urban areas has degraded water and substrate quality. Because of the extent of habitat destruction, the overall aquatic faunal diversity in many of the basins' rivers has declined significantly. Because of this destruction of riverine habitat, 8

(*Quadrula cylindrica strigillata*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Mussel populations throughout the Central and Eastern United States have been declining since modern civilization began to significantly alter aquatic habitats. The Ohio River drainage, which includes the Tennessee and Cumberland Rivers, was a center for freshwater mussel evolution and historically contained about 127 distinct mussel species and subspecies. Of this once rich mussel fauna, 11 mussels are extinct, 28 mussels are classified as Federal endangered species, and 18 others, including the 5 species covered in this proposed rule, are candidates for addition to the Federal List of Endangered and Threatened Wildlife. In less than 100 years, 44 percent of the Ohio River system's mussel fauna has either become extinct, recognized as endangered, or decimated to the point that Federal protection is being considered. No other wide-ranging faunal group in the continental United States has experienced this degree of loss within the last 100 years.

The mussel fauna in most streams of the Ohio River basin has been directly impacted by impoundments, siltation, channelization, and water pollution. Reservoir construction is the most obvious cause of the loss of mussel diversity in the basin's larger rivers. Most of the main stem of both the Tennessee and Cumberland River and many of their tributaries are impounded. For example: over 2,300 river miles or about 20 percent of the Tennessee River and its tributaries with drainage areas of 25 square miles or greater are impounded (Tennessee Valley Authority 1971). In addition to the loss of riverine habitat within impoundments, most impoundments also seriously alter downstream aquatic habitat; and mussel populations upstream of reservoirs may be adversely affected by changes in the fish fauna essential to a mussel's reproductive cycle.

Coal mining related siltation and associated toxic runoff have adversely impacted many stream reaches. Numerous streams have experienced mussel and fish kills from toxic chemical spills, and poor land use practices have fouled many waters with silt. Runoff from large urban areas has degraded water and substrate quality. Because of the extent of habitat destruction, the overall aquatic faunal diversity in many of the basins' rivers has declined significantly. Because of this destruction of riverine habitat, 8 fishes and 24 mussels in the Tennessee and Cumberland River basins have already required Endangered Species Act protection, and numerous other aquatic species in these two basins are currently considered candidates for Federal listing.

The mussel fauna in the Tennessee and Cumberland Rivers has been extensively sampled, and much is known about the historic and present distribution of this rich fauna. Gordon (1991) provided an extensive review of the literature regarding the past and present ranges of the Cumberland elktoe, oyster mussel, Cumberlandian combshell, purple bean, and rough rabbitsfoot. Based on Gordon's (1991) review and personal communication with numerous Federal, State, and independent biologists, it is clear that these five mussel species have undergone significant reductions in range and that they now exist as only remnant isolated populations. (See "Background" section for a discussion of current and historic distribution and threats to the remaining populations.)

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* These five mussels are not commercially valuable; but as they are extremely rare, they could be sought by collectors. The specific areas inhabited by these species are presently unknown to the general public. As a result, their overutilization has not been a problem. However, vandalism could pose a problem, especially if specific inhabited reaches were to be revealed through the often controversial critical habitat designation process. Most stream reaches inhabited by these mussels are extremely small. Thus, populations of the species could be easily eliminated or significantly reduced using readily available toxic chemicals. Although scientific collecting is not presently identified as a threat, take by private and institutional collectors could pose a threat if left unregulated. Federal protection of these species will help to minimize illegal and inappropriate take. (See "Critical Habitat" section for a discussion of why critical habitat is not being considered for these species.)

C. *Disease and predation.* Disease occurrence in freshwater mussels is virtually unknown. However, since 1982, biologists and commercial mussel fishermen have reported extensive mussel die-offs in rivers and lakes throughout the United States. The cause(s) of many of these die-offs is unknown, but disease has been suggested as a possible factor.

Shells of all five species are often found in muskrat middens. The species are also presumably consumed by other mammals, such as raccoons and mink. While predation is not thought to be a significant threat to a healthy mussel population, Neves and Odum (1989) suggest it could limit the recovery of endangered mussel species or contribute to the local extirpation of already depleted mussel populations. Predation would be of particular concern to oyster mussel, Cumberlandian combshell, and purple bean, which exist only as extremely small, remnant populations.

D. *The inadequacy of existing regulatory mechanisms.* The States of Kentucky, Alabama, Tennessee, and Virginia prohibit the taking of fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, enforcement of this permit requirement is difficult. Also, State regulations do not generally protect these mussels from other threats. Existing authorities available to protect aquatic systems, such as the Clean Water Act, administered by the Environmental Protection Agency (EPA) and the Army Corps of Engineers, have not been fully utilized and may have led to the degradation of aquatic environments in the Southeast Region, thus resulting in a decline of aquatic species. As these mussels (Cumberland elktoe, Cumberlandian combshell, oyster mussel, purple bean, and rough rabbitsfoot) coexist with other federally listed species throughout most or all of their range, some of the habitats of these species are indirectly provided some Federal protection from Federal actions and activities through Section 7 of the Act. Federal listing will provide additional protection for all five species throughout their range by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when activities they fund, authorize, or carry out may specifically adversely affect these species. Further, listing will require consultation with the EPA in relationship to water quality criteria, standards, and National Pollution Discharge Elimination System permits under the Clean Water Act; and implementation of actions to recover the species.

E. *Other natural or manmade factors affecting its continued existence.* The populations of these species (Cumberland elktoe, oyster mussel, Cumberlandian combshell, purple bean, and rough rabbitsfoot) are small and geographically isolated. This isolation prohibits the natural interchange of genetic material between populations, and the small population sizes reduce the reservoir of genetic variability within the populations. It is likely that

some of the populations of the Cumberland elktoe, oyster mussel, Cumberlandian combshell, purple bean and rough rabbitsfoot may be below the level required to maintain long-term genetic viability. Also, because most of the extant populations of these mussels are restricted to short river reaches, they are very vulnerable to extirpation from a single catastrophic event, such as a toxic chemical spill or a major stream channel modification. Because the populations of each species are isolated from one another because of impoundments, natural repopulation of any extirpated population is impossible without human intervention.

The invasion of the exotic zebra mussel (*Dreissena polymorpha*) into the Great Lakes poses a potential threat to the Ohio River's mussel fauna. The zebra mussel has recently been reported from the Tennessee and Cumberland Rivers, but the extent of its impact on the basin's freshwater mussels is unknown. However, zebra mussels in the Great Lakes have been found attached in large numbers to the shells of live and freshly dead native mussels, and zebra mussels have been implicated in the loss of entire mussel beds.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these mussels in determining to propose these rules. Based on these evaluations, the preferred action is to propose the Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel *Epioblasma capsaeformis*, Cumberlandian combshell *Epioblasma brevidens*, purple bean *Villosa perpurpurea*, and rough rabbitsfoot *Quadrula cylindrica strigillata* for Federal protection. The Cumberland elktoe, purple bean, and rough rabbitsfoot are known from three populations each, and the Cumberland combshell and oyster mussel are known from five populations each. These five species and their habitat have been and continue to be impacted by habitat destruction and range reduction. Their limited distribution also makes them very vulnerable to possible extinction from toxic chemical spills. Because of their restricted distributions and their vulnerability to extinction, endangered status appears to be the most appropriate classification for these species. (See "Critical Habitat" section for a discussion of why critical habitat is not being proposed for these mussels.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to these species, and designation of critical habitat could pose a further threat to them.

Section 7(a)(2) and regulations codified at 50 CFR Part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, if designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. (See "Available Conservation Measures" section for a further discussion of Section 7.) As part of the development of this proposed rule, Federal and State agencies were notified of the mussels' general distributions, and they were requested to provide data on proposed Federal actions that might adversely affect the species. Should any future projects be proposed in areas inhabited by these mussels, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by its action; and if needed, more specific distributional information would be provided.

Each of these mussels occupies very restricted stream reaches. Thus, as any significant adverse modification or destruction of these species' habitat would likely jeopardize their continued existence, no additional protection for the species would accrue from critical habitat designation that would not also accrue from listing these species. Therefore, habitat protection for these species would be accomplished through the Section 7 jeopardy standard and Section 9 prohibitions against take.

In addition, these mussels are rare, and taking for scientific purposes and private collection could pose a threat if specific site information were released. The publication of critical habitat maps in the **Federal Register**, local newspapers, and other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism especially during the often controversial critical habitat designation process. (See "Summary of Factors Affecting the Species, Part B. Overutilization for commercial, recreational, scientific, or educational purposes" section for a further discussion of threats to the species from vandals.) The locations of populations of these species have consequently been described only in general terms in these proposed rules. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies from the following offices: Service office described in the **ADDRESSES** section; the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501; and White Marsh Field Office, P.O. Box 480, Mid-County Center, U.S. Route 17, White Marsh, Virginia 23183; and from the Kentucky Department of Fish and Wildlife Resources, the Kentucky State Nature Preserves Commission, the Tennessee Wildlife Resources Agency, the Tennessee Department of Conservation, the Virginia Department of Game and Inland Fisheries, and the Virginia Department of Conservation and Recreation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the

Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs which could affect these species. One major Federal project, a proposed Tennessee Valley Authority impoundment on the Duck River, Columbia, Tennessee, could have a significant impact on the oyster mussel. Construction of Columbia Dam was halted in the late 1970's after the Service issued a biological opinion stating that the dam's completion would likely jeopardize the continued existence of two federally listed mussels. (A third mussel listed prior to the issuance of the biological opinion is now known from the proposed flood pool.) Although the presence of a fourth endangered mussel (oyster mussel) may somewhat complicate this issue, any measures needed to avoid a jeopardy situation for the currently listed mussels would not be expected to change significantly with the addition of a fourth listed species.

An impoundment is under consideration on the North Prong of Clear Fork Creek in the upper Big South Fork of the Cumberland River, Fentress County, Tennessee. This project would inundate and adversely impact a portion of the Cumberland elktoe population that exists in the upper Big South Fork basin. This water supply project, proposed by the Fentress County Utility District, is one of a series of water supply alternatives currently under review for a permit pursuant to Section 404 of the Clean Water Act.

No other specific proposed Federal actions were identified that would likely affect any of the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, wastewater facility development, pesticide registration, coal mining, and road and bridge construction. It has been the experience of the Service, however, that nearly all Section 7 consultations have been resolved so that the species has been

Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs which could affect these species. One major Federal project, a proposed Tennessee Valley Authority impoundment on the Duck River, Columbia, Tennessee, could have a significant impact on the oyster mussel. Construction of Columbia Dam was halted in the late 1970's after the Service issued a biological opinion stating that the dam's completion would likely jeopardize the continued existence of two federally listed mussels. (A third mussel listed prior to the issuance of the biological opinion is now known from the proposed flood pool.) Although the presence of a fourth endangered mussel (oyster mussel) may somewhat complicate this issue, any measures needed to avoid a jeopardy situation for the currently listed mussels would not be expected to change significantly with the addition of a fourth listed species.

An impoundment is under consideration on the North Prong of Clear Fork Creek in the upper Big South Fork of the Cumberland River, Fentress County, Tennessee. This project would inundate and adversely impact a portion of the Cumberland elktoe population that exists in the upper Big South Fork basin. This water supply project, proposed by the Fentress County Utility District, is one of a series of water supply alternatives currently under review for a permit pursuant to Section 404 of the Clean Water Act.

No other specific proposed Federal actions were identified that would likely affect any of the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, wastewater facility development, pesticide registration, coal mining, and road and bridge construction. It has been the experience of the Service, however, that nearly all Section 7 consultations have been resolved so that the species has been protected and the project objectives have been met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from these proposals will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species;

(2) the location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) additional information concerning the range, distribution, and population size of the species; and

(4) current or planned activities in the subject areas and their possible impacts on the species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bakaletz, S. 1991. Mussel survey of the Big South Fork National River Recreation Area. M.S. Thesis. Tennessee Technological University, Cookeville, Tennessee. 62 pp.

Bogan, A.E., and P.W. Parmalee. 1983. Tennessee's rare wildlife, Volume II: the mollusks. 123 pp.

Clarke, A.H. 1981. The Tribe Alasmidontini (Unionidae: Anodontinae), Part I: *Pegias, Alasmidonta*, and *Arcidens*. Smithsonian Contributions to Zoology, No. 326. 101 pp.

Gordon, M.E. 1991. Species accounts for Cumberland elktoe (*Alasmidonta atropurpurea*), Cumberlandian combshell (*Epioblasma brevidens*), oyster mussel (*Epioblasma capsaeformis*), rough rabbitsfoot (*Quadrula cylindrica strigillata*), and purple bean (*Villosa perpurpurea*). Unpublished reports to The Nature Conservancy. 75 pp.

Johnson, R.I. 1978. Systematics and zoogeography of *Plagiola* (*-Dysnomia-Epioblasma*), an almost extinct genus of mussels (Bivalvia: Unionides) from middle North America. Bull. Mus. Comp. Zool. 148:239–320.

Kentucky State Nature Preserve Commission. 1991. Endangered, Threatened, and Special Concern Plant and Animal Species of Kentucky. March, 1991. 15 pp.

Neves, R.J. 1991. Mollusks. *In* Virginia's endangered species, proceedings of a symposium. Coordinated by Karen Terwilliger. McDonald & Woodward Publ. Co., Blacksburg, VA. 672 pp.

Neves, R.J., and M.C. Odum. 1989. Muskrat predation on endangered freshwater mussels in Virginia. Jour. Wildl. Manage. 53(4):939–940

Ortmann, A.E. 1918. The nayades (freshwater mussels) of the upper Tennessee drainage with notes on synonymy and distribution. Proceedings of the American Philosophical Society. 57:521–626.

Tennessee Valley Authority. 1971. Stream length in the Tennessee River Basin. Tennessee River Authority, Knoxville, Tennessee. 25 pp.

Author

The primary author of this proposed rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195, Ext. 228).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, the Service proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. § 17.11(h) is amended by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
Bean, purple	*Villosa perpurpurea*	U.S.A. (TN, VA)	E			NA	NA
Combshell, Cumberlandian.	*Epioblasma brevidens.*	U.S.A. (AL, KY, TN, VA).		NA	E		
Elktoe, Cumberland	*Alasmidonta atropurpurea.*	U.S.A. (KY, TN)		NA	E		
Mussel, oyster	*Epioblasma capsaeformis.*	U.S.A. (AL, KY, TN, VA).		NA	E		
Rabbitsfoot, rough	*Quadrula cylindrica strigillata.*	U.S.A. (TN, VA)		NA	E		

Dated: June 30, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–17133 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Bosworth Forest Health Multi-resource Project Pacific Ranger District, Eldorado National Forest

LEAD AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for resource management activities, including biomass removal, timber harvest, fuelbreak construction, and wildlife habitat improvement work on the Bosworth Forest Health Multi-resource Project, involving a total planning area size of about 3,500 acres on the Pacific Ranger District of the Eldorado National Forest. The agency invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by August 1, 1994.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Don Errington, District Timber Officer Pacific Ranger Station, Pollock Pines, California, 95726.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Don Errington, District Timber Officer, Pacific Ranger Station, Pollock Pines, California, 95726, phone 916–644–2349.

SUPPLEMENTARY INFORMATION: The Eldorado National Forest Land and Resource Management Plan was completed in January 1989. The Bosworth Forest Health Multi-resource Project EIS will tier to the Eldorado

Notices

Federal Register
Vol. 59, No. 134
Thursday, July 14, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Bosworth Forest Health Multi-resource Project Pacific Ranger District, Eldorado National Forest

LEAD AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for resource management activities, including biomass removal, timber harvest, fuelbreak construction, and wildlife habitat improvement work on the Bosworth Forest Health Multi-resource Project, involving a total planning area size of about 3,500 acres on the Pacific Ranger District of the Eldorado National Forest. The agency invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by August 1, 1994.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Don Errington, District Timber Officer Pacific Ranger Station, Pollock Pines, California, 95726.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Don Errington, District Timber Officer, Pacific Ranger Station, Pollock Pines, California, 95726, phone 916–644–2349.

SUPPLEMENTARY INFORMATION: The Eldorado National Forest Land and Resource Management Plan was completed in January 1989. The Bosworth Forest Health Multi-resource Project EIS will tier to the Eldorado National Forest Land and Resource Management Plan. Most of the land in the analysis area is identified in the Plan as having a general management direction of timber management.

There are no known permits or licenses required to implement the proposed action.

In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this project. The following tentative alternative themes have been identified thus far:

1. No action
2. Forest Health—Timber product, including biomass, management emphasis
3. Forest Health—Wildlife management emphasis
4. Forest Health—Fuels management emphasis
5. Forest Health—Multiple use management emphasis

These alternatives will include varying levels and distribution of vegetation manipulation, timber harvest, and fuels management. Minor new specified road construction is anticipated. Road reconstruction needs will include drainage work, clearing, and minor realignment. The amount of road reconstruction necessary for this project will vary between alternatives. Harvest prescriptions will include understory removal of both merchantable and sub-merchantable trees, commercial thinning, and fuelbreak construction guidelines. All harvest prescriptions will conform with the California Spotted Owl Sierran Province Guidelines. Adaptive Management strategies for the California Spotted Owl may be included under certain alternatives where benefits to the spotted owl will be realized, that is, wildlife habitat activities or fuels management activities that are designed to better maintain future management options for the spotted owl by improving or retaining stand components most at risk.

Volume estimates of timber to be harvested range from 0 to 10 mmbf of commercial sawtimber. Biomass estimates range from 0 to 30,000 tons. These estimates vary, depending on the alternative.

Preliminary issues that have been identified during the internal scoping process include:

1. The potential for cumulative watershed effects within the project area
2. The selection and application of adaptive management strategies to best achieve the habitat needs of the spotted owl

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7).

The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the EIS.
3. Defining the proper interdisciplinary team make-up.
4. Determining the effective use of time and money in conducting the analysis.
5. Identifying potential environmental, technical, and social impacts of the proposed action and alternatives.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

John Phipps, Forest Supervisor, Eldorado National Forest, is the responsible official.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January, 1995. At that time, EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date EPA's notice of availability appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers's position and contentions. *Vermont Yankee Nuclear Power Corp.* v.

NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by April 1995. In the final EIS the Forest Service is required to respond to the comments and responses received (40 CFR 1503.4). The responsible official will consider the comments, responses, and environmental consequences discussed in the draft EIS, and applicable laws, regulations, and policies in making a decision regarding this project. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 215.

Dated: July 7, 1994.

John Phippe,

Forest Supervisor, Eldorado National Forest.

[FR Doc. 94–17093 Filed 7–13–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held August 9, 1994, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617–M2, 14th Street & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: July 11, 1994.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–17128 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–427–812]

Amended Antidumping Duty Order: Calcium Aluminate Flux From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. 20230; telephone (202) 482–6320 or (202) 482–4929.

Amendment of Antidumping Duty Order

On June 13, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 30337) the Antidumping Duty Order on Calcium Aluminate Flux from France.

In this order, the Department inadvertently stated that the International Trade Commission (ITC) notified the Department that imports of CA flux from France materially injure a U.S. industry. The ITC had found, pursuant to section 735(b)(4)(B) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is threatened with material injury, but that material injury would not have been found but for the suspension of liquidation of entries of the merchandise under investigation.

Therefore, we are amending the suspension of liquidation provisions of the order in accordance with section 736(b)(2) of the Act.

Antidumping Duty Order

In accordance with section 735(d) of the Act, on March 25, 1994, the Department published in the **Federal Register** its final determination that calcium aluminate (CA) flux from France is being sold at less than fair value (59 FR 14136). We amended our final determination on May 9, 1994 (see 59 FR 25446, May 16, 1994) to correct a clerical error. On June 6, 1994, in accordance with section 735(d) of the Act, the ITC notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC further determined, pursuant to section 735(b)(4)(B) of the Act, that it would not have found material injury, but for the suspension of liquidation of entries of CA flux from France.

When the ITC finds threat of material injury, and also makes its "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all entries of CA flux from France, entered or withdrawn from warehouse, for consumption made *on or after* June 15, 1994 (the date on which the ITC published its final affirmative determination of threat of material injury in the **Federal Register**), will be liable for the assessment of antidumping duties.

Suspension of Liquidation

The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries of CA flux from France, entered, or withdrawn from warehouse, for consumption *before* June 15, 1994, (the date on which the ITC published its final affirmative determination of threat of material injury in the **Federal Register**), and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to those entries.

The Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all relevant entries of CA flux from France. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin as noted below:

Manufacturer/producer/exporter	Margin percentage
Lafarge Fondu International	37.93
All others	37.93

This notice constitutes the antidumping duty order with respect to CA flux from France, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 7, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–17018 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–016]

Revocation of Antidumping Finding; Ferrite Cores From Japan

AGENCY: International Trade Administration/Import Administration Department of Commerce.

liable for the assessment of antidumping duties.

Suspension of Liquidation

The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries of CA flux from France, entered, or withdrawn from warehouse, for consumption *before* June 15, 1994, (the date on which the ITC published its final affirmative determination of threat of material injury in the **Federal Register**), and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to those entries.

The Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all relevant entries of CA flux from France. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin as noted below:

Manufacturer/producer/exporter	Margin percentage
Lafarge Fondu International	37.93
All others	37.93

This notice constitutes the antidumping duty order with respect to CA flux from France, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 7, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–17018 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–016]

Revocation of Antidumping Finding; Ferrite Cores From Japan

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its revocation of the antidumping finding on ferrite cores from Japan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Lisa Raisner or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 23051) its notice of intent to revoke the antidumping finding on ferrite cores from Japan (March 13, 1971).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided 30 days to submit their comments.

Scope of the Order

Imports covered by the revocation are shipments of ferrite cores from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8529.90.93.80, 6909.19.10.00, 8518.90.30.00, 8543.80.90.80, 8473.30.40, 8529.90.30, 8543.90.80, 8473.30.50, 8529.90.35, 8548.00.00.00, 8504.90.00, 8529.90.93.40, 8504.90.00. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

In this case, we received no requests for review for five consecutive review periods.

Furthermore, no domestic interested party, under section 353.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on ferrite cores from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of ferrite cores from Japan entered, or withdrawn from warehouse, for consumption on or after March 1, 1994. Entries made during the period March 1, 1993, through February 28, 1994, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 1, 1994, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: July 5, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–17016 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–825]

Antidumping Duty Order: Sebacic Acid From the People's Republic of China (PRC)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–1766.

Scope of Order

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH_2)_8(COOH)_2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and

toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.00, of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order remains dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on May 20, 1994, the Department of Commerce (the Department) made its final determination that sebacic acid from the PRC is being sold at less than fair value (59 FR 28053, May 31, 1994). On July 5, 1994, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that, but for the suspension of liquidation of entries of sebacic acid from the PRC, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries of sebacic acid from the PRC, entered or withdrawn from warehouse, for consumption *on or after* the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register** (July 13, 1994), are liable for the assessment of antidumping duties.

The Department will direct the Customs Service to terminate the suspension of liquidation for entries of sebacic acid imported from the PRC and entered, or withdrawn from warehouse, for consumption *before the date* on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all relevant entries of sebacic acid from the PRC. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The PRC country-wide rate applies to all PRC companies not specifically listed below.

Manufacturer/producer/exporter	Weighted-average margin percentage
Sinochem Jiangsu Import & Export Corporation	55.46
Tianjin Chemicals Import & Export Corporation	59.67
Guangdong Chemicals Import & Export Corporation	57.00
Sinochem International Chemicals Company	43.72
PRC country-wide rate	243.40

This notice constitutes the antidumping duty order with respect to sebacic acid from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 17, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–17017 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–DS–M

Texas A&M University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m.. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–012. *Applicant:* Texas A&M University, College Station, TX 77843-2126. *Instrument:* Gas Isotope Ratio Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 59 FR 9964, March 2, 1994. *Reasons:* The foreign instrument provides an absolute sensitivity of 1500 molecules of CO_2 per mass 44 ion and a multi-element collector with 6 Faraday cups. *Advice Received From:* National Institutes of Health, May 31, 1994.

Docket Number: 94–021. *Applicant:* University of Colorado at Boulder, Boulder, CO 80309-0215. *Instrument:* Cryostream Nitrogen Gas Cooler. *Manufacturer:* Oxford Cryosystems, United Kingdom. *Intended Use:* See notice at 59 FR 13706, March 23, 1994. *Reasons:* The foreign instrument provides: (1) a constant cold N_2 flow rate which is matched to the velocity of an annulus of dry air and (2) temperature control to ± 0.1°C. *Advice Received From:* National Institutes of Health, May 31, 1994.

Docket Number: 94–026. *Applicant:* University of North Carolina at Chapel Hill, Chapel Hill, NC 27599-3290. *Instrument:* High Resolution Sector Mass Spectrometer, Model MAT 900. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 59 FR 13706, March 23, 1994. *Reasons:* The foreign instrument provides: (1) mass range to 10 000 at full acceleration in voltage (2) resolution to 60 000 and (3) scan rate to 0.3 seconds per decade. *Advice Received From:* National Institutes of Health, May 31, 1994.

Docket Number: 94–034. *Applicant:* University of California, Davis, CA 95616. *Instrument:* SIR Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 59 FR 16188, April 6, 1994. *Reasons:* The foreign instrument provides: (1) an internal precision of 0.01 per mil for 100 bar µl samples of CO_2 and N_2 and (2) sensitivity to 1100 molecules of CO_2 per mass 44 ion. *Advice Received From:* National Institutes of Health, May 31, 1994.

Docket Number: 94–036. *Applicant:* University of California of Santa Cruz, Santa Cruz, CA 95064. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 59 FR 16188, April 6, 1994. *Reasons:* The foreign instrument provides: (1) an internal precision of 0.01 per mil for 100 bar µl samples of CO_2 and (2) three Faraday collectors. *Advice Received From:* National Institutes of Health, May 31, 1994.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–17015 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–DS–F

[A–582–802, A–580–806, A–583–808]

Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong, Korea, and Taiwan, Notice of Court Decision, Revocation of Antidumping Duty Orders, and Termination of Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of court decision, revocation of antidumping duty orders, and termination of administrative reviews.

SUMMARY: On August 11, 1993, the United States Court of International Trade (CIT) affirmed the International Trade Commission's (ITC) amended determination on remand that there is no material injury to the U.S. industry. The CIT decision was appealed. On July 6, 1994, the CIT decision was affirmed by the Court of Appeals for the Federal Circuit (CAFC). On July 6, 1994, the ITC notified the Department of Commerce (the Department) of the final court decision affirming its negative remand determination. Therefore, we are revoking the antidumping duty orders on sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Hong Kong, Korea, and Taiwan, and terminating the administrative reviews.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C., 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 27, and August 10 and 23, 1990, the Department determined that

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–17015 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–DS–F

[A–582–802, A–580–806, A–583–808]

Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong, Korea, and Taiwan, Notice of Court Decision, Revocation of Antidumping Duty Orders, and Termination of Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of court decision, revocation of antidumping duty orders, and termination of administrative reviews.

SUMMARY: On August 11, 1993, the United States Court of International Trade (CIT) affirmed the International Trade Commission's (ITC) amended determination on remand that there is no material injury to the U.S. industry. The CIT decision was appealed. On July 6, 1994, the CIT decision was affirmed by the Court of Appeals for the Federal Circuit (CAFC). On July 6, 1994, the ITC notified the Department of Commerce (the Department) of the final court decision affirming its negative remand determination. Therefore, we are revoking the antidumping duty orders on sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Hong Kong, Korea, and Taiwan, and terminating the administrative reviews.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C., 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 27, and August 10 and 23, 1990, the Department determined that MMF sweaters from Hong Kong, Korea, and Taiwan, were being sold in the United States at less than fair value (55 FR 30733, 32659, and 34585, respectively). On September 19, 1990, the ITC determined that a U.S. industry was being materially injured by reason of imports of MMF sweaters from Hong Kong, Korea, and Taiwan (55 FR 38558). On September 24, 1990, the Department published in the **Federal Register** the antidumping duty orders on MMF sweaters from Hong Kong, Korea, and Taiwan (55 FR 39035, 39036, and 39033, respectively).

The ITC determination was appealed, and the CIT remanded the determination to the ITC. On November 23, 1992, the ITC determined on remand that there was no material injury to a U.S. industry. This remand was affirmed by the CIT on August 11, 1993. *Chung Ling Co., Ltd., et al.* v. *United States*, 829 F.Supp. 1353 (CIT 1993).

The petitioner, the National Knitwear & Sportswear Association (NKSA), appealed the CIT decision on October 6, 1993. On July 6, 1994, the CIT decision was affirmed by the CAFC. On July 6, 1994, the ITC notified the Department of the final court decision affirming its negative remand determinations.

As a result of the ITC notification that there is no material injury to the U.S. industry, the Department is revoking the antidumping duty orders on MMF sweaters from Hong Kong, Korea, and Taiwan. On December 29, 1992, and January 4 and 11, 1993, the CIT granted preliminary injunctions enjoining liquidation of entries of MMF sweaters from Hong Kong, Taiwan, and Korea, entered after April 27, 1990. Therefore, revocation is effective April 27, 1990, for all unliquidated entries. We are also terminating the ongoing administrative reviews on MMF sweaters from these countries. Ongoing administrative reviews include the review on MMF sweaters from Taiwan initiated on October 18, 1991 (56 FR 52254), covering the period April 27, 1990, through August 31, 1991, and the reviews on MMF sweaters from all three countries initiated on October 22, 1992 (57 FR 48201), covering the period September 1, 1991, through August 31, 1992.

TERMINATION OF SUSPENSION OF LIQUIDATION: Pursuant to section 516(e)(2) of the Tariff Act of 1930, as amended, the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation of MMF sweaters from Hong Kong, Korea, and Taiwan, and proceed with liquidation of the subject merchandise, which entered the United States on or after April 27, 1990, without regard to antidumping duties.

Dated: July 7, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–17124 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket No. 940678–4178; I.D. 042094A]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of affirmative finding; removal of embargo.

SUMMARY: NMFS announces a determination that the Republic of Colombia has submitted documentary evidence that establishes that it has a marine mammal conservation program and incidental mortality rate that is comparable to that of the United States. As a result of this affirmative finding, yellowfin tuna and products from yellowfin tuna harvested by Colombia-flag purse seine vessels greater than 400 short tons (362.8 mt) carrying capacity, operating in the eastern tropical Pacific Ocean (ETP) can be imported into the United States through December 31, 1994.

EFFECTIVE DATE: This finding was effective May 6, 1994, and remains in effect through December 31, 1994.

ADDRESSES: Director, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90731.

FOR FURTHER INFORMATION CONTACT: LT Dana Wilkes, 310–980–4000, Fax 310–980–4018.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires a ban on the importation of commercial fish or products from fish that have been caught with commercial fishing technology which results in the incidental kill or serious injury of ocean mammals in excess of U.S. standards. In the case of yellowfin tuna from the ETP, the MMPA requires the ban unless nations have met standards comparable to those of the United States. NMFS regulations at 50 CFR 216.24(e) govern the importation of yellowfin tuna caught by purse seine vessels in the ETP. The regulations require submission of certain documentation, including, among other things, the number, by

species, of marine mammals killed and seriously injured and the number of sets made.

The Assistant Administrator for Fisheries, NOAA, reviewed the documentary evidence submitted by Colombia describing the 1993 fishing year (October 1, 1992, through September 30, 1993), and determined that the average rate of incidental taking of marine mammals by Colombia flag vessels and Colombia's regulatory program governing the incidental taking of marine mammals in the course of harvesting yellowfin tuna by purse seine in the ETP are comparable to those of the United States, as required by the tuna importation provisions of 50 CFR 216.24(e). Colombian vessels made only one set involving the encirclement of marine mammals and there were no mortalities or injuries resulting from the set. Observers assigned by the Inter-American Tropical Tuna Commission accompanied 100 percent of the fishing trips made by Colombia-flag purse seine vessels in the ETP during the 1993 fishing year.

On May 6, 1994, after consultation with the Department of State, NMFS issued an affirmative finding to allow the importation of yellowfin tuna and products derived from yellowfin tuna harvested by Colombia-flag purse seine vessels operating in the ETP.

Under the provisions of the International Dolphin Conservation Act, it is unlawful, after June 1, 1994, to buy, sell, offer for sale, ship or transport in the United States tuna that is not dolphin safe. As a result of this provision, only tuna that has not been harvested during a voyage on which purse seine nets were used to encircle dolphin may be sold or shipped into the United States.

Dated: July 7, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–17065 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

Request for Comments on Preliminary Draft of the Report of the Working Group on Intellectual Property Rights

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of draft report and request for public comments.

SUMMARY: The Working Group on Intellectual Property Rights of the White House Information Infrastructure Task Force has issued a preliminary draft of its report, "Intellectual Property and the National Information Infrastructure," and is soliciting public comment. Copies of the preliminary report may be obtained by calling the U.S. Patent and Trademark Office at (703) 305–9300 or by sending a written request to the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231, marked to the attention of Terri A. Southwick, Office of Legislative and International Affairs. Public hearings will be announced at a later date.

DATES: Written comments should be submitted on or before September 7, 1994. Comments in reply to initial written comments may be submitted no later than September 28, 1994.

ADDRESSES: An original and four copies of comments should be submitted to the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231, marked to the attention of Terri A. Southwick, Attorney-Advisor, Office of Legislative and International Affairs. Alternatively, comments may be submitted electronically to the following Internet address: nii-ip@uspto.gov. Comments received will be available for public inspection at the Scientific and Technical Information Center of the Patent and Trademark Office, Room 2CO1, Crystal Plaza 3/4, 2021 Jefferson Davis Highway, Arlington, Virginia, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Terri A. Southwick, Attorney-Advisor, Office of Legislative and International Affairs, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231. Telephone (703) 305–9300 / Fax: (703) 305–8885.

SUPPLEMENTARY INFORMATION: The Working Group on Intellectual Property Rights, chaired by Assistant Secretary of Commerce and Commissioner of Patents and Trademarks Bruce A. Lehman, was established as part of the White House Information Infrastructure Task Force. The Task Force, chaired by Secretary of Commerce Ronald H. Brown, was created to work with Congress and the private sector to develop comprehensive telecommunications and information policies aimed at articulating and implementing the Administration's vision for the National Information Infrastructure (NII).

The Preliminary Draft of the Report of the Working Group on Intellectual Property Rights represents the Working Group's examination and analysis to date of the intellectual property implications of the NII, and includes the Group's draft findings and recommendations. While it addresses each of the major areas of intellectual property law, including patent, trademark and trade secret, the preliminary draft focuses primarily on copyright law and its application and effectiveness in the context of the NII.

Dated: July 8, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94–17119 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–16–M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

On June 16, 1994, notice was given in the **Federal Register** (59 FR, Page 30916) that the Travel and Tourism Advisory Board would meet on July 19, 1994. Notice is hereby given that the venue and starting time have changed as follows: The Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on July 19, 1994, at 9:15 a.m. at the Hampshire House, 84 Beacon Street, 2nd Floor, The Library, Boston, Massachusetts.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the International Travel Act, as amended, and provide guidance to the Under Secretary for Travel and Tourism.

Agenda items are as follows:

I. Call to Order
II. Roll Call
III. Current Legislative Issues
IV. Briefing on H.R. 1250
V. Tourism Policy Council and White House Conference on Tourism
VI. USA Marketing Council Report
VII. USTTA Program Planning
VIII. Miscellaneous
IX. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the public forum and meeting. To the extent time is available, the presentation of oral statements will be allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1860, U.S. Department of Commerce, Washington, D.C. 20230 (telephone: 202–482–1904) will respond to public requests for information about the meeting.

Greg Farmer,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 94–17040 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

July 11, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government agreed to increase the current guaranteed access level for Categories 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 4042, published on January 28, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated

is available, the presentation of oral statements will be allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1860, U.S. Department of Commerce, Washington, D.C. 20230 (telephone: 202–482–1904) will respond to public requests for information about the meeting.

Greg Farmer,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 94–17040 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

July 11, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government agreed to increase the current guaranteed access level for Categories 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 4042, published on January 28, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated December 23, 1993, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 11, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 18, 1994, you are directed to amend the January 24, 1994 directive to increase the guaranteed access level for Categories 347/348 to 2,000,000 dozen, as provided under the terms of the Memorandum of Understanding dated December 9, 1993 between the Governments of the United States and Costa Rica.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17126 Filed 7–13–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Hungary

July 11, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 482–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryover, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 8913, published on February 24, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated February 4, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 11, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 17, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Hungary and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 18, 1994, you are directed to amend the directive dated February 17, 1994 to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated February 4, 1994 between the Governments of the United States and the Republic of Hungary:

Category	Adjusted twelve-month limit [1]
Fabric Group	
410	732,560 square meters.
433	19,862 dozen.
434	19,963 dozen.
435	29,129 dozen.
443	177,000 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 94–17127 Filed 7–13–94; 8:45 am]
BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

July 11, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for the Fabric Group and Categories 338/339 and 340/640 are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65580, published on December 15, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 11, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 18, 1994, you are directed to amend the directive dated December 9, 1993, to reduce the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated August 26, 1992 between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
Fabric Group 218, 219, 220, 225–227, 313–315, 317, 326 and 613/614/615/617, as a group.	78,324,890 square meters.
Other specific limits	
338/339	839,280 dozen.
340/640	994,169 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 94–17125 Filed 7–13–94; 8:45 am]
BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Prophylaxis and Treatment of Cryptosporidiosis

AGENCY: U.S. Army Medical Research and Development Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application Serial No. 08/050,582 entitled "Prophylaxis and Treatment of Cryptosporidiosis", filed 20 April 1993 for licensing. This patent is being assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Office of the Command Judge Advocate, U.S. Army Medical Research and Development Command, Fort Detrick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, (301) 619–2065.

SUPPLEMENTARY INFORMATION: The invention relates to methods of prevention and/or treating humans and other mammals using newly developed anti-cryptosporidial agents against pathogenic, reproducing strains of *Cryptosporidium* which cause diarrhea in normal mammals. The methods of the invention require administration of the treatment agents in sufficient dosage to prevent or eliminate illness resulting from normally pathogenic *Cryptosporidium*.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 94–17117 Filed 7–13–94; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA Number: 84.267]

State Postsecondary Review Program; Notice Extending the Period During Which a State Postsecondary Review Entity (SPRE) May Be Reimbursed for Allowable Costs Under the State Postsecondary Review Program

Extension of Funding Period for SPRE Activity: On July 14, 1993, a notice of funding formula and allowable activities under the State Postsecondary Review Program (SPRP) for fiscal year 1993 was published in the **Federal Register**. One important provision of that notice established June 30, 1994 as the date by which the Secretary would no longer reimburse a State for allowable direct costs under an approved plan and budget for fiscal year 1993. The purpose of this notice is to extend the period during which a State may be reimbursed by the Secretary for allowable costs incurred in carrying out allowable SPRE activities under the SPRP for the 1993 fiscal year. Certain provisions of the SPRP final regulations, published in the **Federal Register** on April 29, 1994 (59 FR 22286), including those provisions that affect the SPRP application for fiscal year 1994 funding did not become effective until after June 30, 1994. Consequently, States no longer had authority to request reimbursement for allowable costs incurred in carrying out allowable activities after the 1993 fiscal year funding period expired. However, some States continued to carry out allowable activities under approved plans.

This action is taken to allow those States to be reimbursed for costs incurred for allowable activities after June 30, 1994 using fiscal year 1993 funds. The period during which a State may be reimbursed by the Secretary for allowable costs incurred in carrying out allowable activities under the SPRP is extended to August 31, 1994.

For Information Contact: Mr. Kenneth R. Waters, Chief, State Liaison Branch, U.S. Department of Education, 400 Maryland Avenue, S.W., Room, 3036, ROB–3 Washington, D.C. 20202–5244. Telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1099a–3.
Dated: July 7, 1994.
David A. Longanecker,
Assistant Secretary for Postsecondary Education.
[FR Doc. 94–17020 Filed 7–13–94; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Floodplain/Wetland Involvement for the Replacement of Four Bridges on the Savannah River Site

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain and wetland involvement.

SUMMARY: DOE proposes to replace four bridges on the Savannah River Site (SRS) near Aiken, South Carolina. The proposed action would involve construction activity to replace bridges in the floodplain and wetlands of Upper Three Runs Creek and Tinker Creek. The scope of this project is intended to immediately replace three of these bridges because of deteriorated, decayed, or rotten timber piles. A fourth bridge would be scheduled for a later replacement. These impacted areas would include:

FR 22286), including those provisions that affect the SPRP application for fiscal year 1994 funding did not become effective until after June 30, 1994. Consequently, States no longer had authority to request reimbursement for allowable costs incurred in carrying out allowable activities after the 1993 fiscal year funding period expired. However, some States continued to carry out allowable activities under approved plans.

This action is taken to allow those States to be reimbursed for costs incurred for allowable activities after June 30, 1994 using fiscal year 1993 funds. The period during which a State may be reimbursed by the Secretary for allowable costs incurred in carrying out allowable activities under the SPRP is extended to August 31, 1994.

For Information Contact: Mr. Kenneth R. Waters, Chief, State Liaison Branch, U.S. Department of Education, 400 Maryland Avenue, S.W., Room, 3036, ROB–3 Washington, D.C. 20202–5244. Telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1099a–3.

Dated: July 7, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–17020 Filed 7–13–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Floodplain/Wetland Involvement for the Replacement of Four Bridges on the Savannah River Site

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain and wetland involvement.

SUMMARY: DOE proposes to replace four bridges on the Savannah River Site (SRS) near Aiken, South Carolina. The proposed action would involve construction activity to replace bridges in the floodplain and wetlands of Upper Three Runs Creek and Tinker Creek. The scope of this project is intended to immediately replace three of these bridges because of deteriorated, decayed, or rotten timber piles. A fourth bridge would be scheduled for a later replacement. These impacted areas would include:

- Replacement of Bridge 603–13G at the intersection of Upper Three Runs Creek and SRS Road 8–1.
- Replacement of Bridge 603–14G at the intersection of Tinker Creek and SRS Road 8–1.
- Replacement of Bridge 603–15G at the intersection of Upper Three Runs Creek and SRS Road 2–1.
- Replacement of Bridge 603–39G at the intersection of Tinker Creek and SRS Road 2–1.

These activities would necessitate temporary access for purposes of construction, as well as disruptions caused by driving new pilings in areas considered floodplains and wetlands of the SRS. In accordance with Title 10, CFR, Part 1022, DOE will prepare a floodplain/wetland assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplains and wetlands.

DATES: Comments on the proposed actions are due on or before July 29, 1994.

ADDRESSES: Comments should be addressed to Floodplain/Wetlands Comments, Stephen R. Wright, Director, Environmental and Laboratory Programs Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802. The phone number is (803) 725–3957. Fax comments to: (803) 725–7688.

FOR FURTHER INFORMATION ON GENERAL FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, PLEASE CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–4600 or (800) 472–2756.

A location map showing the project sites and further information can be obtained from the Savannah River Operations Office (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: The bridges on SRS Road 8–1 (603–13G and 603–14G) which cross Upper Three Runs Creek and Tinker Creek will be replaced with minimal short-term impact and no long-term impact to wetlands or floodplains. This is because sufficient shoulder exists to allow abutment build-up without soil moving into the wetlands. A storm water and sediment control plan will be required prior to bridge replacements in order to minimize sediments eroding into the adjacent wetlands and floodplain. The wetlands and floodplains along Bridge 603–13G & Road 8–1 is located within an area set aside for research. However, there is sufficient shoulder on each side of the stream to allow the replacement work to occur without impacts to the set aside area.

The bridge (603–15G) that spans Upper Three Runs Creek on SRS Road 2–1 will be replaced with minimal short-term impact and no long-term impact to wetlands or floodplains. The bridge (603–39G) that spans Tinker Creek on SRS Road 2–1 would be scheduled for replacement in the future as funding becomes available.

The work required to replace these bridges would be accomplished from the existing roadbeds using a crane for pile driving, erection, and demolition. The only disturbance to the stream is anticipated to result from the installation of two piles to support the center span of the bridges. Prestressed, precast concrete beams will be used to construct longer spans in order to minimize pile installation in the stream. A small amount of sediment would be expected to go into the stream where the work is in the channel and temporarily increase the stream's sediment load level. These increased sediment loads would be less than that encountered after a heavy rainstorm. The old bridge supports would be cut off at the stream bed which may affect the flow of the stream. The bridges would be replaced at their present locations; there should be no loss or long-term impact to SRS floodplains or wetlands.

DOE intends to investigate alternatives to placing pilings in stream channels and mitigation measures to minimize potential impacts to the floodplain and wetlands. There would be no operation of construction equipment or storage of equipment or materials in wetland areas. The existing unpaved roadways would be used for operation of construction equipment and as a material laydown area. There would be no excavation or deposition of fill material in wetlands. The only impact to wetlands would be from the installation of the pilings in stream channels and pilings cut off at stream beds. It is expected that no hazardous wastes or materials would be released in accomplishing the proposed action. Other erosion control measures, such as riprap berms along existing roadway, temporary and permanent seeding, and increasing the gravel thickness of the existing roadway may also be implemented to ensure there is no deposition in downslope wetland areas. The new abutments would be set on pilings placed outside the existing wetland limits on the existing roadway preventing any impacts to the stream and wetlands. Sediment from installation of the pilings in the stream channels could cause a short term

impact to the downstream aquatic system. This impact would be very minor compared to the regular sediment load of Upper Three Runs and Tinker Creeks resulting from a rainstorm and should not last more than a few days following completion of the work. The amount of sediment created by the initial driving of each pile is expected to be measured in ounces. A portable U-shaped silt fence would be placed downstream during pile installation to collect any sediment displaced. Long-term construction impacts in floodplain and wetland areas should not be a factor, since the bridges are to be replaced at their present locations.

A storm water and sediment control plan would be developed so that the proposed action complies with applicable State and local floodplain protection standards and further, to ensure that no additional impacts to wetlands would occur due to erosion and sedimentation. Best management practices would be employed during construction and maintenance activities associated with these proposed actions. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), DOE will prepare a Floodplain/Wetlands Assessment for this proposed DOE action.

Issued in Washington, DC, on this 8th day of July 1994.

Donald F. Knuth,

Acting Deputy Assistant Secretary for Facility Transition and Technical Support Defense Programs.

[FR Doc. 94–17137 Filed 7–13–94; 8:45 am]

BILLING CODE 5450–01–P

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures from Evcon Industries, Inc. (Case No. F–072)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Evcon Industries, Inc. (Evcon) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's AGU, BGU, and BGD series gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Evcon. Evcon's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Evcon seeks to test using a blower delay time of 30 seconds for its AGU, BGU, and BGD series gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than August 15, 1994.

ADDRESS: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–072, Mail Stop EE–43, Room 5E–066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7140

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On May 11, 1994, Evcon filed an Application for Interim Waiver regarding blower time delay. Evcon's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Evcon requests the allowance to test using a 30-second blower time delay when testing its AGU, BGU, and BGD series gas furnaces. Evcon states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in a 1.0 to 2.0 percent improvement in overall energy efficiency. Since current DOE test procedures do not address this variable blower time delay, Evcon asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Evcon an Interim Waiver for its AGU, BGU, and BGD series gas

amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Evcon an Interim Waiver for its AGU, BGU, and BGD series gas furnaces. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations Part 430, the following letter granting the Application for Interim Waiver to Evcon was issued.

Pursuant to paragraph (b) of 10 CFR Part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC; July 9, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Department of Energy

Washington, DC 20585

July 9, 1994

Mr. Tom Chase,

Senior Design Engineer, Evcon Industries, Inc., P.O. Box 19014, Wichita, KS 67204–9014

Dear Mr. Chase: This is in response to your May 11, 1994, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Evcon Industries, Inc. (Evcon) AGU, BGU, and BGD series gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Evcon's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Evcon will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Evcon's Application for an Interim Waiver from the DOE test procedure for its AGU, BGU, and BGD series gas furnaces regarding blower time delay is granted.

Evcon shall be permitted to test its AGU, BGU, and BGD series gas furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified

at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Evcon Industries, Inc.

May 11, 1994.

Mr. Cyrus Nasseri,

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585

Dear Mr. Nasseri: Please consider this petition for waiver and application for interim waiver submitted pursuant to title 10 CFR 430.27. Waiver is requested from the furnace test procedure prescribed in Appendix N to Subpart B of Part 430. The current test procedure requires a 1.5 minute delay from burner startup to blower startup. Evcon is requesting authorization to use a 30 second blower delay on our AGU, BGU and BGD Series gas furnaces. These units are equipped with an electronic device which controls the blower, using a fixed, non-adjustable timing sequence.

This 30 second time delay reduces the amount of heat lost out of the vent system during warm-up, resulting in a 1 to 2 percent improvement in overall energy efficiency. The current test procedure does not give Evcon credit for this energy savings.

Evcon has previously been granted waivers regarding furnace blower on timings, as have most other manufacturers of gas furnaces. Also ASHRAE Standard 103–1993, paragraph 9.5.1.2.2 specifically addresses testing of furnaces with fixed blower time delays.

Confidential test data which verifies these energy savings are available to you upon your request. A copy of this petition for waiver and application for interim waiver is being sent to other domestic manufacturers of similar products.

Sincerely,

Tom Chase,

Senior Design Engineer.

[FR Doc. 94–17136 Filed 7–13–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From York International Corporation (Case No. F–073)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to York International Corporation (York) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's P2DP, PBKD, and XED02 lines of induced draft furnaces.

Today's notice also publishes a "Petition for Waiver" from York. York's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. York seeks to test using a blower delay time of 30 seconds for its P2DP, PBKD, and XED02 lines of induced draft furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than August 15, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–073, Mail Stop EE–43, Room 5E–066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Hasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Stop EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver whichever is sooner, and may be extended for an additional 180 days, if necessary.

On June 16, 1994, York filed an Application for Interim Waiver regarding blower time delay. York's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, York requests the allowance to test using a 30-second blower time delay when testing its P2DP, PBKD, and XED02 lines of induced draft furnaces. York states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an approximately 0.5 percent improvement in energy efficiency. Since current DOE test procedures do not address this variable blower time delay, York asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988; 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration, Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company, Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 2220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

indicative of how these furnaces actually operate. Such a delay results in an approximately 0.5 percent improvement in energy efficiency. Since current DOE test procedures do not address this variable blower time delay, York asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988; 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration, Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company, Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 2220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting York an Interim Waiver for its P2DP, PBKD, and XEDO2 lines of induced draft furnaces. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations Part 430, the following letter granting the Application for Interim Waiver to York was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, July 9, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

July 9, 1994

Mr. Michael B. Eberlein, P.E.,
Engineering Manager—Furnace Products, York International Corporation, P.O. Box 4022, Elyria, OH 44036

Dear Mr. Eberlein: This is in response to your June 16, 1994, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for York International Corporation (York) P2DP, PBKD, and XEDO2 lines of induced draft furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27,1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

York's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage York will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, York's Application for an Interim Waiver from the DOE test procedure for its P2DP, PBKD, and XED02 lines of induced draft furnaces regarding blower time delay is granted.

York shall be permitted to test its P2DP, PBKD, and XED02 lines of induced draft furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t –) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the

highest temperature. If the fan control is permitted to start the blower, measure time delay (t−) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

June 16, 1994

Assistant Secretary, Conservation & Renewable Energy,

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Subject: Petition for Waiver and Application for Interim Waiver.

Gentlemen: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27, as amended 14 November 1986. Waiver is requested from the test procedures for measuring the Energy Consumption of Furances found in Appendix N of Subpart B to Part 430, specifically the section requiring a 1.5 minute delay between burner ignition and start-up of the circulating air blower.

York International requests a waiver from the specified 1.5 minute delay, and seeks authorization in its furnace efficiency test procedures and calculations to utilize a fixed timing control that will energize the circulating air blower 30 seconds after the gas valve opens. A control of this type with a fixed 30 second blower on-time will be utilized in our P2DP, PBKD and XED02 lines of induced draft furnaces.

The current test procedure does not credit York for additional energy savings that occur when a shorter blower on-time is utilized. Test data for these furnaces with a 30 second delay indicate that the overall furnace AFUE will increase approximately 0.5 percent compared to the same furnace when tested with the 1.5 minute delay. Copies of the confidential test data confirming these energy savings will be forwarded to you upon request.

York International is confident that this waiver will be granted, as similar waivers have been granted in the past to Coleman Company, Magic Chef Company, Rheem Manufacturing, the Trane Company, Carrier Corporation, Lennox, Amana Refrigeration, Goodman Manufacturing Company and others.

Manufacturers that domestically market similar products are being sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Michael B. Eberlein, P.E.,

Engineering Manager-Furnace Products, Unitary Products Group.

[FR Doc. 94–17135 Filed 7–13–94; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EG94–74–000, et al.]

Gordonsville Energy, L.P., et al.; Electric Rate and Corporate Regulation Filings

July 8, 1994.

Take notice that the following filings have been made with the Commission:

1. Gordonsville Energy, L.P.

Docket No. EG94–74–000

On June 30, 1994, Gordonsville Energy, L.P., 12500 Fair Lakes Circle, Suite 300, Fairfax, Virginia 22033, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant is a corporation engaged directly and exclusively in the business of owning and operating eligible facilities located in Virginia and selling electric energy at wholesale. Applicant's eligible facilities consist of two 128 MW (net) cogeneration facilities located in Louisa County, Virginia, near Gordonsville.

Comment date: July 22, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Puget Sound Power & Light Company

Docket No. ER94–1114–000

Take notice that on June 24, 1994, Puget Sound Power & Light Company tendered for filing an amendment to its March 31, 1994 filing in the above-referenced docket.

Comment date: July 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Beebee Island Corporation

Docket No. ER94–465–000

Take notice that Beebee Island Corporation (BIC), on June 27, 1994, tendered for filing proposed changes in its Unit Power Sales Agreement with Niagara Mohawk Power Corporation. The proposed changes include an amendment of the formula used to determine total annual revenues from Niagara Mohawk Power Corporation for electricity produced by Beebee Island Corporation's hydroelectric facility, located on the Black River in Watertown, New York. It is not anticipated that the amended formula will have a material effect on annual charges by Beebee Island Corporation.

Copies of the filing were served upon Niagara Mohawk Power Corporation, Filtration Sciences, Inc. and the City of Watertown, New York.

Comment date: July 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

Docket No. ER94–944–000

Take notice that on June 30, 1994 Portland General Electric Company (PGE) tendered for filing a Notice of Withdrawal of PGE's filing in Docket No. ER94–944–000.

PGE has served copies of this filing on the Oregon Public Utility Commission on Kinzua Energy Company.

Comment date: July 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

Docket No. ER94–963–000

Take notice that on June 8, 1994, Portland General Electric Company (PGE) tendered for filing a supplement to its filing in the above Docket, in response to questions from Commission staff concerning the filed Round Butte/ Cove Interconnection and Operation Agreement.

Comment date: July 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

Docket No. ER94–1054–001

Take notice that on June 13, 1994, Carolina Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: July 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

Docket No. ER94–1240–000

Take notice that on July 1, 1994, Maine Public Service Company tendered for filing an amendment to its May 6, 1994 filing in this docket.

Comment date: July 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

Docket No. ER94–1347–000

Take notice that Wisconsin Electric Power Company on June 13, 1994, tendered for filing an Interconnection and Interchange Agreement between itself and Wisconsin Power and Light Company. The Agreement supersedes and replaces in its entirety the previous agreement dated June 7, 1971 which the parties wish to cancel. These rate schedule designations were No. 31 for Wisconsin Electric Power Company and No. 90 for Wisconsin Power and Light Company. The service schedules appended to the Agreement provide for the sale and purchase of Negotiated Capacity and Energy, Emergency Energy, Economy Energy, Short Term Power and Energy, Maintenance Energy, and General Purpose Energy.

The Agreement also updates the listing of interconnection points between the Parties, which are contained as appendices to the Agreement.

Wisconsin Electric Power Company respectfully requests an effective date of 60 days after the filing date.

Copies of the filing have been served on the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: July 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

Docket No. ER94–1403–000

Take notice that on June 28, 1994 Commonwealth Edison Company (Edison) submitted two Service Agreements, dated June 6, 1994 and June 15, 1994, respectively, establishing AES Power, Inc. (AES), and Enron Power Marketing, Inc. (Enron), as customers under the terms of Edison's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

Edison requests an effective date of June 28, 1994 and according seeks waiver of the Commission's notice requirements. Copies of this filing were served upon AES, Enron and the Illinois Commerce Commission.

Comment date: July 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Montana Power Company

Docket No. ER94–1404–000

Take notice that on June 29, 1994 the Montana Power Company (Montana) tendered for filing a Form of Service Agreement with Electric Clearinghouse, Inc. (ECI) under FERC Electric Tariff, Second Revised Volume No. 1 (M–1 Tariff), as well as a revised Index of Purchasers under said Tariff and a Certificate of Concurrence from ECI.

tendered for filing an Interconnection and Interchange Agreement between itself and Wisconsin Power and Light Company. The Agreement supersedes and replaces in its entirety the previous agreement dated June 7, 1971 which the parties wish to cancel. These rate schedule designations were No. 31 for Wisconsin Electric Power Company and No. 90 for Wisconsin Power and Light Company. The service schedules appended to the Agreement provide for the sale and purchase of Negotiated Capacity and Energy, Emergency Energy, Economy Energy, Short Term Power and Energy, Maintenance Energy, and General Purpose Energy.

The Agreement also updates the listing of interconnection points between the Parties, which are contained as appendices to the Agreement.

Wisconsin Electric Power Company respectfully requests an effective date of 60 days after the filing date.

Copies of the filing have been served on the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: July 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

Docket No. ER94–1403–000

Take notice that on June 28, 1994 Commonwealth Edison Company (Edison) submitted two Service Agreements, dated June 6, 1994 and June 15, 1994, respectively, establishing AES Power, Inc. (AES), and Enron Power Marketing, Inc. (Enron), as customers under the terms of Edison's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

Edison requests an effective date of June 28, 1994 and according seeks waiver of the Commission's notice requirements. Copies of this filing were served upon AES, Enron and the Illinois Commerce Commission.

Comment date: July 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Montana Power Company

Docket No. ER94–1404–000

Take notice that on June 29, 1994 the Montana Power Company (Montana) tendered for filing a Form of Service Agreement with Electric Clearinghouse, Inc. (ECI) under FERC Electric Tariff, Second Revised Volume No. 1 (M–1 Tariff), as well as a revised Index of Purchasers under said Tariff and a Certificate of Concurrence from ECI.

A copy of the filing was served upon ECI.

Comment date: July 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

Docket No. ER94–1417–000

Take notice that on June 30, 1994, Entergy Services, Inc. (Entergy Services) tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and Cajun Electric Power Cooperative, Inc. (Cajun). Entergy Services states that the TSA sets out the transmission arrangements under the Entergy Operating Companies' Transmission Service Tariff over their transmission system for certain sales by Cajun to Tennessee Valley Authority.

Comment date: July 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17056 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL94–71–000, et al.]

North Little Rock Cogeneration, L.P. and Power Systems, Ltd., et al.; Electric Rate and Corporate Regulation Filings

July 7, 1994.

Take notice that the following filings have been made with the Commission.

1. North Little Rock Cogeneration, L.P. and Power Systems, Ltd.

Docket No. EL94–71–000

Take notice that on June 27, 1994, North Little Rock Cogeneration, L.P. (NLRC) and Power Systems, Ltd. (PSL) tendered for filing a Petition for Enforcement under section 210(h) of the Public Utility Regulatory Policies Act of 1978 directed against the City of North Little Rock, Arkansas. The petitioners request that the Commission consider their petition expeditiously and consolidate it with the complaint being filed by the petitioners concurrently in Docket No. EL94–72–000 against Entergy Services, Inc.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. North Little Rock Cogeneration, L.P. and Power Systems, Ltd. v. Entergy Services, Inc. and Arkansas Power and Light Co.

[Docket No. EL94–72–000]

Take notice that on June 28, 1994, North Little Rock Cogeneration, L.P. (NLRC) and Power Systems, Ltd. (PSL) tendered for filing a complaint against Entergy Services, Inc. and Arkansas Power & Light Company (AP&L). In their complaint NRLC and PSL challenge the lawfulness of the wholesale power rates contained in the power agreement between AP&L and the City of North Little Rock, Arkansas, dated March 31, 1994. The petitioners request that the Commission consider their complaint expeditiously and consolidate it with the Petition for Enforcement filed by the petitioners in Docket No. EL94–71–000 against the City of North Little Rock, Arkansas.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Electric Company v. Boston Edison Company

[Docket No. EL94–73–000]

Take notice that on June 30, 1994, Commonwealth Electric Company (Commonwealth) tendered for filing a Petition for Investigation and Complaint against Boston Edison Company. According to Commonwealth, the Petition arises out of the contract between Commonwealth and Boston Edison Company for purchase and sale of electricity from the Pilgrim Nuclear Plant.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Polk Power Partners, L.P.

[Docket No. QF92–54–006]

On July 1, 1994, and July 5, 1994, Polk Power Partners, L.P., (Applicant) tendered for filing amendments to its filing in this docket. No determination has been made that the submittals constitute a complete filing.

The amendments provide additional information pertaining primarily to the ownership, and useful thermal output of the facility.

Comment date: July 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. AEP Resources International, Limited

[Docket No. EG94–73–000]

On June 28, 1994, AEP Resources International, Limited ("AEPRI", a corporation duly established under the laws of the Cayman Islands with a registered office located at Caledonian Bank & Trust Limited, Ground Floor, Caledonian House, Mary Street, P.O. Box 1043, George Town, Grand Cayman, Cayman Islands, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

In its application, AEPRI states that it intends (i) to engage directly, or indirectly through an affiliate, in the business of owning or operating, or both owning and operating, an eligible facility as defined under Section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA"), consisting of two 1300 megawatt coal-fired units to be constructed in Suizhong, Liaoning Province, in the People's Republic of China and selling electric energy at wholesale and/or retail, and (ii) to engage in activities that relate to the development and potential acquisition of ownership interests in as-yet unidentified eligible facilities and/or EWGs.

Comment date: July 22, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Michigan Cogeneration Partners Limited Partnership

Docket No. QF94–104–000

On July 1, 1994, Michigan Cogenerator Partners Limited Partnership tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to technical and ownership aspects of the qualifying facility. No determination has been made that this submittal constitutes a complete filing.

Comment date: July 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17057 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM94–6–48–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 8, 1994.

Take notice that on July 1, 1994, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective August 1, 1994:

Fourth Revised Sheet No. 19
First Revised Sheet No. 68H

ANR states that the purpose of the instant filing is to update ANR's annual redetermination of its Transporters Use (%) effective August 1, 1994.

ANR states that all of its Volume Nos. 1 and 2 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 or 385.211. All such motions or protests should be filed on or before July 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17054 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–70–000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

July 8, 1994.

Take notice that on July 1, 1994, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective August 1, 1994:

First Substitute Second Revised Sheet No. 018
Second Revised Sheet No. 018A
First Substitute Second Revised Sheet No. 019
Second Revised Sheet No. 019A

Columbia Gulf states that these tariff sheets are being filed to revise the retainage factors applicable to its transportation services in accordance with Section 33 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, which allows Columbia Gulf to periodically adjust its retainage factors.

Columbia Gulf states that copies of its filing has been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17053 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–5–000]

K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1994.

Take notice that on June 17, 1994, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–B, the following tariff sheets, with an effective date of July 1, 1994.

Original Sheet Nos. 52 and 53.

KNI states that it is making this filing in order to update information concerning its Order No. 497 compliance information and procedures.

KNI states that copies of the filing have been served on all of KNI's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests should be filed on or before July 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17047 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–313–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

July 8, 1994.

Take notice that on July 5, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 149A, to be effective August 1, 1994.

Natural states that the purpose of the filing is to add subsection (f) to Section 7.2 of Rate Schedule S–1 to provide Shippers the option to utilize confirmed nominated injections under Rate Schedule S–1 to balance volumes taken

[Docket No. MT94–5–000]

K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1994.

Take notice that on June 17, 1994, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–B, the following tariff sheets, with an effective date of July 1, 1994.

Original Sheet Nos. 52 and 53.

KNI states that it is making this filing in order to update information concerning its Order No. 497 compliance information and procedures.

KNI states that copies of the filing have been served on all of KNI's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests should be filed on or before July 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17047 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–313–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

July 8, 1994.

Take notice that on July 5, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 149A, to be effective August 1, 1994.

Natural states that the purpose of the filing is to add subsection (f) to Section 7.2 of Rate Schedule S–1 to provide Shippers the option to utilize confirmed nominated injections under Rate Schedule S–1 to balance volumes taken at delivery points in excess of confirmed nominated deliveries.

Natural requested whatever waivers may be necessary to permit the tariff sheet to become effective August 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional transportation customers and interested State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests should be filed on or before July 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17052 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–311–000]

North East Heat & Light Co. v. National Fuel Gas Supply Corp.; Notice of Complaint

July 8, 1994.

Take notice that on June 23, 1994, North East Heat & Light Co. (North East) filed a complaint and request for hearing against National Fuel Gas Supply Corp. (National Fuel), in the above-referenced docket.

North East states that the complaint is being filed against National Fuel for failing to make refunds in the amount of $9,420.83, and for overcharging Account Nos. 186 and 191 balances in the amount of $5,822.49.

North East states that it and National Fuel agreed to a reduction in North East's minimum monthly demand from 5,414 Dth to 4,031 Dth for both rate and Order No. 636 purposes, which was reflected in an unopposed settlement approved by the Commission in an order issued December 30, 1993, in Docket No. RP92–73–000 *et al.* 65 FERC ¶ 61,440.

North East argues that National Fuel erroneously based its claim to collect Account No. 186 and 191 costs in the total amount of $24,016.96 from North East on a Minimum Monthly Demand of 5,414 Dth instead of 4,031 Dth, which resulted in the overcharges and refund shortfall whereof it complains.

North East asks that the Commission find National Fuel has unlawfully sought to overcharge North East by $5,822.49 and has failed to refund to North East $9,420.83.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before August 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before August 8, 1994.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17051 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–11–59–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 8, 1994.

Take notice that on July 5, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that it is filing Twelfth Revised Sheet No. 53 to establish the June 1994 Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 15, 1994. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17055 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–262–028]

Panhandle Eastern Pipe Line Co.; Notice of Refund Report

July 8, 1994.

Take notice that on July 1, 1994, Panhandle Eastern Pipe Line Company (Panhandle), pursuant to the technical conference held on November 30, 1993, filed with the Commission its Revised Refund Evaluation.

Panhandle states that it is filing its Revised Refund Report with all supporting Appendices and Schedules and detailed individual customer refund calculations for consideration by the Commission's staff, along with summary materials included in the report.

Panhandle states that portions of the Revised Refund Report pertinent to the individual refund calculations of each customer, as well as summary materials and this filing have been served on them. Panhandle also states that the summary materials have been served on affected state commissions.

Consistent with the dates established at the June 16, 1994 technical conference, any person desiring to protest said filing or comment on the filing or other matters discussed at the conference, should file such protest or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests or comments should be filed on or before August 1, 1994. Reply comments should be filed on or before August 31, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17048 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–203–046]

Tennessee Gas Pipeline Co.; Notice of Filing of Refund Report

July 8, 1994.

Take notice that on July 7, 1994, Tennessee Gas Pipeline Company (Tennessee) filed its report of refunds pursuant to Article I of the Stipulation and Agreement filed on June 2, 1993 in the above referenced dockets.

Tennessee states that on June 3, 1994, it refunded $260,510,143.31 including principal and interest to all affected customers for the period February 1, 1992 through August 31, 1993. Additionally, it states that it refunded an additional $9,317,666.94 to all rate schedule NET customers pursuant to a separate Stipulation and Agreement filed on October 29, 1992.

Tennessee states that copies of the refund report have been mailed to all affected state regulatory commissions and that customers were served with calculations supporting the refunds on the date which the refunds were made.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before July 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17049 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–299–000]

Texas Eastern Transmission Corp.; Notice of Report on the First Year of Operations Under Order No. 636

July 8, 1994.

Take notice that on June 27, 1994, Texas Eastern Transmission Corp. (Texas Eastern) submitted, pursuant to and in compliance with the Commission's orders in Docket Nos. RS92–11, *et al.*,[1] its "Report on the First Year Operations Under Order No. 636". Texas Eastern states that such Commission orders require Texas Eastern to provide to the Commission certain information based on operational experience for the first year of operation under the provisions of Order No. 636. Texas Eastern states that it has been operating under Order No. 636 since June 1, 1993, the day its restructuring was approved to be effective by the Commission in Docket Nos. RS92–11, *et al.* The last day of the first year of operation was May 31, 1994. Texas Eastern states that it has provided in the filing the information required by the Commission and that copies of the filing were served on all parties in Docket Nos. RS92–11, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17050 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–645–000]

Transcontinental Gas Pipe Line Corp.; Notice of Application

July 8, 1994.

Take notice that on July 6, 1994, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP94–645–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate a Mississippi River Crossing, whereby two 30-inch pipelines will be replaces with one 36-inch pipeline. Transco requests a permanent certificate and construction clearance by August 1, 1994 and, if a permanent certificate is not issued by August 1, Transco requests that a temporary certificate and construction clearance be issued by that date, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on May 20, 1994, it filed a 30-day notice pursuant to Section 2.55(b)(1)(iii) of the Commission's Regulations regarding a planned replacement activity exceeding the cost limits provided in Section 157.208(d) of the Regulations. In such notice, Transco states that it proposed to replace two shallow 30-inch Mississippi River crossing pipelines which have been rendered inoperable by river channel scour. It is stated that the two 30-inch pipeline's will be replaced with one 36-inch installed by horizontal drilling under the river.

Transco states that it received a letter dated June 17, 1994, from the Director of the Office of Pipeline regulation (OPR) which stated:

"On May 12, 1994, the Commission clarified its section 2.55(b) regulations. In Docket No. CP91–2069–000, Arkla Energy Resources Company, the said '* * *' that section 2.55(b) means that replacement facilities must be constructed within the existing right-of-way.'

Based on Transcontinental Gas Pipe Line Corporation's (Transco) filing on May 20, 1994 and supplemented on June 2, 1994, 30-day notice of section 2.55(b) replacement of two 30-inch-diameter pipelines with one 36-inch-diameter pipeline in Pointe Coupee and West Feliciana Parishes, Louisiana is not in the existing right-of-way. Therefore, this project does not qualify for replacement treatment under section 2.55(b). Transco needs to file a section 7(c) application for this project.

Accordingly, Transco states that it filed the instant application.

Transco proposes to install approximately 4,100 feet of 36-inch diameter pipeline by horizontal drilling under the Mississippi River, at the location of its established pipeline crossing corridor of the Mississippi River between Point Coupee and West Feliciana Parishes, Louisiana. It is states that approximately 900 feet of 36-inch tie-in pipeline on the banks of the river will be required to connect the drilled crossing to Transco's mainline system. It is stated that the proposed installation will replace two 30-inch pipeline that have been exposed and damaged by Mississippi River channel scour and are now inoperable. Transco states that the proposed replacement will restore the long-term integrity of Transco's transmission system at the Mississippi

---

[1] *Texas Eastern Transmission Corp.*, 62 FERC ¶61,015 (1993); *Texas Eastern Transmission Corp.*, 63 FERC ¶61,100 (1993); *Texas Eastern Transmission Corp.*, 64 FERC ¶61,305 (1993); *Texas Eastern Transmission Corp.*, 65 FERC ¶61,361 (1993); *Texas Eastern Transmission Corp.*, Docket No. RS92–11–022, Notice of Denial of Rehearing, issued February 17, 1994.

permanent certificate is not issued by August 1, Transco requests that a temporary certificate and construction clearance be issued by that date, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on May 20, 1994, it filed a 30-day notice pursuant to Section 2.55(b)(1)(iii) of the Commission's Regulations regarding a planned replacement activity exceeding the cost limits provided in Section 157.208(d) of the Regulations. In such notice, Transco states that it proposed to replace two shallow 30-inch Mississippi River crossing pipelines which have been rendered inoperable by river channel scour. It is stated that the two 30-inch pipeline's will be replaced with one 36-inch installed by horizontal drilling under the river.

Transco states that it received a letter dated June 17, 1994, from the Director of the Office of Pipeline regulation (OPR) which stated:

"On May 12, 1994, the Commission clarified its section 2.55(b) regulations. In Docket No. CP91–2069–000, Arkla Energy Resources Company, the said '* * * that section 2.55(b) means that replacement facilities must be constructed within the existing right-of-way.'

Based on Transcontinental Gas Pipe Line Corporation's (Transco) filing on May 20, 1994 and supplemented on June 2, 1994, 30-day notice of section 2.55(b) replacement of two 30-inch-diameter pipelines with one 36-inch-diameter pipeline in Pointe Coupee and West Feliciana Parishes, Louisiana is not in the existing right-of-way. Therefore, this project does not qualify for replacement treatment under section 2.55(b). Transco needs to file a section 7(c) application for this project.

Accordingly, Transco states that it filed the instant application.

Transco proposes to install approximately 4,100 feet of 36-inch diameter pipeline by horizontal drilling under the Mississippi River, at the location of its established pipeline crossing corridor of the Mississippi River between Point Coupee and West Feliciana Parishes, Louisiana. It is states that approximately 900 feet of 36-inch tie-in pipeline on the banks of the river will be required to connect the drilled crossing to Transco's mainline system. It is stated that the proposed installation will replace two 30-inch pipeline that have been exposed and damaged by Mississippi River channel scour and are now inoperable. Transco states that the proposed replacement will restore the long-term integrity of Transco's transmission system at the Mississippi River crossing.[1] Transco estimates that the cost of the replacement is approximately $7 million.

Transco states that the system capacity across the Mississippi River after construction of the 36-inch crossing will be 2,346.5 MMcf per day (MMcfd) compared to a capacity of 2,334 MMcfd in 1982 prior to the first failure of one of Transco's shallow pipeline crossings. Accordingly, Transco states that its three directionally drilled pipelines at the Mississippi River crossing (including the one installed pursuant to the instant application) will have a substantially equivalent designed delivery capacity as the five shallow, conventionally installed pipelines and will therefore result in only a nominal increase in capacity at the river crossing. It is stated that all shallow river crossings at this location have been or will be retired.

Transco states that it needs both the Commission authorization and construction clearance by August 1, 1994 to commence construction of this project as soon as possible because, historically, the water level in the Mississippi River is at its annual low point at this time of the year. It is stated that this is important because the drilling equipment will be located on the west bank of the river, inside the flood control levee. During the months of August and September, Transco states that it is expected that the west bank will be dryer than at any time during the year and thus will provide the most secure conditions for the equipment. Transco states that there is only a 2–3 month "window" period for this type of construction before the water level in the river typically rises to a level which would prevent the emplacement of the drilling equipment.

Transco states that it is vitally important that it complete the installation of the new 36-inch pipeline in order to replace the capacity lost as a result of the two 30-inch lines being rendered inoperable by river channel scour. It is stated that this crossing must be completed in time to provide service during the upcoming winter heating season to ensure that the necessary volumes of gas will be able to flow from the production areas—across the Mississippi River—to Transco's markets.

[1] Transco states that directionally drilled pipelines under rivers are significantly more secure than older pipelines which installed by way of trenching the river bed. It is stated that the 36-inch pipeline crossing will be 90 feet below the deepest Mississippi River channel. Transco states that because of the strong currents in the Mississippi River, over time, the shallow, trenched crossings have become exposed and failed.

Transco states that issuance of a certificate by August 1 for the Mississippi River crossing is justified by two reasons: (1) the above-mentioned need for security of gas service during the upcoming winter heating season, and (2) the *de minimis* impact on the environment of the crossing project (as described below). Furthermore, Transco states that the Commission staff is already familiar with this project because of Transco's previous filing of the 30-day notice pursuant to section 2.55(b) of the regulations. Transco states that with respect to the environment, the following are the significant points:

1. In 1992 Transco installed a 36-inch pipeline by directional drilling under the Mississippi River at the same general location. On the west side of the river, the property to be used for temporary work space is owned by Transco in fee. This temporary work place is essentially the same area that was used in 1992. Transco states that an additional 0.4 acre of forested wetlands area is to be cleared on the west side for the proposed installation.

On the east side of the river, the area to be used for temporary work space is essentially the same area that was used in 1992. Transco states that an additional 1.0 acre of forested wetlands areas is to be cleared on the east dies for the proposed installation. The area is within the area which Transco has leased for ten years from the landowner. The ten-year period was to have expired on August 13, 1994, but Transco has recently negotiated an extention until August 13, 1995.

In summary, Transco states that the temporary work areas are essentially the same areas which were previously used in 1992, and the additional areas to be cleared are minor in nature, *i.e.*, a total of 1.4 acres, with 0.4 acre being on Transco-owned land.

2. All clearances have been received with respect to endangered/threatened species and cultural resources.

3. There are no residential dwellings near this project. The owner of the land on the east side of the river does not live on such land.

4. Transco does not have the option of *in situ* replacement because it is replacing shallow trenched pipelines with a directionally drilled one deep beneath the river bed. Transco states that it is locating the planned 36-inch pipeline as close as prudently feasible to the 36-inch pipeline installed by directional drilling in 1992. The planned pipeline is within Transco's established Mississippi River crossing corridor.

Transco points out that, additionally, the details of its proposed Mississippi

River replacement crossing have been presented for public comment. It is stated that the U.S. Army Corps of Engineers (COE) processing of Transco's application for a permit for this project involves the issuance of public notice which allows any members of the public to make comments by July 5, 1994.

Therefore, Transco states that in view of (1) the fast-approaching "window" period for installation of a directionally drilled pipeline at this Mississippi River location, (2) the essential need for the crossing to be completed in time to provide service during the upcoming winter heating season, (3) the *de minimis* environmental impact of Transco's project and (4) the opportunity for public participation already present in the COE processing of Transco's application for a permit, Transco requests that the Commission issue it a permanent certificate and construction clearance by August 1, 1994.

Transco also requests that if a permanent certificate is not issued by August 1, 1994, a temporary certificate and construction clearance be issued by that date so that Transco will be able to complete the crossing in time to provide service during the upcoming winter heating season.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 18, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17046 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2009–003 North Carolina]

Virginia Electric & Power Co.; Notice of Change in Location of Scoping Meeting

July 8, 1994.

By notice dated July 1, 1994, the Commission indicated three scoping meetings related to the application for Non-project Use of Project Lands and Waters at the Gaston and Roanoke Rapids Project (FERC No. 2009), located on the Roanoke River.

The third scoping meeting was originally scheduled at the: OMNI Waterside Mall, 770 Waterside Drive, Norfolk, VA 23510.

The location of the third scoping meeting was then rescheduled to: Sheraton Inn, 3601 Atlantic Avenue, Virginia Beach, VA 23451.

The location of the third scoping meeting has new been rescheduled to: Virginia Beach Pavilion, 1000 19th Street, Virginia Beach, VA 23451.

The time and date of the third scoping meeting have not changed.

Any questions concerning the scoping process for the Non-project Use of Project Lands and Waters at the Gaston and Roanoke Rapids Project should be directed to Steve Edmondson at (202) 219–2653.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17058 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF94–124–000]

Weyerhaeuser Co.; Notice of Application for Commission Certification of Qualifying Status of a Small Power Production Facility

July 8, 1994.

On June 22, 1994, Weyerhaeuser Company (Weyerhaeuser) of 33637 Weyerhaeuser Way South, Federal Way, Washington 98003, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, installation of the facility, referred to as the Chemical Recovery Facility (CRF), located at Carson Road, in Columbus, Mississippi, was completed in May of 1990. The CRF consists of a recovery boiler and a steam turbine generator, with an electric power production capacity of 64 MW. The primary energy source of the CRF is black liquor.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–17059 Filed 7–13–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5010–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: . Comments must be submitted on or before August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Continuous Release Reporting under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (EPA ICR # 1445.03; OMB # 2050–0086). This ICR requests renewal of the existing clearance.

Abstract: CERCLA 103(f)(2) provides relief from the peroccurrence notification requirements of section 103(a) for hazardous substance releases that are "continuous" and "stable in quantity and rate," provided that such releases are reported annually, or at such time as there is any statistically significant increase in the quantity of the release. Under the continuous release reporting regulation (CRRR), developed by EPA's Emergency Response Division in the Office of Solid Waste and Emergency Response, the term "continuous" includes routine, anticipated, intermittent releases, in addition to releases that are continuous without interruption. Similarly, the CRRR considers a release to be "stable in quantity and rate" if it is predictable and regular in quantity and rate of release.

The information collected under the CRRR is used to evaluate the acute and chronic effects of a continuous release in order to determine if a response action is necessary to prevent or mitigate any adverse effects. Any hazardous substance release that equals or exceeds its RQ warrants a timely evaluation of its source, emission rate, and chemical form, the proximity of sensitive populations or ecosystems, and the ambient conditions, to ensure the protection of human health, welfare, and the environment. The information is also used by State and local government authorities for emergency planning and response purposes.

To report a "continuous" release, the regulated community is expected to perform the following activities: (1) One or more initial phone calls to the National Response Center (NRC); (2) an initial written report to the EPA Region; (3) a follow-up written report to the EPA Region one year after the submission of the initial written report; (4) notification to the EPA Region of any changes in release information previously submitted; (5) the immediate notification of any statistically significant increase (SSI) in quantity of release to the NRC; (6) comply with EPA-mandated response activities; (7)

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Continuous Release Reporting under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (EPA ICR # 1445.03; OMB # 2050–0086). This ICR requests renewal of the existing clearance.

Abstract: CERCLA 103(f)(2) provides relief from the peroccurrence notification requirements of section 103(a) for hazardous substance releases that are "continuous" and "stable in quantity and rate," provided that such releases are reported annually, or at such time as there is any statistically significant increase in the quantity of the release. Under the continuous release reporting regulation (CRRR), developed by EPA's Emergency Response Division in the Office of Solid Waste and Emergency Response, the term "continuous" includes routine, anticipated, intermittent releases, in addition to releases that are continuous without interruption. Similarly, the CRRR considers a release to be "stable in quantity and rate" if it is predictable and regular in quantity and rate of release.

The information collected under the CRRR is used to evaluate the acute and chronic effects of a continuous release in order to determine if a response action is necessary to prevent or mitigate any adverse effects. Any hazardous substance release that equals or exceeds its RQ warrants a timely evaluation of its source, emission rate, and chemical form, the proximity of sensitive populations or ecosystems, and the ambient conditions, to ensure the protection of human health, welfare, and the environment. The information is also used by State and local government authorities for emergency planning and response purposes.

To report a "continuous" release, the regulated community is expected to perform the following activities: (1) One or more initial phone calls to the National Response Center (NRC); (2) an initial written report to the EPA Region; (3) a follow-up written report to the EPA Region one year after the submission of the initial written report; (4) notification to the EPA Region of any changes in release information previously submitted; (5) the immediate notification of any statistically significant increase (SSI) in quantity of release to the NRC; (6) comply with EPA-mandated response activities; (7) and keep records on the release, including documentation of the annual evaluation. Activities (4), (5), and (6) are conditional activities expected to be necessary for only a fraction of the continuous releases reported each year.

Burden Statement: The estimated public reporting burden for this collection of information is estimated to require 10.8 hours per report, an average of 47.4 hours per affected facility. This estimate includes time for determining if the hazardous substance release qualifies for reporting under the continuous release final rule, gathering and maintaining the required information, completing and reviewing the telephone and written reports, and maintaining records.

Respondents: Any facility subject to the hazardous substance notification requirements of CERCLA section 103(a).

Estimated No. of Respondents: 1,700 affected facilities

Estimated No. of Responses Per Respondent: 4.4

Estimated Total Annual Burden on Respondents: 80,600 hours

Frequency of Collection: On occasion, when "continuous" releases meet the criteria of CERCLA 103(f)(2).

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (Mail Code: 2136), 401 M Street SW., Washington, DC 20460;

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: June 27, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–17007 Filed 7–13–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5011–4]

National Advisory Council for Environmental Policy and Technology (NACEPT); Recharter

This notice serves to announce that the U.S. Environmental Protection Agency's National Advisory Council for Environmental Policy and Technology (NACEPT) has been rechartered for two years effective June 10, 1994. The Council provides advice and counsel to the Administrator on broad cross-cutting domestic and international environmental policy and technology issues.

ADDRESSES: Office of Cooperative Environmental Management, (1601), U.S. Environmental Protection Agency, 401 M Street, Washington, DC. Attn: Abby J. Pirnie, Director.

FOR FURTHER INFORMATION CONTACT: Abby J. Pirnie or Gordon Schisler at the above address or call 202–260–7567.

Gordon Schisler,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 94–17087 Filed 7–13–94; 8:45 am]

BILLING CODE 6560–50–M

Science Advisory Board

[FRL–5011–6]

Notification of Public Advisory Committee Meeting(s); Open Meeting(s)

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

Environmental Futures Committee

The *Environmental Futures Committee* (EFC) of the Science Advisory Board (SAB) will conduct two public meetings one on August 2–3, 1994 at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA and a second on September 13–14, 1994 at the Gangplank Restaurant, 600 Water Street, SW., Washington, DC. All meetings will begin at approximately 8:30 am and adjourn daily by 5:00 pm.

The Environmental Futures Committee (EFC) was formed by the SAB at the request of Administrator Browner to assist the Agency in anticipating environmental problems, issues and opportunities. The charge to this Committee includes: developing a procedure for short and long-term forecasting of natural and anthropogenic developments which may affect environmental quality and its protection; develop detailed examinations procedures and apply them to some future developments; and draw implications from the examinations of future developments and recommend actions for EPA to address them. At these meetings, the EFC will receive briefings on Futures issues; discuss the overall progress of the project (including tracking the

activities of the SAB Standing Committees that are involved in the project); and continue work on its draft report.

These meetings are open to the public, but seating is limited and available on a first come basis. Any member of the public wishing further information concerning the meetings or who wishes to submit oral or written comments (at least 25 copies) should contact one of the Designated Federal Officials, Dr. Edward Bender, Science Advisory Board (Mail Code 1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–2562; FAX (202) 260–7118, or via the Internet at BENDER.EDWARD@EPAMAIL.EPA.GOV.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes.

For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 25 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: June 29, 1994.

Edward S. Bender,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–17086 Filed 7–13–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5011–5]

Meeting of the Small Town Environmental Planning Task Force

On July 27–28, 1994, the Small Town Environmental Planning Task Force will conduct its second meeting. The purpose of the meeting is to discuss and act on a draft policy paper and focus on how the group will accomplish their legislative mandates.

The Task Force is charged with identifying regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns; identifying means to improve the working relationship between the Environmental Protection Agency and small towns; reviewing proposed regulations for the protection of environmental and public health and suggesting revisions that could improve the ability of small towns to comply with such regulations; and, identifying means to promote regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic conditions of such systems and infrastructure.

The meeting will be held at the Savoy Suites Georgetown located at 2505 Wisconsin Avenue, NW in Washington, DC. The meeting will begin at 9:00 a.m. on July 27th and conclude at 5:00 p.m. on July 28th.

The Designated Federal Officer (DFO) for this Committee is Denise Zabinski. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0419 or by writing to 401 M Street, SW. (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available within thirty days after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible.

Shelley H. Metzenbaum,

Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 94–17091 Filed 7–13–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2875	Solmar Logistics, Inc., 4544 Post Oak Place, Suite 148, Houston, TX 77027	June 20, 1994.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–17042 Filed 7–13–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First of America Bank Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan, to engage *de novo* through its wholly-owned subsidiary First of America Securities, Inc., Kalamazoo, Michigan, in certain nonbanking activities pursuant to section 4(c)(8) of the Bank Holding Company Act, which include acting as "riskless principal" for and privately placing all types of securities, and underwriting and dealing in certain debt securities which include municipal revenue bonds, 1-4 family mortgage-related securities, consumer receivables-related securities, and commerical paper, as well as bank-eligible securities. Applicant is applying for authority to conduct these activities as approved by the Board. J.P. Morgan, 75 Federal Reserve Bulletin 192 (1989).

Board of Governors of the Federal Reserve System, July 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17069 Filed 7-13-94; 8:45 am]

BILLING CODE 6210-01-F

North Bank Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 3, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. North Bank Employee Stock Ownership Plan, Hale, Michigan, to

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan, to engage *de novo* through its wholly-owned subsidiary First of America Securities, Inc., Kalamazoo, Michigan, in certain nonbanking activities pursuant to section 4(c)(8) of the Bank Holding Company Act, which include acting as "riskless principal" for and privately placing all types of securities, and underwriting and dealing in certain debt securities which include municipal revenue bonds, 1-4 family mortgage-related securities, consumer receivables-related securities, and commerical paper, as well as bank-eligible securities. Applicant is applying for authority to conduct these activities as approved by the Board. J.P. Morgan, 75 Federal Reserve Bulletin 192 (1989).

Board of Governors of the Federal Reserve System, July 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17069 Filed 7-13-94; 8:45 am]

BILLING CODE 6210-01-F

North Bank Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 3, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. North Bank Employee Stock Ownership Plan, Hale, Michigan, to acquire 12.57 percent of the voting shares of North Bank Corporation, Hale, Michigan, and thereby indirectly acquire North Bank, Hale, Michigan.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Joe Neill, Welch, Oklahoma, to acquire an additional 5.38 percent, for a total of 36.06 percent of the voting shares of Welch Bancshares, Inc., Welch, Oklahoma, and thereby indirectly acquire The Welch State Bank, Welch, Oklahoma.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Ronald E. Abbott, Paris, Texas, to acquire an additional .52 percent for a total of 25.42 percent; John W. Miles, Paris, Texas, to acquire an additional .52 percent for a total of 25.42 percent; and Linnie Ray Spencer, Paris, Texas, to acquire an additional .52 percent for a total of 25.42 percent of the voting shares of Texas Peoples National Bancshares, Inc., Paris, Texas, and thereby indirectly acquire Peoples National Bank, Paris, Texas.

Board of Governors of the Federal Reserve System, July 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17070 Filed 7-13-94; 8:45 am]

BILLING CODE 6210-01-F

Peoples Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 8, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Peoples Bancorp, Inc., Marietta, Ohio, to acquire 11.67 percent of the voting shares of Woodsfield Savings & Loan Company, Woodsfield, Ohio, and thereby acquire and hold as an investment shares of the target. The target engages in permissible savings association activities pursuant to § 225.25(b)(9) of the Board's Regulation Y.

2. United Bancorp of Kentucky, Inc., Lexington, Kentucky, to acquire 100 percent of the voting shares of Harlan Federal Bank, a Federal Savings Bank, Harlan, Kentucky, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Kent Financial Corporation, Grand Rapids, Michigan, to engage in investing in community housing projects by making equity investments in the Michigan Capital Fund for Housing Limited Partnership I, pursuant to § 225.25(b)(6) of the Board's Regulation Y. This activity will be conducted in the State of Michigan. Comments regarding this application must be received at the Reserve Bank indicated not later than July 28, 1994.

Board of Governors of the Federal Reserve System, July 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17071 Filed 7-13-94; 8:45 am]

BILLING CODE 6210-01-F

Richey Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 8, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Richey Bancorporation, Inc., Glendive, Montana, to become a bank holding company by acquiring 20 percent of the voting shares of Community First Bancorp, Inc., Glendive, Montana, and thereby indirectly acquire First Fidelity Bank, Glendive, Montana.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Pryor Bancorp, Inc., Pryor, Oklahoma, to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Pryor Creek, Pryor, Oklahoma.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Vallicorp Holdings, Inc., Fresno, California, to merge with King Mineral Bancorp, Inc., Visalia, California, and thereby indirectly acquire Mineral King National Bank, Visalia, California.

Board of Governors of the Federal Reserve System, July 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17072 Filed 7-13-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Agency for Health Care Policy and Research; Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of July 1994:

Name: Health Care Policy and Research Special Emphasis Panel

Date and Time: July 21, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852. Open July 21, 8:30 a.m. to 9:00 a.m. Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications related to rural managed care systems and to address subjects related to the development and management of Rural Health Demonstration Centers which will be funded through cooperative agreements to be entered into with the Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on July 21 from 8:30 a.m. to 9:00 a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing complex and clinically-oriented grant applications. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Acting Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, Suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594-2462.

Agenda items for all meetings are subject to change as priorities dictate.

Date: June 28, 1994.

Linda K. Demlo, Ph.D.,

Acting Administrator.

[FR Doc. 94-17025 Filed 7-13-94; 8:45 am]

BILLING CODE 4160-90-P

Centers for Disease Control and Prevention

[Announcement Number 440]

Postdoctoral Fellowship Training Program in Infectious Diseases

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement to provide assistance for a Postdoctoral Fellowship Training Program in Infectious Diseases.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious diseases. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

This program is authorized under sections 301 42 U.S.C. 241), 317(k)(1) and 317(k)(2), (42 U.S.C. 247b(k)(1) and 247b(k)(2)), of the Public Health Service Act, as amended. Applicable program regulations are found in 42 CFR part 52, Grants for Research Projects.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to university affiliated schools of medicine with infectious disease programs accredited by the Accreditation Council for Graduate Medical Education (ACGME).

Applicants meeting the above criteria are the most appropriate organizations to conduct the work under this cooperative agreement because: The purpose of this cooperative agreement is to respond to the documented shortage of physicians trained in academic infectious diseases. Correspondingly, the infectious disease departments of university schools of medicine are the legitimate organizations in which to base a program such as that proposed in this cooperative agreement.

Availability of Funds

Approximately $60,000 is available in FY 1994 to fund one to two awards. It is expected that the award will begin on or about September 30, 1994, and is made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this cooperative agreement is to assist the recipient in the development of a Postdoctoral Fellowship Training Program in Infectious Diseases which utilizes the combined resources of the recipient and CDC. The goal is to improve the ability of the U.S. public health system to respond to the problem of emerging infectious diseases by increasing the number of academic infectious disease physicians with demonstrated skills in the public health aspects of infectious diseases and to provide them with the essential, pertinent clinical and research skills.

The clinical training portion of the Program will occur at the recipient's facilities while the research (basic laboratory or epidemiologic) training may occur at CDC facilities in Atlanta, Georgia. In order to assure that the clinical and research training areas are coordinated to provide a suitably congruent and expedient training program, it may be necessary for both fellows and program staff to frequently commute between CDC and recipient facilities.

The program will be designed for physicians with training in infectious diseases who wish to pursue a career in academic infectious diseases. It will offer a combination of research and clinical training which will lead to eligibility for certification in infectious diseases by the American Board of Internal Medicine, Subspecialty Board of Infectious Diseases (the cognizant member board of the American Board of Medical Specialties). Specific areas of research may include: Viral and rickettsial infections, nosocomial infections, antimicrobial resistance, acquired immunodeficiency syndrome, vector-borne infectious diseases, respiratory and food-borne bacterial diseases, sexually transmitted diseases, and parasitic diseases. Specific areas of clinical concentration may include: clinical rotations in infectious diseases, infectious diseases in transplant recipients, clinical microbiology,

Availability of Funds

Approximately $60,000 is available in FY 1994 to fund one to two awards. It is expected that the award will begin on or about September 30, 1994, and is made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this cooperative agreement is to assist the recipient in the development of a Postdoctoral Fellowship Training Program in Infectious Diseases which utilizes the combined resources of the recipient and CDC. The goal is to improve the ability of the U.S. public health system to respond to the problem of emerging infectious diseases by increasing the number of academic infectious disease physicians with demonstrated skills in the public health aspects of infectious diseases and to provide them with the essential, pertinent clinical and research skills.

The clinical training portion of the Program will occur at the recipient's facilities while the research (basic laboratory or epidemiologic) training may occur at CDC facilities in Atlanta, Georgia. In order to assure that the clinical and research training areas are coordinated to provide a suitably congruent and expedient training program, it may be necessary for both fellows and program staff to frequently commute between CDC and recipient facilities.

The program will be designed for physicians with training in infectious diseases who wish to pursue a career in academic infectious diseases. It will offer a combination of research and clinical training which will lead to eligibility for certification in infectious diseases by the American Board of Internal Medicine, Subspecialty Board of Infectious Diseases (the cognizant member board of the American Board of Medical Specialties). Specific areas of research may include: Viral and rickettsial infections, nosocomial infections, antimicrobial resistance, acquired immunodeficiency syndrome, vector-borne infectious diseases, respiratory and food-borne bacterial diseases, sexually transmitted diseases, and parasitic diseases. Specific areas of clinical concentration may include: clinical rotations in infectious diseases, infectious diseases in transplant recipients, clinical microbiology, outpatient infectious diseases, pediatric infectious diseases, or infectious disease pharmacology. The recipient must be able to provide support for physicians of unusual ability and promise or proven achievement by giving them an opportunity to conduct clinical, laboratory, and epidemiologic research on significant public health problems caused by infectious diseases.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop and conduct a Postdoctoral Fellowship Training Program (PFTP) in clinical and basic laboratory or epidemiologic research in prevention and control of infectious diseases of public health importance in which the clinical training will occur at recipient facilities and the research may occur at CDC facilities. Design and conduct the PFTP such that the clinical training and the research activities will be complementary and congruent.

2. Design and conduct the PFTP such that, upon completion of the fellowship, fellows will become eligible for certification in infectious diseases by the American Board of Internal Medicine.

3. Promote a wide distribution of the PFTP announcement soliciting applicants for fellowships. Contribute to the racial and gender diversity of the PFTP by assuring a wide distribution of the announcement among eligible women and minority physicians.

4. Provide preceptors for the training at recipient's facilities.

5. Develop a pre- and post-application review and approval process. Based on this review process, select applicants to be awarded fellowships.

6. Provide administrative support to fellows during their tenure including the payment of a stipend in accordance with the PHS policy.

7. Develop a plan for monitoring and evaluating the progress of fellows and progress toward achieving program goals.

B. CDC Activities

1. Provide assistance in the development and management of a PFTP.

2. Provide preceptors for training at CDC facilities.

3. Assist in the development of a plan for monitoring and evaluating the progress of fellows and of the progress toward achieving program goals.

Evaluation Criteria

The applications will be reviewed and evaluated based on the following criteria:

1. The extent to which the applicant describes the history of the organization for promoting the field of academic infectious diseases. The extent to which the applicant has promoted the field of academic infectious diseases by conducting regular national meetings and workshops devoted to current topics. The extent to which the applicant documents experience in education and training in academic infectious diseases, including documentation of relevant degree programs offered and evidence of experience in successfully preparing students for certification in infectious diseases by the American Board of Internal Medicine. (15 points)

2. The extent to which the applicant provides evidence of staff and program expertise. The extent to which the applicant provides evidence of a plan to actively promote racial and gender diversity in recruiting and placing postdoctoral fellowship candidates. (15 points)

3. The extent to which the applicant describes their experience in managing postdoctoral fellowship training programs for physicians. (30 points)

4. The extent to which the proposed plan, including the review process for the selection of fellows, addresses CDC program goals and objectives. The extent to which the proposed plan addresses all of the program requirements. The extent to which the proposed plan coordinates the clinical and research activities so that they comprise a complementary and congruent training program, including the extent to which the plan provides for periodic travel by fellows and program officials between CDC and applicant agency. (30 points)

5. The quality of the proposed plan for monitoring and evaluating progress in relation to program activities and objectives. (10 points)

6. The extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds. (not scored)

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372 (45 CFR part 100), Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided which demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Edward L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, on or before August 15, 1994.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, telephone (404) 842–6512.

Programmatic technical assistance may be obtained from Greg Jones, Program Specialist, Office of Administrative Services, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop C–19, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–2434. Please refer to Announcement Number 440 when requesting information regarding this program.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 8, 1994.

Martha Katz,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–17067 Filed 7–13–94; 8:45 am]

BILLING CODE 4163–18–P

[CDC–458]

Announcement of Cooperative Agreement to the World Health Organization

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a sole source cooperative agreement with the World Health Organization (WHO) for Hantavirus Pulmonary Syndrome (HPS) research in epidemiology, pathogenesis and vaccine development. The activities are intended to strengthen the knowledge base of the epidemiology and pathogenesis of hantaviruses, improve diagnostics capabilities, and assist in the further development of a hantavirus vaccine. These programs will provide information for public policy and for targeting strategies for hantavirus-associated respiratory disease prevention and treatment programs. Approximately $60,000 is available in FY 1994 to fund one award. It is expected that the award will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are subject to change. A continuation award within an approved project period will be made on the basis of satisfactory progress and availability of funds.

The purpose for this program is to assist research on hantaviruses that will help researchers in the U.S. to understand the epidemiology and mechanisms of immunity and immunopathology of hantavirus infection. It is also intended that the agreement assure that proper observations of vaccine trials are reliably made should further vaccine development be necessary in this country.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the Section **Where to Obtain Additional Information.**)

Authority

This program is authorized under section 301(a) (42 U.S.C. 241(a)), 311 (42 U.S.C. 243), and 317(k)(3)(42 U.S.C. 247b(k)(3)) of the Public Health Service Act, as amended, Pub. L. 95–626. Applicable program regulations are found in 42 CFR part 52, Grants for Research Projects.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to the World Health Organization (WHO). No other applications are solicited. The program announcement and application kit have been sent to WHO.

WHO is the coordinating agency for WHO Regional Offices including Pan American Health Organization (PAHO), European Regional Office (EURO), South East Asia Regional Office (SEARO), and Western Pacific Regional Office (WPRO) where assistance will be provided. WHO is the appropriate agency to establish collaboration among research groups to improve training, technology transfer and share comparative results.

The CDC will collaborate in providing: Consultation, scientific and technical assistance and training for transfer of laboratory technology and logistics management for study of epidemiology of pathogenic hantaviruses in the Americas; scientific and technical assistance in the observation of the inactivated vaccine trials in both China and Russia; and training and on-site assistance in technical areas of expertise for investigating the mechanisms of immunity and immunopathology of hantavirus infection in Korea.

Executive Order 12372 Review

This application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Where to Obtain Additional Information

If you are interested in obtaining additional information on this program, please refer to Announcement Number 458 and contact Gordon R. Clapp, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6508.

research groups to improve training, technology transfer and share comparative results.

The CDC will collaborate in providing: Consultation, scientific and technical assistance and training for transfer of laboratory technology and logistics management for study of epidemiology of pathogenic hantaviruses in the Americas; scientific and technical assistance in the observation of the inactivated vaccine trials in both China and Russia; and training and on-site assistance in technical areas of expertise for investigating the mechanisms of immunity and immunopathology of hantavirus infection in Korea.

Executive Order 12372 Review

This application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Where to Obtain Additional Information

If you are interested in obtaining additional information on this program, please refer to Announcement Number 458 and contact Gordon R. Clapp, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6508.

A copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1), referenced in the **SUMMARY** section, may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 8, 1994.

Martha Katz,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–17063 Filed 7–13–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94F–0222]

Ramico Foods Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ramico Foods Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of calcium disodium EDTA (ethylenediaminetetraacetate) to promote color retention in canned, cooked fava beans.

DATES: Written comments on the petitioner's environmental assessment by September 12, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3A4404) has been filed by Ramico Foods Inc., 8245 Le Creusot, St-Leonard, Quebec, CANADA H1P 2A2. The petition proposes to amend the food additive regulations in § 172.120 *Calcium Disodium EDTA* (21 CFR 172.120) to provide for the safe use of calcium disodium EDTA to promote color retention in canned coooked fava beans.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 12, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 1, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–17075 Filed 7–13–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPO–116–FN]

Medicare Program: Data, Standards, and Methodology Used To Establish Fiscal Year 1994 Budgets for Fiscal Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice is published in accordance with sections 1816(c)(1) and 1842(c)(1) of the Social Security Act which require us to publish the final data, standards, and methodology used to establish budgets for Medicare intermediaries and carriers. In this notice, we respond to the comments received in response to our notice of October 5, 1993 and we announce the adoption of the proposed data, standards, and methodology that we

used to establish the Medicare fiscal intermediary and carrier budgets for fiscal year (FY) 1994, beginning October 1, 1993, as final and without revision.

EFFECTIVE DATE: This final notice is effective on July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Phyllis Mosmiller, (410) 966–7528.

SUPPLEMENTARY INFORMATION:

I. Background

Fiscal intermediaries and carriers are public or private entities that participate in the administration of the Medicare program by performing benefit payment and claims processing functions. On October 5, 1993, we published in the **Federal Register** (58 FR 51827) a proposed notice that described the data, standards, and methodology we intended to use to establish budgets for Medicare program carriers and fiscal intermediaries, referred to as Medicare contractors, for the Federal fiscal year (FY) 1994, beginning October 1, 1993. The notice was published in accordance with sections 1816(c)(1) and 1842(c)(1) of the Social Security Act (the Act), which require us to publish for public comments the data, standards, and methodology we propose to use to establish budgets for these Medicare contractors.

II. Provisions of the Proposed Notice

Following the same format we have used in prior notices, the October 5, 1993 proposed notice described the budget development process in general and gave an overview of how we intend to use the contractor budget data, standards, and methodology to establish the FY 1994 budgets.

We indicated in the notice that the contractor budget would be structured to coincide with the seven functional areas of responsibilities performed by fiscal intermediaries for Part A and nine functional areas of responsibilities performed by carriers for Part B of the Medicare program. The intermediary functional area responsibilities for Part A are: (1) Bill Payment, (2) Reconsideration and Hearings; (3) Medicare Secondary Payer; (4) Medical Review and Utilization Review; (5) Provider Audit (Desk Review, Field Audit, and Provider Settlement); (6) Provider Reimbursement; and (7) Productivity Investments. The carrier functional area responsibilities for Part B are: (1) Claim Payment; (2) Review and Hearing; (3) Beneficiary/Physician Inquiry; (4) Medical Review and Utilization Review; (5) Benefit Integrity (formerly Fraud and Abuse); (6) Medicare Secondary Payer; (7) Participating Physicians; (8) Provider Education and Training; and (9) Productivity Investments. These functions are funded from the Hospital Insurance Trust Fund (HI) and the Supplementary Medical Insurance Trust Fund (SMI).

We proposed that final funding for the contractor functions listed above would be allocated in accordance with the current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by the Congress.

The FY 1994 Budget and Performance Requirements (BPRs) gave the contractors the authority to manage their budgets on a bottom line basis. Once funding is issued, each contractor will have the flexibility to optimally manage the budget in accordance with the statement of work contained in the BPRs. With the exception of the line item for Payment Safeguards, Productivity Investments, and "Other" line items, contractors have total flexibility in the use of funds. There is a 5 percent limitation on the amount of funds that may be shifted out of individual Payment Safeguards, with unlimited shifting into Payment Safeguards. Shifting into or out of Productivity Investments and "Other" line item funding, not governed by contract modifications, may not exceed 5 percent. Each "Other" line item is treated separately. The Productivity Investment line item is treated as a whole and not by a separate project. Funding that is governed by contract modifications may not be shifted to other functions or line items.

Final BPRs were sent to each contractor in June 1993 to assist in the preparation of their FY 1994 budget requests. The contractors are expected to perform the work as described in the BPR package and in accordance with the standards contained in the Contractor Performance Evaluation Program for FY 1994 that was published in the **Federal Register** (58 FR 51085) on September 30, 1993. While the contractors were preparing their budget requests, we developed preliminary budget allocations for the 16 functional areas that were based on historical patterns, workload growth, inflation assumptions, statistical forecasting reports, and any other available information.

A key step in this budget process is the development of contractor unit costs for processing Part A bills and Part B claims. As in FY 1993, the FY 1994 budget process incorporates a bottom line unit cost approach that encompasses all budget line items except Provider Audit, Productivity Investments, and Other. For funding the bills/claims processing function, the Complexity Index (CI) was continued in FY 1994. In the FY 1993 budget process, we arrayed the contractors' unit costs and identified the contractor at the 60th Percentile. Each contractor with a unit cost higher than the 60th Percentile was held to the 60th Percentile unit cost multiplied by the contractor's CI. Each contractor at or below the 60th Percentile retained its own unit cost multiplied by its CI. The only difference in the unit cost calculation in FY 1994 was the use of the 70th Percentile instead of the 60th Percentile.

It was also noted that limitations on the FY 1994 budget could require across-the-board cost cutting measures. Should this occur, each of HCFA's Regional Offices will determine the amount of budget reduction for its contractors.

III. Analysis of and Responses to Public Comments

In response to our request for public comment in the October 5, 1993 proposed notice, we received four timely items of correspondence. Comments were received from a national specialty association, a beneficiary advocacy association, and two national health insurance associations. Several issues that were raised by the commenters are outside the scope of the proposed notice and are not addressed in this final notice. However, those comments have been referred to the appropriate HCFA components for review and analysis to determine if operational adjustments are required or warranted. In this final notice, we are responding to the comments that are related to the proposed notice.

Comment: Three commenters reflected the concern that the proposed notice was published after the beginning of FY 1994. It was felt that untimely publication of the proposed notice denied interested parties the opportunity to comment before implementation of the budget.

Response: We have taken steps to publish these proposed notices as timely as possible. Although we did not publish the proposed notice before the beginning of the fiscal year (due to considerations in reviewing data and developing a budget), we did provide adequate opportunity for all affected parties to comment on the data, standards, and methodology. We were fully prepared to issue revised Budget and Performance Requirements (BPRs) to intermediaries and carriers based on the comments received. If necessary, we were prepared to renegotiate any affected areas of intermediary and carrier budgets within the levels of funding made available by the Congress.

Comment: Two commenters indicated that the contractor unit cost calculations are derived from a Complexity Index (CI) formula which is methodologically incorrect.

Response: The CI includes full consideration of each individual contractor's workload mix and its actual costs as reported on the Final Administrative Cost Proposals. Therefore, we believe that the CI methodology is an equitable and efficient method of formulating contractor unit cost targets.

Comment: One commenter expressed the opinion that the notice lacks specificity about the development of the contractor budgets that the Omnibus Budget Reconciliation Act of 1987 was intended to elicit. The commenter also stated that most of the methodology described in the notice is general and could apply to any contractor budget year.

Response: The intent of the Congress requires that we provide sufficient description of the data, standards, and methodology used in determining the annual budgets. We believe the notice complies with that intent. The commenter is correct that some methodologies are retained from year to year. However, we always publish the most recent data. Additionally, legislative changes and budget priorities or constraints affect the standards.

Our notices are intended to include only the data, standards, and methodology to be used to establish budgets for fiscal intermediaries and carriers for a given fiscal year. Specific instructions on how to implement and monitor certain initiatives, for example, beneficiary inquiries, participating physician, physician payment reform, etc., are presented through program memoranda, manual instructions, BPRs, etc.

Comment: One commenter stated that HCFA has not provided adequate data, thus preventing the reader from reaching an informed opinion regarding the accuracy of the resulting budgets and unit costs.

Response: As we believe the Congress intended, our proposed notice provides a general description of the budget development process. Specific guidelines and data for the development of individual contractor budgets are found in the current year BPRs.

Comment: There was no mention of the Medicare Transaction System (MTS) in the proposed notice, as stated by another commenter.

affected areas of intermediary and carrier budgets within the levels of funding made available by the Congress.

Comment: Two commenters indicated that the contractor unit cost calculations are derived from a Complexity Index (CI) formula which is methodologically incorrect.

Response: The CI includes full consideration of each individual contractor's workload mix and its actual costs as reported on the Final Administrative Cost Proposals. Therefore, we believe that the CI methodology is an equitable and efficient method of formulating contractor unit cost targets.

Comment: One commenter expressed the opinion that the notice lacks specificity about the development of the contractor budgets that the Omnibus Budget Reconciliation Act of 1987 was intended to elicit. The commenter also stated that most of the methodology described in the notice is general and could apply to any contractor budget year.

Response: The intent of the Congress requires that we provide sufficient description of the data, standards, and methodology used in determining the annual budgets. We believe the notice complies with that intent. The commenter is correct that some methodologies are retained from year to year. However, we always publish the most recent data. Additionally, legislative changes and budget priorities or constraints affect the standards.

Our notices are intended to include only the data, standards, and methodology to be used to establish budgets for fiscal intermediaries and carriers for a given fiscal year. Specific instructions on how to implement and monitor certain initiatives, for example, beneficiary inquiries, participating physician, physician payment reform, etc., are presented through program memoranda, manual instructions, BPRs, etc.

Comment: One commenter stated that HCFA has not provided adequate data, thus preventing the reader from reaching an informed opinion regarding the accuracy of the resulting budgets and unit costs.

Response: As we believe the Congress intended, our proposed notice provides a general description of the budget development process. Specific guidelines and data for the development of individual contractor budgets are found in the current year BPRs.

Comment: There was no mention of the Medicare Transaction System (MTS) in the proposed notice, as stated by another commenter.

Response: We believe that a discussion of MTS is not relevant to the development of the FY 1994 contractor budget.

Comment: One commenter stated that there were no "true budget negotiations" with the contractors in FY 1994.

Response: We disagree. The Regional Offices (ROs) held discussions with the intermediaries and carriers to develop their FY 1994 budgets. A constant effort was made by all ROs to work out any differences with the intermediaries and carriers. The resulting FY 1994 contractor budgets reflect the efforts made during these negotiations.

Comment: One commenter would like a policy to be established in situations where the budget appropriation is not passed by the Congress at the beginning of the fiscal year.

Response: If the budget appropriation is not passed at the beginning of a fiscal year, we inform all carriers and intermediaries through correspondence of the appropriate actions to take until the appropriation is passed. Therefore, we believe it is not necessary to describe these procedures in a notice whose only purpose is to provide a general description of the process to develop the budget.

Comment: Another commenter stated there is a lack of both description and assumptions for savings in every Medicare budget line item identified, including the savings identified by increasing goals for receiving Electric Means Claims (EMC) claims.

Response: The proposed notice is intended to be a general description of the budget process. Contractors receive more detailed information on savings descriptions and assumptions in the BPRs and during contract negotiations with ROs.

Comment: A commenter wanted to know whether the contract or the BPRs controls the contractor's ability to shift funds.

Response: Contractor budget flexibility refers to each contractor's authority to shift funds within its Notice of Budget Approval, once issued. The same rules apply in FY 1994 as in FY 1993. With the exception of the Payment Safeguards, Productivity Investments, and "Other" line items, contractors have complete flexibility with regard to the use of funds for "bottom line" functions/line items. As stated in the BPRs, "Funding governed by contract modifications *may not be shifted*." Existing HCFA policy ensures that adequate funds always will be available to fund Payment Safeguards, an area that is vitally important to the protection of HI and SMI Trust Fund dollars.

Comment: A final commenter stated that, in the Benefits Integrity line, staff increases could improve the quality of claims processed and help eliminate problems which could appear to be fraud and abuse.

Response: We agree that proper staffing for the initial processing of fraud complaints/claims is important to the successful operation of the fraud units. HCFA will continue to fund this area so as to respond to fraud complaints in a timely and accurate manner.

IV. Provisions of the Final Notice

Based on our review of the comments submitted, we are making no changes to the data, standards, and methodology as published in our notice on October 5, 1993. Therefore, we are adopting as final the notice as proposed.

In accordance with Executive Order 12866, this final notice was not reviewed by the Office of Management and Budget.

V. Information Collection Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Authority: Sections 1816(c)(1) and 1842(c)(1) of the Social Security Act (42 U.S.C. 1395h(c)(1) and 1395u(c)(1)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: April 12, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–17010 Filed 7–13–94; 8:45 am]

BILLING CODE 4120–01–P

[BPD–799–GN]

Medicare Program; Medicare Secondary Payer (MSP) Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice—

1. Describes the changes made to the MSP for the disabled provision by sections 13561(b) and 13561(e) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, hereafter referred to as OBRA '93; and

2. Provides guidance for employers and employer health plans so that they can provide to Medicare contractors and beneficiaries the information necessary to implement these changes.

Section 13561(b) changes the sunset date of the MSP for the disabled provision from October 1, 1995 to October 1, 1998.

Section 13561(e) modifies the MSP for the disabled provision to conform to the MSP for the working aged provision, so that for both groups, the MSP provision applies (and the group health plan is primary payer) only when coverage under the plan is based on "current employment status with an employer."

DATES: This notice is effective August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Eve Fisher, (410) 966–5641.

SUPPLEMENTARY INFORMATION: Under the amendments made by section 13561(e) of OBRA '93, Medicare is the secondary payer for health services provided to disabled individuals who have large group health plan coverage based on the individual's own or a family member's "current employment status with an employer". An individual has current employment status if the individual is currently employed (including as a self-employed person), is the employer, or is associated with the employer in a business relationship. Before these amendments, Medicare was the secondary payer not only for disabled individuals who had coverage based on their own or a family member's current employment status but also for individuals who had coverage on some other basis, but who were treated as employees by their employers.

Under present law, Medicare continues to be secondary payer for disabled individuals who have LGHP coverage on the basis of their own or a family member's current employment. Medicare is now primary payer for disabled individuals who are not working and who are not family members of workers.

The statutory changes made by subsections (b) and (e) of section 13561 can be put into effect without first issuing regulations because it is clear on the face of the statute what the Congress intended. Moreover, we have already had to apply these provisions because the Congress made the changes applicable to services furnished on or after August 10, 1993. This notice will help to ensure that all affected parties are aware of, and able to comply with, the new provisions.

Employers that wish to have an evaluation of the Medicare payment status of disabled individuals affected by this amendment must send beneficiary information to the Medicare carrier (not the intermediary) in the State where the employer's home office is located. The beneficiary information includes the name, sex, birth date, social security number, and health insurance claim (HIC) number. The affected individuals are the disabled beneficiaries who are currently covered under the employer's LGHP but whose coverage is not based on the beneficiary's or a family member's current employment status. The employer must give the Medicare carrier written certification that each identified beneficiary has LGHP coverage on a basis other than current employment status.

After it receives and evaluates the beneficiary information, the Medicare carrier will give the employer written notice of the names and HIC numbers of the beneficiaries for whom Medicare will be primary payer, and the effective date of the changed payment status.

Disabled beneficiaries who are identified by the Medicare carrier, and who have delayed enrollment in Medicare Part B because their LGHPs were primary payers under the previous statutory provision, will have the opportunity to enroll in Part B during a special enrollment period. That period will cover the 7 months beginning with the month in which the employer notifies the beneficiary that it is no longer primary payer, or the month following the last month for which the LGHP makes primary payment, whichever is later.

The premium increases that generally apply to delayed enrollment will be waived for all months, beginning with January 1987, during which the beneficiary was covered under the LGHP. Entitlement to Medicare Part B may be established as of the first day of the month of filing for Part B, or retroactive to the first month for which the LGHP no longer makes primary payment, provided the beneficiary agrees to pay all premiums due.

The employer must provide to each affected beneficiary a written notice that includes the following information:

- A statement advising the beneficiary that the plan will no longer make primary payment for services furnished on or after a specified date no earlier than August 10, 1993.
- A statement advising the beneficiary of the opportunity for immediate enrollment in Medicare Part B.
- A statement showing all the months during which the beneficiary was covered under the LGHP.

The employer must also—

- Provide to the beneficiary a copy of the notice from the Medicare carrier certifying that Medicare is now the primary payer; and
- Advise the beneficiary to take the employer notice and the carrier notice to the Social Security office when he or she goes to enroll in Part B.

The information collection and recordkeeping requirements contained in the guidance, above, have been sent to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980.

In accordance with Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 12, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–17011 Filed 7–13–94; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

National Practitioner Data Bank: Change in User Fee

The Health Resources and Services Administration (HRSA), Public Health Service (PHS), Department of Health and Human Services (DHHS), is announcing a change in the fee that is charged entities authorized to request information from the National Practitioner Data Bank (Data Bank).

The current user fees of $6.00 for queries submitted by diskette or telecommunications network and $10.00 for queries submitted on paper have been in effect since July 1, 1993. Those fees were announced in the **Federal Register** on June 1, 1993 (58 FR 31215). That announcement indicated that the fee charged for authorized queries for information concerning an individual physician, dentist, or other health care practitioner would be reviewed periodically and revised as necessary, based upon experience. Any further changes in the fee, and the effective date of the change, would be announced in the **Federal Register**.

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations should be consulted for the definition of terms used in this announcement. These regulations govern the reporting and disclosure of information concerning:

(1) Payments made for the benefit of physicians, dentists, and other health care practitioners as a result of medical malpractice actions or claims; and

(2) Certain adverse actions taken regarding the licenses, clinical privileges, and membership in professional societies of physicians and dentists.

Information in the Data Bank will be available to the following persons, entities, or their authorized agents:

(1) A hospital that requests information at the time a physician, dentist, or other health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital;

(2) A hospital that requests information concerning a physician, dentist, or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital;

(3) A physician, dentist, or other health care practitioner who requests information concerning himself or herself;

(4) Boards of Medical Examiners or other State licensing boards;

(5) Health care entities which have entered or may be entering employment or affiliation relationships with a physician, dentist, or other health care practitioner, or to which the physician, dentist, or other health care practitioner has applied for clinical privileges or appointment to the medical staff;

(6) An attorney, or other individual representing himself or herself, who has

Query method	
Paper	$10.00 (in
Electronic (Diskette)	$6.00 (irre
Electronic (telecom network)	$6.00 (if n
Electronic (telecom network)	$5.00 (*if p*

Dated: July 8, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–17073 Filed 7–13–94; 8:45 am]

BILLING CODE 4160–15–P

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations should be consulted for the definition of terms used in this announcement. These regulations govern the reporting and disclosure of information concerning:

(1) Payments made for the benefit of physicians, dentists, and other health care practitioners as a result of medical malpractice actions or claims; and

(2) Certain adverse actions taken regarding the licenses, clinical privileges, and membership in professional societies of physicians and dentists.

Information in the Data Bank will be available to the following persons, entities, or their authorized agents:

(1) A hospital that requests information at the time a physician, dentist, or other health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital;

(2) A hospital that requests information concerning a physician, dentist, or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital;

(3) A physician, dentist, or other health care practitioner who requests information concerning himself or herself;

(4) Boards of Medical Examiners or other State licensing boards;

(5) Health care entities which have entered or may be entering employment or affiliation relationships with a physician, dentist, or other health care practitioner, or to which the physician, dentist, or other health care practitioner has applied for clinical privileges or appointment to the medical staff;

(6) An attorney, or other individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim. However, this information will be disclosed only upon the submission of evidence that the hospital failed to request information from the Data Bank as required by § 60.10(a) of the regulations, and may be used solely with respect to litigation resulting from the action or claim against the hospital;

(7) A health care entity with respect to professional review activity;

(8) A Federal agency authorized to request information from the Data Bank. The agency must employ or otherwise engage under arrangement (e.g., such as a contract) the services of a physician, dentist, or other health care practitioner, or have the authority to sanction such practitioners covered by a Federal program and enter into a memorandum of understanding with DHHS regarding its participation in the Data Bank; or

(9) A person or entity requesting information in a form which does not permit the identification of any particular health care entity, physician, dentist, or other health care practitioner.

A reassessment of the full operating costs related to processing requests for disclosure of Data Bank information, as required by the DHHS Appropriations Act of 1994 (title II of Pub. L. 103–112, dated October 21, 1993), as well as the comparative costs of the various methods for filing and paying for queries, has resulted in a decision to offer a discount to users when they both query and pay via the telecommunications network as well as pay query fees by credit card or such other electronic transfer option as may be offered in the future. The options to query and pay user fees by these means facilitate the querying process and make it less costly to both users and the Data Bank than all other available options.

Accordingly, the Department is adjusting the user fee to provide a $1.00 discount per name per query submitted and paid via the method described above. This change will become effective July 14, 1994. All requests for information via the telecommunication network which are received on or after this date, and which are paid by credit card or such other electronic transfer method as may be available, will be subject to the new fee.

The criteria set forth in § 60.12(b) of the regulations and allowable costs as required by the Appropriations Act of 1994 were used in determining the amount of this new fee. The criteria include such cost factors as: (1) Electronic data processing time, equipment, materials, computer programmers and operators or other employees; and (2) preparation of reports—materials, photocopying, postage, and administrative personnel.

When a request is for information on one or more physician, dentist, or other health care practitioner, the appropriate total fee will be $6.00 (minus a $1.00 discount for submission and payment as described above; or, plus a $4.00 surcharge for queries filed on paper forms) times the number of individuals about whom information is being requested. For examples, see the table below.

The fee charged will be reviewed periodically, and revised as necessary, based upon experience. Any changes in the fee, and the effective date of the change, will be announced in the **Federal Register**.

Query method	Fee per name in query, by method of payment	Examples
Paper	$10.00 (irrespective of payment method)	10 names in query. 10×$10=$100.00.
Electronic (Diskette)	$6.00 (irrespective of payment method)	10 names in query. 10×$6=$60.00.
Electronic (telecom network)	$6.00 (if *not* paid electronically via credit card or other electronic means)	10 names in query. 10×$6=$60.00.
Electronic (telecom network)	$5.00 (*if paid electronically* via credit card or other electronic means)	10 names in query. 10×$5=$50.00.

Dated: July 8, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–17073 Filed 7–13–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Alcohol Abuse and Alcoholism, August 8–9, 1994, Flow Building Conference Room 12501 Washington Avenue, Rockville, MD 20852.

This meeting will be open to the public from 7:30 a.m. to 8 a.m. on August 8 for a report on recent administrative developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Diana Widner, Office of Scientific Affairs, NIAAA, at (301) 443–4375.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 8 a.m. on August 8 to adjournment on August 9 for the review, discussion, and evaluation of intramural research programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performance, and the productivity of individual staff scientists, the disclosure of which would constitute a clearly unwarranted the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and the roster of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, National Institute on Alcohol Abuse and Alcoholism, Willco Building, Suite 409, 6000 Executive Blvd., Rockville, MD 20892, Telephone: 301/443–4376.

Substantive program information may be obtained from: Theodore Colburn, Ph.D., Room 1B58, Building 31; Telephone (301) 402–1226.

Dated: July 7, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17083 Filed 7–13–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Biomedical Use of Novel Approaches for HIV–1 Vaccine Development.

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks an agreement with a pharmaceutical or biotechnology company to use a novel approach for HIV–1 vaccine development. This novel method for immunological focusing of protective effector responses uses site-directed mutagenesis to reduce the antigenicity of immunodominant epitopes for the purpose of preventing these epitopes from eliciting an immune response. One example of this is the introduction of N-linked carbohydrate. These immunodominant decoy epitopes (decotopes) function to focus the immune system away from responding to more conserved, immunorecessive and potentially more broadly protective domains. Any CRADA for the biomedical use of this technology will be considered.

ADDRESSES: Proposals and questions about this opportunity may be addressed to Dr. Raphe Kantor, Office of Technology Development, National Cancer Institute-Frederick Cancer Research and Development Center, PO Box B, Frederick, MD 21702–1201 Telephone (301) 846–5465, Facsimile (301) 846–6820.

SUPPLEMENTARY INFORMATION: To speed the research, development and commercialization of this technology, the National Cancer Institute at the Frederick Cancer Research and Development Center is seeking an agreement with a pharmaceutical or biotechnology company in accordance with the regulations governing the transfer of Government-developed agents for joint research, development, evaluation, and commercialization in the area of HIV–1 vaccine development.

The National Cancer Institute Laboratory of Tumor Cell Biology has been working on novel approaches to HIV–1 vaccine development. Epitope-specific neutralizing antibodies arise early in the course of HIV infection and are generally directed towards immunodominant determinants in the third hypervariable domain (V3) and gp41 transmembrane domain of the major envelope glycoprotein gp160. Since this domain is one of the more variable and functional immunodominant regions of gp120, variants can arise which escape the effects of neutralizing antibodies. Antibodies capable of neutralizing a broader range of isolates appear at a later time during the course of the infection. These more broadly neutralizing antibodies are not a simple collection of different V3-specific antibodies, but instead are composed mostly of antibodies that have a higher order of conformation and interfere with the binding of virus to CD4. To test whether this early response to V3 suppresses, delays or inhibits the subsequent response to other parts of the molecule, putative N-linked glycosylation sites were introduced into the V3 domain of the molecule in an effort to mask V3. Guinea pigs were first primed with live recombinant vaccinia virus expressing the N-linked glycosylation mutant, then boosted with purified recombinant protein. Neutralizing titers of antibodies were produced, a proportion of which were directed to other epitopes of gp120.

Background information including reprints and issued patents is available from the above-referenced address. Patent applications and pertinent information not yet publicly disclosed can be obtained under a Confidential Disclosure Agreement.

The CRADA aims include the rapid publication of research results and their timely commercialization. The CRADA partner will have an option to negotiate the terms of an exclusive or nonexclusive commercialization license to subject inventions arising under the CRADA.

The role of the Laboratory of Tumor Cell Biology, NCI–FCRDC, in this CRADA will include but not be limited to:

1. Providing recombinant reagent which has already been molecularly modified by said technology for further basic and clinical applications.

2. Continuing application of the technology to develop the most broadly protective immunogen by mapping the immunogenic hierarchy that is involved in decoying, attenuating, or suppressing the host immune response.

3. Using a library of primary HIV–1 isolates representing all major genotypes to test breath and magnitude of immune response.

4. Doing *in vitro* neutralization in primary cell-based assays (i.e. CD^+4 PBMCs, blood derived monocyte/macrophage, spleenic lymphocytes, liver macrophages and colonic epithelium).

5. Providing large-scale screening in *in vitro* neutralization using T-cell line based assays.

6. Developing alternative vaccine delivery systems.

7. Making available facilities and technology to express, analyze and purify recombinant HIV–1 gp160 protein, immunize ALACC-approved laboratory animals, raise and assay subsequent immunologic responses.

8. Performing animal safety and efficacy studies in HIV–1 chimp model.

9. Providing candidate immunogen for Phase I HIV–1 efficacy trial and immunotherapeutic trial.

10. Contracting, as needed, support services at NCI–FCRDC such as biomedical supercomputing, x-ray crystallography, and synthesis of monoclonal antibodies.

11. Publishing research results.

The role of the Collaborator will include but not be limited to:

1. Providing support for ongoing CRADA-related research in the development of vaccine candidates:

(a) Financial support to facilitate scientific goals,

(b) Technical or post doctoral level support for further design and *in vitro* and *in vivo* testing of subunit HIV–1 vaccine candidates,

(c) Financial and logistical support for clinical trials Phase I–III.

2. Using the proposed technology in the development of alternative delivery systems (i.e DNA, canary pox, BCG, polio, Salmonella, and attenuated vectors), and novel antigen presenting strategies.

3. Providing and implementing plans to independently secure future continuing supplies of candidate immunogens to assure continued preclinical and clinical development.

4. Providing plans and supporting clinical development leading to FDA approval of candidate immunogens.

5. Producing, packaging, marketing and distributing successful candidate immunogens.

6. Using the proposed technology for other novel biopharmaceutical applications.

7. Publishing research results.

Selection criteria for choosing the CRADA partner will include but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to the ongoing research and development.

2. The demonstration of adequate resources to perform the research, development and commercialization of this technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the Collaborator's proposal.

3. The ability to perform clinical testing or trials, and obtain IND, NDA and FDA approval for a new drug, medical device or apparatus, diagnostic or therapeutic test, or treatment modality.

4. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.

5. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.

The role of the Collaborator will include but not be limited to:

1. Providing support for ongoing CRADA-related research in the development of vaccine candidates:

(a) Financial support to facilitate scientific goals,

(b) Technical or post doctoral level support for further design and *in vitro* and *in vivo* testing of subunit HIV–1 vaccine candidates,

(c) Financial and logistical support for clinical trials Phase I–III.

2. Using the proposed technology in the development of alternative delivery systems (i.e DNA, canary pox, BCG, polio, Salmonella, and attenuated vectors), and novel antigen presenting strategies.

3. Providing and implementing plans to independently secure future continuing supplies of candidate immunogens to assure continued preclinical and clinical development.

4. Providing plans and supporting clinical development leading to FDA approval of candidate immunogens.

5. Producing, packaging, marketing and distributing successful candidate immunogens.

6. Using the proposed technology for other novel biopharmaceutical applications.

7. Publishing research results.

Selection criteria for choosing the CRADA partner will include but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to the ongoing research and development.

2. The demonstration of adequate resources to perform the research, development and commercialization of this technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the Collaborator's proposal.

3. The ability to perform clinical testing or trials, and obtain IND, NDA and FDA approval for a new drug, medical device or apparatus, diagnostic or therapeutic test, or treatment modality.

4. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.

5. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.

6. The level of financial support the Collaborator will provide for CRADA-related Government activities.

7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) the grant of a research license to the Government when the CRADA collaborator's employee is the sole inventor, or (2) the grant of an option to negotiate for an exclusive or nonexclusive license to the Collaborator when the Government employee is the sole inventor.

The following is a listing of Dr. Robert Garrity's patent portfolio for this technology:

Application Title: "Immunological Focusing of Protective Effector Responses Using Site-Directed Mutagenesis or Chemical modification to Alter a Specific Protein or Peptide Immunogen for Use in Plant, Animal and Human Vaccines and Immunotherapies."

Inventors: Dr. Robert R. Garrity, Dr. Peter L. Nara, Dr. Jaap Goudsmit.

Dated: June 25, 1994.

Barbara M. McGarey, J.D.,

Deputy Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 94–17081 Filed 7–13–94; 8:45 am]

BILLING CODE 4140–01–P

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Biomedical Use of Novel Approaches for Lentivirus Vaccine Development

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks an agreement with a pharmaceutical or biotechnology company to use a novel approach for Lentivirus vaccine development. This novel method for immunological focusing of protective effector responses uses site-directed mutagenesis to reduce the antigenicity of immunodominant epitopes for the purpose of preventing these epitopes from eliciting an immune response. One example of this is the introduction of N-linked carbohydrate. These immunodominant decoy epitopes (decotopes) function to focus the immune system away from responding to more conserved, immunorecessive and potentially more broadly protective domains. Any CRADA for the biomedical use of this technology will be considered.

ADDRESSES: Proposals and questions about this opportunity may be addressed to Dr. Raphe Kantor, Office of Technology Development, National Cancer Institute-Frederick Cancer Research and Development Center, P.O. Box B, Frederick, MD 21702–1201 Telephone (301) 846–5465, Facsimile (301) 846–6820.

SUPPLEMENTARY INFORMATION: To speed the research, development and commercialization of this technology, the National Cancer Institute at the Frederick Cancer Research and Development Center is seeking an agreement with a pharmaceutical or biotechnology company in accordance with the regulations governing the transfer of Government-developed agents for joint research, development, evaluation, and commercialization in the area of Lentivirus vaccine development.

The National Cancer Institute Laboratory of Tumor Cell Biology has been working on novel approaches to HIV–1 vaccine development. Epitope-specific neutralizing antibodies arise early in the course of HIV infection and are generally directed towards immunodominant determinants in the third hypervariable domain (V3) and gp41 transmembrane domain of the major envelope glycoprotein gp160. Since this domain is one of the more variable and functional immunodominant regions of gp120, variants can arise which escape the effects of neutralizing antibodies. Antibodies capable of neutralizing a broader range of isolates appear at a later time during the course of the infection. These more broadly neutralizing antibodies are not a simple collection of different V3-specific antibodies, but instead are composed mostly of antibodies that have a higher order of conformation and interfere with the binding of virus to CD4. To test whether this early response to V3 suppresses, delays or inhibits the subsequent response to other parts of the molecule, putative N-linked glycosylation sites were introduced into the V3 domain of the molecule in an effort to mask V3. Guinea pigs were first

primed with live recombinant vaccinia virus expressing the N-linked glycosylation mutant, then boosted with purified recombinant protein. Neutralizing titers of antibodies were produced, a proportion of which were directed to other epitopes of gp120.

Background information including reprints and issued patents is available from the above-referenced address. Patent applications and pertinent information not yet publicly disclosed can be obtained under a Confidential Disclosure Agreement.

The CRADA aims include the rapid publication of research results and their timely commercialization. The CRADA partner will have an option to negotiate the terms of an exclusive or nonexclusive commercialization license to subject inventions arising under the CRADA.

The role of the Laboratory of Tumor Cell Biology, NCI–FCRDC, in this CRADA will include but not be limited to:

1. Providing recombinant reagent which has already been molecularly modified by said technology for further basic and clinical applications.

2. Providing technology to identify immunogenic domains that are involved in decoying or suppressing the response away from more broadly protective epitopes as demonstrated for HIV–1.

3. Providing expertise in vaccine design, vaccinia-based delivery, in vitro and in vivo assessment of immunogenic products and responses and development of relevant animal models.

4. Developing alternative vaccine delivery systems.

5. Contracting, as needed, NCI-FCRDC suppport services such as biomedical supercomputing, x-ray crystallography, and synthesis of monoclonal antibodies.

6. Publishing research results.

The role of the Collaborator will include but not be limited to:

1. Providing technical and scientific support for further design and *in vitro* and *in vivo* testing of candidate immunogens for Equine Infectious Anemia, Visna Maedi, Feline Immunodeficiency Virus, Simian Immundeficiency Virus, Bovine Immunodeficiency Virus, and Caprine Arthritis Encephalitis Virus.

2. Providing support for ongoing CRADA-related research in the development of vaccine candidates:

(a) Financial support to facilitate scientific goals,

(b) Financial and logistic support for development, efficacy testing of animal models of natural lentiviral infections.

(c) Financial and logistical support for animal clinical trials Phase I-III.

3. Using the proposed technology in the development of alternative delivery systems (i.e DNA, canary pox, BCG, polio, Salmonella, and attenuated vectors), and novel antigen presenting strategies.

4. Using the proposed technology for other novel animal biopharmaceutical applications.

5. Publishing research results.

Selection criteria for choosing the CRADA partner will include but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to the ongoing research and development.

2. The demonstration of adequate resources to perform the research, development and commercialization of this technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the Collaborator's proposal.

3. The ability to perform clinical testing or trials, and obtain IND, NDA and FDA approval for a new drug, medical device or apparatus, diagnostic or therapeutic test, or treatment modality.

4. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.

5. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.

6. The level of financial support the Collaborator will provide for CRADA-related Government activities.

7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) the grant of a research license to the Government when the CRADA collaborator's employee is the sole inventor, or (2) the grant of an option to negotiate for an exclusive or nonexclusive license to the Collaborator when the Government employee is the sole inventor.

The following is a listing of Dr. Robert Garrity's patent portfolio for this technology:

Application Title: "Immunological Focusing of Protective Effector Responses Using Site-Directed Mutagenesis or Chemical modification to Alter a Specific Protein or Peptide Immunogen for Use in Plant, Animal and Human Vaccines and Immunotherapies."

Inventors: Dr. Robert R. Garrity, Dr. Peter L. Nara, Dr. Jaap Goudsmit.

Dated: June 25, 1994.

Barbara M. McGarey, J.D.,

Deputy Director, Office of Technology Transfer National Institutes of Health.

[FR Doc. 94–17082 Filed 7–13–94; 8:45 am]

BILLING CODE 4140–01–P

National Institute on Deafness and Other Communication Disorders; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: July 14, 1994.

Time: 12 noon to adjournment.

Place: 6120 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Marilyn Semmes, Ph.D., Acting Chief, Scientific Review Branch, DEA NIDCD, 6120 Executive Boulevard, Suite 400C, Bethesda, MD 20892, 301/496–8683.

Purpose/Agenda: To review and evaluate a grant application.

The meeting will be closed in accordance with the provisions set forth in Section 552b(c)(4) and 553b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program no. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: July 7, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17084 Filed 7–13–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Cardiovascular Consequences of Sleep Apnea.

Date: July 26–27, 1994.

Time: 7:00 p.m.

Place: Holiday Inn Bethesda, Bethesda, Maryland.

Contact Person: Anthony M. Coelho, Jr., Ph.D., Scientific Review Administrator, 5333 Westbard Avenue, Room 648, Bethesda, Maryland 20892, (301) 594–7485.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 7, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17085 Filed 7–13–94; 8:45 am]

BILLING CODE 4140–01–M

Office of Inspector General

Program Exclusions: June 1994.

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of June 1994, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to

National Heart, Lung, and Blood Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Cardiovascular Consequences of Sleep Apnea.
Date: July 26–27, 1994.
Time: 7:00 p.m.
Place: Holiday Inn Bethesda, Bethesda, Maryland.
Contact Person: Anthony M. Coelho, Jr., Ph.D., Scientific Review Administrator, 5333 Westbard Avenue, Room 648, Bethesda, Maryland 20892, (301) 594–7485.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 7, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17085 Filed 7–13–94; 8:45 am]

BILLING CODE 4140–01–M

Office of Inspector General

Program Exclusions: June 1994.

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of June 1994, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject city, state	Effective date
Program-Related Convictions	
Abrahamsen, Svend E., Saddle River, NJ	07/17/94
Bartlow, Brian, Toms River, NJ	07/17/94
Benelli, Theresa A., Mesa, AZ	07/05/94
Berger, Valery A., Brooklyn, NY	06/30/94
Boateng, Joshua Yaw, Wyncote, PA	07/17/94
Bristol, Marcel C., Brooklyn, NY	06/30/94
Cadamatre, John, Gray Court, SC	06/30/94
Corcoran, James, Louisville, KY	06/30/94
East, Anthony O., Brooklyn, NY	06/30/94
Erickson, Bruce L., Great Falls, MT	07/18/94
Escalante, Gilberto, Miami, FL	06/30/94
Gandy, Paul S., Littleton, CO	06/30/94
Goldstein, Robert Sanford, New Rochelle, NY	07/17/94
Great Falls Eye Surgery Center, Great Falls, MT	07/18/94
Henriquez, Jason C., Flushing, NY	06/30/94
Khalil, Rosaly Saba, Palisades Park, NY	06/30/94
Khan, Javid, Briarwood, NY	06/30/94
Lo, Lancaster, Flushing, NY	06/30/94
Majid, Charlene, Queens, NY	06/30/94
Majid, Muhammad A., Otisville, NY	06/30/94
Provorse, Deborah, Great Valley, NY	07/17/94
Read, Lynn Ray, Lovelady, TX	06/30/94
Ross, Gilbert, Great Neck, NY	06/30/94
Sadaphal, Audrey, N. Valley Stream, NY	06/30/94
Schaffer, Marvin, New York, NY	06/30/94
Stress X-Ray, Inc., Otisville, NY	06/30/94
Turner, Joseph, Baltimore, MD	06/30/94
Williams, Deborah, Bergenfield, NJ	06/30/94
Yobo, Charles A., Farmingdale, NY	07/17/94
Patient Abuse/Neglect Convictions	
Alhanati, Craig Kevin, Oxnard, CA	07/17/94
Arakaky, Franz Abel, Arlington, VA	06/30/94
Budnick, Jean, Ellicott City, MD	06/30/94
Caldwell, Curtlan, Elba, AL	06/30/94
Davis, Sally, Sardis, MS	06/30/94
Douglas, Janet Eve, Debary, FL	06/30/94
Fordham, Paul A., Kearns, UT	06/30/94
Haywood, Robert, Mound Bayou, MS	06/30/94
Johnson, Marion Leon, Jr., Bryan, TX	07/17/94
Jones, Teledo, Bossier City, LA	06/30/94
Larson, Mildred L., Stanton, IA	07/05/94
Lee, Gloria W., Archer, FL	06/30/94
Martin, Peggy Diane, Northport, AL	06/30/94
Moore, Gordon D., Fitchburg, MA	06/30/94
Morton, Denise B., Baltimore, MD	06/30/94
Pearson, Heather D., Conway, AR	07/17/94
Philpott, Joel, Dunn, NC	06/30/94
Rhim, Carol Anne, Lockport, NY	06/30/94
Richards, Robert Lorenzo, Las Vegas, NV	07/05/94
Salinas, Marco A., Perryville, AZ	07/05/94
Solarez, Adam A., Douglas, AZ	07/05/94
Thomas, Lowery M., Baker, LA	07/17/94
Wilson, Tonya, Dunn, NC	06/30/94
Wirag, Pamela, Pelham, NY	06/30/94
Zimmerman, Selma, Carlisle, AR	06/30/94
Conviction for Health Care Fraud	
Armijo, Jose B., Albuquerque, NM	07/17/94
Shead, Annette Townley, St. Louis, MO	07/17/94
Controlled Substance Convictions	
Derosa, Michael F., Morgantown, WV	06/30/94
Mercaldo, Antonio F., Lopez, PA	06/30/94
Njo, Soen Hien, Maple Glen, PA	06/30/94
Peters, Vaughn, Pittsburgh, PA	06/30/94
License Revocation/Suspension	
Berges, Benjamin, Freeport, NY	07/17/94
Davis, Daniel, Greenfield, MA	06/30/94
Dell, Stephen O., Durham, NH	06/30/94
Great Neck Dental, P.C., Great Neck, NY	06/30/94
Griff, Leonard Clark, Philadelphia, PA	06/30/94
Harkins, Frances Anne, Newport News, VA	06/30/94
Krugman, Lawrence G., San Luis Obispo, CA	07/05/94
Lee, Nora L., Brownsville, MN	07/05/94
Prager, Harris J., Glen Burnie, MD	06/30/94
Rogan-Wilson, Laura, Gibsonia, PA	06/30/94
Shaiken, Eugene, San Luis Obispo, CA	07/05/94
Siggers, Richard L., La Mirada, CA	07/05/94
Solomon, Neil, Towson, MD	06/30/94
Vogler, Robert L., Lakewood, CA	07/05/94
Entities Owned/Controlled by Convicted	
Home Medical Equipment Company, Shepherdsville, KY	06/30/94
Montgomery County Taxi, Gaithersburg, MD	06/30/94
The Medicine Shoppe, Colorado Springs, CO	06/30/94
The Medicine Shoppe, Colorado Springs, CO	06/30/94

Subject city, state	Effective date
Default on Heal Loan	
Bailey, David W., Chicago, IL	07/05/94
Beaver, Richard D., Downieville, CA	07/05/94
Claire, James F., Voorhees, NJ	07/17/97
Clark, Russell A., Everett, WA	07/05/94
Cresswell, Diane H., Whittier, CA	07/17/94
Crooks, Joan M., Sedona, AZ	07/05/94
Dixson, David R., Jr., Barnwell, SC	07/17/94
Fiorella-Holder, Michelle Ann, Louisville, KY	07/17/94
Fulton, John R., Oceanside, CA	07/05/94
Graham-Nixon, Denise M., Jackson, LA	06/30/94
Green, Kenneth W., Jr., Dallas, TX	06/30/94
Haileselassie, Hapte, Riyadh, Saudi Arabia	06/30/94
Harms, Eugene G., Ada, OK	07/17/94
Hicks, Wesley L. Jr., Angola, NY	07/17/94
Holaday, Howard R., Jackson, MS	07/17/94
Hoskins-Akale, Denise S., Cottage Grove, MN	07/05/94
Johnson, Anthony, Detroit, MI	07/17/94
Kimbrough, Robert L., Lansing, MI	07/17/94
Lindsey, Scott B., Akron, OH	07/17/94
Millar, Mark A., Mesa, AZ	07/05/94
Mistretta, John P., Hermitage, PA	06/30/94
Mobley, Derrick K., Philadelphia, PA	06/30/94
Moseley, Clarence D., Houston, TX	06/30/94
Moussaed, Emile K., Ypsilanti, MI	07/17/94
Nielsen, David D., Yaound, Cameroun	06/30/94
Ohrdorf, Ronald T., Colorado Springs, CO	06/30/94
Pallas, James M., Lahabra, CA	07/05/94
Pettaway, Reginald, Washington DC	06/30/94
Pham, Greg N., Fountain Valley, CA	07/05/94
Ras, Russell T., Countryside, IL	07/05/94
Sandburg, Donald Douglas, Barrington, IL	07/17/94
Sanderson, Scott F., Stoughton, WI	07/17/94
Sengstacken, Mark A., Marshall, MO	07/05/94
Shaver, Dennis D., Kerrville, TX	06/30/94
Siggers, Ralph A., Berea, OH	07/05/94
Smalley, Daniel R., Wellston, MI	07/17/94
Sprecher, Kyle O., Webster, TX	06/30/94
Stephenson, David W., Newburgh, IN	07/05/94
Stuart, William E. Jr., Chicago, IL	07/05/94
Triden, Thomas Arne, Maple Grove, MN	07/05/94
Turner, Demi M., Newark, NJ	07/17/94
Westerfield, Michael J., Conroe, TX	06/30/94

Dated: July 7, 1994.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Investigations.

[FR Doc. 94-17110 Filed 7-13-94; 8:45 am]

BILLING CODE 4150-04-P

Social Security Administration

1994 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994 Advisory Council on Social Security (the Council).

DATES: July 29, 1994, 9:00 a.m. to 4:00 p.m.

ADDRESSES: Embassy Row Hotel, 2015 Massachusetts Avenue, NW, Washington, DC 20036, (202) 939-4123.

FOR FURTHER INFORMATION CONTACT: Dan Wartonick, 1994 Advisory Council on Social Security, Room 639H, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, (202) 205-4861.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare program and impacts on the Medicaid program, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council met previously on June 24-25, 1994. A notice of that meeting was published in the **Federal Register** on June 13, 1994 (59 FR 30367).

II. Agenda

The Council will discuss:

- Matters relating to technical panels of experts; and
- Regional hearings around the country.

The agenda items are subject to change as priorities dictate.

The meeting is open to the public to the extent that space is available. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance.)

Dated: July 11, 1994.

Dan Wartonick,

Acting Executive Director.

[FR Doc. 94-17226 Filed 7-13-94; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-94-3683; FR-3560-N-04]

Announcement of Funding Awards for Fair Housing Initiatives Program—Fiscal Year 1993

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of FY 1993 funding awards made under the Fair Housing Initiatives Program (FHIP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, Room 5234, 451 Seventh Street, S.W., Washington, D.C. 20410-2000. Telephone number (202) 708-0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708-3216. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination

FY 93

Applicant name and address

Massachusetts Commission Against Discriminat
burton Place, Room 601, Boston, MA 02108.
Massachusetts Commission Against Discriminat
burton Place, Room 601, Boston, MA 02108.
Illinois Department of Human Rights, 100 W. Ra
Suite 10-100, Chicago, IL 60601.
City of Dallas, 1500 Marilla Street, Room 1BN,
75201.
State of Colorado-Division of Civil Rights, 1560 B
1050, Denver, CO 80202-5143.
King County Office of Civil Rights and Compliance
enue, E224 King County Courthouse, Seattle, W

Education a

Massachusetts Housing Finance Agency, 50 Milk
MA 02109.
Research Foundation of the State, University of
Lee Entrance, Suite 211, Amherst, NY 14228.
National Fair Housing Alliance, 927 15th Street, N
Washington, DC 20005.
National Association of Protection and Advocacy
Second Street, NE., Suite 211, Washington, DC
Fair Housing Council, 835 West Jefferson Stree
Louisville, KY 40202.
Pacific Nonprofit Training Center, 4039 North Ove
Portland, OR 97227.

Education and Outre

Boston Fair Housing Commission, City Hall, One C
Room 966, Boston, MA 02201.
Housing Help, Inc., 91-101 Broadway, Suite 6, G
11740.

Reform Act of 1989, this document notifies the public of FY 1993 funding awards made under the Fair Housing Initiatives Program (FHIP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, Room 5234, 451 Seventh Street, S.W., Washington, D.C. 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–3216. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR Part 125.

The FHIP has three funding categories: the Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative.

In a NOFA published in the **Federal Register** on December 22, 1993 (58 FR 68000), the Department announced the availability of $8.8 million in funds for FHIP. On February 25, 1994 (59 FR 9235), HUD published a notice NOFA that made an additional $800,000 available, for a total of $9.6 million in FY 1993 funding.

The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows below.

Dated: June 23, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

FY 93 Fair Housing Initiatives Program Awards

Applicant name and address	Contact name and phone number	Region of project	Single or multi-year funding	Amount requested (amount for only first year reflected for multi-year projects)
Administrative Enforcement Initiative				
Massachusetts Commission Against Discrimination, One Ashburton Place, Room 601, Boston, MA 02108.	Michael Duffy, 617–727–3990 ...	1	S	$160,500
Massachusetts Commission Against Discrimination, One Ashburton Place, Room 601, Boston, MA 02108.	Michael Duffy, 617–727–3990 ...	1	S	[1] 100,546.46
Illinois Department of Human Rights, 100 W. Randolph Street, Suite 10–100, Chicago, IL 60601.	Yoon Lee, 312–814–6239	5	S	130,540
City of Dallas, 1500 Marilla Street, Room 1BN, Dallas, Texas 75201.	Rosie Norris, 214–670–5677	6	S	141,497
State of Colorado-Division of Civil Rights, 1560 Broadway, Suite 1050, Denver, CO 80202–5143.	Robert Wintersmith, 303–894–7822, ext 327.	8	S	259,803
King County Office of Civil Rights and Compliance, 516 Third Avenue, E224 King County Courthouse, Seattle, WA 98104.	Manfert Lee, 206–296–7592	10	S	207,113.54
Education and Outreach Initiative—National Program Component				
Massachusetts Housing Finance Agency, 50 Milk Street, Boston, MA 02109.	Roger Macleod, 617–451–3480	1	S	196,280
Research Foundation of the State, University of New York, 520 Lee Entrance, Suite 211, Amherst, NY 14228.	Kim Pachetti, 716–645–3472	2	S	199,896
National Fair Housing Alliance, 927 15th Street, NW., Suite 600, Washington, DC 20005.	Shanna Smith, 202–898–1661 ..	3	S	199,554
National Association of Protection and Advocacy Systems, 900 Second Street, NE., Suite 211, Washington, DC 20002.	Curtis L. Deckeer, 202–408–9514.	3	S	126,028
Fair Housing Council, 835 West Jefferson Street, Room 108, Louisville, KY 40202.	Galen Martin, 502–583–3247	4	S	[2] 78,252
Pacific Nonprofit Training Center, 4039 North Overlook Terrace, Portland, OR 97227.	Vikki Rennick, 503–287–6403 ...	10	S	199,990
Education and Outreach Initiative—Regional/Local/Community-Based Component				
Boston Fair Housing Commission, City Hall, One City Hall Place, Room 966, Boston, MA 02201.	Victoria Williams, 617–635–4408.	1	S	50,000
Housing Help, Inc., 91–101 Broadway, Suite 6, Greenlawn, NY 11740.	Doug Aloise, 516–754–0373	2	S	50,000

FY 93 FAIR HOUSING INITIATIVES PROGRAM AWARDS—Continued

Applicant name and address	Contact name and phone number	Region of project area	Single or multi-year funding	Amount requested (amount for only first year reflected for multi-year projects)
Prince William Co. Human Rights Commission, 3421 Commission Court, Lake Ridge, VA 22192.	Evelyn Ellington, 703–792–4680	3	S	56,662
Durham Affordable Housing Coalition, 331 West Main Street, Suite 408, Durham, NC 27701.	Peter Skillern 919–683–1185	4	S	94,494
West Jackson Community Development Corporation, 1060 John R. Lynch Street, Post Office Box 10325, Jackson, MS 39289–0325.	Howard Boutte, Jr., 601–352–5993.	4	S	89,060
City of Southfield, 26000 Evergreen Road, Southfield, MI 48076 .	Ruth Elias, 810–354–4400	5	S	[3]42,138
Toledo Community Housing Resource Board, 2116 Madison Avenue, Toledo, OH 43624–1131.	Lisa Rice-Coleman, 419–243–6163.	5	S	115,112
Austin Tenants' Council, Inc., 1619 East First Street, Austin, TX 78702.	Katherine Stark, 512–474–0197	6	S	52,000
Equal Housing Opportunities Council, 7317 Cornell, St. Louis, MO 63130.	John Farley, 618–692–1960	7	S	112,938
Council for Concerned Citizens, 1601 2nd Avenue North, 2nd Floor, Great Falls, MT 59401.	Toni Austad, 406–727–9136	8	S	116,200
Southern Arizona Housing Center, Post Office Box 2441, Tucson, AZ 85702–2441.	Charlotte Wade, 602–798–1568	9	S	98,803
City of Tacoma Human Rights Department, Room 808, 747 Market Street Tacoma, WA 98402–3779.	Allen Correll, 206–591–5151	10	S	122,593
Fair Housing Organizations Initiative—Continuing Development Component				
Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, 294 Washington Street, Boston, MA 02108.	Ozell Hudson, 617–482–1145 ...	1	S	209,386
Civic League of Greater New Brunswick, 47–49 Throop Avenue, New Brunswick, NJ 08901.	C. Roy Epps, 908–247–9066	2	S	99,708
Fair Housing Partnership of Greater Pittsburgh, Inc., Bishop Boyle Center 120 E. Ninth Avenue, Homestead, PA 15120.	Kathy Fletcher, 412–361–8555 .	3	S	143,968
Fair Housing Council, 835 W. Jefferson Street, Room 108, Louisville, KY 40202.	Galen Martin, 502–583–3247	4	S	121,773
Chicago Lawyers' Committee for Civil Rights Under Law, Inc., 185 North Wabash Avenue, Suite 2110, Chicago, IL 60601–3607.	Derrick Ford, 312–630–9744	5	S	88,666
Arkansas Delta Housing Corporation, Post Office Box 410, 1343 South Washington, Forrest City, AR 72335.	Clarence Wright, 501–633–0121	6	S	[4]93,797
Legal Aid of Western Missouri, 1005 Grand, Suite 600, Kansas City, MO 64106.	Richard F. Halliburton, 816–474–6750.	7	S	170,180
Billings Fair Housing Alliance, Inc., 208 North 29th Street, Suite 228, Billings, MT 59102.	Howard McCarthy, 406–252–9324.	8	S	30,000
Mid Peninsula Citizens for Fair Housing, 457 Kingsley Avenue, Palo Alto, CA 94301.	Beverly Lawrence, 415–327–1718.	9	S	42,522
Fair Housing Organizations Initiative—Establishing New Organizations Component				
Metro Fair Housing Services, Inc., 1083 Austin Avenue, NE., Post Office Box 5467, Atlanta, GA 31107.	Robert M. Shifalo, 404–221–0874.	4	S	251,271
Arkansas Fair Housing Council, c/o Dan Pless, 103 W. Capitol, Suite 1115, Little Rock, AR 72201.	Dan Pless, 501–376–7913	6	S	200,000
Arkansas Fair Housing Organization, 523 W. 15th Street, Little Rock, AR 72202.	Johnnie Pugh, 501–376–7151 ...	6	M	250,209
Family Housing Advisory Services, Inc., 2416 Lake Street, Omaha, NE 68111.	Deborah Brockman, 402–444–7921.	7	M	200,000
Metro St. Louis—Equal Housing Opportunity Council, 7317 Cornell, St. Louis, MO 63130.	John E. Farley, 618–692–2680 .	7	M	215,743
Council for Concerned Citizens, 601 2nd Avenue North, 2nd Floor, Great Falls, MT 59401.	Toni Austad, 406–727–9136	8	M	230,099
Idaho Legal Aid Services, Inc., 310 North 5th Street, Boise, ID 83702.	Kelly Miller, 208–336–8980	10	M	216,178
Northwest Fair Housing Alliance, 2124 East Fifth Street, Spokane, WA 99202.	Florence Brassier, 804–367–8543.	10	M	[5]36,500
Private Enforcement Initiative				
Connecticut Housing Coalition, Inc., 30 Jordan Lane, Wethersfield, CT 06109.	Jeffrey Freiser, 203–563–2943 ..	1	S	285,177
ACORN New England Fair Housing Project, 1024 Elysian Field, New Orleans, LA 70117.	Elena Hanggi, 501–376–2528 ...	1	M	95.000

FY 93 FAIR H

Applicant name and address

Lawyers' Committee for Civil Rights Under Law of
Association, 294 Washington Street, Boston, MA
Long Island Housing Services, Inc., 1747 Vete
Highway, Suite 42A, Islandia, NY 11722.
Westchester Residential Opportunities Inc., 470 M
enue, Suite 410, White Plains, NY 10605.
Fair Housing Council of Northern New Jersey, 1
Hackensack, NJ 07631.
Housing Opportunities Made Equal, Inc., 700 Ma
falo, NY 14202.
Legal Aid Society of New York, 15 Park Row, 2
York, NY 10038.
New York Lawyers for the Public Interest, 30 We
9th Floor, New York, NY 10010.
The Fair Housing Council of Suburban Philadelphi
Street, Suite 404, Upper Darby, PA 19082.
Tenants' Action Group of Philadelphia, 21 Sou
12th Floor, Philadelphia, PA 19107.
Greater Birmingham Fair Housing Center, 200
North, Suite 529, Birmingham, AL 35203.
ACORN Peachtree Coalition for Fairness in Hou
sian Field, New Orleans, LA 70117.
Metropolitan Milwaukee Fair Housing Council, 6
Street, Suite 200, Milwaukee, WI 53202.
HOPE Fair Housing Center, 154 South Main Stree
nois 60148.
Access Living of Metropolitan Chicago, 310 Sout
201, Chicago, IL 60607.
ACORN Midwest Fair Housing Consortium, 1024
New Orleans, LA 70117.
ACORN Southern Fairness in Housing Coalition
Field, New Orleans, LA 70117.
ACORN Missouri Consortium for Fair Housing,
Field, New Orleans, LA 70117.
Council for Concerned Citizens, Inc., 601 2nd Ave
Floor, Great Falls, MT 59401.
Marin Housing Center Fair Housing Program,
Street, Suite A–1, San Rafael, CA 94901.
Fair Housing Congress of Southern California,
Blvd., Suite 635, Los Angeles, CA 90010.
Project Sentinel, 430 Sherman Avenue, Suite 308
94306.
ACORN Fair Housing for Washington Coalition,
Field, New Orleans, LA 70117.

[1] Approved for $429,197 if additional funds are a
[2] Approved for $139,283 if additional funds are a
[3] Approved for $130,000 if additional funds are a
[4] Approved for $113,915 if additional funds are a
[5] Approved for $236,496 if additional funds are a
[6] Approved for $287,836 if additional funds are a

[FR Doc. 94–17028 Filed 7–13–94; 8:45 am]
BILLING CODE 4210–28–P

FY 93 FAIR HOUSING INITIATIVES PROGRAM AWARDS—Continued

Applicant name and address	Contact name and phone number	Region of project area	Single or multi-year funding	Amount requested (amount for only first year reflected for multi-year projects)
Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, 294 Washington Street, Boston, MA 02108.	Ozell Hudson, 617–482–1145 ...	1	S	379,315
Long Island Housing Services, Inc., 1747 Veterans Memorial Highway, Suite 42A, Islandia, NY 11722.	David Berenbaum, 516–582–2727.	2	M	286,416
Westchester Residential Opportunities Inc., 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605.	Miriam Buhl 914–428–4507	2	M	150,839
Fair Housing Council of Northern New Jersey, 131 Main Street, Hackensack, NJ 07631.	Lee Porter, 201–489–3552	2	S	[6]205,012.40
Housing Opportunities Made Equal, Inc., 700 Main Street, Buffalo, NY 14202.	Scott Gehl, 716–854–1400	2	M	93,634
Legal Aid Society of New York, 15 Park Row, 22nd Floor, New York, NY 10038.	Archibald R. Murray, 212–577–3313.	2	S	92,500
New York Lawyers for the Public Interest, 30 West 21st Street, 9th Floor, New York, NY 10010.	Joan Vermeulen, 212–727–2270	2	M	113,153.50
The Fair Housing Council of Suburban Philadelphia, 2 South 69th Street, Suite 404, Upper Darby, PA 19082.	James Berry, 610–352–4075	3	S	198,612.60
Tenants' Action Group of Philadelphia, 21 South 12th Street, 12th Floor, Philadelphia, PA 19107.	Elizabeth Hersh, 215–575–0700	3	S	165,000
Greater Birmingham Fair Housing Center, 2000 1st Avenue North, Suite 529, Birmingham, AL 35203.	Bobby Wilson, 205–324–0111 ...	4	S	166,094
ACORN Peachtree Coalition for Fairness in Housing, 1024 Elysian Field, New Orleans, LA 70117.	Elena Hanggi, 501–376–2528 ...	4	M	95,000
Metropolitan Milwaukee Fair Housing Council, 600 East Mason Street, Suite 200, Milwaukee, WI 53202.	William Tisdale, 414–278–1240	5	S	305,511
HOPE Fair Housing Center, 154 South Main Street, Lombard, Illinois 60148.	Bernard Kleina, 708–495–4846 .	5	S	97,545
Access Living of Metropolitan Chicago, 310 South Peoria, Suite 201, Chicago, IL 60607.	James Charlton, 312–226–5900	5	M	199,558
ACORN Midwest Fair Housing Consortium, 1024 Elysian Field, New Orleans, LA 70117.	Elena Hanggi, 501–376–2528 ...	5	M	95,000
ACORN Southern Fairness in Housing Coalition, 1024 Elysian Field, New Orleans, LA 70117.	Elena Hanggi, 501–376–2528 ...	6	M	95,000
ACORN Missouri Consortium for Fair Housing, 1024 Elysian Field, New Orleans, LA 70117.	Elena Hanggi, 501–376–2528 ...	7	M	95,000
Council for Concerned Citizens, Inc., 601 2nd Avenue North, 2nd Floor, Great Falls, MT 59401.	Toni Austad, 406–727–9136	8	M	228,840
Marin Housing Center Fair Housing Program, 88 Belvedere Street, Suite A–1, San Rafael, CA 94901.	Nancy Kenyon, 415–457–5025 .	9	S	105,233
Fair Housing Congress of Southern California, 3731 Wilshire Blvd., Suite 635, Los Angeles, CA 90010.	Michelle White, 213–365–7184 .	9	M	120,000
Project Sentinel, 430 Sherman Avenue, Suite 308, Palo Alto, CA 94306.	Ann Marquart, 415–321–6291 ...	9	M	209,000
ACORN Fair Housing for Washington Coalition, 1024 Elysian Field, New Orleans, LA 70117.	Elena Hanggi, 501–376–2528 ...	10	M	95,000

[1] Approved for $429,197 if additional funds are available.
[2] Approved for $139,283 if additional funds are available.
[3] Approved for $130,000 if additional funds are available.
[4] Approved for $113,915 if additional funds are available.
[5] Approved for $236,496 if additional funds are available.
[6] Approved for $287,836 if additional funds are available.

[FR Doc. 94–17028 Filed 7–13–94; 8:45 am]
BILLING CODE 4210–25–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3714; FR–3397–N–05]

NOFA for Public and Indian Housing Family Investment Centers: Amendment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Amendment of NOFA.

SUMMARY: This notice further amends a NOFA that was published in the **Federal Register** on February 28, 1994 (59 FR 9592), and was amended on April 19, 1994 (59 FR 18570), and June 9, 1994 (59 FR 29816). This further amendment: (1) Strikes language referencing an inapplicable section of the National Affordable Housing Act; and (2) includes new application submission requirements for applicants that apply to undertake renovation,

conversion, and new construction activities.

FOR FURTHER INFORMATION CONTACT: Marcia Y. Martin, Office of Resident Initiatives (ORI), or Dom Nessi, Director, Office of Native American Programs (ONAP), Department of Housing and Urban Development, 451 7th Street, S.W., Washington, DC 20410; telephone numbers: ORI (202) 708–4214; and ONAP (202) 708–1015 (these are not toll free numbers). Hearing- or speech-impaired persons may use the Telecommunications Device for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–8339 or 202–708–9300 (not a toll-free number) for information on the program.

SUPPLEMENTARY INFORMATION: On February 28, 1994, the Department published its NOFA for Public and Indian Housing Family Investment Centers (59 FR 9592). This NOFA was amended for the first time on April 19, 1994 (59 FR 18570), and then on June 9, 1994 (59 FR 29816); it is being amended further by this notice. This amendment addresses application submission requirements for renovation, conversion, and new construction activities, which were inadvertently left out of the NOFA in the section on Checklist of Application Submission Requirements (Section III.B).

In addition, the NOFA is revised to clarify that the applicability of section 957 of the National Affordable Housing Act (42 U.S.C. 12714) (NAHA) is subject to appropriations. Because funds have not been appropriated for the implementation of section 947, it does not apply at this time.

Accordingly, FR Doc. 94–4413, the NOFA for Public and Indian Family Investment Centers, published at 59 FR 9592 (February 28, 1994), and amended at 59 FR 18570 (April 19, 1994), and 59 FR 29816 (June 6, 1994), is further amended as follows:

1. On page 9595, column 2, paragraph (b) of Section I.F(5), headed "*NAHA*", is amended by adding the following two new sentences at the end:

(b) * * * However, section 957 of NAHA is subject to appropriations and, until such time as those appropriations have materialized, this section of the NOFA does not apply. The Department will provide notification if section 957 becomes effective.

2. On page 9598, column 3, the following new paragraphs (13) through (17) are added at the end of Section III.B, "Applications for Renovation/ Conversion Activities Only must contain the following information:"

(13) A description of the need for supportive services that will be provided in the proposed facility by eligible residents;

(14) A description of public or private sources of assistance that can reasonably be expected to fund or provide supportive services, including evidence of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including nonprofit organizations);

(15) Certification from an appropriate agency that the provision of supportive services is well designed to provide families better access to educational and employment opportunities and that there is a reasonable likelihood that such services will be provided for the entire period specified. In the case of FSS, the appropriate agency can be the Coordinating Committee. IHAs without FSS programs may rely on agencies associated with such programs as those found in Mutual Help;

(16) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than one year following the completion of activities under the NOFA. Evidence shall be in the form of a letter or a resolution; and

(17) A description of a plan for continuing operation of the FIC and the provision of supportive services to families for at least one year following the completion of activities funded.

Authority: 42 U.S.C. 1437t and 3535(d).

Dated: June 30, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–17027 Filed 7–13–94; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–4333–02: GP4–214]

Emergency Closure of Public Lands; Oregon

July 5, 1994.

AGENCY: Bureau of Land Management, Interior, Prineville District.

ACTION: Notice is hereby given that effective immediately, all public lands as legally described below are closed to all motorized vehicle access and travel year-long.

In Deschutes County, Oregon:
Township 14 South, Range 13 East, Willamette Meridian
All public lands in Sections 1, 2 and 12
In Crook County, Oregon:
Township 14 South, Range 14 East, Willamette Meridian
All public lands in Sections 5, 6 and 7

The purpose of this closure is to protect against adverse impacts upon soils, vegetation, wildlife and wildlife habitat, scenic and non-motorized recreational resources. Exception to this closure is given to North Unit Irrigation District personnel or their agents for the continued maintenance of the North Unit Main Canal and to other administrative, permitted or emergency uses authorized by the Bureau of Land Management. The authority for this closure is 43 CFR 8341.2.

This closure will remain in effect until the area is re-evaluated, in accordance with 43 CFR 8342, through the resource management planning process and the adverse effects are eliminated and measures are implemented to prevent recurrence.

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8340.0–7.

Dated: July 5, 1994.

Donald L. Smith,

Acting District Manager, Prineville District.

[FR Doc. 94–17118 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–33–M

[MT–921–04–4120–03–P; NDM 81582]

Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Coal Lease Offering By Sealed Bid; NDM 81582—The Coteau Properties Company.

SUMMARY: Notice is hereby given that the coal resources in the lands described below in Mercer County, North Dakota, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by the Coteau Properties Company, in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181–287), as amended.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement and hearing have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significant environmental impact.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

COAL OFFERED: The coal resource to be offered consists of all recoverable reserves in the following described lands located approximately 10 miles north of the town of Beulah:

Mercer County, North Dakota

T. 145 N., R. 86 W. 5th P.M.
Sec. 6: Lots 3, 4, 5, SE¼NW¼;
Sec. 8: E½NE¼, NW¼NW¼, SE¼NW¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 18: E½.
Containing 792.900 acres.

The Beulah bed, averaging 12.0 feet in thickness, is the only economically minable coal seam within the tract. The tract contains an estimated 9.1 million short tons of recoverable lignite. Coal quality, as received, averages 6831 BTU/lb., 37.78 percent moisture, 5.9 percent ash, 0.8 percent sulfur, 29.3 percent fixed carbon, and 27.0 percent volatile matter. This coal bed is being mined in adjoining tracts by the Coteau Properties Company.

RENTAL AND ROYALTY: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of the coal mines by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

DATES: Lease Sale—The lease sale will be held at 11:00 a.m., Tuesday, August 9, 1994, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Bids—Sealed bids must be submitted on or before 10:00 a.m., Tuesday, August 9, 1994, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107–6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

SUPPLEMENTARY INFORMATION: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile

bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

COAL OFFERED: The coal resource to be offered consists of all recoverable reserves in the following described lands located approximately 10 miles north of the town of Beulah:

Mercer County, North Dakota

T. 145 N., R. 86 W. 5th P.M.
Sec. 6: Lots 3, 4, 5, SE¼NW¼;
Sec. 8: E½NE¼, NW¼NW¼, SE¼NW¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 18: E½.
Containing 792.900 acres.

The Beulah bed, averaging 12.0 feet in thickness, is the only economically minable coal seam within the tract. The tract contains an estimated 9.1 million short tons of recoverable lignite. Coal quality, as received, averages 6831 BTU/lb., 37.78 percent moisture, 5.9 percent ash, 0.8 percent sulfur, 29.3 percent fixed carbon, and 27.0 percent volatile matter. This coal bed is being mined in adjoining tracts by the Coteau Properties Company.

RENTAL AND ROYALTY: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of the coal mines by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

DATES: Lease Sale—The lease sale will be held at 11:00 a.m., Tuesday, August 9, 1994, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Bids—Sealed bids must be submitted on or before 10:00 a.m., Tuesday, August 9, 1994, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107–6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

SUPPLEMENTARY INFORMATION: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: July 7, 1994.

Thomas P. Lonnie,
Acting State Director.

[FR Doc. 94–17030 Filed 7–13–94; 8:45 am]
BILLING CODE 4310–DN–P

[NV–050–4410–02]

Public Hearing Scheduled for the Supplement to the Draft Stateline RMP/EIS

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: Pursuant to 40 Code of Federal Regulations 1502.9(c), the Bureau of Land Management's (BLM) Las Vegas District is holding a public hearing to receive oral comments from the public on the Supplement to the Draft Stateline Resource Management Plan and Environmental Impact Statement (RMP/EIS) for the Stateline Planning Unit, Las Vegas District, Nevada.

DATES: The public hearing will be held on August 3, 1994.

ADDRESSES: The hearing will be held in Room 203–206, Cashman Field, 850 Las Vegas Boulevard North, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Jerry Wickstrom, RMP Team Leader, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126; Telephone: (702) 647–5000.

SUPPLEMENTARY INFORMATION: Oral comments may be made at the public hearing beginning at 7 p.m. Individuals wishing to speak are to register before speaking and limit their remarks only to the information addressed in the Supplement to the Draft.

The Supplement to the Draft RMP/EIS contains a new alternative incorporating recommendations for ephemeral/perennial grazing, utility corridors, mineral management in Wilderness Study Areas not designated by Congress, and the U.S. Fish and Wildlife Service's Draft Tortoise Recovery Plan and Proposed Critical Habitat.

The Supplement to the Draft Stateline RMP/EIS was released for public review on May 20, 1994. The public comment period closes August 19, 1994.

Copies of the Supplement to the Draft RMP/EIS may be obtained from the Las Vegas District Office. All written comments on the Supplement to the Draft RMP/EIS must be submitted or postmarked no later than August 19, 1994. Written comments should be addressed to: Stateline Resource Area Manager, Attn. RMP Team Leader, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126.

Dated: July 8, 1994.

Thomas V. Leshendok,
Acting State Director, Nevada.

[FR Doc. 94–17064 Filed 7–13–94; 8:45 am]
BILLING CODE 4310–HC–M

[AZ–020–4333–04]

Wild Cow Springs Recreation Site; Supplementary Rules of Conduct, Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplementary rules of conduct for use and occupancy of the Wild Cow Springs Recreation Site.

SUMMARY: In addition to the regulations contained in 43 CFR 8365.2, the following supplementary rules will apply to the Wild Cow Springs Recreation Site:

a. No more than two vehicles per site will be allowed. Day use visitors are exempt from this rule.

b. No more than 36 vehicles will be allowed in the recreation site at any one time.

c. Quiet hours, in which the use of generators, loud radios, or boisterous behavior would be prohibited, are between 10 p.m. and 6 a.m.

d. Cutting live vegetation or standing dead vegetation is prohibited. Firewood gathering is restricted to dead and down wood only.

e. The recreation site may be closed to the public upon order from the authorized officer for human health and safety reasons.

EFFECTIVE DATE: August 1, 1994.

FOR FURTHER INFORMATION CONTACT: Rick Colvin, Nonrenewable Resources Supervisor, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401, (602) 757–3161.

SUPPLEMENTARY INFORMATION: Wild Cow Springs Recreation Site is a developed camping facility designed for public use and enjoyment. The supplementary rules are designed to provide for public safety and welfare and to protect natural resources.

The authority for establishing supplementary rules is contained in CFR Title 43, Chapter II 8365.1–6. These rules will be available in the Kingman Resource Area Office and will be posted at the Wild Cow Springs Recreation Site. Violations of supplementary rules

are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: July 5, 1994.

David J. Miller,

Acting District Manager.

[FR Doc. 94–17121 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–32–M

[ID–942–04–406A–02]

Idaho: Filing of Plats of Survey

The plats of surveys of the following described land will be officially filed in the Idaho State Office, Bureau of land Management, Boise, Idaho, effective 9 a.m., on August 15, 1994.

The plat representing the dependent resurvey of a portion of the east boundary, Township 56 North, Range 2 West, and portions of the west boundary and subdivisional lines, and the subdivision of sections 6, 7, and 8, and the survey of Lot 1 in section 8 and Tracts 37 and 38, Township 56 North, Range 1 West, Boise Meridian, Idaho, Group No. 812, was accepted July 5, 1994.

The plat representing the dependent resurvey of a portion of the east boundary, Township 57 North, Range 2 West, and portions of the south and west boundaries, subdivisional lines, and 1896 meanders of Lake Pend Oreille, and the subdivision of sections 30 and 32, and survey of Tracts 37 and 38, Township 57 North, Range 1 West, Boise Meridian, Idaho, Group No. 812, was accepted July 5, 1994.

The plat representing the dependent survey of a portion of the subdivisional lines, and the subdivision of section 25, Township 57 North, Range 2 West, Boise Meridian, Idaho, Group 812, was accepted July 5, 1994.

These surveys were executed to meet certain administrative needs of the U.S.D.A. Forest Service.

All inquiries concerning the surveys of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 6, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–17123 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Ouachita Rock-Pocketbook for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Ouachita rock-pocketbook (*Arkansia wheeleri*) which the Service listed as an endangered species on October 23, 1991 (56 FR 54957). Two extant populations are known to exist in the wild. A viable population of some 1,000 individuals inhabit the Kiamichi River in Oakland and a smaller population of some 100 individuals inhabit the lower Little River in Arkansas. The Little River population is believed too reduced and fragmented to ensure long-term viability. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 12, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 222 South Houston, Suite A, Tulsa, Oklahoma 74127. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David Martinez, U.S. Fish and Wildlife Service Biologist, (918) 581–7458 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Ouachita rock-pocketbook (*Arkansia wheeleri*) is a monotypic genus now believed restricted to approximately 138 kilometers (85 miles) of the Red River system in eastern Oklahoma and western Arkansas. Stream impoundment, channelization, and water quality degradation are major threats to the species' continued survival. Impoundments change the physical and chemical characteristics of impounded stream reaches, producing conditions unsuitable for mussel species such as the Ouachita rock-pocketbook. The quality and regulation of releases from impoundments also modify water quality and physical characteristics in downstream waters, often for considerable distances. Such changes generally are detrimental to the native mussel community. Although suitable habitat may continued to exist farther downstream or upstream from impoundments, the populations in those habitats become isolated from each other as a result of the impoundments. Such isolation may prevent exchanges of genetic material that may be essential for long-term survival of the populations.

Channelization removes meanders and normal variations in width and depth of stream channels. It also removes riparian vegetation and modifies flow and sediment conditions in streams. These effects combine to eliminate naturally complex mussel habitats and communities that have become established over long periods of time. Degradation of water quality, whether from the preceding factors or from various sources, also affects mussels by increasing exposure to deleterious constituents and/or reducing availability of needed constituents in aquatic environments. Finally, freshwater mussels may be affected indirectly by any factors affecting particular fish species that the mussels require as larval hosts. The recovery plan addresses Ouachita rock-pocketbook populations as units believed necessary for survival and recovery of the species.

The Ouachita rock-pocketbook recovery plan has been reviewed by the appropriate Service staff in Region ? The plan will be finalized and app - d following incorporation of comme - s and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority: The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 16, 1994.

John G. Rogers,

Regional Director.

[FR Doc. 94–17044 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Final Environmental Impact Statement, General Management Plan, Development Concept Plan, Bent's Old Fort National Historic Site, CO

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Final Environmental Impact Statement/ General Management Plan/Development Concept Plan for Bent's Old Fort National Historic Site.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement/ General Management Plan/Development Concept Plan (FEIS/GMP/DCP) for Bent's Old Fort National Historic Site, Colorado.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/GMP/DCP.

ADDRESSES: Public reading copies of the FEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Bent's Old Fort National Historic Site, Telephone: 719–384–2596

Division of Planning, Design and Construction, Rocky Mountain Regional Office, National Park

indirectly by any factors affecting particular fish species that the mussels require as larval hosts. The recovery plan addresses Ouachita rock-pocketbook populations as units believed necessary for survival and recovery of the species.

The Ouachita rock-pocketbook recovery plan has been reviewed by the appropriate Service staff in Region ? The plan will be finalized and app - d following incorporation of comme .s and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority: The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 16, 1994.

John G. Rogers,

Regional Director.

[FR Doc. 94–17044 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Final Environmental Impact Statement, General Management Plan, Development Concept Plan, Bent's Old Fort National Historic Site, CO

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Final Environmental Impact Statement/ General Management Plan/Development Concept Plan for Bent's Old Fort National Historic Site.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement/ General Management Plan/Development Concept Plan (FEIS/GMP/DCP) for Bent's Old Fort National Historic Site, Colorado.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/GMP/DCP.

ADDRESSES: Public reading copies of the FEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Bent's Old Fort National Historic Site, Telephone: 719–384–2596

Division of Planning, Design and Construction, Rocky Mountain Regional Office, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80225, Telephone: (303) 969–2828

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843

SUPPLEMENTARY INFORMATION: In December 1993, the National Park Service released, for a 60-day public review, a Draft Environmental Impact Statement/General Management Plan/ Development Concept Plan (DEIS/GMP/ DCP) that evaluated three alternatives. The alternatives provided for the preservation of historic and natural resources while providing for visitor use. Under the no-action alternative, existing management activities would continue. Alternative One would expand the scope of the interpretive program, creating a self-service, self-interpretation oriented visitor experience. It would maintain the historic character of the site and improve overall operational and administrative working environments, while limiting physical development of small additions of space and renovation of existing spaces. The proposal would expand the scope of the interpretive program, create an interactive interpretive atmosphere through implementation of a visitor center, maintain the historic character of the site, and improve overall operational and administrative working environments by adding appropriate facilities.

The DEIS/GMP/DCP in particular evaluated the environmental consequences of the proposed action and the other alternatives on geology/ soils, vegetation , prime and unique farmlands, wildlife, threatened and endangered species, water resources/ quality, floodplains and wetlands, air quality, noise quality, cultural resources, visitor use, and socioeconomic resources/surrounding land uses. The environmental consequences of the proposed action and alternatives considered are fully disclosed in the DEIS/GMP/DCP. The Final Environmental Impact Statement/ General Management Plan/Development Concept Plan states that the proposal, as described in the DEIS/GMP/DCP is the final plan. Also included are the results of the public involvement and consultation and coordination for this project.

FOR FURTHER INFORMATION: Contact Superintendent, Bent's Old Fort National Historic Site, at the above address and telephone number.

Dated: May 31, 1994.

W. Wayne Gardner,

Chief, Branch of Planning, Rocky Mountain Region, National Park Service.

[FR Doc. 94–17045 Filed 7–13–94; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–317 (Sub. 3X)]

Indiana Harbor Belt Railroad Co.—Discontinuance of Trackage Rights Exemption—In Gary, IN

Indiana Harbor Belt Railroad Company (IHB) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Trackage Rights* to discontinue its trackage rights [1] on approximately 3 miles of rail line owned by Consolidated Rail Corporation (Conrail), between Conrail mileposts 4.63 and 7.75, in Gary, IN, known as the Dune Park Line.[2]

IHB has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental), 49 CFR 1105.8 (historic requirement), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected

[1] The trackage rights were granted in an agreement between IHB and Conrail dated April 9, 1906.

[2] The status of the line *vis-a-vis* Conrail is unclear. At one point IHB indicates that Conrail has filed, or intends to file, a notice of exemption to abandon this trackage. Elsewhere, however, IHB states that Conrail has previously received authority to abandon the line, subject to IHB's trackage rights.

IHB states that it intends to discontinue trackage rights approximately August 1, 1994. However, 49 CFR 1152.50(d)(2) requires the filing of a notice of discontinuance at least 50 days before the abandonment or discontinuance is to be consummated. Because this notice was filed on June 20, 1994, applicant may not consummate the discontinuance prior to August 9, 1994. IHB's representative has confirmed that the correct consummation date is on or after August 9, 1994.

employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 13, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking statements under 49 CFR 1152.29[5] must be filed by July 25, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 3, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Serpe, 175 West Jackson Boulevard, Suite 1460, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

IHB has filed an environmental report which addresses the effects of the discontinuance, if any, on the environment or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 19, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248.

Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17140 Filed 7–13–94; 8:45 am]

BILLING CODE 7035–01–P

[3] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[4] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[5] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–39 (Sub-No. 17X)]

St. Louis Southwestern Railway Co.—Abandonment Exemption—in Hunt and Collin Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by St. Louis Southwestern Railway Company of a 23.2-mile segment of its line of railroad known as the Commerce Branch, in Hunt and Collin Counties, TX, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 13, 1994. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by July 22, 1994. Petitions to stay must be filed by July 29, 1994. Requests for a public use condition must be filed by August 3, 1994. Petitions to reopen must be filed by August 8, 1994.

ADDRESSES: Send pleadings, referring to Docket No. AB–39 (Sub-No. 17X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's Representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: July 5, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17141 Filed 7–13–94; 8:45 am]

BILLING CODE 7035–01–P

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment, Combustion Engineering, Inc.

Notice is hereby given that Combustion Engineering, Inc. ("CE"), has filed with the United States District Court for the Southern District of New York, a motion to terminate the Final Judgment in *United States* versus *Combustion Engineering, Inc.*, Civil No. 126–230; and the Department of Justice ("Department"), in a Stipulation also filed with the Court, has tentatively consented to termination of the Judgment, reserving the right to withdraw its consent based on public comments and for other reasons.

The Complaint in this case, filed on November 1, 1957, alleged that Combustion Engineering entered into market allocation and exclusive dealing arrangements with twelve foreign companies that manufactured steam generating and fuel burning equipment ("Equipment"). The Final Judgment, among other things, enjoined CE from enforcing provisions in then existing patent and technology license agreements with foreign manufacturers of Equipment that involved territorial market allocation, cross-licensing and exclusive dealing. The judgment also prohibits future agreements with foreign Equipment manufacturers to allocate territories, restrict imports or exports, tie products or services to individual purchases, deal exclusively or cross-license.

The Department has filed with the Court a memorandum setting forth the reasons the Department believes that termination of the Judgment would serve the public interest. Copies of the Complaint, Final Judgment, the United States' memorandum, CE's Motion papers, and all further papers filed with the Court in connection with this Motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202–514–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgment to the Department. Such comments must be received within the sixty (60) day period established by Court order, and will be filed with the Court by the Department. Comments should be addressed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, Department of Justice, 1401 H Street, NW., City Center Building, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–17115 Filed 7–13–94; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Notice of Submission of Proposed Information Collections to OMB

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collection submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is giving notice that the proposed collection of information displayed in this notice has been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320. Public comment is invited on this collection.

DATES: Comments should be submitted by July 29, 1994.

ADDRESSES: Written comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713–6730 or Linda Brown at (202) 501–5200.

The proposed information collection illustrated at the end of this notice has been submitted to OMB.

United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgment to the Department. Such comments must be received within the sixty (60) day period established by Court order, and will be filed with the Court by the Department. Comments should be addressed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, Department of Justice, 1401 H Street, NW., City Center Building, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–17115 Filed 7–13–94; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Notice of Submission of Proposed Information Collections to OMB

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collection submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is giving notice that the proposed collection of information displayed in this notice has been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320. Public comment is invited on this collection.

DATES: Comments should be submitted by July 29, 1994.

ADDRESSES: Written comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713–6730 or Linda Brown at (202) 501–5200.

The proposed information collection illustrated at the end of this notice has been submitted to OMB.

Description: The information collection is a voluntary questionnaire for users and potential users of the National Archives. The respondents have been selected from a group of representatives of the major categories of users as identified by the Nebraska Advisory Committee.

Purpose: The information will be used for a pilot project in Nebraska to determine what information and records may be appropriate for electronic access.

Frequency of response: One time.
Number of respondents: 300.
Reporting hours per response: .33.
Annual reporting burden hours: 100.

Dated: July 8, 1984.

Raymond A. Mosley,

Acting Archivist of the United States.

Electronic Access Study Questionnaire

The National Archives and Records Administration (NARA) has information, records, and related materials from and about the Federal Government. NARA's mission is to give citizens the Federal information they want in the most accessible manner possible so that citizens can protect their individual legal rights, monitor their government, and make informed decisions about national priorities.

Answers to the following questions will help the National Archives prioritize its work as it strives to respond to the informational needs of the people of the U.S. Please check the items that are important to you (or to your clients if you are an information provider). You may check more than one item for each question.

1. What place(s) would be convenient for you to electronically search for or receive National Archives information?

____ public library
____ office
____ school
____ home
____ community center
____ other: _____

2. How do you search for information?

____ personal names or titles
____ subjects/events
____ names of Federal Agencies
____ other: _____
____ place names/geographic areas
____ time frame
____ names of organizations

3. What kind(s) of information services from the National Archives would be most useful to you if available electronically? Indicate priority by marking each item as "H" (High), "M" (Medium), or "L" (Low).

____ Getting started/How to locate information or records and services available through NARA.
____ Public calendar of events.
____ Information about NARA facilities (overview of holdings, hours, location, etc.).
____ Information about records and related materials held by NARA.
____ Copies of actual documents held by NARA.
____ NARA sponsored workshops or training.
____ On-line ordering of records or publications.
____ Information about other Federal Agencies.
____ Information about records created or held by other Federal Agencies.

4. The National Archives has records and related materials documenting the legislative, judicial, and executive branches of the Federal government. Which of the following would be most useful to you? (Check as many as apply.)

Historic Information

Information related to:
____ The Presidency
____ Congress
____ Federal regulations and laws, including the **Federal Register**.
____ Federal Courts

Agency Records:
____ Agriculture
____ Commerce
____ Defense
____ Education/Culture

Current Information

Information related to:
____ The Presidency
____ Congress
____ Federal regulations and laws, including the **Federal Register**.
____ Federal Courts

Agency Records:
____ Agriculture
____ Commerce
____ Defense
____ Education/Culture
____ Energy
____ Health & Human Services
____ Housing & Urban Services
____ Justice/Law Enforcement
____ Labor
____ Maritime
____ Postal Service
____ Public Lands, Parks, & Environment
____ Science & Technology
____ State/Foreign Relations
____ Transportation
____ Treasury/Revenue/Finance

Records of Individuals:
____ Genealogy
____ Military Service Records
____ Ethnic Heritage:
____ Native American
____ Other: _____

___ Energy
___ Health & Human Services
___ Housing & Urban Services
___ Justice/Law Enforcement
___ Labor
___ Maritime
___ Postal Service
___ Public Lands, Parks, & Environment
___ Science & Technology
___ State/Foreign Relations
___ Transportation
___ Treasury/Revenue/Finance

Records of Individuals:

___ Genealogy
___ Military Service Records
___ Ethnic Heritage:
___ Native American
___ Other: _____

5. Please check up to 3 types of records or documents you would like to have available for on-line computer access.

___ written (textual) documents
___ motion pictures/video
___ architectural drawings
___ data sets
___ other: _____
___ photographs
___ maps
___ audio/sound recordings
___ images of museum objects

6. For whom do you usually search for information?

___ Yourself
___ Others

7. For what purpose(s) might you or your customers need information from the National Archives? (Check as many as apply.)

___ to supplement teaching materials (teacher's perspective)
___ elementary
___ undergraduate
___ middle school
___ graduate
___ secondary
___ adult education
___ for school assignments (student's perspective)
___ elementary
___ undergraduate
___ middle school
___ graduate
___ secondary
___ adult education
___ for publishing books, papers, or articles
___ for legal research
___ to search for current grants and funding sources
___ for regulatory research
___ for investment or business opportunities
___ to support an application for personal benefits or claims
___ veteran
___ other: _____
___ for genealogical research
___ for local and community history research
___ for media use, such as
___ radio
___ newspaper
___ magazine
___ TV
___ other:
___ personal interest or enrichment, for example: _____
___ other: _____

8. In what format(s) would you want information or copies of records from the National Archives?

___ photocopies
___ printed publications
___ other: _____
___ photographs
___ CD–ROM
___ microforms
___ on-line

9. How would you like this information or copies of records delivered to you?

_____ FAX
_____ COD
_____ Other: _____
_____ Computer (on-line)
_____ Overnight or second day express delivery
_____ First class mail

10. What technologies are you currently using? Please check all that you use.

_____ None
_____ FAX
_____ Computer as a word processor
_____ Computer with a modem
_____ Macintosh
_____ PC without Windows
_____ PC with Windows
_____ PC with Windows and with a sound card
_____ Other: _____

11. Do you use the following? Please check all that you use.

_____ E-mail
_____ on-line searching
_____ electronic bulletin board(s)
_____ Internet
_____ commercial on-line services
_____ other: _____

12. Have you ever visited a National Archives facility?

_____ yes
_____ no

13. Have you ever called or written to a National Archives facility for information?

_____ yes
_____ no

14. Have you attended any of the Electronic Access Study discussion group sessions that were held in Nebraska in June and July (1994) with National Archives staff?

_____ yes
_____ no

Please return the questionnaire within two weeks to Judi Moline, NIST, Building 225 Room B266, Gaithersburg, MD 20899, or by FAX to 301–926–3696. There is a stamped, self-addressed, envelope enclosed for your convenience.

Public Burden Statement

Public burden reporting for this collection of information is estimated to be 20 minutes per response. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the National Archives and Records Administration (NAAD), 8601 Adelphi Road, College Park, MD 20740–6001, and to the Office of Management and Budget, Paperwork Reduction Project (3095–), Washington, DC 20503. Do not send completed forms to these addresses. Send forms to Judi Moline at the address given in the previous paragraph.

[FR Doc. 94–17145 Filed 7–13–94; 8:45 am]
BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Nebraska Public Power District; Cooper Nuclear Station Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–298]

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption to Facility Operating License No. DPR–46 to the Nebraska Public Power District (the licensee), for the operation of the Cooper Nuclear Station (CNS), located in Nemaha County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of Section III.C.1 of Appendix J to 10 CFR Part 50, to allow Type C testing (local leak rate testing) of four containment isolation valves in the reverse direction.

The proposed action is in accordance with the licensee's application for exemption dated June 29, 1994.

The Need for the Proposed Action

The purpose of Type C testing is to measure the leakage through the primary reactor containment and thereby provide assurance that it does not exceed the maximum allowable leakage rates. Prior to a recent contractor review of local leakrate testing methodology, the licensee had made the determination that reverse direction testing of the subject containment isolation valves produced equivalent or more conservative results than testing in the accident direction. The contractor review disclosed that, while reverse pressure testing for the subject valves (two globe valves and two stop-check globe valves) was conservative with respect to measuring leakage past the valve seating surfaces, such testing may be non-conservative with respect to packing leakage and body-to-bonnet leakage. Packing and body-to-bonnet leakage cannot be quantified by reverse pressure testing because the physical configurations of the valves are such that valve packing and the valve bonnets are not exposed to test pressure. The four valves are not testable in the accident direction due to the inability to isolate the valves from containment and the lack of test connections.

Several factors are cited by the licensee in its June 29, 1994, request for exemption to demonstrate that a high level of confidence exists that reverse direction pressure testing does not yield significantly different results than what would be expected in the accident direction. First, reverse pressure testing of globe valves generally results in a conservative seat leakage measurement because the pressurization test applies force in the direction that would unseat the disk. Any increase in leakage attributable to this factor would tend to offset the inability to measure packing and body-to-bonnet leakage on the non-testable side of the valve. Second, all subject valves are tested in the accident direction during integrated leakrate tests, thus exposing all pressure retaining parts, including the bonnet and packing, to the design basis pressure (58 psig).

Third, integrated leakrate test results historically have not indicated any significant leakage through these two paths. As of June 22, 1994, total minimum path as-left leakage for all type B and C tests measured 117.95 standard cubic feet per hour. The 1991 integrated leakrate test yielded a total measured leakrate of 102.5 standard cubic feet per hour. These results demonstrate that significant margin exists with respect to the startup limit of 189 standard cubic feet per hour and the total allowable limit of 316 standard cubic feet per hour. Thus, there is confidence that the requirements of 10 CFR part 50, appendix J, and the Cooper

primary reactor containment and thereby provide assurance that it does not exceed the maximum allowable leakage rates. Prior to a recent contractor review of local leakrate testing methodology, the licensee had made the determination that reverse direction testing of the subject containment isolation valves produced equivalent or more conservative results than testing in the accident direction. The contractor review disclosed that, while reverse pressure testing for the subject valves (two globe valves and two stop-check globe valves) was conservative with respect to measuring leakage past the valve seating surfaces, such testing may be non-conservative with respect to packing leakage and body-to-bonnet leakage. Packing and body-to-bonnet leakage cannot be quantified by reverse pressure testing because the physical configurations of the valves are such that valve packing and the valve bonnets are not exposed to test pressure. The four valves are not testable in the accident direction due to the inability to isolate the valves from containment and the lack of test connections.

Several factors are cited by the licensee in its June 29, 1994, request for exemption to demonstrate that a high level of confidence exists that reverse direction pressure testing does not yield significantly different results than what would be expected in the accident direction. First, reverse pressure testing of globe valves generally results in a conservative seat leakage measurement because the pressurization test applies force in the direction that would unseat the disk. Any increase in leakage attributable to this factor would tend to offset the inability to measure packing and body-to-bonnet leakage on the non-testable side of the valve. Second, all subject valves are tested in the accident direction during integrated leakrate tests, thus exposing all pressure retaining parts, including the bonnet and packing, to the design basis pressure (58 psig).

Third, integrated leakrate test results historically have not indicated any significant leakage through these two paths. As of June 22, 1994, total minimum path as-left leakage for all type B and C tests measured 117.95 standard cubic feet per hour. The 1991 integrated leakrate test yielded a total measured leakrate of 102.5 standard cubic feet per hour. These results demonstrate that significant margin exists with respect to the startup limit of 189 standard cubic feet per hour and the total allowable limit of 316 standard cubic feet per hour. Thus, there is confidence that the requirements of 10 CFR part 50, appendix J, and the Cooper Nuclear Station Technical Specifications continue to be met.

Fourth, valve packing and body-to-bonnet gaskets do not contain materials that degrade as a result of the mild service conditions to which they are subjected during normal operations and periodic surveillance testing.

Finally, while the above factors may provide reasonable assurance that leakage through the bonnet and the packing is not a problem for the four subject valves, the licensee has proposed additional actions in order to justify permanent exemptions from the "equivalent or more conservative" results requirement of 10 CFR Part 50, Appendix J. Specifically the licensee proposes to perform soap bubble tests to detect body-to-bonnet or packing leakage while these pressure retaining boundaries are pressurized in the accident direction during future integrated leakrate tests. A "zero bubble" or zero detectable leakage acceptance criteria would be satisfied to demonstrate the leak-tightness of the packing and valve bonnets. Additionally, the licensee proposes to specifically observe the two stop-check globe valves for indication of leakage through the insulation during scheduled system surveillance tests which subject the valves to pressurization.

Without the proposed exemption, the licensee would be forced, at significant cost but without any significant increase in public health and safety, to implement plant modifications to permit local leakrate testing with test pressure applied in the accident direction. Further, such actions would delay the restart date of the current outage, which is currently scheduled for July 11, 1994.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed exemption would allow permanent individual exemptions from Appendix J to 10 CFR Part 50 to allow Type C testing of four isolation valves in the reverse direction.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Denial would not reduce the environmental impacts attributed to the facility but would result in the expenditure of resources and increase radiation exposures without any compensating benefit.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Cooper Nuclear Station, dated February 1973.

Agencies and Persons Consulted

The NRC staff consulted with the Nebraska State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the request for exemption dated June 29, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 8th day of July 1994.

For the Nuclear Regulatory Commission.

William D. Beckner,

Director, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17077 Filed 7–13–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–335]

Florida Power & Light Co.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power and Light Company (the licensee) to withdraw its October 21, 1992 application for proposed amendment to Facility Operating License No. DPR–67 for St. Lucie Unit 1, located in St. Lucie County, Florida.

The proposed amendment would have revised Technical Specification 3.3.1.1, Reactor Protective Instrumentation, to modify the action statement requirements for the High Rate of Change in Power trip.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 25, 1992 (57 FR 55581). However, by letter dated June 21, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 21, 1992, and the licensee's letter dated June 21, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Dated at Rockville, Maryland this 6th day of July, 1994.

For the Nuclear Regulatory Commission.

Jan A. Norris, Sr.,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17076 Filed 7–13–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Further to the June 9, 1994, Notice Regarding Standards for the Classification of Federal Data on Race and Ethnicity

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs

ACTION: Announcement of an Additional Public Hearing on Directive No. 15., Race and Ethnic Standards for Federal Statistics and Administrative Reporting

SUMMARY: Through Congressional hearings and direct correspondence, OMB has received numerous comments concerning the classification of Native Hawaiians. One of the suggested changes would involve establishing a separate category for Native Hawaiians. Alternatively, it has been proposed that Native Hawaiians should be part of a "Native American" category that would also include American Indians, Aleuts, and Eskimos. Currently, Native Hawaiians are included in the Asian and Pacific Islander category. To facilitate the participation of the Native Hawaiian community in the current review of the racial and ethnic categories, a public hearing will be held in Honolulu.

PUBLIC HEARING: To provide an additional opportunity to hear views from the public, particularly with respect to the classification of race and ethnicity for Native Hawaiians, and more generally on Directive No. 15, OMB has scheduled the following hearing:

Date/Time	Location
July 18, 1994 4:00 p.m.	The Kamehameha Schools Auditorium Kapalama Heights Honolulu, Hawaii

If you wish to present an oral statement at this hearing, please contact Mike Kitamura, Office of Senator Daniel K. Akaka, telephone 808–522–8970, by Friday, July 15, 1994, and provide your name, address, telephone and fax numbers, and the name of the organization you represent.

Persons testifying are asked to bring three (3) copies of their statement to the hearing. Written statements will also be accepted at the hearing. Depending on the number of persons who request to present their views, the hearing may be extended to the following day.

ADDRESSES: Requests to be placed on the hearing schedule should be directed to Mike Kitamura, Office of Senator Daniel K. Akaka, P.O. Box 50144, Honolulu, Hawaii; telephone 808–522–8970; Fax 808–545–4683.

WRITTEN COMMENTS: Written comments may be addressed to Katherine K. Wallman, Chief, Statistical Policy, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Room 10201 New Executive Office Building, Washington, D.C. 20503.

DATES: To ensure consideration, written comments must be provided to OMB on or before September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Suzann Evinger, Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, Telephone: (202) 395–3093.

SUPPLEMENTARY INFORMATION:

Background

More detailed information about the review and possible revision of OMB's Statistical Policy Directive No. 15 can be found in the Federal Register, Volume 59, No. 110, June 9, 1994, pp. 29831–29835.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs

[FRDoc. 94–17122 Filed 7–13–94; 8:45 am]

BILLING CODE 3110–01–F

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34329; File No. SR–CBOE–94–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Equity and SPX RAES Participation Requirements

July 7, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 22, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to impose fees on market makers who fail to observe certain participation duties on the Retail Automated Execution System ("RAES") for equity and Standard & Poor's 500 Index ("SPX") classes of options. Specifically, the CBOE proposes to amend CBOE Rules 8.16, "RAES Eligibility in Equity Options" and 24.16, "RAES Eligibility in SPX/NDX," to impose the following fees for failures to satisfy the rules' log-off requirements: (1) A fee of $100.00 for one to three failures within one twelve-month period; (2) a fee of $250.00 for four to six failures within one twelve-month period; and (3) a fee of $500.00 for seven or more failures within one twelve-month period. In addition, the CBOE proposes to issue a Regulatory Circular clarifying market makers' RAES responsibilities with respect to equity and SPX options classes and indicating that members who fail to meet the log-on requirements of CBOE Rules 8.16(b) or 24.16(b) ordinarily will be suspended from participation on RAES at the applicable trading station for a period of 21 consecutive business days.[1]

The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE states that the purpose of the proposed rule change is to impose fees on members who fail to observe the RAES log-off requirements set forth in CBOE Rules 8.16(a) and 24.16(a) relative to equity options and SPX index options. The CBOE proposes to incorporate the following fee schedule into CBOE Rules 8.16(a) (for equity options) and 24.16(a) (for SPX options) for failures to comply with the log-off requirements: (1) A fee of $100.00 for one to three failures within one twelve-month period; (2) a fee of $250.00 for four to six failures within one twelve-month period; and (3) a fee of $500.00 for seven or more failures within one twelve-month period.

The proposed fees for failures to observe the log-off requirements for

[1] CBOE Rules 8.16(b) states that in option classes designated by the Market Performance Committee ("MPC"), any market maker who has logged on RAES at any time during an expiration month must log on the RAES system in that option class whenever he is present in that trading crowd until the next expiration. CBOE Rule 24.(b) states that unless exempted by the MPC, any market maker who has logged on RAES at any time during an expiration month must log on the RAES system in SPX/NSX whenever he is present in that trading crowd until the expiration.

for seven or more failures within one twelve-month period. In addition, the CBOE proposes to issue a Regulatory Circular clarifying market makers' RAES responsibilities with respect to equity and SPX options classes and indicating that members who fail to meet the log-on requirements of CBOE Rules 8.16(b) or 24.16(b) ordinarily will be suspended from participation on RAES at the applicable trading station for a period of 21 consecutive business days.[1]

The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE states that the purpose of the proposed rule change is to impose fees on members who fail to observe the RAES log-off requirements set forth in CBOE Rules 8.16(a) and 24.16(a) relative to equity options and SPX index options. The CBOE proposes to incorporate the following fee schedule into CBOE Rules 8.16(a) (for equity options) and 24.16(a) (for SPX options) for failures to comply with the log-off requirements: (1) A fee of $100.00 for one to three failures within one twelve-month period; (2) a fee of $250.00 for four to six failures within one twelve-month period; and (3) a fee of $500.00 for seven or more failures within one twelve-month period.

The proposed fees for failures to observe the log-off requirements for equity and SPX RAES are identical in amounts and graduated structure to the fees proposed for Standard & Poor's 100 Index ("OEX") options in File No. SR-CBOE-94-12. Under both proposals, the fee amounts will increase in relation to the number of times each calendar year that a member does not log off as required.

As is the case for fees applicable to OEX RAES participants under existing CBOE Rule 24.17, "RAES Eligibility in "OEX," the proposed fees do not constitute disciplinary action, although the CBOE's review procedures in Chapter XIX, "Hearings and Review," of the CBOE's rules will be available for review of fees assessed under the proposal. The Commission has noted the appropriateness of such fees and appeal rights in a related context.[2]

In addition to establishing a fee schedule, the CBOE proposes to issue a Regulatory Circular that will reaffirm the nature of CBOE market makers' RAES log-on and log-off responsibilities in respect of equity and SPX options classes and will describe the consequences that attach to any market maker's failure to observe these responsibilities. The Regulatory Circular addresses four points. First, CBOE Rules 8.16(a)(iii) and 24.16(a)(iii) require any market maker who has logged onto RAES at a trading station on any given trading day to log off RAES whenever the market maker leaves the trading crowd for more than "a brief interval." The Regulatory Circular interprets "a brief interval" to mean "five consecutive minutes." Under this interpretation any market maker who signs onto RAES at a particular trading station during a trading session must log off the system prior to leaving that station for more than five consecutive minutes. The CBOE believes that this interpretation should eliminate ambiguity about the amount of time a market maker may be away from the trading crowd without signing off RAES.

Second, the Regulatory Circular notes that graduated fees will be assessed under CBOE Rules 8.16(a) and 24.16(a) for failure to observe the RAES log-off requirement.

Third, the Regulatory Circular reflects the MPC's designation pursuant to CBOE Rules 8.16(b) and 24.16(b) that the expiration month log-on requirements reflected in those rules will be enforced in all classes of equity and SPX options for which RAES is available. Accordingly, any market maker who has logged onto RAES in accordance with CBOE Rules 8.16(a) or 24.16(a) during an expiration month for a given class of options must log on whenever present at the applicable trading station, until expiration.

Fourth, the Regulatory Circular reflects a determination by the MPC, pursuant to its authority under CBOE Rules 8.16(d) and 24.16(d), that any market maker who fails to meet the log-on requirements under CBOE Rules 8.16(b) or 24.16(b) ordinarily will be suspended from participation on RAES at the applicable trading station for a period of 21 consecutive business days.[3]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to enable the CBOE to enforce compliance with the Act, to promote just and equitable principles of trade, and to protect investors and the public interest by assuring that equity and SPX options market makers are aware of and meet their responsibilities pertaining to RAES.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

[1] CBOE Rules 8.16(b) states that in option classes designated by the Market Performance Committee ("MPC"), any market maker who has logged on RAES at any time during an expiration month must log on the RAES system in that option class whenever he is present in that trading crowd until the next expiration. CBOE Rule 24.(b) states that unless exempted by the MPC, any market maker who has logged on RAES at any time during an expiration month must log on the RAES system in SPX/NSX whenever he is present in that trading crowd until the expiration.

[2] Specifically, in approving a CBOE proposal that included procedures for contesting the fees assessed for delayed submission of trade data, the Commission stated that "Although such formalized procedures are unusual for challenging fee assessments, they actually make the imposition of the fee fairer by allowing members to challenge erroneous fee charges. Moreover, these procedures are reasonably designed to afford a member assessed a fee the opportunity to challenge the veracity of the assessments." See Securities Exchange Act Release No. 30001 (November 26, 1991), 56 FR 63529 (order approving File No. SR-CBOE-90-06).

[3] In contrast to this suspension provision, File No SR-CBOE-94-12 proposes that members who fail to observe the RAES log-on requirements for OEX options would be subject to a fee. The CBOE has determined that suspensions, not fees, are the appropriate mechanisms to promote compliance with RAES log-on requirements for equity and SPX options. The CBOE states that it may introduce fees for failures to obeerve the log-on requirements for equity and SPX options at a later date if experience so dictates.

90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 4, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[FR Doc. 94–17032 Filed 7–13–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–34327; File No. SR–NYSE–93–38]

Self-Regulatory Organizations; New York stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Additions of Certain Exchange Rules to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A" and Amendment Minor Rule Violation Enforcement and Reporting Plan

July 7, 1994.

On October 21, 1993 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the Rule 476A Violations List ("List") for imposition of fines for minor violations of rules and/or policies by adding to the List Exchange Rules 304(h)(2), 345.12, 346 (b) and (e), 346(f), 352 (b) and (c), 440C and 472(c). The NYSE also requested approval, under Rule 19d–1(c)(2), to amend its Rule 19d–1 Minor Rule Violation Enforcement and Reporting Plan ("MRVP") to include the Rules enumerated above.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33779 (March 17, 1994), 59 FR 14231 (March 25, 1994). No comments were received on the proposal.

Description and Background

In 1984, the Commission adopted amendments to paragraph (c) of Securities Exchange Act Rule 19d–1 to allow SROs to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.[4] Subsequently, in 1985, the Commission approved an NYSE plan for the abbreviated reporting of minor rule violations pursuant to Rule 19d–1(c) under the Act. The MRVP relieves the NYSE of the current reporting requirements imposed under Section 19(d)(1) of the Act for violations listed in NYSE Rule 476A. The NYSE MRVP, as embodied in NYSE Rule 476A, provides that the Exchange may designate violations of certain rules as minor rule violations. The Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a violation of the delineated rules by issuing a citation with a specific penalty.[5] Such person can either accept the penalty, or opt for a full disciplinary hearing on the matter. Fines assessed pursuant to NYSE Rule 476A in excess of $2,500 are not considered pursuant to the MRVP and must be reported in a manner consistent with the current reporting requirement of Section 19(d)(1) of the Act. The Exchange also retains the option of bringing violations of rules included under NYSE Rule 476A to full disciplinary proceedings, and the Commission expects the Exchange to do so for egregious or repeat violations.

In adopting Rule 19d–1, the Commission noted that the Rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[6] In promulgating paragraph (c) of the Rule, the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The Rule is intended to be limited to rules which can be adjudicated quickly and objectively.

The NYSE currently is adding Exchange Rules 304(h)(2), 345.12, 346 (b) and (e), 346(f), 352 (b) and (c), 440C and 472(c), which generally include reporting, required approvals, record retention and conduct of accounts, for which determinations of violations can be made objectively.

Discussion

Specifically, Rule 304(h)(2) requires that any applicant, applying to the Exchange for consideration as an approved person, supply the Exchange with information regarding any statutory disqualification to which said applicant (or anyone associated therewith) may be subject. The Commission believes that since this is strictly a notification provision, determining compliance therewith is objective.

Rule 345.12 requires applications (Form U–4) for all natural persons required to be registered with the Exchange to be filed upon the candidate's employment and to be kept current. The Commission believes that as an administrative and record-keeping provision, determining compliance is objective.

Rules 346 (b) and (e) generally place limitations upon members, allied members, and their employees with respect to outside employment and association.[7] The Commission believes that the large category of possible minor infractions of these rules and the relative objectivity in assessing possible infractions justify their inclusion in the List and MRVP.

Rule 346(f) prohibits any member, member organization, allied member, approved person or employee of any person in a control relationship with a member or member organization from associating with any person subject to a statutory disqualification as defined in the Act. For the purposes of this Rule, the term associated with a member or member organization has the same meaning as the term "associated with a member" as defined in section 3(a)(21) of the Act.[8] The Commission believes that violations of this Rule are relatively objective and that adding this Rule to the List and MRVP will provide additional deterrence for this type of association, and thus is consistent with the Act.

Rules 352 (b) and (c) generally prohibit any member, member organization, allied member, registered representative or officer from guaranteeing any customer against loss in any account and from sharing in profits or losses in a customer's account. The Commission believes that although there can be serious infractions of these Rules, there are a sufficient number of unexceptional situations that have arisen that warrant adding the Rules to the List and MRVP. The Commission reemphasizes that the NYSE is only to treat minor violations of the rules included in the List and MRVP under Rule 476A and all serious violations should continue to be disciplined in accordance with NYSE Rule 476 ("Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members,

---

[4] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated October 20, 1993.

[4] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Pursuant to paragraph (c)(1) of Rule 19d–1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by an SRO for a violation of an SRO rule that has been designated a minor rule violation pursuant to the Plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic, as opposed to immediate, basis.

[5] The List is contained under Supplementary Material to Exchange Rule 476A. As discussed in note 4 *supra*, only those fines imposed that are not in excess of $2,500 are subject to periodic reporting. Fines imposed pursuant to Rule 476A in excess of $2,500 are deemed final and therefore are subject to immediate reporting to the Commission.

[6] See Securities Exchange Act Release No. 13762 (July 8, 1977), 42 FR 35411 (July 14, 1977).

[7] Rule 346(b) requires members, allied members and employees of member organizations to receive prior written consent of their employer to engage in any other business activity or to be employed or compensated by any other person. Rule 346(e) provides that persons delegated supervisory responsibilities must devote their full time to the business of the member organization during business hours, unless otherwise permitted by the Exchange (Rule 346.10).

[8] 15 U.S.C. 78c(a)(21). Under the Act, the term means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

as an administrative and record-keeping provision, determining compliance is objective.

Rules 346 (b) and (e) generally place limitations upon members, allied members, and their employees with respect to outside employment and association.[7] The Commission believes that the large category of possible minor infractions of these rules and the relative objectivity in assessing possible infractions justify their inclusion in the List and MRVP.

Rule 346(f) prohibits any member, member organization, allied member, approved person or employee of any person in a control relationship with a member or member organization from associating with any person subject to a statutory disqualification as defined in the Act. For the purposes of this Rule, the term associated with a member or member organization has the same meaning as the term "associated with a member" as defined in section 3(a)(21) of the Act.[8] The Commission believes that violations of this Rule are relatively objective and that adding this Rule to the List and MRVP will provide additional deterrence for this type of association, and thus is consistent with the Act.

Rules 352 (b) and (c) generally prohibit any member, member organization, allied member, registered representative or officer from guaranteeing any customer against loss in any account and from sharing in profits or losses in a customer's account. The Commission believes that although there can be serious infractions of these Rules, there are a sufficient number of unexceptional situations that have arisen that warrant adding the Rules to the List and MRVP. The Commission reemphasizes that the NYSE is only to treat minor violations of the rules included in the List and MRVP under Rule 476A and all serious violations should continue to be disciplined in accordance with NYSE Rule 476 ("Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others").

Rule 440C prohibits a member or member organization from failing to deliver against a short-sale until diligent effort is made to borrow securities necessary to make delivery. The Commission notes that activity constituting "diligent effort" in the context of this Rule is explicitly outlined in an NYSE Information Memo circulated to its members in October of 1991.[9] Because the NYSE has placed its members on notice as to what conduct is violative of Rule 440C, we expect that determination of compliance will be straightforward and objective. We therefore believe that it is consistent with the Act to add Rule 440C to the List and MRVP.

Finally, Rule 472(c) requires that members and member organizations retain communications with customers or the public for at least three years.[10] The Commission believes that because this is a record retention rule, discerning compliance is objective and it is appropriate to discipline under the MRVP for minor violations of this Rule.

Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) (1), (6) and, (7), 6(d)(1) and 19(d) of the Act.[11] The proposal is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of rules of the exchange. In this regard, the proposal provides an efficient procedure for appropriate disciplining of members for rule violations that generally encompass reporting, required approvals, record retention and conduct of accounts requirements and are objective in nature. Moreover, because NYSE Rule 476A provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternate means by which to deter violations of the NYSE rules included in the MRVP, thus furthering the purposes of Section 6(b)(1) of the Act. An exchange's ability to effectively enforce compliance by its members and member organizations with Commission and Exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan may not only reduce reporting burdens on an SRO but also may make its disciplinary system more efficient in prosecuting violations of these rules.

In addition, because the NYSE retains the discretion to bring a full disciplinary proceeding for any violation included on the List, the Commission believes that adding the NYSE Rules outlined above will enhance, rather than reduce, the NYSE's enforcement capabilities of these Exchange requirements. In this regard, the Commission expects the Exchange to bring full disciplinary proceedings if it determines that a violation otherwise covered by the MRVP is not minor in nature, in the event of repeat violations of a particular rule, or in any other appropriate circumstance. Finally, the Commission believes that the inclusion of the subject Rules will prove to be an effective alternate response to a violation when the initiation of a full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation. By including the Rules in the Rule 476A Minor Rule Violation List, the NYSE can quickly respond to violations, thereby immediately deterring similar infractions.

It Is Therefore Ordered, pursuant to Section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[12] that the proposed rule change (SR–NYSE–93–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17031 Filed 7–13–94; 8:45 am]

BILLING CODE 8010–01–M

---

[7] Rule 346(b) requires members, allied members and employees of member organizations to receive prior written consent of their employer to engage in any other business activity or to be employed or compensated by any other person. Rule 346(e) provides that persons delegated supervisory responsibilities must devote their full time to the business of the member organization during business hours, unless otherwise permitted by the Exchange (Rule 346.10).

[8] 15 U.S.C. 78c(a)(21). Under the Act, the term means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

[9] See NYSE Information Memo Number 91–41 to all members and member organizations, dated October 18, 1991.

[10] The communications must also contain the name of the person who prepared the material, the name of the person approving its issuance, and be readily available to the Exchange upon request.

[11] 15 U.S.C. 78f(b) (1), (6) and (7), 78f(d)(1) and 78s(d) (1988).

[12] 15 U.S.C. 78s(b)(2) (1988) and 17 CFR 240.19d–1(c)(2) (1991).

[13] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–34322; File No. SR–PSE–93–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Amendments to its Minor Rule Plan

July 6, 1994.

I. Introduction

On November 30, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission") a proposed rule change which amends its Minor Rule Plan ("MRP")[3] by adding certain violations to the list of those subject to the expedited disciplinary procedures set forth in PSE Rule 10.13, and by amending the recommended fine schedule ("Recommended Fine Schedule") for MRP violations. On March 30, 1994, the Exchange filed Amendment No. 1 to the proposed rule change.[4]

Notice of the Exchange's proposed rule change and Amendment No. 1 appeared in the **Federal Register** on May 2, 1994.[5] No comment letters were received on the proposal. This order approves the proposal and Amendment No. 1 thereto.

II. Description of the Proposal

1. The Exchange's MRP

PSE Rule 10.13(a) authorizes the PSE's Executive Committee, Ethics and Business Conduct Committee, Options Floor Trading Committee, and Equity Floor Trading Committee to impose a fine not to exceed $5,000 on any member, member organization, or person associated with a member or member organization for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. The purpose of Rule 10.13 is to provide for a response to a rule violation when a meaningful sanction is appropriate but when initiation of a disciplinary proceeding under PSE Rule 10.3[6] is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Rule 10.13 provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures.[7] Rule 10.13 includes a list of rule violations that are eligible for the expedited disciplinary procedure under the MRP and that may be the subject of fines in accordance with the Recommended Fine Schedule. In order for a particular Exchange rule violation to qualify for inclusion in the MRP, the rule violation must be either objective or technical in nature, and be easily verifiable, thereby lending itself to the use of expedited proceedings.

2. Proposed Additions to List of MRP Violations

The Exchange is proposing to amend its MRP by adding the following violations of Exchange rules and policies to the MRP: (1) Members who act as Floor Brokers and Market Makers trading in excess of 100 contracts per month as a Market Maker without a Primary Appointment (PSE Rule 6.38(c)); (2) Failure to request a market to be removed from the screen when leaving the trading crowd (PSE Rule 6.37, Com. .03; PSE Rule 6.46, Com. .04); (3) Failure to meet 75% Primary Appointment requirement (PSE Rule 6.35, Com. .03); (4) Failure to meet 60% in-person trading requirement (PSE Rule 6.37, Com. .07); (5) Unauthorized use of telephones located in the options trading post areas; (6) Short Sale rules (PSE Rule 5.18(a)–(f)); (7) Inadequate staffing at specialist post (prior to the opening) (PSE Rule 5.28(c)–(d)); (8) Failure to furnish in a timely manner books, records, or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions (PSE Rule 2.12(c)); and (9) Failure to notify the Exchange of a change of address where notices may be served (PSE Rule 1.13).

3. Proposed Amendments to Recommend Fine Schedule

The Recommended Fine Schedule is graudated so that the sanctions imposed for particular Exchange rule violations increase with each subsequent violation. The Exchange proposes to establish recommended fines for first, second, and third-time violations of the rules proposed to be added to the MRP.[8] The Exchange also is proposing that Options and Equity Floor Decorum and Minor Trading Rule Violations be calculated on a running two-year basis, so that a subsequent violation of the same provision within two years will be subject to the next highest fine (*e.g.*, the second violation that occurs within a two-year period will be treated as a second occurrence). However, the Exchange proposes that violations of particular Equity Floor Decorum and Minor Trading Rules be considered on a running one-year basis consistent with existing provisions to that effect in the Equity Floor Procedure Advices ("EFPA").[9]

The Exchange represents that the amended Recommended Fine Schedule will be disseminated to the Exchange membership via a regulatory bulletin, and recirculated periodically (*i.e.*, approximately once per year).

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) and 6(b)(6).[10] Specifically, the Commission believes that an exchange's ability to effectively enforce compliance by its members and member organizations with Commission and Exchange rules is central to its self-regulatory functions. The inclusion of a rule in an exchange's minor rule violation plan, therefore, should not be interpreted to mean it is not an important rule. On the contrary, the Commission recognizes that the inclusion of minor violations of particular rules under a minor rule violation plan may make the exchange's disciplinary system more efficient in prosecuting more egregious and/or repeated violations of these rules, thereby furthering its mandates to protect investors and the public interest.

The Commission has previously found that the Exchange's MRP provides fair procedures for appropriately disciplining members and member organizations for minor rule violations that warrant a sanction more severe than a warning or cautionary letter, but for which a full disciplinary proceeding would be unsuitable because such a proceeding would be costly and time-consuming in view of the minor nature of the violation.[11]

The Commission finds that violations of the Exchange rules proposed to be added to the MRP are either objective or technical in nature and are easily verifiable, thereby lending themselves to the use of expedited proceedings. For example, noncompliance with the 75% Primary Appointment requirement, or with the 60% in-person trading requirement, are matters which may be determined objectively and adjudicated quickly without the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary proceedings. If the Exchange determines that a violation of one of these rules is not minor in nature, the Exchange retains the discretion to initiate full disciplinary proceedings in accordance with PSE Rule 10.3. The Commission expects the PSE to bring full disciplinary proceedings in appropriate cases (*e.g.*, in cases where the violation is egregious or where there is a history or pattern of repeat violations).

In addition, the recommended fines proposed to be added by the Exchange to the Recommended Fine Schedule are

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] Rule 19d–1(c)(2) under the Act, 17 CFR 240.19d–1(c)(2), authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. The Exchange's MRP initially was approved by the Commission in 1985. *See* Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (November 27, 1985). On June 24, 1993, the Commission approved a number of amendments to the Exchange's MRP, including the addition of certain rules to the list of MRP violations, the addition of detailed procedures to the MRP, and revisions to the Exchange's Recommended Fine Schedule. *See* Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491 (July 1, 1993) ("Release 34–32510").

[4] In Amendment No. 1, the Exchange (1) eliminated from its proposal the inclusion, in the Exchange's MRP and the Recommended Fine Schedule, of violations of certain proposed rules which either were pending before the Commission and not yet approved at the time this proposal was filed with the Commission, or are still pending before the Commission (See File Nos. SR–PSE–93–26 and SR–PSE–93–10, respectively); and (2) deleted a cross-reference to another rule which also is pending before the Commission and has not yet been approved (See File No. SR–PSE–93–19). See Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Thomas N. McManus, Division of Market Regulation, Commission, dated Mach 28, 1994.

[5] See Securities Exchange Act Release No. 33956 (April 22, 1994), 59 FR 22700 (May 2, 1994).

[6] PSE Rule 10.3 governs the initiation of disciplinary proceedings by the Exchange for violations within the disciplinary jurisdiction of the Exchange.

[7] See Release 34–32510, *supra* note 3, for a more comprehensive explanation of the MRP procedures.

[8] The largest fine for a violation of one of these rules is $2,500 (for a third-time violation of the short sale rule).

[9] Such rule violations include (1) Smoking or Expectorating (EFPA 1–B); (2) Alcoholic Beverages (EFPA 1–B); and (3) Conduct of Guests (EFPA 1–B).

[10] 15 U.S.C. 78f(b) (5) and (6) (1988). Section 6(b)(5) of the Act requires that the rules of an exchange protect investors and the public interest. Section 6(b)(6) of the Act requires that the rules of an exchange provide that its members be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the Exchange's rules.

[11] See Release 34–32510, *supra* note 3.

6(b)(6).[10] Specifically, the Commission believes that an exchange's ability to effectively enforce compliance by its members and member organizations with Commission and Exchange rules is central to its self-regulatory functions. The inclusion of a rule in an exchange's minor rule violation plan, therefore, should not be interpreted to mean it is not an important rule. On the contrary, the Commission recognizes that the inclusion of minor violations of particular rules under a minor rule violation plan may make the exchange's disciplinary system more efficient in prosecuting more egregious and/or repeated violations of these rules, thereby furthering its mandates to protect investors and the public interest.

The Commission has previously found that the Exchange's MRP provides fair procedures for appropriately disciplining members and member organizations for minor rule violations that warrant a sanction more severe than a warning or cautionary letter, but for which a full disciplinary proceeding would be unsuitable because such a proceeding would be costly and time-consuming in view of the minor nature of the violation.[11]

The Commission finds that violations of the Exchange rules proposed to be added to the MRP are either objective or technical in nature and are easily verifiable, thereby lending themselves to the use of expedited proceedings. For example, noncompliance with the 75% Primary Appointment requirement, or with the 60% in-person trading requirement, are matters which may be determined objectively and adjudicated quickly without the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary proceedings. If the Exchange determines that a violation of one of these rules is not minor in nature, the Exchange retains the discretion to initiate full disciplinary proceedings in accordance with PSE Rule 10.3. The Commission expects the PSE to bring full disciplinary proceedings in appropriate cases (*e.g.*, in cases where the violation is egregious or where there is a history or pattern of repeat violations).

In addition, the recommended fines proposed to be added by the Exchange to the Recommended Fine Schedule are graduated to account for repeat offenders. The Commission expects the Exchange to commence a formal disciplinary proceeding under PSE Rule 10.3, and impose more serious sanctions, if it determines that a violation otherwise covered by the MRP is not minor in nature, in the event of repeat violations of a certain rule by a particular member or member organization, or in any other appropriate circumstance. The fine schedules should result in appropriate discipline of members, in a manner that is proportionate to the minor nature of such violations. Further, the Commission believes that calculating fines on a running two-year basis (or on a running one-year basis for certain rule violations), while preserving the Exchange's ability to increase the sanction for subsequent violations, is an equitable approach that accounts for the possibility that a substantial period of time may elapse between violations.

Finally, the PSE has represented that the Recommended Fine Schedule will be circulated periodically to members of the Exchange. The Commission believes that the publicizing of the Recommended Fine Schedule further enhances the fairness of the MRP.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–PSE–93–31), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17033 Filed 7–13–94; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b) (5) and (6) (1988). Section 6(b)(5) of the Act requires that the rules of an exchange protect investors and the public interest. Section 6(b)(6) of the Act requires that the rules of an exchange provide that its members be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the Exchange's rules.

[11] See Release 34–32510, *supra* note 3.

[Release No. 34–34340; File No. SR–NYSE–94–27]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Content Outline for the General Securities Registered Representative (Series 7) Examination

July 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 30, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE has filed a proposed Content Outline for the General Securities Registered Representative (Series 7) Examination ("Series 7").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to revise and update the Content Outline for the Series 7 examination. The Series 7 examination was created in 1974 as an industry-wide qualification examination for persons seeking registration as general securities representatives. The Series 7 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the solicitation, purchase, and/or sale of securities for the accounts of customers. The purpose of the Series 7 examination is to ensure that registered representatives have the basic knowledge necessary to perform their functions and responsibilities. The Series 7 Content Outline details the subject coverage and question allocation of the examination.

Revision of the Series 7 examination and Content Outline was initiated in April 1993 by an industry committee of SROs and representatives from broker-dealers in order to update the examination in view of changes in the securities industry, including changes in relevant rules and regulations, the development of new securities products, and changes in the job of registered representatives as firms offer an increasingly wide range of financial

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

services.[2] The Content Outline for the Series 7 examination has not been revised since 1986.

The industry committee updated the existing statements of the critical functions of registered representatives to ensure current relevance and appropriateness, drafted statements of tasks expected to be performed by entry-level registered representatives, and conformed the existing Content Outline to the task statements. The Content Outline reflects the revised content of the examination. Under the proposed rule change, the total number of questions in the Series 7 examination will remain 250, and the revised examination will cover all financial product areas covered on the present Series 7 examination as well as several new products, including collateralized mortgage obligations ("CMOs"), long term equity anticipated securities ("LEAPS") and CAPS, with reduced emphasis on direct participation programs.

Under the proposed rule change, NYSE will appoint a committee to review the Series 7 Content Outline and specifications periodically to determine any adjustments that may be required. The committee will represent a broad range of expertise, such as practicing registered representatives, branch managers, compliance officers, training personnel, and SRO representatives. The review will address any new information that registered representatives need to know, information currently specified in the examination that may require deletion and any adjustments that need to be made in the emphasis on various topics.

The other SRO participants will also file the revised Content Outline for approval by the Commission. NYSE intends to commence use of the revised Content Outline ninety days after approval by the Commission.

(b) Statutory Basis

The statutory basis for the Series 7 examination lies in Section 6(c)(3)(B) of the Act. Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–NYSE–94–27 and should be submitted by August 4, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17095 Filed 7–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34341; File No. SR–NYSE–94–26]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Examination Specifications for the General Securities Registered Representative (Series 7) Examination

July 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] Notice is hereby given that on June 30, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE has filed the Examination Specifications for the General Securities Registered Representative (Series 7) Examination ("Series 7") and seeks approval for the Series 7 examination.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to revise, update and seek approval for the Series 7 examination and specifications. The Series 7 examination was created in 1974 as an industry-wide qualification examination for persons seeking registration as general securities representatives. The Series 7 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the solicitation, purchase and/or sale of securities for the accounts of customers. The purpose of the Series 7 examination is to ensure that registered representatives have the basic knowledge necessary to perform their functions and responsibilities. The Series 7 examination specifications detail the areas covered by the examination and break down the number of examination questions culled from each area.

Revision of the Series 7 examination and specifications was initiated in April 1993 by an industry committee of SROs and representatives from broker-dealers in order to update the examination in view of changes in the securities industry, including changes in relevant rules and regulations, the development of new securities products, and changes in the job of registered representatives as firms offer an increasingly wide range of financial services.[2] The examination specifications for the Series 7 have not been revised since 1986.

The industry committee updated the existing statements of the critical functions of registered representatives to ensure current relevances and appropriateness and drafted statements of tasks expected to be performed by entry-level registered representatives. Under the proposed rule change, the total number of questions in the Series 7 examination will remain 250, and the revised examination will cover all financial product areas covered by the present Series 7 examination as well as several new products, including collateralized mortgage obligations ("CMOs"), long term equity anticipation securities ("LEAPS") and CAPS, with reduced emphasis on direct participation programs.

Under the proposed rule change, NYSE will appoint a committee to review the Series 7 Content Outline and specifications periodically to determine any adjustments that may be required. The committee will represent a broad range of expertise, such as practicing registered representatives, branch

[2] SROs on the committee include NYSE, American Stock Exchange, Chicago Board Options Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers and Philadelphia Stock Exchange. Broker-dealer representatives include branch office managers, compliance officers, training personnel and registered representatives.

[3] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

examination was created in 1974 as an industry-wide qualification examination for persons seeking registration as general securities representatives. The Series 7 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the solicitation, purchase and/or sale of securities for the accounts of customers. The purpose of the Series 7 examination is to ensure that registered representatives have the basic knowledge necessary to perform their functions and responsibilities. The Series 7 examination specifications detail the areas covered by the examination and break down the number of examination questions culled from each area.

Revision of the Series 7 examination and specifications was initiated in April 1993 by an industry committee of SROs and representatives from broker-dealers in order to update the examination in view of changes in the securities industry, including changes in relevant rules and regulations, the development of new securities products, and changes in the job of registered representatives as firms offer an increasingly wide range of financial services.[2] The examination specifications for the Series 7 have not been revised since 1986.

The industry committee updated the existing statements of the critical functions of registered representatives to ensure current relevances and appropriateness and drafted statements of tasks expected to be performed by entry-level registered representatives. Under the proposed rule change, the total number of questions in the Series 7 examination will remain 250, and the revised examination will cover all financial product areas covered by the present Series 7 examination as well as several new products, including collateralized mortgage obligations ("CMOs"), long term equity anticipation securities ("LEAPS") and CAPS, with reduced emphasis on direct participation programs.

Under the proposed rule change, NYSE will appoint a committee to review the Series 7 Content Outline and specifications periodically to determine any adjustments that may be required. The committee will represent a broad range of expertise, such as practicing registered representatives, branch managers, compliance officers, training personnel, and SRO representatives. The review will address any new information that registered representatives need to know, information currently specified in the examination that may require deletion and any adjustments that need to be made in the emphasis on various topics.

The other SRO participants will also file the revised specifications for approval by the Commission. NYSE intends to commence use of the revised examination and specifications ninety days after approval by the Commission.

(b) Statutory Basis

The statutory basis for the Series 7 examination lies in Section 6(c)(3)(B) of the Act. Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–NYSE–94–26 and should be submitted by August 4, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17097 Filed 7–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34335; File No. SR–NYSE–94–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Content Outline for the General Securities Sales Supervisor (Series 8) Examination

July 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on June 28, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[2] SROs on the committee include NYSE, American Stock Exchange, Chicago Board Options Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers and Philadelphia Stock Exchange. Broker-dealer representatives include branch office managers, compliance officers, training personnel and registered representatives.

[3] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed a proposed Content Outline for the General Securities Sales Supervisor ("Series 8") Examination.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The General Securities Sales Supervisor ("Series 8") Examination is an industry-wide qualification examination for securities sales supervisors. The Series 8 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the supervision of general securities branch offices (*i.e.*, branch office managers) and of general securities registered representatives. The Series 8 examination tests a candidate's knowledge of securities industry rules and regulations and certain statutory provisions applicable to general securities sales supervision. The Series 8 Content Outline details the subject coverage and question allocation of the examination.

Revision of the Series 8 examination and Content Outline was recently undertaken by an industry committee composed of representatives from SROs (the NYSE, the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers and the Philadelphia Stock Exchange) and representatives from broker-dealers, including branch office managers, compliance personnel and corporate executives, in order to update the examination in view of changes in relevant laws, rules and regulations, the development of new products, and to reflect various changes in industry practices. The committee reviewed the examination specifications, content areas and item bank and developed some new questions in new areas.

The revised examination continues to cover the areas of knowledge required to supervise sales activities in securities, however, the focus of the content of the examination has been shifted to concentrate more closely on supervisory duties. Accordingly, certain questions have been deleted from the examination which deal with routine calculations and basic product knowledge and questions on new federal and SRO rules and regulations have been incorporated into the exam, as well as questions on new products, supervision and changes in industry practices. The Content Outline reflects the revised content of the examination. The examination will remain a six-hour, two-part, 200 question examination. The other SRO participants will also file the revised Content Outline for approval by the SEC. The Exchange intends to commence use of the revised Content Outline ninety days after approval by the Commission.

(b) Statutory Basis

The statutory basis for the Series 8 Examination lies in Section 6(c)(3)(B) of the Act. Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specific levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–23 and should be submitted by August 4, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17098 Filed 7–13–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–34336; File No. SR–NYSE–94–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Examination Specifications for the General Securities Sales Supervisor (Series 8) Examination

July 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder[2] notice is hereby given that on June 28, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1994).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed the proposed Examination Specifications for the General Securities Sales Supervisor ("Series 8") Examination.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The General Securities Sales Supervisor ("Series 8") Examination is an industry-wide qualification examination for securities sales supervisors. The Series 8 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the supervision of general securities branch offices (*i.e.*, branch office managers) and of general securities registered representatives. The Series 8 examination tests a candidate's knowledge of securities industry rules and regulations and certain statutory provisions applicable to general securities sales supervision. The Series 8 examination specifications detail the areas covered by the examination and break down the number of examination questions culled from each area.

Revision of the Series 8 examination and specifications was recently undertaken by an industry committee composed of representatives from SROs

[3] As part of the proposed rule change, the NYSE is also seeking approval of the Series 8 examination itself.

the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed the proposed Examination Specifications for the General Securities Sales Supervisor ("Series 8") Examination.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The General Securities Sales Supervisor ("Series 8") Examination is an industry-wide qualification examination for securities sales supervisors. The Series 8 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the supervision of general securities branch offices (*i.e.*, branch office managers) and of general securities registered representatives. The Series 8 examination tests a candidate's knowledge of securities industry rules and regulations and certain statutory provisions applicable to general securities sales supervision. The Series 8 examination specifications detail the areas covered by the examination and break down the number of examination questions culled from each area.

Revision of the Series 8 examination and specifications was recently undertaken by an industry committee composed of representatives from SROs (the NYSE, the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers and the Philadelphia Stock Exchange) and representatives from broker-dealers, including branch office managers, compliance personnel and corporate executives, in order to update the examination in view of changes in relevant laws, rules and regulations, the development of new products, and to reflect various changes in industry practices. The committee reviewed the examination specifications, content areas and item bank and developed some new questions in new areas.

The revised examination continues to cover the areas of knowledge required to supervise sales activities in securities, however, the focus of the content of the examination has been shifted to concentrate more closely on supervisory duties. Accordingly, certain questions have been deleted which deal with routine calculations and basic product knowledge and questions on new federal and SRO rules and regulations have been incorporated into the exam, as well as questions on new products, supervision and changes in industry practices. The revised examination and specifications include coverage of these new areas. The examination will remain a six-hour, two-part, 200 question examination.

The other SRO participants will also file the revised examination and specifications for approval by the SEC. The Exchange intends to commence use of the revised examination specifications ninety days after approval by the Commission.

(b) Statutory Basis

The statutory basis for the Series 8 Examination lies in Section 6(c)(3)(B) of the Act. Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specific levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–24 and should be submitted by August 4, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17099 Filed 7–13–94: 8:45 am]

BILLING CODE 8010–01–M

[3] As part of the proposed rule change, the NYSE is also seeking approval of the Series 8 examination itself.

[Release No. 34-34334; File No. SR-NYSE-94-13]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Interpretation to Rule 345 Establishing a New Category of Limited Registration for Floor Clerks, and the Content Outline for the Examination Module for Floor Clerks of Members Engaged in Public Business With Professional Customers (Series 7B)

July 8, 1994.

I. Introduction

On March 28, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed interpretation to NYSE Rule 345 to establish a new category of limited registration for floor clerks of members engaged in public business with professional customers and to adopt the Series 7B Examination and corresponding Content Outline for the Examination Module for Floor Clerks of Members Engaged in Public Business with Professional Customers.

The proposed rule change was published for comment in Securities Exchange Act Release No. 34033 (May 10, 1994), 59 FR 25514 (May 16, 1994). No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange is adopting a Series 7B Examination as a subset of the General Securities Registered Representative Examination ("Series 7") to test the knowledge of relevant securities laws and Exchange rules required of floor clerks of members who accept public orders only from professional customers, as defined in the proposal, for execution on the trading floor.[3] In addition, the NYSE is amending Interpretation .15 to Rule 345 ("Qualifications") to establish, as a new category of registration, limited registration for floor clerks who have successfully completed the Series 7B Examination.

Currently, a floor clerk who is associated with a member and who takes orders from public customers must become a registered representative and pass the Series 7 Examination. The Exchange states that such public business is often limited to accepting orders from professional customers.[4] The Exchange believes that the level of knowledge required to perform the activities engaged in by clerks who conduct a professional public business limited to transactions in listed securities on the Exchange floor is narrower in content and scope than that needed to conduct an overall general securities business with retail customers.

On July 29, 1993, the Commission approved a proposed rule change by the NYSE that adopted the Series 7A Examination as a module of the Series 7 Examination to test floor members who only accept public orders from professional customers.[5] According to the Exchange, these floor members have requested that their floor clerks who take public orders solely from professional customers also be allowed to take a qualifying examination more appropriate to the level of knowledge required to serve professional customers. Consequently, the NYSE developed the Series 7B Examination to test the knowledge of floor clerks who accept public orders only from professional customers on behalf of members qualified to conduct business with these professional customers by complementing the Series 7A Examination module with questions on basic information required to perform floor functions.[6]

The NYSE believes that the proposal is consistent with section 6(c)(3)(B) of the Act. The Exchange states that, pursuant to this statutory obligation, it has developed examinations that are administered to establish that Exchange floor members and persons associated with such members performing specific functions have attained specified levels of competence and knowledge.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6(b)(5) and 6(c)(3)(B) of the Act.[7] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission also believes that the proposed rule change is consistent with section 15(b)(7) of the Act[8] which stipulates that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer and all natural persons associated with such broker or dealer must meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

The Commission believes that the Series 7B examination requirement should help to ensure that only those floor clerks with a comprehensive knowledge of Exchange rules, as well as an understanding of the Act, will be able to conduct a public business limited to accepting orders directly from professional customers for execution on the trading floor. In this regard, the Commission carefully reviewed the format and the substantive areas tested on the Series 7B examination. In reviewing the examination, the Commission focused on the comprehensiveness and the choice of specific questions and their level of difficulty. The Commission believes that the examination questions cover the appropriate subject matter and include a sufficiently broad range of topics so as to require an appropriate level of expertise by floor clerks of members who conduct a public business limited to accepting orders directly from professional customers. By ensuring this requisite level of knowledge, the NYSE can remain confident that its limited registration floor clerks have demonstrated an acceptable level of securities knowledge to carry out their responsibilities.

The Commission also has determined that the Content Outline for the Series 7B Examination is sufficiently detailed and covers the appropriate information so as to provide an adequate basis for studying the topics covered on the examination. This outline should help to ensure that those persons taking the Series 7B fully understand the subject matter of the examination.

Finally, the Commission believes that the proposed limited registration requirement for floor clerks of members engaged in a public business with professional customers is reasonable and is consistent with the requirements of Section 6(b)(5) and 6(c)(3)(B) of the Act. This new category of registration would permit only those floor clerks who have demonstrated adequate skills and knowledge to conduct a public business which is generally limited to accepting orders directly from professional customers. The NYSE has argued that the level of knowledge, skills and abilities necessary to conduct such business is less than that needed to conduct a full service business with retail customers. The Commission believes that, because the NYSE will ensure that floor clerks handling professional customer business are adequately qualified through the use of either the Series 7 or Series 7B exam, it is consistent with the NYSE's regulatory responsibilities to establish this category of limited registration.

IV Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR-NYSE-94-13) is approved.

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1994).

[3] The proposal would define a professional customer to include: a bank; a trust company; an insurance company; an investment trust; a state or political subdivision thereof; a charitable or non-profit educational institution regulated under the laws of the United States or any state or pension or profit sharing plan subject to ERISA or of an agency of the United States, or of a state or a political subdivision thereof, or any person who has, or has under management, net tangible assets of at least sixteen million dollars.

For purposes of the definition of professional customer, the term "person" would mean the same as that term is defined in NYSE Rule 2, except that it would not include natural persons.

The Exchange states that the above definition is derived from the term "designated account" as used in NYSE Rule 431 ("Margin Requirements") and interpretations thereof to describe a professional or sophisticated customer.

[4] Telephone conversation between Mary Ann Furlong, Director, Rule and Interpretive Standards, NYSE, and Louis A. Randazzo, Attorney, Office of Market Supervision, SEC, Division of Market Regulation, on June 17, 1994.

[5] See Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993) (order approving File No. SR-NYSE-93-10).

[6] The Exchange will continue to require the successful completion of the Series 7 Examination for any floor clerk seeking to become a registered representative dealing with other than professional customers. In addition, any person who has successfully completed the Series 7 Examination will not be required to complete the Series 7B Examination.

[7] 15 U.S.C. 78f(b)(5) and (c)(3)(B) (1988).

[8] 15 U.S.C. 78o(b)(7) (1988).

[9] 15 U.S.C. 78s(b)(2) (1988).

the trading floor. In this regard, the Commission carefully reviewed the format and the substantive areas tested on the Series 7B examination. In reviewing the examination, the Commission focused on the comprehensiveness and the choice of specific questions and their level of difficulty. The Commission believes that the examination questions cover the appropriate subject matter and include a sufficiently broad range of topics so as to require an appropriate level of expertise by floor clerks of members who conduct a public business limited to accepting orders directly from professional customers. By ensuring this requisite level of knowledge, the NYSE can remain confident that its limited registration floor clerks have demonstrated an acceptable level of securities knowledge to carry out their responsibilities.

The Commission also has determined that the Content Outline for the Series 7B Examination is sufficiently detailed and covers the appropriate information so as to provide an adequate basis for studying the topics covered on the examination. This outline should help to ensure that those persons taking the Series 7B fully understand the subject matter of the examination.

Finally, the Commission believes that the proposed limited registration requirement for floor clerks of members engaged in a public business with professional customers is reasonable and is consistent with the requirements of Section 6(b)(5) and 6(c)(3)(B) of the Act. This new category of registration would permit only those floor clerks who have demonstrated adequate skills and knowledge to conduct a public business which is generally limited to accepting orders directly from professional customers. The NYSE has argued that the level of knowledge, skills and abilities necessary to conduct such business is less than that needed to conduct a full service business with retail customers. The Commission believes that, because the NYSE will ensure that floor clerks handling professional customer business are adequately qualified through the use of either the Series 7 or Series 7B exam, it is consistent with the NYSE's regulatory responsibilities to establish this category of limited registration.

IV Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–94–13) is approved.

[9] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17100 Filed 7–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34338; File Nos. SR–PSE–93–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Extension of Market Maker Margin and Capital Treatment to Certain Market Maker Orders Entered From Off the Trading Floor

July 8, 1994.

On August 13, 1993, as amended on March 28, 1994, April 21, 1994, and May 6, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal to extend market maker capital and margin treatment to orders entered by PSE market makers from off the Exchange floor, provided that at least 80% of their total transactions on the Exchange are executed in person and not through the use of orders. In addition, the proposal requires that all off-floor orders for which a market maker receives market maker treatment be consistent with a market maker's duty to maintain fair and orderly markets and, in general, be effected for the purpose of hedging, reducing the risk of, or rebalancing open positions of the market maker. The PSE originally proposed requiring that 75% of a market maker's total transactions on the PSE be executed on the PSE's floor. In addition, the original proposal did not contain any reference to market making obligations.

The original proposal was published for comment in Securities Exchange Act Release No. 32958 (September 24, 1993), 58 FR 51661 (October 4, 1993). No comments were received on the proposal. This order approves the PSE's proposal, as amended.[3]

[10] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19b–4 (1993).

[3] On March 28, 1994, the PSE amended its proposal to change references in PSE Rule 6.32, Commentary .02 from "Commentary .07(A)" to "Commentary .07" and to change the phrase "set forth in" to "provided in" ("Amendment No. 1").

Currently, under PSE Rule 6.32, "Market Maker Defined," only transactions initiated on the PSE's floor count as market maker transactions. Thus, only on-floor market maker transactions qualify for favorable capital and margin treatment under the PSE's rules, even if such orders are entered to adjust or hedge the risk of positions of the market maker that result from his on-floor market making activity.[4] The PSE states that because a market maker cannot effectively adjust his positions or engage in hedging or other risk limiting opening transactions from off the Exchange floor without incurring a significant economic penalty, PSE market makers must either be physically present on the floor at all times while the market is open, or face significant risks of adverse market movements during those times when they must necessarily be absent from the trading floor. The PSE argues that by imposing costs on certain hedging or risk-adjusting transactions of market makers, the PSE's current rules may prevent market makers from effectively discharging their market making obligations and expose them to unacceptable levels of risk.

The Exchange states that its proposal is designed to accommodate the occasional needs of PSE market makers to adjust or hedge options positions in their market maker accounts at times

Amendment No. 1 is technical in nature and makes no substantive changes. On April 21, 1994, the PSE amended its proposal to provide that 80%, rather than 75%, of a market maker's total transactions on the PSE be executed in person on the PSE's floor ("Amendment No. 2"). In addition, Amendment No. 2 states that the off-floor orders for which a market maker receives market-maker treatment shall be consistent with a market maker's duty to maintain fair and orderly markets and in general shall be effected for the purpose of hedging, reducing the risk of, or rebalancing open positions of the market maker. By a letter dated May 6, 1994, the PSE deleted a provision that provided that market makers who elected to enter orders from off the Exchange's floor but failed to meet the 80% requirement would be subject to the sanctions provided in PSE Rule 6.37, "Obligations of Market Makers," Commentary .07. See Letter from Michael Pierson, Senior Attorney, Market Regulation, PSE, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated May 6, 1994 ("Amendment No 3"). Instead, under Amendment No. 3, market makers who fail to comply with the proposal's requirements will be subject to disciplinary proceedings under PSE Rule 10. By a letter dated June 13, 1994, the Exchange indicated that it plans to issue a circular to its members describing the proposal and emphasizing the importance of monitoring off-floor trading activity. See Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, dated June 13, 1994 ("June 13 Letter").

[4] Questions of margin and capital treatment do not arise in connection with closing transactions initiated from off the floor, since they only reduce or eliminate existing positions.

when they are not physically present on the trading floor, without diluting the requirement that the trading activity of market makers must fulfill their market making obligations and must contribute to the maintenance of a fair and orderly market on the Exchange.

Currently, under PSE Rule 6.35, "Appointment of Market Makers," Commentary .03, all PSE market makers are obligated to effect not less than 75% of their contract volume in their appointed classes of options. In addition, under PSE Rule 6.37, Commentary .07, PSE market makers are required to effect not less than 60% of their total transactions in person on the trading floor and not by entry of orders. The PSE proposes to amend Exchange Rule 6.32, "Market Maker Defined," Commentary .02, to allow market makers who elect to meet a more stringent in-person requirement to receive market maker margin and capital treatment for opening transactions executed through off-floor orders. Specifically, the PSE proposes to amend PSE Rule 6.32 to allow market makers to elect to receive market maker treatment for off-floor opening transactions if the market maker, in addition to satisfying all of the other existing obligations imposed on market makers, executes at least 80% of his total transactions for any calendar quarter in person and not through the use of orders. In addition, the off-floor orders for which a market maker receives market maker treatment shall be consistent with a market maker's duty to maintain fair and orderly markets and in general shall be effected for the purpose of hedging, reducing risk of, rebalancing or liquidating open positions of the market maker.[5]

PSE market makers who elect market maker treatment for off-floor opening transactions but fail to satisfy the proposal's requirements, including the 80% in-person requirement, will be subject to full disciplinary proceedings under Chapter 10 of the PSE's rules.[6] Under PSE Rule 10.1, "Disciplinary Jurisdiction," the Exchange may impose appropriate discipline for violations of the Act and the Exchange's rules, including expulsion, suspension, limitation of activities, functions, and operations, suspension or bar from association with a member or member organization, fine, censure, or any other fitting sanction.

The PSE believes that the amended proposal presents a more appropriate and realistic treatment of market maker transactions initiated from off the trading floor than what is provided for under existing Exchange Rule 6.32. The PSE believes that extending favorable margin and capital treatment for off-floor transactions only to those market makers who submit to an 80% in-person requirement should have the effect of increasing the extent to which market maker transactions contribute to liquidity and to the maintenance of fair and orderly markets on the PSE by providing for a greater degree of in-person trading by market makers and by enabling market makers to better manage the risk of their market making activities.

The PSE believes that the proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it will promote the maintenance of fair and orderly markets on the PSE and will contribute to the protection of investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) in that the proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.[7] In addition, the Commission finds that the proposal is consistent with the requirement under Section 11(a) of the Act that a member's transactions not be inconsistent with the maintenance of fair and orderly markets.[8]

The Commission believes that the proposal is a reasonable effort by the PSE to accommodate the needs of PSE market makers to effect off-floor opening transactions while maintaining the requirement under PSE Rule 6.37(a) that market makers' transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. Specifically, in order to qualify for market maker treatment for off-floor orders, the proposal requires a market maker to execute at least 80% of his total transactions for any calendar quarter in person and not through the use of orders. In addition, the proposal states that the off-floor orders for which a market maker receives market maker treatment shall be consistent with a market maker's duty to maintain fair and orderly markets and in general shall be effected for the purpose of hedging, reducing risk of, rebalancing or liquidating open positions of the market maker. The Commission believes that these requirements, taken together, will help to ensure that all market maker transactions continue to contribute to the maintenance of a fair and orderly market while, at the same time enabling market makers to better manage the risk of their market making activities.

Under the current requirements, market makers who adjust existing positions for hedging purposes while not physically present on the floor cannot receive market maker margin treatment for such orders under any circumstances and must decide whether to close out their positions or place an order in a customer margin account requiring 50% margin. While the Commission believes that this may not be an unreasonable result in many cases, the Commission believes that the PSE has set forth a reasonable proposal that permits market maker treatment for certain off-floor orders under very limited circumstances that ensure that such orders must contribute to the maintenance of fair and orderly markets and require market makers to comply with a heightened 80% in person trading requirement.

By requiring both more stringent in person trading requirements and that off-floor opening transactions be effected only for the purpose of hedging, reducing the risk of, rebalancing or liquidating open positions, the proposal should help to ensure the stability and orderliness of the PSE's markets.

The Commission expects the PSE to closely monitor those market makers electing to receive market maker treatment for certain off-floor orders as provided under the proposal to ensure that they are meeting the in person trading requirements in addition to the other market making obligations required under the proposal. The PSE has represented that market makers who choose to receive favorable margin and capital treatment under the proposal but fail to satisfy the proposal's requirements will be subject to full disciplinary proceedings under Chapter 10 of the PSE's rules. As noted above, the sanctions possible under Chapter 10 include expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member or any other fitting sanction. The Commission expects the Exchange to impose strict sanctions for violations of the rule, particularly in cases of egregious or repeated failures to comply with the rule's requirements.[9]

Finally, the Commission notes that the staff of the Board of Governors of the Federal Reserve System ("Board") has issued a letter raising no objection to the Commission's approval of an identical proposal by the Chicago Board Options Exchange, Inc. ("CBOE"),[10] based on the Commission's belief that the off-floor transactions of CBOE market makers under the proposal are designed to contribute to the maintenance of a fair and orderly market and are consistent with the obligations of a specialist under section 11 of the Act.[11]

The Commission finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2, which increases the in-person requirement from 75% to 80% and requires a market maker's off-floor transactions to be effected for the purpose of hedging, reducing risk of, rebalancing or liquidating open positions, limits the likelihood of abuse of the proposed rule change by limiting its availability to market makers who enter 80% of their orders in person on the PSE's floor and by requiring that the off-floor orders have a legitimate market making purpose. Moreover, the PSE's Amendment No. 2 is identical to Amendment No. 1 to the CBOE's proposal. The CBOE's Amendment No. 1 was published for comment in the **Federal Register** and the Commission received no comments on the CBOE's amendment.[12] The PSE's Amendment No. 3, which provides for full disciplinary proceedings for failures to comply with the proposal's requirements, is consistent with the CBOE's proposal and should help to ensure compliance with the requirements of the proposed rule. As a result, the Commission believes that good cause exists for approving Amendment Nos. 2 and 3 on an accelerated basis.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

---

[5] See Amendment No. 2, *supra* note 3.

[6] See Amendment No. 3, *supra* note 3.

[7] 15 U.S.C. 78f(b)(5) (1982).

[8] 15 U.S.C. 78k (1982).

[9] The PSE plans to distribute a circular to its membership describing the rule change and emphasizing the importance of monitoring off-floor trading activity. *See* June 13 Letter, *supra* note 3.

[10] See File No. SR–CBOE–93–19.

[11] See Letter from Scott Holz, Senior Attorney, Board, to Howard Kramer, Associate Director, Division, Commission, dated March 9, 1994.

[12] See Securities Exchange Act Release No. 33853 (April 1, 1994), 59 FR 16869 (April 8, 1994) (File No. SR–CBOE–93–19).

Finally, the Commission notes that the staff of the Board of Governors of the Federal Reserve System ("Board") has issued a letter raising no objection to the Commission's approval of an identical proposal by the Chicago Board Options Exchange, Inc. ("CBOE"),[10] based on the Commission's belief that the off-floor transactions of CBOE market makers under the proposal are designed to contribute to the maintenance of a fair and orderly market and are consistent with the obligations of a specialist under section 11 of the Act.[11]

The Commission finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 2, which increases the in-person requirement from 75% to 80% and requires a market maker's off-floor transactions to be effected for the purpose of hedging, reducing risk of, rebalancing or liquidating open positions, limits the likelihood of abuse of the proposed rule change by limiting its availability to market makers who enter 80% of their orders in person on the PSE's floor and by requiring that the off-floor orders have a legitimate market making purpose. Moreover, the PSE's Amendment No. 2 is identical to Amendment No. 1 to the CBOE's proposal. The CBOE's Amendment No. 1 was published for comment in the **Federal Register** and the Commission received no comments on the CBOE's amendment.[12] The PSE's Amendment No. 3, which provides for full disciplinary proceedings for failures to comply with the proposal's requirements, is consistent with the CBOE's proposal and should help to ensure compliance with the requirements of the proposed rule. As a result, the Commission believes that good cause exists for approving Amendment Nos. 2 and 3 on an accelerated basis.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 4, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–PSE–93–19), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17096 Filed 7–13–94; 8:45 am]

BILLING CODE 8010–01–M

emphasizing the importance of monitoring off-floor trading activity. *See* June 13 Letter, *supra* note 3.

[10] See File No. SR–CBOE–93–19.

[11] See Letter from Scott Holz, Senior Attorney, Board, to Howard Kramer, Associate Director, Division, Commission, dated March 9, 1994.

[12] See Securities Exchange Act Release No. 33853 (April 1, 1994), 59 FR 16869 (April 8, 1994) (File No. SR–CBOE–93–19).

[13] 15 U.S.C. 78s(b)(2) (1982).

[14] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20391; 812–8068]

Thornburg Income Trust, et al.; Notice of Application

July 8, 1994.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Thornburg Income Trust, Limited Term Municipal Fund, Inc. (together with their series, the "Funds"), Thornburg Securities Corporation ("TSC") and Thornburg Management Company, Inc. ("TMC").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act granting an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting certain open-end management investment companies to issue multiple classes of shares representing interests in the same portfolio of securities and impose a contingent deferred sales charge ("CDSC") on certain redemptions of the shares.

FILING DATES: The application was filed on August 24, 1992 and amended on January 12, 1994 and April 25, 1994. By letter dated July 8, 1994, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 2, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 119 East Marcy Street, Suite 202, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Senior Attorney, at (202) 942–0571, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. Limited Term Municipal Fund, Inc. is a Maryland corporation currently offering shares in two series.[1] The Thornburg Income Trust is a Massachusetts business trust currently offering shares in five series. The Thornburg Income Trust also has seven series that have an effective registration statement but they are not

[1] The series of Limited Term Municipal Fund, Inc. are Limited Term Municipal Fund National Portfolio and Limited Term Municipal Fund California Portfolio.

currently offered.[2] Each Fund has entered into an investment advisory aggreement with TMC, a registered investment adviser. Under the agreement, TMC provides investment advisory and general management services to the Funds, subject to the general supervision of the Fund's board of directors or trustees, whichever is applicable. Each Fund also has entered into a distribution agreement with TSC under which TSC acts as principal underwriter for each Fund. TMC is referred to herein as the "Adviser" and TSC as the "Distributor." The trustees and directors of the Funds are referred to herein as the "Directors."

2. Applicants request that any order issued concerning this application also apply to any other open-end investment company which at any time in the future may offer shares on a basis which is identical in all material respects to the arrangements described in the application, and for which TMC, or any person controlled by or under common control with TMC, in the future may serve as investment adviser, and for which TSC, or any person controlled by or under common control with TSC, acts as distributor of such company's shares.

3. Currently, those Funds that have commenced operations offer their shares at net asset value plus a front-end sales load. Each of those Funds also pays TMC a rule 12b–1 service fee at an annual rate of .125% to .25% of the average daily net assets.

4. Applicants seek relief to implement a multiple distribution system (the "Alternative Pricing System"). Under this system, each of the Funds may offer investors the option of purchasing: shares subject to a front-end sales load and a rule 12b–1 service fee ("Class A"); shares subject to a CDSC and distribution and service fees charged under rule 12b–1 plans ("Class B"); shares sold at net asset value but subject to distribution and service fees charged under rule 12b–1 plans ("Class C"); and shares subject to a smaller front-end sales load than that charged on Class A shares and a smaller CDSC than that charged on Class B shares plus distribution and service fees charged under rule 12b–1 plans ("Class D").

5. The Funds also may offer additional classes of shares ("Future Classes") to or through groups, organizations or institutions such as trade associations, membership or professional organizations, broker-dealers, investment advisers and managers, banking and financial services organizations and financial planners (the "Service Organizations"). Each Future Class's load structure and rule 12b–1 distribution arrangement will be designed to meet the particular requirements of the Service Organization to which it relates. Although the Future Classes would be subject to the same advisory agreement as all shares of the fund, the Service Organization for which the Future Class was created may provide certain administrative and shareholder services to the class. These services will augment or replace (and not be duplicative of) the services provided by TMC and TSC. Expenses attributable to these services would be charged only to the Future Class to which the expenses relate.

6. Certain classes may provide a conversion feature under which shares will convert automatically after a period of time into shares that are subject to an asset based sales charge and service fee, if any, that is in the aggregate lower than the asset based sales charges and service fees on the original shares. All conversions will be effected at net asset value without the imposition of any sales load, fee, or other charge.

7. Each of the Funds currently offers a reinvestment privilege permitting any shareholder of a Fund who has redeemed shares in the preceding 24 months to buy shares in the Fund at net asset value, up to the amount of the redemption proceeds. Applicants expect to continue this reinvestment privilege under the Alternative Pricing System, except that the shareholder may reinvest in shares of a Fund within 24 months or other specified time period at net asset value only if (i) the shares to be purchased are offered in the shareholder's state, and (ii) the purchased shares are of the same class designation as the shares redeemed, except that if the shareholder redeemed shares subject to a CDSC and paid the charge at the time of redemption, the shareholder would be issued Class A shares not subject to a CDSC and without the front-end sales load normally assessed.

8. The Funds do not currently offer any exchange privilege, and have no present intention to do so. However, if an exchange privilege were offered in the future, shares of a Fund generally would be exchangeable only for shares of the corresponding class of other Funds and the privilege would be subject to the eligibility criteria applicable to the class of shares into which the shareholder seeks to exchange. Any exchange privilege applicable to any Fund or class of shares would comply with rule 11a–3 under the Act.

9. Under the Alternative Pricing System, the investment income and gains or losses will be allocated to each class of shares based upon its relative percentage of the Fund's net assets. Expenses also will be allocated to each class based upon its relative percentage of the Fund's net assets except to the extent: (a) Each class bears the specific expenses of the class's rule 12b–1 plans (if any), and (b) Class Expenses (as described in condition 1) are allocated to a specific class. Because of the differing rule 12b–1 fees and Class Expenses, the net income per share of (and dividends per share payable to) each class likely will be different from the net income per share of the other classes of shares of the Fund.

10. Applicants also seek relief to permit the Funds to assess a CDSC on redemptions of certain classes of shares. Shares of the Funds may be subject to the imposition of a CDSC if such shares are redeemed within a specified period after their purchase. The CDSC will apply only to those shares that are issued by the Fund after the SEC grants the requested exemption.

11. No CDSC would be imposed with respect to: (a) Redemptions of shares that were purchased more than a fixed number of years prior to the redemptions; (b) shares derived from reinvestment of distributions; or (c) the amount that represents an increase in the value of the shareholder's account resulting from capital appreciation. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption.

12. In determining the applicability and rate of any CDSC, shares that are not subject to any deferred sales charge are redeemed first, and then other shares will be redeemed in order of purchase, except that another order of redemption may be employed if that would result in the shareholder paying a lower deferred sales charge. If a shareholder owns more than one class of shares, the classes will be redeemed in an order which will result in the lowest possible sales charge, unless the shareholder specifies otherwise.

13. The sum of any front-end sales charge, CDSC, and asset based sales charge imposed by each Fund will not exceed the maximum sales charge then provided for in Article III, Section 26(d) of the Rules of Fair Practice of the NASD. In addition, any CDSC will apply only to shares issued by a Fund after the SEC grants the requested exemptive relief.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) from sections 18(f), 18(g), and 18(i) to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that, by implementing the multiple class distribution system, the Funds would be able to facilitate the distribution of their shares and provide a broad array of services without assuming excessive accounting and bookkeeping costs. Applicants also believe that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowings, affect the Funds' existing assets or reserves, or increase the speculative character of the shares of a Fund.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c–1, to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that their request to permit the CDSC arrangement would place the purchaser in a better position than if a sales load were imposed at the time of sale, since the shareholder may have to pay only a reduced sales charge.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Fund will relate solely to: (a) The impact of the Class Expenses, which are limited to (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy materials to current shareholders; (iii) blue sky fees and costs attributable to registration, qualification or

[2] The series of Thornburg Income Trust are: Thornburg Limited Term U.S. Government Fund, Thornburg Limited Term Income Fund, Thornburg Alabama Intermediate Municipal Fund, Thornburg Arizona Intermediate Municipal Fund, Thornburg Florida Intermediate Municipal Fund, Thornburg Indiana Intermediate Municipal Fund, Thornburg New Mexico Intermediate Municipal Fund, Thornburg Pennsylvania Intermediate Municipal Fund, Thornburg Tennessee Intermediate Municipal Fund, Thornburg Texas Intermediate Municipal Fund, Thornburg Utah Intermediate Municipal Fund, and Thornburg Intermediate Municipal Fund.

lowest possible sales charge, unless the shareholder specifies otherwise.

13. The sum of any front-end sales charge, CDSC, and asset based sales charge imposed by each Fund will not exceed the maximum sales charge then provided for in Article III, Section 26(d) of the Rules of Fair Practice of the NASD. In addition, any CDSC will apply only to shares issued by a Fund after the SEC grants the requested exemptive relief.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) from sections 18(f), 18(g), and 18(i) to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that, by implementing the multiple class distribution system, the Funds would be able to facilitate the distribution of their shares and provide a broad array of services without assuming excessive accounting and bookkeeping costs. Applicants also believe that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowings, affect the Funds' existing assets or reserves, or increase the speculative character of the shares of a Fund.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c–1, to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that their request to permit the CDSC arrangement would place the purchaser in a better position than if a sales load were imposed at the time of sale, since the shareholder may have to pay only a reduced sales charge.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Fund will relate solely to: (a) The impact of the Class Expenses, which are limited to (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy materials to current shareholders; (iii) blue sky fees and costs attributable to registration, qualification or exemption of the class' shares; (iv) SEC registration fees incurred by a class of shares; (v) administrative expenses required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) any other expenses subsequently identified that should be properly allocated to one class that shall be approved by the SEC pursuant to an amended order; (b) the impact of the disproportionate payments made under the rule 12b–1 distribution plans and service fees; (c) the fact that each class will vote separately with respect to the Fund's rule 12b–1 distribution plans applicable to that class of the Fund, except as provided in condition number 13, below; (d) the fact that only certain classes will have a conversion feature; (e) the fact that certain classes will have different exchange privileges; and (f) the designation of each class of shares of a Fund.

2. The Directors of each of the Funds, including a majority of the independent Directors, will approve the Alternative Pricing System, prior to the implementation of the Alternative Pricing System by a particular Fund. The minutes of the meetings of the Directors of each of the Funds regarding the deliberations of the Directors with respect to the approvals necessary to implement the Alternative Pricing System will reflect in detail the reasons for determining that the proposed Alternative Pricing System is in the best interests of both the Funds and their respective shareholders.

3. On an ongoing basis, the Directors of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Directors, including a majority of the independent Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, the Adviser and the Distributor at their own costs will remedy the conflict up to and including establishing a new registered management investment company.

4. The Directors of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of one class of shares will be used to support the rule 12b–1 fee charged to shareholders of that class of shares. Expenditures not related to the sale or servicing of a specific class of shares will not be presented to the Directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors in the exercise of their fiduciary duties.

5. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount with respect to each other class of shares of the Fund, except that distribution and shareholder services payments relating to each respective class of shares will be borne exclusively by that class, and any Class Expenses relating to a given class of shares will be borne exclusively by the affected class.

6. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of expenses among the various classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report to the applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to these reports, following request by the Funds which the Funds agree to make, will be available for inspection by the SEC staff upon the written request for the work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate or Assistant Administrators. The initial report of the Independent Examiner is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and

procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of expenses among the classes of shares, and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition number 6 above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition number 6 above. The applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

8. The prospectuses of the Funds will include a statement to the effect that a salesperson and any other person entitled to receive any compensation for selling or servicing Fund shares may receive different levels of compensation with respect to one particular class of shares over another in a Fund.

9. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors of the Funds with respect to the Alternative Pricing System will be set forth in guidelines which will be furnished to the Directors.

10. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of that Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset value and public offering prices will present each class of shares separately.

11. The applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans or shareholder services plans in reliance on the exemptive order.

12. Any class of shares with a conversion feature ("Purchase Class") will convert into another class of shares ("Target Class") on the basis of relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26, of NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

13. If a Fund implements any amendment to its rules 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, Purchase Class shares will stop converting into Target Class Shares unless shareholders of the Purchase Class, voting separately as a class, approve the proposal. The Directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the Directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to such existing Purchase Class shares in all material respects except that the New Purchase Class will convert into the New Target Class. The New Target Class and New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of the New Target Class or New Purchase Class shall be borne solely by the Advisor and the Distributor. Purchase Class shares sold after implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class are disclosed in an effective registration statement.

14. TSC, the Funds' distributor, will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

15. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Directors of the Funds including a majority of the Independent Directors. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the Directors, and the Directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

16. Any shareholder services plan with respect to any Future Class, which is not otherwise governed by rule 12b–1, will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Release No. 16619 (November 2, 1989), as the rule is currently proposed and as it may be reproposed, adopted, or amended.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17101 Filed 7–13–94; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Notice of the Results of the 1993 Annual GSP Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of results of 1993 Annual Review of the GSP.

SUMMARY: The purpose of this notice is to announce the disposition of the petitions accepted for review in the 1993 Annual Review of the GSP program.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: This publication contains the dispositions of the petitions accepted for review in the 1993 Annual Review of the GSP program (58 FR 53959). These petitions requested changes in the list of articles and countries eligible for duty-free treatment under the GSP program. The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465) (the 1974 Act). The review was conducted pursuant to regulations codified as 15 CFR 2007. These changes took effect on July 1, 1994. The President's decisions concerning the 1993 Annual Review have also been reflected in a proclamation (59 FR 34329) and in a recent USTR press release (the press release is available by contacting the USTR Public Affairs Office at (202) 395–3230). All

ANNEX I—

Case No.	Hts No.	
93–1	0805.30.40	Limes
93–2	0806.20.10	Raisins from S
93–3	2309.90.90(PT)	Vitamin B12 fo
93–4	2902.11.00	Cyclohexane
93–5	2918.30.20(PT)	Bulk Ketoprofe
93–6	2921.49.40(PT)	Selegiline Hydr
93–7	2933.39.37(PT)	Ethionamide
93–8	2937.92.20(PT)	Estradiol Benz
93–9	2937.92.80(PT)	Estradiol
93–10	2937.99.80(PT)	Trenbolone Ac
93–11	8529.90.10[2]	Television Tun
93–12	9106.90.80(PT)	Timers
93–13	4007.00.00	Extruded Rubb
93–14	7308.90.90(PT)	Steel Grating
		C.
93–15	4203.21.40	Baseball Glove
93–16	7113.19.21	Gold Rope Cha
93–17	8402.20.00	Super-Heated
93–18	8407.34.2080[4]	Passenger Car
93–19	8409.91.91(PT)	Aluminum Cylin
93–20	8471.20.00	Notebook-Type
93–21	8471.20.00	Notebook-Type
93–22	8471.91.00	Personal Comp
93–23	8471.91.00	Personal Comp
93–24	8521.10.60	Video Cassette
93–25	8525.20.20	Radiotelephone
93–26	8525.20.50	Cordless Hands
93–27	8525.20.50	Cordless Hands
93–28	8527.31.40	AM/FM Cassett

ACTION: Notice of results of 1993 Annual Review of the GSP.

SUMMARY: The purpose of this notice is to announce the disposition of the petitions accepted for review in the 1993 Annual Review of the GSP program.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: This publication contains the dispositions of the petitions accepted for review in the 1993 Annual Review of the GSP program (58 FR 53959). These petitions requested changes in the list of articles and countries eligible for duty-free treatment under the GSP program. The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465) (the 1974 Act). The review was conducted pursuant to regulations codified as 15 CFR 2007. These changes took effect on July 1, 1994. The President's decisions concerning the 1993 Annual Review have also been reflected in a proclamation (59 FR 34329) and in a recent USTR press release (the press release is available by contacting the USTR Public Affairs Office at (202) 395–3230). All communications with respect to this notice should be addressed to the Director, Generalized System of Preferences, Room 517, 600 17th Street, NW., Washington, DC 20506.

The 1993 Annual GSP Review included reviews of internationally recognized worker rights practices in ten (10) GSP beneficiary countries. The reviews of worker rights practices in Bahrain, El Salvador, Fiji, Guatemala, Oman and Thailand were continued from the 1992 Annual GSP Review. The reviews of worker rights practices in the Dominican Republic, Maldives, Pakistan and Peru were based on petitions that were accepted in the 1993 Annual GSP Review. At the conclusion of the 1993 Annual GSP Review, Bahrain, El Salvador, Fiji, Oman and Peru were found to have taken or be taking steps to afford internationally recognized worker rights, as required by the GSP law. The reviews of worker rights practices in the Dominican Republic, Guatemala, Maldives, Pakistan and Thailand will be continued. The reviews of worker rights practices in the Dominican Republic and Guatemala will be continued for 90 days; the reviews of worker rights practices in Maldives and Pakistan will be continued for one year; and the review of worker rights practices in Thailand will be continued until certain worker rights are reinstated. In addition, the reviews of worker rights practices in Costa Rica, Malawi and Paraguay were terminated in December 1993, after Costa Rica, Malawi and Paraguay were found to have taken or be taking steps to afford internationally recognized worker rights, as required by the GSP law.

The 1993 Annual GSP Review included reviews of the adequacy and effectiveness of intellectual property rights (IPR) in eight (8) GSP beneficiary countries. The reviews of IPR practices in the Dominican Republic, Guatemala and Honduras were continued from the 1992 Annual GSP Review. The reviews of IPR practices in Cyprus, Egypt, El Salvador, Poland and Turkey were based on petitions that were accepted in the 1993 Annual GSP Review. At the conclusion of the 1993 Annual GSP Review, Cyprus, Egypt and Guatemala were found to provide adequate and effective IPR protection, as required by the GSP law. The reviews of IPR practices in the Dominican Republic, Honduras, El Salvador, Poland and Turkey will be continued. In addition, a petition that sought a review of IPR practices in Venezuela was withdrawn in October 1993.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee

ANNEX I—1993 GSP ANNUAL REVIEW—PRODUCT PETITIONS

Case No.	Hts No.	Product	Decision
		A. Petitions To Add Products To GSP	
93–1	0805.30.40	Limes	Grant.
93–2	0806.20.10	Raisins from Seedless Grapes	Deny.
93–3	2309.90.90(PT)	Vitamin B12 for Animal Use	Grant.
93–4	2902.11.00	Cyclohexane	[1] Grant.
93–5	2918.30.20(PT)	Bulk Ketoprofen	Deny.
93–6	2921.49.40(PT)	Selegiline Hydrochloride	[1] Grant.
93–7	2933.39.37(PT)	Ethionamide	[1] Grant.
93–8	2937.92.20(PT)	Estradiol Benzoate	[1] Grant.
93–9	2937.92.80(PT)	Estradiol	[1] Grant.
93–10	2937.99.80(PT)	Trenbolone Acetate	[1] Grant.
93–11	8529.90.10[2]	Television Tuners	Grant.
93–12	9106.90.80(PT)	Timers	Grant.
		B. Petitions To Remove Products From GSP	
93–13	4007.00.00	Extruded Rubber Thread	Grant.
93–14	7308.90.90(PT)	Steel Grating	[3] Grant.
		C. Petitions To Waive Competitive Need Limits	
93–15	4203.21.40	Baseball Gloves	Grant.
93–16	7113.19.21	Gold Rope Chain Necklaces	Grant.
93–17	8402.20.00	Super-Heated Boilers	Grant.
93–18	8407.34.2080[4]	Passenger Car Engines	Grant.
93–19	8409.91.91(PT)	Aluminum Cylinder Heads	Grant.
93–20	8471.20.00	Notebook-Type Computers	Grant.
93–21	8471.20.00	Notebook-Type Computers	Grant.
93–22	8471.91.00	Personal Computers	Grant.
93–23	8471.91.00	Personal Computers	Grant.
93–24	8521.10.60	Video Cassette Recorders	Grant.
93–25	8525.20.20	Radiotelephone Transceivers	Grant.
93–26	8525.20.50	Cordless Handset Telephone	Grant.
93–27	8525.20.50	Cordless Handset Telephone	Grant.
93–28	8527.31.40	AM/FM Cassette Player	Grant.

ANNEX I—1993 GSP ANNUAL REVIEW—PRODUCT PETITIONS—Continued

Case No.	Hts No.	Product	Decision
93–29	8527.32.00	Clock Radios	Withdrawn.
93–30	8528.10.30	Combination TV/VCRs	Deny.
93–11	8529.90.10[2]	Television Tuners	Grant.

[1] Exclude India.
[2] This petition requested that television tuners be added to GSP and that Indonesia be granted a waiver. Grant to HTS subheadings 8529.90.01 and 8529.90.29.
[3] Remove for Venezuela only.
[4] Grant to HTS subheadings 8407.34.18 and 8407.34.48.

[FR Doc. 94–17107 Filed 7–13–94; 8:45 am]
BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–049]

Annual Certification of Cook Inlet Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Correction.

SUMMARY: This document corrects the notice [CGD 94–049] published on Friday, June 24, 1994, (59 FR 32745) concerning the annual certification of Cook Inlet Regional Citizens' Advisory Council.

EFFECTIVE DATE: June 1, 1994 through May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Project Manager, Marine Environmental Protection Division, (G–MEP–3), (202) 267–0500, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: In the June 24, 1994, edition of the **Federal Register**, the notice certifying the Cook Inlet Regional Citizens' Advisory Council inadvertently referred to the Prince William Sound Regional Citizens' Advisory Council in the last paragraph of the notice (59 FR 32745). The last paragraph of the notice is corrected to read as follows:

Recertification

By letter dated June 1, 1994, the Chief, Office of Marine Safety, Security and Environmental Protection certified that the Cook Inlet Regional Citizens' Advisory Council qualifies as an alternative voluntary advisory group under the provisions of 33 U.S.C. 2732(o). This recertification terminates on May 31, 1995.

Dated: July 6, 1994.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–17139 Filed 7–13–94; 8:45 am]
BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc.; RTCA Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Band (118–137 MHz); Eleventh Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 172 meeting to be held August 2–5, starting at 9:30 a.m. (Tuesday only). The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) Accept agenda; (3) Review summary of 10th Plenary; (4) Full committee review of the mail ballot results on WG 2's VHF Data Radio Signal-in-Space MASPS Document; (5) Review of the WG 1's VHF Communications System Recommendations, FINAL DRAFT for the full committee acceptance of the document; (6) Address necessary issues prior to initiating WG 3's VHF Digital Radio MOPS program; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 6, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–17022 Filed 7–13–94; 8:45 am]
BILLING CODE 4910–13–P

RTCA, Inc.; RCTA Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Eleventh Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 147 meeting to be held August 16–18, starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Welcome and introductions; (2) Approval of the summary of the tenth meeting; (3) Chairman's remarks; (4) Working Group reports: (a) WG–1, Avionics Equipment Standards (b) WG–3, System/Service Performance Criteria (c) WG–5, AMS(R)S Voice; (5) Consider for approval: (a) DO–210, Change No. 2 (b) DO–215, Change No. 1; (6) Other business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 6, 1994

David W. Ford,

Designated Officer.

[FR Doc. 94–17023 Filed 7–13–94; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc.; RTCA Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Meeting

Forty-Sixth Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 147 meeting to be held August 11–12, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the minutes of the Forty-Fifth meeting held on April 25–26, 1994; (4) Report of working group activities: (a) Operations Working Group (OWG) (b) Separation Assurance Task Force (c) Requirements Working Group (d) Enhancements Working Group; (5) Report of FAA TCAS Program Activities: (a) TCAS I (b) TCAS II (c) TCAS III (d) ATC Applications Activities; (6) Review of international activities/issues; (7) Review and update of verification and validation process; (8) Review of action items from last meeting; (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 6, 1994.

David W. Ford,

Designated Officer.

[FR Doc: 94–17024 Filed 7–13–94; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Del Norte County, California.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability.

SUMMARY: FHWA, in cooperation with the California Department of Transportation, is issuing this notice to advise the public that an environmental impact statement has been prepared for

RTCA, Inc.; RTCA Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Meeting

Forty-Sixth Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 147 meeting to be held August 11–12; starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the minutes of the Forty-Fifth meeting held on April 25–26, 1994; (4) Report of working group activities: (a) Operations Working Group (OWG) (b) Separation Assurance Task Force (c) Requirements Working Group (d) Enhancements Working Group; (5) Report of FAA TCAS Program Activities: (a) TCAS I (b) TCAS II (c) TCAS III (d) ATC Applications Activities; (6) Review of international activities/issues; (7) Review and update of verification and validation process; (8) Review of action items from last meeting; (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 6, 1994.

David W. Ford,

Designated Officer.

[FR Doc: 94–17024 Filed 7–13–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Del Norte County, California.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability.

SUMMARY: FHWA, in cooperation with the California Department of Transportation, is issuing this notice to advise the public that an environmental impact statement has been prepared for a proposed highway project in Del Norte County, California.

FOR FURTHER INFORMATION CONTACT: John R. Schultz, Chief, District Operations-A, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, California 95814–2724, Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with California Department of Transportation, the National Park Service, the California Department of Parks and Recreation, and the United States Army Corps of Engineers has prepared an environmental impact statement (EIS) on a proposal to improve Route 101 in Del Norte County, California. The proposed improvement would involve the realignment of the existing Route 101 between post miles 20.3 and 22.3 approximately 8.5 to 5.3 kilometers (5.2–3.3 miles) south of Crescent City. Improvements are needed to the existing alignment due to the continuing high accident rate and to correct operational deficiencies. Alternatives under consideration include (1) taking no action (2) adding shoulders and a median to the existing alignment (3) minor realignment of the existing three-land conventional highway and widening to include shoulders and median (4) complete realignment and construction of a new three-lane conventional highway (5) complete realignment and construction of a new four-lane expressway. Potential unavoidable adverse impacts include displacement of state and national parkland, old growth trees including redwoods, sensitive wildlife species including the listed federal threatened and state endangered marbled murrelet, and soil erosion. As part of the public involvement process for this project, a public hearing has been planned in Crescent City on August 30, 1994. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on July 6, 1994.

G.P. Bill Wong,

Senior Transportation Engineer.

[FR Doc. 94–17111 Filed 7–13–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Aurora, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a combined environmental impact/Section 4(f) evaluation will be prepared for a proposed project in Aurora, Colorado.

FOR FURTHER INFORMATION CONTACT: Ronald A. Speral, Design/Environmental Coordinator, FHWA Colorado Division; 555 Zang Street, Room 250; Lakewood Colorado 80228; Telephone (303) 969–6730, extension 368.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Colorado Department of Transportation (CDOT), the U.S. Army Corps Engineers, and the Regional Transportation District (RTD), will prepare draft and final environmental impact statements and draft and final Section 4(f) evaluations (for use of parkland) on a proposal to improve SH 83 (Parker Road) in Aurora, Colorado. The City of Aurora and the Colorado Division of Parks and Recreation will be commenting agencies. The proposed improvement would involve upgrading the I–225/Parker Road interchange, widening Parker Road along the ¾ mile segment between Peoria Street and Hampden Avenue, and constructing new grade separations to replace the Parker Road Intersections at Vaughn Way and at Hampden Avenue. These improvements to Parker Road are considered necessary to relieve significant existing traffic congestion and safety problems.

The alternatives to be considered in the EIS/4(f) evaluation include the following:

(1) The No Build Alternative (taking no action)

(2) Congestion Management Alternative. This alternative would consist of the implementation of several traditional and/or nontraditional congestion management strategies. The potential operational benefits of any combination of strategies would be considered. Only those combined strategies that are capable of meeting the project's mobility objectives (including a minimum peak hour Level of Service

"E" for general traffic) will be analyzed for their environmental impacts.

(3) Alternative 3 (as referenced in the Citizens' Advisory Committee Final Report and Recommendation to Aurora City Council, November 1992), described as follows:

At I–225, a two-lane flyover ramp (Ramp G) would elevate from the right side of Parker Road and cross over it south of the existing interchange (toward Cherry Creek State Park). The ramp would cross over I–225 near RTD's Nine Mile park-n-Ride.

An on-ramp from the intersection of Parker Road and Peoria Street to southbound I–225 would replace the existing on-ramp between the park-n-Ride and I–225.

A loop ramp around the park-n-Ride would replace the signal on Parker Road that now serves the southbound I–225 to southeast—bound Parker Road movement.

All other existing ramps would remain at grade, but would be relocated slightly to accommodate widening of Parker Road. The northbound I–225 off-ramp to northwest-bound Parker Road would provide for triple (one new) left turn lanes.

South of I–225, Vaughn Way would be grade separated to pass beneath Parker Road. Two way access roads, providing right-in, right-out access to and from Parker Road, would replace the existing signalized intersection.

At Hampden Avenue, a half (split) urban interchange would replace the existing intersection.

All of the above improvements would eliminate three existing signals for through traffic movements along the ¾ mile segment of Parker Road.

(4) Alternative 8 (as referenced in the November 1992 Report), would be identical to Alternative 3, with the exception of the alignment of Ramp G. The two-lane flyover ramp would cross over I–225 near the north end of the I–225 structures over Parker Road.

All build alternatives will include pedestrian and bicycle facility improvements. Operationally feasible congestion management strategies will be investigated in conjunction with the build alternatives and incorporated as appropriate.

Seventeen public meetings have been held on the project since March 31, 1992. An agency scoping meeting was held by CDOT with FHWA, the U.S. Army Corps of Engineers, the Colorado Division of Parks and Recreation, RTD, and the City of Aurora on April 20, 1994. Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies. "Open house" and/or informal meetings for the general public will be held during development of the draft EIS. A public hearing will be conducted during the public comment period for the draft EIS/4(f) evaluation. Public notice will be given of the time and place of future public meetings and for the hearing. The draft EIS/4(f) evaluation will be available for public and agency review during a 45-day comment period.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the draft EIS/4(f) evaluation should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 6, 1994.

Ronald A. Speral,

Design/Environmental Coordinator, Lakewood, Colorado.

[FR Doc. 94–17112 Filed 7–13–94; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket S–908]

Lykes Bros. Steamship Co., Ltd.; Application for Authorization to Increase Participation in a Reciprocal Space Charter and Coordinated Sailing Agreement With a Foreign Carrier

By application of June 28, 1994, Lykes Bros. Steamship Co., Inc. (Lykes) requests the Maritime Administration's (MARAD) permission under Section 804 of the Merchant Marine Act, 1936, as amended (Act) to increase the number of vessels from three to five operated by Deppe Linie GmbH ("Deppe") under the cooperative Working Agreement, Space Charter Agreement and Sailing Agreement between Lykes and Deppe (FMC No. 232–011253).

On December 20, 1989, MARAD granted Lykes a waiver under Section 804 under special circumstances and for good cause shown to participate in the reciprocal space charter and coordinated sailing agreement with Deppe for the trade between the U.S. Gulf and East Coast and North Europe until the expiration of Lykes' ODSA Contract, MA/MSB–451. MARAD retained the right to approve any increase in participating vessels by Deppe beyond a total of three.

Deppe intends to operate additional vessels in the trade. Accordingly, Lykes now seeks permission to participate in a space charter with Deppe for up to five vessels under the agreement. Lykes notes that no other change is sought in the Section 804 approval. No change is sought in the U.S.-flag vessels covered by the agreement or the geographic scope of the agreement.

Lykes' believes that its participation in a space charter with respect to an additional two Deppe vessels is warranted by special circumstances and good cause. According to Lykes, the agreement has succeeded to date because it permitted Lykes and Deppe to rationalize and improve service to their customers in a markedly overtonnaged trade. Now Lykes and Deppe both need the flexibility to expand service incrementally to meet customer demands.

Additional of two vessels under this agreement would greatly assist Lykes. Lykes maintains that no adverse impact from the addition of such vessels could occur to other U.S. vessel operators. First, this request would amount to a very modest increase in the ships now available under the agreement and only a minuscule increase in the capacity in the trade. Second, much of the capacity utilized in this service is devoted to the U.S. Gulf/North trade and the trades between Europe/Mexico and the U.S./Mexico where there is no competing U.S. carrier.

Section 804(a) of the Act provides that "it shall be unlawful for any contractor receiving operating-differential subsidy under Title VI * * * to own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Transportation to be essential as provided in section 211 of this Act." Section 804(b) states that this provision may be waived by the Secretary under special circumstances and for good cause shown.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on July 27, 1994. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: July 11, 1994.

Joel C. Richard,

Acting Secretary, Maritime Administration

[FR Doc. 94–17106 Filed 7–13–94; 8:45 am]

BILLING CODE 4910–81–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 134

Thursday, July 14, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

BOARD OF DIRECTORS MEETING

TIME: 10:00 a.m.–1:00 p.m.

PLACE: ADF Headquarters.

DATE: Tuesday, 19 July 1994.

STATUS: Open.

Agenda

10:00 President's Report
11:30 Lunch
12:30 Executive Session

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

Gregory Robeson Smith,

President.

[FR Doc. 94–17252 Filed 7–12–94; 2:33 pm]

BILLING CODE 6116–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:33 p.m. on Monday, July 11, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendation regarding an administrative enforcement proceeding.

Matters relating to the probable failure of a certain insured depository institution.

Matters relating to the Corporation's corporate, supervisory, and resolution activities.

Application of Carrollton Federal Bank, F.S.B., Carrollton, Georgia, a proposed new federally chartered stock savings bank, for Federal deposit insurance.

Recommendation regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re:
Various Failed Depository Institutions Nationwide
Case No. 507–09290–94–BOD

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17 Street, NW., Washington, DC.

Dated: July 12, 1994.

Federal Deposit Insurance Corporation.

E. Elizabeth Hayes,

Acting Assistant Executive Secretary.

[FR Doc. 94–17303 Filed 7–12–94; 2:35 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–16596.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, July 14, 1994, 10:00 a.m. Meeting Open to the Public.

The following item was Added to the Agenda:

Revised Directive No. 3, Debt Settlement Procedures.

DATE AND TIME: Tuesday, July 19, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, July 21, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994–18: Edward J. Sack on behalf of the International Council of Shopping Centers (ICSC)
Advisory Opinion 1994–19: Andrew W. Cohen for the American Society of Anesthesiologists, Inc.
Advisory Opinion 1994–21: William M. Hermelin of American Pharmaceutical Association PAC
Regulations:
MCFL Rulemaking: Summary of Comments and Draft Final Rules (continued from meeting of July 14, 1994)
Personnal Use of Campaign Funds; Request for Additional Comments (tentative)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

[FR Doc. 94–17297 Filed 7–12–94; 2:34 pm]

BILLING CODE 5715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 20, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 12, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–17314 Filed 07–12–94; 3:59 pm]

BILLING CODE 6210–01–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 10–94

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time	Subject Matter
Tues., July 26, 1994 at:	Oral Hearings on objections to Proposed Decisions issued on claims against Iran:
10:00 a.m ...	IR–2672—Mary T. Reza.
	IR–2725—Arianne M. Reza.
	IR–3089—David M. Reza
	IR–3090—Pary L. Reza.
	IR–3091—Sharieh M. Lira.
	IR–3092—Michael J. Reza.
	IR–3093—Nora C. Girshick.
11:00 a.m ...	IR–1833—Albert Monasebian.
	IR–1834—Shahnaz M. Goldman.
	IR–1835—Paridokht Melamed.
	IR–2196—Mahdikht Monasebian.
12:00 noon ..	IR–3113—Linda Z. Balint.
2:00 p.m	IR–0964—Walter J. Johnson.
3:00 p.m	IR–0980—Richard J. Hallwood.

(45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time	Subject Matter
Tues., July 26, 1994 at.	Oral Hearings on objections to Proposed Decisions issued on claims against Iran:
10:00 a.m ..	IR–2672—Mary T. Reza.
	IR–2725—Arianne M. Reza.
	IR–3089—David M. Reza
	IR–3090—Pary L. Reza.
	IR–3091—Sharieh M. Lira.
	IR–3092—Michael J. Reza.
	IR–3093—Nora C. Girshick.
11:00 a.m .	IR–1833—Albert Monasebian.
	IR–1834—Shahnaz M. Goldman.
	IR–1835—Paridokht Melamed.
	IR–2196—Mahdikht Monasebian.
12:00 noon ..	IR–3113—Linda Z. Balint.
2:00 p.m	IR–0964—Walter J. Johnson.
3:00 p.m	IR–0980—Richard J. Hallwood.
3:30 p.m	IR–3043—Carolina Chandlers Corp.
4:00 p.m	IR–0386—Intern'l School Supply.
Wed., July 27, 1994 at 10:30 a.m.	Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC on July 11, 1994.

Judith H. Lock,

Administrative Officer.

[FR Doc. 94–17164 Filed 7–11–94; 5:03 pm]

BILLING CODE 4410–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 18, 1994.

A closed meeting will be held on Monday, July 18, 1994, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Monday, July 18, 1994, at 10:00 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Monica Parry (202) 942–0600.

Dated: July 11, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17233 Filed 7–12–94; 1:05 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register

Vol. 59, No. 134

Thursday, July 14, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 299

[INS No. 1638-93]
RIN 1115-AD58

Immigration and Nationality Forms

Correction

In rule document 94-11955 beginning on page 25555 in the issue of Tuesday, May 17, 1994, make the following correction:

§ 299.1 [Corrected]

1. On page 25556, in § 299.1, in the table, in the first column, in the second line, "CDC 4.22-1" should read "CDC 4.222-1".

§ 299.5 [Corrected]

2. On page 25559, in § 299.5, in the table, in the 2d column, in the 16th line, "Detailed" should read "Detained".

3. On page 25560, in § 299.5, in the table, in the 1st column, in the 16th line, "1-660A" should read "1-600A".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34254; File No. SR-NASD-94-37]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Initial Quotations of Initial Public Offerings

Correction

In notice document 94-15933 appearing on page 33808, in the issue of Thursday, June 30, 1994, in the first column, the file number should read as set forth above.

BILLING CODE 1505-01-D

federal register

Thursday
July 14, 1994

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Competitive Discretionary Assistance Program and Application Kit; Final Comprehensive Plan and Notice of Availability for Fiscal Year 1994; Notice

VOL 59 ISS 134 JL 14 1994 UMI

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Final Comprehensive Plan for Fiscal Year 1994 and Notification of the Availability of the FY 1994 Competitive Discretionary Assistance Program and the Application Kit

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of Final Program Plan for Fiscal Year 1994 and Notice of the Availability of the Competitive Discretionary Assistance Programs and Juvenile Justice Application Kit for Fiscal Year 1994.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this Notice of its Final Comprehensive Plan for Fiscal Year 1994 and Notice of the Availability of the Competitive Discretionary Assistance Programs and Juvenile Justice Application Kit for Fiscal Year 1994 (a separate publication of the Competitive Discretionary Assistance Programs and the Application Kit is available in one document from the Juvenile Justice Clearinghouse).

The OJJDP Application Kit contains the discretionary program announcements, general application and administrative requirements, an application form (Standard Form 424), the OJJDP Peer Review Guideline, OJJDP Competition and Peer Review Procedures, and other supplemental information relevant to the application process. To order an OJJDP Application Kit please call the Juvenile Justice Clearinghouse, toll-free, 24 hours a day, (800) 638–8736.

DATES: See Application Kit for Due Dates.

ADDRESSES: Office of Juvenile Justice and Delinquency Prevention, room 742, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Program inquiries are to be addressed to the attention of the OJJDP staff contact person identified in the application kit's program announcement. For general information, contact Marilyn Silver, Management Analyst, Information Dissemination Unit, (202) 307–0751 [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: In accordance with section 204(b)(5)(A) of Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP Act), as amended, 42 U.S.C. 5614(b)(5)(A), the Acting Administrator of OJJDP is publishing a Final Comprehensive Plan describing the Juvenile Justice and Delinquency Prevention Programs which OJJDP intends to fund during Fiscal Year 1994. This Final Plan includes activities authorized in parts C and D of title II of the JJDP Act (42 U.S.C. 5651–5665b).

The 1984 Amendments to the JJDP Act established Title IV, the Missing Children's Assistance Act. In accordance with Section 406(a) of Title IV of the JJDP Act, 42 U.S.C. 5776(a), OJJDP announced in this Final Program Plan priorities for grants and contracts under section 405, 42 U.S.C. 5775, of the Missing Children's Assistance Act.

Application Requirements

See Application Kit.

Eligibility Requirements

Applications are invited from eligible public and private agencies, organizations, educational institutions, individuals, or combinations thereof. Eligibility differs from program to program. Please consult application kit for individual program announcements for specific eligibility requirements. Where eligible for an assistance award, private for profit organizations must agree to waive any profit or fee. Joint applications by two or more eligible applicants are welcome, as long as one organization is designated as the primary applicant and the other(s) as co-applicant(s). Applicants must demonstrate that they have experience in the design and implementation of the type of program or program activity for which they are an applicant.

Selection Criteria

All applications will be evaluated and rated by a peer review panel according to announced selection criteria. Peer review will be conducted in accordance with the OJJDP Competition and Peer Review Policy, 28 CFR part 34, subpart B. General selection criteria for each competitive program will determine applicants' responsiveness to minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues related to project implementation. Each competitive program announcement may also indicate additional program-specific review criteria and/or changes in points assigned to criteria used in the peer review for that particular program.

Peer reviews will use the following criteria to rate applications unless the program announcement contains separate, program-specific selection criteria:

1. Statement of the Problem. (20 points) The applicant includes a clear, concise statement of the problem addressed in this program.

2. Definition of Objectives. (20 points) The goals and objectives are clearly defined and the objectives are clear, measurable, and attainable.

3. Project Design. (20 points) The project design is sound and constitutes an effective approach to meet the goals and objectives of this program. The design provides a detailed implementation plan with a timeline which indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. The design contains program elements directly linked to the achievement of the project.

4. Management Structure. (15 points) The project's management structure and staffing is adequate to successfully implement and complete the project. The management structure for the project is consistent with the project goals and tasks described in the application. Application explains how the management structure and staffing assignments are consistent with the needs of the program.

5. Organizational Capability. (15 points) The applicant organization's potential to conduct the project successfully must be documented. Applicant demonstrates that staff members have sufficient substantive expertise and technical experience. The applications will be judged on the appropriateness of the position descriptions, required qualifications, and staff selection criteria.

6. Reasonableness of Costs. (10 points) Budgeted costs are reasonable, allowable, and cost effective for the activities proposed, and are directly related to the achievement of the program objectives. All costs are justified in a budget narrative that explains how costs are determined.

Introduction

The youth of America are our Nation's future. However, along with increasing adult violence, the serious and violent crime rate among juveniles has increased sharply in the past few years. At the same time, a small portion of juvenile offenders account for the bulk of all serious and violent crime. Simultaneously, the number of juveniles taken into custody has increased, as has the number of juveniles waived or transferred to the criminal justice system. Admissions to juvenile facilities are at their highest levels ever, and an increasing percentage of these facilities are operating over capacity. Unfortunately, the already strained juvenile justice system does not have adequate fiscal and programmatic resources to identify juveniles at risk of becoming serious, violent, or chronic delinquents and to provide appropriate prevention services or intervene effectively with those juveniles who are already serious, violent, or chronic delinquents.

A Comprehensive Strategy

To reverse national trends in juvenile violence, juvenile victimization and family disintegration will require both a change in national priorities and an unprecedented commitment by public and private agencies, institutions, organizations, and individuals. OJJDP has developed a comprehensive strategy to address serious, violent and chronic delinquency. The strategy is based on OJJDP's review of statistics, research and evaluation and focuses on promising approaches in family strengthening, support for core institutions, delinquency prevention, intervention, and treatment. Its implementation at the State and local levels will require all sectors of the community to participate in determining local needs and in formulating and funding programs to meet those needs in order to prevent and treat delinquency. [A Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders, OJJDP (1993).]

This year, OJJDP will fund a variety of programs and projects to implement the Comprehensive Strategy and foster community planning efforts. OJJDP will work with a number of jurisdictions to test mechanisms designed to assist communities to plan and implement programs that address youth violence.

Communities engaged in comprehensive planning to address the issue of serious, violent and chronic juvenile offenders will be supported by OJJDP funding, technical assistance, information, and training resources. As part of the current program development work on OJJDP's Comprehensive Strategy, communities will be furnished a "how to" manual, providing a blueprint for assessing youth violence problems and resources. An inventory of promising and successful program models to help address the identified problems will also be provided to interested jurisdictions. These resources will be made available to cities and communities, including Weed and Seed jurisdictions, to assist in the planning and implementation of coordinated efforts to deal with youth violence problems. Program development work on OJJDP's Comprehensive Strategy will also support the Attorney General's national agenda for children by

resources to identify juveniles at risk of becoming serious, violent, or chronic delinquents and to provide appropriate prevention services or intervene effectively with those juveniles who are already serious, violent, or chronic delinquents.

A Comprehensive Strategy

To reverse national trends in juvenile violence, juvenile victimization and family disintegration will require both a change in national priorities and an unprecedented commitment by public and private agencies, institutions, organizations, and individuals. OJJDP has developed a comprehensive strategy to address serious, violent and chronic delinquency. The strategy is based on OJJDP's review of statistics, research and evaluation and focuses on promising approaches in family strengthening, support for core institutions, delinquency prevention, intervention, and treatment. Its implementation at the State and local levels will require all sectors of the community to participate in determining local needs and in formulating and funding programs to meet those needs in order to prevent and treat delinquency. [A Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders, OJJDP (1993).]

This year, OJJDP will fund a variety of programs and projects to implement the Comprehensive Strategy and foster community planning efforts. OJJDP will work with a number of jurisdictions to test mechanisms designed to assist communities to plan and implement programs that address youth violence.

Communities engaged in comprehensive planning to address the issue of serious, violent and chronic juvenile offenders will be supported by OJJDP funding, technical assistance, information, and training resources. As part of the current program development work on OJJDP's Comprehensive Strategy, communities will be furnished a "how to" manual, providing a blueprint for assessing youth violence problems and resources. An inventory of promising and successful program models to help address the identified problems will also be provided to interested jurisdictions. These resources will be made available to cities and communities, including Weed and Seed jurisdictions, to assist in the planning and implementation of coordinated efforts to deal with youth violence problems. Program development work on OJJDP's Comprehensive Strategy will also support the Attorney General's national agenda for children by producing an early intervention program strategy; focused on families and beginning with the prenatal period. Program models included in the early intervention strategy will seek to preserve and strengthen families that need support in providing healthy, nurturing environments for their children's social development. Educare programs that provide both child care help for parents and education readiness opportunities will be featured.

OJJDP's Comprehensive Strategy is based on five key principles for preventing and reducing chronic, serious and violent juvenile delinquency. Each of these principles has as its aim either reducing or identifying and controlling the small percentage of juvenile offenders who are serious, violent and chronic offenders. These are stated below:

- Strengthen families in their role of providing guidance, discipline and strong values as their children's first teachers.
- Support core social institutions, including schools, religious institutions, and other local community based organizations, to alleviate risk factors for delinquency and help children develop their full potential.
- Promote prevention strategies that reduce the impact of negative risk factors and enhance protective factors.
- Intervene immediately when delinquent behavior first occurs.
- Establish a broad range of graduated sanctions that provides both accountability and a continuum of services to respond appropriately to the needs of each delinquent offender.

OJJDP is also assisting Denver, Atlanta, Omaha and other Nebraska jurisdictions, and the District of Columbia, under a Department initiative, "Pulling America's Communities Together" (PACT) Program, to address violence issues in these jurisdictions, in designing and implementing short-term measures to reduce the incidence of violence on our streets, in our schools, and in our homes. These measures will be integrated with long-term strategies such as those described above to address the root causes of serious and violent crime and delinquency.

OJJDP is also participating in a collaborative effort with the Bureau of Justice Assistance in the "Comprehensive Communities Program." Under this program, cities or counties faced with high rates of drug-related crime and violence will develop a comprehensive strategy for crime- and drug-control which requires law enforcement and other governmental agencies to work in partnership with the community to address these problems in terms of the environment which fosters them. Each strategy must include a jurisdiction-wide commitment to community policing, coordination among public and private agencies (including, social services, public health, etc.), and efforts that encourage citizens to take an active role in problem solving.

Overview

OJJDP was established by the Juvenile Justice and Delinquency Prevention Act of 1974 (P.L. 93–415), as amended, to provide a comprehensive, coordinated approach to prevent and control juvenile crime and improve the juvenile justice system. OJJDP administers a State Formula Grants Program in 57 States and territories, funds over 100 projects through its Special Emphasis and National Institute for Juvenile Justice and Delinquency Prevention Discretionary Grant Programs, and is charged with coordinating all Federal activities related to juvenile justice and delinquency.

In addition, OJJDP serves as the staff agency for the Coordinating Council on Juvenile Justice and Delinquency Prevention, coordinates the Concentration of Federal Efforts Program, and administers the Title IV Missing and Exploited Children's Program, the Title V Prevention Incentive Grants Program, and programs under the Victims of Child Abuse Act of 1990, as amended (42 U.S.C. 13001 et seq.).

1992 JJDP Act Amendments

The Juvenile Justice and Delinquency Prevention Amendments of 1992 expanded the role of OJJDP in Federal efforts to prevent and treat juvenile delinquency and improve the juvenile justice system by including three new priorities: strengthening the families of delinquents; improving State and local administration of justice and services to juveniles; and assisting States and local communities in preventing youth from entering the justice system. The Amendments encourage parental involvement in treatment and services for juveniles, coordination of services and interagency cooperation. Seven new studies are mandated. The Comptroller General is conducting five of these studies: (1) juveniles waived, certified, or transferred to adult court; (2) admissions of juveniles with behavior disorders to private psychiatric hospitals; (3) gender bias in State juvenile justice systems; (4) Native American pass-through under the Formula Grants Program; and (5) access to counsel in juvenile court

proceedings. OJJDP is conducting the remaining two: (1) the incidence, nature, and causes of violence committed by or against juveniles in urban and rural areas; and (2) the extent and characteristics of juvenile hate crimes.

The JJDP Act Amendments of 1992 also authorize several new grant programs to be administered by OJJDP:

- Part E, State Challenge Activities, authorizes grants to States participating in the Part B Formula Grants Program that provide up to 10 percent of a State's Formula Grants Program allocation for each of 10 challenge activities in which the State participates.
- Part F, Treatment for Juvenile Offenders Who are Victims of Child Abuse or Neglect, authorizes grants to public and nonprofit private organizations for treatment of juvenile offenders who are victims of child abuse or neglect, transitional services, and related research.
- Part G, Mentoring, authorizes three-year grants to or in partnership with local education agencies for mentoring programs designed to link at-risk youth with responsible adults to discourage youth involvement in criminal and violent activity.
- Part H, Boot Camps, authorizes grants to establish up to ten military-style boot camps for delinquent juveniles.
- Title V, Incentive Grants for Local Delinquency Prevention Programs, authorizes grants to local governments for a broad range of delinquency prevention activities targeting youth who have had contact with, or are likely to have contact with, the juvenile justice system.

In FY 1994, two of the five new programs listed above received an appropriation—Part G Mentoring ($4 million) and Title V Incentive Grants ($13 million). These programs are not included in this plan, nor are programs authorized and funded under the Victims of Child Abuse Act of 1990, as amended.

Fiscal Year 1994 Program Planning Activities

The OJJDP program planning process for Fiscal Year 1994 is coordinated with the Assistant Attorney General, Office of Justice Programs (OJP), and the four other Program Bureau components of the OJP. The program planning process involves the following steps:

- Internal review of existing programs by OJJDP staff;
- Internal review of proposed programs by OJP Bureaus and selected Department of Justice components;
- Review of information and data from OJJDP grantees and contractors;
- Review of information contained in State comprehensive plans;
- Review of comments made by youth services providers, juvenile justice practitioners and researchers;
- Consideration of suggestions made by juvenile justice policy makers concerning State and local needs; and
- Consideration of all comments received during the period of public comment on the Proposed Comprehensive Plan.

Discretionary Program Activities

Discretionary Grant Continuation Policy

OJJDP has listed on the following pages continuation projects currently funded in whole or in part with Part C and Part D funds and eligible for continuation funding in Fiscal Year 1994, either within an existing project period or through an extension for an additional project period. A grantee's eligibility for continued funding for an additional budget period within an existing project period depends on the grantee's compliance with funding eligibility requirements and achievement of the prior year's objectives.

Continuation funding consideration for an additional project period for previously funded discretionary grant programs will be based upon several factors, including:

- The extent to which the project responds to the applicable requirements of the JJDP Act;
- Responsiveness to OJJDP and Department of Justice Fiscal Year 1994 program priorities;
- Compliance with performance requirements of prior grant years;
- Compliance with fiscal and regulatory requirements;
- Compliance with any special conditions of award; and
- Availability of funds (i.e. based on program priority determination).

In accordance with 42 U.S.C. 5665a, Section 262 (d)(1)(B), the competitive process described in subparagraph (A) of such section shall not be required if the Administrator makes a written determination waiving the competitive process:

(1) with respect to programs to be carried out in areas to which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) that a major disaster or emergency exists; or

(2) with respect to a particular program described in part C that is uniquely qualified.

In implementing the Fiscal Year 1994 Program Plan, OJJDP will continue the process of developing, testing and demonstrating the graduated sanctions concept throughout its programs, while also maintaining an appropriate emphasis on Weed and Seed Sites.

- For both new competitive programs to be funded at the State or local level and new programs that provide funds to national organizations to provide services at the State and local level. Applicants are encouraged to provide services in Weed and Seed Sites eligible for such services, as appropriate.
- For continuation national project recipients, OJJDP has already focused a variety of program resources on Weed and Seed Sites and will continue an appropriate emphasis throughout Fiscal Year 1994.
- For other continuation awards OJJDP, will negotiate with grantees and task contractors to identify and ensure the provision of appropriate technical assistance, training, information and direct program services to Weed and Seed Sites, other jurisdictions adopting the graduated sanctions program approach, and other eligible service recipients.

OJJDP seeks to focus its assistance on the development and implementation of programs with the greatest potential for reducing juvenile delinquency and to cultivate partnerships with State and local organizations. To that end, OJJDP has set three goals that constitute the major elements of a sound policy for juvenile justice and delinquency prevention:

- To promote delinquency prevention efforts,
- To foster the use of community-based alternatives to the traditional juvenile justice system, and
- To improve the juvenile justice system.

Delinquency Prevention

The first goal of OJJDP is to identify and promote programs which prevent or preclude minor, serious, and violent delinquency from occurring (and which prevent the commission of status offenses). A sound policy for juvenile delinquency prevention strives to strengthen the most powerful contributing factor to good behavior: a productive place for young people in a law-abiding society. Preventive measures can operate on a large scale, providing gains in youth development while reducing youthful misbehavior. OJJDP programs encourage a risk-focused approach, based on public health and social development models.

Community-Based Alternatives

OJJDP's second goal is to identify and promote community-based alternatives for each stage of a child's contact with the juvenile justice system, emphasizing options which are least restrictive and promote or preserve positive ties with the child's family, school and community. Communities cannot afford to place responsibility for juvenile crime entirely on the juvenile justice system. A sound policy for combatting juvenile crime makes maximum use of a community's less formal, often less expensive, and less alienating responses to youthful misbehavior.

Improvement of the Juvenile Justice System

The third goal of OJJDP is to promote improvements in the juvenile justice system and facilitate the most effective allocation of system resources. The limited resources of the juvenile justice system must be reserved for the most difficult and intractable problems of

Interagency Demonstration on Youth, Firearm
Mental Health in the Juvenile Justice System
Law-Related Education in Juvenile Justice Se
Innovative Approaches in Law-Related Educ
National Student/Parent Mock Election* .....
"Just Say No" International* .....
Jackie Robinson Center (JRC)* .....
Parents Anonymous Inc.* .....
Youth Crime Watch* .....

Delinquency Prevention

Continuation Programs

Law-Related Education (LRE)* .....
The Congress of National Black Churches:
National Anti-Drug Abuse Programs* ....
Federal Interagency Partnership, Phase I (CIS
Targeted Outreach with a Gang Prevention a
Satellite Prep School Program and Early Elem
Teens, Crime and Community: Teens in Acti
Race Against Drugs .....

Missing Children

Prevention, Early Intervention, and Mediation
Missing and Exploited Children Prevention a
Paul and Lisa Prevention and Intervention
Projects .....
Project Niño Seguro Services—Addressing M

Community-Based Alternatives

New Programs

Program to Promote Alternative Programs for
Serious, Violent, and Chronic Juvenile Offend
Field-Initiated Research Program .....
Robeson County, North Carolina* .....
Lackawanna County, Pennsylvania* .....
Portland Summer Diversion Project* .....
Douglas County, Nebraska* .....
PACE* .....

Community-Based Alternatives

Continuation Programs

Permanent Families for Abused and Neglected

Community-Based Alternatives

OJJDP's second goal is to identify and promote community-based alternatives for each stage of a child's contact with the juvenile justice system, emphasizing options which are least restrictive and promote or preserve positive ties with the child's family, school and community. Communities cannot afford to place responsibility for juvenile crime entirely on the juvenile justice system. A sound policy for combatting juvenile crime makes maximum use of a community's less formal, often less expensive, and less alienating responses to youthful misbehavior.

Improvement of the Juvenile Justice System

The third goal of OJJDP is to promote improvements in the juvenile justice system and facilitate the most effective allocation of system resources. The limited resources of the juvenile justice system must be reserved for the most difficult and intractable problems of juvenile crime. A sound policy concentrates the more formal, expensive, and restrictive options of the juvenile justice system in two areas:

- Youth behavior which is most abhorrent and least amenable to preventive measures and community responses; and
- Problems of youths and their families which exceed community resources and require more stringent legal resolution.

Fiscal Year 1994 Programs

The following are brief summaries of each of the proposed new and continuation programs for Fiscal Year 1994. The specific program priorities proposed within each category are subject to change with regard to their priority status, estimated amount, sites for implementation, and other descriptive data and information based on the review and comment process, grantee performance, application quality, fund availability, and other factors. OJJDP has a limited amount of appropriations available for new programs in Fiscal Year 1994. New programs are therefore being proposed with funding levels subject to change.

A number of programs contained in this document have been identified for funding by Congress with regard to the grantee(s), the amount of funds, or both. An asterisk (*) indicates those programs. In addition, the 1994 Appropriations Act Conference Report for State, Justice, Commerce, and Related Agencies identified 10 programs for the Office of Juvenile Justice and Delinquency Prevention to examine and provide grants if warranted. Concept papers were requested from these 10 programs. As a result, a number of proposed planned programs had to be removed from the program plan. These programs will receive careful considerations for funding in FY 1995.

Fiscal Year 1994 Program Listing

Delinquency Prevention

New Programs

Interagency Demonstration on Youth, Firearms and Violence	$150,000
Mental Health in the Juvenile Justice System	100,000
Law-Related Education in Juvenile Justice Settings*	440,000
Innovative Approaches in Law-Related Education*	260,000
National Student/Parent Mock Election*	100,000
"Just Say No" International*	250,000
Jackie Robinson Center (JRC)*	250,000
Parents Anonymous Inc.*	250,000
Youth Crime Watch*	50,000

Delinquency Prevention

Continuation Programs

Law-Related Education (LRE)*	2,700,000
The Congress of National Black Churches: National Anti-Drug Abuse Programs*	200,000
Federal Interagency Partnership, Phase I (CIS)	200,000
Targeted Outreach with a Gang Prevention and Intervention Component (Boys and Girls Clubs)	400,000
Satellite Prep School Program and Early Elementary School for Privatized Public Housing	600,000
Teens, Crime and Community: Teens in Action in the '90s*	1,000,000
Race Against Drugs	115,000

Missing Children

Prevention, Early Intervention, and Mediation Project for Missing and Exploited Children	75,000
Missing and Exploited Children Prevention and Services	75,000
Paul and Lisa Prevention and Intervention Efforts: Expansion and Improvement of Non-Profit Organization Projects	75,000
Project Niño Seguro Services—Addressing Missing and Exploited Children	45,258

Community-Based Alternatives

New Programs

Program to Promote Alternative Programs for Juvenile Female Offenders	200,000
Serious, Violent, and Chronic Juvenile Offender Treatment Program	2,000,000
Field-Initiated Research Program	250,000
Robeson County, North Carolina*	337,075
Lackawanna County, Pennsylvania*	50,000
Portland Summer Diversion Project*	100,000
Douglas County, Nebraska*	67,055
PACE*	150,000

Community-Based Alternatives

Continuation Programs

Permanent Families for Abused and Neglected Children*	225,000

National Network of Children's Advocacy Centers*	500,000
Professional Development for Youth Workers	200,000
School Safety Center	250,000
Juvenile Restitution	250,000
Insular Area Support*	403,000
OJJDP Technical Assistance Support Contract: Juvenile Justice Resource Center	650,000
Native American Alternative Community-Based Program	540,000
Missing Children	
Community Action for the Prevention of Missing and Exploited Children	125,000
Provide Services to Recovered Missing Children and Their Families	30,000
Improvement of the Juvenile Justice System	
New Programs	
Pulling America's Communities Together: Program Development	250,000
Violence Studies*	1,000,000
Child Centered Community-Oriented Policing	300,000
What Works: Programs for Juvenile Female Offenders	50,000
Training for Line Staff in Juvenile Corrections and Detention	250,000
Comprehensive Gang Program (Part D)	2,000,000
Marketing the Conditions of Confinement Study	100,000
Conditions of Confinement Follow-Up—Performance Standards	250,000
Training and Technical Support for State and Local Jurisdictional Teams to Focus on Juvenile Corrections and Detention Overcrowding	100,000
Statistics Improvement	175,000
Intensive Community-Based Aftercare Demonstration, Technical Assistance, and Evaluation Program	750,000
National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center	300,000
Telecommunications Assistance	200,000
Interventions to Reduce Disproportionate Minority Confinement in Secure Detention and Correctional Facilities (The Deborah M. Wysinger Memorial Program)	600,000
Non-Violent Dispute Resolution	250,000
Models of Effective Court Based Service Delivery to Children and Their Families	250,000
Delinquency Prevention Training and Technical Assistance	569,076
Seeds of Success—Log Cabin Honor Ranch*	150,000
Improvement of the Juvenile Justice System	
Continuation Programs	
Children in Custody	300,000
Juvenile Justice Clearinghouse	1,016,740
Coalition for Juvenile Justice*	650,000
Juvenile Justice Data Resources	25,000
Juvenile Justice Statistics and Systems Development	275,000
Juveniles Taken Into Custody (JTIC):	
Interagency Agreement	200,000
National Juvenile Court Data Archive*	610,915
Contract for the Evaluation of OJJDP Programs	652,341
Children at Risk	350,000
Delay in the Imposition of Sanctions	100,000
Violence Study—Causes and Correlates*	300,000
Training and Technical Assistance for Juvenile Detention and Corrections (The James E. Gould Memorial Program)	225,000
Training for Juvenile Corrections Staff	475,000
Improvement in Correctional Education for Juvenile Offenders	199,963
Improving Literacy Skills of Institutionalized Juvenile Delinquents	250,000
Juvenile Court Training*	1,100,270
Technical Assistance to the Juvenile Courts*	389,943
Due Process Advocacy Program Development	250,000
Training in Cultural Differences for Law Enforcement/Juvenile Justice Officials	150,000
Bootcamps for Juvenile Offenders: Constructive Intervention and Early Support	550,000
Comprehensive Gang Initiative	500,000
Missing Children	
National Center for Missing and Exploited Children/Resource	3,600,000
Training and Technical Assistance for Nonprofit Missing and Exploited Children's Organizations	250,000
Model Treatment and Services Approaches for Mental Health Professionals Working with Families of Missing Children	200,000
Obstacles to Recovery and Return of Parentally Abducted Children: Training, Technical Assistance	250,000
Development and Expansion of the Child Find Mediation Program to Locate Missing and Exploited Children and Prevent Child Abduction	75,000
ECHO Program Expansion Assistance	19,538

Missing and Exploited Children Comprehensiv
Funding Support for Private Non-profit Organi
Investigative Case Management of Missing Chi
Missing Children Data Archive
Remember They're Children: Using Video to T
National Alzheimer's Patient Alert Program: Sa

Delinquency Prevention

New Programs

Congress has appropriated $13 million in Fiscal Year 1994, under Title V of the JJDP Act, for a new delinquency prevention program. This program also supports OJJDP's Comprehensive Strategy by reducing the onset of delinquency among youths who might otherwise have begun on a pathway to serious, violent and chronic delinquency. Moreover, "community planning teams" will be established under this program to conduct risk and resource assessments in order to determine what delinquency prevention programs are needed for a particular jurisdiction. In communities that are planning system responses for serious, violent and chronic offenders, the work of these planning teams will be coordinated with other system planning.

The following are some key features of this program:

- Some 5,000 community leaders will be trained in the risk and resource assessment process over the next few months.
- Communities will then submit applications for Federal funding for local prevention programs that the community leaders and planning teams have determined are needed to prevent delinquency, based on the community's determination of its needs and priorities. Communities must provide a matching contribution and should establish partnerships with the private sector, especially corporations and foundations.
- These prevention programs will include a number of multi-disciplinary program approaches incorporated in the Attorney General's national agenda for children:

—job training and employment opportunities,

—drug abuse education,

—after school programs, and

—other programs cutting across disciplines and linking schools and social service agencies.

Other delinquency prevention programs are set forth below for which communities engaging in comprehensive community planning can apply directly to OJJDP for funding.

Missing and Exploited Children Comprehensive Action Plan (M/CAP)	999,905
Funding Support for Private Non-profit Organizations Involved with Missing and Exploited Children	70,500
Investigative Case Management of Missing Children Homicides	150,000
Missing Children Data Archive	50,000
Remember They're Children: Using Video to Train Law Enforcement Personnel	200,000
National Alzheimer's Patient Alert Program: Safe Return*	650,000

Delinquency Prevention

New Programs

Congress has appropriated $13 million in Fiscal Year 1994, under Title V of the JJDP Act, for a new delinquency prevention program. This program also supports OJJDP's Comprehensive Strategy by reducing the onset of delinquency among youths who might otherwise have begun on a pathway to serious, violent and chronic delinquency. Moreover, "community planning teams" will be established under this program to conduct risk and resource assessments in order to determine what delinquency prevention programs are needed for a particular jurisdiction. In communities that are planning system responses for serious, violent and chronic offenders, the work of these planning teams will be coordinated with other system planning.

The following are some key features of this program:

- Some 5,000 community leaders will be trained in the risk and resource assessment process over the next few months.
- Communities will then submit applications for Federal funding for local prevention programs that the community leaders and planning teams have determined are needed to prevent delinquency, based on the community's determination of its needs and priorities. Communities must provide a matching contribution and should establish partnerships with the private sector, especially corporations and foundations.
- These prevention programs will include a number of multi-disciplinary program approaches incorporated in the Attorney General's national agenda for children:

—job training and employment opportunities,

—drug abuse education,

—after school programs, and

—other programs cutting across disciplines and linking schools and social service agencies.

Other delinquency prevention programs are set forth below for which communities engaging in comprehensive community planning can apply directly to OJJDP for funding.

Interagency Demonstration on Youth, Firearms and Violence, $150,000

The unacceptably high levels of violent crimes, injuries, and deaths in the United States among our Nation's youth are creating a generation of victims and undermining the economic and communal fabric of society. Firearms are a central part of the problem—for young people 10 to 34 years of age, firearms are the second leading cause of death. In 1990, more teenagers died from firearm-related injuries than from all natural diseases combined.

The Office of Juvenile Justice and Delinquency Prevention in partnership with the National Institute of Justice, and with the Centers for Disease Control, seeks to develop a strategy for preventing and controlling youth violence. From this partnership has come a solicitation requesting proposals to design and implement a demonstration program utilizing a problem-solving approach to understand, prevent and control youth violence. The proposed demonstration project would involve a partnership among the juvenile justice system, a public health agency, and a law enforcement or criminal justice agency within a target community. The funding for this initiative is up to $500,000, including a $150,000 contribution from OJJDP. For a copy of this separate solicitation, Interagency Demonstration on Youth, Firearms, and Violence, call the National Criminal Justice Reference Service, 1–800–851–3420, Box 6000, Rockville, MD 20850.

Mental Health in the Juvenile Justice System, $100,000

This program would implement a two-pronged strategy to address the mental health and juvenile justice systems' lack of coordinated and adequate mental health treatment for America's at-risk and delinquent youth. Juveniles specifically targeted under the two phased strategy proposed are those with mental health problems and impairments, including learning disabilities, who are at risk of becoming status or delinquent offenders, and alleged and adjudicated status offenders and delinquents with undiagnosed or untreated mental health problems, including those in residential care or in juvenile detention and correctional facilities.

The first phase would be funded in Fiscal Year 1994 to develop and implement a two-day conference for up to 200 attendees to address the topics of at-risk juveniles and juveniles with mental health problems or learning disabilities in the juvenile justice system. The purpose of the conference would be to bring together individuals from multiple disciplines to discuss potential solutions to the failure to address the mental health needs of at-risk juveniles and those in our juvenile justice system in a coordinated and systematic manner. The conference would recommend actions that community organizations and local, State, and Federal agencies need to take to address this issue. The conference would be developed in cooperation with the Centers for Mental Health Services and Maternal and Child Health of the U.S. Department of Health and Human Services, the Office of Special Education Programs, U.S. Department of Education and components of other federal agencies, as appropriate.

The second phase, to be considered for funding in Fiscal Year 1995, would establish three to six demonstration programs at the State and local levels to plan comprehensive, coordinated and collaborative approaches to improving mental health services for juveniles.

Law-Related Education in Juvenile Justice Settings, $440,000*

This Law Related Education (LRE) Program (and the Innovative Approaches program that follows) is established pursuant to Section 299(e) of the JJDP Act which provides that 20 percent of the funds appropriated for the national law-related education program under Section 261(a)(7) "shall be reserved each fiscal year for not less than two programs that did not receive funding prior to October 1, 1992."

In 1990, OJJDP began experimenting with LRE for at-risk youths when its consortium of grantees implemented the national LRE program in schools. Interim assessments of this effort suggest positive effects on youths. Administrators and staff of facilities and programs using LRE with this target population have been extremely supportive of the effort.

To expand and augment these initial activities, OJJDP funded two organizations in Fiscal Year 1993 to provide training and technical assistance in law-related education focused on youths in juvenile justice settings. Fiscal Year 1993 awards were made to American Correctional Association/New York Division for Youth and to the Virginia Commonwealth University/Virginia Institute for Law and Citizenship Studies for implementation of LRE in juvenile justice settings.

Applications will be solicited for two new projects to be funded under the initiative in Fiscal Year 1994. The program's major objectives are to increase awareness of LRE in the juvenile justice community; develop or adapt and disseminate LRE curricula and lesson plans used to train youths under the supervision of the juvenile court; provide training and technical assistance to teachers and others in the juvenile justice system; increase public awareness of LRE in juvenile justice settings; and develop an implementation model for future evaluation of this intervention with targeted youths.

Innovative Approaches in Law-Related Education, $260,000*

The purpose of this initiative is to provide support for programs to develop promising, innovative ideas for the delivery of law-related education. The program encompasses the following objectives:

- To promote and support innovative research, development, demonstration, or training programs in the field of law-related education;
- To encourage new methods of focusing law-related education on delinquency prevention within or outside the traditional classroom setting; and
- To develop knowledge that will lead to new techniques, approaches, or methods to deliver law-related education for purposes of preventing delinquency.

Fiscal Year 1993 awards were made to the Boulder County Colorado Board of County Commissioners and to the Professional Development and Training Center at the University of Maryland.

Applications will be solicited for up to three new projects to be funded under this initiative for Fiscal Year 1994 for one year project periods.

National Student/Parent Mock Election, $100,000*

The National Student/Parent Mock Election (NSPME) is an educational exercise in American government and civic responsibility. It invites millions of middle and high school youth to participate with their parents to cast a "mock" vote on the candidates running for Office in November, 1994 and on key issues facing the country.

The program is a law-related education experience that includes a curricula that is highly interactive and concludes with the mock election itself. The program is administered by a non-profit organization which relies on an extensive group of volunteers to conduct mock elections throughout the country. The vote on Mock Election Night (usually one week prior to Election Day) will be televised from a national election headquarters in Washington, D.C. (During past mock elections, Cable News Network carried the election results "live.") The program relies on a number of private and public organizations donating facilities, equipment and expertise.

"Just Say No" International, $250,000*

A grant to "Just Say No" International to expand its Youth Power program to public housing projects in Oakland, California.

Jackie Robinson Center (JRC), $250,000*

JRC is a comprehensive program targeting at-risk youth which provides education, sports and counseling services. This effort will expand their recreational and cultural after school programs to additional schools.

Parents Anonymous, Inc.; $250,000*

Parents Anonymous, Inc. will expand its national network of state and local organizations which seek to reduce juvenile delinquency through family self-help groups. The main focus of this program is to prevent child abuse and neglect.

Youth Crime Watch, $50,000*

Youth Crime Watch of America is a widespread, comprehensive and popular student-led anti-crime and drug problem. Youth Crime Watchers are crime fighters, students K–12 involved in a crime prevention movement BY STUDENTS FOR STUDENTS. The students are ready to do what it takes to create a strong sense of pride, respect and citizenship, using positive peer pressure to reduce crime in schools and neighborhoods. This is a jointly funded program with the Department of Education and the Bureau of Justice Assistance. This program will be expanded in 4 to 5 competitively selected Weed and Seed site and will be administered by BJA.

Delinquency Prevention

Continuation Programs

Law-Related Education (LRE), $2,700,000*

The Law-Related Education (LRE) National Training and Dissemination Program currently involves five national LRE projects and programs which operate in 48 States and four jurisdictions.

The program's purpose is to provide training and materials to State and local school jurisdictions to encourage and guide them in establishing LRE delinquency prevention programs in K–12 curricula and in juvenile justice settings. Grantees will be encouraged to emphasize drug abuse prevention programs in primary, middle, and secondary schools in urban minority communities. The major components of the program are coordination and management, training and technical assistance, preliminary assistance to future sites, public information, program development, and assessment.

This program will be implemented by the current grantees, the American Bar Association, the Center for Civic Education, the Constitutional Rights Foundation, the National Institute for Citizen Education in the Law, and the Phi Alpha Delta Legal Fraternity. No additional applications will be solicited in Fiscal Year 1994.

The Congress of National Black Churches: National Anti-Drug Abuse Program, $200,000

OJJDP proposes the continuation of this organization's national public awareness and mobilization strategy to address the problem of drug abuse and a drug abuse prevention in targeted communities across the United States. The goals of the national mobilization strategy are to summon, focus, and coordinate the leadership of the black religious community in cooperation with the Department of Justice and other federal agencies and organizations to help mobilize groups of community residents to combat effectively the supply and demand problems of drug abuse and drug-related crime activities among adults and juveniles.

The program would be expanded to address family violence intervention issues and target up to 10 additional cities. No additional applications would be solicited in Fiscal Year 1994.

Federal Interagency Partnership, Phase I (Cities in Schools), $200,000

This program is a continuation of a national school dropout prevention model developed and implemented by Cities in Schools, Inc. (CIS). CIS provides training and technical assistance to States and local communities enabling them to adapt and implement the CIS model. The model brings social, employment, mental health, drug prevention, entrepreneurship and other resources to high-risk youths and their families at the school level. Where CIS State organizations are established, they will assume primary responsibility for local program replication during the "Federal Partnership Program I."

This program is jointly funded by OJJDP and the Departments of the Army, Health and Human Services, and Commerce under an OJJDP grant. The total award for Fiscal Year 1993 was $1,400,000. This project would be implemented by the current grantee, Cities in Schools, Inc. No additional applications would be solicited in Fiscal Year 1994.

Targeted Outreach With a Gang Prevention and Intervention Component, $400,000

This program is designed to enable local Boys and Girls Clubs to prevent youths from entering gangs and to intervene with gang members in the early stages of gang involvement to divert them away from gangs and towards more constructive programs. The National Office of Boys and Girls Clubs would provide training and technical assistance to the 81 existing sites and add 25 new gang prevention and 6 intervention sites. The program would be implemented by the current grantee, Boys and Girls Clubs of America and receive an additional $100,000 FY 1995 funds. No additional applications would be solicited in Fiscal Year 1994.

Satellite Prep School Program and Early Elementary School for Privatized Public Housing, $600,000

This is a continuation of a demonstration program, in which OJJDP supported the establishment of an early elementary school program in Ida B. Wells Public Housing Development in Chicago, Illinois. This program is a collaborative effort between OJJDP, the Chicago Housing Authority (CHA), and the Westside Preparatory School and Training Institute (WSP) to establish a Prep-School on the premises of the Ida B. Wells Housing Development for kindergarten to fourth grade children living in this public housing development.

The Wells Prep-School opened with kindergarten and first grade students on September 14, 1992. In September 1993 a second grade was added. The Prep-

Cities in Schools, Inc. (CIS). CIS provides training and technical assistance to States and local communities enabling them to adapt and implement the CIS model. The model brings social, employment, mental health, drug prevention, entrepreneurship and other resources to high-risk youths and their families at the school level. Where CIS State organizations are established, they will assume primary responsibility for local program replication during the "Federal Partnership Program I."

This program is jointly funded by OJJDP and the Departments of the Army, Health and Human Services, and Commerce under an OJJDP grant. The total award for Fiscal Year 1993 was $1,400,000. This project would be implemented by the current grantee, Cities in Schools, Inc. No additional applications would be solicited in Fiscal Year 1994.

Targeted Outreach With a Gang Prevention and Intervention Component, $400,000

This program is designed to enable local Boys and Girls Clubs to prevent youths from entering gangs and to intervene with gang members in the early stages of gang involvement to divert them away from gangs and towards more constructive programs. The National Office of Boys and Girls Clubs would provide training and technical assistance to the 81 existing sites and add 25 new gang prevention and 6 intervention sites. The program would be implemented by the current grantee, Boys and Girls Clubs of America and receive an additional $100,000 FY 1995 funds. No additional applications would be solicited in Fiscal Year 1994.

Satellite Prep School Program and Early Elementary School for Privatized Public Housing, $600,000

This is a continuation of a demonstration program, in which OJJDP supported the establishment of an early elementary school program in Ida B. Wells Public Housing Development in Chicago, Illinois. This program is a collaborative effort between OJJDP, the Chicago Housing Authority (CHA), and the Westside Preparatory School and Training Institute (WSP) to establish a Prep-School on the premises of the Ida B. Wells Housing Development for kindergarten to fourth grade children living in this public housing development.

The Wells Prep-School opened with kindergarten and first grade students on September 14, 1992. In September 1993 a second grade was added. The Prep-School has been established and operates as an early intervention educational model based upon the Marva Collins Westside Preparatory School educational philosophy, curriculum, and teaching techniques. The Westside Preparatory School, a private institution located in Chicago's inner city, has had dramatic success in raising the academic achievement level of low-income minority children. Fiscal Year 1994 funds will be used to continue the operation and management of the school to continue technical assistance for the program and to add a third grade. Awards will be made to existing grantees. No additional applications will be solicited in Fiscal Year 1994.

Teens, Crime, and Community: Teens in Action in the 90s, $1,000,000*

This continuation program is conducted by the National Crime Prevention Council (NCPC) and the National Institute for Citizen Education in the Law (NICEL). Teens in Action in the 90s is a special application of the Teens, Crime and the Community program, which operates on two premises: (1) teens are disproportionately victims of crimes, and (2) teens are resources that can contribute to improving their schools and communities through a broad array of activities.

Under the Fiscal Year 1994 award, NCPC and NICEL will work through the National Teens, Crime, and the Community Program Center to harness the energies of young people toward constructive activities and to reduce crime and violence. The Program Center will be enlarged to serve as a formal clearinghouse for information and materials dissemination and to provide technical assistance and training to communities in establishing the program. With the increase in resources, NCPC will significantly expand the number of communities participating in this program.

This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1994.

Race Against Drugs, $115,000

Race Against Drugs (RAD) is a unique drug awareness, education and prevention campaign designed to help young people understand the dangers of drugs and live a non-impaired lifestyle. With the help and assistance from 21 motorsports organizations and the cooperation of the Federal Bureau of Investigation and National Child Safety Council it has become a fun and exciting new addition to drug abuse prevention programs. RAD now includes national drug awareness and prevention activities at schools, malls and motorsports events, posters, 21 TV public service announcements, signage on T-Shirts, hats, decals, etc., and specialized programs like the "Adopt-a-School Essay and Scholarship" programs: and 6–8 grades school *Be A Winner Action Book, A RAD Adult Guide* and *A RAD Coloring Book* for K–4 grades. This program will be jointly funded by the Bureau of Justice Assistance (BJA) ($40,000) and OJJDP ($75,000) and will be implemented by the current grantee, National Child Safety Council. No additional applications will be solicited in Fiscal Year 1994.

Missing Children

Prevention, Early Intervention, and Mediation Project for Missing and Exploited Children, $75,000

The purpose of this project, administered by Our Town Family Center of Tucson, Arizona, is to enhance the range of services to missing, exploited, and abused children and their families. These services include a school-based prevention program and home-based crisis intervention services. A new family mediation and dispute resolution program seeks to reduce the negative impact of high-conflict divorce and separation on children. The project will provide training workshops for local juvenile justice and school personnel. No additional applications will be solicited during Fiscal Year 1994.

Missing and Exploited Children Prevention and Services, $75,000

The purpose of this project, administered by Counseling Services of Addison County, Middlebury, Vermont, is to continue to expand and develop services to assist missing and exploited youth and their families in Addison County. Project activities include community education programs on child safety issues, counseling, outreach and safe shelter services for runaway and thrownaway youths, training for law enforcement officers, and crisis counseling for families of missing children. No additional applications will be solicited during Fiscal Year 1994.

Paul and Lisa Prevention and Intervention Efforts: Expansion and Improvement of Non-Profit Organization Projects, $75,000

This project expands Paul & Lisa's school-based exploitation prevention program in Connecticut, New York, and

New Jersey. Project activities include helping children develop ways to handle and discourage sexual advances, abduction, and exploitation by adults, and providing school personnel and service providers with strategies to prevent these problems and assist missing and exploited children. Training and technical assistance to organizations and coalitions in selected cities will be provided. No additional applications will be solicited during Fiscal Year 1994.

Project Niño Seguro Services—Addressing Missing and Exploited Children, $45,258

This project, administered by South Bay Community Services of Chula Vista, California, serves English-speaking and Spanish-speaking communities by providing education, information, and services to parents, children, and the community. The project is designed to reduce the occurrence of missing, abducted and exploited children. Project Niño Seguro provides direct counseling to individuals, families, and peer groups. No additional applications will be solicited during Fiscal Year 1994.

Community-Based Alternatives

New Programs

Communities attempting to refocus their juvenile justice system resources on serious, violent and chronic juvenile offenders will be assisted in developing and implementing comprehensive programs for juvenile offenders that combine accountability with treatment and rehabilitation services. These sites will be planning and implementing as many elements of OJJDP's Comprehensive Strategy as resources permit. If successful, they will serve as models for other jurisdictions.

Communities will also be assisted in developing a continuum of community-based care for offenders who do not present a threat to the public safety. For example, a program to provide a continuum of alternatives for females in the juvenile justice system is proposed.

In addition, a field-initiated research program will provide support to address issues related to the Comprehensive Strategy, including mental health issues, family preservation, and waiver and transfer to the criminal justice system.

Program To Promote Alternative Programs for Juvenile Female Offenders, $200,000

Historically, the unique service needs of females have not been given adequate attention in the juvenile justice system. Not only do females represent a smaller percentage of the delinquent population, when females act out their problems, they more often than boys become self-destructive, run away, become involved in prostitution, or turn to unhealthy, exploitative, or abusive environments for attention and shelter. Females may be further victimized when they seek help or come under the juvenile justice system because there are so few resources available to them. Since 1974, the JJDP Act has called for alternatives to confinement for females who have been placed in secure residential programs for less serious offenses than males or confined for longer periods than males.

Today, however, increasing numbers of females live on the streets or in unhealthy, exploitative, or abusive environments. Studies document the inequities of services between males and females and the perpetuation of a cycle of generational abuse, teen pregnancy, delinquency, and emotional dysfunction.

This initiative would fund two demonstration projects to serve the needs of female status offenders, delinquents, dependents, dropouts, and pregnant or teenage mothers. Each selected site must develop a comprehensive continuum of services designed to meet the unique needs of at-risk or delinquent female juveniles. The programs must include such specific components as training and education, life management and personal growth skills, health and counseling, parenting skills, job training skills, and community service. The resources provided for the first year would be used to support planning, initial development and implementation of the program.

This program would be competitively funded with the two sites funded at a level of up to $100,000 each during Fiscal Year 1994.

Serious, Violent and Chronic Juvenile Offender Treatment Program, $2,000,000

In Fiscal Year 1993, under a competitive announcement OJJDP funded two jurisdictions (Allegheny County, Pennsylvania Juvenile Court and the Department of Human Services in Washington, DC) to develop a plan for a systematic strategy for juvenile offenders that combines accountability and sanctions with increasingly intensive community-based intervention, treatment, and rehabilitation services as the seriousness of the offense increases or warrants. The plan's basic elements are to: (1) Assess the existing continuum of secure and nonsecure intervention, treatment, and rehabilitation services in each jurisdiction; (2) define the juvenile offender population; (3) develop and implement a programmatic strategy; (4) develop and implement an evaluative design; (5) integrate private nonprofit community-based organizations into juvenile offender services; (6) incorporate an aftercare program as a formal component of all residential placements; (7) develop a resource plan to enlist the financial and technical support of other Federal, State, and local agencies, private foundations, or other funding sources; and (8) develop a victim assistance component utilizing local organizations. In Fiscal Year 1994, funds will be awarded noncompetitively to support implementation of the plan in the initial two sites, if they successfully develop action plans. In addition, funds will be competitively awarded to two new sites to plan and implement a comprehensive treatment program. All grants would be for up to $500,000 each.

Field-Initiated Research Program, $250,000

The Field-Initiated Research Program seeks to develop promising and innovative research programs relevant to the mission of OJJDP. This program offers an opportunity for support for research ideas generated in the field rather than by OJJDP. Priority topics would include mental health issues, gender bias, rural delinquency, family preservation, due process, waiver and transfer to the criminal justice system, violent youth gangs, disproportionate minority representation, institutional crowding, and other issues directly related to OJJDP's "A Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders."

OJJDP would provide up to three awards of up to $83,000 each under this program.

Robeson County, North Carolina, $337,075*

This grant is to the State of North Carolina to initiate two pilot violence reduction programs based on a successful model program implemented by the Governor's Crime Commission in Robeson County, N.C.

Lackawanna County, Pennsylvania, $50,000*

This is a grant to Lackawanna County, PA to initiate a Juvenile Crime Prevention Program with the local District Attorney, community representatives and counseling practitioners.

Portland Summer Diversion Project, $100,000*

An innovative gang prevention program in northeast Portland, Oregon established a summer program for high school youth that are at risk of joining gangs. It includes employment efforts, counseling and classroom instruction on life skills.

Community-Based Alternatives

Continuation Programs

Permanent Families for Abused and Neglected Children, $225,000*

This is a national project to prevent unnecessary foster care placement of abused and neglected children, to reunify the families of children in care, and to ensure permanent adoptive homes when reunification is impossible. The purpose of this project is to ensure that foster care is used only as a last resort and as a temporary solution. Accordingly, the project is designed to ensure that government's responsibility to children in foster care is duly acknowledged by the appropriate disciplines. Project activities include national training programs for judges, social service personnel, citizen volunteers, and others under the Reasonable Efforts Provision of 42 U.S.C. 671(a)(15); training in selected lead States; and development of a model guide to risk assessment. The program will be implemented by the current grantee, the National Council of Family and Juvenile Court Judges. No additional applications will be solicited during Fiscal Year 1994.

National Network of Children's Advocacy Centers, $500,000*

This program will continue to support the National Network of Children's Advocacy Centers through the development and implementation of coordinated training, technical assistance, and information sharing programs. The network links local Children's Advocacy Center programs whose purpose is to provide multi-disciplinary coordination in the investigation and prosecution of child abuse cases, limited seed money, training, and technical assistance. National leaders in this effort are the National Children's Advocacy Center in Huntsville, Alabama; the University of Oklahoma's Justice Center in Tulsa, Oklahoma; and the National Children's Advocacy Center in Honolulu, Hawaii, two of which will be under contract to provide training and technical assistance. A continuation application will be solicited from one organization in the National Network. No other

Portland Summer Diversion Project, $100,000*

An innovative gang prevention program in northeast Portland, Oregon established a summer program for high school youth that are at risk of joining gangs. It includes employment efforts, counseling and classroom instruction on life skills.

Community-Based Alternatives

Continuation Programs

Permanent Families for Abused and Neglected Children, $225,000*

This is a national project to prevent unnecessary foster care placement of abused and neglected children, to reunify the families of children in care, and to ensure permanent adoptive homes when reunification is impossible. The purpose of this project is to ensure that foster care is used only as a last resort and as a temporary solution. Accordingly, the project is designed to ensure that government's responsibility to children in foster care is duly acknowledged by the appropriate disciplines. Project activities include national training programs for judges, social service personnel, citizen volunteers, and others under the Reasonable Efforts Provision of 42 U.S.C. 671(a)(15); training in selected lead States; and development of a model guide to risk assessment. The program will be implemented by the current grantee, the National Council of Family and Juvenile Court Judges. No additional applications will be solicited during Fiscal Year 1994.

National Network of Children's Advocacy Centers, $500,000*

This program will continue to support the National Network of Children's Advocacy Centers through the development and implementation of coordinated training, technical assistance, and information sharing programs. The network links local Children's Advocacy Center programs whose purpose is to provide multi-disciplinary coordination in the investigation and prosecution of child abuse cases, limited seed money, training, and technical assistance. National leaders in this effort are the National Children's Advocacy Center in Huntsville, Alabama; the University of Oklahoma's Justice Center in Tulsa, Oklahoma; and the National Children's Advocacy Center in Honolulu, Hawaii, two of which will be under contract to provide training and technical assistance. A continuation application will be solicited from one organization in the National Network. No other applications will be solicited during Fiscal Year 1994.

Professional Development for Youth Workers, $200,000

The primary purpose of this program is to promote professional development of youth service and juvenile justice system providers through formal training. The program will include an inventory of existing training programs and their effectiveness, a needs assessment training survey, the development of curricula for several program settings, the design of a dissemination strategy, and the creation of an implementation plan for the second half of a two-year program.

Initially funded in Fiscal Year 1992, the Academy for Educational Development, Inc. will continue this three year program in Fiscal Year 1994. No additional applications will be solicited in Fiscal Year 1994.

School Safety Center, $250,000

The purpose of this collaborative program between OJJDP and Department of Education is to provide training and technical assistance regarding school safety to elementary and secondary schools, and to identify methods to diminish crime, violence, and illegal drug use in schools and on campuses, with special emphasis on gang-related crime. The National School Safety Center (NSSC) maintains a library and clearinghouse with specialized information, provides research on school safety issues, and develops publications and training programs. These funds would focus on prevention of drug abuse and violence in schools and establish State personnel trained in school safety to provide technical assistance to localities.

The Department of Education contributed to the support of this program with a transfer of $1 million of Fiscal Year 1993 funds for expenditure in Fiscal Years 1993–1994. This program would be implemented by the current grantee, the National School Safety Center at Pepperdine University. No additional applications would be solicited in Fiscal Year 1994.

Juvenile Restitution, $250,000

OJJDP will continue to support the juvenile restitution training and technical assistance program in Fiscal Year 1994. The project design is based on practitioner recommendations for current needs in the field. OJJDP initiated a survey on how best to expand and institutionalize restitution as a viable juvenile justice disposition. In addition to the survey, a working group was convened to help map out the course of OJJDP's support for optimum development of the components of restitution. These components will include community service, victim reparation, victim-offender mediation, offender employment and supervision, employment development, and potential program elements designed to establish restitution as an important alternative in improving the juvenile justice system. This project is guided by the need to provide a balance of community protection, offender competency development and accountability in the provision of community-based sanctions.

The Division of Applied Research of Florida Atlantic University was competitively selected in Fiscal Year 1992 to implement this three year project. No additional applications will be solicited in Fiscal Year 1994.

Insular Area Support, $403,000*

The purpose of this program is to provide supplemental financial support to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands (Palau), and the Commonwealth of the Northern Mariana Islands. These funds are available to address the special needs and problems of juvenile delinquency in the insular areas, as specified by Section 261(e) of the JJDP Act, 42 U.S.C. 5665(e).

OJJDP Technical Assistance Support Contract: Juvenile Justice Resource Center, $650,000

The purpose of this contract is to provide technical assistance and support to OJJDP, the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in the areas of program development, evaluation, training, and research. The program will be completed during FY 1994.

Native American Alternative Community-Based Program, $540,000

This program is designed as a collaborative interagency effort between OJJDP and other public and private organizations concerned about juvenile delinquency among Native Americans. Its purpose is to develop community-based alternative programs for Native American youths adjudicated delinquent and to develop a re-entry program for Native American delinquents returning from institutional placements. A multi-component design has been developed in the four project sites. Additional training and technical assistance will be provided to integrate

the critical elements of the OJJDP Intensive Supervision and Community-Based Aftercare programs with cultural elements traditionally used by Native Americans to control and rehabilitate offending youths.

The project sites, initially funded in Fiscal Year 1992, are the Red Lake Band of Chippewa Indians, the Navajo Nation, the Gila River Indian Community and the Pueblo of Jemez. A training and technical assistance provider, The National Indian Justice Center provides the sites with training and technical assistance. No additional applications will be solicited in Fiscal Year 1994.

Missing Children

Community Action for the Prevention of Missing and Exploited Children, $125,000

This project enables the District of Columbia's Center for Child Protection and Family Support to expand its direct service activities to high-risk inner city youths, specifically teenage parents, through the development of a specialized education component designed to educate families on child safety, enhance their understanding of potential abduction and exploitation, and improve the systematic response to dealing with the issues of missing and exploited children. No additional applications will be solicited in Fiscal Year 1994.

Provide Services to Recovered Missing Children and Their Families, $30,000

The purpose of this project is to support the activities of Find the Children of Los Angeles, California, as coordinator of a local multi-agency task force activated upon the recovery of a child. Find the Children coordinates interagency communication to evaluate a child's or family's needs at the time of recovery, assists them in obtaining access to available services, collects data, manages relevant treatment-intervention plans, and issues reports in conjunction with the Interagency Council of Child Abuse and Neglect. No additional applications will be solicited in Fiscal Year 1994.

Improvement of the Juvenile Justice System

New Programs

The new programs funded under this objective support the Comprehensive Strategy. In addition, program development will be provided to the PACT (Pulling America's Communities Together) program sites. The four new violence studies will provide valuable information regarding community violence patterns, with a particular focus on homicides, and identify strategic law enforcement responses. Child-centered community policing will be furthered, under joint support from the Bureau of Justice Assistance, in New Haven, Connecticut. The city's exemplary program will serve as a host site for training other jurisdictions. In another effort, promising program models for prevention, intervention, and treatment of female juvenile offenders will be identified and distributed to jurisdictions across the country. Other projects will focus on detention and corrections, helping the juvenile justice system refocus resources on the most serious, violent, and chronic offenders while improving conditions of confinement.

Finally, a major effort under this objective will be focused on community interventions with violent youth gangs. Additional funds appropriated this year for Part D of the JJDP Act will be used to expand the Office's previous work in this area into an Integrated Gang Program to include demonstration programs and evaluation, research, training, technical assistance, and information dissemination. Many cities experiencing gang problems will benefit directly from information and technical assistance resource to address gang violence.

"Pulling America's Communities Together: Program Development", $250,000

Project PACT (Pulling America's Communities Together) is a Federal initiative designed to empower communities to fight crime. The project presently focuses on four areas: Metropolitan Denver, the State of Nebraska, Metropolitan Atlanta, and Washington, D.C. In these four areas, the Federal Government is supporting and fostering the development of broad-based, fully coordinated local and statewide anti-violence initiatives that work strategically to secure community safety.

The grantee will provide the sites with advice and assistance in assessing youth violence problems and in identifying successful crime prevention and violence reduction programs and models for consideration, adaptation, and implementation in PACT area violence reduction strategies. Moreover, the grantee will provide training and technical assistance on crime prevention and violence reduction topics and coalition and team-building processes.

The program will be implemented by a current grantee, the National Council on Crime and Delinquency. The Bureau of Justice Assistance (BJA) and OJJDP are jointly funding this project. BJA is contributing $200,000. No additional applications will be solicited in Fiscal Year 1994.

Violence Studies, $1,000,000*

The 1992 Amendments to the JJDP Act require OJJDP to conduct a study on violence in Milwaukee, Wisconsin; Los Angeles, California; Washington, DC; and one rural area. Building on the results of OJJDP's Program of Research on Causes and Correlates, the study will address the incidence of violence committed by or against juveniles in urban and rural areas of the United States. In Fiscal Year 1993 OJJDP initiated the study by supporting its planning phase. It is anticipated that awards will be made to conduct studies in each of the four designated sites.

Child-Centered Community-Oriented Policing, $300,000

In Fiscal Year 1993, OJJDP provided support to the New Haven, Connecticut, Police Department and the Yale University Child Development Center to document a child-centered community-oriented policing model, the first phase of which is being implemented in New Haven. The basic elements of the model are a ten-week training course in child development for all new police officers and child development fellowships for all community-based sergeants who direct neighborhood police teams. Fellowships provide four to six hours of training a week over a three-month period at the Child Study Center; 24 hour consultation services from a clinical professional and a police supervisor to patrol officers to assist children in violent situations; weekly case conferences with police officers, educators, and child study center staff; open police stations located in neighborhoods available to residents, used for purposes other than processing arrestees; community liaison; and neighborhood foot patrols.

For Fiscal Year 1994, Community Policing funds transferred from the Bureau of Justice Assistance would support a technical assistance and training grant to support the New Haven and Yale partnership in serving as a host site to jurisdictions interested in replicating the essential elements of the model. Participating jurisdictions must either have an established community-oriented policing program which lends itself to replicating the child-centered elements or have strategic plans for implementing a community-oriented policing model, and propose to replicate the model's essential elements.

Additionally, eligible jurisdictions must have the support of the mayor, or chief executive, and must have as co-applicant the human services agency responsible for providing social, medical, or psychological services to families and children in the jurisdiction. Jurisdictions selected will send a team of the city's key decision makers (mayor, police chief, director of human services agency) to New Haven for intensive orientation, followed by an extended visit from key staff of the agencies responsible for implementing the program. On-site technical assistance will be available from New Haven during implementation.

The program is expected to reduce the disproportionate incarceration of minority youths and the number of youths referred to detention and jails by training patrol officers to support prevention activities and to intervene positively with youths. Jurisdictions interested in participating in this program would coordinate with Yale/New Haven to apply for consideration. Details would be provided in the final program plan. No additional applications would be solicited in Fiscal Year 1994.

What Works: Programs for Juvenile Female Offenders, $50,000

This project would assess promising programs providing prevention and treatment services for juvenile female offenders and conduct a national symposium of researchers and practitioners. Because female status offenders are detained at a much higher rate than males, this project would also examine alternatives to detention. The assessment and symposium would be coordinated with States which, under the OJJDP Formula Grants Program and the Government Accounting Office, are examining gender-bias and gender specific services in the juvenile justice system. The symposium papers and proceedings will identify critical issues related to prevention, intervention, and treatment alternatives for female juvenile offenders. This would be a one-year project culminating in a report on promising approaches and a research and program development agenda for the future. One award will be made to supplement the work being done by the Girls, Inc. in an amount up to $50,000.

Training for Line Staff in Juvenile Corrections and Detention, $250,000

OJJDP proposes to support a multi-year training program for line staff of juvenile corrections and detention facilities. The training would convey that the mission of juvenile justice is to create a positive environment that encompasses education, social services, mental and physical health, and

chief executive, and must have as co-applicant the human services agency responsible for providing social, medical, or psychological services to families and children in the jurisdiction. Jurisdictions selected will send a team of the city's key decision makers (mayor, police chief, director of human services agency) to New Haven for intensive orientation, followed by an extended visit from key staff of the agencies responsible for implementing the program. On-site technical assistance will be available from New Haven during implementation.

The program is expected to reduce the disproportionate incarceration of minority youths and the number of youths referred to detention and jails by training patrol officers to support prevention activities and to intervene positively with youths. Jurisdictions interested in participating in this program would coordinate with Yale/New Haven to apply for consideration. Details would be provided in the final program plan. No additional applications would be solicited in Fiscal Year 1994.

What Works: Programs for Juvenile Female Offenders, $50,000

This project would assess promising programs providing prevention and treatment services for juvenile female offenders and conduct a national symposium of researchers and practitioners. Because female status offenders are detained at a much higher rate than males, this project would also examine alternatives to detention. The assessment and symposium would be coordinated with States which, under the OJJDP Formula Grants Program and the Government Accounting Office, are examining gender-bias and gender specific services in the juvenile justice system. The symposium papers and proceedings will identify critical issues related to prevention, intervention, and treatment alternatives for female juvenile offenders. This would be a one-year project culminating in a report on promising approaches and a research and program development agenda for the future. One award will be made to supplement the work being done by the Girls, Inc. in an amount up to $50,000.

Training for Line Staff in Juvenile Corrections and Detention, $250,000

OJJDP proposes to support a multi-year training program for line staff of juvenile corrections and detention facilities. The training would convey that the mission of juvenile justice is to create a positive environment that encompasses education, social services, mental and physical health, and corrections. Training curricula would be designed or developed from existing resources that are timely, current, and meet the needs of the populations served in these facilities. For example, training could be offered in risk assessment, a range of treatment modalities, behavior management, safety and health issues, peer mediation, and conflict resolution.

A certification program would be developed to facilitate development of progressive skills. Special attention would be devoted to motivation in relation to institutional culture. The grantee chosen to implement the program would establish a limited technical assistance capability to complement this program. Practitioner-oriented organizations are encouraged to submit joint applications. One application would be funded in the amount of up to $250,000.

Comprehensive Gang Program, $2,000,000

OJJDP has developed a Comprehensive Gang Program in response to the Part D amendments to the 1994 JJDP Act. Our program includes five major components which will be coordinated efforts. The first three are new initiatives for which applications are being competitively solicited in Fiscal Year 1994.

1. The National Gang Assessment Resource Center will be established to assess the nature and extent of the gang problem; to review the current gang literature; to advance statistical data collection and analyses; to identify promising program models; to conduct gang-related legislative analysis; and to synthesize such information gathered into meaningful dissemination products. ($500,000 in FY 1994 and $250,000 in FY 1995)

2. OJJDP will fund five sites ($200,000 each) to implement the Comprehensive Community-Wide Approach to Gang Prevention, Intervention and Suppression Program, developed by Irving Spergel and his colleagues at the University of Chicago (1993). ($1,000,000)

3. An independent Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention and Suppression Program will be sponsored to assist sites in establishing realistic and measurable objectives, to document program implementation, to measure the efficacy of a variety of program strategies, and to provide useful interim feedback to program implementors. ($250,000)

4. Training and technical assistance regarding the Comprehensive Community Strategy for Dealing with Gangs and Drugs will be provided to all OJJDP-sponsored prevention and intervention sites, as well as to other jurisdictions considering implementation of this approach. OJJDP will use an existing training/technical assistance contract to provide such services. No applications are being solicited.

5. Targeted Acquisition and Dissemination of Gang Materials will be provided through the Juvenile Justice Clearinghouse, in cooperation with all of the above integrated gang response participants. OJJDP's Juvenile Justice Clearinghouse will provide these services. No applications are being solicited.

OJJDP will establish a Gang Consortium which will include OJJDP gang program managers, and project directors and key staff from each of the OJJDP sponsored gang program initiatives. The membership of the Gang Consortium may also include interested representatives of other Federal agencies who are involved in gang-related program development. The purpose of the Gang Consortium will be to facilitate ongoing coordination of program development, information exchange, and service delivery nationwide.

Marketing the Conditions of Confinement Study, $100,000

The recently completed Abt Associates report on the Conditions of Confinement study, which focused primarily on standards conformity, provided a preliminary analysis of data collected under this research. There are numerous substantive areas that have not yet been explored. The keen interest of the field in the results of this first report indicates the need to provide support to further analyze the data base, particularly data from site visits and interviews with facility staff, youths, and administrators; prepare practitioner-friendly reports; respond to ad hoc requests for special data analyses; and make specialized presentations to a variety of audiences who have an interest in improving conditions of confinement.

Further analysis and dissemination of this report will provide support to the National Consortium formed to foster the implementation of the study recommendations. A continuation grant would be awarded to Abt Associates. No additional applications would be solicited in Fiscal Year 1994.

Conditions of Confinement Follow Up—Performance Standards, $250,000

One of the major findings of the Abt Associates "Conditions of Juvenile Confinement" study is that existing

correctional standards are procedural in nature and do not, even if complied with, reflect positively on conditions of confinement in the institutions that house our nation's troubled youths.

A group of corrections and detention administrators who met in Austin, Texas, in the spring of 1993, concluded that performance-based standards must be developed if the field is to move toward improved services for youths and greater accountability for performance in service areas. In developing these standards, drafters will be required to confer and agree on their goals, and to define indicators that measure goal attainment.

The grantee selected would work with representatives from a broad-based consortium of corrections and detention practitioners and youth advocacy professionals in education, health, mental health, and social services to develop, on a priority basis, measurable performance standards.

The standards developed under this initiative would be practitioner driven and enhance existing nationally recognized standards for juvenile correction and detention facilities. The standards should cover system, staff, and youth performance as well as the quality of life for residents of these facilities.

OJJDP would solicit a multi-year grant for the development of performance-based standards for juvenile corrections and detention.

Training and Technical Support for State and Local Jurisdictional Teams to Focus on Juvenile Corrections and Detention Overcrowding, $100,000

The Conditions of Confinement Study identified overcrowding as the most urgent problem facing juvenile corrections and detention facilities. Overcrowding in juvenile facilities is a function of decisions and policies made at the State, county, and city levels. The trend in a number of jurisdictions toward the inappropriate use of detention and commitment to State facilities has been reversed when key decision makers, such as the chief judge, chief of police, director of the local detention facility, head of the State juvenile correctional agency, and others who affect the flow of juveniles through the system, agree to make decisions collaboratively and to modify practices and policies.

In some instances, modification has occurred in response to court orders. Compliance with court orders is improved with the support of enhanced interagency communication and planning among those agencies affecting flow.

To address the problems of overcrowded facilities, OJJDP plans to support an initiative focused on implementing the recommendations of the Abt study regarding overcrowding. This project would involve developing training and technical assistance materials for use by State and local jurisdictional teams. Assistance would be provided in planning and problem solving strategies to reduce or prevent overcrowding in juvenile facilities. Follow-up technical assistance would also be provided to assist in carrying out plans and strategies developed under the training phase.

It is anticipated that one competitive grant or cooperative agreement in the amount of $100,000 would be awarded in FY 1994.

Juvenile Statistics Improvement, $175,000

OJJDP proposes to fund a project to improve juvenile custody statistics and further the development of an integrated and comprehensive program of national juvenile justice statistics. The initial emphases of this program will focus on: (1) Juvenile custody statistics, and (2) information on juveniles waived or transferred to criminal court. Custody was chosen for improvement because custody statistics are needed to monitor the custody rates and characteristics of offenders who penetrate the juvenile justice system and the types of intervention received.

OJJDP recently convened a Juvenile Custody Statistics Symposium of juvenile justice practitioners, data collectors, providers, and users to help OJJDP reexamine data needs regarding the juvenile custody population and the custody function. The participants' feedback on the need for timely, useful and accurate information is reflected in this plan. The Symposium produced consensus on a number of short-term and long-term needs. In the immediate future, OJJDP will take steps to rebuild the data collection infrastructure of custody and waiver/transfer statistics. The design of work for the waiver and transfer data collection will be informed by the results of the General Accounting Office study of juvenile waiver to criminal court.

The Symposium also produced general consensus regarding data collection priorities and requirements. Within this framework, OJJDP is weighing specific redesign options for producing custody statistics. To this end, OJJDP proposes to pilot test new data collection methods to examine their feasibility and utility among the tests under consideration are the following:

- The design of a new effort to collect individual level data on juveniles in facilities. This new effort will capture detailed demographic and offense data.
- A redesign of facility-based information collections. The anticipated data collections would revitalize the present collection efforts and build on the success of the Conditions and Confinement study.
- A new detention data collection effort to monitor the use of detention and to serve as a barometer of activity in the juvenile justice system.

In order to collect data on juveniles tried in criminal court, OJJDP will pretest data collection instruments for possible use in a supplemental award to the BJS National Prosecutor's Survey.

These pilot tests would explore new data collection technologies (such as computer aided surveys, telephone data entry, and electronic submission of data).

OJJDP anticipates entering into a one-year interagency agreement with the Bureau of the Census to carry out the tasks associated with this work.

Intensive Community-Based Aftercare Demonstration, Technical Assistance, and Evaluation Program, $750,000

This initiative is designed to support the implementation, delivery of technical assistance, and the evaluation of a selected number of jurisdictions currently participating in an OJJDP-sponsored pilot program.

Eight pilot test sites (NC, NJ, TX, CO, NV, PA, VA, MI) will compete for the opportunity to participate in a national independent evaluation. Four sites will be selected and will be awarded up to $100,000 each to partially support the program design demonstration. An estimated $140,000 will be awarded to an independent evaluation contractor to complete initial evaluation design work and document the process. Funding from Fiscal Years 1995 and 1996 will be utilized to support an impact evaluation.

The John Hopkins University will receive a supplemental award of up to $210,000 to continue to provide technical assistance and training to all sites making progress towards implementation. The project period for this initiative will be 36 months. Awards will be made in 12-month increments.

National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center, $300,000

Sections 244, 245, and 246 of the JJDP Act of 1974, as amended, authorize support of training and technical assistance programs for juvenile justice and related personnel. These services have been provided through grants, cooperative agreements, and interagency agreements using a variety of training formats and materials. OJJDP proposes to establish comprehensive and uniform training coverage of the field in order to increase the effectiveness of OJJDP-supported training and technical assistance. To achieve this, the Office would issue a solicitation for an award to establish a Training and Technical Assistance Center to provide the following services and activities to the juvenile justice field:

- A centralized access point for information about training and technical assistance;
- Development of specialized training teams to assist State and local programs, respond to specialized issues or needs, and provide training and certification of trainers;
- Development and distribution of training and technical assistance materials;
- Support for National and regional training events;
- Assessment and evaluation of training programs;
- Information on training models and specific issues affecting training of staff working with juveniles; and
- Provide opportunities for networking and exchanging information and ideas to create learning opportunities for youth development professionals.

The Center would provide the following benefits to support OJJDP training and technical assistance responsibilities:

- Support coordination of all OJJDP training and technical assistance projects;
- Respond immediately to emerging training needs through development and delivery of specialized training and technical assistance;
- Support an agency managed system for effective monitoring of contracted services, efficient use of services, and prevention of overlap of services;
- Coordinate data regarding participants and curricula received from OJJDP-funded grantees and contractors and centralize the information gathered;
- Facilitate the exchange of information about training technologies and provide access to information resources.

In the first year, a catalogue of OJJDP's training activities would be published, including course descriptions, training organizations, and schedules. Other products of the Center during the first year would include the design and testing of a trainer's curriculum, production of training manuals and

and related personnel. These services have been provided through grants, cooperative agreements, and interagency agreements using a variety of training formats and materials. OJJDP proposes to establish comprehensive and uniform training coverage of the field in order to increase the effectiveness of OJJDP-supported training and technical assistance. To achieve this, the Office would issue a solicitation for an award to establish a Training and Technical Assistance Center to provide the following services and activities to the juvenile justice field:

- A centralized access point for information about training and technical assistance;
- Development of specialized training teams to assist State and local programs, respond to specialized issues or needs, and provide training and certification of trainers;
- Development and distribution of training and technical assistance materials;
- Support for National and regional training events;
- Assessment and evaluation of training programs;
- Information on training models and specific issues affecting training of staff working with juveniles; and
- Provide opportunities for networking and exchanging information and ideas to create learning opportunities for youth development professionals.

The Center would provide the following benefits to support OJJDP training and technical assistance responsibilities:

- Support coordination of all OJJDP training and technical assistance projects;
- Respond immediately to emerging training needs through development and delivery of specialized training and technical assistance;
- Support an agency managed system for effective monitoring of contracted services, efficient use of services, and prevention of overlap of services;
- Coordinate data regarding participants and curricula received from OJJDP-funded grantees and contractors and centralize the information gathered;
- Facilitate the exchange of information about training technologies and provide access to information resources.

In the first year, a catalogue of OJJDP's training activities would be published, including course descriptions, training organizations, and schedules. Other products of the Center during the first year would include the design and testing of a trainer's curriculum, production of training manuals and training jurisdictional teams to respond to critical issues and problems. A competitive multi-year contract in the initial amount of $200,000 would be awarded with Fiscal Year 1994 funds and $100,000 of Fiscal Year 1995 funds.

Telecommunications Assistance, $200,000

Developments in information technology and distance training can expand and enhance the information dissemination, training and technical assistance activities of OJJDP programs. These technologies can be employed to enhance present capabilities for existing grantees by increasing access of persons in the juvenile justice system to information and training, reducing travel costs to conferences, and saving time used to attend meetings requiring one or more nights away from one's home or office. OJJDP proposes to award a cooperative agreement to a qualified organization to provide program support, technical assistance and necessary equipment for a variety of information technologies, including audio-graphics, satellite teleconferences, and fiber-optic teleconferences. OJJDP would select from among its grantees to provide the curricula or program information to be presented via telecommunications technologies. A secondary purpose of the grant program would be to support OJJDP in marketing the technology for additional users. A cooperative agreement in the amount of $100,000 would be awarded with Fiscal Year 1994 funds and $100,000 of Fiscal Year 1995 funds.

Interventions To Reduce Disproportionate Minority Confinement in Secure Detention and Correctional Facilities (the Deborah Ann Wysinger Memorial Program), $600,000

National data and studies have demonstrated that minority offenders are overrepresented in secure facilities across the county. In response to this problem, OJJDP issued regulations in 1989 requiring States participating in the Formula Grants Program to determine the existence of disproportionate minority confinement and to design strategies to reduce the problem where it exists. As of February 1993, 42 States had completed the required data analyses, with all but one determining that minority juveniles were overrepresented in secure facilities. Analysis of the data provided by the States further indicates that minority youths are disproportionately represented at several points in the juvenile justice system.

This competitive Special Emphasis program would provide funds to States, local units of government and not-for-profit organizations to demonstrate effective interventions designed to eliminate the disproportionate confinement of minority juveniles in secure detention or correctional facilities, adult jails and lockups, and other secure institutional facilities. Activities appropriate for funding under this initiative would include such programs as:

- Training and education programs for law enforcement and juvenile justice practitioners;
- Diversion programs for minority youths who come in contact with the juvenile justice system;
- Prevention programs in communities with high numbers of minority residents;
- Programs to increase the capacity of community-based organizations to provide alternatives to detention and incarceration for minority youths; and
- Aftercare programs designed to assist minority youths returning to their communities from secure institutions.

Grants would be available to State and local agencies, local units of government and not-for-profit organizations as defined in section 223(a)(1) of the JJDP Act in amounts ranging from $55,000 to $100,000 for the implementation and evaluation of interventions to reduce disproportionate minority confinement. In addition to the general selection criteria applied to all OJJDP competitive application solicitations, the Office will take into consideration the jurisdiction's development of multiple strategies to address the problem and need based on high minority over-representation indices as identified in the Phase I data collection analysis. Programs will be required to coordinate with OJJDP's program evaluation contractor.

Non-Violent Dispute Resolution, $250,000

The Non-Violent Dispute Resolution program is a joint effort of OJJDP and the Bureau of Justice Assistance (BJA) to test a variety of proposed strategies to train teenage students to constructively manage anger, resolve conflict(s), learn the importance of mutual respect, and be responsible for their actions. Up to three organizations and/or agencies will be identified to implement program models. Qualified applicants must have demonstrated successful work in programs which include collaborative efforts among educators, counselors, criminal justice representatives, and parents/caretakers. Applications will be solicited by BJA on a competitive basis.

Models of Effective Court Based Service Delivery to Children and Their Families, $250,000

The expanding role of State courts in today's complex society is particularly evident in the struggle to address the problems and needs of children and families. Courts often have the charge of monitoring and enforcing treatments recommended by human services professionals, sanctions sought by law enforcement agencies, and mandates imposed by Federal and State legislation. In many instances, courts are the last resort for dysfunctional families. Because of these trends, courts have become, often by default, service coordinators, attempting to match the needs of individuals to services available in the community. Courts are undertaking the role of service provider in a vacuum of information of what works and why.

This program would develop and demonstrate effective models for the acquisition, delineation and provision of social services through court auspices. It would examine the nature and extent of the services provided by courts; at what points in the process the services are provided; and, the extent of the coordination of the services across individuals, cases, and service providers. The effectiveness of the models would be evaluated based on their impact on court operations (e.g., the resources needed to implement various models) and the quality of the services provided to clients. This program builds on the results of the recent National Symposium on Courts, Children, and Families conducted by the National Center for State Courts in cooperation with the Conference of State Court Administrators. OJJDP would participate in and provide funding for this program through the Bureau of Justice Assistance under a cooperative agreement with the National Center for State Courts. No additional applications would be solicited in Fiscal Year 1994.

Delinquency Prevention Training and Technical Assistance, $569,076

The purpose of this contract is to provide nationwide training and technical assistance (TA) to local jurisdictions in developing and implementing comprehensive community-wide risk-focused delinquency prevention strategies under Title V, Section 505, of the JJDPA. The specific training and TA objectives are to: provide communities with a full understanding of the risk-focused delinquency prevention approach; provide a mechanism for the key leadership of a community to develop consensus on an overall strategy; provide a strategy for involving the entire community in delinquency prevention planning; provide a process for communities to conduct a risk and resource assessment; provide communities with a strategy for developing an action plan based on the results of the risk and resource assessment; and provide communities with a strategy to implement their action plan.

The training will be provided in cooperation with the state agencies that administer the Formula Grants program. A sole source contract has been awarded to Developmental Research and Programs, Inc. to provide training in the "Communities that Care" prevention strategy.

Seeds of Success—Log Cabin Honor Ranch, $150,000*

The City of San Francisco Juvenile Probation Department and the San Francisco State University are working on a joint project with the Log Cabin Honor Ranch. This project provides education and training opportunities for at-risk youth.

Douglass County, Nebraska, $67,055*

This is a grant for a youth pretrial diversion program in Douglas, County, NE.

P.A.C.E. Center for Girls, Inc., $150,000*

The State of Florida will expand its P.A.C.E. Center for Girls, Inc. to several new sites. P.A.C.E. provides a juvenile judge with an alternative to incarcerating at-risk teenage girls arrested for status and minor offenses.

Improvement of the Juvenile System

Continuation Programs

Children in Custody, $300,000

Under this collaborative program between the OJJDP and U.S. Bureau of the Census, OJJDP proposes to transfer funds to the U.S. Bureau of the Census to conduct the biennial census of public and private juvenile detention, correctional, and shelter facilities. The census describes the target facilities in terms of their resident population as well as their programs and physical characteristics.

The program would be implemented under an interagency agreement with the U.S. Bureau of the Census. No additional applications would be solicited in Fiscal Year 1994.

Juvenile Justice Clearinghouse, $1,006,798

Part of the National Criminal Justice Reference Service (NCJRS), the Juvenile Justice Clearinghouse provides support to OJJDP in: (1) Collecting, synthesizing and disseminating information on all aspects of juvenile delinquency; (2) developing publications; and (3) preparing specialized responses to information requests from the juvenile justice field. The Clearinghouse maintains a toll-free number for information requests.

The Clearinghouse also reviews on a continuing basis reports, data, and standards relating to the juvenile justice system in the United States and develops special resource products for the juvenile justice community.

The Clearinghouse serves as a information center for the acquisition and dissemination of information regarding juvenile delinquency, including State and local juvenile delinquency prevention and treatment programs and plans, availability or resources, training and educational programs, statistics, and other pertinent data and information. The Clearinghouse serves as an information bank systematically collecting and synthesizing the data and knowledge obtained from research and evaluation by public and private agencies, institutions or individuals concerning all aspects of juvenile delinquency, including the prevention and treatment of juvenile delinquency.

Recognizing the critical need to inform juvenile justice practitioners and other policymakers on program approaches which hold promise, the Clearinghouse continually develops and recommends new strategies to communicate the research findings and program activities of OJJDP to the practitioner community.

The entire NCJRS contract, of which the JJC is a part, and which is administered by the National Institute of Justice (NIJ), is scheduled for competitive award in Fiscal Year 1994.

Coalition for Juvenile Justice, $650,000*

The Coalition for Juvenile Justice (Coalition) was established in 1983 as the National Coalition of State Juvenile Justice Advisory Groups. It was renamed the Coalition for Juvenile Justice effective January 1, 1993. The Coalition supports and facilitates the purposes and functions of State juvenile justice advisory groups. In 1984, Congress tasked the Coalition to review Federal policies regarding juvenile justice and delinquency prevention, prepare and submit an Annual Report and recommendations to the President and Congress, and provide advice to the OJJDP Administrator. The Coalition is also authorized to develop an Information Center for Juvenile Justice and Delinquency Prevention Programs, to conduct an Annual Conference and to disseminate information, data, standards, advanced techniques, and program models. No additional applications will be solicited in Fiscal Year 1994.

Juvenile Justice Data Resources, $25,000

This program addresses the need to enhance the availability of juvenile justice data sets for secondary analysis. It will be implemented under an interagency agreement with the University of Michigan. No additional applications will be solicited in Fiscal Year 1994.

Juvenile Justice Statistics and Systems Development, $275,000

The purpose of this program is to improve Federal, State, and local juvenile justice statistics and to enhance decision making and management information systems (MIS) within the juvenile justice system. The SSD Program helps OJJDP formulate a comprehensive National Juvenile Justice Statistics program which will include a series of regular reports on the extent and nature of juvenile offenses and victimization and the justice system's response to the same. A major product will be a Report to the Nation on Juvenile Crime and Victimization.

The program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1994.

Juveniles Taken Into Custody (JTIC): Interagency Agreement, $200,000

The U.S. Bureau of the Census is working with OJJDP to develop a national comprehensive statistical reporting system responsive to the information requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and to the needs of the juvenile justice field for data on juvenile custody populations in order to assist State legislatures and juvenile justice professionals in planning and policy-making decisions. The Census Bureau acts as the data collection agent for the JTIC program. The program will be implemented under an interagency agreement with the U.S. Bureau of the Census. No additional applications will be solicited in Fiscal Year 1994.

and recommendations to the President and Congress, and provide advice to the OJJDP Administrator. The Coalition is also authorized to develop an Information Center for Juvenile Justice and Delinquency Prevention Programs, to conduct an Annual Conference and to disseminate information, data, standards, advanced techniques, and program models. No additional applications will be solicited in Fiscal Year 1994.

Juvenile Justice Data Resources, $25,000

This program addresses the need to enhance the availability of juvenile justice data sets for secondary analysis. It will be implemented under an interagency agreement with the University of Michigan. No additional applications will be solicited in Fiscal Year 1994.

Juvenile Justice Statistics and Systems Development, $275,000

The purpose of this program is to improve Federal, State, and local juvenile justice statistics and to enhance decision making and management information systems (MIS) within the juvenile justice system. The SSD Program helps OJJDP formulate a comprehensive National Juvenile Justice Statistics program which will include a series of regular reports on the extent and nature of juvenile offenses and victimization and the justice system's response to the same. A major product will be a Report to the Nation on Juvenile Crime and Victimization.

The program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1994.

Juveniles Taken Into Custody (JTIC): Interagency Agreement, $200,000

The U.S. Bureau of the Census is working with OJJDP to develop a national comprehensive statistical reporting system responsive to the information requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and to the needs of the juvenile justice field for data on juvenile custody populations in order to assist State legislatures and juvenile justice professionals in planning and policy-making decisions. The Census Bureau acts as the data collection agent for the JTIC program. The program will be implemented under an interagency agreement with the U.S. Bureau of the Census. No additional applications will be solicited in Fiscal Year 1994.

National Juvenile Court Data Archive, $610,915

This program collects, processes, analyzes, and disseminates available data concerning the Nation's juvenile courts. The Archive collects automated data and published reports from juvenile courts throughout the Nation. Using the automated data, the Archive produces comprehensive reports on the activities of the juvenile courts. These reports examine referrals, offenses, intake, and dispositions as well as specialized topics such as minorities in juvenile courts or specific offense categories. The Archive provides assistance to jurisdictions in analyzing their juvenile court data.

The program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1994.

Contract for the Evaluation of OJJDP Programs, $652,341

Information is being collected on the efficiency, cost-effectiveness, and impact of OJJDP programs implemented through discretionary grants, interagency agreements, contracts, and possibly formula grants. OJJDP will use the reported findings, including strengths, weaknesses, and other assessment data, to make policy and planning decisions. The information may also benefit Congress, other Federal agencies, and State and local juvenile justice and child service staffs.

The grantee is:

1. Providing evaluative assessments of potential programs;

2. Conducting a process evaluation of, and designing an impact evaluation for, the Satellite Prep School project;

3. Designing a process and impact evaluation for the LRE Juvenile Justice Initiative project; and

4. Evaluating: (a) The training provided under the Gang and Drug POLICY program; (b) The Intensive Community-Based Aftercare project; (c) NIC Training for Juvenile Detention and Corrections Personnel; (d) The Disproportionate Representation of Minorities Initiative; and (e) The Serious Habitual Offender Comprehensive Action Program.

The contract is awarded to Caliber Associates for a three-year period. Third year funding, to be awarded in Fiscal Year 1994, is $652,341. No additional applications will be solicited in Fiscal Year 1994.

Children at Risk, $350,000

OJJDP, the Bureau of Justice Assistance (BJA), and the Center on Addiction and Substance Abuse (the Center) of Columbia University have undertaken a joint effort to help communities rescue their high risk pre-adolescents from the interrelated threats of crime and drugs. The program tests a specific intervention strategy for reducing and controlling illegal drugs and related crime in target neighborhoods and fosters healthy development among youths from drug- and crime-ridden neighborhoods. Multi-service, multi-disciplinary neighborhood-based programs are being established which will provide a range of opportunities and diverse services for pre-adolescents and their families who are at high risk of involvement in illegal drugs and crime. Simultaneously, the criminal and juvenile justice systems are targeting resources to reduce illegal drug use and crime in the neighborhoods where these young people reside. OJJDP funds are used for the delinquency prevention components of the program.

The Center has received funding from a number of Foundations, for this effort, which has been matched by OJJDP and BJA. Based on the proposals submitted, six communities were selected to receive funds beginning in Fiscal Year 1992 to implement programs over a three-year period: Seattle, Washington; Memphis, Tennessee; Bridgeport, Connecticut; Austin, Texas; Savannah, Georgia; and Newark, New Jersey. Foundation and government funding of between $500,000 and $1 million was allocated per community. The program will be implemented by the current grantee in the five communities. OJJDP funds will be transferred to BJA to implement the program under a BJA Grant and NIJ is supporting the evaluation with BJA funds. No additional applications will be solicited in Fiscal Year 1994.

Delay in the Imposition of Sanctions, $100,000

This project is a continuation of research undertaken to study the delays in the delivery of sanctions to juveniles in the juvenile court system. Where delays are found in the processing of juvenile court cases, the study will address the problems created by these delays and make realistic recommendations on how to correct the problems. This award will be the third and final year of funding for a three-year project and will support the completion of Phase III. Phase I and Phase II, which were completed in the first two years, consisted of a literature review and survey of court administrators to determine the extent to which processing delays occur, a description of

the characteristics that define the problem, an identification of the points in juvenile court case processing that are most susceptible to delays, an intensive site study that evaluated the effect that case processing delays have on juvenile courts' effectiveness and efficiency in handling delinquency cases, including the effect on juveniles themselves. Phase III will be the final stage of this three-year project, entailing a review of the project findings and development of a set of recommendations on how the juvenile justice system can improve case processing and reduce unnecessary delays. The program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1994.

Violence Study—Causes and Correlates, $300,000*

OJJDP proposes to support additional analyses of data collected under its Program of Research on the Causes and Correlates of Delinquency, conducted at the State University of New York at Albany, the University of Pittsburgh, and the University of Colorado. The draft final report, "Urban Delinquency and Substance Abuse," is under review. To use the collected data more fully, additional analyses need to be performed. These analyses are intended to enhance OJJDP's program development for serious, chronic, and violent offenders. Topics for analysis will be determined by program development requirements. For example, development of risk assessment instruments would benefit from more specific analyses regarding risk factors and pathways to chronic, serious, or violent offending.

This program would be implemented by the grantees noted above. No additional applications will be solicited in Fiscal Year 1994.

Training and Technical Assistance for Juvenile Detention and Corrections (The James E. Gould Memorial Program), $225,000

The project would continue to provide technical assistance and training to juvenile correctional and detention agencies, serve as a national forum on juvenile corrections and detention, hold workshops on selected key issues, provide on-site technical assistance, hold a National Juvenile Day Treatment Conference, and promote literacy education and networking.

The project, which would emphasize intermediate sanctions for non-violent juveniles involved in drug-related offenses and illegal activities in Fiscal Year 1994, would be implemented by the current grantee, The American Correctional Association. No additional applications would be solicited in Fiscal Year 1994.

Training for Juvenile Corrections Staff, $475,000

OJJDP proposes to continue the development and implementation of a comprehensive training program for juvenile corrections and detention staff through an interagency agreement with the National Institute of Corrections (NIC). The program is designed to offer a core curriculum for juvenile corrections and detention administrators and mid-level management personnel in such areas as leadership development, management, training of trainers, legal issues, cultural diversity, gang activity, juvenile programming for specialized needs of offenders, and overcrowding. The training would be conducted at the NIC Academy and regionally. This program would be implemented in Fiscal Year 1994 under an interagency agreement with NIC. No additional applications would be solicited in Fiscal Year 1994.

Improving Literacy Skills of Institutionalized Juvenile Delinquents, $250,000

This is a competitively awarded program funding two grants: Mississippi University for Women ($125,000), and The Nellie Thomas Institute of Learning ($125,000). Many juvenile delinquents in correctional institutions need to develop basic reading and writing skills. The program will improve the literacy levels of juvenile residents in these facilities while creating a national network of trained reading teachers and volunteers available to juvenile correctional facilities. It will include training, follow-up technical assistance on teaching methods, and a curriculum for use by the staff of detention and corrections facilities.

This program will be implemented by the current grantees, The Mississippi University for Women, and The Nellie Thomas Institute of Learning. No additional applications will be solicited in Fiscal Year 1994.

Improvement in Correctional Education for Juvenile Offenders, $199,963

The purpose of this program is to assist juvenile corrections administrators in planning and implementing improved educational services for detained and incarcerated juvenile offenders.

In Fiscal Year 1992, the National Office for Social Responsibility (NOSR) was awarded a three year cooperative agreement to begin a comprehensive assessment of the literature and to produce a report documenting the state-of-the-art practices in educational reform. The results will determine how the information will be used in the future to improve educational services for incarcerated juveniles.

NOSR also will be awarded up to $200,000 to provide training and technical assistance to selected sites that are interested in implementing correctional education reform. No additional applications will be solicited for this training and technical program during Fiscal Year 1994.

Juvenile Court Training, $1,100,270*

The primary purpose of this project is to continue and refine the training and technical assistance program offered by the National Council of Juvenile and Family Court Judges. The training objectives are to supplement law school curricula, provide judges with current information on developments in juvenile and family case law, and make available options for sentencing and treatment. Emphasis will be placed on drug testing, gangs and violence, and intermediate sanctions. The project will provide foundation training to new judges and to experienced judges who have been recently assigned to the juvenile or family court bench.

The program will be implemented by the current grantee, The National Council of Juvenile and Family Court Judges. No additional applications will be solicited in Fiscal Year 1994.

Technical Assistance to the Juvenile Courts, $389,943*

The National Center for Juvenile Justice (NCJJ), the current grantee, is the research division of the National Council of Juvenile and Family Court Judges. The four types of technical assistance available under the grant are: (1) Information resources, (2) on-site consultation, (3) off-site consultation, and (4) cross-site consultation. Emphasis will be placed on intermediate sanctions for handling juveniles involved in drug-related offenses and gang activities. In addition, the project will examine appropriate use of juvenile records in adult court proceedings, including an examination of State laws and practices.

The current grantee, the National Center for Juvenile Justice, will implement the program. No additional applications will be solicited in Fiscal Year 1994.

Due Process Advocacy Program Development, $250,000

In Fiscal Year 1993, OJJDP funded the American Bar Association (ABA), in partnership with the Juvenile Law Center (JLC) of Philadelphia, PA and the Youth Law Center (YLC) of San Francisco, CA, to develop a due process advocacy program strategy. The goals of the program are to increase juvenile offenders' access to legal services; and to improve the quality of pre-adjudication, adjudication, and dispositional advocacy for juvenile offenders.

These strategies will be made available to state and local bar associations and other relevant organizations so that they can develop approaches to increase the availability and quality of counsel for juveniles. The ABA and its partners (JLC and YLC) will assess the current state-of-the-art with regard to legal services, training and education, develop strategies to improve access, availability and the quality of counsel and provide a comprehensive report on these issues. During the second funding cycle, training materials will be developed and tested in selected sites. Training materials will be adjusted based on the experience in the test sites and a dissemination strategy will be developed. The ABA will develop mechanisms for networking with legal service providers such as public defender offices and Children's Law Centers. Fiscal Year 1994 funding will support the first six months of the total second year budget of this three year effort. An additional $250,000 will be provided from Fiscal Year 1995 funds for the remaining six months of the second year. No new applications will be solicited.

Training in Cultural Differences for Law Enforcement/Juvenile Justice Officials, $150,000

The project will complete, test, implement, and provide for the dissemination and juvenile justice system utilization of, a cultural diversity training curriculum. The curriculum will be designed to serve the training of trainers in the police/juvenile justice field, and will respond to the unique needs of the major components of the juvenile justice system. Thus, it is expected that training modules and supportive materials will be oriented to cover the aspects of cultural/ethnic diversity particularly relevant to law enforcement, detention staff, probation officers, judges, institutional personnel, aftercare workers, and others involved in the various juvenile justice processes. An award for the current phase of the

Due Process Advocacy Program Development, $250,000

In Fiscal Year 1993, OJJDP funded the American Bar Association (ABA), in partnership with the Juvenile Law Center (JLC) of Philadelphia, PA and the Youth Law Center (YLC) of San Francisco, CA, to develop a due process advocacy program strategy. The goals of the program are to increase juvenile offenders' access to legal services; and to improve the quality of pre-adjudication, adjudication, and dispositional advocacy for juvenile offenders.

These strategies will be made available to state and local bar associations and other relevant organizations so that they can develop approaches to increase the availability and quality of counsel for juveniles. The ABA and its partners (JLC and YLC) will assess the current state-of-the-art with regard to legal services, training and education, develop strategies to improve access, availability and the quality of counsel and provide a comprehensive report on these issues. During the second funding cycle, training materials will be developed and tested in selected sites. Training materials will be adjusted based on the experience in the test sites and a dissemination strategy will be developed. The ABA will develop mechanisms for networking with legal service providers such as public defender offices and Children's Law Centers. Fiscal Year 1994 funding will support the first six months of the total second year budget of this three year effort. An additional $250,000 will be provided from Fiscal Year 1995 funds for the remaining six months of the second year. No new applications will be solicited.

Training in Cultural Differences for Law Enforcement/Juvenile Justice Officials, $150,000

The project will complete, test, implement, and provide for the dissemination and juvenile justice system utilization of, a cultural diversity training curriculum. The curriculum will be designed to serve the training of trainers in the police/juvenile justice field, and will respond to the unique needs of the major components of the juvenile justice system. Thus, it is expected that training modules and supportive materials will be oriented to cover the aspects of cultural/ethnic diversity particularly relevant to law enforcement, detention staff, probation officers, judges, institutional personnel, aftercare workers, and others involved in the various juvenile justice processes. An award for the current phase of the project will be made to the present grantee, the American Correctional Association. No new applicants will be invited.

Bootcamps for Juvenile Offenders: Constructive Intervention and Early Support, $550,000

During Fiscal Year 1991, and after an extensive competitive review process, OJJDP selected and funded three jurisdictions to participate in the Bootcamp for Juvenile Offenders program. The program is designed to create an alternative intermediate-sanction program for non-violent juvenile offenders under the age of 18. The program is also designed to emphasize discipline, treatment and work in a military-style bootcamp program. These programs are also participating in an independent, national evaluation to document the process and impact of the program.

OJJDP will use funds transferred from the Bureau of Justice Assistance (BJA) to provide a limited amount of supplemental funds to three currently Federally funded Bootcamp programs in a military-style bootcamp program based on their assessed needs. No new applications will be solicited in Fiscal Year 1994.

Comprehensive Gang Initiative, $500,000

In 1992, the Bureau of Justice Assistance (BJA) introduced the Comprehensive Gang Initiative. Funding for the Fiscal Year 1994 initiative will be a joint effort by BJA and OJJDP (OJJDP would transfer $500,000 to BJA to support this effort). The Police Executive Research Forum (PERF) has developed a model comprehensive approach to gang issues, which carefully balances initiatives for prevention, intervention and suppression. The model encompasses strategies which bring together cooperative and coordinated efforts of the police, other criminal justice agencies, human services providers and community programs. In addition to a prototype, PERF has developed a training curriculum and a program for providing technical assistance to model demonstration sites. The first four competitively selected demonstration sites were being funded during Fiscal Year 1993 and technical assistance was provided by PERF. Four additional sites will be funded in Fiscal Year 1994 through a competitive process. Applications would be solicited by BJA.

Missing Children

National Center for Missing and Exploited Children/Resource, $3,600,000

This grant will fund the National Center for Missing and Exploited Children to continue to provide the functions of a national resource center and clearinghouse on matters relevant to and required by Title IV—the Missing Children's Assistance Act. No additional applications will be solicited in Fiscal Year 1994.

Training and Technical Assistance for Nonprofit Missing and Exploited Children's Organizations, $250,000

This program will provide technical assistance and training to improve the capacity of nonprofit community-based missing children's organizations to engage in activities which will successfully prevent the abduction and sexual exploitation of children, assist in the recovery of children, and provide services to child victims and their families.

The program will be implemented by the current grantee, the National Victim Center, Arlington, Virginia. No additional applications will be solicited in Fiscal Year 1994.

Model Treatment and Services Approaches for Mental Health Professionals Working With Families of Missing Children, $200,000

The project's goals are to provide mental health personnel with effective treatment approaches and for the rehabilitation of families traumatized by child abduction and faced with reestablishing a state of normalcy in its aftermath. The current grantee is the Western Center for Child Protection, Reno, Nevada. No additional applications will be solicited in Fiscal Year 1994.

Obstacles to Recovery and Return of Parentally Abducted Children: Training, Technical Assistance, $250,000

The American Bar Association Center on Children and the Law, Fund for Justice and Education, recently completed two years of research that showed there are significant obstacles to location, recovery, and return of parentally abducted children. This project will attempt to alleviate some of these identified problems by developing products useful to the field, including continuing professional education and model statutes. No additional applications will be solicited in Fiscal Year 1994.

Development and Expansion of the Child Find Mediation Program to Locate Missing and Exploited Children and Prevent Child Abduction, $75,000

This program is designed to expand mediation program services to prevent parental abductions by increasing the level of awareness of the problem through public service announcements and programs targeting human resources, social service, health care professionals, and the clergy. Additional training will be provided for core mediators and Child Find staff in dispute resolution processes. No additional applications will be solicited in Fiscal Year 1994.

ECHO Program Expansion Assistance, $19,538

The purpose of this project is to enable the Exploited Children's Help Organization (ECHO) of Louisville, Kentucky, to expand existing services to missing and exploited children and their families. These services include community education and prevention; a quarterly newsletter providing information about missing and exploited children and the services available through ECHO; a parents support program; and the "Kids in Court" program. In cooperation with local police, ECHO will compile information about repeat runaways in order to develop a community runaway prevention program. No additional applications will be solicited in Fiscal Year 1994.

Missing and Exploited Children Comprehensive Action Plan (M/CAP), $999,905

The Missing and Exploited Children Comprehensive Action Program (M/CAP) is a multi-agency community action program. The grantee is Public Administration Services, McLean Virginia. The primary program activity is to provide training and technical assistance to help communities plan responses to priority missing and exploited children issues. The program provides programmatic, policy, and procedural approaches, and assists multi-agency community organizations to plan and deliver services in a more cooperative and responsive manner. No additional applications will be solicited in Fiscal Year 1994.

Funding Support for Private Non-profit Organizations Involved with Missing and Exploited Children, $70,500

The purpose of this project is to continue the implementation of an in-house information storage and retrieval system. This will enable the Vanished Children's Alliance of San Jose, California to increase the efficiency of its direct services to families affected by the loss of their children, provide information to law enforcement, and other service providers in a more timely manner, provide more direct counseling and technical assistance to missing children and their families upon recovery, develop effective services for families of long-term missing children, and enhance Vanished Children's Alliance's crisis intervention and referral systems. No additional applications will be solicited in Fiscal Year 1994.

Investigative Case Management of Missing Children Homicides, $150,000

The purpose of this project is to analyze up to 400 missing children homicide cases in order to identify, assess, test, demonstrate, and then describe the investigative practices that will most effectively solve missing and abducted children murder investigations.

The program development and activity will be carried out by the State of Washington Attorney General's Office, Criminal Investigation Division, and that Office's Homicide Investigation Tracking System (HITS), in collaboration with the National Center for Missing and Exploited Children (NCMEC) and NCMEC's cadre of volunteer investigators—America's Law Enforcement Retiree Team (ALERT). The products of the three-year project will be a child homicide investigative resource guide and a national law enforcement training and technical assistance program to aid local, State, and Federal agencies investigating missing children homicides. No additional applications will be solicited in Fiscal Year 1994.

Missing Children Data Archive, $50,000

OJJDP is committed to making publicly available all data sets produced from the Missing Children research programs. To do so, the research data files should be configured into a readily understandable data file with complete documentation. OJJDP has signed an Interagency Agreement with the University of Michigan for just such preparation and archiving of the data sets. Specifically, the University of Michigan will prepare the data and the documentation to conform to generally accepted standards for electronic data. In this way, the data will be more readily accessible for secondary analysis by policy analysts and researchers. During the past fiscal year, this project prepared the data from OJJDP's "National Study of Law Enforcement Agencies' Policies Regarding Missing Children and Homeless Youth." Previously, this project also prepared and distributed OJJDP's first "National Incident Study of Missing, Abducted, Runaway, and Thrownaway Children" (NISMART). In the coming year, OJJDP anticipates preparing the following data sets: "Families of Missing Children: Psychological Consequences and Promising Interventions," and "Obstacles to the Recovery and Return of Parentally Abducted Children."

Remember, They're Children: Using Video to Train Law Enforcement Personnel, $200,000

The purpose of the project is to minimize the negative impact of law enforcement investigative procedures on maltreated children. This will be accomplished through the intensive development and innovative dissemination to law enforcement personnel of a comprehensive video training curriculum designed to improve investigative responses to child victims of maltreatment.

The National Child Welfare Resource Center will provide small- and medium-sized departments with the resources (video curriculum, dissemination avenues, national guidebooks, and other materials) to train and support their staff on how to conduct effective but nontraumatizing child abuse investigations. No additional applications will be solicited in Fiscal Year 1994.

National Alzheimer's Patient Alert Program: Safe Return," $650,000

This project supports the establishment of a national program to facilitate the identification and safe return of missing persons afflicted with Alzheimer's disease and related disorders. The goals of this project are: (1) To develop a central registry of computerized information on memory-impaired persons and a national toll-free telephone line to access the registry; (2) to create an identification system using ID jewelry and clothing labels, purchased and distributed through a central service; and (3) to produce educational materials for use and distribution by participating chapters of the Alzheimer's Disease and Related Disorders Association. No additional applications will be solicited in Fiscal Year 1994.

Discussion of Comments

OJJDP published its proposed Comprehensive Plan for Fiscal Year 1994 in the Federal Register on March 31, 1994, 57 FR 53339, for a 45-day period of public comment. The Office received 65 letters commenting on the proposed plan. All comments have been considered in the development of the Final Comprehensive Plan for Fiscal Year 1994.

The majority of the letters OJJDP received provided positive comments about the overall plan and its programs.

The following is a summary of the substantive comments and the responses by OJJDP. Unless otherwise indicated, each comment was made by a single respondent.

Comment: Seven responses were received advocating continuation funding for two recipients of the Law-Related Education (LRE) in Juvenile Justice Settings program, the American Correctional Association in collaboration with the New York State Division for Youth and the Juvenile Justice Trainer's Association, and Virginia Commonwealth University in collaboration with the Virginia Institute for Law and Citizenship Studies.

Response: These programs were designed and funded as one year projects. Consequently, current recipients for this program will not be eligible for continuation funding.

Comment: A respondent commenting on the proposed "Telecommunications Assistance" initiative indicated that the RFP should carefully define "fiber optics."

Response: The term "fiber optics", will no longer be used in the RFP.

Comment: Three responses were received supporting the National Juvenile Detention Association's development of a training curriculum for juvenile detention center care givers.

Response: The National Juvenile Detention Association's efforts can become an integral part of the new solicitation in support of training line staff in both juvenile detention and juvenile corrections.

Comment: Several respondents identified the following initiatives as worthy of funding and ones in which the field considered critical: Training for Line Staff in Juvenile Detention and Corrections; Marketing the Conditions of Confinement Study; Conditions of Confinement Follow-Up—Performance Standards; Telecommunications Assistance; and Training and Technical Support for State and Local Jurisdiction Teams to Focus on Juvenile Corrections and Detention Crowding.

Response: The final program plan contains each of the aforementioned initiatives.

Comment: A respondent expressed strong support for the Yale Child Study Center/New Haven Department of Police Service Child-Centered Community-Policing" Program.

proposed plan. All comments have been considered in the development of the Final Comprehensive Plan for Fiscal Year 1994.

The majority of the letters OJJDP received provided positive comments about the overall plan and its programs.

The following is a summary of the substantive comments and the responses by OJJDP. Unless otherwise indicated, each comment was made by a single respondent.

Comment: Seven responses were received advocating continuation funding for two recipients of the Law-Related Education (LRE) in Juvenile Justice Settings program, the American Correctional Association in collaboration with the New York State Division for Youth and the Juvenile Justice Trainer's Association, and Virginia Commonwealth University in collaboration with the Virginia Institute for Law and Citizenship Studies.

Response: These programs were designed and funded as one year projects. Consequently, current recipients for this program will not be eligible for continuation funding.

Comment: A respondent commenting on the proposed "Telecommunications Assistance" initiative indicated that the RFP should carefully define "fiber optics."

Response: The term "fiber optics", will no longer be used in the RFP.

Comment: Three responses were received supporting the National Juvenile Detention Association's development of a training curriculum for juvenile detention center care givers.

Response: The National Juvenile Detention Association's efforts can become an integral part of the new solicitation in support of training line staff in both juvenile detention and juvenile corrections.

Comment: Several respondents identified the following initiatives as worthy of funding and ones in which the field considered critical: Training for Line Staff in Juvenile Detention and Corrections; Marketing the Conditions of Confinement Study; Conditions of Confinement Follow-Up—Performance Standards; Telecommunications Assistance; and Training and Technical Support for State and Local Jurisdiction Teams to Focus on Juvenile Corrections and Detention Crowding.

Response: The final program plan contains each of the aforementioned initiatives.

Comment: A respondent expressed strong support for the Yale Child Study Center/New Haven Department of Police Service Child-Centered Community-Policing" Program.

Response: OJJDP recognizes the potential value of the Child-Centered Community-Policing Program model developed by the Yale mental health professionals in collaboration with the New Haven Police Department. Funding will be provided for replication of the Yale/New Haven model in other jurisdictions.

Comment: Eight comments were received indicating specific or general support for a National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center. One of the respondents, while expressing support, cautioned against possible overlap between activities of the Center, other grantees/contractors, and OJJDP staff.

Response: The Office proposes to support the development of a Center that will eliminate, rather than create, duplication of effort by addressing training/technical assistance tasks and areas beyond the normal scope of coverage by individual grantees or contractors. Multi-disciplinary programs and training of trainers programs are examples of projects to be undertaken by the center.

Comment: Three comments were submitted recommending OJJDP support for juvenile restitution programs in the context of the currently funded Balanced and Restorative Justice Project. One respondent suggested an increased allocation for this continuation project, and two suggested restoration of the funding level established prior to a 50% budget reduction imposed on the project in Fiscal Year 1993.

Response: OJJDP supports the Balanced and Restorative Justice Project. The proposed Fiscal Year 1994 funding for this project reflects the projected third year funding level and restoration of 50% of the amount by which the funding level was reduced in Fiscal Year 1993.

Comment: A comment was received advising against the expenditure of OJJDP funds to address the violence content in mass media. Another respondent suggested that OJJDP include partnership opportunities with community-based organizations as part of the requirements for any proposed Media Violence program. A third respondent recommended that the Media Violence program develop information for parents, teachers groups, youth serving organizations, youth groups and community organizations about the relationship between media violence and aggressive behavior, and that seed-money grants be awarded.

Response: While OJJDP disagrees with the first respondent, no funding related to media violence reduction is included in the final program plan. This is due principally to the limited budget of OJJDP and the fact that a variety of agencies and organizations are examining this issue. Partnerships with community-based organizations are anticipated as a part of any future OJJDP Media Violence program initiative. The anticipated program approach to Media Violence would have provided for development and dissemination of user-friendly information, to the groups identified, on the relationship between media violence and aggressive behavior of children.

Comment: A respondent supported the Professional Development for Youth Workers Program, recommending that training of youth workers should be an OJJDP priority and urging that existing training programs offered by community-based youth serving organizations be used, and that these organizations be involved in development of curricula for several program settings. This respondent also encouraged OJJDP to utilize the resources of existing community-based agencies in enhancing safety of children through sub-contracts with community-based organizations for after-school activities.

Response: The Professional Development for Youth Workers Program is completing its second year of funding. OJJDP anticipates testing the curriculum in several community-based settings. A broad base of community-based youth serving organizations have been involved in the implementation of this program from the outset. The curriculum has been developed with their assistance through an advisory committee, working groups, and using a survey of needs and training programs conducted during the first year of implementation. In response to the suggestion that community-based youth serving organizations be used on a contractual basis to provide safe havens for-school children, the National School Safety Center is not tasked to provide such services. The Center provides training and technical assistance to local schools and school districts to assist them to formulate plans and support activities that enhance school safety.

Comment: A respondent supported OJJDP's continued support for the National Network of Children's Advocacy Centers, urging a focus on child sexual-assault-focused models in the program "Models of Effective Court Based Service Delivery to Children and Their Families".

Response: OJJDP appreciates support for the National Network of Children's Advocacy Centers training program. We

have passed this suggestion along to the Network for their consideration.

Comment: A commentor was concerned that no support for "dissertation programs" was included in the Plan. This respondent noted that such grants encourage graduate students to pursue research in the area of juvenile justice. In addition, it was pointed out that a considerable amount of in-kind contributions are provided by universities for these types of projects.

Response: In past years, OJJDP has provided limited funds for Graduate and Summer Research Fellowships. However, this is not a priority area for Fiscal Year 1994. The National Institute of Justice (NIJ) provides Research Fellowship opportunities, including juvenile justice research. The National Criminal Justice Reference Service (NCJRS) 1–800–851–3420 will provide NIJ's FY 94–95 Program Plan upon request.

Comment: One commentor praised the nature of the comprehensive Program Plan and commended the five key principals as outlined in the Comprehensive Strategy section. The respondent suggested that OJJDP clearly state that secure facilities must be used when necessary to assure public safety.

Response: OJJDP's *A Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* clearly states the need to provide secure facilities in order to protect the public safety.

Comment: One commentor expressed support for the Field Initiated Research Program and looks forward to reviewing the results of the research.

Response: The innovative research applications submitted for the Field Initiated Research Program have historically produced projects or relevant research topics that would not otherwise be addressed.

Comment: Another respondent expressed support for the Field Initiated Research Program, violence studies and the female offenders project, but believes that these programs should receive greater funding levels.

Response: OJJDP agrees that the programs should receive greater funding. However, due to funding constraints, expansion is not possible at this time.

Comment: One respondent expressed concern that most of the program funds for Fiscal Year 1994 has either already been allocated, or the allocation is geared toward governmental agencies that already exist. This respondent felt that collaborative programming that include technical assistance from governmental agencies to non-profit service providers who are already working with youth is the solution to programs for at-risk youth who feel alienated.

Response: OJJDP believes there are adequate opportunities for non-profit community-based organizations to compete for available new program funds. OJJDP has always supported collaborative efforts between public and private agencies. Training and technical assistance support for public and private non-profit agencies have been included in the program plan.

Comment: Twelve respondents expressed support to the proposed program "To Promote Alternative Programs for Juvenile Female Offenders." The respondents represented a broad range of professionals, including detention administrators, juvenile court service officials, youth service workers, members of major youth related associations, and community-based program youth care givers and administrators. The respondents viewed the program as a needed first step in addressing the special needs of females in the juvenile system. Several expressed concern that the requirements (planning, initial development and implementation) for such a comprehensive service program could be accomplished within the designated time and budget. OJJDP was urged to define the at-risk female population to be served and to expand the funding period and increase the allocation. One respondent more narrowly questioned the benefits of OJJDP's coordination with the Bureau of Prisons and the Women's Bureau, Department of Labor to female adolescents in the juvenile system.

Response: OJJDP recognizes the importance of a program to address the unique needs of females in the juvenile justice system. As an increasing number of females are entering the juvenile justice system, the Fiscal Year 1994 program will address the needs of adjudicated female juvenile offenders. OJJDP agrees that coordination with the Bureau of Prisons and the Women's Bureau, Department of Labor, may not enable the program to reach the targeted population. Unfortunately, due to budget constraints the allocation has been reduced to $200,000 with two sites funded up to $100,000 to conduct planning and developmental activities for an innovative program to provide alternative services for females in the juvenile justice system.

Comment: One respondent expressed concern that support for mental health programs in the juvenile justice system was inadequate.

Response: OJJDP recognizes the need to improve mental health services for juveniles. In FY94, it will provide technical assistance monies for seven states to develop comprehensive, coordinated and collaborative strategic plans for addressing the mental health needs of persons within the justice system. It will also convene a meeting of national and state leaders to determine what steps should be taken to encourage States to assess their current practices with juveniles and move toward collaborative planning with mental health and other social services. OJJDP recognizes that the $100,000 allocated will have a limited impact and is moving ahead with plans in FY 95 to co-sponsor other federal initiatives in this area with the Center for Mental Health Services (HHS, SAMSA the Office of Special Education Programs (OSEP) in the Department of Education.

Comment: A respondent would prefer that OJJDP shift its emphasis toward funding direct service programs whose success could be evaluated and disseminated for replication. The respondent would like to see additional funds allocated for program development.

Response: OJJDP would like to support more direct service programs. Some of the new and continuation programs will support direct services and others in the early stages of development would lead to direct service initiatives. One such program is the Serious and Violent Offender Program which currently funds two sites to conduct planning and program development. This program development effort is being supported by a grant to the National Council and Crime and Delinquency (NCCD), which has identified several promising programs that can be adapted and developed in new sites. OJJDP also funds Title V—Incentive Grants for Local Delinquency Prevention Programs through the States to local units of government to support direct service delinquency prevention. In Fiscal Year 1994, $13 million was appropriated for this program.

Comment: A respondent expressed concern that the Integrated Gang Program may not focus on smaller communities.

Response: The limited funds for the Integrated Gang Program will be focused on both chronic and emerging gang cities. OJJDP is still working on the details of the program design. OJJDP appreciates the respondents concern with regard to gangs in smaller cities and will take this into consideration in developing the guideline.

Comment: A respondent representing five pilot states funded to address the issue of minority over-representation in secure confinement facilities commented that the Program Plan did not take into account research findings when identifying activities appropriate for the minority over-representation initiative. The respondent suggest additional criteria for selecting programs for funding.

Response: OJJDP will give the suggested criteria serious consideration in drafting the program announcement.

Comments: One respondent expressed concern regarding OJJDP's support for bootcamp programs, asserting a lack of evidence of positive effects.

Response: Interest in the use of bootcamp programs for the prevention and treatment of juvenile delinquency continues to increase. In September 1991, three pilot projects were funded by OJJDP and are currently participating in a process and impact evaluation. Preliminary results should be available in early 1995 and the scheduled completion of the study is early 1996. This evaluation report will be published and OJJDP will use the information in making determinations regarding future program efforts.

Comment: Four respondents expressed support for family strengthening programs. The respondents recommended that OJJDP in finalizing family strengthening guidelines for Fiscal Year 1994. OJJDP consider: (1) Increasing the number of language-minority organizations and cities with significant minority-language populations that receive funding; (2) including state agencies that are serving disadvantaged and high-risk non-English speaking families; (3) encouraging competitive proposals offering programs focused on children at risk as a result of divorce; (4) inviting proposals that seek to reduce risks of children of divorced families by addressing the judicial process; (5) assisting research and demonstration programs that utilize mediation and other therapeutic approaches with families and in divorces involving underage children; and (6) "comprehensive family strengthening programs" focusing on family violence.

Response: OJJDP will consider these constructive recommendations in developing a program strategy in support of family strengthening. As a result of required redirection of funding initially set aside for family strengthening initiatives, OJJDP will be unable to support the development of new programs in this area. The Office will encourage existing programs to enhance family-strengthening components during Fiscal Year 1994 and target the development of new

secure confinement facilities commented that the Program Plan did not take into account research findings when identifying activities appropriate for the minority over-representation initiative. The respondent suggest additional criteria for selecting programs for funding.

Response: OJJDP will give the suggested criteria serious consideration in drafting the program announcement.

Comments: One respondent expressed concern regarding OJJDP's support for bootcamp programs, asserting a lack of evidence of positive effects.

Response: Interest in the use of bootcamp programs for the prevention and treatment of juvenile delinquency continues to increase. In September 1991, three pilot projects were funded by OJJDP and are currently participating in a process and impact evaluation. Preliminary results should be available in early 1995 and the scheduled completion of the study is early 1996. This evaluation report will be published and OJJDP will use the information in making determinations regarding future program efforts.

Comment: Four respondents expressed support for family strengthening programs. The respondents recommended that OJJDP in finalizing family strengthening guidelines for Fiscal Year 1994. OJJDP consider: (1) Increasing the number of language-minority organizations and cities with significant minority-language populations that receive funding; (2) including state agencies that are serving disadvantaged and high-risk non-English speaking families; (3) encouraging competitive propusals offering programs focused on children at risk as a result of divorce; (4) inviting proposals that seek to reduce risks of children of divorced families by addressing the judicial process; (5) assisting research and demonstration programs that utilize mediation and other therapeutic approaches with families and in divorces involving underage children; and (6) "comprehensive family strengthening programs" focusing on family violence.

Response: OJJDP will consider these constructive recommendations in developing a program strategy in support of family strengthening. As a result of required redirection of funding initially set aside for family strengthening initiatives, OJJDP will be unable to support the development of new programs in this area. The Office will encourage existing programs to enhance family-strengthening components during Fiscal Year 1994 and target the development of new family strengthening programs for Fiscal Year 1995.

Comment: A respondent questioned the adequacy of studying the process by which male minority youth enter the juvenile justice system as a means of addressing the critical issue of disproportionate minority representation. The respondent recommended review of our child-rearing, educational, and socialization processes.

Response: It is essential to understand the factors that influence delinquent behavior. The importance of the family and core social institutions in preventing delinquency lies at the heart of OJJDP's Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders. In Fiscal Year 1994, under Title V, $13 million was appropriated for planning and implementing programs that enhance protective factors against delinquent behavior at key points during a youth's development. OJJDP is committed to reducing disproportionate minority confinement. States are required under the Formula Grants Program to determine the extent of this overrepresentation to design strategies to reduce the problem where it exists. In Fiscal Year 1994, $600,000 will be made available to States for demonstration projects that will reduce overrepresentation of juveniles in secure detention or correctional facilities.

Comment: A respondent expressed a concern that the program plan does not provide funding for innovative community rehabilitation and aftercare programs.

Response: The plan includes funds for new community-based alternatives program. Communities refocusing their resources to address serious, violent and chronic juvenile offenders will be assisted to develop and implement programs that combine accountability with treatment and rehabilitative services. A special emphasis has been placed on promoting alternative programs for female offenders. Funds have been allocated to continue support for an intensive community-based aftercare program.

Comment: A respondent recommended support for delinquency prevention and intervention programs in rural areas.

Response: Rural areas are eligible to apply for funding under OJJDP's Title V Delinquency Prevention Program. Under Title V, $13 million will be awarded to the States on a formula basis and States will subgrant through a competitive process. To be eligible to apply for Title V funding a locality must: (1) Receive a certification of compliance with the JJDP Act Formula Grants mandates from the State Advisory Group; (2) convene or designate a prevention policy board, (3) submit a three-year comprehensive delinquency prevention plan.

Comment: One respondent expressed concern about a lack of focus given on vocational education and training.

Response: Vocational training and education is a key component of successful juvenile justice programs. Accordingly, it is built in as a vital component of several OJJDP initiatives. The Serious, Violent, and Chronic Juvenile Offender Treatment Program which supports implementation of a comprehensive continuum of care for juvenile offenders includes vocational training and education. The Intensive Community-Based Aftercare Demonstration Program places a heavy emphasis on job training and placement Vocational education and training is the key component of the Department of Justice and the Department of Interior's joint Youth Environmental Service Program for juvenile offenders, which supports environmental conservation work programs on Federal lands.

Comment: A respondent urged OJJDP to continue its concern with substance abusing youth in the juvenile justice system.

Response: Several OJJDP programs have substance abuse treatment as key components. The Native American Alternative Community-Based Program includes substance abuse treatment. The Serious, Violent, and Chronic Juvenile Offender Program which supports implementation of a comprehensive continuum of care for juvenile offenders includes substance abuse identification and treatment as key program components. The Youth Environmental Service Program, a joint initiative of the Departments of Justice and Interior includes a substance abuse counseling component.

Comment: One correspondent noted the lengthy interval between planning, training, and implementation in Title V.

Response: Title V of the Juvenile Justice and Delinquency Prevention Act requires that a three-year comprehensive plan establish the foundation for a community's strategy for delinquency prevention. This is essential to ensuring that programs and activities target the root causes of delinquency. Many communities already have such a planning process in place.

In those communities where such a planning process is just beginning training will be provided. While Title V requires approval of a local three-year plan prior to funding, other sources of funds are available to meet a locality's needs in the interim. Formula Grants

under Title II provide a means for a State to meet these needs as part of its plan.

Comment: A respondent recommends that the matching requirement provide a decreasing level of Federal support as programs demonstrate their effectiveness in prevention.

Response: Title V requires that units of local government or the State provide a 50 percent match of the amount of the grant, including in-kind contributions. This provision provides flexibility between the State and the units of local government in determining the source of the match, provided that the match requirement does not exceed 50 percent for any unit of local government.

Comment: A correspondent believes preference should be accorded applicants reflecting regional coordination.

Response: Each State determines the approach it deems appropriate for its governmental structure. Combinations of units of local government are eligible to apply for Title V funds.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 94–16996 Filed 07–13–94; 8:45 am]

BILLING CODE 4410–18–P

federal register

Thursday
July 14, 1994

Part III

Department of Education

Fund for Innovation in Education: Innovation in Education Program—Model Content Standards for English and Economics; proposed priorities for Fiscal Year 1995; Notice

VOL 59 ISS 134 JL 14 1994 UMI

DEPARTMENT OF EDUCATION

Fund for Innovation in Education: Innovation in Education Program—Model Content Standards for English and Economics

AGENCY: Department of Education.

ACTION: Notice of Proposed Priorities for Fiscal Year 1995.

SUMMARY: The Secretary proposes absolute priorities under the Fund for Innovation in Education Program as currently authorized or the successor program as it will be established with the reauthorization of the Elementary and Secondary Education Act. The Secretary takes this action to focus Federal financial assistance on the development of content standards—broad descriptions of the knowledge and skills students should acquire in particular subject areas—as the starting point for nationwide systemic education reform. The priorities will guide projects in developing model content standards in English and in Economics for grades K–12.

DATES: Comments must be received on or before August 15, 1994.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Joseph Conaty, U.S. Department of Education, 555 New Jersey Avenue, N.W., room 610d, Washington, DC 20208–5648. Comments on this notice may also be sent to the Department of Education at the appropriate Internet electronic mail address:
English__comments@inet.ed.gov or
Economics__comments@inet.ed.gov.

FOR FURTHER INFORMATION CONTACT: Joseph Conaty, U.S. Department of Education, 555 New Jersey Avenue, NW., room 610d, Washington, DC 20208–5648. Telephone: (202) 219–2079. Internet electronic mail address: Priorities__Questions@inet.ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Dual Information Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Goals 2000: Educate America Act will improve performance for *all* students. The Secretary believes that the development of model content standards in critical subject areas is a useful first step in nationwide systemic education reform. The priorities in this notice support the development of model content standards in English and in Economics and will assist the States in the development of their State content standards as the basis for State systemic reform.

National organizations have developed content standards in mathematics and the arts. The Department of Education is supporting other projects to develop model content standards for science, foreign language, civics, history, and geography. Certain States have already developed related materials in one or more of these subjects that provide guidelines to local schools and districts for the content of what should be taught.

The Secretary believes that a broad, collaborative process is necessary to achieve consensus on what children should know in the content area. Entities or consortia of entities, such as State education agencies (SEA's), local education agencies (LEA's), institutions of higher education, professional associations, private schools, and other public and private agencies, organizations and institutions may apply for funding to support a project in one or both, separately, of the disciplines cited in the proposed priorities. In developing model content standards, projects must draw on relevant work of national and international efforts, educational associations and organizations, and State and local educational agencies. Projects must be designed to reflect the best available knowledge about how students learn and how content can best be taught. Projects also must be designed to reach broad consensus through the participation of all interested parties: Classroom teachers, university and school-based content specialists; State and local school administrators; representatives of private schools; specialists in teacher education; representatives of State legislators, Governor's offices, State and local boards of education; representatives of business, labor, industry, the community at large; parents, and others, such as experts in the field of educating children with special needs.

The Secretary proposes these priorities under the Fund for Innovation in Education (FIE) program. FIE is currently authorized by the Elementary and Secondary Education Act (ESEA) of 1965. It is anticipated that Congress will reauthorize the ESEA in the near future. The Secretary does not expect the FIE program as reauthorized to differ in any substantive way that would preclude the Secretary from establishing these proposed priorities under the newly authorized program.

The Secretary will announce final priorities in a notice in the **Federal Register**. Final priorities will be determined after public comments on this notice are reviewed. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities or funding projects to support these priorities, subject to meeting applicable rule-making requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under these priorities will be published concurrent with or following publication of the notice of final priority.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Absolute Priority 1—Model Content Standards for English

Absolute Priority 2—Model Content Standards for Economics

To meet either one of these two priorities, an application must be for a project in which the applicant, working alone or in collaboration with other entities of its own choice, develops challenging model content standards, kindergarten through grade 12 (K–12), to facilitate State and local construction of content standards and related programs for teacher education, certification, professional development and assessment of student achievement. Each project must carry out all of the following activities:

(a) Design model content standards to serve as the foundation for coherent curricula carefully designed to ensure that all children study challenging subject material in every grade, K–12. The standards must be set forth in a written document that indicates what children should know at certain benchmarks, such as at grades 4, 8, and 12.

(b) Develop and implement a strategy for building a broad consensus by involving classroom teachers, university and school-based content specialists in English or Economics, experts in the education of children with disabilities and other special needs; State and local school administrators, representatives of private schools, specialists in teacher education, representatives of the State legislature, the Governor's office, State and local boards of education; representatives of business, labor, industry, the community at large, parents, and others, as appropriate.

(c) Demonstrate that the standards will be grounded in current research and relevant prior work including efforts of educational associations and organizations, extant State and local content standards, and others.

(d) Establish an advisory council composed of members that represent the broad constituencies associated with the given subject matter competence.

(e) Produce a series of draft documents for review and approval by the advisory council.

(f) Conduct public hearings to critique draft documents.

(g) Provide the Secretary with a copy of the project performance report conducted under 34 CFR 75.590.

industry, the community at large, parents, and others, as appropriate.

(c) Demonstrate that the standards will be grounded in current research and relevant prior work including efforts of educational associations and organizations, extant State and local content standards, and others.

(d) Establish an advisory council composed of members that represent the broad constituencies associated with the given subject matter competence.

(e) Produce a series of draft documents for review and approval by the advisory council.

(f) Conduct public hearings to critique draft documents.

(g) Provide the Secretary with a copy of the project performance report conducted under 34 CFR 75.590.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 610d, 555 New Jersey Avenue, NW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 3151.

(Catalog of Federal Domestic Assistance Number 84.215K, Fund for Innovation in Education)

Dated: July 8, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–17019 Filed 7–13–94; 8:45 am]

BILLING CODE 4000–01–P

VOL
59
PAGES
1-34
JUL
14
1994
UMI

federal register

Thursday
July 14, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability (NOFA) for the Section 8 Set-Aside for Homeless Veterans With Severe Psychiatric or Substance Abuse Disorders; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3770; FR–3714–N–01]

Notice of Funding Availability (NOFA) for Fiscal Year 1994, for the Section 8 Set-Aside for Homeless Veterans With Severe Psychiatric or Substance Abuse Disorders

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for Fiscal Year (FY) 1994.

SUMMARY: This notice announces the availability of $18.4 million in FY 1994 budget authority (approximately 700 units) for a national competition established by the Department of Housing and Urban Development (HUD) and the Department of Veterans Affairs (VA) to award funding under the section 8 rental voucher program for homeless veterans with severe psychiatric or substance abuse disorders. This notice invites public housing agencies and Indian housing authorities, hereinafter collectively referred to as housing agencies (HAs), in conjunction with eligible VA Medical Centers (see Attachment 1) to submit applications.

This NOFA contains information for the applicants regarding the allocation of rental voucher budget authority, the application process, including the application requirements and the deadline for filing applications, the selection criteria and the application rating, ranking, and selection process.

DATES: The due date for submission of applications in response to this NOFA is August 29, 1994. Application forms may be obtained from the local HUD State and Area Offices/Native American Programs Office. Applications must be received in the local HUD State and Area Offices/Native American Programs Office on the due date by 3 p.m. local time. The local HUD State and Area Offices/Native American Programs Offices are the official place of receipt for all applications. At the time, or immediately following the submission of the application to the HUD State or Area Office/Native American Programs Office, the HA also must submit a copy of the application for funding under this NOFA to the following address: U.S. Department of Housing and Urban Development, Mr. Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Room 4220, 451 Seventh Street, SW., Washington, DC 20410.

The above-stated application deadline for submission of completed applications to the HUD State or Area Office/Native American Programs Office is firm as to date and hour. In the interest of fairness to all competing HAs, the Department will treat as ineligible for consideration any application that is not received before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery related problems. HUD will not accept applications submitted via facsimile (FAX) transmission

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. OMB has approved the section 8 information collection requirements under the assigned control number 2577–0169.

I. Purpose and Substantive Description

(A) Background

The HUD-Veterans Affairs Supportive Housing (HUD–VASH) program for homeless veterans with severe psychiatric or substance abuse disorders is a national initiative of HUD and VA. Under this initiative, VA ongoing case management, health and other supportive services will be made available for the term of the Section 8 funding at selected sites to the participants in the HUD–VASH program. The VA services and HUD rental assistance will support community-based initiatives to provide rental assistance, and comprehensive health and other supportive services to homeless veterans suffering from complex, often chronic, health, mental health and substance abuse problems. The supportive services will be delivered in conjunction with permanent, affordable housing.

The goal of the HUD–VASH initiative is to show that appropriate health and other supportive services combined with decent, safe, sanitary, and affordable housing, can help homeless veterans with severe psychiatric or substance abuse disorders lead healthy, productive lives in the community, and exit from homelessness. This initiative also promotes the expansion of permanent housing options for these individuals.

The HUD–VASH initiative is an expansion of previous demonstration programs on behalf of homeless veterans or mentally ill persons, including VA's Health Care for Homeless Veterans (HCHV) and Domiciliary Care for the Homeless Veterans (DCHV) programs and the HUD/Robert Wood Johnson Program for the Chronically Mentally Ill.

The HUD–VASH initiative combines Section 8 rental voucher assistance provided by HUD to selected HAs with case management and clinical services provided by VA at its medical centers. Under this initiative, VA will identify homeless veterans with severe psychiatric or substance abuse disorders through outreach efforts. The selected veterans will receive treatment and be medically stabilized, prior to issuance of the rental assistance. VA will work with HA staff to help veterans locate suitable private market rental units where the veterans can be assisted under the rental assistance program. VA will continue to provide case management services, outpatient health services, hospitalization and other assistance on a regular basis, as needed. Veterans involved in this program will continue in the prescribed treatment programs after they have leased units under the rental assistance program.

This announcement invites HAs who currently administer a housing program in areas where eligible VA sites are located to submit applications for rental voucher funding under this initiative. The rating of Selection Criteria 2, 3, 4, and 6 will be made by VA and based on information available from VA's Northeast Program Evaluation Center (NEPEC) and includes data regularly submitted by VA Medical Centers in the annual Progress Reports for the HCHV and the DCHV programs.

(B) Allocation Amounts

Of the amounts made available by the VA, HUD-Independent Agencies Appropriations Act for FY 1994, up to $18.4 million of budget authority for the rental voucher program is set-aside for the HUD–VASH program. This amount will support approximately 700 rental vouchers. Each HA may apply for funding for at least 25 rental vouchers but not more than 50 rental vouchers per VA Medical Center. An applicant may apply for as many as 50 rental vouchers if VA Medical Centers commit in a letter to the HA that the VA Medical Center will provide two professional, full-time equivalent employees for case management services. An applicant may apply for 25 rental vouchers if VA Medical Centers commit in a letter to the HA that the VA Medical Center will provide one professional, full-time equivalent employee for case management services.

(C) Eligibility

The eligible VA Medical Centers are listed in Attachment 1 to this NOFA. The eligible HAs are those which are currently administering a Section 8 rental assistance program within the catchment area for the eligible VA Medical Centers. Only one HA per VA Medical Center may apply for funding, but an HA may apply for rental vouchers for more than one eligible VA Medical Center if there are multiple VA Medical Centers within the HA's jurisdiction. Each HA may apply for a maximum of 50 rental vouchers per VA Medical Center as discussed in Section II(B) of this NOFA.

(D) Family Self-Sufficiency Program

Unless specifically exempted by HUD, any rental voucher or rental certificate funding reserved in FY 94 (except funding for renewals or amendments) will be used to establish the minimum size of a PHA's FSS program.

(E) Guidelines

The rental assistance provided under the HUD–VASH initiative will enable very low-income, homeless veterans with severe psychiatric or substance abuse disorders to live in decent, safe and sanitary housing. The amount of the rental assistance is generally the difference between the applicable payment standard of the HA for the appropriate size unit and 30 percent of the family's adjusted income. The rental assistance allows an individual to be assisted in a standard rental unit of his or her choice. If the individual subsequently moves to a different unit, the individual can continue to receive the rental assistance. Funding for five years of rental assistance will be provided by HUD to the HA in support of the HUD–VASH program. HAs and local VA Medical Centers will need to work together throughout the course of this initiative to achieve the objectives of the program.

(1) VA Medical Center Responsibilities

VA Medical Center responsibilities include:

per VA Medical Center. An applicant may apply for as many as 50 rental vouchers if VA Medical Centers commit in a letter to the HA that the VA Medical Center will provide two professional, full-time equivalent employees for case management services. An applicant may apply for 25 rental vouchers if VA Medical Centers commit in a letter to the HA that the VA Medical Center will provide one professional, full-time equivalent employee for case management services.

(C) Eligibility

The eligible VA Medical Centers are listed in Attachment 1 to this NOFA. The eligible HAs are those which are currently administering a Section 8 rental assistance program within the catchment area for the eligible VA Medical Centers. Only one HA per VA Medical Center may apply for funding, but an HA may apply for rental vouchers for more than one eligible VA Medical Center if there are multiple VA Medical Centers within the HA's jurisdiction. Each HA may apply for a maximum of 50 rental vouchers per VA Medical Center as discussed in Section II(B) of this NOFA.

(D) Family Self-Sufficiency Program

Unless specifically exempted by HUD, any rental voucher or rental certificate funding reserved in FY 94 (except funding for renewals or amendments) will be used to establish the minimum size of a PHA's FSS program.

(E) Guidelines

The rental assistance provided under the HUD–VASH initiative will enable very low-income, homeless veterans with severe psychiatric or substance abuse disorders to live in decent, safe and sanitary housing. The amount of the rental assistance is generally the difference between the applicable payment standard of the HA for the appropriate size unit and 30 percent of the family's adjusted income. The rental assistance allows an individual to be assisted in a standard rental unit of his or her choice. If the individual subsequently moves to a different unit, the individual can continue to receive the rental assistance. Funding for five years of rental assistance will be provided by HUD to the HA in support of the HUD–VASH program. HAs and local VA Medical Centers will need to work together throughout the course of this initiative to achieve the objectives of the program.

(1) VA Medical Center Responsibilities

VA Medical Center responsibilities include:

(a) Screening of the homeless veterans on the HA's Section 8 waiting list to determine whether these veterans meet the HUD–VASH set-aside participation criteria established by the VA national office, and if there are an insufficient number of applicants on the HA waiting list, referring homeless veterans to the HA;

(b) Providing treatment and supportive services to potential HUD–VASH participants prior to the HA issuance of rental assistance;

(c) Providing housing search assistance to HUD–VASH participants;

(d) Identifying the social service and medical needs of HUD–VASH participants and providing regular ongoing case management, outpatient health services, hospitalization and other supportive services as needed throughout the five year term of the Section 8 funding; and

(e) Maintaining records and providing information for evaluation purposes, as required by HUD or VA.

(2) Veteran Eligibility

In order to be certified to be eligible for rental assistance under this initiative, a veteran must:

(a) Have been contacted by the VA homeless program while living in a shelter or on the street;

(b) Have a severe psychiatric or substance abuse disorder as determined by the VA Medical Center;

(c) Have received treatment and have been medically stabilized; and

(d) Agree to participate in the clinical program offered by the VA Medical Center's specialized homeless program.

Preferences will be given to veterans who have been homeless for 30 days or more.

(3) HA Responsibilities

An HA's responsibilities include: (a) Reviewing its Section 8 waiting list and identifying homeless veterans to be referred to the VA Medical Centers for a determination of whether the veterans meet the HUD–VASH participation criteria;

(b) Determining the Section 8 eligibility of homeless veterans referred by the VA Medical Center;

(c) Amending its administrative plan and equal opportunity housing plan to provide for a preference for homeless veterans certified by the VA Medical Center for participation in the HUD–VASH program in a number equal to the number of rental vouchers provided under this NOFA;

(d) Maintaining records and providing information for evaluation purposes, as required by HUD or VA; and

(e) Administering the Section 8 rental assistance programs in accordance with HUD regulations and requirements.

(4) Section 8 Rental Voucher Assistance

The HUD–VASH initiative provides assistance under the section 8 rental voucher program. HAs must administer this demonstration program in accordance with HUD's regulations governing the section 8 rental voucher program, codified at 24 CFR part 887. The HA may issue a rental certificate instead of a rental voucher to an individual selected to participate in the HUD–VASH initiative if the individual requests a rental certificate and the HA has one available. If section 8 assistance for a participant under this demonstration terminates during the five-year term of the ACC for the section 8 rental vouchers provided under this demonstration, the rental assistance must be reissued to another eligible veteran.

II. Application Process

(A) Selection Criteria/Ranking Factors

To provide each applicant HA with a fair opportunity to receive an award of rental vouchers for the HUD–VASH program during FY 1994, HUD will use the eight selection criteria listed below to rate all applications found acceptable for further processing.

(1) Selection Criterion 1: HA Administrative Capability (40 points)—

(a) Description: Overall HA administrative capability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs is either excellent or good. Administrative Capability is evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), compliance with the portability requirements for rental vouchers and rental certificates, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, timely submission of budgets and financial statements, and rent reasonableness requirements. For purposes of this NOFA, an HA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, HUD will rate HA administration of the Public or Indian Housing Program. If an HA is not administering a Rental Voucher, Rental Certificate, Moderate Rehabilitation, Public Housing or Indian Housing

Program, HUD will assess the administrative capability of the HA based on such factors as experience of staff, support of the HA by the local government, and the HA's administrative experience with non-HUD housing programs.

(b) Rating and Assessment: (i) HUD review of HA Operations—

• 8 Points—Assign 8 points if HA has no review findings outstanding, or all review findings have been corrected, for HUD HA management reviews, Fair Housing & Equal Opportunity reviews, or Inspector General audits as of the deadline date for submission of applications under this NOFA.

• 5 Points—Assign 5 points if HA has less than five review findings outstanding and all findings are being addressed.

• 2 Points—Assign 2 points if HA has five or more review findings outstanding and all findings are being addressed.

• 0 Points—Assign 0 points if HA has any review findings outstanding and the findings are not being addressed.

(ii) Compliance with Section 8 Portability rules:

• 8 Points—Assign 8 points if HA is in compliance with all provisions of the portability rules.

• 5 Points—Assign 5 points if HA is in general compliance with portability rules, but has some minor compliance issues.

• 2 Points—Assign 2 points if HA has some major compliance issues under portability which are being addressed.

• 0 Points—Assign 0 points if HA is not in compliance with portability rules and issues are not being addressed.

(iii) Housing Quality Standards (HQS) Inspections:

• 8 Points—Assign 8 points if HA had more than 95% of its units pass HQS inspections by HUD at the last review or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 95% or more.

• 6 Points—Assign 6 points if HA had more than 90% of its units pass HQS inspections by HUD at the last review, or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 90% or more.

• 4 Points—Assign 4 points if HA had more than 85% of its units pass HQS inspections by HUD at the last review, or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 85% or more.

• 2 Points—Assign 2 points if HA had more than 80% of its units pass HQS inspections by HUD at the last review, or HUD is aware of actions taken by the HA to improve the number of units that pass HQS inspections to 80% or more.

• 0 Points—Assign 0 points if HA had 80% or less of its units pass HQS inspections by HUD at the last review and HUD is *not* aware of actions taken by the HA to improve the number of units that pass HQS inspections to 80% or more.

(iv) Percentage of Units Leased as of September 30, 1993. HUD staff should use the percentage of units under ACC for a period of one year leased for the tenant-based rental assistance program administered by an HA. HUD may use a report on leasing for another period if the September 30, 1993, report is not reflective of HA performance.

• 8 Points—Assign 8 points if HA had 98% or more of its rental certificates and rental vouchers under lease.

• 6 Points—Assign 6 points if HA had 96% or more of its rental certificates and rental vouchers under lease.

• 4 Points—Assign 4 points if HA had 94% or more of its rental certificates and rental vouchers under lease.

• 2 Points—Assign 2 points if HA had 90% or more of its rental certificates and rental vouchers under lease.

• 0 Points—Assign 0 points if HA had less than 90% of its rental certificates and rental vouchers under lease.

(v) Timely Submission of HA Budget and Financial Statements to HUD.

• 8 Points—Assign 8 points if the HA submitted both its most recent fiscal year Section 8 budget at least 30 days prior to the start of the HA fiscal year and its year-end Section 8 annual financial statements within the required 45 days of the end of the HA's fiscal year.

• 4 Points—Assign 4 points if the HA submitted either its most recent fiscal year budget at least 30 days prior to the start of the HA's fiscal year or its year-end Section 8 annual financial statements within the required 45 days of the end of the HA fiscal year.

• 0 Points—Assign 0 points if the HA is unable to document the timely submission of the budget and financial statements.

(2) Selection Criterion 2: Appropriateness of Population Served by VA Medical Center (10 points).

(a) Description: The VA Medical Center has shown its ability to target specialized homeless program resources for veterans who are homeless (i.e., living in homeless shelters or outdoors at the time of initial program assessment).

(b) Rating: 10 points. The proportion of all homeless veterans served by the VA Medical Center is in the higher twenty-fifth percentile for all program sites as rated by VA's NEPEC.

5 Points—The proportion of all homeless veterans served by the VA Medical Center is in the higher fiftieth percentile for all program sites as rated by VA's NEPEC.

0 Points—If neither of the above statements apply, assign 0 points.

(3) Selection Criterion 3: Outreach efforts of the VA Medical Center (10 points).

(a) Description: The VA Medical Center has adhered to the program principles as evidenced by outreach efforts in the homeless programs it currently administers.

(b) Rating: 10 points. The proportion of homeless veterans served who were contacted through outreach at healthcare for homeless veterans (HCHV) sites or entered the program from the community at DCHV sites is in the higher twenty-fifth percentile for all program sites as rated by VA's NEPEC.

5 Points—The proportion of homeless veterans served who were contacted through outreach (at HCHV sites) or entered the program from the community (at DCHV sites) is in the higher fiftieth percentile for all program sites as rated by VA's NEPEC.

0 Points—If neither of the statements apply, assign 0 points.

(4) Selection Criterion 4: Success rate of treatment by VA Medical Center's specialized homeless program (10 points).

(a) Description: The proportion of veterans served by the VA Medical Center in a specialized homeless program which had arrangements for housing and employment at the time of discharge from contract residential care or domiciliary care.

(b) Rating: 10 points. The number of homeless veterans served in a specialized homeless program is in the higher twenty-fifth percentile for all program sites as rated by VA's NEPEC.

5 Points—The number of homeless veterans served in a specialized homeless program is in the higher fiftieth percentile for all program sites as rated by VA's NEPEC.

0 Points—If neither of the above statements apply, assign 0 points.

(5) Selection Criterion 5: The Extent of the VA Medical Center's integration of Homeless programs with other Community Programs for the Homeless (15 points).

(a) Description: Integration of the VA Medical Center's program for homeless veterans with other community programs for the homeless. The application must contain a description of such integration.

(b) Rating: 15 points. The application shows the VA Medical Center's commitment of resources to the Access to Community Care and Effective Supportive Services (ACCESS) program, other initiatives undertaken by local coalitions for the homeless, or comparable multi-service integration initiatives on behalf of the homeless.

8 Points—The application shows the VA Medical Center's involvement in service integration through membership in local coalitions of homeless service providers and attendance of meetings of such groups, but the Center has not committed resources to the groups.

0 Points—The application does not show that the VA Medical Center cooperates with service integration activities or resource exchange.

(6) Selection Criterion 6: Need for Specialized Services for Homeless Veterans. (15 points).

(a) Description: The number of homeless veterans in the area of the VA Medical Center warrants additional resources to address the demand for services.

(b) Rating: 15 points. The number of homeless veterans who were screened by outreach clinicians of the VA Medical Center's specialized program for homeless veterans during FY 1993 was in the top twenty-fifth percentile of all program sites as rated by VA's NEPEC.

8 Points—The number of homeless veterans who were screened by outreach clinicians of the VA Medical Center's specialized program for homeless veterans during FY 1993 was in the top fiftieth percentile of all program sites as rated by VA's NEPEC.

0 Points—If neither of the above statements apply, assign 0 points.

(7) Selection Criterion 7: Efforts of HAs to Establish a Family Self-Sufficiency Program (10 point Deduction).

(a) Description: The application must describe administration of a PHA's FSS program. The description must include (1) Submission to HUD of an Action Plan, and (2) creation of a Program Coordinating Committee. If a PHA is not administering a Rental Voucher or Rental Certificate Program, the HUD State or Area Office will rate HA administration of the Public Housing FSS program, if applicable. All activities rated under this criterion must have been completed prior to the submission of an application under this NOFA. The score of the PHA application must be *reduced* if the PHA received an FSS Incentive award of Section 8 funding in FY 1992 and the PHA has failed to complete the required implementation steps as described below. Also, the score of a PHA application must be reduced if the PHA received funding in FY 1993 (unless the HUD State or Area Office granted a total exception to the FSS program requirement) and the PHA has

other initiatives undertaken by local coalitions for the homeless, or comparable multi-service integration initiatives on behalf of the homeless.

8 Points—The application shows the VA Medical Center's involvement in service integration through membership in local coalitions of homeless service providers and attendance of meetings of such groups, but the Center has not committed resources to the groups.

0 Points—The application does not show that the VA Medical Center cooperates with service integration activities or resource exchange.

(6) Selection Criterion 6: Need for Specialized Services for Homeless Veterans. (15 points).

(a) Description: The number of homeless veterans in the area of the VA Medical Center warrants additional resources to address the demand for services.

(b) Rating: 15 points. The number of homeless veterans who were screened by outreach clinicians of the VA Medical Center's specialized program for homeless veterans during FY 1993 was in the top twenty-fifth percentile of all program sites as rated by VA's NEPEC.

8 Points—The number of homeless veterans who were screened by outreach clinicians of the VA Medical Center's specialized program for homeless veterans during FY 1993 was in the top fiftieth percentile of all program sites as rated by VA's NEPEC.

0 Points—If neither of the above statements apply, assign 0 points.

(7) Selection Criterion 7: Efforts of HAs to Establish a Family Self-Sufficiency Program (10 point Deduction).

(a) Description: The application must describe administration of a PHA's FSS program. The description must include (1) Submission to HUD of an Action Plan, and (2) creation of a Program Coordinating Committee. If a PHA is not administering a Rental Voucher or Rental Certificate Program, the HUD State or Area Office will rate HA administration of the Public Housing FSS program, if applicable. All activities rated under this criterion must have been completed prior to the submission of an application under this NOFA. The score of the PHA application must be *reduced* if the PHA received an FSS Incentive award of Section 8 funding in FY 1992 and the PHA has failed to complete the required implementation steps as described below. Also, the score of a PHA application must be reduced if the PHA received funding in FY 1993 (unless the HUD State or Area Office granted a total exception to the FSS program requirement) and the PHA has failed to complete the required implementation steps as described below.

(b) Rating and Assessment: The HUD State or Area Office must *deduct* point values as shown below:

- 10 Point Deduction—Deduct 10 points if HA has failed to establish a Program Coordinating Committee and provide the names, duties and experience of all members to HUD (24 CFR 984.202(a) and (b)), *and* the HA has failed to submit an Action Plan to HUD within 90 days of notification by HUD of approval of the PHA's application for units under the FY 91/92 FSS incentive award competition or HUD approval of the HA's first application, commencing in FY 93, for rental certificates or rental vouchers (24 CFR 984.201(c)(1)).
- 5 Point Deduction—Deduct 5 points if the HA has failed to establish a Program Coordinating Committee and provide the names, duties and experience of all members *or* has failed to submit an Action Plan in accordance with 24 CFR 984.201(c)(1).

(8) Selection Criterion 8: Efforts of HA to Provide Area-Wide Housing Opportunities for Families (5 points).

(a) Description: Many HAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. These HAs have established cooperative agreements with other HAs or created a consortium of HAs in order to facilitate the transfer of families and their rental assistance funding between HAs. HAs have established relationships with other entities such as non-profit groups to provide families with additional counseling to increase the likelihood of a successful move by the families to low-poverty areas.

(b) Rating and Assessment: HUD will assign point values as shown below:

- 5 Points—Assign 5 points if the HA documents that it has taken steps to increase area-wide housing opportunities for families such as being a member of an established consortium of HAs including at least 50 percent of the HAs in its housing market, providing extra counseling to families, establishing a relationship with other groups including non-profit agencies, or participating in other activities that facilitate area-wide housing opportunities for families.
- 0 Points—Assign 0 points if the HA is unable to document area-wide efforts as shown in this criterion.

(B) Unacceptable Applications

To be eligible for processing, an application must be received by the HUD State or Area Office/Native American Programs Office no later than the application submission deadline date and time specified in this notice. The HUD State or Area Office/Native American Programs Office will screen all applications and notify HAs of technical deficiencies by letter. Allowable corrections relate only to technical items, as determined by HUD, which do not improve the substantive quality of the application relative to the ranking factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. Information received after 3:00 p.m. local time on the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as being incomplete.

All HAs are encouraged to review the "Checklist for Technical Requirements" provided in Section IV of this NOFA. The checklist identifies all technical requirements needed for application processing. An HA application that does not comply with the requirements of 24 CFR 887.55 (b) and this notice, including the drug-free workplace certification, and the anti-lobbying certification disclosure requirements, by the expiration of the 14-day cure period will be rejected from processing.

(a) After the 14-calendar day cure period, if any, the HUD State or Area Office will disapprove HA applications that it determines are not acceptable for processing (refer to Checklist of Technical Requirements in the Section 8 HA Application Kit available at the HUD State or Area Office/Native American Programs Office). The HUD State or Area Office/Native American Programs Office notification of rejection letter must state the basis for the decision.

(b) HUD may decide to deny processing of applications that fall into any of the following categories:

(i) The Department of Justice has brought a civil rights suit against the applicant HA and the suit is pending;

(ii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(iii) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with court order, or implementing a HUD approved plan or

compliance agreement designed to correct the areas of noncompliance.

(iv) HUD has deferred application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the Title VI regulations (24 CFR 1.8), or under section 504 of the Rehabilitation Act of 1973, as amended, and the section 504 regulations (24 CFR 8.57), or under The Americans with Disabilities Act of 1990.

(v) The HA has serious, unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or HUD State or Area Office/Native American Programs Office management review findings for one or more of its rental certificate, rental voucher, or moderate rehabilitation programs, or, in the case of an HA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program.

(vi) The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 85 percent.

(vii) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental vouchers.

(C) Application Processing

The HUD State or Area Office/Native American Programs Office is responsible for rating the applications for Selection Criterion 1: HA Administrative Capability, for Selection Criterion 7: Efforts of HAs to Establish a Family Self-Sufficiency Program and for Selection Criterion 8: Efforts to provide Area-wide Housing Opportunities for Families. HUD Headquarters is responsible for rating, ranking and selecting applications which will receive assistance under the HUD–VASH Program. The HUD State or Area Office/Native American Programs Office will initially screen all applications, using the "Checklist for Technical Requirements" listed in Section III of this NOFA as a guide to determine if an application is complete.

(D) Selection Process

After the HUD State or Area Office/ Native American Programs Office has screened HA applications and disapproved any applications unacceptable for further processing (See Section II of this NOFA), the HUD State or Area Office/Native American Programs Office will review and rate all approvable applications for Selection Criterion 1: HA Administrative Capability, Selection Criterion 7: Efforts of HAs to Establish a Family Self-Sufficiency Program and for Selection Criterion 8: Efforts to provide Metropolitan-wide Housing Opportunities for Families only, utilizing the point assignments listed in this NOFA. All scored applications and rating sheets in each HUD State or Area Office/Native American Programs Office will be sent to the HUD Headquarters.

HUD Headquarters and the Department of Veterans Affairs will review and rate these applications for Selection Criteria 2 through 8, utilizing the point assignments listed in this NOFA. Headquarters will select the highest rated applications until the rental voucher funds are insufficient to fund the next highest rated application(s).

When remaining rental voucher funds are insufficient to fund the next highest scoring application(s) in full, HUD Headquarters may fund that application(s) to the extent of the number of rental vouchers available. Applicants that do not wish to have the size of their programs reduced may indicate in their applications that they do not wish to be considered for a reduced award of funds. HUD Headquarters will skip over these applicants if assigning the remaining funding would result in a reduced funding level.

(E) Local Government Comments

The HUD State or Area Office/Native American Programs Office will obtain section 213 comments, in accordance with 24 CFR part 791, subpart C, from the unit of general local government, including an Indian tribe. Comments submitted by the unit of general local government must be considered before an application can be approved.

For purposes of expediting the application process, the HA should encourage the chief executive officer of the unit of general local government to submit a letter with the HA application commenting on the HA application in accordance with Section 213. Since HUD cannot approve an application until the 30-day comment period is closed, the Section 213 letter should not only comment on the application, but also state that HUD may consider the letter to be the final comments and that no additional comments will be forthcoming from the unit of general local government.

III. Checklist of Application Submission Requirements.

(A) Application Requirements

Each HA must submit the items identified in this section and must include the descriptions required by Selection Criteria 5, 7 and 8. All other rating criteria will be rated based on data currently available to HUD and VA.

(1) Letter From VA Medical Center

The HA application must include a letter from the Director of the VA Medical Center stating that the HA's jurisdiction to operate a rental voucher program, as identified by the HA to the Medical Center, is within the catchment area of the VA Medical Center to operate homeless programs. This letter must also include a statement that the VA Medical Center will commit a minimum of one professional, full-time equivalent (FTE) employee per each new increment of 25 rental vouchers awarded to the corresponding HA, i.e., two FTE for 50 vouchers requested. These additional FTE are necessary to provide case-management services for the homeless veterans who receive rental assistance under this HUD–VASH set-aside.

(2) Narrative on VA Medical Center's Homeless Programs

The applicants must describe the VA Medical Center's efforts to integrate its work with homeless veterans with other community programs for the homeless. Commitment of resources to the Access to Community Care and Effective Supportive Services (ACCESS) program is an example of the multi-service integration initiatives which the Medical Center must describe.

(B) Application Kit

An Application Kit, which includes Form HUD–52515, Application for Existing Housing, may be obtained from the local HUD State or Area Office/ Native American Programs Office. Only an original application and one copy should be submitted; it is not necessary to submit additional copies of the application. In addition, the basic application and other required submissions are available from the HUD State or Area Office, as follows: Form HUD–52515; Certification for a Drug-Free Workplace; Text for the Certification Regarding Lobbying; and Standard Form LLL, Disclosure of Lobbying Activities.

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the appropriate HUD State or Area Office/ Native American Programs Office no later than the date and time specified in Section II of this NOFA. The HUD State or Area Office/Native American Programs Office will initially screen all applications and notify HAs of technical deficiencies by letter.

If an application has technical deficiencies, the HA will have 14 calendar days from the date when HUD issues written notification to submit the missing or corrected information to the HUD State or Area Office and/or Native American Programs Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate HUD State or Area Office/Native American Programs Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete. All HAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. An HA application that does not comply with the requirements of 24 CFR 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification/disclosure requirements, after the expiration of the 14-day cure period will be rejected from processing.

V. Other Matters

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

(B) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial, direct effect on the States, on their political subdivisions, or on the relationship between the Federal

Native American Programs Office no later than the date and time specified in Section II of this NOFA. The HUD State or Area Office/Native American Programs Office will initially screen all applications and notify HAs of technical deficiencies by letter.

If an application has technical deficiencies, the HA will have 14 calendar days from the date when HUD issues written notification to submit the missing or corrected information to the HUD State or Area Office and/or Native American Programs Office. Curable technical deficiencies relate only to items that do not improve the substantive quality of the application relative to the rating factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time (i.e., the time in the appropriate HUD State or Area Office/Native American Programs Office), of the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as incomplete. All HAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. An HA application that does not comply with the requirements of 24 CFR 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification/disclosure requirements, after the expiration of the 14-day cure period will be rejected from processing.

V. Other Matters

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

(B) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial, direct effect on the States, on their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, because this NOFA would not substantially alter the established roles of HUD, the States and local governments, including HAs.

(C) Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Executive Order and, thus, is not subject to review under the Order. This is a funding notice and does not alter program requirements concerning family eligibility.

(D) Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 16, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(E) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

(F) Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the

number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

(G) Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act prescribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4, and was recently amended by an interim rule published in the **Federal Register** on August 4, 1992 (57 FR 34246). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics, (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Dated: June 29, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Checklist for Technical Requirements

The following checklist specifies the required information which must be submitted in the joint application. It is recommended, but not required, that the application contain a narrative explaining how the application meets the selection criteria.

INITIAL SCREENING CHECKLIST

HA Yes	HA No	
☐	☐	1. The application contains a cover letter stating the *total* number of rental vouchers requested in the application and indicates whether the applicant is willing to accept a reduced number and the minimum number of units the applicant is willing to accept.
☐	☐	2. The application includes form HUD 52515 and the average adjusted monthly income (see section H of HUD 52515) by bedroom size for which the HA has submitted an application.
☐	☐	3. The application demonstrates that the applicant qualifies as an HA and is legally qualified and authorized to participate in the rental assistance programs for the area in which the program is to be carried out. Such demonstration includes (i) The relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the HUD State or Area Office, they do not have to be resubmitted.
☐	☐	4. The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 887.251 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.
☐	☐	5. The application contains the HA schedule of leasing which must provide for the expeditious leasing of units. In developing the schedule, an HA must specify the number of units that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible individuals within twelve months or sooner after execution of the ACC by HUD.

REQUIREMENT FOR DRUG-FREE WORKPLACE CERTIFICATION, ANTI-LOBBYING CERTIFICATION AND DISCLOSURE STATEMENT

HA Yes	HA No	
☐	☐	6. The application meets HUD's drug-free workplace requirement set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace.)
☐	☐	7. The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the HA obtaining more than $100,000 in budget authority. To comply, HAs must submit an Anti-Lobbying Certification [Attachment 4] and if warranted, a Disclosure of Lobbying Activities.
☐	☐	8. The application includes a description of the VA Medical Center's integration of homeless programs with other community programs for the homeless.
☐	☐	9. The application includes a description of the efforts of the HA to establish an FSS program and to provide area-wide housing opportunities for families.
☐	☐	10. The application includes a letter from the VA Medical Center that states the HA's jurisdiction, as identified to the VA Medical Center by the HA, to operate a rental voucher program is within the catchment area of the VA Medical Center and the VA Medical Center commits to provide additional FTE employee for case-management services.

List of Eligible VA Medical Centers 29

FY 1993 HUD-VASH Notice of Fund Availability 30

1. Allen Park, MI 31
2. Anchorage, AK 32
3. Albany, NY 33
4. American Lake, WA 34
5. Atlanta, GA 35
6. Augusta, GA 36
7. Baltimore, MD 37
8. Bath, NY 38
9. Bay Pines, FL 39
10. Bedford, MA 40
11. Biloxi, MS 41
12. Birmingham, AL 42
13. Boston, MA 43
14. Brockton, MA 44
15. Bronx, NY 45
16. Brooklyn, NY 46
17. Buffalo, NY 47
18. Butler, PA 48
19. Canandaigua, NY 49
20. Charleston, SC 50
21. Cheyenne, WY 51
22. Chicago (West Side), IL 52
23. Cincinnati, OH 53
24. Cleveland, OH 54
25. Coatesville, PA 55
26. Dallas, TX 56
27. Dayton, OH 57
28. Denver, CO 58

List of Eligible VA Medical Centers

FY 1993 HUD-VASH Notice of Fund Availability

1. Allen Park, MI
2. Anchorage, AK
3. Albany, NY
4. American Lake, WA
5. Atlanta, GA
6. Augusta, GA
7. Baltimore, MD
8. Bath, NY
9. Bay Pines, FL
10. Bedford, MA
11. Biloxi, MS
12. Birmingham, AL
13. Boston, MA
14. Brockton, MA
15. Bronx, NY
16. Brooklyn, NY
17. Buffalo, NY
18. Butler, PA
19. Canandaigua, NY
20. Charleston, SC
21. Cheyenne, WY
22. Chicago (West Side), IL
23. Cincinnati, OH
24. Cleveland, OH
25. Coatesville, PA
26. Dallas, TX
27. Dayton, OH
28. Denver, CO
29. Dublin, GA
30. Des Moines, IA
31. East Orange, NJ
32. Fargo, ND
33. Hampton, VA
34. Hines, IL (Chicago)
35. Hot Springs, SD
36. Houston, TX
37. Huntington, WV
38. Indianapolis, IN
39. Kansas City, MO
40. Leavenworth, KS
41. Lebanon, PA
42. Little Rock, AR
43. Loma Linda, CA
44. Long Beach, CA
45. Los Angeles, CA
46. Louisville, KY
47. Lyons, NJ
48. Martinsburg, WV
49. Miami, FL
50. Milwaukee, WI
51. Minneapolis, MN
52. Montrose, NY
53. Mountain Home, TN
54. Nashville, TN
55. New Orleans, LA
56. New York, NY
57. North Chicago, IL
58. Oklahoma City, OK
59. Palo Alto, CA
60. Perry Point, MD
61. Philadelphia, PA
62. Phoenix, AZ
63. Pittsburgh, PA
64. Portland, OR
65. Prescott, AZ
66. Providence, RI
67. Roseburg, OR
68. Salisbury, NC
69. Salt Lake City, UT
70. San Antonio, TX
71. San Diego, CA
72. San Francisco, CA
73. St. Louis, MO
74. Seattle, WA
75. Syracuse, NY
76. Tampa, FL
77. Toledo, OH
78. Tomah, WA
79. Tucson, AZ
80. Tuskegee, AL
81. Walla Walla, WA
82. Washington, DC
83. West Haven, CT
84. West Los Angeles, CA
85. White City, OR
86. Wilkes-Barre, PA
87. Lebanon, PA

[FR Doc. 94–17029 Filed 7–13–94; 8:45 am]
BILLING CODE 4210–33–P

VOL
59
ISS
1
3
4
JL
14
994
UMI

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc.)
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public La
numbers, **Federal Register** finding aids, and list of
documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and th
documents on public inspection are available on th
National Archives fax-on-demand system. You must
from a fax machine. There is no charge for the servi
except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES, J

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11
35461–35606.....12
35607–35846.....13
35847–36016.....14

Reader Aids

Federal Register

Vol. 59, No. 134

Thursday, July 14, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342 1
34343–34552 5
34553–34754 6
34755–34966 7
34967–35210 8
35211–35460 11
35461–35606 12
35607–35846 13
35847–36016 14

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
No. 94–29 of June 27, 1994 35211
No. 94–30 of June 30, 1994 35607
No. 94–31 of July 1, 1994 35609
Memorandums:
June 30, 1994 34341
Proclamations:
6641 (See Proc. 6704) 34329
6704 34329
6705 34343
Executive Orders:
1919½ (Revoked in part by PLO 7065) 35054
12002 (See EO 12923) 34551
12214 (See EO 12923) 34551
12735 (See EO 12923) 34551
12755 (See EO 12923) 34551
12851 (See EO 12923) 34551
12923 34551

5 CFR

179 ..... 35213, 35215
2610 34755
2634 34755
2636 34755
2641 34755
Proposed Rules:
575 34393
3201 35480

7 CFR

272 34553
275 34553
283 34553
301 35611
319 35564
354 35612
406 35613
916 33897
917 33897
928 33898
947 33900
981 ..... 35222, 35847
1205 33901
1421 34345
1755 ..... 34353, 34899
Proposed Rules:
46 35487
1036 33922

8 CFR

103 33903
212 35614
245 33903
245a 33903
264 33903
274a 33903
299 35978
Proposed Rules:
214 35866

9 CFR

78 35615
92 34375
97 34756
Ch. III 34375
Proposed Rules:
317 34396
381 35639

10 CFR

40 35618
50 35461
72 35618
74 35618
75 35618
150 35618
710 35178
Proposed Rules:
1003 34767

11 CFR

102 35785

12 CFR

Proposed Rules:
220 33923
230 35271
336 35480

14 CFR

21 34572
23 34572
39 ..... 34574, 34576, 34757, 34758, 34899, 34967, 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247
71 ..... 34577, 34758, 34759, 34760, 35248
91 34578
97 ..... 35248, 35250
1209 35623
Proposed Rules:
Ch. I 35868
21 34779
23 35196
33 35272
39 ..... 34396, 34584, 35488, 35490
71 ..... 34192, 34585, 35492, 35869
93 34192

16 CFR
2 34968
4 34968
305 34014
Proposed Rules:
Chapter II 35657
22 35661
300 34780
301 34780
303 34780
1117 33925
1307 35058
1500 ..... 33928, 33932

17 CFR
1 34376
33 34376
190 34376
Proposed Rules:
240 34781

18 CFR
284 35462
Proposed Rules:
35 35274

19 CFR
174 34970

20 CFR
416 33906

21 CFR
5 35848
510 33908
520 ..... 33908, 35251
558 35251
1220 35252
Proposed Rules:
341 34781

22 CFR
60 33909
61 33909
62 33909
63 33909
64 33909
65 33909
514 34760

23 CFR
655 33909
Proposed Rules:
637 35493

24 CFR
17 34578
791 35253
3280 34294
Proposed Rules:
43 34300
92 34300
941 35834
100 34902
570 34300

25 CFR
Proposed Rules:
164 35580
165 35580

26 CFR
1 ..... 34971, 35030, 35414
31 35414
40 35414
602 ..... 34971, 35030
Proposed Rules:
1 ..... 34398, 35066, 35418
31 35418
40 35418

27 CFR
5 35623

28 CFR
551 34742
571 35456

29 CFR
1910 ..... 33910, 34580
Proposed Rules:
Ch. XXVI 35067
Ch. XL 35067
1915 34586

30 CFR
944 35255
Proposed Rules:
75 35071
920 35289
944 35871

31 CFR
51 35624
52 35624
550 35259

32 CFR
90 ..... 34382, 35463
91 ..... 34382, 35463
155 35464
369 35261
383 34382
384 35262
389 34382
552 ..... 34581, 34761
706 ..... 35033, 35849
Proposed Rules:
553 34782

33 CFR
4 34210
130 34210
131 34210
132 34210
137 34210
138 34210
334 35850
Proposed Rules:
165 ..... 35290, 35661
322 34783
334 33939

34 CFR
74 34722
77 34722
641 34198
668 34964
682 ..... 34964, 35624
685 34278
690 34964
Proposed Rules:
Ch. VI 34398

36 CFR
704 35034

38 CFR
3 ..... 34382, 35265, 35464, 35851

39 CFR
111 33911
233 35851
266 35625
Proposed Rules:
111 35873

40 CFR
9 ..... 33912, 34070
35 35852
52 ..... 33914, 34383, 35035, 35036, 35044, 35411
80 35854
81 35044
85 33912
86 33912
112 34070
141 34320
142 34320
180 ..... 35627, 35629
185 35629
186 35629
271 35266
300 35852
372 34386
600 33912
Proposed Rules:
Ch. I 33940
51 35292
52 ..... 33941, 34399, 34401, 35072, 35079, 35875, 35883
81 35079
141 35891
143 35891
152 35662
174 35662
180 35663
185 33941

42 CFR
Proposed Rules:
421 35664

43 CFR
Public Land Order:
7055 34899
7064 34582
7065 35054
7067 35859
7068 35859
7069 35267
Proposed Rules:
2800 35596
2810 35596
2880 35596

44 CFR
362 35630

45 CFR
Proposed Rules:
615 35079

47 CFR
Chapter I 35631
22 35054
43 35632
73 ..... 34391, 34766, 35055, 35268
74 35635
80 35268
87 35268
Proposed Rules:
Chapter I 35664
61 33947
64 33947
69 33947
73 ..... 34404, 34405, 35081, 35082, 35292, 35293, 35785, 35893, 35894
74 35665

48 CFR
Proposed Rules:
209 35895
252 35895
926 35294
952 35294
970 35294

49 CFR
172 35411
195 35465
392 34708
393 ..... 34708, 34712
571 35636
1056 34392
Proposed Rules:
541 3508
571 ..... 34405, 35298, 35300, 35670, 35672

50 CFR
17 35860
215 35471
216 35864
229 34899
301 ..... 35474, 35475
651 35056
658 34582
672 35056
675 ..... 33920, 34392, 34583, 35056, 35057, 35476, 35638
681 35270
Proposed Rules:
Chapter II 35674
17 ..... 34784, 35089, 35303, 35304, 35305, 35307, 35496, 35584, 35674, 35896, 35900
20 35566
222 35089
644 35308
654 33947

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 11, 1994

INFORMATION ABOUT THE S

Know when to expect your renew
prices down, the Government Print
learn when you will get your renew
the top line of your label *as shown*

A re
sent
befo

AFR SMITH212J
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747

To be sure that your service continu
If your subscription service is disco
Superintendent of Documents, Was
will be reinstated.

To change your address: Please S
Superintendent of Documents, Attn
DC 20402–9373.

To inquire about your subscriptio
your correspondence, to the Superi
Stop: SSOM, Washington, DC 204

To order a new subscription: Ple

Order Processing Code
* 5468

Superintendent of D

☐**YES,** please enter my subscriptio

____ subscriptions to **Federal Regi**
of Code of Federal Regulations

____ subscriptions to **Federal Regi**

The total cost of my order is $____
regular shipping and handling.) Price subj

Company or personal name (Plea

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before this date.

```
AFR  SMITH212J                DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before this date.

```
AFRDO  SMITH212J              DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐**YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and LSA List of Code of Federal Regulations Sections Affected, at $490 ($612.50 foreign) each per year.

____ subscriptions to **Federal Register,** *daily only* (FRDO), at $444 ($555 foreign) each per year.

The total cost of my order is $_____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/94

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

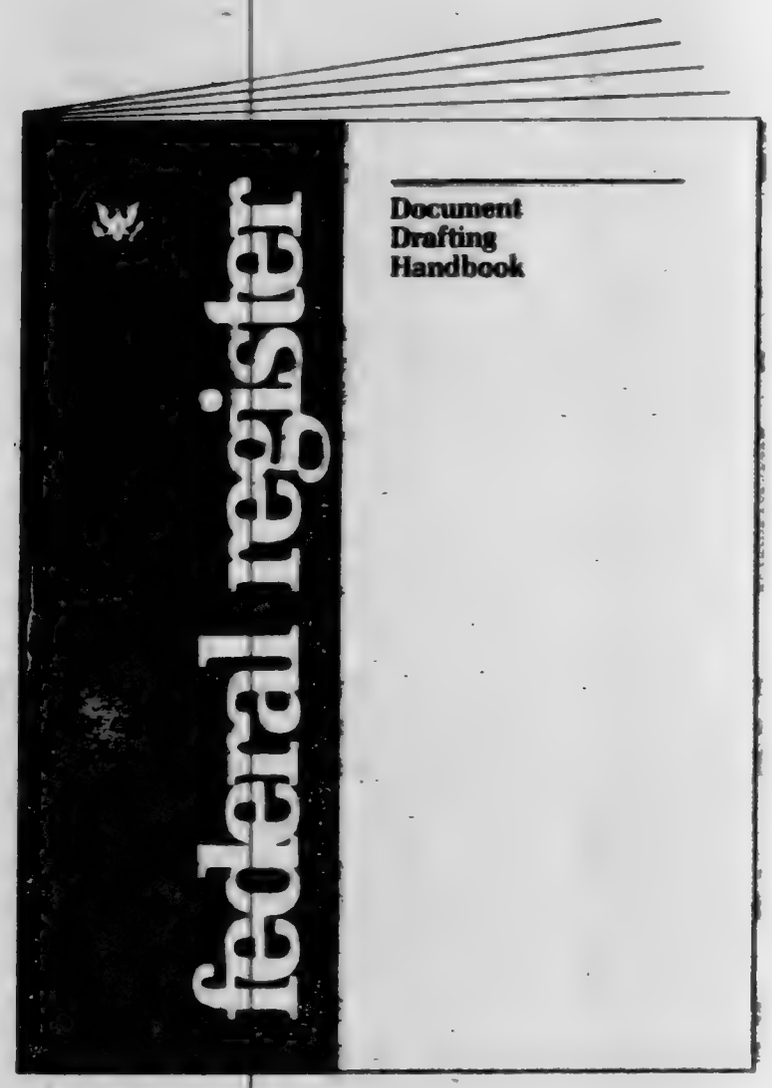

Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy!

To fax your orders and inquiries—(202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069-000-00037-1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%. All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature) (Rev 12/91)

4. Mail To: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954

Pu

Pamphlet prints of public laws
laws upon enactment and a
Legislative history references
issued irregularly upon enactm

(Individual laws also may be p
20402-9328. Prices vary. See
newly enacted laws.)

Superintendent

Order Processing Code:
* 6216

☐ **YES**, enter my subscription(s) as follo

_____ subscriptions to **PUBLIC LAWS** for t

The total cost of my order is $_____. I
postage and handling and are subject to chang

(Company or Personal Name) (Please

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other ma

Public Laws

103d Congress, 2d Session, 1994

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 2d Session, 1994.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws.)

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

S3

Charge your order. It's Easy!

To fax your orders (202) 512-2233

☐ **YES**, enter my subscription(s) as follows:

_ subscriptions to **PUBLIC LAWS** for the 103d Congress, 2d Session, 1994 for $156 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (1994)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

VOL
59
ISS
1
3
4
JL
14
994
UMI

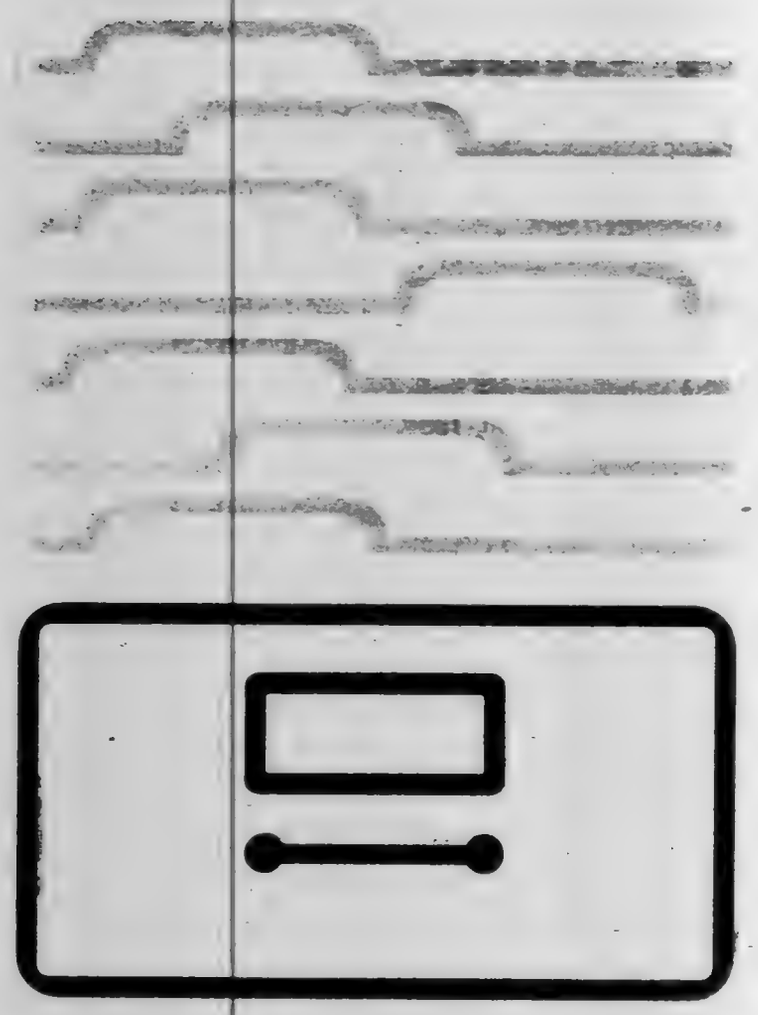

NEW EDITION

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1994

The GUIDE is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Order Form

Order Processing Code:
* 7296

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2250

❑ **YES,** send me ___ subscriptions to **1994 Guide to Record Retention Requirements in the CFR,** S/N 069–000–00056–8, at $20.00 ($25.00 foreign) each.

The total cost of my order is $ _____ (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

Check method of payment:

❑ Check payable to Superintendent of Documents

❑ GPO Deposit Account [ ][ ][ ][ ][ ][ ]–[ ]

❑ VISA ❑ MasterCard [ ][ ][ ][ ] (expiration date)

[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]

Thank you for your order!

Authorizing signature 4/94

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

ts

FR)

d to

e
ust
ot.
to
NS

VISA

-2250

nts

date)

rder!

4/94

954

VOL
59
ISS
1
3
4
JL
14
994
UMI

Printed on recycled paper

VOL
59
ISS
135
JUL
15
1994
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7–15–94
Vol. 59 No. 135

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****

A FR UMISE
UMI SERIALS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR

7–15–94
Vol. 59 No. 135

Federal Register

Friday
July 15, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********3-DIGIT 481

A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

VOL
59
NO
1
3
5
JUL
15
1994
MI

7-15-94
Vol. 59 No. 135
Pages 36017-36350

federal register

7–15–94
Vol. 59 No. 135
Pages 36017–36350

federal register

Friday
July 15, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche — 202–512–1800
Assistance with public subscriptions — 512–1806

Online:

Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions — 202–512–1530

Single copies/back copies:

Paper or fiche — 512–1800
Assistance with public single copies — 512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche — 523–5243
Assistance with Federal agency subscriptions — 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Agency for Health Care Policy and Resea
NOTICES
Meetings:
Clinical practice guidelines development
Acute pain management; operative or
procedures and trauma, 36202–362

Agricultural Marketing Service
RULES
Cranberries grown in Massachusetts et al.,
PROPOSED RULES
Grapes grown in California, and grapes, im
36093
Milk marketing orders:
Chicago Regional, 36094–36095
Southwest Plains, 36095–36096
Raisins produced from grapes grown in Cal
36094

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Se
See Forest Service
See Soil Conservation Service
RULES
Administrative regulations:
Vending stands operated by licensed blin
installation on premises under USDA
36020
Organization, functions, and authority dele
Assistant Secretary for Science and Educa
36020–36021
NOTICES
Agency information collection activities un
review, 36159

Animal and Plant Health Inspection Servic
RULES
Exportation and importation of animals and
products:
Ports designations—
Covington, KY, 36024–36026
Interstate transportation of animals and anir
(quarantine):
Brucellosis in cattle and bison—
State and area classifications, 36023–36
NOTICES
Genetically engineered organisms for releas
environment; permit applications, 3615

Antitrust Division
NOTICES
Competitive impact statements and propose
judgments:
Tri-R-Disposal et al., 36214–36218
National cooperative research notifications:
MEMC Electronic Materials, Inc., et al., 36
National Center for Manufacturing Scienc

Arts and Humanities, National Foundation
See National Foundation on the Arts and th

Contents

Federal Register
Vol. 59, No. 135
Friday, July 15, 1994

Agency for Health Care Policy and Research
NOTICES
Meetings:
Clinical practice guidelines development—
Acute pain management; operative or medical procedures and trauma, 36202–36203

Agricultural Marketing Service
RULES
Cranberries grown in Massachusetts et al., 36021–36023
PROPOSED RULES
Grapes grown in California, and grapes, imported, 36091–36093
Milk marketing orders:
Chicago Regional, 36094–36095
Southwest Plains, 36095–36096
Raisins produced from grapes grown in California, 36093–36094

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Soil Conservation Service
RULES
Administrative regulations:
Vending stands operated by licensed blind persons; installation on premises under USDA control, 36019–36020
Organization, functions, and authority delegations:
Assistant Secretary for Science and Education et al., 36020–36021
NOTICES
Agency information collection activities under OMB review, 36159

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Ports designations—
Covington, KY, 36024–36026
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
State and area classifications, 36023–36024
NOTICES
Genetically engineered organisms for release into environment; permit applications, 36159–36160

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Tri-R-Disposal et al., 36214–36218
National cooperative research notifications:
MEMC Electronic Materials, Inc., et al., 36218
National Center for Manufacturing Sciences, Inc., 36218

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
United Nations Children's Fund, 36203–36204

Coast Guard
RULES
Drawbridge operations:
Michigan, 36062–36063
Ports and waterways safety:
National vessel traffic service (VTS) systems, 36316–36336
Vessel documentation and measurement:
Admeasurement deep frames; policy statement, 36088

Commerce Department
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 36168–36169

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 36255

Customs Service
PROPOSED RULES
Entry process:
Entry documentation prefiling, 36102–36103

Defense Department
RULES
Acquisition regulations:
Community services contracting with local governments at installations being closed, 36088–36090
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 36169–36170

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Community Methadone Health Services, 36219

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
One-Stop Career Center Systems, 36221–36231

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 36231–36232

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
NOTICES
Building energy standards program; energy-related provisions of residential building codes; guidance and procedures, 36173–36176

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Uranium mill tailings disposal sites, owners and operators; licensed by Nuclear Regulatory Commission, 36280–36302
Air programs; State authority delegations:
California, 36065–36069
PROPOSED RULES
Air pollutants, hazardous; national emission standards and air pollution; standards of performance for new stationary sources:
Petroleum refinery sources, new and existing, 36130–36157
Air quality implementation plans; approval and promulgation; various States:
Arizona, 36116–36120
Connecticut, 36120–36122
Michigan, 36123–36128
Pennsylvania, 36128–36130
NOTICES
Confidential business information and data transfer to contractors, 36176–36177
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 36177
Weekly receipts, 36177–36178
Toxic and hazardous substances control:
Premanufacture notices receipts, 36178–36191

Executive Office of the President
See Management and Budget Office
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 36046–36047
Pratt & Whitney, 36047–36050
Class E airspace; correction, 36050–36051
PROPOSED RULES
Airworthiness directives:
Jetstream, 36096–36098
Raytheon, 36098–36099
Class D airspace and Class E airspace, 36100–36102
Class E airspace, 36099–36100
NOTICES
Organization, functions, and authority delegations:
Burley, ID, 36251
Idaho Falls, ID, 36251

Federal Communications Commission
PROPOSED RULES
Radio services, special:
Amateur services—
High frequency amateur service bands automatic control, 36157–36158
NOTICES
Agency information collection activities under OMB review, 36192

Federal Emergency Management Agency
RULES
Preparedness:
Defense production; priorities and allocations authority; CFR part removed, 36087–36088
NOTICES
Disaster and emergency areas:
Alabama, 36193
Georgia, 36192–36193
North Dakota, 36193

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Entergy Power Development Corp. et al., 36170–36171
Environmental statements; availability, etc.:
Cove Point LNG L.P. et al., 36172
Applications, hearings, determinations, etc.:
Columbia Gulf Transmission Co. et al., 36171–36172
Mississippi River Transmission Corp., 36172–36173
National Fuel Gas Supply Corp., 36173
Southern California Gas Co., 36173
Williams Natural Gas Co., 36173

Federal Highway Administration
RULES
Engineering and traffic operations:
Truck size and weight—
National Network for commercial vehicles; route additions in Georgia, 36051–36054
PROPOSED RULES
Motor carrier safety standards:
Commercial driver's license process; inclusion of physical fitness certification, 36338–36340
NOTICES
Environmental statements; notice of intent:
Bernalillo and Sandoval Counties, NM, 36251–36252
Mississippi commercial motor vehicle safety law, review; preliminary preemption determination and comment request, 36252–36253

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Community support review—
Selection of members, 36194–36201

Federal Reserve System
NOTICES
Federal Open Market Committee:
Domestic policy directives, 36201
Applications, hearings, determinations, etc.:
Hometown Bancorp, Inc., 36201
Mylander, George L., 36201–36202

Fish and Wildlife Service
RULES
Alaska Federal public lands subsistence management regulations; review policies, 36063–36065

PROPOSED RULES
Hunting and fishing:
Open areas list additions and refuge-spec 36342–36349
Periodic reviews of significant regulations; comments, 36108–36114
NOTICES
Endangered and threatened species:
Recovery plans—
Houghton's goldenrod, 36209–36210
Leedy's roseroot, 36210

Food and Drug Administration
RULES
Human drugs:
Cold, cough, allergy, bronchodilator, and products (OTC)—
Antitussive products; final monograph 36051
PROPOSED RULES
Food for human consumption:
Crabmeat common or usual name regulat 36103–36107
Prescription drugs; policies, requirements, administrative procedures, 36107–361
NOTICES
Food additive petitions:
A.E. Staley Manufacturing Co., 36204

Forest Service
RULES
Alaska Federal public lands subsistence ma regulations; review policies, 36063–36

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities review, 36169–36170

Geological Survey
PROPOSED RULES
Periodic reviews of significant regulations; comments, 36108–36114

Health and Human Services Department
See Agency for Health Care Policy and Res
See Centers for Disease Control and Preven
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and H Department
See National Institutes of Health
See Public Health Service
RULES
Medicare and medicaid:
Fraud and abuse—
Civil monetary penalties and intermedi violations by HMO's and competit plans, 36072–36087

Health Care Financing Administration
See Inspector General Office, Health and H Department
RULES
Medicare:
Physician fee schedule (1994 CY); payme relative value unit adjustments; corre 36071

PROPOSED RULES
Hunting and fishing:
Open areas list additions and refuge-specific regulations, 36342–36349
Periodic reviews of significant regulations; request for comments, 36108–36114
NOTICES
Endangered and threatened species:
Recovery plans—
Houghton's goldenrod, 36209–36210
Leedy's roseroot, 36210

Food and Drug Administration
RULES
Human drugs:
Cold, cough, allergy, bronchodilator, and antiasthmatic products (OTC)—
Antitussive products; final monograph; correction, 36051
PROPOSED RULES
Food for human consumption:
Crabmeat common or usual name regulation amendment, 36103–36107
Prescription drugs; policies, requirements, and administrative procedures, 36107–36108
NOTICES
Food additive petitions:
A.E. Staley Manufacturing Co., 36204

Forest Service
RULES
Alaska Federal public lands subsistence management regulations; review policies, 36063–36065

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 36169–36170

Geological Survey
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 36108–36114

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Public Health Service
RULES
Medicare and medicaid:
Fraud and abuse—
Civil monetary penalties and intermediate sanctions for violations by HMO's and competitive medical plans, 36072–36087

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
RULES
Medicare:
Physician fee schedule (1994 CY); payment policies and relative value unit adjustments; correction, 36069–36071
Medicare and medicaid:
Fraud and abuse—
Civil monetary penalties and intermediate sanctions for violations by HMO's and competitive medical plans, 36072–36087
NOTICES
Agency information collection activities under OMB review, 36204–36205

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 36205–36207
Public and Indian housing—
Public housing development, 36208

Immigration and Naturalization Service
NOTICES
Temporary protected status program designations:
Bosnia-Hercegovina, 36219–36221

Indian Affairs Bureau
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 36108–36114

Inspector General Office, Health and Human Services Department
RULES
Medicare and medicaid:
Fraud and abuse—
Civil monetary penalties and intermediate sanctions for violations by HMO's and competitive medical plans, 36072–36087

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Mines Bureau
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 36108–36114

Internal Revenue Service
RULES
Income taxes:
Real estate mortgage investment conduits
Correction, 36256
PROPOSED RULES
Income taxes:
Real estate mortgage investment conduits; cross-reference
Hearing cancellation, 36114

International Trade Administration
NOTICES
Antidumping:
Pressure sensitive plastic tape from—
Italy, 36162

Antidumping and countervailing duties:
Administrative review requests, 36160–36162
Customs duties and taxes exemption for foreign air carriers; request for finding of reciprocity:
Abu Dhabi et al., 36162–36163
United States-Canada free-trade agreement; binational panel reviews:
Cold-rolled steel sheet from—
United States, 36163
Flat hot-rolled carbon steel sheet products from—
United States, 36163–36164

International Trade Commission
NOTICES
Import investigations:
Silicomanganese from—
Brazil et al., 36212–36213

Interstate Commerce Commission
NOTICES
Railroads and property and passenger motor carriers; annual operating revenues index, 36213
Railroad services abandonment:
Chicago & North Western Transportation Co., 36213–36214

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Immigration and Naturalization Service

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Wage determination request and response to request (Standard Form 308); stocking requirement change, 36221

Land Management Bureau
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 36108–36114
NOTICES
Alaska Native claims selection:
Kuskokwim Corp., 36208
Meetings:
Southeast New Mexico Playa Lakes Coordinating Committee, 36208
Survey plat filings:
New Mexico, 36208–36209
Withdrawal and reservation of lands:
New Mexico, 36209

Legal Services Corporation
NOTICES
Grant and cooperative agreement awards:
Micronesian Legal Services Corp., 36232

Management and Budget Office
NOTICES
Budget rescissions and deferrals
Cumulative reports, 36304–36313

Minerals Management Service
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 36108–36114

Mines Bureau
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 36108–36114

Minority Business Development Agency
NOTICES
Business development center program applications:
Indiana, 36164–36165
Texas, 36165–36166

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 36169–36170

National Credit Union Administration
RULES
Credit unions:
Miscellaneous amendments, 36040–36042

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Challenge/Advancement Advisory Panel, 36232–36233
Presenting and Commissioning Advisory Panel, 36233

National Institutes of Health
NOTICES
Meetings:
National Institute on Deafness and Other Communication Disorders, 36205

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic swordfish, 36090
PROPOSED RULES
Endangered and threatened species:
Harbor porpoise; Gulf of Maine population, 36158
NOTICES
Meetings:
Western Pacific Fishery Management Council, 36166–36168

National Park Service
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 36108–36114
NOTICES
Committees; establishment, renewal, termination, etc.:
Pea Ridge National Military Park Advisory Team, 36210
Meetings:
Indian Memorial Advisory Committee, 36211
Keweenaw National Historical Park Advisory Commission, 36211
National Park System Advisory Board, 36211–36212

National Science Foundation
NOTICES
Meetings:
Diversity in scientific and technological workforce; conference, 36233
Engineering Education and Centers Special Emphasis Panel, 36233

Nuclear Regulatory Commission
RULES
Production and utilization facilities; domes
Materials facilities decontamination and decommissioning timeliness, 36026–
NOTICES
Agency information collection activities un review, 36233–36234

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representati
See Trade Representative, Office of United

Pension Benefit Guaranty Corporation
RULES
Multiemployer and single-employer plans:
Late premium payments and employer li underpayments and overpayments; i 36054–36055
Valuation of plan benefits, etc.—
Interest rates, etc., 36055–36058
Multiemployer plans:
Withdrawal liability; notice and collectio 36058–36059

Personnel Management Office
RULES
Prevailing rate systems, 36019

Presidential Documents
ADMINISTRATIVE ORDERS
Government agencies and employees:
Executive branch; expanding family-frien arrangements (Memorandum of July 36017–36018

Public Health Service
See Agency for Health Care Policy and Res
See Centers for Disease Control and Preven
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency information collection activities un review, 36205

Railroad Retirement Board
NOTICES
Agency information collection activities un review, 36235

Reclamation Bureau
PROPOSED RULES
Periodic reviews of significant regulations; comments, 36108–36114

Research and Special Programs Administ
RULES
Pipeline safety:
Hazardous liquid and carbon dioxide; reg Correction, 36256

Securities and Exchange Commission
RULES
Electronic Data Gathering, Analysis, and Re (EDGAR):
Filer Manual availability, 36262–36263

Nuclear Regulatory Commission
RULES
Production and utilization facilities; domestic licensing:
Materials facilities decontamination and decommissioning timeliness, 36026–36040
NOTICES
Agency information collection activities under OMB review, 36233–36234

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension Benefit Guaranty Corporation
RULES
Multiemployer and single-employer plans:
Late premium payments and employer liability underpayments and overpayments; interest rates, 36054–36055
Valuation of plan benefits, etc.—
Interest rates, etc., 36055–36058
Multiemployer plans:
Withdrawal liability; notice and collection; interest rates, 36058–36059

Personnel Management Office
RULES
Prevailing rate systems, 36019

Presidential Documents
ADMINISTRATIVE ORDERS
Government agencies and employees:
Executive branch; expanding family-friendly work arrangements (Memorandum of July 11, 1994), 36017–36018

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency information collection activities under OMB review, 36205

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 36235

Reclamation Bureau
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 36108–36114

Research and Special Programs Administration
RULES
Pipeline safety:
Hazardous liquid and carbon dioxide; regulatory review Correction, 36256

Securities and Exchange Commission
RULES
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Filer Manual availability, 36262–36263
Operational phase implementation—
Corporation Finance and Investment Management Divisions, 36258–36262
PROPOSED RULES
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Technical amendments, 36264–36278
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 36235–36240
Boston Stock Exchange, Inc., 36240–36241
Midwest Clearing Corp. et al., 36241–36242
National Association of Securities Dealers, Inc., 36242–36243
New York Stock Exchange, Inc., 36243–36244
Philadelphia Stock Exchange, Inc., 36244–36249
Applications, hearings, determinations, etc.:
Public utility holding company filings, 36249–36250

Small Business Administration
RULES
Business loan policy; disaster-physical disaster economic injury loans; and loans to State and local development companies:
Media policy rule, 36042–36045
Disaster-physical disaster and economic injury loans:
Homeowners assistance limitations, 36045–36046
NOTICES
Disaster loan areas:
Tennessee et al., 36250

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Pecos River Native Riparian Restoration Project, NM, 36160

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Indiana, 36059–36062
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 36108–36114
Permanent program and abandoned mine land reclamation plan submissions:
Indiana, 36114–36116

Trade Representative, Office of United States
NOTICES
Foreign country practices; priority identification, 36234–36235

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 36251
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 36251

Treasury Department
See Customs Service

See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 36253–36254

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 36258–36278

Part III
Environmental Protection Agency, 36280–36302

Part IV
Office of Management and Budget, 36304–36313

Part V
Department of Transportation, Coast Guard, 36316–36336

Part VI
Department of Transportation, Federal Highway Administration, 36338–36340

Part VII
Department of the Interior, Fish and Wildlife Service, 36342–36345

Part VIII
Department of the Interior, Fish and Wildlife Service, 36348–36349

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month c
Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandums:
July 11, 1994 36017

5 CFR
532 36019

7 CFR
1 36019
2 36020
929 36021
Proposed Rules:
925 36091
944 36091
989 36093
1030 36094
1106 36095

9 CFR
2 36023
2 36092

10 CFR
2 36026
30 36026
40 36026
70 36026
72 36026

12 CFR
701 36040
709 36040
745 36040
747 36040
790 36040
791 36040
792 36040
793 36040
794 36040

13 CFR
108 36042
120 36042
123 (2 documents) 36042, 36045

14 CFR
39 (2 documents) 36046, 36047
71 36050
Proposed Rules:
39 (2 documents) 36096, 36098
71 (2 documents) 36099, 36100

17 CFR
228 36258
229 36258
230 36258
232 36262
259 36258
Proposed Rules:
228 36264
229 36264
230 36264
232 36264
239 36264
240 36264
249 36264
250 36264
259 36264
260 36264
269 36264
270 36264
274 36264

19 CFR
Proposed Rules:
141 36102
142 .....

21 CFR
341 .....
Proposed Ru
102 .....
203 .....
205 .....

23 CFR
658 .....

25 CFR
Proposed Ru
Ch. I .....

26 CFR
1 .....
Proposed Ru
1 .....

29 CFR
2610 .....
2619 .....
2622 .....
2644 .....
2676 .....

30 CFR
914 .....
Proposed Ru
Ch. II .....
Ch. IV .....
Ch. VI .....
Ch. VII .....
914 .....

33 CFR
1 .....
26 .....
117 .....
160 .....
161 .....
162 .....
164 .....
165 .....

36 CFR
242 .....
Proposed Ru
Ch. I .....

40 CFR
55 .....
61 .....
Proposed Ru
52 (4 docun
3
60 .....
63 .....

42 CFR
405 .....
414 .....
417 .....
431 .....
434 .....
1003 .....

43 CFR
Proposed Ru
Ch. I .....
Ch. II .....
Subtitle A ...

44 CFR
322 .....

46 CFR
68 .....

47 CFR
Proposed Ru
97 .....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandums:
July 11, 1994 36017

5 CFR
532 36019

7 CFR
1 36019
2 36020
929 36021
Proposed Rules:
925 36091
944 36091
989 36093
1030 36094
1106 36095

9 CFR
2 36023
2 36092

10 CFR
2 36026
30 36026
40 36026
70 36026
72 36026

12 CFR
701 36040
709 36040
745 36040
747 36040
790 36040
791 36040
792 36040
793 36040
794 36040

13 CFR
108 36042
120 36042
123 (2 documents) 36042, 36045

14 CFR
39 (2 documents) 36046, 36047
71 36050
Proposed Rules:
39 (2 documents) 36096, 36098
71 (2 documents) 36099, 36100

17 CFR
228 36258
229 36258
230 36258
232 36262
259 36258
Proposed Rules:
228 36264
229 36264
230 36264
232 36264
239 36264
240 36264
249 36264
250 36264
259 36264
260 36264
269 36264
270 36264
274 36264

19 CFR
Proposed Rules:
141 36102
142 36102

21 CFR
341 36051
Proposed Rules:
102 36103
203 36107
205 36107

23 CFR
658 36051

25 CFR
Proposed Rules:
Ch. I 36108

26 CFR
1 36256
Proposed Rules:
1 36114

29 CFR
2610 36054
2619 36055
2622 36054
2644 36058
2676 36055

30 CFR
914 36059
Proposed Rules:
Ch. II 36108
Ch. IV 36108
Ch. VI 36108
Ch. VII 36108
914 36114

33 CFR
1 36316
26 36316
117 36062
160 36316
161 36316
162 36316
164 36316
165 36316

36 CFR
242 36063
Proposed Rules:
Ch. I 36108

40 CFR
55 36065
61 36280
Proposed Rules:
52 (4 documents) 36116, 36120, 36123, 36128
60 36130
63 36130

42 CFR
405 36069
414 36069
417 36072
431 36072
434 36072
1003 36072

43 CFR
Proposed Rules:
Ch. I 36108
Ch. II 36108
Subtitle A 36108

44 CFR
322 36087

46 CFR
68 36088

47 CFR
Proposed Rules:
97 36157

48 CFR
206 36088
222 36088
226 36088
237 36088
252 36088
Proposed Rules:
Ch. XIV 36108

49 CFR
195 36256
Proposed Rules:
383 36338

50 CFR
100 36063
630 36090
Proposed Rules:
Ch. I 36108
32 (2 documents) 36342, 36348
227 36158
Ch. IV 36108

VOL
59
ISS
135
JUL
15
1994
UMI

Federal Register
Vol. 59, No. 135
Friday, July 15, 1994

Title 3—

The President

Me

Ex
in

Me

In
hig
mu
wo
plo
em
an
om
op
me
pu

Th
"ag
ag
inc
ul
clu

I d
the
to
arr
an
dev
Th
thi

Th
Ma
me

Ind
per

Federal Register
Vol. 59, No. 135
Friday, July 15, 1994

Presidential Documents

Title 3—

The President

Memorandum of July 11, 1994

Expanding Family-Friendly Work Arrangements in the Executive Branch

Memorandum for the Heads of Executive Departments and Agencies

In order to recruit and retain a Federal work force that will provide the highest quality of service to the American people, the executive branch must implement flexible work arrangements to create a "family-friendly" workplace. Broad use of flexible work arrangements to enable Federal employees to better balance their work and family responsibilities can increase employee effectiveness and job satisfaction, while decreasing turnover rates and absenteeism. I therefore adopt the National Performance Review's recommendation that a more family-friendly workplace be created by expanding opportunities for Federal workers to participate in flexible work arrangements, consistent with the mission of the executive branch to serve the public.

The head of each executive department or agency (hereafter collectively "agency" or "agencies") is hereby directed to establish a program to encourage and support the expansion of flexible family-friendly work arrangements, including: job sharing; career part-time employment; alternative work schedules; telecommuting and satellite work locations. Such a program shall include:

(1) identifying agency positions that are suitable for flexible work arrangements;

(2) adopting appropriate policies to increase the opportunities for employees in suitable positions to participate in such flexible work arrangements;

(3) providing appropriate training and support necessary to implement flexible work arrangements; and

(4) identifying barriers to implementing this directive and providing recommendations for addressing such barriers to the President's Management Council.

I direct the Director of the Office of Personnel Management ("OPM") and the Administrator of General Services ("GSA") to take all necessary steps to support and encourage the expanded implementation of flexible work arrangements. The OPM and GSA shall work in concert to promptly review and revise regulations that are barriers to such work arrangements and develop legislative proposals, as needed, to achieve the goals of this directive. The OPM and GSA also shall assist agencies, as requested, to implement this directive.

The President's Management Council, in conjunction with the Office of Management and Budget, shall ensure that any guidance necessary to implement the actions set forth in this directive is provided.

Independent agencies are requested to adhere to this directive to the extent permitted by law.

This directive is for the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this directive in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 11, 1994.

[FR Doc. 94–17409
Filed 7–13–94; 3:34 pm]
Billing code 3110–01–M

Rules and Regulation

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AF82

Prevailing Rate Systems; Rockingham, New Hampshire, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to redefine the Rockingham, New Hampshire, Nonappropriated Fund (NAF) Federal Wage System wage area for paysetting purposes. After this change, a new wage area, York, Maine, will include the same three counties, with York County, Maine, designated as the survey area and Rockingham County, New Hampshire, and Windsor County, Vermont, designated as areas of application. With the closing of Pease Air Force Base, there are no longer enough NAF wage employees in Rockingham County to satisfy the requirements established by regulation for a survey county.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On March 23, 1994, OPM published an interim rule to redefine the Rockingham, New Hampshire, NAF wage area (59 FR 13641). The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

Rules and Regulations

Federal Register
Vol. 59, No. 135
Friday, July 15, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AF82

Prevailing Rate Systems; Rockingham, New Hampshire, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to redefine the Rockingham, New Hampshire, Nonappropriated Fund (NAF) Federal Wage System wage area for paysetting purposes. After this change, a new wage area, York, Maine, will include the same three counties, with York County, Maine, designated as the survey area and Rockingham County, New Hampshire, and Windsor County, Vermont, designated as areas of application. With the closing of Pease Air Force Base, there are no longer enough NAF wage employees in Rockingham County to satisfy the requirements established by regulation for a survey county.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On March 23, 1994, OPM published an interim rule to redefine the Rockingham, New Hampshire, NAF wage area (59 FR 13641). The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on March 23, 1994 (59 FR 13641), is adopted as final without any changes.

U.S. Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94–17149 Filed 7–14–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

RIN 00–0599

Vending Stands To Be Operated by Licensed Blind Persons

AGENCY: Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This action removes subpart F (§§ 1.91–1.94) from 7 CFR part 1. Subpart F of 7 CFR prescribes procedures governing the installation of vending stands operated by licensed blind persons on premises under the control of USDA in accordance with the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*). Subsequent to the promulgation of these regulations, the Randolph-Sheppard Act Amendments of 1974 were enacted, and pursuant to its authority thereunder the Department of Education issued Governmentwide implementing regulations at 34 CFR part 395, which supersede the USDA regulations. The removal of 7 CFR subpart F (§§ 1.91–1.94) will eliminate obsolete provisions, reduce duplication of material in the CFR, and allow USDA agencies to look to the Agriculture Property Management Regulations for the internal implementation of 34 CFR part 395.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. William P. Kiley, Realty Specialist, Real Property Management Division, Office of Operations, United States Department of Agriculture, room 1566, South Building, 14th Street & Independence Avenue SW., Washington, DC 20250, telephone (202) 720–5001. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: USDA first published 7 CFR 1.91–1.94, to implement the provisions of the Randolph-Sheppard Act in USDA controlled facilities, at 22 FR 7169, September 7, 1957, and amended them at 28 FR 8117, August 8, 1963. These regulations were superseded when the Randolph-Sheppard Act Amendments of 1974, Public Law 93–651, November 21, 1974, designated the Rehabilitative Services Administration of the then Department of Health, Education, and Welfare as the principal agency for carrying out the Act. The function subsequently was transferred to the Department of Education, which issued 34 CFR part 395 to implement the provisions of the Act Governmentwide. USDA has determined that this action relates solely to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this action may be made effective less than 30 days after publication in the **Federal Register**. Further, since this action relates solely to internal agency management, it is not a significant regulatory action for the purposes of E.O. 12866. This action is not a rule as defined by the Regulatory Flexibility Act, and thus is exempt from the provisions of the Act.

List of Subjects in 7 CFR Part 1

Administrative regulations, Vending stands.

For the reasons set forth in the preamble, Title 7, Part 1 of the Code of Federal Regulations is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

2. Part 1 is amended by removing Subpart F (§§ 1.91–1.94).

Signed at Washington, DC, on July 7, 1994.
Mike Espy,
Secretary.
[FR Doc. 94–17239 Filed 7–14–94; 8:45 am]
BILLING CODE 3410–88–M

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate to the Assistant Secretary for Science and Education and to the Administrator, Agricultural Research Service, the authority to administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, to conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program as authorized by the National Nutrition Monitoring and Related Research Act of 1990, and to conduct a program of nutrition education research.
EFFECTIVE DATE: July 15, 1994.
FOR FURTHER INFORMATION CONTACT: Betty Ollila, Office of the General Counsel, United States Department of Agriculture, Room 2332, South Building, 14th Street and Independence Avenue SW., Washington, DC (202) 720–5824.
SUPPLEMENTARY INFORMATION: Public Law No. 103–211 requires that funds appropriated by Public Law No. 103–111 for the functions of the Human Nutrition Information Service be available only to the Agricultural Research Service. These amendments to the delegations of authority are necessary in order for the Agricultural Research Service to carry out the functions of the Human Nutrition Information Service. This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is exempt from the notice and comment procedures of the Administrative Procedure Act, and this rule may be effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12866. This action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and thus is exempt from its provisions. This rule is also exempt from the requirements of the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), and requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICES OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.15 is amended by revising the section heading and by removing and reserving paragraph (b) to read as follows:

§ 2.15 Assistant Secretary for Food and Consumer Services.

* * * * *

3. Section 2.30 is amended by adding a new paragraph (h) to read as follows:

§ 2.30 Assistant Secretary for Science and Education.

* * * * *

(h) *Related to national food and human nutrition research and information.* (1) Administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department;

(iii) Research on the factors affecting food preference and habits; and

(iv) The development of techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet (7 U.S.C. 3171–3175, 3177).

(2) The authority in paragraph (h)(1) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels;

(iv) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions;

(v) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy;

(vi) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs;

(vii) Coordinate nutrition education research and professional education projects within the Department; and

(viii) Maintain data generated on food composition in a National Nutrient Data Bank.

(3) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups;

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) Analyze data from such surveys to provide a basis for evaluating dietary adequacy; and

(v) Consult with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies.

(4) Conduct a program of nutrition education research.

(5) Co-chair with the Assistant Secretary for Health, Department of Health and Human Services, the Interagency Board for Nutrition Monitoring and Related Research for the development and coordination of a Ten-Year Comprehensive Plan as required by Public Law No. 101–445.

Subpart L—Delegations of Authority by the Assistant Secretary for Food and Consumer Services

4. Section 2.92 is removed and reserved.

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

5. Section 2.106 is amended by adding new paragraphs (a)(65) through (a)(69) to read as follows:

§ 2.106 Administrator, Agricultural Research Service.

(a) * * *

(65) Administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department;

(iii) Research on the factors affecting food preference and habits; and

(iv) The development of techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet (7 U.S.C. 3171–3175, 3177).

(66) The authority in paragraph (a)(65)(i) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels;

(iv) Develop suitable and safe preparation and management

(4) Conduct a program of nutrition education research.

(5) Co-chair with the Assistant Secretary for Health, Department of Health and Human Services, the Interagency Board for Nutrition Monitoring and Related Research for the development and coordination of a Ten-Year Comprehensive Plan as required by Public Law No. 101–445.

Subpart L—Delegations of Authority by the Assistant Secretary for Food and Consumer Services

4. Section 2.92 is removed and reserved.

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

5. Section 2.106 is amended by adding new paragraphs (a)(65) through (a)(69) to read as follows:

§ 2.106 Administrator, Agricultural Research Service.

(a) * * *

(65) Administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department;

(iii) Research on the factors affecting food preference and habits; and

(iv) The development of techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet (7 U.S.C. 3171–3175, 3177).

(66) The authority in paragraph (a)(65)(i) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels;

(iv) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions;

(v) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy;

(vi) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs;

(vii) Coordinate nutrition education research and professional education projects within the Department; and

(viii) Maintain data generated on food composition in a National Nutrient Data Bank.

(67) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups;

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) Analyze data from such surveys to provide a basis for evaluating dietary adequacy; and

(v) Consult with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies.

(68) Conduct a program of nutrition education research.

(69) Provide staff support to the Assistant Secretary for Science and Education related to the Ten-Year Comprehensive Plan and the Interagency Board for Nutrition Monitoring and Related Research required by Public Law No. 101–445.

* * * * *

For Subparts C and L.

Dated: July 5, 1994.

Mike Espy,

Secretary of Agriculture.

For Subpart N.

R.D. Plowman,

Acting Assistant Secretary, Science and Education.

[FR Doc. 94–16757 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–03–M

Agricultural Marketing Service

7 CFR Part 929

[FV94–929–1IFR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Changes to the Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the rules and regulations under the cranberry marketing order. The marketing order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (Committee). This rule revises or deletes language in the order's rules and regulations to reflect amendatory changes to the marketing order completed in 1992. This rule will make the order's rules and regulations consistent with the current marketing order language.

DATES: Effective July 15, 1994; comments received by August 15, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Mark Hessel, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3923.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in 10 States, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries who are subject to regulation under the order and approximately 1,050 producers of cranberries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This rule revises or deletes language in the order's rules and regulations to reflect amendatory changes to the order completed in 1992. This rule makes the order's rules and regulations consistent with current order language. These changes were unanimously recommended by the Cranberry Marketing Committee (Committee) at its March 1, 1994, meeting.

In 1992, the cranberry marketing order was amended [57 FR 38748, August 27, 1992] to change, among other provisions, the volume control features of the order. Prior to the amendment, the order authorized a base quantity program in which each producer received a base quantity calculated by the Committee from a representative period in the order. Base quantity was annually distributed to existing producers and new producers based on a formula in the order. The 1992 order amendments authorized a volume control program to be based on the sales history of each producer. The Committee now calculates a sales history for each producer based on the average of sales for a specified period for each producer or, in the case of a new producer, sales history is based on a State's average yield per acre. Other order amendments were made to reflect current industry practices.

The first change revises section 929.107 which currently provides the basis for determining established cranberry acreage. The section is revised by deleting various terms, dates, and section references. The term "established" cranberry acreage and the reference to section 929.16 are no longer applicable since they were removed by the 1992 amendment. The reference to growing cranberries during a specified period of time (i.e., 1965–66 through 1967–68) and other similar date references are removed since producers are no longer required to produce during this period to have a commercial crop of cranberries. Other modifications are made in the section for clarity.

The second change deletes section 929.108 which provides for procedures to substantiate a firm and substantial commitment for use in determining base quantities. This section is no longer applicable since the order amendments authorize a sales history to be computed for every producer. New or existing producers no longer have to show a firm and substantial commitment to receive base quantity.

The third change revises section 929.110 which provides for transfers or sales of cranberry acreage during the representative period. This section is revised by deleting the term "representative period." This term is no longer applicable since all reference to a representative period for computing base quantities was removed by the 1992 amendment. Producers must inform the Committee at any time when transfers or sales of acreage are made. Also, the term "base quantity" is deleted and replaced with the term "sales history." Other minor changes are made to the section to make it consistent with the order amendment.

The fourth change deletes section 929.148 which provides factors to be considered when assigning or adjusting base quantities for producers. This section is no longer applicable since the order amendment authorizes the computation of a sales history for each producer. These factors are not used when calculating sales history.

The fifth change revises section 929.150(a) which provides for the transfer or assignment of base quantities. This section is revised by deleting the term "base quantity" and replacing it with the term "sales history." The term base quantity is no longer applicable since the order amendment authorizes a sales history to be calculated for each producer.

The last change deletes section 929.153 which provides for the establishment and distribution of a base quantity reserve. This section is no longer applicable since the 1992 order amendment provides for a volume control program to be based on sales histories of producers. A producer's sales history is updated annually based on the highest four out of six years' sales. Therefore, a base quantity reserve is not necessary for updating producers' sales histories or for allowing entry of new growers.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0103.

After consideration of all relevant material presented, including the Committee's recommendation, and

other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The rules and regulations need to be consistent with the marketing order to allow the order to operate efficiently; (2) the Committee unanimously recommended this rule at a public meeting and all interested persons had an opportunity to provide input; (3) this rule is administrative in nature and provides no new restriction on handlers; (4) cranberry handlers are aware of this rule and need no additional time to comply with its requirements; and (5) this rule provides a 30-day comment period and any comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.107 is revised to read as follows:

§ 929.107 Basis for determining cranberry acreage.

(a) To be classified as cranberry acreage pursuant to section 929.48, all such acreage must be producing cranberries on a commercial basis or planted, in accordance with order provisions, so as to produce cranberries on a commercial basis. Commercial crop is synonymous with commercial basis and shall mean acreage that has a sufficient density of growing vines to show that such acreage can produce a commercial crop of at least 15 barrels per acre without replanting or renovation of any kind.

other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The rules and regulations need to be consistent with the marketing order to allow the order to operate efficiently; (2) the Committee unanimously recommended this rule at a public meeting and all interested persons had an opportunity to provide input; (3) this rule is administrative in nature and provides no new restriction on handlers; (4) cranberry handlers are aware of this rule and need no additional time to comply with its requirements; and (5) this rule provides a 30-day comment period and any comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.107 is revised to read as follows:

§ 929.107 Basis for determining cranberry acreage.

(a) To be classified as cranberry acreage pursuant to section 929.48, all such acreage must be producing cranberries on a commercial basis or planted, in accordance with order provisions, so as to produce cranberries on a commercial basis. Commercial crop is synonymous with commercial basis and shall mean acreage that has a sufficient density of growing vines to show that such acreage can produce a commercial crop of at least 15 barrels per acre without replanting or renovation of any kind.

(b) So that the committee may properly identify cranberry acreage, the grower shall furnish, upon request, on forms furnished by the committee, information sufficient for the committee to establish that such grower is the grower for the acreage involved. It shall be the responsibility of the committee to determine by physical inspection or other means whether there is sufficient vine density as to qualify as "cranberry acreage" in accordance with paragraph (a) of this section. In making such determination, the committee shall be guided by standards of comparison between the potential bog and existing bogs in the same area.

(c) If the determination were that all or part of the acreage eligible under paragraph (a) of this section does not have sufficient vine coverage to produce 15 barrels per acre, that portion without sufficient vine coverage will not qualify as cranberry acreage under this section. In the event only a portion of an acreage has sufficient vine population and density to produce 15 barrels of cranberries per acre, such portion will qualify as cranberry acreage pursuant to this section. Since such qualified portion of the acreage would be eligible for a sales history, it must be definitely and permanently delineated.

(d) It shall be the responsibility of the grower to maintain adequate sales records to show actual sales from their cranberry acreage and submit such records to the committee separately from sales records pertaining to any other acreage. The report of sales must be filed by the grower no later than January 15 of the calendar year succeeding the crop year to which such sales pertain.

3. Section 929.108 is removed.

4. Section 929.110 is revised to read as follows:

§ 929.110 Transfers or sales of cranberry acreage.

(a) Sales or transfers of cranberry acreage shall be reported by the transferor and transferee to the committee, in writing, on forms provided by the committee. Completed forms shall be sent to the committee office not later than 30 days after the transaction has occurred.

(b) Upon transfer of all or a portion of a growers' acreage, the committee shall be provided with certain information on the forms it will provide to the parties. The transferor and transferee must provide the following information:

(1) Crop records for the acreage involved;

(2) Annual production and sales for each crop year on the acreage involved, either in total, or for each individual parcel; and

(3) Such other information as the committee deems necessary.

(c) Cranberry acreage sold or transferred shall be recognized in connection with the issuance of sales history as follows:

(1) If a grower sells all of the acreage comprising the entity, all prior sales history shall accrue to the purchaser;

(2) If a grower sells only a portion of the acreage comprising the entity from which prior sales have been made, the purchaser and the seller must agree as to the amount of sales history attributed to each portion and shall provide, on a form provided by the committee, sufficient information so that sales are shown separately by crop year. However, the sales history attributed to each portion shall not exceed the total sales history, as determined by the committee, for such acreage at the time of transfer.

5. Section 929.148 is removed.

6. In § 929.150, the section heading and paragraph (a) are revised to read as follows:

§ 929.150 Transfer or assignment of sales history.

(a) If indebtedness is incurred with regard to the acreage to which the cranberries are attributed, and on which a sales history is established, the sales history holder may transfer or assign the sales history solely as security for the loan. During the existence of such indebtedness no further transfer or assignment of sales history by the sales history holder shall be recognized by the committee unless the lender agrees thereto: Provided, That a copy of such loan agreement or assignment shall be filed with the committee before any right expressed therein, with regard to the sales history, shall be recognized by the committee under this paragraph (a).

* * * * *

7. Section 929.153 is removed.

Dated: July 11, 1994

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–17240 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 94–008–2]

Brucellosis in Cattle; State and Area Classifications; Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Texas from Class B to Class A. We have determined that Texas meets the standards for Class A status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from Texas.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4918.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on March 28, 1994 (59 FR 14359–14360, Docket No. 94–008–1), we amended the brucellosis regulations in 9 CFR part 78 by removing Texas from the list of Class B States in § 78.41(c) and adding it to the list of Class A States in § 78.41(b).

Comments on the interim rule were required to be received on or before May 27, 1994. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78.41 and that was published at 59 FR 14359–14360 on March 28, 1994.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 11th day of July 1994.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17247 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 92

[Docket No. 94–014–1]

Ports Designated for Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding the Greater Cincinnati International Airport, which is located in Covington, KY, as a limited port of entry for certain birds. This action will add another port through which certain pet birds from Canada, certain pet birds that originated in the United States, and performing or theatrical birds may be offered for entry into the United States. We are also making several nonsubstantive changes to correct errors in the regulations concerning importation of birds.

DATES: This rule will be effective on September 13, 1994 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before August 15, 1994. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your submission refers to Docket No. 94–014–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Tracye Butler, Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 767, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5097.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart A—Birds, §§ 92.100 through 92.107 of the regulations, regulates the importation of pet birds, commercial birds, zoological birds, research birds, and performing or theatrical birds into the United States.

This direct final rule will add the Greater Cincinnati International Airport, which is located in Covington, KY, as a limited port of entry for certain birds that are not required to be quarantined upon arrival at the port of entry. The Greater Cincinnati International Airport has no quarantine or holding facilities for birds. Under §§ 92.101(c)(1) and (c)(2) and 92.101(f) of the regulations, certain pet birds from Canada, certain U.S.-origin pet birds, and performing or theatrical birds are not required to be quarantined upon arrival at the port of entry, and so may be offered for entry at a limited port.

In the past, limited ports of entry for certain pet birds and performing or theatrical birds have been listed in § 92.203(d) of the regulations, which is part of Subpart B—Poultry. Limited ports were listed in § 92.203(d) because those ports were also designated as ports of entry for performing or theatrical poultry and certain other poultry and poultry products, such as poultry test specimens, hatching eggs, and day-old chicks, none of which require restraint or holding facilities.

There has been an increasing number of pet birds arriving at the Greater Cincinnati International Airport; there have not, however, been any poultry or poultry products offered for entry at the airport. For this reason, the Animal and Plant Health Inspection Service (APHIS) intends that the Greater Cincinnati International Airport be designated as a limited port of entry for certain birds only. Therefore, in this direct final rule, the list of limited ports in § 92.203(d) will be reproduced in § 92.102, "Ports designated for the importation of birds." The list will be part of a new paragraph that states that the ports listed in the paragraph are designated as ports of entry for pet birds imported under the provisions of § 92.101(c)(1) or (2) and performing or theatrical birds imported under the provisions of § 92.101(f). This new paragraph will serve only as a means for APHIS to add the Greater Cincinnati International Airport as a limited port of entry for certain birds; its addition will have no substantive effect on any other provisions of the regulations.

Miscellaneous

This direct final rule will also make several corrections to the regulations.

Under § 92.101(c)(3), certain pet birds are required to be quarantined upon arrival at the port of entry. Section 92.103(c) states that these birds may be offered for entry at one of the ports listed in § 92.102(a), which are the special ports for pet birds. However, in § 92.101(c)(3)(ii), there are three references to such birds being offered for entry at a port of entry designated in §§ 92.102 or 92.203. This direct final rule will correct § 92.101(c)(3)(ii) by removing the three references to § 92.203 and, because we will be adding a second list of ports to § 92.102, changing the three references to that section to specify the special ports listed in § 92.102(a). We will also correct a misspelling in paragraph § 92.101(c)(3)(ii).

In a final rule published in the **Federal Register** on July 13, 1993 (58 FR 37642, Docket No. 92–103–2), we added Port Canaveral, FL, as a port of entry for pet birds, performing or theatrical birds, performing or theatrical poultry, and certain other poultry and poultry products such as poultry test specimens, hatching eggs, and day-old chicks. As discussed above, such birds, poultry, and poultry products are not required to be quarantined at the port of entry. We stated in the July 1993 final rule that the port of entry at Port Canaveral, FL, has facilities only for those birds, poultry, and poultry products that do not appear to require restraint and holding facilities, so we added Port Canaveral, FL, to the list of limited ports in § 92.203(d). We also, however, mistakenly added Port Canaveral, FL, to the list of special ports in § 92.102(a), which are the special ports for pet birds that are required to be quarantined upon arrival at the port of entry. This direct final rule will correct that error by removing Port Canaveral, FL, from the list of special ports in § 92.102(a).

In § 92.105(b), the first sentence refers to the limited ports listed in § 92.203(d) when the reference should actually be to the special ports listed in § 92.102(a). The error dates back to 1980, before part 92 was reorganized into its present format, when the limited ports and the special ports were listed in the same section (the former § 92.3). The special ports were listed in § 92.3(e) until the publication of a final rule in the

means for APHIS to add the Greater Cincinnati International Airport as a limited port of entry for certain birds; its addition will have no substantive effect on any other provisions of the regulations.

Miscellaneous

This direct final rule will also make several corrections to the regulations.

Under § 92.101(c)(3), certain pet birds are required to be quarantined upon arrival at the port of entry. Section 92.103(c) states that these birds may be offered for entry at one of the ports listed in § 92.102(a), which are the special ports for pet birds. However, in § 92.101(c)(3)(ii), there are three references to such birds being offered for entry at a port of entry designated in §§ 92.102 or 92.203. This direct final rule will correct § 92.101(c)(3)(ii) by removing the three references to § 92.203 and, because we will be adding a second list of ports to § 92.102, changing the three references to that section to specify the special ports listed in § 92.102(a). We will also correct a misspelling in paragraph § 92.101(c)(3)(ii).

In a final rule published in the **Federal Register** on July 13, 1993 (58 FR 37642, Docket No. 92–103–2), we added Port Canaveral, FL, as a port of entry for pet birds, performing or theatrical birds, performing or theatrical poultry, and certain other poultry and poultry products such as poultry test specimens, hatching eggs, and day-old chicks. As discussed above, such birds, poultry, and poultry products are not required to be quarantined at the port of entry. We stated in the July 1993 final rule that the port of entry at Port Canaveral, FL, has facilities only for those birds, poultry, and poultry products that do not appear to require restraint and holding facilities, so we added Port Canaveral, FL, to the list of limited ports in § 92.203(d). We also, however, mistakenly added Port Canaveral, FL, to the list of special ports in § 92.102(a), which are the special ports for pet birds that are required to be quarantined upon arrival at the port of entry. This direct final rule will correct that error by removing Port Canaveral, FL, from the list of special ports in § 92.102(a).

In § 92.105(b), the first sentence refers to the limited ports listed in § 92.203(d) when the reference should actually be to the special ports listed in § 92.102(a). The error dates back to 1980, before part 92 was reorganized into its present format, when the limited ports and the special ports were listed in the same section (the former § 92.3). The special ports were listed in § 92.3(e) until the publication of a final rule in the February 22, 1980, **Federal Register** (45 FR 11796–11797) that redesignated § 92.3(e) as § 92.3(f) and added the list of limited ports as the new § 92.3(e). When paragraph (e) was redesignated, we inadvertently failed to reflect that change in § 92.8(c), which contained a reference to § 92.3(e). Not correcting that reference had the effect of changing the meaning of § 92.8(c) so that the paragraph stated that pet birds requiring quarantine at the port of entry must be presented for entry at ports that have no facilities for quarantine. The error was repeated when part 92 was reorganized into its present format by a final rule published in the **Federal Register** on August 2, 1990 (55 FR 31484–31562, Docket No. 90–023), and § 92.8(c) became § 92.105(b). This direct final rule will, therefore, correct the reference so the regulations in § 92.105(b) regain their intended meaning.

In § 92.106(a), this direct final rule will restore one sentence and delete another to correct an error that resulted from an earlier final rule. A final rule published in the **Federal Register** on January 6, 1982 (47 FR 591–596, Docket No. 81–071), directed the revision of the seventh and eighth sentences in § 92.106(a), but the sixth and seventh sentences were the ones actually revised in the regulations. As a result of that error, the sentence "The daily log and the identification record shall be maintained for 12 months following the date of the release of the bird from quarantine" was deleted and the sentence that begins "During the quarantine period, the importer shall * * *" was left in the text. The former sentence will be restored and the latter sentence deleted.

This direct final rule will amend §§ 92.101, 92.102, 92.105, and 92.106 in accordance with the procedures explained below. The amendments will add the Greater Cincinnati International Airport as a limited port, add a list of limited ports to § 92.102, and correct several errors in the regulations.

Effective Date

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This direct final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This direct final rule will add the Greater Cincinnati International Airport in Covington, KY, as a limited port of entry for certain birds. The Greater Cincinnati International Airport has seen a steady increase in the number of international arrivals, especially from Europe. The airport is a hub for at least one major airline and receives flights from London, Zurich, Paris, Frankfort, and Munich. The increase in international arrivals is expected to continue.

When a traveler with a pet bird arrives at the Greater Cincinnati International Airport without advance notice, APHIS inspectors at the airport must contact APHIS Veterinary Services (VS) personnel in Kentucky to arrange for an inspection. The traveler then must wait at the airport for an APHIS veterinarian to arrive. In order to streamline this process, the APHIS Area Veterinarian in Charge in Kentucky has requested that the Greater Cincinnati International Airport be designated as a limited port of entry for pet birds. Such a designation will enable travelers to contact APHIS in advance to schedule an inspection to coincide with their arrival, and APHIS/VS personnel will have the necessary forms and equipment on hand to conduct those inspections. This will allow a more orderly approach to the inspection of

pet birds arriving at the Greater Cincinnati International Airport from foreign countries.

We believe that designating the Greater Cincinnati International Airport as a limited port of entry for birds will have no economic impact on domestic or foreign consumers or producers, large or small, because the designation will not have any effect on commercial imports of birds. No additional cost is expected for APHIS because no new personnel will have to be hired, nor will any additional hours have to be worked by the APHIS/VS personnel already on staff who currently perform the required inspections for arriving pet birds without the benefit of prior notice.

The remaining changes contained in this document are administrative in nature and, therefore, will have no economic effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.101 [Amended]

2. Section 92.101 is amended as follows:

a. In paragraph (c)(3)(ii), in the second sentence, the words "as provided, in § 92.102 or 92.203" are removed and the words "in § 92.102(a)" are added in their place, and the reference "§ 92.102 or 92.203" is removed and the reference "§ 92.102(a)" is added in its place.

b. In paragraph (c)(3)(ii), in the third sentence, the reference "§ 92.102 or 92.203" is removed and the reference "§ 92.102(a)" is added in its place, and the word "Newberg" is removed and the word "Newburgh" is added in its place.

3. In § 92.102, paragraph (a) is revised as set forth below and a new paragraph (d) is added to read as follows:

§ 92.102 Ports designated for the importation of birds.

(a) *Special ports for pet birds.* The following ports are designated as ports of entry for pet birds imported under the provisions of § 92.101(c) and performing or theatrical birds imported under the provisions of § 92.101(f): Los Angeles and San Ysidro, CA; Miami, FL; Honolulu, HI; New York, NY; and Hidalgo, TX.

* * * * * *

(d) *Limited ports.* The following ports are designated as ports of entry for pet birds imported under the provisions of § 92.101(c) (1) or (2) and performing or theatrical birds imported under the provisions of § 92.101(f): Anchorage and Fairbanks, AK; San Diego, CA; Denver, CO; Jacksonville, Port Canaveral, St. Petersburg-Clearwater, and Tampa, FL; Atlanta, GA; Chicago, IL; New Orleans, LA; Boston, MA; Baltimore, MD; Portland, ME; Minneapolis, MN; Great Falls, MT; Covington, KY (Greater Cincinnati International Airport); Portland, OR; San Juan, PR; Galveston and Houston, TX; and Seattle, Spokane, and Tacoma, WA.

§ 92.105 [Amended]

4. In § 92.105, paragraph (b), the reference "§ 92.203(d)" is removed and the reference "§ 92.102(a)" is added in its place.

§ 92.106 [Amended]

5. In § 92.106, paragraph (a), the eighth sentence, which reads "During the quarantine period, the importer shall comply with handling procedures (including inspection and testing) as provided in paragraph (c) of this section.", is removed.

6. In § 92.106, paragraph (a), a new sentence is added after the fifth sentence to read as follows: "The daily log and the identification record shall be maintained for 12 months following the date of the release of the bird from quarantine".

Done in Washington, DC, this 11th day of July 1994.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17246 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 30, 40, 70, and 72

RIN 3150–AD85

Timeliness in Decommissioning of Materials Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require timely decontamination and decommissioning by nuclear material licensees. These amendments establish specific time periods for decommissioning unused portions of operating nuclear materials facilities and for decommissioning the entire site upon termination of operations. The rule is intended to reduce the potential risk to public health and the environment from radioactive material remaining for long periods of time at such facilities after licensed activities have ceased.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6230.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background.
II. Need for a rule.
III. Summary of requirements and the resolution of comments on the requirements.
IV. Other issues.
V. Enforcement.
VI. Agreement state compatibility
VII. Implementation.
VIII. Finding of no significant environmental impact: Availability.
IX. Paperwork reduction act statement
X. Regulatory analysis.
XI. Regulatory flexibility certification.
XII. Backfit analysis.

I. Background

In 1990, the NRC implemented the Site Decommissioning Management Plan (SDMP) to identify and resolve

issues associated with the timely cleanup of a number of sites where buildings, soil, and ground water are contaminated. The SDMP contaminated sites are symptomatic of the need for definitive NRC regulations that specify acceptable time periods for decommissioning nuclear material facilities when licensed activities have ceased.

When decommissioning is delayed for long periods following cessation of operations, there is a risk that safety practices may become lax as key personnel relocate and management interest wanes. In addition, bankruptcy, corporate takeover, or other unforeseen changes in the company's financial status may complicate and perhaps further delay decommissioning.

The NRC published a proposed rule addressing timeliness of decommissioning for public comment in the **Federal Register** on January 13, 1993, (58 FR 4099). The public comment period for the proposed rule expired on March 29, 1993. The NRC is issuing this final rule to establish timeliness criteria for decommissioning nuclear materials facilities to avoid future problems resulting from delayed actions on the cleanup of contaminated inactive facilities and to avoid the occurrence of difficulties associated with a case-by-case approach to requiring timely decontamination and decommissioning.

II. Need for a Rule

The lack of definitive criteria as to when licensees should commence and complete decommissioning their facilities has resulted in instances where the NRC has had to issue orders to establish schedules for timely decommissioning. Because timeliness in decommissioning is a generic issue, the NRC is amending its regulations to clearly delineate the licensee's responsibility for timely decommissioning.

In developing details of these requirements, the NRC considered whether to impose them on all licensees, or to limit the requirements only to those licensees who, because of the size of their operations, had greater potential for needing significant cleanup before their sites could be fully decommissioned; i.e., those licensees covered by the financial assurance requirements for decommissioning in 10 CFR 30.35, 40.36, 70.25, and 72.30. Because the regulatory problems in delaying decommissioning apply to all licensees, regardless of size, the NRC has determined that the provisions of the rule should apply to all 10 CFR Parts 30, 40, 70, and 72 licensees.

issues associated with the timely cleanup of a number of sites where buildings, soil, and ground water are contaminated. The SDMP contaminated sites are symptomatic of the need for definitive NRC regulations that specify acceptable time periods for decommissioning nuclear material facilities when licensed activities have ceased.

When decommissioning is delayed for long periods following cessation of operations, there is a risk that safety practices may become lax as key personnel relocate and management interest wanes. In addition, bankruptcy, corporate takeover, or other unforeseen changes in the company's financial status may complicate and perhaps further delay decommissioning.

The NRC published a proposed rule addressing timeliness of decommissioning for public comment in the **Federal Register** on January 13, 1993, (58 FR 4099). The public comment period for the proposed rule expired on March 29, 1993. The NRC is issuing this final rule to establish timeliness criteria for decommissioning nuclear materials facilities to avoid future problems resulting from delayed actions on the cleanup of contaminated inactive facilities and to avoid the occurrence of difficulties associated with a case-by-case approach to requiring timely decontamination and decommissioning.

II. Need for a Rule

The lack of definitive criteria as to when licensees should commence and complete decommissioning their facilities has resulted in instances where the NRC has had to issue orders to establish schedules for timely decommissioning. Because timeliness in decommissioning is a generic issue, the NRC is amending its regulations to clearly delineate the licensee's responsibility for timely decommissioning.

In developing details of these requirements, the NRC considered whether to impose them on all licensees, or to limit the requirements only to those licensees who, because of the size of their operations, had greater potential for needing significant cleanup before their sites could be fully decommissioned; i.e., those licensees covered by the financial assurance requirements for decommissioning in 10 CFR 30.35, 40.36, 70.25, and 72.30. Because the regulatory problems in delaying decommissioning apply to all licensees, regardless of size, the NRC has determined that the provisions of the rule should apply to all 10 CFR Parts 30, 40, 70, and 72 licensees.

Under existing regulations in § 72.42(b), ISFSI and MRS licensees are required to file applications for renewal of their licenses at least 2 years prior to expiration of the existing license. This final rule requires licensees to notify the NRC (at least 2 years prior to license expiration) if an application for renewal will not be filed. The notification requirement, coupled with the 12-month time period for preparation of the final decommissioning plan, is equivalent to the current requirement in § 72.54(a) for submittal of a plan 1 year before expiration of the license. This requirement also has the effect of clearly documenting the licensee's decision on the future of the site 2 years before license termination.

This final rule does not define radiological criteria for release for unrestricted use, but states that licenses will be terminated in accordance with NRC requirements. The NRC is in the process of establishing these levels in an enhanced participatory rulemaking that will be noticed in the **Federal Register**. Pending promulgation of the new radiological criteria, licensees are expected to comply with current criteria and practices as described in the NRC Action Plan Ensuring Timely Decommissioning of SDMP Sites (57 FR 13389; April 16, 1992). Further information on acceptable criteria may be obtained through the NRC regional or headquarters offices. Once the radiological criteria are finalized, licenses would be terminated in accordance with those criteria.

The final rule also clarifies requirements for radiological surveys performed as part of the license termination process. This rule clarifies that licensees need only submit the final survey showing that the site or area is suitable for release in accordance with NRC requirements after decommissioning has been completed. Some licensees have questioned whether existing requirements may be construed to require two surveys. In order to adequately review and approve a decommissioning plan the NRC must be aware of the conditions at the site. Therefore, a new item was included in the proposed rule that added to the contents of a proposed decommissioning plan a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan. This description may be a preliminary radiation survey or other type of documentation which characterizes the conditions of the site. No comments were received on this item in the proposed rule.

III. Summary of Requirements and Discussion of Comments

Seventeen comment letters were received on the proposed rule. Nine letters were received from licensees, three from public interest groups, four from industry organizations, and one from a State government. All of the comments were considered with respect to possible revision of the proposed rule. This discussion summarizes the major requirements in the regulation by section and discusses the significant issues raised by public comment and how they were resolved. The bases and origins of the requirements are also explained. Copies of the public comments received on the proposed rule are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C. 20036.

Sections 30.4, 40.4, 70.4, and 72.3—Definitions

These sections define terms that are used in the amended Parts 30, 40, 70 and 72. Of particular relevance to this rulemaking is the definition of principal activities. The final rule defines principal activities as those activities that are essential to achieving the purpose for which the license was issued or amended. Principal activities are commonly listed or described in the license under the Authorized Use heading. Principal activities are defined in the regulation to prevent licensees from avoiding end-of-use decommissioning. For example, a licensee could not store licensed radioactive material in an otherwise unused building to avoid end-of-use decommissioning. Storage of licensed material is not a principal activity unless it is specifically authorized for waste (such as greater than class C) that cannot currently be accepted at available disposal facilities, or it is the primary purpose for which the license was issued (such as, spent fuel storage in an ISFSI).

Some commenters suggested that definitions for the terms "uranium recovery facility" and "characterization of the site" be added to the proposed rule. The NRC did not adopt these suggestions with this rulemaking. First, the term "uranium recovery facility" does not appear in this rule; hence no definition is needed. Second, whether there is a need to define "site characterization" is better determined by the nature of the criteria for decommissioning and will be addressed upon completion of that rulemaking.

Sections 30.36(a)–(c), 40.42 (a)–(c), 70.38(a)–(c) and 72.54(a)–(c)

These sections of the regulations address license termination, expiration, revocation, denial of renewal, and their relationship to each other. A license "expires" when: (1) the expiration date stated in the license is reached [unless the licensee has appropriately filed for renewal], (2) the NRC revokes the license, or (3) the NRC formally denies an application to renew the license. "Expiration" of a license, whether voluntary or involuntary, refers to the end of a licensee's authorization to perform activities licensed under the Atomic Energy Act of 1954, as amended, with the exception of a licensee's continuing authorization to perform licensed activities incident to and necessary for site decontamination and decommissioning. Licensees with expired licenses must then decommission pursuant to the time limits and other requirements stated in the regulations. The final rule makes clear that the decommissioning and timeliness criteria apply to all licensees for whom the authorization to perform licensed activities has expired, regardless of whether the expiration was voluntary or involuntary. When the NRC has determined that decommissioning has been completed in a satisfactory manner, the NRC will relieve the licensee of license obligations by terminating the license. All licenses remain in effect until formally terminated by the NRC. One commenter suggested revising the language to clarify that licensees were not required to control access to areas within their facility once they are decontaminated. The language in the final rule was revised to state that licensees were required to control access to restricted areas until they were suitable for release in accordance with NRC requirements.

Sections 30.36(d), 40.42(d), 70.38(d), and 72.54(d)—Submittal of Decommissioning Plan (if Required) Within 12 Months of Notification

The final rule establishes specific requirements for: (1) timely decommissioning of the entire site at the end of all licensed activity at the site, thereby allowing license termination and release of the site in accordance with NRC requirements (i.e., "end-of-license" decommissioning); and (2) timely decommissioning of separate buildings and outdoor areas where licensed activities have ceased while licensed activities continue to be conducted at other site locations (i.e., "end-of-use" decommissioning). Licenses will be amended to exclude decommissioned buildings or outdoor areas as authorized places of use following satisfactory completion of end-of-use decommissioning.

The final rule requires licensees to submit notification of the existence of inactive buildings or outdoor areas but does not require them to provide notification of the existence of inactive parts of buildings, such as rooms or laboratories. To include parts of buildings in the regulation was seen as a cumbersome regulatory requirement both for licensees and the NRC without sufficient resultant benefit. In addition to notification, licensees will be required to initiate decommissioning, or submit a decommissioning plan for NRC approval within 12 months of the notification.

A commenter noted that the 12-month period allowed by the proposed rule for submittal of a decommissioning plan fails to recognize the scope of work necessary to characterize a site prior to preparing a plan. This commenter suggested that consistent with other licensing actions, scheduling commitments should be developed on a site-specific basis. A second commenter also felt that the 12-month period was unrealistic because of the need to obtain other agency approvals and those agencies are not subject to NRC schedules or under the licensee's control. This commenter suggested that, rather than requiring that a decommissioning plan be submitted within 12 months, the rule should require submission of a proposed schedule taking into account the requirements of other affected regulatory bodies.

The NRC did not extend the 12-month period for submittal of a decommissioning plan. The NRC notes that flexibility has been included in the final rule. The NRC may approve alternate schedules as indicated in §§ 30.36(f)(2), 40.42(f)(2), 70.38(f)(2) and 72.52(e)(2). The final rule requires the decommissioning plan to be submitted within 12 months from:

(1) The notification of license expiration,

(2) A decision by the licensee to permanently cease "principal activities," or

(3) When there are no "principal activities" for 24 months.

Sections 30.36(d) (2), (3), and (4), 40.42(d) (2), (3), and (4), 70.38 (d) (2), (3), and (4), 72.54(d) (2) and (3)—Notification of Inactivity for 24 Months and Begin Decommissioning or Submit Plan, as Appropriate.

Sixteen of the 17 commenters foresaw major difficulties with having to begin decommissioning within 24 months of inactivity. They stated that it may not be in the licensee's best interest to decommission unattached buildings because of the additional manpower involved and that future business that would require use of the buildings may be unknown.

The time required for completing decommissioning consists of the periods both for initiating the decommissioning process and for subsequently completing decommissioning activities. In determining the appropriate time period for initiating decommissioning, the NRC considered the health and safety benefits to be obtained by allowing short-lived isotopes to decay before beginning decommissioning operations and the licensee's need to make business decisions concerning future use of inactive buildings or outdoor areas. In determining the appropriate time period for the completion of subsequent decommissioning activities, the NRC considered the time needed to plan and safely carry out decommissioning operations based on previous experience.

With regard to initiation of the decommissioning process, the background information developed for the rulemaking on general requirements for decommissioning (53 FR 24018; June 27, 1988) included an evaluation of decommissioning planning and preparation requirements for the wide variety of different sized operations licensed under 10 CFR Parts 30, 40, and 70. The evaluation indicated that, in general, for materials license facilities, further benefits derived from radiological decay are not likely to be gained by delaying decommissioning beyond approximately 3 years from the date that operations cease. The NRC considers a period of approximately 24 months for making business decisions on further use of inactive facilities to be reasonable. This permits licensees sufficient time to make decisions concerning future use of an inactive facility, while accommodating periods of inactivity due to normal operations, testing, or routine business cycles.

Based on the 24-month time period considered reasonable for making business decisions and considering that the incremental benefits due to radioactive decay between the second and third years of inactivity are small, the NRC considers a period of approximately 24 months to be a reasonable time period to permit a building or outdoor area to remain inactive without undergoing decommissioning. Therefore, the final rule stipulates that licensees must notify NRC if they have buildings or outdoor areas where no principal activities have been conducted for 24 months. Notification is also required when the license has expired or when the licensee has decided to permanently cease principal activities and begin the formal process leading to license termination. The rule allows licensees 60 days to provide notification. The rule requires licensees that are not required to submit decommissioning plans to begin decommissioning within the 60-day period provided for notification unless the NRC has granted a delay or postponement. Licensees required to submit decommissioning plans will be required to submit final decommissioning plans within 12 months following notification to cease principal activities.

Based on its analysis of the situation, the NRC arrived at a 24-month period as being a reasonable time period for a facility, building or outside area to remain inactive without undergoing decommissioning. Licensees may file for exemption if they feel they will exceed the 24-month inactivity period.

Sections 30.36(e) and (h), 40.42(e) and (h), 70.38(e) and (h), and 72.54(e) and (j)—Submittal of Request to Delay Initiation of the Decommissioning Process and Submittal of Alternate Decommissioning Schedules.

The NRC recognizes that licensees may not wish to decommission the site or separate buildings or outdoor areas when submitting the notification of inactivity for 24 months. Thus, the rule permits licensees to make a request and justify delay or postponement. Licensees will be required to submit the request with justification 30 days prior to the time notification would have been required under paragraph (d). In practical terms, this means:

(1) 30 days after the license expiration date,

(2) 30 days following the decision to permanently cease principal activities at the site or in separate buildings or outdoor areas, or

(3) 30 days following the end of the 24-month time period of inactivity for the site or in separate buildings or outdoor areas.

Five commenters expressed opinions against the provision for granting an

radioactive decay between the second and third years of inactivity are small, the NRC considers a period of approximately 24 months to be a reasonable time period to permit a building or outdoor area to remain inactive without undergoing decommissioning. Therefore, the final rule stipulates that licensees must notify NRC if they have buildings or outdoor areas where no principal activities have been conducted for 24 months. Notification is also required when the license has expired or when the licensee has decided to permanently cease principal activities and begin the formal process leading to license termination. The rule allows licensees 60 days to provide notification. The rule requires licensees that are not required to submit decommissioning plans to begin decommissioning within the 60-day period provided for notification unless the NRC has granted a delay or postponement. Licensees required to submit decommissioning plans will be required to submit final decommissioning plans within 12 months following notification to cease principal activities.

Based on its analysis of the situation, the NRC arrived at a 24-month period as being a reasonable time period for a facility, building or outside area to remain inactive without undergoing decommissioning. Licensees may file for exemption if they feel they will exceed the 24-month inactivity period.

Sections 30.36(e) and (h), 40.42(e) and (h), 70.38(e) and (h), and 72.54(e) and (j)—Submittal of Request to Delay Initiation of the Decommissioning Process and Submittal of Alternate Decommissioning Schedules.

The NRC recognizes that licensees may not wish to decommission the site or separate buildings or outdoor areas when submitting the notification of inactivity for 24 months. Thus, the rule permits licensees to make a request and justify delay or postponement. Licensees will be required to submit the request with justification 30 days prior to the time notification would have been required under paragraph (d). In practical terms, this means:

(1) 30 days after the license expiration date,

(2) 30 days following the decision to permanently cease principal activities at the site or in separate buildings or outdoor areas, or

(3) 30 days following the end of the 24-month time period of inactivity for the site or in separate buildings or outdoor areas.

Five commenters expressed opinions against the provision for granting an extension of time for submitting a decommissioning plan. A commenter recommended that an additional factor be included under paragraph (h), in each of the affected sections in the regulation as a reason to delay decommissioning—the future availability of emerging technologies which would enable more thorough or efficient decontamination. The NRC did not adopt this recommendation because this additional factor, as worded, appears to be too general to be used as a basis for delaying decommissioning. If some particular emerging technology could be identified which would offer more thorough or efficient decontamination on a definite time scale, it could form the basis of a request to the NRC by a licensee for a delay in beginning decommissioning.

Some commenters expressed the opinion that 30 days is not enough time for the licensee to perform a proper analysis and prepare a meaningful submittal. They proposed allowing 90 days for submitting a schedule for preparation, submittal and review of a site characterization plan, site characterization report, and site decommissioning plan and elimination of the 30-day notice. The commenters appeared to misunderstand the purpose of the 30-day notice. The 30-day notice is not for a request to extend the time for submittal of a decommissioning plan but applies to a request and justification for postponement of the initiation of the decommissioning process. For those licensees required to submit decommissioning plans, the regulation allows licensees 12 months, not 30 days, to prepare the decommissioning plan.

A commenter expressed concern with the provision which puts the decommissioning timetable "on hold" until the NRC makes a determination on the extension request. To make the NRC accountable, the commenter strongly urged that the NRC modify the rule to place a reasonable time limit on NRC determinations regarding extension requests (i.e., 30 days). The NRC did not adopt this comment because a 30-day time period for evaluating a request for an extension of the 24-month decommissioning period would be difficult to adhere to due to the complexity involved in evaluation of non-routine factors such as extensive ground-water contamination and because the NRC may have to request further information from the licensee.

Sections 30.36(e), 40.42(e), 70.38(e), and 72.54 (e)(1)—Inclusion of Specific Information to Support a Request to Delay or Postpone Initiation of Decommissioning

Three commenters stated that the wording of the extension request provision failed to define specific standards to be met by a licensee or to describe how the NRC will evaluate requests. It was noted that the term "otherwise in the public interest" was not precisely defined and could be interpreted in a variety of ways. Two commenters noted that the rule states that the NRC may grant a request to delay or postpone decommissioning if NRC determines the relief "is not detrimental to public health and safety and is otherwise in the public interest." In addition, these commenters felt that this section was unnecessary for uranium recovery licensees because the NRC already knows the safety status of the facilities through various periodic reports that must be submitted.

The NRC did not adopt these suggestions. Sections 30.36(h), 40.42(h), 70.38(h) and 72.54(j) of the final rule contain five criteria the NRC will evaluate in reaching a decision on the merits of the licensee's request. Guidance on techniques used by the staff to evaluate requests is typically provided in regulatory guides and other guidance documents. The NRC will issue additional guidance as necessary after the final rule is issued.

Sections 30.36 (e) and (h), 40.42 (e) and (h), 70.38 (e) and (h), and 72.54 (e) and (j)—Public Participation

One commenter suggested that the public would like to be given a role in evaluating the merits of requests for extensions of the decommissioning schedules. This commenter stated that the rule should provide for hearings for any variation in the rule conditions, including granting of an extension.

In most cases, when an extension is granted the license would be amended. Since current NRC rules (§ 2.1205) provide individuals that could be affected the right to request a hearing whenever a license amendment is issued, there does not appear to be a need for any additional rule changes to accommodate this concern.

Sections 30.36(f)(4)(vi), 30.36(g), 30.36(h), 40.42(f)(4)(vi), 40.42(g), 40.42(h), 70.38(f)(4)(vii), 70.38(g), 70.38(h), 72.54(i), and 72.54(j)(1) and (2)—Decommissioning Period

Six of the 17 comment letters on the proposed rule questioned the practicability of the 18-month period for

the completion of decommissioning for various reasons. Several commenters felt that the 18-month limit was premature because NRC has not yet established the acceptance criteria, which may affect cost and scheduling of decommissioning. Other commenters stated that most fuel facilities require significantly more time than 18 months and the rule should recognize this. A commenter expressed the view that the 18-month period should not apply to uranium recovery facilities because portions of the milling facility may need to remain under license for ground-water remediation and tailings closure. The commenter suggested modifying the rule to state that decommissioning would be completed as soon as practicable after a final decision to cease operations. This commenter also suggested extending the period for decommissioning to make scheduling more realistic for major materials licensees. In addition, this commenter suggested that the NRC request strict compatibility for Agreement States to preclude imposition of more restrictive standards than those imposed by NRC.

The NRC has concluded that an 18-month period for completion of decommissioning may not be adequate for many major materials licensees. In response to the comments received, the NRC has decided to increase the time limit to complete decommissioning. This change is expected to have the effect of reducing the number of requests for extensions of the time period without having a significant impact on public health and safety. Following initiation of decommissioning activities, licensees would have a maximum of 24 months to complete decommissioning.

The amended regulations permit licensees to request the NRC to consider extending the 24-month time limit for decommissioning. The NRC will consider site-specific factors on a case-by-case basis. Factors that the NRC may consider to be appropriate include:

(1) Availability of waste disposal facilities;

(2) Reductions in dose or waste volume due to radioactive decay;

(3) Technical feasibility of decommissioning;

(4) Regulatory requirements of other government agencies;

(5) Lawsuits;

(6) Ground-water treatment activities;

(7) Monitored natural ground-water restoration; or

(8) Other factors that could result in more environmental harm than deferred clean-up or that are beyond the control of the licensee.

Based on these time periods the NRC estimates that licensees who are not required to submit decommissioning plans will complete their decommissioning activities in approximately 50 months or less after cessation of operations (i.e., 24 months of inactivity, 60 days for notification, and 24 months to complete decommissioning). Licensees who are required to submit decommissioning plans would be expected to complete their decommissioning activities in approximately 62 months or less (i.e., 24 months of inactivity, 60 days for notification, 12 months to submit a decommissioning plan, and 24 months to complete decommissioning). NRC review and approval of decommissioning plans (estimated to be 6 months or less) will be in addition to the 62-month total.

Sections 30.36(f)(1) and (3), 40.42(f)(1) and (3), 70.38(f)(1) and (3)—Activities Permitted Prior to Approval of a Decommissioning Plan

Three commenters stated that the rule should clearly specify what decontamination and decommissioning activities are permitted without approval of a decommissioning plan. They also stated that there should be specific wording that permits the licensee to proceed with certain activities pending approval of the plan. They believed that decommissioning activities covered under existing authorizations and procedures should be able to proceed pending approval of the plan. In addition, one commenter believed that those activities which would not increase health and safety impacts to workers and the public should be permitted pending approval of the plan. A commenter noted that license amendments could be considered for specific activities while the plan is under NRC review.

The NRC did not adopt these suggestions because sufficient latitude currently exists for licensees to carry out decommissioning activities in the absence of an approved decommissioning plan provided the procedures used are approved under existing licensing conditions and do not increase the potential for health and safety impacts to workers or to the public or result in significantly greater release of radioactive material to the environment.

Sections 30.36(i), 40.42(i), 70.38(i), and 72.54(k)—Radiation Surveys

The comments on this subject were concerned with radiation survey measurements and radiation units to be used. Three commenters questioned the practical value of the required measurement of beta/gamma radiation levels at one centimeter from the surface. The commenters noted that this measurement was not included in NUREG/CR–5849. Four commenters objected to the requirement in the proposed rule to use SI units. They believed that this proposal was in conflict with Part 20 and would be confusing to all concerned. Here again, the commenters suggested that the results of radiation measurement be specified elsewhere, such as in the rule dealing with residual radiation standards.

The NRC has decided to delete the requirement for beta/gamma radiation levels at 1 centimeter from the surface since sufficient guidance exists in NUREG/CR–5849. The provision in the final rule that requires that radiation levels be reported in SI units reflects NRC policy on metrication which was published in the **Federal Register** on October 7, 1991 (57 FR 46202). In keeping with this policy, levels of gamma radiation will be expressed in units of millisieverts. The millisievert was chosen over Coulomb/kilogram to convert from Roentgen because expressing in units of absorbed dose allows easy conversion. The values only differ with respect to orders of magnitude. The staff notes that using absorbed dose to express levels gamma radiation is the approach adopted in Europe and will foster international consistency.

Sections 30.36(j)(2), 40.42(j)(2), 70.38(j)(2), and 72.54(l)(2)—Delay for Radiation Criteria Rule

Five commenters expressed opposition to or concern with the NRC's plans to proceed with the timeliness in decommissioning rulemaking separate from and in advance of the EPR currently underway. The main points made by the commenters in support of either delaying the timeliness rulemaking or combining the two rulemakings were:

(1) Proceeding with the timeliness rulemaking separately constrains the public's ability to influence the radiological-standards rulemaking and weakens the NRC's stated commitment to greater public participation;

(2) The timeliness rulemaking is isolated from the enhanced public participation of the radiological-standards rulemaking;

(3) It is inconsistent to define the length of time decommissioning will require when it is not known what the extent of decommissioning will be (the timeliness rulemaking is based on the premise of decommissioning for release

in accordance with NRC requirements). The results of the radiological standards rulemaking may provide for alternative approaches to decommissioning, such as continual remediation or long-term monitoring, restricted use, and continued institutional care, perhaps through the transfer of the property to a governmental entity; and

(4) Because decommissioning should be done correctly and is expensive, its scheduling and implementation should be accomplished with the benefit of final residual radiation criteria.

The comments regarding the desirability of either delaying the timeliness in decommissioning rulemaking until the rulemaking on decommissioning criteria is completed or combining the two rulemakings have merit. Ideally, the two subjects could be addressed in a single rulemaking because of their strong interdependence. However, the NRC has determined that, pending promulgation of the new decommissioning criteria, adequate criteria exist to conduct decommissioning and are described in the NRC Action Plan Ensuring Timely Decommissioning of SDMP sites (57 FR 13389; April 16, 1992). Because having these new timeliness requirements in the regulations is expected to improve the NRC's ability to see that timely decommissioning is accomplished, the NRC did not adopt the commenters' suggestion. Adoption of the suggestions of the commenters on this point would result in either the continuation of the "status quo", i.e., establishment of time schedules for decommissioning on a case-by-case basis through license condition or order, or postponement of all decommissioning of materials facilities until the rulemaking on decommissioning criteria has been completed.

Section 70.38(f)(4)(vi)

A commenter suggested deleting the requirements to submit updated descriptions of physical security plans and material control and accountability plans. This comment was not adopted because this information is likely to be different from the plans designed to cover routine operations. As noted in the comment, the licensee may be in a position where the possession limit for special nuclear material can be reduced below the threshold for the plans, then the information would not be required in the decommissioning plan.

Viability of Uranium Recovery Industry

Uranium recovery licensees consist of conventional mills, commercial, research and development in situ facilities, ore buying stations, and heap-

in accordance with NRC requirements). The results of the radiological standards rulemaking may provide for alternative approaches to decommissioning, such as continual remediation or long-term monitoring, restricted use, and continued institutional care, perhaps through the transfer of the property to a governmental entity; and

(4) Because decommissioning should be done correctly and is expensive, its scheduling and implementation should be accomplished with the benefit of final residual radiation criteria.

The comments regarding the desirability of either delaying the timeliness in decommissioning rulemaking until the rulemaking on decommissioning criteria is completed or combining the two rulemakings have merit. Ideally, the two subjects could be addressed in a single rulemaking because of their strong interdependence. However, the NRC has determined that, pending promulgation of the new decommissioning criteria, adequate criteria exist to conduct decommissioning and are described in the NRC Action Plan Ensuring Timely Decommissioning of SDMP sites (57 FR 13389; April 16, 1992). Because having these new timeliness requirements in the regulations is expected to improve the NRC's ability to see that timely decommissioning is accomplished, the NRC did not adopt the commenters' suggestion. Adoption of the suggestions of the commenters on this point would result in either the continuation of the "status quo", i.e., establishment of time schedules for decommissioning on a case-by-case basis through license condition or order, or postponement of all decommissioning of materials facilities until the rulemaking on decommissioning criteria has been completed.

Section 70.38(f)(4)(vi)

A commenter suggested deleting the requirements to submit updated descriptions of physical security plans and material control and accountability plans. This comment was not adopted because this information is likely to be different from the plans designed to cover routine operations. As noted in the comment, the licensee may be in a position where the possession limit for special nuclear material can be reduced below the threshold for the plans, then the information would not be required in the decommissioning plan.

Viability of Uranium Recovery Industry

Uranium recovery licensees consist of conventional mills, commercial, research and development in situ facilities, ore buying stations, and heap-leach facilities. These sites may contain processing facilities and waste disposal areas. All of the sites, other than the tailings impoundments and waste disposal areas, are to be decommissioned and released in accordance with NRC requirements under NRC's present regulations. The waste disposal areas are reclaimed and, when the specific license is terminated, they are licensed for long-term care under the general license in § 40.28.

The current requirements for decommissioning and reclamation of these sites are contained primarily in Appendix A to 10 CFR Part 40. In particular, Criterion 9 of Appendix A requires that prior to commencement of operations, there must be a NRC-approved plan for:

(1) Decontamination and decommissioning of mill buildings and the milling site to levels which allow unrestricted use of these areas upon decommissioning, and

(2) The reclamation of tailings and/or waste disposal areas in accordance with technical criteria presented in Section I of Appendix A.

Nonetheless, § 40.42 applies to the uranium processing facilities. The effect of the final rule is to require the uranium recovery licensees to notify the NRC within 60 days when they have permanently ceased operations or have not conducted operations for 24 months (§ 40.42(d)) and to submit an updated decommissioning plan within 12 months of this notification or license expiration. The provisions in the amended § 40.42(g) on the content of a decommissioning plan are consistent with the decommissioning plan required in Criterion 9 of Appendix A to 10 CFR Part 40. The decommissioning plan submitted at the end of operations is intended to better describe the actual conditions of the site at that time.

Some uranium recovery licensees may require additional time to conduct final decommissioning and site survey in order to support the reclamation of waste disposal areas. Section 40.42(k) provides for an exemption for the waste disposal areas at uranium recovery facilities.

Disposal areas (as defined in Appendix A to 10 CFR Part 40) are reclaimed and ownership is eventually transferred to the Department of Energy. Criterion 6A of Appendix A to 10 CFR Part 40 and Subpart D of 40 CFR Part 192 specifically require the submittal and approval of a timely reclamation plan. For these reasons, the provisions in the final rule in § 40.42(f) for the content of a plan and § 40.42(g) for the timing of completion of the plan do not apply to the reclamation of the waste disposal areas at uranium recovery facilities and thorium mills.

To coordinate decommissioning of uranium recovery facilities and reclamation of disposal areas, the NRC may need to extend the date for completion of decommissioning including the final radiological survey until the reclamation of the disposal area has been completed. Typically, the reclamation of a disposal area may require several years of drying, several construction seasons, and a period of stability monitoring prior to the licensee proposing to terminate the license. Requests for delay in completion of the final aspects of decommissioning can be accommodated through the provisions in § 40.42(h).

The NRC recognizes the fluctuation that has occurred in the uranium industry. The amended regulation allows the NRC to extend the 24-month period of inactivity if the NRC determines, based on a request by the licensee, that this relief is not detrimental to the public health and safety and is otherwise in the public interest. Commenters stated that the proposed rule threatens future energy security of the United States by forcing decommissioning of uranium production facilities. According to the commenters, the proposed timetables failed to take into account site-specific circumstances, factors beyond the control of the licensee, and the problematic nature of the international marketplace. Two commenters stated that their suggestion of exempting uranium recovery facilities from the rule would allow the United States to maintain its domestic uranium producing industry rather than forcing its demise with every downturn in the market and thereby help limit U.S. dependence on foreign energy sources. They also stated that such an exemption would be consistent with NRC Chairman Selin's written testimony before the Senate Committee on Energy and Natural Resources during hearings on the then proposed National Energy Act on June 26, 1992.

What the commenters are referring to is not written testimony but NRC's June 26, 1992, comments to Congress on provisions of the proposed National Energy Policy Act of 1992 relating to mill tailings cleanup funding. The NRC is not exempting uranium recovery facilities from decommissioning. There is no policy justification for concluding that once a uranium recovery facility has ceased operations, decommissioning should not commence promptly. In fact, prompt decommissioning is consistent with this agency's mandate to protect

public health and safety. Commenters have misconstrued the Commission's June 26, 1992, letter to Congress. In that letter, the Commission urged Congress to modify the legislation to provide that uranium mills could be eligible for reimbursements for some of their cleanup costs even if the mills were still operating in 2002. The legislation then pending provided that decommissioning of a mill had to be completed by the end of 2002 in order to receive Federal funding. The legislation ultimately enacted included the modifications recommended by the NRC. Nowhere in NRC's correspondence did the Commission suggest that decommissioning be deferred once a facility has ceased operations. In addition, flexibility has been built into the final rule so that a licensee can file for an exemption from having to commence decommissioning following 24 months of inactivity.

Inclusion of QA Plan in the Decommissioning Plan

One commenter suggested that the content of the decommissioning plan be augmented to include a quality assurance program description, a description of the manner in which the characterization of the site was performed and assurance that the characterization was performed in accordance with a quality assurance program and implementing procedures. This commenter pointed out that the QA program is currently only discussed in Part 72. Because it is especially important to assure high quality data in conducting various tests (e.g., analysis of soil, water, air, contamination), requirements for QA programs should be added to the other sections as well.

The NRC believes that the QA programs incorporated into existing licenses apply to decommissioning as well.

IV. Other Issues

10 CFR Part 2, Appendix C, Supplement VI—Enforcement

Four commenters expressed disagreement with the enforcement policy stated in the Supplementary Information of the proposed rule. They believed that a Severity Level 3 enforcement category seemed harsh or excessive in view of the subjective and unpredictable character of many factors that will influence determinations and actions regarding decommissioning. They also noted that the one-level approach does not seem to recognize the wide range of situations or interpretations that could result in citations. They suggested that the enforcement policy be consistent with the complexities and uncertainties involved.

This comment was not adopted because the NRC considers timely decommissioning of materials facilities an important regulatory issue. Thus, violations involving a failure to notify the NRC as required by regulation or license condition or to complete decommissioning activities in accordance with regulation or license condition normally will be classified at Severity Level III and will result in consideration of monetary civil penalties or other enforcement action as appropriate.

Environmental Assessment

A commenter disagreed with the NRC Finding of No Significant Environmental Impact for the proposed rule and believed that it represented an inadequate consideration of potential environmental effects. The commenter noted that NRC has indicated its intention to prepare a GEIS for the residual radiological standards rulemaking and because the timeliness rulemaking has such a strong link to it that the timeliness rulemaking also logically requires a GEIS.

As noted in the Supplementary Information with the proposed rule, the NRC staff prepared an Environmental Assessment which found that, if adopted, the proposed rule would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. As discussed in the Environmental Assessment, the NRC had previously prepared a Generic Environmental Impact Statement on Decommissioning (GEIS). For licensees covered by this regulation, the GEIS found that either immediate decommissioning or short-term storage to allow short-lived radionuclides to decay is the preferred decommissioning strategy. Delayed decommissioning for an extended period of time would only rarely be justified for these types of facilities. The GEIS concluded that the overall impact of decommissioning existing nuclear materials facilities is small. Because these regulatory changes specifically lean in the direction of the preferred decommissioning strategies, immediate decommissioning or short-term storage, it can be concluded that this rulemaking will have no adverse impact on the environment. A more detailed rationale is given in the environmental assessment published with the notice of proposed rulemaking on Timeliness in Decommissioning of Materials Facilities (58 FR 4099; January 13, 1993).

Economic Impacts

Several commenters stated that the proposed rule represents gross interference with the licensee's right to operate a business within applicable regulations and within the framework of normal business and economic cycles. They believed that licensees must be given the option to "wait out" downturns in the market by idling facilities and placing them under long term care and maintenance until operations can be profitably restarted. They believed that the proposed rule would deprive the licensees of the ability to obtain future financial return on investment.

The NRC agrees that licensees should have flexibility with regard to business decisions, and this sensitivity resulted in specific provisions and exemptions to account for the special circumstances where the rule might work a hardship on a particular licensee. The NRC does not believe that further considerations are necessary.

License Fees

A commenter suggested that the timeliness rule should recognize the diminished risk and regulatory effort associated with a license during the decommissioning process and the NRC fee structure adjusted accordingly.

In response, there does not appear to be any need to change the fee structure for decommissioning. It is noted that fees for license amendments for major materials or fuel cycle facilities are on a full cost recovery basis and the cost, therefore, would depend upon the amount of effort expended by the NRC staff on any given case. Once a licensee enters a possession-only status the option is available of qualifying for a different fee category due to a change in the nature of the licensed activities.

V. Enforcement

Concurrent with the publication of the final rule, the Commission is modifying Supplement VI of the Enforcement Policy to provide that violations involving a failure to notify the NRC as required by regulation or license condition, failure to meet decommissioning standards, failure to complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification may be classified as Severity Level III and may result in consideration of monetary civil penalties or other enforcement action as appropriate.

VI. Agreement State Compatibility

The final rule is a matter of compatibility between the NRC and the Agreements States, thereby providing consistency between Federal and State safety requirements. This rule is assigned a Division 2 compatibility. Under this level of compatibility, the Agreement States would be expected to adopt a timeliness in decommissioning rule but would be permitted flexibility to apply more stringent requirements if deemed appropriate by the State.

VII. Implementation

The timing provisions of this rule begin on the effective date. Thus, licensees that currently have unused facilities at the time of publication of the final rule would not need to submit notifications required by this rule earlier than 2 years after the rule becomes effective. This provides those licensees with same period of time (2 years) in which to determine whether the unused facility would be put into use again or to submit notification as required by the rule.

VIII. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The action establishes specific requirements for timeliness of decommissioning of nuclear materials facilities. The action is directed to improving the regulatory, licensing, inspection, and enforcement framework relating to these facilities and does not change the underlying fundamental requirement to decommission facilities to levels acceptable for release. Thus, this action will not adversely affect the quality of the human environment. The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are available without charge upon written request from Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

IX. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980

VI. Agreement State Compatibility

The final rule is a matter of compatibility between the NRC and the Agreements States, thereby providing consistency between Federal and State safety requirements. This rule is assigned a Division 2 compatibility. Under this level of compatibility, the Agreement States would be expected to adopt a timeliness in decommissioning rule but would be permitted flexibility to apply more stringent requirements if deemed appropriate by the State.

VII. Implementation

The timing provisions of this rule begin on the effective date. Thus, licensees that currently have unused facilities at the time of publication of the final rule would not need to submit notifications required by this rule earlier than 2 years after the rule becomes effective. This provides those licensees with same period of time (2 years) in which to determine whether the unused facility would be put into use again or to submit notification as required by the rule.

VIII. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The action establishes specific requirements for timeliness of decommissioning of nuclear materials facilities. The action is directed to improving the regulatory, licensing, inspection, and enforcement framework relating to these facilities and does not change the underlying fundamental requirement to decommission facilities to levels acceptable for release. Thus, this action will not adversely affect the quality of the human environment. The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are available without charge upon written request from Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

IX. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–0009, –0017, –0020, –0028, and –0132.

The public reporting burden for this collection of additional information is estimated to average 0.5 hours per response, to prepare and submit a notification of intent to terminate licensed activities. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0009, 3150–0017, 3150–0020, 3150–0028, and 3150–0132), Office of Management and Budget, Washington, DC 20503.

X. Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the requirements in the rule. The analysis is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule imposes requirements for timely decommissioning of a site. Although the rule includes all materials licensees regulated by the NRC and the Agreement States, decommissioning efforts for licensees that possess and use only materials with short half-lives or materials only in sealed sources are simple and require only that enough time be permitted to either allow short-lived materials to decay or to enable them to properly dispose of their sealed sources. Therefore, the impact of the rule on these licensees is not significant. The net cost to the remaining licensees, estimated to number 3,300, is expected to be small based on an analysis of the costs of decommissioning, including waste disposal. The analysis indicates that in nearly all cases, the cost of decommissioning (which includes the costs of waste disposal) will increase if decommissioning is delayed. Complete details of the cost analysis are contained in Section 6.2 of the Regulatory Analysis. However, these remaining 3,300 licensees are not likely to be small entities and, in addition, there actually may be significant costs of cleanup of secondary contamination if decommissioning is delayed.

XII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex Discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, and Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Independent storage of spent fuel and high level waste, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, and Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 30, 40, 70, and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.4 a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 30.4 Definitions.

* * * * *

Principal activities, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

* * * * *

3. Section 30.36 is revised to read as follows:

§ 30.36 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 30.37 not less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each specific license revoked by the Commission expires at the end of the day on the date of the Commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by Commission Order.

(c) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of byproduct material until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving byproduct material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements.

(d) Within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 30.6, each licensee shall provide notification to the NRC in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release in accordance with NRC requirements, or submit within 12 months of notification a decommissioning plan, if required by paragraph (f)(1) of this section, and begin decommissioning upon approval of that plan if—

(1) The license has expired pursuant to paragraph (a) or (b) of this section; or

(2) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements; or

(3) No principal activities under the license have been conducted for a period of 24 months; or

(4) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e) The Commission may grant a request to extend the time periods established in paragraph (d) if the Commission determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

(f)(1) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Commission and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(2) The Commission may approve an alternate schedule for submittal of a decommissioning plan required pursuant to paragraph (d) of this section if the Commission determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(3) Procedures such as those listed in paragraph (f)(1) of this section with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(4) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) A description of planned decommissioning activities;

(iii) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) A description of the planned final radiation survey; and

(v) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in paragraph (h) of this section.

(5) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(g)(1) Except as provided in paragraph (h) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in paragraph (h) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(h) The Commission may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Commission determines that the alternative is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors which the Commission may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(i) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen)

will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(g)(1) Except as provided in paragraph (h) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in paragraph (h) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(h) The Commission may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Commission determines that the alternative is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors which the Commission may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(i) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters—removable and fixed—for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(j) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Commission determines that:

(1) Byproduct material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or (ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

4. Section 30.37 is revised to read as follows:

§ 30.37 Application for renewal of licenses.

(a) Application for renewal of a specific license must be filed on NRC Form 314 and in accordance with § 30.32.

(b) [Reserved]

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat 3123, (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 40.4 a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 40.4 Definitions.

* * * * *

Principal activities, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

* * * * *

7. Section 40.42 is revised to read as follows:

§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 40.43 not less than 30 days before the expiration of the existing license. If an application for renewal has been filed, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each specific license revoked by the Commission expires at the end of the day on the date of the Commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by Commission Order.

(c) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of source material until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving source material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements;

(d) Within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 40.5, each licensee shall provide notification to the NRC in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is suitable for release in accordance with NRC requirements, or submit within 12 months of notification a decommissioning plan, if required by paragraph (f)(1) of this section, and

begin decommissioning upon approval of that plan if—

(1) The license has expired pursuant to paragraph (a) or (b) of this section; or

(2) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or in any separate building or outdoor area; or

(3) No principal activities under the license have been conducted for a period of 24 months; or

(4) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e) The Commission may grant a request to delay or postpone initiation of the decommissioning process if the Commission determines that such relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

(f)(1) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Commission and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(2) The Commission may approve an alternate schedule for submittal of a decommissioning plan required pursuant to paragraph (d) of this section if the Commission determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(3) The procedures listed in paragraph (f)(1) of this section may not be carried out prior to approval of the decommissioning plan.

(4) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) A description of planned decommissioning activities;

(iii) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) A description of the planned final radiation survey; and

(v) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (h) of this section.

(5) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(g)(1) Except as provided in paragraph (h) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in paragraph (h) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(h) The Commission may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Commission determines that the alternative is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors which the Commission may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(i) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(j) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Commission determines that:

(1) Source material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements.

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

(k) Specific licenses for uranium and thorium milling are exempt from paragraphs (d)(4), (f) and (g) of this section with respect to reclamation of tailings impoundments and/or waste disposal areas.

8. Section 40.43 is revised to read as follows:

§ 40.43 Renewal of licenses.

(a) Application for renewal of a specific license must be filed on NRC Form 314 and in accordance with § 40.31.

(b) [Reserved]

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486 sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

10. In Section 70.4 a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 70.4 Definitions.

* * * * *

Principal activities, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

* * * * *

§ 70.33 [Amended].

11. Section 70.33 is amended by removing and reserving paragraph (b).

12. Section 70.38 is revised to read as follows:

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date

(k) Specific licenses for uranium and thorium milling are exempt from paragraphs (d)(4), (f) and (g) of this section with respect to reclamation of tailings impoundments and/or waste disposal areas.

8. Section 40.43 is revised to read as follows:

§ 40.43 Renewal of licenses.

(a) Application for renewal of a specific license must be filed on NRC Form 314 and in accordance with § 40.31.

(b) [Reserved]

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486 sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

10. In Section 70.4 a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 70.4 Definitions.

* * * * *

Principal activities, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

* * * * *

§ 70.33 [Amended].

11. Section 70.33 is amended by removing and reserving paragraph (b).

12. Section 70.38 is revised to read as follows:

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 70.33 not less than 30 days before the expiration of the existing license. If an application for renewal has been filed, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each specific license revoked by the Commission expires at the end of the day on the date of the Commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by Commission Order.

(c) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of special nuclear material until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving special nuclear material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements.

(d) Within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 70.5, each licensee shall provide notification to the NRC in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is suitable for release in accordance with NRC requirements, or submit within 12 months of notification a decommissioning plan, if required by paragraph (f)(1) of this section, and begin decommissioning upon approval of that plan if—

(1) The license has expired pursuant to paragraph (a) or (b) of this section; or

(2) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or in any separate building or outdoor area; or

(3) No principal activities under the license have been conducted for a period of 24 months; or

(4) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e) The Commission may grant a request to delay or postpone initiation of the decommissioning process if the Commission determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

(f)(1) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Commission and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(2) The Commission may approve an alternate schedule for submittal of a decommissioning plan required pursuant to paragraph (d) of this section if the Commission determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(3) The procedures listed in paragraph (f)(1) of this section may not be carried out prior to approval of the decommissioning plan.

(4) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) A description of planned decommissioning activities;

(iii) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) A description of the planned final radiation survey; and

(v) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) A description of the physical security plan and material control and accounting plan provisions in place during decommissioning.

(vii) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (h) of this section.

(5) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as practical and that the health and safety of workers and the public will be adequately protected.

(g)(1) Except as provided in paragraph (h) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in paragraph (h) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(h) The Commission may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Commission determines that the alternative is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors which the Commission may consider appropriate on a case-by-case basis, such as regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(i) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(j) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Commission determines that:

(1) Special nuclear material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

13. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102 Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.90(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and Sec. 218(a) 96 Stat. 2252 (42 U.S.C. 10198).

14. In § 72.3, a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 72.3 Definitions.

* * * * *

Principal activities, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended, excluding activities incidental to decontamination or decommissioning.

* * * * *

15. Section 72.54 is revised to read as follows:

§ 72.54 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date stated in the license except when a licensee has filed an application for renewal pursuant to § 72.42 not less than 24 months before the expiration of the existing license. If an application for renewal has been filed at least 24 months prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each specific license revoked by the Commission expires at the end of the day on the date of the Commission's final determination to revoke the license or on the expiration date stated in the determination or as otherwise provided by Commission Order.

(c) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of licensed material until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving spent fuel or other licensed material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements.

(d) As required by § 72.42(d), or within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 72.4, each licensee shall notify the NRC in writing, and submit within 12 months of this notification, a final decommissioning plan and begin decommissioning upon approval of the plan if—

(1) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements; or

(2) No principal activities under the license have been conducted for a period of 24 months; or

(3) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e)(1) The Commission may grant a request to delay or postpone initiation of the decommissioning process if the Commission determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

(2) The Commission may approve an alternate schedule for submittal of the final decommissioning plan required pursuant to paragraph (d) of this section if the Commission determines that the alternate schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety, and is otherwise to the public interest.

(f) The proposed final decommissioning plan must include—

(1) A description of the current conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

licensed material until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving spent fuel or other licensed material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements.

(d) As required by § 72.42(d), or within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 72.4, each licensee shall notify the NRC in writing, and submit within 12 months of this notification, a final decommissioning plan and begin decommissioning upon approval of the plan if—

(1) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements; or

(2) No principal activities under the license have been conducted for a period of 24 months; or

(3) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e)(1) The Commission may grant a request to delay or postpone initiation of the decommissioning process if the Commission determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

(2) The Commission may approve an alternate schedule for submittal of the final decommissioning plan required pursuant to paragraph (d) of this section if the Commission determines that the alternate schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety, and is otherwise to the public interest.

(f) The proposed final decommissioning plan must include—

(1) A description of the current conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(2) The choice of the alternative for decommissioning with a description of the activities involved;

(3) A description of controls and limits on procedures and equipment to protect occupational and public health and safety;

(4) A description of the planned final radiation survey; and

(5) An updated detailed cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning including means for adjusting cost estimates and associated funding levels over any storage or surveillance period; and

(6) A description of technical specifications and quality assurance provisions in place during decommissioning.

(g) For final decommissioning plans in which the major dismantlement activities are delayed by first placing the ISFSI or MRS in storage, planning for these delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of these activities.

(h) If the final decommissioning plan demonstrates that the decommissioning will be completed as soon as practicable, performed in accordance with the regulations in this chapter, and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve the plan subject to any appropriate conditions and limitations and issue an order authorizing decommissioning.

(i)(1) Except as provided in paragraph (j) of this section, each licensee shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following approval of the final decommissioning plan by the Commission.

(2) Except as provided in paragraph (j) of this section, when decommissioning involves the entire site, each licensee shall request license termination as soon as practicable but no later than 24 months following approval of the final decommissioning plan by the Commission.

(j) The Commission may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Commission determines that the alternate schedule is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors that the Commission may consider appropriate on a case-by-case basis, such as regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(k) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a final radiation survey of the premises where the licensed activities were conducted and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(l) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Commission determines that—

(1) The decommissioning has been performed in accordance with the approved final decommissioning plan and the order authorizing decommissioning; and

(2)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

16. In § 72.86, paragraph (b), is revised to read as follows:

§ 72.86 Criminal penalties.

* * * * *

(b) The regulations in this Part 72 that are not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 72.1, 72.2, 72.3, 72.4, 72.5, 72.7, 72.8, 72.9, 72.16, 72.18, 72.20, 72.22, 72.24, 72.26, 72.28, 72.32, 72.34, 72.40, 72.46, 72.56, 72.58, 72.60, 72.62, 72.84, 72.86, 72.90, 72.96, 72.108, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.182, 72.194, 72.200, 72.202, 72.204, 72.206, 72.210, 72.214, 72.220, 72.230, 72.236, 72.238, and 72.240.

Conforming Amendment

The following amendment to Chapter I of Title 10 generally updates citations to 10 CFR Parts 30, 40, 70 and 72 and is found in Part 2 of the NRC regulations. This amendment is particularly important as it goes beyond updating cross-reference citations. The amendment to 10 CFR Part 2, Appendix C updates and modifies the examples of severity levels. Because Appendix C is a policy statement of the Commission and not a regulation, the Commission is issuing the amendment to the Commission's enforcement policy in 10 CFR Part 2, Appendix C in final form without public comment.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

17. The authority citation for Part 2 continues in part to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat 1242, as amended (42 U.S.C. 5841)

* * * * *

18. In Appendix C to 10 CFR Part 2, Supplement VI, Section C is amended by revising paragraphs 9, and 10, and by adding a new paragraph 11, as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Supplement VI—Fuel Cycle and Materials Operations

C. Severity Level III—Violations involving for example:

* * * * *

9. A failure to submit an NRC Form 241 in accordance with the requirements in § 150.20 of 10 CFR part 150;

10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do no meet safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance; or

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification.

Dated at Rockville, Maryland, this 11th day of July, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–17206 Filed 7–14–94; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 709, 745, 747, 790, 791, 792, 793 and 794

Change of Addresses and Redesignation of Offices

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule.

SUMMARY: NCUA moved the location of its central office from Washington, DC to Alexandria, VA in September, 1993. This document updates various sections of NCUA's Rules and Regulations to reflect the agency's current address. Several additional changes are made. First, a correction to a referenced subpart in the regulations is made. Second, NCUA's Administrative Office was renamed the Office of Administration several years ago. References to the Administrative Office are changed to the Office of Administration. Third, in 1990 NCUA switched from the government wide GS pay system to its own CU (credit union) system. References to GS pay are changed to CU pay. Fourth, in February, 1994, NCUA established two new offices, the Office of Community Development Credit Unions and the Office of Chief Economist and Policy Analysis, and placed the Central Liquidity Facility within the Office of Examination and Insurance. In addition, in May, 1994, the Office of Training and Development was established and certain functions were moved from one office to another as a result of streamlining studies done both by agency staff and an outside consulting firm. Descriptions of these changes as well as some minor changes in other office descriptions are made to the appropriate regulation.

EFFECTIVE DATE: July 15, 1994.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel, at 703–518–6540.

SUPPLEMENTARY INFORMATION: NCUA's central office location changed from 1776 G Street, NW., Washington, DC 20456 to 1775 Duke Street, Alexandria, VA 22314–3428 in September, 1993. The change in address is made in parts 701, 709, 745, 747, 791, 792, 793 and 794 of NCUA's Regulations. In July of 1991, NCUA revised part 747 of the Regulations (*see* 56 FR 37828, 8/9/91). This part sets forth procedures for various administrative actions. Under the earlier version of part 747, subpart L (12 CFR § 747.1201 et seq.) described the procedures for appeal of a notice of disapproval of a change in senior executive officers. These procedures are found in subpart J of the current version of part 747. Section 701.14(f) refers to the now nonexistent subpart L. A correction is made to this reference in § 701.14(f). NCUA's Office of Administration was previously titled the Administrative Office. Parts 792 and 794 contain several references to the Administrative Office. These have all been changed to the Office of Administration. Section 792.5(b) contains several references to GS pay. In 1990, NCUA switched from the GS pay system to its own CU pay system. The references in § 792.25(b) are changed from GS to CU.

In February, 1994, the NCUA Board established two new offices, the Office of Community Development Credit Unions and the Office of the Chief Economist and Policy Analysis. The Board also placed the Central Liquidity Facility within the Office of Examination and Insurance. The Office of Community Development Credit Unions will administer the Community Development Revolving Loan Program. This Program is currently described in paragraph 790.2(e). Paragraph 790.2(e) is deleted and the information is moved to the new description of the Office of Community Development Credit Unions in new paragraph 790.2(b)(13). Description of the Office of the Chief Economist and Policy Analysis is found in new paragraph 790.2(b)(14). Some of the functions contained in the current description of the Office of Examination and Insurance will now be done by the Office of the Chief Economist and Policy Analysis. These functions have been deleted from the description of the Office of Examination and Insurance. The current description of the Central Liquidity Facility currently found in paragraph 790.2(d) goes into more detail than other office descriptions. Deletions and other modifications have been made and the CLF description is now part of the description of the Office of Examination and Insurance and appears as new paragraph 790.2(b)(6)(iii).

In the early part of 1994, streamlining studies of the central office by both agency staff and an outside consulting firm were completed. In May, 1994, results of the streamlining studies were implemented. The Office of Training and Development was established and is described in new paragraph 790.2(b)(15). This new training office has taken over some of the functions of the Office of Human Resources. Appropriate changes have been made to the description of the Office of Human Resources found in paragraph 790.2(b)(9). The responsibility for initial Freedom of Information Act requests was moved from the Office of Administration to the Office of General Counsel. The resulting changes are made to paragraphs 790.2(b)(3), 790.2(b)(8), 792.2(f), and 792.2(g) (1) and (2). A clarification is also made to the description of the NCUA Board in paragraph 790.2(b)(1).

Since all of these changes are either housekeeping and do not have any substantive effect on credit unions or merely provide the description of offices, the Board finds it unnecessary to either issue a proposed rule or to have a delayed effective date. Therefore these changes are issued in final form and are effective upon publication.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The types of changes made by this rule have no economic impact on credit unions. These are merely housekeeping changes. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial

in new paragraph 790.2(b)(14). Some of the functions contained in the current description of the Office of Examination and Insurance will now be done by the Office of the Chief Economist and Policy Analysis. These functions have been deleted from the description of the Office of Examination and Insurance. The current description of the Central Liquidity Facility currently found in paragraph 790.2(d) goes into more detail than other office descriptions. Deletions and other modifications have been made and the CLF description is now part of the description of the Office of Examination and Insurance and appears as new paragraph 790.2(b)(6)(iii).

In the early part of 1994, streamlining studies of the central office by both agency staff and an outside consulting firm were completed. In May, 1994, results of the streamlining studies were implemented. The Office of Training and Development was established and is described in new paragraph 790.2(b)(15). This new training office has taken over some of the functions of the Office of Human Resources. Appropriate changes have been made to the description of the Office of Human Resources found in paragraph 790.2(b)(9). The responsibility for initial Freedom of Information Act requests was moved from the Office of Administration to the Office of General Counsel. The resulting changes are made to paragraphs 790.2(b)(3), 790.2(b)(8), 792.2(f), and 792.2(g) (1) and (2). A clarification is also made to the description of the NCUA Board in paragraph 790.2(b)(1).

Since all of these changes are either housekeeping and do not have any substantive effect on credit unions or merely provide the description of offices, the Board finds it unnecessary to either issue a proposed rule or to have a delayed effective date. Therefore these changes are issued in final form and are effective upon publication.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The types of changes made by this rule have no economic impact on credit unions. These are merely housekeeping changes. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule does not change any paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Since these are housekeeping changes only, there is no effect on state interests.

List of Subjects

12 CFR Parts 701, 709, 745, 747, 790, 791, 793 and 794

Credit unions.

By the National Credit Union Administration Board on July 8, 1994.

Hattie M. Ulan,

Acting Secretary of the Board.

Accordingly, for the reasons set out in the preamble, 12 CFR Ch. VII is amended as set forth below.

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 42 U.S.C. 3601–1610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

PART 709—INVOLUNTARY LIQUIDATION AND CREDITOR CLAIMS

2. The authority citation for part 709 continues to read as follows:

Authority: 12 U.S.C. 1766; Pub. L. 101–73; 103 Stat. 183, 530 (1989) (12 U.S.C. 1787 *et seq.*).

PART 745—SHARE INSURANCE AND APPENDIX

3. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1781, 12 U.S.C. 1789.

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, AND RULES OF PRACTICE AND PROCEDURE

4. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1784, 12 U.S.C. 1787.

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

5. The authority citation for part 790 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f.

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

6. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

7. The authority citation for part 792 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f, 5 U.S.C. 552, 5 U.S.C. 552a, Executive Orders 12600 and 12356.

PART 793—TORT CLAIMS AGAINST THE GOVERNMENT

8. The authority citation for part 793 is revised to read as follows:

Authority: 12 U.S.C. 1766.

PART 794—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL CREDIT UNION ADMINISTRATION

9. The authority citation for part 794 continues to read as follows:

Authority: 12 U.S.C. 794.

§§ 701.1, 701.2, 701.31, 747.306, 793.2 [Amended]

10. Remove the address "Washington, DC 20456" and add, in its place, the address "1775 Duke Street, Alexandria, VA 22314–3428" in the following places:

(a) § 701.1;
(b) § 701.2(b);
(c) § 701.2(c);
(d) § 701.31(d)(3) (two times);
(e) § 747.306(b);
(f) § 793.2(c).

11. Remove the address "1776 G Street, NW., Washington, DC 20456" and add, in its place the address "1775 Duke Street, Alexandria, VA 22314–3428" in the following places:

(a) § 709.8(c)(1);
(b) § 709.9(b);

(c) § 745.202(a);
(d) § 747.609(d);
(e) § 747.616;
(f) § 791.8(c);
(g) § 792.2(g)(1);
(h) § 792.22(a);
(i) § 792.26(a);
(j) § 792.27(a);
(k) § 792.27(c);
(l) § 792.40.

12. Remove the address "1776 G Street NW., Room 7261, Washington, DC 20456" and replace it with "1775 Duke Street, Alexandria, VA 22314–3428" in § 794.170(c).

13. Section 701.14(f) is amended by revising the last sentence to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

* * * * *

(f) * * * The Notice of Disapproval will advise the parties of their rights of appeal pursuant to 12 CFR part 747 subpart J, of NCUA's Regulations.

14. Section 747.307(a) is amended by revising the first sentence to read as follows:

§ 747.307 Hearing.

(a) Upon receipt of a request for a hearing which complies with § 747.306, the NCUA Board will order an informal hearing to commence within the following 30 days in the Washington, DC metropolitan area or at such other place as the NCUA Board designates before a Presiding Officer designated by the NCUA Board to conduct the hearing. * * *

* * * * *

15. Remove the title "Administrative Office" and replace it with "Office of Administration" in the following places:
(a) § 792.24(b)(3);
(b) § 792.26(a);
(c) § 792.37(a);
(d) § 792.50(a);
(e) § 794.170(c).

16. Remove the letters "GS" and replace them with "CU" in § 792.5(b)(1)(i), (b)(1)(ii), and (b)(2).

17. Section 790.2 is amended by adding a new fourth sentence to paragraph (b)(1); by removing the phrase "the Freedom of Information Act." from the second sentence of paragraph (b)(3); by redesignating the two paragraphs contained in paragraph (b)(6) as paragraphs (b)(6) (i) and (ii); by removing the phrase "and economical reports and research papers on market trends affecting credit unions" from the end of the first sentence of newly designated paragraph (b)(6)(i) and replacing it with the word "reports"; by adding new paragraph (b)(6)(iii); by adding a new fourth sentence to paragraph (b)(8); by removing the word "training," from the fourth sentence of paragraph (b)(9); by adding new paragraphs (b) (13), (14) and (15) and by removing paragraphs (d) and (e) to read as follows:

§ 790.2 Central and regional office organization.

* * * * *

(b) * * *

(1) * * * The Chairman shall be the spokesman for the Board and shall represent the Board and the NCUA in its official relations with other branches of the government. * * *

* * * * * *

(6) *Office of Examination and Insurance.* * * *

(iii) *NCUA Central Liquidity Facility (CLF).* The CLF was created to improve general financial stability by providing funds to meet the liquidity needs of credit unions. It is a mixed-ownership Government corporation under the Government Corporation Control Act (31 U.S.C. 9101, *et seq.*). The CLF is managed by the NCUA Board, which acts as the CLF Board of Directors. The Chairman of the NCUA Board is the Chairman of the CLF Board of Directors. The Secretary of the Board serves as the Secretary of the CLF.

* * * * *

(8) * * * The Office has responsibility for processing Freedom of Information Act requests and appeals. * * *

* * * * *

(13) *Office of Community Development Credit Unions.* This Office is responsible for coordinating NCUA policy as it relates to community development credit unions, including those credit unions designated as "low-income." The Office administers the Community Development Revolving Loan Program for Credit Unions (Program). This Program was funded from a congressional appropriation and serves as a loan and technical assistance vehicle for low-income credit unions. The Office Director serves as Program Chairman and authorizes loans and technical assistance to participating credit unions. The Program is governed by part 705 of subchapter A of this chapter.

(14) *Office of Chief Economist and Policy Development.* The Office is responsible for developing and conducting research projects and analytical studies in support of NCUA programs, including the fields of cooperative thrift, credit, investments and the impact of the national economy on the credit union movement. The Office will make periodic reports on its activities for the information and use of agency staff, credit union officials, state credit union supervisory authorities, and other governmental and private groups. The Office also provides policy advice to the Board and senior agency staff.

(15) *Office of Training and Development.* This Office provides a comprehensive program for the training and development of NCUA's staff. The Office is responsible for developing policy, consistent with the Government Employees Training Act, related to its training program; for providing training opportunities equitably so that all employees have the skills necessary to help meet the agency's mission; for evaluating the agency's training and development efforts; and for ensuring that the agency's training monies are spent in a cost efficient manner and in accordance with the law.

* * * * * *

18. Section 792.2 is amended by revising the second sentence of paragraph (f), the first sentence of paragraph (g)(1) and the last sentence of paragraph (g)(2) as follows:

§ 792.2 Information made available to the public and requests for such information.

* * * * * *

(f) *Information centers.* * * * The Freedom of Information Officer of the Office of General Counsel is responsible for the operations of the Information Center maintained at the Central Office. * * *

(g) *Methods of request.*

(1) *Indices.* Requests for indices should be made to NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. * * *

(2) *All other records.* * * * When the location of requested records is not known, or it is known that such records are located in the Central Office, the request should be addressed to the Freedom of Information Officer of the Office of General Counsel at the address noted in paragraph (g)(1) of this section. * * * * *

[FR Doc. 94–17161 Filed 7–14–94; 8:45 am]
BILLING CODE 7535–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 108, 120, and 123

Media Policy Rule

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: SBA is repealing its media policy or opinion molder rule. Under this final regulation, creditworthy small business concerns engaged in media activity will be eligible to be considered for SBA financial assistance unless they are otherwise ineligible. Under the final regulation, SBA reserves the right to withhold financial assistance on a case-by-case basis when the extension of assistance would be in violation of a statute or the Constitution. This action is being taken to enable SBA to promote job growth and economic development by making SBA financial assistance available to a larger number of small business concerns.

EFFECTIVE DATE: July 15, 1994. The amendment of Part 123 is effective for disasters which occur on or after July 15, 1994.

FOR FURTHER INFORMATION CONTACT: John R. Cox, Assistant Administrator for Financial Assistance, 202/205–6490.

SUPPLEMENTARY INFORMATION: On April 5, 1994, SBA published in the **Federal Register** a proposed regulation repealing its media policy rule (59 FR 15872). SBA received 143 comments which favored the repeal, and two comments against it. The majority of the affirmative commenters represented the owners of motion picture theaters and bookstores. They noted that the proposed repeal by the Agency would allow many small business concerns throughout the country, but particularly in rural areas, to obtain urgently needed financial assistance for maintenance, upgrading, and growth. While one of the commenters favored the proposed repeal, he voiced concern about SBA providing financial assistance to adult motion picture theaters. As is noted below, SBA will consider the constitutional and legal implications of the repeal of the present rule, as they arise on a case-by-case basis. However, the Agency does not consider the need to deal with these implications as sufficient to prevent it from going forward with the general repeal. Accordingly, the Agency is promulgating the repeal is proposed.

Under SBA's existent regulatory policy, no SBA direct or guaranteed business loan, economic injury disaster loan, or development company assistance has been made to an applicant engaged in the "creation, origination, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content." (13 CFR § 120.101–2(b) (1993)). There are several express exceptions to this prohibition.

SUMMARY: SBA is repealing its media policy or opinion molder rule. Under this final regulation, creditworthy small business concerns engaged in media activity will be eligible to be considered for SBA financial assistance unless they are otherwise ineligible. Under the final regulation, SBA reserves the right to withhold financial assistance on a case-by-case basis when the extension of assistance would be in violation of a statute or the Constitution. This action is being taken to enable SBA to promote job growth and economic development by making SBA financial assistance available to a larger number of small business concerns.

EFFECTIVE DATE: July 15, 1994. The amendment of Part 123 is effective for disasters which occur on or after July 15, 1994.

FOR FURTHER INFORMATION CONTACT: John R. Cox, Assistant Administrator for Financial Assistance, 202/205–6490.

SUPPLEMENTARY INFORMATION: On April 5, 1994, SBA published in the **Federal Register** a proposed regulation repealing its media policy rule (59 FR 15872). SBA received 143 comments which favored the repeal, and two comments against it. The majority of the affirmative commenters represented the owners of motion picture theaters and bookstores. They noted that the proposed repeal by the Agency would allow many small business concerns throughout the country, but particularly in rural areas, to obtain urgently needed financial assistance for maintenance, upgrading, and growth. While one of the commenters favored the proposed repeal, he voiced concern about SBA providing financial assistance to adult motion picture theaters. As is noted below, SBA will consider the constitutional and legal implications of the repeal of the present rule, as they arise on a case-by-case basis. However, the Agency does not consider the need to deal with these implications as sufficient to prevent it from going forward with the general repeal. Accordingly, the Agency is promulgating the repeal is proposed.

Under SBA's existent regulatory policy, no SBA direct or guaranteed business loan, economic injury disaster loan, or development company assistance has been made to an applicant engaged in the "creation, origination, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content." (13 CFR § 120.101–2(b) (1993)). There are several express exceptions to this prohibition.

This policy was originally adopted by SBA in 1953 under the authority granted by Section 4(d) of the Small Business Act (15 USC 633(d)) which authorizes the Agency to "establish general policies (particularly with reference to the public interest* * *), which shall govern the granting and denial of applications for financial assistance by the Administration." The Reconstruction Finance Agency, the predecessor to SBA, had a similar media policy rule.

There were three basic reasons for the policy: First, the prohibition was based upon SBA's desire to avoid any possible accusation that the Government was attempting to control editorial freedom by subsidizing media or communication for political or propaganda purposes. Second, the Agency has generally sought to avoid Government identification through its business assistance programs with concerns which might publish or produce matters of a religious or controversial nature. Third, SBA recognized that the constitutionally protected rights of freedom of speech and press ought not to be compromised either by the fear of Government reprisal or by the expectation of Government financial assistance.

Over the years, Congress has considered the policy and has not objected to SBA's approach. In H.R. Rep. No. 840, 94th Cong., 2d Sess. 28 (1976), the Subcommittee on SBA Oversight and Minority Enterprise acknowledged that SBA's statutory duty to assist small business

Must be in balance with supervening First Amendment prohibitions. The Subcommittee does not believe that the SBA should engage in activities which would necessitate its assumption of a censorship role. By censorship we mean the ability of SBA to direct a business as to what it can do or cannot do, relative to First Amendment protected activity, coupled with the power to enforce its will through the use of sanctions. The subcommittee believes such censorship would exist if SBA were to place in its loan agreements a prohibition against the promulgation of certain ideas and values, a breach of which would allow the Agency to liquidate the loan.

However, many individual Members of Congress have expressed concern with the substance of SBA's regulations in this area. Several bills have been introduced to revise the rule legislatively, although none has been enacted. For example, S. 2084, 98th Cong., 2nd Sess. (1984), would have abolished the rule except in cases where the financial assistance would have been used primarily to (1) advance or inhibit religion; (2) threaten the overthrow of organized Government by unlawful means; or (3) engage in any illegal activity or the dissemination of obscene materials which may be unlawful in any jurisdiction in which the small concern may operate. S. 2084 also would have required SBA to look at the content of the publications or communications in making its decision to assist a particular small concern.

H.R. 1157, 98th Cong., 1st Sess. (1983), would have required SBA to hold a hearing, if the business was covered by the media policy rule, in order to ascertain if the SBA financial assistance would have been (1) adverse or detrimental to a legitimate public interest, or (2) used primarily to promote or criticize political or religious ideas. This approach would have led to lengthy hearings on applications for assistance every time the Agency interpreted the law adversely to an applicant.

SBA testified on both of these bills and supported a legislative remedy to the problems associated with administration of the rule. However, no legislation has been forthcoming.

In hearings on March 7, 1984, before the House Subcommittee on Export Opportunity and Special Small Business Problems, which was considering H.R. 1157, an expert in Constitutional Law on the faculty of the George Washington University Law School testified that the media policy rule was constitutional and was a justifiable approach in light of SBA's business and financial orientation and limited First Amendment expertise. However, there have been concerns raised over the years regarding the breadth of the present rule.

The regulation presently provides a very broad list of ineligible enterprises which includes publishers, producers, importers, exporters or distributors of all types of communications (such as newspapers, sheet music, posters, film, tape, theatrical productions, greeting cards, and books), plus transportation concerns limited to the distribution of such products. Regulatory exceptions have been granted to commercial printing firms, advertising agencies, technical production facilities (such as a recording studio), and vocational schools. Eligible for assistance based on administrative interpretations are general merchandise stores which sell books, magazines and newspapers, and general book, music, record or videotape stores. Not eligible for assistance are specialty book or videotape stores which sell or rent items in a single or limited subject area. The rationale underlying the distinction between general and specialty stores has been

that a general store covers a broad range of ideas, values and thoughts, rather than a particular or narrow set of ideas or values. SBA no longer regards this distinction as a proper basis for determining eligibility.

SBA is well aware that small media concerns often have difficulty in raising capital or borrowing money. The media policy rule applicable to the financing of business loans has not been applied to assistance provided by small business investment companies (SBICs) which are licensed by SBA. Thus, SBICs are permitted to help businesses engaged in the media. The policy surrounding SBIC assistance to media concerns is similar to the approach taken by the Congress in funding broadcasting through the nonprofit Corporation for Public Broadcasting. SBICs operate within SBA regulations, but their transactions with small companies are private arrangements which carry no SBA guaranty.

SBA also has been making physical injury disaster loans to media concerns and academic schools since 1953, based on humanitarian grounds. The SBA's disaster loan program attempts to restore to an injured party that which was lost due to circumstances beyond its control. No distinction is made for eligibility purposes between media and non-media concerns for physical disaster loans, but economic injury disaster loans have been subject to the limitations of the media policy rule.

SBA believes that the assistance it presently makes available under the exceptions to the media rule and under the SBIC and disaster programs is not sufficient to assist small businesses in the media industries which are demonstrably in need of increased aid. Accordingly, SBA is changing its policy so as to make assistance available, under the 7(a) business, economic injury disaster and development company loan programs, to media concerns which are otherwise eligible for such assistance.

SBA believes that its present regulatory apparatus and administrative practice for screening applicants for such assistance are sufficient to protect the public interest. In this regard, the present credit criteria under which applications for such assistance are reviewed and the prohibition on funding illegal activities should be sufficient to provide the desired level of protection. (See 13 CFR Parts 120 *et seq.* and 122 *et seq.*, specifically 13 CFR §§ 120.101–2(d) and 120.103–2). SBA's Office of General Counsel plans to address constitutional and other legal issues which may arise as a result of this repeal on a case by case basis. The General Counsel's Office will provide SBA field personnel with guidance and advice with respect to loan applications which are referred to that office because of constitutional or other legal concerns.

Since SBA is repealing the media rule in Part 120 of its regulations, it is also eliminating the cross-reference to the rule which is in Part 123 of its regulations, relating to economic injury disaster loans. Because the repeal of the opinion molder necessitates renumbering subparagraphs in Part 120, SBA is also changing a cross-reference to Part 120 in Part 108 of its regulations, relating to development companies.

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this final rule will have a significant economic impact on a substantial number of small entities. From the limited amounts of data that the SBA had at the proposed rulemaking stage, SBA certified that repeal of the media policy rule would not have a significant economic impact upon a substantial number of small entities. Based upon data received from various sources and comments received by SBA concerning the proposed rulemaking, SBA, upon further consideration, believes that this rule could have a significant economic impact upon a substantial number of small entities.

Repeal of the media policy rule would increase the eligibility for small entities in certain industries. Material from unpublished data prepared under contract by the United States Bureau of the Census for the SBA in May, 1994, show that approximately 75,000 small business concerns in the affected industries would become eligible for participation in the SBA's loan guaranty program. These small business concerns account for approximately 95% of the businesses in those industries.

In compliance with the Regulatory Flexibility Act, the SBA has examined alternatives other than the repeal of the media policy rule. The alternatives included modification of the rule and maintenance of the status quo. The SBA has determined that of those courses of action, repeal of the rule would be most beneficial to those entities.

This final rule was reviewed by OMB under Executive Order 12866. This final rule is intended to make eligible more media small business concerns. It is reasonable to assume that SBA will not be requested to process a disproportionate number of additional media loan applications. For example, in fiscal 1991, 1992 and 1993, respectively, SBA guaranteed 202, 199 and 241 section 7(a) loans to eligible bookstores, advertising agencies, video stores and vocational schools. The aggregate amounts of the SBA guaranteed portions for those three years for such businesses were, respectively, $27.7, $28.7 and $35.2 million.

SBA certifies that the final rule would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

SBA certifies that this final rule would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Further, for purposes of Executive Order 12778, SBA certifies that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalogue of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

List of Subjects

13 CFR Part 120

Loan programs/businesses; Small Businesses

13 CFR Part 123

Disaster Assistance; Loan programs—business

13 CFR Part 108

Loan programs—business; Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA is amending parts 108, 120 and 123, chapter I, title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.101–2 is amended by removing paragraph (b) in its entirety, and redesignating paragraphs (c) through (h) as paragraphs (b) through (g).

PART 123—DISASTER—PHYSICAL DISASTER AND ECONOMIC INJURY LOANS

1. The authority citation for part 123 continues to read as follows:

Authority: Sections 5(b)(6), 7 (b), (c), (f) of the Small Business Act (15 U.S.C. 634 (b)(6), 636 (b), (c), (f)); and Pub. L. 102–395, 106 Stat. 1828, 1864, and Pub. L. 103–75, 107 Stat. 739.

2. Section 123.41(b)(2) is revised to read as follows:

§ 123.41 General Provisions.

* * * * *

(b) *Eligible applicants.* (1) * * *

(2) Small business concerns regardless of their business activity are eligible to apply for these loans, except for (i) gambling concerns—see § 120.101–2(b); (ii) concerns engaged in illegal activities—see § 120.101–2(c); (iii) lending or investment concerns—see § 120.101–2(d); (iv) concerns with principals incarcerated, on parole or probation—see § 120.101–2(e); (v) multi-level sales distribution ("pyramid") concerns—see § 120.101–2(f); (vi) loan packagers—see § 120.101–2(g); (vii) concerns engaged in speculation—see § 120.102–5; (viii) concerns investing in property—see § 120.102–8.

* * * * *

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.8(g) is revised to read as follows:

§ 108.8 Borrower requirements and prohibitions.

* * * * *

(g) *Other loan eligibility requirements.* Sections 120.101–2 (except paragraph (d)), 120.102–5 and 120.102–9 of this chapter shall apply to loans made or guaranteed under this part.

Dated: June 29, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–17187 Filed 7–14–94; 8:45 am]

BILLING CODE 8025–01–M

---

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is revising on an immediate basis the commencement date for the increases in the limitations on SBA's share of homeowner disaster assistance which were published at 59 FR 6213 (February 10, 1994). This revision is being undertaken on an emergency basis and is therefore published as a final rule.

636 (b), (c), (f)); and Pub. L. 102–395, 106 Stat. 1828, 1864, and Pub. L. 103–75, 107 Stat. 739.

2. Section 123.41(b)(2) is revised to read as follows:

§ 123.41 General Provisions.

* * * * *

(b) *Eligible applicants.* (1) * * *

(2) Small business concerns regardless of their business activity are eligible to apply for these loans, except for (i) gambling concerns—see § 120.101–2(b); (ii) concerns engaged in illegal activities—see § 120.101–2(c); (iii) lending or investment concerns—see § 120.101–2(d); (iv) concerns with principals incarcerated, on parole or probation—see § 120.101–2(e); (v) multi-level sales distribution ("pyramid") concerns—see § 120.101–2(f); (vi) loan packagers—see § 120.101–2(g); (vii) concerns engaged in speculation—see § 120.102–5; (viii) concerns investing in property—see § 120.102–8.

* * * * *

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.8(g) is revised to read as follows:

§ 108.8 Borrower requirements and prohibitions.

* * * * *

(g) *Other loan eligibility requirements.* Sections 120.101–2 (except paragraph (d)), 120.102–5 and 120.102–9 of this chapter shall apply to loans made or guaranteed under this part.

Dated: June 29, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–17187 Filed 7–14–94; 8:45 am]

BILLING CODE 8025–01–M

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is revising on an immediate basis the commencement date for the increases in the limitations on SBA's share of homeowner disaster assistance which were published at 59 FR 6213 (February 10, 1994). This revision is being undertaken on an emergency basis and is therefore published as a final rule.

EFFECTIVE DATE: July 15, 1994.

ADDRESSES: Comments should be submitted to Bernard Kulik, Assistant Administrator for Disaster Assistance, U.S. Small Business Administration, 409 Third Street SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael E. Deegan, Office of Disaster Assistance, (202) 205–6734.

SUPPLEMENTARY INFORMATION: On February 10, 1994, SBA published a final rule increasing the limitations on SBA's share of disaster assistance made available to homeowners or renters for any one disaster commencing on or after January 1, 1994. 59 Fed. Reg. 6213. The increased limits were twice those previously available for disaster assistance to homeowners and renters.

As SBA explained in the preamble to the final rule, the former loan limitations had become insufficient to meet the needs of many homeowners and renters confronted with the effects of physical disasters. Economic inflation, together with the increase in construction costs typically present in the aftermath of a large catastrophe, had precipitated the need for the increased loan limits.

The increases were adopted by SBA on an emergency basis, without notice or comment, in order to expedite their application to the California earthquake disaster of January 1994. As adopted, the increases were effective only for disasters commencing on or after January 1, 1994.

Comments received subsequent to the publication of that emergency rule have caused SBA to reconsider its selection of January 1, 1994 as the appropriate commencement date for the application of the new loan limits. As is sometimes the case when a new rule is adopted, the precipitating factors (in this case, general inflation and spikes in construction expense) have been present for a period of time either before the need for a revision to the regulation is recognized or before the regulation is finally adopted. In order to compensate for this delay, SBA sometimes makes a rule effective prior to its date of publication. By adopting an effective date of January 1,1994 for the homeowner/renter loan limitation rule (a date six weeks prior to the publication of the rule), SBA was extending the benefits of that rule to victims of very recent disasters, whose loan applications had not yet been processed by the Agency.

At that time, however, loan applications in connection with disasters commencing as far back as October 26, 1993, the commencement date for the California wildland fire disaster, were still being processed. Victims of the California fire disaster were as much in need of the increased loan limits as their counterpart victims of the California earthquake disaster since both disasters occurred in the same general area. In order to administer the Disaster Program in a consistent and equitable manner, SBA has determined that the increased loan limits it adopted on February 10, 1994 should be extended to all disasters commencing on or after October 26, 1993.

This change is being made effective upon publication pursuant to 13 CFR 123.1(b) which authorizes emergency changes in the regulations governing its disaster assistance program, and 5 U.S.C. 553(b)(B) which permits publication of regulations in final form without notice or comment when an agency finds that good cause exists for publication in final form on an emergency basis, and that notice and comment is impracticable, unnecessary or contrary to the public interest. In this regard, the public interest in seeing to it that the new limitations are immediately effective as to the California wildland fire disaster so as to promptly assist the affected homeowners and renters makes the utilization of notice and comment rulemaking impracticable.

Compliance With Executive Orders 12866, 12612, and 12778; Regulatory Flexibility Act, 5 U.S.C. 601, et seq.; and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of Executive Order 12866, SBA certifies that this rule will not have an annual economic effect in excess of $100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition and, therefore, would not constitute a major or significant rule. SBA has made this determination based upon the fact that for the five disasters commencing between October 26, 1993 and December 31, 1993 (inclusive), physical disaster loans to homeowners and renters did not exceed $38 million. Many of those borrowers will not need or be eligible for the increased loan limits. However, even if they all needed and were eligible for the full amount of the increases, the maximum effect of those increases could be no more than $38 million.

For purposes of Executive Order 12612, SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic effect on a substantial number of small entities for the same reason that it is not a major or significant rule.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule will not impose a new recordkeeping or reporting requirement.

(Catalog of Federal Domestic Assistance Program No. 59.008, Small Business)

List of Subjects in 13 CFR Part 123

Disaster, Physical disaster and economic injury loans.

For the reasons set out above, pursuant to sections 5(b)(6), 7(b)(1), and 7(c)(6) of the Small Business Act, Title 13, Part 123 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 123 continues to read as follows:

Authority: Sections 5(b)(6), 7 (b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6), 636(b), (c), (f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

2. Section 123.25 is amended by revising paragraph (a) to read as follows:

§ 123.25 Special conditions—Home loans.

(a) Limits. SBA's share of loans approved on or after October 1, 1983, to a Homeowner (including all dependents) is limited for any one disaster commencing on or after October 26, 1993, to the following:

1. $40,000 for repair or replacement of household and personal effects;

(2) $200,000 for repair or replacement of a primary residence, including repair or replacement of landscaping and/or recreational facilities not to exceed $5,000;

(3) eligible refinancing pursuant to § 123.24(f) not to exceed the lesser of $200,000 or the physical damage to the real property which is to be repaired;

(4) $48,000 for mitigation pursuant to § 123.24(j) of this part;

(5) $488,000 for the total loan within the limitations specified in paragraphs (a)(1) through (a)(4) of this section.

* * * * *

Dated: June 29, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–17202 Filed 7–14–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–90–AD; Amendment 39–8974; AD 94–15–03]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes. This action requires revising the Non-Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include procedures that will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss. This amendment is prompted by reports that flight crew procedures related to fuel system leaks are not defined adequately in the FAA-approved AFM for these airplanes. The actions specified in this AD are intended to ensure that the flight crew is advised of the potential hazard related to fuel exhaustion due to undetected leakage, and the procedures necessary to address it.

DATES: Effective on August 1, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Lanny Pinkstaff, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2684; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: Several in-service incidents have occurred on Boeing Model 757 series airplanes in which an engine fuel line has cracked or fractured and a significant fuel leak has occurred. These fuel leaks have occurred at locations within the engine fuel system upstream of the fuel flow transmitter. Under these circumstances, sufficient fuel may still be supplied to the engine, and the engine may operate normally. In these instances, the flight crew would receive no indication of abnormal fuel flow (i.e., fuel leakage) from the fuel flow meter. If the flight crew fails to detect a fuel leak, appropriate action would not be taken to prevent further fuel loss. This condition, if not corrected, could result in fuel exhaustion due to undetected fuel leakage.

Because the fuel system indication system and the AFM procedures of the Model 767 are similar to those of the Model 757, the potential for undetected fuel loss in the event of fractures of the fuel lines, and subsequent fuel leakage, exists for the Model 767.

In light of this information, the FAA finds that certain procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for Model 767 series airplanes to enable the flight crew to detect fuel system leaks and to take appropriate action. The FAA has determined that such procedures currently are not defined adequately in the AFM for these airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 767 series airplanes of the same type design, this AD is being issued to ensure that flight crews are advised of the potential hazard related to a significantly reduced or exhausted airplane fuel supply, and of the procedures to address it. This AD requires revising the Non-Normal Procedures Section of the AFM to include procedures that will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment here on are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and

suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–90–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–90–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–15–03 Boeing: Amendment 39–8974. Docket 94–NM–90–AD.

Applicability: All Model 767 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised of the potential hazard associated with fuel exhaustion due to undetected fuel leakage, and of the procedures necessary to address it, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise the Non-Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss. This may be accomplished by inserting a copy of this AD in the AFM.

In-Flight Engine Fuel Leak

If the Flight Management Computer (FMC) message,"FUEL DISAGREE—PROG 2/2", or "INSUFFICIENT FUEL", is displayed:

Compare the Fuel Quantity Indicating System (FQIS) total fuel quantity and the FMC calculated fuel remaining (based on fuel flow) with estimated fuel usage data.

If a fuel leak is suspected, turn off the center wing tank pumps and close the crossfeed valves (tank-to-engine fuel feed configuration). Watch for any unusual decrease in fuel tank quantity and/or a fuel imbalance to determine if fuel is being lost.

If an engine fuel leak is confirmed (either visually or by flight deck indications), shut down the affected engine to stop the leak and retain the remaining fuel. After shutdown of the affected engine, resume normal fuel management procedures. All remaining fuel can be used for the operating engine. Use the FQIS to determine the fuel remaining.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on August 1, 1994.

Issued in Renton, Washington, on July 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17197 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 92–ANE–23; Amendment 39–8916; AD 94–10–09]

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, that requires initial and repetitive inspections of the sixth stage low pressure turbine (LPT) inner airseal, and modification of the sixth stage LPT inner airseal to reduce the potential for two failure modes. This amendment is prompted by reports of thermal mechanical interference inducing low cycle fatigue (LCF) cracks at two locations on the sixth stage LPT inner airseal, resulting in five uncontained failures. The actions specified by this AD are intended to prevent an uncontained failure of the sixth stage LPT inner airseal, which can result in damage to the aircraft.

DATES: Effective September 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 13, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publication Department, 400 Main Street, East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA

01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT9D series turbofan engines was published in the **Federal Register** on June 7, 1993 (58 FR 31920). That action proposed to require initial and repetitive on-wing borescope or eddy current inspections of the sixth stage low pressure turbine (LPT) inner airseal rear retaining wing, initial and repetitive on-wing eddy current inspections of the sixth stage LPT inner airseal knife edges, rework of the sixth stage inner airseal knife edges, which is a terminating action to the repetitive knife edge inspections, and rework of the sixth stage LPT inner airseal rear retaining wing, in accordance with the following service bulletins (SB's):

PW SB No. 5978, Revision 3, dated May 20, 1992; PW SB No. 5979, Revision 2, dated April 28, 1992; PW SB No. 5847, Revision 2, dated October 31, 1990; and PW SB No. 5745, Revision 2, dated October 24, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The comment requests the inclusion of PW SB No. 6054, Revision 1, dated April 24, 1992, in the proposed rule. This SB describes installation of a new 6th stage LPT inner airseal as a terminating action to the required inspections and rework. The FAA concurs. This final rule includes the option of installing a new, improved 6th stage LPT inner airseal, in accordance with PW SB No. 6054, Revision 1, dated April 24, 1992, as a terminating action to the inspections and rework required by this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 602 Pratt & Whitney Model JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 121 engines installed on aircraft of U.S. Registry would be affected by this proposed AD, that it would take approximately 153 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. The FAA estimates that approximately 50% of affected engines have already incorporated the knife edge modification described in PW SB No. 5847, Revision 2, dated October 31, 1990, and that approximately 5% of affected engines have already incorporated the retaining wing modification described in PW SB No. 5745, Revision 2, dated October 24, 1990. The average utilization of these engines is 2 cycles per day, and the program duration is estimated to be 20 years. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $981,479 over a 20 year period.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–10–09 Pratt & Whitney: Amendment 39–8916. Docket 92–ANE–23.

Applicability: Pratt & Whitney (PW) Model JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines, installed on but not limited to Boeing 747 series, McDonnell Douglas DC–10 series, and Airbus A300 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained failure of the sixth stage low pressure turbine (LPT) inner airseal, which can result in damage to the aircraft, accomplish the following:

(a) For engines that have not had the sixth stage LPT inner airseal reworked in accordance with PW Service Bulletin (SB) No. 5847, Revision 2, dated October 31, 1990, eddy current inspect the sixth stage LPT inner airseal knife edges for cracks in accordance with the Accomplishment Instructions of PW SB No. 5979, Revision 2, dated April 28, 1992, and remove cracked sixth stage LPT inner airseals, as follows:

(1) For sixth stage LPT inner airseals identified by Part Number (P/N) in PW SB No. 5979, Revision 2, dated April 28, 1992, with greater than 2,500 cycles since new (CSN) on the effective date of this AD, accomplish an initial eddy current inspection prior to accumulating more than 250 cycles in service (CIS) after the effective date of this AD, or within 1,000 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later.

(2) For sixth stage LPT inner airseals listed by P/N in PW SB No. 5979, Revision 2, dated April 28, 1992, with less than or equal to 2,500 CSN on the effective date of this AD, accomplish an initial eddy current inspection prior to accumulating more than 2,750 CSN, or within 1,000 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later.

(3) For sixth stage LPT inner airseals that meet the continue in service criteria described in PW SB No. 5979, Revision 2, dated April 28, 1992, thereafter eddy current inspect the sixth stage LPT inner airseal knife edges for cracks in accordance with the Accomplishment Instructions of PW SB No. 5979, Revision 2, dated April 28, 1992, at intervals not to exceed 1,000 CIS since the last eddy current inspection in accordance with this AD.

(4) Remove cracked sixth stage LPT inner airseals that do not meet the continue in service criteria described in PW SB No. 5979, Revision 2, dated April 28, 1992, and replace with a new, or serviceable sixth stage LPT inner airseal that has been reworked in accordance with paragraph (b) of this AD.

(b) Rework the sixth stage LPT inner airseal knife edge diameters in accordance with the Accomplishment Instructions of PW SB No. 5847, Revision 2, dated October 31, 1990, at the next shop visit after the effective date of this AD where the LPT module is accessible, or not later than January 1, 1996, whichever occurs first. Accomplishment of this rework constitutes a terminating action to the initial and repetitive inspection requirements of paragraph (a)(1), (a)(2), and (a)(3) of this AD.

(c) Eddy current or borescope inspect sixth stage LPT inner airseal rear retaining wings for cracks in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 3, dated May 20, 1992, and remove cracked sixth stage LPT inner airseals, as follows:

(1) For sixth stage LPT inner airseals identified by P/N in PW SB No. 5978, Revision 3, dated May 20, 1992, with greater than 500 CSN on the effective date of this AD, accomplish an initial eddy current or borescope inspection prior to accumulating more than 250 CIS after the effective date of this AD, or 500 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later.

(2) For sixth stage LPT inner airseals identified by P/N in PW SB No. 5978, Revision 3, dated May 20, 1992, with less than or equal to 500 CSN on the effective date of this AD, accomplish an initial eddy current or borescope inspection prior to accumulating 750 CSN, or 500 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later.

(3) For sixth stage LPT inner airseals that meet the continue in service criteria described in PW SB No. 5978, Revision 3, dated May 20, 1992, thereafter eddy current or borescope inspect the sixth stage LPT inner airseal retaining wing for cracks at intervals specified in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 3, dated May 20, 1992.

(4) Remove cracked sixth stage LPT inner airseals that do not meet the continue in service criteria described in PW SB No. 5979, Revision 2, dated April 28, 1992, and replace with a new, or serviceable sixth stage LPT inner airseal that has been reworked in accordance with paragraph (b) of this AD.

(b) Rework the sixth stage LPT inner airseal knife edge diameters in accordance with the

Document No.	
PW SB No. 5978	Total Pages: 34.
PW SB No. 5979	Total Pages: 37.
PW SB No. 5847 1–4 2 October 31, 1990..	

or not later than January 1, 1996, whichever occurs first. Accomplishment of this rework constitutes a terminating action to the initial and repetitive inspection requirements of paragraph (a)(1), (a)(2), and (a)(3) of this AD.

(c) Eddy current or borescope inspect sixth stage LPT inner airseal rear retaining wings for cracks in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 3, dated May 20, 1992, and remove cracked sixth stage LPT inner airseals, as follows:

(1) For sixth stage LPT inner airseals identified by P/N in PW SB No. 5978, Revision 3, dated May 20, 1992, with greater than 500 CSN on the effective date of this AD, accomplish an initial eddy current or borescope inspection prior to accumulating more than 250 CIS after the effective date of this AD, or 500 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later.

(2) For sixth stage LPT inner airseals identified by P/N in PW SB No. 5978, Revision 3, dated May 20, 1992, with less than or equal to 500 CSN on the effective date of this AD, accomplish an initial eddy current or borescope inspection prior to accumulating 750 CSN, or 500 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later.

(3) For sixth stage LPT inner airseals that meet the continue in service criteria described in PW SB No. 5978, Revision 3, dated May 20, 1992, thereafter eddy current or borescope inspect the sixth stage LPT inner airseal retaining wing for cracks at intervals specified in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 3, dated May 20, 1992.

(4) Remove cracked sixth stage LPT inner airseals that do not meet the continue in service criteria described in PW SB No. 5979, Revision 2, dated April 28, 1992, and replace with a new, or serviceable sixth stage LPT inner airseal that has been reworked in accordance with paragraph (b) of this AD.

(b) Rework the sixth stage LPT inner airseal knife edge diameters in accordance with the Accomplishment Instructions of PW SB 5847, Revision 2, dated October 31, 1990, at the next shop visit after the effective date of this AD where the LPT module is accessible, or not later than January 1, 1996, whichever occurs first. Accomplishment of this rework constitutes a terminating action to the initial and repetitive inspection requirements of paragraph (a)(1), (a)(2), and (a)(3) of this AD.

(c) Eddy current or borescope inspect sixth stage LPT inner airseal rear retaining wings for cracks in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 3, dated May 20, 1992, and remove cracked sixth stage LPT inner airseals, as follows: (1) For sixth stage LPT inner airseals identified by P/N in PW SB No. 5978, Revision 3, dated May 20, 1992, with greater than 500 CSN on the effective date of this AD, accomplish an initial eddy current or borescope inspection prior to. accumulating more than 250 CIS after the effective date of this AD, or 500 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later. (2) For sixth stage LPT inner airseals identified by P/N in PW SB No. 5978, Revision 3, dated May 20, 1992, with less than or equal to 500 CSN on the effective date of this AD, accomplish an initial eddy current or borescope inspection prior to accumulating 750 CSN, or 500 CIS since the last in-shop fluorescent penetrant inspection, whichever occurs later. (3) For sixth stage LPT inner airseals that meet the continue in service criteria described in PW SB No. 5978, Revision 3, dated May 20, 1992, thereafter, eddy current or borescope inspect the sixth stage LPT inner airseal retaining wing for cracks at intervals specified in accordance with the Accomplishment Instructions of PW SB No. 5978, Revision 3, dated May 20, 1992. (4) Remove cracked sixth stage LPT inner airseals that do not meet the continue in service criteria described in PW SB No. 5978, Revision 3, dated May 20, 1992, and replace with a new, or serviceable sixth stage LPT inner airseal that has been reworked in accordance with paragraph (d) of this AD.

(5) Thereafter, inspect initially, reinspect, and remove from service, if necessary, the replacement sixth stage LPT inner airseals in accordance with paragraph (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

(d) Rework the sixth stage LPT inner airseal rear retaining wing in accordance with the Accomplishment Instructions of PW SB 5745, Revision 2, dated October 24, 1990, at the next shop visit after the effective date of this AD where the LPT module is accessible, or not later than January 1, 1996, whichever occurs first.

NOTE: Rework of the sixth stage LPT inner airseal rear retaining wing in accordance with paragraph (d) of this AD does not exempt sixth stage LPT inner airseals from initial and repetitive inspections in accordance with paragraph (c)(1), (c)(2), (c)(3) of this AD.

(e) Installation of a new, improved 6th stage LPT inner airseal, in accordance with PW SB No. 6054, Revision 1, dated April 24, 1992, constitutes terminating action to the inspections and rework required by this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

NOTE: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections and modifications shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
PW SB No. 5978	1	3	May 20, 1992.
	2	Original	December 19, 1990.
	3–4	2	April 28, 1992.
	5–11	1 October 10, 1991..	
	12	3 October 10, 1991..	
	13–18	1	October 10, 1991.
	19	3	May 20, 1991.
	20–33	1	October 10, 1991.
	34	2	April 28, 1992.
Total Pages: 34.			
PW SB No. 5979	1	2	April 28, 1992.
	2	Original	December 20, 1990.
	3–4	1	September 27, 1991.
	5–33	Original	December 19, 1990.
	34	1	September 27, 1991.
	35–36	Original	December 19, 1990.
	37	2	April 28, 1992.
Total Pages: 37.			
PW SB No. 5847 1–4 2 October 31, 1990..			
	5	Original	April 11, 1989.
	6	2	October 31, 1990.
	7	Original	April 11, 1989.

Document No.	Pages	Revision	Date
	8	2	October 11, 1989.
	9	Original	April 11, 1989.
	10	2	October 11, 1989.
Total Pages: 10.			
PW SB No. 5745	1–9	2	October 24, 1990.
Total Pages: 9.			
PW SB No. 6054	1–4	1	April 24, 1992.
	5–7	Original	November 6, 1991.
	8	1	April 24, 1992.
	9–16	Original	November 6, 1991.
Total Pages: 16.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publication Department, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 13, 1994.

Issued in Burlington, Massachusetts, on July 7, 1994.

Michael H. Borfitz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service

[FR Doc. 94–17068 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 94–ASO–9]

Amend Establishment of Class E Airspace Areas, Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments; correction.

SUMMARY: This action corrects errors in a final rule published on May 23, 1994, (59 FR 26598) Airspace Docket Number 94–ASO–9. The Class E airspace at Jacksonville, Craig Municipal Airport, Florida and Montgomery, Dannelly Field, Alabama are removed. The Class E airspace at Orlando, Executive Airport, Florida is amended. The latitudes and longitudes at the following airports are corrected; Florence, Regional Airport, SC, Wilmington, New Hanover International Airport, NC, Miami, Kendall-Tamiami Executive Airport, FL, St. Petersburg-Clearwater International Airport, FL and Atlanta, Fulton County Airport, GA.

DATES: Effective date: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, Docket Number 94–ASO–9, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 94–12531, Airspace Docket 94–ASO–9 published on May 23, 1994, [59 FR 26598] established Class E airspace areas at numerous locations in South Carolina, North Carolina, Florida, Georgia, Tennessee, and Alabama. The Jacksonville, Craig Municipal Airport, FL and Montgomery, Dannelly Field, AL were inadvertently included as locations to establish Class E airspace areas. This action corrects those errors by removing the Class E airspace designation for Jacksonville, Craig Municipal Airport, FL and Montgomery, Dannelly Field, AL. This action also corrects the legal description for Orlando, Executive Airport, FL Class E airspace by including a sentence that was inadvertently left out of the final rule. Finally, the latitudes and longitudes published for Florence, Regional Airport, SC, Wilmington, New Hanover International Airport, NC, Miami, Kendall-Tamiami Executive Airport, FL, St. Petersburg-Clearwater International Airport, FL, and Atlanta, Fulton County Airport, GA are corrected.

Correction to Final Rule

Accordingly, pursuant to the Authority delegated to me, the aforementioned airspace designations as published in the **Federal Register** on May 23, 1994 [59 FR 26598] (Federal Register Document 94–12531, page 26597, column 3) are corrected in the amendment to the incorporation by reference in 14 CFR 71.1 as follows:

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

ASO AL E2 Mobile, AL [Remove]

Mobile Downtown Airport, AL
(lat. 30°37'35" N, long. 88°04'05" W)

* * * * *

ASO FL E2 Jacksonville Craig Municipal Airport, FL [Remove]

Jacksonville, Craig Municipal Airport, FL
(lat. 30°20'11" N, long. 81°30'52" W)

* * * * *

ASO SC E2 Florence, SC [corrected]

Florence Regional Airport, SC
(lat. 34°11'07" N, long. 79°43'26" W)

That airspace extending upward from the surface within a 4.2-mile radius of Florence Regional Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO NC E2 Wilmington, NC [corrected]

Wilmington, New Hanover International Airport, NC
(lat. 34°16'14" N, long. 77°54'09" W)

That airspace extending upward from the surface within a 5-mile radius of New Hanover International Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 Orlando, FL [Amended]

Orlando, Executive Airport, FL
(lat. 28°32'44" N, long. 81°19'58" W)
Orlando VORTAC
(lat. 28°32'34" N, long. 81°20'06" W)

That airspace extending upward from the surface within a 4-mile radius of Orlando Executive Airport and within 3.6 miles each side of the Orlando VORTAC 254° radial extending from the 4-mile radius to 8.1 miles west of the VORTAC; excluding that portion within the Orlando, FL, Class B airspace area. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 Miami, FL [Corrected]

Miami, Kendall-Tamiami Executive Airport, FL
(lat. 25°38'52" N, long. 80°25'58" W)

That airspace extending upward from the surface within a 3.5-mile radius of the Kendall-Tamiami Executive Airport, FL; excluding that airspace within the Miami, FL, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The published date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 St. Petersburg, FL [Corrected]

St. Petersburg-Clearwater International Airport, FL
(lat. 27°54'39" N, long. 82°41'15" W)

That airspace extending upward from the surface within a 4.2-mile radius of St. Petersburg-Clearwater International Airport; excluding that portion within the Tampa International Airport, FL, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The published date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E2 Atlanta, GA [Corrected]

Atlanta, Fulton County Airport, GA
(lat. 33°46'45" N, long. 84°31'17" W)
Dobbins AFB
(lat. 33°54'54" N, long. 84°31'00" W)

That airspace extending upward from the surface within a 4-mile radius of Fulton County Airport; excluding the portion north of a line connecting the 2 points of intersection with a 5.5-mile radius centered on Dobbins AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on June 20, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–17217 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–13–M

ASO FL E2 Miami, FL [Corrected]

Miami, Kendall-Tamiami Executive Airport, FL
(lat. 25°38'52" N, long. 80°25'58" W)

That airspace extending upward from the surface within a 3.5-mile radius of the Kendall-Tamiami Executive Airport, FL; excluding that airspace within the Miami, FL, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The published date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 St. Petersburg, FL [Corrected]

St. Petersburg-Clearwater International Airport, FL
(lat. 27°54'39" N, long: 82°41'15" W)

That airspace extending upward from the surface within a 4.2-mile radius of St. Petersburg-Clearwater International Airport; excluding that portion within the Tampa International Airport, FL, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The published date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E2 Atlanta, GA [Corrected]

Atlanta, Fulton County Airport, GA
(lat. 33°46'45" N, long. 84°31'17" W)
Dobbins AFB
(lat. 33°54'54" N, long. 84°31'00" W)

That airspace extending upward from the surface within a 4-mile radius of Fulton County Airport; excluding the portion north of a line connecting the 2 points of intersection with a 5.5-mile radius centered on Dobbins AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on June 20, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94-17217 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 89P-0040]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-The-Counter Human Use; Amendment of Final Monograph for OTC Antitussive Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of June 3, 1994 (59 FR 29172). The document amended the final monograph for over-the-counter (OTC) antitussive drug products to include the ingredients diphenhydramine citrate and diphenhydramine hydrochloride. The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertsen, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

In FR Doc. 94-13586, appearing on page 29172 in the **Federal Register** of Friday, June 3, 1994, the following corrections are made:

§ 341.74 [Corrected]

1. On page 29174, in the third column, in § 341.74 *Labeling of antitussive drug products*, paragraphs (d)(1)(iv) and (d)(1)(v) are corrected by removing the quotation marks.

§ 341.90 [Corrected]

2. On page 29174, in the third column, in § 341.90 *Professional labeling*, paragraphs (r) and (s) are corrected by removing the quotation marks.

Dated: July 8, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 94-17158 Filed 7-14-94; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 93-35]

RIN 2125-AD26

Truck Size and Weight; National Network

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA has modified the National Network for commercial motor vehicles by adding routes in Georgia. The National Network was established by a final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. This rulemaking adds 26 segments to the National Network as requested by the State of Georgia.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr Thomas Klimek, Office of Motor Carrier Information Management and Analysis (202-366-2212), or Mr. Charles Medalen, Office of the Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The National Network of Interstate highways and federally-designated routes, on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982, 49 U.S.C. App. 2311 *et seq.*, may operate, was established by the final rule published in the **Federal Register** on June 5, 1984 (49 FR 23302) These highways are located in each State, the District of Columbia, and Puerto Rico. Routes on the National Network are listed in appendix A of Part 658. Additional routes not on the network but available for STAA vehicles are also identified at State request.

Procedures for the addition and deletion of routes are outlined in 23 CFR 658.11 and include the issuance of a notice of proposed rulemaking (NPRM) before final rulemaking. The NPRM listing Georgia's proposed changes to the National Network was published on December 16, 1993 [58 FR 65677].

The State of Georgia, under authority of the Governor, requests the addition of 26 route segments to the National Network. The segments have been

reviewed by State and FHWA offices for general adherence to the criteria of 23 CFR 658.9 and found to provide for the safe operation of larger commercial vehicles and for the needs of interstate commerce.

The segments requested are generally described as:

1. US 19 (GA 300) from Florida State Line to Pelham, 27.6 miles;
2. US 27 (GA 1) from GA 53 south of Rome to US 278 in Cedartown, 12.0 miles;
3. US 27 (GA 1) from Florida State Line to GA 38 in Bainbridge, 19.0 miles;
4. US 41 (GA 3) from GA 5 Connector to County Road 633 near Emerson, 15.2 miles;
5. US 78 (GA 10) from Stone Mountain Freeway to Monroe Bypass, 25.9 miles;
6. US 80 (GA 22) from Alabama State Line to GA 85 in Columbus, 9.9 miles;
7. US 84 (GA 38) from Alabama State Line to I–75, 124.4 miles;
8. US 84 (GA 38) from GA 520 in Waycross to GA 32 in Patterson, 18.1 miles;
9. US 129 (GA 11) from I–85 to I–985, 14.9 miles;
10. US 319 (GA 35) from GA 300 in Thomasville to US 82 in Tifton, 55.7 miles,
11. US 441 (GA 31) from GA 520 in Pearson to GA 135 in Douglas, 13.2 miles;
12. US 441 (GA 24) from I–20 to GA 22 in Milledgeville, 40.1 miles,
13. US 441 (GA 15 Alternate) from Athens Bypass to I–85, 21.1 miles,
14. GA 5 Connector from I–75 to U. S. 41 (GA 3), 1.3 miles;
15. GA 6 from I–20 to GA 6 Bypass near Dallas, 13.8 miles;
16. GA 6 Bypass around Dallas, 6.0 miles;
17. GA 10 Loop (East and South Bypass) in Athens, 11.6 miles;
18. GA 61 from I–20 to GA 166 near Carrollton, 8.6 miles;
19. GA 166 from GA 61 to the end of the 4 lane divided section west of GA 1 at Carrollton, 7.8 miles;
20. GA 247 Connector from I–75 to GA 247 in Warner Robins, 8.5 miles;
21. GA 316 from GA 120 to U S 29 (GA 8), 6.0 miles;
22. GA 515 from I–575 to Blairsville, 63.4 miles;
23. GA 520 from Cusseta to Dawson, 45.7 miles;
24. GA 520 from I–75 to Waycross, 74.8 miles;
25. GA 520 from I–95 to GA 25, 5.4 miles;
26. GA 25 from GA 520 to GA 25 Spur, 6.0 miles.

Eight segments of the current and requested NN routes have been combined for clarity and to better describe the termini. The changes are as follows:

Route	From	To
Segments listed in the NPRM:		
US 19	US 82 Albany	Near Pelham.
US 19	Florida State Line	Pelham.
Replaced by:		
US 19	FL State Line	US 82 Albany.
Segments listed in the NPRM:		
US 82	Dawson	I–75 Tifton.
US 82	US 84 Waycross	I–95 Exit 6 Brunswick.
GA 520/US 82	I–75	Waycross.
Replaced by:		
US 82/GA 520	Dawson	I–95 Exit 6 Brunswick.
Segments listed in the NPRM:		
US 280	Alabama State Line	Cussetta.
GA520/US 280	Cusseta	Dawson.
Replaced by:		
US 280/GA 520	Alabama State Line	Dawson.
Segments listed in the NPRM:		
GA 316 (5 miles)	I–85	Near Lawrenceville.
GA 316	GA 120	US 29.
Replaced by:		
GA 316	I–85	US 29.
Segments listed in the NPRM:		
US 441/GA 15 Alternate	Athens Bypass	I–85.
Replaced by:		
US 441/GA 15	Athens Bypass	I–85.

The word "Alternate" has been removed from the listing contained in the NPRM as a technical correction because Alternate 15 does not coincide with US 441.

With these changes the FHWA is adding the segments requested to the existing route descriptions for Georgia. We are publishing the new Georgia listing in its entirety because of the extent of the revisions.

Rulemaking Analyses and Notices

No comments were received, and FHWA is therefore adopting the rule as proposed. Eight segments have been combined for clarity and to better describe the termini. The changes are described in the Supplementary Information section. The word "Alternate" has been removed as a technical correction because Alternate 15 does not coincide with US 441.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a "significant regulatory action," within the meaning of E.O. 12866, nor is it considered "significant" under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This rulemaking proposes technical amendments to 23 CFR 658, adding certain highway segments in accordance with statutory provisions. These segments represent a very small portion of the National Network and have a negligible impact on the prior system. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FHWA has evaluated the effects of this proposal on small entities. As stated in the preceding paragraph, this rulemaking proposes technical amendments to 23 CFR 658, adding certain highway segments in accordance with statutory provisions. These segments represent a very small portion of the National Network and have a negligible impact on the prior system. This rulemaking would, however, allow motor carriers, including small carriers, access to highways not available to them at the present time.

Based on its evaluation of this proposal, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Route	
US 19	FL State Line
US 23/GA 365	I–985 near Gainesv
US 25	I–16
US 27	GA 53 Rome
US 27	FL State Line
US 27 Alternate GA 85	I–185 Columbus
US 29	US 78 W. Interchar
US 41	I–75 W. of Morrow
US 41	GA 5 Connector
US 76	I–75 Dalton
US 78–US 29	GA 138 Monroe
US 78/GA 410	Valleybrook Rd. Sc
US 78/GA 10	Stone Mountain Fre
US 80/GA 22	AL State Line
US 82/GA 520	Dawson
US 84/GA 38	Alabama State Line
US 84/GA 38	GA 520 Waycross
US 129	I–16
US 129	GA 247 Connector
US 129/GA 11	I–85
US 280/GA 520	Alabama State Line
US 319/GA 35	US 19/GA 300 Thor
US 411–US 41	US 27 Rome
US 441/GA 31	US 82/GA 520 Pea
US 441/GA 24	I–20
US 441/GA 15	Athens Bypass
GA 2	US 27 Fort Ogletho
GA 5 Connector	I–75
GA 6	I–20
GA 6 Bypass	E. of Dallas
GA 10 Loop	E. and S. Bypass in
GA 14 Spur	US 29/Welcome All
GA 21	I–95 Monteith
GA 25	GA 520

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FHWA has evaluated the effects of this proposal on small entities. As stated in the preceding paragraph, this rulemaking proposes technical amendments to 23 CFR 658, adding certain highway segments in accordance with statutory provisions. These segments represent a very small portion of the National Network and have a negligible impact on the prior system. This rulemaking would, however, allow motor carriers, including small carriers, access to highways not available to them at the present time.

Based on its evaluation of this proposal, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The Regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environment Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highway and roads, Motor carrier—size and weight.

Issued on: July 7, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, Chapter 1, by amending appendix A to Part 658 for the State of Georgia as set forth below:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR Part 658 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. app. 2311, 2312, and 2316; 49 CFR 1.48 (b)(19) and (c)(19).

Appendix A [Amended]

2. Appendix A to Part 658 is amended for the State of Georgia by revising the route listing to read as follows:

Appendix A to Part 658—National Network—Federally-Designated Routes

* * * * *

GEORGIA

Route	From	To
US 19	FL State Line	US 82 Albany.
US 23/GA 365	I–985 near Gainesville	US 441 near Cornelia.
US 25	I–16	N. of Statesboro.
US 27	GA 53 Rome	US 278 Cedartown.
US 27	FL State Line	GA 38 Bainbridge.
US 27 Alternate GA 85	I–185 Columbus	Ellerslie.
US 29	US 78 W. Interchange	US 129/441 E. Interchange Athens.
US 41	I–75 W. of Morrow	Near Barnesville.
US 41	GA 5 Connector	County Road 633 Emerson.
US 76	I–75 Dalton	US 411 Chatsworth.
US 78–US 29	GA 138 Monroe	US 29 W. Interchange Athens.
US 78/GA 410	Valleybrook Rd. Scottsdale	GA 10 Stone Mountain.
US 78/GA 10	Stone Mountain Freeway	Monroe Bypass.
US 80/GA 22	AL State Line	GA 85 Columbus.
US 82/GA 520	Dawson	I–95 Exit 6 Brunswick.
US 84/GA 38	Alabama State Line	I–75.
US 84/GA 38	GA 520 Waycross	GA 32 Patterson.
US 129	I–16	Gray.
US 129	GA 247 Connector Warner Robins	I–75 Macon.
US 129/GA 11	I–85	I–985.
US 280/GA 520	Alabama State Line	Dawson.
US 319/GA 35	US 19/GA 300 Thomasville	US 82/GA 520 Tifton.
US 411–US 41	US 27 Rome	I–75 near Emerson.
US 441/GA 31	US 82/GA 520 Pearson	GA 135 Douglas.
US 441/GA 24	I–20	GA 22 Milledgeville.
US 441/GA 15	Athens Bypass	I–85.
GA 2	US 27 Fort Oglethorpe	I–75.
GA 5 Connector	I–75	US 41.
GA 6	I–20	GA 6 Bypass near Dallas.
GA 6 Bypass	E. of Dallas	W. of Dallas.
GA 10 Loop	E. and S. Bypass in Athens	
GA 14 Spur	US 29/Welcome All Road	I–85/285 S. Interchange Atlanta.
GA 21	I–95 Monteith	GA 204 Savannah.
GA 25	GA 520	GA 25 Spur.

GEORGIA—Continued

Route	From	To
GA 25 Spur	US 17 N. of Brunswick	I–95 Exit 8.
GA 53	Rome	I–75 Calhoun.
GA 61	I–20	GA 166 near Carrollton.
GA 85	Fayetteville	I–75.
GA 138	I–20 Conyers	US 78 Monroe.
GA 166	GA 61	End of 4-lane section of W. GA 1 Carrollton.
GA 247C	I–75	GA 247 Warner Robins.
GA 300	US 82 Albany	I–75 near Cordele.
GA 316	I–85	US 29.
GA 400	I–285 near Atlanta	GA 60.
GA 515	I–575	Blairsville.
GA 520	I–95	GA 25.

Note: Atlanta area—Interstate highways within the I–285 beltway are not available to through trucks with more than 6 wheels because of construction.

* * * * *

[FR Doc. 94–17174 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–22–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning July 1, 1994. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in May 1994 through July 1994. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning July 1, 1994, the interest charged on the underpayment of taxes will be at a rate of 8 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the July 1, 1994, through September 30, 1994, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in May of 1994 through July of 1994.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these actions is a "significant regulatory action" under the criteria set forth in Executive Order 12866, because they will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, part 2610 and part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning July 1, 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2610—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From—	Through—	Interest rate (percent)
. . .	. . .	. . .
July 1, 1994 ...	September 30, 1994.	8

3. Appendix B to part 2610 is amended by adding to the table of interest rates new entries for premium payment years beginning in May of 1994 through July of 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, part 2610 and part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning July 1, 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2610—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From—	Through—	Interest rate (percent)
. . . . .		
July 1, 1994 ...	September 30, 1994.	8

3. Appendix B to part 2610 is amended by adding to the table of interest rates new entries for premium payment years beginning in May of 1994 through July of 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
. . . . .	
May 1994	5.82
June 1994	5.93
July 1994	5.92

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning July 1, 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From—	Through—	Interest rate (percent)
. . . . .		
July 1, 1994 ...	September 30, 1994.	8

Issued in Washington, DC, this 11th day of July 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–17250 Filed 7–14–94; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in August 1994, and to multiemployer plans with valuation dates in August 1994. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: August 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the August 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard

termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during August 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during August 1994.

For annuity benefits, the interest rates will be 7.00% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.75% for the period during which benefits are in pay status, 5.00% during the seven years directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums not in excess of $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 must use interest assumptions at least as generous as 120% of the PBGC interest assumptions).) The above annuity interest assumptions represent an increase (from those in effect for July 1994) of .10 percent for the first 25 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent an increase (from those in effect for July 1994) of .25 percent for the period during which benefits are in pay status and the seven years directly preceding that period; they are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during August 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during August 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 10 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $V^{:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the value of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<Y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

Rate set	For valuation dates occurring in the month—	The values of i_t are:																			
		i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}	i_{17}	i_{18}	i_{19}	i_{20}
10	August 1994	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700

Annuity Valuations

In determining the value of interest factors of the form $V^{:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 10 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Rate set	For valuation dates occurring in the month—	The values of i_t are:																			
		i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}	i_{17}	i_{18}	i_{19}	i_{20}
10	August 1994	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700	0.0700

Annuity Valuations

In determining the value of interest factors of the form $V^{:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in

TABLE I
[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
10	8–1–94	9–1–94	5.75	5.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form V^{x}_{n} (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, . . ., and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
August 1994	.0700	1–25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 10 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form V^{x}_{n} (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i^2 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
10	8–1–94	9–1–94	5.75	5.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form V^{x}_{n} (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, . . . , and referred to generally as i_t) assumed to be in effect

between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_1	for t=	i_2	for t=	i_3	for t=
August 1994	.0700	1–25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 11th day of July 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–17251 Filed 7–14–94; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. This amendment adds to the appendix of that regulation a new interest rate to be effective from July 1, 1994, to September 30, 1994. The effect of the amendment is to advise the public of the new rate.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 7.25 percent, which will be effective from July 1, 1994, through September 30, 1994. This rate represents an increase of 1.25 percent from the rate in effect for the second quarter of 1994. This rate is based on the prime rate in effect on June 15, 1994.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table a new entry to read as follows:

Appendix A to Part 2644—Table of Interest Rates

* * * * *

From—	To—	Date of quotation	Rate (percent)
07/01/94	09/30/94	6/15/94	7.25

Issued in Washington, DC, on this 11th day of July 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–17249 Filed 7–14–94; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM). Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 93–3) consists of revisions to Indiana's Surface Coal Mining and Reclamation Rules concerning delegation of authority, ultimate authority, conduct of certain proceedings and record keeping by the administrative law judge (ALJ). The amendment is intended to revise the Indiana Administrative Code (IAC) rules to implement statutory changes contained in the 1991 Senate Enrolled Act (SEA) 154.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of

Issued in Washington, DC, on this 11th day of July 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–17249 Filed 7–14–94; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 93–3) consists of revisions to Indiana's Surface Coal Mining and Reclamation Rules concerning delegation of authority, ultimate authority, conduct of certain proceedings and record keeping by the administrative law judge (ALJ). The amendment is intended to revise the Indiana Administrative Code (IAC) rules to implement statutory changes contained in the 1991 Senate Enrolled Act (SEA) 154.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated June 4, 1991 (Administrative Record Number IND–0894), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program concerning statutes enacted by Indiana under SEA 154 from the 1991 Indiana Legislative Session. The amendments included provisions concerning requirements for hearings, and changes in the responsibilities of the director of the IDNR and the Natural Resources Commission (NRC). OSM approved the proposed amendments on June 23, 1992 (57 FR 27928).

By letter dated April 2, 1993 (Administrative Record Number IND–1217), Indiana submitted proposed program amendment number 93–3. Program amendment 93–3 consists of changes to the Indiana rules concerning delegation of authority, ultimate authority, conduct of certain proceedings, and record keeping by the ALJ. The changes to the Indiana rules reflect the statutory changes contained in the 1991 SEA 154 discussed above.

OSM announced receipt of the proposed amendment in the April 23, 1993, **Federal Register** (58 FR 21693), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 24, 1993. Upon review of the proposed amendments, OSM identified additional changes to the rules which had not been previously reviewed and approved by OSM. On September 21, 1993, OSM reopened the public comment period and invited public comment on those changes which were not previously identified as amendments subject to public comment (58 FR 48996). The public comment period closed on October 6, 1993. OSM reopened the public comment period on March 28, 1994 (59 FR 14375), after Indiana submitted a version of the amendment which differed from the original submittal. The public comment period closed on April 12, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

Revisions which are not discussed below concern nonsubstantive wording changes, or revise paragraph notations to reflect organizational changes resulting from this amendment.

1. 310 IAC 0.6–1–2 Applicability of Rule

(a) Subsection 2(a) is amended by replacing the term "department" with the term "commission." In effect, under this amendment, administrative law judges conduct proceedings for the NRC rather than the IDNR. Under Public Law 28–199, SEA 362 (referred to as the "Sunset" law), Indiana amended Indiana Code (IC) IC 14–3–3–3(e) to provide that the Indiana NRC shall appoint administrative law judges. The proposed amendment, therefore, is consistent with IC 14–3–3–3(e) as amended by SEA 362. OSM approved the amendments to IC 14–3–3–3(e) made by SEA 362 on August 2, 1991 (56 FR 37016). While there is no direct Federal counterpart to the proposed provision at subsection 2(a), the Director finds the proposed amendment is not inconsistent with SMCRA section 503 concerning the establishment of State programs.

(b) Subsection 2(b) is amended to provide that 310 IAC 0.6–1–8 and 310 IAC 0.6–1–12 do not apply if the ALJ is the NRC. The proposed language does not render the Indiana program less effective for the following reasons. 310 IAC 0.6–1–8 pertains to automatic changes of the ALJ. Since the NRC is the ultimate authority for the IDNR, the provision at 310 IAC 0.6–1–8 concerning automatic changes of the ALJ would not apply. 310 IAC 0.6–1–12 also would not apply because section 310 IAC 0.6–1–12 only pertains to orders from other than the ultimate authority. While there is no direct Federal counterpart to the proposed provision at 2(b), the Director finds the proposed amendment is not inconsistent with SMCRA section 503.

(c) This new subsection provides that 310 IAC 0.6–1–12, concerning objections to recommendations of an ALJ, does not apply if IC 4–21.5–4 concerning emergency orders, or if sections 310 IAC 0.6–1–2.5(b) concerning administrative reviews by an ALJ, or (c) concerning final orders by an ALJ apply. Additionally, the proposed language provides that a party may seek judicial review under IC 4–21.5–5 of a final order made by an ALJ under 310 IAC 0.6–1–2.

There is no direct Federal counterpart to the proposed language. The Director finds, however, that the proposed language is not inconsistent with SMCRA because the public has the right

to appeal decisions by the regulatory authority under IC 4–21.5–5 concerning judicial review.

2. 310 IAC 0.6–1–2.5 Ultimate Authority

This new section is added to provide at subsection 2.5(a) that the NRC is the ultimate authority for the IDNR for proceedings under rule 310 IAC 0.6–1, except as provided in subsections 2.5 (b) and (c). In subsection 2.5(b), the ALJ is the ultimate authority for administrative reviews under IC 13–4.1 or 310 IAC 12, except for proceedings concerning the approval or disapproval of a permit application or permit renewal under IC 13–4.1–4–5 and proceedings for suspension or revocation of a permit under IC 13–4.1–11–6. In subsection 2.5(c), an order made by an ALJ granting or denying temporary relief from a decision of the director of the IDNR is a final order of the department.

The proposed language is consistent with the Indiana provisions contained in its "Sunset law" (Pub. L. 28–199, SEA 362). While there is no Federal counterpart to section 2.5, the Director finds that the proposed language is not inconsistent with SMCRA section 503 concerning the establishment of State programs.

3. 310 IAC 0.6–1–17 Record of Proceedings

This new section is added to provide (in subsection 17(a)) that the record required to be kept by an ALJ under IC 4–21.5–3–14 commences with the filing of one of the following with the director of the IDNR: (1) A petition for administrative review under IC 4–21.5–3–7; (2) a complaint under IC 4–21.5–3–8; (3) a proceeding before an ALJ under IC 4–21.5–4.

New subsection 17(b) provides that the record required to be kept by an ALJ consists of the official record as set forth in IC 4–21.5–3–33.

New subsection 17(c) provides that in addition to subsections 17 (a) and (b), subsection 17(c) applies to proceedings concerning the approval or disapproval of a permit application, permit revision application, or permit renewal under IC 13–4.1–4–5.

Upon a timely objection before or during a hearing, the ALJ shall exclude testimony or exhibits which are offered but which identify or otherwise address matters which were not part of the "record before the director" under IC 13–4.1–4–5. The "record before the director" includes each of the following: (1) The permit; (2) the permit application; (3) documentation tendered or referenced in writing by the applicant or an interested person for the purposes of evaluating, or used by the IDNR to evaluate the application; (4) the analyses of the IDNR in considering the application, including the expertise of the IDNR's employees and references used to evaluate the application; (5) documentation received under IC 13–4.1–4–2, including the conduct and results of any informal conference or public hearing under IC 13–4.1–4–2(c); (6) correspondence received or generated by the department relative to the application, including letters of notification, proofs of filing newspaper advertisements, and timely written comments from an interested person.

Upon review of the amendment, OSM informed Indiana that the proposed language at subsection 17(c) appears to limit the record before the director of the IDNR (director) to a degree which would prevent a full public hearing on the application. In response to OSM's concerns, Indiana stated that the State differs with OSM's interpretation of both the intent and application of the proposed language (Administrative Record Number IND–1311).

Indiana stated that the Division of Reclamation of the IDNR agrees with OSM that evidence "created after an agency decision, or otherwise not fairly available to the proponent prior to that decision, is important in determining the propriety of the issuance or denial of a permit." Indiana further stated that "[E]xclusion of valid evidence which was not fairly available prior to the agency action would deny aggrieved individuals a fair opportunity to present evidence and arguments regarding a particular permit application" and would "thwart the fundamental protection purpose of SMCRA."

In order to clarify the Division's interpretation, Indiana stated that "[i]t is not our interpretation that a party should be afforded unlimited license to submit any and all 'evidence' which that party believes relevant." "Clearly," the State asserted, "any information before the agency during the initial decision making process is relevant in a subsequent administrative review proceeding " "However," the State added, "a party should not be permitted to 'sit on their rights' during the entire permit review and public comment periods, thereby denying the reviewing agency the benefit of crucial information, and subsequently challenge the propriety of the agency decision based upon information withheld by the 'aggrieved' party." (Administrative Record No. IND–1311).

In a letter to Indiana dated February 2, 1994 (Administrative Record Number IND–1353), OSM stated its agreement with Indiana's concerns as noted above. However, despite the Division's interpretation of what should or should not be included in the record before the director, OSM stated that it appears that it would be the ALJ, and not the Division of Reclamation, which would decide what evidence could or could not be considered at a hearing or a pre-hearing conference. The ALJ's would decide these issues when presented with objections to the admission of evidence alleged to be outside of the record made before the director.

In response, Indiana stated in a letter dated February 18, 1994 (Administrative Record Number IND–1337), that it disagreed with OSM's interpretation that a plain language reading of the proposed language at 310 IAC 0.6–1–17(c) requires exclusion of evidence generated after a decision, or not fairly available in advance of the agency decision. Instead, Indiana offered reasons why it believes the proposed language affords sufficient flexibility to permit the introduction of such evidence.

Indiana asserted that the proposed language provides that subsections 17 (a) and (b) apply to permit review proceedings. Subsection 17(b) states that the "record" includes the "official record" under IC 4–21.5–3–33. IC 4–21.5–3–33(b)(4) provides, in part, that the agency record includes "evidence received or considered." "Similarly," the State asserts, "IC 4–21.5–3–33(b)(6) provides that the agency record includes proffers of proof and objections and rulings on them." The Division of Reclamation interprets the above-referenced provisions as being sufficiently general to allow the introduction of evidence generated after, or not fairly available in advance of the agency decision under review.

Indiana noted that 310 IAC 0.6–1–17(c) provides that "* * * nothing in this subsection precludes the admission of testimony or exhibits which are limited to an explanation or analysis of materials included in the record before the director, or the manner in which the materials were applied, used, or relied upon in evaluating the application." The Division of Reclamation interprets this provision "as providing sufficient flexibility to permit the introduction of evidence generated after, or not fairly available in advance of the agency decision as explanation or analysis evidence." (Administrative Record No. IND–1337).

The Director agrees that the provisions cited by Indiana could indeed be interpreted as to allow the introduction of some evidence generated after, or not fairly available in advance of the agency decision. Again, however, the ALJ's will be charged with interpreting this regulation, not the IDNR.

Subsection 514(c) of SMCRA and 30 CFR 775.11(b)(1) require that hearings conducted by State regulatory authorities on permitting decisions must be of record and adjudicatory in nature. Indiana meets those standards. Consequently, Indiana's proposed language is no less stringent than SMCRA and no less effective than the Federal regulations. The Director understands that under this rule some evidence and documentation could be ruled inadmissible by an ALJ in a post-decisional hearing. However, this rule does not prevent such evidence and documentation from being remanded by an ALJ to the regulatory authority for analysis and reconsideration of its permit decision. In this way, evidence submitted which is deemed relevant and important to a permit decision can be considered, while at the same time assuring that permit decisions remain in the hands of the regulatory authority.

4. 310 IAC 0.6–1–9 Defaults, Dismissals, Agreed Orders, and Consent Decrees

Subsection 9(a) has been amended to provide that an ALJ may, on its own motion or the motion of a party, enter a nonfinal order of default or dismissal, as appropriate, and submit the nonfinal order to the secretary of the NRC for final action if any of the described conditions are met. Prior to this amendment, the rule only provided for nonfinal orders of dismissal by the ALJ. New subsection 9(a)(3) is added to provide that the ALJ may enter a nonfinal order of default or dismissal where the party which initiated the administrative review requests the proceeding be dismissed, and every other party joins or acquiesces in the dismissal. In addition, new subsection 9(a)(4) is added to provide that where the ALJ may enter a nonfinal default or dismissal order, a default or dismissal could be entered in a civil action.

New subsection 9(b) provides that an ALJ shall approve an agreed order or consent decree entered by the parties, if it is: (1) Clear and concise; and (2) lawful.

New subsection 9(c) provides that an ALJ may enter a nonfinal order of default or a nonfinal order of involuntary dismissal only following the issuance of a proposed order of default or proposed order of dismissal under IC 4–21.5–3–24.

New subsection 9(d) provides that the secretary of the NRC, as the designee of the NRC under IC 4–21.5–3–28(b), may affirm the entry of a nonfinal default

however, the ALJ's will be charged with interpreting this regulation, not the IDNR.

Subsection 514(c) of SMCRA and 30 CFR 775.11(b)(1) require that hearings conducted by State regulatory authorities on permitting decisions must be of record and adjudicatory in nature. Indiana meets those standards. Consequently, Indiana's proposed language is no less stringent than SMCRA and no less effective than the Federal regulations. The Director understands that under this rule some evidence and documentation could be ruled inadmissible by an ALJ in a post-decisional hearing. However, this rule does not prevent such evidence and documentation from being remanded by an ALJ to the regulatory authority for analysis and reconsideration of its permit decision. In this way, evidence submitted which is deemed relevant and important to a permit decision can be considered, while at the same time assuring that permit decisions remain in the hands of the regulatory authority.

4. 310 IAC 0.6–1–9 Defaults, Dismissals, Agreed Orders, and Consent Decrees

Subsection 9(a) has been amended to provide that an ALJ may, on its own motion or the motion of a party, enter a nonfinal order of default or dismissal, as appropriate, and submit the nonfinal order to the secretary of the NRC for final action if any of the described conditions are met. Prior to this amendment, the rule only provided for nonfinal orders of dismissal by the ALJ. New subsection 9(a)(3) is added to provide that the ALJ may enter a nonfinal order of default or dismissal where the party which initiated the administrative review requests the proceeding be dismissed, and every other party joins or acquiesces in the dismissal. In addition, new subsection 9(a)(4) is added to provide that where the ALJ may enter a nonfinal default or dismissal order, a default or dismissal could be entered in a civil action.

New subsection 9(b) provides that an ALJ shall approve an agreed order or consent decree entered by the parties, if it is: (1) Clear and concise; and (2) lawful.

New subsection 9(c) provides that an ALJ may enter a nonfinal order of default or a nonfinal order of involuntary dismissal only following the issuance of a proposed order of default or proposed order of dismissal under IC 4–21.5–3–24.

New subsection 9(d) provides that the secretary of the NRC, as the designee of the NRC under IC 4–21.5–3–28(b), may affirm the entry of a nonfinal default order, dismissal order, or consent decree. The secretary of the NRC has exclusive authority to approve, remand, or submit to the commission for final action, any nonfinal order or decree entered by an ALJ under section 310 IAC 0.6–1–9. A party which opposes the entry of a final order by the secretary of the NRC must file a written objection, and the ALJ and any other party may file a written response to the objection.

Subsection 9(e) is amended to provide that an order of default, order of dismissal, agreed order, or consent decree made by the secretary of the NRC is a final order of the IDNR and is made with prejudice, unless otherwise specified in the order or decree. Prior to the proposed amendment, the rule did not include an order of default by the Secretary as a final order of the IDNR, nor did it specify the secretary of the NRC as the designee of the IDNR for purposes of issuing final orders.

New subsection 9(f) provides that an order of default, order of dismissal, agreed order, or consent decree made by an ALJ, where acting as the ultimate authority for the IDNR under section 310 IAC 0.6–1–2.5(b), is a final order of the department unless otherwise specified in the order or decree. A person may seek judicial review of a final order entered under 310 IAC 0.6–1–9(f) as provided in IC 4–21.5–5.

There are no direct counterparts to the proposed rules. The Director finds, however, that the proposed rules are not inconsistent with SMCRA at section 514 concerning decisions of the regulatory authority and appeals, and the Federal regulations at 30 CFR Part 775 concerning administrative and judicial review of decisions.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No agency comments were received concerning the proposed amendments to the Indiana program.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the April 23, 1993, **Federal Register** (58 FR 21693). The comment period closed on May 24, 1993. The public comment period was reopened on September 21, 1993 (58 FR 48996) and again on March 28, 1994 (59 FR 14375). These comment periods closed on October 6, 1993, and April 12, 1994, respectively. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. The Indiana Coal Council, Inc. (ICC) commented in support of the proposed amendments.

Ms. F. K. Harris commented that the proposed amendment at 310 IAC 0.6–1–17(c), which authorizes the ALJ to exclude testimony or exhibits which are offered but which identify matters which were not part of the "record before the director," inappropriately limits the evidence which can be introduced at a permit review hearing. The Director disagrees. As discussed above in Finding 3, SMCRA at section 514(c) and the Federal regulations at 30 CFR 775.11(b)(1) provide that hearings conducted by State regulatory authorities on permitting decisions must be of record and adjudicatory in nature. Indiana meets those standards. The proposed language may allow some information or documentation to be excluded from post-decisional hearings. However, this proposal does not prevent and ALJ at a permit hearing from remanding relevant and important information and documentation to the regulatory authority for analysis and reconsideration of its permit decision. Such a remand would benefit the State in its interest in issuing only those permits, revisions, and renewals which should be issued.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IND–1221). EPA did not respond to OSM's request.

V. Director's Decision

Based on the findings above, the Director is approving Indiana's program amendment number 93–3 as submitted by Indiana on April 2, 1993, and clarified by OSM on September 21, 1993, and March 28, 1994.

The Federal regulations at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage

States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 9, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 914.15, paragraph (aaa) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(aaa) The following amendment (Program Amendment Number 93–3) to the Indiana program as submitted to OSM on April 2, 1993, and clarified on September 21, 1993, and March 28, 1994, is approved effective July 15, 1994: 310 IAC 0.6–1–2 concerning applicability of the rule; 310 IAC 0.6–1–2.5 concerning ultimate authority for the Indiana Department of Natural Resources; 310 IAC 0.6–1–9 concerning defaults, dismissals, agreed orders, and consent decrees, and 310 IAC 0.6–1–17 concerning record of the director for surface coal mining permits.

[FR Doc. 94–17283 Filed 7–14–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–94–019]

RIN 2115–AE47

Drawbridge Operation Regulations; Saginaw River, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment removes the regulations for the I–75 highway drawbridge, mile 14.5 across the Saginaw River at Zilwaukee, Michigan, because a fixed span replacement bridge has been constructed and the bascule bridge has been removed. A notice of proposed rulemaking has not been issued for this regulation because the bascule bridge is no longer in existence, eliminating the need for regulation.

EFFECTIVE DATE: This rule becomes effective on August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Chief, Bridge Branch, Ninth Coast Guard District, at (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document is Mr. Fred H. Mieser, Project Manager.

Background and Purpose

The bascule bridge across the Saginaw River, mile 14.5, at Zilwaukee, Michigan, was replaced by a high level fixed bridge at mile 14.61 from the mouth of the river. The bascule bridge has been removed; therefore, the need for 33 CFR 117.647(c) has been eliminated. This action has no economic consequences. It merely removes regulations for a bridge that no longer exists.

This action necessitates redesignating the regulations listed in 33 CFR 117.647 (d), (e), and (f) for the Sixth Avenue bridge, mile 17.1, Chessie System railroad bridge, mile 18.0, and Grand Trunk Western railroad bridge, mile 19.2 all across the Saginaw River within the State of Michigan.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because the rule which is being changed is for a drawbridge that has been removed from the waterway and no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since the I–75 drawbridge has been removed and replaced by a fixed bridge, the rule governing the I–75 drawbridge is no longer appropriate. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been prepared and placed in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 117 as follows:

significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because the rule which is being changed is for a drawbridge that has been removed from the waterway and no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since the I–75 drawbridge has been removed and replaced by a fixed bridge, the rule governing the I–75 drawbridge is no longer appropriate. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been prepared and placed in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for part 117 continues to read as follows.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.647, paragraph (c) is removed and paragraphs (d), (e), and (f) are redesignated as paragraphs (c), (d), and (e) respectively.

Dated: July 5, 1994.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 94–17274 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Federal Public Lands in Alaska; Customary and Traditional Use Eligibility Determinations; Review Policies

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Review policies.

SUMMARY: Pursuant to the regulatory authority found at 36 CFR 242.10(a), 242.18(b), 50 CFR 100.10(a), and 100.18(b), the Federal Subsistence Board (Board) provides notice of a priority list and associated schedule for reviewing customary and traditional use eligibility determinations, and details the associated administrative process, under the Federal Subsistence Management Program.

EFFECTIVE DATE: The Federal Subsistence Board policies shall be effective July 15, 1994.

ADDRESSES: Any comments concerning this notice may be sent to the Chair, Federal Subsistence Board, c/o Richard S. Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628; telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Background

In 1990, the Board assumed subsistence management responsibilities on Federal public lands and adopted the existing State of Alaska customary and traditional use eligibility determinations. Such determinations identified customary and traditional subsistence uses of certain fish and wildlife resources by specific communities and areas in Alaska. Due to changes in the rural status of some communities, public comments on the draft environmental impact statement "Subsistence Management for Federal Public Lands in Alaska" (October 7, 1991), comments received on temporary and implementing subsistence regulations, and customary and traditional use eligibility determination appeals submitted under the temporary subsistence regulations, the Board recognized the need for new assessments of existing customary and traditional use eligibility determinations. However, the Board deferred action on customary and traditional use eligibility until after July 1, 1992 (the effective date of final implementing rules for the Federal subsistence program) and indicated that a customary and traditional use determination process and schedule would be developed and published. Customary and traditional use eligibility determination assessments were begun in regard to the Kenai Peninsula and Upper Tanana areas in 1992, and the Copper River Basin more recently. These areas were prioritized based upon public comments received during the environmental impact statement process and subsequent Board meetings. This notice sets forth an initial customary and traditional use eligibility determination schedule to be updated on a routine basis dependent upon input from the public and Federal Subsistence Regional Advisory Councils (Regional Councils). Details of the administrative process involved in customary and traditional assessments, public and advisory council input opportunities, and decision making steps, are also set forth.

Customary and Traditional Use Eligibility Determination Procedures

The Board will implement a systematic program for review of customary and traditional use eligibility

determinations. As a priority consideration, the Board will focus its determinations on community or area uses of large mammals (ungulates and bears). Nevertheless, the Board recognizes that subsistence is in large part exemplified by reliance upon, and traditional use of, a multitude of fish and wildlife species, and consequently even the Board's initial large mammal assessments will examine information on subsistence uses of varied species. Furthermore, the Board retains the authority to initiate assessments and make eligibility determinations related to the customary and traditional use of any species as recommended by Regional Councils or as necessary for proper administration of the program. The Board will examine uses of species of large mammals by communities or areas rather than focus on individual herds.

The Board recognizes that subsistence resource use patterns of neighboring communities are often interrelated and should be analyzed concurrently. The Board has identified 26 areas in Alaska where neighboring communities are thought to have similar patterns of resource uses. In identifying these "analysis areas" the distribution of Federal public lands and associated jurisdictions of Regional Councils were taken into account. The 26 analysis areas constitute geographically distinct regions of Alaska within which customary and traditional use patterns of a community or communities will be documented and analyzed. Within each analysis area, the determinations will focus primarily on the customary and traditional uses of large mammals by the communities located within that analysis area. Existing eligibility determinations regarding communities and areas adjacent to the area under analysis will not be revised unless a full assessment and review of those areas or communities have occurred.

Existing regulations at 36 CFR 242.16(b) and 50 CFR 100.16(b) identify eight factors that exemplify customary and traditional subsistence uses of a community or area. The Board will base its determination of customary and traditional use eligibility on the extent to which a community, group of communities, or area meet the characteristics of these identified factors. The eight factors are as follows:

1. A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

2. A pattern of use recurring in specific seasons for many years;

3. A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

4. The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

5. A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

6. A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

7. A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

8. A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social and nutritional elements to the community or area.

To reach final decisions on customary and traditional use eligibility, several steps in the process of initiating, preparing, reviewing, noticing, evaluating public comments, and acting on each customary and traditional use assessment will have to be accomplished. All participating Federal agencies and the Regional Councils have substantial roles in the completion of these tasks and eventual customary and traditional use eligibility determinations. In addition, customary and traditional use eligibility determinations will be subject to Federal rulemaking procedures for which considerable public review and comment opportunities are afforded.

The following steps form the framework of the administrative process which will be applied in reaching customary and traditional use eligibility determinations:

Scoping—Define, in consultation with pertinent Regional Councils, affected rural communities within or adjacent to the analysis area that will be part of the assessment. Consult with local residents, Regional councils, and local advisory committees for input on methodology of assessment, special public participation needs, and other local insight.

Information Collection—Collect and analyze available literature, harvest reports, interviews, and other available information. Determine if available information is adequate to make determinations. Recommend and/or plan for additional information gathering or studies if needed.

Analysis—Analyze information as related to eight regulatory factors identified in the Federal Subsistence Management Program regulations. Prepare and present an assessment report including conclusions on needed changes to existing determinations to pertinent Regional Council, and other entities as requested, and take comments on adequacy of analysis; revise analysis as necessary.

Regional Council Review—Prepare and present to the pertinent Regional Council, initial staff recommendations relative to use eligibility determinations. These recommendations will be reviewed by all affected Regional Councils.

Proposed Rule—Revise the staff recommendations in consideration of the Regional Council comments and publish a proposed rule in the **Federal Register**.

Public Review—Hold public meetings and accept comments from the public, Regional Councils, local advisory committees, and affected communities. Regional Councils will review public comments and develop recommendations for Board consideration.

Board Decision—Board receives Regional Council recommendations and makes customary and traditional use eligibility determinations, subsequently published as a final rule in the **Federal Register**. New, customary and traditional use eligibility determinations will be scheduled to take effect at the beginning of a Federal subsistence regulatory year (July 1).

These steps have been developed as a result of experience, and Regional Council input regarding the Kenai Peninsula and Upper Tanana areas' customary and traditional use eligibility determinations which were begun in 1992. The determination process for both of those areas is well along, with determinations expected to be completed during 1995.

Depending on the complexity of the issues and area under review, the scoping, information collection, and analysis portions of each customary and traditional use eligibility determination action are expected to take at least a year. In most instances it is foreseen that public involvement may extend the period required for each determination to greater than a year.

Customary and Traditional Use Determination Priorities

In order to provide for an adequate review of customary and traditional use eligibility, the Board recognizes that not all customary and traditional use eligibility determination requests and agency assessments could be addressed at the same time. Consequently, the Board has established customary and traditional use eligibility determination priorities which are based on public requests, recommendations of Regional Councils and Federal land management agencies, and the availability of personnel and financial resources to conduct the work. At the present time, the Board has established priorities for customary and traditional use assessments for 1994–1995.

Analysis area and priority order
1. Upper Tanana
2. Kenai Peninsula
3. Copper River Basin
4. Yukon-Kuskokwim Delta
5. Minto
6. Yukon Flats
7. Eastern North Slope
Completion dates of the following prioritized areas be determined:
Stikine
Denali/Parks Highway
Eastern Interior
Iditarod-George
Chatham
Prince William Sound
Ketchikan
Bristol Bay
Middle Yukon
Kodiak
Brooks Range
Lake Clark
Alaska Peninsula
Seward Peninsula
Kotzebue Sound
Norton Sound
Western North Slope
Aleutians
Talkeetna

Drafting Information

This policy was drafted under the guidance of Richard S. Pospahala, U.S. Fish and Wildlife Service, Alaska Regional Office, Office of Subsistence Management, Anchorage, Alaska. The primary authors were Taylor Brelsford and William Knauer of the same office; John Hiscock of the National Park Service, Alaska Regional Office; Tom Boyd, Bureau of Land Management, Alaska State Office; and Norm Howse, USDA-Forest Service, Alaska Regional Office.

agency assessments could be addressed at the same time. Consequently, the Board has established customary and traditional use eligibility determination priorities which are based on public requests, recommendations of Regional Councils and Federal land management agencies, and the availability of personnel and financial resources to conduct the work. At the present time, the Board has established priorities for customary and traditional use assessments for 1994–1995.

Assessments begun in 1992 regarding the Kenai Peninsula and Upper Tanana areas are nearing completion. In contemplation of those customary and traditional use eligibility determinations which will be completed after 1995, the Board intends to continue to review requests submitted from the public, and recommendations from the Regional Councils and Federal agencies, and any additional information which might be pertinent. As necessary, an updated customary and traditional use eligibility determination schedule will be published in the **Federal Register** in ensuing years. In addition, the Board retains the flexibility to respond to management problems as needed, including those instances in which customary and traditional use eligibility determinations may need modification on an urgent basis.

The current schedule and priority list for making customary and traditional use eligibility determinations is as follows:

Analysis area and priority order	Regional advisory council	Unit	Year of completion
1. Upper Tanana	Eastern Interior	12	1995
2. Kenai Peninsula	Southcentral	7, 15	1995
3. Copper River Basin	Southcentral	11, 13(A–D)	1996
4. Yukon-Kuskokwim Delta	Western Interior	18	1995
5. Minto	Eastern Interior	20(A), (B), (D), (F); 25 (C)	1996
6. Yukon Flats	Eastern Interior	25(A), (B), (D)	1995
7. Eastern North Slope	North Slope	26(B), (C)	1995
Completion dates of the following prioritized areas to be determined:			
Stikine	Southeast	1(B), 3	.....
Denali/Parks Highway	Eastern Interior	20(A), (C), 13(E), 16	.....
Eastern Interior	Eastern Interior	20(E)	.....
Iditarod-George	Western Interior	19, 21(E)	.....
Chatham	Southeast	1(C), (D), 4; 5(A), (B)	.....
Prince William Sound	Southcentral	6	.....
Ketchikan	Southeast	1(A), 2	.....
Bristol Bay	Bristol Bay	17	.....
Middle Yukon	Western Interior	21(A), (B), (C), (D)	.....
Kodiak	Kodiak/Aleutians	8	.....
Brooks Range	Western Interior	24	.....
Lake Clark	Bristol Bay	9(A), (B), (C)	.....
Alaska Peninsula	Bristol Bay	9(D) & (E)	.....
Seward Peninsula	Seward Peninsula	22(C), (D), (E)	.....
Kotzebue Sound	Northwest Arctic	23	.....
Norton Sound	Seward Peninsula	22(A), (B)	.....
Western North Slope	North Slope	26(A)	.....
Aleutians	Kodiak/Aleutians	10	.....
Talkeetna	Southcentral	14	.....

Drafting Information

This policy was drafted under the guidance of Richard S. Pospahala, U.S. Fish and Wildlife Service, Alaska Regional Office, Office of Subsistence Management, Anchorage, Alaska. The primary authors were Taylor Brelsford and William Knauer of the same office; John Hiscock of the National Park Service, Alaska Regional Office; Tom Boyd, Bureau of Land Management, Alaska State Office; and Norm Howse, USDA-Forest Service, Alaska Regional Office.

Dated: June 16, 1994.

William L. Hensley,

Chair, Federal Subsistence Board.

Dated: June 24, 1994.

Robert W. Williams,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 94–17041 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–5013–2]

Outer Continental Shelf Air Regulations; Delegation of Authority; South Coast Air Quality Management District, State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The Regional Administrator for EPA Region 9, San Francisco, has delegated authority to implement and enforce the requirements of the Outer Continental Shelf (OCS) program within 25 miles of the state's seaward boundary to the South Coast Air Quality Management District (SCAQMD or District), California. EPA reviewed the

District's rules and regulations and has found them to be adequate for delegation, provided that the District meets the requirements of 40 CFR 51.161(b) and 40 CFR part 124 by amending Rule 212, Standards for Approving Permits, to incorporate public notice and comment procedures for permitting of OCS facilities.

EFFECTIVE DATES: The effective date of the delegation of authority for SCAQMD is May 9, 1994.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region 9 office during normal business hours and at the following location:

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105. (415) 744–1197.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency has delegated the authority to implement and enforce the requirements of the OCS rule (40 CFR part 55) to the SCAQMD. The final OCS rule was promulgated by EPA on September 4, 1992 pursuant to section 328 of the Clean Air Act (the Act). (57 FR 40792).

Under section 328(a) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources and the District's regulations have been reviewed by EPA. The following criteria for delegation are set forth at 40 CFR 55.11:[1] (1) the state has adopted the appropriate portions of 40 CFR part 55 into law; (2) the state has adequate authority under state law to implement and enforce the requirements of part 55; (3) the state has adequate resources to implement and enforce the requirements of part 55; and (4) the state has adequate administrative procedures to implement and enforce the requirements of part 55, including public notice and comment procedures.

The following delegation agreement represents the terms and conditions of the delegation to the SCAQMD:

U.S. EPA—South Coast Air Quality Management District, Agreement for Delegation of Authority for Outer Continental Shelf Air Regulations (40 CFR Part 55)

The undersigned, on behalf of the South Coast Air Quality Management District ("SCAQMD" or "the District") and the United States Environmental Protection Agency ("EPA"), hereby agree to the delegation of authority from EPA to the SCAQMD to implement and enforce the requirements of the Outer Continental Shelf ("OCS") Air Regulations (40 CFR part 55) within 25 miles of the state's seaward boundary, pursuant to section 328(a)(3) of the Clean Air Act ("the Act"), subject to the terms and conditions below. EPA has reviewed SCAQMD's request for delegation and has found that SCAQMD's regulations meet the requirements for delegation set forth at 40 CFR 55.11, provided that the District meets the requirements of 40 CFR 51.161(b) and 40 CFR part 124 by amending Rule 212, Standards for Approving Permits, to incorporate public notice and comment procedures for permitting of OCS facilities. Until the District Board approves an amended Rule 212 that meets the requirements of 40 CFR 51.161(b) and 40 CFR part 124, the District shall interpret the current Rule 212 to incorporate the requirements of 40 CFR 51.161(b) and 40 CFR part 124. In addition, the District shall provide a copy of its Rule 212 interpretation to all OCS sources regulated by the District, and a copy to the Administrator through the EPA Regional Office (Attn: A–5–1). The public notice distribution, for purposes of all major modifications to off-shore sources, shall be to the broadest possible scope of interested parties and shall include as a minimum:

- Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the State or local agency's analysis of the effect on air quality;
- A 30-day period for submittal of public comment; and
- A notice by prominent advertisement in the area affected of the location of the source information and the analysis of the effect on air quality.

This delegation includes authority for the following sections of the Outer Continental Shelf Air Regulations:

Section	Title
55.1	Statutory authority and scope.
55.2	Definitions.
55.3	Applicability.
55.4	Requirements to submit a notice of intent.
55.6	Permit requirements.
55.7	Exemptions.
55.8	Monitoring, reporting, inspections, and compliance.
55.9	Enforcement.
55.10	Fees.
55.13	Federal requirements that apply to OCS sources.
55.14	Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries by state.

EPA is not delegating the authority to implement and enforce sections 55.5 (Corresponding onshore area designation), 55.11 (Delegation), and 55.12 (Consistency updates), as authority for these sections is reserved to the Administrator. The District has also adopted Appendix A to 40 CFR part 55, Listing of State and Local Requirements Incorporated by Reference into part 55, by State. The authority to revise or amend this section is reserved to EPA Region 9. In addition, SCAQMD has not yet received delegation of authority from EPA for implementation and enforcement of the federal Prevention of Significant Deterioration Program (PSD). Therefore, EPA shall retain authority for the PSD provisions of part C of the Act and the regulations promulgated thereunder at 40 CFR 52.21.

Under section 328(a)(3) of the Act, EPA may delegate authority to implement and enforce the OCS air regulations to a state if that state is adjacent to an OCS source and the Administrator determines that the state's regulations are adequate. The State of California is adjacent to a number of OCS sources. For the OCS sources for which the South Coast has been designated the corresponding onshore area (COA), the State has submitted SCAQMD's regulations to EPA and requested that EPA delegate to SCAQMD authority to implement and enforce the OCS air regulations. SCAQMD's regulations have been reviewed by EPA and, in conjunction with the District's commitment to amend Rule 212 to (1) incorporate public notice and comment procedures for OCS facilities; and (2) to interpret the current Rule 212 to incorporate public notice and comment procedures for OCS facilities until Rule 212 is amended, EPA determined the regulations to be adequate for implementing and enforcing the delegable sections of 40 CFR part 55.

The OCS air regulations set forth the following criteria for delegation at 40 CFR 55.11:

(1) The state has adopted the appropriate portions of 40 CFR part 55 into state law—SCAQMD adopted Rule 1183, Outer Continental Shelf Air Regulations, on March 12, 1993. This rule incorporates the provisions of 40 CFR part 55 that EPA is delegating to the District. (NOTE: §§ 55.5 (corresponding onshore area designations), 55.11 (delegation), 55.12 (consistency updates), Appendix A (Listing of State and Local Requirements) were adopted by SCAQMD but EPA will not delegate authority for these sections, as provided by § 55.11(a)).

(2) The state has adequate authority under state law to implement and enforce the requirements of part 55—

[1] The term "state" as used in the delegation criteria refers to the local air pollution permitting agency—SCAQMD.

Rule 104 ...	Reporting of Source Test Data and
Rule 105 ...	Authority to Arrest
Rule 106 ...	Increments of Progress
Rule 109 ...	Recordkeeping for Volatile Organic
Rule 110 ...	Rule Adoption Procedure to Assure

Rule 201 ...	Permit to Construct
Rule 203 ...	Permit to Operate
Rule 204 ...	Permit Conditions
Rule 210 ...	Applications
Rule 212 ...	Standards for Approving Permits (p and comment for OCS sources).
Rule 214 ...	Denial of Permits
Rule 216 ...	Appeals
Rule 221 ...	Plans

Rule 301 ...	Permit Fees
Rule 303 ...	Hearing Board Fees
Rule 306 ...	Plan Fees

Rule 430 ...	Breakdown Provisions

Regu

Rule 501 ...	General
Rule 502 ...	Filing Petitions
Rule 503 ...	Petitions for Variances and Appeals
Rule 503.1	Ex Parte Petitions for Variances
Rule 504 ...	Rules from which Variances are not
Rule 506 ...	Failure to Comply with Rules
Rule 507 ...	Pleadings
Rule 510 ...	Notice of Hearing
Rule 511 ...	Evidence
Rule 511.1	Subpoenas
Rule 513 ...	Administrative Notice
Rule 514 ...	Continuances
Rule 515 ...	Findings and Decisions
Rule 517 ...	Emergency Variances—Procedures

Rule 703 ...	Episode Criteria
Rule 704 ...	Episode Declaration
Rule 706 ...	Episode Notification
Rule 708 ...	Plans

1183, Outer Continental Shelf Air Regulations, on March 12, 1993. This rule incorporates the provisions of 40 CFR part 55 that EPA is delegating to the District. (NOTE: §§ 55.5 (corresponding onshore area designations), 55.11 (delegation), 55.12 (consistency updates), Appendix A (Listing of State and Local Requirements) were adopted by SCAQMD but EPA will not delegate authority for these sections, as provided by § 55.11(a)).

(2) The state has adequate authority under state law to implement and enforce the requirements of part 55—According to a letter dated January 25, 1993 and forwarded to EPA from the State Attorney General, SCAQMD has the authority to implement and enforce the requirements of part 55.

(3) The state has adequate resources to implement and enforce the requirements of part 55—SCAQMD has submitted information documenting that the District has adequate resources to implement and enforce the requirements of part 55.

(4) The state has adequate administrative procedures to implement and enforce the requirements of this part, including public notice and comment procedures—SCAQMD's administrative procedures have been reviewed by EPA and found to be adequate assuming that the District: (1) amends Rule 212 for OCS sources in accordance with 40 CFR § 51.161(b) and 40 CFR 124; and (2) interprets the current Rule 212 for OCS sources in accordance with 40 CFR 51.161(b) and 40 CFR 124.

EPA is delegating authority to implement and enforce part 55 pursuant to the SCAQMD's use of the following administrative and procedural rules:

Regulation I—General Provisions

Rule 104	Reporting of Source Test Data and Analysis	January 9, 1976.
Rule 105	Authority to Arrest	January 9, 1976.
Rule 106	Increments of Progress	January 9, 1976.
Rule 109	Recordkeeping for Volatile Organic Compounds	March 6, 1992.
Rule 110	Rule Adoption Procedure to Assure Protection and Enhancement of The Environment	October 7, 1988.

Regulation II—Permits

Rule 201	Permit to Construct	January 5, 1990.
Rule 203	Permit to Operate	January 5, 1990.
Rule 204	Permit Conditions	March 6, 1992.
Rule 210	Applications	January 5, 1990.
Rule 212	Standards for Approving Permits (provided the Rule is interpreted and implemented to require public notice and comment for OCS sources).	September 6, 1991.
Rule 214	Denial of Permits	January 5, 1990.
Rule 216	Appeals	January 5, 1990.
Rule 221	Plans	January 4, 1985.

Regulation III—Fees

Rule 301	Permit Fees	June 11, 1993.
Rule 303	Hearing Board Fees	June 6, 1992.
Rule 306	Plan Fees	July 6, 1990.

Regulation IV—Prohibitions

Rule 430	Breakdown Provisions	May 5, 1978.

Regulation V—Procedure Before the Hearing Board

Rule 501	General	February 5, 1988.
Rule 502	Filing Petitions	July 10, 1992.
Rule 503	Petitions for Variances and Appeals	February 5, 1988.
Rule 503.1	Ex Parte Petitions for Variances	February 5, 1988.
Rule 504	Rules from which Variances are not allowed	January 5, 1990.
Rule 506	Failure to Comply with Rules	February 5, 1988.
Rule 507	Pleadings	August 1, 1995.
Rule 510	Notice of Hearing	February 5, 1988.
Rule 511	Evidence	February 5, 1988.
Rule 511.1	Subpoenas	February 5, 1988.
Rule 513	Administrative Notice	February 5, 1988.
Rule 514	Continuances	February 5, 1988.
Rule 515	Findings and Decisions	March 6, 1992.
Rule 517	Emergency Variances—Procedures—Breakdown	February 5, 1998.

Regulation VII—Emergencies

Rule 703	Episode Criteria	April 4, 1980.
Rule 704	Episode Declaration	July 9, 1982.
Rule 706	Episode Notification	April 4, 1980.
Rule 708	Plans	July 9, 1982.

Regulation VIII—Orders for Abatement		
Rule 802	Order of Abatement	August 1, 1975.
Rule 803	Filing Petitions	February 5, 1988.
Rule 806	Findings	February 5, 1988.
Rule 814	Official Notice	August 1, 1975.
Rule 816	Order and Decisions	February 5, 1988.
Rule 817	Effective Date of Decision	August 1, 1975.
Regulation IX—New Source Performance Standards		
	April 9, 1993.	
Regulation XII—Rules of Practice and Procedures Health and Safety Code Section 40509		
	June, 1985.	
Regulation XIII—New Source Review		
	June 28, 1990.	
Regulation XVII—Prevention of Significant Deterioration		
	January 6, 1989.	

The District may use any administrative procedures it has under State law to implement and enforce the requirements of part 55. However, as stated in the preamble to part 55, as onshore, a variance will not shield a source from enforcement action by EPA.

Permits

Pursuant to § 55.6:

(1) SCAQMD will require that the Applicant send a copy of any permit application required by 40 CFR 55.6 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the same time as the application is submitted to SCAQMD.

(2) SCAQMD shall send a copy of any public comment notice required under §§ 55.6, 55.13 or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) and to the Minerals Management Service.

(3) SCAQMD shall send a copy of any preliminary determination and any final permit action required under §§ 55.6, 55.13, or 55.14 to the Administrator through the EPA Regional Office (Attn: A–5–1) at the time of the determination and shall make available to the Administrator any materials used in making the determination.

(4) SCAQMD shall provide written notice of any permit application from a source, the emissions from which may affect a Class I area, to the Federal Land Manager of that area.

(5) The District shall request EPA guidance on any matter involving the interpretation of section 328 of the Act, the delegated sections of the OCS regulations or any other provision of 40 CFR part 55 to the extent that implementation, review, administration or enforcement of these provisions has not been covered by determinations or guidance sent to the District.

(6) Pursuant to its authority under the Clean Air Act, EPA may review permits issued by the District under this agreement to ensure that the District's implementation of Rule 1183 is consistent with the time frames and requirements of the Federal regulations (40 CFR part 55).

Exemptions

Pursuant to § 55.7:

(1) SCAQMD shall transmit to the Administrator (through the Regional Office), the Minerals Management Service, and the U.S. Coast Guard, a copy of the permit application that includes an exemption request, or the request for exemption if no permit is required, within 5 days of its receipt.

(2) SCAQMD shall consult with the Minerals Management Service of the U.S. Department of the Interior and the U.S. Coast Guard to determine whether the exemption will be granted or denied.

(3) If SCAQMD, the Minerals Management Service, and the U.S. Coast Guard do not reach a consensus decision within 90 days from the day the SCAQMD received the exemption request, the request shall automatically be referred to the Administrator, who will process the referral in accordance with 40 CFR 55.7(f)(3). SCAQMD shall transmit to the Administrator, within 91 days of its receipt, the exemption request and all materials submitted with the request, such as the permit application or the compliance plan, and any other information considered or developed during the consultation process.

(4) SCAQMD will process exemption requests submitted with an approval to construct or permit to operate application in accordance with the procedures outlined in 40 CFR part 55.

Monitoring, Reporting, Inspections, and Compliance

SCAQMD may use any authority it possesses under state law to require monitoring and reporting, and to conduct inspections. The Administrator or SCAQMD shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or SCAQMD to conduct unannounced inspections.

General Conditions

(1) SCAQMD shall implement and enforce the Federal requirements of 40 CFR 55.13 as well as the applicable state and local requirements contained in 40 CFR 55.14. Notwithstanding the above, EPA retains authority for implementation and enforcement of the PSD requirements of part C of the Act and 40 CFR 52.21. The District shall notify sources that may be subject to part C of the Act and 40 CFR 52.21 that they must apply to EPA for a permit. The District's failure to notify sources shall not affect EPA's exercise of its enforcement and implementation authority.

(2) The primary responsibility for enforcement of the OCS air regulations delegated to the District shall rest with the SCAQMD. Nothing in this agreement shall prohibit EPA from enforcing the OCS requirements of the Clean Air Act, the OCS regulations, or the terms and conditions of any permit issued by the District pursuant to this agreement.

(3) In the event that the District is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the OCS air regulations, the District will immediately notify the EPA Region 9 Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority.

(4) EPA shall retain authority to implement and enforce all requirements for OCS sources located beyond 25 miles from the state's seaward boundaries.

(5) This delegation may be amended at any time by the formal written agreement of both the SCAQMD and EPA including amendments to add, change, or remove conditions or terms of this agreement.

(6) If SCAQMD adopts revisions to the District regulations reviewed by EPA and found to meet the requirements set forth at 40 CFR 55.11 for delegation, the parties may amend the agreement pursuant to condition 5 above, or EPA may take steps to revoke the delegation in whole or in part pursuant to condition 7 below. Any amendments to regulations submitted by the District to meet the requirements of 40 CFR 55.11 shall not be applied under this agreement until EPA has reviewed such amendments and determined that they are still adequate to implement and enforce the delegable portions of 40 CFR part 55.

(7) This delegation, after consultation with the SCAQMD, may be revoked in whole or in part if EPA determines that the SCAQMD no longer meets the requirements for delegation set forth at 40 CFR 55.11(b)(1–4). Any such revocation shall be effective as of the date specified in a Notice of Revocation to the SCAQMD. In addition, this agreement shall be revoked if: (1) the District does not amend Rule 212, Standards for Approving Permits, to incorporate public notice and comment requirements for OCS sources by August 15, 1994; (2) the District fails to interpret the current Rule 212 to

HCPCS+	MOD
*15788	Chemical peel, face, epiderm
*15789	Chemical peel, face, dermal

agreement shall prohibit EPA from enforcing the OCS requirements of the Clean Air Act, the OCS regulations, or the terms and conditions of any permit issued by the District pursuant to this agreement.

(3) In the event that the District is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the OCS air regulations, the District will immediately notify the EPA Region 9 Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority.

(4) EPA shall retain authority to implement and enforce all requirements for OCS sources located beyond 25 miles from the state's seaward boundaries.

(5) This delegation may be amended at any time by the formal written agreement of both the SCAQMD and EPA including amendments to add, change, or remove conditions or terms of this agreement.

(6) If SCAQMD adopts revisions to the District regulations reviewed by EPA and found to meet the requirements set forth at 40 CFR 55.11 for delegation, the parties may amend the agreement pursuant to condition 5 above, or EPA may take steps to revoke the delegation in whole or in part pursuant to condition 7 below. Any amendments to regulations submitted by the District to meet the requirements of 40 CFR 55.11 shall not be applied under this agreement until EPA has reviewed such amendments and determined that they are still adequate to implement and enforce the delegable portions of 40 CFR part 55.

(7) This delegation, after consultation with the SCAQMD, may be revoked in whole or in part if EPA determines that the SCAQMD no longer meets the requirements for delegation set forth at 40 CFR 55.11(b)(1–4). Any such revocation shall be effective as of the date specified in a Notice of Revocation to the SCAQMD. In addition, this agreement shall be revoked if: (1) the District does not amend Rule 212, Standards for Approving Permits, to incorporate public notice and comment requirements for OCS sources by August 15, 1994; (2) the District fails to interpret the current Rule 212 to incorporate public notice and comment for OCS sources.

(8) This delegation of authority becomes effective upon the date of the signature of both parties to this Agreement.

(9) A notice of this delegated authority will be published in the **Federal Register**.

Dated: May 9, 1994.

John Wise,

Acting Regional Administrator, Region 9

Dated: May 3, 1994.

Dr. James Lents,

Executive Officer, South Coast Air Quality Management District.

Dated: May 2, 1994.

Peter M. Greenwald,

District Counsel, SCAQMD.

EPA Action

The EPA hereby notifies the public that it has delegated the authority to implement and enforce the requirements of the OCS air regulations (40 CFR part 55) promulgated by EPA on September 4, 1992 to the above-referenced local agency.

The Office of Management and Budget has exempted this rulemaking from the requirements of section 6 of Executive Order 12866.

This notice is issued under the authority of section 328 of the Clean Air Act, 42 U.S.C. 7627.

Dated: June 16, 1994.

John Wise,

Acting Regional Administrator, Region 9.

[FR Doc. 94–17296 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 414

[BPD–770–CN]

RIN 0938–AG22

Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1994

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on December 2, 1993 (58 FR 63626) entitled "Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1994."

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth Holland, (410) 966–1309.

SUPPLEMENTARY INFORMATION: In **Federal Register** Document [93–29362] beginning on page 63626, in the issue of December 2, 1993, make the following corrections:

A. *Page 63626*

1. In the **ADDRESSES** section, in column 2, in line 12, the telephone number is corrected to read "(202) 690–7890."

2. In column 3, in line 10, the **Federal Register** citation is corrected to read "(57 FR 55914)."

B. *Page 63628*

In column 3, in line 4, the **Federal Register** citation is corrected to read "(56 FR 59502)."

C. *Page 63642*

In column 2, in the paragraph designated I., the number of the fourth code in the listing is corrected to read "84182."

D. *Page 63652*

In column 2, in the paragraph designated 2.a., the **Federal Register** citation is corrected to read "(57 FR 55938)."

E. *Pages 63653 and 63662, Table 3*

1. On page 63653, the following codes are corrected to read:

HCPCS+	MOD description	RUC recommended work RVUs	Specialty recommended work RVUs	HCFA decision
*15788	Chemical peel, face, epiderm	None	5.00	Decreased
*15789	Chemical peel, face, dermal	None	6.59	Decreased

HCPCS+		MOD description	RUC recommended work RVUs	Specialty recommended work RVUs	HCFA decision
*15792		Chemical peel, nonfacial	None	4.00	Decreased.
*15793		Chemical peel, nonfacial	None	5.34	Decreased.

2. On page 63662, the following codes are corrected to read:

HCPCS+		MOD description	RUC recommended work RVUs	Specialty recommended work RVUs	HCFA decision
97545		Work hardening	None	1.70	(b).
97546		Work hardening	None	.85	(b).

F. Pages 63722 through 63836, Addendum B

1. On page 63722, the following codes are corrected to read:

HCPCS[1]	MOD status	Description	Work RVUs	Practice expense RVUs[2]	Malpractice RVUs	Total	Global period	Update
33401	C	Valvuloplasty, open	0.00	0.00	0.00	0.00	090	S
33403	C	Valvuloplasty, w/cp bypass	.00	.00	.00	.00	090	S
33406	C	Replacement, aortic valve	.00	.00	.00	.00	090	S
33413	C	Replacement, aortic valve	.00	.00	.00	.00	090	S
33414	C	Repair, aortic valve	.00	.00	.00	.00	090	S
33471	C	Valvotomy, pulmonary valve	.00	.00	.00	.00	090	S
33475	C	Replacement, pulmonary valve	.00	.00	.00	.00	090	S
33505	C	Repair artery w/tunnel	.00	.00	.00	.00	090	S
33506	C	Repair artery, translocation	.00	.00	.00	.00	090	S
33600	C	Closure of valve	.00	.00	.00	.00	090	S
33602	C	Closure of valve	.00	.00	.00	.00	090	S
33606	C	Anastomosis/artery-aorta	.00	.00	.00	.00	090	S
33608	C	Repair anomaly w/conduit	.00	.00	.00	.00	090	S
33610	C	Repair by enlargement	.00	.00	.00	.00	090	S

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2*] Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

2. On page 63723, the following codes are corrected to read:

HCPCS[1]	MOD status	Description	Work RVUs	Practice expense RVUs[2]	Malpractice RVUs	Total	Global period	Update
33611	C	Repair double ventricle	0.00	0.00	0.00	0.00	090	S
33612	C	Repair double ventricle	.00	.00	.00	.00	090	S
33615	C	Repair (simple fontan)	.00	.00	.00	.00	090	S
33617	C	Repair by modified fontan	.00	.00	.00	.00	090	S
33619	C	Repair single ventricle	.00	.00	.00	.00	090	S
33692	C	Repair of heart defects	.00	.00	.00	.00	090	S
33697	C	Repair of heart defects	.00	.00	.00	.00	090	S
33698	C	Repair of heart defects	.00	.00	.00	.00	090	S
33722	C	Repair of heart defect	.00	.00	.00	.00	090	S
33732	C	Repair heart-vein defect	.00	.00	.00	.00	090	S
33736	C	Revision of heart chamber	.00	.00	.00	.00	090	S
33766	C	Major vessel shunt	.00	.00	.00	.00	090	S
33767	C	Atrial septectomy/septostomy	.00	.00	.00	.00	090	S
33770	C	Repair great vessels defect	.00	.00	.00	.00	090	S
33771	C	Repair great vessels defect	.00	.00	.00	.00	090	S
33853	C	Repair septal defect	.00	.00	.00	.00	090	S

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2*] Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

3. On page 63724, the following codes are corrected to read:

HCPCS[1]	MOD status	Description
33917	C	Repair pulmonary arter
33918	C	Repair pulmonary atres
33919	C	Repair pulmonary atres
33920	C	Repair pulmonary atres
33922	C	Transect pulmonary art

[1] All numeric CPT HCPCS Copyright 1993 Ame
[2*] Indicates reduction of Practice Expense RVU

4. On page 63733, HCPCS code 43248

HCPCS[1]	MOD status	Description
43248	A	Upper GI endoscopy/g

[1] All numeric CPT HCPCS Copyright 1993 Ame
[2*] Indicates reduction of Practice Expense RVU

5. On page 63749, the third appearance

HCPCS[1]	MOD status	Description
59020	A	Fetal contract stress tes

[1] All numeric CPT HCPCS Copyright 1993 Ame
[2*] Indicates reduction of Practice Expense RVU

6. On page 63764, the following code is

HCPCS[1]	MOD status	Description
70551	A	Magnetic image, brain (

[1] All numeric CPT HCPCS Copyright 1993 Amer
[2*] Indicates reduction of Practice Expense RVU

7. On page 63799, the following code is

HCPCS[1]	MOD status	Description
86423	D	Radioimmunosorbent tes

[1] All numeric CPT HCPCS Copyright 1993 Amer
[2*] Indicates reduction of Practice Expense RVU

8. On page 63836, the following codes a

HCPCS[1]	MOD status	Description
J7030	E	Infusion, normal saline s
J7040	E	Infusion, normal saline s
J7042	E	5% dextrose/normal salin
J7050	E	Infusion, normal saline s
J7051	E	Sterile saline or water
J7060	E	5% dextrose/water
J7070	E	Infusion, d5w
J7120	E	Ringers lactate infusion

[1] All numeric CPT HCPCS Copyright 1993 Ameri
[2*] Indicates reduction of Practice Expense RVUs

(Section 1848 of the Social Security Act (42 U.S.C
(Catalog of Federal Domestic Assistance Program

Dated: July 5, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resou

[FR Doc. 94-17222 Filed 7-14-94; 8:45 am]

BILLING CODE 4120-01-P

HCPCS[1]	MOD status	Description	Work RVUs	Practice expense RVUs[2]	Malpractice RVUs	Total	Global period	Update
33917	C	Repair pulmonary artery	0.00	0.00	0.00	0.00	090	S
33918	C	Repair pulmonary atresia	.00	.00	.00	.00	090	S
33919	C	Repair pulmonary atresia	.00	.00	.00	.00	090	S
33920	C	Repair pulmonary atresia	.00	.00	.00	.00	090	S
33922	C	Transect pulmonary artery	.00	.00	.00	.00	090	S

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

4. On page 63733, HCPCS code 43248 is corrected to read as follows:

HCPCS[1]	MOD status	Description	Work RVUs	Practice expense RVUs[2]	Malpractice RVUs	Total	Global period	Update
43248	A	Upper GI endoscopy/guidewire	3.18	*4.14	0.34	7.66	000	N

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

5. On page 63749, the third appearance of HCPCS code 59020 is corrected to read as follows:

HCPCS[1]	MOD status	Description	Work RVUs	Practice expense RVUs[2]	Malpractice RVUs	Total	Global period	Update
59020	A	Fetal contract stress test	0.67	*0.67	0.19	1.73	000	S

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

6. On page 63764, the following code is corrected to read:

HCPCS[1]	MOD status	Description	Work RVUs	Practice expense RVUs[2]	Malpractice RVUs	Total	Global period	Update
70551	A	Magnetic image, brain (MRI)	1.50	0.67	0.10	2.27	XXX	N

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

7. On page 63799, the following code is added to read:

HCPCS[1]	MOD status	Description	Work RVUs	Practice expense RVUs[2]	Malpractice RVUs	Total	Global period	Update
86423	D	Radioimmunosorbent test IGE	0.00	0.00	0.00	0.00	XXX	O

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

8. On page 63836, the following codes are corrected to read:

HCPCS[1]	MOD status	Description	Work RVUs	Practice expense RVUs[2]	Malpractice RVUs	Total	Global period	Update
J7030	E	Infusion, normal saline solution	0.00	0.00	0.00	0.00	XXX	O
J7040	E	Infusion, normal saline solution	.00	.00	.00	0.00	XXX	O
J7042	E	5% dextrose/normal saline	.00	.00	.00	0.00	XXX	O
J7050	E	Infusion, normal saline solution	.00	.00	.00	0.00	XXX	O
J7051	E	Sterile saline or water	.00	.00	.00	0.00	XXX	O
J7060	E	5% dextrose/water	.00	.00	.00	0.00	XXX	O
J7070	E	Infusion, d5w	.00	.00	.00	0.00	XXX	O
J7120	E	Ringers lactate infusion	.00	.00	.00	0.00	XXX	O

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2] * Indicates reduction of Practice Expense RVUs as a result of OBRA 1993.

(Section 1848 of the Social Security Act (42 U.S.C. 1395w–4))
(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 5, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–17222 Filed 7–14–94; 8:45 am]

BILLING CODE 4120–01–P

Office of the Secretary

42 CFR Parts 417, 431, 434, and 1003

RIN 0991–AA44

Medicare and State Health Care Programs: Fraud and Abuse, Civil Money Penalties and Intermediate Sanctions for Certain Violations by Health Maintenance Organizations and Competitive Medical Plans

AGENCY: Office of the Secretary, HHS, Office of Inspector General (OIG) and the Health Care Financing Administration (HCFA).

ACTION: Final rule.

SUMMARY: This final rule implements sections 9312(c)(2), 9312(f), and 9434(b) of Public Law 99–509, section 7 of Public Law 100–93, section 4014 of Public Law 100–203, sections 224 and 411(k)(12) of Public Law 100–360, and section 6411(d)(3) of Public Law 101–239. These provisions broaden the Secretary's authority to impose intermediate sanctions and civil money penalties on health maintenance organizations (HMOs), competitive medical plans, and other prepaid health plans contracting under Medicare or Medicaid that (1) substantially fail to provide an enrolled individual with required medically necessary items and services; (2) engage in certain marketing, enrollment, reporting, or claims payment abuses; or (3) in the case of Medicare risk-contracting plans, employ or contract with, either directly or indirectly, an individual or entity excluded from participation in Medicare. The provisions also condition Federal financial participation in certain State payments on the State's exclusion of certain prohibited entities from participation in HMO contracts and waiver programs. This final rule is intended to significantly enhance the protections for Medicare beneficiaries and Medicaid recipients enrolled in a HMO, competitive medical plan, or other contracting organization under titles XVIII and XIX of the Social Security Act.

EFFECTIVE DATE: These rules are effective September 13, 1994.

FOR FURTHER INFORMATION, CONTACT:

Zeno W. St. Cyr, II, Legislation, Regulations, and Public Affairs Staff, OIG, (202) 619–3270 or

Marty Abeln, Office of Managed Care, HCFA, (202) 205–9582 or

Mike Fiore, Medicaid Bureau, HCFA, (410) 966–4460

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Managed care plans, such as health maintenance organizations (HMOs), competitive medical plans (CMPs), and health insuring organizations (HIOs) are entities that provide enrollees with comprehensive, coordinated health care in a cost-efficient manner. Payment for these plans is generally made on a prepaid, capitation basis. The goal of prepaid health care delivery is to control health care costs while at the same time providing enrollees with affordable, coordinated, quality health care services. Titles XVIII and XIX of the Social Security Act (the Act) authorize contracts with managed health care plans for the provision of covered health services to Medicare beneficiaries and Medicaid recipients.

B. Medicare

Section 1876 of the Act provides for Medicare payment at predetermined rates to eligible organizations that have entered into risk contracts with HFCA, or for payment of reasonable costs to eligible organizations that have entered into cost contracts. Eligible organizations include HMOs that have been federally qualified under section 1310(d) of title XIII of the Public Health Service Act, and CMPs that meet the requirements of section 1876(b)(2) of the Act.

Medicare enrollees of risk-contracting CMPs or HMOs are required to receive covered services only through the organization, except for emergency services and urgently needed out-of-area services. In the case of a cost contract, the Medicare beneficiary may also receive services outside the organization, with Medicare paying for the services through the general Medicare fee-for-service system. If an HMO or CMP fails to comply with a contract provision, the Secretary may decide to not renew or to terminate the contract. Regulations governing nonrenewal of a contract are found at 42 CFR 417.492, and regulations governing termination of a contract are at 42 CFR 417.494.

C. Medicaid

Section 1903(m) of the Act contains requirements that apply to State Medicaid contracts for the provision, on a risk basis, either directly or through arrangements, of at least certain specified services ("comprehensive services"). HCFA regulations at 42 CFR part 434 implement the requirements in section 1903(m) and contain other requirements applicable to Medicaid contracts generally. Section 434.70 provides that HCFA may withhold Federal matching payments, known as Federal financial participation (FFP), for State expenditures for services provided to Medicaid recipients when either party to a contract substantially fails to carry out the terms of the contract.

D. New Legislation

1. The Omnibus Budget Reconciliation Act of 1986

Section 9312(c)(2) of Public Law 99–509, the Omnibus Budget Reconciliation Act of 1986 (OBRA 86), added section 1876(f)(3) to the Act. This provision authorizes the Secretary to suspend enrollment of Medicare beneficiaries by an HMO/CMP or to suspend payment to the HMO/CMP for individuals newly enrolled, after the date the Secretary notifies the organization of noncompliance with the requirement in section 1876(f)(1) that limits enrollment to no more than 50 percent Medicare beneficiaries and Medicaid recipients. Prior to OBRA 86, HCFA's only recourse against an organization for noncompliance with any contract provisions was to non-renew or initiate termination of the contract. The new authority provides alternative remedies that may be used in place of or in addition to contract nonrenewal or termination for organizations that do not comply with the enrollment composition requirement.

Additionally, sections 9312(f) and 9434(c) of OBRA 86 added sections 1876(i)(6) and 1903(m)(5), respectively, to the Act. These provisions authorize a civil money penalty not greater than $10,000 for each instance of failure by an organization with a Medicare risk contract, or certain organizations with a comprehensive risk contract under Medicaid, to provide required medically necessary items or services to Medicare or Medicaid enrollees if the failure adversely affects (or has the likelihood of adversely affecting) the enrollee.

2. The Medicare and Medicaid Patient and Program Protection Act of 1987

Section 7 of Public Law 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987 (MMPPPA), added section 1902(p) of the Act, which grants States the authority to exclude individuals or entities from participation in their Medicaid programs for any of the reasons that constitute a basis for exclusion from Medicare under sections 1128, 1128A, or 1866(b)(2) of the Act. In addition, section 7 of MMPPPA established a new condition that States must meet in order to receive FFP for payments to HMOs or entities furnishing services under a waiver approved under section 1915(b)(1) of the Act. The latter provision conditioned FFP upon a State's providing that it will exclude from participation, as an HMO or an entity furnishing services under a section 1915(b)(1) waiver, any entity that could be excluded under section 1128(b)(8) of the Act (that is, any individual or entity against whom criminal or civil penalties have been imposed). FFP is also conditioned upon a State excluding an entity that has, directly or indirectly, a substantial contractual relationship with a person described in section 1128(b)(8)(B) of the Act.

3. The Omnibus Budget Reconciliation Act of 1987

Section 4014 of Public Law 100–203, the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), provides the Department with increased penalty amounts and greater statutory authority and flexibility to take action against HMOs or CMPs that commit certain abuses. This authority also may be exercised in addition to or in place of initiating contract termination proceedings. Section 4014 of OBRA 87 amends section 1876(i)(6) of the Act to authorize the Secretary to impose civil money penalties, suspend enrollment, and suspend payments for newly enrolled individuals in the case of an organization with a Medicare contract (both risk and cost contract) that the Secretary determines has (1) failed substantially to provide required medically necessary items and services to Medicare enrollees if the failure adversely affects (or has the likelihood of adversely affecting) the enrollee; (2) imposed premiums on Medicare enrollees in excess of permitted premium amounts; (3) acted to expel or refused to reenroll an individual in violation of section 1876 of the Act; (4) engaged in any practice that can reasonably be expected to deny or discourage enrollment (except as permitted under section 1876) by Medicare enrollees whose medical condition or history indicates a need for substantial future medical services; (5) misrepresented or falsified information provided under section 1876 to the Secretary, an individual, or any other entity; or (6) fails to comply with the requirements of section 1876(g)(6)(A) regarding prompt payment of claims. Under OBRA 87, the maximum allowable civil money penalty that can be imposed for each determination of a violation is increased to $25,000, or $100,000 in the case of a HMO or CMP determined to have committed acts in

payments to HMOs or entities furnishing services under a waiver approved under section 1915(b)(1) of the Act. The latter provision conditioned FFP upon a State's providing that it will exclude from participation, as an HMO or an entity furnishing services under a section 1915(b)(1) waiver, any entity that could be excluded under section 1128(b)(8) of the Act (that is, any individual or entity against whom criminal or civil penalties have been imposed). FFP is also conditioned upon a State excluding an entity that has, directly or indirectly, a substantial contractual relationship with a person described in section 1128(b)(8)(B) of the Act.

3. The Omnibus Budget Reconciliation Act of 1987

Section 4014 of Public Law 100–203, the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), provides the Department with increased penalty amounts and greater statutory authority and flexibility to take action against HMOs or CMPs that commit certain abuses. This authority also may be exercised in addition to or in place of initiating contract termination proceedings. Section 4014 of OBRA 87 amends section 1876(i)(6) of the Act to authorize the Secretary to impose civil money penalties, suspend enrollment, and suspend payments for newly enrolled individuals in the case of an organization with a Medicare contract (both risk and cost contract) that the Secretary determines has (1) failed substantially to provide required medically necessary items and services to Medicare enrollees if the failure adversely affects (or has the likelihood of adversely affecting) the enrollee; (2) imposed premiums on Medicare enrollees in excess of permitted premium amounts; (3) acted to expel or refused to reenroll an individual in violation of section 1876 of the Act; (4) engaged in any practice that can reasonably be expected to deny or discourage enrollment (except as permitted under section 1876) by Medicare enrollees whose medical condition or history indicates a need for substantial future medical services; (5) misrepresented or falsified information provided under section 1876 to the Secretary, an individual, or any other entity; or (6) fails to comply with the requirements of section 1876(g)(6)(A) regarding prompt payment of claims. Under OBRA 87, the maximum allowable civil money penalty that can be imposed for each determination of a violation is increased to $25,000, or $100,000 in the case of a HMO or CMP determined to have committed acts in (4) above or for misrepresenting or falsifying information furnished to the Secretary under section 1876.

4. The Medicare Catastrophic Coverage Act of 1988

The Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100–360, amended sections 1876 and 1903(m) of the Act by adding new civil money penalty authority for violations occurring within the Medicare program and by applying the OBRA 87 HMO and CMP intermediate sanction and civil money penalty authority to the Medicaid program.

Section 224 of MCCA amended section 1876(i)(6)(B)(i) of the Act. In addition to other civil money penalties, in cases where Medicare enrollees are charged more than the allowable premium, section 224 imposes a penalty which doubles the amount of excess premium charged by the HMO or CMP. The excess premium amount is deducted from the penalty and returned to the Medicare enrollee. Section 224 also imposes a $15,000 penalty for each individual not enrolled if it is determined that the HMO or CMP engaged in any practice which denied or discouraged enrollment (except as permitted under section 1876 of the Act) by Medicare enrollees whose medical condition or history indicated a need for substantial future medical services.

Section 411(k)(12) of MCCA amended section 1903(m)(5) of the Act to provide the Secretary with authority to impose civil money penalties on contracting organizations, and to deny payments for new enrollees of contracting organizations, in cases where the Secretary determines that an organization has (1) failed substantially to provide required medically necessary items and services to Medicaid enrollees if the failure adversely affects (or has the likelihood of adversely affecting) the enrollee; (2) imposed premiums on Medicaid enrollees in excess of premium amounts permitted under title XIX of the Act; (3) discriminated among individuals in violation of the provisions of section 1903(m)(2)(A)(v) of the Act, including expelling or refusing to reenroll an individual or engaging in any practice which could reasonably be expected to deny or discourage enrollment (except as permitted under section 1903(m)) by Medicaid recipients whose medical condition or history indicates a need for substantial future medical services; or (4) misrepresented or falsified information provided under section 1903 of the Act to the Secretary, State, an individual, or any other entity.

Under the amendments to section 1903(m)(5) made by MCCA, the maximum allowable civil money penalty that can be imposed for each determination of a violation is increased to $25,000, or $100,000 in the case of a determination that a contracting organization has (1) violated the provisions of section 1903(m)(2)(A)(v) by expelling or refusing to reenroll an individual or by engaging in a practice which denied or discouraged enrollment (except as permitted under section 1903(m)) by Medicaid recipients whose medical condition or history indicated a need for substantial future medical services; or (2) misrepresented or falsified information furnished to the Secretary or State under section 1903(m).

Additionally, in cases where Medicaid enrollees are charged more than the allowable premium, section 411(k)(12) of MCCA amended section 1903(m)(5) of the Act to authorize imposition of an additional penalty which doubles the amount of excess premium charged by the contracting organization, with the excess premium amount deducted from the penalty and returned to the Medicaid enrollee. Imposition of an additional $15,000 penalty is authorized for each individual not enrolled if it is determined that the contracting organization has violated the provisions of section 1903(m)(2)(A)(v) by expelling or refusing to reenroll an individual or by engaging in any practice which denied or discouraged enrollment (except as permitted under section 1903(m)) by Medicaid recipients whose medical condition or history indicated a need for substantial future medical services.

5. The Omnibus Budget Reconciliation Act of 1989

Public Law 101–239, the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), amended sections 1876 and 1902(p) of the Act to provide the Secretary with an additional civil money penalty and intermediate sanction authority for violations occurring within the Medicare program and with additional conditions for FFP.

Section 6411(d)(3)(A) of OBRA 89 amended section 1876(i)(6)(A) of the Act to authorize the Secretary to restrict enrollment in, suspend payment to, and impose a civil money penalty against an organization with a risk contract that (1) employs or contracts with any individual or entity excluded from Medicare participation under sections 1128 or 1128A of the Act for the provision of health care, utilization review, medical social work, or administrative services; or (2) employs or contracts with any entity for the

provision of such services (directly or indirectly) through an excluded individual or entity. The maximum allowable civil money penalty that may be imposed for each determination of a violation of this nature is $25,000.

Section 6411(d)(3)(B) of OBRA 89 amended section 1902(p)(2) of the Act to condition FFP in payments to HMOs, or to entities furnishing services under a § 1915(b)(1) waiver, upon the State's barring the following entities from participation as HMOs or section 1915(b)(1) waiver participants: (1) Any organization that employs or contracts with any individual or entity excluded from Medicaid participation under sections 1128 or 1128A of the Act for the provision of health care, utilization review, medical social work, or administrative services; or (2) any organization that employs or contracts with any entity for the provision of such services (directly or indirectly) through an excluded individual or entity.

II. Provisions of the Proposed Rule

On July 22, 1991, we published a proposed rule with a 60-day comment period (56 FR 33403) that would amend 42 CFR Part 417, Subpart C; Part 431, Subpart B; Part 434, Subparts C, D, E, and F; and Part 1003 specifically by establishing sanctions and civil money penalties which may be imposed on contracting organizations that substantially fail to provide an enrollee with required medically necessary items and services or that engage in certain marketing, enrollment, reporting, claims payment, employment, or contracting abuses.

In the July 1991 proposed rule, we proposed to incorporate the Medicare sanction provisions of OBRA 86, OBRA 87, MCCA, and OBRA 89 into agency regulations largely without substantial modifications. Under the proposed regulations, after HCFA (or a State) determines that a contracting organization has committed a violation under sections 1876(i)(6)(A) or 1903(m)(5)(A), information pertaining to the violation would be provided to the OIG.

Briefly, our proposed changes to the regulations were designed to implement the Department's new authorities by detailing HCFA's (and States') role in imposing intermediate sanctions, and the OIG's role in imposing civil money penalties, for certain abuses committed by contracting organizations providing health care items or services to Medicare beneficiaries or Medicaid recipients. We proposed that—

- Once it is determined that a Medicare contracting organization has committed a violation, and in place of initiating contract termination proceedings, HCFA may:
  - —Require the contracting organization to suspend enrollment of Medicare beneficiaries;
  - —Suspend payments to the contracting organization for individuals enrolled after a specified date.
- If a State Medicaid agency determines that a Medicaid contracting organization has committed a violation, it may, in place of terminating the contract, recommend to HCFA that HCFA's intermediate sanction authority be exercised to deny payment to the contracting organization for Medicaid recipients enrolled with the organization after a specified date. This recommendation takes effect absent HCFA action.
- In addition to or in place of other remedies available under law, the OIG may:
  - —Impose a penalty of up to $25,000 for each determination that a contracting organization has—
    - (1) Failed substantially to provide an enrollee with required medically necessary items and services, if the failure adversely affects (or has the likelihood of adversely affecting) the enrollee; or
    - (2) Committed enrollment, marketing, claims payment, or certain reporting violations;
  - —Impose a penalty of up to $25,000 for each determination that a contracting organization with a Medicare risk-sharing contract employs or contracts with—
    - (1) Individuals or entities excluded from participation in Medicare, under sections 1128 or 1128A of the Act, for the provision of health care, utilization review, medical social work, or administrative services; or
    - (2) Any entity for the provision of such services (directly or indirectly) through an excluded individual or entity; and
  - —Impose a penalty of up to $100,000 for each determination that a contracting organization has—
    - (1) Misrepresented or falsified information furnished under the provisions of the statute to the Secretary or State; or
    - (2) Expelled or refused to reenroll an individual or engaged in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by statute) by enrollees whose medical condition or history indicates a need for substantial future medical services.
- In cases where a civil money penalty is imposed against a plan for charging enrollees more than the allowable premium, the OIG will impose an additional penalty equal to double the amount of excess premium charged by the contracting organization. The excess premium amount will be deducted from the penalty and returned to the enrollee.
- The OIG will impose an additional $15,000 penalty for each individual not enrolled if it is determined that a contracting organization expelled or refused to reenroll an individual or engaged in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by statute) by enrollees whose medical condition or history indicates a need for substantial future medical services.
- The provisions also condition FFP in certain State payments on the State's exclusion of certain entities excluded (or excludable) from Medicare.

III. Analysis of and Responses to Public Comments

In response to the July 22, 1991 proposed rule, we received 14 timely items of correspondence. The comments were from group health associations, State agencies, health insurance plans, and law firms. A summary of these comments are discussed below:

A. Intermediate Sanctions

Comment: Several commenters wanted clarification on how § 417.495(a)(1), which describes the first basis for the imposition of intermediate sanctions, will be defined. There was particular interest expressed about the criteria by which the terms "fails substantially" and "medically necessary" will be evaluated.

Response: In determining if an organization has violated § 417.495(a)(1), HCFA and State Medicaid agencies will make a comprehensive three-part evaluation. Specifically, this will involve determining if the organization has: (1) *Failed substantially* to provide *medically necessary* items or services and this has (3) *adversely affected* (or has the *substantial likelihood* of adversely affecting) the enrollee. To determine if the three principal requirements of § 417.495(a)(1) have been violated, HCFA and State Medicaid agencies will have recourse to a number of sources of information and guidance. For Medicare, the information sources include the attending physician, other health care personnel, the HMO or CMP, utilization reviewers, the Peer Review Organization (PRO), the Medicare enrollee or authorized representatives, and internal or possibly third-party expertise. Additional sources of guidance will include clinical practice standards; guidelines or advisories promulgated by authoritative bodies; and Medicare law, regulations, and manuals.

States, in making an initial finding on Medicaid contractor violations, also have a number of sources of information available to them. These include health care experts conducting the required periodic medical audits; the health professionals under contract to the State to perform the annual quality review of services delivered by HMOs and HIOs; other health consultants to the State agency; clinical practice standards, guidelines, or advisories promulgated by authoritative bodies; and Medicaid law, regulations, and manuals.

In making determinations of "substantial failure," consideration will be given to the impact on the health status of a Medicare or Medicaid enrollee of not having received covered items and services and, in cases where patterns of withholding items and services are identified, the frequency of the events and the resulting impact on the health status of enrollees.

In making determinations of "medical necessity," HCFA and the States will rely on their respective coverage or payment requirements but will also utilize various sources of expert opinion (as described above) in order to determine if required medically necessary care has either been denied or inappropriately provided.

Comment: A commenter asked whether the same criteria used for "medical necessity" for Medicare and Medicaid coverage of services will be used to determine medical necessity under the final rule.

Response: In making medical necessity decisions, Medicare and Medicaid will continue to utilize the current oversight processes and coverage and payment criteria. Under the intermediate sanction, however, HCFA and States will also have recourse, on a case by case basis, to other sources of expert information and guidance (as described in the previous response) in making medical necessity decisions.

Comment: A number of commenters wanted changes made to the definition of "adverse affect." One commenter suggested that the definition is too narrow, and unreasonably requires the patient to suffer a high degree of risk to his or her health before a sanction can be applied. Another commenter said that the definition was too vague and suggested amending the definition to indicate that adverse effect is limited to the withholding of or failure to provide

third-party expertise. Additional sources of guidance will include clinical practice standards; guidelines or advisories promulgated by authoritative bodies; and Medicare law, regulations, and manuals.

States, in making an initial finding on Medicaid contractor violations, also have a number of sources of information available to them. These include health care experts conducting the required periodic medical audits; the health professionals under contract to the State to perform the annual quality review of services delivered by HMOs and HIOs; other health consultants to the State agency; clinical practice standards, guidelines, or advisories promulgated by authoritative bodies; and Medicaid law, regulations, and manuals.

In making determinations of "substantial failure," consideration will be given to the impact on the health status of a Medicare or Medicaid enrollee of not having received covered items and services and, in cases where patterns of withholding items and services are identified, the frequency of the events and the resulting impact on the health status of enrollees.

In making determinations of "medical necessity," HCFA and the States will rely on their respective coverage or payment requirements but will also utilize various sources of expert opinion (as described above) in order to determine if required medically necessary care has either been denied or inappropriately provided.

Comment: A commenter asked whether the same criteria used for "medical necessity" for Medicare and Medicaid coverage of services will be used to determine medical necessity under the final rule.

Response: In making medical necessity decisions, Medicare and Medicaid will continue to utilize the current oversight processes and coverage and payment criteria. Under the intermediate sanction, however, HCFA and States will also have recourse, on a case by case basis, to other sources of expert information and guidance (as described in the previous response) in making medical necessity decisions.

Comment: A number of commenters wanted changes made to the definition of "adverse affect." One commenter suggested that the definition is too narrow, and unreasonably requires the patient to suffer a high degree of risk to his or her health before a sanction can be applied. Another commenter said that the definition was too vague and suggested amending the definition to indicate that adverse effect is limited to the withholding of or failure to provide medically necessary care covered by the contract. Another commenter expressed concern that the definition of adverse affect appears to be lacking in that it addresses only those instances in which care has been withheld and fails to address those instances where substandard or inappropriate care has been delivered. Still another commenter believed the regulation should provide a definition for "adverse affect" that specifically includes sanctions against HMOs that fail to provide timely and adequate prenatal and children's preventive care.

Response: The expertise needed to determine what constitutes "adverse effect" are similar to those previously discussed which are needed to evaluate "substantial failure" and "medically necessary." HCFA and States will rely on the same sources of information and guidance (as previously described) to determine when an enrollee has been adversely affected by the failure to provide the required medically necessary services.

It should be noted that in addition to a substantial failure to provide medically necessary services, "adverse effect" may also be found to be the result of providing inappropriate or substandard care. Specifically, for medical services that are Medicare or Medicaid approved and are found to be medically necessary, if HCFA or the State determines that a failure to appropriately provide required services has adversely affected (or has a substantial likelihood of adversely affecting) an enrollee, then this will constitute a violation. This includes Medicaid required prenatal and children's preventive care.

Comment: One commenter stated that "adversely affects" should be defined in terms of a detrimental effect on the condition(s) for which the person is seeking treatment.

Response: HCFA and State Medicaid agencies will not limit a determination of adverse effect to only those conditions for which the person is seeking treatment. For example, instances may arise where beneficiaries are seeking treatment for one condition and the physician will determine that another condition is actually the cause of their symptoms.

Comment: One commenter stated that the penalties should apply only to instances where the plan acts negligently or with intent to wrongfully deny medically necessary services. Similarly, a few commenters believed that any sanctions and/or civil money penalties should apply only when an organization has knowingly and willfully violated the law. Two of those commenters suggested that we add a requirement that any violations must be "knowingly and willfully" committed before we impose a sanction.

Response: Sanctions will not be limited to instances where plans act negligently or with wrongful intent. Aggravating and mitigating factors, such as the degree of culpability of the organization, will be considered in determining any sanction or civil money penalty. As in all our determinations on intermediate sanctions, the scope, and duration of the violation, as well as the level of threat to enrollee health and safety, will be evaluated in determining the severity of a particular sanction. Further, we believe that an absolute requirement for "knowingly and willfully" violations is more stringent than the law anticipated. We will consider evidence that an organization has willfully violated the statute as an aggravating circumstance. Nevertheless, we will not add the requirement that violations must be "knowingly and willfully" committed before the imposition of a sanction.

Comment: One commenter asked whether it would be considered a failure to provide medically necessary services if an HMO determined, according to its standard procedures, that a particular service did not qualify as an emergency or out-of-area urgently needed care and denied the service. This commenter recommended that the regulation exclude from any definition of "substantial failure to provide medically necessary services" those circumstances in which care is not provided based upon a medical judgment made in accord with the HMO's standard operating policies determining coverage. In addition, the commenter asked under what circumstances the failure of a physician, with whom the HMO contracts on an independent contractor basis, to furnish a medically necessary item or service can be imputed to the HMO, absent a clear showing that the HMO knowingly contracted with a physician (or other provider) with a history of improper treatment of patients.

Response: In general, an organization which reasonably follows approved guidelines and policies in making medical care decisions will not be found to have denied medically necessary services. It is important to emphasize that we expect medical care decisions to be made judiciously and appropriately. There may be instances when the organization's rules are inadequate; in such circumstances we expect the organization to protect the welfare of the beneficiary.

With respect to an HMO contracting with an independent contractor physician, we consider the HMO responsible for the quality of care its members receive. The HMO has a duty to ensure that the care enrollees receive is appropriate, whether the physician or provider is an employee of the HMO or an independent contractor. If a HMO knowingly contracts with a provider that has a history of improper treatment toward patients, we would consider this a serious aggravating circumstance in determining a sanction or civil money penalty.

Comment: One commenter pointed out that not all HMOs offer all routine covered services in their own health care centers, and therefore must contract out with other providers to offer those services. If it occurs that routine services cannot be scheduled without some minor delay, under what circumstances would such a delay result in a determination that the HMO failed substantially to provide medically necessary services?

Response: Such a situation will be evaluated based on the judgement of experts with whom HCFA will consult and in accordance with Medicare law and regulations. As previously noted, these experts include physicians, other medical personnel, the PRO, and utilization reviewers. Factors such as the effect of delays on the beneficiary's health and whether such delays are reasonable given the type of service and the needs of the beneficiary will be considered. An HMO that contracts for various services remains responsible for the quality and timeliness of those services.

Comment: Several commenters wanted more guidance as to what constitutes an excess premium for purposes of imposing intermediate sanctions in § 434.67(a)(2). One commenter suggested that the regulation include language stating that HCFA approval of the premium amount is consistent with the statutory requirement. Another commenter believed that penalties in premium setting should be limited to instances in which plans knowingly and intentionally seek to overcharge beneficiaries.

Response: In Medicare contracting organizations the premiums and other charges for Medicare enrollees are required to be the actuarial equivalent of what a Medicare beneficiary would pay in fee-for-service for Medicare covered services (section 1876(e)). Premium charges in excess of the HCFA approved amount would be considered excessive.

Although premiums are not typically employed for Medicaid contracting HMOs for Medicaid enrollees, if the State and the HMO/HIO agreed to do so, the use of the premiums would have to be explicitly described in the HMO/HIOs contract with the State. The use of premiums in this way would also have to be described in the State plan, and could not exceed the actual value of deductibles and co-payment amounts provided for under the State plan. Both the State plan provision and the contract terms are required to have the approval of HCFA. Therefore any use of premiums which is not explicitly provided for in an HMO's or HIO's contract with the State, which has been approved by HCFA, would be in excess of a permitted premium.

Comment: Proposed § 417.495(a)(8), which we have designated as § 417.500(a)(8) in this final rule, prohibits Medicare risk contractors from employing or contracting with or through individuals or entities (either directly or indirectly) which have been excluded from participating in Medicare. One commenter believed this provision placed an onerous burden on the risk contractor to conduct extensive inquiries into the background of each of its participating providers and subcontractors, as well as imposing an obligation to obtain from HCFA the most recent information regarding excluded entities. In addition, this commenter wanted clarification of the meaning of "employing or contracting * * * (directly or indirectly) through an excluded individual or entity," so the risk contractor will know the extent of background information it must require of participating providers and others. Further, the commenter suggested that HCFA implement this provision by, (1) providing the risk contractor with a periodic listing of all excluded entities; and (2) specifying that the statutory obligation is satisfied if the risk contractor requests the background information, checks the information furnished by the subcontractor against the most recent list of excluded entities provided by HCFA, and the contracting entity or entities are not on the list.

Response: As part of its current operating procedures, HCFA makes available to Medicare contractors the Medicare/Medicaid Sanction-Reimbursement Report, which lists entities, contractors, and providers excluded from Medicare. While we consider review of the sanction report a critical step in complying with the requirement prohibiting contracting with an excluded individual or entity, it is not conclusive proof of having satisfied the legal obligation. In general, beyond reviewing the sanction report, we expect a reasonable effort to comply with this requirement. This would include reasonable activities to verify provider credentials, and review of other relevant State and professional records. We do not require or expect contracting organizations to go beyond making a reasonable and conscientious effort to comply with this requirement.

Comment: Many commenters wanted more than 15 days to respond to the notice of intermediate sanctions. The suggested time limits ranged from 30 to 60 days with the option of additional extensions.

Response: We agree that allowing more time for an organization to respond to a notification of sanction may be necessary in some instances. We have revised our regulations at § 417.500(b)(2) and § 434.67(c) to permit a 15 day extension to the original 15 days if HCFA approves a written request from the organization. The request for an extension must provide a credible explanation of why additional time is needed and must be received by HCFA or the State agency, as appropriate, before the end of the 15 day period following the organization's date of notification of sanction. An extension will not be available in instances where HCFA, or HCFA in consultation with the State agency, finds that the organization's conduct poses a serious threat to an enrollees' health and safety or if HCFA or the State agency, as appropriate, judges the additional 15 days to be unnecessary for the organization to respond.

Comment: Two commenters wanted the regulation to specify the information that would be provided in the notice of intermediate sanctions. Another commenter suggested the following information be provided: (1) The sanction or sanctions to be imposed; (2) the effective date and duration of the sanction; (3) the authority for the sanction; (4) the reason for the sanction; (5) specific information regarding the organization's right to contest the determination, including timeframes for submission of the organization's request for reconsideration, the permissible content of the request and supporting materials, and to whom the request should be submitted; and (6) information regarding any rights to hearing or appeal, including judicial review, that the organization may have if the sanction is imposed. In addition, the organization should be provided with copies of any documents on which HCFA or the State Agency relied in determining that a violation occurred.

Response: Confidentiality may not allow the release of certain documents which have influenced HCFA's decision to impose a sanction. However, most of the information listed above will be provided to an organization in the notification of sanction. Specifically, the notice of sanction will provide: (1) The sanction or sanctions to be imposed, (2) the reason for the sanction, (3) the authority for the sanction, (4) the effective date of the sanction, and (5) the time available for submission of the request for reconsideration and to whom the request should be submitted.

HCFA will specify the above information in operating procedures rather than in the regulations. Under the intermediate sanctions, appeal rights will be limited to the reconsideration period.

Comment: One commenter wanted the following information provided by HCFA following a reconsideration: (1) Whether the intermediate sanction will be imposed; (2) the reasons for imposing the sanction, addressing the evidence and arguments submitted by the organization; (3) the effective date and duration of the sanction; and (4) specific information regarding the organization's right to appeal the imposition of a sanction.

Response: We will provide this information at the conclusion of a reconsideration, with two exceptions. First, the duration of the sanction will depend largely on the organization's corrective action plan and willingness and ability to resolve the problem(s). An organization that cannot immediately correct a deficiency for which it has been sanctioned will be expected to submit a corrective action plan to HCFA. This plan will be the organization's description of how and when it will resolve the problems that caused the sanctions to be imposed. Because each corrective action plan is unique, the duration of the sanction cannot be specified at the time it is imposed. Second, there will not be additional appeal steps beyond the initial reconsideration. HCFA will, however, act as quickly as possible when an organization believes it has resolved the violation(s) and wishes to be re-evaluated.

Comment: One commenter recommended that the Medicaid regulations contain minimum standards for the State review procedure. In addition, this commenter believed that an organization sanctioned by a State should have an opportunity for a separate review determination on the Federal level which would supersede any State determination.

Response: State Medicaid agencies are currently responsible for establishing and implementing procedures to monitor HMO and HIO contracts. The areas States monitor through these

the information listed above will be provided to an organization in the notification of sanction. Specifically, the notice of sanction will provide: (1) The sanction or sanctions to be imposed, (2) the reason for the sanction, (3) the authority for the sanction, (4) the effective date of the sanction, and (5) the time available for submission of the request for reconsideration and to whom the request should be submitted.

HCFA will specify the above information in operating procedures rather than in the regulations. Under the intermediate sanctions, appeal rights will be limited to the reconsideration period.

Comment: One commenter wanted the following information provided by HCFA following a reconsideration: (1) Whether the intermediate sanction will be imposed; (2) the reasons for imposing the sanction, addressing the evidence and arguments submitted by the organization; (3) the effective date and duration of the sanction; and (4) specific information regarding the organization's right to appeal the imposition of a sanction.

Response: We will provide this information at the conclusion of a reconsideration, with two exceptions. First, the duration of the sanction will depend largely on the organization's corrective action plan and willingness and ability to resolve the problem(s). An organization that cannot immediately correct a deficiency for which it has been sanctioned will be expected to submit a corrective action plan to HCFA. This plan will be the organization's description of how and when it will resolve the problems that caused the sanctions to be imposed. Because each corrective action plan is unique, the duration of the sanction cannot be specified at the time it is imposed. Second, there will not be additional appeal steps beyond the initial reconsideration. HCFA will, however, act as quickly as possible when an organization believes it has resolved the violation(s) and wishes to be re-evaluated.

Comment: One commenter recommended that the Medicaid regulations contain minimum standards for the State review procedure. In addition, this commenter believed that an organization sanctioned by a State should have an opportunity for a separate review determination on the Federal level which would supersede any State determination.

Response: State Medicaid agencies are currently responsible for establishing and implementing procedures to monitor HMO and HIO contracts. The areas States monitor through these procedures are broader than the areas identified in this rule. Because States already have these monitoring and review procedures in place, we prefer to allow States to implement these additional responsibilities within their current activities. We will not, in these regulations, specify national standards for this one aspect of the overall monitoring and review of HMO and HIO contracts conducted by States.

In response to the second comment, the Medicaid program is administered by States as opposed to the Federal government. We stated in the preamble of the proposed rule that we believe that States are in the best position to monitor the identified violations and to make a determinations as to whether a violation has occurred. The proposed rule and this final rule offer an additional opportunity for an HMO or HIO to receive a reconsideration of a State's determination. We do not see the need for a third level of review and determination.

Comment: A commenter recommended that HCFA require States to collect information quarterly from Medicaid participating HMOs on the timeliness and frequency of prenatal visits for each Medicaid enrollee. The commenter also recommended requiring States to annually submit data to HCFA demonstrating that the State's rates for prenatal and Early Periodic Screening Diagnosis and Testing (EPSDT) services are adequate to ensure access under Medicaid's statutory requirements.

Response: This comment goes beyond the scope of this rulemaking, which implements legislative authority for intermediate sanctions and civil money penalties for HMOs (and some HIOs). HMOs and HIOs are not yet obligated to pay EPSDT providers State rates. The adequacy of such State rates is not relevant in the case of HMO enrollees. Note, however, section 1926(a) of the Social Security Act requires that State Medicaid agency payments must be sufficient to enlist enough providers to ensure that obstetric and pediatric services are available to Medicaid recipients at least to the same extent available to the general population. HCFA is developing a proposed rule which would implement the provisions of section 1926(a) in regulations.

Comment: One commenter believed that, without additional FFP, the Federal requirements mandating additional specific monitoring functions under this regulation would be burdensome for the States.

Response: HCFA expects States to integrate these new areas of monitoring into their existing monitoring and review activities; for example, those required for monitoring an HMO's enrollment and termination practices and grievance procedures. There will continue to be FFP in the costs for conducting these activities at each State's current Federal matching rate.

Comment: One commenter recommended that HCFA affirmatively adopt those State decisions with which it agrees. The commenter believes this will mean that HCFA will more closely examine State agency determinations or decisions if it is required to formally adopt them.

Response: The regulation at § 434.67(b) provides for a mechanism whereby HCFA must uphold or reject a State decision that a sanction be or not be imposed. We believe that HCFA's consequent imposition of a sanction or decision not to impose a sanction provides sufficient formal affirmative adoption or rejection of a State's recommendation.

Comment: One commenter recommended that the final regulation should specify that the informal appeal must be conducted by an official "experienced and knowledgeable" about contracting under sections 1876 or 1903(m) of the Act.

Response: HCFA will ensure that sanction reconsiderations are evaluated by qualified HCFA officials. However, we do not believe it is necessary to mandate specific qualifications in the regulation.

Comment: A number of commenters were interested in HCFA's approach to beneficiary complaints. HCFA was encouraged to add provisions to the intermediate sanctions establishing timeframes and methodologies for the investigation of complaints. A specific recommendation was made to amend 42 CFR part 417 to require HCFA to have procedures to monitor and investigate violations of section 1876 of the Act. Other commenters believed that HCFA should require contracting organizations to publicize the availability of intermediate sanctions along with information on how to file complaints. Another commenter suggested the rules specify that the complainant receive: (1) Verification of receipt of the complaint; (2) a copy of the notice of intermediate sanction; (3) a copy of the HMOs response, if any, and; (4) a copy of the reconsideration determination. Finally, two commenters wanted a time limit placed on HCFA's investigation and review of beneficiary complaints, suggesting a 60-day deadline for processing the initial complaint and informing the complainant on the outcome of the investigation.

Response: The purpose of the intermediate sanction is to provide more

tools and authority to protect the Medicare beneficiary or Medicaid recipient. HCFA already has procedures in the regional offices and State Medicaid agencies for reporting and responding to beneficiary or recipient complaints. In addition, we already require that HMOs have a formal appeals process through which Medicare enrollees may submit complaints to HCFA. Information about this process must be included in written marketing materials, as set forth in § 417.426. Thus, if an HMO or competitive medical plan denies a service or payment for a service to a Medicare enrollee, the HMO or competitive medical plan must advise the enrollee of his or her rights under Medicare that afford the beneficiary the right to appeal the denial to HCFA. Establishing a separate complaint mechanism for the intermediate sanctions regulation would only serve to divert scarce resources from oversight and enforcement activities. Nevertheless, enrollee complaints will continue to be used as a key indicator of potential problems in Medicare or Medicaid contracting plans as well as identifying potential problems where intermediate sanctions or civil money penalties would be effective.

Comment: One commenter stated that an appropriate sanction for marketing abuse would be to require future marketing materials and/or membership materials to publicize the imposition of sanctions.

Response: This goes beyond our legislative authority. We are constrained, by the provisions of the enabling legislation, in the sanctions we may apply.

Comment: Two commenters were concerned that if the informal reconsideration results in a reversal of the initial determination, there is no provision to ensure that notice of the decision to reverse is provided to the OIG.

Response: We agree that it is important that OIG be notified by HCFA if, in the course of reconsideration or at a later time, a sanction is rescinded. The single determination applies to the initial determination and HCFA will promptly forward to the OIG information on reversals or termination of sanctions. Generally, HCFA will only notify OIG of an intermediate sanction after HCFA has confirmed the imposition of a sanction. This confirmation of sanction will occur at the conclusion of the notification of sanction period or at the end of a reconsideration.

Comment: One commenter believed that the sanctions available to HCFA were too limited and recommended that this final regulation include a third category of sanctions to include such additional sanctions as HCFA considers appropriate and as justice requires. Another commenter specifically suggested we broaden the intermediate sanctions to include sanctions for inappropriate marketing activities and noncompliance with appeal timeframes.

Response: We cannot broaden the intermediate sanctions regulation by introducing a third new category of sanctions that would be determined by what HCFA would consider "appropriate and as justice requires." To do so would exceed our statutory authority.

With regard to applying the intermediate sanctions to marketing violations, section 1876(i)(6)(A)(V) of the Act authorizes HCFA to impose sanctions if an HMO/CMP misrepresents or falsifies information that it furnishes under section 1876 of the Act to HCFA, an individual, or to any other entity. We believe this provides us authority to address a wide range of potential marketing abuses. One of the sanctions provided by the statute is the suspension of enrollment Medicare beneficiaries by the HMO/CMP (section 1876(i)(B)(ii)). Because we consider marketing activities to be an integral part of the enrollment process, we believe the statute gives HCFA the authority to require the offending HMO/CMP to suspend marketing activities directed to Medicare beneficiaries. Therefore, in this final rule, we clarify this by adding a new § 417.500(d)(3). Accordingly, §§ 417.500 (d)(1)–(d)(3) require the sanctioned HMO/CMP to stop accepting applications for enrollment made by Medicare beneficiaries, suspend payment to the HMO/CMP for Medicare beneficiaries enrolled during the sanction period, and, finally, requires the HMO/CMP to suspend all marketing activities to Medicare beneficiaries.

Additionally, we believe that, even in cases where HCFA imposes the suspension of payment sanction, HCFA may require the HMO/CMP to suspend marketing activities to Medicare beneficiaries. We believe that, if HCFA could suspend all enrollment entirely at its discretion, conditions could be attached to a decision to permit an HMO/CMP to continue to enroll new members—namely that actual marketing to new members cease until the sanction is lifted.

Noncompliance with appeal time frames may also be a violation of section 1876(i)(6)(A)(v) if, for example, HCFA finds that an HMO/CMP is misrepresenting information regarding its appeal process or is providing beneficiaries inaccurate information regarding appeal time frames. In addition, since the Medicare appeals process protects the Medicare enrollee's right to appeal an HMO's or competitive medical plan's decision not to furnish or pay for services, a violation of the appeals process is a failure to substantially provide required medically necessary items and services.

Comment: One commenter requested that an organization which is under the sanction of suspension of new enrollment applications also be prohibited from any new subscriber marketing activities. Another commenter asked what the implications for the organization are if an intermediate sanction of suspension of enrollment is imposed. Does the organization still have an obligation to conduct the annual open enrollment period if it occurs during the sanction period? Also, if the sanction is the suspension of payments for new enrollees, will the organization still be required to accept new enrollees and provide health services for which they may not be paid?

Finally, one commenter asked for a specific definition of "suspension." For example, if payments are suspended, the commenter wanted to know whether the organization can recover for services furnished during the sanction period after the sanction is lifted. The commenter also asked whether the organization may engage in marketing activities during the suspension period, holding applications in abeyance until the sanction is removed.

Response: Based on the authority granted the Secretary under section 1876(f)(3) of the Act and established in this regulation at §§ 417.500 (d)(1) through (d)(3), HCFA has the authority to impose the following penalties on offending HMOs or CMPs:

1. Require the HMO or CMP to suspend the enrollment of Medicare beneficiaries during the sanction period; or
2. Suspend payments to the organization for Medicare beneficiaries enrolled during the sanction period.

Depending on the severity and nature of the violation, HCFA will determine which of the two penalties available under the intermediate sanctions is appropriate. A discussion of the two penalties under the intermediate sanctions available to HCFA follows.

Suspension of new Medicare enrollments: Under this sanction, HCFA requires the HMO or CMP to cease all enrollments of Medicare beneficiaries. On the date the sanction is effective, the plan would be prohibited from accepting applications or otherwise enrolling any new Medicare beneficiaries in the plan. However, individuals already enrolled in the plan and who become Medicare eligible (age in) while the plan is under the suspension of new enrollments, may be enrolled, if they choose, in the plan during the sanction period. Under this sanction, the plan would also be prohibited from engaging in any marketing activities directed to Medicare beneficiaries.

The organization would continue to be paid by HCFA for beneficiaries enrolled before the imposition of this sanction.

Suspension of payments: Under the suspension of payments penalty, the HMO or CMP may continue to enroll beneficiaries but would not be paid for those beneficiaries during the sanction period. Once the sanction period ends, there will be a retroactive payment for beneficiaries enrolled during the sanction period. Thus, this penalty is purely a financial one, affecting only the withholding of the HMO's or competitive medical plan's capitation payment for new medicare enrollees during the sanction period.

Enrollment of new members would be allowed to continue; thus the plan would not necessarily "lose" potential enrollees who would enroll with another HMO or CMP if enrollment was suspended under section 1876(i)(6)(B)(iii) of the Act. As was described in a previous response to a comment, at the time an HMO or CMP is notified that it is subject to the intermediate sanctions, the notice of sanction will inform the plan what specific intermediate sanction has been imposed, including what the plan must do to comply with the sanction, and the effective date of the sanction. In addition to whatever sanction HCFA imposes, the HMO or CMP may also be subject to civil money penalties levied by the Office of Inspector General.

Comment: Several commenters suggested that the informal reconsideration be required to be conducted promptly, for example, within 30 or 60 days of receipt of the organization's evidence. In addition, one commenter requested that the review be expedited if the organization demonstrates that there is a pressing need for swift action.

Response: It is our intent to conduct reconsiderations promptly. The purpose of an intermediate sanction is to allow us to resolve a problem quickly. Nevertheless, we do not choose to specify a time limit. We encourage organizations to inform us of any

accepting applications or otherwise enrolling any new Medicare beneficiaries in the plan. However, individuals already enrolled in the plan and who become Medicare eligible (age in) while the plan is under the suspension of new enrollments, may be enrolled, if they choose, in the plan during the sanction period. Under this sanction, the plan would also be prohibited from engaging in any marketing activities directed to Medicare beneficiaries.

The organization would continue to be paid by HCFA for beneficiaries enrolled before the imposition of this sanction.

Suspension of payments: Under the suspension of payments penalty, the HMO or CMP may continue to enroll beneficiaries but would not be paid for those beneficiaries during the sanction period. Once the sanction period ends, there will be a retroactive payment for beneficiaries enrolled during the sanction period. Thus, this penalty is purely a financial one, affecting only the withholding of the HMO's or competitive medical plan's capitation payment for new medicare enrollees during the sanction period.

Enrollment of new members would be allowed to continue; thus the plan would not necessarily "lose" potential enrollees who would enroll with another HMO or CMP if enrollment was suspended under section 1876(i)(6)(B)(iii) of the Act. As was described in a previous response to a comment, at the time an HMO or CMP is notified that it is subject to the intermediate sanctions, the notice of sanction will inform the plan what specific intermediate sanction has been imposed, including what the plan must do to comply with the sanction, and the effective date of the sanction. In addition to whatever sanction HCFA imposes, the HMO or CMP may also be subject to civil money penalties levied by the Office of Inspector General.

Comment: Several commenters suggested that the informal reconsideration be required to be conducted promptly, for example, within 30 or 60 days of receipt of the organization's evidence. In addition, one commenter requested that the review be expedited if the organization demonstrates that there is a pressing need for swift action.

Response: It is our intent to conduct reconsiderations promptly. The purpose of an intermediate sanction is to allow us to resolve a problem quickly. Nevertheless, we do not choose to specify a time limit. We encourage organizations to inform us of any circumstances that require expedited reconsideration.

Comment: One commenter stated that the language in proposed § 417.495(e)(1), now designated as § 417.500(e)(1), implies that HCFA's reconsideration will inevitably result in upholding the initial determination. They recommended the language of this paragraph be revised to clarify that the sanctions are effective only if HCFA decides to uphold the initial determination.

Response: We disagree with the commenters interpretation of § 417.500(e)(1) and we do not believe the recommended clarification is necessary. We believe it is clear that the provision on the effective date for a sanction only applies when a final decision to impose a sanction is made. The reconsideration process is meant to be a serious assessment of the response by the sanctioned organization. As such, HCFA will not inevitably uphold its initial decision. If HCFA reverses its initial decision, § 417.500(e)(1) would have no applicability.

Comment: One commenter noted that the regulation allows HCFA to make the intermediate sanction effective immediately if the organization's conduct poses a serious threat to an enrollee's health and safety. The commenter stated that if the health and safety of enrollees is at issue, HCFA should take steps to terminate the contract in its entirety, and that intermediate sanctions are not appropriate in such critical circumstances.

Response: There may be instances in which HCFA will impose the intermediate sanction to stop the organization from enrollment and marketing activities at the same time a termination action is being initiated. We believe it is in the best interest of the enrollee that we maintain our authority to respond simultaneously with both actions.

Comment: Three commenters wanted to know if the intermediate sanctions could be imposed retroactively.

Response: Intermediate sanctions will always be imposed prospectively. Civil money penalties, on the other hand, may be imposed for conduct which has already occurred.

Comment: One commenter asked that we clarify what "generally" means as it appears in proposed §§ 417.495(e)—now § 417.500(e)—and 434.67(f)(1). These sections specify that if an HMO seeks reconsideration of a HCFA sanction, "the intermediate sanction generally will be effective on the date the organization is notified of HCFA's decision."

Response: The notice of intermediate sanction, (or notice of reconsideration of an intermediate sanction) will specify the effective date. Usually this will be on the date of the reconsideration notice. We have revised these sections, however, to more clearly state that the sanction is effective on the date specified in the sanction notice or reconsideration notice, respectively.

Comment: One commenter suggested a definition of "substantial" contractual relationship under a Medicaid contract. The commenter proposed that the regulation define "substantial" as greater than 5 percent of the total annual volume of payments for categories of services under the program.

Response: We considered use of a quantitative approach to defining a "substantial" contractual relationship—either a numerical dollar amount or, as suggested by the commenter, expressed as a percent. We dismissed such approaches because contracts of seemingly small financial value could still have a significant effect on Medicare or Medicaid enrollees. Furthermore, if an organization is large, with a substantial contracting budget, even a small percent, such as 5 percent, could involve substantial sums of money. We are therefore adhering to the definition of a "substantial" contractual relationship contained in the proposed rule. Nevertheless, we will consider relative size as a factor in our determination of whether to impose intermediate sanctions or civil money penalties.

Comment: A number of commenters believed that the imposition and duration of sanctions in both Medicare and Medicaid should be subject to a formal review instead of the proposed informal review process. One commenter stated that the formal review steps should consist of an independent review by an administrative law judge (ALJ), with review by the Departmental Appeals Board and, finally, judicial review; with sanctions not taking effect until all appeals are exhausted.

Response: The legislative intent for the intermediate sanctions is to provide HCFA with the authority to respond in a flexible and timely manner to violations of contracting organizations. Allowing the sanction process to become linked to extended review procedures would not serve the interests of the beneficiary or meet the intent of legislation. We believe that the reconsideration process will provide organizations ample opportunity to explain their position.

Comment: Two commenters stated that, if a pre-sanction hearing was not allowed, there should be a post-sanction

hearing before an ALJ or other impartial body, held as soon as possible after the imposition of any sanctions.

Response: As was stated previously, the intent of the statutory provisions implemented in this regulation is to allow HCFA to respond quickly to a problem. During the reconsideration process the decision to impose or not impose a sanction will be made judiciously. In the event a sanction is applied, HCFA will work with the organization to resolve the problem as rapidly as possible. We expect sanctions to be of short duration. If the violation persists, the likely outcome would be termination of the contract rather than an indefinite sanction. We believe that additional hearings would only serve to delay the resolution of problems.

Comment: One commenter stated that an organization should have an "opportunity to cure" by which the organization could avoid the imposition of sanctions by demonstrating not only that the alleged violation had not occurred, but that any prior violation already had been remedied.

Response: We agree that an organization which has received a notice of sanction should have a reasonable opportunity to present its position. In the event the risk contractor demonstrates during the reconsideration period that the sanction is not appropriate, the sanction will not be imposed. The organization's prior contract performance will be considered as we determine whether to impose a sanction and the amount of any civil money penalty.

Comment: One commenter requested than an organization be allowed to submit both documentary evidence, including statements and affidavits, and written arguments in response to a notice that HCFA intends to impose an intermediate sanction.

Response: We agree. The rule provides for the submission of such information as part of the reconsideration process. (See §§ 417.500 (b) (proposed § 417.495(b)) and 434.67(c))

Comment: One commenter expressed concern about the potential duration of an intermediate sanction and recommended a procedure by which, once a sanction is imposed, it will remain in effect until the organization submits a credible allegation of compliance. The commenter defined this as a senior officer's written statement that the organization has taken steps to ensure alleged violations have been examined and, where necessary, corrected. The commenter stated that HCFA should then have 14 days to determine whether the sanction should be terminated. If HCFA is unable to make a determination within 14 days, then the commenter believes that the intermediate sanction should be removed.

Response: We disagree with the recommendation. Our review and decision if we should end a sanction will be done as quickly as possible, but the timing will depend largely on the complexity of the problem and responsiveness of the organization. If a sanction is imposed, the sanctioned organization will develop a corrective action plan, effectively setting their own timetable for the removal of sanctions. HCFA will respond as quickly as possible to review an organization that believes it has corrected its deficiencies.

Comment: Several commenters wanted some means available to ensure prompt reevaluation of an existing sanction and a time limit placed on the duration of a sanction. A related comment was that any renewal of a contract should constitute ratification of the organization's performance under the contract and, thus, the end of the sanction period.

Response: In the event a sanction is applied to an organization, HCFA will respond as quickly as possible to their request for a re-evaluation. We, however, will not set specific limits on the timing or frequency of our reevaluations, or view contract renewal as HCFA's acknowledgement that sufficient corrective action has been taken.

Comment: One commenter pointed out what was believed to be an error in proposed § 434.67(f)(1). The last sentence of this citation in the proposed rule referred to "the date the organization is notified of HCFA's decision under paragraph (d)(1)(ii) of this section." However, paragraph (d)(1)(ii) of that section does not relate to a notification of a decision following reconsideration by HCFA, but rather to a decision by a State agency.

Response: We have modified § 434.67(d)(2) to clarify that the State agency decision to impose a sanction becomes HCFA's decision except in instances where HCFA decides to modify or reverse that agency decision. We also have revised § 434.67(f) so that it, (1) refers in paragraph (f)(1) to the date the HMO is "notified * * * under paragraph (c)," rather than "under paragraph (d)(1)(ii);" and, (2) refers in paragraph (f)(2) to "the date specified in HCFA's reconsideration notice."

B. Factors To be Considered in Levying Civil Money Penalties

Comment: One commenter believed that the proposed "Factors To Be Considered in Levying Civil Money Penalties" greatly dilutes the effectiveness of the penalties by creating many opportunities for HMOs to argue for minimal fines. The commenter stated that the imposition of a full penalty is tied to proof that the HMO engaged in prohibited behavior on a repeated and knowing basis—which is excessively difficult to prove. The commenter suggested that the deterrent effect of the civil money penalties should be preserved by imposing maximum fines for all violations that come to light.

Response: The intent of penalties is to quickly bring about corrective action on the part of a sanctioned organization and to deter further violations. The OIG will use the "Factors to Be Considered in Levying Civil Money Penalties" as a guide in determining the appropriate amount of any civil money penalty. Organizations that have made honest errors and are responsive to HCFA regulators will face less severe penalties than organizations that demonstrate a pattern of knowingly committing violations. We believe that, in performing our oversight responsibilities, it is important to retain flexibility in responding to violations. However, once all evidence has been evaluated and weighed, the OIG will act on the facts of the case in the manner it believes will best achieve the objectives of enrollee protection and regulatory compliance.

Comment: One commenter had several suggestions regarding the enumeration of specific mitigating and aggravating circumstances for the imposition of civil money penalties.

The commenter stated that the statute and regulation establish sanctions that can be imposed against organizations that charge enrollees premiums in excess of those permitted. The commenter believed it should be a mitigating circumstance if the premiums were only incidentally in excess of those permitted; it should be an aggravating circumstance if the premiums were greatly in excess of those permitted.

The commenter stated that the statute and regulations also provide sanctions for contracting with excluded individuals or entities. The commenter believed it should be an aggravating circumstance if the entity was excluded because of its dealings with the HMO and the excluded entity is contracting with the HMO for health care services. The commenter believed it should be a mitigating circumstance if the—

(1) Entity was excluded because of activities unrelated to its dealings with the HMO.

(2) Contract with the excluded entity is unrelated to the delivery of health care services.

(3) Violation is confined to a particular service area of the HMO.

Response: We do not agree with these comments. We believe that the current factors listed under proposed § 1003.106(a)(4) provide for sufficient consideration of the circumstances surrounding violations where premiums in excess of the allowable amount are charged by a contracting organization. Therefore, a separate factor addressing such a violation is unnecessary. With regard to the second comment, we believe that this goes beyond the scope of the statute. The enabling legislation provides for imposition of a civil money penalty without regard to the specific activities which resulted in an individual being excluded from the Medicare program. Additionally, since the statute provides that the penalty may be imposed in instances where excluded individuals are contracted to provide other than patient care, we see no need to mitigate this circumstance. Finally, we believe that the current factors listed under § 1003.106(a)(4) provide for sufficient consideration of the scope of a violation. Therefore, an amendment addressing violations that may be confined to a particular service are not necessary.

Comment: One commenter wanted the OIG to consider prior offenses for which the organization was not assessed any sanctions or money penalties. The commenter believed that even if prior violations had not been sanctioned, a pattern of violations should be considered more serious and dealt with more harshly. The commenter also suggested that proposed § 1003.106(a)(4)(vii), which concerns the history of prior offenses, should be amended to include, in the list of factors to be considered, whether there were any prior offenses by the organization, regardless of administrative or civil sanctions assessed.

Response: In making a determination on the imposition of sanctions we will consider an organization's pattern of conduct. A background of repeated violations would be considered an aggravating circumstance. We believe the current provisions in proposed § 1003.106 allow the OIG to consider the prior conduct of an organization in levying civil money sanctions. Therefore, an amendment is unnecessary.

Comment: One commenter stated that the standards in § 1003.106 relating to determinations regarding the amount of the penalty and assessment are

(2) Contract with the excluded entity is unrelated to the delivery of health care services.

(3) Violation is confined to a particular service area of the HMO.

Response: We do not agree with these comments. We believe that the current factors listed under proposed § 1003.106(a)(4) provide for sufficient consideration of the circumstances surrounding violations where premiums in excess of the allowable amount are charged by a contracting organization. Therefore, a separate factor addressing such a violation is unnecessary. With regard to the second comment, we believe that this goes beyond the scope of the statute. The enabling legislation provides for imposition of a civil money penalty without regard to the specific activities which resulted in an individual being excluded from the Medicare program. Additionally, since the statute provides that the penalty may be imposed in instances where excluded individuals are contracted to provide other than patient care, we see no need to mitigate this circumstance. Finally, we believe that the current factors listed under § 1003.106(a)(4) provide for sufficient consideration of the scope of a violation. Therefore, an amendment addressing violations that may be confined to a particular service are not necessary.

Comment: One commenter wanted the OIG to consider prior offenses for which the organization was not assessed any sanctions or money penalties. The commenter believed that even if prior violations had not been sanctioned, a pattern of violations should be considered more serious and dealt with more harshly. The commenter also suggested that proposed § 1003.106(a)(4)(vii), which concerns the history of prior offenses, should be amended to include, in the list of factors to be considered, whether there were any prior offenses by the organization, regardless of administrative or civil sanctions assessed.

Response: In making a determination on the imposition of sanctions we will consider an organization's pattern of conduct. A background of repeated violations would be considered an aggravating circumstance. We believe the current provisions in proposed § 1003.106 allow the OIG to consider the prior conduct of an organization in levying civil money sanctions. Therefore, an amendment is unnecessary.

Comment: One commenter stated that the standards in § 1003.106 relating to determinations regarding the amount of the penalty and assessment are subjective criteria which could result in arbitrary determinations by the OIG.

Response: We disagree with this comment. Congress authorized a maximum penalty amount for certain violations contained in the underlying statutes. The proposed factors listed in § 1003.106 represent an attempt to provide a measure for impartially determining a penalty amount against a culpable organization. Moreover, the public is afforded an opportunity to comment on the proposed factors before their adoption in final regulations. This process is intended to inform the public about what factors will be used in determining penalty amounts, and, to the extent possible, remove subjectivity from penalty determination decisions.

Comment: One commenter wanted to add the "enrollee's compliance with rules and protocols of the contracting organization" as a factor in our determination of imposing civil money penalties.

Response: We believe that the current factors listed under proposed § 1003.106(a)(4) provide for sufficient consideration of the commenter's concerns. Specifically, in paragraph (a)(4)(ii) the factor is the degree of culpability of the contracting organization. Under this factor, in determining whether or not to impose a penalty, as well as in determining the amount of any penalty which may be imposed, consideration will be given to the enrollee's culpability for the violation, including compliance with rules and protocols of the contracting organization. Therefore, a separate factor addressing this issue is unnecessary.

Comment: One commenter asked if proposed § 1003.103(c)(1)(iv), now designated as § 1003.103(e)(1)(iv), establishes degrees or levels of misrepresentation and falsification of information that will be subject to varying amounts of civil money penalties. In addition, the commenter wanted a distinction to be made in the regulation between a misrepresentation and falsification and a mistake with no fraudulent intent.

Response: Concerning a violation of this nature, we believe that once all pertinent information is examined, any reasonable person could discern the difference between a "misrepresentation" and "a mistake with no fraudulent intent." Therefore, we believe that the language in § 1003.103(c)(1)(iv) is sufficient as written.

Comment: Section 1003.103(c)(1)(v) specifies that the failure to comply with prompt payment of claims as established in section 1876(g)(6)(A) of the Act is the basis for a money penalty A commenter asked what constitutes a violation of timely claims payment, whether it is one late claim or a percentage of claims beyond the standard. In addition, this commenter questioned whether late claims will be determined from a monthly report, Medicare carriers, on-site review, or beneficiary or provider complaints and asked whether this includes claims from nonparticipating providers.

Response: Section 1876(g)(6)(A) of the Act contains a cross-reference to sections 1816(c)(2) and 1842(c)(2) of the Act, which describe prompt payment. These sections require that 95 percent of claims be paid within a specified time period (currently 24 calendar days after receipt). As a result, a definition in this regulation is unnecessary.

Comment: One commenter questioned whether Qualified Medicare Beneficiaries (QMBs) are subject to this rule.

Response: This rule applies to plans that have a Medicare or Medicaid contract. QMBs could be enrolled (or want to enroll) in these plans, and thus, could be affected by these rules.

Comment: One commenter wanted to know what constitutes "discouraging enrollment." Another commenter stated that a penalty should be imposed for discouraging enrollment only if a beneficiary is discouraged from enrolling because of a medical condition or a future need for substantial services.

Response: It is not possible to set out all the possible ways that enrollments in a contracting organization might be discouraged. Essentially, such a determination would be made after judging all the facts and circumstances surrounding an alleged violation. We agree, however, that violations of this nature pertain to certain circumstances The statute specifically authorizes imposition of a penalty in those instances in which, except as permitted by law, a contracting organization expels or refuses to reenroll an individual or engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment by enrollees whose medical condition or history indicate a need for substantial future medical services.

Comment: One commenter stated that § 434.80 would require a State agency to exclude from participation, as a Medicaid contractor, any HMO that is controlled or owned by an individual who has been convicted of a criminal offense relating to financial misconduct. The commenter said that this provision amounts to a lifetime ban on participation in Medicaid for

individuals who may have committed an offense only marginally related to the delivery of health care. The commenter recommended that this prohibition not be a lifetime ban, but that the prohibitions be restricted in their effect to criminal offenses which occurred within the past 10 years. The commenter also stated that the relationship of the criminal offense to the delivery of health care services should be a factor applied by the State agency in determining the fitness of the HMO contractor.

Response: This requirement is based on the requirement in 1902(p)(2) of the Act. The law does not provide authority for the Department to either grant exceptions to this requirement or make this requirement effective for only a specified time period.

Comment: A commenter noted that proposed § 1003.106(a)(1) refers to determining the amount of a penalty under § 1003.103(a), (b) and (c)(1) through (c)(3), and proposed § 1003.106(a)(4) refers to factors for the OIG to consider in determining the penalty under § 1003.103(b)(4) [sic]. The commenter states that there is no § 1003.103(b)(4), and believes that both of these references are incorrect.

Response: We agree. Several sections were incorrectly referenced in §§ 1003.106(a)(1) and 1003.106(a)(4) and we are revising the regulations accordingly. Numerous revisions to referenced sections are made in this final rule because of the publication of final OIG regulations since this HMO regulation was published as a proposed rule.

IV. Provisions of the Final Regulations

After consideration of the comments received and our further analysis of specific issues, we are publishing as final the July 22, 1991, proposed regulations with the revisions identified below. We have also made numerous editorial changes to improve the readability of the proposed text, without changing its substance.

On October 17, 1991 HCFA published a final rule (56 FR 51984) that amended part 417 to simplify, clarify, and update regulations on prepaid health care. Among other changes, that rule designated the contents of Subpart C—Health Maintenance Organization and Competitive Medical Plans as Subpart L—Medicare Contract Requirements. In the July 1991 proposed rule, we proposed to add a new § 417.495, "Sanctions against the organizations" to subpart C. Therefore, as a change from the proposed rule, we are designating proposed § 417.495 as 417.500 and adding it to subpart L.

As discussed in section III of this preamble, we have revised proposed §§ 417.495(b) and 434.67(c), which concern the time limit for seeking a reconsideration, to allow an additional 15 days under certain circumstances. (Proposed § 417.495(b) is now § 417.500(b).)

In addition to changes to improve its readability, proposed § 417.495(e), which concerns the effective date of a sanction, is revised to replace the inexplicit phrase "generally will be effective on the date the organization is notified of HCFA's decision." In this final rule, we specify that, if an organization seeks a reconsideration, the sanction is effective on the date specified in HCFA's notice of reconsidered determination. (Proposed § 417.495(e) is now § 417.500(e). Proposed § 431.55 is revised to improve its readability.)

On January 29, 1992, the OIG published a final rule (57 FR 3298) that amended, among other parts, part 1003. As a result of the publication of the January 29, 1992 rule, we have made changes from our July 22, 1991 proposed rule as follows:

- The substance of proposed §§ 1003.100(b)(1)(i) and (b)(1)(ii), which concern the purpose of part 1003, were incorporated into regulations at §§ 100.100(b)(1)(i) and (b)(1)(iv), respectively, by the January 29 rule. Therefore, proposed § 1003.100(b)(1)(i) is not included in this final rule. Section 1003.100(b)(1)(iv) is included in this final rule solely to make technical corrections.
- Proposed § 1003.100(b)(1)(iii), which also concerns the purpose of part 1003, is designated as § 1003.100(b)(1)(vi) by this final rule.
- The substance of proposed § 1003.102(b)(1), which identifies those individuals against whom the OIG may impose a penalty, was incorporated at §§ 1003.102(b)(1) through (b)(3) by the January 29, 1992 rule. Therefore, it is not included in this rule.
- Proposed § 1003.102(b)(2), which concerns the imposition of penalties against contracting organizations, is designated as § 1003.102(b)(8) by this final rule.
- In § 1003.103, which concerns the amount of a penalty, proposed paragraph (c) is designated as paragraph (e). Further, paragraph (a) as established by the January 29 rule is revised to include a reference to the newly-established paragraph (e).
- Also in § 1003.103, subparagraph (e)(3)(ii) is revised to more clearly reflect the penalty amount stipulated under the statute.
- In § 1003.106, which concerns determining the amount of a penalty and assessment, we have replaced the phrase "person or contracting organization" with the phrase "person." "Person," as it is broadly defined in § 1003.101, includes contracting organizations. Therefore, the phrase was replaced in the final rule.

As discussed in section III of this preamble, we have included, at § 1003.106(d), provisions regarding mitigating and aggravating circumstances to be considered in determining the amount of any penalty.

V. Information Collection Requirements

This final rule contains no information collection requirements. Consequently, this final rule need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Statement

This final rule implements sections of OBRA 1986, sections of the Medicare and Medicaid Patient and Program Protection Act of 1987, sections of the Medicare Catastrophic Coverage Act of 1988, and a section of OBRA 1989. This final rule will implement the Secretary's broadened authority to impose intermediate sanctions and civil money penalties on HMOs and other prepaid health plans contracting under Medicare or Medicaid that substantially fail to provide an enrolled individual with required medically necessary items and services, engage certain marketing, enrollment, reporting, or claims payment abuses, or, in the case of Medicare, employ or contract with, either directly or indirectly, an individual or entity excluded from participation in Medicare.

This regulation is the result of statutory changes and serves to clarify departmental policy with respect to the imposition of intermediate sanctions and civil money penalties. We believe the majority of plans, practitioners and providers do not engage in the prohibited activities and practices discussed in this final rule. In addition, we believe this final rule will have a deterrent effect upon providers and practitioners. Therefore, we expect that the aggregate economic impact would be minimal, affecting only those engaged in the prohibited behavior in violation of this final rule.

The Office of Management and Budget has reviewed this final rule in accordance with the provisions of Executive Order 12866.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all HMOs, competitive medical plans and other contracting organizations to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We do not have data to assist us in estimating the number of contracting organizations that will be affected by this final rule or the magnitude of any penalties that will be imposed. Nevertheless, any impact will be minimal because we believe the number of providers and practitioners engaged in prohibited activities are few. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 417

Administrative practice and procedure; Grant programs—health; Health care; Health facilities; Health insurance; Health Maintenance Organizations (HMO); Loan programs—health; Medicare; Reporting and recordkeeping requirements.

42 CFR Part 431

Grant Programs—Health; Health facilities; Medicaid; Privacy; Reporting and recordkeeping requirements.

42 CFR Part 434

Grant Programs—Health; Health Maintenance Organizations (HMO); Medicaid; Reporting and recordkeeping requirements.

42 CFR Part 1003

Administrative practice and procedure; Fraud; Grant Programs—Health; Health facilities; Health professions; Maternal and child health; Medicaid; Medicare; Penalties.

with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all HMOs, competitive medical plans and other contracting organizations to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We do not have data to assist us in estimating the number of contracting organizations that will be affected by this final rule or the magnitude of any penalties that will be imposed. Nevertheless, any impact will be minimal because we believe the number of providers and practitioners engaged in prohibited activities are few. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 417

Administrative practice and procedure; Grant programs—health; Health care; Health facilities; Health insurance; Health Maintenance Organizations (HMO); Loan programs—health; Medicare; Reporting and recordkeeping requirements.

42 CFR Part 431

Grant Programs—Health; Health facilities; Medicaid; Privacy; Reporting and recordkeeping requirements.

42 CFR Part 434

Grant Programs—Health; Health Maintenance Organizations (HMO); Medicaid; Reporting and recordkeeping requirements.

42 CFR Part 1003

Administrative practice and procedure; Fraud; Grant Programs—Health; Health facilities; Health professions; Maternal and child health; Medicaid; Medicare; Penalties.

A. 42 CFR part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97–248 (42 U.S.C. 1395mm note); section 9312(c) of Pub. L. 99–509 (42 U.S.C. 1395mm note); and secs. 215, 353, and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216, 263a, and 300e through 300e–17) and 31 U.S.C. 9701, unless otherwise noted.

Subpart L—Medicare Contract Requirements

2. In subpart L, a new section 417.500 is added to read as follows:

§ 417.500 Sanctions against HMOs and CMPs.

(a) *Basis for imposition of sanctions.* HCFA may impose the intermediate sanctions specified in paragraph (d) of this section, as an alternative to termination, if HCFA determines that an HMO or CMP with a contract under this subpart does one or more of the following:

(1) Fails substantially to provide the medically necessary services required to be provided to a Medicare enrollee and the failure adversely affects (or has a substantial likelihood of adversely affecting) the enrollee.

(2) Requires Medicare enrollees to pay amounts in excess of premiums permitted.

(3) Acts, in violation of the provisions of this part, to expel or to refuse to reenroll an individual.

(4) Engages in any practice that could reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this part) by eligible individuals whose medical conditions or histories indicate a need for substantial future medical services.

(5) Misrepresents or falsifies information that it furnishes under this part to HCFA, an individual, or to any other entity.

(6) Fails to comply with the requirements of section 1876(g)(6)(A) of the Act relating to the prompt payment of claims.

(7) Fails to meet the requirement in section 1876(f)(1) of the Act that not more than 50 percent of the organization's enrollment be Medicare beneficiaries and Medicaid recipients.

(8) Has a Medicare risk contract and—

(i) Employs or contracts with individuals or entities excluded from participation in Medicare under section 1128 or section 1128A of the Act for the provision of health care, utilization review, medical social work, or administrative services; or

(ii) Employs or contracts with any entity for the provision of those services (directly or indirectly) through an excluded individual or entity.

(b) *Notice of sanction.* (1) Before imposing the intermediate sanctions specified in paragraph (d) of this section, HCFA—

(i) Sends a written notice to the HMO or CMP stating the nature and basis of the proposed sanction; and

(ii) Sends the OIG a copy of the notice (other than a notice regarding the restriction on Medicare and Medicaid enrollees as described in paragraph (a)(7) of this section), once the sanction has been confirmed following the notice period or the reconsideration.

(2) HCFA allows the HMO or CMP 15 days from receipt of the notice to provide evidence that it has not committed an act or failed to comply with a requirement described in paragraph (a) of this section, as applicable. HCFA may allow a 15-day addition to the original 15 days upon receipt of a written request from the HMO or CMP. To be approved, the request must provide a credible explanation of why additional time is necessary and be received by HCFA before the end of the 15-day period following the date of receipt of the sanction notice. HCFA does not grant an extension if it determines that the HMO's or CMP's conduct poses a threat to an enrollee's health and safety.

(c) *Informal reconsideration.* If, consistent with paragraph (b)(2) of this section, the HMO or CMP submits a timely response to HCFA's notice of sanction, HCFA conducts an informal reconsideration that:

(1) Consists of a review of the evidence by a HCFA official who did not participate in the initial decision to impose a sanction; and

(2) Gives the HMO or CMP a concise written decision setting forth the factual and legal basis for the decision that affirms or rescinds the original determination.

(d) *Specific sanctions.* If HCFA determines that an HMO or CMP has acted or failed to act as specified in paragraph (a) of this section and affirms this determination in accordance with paragraph (c) of this section, HCFA may—

(1) Require the HMO or CMP to suspend acceptance of applications for

enrollment made by Medicare beneficiaries during the sanction period;

(2) Suspend payments to the HMO or CMP for Medicare beneficiaries enrolled during the sanction period; and

(3) Require the HMO or CMP to suspend all marketing activities to Medicare enrollees.

(e) *Effective date and duration of sanctions*—(1) *Effective date.* Except as provided in paragraph (e)(2) of this section, a sanction is effective 15 days after the date that the organization is notified of the decision to impose the sanction or, if the HMO or CMP timely seeks reconsideration under paragraph (c) of this section, on the date specified in the notice of HCFA's reconsidered determination.

(2) *Exception.* If HCFA determines that the HMO's or CMP's conduct poses a serious threat to an enrollee's health and safety, HCFA may make the sanction effective on a date before issuance of HCFA's reconsidered determination.

(3) *Duration of sanction.* The sanction remains in effect until HCFA notifies the HMO or CMP that HCFA is satisfied that the basis for imposing the sanction has been corrected and is not likely to recur.

(f) *Termination by HCFA.* In addition to or as an alternative to the sanctions described in paragraph (d) of this section, HCFA may decline to renew a HMO's or CMP's contract in accordance with § 417.492(b), or terminate the contract in accordance with § 417.494(b).

(g) *Civil money penalties.* If HCFA determines that a HMO or CMP has committed an act or failed to comply with a requirement described in paragraph (a) of this section (with the exception of the requirement to limit the percentage of Medicare and Medicaid enrollees described in paragraph (a)(7) of this section), HCFA notifies the OIG of that determination. HCFA also conveys to the OIG information when it reverses or terminates a sanction imposed under this subpart. In accordance with the provisions of 42 CFR part 1003, the OIG may impose civil money penalties on the HMO or CMP in addition to or in place of the sanctions that HCFA may impose under paragraph (d) of this section.

B. 42 CFR part 431 is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 431.55 is amended by adding a sentence at the end of paragraph (a) and adding new paragraph (h) to read as follows:

§ 431.55 Waiver of other Medicaid requirements.

(a) Statutory basis. * * *. Section 1902(p)(2) of the Act conditions FFP in payments to an entity under a section 1915(b)(1) waiver on the State's provision for exclusion of certain entities from participation.

* * * * *

(h) *Waivers approved under section 1915(b)(1) of the Act*—(1) Basic Rules. (i) An agency must submit, as part of it's waiver request, assurance that the entities described in paragraph (h)(2) of this section will be excluded from participation under an approved waiver.

(ii) FFP is available in payments to an entity that furnishes services under a section 1915(b)(1) waiver only if the agency excludes from participation any entity described in paragraph (h)(2) of this section.

(2) Entities that must be excluded. The agency must exclude an entity that meets any of the following conditions:

(i) Could be excluded under section 1128(b)(8) of the Act as being controlled by a sanctioned individual.

(ii) Has a substantial contractual relationship (direct or indirect) with an individual convicted of certain crimes, as described in section 1128(b)(8)(B) of the Act.

(iii) Employs or contracts directly or indirectly with one of the following:

(A) Any individual or entity that, under section 1128 or section 1128A of the Act, is precluded from furnishing health care, utilization review, medical social services, or administrative services.

(B) Any entity described in paragraph (h)(2)(i) of this section.

(3) Definitions. As used in this section, substantial contractual relationship means any contractual relationship that provides for one or more of the following services:

(i) The administration, management, or provision of medical services.

(ii) The establishment of policies, or the provision of operational support, for the administration, management, or provision of medical services.

C. 42 CFR part 434 is amended as set forth below:

PART 434—CONTRACTS

1. The authority citation for part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart C—Contracts with HMOs and PHPs: Contract Requirements

2. In subpart C, a new § 434.22 is added to read as follows:

§ 434.22 Application of sanctions to risk comprehensive contracts.

A risk comprehensive contract must provide that payments provided for under the contract will be denied for new enrollees when, and for so long as, payment for those enrollees is denied by HCFA under § 434.67(e).

Subpart D—Contracts With Health Insuring Organizations

3. In subpart D, a new § 434.42 is added to read as follows:

§ 434.42 Application of sanctions to risk comprehensive contracts.

A risk comprehensive contract must provide that payments provided for under the contract will be denied for new enrollees when, and for so long as, payment for those enrollees is denied by HCFA under § 434.67(e).

Subpart E—Contracts With HMOs and PHPs: Medicaid Agency Responsibilities

4. In subpart E, § 434.63 is revised to read as follows:

§ 434.63 Monitoring procedures.

The agency must have procedures to do the following:

(a) Monitor enrollment and termination practices.

(b) Ensure proper implementation of the contractor's grievance procedures.

(c) Monitor for violations of the requirements specified in § 434.67 and the conditions necessary for FFP in contracts with HMOs specified in § 434.80.

Subpart E—Contracts With HMOs and PHPs: Medicaid Agency Responsibilities

5. In subpart E, a new § 434.67 is added to read as follows:

§ 434.67 Sanctions against HMOs with risk comprehensive contracts.

(a) *Basis for imposition of sanctions.* The agency may recommend that the intermediate sanction specified in paragraph (e) of this section be imposed if the agency determines that an HMO with a risk comprehensive contract does one or more of the following:

(1) Fails substantially to provide the medically necessary items and services required under law or under the contract to be provided to an enrolled recipient and the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual.

(2) Imposes on Medicaid enrollees premium amounts in excess of premiums permitted.

(3) Engages in any practice that discriminates among individuals on the basis of their health status or requirements for health care services, including expulsion or refusal to reenroll an individual, or any practice that could reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by section 1903(m) of the Act) by eligible individuals whose medical conditions or histories indicate a need for substantial future medical services.

(4) Misrepresents or falsifies information that it furnishes, under section 1903(m) of the Act to HCFA, the State agency, an individual, or any other entity.

(b) *Effect of an agency determination.* (1) When the agency determines that an HMO with a risk comprehensive contract has committed one of the violations identified in paragraph (a) of this section, the agency must forward this determination to HCFA. This determination becomes HCFA's determination for purposes of section 1903(m)(5)(A) of the Act, unless HCFA reverses or modifies the determination within 15 days.

(2) When the agency decides to recommend imposition of the sanction specified in paragraph (e) of this section, this recommendation becomes HCFA's decision, for purposes of section 1903(m)(5)(B)(ii) of the Act, unless HCFA rejects this recommendation within 15 days.

(c) *Notice of sanction.* If a determination to impose a sanction becomes HCFA's determination under paragraph (b)(2) of this section, the agency must send a written notice to the HMO stating the nature and basis of the proposed sanction. A copy of the notice is forwarded to the OIG at the same time it is sent to the HMO. The agency allows the HMO 15 days from the date it receives the notice to provide evidence that it has not committed an act or failed to comply with a requirement described in paragraph (a) of this section, as applicable. The agency may allow a 15-day addition to the original 15 days upon receipt of a written request from the organization. To be approved, the request must provide a credible explanation of why additional time is necessary and be received by HCFA before the end of the 15-day period following the date the organization received the sanction notice. An extension is not granted if HCFA determines that the organization's

affected (or has substantial likelihood of adversely affecting) the individual.

(2) Imposes on Medicaid-enrollees premium amounts in excess of premiums permitted.

(3) Engages in any practice that discriminates among individuals on the basis of their health status or requirements for health care services, including expulsion or refusal to reenroll an individual, or any practice that could reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by section 1903(m) of the Act) by eligible individuals whose medical conditions or histories indicate a need for substantial future medical services.

(4) Misrepresents or falsifies information that it furnishes, under section 1903(m) of the Act to HCFA, the State agency, an individual, or any other entity.

(b) *Effect of an agency determination.* (1) When the agency determines that an HMO with a risk comprehensive contract has committed one of the violations identified in paragraph (a) of this section, the agency must forward this determination to HCFA. This determination becomes HCFA's determination for purposes of section 1903(m)(5)(A) of the Act, unless HCFA reverses or modifies the determination within 15 days.

(2) When the agency decides to recommend imposition of the sanction specified in paragraph (e) of this section, this recommendation becomes HCFA's decision, for purposes of section 1903(m)(5)(B)(ii) of the Act, unless HCFA rejects this recommendation within 15 days.

(c) *Notice of sanction.* If a determination to impose a sanction becomes HCFA's determination under paragraph (b)(2) of this section, the agency must send a written notice to the HMO stating the nature and basis of the proposed sanction. A copy of the notice is forwarded to the OIG at the same time it is sent to the HMO. The agency allows the HMO 15 days from the date it receives the notice to provide evidence that it has not committed an act or failed to comply with a requirement described in paragraph (a) of this section, as applicable. The agency may allow a 15-day addition to the original 15 days upon receipt of a written request from the organization. To be approved, the request must provide a credible explanation of why additional time is necessary and be received by HCFA before the end of the 15-day period following the date the organization received the sanction notice. An extension is not granted if HCFA determines that the organization's conduct poses a threat to an enrollee's health and safety.

(d) *Informal reconsideration.* (1) If the HMO submits a timely response to the agency's notice of sanction, the agency conducts an informal reconsideration that includes—

(i) Review of the evidence by an agency official who did not participate in the initial recommendation to impose the sanction; and

(ii) A concise written decision setting forth the factual and legal basis for the decision.

(2) The agency decision under paragraph (d)(1)(ii) of this section is forwarded to HCFA and becomes HCFA's decision unless HCFA reverses or modifies the decision within 15 days from the date of HCFA's receipt of the agency determination. In the event HCFA modifies or reverses the agency decision, the agency sends the HMO a copy of HCFA's decision under this paragraph.

(e) *Denial of payment.* If a HCFA determination that a HMO has committed a violation described in paragraph (a) of this section is affirmed on review under paragraph (d) of this section, or is not timely contested by the HMO under paragraph (c) of this section, HCFA, based upon the recommendation of the agency, may deny payment for new enrollees of the HMO under section 1903(m)(5)(B)(ii) of the Act. Under §§ 434.22 and 434.42, HCFA's denial of payment for new enrollees automatically results in a denial of agency payments to the HMO for the same enrollees. A new enrollee is an enrollee that applies for enrollment after the effective date in paragraph (f)(1) of this section.

(f) *Effective date and duration of sanction.* (1) Except as specified in paragraphs (f)(2) and (f)(3) of this section, a sanction is effective 15 days after the date the HMO is notified of the decision to impose the sanction under paragraph (c) of this section.

(2) If the HMO seeks reconsideration under paragraph (d) of this section, the sanction is effective on the date specified in HCFA's reconsideration notice.

(3) If HCFA, in consultation with the agency, determines that the HMO's conduct poses a serious threat to an enrollee's health and safety, the sanction may be made effective on a date prior to issuance of the decision under paragraph (d)(1)(ii) of this section.

(g) *Civil money penalties.* If a determination that an organization has committed a violation under paragraph (a) of this section becomes HCFA's determination under paragraph (b)(1) of this section, HCFA conveys the determination to the OIG. In accordance with the provisions of 42 CFR part 1003, the OIG may impose civil money penalties on the organization in addition to or in place of the sanctions that may be imposed under this section.

(h) *HCFA's role.* HCFA retains the right to independently perform the functions assigned to the agency in paragraphs (a) through (f) of this section.

(i) *State Plan requirements.* The State Plan must include a plan to monitor for violations specified in paragraph (a) of this section and for implementing the provisions of this section.

6. In subpart F, a new § 434.80 is added to read as follows:

Subpart F—Federal Financial Participation

§ 434.80 Condition for FFP in contracts with HMOs.

(a) *Basic rule.* FFP in payments to an HMO is available only if the agency excludes from participation as such an entity any entity described in paragraph (b) of this section.

(b) *Entities that must be excluded.* (1) An entity that could be excluded under section 1128(b)(8) of the Act as being controlled by a sanctioned individual.

(2) An entity that has a substantial contractual relationship as defined in § 431.55(h)(2), either directly or indirectly, with an individual convicted of certain crimes as described in section 1128(b)(8)(B) of the Act.

(3) An entity that employs or contracts, directly or indirectly, with one of the following:

(i) Any individual or entity excluded from Medicaid participation under section 1128 or section 1128A of the Act for the furnishing of health care, utilization review, medical social work, or administrative services.

(ii) Any entity for the provision through an excluded individual or entity of services described in paragraph (b)(3)(i) of this section.

D. 42 CFR part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS, AND EXCLUSIONS

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7a, 1320b–10, 1395mm, 1395ss(d), 1395u(j), 1395u(k), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 is amended by revising paragraph (a); republishing paragraph (b)(1) introductory text; revising paragraphs (b)(1)(iv) and

(b)(1)(v); and adding a new paragraph (b)(1)(vi) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128, 1128(c), 1128A, 1140, 1842(j), 1842(k), 1876(i)(6), 1882(d), and 1903(m)(5) of the Social Security Act, and sections 421(c) and 427(b)(2) of Public Law 99–660 (42 U.S.C. 1320a–7, 1320a–7a, 1320a–7(c), 1320b–10, 1395mm, 1395ss(d), 1395u(j), 1395u(k), 1396b(m), 11131(c) and 11137(b)(2)).

(b) *Purpose.* * * *

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

* * * * *

(iv) Fail to report information concerning medical malpractice payments or who improperly disclose, use or permit access to information reported under part B of title IV of Public Law 99–660, and regulations specified in 45 CFR part 60;

(v) Misuse certain Medicare and social security program words, letters, symbols and emblems; or

(vi) Substantially fail to provide an enrollee with required medically necessary items and services, or that engage in certain marketing, enrollment, reporting, claims payment, employment, or contracting abuses.

* * * * *

3. Section 1003.101 is amended by adding, in alphabetical order, definitions for the terms "adverse effect," "contracting organization," and "enrollee" to read as follows:

§ 1003.101 Definitions.

* * * * *

Adverse effect means medical care has not been provided and the failure to provide such necessary medical care has presented an imminent danger to the health, safety, or well-being of the patient or has placed the patient unnecessarily in a high-risk situation.

* * * * *

Contracting organization means a public or private entity, including of a health maintenance organization (HMO), competitive medical plan, or health insuring organization (HIO) which meets the requirements of section 1876(b) of the Act or is subject to the requirements in section 1903(m)(2)(A) of the Act and which has contracted with the Department or a State to furnish services to Medicare beneficiaries or Medicaid recipients.

Enrollee means an individual who is eligible for Medicare or Medicaid and who enters into an agreement to receive services from a contracting organization that contracts with the Department under title XVIII or title XIX of the Act.

* * * * *

4. Section 1003.102, paragraph (b) introductory text is republished and a new paragraph (b)(8) is added to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(b) The OIG may impose a penalty, and where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

* * * * *

(8) Is a contracting organization that HCFA determines has committed an act or failed to comply with the requirements set forth in § 417.500(a) or § 434.67(a) of this title or failed to comply with the requirement set forth in § 434.80(c) of this title.

* * * * *

5. Section 1003.103 is amended by revising paragraph (a) and adding new paragraph (e) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b) through (e) of this section, the OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under § 1003.102.

* * * * *

(e)(1) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $25,000 for each determination by HCFA that a contracting organization has:

(i) Failed substantially to provide an enrollee with required medically necessary items and services and the failure adversely affects (or has the likelihood of adversely affecting) the enrollee;

(ii) Imposed premiums on enrollees in excess of amounts permitted under section 1876 or Title XIX of the Act;

(iii) Acted to expel or to refuse to re-enroll a Medicare beneficiary in violation of the provisions of section 1876 of the Act and for reasons other than the beneficiary's health status or requirements for health care services;

(iv) Misrepresented or falsified information furnished to an individual or any other entity under section 1876 or section 1903(m) of the Act; or,

(v) Failed to comply with the requirements of section 1876(g)(6)(A) of the Act regarding prompt payment of claims.

(2) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $25,000 for each determination by HCFA that a contracting organization with a contract under section 1876 of the Act:

(i) Employs or contracts with individuals or entities excluded, under section 1128 or section 1128A of the Act, from participation in Medicare for the provision of health care, utilization review, medical social work, or administrative services; or

(ii) Employs or contracts with any entity for the provision of services (directly or indirectly) through an excluded individual or entity.

(3) The OIG may, in addition to or in lieu of other remedies available under law, impose a penalty of up to $100,000 for each determination that a contracting organization has:

(i) Misrepresented or falsified information furnished to the Secretary under section 1876 of the Act or to the State under section 1903(m) of the Act; or

(ii) Acted to expel or to refuse to reenroll a Medicaid recipient because of the individual's health status or requirements for health care services, or engaged in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by section 1876 or section 1903(m) of the Act) with the contracting organization by Medicare beneficiaries and Medicaid recipients whose medical condition or history indicates a need for substantial future medical services.

(4) If enrollees are charged more than the allowable premium, the OIG will impose an additional penalty equal to double the amount of excess premium charged by the contracting organization. The excess premium amount will be deducted from the penalty and returned to the enrollee.

(5) The OIG will impose an additional $15,000 penalty for each individual not enrolled when HCFA determines that a contracting organization has committed a violation described in paragraph (e)(3)(ii) of this section.

(6) For purposes of paragraph (e) of this section, a violation is each incident where a person has committed an act listed in § 417.500(a) or § 434.67(a) of this title or failed to comply with a requirement set forth in § 434.80(c) of this title.

6. Section 1003.106 is amended by adding new paragraph (a)(4); redesignating paragraph (d) as paragraph (e) and republishing it; and adding a new paragraph (d) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) * * *

(4) In determining the appropriate amount of any penalty in accordance with § 1003.103(e), the OIG will consider as appropriate—

(i) The nature and scope of the required medically necessary item or service not provided and the circumstances under which it was not provided;

(ii) The degree of culpability of the contracting organization;

(iii) The seriousness of the adverse effect that resulted or could have resulted from the failure to provide required medically necessary care;

(iv) The harm which resulted or could have resulted from the provision of care by a person that the contracting organization is expressly prohibited, under section 1876(i)(6) or section 1903(p)(2) of the Act, from contracting with or employing;

(v) The harm which resulted or could have resulted from the contracting organization's expulsion or refusal to reenroll a Medicare beneficiary or Medicaid recipient;

(vi) The nature of the misrepresentation or fallacious information furnished by the contracting organization to the Secretary, State, enrollee, or other entity under section 1876 or section 1903(m) of the Act;

(vii) The history of prior offenses by the contracting organization or principals of the contracting organization, including whether, at any time prior to determination of the current violation or violations, the contracting organization or any of its principals was convicted of a criminal charge or was held liable for civil or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services; and

(viii) Such other matters as justice may require.

* * * * *

(d) In considering the factors listed in paragraph (a)(4) of this section, for violations subject to a determination under § 1003.103(e), the following circumstances are to be considered, as appropriate, in determining the amount of any penalty—

(1) Nature and circumstances of the incident. It would be considered a mitigating circumstance if, where more than one violation exists, the appropriate items or services not provided were:

(i) Few in number, or

(ii) Of the same type and occurred within a short period of time.

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) * * *

(4) In determining the appropriate amount of any penalty in accordance with § 1003.103(e), the OIG will consider as appropriate—

(i) The nature and scope of the required medically necessary item or service not provided and the circumstances under which it was not provided;

(ii) The degree of culpability of the contracting organization;

(iii) The seriousness of the adverse effect that resulted or could have resulted from the failure to provide required medically necessary care;

(iv) The harm which resulted or could have resulted from the provision of care by a person that the contracting organization is expressly prohibited, under section 1876(i)(6) or section 1903(p)(2) of the Act, from contracting with or employing;

(v) The harm which resulted or could have resulted from the contracting organization's expulsion or refusal to reenroll a Medicare beneficiary or Medicaid recipient;

(vi) The nature of the misrepresentation or fallacious information furnished by the contracting organization to the Secretary, State, enrollee, or other entity under section 1876 or section 1903(m) of the Act;

(vii) The history of prior offenses by the contracting organization or principals of the contracting organization, including whether, at any time prior to determination of the current violation or violations, the contracting organization or any of its principals was convicted of a criminal charge or was held liable for civil or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services; and

(viii) Such other matters as justice may require.

* * * * *

(d) In considering the factors listed in paragraph (a)(4) of this section, for violations subject to a determination under § 1003.103(e), the following circumstances are to be considered, as appropriate, in determining the amount of any penalty—

(1) Nature and circumstances of the incident. It would be considered a mitigating circumstance if, where more than one violation exists, the appropriate items or services not provided were:

(i) Few in number, or

(ii) Of the same type and occurred within a short period of time.

It would be considered an aggravating circumstance if such items or services were of several types and occurred over a lengthy period of time, or if there were many such items or services (or the nature and circumstances indicate a pattern of such items or services not being provided).

(2) Degree of culpability. It would be considered a mitigating circumstance if the violation was the result of an unintentional, unrecognized error, and corrective action was taken promptly after discovery of the error.

(3) Failure to provide required care. It would be considered an aggravating circumstance if the failure to provide required care was attributable to an individual or entity that the contracting organization is expressly prohibited by law from contracting with or employing.

(4) Use of excluded individuals. It would be considered an aggravating factor if the contracting organization knowingly or routinely engages in the prohibited practice of contracting or employing, either directly or indirectly, individuals or entities excluded from the Medicare program under section 1128 or section 1128A of the Act.

(5) Routine practices. It would be considered an aggravating factor if the contracting organization knowingly or routinely engages in any discriminatory or other prohibited practice which has the effect of denying or discouraging enrollment by individuals whose medical condition or history indicates a need for substantial future medical services.

(6) Prior offenses. It would be considered an aggravating circumstance if at any time prior to determination of the current violation or violations, the contracting organization or any of its principals was convicted on criminal charges or held liable for civil or administrative sanctions in connection with a program covered by this part or any other public or private program of payment for medical services. The lack of prior liability for criminal, civil, or administrative sanctions by the contracting organization, or the principals of the contracting organization, would not necessarily be considered a mitigating circumstance in determining civil money penalty amounts.

(e) (1) The standards set forth in this section are binding, except to the extent that their application would result in imposition of an amount that would exceed limits imposed by the United States Constitution.

(2) The amount imposed will not be less than the approximate amount required to fully compensate the United States, or any State, for its damages and costs, tangible and intangible, including but not limited to the costs attributable to the investigation, prosecution, and administrative review of the case.

(3) Nothing in this section will limit the authority of the Department to settle any issue or case as provided by § 1003.126, or to compromise any penalty and assessment as provided by § 1003.128.

Dated: March 30, 1994.

June Gibbs Brown,

Inspector General.

Dated: April 12, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: July 7, 1994.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 94–17221 Filed 7–14–94; 8:45 am]

BILLING CODE 4110–60–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 322

RIN 3067–AC27

Defense Production: Priorities and Allocations Authority; Removal of CFR Part

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule removes 44 CFR 322, Defense Production: Priorities and Allocations Authority (DMO–3), the authority for which was superseded by Executive Order 12919 of June 3, 1994.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Hall, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3520.

SUPPLEMENTARY INFORMATION: On June 3, 1994, the President signed Executive Order 12919, National Defense Industrial Resources Preparedness, 59 FR 29525, June 7, 1994, which delegated authorities under the Defense Production Act and revoked and superseded certain authorities that were the basis for 44 CFR part 322. This rule removes part 322 to comply with Executive Order 12919.

List of Subjects in 44 CFR Part 322

Authority delegations (Government agencies), National defense.

PART 322—[REMOVED]

Accordingly, 44 CFR part 322 is removed.

Dated: July 11, 1994.

James L. Witt,

Director.

[FR Doc. 94–17232 Filed 7–14–94; 8:45 am]

BILLING CODE 6718–20–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 68

[CGD 94–050]

Deep Frames in Vessel Admeasurement

AGENCY: Coast Guard, DOT.

ACTION: Policy statement.

SUMMARY: The Coast Guard is issuing this policy statement to address the variances in its practices related to the use of deep-frames in vessel admeasurement. Recent decisions applying the rules of practice regarding deep-frames to existing vessels during remeasurement have raised questions of fairness in application of the practices. This policy addresses the acceptance of deep-frames used in the construction of vessels under previously accepted practices.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth C. Hixson, Vessel Documentation and Tonnage Survey Branch at (202) 267–1492.

SUPPLEMENTARY INFORMATION: The admeasurement of vessels has a long history. Indeed, the earliest admeasurement statute was enacted by the First Congress in 1789. Over the years, as the Nation's maritime law developed, various Federal statutes used vessel tonnage as a parameter for certain requirements. As a vessel's tonnage became increasingly important as a parameter, the marine industry developed a number of artificial construction techniques which had the effect of reducing tonnage. The use of deep-frames was one of these techniques.

The method of measuring under the standard or regulatory tonnage system allows deep-frames to work as a tonnage reduction technique. This method calls for the hull dimension measurements to be taken from the inner face of the deep-frame rather than the interior wall of the hull. Therefore, a deep-frame excludes more space from the tonnage calculation and lowers the resulting tonnage. In this manner a vessel may avoid having to meet certain regulatory requirements that are based on the vessel's tonnage.

In the past, several different interpretations existed regarding the use of deep-frames in tonnage measurement. Some interpretations permitted deep-frames to be notched in a way that permitted more area to be excluded, resulting in lower tonnage, others did not permit notching in the same manner; some required deep-frames to begin and terminate on a bulkhead, others did not; and so forth. Each of these interpretations served as a local rule of practice for constructing a deep-frame in the particular Coast Guard District where used. Vessel owners, as a matter of business practice, constructed their vessels with deep-frames meeting the least onerous locally acceptable practice. Although deep-framing techniques were developed with the general intent that they be consistently applied, no effort was ever made to achieve consistency in application or to disseminate the existing interpretations or practices. In addition, since the nuances of the practices did not detract from nor contribute to the safe construction of the vessel, no urgency was present to make the practices consistent. Therefore, numerous vessels were constructed using different practices regarding deep-frames, each of which was locally acceptable as a deep-frame technique for tonnage measurement purposes. Many of those vessels are still in service today.

On December 23, 1983, the Coast Guard entered into a Memorandum of Understanding (MOU) that delegated certain aspects of the tonnage measurement function to the American Bureau of Shipping (ABS). Since that time, the rules of practice regarding the use of deep-frames in construction have been applied with greater consistency.

A vessel which was constructed before the 1983 MOU recently underwent extensive shipyard work. The scope of the work performed resulted in a requirement that the vessel be readmeasured. During the measurement process, existing deep-frames in the vessel were not accepted as deep-frames for tonnage measurement purposes because they did not conform to the rules of practice as currently interpreted. To modify the deep-frames on this one vessel to conform to the current rules of practice would cost approximately $250,000. Since the deep-frames on the vessel as configured at construction were accepted as such for tonnage measurement purposes, and since modification of the deep-frames would not contribute to the safe construction or operation of the vessel, the Coast Guard will not require the deep-frames to be modified to meet the current interpretation of the rules of practice.

The purpose of this policy statement is to preserve the acceptance of deep-frames used in the construction of vessels under previously accepted practices. The Coast Guard's opinion is that to require vessel owners to now modify deep-frames that met acceptable practices when originally installed, would subject them to unnecessary costs. The alternative for the vessel owners is to remeasure their vessels without the benefit of the deep-frames. This alternative could subject the vessel to various regulatory and operational requirements for which it was not designed.

The Coast Guard's policy is that all deep-frames installed during construction of a vessel delivered before December 23, 1983, and accepted under local rules of practice as deep-frames for original measurement of the vessel, will be accepted as deep-frames for all tonnage measurement purposes under current rules of practice. Any vessel delivered on or before December 23, 1983, must meet the current rules of practice for deep-frames. In addition, any new or additional deep-frames installed after the effective date of this policy statement on vessels delivered before December 23, 1983, must meet the current rules of practice for deep-frames.

Dated: July 11, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–17275 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

48 CFR Parts 206, 222, 226, 237, and 252

Defense Federal Acquisition Regulation Supplement; Services at Installations Being Closed

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Director of Defense Procurement is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit contracting with local governments for police, fire protection, airfield operation, or other community services. The interim rule adds a clause which restricts performance of such services to professional employees to the extent that professionals are available in the area under the jurisdiction of the local government.

DATES: *Effective Date:* July 8, 1994.

Comment Date: Comments on the interim rule should be submitted to the address shown below on or before September 13, 1994 to be considered in formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mrs. Linda Holcombe, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 604–5971. Please cite DFARS Case 93–D323 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda Holcombe, (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2907 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) permits the Secretary of Defense to contract with local governments for police, fire protection, airfield operation, or other community services.

The Director, Defense Procurement, issued Departmental Letter 94–011, July 8, 1994, to require that all solicitations and contracts with local governments for police, fire protection, airfield operation, or other community services must include a clause restricting performance of such services to professional employees to the extent that professionals are available in the area under the jurisdiction of the local government.

B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it will, to the extent such authority is exercised by the Secretary of Defense, reduce competitive participation by any entities, large or small, which perform, or are interested in performing police, fire protection, airfield operation, or other community services. These solicitations shall be restricted to local governments at military installations being closed. A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Mrs. Linda S.

performance of such services to professional employees to the extent that professionals are available in the area under the jurisdiction of the local government.

DATES: *Effective Date:* July 8, 1994.

Comment Date: Comments on the interim rule should be submitted to the address showo below on or before September 13 1994 to be considered in formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mrs. Linda Holcombe, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 604–5971. Please cite DFARS Case 93–D323 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda Holcombe, (703) 604–5929.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2907 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160) permits the Secretary of Defense to contract with local governments for police, fire protection, airfield operation, or other community services.

The Director, Defense Procurement, issued Departmental Letter 94–011, July 8, 1994, to require that all solicitations and contracts with local governments for police, fire protection, airfield operation, or other community services must include a clause restricting performance of such services to professional employees to the extent that professionals are available in the area under the jurisdiction of the local government.

B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it will, to the extent such authority is exercised by the Secretary of Defense, reduce competitive participation by any entities, large or small, which perform, or are interested in performing police, fire protection, airfield operation, or other community services. These solicitations shall be restricted to local governments at military installations being closed. A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Mrs. Linda S. Holcombe, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. The interim rule applies to both large and small businesses. Comments are invited from small businesses and other interested parties. Comments from small entities will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 93–D323 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 206, 222, 226, 237, and 252.

Government procurement.

Nancy L. Ladd,

Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 206, 222, 226, 237, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 206, 222, 226, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

2. Section 206.302–5 is amended by revising paragraph (b) to read as follows:

§ 206.302–5 Authorized or required by statute

(b) *Application.*

Agencies may use this authority to—

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United State in accordance with 10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b).

(ii) Acquire police, fire protection, airfield operation, or other community services from local governments at military installations to be closed under the circumstances in 237.7401 (Section 2907 of Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160)).

* * * * *

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Subpart 222.71 is amended by revising the title to read:

"Subpart 222.71—Right of First Refusal of Employment"

PART 226—OTHER SOCIOECONOMIC PROGRAMS

4. A new subpart 226.72 is added to read as follows:

Subpart 226.73—Base Closures and Realignments

Sec.
226.7200 Scope.

Subpart 226.72—Base Closures and Realignments

226.7200 Scope.

This subpart identifies the various policies and statutory authorities that affect contracts associated with the closure and realignment of military installations. These policies and authorities are—

(a) *Right of first refusal of employment.* This authority is embodied in a clause for use in solicitations and contracts arising from the closure of a military installation. The clause established employment rights for Government employees who are adversely affected by closure of the installation (see subpart 222.71).

(b) *Preference for local and small business.* This authority allows contracting officers, when entering into a contract as part of the closure or realignment of a military installation, to give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small and small disadvantaged business concerns (see subpart 226.71).

(c) *Services at installations being closed.* This authority allows DoD, under certain conditions, to contract with local governments for police, fire protection airfield operations and other community services at installations being closed (see subpart 237.74).

PART 237—SERVICE CONTRACTING

5. A new subpart 237.74 is added to read as follows:

Subpart 237.74—Services at Installations Being Closed

Sec.
237.7400 Scope.
237.7401 Policy.
237.7402 Contract clause.

Subpart 237.74—Services at Installations Being Closed

237.7400 Scope.

This subpart prescribes procedures for contracting, through use of other than full and open competition, with local governments for police, fire protection,

airfield operation, or other community services at military installations to be closed under the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–536), as amended, and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510), as amended.

237.7401 Policy.

The authority in 206.302–5(b)(ii) to contract with local governments—

(a) May be exercised without regard to the provisions of 10 U.S.C. Chapter 146, Contracting for Performance of Civilian Commercial or Industrial Type Functions;

(b) May not be exercised earlier than 180 days before the date the installation is scheduled to be closed;

(c) Requires a determination by the head of the contracting activity that the services being acquired under contract with the local government is in the best interests of the Department of Defense.

237.7402 Contract clause.

Use the clause at 252.237–7022, Services at Installations Being Closed, in solicitations and contracts based upon the authority of this subject.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.237–7022 is added to read as follows:

252.237–7022 Services at Installations Being Closed.

As prescribed in 237.7402, use the following clause:

Services at Installations Being Closed (July 1994)

Professional employees shall be used by the local government to provide services under this contract to the extent that professionals are available in the area under the jurisdiction of the local government.

(End of clause)

[FR Doc. 94–17265 Filed 7–14–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640–1140; I.D. 071294A]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the drift gillnet fishery for swordfish in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat. NMFS has determined that the semiannual quota for swordfish that may be harvested by drift gillnet during July through December will be reached on or before July 20, 1994. This closure is necessary to prevent the catch of swordfish by drift gillnet vessels from exceeding the quota.

EFFECTIVE DATE: Closure is effective 0001 hours, local time, July 20, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713- 2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*).

The implementing regulations at 50 CFR 630.24(b)(1)(i)(A) establish a quota of 69,286 lb (31,428 kg) of swordfish that may be harvested by drift gillnet during the period July 1 through December 31, each year. NMFS may adjust the July 1 through December 31, 1994, drift gillnet quota to reflect actual catches made in the January 1 through June 30, 1994, semiannual period as specified in 50 CFR 630.24. Available data indicate that the January through June quota was exceeded by 3034 lb (1376 kg) when the fishery was closed on June 25, 1994. Therefore, the adjusted quota for the July through December period is 66,252 lb (30,051 kg).

Under 50 CFR 630.25(a), NMFS is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached, by filing a document with the Office of the Federal Register at least 8 days before the closure is to become effective.

Based on reported catch, NMFS has determined that the drift gillnet quota for the July 1 through December 31 period will be reached on or before July 20, 1994. Hence, the drift gillnet fishery for Atlantic swordfish is closed effective 0001 hours, local time, July 20, 1994, through December 31, 1994.

During this closure of the drift gillnet fishery: (1) A person aboard a vessel using or having aboard a drift gillnet may not fish for swordfish from the North Atlantic swordfish stock; (2) no more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat; and (3) no more than two swordfish per trip may be landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is required by 50 CFR 630.25(a) and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: July 12, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17305 Filed 7–12–94; 3:26 pm]

BILLING CODE 3510–22–F

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Docket No. FV93–925–1PR]

Table Grapes Grown In Southeastern California and Table Grapes Imported Into the United States; Revision in Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on changes in the minimum quality requirements currently in effect for table grapes grown in southeastern California under Marketing Order No. 925 and for table grapes imported into the United States. This proposed rule would allow for the handling of grapes which satisfy all the requirements of the U.S. No. 1 Institutional grade except for bunch size tolerance. The objective of this proposal is to aid handlers and importers in the marketing of grapes which do not meet the U.S. No. 1 Institutional grade because of a greater variance in bunch size.

DATES: Comments must be received by August 1, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Peter I. Parks, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno,

Proposed Rules

Federal Register
Vol. 59, No. 135
Friday, July 15, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Docket No. FV93–925–1PR]

Table Grapes Grown in Southeastern California and Table Grapes Imported Into the United States; Revision in Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on changes in the minimum quality requirements currently in effect for table grapes grown in southeastern California under Marketing Order No. 925 and for table grapes imported into the United States. This proposed rule would allow for the handling of grapes which satisfy all the requirements of the U.S. No. 1 Institutional grade except for bunch size tolerance. The objective of this proposal is to aid handlers and importers in the marketing of grapes which do not meet the U.S. No. 1 Institutional grade because of a greater variance in bunch size.

DATES: Comments must be received by August 1, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Peter I. Parks, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721, telephone (209) 487–5901; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone (202) 720–5127.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 925 [7 CFR part 925], regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule is also issued pursuant to section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities under Federal marketing orders. Table grapes were added to the list of commodities specified in section 8e in 1982.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 20 handlers of California desert grapes subject to regulation under the marketing order, and approximately 90 producers. In addition, there are approximately 70 importers of table grapes subject to the requirements of the table grape import regulation. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of the table grape handlers, producers and importers may be classified as small entities.

Under the marketing order, table grapes grown in southeastern California are currently subject to a minimum grade requirement of U.S. No. 1 or U.S. No. 1 Institutional, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type) (Standards). The requirements of the U.S. No. 1 Institutional grade are the same as those of the U.S. No. 1 grade, with two exceptions. The first relates to bunch size. Under the U.S. No. 1 grade, there is a minimum bunch size requirement of 4 ounces. Under the U.S. No. 1 Institutional grade, bunches must

weigh at least 2 ounces but not more than 5 ounces. The second difference is that at least 95 percent of the containers in a lot of grapes grading U.S. No. 1 Institutional must be legibly marked "Institutional Pack," whereas no such marking requirement applies under the U.S. No. 1 grade. In order to allow for variations incident to proper grading and handling, both grades provide a tolerance of 8 percent for off-size bunches and for bunches and berries failing to meet other grade requirements.

The California Desert Grape Administrative Committee (committee), the agency responsible for local administration of the order, met on November 4, 1993, and unanimously recommended relaxing the quality requirements in the handling regulations to allow an additional bunch size tolerance for grapes which would otherwise grade U.S. No. 1 Institutional. This proposal would provide an additional tolerance of 25 percent, or a total of 33 percent, for bunches of grapes that would otherwise meet the U.S. No. 1 Institutional grade.

Prior to the 1992 season, the minimum grade requirement in effect under the order was U.S. No. 1 grade. The U.S. No. 1 Institutional grade was authorized as a means of allowing the industry to fulfill demands of the foodservice industry (e.g., restaurants and schools) for smaller sized bunches of grapes than are preferred in other markets. However, the domestic table grape industry has experienced difficulty in meeting the requirements of the U.S. No. 1 Institutional grade due to the 8 percent tolerance for off-sized bunches. The committee believes that establishing an additional tolerance for off-sized bunches in the handling regulation will promote sales of grapes packed for institutional use. Due to the requirements of the current handling regulation, California table grape handlers are unable to ship smaller grape bunches because of the 8 percent off-size bunch tolerance of the U.S. No. 1 Institutional grade. This has required handlers to repack grapes after they have been packed in the vineyards, resulting in packing costs that are prohibitively high for the modest prices paid by buyers of institutional grade grapes. Allowing an additional 25 percent bunch size tolerance is expected to allow the industry to more fully utilize its grapes in the marketplace. This proposal would allow handlers to mark containers of grapes meeting the modified requirements as proposed herein as "DGAC No. 1 Institutional."

In accordance with section 8e of the Act, table grapes imported into the United States are subject to the same minimum grade requirements as those in effect for domestically grown grapes under the marketing order. Those requirements are found in Table Grape Import Regulation 4 [7 CFR part 944.503]. Because this proposed rule would provide an additional tolerance for off-size bunches of grapes under the domestic handling regulation, the same change is being proposed under the table grape import regulation.

Finally, this rule would also update references to government contacts and sources of regulatory information in both the domestic and import regulations.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit comments on this proposal. A 15-day comment period is considered appropriate because this action would relax requirements currently in effect, and to be of maximum benefit it should be in effect as soon as possible since the 1994 shipping season began on April 20.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR Parts 925 and 944 are proposed to be amended as follows:

1. The authority citation for both 7 CFR Parts 925 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

2. Section 925.304 is amended by revising paragraph (a) to read as follows:

§ 925.304 California Desert Grape Regulation 6.

(a) Grade, size, and maturity. Except as provided under paragraphs (a)(1) and (a)(2) of this section, such grapes shall meet the minimum grade and size requirements of U.S. No. 1 Table, or U.S. No. 1 Institutional, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.913) (Standards), or shall meet all the requirements of U.S. No. 1 Institutional with the exception of the tolerance percentage for bunch size. Such tolerance shall be 33 percent instead of 8 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements may be marked "DGAC No. 1 Institutional" but shall not be marked "Institutional Pack."

(1) Grapes of the Perlette variety shall meet the minimum berry size requirement of ten-sixteenths of an inch;

(2) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch; shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code [Title 3].

* * * * *

3. Section 925.304(f) is amended by removing the zip code "20250" and adding in its place "20090–6456" and by removing the phone number "(202) 447–5697" and adding in its place "(202) 720–2491".

PART 944—FRUITS, IMPORT REGULATIONS

4. Section 944.503 is amended by revising paragraph (a)(1) to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a)(1) Pursuant to section 8e of the Act and Part 944—Fruits, Import Regulations, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in 7 CFR 51.884 for U.S. No. 1 Table or in 7 CFR 51.885 for U.S. No. 1 Institutional grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.913), or shall meet all the requirements of U.S. No. 1 Institutional with the exception of the tolerance percentage for bunch size. Such tolerance shall be 33 percent instead of 8 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements shall not be marked "Institutional Pack, but may be marked DGAC No.1 Institutional."

(1) Grapes of the Perlette variety shall meet the minimum berry size requirement of ten-sixteenths of an inch, and

(2) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3).

* * * * *

5. Section 944.503(a)(2) is amended by removing the zip code "20250" and adding in its place "20090–6456" and by removing the phone number "(202) 447–5697" and adding in its place "(202) 720–2491."

Dated: July 11, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–17242 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 989

[Docket No. FV94–989–3PR]

Raisins Produced From Grapes Grown in California; Removal of an Exemption for Raisins Produced in Southern California and Exported to Mexico

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would revise the administrative rules and regulations established under the Federal marketing order for raisins produced from grapes grown in California. It would remove a provision that currently exempts raisins produced from grapes dried on the vine in southern California and exported to Mexico from all marketing order requirements. This rule is based on a unanimous recommendation of the Raisin Administrative Committee (Committee), which is responsible for local administration of the order. Elimination of the exemption is intended to facilitate administration and improve enforcement efforts.

DATES: Comments must be received by August 1, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule.

(1) Grapes of the Perlette variety shall meet the minimum berry size requirement of ten-sixteenths of an inch, and

(2) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3).

* * * * *

5. Section 944.503(a)(2) is amended by removing the zip code "20250" and adding in its place "20090–6456" and by removing the phone number "(202) 447–5697" and adding in its place "(202) 720–2491."

Dated: July 11, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–17242 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Part 989

[Docket No. FV94–989–3PR]

Raisins Produced From Grapes Grown in California; Removal of an Exemption for Raisins Produced in Southern California and Exported to Mexico

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would revise the administrative rules and regulations established under the Federal marketing order for raisins produced from grapes grown in California. It would remove a provision that currently exempts raisins produced from grapes dried on the vine in southern California and exported to Mexico from all marketing order requirements. This rule is based on a unanimous recommendation of the Raisin Administrative Committee (Committee), which is responsible for local administration of the order. Elimination of the exemption is intended to facilitate administration and improve enforcement efforts.

DATES: Comments must be received by August 1, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference this docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or FAX (209) 487–5906; or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; Telephone: (202) 205–2830, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 989 [7 CFR part 989], both as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, [7 USC 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This proposed rule would remove a provision that exempts raisins produced from grapes dried on the vine in southern California and exported to Mexico in natural condition from all marketing order requirements. It is based on a unanimous recommendation of the Committee and other available information.

Section 989.60 of the order provides that the Committee may establish, with the approval of the Secretary, rules and procedures to exempt from regulations raisins produced in southern California (i.e., the counties of Riverside, Imperial, San Bernardino, Ventura, Orange, Los Angeles, and San Diego) and disposed of for distillation, livestock feed, or by export in natural condition to Mexico.

Paragraph (b) of section 989.160 of Subpart—Administrative Rules and Regulations (7 CFR 989.102–989.176) currently exempts raisins produced from grapes dried on the vine in those southern California counties, which are disposed of for use in distillation, livestock feed, or by export in natural condition to Mexico, from all marketing order requirements. This proposed rule would eliminate the exemption that applies to those raisins exported in natural condition to Mexico.

When that exemption provision was established in the early 1970's, the quantities of raisins exported to Mexico were relatively small and were of off-grade quality. It was determined at that time that the export exemption would not interfere with order regulations or with accomplishing program objectives.

Diminished demand in recent years for off-grade raisins and raisin residual material for distillation in California has made export in natural condition to Mexico a relatively lucrative market. The Committee has confirmed reports that large volumes of poor quality raisins, including lots as large as forty to fifty thousand pounds, have been exported into Mexico from southern California and other areas of California. This is a significant departure from the situation which existed when the exemption was first implemented. Raisins from areas which are not exempt from the provisions of the order appear to be passing into Mexico in violation of the regulations.

The North American Free Trade Agreement (NAFTA) has effected the removal of import duties and license requirements, opening the Mexican market to raisins which meet the quality requirements of the order. Hence, there is now an opportunity to build an export market in Mexico for high quality raisins. The Committee believes that all raisins eligible for export to Mexico need to be subject to the quality requirements of the order. The Committee also believes that the regulation of such raisins is essential to meeting program objectives and improving compliance efforts.

On the basis of this information, the Committee, on April 16, 1994, unanimously recommended the removal of the exemption that applies to raisins produced from grapes dried on the vine in southern California and exported in natural condition to Mexico.

Based on the above, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because the Committee would like to stop further abuse of the current provisions as soon as possible to accomplish marketing order objectives.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.160 is amended by revising paragraph (b) to read as follows:

§ 989.160 Exemptions.

(a) * * *

(b) *Disposition of raisins produced in Southern California.* Raisins produced from grapes dried on the vine in the counties of Riverside, Imperial, San Bernardino, Ventura, Orange, Los Angeles, and San Diego, which are disposed of for use in distillation or livestock feed, shall be exempt from the provisions of this part.

Dated: July 11, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–17245 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Part 1030

[DA–94–16]

Milk in the Chicago Regional Marketing Area; Proposed Temporary Revision of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rule.

SUMMARY: This document invites written comments on a proposal to revise the supply plant shipping standards under the Chicago Regional order for the months of August and September, 1994. The proposal would reduce shipping percentages for individual supply plants and units of supply plants to zero for these two months. The reductions were requested by Central Milk Producers Cooperative, a federation of cooperatives that represents producers who supply the market. The organization contends that the action is necessary to prevent uneconomic and inefficient movements of milk to qualify plants for pooling.

DATES: Comments are due no later than July 22, 1994.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 720–2357.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1030.7(b)(5) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Chicago Regional marketing area is being considered for the months of August 1, 1994, through September 30, 1994.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include August 1994 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages for the months of August and September, 1994. For an individual supply plant, the proposed action would reduce the shipping percentage by 3 percentage points (from 3 to zero percent of receipts) in August 1994 and by 5 percentage points (from 5 to zero percent of receipts) in September 1994. For a unit of supply plants, the proposed action would reduce the shipping percentage by 6 percentage points (from 6 to zero percent of receipts) in August 1994 and by 10 percentage points (from 10 to zero percent of receipts) in September 1994.

Currently, the order provides that from January through August, individual supply plants must ship at least 3 percent of milk receipts to distributing plants to qualify as pool plants while a unit of supply plants must ship at least 6 percent of total receipts for pooling purposes. From September through December, individual supply plants must ship at least 5 percent of milk receipts to distributing plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes.

The Chicago order provides that the Market Administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points for up to 3 months. The order also provides that the Director of the Dairy Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standards by up to 10 percentage points. The adjustments can

handling of milk in the Chicago Regional marketing area is being considered for the months of August 1, 1994, through September 30, 1994.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include August 1994 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages for the months of August and September, 1994. For an individual supply plant, the proposed action would reduce the shipping percentage by 3 percentage points (from 3 to zero percent of receipts) in August 1994 and by 5 percentage points (from 5 to zero percent of receipts) in September 1994. For a unit of supply plants, the proposed action would reduce the shipping percentage by 6 percentage points (from 6 to zero percent of receipts) in August 1994 and by 10 percentage points (from 10 to zero percent of receipts) in September 1994.

Currently, the order provides that from January through August, individual supply plants must ship at least 3 percent of milk receipts to distributing plants to qualify as pool plants while a unit of supply plants must ship at least 6 percent of total receipts for pooling purposes. From September through December, individual supply plants must ship at least 5 percent of milk receipts to distributing plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes.

The Chicago order provides that the Market Administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points for up to 3 months. The order also provides that the Director of the Dairy Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standards by up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represents a substantial number of the producers who supply the market. CMPC contends that the most recent supply and demand estimates, and their commitments to the market, substantiate that there will be more than sufficient fluid milk supplies from close-in sources available for the fluid market. Current projections indicate that supply will remain constant while demand will decrease. Based on these projections, CMPC asserts that it is impractical and unnecessary to require qualifying shipments from distant unit plants, while forcing the milk from nearby unit plants to be hauled to distant plants for manufacturing, merely for pooling purposes. CMPC states that this double hauling of milk will put a financial burden on handlers who operate pool units. Thus, CMPC contends that a reduction of shipping percentages is necessary to prevent uneconomic and inefficient shipments of milk from distant supply plants solely for pooling purposes.

Based on supply and demand estimates, CMPC has requested that the market administrator reduce the shipping percentages by 2 percentage points for the months of August and September 1994. A reduction of the shipping percentages for these two months is being considered by the Market Administrator.

Based on the most recent supply and demand projections, CMPC contends a further reduction of shipping percentages, beyond the request to the Market Administrator, will be necessary.

CMPC contends that in order to make the most efficient use of available milk supplies, as much as possible of nearby milk supplies will have to be utilized with reliance on distant supplies only on days when nearer milk supplies have been exhausted. For the months of August and September, 1994, CMPC contends that such efficiencies can only be realized if the shipping standards for individual plants and units of supply plants are reduced to zero percent of receipts, respectively.

In view of the current supply and demand relationship, it may be necessary to reduce the supply plant shipping percentages as proposed to provide for the efficient and economic marketing of milk during the months of August 1, 1994, through September 30, 1994.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

The authority citation for 7 CFR Part 1030 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

Dated: July 11, 1994.

Silvio Capponi,

Acting Director, Dairy Division.

[FR Doc. 94–17243 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Part 1106

[DA–94–17]

Milk in the Southwest Plains Marketing Area; Proposed Temporary Revision of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This document invites written comments on a proposal to reduce the shipping requirement for a cooperative association that operates a balancing plant under the Southwest Plains Federal milk order (Order 106) for a 12-month period, beginning October 1, 1994. The proposed action was requested by Associated Milk Producers, Inc. (AMPI), which contends the action is necessary to prevent the uneconomic and inefficient movement of producer milk regularly associated with the market.

DATES: Comments are due no later than August 15, 1994.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order

and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1106.7 (c) and (d) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of October 1, 1994, through September 30, 1995.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 30th day after publication of this notice in the Federal Register.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed revision would reduce from 45 to 35 percent the shipping requirement for a cooperative association that operates a balancing plant for the period of October 1994 through September 1995. In order for a cooperative association's plant that is located in the marketing area or in a county adjacent to the marketing area to be a pool plant, the Southwest Plains order requires that the cooperative deliver to pool distributing plants a minimum of 45 percent of the total quantity of milk marketed by the cooperative, either during the month or during the 12-month period ending with the immediately preceding month. The order also authorizes the Director of the Dairy Division to increase or decrease this requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments or prevent uneconomic shipments of milk.

According to AMPI, Mid-America Dairymen (Mid-Am) and AMPI have formed an agency for the purpose of pooling member-producers' milk. These two cooperatives represented about 73 percent of the producers and 77 percent of the milk pooled on Order 106 in May 1994. AMPI states that the agency has shipped approximately 40 percent of its total receipts to pool distributing plants during the past 12 months and anticipates a similar demand for milk during the next 12 months. It concludes, therefore, that the 45 percent cooperative association shipping requirement, which was reduced to 35 percent for the period of October 1, 1992, through September 30, 1994, should remain at that level for the 12-month period commencing on October 1, 1994.

AMPI contends that, without the continuation of the reduced shipping requirements, milk normally pooled under the Southwest Plains order would become ineligible for pooling unless the cooperative made uneconomic, inefficient, and unnecessary shipments of milk of fluid handlers.

Accordingly, it may be necessary to reduce from 45 to 35 percent the delivery requirement as proposed to provide for the efficient and economic marketing of milk during the months of October 1, 1994, through September 30, 1995.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

Dated: July 11, 1994.

Silvio Capponi, Jr.,

Acting Director, Dairy Division

[FR Doc. 94–17244 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–66–AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require installation of additional venting between the flight deck and the passenger compartment. This proposal is prompted by results of an engineering analysis that revealed there was insufficient venting in the forward stowage and wardrobe assembly. The actions specified by the proposed AD are intended to prevent injury to the crew resulting from structural failure of the bulkhead between the flight deck and the passenger compartment in the event of windshield failure and subsequent rapid decompression.

DATES: Comments must be received by September 20, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P. O. Box 16029, Dulles International Airport, Washington, D.C. 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Bud Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–66–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that results of an engineering analysis have revealed that there is insufficient venting in the left and right forward stowage and the right forward wardrobe assembly between the flight deck and the passenger compartment. This condition, if not corrected, could result in injury to the crew due to structural failure of the bulkhead between the flight deck and the passenger compartment in the event of windshield failure and subsequent rapid decompression. Although the forward flight attendant seat is attached to this bulkhead, integrity of the airplane hull is not a risk factor in this situation.

Jetstream Aircraft Limited has issued Service Bulletin J41–25–018, dated March 15, 1994, that describes procedures for installing additional

proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–66–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that results of an engineering analysis have revealed that there is insufficient venting in the left and right forward stowage and the right forward wardrobe assembly between the flight deck and the passenger compartment. This condition, if not corrected, could result in injury to the crew due to structural failure of the bulkhead between the flight deck and the passenger compartment in the event of windshield failure and subsequent rapid decompression. Although the forward flight attendant seat is attached to this bulkhead, integrity of the airplane hull is not a risk factor in this situation.

Jetstream Aircraft Limited has issued Service Bulletin J41–25–018, dated March 15, 1994, that describes procedures for installing additional venting in the left and right forward stowage and the right forward wardrobe assembly. This additional venting would provide faster pressure equalization between the flight deck and the passenger compartment in the event of a sudden depressurization of the pilots' compartment. Faster pressure equalization will prevent structural failure of the bulkhead in the event of rapid depressurization. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of additional venting between the flight deck and the passenger compartment. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $22,000, or $2,200 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited: Docket 94–NM–66–AD.

Applicability: Model 4101 airplanes; constructors numbers 41005 through 41015 inclusive, 41019 through 41024 inclusive, 41028, and 41029; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent injury to the crew resulting from structural failure of the bulkhead between the flight deck and the passenger compartment in the event of windshield failure and subsequent rapid decompression, accomplish the following:

(a) Within 525 hours time-in-service after the effective date of this AD, install additional decompression vents in the left and right stowage and the right forward wardrobe assembly bulkhead between the flight deck and passenger compartment, in accordance with Jetstream Service Bulletin J41–25–018, dated March 15, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17194 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 94–NM–77–AD]

Airworthiness Directives; Raytheon Corporate Jets Model BAe 125–1000A and Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Raytheon Corporate Jets Model BAe 125–1000A and Hawker 1000 series airplanes. This proposal would require installation of additional vent areas in the central fuselage. This proposal is prompted by an analysis which indicated that an explosive decompression could not be vented adequately with the currently-installed floor venting system on these airplanes. The actions specified by the proposed AD are intended to prevent collapse of the floor and subsequent injury to passengers and crew in the event of an explosive decompression of the fuselage.

DATES: Comments must be received by September 20, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–77–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Raytheon Corporate Jets Model BAe 125–1000A and Hawker 1000 series airplanes. The CAA advises that an analysis was recently conducted which indicates that, due to the configuration of the floor venting system currently installed on these airplanes, an explosive decompression could not be adequately vented. This condition, if not corrected, could result in the collapse of the floor and subsequent injury to passengers and crew in the event of an explosive decompression of the fuselage.

Hawker-Raytheon Corporate Jets has issued Service Bulletin SB.53–76–3627A, dated February 25, 1994, which describes procedures for installing Modification 253627A. This modification entails adding two holes to the underfloor diaphragm at Frame 10D. This will increase the vent areas by 4 sq. in.

Hawker-Raytheon Corporate Jets has also issued Service Bulletin SB.53–81–3661B, dated February 25, 1994, which describes procedures for installing Modification 253661B. This modification entails removing the fiberglass floor fill cover located outboard of the floor panels between Frames 8 and 10D, right-hand. It also entails enlarging the existing lightening holes in the right-hand seat rail web between Frames 10B and 10D, adding a third hole to increase the vent area, and installing a new reinforcing plate. The manufacturer recommends that this modification be installed concurrently with Modification 253627A.

The CAA classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of Modifications 253627A and 253661B. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 19 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 34 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $35,350, or $1,870 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

type design registered in the United States, the proposed AD would require installation of Modifications 253627A and 253661B. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 19 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 34 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $35,350, or $1,870 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Corporate Jets [formerly British Aerospace plc]: Docket 94–NM–77–AD.

Applicability: Model BAe 125–1000A and Hawker 1000 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the floor and subsequent injury to passengers and crew in the event of an explosive decompression of the fuselage, accomplish the following:

(a) Within 12 months after the effective date of this AD, install Modification 253627A in accordance with Hawker-Raytheon Service Bulletin SB.53–76–3627A, dated February 25, 1994; and install Modification 253661B in accordance with Hawker-Raytheon Service Bulletin SB.53–81–3661B, dated February 25, 1994. These modifications shall be installed concurrently.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17195 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 71

[Airspace Docket No. 94–AWP–19]

Proposed Modification of Class E Airspace; Marysville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Marysville, CA. This action would modify the Marysville, CA Class E airspace to accommodate an Instrument Landing System (ILS)/standard instrument approach procedure (SIAP) being developed for Lincoln Municipal Airport.

DATES: Comments must be received on or before September 1, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 94–AWP–19, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California. An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0697.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AWP–19." The postcard will be date/time stamped and returned to the

commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AWP–530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Marysville, CA Class E airspace to accommodate an area ILS/SIAP being developed for Lincoln Municipal Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993) The Class E airspace listed in the document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

Marysville, Yuba County Airport, CA
(Lat. 39°05'53" N, long. 121°34'11" W)
Marysville Beale AFB, CA
(Lat. 39°08'10" N, long. 121°26'12" W)
Marysville Beale AFB TACAN
(Lat. 39°08'05" N, long. 121°26'26" W)
Marysville VOR/DME
(Lat. 39°05'55" N, long. 121°34'23" W)
Mustang VORTAC
(Lat. 39°31'53" N, long. 119°39'22" W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of Beale AFB and 2 miles each side of a 345° bearing from the Lincoln Municipal Airport and within a 7-mile radius of Yuba County Airport and within 7.8 miles west and 4.3 miles east of the Beale AFB TACAN 342° radial extending from the Beale AFB 8.7-mile radius to 25 miles northwest of the Beale AFB TACAN and within 7 miles west and 4.3 miles east of the Marysville VOR 343° radial, extending from the Yuba County 7-mile radius to 10.4 miles northwest of the Marysville VOR and within 7 miles southwest and 4.3 miles northeast of the Marysville VOR 153° radial extending from the Yuba County 7-mile radius to 10.4 miles southeast of the VOR. That airspace extending upward from 1,200 feet above the surface bounded on the east by a line extending from lat. 40°00'00" N, long. 120°30'04" W; to lat. 39°30'00" N, long. 120°30'04" W; to lat. 39°38'00" N, long. 120°19'04" W; to lat. 39°07'00" N, long. 120°19'04" W, then counterclockwise via the 39.1-mile radius of the Mustang VORTAC to lat. 39°00'00" N; thence via lat. 39°00'00" N, to the west boundary of V–23; on the west by the west boundary of V–23, on the northwest by the Red Bluff, CA, Class E airspace area, and on the north by lat. 40°00'00" N. That airspace extending upward from 8,500 feet MSL bounded on the south by lat. 40°00'00" N, on the west and northwest by the Red Bluff, CA, and Maxwell, CA, Class E airspace areas, on the north by lat. 40°45'00" N, and on the east by a line extending from lat. 40°45'00" N, long. 121°39'04" W; to lat. 40°23'00" N, long. 121°39'04" W; to lat. 40°23'00" N, long. 121°25'04" W; to lat. 40°00'00" N, long. 121°25'04" W. That airspace extending upward from 10,500 feet MSL bounded on the east by long. 120°19'04" W; on the south by a line extending from lat. 39°30'00" N, long. 120°19'04" W; to lat. 39°30'00" N., long. 120°30'04" W; to lat. 40°00'00" N, long. 120°30'04" W; to lat. 40°00'00" N, long. 121°25'04" W; on the west by long. 121°25'04" W, and on the north by lat. 40°45'00" N. That airspace extending upward from 12,500 feet MSL bounded on the east by long. 121°25'04" W; on the south by lat. 40°23'00" N, on the west by long. 121°39'04" W; and on the north by lat. 40°45'00" N

* * * * *

Issued in Los Angeles, California on June 29, 1994.

Richard R. Lien,

Manager, Air Traffic Division.

[FR Doc. 94–17213 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 94–AWP–18]

Proposed Establishment of Class D and Class E4 Airspace and Modification of Class E2 Airspace: Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D and Class E4 airspace and modify Class E2 airspace at Elko Municipal Airport—J.C. Harris Field, Elko, Nevada. The Elko County Commission is establishing an Airport Traffic Control Tower at this airport. The intended effect of this proposal is to provide adequate airspace for Instrument Flight Rules (IFR) procedures at Elko Municipal Airport-J.C. Harris Field, and to require two-way radio communications at the airport.

DATES: Comments must be received on or before September 16, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 94–AWP–18, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California. An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Charles Register, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297–1640.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AWP–18." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public

Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 94–AWP–18, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California. An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Charles Register, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297–1640.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AWP–18." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AWP–530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NRPM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D and E airspace at Elko Municipal Airport-J.C. Harris Field. An airport traffic control tower is being established at the airport. The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace is published in paragraphs 5000, 6002 and 6004 respectively, of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in the document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

AWP NV D Elko [New]

Elko Municipal Airport—J.C. Harris Field, Elko, NV
(Lat. 40°49'31" N, long. 115°47'28" W)

That airspace extending upward from the surface up to and including 7,700 feet MSL within a 4.3-mile radius of Elko Municipal Airport-J.C. Harris Field, and within 1.8 miles each side of the extended centerline of Runway 23 of the Elko Municipal Airport-J.C. Harris Field, extending from the 4.3 mile radius to 5 miles southwest of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AWP NV E2 Elko [Revised]

Elko Municipal Airport—J.C. Harris Field, Elko, NV
(Lat. 40°49'31" N, long. 115°47'28" W)

Within a 4.3 mile radius of the Elko Municipal Airport and within 1.8 miles each side of the 247° bearing from the Elko Municipal Airport-J.C. Harris Field, extending from the 4.3 mile radius to 5.2 miles southwest of the of the Elko Municipal Airport-J.C. Harris Field and within 1.8 miles each side of the 075° bearing from the Elko Municipal Airport-J.C. Harris Field extending from the 4.3 mile radius to 8.3 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area

* * * * *

AWP NV E4 Elko [New]

Elko Municipal Airport—J.C. Harris Field, Elko, NV
(Lat. 40°49'31" N, long. 115°47'28" W)

That airspace extending upward from the surface within 1.8 miles each side of the 075° bearing from the Elko Municipal Airport-J.C. Harris Field extending from 4.3 miles to 8.3 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on June 30, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94-17214 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 142

RIN 1515-AB21

Withdrawal Of Proposed Customs Regulations Amendments Relating To Prefiling Of Entry Documentation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal.

SUMMARY: This document withdraws proposed amendments to the Customs Regulations which would have limited the privilege of prefiling merchandise entry documentation to participants in the Automated Broker Interface and to other entry filers where the carrier participates in, or where transmission is otherwise through, the Automated Manifest System. Customs has determined that the proposals should be withdrawn based on concerns expressed by the trade community and because Customs is not presently in a position to make the programming changes that would be necessary to implement the proposals.

DATES: Withdrawal effective July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ernie Cunningham, Office of Inspection and Control (202-927-0167).

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1991, Customs published in the **Federal Register** (56 FR 56608) an Advance Notice of Proposed Rulemaking stating that Customs was considering amending Parts 141 and 142 of the Customs Regulations (19 CFR Parts 141 and 142) to limit merchandise entry prefiling (that is, prior to arrival of the merchandise) privileges to: (1) entries filed by entry filers who are participants in the Automated Broker Interface (ABI); and (2) entries filed by non-ABI entry filers for merchandise that is transported on carriers that are participants in the Automated Manifest System (AMS). The document also gave advance notice that if this proposal is adopted, Customs would within six months of its adoption release selectivity results (that is, a determination whether a general or intensive examination of merchandise is necessary) prior to carriers' arrival only to entry filers whose merchandise is transported on carriers that are participants in AMS. Thus, in effect, while entry filers who are participants in ABI could continue to prefile, provisional releases would only be issued by Customs for merchandise transported on AMS carriers. The document invited the public to submit written comments to assist Customs in determining whether to proceed further with these proposals.

On December 13, 1993, Customs published in the **Federal Register** (58 FR 65135) a Notice of Proposed Rulemaking which, after discussing the public comments submitted in response to the Advance Notice of Proposed Rulemaking and noting that no regulatory change was necessary to implement the proposal to narrow the category of entry filers to whom selectivity results would be released prior to arrival, set forth specific proposals to amend §§ 141.68(a)(3) and 142.2(b)(1) of the Customs Regulations (19 CFR 141.68(a)(3) and 142.2(b)(1)). The proposed amendment to § 141.68(a)(3) consisted essentially of a cross-reference to § 142.2(b)(1), and the proposed amendment to § 142.2(b)(1) involved setting forth three circumstances in which entry documentation may be submitted before the merchandise arrives within the limits of the port where entry is to be made. The first two circumstances were essentially as outlined in the Advance Notice of Proposed Rulemaking. The third circumstance, added in response to a public comment, involved cases where, regardless of whether the carrier transporting the merchandise for which the entry documentation is filed is an AMS participant, there is an AMS transmission through the Express Consignment Module of Air AMS regarding that carrier. The Notice of Proposed Rulemaking invited public comments on the proposals which would be considered before adoption of the proposals, and the public comment period closed on February 11, 1994.

Ten letters were received setting forth comments on the proposed regulatory amendments. Although the majority of these commenters supported, in principle, one of the underlying Customs goals of encouraging carriers to automate, a number of these commenters were of the view that practical considerations militated against implementation of the proposals under present circumstances. The cited circumstances included the need for modifications to Air and Sea AMS to deal with continuing operational problems, the need to provide access to AMS through ABI, and the need to address the lack of adequate participation in Air AMS on the part of freight forwarders and deconsolidators. Some commenters objected in principle to the approach of encourging one group to do something by taking a benefit away from another group, and other commenters stated that the proposals would put small trucking operators and small customs brokers at a competitive disadvantage vis-a-vis larger entities that can more easily support the expense of becoming operational in AMS and ABI.

Customs believes that the comments submitted in response to the Notice of Proposed Rulemaking raise important issues that must be more fully addressed before the published proposals are adopted. Those comments, as well as further internal review of this matter by Customs, demonstrate that the proposed changes to the existing prefiling policy would require extensive programming changes in selectivity, AMS, the Automated Air Arrival/Departure Log, and the yet to be developed Automated Sea Arrival/Departure Log. Due to other programming priorities, including the need to address unresolved problems in Air AMS, and because of the unavailability of adequate personnel and budgetary resources to devote to the task, Customs is not at the present time in a position to pursue such large-scale programming changes. Accordingly, the proposals set forth in the document published in the **Federal Register** at 58 FR 65135 on December 13, 1993, are hereby withdrawn.

George J. Weise,

Commissioner of Customs.

Approved: June 24, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94-17147 Filed 7-14-94; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 92P-0476]

Crabmeat; Amendment of Common or Usual Name Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the common or usual name regulation for crabmeat by adding the species *Lithodes aequispina* to those listed in this regulation and by providing that the common or usual name of crabmeat derived from this species is "Brown King crabmeat." This proposal is in response to a citizen petition submitted by the Alaska Seafood Marketing Institute (ASMI).

DATES: Written comments by September 13, 1994. The agency proposes that any final rule that may issue based on this proposal become effective 30 days after its publication in the **Federal Register**.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA-05), Food and Drug Administration, rm. 1-3, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary I. Snyder, Center for Food Safety and Applied Nutrition (HFS-16), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-3888.

SUPPLEMENTARY INFORMATION:

I. Background

A. Crabmeat Labeling

The Shellfish Promotion Committee of ASMI, 1011 Western Ave., suite 603, Seattle, WA 98104, filed a petition on December 17, 1992, to amend the common or usual name regulation for crabmeat (§ 102.50 (21 CFR 102.50)) to provide that the common or usual name of crabmeat derived from the species *L. aequispina* is "Brown King crabmeat."

Section 102.50 lists the following genera and species and the associated

FR 65135 on December 13, 1993, are hereby withdrawn.

George J. Weise,

Commissioner of Customs.

Approved: June 24, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94-17147 Filed 7-14-94; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 92P-0476]

Crabmeat; Amendment of Common or Usual Name Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the common or usual name regulation for crabmeat by adding the species *Lithodes aequispina* to those listed in this regulation and by providing that the common or usual name of crabmeat derived from this species is "Brown King crabmeat." This proposal is in response to a citizen petition submitted by the Alaska Seafood Marketing Institute (ASMI).

DATES: Written comments by September 13, 1994. The agency proposes that any final rule that may issue based on this proposal become effective 30 days after its publication in the Federal Register.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA-05), Food and Drug Administration, rm. 1-3, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary I. Snyder, Center for Food Safety and Applied Nutrition (HFS-16), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-3888.

SUPPLEMENTARY INFORMATION:

I. Background

A. Crabmeat Labeling

The Shellfish Promotion Committee of ASMI, 1011 Western Ave., suite 603, Seattle, WA 98104, filed a petition on December 17, 1992, to amend the common or usual name regulation for crabmeat (§ 102.50 (21 CFR 102.50)) to provide that the common or usual name of crabmeat derived from the species *L. aequispina* is "Brown King crabmeat."

Section 102.50 lists the following genera and species and the associated common or usual name of their crabmeat: *Paralithodes camtschatica* and *P. platypus* as King crabmeat; *P. brevipes* as King crabmeat or Hanasaki crabmeat; *Erimacrus isenbeckii* as Korean variety crabmeat or Kegani crabmeat; and *Chionoecetes opilio, Chionoecetes tanneri, Chionoecetes bairdii,* and *Chionoecetes angulatus* as Snow crabmeat. Thus, § 102.50 provides that only the crabmeat from three species of the genus *Paralithodes* may be called "King crabmeat."

FDA has been dealing with common or usual name issues involving crabmeat since 1954. In the Federal Register of April 8, 1954 (19 FR 2013), FDA announced its policy for the appropriate labeling of imported canned crabmeat. FDA stated that the term "King crabmeat" is an acceptable common name for the product prepared from any one of the above three *Paralithodes* species, and that "Hanasaki crabmeat" was an acceptable alternative common name for a product prepared from *P. brevipes*. FDA later codified these and the other common or usual names for crabmeat in § 102.7 when it promulgated 21 CFR part 102 in 1973 (38 FR 6964 at 6966, March 14, 1973). (Section 102.7 was later redesignated as § 102.50 (42 FR 14322, March 15, 1977)).

FDA's policy on the labeling of the crabmeat of species not listed in § 102.50 is set forth in the agency's Compliance Policy Guide (CPG 7108.04). Under this policy, products derived from domestic sources that are labeled as "crabmeat," without qualification, are generally accepted to have been derived from *Callinectes sapidus* (blue crab). In other cases, the agency encourages the use of a prefix that identifies the country where the crab was caught (e.g., "Taiwan Crabmeat").

B. Common or Usual Name Provisions

The common or usual name of a food is the prevalent and meaningful name by which consumers ordinarily identify a specific food. This vernacular name may lack the specificity of the scientific or technical name of a food, but an appropriate common or usual name permits the public to unambiguously distinguish between similar foods that are available in the marketplace. The common or usual name of a food may be established by a history of common usage or by regulation. Section 102.5 requires that the common or usual name of a food accurately identify, in simple and direct terms, the basic nature of the food and its characterizing properties. The name must be uniform among all identical or similar products. In fact, under § 101.3(b)(1), a food with a common or usual name that has been established by regulation is misbranded if it is not identified by that name.

Before establishing a common or usual name by regulation, FDA must conclude that the proposed name is not false or misleading within the meaning of section 403(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(a)) and that the name for the food conforms with the provisions of § 102.5. Moreover, to prevent confusion and deceptive economic practices, the agency must ensure that a proposed common or usual name is not inappropriately similar to one that has already been established by regulation. Therefore, suitable identifying terms in the proposed name are necessary to ensure that consumers can distinguish one product from another similar product (28 FR 10900, October 11, 1963).

In the case of crabmeat, the common or usual name "King crabmeat" identifies a food with the common characterizing properties that consumers in the United States associate with the meat of the large spider crabs found in the waters of the North Pacific. These King crabs, also known as "Alaskan King Crabs," are characterized by a spiny shell, six long spidery legs, a large and a small claw, and a typical weight of about 4½ Kilograms (kg) (10 pounds (lb)) (Refs. 1 and 2). Thus, the common name "King crabmeat" applies to the meat derived from any of three scientifically different crab species whose meats are sufficiently similar that consumers accept them as being interchangeable.

This proposal, if finalized, will establish a new common or usual name that is similar to "King crabmeat." FDA tentatively finds, however, that the similarity in names will not be deceptive because the ASMI petition includes data that show that the meat of *L. aequispina* and *P. camtschatica* (King crabmeat) are similar. Moreover, inclusion of the qualifying prefix "brown" in the proposed common or usual name for the meat of *L. aequispina* will help consumers to distinguish that crabmeat from that of the *Paralithodes* spp. Finally, data in the ASMI petition also show that "Brown King crabmeat" is the commonly accepted name for *L. aequispina*.

C. Previous King Crabmeat Petitions

FDA has previously denied petitions to amend § 102.50 to permit the use either of the term "King crabmeat" or a qualified version of that name as the common or usual name of crabmeat from either *L. aequispina* or *L.*

antarctica (Docket Nos. 76P–182, 81P 0327/CP, and 84P–046). In each instance, the agency concluded that the petitioner had not presented sufficient evidence of the comparability of the meats of the *Lithodes* spp. with the King crabmeat of the *Paralithodes* spp. to support the requested amendment (Refs. 3, 4, 5, and 6). In these denials the agency held that a petitioner must demonstrate that each of the significant characteristics of King crabmeat that are valued by consumers is present in the new species before the agency will permit meat from that species to be identified in § 102.50 as "King crabmeat."

The petition that FDA denied in 1978 (Docket No. 76P–182) requested that the common or usual name "King crabmeat" be established for *L. aequispina*. The agency denied the petition primarily because it found that, based on the limited numbers of *L. aequispina* marketed at that time, there was not a sufficient basis to find that there was a common or usual name for the species (Ref. 6). The available information on the name by which this species was commonly known within the industry showed that it was referred to by various names, including "brown crab" and "golden crab," as well as "King crab" and "golden King crab."

II. Grounds for the Petition

A. Introduction

The ASMI petition requests that FDA amend § 102.50 to include the species *L. aequispina* and provide for the use of "Brown King crabmeat" as the common or usual name of its crabmeat. In support of the amendment, the petition provides: (1) Data and results of tests that compare *L. aequispina* with *P. camtschatica*. The tests scored the preferences of a consumer panel for the taste, texture, appearance, and appropriateness of labeling each species as King crabmeat; (2) photographs that compare the size and color of the cooked legs and claws of these species; (3) literature bearing on crab fishery practices, marketing, and the nomenclature and comparative morphology of *L. aequispina* and other crab species, (4) a compilation of the average measurements of the shoulder, merus, carpus, and propodus for the crab legs used in the consumer panel visual display to determine preference for "King crab" labeling; and (5) ten letters from major processors of Alaska King crab and a letter from the National Fisheries Institute endorsing the petition and attesting that consumers and the industry accept *L. aequispina* ("Alaska golden or brown crab") as King crab.

B. Brown or Golden King Crab

1. Market Acceptance as King Crabmeat

The ASMI states that *L. aequispina* has been commonly identified, marketed, and accepted as "Gold," "Golden," or "Brown King crab" since the early 1980's, when its fishery began to develop. The ASMI also states that no resistance or confusion has arisen from the general buying public concerning the use of the term "King crab" to describe the product. The petitioner further states that increased demand and recent developments in deep water harvesting technology have resulted in a significant commercial fishery for *L. aequispina*, and that, over the last decade, as the availability of *P. camtschatica* and *P. platypus* has decreased, the demand for and supply of *L. aequispina* has grown. The petition states that as a result of these factors, *L. aequispina* has become a major source of King crabmeat in the United States, whereas the supply of crabmeat from *P. camtschatica* and *P. platypus* has been greatly reduced and is often limited to a few market areas.

As discussed above, FDA concluded in 1978 that the use of the term "golden" or "brown crab" for *L. aequispina* was not sufficiently common in U.S. markets to be established as the common or usual name for this food. However, the available evidence shows that, beginning in the 1980's, the size of the commercial catch of *L. aequispina* has increased to a large fraction of what the industry has called the "total King crab harvest." For example, from 1981 to 1982, *L. aequispina* represented 1.4 percent of the total Alaskan King crab catch (*Paralithodes* spp. plus *L. aequispina*) in the western region. From 1983 to 1984, it represented 21.7 percent of the total catch (see Docket No. 84P–0046).

In addition to the information in the petition, FDA has sought to corroborate the general acceptance of *L. aequispina* as a King crab, and that it is commonly known as "brown" King crab, by consulting authoritative references on nomenclature for aquatic species, as well as the scientific and trade literature. All of these sources commonly refer to *L. aequispina* as either "golden King crab" or "brown King crab" (Refs. 2 and 7 through 12).

FDA relied in part on publications of the American Fisheries Society ("List of Common and Scientific Names of Fishes from the United States and Canada") in preparing a guide to acceptable common and market names for the species of food fish sold in U.S. interstate commerce that do not have common or usual names established by regulation (54 FR 12284, March 24, 1989). The American Fisheries Society Special Publication 17, "Common and Scientific Names of Aquatic Invertebrates from the United States and Canada: Decapod Crustaceans," addresses adherence to uniform scientific and common nomenclature of aquatic invertebrates (Ref. 9). *L. aequispina* is among the species recognized in this compilation under the family heading "Lithodidae-stone and King crabs." This compilation also identifies this species with the common name "golden King crab."

Similarly, a compilation that focuses on the fishery region of interest, "Alaska's Saltwater Fishes and Other Sea Life, A Field Guide", prepared by the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, identifies *L. aequispina* as "Golden King Crab, Brown King Crab, or Deep Water Crab" (Ref. 7). This source also presents illustrations and the dimensions of the species listed.

A nomenclature reference with an international perspective, "Fish: Five-Language Dictionary of Fish, Crustaceans and Molluscs," lists *L. aequispina* as "golden King crab" (Ref. 10).

Literature unrelated to species identification or nomenclature also distinguishes *L. aequispina* as a King crab. For example, a treatise dealing with the diseases of aquatic species, "Principal Diseases of Marine Fish and Shellfish," refers to this species as "golden king crabs" (Ref. 11). Similarly, an article reporting a joint government/industry ocean survey to gather information on the size of *L. aequispina* at maturity is entitled "Brown King Crab" (Ref. 8), and regulations of the Alaska Board of Fisheries for Commercial Fishing in Alaska identify the species as "brown king crab" (Ref. 15).

Correspondingly, trade periodicals dealing with the market price and availability of King crab consistently classify or refer to *L. aequispina* as a King crab (prefaced by either "golden" or "brown") and commonly regard it as an Alaskan King crab (Refs. 2, 12, and 13). Thus, the agency tentatively finds that these names for *L. aequispina* have been commonly used in the United States for about a decade, and that this usage, in contrast with the situation in 1978, supports the requested amendment of § 102.50.

In addressing the similarities between *L. aequispina* and *P. camtschatica*, the petition does not address the value that the marketplace ascribes to each species, as reflected by the market prices they command. Nor does the petition address whether establishing the proposed common or usual name for *L. aequispina* will affect the price of its meat. FDA believes that in the case of unprocessed raw products such as crabs, consumers and crabmeat processors will normally pay a comparable price for similar products that are equally desirable. For example, from January 1990 to January 1992, prices for "King" crab legs and claws (12/14 count) were reported to have varied from $2.10 to $3.85 more per pound than those of "Brown King" (21/24 count) (Ref. 12). In 1988, graded sections of *P. camtschatica* were $1.75 to $2.00 more per pound than those of Brown King crab (Ref. 13). Thus, although *L. aequispina* is classified and sold as a King crab, the substantial price difference between these species means that they are not typically regarded as interchangeable foods by the marketplace.

A certain amount of the price differential between these species may be attributable to the current scarcity of the *Paralithodes* spp. However, FDA believes that most of the difference in price is a result of the disparity in size. The agency recognizes that one of the primary distinguishing and valued features of *Paralithodes* spp. is their large size relative to other crabs. Therefore, fair dealing and the interest of the consumer require that, among other considerations, any crabmeat that is labeled either as "King crabmeat" or as a variety of King crabmeat (e.g., Brown King crabmeat) should be derived from a species of crab that has dimensions that are similar to those which consumers associate with King crab (*Paralithodes* spp.).

Literature in the petition (Ref. 7) shows that the length of *L. aequispina* (listed as "Golden King Crab," "Brown King Crab," or "Deep Water Crab"), measured across the body shell (carapace), is 23 centimeters (cm) (9 inches (in)), and that its width is up to 23 cm (9 in). The respective carapace dimensions for *P. camtschatica* and *P. platypus* are given as: 23 cm (9 in) and up to 28 cm (11 in) across the carapace; 20 cm (8 in) and up to 25 cm (10 in) in width.

These dimensions show that while *L. aequispina* is not as large as the two *Paralithodes* spp., selected examples of the three species can be comparable in overall body size. The actual sizes of the crabs generally available to the consumer or crabmeat processor, however, are governed by the size of the crabs customarily found in the

the marketplace ascribes to each species, as reflected by the market prices they command. Nor does the petition address whether establishing the proposed common or usual name for *L. aequispina* will affect the price of its meat. FDA believes that in the case of unprocessed raw products such as crabs, consumers and crabmeat processors will normally pay a comparable price for similar products that are equally desirable. For example, from January 1990 to January 1992, prices for "King" crab legs and claws (12/14 count) were reported to have varied from $2.10 to $3.85 more per pound than those of "Brown King" (21/24 count) (Ref. 12). In 1988, graded sections of *P. camtschatica* were $1.75 to $2.00 more per pound than those of Brown King crab (Ref. 13). Thus, although *L. aequispina* is classified and sold as a King crab, the substantial price difference between these species means that they are not typically regarded as interchangeable foods by the marketplace.

A certain amount of the price differential between these species may be attributable to the current scarcity of the *Paralithodes* spp. However, FDA believes that most of the difference in price is a result of the disparity in size. The agency recognizes that one of the primary distinguishing and valued features of *Paralithodes* spp. is their large size relative to other crabs. Therefore, fair dealing and the interest of the consumer require that, among other considerations, any crabmeat that is labeled either as "King crabmeat" or as a variety of King crabmeat (e.g., Brown King crabmeat) should be derived from a species of crab that has dimensions that are similar to those which consumers associate with King crab (*Paralithodes* spp.).

Literature in the petition (Ref. 7) shows that the length of *L. aequispina* (listed as "Golden King Crab," "Brown King Crab," or "Deep Water Crab"), measured across the body shell (carapace), is 23 centimeters (cm) (9 inches (in)), and that its width is up to 23 cm (9 in). The respective carapace dimensions for *P. camtschatica* and *P. platypus* are given as: 23 cm (9 in) and up to 28 cm (11 in) across the carapace; 20 cm (8 in) and up to 25 cm (10 in) in width.

These dimensions show that while *L. aequispina* is not as large as the two *Paralithodes* spp., selected examples of the three species can be comparable in overall body size. The actual sizes of the crabs generally available to the consumer or crabmeat processor, however, are governed by the size of the crabs customarily found in the commercial catch. This size, in turn, may be determined more by the minimum harvestable size imposed for a specific harvesting area or fishery, than by the larger sizes that are known to exist but are not caught in significant numbers.

The larger sizes of *L. aequispina* apparently are not caught in significant numbers (Ref. 8). As a consequence, the minimum legal size limit for harvest in some fishery areas might be reduced to crabs as small as 13.75 cm (5½ in) in carapace width, to make the fishery commercially viable for *L. aequispina* (Ref. 8). The agency believes that these factors may result in crab parts and crabmeat chunks that typically are somewhat smaller than those of the *Paralithodes* spp.

The petition states that because each of the species is harvested from widespread areas in Alaskan waters, the size of the crabs has always varied. To compensate for this variation, the legs and claws are repacked to provide uniform counts per 4½-kg (10-lb) unit. Thus, the petitioner contends that the retailer and the consumer will get a uniform range of sizing regardless of which species of *Lithodes* or *Paralithodes* is purchased as "King crab." However, as described above, the generally lower market price of *L. aequispina* indicates that providing uniform counts per unit weight does not cause processors and consumers to accept its meat as interchangeable with that of the *Paralithodes* spp.

2. Comparative Sensory Testing

The petitioner states that in establishing an appropriate common or usual name, consumers must be protected from deceptive practices, but that the proposed name is justified because there are more similarities than differences between *L. aequispina* crabmeat and that of the three species of *Paralithodes* listed in § 102.50. The petition states that the crabmeat from all four species is nearly identical in flavor, texture, and color. The petition describes a slight variation in the reddish hue of the carotenoid layer surrounding the white meat of each leg segment of *L. aequispina* but states that there is a range of the reddish hue in the meat between samples of any one species. Photographs comparing the cooked legs and claws of *L. aequispina* and *P. camtschatica* demonstrate that these pieces share a similar color and morphology.

Consumer acceptance studies were conducted with a total of 158 individuals tested in three geographic areas (Chicago, Los Angeles, and New York City). The tests compared *L. aequispina* with *P. camtschatica* by rating consumer preference, in terms of degree of "liking," based on the appearance of previously frozen crab legs and the taste and texture of their crabmeat, presented as precooked split merus (the section of the leg of a king crab which is closest to the shoulder (Ref. 16)) portions in the shell. The test panel also rated the appropriateness of labeling each species' crabmeat as "King crab," based on a display of cooked, whole crab legs. All products were from crab legs sized 16/20 pieces per 4½ kg (10 lb).

The sensory characteristics of the samples were evaluated on a hedonic scale, ranging from 9 for "like extremely" to 1 for "dislike extremely." The reported average scores in each of the four rated categories of "liking" (overall degree of liking, appearance, flavor, and texture) for each species were not statistically different at the 90 percent confidence level, and these average scores were approximately 7 on the hedonic scale (like moderately) for each category. The averaged results thus indicate that the panel members found no significant differences between the crabmeats of the two species. However, a slightly greater number of responses in the top degrees of liking (extremely and very much) indicated a consistent margin of preference for *P. camtschatica* across these four categories.

Analysis of the data by FDA confirmed the reported results but found that the results for all of the categories evaluated were dependent on the order in which the species were presented (Ref. 14). The ratings for "appearance" showed that the respondents that were given the *P. camtschatica* crabmeat first rated it significantly higher ($p < 0.01$) than they rated *L. aequispina*. When the species were presented to other respondents in the reverse order, *L. aequispina* was rated significantly higher ($p < 0.01$). Similarly, when rated for "flavor," *P. camtschatica* meat scored significantly higher ($p < 0.01$) if presented first, while the reverse order of presentation resulted in flavor ratings that were about the same on average ($p < 0.15$). In the case of the rating for "overall" acceptance, respondents that were given *P. camtschatica* crabmeat first rated it significantly higher ($p < 0.001$) than *L. aequispina*, while those presented with the products in the reverse order rated the two products about the same on average ($p < 0.15$). A similar pattern was found for the "texture" ratings.

The ratings for the appropriateness of labeling either crab as "King crab," based on the appearance of the whole crab legs, resulted in a statistically

significant higher mean score for *L. aequispina*. However, the petition does not state to what degree the display represented the most commonly available leg sizes of each species. Again, however, FDA analysis of the data indicated that the order of presentation appeared to affect the results. Respondents observing *P. camtschatica* legs first rated *L. aequispina* significantly higher ($p < 0.001$) than *P. camtschatica*. When given in the reverse order, the two products were rated about the same on average ($p > 0.25$).

The apparent dependence of the preferences expressed by the panel on the order of species presentation raises questions about the adequacy of the statistical design of the study. However, FDA does not believe that the effects observed from the order of species presentation are of a type or an extent that invalidates the overall test panel results, which show that the crabmeats are similar. For example, in four of the five categories evaluated, reversing the order in which the crabmeat was presented (e.g., *L. aequispina* before *P. camtschatica*) did not result in *L. aequispina* being favored over *P. camtschatica*, as might be expected if there was a meaningful correlation between preference and order of presentation. Instead, those served *L. aequispina* first rated the two crabmeats about the same on average, suggesting that any bias introduced by the order of crabmeat presentation was not a determining factor in the overall panel ratings. Therefore, FDA tentatively concludes that the approximately equivalent average scores for each species in each of the four sensory categories compared are valid findings, and that they are sufficient to demonstrate that the test panels found that the two crabmeats are similar foods when compared for flavor, texture, appearance, and overall degree of liking.

Thus, with respect to these sensory attributes, the results are consistent with the conclusion that the use of the terms "King crabmeat" in the common or usual name of *L. aequispina* is not misleading. Inasmuch as the proposed amendment will establish a common name for a similar but separate type of "King crabmeat," FDA tentatively finds that tests showing that consumers accept the meat of *L. aequispina* as identical to, or interchangeable with, that of the three *Paralithodes* species are not necessary.

III. The Proposed Regulation

While the petition seeks to demonstrate the similarity between the important characteristics of *L. aequispina* meat and that of the largest of the *Paralithodes* crabs, the petitioner's proposed amendment requests the use of a common or usual name other than "King crabmeat."

FDA believes that the data and information submitted in the petition, as well as other information available to the agency, support a tentative conclusion that *L. aequispina* is now widely accepted in the United States as a bonafide King crab. This tentative conclusion is based primarily on the use of the term "King crab" in the names commonly used to identify it in the scientific and trade literature (i.e., golden, gold, brown, and deep water King crab), as well as its relative size and a decade of substantial sales and acceptance in the United States as a type of King crab.

However, the agency also recognizes that *L. aequispina* is a different genus than the species commonly known as "King crab" in the United States, and that its somewhat smaller size and lower market value clearly differentiate it from traditional King crab of the genus *Paralithodes*. Consequently, FDA agrees with the petitioner, and one of the processors that endorsed the petition by letter, that the crabmeat of *L. aequispina* should be identified by a qualifying prefix that will make consumers aware that it is not identical to the King crabmeat of the three *Paralithodes* species listed in § 102.50. Therefore, because the requested name is a modified form of an established common name for a similar food, FDA tentatively concludes that the proposed name will not confuse or mislead consumers. FDA has tentatively concluded the modified name "Brown King crabmeat" appropriately sets this product apart from "King crabmeat," and that "Brown" suitably serves to identify and distinguish this similar but specific type of crabmeat. Moreover, the name "Brown King crabmeat" has the benefit of a history of common use that should augment the recognition among consumers of the differences between these two foods.

The agency is aware that *L. aequispina* also has been commonly referred to as "Golden King crab." Nonetheless, FDA discourages the use of the name "Golden King crabmeat," because its use as a statement of identity on food labels could mislead consumers. FDA believes that the use of the prefix "golden" connotes a superior quality or premium grade of crabmeat and thereby could unfairly affect the price that consumers are willing to pay for the product. Conversely, the agency tentatively concludes that the common or usual name "Brown King crabmeat" does not convey similar ambiguous implications about the nature or value of the crabmeat. FDA tentatively finds that this name is consistent with fair dealing and the interest of the consumer and should not unfairly affect the price of *L. aequispina* crabmeat.

As provided by § 101.3(b)(1), adoption by FDA of the proposed amendment will require that the meat of *L. aequispina* be labeled as "Brown King crabmeat." The agency tentatively finds that the consistent use of this term will benefit consumers by providing a consistent statement of identity, thereby precluding the use of various potentially misleading names in or on labels and labeling pertaining to this food.

The common or usual name "Brown King crabmeat" will provide consumers with a common or usual name for *L. aequispina* crabmeat that not only accurately identifies the basic nature of the food in simple and direct terms as a meat derived from a King crab, but also provides consumers with added characterizing information that will enable them to distinguish it from traditional "King crabmeat."

Therefore, after a careful review of the petition and consideration of all of the available information, FDA is proposing to amend § 102.50, by adding the crabmeat of the species *L. aequispina*, identified by the common or usual name "Brown King crabmeat." This proposal is based in part on the acceptance of *L. aequispina* as a "Brown King crab" by the fishery industry and in the marketplace and in part on the similarity of its meat in taste, texture, and appearance with King crabmeat, as demonstrated by consumer acceptance studies.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because *L. aequispina* has been marketed for 10 years as golden or brown King crab, FDA estimates that there are no costs of the proposed rule from labeling changes or for any other reason, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "The Seafood Handbook, Seafood Standards, Establishing Guidelines for Quality," published by Seafood Business Magazine, Rockland, ME, Journal Publications, 1991.

2. Miller, R.J., "North American Crab Fisheries: Regulations and Their Rationales," *Fisheries Bulletin*, 74 (3):623, 1976.

3. Letter to Arne L. Abrams, Wendt International, Inc., from Joseph P. Hile, FDA, April 12, 1982.

4. Letter to Patrick J. Ricci, Seven Seas, Inc., from Joseph P. Hile, FDA, April 30, 1984.

5. Letter to Raquel B. Flisfisch, Embassy of Chile, ProChile Chilean Government Trade Bureau, from Joseph P. Hile, FDA, September 28, 1984.

6. Letter to Charles O. Perkins, Technical Services, New England Fish Company, from Joseph P. Hile, FDA, September 11, 1978.

7. Kessler, Doyne W., "Alaska's Saltwater Fishes and Other Sea Life. A Field Guide." The National Marine Fisheries Service, Alaska Northwest Publishing Co., Anchorage, AK, p. 27, 1985.

8. Benveniste, K., "Brown King Crab," *Pacific Fishing*, p. 44, October 1983.

9. Williams, Austin B., Lawrence G. Abele, et al., "Common and Scientific Names of Aquatic Invertebrates from the United States and Canada: Decapod Crustaceans," American Fisheries Society Special Publication 17, p. 33, 1989.

10. Krane, W., "Fish: Five-Language Dictionary of Fish, Crustaceans and Molluscs," Van Nostrand Reinhold, p. 96, 1986.

11. Sindermann, C. J., "Principal Diseases of Marine Fish and Shellfish," vol. 2, 2d ed., Academic Press, Inc., San Diego, CA, p. 193, 1990.

options that would minimize any significant impact of a rule on small entities. Because *L. aequispina* has been marketed for 10 years as golden or brown King crab, FDA estimates that there are no costs of the proposed rule from labeling changes or for any other reason, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "The Seafood Handbook, Seafood Standards, Establishing Guidelines for Quality," published by Seafood Business Magazine, Rockland, ME, Journal Publications, 1991.
2. Miller, R.J., "North American Crab Fisheries: Regulations and Their Rationales," *Fisheries Bulletin*, 74 (3):623, 1976.
3. Letter to Arne L. Abrams, Wendt International, Inc., from Joseph P. Hile, FDA, April 12, 1982.
4. Letter to Patrick J. Ricci, Seven Seas, Inc., from Joseph P. Hile, FDA, April 30, 1984.
5. Letter to Raquel B. Flisfisch, Embassy of Chile, ProChile Chilean Government Trade Bureau, from Joseph P. Hile, FDA, September 28, 1984.
6. Letter to Charles O. Perkins, Technical Services, New England Fish Company, from Joseph P. Hile, FDA, September 11, 1978.
7. Kessler, Doyne W., "Alaska's Saltwater Fishes and Other Sea Life: A Field Guide," The National Marine Fisheries Service, Alaska Northwest Publishing Co., Anchorage, AK, p. 27, 1985.
8. Benveniste, K., "Brown King Crab," *Pacific Fishing*, p. 44, October 1983.
9. Williams, Austin B., Lawrence G. Abele, et al., "Common and Scientific Names of Aquatic Invertebrates from the United States and Canada: Decapod Crustaceans," American Fisheries Society Special Publication 17, p. 33, 1989.
10. Krane, W., "Fish: Five-Language Dictionary of Fish, Crustaceans and Molluscs," Van Nostrand Reinhold, p. 96, 1986.
11. Sindermann, C. J., "Principal Diseases of Marine Fish and Shellfish," vol. 2, 2d ed., Academic Press, Inc., San Diego, CA, p. 193, 1990.
12. "North Pacific Crab," *Seafood Leader*, 12(2):213, 1992.
13. "Buyer's Guide," *Seafood Leader*, 8:275, 1988.
14. Memorandum from Foster D. McClure, Statistical Analysis Branch, Center for Food Safety and Applied Nutrition, FDA, to Spring C. Randolph, Office of Seafood, FDA, November 1, 1993.
15. Alaska Department of Fish and Game, Regulations of the Alaska Board of Fisheries and Commercial Fishing in Alaska, p. 128, 1990.
16. Dore, Ian, "Fresh Seafood," *The Commercial Buyers Guide*, Van Nostrand Reinhold, p. 210, 1984.

VII. Comments

Interested persons may, on or before September 13, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 102

Beverages, Food grades and standards, Food labeling, Frozen foods, Oils and fats, Onions, Potatoes, Seafood.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 102 be amended as follows:

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

1. The authority citation for 21 CFR part 102 continues to read as follows:

Authority: Secs. 201, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 371).

2. Section 102.50 is amended by revising the table to read as follows:

§ 102.50 Crabmeat.

* * * * *

Scientific name of crab	Common or usual name of crabmeat
Chionoecetes opilio, Chionoecetes tanneri, Chionoecetes bairdii, and Chionoecetes angulatus.	Snow crabmeat.
Erimacrus isenbeckii	Korean variety crabmeat or Kegani crabmeat.
Lithodes aequispina	Brown King crabmeat.
Paralithodes brevipes	King crabmeat or Hanasaki crabmeat.
Paralithodes camtschatica and Paralithodes platypus.	King crabmeat.

Dated: June 30, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-17289 Filed 7-14-94; 8:45 am]

BILLING CODE 4160-01-P

---

21 CFR Parts 203 and 205

[Docket No. 92N-0297]

RIN 0905-AC81

Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to August 15, 1994 the comment period for the proposed rule to establish agency policies and requirements, and to provide administrative procedures, information, and guidance for sections of the Prescription Drug Marketing Act of 1987 (PDMA) and the Prescription Drug Amendments of 1992 (PDA), which was published in the **Federal Register** of Monday, March 14, 1994. This action is in response to requests for an extension of the comment period.

DATES: Written comments by August 15, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: May-Lis A. Manley, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1046.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 14, 1994 (59 FR 11842), FDA issued a proposed rule to implement sections of PDMA and PDA. The proposed rule focuses primarily on reimportation, sales restrictions, and drug samples. These

provisions are intended to benefit consumers by providing safeguards to ensure that prescription drug products are safe and effective and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs are being sold to consumers. The proposal gave interested persons an opportunity to submit written comments by May 30, 1994.

In response to the proposal, Alza Corp. requested a 1-month extension of the comment period; Piper & Marbury requested a 90- to 120-day extension; and Wolf, Block, Schorr and Solis-Cohen on behalf of Diagnostek, Inc., requested a 10-day extension. These organizations requested additional time to respond to the proposal because of its length and because of complex issues and questions that need careful analysis and evaluation.

FDA has carefully considered these requests and has determined that reopening the comment period to August 15, 1994 for the preparation and submission of meaningful comments on this proposed rule, is in the public interest. A longer comment period is not warranted because the proposal provided an extended comment period and because FDA previously made available many of the procedures contained in the proposal in a series of letters containing interim guidance. Accordingly, the comment period for submissions by any interested person is reopened to August 15, 1994.

Interested persons may, on or before August 15, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 11, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17268 Filed 7–14–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Ch. I

Minerals Management Service

30 CFR Ch. II

Geological Survey

30 CFR Ch. IV

Bureau of Mines

30 CFR Ch. VI

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

National Park Service

36 CFR Ch. I

Office of the Secretary

43 CFR Subtitle A

48 CFR Ch. XIV

Bureau of Reclamation

43 CFR Ch. I

Bureau of Land Management

43 CFR Ch. II

Fish and Wildlife Service

50 CFR Chs. I and IV

Review of Existing Significant Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice with request for comment.

SUMMARY: Pursuant to Executive Order 12866 (the "Order"), the Department of the Interior ("DOI") announced its intent on March 1, 1994, to establish periodic reviews of all "significant" regulations published by the Department (59 FR 9718). The purpose of these reviews is to ensure that all significant DOI regulations are efficient and effective, impose the least possible burden upon the public, and are tailored no broader than necessary to meet the objectives of the program being implemented.

The Department has determined to review a number of its regulations. Some are being reviewed based upon the Department's examination of its regulatory program. Others are being reviewed in response to the comments received on the March 1 notice (the "Notice"), or will be reviewed in the course of upcoming rulemakings or other proceedings. The purpose of this notice is to inform the public of which regulations are being reviewed at this time, to briefly discuss the comments received pursuant to the March 1 Notice, and to invite specific, detailed comments on how the regulations under review may be revised.

This notice discusses regulations issued by the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, the Minerals Management Service, the Bureau of Indian Affairs, and the Bureau of Reclamation. Other bureaus and offices are not discussed because no comments were received regarding their regulations, and it was determined that either they have no significant regulation or review is not appropriate at this time. If you disagree and feel that these bureaus and offices have regulations that should be reviewed at this time, please contact the Office of Regulatory Affairs at the address below. Similarly, if there are any concerns regarding the plans or analyses set forth below by the various Departmental bureaus and offices, please also contact the Office of Regulatory Affairs.

DATES: Written comments must be received by October 13, 1994.

ADDRESSES: Please send written comments to Bill Vincent, Deputy Director, Office of Regulatory Affairs, Department of the Interior, Mail Stop 6214 MIB, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bill Vincent, Deputy Director, Office of Regulatory Affairs, phone (202) 208–5271.

SUPPLEMENTARY INFORMATION: The following is a discussion of the regulations that currently are scheduled for review as well as the comments received in response to the March 1 notice.

Bureau of Land Management ("BLM")

After assessing its regulatory program and reviewing the comments received in response to the Notice, BLM plans to review the following regulations contained in 43 CFR: Part 1600 (Planning, Programming, Budgeting); Group 3200 (Geothermal Resources Leasing); Group 3400 (Coal Management); Group 3600 (Mineral Materials Disposal); and Group 8300 (Recreation Management). Specific comments are requested on these provisions. The following is a discussion of comments received in response to the Notice.

Comments From the Geothermal Energy Industry

Five comments came from companies producing or seeking to produce geothermal energy. The thrust of all of the comments was that the BLM should expedite publication of geothermal resources leasing and operations regulations that have been in development for several years. These regulations were removed from the Semiannual Agenda of Federal Regulations (the "Agenda") last winter because we were unable to forecast with precision when work on the rule would be completed. This rule will be restored to the Agenda this summer, and internal review of the rule should begin in October 1994.

Two of these comments suggested that a series of industry-government forums should take place on these regulations, and an industry-government task force should be formed to monitor them and prepare the rule. We will consider the use of such forums during the public comment period on the proposed rule, but any group formed to reach consensus on a proposed rule must be in compliance with the Federal Advisory Committee Act.

One of the geothermal comments also mentioned other regulations as possible candidates for review: 43 CFR Part 1600—Planning, Programming and Budgeting, and 43 CFR Part 2800—Rights-of-way. As mentioned above, BLM plans to review the planning regulations, and draft revised regulations are in preparation. They will be restored to the Agenda when it is updated this summer.

There are no current plans to review or amend the general right-of-way regulations implementing Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) or Section 28 of the Mineral Leasing Act. Two current rules on rights-of-way are in review: regulations on rights-of-way under R.S. 2477, a major DOI priority, and fee schedule regulations for nonlinear communication site rights-of-way, which are of interest in the Congress. Reviews will not begin until those two rules are finalized.

Comments From the Oil and Gas Industry

Two commenters suggested review of regulations on archaeological and cultural resource clearances for mineral leasing activities on BLM and split-estate lands. The regulations referred to in this comment are issued by the Advisory Committee on Historic Preservation and implemented by BLM in cooperation with State Historic

Comments From the Geothermal Energy Industry

Five comments came from companies producing or seeking to produce geothermal energy. The thrust of all of the comments was that the BLM should expedite publication of geothermal resources leasing and operations regulations that have been in development for several years. These regulations were removed from the Semiannual Agenda of Federal Regulations (the "Agenda") last winter because we were unable to forecast with precision when work on the rule would be completed. This rule will be restored to the Agenda this summer, and internal review of the rule should begin in October 1994.

Two of these comments suggested that a series of industry-government forums should take place on these regulations, and an industry-government task force should be formed to monitor them and prepare the rule. We will consider the use of such forums during the public comment period on the proposed rule, but any group formed to reach consensus on a proposed rule must be in compliance with the Federal Advisory Committee Act.

One of the geothermal comments also mentioned other regulations as possible candidates for review: 43 CFR Part 1600—Planning, Programming and Budgeting, and 43 CFR Part 2800—Rights-of-way. As mentioned above, BLM plans to review the planning regulations, and draft revised regulations are in preparation. They will be restored to the Agenda when it is updated this summer.

There are no current plans to review or amend the general right-of-way regulations implementing Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) or Section 28 of the Mineral Leasing Act. Two current rules on rights-of-way are in review: regulations on rights-of-way under R.S. 2477, a major DOI priority, and fee schedule regulations for nonlinear communication site rights-of-way, which are of interest in the Congress. Reviews will not begin until those two rules are finalized.

Comments From the Oil and Gas Industry

Two commenters suggested review of regulations on archaeological and cultural resource clearances for mineral leasing activities on BLM and split-estate lands. The regulations referred to in this comment are issued by the Advisory Committee on Historic Preservation and implemented by BLM in cooperation with State Historic Preservation Officers. They are not subject to review or amendment by BLM, and comments will be forwarded to the Committee.

The commenters also suggested that lease terms and rental payments be suspended pending environmental reviews, and that BLM should not consider exploration and production wastes as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or the Resource Conservation and Recovery Act of 1976. They urged completion of rules revising Onshore Oil and Gas Order No. 1—Approval of Operations, Order No. 8—Well Workovers, Completions, Abandonments, and a rule relating to BLM responsibilities as to oil and gas operations on Forest Service lands.

These suggestions are not related to the review of existing significant regulations and therefore fall outside of the scope of the Order. Nevertheless, the following is a brief statement regarding current efforts for some of the suggestions. The rule regarding Order No. 1 will be restored to the Agenda when the program office has finished its review of the draft prepared by BLM's standing field committee on operations. The rule regarding Order No. 8 is undergoing review within BLM. The rule relating to Forest Service lands is undergoing review within the Department's Solicitor's Office.

One commenter suggested that oil and gas lease terms and rental payments be automatically suspended pending environmental reviews affecting a particular lease or unit. The current regulations at 43 CFR 3103.4–2 allow such suspensions, at the discretion of the authorized officer, for the purpose of conserving natural resources. Although this suggestion might be considered in a future review, making such a suspension automatic would make the process susceptible to abuse. It might allow extensions of leases that are not being actively developed without proof that the environmental review prevents ongoing or imminent development or somehow threatens natural resources. Without further persuasion from the public, this suggestion likely will not be adopted.

The comment regarding whether oil and gas wastes are hazardous has long been a matter of controversy. The matter has not yet been resolved conclusively in the courts, and may not be until the laws involved are reauthorized in the Congress. We are continuing to work with industry to resolve this issue.

One commenter requested to be involved in the preparation and distribution of BLM's Instruction Memoranda. This is a matter for review in the process of reducing our internal directives pursuant to Executive Order 12861, and will be considered then. Specific suggestions for revising BLM instruction manuals may be sent to the Office of Regulatory Affairs at the address set forth in the beginning of this notice.

One commenter urged that environmental impact statements ("EIS's") on rights-of-way on public lands for projects that are otherwise wholly on private lands be limited strictly to a consideration of their environmental impacts on the public lands crossed by the rights-of-way. This would be counter to our interpretation of the National Environmental Policy Act of 1969 ("NEPA"), which requires that all effects of a project be considered in reviewing the Federal aspects of the project.

The commenter also urged that categorical exclusions from environmental review be applied more liberally to activities such as geophysical exploration and drilling permit applications, which it characterizes as having minimal impact. At 43 CFR 3162.5–1, BLM's regulations require an environmental record of review or an environmental assessment to determine whether an EIS is required and what terms and conditions need to be included in approved plans. Again, NEPA requires that all effects of a project be considered in reviewing the Federal aspects of the project. Further, the Department's Solicitor has advised BLM to limit its use of categorical exclusions. Nevertheless, categorical exclusions are listed in the appendix to the Departmental Manual, and may be subject to our review of internal directives under E.O. 12861.

The commenter also suggested that BLM apply Administrative Procedure Act procedures (*i.e.*, public notice and comment) to BLM State and District Office issuance of Notices to Lessees, and that oil and gas lease parcel stipulations identify, by specific legal description, the lands covered. The latter is a matter that can be covered in the review of internal directives. The former have not been routinely published in the **Federal Register** for public comment because of their geographically limited effect. In any event, these are not topics for periodic review of significant regulations.

Finally, a review of 43 CFR Group 3100 was requested. These rules, however, currently are being reviewed through the National Performance Review. The National Performance Review has identified broad aspects of the onshore oil and gas program as

candidates for process re-engineering. Implementation teams have been established to evaluate comments received from outside groups and Federal employees on ways to streamline procedures and make them more effective. It is likely that these teams will recommend changes to one or more sections of the onshore oil and gas regulations as a result of their evaluations. Consequently, no further review is necessary at this time.

Comments From the Coal Industry

A coal industry commenter made two specific recommendations regarding BLM's coal management regulations: (1) that BLM reinstitute a rulemaking that was withdrawn from review in 1993 that would have rendered all coal lease decisions and approvals in full force and effect pending appeal: and (2) that BLM discontinue its current rulemaking that would amend coal logical mining unit ("LMU") procedures. Neither recommendation relates to periodic review of existing regulations. Further, following the recommendations would reverse two policy decisions of the administration. Nevertheless, the program office is reviewing the entire group of coal management regulations at this time. A proposed rule that will include the LMU proposal and other coal management provisions will be scheduled in the upcoming Agenda, revising the current entry for the LMU rule.

Miscellaneous

One commenter provided a list of regulations that, in the commenter's view, adversely affect "in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health safety (sic), or State, local, or tribal governments, or communities." Each of the following paragraphs is devoted to the successive parts of Title 43 suggested by this commenter for review.

1700—Program Management. This Group is divided into two parts, 1720—Programs and Objectives, and 1780—Cooperative Relations. The former part was removed from the Code of Federal Regulations in a final rule published on June 6, 1994 (59 FR 29205). The latter, which contains the regulations on advisory committees, was proposed to be substantially revised as part of the proposed rule on rangeland reform, published on March 25, 1994 (59 FR 14314). No further review of these regulations is necessary.

2400—Land Classification. Proposed legislation that would make these regulations unnecessary is being drafted in BLM. Further, a proposed rule amending this part currently is being reviewed by the Department's Solicitor's Office. It was removed from the most recent edition of the Agenda because of uncertainty regarding when review would be complete.

3000–3800. This grouping includes all of the mineral development regulations of BLM. Of these, Group 3400—Coal Management is now being reviewed, as stated above, and review should be completed and lead to new regulations before 1996. Group 3200—Geothermal Resources Leasing, as stated above, is being reviewed, and a proposed rule will be scheduled in the upcoming Agenda.

In addition, all of the minerals regulations except for those governing mining under the mining law are being reviewed for purposes of revising or adding provisions for recovery of administrative costs. A proposed rule was drafted in 1993, but was withdrawn because of questions regarding supporting data that arose during internal review. New rules amending some of the cost recovery provisions relating to oil and gas exploration (part of Group 3100) and non-energy leasable minerals (Group 3500) may be added to the upcoming Agenda, depending on policy decisions to be made at the DOI level and involving the Office of the Inspector General.

Several rulemaking efforts amending portions of Groups 3700 and 3800, relating to the mining law, have been suspended pending the development of mining law reform legislation in the Congress. Moreover, the regulations in Group 3600—Mineral Materials Disposal, were the subject of a final rule prepared in 1992. This rule was suspended upon the change of Administrations in 1993, and the regulations in this group are now being reviewed, partly in response to audits by the Office of the Inspector General, and for purposes of updating the regulations and improving efficiency. This review should be concluded by 1996.

4100—Grazing Administration. These regulations have been subject to internal and DOI review, and intense public scrutiny, during the last 12 months. A rule amending them is now among the highest priorities of the Secretary of the Interior, and a proposed rule was published on March 25, 1994 (59 FR 14314). There is no need for further review of these regulations under Section 5 of the Executive Order.

5000–5510. This grouping comprises the entire Forestry Program regulations of BLM, including those on free use of vegetative resources. The regulations governing these programs have been undergoing continual informal review over the past decade and close public scrutiny and intense interest during the past 18 months surrounding the formulation of the Secretary's Forest Plan. As problems are disclosed, either through informal public input or internal review, and as legislation is enacted, rules have been proposed and promulgated dealing with them. There currently are two rules undergoing review, one proposing regulations on export and substitution of timber, and the other promulgating regulations on trespass. We would be happy to consider specific public comments on needed changes in the forestry regulations, but there are no plans for systematic review of these regulations in the next 2 years, especially in light of possible funding and personnel cuts in this program.

6220—Wildlife Management. There are no regulations in this part except for a single paragraph stating a purpose for regulations on primitive areas, scenic corridors and buffer zones, and wild and scenic rivers. It is not clear why the commenter listed this provision as significant, but it is certainly a good candidate for removal as serving no purpose.

8300—Recreation Management. The portions of the recreation management regulations on prohibited acts are currently undergoing review as part of the projected overhaul of the law enforcement regulations in part 9260. In addition, the entire recreation management part will be reviewed for purposes of efficiency and streamlining in the next 2 years. Comments from the public regarding this review are welcome.

8400—Visual Resource Management [Reserved] and 8600—Environmental Education and Protection [Reserved]. There are no regulations at all in these groups, and it is not clear why the commenter listed these parts. The headings and part numbers are merely reserved for possible future use.

8500—Wilderness Management. The wilderness management regulations were thoroughly reviewed by BLM in 1992–93, and a proposed rule updating certain provisions is awaiting review in the Office of the Solicitor. Publication of the proposed rule will afford the public an opportunity to make further suggestions.

9210—Fire Management. There are no current plans to review the fire management regulations. The program office currently is reviewing its internal Manual and other guidance. Moreover, most fire management initiatives arise from State and local governments, and are carried out through cooperative agreements and memoranda of understanding. We do not view these regulations as significant under the terms of the Executive Order, but would be happy to accept specific comments from the public as to how they may be improved. We do not anticipate a formal review, however, unless comments arrive informing us of problems with the current regulations.

The commenter also suggested a procedure for conducting periodic review of existing regulations. He suggested that "DOI held numerous public hearings in each of the States which are affected by these regulations" and that "DOI meet separately with each individual county together with the businesses and industries within that county which are affected by these regulations." In the BLM we meet constantly with the public, formally and informally, at all levels of the organization. To institutionalize such meetings in every county for this periodic review, however, would be enormously expensive and time consuming. BLM therefore is strongly opposed to such a procedure.

Summary

The following BLM regulations in Title 43 of the Code of Federal Regulations are scheduled for review and specific, detailed recommendations on how these regulations should be amended are invited.

Part 1600—Planning, Programming, Budgeting
Group 3200—Geothermal Resources Leasing
Group 3400—Coal Management
Group 3600—Mineral Materials Disposal
Group 8300—Recreation Management

The following regulations will not be reviewed in the immediate future because reviews have been completed, proposed rules amending them either have been published or are expected to be published, or because legislation is pending.

Group 1700—Program Management
Group 2400—Classification
Group 3700—Multiple Use; Mining
Group 3800—Mining Claims under the General Mining Law
Group 4100—Grazing Administration
Group 8500—Wilderness Management

The following regulations are not scheduled for review, although comments addressing them are welcome:

Part 9210—Fire Management

The following regulations are not scheduled for review and comments are not being solicited through this notice

agreements and memoranda of understanding. We do not view these regulations as significant under the terms of the Executive Order, but would be happy to accept specific comments from the public as to how they may be improved. We do not anticipate a formal review, however, unless comments arrive informing us of problems with the current regulations.

The commenter also suggested a procedure for conducting periodic review of existing regulations. He suggested that "DOI held numerous public hearings in each of the States which are affected by these regulations" and that "DOI meet separately with each individual county together with the businesses and industries within that county which are affected by these regulations." In the BLM we meet constantly with the public, formally and informally, at all levels of the organization. To institutionalize such meetings in every county for this periodic review, however, would be enormously expensive and time consuming. BLM therefore is strongly opposed to such a procedure.

Summary

The following BLM regulations in Title 43 of the Code of Federal Regulations are scheduled for review and specific, detailed recommendations on how these regulations should be amended are invited.

Part 1600—Planning, Programming, Budgeting
Group 3200—Geothermal Resources Leasing
Group 3400—Coal Management
Group 3600—Mineral Materials Disposal
Group 8300—Recreation Management

The following regulations will not be reviewed in the immediate future because reviews have been completed, proposed rules amending them either have been published or are expected to be published, or because legislation is pending.

Group 1700—Program Management
Group 2400—Classification
Group 3700—Multiple Use; Mining
Group 3800—Mining Claims under the General Mining Law
Group 4100—Grazing Administration
Group 8500—Wilderness Management

The following regulations are not scheduled for review, although comments addressing them are welcome:

Part 9210—Fire Management

The following regulations are not scheduled for review and comments are not being solicited through this notice because rules or reviews currently are underway in those areas:

Group 2800—Use; Rights-of-Way
Group 3100—Oil and Gas Leasing
Group 3500—Management of Solid Minerals Other Than Coal
Group 5400—Sales of Forest Products
Group 5500—Nonsale Disposals

Bureau of Reclamation

The Bureau of Reclamation (Reclamation) received no comments in response to the Department's March 1 Notice. Nevertheless, it has identified six significant regulations that meet the Order's criteria for a significant regulation, and each of these regulations will be reviewed. These regulations are:

(1) 43 CFR part 413 (assessment by irrigation districts of lands owned by the United States, Columbia Basin Project, Washington);

(2) 43 CFR part 417 (procedural methods for implementing Colorado River water conservation measures with lower basin contractors and others);

(3) 43 CFR part 418 (Newlands Reclamation Project, Nevada; Truckee River Storage Project, Nevada; and Washoe Reclamation Project, Nevada-California (Truckee and Carson River Basins, California-Nevada); Pyramid Lake Indian Reservation, Nevada; Stillwater Area, Nevada);

(4) 43 CFR part 424 (regulations pertaining to standards for the prevention, control, and abatement of environmental pollution of Conconully Lake and Conconully Reservoir, Okanogan County, Washington);

(5) 43 CFR part 426 (rules and regulations for projects governed by Federal Reclamation Law, which currently are being reviewed and revised; and

(6) 43 CFR part 431 (general regulations for power generation, operation, maintenance, and replacement at the Boulder Canyon Project, Arizona/Nevada).

Reclamation will conduct a review of each of these regulations. Any revisions will be published in the **Federal Register** with a 60-day period for public comment.

Regulation 43 CFR 426 is in the process of being rewritten. The proposed rule is scheduled for completion in December 1994, and the final rule is scheduled for completion in August 1995. The remaining rules will be reviewed as expeditiously as possible, and completion of the review and any appropriate revisions will be no later than June 30, 1996.

Office of Surface Mining Reclamation and Enforcement ("OSM")

OSM received several comments in response to the Notice. Based upon these comments and an independent assessment of its regulatory program, OSM is conducting, or will conduct, reviews of several existing significant regulations. The following is a brief discussion of the comments received and the reviews that will be conducted.

Definition of Valid Existing Rights

OSM received a number of comments regarding the definition of valid existing rights. A rulemaking currently is being conducted regarding this definition, and no further review is necessary at this time. A notice of intent to prepare an environmental impact statement was published in the **Federal Register** on April 28, 1994, and the comment period on this notice expired on June 30. OSM is examining the comments and is proceeding with preparation of the statement and the rule.

Federal Oversight/Enforcement of Approved State Programs (Sections 842, 843)

One commenter recommends that OSM repeal 30 CFR 843.12(a)(2) to eliminate Federal NOV authority in primacy States. These regulations, however, currently are being litigated. OSM does not intend to take any further action until a court decision is issued.

The commenter also recommends that OSM require citizens to exhaust the State program citizen complaint process before any Federal involvement or use of ten-day notices. The commenter further recommends that OSM limit citizen review of State permitting decisions to those procedures established under State programs for that purpose, and eliminate use of ten-day notices to address State permitting issues.

OSM has established two task forces which currently are studying the entire citizen complaint and ten-day notice processes. This study includes a review of the specific concerns raised by the commenter. The efforts of these task forces may culminate in recommended changes, and OSM does not intend to undertake any further action until the studies are completed.

Revegetation Success Standards (Sections 816.116/817.116)

A commenter identified three areas of the revegetation success standards for change: 1) The requirement to obtain approval from other agencies for planting and stocking plans; 2) the requirement that husbandry or conservation practices be approved through the State program amendments process; and 3) the requirement that OSM-approved statistically valid

measurement techniques be used in evaluating revegetation success.

OSM will review the regulations to determine the need to propose rulemaking. Public comments are requested regarding modification to the Revegetation Success Standards for sections 816.116 and 817.116. Review of the regulations will commence by October 1, 1994.

Hydrology: Water Quality (Sections 816.42/817.42, 782.21(j)/784.14(i))

A commenter asked OSM to delete cross references to 816.42 (which cites effluent guidelines at 40 CFR part 434) in favor of the statement "* * * capable of meeting EPA's effluent guidelines." Any rule change, however, requires the concurrence of the Environmental Protection Agency (EPA). OSM therefore intends to enter into discussions with EPA and review the current Hydrologic standards at sections 816.42, 816.46/817.42, 817.46. Public comments are requested regarding these hydrologic standards. Review of the regulations will commence by October 1, 1994.

Air Monitoring Program (Sections 780.15/784.26)

A commenter noted that fugitive and other emissions at mines fall within EPA's authority under the Clean Air Act and should not be regulated by OSM. The commenter also noted that SMCRA only provides authority to deal with erosional aspects of air pollution.

The existing OSM permitting requirements were promulgated in 1979. Subsequently, the corresponding performance standards governing air quality were revised. OSM considers it appropriate, therefore, to review these permitting regulations. Public comments are requested regarding these requirements at sections 780.15 and 784.26. Review of the regulations will commence by October 1, 1994.

Roads (Sections 816.150, 816.151, 817.150, 817.151)

One commenter suggested that existing road design standards need to be deleted because the primary road category is so broadly defined that it subjects temporary roads and insignificant travel routes to expensive highway design standards. The commenter further suggested that the foundation and embankment testing requirements and drainage design requirements are costly and unnecessary, and that they should be replaced with general criteria for roads based upon prudent engineering practices and best management practices. The commenter also noted that OSM should refrain from exerting jurisdiction over public roads.

OSM does not believe there is sufficient justification to review the existing regulations regarding road design standards. OSM believes its existing standards, which are implemented through a two-tiered classification system, adequately address the commenters concerns. OSM plans, however, to undertake rulemaking to address the jurisdictional question.

Regulations Concerning Ownership and Control, Permit Information, and Permit Rescission

Commenters suggested that OSM review regulations concerning ownership and control, permit information, and permit rescission. These regulations currently are being litigated and/or are in the process of being revised. OSM does not intend to take any further action until pending issues are decided.

Water Impoundments/Sedimentation Ponds (Sections 816.49/817.49, 780.25/846.16)

A rulemaking currently is being undertaken and no further review is expected at this time. A final rule entered internal review within OSM on February 7, 1994.

Backfilling and Grading—Nationwide Time and Distance Standards

A commenter raises the same issues on the relevance of a time standard and the practicality of establishing national standards for area and contour mining due to the variability in geology, equipment, mining methods, and market conditions as it previously did in its May 25, 1993, report. OSM already has commenced a rulemaking in this area and no further review is required.

Backfilling and Grading—Underground Mines (Sections 817.102/106)

A commenter recommends revising existing regulations requiring the elimination of the "highwall" at underground mine openings. The commenter notes that OSM's rules on highwall elimination and approximate original contour restoration should reflect the statutory and operational differences between surface and underground mining. The commenter recommends that OSM revise the regulations to clarify that the underground performance standards in section 516(b)(2) are the relevant standards governing the reclamation of mine openings and avoid the wholesale incorporation of surface mining requirements.

OSM is currently reviewing its Backfilling and Grading rule and will shortly implement an outreach plan to discuss certain topics. Public comment regarding OSM rules for backfilling and grading highwalls for underground mines will be welcome at that time.

Historic Properties (Sections 779.12(b)/7832.12(b)

A commenter recommends that the rules should provide, with greater clarity and certainty, a threshold of information necessary before the State Historic Preservation Officer ("SHPO") and regulatory authority can order field investigations and surveys to identify the possible existence of important cultural and historic resources. The SHPO should be subject to a higher burden for its recommendations so that available information discloses a substantial likelihood that cultural and historic resources eligible for listing in the National Register are present on the mine site.

OSM currently is pursuing a programmatic agreement with the Advisory Council on Historic Preservation that will address the issues raised by the commenter. A notice announcing the availability of the programmatic agreement and requesting comments was published in the Federal Register on June 16, 1994.

Transfer, Assignment, and Sale of Permits (Section 774)

Comments suggested that rules relating to the transfer, assignment, and sale of permits be reviewed. A rulemaking currently is being undertaken and no further review is necessary.

Abandoned Mined Land Fee Reauthorization Implementation

A commenter recommends not finalizing that aspect of the proposed rule on the new reporting requirements until it has conducted a burden analysis and discussed with the coal industry a more realistic and less costly approach for gathering information. For example, OSM should clarify that the lessees of the coal are the owners for purposes of identifying the owners of the coal on the AML form.

A final rule was published in the **Federal Register** on May 31, 1994. Extensive outreach efforts were conducted with States and Tribes and constituent groups prior to the drafting of the proposed rule. Further, the proposed rule was subject to an extended public comment period via the **Federal Register** process. All comments received were evaluated carefully and responded to as appropriate in the final

rule, including responding to a lengthy comment that included references to the reporting burdens of industry as related to threshold reporting requirements. Specifically, the final rule at 30 CFR 870.5 addressed the coal ownership concern by specifying that, "(i)f there are several persons who have successfully transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e., the person or persons who have granted the permittee the right to extract the coal."

Minerals Management Service

The Minerals Management Service ("MMS") received approximately 40 public comments on the Notice. The commenters cited specific sections of the regulations and stated what was, in their opinion, wrong with the regulation and recommended how to fix it. Since the comments were very specific they will be very useful to MMS. The comments were also very constructive and we encourage the continued use of this open dialogue.

The comments were almost equally divided between MMS' Offshore Minerals Management operation and its Royalty Management Program. Discussed below are those comments that MMS either already has started some action, or intends to initiate some type of action in the near future. In keeping with the need to avoid paperwork and regulations, MMS will seek non-regulatory solutions wherever possible.

If issues raised by commenters are not covered by one of the listed areas, MMS will conduct a separate review and obtain input from other offices in headquarters and the Regions. For example, MMS will address concerns expressed in a letter from the Wilderness Society about the public input process.

Offshore Minerals Management ("OMM") Program

In response to the public comments received on the Notice, the OMM Program plans to review the following four sections of OMM regulations. The first three areas involve ongoing reviews that will be expanded to cover additional provisions as a result of the comments received in response to the Notice.

1. Regulations applicable to production in deep water. (30 CFR Part 250, Subpart H, Production)

Comments Received—(a) "Revise current regulations to provide for approval of extended flaring periods under certain situations (e.g., deepwater prospects, well tests, etc.) and clarify

rule, including responding to a lengthy comment that included references to the reporting burdens of industry as related to threshold reporting requirements. Specifically, the final rule at 30 CFR 870.5 addressed the coal ownership concern by specifying that, "(i)f there are several persons who have successfully transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e., the person or persons who have granted the permittee the right to extract the coal."

Minerals Management Service

The Minerals Management Service ("MMS") received approximately 40 public comments on the Notice. The commenters cited specific sections of the regulations and stated what was, in their opinion, wrong with the regulation and recommended how to fix it. Since the comments were very specific they will be very useful to MMS. The comments were also very constructive and we encourage the continued use of this open dialogue.

The comments were almost equally divided between MMS' Offshore Minerals Management operation and its Royalty Management Program. Discussed below are those comments that MMS either already has started some action, or intends to initiate some type of action in the near future. In keeping with the need to avoid paperwork and regulations, MMS will seek non-regulatory solutions wherever possible.

If issues raised by commenters are not covered by one of the listed areas, MMS will conduct a separate review and obtain input from other offices in headquarters and the Regions. For example, MMS will address concerns expressed in a letter from the Wilderness Society about the public input process.

Offshore Minerals Management ("OMM") Program

In response to the public comments received on the Notice, the OMM Program plans to review the following four sections of OMM regulations. The first three areas involve ongoing reviews that will be expanded to cover additional provisions as a result of the comments received in response to the Notice.

1. Regulations applicable to production in deep water. (30 CFR Part 250, Subpart H, Production)

Comments Received—(a) "Revise current regulations to provide for approval of extended flaring periods under certain situations (e.g., deepwater prospects, well tests, etc.) and clarify criteria for flaring or venting small amounts of gas."

(b) "Revise requirements associated with subsea installations such as valve arrangement and closure time requirements for USV's and associated SCSSV's."

Action Planned—Formation of a Task Force to evaluate deepwater issues.

Timetable—Task Force expected to complete a draft report in July or August 1994.

2. Regulations applicable to blowout preventer ("BOP") test procedures and frequency. (30 CFR 250.56 and 57)

Comments Received—"Revise BOP testing regulations to allow for less frequent and shorter tests. Allow 14 day BOP test interval vs. current 7 day * * *"

Action Planned—The MMS has established a workgroup to study BOP system maintenance and reliability. The workgroup is also looking at testing times.

Timetable—The workgroup expects to complete data analysis by November 1994.

3. Regulations governing safety and pollution prevention equipment. (30 CFR 250.126)

Comments Received—"Reduce associated administrative burden on lessees and operators by eliminating unnecessary record keeping requirements (i.e., inventory lists, paperwork notifications, etc.)."

Action Planned—MMS intends to use a negotiated rulemaking as part of this review.

Timetable—A "Convener" has been appointed and has initiated discussions with interested parties. The first meeting of the participants is planned for September 1994.

4. Regulations governing conservation of resources and diligence. (30 CFR Part 250. Subpart K, Oil and Gas Production Rates and Subpart M, Unitization).

Comments Received—(a) "Revise Suspension of Production approval/ lease holding criteria * * *", (b) "Relax restrictions on commingling reservoirs in a common wellbore * * *", (c) "revise current regulations to provide for approval of extended flaring periods * * *", etc.

Action Planned—Initiate a review of the issues raised. Review may consist of forming a workgroup.

Timetable—Begin review in Fall of 1994.

Royalty Management Program ("RMP")

The RMP plans to review the following regulations:

1. Regulations applicable to valuation of oil and gas produced from unitized/ communitized properties (Take vs Entitlements). Also, regulations applicable to non-arm's length sales. (30 CFR 202)

Comments Received—"Regulations concerning Takes vs. Entitlements are confusing and make compliance difficult * * * valuing gas under a non-arm's length transaction is burdensome * * *"

Action Planned—Form a workgroup with representation from various sources to arrive at a consensus and develop a Negotiated Regulation.

Timetable—First meeting of participants in the negotiated rulemaking process was held in Denver, Co. on June 15, 1994.

2. Regulations clarifying the responsibilities of payors and lessees. (30 CFR 218 and 211)

Comments Received—"Existing regulations are unclear as to the obligations and liabilities of payors and lessees."

Action Planned—A workgroup has been assembled to review the options associated this issue.

Timetable—A Proposed Rule on *Payor Responsibilities* is being drafted. Projected publishing date is late 1994.

3. Regulations establishing procedures for obtaining refunds and credits of excess payments made under Federal mineral leases on the Outer Continental Shelf (OCS) which are subject to section 10 of the OCS Lands Act. (30 CFR 230)

Comments Received—"Industry has difficulty complying with 2 year limitation on refunds * * *."

Action Planned—Regulations have been drafted to address certain aspects of section 10 refunds.

Timetable—A Final Rule on Offsets, Recoupments and Refunds of Excess Payments of Royalties, Rentals, Bonuses, or Other Amounts under Federal offshore Mineral Leases. Projected publishing date is Fall 1994

4. Streamlining the MMS Administrative Appeals process. (30 CFR 290)

Comments Received—The process has been criticized for taking too long.

Action Planned—A couple of studies have been performed to review the different core processes in the Appeal function. Some streamlining revisions have been implemented and further studies are continuing.

Timetable—Review and streamlining of appeals process is ongoing. Meetings are being held and internal processes being reviewed. Most recent effort is determining whether Alternative Dispute Resolution could be an effective tool in the Appeal process.

Bureau of Indian Affairs ("BIA")

BIA received no comments in response to the Notice. Nevertheless,

BIA will review the following regulations: 25 CFR Part 169 (rights-of-way over Indian lands); 25 CFR Part 152 (issuance of patents in fee, certificates of competency, removal of restrictions, and sale of certain Indian lands); 25 CFR Part 168 (grazing regulations for the Hopi Partitioned Lands area); and 25 CFR Part 83 (procedures for establishing that an American Indian group exists as an Indian tribe).

Each regulation will be reviewed before December 31, 1994 to determine whether it should be revised. The reviews will be held during a joint meeting between the Division of Management Support, the Solicitor's Office and the related program office. Results of the reviews shall be submitted in writing from the Division of Management Support to the Department's Office of Regulatory Affairs as soon as possible after the conclusion of the last review meeting.

Dated: July 1, 1994.

Bill Vincent,

Deputy Director, Office of Regulatory Affairs.

[FR Doc. 94-17228 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-10-94]

RIN 1545-AS54

Real Estate Mortgage Investment Conduits; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to real estate mortgage investment conduits.

DATES: The public hearing originally scheduled for Friday, July 22, 1994, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 or (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 860G of the Internal Revenue Code. A notice of proposed rulemaking and public hearing appearing in the **Federal Register** for Wednesday, April 20, 1994, (59 FR 18772), announced that the public hearing on the proposed regulations would be held on Friday, July 22, 1994, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, D.C.

The public hearing scheduled for Friday, July 22, 1994, is cancelled.

Jacquelyn B. Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94-17148 Filed 7-14-94; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Reclamation Act of 1977 (SMCRA). The proposed amendment (#93-2 Continuation) consists of revisions to the Indiana rules concerning show cause orders and adjudicative proceedings for the suspension and revocation of permits. The amendment is intended to revise the Indiana program to be consistent with SMCRA and the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., E.S.T. August 15, 1994. If requested, a public hearing on the proposed amendment will be held on August 9, 1994. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T. on August 1, 1994.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Roger W. Calhoun, Director, Indianapolis Field Office at the first address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contracting OSM's Indianapolis Field Office. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226-6166;

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232-1547.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32071). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendment

By letter dated June 15, 1994 (Administrative Record No. IND-1374), Indiana submitted the final-adopted language of program amendment #93-2 concerning show cause orders and adjudicative proceedings for the suspension or revocation of permits. OSM published a final rule notice approving, with an exception, Indiana's program amendment #93-2 on November 18, 1993 (58 FR 60783). In that notice, OSM required, at 30 CFR 914.16(d), an amendment to the Indiana program. Indiana's submittal of the final-adopted language of amendment #93-2 contains Indiana's response to the required program amendment at 30 CFR 914.16(d) and other changes made by Indiana. Since Indiana's final adoption of amendment #93-2 occurred after OSM published its approval of #93-2, any changes Indiana made to the language approved by OSM on November 18, 1993, must be considered by OSM to be the subject of a new

proposed amendment. In addition to nonsignificant wording and paragraph notation changes, the proposed amendments are summarized as follows.

1. 310 IAC 0.6-1-5 Petition for Review; Response

Indiana is making numerous changes to this section. Subsection 5(c) is rewarded to provide that when the director of the Indiana Department of Natural Resources (IDNR) determines that a permit issued pursuant to IC 13-4.1 and 310 IAC 12 should be suspended or revoked, the director of the IDNR (or a delegate of the director) shall issue to the permittee an order to show cause why the permit should not be revoked or suspended. Deleted from this paragraph is reference to IC 4-21.5-3-8.

In subsection 5(c)(2), the words "alleged in the order to show cause" are added after the word "violations."

In subsection 5(c)(2)(B) a reference to 310 IAC 12 is added at the end of the sentence.

In subsection 5(e), the first sentence is reworded by referring to "an order to show cause." The word "service" is deleted and replaced by "permittee's receipt of the order to show cause."

Subsection 5(e)(1) is amended by deleting the words "as described in" following the word "violations." Reference to 310 IAC 12 is added following the second reference to IC 13-4.1.

The language in 5(e)(1)(A) is amended to provide "that the facts alleged in the order to show cause constitute a pattern of violations."

In subsection 5(e)(1)(C), the words "to comply with IC 13-4.1, 310 IAC 12, or any permit condition required by IC 13-4.1 or 310 IAC 12" are added at the end of the clause.

Subsection 5(f) is amended by replacing the word "response" with "an answer." The word "permittee's" is added before the word "receipt." "Show cause order" has been amended to read "order to show cause."

In subsection 5(g)(1), "a response" is replaced by "an answer." A new second sentence is added to read "[t]he proceeding is commenced when the permittee files an answer under subsection (e)." In the third sentence the phrase "complaint and proposed order" is changed to "order to show cause."

Subsection 5(g)(2) is amended to provide that the administrative law judge (ALJ) shall "issue findings and a written recommendation to the commission that the permit either" be suspended or revoked. Prior to this change, the language provided that the ALJ shall "order the permit either

proposed amendment. In addition to nonsignificant wording and paragraph notation changes, the proposed amendments are summarized as follows.

1. 310 IAC 0.6–1–5 Petition for Review; Response

Indiana is making numerous changes to this section. Subsection 5(c) is rewarded to provide that when the director of the Indiana Department of Natural Resources (IDNR) determines that a permit issued pursuant to IC 13–4.1 and 310 IAC 12 should be suspended or revoked, the director of the IDNR (or a delegate of the director) shall issue to the permittee an order to show cause why the permit should not be revoked or suspended. Deleted from this paragraph is reference to IC 4–21.5–3–8.

In subsection 5(c)(2), the words "alleged in the order to show cause" are added after the word "violations."

In subsection 5(c)(2)(B) a reference to 310 IAC 12 is added at the end of the sentence.

In subsection 5(e), the first sentence is reworded by referring to "an order to show cause." The word "service" is deleted and replaced by "permittee's receipt of the order to show cause."

Subsection 5(e)(1) is amended by deleting the words "as described in" following the word "violations." Reference to 310 IAC 12 is added following the second reference to IC 13–4.1.

The language in 5(e)(1)(A) is amended to provide "that the facts alleged in the order to show cause constitute a pattern of violations."

In subsection 5(e)(1)(C), the words "to comply with IC 13–4.1, 310 IAC 12, or any permit condition required by IC 13–4.1 or 310 IAC 12" are added at the end of the clause.

Subsection 5(f) is amended by replacing the word "response" with "an answer." The word "permittee's" is added before the word "receipt." "Show cause order" has been amended to read "order to show cause."

In subsection 5(g)(1), "a response" is replaced by "an answer." A new second sentence is added to read "[t]he proceeding is commenced when the permittee files an answer under subsection (e)." In the third sentence the phrase "complaint and proposed order" is changed to "order to show cause."

Subsection 5(g)(2) is amended to provide that the administrative law judge (ALJ) shall "issue findings and a written recommendation to the commission that the permit either" be suspended or revoked. Prior to this change, the language provided that the ALJ shall "order the permit either suspended or revoked." The second sentence is amended to provide "[i]n issuing findings and a written recommendation to the commission" the listed standards shall apply.

Subsection 5(g)(2)(C) provides that the ALJ shall comply with the requirements of IC 4–21.5–3–27(a) through IC 4–21.5–3–27(d) and IC 4–21.5–3–27(g). The provisions of IC 4–21.5–3–27(e) and IC 4–21.5–3–27(f) shall not apply to show cause proceedings.

New subsection 5(g)(2)(D) provides that any time prior to the conclusion of the hearing of record, the ALJ may allow the parties to submit briefs and proposed findings.

New subsection 5(g)(3) sets ten-day standards for the written recommendations of the ALJ following a hearing or following the permittee's answer if no hearing is requested.

New subsection 5(g)(4) limits the filing of objections to a director's recommendation under 310 IAC 0.6–1–5(f) if a person did not comply with 310 IAC 0.6–1–5(e) concerning contesting an order to show cause. In addition, this provision provides "[u]nder IC 13–4.1–11–6(c), the administrative law judge shall issue the findings and a non-final order within 60 days after conclusion of the hearing."

Subsection 5(h) is amended to set a 50-day standard for the final order of the commission following the issuance of the director's recommended order to the ALJ findings and written recommendations. Amendments also set a 90-day standard for the commission's final order following receipt of the order to show cause by the permittee where the permittee does not comply with the requirements of 310 IAC 0.6–1–5(e). A 60-day standard is set for the commission's final order following the hearing or the ALJ's receipt of the permittee's answer filed under 310 IAC 0.6–1–5(e) if no hearing was requested or necessary.

Subsection 5(i) is amended by replacing "administrative law judge" with "commission" and adding a reference to 310 IAC 12 at the end of the first sentence.

Old subsection 5(j), which limited the number of hearings available to one before the director and one before the commission, is deleted.

2. 310 IAC 0.6–1–13 Awards of Litigation Expenses

Subsection 13(c) is amended by changing "IC 13–8–5–7" to read "IC 13–8–15–7."

3. 310 IAC 0.7–3–5 Delegations

Subsection 5(c) is deleted. This provision would grant the deputy director of the IDNR authority to take action to forfeit a bond.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on August 1, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under

ADDRESSES. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory program and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 11, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94-17284 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ16-1-6820; FRL-4884-5]

Clean Air Act Limited Approval/Disapproval and Promulgation of PM_{10} Implementation Plan for Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes limited approval/disapproval of the State implementation plan (SIP) submitted by the State of Arizona for the purpose of bringing about the attainment of the National ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area PM_{10} SIP for the Hayden/Miami area in Arizona.

DATES: Comments on this proposed action must be received in writing by August 15, 1994.

ADDRESSES: Comments should be addressed to Robert Pallarino, Plans Development Section (A-2-2), EPA, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Pallarino, Plans Development Section (A-2-2), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. Telephone (415) 744-1212.

SUPPLEMENTARY INFORMATION:

1. Background

The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In this action on the Arizona moderate PM_{10} SIP, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on this proposal.

Those States containing initial moderate PM_{10} nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543-13544.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566). In this action, EPA is proposing to grant a limited approval/disapproval of the plan revision for Hayden/Miami because it contains some portions which strengthen the existing SIP but the revision does not wholly meet the applicable requirements of the Act. The most serious deficiency of the SIP revision is that it only addresses the Hayden portion of the nonattainment area. The Hayden/Miami nonattainment area consists of two distinct air basins which are separated by the Pinal and Mescal Mountain ranges. These two air basins are affected by different sources of PM_{10} and a separate control strategy is required for each basin. Therefore, while the submittal does not fully meet the specific provisions of part D, for example, a complete emission inventory that addresses the entire nonattainment area, a description of the monitoring network for the entire nonattainment area, and a demonstration of attainment that includes the Miami portion of the nonattainment area, it does contain some provisions which adequately address PM_{10} air quality in the Hayden portion of the nonattainment area. The operating permit issued to ASARCO, Inc., which is the primary vehicle for implementing the control strategy developed for the Hayden area, is an effective control of the largest sources of PM_{10} emissions in the Hayden area and advances the NAAQS-related air quality protection goals of the Act. Therefore, EPA proposes to grant a limited approval for the SIP revision because of its overall strengthening effect on Arizona's SIP, but is also proposing to disapprove the SIP revision because it does not address the Miami portion of the nonattainment area and because the SIP revision did not address the general requirements pertaining to establishing provisions for an air quality surveillance system.

Some provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–13544.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). In this action, EPA is proposing to grant a limited approval/disapproval of the plan revision for Hayden/Miami because it contains some portions which strengthen the existing SIP but the revision does not wholly meet the applicable requirements of the Act. The most serious deficiency of the SIP revision is that it only addresses the Hayden portion of the nonattainment area. The Hayden/Miami nonattainment area consists of two distinct air basins which are separated by the Pinal and Mescal Mountain ranges. These two air basins are affected by different sources of PM_{10} and a separate control strategy is required for each basin. Therefore, while the submittal does not fully meet the specific provisions of part D, for example, a complete emission inventory that addresses the entire nonattainment area, a description of the monitoring network for the entire nonattainment area, and a demonstration of attainment that includes the Miami portion of the nonattainment area, it does contain some provisions which adequately address PM_{10} air quality in the Hayden portion of the nonattainment area. The operating permit issued to ASARCO, Inc., which is the primary vehicle for implementing the control strategy developed for the Hayden area, is an effective control of the largest sources of PM_{10} emissions in the Hayden area and advances the NAAQS-related air quality protection goals of the Act. Therefore, EPA proposes to grant a limited approval for the SIP revision because of its overall strengthening effect on Arizona's SIP, but is also proposing to disapprove the SIP revision because it does not address the Miami portion of the nonattainment area and because the SIP revision did not address the general requirements pertaining to establishing provisions for an air quality surveillance system.

A. Analysis of State Submission

The EPA is proposing to grant a limited disapproval for the SIP submittal for not meeting the specific requirements of sections 110(a)(2)(B), 172(c)(1), and 172(c)(3) of the Act. These deficiencies result from the SIP's failure to address the Miami portion of the nonattainment area and also the general monitoring requirements for the entire nonattainment area. Further discussion on these deficiencies is provided in the Technical Support Document contained in the docket.

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA within six months after receipt of the submission.

The State of Arizona held a public hearing on August 21, 1989 to entertain public comment on the implementation plan for Hayden, Arizona. Following the public hearing the plan was adopted by the State and signed by the Governor's designee on October 16, 1989, and submitted to EPA on October 16, 1989 as a proposed revision to the SIP. On February 3, 1992, Arizona submitted a new transmittal letter to EPA asking that EPA consider the October 16, 1989 submittal as meeting the November 15, 1991 PM_{10} SIP submittal due date. This transmittal letter included an attached justification for not implementing additional RACM in the Hayden SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after November 15, 1991, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). EPA determined that the submittal was complete, but did not make a formal finding of completeness. By operation of law the submittal was deemed complete as of May 15, 1992. As noted, in this action EPA proposes to partially approve Arizona's PM_{10} SIP submittal for Hayden/Miami and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

Arizona submitted an emissions inventory for base year 1986. The base year inventory only identified sources in Hayden (the ASARCO smelter stack, copper ore tailings, ore crushing, the ASARCO slag dump, road dust, ASARCO smelter building fugitives, and copper ore). These are the primary sources of PM_{10} in the Hayden portion of the nonattainment area, contributing over 90 percent of the total emissions in Hayden during the time that the violations were recorded. Additional contributing sources included lime handling, gypsum handling, locomotive exhaust, automobile exhaust, and woodburning stoves.

The EPA is proposing to approve the emissions inventory. While the emission inventory contains some inaccuracies with respect to certain point, area, and mobile source emissions, EPA feels that the inventory is accurate enough for determining the primary sources of PM_{10} in the Hayden area and the control strategy's effect on PM_{10} emissions in the nonattainment area. Furthermore, EPA feels the inventory provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act (ACT).[2] For further details

[1] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[2] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air

Continued

see the Technical Support Document (TSD).

3. RACM (Including RACT)

As noted, the initial moderate PM_{10} nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560 13561).

It should be noted that the SIP revision for the Hayden area was developed prior to the passage of the Clean Air Act Amendments of 1990. Implementation of RACM was not a required portion of the SIP at that time. Arizona subsequently submitted an addendum to the SIP revision on February 3, 1992 which presented the justification for not implementing all of the RACM measures identified in Appendices C1, C2, and C3 of the General Preamble. The basic argument against implementation of further RACM was that the SIP demonstrated attainment of the PM_{10} NAAQS in 1990, four years sooner than required by the Act, and that additional RACM would not cause the area to reach attainment any sooner. This is a valid argument in favor of not adopting further RACM. The control measures that are being implemented in the Hayden area are consistent with the guidance issued by EPA regarding fugitive dust in its General Preamble. Furthermore, the Hayden area has not experienced any violations of the PM_{10} NAAQS since 1990. The SIP submitted by Arizona for the Hayden nonattainment area used Chemical Mass Balance receptor modeling and dispersion modeling and then reconciled the results according to guidance provided by EPA in the document *Protocol For Reconciling Differences Among Receptor And Dispersion Models*, EPA, March 1987. As a result, five sources were identified as contributing to the PM_{10} nonattainment problem in Hayden and will be controlled with a variety of measures. Table 1 lists these measures and the associated emission reductions.

TABLE 1

Source/source category	Control measure	Emissions w/o controls (contribution to 24 hr ambient levels in µg/m³)	Emissions after controls (contribution to 24 hr ambient levels in µg/m³)
Ore Unloading, Crushing, and Conveying	Increased use of spray bars, hooding, enclosures, newer and more efficient rotoclones, better housekeeping.	410.8	39.6
Unpaved Roads	Capping, watering, use of dust suppressants	86.5	8.7
Locomotives	Implementation of 40% opacity limit	58.8	23.5
Paved Roads	No controls to be implemented	29.9	29.9
Gypsum Handling	Source permanently shut down	10.2	0.0

The control measures in Table 1 have been implemented and therefore meet the requirement of implementing RACM by December 10, 1993. According to the SIP, control of these sources will result in an estimated emission reduction of 292 tons per year of PM_{10}. A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation as to why certain available control measures were not implemented, can be found in the Technical Support Document (TSD).

The EPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures to be implemented. There are a limited and obvious number of PM_{10} sources in the Hayden area and the State addresses each of them in the SIP revision. The implementation of Arizona's part D particulate matter nonattainment plan control strategy will result in the attainment of the PM_{10} NAAQS by December 31, 1994. By this document EPA is proposing to approve the RACM, including RACT, developed by Arizona for the Hayden area's control strategy. EPA is proposing to approve the operating permit issued to ASARCO Inc., the measure restricting off road vehicle use, the measure for locomotive emissions and the measure for gypsum handling.

4. Demonstration

As noted, the CAA requires that initial moderate PM_{10} nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (See section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable. The SIP submitted by Arizona for Hayden contains an attainment demonstration using Chemical Mass Balance (CMB) Receptor Modeling reconciled with the Industrial Source Complex Short Term (ISCST) Dispersion Model. This demonstration indicates that the NAAQS for PM_{10} will be attained by 1990 in Hayden and maintained in future years. The 24-hour PM_{10} NAAQS is 150 micrograms/cubic meter (µg/m³), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 µg/m³ is equal to or less than one (see 40 CFR 50.6). The annual PM_{10} NAAQS is 50 µg/m³, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 µg/m³. The demonstration predicted that the 24-hour design concentration in the attainment year of 1990 will be 129 µg/m³, thus demonstrating attainment of the 24-hour PM_{10} NAAQS. The annual design concentration of 31.6 µg/m³ predicted for the same year demonstrates attainment of the annual PM_{10} NAAQS. The demonstration also showed that the PM_{10} NAAQS will be maintained in future years by predicting a 24-hour design concentration of 147.1 µg/m³, and an annual design concentration of 34.2 µg/m³ for the year 1997. The control strategy used to achieve these design concentrations is summarized in the section titled "RACM (including RACT)".

The State's demonstration of attainment of the 24 hour NAAQS in the Hayden area is approved as is the SIP's demonstration of attainment of the annual PM_{10} NAAQS in the Hayden area. For a more detailed description of the attainment demonstration and the control strategy used, see the Technical Support Document.

5. PM_{10} Precursors

The control requirements which are applicable to major stationary sources of PM_{10}, also apply to major stationary sources of PM_{10} precursors unless EPA determines such sources do not contribute significantly to PM_{10} levels in excess of the NAAQS in that area (see section 189(e) of the Act).

An analysis of air quality and emissions data for the Hayden portion of the nonattainment area indicates that exceedances of the NAAQS are attributable chiefly to direct particulate matter emissions from copper ore unloading, crushing and conveying activities, unpaved roads, locomotives, and gypsum handling. Sources of particulate matter precursor emissions of SO_2 contribute anywhere from 3 µg/m³ to 5 µg/m³ to the 24 hr design concentration. Consequently, EPA is proposing to find that major sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS. The consequences of this finding are that the PM_{10} nonattainment area control requirements will not apply to the sources of PM_{10} precursors. Further discussion of the analyses and supporting rationale for EPA's finding are contained in the Technical Support Document. Note that while EPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM_{10} nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual

Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline*. We believe that this document provides a general basis for meeting the requirements of the new Act.

the section titled "RACM (including RACT)".

The State's demonstration of attainment of the 24 hour NAAQS in the Hayden area is approved as is the SIP's demonstration of attainment of the annual PM_{10} NAAQS in the Hayden area. For a more detailed description of the attainment demonstration and the control strategy used, see the Technical Support Document.

5. PM_{10} Precursors

The control requirements which are applicable to major stationary sources of PM_{10}, also apply to major stationary sources of PM_{10} precursors unless EPA determines such sources do not contribute significantly to PM_{10} levels in excess of the NAAQS in that area (see section 189(e) of the Act).

An analysis of air quality and emissions data for the Hayden portion of the nonattainment area indicates that exceedances of the NAAQS are attributable chiefly to direct particulate matter emissions from copper ore unloading, crushing and conveying activities, unpaved roads, locomotives, and gypsum handling. Sources of particulate matter precursor emissions of SO_2 contribute anywhere from 3 $\mu g/m^3$ to 5 $\mu g/m^3$ to the 24 hr design concentration. Consequently, EPA is proposing to find that major sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS. The consequences of this finding are that the PM_{10} nonattainment area control requirements will not apply to the sources of PM_{10} precursors. Further discussion of the analyses and supporting rationale for EPA's finding are contained in the Technical Support Document. Note that while EPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM_{10} nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

In determining RFP for this initial moderate area, EPA has reviewed the attainment demonstration and control strategy for the area and assessed whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the PM_{10} NAAQS by December 31, 1994 (see section 171(1)). Since Arizona has not recorded a violation of the PM_{10} NAAQS in the Hayden since 1990, EPA feels that the State of Arizona has satisfied the RFP requirement for the Hayden portion of the nonattainment area.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply to the types of activities identified in that discussion, including, for example, copper ore unloading, crushing and conveying, dust from unpaved roads, locomotive exhaust, gypsum handling, and off-road vehicle use. The SIP provides that the affected activities are subject to the applicable control measures.

Consistent with the attainment demonstration described above, the SIP requires that all affected activities must be in full compliance with the applicable SIP provisions by December 31, 1991. In addition to the applicable control measures, this includes the applicable record-keeping requirements which are addressed in the supporting technical information. In addition, the SIP sets out a compliance schedule for the ASARCO smelting facility that includes enforceable deadlines by which the source must implement the appropriate control measures. The compliance schedule is described in more detail in the supporting technical information. Compliance for certain measures, such as the limitation of process emissions from the crushing facility and the control of emissions from unpaved roads must be determined in accordance with appropriate test methods. The SIP provides that compliance with the operating permit process emission conditions applicable to the ASARCO facility will be determined in accordance with EPA approved test methods as contained in the Arizona Testing Manual. For the control of unpaved road emissions compliance will be determined based on test methods contained in the EPA document *Control of Open Fugitive Dust Sources* (EPA–450/3–88–008). The EPA believes these test methods are appropriate for determining compliance.

The attached Technical Support Document (TSD) contains further information on enforceability requirements including: enforceable emission limitations; a description of the rules contained in the SIP and the source types subject to them; and reporting and recordkeeping requirements.

The State of Arizona has given the State Department of Environmental Quality the necessary legal authority to ensure that the measures contained in the SIP are adequately enforced.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See, generally 57 FR 13543–13544. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM_{10} NAAQS by the applicable statutory deadline.

However, as noted the States are not required to submit the contingency plan in section 172(c)(9), until November 15, 1993 (see 57 FR 13543 (April 16, 1992)). Consequently, Arizona will have until November 15, 1993 to submit a contingency plan.

III. Implications of This Action

The EPA is proposing to grant a limited approval/disapproval for the SIP revision submitted by the State of Arizona on October 16, 1989 for the Hayden/Miami moderate PM_{10} nonattainment area. If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of

the Act (see generally 57 FR 13566–13567). As provided under section 179(a) of the Act, the State of Arizona would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose either the highway funding sanction or the requirement to provide two-to-one new source review offsets. If the State has not corrected its deficiency within 6 months thereafter, EPA must impose the second sanction. Any sanction EPA imposes must remain in place until EPA determines that the State has come into compliance. If EPA ultimately disapproves all or part of the SIP submittal for the Hayden/Miami nonattainment area and the State of Arizona fails to correct the deficiency within 18 months of such disapprovals, EPA anticipates that the first sanction it would impose would be the two to one offset requirement. Note also that any final disapproval would trigger the requirement for EPA to impose a Federal implementation plan as provided under section 110(c)(1) of the Act.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposal including EPA's proposed decision to impose the two to one new source review offset requirement as the first sanction should EPA ultimately disapprove this submittal in whole or in part and the State fail to timely remedy the deficiency. EPA is particularly interested in comments addressing the adequacy of the State's modeling and the accuracy of the State's emissions inventory. As indicated at the outset of this document, EPA will consider any comments received by August 15, 1994.

V. Executive Order (EO) 12866

Under Executive Order 12866, this action is not "significant". It has not been submitted to OMB for review in accordance with section 6 of E.O 12866.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

The disapproval action taken against Arizona's SIP submittal for not addressing the Miami portion of the nonattainment area affects only one source, Cyprus Miami Mining Corp. Cyprus Miami Mining Corp. is not a small entity. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 15, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–17300 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[CT15–1–6080; A–1–FRL–5013–5]

Approval and Promulgation of Air Quality Implementation Plans; Approval of the Employee Commute Options Program Submitted by the State of Connecticut Pursuant to Title I, Section 182(d)(1)(B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Connecticut for the purpose of establishing an Employee Commute Options Program (Program). Connecticut submitted this SIP revision to satisfy the requirement in Section 182(d)(1)(B) of the Clean Air Act (CAA) that, for severe ozone nonattainment areas, states establish programs under which employers with 100 or more employees must develop compliance plans which convincingly demonstrate an increase in the average passenger occupancy (APO) of commute trips by their employees by no less than 25% above the average vehicle occupancy (AVO) of the nonattainment area. This action is being taken under Section 110 of the Clean Air Act. The rationale for the approval is included in this notice; additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by August 15, 1994. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg. (AAA), Boston, MA 02203. Copies of the state's submittal and EPA's technical support document are available for inspection during normal business hours, by appointment at the U.S. Environmental Protection Agency, Jerry Kurtzweg, ANR–443, 401 M Street, SW, Washington, D.C. 20460; the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA 02203; and the Bureau of Air Management, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: Daniel J. Brown, (617) 565–9048, of the U.S. Environmental Protection Agency in Boston, MA.

SUPPLEMENTARY INFORMATION: On January 12, February 1, and July 27, 1993, the Connecticut Department of Environmental Protection (DEP) submitted a revision to its State Implementation Plan (SIP) for air quality. The revision is designed to satisfy the requirements of Section 182(d)(1)(B) of the Clean Air Act, as amended in 1990 (CAA).

I. Background

Section 182(d)(1)(B) of the CAA requires that states, in which all or part of a severe ozone nonattainment area is located, must submit a SIP revision requiring employers in such areas to reduce work related trips and miles travelled by employees. Such employee commute option (ECO) programs are required to minimize the use of single occupant vehicles for work-related trips, thereby achieving emission reductions beyond what can be obtained through stricter tailpipe and fuel standards. Because parts of Connecticut's Fairfield and Litchfield Counties are in the New York-New Jersey-Connecticut severe nonattainment area, Connecticut was required to submit an ECO program covering those parts of the two counties.

Under Section 182(d)(1)(B), Connecticut was required to submit its ECO SIP revision by November 15, 1992. Connecticut submitted its ECO SIP on January 12, 1993, and supplemented the program with submittals on February 1 and July 27, 1993. ECO SIP revisions must, at a minimum, require that each employer of 100 or more employees increase average passenger occupancy (APO) per vehicle in commuting trips during peak travel periods by not less than 25% above the AVO for all such trips in the area at the time the revision is submitted. To achieve this goal, the revision must require subject employers to submit compliance plans to the state two years after the SIP revision is submitted to EPA. These compliance plans, developed by each subject employer, shall convincingly demonstrate an increase in the APO of their employees who commute to work during the morning peak travel period by no less than 25% above the average vehicle occupancy (AVO) of the nonattainment area. These compliance plans must "convincingly demonstrate" that the employers will meet the target APO (at least 25% above the AVO) not later than four years after the SIP is submitted. Where there are important differences in terms of commute patterns, land use, or AVO, the States may establish different zones within the nonattainment area for purposes of calculation of the AVO.

EPA is also requesting comments on Connecticut's plan to modify its SIP submission by revising the definition of "average vehicle occupancy" to replace the requirement that it be calculated on or before November 15, 1992 with the requirement that it be calculated using a method acceptable to EPA; revising the definition of "employer" to include the State of Connecticut and any political subdivision of the State rather than a government department; and revising the dates by which employers of two hundred or more are required to submit compliance plans. Employers of two hundred or more will have additional time to submit compliance plans while still being required to submit plans no later than two years from the date of the SIP revision. Proposed amendments to the ECO legislation reflecting these changes are currently before the Connecticut

thereby achieving emission reductions beyond what can be obtained through stricter tailpipe and fuel standards. Because parts of Connecticut's Fairfield and Litchfield Counties are in the New York-New Jersey-Connecticut severe nonattainment area, Connecticut was required to submit an ECO program covering those parts of the two counties.

Under Section 182(d)(1)(B), Connecticut was required to submit its ECO SIP revision by November 15, 1992. Connecticut submitted its ECO SIP on January 12, 1993, and supplemented the program with submittals on February 1 and July 27, 1993. ECO SIP revisions must, at a minimum, require that each employer of 100 or more employees increase average passenger occupancy (APO) per vehicle in commuting trips during peak travel periods by not less than 25% above the AVO for all such trips in the area at the time the revision is submitted. To achieve this goal, the revision must require subject employers to submit compliance plans to the state two years after the SIP revision is submitted to EPA. These compliance plans, developed by each subject employer, shall convincingly demonstrate an increase in the APO of their employees who commute to work during the morning peak travel period by no less than 25% above the average vehicle occupancy (AVO) of the nonattainment area. These compliance plans must "convincingly demonstrate" that the employers will meet the target APO (at least 25% above the AVO) not later than four years after the SIP is submitted. Where there are important differences in terms of commute patterns, land use, or AVO, the States may establish different zones within the nonattainment area for purposes of calculation of the AVO.

EPA is also requesting comments on Connecticut's plan to modify its SIP submission by revising the definition of "average vehicle occupancy" to replace the requirement that it be calculated on or before November 15, 1992 with the requirement that it be calculated using a method acceptable to EPA; revising the definition of "employer" to include the State of Connecticut and any political subdivision of the State rather than a government department; and revising the dates by which employers of two hundred or more are required to submit compliance plans. Employers of two hundred or more will have additional time to submit compliance plans while still being required to submit plans no later than two years from the date of the SIP revision. Proposed amendments to the ECO legislation reflecting these changes are currently before the Connecticut legislature. EPA agrees with Connecticut that these are minor "technical" changes to the legislation that will not affect the approvability of the ECO SIP. Therefore, upon Connecticut's submission of a revised ECO SIP containing these revisions, EPA proposes to approve these revisions to the SIP in the final rulemaking on this proposal.

Section 110(k) of the CAA contains provisions governing EPA's review of SIP submittals. Section 110(k) specifies that if the submittal satisfactorily addresses all of the required Program elements, EPA shall grant full approval.

II. Analysis

The State of Connecticut has submitted a SIP revision to EPA in order to satisfy the requirements of Section 182(d)(1)(B). EPA issued the Employee Commute Options Guidance on December 17, 1992 interpreting various aspects of the statutory requirements. Under this guidance, to gain approval, the State submittal must contain each of the following program elements: (1) the AVO for each nonattainment area or for each zone if the area is divided into zones; (2) the target APO which is no less than 25% above the AVO(s); (3) an ECO program that includes a process for compliance demonstration; and (4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers.

Connecticut has met the requirements of Section 182(d)(1)(B) by submitting a SIP revision that implements all required program elements.

1. The Average Vehicle Occupancy

Section 182(d)(1)(B) requires that the State determine the AVO at the time the SIP revision is submitted. Connecticut has met this requirement by establishing an AVO for the entire Connecticut portion of the severe nonattainment area. The AVO was calculated to be 1.19 based on the most recent census data and was included as part of the Connecticut SIP submittal on January 12, 1993. Connecticut has affirmed that this AVO is representative of the AVO at the time of submittal as required by Section 182(d)(1)(B).

2. The Target APO

Section 182(d)(1)(B) indicates that the target APO must be not less than 25% above the AVO for the nonattainment area. An approvable SIP revision for this program must include the target APO. Connecticut has met this requirement in the SIP submittal on January 12, 1993, by including a target APO which is no less than 25% above the AVO.

Connecticut provided EPA with the state regulation describing the methodology required to be followed by an employer when calculating the APO for the worksite. This method is consistent with EPA guidance and is binding on employers. Connecticut specifically requested that the calculation methodology not be included in the SIP revision since it is subject to change pending EPA guidance on allowable credit for alternatively fueled vehicles. EPA has agreed to withhold the APO calculation from the SIP revision and will audit any revisions to current methodology for consistency with EPA guidance. In the event that EPA finds revisions to the APO calculation methodology that are inconsistent with EPA guidance, EPA will issue a SIP call pursuant to Section 110(k)(5) of the Act, requiring the appropriate APO calculation methodology to be incorporated into an ECO SIP revision.

3. ECO Program

State or local law must establish ECO requirements for employers with 100 or more employees at a worksite within severe and extreme ozone nonattainment areas and serious carbon monoxide areas. In the ECO Guidance issued December 1992, EPA states that automatic coverage of employers of 100 or more should be included in the law. In addition, States should develop procedures for notifying subject employers regarding the ECO requirements.

State and/or local law must require that initial compliance plans "convincingly demonstrate" prospective compliance. Approval of the SIP revision depends on the ability of the State/local regulations to ensure that the CAA requirement that initial compliance plans "convincingly demonstrate" compliance will be met.

Connecticut has met these requirements, in the February 1, and July 27, 1993 SIP revisions, by including enacted legislation revising the General Statutes of Connecticut to provide for automatic coverage of employers of 100 or more located in the portion of Connecticut's Fairfield and Litchfield Counties which are in the New York-New Jersey-Connecticut severe nonattainment area. The SIP revision sets forth time schedules for notifying affected employers and requiring the submittal and implementation of compliance plans which convincingly demonstrate an increase in the APO of not less than 25%. The schedule for submission varies by employer size, but in any event all subject employers are required to submit a compliance plan,

within two years from the date of the SIP revision, increasing the APO by 25% within four years from the date of the SIP revision, as required by the CAA. To ensure that compliance plans "convincingly demonstrate" compliance, the Connecticut Department of Transportation, or designated regional planning agency, shall within 120 days of a plan submittal evaluate the plan for its ability to convincingly demonstrate compliance. Employers whose compliance plan does not convincingly demonstrate compliance will be required to submit, within 60 days of notification, a revised compliance plan which convincingly demonstrates compliance. Connecticut will impose financial penalties for employers who do not submit a compliance plan, or a revised compliance plan, which convincingly demonstrates compliance. The penalties should be large enough to result in a significant prospective incentive for the employer to design and implement an effective initial compliance plan.

The Connecticut ECO legislation includes a provision allowing an employer's compliance plan to be deemed approved in the absence of a response following the 120 day evaluation period. EPA believes that this provision is intended to expedite the approval process for only those plans which convincingly demonstrate compliance, thereby promoting early implementation of such plans. EPA is concerned that such a provision could result in a compliance plan which does not convincingly demonstrate compliance, being deemed approved in the event that a notice of inadequacy on such a plan is not provided within the 120 day evaluation period. It is therefore important that the state, or designated regional planning agency, review and take action promptly on submitted employer compliance plans. EPA intends to audit Connecticut's ECO program to assure that compliance plans are being evaluated as required, and notice is provided to employers whose compliance plans do not convincingly demonstrate compliance. If EPA finds that such requirements are not being complied with, EPA will issue a SIP call pursuant to Section 110(k)(5) of the Act, requiring Connecticut to submit a revision to the ECO SIP eliminating the provision for approval of compliance plans based on a 120 day time lapse.

EPA has similar concerns regarding the definition of employee as described in the ECO legislation. The definition includes a provision which would exempt a person whose mode of transportation for performing such person's responsibilities is the same vehicle in which such person commuted to the employer's work location. EPA believes that this provision is intended for a limited classification of employees who require the use of a vehicle for such responsibilities as sale of products and also require the employee to commute to a worksite to obtain such products or samples thereof, eliminating the possibility for such an employee to not use their vehicle for commuting to the worksite. EPA will audit the Connecticut ECO program and in the event that EPA finds this provision to exclude employees which otherwise could commute to the worksite by a means which would assist the worksite to achieve the target APO, EPA will issue a SIP call pursuant to Section 110(k)(5) of the Act, requiring Connecticut to submit a revision to the ECO SIP eliminating this provision from the definition of employee.

4. Enforcement Procedures

States and local jurisdictions need to include penalties and/or compliance incentives in their ECO regulations for an employer who fails to submit a compliance plan, or an employer who fails to implement an approved compliance plan, according to the compliance plan's implementation schedule. Penalties should be severe enough to provide an adequate incentive for employers to comply and be no less than the expected cost of compliance. Connecticut has met this requirement, in the February 1, and July 27, 1993 SIP revisions, by including enacted legislation revising the General Statutes of Connecticut to provide penalties for an employer who fails to submit compliance plans, revised compliance plans, compliance reports, maintenance plans, and/or fails to implement such compliance and maintenance plans.

Proposed Action

EPA is proposing to approve the SIP revision submitted by the State of Connecticut. The State of Connecticut submitted a SIP revision implementing each of the program elements required by Section 182(d)(1)(B) of the CAA.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 27, 1994.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 94–17302 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[M129–01–6416; FRL–5013–3]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this action, the EPA is proposing to approve portions and to conditionally approve other portions of a revision to the Michigan State Implementation Plan (SIP) for attainment of the National Ambient Air Quality Standards for ozone. On November 12, 1993, Michigan submitted a SIP revision request to the EPA to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act, as amended in 1990 (CAA or Act), and the Federal motor vehicle inspection and maintenance (I/M) rule at 40 CFR part 51, subpart S. This revision establishes and requires the implementation of an I/M program in the Grand Rapids and Muskegon ozone nonattainment areas. The EPA's final action to approve or conditionally approve portions of the State's SIP revision is dependent upon the materials submitted to EPA 2 weeks prior to the close of the public comment period. Alternatively, should the State fail to timely submit the items described below, EPA is proposing to disapprove the SIP submission.

DATES: Comments must be received on or before August 15, 1994.

ADDRESSES: Comments may be mailed to: Carlton Nash, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson, (312) 353–4779.

SUPPLEMENTARY INFORMATION:

1. Introduction

The CAA requires States to make changes to improve existing I/M programs or implement new ones. Section 182 requires any ozone nonattainment area which has been classified as "marginal" (pursuant to section 181(a) of the CAA) or worse with an existing I/M program that was

40 CFR Part 52

[M129–01–6416; FRL–5013–3]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this action, the EPA is proposing to approve portions and to conditionally approve other portions of a revision to the Michigan State Implementation Plan (SIP) for attainment of the National Ambient Air Quality Standards for ozone. On November 12, 1993, Michigan submitted a SIP revision request to the EPA to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act, as amended in 1990 (CAA or Act), and the Federal motor vehicle inspection and maintenance (I/M) rule at 40 CFR part 51, subpart S. This revision establishes and requires the implementation of an I/M program in the Grand Rapids and Muskegon ozone nonattainment areas. The EPA's final action to approve or conditionally approve portions of the State's SIP revision is dependent upon the materials submitted to EPA 2 weeks prior to the close of the public comment period. Alternatively, should the State fail to timely submit the items described below, EPA is proposing to disapprove the SIP submission.

DATES: Comments must be received on or before August 15, 1994.

ADDRESSES: Comments may be mailed to: Carlton Nash, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson, (312) 353–4779.

SUPPLEMENTARY INFORMATION:

1. Introduction

The CAA requires States to make changes to improve existing I/M programs or implement new ones. Section 182 requires any ozone nonattainment area which has been classified as "marginal" (pursuant to section 181(a) of the CAA) or worse with an existing I/M program that was part of a SIP, or any area that was required by the 1977 Amendments to the CAA to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, all ozone nonattainment areas classified as moderate or worse must implement a "basic" or an "enhanced" I/M program depending upon its classification, regardless of previous requirements.

In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIP for all areas required by the CAA to have an I/M program.

II. Background

The State of Michigan currently contains 3 ozone nonattainment areas which are required to implement I/M programs in accordance with the Act. The Detroit-Ann Arbor ozone nonattainment area is classified as moderate and contains the following 7 counties: Wayne, Oakland, Macomb, Washtenaw, St. Clair, Livingston, and Monroe. The Grand Rapids ozone nonattainment area is classified as moderate and contains 2 counties: Kent and Ottawa. The Muskegon ozone nonattainment area is classified as moderate and is comprised of Muskegon county. These designations for ozone were published in the **Federal Register** (FR) on November 6, 1991 and November 30, 1992 and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.300–81.437.

III. I/M Regulation General SIP Submittal Requirements

On November 5, 1992 (57 FR 52950), the EPA published a final regulation establishing the I/M requirements, pursuant to sections 182 and 187 of the CAA. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires States to submit an I/M SIP revision which includes all necessary legal authority and the items specified in 40 CFR 51 by November 15, 1993.

Pursuant to these requirements, the State of Michigan was required to submit a SIP revision that requires the establishment and implementation of a "basic" I/M program in the Detroit-Ann Arbor, Grand Rapids, and Muskegon nonattainment areas by November 15, 1993.[1]

IV. State Submittal

On November 12, 1993, the Michigan Department of Natural Resources (MDNR) submitted to the EPA a revision that provided for an I/M program in Western Michigan (i.e., the Grand Rapids and Muskegon nonattainment areas). Under the requirements of the EPA completeness review procedures (40 CFR 51 Appendix V) and the requirements of section 110(k) of the CAA, the submittal was deemed complete by EPA on April 18, 1994.

In Western Michigan, the State will be implementing a biennial, "test-only" I/M program which meets the requirements of the EPA's "enhanced" performance standard and other requirements contained in the Federal I/M rule in the applicable nonattainment counties. The Michigan Department of Transportation (MDOT) has sole responsibility for implementing the program, while the MDNR is responsible for enforcement of the program. In addition, the State will enter into a contractual agreement with a centralized contractor to provide the network of services required to operate a program. Other aspects of the Western Michigan I/M program include: testing of 1975 and later light duty vehicles and trucks and heavy duty trucks, evaporative emission testing for 1975 and later model year vehicles, a test fee to ensure the State has adequate resources to implement the program, enforcement by registration denial, a repair effectiveness program, contractual requirements for testing convenience, quality assurance, data collection, minimum expenditure waivers, reporting, test equipment and test procedure specifications, public information and consumer protection, and inspector training and certification, and contractual requirements for a Total Quality Management Plan between the State and the centralized contractor.

V. The EPA's Analysis of the Western Michigan I/M Program

The EPA has reviewed the State's submittal for consistency with the statutory requirements of EPA regulations. A summary of the EPA's analysis is provided below. More detailed support for approval of the .

[1] This rulemaking is limited to the Grand Rapids and Muskegon nonattainment areas. The I/M program in the Detroit-Ann Arbor nonattainment will be addressed in a separate rulemaking.

State's submittal is contained in a Technical Support Document (TSD), dated May 31, 1994, which is available from the Region 5 Office, listed above.

A. Applicability

The SIP needs to describe the applicable areas in detail and, consistent with 57 FR 51.350, needs to include the legal authority or rules necessary to establish program boundaries.

The Western Michigan I/M legislation specifies that an I/M program be implemented in Kent, Ottawa, and Muskegon counties, as required.

B. I/M Performance Standard

The SIP revision provides for an I/M program in Western Michigan that meets the "enhanced" I/M performance standard. The State elected to design a program meeting the "enhanced" performance standard as a means of meeting other requirements associated with the CAA (e.g., section 182(b)(1), Reasonable Further Progress). The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

The State has submitted a modeling demonstration using the EPA computer model MOBILE5a showing that the "enhanced" performance standard is met.

C. Network Type and Program Evaluation

The SIP needs to include a description of the network to be employed, the required legal authority, and in the case of areas making claims for case-by-case equivalency, the required demonstration. Also, for areas implementing "enhanced" I/M programs, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, and related details of the evaluation program, and the legal authority enabling the evaluation program.

The State has chosen to implement a "centralized" I/M network program design which will utilize a centralized contractor to implement the inspection portion of the program. The State has chosen not to make a demonstration for case-by-case equivalency for a different network design.

The MDNR describes and commits, in its SIP narrative, to institute a continuous ongoing evaluation program consistent with the Federal I/M rule. The results of the evaluation program will be reported to the EPA on a biennial basis. Legal authority, which is contained in the H.B. 4165, authorizes the MDNR to implement this contractor operated centralized program and conduct the program evaluation.

D. Adequate Tools and Resources

The SIP needs to include a description of the resources that will be used for program operation, and discuss how the performance standard will be met, which includes: (1) a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in the Federal I/M rule, (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

The adopted legislation for the Western Michigan program, H.B. 4165, provides for a $24 per vehicle inspection fee which is adjusted annually for inflation. Of this $24 fee, no less than $3 will be devoted to oversight and management of the program. The SIP narrative also describes the budget, staffing support, and equipment needed to implement the program. The State expects to dedicate a staffing level of 12 full-time equivalent employees to support the program.

E. Test Frequency and Convenience

The SIP needs to include the test schedule in detail including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, for "enhanced" I/M programs, the SIP needs to demonstrate that the network of stations providing test services is sufficient to insure short waiting times to get a test and short driving distances.

The SIP revision for Western Michigan requires biennial inspections for all subject motor vehicles. For new vehicles, the first test is required for re-registration, 2 years after initial titling. For vehicles already titled at the time of program start-up, inspections are required within 30 days prior to the anniversary of initial titling. Newly registered used vehicles are required to be inspected within thirty days of being registered initially in the State. The inspections will be conducted on odd or even years corresponding to the model year of the vehicle and timed with the registration process which is explained in the SIP submittal. The authority for the enforcement of the testing frequency is contained in the Western Michigan I/M legislation.

Short waiting times and short driving distances relating to network design are addressed in the contract between the State and its managing contractor. The State is contractually requiring that the monthly average waiting time shall not exceed 15 minutes more than 4 times in a month. In addition, the location of stations shall be such that 70 percent of the vehicle population must be within 5 miles of an inspection station, and that 90 percent of the vehicle population must be within 12 miles of an inspection station.

F. Vehicle Coverage

The SIP needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP needs to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

The Western Michigan program includes coverage of all 1975 and newer model year gasoline powered light-duty vehicles and light-duty and heavy-duty trucks, registered or required to be registered within the nonattainment areas and fleets primarily operated within an I/M program area. Vehicles will be identified through the MDOT vehicle registration database. Only the following vehicles are exempt from the I/M requirement: historic vehicles, diesel vehicles, dedicated alternative fuel vehicles, electric vehicles, motorcycles, and vehicles used for covert monitoring of inspection station facilities. The State has estimated exempted vehicles to account for 0.3 percent of the total vehicle population.

The legal authority for the vehicle coverage is contained in the H.B. 4165.

G. Test Procedures and Standards

The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance, or law describing and establishing the test procedures.

The Western Michigan I/M SIP obligates the State to do IM240 testing in accordance with the EPA's guidance document entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications" (Technical Guidance). The State will be requiring IM240 tests on 1981 and later model year vehicles. This model year coverage complies with the EPA's I/M regulation. All 1975 and later model year vehicles not receiving an IM240 test will receive a loaded 2 speed test in accordance with the EPA's test procedures contained in the appendices of the Federal I/M rule. The test procedures are specifically and legally established in the Request For Proposal (RFP), which the Western Michigan I/M contractor is required to abide by.

H. Test Equipment

The SIP needs to include written technical specifications for all test equipment used in the program and shall address each of the requirements in 57 FR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Western Michigan I/M SIP revision obligates the State to use the written equipment specifications contained in the EPA's IM240 Technical Guidance and appendices of the Federal I/M rule. Michigan's RFP sufficiently addresses the requirements in 40 FR 51.358 and includes descriptions of performance features and functional characteristics of the computerized test systems. The necessary test equipment, required features, and acceptance testing criteria are also mandated in the RFP.

I. Quality Control

The SIP needs to include a description of quality control and record keeping procedures. The SIP needs to include the procedures manual, rule, and ordinance or law describing and establishing the procedures of quality control and requirements.

The Western Michigan SIP narrative and RFP contain descriptions and requirements establishing the quality control procedures in accordance with

The legal authority for the vehicle coverage is contained in the H.B. 4165.

G. Test Procedures and Standards

The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance, or law describing and establishing the test procedures.

The Western Michigan I/M SIP obligates the State to do IM240 testing in accordance with the EPA's guidance document entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications" (Technical Guidance). The State will be requiring IM240 tests on 1981 and later model year vehicles. This model year coverage complies with the EPA's I/M regulation. All 1975 and later model year vehicles not receiving an IM240 test will receive a loaded 2 speed test in accordance with the EPA's test procedures contained in the appendices of the Federal I/M rule. The test procedures are specifically and legally established in the Request For Proposal (RFP), which the Western Michigan I/M contractor is required to abide by.

H. Test Equipment

The SIP needs to include written technical specifications for all test equipment used in the program and shall address each of the requirements in 57 FR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Western Michigan I/M SIP revision obligates the State to use the written equipment specifications contained in the EPA's IM240 Technical Guidance and appendices of the Federal I/M rule. Michigan's RFP sufficiently addresses the requirements in 40 FR 51.358 and includes descriptions of performance features and functional characteristics of the computerized test systems. The necessary test equipment, required features, and acceptance testing criteria are also mandated in the RFP.

I. Quality Control

The SIP needs to include a description of quality control and record keeping procedures. The SIP needs to include the procedures manual, rule, and ordinance or law describing and establishing the procedures of quality control and requirements.

The Western Michigan SIP narrative and RFP contain descriptions and requirements establishing the quality control procedures in accordance with the Federal I/M rule. These requirements will help ensure that equipment calibrations are properly performed and recorded as well as maintaining compliance document security. The quality control procedures manual is contained in the RFP. The Western Michigan SIP revision obligates the State to comply with all specifications for all quality control in accordance with the Federal I/M rule.

J. Waivers and Compliance Via Diagnostic Inspection

The SIP needs to include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate needs to be used for estimating emission reduction benefits in the modeling analysis. Also, the State needs to take corrective action if the waiver rate exceeds that estimated in the SIP or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP needs to describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP shall include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

The Western Michigan I/M program includes a waiver rate as a percentage of initially failed vehicles of 6 percent. This waiver rate is used in the modeling demonstration. In the SIP narrative, the State of Michigan commits to take corrective action if the actual waiver rate rises above 6 percent. The SIP provides for only 1 type of waiver, that being based on a minimum repair expenditure. This waiver is consistent with the Federal I/M rule. The proper criteria, procedures, quality assurance and administration regarding the issuance of waivers will be ensured by MDOT and the managing contractor and are contained in the SIP narrative and RFP. The waiver criteria are contained in both the State's legislation and the RFP. The State has established a minimum $300 expenditure for the issuance of a waiver. This minimum limit is in accordance with the CAA and Federal I/M rule.

K. Motorist Compliance Enforcement

The SIP needs to provide information concerning the enforcement process including: (1) a description of the existing compliance mechanism, if it is to be used in the future, and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, e.g., those operated in (but not necessarily registered in) the program area. Also, the SIP needs to include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism need to be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP needs to include a commitment to an enforcement level, at a minimum, in practice.

The State has chosen to use registration-denial as its primary enforcement mechanism. Motorists will be denied vehicle registration unless the vehicle has complied with the I/M program requirements. The motorist compliance enforcement program will be implemented in part, by the MDOT in conjunction with the Michigan Department of State. The Michigan State Police and local police departments will take the lead in citing motorists who fail to comply with the registration requirement. In addition, parking meter attendants also have the authority to ticket parked vehicles with expired or otherwise invalid license plates.

Only the following vehicles types are exempt from the I/M requirement: historic vehicles, diesel vehicles, dedicated alternative fuel vehicles, electric vehicles, motorcycles, and vehicles used for covert monitoring of inspection station facilities. The State has estimated exempted vehicles to account for 0.3 percent of the total vehicle population.

Fleet vehicles, rental car fleets, and leased vehicles that do not receive an annual registration will be required to meet the same program requirements as all other vehicles that receive annual registration. The project compliance rate is estimated to be 97 percent. The State commits to revise the I/M SIP if the State fails to meet the 97 percent compliance rate.

The legal authority to implement and enforce the program is included in H.B. 4165.

L. Motorist Compliance Enforcement Program Oversight

The SIP needs to include a description of enforcement program oversight and information management activities.

The Western Michigan SIP revision provides for regular auditing of its enforcement program and the following of effective management practices, including adjustments to improve the program when necessary. These program oversight and information management activities are described in the SIP narrative and RFP which include: the establishment of written procedures for personnel engaged in I/M document handling and processing and the use of a bar-coded data entry system for tracking program documents.

However, the submittal does not include, for example, the procedures through which the activities of enforcement personnel are quality-controlled, as described in 40 CFR part 51.362. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.362 to EPA prior to final rulemaking.

M. Quality Assurance

The SIP needs to include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits.

The Western Michigan I/M SIP revision includes a description of its quality assurance program. The program includes operation and progress reports and overt and covert audits of all emission inspectors and emission inspection and referee facilities. The program will be conducted by a contractor with oversight provisions reserved to the State. Procedures and techniques for overt and covert performance, record, and equipment audits will be given to auditors and updated as needed. In addition, all program auditors will themselves be audited at least once per year.

N. Enforcement Against Contractors, Stations and Inspectors

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of State constitutional impediments to immediate suspension authority, the State Attorney General shall furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP needs to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In States without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the 3 day case management requirement for violations that directly affect emission reductions.

The Western Michigan SIP revision incorporates an innovative method for ensuring that the I/M program will be run effectively. The State will require the contractor to become part of the MDOT's Total Quality Management (TQM) program.

However, while the State's submittal includes the legislative authority for enforcement against contractors, the submittal does not include, for example, a penalty schedule for those persons found in violation of the rules of the I/M program, as described in 40 CFR part 51.364. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.364 to EPA prior to final rulemaking.

O. Data Collection

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The Federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR Part 51.359. The SIP needs to describe the types of data to be collected.

The Western Michigan I/M SIP revision provides for the collecting and storage of test data consistent with the Federal I/M rule. The information contained within each test report is such that it will be possible to unambiguously tie specific test results to a specific vehicle, test site, and inspector. The State also commits to gather, summarize, and report the results of quality control checks performed on testing equipment, sorted according to station number, system number, date, the concentration values of the calibration gases used and the start time of the quality control check.

P. Data Analysis and Reporting

Data analysis and reporting are required to allow for monitoring an evaluation of the program by the State and the EPA. The Federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control, and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to the EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the previous 2 year period and how these problems will be or were corrected.

Under the Western Michigan SIP revision, the State will address all the data elements and reporting requirements listed in 57 FR 51.366.

Q. Inspector Training and Licensing or Certification

The SIP needs to include a description of the training program, the written and "hands-on" tests, and the licensing or certification process.

The Western Michigan I/M SIP revision provides for the implementation of training, certification, and refresher programs for emission inspectors. The SIP describes the program and curriculum which include written and "hands-on" testing at least every 2 years. All inspectors will be required to be certified to inspect vehicles in the Western Michigan I/M program.

R. Public Information and Consumer Protection

The SIP must include public information and consumer protection programs.

The Western Michigan SIP revision includes a provision in the RFP for the contractor to develop a public information program which educates the public on I/M, State and Federal regulations, air quality and the role of motor vehicles in the air pollution problem, and other items as described in the Federal rule. The consumer protection program includes a number of provisions for a challenge mechanism, protection of whistle blowers, and assistance to motorists in obtaining warranty covered repairs will also be further developed in the final contract.

However, the State's submittal does not include a provision to provide motorists that fail the emissions test to automatically receive test repair facility performance data and diagnostic information, as described in 40 CFR part 51.368. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.368 to EPA prior to final rulemaking.

S. Improving Repair Effectiveness

The SIP needs to include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for "enhanced" I/M programs, and a description of the repair technician training resources available in the community.

the program and curriculum which include written and "hands-on" testing at least every 2 years. All inspectors will be required to be certified to inspect vehicles in the Western Michigan I/M program.

R. Public Information and Consumer Protection

The SIP must include public information and consumer protection programs.

The Western Michigan SIP revision includes a provision in the RFP for the contractor to develop a public information program which educates the public on I/M, State and Federal regulations, air quality and the role of motor vehicles in the air pollution problem, and other items as described in the Federal rule. The consumer protection program includes a number of provisions for a challenge mechanism, protection of whistle blowers, and assistance to motorists in obtaining warranty covered repairs will also be further developed in the final contract.

However, the State's submittal does not include a provision to provide motorists that fail the emissions test to automatically receive test repair facility performance data and diagnostic information, as described in 40 CFR part 51.368. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.368 to EPA prior to final rulemaking.

S. Improving Repair Effectiveness

The SIP needs to include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for "enhanced" I/M programs, and a description of the repair technician training resources available in the community.

The Western Michigan I/M SIP revision includes a description of the technical assistance and repair technician training programs to be implemented. The State has committed to meeting the applicable technical assistance requirements of 40 CFR part 51.369, and to that end require the contract to be entered into will sufficiently address the Federal I/M rule requirements. The MDOT will also ensure that a repair technician hotline will be available for repair technicians. The State will also ensure that adequate repair technician training exists prior to the beginning of testing in January 1995.

However the submittal does not provide for a system of repair facility performance monitoring, as described in 40 CFR part 51.369. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.369 to EPA prior to final rulemaking.

T. Compliance with Recall Notices

For areas implementing "enhanced" I/M programs, the SIP needs to describe the procedures used to incorporate the vehicle recall lists provided into the inspection or registration database, the quality control methods used to insure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The State's submittal does not sufficiently address all the aspects of this requirement as described in 40 CFR part 51.370. Therefore, EPA proposes to approve this portion of the State's submittal if Michigan submits the necessary materials in time to allow EPA to place it in the docket 2 weeks prior to the close of the public comment period. If Michigan cannot submit the necessary materials, but does submit a commitment to complete the necessary materials within 1 year of EPA's final rulemaking, EPA proposes to conditionally approve this portion of the State's submittal. Alternatively, if the State does not submit any materials 2 weeks prior to the close of the public comment period, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. In order to receive final full approval, the State must submit its final, signed contract addressing the requirements of 40 CFR part 51.370 to EPA prior to final rulemaking.

U. On-road Testing

For areas that are classified as serious or above for ozone nonattainment, the SIP needs to include a detailed description of the on-road testing program.

Because the nonattainment areas in Western Michigan are classified as moderate, this particular I/M requirement is not applicable to the Western Michigan I/M program. However, the State does have the authority to implement on-road testing on a discretionary basis.

V. State Implementation Plan Submissions/Implementation Deadlines

The Federal I/M rule requires areas starting new test-only programs to be fully implemented by January 1, 1995.

The Western Michigan I/M SIP revision provides that the program will begin operation by January 1, 1995.

T. Concluding Statement

A more detailed analysis of the State's submittal and how it meets the Federal requirements is contained in the EPA's TSD dated May 31, 1994, which is available from the Region 5 office listed above. The criteria used to review the submitted SIP revision are based on the requirements stated in section 182 of the CAA and the Federal I/M regulations. Based on these requirements, the EPA developed a detailed I/M approvability checklist to be used nationally to determine if I/M programs meet the requirements of the CAA and the Federal I/M rule. This checklist, based on the CAA and Federal I/M regulations, formed the primary basis for the EPA's technical review.

The EPA has reviewed the Western Michigan I/M SIP revision submitted to the EPA, using the criteria stated above. The H.B. 4165, RFP, and accompanying materials contained in the SIP represent an acceptable approach to the I/M requirements and meet all the criteria required for approvability with the exceptions noted above.

Proposed Action

The EPA is proposing to approve portions the Western Michigan I/M SIP

revision as meeting the requirements of the CAA and the Federal I/M rule and for the deficient portions of the State's submittal noted above, approve those portions which the State submits 2 weeks before the close of the official comment period and conditionally approve those portions which the State submits a commitment to complete within 1 year of EPA's final rulemaking, or alternatively if the State takes neither of the above actions to remedy the submittal's deficiencies, EPA proposes to disapprove the SIP as failing to comply with section 110 and Part D. The EPA requests comments on this proposal including the EPA's proposal to approve the I/M SIP for Western Michigan as meeting the requirements of the CAA and Federal I/M rule. As indicated at the outset of this action, the EPA will consider any comments received by [insert date 30 days from date of publication] and make the TSD available upon request.

I. Basis for Conditional Approval

The EPA believes conditional approval is appropriate in this case because the State has developed final, fully adopted legislative authority for the "enhanced" I/M program and needs only to supplement its submittal to address a number of the I/M program requirements. As a condition of EPA's proposed conditional approval, the State must submit a final, fully adopted contract or rules to EPA no later than 1 year after EPA's final conditional approval.

II. Statement of Approvability

Under the authority of the Governor, the MDNR submitted a SIP revision to satisfy the requirements of the I/M regulation to the EPA on November 15, 1993. The Agency has reviewed this submittal and is proposing to approve portions and proposing to conditionally approve other portions of it pursuant to Sections 110(k) of the Act, on the condition that the portions of the I/M program noted above are adopted and/or submitted on the schedules noted in this proposed rulemaking.

If the State fails to timely submit the required regulations and other material or commit to do so within 1 year of EPA's final conditional approval, EPA proposes in the alternative to disapprove the SIP as failing to comply with section 110 and Part D.

If the EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt and submit the final rule or contract amendments within 1 year of the conditional approval. Once the EPA has conditionally approved this committal, if the State fails to adopt or submit the required rules or contract to EPA, final approval will become a disapproval. EPA will notify the State by letter to this effect. Once the SIP has been disapproved, these commitments will no longer be a part of the approved nonattainment area SIPs. The EPA subsequently will publish a notice to this effect in the notice section of the **Federal Register** indicating that the commitment or commitments have been disapproved and removed from the SIP. If the State adopts and submits the final rule or contract amendments to the EPA within the applicable time frame, the conditionally approved commitments will remain part of the SIP until the EPA takes final action approving or disapproving the new submittal. If the EPA approves the subsequent submittal, those newly approved rules or contract will become a part of the SIP.

If after considering comments on the proposal, the EPA issues a final disapproval or if the conditional approval portions are converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin on the effective date of the final disapproval or at the time the EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit and the EPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, the EPA must impose 1 of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval starts the 24 month clock for the imposition of a section 110(c) Federal Implementation Plan. Finally, under section 110(m) the EPA has discretionary authority to impose sanctions at any time after a final disapproval.

Procedural Background

The OMB has exempted this rule from the requirements of section 6 of Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have an significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct., 1976); 42 U.S.C. § 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen oxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 6, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–17299 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–60–P

---

40 CFR Part 52

[PA25–1–5994; FRL–5013–6]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania—Emission Statement Program

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of implementing an emission statement program for stationary sources applicable in the entire Commonwealth of Pennsylvania. The SIP revision was submitted by the Commonwealth to satisfy the federal requirements for an emission statement program as part of the SIP for the Commonwealth of Pennsylvania.

DATES: Comments on this proposed action must be received in writing by August 15, 1994.

ADDRESSES: Comments must be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the Commonwealth's submittal and other information are available for public inspection during normal business hours at the following location: Environmental Protection Agency, Region III, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107; Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, Market Street Office Bldg., Harrisburg, PA 17105–8468.

FOR FURTHER INFORMATION CONTACT: Enid A. Gerena, (3AT14), U.S. Environmental Protection Agency, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–8239.

SUPPLEMENTARY INFORMATION: On November 12, 1992, the Pennsylvania Department of Environmental Resources (PADER) submitted a revision to the Pennsylvania's SIP which establishes emissions statement requirements for sources of nitrogen oxides (NO_x) and volatile organic compounds (VOCs).

The revision consists of amendments to Title 25 Pa. Code Chapter 135. Section 135.21 provides the actual requirements for the submittal of emission statements by owners or operators of stationary sources emitting NO_x and/or VOCs located in ozone nonattainment areas designated by the Clean Air Act (CAA) as marginal, moderate, serious, severe or extreme. Under 25 Pa. Code section 135.21, emission statement requirements would also apply to stationary sources of NO_x and/or VOCs in areas included in the Northeast Ozone Transport Region which emit or have the potential to emit 100 tons per year of NO_x or 50 tons per year of VOC. Each facility will provide the Commonwealth with a certified statement reporting emissions in accordance with EPA guidance requirements. The Commonwealth's annual emission statements are due by March 1 for the preceding calendar year beginning with March 1, 1993 for calendar year 1992.

Section 135.5 identifies records that facilities are required to maintain and report to PADER to support emission inventory and emission statement data reports.

I. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of Part D of Title I of the Clean Air Act, as amended by the CAA. EPA has published a "General Preamble" describing EPA's preliminary views on how the Agency intends to review SIP's and SIP revisions submitted under Title I of the CAA, including those State submittals for

normal business hours at the following location: Environmental Protection Agency, Region III, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107; Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, Market Street Office Bldg., Harrisburg, PA 17105–8468.

FOR FURTHER INFORMATION CONTACT: Enid A. Gerena, (3AT14), U.S. Environmental Protection Agency, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–8239.

SUPPLEMENTARY INFORMATION: On November 12, 1992, the Pennsylvania Department of Environmental Resources (PADER) submitted a revision to the Pennsylvania's SIP which establishes emissions statement requirements for sources of nitrogen oxides (NO_x) and volatile organic compounds (VOCs).

The revision consists of amendments to Title 25 Pa. Code Chapter 135. Section 135.21 provides the actual requirements for the submittal of emission statements by owners or operators of stationary sources emitting NO_x and/or VOCs located in ozone nonattainment areas designated by the Clean Air Act (CAA) as marginal, moderate, serious, severe or extreme. Under 25 Pa. Code section 135.21, emission statement requirements would also apply to stationary sources of NO_x and/or VOCs in areas included in the Northeast Ozone Transport Region which emit or have the potential to emit 100 tons per year of NO_x or 50 tons per year of VOC. Each facility will provide the Commonwealth with a certified statement reporting emissions in accordance with EPA guidance requirements. The Commonwealth's annual emission statements are due by March 1 for the preceding calendar year beginning with March 1, 1993 for calendar year 1992.

Section 135.5 identifies records that facilities are required to maintain and report to PADER to support emission inventory and emission statement data reports.

I. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of Part D of Title I of the Clean Air Act, as amended by the CAA. EPA has published a "General Preamble" describing EPA's preliminary views on how the Agency intends to review SIP's and SIP revisions submitted under Title I of the CAA, including those State submittals for ozone transport areas within the States (see 57 FR 13498 (April 16, 1992) ["SIP: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990"], 57 FR 18070 (April 28, 1992) ["Appendices to the General Preamble"], and 57 FR 55620 (November 25, 1992) ["SIP: NO_x Supplement to the General Preamble"]).

EPA has also issued a draft guidance document describing the requirements for the emission statement programs discussed in this action, entitled "Guidance on the Implementation of an Emission Statement Program" (July, 1992). The Agency is also conducting a rulemaking process to modify Title 40, Part 51 of the CFR to reflect the requirements of the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in Marginal nonattainment areas, which are also made applicable by section 182 (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program for stationary sources to prepare and submit to the State each year emission statements certifying their actual emissions of VOC and NO_X. This section of the Act provides that the States are to submit a revision to their SIPs by November 15, 1992 establishing this emission statement program. Based upon the provisions of sections 182(f), 184(b)(2) and 302(j), emission statements are also required from sources in attainment areas within ozone transport regions which emit, or have the potential to emit, 50 tons per year (tpy) or more of VOC, or 100 tpy or more of NO_X.

If a stationary source emits either VOC or NO_X at or above the designated minimum reporting level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

The States may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tpy of actual plant-wide NO_X and VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emissions factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA.

The CAA requires facilities to submit the first emission statement to the State within three years after November 15, 1990, and annually thereafter.

At minimum, the emission statement data should include:

—certification of data accuracy;
—source identification information;
—operating schedule;
—emissions information (to include annual and typical ozone season day emissions);
—control equipment information; and
—process data.

EPA developed emission statements data elements to be consistent with other source and State reporting requirements. This consistency is essential to assist States with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

II. EPA's Evaluation of the Commonwealth's Submittal

A. Procedural Background

The Commonwealth of Pennsylvania held public hearings on January 6, 7, 8, 1992 in King of Prussia, Harrisburg, and Monroeville respectively, for the purpose of soliciting public comment on the proposed regulatory revisions to require emission statements for stationary sources. Following the public hearings, the regulatory revisions were adopted by the State, on July 21, 1992, became effective in the Commonwealth on October 10, 1992, and were submitted to EPA on November 12, 1992 as a revision to the SIP.

B. Components of the Commonwealth's Emission Statement Program

There are several key and specific components of an acceptable emission statement program. Specifically, the State must submit a revision to its SIP which consists of an emission statement program which meets the minimum requirements for reporting by the sources and the State. In general, the emission statement program must include, at a minimum, definitions and provisions for applicability, compliance, specific source reporting, and reporting forms. EPA has determined that the Commonwealth of Pennsylvania has developed their Emission Statement Program in accordance with the EPA guidance document, "Guidance on the Implementation of an Emission Statement Program" (July 1992) and satisfies the above mentioned minimum requirements. EPA's detailed review of Pennsylvania's Emission Statement Program is contained in the technical support document (TSD) which is available, upon request, from the EPA Region III Office listed in the **ADDRESSES** section of this notice.

C. Enforceability

The Commonwealth of Pennsylvania SIP (Pa Stat. Ann tit. 35, section 4009 and section 4009.1) provides for adequate enforcement of the emission statement requirements of Section 182(a)(3)(B) and Sections 184(b)(2) and 182(f). Once EPA completes the rulemaking process approving the Commonwealth's Emission Statement program as part of the SIP, it will be federally enforceable.

III. Proposed Action

EPA is proposing to approve revisions to the Pennsylvania SIP to include the regulation at Title 25 Pa. Code chapter 135, section 135.5, Recordkeeping, and section 135.21, Emission Statements. This revision was submitted to EPA by the Commonwealth of Pennsylvania on November 12, 1992. This state submittal establishes emission statement requirements for sources of NOx and VOCs within the entire Commonwealth of Pennsylvania.

The EPA is requesting public comments on all aspects of the issues discussed in this notice. As indicated at the outset of this notice, EPA will consider any comments received by (30 days from date of publication). Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional Office in accordance with the instructions in the **ADDRESSES** section of this notice.

Nothing in this section should be construed as permitting or allowing or establishing a precedent for any future request for revision of any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the Commonwealth is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410 (a)(2).

This action has been classified as a Table 2 action for signature by the Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

The Administrator's decision to approve or disapprove the Pennsylvania's SIP Emission Statement revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K), and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 52.

List of Subjects in 40 CFR Part 52

Environmental protection, Air Pollution Control, hydrocarbons, volatile organic compounds, oxides of nitrogen, nitrogen dioxide, Ozone reporting and recordkeeping requirements, SIP requirements, and intergovernmental relations.

Authority: 42 U.S.C. section 7401–7671q.

Dated: April 23, 1994.

Peter H. Kostmayer,

Regional Administrator, Region III.

[FR Doc. 94–17298 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 60 and 63

[AD–FRL–5012–3]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA is proposing to regulate the emissions of certain hazardous air pollutants from petroleum refineries that are major sources under section 112 of the Clean Air Act as amended in 1990. The proposed rule, the national emission standards for hazardous air pollutants for petroleum refineries, would require sources to achieve emission limits reflecting the application of the maximum achievable control technology, consistent with sections 112(d) and 112(h) of the Clean Air Act as amended in 1990. The proposed rule would regulate the emissions of the organic hazardous air pollutants identified on the list of 189 hazardous air pollutants in the Clean Air Act at both new and existing petroleum refinery sources.

The EPA is also proposing to amend two standards of performance for new stationary sources: standards of performance for equipment leaks of volatile organic compounds in the synthetic organic chemicals manufacturing industry; and standards of performance for volatile organic compounds emissions from petroleum refinery wastewater systems. These standards were previously promulgated under section 111 of the Clean Air Act.

DATES: *Comments.* Comments must be received on or before September 13, 1994.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 5, 1994, a public hearing will be held on August 15, 1994, beginning at 9 a.m. Persons wishing to present oral testimony must contact Ms. Lina Hanzely of the EPA at (919) 541–5673 by August 5, 1994. Persons interested in attending the hearing should call Ms. Hanzely at (919) 541–5673 to verify that a hearing will be held.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible), to: The Air and Radiation Docket and Information Center (LE–131), ATTN: Docket No. A–93–48, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts the EPA requesting a public hearing, it will be held at the EPA's Office of Administration auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Hanzely, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673.

Docket. The docket listed above under **ADDRESSES** contains supporting information used in developing the proposed rule. The docket includes several memoranda documenting the estimation of impacts of the regulatory alternatives and the technical basis of the proposed standards. Dockets are available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards, contact Mr. James F. Durham, at (919) 541–5672, Chemicals and Petroleum Branch (MD–13), Emission Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed regulation.

I. Acronyms, Abbreviations and Measurement Units
  A. Acronyms
  B. Abbreviations and Measurement Units
II. Background
  A. Statutory Authority
  B. Previous Regulations
III. Summary of Proposed Rule
  A. Applicability and General Standards
  B. Miscellaneous Process Vent Provisions
  C. Storage Vessel Provisions
  D. Wastewater Provisions
  E. Equipment Leak Provisions
  F. Recordkeeping and Reporting Provisions
  G. Emissions Averaging
IV. Summary of Impacts of Proposed Rule
  A. Environmental Impact
  B. Energy Impact
  C. Cost Impact
  D. Economic Impact
  E. Benefits Analysis
V. Emission and Impact Estimation Methods
VI. Rationale for Proposed Standard
  A. Selection of Source Category, Sources, and Pollutants
  B. Selection of Miscellaneous Process Vent Provisions
  C. Selection of Storage Vessel Provisions
  D. Selection of Wastewater Collection and Treatment Operation Provisions

be held at the EPA's Office of Administration auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Hanzely, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673.

Docket. The docket listed above under **ADDRESSES** contains supporting information used in developing the proposed rule. The docket includes several memoranda documenting the estimation of impacts of the regulatory alternatives and the technical basis of the proposed standards. Dockets are available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards, contact Mr. James F. Durham, at (919) 541–5672, Chemicals and Petroleum Branch (MD–13), Emission Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed regulation.

I. Acronyms, Abbreviations and Measurement Units
  A. Acronyms
  B. Abbreviations and Measurement Units
II. Background
  A. Statutory Authority
  B. Previous Regulations
III. Summary of Proposed Rule
  A. Applicability and General Standards
  B. Miscellaneous Process Vent Provisions
  C. Storage Vessel Provisions
  D. Wastewater Provisions
  E. Equipment Leak Provisions
  F. Recordkeeping and Reporting Provisions
  G. Emissions Averaging
IV. Summary of Impacts of Proposed Rule
  A. Environmental Impact
  B. Energy Impact
  C. Cost Impact
  D. Economic Impact
  E. Benefits Analysis
V. Emission and Impact Estimation Methods
VI. Rationale for Proposed Standard
  A. Selection of Source Category, Sources, and Pollutants
  B. Selection of Miscellaneous Process Vent Provisions
  C. Selection of Storage Vessel Provisions
  D. Selection of Wastewater Collection and Treatment Operation Provisions
  E. Selection of Equipment Leak Provisions
  F. Use of Continuous Monitoring to Determine Compliance
  G. Selection of Reporting and Recordkeeping Provisions
  H. Rationale for Emissions Averaging Provisions
VII. Amendments to Previous Regulations
  A. Amendment to 40 CFR Part 60 Subpart QQQ
  B. Amendment to 40 CFR Part 60 Subpart VV
VIII. Administrative Requirements
  A. Executive Order 12866
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Review

The proposed regulatory text is not included in this **Federal Register** notice, but is available in Docket No. A–93–48, or by written or telephone request from the Air and Radiation Docket Information Center (see **ADDRESSES**). The proposed regulatory language is also available on the Technology Transfer Network (TTN), on the EPA's electronic bulletin boards. This bulletin board provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed call the HELP line at (919) 541–5384.

I. Acronyms, Abbreviations and Measurement Units

The following acronyms, abbreviations and measurement units are provided to clarify the preamble to the proposed rule.

A. Acronyms

Act—Clean Air Act
BWON—Benzene Waste Operations NESHAP
CEMS—continuous emission monitoring system
CFR—Code of Federal Regulations
CTG—control techniques guideline
E.O.—Executive Order
EFR—External Floating Roof
EPA—U.S. Environmental Protection Agency
FCCU—fluidized catalytic cracking unit
FR—**Federal Register**
HAP—hazardous air pollutant
HON—hazardous organic national emission standards for hazardous air pollutants for the SOCMI source category
ICR—information collection request
IFR—internal floating roof
LDAR—leak detection and repair
MACT—maximum achievable control technology
NESHAP—national emission standards for hazardous air pollutants
NSPS—new source performance standards
OMB—Office of Management and Budget
QIP—quality improvement program
RCT—reference control technology
RIA—Regulatory Impact Analysis
SOCMI—synthetic organic chemical manufacturing industry
TAB—total annual benzene
TOC—total organic compounds
VOC—volatile organic compounds

B. Abbreviations and Measurement Units

Btu—British thermal unit
CO—carbon monoxide
hr—hour
kPa—kilopascals
Kw-hr/yr—kilowatt-hour per year
lb—pound
l/min—liters per minute
m^3—cubic meters
Mg—megagrams
MEK—methyl ethyl ketone
MTBE—methyl tertiary butyl ether
NO_x—nitrogen oxides
PM—particulate matter
ppm—parts per million
ppmv—parts per million by volume
ppmw—parts per million by weight
psia—pounds per square inch absolute
SO_2—sulfur dioxide
yr—year

II. Background

This section provides background about the legal and policy criteria that the Administrator took into consideration in selecting the provisions of this proposed rule. It is included to give the reader a sense of the rule as a whole. To that end, this section includes background about the rule, the statutory authority of the rule, including some statutory history, a summary of the current statutory requirements for standards developed under section 112 of the Act, and a summary of previous regulations.

The regulation being proposed today, under section 112 of the Act, is the petroleum refineries NESHAP, which would set MACT for petroleum refineries. The petroleum refineries industry group includes any facility engaged in producing gasoline, naphthas, kerosene, jet fuels, distillate fuel oils, residual fuel oils, lubricants, or other products made from crude oil or unfinished petroleum derivatives.

Some components of the petroleum refining industry have already been subject to various Federal, State, and local air pollution control rules. Although these existing rules will remain in effect, the petroleum refinery NESHAP will provide comprehensive coverage of the petroleum refinery sources not covered by the existing rules. The petroleum refinery NESHAP, as proposed today, regulates emissions of all the organic HAP's emitted from emission points at both new and existing petroleum refinery sources. The proposed NESHAP reflects the EPA's regulatory experience from previous NESHAP and NSPS rulemakings involving similar kinds of sources and emission points. Information on control

technology applicability, performance, and cost was developed to support these NESHAP and NSPS. This information was carefully reconsidered in light of the Act and used in the selection of MACT and the other provisions of the proposed rule, such as monitoring, recordkeeping, and reporting requirements.

A. Statutory Authority

This section provides a brief history of section 112 of the Act and background regarding the definition of source categories and source for section 112 standards. This information is included to give the reader a sense of the statutory, judicial, and Congressional guidance that the Administrator took into consideration in developing the source category and source definitions for the petroleum refinery NESHAP.

Section 112 of the Act provides a list of 189 HAP's and directs the EPA to develop rules to control HAP emissions. The Act requires that the rules be established for categories of sources of the emissions, rather than being set by pollutant. In addition, the Act sets out specific criteria for establishing a minimum level of control and criteria to be considered in evaluating control options more stringent than the minimum control level. Assessment and control of any remaining unacceptable health or environmental risk is to occur 8 years after the rules are promulgated.

Specifically, section 112(c), as amended, directs the Administrator to develop a list of all categories or subcategories of major sources and such categories or subcategories of area sources that meet the requirements of section 112(c)(3) and emit the HAP's listed pursuant to section 112(b). Section 112(d) directs the Administrator to promulgate emission standards for each listed category or subcategory of HAP sources. Such standards will be applicable to both new and existing sources and shall require:

> the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new and existing sources in the category or subcategory to which such emission standard applies.

42 U.S.C. 7412(d)(2).

The Act further provides that "the maximum degree of reduction in emissions that is deemed achievable" shall be subject to a "floor," which is determined differently for new and existing sources. For new sources, the standards set shall not be any less stringent than "the emission control that is achieved in practice by the best controlled similar source." For existing sources, the standards may not be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in each category or subcategory of 30 or more sources. (For smaller categories or subcategories, the standards may not be less stringent than the average emission limitation achieved by the best performing five sources in the category or subcategory.)

In determining whether the standard should be more stringent than the floor and by how much, the Administrator is to consider, among other things, the cost of achieving such additional reductions. The statutory provisions do not limit how the standard is to be set beyond requiring that it be applicable to all sources in a category and be at least as stringent as the floor.

B. Previous Regulations and Guidance

The regulations affecting the petroleum refining industry that have already been promulgated include a number of NSPS in 40 CFR part 60: subpart J—Standards of Performance for Petroleum Refineries; subparts K, Ka, and Kb—various standards of performance for storage vessels for petroleum liquids; subpart GGG—Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries; and subpart QQQ—Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems.

The regulations that have already been promulgated also include a number of NESHAP in 40 CFR part 61: subpart J—NESHAP for Equipment Leaks (Fugitive Emission Sources) of Benzene; subpart Y—NESHAP for Benzene Emissions from Benzene Storage Vessels; and subpart FF—NESHAP for Benzene Waste Operations.

The EPA has also issued guidance on controlling equipment leaks at refineries in the refinery CTG. Guideline Series: Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment. U.S. Environmental Protection Agency. Office of Air Quality Planning and Standards. EPA–450/2–78–036. June 1978.

III. Summary of Proposed Rule

This section of this preamble summarizes the proposed rule (40 CFR part 63, subpart CC). The rule is made up of seven different subjects: applicability, definitions, and general standards; miscellaneous process vent provisions; storage vessel provisions; wastewater provisions; equipment leak provisions; recordkeeping and reporting provisions; and emissions averaging. This summary is divided into seven subsections corresponding to these parts of the regulation.

The discussion in this section briefly summarizes the requirements of the rule, without accounting for how the provisions were selected or how applicability criteria were determined. Specific discussion of the rationale upon which the provisions of the rule are based can be found in section VI of this preamble.

It should be noted that State rules for VOC (and/or HAP's) may be more stringent than the rules being proposed today for refineries. Organic HAP's are only a subset of the VOC emitted from refineries. This means that the magnitude of VOC emissions from a refinery can be substantially greater than the HAP emissions, and the cost per unit of emission reduction of any particular control strategy would be less.

A. Applicability and General Standards

The rule applies to petroleum refining process units that are part of a plant site that is a major source as defined in section 112 of the Act. The determination of potential to emit, and therefore major source status, is based on the total of all HAP emissions from all activities at the plant site. For example, at some integrated facilities there may be operations from multiple source categories (e.g., petroleum refining, SOCMI production, pesticide production). The potential to emit for such a plant site would include HAP emissions from all source categories. If that plant-site total potential to emit exceeds 10 tons per year of a single HAP or 25 tons per year of a combination of HAP's, the petroleum refinery process units would be subject to the proposed Petroleum Refinery NESHAP, even if the emissions from the petroleum refinery process units were below the 10/25 threshold.

The applicability section of the regulation specifies what is included in the petroleum refining source category and the source within the source category.

Petroleum refineries are facilities engaged in producing gasoline, naphthas, kerosene, jet fuels, distillate fuel oils, residual fuel oils, or other transportation fuels, heating fuels, or lubricants from crude oil or unfinished petroleum derivatives.

The source comprises the miscellaneous process vents, storage vessels, wastewater streams, and equipment leaks associated with petroleum refining process units within a refinery. The rationale for selecting this source definition is discussed in section VI.A of this preamble.

The general standards section of the regulation establishes the compliance dates for new and existing sources and requires that sources be properly operated and maintained at all times. The general standards clarify the applicability of the NESHAP General Provisions (40 CFR part 63 subpart A) to sources subject to subpart CC.

B. Miscellaneous Process Vent Provisions

Miscellaneous process vents are defined to include streams containing greater than 20 ppmv organic HAP that are continuously or periodically discharged from petroleum refining process units. Miscellaneous process vents exclude vents that are routed to the refinery fuel gas system and vents from fluidized catalytic cracking unit catalyst regeneration, catalytic reformer catalyst regeneration, and sulfur plants. The vents included in miscellaneous process vents are defined specifically in the definitions section (§ 63.641) of the proposed rule.

The miscellaneous process vent provisions require the owner or operator of a miscellaneous process vent to reduce emissions of organic HAP by 98 percent or to 20 ppmv, or to reduce emissions using a flare meeting the requirements of § 63.11(b) of the NESHAP General Provisions (40 CFR part 63 subpart A). The process vent provisions allow for pollution prevention in that pollution prevention could be used to reduce organic HAP concentrations to less than 20 ppmv, and the stream would not be subject to control requirements.

C. Storage Vessel Provisions

A storage vessel means a tank or other vessel storing feed or product for a petroleum refining process unit that contains organic HAP's. The storage vessel provisions do not apply to the following: (1) vessels permanently attached to mobile vehicles, (2) pressure vessels designed to operate in excess of 204.9 kPa (29.7 psia), (3) vessels with capacities smaller than 40 m^3 (10,500 gal), and (4) wastewater tanks.

The storage provisions define two groups of vessels: Group 1 vessels are vessels with a design storage capacity and a maximum true vapor pressure above the values specified in the proposed regulation and in section VI.C. of this notice; Group 2 vessels are all storage vessels that are not Group 1

vessels, wastewater streams, and equipment leaks associated with petroleum refining process units within a refinery. The rationale for selecting this source definition is discussed in section VI.A of this preamble.

The general standards section of the regulation establishes the compliance dates for new and existing sources and requires that sources be properly operated and maintained at all times. The general standards clarify the applicability of the NESHAP General Provisions (40 CFR part 63 subpart A) to sources subject to subpart CC.

B. Miscellaneous Process Vent Provisions

Miscellaneous process vents are defined to include streams containing greater than 20 ppmv organic HAP that are continuously or periodically discharged from petroleum refining process units. Miscellaneous process vents exclude vents that are routed to the refinery fuel gas system and vents from fluidized catalytic cracking unit catalyst regeneration, catalytic reformer catalyst regeneration, and sulfur plants. The vents included in miscellaneous process vents are defined specifically in the definitions section (§ 63.641) of the proposed rule.

The miscellaneous process vent provisions require the owner or operator of a miscellaneous process vent to reduce emissions of organic HAP by 98 percent or to 20 ppmv, or to reduce emissions using a flare meeting the requirements of § 63.11(b) of the NESHAP General Provisions (40 CFR part 63 subpart A). The process vent provisions allow for pollution prevention in that pollution prevention could be used to reduce organic HAP concentrations to less than 20 ppmv, and the stream would not be subject to control requirements.

C. Storage Vessel Provisions

A storage vessel means a tank or other vessel storing feed or product for a petroleum refining process unit that contains organic HAP's. The storage vessel provisions do not apply to the following: (1) vessels permanently attached to mobile vehicles, (2) pressure vessels designed to operate in excess of 204.9 kPa (29.7 psia), (3) vessels with capacities smaller than 40 m^3 (10,500 gal), and (4) wastewater tanks.

The storage provisions define two groups of vessels: Group 1 vessels are vessels with a design storage capacity and a maximum true vapor pressure above the values specified in the proposed regulation and in section VI.C. of this notice; Group 2 vessels are all storage vessels that are not Group 1 vessels. The storage provisions require that one of the following control systems be applied to Group 1 storage vessels: (1) an IFR with proper seals; (2) an EFR with proper seals; (3) an EFR converted to an IFR with proper seals; or (4) a closed vent system with a 95-percent efficient control device. The storage provisions give details on the types of seals required. The EPA is co-proposing an option that would also require controlled fittings on existing floating roof tanks. Vessels at new sources that are equipped with floating roofs are required to meet specifications for seals and fittings. Monitoring and compliance provisions for Group 1 vessels include periodic visual inspections of vessels and roof seals, as well as internal inspections. If a closed vent system and control device is used for venting emissions from Group 1 storage vessels, the owner or operator must establish appropriate monitoring procedures. No controls or inspections are required for Group 2 storage vessels. The storage vessel provisions are based on and encourage pollution prevention. The pollution prevention options specifically listed by the standard are: IFR, EFR, and a closed vent system routed to a recovery device.

D. Wastewater Provisions

The wastewater provisions of this rule are based on the BWON, using benzene as a surrogate for all organic HAP's from wastewater in petroleum refineries. As explained in section VI.D of this preamble, benzene is a good indicator of the presence of other HAP's in wastewater. The wastewater streams subject to this rule include water, raw material, intermediate, product, by-product, co-product, or waste material that contains organic HAP's and is discharged into an individual drain system. The wastewater provisions define two groups of wastewater streams. Group 1 streams are those that contain a concentration of at least 10 ppmw benzene, have a flow rate of at least 0.02 l/min, are located at a refinery with a total annual benzene loading of at least 10 megagrams per year and are not exempt from control requirements under 40 CFR part 61 subpart FF (the BWON). Group 2 streams are wastewater streams that are not Group 1.

The wastewater provisions of the rule refer to the BWON, which requires owners or operators of a Group 1 wastewater stream to reduce benzene mass by 99 percent using suppression followed by steam stripping, biotreatment, or other treatment processes. Vents from steam strippers and other waste management or treatment units are required to be controlled by a control device achieving 95 percent emissions reduction or 20 ppmv at the outlet of the control device. The performance tests required for wastewater streams and treatment operations to verify that the control devices achieve the desired performance are included in the BWON, as are the monitoring, reporting, and recordkeeping provisions necessary to demonstrate compliance. No controls or monitoring are required for Group 2 wastewater streams. The wastewater provisions promote pollution prevention in that pollution prevention measures could be used to reduce the benzene concentration to below the criteria for Group 1 wastewater streams. Once the stream is a Group 2 wastewater stream, control is not required. Pollution prevention measures may also be taken to reduce the refinery-wide TAB quantity in waste to below 10 Mg/yr or to reduce the refinery-wide TAB quantity in wastewater to below 1 Mg/yr, beyond which no further control would be required. Furthermore, the emissions suppression requirements of the provisions are pollution prevention measures.

E. Equipment Leak Provisions

The equipment leak standards for the petroleum refinery NESHAP refer to the negotiated equipment leak regulation included in the HON (40 CFR part 63 subpart H). These standards are summarized in the preamble to the promulgated HON (59 FR 19402, April 22, 1994). The standards for the petroleum refinery NESHAP differ from the HON in the following ways: only one leak definition for pumps in phase III; leak definition for pumps is equal to or greater than 2,000 ppmv; leak definitions for valves in phases II and III; monitoring frequencies for valves; connectors are not required to be monitored, but sources may choose to monitor valves less frequently in exchange for monitoring of connectors. More details and a discussion of the rationale for these differences are contained in section VI.E. The equipment leaks standards further the goals of pollution prevention, because many of the requirements, such as leak detection and repair, are pollution prevention measures.

F. Recordkeeping and Reporting Provisions

The rule requires petroleum refineries complying with subpart CC to keep records of information necessary to document compliance for 5 years and to submit the following four types of reports to the Administrator: (1) An

Initial Notification, (2) a Notification of Compliance Status, (3) Periodic Reports, and (4) other reports. There are no requirements for reporting compliance with the wastewater provisions other than the reports already required by the BWON.

1. Initial Notification

The Initial Notification is due 120 days after the date of promulgation for existing petroleum refinery sources. For new sources that have an initial start-up more than 90 days after promulgation, the application for approval of construction or reconstruction required under the General Provisions (40 CFR part 63 subpart A) must be submitted in lieu of the Initial Notification. This application is due as soon as practicable before construction or reconstruction is planned to commence but it need not be sooner than 90 days after promulgation of subpart CC. For new sources that have an initial start-up less than 90 days after promulgation, no application for approval of construction is required, and the Initial Notification is due within 90 days after promulgation.

The Initial Notification must list the petroleum refining process units that are subject to the rule. The Initial Notification is not required if a Title V operating permit application has been submitted that provides the required information.

2. Notification of Compliance Status

The Notification of Compliance Status must be submitted 150 days after the sources's compliance date. It contains the information necessary to demonstrate that compliance has been achieved, such as: the results of any performance tests for miscellaneous process vents; design analyses for control devices applied to storage vessels; a description of equipment subject to the equipment leaks provisions and the number of pieces of equipment in each equipment type; and the method of compliance with the equipment leak standard. For emission points subject to continuous monitoring requirements, the notification must contain site-specific ranges for each monitored parameter and the rationale for selection of the ranges. If the information required in the Notification of Compliance Status has already been submitted to the operating permit authority, it does not need to be resubmitted.

3. Periodic Reports

Periodic Reports must be submitted semiannually, except that the implementing agency can request quarterly submittal for emission points where monitored parameter values are outside their permitted ranges more than 1 percent or monitors are out of service more than 5 percent of the total operating time in a semiannual reporting period.

All Periodic Reports must include information required to be reported under the recordkeeping and reporting provisions for each emission point. For continuously monitored parameters, the data on those periods when the parameters are outside their established ranges are included in the reports. Periodic Reports must also include results of any performance tests conducted during the reporting period and reports of equipment failures, leaks, or improper work practices that are discovered during required inspections.

4. Other Reports

A very limited number of other reports must be submitted as required by the provisions for each kind of emission point. Other reports include notifications of storage vessel internal inspections, and reports of start-up, shut-down, and malfunction required by the General Provisions (40 CFR part 63 subpart A).

G. Emissions Averaging

The EPA is proposing that emissions averaging be allowed among existing miscellaneous process vents, storage vessels, and wastewater streams within a refinery. New sources would not be allowed to use emissions averaging. Under emissions averaging, a system of emission "credits" and "debits" would be used to determine whether the source is achieving the required emission reductions. An owner or operator who generates an emission debit must control other emission points to a level more stringent than is required by the regulation to generate an emission credit. Annual emission credits must exceed emission debits for a source to be in compliance. The proposed rule contains specific equations and procedures for calculating credits and debits. Monitoring of control device operation would be required and Periodic Reports would be submitted quarterly instead of semiannually for emission points in emissions averages.

IV. Summary of Impacts of Proposed Rule

This section presents the environmental, energy, cost, and economic impacts resulting from the control of HAP emissions under the proposed rule. It is estimated that approximately 190 petroleum refineries would be required to apply controls by the proposed standards.

Impacts are presented relative to a baseline, the level of control in the absence of the proposed rule. The estimates include the impacts of applying control to: (1) existing process units and (2) additional process units that are expected to begin operation over a 5-year period. Thus, the estimates represent annual impacts occurring in the fifth year. Based on a review of annual construction projects over the years 1988 to 1992 listed in the *Oil and Gas Journal*, it was assumed that 34 new process units would be constructed each year over a 5-year period.

For regulatory purposes, some of the process units constructed in the first 5 years of the rule may be considered new sources, while others may be considered part of an existing source. However, for the purpose of presenting total impacts, this distinction has not been made.

A. Environmental Impact

The environmental impact of the rule includes the reduction of HAP and VOC emissions, increases in other air pollutants, and decreases in water pollution and solid waste resulting from the proposed rule.

Under the proposed rule, it is estimated that the emissions of HAP from refineries would be reduced by 54,000 Mg/yr, and the emissions of VOC would be reduced by 350,000 Mg/yr (see table 1). Estimates of baseline HAP and VOC emissions are presented in conjunction with emissions reductions estimates to illustrate the level of control being achieved by the rule. Baseline HAP and VOC emissions take into account the current estimated level of emissions control, based on previous regulations and questionnaire responses submitted by refineries. As a result, baseline HAP and VOC emissions reflect the level of control that would be achieved in the absence of the proposed rule. The proposed rule would achieve a 68 percent reduction in HAP emissions and a 72 percent reduction in VOC emissions relative to the baseline. Table 1 presents the baseline emissions and emission reduction for each of the four kinds of emission points controlled by this proposed rule.

TABLE 1.—NATIONA

Source	
Miscellaneous process vents	
Equipment leaks	
Storage vessels	
Wastewater collection and treatment	
Total	

[a] The MACT level of control is no additional contro

Emission levels of other air pollutants (CO, NO_X, SO_2) were not quantified. However, slight increases above existing emission levels would result from the combustion of fossil fuel as part of control device operations. Additional emissions of CO, NO_X, and SO_2 would result from fuel burned to generate energy for operation of compressors for ducting miscellaneous process vent streams to control devices.

Impacts for water pollution and solid waste were judged to be negligible and were not quantified as part of the impact analysis.

B. Energy Impact

Increases in energy use were estimated for operating control equipment that would be required by the proposed standards (i.e.,

TABLE 2.—NATI

Source	
Miscellaneous process vents	
Equipment leaks	
Storage vessels	
Wastewater collection and treatment	
Total	

[a] Total capital costs incurred in the 5-year period.
[b] The MACT level of control is no additional contro

D. Economic Impacts

The preliminary economic impact analysis for the selected regulatory alternatives shows that the estimated price increases for affected products range from 0.18 percent for residual fuel oil to 0.51 percent for jet fuel. Estimated decreases in product output range from 0.12 percent for jet fuel to 0.37 percent for residual fuel oil. Total net exports (exports minus imports) for all petroleum liquids are predicted to decrease by 1.8 million barrels annually, approximately 1 percent, as a result of the standard.

TABLE 1.—NATIONAL PRIMARY AIR POLLUTION IMPACT IN THE FIFTH YEAR

Source	Baseline emissions (Mg/yr)		Emission reductions			
			(Mg/yr)		(Percent)	
	HAP	VOC	HAP	VOC	HAP	VOC
Miscellaneous process vents	9,800	190,000	8,400	180,000	85	95
Equipment leaks	52,000	190,000	45,000	160,000	87	85
Storage vessels	9,300	111,000	1,300	21,000	14	19
Wastewater collection and treatment	10,000	10,000	(a)	(a)	(a)	(a)
Total	81,000	500,000	55,000	360,000	68	72

[a] The MACT level of control is no additional control.

Emission levels of other air pollutants (CO, NO_X, SO_2) were not quantified. However, slight increases above existing emission levels would result from the combustion of fossil fuel as part of control device operations. Additional emissions of CO, NO_X, and SO_2 would result from fuel burned to generate energy for operation of compressors for ducting miscellaneous process vent streams to control devices.

Impacts for water pollution and solid waste were judged to be negligible and were not quantified as part of the impact analysis.

B. Energy Impact

Increases in energy use were estimated for operating control equipment that would be required by the proposed standards (i.e., compressors for ducting miscellaneous process vent streams to control devices). The estimated energy use increase in the fifth year would be 13 million kw-hr/yr of electricity or 21,000 barrels of oil equivalent.

C. Cost Impact

The cost impact of the rule includes the capital cost of new control equipment, the cost of energy (supplemental fuel, steam, and electricity) required to operate control equipment, and operation and maintenance cost. Generally, the cost impact also includes any cost savings generated by reducing the loss of valuable product in the form of emissions. The average cost effectiveness of the regulation ($/Mg of pollutant removed) is also presented as part of the cost impact. The average cost effectiveness is determined by dividing the annual cost by the annual emission reduction.

Under the proposed rule, it is estimated that total capital costs would be $207 million (first quarter 1992 dollars) and total annual costs would be $84 million (first quarter 1992 dollars) per year. Table 2 presents the capital and annual cost impact of the proposed regulation for each of the four kinds of emission points as well as the national totals. In addition to the cost impact shown in Table 2, it is estimated that monitoring, recordkeeping, and reporting activities would cost about $26 million/yr, bringing the total national annual costs to about $110 million.

TABLE 2.—NATIONAL CONTROL COST IMPACTS IN THE FIFTH YEAR

Source	Total capital costs[a] (10^6 $)	Total annual costs (10^6 $/yr)	Average HAP cost effectiveness ($/Mg HAP)	Average VOC cost effectiveness ($/Mg VOC)
Miscellaneous process vents	31	12	1,400	66
Equipment leaks	130	65	1,500	410
Storage vessels	46	6	4,600	340
Wastewater collection and treatment	(b)	(b)	(b)	(b)
Total	207	84	.....	.....

[a] Total capital costs incurred in the 5-year period.
[b] The MACT level of control is no additional control.

D. Economic Impacts

The preliminary economic impact analysis for the selected regulatory alternatives shows that the estimated price increases for affected products range from 0.18 percent for residual fuel oil to 0.51 percent for jet fuel. Estimated decreases in product output range from 0.12 percent for jet fuel to 0.37 percent for residual fuel oil. Total net exports (exports minus imports) for all petroleum liquids are predicted to decrease by 1.8 million barrels annually, approximately 1 percent, as a result of the standard.

Industry has expressed concern that the proposed rule could cause some small refineries to shut down. Using conservative (i.e., worst case) assumptions, the economic analysis indicates that from none to seven small refineries are at risk of closure under the proposed rule. The majority of the closures would occur in refineries that process less than 10,000 to 20,000 barrels of crude oil per day. Also, the regulatory flexibility analysis showed that compliance costs as a percentage of sales are more than twice as high for small refiners compared to other refiners. For more information, consult "Economic Impacts Analysis of the Petroleum Refinery NESHAP" in the docket.

E. Benefits Analysis

The RIA presents the results of an examination of the potential health and welfare benefits associated with air emission reductions projected as a result of implementation of the petroleum refinery NESHAP. The proposed regulation regulates HAP emissions from storage tanks, process vents, equipment leaks, and wastewater

emission points at refining sites. Of the HAP's emitted by petroleum refineries, some are classified as VOC, which are ozone precursors. Hazardous air pollutant benefits are presented separately from the benefits associated specifically with VOC emission reductions.

The predicted emissions of a few HAP's associated with this regulation have been classified as probable or known human carcinogens. As a result, one of the benefits of the proposed regulation is a reduction in the risk of cancer mortality. Other benefit categories include reduced exposure to noncarcinogenic HAP's, and reduced exposure to VOC.

Emissions of VOC have been associated with a variety of health and welfare impacts. Volatile organic compound emissions, together with NO_X, are precursors to the formation of tropospheric ozone. Exposure to ambient ozone is responsible for a series of respiratory related adverse impacts.

Based on existing data, the benefits associated with reduced HAP and VOC emissions were quantified. The quantification of dollar benefits for all benefit categories is not possible at this time because of limitations in both data and available methodologies. Although an estimate of the total reduction in HAP emissions for various control options has been developed for the RIA, it has not been possible to identify the speciation of the HAP emission reductions for each type of emission point. However, an estimate of HAP speciation for equipment leaks has been made. Using emissions data for equipment leaks and the Human Exposure Model, the annual cancer risk caused by HAP emissions from petroleum refineries was estimated. Generally, this benefit category is calculated as the difference in estimated annual cancer incidence before and after implementation of each regulatory alternative. Since the annual cancer incidence associated with baseline conditions was less than one life per year, the benefits associated with the petroleum refinery NESHAP were determined to be small. Therefore, these benefits are not incorporated into this benefit analysis.

The benefits of reduced emissions of VOC from a MACT regulation of petroleum refineries were quantified using the technique of "benefits transfer." Because analysis by the Office of Technology Assessment from which benefits transfer values were obtained only estimated health benefits in nonattainment areas, the transfer values can be applied to VOC reductions occurring only in nonattainment areas. (Nonattainment areas are geographical locations in which the National Ambient Air Quality Standard for ozone has been violated.) The benefit transfer ratio range for acute health impacts used in this analysis is from $25 to $1,574 per megagram of VOC with an average of $800 per megagram of VOC. In order to quantify VOC emission reductions, these ratios were multiplied by VOC emission reductions from petroleum refineries located in ozone nonattainment areas. Estimated benefits for VOC reductions are $148.3 million for the proposed regulation and $153.9 million for a more stringent alternative.

The quantified benefits exceed costs by $15.9 million 1992 dollars per year for the proposed alternative. The quantified benefits exceed costs by $5.5 million 1992 dollars per year for the more stringent alternative. Thus, a comparison of the incremental difference in the two alternatives indicates that the incremental net benefits are negative for the more stringent alternative.

V. Emission and Impact Estimation Methods

Emissions from petroleum refineries and the impact of controlling emissions were estimated using information published in the *Oil and Gas Journal* and provided by petroleum refineries in response to information collection requests and questionnaires sent out under section 114 of the Act. For a general discussion of the estimation methods for existing and new petroleum refinery sources and references for memoranda on the specific methods used for each kind of emission point, refer to the memorandum, Emission and Impact Estimation Methods, available in the Docket. It is noted that API provided the EPA with emissions data that it has collected relatively recently on leaking equipment. The EPA is evaluating this data. Once this review is complete, the EPA intends to incorporate it into documents which are used for estimating emissions, particularly on an individual plant basis. It could also affect the emission reduction estimates provided for the promulgated standard.

VI. Rationale for Proposed Standard

A. Selection of Source Category, Sources, and Pollutants

This section of the preamble describes the rationale for the selection and definition of the petroleum refinery source category and for the factors that the Administrator took into consideration in defining the sources within the petroleum refinery source category.

1. Selection of Source Category

The definition of the source category is important in setting standards because it sets the boundary for what emission points will be regulated under this standard. A large plant site such as a refinery could comprise multiple source categories. For example, a refinery is likely to contain equipment that would be regulated under the industrial cooling tower source category, the process heater source category, the industrial boiler source category, or the SOCMI source category. The petroleum refinery source category regulated under this NESHAP is defined to include equipment specifically used to produce fuels, heating oils, or lubricants by separating petroleum or separating, cracking, or reforming unfinished petroleum derivatives.

The EPA's source category list (57 FR 31576, July 16, 1992), required by section 112(c) of the Act, identifies categories of sources for which NESHAP are to be established. This list includes all categories of major sources of HAP's known to the EPA at this time, and all area source categories for which findings of adverse effects warranting regulation have been made. Two categories of sources are listed for petroleum refineries: (1) catalytic cracking (fluid and other) units, catalytic reforming units, and sulfur plant units, scheduled for promulgation in 1997, and (2) other sources not distinctly listed, scheduled for promulgation in 1995 (58 FR 63952, December 3, 1993).

Based on review of information on petroleum refineries during development of the proposed standards, it was determined that some of the emissions points from the two listed categories of sources have similar characteristics and can be controlled by the same control techniques. In particular, miscellaneous process vents emitting organic HAP's, storage vessels, wastewater streams, and leaks from equipment in organic HAP service within catalytic cracking units, catalytic reforming units, and sulfur plant units are similar to emission points from the other process units at petroleum refineries (i.e., units in the category of "other sources not distinctly listed"). Because it is most effective to regulate these emission points in a single regulation, the EPA intends to amend the source category list when the standards proposed today are promulgated. Upon revision, all emission points from petroleum refining units included in today's proposed standards will be in a single source category.

The petroleum refinery source category selected for regulation by subpart CC includes process units for catalytic cracking (fluid and other), catalytic reforming, sulfur plants, and other petroleum refinery units not distinctly listed. The other units not distinctly listed include, but are not limited to, process units for thermal cracking, vacuum distillation, crude distillation, hydrotreating/hydrorefining, alkylation, isomerization, polymerization, lube oil processing, and hydrogen production. Units for processing natural gas liquids, refining units for recycling discarded oil, and shale oil extraction units are not covered by this rule. Ethylene processes are not covered by this rule because they are included in a separate source category.

Miscellaneous process vents, as defined in § 63.641 of the proposed rule, from the process units subject to this rule are part of the petroleum refinery source category. Three kinds of vents at petroleum refineries would not be included in the source category for today's proposed rule. These vents—the catalytic cracking catalyst regeneration vent, the catalytic reformer catalyst regeneration vent, and the sulfur plant vents—will be included in a separate category subject to a 1997 deadline. These vents have significantly different HAP emission characteristics and would be controlled with different controls than the rest of the refinery emission points. The standard proposed today addresses emissions of organic HAP's. The FCCU catalyst regeneration vent emits primarily metal HAP's, which would be controlled using particulate controls. Catalytic reformer catalyst regeneration vents emit hydrogen chloride, and sulfur plant vents emit carbonyl sulfide and carbon disulfide. Because of their unique characteristics, the EPA concluded that these emission points warranted separate consideration. Because limited data are currently available, these emission points will be included in a separate source category under a separate schedule. (However, the EPA would like to clarify that miscellaneous process vents (as defined in § 63.641 of the proposed rule) from catalytic cracking, catalytic reforming, and sulfur plant units that emit organic HAP's would be subject to subpart CC.)

a. *Distinction between petroleum refinery and SOCMI source categories.* This petroleum refineries NESHAP generally covers refinery processes that produce petroleum liquids (such as gasoline, naphthas, and kerosene) for use as fuels. Often, products of refinery processes are used to make synthetic

The petroleum refinery source category selected for regulation by subpart CC includes process units for catalytic cracking (fluid and other), catalytic reforming, sulfur plants, and other petroleum refinery units not distinctly listed. The other units not distinctly listed include, but are not limited to, process units for thermal cracking, vacuum distillation, crude distillation, hydrotreating/hydrorefining, alkylation, isomerization, polymerization, lube oil processing, and hydrogen production. Units for processing natural gas liquids, refining units for recycling discarded oil, and shale oil extraction units are not covered by this rule. Ethylene processes are not covered by this rule because they are included in a separate source category.

Miscellaneous process vents, as defined in § 63.641 of the proposed rule, from the process units subject to this rule are part of the petroleum refinery source category. Three kinds of vents at petroleum refineries would not be included in the source category for today's proposed rule. These vents—the catalytic cracking catalyst regeneration vent, the catalytic reformer catalyst regeneration vent, and the sulfur plant vents—will be included in a separate category subject to a 1997 deadline. These vents have significantly different HAP emission characteristics and would be controlled with different controls than the rest of the refinery emission points. The standard proposed today addresses emissions of organic HAP's. The FCCU catalyst regeneration vent emits primarily metal HAP's, which would be controlled using particulate controls. Catalytic reformer catalyst regeneration vents emit hydrogen chloride, and sulfur plant vents emit carbonyl sulfide and carbon disulfide. Because of their unique characteristics, the EPA concluded that these emission points warranted separate consideration. Because limited data are currently available, these emission points will be included in a separate source category under a separate schedule. (However, the EPA would like to clarify that miscellaneous process vents (as defined in § 63.641 of the proposed rule) from catalytic cracking, catalytic reforming, and sulfur plant units that emit organic HAP's would be subject to subpart CC.)

a. *Distinction between petroleum refinery and SOCMI source categories.* This petroleum refineries NESHAP generally covers refinery processes that produce petroleum liquids (such as gasoline, naphthas, and kerosene) for use as fuels. Often, products of refinery processes are used to make synthetic organic chemicals other than fuels. The petroleum refineries NESHAP will not cover chemical manufacturing process units that are covered under the SOCMI source category, even if these units are located at a refinery site. A SOCMI chemical manufacturing process unit that is located at a refinery and produces one or more of the chemicals listed in the HON (40 CFR part 63 subpart F, table 1) as a single chemical product or as a mixed chemical used to produce other chemicals would be considered a SOCMI process and would be subject to the HON rather than to the petroleum refineries NESHAP.

For example, MTBE, an additive used for octane enhancement in gasoline, is a SOCMI chemical that can be produced at some petroleum refineries and is made from a petroleum refinery product. The feedstock for MTBE is a mixed C4, C5 hydrocarbon stream produced in an FCCU; the FCCU is subject to the petroleum refineries NESHAP. However, MTBE is on the list of SOCMI chemicals in the HON (40 part 63 subpart F), so the process unit used to produce MTBE from the C4, C5 hydrocarbon feedstock is regulated under the HON, not under the petroleum refineries NESHAP.

b. *Exclusion of area sources.* A petroleum refining process would be subject to the proposed standard only if it is part of a major source. A major source is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, more than 10 tons per year of any HAP or more than 25 tons per year of total HAP. An area source is any stationary source or group of stationary sources that are not major sources. The General Provisions for the NESHAP (40 CFR part 63 subpart A), provide a definition of potential to emit. The General Provisions apply to the petroleum refinery source category.

Based on the information available on petroleum refineries and emission estimates developed for this standard, the EPA has no information that can be used to determine whether area sources in the petroleum refinery source category would present a threat of adverse effects to human health or to the environment. It is believed that most refineries are major sources, and that there are few, if any, area sources. The EPA requests comments containing information on whether there are area sources within the petroleum refining source category and on the emissions from such sources. Commenters should provide the basis for any emission estimates.

c. *Exclusion of research and development facilities.* The proposed standard would not apply to research and development facilities, such as laboratories and pilot plants, regardless of whether the facilities are located on the same site as a commercial petroleum refinery. Research and development facilities connected with petroleum refineries are believed to be small, and the EPA has limited information about their operations or about the appropriate controls for these facilities. The EPA concluded, therefore, that it would not be appropriate to include research and development facilities in this regulation. In accordance with section 112(c)(7) of the Act, a separate source category for research and development facilities may be established at a later date if more comprehensive information becomes available. Standards for such facilities may be developed at a later date, if the EPA determines that such action is warranted.

d. *Exclusion of transfer operations.* Transfer operations at petroleum refineries, that is, loading products into tank trucks, railcars, or marine vessels, is not included in the source category regulated by this rule. Loading of marine vessels will be regulated under the Federal Standards for marine tank vessel for loading and unloading operations and NESHAP for marine tank vessel for loading and unloading operations. Emissions from loading tank trucks and railcars will be regulated under the NESHAP for the gasoline distribution and organic liquids distribution (nongasoline) source categories in the liquids distribution industry group. The NESHAP for the gasoline distribution source category was proposed in February 1994; the NESHAP for the organic liquids distribution source category is scheduled to be promulgated by 2000.

e. *Small refineries.* The standard proposed today would apply to all refineries that are major sources including small refineries. Small refineries maintain that they will be more severely affected by the proposed rule than large refineries and therefore should be given separate regulatory consideration. Small refiners point out that they are predominately located in rural areas that are in compliance with the Federal ambient air quality standard for ozone. Therefore, many of them have not implemented LDAR programs and other control procedures that have been started by large refiners to control VOC in ozone nonattainment areas. As a result they will be confronted with relatively high costs for starting LDAR programs and retrofitting storage tanks. Moreover, small refiners point out that

LDAR costs are related more to refinery complexity than size. Therefore, refineries that differ in size but have similar processing configurations will incur similar costs. However, the costs on a per-barrel basis will be higher for the small refineries.

The proposed rule does not treat small refineries as a separate subcategory because the EPA could not identify fundamental technical differences between small and large refineries. In addition, even if small refineries were in a separate source category it appears that the minimum control levels (floors) would not be much different from those for the larger refineries. Comments are requested on whether a basis exists for subcategorizing small refineries, and if so, at what size, along with supporting data and rationale.

2. Selection of Source

The definition of source is an important element of this NESHAP because it describes the specific grouping of emission points within the source category to which each standard applies.

The EPA has broad discretion in defining "sources." Section 112(d) directs the Administrator to set standards for all "major sources" within every listed category. Area sources meeting the requirements of sections 112(c)(3) or 112(k) must also be regulated. Major sources are "stationary sources," or groups of stationary sources, of a given size, as defined in section 112(a)(1). The definition of "stationary source" included in section 112 is identical to the definition used in section 111(a), which is "any building, structure, facility, or installation which emits or may emit any air pollutant." 42 U.S.C. 7411(a). However, section 112, as amended, does not require that the standards set under section 112(d) be set for the same components of the categories as was done under section 111. Thus, there is no requirement that the section 112(d) NESHAP for stationary sources be set for precisely the same portions of the industry as the section 111 NSPS.

As the Supreme Court has recognized in *Chevron, USA, Inc., versus Natural Resources Defense Council*, 467 U.S. 837 (1984) (hereafter referred to as *Chevron*), EPA has broad discretion to define "source." The Court recognized in *Chevron* that if any Congressional intent can be discerned from the statutory language of section 111(a)(3) (the definition of source that is used in section 112), "the listing of overlapping, illustrative terms was intended to enlarge, rather than confine, the scope of the EPA's power to regulate particular sources in order to best effectuate the policies of the Act." *Chevron*. Thus, the court found that a "source" can encompass "any discrete, but integrated operation, which pollutes." *Chevron*. As such, the EPA has flexibility, within the broad definition of "stationary source," to define the source for each section 112(d) standard as broadly or narrowly as is appropriate for the particular industry being regulated. Previous regulations have, in light of this flexibility, defined source in a variety of ways, ranging from narrow to broad definitions. For example, for BWON, the source was defined as the plant site, for the petroleum refinery equipment leaks NSPS (40 CFR part 60, subpart GGG) the source was the process unit, and for the petroleum refinery wastewater NSPS (40 CFR part 60 subpart QQQ) the source was more narrowly defined. There is no presumptive definition.

The proposed standard defines source as the collection of emission points in HAP-emitting petroleum refining processes within the source category that are part of a major source. The source comprises all miscellaneous process vents, storage vessels, wastewater streams, and equipment leaks associated with petroleum refining process units that are located at a single plant site covering a contiguous area under common control.

The way the source is defined has implications for setting MACT and for compliance with the proposed rule. Emission standards for new and for existing sources promulgated under section 112(d) of the Act must represent the maximum degree of emission reduction achievable; this is typically referred to as MACT. The EPA considered two possible definitions of source for the petroleum refinery NESHAP. The source could be defined narrowly as each individual process vent, storage vessel, or wastewater stream or piece of equipment; or the source could be defined broadly, as the collection of all such emission points at the refinery.

The narrow definition of the petroleum refinery source, defining the source as each individual emission point, was rejected because a narrow definition is more appropriate when all emission points have consistent characteristics and because it would not allow compliance flexibility. For example, if each storage vessel were comparable to each other storage vessel, so that the same performance level could apply to them all, a narrow definition might be appropriate. In fact, storage vessels can vary widely in size and material stored, and the emission performance level appropriate for one may be inappropriate for another. In addition, the control strategy for a refinery is decided at a refinery level. Often, individual emission points within a refinery are controlled together (e.g., multiple miscellaneous process vents can be routed to one control system). Thus, it is reasonable to look at the overall level of control a refinery is achieving because the size, level of emissions, and significance of emissions can vary from point to point.

A broad definition of source allows consideration of site-specific differences and compliance flexibility, including emissions averaging. With a broad definition, a source may exercise some choice in the level of control of each individual emission point as long as the sourcewide MACT level of emission reduction is met. This flexibility results in benefits of achieving maximum emission reductions in a more efficient and cost-effective manner.

Another reason for selection of the broad definition of source is compatibility with the BWON source definition. This compatibility allows the standards to be consistent and eliminates the burden of overlapping standards and implementation problems that would arise if the source for today's proposed rule was defined much more narrowly than the BWON source.

The definition of source also affects refineries making changes to existing facilities. Under the Act, sources that are constructed or reconstructed after proposal of a standard are considered to be new sources. Reconstructions are defined in § 63.2 of the NESHAP General Provisions (59 FR 12408, March 16, 1994) as the replacement of components of an affected source to such an extent that the fixed capital cost of the new component exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source. Upon reconstruction, an affected source is subject to standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

With a narrower source definition, enforcement of the standard would be difficult because any change to any emission point could trigger regulatory provisions governing reconstruction. Reconstructed sources are treated as new sources, so many small "new" sources could be scattered throughout an existing refinery. Determining requirements for different emission points would be complex, and the new or reconstructed sources (which are treated as new sources) may require control systems separate from the control systems for existing sources. This could increase the cost and economic impact of the regulation.

With a broad source definition, the replacement or addition of new equipment would be unlikely to exceed 50 percent of the fixed capital cost of the source.

3. Determining New Source Status

The proposed rule clarifies the process for determining if new or existing source requirements would apply to a particular petroleum refining process unit or emission point. The requirements and definitions used by the proposed petroleum refineries rule to distinguish new and existing sources are consistent with section 112(a) and the related components of the subpart A General Provisions. The following would be subject to the subpart CC requirements for new sources: (1) Petroleum refining process units constructed after the date of proposal of subpart CC and having the potential to emit major quantities (10 tons per year of any HAP or 25 tons per year of any combination of HAP's); (2) existing sources reconstructed after that date; and (3) "greenfield" petroleum refining process units that constitute all or part of a major source constructed after that date. (New source requirements would not be triggered by the addition of an individual emission point, such as a storage vessel.) Thus, any change or addition to an existing petroleum refinery plant site must meet the same three criteria as a "greenfield" plant to be considered a new source. The EPA proposes this approach for determining what is subject to new source requirements to avoid providing an incentive for petroleum refinery owners and operators to construct processes as area sources. Also, EPA wanted to ensure that new sources built at existing plant sites are subject to the same requirements as new sources that are "greenfield" sites. Additions to an existing plant that do not meet the requirements of being a petroleum refining process unit and do not have the potential to emit major amounts, would be subject to existing source requirements.

control systems for existing sources. This could increase the cost and economic impact of the regulation.

With a broad source definition, the replacement or addition of new equipment would be unlikely to exceed 50 percent of the fixed capital cost of the source.

3. Determining New Source Status

The proposed rule clarifies the process for determining if new or existing source requirements would apply to a particular petroleum refining process unit or emission point. The requirements and definitions used by the proposed petroleum refineries rule to distinguish new and existing sources are consistent with section 112(a) and the related components of the subpart A General Provisions. The following would be subject to the subpart CC requirements for new sources: (1) Petroleum refining process units constructed after the date of proposal of subpart CC and having the potential to emit major quantities (10 tons per year of any HAP or 25 tons per year of any combination of HAP's); (2) existing sources reconstructed after that date; and (3) "greenfield" petroleum refining process units that constitute all or part of a major source constructed after that date. (New source requirements would not be triggered by the addition of an individual emission point, such as a storage vessel.) Thus, any change or addition to an existing petroleum refinery plant site must meet the same three criteria as a "greenfield" plant to be considered a new source. The EPA proposes this approach for determining what is subject to new source requirements to avoid providing an incentive for petroleum refinery owners and operators to construct processes as area sources. Also, EPA wanted to ensure that new sources built at existing plant sites are subject to the same requirements as new sources that are "greenfield" sites. Additions to an existing plant that do not meet the requirements of being a petroleum refining process unit and do not have the potential to emit major amounts, would be subject to existing source requirements.

4. Selection of Pollutants

The HAP's that are emitted from the emission points that make up the source in this source category are all organic HAP's; the predominant HAP's are benzene, toluene, xylene, ethylbenzene, and hexane. Therefore, the provisions of this NESHAP apply to the organic HAP's listed in section 112(b) of the Act.

B. Selection of Miscellaneous Process Vent Provisions

The definition in § 63.641 of the proposed rule describes the vents that are considered to be "miscellaneous process vents." The available data indicated that these vents have similar emission characteristics and can be controlled by the same type of control technologies.

1. Selection of Emission Control Requirements

The Act specifies that the EPA, in determining the MACT level of control for sources regulated under section 112, must select emission control requirements that are at least as stringent as, or more stringent than, the emission control level identified as the floor. As a result, the EPA began the process of selecting control requirements for miscellaneous process vents by determining MACT floors for existing and new sources. The MACT floor determinations are fully described in a memorandum "Determination of the Petroleum Refinery MACT Floors for Existing and New Sources," available in the docket. This section summarizes the MACT floors as they relate to miscellaneous process vents, and the selection of the proposed process vent provisions.

The Act requires that the EPA determine MACT based on consideration of cost, energy requirements and nonair quality health and environmental impacts. The EPA maintains that the requirements of this proposed rule were determined based on these statutorily-specified criteria. The EPA requests comment on the appropriateness of considering additional criteria such as pollution prevention, environmental equity, affordability, and technology innovation.

a. *Existing sources.* Based on information contained in industry responses to the EPA's ICR and section 114 questionnaires, it was determined that the average emission limitation achieved by the best performing 12 percent of sources is combustion control of all miscellaneous process vents. Data analyses conducted in developing previous NSPS and the HON determined that combustion controls can achieve 98 percent organic HAP reduction or an outlet organic HAP concentration of 20 ppmv for all vent streams. The selection of these numerical levels is described in the preamble for the proposed reactor processes NSPS (55 FR 26953, June 29, 1990).

The MACT floor level of control for existing sources, therefore, includes reduction of organic HAP emissions from miscellaneous process vents by 98 percent or to a level of 20 ppmv for miscellaneous process vents with concentrations that exceed *de minimis* levels. A *de minimis* level of 20 ppmv was selected. Process vents with organic HAP emission levels below this concentration would not be subject to the proposed rule because the available technologies may not be able to reduce organic emissions below this level. Regulatory options more stringent than the floor were not investigated for miscellaneous process vents because no available technology that is generally applicable can achieve a more stringent level of control than the MACT floor. Therefore, the standard being proposed for miscellaneous process vents at existing sources is the MACT floor.

The estimated emission reductions and cost impacts for the proposed standards for all emission points are shown in table 3. The miscellaneous process vent costs are based on routing the vents to the refinery fuel gas or flare systems. Some industry representatives have expressed concerns that the costs may be underestimated. The EPA requests specific cost data and information on how miscellaneous process vents at existing sources would be controlled and what the cost would be.

TABLE 3.—CONTROL OPTIONS AND IMPACTS

Source	Baseline emissions (Mg/yr)	Control option[a]	HAP		Annual cost ($1,000/yr)	Cost effectiveness ($/Mg HAP)	
			Emission reduction (Mg/yr)	Percent emission reduction		Average	Incremental
Miscellaneous Process Vents:							
Existing sources	8,900	Floor*	7,600	85	13,000	1,700	N/A
New sources[b]	800	Floor*	770	85	370	480	N/A
Storage Vessels:							
Existing sources[c]	9,000	Floor*	1,300	14	11,400	8,500	N/A
		Option 1*	1,800	20	13,600	7,800	4,400
		Option 2	2,600	29	37,000	14,000	30,000
New sources[b]	290	Floor*	4	1.4	98	24,000	N/A
		Option 1	14	4.8	550	39,000	45,000
Wastewater:							
Existing sources	9,200	Floor*		N/A		N/A	N/A
		Option 1	7,700	93	120,000	15,000	15,000
New sources[b]	960	Floor*		N/A		N/A	N/A
		Option 1	930	97	18,000	20,000	20,000
Equipment Leaks:							
Existing sources	50,000	Floor[d]	35,000	69	69,000	2,000	N/A
		Option 1*	44,000	87	66,000	1,500	−330
		Option 2	46,000	91	78,000	1,700	6,000
New sources	1,300	Floor*[,d]	640	49	−210	−330	−330
		Option 1	760	59	840	1,100	8,300

[a] Explanation of control options:
Storage Vessels
Existing Sources
Floor=Subpart Kb floating roof with specified seals or closed vent systems and control devices for vessels ≥ 177 m³ storing liquid with the vapor pressures ≥ 8.3 kPa.
Option 1=Floating roof with subpart Kb specified seals and fittings for vessels ≥ 151 m³ storing liquids with true vapor pressure ≥ 5.2 kPa.
Option 2=Floating roof with subpart Kb specified seals and fittings for vessels ≥ 151 m³ storing liquids with true vapor pressure ≥ 0.014 kPa.
New Sources
Floor=Floating roof with subpart Kb specified seals and fittings for vessels ≥ 151 m³ storing liquid with the vapor pressures ≥ 3.4 kPa, and vessels ≥ 76 m³ storing liquids with vapor pressures equal to or greater than 77 kPa.
Option 1=Floating roof with specified seals and fittings for vessels ≥ 151 m³ storing liquids with true vapor pressures ≥ 0.014 kPa, and vessels ≥ 76 m³ storing liquids with vapor pressures equal to or greater than 77 kPa.
Equipment Leaks
Existing Sources
Floor=Compliance with the petroleum refinery NSPS.
Option 1=Compliance with the negotiated equipment leaks regulation in HON, subpart H of part 63, without connectors.
Option 2=Compliance with the negotiated equipment leaks regulation in HON, subpart H of part 63.
New Sources
Floor=Compliance with the negotiated equipment leaks regulation in HON, subpart H of part 63, without connectors.
Option 1=Compliance with the negotiated equipment leaks regulation in HON, subpart H of part 63.
Wastewater
Existing and New Sources
Floor=Compliance with the BWON for any refinery with > 10 Mg/yr of benzene loading in waste. Controlling waste streams > 10 ppm benzene by weight with flow rates > 0.02 1/min.
Option 1=Compliance with the BWON for all refinery wastewater streams.
Miscellaneous Process Vents Existing and New Sources
Floor=Control to 20 ppm HAP or 98 percent reduction of HAP by combustion.
[b] Impacts were estimated for new process units constructed in the 5 years after promulgation. For regulatory purposes, some of these units may be considered new sources while others may be considered part of an existing source.
[c] The floor and option 1 are being co-proposed for storage vessels at existing sources and the EPA is requesting comment on which should be selected.
[d] For equipment leaks at both new and existing sources the option identified as the "floor" is slightly more stringent than the actual floor. For ease of costing, these options were chosen to represent the floor. See footnote "a" for an explanation of the control options.
*=Control option chosen.
N/A=Not applicable.

Industry has commented that the control requirements for the process vents should be based on a cost-effectiveness method similar to the TRE approach used in the HON rule. Industry recommendations are based on limited information which indicates that the control cost per ton of HAP reduction can differ by several hundred percent. As in the HON, the differences are apparently due to wide variations in the control costs and the HAP content of the process vents.

The EPA requests comment on whether or not the control requirements for the miscellaneous process vents should be based on a cost-effectiveness approach similar to the TRE method used in the HON. The EPA does not have the information to determine if a cost-effectiveness approach is needed or to develop one and to relate it to the floor. The required information includes descriptions of the sources of emissions and the emission controls. The vent stream characteristics such as flow rate, heating value, VOC, and HAP contents are also required. Information provided by industry in response to two formal EPA questionnaires contained little information with respect to the vent stream characteristics. It is not possible to develop TRE equations that are specific to petroleum refineries without this information. In the event that the

EPA develops a TRE, the Agency requests the information that is needed to develop cost-effectiveness equations for the refining industry similar to those in the HON. The information is requested for a representative segment of the refining industry. If this information is received, the EPA will analyze it before promulgation of this rule and will utilize a TRE approach if such an approach appears appropriate.

Industry has commented that the cost equations for the TRE requirements in the HON rule may be applicable to the refining industry. The EPA solicits comment with supporting information on the applicability of the HON cost equations to the refining industry such as information on the similarity or differences between the refining industry and the SOCMI in terms of vent stream characteristics (flow, concentration, heating value) and for combustion control device designs in use.

Industry has commented that the applicability levels for the HAP concentration (50 ppmv) and the flow rate (0.005 standard cubic meter per minute) in the process vents provisions of the HON should be applicable to the refining industry. The purpose of the applicability levels is to avoid affecting large numbers of small vents whose cumulative emissions are small relative to the control costs and the costs of monitoring, recordkeeping and reporting. The EPA requests information to determine if there are large numbers of small vents with low HAP concentrations in the refining industry, and whether such vents are controlled. If such vents exist, the EPA also requests information to determine the applicability levels that would avoid affecting vents where the emission control and administrative costs are inordinately high relative to the emission reductions. If sufficient data are received and the MACT floor does not require control of such vents, the EPA will include appropriate applicability levels in the final rule.

Industry has commented that the EPA has overestimated the HAP and VOC emissions from the miscellaneous process vents—particularly from the alkylation and vacuum distillation units. The estimates are based on: (1) Information submitted by the petroleum refining industry in response to the EPA questionnaires, and (2) emission estimation extrapolations and assumptions by the EPA where reported data were insufficient. Industry has questioned the assumptions made by the EPA in their analysis. Industry maintained that part of the reported emissions may be from water

EPA develops a TRE, the Agency requests the information that is needed to develop cost-effectiveness equations for the refining industry similar to those in the HON. The information is requested for a representative segment of the refining industry. If this information is received, the EPA will analyze it before promulgation of this rule and will utilize a TRE approach if such an approach appears appropriate.

Industry has commented that the cost equations for the TRE requirements in the HON rule may be applicable to the refining industry. The EPA solicits comment with supporting information on the applicability of the HON cost equations to the refining industry such as information on the similarity or differences between the refining industry and the SOCMI in terms of vent stream characteristics (flow, concentration, heating value) and for combustion control device designs in use.

Industry has commented that the applicability levels for the HAP concentration (50 ppmv) and the flow rate (0.005 standard cubic meter per minute) in the process vents provisions of the HON should be applicable to the refining industry. The purpose of the applicability levels is to avoid affecting large numbers of small vents whose cumulative emissions are small relative to the control costs and the costs of monitoring, recordkeeping and reporting. The EPA requests information to determine if there are large numbers of small vents with low HAP concentrations in the refining industry, and whether such vents are controlled. If such vents exist, the EPA also requests information to determine the applicability levels that would avoid affecting vents where the emission control and administrative costs are inordinately high relative to the emission reductions. If sufficient data are received and the MACT floor does not require control of such vents, the EPA will include appropriate applicability levels in the final rule.

Industry has commented that the EPA has overestimated the HAP and VOC emissions from the miscellaneous process vents—particularly from the alkylation and vacuum distillation units. The estimates are based on: (1) Information submitted by the petroleum refining industry in response to the EPA questionnaires, and (2) emission estimation extrapolations and assumptions by the EPA where reported data were insufficient. Industry has questioned the assumptions made by the EPA in their analysis. Industry maintained that part of the reported emissions may be from water blowdowns, equipment leaks or from other emission sources that are not true process vents. The EPA will consider revising the emission estimates if the EPA receives new data demonstrating that revisions are appropriate.

Industry has commented that since the HAP to VOC ratio for reformers is dissimilar to other process units, the EPA should not use it to estimate HAP emissions from process units other than reformers. The EPA agrees with industry on this point and plans to revise the estimates after considering any new information submitted.

b. *New sources.* Because the best performing source controls all miscellaneous process vents by combustion, the new source MACT floor includes reduction of emissions from miscellaneous process vents by 98 percent or to a level of 20 ppmv. A 20 ppmv *de minimis* concentration was selected for the same reason as existing sources. There are no available control options that are generally applicable that can achieve emission levels more stringent than the floor. Therefore, the standard being proposed for miscellaneous process vents at new sources is the MACT floor. The cost and emission reduction for new source are presented in table 3.

2. Selection of Format

The format of the regulation for miscellaneous process vent streams depends on the kind of control device the refinery selects. For vent streams controlled by control devices other than flares, the format of the regulation is a combination of a weight-percent reduction and an outlet concentration. A weight-percent reduction format is appropriate for process vent streams with HAP concentrations above 1,000 ppmv, because a weight-percent limit is the best measure of the performance of combustion control devices and will assure that MACT is applied. For process vent streams with HAP concentrations below 1,000 ppmv, the format of the regulation is a 20 ppmv outlet concentration, because 98 percent HAP reduction may not be achievable.

For vent streams controlled by a flare, the proposal refers to the performance specifications in the General Provisions (40 CFR part 63, subpart A, section 63.11). An emission limit or percent reduction format was not selected because it is very difficult to measure the emissions from a flare to determine its efficiency.

The petroleum refinery fuel gas system is considered part of the refinery processes; therefore, any vent stream being recovered and routed to the fuel gas system is also considered part of the process. These vent streams are not considered miscellaneous process vents and are not subject to subpart CC. Furthermore, these vents are already controlled to the most stringent levels achievable.

3. Selection of Performance Tests, Monitoring Requirements, and Test Methods

The standard specifies the performance tests, monitoring requirements, and test methods necessary to determine whether a miscellaneous process vent stream is required to apply control devices and to demonstrate that the allowed emission levels are achieved when controls are applied. The format of these requirements, as with the format of the miscellaneous process vent provisions, depends on the control device selected.

a. *Performance test.* Performance tests ensure that a control device can achieve the required control level and help establish operating parameters that indicate proper operation and maintenance. Initial performance tests are required for control devices other than flares and certain boilers and process heaters. Specifically, testing would be required for incinerators, and for boilers and process heaters smaller than 44 MW (150 million Btu/hr) where the vent stream is not used as the primary fuel or mixed with the primary fuel prior to being introduced into the boiler.

As previously stated, miscellaneous process vent streams routed to the refinery fuel gas system are not subject to these standards, and boilers and process heaters that use refinery fuel gas are not required to be tested.

An initial performance test is not required for boilers and process heaters larger than 44 MW (150 million Btu/hr) because they operate at high temperatures and residence times. Analysis shows that when vent streams are introduced into the flame zone of these boilers and process heaters, over 98 percent reduction or an outlet concentration of 20 ppmv is achieved. Therefore, a performance test is not necessary.

Because percent reduction and outlet concentration cannot feasibly be measured at flares, the flare must meet the requirements for operating conditions in § 63.11 of 40 CFR part 63 subpart A.

b. *Test methods.* The proposed miscellaneous process vent provisions would require the use of approved test methods to ensure consistent and verifiable results for initial performance tests and compliance demonstrations. The proposed regulation refers to the

HON (40 CFR part 63, subpart G) for performance test provisions; but the rationale for the use of these provisions for petroleum refineries is presented below. For performance tests, Methods 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, are specified for measuring vent stream flow rate. Method 18 of 40 CFR part 60, appendix A, is specified for measuring total vent stream HAP or TOC concentration at the outlet of the control device to determine whether outlet HAP concentration is below 20 ppmv or at both the inlet and outlet of the control device to determine if HAP emissions are reduced by 98 percent. In order to allow owners or operators greater flexibility, the proposed provisions also allow the use of any test method or test results validated according to the protocol in Method 301 of 40 CFR part 63, appendix A.

The EPA considered allowing Method 25A as an alternative to Method 18 for demonstrating compliance of control devices applied to process vents; however, Method 25A is not included as an alternative for demonstrating compliance with the emissions reduction. The basis for the decision was that the EPA determined that the results obtained with Method 25A would not consistently demonstrate HAP control efficiency. Miscellaneous process vent streams often contain mixtures of multiple organic HAP's and other organic compounds. The TOC measurements obtained with Method 25A would vary depending on how the method is calibrated, because response factors for individual compounds vary. Furthermore, some compounds are not well detected by Method 25A. Another concern is that the relative proportion of individual organic compounds may change across the combustor. Therefore, specifying calibration with the principal HAP in the inlet would not necessarily produce reliable results.

c. *Monitoring.* Control devices used to comply with the proposed standard need to be maintained and operated properly if either a 98 percent reduction or outlet concentration of 20 ppmv is to be achieved on a continuing basis. Monitoring of the control device operating parameters can be used to determine if the emission limit is being met on a continuous basis. The monitoring of operating parameters constitutes enhanced monitoring, as discussed in section VI.F of this notice.

The EPA considered two monitoring options: (1) the use of CEMS to measure HAP's and (2) continuous monitoring of control device operating parameter. Continuous emission monitoring systems are not currently available for all of the organic HAP's found in miscellaneous process vent streams. Thus, direct monitoring of HAP emission reduction or concentration is not possible for every stream. Furthermore, for those HAP's where CEMS are available, the costs of installing, calibrating, operating, and maintaining CEMS and flow monitors at both the inlets and outlets of every control device (which would be needed to determine percent reduction) would be much higher than the costs of parameter monitoring. The use of CEM's would, therefore, increase the cost impacts of the rule.

It is proposed that the continuous monitoring of control device operating parameters be used to determine whether continuous compliance is achieved. The proposed standard lists the parameters that can be monitored for the common types of combustion devices: thermal incinerators, catalytic incinerators, boilers and process heaters, and flares. These parameters were selected because they are good indicators of combustion device performance, and instruments are available at a reasonable cost to monitor these parameters continuously. The proposed rule also allows the owner or operator to request to monitor parameters not listed in the proposed standard on a site-specific basis.

The proposed standard would require the owner or operator to establish site-specific parameter ranges through the Notification of Compliance Status report or the operating permit submitted to comply with Title V of the Act. Site-specific parameter ranges accommodate site-specific differences in control design and process vent stream characteristics. Failure to maintain the established values of the monitored parameters would be an enforceable violation of the emission limits of the standard.

The proposed petroleum refineries NESHAP does not require monitoring boilers or process heaters with a heat capacity of 44 MW (150 million Btu/hr) or greater, or boilers or process heaters with a heat capacity less than 44 MW (150 million Btu/hr) that introduce the process vent stream as a primary fuel or mix it with the primary fuel and introduce it through the same burner. These devices operate at temperatures and residence times that the EPA has concluded will ensure compliance with the emission limits (at least 98 percent reduction of total HAP). Therefore, if the vent stream is routed to the devices as described above and enters at the specified locations, continuous compliance is demonstrated.

C. Selection of Storage Vessel Provisions

1. Selection of Emission Control Requirements

This section summarizes the MACT floors for new and existing sources as they relate to storage vessels, regulatory alternatives more stringent than the floors, and the rationale for the selected alternatives for storage vessels.

a. *Existing sources.* Based on information on storage vessel control levels and vessel capacities and vapor pressures submitted to the EPA by petroleum refineries, the MACT floor level of control was determined to be: storage vessels with capacities greater than or equal to 177 m^3 storing liquids with true vapor pressures greater than or equal to 8.3 kPa must control to the level of 40 CFR part 60 subpart Kb with the exception of fitting requirements for floating roof vessels. This represents the average level of storage vessel control achieved at the best-performing 12 percent of sources. The control applicability criterion of 177 m^3 (1,115 barrels or 47,000 gallons) was selected because the best-performing sources do not control storage vessels with capacities below this size. The vapor pressure of 8.3 kPa (1.2 psia) was determined by screening the data set for controlled tanks (tanks that met subpart Kb seal requirements) at increasing vapor pressures until the cumulative number of tanks identified as controlled equalled 12 percent of the entire data set. The average vapor pressure of the petroleum liquids in these controlled tanks was 8.3 kPa.

The EPA also considered two alternative levels of emission limitation. Each required control to subpart Kb levels including controlled fittings for floating roof vessels and were for control of vessels with capacities greater than or equal to 151 m^3 (950 barrels or 40,000 gallons). However, each of the alternatives had a different true vapor pressure applicability criterion. The first alternative required that vessels storing liquids with a true vapor pressure greater than or equal to 5.2 kilopascals (0.75 psia) be controlled. This alternative was analyzed because it also corresponds to one of the applicability tiers of subpart Kb of 40 CFR part 60. The second alternative was for controls being required for vessels storing liquids with a true vapor pressure greater than or equal to 0.014 kilopascals (0.002 psia). This alternative was chosen in order to assess the impact of control of vessels storing low vapor pressure liquids such as diesel/distillate, jet kerosene/kerosene, heavy gas oil, residual fuel oil, and asphalt. Table 3 presents the emission reductions and

cost for the MACT floor level of control and the two options above the floor.

The EPA is co-proposing the floor level of control, and option 1, for storage tanks in order to promote comment on both options. The floor requires that petroleum liquids with true vapor pressures of 8.3 kPa (1.2 psia) or higher be placed in floating roof storage tanks equipped with seals that comply with the NSPS for volatile organic liquids (subpart Kb of 40 CFR part 60). The floor control will reduce the current HAP emissions from storage tanks by 14 percent. This relatively small emission reduction is due to the fact that most volatile petroleum liquids are stored in floating roof tanks to reduce product losses or to comply with VOC control requirements in ozone nonattainment areas. The emission reductions associated with upgrading the seals on such tanks to comply with subpart Kb requirements are, in many cases, modest.

Controlling both the fittings and the seals to subpart Kb requirements was evaluated as option 1. The EPA seeks comment on whether the floor level or control or option 1 should be selected. In particular, the EPA requests comment on whether or not the incremental cost effectiveness of option 1—$4,400 per ton of HAP emissions reduced—should be viewed as making that option unachievable considering cost. The EPA also requests comment on whether option 1 should be selected because of a combination of factors. Specifically, option 1 achieves a greater degree of pollution prevention because even less product is lost due to evaporation. In addition, the vapor pressure and storage tank size applicability levels for option 1 correspond to the HON's applicability levels for large storage tanks. Also, since HAP emissions represent roughly 10 percent of VOC emissions, additional cost-effective VOC reductions would result from option 1. Finally, option 1 would provide a 20 percent reduction, rather than a 14 percent reduction, in emissions of the types of HAP emitted from petroleum refinery storage tanks.

No nonair quality health impacts, energy, or other environmental impacts were expected from any of the alternatives. Thus, these considerations did not affect the choice of the proposed rule. The controls required by the proposed requirements are not expected to create any secondary emissions of carbon monoxide or nitrogen oxides.

b. *New sources.* The MACT floor for new sources is control of vessels equal to or greater than 151 m^3 (950 barrels or 40,000 gallons) with vapor pressures equal to or greater than 3.4 kPa (0.5 psia), and vessels with capacities equal

cost for the MACT floor level of control and the two options above the floor.

The EPA is co-proposing the floor level of control, and option 1, for storage tanks in order to promote comment on both options. The floor requires that petroleum liquids with true vapor pressures of 8.3 kPa (1.2 psia) or higher be placed in floating roof storage tanks equipped with seals that comply with the NSPS for volatile organic liquids (subpart Kb of 40 CFR part 60). The floor control will reduce the current HAP emissions from storage tanks by 14 percent. This relatively small emission reduction is due to the fact that most volatile petroleum liquids are stored in floating roof tanks to reduce product losses or to comply with VOC control requirements in ozone nonattainment areas. The emission reductions associated with upgrading the seals on such tanks to comply with subpart Kb requirements are, in many cases, modest.

Controlling both the fittings and the seals to subpart Kb requirements was evaluated as option 1. The EPA seeks comment on whether the floor level or control or option 1 should be selected. In particular, the EPA requests comment on whether or not the incremental cost effectiveness of option 1—$4,400 per ton of HAP emissions reduced—should be viewed as making that option unachievable considering cost. The EPA also requests comment on whether option 1 should be selected because of a combination of factors. Specifically, option 1 achieves a greater degree of pollution prevention because even less product is lost due to evaporation. In addition, the vapor pressure and storage tank size applicability levels for option 1 correspond to the HON's applicability levels for large storage tanks. Also, since HAP emissions represent roughly 10 percent of VOC emissions, additional cost-effective VOC reductions would result from option 1. Finally, option 1 would provide a 20 percent reduction, rather than a 14 percent reduction, in emissions of the types of HAP emitted from petroleum refinery storage tanks.

No nonair quality health impacts, energy, or other environmental impacts were expected from any of the alternatives. Thus, these considerations did not affect the choice of the proposed rule. The controls required by the proposed requirements are not expected to create any secondary emissions of carbon monoxide or nitrogen oxides.

b. *New sources.* The MACT floor for new sources is control of vessels equal to or greater than 151 m^3 (950 barrels or 40,000 gallons) with vapor pressures equal to or greater than 3.4 kPa (0.5 psia), and vessels with capacities equal to or greater than 76 m^3 (475 barrels or 20,000 gallons) storing liquids with vapor pressures equal to or greater than 77 kPa (11.1 psia). Such vessels would be required to meet requirements essentially equivalent to 40 CFR part 60 subpart Kb (i.e., use of floating roofs with proper seals and controlled fittings, or a closed vent system with a 95 percent efficient control device). The applicability criteria are based on the most stringent regulations that apply to petroleum refinery storage vessels including Rule 463 of California's South Coast Air Quality Management District and the storage vessel NSPS (subpart Kb).

The MACT floor and an option more stringent than the floor requiring control of storage vessels with vapor pressures above 0.014 kPa (0.002 psia) (which is the same as option 3 for existing sources) was also considered. The proposed level of control for new sources is the MACT floor. Vessels with capacities greater than or equal to 151 m3 (950 barrels or 40,000 gallons) storing liquids with true vapor pressures greater than or equal to 3.4 kPa (0.5 psia), and vessels with capacities greater than or equal to 76 m^3 (475 barrels or 20,000 gallons) storing liquids with vapor pressures equal to or greater than 77 kPa (11.1 psia) would be required to comply with the subpart Kb (including the controlled fitting requirements). The option more stringent than the floor was not selected because it would result in high costs relative to HAP emission reduction.

2. Selection of Format

The storage vessel provisions in the HON rule are very similar to the requirements of subpart Kb. The HON storage provisions are clearer and give more details in explaining the controlled fitting requirements than subpart Kb. The HON provisions have an allowance for existing source owners and operators to wait for the next scheduled maintenance for the upgrading of certain seals and installation of fittings on vessels already equipped with floating roofs; this provision is not in subpart Kb because it applies only to new storage vessels. In addition, the HON storage vessel provisions clarify the provisions that apply when an EFR is converted to an IFR as a means of compliance. Because of all these reasons, the EPA elected to refer directly to the requirements in the HON. The format of the HON includes equipment and work practice standards; if control devices are used, there is an emission standard (percent reduction) format. For storage vessels at existing sources the HON storage vessel provisions are referred to without the controlled fitting requirements. For storage vessels at new sources all of the requirements in the HON storage vessel provisions are referred to.

The proposed regulation differs from the HON in that storage vessels that contain petroleum liquids with true vapor pressures of 5.0 psia or greater are required to comply with the proposed rule within 3 years. That is, refiners are not permitted to wait until the next scheduled maintenance to install the emission controls if such maintenance is beyond the compliance date. Calculations indicate that when the true vapor pressure of the material in the tanks exceeds 5.0 psia, the emission reductions that result from installing controls within 3 years more than offset the HAP emissions created from cleaning and degassing the storage vessels. The EPA requests comment on this conclusion with supporting data and calculations.

3. Selection of Compliance Determination Provisions

The proposed compliance determination provisions for storage vessels include inspections of floating roofs and design evaluations and monitoring of closed vent systems and control devices. The use of monitoring and inspections to determine continuous compliance constitute enhanced monitoring.

For storage vessels controlled with floating roofs, it is not feasible to capture and continuously monitor emissions. Therefore, periodic inspection of roof seals for IFR's and EFR's and seal gap measurements for EFR's are used to determine compliance with the storage vessel equipment and work practice standards. If defects are found during inspections they must be repaired within specified times. There are provisions for requests for extensions and delay of repair of certain conditions are met. These inspection and repair provisions are similar to the HON, and the proposed rule cross-references the HON where appropriate. Failure to perform inspections or to complete repairs as specified constitutes an enforceable violation of the standards.

For storage vessels controlled by closed vent systems and control devices, the EPA considered the use of CEMS to measure HAP's and control device operating parameter monitoring. Continuous emissions monitoring was determined to be infeasible for the same reasons described in the miscellaneous process vents section. Furthermore, emissions from storage vessels have low flow rates and also have highly variable

flows and concentrations with the majority of emissions occurring during filling. These characteristics would complicate emission monitoring. Control device operating parameter monitoring is proposed as a means of determining continuous compliance with the percent reduction specified for control devices. The petroleum refineries rule, which cross-references the HON, provides for sources to establish site-specific control device operating parameters and ranges appropriate to their storage vessel control system.

D. Selection of Wastewater Collection and Treatment Operation Provisions

1. Selection of Emission Control Requirements

This section summarizes the determination of the MACT floors for new and existing sources as they apply to wastewater, regulatory alternatives more stringent than the floors, and the rationale for the selected alternative for wastewater.

The alternative selected for proposal is the floor level of control (compliance with BWON). The BWON controls 75 percent of the benzene in refinery wastewater nationwide and 76 percent of the volatile organic HAP in refinery wastewater. (For more information, refer to the memorandum in the docket entitled "The Effectiveness of the Benzene Waste Operations NESHAP for Controlling Volatile HAP Loading in Petroleum Refinery Wastewater"). The EPA believes that benzene is an effective surrogate for indicating the presence of all HAP compounds in petroleum refinery wastewater because data show that the majority of the total HAP compound loading in wastewater consists of compounds that are very similar to benzene in terms of both chemical structure and volatility (from the water phase to the air phase). Volatile HAP compounds are present in a fairly constant ratio to benzene (approximately four-to-one on a mass basis) except in two circumstances, product blending and MEK dewaxing units. Because of the different nature of these processes, different ratios would be expected. In both of these process units HAP's are added. In the case of MEK dewaxing units the benzene concentration is relatively low, less than 1 ppmw on average; however, the baseline volatile HAP emissions from MEK dewaxing units are also relatively low, less than 1 percent of the HAP baseline emissions. For product blending, the benzene concentration is relatively high, greater than 10 ppmw on average; therefore, even though the HAP-to-benzene ratio is not the same as with other process units, wastewater streams from product blending process units have a sufficient benzene concentration that control would be required at applicable facilities. Thus, the EPA maintains that benzene is a good surrogate for all HAP compounds. The EPA requests comment on this position and any supporting data.

Because the proposed standard for wastewater requires compliance with the existing BWON, no additional emission reduction, cost, energy, or other environmental or health impacts are associated with the proposed standard.

a. *Wastewater: Existing sources.* The best performing wastewater control systems are those that are in place to comply with the BWON. These systems control not only benzene, but are also expected to control the other organic HAP's in petroleum refinery wastewater. The BWON applies to wastewater streams that contain 10 ppmw benzene or greater, have a flow of 0.02 l/min or greater, and are located at facilities with a TAB loading of at least 10 Mg/yr in waste and wastewater. Based on data provided to the EPA through the BWON 90-day reports, the EPA determined that the BWON was applicable to 43 percent of the refineries. No refineries are known to have more stringent controls than the BWON. Therefore, the MACT floor, or the average of the top performing 12 percent of sources, is control to the BWON level of control.

The EPA considered an alternative level of emission reduction more stringent than the MACT floor that would be achieved by controlling all wastewater streams with at least 10 ppmw benzene at any refinery regardless of the size of its annual benzene loading. Table 3 presents the cost and emission reductions for the MACT floor and the alternative more stringent than the floor.

Alternative control option 1 was not selected because the additional emission reduction achieved through further control was not significant, given the associated costs (see table 3). Also, this option would primarily affect small refineries and it is expected that it could have significant impact on small businesses. There may be some additional nonair quality benefits, such as reduced generation of hazardous waste and reduced water contamination, and air quality benefits from reduction of non-HAP VOC; however, these benefits could not be quantified.

b. *Wastewater: New sources.* The analysis of the data base also showed that the maximum emission reduction being achieved at any source is determined by the control requirements for the BWON. Thus, the floor for new sources is control to the BWON level of control. The floor alternative was selected as the proposed level of control for new sources. As with existing sources, the option more stringent than the floor was considered, and the impacts are shown in table 3. Option 1 was rejected for new sources for the same reasons described above for existing sources.

2. Selection of Format

Because the BWON is the basis of the selected level of control for both new and existing sources, the EPA elected to refer directly to those requirements. The provisions for controlling air emissions from wastewater streams are a combination of equipment, operational, work practice, and emission standards. The reasons for selection of these formats are described in the preamble to the proposed BWON standards (54 FR 38083, September 14, 1989).

3. Selection of Testing and Monitoring Provisions

Because the proposed refineries NESHAP refers directly to the BWON equipment, operational, work practice, and emission standards, it is also appropriate to refer to the testing and monitoring requirements of BWON for compliance determination. The monitoring procedures required by the BWON would be used to determine compliance with the standard. Failure to maintain the established values of monitored parameters, or failure to conduct the required measurements and inspections would be an enforceable violation of the standards.

E. Selection of Equipment Leak Provisions

1. Selection of Emission Control Requirements

This section of the preamble summarizes the MACT floors as they relate to equipment leaks within new and existing sources, regulatory alternatives more stringent than the floors, and the rationale for the selected alternative for equipment leaks. As mentioned in section VI.B.1 of this preamble, the EPA requests comment on consideration of pollution prevention, environmental equity, affordability, and technology innovation as additional criteria in the selection of MACT.

a. *Equipment leaks: Existing sources.* The EPA's analysis indicated that the average control level of the best-controlled 12 percent of sources, the MACT floor level of control, is between

the level of control required by the petroleum refinery CTG and the petroleum refinery NSPS. For costing purposes, the petroleum refinery NSPS level of control was used for the MACT floor option. This was done because it would have been difficult to determine the requirements for an option in between the two levels of control. Also by using the NSPS the results were a conservative estimate of the cost of the MACT floor; and the option was not less stringent than the floor.

Two options above the floor were also considered based on the negotiated rule for equipment leaks (40 CFR part 63, subpart H). As discussed in the preamble presenting the rationale for the negotiated rule (57 FR 62659 and 57 FR 62660), the framework developed in the regulatory negotiation was the presumptive basis for the refinery standard. The EPA also agreed in the negotiation to consider whether the numerical standards and leak definitions established for SOCMI sources were achievable by refineries. While both options 1 and 2 are based on the negotiated rule, option 1 does not include the connector provisions. Table 3 presents the estimated cost and emission reduction for the floor and the two additional options.

The proposed standard is the negotiated rule without the connector provisions and with a few exceptions. (The exceptions to the negotiated rule are discussed in the remainder of this subsection.) This option, which is similar to option 1, was selected because it is consistent with the negotiated rule, and it achieves significant emission reduction at a reasonable cost relative to the MACT floor. As discussed later in this section, more frequent valve monitoring is allowed in place of connector monitoring because, as shown in the table for option 2, the cost of connector monitoring is high relative to the emission reduction achieved, and additional valve control is a more cost effective way to reduce emissions.

No nonair quality health impacts, energy, or other environmental impacts were expected from any of the alternatives. Thus, these considerations did not affect the choice of the proposed requirements.

In light of the agreements made during the negotiation, the EPA considered whether leaks should be defined differently in the proposed refinery standard than in subpart H, what performance level should be established in phase III of the pump and valve standards, and which provisions in the negotiated rule were relevant and applicable to refinery operations.

the level of control required by the petroleum refinery CTG and the petroleum refinery NSPS. For costing purposes, the petroleum refinery NSPS level of control was used for the MACT floor option. This was done because it would have been difficult to determine the requirements for an option in between the two levels of control. Also by using the NSPS the results were a conservative estimate of the cost of the MACT floor; and the option was not less stringent than the floor.

Two options above the floor were also considered based on the negotiated rule for equipment leaks (40 CFR part 63, subpart H). As discussed in the preamble presenting the rationale for the negotiated rule (57 FR 62659 and 57 FR 62660), the framework developed in the regulatory negotiation was the presumptive basis for the refinery standard. The EPA also agreed in the negotiation to consider whether the numerical standards and leak definitions established for SOCMI sources were achievable by refineries. While both options 1 and 2 are based on the negotiated rule, option 1 does not include the connector provisions. Table 3 presents the estimated cost and emission reduction for the floor and the two additional options.

The proposed standard is the negotiated rule without the connector provisions and with a few exceptions. (The exceptions to the negotiated rule are discussed in the remainder of this subsection.) This option, which is similar to option 1, was selected because it is consistent with the negotiated rule, and it achieves significant emission reduction at a reasonable cost relative to the MACT floor. As discussed later in this section, more frequent valve monitoring is allowed in place of connector monitoring because, as shown in the table for option 2, the cost of connector monitoring is high relative to the emission reduction achieved, and additional valve control is a more cost effective way to reduce emissions.

No nonair quality health impacts, energy, or other environmental impacts were expected from any of the alternatives. Thus, these considerations did not affect the choice of the proposed requirements.

In light of the agreements made during the negotiation, the EPA considered whether leaks should be defined differently in the proposed refinery standard than in subpart H, what performance level should be established in phase III of the pump and valve standards, and which provisions in the negotiated rule were relevant and applicable to refinery operations. Available monitoring data from a few refineries and differences between typical refinery operations and SOCMI operations (e.g., turnaround schedules, line sizes, percent HAP in process fluids, line pressures) were considered. The differences were found to affect the availability of some low emission technologies and the achievable performance levels. The EPA concluded that a few changes to the provisions of the negotiated rule (40 CFR part 63 subpart H) were necessary to ensure that the proposed standard for refineries is achievable. The changes to the provisions and the reasons for the changes are discussed below.

One change that was considered was a change to the definition of "in organic hazardous air pollutant service." Using the definition from the negotiated rule, equipment that contains or comes in contact with fluid that is less than 5 percent by weight total organic HAP's would not be subject to the equipment leak provisions.

Pump standard. The negotiated rule for equipment leaks implements the leak detection and repair program for pumps in three phases, with lower leak definitions in the later phases. The EPA considered the available information on emission performance of mechanical seals and concluded that the negotiated standard for pumps was achievable. The proposed standard for refineries, however, has been simplified to specify only one leak definition in phase III. The negotiated provisions for pumps in polymerizing monomer service and food/medical service are not relevant to this category, and therefore have not been included in the refinery standard. In addition, to simplify the rule, a leak has been defined as a concentration of 2,000 ppm or greater. This change makes the level at which repair is required the same as the leak definition. Additionally, low emission single seal technology has progressed to the point where these seals can achieve a 2,000 ppm leak definition for certain process services. It is expected that this will result in lower costs to comply than if dual seals were necessary.

Additionally, in examining the appropriateness of the pump standard to refinery operations, the EPA considered whether to extend some of the concepts of the negotiated valve standard to the pump standard for refineries. Specifically, the EPA considered whether to allow reduced monitoring frequency for better performance and to allow increased monitoring frequency as an alternative to the QIP for poor performance. The negotiated valve standard included incentive provisions to encourage better performance and two forms of penalty options to consider differences among facilities' ability to undertake a QIP. After considering the predicted differences in effectiveness of different monitoring intervals for pumps, the EPA concluded that an incentive for better performance could be included in the pump standard and still assure better emission performance. The pump standard for refineries thus would allow facilities that achieve less than 3 percent of pumps leaking, or one pump leaking, to monitor pumps quarterly; and facilities that have greater than 3 percent (or 1 pump) but fewer than 10 percent, or 3 pumps, leaking would be required to conduct monthly monitoring of pumps. The EPA considered whether an alternative to the QIP could be provided for those facilities that have greater than 10 percent, or 3 pumps, leaking. It was determined that in such situations, the only alternative is an engineering analysis to determine the cause of the high leak frequency. Therefore, facilities with 10 percent, or 3 pumps, leaking or greater will still be required to implement a QIP for pumps.

The EPA also considered whether LDAR should be required for reciprocating pumps in heavy liquid service. In most cases when drips are observed, monitored concentration is below the leak definition, and elimination of such drips would be infeasible due to spare or design limitations. The replacement of such pumps would be very expensive, and would result in little emission reduction. Therefore, the EPA concluded that requirements to monitor and repair such pumps would be unproductive.

The proposed rule would require monitoring and repair for reciprocating pumps in light liquid service. The EPA requests comment on the feasibility and cost of controlling leaks from reciprocating pumps in light liquid service. Commenters are requested to include technical information to support their comments.

Similarly, comment is requested on the feasibility and cost of control measures for reciprocating compressors. As with pumps, there may be space and design constraints that may preclude adding seals and repair or replacement could be costly.

Valve standard. The EPA considered whether the negotiated standard was appropriate for values, and proposes to adjust the leak definition for phases II and III. The proposed leak definition of 1,000 ppm for phases II and III was selected based on consideration of monitoring data from a few facilities, existing state programs, and the

expected emission reduction and cost associated with different leak definitions. The EPA considered but rejected using 10,000 ppm as the concentration that defines a leak because several state programs recently established leak definitions of 500 to 1,000 ppm. However, there is only one State program that has a leak definition/performance standard framework consistent with subpart H and leak definition lower than 10,000 ppm. This program has been in effect for a number of years and controls refineries with a leak definition of 1,000 ppm. This program has shown that a valve performance standard for refineries can be reliably implemented and is achievable with a leak definition of 1,000 ppm. This program and the fact that significant additional emission reduction can be achieved cost-effectively, led the EPA to conclude that a 1,000 ppm leak definition was practical and achievable. A leak definition lower than 1,000 ppm was not selected because the additional emission reduction achievable was small (<1 percent) and the lack of data from refineries with performance standards utilizing a leak definition of less than 1,000 ppm.

Owing to the limited data available in this rulemaking, the EPA selected the performance levels considering the differences in total HAP content of process fluids in SOCMI processes and refinery processes and the performance levels selected in the equipment leak negotiation. It was determined that with an equipment leak definition of 1,000 ppm, a performance standard based on 5 percent allowable leaking valves for petroleum refineries is equivalent to the subpart H performance standard for the SOCMI. This determination was based on the calculation procedures in "Protocol for Equipment Leak Emission Estimates," (EPA–453/R–93–026) and average HAP/VOC ratios for process fluids.

The EPA also evaluated what monitoring frequencies should be established for given performance levels (i.e., percent leaking valves). Using the average HAP to VOC ratio estimated for HON, the EPA concluded that equivalent performance requirements would be established if the refinery standard required quarterly monitoring for facilities achieving less than 5 percent leaking valves. Similarly, semiannual monitoring would be allowed for facilities achieving less than 4 percent leaking valves; and annual monitoring for facilities achieving less than 3 percent leaking valves.

In addition to the basic valve program described above, EPA developed an optional, more stringent performance standard, that can be used by facility owners or operators electing not to implement a connector program. EPA has concluded a connector LDAR program is a costlier way to achieve emission reductions, as compared with a more stringent valve standard. The EPA, thus concluded that a more cost effective approach would be to allow facilities the option to elect lower performance levels for valves in lieu of implementing a connector LDAR program.

Based on the Protocol document, an equivalent emissions reduction can be achieved by a one percent differential of the allowable leakers at the 1,000 ppm leak definition. Therefore, a facility electing not to implement the connectors LDAR program can elect to comply with a valve performance standard of 4 percent leaking valves with quarterly LDAR, 3 percent leaking valves with semi-annual LDAR and 2 percent leaking valves with annual LDAR program.

The nonrepairable valve allowance was also adjusted to consider differences between refinery operations and SOCMI operations. The proposed standard would allow exclusion of 1 percent per year up to a maximum of 3 percent of the valves in HAP service from the calculation of percent leaking valves. The nonrepairables provision is structured in this manner to take into consideration the typically longer turnaround schedules in refineries than in SOCMI process units, while recognizing that some refinery units may operate on shorter schedules.

Connectors in gas/vapor and light liquid service. The EPA considered whether application of the negotiated standard for connectors to refinery operators was appropriate. In this evaluation, the EPA considered differences between designs, capacities, and operations of refinery and SOCMI units and how these might alter the cost of a LDAR program for connectors. Because the existing connector emission factor predicts very low emission rates from connectors, it appears that a connector LDAR program is relatively costly to achieve additional emission reductions. Table 3 provides a comparison of the costs and emission reductions for control alternatives that include and control alternatives that exclude the negotiated rule's connector standard. The EPA, thus, concluded that a more cost effective approach would be to allow sources the option to elect less frequent monitoring for valves if a connector LDAR program is implemented.

The proposed equipment leak provisions give three options for a connector LDAR program which, if any of these are implemented, would allow for less frequent monitoring of valves. The three options are: (1) A random 200 connector survey; (2) a connector inspection program, and (3) the negotiated rule's connector program. In the random 200 connector survey, the monitoring frequency depends on the percent leaking connectors identified in 200 randomly chosen connectors. At higher leak frequencies, the owner or operator has to survey connectors more frequently and repair any leaking connectors detected. In the connector inspection program, all connectors of 2 in. or greater nominal diameter in gas/vapor service are to be monitored using Method 21 of 40 CFR part 60, appendix A, and all connectors of 2 in. or greater nominal diameter in light liquid service are to be inspected for indications of liquids dripping. This alternative was developed because the majority of connectors in refinery process units that will be subject to the equipment leak provisions of the standard are in light liquid service and a visual inspection program should be less costly to implement than Method 21 monitoring of these connectors. The monitoring frequency of this program also varies with the percentage of leaking connectors. The negotiated rule's program is included as a third option, because some refinery units may be required under their state program to implement these provisions.

A nonrepairable connector allowance is included because increased monitoring frequency, if triggered by nonrepairable components, would be of little benefit. The proposed alternative standard for connectors allows for excluding 1 percent of the connectors per year up to a maximum of 3 percent of the connectors from the calculation of the percentage of leaking connectors. The nonrepairable allowance was selected considering the need to provide an incentive to limit the number of nonrepairable connectors while also trying to avoid imposition of unproductive costs.

b. *Equipment leaks: New sources.* The floor for new sources is between the NSPS and the rule proposed for existing sources. Available data shows that many refineries are complying with the NSPS and several are also complying with State rules that have lower leak definitions (i.e., 1,000 ppm for values). The EPA therefore did not consider the NSPS as an option for new sources because it would be below the floor. For costing purposes, the same requirements as option 1 for existing sources were considered the floor for new sources. The EPA considered option 2 for existing sources as another option for new sources (option 1 for new sources). (See table 3 and the text in section VI.E.1.a of this preamble.) The proposed standard for new sources, which is similar to the option costed as the new source floor, is the negotiated rule (40 CFR part 63 subpart H) without the connector provisions and with a few other differences. This is the same as the standard proposed for existing sources. This option was selected because it is at least as stringent as the floor and achieves significant emission reduction at a more reasonable cost than option 1 for new sources. No nonair quality health impacts, energy, or other environmental impacts were expected from either of the alternatives, so these considerations did not affect the choice of the proposed requirements. The rationale for not requiring connector LDAR and the rationale for the differences between the proposed rule and subpart H are discussed in section VI.E.1.a.

One difference between the proposed rule for new and existing sources is that pumps and valves at new sources must be in compliance with phase II at start-up, rather than phase I. This is consistent with the negotiated rule. It is reasonable to expect new sources to be designed to achieve the phase II level of control because they do not experience retrofit constraints that affect existing sources.

c. *Equipment leaks: Small refineries.* The EPA is considering whether it is appropriate to establish a different standard for small refineries. As proposed, the equipment leaks provisions would be the same for small and large refineries, except that all equipment at small refineries would be allowed 18 months to begin compliance (instead of requiring one-third of the equipment to comply in 6 months, one-third in 12 months, and the remainder in 18 months). Compliance in 6 or 12 months could be infeasible for many small refineries. Many are located in attainment areas and have never been required to implement LDAR programs and their owners or operators do not have expertise in setting up and operating such programs. It will require more time for these refineries to develop and implement LDAR programs and the associated recordkeeping and reporting systems.

The EPA is also considering a less stringent standard and a longer compliance time for small refineries. In particular, small refinery existing sources could be required to comply with the provisions of the equipment

considered the floor for new sources. The EPA considered option 2 for existing sources as another option for new sources (option 1 for new sources). (See table 3 and the text in section VI.E.1.a of this preamble.) The proposed standard for new sources, which is similar to the option costed as the new source floor, is the negotiated rule (40 CFR part 63 subpart H) without the connector provisions and with a few other differences. This is the same as the standard proposed for existing sources. This option was selected because it is at least as stringent as the floor and achieves significant emission reduction at a more reasonable cost than option 1 for new sources. No nonair quality health impacts, energy, or other environmental impacts were expected from either of the alternatives, so these considerations did not affect the choice of the proposed requirements. The rationale for not requiring connector LDAR and the rationale for the differences between the proposed rule and subpart H are discussed in section VI.E.1.a.

One difference between the proposed rule for new and existing sources is that pumps and valves at new sources must be in compliance with phase II at start-up, rather than phase I. This is consistent with the negotiated rule. It is reasonable to expect new sources to be designed to achieve the phase II level of control because they do not experience retrofit constraints that affect existing sources.

c. *Equipment leaks; Small refineries.* The EPA is considering whether it is appropriate to establish a different standard for small refineries. As proposed, the equipment leaks provisions would be the same for small and large refineries, except that all equipment at small refineries would be allowed 18 months to begin compliance (instead of requiring one-third of the equipment to comply in 6 months, one-third in 12 months, and the remainder in 18 months). Compliance in 6 or 12 months could be infeasible for many small refineries. Many are located in attainment areas and have never been required to implement LDAR programs and their owners or operators do not have expertise in setting up and operating such programs. It will require more time for these refineries to develop and implement LDAR programs and the associated recordkeeping and reporting systems.

The EPA is also considering a less stringent standard and a longer compliance time for small refineries. In particular, small refinery existing sources could be required to comply with the provisions of the equipment leaks NSPS 40 CFR part 60 subpart GGG instead of the proposed option. As discussed in section VI.E.1.a, the MACT floor for equipment leaks at existing sources is between the CTG and the NSPS, so the NSPS is at least as stringent as the MACT floor. The NSPS has a leak detection level of 10,000 ppm and does not have the phased-in lower leak definitions and performance levels or the QIP provisions of the proposed rule. Thus, the NSPS would be simpler and less costly for small refiners to implement. There is also concern that because of start-up costs for the LDAR program and the relationship of costs to refinery complexity, the cost per Mg of emission reduction for options above the floor could be somewhat higher for small refiners. The EPA solicits comments on whether the standard for small refineries should be based on the NSPS instead of the negotiated rule. In particular, documentation of the control level of small refineries, and the costs of complying with the NSPS versus the proposed rule would be helpful. Commenters should provide the technical bases for their cost estimates and other comments.

The EPA is also considering allowing small refineries 3 years to achieve compliance with the NSPS level of control. As previously stated, small refineries may need additional time to design and implement LDAR programs. Section 112 of the Act allows the EPA to establish compliance times up to a maximum of 3 years for existing sources. New sources would be required to comply upon start-up or promulgation of the rule, whichever is later, as required by the Act. The EPA requests comments and supporting rationale on what compliance times are reasonable for small refineries.

2. Selection of Format

Because it is not practical to measure emissions from equipment leaks, an equipment and work practice format was chosen for the standards. Format selection is discussed in the preamble to the proposed HON (57 FR 62608). Because the HON negotiated rule for equipment leaks is the basis of the standard chosen to regulate petroleum refinery equipment leaks for both new and existing sources, the EPA elected to refer directly to the requirements in the negotiated rule. The differences for pumps, valves, and connectors are specified in the proposed subpart CC.

3. Selection of Monitoring and Compliance

Determination Provisions. Because the equipment leak provisions of the proposed rule are work practice and equipment standards, monitoring, repairing leaks, and maintaining the required records constitutes compliance with the rule. The HON equipment leak provisions are appropriate to determine continuous compliance with the petroleum refinery equipment leak standards. In summary, these provisions require periodic monitoring with a portable hydrocarbon detector to determine if equipment is leaking. If leaks are detected, repair is required within specified time periods. There are provisions for delay of repair in certain circumstances. Failure to perform the required monitoring or to repair leaking equipment within the specified time period or document a delay of repair would constitute an enforceable violation of the standards.

F. Use of Continuous Monitoring to Determine Compliance

The EPA has considered how sources subject to this NESHAP should demonstrate continuous compliance with the standards. The EPA has concluded that where CEMS were not feasible operating parameter monitoring can be used for this purpose. As explained under miscellaneous process vents in section VI.B of this notice, use of CEMS is not feasible for measuring emissions from petroleum refineries; however, continuous operating parameter monitoring is required for some emission points. An excursion of a parameter outside the established range would constitute a violation of the emission standards. Owners or operators are required to establish site-specific ranges for operating parameters based on performance test data and/or other information. This allows owners or operators to demonstrate the parameter ranges that correspond to meeting the emission limits for their particular emission points and control devices. If a parameter is outside the range it would be considered a violation of the emission limits unless the excursion is caused by a start-up, shut-down, or malfunction that meets the criteria for a malfunction specified in the NESHAP general provisions (40 CFR part 63 subpart A).

A daily averaging period for monitored parameters was selected for determining whether an excursion has occurred. This averaging period allows for short-term (e.g., 15-minute or hourly) parameter fluctuations that are expected and unavoidable for the types of control devices required, and gives the owner or operator a reasonable period of time to take action if there is a problem. If a shorter averaging period (for example 3 hours) were selected, sources would be likely to have multiple excursions

caused by the same operational problem because it would not be possible to correct problems in one 3-hour reporting period.

The EPA requests comment on the proposed approach for determination of compliance based on continuous parameter monitoring, and on possible alternative approaches.

As explained in section VI.B, (Miscellaneous Process Vents section) not all vents are required to use continuous monitors. Most miscellaneous process vents would probably be ducted to the refinery fuel gas system for combustion in boilers, and such vents would not be regulated under the proposed rule and would not be required to perform any monitoring.

For some emission points, such as storage vessels equipped with floating roofs and equipment leaks, continuous monitoring is not feasible. In such cases, failure to comply with the required inspection and repair procedures would constitute a violation of the equipment and work practice standards.

G. Selection of Reporting and Recordkeeping Provisions

The proposed rule would require sources to submit up to four types of reports: Initial Notification, Notification of Compliance Status, Periodic Reports, and Other reports. The purpose and contents of each of these reports are described in this section. The wording of the proposed rule requires all draft reports to be submitted to the "Administrator". The term Administrator means either the Administrator of the EPA, an EPA regional office, a State agency, or other authority that has been delegated the authority to implement this rule. In most cases, reports will be sent to State agencies. Addresses are provided in the General Provisions (subpart A) of 40 CFR part 63.

Records of reported information and other information necessary to document compliance with the regulation are generally required to be kept for 5 years. A few records pertaining to equipment design would be kept for the life of the equipment.

1. Initial Notification

The proposed rule would require owners or operators who are subject to subpart CC to submit an Initial Notification. This report establishes early communication between the source and the regulatory agency, allowing both to plan for regulatory compliance. If the information contained in the Initial Notification has already been submitted to the operating permit authority, no Initial Notification is required for this rule. For existing sources, the Initial Notification is due 120 days after the date of promulgation. For new sources, the Initial Notification is due as soon as practicable before construction or reconstruction is planned to commence but it need not be sooner than 90 days after promulgation of subpart CC.

The Initial Notification must include a list of the petroleum refining processes at the source that are subject to subpart CC, and which provisions may apply (e.g., the provisions for miscellaneous process vents, storage vessels, or equipment leaks). A detailed identification of emission points is not required, because these data would be included in the operating permit application.

2. Notification of Compliance Status

The Notification of Compliance Status would be submitted 150 days after the source's compliance date. For new sources, the compliance date is at start-up or the promulgation date of subpart CC, whichever is later. For existing sources, the proposed compliance date is 3 years after promulgation, except that equipment leaks compliance would be staggered, with one-third of the equipment complying 6 months after promulgation, another third in 12 months, and the remainder in 18 months. The timing of compliance-related reporting for equipment leaks is specified in 40 CFR part 63 subpart H, which was referenced by subpart CC. The Notification of Compliance Status contains the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests and design analyses. If this information has already been submitted as part of a Title V operating permit program it does not have to be repeated in a Notification of Compliance Status. If it is not already submitted, however, it must be submitted as specified in this rule.

Sources with a large number of emission points are likely to submit results of multiple performance tests for each kind of emission point. For each test method used for a particular kind of emission point (e.g., a process vent), one complete test report would be submitted. For additional tests performed for the same kind of emission point using the same method, the results would be submitted, but a complete test report is not required. Results would include values needed to determine compliance (e.g., inlet and outlet concentrations, flow rates, and percent emission reduction) as well as the values of monitored parameters averaged over the period of the test. Submitting one test report will allow the regulatory authority to verify that the source has followed the correct sampling and analytical procedures and has done calculations correctly. Complete test reports for other emission points may be kept at the plant rather than submitted. This reporting system was established to ensure that reviewing authorities have sufficient information to evaluate the monitoring and testing used to demonstrate compliance with the petroleum refineries NESHAP, while minimizing the reporting burden.

Another type of information to be included in the Notification of Compliance Status is the specific range for each monitored parameter for each emission point, and the rationale for why this range indicates compliance with the emission standards. (If this range has already been established in the operating permit, it does not need to be repeated in the Notification of Compliance Status.)

Although in some previous NSPS and NESHAP, the EPA has specified a pre-determined range of operating parameter values, such values could be considered inadequate given the increased importance of parameter monitoring in determining and certifying compliance due to the new requirements in section 114 of the Act. For the proposed petroleum refinery NESHAP, the EPA is requiring sources to establish site-specific ranges. Allowing site-specific ranges for monitored parameters accommodates site-specific variation in emission point characteristics and control device designs. Based on the information available at proposal, it appeared to be difficult to establish ranges or minimum or maximum values that would be applicable in all cases.

The proposed system for establishing operating parameter ranges attempts to balance the need for technical certainty and operational feasibility. The ranges may be established by performance testing supplemented by engineering assessments and manufacturer's recommendations. However, the performance test is not required to be conducted over the entire range of permitted parameter values because such a requirement could impose significant technical difficulties and costs on the source. The EPA believes that a performance test conducted for a smaller, yet representative, range of operating conditions can still provide a range for the operating parameters that ensures compliance with the emission limit. For emission points and control devices where a performance test is not required (for example, a closed vent system and control device on a storage vessel), the range may be established by engineering assessment.

As an example, for a miscellaneous process vent controlled by an incinerator, the notification of compliance status would include the site-specific minimum firebox temperature that will ensure that the emission limit is met and the data and rationale to support this minimum temperature.

3. Periodic Reports and Records of Monitoring Data

Periodic Reports are required to ensure that the standards continue to be met and that control devices are operated and maintained properly. Generally, Periodic Reports would be submitted semiannually. If monitoring results show that the parameter values for a particular emission point are outside the established range for more than 1 percent of the operating time in a reporting period, or the monitor is out of service for more than 5 percent of the time, the implementing agency may request that the owner or operator submit quarterly reports for that emission point. After 1 year, the source can return to semiannual reporting, unless the regulatory authority requests continuation of quarterly reports.

The EPA has established this reporting system in order to provide an incentive (less frequent reporting) for good performance. Because of uncertainty about the periods of time over which sources are likely to experience excursions outside the parameter ranges or monitoring system failures, the EPA is seeking comment on the 1 and 5 percent criteria triggering more frequent reporting. In particular, data are requested on both the frequency of excursions and monitoring system downtime.

Periodic Reports specify periods when the values of monitored parameters are outside the ranges established in the Notification of Compliance Status or operating permit. If the values of the monitored parameters are within the established range, records are kept, but the values are not reported. This will reduce the volume of information in reports and will reduce the reporting burden while still allowing determination of continuous compliance.

For continuous parameter monitoring, records must be kept of the parameter recorded once every 15 minutes. If a parameter is monitored more frequently than once every 15 minutes, 15-minute or more frequent averages may be recorded instead of the individual values. For days when the monitored values are not outside their ranges, the

vessel), the range may be established by engineering assessment.

As an example, for a miscellaneous process vent controlled by an incinerator, the notification of compliance status would include the site-specific minimum firebox temperature that will ensure that the emission limit is met and the data and rationale to support this minimum temperature.

3. Periodic Reports and Records of Monitoring Data

Periodic Reports are required to ensure that the standards continue to be met and that control devices are operated and maintained properly. Generally, Periodic Reports would be submitted semiannually. If monitoring results show that the parameter values for a particular emission point are outside the established range for more than 1 percent of the operating time in a reporting period, or the monitor is out of service for more than 5 percent of the time, the implementing agency may request that the owner or operator submit quarterly reports for that emission point. After 1 year, the source can return to semiannual reporting, unless the regulatory authority requests continuation of quarterly reports.

The EPA has established this reporting system in order to provide an incentive (less frequent reporting) for good performance. Because of uncertainty about the periods of time over which sources are likely to experience excursions outside the parameter ranges or monitoring system failures, the EPA is seeking comment on the 1 and 5 percent criteria triggering more frequent reporting. In particular, data are requested on both the frequency of excursions and monitoring system downtime.

Periodic Reports specify periods when the values of monitored parameters are outside the ranges established in the Notification of Compliance Status or operating permit. If the values of the monitored parameters are within the established range, records are kept, but the values are not reported. This will reduce the volume of information in reports and will reduce the reporting burden while still allowing determination of continuous compliance.

For continuous parameter monitoring, records must be kept of the parameter recorded once every 15 minutes. If a parameter is monitored more frequently than once every 15 minutes, 15-minute or more frequent averages may be recorded instead of the individual values. For days when the monitored values are not outside their ranges, the owner or operator may convert the 15-minute values to hourly averages and then discard the 15-minute values. These provisions ensure that there will be enough monitoring values recorded and retained to be representative of the monitoring period, while reducing by a factor of four the burden that would be associated with digital conversion of data, transferring data to tape or hard copy, copying, and storing the data if all the 15-minute values had to be retained.

The proposed rule would allow sources to request approval to use alternative monitoring and recordkeeping systems. This will reduce the burden by allowing greater use of existing systems. Alternative monitoring systems specifically discussed in the rule include nonautomated systems and data compression systems. These systems will be allowed on a site-specific basis, dependent upon approval of the implementing agency. The proposed rule includes specific minimum requirements for applications to use nonautomated systems. For example, parameters must be manually read and recorded at least once per hour and the source must demonstrate that the frequency is sufficient to represent control device operating conditions. Data compression systems do not record monitored operating parameter values at a set frequency, but record all values that meet set criteria for variation from previously recorded values. The proposed rule would require sources applying to use such systems to show that they are designed to: Measure and record at least four representative values per hour, recognize and alert the operator to unchanging data, and calculate daily averages. Additional details and rationale for these provisions are contained in the preamble to the promulgated HON (59 FR 19402, April 22, 1994).

For some types of emission points and controls, periodic (e.g., monthly, quarterly, or annual) inspections or measurements are required instead of continuous monitoring. Records that such inspections or measurements were done must be kept; but results are included in Periodic Reports only if a problem is found. This requirement is designed to minimize the recordkeeping and reporting burden of the proposed rule.

4. Other Reports

There are a very limited number of other reports. Where possible, subpart CC is structured to allow information to be reported in the Periodic Reports. However, in a few cases, it is necessary for the source to provide information to the regulatory authority shortly before or after a specific event. For example, for storage vessels, notification prior to internal tank inspections is required to allow the regulatory authority to have an observer present. Requests for approval to monitor control device operating parameters other than those listed in the rule and requests for approval to use alternatives to continuous monitoring must be submitted 18 months prior to the compliance date for existing sources. This will allow the regulatory authority and the source to reach agreement on monitoring requirements prior to the compliance date. Certain notifications and reports required by the part 63 General Provisions must also be submitted.

H. Rationale for Emissions Averaging Provisions

The EPA is proposing that emissions averaging be allowed for miscellaneous process vents, storage tanks, and wastewater streams within petroleum refineries. The EPA requests comments on whether emissions averaging should be included in the final rule, and on specific features of the proposed emissions averaging provisions. Commenters should provide the reasons for their recommendations and supporting information.

The EPA proposed a NESHAP for Marine Tank Vessel Loading and Unloading Operations in the **Federal Register** Vol. 59, No. 92 on Friday, May 13, 1994. Marine Tank Vessel Loading and Unloading Operations is a source category included on the list of source categories for regulation under Section 112. The NESHAP addresses HAP from these operations; loading and unloading operations can occur at refineries as well as other types of plants.

Today's proposed rule addresses only the 4 emission points in refinery operations discussed earlier in this notice. Although no regulatory text is included in today's proposal, the EPA requests comments on the concept of expanding the petroleum refinery source category covered by today's rule to include marine vessel loading and unloading operations subject to the requirements of section 112 that occur at refineries. The marine vessel requirements proposed for purposes of compliance with section 183(f), however, would remain unchanged. If the above change is made to the petroleum refinery source category, the source category currently listed in accordance with section 112(c) as Marine Tank Vessel Loading and Unloading Operations would be split into two parts—those which are collocated at refineries and those which

are not. The ones collocated at refineries would be combined with and become part of the refinery source category addressed by today's proposed rule. The source category list would be amended accordingly. The purpose would be to allow emissions averaging between the HAP emissions from marine vessel loading and unloading and the HAP emissions from the refinery emission points identified in today's rule as suitable for emissions averaging. It appears that in some cases, there may be opportunities to control some of these emission points (e.g. storage tanks) more cost-effectively than marine vessel loading and unloading operations. In other cases, it may be more cost-effective to control marine vessel operation emissions than the refinery emission points. Integrating marine loading and unloading operations into the refinery category and utilizing emissions averaging may provide an opportunity for more emissions reductions at a lower cost than would occur if the categories remain separate. In addition, because of the 10 percent discount factor, additional emissions reductions will be achieved if emissions averaging is used. The EPA requests comments on whether there would be additional regulatory and enforcement complexities if this approach were adopted.

If the suggested approach were adopted, the limitations of the proposed emissions averaging provisions included in today's proposal would also apply to the loading and unloading operations. With regard to calculating the emissions for purposes of averaging, the May 13 proposal included procedures for determining HAP emissions from marine vessel loading operations for purposes of determining applicability of the rule; the EPA solicited comment on these procedures. These emission estimating procedures will also be considered for the purpose of emission averaging. The promulgation date, and thus the compliance date, for the marine vessel loading and unloading standard is currently expected to be earlier than the petroleum refinery standard. The EPA requests comments on whether and how these compliance dates should be made consistent, and what legal factors should be considered.

The EPA's database which serves as the basis for the May 13 proposed rule for marine vessels does not identify which loading and unloading operations occur at refineries as opposed to other types of plants. However, the EPA has no data to indicate that marine vessel loading operations at refineries are dissimilar to marine vessel loading operations located at other facilities or that their control levels differ. Therefore, the EPA anticipates that the floors for neither the petroleum refinery nor the marine vessel rules would be affected by redefining the source categories as described. If any data were received which could lead to changes in the floor calculations, the public would be given an opportunity to review the data as well as an opportunity to comment on any proposed changes to the floors.

If the EPA expands the refinery source category to include marine vessel loading and unloading operations, loading operations at refineries would have an opportunity to average emissions and reduce costs. In addition, they would be required to achieve additional emission reductions in accordance with the 10 percent discount requirement contained in the emissions averaging provisions. Loading operations that stand alone would not have this same opportunity to reduce costs. Public comment is solicited on the magnitude of these impacts and the appropriateness of this distinction.

Some marine terminals handle products with low concentrations of HAP's but high concentrations of non-HAP VOC. In such circumstances, it may be cost-effective to forego control of HAP's from marine terminals by overcontrolling HAP's from another emission point. If, however, the emission point being controlled does not offset the non-HAP VOC foregone by not controlling the marine terminals, a net increase in non-HAP VOC could result. The EPA solicits comments on what considerations should be given to this type of situation in deciding to combine marine terminals and refineries for the purpose of emission averaging.

The EPA requests comment on the extent to which emissions averaging between marine vessel loading and unloading operations and other refinery operations could result in exposure spikes. This could occur if batch emission streams were left uncontrolled in exchange for control of continuous emission streams, or vice versa.

Several regulatory alternatives were considered for each emission point covered by today's rule. In some cases, more stringent alternatives than those selected as the basis of the proposal were rejected based on cost considerations. If the EPA were to decide to allow emissions averaging between marine vessel loading and unloading operations and those emission points allowed to average by today's proposal, sources would likely have an opportunity to reduce compliance costs. It is possible that reduction in compliance costs could make other control options more affordable. Public comment is solicited on whether the 10 percent discount factor included in the emissions averaging provisions adequately addresses this issue or how the potential cost savings resulting from the redefinition of the source category should be considered when the EPA reevaluates the regulatory alternatives as part of the final rule.

The EPA also requests that commenters submit data on possible emission factors and/or alternative emission calculation procedures for marine vessel operations for consideration in the final rule.

The EPA will consider all comments and data received on this issue in publishing a final rule. If the EPA decides to promulgate a final rule allowing emissions averaging between marine vessel loading and unloading operations and other emission points at refineries, the Administrator may decide to publish a supplemental proposal or notice of data availability to provide the public an opportunity to comment, particularly on the specific averaging provisions of the rule.

1. Reasons for Proposing Averaging for the Four Emission Points

Emissions averaging is proposed as a means of providing sources flexibility to comply in the least costly manner while still maintaining a regulation that is workable and enforceable. Recently, the EPA and Amoco Corporation conducted a joint study of environmental releases at the Amoco facility in Yorktown, Virginia. A focus of the study was to identify cost-effective pollution prevention and control opportunities. Specific emission estimates and control strategies for the Yorktown facility may not apply to other refineries due to site-specific differences. However, the study did highlight the importance of compliance flexibility and the potential of pollution prevention strategies to achieve cost-effective emission reductions. Emissions averaging is one way to allow compliance flexibility within the statutory limitations of section 112 of the Act.

The EPA has included emissions averaging provisions in this rule as one way of providing operational flexibility, however, implementing agencies can seek approval of the State rules or authorities which differ in form from the federal rule developed under section 112 of the CAA. An implementing agency could submit a formal request under 40 CFR part 63, subpart E demonstrating that the State rule, among other criteria, is at least as stringent for each affected source as the federal rule. Therefore, implementing agencies have the option of developing their own rule that provides operational flexibility through the State program approval and delegation process.

For some facilities, including small refineries, use of emissions averaging could prevent serious economic impacts or potential closures. For example, economic impacts could be caused by removing fixed roof storage vessels from service to retrofit controls when the number of products is increasing due to the upcoming reformulated gasoline rules, and all the vessels may need to be in service to maintain production levels. Facilities in Northern climates have a limited season during which retrofits could be done, which corresponds to the gasoline production season. Averaging would provide some flexibility to not retrofit all storage vessels if other emission points could be more easily over-controlled. Similarly, due to site-specific equipment configurations and emission characteristics, it may be infeasible to route a particular miscellaneous process vent to the existing fuel gas or flare system. Control of such a vent could be costly. Another case where averaging would be useful is where facilities already control storage vessels or process vents, but the controls do not fully meet the specifications of the regulation. It could be costly to retrofit such emission points, and might only result in a few percent emission reduction. Emissions averaging might allow facilities to retain the current control levels for such points and balance this by over-control of emission points that can be controlled more cost effectively.

The EPA requests comment on the usefulness of emissions averaging provisions for the petroleum refinery industry.

The EPA is also interested in making sure that any flexibility provisions be appropriately tailored to each particular source category so that environmental protection is continually assured, and real flexibility provided. For that reason, the EPA is requesting comment on the specific provisions of the emissions averaging approach discussed below (recordkeeping and reporting, monitoring, compliance periods, debits, credits, credit discount factors, limits on averaging, interpollutant trading and averaging, and scope).

This request for comment includes the threshold criteria (hazard or risk equivalency, discount factor) established in the HON for the use of averaging, and its appropriateness for this source category. For example,

each affected source as the federal rule. Therefore, implementing agencies have the option of developing their own rule that provides operational flexibility through the State program approval and delegation process.

For some facilities, including small refineries, use of emissions averaging could prevent serious economic impacts or potential closures. For example, economic impacts could be caused by removing fixed roof storage vessels from service to retrofit controls when the number of products is increasing due to the upcoming reformulated gasoline rules, and all the vessels may need to be in service to maintain production levels. Facilities in Northern climates have a limited season during which retrofits could be done, which corresponds to the gasoline production season. Averaging would provide some flexibility to not retrofit all storage vessels if other emission points could be more easily over-controlled. Similarly, due to site-specific equipment configurations and emission characteristics, it may be infeasible to route a particular miscellaneous process vent to the existing fuel gas or flare system. Control of such a vent could be costly. Another case where averaging would be useful is where facilities already control storage vessels or process vents, but the controls do not fully meet the specifications of the regulation. It could be costly to retrofit such emission points, and might only result in a few percent emission reduction. Emissions averaging might allow facilities to retain the current control levels for such points and balance this by over-control of emission points that can be controlled more cost effectively.

The EPA requests comment on the usefulness of emissions averaging provisions for the petroleum refinery industry.

The EPA is also interested in making sure that any flexibility provisions be appropriately tailored to each particular source category so that environmental protection is continually assured, and real flexibility provided. For that reason, the EPA is requesting comment on the specific provisions of the emissions averaging approach discussed below (recordkeeping and reporting, monitoring, compliance periods, debits, credits, credit discount factors, limits on averaging, interpollutant trading and averaging, and scope).

This request for comment includes the threshold criteria (hazard or risk equivalency, discount factor) established in the HON for the use of averaging, and its appropriateness for this source category. For example, during discussions on the HON rule, concerns were raised about interpollutant trades resulting from the use of averaging provisions. As a result of these concerns, threshold criteria were added to ensure equal or greater environmental protection by requiring a demonstration of equivalent protection, and by requiring a 10 percent increase in reductions resulting from the use of averaging. Given that emission points in SOCMI sources and refinery sources have similar emission characteristics (multiple pollutant streams) which make interpollutant trading virtually inescapable under any averaging system, the EPA is seeking comment on these threshold criteria for use with this MACT standard.

For the purposes of this MACT standard, the EPA would also like to solicit comment on cost as a threshold criteria for the use of an interpollutant averaging scheme. The Agency's assumption is that cost would likely be a prime motivator for the use of any averaging. It may be, however, that an explicit criteria for the demonstration of extreme costs (e.g., related to space constraints, safety concerns, near term plans for process changes, or additional control of well controlled points), as a pre-condition for the use of an interpollutant averaging scheme, would better protect against potential risk increases. This criteria would also likely result in less flexibility for the source.

An alternative method of providing for operational flexibility would be to establish a case-by-case waiver system. This approach would allow sources that meet specific threshold criteria to determine an alternative compliance option for certain emission points. A source would need to demonstrate, to the satisfaction of the implementing agency, that MACT cannot be met for certain emission points because of extreme costs related to space constraints, safety concerns, near term process changes, or additional control of well controlled emission points. The alternative compliance option would, at a minimum, have to ensure that the control level for the entire source is at least as stringent as the MACT level of control. Some of the provisions of the HON averaging system (e.g., hazard [risk] equivalency, discount factor) could also be incorporated into this approach. While this approach only allows flexibility for those facilities that make the required demonstration, it provides sources and implementing agencies more flexibility to design a more tailored control scenario.

The EPA requests comment on the concept of a case-by-case waiver system, the specific threshold criteria and the appropriateness of adopting HON-based provisions.

2. Overview of Averaging

In the emissions averaging scheme proposed for petroleum refineries, a system of emissions "credits" and "debits" is used to determine whether the required emission reductions are achieved. Basically, the petroleum refineries provisions for each kind of emission point require Group 1 points (those meeting certain applicability criteria) to achieve a particular emissions reduction or apply a certain control technology. These technologies are called the "reference control technologies," or RCT's, and the EPA has established a control efficiency (percent emission reduction) for the RCT for each kind of emission point. If an owner or operator does not achieve the control efficiency of the RCT for a Group 1 emission point, an emission debit is generated.

An owner or operator who generates an emission debit must control other emission points to a level more stringent than is required for that kind of point to generate emission credits. Credits may come from: (1) control of Group 1 emission points using technologies that the EPA has rated as being more effective than the appropriate RCT, (2) control of Group 2 emission points, and (3) pollution prevention projects that result in greater emission reduction than the standard requires for the relevant point or points.

Emission credits would need to exceed debits on an annual basis for a source to be in compliance. Monitoring and quarterly credit/debit ratio checks would also be used to determine compliance, as described in section H.3 below. Furthermore, prior to using emissions averaging, a source would need to demonstrate to the satisfaction of the implementing agency that the planned emissions average would not result in increased risk or hazard relative to compliance without averaging.

3. Selection of Averaging Provisions

This section describes the rationale for specific aspects of the proposed emissions averaging provisions and the alternative policies that were considered in developing these provisions.

a. *The scope of emissions averaging.* The EPA proposes to allow emissions averaging across miscellaneous process vents, storage vessels, and wastewater streams within a single existing source, as defined for the petroleum refining source category. This proposed scope allows as much flexibility as possible while adhering to statutory

requirements and maintaining an enforceable standard.

The EPA decided against allowing equipment leaks to be included in emissions averaging. While there are methods available for quantifying emissions from equipment leaks, equipment leaks cannot be included in emissions averages at this time because the proposed standard for equipment leaks has no fixed performance level. Although it would be possible to establish site-specific emission levels, the cost would be high, and it would also be costly to maintain the documentation necessary to demonstrate compliance.

Based on the complexity and cost of developing a scheme to include equipment leaks in emissions averaging and the likelihood of a high compliance determination burden for both the industry and enforcement agencies, the EPA decided the public cost of including equipment leaks in emissions averaging is not warranted at this time.

The EPA proposes not to allow emissions averaging at new sources. New sources have historically been held to a stricter standard than existing sources because it is most cost-effective to integrate state-of-the art controls into equipment design and to install the technology during construction of new sources. One reason for allowing averaging is to permit existing sources flexibility to achieve compliance at diverse points with varying degrees of control already in place in the most economically and technically reasonable fashion. This concern does not apply to new sources which can be designed and constructed with compliance in mind. Also, because new sources will have to comply with applicable NSPS (e.g., 40 CFR part 60 subpart Kb), there would be little opportunity for emissions averaging at new sources.

Averaging would be permitted only among emission points within the petroleum refineries source category. Other emission points (e.g., SOCMI emission points) located within the contiguous facility could not be averaged with petroleum refinery emission points. The fundamental problem with allowing averaging among different source categories is that it allows averaging among multiple sources. The proposed petroleum refineries NESHAP defines the source as the collection of emission points within petroleum refinery processes within a major source. Many major sources containing such points will also contain other points that are not covered by this standard but are covered by different MACT standards (e.g., the HON). Each of these standards may have a separate floor, and the statute requires that each standard be no less stringent than its floor.

It would be inconsistent with section 112(d) to allow averaging to be used to permit a source subject to a MACT standard to avoid compliance with that standard. In addition, different sources would have different compliance deadlines. Section 112(i) requires compliance by a source within a set timeframe. Transferring emission reduction obligations to points outside of the source would be inconsistent with the requirement of section 112(d) that standards be set for sources in a listed category and the requirement of section 112(i) that compliance with such standard be achieved by sources in the category.

b. *Interpollutant trading and risk analysis.* The majority of HAP emissions at refineries are composed of a few chemicals, including benzene, toluene, xylenes, ethylbenzene, and hexane. There is a narrower range of variation in emission stream composition among petroleum refinery emission points than there is in some other source categories (e.g., SOCMI emission points regulated by the HON). However, the different HAP's emitted have different toxicities, and there are some variations in the concentrations of individual HAP's and the emission release characteristics of different emission points. Therefore, there is a potential that some emissions averaging scenarios could increase the health risk to the public relative to the risk of compliance without emissions averaging. For this reason, the EPA proposes that sources who elect to use averaging must demonstrate, to the satisfaction of the implementing agency, that compliance through averaging would not result in greater risk or hazard than compliance without averaging. The EPA would provide guidance for making the demonstration based on existing procedures, but the actual methodology to be used by the source would be chosen by the implementing agency. The EPA believes that this approach provides assurance of health protection while allowing for site-specific evaluations. This approach also gives all implementing agencies the authority to consider risk in approving averages. A more complete discussion of the reasons for this decision and the alternatives considered is provided in the preamble to the promulgated HON (59 FR 19402, April 22, 1994). The EPA requests comment on whether the provisions regarding risk or hazard demonstration should be the same for petroleum refineries as for the HON.

The EPA also requests comment on whether sources should be required to use the hazard ranking system developed for the purposes of section 112(g) to demonstrate that compliance through averaging would not result in greater hazard. States would still have the option of also requiring a risk analysis.

c. *Limits on averaging.* The EPA proposes that emissions averages be limited to 20 points at a source, or 25 points if pollution prevention measures are used to control some points in the average. A limitation on the number of points is proposed because the complexity of averaging across a large number of points would raise significant enforcement concerns, as well as concerns about the resource burden on implementing agencies. The EPA anticipates that most sources will not find a large number of opportunities to generate cost-effective credits. Hence, it can be anticipated that most averages will involve a limited number of emission points, and imposing a limit should not affect most sources. The limit of 20 points in an average, 25 points if pollution prevention measures are used, was chosen because the EPA anticipates that most sources will rarely want to include more than 20 points in an average. In addition, allowing much more than 20 points would make enforcement increasingly untenable. Thus, the competing interests of flexibility for sources and enforceability were balanced in this decision. A higher number of points is allowed where pollution prevention is used in order to encourage pollution prevention strategies, and because the same pollution prevention measure may reduce emissions from multiple points.

The proposed rule would grant State and local agencies the discretion to preclude sources from using emissions averaging to comply with the petroleum refineries NESHAP, without using the section 112(l) rule delegation process. Without this provision, if a State or local agency wished to receive delegation of authority to implement and enforce the NESHAP without averaging, a review by the EPA would be required. Including this provision in the NESHAP will reduce paperwork burdens on States, expedite delegation of the rule to States, and remove a potential source of uncertainty for sources subject to the rule. Even though the EPA supports the use of emissions averaging where it may be appropriate, its use must be balanced by the individual needs of States and local agencies that bear the responsibility for administering and enforcing the rule. A detailed rationale for allowing agencies discretion to implement the NESHAP without emissions averaging is contained in the preamble for the promulgated HON (59 FR 19402, April 22, 1994).

d. *Credits.* The equations and procedures for calculating source wide credits are contained in § 63.650 of the proposed rule. The proposed emissions averaging would allow credits only for control or pollution prevention actions taken after November 15, 1990, the date of the 1990 Amendments. The EPA proposes not to allow actions taken before passage of the 1990 Amendments to be used to generate emission credits because such reductions would have occurred anyway, for reasons unrelated to the 1990 Amendments or the proposed rule. If the EPA allowed these actions to generate emission credits, then the source would be able to generate more emission debits and, thus, more total emissions. Emissions averaging is a method for complying with subpart CC and should not result in more emissions than the other compliance options.

Credits could be generated if miscellaneous process vents, Group 1 storage vessels, or Group 1 wastewater streams are controlled using equipment that EPA agrees has a higher efficiency than the RCT for those points. Credits can also be generated if a pollution prevention measure is used on a Group 1 point or a miscellaneous process vent, alone or in combination with a control technology, and it results in lower emissions than would use of the RCT alone. In order to take credit for reductions beyond the RCT level, the source would need to demonstrate the efficiency or level of emission reduction achievable through use of the control technology or pollution prevention measure. The process for application and approval of a "nominal efficiency" higher than the RCT efficiency is contained in § 63.650 of the proposed rule.

The EPA proposes not to allow credits for use of an RCT above its designated reference efficiency rating. (The RCT's for process vents, storage vessels, and wastewater, and their efficiencies are listed in the definitions section of the proposed rule.) Reference control efficiency ratings for RCT were established because each RCT has a minimum level of emissions reduction that can generally be achieved. The EPA acknowledges that RCT's can sometimes achieve greater emission reductions. However, providing credits for these instances is inappropriate because the magnitude of debits, not just credits, is based on the RCT's reference efficiency ratings. If it could be determined that

discretion to implement the NESHAP without emissions averaging is contained in the preamble for the promulgated HON (59 FR 19402, April 22, 1994).

d. *Credits.* The equations and procedures for calculating source wide credits are contained in § 63.650 of the proposed rule. The proposed emissions averaging would allow credits only for control or pollution prevention actions taken after November 15, 1990, the date of the 1990 Amendments. The EPA proposes not to allow actions taken before passage of the 1990 Amendments to be used to generate emission credits because such reductions would have occurred anyway, for reasons unrelated to the 1990 Amendments or the proposed rule. If the EPA allowed these actions to generate emission credits, then the source would be able to generate more emission debits and, thus, more total emissions. Emissions averaging is a method for complying with subpart CC and should not result in more emissions than the other compliance options.

Credits could be generated if miscellaneous process vents, Group 1 storage vessels, or Group 1 wastewater streams are controlled using equipment that EPA agrees has a higher efficiency than the RCT for those points. Credits can also be generated if a pollution prevention measure is used on a Group 1 point or a miscellaneous process vent, alone or in combination with a control technology, and it results in lower emissions than would use of the RCT alone. In order to take credit for reductions beyond the RCT level, the source would need to demonstrate the efficiency or level of emission reduction achievable through use of the control technology or pollution prevention measure. The process for application and approval of a "nominal efficiency" higher than the RCT efficiency is contained in § 63.650 of the proposed rule.

The EPA proposes not to allow credits for use of an RCT above its designated reference efficiency rating. (The RCT's for process vents, storage vessels, and wastewater, and their efficiencies are listed in the definitions section of the proposed rule.) Reference control efficiency ratings for RCT were established because each RCT has a minimum level of emissions reduction that can generally be achieved. The EPA acknowledges that RCT's can sometimes achieve greater emission reductions. However, providing credits for these instances is inappropriate because the magnitude of debits, not just credits, is based on the RCT's reference efficiency ratings. If it could be determined that the RCT on a debit generator could achieve greater reductions than its rated efficiency, the magnitude of debits from the point would be greater. Thus, to give credit for reductions above an RCT's rated efficiency and not to increase the magnitude of debits as well would represent a windfall from averaging, and result in greater emissions than under point-by-point compliance.

Credit could be generated by applying a control technique or pollution prevention measure to a Group 2 storage vessel or wastewater stream. There are no Group 2 miscellaneous process vents under the refineries NESHAP because all miscellaneous process vents subject to the rule are required to apply control (i.e., are Group 1). The procedures for determining the efficiency of controls or pollution prevention measures applied to Group 2 storage vessels and wastewater streams are contained in § 63.650 of the proposed rule.

e. *Credit discount factors.* A discount factor of 10 percent is proposed for calculating credits. A discount factor would reduce the value of credits in the emissions average by a certain percentage before the credits are compared to the debits. In considering a discount factor, the EPA examined the requirements for determining MACT in section 112(d) of the Act. Section 112(d)(2) specifies that MACT standards shall require the maximum degree of reduction in emissions of HAP's, taking into consideration, among other things, the cost of achieving those reductions. By defining the source broadly and including the option for emissions averaging in the proposed rule, it could be argued that the EPA is providing flexibility for source owners and operators that would lower the costs of compliance. The EPA is persuaded that, to carry out the mandate of § 112(d)(2) of the Act, some portion of these cost savings should be shared with the environment by requiring sources using averaging to achieve more emission reductions than they would otherwise. The 10 percent discount factor is consistent with the HON and other programs. While realizing environmental benefits, the 10 percent factor is not so high as to preclude or strongly discourage emissions averaging.

Credits generated through use of a pollution prevention measure would not be discounted, because the EPA recognizes that encouraging pollution prevention will result in more overall emission reductions, possibly including multimedia reductions and lower overall releases into the environment.

f. *Debits.* The equations and procedures for calculating source-wide debits are contained in § 63.650 of the proposed rule. Debits would be generated when a miscellaneous process vent or a Group 1 storage vessel is not controlled to the level required by the miscellaneous process vent or storage vessel provisions of the NESHAP. Debits could not be generated for Group 1 wastewater streams.

g. *Compliance period.* The EPA proposes that the credits and debits generated in emissions averages balance on an annual basis, and that debits do not exceed credits by more than 30 percent in any one quarter of the year. These two requirements are used together to establish an emissions averaging system that provides flexibility for changes in production over time without allowing for wide-ranging fluctuations in HAP emissions over time. The annual compliance period was selected for proposal to accommodate seasonal changes in production and provide sources flexibility in selecting points for inclusion in emissions averages. Annual averaging accommodates seasonal changes in feedstocks, product mix, and operating conditions. Seasonal changes in product mix are common at refineries which, for example, may maximize gasoline production during some parts of the year and maximize fuel oil (heating oil) during other seasons. With an annual compliance period, sources can average emission points that may not have the same emission rates during some periods of the year, as long as they are similar on an annual basis. This latitude will also be useful to accommodate averages with points that must undergo temporary maintenance shutdowns at different times during the year.

In selecting a compliance period for averaging, the EPA also considered the need to verify compliance and, when appropriate, take enforcement action in a timely fashion. One concern about an annual compliance period is that the EPA's authority to take administrative enforcement actions would be reduced because section 113(d) of the Act limits assessment of administrative penalties to violations that occur no more than 12 months prior to the initiation of the administrative proceeding. Administrative proceedings are far less costly than judicial proceedings for both the EPA and the regulated community. The requirement that debits not exceed credits by more than 30 percent in any quarter enables the EPA to use this administrative enforcement authority by providing a shorter period in which to verify compliance.

The EPA is, however, also considering compliance periods that are shorter than

annual. The EPA has concerns about the ability to take enforcement actions for violations that cover an entire year and thus involve the analysis and presentation of an entire year's data, which may make litigation complex. Specific alternatives could include a quarterly or semiannual block averaging period, where credits would need to equal or exceed debits for each 3-month or each 6-month period. Alternatively, a quarterly or semiannual block averaging period with banking for an additional 3-month or 6-month period could be specified. If banking were allowed across blocks, the source could reserve or "bank" extra emission credits from one period to offset debits in the next averaging period. At the end of the next averaging period, any unused banked credits would expire. Banking could avoid some noncompliance scenarios and accommodate seasonal variations; however, it could make compliance determination more complex. The EPA requests comments on whether one of these alternatives should be selected instead of the proposed annual compliance period.

h. *Banking.* The EPA considered "banking" of credits, which would allow excess credits generated in one compliance period to be saved and used to offset debits in a subsequent compliance period. The EPA proposes not to allow banking if an annual compliance period is selected for emissions averaging. While banking could provide additional compliance flexibility for sources, it would greatly increase the administrative burden of emissions averaging and would also increase the likelihood of peak HAP exposures. In years when banked credits were used, sources could be emitting beyond the standard. Banking is more fully discussed in the preambles to the proposed and promulgated HON (57 FR 62608, December 31, 1992 and 59 FR 19402 April 22, 1994).

i. *Monitoring.* Emission points in emissions averages would be subject to the same performance testing and monitoring requirements as the proposed rule requires for other emission points that are not included in averages. If monitoring shows that the controls in place on any given emission point in the emission average are not being operated to achieve their specified emission reduction, this would be separately enforceable from the credit/debit balance.

If a continuously monitored emission point in an emissions average experiences a period of excess emissions, the proposed presumption is that the point should be assigned either no credits or maximum debits. It is proposed that either no credits and maximum debits, as applicable, will be assigned for periods of excess emissions because any other assumption would result in emission reductions that could not be verified or adequately enforced. However, if the source has data indicating that some partial credits or debits may be warranted, it can submit that information to the implementing agency with the next Periodic Report. Thus, partial credits and debits can be assigned with the approval of the implementing agency.

j. *Recordkeeping and reporting.* Under emissions averaging, sources would submit a detailed description of the planned emissions average in an implementation plan. The plan can be submitted in the operating permit application, an amendment to the application, or as a separate submittal. The emissions averaging plan would be approved by the operating permit authority, except that sources applying for credits for controls with nominal efficiencies beyond the RCT level would need to obtain EPA approval for the nominal efficiency rating.

The Notification of Compliance Status would contain performance test results for emission points in averages and first quarter debit and credit calculations. Periodic reports for points in emission averages would be submitted quarterly, instead of semiannually. Quarterly reporting of credits and debits would allow timely enforcement of the quarterly emissions check provisions previously described. Periods when monitoring data for an emission point indicate excess emissions would also be identified in the quarterly reports.

Recordkeeping for emission points in emissions averages would be similar to that for other emission points. In addition, records of monthly credit and debit calculations would be maintained.

These recordkeeping and reporting provisions were selected for proposal because they are as consistent as possible with the provisions for emission points that are not in averages, while also providing the additional credit and debit information needed to determine whether the emissions average is achieving the required level of emissions reduction.

VII. Amendments to Previous Regulations

Amendments to two previous regulations are being proposed along with the proposal of the Petroleum Refinery NESHAP: The Petroleum Refinery Wastewater NSPS, 40 CFR part 60 subpart QQQ; and the SOCMI Equipment Leak NSPS, 40 CFR 60 subpart VV.

A. Amendment to 40 CFR Part 60 Subpart QQQ

Two amendments to subpart QQQ are being proposed. One clarifies a confusion regarding an exemption for tanks. The other allows the use of mechanical shoe seals on tanks.

Section 60.692–3(d), *Standards: Oil-water separator*, of subpart QQQ exempts tanks that are subject to the requirements of K, Ka, or Kb from the requirements of § 60.692–3. This exemption was placed in the standards section of the subpart with the intent that the exemption applied to tanks subject to the control and associated requirements of K, Ka, or Kb. There has been confusion regarding whether the exemption applies to tanks subject to the control requirements or to affected facilities as defined in K, Ka, and Kb.

The affected facilities to which K and Ka apply are storage vessels with capacities greater than or equal to 151 cubic meters. Subparts K and Ka require controls on affected facilities containing liquids with vapor pressures equal to or greater than 10.3 kPa.

The affected facility to which Kb applies is each storage vessel with a capacity greater than or equal to 40 cubic meters. However, each storage vessel with a capacity less than 75 cubic meters is exempt from the General Provisions (part 60 subpart A) and from the provisions of subpart Kb, except for the requirement that the operator keep records showing dimensions and capacity of vessel [§ 60.116b(b)]. Subpart Kb requires controls on affected facilities with capacities greater than or equal to 151 cubic meters containing liquids with vapor pressures greater than or equal to 5.2 kPa.

The intent of subpart QQQ is to control emissions from the wastewater system down to and including primary treatment. The control technique is to prevent exposure to the atmosphere of the oily wastewater in the drain system and the oil-water separator. Subpart QQQ requires that each drain be equipped with a water seal control and each junction box and sewer line be covered. Subpart QQQ also requires each oil water separator tank, slop oil tank, storage vessel, or other auxiliary equipment be equipped and operated with a tightly sealed fixed roof.

Questions have arisen regarding whether § 60.692–3(d) would allow an open-top tank in the wastewater system at or upstream of the oil-water separator. For example, assume a tank is an affected facility under subpart QQQ and Subpart K, Ka, or Kb and contains an organic liquid with a vapor pressure less than 5.2 kPa. The operator would have to meet recordkeeping requirements but the tank would not be required to have a fixed roof to comply with K, Ka, or Kb. This is obviously inconsistent with the intent of the control technology based standards of subpart QQQ.

The second proposed amendment is to allow use of mechanical shoe seals on oil/water separators. As described in the proposal preamble for subpart QQQ, 52 FR 16338 (May 4, 1987), the EPA only had information on the availability of two basic designs for primary seals that are applicable to oil-water separators. The two designs were vapor-mounted and liquid-mounted primary seals. The EPA solicited comments on the effectiveness of different types of seals applicable to oil-water separators. The EPA received no comments on the use or availability of mechanical shoe seals.

Since promulgation of subpart QQQ, the EPA has received several requests to allow the use of mechanical shoe seals to meet the requirements of subpart QQQ. Subpart Kb allows the use of liquid-mounted primary seals or mechanical shoe seals on external floating roofs on storage tanks.

According to the proposal preamble for subpart Kb, 49 FR 29702 (July 23, 1984), data from tests conducted on external floating roof tanks by the American Petroleum Institute show that a mechanical shoe primary seal in conjunction with a rim-mounted secondary seal is as effective as a liquid-mounted primary seal with a secondary seal. These same data were used to evaluate the efficiency of vapor-mounted primary seals in response to comments received on the proposed rule.

Since liquid-mounted primary seals and mechanical shoe primary seals both meet the requirements of the equipment standards in subpart Kb, it is determined, by analogy, that these two primary seal types meet the requirements of the alternative equipment standards in subpart QQQ. Thus, it is proposed that § 60.693–2 of subpart QQQ be amended to allow use of mechanical shoe seals.

B. Amendment to 40 CFR Part 60 Subpart VV

The EPA proposes to amend the definition of closed vent system in 40 CFR part 60 subpart VV to clarify that if equipment leak emissions are routed back to the process, this does not make the process subject to the closed vent system standards that require operation with no detectable leaks above 50 ppmv. In the case of petroleum refineries, equipment leaks may be sent to the refinery-wide fuel gas system. It was not EPA's intent to require the entire fuel

to meet recordkeeping requirements but the tank would not be required to have a fixed roof to comply with K, Ka, or Kb. This is obviously inconsistent with the intent of the control technology based standards of subpart QQQ.

The second proposed amendment is to allow use of mechanical shoe seals on oil/water separators. As described in the proposal preamble for subpart QQQ, 52 FR 16338 (May 4, 1987), the EPA only had information on the availability of two basic designs for primary seals that are applicable to oil-water separators. The two designs were vapor-mounted and liquid-mounted primary seals. The EPA solicited comments on the effectiveness of different types of seals applicable to oil-water separators. The EPA received no comments on the use or availability of mechanical shoe seals.

Since promulgation of subpart QQQ, the EPA has received several requests to allow the use of mechanical shoe seals to meet the requirements of subpart QQQ. Subpart Kb allows the use of liquid-mounted primary seals or mechanical shoe seals on external floating roofs on storage tanks.

According to the proposal preamble for subpart Kb, 49 FR 29702 (July 23, 1984), data from tests conducted on external floating roof tanks by the American Petroleum Institute show that a mechanical shoe primary seal in conjunction with a rim-mounted secondary seal is as effective as a liquid-mounted primary seal with a secondary seal. These same data were used to evaluate the efficiency of vapor-mounted primary seals in response to comments received on the proposed rule.

Since liquid-mounted primary seals and mechanical shoe primary seals both meet the requirements of the equipment standards in subpart Kb, it is determined, by analogy, that these two primary seal types meet the requirements of the alternative equipment standards in subpart QQQ. Thus, it is proposed that § 60.693–2 of subpart QQQ be amended to allow use of mechanical shoe seals.

B. Amendment to 40 CFR Part 60 Subpart VV

The EPA proposes to amend the definition of closed vent system in 40 CFR part 60 subpart VV to clarify that if equipment leak emissions are routed back to the process, this does not make the process subject to the closed vent system standards that require operation with no detectable leaks above 50 ppmv. In the case of petroleum refineries, equipment leaks may be sent to the refinery-wide fuel gas system. It was not EPA's intent to require the entire fuel gas system to be subject to the 500 ppm requirement because the fuel gas system is an integral part of the process. Furthermore, the EPA's cost impact estimates did not include the large monitoring, recordkeeping, and reporting burden of complying with the 500 ppm limit, or the leak detection and repair requirements for the hundreds or thousands of valves, connectors, and other equipment associated with the refinery fuel gas system and the dozens of boilers or process heaters combusting the refinery fuel gas.

The EPA proposes to amend 40 CFR part 60 subpart VV § 60.482–5 to match the language in the equivalent section of the equipment leaks negotiated rule (40 CFR part 63, subpart H, § 63.166). The language from the negotiated rule more clearly represents the EPA's intentions. The current language in subpart VV requires sampling connection systems to be equipped with a closed purge system or a closed vent system, The negotiated rule requires closed purge sampling, closed-loop sampling, or a closed vent system. Closed-purge sampling systems eliminate emissions due to purging by either returning the purge material directly to the process or by collecting the purge in a collection system which is not open to the atmosphere for recycle or disposal. Closed-loop sampling systems also eliminate emissions due to purging by returning process fluid to the process through an enclosed system that is not directly vented to the atmosphere. Closed vent vacuum systems capture and transport the purged process fluid to a control device. *In situ* sampling systems would be exempted from these regulations.

It is proposed that paragraph (f) of § 60.482–10 of subpart VV be revised to be consistent with the requirements for closed vent systems developed for the HON (40 CFR part 63, subpart G, § 63.148). These revisions more clearly reflect the EPA's intent and specify the monitoring and recordkeeping necessary to demonstrate compliance with the requirement to operate with no detectable leaks above 500 ppmv. For closed vent systems constructed of hard-piping, compliance would be determined by an initial Method 21 inspection and an annual visual inspection. Because such systems are extremely unlikely to leak, an annual Method 21 inspection is considered to be overly burdensome. For systems constructed of ductwork, annual Method 21 inspections would be required. The proposed revisions specify the time period for repairs if leaks are detected. Provisions are included for delay of repair, equipment that is unsafe to inspect, and equipment that is difficult to inspect. These provisions are very similar to those currently included in other sections of subpart VV (such as the valve standards), so they provide consistency.

VIII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, [58 **Federal Register** 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set fourth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" rule because it will have an annual effect on the economy of more than $100 million, and is therefore subject to the requirements of Executive Order 12866. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by the EPA (ICR No. 1692.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 4,281 hrs per recordkeeper annually. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data

needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: (1) Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and (2) the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of proposed regulations on small business entities. If a preliminary analysis (known as the initial regulatory flexibility analysis) would have a significant economic impact on a substantial number (usually taken as at least 20 percent) of small entities, then a final regulatory flexibility analysis must be prepared.

Regulatory Flexibility Act guidelines for regulations like this one whose start action notifications were filed before April 1992 indicated that an economic impact should be considered significant if it meets one of the following criteria:

(1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers;

(2) Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

(3) Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities, or

(4) Regulatory requirements are likely to result in closure of small entities.

Data were not readily available to determine if criteria (1) and (3) were met or not, so the analysis focused on the other two. Results from the economic impact analysis indicate that potential closures range from none to a maximum of seven. The closures would occur in refineries that process less than 10,000 to 20,000 barrels of crude oil per day (refer to the "Economic Impact Analysis of the Regulatory Alternatives for the Petroleum Refineries NESHAP" in the Docket). While this percentage of net closures is less than 20 percent of the total number of small refineries (90), it was deemed high enough for carrying out a Regulatory Flexibility Analysis on that basis alone. Criterion (2), however, was satisfied. The compliance costs to sales ratio for the small refiners was more than 10 percent greater than the same ratio calculated for all other refiners.

There are three reasons why small entities are disproportionately affected by the regulation. The first is the fact that they tend to own smaller facilities, and therefore have smaller economies of scale. Because of the smaller economies of scale, per-unit costs of production and compliance are higher for the small refiners compared to others. Related to this is the fact that small refiners have less ability to produce differentiated products. This ability, called complexity, increases with increasing refinery capacity. A large refinery can respond to a relative increase in production costs for one product by increasing production of a product now relatively cheaper to produce, an ability most small refiners rarely enjoy.

A second reason is they have fewer capital resources. Small refineries have less ability to finance the capital expenditures needed to purchase the equipment required to comply with the regulation. The third is the difference in internal structure. None of the small refiners are vertically or horizontally integrated, and in all but a few cases are not the subsidiary of a large parent company. The small refiners are typically independent owners and operators of their facilities, and most are owners of a single refinery. They do not possess the ability to shift production between different refineries and have less market power than their large competitors.

Another reason why smaller refiners experience greater economic impacts than other refiners is due to the small industry-level price increases (less than 1 percent in all cases). It is unlikely that small refiners will be able to recover annualized control costs by increasing product prices, since the large refiners will not be significantly impacted. As seen in the examination of criterion (2), the large refiners will not be significantly affected from compliance with the regulation.

In calculating the number of closures, the assumption was made that those refineries with the highest per-unit control costs were marginal after compliance with the regulation. While this assumption is often useful in closure analysis, it is not always true. The assumption is consistent with perfect competition theory that presumes all firms are price-takers. If a refiner does have some monopoly power in a particular market, then it is possible the refiners could continue to operate for some period while complying with the regulation. It is a conservative assumption that likely biases the results to overstate the number of refinery closures and other impacts of the proposed regulation.

To mitigate these economic impacts on small refiners, the Agency is considering whether to subcategorize and develop separate MACT floors. As stated in section VI.A.1.e, comments are requested on whether a basis exists for subcategorizing small refineries, and if so, at what size, along with supporting data and rationale. In addition, the EPA would like to better understand the impact of the proposed rule on small refineries. To assist the EPA in assessing the impact of the proposed rule on small refiners, the Agency requests comment with supporting information on the level of competition between refiners that process less than 10,000 to 20,000 barrels of crude oil per day and the larger refiners. Moreover, there is additional uncertainty in predicting the economic impact since the EPA does not have the information to determine if or how small refineries will actually be affected by the proposed rule. For example, they would not be affected if the HAP emissions are below the 25 ton per year cutoff specified in the statute or they are processing crude oils or producing products whose vapor pressures and HAP contents are below the applicability levels specified in the rule. The EPA seeks comment and better information on these very small refineries as follows:

(1) Are refineries that process less than 10,000 to 20,000 barrels per day of crude oil "major sources" as defined in section 112 of the Act?

(2) Are the HAP contents of the process vents below the 20 ppmv applicability level?

(3) Are the HAP contents of the petroleum liquids in the processing lines below the 5 percent (by weight) applicability level in the equipment leak provisions?

(4) Are the true vapor pressures of the petroleum liquids in the storage vessels below the 1.2 psia applicability level?

Supporting data should be included with the responses to these questions.

D. Review

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health and environmental risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Intergovernmental relations, Natural gas, Volatile organic compounds.

40 CFR Part 63

Air pollution control, Hazardous substances, Incorporation by reference, Petroleum refineries, Reporting and recordkeeping requirements.

Dated: June 30, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–17130 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 94–59; FCC 94–171]

Automatic Control on High Frequency Amateur Service Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to authorize the use of automatic control for amateur stations transmitting a digital emission on the High Frequency (HF) amateur service bands. The proposed rules are necessary so that amateur operators can engage in automated digital communications on the HF bands based upon the packet radio protocol used generally by amateur stations on other amateur service bands. This proposal would give better service to members of the amateur community because it would allow them to use automatic control on additional amateur service frequencies, and to take advantage of the propagation characteristics of the HF bands to communicate with other amateur stations, particularly with those in other countries.

DATES: Comments are due on or before October 1, 1994. Reply comments are due on or before November 1, 1994.

ADDRESSES: Federal Communications, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

data, and the recordkeeping and reporting requirements.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Intergovernmental relations, Natural gas, Volatile organic compounds.

40 CFR Part 63

Air pollution control, Hazardous substances, Incorporation by reference, Petroleum refineries, Reporting and recordkeeping requirements.

Dated: June 30, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–17130 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 94–59; FCC 94–171]

Automatic Control on High Frequency Amateur Service Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to authorize the use of automatic control for amateur stations transmitting a digital emission on the High Frequency (HF) amateur service bands. The proposed rules are necessary so that amateur operators can engage in automated digital communications on the HF bands based upon the packet radio protocol used generally by amateur stations on other amateur service bands. This proposal would give better service to members of the amateur community because it would allow them to use automatic control on additional amateur service frequencies, and to take advantage of the propagation characteristics of the HF bands to communicate with other amateur stations, particularly with those in other countries.

DATES: Comments are due on or before October 1, 1994. Reply comments are due on or before November 1, 1994.

ADDRESSES: Federal Communications, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, adopted June 13, 1994, and released June 23, 1994. The complete text of this Commission action, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230), 1919 M Street NW., Washington, DC. The complete text of this *Notice of Proposed Rulemaking*, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.), 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. The variables affecting communications in the HF bands are highly complex. Establishing and maintaining a HF communications link, therefore, presents operating demands not encountered on the Very-High Frequency (VHF) and higher frequency bands above 30 MHz. To maintain the communications link and avoid causing interference to the communications of other amateur stations, the control operator constantly monitors the activity on the channel being used and adjusts the station's transmitting parameters as needed. Because the presence of the control operator has been imperative for proper operation on the HF bands, automatic control of an amateur station that is transmitting on these bands has not been authorized.

2. In 1986, the Commission indicated an interest in authorizing automatic control of amateur stations transmitting digital communications in the HF band. In this regard, the Commission noted that a feasibility study planned by The American Radio Relay League, Inc. (ARRL) would be helpful in determining if any rule changes were necessary to prevent interference to and from other amateur service communication.

3. The proposed rules allow an amateur service licensee to use automatic control of amateur stations in the HF bands, with the safeguards recommended by the petitioners. This proposal would make the transmission of data and RTTY emission types practical and effective.

4. It also proposed to authorize automatic control for stations transmitting data and RTTY emission-types on specific subbands, and it proposed to authorize communications between a locally or remotely controlled station and an automatically controlled station on any frequency where data and RTTY emission types are otherwise authorized.

5. These proposed rules are intended to facilitate the development of digital communications on the HF amateur service bands. Comments are invited on the entire proposal.

6. The proposed rules are set forth at the end of this document.

7. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as specified in the Commission's Rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

8. In accordance with Section 605(b) of the Regulatory Flexibility Act of 1980, 5 USC § 605(b), the Commission certifies that the proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small business entities because the amateur stations that are the subject of this proceeding would not be authorized to transmit any communications where the station licensee or control operator has a pecuniary interest. *See* § 97.113(a)(3).

9. This *Notice of Proposed Rule Making* and the proposed rule amendments are issued under the authority of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 USC §§ 154(i) and 303(r).

10. A copy of this *Notice of Proposed Rule Making* will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Automatic control, Radio.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Proposed Rules

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.109 is amended by revising paragraphs (d) and (e) to read as follows:

§ 97.109 Station control.

* * * * *

(d) When a station is being automatically controlled, the control

operator need not be at the control point. Only stations specifically designated elsewhere in this Part may be automatically controlled. Automatic control must cease upon notification by an EIC that the station is transmitting improperly or causing harmful interference to other stations. Automatic control must not be resumed without prior approval of the EIC.

(e) No station may be automatically controlled while transmitting third party communications, except a station transmitting a RTTY or data emission. All messages that are retransmitted must originate at a station that is being locally or remotely controlled.

3. New § 97.221 is added to read as follows:

§ 97.221 Automatically controlled digital station.

(a) This rule section does not apply to an auxiliary station, a beacon station, a repeater station, an earth station, a space station, or space telecommand station.

(b) A station may be automatically controlled while transmitting RTTY or data emissions on the 6 m or shorter wavelength bands, and on the 28.120–18.189 MHz, 24.925–24.930 MHz, 21.090–100 MHz, 18.105–18.110 MHz, 14.0950–14.0995 MHz, 14.1005–14–112 MHz, 10.140–10.150 MHz, 7.100–7.105 MHz, or 3.620–3.635 MHz segments.

(c) A station may be automatically controlled while transmitting A RTTY or data emission on any other frequency authorized for such emission types provided that:

(1) The station is responding to interrogation by a station under local or remote control; and

(2) No transmission from the automatically controlled station occupies a bandwidth of more than 500 Hz.

[FR Doc. 94–16882 Filed 7–14–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 921232–2332; I.D. 092192B]

Threatened Fish and Wildlife; Listing of the Gulf of Maine Population of Harbor Porpoise as Threatened under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: NMFS is reopening the comment period on the proposed rule to list Gulf of Maine (GME) harbor porpoise to allow public comment on the population status of harbor porpoise following the receipt of new data and information on the 1990–93 bycatch rates.

DATES: Comments must be received by August 11, 1994.

ADDRESSES: Comments should be addressed to Director, Office of Protected Resources, 1335 East-West Highway, Room 8268, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne or Margot Bohan, 301/713–2322.

SUPPLEMENTARY INFORMATION: On January 7, 1993, NMFS proposed to designate the GME population of harbor porpoise as threatened under the Endangered Species Act (ESA). The final determination on the proposed rule to list harbor porpoise was extended at 58 FR 59230 on November 8, 1993, to allow for analysis of the 1993 bycatch data prior to final determination. At that time, NMFS also stated that it would reopen the comment period following completion of these analyses. Therefore, NMFS announces that it is reopening the comment period on the proposed rule to allow for public review and comment on the 1993 bycatch estimates, as well as on the 1990–92 estimates that were adjusted following comments received at a February 1994 workshop on the status of harbor porpoise in the GME.

The final 1990–93 bycatch estimates consider those harbor porpoise that are taken in the gillnets, but fall out of the net as the nets are being hauled back onto the vessel, and as a result have not been included in bycatch estimates to date. This has resulted in an increase in previously released bycatch estimates for 1990, 1991, and 1992 by 21 percent, 20 percent, and 33 percent, respectively. These bycatch estimates and proceedings from the 1994 harbor porpoise workshop are available upon request (see **ADDRESSES**).

Dated: July 11, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–17180 Filed 7–12–94; 10:59 am]

BILLING CODE 3510–22–F

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 11, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

- Economic Research Service
Survey of State Farm Credit Programs
Annually
State or local governments; 103 responses; 47 hours
Patrick J. Sullivan, (202) 219–0719

- Farmers Home Administration
7 CFR 1956–B, Debt Settlement—Farmer Programs and Housing
FmHA 1956–1
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Small businesses or

Notices

Federal Register
Vol. 59, No. 135
Friday, July 15, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 11, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

• Economic Research Service
Survey of State Farm Credit Programs
Annually
State or local governments; 103 responses; 47 hours
Patrick J. Sullivan, (202) 219–0719

• Farmers Home Administration
7 CFR 1956–B, Debt Settlement—Farmer Programs and Housing
FmHA 1956–1
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 29,900 responses; 14,825 hours
Jack Holston, (202) 720–9736

• National Agricultural Statistics Service
Supplemental Qualification Statement
On occasion
Individuals or households; 180 responses; 540 hours
Larry Gambrell, (202) 720–5778

• Agricultural Marketing Service
Winter Pears Grown in Oregon, Washington, and California—Marketing Order No. 927
FV–118, FV–119, FV–120
Recordkeeping; On occasion; Biennially
Farms; Businesses or other for profit; 5,556 responses; 3,595 hours
Teresa L. Hutchinson, (503) 326–2724

• National Agricultural Statistics Service
Honey Survey
Annually
Farms; 9,000 responses; 1,500 hours
Larry Gambrell, (202) 720–5778

Revision

• Farmers Home Administration
7 CFR 1942–K, Emergency Community Water Assistance Grants
FmHA 1942–31
On occasion
State or local governments; Non-profit institutions; Small busiensses or organizations; 1,050 responses; 1,200 hours
Jack Holston, (202) 720–9736

• Rural Development Administration
Annual Survey of Farmer Cooperatives and Questionnaire to Identify Farmer Cooperatives
ACS–13, 14–A, S, C, D, E, H
On occasion; Annually
Businesses or other for-profit; Small businesses or organizations; 2,510 responses; 1,185 hours
Jack Holston, (202) 720–9736

• Agricultural Marketing Service
Olives Grown in California, Marketing Order No. 932
Recordkeeping; On occasion; Monthly
Farms; Businesses or other for-profit; Small businesses or organizations; 16,998 responses; 4,742 hours
Carolyn Thorpe, (202) 720–8139

Reinstatement

• Food and Nutrition Service
Target for Income and Eligibility Verification System
Recordkeeping; Annually
Individuals or households; State or local governments; 53 responses; 786,537 hours
Ed Speshock, (703) 305–2383

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 94–17158 Filed 7–14–94; 8:45 am]
BILLING CODE 3410–M

Animal and Plant Health Inspection Service

[Docket No. 94–066–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant

Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation of interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94–161–01	Du Pont Agricultural Products.	6–10–94	Canola plants genetically engineered to express altered genes affecting seed fatty acid composition.	Arizona.
94–166–01	Mycogen Corporation	6–15–94	Alfalfa plants genetically engineered to express a gene from *Bacillus thuringiensis* (Bt) for resistance to coleopteran insects.	California, Idaho, Wisconsin.
94–167–01, renewal of permit 92–037–07, issued on 05–18–92.	Upjohn Company	6–16–94	Melon plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Arizona, California.
94–168–01	Calgene, Incorporated	6–17–94	Canola plants genetically engineered to express oil modification genes.	Arizona, Florida.

Done in Washington, DC, this 11th day of July 1994.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17248 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–34–P

Soil Conservation Service

Pecos River Native Riparian Restoration Project, Eddy County, NM

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and the Soil Conservation Service Rules (7 CFR Part 650), the Soil Conservation Service, U.S. Department Of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pecos River Native Riparian Restoration Project, Eddy County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Thomas A. Weber, State Conservationist, Soil Conservation Service, 517 Gold Avenue SW., room 3301, Albuquerque, NM 87102–3157. Telephone (505) 766–3277.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Thomas A. Weber, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is to demonstrate effective, economical, and environmentally sound management of saltcedar invaded land in the project area. The action includes a combination of herbicide, mechanical, and vegetative management of saltcedar stands within the project area that will protect soil, water, air, plant, animal, cultural, and human resource and will correct resource problems associated with the invasion of saltcedar.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment has had a 45-day review by concerned Federal, State, and local agencies and interested parties. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Thomas A. Weber.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: July 7, 1994.

Thomas A. Weber.

State Conservationist.

[FR Doc. 94–17181 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Initiation of Antidumping Duty Administrative Reviews and Requests for Revocation in Part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping duty orders and findings with June anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews. The Department also received requests to revoke in part two antidumping duty orders.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with 19 CFR 353.22(a)(1993), for administrative reviews of various antidumping duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on polyethylene terephthalate film from the Republic of Korea and Japan.

Ant
Brazil:
Frozen Concentrated Orange Juice, A–351–605
Citrovita Industrial S.A.[1]
Certain Malleable Cast Iron Pipe Fittings,[1] A–35
Fundicao Tupy, S.A.
Canada:
Oil Country Tubular Goods, A–122–506
IPSCO, Inc
Colombia:
Certain Fresh Cut Flowers, A–301–602
Flores Santana[1]
France:
Large Power Transformers, A–427–030
Jeumont Schneider Transformateurs
Germany:
High-Tenacity Rayon Filament Yarn, A–428–810
Akzo Faser AG
Italy:
Large Power Transformers, A–475–031
Tamini Costruzioni Elettromeccaniche
Japan:
Antifriction Bearings (Other than Tapered Roller
Nihon K.J., K.K.[1]
Certain Forklift Trucks, A–588–703
Nissan Motor Company, Toyota Motor Corpora
Fishnetting of Man-Made Fibers, A–588–029
Yamaji Fishing Net Co., Ltd
Industrial Belts, A–588–807
Mitsuboshi Belting, Ltd. Nakamichi Corporation
Large Power Transformers, A–588–032
Fuji Electric Co., Ltd
Polyethylene Terephthalate Film, Sheet and Strip
Nippon Magphane Co., Ltd., Teijin, Ltd., Toray
Roller Chain, Other than Bicycle,[2] A–588–028
Daido Kogyo, Enuma Chain, Hitachi Metals
New Zealand:
Fresh Kiwifruit, A–614–801
New Zealand Kiwifruit Marketing Board
Taiwan:
Certain Stainless Steel Butt-Weld Pipe Fittings, A
Ta Chen
The People's Republic of China:
Axes/Adzes; Bars/Wedges; Hammers/Sledges; P
Fujian Machinery & Equipment Import & Expo
tion (SMC)
All other export
Sparklers, A–570–804
Guangxi Native Produce Import and Export Co
All other expor
Romania:
Tapered Roller Bearings and Parts Thereof, Finis
Technoimportexport
All other exp
The Republic of Korea:
Polyethylene Terephthalate Film, Sheet and Strip
Cheil Synthetics, Inc., Kolon Industries, Inc., SK

[1] Inadvertently omitted from previous initiation noti
[2] This is a correction to 59 FR 24683, published M
[3] This is a correction to the amendment for 59 FI
should have read as follows: This is an amendmen
hammers/sledges, and picks/mattocks from the Peo

received timely requests to revoke in part the antidumping duty orders on polyethylene terephthalate film from the Republic of Korea and Japan.

Initiation of Reviews

In accordance with section 19 CFR 353.22(c), we are initiating administrative reviews of the following antidumping duty orders and findings. We intend to issue the final results of these reviews not later than June 30. 1995.

Antidumping duty proceedings	Period to be reviewed
Brazil:	
Frozen Concentrated Orange Juice, A–351–605	
Citrovita Industrial S.A.[1]	05/01/93–04/30/94
Certain Malleable Cast Iron Pipe Fittings,[1] A–351–505	
Fundicao Tupy, S.A.	05/01/93–04/30/94
Canada:	
Oil Country Tubular Goods, A–122–506	
IPSCO, Inc	06/01/93–05/31/94
Colombia:	
Certain Fresh Cut Flowers, A–301–602	
Flores Santana[1]	03/01/93–02/28/94
France:	
Large Power Transformers, A–427–030	
Jeumont Schneider Transformateurs	06/01/93–05/31/94
Germany:	
High-Tenacity Rayon Filament Yarn, A–428–810	
Akzo Faser AG	06/01/93–05/31/94
Italy:	
Large Power Transformers, A–475–031	
Tamini Costruzioni Elettromeccaniche	06/01/93–05/31/94
Japan:	
Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, A–588–804	
Nihon K.J., K.K.[1]	05/01/93–04/30/94
Certain Forklift Trucks, A–588–703	
Nissan Motor Company, Toyota Motor Corporation, Toyo Umpanki Company, Ltd	06/01/93–05/31/94
Fishnetting of Man-Made Fibers, A–588–029	
Yamaji Fishing Net Co., Ltd	06/01/93–05/31/94
Industrial Belts, A–588–807	
Mitsuboshi Belting, Ltd. Nakamichi Corporation	06/01/93–05/31/94
Large Power Transformers, A–588–032	
Fuji Electric Co., Ltd	06/01/93–05/31/94
Polyethylene Terephthalate Film, Sheet and Strip, A–588–814	
Nippon Magphane Co., Ltd., Teijin, Ltd., Toray Industries, Inc	06/01/93–05/31/94
Roller Chain, Other than Bicycle,[2] A–588–028	
Daido Kogyo, Enuma Chain, Hitachi Metals	04/01/93–03/31/94
New Zealand:	
Fresh Kiwifruit, A–614–801	
New Zealand Kiwifruit Marketing Board	06/01/93–05/31/94
Taiwan:	
Certain Stainless Steel Butt-Weld Pipe Fittings, A–583–816	
Ta Chen	12/23/92–05/31/94
The People's Republic of China:	
Axes/Adzes; Bars/Wedges; Hammers/Sledges; Picks/Mattocks,[3] A–570–803	
Fujian Machinery & Equipment Import & Export Corporation (FMEC) Shandong Machinery Import & Export Corporation (SMC)	02/01/93–01/31/94
All other exporters of hand tools are conditionally covered by this review.	
Sparklers, A–570–804	
Guangxi Native Produce Import and Export Company	06/01/93–05/31/94
All other exporters of sparklers are conditionally covered by this review.	
Romania:	
Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, A–485–801	
Technoimportexport	06/01/93–05/31/94
All other exporters of TRBs are conditionally covered by this review.	
The Republic of Korea:	
Polyethylene Terephthalate Film, Sheet and Strip, A–580–814	
Cheil Synthetics, Inc., Kolon Industries, Inc., SKC Limited, STC Corporation	06/01/93–05/31/94

[1] Inadvertently omitted from previous initiation notice.
[2] This is a correction to 59 FR 24683, published May 12, 1994, for roller chain from Japan. The firms initiated should have read as stated here.
[3] This is a correction to the amendment for 59 FR 30770, published June 15, 1994, for hand tools from the PRC. The June 15, 1994, notice should have read as follows: This is an amendment of the March 14, 1994, initiation notice (59 FR 11768) covering axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks from the People's Republic of China.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 353.25(c)(2).

Dated: July 11, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–17279 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On April 13, 1994, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. The review covers one exporter, NAR, and the period October 1, 1992 through September 30, 1993. Since there were no shipments of the subject merchandise during the period of review, we determine that the dumping margin for NAR to be 1.24 percent, the rate NAR received in its most recent review.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or 482–3814, respectively.

Background

On April 13, 1994, the Department of Commerce (the Department) published the preliminary results (59 FR 17513) of its administrative review of the antidumping duty finding on pressure sensitive plastic tape from Italy (42 FR 56110). The Department has now completed this administrative review in accordance with section 751 of the tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of pressure sensitive plastic tape measuring over 1⅜ inches in width and not exceeding 4 miles in thickness, classifiable under item numbers 3919.10.20 and 3919.90.50 of the Harmonized Tariff Schedules (HTS). HTS item numbers are provided for convenience and for Customs purposes. The written descrpitions remain dispositive.

Final Results of Review

The Department received no comments on its preliminary results. Therefore, we have assigned NAR the rate applicable to it from its most recent administrative review as the estimated cash deposit rate. This rate is 1.24 percent.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in any review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise and (4) the "all other" rate for purposes of this review will be 12.66 percent, the "new shipper" rate established in the first notice of final results of administrative review, (48 FR 35686, August 5, 1983) as decided in *Florad Trade Council v. United States*, Slip op. 93–79 and *Federal-Mogal Corporation and the Torrington Company V. United States*, Slip Op. 93–83.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevent entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumpong duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a remainder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversation to judicial protection order is hereby requested. Failure to comply with regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 9, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–17278 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–DS–M

Exemption of Foreign Air Carriers From Customs Duties and Taxes; Request for Finding of Reciprocity (Abu Dhabi, Bahrain, Oman, and Qatar)

Notice is hereby given that the Department of Commerce is undertaking to determine, pursuant to sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), whether the Governments of Abu Dhabi, Bahrain, Oman, and Qatar, allow customs duties exemptions to aircraft of U.S. registry in connection with international commercial operations substantially reciprocal to those exemptions granted in the United States to aircraft of foreign registry. The basis of this undertaking is the request of the Government of Bahrain on behalf of Gulf Air Company, G.S.C., for a finding of such reciprocity effective June 1, 1994.

The Tariff Act of 1930, as amended, provides exemptions for aircraft of foreign registry from payment of import duties on the import of supplies into the United States for such aircraft in connection with their international commercial operations. "Supplies" as used in this context cover a wide range of articles used by aircraft in international operations, including fuel and lubricants, spare parts, consumable supplies, and ground handling and support equipment. These exemptions are allowed upon a finding by the Secretary of Commerce, or his designee, and communicated to the Secretary of the Treasury, that such country allows, or will allow, "substantially reciprocal privileges" to aircraft of U.S. registry with respect to import of supplies into that country.

Interested parties are invited to submit their views and comments concerning this matter in writing to Mr. Jude Kearney, Deputy Assistant Secretary for Service Industries and Finance, Room 1128, U.S. Department of Commerce, Washington, DC 20230. All submissions should be made in five copies and should be received no later than thirty (30) days following the publication of this notice.

Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday in the Freedom on Information Records Inspection Facility, International Trade Administration, Room 4102, U.S. Department of Commerce, Washington, DC

FOR FURTHER INFORMATION CONTACT: Eugene Alford, Office of Service Industries, International Trade Administration, Room 1112, U.S. Department of Commerce, Washington, DC 20230, or telephone (202) 482–5071.

Dated: July 11, 1994.

Jude Kearney,

Deputy Assistant Secretary for Service Industries and Finance.

[FR Doc. 94–17154 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–DR–M

United States-Canada Free-Trade Agreement, Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On June 14, 1994 the binational Panel issued its decision in the review of the final determination made by the Deputy Minister of National Revenue (Customs, Excise and Taxation) respecting Certain Cold-Rolled Steel Sheet Originating in or Exported from the United States of America. The Binational Secretariat assigned Secretariat File No. CDA–93–1904–08 to this matter.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061; 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final

with respect to import of supplies into that country.

Interested parties are invited to submit their views and comments concerning this matter in writing to Mr. Jude Kearney, Deputy Assistant Secretary for Service Industries and Finance, Room 1128, U.S. Department of Commerce, Washington, DC 20230. All submissions should be made in five copies and should be received no later than thirty (30) days following the publication of this notice.

Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday in the Freedom on Information Records Inspection Facility, International Trade Administration, Room 4102, U.S. Department of Commerce, Washington, DC

FOR FURTHER INFORMATION CONTACT: Eugene Alford, Office of Service Industries, International Trade Administration, Room 1112, U.S. Department of Commerce, Washington, DC 20230, or telephone (202) 482–5071.

Dated: July 11, 1994.

Jude Kearney,

Deputy Assistant Secretary for Service Industries and Finance.

[FR Doc. 94–17154 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–DR–M

United States-Canada Free-Trade Agreement, Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On June 14, 1994 the binational Panel issued its decision in the review of the final determination made by the Deputy Minister of National Revenue (Customs, Excise and Taxation) respecting Certain Cold-Rolled Steel Sheet Originating in or Exported from the United States of America. The Binational Secretariat assigned Secretariat File No. CDA–93–1904–08 to this matter.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061; 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The Rules were further amended and published in the **Federal Register** on February 8, 1994 (59 FR 5892). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Background

In the June 14, 1994 decision, the binational panel affirmed in part and remanded in part the investigating authorities' final determination. The binational panel instructed the investigating authority to provide its Determination on Remand within 90 days of the panel decision (by September 12, 1994).

Dated: July 8, 1994.

Caratina L. Alston,

Deputy U.S. Secretary, NAFTA Secretariat.

[FR Doc. 94–17277 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final determination made by the Canadian International Trade Tribunal respecting Certain Flat Hot-Rolled Carbon Steel Sheet Products Originating in or Exported from the United States of America is completed. (Secretariat File No. CDA–93–1904–07)

SUMMARY: This notice is effective June 30, 1994, the 31st day following the date on which the responsible Secretary issued the Notice of Final Panel Action

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th Street and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended and published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The Rules were further amended and published in the **Federal Register** on February 8, 1994 (59 FR 5892). The panel review in this matter was conducted in accordance with these Rules, as amended.

Background

On May 18, 1994, the binational panel affirmed the investigating authority's determination respecting Certain Flat Hot-Rolled Carbon Steel Sheet Products Originating in or Exported from the United States of America. No Request for an Extraordinary Challenge Committee has been filed with the responsible Secretary. Therefore, pursuant to subrule 80(b) of the *Article 1904 Panel Rules*, this Notice of Completion is effective on June 30, 1994, the 31st day following the date on which the responsible Secretary issued the Notice of Final Panel Action.

Dated: July 8, 1994.
Caratina L. Alston,
Deputy U.S. Secretary, NAFTA Secretariat.
[FR Doc. 94–17276 Filed 7–14–94; 8:45 am]
BILLING CODE 3510–GT–M

Minority Business Development Agency

Business Development Center Applications: Indianapolis, Indiana MSA (Service Area)

AGENCY: Minority Business Development Agency, Commerce.
ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from January 1, 1995 to December 31, 1995 is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Indianapolis, Indiana geographic service area. The award number of this MBDC will be 05–10–95001–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDC funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDC. Final award selections shall be based on the number of points received, the demonstrated responsibility of the application, and the determination of those most likely to further the purpose of the MBDC program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an applicant not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDC based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is August 31, 1994. Applications must be postmarked on or before August 31, 1994.

ADDRESSES: Chicago Regional Office, 55 E. Monroe Street, Suite 1406, Chicago, Illinois 60603, (312) 353–0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office, telephone (312) 353–0182.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-bid conference will be held on August 2, 1994, at 10 a.m. at the Federal Building, 575 North Pennsylvania Street, Conference Room 284, Indianapolis, Indiana. Questions concerning the preceding information can be answered by the contact person in Chicago indicated above, and copies of application kits and applicable regulations can be obtained at the above Chicago Regional Office address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award cost. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which may cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporitng inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products—Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products—Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: July 11, 1994.

David Vega,

Regional Director, Chicago Regional Office

[FR Doc. 94–17192 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Houston MBDC I.D. No. 06–10–95001–01

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from *January 1, 1995* to *December 31, 1995* is estimated at *$499,839*. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the *Houston, Texas* geographic service area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDC shall be required to contribute at least 15% of the total project costs through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is August 27, 1994.

Applications must be postmarked on or before August 27, 1994.

ADDRESSES: Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Bobby Jefferson, Acting Regional Director, Dallas Regional office, telephone (214) 767–8001.

A pre-bid conference will be held on August 9, 1994, in the Earl Cabell Federal Building, Room 7B23, 1100 Commerce Street, Dallas, Texas at 10:00 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions

concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the obligation on the part of the Department of Commerce to cover pre-award costs. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, prejury or other matters which significantly reflect on the applicant's management honesty or financial intergrity.

Award Termination—The Departmental Grants Office may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products—Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103–121, Sections 606. (a) and (b).

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: July 11, 1994.

Bobby Jefferson,

Acting Regional Director, Dallas Regional Office.

[FR Doc. 94–17189 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 070794A]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold meetings on July 27–28, 1994, in the Iris Room of the Pagoda Hotel, 1525 Rycroft Street, Honolulu, HI; telephone: (808) 941–6611. The meetings will begin at 8:30 a.m. and end at 5:00 p.m. each day.

The SSC will discuss, and may make recommendations to the Council regarding the following topics:

(1) Pelagic Fisheries Research Program, including fishing industry and vessel economics projects;

(2) Regional plan for cultural, social, and economic research;

(3) Draft regulations for Hawaii humpback whale national marine sanctuary;

(4) Research results on Northwestern Hawaiian Islands bottomfish fisheries;

(5) 1993 annual reports and recommendations for bottomfish and pelagics;

(6) NMFS biological opinion regarding turtles and longlines;

(7) SSC mission and charge; and

(8) Other business as required.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, telephone (voice only) (808) 522–8220, at least 10 days prior to the meeting date.

Dated: July 8, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17261 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070794B]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Vessel Monitoring System (VMS) Committee will hold a meeting on July 29, 1994, at the Pacific Ocean Producers conference room, 965–B North Nimitz Highway, Honolulu, HI; telephone: (808) 537–2905. The meeting will begin at 1:30 p.m. and will end at 3:30 p.m.

The Committee will review, and may make recommendations to the Council regarding implementation of the Hawaii longline VMS program, including:

(a) Proposed regulations,

(b) Software and hardware development,

(c) Equipment procurement,

(d) Vendor certification and training,

(e) Installation timetable,

(f) Unresolved operational details such as signal masking, and

(g) Other topics as necessary.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522–8220.

Dated: July 11, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 94–17262 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070794C]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) and its

Dated: July 8, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17261 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070794B]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Vessel Monitoring System (VMS) Committee will hold a meeting on July 29, 1994, at the Pacific Ocean Producers conference room, 965–B North Nimitz Highway, Honolulu, HI; telephone: (808) 537–2905. The meeting will begin at 1:30 p.m. and will end at 3:30 p.m.

The Committee will review, and may make recommendations to the Council regarding implementation of the Hawaii longline VMS program, including:

(a) Proposed regulations,

(b) Software and hardware development,

(c) Equipment procurement,

(d) Vendor certification and training,

(e) Installation timetable,

(f) Unresolved operational details such as signal masking, and

(g) Other topics as necessary.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522–8220.

Dated: July 11, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 94–17262 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070794C]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) and its standing committees will hold meetings on August 3–5, 1994, at the Royal Kona Resort, 75–5852 Alii Drive, Kailua-Kona, HI; telephone: (800) 774–5662. The meetings will begin at 9:00 a.m. and end at 5:00 p.m. each day. Standing Committees will meet in the Resolution Room on August 3, and the full Council will meet in the Alii Surf Room on August 4–5.

The Council will discuss, and may take action on, the following topics:

(1) Activities of scientific, management, and enforcement agencies;

(2) NMFS biological opinion regarding turtles and longlines;

(3) Draft regulations for Hawaii humpback whale national marine sanctuary;

(4) Pelagic fisheries research and management, including NMFS longline observer program; Council request for designation as the lead Council for management of Pacific pelagic species, Hawaii fishing industry and vessel economics project, economic characteristics of the Hawaii charterboat fishery; 1993 annual report and recommendations;

(5) Bottomfish fishery research and management, including Northwestern Hawaiian Islands (NWHI) catch reporting system, State of Hawaii management of Main Hawaiian Islands bottomfish, 1993 annual report and recommendations;

(6) Crustacean fishery research and management, including status of stocks, fishery prospects and quota for the 1994 NWHI lobster season;

(7) Native fishing rights;

(8) Joint Interior-Commerce working group to review Federal fishery policy in the Pacific;

(9) Federal definition of recreational/commercial fishermen;

(10) Magnuson Act reauthorization;

(11) Western Pacific Fisheries Information Network funding;

(12) Possible changes to Statement of Organization, Practices, and Procedures related to conflict of interest;

(13) Administrative matters; and

(14) Other business as required.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, telephone (voice only) (808) 522–8220, at least 10 days prior to the meeting date.

Dated: July 8, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17203 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070894A]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Regional Fishery Management Council's *ad hoc* working group to review Federal fisheries policy in the Pacific, as it affects U.S. insular areas, will hold a meeting on July 28–29, 1994, in the Lieutenant Governor's Conference Room of the Leiopapa A. Kamehameha Building (State Office Tower, Room 1402), 235 South Beretania Street, Honolulu, HI; telephone: (808) 522–8220. The meeting will begin at 9:00 a.m. and end at 5:00 p.m. each day.

The working group will discuss and may make recommendations regarding the following topics:

(a) Magnuson Act reauthorization, including domestic and foreign fishing fees, indigenous fishing rights, cooperative enforcement, and islands' abilities to take a greater role in the regional negotiations and management of their respective Exclusive Economic Zones;

(b) Nicholson Act exemptions;

(c) Island authority over non-living resources;

(d) Marine Research;

(e) NMFS funding;

(f) Competitive fisheries trade issues;

(g) American Samoa tuna cannery tax payments;

(h) Histamine testing of tuna shipments;

(i) Aquaculture development; and

(j) Other business as required.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, telephone (voice only) (808) 522–8220, at least 10 days prior to the meeting date.

Dated: July 11, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17264 Filed 7–14–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 15, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Marker, Tube Type
7520–01–383–7924
7520–01–383–7929
NPA: Dallas Lighthouse for the Blind, Inc. Dallas, Texas.

Printing and Binding "En Garde" Newsletter
7690–00–NSH–0079
(Requirements for the Government Printing Office, New York, NY)
NPA: Consolidated Industries of Greater Syracuse, Inc. Syracuse, New York.

Services

Grounds Maintenance, Vandenberg Air Force Base, California
NPA: Santa Maria Association for the Retarded, Santa Maria, California.

Janitorial/Custodial, John F. Shea Federal Building, 777 Sonoma Avenue, Santa Rosa, California
NPA: Goodwill Industries of the Redwood Empire, Santa Rosa, California.

Janitorial/Custodial, U.S. Post Office, Courthouse and Customs House, 301 Simonton Street, Key West, Florida
NPA: Brevard County Community Achievement Center, Inc., Rockledge, Florida.

Janitorial/Custodial, Federal Law Enforcement Training Center, Building 252 and Outdoor Ranges, Glynco, Georgia
NPA: Goodwill Industries of the Coastal Empire, Inc., Savannah, Georgia.

Janitorial/Custodial, Landrum Federal Building and U.S. Post Office, Jasper, Georgia
NPA: Burnt Mountain Center, Jasper, Georgia.

Janitorial/Custodial, U.S. Customhouse, Savannah, Georgia
NPA: Goodwill Industries of the Coastal Empire, Inc., Savannah, Georgia.

Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, Valdosta, Georgia
NPA: Goodwill Industries of South Georgia, Albany, Georgia.

Janitorial/Custodial, Red Rock Canyon Visitor Center, Red Rock National Conservation Area, Las Vegas, Nevada
NPA: Opportunity Village Association for Retarded Citizens, Las Vegas, Nevada.

Janitorial/Custodial, Federal Complex, Raleigh, North Carolina
NPA: Goodwill Industries of East Central North Carolina, Durham, North Carolina.

Janitorial/Custodial, Charles E. Kelly Support Facility, Oakdale, Pennsylvania
NPA: Hancock County Sheltered Workshop, Weirton, West Virginia.

Janitorial/Custodial, Davis Federal Building, Memphis, Tennessee
NPA: Lakeview Center, Inc., Pensacola, Florida.

Janitorial/Minor Maintenance, Lennon Federal Building and U.S. Courthouse, Wilmington, North Carolina
NPA: New Hanover Workshop, Wilmington, North Carolina.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–17280 Filed 7–14–94; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 15, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agency listed:

Transparency Film, Xerographic
7530–00–NIB–0099 (8½" x 11" Clear)
7530–00–NIB–0100 (8½" x 11" Red, Blue, Green, Yellow)
7530–00–NIB–0101 (8½" x 11" Clear w/ strip)
NPA: Industries of the Blind, Inc., Greensboro, North Carolina.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–17281 Filed 7–14–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 15, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 15 and May 27, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 F.R. 18104 and 27538) of proposed additions to the Procurement List.

substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agency listed:

Transparency Film, Xerographic
7530–00–NIB–0099 (8½" x 11" Clear)
7530–00–NIB–0100 (8½" x 11" Red, Blue, Green, Yellow)
7530–00–NIB–0101 (8½" x 11" Clear w/ strip)

NPA: Industries of the Blind, Inc., Greensboro, North Carolina.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–17281 Filed 7–14–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 15, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 15 and May 27, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 F.R. 18104 and 27538) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Adhesive Tape, Surgical
6510–01–370–4099
6510–00–926–8882 (Requirements for the VA only)
6510–00–926–8883 (Requirements for the VA only)
6510–01–370–4100
6510–01–368–2659
6510–01–368–2660
6510–01–285–3896
6510–01–284–5110
6510–01–107–0223
6510–01–060–1639

Services

Food Service Attendant, Arizona National Guard, Tucson Air National Guard Base, Tucson, Arizona
Janitorial/Custodial, Hazard Park U.S. Army Reserve Center, Los Angeles, California

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–17282 Filed 7–14–94; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115; FAR Case 91–20]

Clearance Request for Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0115).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notification of Ownership Changes.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. The Government often does not receive adequate and timely notice of this event.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated at 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *100*; responses per respondent, *1*; total annual responses, *100*; preparation hours per response, *1*; and total response burden hours, *100*.

Send comments regarding this burden estimate or any other aspect of this

collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *100*; hours per recordkeeper, *.25*; and total recordkeeping burden hours, *25*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0115, FAR case 91–20, Notification of Ownership Changes, in all correspondence.

Dated: July 11, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–17227 Filed 7–14–94; 8:45 am]

BILLING CODE 6820–34–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EG94–75–000, et al.]

Entergy Power Development Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 11, 1994.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Development Corporation

[Docket No. EG94–75–000]

On July 6, 1994, Entergy Power Development Corporation ("Applicant"), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Delaware corporation, is wholly-owned by Entergy Corporation, a registered holding company within the meaning of Section 2(a)(12) of the Public Utility Holding Company Act of 1935. In Richmond Power Enterprises, L.P., et al., 62 FERC ¶ 61,157 (1993), and Entergy Power Development Corp., 67 FERC ¶ 61,344 (1994), the Commission determined that Applicant is an exempt wholesale generator. Applicant now intends to indirectly own or operate, or both own and operate, the generating and transmission facilities currently owned by Empresa de Generacion Electrica de Lima, S.A., a nationally owned Peruvian corporation. These facilities consist of five hydroelectric generating facilities and one thermal generating facility having a combined total installed capacity of 692.6 MW and approximately 576 Km of transmission lines, which operate as radial lines to interconnect and deliver energy from the generating units to the national grid in Peru.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Entergy EDEGEL II, Inc.

[Docket No. EG94–76–000]

On July 6, 1994, Entergy EDEGEL II, Inc. ("Applicant"), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Delaware corporation, is wholly-owned by Entergy Power Development Corporation, a registered holding company within the meaning of Section 2(a)(12) of the Public Utility Holding Company Act of 1935. Applicant intends to indirectly own or operate, or both own and operate, the generating and transmission facilities currently owned by Empresa de Generacion Electrica de Lima, S.A., a nationally owned Peruvian corporation. These facilities consist of five hydroelectric generating facilities and one thermal generating facility having a combined total installed capacity of 692.6 MW and approximately 576 Km of transmission lines, which operate as radial lines to interconnect and deliver energy from the generating units to the national grid in Peru.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Entergy EDEGEL I, Inc.

[Docket No. EG94–77–000]

On July 6, 1994, Entergy EDEGEL I, Inc. ("Applicant"), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Delaware corporation, is wholly-owned by Entergy Power Development Corporation, which in turn is wholly-owned by Entergy Corporation, a registered holding company within the meaning of Section 2(a)(12) of the Public Utility Holding Company Act of 1935. Applicant intends to indirectly own or operate, or both own and operate, the generating and transmission facilities currently owned by Empresa de Generacion Electrica de Lima, S.A., a nationally owned Peruvian corporation. These facilities consist of five hydroelectric generating facilities and one thermal generating facility having a combined total installed capacity of 692.6 MW and approximately 576 Km of transmission lines, which operate as radial lines to interconnect and deliver energy from the generating units to the national grid in Peru.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. EP EDEGEL, Inc.

[Docket No. EG94–78–000]

On July 6, 1994, EP EDEGEL, Inc. ("Applicant"), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant, a Delaware corporation, is owned approximately 72 percent by Entergy Edegel I, Inc. and Entergy Edegel II, Inc., collectively, and approximately 28 percent by PSI Argentina, Inc. Entergy Edegel I, Inc. and Entergy Edegel II, Inc. are both wholly-owned by Entergy Power Development Corporation, which in turn is wholly-owned by Entergy Corporation, a registered holding company within the meaning of Section 2(a)(12) of the Public Utility Holding Company Act of 1935 ("PUHCA"). PSI Argentina, Inc. is owned by PSI Resources, Inc., an exempt public utility holding company under Section 3(a)(1) of PUHCA. Applicant intends to indirectly own or operate, or both own and operate, the generating and transmission facilities currently owned by Empresa de Generacion Electrica de Lima, S.A., a nationally owned Peruvian corporation. These facilities consist of five hydroelectric generating facilities and one thermal generating facility having a combined total installed capacity of 692.6 MW and approximately 576 Km of transmission lines, which operate as radial lines to interconnect and deliver energy from the generating units to the national grid in Peru.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Wartsila Diesel Development Corp., Inc.

[Docket No. EG94–79–000]

On July 6, 1994 Wartsila Diesel Development Corp., Inc. (DDC) (c/o Lee M. Goodwin, Reid & Priest, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application for exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

DDC is a Delaware corporation formed to develop, own, and/or operate eligible facilities. DDC will operate two diesel electric generating facilities in the Dominican Republic and one diesel electric generating facility in Guyana. DDC states that it also may engage in project development activities associated with its development or acquisition of operating or ownership interests in additional as-yet unidentified eligible facilities and/or exempt wholesale generators that meet the criteria in Section 32 of the Public Utility Holding Company Act.

Comment date: August 1, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Intercoast Power Marketing Company

[Docket No. ER94–6–000]

Take notice that on June 22, 1994, Intercoast Power Marketing Company tendered for filing additional information to its October 5, 1993 filing in the above-referenced docket.

Comment date: July 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER94–938–000]

Take notice that on May 27, 1994, Public Service Company of New Mexico tendered for filing an amendment in the above-referenced docket.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

692.6 MW and approximately 576 Km of transmission lines, which operate as radial lines to interconnect and deliver energy from the generating units to the national grid in Peru.

Comment date: July 28, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Wartsila Diesel Development Corp., Inc.

[Docket No. EG94–79–000]

On July 6, 1994 Wartsila Diesel Development Corp., Inc. (DDC) (c/o Lee M. Goodwin, Reid & Priest, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application for exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

DDC is a Delaware corporation formed to develop, own, and/or operate eligible facilities. DDC will operate two diesel electric generating facilities in the Dominican Republic and one diesel electric generating facility in Guyana. DDC states that it also may engage in project development activities associated with its development or acquisition of operating or ownership interests in additional as-yet unidentified eligible facilities and/or exempt wholesale generators that meet the criteria in Section 32 of the Public Utility Holding Company Act.

Comment date: August 1, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Intercoast Power Marketing Company

[Docket No. ER94–6–000]

Take notice that on June 22, 1994, Intercoast Power Marketing Company tendered for filing additional information to its October 5, 1993 filing in the above-referenced docket.

Comment date: July 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER94–938–000]

Take notice that on May 27, 1994, Public Service Company of New Mexico tendered for filing an amendment in the above-referenced docket.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER94–1107–000]

Take notice that on June 20, 1994, Kansas City Power & Light Company tendered for filing an amendment to its March 31, 1994 filing in the above-referenced docket.

Comment date: July 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER94–1127–001]

Take notice that on May 30, 1994, Entergy Services, Inc. (Entergy Services), as agent for Mississippi Power & Light Company (MP&L), tendered for filing a revised Service Schedule LF to the Interconnection Agreement between South Mississippi Electric Power Association (SMEPA) and MP&L, dated July 18, 1979, as amended. Entergy Services requests waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the service to become effective as of June 1, 1994. To the extent necessary, Energy Services also requests waiver of the requirements of § 35.13 of the Commission's regulations.

Comment date: July 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. East Texas Electric Cooperative, Inc.

[Docket No. ES94–30–000]

Take notice that on June 27, 1994, East Texas Electric Cooperative, Inc. filed an application under § 204 of the Federal Power Act seeking authorization to assume liability for a long-term secured loan in the amount of not more than $34,415,231 from the National Rural Utilities Cooperative Finance Corporation.

Comment date: July 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Chambers Cogeneration Limited Partnership

[Docket Nos. QF87–433–002 and EL94–29–000]

On July 8, 1994, Chambers Cogeneration Limited Partnership tendered for filing additional information in support of its request for waiver of the technical standards relating to its cogeneration facility.

Comment date: July 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17231 Filed 7–14–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–312–000]

Columbia Gulf Transmission Co. and Texas Eastern Transmission Corp.; Joint Petition for Approval of Stipulation

July 11, 1994.

Take notice that on July 1, 1994, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Columbia Gulf Transmission Company (Columbia Gulf) and Texas Eastern Transmission Corporation (Texas Eastern) filed a joint petition requesting that the Commission issue an order approving a stipulation entered into by Columbia Gulf and Texas Eastern on June 29, 1994. Petitioners state that the stipulation terminates two firm transportation contracts between Columbia Gulf and Texas Eastern by the payment of a negotiated Account No. 858 exit fee by Texas Eastern to Columbia Gulf in consideration for Columbia Gulf's agreement to the termination and abandonment of the contracts.

The stipulation is contingent upon Commission approval, including Commission recognition of Texas Eastern's right to recover the exit fee paid to Columbia Gulf as a stranded Account No. 858 cost pursuant to Order No. 636 and/or pursuant to Texas Eastern's global settlement approved by the Commission on May 12, 1994, in Docket No. RP85–177–119, *et al.* Columbia Gulf also seeks Section 7(b) abandonment authorization for the two contracts.

Any person desiring to be heard or to protest the petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17173 Filed 7–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP94–59–000, 001, CP93–226–000]

Cove Point LNG Limited Partnership, Columbia LNG Corporation; Public Meeting on Environmental and Safety Issues

July 11, 1994.

The Federal Energy Regulatory Commission (FERC) staff will conduct a public meeting at 7 p.m. on August 4, 1994 at the Holiday Inn, 155 Holiday Drive, Solomons, Maryland to discuss environmental and safety issues associated with the construction of a liquefaction unit and recommissioning part of the existing LNG facilities at Columbia LNG Corporation's (Columbia LNG) terminal located at Cove Point, Calvert County, Maryland.

Background

On February 26, 1993, Columbia LNG filed an application in Docket No. CP93–226–000 proposing to construct a liquefaction unit and recommission its existing facilities at its Cove Point import terminal in Calvert County, Maryland. The liquefaction unit would have been capable of liquefying up to 20.0 million cubic feet per day (MMcfd) of natural gas for storage. Existing LNG vaporizers would have provided up to 1.0 billion cubic feet per day (Bcfd) of sendout during the winter season. Additionally, Columbia LNG proposed to provide LNG ship terminalling services where it would unload LNG tankers at its existing offshore facilities.

On April 8, 1993, the FERC staff issued a Notice of Intent (NOI) To Prepare an Environmental Assessment (EA) for the above project and requested comments on its scope. The notice and requests for comments were sent to Federal, state and local environmental agencies, parties to the proceeding, and the public.

On November 3, 1993, Columbia LNG withdrew its application filed in Docket No. CP93–226–000 and concurrently refiled a new application in Docket No. CP94–59–000 under a limited partnership called Cove Point LNG Company, L.P. This name was later changed in Docket No. CP94–59–001 to Cove Point LNG Limited Partnership (Cove Point LNG).

The new application has some obvious differences from the initial application filed on February 26, 1993. Offshore facilities are no longer being considered for recommissioning. The 20 MMCFD liquefaction unit has been downsized to 15 MMCFD. The recommissioning of the remaining existing facilities would be conducted in two phases. Phase 1, which involves two of the four storage tanks, four of the ten vaporizers, two of the three first-stag sendout pumps, four of the ten second-stage sendout pumps, one of the two boiloff blowers, boiloff compressors, and other related equipment, would be initially recommissioned. Phase 2 would recommission the remaining facilities (except the offshore facilities) within three years after the in-service date for the peaking services, provided that such recommissioning commences within three years after the in-service date. If recommissioning of any of the identified facilities is not commenced within the three-year period, Cove Point LNG will return to the FERC to obtain further authority to recommission such facilities.

Public Participation

Given the downsizing of the project, the FERC staff did not supplement its original NOI to Prepare an EA. Some comments were originally received as a result of the NOI. They have been analyzed and the EA is nearing completion. Since few comments were received, staff is making an additional effort to reach out to the public and will conduct a public meeting as noted at the beginning of this notice. It is hoped that the local public near the LNG plant will attend this meeting and offer their viewpoints.

Persons who would like to make oral presentations at the public meeting should contact the FERC Project Manager below to have their names placed on the speakers' list. Persons on the speakers' list prior to the date of the meeting will be allowed to speak first. A second speakers' list will be available for sign-up at the public meeting. Priority will be given to those persons representing groups.

In addition to the public meeting, the FERC staff will be conducting separate discussions during the course of August 4 and 5 with the Cove Point LNG and its design contractors to examine the cryogenic engineering design aspects of the proposal. Because much of the design data is proprietary and submitted to Cove Point LNG on a confidential basis, these discussions are limited to those who have direct access to the design data and can technically discuss the design aspects of the plant. Staff will however be available at the August 4 evening meeting to answer any general questions concerning these separate design discussions.

Further information concerning the public scoping meeting or about this project in general is available from Hugh Thomas, Project Manager, at (202) 208–0980.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17168 Filed 7–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–306–001]

Mississippi River Transmission Corporation; Rate Change Filing

July 11, 1994.

Take notice that on July 7, 1994 Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Fourth Revised Sheet No. 10, to be effective July 1, 1994.

On June 30, 1994 MRT filed a Gas Supply Realignment Cost recovery filing proposed to be effective July 1, 1994 in Docket No. RP94–306–000. MRT recently discovered that the June 30 filing contained an inadvertent error in Footnote No. 1 on Fourth Revised Sheet No. 10.

MRT states that the purpose of the instant filing is to resubmit Sheet No. 10 to correctly state in Footnote No. 1 that the GSRC surcharges are $.404 in the FTS Reservation Charges for the Market Zone and Field Zone, and $.0390 in the SCT Usage Charges for the Market Zone and Field Zone.

MRT states that a copy of this letter with the tariff sheet is being mailed to each of MRT's jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 3875.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 18, 1994. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17172 Filed 7–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–646–000]

National Fuel Gas Supply Corporation; Request Under Blanket Authorization

July 11, 1994.

Take notice that on July 7, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP94–646–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate delivery tap facilities with respect to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution) under authorization issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, National proposes to construct and operate a new delivery tap located in Washington Township, Erie County, Pennsylvania. The purpose of the delivery tap is for general residential use by Distribution customers in Washington Township, Pennsylvania.

National indicates that the total volume to be delivered to the customer is estimated to be 1,200 Mcf annually. National states that the total volumes to be delivered to the customer would not exceed the total volume authorized prior to this request. National states that its FERC Gas Tariff does not prohibit the addition of new delivery taps. National further states that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantaged to its other customers and that this will have a minimal impact on its peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of

with § 3875.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 18, 1994. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17172 Filed 7–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–646–000]

National Fuel Gas Supply Corporation; Request Under Blanket Authorization

July 11, 1994.

Take notice that on July 7, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP94–646–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate delivery tap facilities with respect to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution) under authorization issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, National proposes to construct and operate a new delivery tap located in Washington Township, Erie County, Pennsylvania. The purpose of the delivery tap is for general residential use by Distribution customers in Washington Township, Pennsylvania.

National indicates that the total volume to be delivered to the customer is estimated to be 1,200 Mcf annually. National states that the total volumes to be delivered to the customer would not exceed the total volume authorized prior to this request. National states that its FERC Gas Tariff does not prohibit the addition of new delivery taps. National further states that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantaged to its other customers and that this will have a minimal impact on its peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17170 Filed 7–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR94–16–000]

Southern California Gas Co.; Technical Conference

July 11, 1994.

Take notice that a technical conference has been scheduled for Wednesday, August 10, 1994, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, to discuss Southern California Gas Company's filing in this proceeding.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17171 Filed 7–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–630–000]

Williams Natural Gas Company; Request Under Blanket Authorization

July 11, 1994.

Take notice that on June 27, 1994, Williams Natural Gas Company (WNG), One Williams Center Post Office Box 3288, Tulsa, Oklahoma 74101, filed a request with the Commission in Docket No. CP94–630–000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install a tap and appurtenant facilities to deliver transportation gas to a processing plant currently under construction in Hemphill County, Texas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

WNG proposes to install a 10-inch tap and appurtenant facilities on its Pampa 20-inch pipeline located in Hemphill County, Texas. William Gas Processing—Mid-Continent Region Company (WGP–MCR), an affiliate of WNG, has requested this tap to allow delivery of unprocessed gas to a cryogenic turboexpander gas plant which is currently under construction by Williams Field Services—Mid-Continent Region Company, another WNG affiliate. WNG estimates the cost of the construction of these facilities to be $35,566 which, would be reimbursed by WGP–MCR. WGP–MCR estimates the annual volume would be approximately 16,425,000 Mcf and the peak day volume would be 45,000 Mcf.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file, pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17169 Filed 7–14–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

[Docket No. EE–RM–94–210]

Building Energy Standards Program: Updating State Building Codes Regarding Energy Efficiency

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Pursuant to section 304 of the Energy Conservation and Production Act, the Department of Energy (DOE or Department) is announcing guidance and procedures for the use of States concerning their review of the energy-related provisions of their residential building codes in light of the relevant version of the Council of American Building Officials' Model Energy Code

(Model Energy Code), and of their commercial building codes in light of the American Society of Heating, Refrigerating and Air Conditioning Engineers/Illuminating Engineering Society of North America Standard 90.1–1989 (Standard 90.1–1989). The guidance and procedures cover Certifications, Statements of Reasons and Requests for Extensions of Deadlines from States pursuant to section 304.

In addition, the Department today determines that the Model Energy Code, 1993 compared to the Model Energy Code, 1992 would achieve greater energy efficiency in residential buildings. Consequently, States should review their residential building codes during the next two years using the Model Energy Code, 1993 as the standard.

DATES: Certifications or Statements of Reasons with regard to Model Energy Code, 1992 are due October 24, 1994. Certifications or Statements of Reasons with regard to Model Energy Code, 1993 are due two years from the publication of this notice. Certifications with regard to Standard 90.1–1989 are due October 24, 1994.

ADDRESSES: Certifications, Statements of Reasons, and Requests for Extensions of Deadlines for Certification Statements by States should be directed to the Assistant Secretary for Energy Efficiency and Renewable Energy, Office of Codes and Standards, Mail Station EE–43, 1000 Independence Avenue, Washington, DC 20585. Envelopes or packages should be labeled, "State Certification of Building Codes Regarding Energy Efficiency."

FOR FURTHER INFORMATION CONTACT: Stephen P. Walder, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–432, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: 202–586–9209, FAX: 202–586–4617.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Requirements

Title III of the Energy Conservation and Production Act of 1976, as amended (Act) establishes mandated requirements for the Building Energy Standards Program. 42 U.S.C. 6831–6837. The Act applies to all State building codes which by definition includes the codes of units of general purpose local government. 42 U.S.C. 6832. As stated in the Act, the term "State" is defined to include the District of Columbia, the Commonwealth of Puerto Rico, any territory and possession of the United States, as well as the 50 States.

1. *Residential Building Codes.* Under the Act, each State, not later than two years after the enactment of the Energy Policy Act of 1992 (October 24, 1992), is required to certify to the Secretary of Energy (Secretary) that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise its residential building code provisions to meet or exceed the Model Energy Code, 1992 or any successor of such code that improves energy efficiency. The determination is to be: (1) made after public notice and hearing; (2) made in writing; (3) based on findings included in such determination and evidence presented at the hearing; and (4) available to the public. 42 U.S.C. 6833(a)(1), (a)(2). In addition, if a State makes a determination that it is not appropriate to revise its residential building code, the State is required to submit to the Secretary, in writing, the reasons for the determination which is to be made available to the public. 42 U.S.C. 6833(a)(4).

Furthermore, whenever the Model Energy Code, 1992, or any successor to such code is revised, the Secretary is required to make a determination, not later than 12 months after such revision, whether such amendment would improve the energy efficiency of residential buildings and to publish notice of such determination in the **Federal Register**. If the Secretary determines that the revision of Model Energy Code, 1992, or any successor thereof, improves the energy efficiency in residential buildings, then not later than two years after the date of the publication of such determination, each State is required to certify that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for the State to revise its residential building code. 42 U.S.C. 6833(a)(5).

As of the date that this notice was issued, only one State had submitted a certification with regard to the Model Energy Code, 1992.

2. *Commercial Building Codes.* Under the Act, each State, not later than two years after enactment of the Energy Policy Act of 1992, is required to certify to the Secretary that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency. The certification must include a demonstration that the State's code provisions meet or exceed the requirements of Standard 90.1–1989. Whenever the provisions of Standard 90.1–1989, or any successor standard, are revised, the Secretary is required to make a determination, not later than 12 months after the date of such revision, whether such amendment would improve energy efficiency in commercial buildings and to publish notice of such determination in the **Federal Register**. 42 U.S.C. 6833(b)(1) and (b)(2). If the Secretary publishes an affirmative determination, then the States have up to 2 years to review and update their commercial building codes accordingly. *Id.*

3. *Requests for Extension of Deadlines.* The Act authorizes the Secretary to permit extensions of the deadlines for the certification requirements relative to both residential and commercial building codes, if the State can demonstrate that it has made a good faith effort to comply with the requirements and that it has made significant progress in doing so. 42 U.S.C. 6833(c).

II. Discussion

A. Updating Residential Building Codes Regarding Energy Efficiency

1. *Determination.* As stated above, section 304(a)(2) requires each State to make a determination as to whether it is appropriate for such State to revise its residential building code regarding energy efficiency. The determination shall be: (1) made after public notice and hearing; (2) in writing; (3) based upon findings and upon the evidence presented at the hearing; and (4) made available to the public. The States have considerable discretion with regard to the hearing procedures they use, subject to providing an adequate opportunity for members of the public to be heard and to present relevant information. The Department recommends publication of any notice of public hearing in newspapers of general circulation.

The Department realizes that some States do not have a State residential code or have a code that does not apply to all newly constructed residential buildings. If local building codes regulate residential building design and construction rather than a State code, the State must provide for review of those local codes and determine whether it is appropriate for each of its units of general purpose local government to revise the provisions of its residential building code regarding energy efficiency to meet or exceed the Model Energy Code. States may base their determinations and certifications on reasonable preliminary determinations by units of general purpose local government after they have held an adequate public hearing.

States should be aware that high-rise multi-family residential buildings (greater than three stories) and hotel, motel, and other transient residential building types of any height have historically been treated for energy code purposes as commercial buildings. Consistent with the treatment of high-rise multi-family residential buildings and hotels, motels, and other transient residential building types in Standard 90.1–1989 as if they were commercial buildings, the Department is of the view that the energy efficiency requirements of building codes applicable to such buildings should be reviewed and updated by the States and units of general purpose local government pursuant to the Act as if they were commercial building code requirements. Consequently, residential buildings, for the purposes of certification, would include one- and two-family detached and attached buildings, townhouses, row houses, and low-rise multi-family buildings (not greater than three stories) such as condominiums and garden apartments.

2. *Certification.* As stated above, section 304(a) requires each State to certify to the Secretary that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise the provisions of such residential building code to meet or exceed the Model Energy Code, 1992. The certification must be in writing. If a State intends to certify that its residential building code(s) already meet or exceed the requirements of the Model Energy code, 1992, it would be appropriate for the State to provide an explanation of the basis for this certification, e.g. the Model Energy Code, 1993, is incorporated by reference, the results of the Departments' comparative analysis or the results of an independent analysis. The Department believes that it would be appropriate for the chief executive of the State (e.g., the Governor) to designate a State official such as the Director of the State energy office, State code commission, utility commission, or equivalent having primary responsibility for residential building code promulgation and adoption to provide the certification to the Secretary, including certifications regarding the codes of units of general purpose local government based on information provided by responsible local officials.

3. *Statement of reasons.* Section 304(a)(4) requires that if a State makes

purpose local government after they have held an adequate public hearing.

States should be aware that high-rise multi-family residential buildings (greater than three stories) and hotel, motel, and other transient residential building types of any height have historically been treated for energy code purposes as commercial buildings. Consistent with the treatment of high-rise multi-family residential buildings and hotels, motels, and other transient residential building types in Standard 90.1–1989 as if they were commercial buildings, the Department is of the view that the energy efficiency requirements of building codes applicable to such buildings should be reviewed and updated by the States and units of general purpose local government pursuant to the Act as if they were commercial building code requirements. Consequently, residential buildings, for the purposes of certification, would include one- and two-family detached and attached buildings, townhouses, row houses, and low-rise multi-family buildings (not greater than three stories) such as condominiums and garden apartments.

2. *Certification.* As stated above, section 304(a) requires each State to certify to the Secretary that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise the provisions of such residential building code to meet or exceed the Model Energy Code, 1992. The certification must be in writing. If a State intends to certify that its residential building code(s) already meet or exceed the requirements of the Model Energy code, 1992, it would be appropriate for the State to provide an explanation of the basis for this certification, e.g. the Model Energy Code, 1993, is incorporated by reference, the results of the Departments' comparative analysis or the results of an independent analysis. The Department believes that it would be appropriate for the chief executive of the State (e.g., the Governor) to designate a State official such as the Director of the State energy office, State code commission, utility commission, or equivalent having primary responsibility for residential building code promulgation and adoption to provide the certification to the Secretary, including certifications regarding the codes of units of general purpose local government based on information provided by responsible local officials.

3. *Statement of reasons.* Section 304(a)(4) requires that if a State makes a determination that it is not appropriate to revise the energy efficiency provisions of its residential building code, the State is to submit to the Secretary, in writing, the reasons for this determination. The statement of reasons should define and summarize the pertinent issues and problems regarding its determination; and provide an explanation as to why the State came to its conclusion. If local building codes are applicable in the absence of a State code, the State may rely on reasons provided by the units of general purpose local government. Upon receipt, the Department will publish in the **Federal Register** a notice of availability, stating that a copy has been placed in its Freedom of Information Reading Room in the Forrestal Building in Washington, D.C., so that members of the public may inspect it.

4. *DOE Determination of Improved Energy Efficiency from a Revised Model Energy Code.* At the beginning of 1993, the Council of American Building Officials published a new edition of the Model Energy Code. Differences between the two versions include: (1) the 1993 Edition incorporates the heating; ventilation, and air conditioning minimum energy efficiency standards requirements from Standard 90.1–1989 which includes the Department's appliance energy conservation regulations. 10 CFR Part 430. (2) the 1993 Edition incorporates revised U_o[1] values for walls; (3) the 1993 Edition includes revised air infiltration values for windows and doors; and (4) the 1993 Edition incorporated the air leakage requirements of Standard 90.1–1989.

Based on the above, the Department has determined that the 1993 update would improve the energy efficiency of residential building codes. Section 304(a)(5) of the Act provides for States to certify their codes [using the procedures in section 304(a)(2)] after reviewing them in light of a revised version of the Model Energy Code, such as the 1993 update, not later than two years from the Department's determination that the revised version would improve energy efficiency. With regard to the Model Energy Code, 1993, that period for revision begins today.

As noted above, only one State has submitted a certification with regard to its residential building code as of the date that this notice was issued. States that have not yet made substantial progress in reviewing the energy efficiency provisions of their residential building codes may wish to review and certify their codes in light of the Model Energy Code, 1993. If a State is able to complete its review and certification with regard to the Model Energy Code, 1993 on or before October 24, 1994, there is no need to separately review and certify with respect to the Model Energy Code, 1992. States that have made substantial progress in reviewing the energy efficiency provisions of their residential building codes in light of the Model Energy Code, 1992 may wish to complete their review and submit an appropriate certification by the October 24, 1994 statutory deadline before considering the Model Energy Code, 1993.

[1] U_o = the area-weighted average thermal transmittance of the gross area of the building envelope; i.e., the exterior wall assembly including fenestration and doors, the roof and ceiling assembly, and the floor assembly, British thermal unit/(hour x square feet x degrees Fahrenheit).

B. State Certification and Demonstration Regarding Updating of Commercial Building Codes

1. *Certification.* Section 304(b) requires that not later than October 24, 1994 each State shall certify in writing to the Secretary that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency. The certification is required to include a demonstration that the commercial building code provisions regarding energy efficiency meet or exceed the requirements of Standard 90.1–1989. As discussed in section A herein, commercial buildings include hotels, motels and other transient buildings of any height as well as high-rise (greater than three stories) multi-family residential buildings (such as apartments and condominiums).

The Department believes that it would be appropriate for the chief executive of the State (e.g., the Governor) to designate a State official such as the Director of the State energy office, State code commission, utility commission or equivalent having primary responsibility for commercial building code promulgation and adoption to provide the certification to the Secretary. The Department realizes that some States do not have a State commercial code or have a code that does not apply to all newly constructed commercial buildings. Where local building codes regulate commercial building design and construction rather than a State code, the State must provide for the review and updating of those codes regarding energy efficiency to meet or exceed Standard 90.1–1989. With respect to local building codes, States may base their review and update on reasonable preliminary review and certifications presented to the State by its units of general purpose local government.

2. *Demonstration.* It would be appropriate for the demonstration to include a copy of the State and local government (if applicable) commercial building codes regarding energy efficiency or copies of legislation or regulations adopting either Standard 90.1–1989, or the codified version of Standard 90.1–1989, by reference or incorporation into its State or local building codes. If a State has not adopted Standard 90.1–1989 by reference or incorporation, it would be appropriate to include an analysis showing that its code meets or exceeds Standard 90.1–1989, or the State could accept the conclusions provided the State by the Department in its comparative analysis of the State code relative to Standard 90.1–1989 as a part of the technical assistance provided under section 304(d). In conjunction with the effort to update its residential building code, States should be aware that the Model Energy Code, 1993 adopts Standard 90.1–1989 by reference for commercial and high-rise residential buildings. As such, State adoption of the Model Energy Code, 1993 would automatically satisfy the Act as it relates to commercial buildings.

Demonstrations for local government building codes may be based on reasonable preliminary review and analyses presented to the State by its units of general purpose local government.

C. Request for Extensions

Section 304(c) of the Act requires that the Secretary permit extensions of the deadlines for the certification requirements under sections 304(a) and (b) if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress toward meeting the provisions of section 304. Such demonstrations could include one or more of the following: (1) a plan for response to the requirements stated in section 304; (2) a statement that the State has appropriated or requested funds (within State funding procedures) to implement a plan that would respond to the requirements of section 304; or (3) a notice of public hearing.

States should submit separate requests for extension of deadlines for their residential and the commercial building code certifications.

D. Submittals

When submitting any of the above-described documents in this notice, the Department requests that the original documents be accompanied by one copy of the same.

Issued in Washington, DC, on June 7, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–17259 Filed 7–14–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5013–1]

Access to Data for Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of access to data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) has previously transferred information, under contract #68–W0–0027, to its contractor, Science Applications International Corporation (SAIC), and SAIC's subcontractors Eastern Research Group, Appl Inc. and Research Technical Corp. EPA will also transfer, under contract #68–W2–0027, information which has been or will be submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). As part of the Hazardous and Solid Waste Amendments of 1984, EPA's Office of Solid Waste is required to make determinations concerning identification of specified hazardous wastes. SAIC and its subcontractors, are developing a schedule for reviewing listed hazardous wastes for possible land disposal restrictions. Some of the information may have a claim of business confidentiality.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than July 25, 1994.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (5303) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Comments should be identified as "Access to Confidential Data."

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (5305) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 260–3410.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is required, by the Hazardous and Solid Waste Amendments of 1984 to make determinations concerning land disposal for specified hazardous wastes, and to develop a schedule for reviewing all other listed hazardous wastes for possible land disposal restrictions. EPA is also mandated to list new hazardous waste streams determined to pose a significant public health and environmental hazard. In order to carry out these legislative mandates, EPA must develop land disposal restriction regulations.

SAIC and its subcontractors, under EPA Contract 68–WO–0027, have assisted and, under EPA Contract 68–W2–0027, will continue to assist the Characterization and Assessment Division of the Office of Solid Waste to develop a schedule for reviewing all other listed hazardous wastes for possible land disposal restrictions; to analyze regulatory options and impacts, human and ecological health effects, and industry and plant profiles; to perform chemical and physical analyses of waste samples; and to develop materials and planning activities for public education and involvement. The information to which SAIC and its subcontractors need access is required to fulfill Congressional mandates to determine those wastes which are hazardous for possible disposal controls and restriction. SAIC and its subcontractors also need access to the Agency's Industry Studies Data Base to obtain some of the above information. The information being transferred to SAIC and its subcontractors may have been or will be claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that SAIC and its subcontractors require access to confidential business information submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer confidential business information to these firms, on a need-to-know basis. Upon completing their use of the confidential business information, SAIC and their subcontractors will return all of it to EPA.

SAIC and its subcontractors are required to sign non-disclosure agreements before they are permitted access to confidential information. Also SAIC and its subcontractors are required to establish security procedures as specified in EPA's "RCRA Confidential Business Information Security Manual". EPA reviews and approves security procedures prior to transferring any RCRA confidential business information.

Dated: July 6, 1994.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 94–17301 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4713–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 27, 1994 Through July 1, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D–APH–A82124–00 Rating EO2, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States.

Summary: EPA expressed environmental objections to the mandated use of methyl bromide to treat whole logs. EPA requested that other alternatives be considered.

ERP No. D–BLM–K67023–CA Rating EC2, Oro Cruz Operation of the American Girl Canyon Project, Surface and Underground Mining, Plan of Operations Approval, Imperial County, CA.

Summary: EPA expressed environmental concerns regarding potential project impacts to water quality, wetlands and wildlife and the need for additional information in the final EIS on water quality, air quality and the mitigation of environmental impacts.

ERP No. D–USN–K11053–CA Rating EC2, Miramar Landfill General Development Plan/Fiesta Island Replacement Project/Northern Sludge Processing Facility/West Miramar Landfill Phase II/Overburden Disposal, Implementation, Funding, COE Section 404 Permit and NPDES Permit, Naval Air Station Miramar, San Diego County, CA.

Summary: EPA expressed environmental concerns with potential impacts to air quality, water resources, wetlands and biological resources. EPA

Dated: July 6, 1994.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 94–17301 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4713–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 27, 1994 Through July 1, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D–APH–A82124–00 Rating EO2, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States.

Summary: EPA expressed environmental objections to the mandated use of methyl bromide to treat whole logs. EPA requested that other alternatives be considered.

ERP No. D–BLM–K67023–CA Rating EC2, Oro Cruz Operation of the American Girl Canyon Project, Surface and Underground Mining, Plan of Operations Approval, Imperial County, CA.

Summary: EPA expressed environmental concerns regarding potential project impacts to water quality, wetlands and wildlife and the need for additional information in the final EIS on water quality, air quality and the mitigation of environmental impacts.

ERP No. D–USN–K11053–CA Rating EC2, Miramar Landfill General Development Plan/Fiesta Island Replacement Project/Northern Sludge Processing Facility/West Miramar Landfill Phase II/Overburden Disposal, Implementation, Funding, COE Section 404 Permit and NPDES Permit, Naval Air Station Miramar, San Diego County, CA.

Summary: EPA expressed environmental concerns with potential impacts to air quality, water resources, wetlands and biological resources. EPA recommended that project construction be restricted during peak air quality nonattainment periods and that the project be designed to avoid vernal pool wetlands.

ERP No. DS–NOA–E64014–00 Rating EC2, Coral and Coral Reefs Fishery Management Plan, Updated Information, Amendment 2 of the Gulf of Mexico and South Atlantic.

Summary: EPA expressed environmental concerns and requests additional information on the proposed alternatives.

Final EISs

ERP No. F–FHW–K40192–CA CA–41 Improvements, Elkhorn Avenue to North Avenue, Funding, Fresno County, CA.

Summary: Review of the Final EIS was not deemed necessary. No comment letter was sent to the preparing agency.

ERP No. F–GSA–K80033–CA Sacramento Federal Building—United States Courthouse, Site Selection and Construction within a portion of the Central Business District, City of Sacramento, Sacramento County, CA.

Summary: Review of the Final EIS was not deemed necessary. No comment letter was sent to the preparing agency.

ERP No. F–GSA–K81020–CA Ronald Reagan Federal Building—United States Courthouse, Site Selection and Construction in the Central Business Area and Approval of Permits, City of Santa Ana, Orange County, CA.

Summary: EPA had no objections to the proposed project.

ERP No. F–USN–E11023–NC Camp Lejeune Marine Corps Base, Wastewater Treatment System Upgrading, Construction and Operation, NPDES, COE Section 10 and 404 Permits, Onslow County, NC.

Summary: EPA had no objections to the proposed wastewater upgrade at Camp Lejeune.

Regulations

ERP No. R–NRC–A09819–00 10 CFR Parts 34 and 150, Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations, FR 59.9429.

Summary: EPA reviewed the proposed rule and recommended that the frequency for field inspections remain quarterly until there is enough experience with the revised regulation to warrant changing it.

ERP No. R–UAF–A10068–00 32 CFR Part 989, Environmental Impact Analysis Process (EIAP) for the United States Air Force, Proposed Rule (59 FR 17061).

Summary: EPA commended the Air Force on the proposed revisions and made suggestions for documenting mitigation and for clarifying categorical exclusions.

Dated: July 12, 1994.

Richard E. Sanderson,

Director, Office of Federal Activities

[FR Doc. 94–17286 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4713–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed July 04, 1994 Through July 08, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940266, Draft Supplement, SCS, WV, Upper Buffalo Creek Watershed Flood Prevention and Watershed Protection, Additional Information, Funding, City of Mannington, Marion County, WV, Due: August 29, 1994, Contact: Rollin N. Swank (304) 291–4151.

EIS No. 940267, Final EIS, AFS, OR, Newberry Geothermal Pilot Project, Construction and Operation of a 33-megawatt Power Plant, Approvals, Deschutes National Forest, Fort Rock Ranger District, Deschutes County, OR, Due: August 15, 1994, Contact: Alice Doremus (503) 383–4703.

EIS No. 940268, Draft EIS, VAD, HI, Veterans Affairs Medical and Regional Office Center Relocation to Tripler Army Medical Center, Construction and Renovation, Approval and NPDES Permit, Oahu, HI, Due: August 29, 1994, Contact: Eugene Keller (202) 233–2463.

EIS No. 940269, Final EIS, UAF, TX, Carswell Air Force Base (AFB) Disposal and Reuse, Implementation, Tarrant County, TX, Due: August 15, 1994, Contact: Dan Mooney (210) 536–3839.

EIS No. 940270, Draft EIS, COE, CA, Petaluma River Flood Control Improvements, Implementation, City of Petaluma, Sonoma County, CA, Due: August 29, 1994, Contact: Gary Flickinger (415) 744–3341.

EIS No. 940271, Final EIS, FHW, CA, Adoption—Calexico East Border Station Construction and Road Construction, CA–7 between the New Port of Entry and CA–98 that borders the United States and Mexico, Funding and Right-of-way Permit, City of Calexico, Imperial County, CA, Due: August 15, 1994, Contact: Leonard E. Brown (916) 551–1307.

The US Department of Transportation's Federal Highway Administration (FHW) has adopted the US General Services Administration's final EIS filed with the US Environmental Protection Agency on 8–9–93. The FHW was a Cooperating Agency for the above final EIS. Recirculation of the document is not necessary Under § 1506.3(c) of the Council on Environmental Quality Regulations.

EIS No. 940272, Draft EIS, COE, PR, Rio Guanajibo River Basin Flood Protection Project, Implementation and NPDES Permit, Mayaguez and San German, PR, Due; August 29, 1994, Contact: William J. Fonferek (904) 232–2803.

EIS No. 940273, Draft EIS, FEM, CA, Oakland City Administration Building Project, Construction, Funding and Permit Approval, for Replacement of City Hall in the City Hall Plaza, Oakland, CA, Due: August 29, 1994, Contact: Sandro Amaglio (415) 923–7284.

EIS No. 940274, Final EIS, FAA, MN, Minneapolis-St. Paul International Airport, Runway 4–22 Extension, Funding, Wold-Chamberlain Field, Hennepin County, MN, Due: August 15, 1994, Contact: Glenn Orcutt (612) 725–4221.

Amended Notices

EIS No. 940250, Draft EIS, DOE, NAT, Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs, Implementation, Due: September 30, 1994, Contact: Tom Wichmann (800) 682–5583.

Published FR 07–01–94 Title Change and Contact Person and Telephone Number Change.

Dated: July 12, 1994.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 94–17285 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–U

[OPPTS–59984; FRL–4900–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 4 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 94–118, June 28, 1994.

Y 94–119, 94–120, June 29, 1994.

Y 94–121, July 10, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (4708), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NE–B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94–118

Manufacturer. Confidential.

Chemical. (G) Acrylic terpolymer.

Use/Production. (S) Additive for industrial coatings to improve surface appearance. Prod. range: Confidential.

Y 94–119

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Additive for magnetic tapes. Prod. range: Confidential.

Y 94–120

Manufacturer. Seydel Companies.

Chemical. (G) Acid terminated terehthalate/isophthalate polyested resin.

Use/Production. (S) Textile sizing other processes, adhesives. Prod. range: Confidential.

Y 94–121

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester resin.

Use/Production. (S) Mine bolt resin. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: July 6, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–17291 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59983; FRL–4900–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 10 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 94–108, May 29, 1994.

Y 94–109, May 30, 1994.

Y 94–110, 94–111, 94–112, June 2, 1994.

Y 94–113, 94–114, June 6, 1994.

Y 94–115, 94–116, June 20, 1994.

Y 94–117, June 21, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NE–B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94–108

Importer. Unitika America Coporation.

Chemical. (G) Co-polyester.

Use/Importer. (S) Resin for powder coating on metal surface. Import range: 20,000–30,000 kg/yr.

Y 94–109

Manufacturer. Confidential.

Chemical. (G) Poly(alkylmethacrylate),

Use/Production. (S) Lube oil additive and hydrocarbon process stream additive. Prod. range: Confidential.

Y 94–110

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Emulsion polymer,crylic emulsion.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94–111

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Emulsion polymer, acrylic emulsion.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94–112

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Emulsion polymeracrylic emulsion.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94–113

Manufacturer. Estron Chemical, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) . Prod. range: Confidential.

Y 94–114

Manufacturer. Bostik, Inc.

Chemical. (G) Polyester.

Use/Production. (G) Open, non-dispersive useend. Prod. range: Confidential.

Y 94–115

Manufacturer. Confidential.

Chemical. (G) Saturated polymer.

Use/Production. (G) Sheet molding compound resin. Prod. range: Confidential.

Y 94–116

Manufacturer. Confidential.

Chemical. (G) Polyamide graft copolymer.

through Friday, excluding legal holidays.

Y 94–108

Importer. Unitika America Coporation.
Chemical. (G) Co-polyester.
Use/Importer. (S) Resin for powder coating on metal surface. Import range: 20,000–30,000 kg/yr.

Y 94–109

Manufacturer. Confidential.
Chemical. (G) Poly(alkylmethacrylate),
Use/Production. (S) Lube oil additive and hydrocarbon process stream additive. Prod. range: Confidential.

Y 94–110

Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Emulsion polymer,crylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94–111

Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Emulsion polymer, acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94–112

Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Emulsion polymeracrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94–113

Manufacturer. Estron Chemical, Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) . Prod. range: Confidential.

Y 94–114

Manufacturer. Bostik, Inc.
Chemical. (G) Polyester.
Use/Production. (G) Open, non-dispersive useend. Prod. range: Confidential.

Y 94–115

Manufacturer. Confidential.
Chemical. (G) Saturated polymer.
Use/Production. (G) Sheet molding compound resin. Prod. range: Confidential.

Y 94–116

Manufacturer. Confidential.
Chemical. (G) Polyamide graft copolymer.
Use/Production. (G) Polymeric material: open, non-dispersive. Prod. range: Confidential.

Y 94–117

Manufacturer. Confidential.
Chemical. (G) Alkyd polyester resin.
Use/Production. (G) Sheet molding compound resin. Prod. range:

List of Subjects

Environmental protection, Premanufacture notification.

Dated: July 6, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–17292 Filed 7–14–94; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–51834; FRL–4871–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 125 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 94–896, 94–897, 94–898, 94–899, 94–900, 94–901, 94–902, 94–903, 94–904, 94–905, 94–906, May 18, 1994.

P 94–907, 94–908, 94–909, 94–910, May 22, 1994.

P 94–911, 94–912, 94–913, 94–914, 94–915, 94–916, 94–917, 94–918, 94–919, 94–920, 94–921, 94–922, 94–923, 94–924, May 23, 1994.

P 94–925, 94–926, May 24, 1994.

P 94–927, 94–928, 94–929, May 25, 1994.

P 94–930, 94–931, 94–932, 94–933, 94–934, 94–935, 94–936, 94–937, 94–938, May 28, 1994.

P 94–939, 94–940, May 29, 1994.

P 94–941, 94–942, May 28, 1994.

P 94–943, May 29, 1994.

P 94–944, 94–945, 94–946, 94–947, 94–948, 94–949, 94–950, 94–951, 94–952, 94–953, 94–954, 94–955, 94–956, 94–957, 94–958, May 30, 1994.

P 94–959, 94–960, 94–961, 94–962, 94–963, 94–964, 94–965, 94–966, 94–967, 94–968, 94–969, 94–970, 94–971, 94–972, 94–973, 94–974, 94–975, 94–976, 94–977, 94–978, 94–979, 94–980, 94–981, 94–982, May 31, 1994.

P 94–983, 94–984, 94–985, June 1, 1994.

P 94–986, May 31, 1994.

P 94–987, 94–988, 94–989, June 4, 1994.

P 94–990, 94–991, 94–992, June 5, 1994.

P 94–993, 94–994, 94–995, 94–996, 94–997, June 6, 1994.

P 94–998, 94–999, June 5, 1994.

P 94–1000, June 7, 1994.

P 94–1001, 94–1002, 94–1003, June 6, 1994.

P 94–1004, 94–1005, 94–1006, 94–1007, June 7, 1994.

P 94–1008, June 4, 1994.

P 94–1009, 94–1010, 94–1011, 94–1012, 94–1013, 94–1014, 94–1015, 94–1016, June 11, 1994.

P 94–1017, 94–1018, 94–1019, 94–1020, June 12, 1994.

Written comments by:

P 94–896, 94–897, 94–898, 94–899, 94–900, 94–901, 94–902, 94–903, 94–904, 94–905, 94–906, April 18, 1994.

P 94–907, 94–908, 94–909, 94–910, April 22, 1994.

P 94–911, 94–912, 94–913, 94–914, 94–915, 94–916, 94–917, 94–918, 94–919, 94–920, 94–921, 94–922, 94–923, 94–924, April 23, 1994.

P 94–925, 94–926, April 24, 1994.

P 94–927, 94–928, 94–929, April 25, 1994.

P 94–930, 94–931, 94–932, 94–933, 94–934, 94–935, 94–936, 94–937, 94–938, April 28, 1994.

P 94–939, 94–940, April 29, 1994.

P 94–941, 94–942, April 28, 1994.

P 94–943, April 29, 1994.

P 94–944, 94–945, 94–946, 94–947, 94–948, 94–949, 94–950, 94–951, 94–952, 94–953, 94–954, 94–955, 94–956, 94–957, 94–958, April 30, 1994.

P 94–959, 94–960, 94–961, 94–962, 94–963, 94–964, 94–965, 94–966, 94–967, 94–968, 94–969, 94–970, 94–971, 94–972, 94–973, 94–974, 94–975, 94–976, 94–977, 94–978, 94–979, 94–980, 94–981, 94–982, May 1, 1994.

P 94–983, 94–984, 94–985, May 2, 1994.

P 94–986, May 1, 1994.

P 94–987, 94–988, 94–989, May 5, 1994.

P 94–990, 94–991, 94–992, May 6, 1994.

P 94–993, 94–994, 94–995, 94–996, 94–997, May 7, 1994.

P 94–998, 94–999, May 6, 1994.

P 94–1000, May 8, 1994.

P 94–1001, 94–1002, 94–1003, May 7, 1994.

P 94–1004, 94–1005, 94–1006, 94–1007, May 8, 1994.

P 94–1008, May 5, 1994.

P 94–1009, 94–1010, 94–1011, 94–1012, 94–1013, 94–1014, 94–1015, 94–1016, May 12, 1994.

P 94–1017, 94–1018, 94–1019, 94–1020, May 13, 1994.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51834]" and the specific PMN number should be sent to: Document Control Center (4707), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460 (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (4708), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NEM–B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

P 94–896

Manufacturer. Confidential.

Chemical. (G) Substituted alkyl dianlide.

Use/Production. (G) Chemical intermediate. Prod. range: 58,000 kg/yr.

P 94–897

Importer. Vista Chemical Company.

Chemical. (S) 2-Butyldecanoic acid.

Use/Import. (G) Chemical intermediate. Import range: 300,000 kg/yr.

P 94–898

Importer. Vista Chemical Company.

Chemical. (S) 2-Butyldecanoic acid.

Use/Import. (G) Chemical intermediate. Import range: 300,000 kg/yr.

P 94–899

Importer. Vista Chemical Company.

Chemical. (S) 2-Butyldecanoic acid.

Use/Import. (G) Chemical intermediate. Import range: 300,000 kg/yr.

P 94–900

Importer. Vista Chemical Company.

Chemical. (S) 2-Butyl-1-decanol.

Use/Import. (G) Solubilizing agent, lubricant, and chemical intermediate. Import range: 200,000–600,000 kg/yr.

P 94–901

Importer. Vista Chemical Company.

Chemical. (S) 2-Butyl-1-decanol.

Use/Import. (G) Soluibilizing agent, lubricant, and chemical intermediate. Import range: 300,000–600,000 kg/yr.

P 94–902

Importer. Vista Chemical Company.

Chemical. (S) 2-Butyl-1-decanol.

Use/Import. (G) Solubilizer agent, lubricant, and chemical intermediate. Import range: 200,000–600,000 kg/yr.

P 94–903

Importer. Vista Chemical Compoany.

Chemical. (S) 2-Butyl-1-decanol.

Use/Import. (G) Solubilizing agent, lubricant, and chemical intermediate. Import range: 200,000–600,000 kg/yr.

P 94–904

Importer. Vista Chemical Company.

Chemical. (S) 2-Butyl-1-decanol.

Use/Import. (G) Solubilizing agent, lubricant, and chemical intermediate. Import range: 200,000–600,000 kg/yr.

P 94–905

Importer. Vista Chemical Company.

Chemical. (S) 2-Hexadecyl-1-octadecanol.

Use/Import. (G) Solubilizer agent, lubricant, and chemical intermediate. Import range: 200,000–600,000 kg/yr.

P 94–906

Importer. Vista Chemical Company.

Chemical. (S) 2-Hexadecyl-1-eicosanol.

Use/Import. (G) Solubilizing agent, lubricant, and chemical intermediate. Import range: 200,000–600,000 kg/yr.

P 94–907

Manufacturer. Confidential.

Chemical. (G) Modified vinyl ester copolymer.

Use/Production. (S) Architectural paint vehicle. Prod. range: Confidential.

P 94–908

Manufacturer. Confidential.

Chemical. (G) Modified vinyl acetate polymer.

Use/Production. (S) Architectural paint vehicle. Prod. range: Confident.

P 94–909

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air dry and force dry coatings for metal substrates. Prod. range: Confidential.

P 94–910

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial air dry and force dry coatings for metal substrates. Prod. range: Confidential.

P 94–911

Manufacturer. Nalco Chemical Company.

Chemical. (G) Carbohydrazone.

Use/Production. (S) Oxygen scavenger gas boiler feed water. Prod. range: Confidential.

P 94–912

Manufacturer. Confidential.

Chemical. (G) Acrylic acid copolymer.

Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

P 94–913

Manufacturer. Confidential.

Chemical. (G) Acrylic acid copolymer.

Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

P 94–914

Manufacturer. Confidential.

Chemical. (G) Acrylic acid copolymer salt.

Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

P 94–915

Manufacturer. Confidential.

Chemical. (G) Acrylic acid copolymer salt.

Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.conf.

P 94–916

Manufacturer. Confidential.

Chemical. (G) Acrylic acid copolymer saltsociometrics.

Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

P 94–917

Manufacturer. Confidential.

Chemical. (G) Acrylic acid copolymer salt.

Use/Production. (G) Thickener for aqueous systems. Prod. range: Confidential.

P 94–918

Manufacturer. Confidential.

Chemical. (G) Water borne polyurethane.

Use/Production. (S) Adhesive for footwear. Prod. range: Confidential.

P 94–919

Manufacturer. Angus Chemical Company.

Chemical. (G) Reaction product of an alkanolamine and boric acid.

Use/Production. (S) Corrosion inhibitor in metal working fluids. Prod. range: Confidential.

P 94–920

Manufacturer. Croda Inc.

Chemical. (S) Polyoxyethylene (1700) pentaerythritol tetrastearate/palmitrate.

Use/Production. (S) Thickening agent. Prod. range: 15,000 kg/yr.

P 94–921

Manufacturer. Confidential.

Chemical. (S) Phenol, 4,4'-methylenebis(2,6-dimethyl-).

Use/Production. (S) Phenolic intermediate and crosslinking agent. Prod. range: Confidential.

P 94–922

Importer. Confidential.

Chemical. (G) Substituted resorcinol.

Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 94–923

Importer. Confidential.

Chemical. (G) Substituted phenol.

Use/Import. (G) A component of the material for IC fabrication, Import range: Confidential.

P 94–924

Manufacturer. Confidential.

Chemical. (G) Carboxylic acid/ polymer.

Use/Production. (G) Water treatment additive. Prod. range: Confidential.

P 94–925

Manufacturer. Teknor Apex Company.

Chemical. (G) Polyol ester.

Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 94–926

Manufacturer. Teknor Apex Company.

Chemical. (S) Polyol ester.

Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 94–927

Importer. 3M Company.

Chemical. (G) Fluorochemical acrylate polymer.

Use/Import. (G) Coating. Import range: Confidential..

P 94–928

Manufacturer. Confidential.

Chemical. (G) Dialkyl crown ether.

Use/Production. (G) Reversible extractment of strontium and lead. Prod. range: Confidential.

P 94–929

Manufacturer. Confidential.

Chemical. (G) Aromatic crown ether.

Use/Production. (S) Corrosion inhibitor in metal working fluids. Prod. range: Confidential.

P 94–920

Manufacturer. Croda Inc.
Chemical. (S) Polyoxyethylene (1700) pentaerythritol tetrastearate/palmitrate.
Use/Production. (S) Thickening agent. Prod. range: 15,000 kg/yr.

P 94–921

Manufacturer. Confidential.
Chemical. (S) Phenol, 4,4'-methylenebis(2,6-dimethyl-).
Use/Production. (S) Phenolic intermediate and crosslinking agent. Prod. range: Confidential.

P 94–922

Importer. Confidential.
Chemical. (G) Substituted resorcinol.
Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 94–923

Importer. Confidential.
Chemical. (G) Substituted phenol.
Use/Import. (G) A component of the material for IC fabrication, Import range: Confidential.

P 94–924

Manufacturer. Confidential.
Chemical. (G) Carboxylic acid/ polymer.
Use/Production. (G) Water treatment additive. Prod. range: Confidential.

P 94–925

Manufacturer. Teknor Apex Company.
Chemical. (G) Polyol ester.
Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 94–926

Manufacturer. Teknor Apex Company.
Chemical. (S) Polyol ester.
Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 94–927

Importer. 3M Company.
Chemical. (G) Fluorochemical acrylate polymer.
Use/Import. (G) Coating. Import range: Confidential..

P 94–928

Manufacturer. Confidential.
Chemical. (G) Dialkyl crown ether.
Use/Production. (G) Reversible extractment of strontium and lead. Prod. range: Confidential.

P 94–929

Manufacturer. Confidential.
Chemical. (G) Aromatic crown ether.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94–930

Manufacturer. Confidential.
Chemical. (G) Blocked polyisocyanate.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94–931

Manufacturer. Confidential.
Chemical. (G) Blocked polyisocyanate.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94–932

Manufacturer. Confidential.
Chemical. (G) Blocked polyisicyanate.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94–933

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Amine neutralized phosporic acid esters.
Use/Production. (G) . Prod. range: Confidential.

P 94–934

Manufacturer. Confidential.
Chemical. (G) Terephthalate esterq.
Use/Production. (G) Lubricant basestock. Prod. range: Confidential.

P 94–935

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate mecrylate polymer.
Use/Production. (G) Highly dispersed material. Prod. range: 250,000–400,000 kg/yr.

P 94–936

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate metacrylate polymer.
Use/Production. (G) Highly dispersed material. Prod. range: 250,000–400,000 kg/yr.

P 94–937

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate methacrylate polymer.
Use/Production. (G) Highly dispersed material. Prod. range: 250,000–400,000 kg/yr.

P 94–938

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate metacrylate polymer.
Use/Production. (G) Highly dispersed material. Prod. range: 250,000–400,000 kg/yr.

P 94–939

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94–940

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94–941

Importer. Lenzing Performance Inc.
Chemical. (G) Polyamideimide.
Use/Import. (S) Wire coating, griding wheels, reinforcement polymer, menbranes, and moulded parts. Import range: Confidential.

P 94–942

Manufacturer. Confidential.
Chemical. (G) Polyimide.
Use/Production. (S) Wire coating, grinding wheels, reinforcement polymer, membranes and moulded parts. Prod. range: Confidential.

P 94–943

Manufacturer. Confidential.
Chemical. (G) Alkyl-aminophenol.
Use/Production. (S) Intermediate in the manufacture of fluorescent whitening agent. Prod. range: 42,200 kg/yr.

P 94–944

Manufacturer. Confidential.
Chemical. (G) Chemically modified cyclodextrin.
Use/Production. (G) Inclusion complexation agent. Prod. range: Confidential.

P 94–945

Manufacturer. Confidential.
Chemical. (G) Substituted heterocyclic azo trisubstituted benzeneamine.
Use/Production. (S) Dye intermediate. Prod. range: Confidential.

P 94–946

Manufacturer. Confidential.
Chemical. (G) Trisubstituted aminophenylazo substituted heteromonocyclic quaternary aminonium salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–947

Manufacturer. Confidential.
Chemical. (G) Trisubstituted aminophenylazo substituted heteromonocyclic quaternary aminonium salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–948

Manufacturer. Confidential

Chemical. (G) Trisubstituted aminophenylazo substituted heteromonocyclic quaternary aminonium salt.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–949

Manufacturer. Confidential.

Chemical. (G) Substituted aromatic acid chloride.

Use/Production. (G) Chemical intermediate. Prod. range: 5,000 kg/yr.

P 94–950

Manufacturer. Confidential.

Chemical. (S) An isophthalic acid, phthalic anhydride, neopentyl glycol, trimethyol, propane, ethylene glycol, 2-butyl-2-ethyl-1,3 propanediol polyester.

Use/Production. (G) Polyesters resin for use in industrial coatings. Prod. range: Confidential.

P 94–951

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94–952

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94–953

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94–954

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94–955

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94–956

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94–957

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94–958

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate polymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94–959

Importer. Confidential.

Chemical. (G) 1,2-Propanediol, 2 (or 3)-1-propenyloxyl)-, polymer with *x* hydroxy-*w*-hydroxypoly (oxy-1,4-butanediyl) and 1,1′ methylenebis (4-isocyanatobenzene).

Use/Import. (S) Rubber and plastics resin. Import range: 110,000–250,000 kg/yr.

P 94–960

Manufacturer. The Dow Chemical Company.

Chemical. (G) Methylene diphenylene diisocyanate (MDI) prepolymer.

Use/Production. (S) For the production of shoe soles, inner soles, sandals and boots. Prod. range: Confidential.

P 94–961

Manufacturer. The Dow Chemical Company.

Chemical. (G) Methylene diphenylene diisocyanate (MDI) prepolymer.

Use/Production. (S) For the production of shoe soles, inner soles, sandals and boots. Prod. range: Confidential.

P 94–962

Manufacturer. Confidential.

Chemical. (G) Poly condensate of aliphatic dicarboxylic acid and alkanediol polyurethane of aliphatic polyester.

Use/Production. (G) Molding compound. Prod. range: Confidential.

P 94–963

Manufacturer. Confidential.

Chemical. (G) Polyuethane of aliphatic polyester.

Use/Production. (G) Molding compound. Prod. range: Confidential.

P 94–964

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and apolyol calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–965

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–966

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–967

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–968

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–969

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–970

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–971

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–972

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–973

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–974

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–975

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–976

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–977

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–972

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–973

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–974

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–975

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–976

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–977

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–978

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol, calcium, magnesium and zinc salts.

Use/Production. (S) The PMN substances function as binders in publication gravure printing inks. Prod. range: Confidential.

P 94–979

Manufacturer. Confidential.

Chemical. (G) Amine carboxylic acid alkali salt.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94–980

Manufacturer. Confidential.

Chemical. (G) Copolymeric fluoroalkyliphatic ester.

Use/Production. (S) Stain resistant agent for carpet or general fabrics. Prod. range: 1,000–30,000 kg/yr.

P 94–981

Manufacturer. Confidential.

Chemical. (S) Fatty acids, lard.

Use/Production. (G) Site-limited intermediate. Prod, range: Confidential.

P 94–982

Manufacturer. Confidential.

Chemical. (G) Methyl amine esters.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

P 94–983

Manufacturer. Petrolite Corporation.

Chemical. (S) 2-Propenoic acid, alcohols C_{-r4}' esters.

Use/Production. (G) Additive. Prod. range: Confidential.

P 94–984

Manufacturer. Uni-Star Industries, Ltd.

Chemical. (G) Rosin, maleated, polymer with.

Use/Production. (S) Foam loose fill and foam sheet packaging material. Prod. range: Confidential.

P 94–985

Manufacturer. American Maize-Products Company.

Chemical. (G) Chemically modified cyclodextrin.

Use/Production. (G) Inclusion complexation agent. Prod. range: Confidential.

P 94–986

Importer. Rhone-Poulenc nc.

Chemical. (S) Phosphoric acid, lanthanum (3+) salt (1:1).

Use/Import. (S) Catalyst for organic synthesis, phospher for TV picture tubes and fluorescent lights. Import range: Confidential.

P 94–987

Manufacturer. Confidential.

Chemical. (G) Unsaturated urethane acrylate.

Use/Production. (G) Resin or resin additive. Prod. range: Confidential.

P 94–988

Manufacturer. Hercules Incorporation.

Chemical. (G) Hydrophobically modified hydroxyethylcellulose.

Use/Production. (S) Thickening agent for paints, paper coatings, hair and skin care applications. Prod. range: Confidential.

P 94–989

Importer. Ciba-Geigy Corporation.

Chemical. (G) Naphthalenedisulfonic acid, bis-3-(2-acetylamino)-4-((3-substituted-5-poropylamino)amino triazine) phenyl azo.

Use/Import. (S) Thickening agent for paints, paper coatings, hair and skin care applications. Import range: Confidential.

P 94–990

Importer. DIC Trading (U.S.A.), Inc.

Chemical. (G) Polester polyurethane.

Use/Import. (G) Polyurethane for adhesives. Import range: Confidential.

P 94–991

Importer. DIC Trading (U.S.A.), Inc.

Chemical. (G) Acrylic modified epoxy ester.

Use/Import. (S) Automobile parts coatings. Import range: Confifential.

P 94–992

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Hydroxyl groups containing acrylic copolymer.

Use/Production. (S) Air-drying and stoving industrial paints. Prod. range: 10,000–30,000 kg/yr.

P 94–993

Manufacturer. Confidential.

Chemical. (G) Halogenated ethylene/aromatic copolymer.

Use/Production. (S) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94–994

Manufacturer. Confidential.

Chemical. (G) Modified ethylene ethylene/aromatic copolymer.

Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94–995

Manufacturer. Confidential.

Chemical. (G) Halogenated ethylene/aromatic copolymer.
Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94–996

Manufacturer. Confidential.
Chemical. (G) Halogenated ethylene/aromatic copolymer.
Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94–997

Manufacturer. Confidential.
Chemical. (G) Halogenated ethylene/aromatic copolymer.
Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94–998

Manufacturer. Morton International, Inc.
Chemical. (S) Bis(cyclopentadienyl)magnesium.
Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94–999

Manufacturer. Morton International, Inc.
Chemical. (S) Bis(methylcyclopentadienyl) magnesium.
Use/Production. (G) Organometallic source for doping compound semi conductors, and deposition of magnesium. Prod. range: Confidential.

P 94–1000

Importer. AKZO Resins.
Chemical. (G) Polyester resin.
Use/Import. (S) Resin used to manufacture industrial coatings. Import range: Confidential.

P 94–1001

Manufacturer. Confidential.
Chemical. (G) Guerbet alcohol ester.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1002

importer. DIC Trading (U.S.A.), Inc.
Chemical. (G) Chlorinated polypropylene modified acrylic copolymer.
Use/Import. (S) Indusrtial coating for polypropylene goods. Import range: Confidential.

P 94–1003

Importer. Confidential.
Chemical. (G) Reaction products formed between tannins and amines in the presence of hydrochloric acid.
Use/Import. (G) Open, non-dispersive: product of emulsifier for binder use in construction and maintenance of roads. Import range: Confidential.

P 94–1004

Manufacturer. Confidential.
Chemical. (G) Reaction products of chlormethyl oxirane, bisphenol A, and polyoxyethylene-polyoxypropopylene block copolymer.
Use/Production. (G) Modifier for water-redcurable epoxy resins. Prod. range: Confidential.

P 94–1005

Manufacturer. Anitec Divisin of International Paper.
Chemical. (S) 6-Bromo-1,3-benzodioxole-5-carboxaldehyde.
Use/Production. (S) Intermediate in synthesis of photographic sensitizing dye. Prod. range: 30–60 kg/yr.

P 94–1006

Manufacturer. Anitec Division Of International Paper.
Chemical. (S) 5-Bromo-6-nitro-1,3-benzodioxole.
Use/Production. (S) Intermediate in synthesis of photographic sensitizing dye. Prod. range: 30–60 kg/yr.

P 94–1007

Manufacturer. Anitec, Divison of International Paper.
Chemical. (S) Bis (4,5-(methylenedoxy)-2-nitrophenyl) disulfide.
Use/Production. (S) Intermediate in synthesis of photographic sensitizing dye. Prod. range: 30–60 kg/yr.

P 94–1008

Manufacturer. Confidential.
Chemical. (G) Rosin derivative metal resinate.
Use/Production. (S) Resin for printing ink or adhesives. Prod. range: Confidential.

P 94–1009

Importer. Confidential.
Chemical. (G) Trifunctional aliphatic blocked urethane cross-linker.
Use/Import. (G) Protective coating for resin. Import range: 2,000–5,000 kg/yr.

P 94–1010

Manufacturer. Eastman Chemical Company.
Chemical. (G) Substituted amino-anthraquinone.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94–1011

Manufacturer. Eastman Chemical Company.
Chemical. (G) Substituted amino-anthraquinone.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94–1012

Manufacturer. Eastman Chemical Company.
Chemical. (G) Substituted amino-anthraquinone.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94–1013

Manufacturer. Eastman Chemical Company.
Chemical. (G) Substituted amino-anthraquinone.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94–1014

Manufacturer. Eastman Chemical Company.
Chemical. (G) Substituted amino-anthraquinone.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94–1015

Importer. Confidential.
Chemical. (G) Reaction products formed between tannins and amines in the presence of hydrochloric acid.
Use/Production. (G) Open, non-dispersive: product of emulsifier for binder used in construction and maintenance of roads. Import range: Confidential.

P 94–1016

Manufacturer. Confidential.
Chemical. (S) 2-Pyrrolidone, 1-ethenyl-, polymer with 1-triacontene.
Use/Production. (S) Explosive/pyrotechic binder/stabilizer. Prod. range: Confidential.

P 94–1017

Manufacturer. Confidential.
Chemical. (G) Substitued urea.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94–1018

Manufacturer. Confidential.
Chemical. (G) Substituted guanidine.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94–1019

Manufacturer. Confidential.
Chemical. (G) Quaternary ammonium halide.
Use/Production. (G) Catalyst for use in manufacture of chemical intermediate. Prod. range: Confidential.

P 94–1020

Manufacturer. S. C. Johnson & Sons, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-despersive. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: July 6, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–17293 Filed 7–14–94; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–51835; FRL–4874–6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 152 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 94–1021, 94–1022, 94–1023, 94–1024, 94–1025, 94–1026, 94–1027, 94–1028, 94–1029, 94–1030, 94–1031, 94–1032, 94–1033, 94–1034, 94–1035, 94–1036, 94–1037, 94–1038, 94–1039, 94–1040, 94–1041, 94–1042, 94–1043, 94–1044, 94–1045, 94–1046, 94–1047, 94–1048, 94–1049, 94–1050, 94–1051, 94–1052, 94–1053, 94–1054, 94–1055, 94–1056, 94–1057, 94–1058, 94–1059, 94–1060, 94–1061, 94–1062, June 12, 1994.

P 94–1063, 94–1064, June 13, 1994.

P 94–1065, 94–1066, 94–1067, 94–1068, 94–1069, 94–1070, 94–1071, 94–1072, 94–1073, 94–1074, 94–1075, 94–1076, June 15, 1994.

P 94–1077, June 18, 1994.

P 94–1078, June 15, 1994.

P 94–1079, 94–1080, 94–1081, 94–1082, 94–1083, 94–1084, 94–1085, 94–1086, 94–1087, 94–1088, 94–1089, 94–1090, 94–1091, 94–1092, June 19, 1994.

P 94–1093, 94–1094, 94–1095, June 20, 1994.

P 94–1096, 94–1097, 94–1098, 94–1099, 94–1100, 94–1101, 94–1102, 94–1103, 94–1104, 94–1105, 94–1106, 94–1107, 94–1108, 94–1109, 94–1110, 94–

Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-despersive. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: July 6, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–17293 Filed 7–14–94; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–51835; FRL–4874–6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 152 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 94–1021, 94–1022, 94–1023, 94–1024, 94–1025, 94–1026, 94–1027, 94–1028, 94–1029, 94–1030, 94–1031, 94–1032, 94–1033, 94–1034, 94–1035, 94–1036, 94–1037, 94–1038, 94–1039, 94–1040, 94–1041, 94–1042, 94–1043, 94–1044, 94–1045, 94–1046, 94–1047, 94–1048, 94–1049, 94–1050, 94–1051, 94–1052, 94–1053, 94–1054, 94–1055, 94–1056, 94–1057, 94–1058, 94–1059, 94–1060, 94–1061, 94–1062, June 12, 1994.

P 94–1063, 94–1064, June 13, 1994.

P 94–1065, 94–1066, 94–1067, 94–1068, 94–1069, 94–1070, 94–1071, 94–1072, 94–1073, 94–1074, 94–1075, 94–1076, June 15, 1994.

P 94–1077, June 18, 1994.

P 94–1078, June 15, 1994.

P 94–1079, 94–1080, 94–1081, 94–1082, 94–1083, 94–1084, 94–1085, 94–1086, 94–1087, 94–1088, 94–1089, 94–1090, 94–1091, 94–1092, June 19, 1994.

P 94–1093, 94–1094, 94–1095, June 20, 1994.

P 94–1096, 94–1097, 94–1098, 94–1099, 94–1100, 94–1101, 94–1102, 94–1103, 94–1104, 94–1105, 94–1106, 94–1107, 94–1108, 94–1109, 94–1110, 94–1111, 94–1112, 94–1113, 94–1114, 94–1115, 94–1116, 94–1117, 94–1118, 94–1119, 94–1120, June 19, 1994.

P 94–1121, June 11, 1994.

P 94–1122, 94–1123, 94–1124, 94–1125, 94–1126, 94–1127, June 21, 1994.

P 94–1128, June 27, 1994.

P 94–1129, 94–1130, 94–1131, 94–1132, June 21, 1994.

P 94–1133, 94–1134, 94–1135, 94–1136, June 22, 1994.

P 94–1137, 94–1138, 94–1139, 94–1140, 94–1141, 94–1142, June 25, 1994.

P 94–1143, June 15, 1994.

P 94–1144, 94–1145, 94–1146, 94–1147, 94–1148, 94–1149, 94–1150, 94–1151, June 25, 1994.

P 94–1152, 94–1155, 94–1156, 94–1163, 94–1164, 94–1165, 94–1166, 94–1167, 94–1168, 94–1169, June 26, 1994.

P 94–1170, 94–1171, 94–1172, 94–1173, 94–1174, 94–1175, 94–1176, 94–1177, 94–1178, 94–1179, 94–1180, June 27, 1994.

Written comments by:

P 94–1021, 94–1022, 94–1023, 94–1024, 94–1025, 94–1026, 94–1027, 94–1028, 94–1029, 94–1030, 94–1031, 94–1032, 94–1033, 94–1034, 94–1035, 94–1036, 94–1037, 94–1038, 94–1039, 94–1040, 94–1041, 94–1042, 94–1043, 94–1044, 94–1045, 94–1046, 94–1047, 94–1048, 94–1049, 94–1050, 94–1051, 94–1052, 94–1053, 94–1054, 94–1055, 94–1056, 94–1057, 94–1058, 94–1059, 94–1060, 94–1061, 94–1062, May 13, 1994.

P 94–1063, 94–1064, May 14, 1994.

P 94–1065, 94–1066, 94–1067, 94–1068, 94–1069, 94–1070, 94–1071, 94–1072, 94–1073, 94–1074, 94–1075, 94–1076, May 16, 1994.

P 94–1077, May 19, 1994.

P 94–1078, May 16, 1994.

P 94–1079, 94–1080, 94–1081, 94–1082, 94–1083, 94–1084, 94–1085, 94–1086, 94–1087, 94–1088, 94–1089, 94–1090, 94–1091, 94–1092, May 20, 1994.

P 94–1093, 94–1094, 94–1095, May 21, 1994.

P 94–1096, 94–1097, 94–1098, 94–1099, 94–1100, 94–1101, 94–1102, 94–1103, 94–1104, 94–1105, 94–1106, 94–1107, 94–1108, 94–1109, 94–1110, 94–1111, 94–1112, 94–1113, 94–1114, 94–1115, 94–1116, 94–1117, 94–1118, 94–1119, 94–1120, May 20, 1994.

P 94–1121, May 12, 1994.

P 94–1122, 94–1123, 94–1124, 94–1125, 94–1126, 94–1127, May 22, 1994.

P 94–1128, May 28, 1994.

P 94–1129, 94–1130, 94–1131, 94–1132, May 22, 1994.

P 94–1133, 94–1134, 94–1135, 94–1136, May 23, 1994.

P 94–1137, 94–1138, 94–1139, 94–1140, 94–1141, 94–1142, May 26, 1994.

P 94–1143, May 16, 1994.

P 94–1144, 94–1145, 94–1146, 94–1147, 94–1148, 94–1149, 94–1150, 94–1151, May 26, 1994.

P 94–1152, 94–1155, 94–1156, 94–1163, 94–1164, 94–1165, 94–1166, 94–1167, 94–1168, 94–1169, May 27, 1994.

P 94–1170, 94–1171, 94–1172, 94–1173, 94–1174, 94–1175, 94–1176, 94–1177, 94–1178, 94–1179, 94–1180, May 28, 1994.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51835]" and the specific PMN number should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460 (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NEM–B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

P 94–1021

Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1022

Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1023

Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1024

Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1025
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1026
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1027
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1028
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1029
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1030
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1031
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emusion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1032
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1033
Manufacturer. S. C. Johnson & Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1034
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1035
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1036
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1037
Manufacturer. S. C. Johnson & Son, Inc.
Chemical. (G) Acrylic emulsion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1038
Manufacturer. Siltech Inc.
Chemical. (G) Dimethicone copolyol amine.
Use/Production. (S) Textile softener. Prod. range: Confidential.

P 94–1039
Importer. Confidential.
Chemical. (G) Disazo-substituted carbomonocyclic metal complex.
Use/Import. (S) Leather dye. Import range: Confidential.

P 94–1040
Manufacturer. Scher Chemicals, Inc.
Chemical. (S) *N*-Alkyl-(3,aminopropyl)-*N*-*N*-Dimethyl-*N*-ethyl ammonium ethyl sulfate.
Use/Production. (G) Floor treatment additive. Prod. range: Confidential.

P 94–1041
Manufacturer. H. B. Fuller Company.
Chemical. (G) Triethylaminium salt polyurethane polymer.
Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94–1042
Manufacturer. Fairmount Chemical Company, Inc.
Chemical. (G) Methylene-bis-benzotriazolylphenols.
Use/Production. (S) Processing polycarbonates, polymer additive for ultraviolet stabilization-high temperature. Prod. range: Confidential.

P 94–1043
Manufacturer. Confidential.
Chemical. (G) Methylene-bis-benzotriazolylphenols.
Use/Production. (S) Halogen (chlorine or bromine) stabilizer in swimming pools and spas. Prod. range: 34,000–136,000 kg/yr.

P 94–1044
Manufacturer. Confidential.
Chemical. (G) Acrylic polymers.
Use/Production. (G) Adhesive for industrial application to substrates. Prod. range: Confidential.

P 94–1045
Manufacturer. Confidential.
Chemical. (G) Acrylic polymers.
Use/Production. (G) Adhesive for industrial application to substrates. Prod. range: Confidential.

P 94–1046
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1047
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1048
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1049
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1050
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1051
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1052
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1053
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1054
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1055
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1056
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1057
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1058
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1059
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1060
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1061
Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1062
Manufacturer. Internationl Specialty Products.
Chemical. (G) Chloro alkene.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94–1063
Importer. Confidential.
Chemical. (G) Siloxanes and silicones, polyether modified.
Use/Import. (G) Additive, open, non-dispersive use. Import range: Confidential.

P 94–1064
Importer. Confidential.
Chemical. (G) Acrylic acid copolymer, polyoxyethylene modified.
Use/Import. (G) Additive, open, non-dispersive use. Import range: Confidential.

P 94–1065
Importer. Confidential.

Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1055

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1056

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1057

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1058

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1059

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1060

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1061

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 94–1062

Manufacturer. Internationl Specialty Products.
Chemical. (G) Chloro alkene.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94–1063

Importer. Confidential.
Chemical. (G) Siloxanes and silicones, polyether modified.
Use/Import. (G) Additive, open, non-dispersive use. Import range: Confidential.

P 94–1064

Importer. Confidential.
Chemical. (G) Acrylic acid copolymer, polyoxyethylene modified.
Use/Import. (G) Additive, open, non-dispersive use. Import range: Confidential.

P 94–1065

Importer. Confidential.
Chemical. (G) Hydroxy acrylic polymer.
Use/Import. (G) Automotive refinish paint. Import range: Confidential.

P 94–1066

Manufacturer. Confidential.
Chemical. (G) Pentaerythritol tetraesters of mixed fatty acids.
Use/Production. (G) Synthetic industrial lubricant for contained use. Prod. range: Confidential.

P 94–1067

Manufacturer. Confidential.
Chemical. (G) Mixed fatty acid esters of mono and dipentaerythritol.
Use/Production. (G) Synthetic industrial lubricant for contained use. Prod. range: Confidential.

P 94–1068

Manufacturer. Confidential.
Chemical. (G) Mixed fatty acid esters of mono and dipentaerythritol.
Use/Production. (G) Synthetic industrial lubricant for contained use. Prod. range: Confidential.

P 94–1069

Manufacturer. Confidential.
Chemical. (G) Mixed fatty acid esters of mono and dipentaerythritol.
Use/Production. (G) Component of dispersively applied coating. Prod. range: Confidential.

P 94–1070

Manufacturer. Confidential.
Chemical. (G) Modified acrylate methacrylate polymer.
Use/Production. (G) Polyester component of a polyurethane adhesive. Prod. range: Confidential.

P 94–1071

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional polymers.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

P 94–1072

Manufacturer. Confidential.
Chemical. (G) Styrenated hydroxy functional acrylic.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

P 94–1073

Manufacturer. Confidential.
Chemical. (G) Mixed unsaturated aliphatic esters.
Use/Production. (G) Component of coating with open use. Prod. range: 64,000–85,000 kg/yr.

P 94–1074

Manufacturer. H. B. Fuller Corporation.
Chemical. (G) Polyester isocyanate polymer.
Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94–1075

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate polymer.
Use/Production. (S) Adhesive. Prod. range: Confidential.

P 94–1076

Importer. Confidential.
Chemical. (G) Modified polyester resin.
Use/Import. (G) Adhesive. Import range: Confidential.

P 94–1077

Importer. Spies Hecker, Inc.
Chemical. (S) 1,6-Hexanediol; hexanedioic acid; 1,3-benzenedicarboxylic acid; 1,3-benzenedicarboxylic acid; 1,4-benzenedicarboxylic acid; dimethylolpropionic acid; isophorone diisocyanate; dimethylisopropanolamine.
Use/Import. (S) Binder for paints. Import range: 100–1,000 kg/yr.

P 94–1078

Manufacturer. Confidential.
Chemical. (G) Vinyl acetate copolymer.
Use/Production. (G) Protective coating,(open, non-dispersive use). Prod. range: Confidential.

P 94–1079

Manufacturer. Arizona Chemical Company.
Chemical. (G) Petroleum hydrocarbon resin (cyclopentadiene type) as the basic polymer.
Use/Production. (S) Tackifier component of adhesives. Resin component in production of heat-set, wed off-set and sheet fed inks. Prod. range: Confidential.

P 94–1080

Manufacturer. Olin Corporation.
Chemical. (G) Alcohol alkoxylate.
Use/Production. (S) Surfactant/rinse aid household, and industrial automatic dishwashing. Prod. range: Confidential.

P 94–1081

Manufacturer. Confidential.
Chemical. (G) Hydroxy terminated saturated polyester resin.
Use/Production. (G) Intermediate for laminating adhesive. Prod. range: Confidentisl.

P 94–1082

Manufacturer. Confidential.
Chemical. (G) Isocyanate-terminated polyester polyurethane.

Use/Production. (G) Synthetic industrial lubricant for contained use. Prod. range: Confidential.

P 94–1083

Manufacturer. Confidential.
Chemical. (G) Trimethylolpropane triesters with mixed fatty acids.
Use/Production. (G) Synthetic industrial lubricant for contained use. Prod. range: Confidential.

P 94–1084

Manufacturer. Arizona Chemical Company.
Chemical. (G) Petroleum hydrocarbon resin (cyclopentadiene type), as the basic polymer.
Use/Production. (S) Tackifier component of adhesives. Resin component in the production of heat-set, off-set and sheet inks. Prod. range: Confidential.

P 94–1085

Manufacturer. Confidential.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1086

Manufacturer. Confidential.
Chemical. (G) Mono and amine salt carboxylate.
Use/Production. (G) Urethane foam catalyst. Prod. range: Confidential.

P 94–1087

Manufacturer. R. T. Vanderbilt Company, Inc.
Chemical. (S) Thiodicarbonic diamide, tetrakis (2-methylpropyl)-.
Use/Production. (S) Polymer and elastomer accelerator. Prod. range: Confidential.

P 94–1088

Manufacturer. Confidential.
Chemical. (G) Alkyl polyester resin, carboxy terminated.
Use/Production. (G) Resin for powder coating. Prod. range: Confidential.

P 94–1089

Importer. Confidential.
Chemical. (G) Polyurethane adduct.
Use/Import. (G) Open, non-dispersive. Import range: Confidential.

P 94–1090

Importer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (S) Docosanoic acid, mono ester with 1,2,3-propanediol.
Use/Import. (G) Polymer additive non-dispersive use. Import range: Confidential.

P 94–1091

Manufacturer. Eastman Kodak Company.
Chemical. (G) Aromatic amino substituted naphthalenecarboxamide.
Use/Production. (G) Chemical intermediate. Prod. range: 150–1,500 kg/yr.

P 94–1092

Manufacturer. Stockhausen, Inc.
Chemical. (G) Polglycoletheracrylate teloner with acrylic and sulfonic acid sodium salts.
Use/Production. (S) Dispersing agent, sequestering agent for all and proceses in textile finising (dyeing, printing); Prod. range: 50,000–500,000 kg/yr.

P 94–1093

Manufacturer. Confidential.
Chemical. (G) Polysulfide aralkylchorosilane.
Use/Production. (G) Intermediate chlorosilane used for the production of silane esters. Prod. range: Confidential.

P 94–1094

Manufacturer. Confidential.
Chemical. (S) *A* 2-Methyl-1,3 propendiol, isophthalic anhydride, 2-oxepanone (epsilon-caprolactone)vextended polyester.
Use/Production. (G) Polyester for use in industrial coating. Prod. range: Confidential.

P 94–1095

Manufacturer. Confidential.
Chemical. (G) Amine salt of a brominated polyester, cyclohexane,1,1 methylene bis(4-isocyanate) based polyurethane.
Use/Production. (S) Fabric coating. Prod. range: 100,000–500,000 kg/yr.

P 94–1096

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1097

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenol, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1098

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1099

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1100

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1101

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1102

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1103

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1104

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publicaton gravure printing inks. Prod. range: Confidential.

P 94–1105

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1106

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1107

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1108

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1109

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldwhyde and polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1110

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkyphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1111

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1112

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with alkyphenols, carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in

lithographic and publication gravure pinting inks. Prod. range: Confidential.

P 94–1106

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1107

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1108

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1109

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldwhyde and polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1110

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkyphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1111

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1112

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkyphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1113

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1114

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1115

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkyphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1116

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1117

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1118

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1119

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1120

Manufacturer. Confidential.

Chemical. (G) Rosin, maleated, polymer with alkylphenols, carboxylic acids, formaldehyde and a polyol.

Use/Production. (S) The PMN substances function as binders in lithographic and publication gravure printing inks. Prod. range: Confidential.

P 94–1121

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1122

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Substituted naphthalenesulfonic acid.

Use/Production. (S) Reactive dye for cellulose. Prod. range: 5,000–30,000 kg/yr.

P 94–1123

Manufacturer. Hoechst Celanese Cororation.

Chemical. (G) Substituted naphthalenesulfonic acid.

Use/Production. (S) Reactive dye for cellulose. Prod. range: 5,000–30,000 kg/yr.

P 94–1124

Manufacturer. Confidential.

Chemical. (G) Mixed pentaerythritol tetraester reaction products with alkylated diarylamino.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 94–1125

Manufacturer. Confidential.

Chemical. (S) Aqueous polyurethane dispersion.

Use/Production. (G) Coating for: flexible substrate, wood industrial coatings, printing inks and glass fiber sizing. Prod. range: 100,000–300,000 kg/yr.

P 94–1126

Manufacturer. Confidential.

Chemical. (S) Aqueous polyurethane dispersion.

Use/Production. (S) Coating for: flexible substrate, wood, and industiral coatings, printing inks and glass fiber sizing. Prod. range: 340,000–680,000 kg/yr.

P 94–1127

Manufacturer. Confidential.

Chemical. (S) Aqueous polyurethane dispersion.

Use/Production. (S) Coating for: flexible substrate, wood, and industiral coatings, printing inks and glass fiber sizing. Prod. range: 340,000–680,000 kg/yr.

P 94–1128

Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Ethylene copolymer.
Use/Production. (G) Hot melt sealant. Prod. range: Confidential.

P 94–1129

Importer. Confidential.
Chemical. (G) Alkyl cyano substituted pyridazo benzoate.
Use/Import. (G) This substance is used as one of the yellow components of color sheet casette. Import range: Confidential.

P 94–1130

Importer. Confidential.
Chemical. (G) 3-(Alkyloxyphenyl)-7-phenyl-1,5-dioxo-*s*-indacen-2,6-dione.
Use/Import. (G) Disperse dye colorant for coloration of polyester textile. Import range: Confidential.

P 94–1131

Importer. Confidential.
Chemical. (G) Naphthylazo-triazinylamino-naphathalene disulfonic acid.
Use/Import. (G) Dye for cotton. Import range: Confidential.

P 94–1132

Manufacturer. Confidential.
Chemical. (G) Amine catalyst.
Use/Production. (G) Epoxy catalyst. Prod. range: Confidential.

P 94–1133

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Oil modified urethane.
Use/Production. (G) Coating resin. Prod. range: Confidential.

P 94–1134

Manufacturer. Confidential.
Chemical. (S) Modified acrylic polymer.
Use/Production. (G) Open non-dispersive use. Prod. range: Confidential.

P 94–1135

Manufacturer. Confidential.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1136

Manufacturer. Confidential.
Chemical. (G) Acrylic resin/ acrylic polymer.
Use/Production. (G) The acrylic polymer is to be used as a polymeric binder in light-sensitive photoresists. Prod. range: Confidential.

P 94–1137

Manufacturer. Confidential.
Chemical. (G) *N*-Alkyl phthalimide.
Use/Production. (S) Intermediate for surfactant. Prod. range: 5,000–25,000 kg/yr.

P 94–1138

Manufacturer. Confidential.
Chemical. (G) *N*-Alkyl phthalimide.0
Use/Production. (S) Intermediate for surfactant. Prod. range: 5,000–25,000 kg/yr.

P 94–1139

Manufacturer. Confidential.
Chemical. (G) Amidocarboxy benzoic acid salt.
Use/Production. (S) Surfactant for hard surface cleaners. Prod. range: 5,000–25,000 kg/yr.

P 94–1140

Manufacturer. Confidential.
Chemical. (G) Amidocarboxy benzoic acid salt.
Use/Production. (S) Surfactant for hard surface cleaners. Prod. range: 5,000–25,000 kg/yr.

P 94–1141

Manufacturer. Confidential.
Chemical. (G) Styrene-acrylic polymer.
Use/Production. (S) Additive for polymers. Prod. range: Confidental.

P 94–1142

Importer. UBE Industries (America), Inc.
Chemical. (S) Magnesium hydroxide sulfate teihydrate.
Use/Import. (S) Reinforcing material for plastics and rubbers. Import range: 5,000–10,000 kg/yr.

P 94–1143

Manufacturer. United Organics Corporation.
Chemical. (S) Antimony tributyrate.
Use/Production. (S) Polyester catalyst. Prod. range: 25,000–1,000,000 kg/yr.

P 94–1144

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated polymer with carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94–1145

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with carboylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94–1146

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94–1147

Manufacturer. Confidential.
Chemical. (S) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential

P 94–1148

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94–1149

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94–1150

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94–1151

Manufacturer. Confidential.
Chemical. (G) Rosin, maleated, polymer with carboxylic acids, formaldehyde and a polyol.
Use/Production. (S) The PMN substances function as binders in lithographic printing inks. Prod. range: Confidential.

P 94–1152

Manufacturer. Cytec Industries, Inc.
Chemical. (G) Modified epoxy resin; modified aromatic epoxy resin.
Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.

P 94–1155

Manufacturer. Cytec Industries Inc.
Chemical. (G) Modified epoxy resin; modified aromatic epoxy resin.
Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.

P 94–1156

Manufacturer. Cyctec Industries Inc.
Chemical. (G) Modified epoxy resin; modified aromatic epoxy resin.
Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.

P 94–1163

Manufacturer. The Dow Chemical Company.
Chemical. (S) Styrene; para-methyl styrene.
Use/Production. (G) Plastic film and container applications. Prod. range: Confidential.

P 94–1164

Importer. The Dow Chemical Company.
Chemical. (G) Modified styrene-acrylate polymer.
Use/Import. (S) Polymer for use in interior house paint. Import range: Confidential.

P 94–1165

Importer. The Dow Chemical Company.
Chemical. (G) Modified styrene-acrylate polymer.
Use/Import. (G) Plastic film for container applications. Import range: Confidential.

P 94–1166

Importer. The Dow Chemical Company.
Chemical. (G) Modified styrene-acrylate polymer.
Use/Import. (S) Polymer for use in interior house paint. Import range: Confidential.

P 94–1167

Importer. The Dow Chemical Company.
Chemical. (G) Modified styrene-acrylate polymer.
Use/Import. (S) Polymer for use in interior house paint. Import range: Confidential.

P 94–1168

Manufacturer. Shell Oil Company.
Chemical. (G) Polyester of saturated polyol.

Chemical. (G) Modified epoxy resin; modified aromatic epoxy resin.

Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.

P 94–1155

Manufacturer. Cytec Industries Inc.

Chemical. (G) Modified epoxy resin; modified aromatic epoxy resin.

Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.

P 94–1156

Manufacturer. Cyctec Industries Inc.

Chemical. (G) Modified epoxy resin; modified aromatic epoxy resin.

Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.

P 94–1163

Manufacturer. The Dow Chemical Company.

Chemical. (S) Styrene; para-methyl styrene.

Use/Production. (G) Plastic film and container applications. Prod. range: Confidential.

P 94–1164

Importer. The Dow Chemical Company.

Chemical. (G) Modified styrene-acrylate polymer.

Use/Import. (S) Polymer for use in interior house paint. Import range: Confidential.

P 94–1165

Importer. The Dow Chemical Company.

Chemical. (G) Modified styrene-acrylate polymer.

Use/Import. (G) Plastic film for container applications. Import range: Confidential.

P 94–1166

Importer. The Dow Chemical Company.

Chemical. (G) Modified styrene-acrylate polymer.

Use/Import. (S) Polymer for use in interior house paint. Import range: Confidential.

P 94–1167

Importer. The Dow Chemical Company.

Chemical. (G) Modified styrene-acrylate polymer.

Use/Import. (S) Polymer for use in interior house paint. Import range: Confidential.

P 94–1168

Manufacturer. Shell Oil Company.

Chemical. (G) Polyester of saturated polyol.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94–1169

Manufacturer. Confidential.

Chemical. (G) Alkylated melamine resin.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 20,000–100,000 kg/yr.

P 94–1170

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam, 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1171

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1172

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1173

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1174

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1175

Importer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins caprolactam; 2,6-bis(1,1-dimethyl)-4-methylphenol.

Use/Import. (G) Metal working additive. Import range: Confidential.

P 94–1176

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1177

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; sodium hydroxide; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1178

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; potassium hydroxide; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1179

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; monoethanolamine; 2,6-bis(1,1-dimethanoamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

P 94–1180

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) Maleic anhydride; C_{12}–C_{21} branched chain mono-olefins; caprolactam; diethanolamine; 2,6-bis(1,1-dimethylethyl)-4-methylphenol.

Use/Production. (G) Metal working additive. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: July 6, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–17295 Filed 7–14–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted To Office Of Management And Budget For Review

July 11, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: None

Title: Section 1.402, Pioneer's preference

Action: Reinstatement of a preciously approved collection for which approval has expired

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 3 responses; 500 hours average burden per response; 1,500 hours total annual burden

Needs and Uses: A Report and Order was adopted in April 1991 creating a "pioneer's preference" for those entities whose proposals foster the introduction and development of new communications technologies and services in the spectrum allocation and authorization process. A Memorandum Opinion and Order was adopted in February 1992 modifying the rule section. Specifically, a deadline was established for the filing of pioneer's preference requests and certain rules were clarified. Information submitted by applicants for a pioneer's preference will be used by the Commission to determine whether initiation of a rulemaking proceeding is warranted and, if so, whether applicants are entitled to preferences. If the information is not collected, it would not be possible to award preferences.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17203 Filed 7–14–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1033–DR]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1033–DR), dated July 7, 1994, and related determinations.

EFFECTIVE DATE: July 7, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 7, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Georgia, resulting from torrential rain, high wind, tornadoes and flooding resulting from Tropical Storm Alberto on July 3, 1994, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

Bibb, Clayton, Dougherty, and Sumter Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–17237 Filed 7–14–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1033–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1033–DR), dated July 7, 1994, and related determinations.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated July 7, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1994:

Butts, Calhoun, Coweta, Crawford, Dooly Early, Fayette, Fulton, Henry, Houston, Jones, Lamar, Lee, Macon, Meriwether, Monroe, Peach, Pike, Randolph, Spalding, Talbot, Taylor, Terrell, Troup, Twiggs, Upson, and Webster Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17235 Filed 7–14–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1033–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1033–DR), dated July 7, 1994, and related determinations

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated July 7, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1994:

Crisp and Worth Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17236 Filed 7–14–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1034–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1034–DR), dated July 8, 1994, and related determinations.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 8, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from severe storms and flooding

[FEMA–1033–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1033–DR), dated July 7, 1994, and related determinations

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated July 7, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1994:

Crisp and Worth Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17236 Filed 7–14–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1034–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1034–DR), dated July 8, 1994, and related determinations.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 8, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from severe storms and flooding resulting from Tropical Storm Alberto on July 2, 1994, and continuing , is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leland Wilson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Barbour, Coffee, Covington, Dale, Geneva, Henry, Houston, and Randolph Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–17234 Filed 7–14–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1032–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1032–DR), dated July 1, 1994, and related determinations.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 1, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe storms, flooding and ground saturation due to high water tables on March 5, 1994, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David P. Grier of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

Barnes, Benson, Foster, Griggs, Hettinger, LaMoure, Logan, McIntosh, McKenzie, Nelson, Oliver, Ramsey, Steele, Stutsman, Towner, Walsh, Wells and Williams Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–17238 Filed 7–14–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL HOUSING FINANCE BOARD

[No. 94–N02]

Notice of Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new Section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR Part 936) that were published in the **Federal Register** on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members that are subject to the Community Reinvestment Act of 1977, 12 U.S.C. 2901 *et seq.*, (CRA), will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the second quarter review (1994–95 cycle) under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date for Member Community Support Statements for Members Selected in Second Quarter Review:* August 31, 1994.

Due Date for Public Comments on Members Selected in Second Quarter Review: August 31, 1994.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408–2825, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board currently reviews all FHLBank System members that are subject to CRA once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. To date, only members that are subject to CRA have been reviewed. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations post-July 1, 1990, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter. However, the Finance Board will postpone review of new members until they have been in the System for one full year.

The Finance Board is currently in the process of promulgating amendments to the Community Support regulation that would specify the procedures to be used to evaluate those members that are not subject to CRA (insurance companies and credit unions). As soon as these regulations are adopted, this review will include those members that are not subject to CRA.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members To Be Reviewed in the Second Quarter, Grouped by FHLBank District

Member	City and state
Federal Home Loan Bank of Boston—District 1 Post Office Box 9106, Boston, Massachusetts 02205–9106	
Branford Savings Bank	Branford, CT.
Community Savings Bank	Bristol, CT.
Farmers and Mechanics Bank	Middletown, CT.
First City Bank	New Britain, CT.
Norwich Savings Society	Norwich, CT.
American Bank of Connecticut	Waterbury, CT.
Centerbank	Waterbury, CT.
North Middlesex Savings Bank	Ayer, MA.
Peoples Federal Savings Bank	Boston, MA.
The Boston Bank of Commerce	Boston, MA.
People's Savings Bank of Brockton	Brockton, MA.
North Cambridge Cooperative Bank	Cambridge, MA.
Easthampton Co-op Bank	Easthampton, MA.
Everett Savings Bank	Everett, MA.
Glendale Cooperative Bank	Everett, MA.
Fidelity Cooperative Bank	Fitchburg, MA.
Foxboro National Bank of Foxboro	Foxboro, MA.
Ipswich Savings Bank	Ipswich, MA.
First Essex Bank, FSB	Lawrence, MA.
Medford Cooperative Bank	Medford, MA.
Plymouth Savings Bank	Middleborough, MA.
Monson Savings Bank	Monson, MA.
Lawrence Savings Bank	North Andover, MA.
Warren Five Cents Savings Bank	Peabody, MA.
Saugus Cooperative Bank	Saugus, MA.
Spencer Savings Bank	Spencer, MA.
Bristol County Savings Bank	Taunton, MA.
Sterling Bank	Waltham, MA.
Winchester Cooperative Bank	Winchester, MA.
Franklin Savings Bank	Farmington, ME.
Kennebunk Savings Bank	Kennebunk, ME.
Katahdin Trust Company	Patten, ME.
Coastal Savings Bank	Portland, ME

Member
Peoples Heritage Savings Bank
Southeast Bank for Savings
Franklin Savings Bank
CFX Bank
Mascoma Savings Bank
First NH Bank
Meredith Village Savings Bank
Peterborough Savings Bank
Bank of Newport
Northfield Savings Bank
Marble Bank
Federal Home Loan Bank of One World Trade Center—103rd Floo
Pamrapo Savings Bank, SLA
Ocean Federal Savings Bank
Farmers & Mechanics Savings Bank, SLA
Freehold Savings & Loan Association
Oritani Savings and Loan Association
Investors Savings Bank
Millington Savings Bank, SLA
Gibraltar Savings Bank, SLA
Ocean City Home Savings & Loan Association
Lakeview Savings Bank
Ridgewood Savings and Loan Association
Shadow Lawn Savings Bank, SLA
Glen Falls National Bank & Trust Company
Provident Savings Bank, F.A.
Maple City Savings and Loan Association
Sunnyside Federal Savings & Loan Association
Maspeth Federal Savings & Loan Association
Massena Savings and Loan Association
Medina Savings and Loan Association
Carver Federal Savings Bank
The Lincoln Savings Bank, FSB
Ogdensburg Federal Savings & Loan Association
Schenectady Federal Savings & Loan Assoc
Bank of Westbury
Yonkers Savings and Loan Association
Doral Federal Savings Bank
Federal Home Loan Bank of 625 West Ridge Pike, Suite B–107, Cons
Investment Savings and Loan Association
Reliance Savings Association
Bridgeville Savings Bank
Charleroi Federal Savings Bank
Citizens National Bank of Evans City
Greenville Savings Bank
Mauch Chunk Trust Company
Grange National Bank of Wyoming County
Westmoreland Federal Savings & Loan Assoc
Keystone Savings Bank
Lock Haven Savings and Loan Association
First Citizens National Bank
First National Bank of McConnellsburg
The Muncy Bank & Trust Company
Prudential Savings Bank, PaSA
Iron and Glass Bank
Workingmens Savings Bank, FSB
Greater Pottsville FS&LA
Peoples Savings Bank, PaSA
Central Pennsylvania Savings Association
Keystone Federal Savings & Loan Association
First National Bank of Spring Mills
East Stroudsburg Savings Association
Main Line Federal Savings Bank
Washington Federal Savings Bank
Citizens & Northern Bank
First National Bank of Bluefield
First Empire Federal Savings & Loan Assoc
First Federal S&LA of Ravenswood

Member	City and state
Peoples Heritage Savings Bank	Portland, ME.
Southeast Bank for Savings	Dover, NH.
Franklin Savings Bank	Franklin, NH
CFX Bank	Keene, NH.
Mascoma Savings Bank	Lebanon, NH.
First NH Bank	Manchester, NH.
Meredith Village Savings Bank	Meredith, NH.
Peterborough Savings Bank	Peterborough, NH.
Bank of Newport	Newport, RI.
Northfield Savings Bank	Northfield, VT.
Marble Bank	Rutland, VT
Federal Home Loan Bank of New York—District 2 One World Trade Center—103rd Floor, New York, New York 10048	
Pamrapo Savings Bank, SLA	Bayonne, NJ.
Ocean Federal Savings Bank	Brick Township, NJ.
Farmers & Mechanics Savings Bank, SLA	Burlington, NJ.
Freehold Savings & Loan Association	Freehold, NJ.
Oritani Savings and Loan Association	Hackensack, NJ.
Investors Savings Bank	Millburn, NJ.
Millington Savings Bank, SLA	Millington, NJ.
Gibraltar Savings Bank, SLA	Newark, NJ.
Ocean City Home Savings & Loan Association	Ocean City, NJ.
Lakeview Savings Bank	Paterson, NJ.
Ridgewood Savings and Loan Association	Ridgewood, NJ.
Shadow Lawn Savings Bank, SLA	West Long Branch, NJ.
Glen Falls National Bank & Trust Company	Glen Falls, NY.
Provident Savings Bank, F.A.	Haverstraw, NY.
Maple City Savings and Loan Association	Hornell, NY.
Sunnyside Federal Savings & Loan Association	Irvington, NY.
Maspeth Federal Savings & Loan Association	Maspeth, NY.
Massena Savings and Loan Association	Massena, NY.
Medina Savings and Loan Association	Medina, NY.
Carver Federal Savings Bank	New York, NY.
The Lincoln Savings Bank, FSB	New York, NY.
Ogdensburg Federal Savings & Loan Association	Ogdensburg, NY.
Schenectady Federal Savings & Loan Assoc	Schenectady, NY.
Bank of Westbury	Westbury, NY.
Yonkers Savings and Loan Association	Yonkers, NY.
Doral Federal Savings Bank	Catana, PR
Federal Home Loan Bank of Pittsburgh—District 3 825 West Ridge Pike, Suite B–107, Conshohocken, Pennsylvania 19428	
Investment Savings and Loan Association	Altoona, PA.
Reliance Savings Association	Altoona, PA.
Bridgeville Savings Bank	Bridgeville, PA.
Charleroi Federal Savings Bank	Charleroi, PA.
Citizens National Bank of Evans City	Evans City, PA.
Greenville Savings Bank	Greenville, PA.
Mauch Chunk Trust Company	Jim Thorpe, PA.
Grange National Bank of Wyoming County	Laceyville, PA.
Westmoreland Federal Savings & Loan Assoc	Latrobe, PA.
Keystone Savings Bank	Lehigh Valley, PA.
Lock Haven Savings and Loan Association	Lock Haven, PA.
First Citizens National Bank	Mansfield, PA.
First National Bank of McConnellsburg	McConnellsburg, PA.
The Muncy Bank & Trust Company	Muncy, PA.
Prudential Savings Bank, PaSA	Philadelphia, PA.
Iron and Glass Bank	Pittsburgh, PA.
Workingmens Savings Bank, FSB	Pittsburgh, PA.
Greater Pottsville FS&LA	Pottsville, PA.
Peoples Savings Bank, PaSA	Ridgway, PA.
Central Pennsylvania Savings Association	Shamokin, PA.
Keystone Federal Savings & Loan Association	Sharpsburg, PA.
First National Bank of Spring Mills	Spring Mills, PA.
East Stroudsburg Savings Association	Stroudsburg, PA.
Main Line Federal Savings Bank	Villanova, PA.
Washington Federal Savings Bank	Washington, PA.
Citizens & Northern Bank	Wellsboro, PA.
First National Bank of Bluefield	Bluefield, WV.
First Empire Federal Savings & Loan Assoc	Charleston, WV.
First Federal S&LA of Ravenswood	Ravenswood, WV.

Member	City and state
Federal Home Loan Bank of Atlanta—District 4, Post Office Box 105565, Atlanta, Georgia 30348	
Central State Bank	Calera, AL.
Southland Bank	Dothan, AL.
First Federal Bank, FSB	Enterprise, AL.
First Bank and Trust	Grove Hill, AL.
First Federal of Alabama, FSB	Jasper, AL.
First Liberty National Bank	Washington, DC.
Independence Federal Savings Bank	Washington, DC.
AmTrust Bank, FSB	Boca Raton, FL.
Key Florida Bank, FSB	Bradenton, FL.
Crown Savings Association	Casselberry, FL.
FirstSouth Bank, FSB	Holiday, FL.
Community First Bank	Jacksonville, FL.
Key Biscayne Bank & Trust Company	Key Biscayne, FL.
Union Bank of Florida	Lauderhill, FL.
First Federal S&L Association of Lake County	Leesburg, FL.
The American Bank of the South	Merritt Island, FL.
Pacific National Bank	Miami, FL.
Mercantile Bank of Naples	Naples, FL.
First Federal Savings Bank of New Smyrna	New Smyrna Beach, FL.
Preferred Bank, A FSB	Palmetto, FL.
AmSouth Bank of Florida	Pensacola, FL.
First Federal Savings Bank of Charlotte Cty	Punta Gorda, FL.
City Bank of Tampa	Tampa, FL.
Fidelity Federal Savings Bank of Florida	West Palm Beach, FL.
First FS&LA of the Palm Beaches	West Palm Beach, FL.
Federal Trust Bank, a FSB	Winter Park, FL.
The Summit National Bank	Atlanta, GA.
First Federal Bank of Northwest Georgia, FSB	Cedartown, GA.
Habersham Bank	Clarkesville, GA.
Newton Federal Savings & Loan Association	Covington, GA.
Mount Vernon FSB	Dunwoody, GA.
Griffin Federal Savings Bank	Griffin, GA.
United Bank of Griffin	Griffin, GA.
Crescent Bank & Trust Co	Jasper, GA.
Home Federal Savings Bank	Rome, GA.
Farmers & Merchants Bank	Statesboro, GA
Thomaston Federal Savings Bank	Thomaston, GA.
Thomas County Federal Savings & Loan Association	Thomasville, GA.
Stephens Federal Savings & Loan Association	Toccoa, GA.
Tucker Federal Savings & Loan Association	Tucker, GA.
First Federal Savings & Loan Association	Valdosta, GA.
American National Savings Association, F.A	Baltimore, MD.
Baltimore American Savings Bank, FSB	Baltimore, MD.
Chase Bank of Maryland	Baltimore, MD.
Farmers Bank, a Federal Savings Bank	Baltimore, MD.
First Federal Savings Bank of Western Maryland	Cumberland, MD.
Eastern Savings Bank, FSB	Hunt Valley, MD.
Maryland Federal Savings & Loan Association	Hyattsville, MD.
Citizens Savings Bank, F.S.B.	Silver Spring, MD.
Sykesville Federal Savings Association	Sykesville, MD.
Equitable Federal Savings Bank	Wheaton, MD.
First Southern Savings Bank	Asheboro, NC.
Blue Ridge Savings Bank, Inc	Asheville, NC.
Citizens Savings Bank	Newton, NC.
The Community Bank	Pilot Mountain, NC.
Raleigh Federal Savings Bank	Raleigh, NC.
Centura Bank	Rocky Mount, NC.
Citizens Federal Savings and Loan Association	Salisbury, NC.
Cleveland Federal Bank, a Savings Bank	Shelby, NC.
The Bank of Iredale	Statesville, NC.
Ashe Federal Savings & Loan Association	West Jefferson, NC.
Piedmont Federal Savings & Loan Association	Winston-Salem, NC.
First Palmetto Savings Bank, FSB	Camden, SC.
Carolina First Savings Bank, FSB	Georgetown, SC.
Greenville National Bank	Greenville, SC.
United Savings Bank, FSB	Greenwood, SC.
Spartanburg National Bank	Spartanburg, SC.
Community Federal S&L of Winnsboro	Winnsboro, SC.
Woodruff Federal Savings & Loan Association	Woodruff, SC.
Columbia First Bank, A FSB	Arlington, VA.
Fredericksburg Savings & Loan Association, FA	Fredericksburg, VA.
Eastern American Bank, FSB	Herndon, VA.

Memb
Cenit Bank for Savings, FSB
Life Savings Bank, FSB
Fidelity Federal Savings Bank
Southside Bank
Federal Home Loan Bank o Post Office Box 598, Cin
Bank of Edmonson County
Citizens Bank & Trust Company
Farmers & Traders Bank of Campton
First Federal Bank for Savings
Bank of Danville and Trust Company
Central Kentucky Federal S&L Association
Columbia Federal Savings & Loan Association
Harlan National Bank
Harrodsburg First FS&LA
First Federal Savings & Loan Association
First Federal Savings Bank
Republic Savings Bank, FSB
Home Federal Savings & Loan Association
First Federal Savings Bank of Kentucky
Home Federal Bank, FSB
Middlesboro Federal Bank, F.S.B.
The Bank of Mt. Vernon
Peoples Bank of Mt. Washington
United Citizens Bank & Trust Company
First State Bank of Pineville
The Central Bank of North Pleasureville
The Citizens National Bank of Bluffton
First National Bank of Southeastern Ohio
First City Bank
Brentwood Savings Association
Columbia Savings & Loan Company
The Clifton Heights Loan & Building Company
First Federal Savings and Loan
Fidelity FS&LA
Home Building and Loan Company
Mayflower Savings & Loan Company
Home Federal, FSB
Liberty Federal Savings & Loan Association
The Citizens Bank of Logan
Security Savings Association
The Nelsonville Home & Savings Association
Valley Central Savings Bank
Mutual Federal Savings Bank, a Stock Corp
Dollar Bank, FSB
Farmers and Merchants Bank
Farmers and Merchants Bank
Elizabethton Federal Savings Bank
Marion Trust & Banking Company
First Bank of East Tennessee, N.A
Lexington First Federal Savings Bank
Volunteer Federal Savings & Loan Association
The First National Bank
Leader Federal Bank for Savings
Franklin Federal Savings Bank
Jefferson Federal Savings & Loan Association
Liberty Federal Savings Bank
Citizens Bank & Trust Company
Federal Home Loan Bank of P.O. Box 60, Indianapo
First Federal Savings Bank of Angola
Peoples Federal Savings Bank
Fayette Federal Savings Bank
Home Loan Savings Bank, SB
Newton County Loan & Savings Association
HFS Bank, FSB
First Federal Savings Bank of Kokomo
Union Federal Community Bank, FSB
Security Federal Savings Bank
American Savings, FSB
First National Bank of Odon
First Federal S&LA of Richmond
Peoples Building and Loan Association

Member	City and state
Cenit Bank for Savings, FSB	Norfolk, VA.
Life Savings Bank, FSB	Norfolk, VA.
Fidelity Federal Savings Bank	Richmond, VA.
Southside Bank	Tappahannock, VA
Federal Home Loan Bank of Cincinnati—District 5 Post Office Box 598, Cincinnati, Ohio 45201	
Bank of Edmonson County	Brownsville, KY.
Citizens Bank & Trust Company	Campbellsville, KY.
Farmers & Traders Bank of Campton	Campton, KY.
First Federal Bank for Savings	Covington, KY.
Bank of Danville and Trust Company	Danville, KY.
Central Kentucky Federal S&L Association	Danville, KY.
Columbia Federal Savings & Loan Association	Fort Mitchell, KY.
Harlan National Bank	Harlan KY.
Harrodsburg First FS&LA	Harrodsburg, KY.
First Federal Savings & Loan Association	Hazard, KY.
First Federal Savings Bank	Hopkinsville, KY.
Republic Savings Bank, FSB	Louisville, KY.
Home Federal Savings & Loan Association	Ludlow, KY.
First Federal Savings Bank of Kentucky	Madisonville, KY.
Home Federal Bank, FSB	Middlesboro, KY.
Middlesboro Federal Bank, F.S.B.	Middlesboro, KY.
The Bank of Mt. Vernon	Mount Vernon, KY.
Peoples Bank of Mt, Washington	Mount Washington, KY.
United Citizens Bank & Trust Company	New Castle, KY.
First State Bank of Pineville	Pineville, KY.
The Central Bank of North Pleasureville	Pleasureville, KY.
The Citizens National Bank of Bluffton	Bluffton, OH.
First National Bank of Southeastern Ohio	Caldwell, OH.
First City Bank	Christiansburg, OH.
Brentwood Savings Association	Cincinnati, OH.
Columbia Savings & Loan Company	Cincinnati, OH.
The Clifton Heights Loan & Building Company	Cincinnati OH.
First Federal Savings and Loan	Defiance, OH.
Fidelity FS&LA	Delaware OH
Home Building and Loan Company	Greenfield, OH.
Mayflower Savings & Loan Company	Groebeck, OH.
Home Federal, FSB	Hamilton, OH.
Liberty Federal Savings & Loan Association	Ironton, OH.
The Citizens Bank of Logan	Logan, OH.
Security Savings Association	Milford OH.
The Nelsonville Home & Savings Association	Nelsonville, OH.
Valley Central Savings Bank	Reading, OH.
Mutual Federal Savings Bank, a Stock Corp	Zanesville, OH.
Dollar Bank, FSB	Pittsburgh, PA.
Farmers and Merchants Bank	Clarksville, TN.
Farmers and Merchants Bank	Dyer, TN.
Elizabethton Federal Savings Bank	Elizabethton, TN.
Marion Trust & Banking Company	Jasper, TN.
First Bank of East Tennessee, N.A	La Follette, TN.
Lexington First Federal Savings Bank	Lexington, TN.
Volunteer Federal Savings & Loan Association	Madisonville, TN.
The First National Bank	McMinnville, TN.
Leader Federal Bank for Savings	Memphis, TN.
Franklin Federal Savings Bank	Morristown, TN.
Jefferson Federal Savings & Loan Association	Morristown, TN.
Liberty Federal Savings Bank	Paris, TN.
Citizens Bank & Trust Company	Wartburg, TN.
Federal Home Loan Bank of Indianapolis—District 6 P.O. Box 60, Indianapolis, IN 46205–0060	
First Federal Savings Bank of Angola	Angola, IN.
Peoples Federal Savings Bank	Auburn, IN.
Fayette Federal Savings Bank	Connersville, IN.
Home Loan Savings Bank, SB	Fort Wayne, IN.
Newton County Loan & Savings Association	Goodland, IN.
HFS Bank, FSB	Hobart, IN.
First Federal Savings Bank of Kokomo	Kokomo, IN.
Union Federal Community Bank, FSB	Lebanon, IN.
Security Federal Savings Bank	Logansport, IN.
American Savings, FSB	Munster, IN.
First National Bank of Odon	Odon, IN.
First Federal S&LA of Richmond	Richmond, IN.
Peoples Building and Loan Association	Tell City, IN.

Member	City and state
Valley Bank, A FSB	Terre Haute, IN.
First Federal Bank, a FSB	Vincennes, IN.
First Federal Savings Bank of Wabash	Wabash, IN.
Home Building Savings Bank, FSB	Washington, IN.
Peoples National Bank and Trust Company	Washington, IN.
First Federal S&LA of Alpena	Alpena, MI.
First Security Savings Bank, FSB	Bloomfield Hills, MI.
Eaton Federal Savings Bank	Charlotte, MI
Security Savings Bank, FSB	Jackson, MI.
Franklin Bank, N.A.	Southfield, MI.
Federal Home Loan Bank of Chicago—District 7 111 East Wacker Drive, Suite 700, Chicago, Illinois 60601	
Aurora Federal Savings Bank	Aurora, IL.
First Federal Savings and Loan of Belvidere	Belvidere, IL.
Champaign National Bank	Champaign, IL.
First FS&LA of Champaign-Urbana	Champaign, IL.
Charleston Federal Savings & Loan Association	Charleston, IL.
Central Federal S&L Association of Chicago	Chicago, IL.
Columbus Savings Bank	Chicago, IL.
Damen Federal Bank for Savings	Chicago, IL.
Fidelity Federal Savings Bank	Chicago, IL.
First Security Federal Savings Bank	Chicago, IL.
Mutual Federal Savings & Loan Association	Chicago, IL.
Universal Federal Savings Bank	Chicago, IL.
Collinsville Building and Loan Association	Collinsville, IL.
Deerfield Federal Savings & Loan Association	Deerfield, IL.
Calumet Federal S&LA of Chicago	Dolton, IL.
First Federal Savings and Loan Association	Edwardsville, IL.
Guardian Savings Bank	Granite City, IL.
Wabash Savings Bank	Mt. Carmel, IL.
Nashville Savings Bank	Nashville, IL.
Citizens Savings Bank, FSB	Normal, IL.
Peoples Bank and Trust of Pana	Pana, IL.
Peru Federal Savings and Loan Association	Peru, IL.
Home Guaranty Savings Association	Piper City, IL.
First Robinson Savings & Loan, F.A.	Robinson, IL.
NorthLand Bank of Wisconsin, SSB	Ashland, WI.
Fox Valley Savings and Loan Association	Fond du Lac, WI.
First Federal Savings Bank La Crosse-Madison	La Crosse, WI.
Ladysmith Federal Savings & Loan Association	Ladysmith, WI.
Merrill Federal Savings and Loan Association	Merrill, WI.
Continental Savings Bank, SA	Milwaukee, WI.
Guaranty Bank, S.S.B.	Milwaukee, WI.
Lincoln Savings Bank, SA	Milwaukee, WI.
M & I Bank, S.S.B.	Sheboygan, WI.
American Equity Bank, S.S.B.	Stevens Point, WI.
First Financial Bank, FSB	Stevens Point, WI.
Superior Savings Bank	Superior, WI.
Federal Home Loan Bank of Des Moines—District 8 907 Walnut Street, Des Moines, Iowa 50309	
Brenton Savings Bank, FSB	Ames, IA.
Midwest Federal S&LA of Eastern Iowa	Burlington, IA.
First Federal Savings Bank of Creston, FSB	Creston, IA.
Community Savings Bank	Edgewood, IA.
Grinnell Federal Savings Bank	Grinnell, IA.
Independence Federal Bank for Savings	Independence, IA.
Liberty Savings Bank	Johnston, IA.
Security Bank Jasper-Poweshiek	Kellogg, IA.
State Central Bank	Keokuk, IA.
Iowa State Savings Bank	Knoxville, IA.
Interstate Federal Savings and Loan Assoc. of McGregor	McGregor, IA.
Story County Bank & Trust Company	Story City, IA.
Oakley National Bank of Buffalo	Buffalo MN.
State Bank of Kimball	Kimball, MN.
Goodhue County National Bank of Red Wing	Red Wing, MN.
First National Bank of St. Peter	St. Peter, MN.
Investors Savings Bank, FSB	Wayzata, MN.
Roosevelt Bank, A Federal Savings Bank	Chesterfield, MO.
MCM Savings Bank, F.S.B.	Hannibal, MO.
United Savings Bank	Lebanon, MO.
Clay County Savings & Loan Association	Liberty, MO.
Liberty Savings Bank	Liberty, MO.
First Home Savings Bank	Mountain Grove, MO.

Member
Southern Missouri Savings Bank
First National Bank of the Midsouth
Provident Savings Bank, FSB
First National Bank North Dakota
First S & LA of South Dakota, Inc
Brookings Federal Bank a FSB
American Federal Bank, a FSB
Cor Trust Bank
First Western Federal Savings Bank
Federal Home Loan Bank o 5605 N. MacArthur Boulevard, 9th
Charter State Bank
Corning Savings and Loan Association
Calhoun County Bank
Malvern National Bank
Heritage Bank, FSB
First National Bank of Paragould
WynBanc Savings, FSB
Citizens Savings and Loan Association
First National Bank of St. Charles Parish
Capital Bank
Home Savings Bank
Calcasieu-Marine National Bank
Greater New Orleans Homestead Association
Meri-Trust
Algiers Homestead Association
Rayne Building and Loan Association
North Central Bank For Savings
Alamogordo Federal Savings & Loan Association
Union Savings Bank
First Federal Savings Bank of New Mexico
Charter Bank For Savings, F.S.B
Tucumcari Federal Savings & Loan Association
First Savings Bank, FSB
Mercantile Bank, N.A
First Madison Bank, FSB
Mercantile Banc & Trust, PASA
Bank of South Texas
Colonial Savings & Loan
Guaranty National Bank
National Bank
Gilmer Savings Bank, FSB
Riverway Bank
FirstBanc Saving Association of Texas
First Federal Savings & Loan Association of Paris
Balcones Banc Savings Association
First State Bank
Federal Home Loan Bank of T Post Office Box 176, Topek
FNB in Alamosa
Alpine Bank Carbondale
Alpine Bank
Pikes Peak National Bank of Colorado Springs
First Interstate Bank of Fort Collins
The First National Bank of Ordway
Rocky Ford FS&LA of Colorado
Century Savings and Loan Association
Park State Bank
Prairie State Bank
Mid-Continent Fed. S&LA
Citizens National Bank of Fort Scott
University National Bank of Lawrence
Mutual Savings and Loan Association
Manhattan National Bank
Peoples Bank
First National Bank of Syracuse
Capitol Federal Savings & Loan Association
Silver Lake Bank
Bank IV Kansas, N.A
Railroad Savings Bank, FSB
The First National Bank of Stromsburg
Lancaster County Bank
Guthrie Savings and Loan Association

Member	City and state
Southern Missouri Savings Bank	Poplar Bluff, MO.
First National Bank of the Midsouth	Sikeston, MO.
Provident Savings Bank, FSB	St. Joseph, MO.
First National Bank North Dakota	Grand Forks, ND.
First S & LA of South Dakota, Inc	Aberdeen, SD.
Brookings Federal Bank a FSB	Brookings, SD.
American Federal Bank, a FSB	Madison, SD.
Cor Trust Bank	Mitchell, SD.
First Western Federal Savings Bank	Rapid City, SD.
Federal Home Loan Bank of Dallas—District 9 5605 N. MacArthur Boulevard, 9th Floor, Irving, Texas 75038	
Charter State Bank	Beebe AR.
Corning Savings and Loan Association	Corning, AR.
Calhoun County Bank	Hampton, AR.
Malvern National Bank	Malvern, AR.
Heritage Bank, FSB	Monticello, AR.
First National Bank of Paragould	Paragould, AR.
WynBanc Savings, FSB	Wynne, AR.
Citizens Savings and Loan Association	Baton Rouge, LA.
First National Bank of St. Charles Parish	Boutte, LA.
Capital Bank	Delhi, LA.
Home Savings Bank	Lafayette, LA.
Calcasieu-Marine National Bank	Lake Charles, LA.
Greater New Orleans Homestead Association	Metairie, LA.
Meri-Trust	Morgan City, LA.
Algiers Homestead Association	New Orleans, LA.
Rayne Building and Loan Association	Rayne, LA.
North Central Bank For Savings	Winona, MS.
Alamogordo Federal Savings & Loan Association	Alamogordo, NM.
Union Savings Bank	Albuquerque, NM.
First Federal Savings Bank of New Mexico	Roswell, NM.
Charter Bank For Savings, F.S.B	Santa Fe, NM.
Tucumcari Federal Savings & Loan Association	Tucumcari, NM.
First Savings Bank, FSB	Arlington, TX.
Mercantile Bank, N.A	Brownsville, TX.
First Madison Bank, FSB	Dallas, TX.
Mercantile Banc & Trust, PASA	Dallas, TX.
Bank of South Texas	Floresville, TX.
Colonial Savings & Loan	Fort Worth, TX.
Guaranty National Bank	Gainesville, TX.
National Bank	Gatesville, TX.
Gilmer Savings Bank, FSB	Gilmer, TX.
Riverway Bank	Houston, TX.
FirstBanc Saving Association of Texas	Missouri City, TX.
First Federal Savings & Loan Association of Paris	Paris, TX.
Balcones Banc Savings Association	San Marcos, TX.
First State Bank	Temple, TX.
Federal Home Loan Bank of Topeka—District 10 Post Office Box 176, Topeka, Kansas 66601	
FNB in Alamosa	Alamosa, CO.
Alpine Bank Carbondale	Carbondale, CO.
Alpine Bank	Clifton, CO.
Pikes Peak National Bank of Colorado Springs	Colorado Springs, CO.
First Interstate Bank of Fort Collins	Fort Collins, CO.
The First National Bank of Ordway	Ordway, CO.
Rocky Ford FS&LA of Colorado	Rocky Ford, CO.
Century Savings and Loan Association	Trinidad, CO.
Park State Bank	Woodland Park, CO.
Prairie State Bank	Augusta, KS.
Mid-Continent Fed. S&LA	El Dorado, KS.
Citizens National Bank of Fort Scott	Fort Scott, KS.
University National Bank of Lawrence	Lawrence, KS.
Mutual Savings and Loan Association	Leavenworth, KS.
Manhattan National Bank	Manhattan, KS.
Peoples Bank	Pratt, KS.
First National Bank of Syracuse	Syracuse, KS.
Capitol Federal Savings & Loan Association	Topeka, KS.
Silver Lake Bank	Topeka, KS.
Bank IV Kansas, N.A	Wichita, KS.
Railroad Savings Bank, FSB	Wichita, KS.
The First National Bank of Stromsburg	Stromsburg, NE.
Lancaster County Bank	Waverly, NE.
Guthrie Savings and Loan Association	Guthrie, OK.

Member	City and state
First National Bank in Okeene	Okeene, OK.
City Bank & Trust	Oklahoma City, OK.
Local Federal Bank, F.S.B	Oklahoma City, OK.
Federal Home Loan Bank of San Francisco—District 11 307 East Chapman Avenue, Orange, California 92666	
Heart Federal Savings & Loan Association	Auburn, CA.
Secure Savings Bank, FSB	Fontana, CA.
Fullerton Savings & Loan Association	Fullerton, CA.
Hemet Federal Savings & Loan Association	Hemet, CA.
ITT Federal Bank, FSB	Irvine, CA.
Pioneer Savings and Loan Association, FSLA	Irvine, CA.
Western Financial Savings Bank	Irvine, CA.
Home Savings of America, FSB	Irwindale, CA.
First Public Savings Bank, F.S.B	Los Angeles, CA.
Standard Savings Bank, FSB	Los Angeles, CA.
U.S. Trust Company of California, N.A	Los Angeles, CA.
Westcoast Savings and Loan Association	Marina Del Rey, CA.
Western Federal Savings & Loan Association	Marina Del Rey CA.
Independence One Bank of California, FSB	Mission Viejo, CA.
Trust Savings Bank, FSB	Monterey Park, CA.
Household Bank, F.S.B	Newport Beach, CA.
Novato National Bank	Novato, CA.
United Labor Bank, F.S.B	Oakland, CA.
World Savings and Loan Association	Oakland, CA.
Malaga Bank, SSB	Palos Verdes Estates, CA.
Northbay Savings Bank	Petaluma, CA.
Pomona First Federal S&L Association	Pomona, CA.
Life Savings Bank, F.S.B	San Bernardino, CA.
Home Federal S&L Association of San Francisco	San Francisco, CA.
San Francisco Federal Savings & Loan Association	San Francisco, CA.
Sincere Federal Savings Bank	San Francisco, CA.
United California Savings Bank	Santa Ana, CA.
Saratoga National Bank	Saratoga, CA.
American Savings Bank, F.A	Stockton, CA.
Stockton Savings Bank, F.S.B.	Stockton CA
Torrance Bank, S.S.B	Torrance, CA.
PriMerit Bank, FSB	Las Vegas, NV.
Federal Home Loan Bank of Seattle—District 12 1501 4th Avenue, Seattle, Washington 98101–1693	
Mt. McKinley Bank	Fairbanks, AK.
First FS&LA of America	Honolulu, HI.
Security Bank, FSB	Billings, MT.
Glacier Bank, FSB	Kalispell, MT.
First Security Bank & Trust	Miles City, MT.
Valley Community Bank	McMinnville, OR.
West One Bank Oregon, Savings Bank	Portland, OR.
The Prineville Bank	Prineville, OR.
Summit Savings Bank	Bellevue, WA.
Cascade Savings Bank, FSB	Everett, WA.
InterWest Savings Bank	Oak Harbor, WA.
Centennial Bank	Olympia, WA.
Kitsap Bank	Port Orchard, WA.
Raymond Federal Savings and Loan Association	Raymond, WA.
University Savings Bank	Seattle, WA.
Washington Federal Savings	Seattle, WA.
Sterling Savings Association	Spokane, WA.
Big Horn Federal Savings Bank	Greybull, WY.

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBanks no later than August 31, 1994.

All public comments concerning the Community Support performance of selected members must be submitted to the members' FHLBanks no later than August 31, 1994.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public.

The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

By the Federal Housing Finance Board.

Dated: July 8, 1994.

Nicolas P. Retsinas,

HUD Secretary's Designee to the Board.

[FR Doc. 94–17060 Filed 7–14–94; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 17, 1994

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 17, 1994.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has expanded substantially on balance thus far in 1994. Nonfarm payroll employment increased sharply in March and April, in part reflecting a rebound in sectors affected by severe winter weather; the civilian unemployment rate fell slightly further in April, to 6.4 percent. Industrial production was up appreciably in April after a strong rise over the previous two quarters. Advance data on retail sales indicate a decline in April, after very large increases in February and March. Housing starts fell slightly in April but remained well above the depressed winter pace. Orders for nondefense capital goods point to a continued strong uptrend in spending on business equipment, while nonresidential building has shown some recovery after severe weather disrupted construction during January and February. The nominal deficit on U.S. trade in goods and services widened on

[1] Copies of the Minutes of the Federal Open Market Committee meeting of May 17, 1994, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

also notify community groups and other interested members of the public.

The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

By the Federal Housing Finance Board.

Dated: July 8, 1994.

Nicolas P. Retsinas,

HUD Secretary's Designee to the Board.

[FR Doc. 94-17060 Filed 7-14-94; 8:45 am]

BILLING CODE 6725-01-P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 17, 1994

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 17, 1994.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has expanded substantially on balance thus far in 1994. Nonfarm payroll employment increased sharply in March and April, in part reflecting a rebound in sectors affected by severe winter weather; the civilian unemployment rate fell slightly further in April, to 6.4 percent. Industrial production was up appreciably in April after a strong rise over the previous two quarters. Advance data on retail sales indicate a decline in April, after very large increases in February and March. Housing starts fell slightly in April but remained well above the depressed winter pace. Orders for nondefense capital goods point to a continued strong uptrend in spending on business equipment, while nonresidential building has shown some recovery after severe weather disrupted construction during January and February. The nominal deficit on U.S. trade in goods and services widened on average in January and February from the fourth-quarter rate. Increases in broad indexes of consumer and producer prices remained moderate through April, though prices of industrial materials continued to rise.

Market interest rates have posted large additional increases since the Committee meeting on March 22, 1994. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined somewhat further on balance over the intermeeting period.

Growth of M2 and M3 picked up on average in March and April; for the year through April, M2 expanded at a rate somewhat below the middle of its range for 1994 and M3 at a pace somewhat above the bottom of its range. Total domestic nonfinancial debt has expanded at a moderate rate in recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1993 to the fourth quarter of 1994. The Committee anticipated that developments contributing to unusual velocity increases could persist during the year and that money growth within these ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt was set at 4 to 8 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to increase somewhat the existing degree of pressure on reserve positions, taking account of a possible increase in the discount rate. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with modest growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, July 11, 1994.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 94-17179 Filed 7-14-94; 8:45 am]

BILLING CODE 6210-01-F

Hometown Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 8, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Hometown Bancorp, Inc., Milan, Tennessee, to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Milan, Milan, Tennessee.

Board of Governors of the Federal Reserve System, July 11, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17162 Filed 7-14-94; 8:45 am]

BILLING CODE 6210-01-F

George L. Mylander; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank

[1] Copies of the Minutes of the Federal Open Market Committee meeting of May 17, 1994, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 4, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. George L. Mylander, Sandusky, Ohio, to acquire an additional .52 percent, for a total of 10.8 percent of the voting shares of First Citizens Banc Corp., Sandusky, Ohio, and thereby indirectly acquire Citizens Banking Company, Sandusky, Ohio.

Board of Governors of the Federal Reserve System, July 11, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17163 Filed 7-14-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Health Care Policy and Research

Public Meeting on the Update of Acute Pain Management: Operative or Medical Procedures and Trauma Clinical Practice Guideline

The Agency for Health Care Policy and Research (AHCPR) announces a public meeting to receive comments and information pertaining to the update of the clinical practice guideline on Acute Pain Management: Operative or Medical Procedures and Trauma (AHCPR Publication No. 92–0032). The AHCPR-supported guideline was developed by a private sector panel of health care experts and consumers, and released in March 1992.

A meeting will be held to solicit information and comments from the public regarding the availability of new scientific evidence or new technologies that may warrant the updating of the Acute Pain Management: Operative or Medical Procedures and Trauma guideline. This information will assist AHCPR in determining the need for and timing of the guideline update.

Meeting: Update of Acute Pain Management: Operative or Medical Procedures and Trauma Clinical Practice Guideline

Date: September 7, 1994
From: 9:00 a.m.–12:00 p.m.
Place: The Parklawn Building, Conference Room E, 5600 Fishers Lane, Rockville, Maryland 20852
Phone: 301–443–2585

Copies of the clinical practice guideline may be requested from: The AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907, Toll-Free: 1–800–358–9295.

Background

The Agency for Health Care Policy and Research (AHCPR) is charged, under Title IX of the Public Health Service Act, with enhancing the quality, appropriateness, and effectiveness of health care services, and access to such services. The AHCPR accomplishes its goals through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. (42 U.S.C. 299–299c–6 and 1320b–12.)

In keeping with its legislative mandates, AHCPR arranges for the periodic review and update of clinically relevant guidelines that may be used by physicians, nurses, other health care providers, educators, and consumers to assist in determining how diseases, disorders, and other health care conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Medical review criteria, standards of quality, and performance measures are then developed based on the guidelines produced.

Section 912 of the Act (42 U.S.C. 299b–1(b)) requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, nurses, other health care providers, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines and guideline updates.

The AHCPR Process for Determining the Need for Guideline Updates

In the **Federal Register** of April 25, 1994 (59 Vol. 19723), AHCPR published its process for determining the need for updates of clinical practice guidelines. The process includes, among other activities:

- A survey of subsequently published scientific literature in the topic areas addressed by the guidelines, approximately 24 months after the release of the guideline, to determine the volume of new scientific evidence, its quality, and the likelihood of such information causing change in the guideline's recommendations;
- A review of other relevant information obtained from evaluation studies conducted to examine the implementation or effects of the guidelines (i.e., development and use of guideline derived medical review criteria, performance measures, and standards of quality); and
- A public meeting to address the need for and timing of an update when sufficient data are obtained that indicate a guideline update may be needed.

Arrangements for the September 7, 1994 Public Meeting on Update of Acute Pain Management: Operative or Medical Procedures and Trauma

Representatives of organizations and other individuals are invited to provide written comments on new scientific evidence or other related information pertaining to the need to update the guideline, and make a brief (5 minutes or less) oral statement. Individuals and representatives who would like to attend must register with Kelly Fennington, Program Analyst, Office of the Forum for Quality and Effectiveness in Health Care (Forum), at the address set out below by August 12, 1994, and indicate whether they plan to make an oral statement. A written copy of the oral statement should be submitted to the Forum by August 12, 1994. If more requests to make oral statements are received than can be accommodated between 9 a.m. and 12 p.m. on September 7, 1994, time will be allocated in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers are presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered when making a decision regarding the update for this guideline.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Forum by August 12, 1994, at the address below.

Registration should be made with, and written materials submitted to: Kelly Fennington, Program Analyst, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd., Suite 310, Rockville, Maryland, 20852, Phone: (301) 594–4015, Fax: (301) 594–4027.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Program Note, "Clinical Practice Guideline Development," dated August 1993. This document describes AHCPR's activities with respect to clinical practice guidelines including the process and criteria for selecting panels. This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Information may also be obtained by contacting Carole Hudgings, Ph.D., Acting Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd., Suite 310, Rockville, MD 20852, Phone 301–594–4015, Fax: 301–594–4027.

Dated: July 7, 1994.

Linda K. Demlo,

Acting Administrator.

[FR Doc. 94–17151 Filed 7–14–94; 8:45 am]

BILLING CODE 4160–90–P

Centers for Disease Control and Prevention

[CDC-420]

RIN 0905-ZA-35

Announcement of Cooperative Agreement to The United Nations Children's Fund

Summary

The Centers for Disease Control and Prevention (CDC), announces the

September 7, 1994, time will be allocated in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers are presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered when making a decision regarding the update for this guideline.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Forum by August 12, 1994, at the address below.

Registration should be made with, and written materials submitted to: Kelly Fennington, Program Analyst, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd., Suite 310, Rockville, Maryland, 20852, Phone: (301) 594–4015, Fax: (301) 594–4027.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Program Note, "Clinical Practice Guideline Development," dated August 1993. This document describes AHCPR's activities with respect to clinical practice guidelines including the process and criteria for selecting panels. This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Information may also be obtained by contacting Carole Hudgings, Ph.D., Acting Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd., Suite 310, Rockville, MD 20852, Phone 301–594–4015, Fax: 301–594–4027.

Dated: July 7, 1994.

Linda K. Demlo.

Acting Administrator.

[FR Doc. 94–17151 Filed 7–14–94; 8:45 am]

BILLING CODE 4160–90–P

Centers for Disease Control and Prevention

[CDC-420]

RIN 0905-ZA-35

Announcement of Cooperative Agreement to The United Nations Children's Fund

Summary

The Centers for Disease Control and Prevention (CDC), announces the availability of funds for fiscal year (FY) 1994 for a sole source cooperative agreement with the United Nations Children's Fund (UNICEF) to provide support for poliomyelitis eradication activities. UNICEF may use these funds for activities which may include programmatic assistance and oral polio vaccine (OPV) for supplemental immunization activities in polio-endemic countries in accordance with the World Health Organization (WHO) Plan of Action (Revised 1992) for the global eradication of polio by the year 2000. UNICEF is in partnership with WHO in supporting global immunization activities, and has assumed primary responsibility for providing countries access to high quality, affordable vaccines through UNICEF's procurement system. Approximately $3–4 million will be available in FY 1994 to fund this project for a 12-month budget period within a 3-year project period. The funding estimate is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this cooperative agreement is to provide support for poliomyelitis eradication activities. UNICEF may use these funds for activities which may include programmatic assistance and oral polio vaccine for polio-endemic countries to implement national immunization days and other supplemental immunization strategies for the eradication of polio.

The CDC will collaborate by providing technical assistance and consultation to UNICEF during the planning and implementation of these immunization activities. The CDC will also provide other technical assistance in support of this project, as needed.

Polio eradication is of great importance to the United States. Because of the constant threat of the importation of polio from other countries, more than $225 million is spent each year in the United States to protect American children from this threat. We can expect to save all of this money after global polio eradication is achieved and vaccinations against polio are stopped in the United States.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under Sections 301(a) and 307 of the Public Health Service Act, as amended, 42 U.S.C. 241(a) and 242*l*, and section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 2151b.

Smoke-Free Workplace

Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission of promoting the protection and advancement of an individual's physical and mental health.

Eligible Applicant

Assistance will be provided only to UNICEF for this project. No other applications are solicited. The Program Announcement and application kit have been sent to UNICEF.

UNICEF is the most appropriate and qualified agency to conduct the activities under this cooperative agreement for the following reasons:

A. UNICEF is the only organization with a worldwide vaccine procurement and distribution network. WHO relies upon this for the continued success of its Expanded Programmme on Immunization. UNICEF has demonstrated their ability to use this network. Currently, UNICEF provides vaccine to nearly all developing countries. UNICEF-procured vaccine meets the requirements of the countries in which the project will be conducted and is shipped in compliance with standards of refrigeration for each vaccine. UNICEF access to member governments and their immunization programs is unique in the world.

B. The proposed program is strongly supportive of, and directly related to, the achievement of UNICEF and CDC/National Immunization Program objectives for the control and elimination of vaccine preventable diseases.

C. UNICEF, together with WHO, the Pan American Health Organization, Rotary International, and CDC, is a member of the Polio Eradication Network, an organization formed to increase support and visibility for the polio eradication initiative.

Executive Order 12372 Review

The application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.185, Immunization Research, Demonstration, Public Information, and Education, Training, and Clinical Skills Improvement Projects.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Program Announcement Number 420 and contact Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–09, Atlanta, Georgia 30305, telephone (404) 842–6880.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "SUMMARY" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 11, 1994.

Martha Katz,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–17188 Filed 7–14–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94F–0223]

A. E. Staley Manufacturing Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that A. E. Staley Manufacturing Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a modified polydextrose produced by using phosphoric acid in place of citric acid.

DATES: Written comments on the petitioner's environmental assessment by August 15, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409(b)(5) (21 U.S.C. 321(s), 348(b)(5))), notice is given that a food additive petition (FAP 4A4422) has been filed by A. E. Staley Manufacturing Co., c/o P.O. Box 151, Decatur, IL 62525. The petition proposes that the food additive regulations in § 172.841 *Polydextrose* (21 CFR 172.841) be amended to provide for the safe use of a modified polydextrose produced by using phosphoric acid in place of citric acid.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 15, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 8, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–17290 Filed 7–14–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Medicare Common Claims Form; *Form No.:* HCFA–1500; *Use:* This form is a standardized form for use in the Medicare/Medicaid programs to apply for reimbursement for covered services. Use of these forms will reduce the cost and administrative burdens associated with claims; *Frequency:* On occasion; *Respondents:* Businesses, individuals or households, state or local governments, small businesses or organizations; *Estimated Number of Responses:* 546,115,406; *Average Hours Per Response:* .13; *Total Estimated Burden Hours:* 73,325,195.

2. *Type of Request:* Extension; *Title of Information Collection:* HMO Qualification Applications; *Form No.:* HCFA–901–1,901–2,901–3; *Use:* The forms are used as instruments through which organizations will make application for Federal HMO qualification status and/or to become eligible to negotiate a Medicare contract with the Health Care Financing Administration; *Frequency:* On occasion; *Respondents:* Businesses or other for profit, small businesses or organizations, State and local governments; *Estimated Number of Responses:* 65; *Average Hours Per Response:* 100; *Total Estimated Burden Hours:* 6,500. Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: July 7, 1994.

Kathleen Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–17304 Filed 7–14–94; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Cancellation of Meeting.

Notice is hereby given of the cancellation of the meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, July 12, 1994, 6120 Executive Blvd., Rockville, MD, which was published in the **Federal Register** on June 27, 1994, 59 FR 33001.

The meeting is cancelled due to the withdrawal of the application to be reviewed.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: July 11, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17144 Filed 7–14–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 8, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. Pretesting of Office of Cancer Communications Messages—0925–0046 (Reinstatement)—To help ensure that health messages, strategies, and information services developed by the Office of Cancer Communications (OCC) have the potential of being received, understood, and accepted by their target audiences, OCC will pretest messages and strategies while they are in

Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: July 7, 1994.

Kathleen Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–17304 Filed 7–14–94; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Cancellation of Meeting.

Notice is hereby given of the cancellation of the meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, July 12, 1994, 6120 Executive Blvd., Rockville, MD, which was published in the **Federal Register** on June 27, 1994, 59 FR 33001.

The meeting is cancelled due to the withdrawal of the application to be reviewed.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: July 11, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17144 Filed 7–14–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 8, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. Pretesting of Office of Cancer Communications Messages—0925–0046 (Reinstatement)—To help ensure that health messages, strategies, and information services developed by the Office of Cancer Communications (OCC) have the potential of being received, understood, and accepted by their target audiences, OCC will pretest messages and strategies while they are in developmental stages. Respondents: Individuals or households; Number of Respondents: 13,780; Number of Responses per Respondent: 1; Average Burden per Response: .146 hours; Estimated Annual Burden: 2,010 hours.

2. Importer's Entry Notice, Form 700 Set—0910–0046 (Extension, no change)—The Food and Drug Administration (FDA) has the responsibility of assuring the admissibility of foods, drugs, medical devices, and cosmetics offered for import into the United States. Each sample taken requires certain documents which notify FDA of arrival of each shipment. FDA staff select representative items for sampling and analysis. Respondents: Businesses or other for-profit; Number of Respondents: 63,000; Number of Responses per Respondent: 25; Average Burden per Response: 0.05 hours; Estimated Annual Burden: 78,750 hours.

3. Health Education Assistance Loan (HEAL) Program—Forms HRSA 502–1&2, HRSA 500–1&2, and HRSA 512—0915–0043 (Revision)—The information obtained from lenders on these forms is essential for sound and responsible program management. The Repayment Schedule establishes the amounts, number and due dates of payments. The Promissory Note provides legal documentation of the loan. The Lender's Call Report enables DHHS to monitor outstanding HEAL loans. Respondents: Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Disclosure—Repayment Schedule, Promissory Note.	23	2,100	.5 hours.
Reporting—Lender's Call Report.	58	4	.75 hours.

Estimated Total Annual Burden—25,424 hours

4. 1995 National Household Survey on Drug Abuse (NHSDA)—0930–0110—This National probability survey sample of the household population of the United States is necessary to determine the prevalence of cigarette, alcohol, and licit and illicit drug use. The results will be used by SAMHSA, ONDCP, government agencies, pertinent organizations and individuals to establish policy, direct their activities, and better allocate resources. Respondents: Individuals or households; Number of Respondents: 18,000; Number of responses per Respondent: 1; Average Burden per Response: 1.23 hours; Estimated Annual Burden: 22,111 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235 Washington, DC 20503.

Dated: July 11, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–17146 Filed 7–14–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–92]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding

unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: Bob Menke, Area-MI, Bolling AFB, 172 Luke Avenue, Suite 104, Washington, DC 20332–5113; (202) 767–6235; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208–0619; Dept. of Energy: Tom Knox, Acting Team Leader, Facilities Planning and Acquisition Branch, FM–20, Forrestal Bldg., Room 6H–058, Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: July 8, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 7/15/94

Suitable/Available Properties

Buildings (by State)

Kansas

U.S. Post Office & Courthouse
812 North 7th Street
Kansas City Co: Wyandotte KS 66101–
Landholding Agency: GSA
Property Number: 549420003
Status: Excess
Comment: 52257 sq. ft., 4-story plus basement, presence of asbestos and lead based paint, most recent use—offices.
GSA Number: 7–G–KS–0514

Montana

Bldg.—Conrad Training Site
15 miles east of the City of Conrad
Co: Pondera MT 59425–
Landholding Agency: Air Force
Property Number: 189420025
Status: Unutilized
Comment: 7000 sq. ft., 1-story brick, most recent use—technical training site.

Texas

Bldg. 121
Laughlin Air Force Base
Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420026
Status: Unutilized
Comment: 11202 sq. ft., 1-story, needs rehab, presense of asbestos, secured area with alternate access.

Bldg. 348
Laughlin Air Force Base
Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420027
Status: Unutilized
Comment: 1799 sq. ft., 1-story, needs rehab, presense of asbestos, secured area with alternate access.

Bldg. 475
Laughlin Air Force Base
Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420028
Status: Unutilized
Comment: 1083 sq. ft., 1-story, needs rehab, secured area with alternate access.

Land (by State)

Montana

Makoshika Radio Site
Glendive Co: Dawson MT 59330–
Landholding Agency: GSA
Property Number: 549420004
Status: Excess
Comment: 4.13 acres, limited utilities, most recent use—communication site.
GSA Number: 7–B–MT–599

Suitable/Unavailable Properties

Land (by State)

Washington

Land
Off Interstate 5/Taylor Way & East-West Rd.
Tacoma Co: Pierce WA 98421–
Landholding Agency: Energy
Property Number: 419420003
Status: Underutilized
Comment: 2.99 acres, transmission line right of way, easement restrictions, includes 2 steel transmission towers, super-fund cleanup site.

Unsuitable Properties

Buildings (by State)

Alaska

USCG MSD Office (2 buildings)
2958 Tongass Avenue
Ketchikan Co: Ketchikan AK 99901–
Landholding Agency: GSA
Property Number: 879130004
Status: Excess
Reason: Extensive deterioration

California

Former Naval Research Bldg.
Pasadena Co: Los Angeles CA 91106–
Landholding Agency: GSA
Property Number: 549430001
Status: Excess
Reason: Extensive deterioration.
GSA Number: 9–N–CA–1304A

Bldg. 15951
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430006
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31100
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430007
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31160
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430008
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31524
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430009
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31525
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430010
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31526
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430011

California

Former Naval Research Bldg.
Pasadena Co: Los Angeles CA 91106–
Landholding Agency: GSA
Property Number: 549430001
Status: Excess
Reason: Extensive deterioration.
GSA Number: 9–N–CA–1304A

Bldg. 15951
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430006
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31100
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430007
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31160
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430008
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31524
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430009
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31525
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430010
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31526
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430011
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31527
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430012
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31528
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430013
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Bldg. 31581
Naval Air Weapons Stations
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430014
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material.

Maine

Garage—Boothbay Harbor Stat.
Boothbay Harbor Co: Lincoln ME 04538–
Landholding Agency: DOT
Property Number: 879430001
Status: Unutilized
Reason:
Secured Area.

New Jersey

Bldg. 130
Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Landholding Agency: Army
Property Number: 219430001
Status: Unutilized
Reason:
Secured Area
Extensive deterioration
Floodway.

North Carolina

Bldg. 9017
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430001
Status: Unutilized
Reason:
Secured Area
Extensive deterioration.

Bldg. 9019
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430002
Status: Unutilized
Reason:
Secured Area
Extensive deterioration.

Bldg. 9021
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430003
Status: Unutilized
Reason:
Secured Area
Extensive deterioration.

Bldg. 9023
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430004
Status: Unutilized
Reason:
Secured Area
Extensive deterioration.

Bldg. 9035
Piney Island
Marine Corps Air Stations
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430005
Status: Unutilized
Reason: Extensive deterioration.

Structure #AS582
New River Air Station
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430015
Status: Unutilized
Reason:
Secured Area
Extensive deterioration.

Washington

Bldg. 875
Portion, Ft. Vancouver Barracks
E. 10th & Cabell Road, I–95 North
Vancouver WA
Landholding Agency: GSA
Property Number: 549430002
Status: Excess
Reason: Extensive deterioration.
GSA Number: 9–D–WA–500L

Boilder Building
Port Angeles Air Station
Port Angeles Co: Clallam WA 98362–0519
Landholding Agency: DOT
Property Number: 879430002
Status: Excess
Reason:
Secured Area
Extensive deterioration.

[FR Doc. 94–17026 Filed 7–14–94; 8:45 am]

BILLING CODE 4210–29–M

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N-94-3763; FR-3676-N-02]

Funding Availability for FY 1994; Invitation for Applications; Public Housing Development: Extension of Application Deadline for Certain Applicants

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of extension of application deadline for certain applicants.

SUMMARY: HUD is extending the application deadline for public housing development applications for those applicants who were adversely affected in their application preparation because of flooding in the State of Georgia due to Tropical Store Alberto.

DATES: For qualified applicants, the application deadline is being extended from July 8, 1994 to July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Marie D. Head, Chief of the Housing Programs Branch, Atlanta State Office, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303. Telephone (404) 331-6876. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 24, 1994 (59 FR 26902), HUD published a Notice of Funding Availability (NOFA) announcing the availability of FY 1994 funds for public housing development (Public Housing Development NOFA).

This notice announces an extension of the application deadline set forth in the May 24, 1994 Public Housing Development NOFA for eligible Public Housing Authorities (PHA) that were adversely affected in the preparation or submission of applications because of flooding in the State of Georgia due to Tropical Storm Alberto. For those applicants who qualify, the application deadline is extended from July 8, 1994 to July 22, 1994.

An applicant may qualify for an extension of the application deadline for public housing development if:

(A) The applicant submits a certification with its application that it was unable to meet the July 8, 1994 deadline and describes the reasons that justify a delayed submission pursuant to this notice; and

(B) HUD determines that the certification adequately demonstrates that the applicant's ability to prepare or submit the public housing development application was substantially impaired as a result of the flooding described in this notice.

If HUD approves the certification, the application will be accepted for review.

An eligible PHA may submit such an application, or may revise and resubmit a previously submitted application, as long as *the application is received by the Atlanta State Office by 4:00 PM on July 22, 1994.* All submission requirements other than the date by which such applications must be received remain unaffected by this notice.

Dated: July 8, 1994.

Janice D. Rattley,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 94-17153 Filed 7-14-94; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-963-4230-05]

Notice for Publication F-14831-A; Alaska Native Claims Selection; Alaska

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Kuskokwim Corporation, for the village of Aniak, for approximately 10,654 acres. The lands involved are in the vicinity of Aniak, Alaska, and are located within Tps. 16 N., Rs. 58 and 59 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Tundra Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government, or regional corporation, shall have until August 15, 1994 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Bernice P. Leskosky,

Land Law Examiner, Branch of Southwest Adjudication.

[FR Doc. 94-17193 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-JA-P

[NM-060-4760-01 (606)]

Southeast New Mexico Playa Lakes Coordinating Committee; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Southeast New Mexico Playa Lakes Coordinating Committee Meeting.

DATES: Wednesday, August 24, 1994, beginning at 9:30 a.m.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, 1717 West 2nd Street, Roswell, NM 88201, (505) 627-0272.

SUPPLEMENTARY INFORMATION: The agenda will include presentation of a Research Proposal by the National Biological Survey (NBS) to the Southeast New Mexico Playa Lakes Coordinating Committee, for approval. The meeting will be held at the Carlsbad Resource Area Office, 620 E. Greene, Carlsbad, New Mexico. Summary minutes will be maintained in the Roswell District Office and will be available for public inspection during regular business hours (7:45 a.m.-4:30 p.m.) within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: July 7, 1994.

Leslie M. Cone,

District Manager

[FR Doc. 94-17229 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-04-4730-12]

Notice of Filing of Plats of Surveys; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on August 9, 1994.

New Mexico Principal Meridian, New Mexico:

T. 27 N., R. 14 W., Accepted June 15, 1994, for Group 870 NM.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: July 6, 1994.

John P. Bennett,

Chief, Branch of Cadastral Survey/Geo Science.

[FR Doc. 94-17186 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-FB-M

[NM-920-4210-06; NMNM 42921]

Notice of Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 320-acre withdrawal for the Fort Cummings spring continue for an additional 20 years. The land will remain closed to surface entry and non-metalliferous mining, and has been and will remain open to mineral leasing and metalliferous mining.

DATE: Comments should be received by October 13, 1994.

ADDRESS: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87115, 505-438-7502.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505-438-7594.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that the existing land withdrawal made by the Secretarial Order of November 22, 1894, be continued for a period of

prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: July 6, 1994.

John P. Bennett,

Chief, Branch of Cadastral Survey/Geo Science.

[FR Doc. 94–17186 Filed 7–14–94; 8:45 am]

BILLING CODE 4310–FB–M

[NM–920–4210–06; NMNM 42921]

Notice of Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 320-acre withdrawal for the Fort Cummings spring continue for an additional 20 years. The land will remain closed to surface entry and non-metalliferous mining, and has been and will remain open to mineral leasing and metalliferous mining.

DATE: Comments should be received by October 13, 1994.

ADDRESS: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87115, 505–438–7502.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505–438–7594.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that the existing land withdrawal made by the Secretarial Order of November 22, 1894, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

The land is described as follows:

New Mexico Principal Meridian

T. 21 S., R. 8 W.,
sec. 22, SE¼;
sec. 23, SW¼.
The area contains 320 acres in Luna County.

The purpose of the withdrawal is to protect the Fort Cummings Spring. The withdrawal segregates the land from settlement, sale, location, and entry, but not the mineral leasing laws. The land will also be segregated from non-metalliferous mining, but not from metalliferous mining.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: July 7, 1994.

Frank Splendoria,

Acting Associate, State Director.

[FR Doc. 94–17182 Filed 7–14–94; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for the Agency Draft Recovery Plan for Solidago Houghtonii (Houghton's Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period for the Service's agency draft recovery plan for *Solidago houghtonii* (Houghton's goldenrod) is reopened for 60 days to allow comments on the draft plan to be submitted by all interested parties.

DATES: The comment period is reopened on July 15, 1994 and will close on September 13, 1994.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by Contacting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056 (telephone: 612/725–3276; fax: 612/725–3526). Written comments and materials regarding the plan should be addressed to Zella E. Ellshoff, Regional Botanist, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Zella E. Ellshoff at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development.

The threatened *Solidago houghtonii* (Houghton's goldenrod) occurs on Federal, State, municipal, and private lands only in nine Michigan counties on or near Lakes Huron and Michigan and at one site in Genessee County, New York. As described in the draft recovery plan for this plant, recovery efforts are expected focus on actions necessary to conserve known occurrences, maintain ecosystem processes, and enable each occurrence to be naturally self-sustaining.

The **Federal Register** notice announcing the availability for public review and comment of the agency draft recovery plan for *S. houghtonii* was published on September 17, 1993. The original comment period ended on October 18, 1993. Since publication of this original notice, some parties have requested an extension or reopening of the comment period to allow sufficient

time for public input. The Service believes that a number of parties interested in reviewing the draft plan may not have received the notice in sufficient time to review it and submit comments during the original comment period. The Service, therefore, finds that reopening the public comment period will benefit the recovery planning process and, hence, issues this notice. All comments on the draft recovery plan received on or before September 13, 1994 will receive consideration by the Service prior to approval of the plan.

Author

The primary author of this notice is Zella E. Ellshoff, at the above address and telephone number.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 8, 1994

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 94–17190 Filed 7–14–94; 8:45 am]

BILLING CODE 4310–55–M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for the Technical/Agency Draft Recovery Plan for Sedum integifolium ssp. leedyi (Leedy's roseroot)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period for the Service's technical/agency draft recovery plan for *Sedum integrifolium* ssp. *leedyi* (Leedy's roseroot) is reopened. The comment period is being reopened for 60 days to allow comments on the draft plan to be submitted by all interested parties.

DATES: The comment period is reopened on July 15, 1994 and will close on September 13, 1994.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Dive, Fort Snelling, Minnesota 55111–4056 (telephone: 612/725–3276; fax 612/725–3526). Written comments and materials regarding the plan should be addressed to Zella E. Ellshoff, Regional Botanist, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal hours at the above address.

FOR FURTHER INFORMATION CONTACT: Zella E. Ellshoff at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed. Section 4(f) of the Act, as amended in1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development.

The threatened *Sedum integrifolium* ssp. *leedyi* (Leedy's roseroot) is endemic to southeastearn Minnesota and western New York and occurs in six known populations, two on State-owned property and four on privately owned land. As described in the draft recovery plan for this plant, recovery efforts are expected to focus on actions necessary to conserve three privately owned Minnesota populations and a comparably sized and self-sustaining portion of the main New York population.

The **Federal Register** notice announcing the availability for public review and comment of the technical/agency draft recovery plan for *S. integrifolium* ssp. *leedyi* was published on September 17, 1993. The original comment period ended on October 18, 1993. Since publication of this original notice, some parties have requested an extension or reopening of the comment period to allow sufficient time for public input. The Service believes that a number of parties interested in reviewing the draft plan may not have received notice in sufficient time to review it and submit comments during the original comment period. The Service, therefore, finds that reopening the public comment period will benefit the recovery planning process and, hence, issues this notice. All comments on the draft recovery plan received on or before September 13, 1994 will receive consideration by the Service prior to approval of the plan.

Author

The primary author of this notice is Zella E. Ellshoff, at the above address and telephone number.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act; 16 U.S.C. 1533(f).

Dated: July 8, 1994.

Marvin E. Moriarty,

Regional Director.

[FR Doc. 94–17191 Filed 7–14–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Pea Ridge National Military Park Advisory Team; Notice of Establishment

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988). Following consultation with the General Services Administration and the Office of Management and Budget, notice is hereby given that the Secretary of the Interior is administratively establishing an advisory committee to be known as the Pea Ridge National Military Park Advisory Team.

The purpose of the Advisory Team is to provide a forum for dialogue between community representatives and the Pea Ridge National Military Park on management issues affecting the park and the community.

The Secretary of the Interior will appoint 19 members to the Advisory Team to represent a cross-section of those who are interested in and directly affected by park management activities. Nominations for appointment by the Secretary will be sought from: Park neighbors (2 appointees); print media (2); educators (4); environmental organizations (2); the legal profession (1); community planners (1); the general community (1); the financial community (2); Chambers of Commerce (2); and local government (2).

Certification

I hereby certify that the administrative establishment of the Pea Ridge National Military Park Advisory Team is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916 (16 U.S.C. 1, *et seq.*), as amended and supplemented, and other statutes relating to the administration of the National Park System.

Dated: May 5, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94–17210 Filed 7–14–94; 8:45 am]

BILLING CODE 4310–70–P

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting

SUMMARY: This notice announces an upcoming meeting of the Indian Memorial Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463). Meeting Date and Time: August 2–3, 1994; 8:00 a.m.

ADDRESS: Radisson Northern Hotel, Broadway and 1st Avenue, Billings, MT.

The purpose of this meeting will be to discuss the legislation establishing the Indian Memorial Advisory Committee (Public Law 102–201), the activation memorandum issued by the Director of the National Park Service, the charter of the Committee, the roles and responsibilities of the Committee, the required annual report to the President, and the election of a Chairman.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Little Bighorn Battlefield National Monument, P.O.Box 39, Crow Agency, MT 59022. The telephone number is (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and "* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Booher, Indian Affairs Coordinator, Rocky Mountain Regional Office, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2828.

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting

SUMMARY: This notice announces an upcoming meeting of the Indian Memorial Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463). Meeting Date and Time: August 2–3, 1994; 8:00 a.m.

ADDRESS: Radisson Northern Hotel, Broadway and 1st Avenue, Billings, MT.

The purpose of this meeting will be to discuss the legislation establishing the Indian Memorial Advisory Committee (Public Law 102–201), the activation memorandum issued by the Director of the National Park Service, the charter of the Committee, the roles and responsibilities of the Committee, the required annual report to the President, and the election of a Chairman.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Little Bighorn Battlefield National Monument, P.O.Box 39, Crow Agency, MT 59022. The telephone number is (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and "* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Booher, Indian Affairs Coordinator, Rocky Mountain Regional Office, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2828.

Dated: July 8, 1994.

Peggy A. Lipson,

Chief, Office of Ecosystem and Strategic Management, Rocky Mountain Region.

[FR Doc. 94–17207 Filed 7–14–94; 8:45 am]

BILLING CODE 4310–70–P

Keweenaw National Historical Park Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Tuesday, October 25, 1994; 8:30 a.m. until 4:30 p.m.

ADDRESS: Keweenaw National Historic Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913–0471. The agenda for the meeting consists of reviewing the progress of the general management plan program; discussions relating to procedures for awarding preservation assistance grants; and any other statutory requirements.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Public Law 102–543 on October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, P.O. Box 471, Calumet, Michigan 49913–0471, (906)–337–3168.

Dated: July 7, 1994.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 94–17208 Filed 7–14–94; 8:45 am]

BILLING CODE 4310–70–P

Keweenaw National Historical Park Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Tuesday, July 26, 1994; 8:30 a.m. until 4:30 p.m.

ADDRESSES: Keweenaw National Historic Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913–0471. The agenda for the meeting consists of reviewing the progress of the general management plan program; discussions relating to procedures for awarding preservation assistance grants; and any other statutory requirements.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Public Law 102–543 on October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, P.O. Box 471, Calumet, Michigan 49913–0471, (906) 337–3168.

Dated: July 7, 1994.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 94–17209 Filed 7–14–94; 8:45 am]

BILLING CODE 4310–70–P

National Park Service Advisory Board; Meeting

AGENCY: National Park Service.

ACTION: Notice of Meeting of History Areas Committee of National Park System Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9:00 a.m. on the following date and at the following location.

DATE: August 12, 1994.

LOCATION: Department of the Interior, Conference Room 7000, Main Interior Building, 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, History Division, National Park Service, P.O. Box 37127, Suite 310, Washington, DC 20013–7127. Telephone (202) 343–8163.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on August 15, 1994, of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the full board those properties that the committee finds meet the criteria of the National Historic Landmarks Program. The members of the History Areas Committee are:

Dr. Holly Anglin Robinson, Chair
Mr. F.C. Duke Zeller, Vice Chair
Mr. Paul F. Cole
Ms. Carrel Cowan-Ricks
Dr. James Horton
Mr. Karl A. Komatsu
Mr. Roger L. Williams, *ex officio*

The meeting will include presentations and discussions on the

national historic significance and the historic integrity of a number of properties being nominated for National Historic Landmark designation. These nominations are:

Two properties in the field of architecture:

The Breakers, Newport, Newport County, Rhode Island

Christ Church Cathedral, St. Louis, Missouri

Three properties in the field of geology:

Rock Magnetics Laboratory, Menlo Park, San Mateo County, California

Hadrosaurus Foulkii Leidy Site, Haddonfield, Camden County, New Jersey

J. Peter Lesley House, Philadelphia, Pennsylvania

One property in the field of labor:

Pocahontas Exhibition Coal Mine, Pocahontas, Tazewell County, Virginia

Three properties in maritime history:

Maple Leaf, Jacksonville, Duval County, Florida

Emma C. Berry, Mystic, Connecticut

Skytsborg (Blackbeard's Castle), Charlotte Amalie, St. Thomas, U.S. Virgin Islands

One property relating to Ethnic History:

Little Tokyo Historic District, Los Angeles, California

One property in the field of politics:

Joseph Taylor Robinson House, Little Rock, Arkansas

One property relating to African-American History:

Fort Mose (Second) Site, St. Johns County, Florida

One archeological property:

Kijik Archeological District, Lake Clark National Park & Preserve, Alaska

And one boundary reduction:

Coker Experimental Farms, Hartsville, Darlington County, South Carolina

Also, should the necessary waivers be received, the committee will also be considering two additional properties:

Twelfth Street YMCA Building, Washington, District of Columbia

Indiana World War Memorial Plaza Historic District, Indianapolis, Indiana

The committee will also be given an introduction and overview to an upcoming Paleo-Indian theme study.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the committee a written statement concerning matters to be discussed. Written statements may be submitted to Benjamin Levy, Acting Chief Historian, History Division (418), National Park Service, P.O. Box 37127, Suite 310, Washington, DC 20013-7127.

Dated: July 8, 1994.

Rowland T. Bowers,

Deputy Associate Director, Cultural Resources, National Park Service, Washington Office.

[FR Doc. 94-17211 Filed 7-14-94; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-671-674 (Final)]

Silicomanganese From Brazil, the People's Republic of China, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-671-674 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, the People's Republic of China (China), Ukraine, and Venezuela of silicomanganese,[1] provided for in subheadings 7202.30.00 and 7202.99.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of silicomanganese from Brazil, China, Ukraine, and Venezuela are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). These investigations were requested in a petition filed on November 12, 1993, by Elkem Metals Co., Pittsburgh, PA, and the Oil, Chemical, and Atomic Workers, Local 3-639, Belpre, OH.

Participation in the investigations and public service list.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on August 19, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on September 1, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 26, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 30, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in these investigations as possible any requests to present a portion of their hearing testimony *in camera*.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is August 26, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is September 12, 1994, although parties may submit a supplemental statement within ten days after the Department of Commerce's final determinations regarding sales at less than fair value; this supplemental statement must be limited to a discussion of the Department of Commerce's final determinations and may not exceed five pages in length.

Witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to these investigations may submit a written statement of information pertinent to the subject of the investigations on or before September 12, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

[1] Silicomanganese (sometimes called ferrosilicon manganese), is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorus, and sulfur. Silicomanganese normally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorus. All compositions, forms, and sizes are included within the scope of these investigations, including silicomanganese slag, fines, and briquettes.

section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on September 1, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 26, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 30, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in these investigations as possible any requests to present a portion of their hearing testimony *in camera.*

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is August 26, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is September 12, 1994, although parties may submit a supplemental statement within ten days after the Department of Commerce's final determinations regarding sales at less than fair value; this supplemental statement must be limited to a discussion of the Department of Commerce's final determinations and may not exceed five pages in length.

Witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to these investigations may submit a written statement of information pertinent to the subject of the investigations on or before September 12, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: July 11, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–17225 Filed 7–14–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Indexing the Annual Operating Revenues of Railroads, Motor Carriers of Property, and Motor Carriers of Passengers

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads, motor carriers of property, and motor carriers of passengers for classification purposes. This indexing method will ensure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. For both motor carriers of property and motor carriers of passengers, the inflation factors are based on the annual average Producer Price Index for all commodities. The indices are developed by the Bureau of Labor Statistics (BLS).

The base years for railroads, motor carriers of property, and passenger motor carriers are 1991, 1993, and 1988 respectively. The inflation index factors are as follows:

	Railroads	
	Index	Deflator percent
1991	409.5	[1] 100.00
1992	411.8	99.45
1993	415.5	98.55
Motor Carriers of Property Producer Price Index		
1993	118.9	[2] 100.00.
Motor Carriers of Passengers Producer Price Index		
1988	106.9	
1991	116.5	91.76
1992	117.2	91.21
1993	118.9	89.90

[1] *Montana Rail Link, Inc., and Wisconsin Central Ltd., 8 I.C.C. 2d 625 (1992),* raised the revenue classification level for class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992.

[2] *Rev. to Accounting & Reporting Requirs. for Motor, 9 I.C.C. 2d 1268 (1994),* raised the revenue classification level for class I motor carriers of property from $5 million to $10 million (1993 dollars), effective for the reporting year beginning January 1, 1994.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: William F. Moss III, (202) 927–5730.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17269 Filed 7–14–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–1 (Sub No. 252X)]

Chicago and North Western Transportation Company Abandonment and Discontinuance of Service Exemption in Hennepin County, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, 10904, and 10906 the Chicago and North Western Transportation Company's abandonment of a 3.65-mile segment of the Cedar Lake line from milepost 16.20 to milepost 19.85 in Hopkin, MN, in Hennepin County, MN, and the discontinuance of service over the remaining 2.5-mile segment of Cedar Lake line, between milepost 13.70 at Cedar Lake in western Minneapolis, MN, and milepost 16.20 at Hopkins, MN, in Hennepin County, MN.[1]

[1] Originally CNW sought to abandon the entire Cedar Lake line. By letter filed April 7, 1994, CNW amended its petition for exemption to state that only a discontinuance of service is sought over the 2.5 miles of the Cedar Lake line, between milepost 13.70 and milepost 16.20, as described above, because the Soo Line Railroad Company and the

Continued

DATES: The exemption will be effective on August 14, 1994, unless a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[2] must be filed by July 25, 1994; petitions to stay must be filed by August 1, 1994; and petitions to reopen must be filed by August 9, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–1 (Sub-No. 252X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioners' representative: Thomas F. Flanagan, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: July 6, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17270 Filed 7–14–94; 8:45 am]

BILLING CODE 7035–01–P

Twin Cities and Western Railroad Company would retain their overhead trackage rights over that line segment.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987)

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Gerald Petty d/b/a Tri-R-Disposal, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been lodged with the United States District Court for the Central District of Illinois in *United States of America* v. *Gerald Petty d/b/a Tri-R-Disposal, et al.*, Civil Action No. 94–3142. The Complaint in this case alleged that the defendants exchanged rate information among themselves and jointly advertised rates to facilitate price increases for waste services in the Christian County, Illinois area in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment enjoins the defendants from directly or indirectly disclosing to any other defendant or any other person engaged in the waste services business any rate prior to its having been disclosed to the general public and from advertising, publishing, announcing or disseminating any rate for waste services jointly or in concert or connection with any other defendant or any other person engaged in providing waste services. Each defendant is required to establish an antitrust compliance program.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court, should be directed to Marvin Price, Acting Chief, Chicago Office, 209 South LaSalle Street, Antitrust Division, U.S. Department of Justice, Chicago, Illinois 60604 (telephone: (312) 353–7530).

Constance K. Robinson,

Director of Operations.

In the United States District Court for the Central District of Illinois, Springfield Division: United States of America, Plaintiff, v. Gerald Petty d/b/a Tri-R-Disposal; and Leo Carey and Grace Carey, individually and d/b/a Carey's Disposal Service, Defendants. Civil No. 94–3142.

Complaint

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants named herein and complains and alleges as follows:

I.

Jurisdiction and Venue

1. This Complaint is filed under section 4 of the Sherman Act (15 U.S.C. 4), as amended, in order to prevent and restrain violations by the defendants of section 1 of the Sherman Act (15 U.S.C. 1).

2. Each defendant resides in the Central District of Illinois within the meaning of 28 U.S.C. 1391(b).

II.

Definitions

3. "Waste Services" means any collection, pick-up, hauling, transportation, dumping, recycling, sale or disposal of garbage, trash, rubbish, scrap, by-products or other waste materials.

III.

Defendants

4. Defendant Gerald Petty operates a waste services business as a sole proprietor under the name Tri-R-Disposal in and around Christian County, Illinois (hereinafter the "Christian County area").

5. Defendants Leo Carey and Grace Carey operate a waste services business as sole proprietors under the name Carey's Disposal Service in and around the Christian County area.

IV.

Trade and Commerce

6. During the period covered by this complaint, each of the defendants engaged in the business of providing waste services to residential and commercial customers in and around the Christian County area.

7. The defendants' business activities are within the flow of and substantially affect interstate commerce.

V.

Violation Alleged

8. Beginning at least as early as September 26, 1993, and continuing until on or about November 7, 1993, the defendants engaged in a continuing combination and conspiracy in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

9. The combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants to use joint advertising to facilitate a coordinated increase in the rates charged for waste services in the Christian County area.

10. For the purpose of forming and carrying out the aforesaid combination and conspiracy, the defendants did the following things, among others:

(a) disseminated information among themselves relating to possible rate increases; and

(b) jointly advertised rates for their waste services.

VI.

Effects

11. The combination and conspiracy had an effect on interstate commerce in that competition among the defendant waste services businesses was unreasonably restrained and consumers of waste services were deprived of the benefits of free and open competition in the sale of waste services.

VII.

Claim for Equitable Relief

12. The illegal agreement, combination and conspiracy alleged in this complaint is likely to recur unless the injunctive relief prayed for herein is granted.

VIII.

Prayer for Relief

Wherefore, plaintiff prays:

(a) that the Court adjudge and decree that defendants have engaged in an unlawful agreement, combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act;

(b) that for a period of ten years the Court enjoin each defendant, its agents, employees, successors and assigns, and all other persons acting or claiming to act under, through or for any defendant, from:

(i) advertising, publishing, announcing or disseminating any rate or rate increase for any waste service jointly or in concert or in connection with any other defendant or any person engaged in providing waste services; and

(ii) directly or indirectly disclosing to any other defendant or any other person engaged in providing waste services any rate prior to its having been disclosed to the general public;

(c) That each defendant be required to institute a compliance program;

(d) That for ten years after the entry of the Final Judgment, on or before its anniversary date, each defendant shall file with plaintiff an annual declaration reporting that such defendant has complied with the terms of the Final Judgment and has engaged in no activities of the type prohibited by the Final Judgment; and

(e) That this Court order such other and further relief as the nature of the case may require and that the Court deems just and proper.

VII.

Claim for Equitable Relief

12. The illegal agreement, combination and conspiracy alleged in this complaint is likely to recur unless the injunctive relief prayed for herein is granted.

VIII.

Prayer for Relief

Wherefore, plaintiff prays:

(a) that the Court adjudge and decree that defendants have engaged in an unlawful agreement, combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act;

(b) that for a period of ten years the Court enjoin each defendant, its agents, employees, successors and assigns, and all other persons acting or claiming to act under, through or for any defendant, from:

(i) advertising, publishing, announcing or disseminating any rate or rate increase for any waste service jointly or in concert or in connection with any other defendant or any person engaged in providing waste services; and

(ii) directly or indirectly disclosing to any other defendant or any other person engaged in providing waste services any rate prior to its having been disclosed to the general public;

(c) That each defendant be required to institute a compliance program;

(d) That for ten years after the entry of the Final Judgment, on or before its anniversary date, each defendant shall file with plaintiff an annual declaration reporting that such defendant has complied with the terms of the Final Judgment and has engaged in no activities of the type prohibited by the Final Judgment; and

(e) That this Court order such other and further relief as the nature of the case may require and that the Court deems just and proper.

Dated:

Anne K. Bingaman,

Assistant Attorney General.

Robert E. Litan,

Deputy Assistant Attorney General.

Mark Schechter,

Marvin Price,

Attorneys, U.S. Department of Justice, Antitrust Division.

Frances C. Hulin,

By: James A. Lewis, United States Attorney, Central District of Illinois, Springfield Division.

Susan H. Booker,

Attorney, Midwest Office, U.S. Department of Justice, Antitrust Division, 209 S. LaSalle, Room 600, Chicago, Illinois 60604, (312) 353–7530.

In the United States District Court for the Central District of Illinois Springfield Division: United States of America, Plaintiff, v. Gerald Petty, d/b/a Tri-R-Disposal; and Leo Carey and Grace Carey, individually and d/b/a Carey's Disposal Service, Defendants. Civil No. 94–3142.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the Central District of Illinois;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

3. The parties shall abide by and comply with the provisions of the Final Judgment pending its entry, and shall, from the date of the filing of this Stipulation, comply with all terms and provisions thereof as though the same were in full force and effect as an order of the Court; and

4. In the event plaintiff withdraws its consent of if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For plaintiff United States of America:

Anne K. Bingaman,

Assistant Attorney General.

Robert E. Litan,

Deputy Assistant Attorney General.

Mark Schechter,

Marvin Price,

Attorneys, U.S. Department of Justice, Antitrust Division.

Frances C. Hulin,

By: James A. Lewis, United States Attorney, Central District of Illinois, Springfield Division.

Susan H. Booker,

Attorney, Midwest Office, U.S. Department of Justice, Antitrust Division, 209 S. LaSalle, Room 600, Chicago, Illinois 60604, (312) 353–7530.

For defendant Gerald Petty

Dan Austin, Esq.,

Meyer, Austin, Romano & Lacey P.C., P.O. Box 140, Taylorville, IL 62568.

For defendants Leo and Grace Carey

David Fines, Esq.,

Hershey, Beavers, Periad, Graham, and Fines, P.O. Box 320, Taylorville, IL 62568.

In the United States District Court for the Central District of Illinois Springfield Division: United States of America, Plaintiff, v. Gerald Petty, d/b/a Tri-R-Disposal; and Leo Carey and Grace Carey, individually and d/b/a Carey's Disposal Service, Defendants Civil No. 94–3142. Filed: May 31, 1994.

Final Judgment

Plaintiff, United States of America, filed its Complaint on May 31, 1994. Plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgement shall not be evidence against or an admission by any party with respect to any issue of fact or law. Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, adjudged and decreed, as follows:

I.

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

Definitions

As used in this Final Judgment:

(A) "Defendant" or "defendants" means each of the named defendants in this action; each affiliate or partnership

of any of them; and each officer, employee, agent, and other person acting for or on behalf of any of them or any of their affiliates or partnerships;

(B) "Intracompany communication" means any communication relating solely to the operations of a company that is solely between individuals who are officers or employees of that company;

(C) "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity. In the case of an individual, the term also means any employee, agent or other person acting for or on behalf of the individual. In the case of any business or legal entity, the term also means each subsidiary, affiliate, division or partnership of the business or legal entity and each officer, director, employee, agent or other person acting for or on behalf of any of them;

(D) "Rate" means any actual, proposed or list price, bid or quote, and any information relating to any price, bid or quote, including but not limited to any profit margin; premium; markup; commission; discount; labor, unit, material, equipment, fees, or other costs; formulas or other methods used to determine any price or cost; and credit or payment terms;

(E) "Waste Services" means any collection, pick-up, hauling, transportation, dumping, recycling, sale or disposal of garbage, trash, rubbish, scrap, by-products or other waste materials.

III.

Defendants

(A) Defendant Gerald Petty operates a waste services business under the name Tri-R-Disposal in Christian County, Illinois.

(B) Defendants Leo and Grace Carey operate a waste services business under the name Carey's Disposal Service in Christian County, Illinois.

IV.

Applicability

(A) The provisions of this Final Judgment shall apply to defendants, to each of their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

(C) Defendants shall each require, as a condition of the sale or other disposition of all or substantially all of their assets used in providing waste services that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

V.

Prohibited Conduct

(A) Each defendant is enjoined and restrained from directly and indirectly disclosing to any other defendant or any other person engaged in providing waste services any rate prior to its having been disclosed to the general public.

(B) Each defendant is enjoined and restrained from advertising, publishing, announcing, or disseminating any rate for any waste services jointly or in concert or in connection with any other defendant or any other person engaged in providing waste services.

(C) Nothing in Section V of this Final Judgment shall prohibit any:

(1) intracompany communication;

(2) defendant from engaging in any good faith communication relating to any actual or possible contract to provide waste services or to purchase waste services from any other person engaged in providing waste services as long as both (i) the purpose or effect of any such communication or contract is not to eliminate or suppress competition in the supply or sale of waste services; and (ii) the information disclosed during any such communication and the scope of any such contract are no broader than is necessary to provide or purchase the specific waste services in question.

VI.

Compliance Program

(A) Defendants are ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her company to ensure that it complies with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(1) Distributing, within 60 days from entry of this Final Judgment, a copy of this Final Judgment to all owners, officers, and employees who have responsibility for approving, disapproving, monitoring, recommending or implementing any prices;

(2) Distributing in a timely manner a copy of this Final Judgment to any owner, officer, or employee who succeeds to a position described in Section VI(A)(1);

(3) Briefing annually those persons designated in Sections VI(A)(1) and (2) on the meaning and requirements of this Final Judgment and the antitrust laws;

(4) Obtaining from each owner, officer or employee designated in Section VI(A)(1) and (B)(2) a written certification that he or she (a) has read, understands, and agrees to abide by the terms of this Final Judgment;

(b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and

(5) Maintaining a record of recipients from whom the certification in Section VI(A)(4) has been obtained.

VII.

Certification

(A) Within 75 days of the entry of this Final Judgment, defendants shall each certify to plaintiff whether the defendant has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI(A)(1) above.

(B) For ten years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall file with the plaintiff an annual statement as to the fact of its compliance with the provisions of Sections V and VI(A).

(C) If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII.

Plaintiff Access

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, be permitted, subject to any legally recognized privilege:

(1) Access during that defendant's office hours to inspect and copy all records and documents in its possession or under its control, relating to any matters contained in this Final Judgment; and

(2) To interview that defendant's officers, employees, trustees or agents, who may have counsel present, regarding any such matters. The interviews shall be subject to that defendant's reasonable convenience and without restraint or interference from any defendant.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, any defendant, shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) Nothing set forth in this Final Judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as the Civil Investigative Demand process provided by 15 U.S.C. 1311–1314 or a Federal grand jury, to determine if the defendant has complied with this Final Judgment.

IX. Further Elements of Final Judgment

(A) This Final Judgment shall expire ten (10) years from the date of its entry.

(B) Jurisdiction is retained by this Court to enable any of the parties to the Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify, or terminate any of its provisions, to enforce compliance and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

The United States District Court, for the Central District of Illinois, Springfield Division: *United States of America*, Plaintiff, v. *Gerald Petty, d/b/a/ Tri–R–Disposal; and Leo Carey and Grace Carey, individually and d/b/a Carey's Disposal Service*, Defendants. Civil No. 94–3142.

(1) Access during that defendant's office hours to inspect and copy all records and documents in its possession or under its control, relating to any matters contained in this Final Judgment; and

(2) To interview that defendant's officers, employees, trustees or agents, who may have counsel present, regarding any such matters. The interviews shall be subject to that defendant's reasonable convenience and without restraint or interference from any defendant.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, any defendant, shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) Nothing set forth in this Final Judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as the Civil Investigative Demand process provided by 15 U.S.C. 1311–1314 or a Federal grand jury, to determine if the defendant has complied with this Final Judgment.

IX. Further Elements of Final Judgment

(A) This Final Judgment shall expire ten (10) years from the date of its entry.

(B) Jurisdiction is retained by this Court to enable any of the parties to the Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify, or terminate any of its provisions, to enforce compliance and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

The United States District Court, for the Central District of Illinois, Springfield Division: *United States of America*, Plaintiff, v. *Gerald Petty, d/b/a/ Tri–R–Disposal; and Leo Carey and Grace Carey, individually and d/b/a Carey's Disposal Service*, Defendants. Civil No. 94–3142.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of all defendants in this civil antitrust proceeding.

I. Nature and Purpose of the Proceedings

On May 31, 1994, the United States filed a civil antitrust complaint under Section 1 of the Sherman Act, 15 U.S.C. § 1, seeking to enjoin the defendants from engaging in an alleged combination and conspiracy to suppress competition in the supply of residential and commercial waste services in and around Christian County, Illinois, through the joint advertisement of rates because the combination and conspiracy is an unreasonable restraint of interstate commerce in violation of Section 1 of the Sherman Act (15 U.S.C. 1).

The Complaint alleges that the defendants:

(1) Disseminated information among themselves relating to possible rate increases; and

(2) Jointly advertised rates for their waste services. The complaint requests that the defendants be enjoined from directly or indirectly disclosing any rate to any defendant or person prior to it having been announced to the general public and from publishing, announcing or disseminating any rate for waste services jointly or in connection with any defendant or person engaged in providing waste services. The complaint further requests that the defendants be required to institute an antitrust compliance program and file an annual certification of compliance with the terms of the Final Judgment as entered.

The United States and the defendants have stipulated and agreed that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, unless the United States withdraws its consent. Entry of the proposed Final Judgment will terminate this action as to each of the defendants, except the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations of the Final Judgment.

II. Events Giving Rise to the Alleged Violation

At all times relevant to the allegations contained in the complaint, each of the defendants operated a waste services business in Christian County, Illinois. The defendants held dominant positions in the market for such services. The United States' complaint in this case alleges that the defendants engaged in a conspiracy that unreasonably restrained competition in the sale of waste services through the use of joint advertising to facilitate a coordinated increase in the rates charged for waste services in the Christian County area. The complaint alleges that the defendants disseminated among themselves information about rate increases and jointly advertised rates for their waste services.

III. Explanation of the Proposed Final Judgment

A. Prohibited Conduct

Section V(A) prohibits the defendants from directly or indirectly disclosing to any other defendant or any other person engaged in the waste services business any rate prior to its having been disclosed to the general public. Section V(B) of the Final Judgment prohibits the defendants from advertising, publishing, announcing or disseminating any rate for waste services jointly or in concert or in connection with any other defendant or any other person engaged in providing waste services.

B. Compliance Program and Certification

In addition to the prohibitions contained in Section V of the proposed Final Judgment, the defendants are required to implement an antitrust compliance program as set forth in Section VI.

As part of the compliance program, each defendant is required to distribute copies of the Final Judgment to all owners, officers and employees responsible in any way for prices and to any person who succeeds to the position as an owner, officer or employee responsible for prices. Additionally, such individuals must execute a certification of compliance as set forth more fully in section VI(A)(4). Each defendant must also submit an annual statement to the United States as to its compliance with the Final Judgment as required under section VII(B).

C. Applicability to Successors and Assigns

Section IV of the Proposed Final Judgment makes the Final Judgment applicable to the successors and assigns of each defendant. Each defendant must require, as a condition of the sale of its business or assets used in its waste services business, that the buyer agree to be bound by the provisions of the Final Judgment.

IV. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided the United States has not withdrawn its consent. The Act conditions the entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Marvin Price, Acting Chief, Midwest Office, Antitrust Division, United States Department of Justice, 209 South LaSalle Street, Suite 600, Chicago, Illinois 60604.

Under section IX of the proposed Judgment the Court will retain jurisdiction over this matter for the purpose of enabling any of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of the Final Judgment, or for the punishment of any violations of the Final Judgment.

V. Alternatives to the Proposed Final Judgment

The proposed Final Judgment provides all the relief as to the defendants necessary to cure the violations alleged in the complaint. The Judgment will enjoin the defendants from resuming operation of the alleged conspiracy. Because the Judgment provides all of the relief against the defendants that the United States would have sought through a trial, the United States did not seriously consider any alternatives to the Judgment.

VI. Determinative Documents

No documents were determinative in formulating the proposed Judgment, and the United States therefore has not attached any such documents to the Judgment.

Dated:

Anne K. Bingaman,

Assistant Attorney General.

Robert E. Litan,

Mark Schechter,

Marvin Price,

Attorneys, U.S. Department of Justice, Antitrust Division.

Frances C. Hulin,

By: James A. Lewis, United States Attorney, Central District of Illinois, Springfield Division.

Respectfully submitted.

Susan H. Booker,

Attorney, Midwest Office, U.S. Department of Justice, Antitrust Division, 209 S. LaSalle, Room 600, Chicago, Illinois 60604, (312) 353-7530.

[FR Doc. 94-17114 Filed 7-14-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—MEMC Electronic Materials, Inc. and International Business Machines Corporation

Notice is hereby given that, on April 29, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), MEMC Electronic Materials, Inc. ("MEMC") and International Business Machines Corporation ("IBM") have filed written notifications on behalf of SiBond, L.L.C., an entity formed by them, simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are MEMC, St. Peters, MO; and IBM, Yorktown Heights, NY. On February 12, 1994, MEMC and IBM entered into a written agreement to form a limited liability company called SiBond, L.L.C. ("SiBond"), which was subsequently formed in Delaware on February 15, 1994. SiBond's purpose is primarily to engage in research, development, and prototype manufacture of silicon on insulator wafers using novel processes which will enhance the performance of the wafers. The wafers would be used by makers of semiconductors for the fabrication of chips.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94-17184 Filed 7-14-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant To The National Cooperative Research and Production Act of 1993—National Center For Manufacturing Sciences, Inc.

Notice is hereby given that, on June 14, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following members of NCMS, specifically, Setco Sales Company, Cincinnati; OH; Aesop, Inc., Concord, NH; Ford Motor Company, Dearborn, MI; Giddings & Lewis, Inc., Fond du Lac, WI; ORSCO, Inc., Madison Heights, MI; General Motors Corporation, Detroit, MI; the Torrington Company, Torrington, CT; Manufacturing Laboratories, Inc., Gainesville, FL; and NCMS, Ann Arbor, MI, have executed a Project Agreement dated May 31, 1994, along with project participant, Olofsson Machine Tools, Inc., Lansing, MI, to undertake research development activities focusing on the development of advanced light weight machining spindles.

Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on May 13, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 23, 1994 (59 FR 32462).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94-17183 Filed 7-14-94; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 94-29]

Community Methadone Health Services Revocation of Registration

On February 10, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Community Methadone Health Services (Respondent), of Rockville, Maryland, proposing to revoke its DEA Certificate of Registration, RC0173271, and to deny any pending applications for registration as a narcotic treatment program. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(g) and 824(a)(4), in that on September 23, 1992, an investigation of the Community Methadone Health Services narcotic treatment program (program) by the Maryland Alcohol and Drug Abuse Administration indicated lax accountability controls and shortages of 17,000 mg. of methadone, a Schedule II controlled substance; that on March 6, 1993, an investigation of the narcotic treatment program by the DEA indicated shortages of 44,339 mg. of methadone, and in addition, the program failed to maintain complete and accurate records in violation of 21 CFR 1304.21(a), permitted the unauthorized handling of methadone by an employee in violation of 21 CFR 1301.74(h), failed to comply with a U.S. Health and Human Services (HHS) regulation regarding take-home doses in violation of 21 CFR 1301.74(k), failed to document the alleged theft or loss of a controlled substance in violation of 21 CFR 1301.76(b), and failed to execute a power of attorney for the execution of DEA order forms required under 21 CFR 1305.07; that on March 6, 1993, an investigation of the narcotic treatment program by the Maryland Department of Health and Mental Hygiene agencies indicated numerous violations of State and Federal law, and in lieu of issuing a cease and desist order, the state entered an agreement in which the program ceased operations until the completion of the state investigation, and subsequently, a consent agreement allowed the program to reopen on April 30, 1993, under specified conditions and guidelines, including a prohibition of its owner from participating in day to day program operations; that the Community Methadone Health Services narcotic treatment program was initially registered with the DEA on May 4, 1992 and its owner and executive director is

Drug Enforcement Administration

[Docket No. 94–29]

Community Methadone Health Services Revocation of Registration

On February 10, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Community Methadone Health Services (Respondent), of Rockville, Maryland, proposing to revoke its DEA Certificate of Registration, RC0173271, and to deny any pending applications for registration as a narcotic treatment program. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(g) and 824(a)(4), in that on September 23, 1992, an investigation of the Community Methadone Health Services narcotic treatment program (program) by the Maryland Alcohol and Drug Abuse Administration indicated lax accountability controls and shortages of 17,000 mg. of methadone, a Schedule II controlled substance; that on March 6, 1993, an investigation of the narcotic treatment program by the DEA indicated shortages of 44,339 mg. of methadone, and in addition, the program failed to maintain complete and accurate records in violation of 21 CFR 1304.21(a), permitted the unauthorized handling of methadone by an employee in violation of 21 CFR 1301.74(h), failed to comply with a U.S. Health and Human Services (HHS) regulation regarding take-home doses in violation of 21 CFR 1301.74(k), failed to document the alleged theft or loss of a controlled substance in violation of 21 CFR 1301.76(b), and failed to execute a power of attorney for the execution of DEA order forms required under 21 CFR 1305.07; that on March 6, 1993, an investigation of the narcotic treatment program by the Maryland Department of Health and Mental Hygiene agencies indicated numerous violations of State and Federal law, and in lieu of issuing a cease and desist order, the state entered an agreement in which the program ceased operations until the completion of the state investigation, and subsequently, a consent agreement allowed the program to reopen on April 30, 1993, under specified conditions and guidelines, including a prohibition of its owner from participating in day to day program operations; that the Community Methadone Health Services narcotic treatment program was initially registered with the DEA on May 4, 1992 and its owner and executive director is Mr. Daniel Flint; that on December 2, 1987, Mr. Daniel Flint was convicted of attempting to obtain a controlled dangerous substance and was sentenced to one year probation in Montgomery County, Maryland; that in March 1993, Mr. Daniel Flint allegedly acquired methadone for his own use from a private physician in Washington, DC, and as a result, on June 25, 1993, he was arrested in Montgomery County, Maryland for obtaining methadone by fraud, and subsequently, on July 8, 1993, was indicted for this offense in the Superior Court of Washington, DC; and that on August 6, 1993, the Maryland Department of Health and Mental Hygiene, Division of Drug Control ordered the suspension of Community Methadone Health Services' controlled dangerous substances (CDS) registration, and therefore, Community Methadone Health Services is not authorized to handle controlled substances in the state in which it operates.

The Respondent, by its Director, Daniel Flint, responded to the Order to Show Cause and requested a hearing. Counsel for the Government filed a motion for summary disposition on April 15, 1994, alleging that the Respondent no longer held state authorization to handle controlled substances for reason that the Maryland Department of Health and Mental Hygiene, Division of Drug Control, ordered the suspension of Respondent's controlled dangerous substances (CDS) registration on August 6, 1993. The Respondent did not file any response to the Government motion.

On May 17, 1994, the administrative law judge entered an order granting the Government's motion for summary disposition and recommended that the Respondent's registration be revoked. No exceptions were filed by either party. The administrative law judge transmitted the record to the Deputy Administrator on June 17, 1994.

The Deputy Administrator has considered the record in its entirety and, under the provision of 21 CFR 1316.67, enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

No evidentiary hearing was held in this case as there were no factual issues involved, only a question of law. Judge Tenney found that the Respondent lacked state authorization to handle controlled substances in the State of Maryland, the jurisdiction in which the Respondent is registered with the DEA. Judge Tenney concluded that DEA has no authority to maintain a DEA registration, where the registrant is without state authority to handle controlled substances.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized by the state to dispense controlled substances. The Administrator has consistently held that termination of a registrant's state authority to handle controlled substances requires that DEA revoke the registrant's DEA Certificate of Registration. *See Bobby Watts, M.D.*, 53 FR 11919 (1987); *Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992).

The Deputy Administrator adopts the findings and recommendation of the administrative law judge. Based on the foregoing, the Deputy Administrator concludes that the Respondent's registration must be revoked. 21 U.S.C. 824(a)(3). In light of Respondent's lack of state authorization to handle controlled substances in the State of Maryland, the Deputy Administrator concludes that it is not necessary to address whether Respondent's continued registration is inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, RC0173271, previously issued to Community Methadone Health Services, be, and it hereby is, revoked, and that any pending applications for registration, be, and they hereby are, denied. This order is effective July 15, 1994.

Dated: July 8, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–17273 Filed 7–14–94; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1621–94; AG Order No. 1898–94]

RIN 1115–AC30

Extension of Designation of Bosnia-Hercegovina Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until August 10, 1995, the Attorney General's designation of Bosnia-Hercegovina under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act, as

amended (Act). Accordingly, eligible aliens who are nationals of Bosnia-Hercegovina, or who have no nationality and who last habitually resided in Bosnia-Hercegovina, may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons who already registered for the initial period of Temporary Protected Status, which ended on August 10, 1993. In addition, during the extension period, some aliens may be eligible for later initial registration pursuant to 8 CFR 240.2(f)(2).

EFFECTIVE DATES: This extension of designation is effective on August 11, 1994, and will remain in effect until August 10, 1995. Re-registration procedures become effective on July 15, 1994, and will remain in effect until August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Senior Immigration Examiner, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Public Law 101–649 and section 304(b) of Public Law 102–232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General so designates a state, or a part thereof, upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on August 10, 1992, the Attorney General designated Bosnia-Hercegovina for Temporary Protected Status for a period of one year, 57 FR 35604–35605. The Attorney General extended the designation of Bosnia-Hercegovina under the Temporary Protected Status program for an additional year until August 10, 1994, 58 FR 40676–40677.

This notice extends the designation of Bosnia-Hercegovina under the Temporary Protected Status program for an additional year, in accordance with sections 244A(b)(3) (A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Bosnia-Hercegovina, or who have no nationality and who last habitually resided in Bosnia-Hercegovina, must comply in applying for continuation of Temporary Protected Status.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Bosnia-Hercegovina's Temporary Protected Status designation, late initial registrations are possible for some Bosnia-Hercegovinans under 8 CFR 240.2(f)(2). Such late initial registrants must still meet the initial presence requirement for all Bosnia-Hercegovinans and the status requirements contained in 8 CFR 240.2(f)(2). A fee of fifty dollars ($50) is charged for each Application for Temporary Protected Status, Form I–821, filed for late initial registration. An Application for Employment Authorization, Form I–765, must be filed together with Form I–821 in all cases. However, the fee prescribed in 8 CFR 103.7(b)(1) for Form I–765 is only charged if the alien requests employment authorization.

The general fee for filing an Application for Employment Authorization, Form I–765, will increase to seventy dollars ($70) on July 14, 1994. (See 59 FR 30516–30520, June 14, 1994.) The new fee is required when Form I–765 is filed as part of either a re-registration or as part of a late initial registration for Temporary Protected Status. This filing fee must accompany Form I–765 unless a properly document fee waiver request is approved by the Service or the applicant does not request employment authorization.

Notice of Extension of Designation of Bosnia-Hercegovina Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I have determined that, as a result of the ongoing civil unrest in that country, there still exist extraordinary and temporary conditions in Bosnia-Hercegovina that prevent aliens who are nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, from returning to Bosnia-Hercegovina in safety. I have further determined that permitting nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) The designation of Bosnia-Hercegovina under section 244A(b) of the Act is extended for an additional one-year period from August 11, 1994, to August 10, 1995.

(2) I estimate that there are approximately 400 nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) A national of Bosnia-Hercegovina, or an alien having no nationality who last habitually resided in Bosnia-Hercegovina, who received a grant of Temporary Protected Status during the initial period of designation from August 10, 1992, to August 10, 1993, must comply with the re-registration requirements contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Bosnia-Hercegovina, or an alien having no nationality who last habitually resided in Bosnia-Hercegovina, who previously has been granted Temporary Protected Status, must re-register by filing a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on July 15, 1994, and ending on August 15, 1994, in order to be eligible for Temporary Protected Status during the period from August 11, 1994, until August 10, 1995. Late re-registration applications will be allowed for "good cause" pursuant to 8 CFR 240.17(c).

(5) There is no filing fee for the Form I–821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1) will be charged for the Form I–765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice. An alien who does not request employment authorization must file Form I–821 together with Form I–765 for information purposes, but in such cases both Form I–821 and Form I–765 will be without fee.

(6) Pursuant to section 244A(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before August 10, 1995, the designation of Bosnia-Hercegovina under the Temporary Protected Status program to determine whether the conditions for designation continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(7) Information concerning the Temporary Protected Status program for nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: July 11, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–17212 Filed 7–14–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Stocking Change of Standard Form 308

AGENCY: Department of Labor, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Department of Labor is changing the stocking requirement of SF 308, Request for Wage Determination and Response to Request. This form is now authorized for local reproduction. You can request camera copy of SF 308 from the Employment Standards Administration (ESA), Attention: George Blyther, (202) 219–8441.

FOR FURTHER INFORMATION CONTACT: Mrs. Cheryl Robinson, DOL Departmental Forms Officer, (202) 219–9161.

EFFECTIVE DATE: July 15, 1994.

Signed at Washington, DC this 6th day of July, 1994.

Kenneth A. Mills,

Director, Office of IRM Policy.

[FR Doc. 94–17271 Filed 7–14–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Wagner-Peyser Act: One-Stop Career Center System Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

SUMMARY: All Information required to submit a proposal is contained in this announcement. The U.S. Department of Labor, Employment and Training Administration (DOL/ETA) is announcing available grants for the planning/development and implementation of One-Stop Career Center Systems. The One-Stop Career Center System is the organizing vehicle for transforming the current fragmented array of employment and training programs into a coordinated information and service delivery system for individuals seeking first, new or better

Immigration and Naturalization Service offices upon publication of this notice.

Dated: July 11, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–17212 Filed 7–14–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Stocking Change of Standard Form 308

AGENCY: Department of Labor, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Department of Labor is changing the stocking requirement of SF 308, Request for Wage Determination and Response to Request. This form is now authorized for local reproduction. You can request camera copy of SF 308 from the Employment Standards Administration (ESA), Attention: George Blyther, (202) 219–8441.

FOR FURTHER INFORMATION CONTACT: Mrs. Cheryl Robinson, DOL Departmental Forms Officer, (202) 219–9161.

EFFECTIVE DATE: July 15, 1994.

Signed at Washington, DC this 6th day of July, 1994.

Kenneth A. Mills,

Director, Office of IRM Policy.

[FR Doc. 94–17271 Filed 7–14–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Wagner-Peyser Act: One-Stop Career Center System Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

SUMMARY: All Information required to submit a proposal is contained in this announcement. The U.S. Department of Labor, Employment and Training Administration (DOL/ETA) is announcing available grants for the planning/development and implementation of One-Stop Career Center Systems. The One-Stop Career Center System is the organizing vehicle for transforming the current fragmented array of employment and training programs into a coordinated information and service delivery system for individuals seeking first, new or better jobs and for employers seeking to hire new workers.

In advancing this purpose, DOL/ETA seeks to provide a framework within which States, in conjunction with local entities, have the flexibility to design a One-Stop Career Center System which is customized to the particular needs of the local labor market and the State, but is also part of a larger State and national system. As envisioned, this system is characterized by its emphasis on serving its customers. It should meet the needs of all customers by providing a common core of information and services which are standard and universal at any access point which calls itself a "one-stop." It should be easy to locate and use, be information-rich and offer customers choice in where and how to get services. This system must be focused on constant improvement by gauging customer satisfaction with services and using the information to improve the system.

With this solicitation, the Department is focusing on creating a *system*, not merely a collection of networked individual programs. Federal, State and local entities need to agree on how to work in a way that builds on the strengths of each, recognizes the necessary role of each and explores the creation of new approaches and collaboratives to serve the customer. This system should be flexible, comprised of entities that are learning organizations with staff capable of leading and changing. This flexible system is also "high-tech"—where technology is used to give and expand high-quality services to customers in a variety of manners and media.

In the Department's fiscal year 1994 budget, Congress appropriated $50 million for One-Stop Career Centers under current Wagner-Peyser Act authority. These funds became available for obligation and expenditure effective July 1, 1994. Of the funds, $26 million will be used for funding the planning, development and implementation of One-Stop Career Center systems. Of the remaining amount, $20.5 million has been targeted for first year funding of a comprehensive national Labor Market Information System. The balance, $3.5 million, will be awarded to local communities under a separate SGA for local site system development and to serve as "learning laboratories" for other communities.

Grants will be awarded on a competitive basis approximately 15 to 20 States for planning and development and approximately 4 to 6 States for implementation of One-Stop Career Center systems. Planning and development grants are for a one-year period. Implementation grants are for a three-year period. Grant funds for the second and third years are contingent upon satisfactory performance in the previous year and availability of funds

DATES: The closing date for receipt of proposals at the Department of Labor will be 2 p.m., Eastern Time, September 15, 1994. Any proposal not received at the designated place, date and time of delivery specified will not be considered.

ADDRESSES: Proposals shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Charlotte A. Adams, Reference: SGA/DAA 94–20, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Charlotte A. Adams, Division of Acquisition and Assistance, Telephone (202) 219–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds to support the planning/development and implementation of One-Stop Career Center Systems. This announcement consists of five parts: Part I—Background/Description, Part II— Application Process, Part III—Evaluation Criteria for Award, Part IV—Meetings and Part V—Reporting Requirements.

Part I—Background/Description

American workers confront an economy in continuous transition. Young people and other first time job seekers must try to find their place in a shifting labor market. Job holders find they must constantly learn new skills. Fewer workers can expect to be with a single firm throughout their work life. Employers find it harder to find new workers with up-to-date skills.

There is a confusing patchwork of job training, retraining and benefit programs which do not efficiently address workforce security and career requirements. There is a clear need for a streamlined One-Stop Career Center system which puts customers first by providing them with the information and access to services they need to make sound career decisions.

The Department is committed to improving the quality and delivery of services to its ultimate customers—American workers and their employers. The One-Stop Career Center system is the vehicle for transforming this fragmented training and employment system into a coordinated information

and service delivery system for all Americans seeking new jobs, better jobs, or first jobs. An essential component within the One-Stop system is an enhanced labor market information system.

In fiscal year 1994, the Employment and Training Administration (ETA) is using the $50 million Congress appropriated under the Wagner-Peyser Act to bring implementation of a voluntary, national One-Stop Career Center system and for first year funding of the American Labor Market Information System.

ETA plans to use $26 million of the funds to award grants to develop and implement One-Stop Career Center systems in conjunction with local communities. Grants will be awarded on a competitive basis to approximately 15 to 20 States for planning/development and to approximately 4 to 6 States for implementation of One-Stop Career Center systems.

ETA will also issue a separate solicitation (for approximately $3.5 million) to award grants to local communities for local One-Stop Career Center systems. These competitively awarded grants will be available to local communities that have already developed a local system and which would like to serve as "learning laboratories" for other States and local communities in developing One-Stop Career Center systems. It is anticipated that these local communities will be able to make enhancements to their systems and undertake a broad range of dissemination and technical assistance activities.

An additional $8 million (approximately) of the remaining $20.5 million will also be distributed to the States that receive One-Stop implementation grants to support labor market information needs. Those States selected for implementation grants will be provided with this additional funding for technology upgrades to support the State's LMI data collection—analysis and information distribution system.

The remaining $12.5 million (approximately) in LMI funds will be spent to begin the building of America's Labor Market Information System in every State. Some funds will be available to every State regardless of whether the State pursues One-Stop grant funding. States will use these funds to meet specific LMI needs as designated by the States. Funds will also be provided to individual States for demonstration projects, to support evaluation of existing LMI products and the development of new ones, and to underwrite the expansion of job and talent banks. More detailed plans for use of these funds will be issued separately.

The One-Stop Career Center System Framework

As envisioned, the One-Stop Career Center System will provide universal access to basic high-quality services for at least DOL funded programs. A guiding principle behind the One-Stop concept is that individuals should have access, through a One-Stop, to a broad range of employment, training and education services. This implies at least one physical location that provides comprehensive services to any individual seeking such services.

Beyond this, there is a great deal of flexibility afforded at State and local levels to design the One-Stop system that best serves the community, and there are many stages of development. For example, the One-Stop Career Center system may be physically located in one comprehensive site, in many sites, through electronic and technological access points, or through a combination of these approaches.

Designs may include on-site services for only selected programs in the One-Stop Career Center while linking to other programs. Under this scenario, any individual can receive information on possible eligibility for services which may be accessed through another service center—the so-called "no wrong door." A design may provide full access to every employment and training and education program in a single One-Stop Career Center in the community which is linked with other specialized centers and electronic and technological access points.

The goal of this solicitation is to accelerate the creation of a comprehensive, streamlined system of One-Stop Career Centers that will, at a minimum, provide a standard set of high quality services universally by investing in innovations already underway in the States and communities. The federal design leaves the conduct of One-Stop Career Center system operations as flexible as possible under the direction of State and local partners, while maintaining accountability and keeping it part of a nationwide system which is characterized by a high standard of quality. States, working in conjunction with localities, will specify the flow of funds in their proposals, allowing them to adapt the best systems to fit their needs.

In awarding grants for development and implementation of One-Stop Career Center systems, ETA's intent is to support promising State and local efforts toward program integration, improved access and enhanced quality of services to workers and employers consistent with broadly defined outcomes. It is expected that statewide systemic change may be achieved by building on the enriching current programs.

The Administration's proposed Reemployment Act of 1994 (REA) contains provisions establishing a framework for the development and implementation of statewide One-Stop Career Center systems. However, since the REA is pending in Congress, the grant solicitation criteria are *not* based on the REA, but rather on existing legislative authority. This solicitation is based on broad outcome objectives to be achieved through the One-Stop system. These broad outcome objectives that ETA will use in making investment decisions for One-Stop systems are:

1. Universality

The One-Stop Center system must be one that integrates delivery of services under existing unemployment, employment and job training programs. The system must provide all populations with an array of job finding and employment development assistance.

2. Customer Choice

Consistent with the principles in the Vice President's National Performance Review for reinventing government, these systems should provide customers with options and choice of where to get the services that best meet their needs.

3. Integrated System

In order to provide a career center system that is comprehensive and accessible in "One-Stop," programs, services, and governance structures must be as fully integrated as possible. At a minimum, the One-Stop system must include the DOL-funded employment and training programs. The highest degree of program integration and/or accessibility will be viewed the most favorably in the competition for implementation grants.

4. Performance-Driven/Outcomes-Based

The One-Stop system must be clear in the outcomes it seeks to achieve and the consequences for failing to meet these outcomes. There must be a system to measure whether the One-Stop system performance actually achieved the outcomes. This should have a strong connection to whether the customer is satisfied with the services received.

America's Labor Market Information System (ALMIS)

The One-Stop system will be augmented by an expanded and improved LMI system to benefit all Americans. Increased Federal investments—leveraged by State and local resources—will be made in five major categories with key objectives:

(1) Customer Products and Services

- Improve the basic labor exchange function (including talent banks and electronic access to job banks).
- Improve the ability to assess skills and skill needs.
- Create common program administration tools.
- Create, upgrade, disseminate tools for easy access.

(2) Data Sets

- Create a standardized wage program.
- Collect expanded information to permit. State/Federal industry and occupation projections.
- Improve reliability of State and local labor force estimates.
- Create or acquire a database of employers.
- Enhance State Training Inventory with additional data.
- Develop consistent reports on education, training, and employment service programs.
- Continue process of improvement to basic Bureau of Labor Statistics programs.
- Improve Mass Layoff Statistics.

(3) Delivery Systems

- Develop user-friendly delivery shell with plug-in modules.
- Create a national LMI computer network to permit easy data transfer.

(4) LMI Organizational Structure

- Establish a high performance LMI organizational structure.
- Create LMI training infrastructure.
- Build a NOICC/SOICC training structure to provide support for counselors.

(5) Common Language/Technical Standards

- Develop common language of skills and occupational knowledge.
- Develop a common occupational classification scheme.
- Adopt national technical standards for LMI electronic portion.

America's Labor Market Information System (ALMIS)

The One-Stop system will be augmented by an expanded and improved LMI system to benefit all Americans. Increased Federal investments—leveraged by State and local resources—will be made in five major categories with key objectives:

(1) Customer Products and Services

- Improve the basic labor exchange function (including talent banks and electronic access to job banks).
- Improve the ability to assess skills and skill needs.
- Create common program administration tools.
- Create, upgrade, disseminate tools for easy access.

(2) Data Sets

- Create a standardized wage program.
- Collect expanded information to permit. State/Federal industry and occupation projections.
- Improve reliability of State and local labor force estimates.
- Create or acquire a database of employers.
- Enhance State Training Inventory with additional data.
- Develop consistent reports on education, training, and employment service programs.
- Continue process of improvement to basic Bureau of Labor Statistics programs.
- Improve Mass Layoff Statistics.

(3) Delivery Systems

- Develop user-friendly delivery shell with plug-in modules.
- Create a national LMI computer network to permit easy data transfer.

(4) LMI Organizational Structure

- Establish a high performance LMI organizational structure.
- Create LMI training infrastructure.
- Build a NOICC/SOICC training structure to provide support for counselors.

(5) Common Language/Technical Standards

- Develop common language of skills and occupational knowledge.
- Develop a common occupational classification scheme.
- Adopt national technical standards for LMI electronic portion.

Part II—Application Process All Information Required to Submit a Proposal is Contained in This Announcement

A. Eligible Applicants

Competition for these awards is limited to States which have developed proposals in conjunction with appropriate local entities. Only the 50 States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands are eligible to apply. *The Governor must transmit the proposal. In transmitting the proposal, (only one per State),* the State must include evidence of commitment among those State and local agencies that will participate in the activities described in the State's proposal.

B. Applicant Options

States may apply for:

- A planning/developmental grant; or,
- An implementation grant; or,
- Both a planning/development and an implementation grant. States which are applying for an implementation grant may request consideration for a planning/development grant should the State not be selected for an implementation grant. States which would like to be considered for both should complete both the planning/development and implementation grant sections, including corresponding budgets.

C. Grant Awards

The Department has allocated about $4.5 million for planning/development grants. Approximately 15 to 20 grants will be awarded. The Department anticipates making awards of $200,000 to $400,000 based upon size. Size of State will be determined based on the size of the State's civilian labor force. While the Department does not anticipate increasing the total amount available for planning/development grants, adjustments will be considered for individual States depending upon the requirements of the plan and the number and quality of grant proposals received. The Department has allocated about $21.5 million for implementation grants. Implementation grants will be awarded to approximately 4 to 6 States. The Department anticipates funding the implementation grants incrementally, using the $21.5 million allocated for this purpose to fund the first year. Funding for the second and third years is contingent upon the continued availability of funds and upon satisfactory performance in the prior year. However, the Department will not make a final decision on funding until the implementation proposals are reviewed and evaluated.

D. Use of Funds

Funds received under this grant may be used for activities outlined in the State's plan. The only exception is that funds *may not* be used for construction of new buildings.

E. Closing Date

The closing date for receipt of proposals at the Department of Labor is 2:00 p.m. Eastern time, September 15, 1994. Any proposal not received at the designated place, date and time of delivery specified will not be considered.

F. Application Procedures

1. Submission of Proposal

The proposal shall consist of two (2) separate parts:

Part I shall contain the Standard Form (SF) 424, "Application for Federal Assistance," and "Budget Information." All copies of the 424 shall have original signatures. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information form.

Part II shall contain technical data that demonstrates the State's plan and capabilities in accordance with the Contents of the Application detailed below. This part should address the review questions in sequential order.

An original and six (6) copies of the proposal shall be submitted in hard copy. One diskette, 5¼" or 3½", in WordPerfect, AMI Pro, MS Word, WordStar, or ASCII text format should also be submitted for Part II. All material should be submitted to: Charlotte Adams, Grants Management Specialist, U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., Room S–4203. Washington, DC 20210.

2. Hand Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time, September 15, 1994. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

3. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and was either:

(1) Sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of proposal (e.g., an offer submitted in response to a solicitation requiring receipt of proposals by the 20th of the month must have been mailed by the 15th); or

(2) Sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service Registered or Certified Mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, offerors should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

4. Period of Performance

For planning and development grants, the period of performance will be 12 months from the date of execution of the grant. For implementation grants, the period of performance will be 36 months from the date of execution of the grant. It is expected the awards will be made in November 1994. It is anticipated that a total of $26 million for planning and development grants and for implementation grants will be disbursed. Grant funds for the second and third years are contingent upon satisfactory performance in the prior years and continued availability of funds.

G. Statement of Work/Grant Application

1. Description Section

All States, regardless of whether the State is applying for a planning/developmental or implementation grant, *must* fully complete this section. No proposal will be considered unless each item below is fully addressed. Supplemental information may be provided to complete this section, for example, planning documents; workplans; videos; marketing materials; or other explanatory information.

- *Work Force Development.* The proposal must describe the actions that the State and/or local communities have already completed to assess current and future work force development needs and to prepare a strategic plan for addressing these needs. Proposal should reference (or include) copies of studies conducted, including participating State and local agencies and interest groups, and actions taken to implement the plan. Copies of relevant, enacted State legislation should also be included.
- *One-Stop Career Center System Vision.* The proposal must provide a description of the basic features of a One-Stop system in their State. This description should include the underlying assumptions, principles and objectives in developing and implementing a One-Stop system.
- *Status of One-Stop Efforts.* The proposal must describe the status of One-Stop efforts in local communities within the State. This should include the level of resources the State has already committed to One-Stop efforts.
- *Collaboration.* The proposal must include a description of how the Governor, local elected officials, community and business leaders, representatives of voluntary organizations, State and local agency officials responsible for job training and employment, service providers, and other interested organizations and individuals will collaborate in the development and implementation of the statewide One-Stop system. Proposals should contain specific examples of collaboration such as a description of the worker profiling and reemployment services system, memoranda of understanding, agreements among State and local officials, composition and responsibilities of State and local work force development entities, etc.
- *Labor Market Information.* Proposal must describe the State's present capacity to deliver high quality labor market information to the customers of the One-Stop system.
- *Agency Contact.* The Proposal must identify the program official(s) who will have lead responsibility for administering this grant. In designating such individual(s), the State should also outline the duties and responsibilities of this individual(s). Also, the proposal must address how this program official(s) will insure the full participation of all participating State and local agencies that have been identified as partners in this planning and developing process.
- *Financial Management.* The proposal must designate a fiscal agent to receive and be accountable for grant funds and must describe how the funds will be awarded and managed at the State and local levels.

2. Planning/Development Grants

States which have not developed a plan for implementation of a One-Stop Career Center system statewide may apply for planning/development grants. These funds may be used for a wide-range of planning and developmental activities. It should be noted that planning/development grants may be used in a situation where the State is not ready to move forward with statewide implementation of a One-Stop system, but a local community is poised to implement a One-Stop career center system locally. This community may, in collaboration with the State, apply for a planning/development grant that may be used exclusively for local site implementation. Some States may find that this approach of beginning with one or more local sites is appropriate as a first step towards developing a statewide system. States seeking planning/development grants must provide the following additional information.

- *Strategic Plan.* The proposal should describe the activities that the State proposes to undertake during the 12-month grant period in the planning and development of the One-Stop Career Center system. This plan should include activities that are being funded from this grant as well as from other sources. Examples of activities that a State may elect to undertake include:
- Initiating a planning process aimed at building a One-Stop system;
- Identifying or establishing an appropriate State-local structure to administer the One-Stop Career Center system;
- Identifying and designating substate areas for the One-Stop Career Center system;
- Identifying or establishing broad-based partnerships among employers, labor, education, State and local government and community organizations to participate in the design, development and administration of the One-Stop Career Center system;
- Building consensus among local stakeholders and supporting local One-Stop Career Center planning and development activities to provide guidance in the development of a One-Stop system;
- Initiating local site pilot programs for testing key components of program design, such as designing and testing common intake systems (including forms and records) for participating programs and determining methods to integrate program data bases;
- Analyzing current statutory, regulatory and administrative impediments to the establishment of a One-Stop system;
- Conducting an assessment of staff training and development needs at the State and local levels;
- Preparing the plan required for submission of a proposal for an implementation grant.
- *Outcome of Process.* The proposal should describe the progress expected to be achieved in the planning and development process at the end of the 12-month grant period. It should include expected "next steps." Local participation in the design and operation of One-Stop is critical, therefore some description of how this will be advanced by the planning/development phase should also be provided.
- Resources. The amount and source of any additional resources that will be devoted to this planning and development process should also be included in the proposal.

3. Implementation Grants

States, in conjunction with local communities, seeking implementation grants must provide the following additional information.

- *Design of One-Stop Career Center System.* The proposal must specifically address how its design of a One-Stop Career Center system will achieve the following four broad outcome objectives. Since this system is delivered at the local level, the State plan must describe the role of local officials in designing the system. Letters of support from local officials and copies of any negotiated agreements or other pertinent materials must be included.

• Identifying and designating substate areas for the One-Stop Career Center system;

• Identifying or establishing broad-based partnerships among employers, labor, education, State and local government and community organizations to participate in the design, development and administration of the One-Stop Career Center system;

• Building consensus among local stakeholders and supporting local One-Stop Career Center planning and development activities to provide guidance in the development of a One-Stop system;

• Initiating local site pilot programs for testing key components of program design, such as designing and testing common intake systems (including forms and records) for participating programs and determining methods to integrate program data bases;

• Analyzing current statutory, regulatory and administrative impediments to the establishment of a One-Stop system;

• Conducting an assessment of staff training and development needs at the State and local levels;

• Preparing the plan required for submission of a proposal for an implementation grant.

• *Outcome of Process.* The proposal should describe the progress expected to be achieved in the planning and development process at the end of the 12-month grant period. It should include expected "next steps." Local participation in the design and operation of One-Stop is critical, therefore some description of how this will be advanced by the planning/development phase should also be provided.

• Resources. The amount and source of any additional resources that will be devoted to this planning and development process should also be included in the proposal.

3. Implementation Grants

States, in conjunction with local communities, seeking implementation grants must provide the following additional information.

• *Design of One-Stop Career Center System.* The proposal must specifically address how its design of a One-Stop Career Center system will achieve the following four broad outcome objectives. Since this system is delivered at the local level, the State plan must describe the role of local officials in designing the system. Letters of support from local officials and copies of any negotiated agreements or other pertinent materials must be included.

• Universal. All population groups must have access to a broad array of services from a comprehensive assortment of employment and training programs. Basic services that one-stop centers would be expected to provide to all customers include, as a minimum: Customer-oriented information on careers, labor markets, jobs and the availability and quality of education and training programs; testing and assessment; job openings; hiring requirements and referrals; assistance with job search skills; and, initial eligibility information on programs available within the community. Proposals must describe:

• The specific, basic services which will be widely available through the one-stop centers;

• The approach to insuring that these services are available to all individuals;

• Any other customized services available through the one-stop career center system.

• Customer Choice. Customers, both individuals and employers, should have a choice in how to get information, basic services, and education/training. The Department recognizes that there are two aspects to customer choice,which should be considered in designing a one-stop system. The first aspect is whether customers have more than one choice as to how they get basic information and services in the community. The second aspect is whether the customer receives enough quality information on education and training options s/he may pursue to make an informed choice. Proposals must describe how customer choice will be afforded within the one-stop system, and must describe:

• The geographic area within which choice will be provided;

• Any areas of the State in which choice in location of one-stop services is not available or practical and whether other alternatives, such as kiosks and toll-free lines, will be used to provide some degree of customer choice for these areas;

• How the State and its local communities will provide information on the quality of education and training services, particularly in consideration of the current paucity of qualitative data and how it will expand and evaluate the extent of the data.

• Any proposed financial/budgetary system to reward the operator(s) or vendor(s) that provide the services that are more attractive to customers.

• Integrated. The underlying notion of "one-stop" is that there is an integration of programs, services, and governance structures. At a minimum, the following DOL-funded programs must be included in the one-stop system: dislocated worker programs, Employment Service programs, Veterans Employment Service programs, Title II of JTPA, Senior Community Service Employment Program under title V of the Older Worker Act, and Unemployment Insurance programs. Proposals must describe how these programs will be available through the One-Stop system. Additional DOL-funded programs are also encouraged to be included, e.g., Migrant Seasonal Farm Workers, Homeless Training, Native American programs, School-to-Work Opportunity programs, Job Corps and Bureau of Apprenticeship and Training programs. For both DOL and non-DOL funded programs, extra points will be awarded to those applications that include the most education, employment and training programs, such as Food Stamp Employment and Training, JOBS, Adult Education, Vocational Rehabilitation, Carl Perkins Act post-secondary programs, student financial assistance programs under Title IV of the Higher Education Act and State and local non-Federal programs. It is also expected that services will be integrated for the programs selected and will be available at all One-Stops. Finally, there should be some integration of governance to ensure coordination cooperation and high-quality planning and oversight. Proposal must describe:

• The programs which will be integrated through the One-Stop system;

• How these programs will be integrated e.g., exclusively delivered through One-Stop; delivered through One-Stop and also elsewhere; not delivered through One-Stop but accessible; information provided only—including a description of these services;

• How flexibility will be afforded in designing and determining integration of programs and services under such programs on a local area basis;

• State and local bodies that will coordinate these programs and services, including the membership of these bodies, their functions and responsibilities for the One-Stop system and any other functions and the extent to which existing entities will accommodate this purpose;

• How this approach specifically represents an enhancement to the existing structure for delivery of employment and training services.

• Performance-Driven Outcome-Based Measures. Proposal must describe:

• The specific outcomes for customers to be achieved by the One-Stop system;

- The proposed measures to assess the performance of the One-Stop career Centers and to determine whether the outcomes were achieved and the consequences for failing to meet them;
- Other measures to ensure accountability, integrity, and high-performance—e.g., financial accountability and program performance.

Note: These performance measures do not replace those currently in effect for the Department's grant-in-aid programs. These measures are specifically intended for the One-Stop Career Center system.

- *Implementation Plan.* The proposal must contain a detailed plan for statewide implementation over the three-year period, including a time line of major activities and anticipated milestones. The statewide plan may consist of the strategy for building a statewide system under joint State-local agreement together with a description of specific communities which are prepared to implement immediately. This plan must address:
- Local Implementation. The proposal must contain the approach for phasing in local implementation and must address the following questions and subjects:
- What are the geographic areas that will be designed as One-Stop system service areas?
- What is the projected timetable for implementation, by geographic area?
- What process will be used to determine One-Stop operators?
- How much flexibility will service areas have in developing One-Stop systems and in determining appropriate governance structures?
- How will State-local operating agreements be developed?
- Local Agreement. Written agreements between the State and the local area must be executed prior to implementation of the One-Stop Career Center system in a local area. Local elected officials and the chief executive of the local Private Industry Council or Councils, where applicable, must be among the signatories to the agreement. A State plan must include copies of such agreements for any local areas the State proposes to begin implementation in the first year of the three-year implementation period.
- Capacity Building. What are the specific staff development and training needs at the State and local levels and how will these needs be met? Will any technical assistance be needed from ETA? If so, please describe.
- Obstacles/Barriers. What are the obstacles to successful implementation of a statewide One-Stop career system? How does the State propose to address these obstacles? What, if any, administrative actions will be sought from ETA? In what areas would waivers of Federal law or regulations be helpful?
- *Costs/Resources.* The proposal must provide a complete budget for implementation of the One-Stop system, including both Federal and non-Federal sources. The sources of funds should be clearly identified. Proposal must specifically identify the resources requested under this grant and the activities these resources will fund. Costs should be identified on an annual basis and broken down into broad cost categories. The cost plan must also address:
- The amount of resources the State and local communities have already committed to building the One-Stop system.
- The percentage or amount of funds that will be reserved for expenditure at the State level.
- The method of allocating funds to the local level and for insuring accountability for fund management at the local level.
- The method by which shared or joint costs will be allocated back to the contributing sources.

4. Labor Market Information Funds

Additional funds are available to support upgrading the State's labor market information system in those States which receive *implementation* grants. Those States which are applying for implementation grants and are seeking additional resources to meet their LMI needs must supply the following information.

- Provide an organizational chart depicting the major lines of LMI authority, responsibility and production-analysis-dissemination relationships within the State. The accompanying narrative should also describe the working relationship between the State agency and the State Occupational Information Coordinating Committee (SOICC).
- Provide approximate State agency staffing levels for:

Activity	Approximate staffing levels (in full time equivalents)
LMI services to customers	
Labor market analysis and publications	
Production of administrative reports	
Production of Labor statistics reports (CES, LAUS, ES 202, etc.)	
Reports validation	
Special LMI projects	
ADP Support	
Other LMI-related activities	

- Discuss the principal Federal, State, local and private funding sources for the LMI program.
- Summarize the major LMI databases and their beneficiaries in the State.
- The description of products and services should reference substate or local coverage, and indicate whether or not these products and services are provided on a cost-reimbursable basis to generate revenue for program costs.
- "Major Customers" can include references to individuals, employers, counselors, planners, local governments, Employment Service (including Alien Certification and Test Development customers), JTPA grantees, education institutions, State legislature, economic development agency, other State agencies, etc.).
- "Method of Conveyance and Access" should include references to mainframe, minicomputer and local area network terminal access; CD–ROM, kiosks and other emerging technology, etc.

Title and description of LMI databases, products and services	Major customers	Method of conveyance and access

- Describe the strengths of your LMI program in relation to the five major categories (customer products and services, data sets, delivery systems, LMI organizational structure, and common language and technical standards) noting both Federal/State programs, special projects funded by the Federal Government or State legislatures, and any local innovative projects.
- Identify which programs could be replicated or adapted in other States. Has the State participated with other States in cooperative LMI programs in the past?
- Describe the current problem areas and current funding issues which affect your LMI program. What are the State's major priorities in addressing these identified problems?
- From various source documents (e.g., existing State strategic plans for information technology, State Agency Labor Market Information unit operational plans), briefly describe the current and contemplated role of automation and technology in providing labor market information and services to the citizens of the State.
- Provide a complete budget of proposed investments to the LMI system, broken down by major cost categories, and identify the proposed resources by fund source, including the specific funds being requested in this proposal.

Part III—Evaluation Criteria For Award

Offerors are advised that there will be a two-stage review process used to evaluate proposals. Prior to the formal review, proposals will be reviewed to insure that *all* the information requested in this proposal is provided and complete. For offerors seeking planning and development grants only, the proposal must include completed part II, G, Sections 1 and 2 above. For offerors seeking an implementation grant only, the proposal must include completed Part II, G, Sections, 1, 3, and 4 above. Offerors requesting consideration for both type grants must fully complete Part II. Offerors should insure that implementation proposals are detailed and specific in addressing how the design for the One-Stop system will achieve the four outcomes identified in Section C. Completed proposals will be reviewed by a panel of experts. Each panelist will review the proposals according to the rating criteria listed below. The panels' recommendations are advisory in nature to help establish the competitive range. The Grant Officer will make final awards based on overall quality, geographic location and what is in the best interests of the government.

A. Criteria For Planning and Development Grants

1. The status of current efforts to improve the State/Local employment and training system, including the vision for the One-Stop system. Points 20

In applying this criterion, consideration will be given to such factors as:

- The status of State and local efforts to assess how well current workforce development programs (both employment and training) are meeting the needs for developing a skilled workforce;
- Whether the State has adopted a strategic plan for investing in workforce development that was jointly developed with local communities and other interested parties, and, if so, the steps which have been taken to implement the plan;

current and contemplated role of automation and technology in providing labor market information and services to the citizens of the State.

• Provide a complete budget of proposed investments to the LMI system, broken down by major cost categories, and identify the proposed resources by fund source, including the specific funds being requested in this proposal.

Part III—Evaluation Criteria For Award

Offerors are advised that there will be a two-stage review process used to evaluate proposals. Prior to the formal review, proposals will be reviewed to insure that *all* the information requested in this proposal is provided and complete. For offerors seeking planning and development grants only, the proposal must include completed part II, G, Sections 1 and 2 above. For offerors seeking an implementation grant only, the proposal must include completed Part II, G, Sections, 1, 3, and 4 above. Offerors requesting consideration for both type grants must fully complete Part II. Offerors should insure that implementation proposals are detailed and specific in addressing how the design for the One-Stop system will achieve the four outcomes identified in Section C. Completed proposals will be reviewed by a panel of experts. Each panelist will review the proposals according to the rating criteria listed below. The panels' recommendations are advisory in nature to help establish the competitive range. The Grant Officer will make final awards based on overall quality, geographic location and what is in the best interests of the government.

A. Criteria For Planning and Development Grants

1. The status of current efforts to improve the State/Local employment and training system, including the vision for the One-Stop system. Points 20

In applying this criterion, consideration will be given to such factors as:

• The status of State and local efforts to assess how well current workforce development programs (both employment and training) are meeting the needs for developing a skilled workforce;

• Whether the State has adopted a strategic plan for investing in workforce development that was jointly developed with local communities and other interested parties, and, if so, the steps which have been taken to implement the plan;

• How well the version of an integrated delivery system for delivery of education, employment, unemployment and job training services incorporates the four broad outcomes identified in Part I.

2. The State's approach to planning and development. Point 30

In applying this criterion, consideration will be given to such factors as:

• Whether the planned activities will likely prepare the State and local communities to implement a One-Stop system;

• Whether the State's plan is likely to lead to a broad consensus across local areas as to the design and implementation of a One-Stop system;

• Whether the planned activities will fully utilize and expand the existing LMI system to support the One-Stop system;

• Whether the planning process is likely to lead to the identification of barriers to implementation and recommended actions to overcome these barriers;

• Whether the timetable of activities is realistic to the tasks.

3. The State's ability to integrate diverse programs, agencies, organizations and individuals at the State and local levels. Points 30

In applying this criterion, consideration will be given to such factors as:

• The extent to which a broad array of State and local agencies participated in the development of this application;

• Other related actions by State and local education and employment and training agencies to coordinate and integrate program activities in order to reduce duplication of effort and to provide better service to the customer;

• The numbers and purposes of local agreements that already exist among education, employment and training providers.

4. The commitment to the planning and development effort. Points 20

In applying this criterion, consideration will be given to:

• The level of resources the State and local communities have already committed to improving the delivery of program service through the One-Stop concept;

• The level and source of resources they intend to commit to the planning and development process, and whether the level of resources is adequate to support the activities proposed.

B. Criteria for Implementation Grants

1. The quality of the design of the One-Stop system. Points 30

In applying this criterion, consideration will be given to the following factors that relate to the four broad outcomes to be achieved:

• Whether the proposal clearly identifies the One-Stop system's customers and ensures services available to customers are comprehensive and accessible;

• The basis for designation of service delivery areas and how the service area relates to the local labor market;

• The extent to which customers will have choice in the location and method of access of information;

• Whether the State has a labor market information system which will provide the quality and accessibility of information needed to support the One-Stop system; and,

• What planned improvements will be made to the labor market information system to further support the One-Stop system being proposed;

• Whether the State governing body includes agencies that represent a comprehensive array of State and Federal education, employment, unemployment and job training programs and this entity's role in strategic planning and oversight of programs and the One-Stop system;

• The extent to which local officials participated in the design of the One-Stop system;

• Whether the local governing body represents the community, includes appropriate business representatives and represents a broad array of education, employment and training programs;

• Whether the members of the local boards are among the community leaders;

• Whether the plan proposes clear outcome measures;

• Whether the system proposed to measure performance is customer-focused and insures accountability for program performance;

• Whether the system design will likely result in the provision of quality services to *all* customers—i.e., individuals and employers.

2. The size and number of programs included, the level and type of services provided, and how the services are delivered. Points 30

In evaluating this criterion, factors under consideration include:

• The number of Federal, State and local education, unemployment, employment, training and other programs included in the One-Stop system;

• The specific services provided by all One-Stops;

• The extent to which services are delivered directly to customers; and,

• The extent to which these services will enable customers to make an

informed choice about employment and job training opportunities.

3. The feasibility and soundness of the implementation plan. Points 30

In evaluating this criterion, factors under consideration include:

- Whether the time line is appropriate to the tasks to the undertaken;
- The progress the State and locals have already made in implementation;
- Whether staff development and training needs are fully considered;
- The extent to which the proposal takes advantage of technology;
- The number of sites (and representative population) which are ready to implement in the first year;
- The degree of participation in the development and implementation of the system by local officials;
- Whether the agreement between the State and the local areas supports successful implementation and operation of the system;
- The approach to identifying and overcoming barriers to implementation.

4. The value added to the Federal resource investment. Points 10

In evaluating this criterion, factors under consideration include:

- The amount and sources of resources the State/Locals have already invested in a One-Stop system;
- The amount and sources of resources the State and/or Locals propose to invest over the three-year implementation period;
- The specific uses of the Federal funds and how these funds enables the State to expand or enhance its current efforts or to test new approaches;
- Estimates regarding cost savings from administrative savings and other efficiencies together with the estimate of increases in quantity/quality of direct services to customers projected by the savings realized;
- Plans on how this investment will leverage other resources to build a system which will accommodate future program integration.

Part IV—Meetings

ETA plans to hold one meeting with the States which receive planning and development grants during the 12-month grant period. For implementation States, ETA plans to hold meetings approximately every six months throughout the duration of the implementation period. These meetings will be used to assess progress, identify issues, share information among States and provide technical assistance to the State and its local entities.

Part V—Reporting Requirements

- Quarterly financial reports as required by the grant award documents.
- Quarterly narrative progress reports;
- A narrative progress report at the conclusion of the grant period for both implementation and development grants; and for developmental grants, a plan for the comprehensive statewide One-Stop Career Center system at the end of the development period.
- Implementation States will be expected to provide such additional information as is needed so that these States an local communities' efforts, successes and problems will help inform implementation efforts in other States. In this connection, ETA expects to conduct an independent evaluation of all One-Stop implementation States and States will be expected to cooperate fully with the evaluator. ETA also expects to provide technical assistance to assist States with their implementation efforts.

Dated: July 11, 1994.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

Appendices

A. SF–424, Application for Federal Assistance

B. Budget Information

BILLING CODE 4510–30–M

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction
5. APPLICANT INFORMATION	
Legal Name:	
Address (give city, county, state, and zip code):	
6. EMPLOYER IDENTIFICATION NUMBER (EIN):	
8. TYPE OF APPLICATION: ☐ New ☐ Cont	
If Revision, enter appropriate letter(s) in box(es). A. Increase Award B. Decrease Award D. Decrease Duration Other (specify):	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: TITLE:	
12. AREAS AFFECTED BY PROJECT (cities, counties	
13. PROPOSED PROJECT: Start Date / Ending Date	14. CON a. Applic
15. ESTIMATED FUNDING:	
a. Federal	$
b. Applicant	$
c. State	$
d. Local	$
e. Other	$
f. Program Income	$
g. TOTAL	$
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, A AUTHORIZED BY THE GOVERNING BODY OF THE AP	
a. Typed Name of Authorized Representative	
d. Signature of Authorized Representative	

Previous Editions Not Usable

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es). ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	
c. State	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
d. Local	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g. TOTAL	$ .00	☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

BILLING CODE 4510-30-C

Instructions for Budget Information

Section A—Budget Summary by Categories

1. *Personnel:* Show salaries to be paid for project personnel.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.

3. *Travel:* Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project period.

6. *Contractual:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. *Other:* Indicate all direct costs not clearly covered bylines 1 through 6 above, including consultants.

8. *Total, Direct Costs:* Add lines 1 through 7.

9. *Indirect Costs:* Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. *Training/Stipend Cost:* (If allowable)

11. *Total Federal funds Requested:* Show total of lines 8 through 10.

Section B—Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/ matching funds, i.e. other Federal source or other Non-Federal source.

Note: Please include a detailed cost analysis of each line item.

[FR Doc. 94–17272 Filed 7–14–94; 8:45 am]
BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and

Instructions for Budget Information

Section A—Budget Summary by Categories

1. *Personnel:* Show salaries to be paid for project personnel.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.

3. *Travel:* Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project period.

6. *Contractual:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. *Other:* Indicate all direct costs not clearly covered bylines 1 through 6 above, including consultants.

8. *Total, Direct Costs:* Add lines 1 through 7.

9. *Indirect Costs:* Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. *Training/Stipend Cost:* (If allowable)

11. *Total Federal funds Requested:* Show total of lines 8 through 10.

Section B—Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

Note: Please include a detailed cost analysis of each line item.

[FR Doc. 94–17272 Filed 7–14–94; 8:45 am]
BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanator forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, room S–3014, Washington, DC. 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume V

Iowa
IA940075 (Jul. 15, 1994)
Iowa
IA940076 (Jul. 15, 1994)
Oklahoma
OK940027 (Jul. 15, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ940002 (Feb. 11, 1994)
NJ940003 (Feb. 11, 1994)

Volume II

Pennsylvania
PA940005 (Feb. 11, 1994)
PA9400012 (Feb. 11, 1994)
PA9400017 (Feb. 11, 1994)
PA9400018 (Feb. 11, 1994)
PA9400019 (Feb. 11, 1994)
PA9400023 (Feb. 11, 1994)
PA9400042 (Feb. 11, 1994)

Volume III

Tennessee
TN940040 (Feb. 11, 1994)

Volume IV

Wisconsin
WI940001 (Feb. 11, 1994)
WI940007 (Feb. 11, 1994)

Volume V

Iowa
IA940006 (Feb. 11, 1994)

IA940042 (Feb. 11, 1994)
Texas
TX940009 (Feb. 11, 1994)
TX9400010 (Feb. 11, 1994)
TX940054 (Feb. 11, 1994)
TX940081 (Feb. 11, 1994)

Volume VI

California
CA940004 (Feb. 11, 1994)
Colorado
CO940001 (Feb. 11, 1994)
CO940005 (Feb. 11, 1994)
CO940006 (Feb. 11, 1994)
CO940007 (Feb. 11, 1994)
CO940008 (Feb. 11, 1994)
CO940009 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 8th Day of July 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–16993 Filed 7–14–94; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Grant Award for Legal Services State Support in the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grants.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a one-time, nonrecurring grant to the Micronesian Legal Services Corporation for the purpose of planning for state support activities in its service area. The Corporation plans to award a grant in the amount of $20,000.

The one-time grant will be awarded pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this 30-day period.

DATES: All comments and recommendations must be received by 5 pm on or before August 15, 1994.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Office of Program Services, (202) 336–8825.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. The program is a recipient of LSC funding for providing direct legal services to their service area. The amount of the 1994 state support planning grant is consistent with the 1994 LSC Appropriations Act.

Dated: July 12, 1994.

Leslie Q. Russell,

Assistant to the Director, Office of Program Services.

[FR Doc. 94–17266 Filed 7–14–94; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge and Advancement Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Museum Challenge Section), the National Council on the Arts will be held on August 1–2, 1994. This meeting will be held from 9 a.m. to 5:30 p.m., in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. on August 1, 1994 for opening remarks and welcome.

The remaining portions of this meeting from 10 a.m. to 5:30 p.m. on August 1, 1994 and from 9 a.m. to 5:30 p.m. on August 2, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 11, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–17199 Filed 7–14–94; 8:45 am]

BILLING CODE 7537–01–M

Challenge and Advancement Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Folk and Traditional Arts Challenge Section) to the National Council on the Arts will meet on August 9, 1994. The panel will meet from 10:00 a.m. to 4:00 p.m. This meeting will be held in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5439.

Dated: July 11, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94–17200 Filed 7–14–94; 8:45 am]

BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel (Music Presenters A Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Music Presenters A Section) to the National Council on the Arts will be held on July 26–29, 1994. The panel will meet from 9 a.m. to 6 p.m. on July 26, from 8:30 a.m. to 6 p.m. on July 27 and 28, from 8:30 a.m. to 5:30 p.m. on July 29, in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 8:30 a.m. to 9 a.m. on July 27–29 for a guidelines discussion and from 3:30 p.m. to 5:30 p.m. on July 29 for a policy discussion and guidelines review.

The remaining portions of this meeting from 9 a.m. to 6 p.m. on July 26–29 and from 9 a.m. to 3:30 p.m. on July 29 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of

Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5439.

Dated: July 11, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94–17200 Filed 7–14–94; 8:45 am]

BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel (Music Presenters A Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Music Presenters A Section) to the National Council on the Arts will be held on July 26–29, 1994. The panel will meet from 9 a.m. to 6 p.m. on July 26, from 8:30 a.m. to 6 p.m. on July 27 and 28, from 8:30 a.m. to 5:30 p.m. on July 29, in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 8:30 a.m. to 9 a.m. on July 27–29 for a guidelines discussion and from 3:30 p.m. to 5:30 p.m. on July 29 for a policy discussion and guidelines review.

The remaining portions of this meeting from 9 a.m. to 6 p.m. on July 26–29 and from 9 a.m. to 3:30 p.m. on July 29 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 11, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–17198 Filed 7–14–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Conference

The National Science Foundation's (NSF) Directorate for Education and Human Resources (EHR) will host its Third Annual Conference, "Diversity in the Scientific and Technological Workforce" on September 29–October 1, 1994, at the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008. The hours of the Conference are: September 29, from 6 p.m. until 8:30 p.m.; September 30, from 8 a.m. until 9 p.m., and October 1, from 8:30 a.m. until 7 p.m.

This event represents a continuation of last year's conference which focused on major issues related to minority education, along with an update on efforts implemented in the last year and results to date. Planned activities include presentation of the updated NSF Action Plan for the increased participation of minorities in science, engineering and mathematics (SEM) fields, presentations by national leaders in SEM education, student presentations of research findings in poster and panel settings, and workshops on NSF research and education programs.

The conference will not operate as an advisory committee. It will be open to the public. Participants will include persons representing the heads of national associations, education, science, mathematics and engineering practitioners, and Federal and state government officials.

For additional information, contact Dr. Elmima C. Johnson, Staff Associate, Office of the Assistant Director for Education & Human Resources, Room 805, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1604.

Dated: July 7, 1994.

Dr. Roosevelt Calbert,

Division Director, Human Resource Development.

[FR Doc. 94–17143 Filed 7–14–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering Education and Centers; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (#173).

Date and Time: August 2–4 1994; 9:00 AM–5:00 PM.

Place: Rooms 360, 390, NSF, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Frederick Betz, Division of Engineering Education & Centers, (703) 306–1381, and Dr. Michael Crowley, Division of Design, Manufacture, and Industrial Innovation, (703) 306–1391, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 222330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Management of Technological Innovation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 11, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–17142 Filed 7–14–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management

and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection:

• DOE/NRC Form 742—Material Balance Report, and NUREG/BR–0007, instructions for completing Forms 742 and 742C.

• DOE/NRC Form 742C—Physical Inventory Listing.

3. The form number if applicable: Same as item 2 above.

4. How often the collection is required: Semiannually for affected special nuclear material licensees. Annually for affected source material licensees. As specified in Facility Attachments for licensees reporting under 10 CFR Part 75.

5. Who will be required or asked to report: Persons licensed to possess specified quantities of special nuclear material or source material.

6. An estimate of the number of responses:

• DOE/NRC Form 742: 600.

• DOE/NRC Form 742C: 240.

7. An estimate of the total number of hours needed annually to complete the requirement or request:

• DOE/NRC Form 742: Forty-five minutes per response, for a total of 450 hours annually.

• DOE/NRC Form 742C: Six hours per response, for a total of 1,440 hours annually.

8. An indication of whether Section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: Each licensee authorized to possess special nuclear material totalling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, and any licensee authorized to possess 1,000 kilograms of source material, is required to submit DOE/NRC Form 742. Reactor licensees required to submit DOE/NRC Form 742, and facilities subject to 10 CFR Part 75, are required to submit DOE/NRC Form 742C. The information is used by NRC to fulfill its responsibilities as a participant in the US/IAEA Safeguards Agreement and bilateral agreements with Australia and Canada, and to satisfy its domestic safeguards responsibilities.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer Troy Hillier, Office of Information and Regulatory Affairs (3150–0004, 3150–0058), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 415–7232.

Dated at Rockville, Maryland, this 7th day of July 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 150—Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274

3. The form number if applicable: Not applicable.

4. How often the collection is required: Reports are required as occasioned by the occurrence of specified events, such as the receipt or transfer of licensed radioactive material, or actual or attempted theft of licensed material. An annual statement of source material inventory is required of certain licensees.

5. Who will be required or asked to report: Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts.

6. An estimate of the number of responses: 63.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 2.38 hours per response, for a total of 150 hours annually.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States over which NRC regulatory authority continues, including certain information collection requirements. The information is needed to permit NRC to make reports to other governments and the International Atomic Energy Agency in accordance with international agreements. The information is also used to carry out NRC's safeguards and inspection programs.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0032), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 415–7232.

Dated at Rockville, Maryland, this 7th day of July 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–17205 Filed 7–14–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Priority Practices; Request For Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public on practices that should be considered with respect to identification of priority foreign country practices under Executive Order 12901 of March 3, 1994 (59 FR 10727).

SUMMARY: Executive Order 12901 requires the United States Trade Representative (USTR) to review United States trade expansion priorities and to identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. USTR is requesting written submissions from the public concerning foreign countries' practices that should be considered by the USTR for this purpose.

DATES: Submissions must be received on or before 12:00 noon on Friday, August 5, 1994.

ADDRESS: 600 17th Street, NW. Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Irving Williamson, Deputy General Counsel, Office of the United States Trade Representative, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 1 of E.O. 12901 requires the USTR, no later than September 30, 1994, to review United States trade expansion priorities and identify foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. A report on the practices identified must be submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and published in the **Federal Register**. Section 2 of E.O. 12091 requires the Trade Representative to initiate investigations under section 302(b)(1) of the Trade Act of 1974 as amended (19 U.S.C. 2412(b)(1)), no later than October 21, 1994, with respect to all of the foreign country practices so identified.

Requirements for Submissions

USTR invites submissions on foreign country practices that should be considered for identification under E.O. 12901. Submissions should indicate whether the foreign practice at issue was identified in the 1994 National Trade Estimate (NTE) Report published in April 1994 by USTR (GPO 1994–366–989/10218), and if so, should cite the page number(s) where it appears in the NTE and provide any additional information considered relevant. If the foreign practice was not identified in the 1994 NTE Report, submissions should (1) include information on the nature and significance of the foreign practice; (2) identify the United States product, service, intellectual property right, or foreign direct investment matter which is affected by it; and (3) provide any other information considered relevant. Such information may include information on the trade agreements to which a foreign country is a party and its compliance with those agreements; the medium- and long-term implications of foreign government procurement plans; and the international competitive position and export potential of affected United States products and service. Because submissions will be placed in a public file, open to public inspection at USTR,

considered by the USTR for this purpose.

DATES: Submissions must be received on or before 12:00 noon on Friday, August 5, 1994.

ADDRESS: 600 17th Street, NW. Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Irving Williamson, Deputy General Counsel, Office of the United States Trade Representative, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 1 of E.O. 12901 requires the USTR, no later than September 30, 1994, to review United States trade expansion priorities and identify foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. A report on the practices identified must be submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and published in the **Federal Register**. Section 2 of E.O. 12091 requires the Trade Representative to initiate investigations under section 302(b)(1) of the Trade Act of 1974 as amended (19 U.S.C. 2412(b)(1)), no later than October 21, 1994, with respect to all of the foreign country practices so identified.

Requirements for Submissions

USTR invites submissions on foreign country practices that should be considered for identification under E.O. 12901. Submissions should indicate whether the foreign practice at issue was identified in the 1994 National Trade Estimate (NTE) Report published in April 1994 by USTR (GPO 1994–366–989/10218), and if so, should cite the page number(s) where it appears in the NTE and provide any additional information considered relevant. If the foreign practice was not identified in the 1994 NTE Report, submissions should (1) include information on the nature and significance of the foreign practice; (2) identify the United States product, service, intellectual property right, or foreign direct investment matter which is affected by it; and (3) provide any other information considered relevant. Such information may include information on the trade agreements to which a foreign country is a party and its compliance with those agreements; the medium- and long-term implications of foreign government procurement plans; and the international competitive position and export potential of affected United States products and service. Because submissions will be placed in a public file, open to public inspection at USTR, business-confidential information should not be submitted.

Interested persons must provide twenty copies of any submission to Dorothy Balaban, staff assistant to the Section 301 Committee, Room 222, 600 17th Street, NW, Washington, D.C. 20506, no later than 12:00 noon on Friday, August 5, 1994.

Public Inspection of Submissions

Within the business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 94–17365 Filed 7–14–94; 8:45 am]

BILLING CODE 3190–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Student Beneficiary Monitoring.

(2) *Form(s) submitted:* G–315, G–315a, G–315a.1.

(3) *OMB Number:* 3220–0123.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, Non-profit institutions.

(8) *Estimated annual number of respondents:* 565.

(9) *Total annual responses:* 1,230.

(10) *Average time per response:* 0.09830 hours.

(11) *Total annual reporting hours:* 121.

(12) *Collection description:* Under the Railroad Retirement Act (RRA), a student benefit is not payable if the student ceases full-time school attendance, marries, works in the railroad industry, has excessive earnings or attains the upper age limit under the RRA. The report obtains information to be used in determining if benefits should cease or be reduced.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 94–17230 Filed 7–14–94; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34356; International Series Release No. 681; File No. SR–Amex–94–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 2 and 3 by the American Stock Exchange, Inc. Relating to the Listing and Trading of Options on the Mexico Index

July 12, 1994

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 3, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On June 27, 1994, the Exchange filed Amendment No. 1 to the proposed rule change, the subject matter of which was superseded with the filing of Amendment No. 2 ("Amendment No. 2"), which was filed on July 7, 1994.[1] Amendment No. 1 was formally

[1] See Letter from Howard Baker, Senior Vice President, Derivative Securities, Amex, to Michael Walinskas, Derivative Products Regulation, SEC dated July 7, 1994. In the original proposal, the Amex sought approval for the listing of options based upon a Mexico Index that was capitalization-weighted and based upon shares of twenty Mexican stocks or American Depository Receipts ("ADRs") traded on the New York Stock Exchange, Amex or that were National Market securities. The Amex proposed that the Index be classified as a broad-based index. Amendment No. 2 supersedes the original proposal and Amendment No. 1.

withdrawn in Amendment No. 2. On July 11, 1994, the Exchange filed Amendment No. 3 ("Amendment No. 3") to the proposed rule change to provide for certain standards to be used in conjunction with the maintenance of the Index, as described below.[2] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 2 and 3 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to trade options on the Mexico Index ("Mexico Index" or "Index"), a new stock index developed by the Amex, based on Mexican stocks (or ADRs thereon) traded on the Amex, the New York Stock Exchange ("NYSE"), or that are National Market ("NM") securities traded through the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex has developed a new index called the Mexico Index, based entirely on shares of widely held Mexican stocks and ADRs traded on the NYSE, Amex, or that are NM securities. The Index contains securities of highly-capitalized companies with major business interests in Mexico. These companies have been drawn from a variety of industries, including construction, telecommunications, banking, shipping, tobacco, media, and food and beverage, to reflect the diversity of the Mexican market.

Index Calculation and Maintenance

The Index is calculated using a "modified" equal dollar weighting methodology. Two of the ten component securities have been given a higher weighting in the Index in order to more closely approximate the weight the industry represented by that component has in the Mexican stock market. The Amex believes that this will allow the Index's value to correlate more closely with the Bolsa Mexican Indice de Precios y Cotizaciones, which is commonly known as the "Bolsa Index." For example, Telefonos de Mexico, which is the largest capitalized component in the Index, will have a higher weight in the Index, but not as high as if the Index were capitalization weighted. The Amex believes that this "modified" equal dollar weighting methodology allows the Index to be a more accurate reflection of the Mexican market since it provides a higher weighting for the larger capitalized components, yet does not permit those stocks to dominate the Index. The Exchange believes that this method of calculation is important given the great disparity in market value of a few of the Index's component stocks. It has been the Exchange's experience that options on market value weighted indexes dominated by one or two component stocks are less useful to investors, since the index will tend to represent the one or two components and not the group as a whole.

The following is a description of how the "modified" equal dollar weighting calculation method works. As of the market close on June 17, 1994, a portfolio of ten Mexican stocks was established representing an investment (rounded to the nearest whole share) of $24,000 in the largest capitalized stock in the Index, $12,000 in the second largest, and $8,000 in each of the remaining companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 231.00 at the close of trading on June 17, 1994. Each quarter thereafter, following the close of trading on the third Friday of March, June, September and December, the Index components will be ranked in descending market capitalization order and the Index portfolio adjusted by changing the number of whole shares of each component stock so that the largest capitalized stock in the Index represents 24% of the Index value, the second largest represents 12%, and each of the remaining companies represent 8%. If the number of components in the Index increases to greater than ten securities, the Amex will continue to weight the two components with the highest market capitalizations 24% and 12%, respectively. The remaining components will then be weighted equally.[3] For example, if two new components are added to the Index, the two securities with the highest market capitalizations will be assigned a 24% and 12% weighting, respectively, while the remaining ten securities in the Index would be weighted 6.4%

If it becomes necessary to remove a stock from the Index, the Exchange will either add a Mexican stock having characteristics that will permit the Index to remain within the maintenance criteria specified in its rules and the Generic Narrow-Based Index Approval Order,[4] or will permit the Index to remain at nine stocks until the next quarterly rebalancing, at which time the Exchange will replace the component so that the Index will continue to have at least ten components.[5] The Exchange has chosen to rebalance following the close of trading on the quarterly expiration cycle because it allows an option contract to be held for up to three months without a change in the Index portfolio while at the same time, maintaining the "modified" equal dollar weighting feature of the Index. If necessary, a divisor adjustment is made at the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

The Amex states that it has had experience making regular quarterly adjustments to a number of its indexes and has not encountered investor confusion regarding the adjustments, since they are done on a regular basis and timely, proper and adequate notice is given. An information circular is distributed to all Exchange members notifying them of the quarterly changes. This circular is also sent by facsimile to the Exchange's contacts at the major options firms mailed to recipients of the Exchange's options related information circulars, and made available to subscribers of the Options New Network. In addition, the Exchange will include in its promotional and marketing materials for the Index description of the "modified" equal dollar weighting methodology. As noted above, the number of shares of each component stock in the Index portfolio remain fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, a stock distribution, stock, splits, reverse stock splits, rights offering distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the component, to the nearest whole share. In all cases the divisor will be adjusted, if necessary, to ensure Index continuity

The Amex will calculate and maintain the Index, and pursuant to Exchange Rule 901C(b) may at any time or from time to time substitute stocks, or adjust the number of stocks included in the Index, based on changing conditions in Mexico. However, the Exchange will not decrease the number of Index component stocks to less than nine or increase the number of component stocks to greater than thirteen without prior Commission approval.[6]

The value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The Exchange proposes to trade cash-settled, European-style Index options (*i.e.*, exercises are permitted at expiration only). The Exchange also proposes that Mexico Index options will have trading hours from 9:30 a.m. to 4:15 p.m. EST. As with other index options traded on the Amex, the options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in an option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options

[2] See Letter from Howard Baker, Senior Vice President, Derivative Securities, Amex, to Michael Walinskas, Derivative Products Regulation, SEC, dated July 11, 1994.

[3] See Amendment No. 3.

[4] See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) ("Generic Narrow Based Index Approval Order").

[5] See Amendment No. 3.

[6] See Amendment No. 3.

marketing materials for the Index description of the "modified" equal dollar weighting methodology. As noted above, the number of shares of each component stock in the Index portfolio remain fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, a stock distribution, stock, splits, reverse stock splits, rights offering distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the component, to the nearest whole share. In all cases the divisor will be adjusted, if necessary, to ensure Index continuity

The Amex will calculate and maintain the Index, and pursuant to Exchange Rule 901C(b) may at any time or from time to time substitute stocks, or adjust the number of stocks included in the Index, based on changing conditions in Mexico. However, the Exchange will not decrease the number of Index component stocks to less than nine or increase the number of component stocks to greater than thirteen without prior Commission approval.[6]

The value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The Exchange proposes to trade cash-settled, European-style Index options (*i.e.*, exercises are permitted at expiration only). The Exchange also proposes that Mexico Index options will have trading hours from 9:30 a.m. to 4:15 p.m. EST. As with other index options traded on the Amex, the options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in an option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Index value for purposes of settling a specific Mexico Index option will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of NM securities, the first reported sale price will be used. As trading begins in each of the Index's component securities, its opening sale price is captured for use in the calculation. Once all of the component stocks have opened, the value of the Index is determined and that value is used as the settlement value of the option. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior day's last sale price is used in the calculation.

The Exchange plans to list options series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, longer term option series having up to thirty-six months to expiration may be traded. In lieu of such long-term options on a full-value Index level, the Exchange may instead list long-term, reduced-value put and call options based on one-tenth (1/10th) the Index's full-value. In either event, the interval between expiration months for either a full-value or reduced-value long-term option will not be less than six months.

Eligibility Standards for Index Components

The Index's component securities all have major business interests in Mexico, and have been selected on the basis of their market capitalization, trading liquidity, and representation of Mexican business industries. The components represent the largest and most liquid of all Mexican securities trading in the U.S. and the Index tracks closely the performance of the Bolsa Index, a benchmark for the Mexican stock market.

The Exchange has represented that it will ensure that the Index initially and thereafter satisfies the listing and maintenance criteria set forth in the Generic Narrow-Based Index Approval Order. In choosing among Mexican stocks that meet the initial minimum criteria set forth in the Generic Narrow-Based Index Approval Order (as well as Exchange Rule 901C), the Exchange will select stocks that: (1) Have a minimum market value in U.S. dollars of at least $75 million,[7] except that for each of the lowest weighted component securities in the Index that in the aggregate account for no more than 10% of the weight of the Index, the market value may be at least $50 million; (2) have an average monthly trading volume in the U.S. markets over the previous six month period of not less than one million shares (or ADRs) except that for each of the lowest weighted component securities in the Index that in the aggregate account for no more than 10% of the weight of the Index, the trading volume shall be at least 500,000 shares in each of the last six months; (3) have at least 90% of the numerical Index value and at least 80% of the total number of component securities meeting the current criteria for standardized option trading set forth in Exchange Rule 915; and (4) are reported securities that trade on either the NYSE, Amex (subject to the limitations of Rule 901C), or are NM securities. In addition, no individual stock in the Index may represent more than 25% of the Index weight (at the time of rebalancing) and the five highest weighted stocks may not constitute more than 60% of the Index weight (at the time of rebalancing).

The Amex will ensure that not more than 20% of the weight of the Index is represented by ADRs overlying foreign securities that are not subject to comprehensive surveillance sharing agreements.[8] Currently, one component ADR, accounting for 8% of the Index value, has the majority of its trading volume occurring on the Bolsa Mexicana de Valores, an exchange with which the Amex does not currently have in place an effective market information sharing agreement.

If the Index fails at any time to satisfy the maintenance criteria set forth in the Generic Narrow-Based Index Approval Order and Exchange Rule 901C, the Exchange will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on the Mexico Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.[9]

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to the trading of regular and long-term contracts based on the Index. These Rules cover issues such as surveillance, exercise prices, and

[6] See Amendment No. 3.

[7] In the case of ADRs, this represents market value as measured by total world-wide shares outstanding.

[8] See Amendment No. 3.

[9] See Amendment No. 3.

position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. The Index is deemed to be a Stock Index option under Rule 901C(a) and a Stock Index Group under rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (*i.e.*, within ten points above or below the current index value) options series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange proposes to establish, pursuant to Rule 904C(c), a position limit of 7,500 contracts on the same side of the market.[10]

In anticipation of substantial customer activity in the options on this Index (including institutional activity), the Exchange seeks to have the ability to utilize its Auto-Ex system for orders in the Index options of up to 50 contracts. Auto-Ex is the Exchange's automated execution system which provides for the automatic execution of market and marketable limit orders at the best bid or offer at the time the order is entered. The ability to use Auto-Ex for orders of up to 50 contracts will provide customers with deep, liquid markets as well as expeditious executions. The Amex represents that it has the necessary systems capacity to support new series that would result from the introduction of Mexico Index Options.[11]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

[10] Telephone conversation between Howard Baker, Senior Vice President, Derivative Securities, Amex, and Howard Kramer, Associate Director, Division of Market Regulation, SEC, on July 12, 1994. In Amendment No. 2, the Amex proposed position limits of 10,500 contracts. That portion of Amendment No. 2 which refers to position limits has been withdrawn.

[11] See Letter from Edward Cook, Jr., Managing Director, Information Technology, Amex, to Michael Walinskas, Derivative Products Regulation, SEC, dated July 8, 1994.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex requests that the proposed rule change be given expedited review and accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and coping at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–20 and should be submitted by August 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

[12] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94–17348 Filed 7–14–94; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–34347; File No. SR–Amex–94–25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Increasing the Share Parameters for Orders Entered Through PER

July 11, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the share parameters, from 5,099 to 30,099 shares, for orders entered through the Exchange's Post Execution Reporting (PER) system.

The Exchange requests the Commission to find good cause, pursuant to section 19(b)(2) of the Act, for approving the portion of the proposed rule change that would increase PER eligibility from 5,099 to 30,099 on those securities listed on the Exchange which are part of the S&P 500 Index, prior to the thirtieth day after publication in the **Federal Register**. The Exchange believes that such an increase in PER eligibility is responsive to the operational needs of member firms and will enhance efficiency by quickly expanding automated order delivery for those securities which, as a group, are among the most actively traded on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b–4 (1991).

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PER system provides member firms with the means to electronically transmit equity orders up to volume limits specified by the Exchange directly to the specialist's post on the Exchange Floor. Market and marketable limit orders and pre-opening market orders are placed on the specialist's electronic book. Once the PER order is executed, the system transmits the execution report directly back to the member firm.

Since its implementation in the late 1970s, the Exchange has gradually increased the order parameters for PER in response to the operational needs of member firms, in recognition of the cost efficiencies gained through expanded use of automation, and to remain competitive with other exchanges' automated systems. Currently, the PER system accepts eligible market and limit orders of up to 5,099 shares.

The last increase, approved by the Commission on July 7, 1993,[3] permitted an expansion of PER eligibility for Unit Investment Trust securities (such as Standard & Poor's Depositary Receipts) from 5,099 to 25,000 shares for eligible market and limit orders.

In order to improve the competitiveness of PER as an order-routing facility, and to facilitate access to PER by larger size orders, the Exchange is now proposing to increase PER eligibility from 5,099 to 30,099 shares for both market and limit round lot orders. The Exchange initially proposes to implement the increased PER eligibility on a select number of securities, namely those securities included in the S&P 500 Index. Currently, Exchange securities in the S&P 500 Index are:

Amdahl Corporation
Echo Bay Mines Ltd.
Giant Food Inc.
Hasbro, Inc.; and
The New York Times Company

[3] *See* Securities Exchange Release No. 32544 (June 29, 1993), 58 FR 36485, July 7, 1993.

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PER system provides member firms with the means to electronically transmit equity orders up to volume limits specified by the Exchange directly to the specialist's post on the Exchange Floor. Market and marketable limit orders and pre-opening market orders are placed on the specialist's electronic book. Once the PER order is executed, the system transmits the execution report directly back to the member firm.

Since its implementation in the late 1970s, the Exchange has gradually increased the order parameters for PER in response to the operational needs of member firms, in recognition of the cost efficiencies gained through expanded use of automation, and to remain competitive with other exchanges' automated systems. Currently, the PER system accepts eligible market and limit orders of up to 5,099 shares.

The last increase, approved by the Commission on July 7, 1993,[3] permitted an expansion of PER eligibility for Unit Investment Trust securities (such as Standard & Poor's Depositary Receipts) from 5,099 to 25,000 shares for eligible market and limit orders.

In order to improve the competitiveness of PER as an order-routing facility, and to facilitate access to PER by larger size orders, the Exchange is now proposing to increase PER eligibility from 5,099 to 30,099 shares for both market and limit round lot orders. The Exchange initially proposes to implement the increased PER eligibility on a select number of securities, namely those securities included in the S&P 500 Index. Currently, Exchange securities in the S&P 500 Index are:

Amdahl Corporation
Echo Bay Mines Ltd.
Giant Food Inc.
Hasbro, Inc.; and
The New York Times Company

[3] See Securities Exchange Release No. 32544 (June 29, 1993), 58 FR 36485, July 7, 1993.

After three months of expansion of the share parameters for PER with respect to securities included in the S&P 500 Index, and upon approval of the Exchange's Floor Governors and Senior Staff, the Exchange is proposing to extend increased PER eligibility for up to 30,099 shares to all other Exchange-listed securities.

The Exchange represents that the current capacity of the PER system is well in excess of what is required to accommodate the increase in parameters from 5,099 to 30,099 shares for both market and limit round lot orders.

The automated system utilized by PER is designed to process up to 13.5 messages per second. The historic peak utilization of this system was 7.7 messages per second (on October 16, 1989), only 57% of capacity. Additionally, what is relevant to system capacity is the number of orders, not the number of shares represented by each order. Under the current PER parameters the Exchange already processes 60 percent of its total volume through the PER system, which clearly suggests that the impact of the contemplated increase on the number of orders coming through the system will be small, given that each 30,099 share order represents a much larger portion of volume than a 5,099 share order.

Finally, whatever additional system capacity is consumed by the increase in the PER parameters on an overall basis, only a portion of that increase will occur during the first three months, when the increase will apply only to the Amex stocks included in the S&P 500 Index. While those stocks do tend to be among our most active in share volume, so that they comprise an appropriate initial group, in the aggregate they represent only a small portion of overall Exchange share volume. Accordingly, the increased burden on system capacity during the first three months should be truly negligible and the Exchange will have the opportunity to observe the level of increased utilization and factor that into its assessment of how best to implement the parameter increase over the remainder of the Exchange's list.[4]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[4] As noted, the current system capacity is far in excess of what is required to accommodate the proposed increase in the PER parameters. However, it is important to note that even in the very unlikely event the 13.5-messages-per-second capacity limit were to be reached, orders would be queued, not lost. In addition, the Exchange has the flexibility to control the queuing process by utilizing a mechanism which adjusts relative priority between incoming orders and executions and administrative messages.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-94-25 and should be submitted by August 5, 1994.

IV. Commission's Findings and Order Granting Accelerated

The Commission finds that the Amex's proposal to increase the PER share parameters from 5,099 to 30,099, for orders of Exchange-listed securities which are a part of the S&P 500 Index, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed

rule change is consistent with the requirements of section 6(b)(5) of the Act[5] because it will facilitate transactions in securities by allowing for the timely transmission of a larger number of orders to the Amex floor. The proposal will also result in more efficient and effective market operations, consistent with section 11A(a)(1)(B) and will further the maintenance of fair and orderly markets and the efficient execution of securities transactions consistent with section 11A(a)(1)(C) of the Act.[6]

Finally, based upon representations from the Amex, the Commission is satisfied that the Exchange's PER system will have adequate computer processing capacity to accommodate the increased order size eligibility—at a minimum, for those Exchange-listed securities included in the S&P 500 Index.

The Commission finds good cause for partially approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the expansion of PER limit sizes to the Amex-listed S&P 500 stocks should provide substantial benefits to market participants and accordingly should be allowed to be implemented without delay at this time. Moreover, the Commission believes that accelerated approval of the proposal, in so far as it pertains to the Amex-listed securities included in the S&P 500 Index, is appropriate in order to allow the Amex to evaluate the impact of such an expansion to enable it to make an informed decision, after three months, whether or not it would be beneficial and feasible to expand the PER order size eligibility increase to all securities.

It Is Therefore Ordered, pursuant to section 19(b)(2),[7] that the portion of the proposed rule change applicable to Amex-listed securities included in the S&P 500 Index is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17258 Filed 7–14–94; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] 15 U.S.C. 78f(b)(5) and § 78k–1 (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–34346; File No. SR–BSE–94–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Net Capital and Equity Rule

July 11, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on April 11, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change [1] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange proposes to amend its Capital and Equity Requirements to conform to the current requirements as set forth in SEC Rule 17a–11. The text of the proposed rule change is as follows: *new language* [deleted language].

Chapter XXII—Capital and Equity Requirements

Sec. 2[.](a) *All* members and member organizations [using the facilities of the Boston Stock Exchange Clearing Corporation ("the facilities") doing business on the floor of the Exchange and; who clears transactions for another broker or dealer or; maintains accounts for another broker or dealer or; introduces accounts to another broker or dealer or; maintains customer accounts] shall at all times—

(i) Maintain net capital not less than that prescribed by SEC Rule 15c3–1 (17 CFR 240.15c3–1); [and]

(ii) [b] *Be* subject to Appendix D of SEC Rule 15c[ ]3–1 in regard to Satisfactory Subordination Agreements[.] *and*

(iii) Be subject to the reporting requirements set forth under SEC Rule 17a–11 and the SEC's Early Warning Rule contained therein.

* * * * *

[Early Warning Alert Notification

Sec. (c)(3) All specialists assigned to the Exchange as their Examining Authority shall be required to compute net capital and must immediately deliver written notice to the Exchange, identifying what action is being taken to alleviate the alert status, whenever one of the following occurs:

(i) Net capital falls below required minimum levels;

(ii) Net capital falls below 120% of its minimum requirement; or

(iii) Specialist fails to comply with the following financial responsibility requirements:

(A) Fails to make and keep current books and records;

(B) Discovers or is notified by an independent accountant of the existence of any material inadequacy; or

(C) When the Exchange learns that the specialist has failed to file a notice under this section.

Note: Where a specialist is assigned to another Examining Authority, that specialist shall be required to comply with the provisions as set forth by its assigned Examining Authority or SEC Rule 15c3–1 and the reporting requirements set forth under SEC Rule 17a–11. Whenever the Exchange provides a specialist with an early warning alert notice, such specialist must respond by verifying the alert in writing. If a specialist fails to respond to the early warning alert sent by the Exchange, it shall be considered a valid alert and the specialist shall be notified by the Exchange that it must comply with the provisions of this rule as set forth above.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain provisions of the net capital and equity rule to conform to the current requirements as set forth in SEC Rules 15c3–1 and 17a–11. The proposed changes to Section 2(a) will expand the scope of the rule to require that all members comply with SEC Rule 15c3–1 regarding net capital which became effective on April 1, 1994, and as such supersede the current Exchange rule. The proposed changes to Section 2(c)(3) eliminates the Exchange's Early Warning Alert Notification procedure and replaces it with the SEC's Early Warning provisions as set forth in SEC Rule 17a–11.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act, in that the capital and equity requirements of the Exchange are designed to protect investors and the public interest by ensuring that Exchange members doing business on the Floor have adequate funds to cover losses that they might incur in the everyday transaction of business.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–05 and should be submitted August 5, 1994.

[1] On April 25, 1994, the BSE filed Amendment No. 1 which corrects several technical mistakes in the original rule filing in the text of the Rule. On June 20, 1994, the BSE filed Amendment No. 2 which removed the Early Warning Alert Notification provision from BSE's Rules because, as the Exchange members are bound by § 2.(a)(iii) of the Rules to be subject to the SEC's Early Warning Alert Notification, such provision was duplicative. *See* letters from Karen Aluise, Assistant Vice President, Boston Stock Exchange, to Amy Bilbija, Commission, dated April 20, 1994, and June 20, 1994, respectively.

2(a) will expand the scope of the rule to require that all members comply with SEC Rule 15c3–1 regarding net capital which became effective on April 1, 1994, and as such supersede the current Exchange rule. The proposed changes to Section 2(c)(3) eliminates the Exchange's Early Warning Alert Notification procedure and replaces it with the SEC's Early Warning provisions as set forth in SEC Rule 17a–11.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act, in that the capital and equity requirements of the Exchange are designed to protect investors and the public interest by ensuring that Exchange members doing business on the Floor have adequate funds to cover losses that they might incur in the everyday transaction of business.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–05 and should be submitted August 5, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to amend its Capital and Equity Requirements Rule is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, in that the capital and equity requirements of the Exchange are designed to protect investors and the public interest by ensuring that Exchange members doing business on the Floor have adequate funds to cover losses that they might incur in the everyday transaction of business.[2]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the BSE to amend the Exchange's current net capital and equity rule to conform to Rules 15c3–1 and 17a–11 of the Act. In addition, the Commission previously noticed for comment and approved similar filings of the PSE and the Phlx. No comments were received on those files.[3]

It Is Therefore Ordered, pursuant to Section 19(b)(2)[4] that the proposed rule change (SE–BSE–94–05) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17256 Filed 7–14–94; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78f(b)(5) (1988). *See generally* Securities Exchange Act Release Nos. 34295 (July 1, 1994) and 33838 (March 30, 1994) approving similar changes with respect to conforming exchange rules to the revised SEC Net Capital Requirements for the Pacific Stock Exchange ("PSE") and Philadelphia Stock Exchange ("Phlx"), respectively. The Discussion in those approval orders are incorporated herein.

[3] *See* note 2, *supra*.

[4] 15 U.S.C. 78s(b)(2) (1988).

[Release No. 34–34333; File Nos. SR–MCC–94–03 and SR–MSTC–94–03]

Self-Regulatory Organizations; Midwest Clearing Corporation and Midwest Securities Trust Company; Order Approving Proposed Rule Changes Establishing More Definitive Standards for Retention of Participants Fund Deposits

July 8, 1994.

On January 31, 1994, and February 7, 1994, the Midwest Securities Trust Company ("MSTC") and the Midwest Clearing Corporation ("MCC") filed proposed rule changes (File Nos. SR–MSTC–94–03 and SR–MCC–94–03) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposals was published in the **Federal Register** on May 18, 1994.[2] No comments were received by the Commission. This order approves the proposals.

I. Description of the Proposals

The proposed rule changes establish more definitive standards for the retention of deposits to the MCC and MSTC participants funds when a participant ceases to be a participant. Specifically, the proposals modify Article IX (Property Held for Participants), Rule 2 (Participants' Fund), Section 11 (Ceasing To Be a Participant) of MCC *Rules* and Article VI (Property Held for Participants), Rule 2 (Participants' Fund), Section 12 (Ceasing To Be a Participant) of MSTC *Rules*.

The proposals are designed to enable MCC and MSTC to retain in their participants funds appropriate amounts of assets to protect themselves from losses that arise from obligations of former participants. For example, when the issuer of a security pays dividends, MCC participants that have long positions in the security are credited, and MCC participants that have short positions are debited. Occasionally, however, an issuer will fail to disseminate dividend information in a timely manner. When the dividend information is ultimately disseminated, participants that had short positions on the date the dividend amounts should have been debited are charged the appropriate debits. If a participant that had such a short position has ceased to be a participant, MCC has the right to collect the dividend from the ex-participant because the dividend

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 34041 (May 11, 1994), 59 FR 25977.

represents an amount chargeable against the ex-participant's contributions as a result of transactions conducted while it was an MCC participant. However, if MCC has refunded all of the ex-participant's participants fund deposit, MCC would have no direct access to funds of the ex-participant, and MCC will be at risk.

MSTC faces similar risks. For example, if a participant has on deposit with MSTC a nontransferable security (*e.g.*, a security of an issuer in bankruptcy) that becomes transferable after the participant has ceased to be an MSTC participant, MSTC could become obliged to transfer the security to a third party transferee. If MSTC is not able to make good delivery of the certificates and if MSTC already has refunded all of the ex-participant's participants fund deposit, MSTC will be at risk.

Accordingly, if MCC and MSTC retain participants fund deposits, obtain an appropriate guarantee, or have approved the substitution of another participant to the ex-participant's obligations, MCC and MSTC will reduce the risk from such occurrences as the late receipt of dividend information or the conversion of a security from nontransferable to transferable. At this time, however, there are no specific provisions in MCC's or MSTC's rules relating to either the length of time that MCC or MSTC may retain participants fund deposits or the amount of participants fund deposits that MCC or MSTC may retain. Based on their experiences, MCC and MSTC believe that absent an acceptable guarantee or an approved substitution, it will be appropriate for them to retain the greater of (1) 25% of the participant's average participants fund requirement over the previous twelve months or (2) $100,000 or the participant's entire deposit if the participant has a participants fund deposit of less than $100,000. Under the proposal, MCC and MSTC will be permitted to retain participants fund deposits for up to four years.[3]

II. Discussion

The Commission believes that the proposals are consistent with the Act and particularly with Section 17A of the Act.[4] Section 17A(b)(3)(F) of the Act requires that the rules of clearing agencies be designed, among other things, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agencies or for which they are responsible.[5] The Commission believes that the proposed rule changes, which are modeled after the participants fund retention rule of NSCC and which are designed to protect participants fund deposits maintained by MCC and MSTC against losses related to exparticipants obligations, will better enable MCC and MSTC to manage such risks. Thus, the Commission believes that the rule changes are consistent with MCC's and MSTC's statutory responsibilities under Section 17A of the Act to safeguard securities and funds in their possession or control.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposals are consistent with the requirements of the Act, particularly with Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the above-mentioned proposed rule changes (File Nos. SR–MCC–94–03 and SR–MSTC–94–03) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17160 Filed 7–14–94; 8:45 am]

BILLING CODE 8010–01–M

[3] The Commission has approved similar participants' fund retention standards for the National Securities Clearing Corporation ("NSCC"). Securities Exchange Act Release No. 32728 (August 10, 1993), 58 FR 43395 (File No. SR–NSCC–93–01) (order approving proposed rule change).

[4] 15 U.S.C. 78q–1 (1988)

[5] 15 U.S.C. 78q–1(b)(3)(F) (1988)

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34348; File No. SR–NASD–93–75]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Referral of Matters by Arbitrators for Disciplinary Investigation

July 11, 1994.

On May 25, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission")[1] a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder.[3] The proposed rule change amends Section 5 of the Code of Arbitration Procedure ("Code")[4] to specify that arbitrators, at the conclusion of a proceeding, may refer matters arising or discovered during the course of an arbitration proceeding for disciplinary investigation.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 34146, June 2, 1994) and by publication in the **Federal Register** (59 FR 29647, June 8, 1994). One comment letter was received.[5] This order approves the proposed rule change.

In its filing, the NASD stated that potential violations uncovered during arbitration hearings should be investigated by the NASD as part of its comprehensive regulatory program. While customers who suffer a financial loss as a result of misconduct by their registered representative may bring arbitration actions, they often do not pursue formal complaints with a self-regulatory organization ("SRO") necessary to trigger an investigation of the potential violation. Further, while the filing of an arbitration complaint will alert an SRO to the existence of a potential violation,[6] because customer complaints in arbitration often do not allege or disclose sufficient information to indicate obvious misconduct on the part of a respondent, they may not trigger a disciplinary investigation. Indeed, in such cases, violations of the securities laws or the NASD's rules may not be apparent until an arbitration hearing occurs and the parties testify and introduce evidence about the relevant events. The NASD stated in its filing that in some cases, it never is made aware of securities law violations or violations of the NASD's rules, notwithstanding the fact that the financial injury to the customer resulting from the violations is the subject of an arbitration proceeding.

The NASD also stated in its filing that it has observed that arbitrators seldom refer for disciplinary investigation matters which come to their attention during the course of an arbitration proceeding. Because the NASD believes that arbitration matters, and the evidentiary material related to or produced in such matters, constitute a valuable source of information concerning potential violations of the NASD's rules and the federal securities laws, it believes that bringing such information to the attention of the Association's regulatory staff should improve the efficacy of the NASD's regulatory function. The NASD stated in its filing that it believes that specifying a mechanism in the Code for arbitrators to bring such information to the attention of the NASD's regulatory staff for investigation will serve the public interest by ensuring that potential violations of the NASD's rules and the federal securities laws are not overlooked.

In addition, the NASD believes that it is important for arbitrators to understand that the arbitration process is for the resolution of disputes between the securities industry and others, and that there is also a regulatory apparatus separate from the arbitration process which is designed to address misconduct which affects the public interest and the integrity of the financial markets. Thus, to the extent arbitrators are aware that they may refer matters, in addition to or in lieu of awarding punitive damages as part of awards,[7] the fairness of the arbitration process will be enhanced.

The proposed amendment to Section 5 specifies that if any matter comes to the attention of an arbitrator during the course of a proceeding the arbitrator may initiate a referral of the matter to the Association for disciplinary investigation. The proposed amendment also specifies, however, that any such referral should be initiated by an arbitrator only after final disposition of the matter through settlement or award. Although the NASD is not setting forth a specific procedure for such referrals, the NASD stated in its filing that it contemplates that arbitrators will direct referrals to the Association through the Arbitration Department Staff and the Director of Arbitration.

One commenter objected to the proposed rule change on the grounds that it would cause arbitrators to believe that they must make disciplinary referrals in all instances in which they find for claimants alleging that a member firm or associated person has violated the NASD's rules or securities

[1] The NASD initially submitted the proposed rule change on December 16, 1993. However, on May 25, 1994, the NASD filed Amendment No. 1, which amended and superseded the original rule filing.

[2] 15 U.S.C. 78s(b)(1)(1988).

[3] 17 CFR 240.19b–4 (1993)

[4] *NASD Manual*, Code of Arbitration Procedure, Part I, Section 5, (CCH) ¶ 3705.

[5] *See* letter from James F. Fotenos, Esq., Fotenos & Suttle, P.C. to Jonathan G. Katz, Secretary, SEC, dated July 1, 1994 ("Fotenos Letter").

[6] The filing of a customer-initiated arbitration complaint against an associated person alleging damages of $10,000 or more triggers a requirement of the member or associated person to amend the associated person's Form U–4 or U–5, as appropriate. Information supplied pursuant to such an amendment will be entered into the Central Registration Depository and will also be forwarded to the appropriate NASD District office for preliminary investigation.

[7] The NASD, in connection with this rule filing, is not expressing any official position with respect to the ability of arbitrators to award punitive damages.

proceeding. Because the NASD believes that arbitration matters, and the evidentiary material related to or produced in such matters, constitute a valuable source of information concerning potential violations of the NASD's rules and the federal securities laws, it believes that bringing such information to the attention of the Association's regulatory staff should improve the efficacy of the NASD's regulatory function. The NASD stated in its filing that it believes that specifying a mechanism in the Code for arbitrators to bring such information to the attention of the NASD's regulatory staff for investigation will serve the public interest by ensuring that potential violations of the NASD's rules and the federal securities laws are not overlooked.

In addition, the NASD believes that it is important for arbitrators to understand that the arbitration process is for the resolution of disputes between the securities industry and others, and that there is also a regulatory apparatus separate from the arbitration process which is designed to address misconduct which affects the public interest and the integrity of the financial markets. Thus, to the extent arbitrators are aware that they may refer matters, in addition to or in lieu of awarding punitive damages as part of awards,[7] the fairness of the arbitration process will be enhanced.

The proposed amendment to Section 5 specifies that if any matter comes to the attention of an arbitrator during the course of a proceeding the arbitrator may initiate a referral of the matter to the Association for disciplinary investigation. The proposed amendment also specifies, however, that any such referral should be initiated by an arbitrator only after final disposition of the matter through settlement or award. Although the NASD is not setting forth a specific procedure for such referrals, the NASD stated in its filing that it contemplates that arbitrators will direct referrals to the Association through the Arbitration Department Staff and the Director of Arbitration.

One commenter objected to the proposed rule change on the grounds that it would cause arbitrators to believe that they must make disciplinary referrals in all instances in which they find for claimants alleging that a member firm or associated person has violated the NASD's rules or securities laws.[8] This commenter stated that the effect of the proposed rule change would be to compromise the independence of arbitrators. The Commission disagrees. The Commission notes that the amendment provides that referral of any matter by an arbitrator is permissive rather than mandatory. Futher, the Commission believes that, because the disciplinary process is intended to address misconduct which affects the public interest and the integrity of the financial markets, the process is enhanced when the NASD receives notice of violations from an important and reliable source of information.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] because it will encourage arbitrators to bring information concerning potential violations of the Association's rules and the federal securities laws to the attention of the NASD's regulatory staff for investigation. This, in turn, will serve the public interest by enhancing the ability of the NASD's regulatory staff to take disciplinary action against perpetrators of conduct adversely affecting the public interest and the integrity of financial markets.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–NASD–93–75 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17257 Filed 7–14–94, 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34343; File No. SR–NYSE–94–3]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Adoption of New Rule 123A.46

July 11, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 22, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a new Rule 123A.46 pertaining to members' representation of multiple orders. Rule 123A.46 would require members and member organizations (including "upstairs" trading personnel) to inform customers if they are representing orders for more than one customer at the same time, on the same side of the market, if the orders may not receive an execution in time priority of receipt, or may not receive an equal or proportional split.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections (A), (B) and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing adoption of new Rule 123A.46 to ensure that customers are informed, in a timely manner, of the circumstances under which their orders are being represented. Under this rule, members and member organizations (including "upstairs" trading personnel) would be required to inform each customer if they are representing orders for more than one customer at the same time, on the same side of the market, if the orders may not receive an execution in time priority of receipt, or may not receive an equal or strictly proportional split based upon the size of the orders. For example, if a broker was representing three not held orders to buy stock, one for 100,000 shares, and two for 50,000 shares each, and the broker executed a trade for 12,000 shares, the broker would be permitted to (1) allocate all 12,000 shares to the customer who entered the order first (time priority), (2) split the trade equally by giving 4,000 shares to each customer, or (3) split the trade proportionally to the customer

---

[7] The NASD, in connection with this rule filing, is not expressing any official position with respect to the ability of arbitrators to award punitive damages.

[8] *See* Fotenos Letter, *supra* n. 5.

[9] 15 U.S.C. 78o–3.

[1] 15 U.S.C. § 78s(b)(1).

orders, *i.e.*, 6,000 shares, 3,000 shares and 3,000 shares. Under these circumstances, no disclosures would be required. However, if the execution would be split in any other manner, this information would have to be disclosed to customers prior to multiple orders being represented.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The proposed adoption of Rule 123A.46 is consistent with these objectives in that it will ensure that customers are informed in a timely manner of the circumstances under which their orders are being represented.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–3 and should be submitted by August 5, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17253 Filed 7–14–94; 8:45 am]

BILLING CODE 8015–01–M

[Release No. 34–34342; File No SR–Phlx–91–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Equity Floor Procedure Advice E–A–1—Responsibility for Displaying Best Bid and Offer Prices

July 11, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 15, 1991, the Philadelphia Stock Exchange, Inc. ("Phlyx" of "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and on June 23, 1994 filed Amendment No. 1 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt Phlx Equity Floor Procedure Advice ("EFPA") E–A–1: *Responsibility for Displaying Best Bid and Offer Prices Established on the Equity Floor.* The Text of the proposed new advice is presented below:

E–A–1 Responsibility for Displaying Best Bid and Offer Prices Established on the Equity Floor

(i) A Specialist shall use due diligence to ensure that the best available bid price and offer price on the floor in each "primary stock issue" assigned to him is properly and timely displayed for dissemination purposes throughout the trading day.

(ii) A Specialist shall also use due diligence to ensure proper and timely display of any bid or offer price of any order on the book in a "secondary issue" assigned to him for so long as such bid or offer is equal or superior to the consolidated best bid or offer of those disseminated by the national exchanges.

(iii) For the purposes of the above paragraphs, the fine schedule below will apply in any instance of any exchange review which identifies that five percent or more of such orders have not been properly displayed in a timely fashion for the review period.

FINE SCHEDULE

[Implemented on a three year running calendar basis]

E–A–1	
1st Occurrence	$100.00
2nd Occurrence	250.00
3rd Occurrence	500.00
4th and Thereafter	Sanction is discretionary with Business Conduct Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of land basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This new equity floor procedure advice codifies the due diligence requirement of equity specialists imposed pursuant to SEC Rule 11Ac1–1 to display the best bid and offer available on the floor in their assigned issues. The specialists' responsibility will be different for primary stock issues and secondary market issues.

For stocks that are primary to this Exchange, a specialist's responsibility will be to ensure that the best bid and offer voiced on the floor of the Exchange in one of his assigned specialist issues is properly and timely displayed for dissemination purposes throughout the trading day. A primary stock issue is any issue dually listed with another exchange for which the Phlx has traded the majority of exchange volume over the previous six months or any issue listed on the Phlx which is not listed on any other national exchange.

For those stocks in which the Phlx specialist makes a secondary market, his responsibility is to ensure proper and timely display of the best bid (or offer) so long as such bid (or offer) is equal or superior to all other bids (or offers) reflected and disseminated at the time by the national exchanges.

The Exchange has provided a fine schedule to be applied when an Exchange review identifies five percent or more of such orders reviewed over a designated time period to have not been properly displayed in a timely manner. If at any time, however, an Exchange review reveals that the amount of orders not timely displayed exceeds five percent by an amount whereby it would be unreasonable to still consider the infraction as minor, the staff may bring the matter to the Business Conduct Committee to authorize a Statement of Charges and impose more severe sanctions pursuant to Exchange Rule 970.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

imposed pursuant to SEC Rule 11Ac1–1 to display the best bid and offer available on the floor in their assigned issues. The specialists' responsibility will be different for primary stock issues and secondary market issues.

For stocks that are primary to this Exchange, a specialist's responsibility will be to ensure that the best bid and offer voiced on the floor of the Exchange in one of his assigned specialist issues is properly and timely displayed for dissemination purposes throughout the trading day. A primary stock issue is any issue dually listed with another exchange for which the Phlx has traded the majority of exchange volume over the previous six months or any issue listed on the Phlx which is not listed on any other national exchange.

For those stocks in which the Phlx specialist makes a secondary market, his responsibility is to ensure proper and timely display of the best bid (or offer) so long as such bid (or offer) is equal or superior to all other bids (or offers) reflected and disseminated at the time by the national exchanges.

The Exchange has provided a fine schedule to be applied when an Exchange review identifies five percent or more of such orders reviewed over a designated time period to have not been properly displayed in a timely manner. If at any time, however, an Exchange review reveals that the amount of orders not timely displayed exceeds five percent by an amount whereby it would be unreasonable to still consider the infraction as minor, the staff may bring the matter to the Business Conduct Committee to authorize a Statement of Charges and impose more severe sanctions pursuant to Exchange Rule 970.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–91–20 and should be submitted by August 5, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17254 Filed 7–14–94; 8:45 am]

BILLING CODE 8010–01–M

SECUTITIES AND EXCHANGE COMMISSION

[Release No. 34–34345; File No. SR-Phlx-94–01]

Self Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 5 to the Proposed Rule Change, by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of Options on the Phone Index.

July 11, 1994

Introduction

On January 3, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange) submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on the Phlx Phone Index ("Phone Index" or "Index"). On February 18, 1994, February 24, 1994, April 6, 1994, April 11, 1994, and July 5, 1994, the Exchange filed Amendment Nos. 1,[3] 2,[4] 3,[5] 4,[6] and 5,[7] respectively, to this proposal.

[1] 15 U.S.C. § 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] In Amendment No. 1, the Phlx amended the proposal: (1) to provide that the Index will be updated during the trading day at least once every 15 seconds, rather than once every minute; (2) to provide that the exercise prices will be set at five point Index intervals rather than 2½ point Index intervals as stated in the original filing; (3) to specify that the expiration cycle applicable to options on the Index will be three expiration months from the March, June, September, December cycle plus two additional near-term months; (4) to clarify the Exchange's obligations with respect to delisting and replacing components of the Index; (5) to clarify that all of the proposed Index's component stocks are, and any future replacement or added component securities will be, listed and traded on either the New York Stock Exchange ("NYSE") or the American Stock Exchange (non-ECM) ("Amex"), or quoted on and traded through the Nasdaq National Market ("Nasdaq/NM"); and (6) to clarify that all of the current Index component stocks have overlying exchange-traded options on them. *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated February 16, 1994.

[4] In Amendment No. 2, the Phlx amended the proposal to change the name of the Index from the Phlx Baby Bell Index to the Phlx Phone Index. *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Staff Attorney, Division of Market Regulation, Commission, dated February 24, 1994.

[5] In Amendment No. 3, the Phlx amended the proposal to represent that the Phlx will submit a Rule 19b–4 filing to the Commission prior to opening any new series of options on the Index for trading if at any time less than 90 percent of the

Continued

The proposed rule change and Amendment Nos. 1, 2, 3, and 4 thereto were published for comment in the **Federal Register** on June 6, 1994.[8] No comments were received on the proposed rule change, nor the amendments. This order approves the proposal and its five amendments.

II. Description of Proposal

A. Composition of the Index

The Phlx proposes to list for trading options on the Phone Index, a stock index to be calculated and maintained by the Phlx. The Index will be composed of the common stocks of the eight companies created as a result of the divestiture of American Telephone & Telegraph Co. ("AT&T") in 1983, including the seven regional telephone companies spun off from AT&T as well as AT&T itself.[9] AT&T and the spun-off regional telephone companies represent some of the largest and most widely-held U.S. common stocks. All eight of the common stocks are listed on the NYSE. The Phlx will use a capitalization-weighted methodology to calculate the Index.[10]

As of March 11, 1994, the market capitalizations of the individual stocks in the Index ranged from a high of $68.7 billion (AT&T) to a low of $15 billion (Nynex), with the mean and median being $27.6 billion and $22.8 billion, respectively. The market capitalization of all the stocks in the Index was $220.6 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 1.4 billion shares (AT&T) to a low of 412.7 million shares (Nynex). In addition, the average daily trading volume of the stocks in the Index, for the six months immediately preceding February 24, 1994, ranged from a high of 1,646,200 shares per day (AT&T) to a low of 425,100 shares per day (BellSouth Corp.), with a mean of approximately 773,638 shares. For the same period, the average monthly trading volume of the stocks in the Index ranged from a high of 40,916,000 shares per month (AT&T) to a low of 8,928,000 shares per month (BellSouth Corp.), with a mean of approximately 17.03 million shares. Finally, no one stock comprised more than 31.14 percent of the Index's total value as of March 11, 1994 (AT&T), and the percentage weighing of the four largest issues in the Index accounted for 64.77 percent of the Index's value. The percentage weighting of the lowest weighted stock was 6.78 percent of the Index (Nynex), and the percentage weighting of the five smallest issues in the Index accounted for 35.23 percent of the Index's value.

B. Maintenance

The Index will be maintained by the Phlx. The Phlx will make special adjustments to the securities comprising the Index to reflect such events as stock splits or reverse splits, spinoffs, stock dividends, reorganizations, recapitalizations, and similar events, upon their occurrence. In accordance with Phlx Rule 1009A, if any change in the nature of any stock in the Index that is caused by delisting, merger, acquisition, or otherwise occurs which would change the overall market character of the Index, the Exchange will take appropriate steps to delete this Index component stock from the Index. Such Index component stock would be replaced by another Index component stock which the Exchange in its discretion believes would be compatible with the intended market character of the Index.[11]

If at any time less than 90 percent of the component stocks in the Index, by weight, are eligible for exchange options trading, or if the number of stocks in the Index ever increases to more than ten or decreases to less than eight, the Exchange would submit a filing to the Commission pursuant to Rule 19b–4 under the Act prior to opening any new series of options on the Index for trading.

C. Calculation of the Index

The Index will be calculated using a capitalization-weighting methodology. The representation of each security in the Index will be proportional to the security's last sale price multiplied by the total number of shares outstanding, in relation to the total market value of all of the securities in the Index. The value of the Index was set to equal 200 on December 1, 1993. As of June 24, 1994, the Index value was 196.73. The formula for calculating the Index value is as follows:

$$\text{Current Index Value} = \frac{\text{Total Capitalization}}{\text{Divisor}}$$

Where:

Total Capitalization = Sum of Market Values (price × shares outstanding) for all component securities

Divisor = The number which, when divided from the total capitalization when the Index was initially calculated (on December 1, 1993), yielded an Index value of 200.

The Index divisor will be adjusted for changes in the capitalization of any of the component securities resulting from mergers, acquisitions, delistings, substitutions, and other like corporate events. The formula for adjusting the divisor is as follows:

Adjustments in the value of the Index which are necessitated by the addition and/or deletion of an issue from the Index are made by adding and/or subtracting the market value (price × shares outstanding) of the relevant issues.

The Index value will be updated dynamically and disseminated at least once every fifteen seconds during the trading day.[12] The Phlx has retained Bridge Data, Inc. to compute and do all necessary maintenance of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority ("OPRA"). The Index value also will be available on broker/dealer interrogation devices to subscribers of the option information.

The Index value, for purposes of settling outstanding Index options contracts upon expiration, will be calculated based upon the regular way opening sale prices for each of the Index's component stocks on the last trading day prior to expiration. Once all of the component stocks have opened, the value of the Index will be determined and that value will be sued as the final settlement value for expiring Index option contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the last reported sale price of such security will be used in any case where that security does not trade on that day.

D. Contract Specifications

The proposed options on the Index will be cash-settled. American-style options.[13] Standard options trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply to the contracts. The Index multiplier will be 100. Strike prices will be set at five point intervals in terms of the current value of the index.[14]

The Exchange will trade consecutive and cycle month series pursuant to Phlx Rule 1101A. Specifically, there will be

---

component securities, by weight, are eligible for exchange options trading, or if at any time the number of stocks in the Index increases to more than ten or decreases to less than eight. *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated March 3, 1994.

[6] In Amendment No. 4, the Phlx amended the proposal: (1) to change the manner in which the current Index value would be calculated; (2) to represent that the surveillance procedures currently used to monitor trading in each of the Exchange's other index options, which include having complete access to trading activity in the underlying securities comprising the Index (all of which are traded on the NYSE), also will be used to monitor trading in options on the Index; (3) to provide that the Intermarket Surveillance Group Agreement dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index; and (4) to confirm that the trading hours for the Index will be 9:30 a.m. to 4:10 p.m. (New York time). *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Thomas McManus, Division of Market Regulation, Commission, dated April 7, 1994.

[7] In Amendment No. 5, the Phlx amended its proposal to include (1) the listing, pursuant to Phlx Rule 1101A(b)(iv), of quarterly index options ("QIX options") on the Phone Index; and (2) the listing, pursuant to Phlx Rule 1101A(b)(iii), of series of long-term options ("LEAPS") on the Phone Index. *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Thomas McManus, Division of Market Regulation, Commission, dated July 1, 1994.

[8] *See* Securities Exchange Act Release No. 34130 (May 27, 1994), 59 FR 29317 (June 6, 1994).

[9] The components of the Index are: AT&T; Ameritech Corp.; Bell Atlantic Corp.; BellSouth Corp.; Nynex Corp.; Pacific Telesis Group; Southwestern Bell Corp.; and US West Inc.

[10] *See infra* Section II.C., entitled "Calculation of the Index," for a description of this calculation method.

[11] The Exchange represents that any future replacement or added component securities will be listed and traded on either the NYSE or Amex, or quoted on and traded through the Nasdaq/NM. *See supra* note 3.

[12] To the extent that a component stock does not open for trading on a particular trading day, or trading in that component stock is halted during the course of a particular trading day, the last reported sale price of such security will be used for purposes of calculating the current Index value.

[13] An American-style option can be exercised at any time prior to its expiration.

[14] Additional exercise prices will be added in accordance with Phlx Rule 1101A(a).

$$\text{Divisor} = \frac{\text{Total Capitalization (as result of adjustments)}}{\text{Index Value}}$$

Adjustments in the value of the Index which are necessitated by the addition and/or deletion of an issue from the Index are made by adding and/or subtracting the market value (price × shares outstanding) of the relevant issues.

The Index value will be updated dynamically and disseminated at least once every fifteen seconds during the trading day.[12] The Phlx has retained Bridge Data, Inc. to compute and do all necessary maintenance of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority ("OPRA"). The Index value also will be available on broker/dealer interrogation devices to subscribers of the option information.

The Index value, for purposes of settling outstanding Index options contracts upon expiration, will be calculated based upon the regular way opening sale prices for each of the Index's component stocks on the last trading day prior to expiration. Once all of the component stocks have opened, the value of the Index will be determined and that value will be sued as the final settlement value for expiring Index option contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the last reported sale price of such security will be used in any case where that security does not trade on that day.

D. Contract Specifications

The proposed options on the Index will be cash-settled. American-style options.[13] Standard options trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply to the contracts. The Index multiplier will be 100. Strike prices will be set at five point intervals in terms of the current value of the index.[14]

The Exchange will trade consecutive and cycle month series pursuant to Phlx Rule 1101A. Specifically, there will be three expiration months from the March, June, September, December cycle, plus two additional near-term months so that the three nearest-term months always will be available. In addition, pursuant to and in accordance with Phlx Rule 1101A(b)(iii), the Exchange will list and trade series of LEAPS on the Index.

Index options will expire on the Saturday following the third Friday of the expiration month. Since options on the Index will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will be the second to last business day before expiration (normally a Thursday). Alternatively, pursuant to Phlx Rule 1101A(b)(iv), the Exchange may provide for the listing of up to eight near-term quarterly expirations for the Index. These QIX options would expire on the first business day following the end of each calendar quarter, and all such QIX options would be P.M.-settled.[15]

E. Position and Exercise Limits, Margin Requirements, and Trading Halts

Position limits and exercise limits for the Index options will be set at no more than 5,500 contracts.[16] Index options will be traded pursuant to the current Phlx rules governing the trading of index options, particularly Phlx Rules 1000A through 1103A, and generally, Phlx Rules 1000 through 1070. For example, Exchange rules applicable to options on the Phone Index will be identical to the rules applicable to other narrow-based index options for purposes of trading rotations, halts, and suspensions,[17] and margin treatment.[18]

F. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Phone Index options. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group ("ISG") Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the index.[19]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[20] Specifically, the Commission finds that the trading of Phone Index options will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with U.S. telephone industry stocks.[21]

A. Index Design and Structure

The Commission finds that the Phone Index is a narrow-based index. The Phone Index is composed of only eight securities, all of which are U.S. telephone industry stocks. Accordingly, the Commission believes that it is appropriate for the Phlx to apply its rules governing narrow-based index

[12] To the extent that a component stock does not open for trading on a particular trading day, or trading in that component stock is halted during the course of a particular trading day, the last reported sale price of such security will be used for purposes of calculating the current Index value.

[13] An American-style option can be exercised at any time prior to its expiration.

[14] Additional exercise prices will be added in accordance with Phlx Rule 1101A(a).

[15] *See* Securities Exchange Act Release No. 34234 (June 17, 1994), 59 FR 32729 (June 24, 1994), which approved the Exchange's proposal to amend Phlx Rule 1101A to permit the Exchange to list QIX options on all existing and future Exchange indexes (with each listing of QIX options on future indexes subject to Commission approval).

[16] *See* Phlx Rules 1001A(b)(i) and 1002A, respectively.

[17] *See* Phlx Rule 1047A.

[18] *See* Phlx Rules 722 and 1000A.

[19] The Exchange is a member of the ISG, which was formed on July 14, 1983, among other things, to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[20] 15 U.S.C. 78f(b)(5) (1988).

[21] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed index options on the Phone Index will provide investors with a hedging vehicle that should reflect the overall movement of telephone industry stocks in the U.S. securities markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions in this sector of the U.S. securities markets, allowing them to establish positions or increase existing positions in such markets in a cost-effective manner.

options to trading in the Index options.[22]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the index's component securities significantly minimize the potential for manipulation of the Index. First, the majority of the components that comprise the Index are actively-traded, with a mean and median average daily trading volume of 773,800 and 637,700 shares, respectively, over the six months immediately preceding February 24, 1994.[23] Second, the market capitalizations of the securities in the Index are very large, ranging from a high of $68.7 billion to a low of $15 billion, as of March 11, 1994, with the mean and median being $27.6 billion and $22.8 billion, respectively. Third, although the Index is only comprised of eight component securities, no one particular security or group of securities dominates the Index. Specifically, no individual stock comprises more than 31.15 percent of the Index's total value, and the percentage weighting of the four largest issues in the Index accounts for 64.77 percent of the Index's value.[24] Fourth, all of the securities in the Index are eligible for standardized options trading, and the proposed Phlx maintenance requirement requires that at least 90 percent of the weighting of the Index be comprised of securities that are eligible for exchange options trading. Fifth, if the Phlx increases the number of component securities to more than ten or decreases that number to less than eight, the Phlx will be required to seek Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price of expiration month series of Phone Index options. This will help protect against material changes in the composition and design of the Index that might adversely affect the Phlx's obligations to protect investors and to maintain fair and orderly markets in Index options. Finally, the Index is comprised, and in the future may only be comprised, of stocks listed and traded on the NYSE or Amex, or quoted on and traded through the Nasdaq/NM. Accordingly, the Phlx will be required to ensure that each component of the Index is subject to last sale reporting requirements in the United States. This will further reduce the potential for manipulation of the value of the Index.

B. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation.[25] In this regard, the NYSE, which currently is the primary market for all of the stocks comprising the Index, is a member of the ISG, which provides for the exchange of all necessary surveillance information.[26]

C. Market Impact

The Commission believes that the listing and trading on the Phlx of options on the Phone Index will not adversely impact the underlying securities markets.[27] First, as described above, for the most part no one security or group of securities dominates the Index. Second, because at least 90 percent of the numerical value of the Index must be accounted for by securities that meet the Exchange's options listing standards, the component securities generally will be actively-traded, highly-capitalized securities. Third, the 5,500 contract position and exercise limits applicable to Index options will serve to minimize potential manipulation and market impact concerns.

Lastly, the Commission believes that settling expiring Phone Index options based on the opening prices of component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce the "Expiration Friday" effects on markets for securities underlying options on the Index.[28]

D. Accelerated Approval of Amendment No. 5

The Commission finds good cause for approving Amendment No. 5 to the proposed rule change prior to the thirtieth day after the date of publication on notice of filing thereof in the **Federal Register**. The portion of Amendment No. 5 providing for the listing of QIX options on the Index is consistent with the Exchange proposal approved by the Commission on June 17, 1994 relating to the listing of QIX options on all stock indexes for which index options are listed for trading by the Exchange.[29] That proposal was published for the full 21-day comment period, and no comments were received In addition, because Phlx Rule 1101A(b)(iii) generally permits the Exchange to list series of LEAPS on stock indexes, the Commission finds that the portion of Amendment No. 5 relating to the listing of series of LEAPS on the Index presents no new regulatory issues. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 5 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 5 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the foregoing that are filed with the Commission, and all written communications relating to the foregoing between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Phlx–94–01 and should be submitted by August 5, 1994.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (File No. SR–Phlx–94–01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17255 Filed 7–14–94; 8:45 am]

BILLING CODE 8010–01–M

[22] *See supra* notes 13 through 15, and accompanying text.

[23] In addition, over this same period, no component of the Index had an average daily trading volume of less than 425,100 shares per day

[24] The Commission's analysis is based on the eight securities in the Index. For an index with several more underlying securities, the Commission might come to a different conclusion if only a few securities accounted for a substantial portion of the index's weighting. In addition, although the Index is comprised of only eight stocks, the Commission is satisfied that, based on the large capitalizations, liquidity, and relative weightings of the component securities, the Index can be traded as an index product.

[25] *See* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[26] *See supra* note 16. In addition, the Amex and the National Association of Securities Dealers, Inc. are members of the ISG.

[27] In addition, the Phlx has represented that the Phlx and OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of options on the Phone Index. *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Thomas McManus, Division of Market Regulation, Commission, dated June 24, 1994; and Letter from Joseph P. Corrigan, Executive Director, OPRA, to Richard Cangelosi, Assistant Vice President, New Product Development, Phlx, dated April 18, 1994

[28] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[29] *See supra* note 15

[30] 15 U.S.C. § 78s(b)(2) (1988).

[31] 17 CFR 200.30–3(a)(12) (1993).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26082]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 8, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 1, 1994 to the Secretary, Securities and Exchange Commission, Washington, DC. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–8435)

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia

mentioned self-regulatory organization. All submissions should refer to File No. SR–Phlx–94–01 and should be submitted by August 5, 1994.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (File No. SR–Phlx–94–01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17255 Filed 7–14–94; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26082]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 8, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 1, 1994 to the Secretary, Securities and Exchange Commission, Washington, DC. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–8435)

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia 30346, and its subsidiaries, Alabama Power Company, 600 North 18th Street, Birmingham, Alabama, 35291, Georgia Power Company, 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501, Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501, Savannah Electric and Power Company, 600 Bay Street East, Savannah, Georgia 31401, Southern Company Services, Inc., 64 Perimeter Center East, Atlanta, Georgia 30346, Southern Electric International, Inc., 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, Alabama, 35205 and Southern Electric Generating Company, 600 North 18th Street, Birmingham, Alabama 35291, a subsidiary of Alabama Power Company and Georgia Power Company (collectively, "Applicants"), have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 32 and 33 of the Act and Rules 53 and 54 thereunder.

Southern proposes to issue and sell: (1) up to 25 million additional shares of its authorized but unissued common stock, par value $5 per share, as such number may be adjusted for any share split or distribution hereafter authorized by the Commission ("DRIP Stock"), pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Dividend Plan"); (2) up to 9 million additional shares of its authorized but unissued common stock, par value $5 per share, as such number may be adjusted for any share split or distribution hereafter authorized by the Commission ("ESP Stock"), pursuant to The Southern Company Employee Savings Plan ("Savings Plan"); and (3) up to 3 million additional shares of its authorized but unissued common stock, par value $5 per share, as such number may be adjusted for any share split or distribution hereafter authorized by the Commission ("ESOP Stock"), in order to provide common stock to fund The Employee Stock Ownership Plan of The Southern Company System ("ESOP Plan"). It is proposed that the DRIP Stock, the ESP Stock and the ESOP Stock will be issued and sold from time-to-time on or prior to December 31, 1997.

The DRIP Stock will be offered to all holders of Southern's common stock pursuant to the Dividend Plan whereby shareholders voluntarily may elect to: (1) have cash dividends on all of their shares of Southern common stock automatically reinvested and have the option of investing additional amounts by making cash payments; (2) have cash dividends on less than all of their shares automatically reinvested and continue to receive cash dividends on their remaining shares and have the option of investing additional amounts by making cash payments; or (3) invest by making optional cash payments only of not less than $25 per payment nor more than $6,000 per quarter. Cash dividends on shares credited to a participant's account under the Dividend Plan will be reinvested in shares of Southern's common stock. No shares will be sold by Southern under the Dividend Plan at less than the par value of such shares.

Shares of common stock purchased on behalf of shareholders will be, at Southern's discretion, previously issued shares purchased on the open market, newly issued shares purchased directly from Southern, or a combination of both. The price to participants will be the weighted average price paid for the shares.

The price of shares purchased directly from Southern will be equal to the average of the high and low sale prices for Southern's common stock, as published in *The Wall Street Journal* in its report of NYSE-Composite Transactions, on the dividend payment date, or the average of the high and low sale prices on the trading dates immediately preceding and following the dividend payment date, if the common stock is not traded on the New York Stock Exchange on the dividend payment date.

Southern Company Services, Inc. administers the Dividend Plan. A registered broker-dealer will be designated to act as an independent agent for the purpose of purchasing shares for participants on the open market. No service charge or commission is paid by participants in connection with purchases under the Dividend Plan.

A participant retains all voting rights relating to shares purchased under the Dividend Plan and credited to his/her account, and such shares will be voted in accordance with his/her instructions. A participant may withdraw from the Dividend Plan at any time upon written notice. In addition, without withdrawing from the Dividend Plan, a participant is entitled to demand and receive a certificate representing any number of whole shares of common stock credited to his/her account.

The ESP Stock will be offered to employees of Southern's subsidiaries pursuant to the Savings Plan under which such employees voluntarily may contribute, through payroll deductions and/or compensation reductions, any whole percentage which together are not more than 16% of their compensation. Each Savings Plan member must direct

[30] 15 U.S.C. § 78s(b)(2) (1988).

[31] 17 CFR 200.30–3(a)(12) (1993).

that his/her contributions be invested in one or more of four funds administered under the Savings Plan, except that employer matching contributions must be invested in the Company Stock Fund, consisting of Southern's common stock.

Wachovia Bank of Georgia, N.A. acts as Trustee for the trust which is part of the Savings Plan, and the Savings Plan is administered by the Savings Plan Committee, the members of which are appointed by the Board of Directors of Southern Company Services, Inc. Investment purchases by the Trustee for the funds may be made either on the open market or by private purchase, provided that no private purchase may be made of common stock of Southern at a price greater than the last sale price or current independent bid price, whichever is higher, for such stock on the New York Stock Exchange, plus an amount equal to the commission payable in a stock exchange transaction if such private purchase is not made from Southern. The Trustee may purchase common stock of Southern directly from Southern under the Dividend Plan or under any other similar plan made available to all holders of record of shares of common stock of Southern, at the purchase price provided for in such plan.

The exact number of ESOP Shares to be issued by Southern will be determined by the aggregate amount of contributions to be invested by the trust established pursuant to the ESOP Plan ("ESOP Trust") and the purchase price per share of Southern's common stock determined as set forth below. As amended and restated, the ESOP Plan permits the Applicants to contribute cash or common stock in an amount or under such formula as the Board of Directors of Southern Company Services, Inc. shall determine in its sole and absolute discretion.

It is anticipated that the contributions by the Applicants to the ESOP Trust generally will be made in cash. However, if a contribution consists of ESOP Stock, the purchase price per share shall be the average of the closing prices of a share of Southern's common stock based on consolidated trading, as defined by the Consolidated Tape Association and reported as part of the consolidated trading prices of New York Stock Exchange listed securities, for the 20 consecutive trading days immediately preceding the date on which such shares are contributed to the ESOP Plan. The purchase price per share of ESOP Stock acquired from Southern by the ESOP Trust with cash contributions shall be the fair market value as of the date of acquisition.

Cash contributions to the ESOP Trust also may be invested in Southern's common stock through open market purchases or private purchases from parties other than Southern. The purchase price per share of common stock acquired by private purchases from a party other than Southern shall not be greater than the last sale price or highest current independent bid price, whichever is higher, for a share determined on the basis of consolidated trading, as defined by the Consolidated Tape Association and reported as part of the consolidated trading prices of New York Stock Exchange listed securities, plus an amount not greater than the commission payable in a stock exchange transaction.

Under the ESOP Plan, the ESOP Trust is required to reinvest cash dividends paid on shares of Southern's common stock allocated to a participant's account in additional shares of common stock, unless the participant elects to have such cash dividends distributed to him/her currently or the Employing Company distributes cash dividends in order to qualify such distribution for a tax deduction under the 1986 Code. In reinvesting any cash dividends, the ESOP Trust may purchase common stock under the Dividend Plan, at the price provided for in such plan, on the open market or by private purchase, including purchases directly from Southern, at the stock's fair market value. All costs of administration of the ESOP Plan and the ESOP Trust, in excess of those costs allowed by the 1986 Code to be withheld from contributions or to be paid by the ESOP Trust, are paid by the Applicants.

Southern intends to use the net proceeds from the sale of the DRIP Stock, the ESP Stock and the ESOP Stock, together with other available funds, to make additional equity investments in subsidiaries, including cash capital contributions to its operating utility subsidiaries. Southern may also invest such proceeds, along with other authorized proceeds from related financings, up to an aggregate of $500 million in "exempt wholesale generators" and "foreign utility companies," as defined in Sections 32 and 33 of the Act, respectively, and for other corporate purposes. Investments by Southern and its subsidiaries would only be made in accordance with existing or future authorizations or in accordance with such exemptions as may exist under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-17159 Filed 7-14-94; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2726]

Tennessee; (With Contiguous Counties in Alabama); Declaration of Disaster Loan Area

Lawrence County and the contiguous counties of Giles, Lewis, Maury, and Wayne in the State of Tennessee, and Lauderdale and Limestone Counties in the State of Alabama constitute a disaster area as a result of damages caused by tornadoes which occurred on June 26, 1994. Applications for loans for physical damage may be filed until the close of business on September 6, 1994 and for economic injury until the close of business on April 5, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	7.125
Homeowners without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	7.125
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for the State of Tennessee are 272612 for physical damage and 829100 for economic injury, and in Alabama the numbers are 272712 for physical damage and 829200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 5, 1994.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 94-17201 Filed 7-14-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended July 1, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49631
Date filed: June 29, 1994
Parties: Members of the International Air Transport Association
Subject: Telex Reso 024f—Namibia/South Africa
Proposed Effective Date: August 1, 1994

Docket Number: 49632
Date filed: June 29, 1994
Parties: Members of the International Air Transport Association
Subject: TC23 Telex Mail Vote 688 Australia-Europe Excursion fares r-1—Reso 0711l Amendment to Mail Vote
Proposed Effective Date: July 1, 1994

Docket Number: 49633
Date filed: June 29, 1994
Parties: Members of the International Air Transport Association
Subject: PAC/Reso/378 dated June 24, 1994 16th PAC—Expedited Resos r-1 to r-6
Proposed Effective Date: August 1, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-17178 Filed 7-14-94; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 1, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49634
Date filed: June 29, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 27, 1994.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended July 1, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49631
Date filed: June 29, 1994
Parties: Members of the International Air Transport Association
Subject: Telex Reso 024f—Namibia/South Africa
Proposed Effective Date: August 1, 1994
Docket Number: 49632
Date filed: June 29, 1994
Parties: Members of the International Air Transport Association
Subject: TC23 Telex Mail Vote 688 Australia-Europe Excursion fares r–1—Reso 0711I Amendment to Mail Vote
Proposed Effective Date: July 1, 1994
Docket Number: 49633
Date filed: June 29, 1994
Parties: Members of the International Air Transport Association
Subject: PAC/Reso/378 dated June 24, 1994 16th PAC—Expedited Resos r–1 to r–6
Proposed Effective Date: August 1, 1994

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 94–17178 Filed 7–14–94; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 1, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49634
Date filed: June 29, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 27, 1994

Description: Application of Globair Corp., pursuant to Section 401(d)(1) of the act, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing Globair to provide scheduled foreign air transportation of persons, property and mail. Globair intends to provide service between New York, one or more European points, and Tel Aviv, Israel. Globair also intends to operate between New York and Miami, and will be applying in the near future for authority to provide scheduled interstate and overseas air transportation.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 94–17177 Filed 7–14–94; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

Flight Service Station at Burley, ID; Closing

Notice is hereby given that on or about August 24, 1994, the flight service station at Burley, Idaho, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Boise, Idaho. This information will be reflected in the FAA Organization Statement the next time it is issued. Sec. 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on June 14, 1994.

Frederick M. Isaac,
Regional Administrator, Northwest Mountain Region.
[FR Doc. 94–17216 Filed 7–14–94; 8:45 am]
BILLING CODE 4910–13–M

Flight Service Station at Idaho Falls, ID; Closing

Notice is hereby given that on or about August 3, 1994, the flight service station at Idaho Falls, Idaho, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Boise, Idaho. This information will be reflected in the FAA Organization Statement the next time it is issued. Sec. 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on June 14, 1994.

Frederick M. Isaac,
Regional Administrator, Northwest Mountain Region.
[FR Doc. 94–17215 Filed 7–14–94; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Bernalillo and Sandoval Counties, NM

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Bernalillo and Sandoval Counties, New Mexico.

FOR FURTHER INFORMATION CONTACT: Reuben S. Thomas, Division Administrator, Federal Highway Administration, 604 W. San Mateo, Santa Fe, NM 87505, Telephone: (505) 820–2022.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Mexico State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on a proposal to construct an access controlled transportation facility, known as Paseo del Volcan, on a new alignment on the west mesa of Albuquerque, New Mexico. Paseo del Volcan is included in the Long Range Major Street Plan for the Albuquerque urban Area and is intended to provide a connector between Interstate 40 (I–40) west of the urban area and Interstate 25 (I–25) north of the urban area. This project would preserve the investment and utility of the existing infrastructure, operations and transportation service in the Albuquerque metropolitan area. Of particular importance is the potential benefit to the Interstate system passing through the City of Albuquerque. The EIS will allow for right of way preservation and may also provide limited phased constructed based on current needs. Paseo del Volcan would begin at a new or improved interchange on I–40 west of Albuquerque, proceed north and then west to provide a connector with I–25 north of Albuquerque. The I–25 connection will be via a new or improved interchange on I–25 east of Bernalillo, or via NM 44 with a new or improved interchange west of Bernalillo. The total distance is approximately 35 miles (56.3 km). One option includes a new bridge across the Rio Grande near Bernalillo, New

Mexico. Interchanges are envisioned at defined major streets with at least one mile intervals between access points. New or improved interchanges at I–40, I–25 and NM 44 are also under consideration.

Options under consideration include (1) taking no action; (2) construction of an access controlled facility with appropriate consideration of provisions of pedestrian, equestrian and bicycle facilities and for demand reduction strategies and alternative transportation modes such as transit, light rail and high occupancy vehicle accommodations. The build alternates also will include variations in alignment location and termini. It is anticipated that the facility would be constructed in phases with the termini and configuration based on current needs.

Informal scoping for the proposal began in 1991. Comments were solicited from appropriate Native American groups, Federal, state and local agencies and from private organizations and citizens. Two scoping open houses and three community open houses have been held.

A major investment study scoping meeting was held to comply with recently promulgated metropolitan transportation planning regulations.

The draft EIS will be made available for Native American, public and agency review and comment. A public hearing will be advertized and held after document distribution and review. To ensure that the full range of issues related to this proposed action are addressed and all significant issues and impacts identified, comments and suggestions are invited from all interested parties. Comments on questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on June 30, 1994.

Reuben S. Thomas,

Division Administrator, Santa Fe, NM.

[FR Doc. 94–17185 Filed 7–14–94; 8:45 am]

BILLING CODE 4910-22-M

[FHWA Docket No. MC–94–14]

State Commercial Motor Vehicle Safety Law Affecting Interstate Commerce; Notice of Review and Preliminary Preemption Determination

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of review of State of Mississippi commercial motor vehicle safety law; notice of preliminary preemption determination; request for comments.

SUMMARY: The FHWA is reviewing a State of Mississippi commercial motor vehicle safety law to determine whether the law may be in effect and enforced with respect to commercial motor vehicles in interstate commerce. This review is required by the Motor Carrier Safety Act of 1984. In a preliminary finding, the FHWA has determined that the State law is incompatible with Federal regulations. Unless the preliminary finding is refuted by evidence or arguments received in response to this notice, a determination will be made that the law is preempted and shall not have effect and be enforced.

DATES: Comments must be received on or before September 13, 1994.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC–10, room 4232, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Taylor, Office of Motor Carriers, HFO–30, (202) 366–0133; or Mr. David Sett, Office of the Chief Counsel, HCC–20, (202) 366–0834; Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Motor Carrier Safety Act of 1984 (the Act) directs the Secretary of Transportation to conduct rulemaking proceedings to determine whether State laws may be in effect and enforced with respect to commercial motor vehicles in interstate commerce. The FHWA may, upon its own initiative or the petition of any interested person, begin proceedings to determine the preemptive effect of Federal regulations. 49 U.S.C. app. 2507.

Under the United States Constitution, the FHWA shares with the States the power to regulate commercial motor vehicles in interstate commerce. However, State laws which are incompatible with and do not have the same effect as Federal regulations may be preempted.

The Commercial Motor Vehicle Safety Regulatory Review Panel, which was established by the Act to analyze State commercial motor vehicle safety laws and regulations, notified the FHWA in its final report in August 1990 that a State of Mississippi law was incompatible with Federal regulations. The law in question exempts vehicles engaged in certain industries, such as lumber and gravel hauling and farming, from compliance with State motor carrier safety laws and regulations.

The specific provisions which have preliminarily been found to be preempted as they apply to interstate commerce are found in Section 77–7–16(3)(g)-(i), Mississippi Code of 1972. Subsection (3) exempts certain vehicles from the provision in the Code authorizing the State Public Service Commission to inspect vehicles for safe operation and safe use of equipment. Included in this exemption are:

(g) Motor vehicles owned and operated by any farmer who:

(i) Is using the vehicle to transport agricultural products from a farm owned by the farmer, or to transport farm machinery or farm supplies to or from a farm owned by the farmer;

(ii) Is not using the vehicle to transport hazardous materials of a type and quantity that requires the vehicle to be placarded in accordance with the Federal Hazardous Material Regulations in CFR 49 part 177.823; and

(iii) Is using the vehicle within one hundred fifty (150) air miles of the farmer's farm, and the vehicle is a private motor carrier of property.

(h) Motor vehicles engaged in the transportation of logs and pulpwood between the point of harvest and the first point of processing the harvested product;

(i) Motor vehicles engaged exclusively in hauling gravel or other unmanufactured road building materials.

The FMCSRs do not contain compatible exemptions. Generally, the Federal Motor Carrier Safety Regulations (FMCSRs) do not allow industry-based exemptions. State laws which provide such exemptions for vehicles in interstate commerce are deemed less stringent than the FMCSRs.

Drivers of farm vehicles, such as defined in paragraph (g) of the Mississippi Code, do have limited (49 CFR 391.67, articulated vehicles) and full (49 CFR 391.2(c), nonarticulated vehicles) exemptions from driver qualification requirements of Part 391 of the FMCSRs. Unlike the Mississippi Code, however, the FMCSRs do not exempt farm vehicles or their drivers from any other motor carrier safety requirements. Paragraph (g) is, therefore, preliminarily determined to be preempted insofar as it provides exemptions for farm vehicles not found in the FMCSRs.

The exemptions in paragraphs (h) and (i) for gravel and log haulers have no parallels in the FMCSRs. Each of these provisions in the Mississippi Code are therefore incompatible with the FMCSRs and are preliminarily determined to be preempted.

Insofar as these exemptions affect vehicles in interstate commerce, they are contrary to the guideline for regulatory review in 49 CFR Part 355, app. A, which provides that the "requirements must apply to all segments of the motor carrier industry." If as a result of this review, the FHWA finalizes this determination that the exemption is less stringent than Federal regulations, the State law will be preempted and shall not be in effect and enforced by the State of Mississippi with respect to commercial motor vehicles in interstate commerce. 49 U.S.C. app. 2507(c)(3).

The FHWA encourages all interested persons to submit comments on this review and preemption determination. In addition, any person, including the State of Mississippi, may petition the FHWA for a waiver from a preemption determination. 49 U.S.C. app. 2507(d). A petitioner is afforded the opportunity for a hearing on the record. A petition for a waiver may be combined with this proceeding, if made within the 60-day comment period. 49 CFR 355.25(e). A waiver may be granted if it is demonstrated that the waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

It should be reemphasized that this preliminary preemption determination is applicable only to certain State of Mississippi commercial motor vehicle safety laws insofar as they apply to vehicles in interstate commerce. State of Mississippi laws applicable only to vehicles in intrastate commerce are not subject to preemption, and, moreover, appear to be compatible for purposes of

Recordkeeping .....
Learning about the law or the form .....

CFR 391.67, articulated vehicles) and full (49 CFR 391.2(c), nonarticulated vehicles) exemptions from driver qualification requirements of Part 391 of the FMCSRs. Unlike the Mississippi Code, however, the FMCSRs do not exempt farm vehicles or their drivers from any other motor carrier safety requirements. Paragraph (g) is, therefore, preliminarily determined to be preempted insofar as it provides exemptions for farm vehicles not found in the FMCSRs.

The exemptions in paragraphs (h) and (i) for gravel and log haulers have no parallels in the FMCSRs. Each of these provisions in the Mississippi Code are therefore incompatible with the FMCSRs and are preliminarily determined to be preempted.

Insofar as these exemptions affect vehicles in interstate commerce, they are contrary to the guideline for regulatory review in 49 CFR Part 355, app. A, which provides that the "requirements must apply to all segments of the motor carrier industry." If as a result of this review, the FHWA finalizes this determination that the exemption is less stringent than Federal regulations, the State law will be preempted and shall not be in effect and enforced by the State of Mississippi with respect to commercial motor vehicles in interstate commerce. 49 U.S.C. app. 2507(c)(3).

The FHWA encourages all interested persons to submit comments on this review and preemption determination. In addition, any person, including the State of Mississippi, may petition the FHWA for a waiver from a preemption determination. 49 U.S.C. app. 2507(d). A petitioner is afforded the opportunity for a hearing on the record. A petition for a waiver may be combined with this proceeding, if made within the 60-day comment period. 49 CFR 355.25(e). A waiver may be granted if it is demonstrated that the waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

It should be reemphasized that this preliminary preemption determination is applicable only to certain State of Mississippi commercial motor vehicle safety laws insofar as they apply to vehicles in interstate commerce. State of Mississippi laws applicable only to vehicles in intrastate commerce are not subject to preemption, and, moreover, appear to be compatible for purposes of the Motor Carrier Safety Assistance Program because they fall within the Tolerance Guidelines. 49 CFR Part 350, app. C.

(49 U.S.C. App. Sec. 2507; 23 U.S.C. Sec 315; 49 CFR 1.48)

Issued on: July 7, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–17176 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 5, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220

Office of Thrift Supervision (OTS)

OMB Number: 1550–0026.

Form Number: FFIEC 001.

Type of Review: Extension.

Title: Annual Report of Trust Assets.

Description: The Annual Report of Trust Assets is submitted by financial institutions that operate trust departments. The report is the only source of information available regarding market values of assets held in trust departments. The information compiled by the FDIC and published in an annual report that is used by financial institutions, federal supervisory agencies and other groups.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 110.

Estimated Burden Hours Per Respondent: 2 hours, 2 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 223 hours.

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 94–17165 Filed 7–14–94; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

July 7, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220

Internal Revenue Service (IRS)

OMB Number: 1545–0130.

Form Number: IRS Form 1120S, Schedule D, and Schedule K–1.

Type of Review: Revision.

Title: U.S. Income Tax Return for an S Corporation (1120S); Capital Gains and Losses and Built-In Gains (Schedule D); Shareholder's Share of Income, Credits, Deductions, etc. (Schedule K–1).

Description: Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S corporation and its shareholders.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 1,880,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1120S	Schedule D (Form 1120S)	Schedule K–1 (Form 1120S)
Recordkeeping	62 hours, 40 minutes	9 hours, 20 minutes	14 hours, 50 minutes
Learning about the law or the form	20 hours, 43 minutes	4 hours, 13 minutes	10 hours, 19 minutes

	Form 1120S	Schedule D (Form 1120S)	Schedule K–1 (Form 1120S)
Preparing the form	36 hours, 37 minutes	9 hours, 13 minutes	14 hours, 44 minutes.
Copying, assembling, and sending the form to the IRS	4 hours, 1 minute	1 hour, 20 minutes	1 hour, 4 minutes.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 452,979,090 hours.
OMB Number: 1545–0938.
Form Number: IRS Form 1120–IC–DISC, Schedule K, and Schedule P.
Type of Review: Revision.
Title: Interest Charge Domestic International Sales Corporation Return (1120–IC–DISC);
Shareholder's Statement of IC–DISC Distributions (Schedule K);
Intercompany Transfer Price or Commission (Schedule P).
Description: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed, but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders; Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers, etc.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 1,200.
Estimated Burden Hours Per Respondent/Recordkeeper:

0	Form 1120–IC–DISC	Schedule K (1120–IC–DISC)	Schedule P(1120–IC–DISC)
Recordkeeping	95 hr., 54 min.	4 hr., 4 min.	12 hr., 55 min.
Learning about the law or the form	20 hr., 8 min.	47 min.	1 hr., 17 min.
Preparing the form	30 hr., 1 min.	54 min.	1 hr., 34 min.
Copy, assembling, and sending the form to the IRS	2 hr., 9 min.		

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 232,253 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–17166 Filed 7–14–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 8, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, N.W., Washington, D.C. 20220.

Office of Thrift Supervision (OTS)

OMB Number: New.
Form Number: OTS Form 1586.
Type of Review: New collection.
Title: Instructions for Filing Out the Interest-Rate Risk Appeals Submission.
Description: The form is used to obtain information from savings associations who want to appeal their interest-rate risk component.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 30 hours.
Frequency of Response: Quarterly, Annually.
Estimated Total Reporting Burden: 1,200 hours.
Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, N.W., Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–17167 Filed 7–14–94; 8:45 am]

BILLING CODE 4810–25–P

Sunshine Act Meeting

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m. Thursday, July 21, 1994.

LOCATION: Room 410, East West Towers, 4330 East West Highway Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

COMPLIANCE STATUS REPORT: The staff will brief the Commission on the status of various compliance matters.

Sunshine Act Meetings

Federal Register
Vol. 59, No. 135
Friday, July 15, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m. Thursday, July 21, 1994.

LOCATION: Room 410, East West Towers, 4330 East West Highway Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

COMPLIANCE STATUS REPORT: The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the last agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sayde E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: July 13, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–17363 Filed 7–13–94; 3:16 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, July 20, 1994.

LOCATION: ROOM 420, EAST WEST TOWERS, 4330 EAST WEST HIGHWAY, BETHESDA, MARYLAND.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

FY 1996 BUDGET: The staff will brief the Commission on issues related to the Commission's budget for fiscal year 1996.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: July 13, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–17364 Filed 7–13–94; 3:16 pm]

BILLING CODE 6355–01–M

Corrections

Federal Register
Vol. 59, No. 135
Friday, July 15, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket PS-127; Amdt. 195-52]
RIN 2137-AC27

Regulatory Review: Hazardous Liquid and Carbon Dioxide Pipeline Safety Standards

Correction

In rule document 94-15510 beginning on page 33388 in the issue of Tuesday, June 28, 1994, make the following corrections:

§ 195.246 [Corrected]

1. On page 33397, in the second column, in § 195.246, paragraph (b), in the third line, "3.7 m 12-ft-deep" should read "3.7 m (12 ft) deep".

§ 195.248 [Corrected]

2. On the same page, in the same column, in amendatory instruction 18. for § 195.248, in the eighth line, "12-ft-deep" should read "3.7 m (12 ft) deep".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8534]

1545-AS55

Real Estate Mortgage Investment Conduits

Correction

In rule document 94-9548 beginning on page 18746 in the issue of Wednesday, April 20, 1994, make the following correction:

1. On page 18746, in the second column, in the last line at the bottom of the page, "§ 1.860G1(a)(3)(i)" should read "§ 1.860G-1(a)(3)(i)".

2. On the same page, in the 3rd column, beginning in the 15th line, "April 14, 1994" should read "April 4, 1994".

BILLING CODE 1505-01-D

Friday
July 15, 1994

Part II

Securities and Exchange Commission

17 CFR Part 228, et al.
Rulemaking for EDGAR System and Adoption of Updated Filer Manual; Final Rules and Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230 and 259

[Release Nos. 33–7072; 34–34330; 35–26079; IC–20388]

RIN 3235–AC48

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is announcing the implementation of Financial Data Schedules required to be furnished in connection with certain electronic filings processed by the Divisions of Corporation Finance or Investment Management that are submitted on the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. Financial Data Schedules will be required commencing on September 1, 1994. The Commission also is adopting technical and clarifying amendments to the Financial Data Schedule rules.

EFFECTIVE DATE: The effective date of the rule changes is September 1, 1994. Implementation of Financial Data Schedule requirements will commence with filings made on or after September 1, 1994.

FOR FURTHER INFORMATION CONTACT: For Division of Corporation Finance filings, Barbara C. Jacobs or James R. Budge, Office of Disclosure Policy, at (202) 942–2910, or Sylvia J. Reis, CF EDGAR Policy, at (202) 942–2940. For Division of Investment Management filings, Anthony A. Vertuno, EDGAR IM Project, at (202) 942–0591. For filings under the Public Utility Holding Company Act of 1935, David Marsh, Office of Public Utility Regulation, at (202) 942–0558.

SUPPLEMENTARY INFORMATION: The Commission is announcing the implementation of Financial Data Schedule requirements and also adopting revisions to Item 601(c)(1)(ii) [1] of Regulations S–B [2] and S–K,[3] and is adding new paragraph (c)(2)(iv) [4] thereto. The Commission also is adopting revisions to paragraph (e) of Rule 483 [5] and Form U–13–60.[6]

[1] 17 CFR 228.601(c)(1)(ii) and 17 CFR 229.601(c)(1)(ii).

[2] 17 CFR part 228.

[3] 17 CFR part 229.

[4] 17 CFR 228.601(c)(2)(iv) and 17 CFR 229.601(c)(2)(iv).

[5] 17 CFR 230.483(e).

[6] 17 CFR 259.313.

I. Implementation of Financial Data Schedules in Connection With Division of Corporation Finance and Division of Investment Management Filings

On February 23, 1993, the Commission adopted interim rules to implement mandated electronic filing on the EDGAR system for registrants whose filings are processed by the Divisions of Corporation Finance and Investment Management and for those making filings with respect to such registrants.[7] These rules included provisions requiring electronic filers to furnish Financial Data Schedules. A Financial Data Schedule is an exhibit that will contain financial information extracted or derived from financial data within a filing that is marked (or "tagged") to allow electronic manipulation of such information.[8]

While most provisions of the interim rules became effective on April 26, 1993, the Financial Data Schedule provisions initially were to become effective on November 1, 1993, in order to provide additional time for system programming. However, on September 28, 1993, the Commission's Office of Information Technology announced that Financial Data Schedules would not be accepted by the EDGAR system until sometime in the second quarter of 1994.[9] The Commission announces today that the EDGAR system's capacity to accept and process Financial Data Schedules has been fully developed and tested. As a result, Financial Data Schedules will be required to be submitted in connection with filings made on or after September 1, 1994.

As discussed more fully in the Adopting Releases, Financial Data Schedules are required to be submitted with electronic filings under the Securities Act of 1933 ("Securities Act") [10] and the Securities Exchange Act of 1934 ("Exchange Act") [11] that contain updated financial information (other than through incorporation by reference) and with designated filings under the Investment Company Act of 1940 [12] and the Public Utility Holding Company Act of 1935 ("1935 Act").[13] Advance copies of the EDGAR Filer Manual and EDGARLink version 3.5, which support construction of Financial Data Schedules, were made available to the public in April 1994; minor modifications will be made available prior to the mandated implementation date. This distribution scheme was chosen to allow mandated electronic filers ample time to commence test filings in advance of the September 1994 implementation date.[14]

After Financial Data Schedule requirements are implemented, an electronic filer's failure to furnish a schedule will not prevent acceptance of the filing for which the schedule is required. However, inasmuch as the schedule may be used by the Commission staff, processing of the filing may be delayed pending filing of the schedule. Further, electronic filers that have not filed a required Financial Data Schedule will be ineligible to use Form S–2,[15] Form S–3,[16] and Form S–8.[17] If a filing is made without a required Financial Data Schedule, or if a schedule is submitted with errors and is therefore identified by EDGAR as a "flawed" exhibit, the filer must remedy the omission or flawed schedule by submitting a correctly compiled schedule as an amendment to the original filing.[18]

II. Clarifying Amendments and Other Matters Involving Division of Corporation Finance Filings

A. Rule Changes

In the Adopting Releases, the Commission solicited comments or suggestions from interested parties relating to the Financial Data Schedule requirements. In response, the Commission received three comment letters.[19] Filers generally have reacted favorably to the changes made to the proposed Financial Data Schedule requirements now embodied in the adopted rules. However, in response to questions from filers, the Commission is adopting technical and clarifying amendments to Item 601(c) of Regulations S–B and S–K [20] to provide registrants with a clearer understanding of the filing requirements relating to Financial Data Schedules.

Because the amendments adopted today are merely technical corrections to clarify existing requirements and relate generally to agency procedure or practice, proposal for comment is not required under the Administrative Procedure Act.[21] Further, the Commission finds good cause under section 553(b) of that Act for not publishing the amendments for comment because such publication is unnecessary. The rules being amended were adopted after notice and opportunity for public comment, and no substantive obligations will change as a result of the amendments. The changes are responsive to filer concerns raised with the staff relating to ambiguity in the current language of the rules. Since no public comment is required, it follows that this rulemaking is not subject to the requirements of the Regulatory Flexibility Act.[22]

1. Periods Covered in Financial Data Schedule

As adopted, Item 601(c) states that subsequent to becoming subject to mandated electronic filing, any electronic filing that includes financial statements of the registrant:

> For a recent fiscal year or interim year to date period, or both, for which financial statements have not previously been filed, otherwise than by incorporation by reference, shall include as an exhibit a Financial Data Schedule *containing information for the updating period or periods* (emphasis added).[23]

Some filers have expressed uncertainty about the meaning of the term "updating period" as it relates to income statements included in quarterly reports on Form 10–Q, asking if the schedule should include information only for the period of the report, that is, one quarter's information, or if cumulative year to date information should be included, or both.[24] In the Corporation Finance Release, the Commission explained that information would be required for the interim year

[7] Release Nos. 33–6977 (February 23, 1993) (58 FR 14628) ("Corporation Finance Release"); IC–19284 (February 23, 1993) (58 FR 14848) ("Investment Company Release"); and 35–25746 (February 23, 1993) (58 FR 14999) ("Public Utility Release"), cumulatively referred to as the "Adopting Releases".

[8] For a complete discussion of Financial Data Schedules, *see* Section IV.D of the Corporation Finance Release. *See* also Section IV.D of the Investment Company Release and Section IV of the Public Utility Release.

[9] *See* Release No. 34–32971 (September 28, 1993) (58 FR 51659).

[10] 15 U.S.C. 77a *et seq.*

[11] 15 U.S.C. 78a *et seq.*

[12] 15 U.S.C. 80a–1 *et seq.*

[13] 15 U.S.C. 79a *et seq.*

[14] The Commission is adopting the EDGAR Filer Manual for EDGARLink version 3.5 concurrently with this release; the updated Filer Manual also has an effective date of September 1, 1994. *See* Release No. 33–7073 (July 8, 1994).

[15] 17 CFR 239.12.

[16] 17 CFR 239.13.

[17] 17 CFR 239.16b. In addition, accelerated effectiveness will not be available for registration statements that do not contain required Financial Data Schedules.

[18] If the amendment is solely for the purpose of adding or revising this exhibit, the filing may consist of the cover page, signature page, exhibit index, and the new or revised exhibit. The rest of the filing need not be resubmitted.

[19] These letters are available for inspection in the Commission's public reference room, File No. S7–6–93.

[20] 17 CFR 228.601(c) and 17 CFR 229.601(c). For purposes of this release, any references to Item 601 of Relation S–K also pertain to Item 601(c) of Regulation S–B.

[21] 5 U.S.C. 553(b).

[22] 5 U.S.C. 603, 604.

[23] Item 601(c)(1)(ii) of Regulations S–B and S–K.

[24] A summary of staff telephone conversations on this point is available for inspection in the Commission's public reference room, File No. S7–6–93.

questions from filers, the Commission is adopting technical and clarifying amendments to Item 601(c) of Regulations S–B and S–K [20] to provide registrants with a clearer understanding of the filing requirements relating to Financial Data Schedules.

Because the amendments adopted today are merely technical corrections to clarify existing requirements and relate generally to agency procedure or practice, proposal for comment is not required under the Administrative Procedure Act.[21] Further, the Commission finds good cause under section 553(b) of that Act for not publishing the amendments for comment because such publication is unnecessary. The rules being amended were adopted after notice and opportunity for public comment, and no substantive obligations will change as a result of the amendments. The changes are responsive to filer concerns raised with the staff relating to ambiguity in the current language of the rules. Since no public comment is required, it follows that this rulemaking is not subject to the requirements of the Regulatory Flexibility Act.[22]

1. Periods Covered in Financial Data Schedule

As adopted, Item 601(c) states that subsequent to becoming subject to mandated electronic filing, any electronic filing that includes financial statements of the registrant:

> For a recent fiscal year or interim year to date period, or both, for which financial statements have not previously been filed, otherwise than by incorporation by reference, shall include as an exhibit a Financial Data Schedule *containing information for the updating period or periods* (emphasis added).[23]

Some filers have expressed uncertainty about the meaning of the term "updating period" as it relates to income statements included in quarterly reports on Form 10–Q, asking if the schedule should include information only for the period of the report, that is, one quarter's information, or if cumulative year to date information should be included, or both.[24] In the Corporation Finance Release, the Commission explained that information would be required for the interim year to date period (e.g., nine months in the third quarter Form 10–Q).[25] Accordingly, the Commission is amending the language of Item 601(c) to clearly state that information is required for the most recent annual or interim year to date periods (or both if included in a registration statement to which the schedule relates).[26]

2. Representing Immaterial or Inapplicable Values

Filers must furnish a value corresponding to each line item required in the various schedules.[27] One commenter suggested that a "N/A" (not applicable) designation be allowed in response to a Financial Data Schedule line item where corresponding information was omitted from the underlying financial statements because it was immaterial or inapplicable, as permitted by Regulation S–X.[28] Because of system design considerations, an "N/A" designation is not feasible. However, in order to address the issue, the Commission is amending Item 601(c) to provide specifically that if an item is inappropriate or immaterial in the underlying financial statements, a filer must place a "0" (zero) next to the appropriate tag in the Financial Data Schedule. This will inform the EDGAR system that the data entry cannot be used for ratio calculations or other arithmetic functions.

3. No Schedule Required With Form 11–K

Financial Data Schedules were never intended to be required in connection with reports on Form 11–K, the annual report for employee stock purchase, savings and similar plans,[29] and consequently, no affirmative obligation to submit a Schedule was adopted in Regulation S–K, Regulation S–B or the Form itself. In order to make that policy clear, a note has been added to Regulation S–K and S–B exempting filings on Form 11–K from Financial Data Schedule requirements.[30]

B. Other Matters

1. Schedule To Be Filed by Public Utility Companies and Public Utility Holding Companies in Connection With Filings Processed by the Division of Corporation Finance

The adopted rules provide that public utility companies and public utility holding companies (jointly referred to as "public utilities") must use Schedule UT [31] in preparing their Financial Data Schedules submitted in connection with Division of Corporation Finance filings.[32] One commenter stated that it was unclear when a company is considered a "public utility company" under the Financial Data Schedule rules. The term "public utility company" is defined in the 1935 Act as "an electric utility company or a gas utility company," as those terms are defined in that Act.[33] This definition was intended to apply to the provisions in question.

The commenter also requested clarification as to whether an option would be available to a public utility company to choose between Schedule UT or the Schedule based on Article 5 of Regulation S–X.[34] Generally, public utilities will be required to use Schedule UT in connection with their filings under the Securities Act or the Exchange Act. However, as is true with the presentation of other forms of financial information, in unusual circumstances where a public utility's financial statements simply would be better reflected by the use of a Financial Data Schedule other than Schedule UT, appropriate relief may be granted upon consultation with the staff of the Division of Corporation Finance.

2. Interpretation of Items Required by Financial Data Schedules

One commenter expressed concerns that the Financial Data Schedule captions are not sufficiently specific to encompass all financial statement reporting components. System constraints necessarily limit the different types of Financial Data

---

[20] 17 CFR 228.601(c) and 17 CFR 229.601(c). For purposes of this release, any references to Item 601 of Relation S–K also pertain to Item 601(c) of Regulation S–B.

[21] 5 U.S.C. 553(b).

[22] 5 U.S.C. 603, 604.

[23] Item 601(c)(1)(ii) of Regulations S–B and S–K.

[24] A summary of staff telephone conversations on this point is available for inspection in the Commission's public reference room, File No. S7–6–93

[25] *See* Section IV.D.3 of the Corporation Finance Release.

[26] A Financial Data Schedule furnished with a Securities Act registration statement that includes financial information for both annual and interim periods would include two columns of data—one column for the annual period, and another for the interim period.

[27] If a consolidated totals schedule (Schedule CT) is used with two or more partial schedules applicable to disparate industry segments of a single conglomerate corporation, a value is required for each item in the Schedule CT itself. Tags and values for inapplicable or immaterial items in the associated schedules are not required to be included; if, however, tags for such items are included, a value "0" (zero) is required.

[28] 17 CFR part 210.

[29] 17 CFR 249.311.

[30] *See* new note to paragraph (c)(1)(ii) of Item 601 of Regulation S–B and Regulation S–K.

[31] Appendix E to Item 601(c). Schedule UT follows the same format for the Financial Data Schedule (OPUR1) required in connection with annual reports filed under the 1935 Act

[32] These rules are found at 17 CFR 228.601(c)(3)(v) and 17 CFR 229.601(c)(3)(v)

[33] *See* 1935 Act sections 2(a)(3) and 2(a)(4) for definitions of "electric utility company" and "gas utility company" (15 U.S.C. 79b (a)(3) and (a)(4))

[34] Appendix A to Item 601(c). Article 5 of Regulation S–X is found at 17 CFR 210.5–01 through 210.5–04

Schedule items to a feasible number of generic categories, with each item requiring a response. Although there is an infinite number of possible financial statement reporting variations, the schedule items can capture only broadly defined and frequently occurring account types. Consequently, the flexibility of presentation generally available to registrants in their financial statements is restricted in the context of Financial Data Schedules; filers will not be allowed to customize line items in the schedules by creating new tags or line items.[35] Filers must consider the information in underlying financial statements and determine the best fit into the line items on the schedule. Financial Data Schedule line items are not provided for unusual or infrequently occurring account types. Data relating to such items, however, will be reflected in relevant totals included in the Financial Data Schedule.

III. Matters Applicable to Investment Management Filers

A. Technical Revisions to Rule 483(e)

The Commission is amending Rule 483(e) to correct a typographical error in the Investment Company Release and to conform the Financial Data Schedule items to revised form requirements adopted by the Commission and changes in the requirements for preparation of financial statements under generally accepted accounting principles. In addition, the Commission is amending Rule 483(e) to provide specifically that, if an item is inappropriate or immaterial in the underlying financial statements, a filer must place a "0" (zero) next to the appropriate tag in the Financial Data Schedule.[36]

B. Technical Revisions to Form U–13–60

The Commission is amending Form U–13–60 to correct a typographical error in the Public Utility Release.

IV. Statutory Basis

The amendments to Item 601(c) of Regulations S–B and S–K are promulgated pursuant to Securities Act sections 6, 7, 8, 10 and 19 and Schedule A; Exchange Act sections 3, 9, 10, 12, 13, 14, 15, 23 and 35A; 1935 Act section 20 and Investment Company Act of 1940 sections 8, 30, 31 and 38. The amendments to Rule 483(e) under the Securities Act are adopted under: Securities Act sections 2, 6, 7, 8, 10 and 19(a); Exchange Act sections 3, 12, 13, 14, 15, 23 and 35A; and Investment Company Act sections 8, 30, 31 and 38. The amendments to 1935 Act Form U–13–60 are being adopted under sections 5, 6, 7, 10, 12, 13, 14, 17, and 20 of the 1935 Act.

List of Subjects in 17 CFR Parts 228, 229, 230 and 259

Holding companies; Investment Companies; Reporting and recordkeeping requirements; Securities.

Text of the Amendments

For the reasons set forth above, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. In § 228.601, by revising paragraph (c)(1)(ii) and by adding paragraph (c)(2)(iv) to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(c) *Financial Data Schedule.*—(1) *General.* (i) * * *

(ii) Any electronic filing that includes financial statements of the registrant for a recent fiscal year or interim year to date period, or both, for which financial statements have not previously been filed, otherwise than by incorporation by reference, shall include as an exhibit a Financial Data Schedule containing financial information for such fiscal year or interim year to date periods, or both.

Note: Financial Data Schedules are not required in connection with annual reports on Form 11–K (§ 249.311 of this chapter), for employee stock purchase, savings and similar plans.

* * * * *

(2) *Format and presentation of Financial Data Schedule.* * * *

(iv) Except as otherwise provided in the EDGAR Filer Manual, a response is required for each item called for in the schedule. If information required by the applicable schedule is not included in the underlying financial data because it is either immaterial or inapplicable to the registrant, the registrant shall use the value "0" (zero) in response to that item.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

4. In § 229.601, by revising paragraphs (c)(1)(ii) and by adding paragraph (c)(2)(iv) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(c) *Financial Data Schedule*— (1) *General.* (i) * * *

(ii) Any electronic filing that includes financial statements of the registrant for a recent fiscal year or interim year to date period, or both, for which financial statements have not previously been filed, otherwise than by incorporation by reference, shall include as an exhibit a Financial Data Schedule containing financial information for such fiscal year or interim year to date periods, or both.

Note: Financial Data Schedules are not required in connection with annual reports on Form 11–K (§ 249.311 of this chapter), for employee stock purchase, savings and similar plans.

* * * * *

(2) *Format and presentation of Financial Data Schedule.* * * *

(iv) Except as otherwise provided in the EDGAR Filer Manual, a response is required for each item called for in the schedule. If information required by the applicable schedule is not included in the underlying financial data because it is either immaterial or inapplicable to the registrant, the registrant shall use the value "0" (zero) in response to that item.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

6. In § 230.483, by adding paragraph (e)(3)(iii) and by revising paragraph (e)(4) to read as follows:

[35] EDGARLink version 13 includes a facility to aid filers in the construction of Financial Data Schedules. Filers will be prompted to insert figures following fixed tag names that correspond to the various schedule items.

[36] See new paragraph (e)(3)(iii) of Rule 483. *See also supra* Section II.A.2 of this Release.

§ 230.483 Exhibits for certain registration statements, financial data schedule.

* * * * *

(e) *Financial data schedule.* * * *

(3) *Format and Presentation of Schedule.* * * *

(iii) Except as otherwise provided in the EDGAR Filer Manual, a response is

Item No.	
6–03–	Investment
6–04–4	Investment
6–04–6	Receivable
6–04–8	Other asse
	Balancing a
6–04–9	Total asset
6–04–	Accounts p
6–04–13	Senior long
	Balancing a
6–04–14	Total liabilit
6–04–16	Senior equi
6–04–16	Paid-in-cap
6–04–16	Number of
6–04–16	Number of
6–04–17(a)	Accumulate
	Overdistribu
6–04–17(b)	Accumulate
	Overdistribu
6–04–17(c)	Accumulate
6–04–19	Net assets.
6–07–1(a)	Dividend in
6–07–1(b)	Interest inc
6–07–1(c)	Other incon
6–07–2	Expenses–
6–07–6	Net investm
6–07–7(a)	Realized ga
6–07–7(d)	Net increas
6–07–9	Net increas
6–09–2	Net equaliz
6–09–3(a)	Distributions
6–09–3(b)	Distributions
6–09–3(c)	Distributions
6–09–4(b)	Number of
6–09–4(b)	Number of
6–09–4(b)	Number of
6–09–5	Total increa
6–09–7	Accumulate
6–04–17(b)	Accumulate
	Overdistribu
	Overdistribu

72F	Gross advis
72P	Interest Exp
72X	Total expen
75	Average net

3(a)	Net asset va
3(a)	Net investm
3(a)	Net realized
3(a)	Dividends p
3(a)	Distributions
3(a)	Per share re
3(a)	Net asset va
3(a)	Ratio of exp
3(b)	Average deb
3(b)	Average deb

§ 230.483 Exhibits for certain registration statements, financial data schedule.

* * * * *

(e) *Financial data schedule.* * * *

(3) *Format and Presentation of Schedule.* * * *

(iii) Except as otherwise provided in the EDGAR Filer Manual, a response is required for each item called for in the schedule. If information required by the applicable schedule is not included in the underlying financial data because it is either immaterial or inapplicable to the registrant, the registrant shall use the value "0" (zero) in response to that item.

* * * * *

(4) *Contents of Financial Data Schedule.* The Schedule shall set forth the financial information and other data specified below that are applicable to the registrant.

ARTICLE 6 OF REGULATION S-X

Item No.	Item description
6-03-	Investments—cost.
6-04-4	Investments.
6-04-6	Receivables.
6-04-8	Other assets.
	Balancing amount to total assets.
6-04-9	Total assets.
6-04-	Accounts payable for securities.
6-04-13	Senior long-term debt.
	Balancing amount to total liabilities.
6-04-14	Total liabilities.
6-04-16	Senior equity securities.
6-04-16	Paid-in-capital—common shareholders.
6-04-16	Number of shares or units—current period.
6-04-16	Number of shares or units—prior period.
6-04-17(a)	Accumulated undistributed net investment income (current year)
	Overdistribution of net investment income.
6-04-17(b)	Accumulated undistributed net realized gains (losses)
	Overdistribution of realized gains.
6-04-17(c)	Accumulated net unrealized appreciation (depreciation)
6-04-19	Net assets.
6-07-1(a)	Dividend income
6-07-1(b)	Interest income.
6-07-1(c)	Other income.
6-07-2	Expenses—net.
6-07-6	Net investment income (loss).
6-07-7(a)	Realized gains (losses) on investments.
6-07-7(d)	Net increase (decrease) in appreciation (depreciation).
6-07-9	Net increase (decrease) in net assets resulting from operations
6-09-2	Net equalization charges and credits.
6-09-3(a)	Distributions from net investment income.
6-09-3(b)	Distributions from realized gains.
6-09-3(c)	Distributions from other sources
6-09-4(b)	Number of shares sold.
6-09-4(b)	Number of shares redeemed.
6-09-4(b)	Number of shares issued—reinvestment.
6-09-5	Total increase (decrease).
6-09-7	Accumulated undistributed net investment income (prior year)
6-04-17(b)	Accumulated undistributed net realized gains (prior year).
	Overdistribution of net investment income (prior year).
	Overdistribution of net realized gains (prior year).
	Form N-SAR
72F	Gross advisory fees.
72P	Interest Expense.
72X	Total expenses (gross).
75	Average net assets.
	Form N-1A
3(a)	Net asset value per share—beginning of period.
3(a)	Net investment income (loss) per share.
3(a)	Net realized and unrealized gain (loss) per share
3(a)	Dividends per share from net investment income.
3(a)	Distributions per share from realized gains.
3(a)	Per share returns of capital and distributions from other sources
3(a)	Net asset value per share—end of period.
3(a)	Ratio of expenses to average net assets.
3(b)	Average debt outstanding during period.
3(b)	Average debt outstanding per share.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

7. The authority citation for part 259 continues to read as follows:

Authority: 15 U.S.C 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

Note: The text of the following form and the amendment will not appear in the Code of Federal Regulations.

8. In Form U–13–60 (referenced in § 259.313), by revising the Item numbers and caption headings in Schedule XIX to read as follows:

INSTRUCTIONS AND FORM—FORM U–13–60 ANNUAL REPORT FOR MUTUAL AND SUBSIDIARY SERVICE COMPANIES

Item No.	Caption heading
Schedule XIX	Financial data schedule
1	Net Service Company Property.
2	Total Investments.
3	Total Current and Accrued Assets.
4	Total Deferred Debits.
5	Balancing Amount For Total Assets and Other Debits.
6	Total Assets and Other Debits.
7	Total Proprietary Capital.
8	Total Long-Term Debt.
9	Notes Payable.
10	Notes Payable to Associate Companies.
11	Balancing Amount For Total Current and Accrued Liabilities.
12	Total Deferred Credits.
13	Accumulated Deferred Income Taxes.
14	Total Liabilities and Proprietary Capital.
15	Services Rendered to Associate Companies.
16	Services Rendered to Nonassociate Companies.
17	Miscellaneous Income or Loss.
18	Total Income.
19	Salaries and Wages
20	Employee Pensions and Benefits.
21	Balancing Amount For Total Expenses.
22	Total Expenses.
23	Net Income (Loss).
24	Total Expenses (Direct Costs).
25	Total Expenses (Indirect Costs).
26	Total Expenses (Total).
27	Number Of Personnel End Of Year.

Dated: July 8, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17102 Filed 7–14–94; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7073; 34–34331; 35–26080; 39–2320; IC–20389]

RIN 3235–AG10

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting an updated edition of the EDGAR Filer Manual and is providing for its incorporation by reference into the Code of Federal Regulations.

EFFECTIVE DATE: The amendment to Regulation S–T will be effective on September 1, 1994. The new edition of the EDGAR Filer Manual (EDGAR Release 3.5) will be effective on September 1, 1994. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of September 1, 1994.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, David T. Copenhafer at (202) 942–8800; in the Division of Corporation Finance, Barbara C. Jacobs or James R. Budge at (202) 942–2910; in the Division of Investment Management, Anthony A. Vertuno at (202) 942–0591.

SUPPLEMENTARY INFORMATION: The Commission today announces the adoption of an updated EDGAR Filer Manual ("Filer Manual"), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.[1] Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.[3] The most important revisions in the Filer Manual relate to the preparation and submission of Financial Data Schedules, which must be included with applicable filings on or after September 1, 1994.[4] Rule 301 of Regulation S-T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The revised Filer Manual and the amendment to Rule 301 will be effective on September 1, 1994.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 Fifth Street, N.W., Washington D.C. 20549. Electronic format copies will be available on the EDGAR electronic bulletin board. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Statutory Basis

The amendment to Regulation S–T is being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[5]

---

[1] The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. *See* Release No. 33–6986 (April 1, 1993) (58 FR 18638).

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[3] *See* Release Nos. 33–6977 (February 23, 1993) (58 FR 14628), IC–19284 (February 23, 1993) (58 FR 14848), 35–25746 (February 23, 1993) (58 FR 14999), and 33–6980 (February 23, 1993) (58 FR 15009) for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing.

[4] *See* Release No. 33–7072, published concurrently, for further information regarding the implementation of Financial Data Schedules.

[5] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

important revisions in the Filer Manual relate to the preparation and submission of Financial Data Schedules, which must be included with applicable filings on or after September 1, 1994.[4] Rule 301 of Regulation S-T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The revised Filer Manual and the amendment to Rule 301 will be effective on September 1, 1994.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 Fifth Street, N.W., Washington D.C. 20549. Electronic format copies will be available on the EDGAR electronic bulletin board. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Statutory Basis

The amendment to Regulation S–T is being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[5] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[6] Section 20 of the Public Utility Holding Company Act of 1935,[7] Section 319 of the Trust Indenture Act of 1939,[8] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[9]

List of Subjects in 17 CFR Part 232

Incorporation by reference; Investment Companies; Registration requirements; Reporting and recordkeeping requirements; Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The August 1994 edition of the *EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 3.5)* is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 5th Street, N.W., Washington, D.C. 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638–8241. Electronic format copies are available through the EDGAR electronic bulletin board. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 848–8199.

Dated: July 8, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17103 Filed 7–14–94; 8:45 am]

BILLING CODE 8010–01–P

14999), and 33–6980 (February 23, 1993) (58 FR 15009) for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing.

[4] *See* Release No. 33–7072, published concurrently, for further information regarding the implementation of Financial Data Schedules.

[5] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

[6] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w and 78*ll*.

[7] 15 U.S.C. 79t.

[8] 15 U.S.C. 77sss.

[9] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 232, 239, 240, 249, 250, 259, 260, 269, 270 and 274

[Release Nos. 33–7074; 34–34332; 35–26081; 39–2321; IC–20390. File No. S7–20–94]

RIN 3235–AG10

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing minor and technical changes to its rules governing electronic filing on the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system, and also is providing guidance on avoiding errors in the EDGAR filing process.

DATES: Comments must be submitted on or before August 15, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–20–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: For Corporation Finance filings, Barbara C. Jacobs, James R. Budge or Joseph P. Babits, Office of Disclosure Policy, Division of Corporation Finance, Mail Stop 3–12, 450 Fifth Street, NW., Washington, DC 20549, at (202) 942–2910. For Division of Investment Management filings, Anthony A. Vertuno or Ruth Armfield Sanders, EDGAR IM Project, at (202) 942–0591. For filings under the Public Utility Holding Company Act of 1935, Richard T. Miller, Office of Public Utility Regulation, at (202) 942–0545.

SUPPLEMENTARY INFORMATION: The Commission today requests public comment on a number of minor and technical changes to the rules governing the submission of documents filed via the EDGAR system. These proposals reflect the experience of the staff since the rules implementing the EDGAR system were adopted in February 1993.[1] The changes, if adopted, will affect Regulation S–B,[2] Regulation S–K,[3] the Rules and Regulations[4] under the Securities Act of 1933 ("Securities Act"),[5] Regulation S–T, the Forms under the Securities Act,[6] the Rules, Regulations and Schedules[7] under the Securities Exchange Act of 1934 ("Exchange Act"),[8] the Forms under the Exchange Act,[9] the Rules[10] and Forms[11] under the Public Utility Holding Company Act of 1935 ("Public Utility Act"),[12] the Rules[13] under the Trust Indenture Act of 1939 ("Trust Indenture Act")[14], and the Rules[14], and the Rules[15] under the Investment Company Act of 1940 ("Investment Company Act").[16] Guidance also is provided in Part III of this Release to assist in preventing errors when making EDGAR filings.

I. Background and Proposed Amendments

In February 1993, the Commission adopted Regulation S–T, governing mandated electronic filing, and a number of amendments to its rules, schedules and forms, to begin implementation of the EDGAR system, whereby most registrants whose filings are processed by the Division of Corporation Finance and the Division of Investment Management will make their submissions electronically. Phase-in to mandated electronic filing began on April 26, 1993, the date on which the interim rules became effective.[17] On December 6, 1993, the last group of approximately 3,400 filers chosen to participate in a Congressionally-mandated significant test group was phased in, commencing a six-month hiatus from further phase-in. As of June 17, 1994, over 59,000 live filings and 48,000 test filings had been submitted on the EDGAR system. Both system development and staff training on EDGAR are continuing.

The electronic filing system currently is being evaluated to determine whether the Commission should, as planned, make the interim rules final and applicable to all registrants, including those in the significant test group, and proceed with the phase-in process. This determination is anticipated to be announced by the Commission later this summer.

The staff has gained substantial experience with the EDGAR system and its implementing regulations since the first mandated filings were made in April 1993 and has determined that certain refinements to the rules would be desirable. Most of the proposals are minor amendments that would affect substantive filing requirements (several of which represent codifications of rule interpretations), or that would clarify language in the current requirements in an effort to enhance filers' understanding of their electronic filing obligations. Others consist of matters involving Commission procedures and practices as well as technical corrections to the rules adopted previously. The specific proposals are set forth below.

Several of the following proposals would change in minor ways the manner in which an electronic filer complies with its filing obligations with the Commission. Others would codify interpretations of current EDGAR rules and otherwise clarify existing filing requirements.[18] Comment is solicited on the need for each proposed change and whether there are any alternatives to each proposal.

A. Changes to Regulation S–T

Regulation S–T, which controls the preparation and submission of electronic filings to the Commission, would be amended as described below.

• *Rule 12(b) of Regulation S–T.* Regulation S–T would be amended to codify that electronic filers are permitted to submit filings on diskette and magnetic tape to the Commission's Operations Center in Alexandria, Virginia. Filers who file on diskette and magnetic tape may prefer to send them directly to the Operations Center to expedite acceptance processing of their submissions, since diskettes and tapes sent to the Commission's headquarters must be forwarded to the Operations Center for processing.

• *Proposed Rule 13(d) of Regulation S–T.* Exchange Act Rule 14a–6(b) provides that definitive proxy statements may be "filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holder."[19] Similar provisions are found in other Commission rules.[20] Although electronic filers could mail diskettes or magnetic tapes, those choosing to file by direct transmission do not have this option. Instead, they must file before or on the date the paper counterpart is mailed to investors; such filing date must be a business day of the Commission. Paper filers (or those using diskettes or magnetic tape) have more flexibility, because not only can they satisfy their filing obligations by putting copies in the mail to the Commission at the time of distribution (thus allowing the actual filing to occur after the distribution), they also can satisfy their filing obligation by mailing on Saturday or Sunday, an option not available to direct transmission-filers. To place electronic filers on the same footing with paper filers with respect to these filing requirements, a new provision would be added to Regulation S–T allowing electronic filers to file their definitive proxy materials (or other documents, as applicable) before or on the date the paper distribution is made, or if the distribution does not occur on a business day of the Commission, as soon as practicable on the next business day.

• *Rule 101(a)(1)(i) of Regulation S–T.* The Regulation S–T list of mandated electronic submissions would be revised to specifically include prospectuses filed under the Securities Act.[21]

---

[1] The EDGAR rules were adopted in four releases: Release No. 33–6977 (February 23, 1993) (58 FR 14628) (containing a general description of the EDGAR system, Regulation S–T (the electronic filing regulation) (17 CFR part 232), and the rules applicable to filings processed by the Division of Corporation Finance); Release No. IC–19284 (February 23, 1993) (58 FR 14848) (relating to rules specific to investment companies and institutional investment managers); Release No. 35–25746 (February 23, 1993) (58 FR 14999) (relating to rules specific to public utility holding companies); and Release No. 33–6980 (February 23, 1993) (58 FR 15009) (instructions for filing fees).

[2] 17 CFR part 228.

[3] 17 CFR part 229.

[4] 17 CFR part 230.

[5] 15 U.S.C. 77a *et seq.*

[6] 17 CFR part 239.

[7] 17 CFR part 240.

[8] 15 U.S.C. 78a *et seq.*

[9] 17 CFR part 249.

[10] 17 CFR part 250.

[11] 17 CFR part 259.

[12] 15 U.S.C. 79a *et seq.*

[13] 17 CFR part 260.

[14] 15 U.S.C. 77aaa *et seq.*

[15] 17 CFR part 270.

[16] 15 U.S.C. 80a–1 *et seq.*

[17] The Financial Data Schedule provisions will be implemented on September 1, 1994. *See* Release No. 33–7072 (July 8, 1994). Financial Data Schedules are exhibits that contain financial information extracted or derived from financial data within a filing that is marked to allow electronic manipulation of such information. For a complete discussion of Financial Data Schedules, *see* Release No. 33–7072, Section IV.D of Release No. 33–6977, Section IV.D of Release No. IC–19284, and Section IV of Release No. 35–25746.

[18] A number of proposals involving incorrect cross-references, typographical errors and other technical changes are not discussed individually here but are set forth in the text of the proposed rules, below.

[19] 17 CFR 240.14a–6(b).

[20] *See*, 17 CFR 240.14a–6(c) (relating to personal soliciting materials); 17 CFR 240.14a–11(c) (relating to information delivered to investors prior to sending a required proxy statement in an election contest); 17 CFR 240.14a–12(b) (relating to delivery of soliciting materials prior to sending a required proxy statement in circumstances other than election contests); 17 CFR 240.14c–5(b) (relating to definitive information statements); and 17 CFR 240.16b–3(b)(2)(ii) (relating to employee benefit plan information to be furnished to investors prior to a vote on changes to the plan).

[21] This would make it clear that prospectus filings pursuant to Securities Act Rules 424 (17 CFR 230.424) and 497 (17 CFR 230.497) are to be filed electronically. For investment company filings, Rule 101(a)(1)(i) would include statements of additional information and, where required to be filed with the Commission, prospectuses submitted

magnetic tape may prefer to send them directly to the Operations Center to expedite acceptance processing of their submissions, since diskettes and tapes sent to the Commission's headquarters must be forwarded to the Operations Center for processing.

• *Proposed Rule 13(d) of Regulation S–T.* Exchange Act Rule 14a–6(b) provides that definitive proxy statements may be "filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holder."[19] Similar provisions are found in other Commission rules.[20] Although electronic filers could mail diskettes or magnetic tapes, those choosing to file by direct transmission do not have this option. Instead, they must file before or on the date the paper counterpart is mailed to investors; such filing date must be a business day of the Commission. Paper filers (or those using diskettes or magnetic tape) have more flexibility, because not only can they satisfy their filing obligations by putting copies in the mail to the Commission at the time of distribution (thus allowing the actual filing to occur after the distribution), they also can satisfy their filing obligation by mailing on Saturday or Sunday, an option not available to direct transmission-filers. To place electronic filers on the same footing with paper filers with respect to these filing requirements, a new provision would be added to Regulation S–T allowing electronic filers to file their definitive proxy materials (or other documents, as applicable) before or on the date the paper distribution is made, or if the distribution does not occur on a business day of the Commission, as soon as practicable on the next business day.

• *Rule 101(a)(1)(i) of Regulation S–T.* The Regulation S–T list of mandated electronic submissions would be revised to specifically include prospectuses filed under the Securities Act.[21]

• *Rule 101(a)(1)(iii) of Regulation S–T.* The Regulation S–T list of mandated electronic submissions would be revised to specifically exclude Form 13F[22] from the list of mandated electronic filings, consistent with other rule provisions and codifying current staff interpretations.[23]

• *Proposed Rule 101(b)(3) of Regulation S–T.* Employee benefit plans would be permitted to file their entire annual report on Form 11–K [24] in paper or in electronic format.[25] Currently, Regulation S–T requires Forms 11–K to be filed electronically,[26] but registrants may choose to file any financial statements and schedules prepared in accordance with the financial reporting requirements of the Employee Retirement Income Security Act of 1974 ("ERISA")[27] in paper under cover of Form SE.[28] While this proposal would allow all Forms 11–K to be filed in paper, comment is requested as to whether this option should be available only to plans including ERISA financial statements and schedules. If commenters believe that Form 11–K should remain a required electronic filing, comment is solicited on whether the rules and forms should be amended to specify that only ERISA financial documents prepared on pre-printed forms filed with the Department of Labor or the Internal Revenue Service should be allowed to be filed under cover of Form SE. This would more clearly reflect the Commission's original intention in adopting the Form SE procedure applicable to these reports, which was to provide filers a way to avoid undue burden and expense in converting documents filed with other government agencies into a format compatible with EDGAR. If registrants prepare financial statements and schedules in a format readily convertible to a format acceptable to EDGAR, arguably such financial information should be included in electronic format, even if prepared in accordance with the financial reporting requirements of ERISA.

• *Proposed Rules 101(b) (4) and (5) of Regulation S–T.* The following filings would be explicitly included among those allowed to be submitted in electronic format, consistent with other rule provisions and codifying current staff interpretations: Reports on Form 13F, filed with the Commission by institutional investment managers as required by section 13(f)(1)[29] of, and Rule 13f–1[30] under, the Exchange Act, on magnetic tape in the format described in Form 13F–E;[31] and

Exhibits to Form N–SAR,[32] except that the Financial Data Schedule required under Rule 483 under the Securities Act[33] must be filed in electronic format.[34]

• *Rule 101(c) of Regulation S–T. The following filings would be required to be filed in paper rather than electronically, codifying current staff interpretations:*

Form F–6, for registration under the Securities Act of depositary shares represented by American Depositary Receipts.[35] Comment is solicited as to whether Form F–6 should be an optional electronic filing rather than one required to be filed in paper;

Annual reports filed with the Commission by indenture trustees pursuant to the Trust Indenture Act;[36]

Applications for an exemption from Exchange Act reporting obligations filed pursuant to Section 12(h) of the Exchange Act;[37] and,

Information relating to employee benefit plan transactions required to be filed pursuant to Rule 16b–3(b)(2)(ii)[38] under section 16 of the Exchange Act.[39]

---

[19] 17 CFR 240.14a–6(b).

[20] *See*, 17 CFR 240.14a–6(c) (relating to personal soliciting materials); 17 CFR 240.14a–11(c) (relating to information delivered to investors prior to sending a required proxy statement in an election contest); 17 CFR 240.14a–12(b) (relating to delivery of soliciting materials prior to sending a required proxy statement in circumstances other than election contests); 17 CFR 240.14c–5(b) (relating to definitive information statements); and 17 CFR 240.16b–3(b)(2)(ii) (relating to employee benefit plan information to be furnished to investors prior to a vote on changes to the plan).

[21] This would make it clear that prospectus filings pursuant to Securities Act Rules 424 (17 CFR 230.424) and 497 (17 CFR 230.497) are to be filed electronically. For investment company filings, Rule 101(a)(1)(i) would include statements of additional information and, where required to be filed with the Commission, prospectuses submitted under Securities Act Rule 482 (17 CFR 230.482). *See* proposed amendments to paragraphs (a) and (e) of Rule 902 of Regulation S–T, which would codify a limited exception to the electronic filing requirements for Securities Act Rule 497 filings.

[22] 17 CFR 249.325.

[23] See Rule 903(a)(3) of Regulation S–T (17 CFR 232.903(a)(3)). *See also* Section V. of Release No. IC–19284.

[24] 17 CFR 249.311.

[25] Of course, the same would be true for employee benefit plan annual reports filed as amendments to Forms 10–K (17 CFR 249.310) or 10–KSB (17 CFR 249.310b), as permitted by Exchange Act Rule 15d–21 (17 CFR 240.15d–21).

[26] Rule 101(a)(1)(iii) of Regulation S–T (17 CFR 232.101(a)(1)(iii)).

[27] Pub. L. No 93–406 (codified at 29 U.S.C. 1001 *et seq.*).

[28] 17 CFR 232.311(c) and General Instruction E of Form 11–K. Form SE is found at 17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403.

[29] 15 U.S.C. 78m(f)(1).

[30] 17 CFR 240.13f–1.

[31] 17 CFR 249.326. *See* Rule 903(a)(3) of Regulation S–T (17 CFR 232.903(a)(3)).

[32] 17 CFR 274.101.

[33] 17 CFR 230.483.

[34] *See* Rule 903(a)(1) of Regulation S–T (17 CFR 232.903(a)(1)).

[35] 17 CFR 239.36. Proposed Rule 101(c)(18) of Regulation S–T.

[36] *See* section 313(d) of the Trust Indenture Act (15 U.S.C. 77mmm(d)). Proposed Rule 101(c)(19) of Regulation S–T. Section 313 of the Trust Indenture Act requires indenture trustees to mail to all registered holders of indenture securities at stated intervals no less than 12 months a brief report with respect to any of several enumerated events set forth in the statute. Indenture trustees are required to file a copy of such reports with each stock exchange upon which the indenture securities are listed, and also with the Commission, at the time the report is mailed to security holders.

[37] 15 U.S.C. 78l(h). Proposed Rule 101(c)(20) of Regulation S–T.

[38] 17 CFR 240.16b–3(b)(2)(ii).

[39] 15 U.S.C. 78p. Proposed Rule 101(c)(21) of Regulation S–T. Rule 16b–3(2)(b)(ii) requires an

Continued

• *Rule 101(c)(2) of Regulation S–T.* The rules governing the submission of supplemental information would be revised to specify that such information should be furnished in paper only if the submitter requests that the information be returned after staff review and where the information is of the type typically returned by the staff pursuant to Rule 418(b) of Regulation C or Rule 12b–4 of Regulation 12B. [40] This proposal would not affect the current provision requiring that supplemental information submitted in connection with a confidential treatment request be submitted in paper.

• *Rule 101(c)(3) of Regulation S–T.* The provision exempting shareholder proposal submissions from electronic filing would be clarified to state that all correspondence relating to shareholder proposals submitted to the staff pursuant to Exchange Act Rule 14a–8 [41] should be filed in paper.

• *Rule 101(c)(8) of Regulation S–T.* A reference to the Commission's regional offices would be amended to reflect current nomenclature.

• *Rule 101(c)(10) of Regulation S–T.* The exclusion from electronic filing afforded to promotional material and sales literature would be expanded to include all such materials supplementally furnished to the staff of the Division of Corporation Finance. The exclusion is currently limited to materials submitted pursuant to Securities Act Industry Guide 5.[42] The exclusion also would be expanded to specify the exclusion of sales literature submitted under Rule 24b–2 of the Investment Company Act,[43] consistent with that rule.[44]

• *Rule 102(a) of Regulation S–T.* Current Rule 102(a) of Regulation S–T states that "[e]xhibits to an electronic filing that have been filed previously in paper may, but shall not be required to be, restated in electronic format." [45] That language would be clarified under the proposals by stating that exhibits incorporated by reference from filings previously made in paper (either before becoming subject to mandated electronic filing requirements or pursuant to a hardship exemption) may, but are not required to be, refiled in electronic format.[46]

• *Rule 102(e) of Regulation S–T.* Current Rule 102(e) of Regulation S–T would be amended to clarify the requirement that, after a date three years after its phase-in date, a registered investment company or business development company may incorporate by reference only documents filed electronically. Specifically, the proposals would make it clear that the exemption in the rule for documents filed in paper pursuant to a hardship exemption would be applicable only if any required confirming copy has been submitted. The proposals would also provide that an exhibit, filed in paper, to Form N–SAR [47] may be incorporated by reference into another Form N–SAR filing.

• *Rule 302(b) of Regulation S–T.* The requirement to retain a manually signed signature page or other signature authentication document would be clarified to specifically require a manual signature with respect to each signatory to the electronic filing.

• *Proposed Rule 302(c) of Regulation S–T.* Commission rules no longer would require manual signatures on the paper copies of electronic filings required to be furnished by registrants to national securities exchanges and national securities associations.[48]

• *Proposed Rules 303(a)(3) and (4) of Regulation S–T.* The following would be added to the list of documents which may not be incorporated by reference, consistent with other rule provisions [49] and codifying current staff interpretations:

For a registered investment company or a business development company making electronic submissions more than three years after its phase-in date, a document which has not been filed in electronic format, unless the document has been filed in paper pursuant to a hardship exemption and any required confirming copy has been submitted or the document is an exhibit, filed in paper, to Form N–SAR, and is being incorporated by reference into another Form N–SAR filing.

For investment company filings, any Financial Data Schedule required under Securities Act Rule 483.[50]

• *Rule 304(a) of Regulation S–T.* Descriptions of omitted graphic and image material would be allowed to be placed either in the text of an electronic filing where the omission occurs or in an appendix thereto, at the option of the filer. Registrants no longer would be required to list all omitted material in an appendix to the filing. Descriptions could be provided in narrative or tabular format, as appropriate.

• *Rule 304(d) of Regulation S–T.* Electronic filers subject to the requirement to furnish a stock performance comparison graph in their proxy statements pursuant to Item 402(*l*) of Regulation S–K [51] would be required to satisfy that obligation in their electronic filing in the same manner as applicable to other types of omitted charts or graphs, that is, by describing the omitted performance graph by presenting the graph's data points in tabular form.[52] The requirement to furnish a paper copy of the performance graph to the Branch Chief in the Division of Corporation Finance responsible for the review of the registrant's filings would be retained, in order to allow the staff to continue monitoring information as it is distributed to investors.[53] The current option to file the graph in paper under cover of Form SE [54] would be eliminated, as it can result in an electronic presentation that is incomplete to the reader without reference to the Form SE.

• *Proposed Rule 311(b) of Regulation S–T.* The rule governing filing of exhibits in paper under cover of Form SE would be amended to provide that exhibits to a Commission schedule filed pursuant to Section 13 or 14(d) of the Exchange Act [55] may be filed in paper under cover of Form SE where such exhibits previously were filed in paper (either before becoming subject to mandated electronic filing or pursuant to a hardship exemption) and are required to be refiled pursuant to the schedule's general instructions. Currently, such documents must be filed in electronic format along with the schedule to which they relate, absent a hardship exemption.[56]

• *Proposed Rule 311(c) of Regulation S–T.* Insurance companies that file information included in their annual statements provided to state insurance regulators (*i.e.*, Schedules O and P) [57] as exhibits to their Forms 10–K would be allowed to file such documents in paper under cover of Form SE because of difficulties in translating them into a format compatible with EDGAR.[58]

• *Rule 311(d) of Regulation S–T.* The proposed revisions would codify the staff's interpretation that a Financial Data Schedule is not among those exhibits to Form N–SAR that an investment company may submit in paper under cover of Form SE.

• *Rules 901(a) and 902(a) of Regulation S–T.* A note would be added to Rules 901 and 902 of Regulation S–T to make it clear that registrants become subject to mandated electronic filing upon their phase-in date and all subsequent filings must be made electronically, even filings made with respect to transactions that commenced prior to, and are in process, at the time a company is phased in.[59] The proposed note to Rule 902(a) would clarify the limited exception for definitive filings by investment companies under Rule 497 under the Securities Act.

• *Rule 901(c)(4) of Regulation S–T.* A note would be added to Rule 901 of Regulation S–T explaining that while companies subject to mandated electronic filing generally may choose to

---

issuer to furnish in writing to the holders of record of the securities entitled to vote for an employee benefit plan, and file with the Commission, substantially the same information concerning the plan that would be required by the rules and regulations in effect under section 14(a) of the Exchange Act (15 U.S.C. 78n(a)) at the time, where consents are not solicited in a manner that is substantially in compliance with the Commission's proxy rules.

[40] 17 CFR 230.418(b) and 17 CFR 240.12b–4, respectively. These rules permit the return of supplemental information where the request for the return of the information is made at the time of submission and where such return is consistent with the protection of investors and with the provisions of the Freedom of Information Act (5 U.S.C. 552).

[41] 17 CFR 240.14a–8.

[42] 17 CFR 229.801(e).

[43] 17 CFR 270.24b–2.

[44] *See* Section III.C of Release No. IC–19284.

[45] 17 CFR 232.102(a).

[46] *See* discussion of proposed Rule 311(b) of Regulation S–T, below, for treatment of exhibits to schedules filed pursuant to section 13 or 14(d) of the Exchange Act (15 U.S.C. 78(m) and (n)(d)).

[47] 17 CFR 274.101.

[48] For example, Exchange Act Rule 12b–11 (17 CFR 240.12b–11) requires that a manually signed copy of Exchange Act reports be filed with each exchange upon which the registrant's securities are registered. This manual signature requirement would be superseded by the proposed Regulation S–T requirement for electronically filed reports.

[49] See Rule 102(e) of Regulation S–T (17 CFR 232.102(e)) and proposed revisions thereto.

[50] 17 CFR 230.483.

[51] 17 CFR 229.402*l*.

[52] *See* letter from Mauri L. Osheroff, Associate Director, Regulatory Policy, Division of Corporation Finance, dated November 16, 1993, for an example of how the performance graph may be presented in tabular form in the proxy statement. This letter is available through the EDGAR Bulletin Board.

[53] The current requirement is found in Rule 304(d)(2) of Regulation S–T (17 CFR 232.304(d)(2)). It is proposed to be incorporated into paragraph (d) of that section.

[54] Rule 304(d)(1) of Regulation S–T (17 CFR 232.304(d)(1)).

[55] 15 U.S.C. 78m and 78n(d).

[56] For example, where an issuer delivers its Form 10–K with its Schedule 13E–4 (17 CFR 240.13e–101) in connection with its issuer tender offer proposal, the Form 10–K must be filed as an exhibit to the schedule, notwithstanding the fact that it previously had been filed with the Commission. *See* Item 9 of Schedule 13E–4. Under current rules, the Form 10–K would be required to be filed electronically as an exhibit, even if it originally had been filed in paper. Under the proposed rules, the exhibit would continue to be required, but it could be filed in paper under cover of Form SE if it originally had been filed in paper.

[57] See Item 601(b)(28) of Regulations S–K and S–B (17 CFR 229.601(b)(28) and 228.601(b)(28), respectively).

[58] Since April 1993, the staff, via delegated authority, has granted requests for continuing hardship exemptions for this type of document for a period of one year from the date of the grant of the exemption.

[59] Of course, under Rule 101(a)(1)(iii) a registrant may file its Form 10–K or Form 10–KSB in paper if it is the first document filed with the Commission following its phase-in date.

exhibits previously were filed in paper (either before becoming subject to mandated electronic filing or pursuant to a hardship exemption) and are required to be refiled pursuant to the schedule's general instructions. Currently, such documents must be filed in electronic format along with the schedule to which they relate, absent a hardship exemption.[56]

• *Proposed Rule 311(c) of Regulation S–T.* Insurance companies that file information included in their annual statements provided to state insurance regulators (*i.e.*, Schedules O and P)[57] as exhibits to their Forms 10–K would be allowed to file such documents in paper under cover of Form SE because of difficulties in translating them into a format compatible with EDGAR.[58]

• *Rule 311(d) of Regulation S–T.* The proposed revisions would codify the staff's interpretation that a Financial Data Schedule is not among those exhibits to Form N–SAR that an investment company may submit in paper under cover of Form SE.

• *Rules 901(a) and 902(a) of Regulation S–T.* A note would be added to Rules 901 and 902 of Regulation S–T to make it clear that registrants become subject to mandated electronic filing upon their phase-in date and all subsequent filings must be made electronically, even filings made with respect to transactions that commenced prior to, and are in process, at the time a company is phased in.[59] The proposed note to Rule 902(a) would clarify the limited exception for definitive filings by investment companies under Rule 497 under the Securities Act.

• *Rule 901(c)(4) of Regulation S–T.* A note would be added to Rule 901 of Regulation S–T explaining that while companies subject to mandated electronic filing generally may choose to electronically file Schedules 13D[60] and 13G[61] with respect to a paper filer, domestic electronic filers are restricted from doing so with respect to foreign private issuers because EDGAR currently requires an IRS tax identification number to be inserted for the subject company as a prerequisite to acceptance of the filing. It is anticipated that the EDGAR system will be modified in the future to process such filings, but until such time, they must be filed in paper.

• *Rules 901(d) and 902(g) of Regulation S–T.* The statutory requirement[62] to furnish the Commission with a paper copy of each electronic filing for a period of one year following a registrant's phase-in date would be modified to require new electronic filers to furnish to the Commission one paper copy of their first electronic filing only.[63] Filers have characterized the requirement as burdensome, and the Commission believes the need for a paper copy could be reduced to a minimum. This change will be effected only after the Commission makes a finding, as required by statute, that the EDGAR system is reliable, provides a suitable alternative to written and printed filings, and provides information as effectively and efficiently for filers, users and disseminators as the written or printed counterpart.[64] Comment also is solicited on whether the current due date for receipt of the paper copy (six business days after the electronic filing is made) should be extended, for example to ten or 15 business days after the date of electronic filing.

• *Rule 902(e) of Regulation S–T.* The proposed amendments would clarify the limited exception, currently contained in Rule 902(e) of Regulation S–T[65] for definitive filings by investment companies under Rule 497 of the Securities Act, to mandated electronic filing.

B. Changes to Item 601 of Regulations S–K and S–B

The following proposals would amend Item 601 of Regulations S–K and S–B, which govern the submission of exhibits, including the new Financial Data Schedule.

• The exhibit tables of Regulations S–K and S–B would be amended to indicate that charter documents are to be filed with quarterly reports on Forms 10–Q[66] and 10–QSB[67] pursuant to paragraph (b)(3) of Regulations S–K[68] and S–B[69] if such documents had been amended during the reporting period, thereby reflecting the requirements of Item 601(a)(4) of Regulations S–B and S–K.[70]

• Item 601 of Regulations S–K and S–B would be amended to state that if an instrument defining the rights of security holders is in the form of a certificate, the text appearing on the certificate must be reproduced in an electronic filing, together with a description of any other graphic and image material appearing on the certificate.[71]

• Item 601(b)(10) of Regulations S–K and S–B would be amended to clarify that a material contract that becomes effective or that is executed during the reporting period reflected by an annual or quarterly report must be filed as an exhibit to the periodic report filed for the corresponding period.[72]

• Applications filed for the purpose of determining the eligibility of a person designated as trustee for debt securities registered under the Securities Act that are eligible to be issued, offered, or sold on a delayed basis by or on behalf of the registrant, pursuant to section 305(b)(2) of the Trust Indenture Act,[73] would be required to be filed separately in the manner prescribed by the EDGAR Filer Manual.[74] Currently, such filings must be filed as an exhibit to a post-effective amendment to the registration statement to which the application relates. This

---

[56] For example, where an issuer delivers its Form 10–K with its Schedule 13E–4 (17 CFR 240.13e–101) in connection with its issuer tender offer proposal, the Form 10–K must be filed as an exhibit to the schedule, notwithstanding the fact that it previously had been filed with the Commission. *See* Item 9 of Schedule 13E–4. Under current rules, the Form 10–K would be required to be filed electronically as an exhibit, even if it originally had been filed in paper. Under the proposed rules, the exhibit would continue to be required, but it could be filed in paper under cover of Form SE if it originally had been filed in paper.

[57] See Item 601(b)(28) of Regulations S–K and S–B (17 CFR 229.601(b)(28) and 228.601(b)(28), respectively).

[58] Since April 1993, the staff, via delegated authority, has granted requests for continuing hardship exemptions for this type of document for a period of one year from the date of the grant of the exemption.

[59] Of course, under Rule 101(a)(1)(iii) a registrant may file its Form 10–K or Form 10–KSB in paper if it is the first document filed with the Commission following its phase-in date.

[60] 17 CFR 240.13d–101.

[61] 17 CFR 240.13d–102.

[62] *See* Section 35A(d)(3) of the Exchange Act (15 U.S.C. 78*ll*(d)(3)).

[63] The current requirement to place a legend on the top of the paper copy would be modified and retained; the rules also would be modified to require the copy to be sent to the Commission's Operations Center in Alexandria, Virginia, as is currently the practice. If these provisions are adopted, all filers that have submitted a paper copy of at least one electronic filing would be relieved of any obligation to furnish such copies after the effective date of the amendment.

[64] *See* Exchange Act section 35A(d)(3)(B) (15 U.S.C. 78*ll*(d)(3)(B)).

[65] 17 CFR 232.902(e).

[66] 17 CFR 249.308a.

[67] 17 CFR 249.308b.

[68] 17 CFR 229.601(b)(3).

[69] 17 CFR 228.601(b)(3).

[70] 17 CFR 228.601(a)(4) and 17 CFR 229.601(a)(4). Proposed revisions to the exhibit table of Item 601 of Regulations S–K and S–B.

[71] Proposed instruction to Item 601(b)(4) of Regulations S–K and S–B [17 CFR 229.601(b)(4) and 17 CFR 228.601(b)(4), respectively].

[72] Proposed Instruction 2 to Item 601(b)(10) to Regulations S–K and S–B (17 CFR 229.601(b)(10) and 17 CFR 228.601(b)(10), respectively).

[73] 15 U.S.C. 77eee(b)(2).

[74] Proposed revision of Item 601(b)(25)(ii) of Regulations S–K and S–B (17 CFR 229.601(b)(25)(ii) and 17 CFR 228.601(b)(25)(ii), respectively). A new electronic form type 305B2 will be added in future EDGAR programming to accommodate this type of filing.

change is intended to provide expedited processing of such filings, inasmuch as such filings could become automatically effective without staff intervention, a process not available with post-effective amendments. Of course, the general procedure requiring all other trust indenture eligibility applications on Form T–1 and T–2[75] to be submitted as an exhibit to the registration statement would remain intact.[76]

• Item 601 also would be amended to clarify that earnings statements "made generally available" pursuant to § 11(a) of the Securities Act[77] should be filed as an exhibit to Exchange Act periodic reports only where the statement was made available using methods other than including the information in another filing with the Commission, as provided by Securities Act Rule.[78]

• Financial Data Schedules would not be required to be filed in connection with registration statements on Form S–8[79] (for registration of securities issued pursuant to employee benefit plans), since updated financial information is rarely included in such filings.[80]

• A note would be added to Item 601(c) of Regulations S–K and S–B, providing that the paper copy of an electronic filing sent to the Commission's Operations Center in Alexandria, Virginia pursuant to Rule 901(d) of Regulation S–T need not contain any Financial Data Schedule included in that filing. Similarly, registrants would not be required to furnish paper versions of their Financial Data Schedules with the paper copies sent to national securities exchanges and national securities associations pursuant to Commission rules.[81] Both provisions are consistent with the Commission's position, also codified in the proposed note, that paper copies of the Schedule are not required with filings made in paper pursuant to a hardship exemption because the Schedule merely reflects information found elsewhere in the filing, and thus, it is only useful in electronic filings.[82] However, comment is solicited as to whether there would be some purpose served by requiring the provision of paper versions of the Financial Data Schedules to the national securities exchanges, national securities associations, their listed companies and the public and whether such a requirement should be adopted.

C. Changes to Securities Act Rule 483, Form S–6 and Investment Company Rule 20a–4

The following proposals would amend rules and forms under the Securities and Investment Company Acts in connection with Financial Data Schedule requirements:

• A note would be added to Securities Act Rule 483(e) indicating that paper copies of Financial Data Schedules are not required to be furnished to the Commission or to national securities exchanges or national securities associations.[83]

• Form S–6[84] would be amended to make it clear that a Financial Data Schedule is required only upon the filing of an amendment to a registration statement on that form.

• Investment Company Act Rule 20a–4[85] would be amended to clarify that the Financial Data Schedule, required to be submitted by investment companies with certain proxy material, would be submitted as an exhibit.

D. Changes to Public Utility Act Rules and Forms

The following proposals would amend the Public Utility Act Rules and Forms:

• Forms U5B,[86] U5S,[87] and U–1[88] under the Public Utility Act would be amended to state that if an instrument defining the rights of security holders is in the form of a certificate, the text appearing on the certificate must be reproduced in an electronic filing.[89]

E. Other Changes

Other proposed amendments are listed below.

• Exchange Act Rule 12b–15[90] would be amended to specify the number of copies required to be filed in connection with amendments to Exchange Act filings made in paper.

• An electronic filing provision of Regulation 13D relating to electronic amendments to Schedules 13D and 13G would be amended to track its parallel provision in Regulation S–T.[91]

• A note to Exchange Act Rule 14a–4[92] would codify the Commission's position that proxy cards should be filed as appendices at the end of proxy statements filed in electronic format, and not as separate documents within the electronic submission.[93] In a similar vein, Instruction 3 to Item 10 of Schedule 14A[94] would instruct electronic filers to file employee benefit plan documents required to accompany the proxy statement as appendices to the proxy statement. As is currently true, filers would not be required to deliver the plan documents to shareholders unless they are a part of the proxy statement.

• Technical revisions would be made to the cover pages of proxy and information statements[95] to make them easier to understand and expedite processing. The rules would be revised to clarify that the cover page is for the use of the Commission and is not required to be distributed to security holders.[96] Further, a change would be made to Schedule 14A to ensure that the approximate date on which the proxy statement and form of proxy are first sent or given to security holders would be printed on the first page of the proxy statement sent to investors, and not on the cover sheet.[97]

• The tender offer rules would be amended to clarify that tender offer periods are tolled because of failure to file required documents in electronic format only when the bidder is required to file electronically or, if applicable, after it has elected to do so by filing the Tender Offer Statement in electronic form.[98]

• The number of paper copies of Form SE[99] (for use with documents filed in paper pursuant to a hardship exemption or other specified purposes) and Form TH[100] (used in connection with paper filings pursuant to a temporary hardship exemption) required to be filed would be increased from three to four, to facilitate processing by the staff. As currently required, three paper copies of the exhibits or other documents submitted under cover of these forms would be required.

II. General Request for Comment

Comment is solicited with regard to each proposal respecting the viewpoints of both the filers and the users of information filed via EDGAR. Commenters should address any alternatives to these proposals they deem appropriate. Other suggestions relating to EDGAR and associated rules outside of these proposals will be considered in connection with the Commission's ongoing evaluation of the system. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[101] Comments should be addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549, and should refer to File No. S7–20–94.

III. Common Mistakes Made by EDGAR Filers

Since the adoption of the interim rules in February 1993, the Commission staff has been working with electronic filers to help them satisfy their

---

[75] 17 CFR 269.1 and 17 CFR 269.2, respectively.

[76] See Item 601(b)(25)(ii) of Regulations S–K and S–B (17 CFR 229.601(b)(25)(ii) and 228.601(b)(25)(ii), respectively).

[77] 15 U.S.C. 77k(a).

[78] 17 CFR 230.158. Proposed revision of Item 601(b)(99)(iii) of Regulation S–K (17 CFR 229.601(b)(99)(iii)) and Item 601(b)(99)(ii) of Regulation S–B (17 CFR 228.601(b)(99)(ii)).

[79] 17 CFR 239.16b.

[80] Proposed revision of note to Item 601(c)(1) of Regulations S–K and S–B. This would be a revision to the note adopted in connection with the implementation of Financial Data Schedules, which indicates that no Financial Data Schedule is required for Form 11–K. *See* Release No. 33–7072.

[81] Proposed note 2 to paragraph (c)(1) of Item 601 of Regulations S–K and S–B.

[82] *See* n. 287 in Release No. 33–6977.

[83] Proposed note 2 to paragraph (e)(1) of Securities Act Rule 483. *See* proposed note 2 to Item 601(c) of Regulations S–K and S–B, discussed above.

[84] 17 CFR 239.16.

[85] 17 CFR 270.20a–4.

[86] 17 CFR 259.5b.

[87] 17 CFR 259.5s.

[88] 17 CFR 259.101.

[89] Proposed Instructions for Exhibits B to Forms U5B and U5S and Instruction A to Instructions as to Exhibits to Form U–1. This proposal parallels the proposed changes to Item 601(b)(4) of Regulations S–K and S–B, discussed above.

[90] 17 CFR 240.12b–15.

[91] Proposed revision of Exchange Act Rule 13d–2(c) (17 CFR 240.13d–2(c)).

[92] 17 CFR 240.14a–4.

[93] *See* section IV.F.5 of Release No. 33–6977.

[94] 17 CFR 240.14a–101.

[95] For example, a box would be added for filers of definitive material to check if the fee had previously been paid with preliminary materials and a reference to Investment Company Act Rule 20a–1(c) (17 CFR 270.20a–1) would be added to the "Payment of Filing Fee" section. Schedule 14C, setting forth the requirements for information statements, is found at 17 CFR 240.14c–101.

[96] Proposed revisions to Rule 14a–6(m) (17 CFR 240.14a–6(m)) and Rule 14c–5(h) (17 CFR 240.14c–5(h)).

[97] Proposed amendment to paragraph (b) of Item 1 of Schedule 14A.

[98] Proposed revision of Rule 14e–1(e) (17 CFR 240.14e–1(e)). For example, if the bidder is an electronic filer and the target company is also an electronic company, and the bidder files its Tender Offer Statement in paper in violation of the electronic filing rules, the time periods will be tolled with respect to the tender offer until a confirming electronic copy of the Statement is submitted. Where the bidder is an electronic filer and the target is a paper filer, if the bidder elects to file in paper under Rule 901(c)(1) of Regulation S–T (17 CFR 232.901(c)(1)), it may do so without tolling the tender offer periods, because paper filing is specifically allowed in that provision. However, if the electronic bidder elects to electronically file its Tender Offer Statement with respect to a paper company, as permitted by Regulation S–T, any subsequent filing in paper by the bidder with respect to the transaction will cause the tender offer periods to be tolled until confirming electronic copies of these documents are submitted.

[99] 17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403.

[100] 17 CFR 239.65, 249.447, 259.604, 269.10, and 274.404.

[101] 15 U.S.C. 78w(a).

• The number of paper copies of Form SE[99] (for use with documents filed in paper pursuant to a hardship exemption or other specified purposes) and Form TH[100] (used in connection with paper filings pursuant to a temporary hardship exemption) required to be filed would be increased from three to four, to facilitate processing by the staff. As currently required, three paper copies of the exhibits or other documents submitted under cover of these forms would be required.

II. General Request for Comment

Comment is solicited with regard to each proposal respecting the viewpoints of both the filers and the users of information filed via EDGAR. Commenters should address any alternatives to these proposals they deem appropriate. Other suggestions relating to EDGAR and associated rules outside of these proposals will be considered in connection with the Commission's ongoing evaluation of the system. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[101] Comments should be addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549, and should refer to File No. S7–20–94.

III. Common Mistakes Made by EDGAR Filers

Since the adoption of the interim rules in February 1993, the Commission staff has been working with electronic filers to help them satisfy their electronic filing obligations. The staff has identified a number of items of information that have proven useful to electronic filers and should be conveyed to the electronic filing community at large. To that end, the staff has compiled the following list of suggestions to help electronic filers avoid some of the more common errors associated with electronic filing.

A. Review Documents in EDGAR Format and Use EDGARLink's Error Checking Features Prior to Filing

Filers should run their filing through EDGARLink's error checking process and review the entire document after conversion to electronic format, including the information in the submission and document headers before transmitting the filing to the Commission. Electronic filers that plan ahead and carefully error check and proofread documents prior to filing will generally have success in making their filings with the Commission. Some examples of errors that easily could have been avoided by error checking and reviewing the document prior to transmission are:

1. Inaccurate ASCII conversion resulting in table columns that do not line up correctly;[102]

2. Including too many characters on a line;

3. Failure to place the text of the filing between the <TEXT> and </TEXT> tags, resulting in an accepted filing that appears to have no text (this usually occurs when the filer is not using EDGARLink to prepare the submission);

4. Filing draft versions of documents instead of the final version, as intended;

5. Including incorrect Central Index Key ("CIK")[103] and IRS identification numbers in the submission header, resulting either in the suspension of the filing, or in the case of filings using a subject company tagging scheme, in a filing being accepted with the wrong company being recorded as the subject company. Filers that hold more than one CIK and CIK Confirmation Code ("CCC") number,[104] because of affiliates that are also subject to electronic filing rules or because they act as filing agents, have sometimes inadvertently used the wrong CIK and CCC numbers in a submission header, thereby indicating that the filer was someone other than the intended filer, and resulting in the intended filer not having made its filing;

6. Using the wrong EDGAR submission type for the intended purpose. For example, if an Exchange Act reporting company marks the box on the cover of its Form 10–K to indicate that it includes no disclosure relating to delinquent reports required to be filed by its insiders pursuant to Section 16(a) of the Exchange Act,[105] the correct form type is 10–K405, not 10–K. The latter form type should be used only when the Item 405 box is not checked.[106]

B. Appropriate Use of the <TEST> Tag

Filers should ensure prior to transmission that a document intended to be a live filing does not include a <TEST> tag in the submission header and that the transmission is being done in a live transmission session. If a document intended to be an official filing with the Commission is actually sent as a test, it will be treated as though no filing were made. The filing will not appear on the Commission's records and it will not be disseminated to the public. Conversely, if a submission intended to be a test is not transmitted during a test session or does not include a <TEST> tag in the header in a live transmission session, the test document will be considered an official filing and will be disseminated to the public, usually in a matter of minutes. While testing is encouraged, so is extra caution to ensure that the result intended is the result achieved.

C. Appropriate Use of the <CONFIRMING-COPY> Tag

Confirming electronic copies of filings made in paper are required in three instances. First, if a filing is made in paper pursuant to a temporary hardship exemption pursuant to Rule 201 of Regulation S–T,[107] a copy of the paper filing must be submitted in electronic format within six business days.

---

electronic company, and the bidder files its Tender Offer Statement in paper in violation of the electronic filing rules, the time periods will be tolled with respect to the tender offer until a confirming electronic copy of the Statement is submitted. Where the bidder is an electronic filer and the target is a paper filer, if the bidder elects to file in paper under Rule 901(c)(1) of Regulation S–T (17 CFR 232.901(c)(1)), it may do so without tolling the tender offer periods, because paper filing is specifically allowed under that provision. However, if the electronic bidder elects to electronically file its Tender Offer Statement with respect to a paper company, as permitted by Regulation S–T, any subsequent filing in paper by the bidder with respect to the transaction will cause the tender offer periods to be tolled until confirming electronic copies of these documents are submitted.

[99] 17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403.

[100] 17 CFR 239.65, 249.447, 259.604, 269.10, and 274.404.

[101] 15 U.S.C. 78w(a).

[102] The EDGAR system requires all documents to be prepared in ASCII format. ASCII stands for "American Standard Code for Information Interchange," and represents letters, numbers, blank spaces, and a limited number of symbols. When properly translated to ASCII, word processing codes for features such as underlining and bold-face are removed and codes indicating indentation and tabbing are replaced by the appropriate number of spaces on a line. Improperly translated tables will not necessarily cause a filing to be suspended, but if the numbers within the column do not appear in their appropriate place within the filing, the information becomes difficult, if not impossible, for persons looking at the filing to read and understand.

[103] CIK numbers are unique public identification numbers assigned by the Commission to each filer, filing agent and training agent.

[104] CCC numbers are identification codes chosen by the electronic filer and known by the EDGAR system which are matched against the filer's CIK number to identify the filing as one authorized by the filer.

[105] 15 U.S.C. 78p(a).

[106] 10–K405 is a new form type found in the EDGAR Filer Manual, adopted in Release No. 33–7073 (July 8, 1994).

[107] 17 CFR 232.201.

Second, if a filing is made in paper in violation of the electronic filing requirements, a confirming electronic copy of that filing must be placed on the EDGAR database in order to avoid the sanctions imposed as a result of the electronic filing violation.[108] Third, confirming copies must be filed where a continuing hardship exemption has been granted to allow a filing to be made in paper upon the condition that it be followed up electronically within a specified period of time.[109] Confirming copies are *not* official filings, but rather, are copies of official filings previously made in paper. Some filers have inadvertently included a <CONFIRMING-COPY> tag in what they intended to be an official filing and failed to notice or appreciate the significance of the statement in their acceptance message that the document was received as a confirming electronic copy. At a later time, they are alerted to the fact that the Commission's records do not reflect their filing as an official document. The only course of remedial action is to refile the document as an official filing.

D. Timing Considerations

1. Filing Fees

Filers should follow precisely the guidelines on how to submit filing fees to the Commission's lockbox at Mellon Bank in Pittsburgh, Pennsylvania, including the provisions requiring the filer's filing fee account number to accompany the payment.[110] This is particularly important in the case of "good money" filings that require confirmation of the fee prior to automatic acceptance by the EDGAR system, *e.g.*, Securities Act registration statements. Filers also should plan ahead and follow up with respect to their wire transfer arrangements with their banks, to ensure that the money is sent as instructed. EDGAR cannot verify a fee that has not reached the lockbox because a bank has not wired the money to the Commission's account, or because the wire transfer process took longer than anticipated.

2. Last Minute Filing

Filers should avoid waiting until late in the day on which a filing must be made before attempting to commence an electronic transmission of the filing. Even if the submission has no errors that would cause its suspension, delay until shortly before 5:30 p.m. on the desired filing date may result in missing that filing date.[111] Before a direct transmission begins using EDGARLink, the submission file is compressed (which takes an average of about one minute for a 40–80 page document if the filer is using a personal computer with a 386 processing chip), a dial-up and handshake with the EDGAR host system occurs, and an EDGARLink verification protocol must be completed. Further, the time assigned to the receipt of the first byte of information from the submission is established by EDGAR's clock, not the internal clock of the filer's computer. For the foregoing reasons, there can be no assurance that the filing will receive that day's filing date if a filer delays transmission until minutes before 5:30 p.m.

3. Adjustments to Filing Dates

Rule 13(b) of Regulation S–T allows electronic filers to request an adjustment to a filing date for an electronic filing if the filer, in good faith, attempts to file a document in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control.[112] This may occur when a filing is delayed beyond its due date because of technical problems, or a filing is made but contains errors causing its suspension.

It is not the staff's policy to grant filing date adjustments for Securities Act registration statements or other transactional filings, since shareholders' rights may be affected.[113] In contrast, reasonable requests for an adjustment to the filing date of an Exchange Act report will be granted if the filing is made (or re-submitted) promptly. However, filers have an obligation to confirm the status of their filings and must read the related acceptance or suspension messages carefully to determine if the filing was successfully made. For example, if a filing inadvertently was submitted as a test or a confirming electronic copy, and was therefore not considered an official filing, a new filing must be made immediately and the staff must be notified, if the second transmission was after the due date of the filing and an adjustment is desired. It is not the policy of the staff to grant adjustments backdating a filing over an extended period of time.

IV. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed changes contained in this release, commenters are requested to provide their views and data relating to any costs and benefits associated with these proposals. It is anticipated that these proposals will not affect significantly the costs and burdens associated with filing requirements generally, or specifically with respect to electronic filing.

V. Summary of Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis notes that the amendments are to make minor revisions to the rules implementing the EDGAR system.

As discussed more fully in the analysis, the proposals would affect persons that are small entities, as defined by the Commission's rules. It is not expected that increased reporting, recordkeeping and compliance burdens would result from the changes. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the electronic filing requirements to be amended.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As discussed more fully in the analysis, the nature of these amendments do not lend themselves to separate treatment, nor would they impose additional burdens on small business issuers.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, Mail Stop 3–12, 450 Fifth Street, NW., Washington, DC 20549.

VI. Statutory Basis

The foregoing amendments are proposed pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act, sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act, sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Act, section 319 of the Trust Indenture Act, and sections 8, 30, 31 and 38 of the Investment Company Act.

List of Subjects in 17 CFR Parts 228, 229, 230, 232, 239, 240, 249, 250, 259, 260 and 270

Accountants, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities, Utilities.

Text of the Proposed Amendments

In accordance with the foregoing, it is proposed that title 17, chapter II of the Code of Federal Regulations be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.601 in the exhibit table, by adding an "x" corresponding to exhibits (3)(i) and (ii) under the caption "*10–QSB*" and removing the "x" corresponding to exhibit (27) under the caption "*S–8*," by adding an instruction following paragraph (b)(4)(iii), redesignating the Instruction to Item 601(b)(10) as Instruction 1 and adding Instruction 2, revising the second sentence of paragraph (b)(25)(ii), revising paragraph (b)(28)(iv), revising paragraph (b)(99)(ii), revising the note to paragraph (c)(1)(ii), redesignating the note following paragraph (c)(1)(vi) as Note 1 and adding Note 2, to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(4) *Instruments defining the rights of security holders, including indentures.*

* * *

(iii) * * *

Instruction for electronic filings. If the instrument defining the rights of security holders is in the form of a certificate, the text appearing on the certificate shall be

---

[108] Registrants who file documents in paper in violation of the electronic filing rules lose their eligibility to use Forms S–2 (17 CFR 239.12), S–3 (17 CFR 239.13), S–8, F–2 (17 CFR 239.32) and F–3 (17 CFR 239.33). In addition, documents filed in violation of the electronic filing rules may not be incorporated by reference into other filings. Finally, in certain circumstances, tender offer periods will be tolled until the electronic filing violation has been cured. *See generally* the note to paragraph (a) of Rule 101 of Regulation S–T (17 CFR 232.101(a)).

[109] See Rule 202(d) of Regulation S–T (17 CFR 232.202(d)).

[110] See Rule 3a of the Commission's informal and other procedures (17 CFR 202.3a). *See also* the Filing Fees Account System Handbook, published by the Commission's Office of Filings and Information Services.

[111] Rule 13(a)(2) of Regulation S–T (17 CFR 232.13(a)(2)) provides that where a direct transmission of a filing commences on or before 5:30 p.m., the filing will receive that day's filing date if all of the conditions of acceptance are satisfied, even if acceptance processing is not complete until after 5:30 p.m. If a direct transmission of a filing is commenced after 5:30 p.m., the filing will receive the next day's filing date.

[112] 17 CFR 232.13(b).

[113] *See* Section III.E.4 of Release No. 33–6977.

Corporation Finance, Mail Stop 3–12, 450 Fifth Street, NW., Washington, DC 20549.

VI. Statutory Basis

The foregoing amendments are proposed pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act, sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act, sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Act, section 319 of the Trust Indenture Act, and sections 8, 30, 31 and 38 of the Investment Company Act.

List of Subjects in 17 CFR Parts 228, 229, 230, 232, 239, 240, 249, 250, 259, 260 and 270

Accountants, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities, Utilities.

Text of the Proposed Amendments

In accordance with the foregoing, it is proposed that title 17, chapter II of the Code of Federal Regulations be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.601 in the exhibit table, by adding an "x" corresponding to exhibits (3)(i) and (ii) under the caption "*10–QSB*" and removing the "x" corresponding to exhibit (27) under the caption "*S–8*," by adding an instruction following paragraph (b)(4)(iii), redesignating the Instruction to Item 601(b)(10) as Instruction 1 and adding Instruction 2, revising the second sentence of paragraph (b)(25)(ii), revising paragraph (b)(28)(iv), revising paragraph (b)(99)(ii), revising the note to paragraph (c)(1)(ii), redesignating the note following paragraph (c)(1)(vi) as Note 1 and adding Note 2, to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(4) *Instruments defining the rights of security holders, including indentures.*

* * *

(iii) * * *

Instruction for electronic filings. If the instrument defining the rights of security holders is in the form of a certificate, the text appearing on the certificate shall be reproduced in an electronic filing together with a description of any other graphic and image material appearing on the certificate, as provided in Rule 304 of Regulation S–T (§ 232.304 of this chapter).

* * * * *

(10) *Material Contracts.* (i) * * *

Instruction 1 to Item 601(b)(10). * * *

Instruction 2 to Item 601(b)(10). If a material contract is executed or becomes effective during the reporting period reflected by a Form 10–QSB or Form 10–KSB, it shall be filed as an exhibit to the Form 10–QSB or Form 10–KSB filed for the corresponding period. *See* paragraph (a)(3) of this Item.

* * * * *

(25) *Statement of eligibility of trustee.*

* * * * *

(ii) * * * Rather, such statements must be submitted as exhibits in the same electronic submission as the registration statement to which they relate, or in an amendment thereto, except that electronic filers that rely on Trust Indenture Act Section 305(b)(2) for determining the eligibility of the trustee under indentures for securities to be issued, offered or sold on a delayed basis by or on behalf of the registrant shall file such statements separately in the manner prescribed by § 260.5b–1 through § 260.5b–3 of this chapter and by the EDGAR Filer Manual.

* * * * *

(28) *Information from reports furnished to state insurance regulatory authorities.* * * *

(iv) If ending reserves in paragraphs (b)(28)(ii)(A) and (b)(28)(ii)(B) of this Item or the proportionate share of the small business issuer and its other subsidiaries in paragraph (b)(28)(ii)(C) of this Item are less that 5% of the total ending reserves in paragraphs (b)(28)(ii)(A) and (b)(28)(ii)(B) of this Item, and the proportionate share of (b)(28)(ii)(C) of this Item, small business issuers may omit that category and note that fact. If the amount of the reserves attributable to fifty percent-or-less-owned equity investees that file this information as companies in their own right exceeds 95% of the total in paragraph (b)(28)(ii)(C) of this Item, small business issuers do not need to provide reserves information for the other fifty percent-or-less-owned equity investees.

* * * * *

(99) *Additional Exhibits*

* * * * *

(ii) If pursuant to Section 11(a) of the Securities Act (15 U.S.C. 77k(a)) an issuer makes generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the effective date of the registration statement, and if such earnings statement is made available by "other methods" than those specified in paragraphs (a) or (b) of § 230.158 of this chapter, it must be filed as an exhibit to the Form 10–QSB or the Form 10–KSB, as appropriate, covering the period in which the earnings statement was released.

(c) *Financial Data Schedule.*—(1) * * *

(ii) * * *

Note: Financial Data Schedules are not required in connection with registration statements on Form S–8 (§ 239.16b of this chapter) or annual reports on Form 11–K (§ 249.311 of this chapter), for employee stock purchase, savings and similar plans

* * * * *

(vi) * * *

Note 1: * * *

Note 2: Paper copies of the Financial Data Schedule are not required to be furnished with the paper copy sent to the Commission's Operations Center in Alexandria, Virginia pursuant to Rule 901(d) of Regulation S–T (§ 232.901(d) of this chapter), or with the paper copies of filings required by the Commission rules to be furnished to the national securities exchange or national securities association upon which the registrant's securities are listed. Similarly, no paper copy of a Financial Data Schedule is required with filings made in paper pursuant to a hardship exemption; however, any required electronic confirming copy of such filing should be accompanied by a Financial Data Schedule, where appropriate pursuant to paragraph (c)(1)(ii) of this section.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

4. By amending § 229.601 in the exhibit table, by adding an "x" corresponding to exhibits (3)(i) and (ii) under the caption "10–Q" and removing the "x" corresponding to exhibit (27) under the caption "*S–8*", by designating the current instruction at the end of paragraph (b)(4) as Instruction 1 and adding Instruction 2, designating the current instruction at the end of paragraph (b)(10) as Instruction 1 and adding Instruction 2, revising the second sentence of paragraph (b)(25)(ii),

by revising paragraph (b)(99)(iii), revising the note to paragraph (c)(1)(ii), redesignating the note following paragraph (c)(1)(vi) as Note 1 and adding Note 2 thereafter, adding a ")" before the period at the end of paragraph (c)(3)(ii), to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(4) *Instruments defining the rights of security holders, including indentures.*

* * * * *

Instruction 1. * * *

Instruction 2 (for electronic filings). If the instrument defining the rights of security holders is in the form of a certificate, the text appearing on the certificate shall be reproduced in an electronic filing together with a description of any other graphic and image material appearing on the certificate, as provided in Rule 304 of Regulation S–T (§ 232.304 of this chapter).

* * * * *

(10) *Material Contracts.* (i) * * *

Instruction 1. * * *

Instruction 2. If a material contract is executed or becomes effective during the reporting period reflected by a Form 10–Q or Form 10–K, it shall be filed as an exhibit to the Form 10–Q or Form 10–K filed for the corresponding period. See paragraph (a)(4) of this Item.

* * * * *

(25) *Statement of eligibility of trustee.*

* * * * *

(ii) *Electronic filings.* * * * Rather, such statements must be submitted as exhibits in the same electronic submission as the registration statement to which they relate, or in an amendment thereto, except that electronic filers that rely on Trust Indenture Act Section 305(b)(2) for determining the eligibility of the trustee under indentures for securities to be issued, offered or sold on a delayed basis by or on behalf of the registrant shall file such statements separately in the manner prescribed by § 260.5b–1 through § 260.5b–3 of this chapter and by the EDGAR Filer Manual.

* * * * *

(99) *Additional Exhibits*

* * * * *

(iii) If pursuant to Section 11(a) of the Securities Act (15 U.S.C. 77k(a)) an issuer makes generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the effective date of the registration statement, and if such earnings statement is made available by "other methods" than those specified in paragraphs (a) or (b) of § 230.158 of this chapter, it must be filed as an exhibit to the Form 10–Q or the Form 10–K, as appropriate, covering the period in which the earnings statement was released.

(c) *Financial Data Schedule—(1)*

* * *

(ii) * * *

Note: Financial Data Schedules are not required in connection with registration statements on Form S–8 (§ 239.16b of this chapter) or annual reports on Form 11–K (§ 249.311 of this chapter), for employee stock purchase, savings and similar plans.

* * * * *

(iv) * * *

Note 1: * * *

Note 2: Paper copies of the Financial Data Schedule are not required to be furnished with the paper copy sent to the Commission's Operations Center in Alexandria, Virginia pursuant to Rule 901(d) of Regulation S–T (§ 232.901(d) of this chapter), or with the paper copies of filings required by the Commission rules to be furnished to the national securities exchange or national securities association upon which the registrant's securities are listed. Similarly, no paper copy of a Financial Data Schedule is required with filings made in paper pursuant to a hardship exemption; however, any required electronic confirming copy of such filing should be accompanied by a Financial Data Schedule, where appropriate pursuant to paragraph (c)(1)(ii) of this section.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 79o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.405 [Amended]

6. By amending § 230.405 by revising the term "Graphic communications" to read "Graphic communication" each time it appears in that definition.

7. By amending § 230.483 by redesignating the note following paragraph (e)(1)(iv) as Note 1 and adding Note 2 thereafter to read as follows:

§ 230.483 Exhibits for Certain Registration Statements, Financial Data Schedule.

* * * * *

(e) *Financial Data Schedule.*

(1) *General.*

* * * * *

(iv) * * *

Note 1: * * *

Note 2: Paper copies of the Financial Data Schedule are not required to be furnished with the paper copy sent to the Commission's Operations Center in Alexandria, Virginia pursuant to Rule 902(g) of Regulation S–T (§ 232.902(g) of this chapter), or with the paper copies of filings required by the Commission rules to be furnished to the national securities exchange or national securities association upon which the registrant's securities are listed. Similarly, no paper copy of a Financial Data Schedule is required with filings made in paper pursuant to a hardship exemption; however, any required electronic confirming copy of such filing should be accompanied by a Financial Data Schedule, where required by the applicable form.

* * * * *

§ 230.488 [Amended]

8. By amending § 230.488 by removing paragraph (c)(2) and by redesignating paragraph (c)(1) as paragraph (c).

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

9. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

10. By amending § 232.12 by adding a sentence at the end of paragraph (b) to read as follows:

§ 232.12 Business hours of the Commission.

* * * * *

(b) * * * Submissions on magnetic tape or diskette may be filed either at the address indicated in paragraph (a) of this section, or at the Commission's Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

* * * * *

11. By amending § 232.13 by adding paragraph (d) following the note, to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

* * * * *

(d) Where the Commission's rules, schedules and forms provide that a document may be "mailed for filing with the Commission" at the same time it is published, furnished, sent or given to security holders or others, an electronic filer may file the document with the Commission electronically before or on the date the document is published, furnished, sent or given, or if such publication or distribution does not occur on a business day of the Commission, as soon as practicable on the next business day. Any associated time periods shall be calculated on the basis of the publication or distribution date (as applicable), and not on the basis of the date of filing.

12. By amending § 232.101 by revising paragraphs (a)(1)(i), (a)(1)(iii), (c)(2), (c)(3), (c)(8), and (c)(10), by revising the heading of paragraph (c), by removing the word "and" following the semicolon in paragraph (c)(16), and by adding paragraphs (b)(3), (b)(4), (b)(5), (c)(18), (c)(19), (c)(20), and (c)(21), to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) Mandated electronic submissions.

(1) * * *

(i) Registration statements and prospectuses filed pursuant to the Securities Act (15 U.S.C. 77a, *et seq.*) or registration statements filed pursuant to Sections 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or (g));

* * * * *

(iii) Statements, reports and schedules filed with the Commission pursuant to Sections 13, 14, or 15(d) of the Exchange Act (15 U.S.C. 78m, n, and *o*(d)), except Form 13F (§ 249.325 of this chapter), *provided that* if a registrant's first mandated electronic filing would be an annual report on Form 10–K (§ 249.310 of this chapter) or Form 10–KSB (§ 249.310b of this chapter) such annual report may, at the option of the registrant, be submitted in paper format;

* * * * *

(b) * * *

(3) Form 11–K (§ 249.311 of this chapter), if financial statements and schedules prepared in accordance with the requirements of ERISA are filed pursuant to Instruction 4 of that form. Registrants who satisfy their Form 11–K filing obligations by filing amendments to Forms 10–K or 10–KSB, as provided by Rule 15d–21 (§ 240.15d–21 of this chapter), also may choose to file such amendments in paper or electronic format;

(4) Reports on Form 13F (§ 249.325 of this chapter), filed with the Commission by institutional investment managers as required by Section 13(f)(1) (15 U.S.C. 78m(f)(1)) of, and Rule 13f–1 (§ 240.13f–1 of this chapter) under, the Exchange Act on magnetic tape in the format described in Form 13F–E (§ 249.326 of this chapter); and

(5) Exhibits to Form N–SAR (§ 274.101 of this chapter), except that the Financial Data Schedule required under Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter) shall be filed in electronic format.

(c) *Documents to be submitted in paper only.*

* * * * *

(2) Supplemental information, if the submitter requests that the information be protected from public disclosure under the Freedom of Information Act (5 U.S.C. 552) pursuant to a request for

(c)(3), (c)(8), and (c)(10), by revising the heading of paragraph (c), by removing the word "and" following the semicolon in paragraph (c)(16), and by adding paragraphs (b)(3), (b)(4), (b)(5), (c)(18), (c)(19), (c)(20), and (c)(21), to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) Mandated electronic submissions. (1) * * *

(i) Registration statements and prospectuses filed pursuant to the Securities Act (15 U.S.C. 77a, *et seq.*) or registration statements filed pursuant to Sections 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or (g));

* * * * *

(iii) Statements, reports and schedules filed with the Commission pursuant to Sections 13, 14, or 15(d) of the Exchange Act (15 U.S.C. 78m, n, and *o*(d)), except Form 13F (§ 249.325 of this chapter), *provided that* if a registrant's first mandated electronic filing would be an annual report on Form 10–K (§ 249.310 of this chapter) or Form 10–KSB (§ 249.310b of this chapter) such annual report may, at the option of the registrant, be submitted in paper format;

* * * * *

(b) * * *

(3) Form 11–K (§ 249.311 of this chapter), if financial statements and schedules prepared in accordance with the requirements of ERISA are filed pursuant to Instruction 4 of that form. Registrants who satisfy their Form 11–K filing obligations by filing amendments to Forms 10–K or 10–KSB, as provided by Rule 15d–21 (§ 240.15d–21 of this chapter), also may choose to file such amendments in paper or electronic format;

(4) Reports on Form 13F (§ 249.325 of this chapter), filed with the Commission by institutional investment managers as required by Section 13(f)(1) (15 U.S.C. 78m(f)(1)) of, and Rule 13f–1 (§ 240.13f–1 of this chapter) under, the Exchange Act on magnetic tape in the format described in Form 13F–E (§ 249.326 of this chapter); and

(5) Exhibits to Form N–SAR (§ 274.101 of this chapter), except that the Financial Data Schedule required under Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter) shall be filed in electronic format.

(c) *Documents to be submitted in paper only.*

* * * * *

(2) Supplemental information, if the submitter requests that the information be protected from public disclosure under the Freedom of Information Act (5 U.S.C. 552) pursuant to a request for confidential treatment under Rule 83 (§ 200.83 of this chapter) or if the submitter requests that the information be returned after staff review and the information is of the type typically returned by the staff pursuant to Rule 418(b) of Regulation C (§ 230.418(b) of this chapter) or Rule 12b–4 of Regulation 12B (§ 240.12b–4 of this chapter);

(3) Shareholder proposals and all related correspondence submitted pursuant to Rule 14a–8 of the Exchange Act (§ 240.14a–8 of this chapter);

* * * * *

(8) Filings made with the Commission's Regional or District Offices;

* * * * *

(10) Promotional and Sales Material submitted pursuant to Securities Act Industry Guide 5 (§ 229.801(e) of this chapter) or otherwise supplementally furnished for review by the staff of the Division of Corporation Finance; and sales literature submitted under Rule 24b–2 of the Investment Company Act (§ 270.24b–2 of this chapter);

* * * * *

(18) Form F–6 (§ 239.36 of this chapter);

(19) Annual reports filed with the Commission by indenture trustees pursuant to Section 313 of the Trust Indenture Act (15 U.S.C. 77mmm);

(20) Applications for an exemption from Exchange Act reporting obligations filed pursuant to Section 12(h) of the Exchange Act (15 U.S.C. 78*l*(h)); and

(21) Written information concerning employee benefit plans required to be filed with the Commission pursuant to Rule 16b–3(b)(2)(ii) of the Exchange Act (§ 240.16b–3(b)(2)(ii) of this chapter).

13. By amending § 232.102 by revising paragraphs (a) and (e), to read as follows:

§ 232.102 Exhibits.

(a) Exhibits to an electronic filing that have not previously been filed with the Commission shall be filed in electronic format, absent a hardship exemption. Previously filed exhibits, whether in paper or electronic format, may be incorporated by reference into an electronic filing to the extent permitted by Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter), Rule 411 under the Securities Act (§ 230.411 of this chapter), Rule 12b–23 or 12b–32 under the Exchange Act (§ 240.12b–23 or § 240.12b–32 of this chapter), Rule 22 under the Public Utility Holding Company Act (§ 250.22 of this chapter), Rules 0–4, 8b–23, and 8b–32 under the Investment Company Act (§ 270.0–4, § 270.8b–23 and § 270.8b–32 of this chapter) and Rule 303 of Regulation S–T (§ 232.303). An electronic filer may, at its option, restate in electronic format an exhibit incorporated by reference that originally was filed in paper format.

Note: Exhibits to a Commission schedule filed pursuant to Section 13 or 14(d) of the Exchange Act may be filed in paper under cover of Form SE where such exhibits previously were filed in paper (prior to a registrant's becoming subject to mandated electronic filing or pursuant to a hardship exemption) and are required to be refiled pursuant to the schedule's general instructions. *See* Rule 311(b) of Regulation S–T (17 CFR 232.311(b)).

* * * * *

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, after the date which is three years following a registrant's phase-in date, any incorporation by reference by a registered investment company or a business development company shall relate only to documents which have been filed in electronic format, unless

(1) The document has been filed in paper pursuant to a hardship exemption (§§ 232.201 and 232.202 of this chapter) and any required confirming copy has been submitted or

(2) The document is an exhibit, filed in paper in accordance with applicable rules, to Form N–SAR being incorporated by reference only into another Form N–SAR filing.

* * * * *

14. By amending § 232.302 by revising paragraph (b) and adding paragraph (c), to read as follows:

§ 232.302 Signatures.

(a) * * *

(b) Each signatory to an electronic filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years. Upon request, an electronic filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

(c) Where the Commission's rules require a registrant to furnish to a national securities exchange or national securities association paper copies of a document filed with the Commission in electronic format, signatures to such paper copies may be in typed form.

15. By amending § 232.303 by adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 232.303 Incorporation by reference.

(a) * * *

(3) For a registered investment company or a business development company making an electronic submission more than three years after its phase-in date, documents that have not been filed in electronic format, unless:

(i) The document has been filed in paper pursuant to a hardship exemption (§§ 232.201 and 232.202 of this chapter) and any required confirming copy has been submitted or

(ii) The document is an exhibit, filed in paper in accordance with applicable rules, to Form N–SAR being incorporated by reference into another Form N–SAR filing.

(4) Any Financial Data Schedule required under Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

* * * * *

16. By amending § 232.304 by revising paragraphs (a) and (d) to read as follows:

§ 232.304 Graphic and image material.

(a) If an electronic filing omits graphic or image material included in the paper version of the document, the electronic version shall include a fair and accurate narrative description or tabular representation of the omitted material. Such descriptions or representations may be included in the text of the electronic filing where the graphic or image material appears in the paper version, or they may be listed in an appendix to the electronic filing. Differences between the electronic and paper versions of the document such as pagination, color, type size or style, or corporate logo need not be described.

* * * * *

(d) The performance graph that is to appear in registrant proxy and information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of such meetings) at which directors will be elected, as required by Item 402(*l*) of Regulation S–K (§ 229.402(*l*) of this chapter), shall be furnished to the Commission in connection with an electronic filing by presenting the data in tabular or chart form within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. Registrants also shall submit supplementally a paper copy of the performance graph to their Branch Chief in the Division of Corporation Finance.

17. By amending § 232.306 by revising the first sentence of the note following paragraph (a), to read as follows:

§ 232.306 Foreign language documents and symbols.

* * * * *

Note: With respect to submission of an electronic filer's latest annual budget required to be filed as Exhibit B in Form 18 (§ 249.218 of this chapter) or as Exhibit (c) in Form 18–K (§ 249.318 of this chapter), for foreign governments and political subdivisions thereof, if an English version of such filer's last annual budget as presented to its legislative body has been prepared, it shall be filed electronically. * * *

* * * * *

18. By amending § 232.311 by revising paragraphs (b), (c), and (d) and in paragraphs (e), (f) and (g), by replacing the references to "Form S–E" with references to "Form SE", and in paragraph (h)(2), by revising the reference "paragraphs (a) through (c)" to read "paragraphs (a) through (g)" to read as follows:

§ 232.311 Documents submitted in paper under cover of Form SE.

* * * * *

(b) Exhibits to a Commission schedule filed pursuant to Section 13 or 14(d) of the Exchange Act may be filed in paper under cover of Form SE where such exhibits previously were filed in paper (prior to a registrant's becoming subject to mandated electronic filing or pursuant to a hardship exemption) and are required to be refiled pursuant to the schedule's general instructions.

(c) Exhibits consisting of all or portions of an annual statement provided to state insurance regulators (*e.g.*, Schedules O and P), required to be filed pursuant to Item 601(b)(28) of Regulation S–B or Regulation S–K (§ 228.601(b)(28) or § 229.601(b)(28) of this chapter, respectively), may be filed in paper under cover of Form SE.

(d) Exhibits to Form N–SAR (§ 274.101 of this chapter), other than the Financial Data Schedule required under Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter), may be filed in paper under cover of Form SE.

* * * * *

19. By amending § 232.901 by adding a note following the introductory text of paragraph (a), by adding a note following paragraph (c)(4), by revising the heading and introductory text of paragraph (d), and by revising paragraph (d)(2), to read as follows:

§ 232.901 Division of Corporation Finance EDGAR Transition.

(a) * * *

Note: Registrants become subject to mandated electronic filing on their phase-in date. Consequently, all documents required to be filed in electronic format pursuant to Rule 101 of Regulation S–T (§ 232.101) filed on or after a registrant's phase-in date must be filed electronically, absent a hardship exemption, even if the transaction to which a filing relates was commenced in paper before the phase-in date and is still in process on the registrant's phase-in date. *See* Rule 101(a)(1)(iii) of Regulation S–T, that provides for optional paper filing of a Form 10–K or 10–KSB if it is the first document filed after a registrant's phase-in date.

* * * * *

(c) * * *

(4) * * *

Note: While companies subject to mandated electronic filing generally may choose to electronically file Schedules 13D and 13G with respect to a paper filer, domestic electronic filers are restricted from doing so with respect to foreign private issuers because EDGAR currently requires an IRS tax identification number to be inserted for the subject company as a prerequisite to acceptance of the filing. Such filings must be made in paper until the EDGAR system is modified to process them electronically.

* * * * *

(d) *Paper Copies of Electronic Filings.* Electronic filers shall submit to the Commission a paper copy of their first electronic filing, as follows:

(1) * * *

(2) The paper copy shall be sent to the following address: OFIS Filer Support, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413. The paper copy shall be received by the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS PAPER DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 901(d) OF REGULATION S–T

* * * * *

20. By amending § 232.902 by adding a note following paragraph (a), by revising the heading and introductory text of paragraph (g), and by revising paragraphs (e) and (g)(2), to read as follows:

§ 232.902 Division of Investment Management EDGAR Transition.

(a) * * *

Note: Registrants become subject to mandated electronic filing on their phase-in date. Consequently, all documents required to be filed in electronic format pursuant to Rule 101 of Regulation S–T (§ 232.101) filed on or after a registrant's phase-in date must be filed electronically, absent a hardship exemption, even if the transaction to which a filing relates was commenced in paper before the phase-in date and is still in process on the registrant's phase-in date. *See* paragraph (e) of this section that provides for optional paper filing of certain filings under Rule 497 under the Securities Act of 1933 (§ 230.497 of this chapter).

* * * * *

(e) *Required electronic filing for Phased-in Filers.* A registrant that is phased in, under either the mandatory electronic filing provisions of paragraphs (a), (b), or (c) or by reassignment under paragraph (d) of this section, shall file electronically all filings which are mandated electronic submissions under Rule 101 of Regulation S–T (§ 232.101 of this chapter) and which are made on or after a registrant's phase-in date, *Provided, however,* that a registrant need not file electronically a filing, after the Registrant's phase-in date, under Rule 497 under the Securities Act of 1933 (§ 230.497 of this chapter) that relates solely to a registration statement or post-effective amendment filed prior to the registrant's phase-in date and is submitted for the purpose of filing the definitive prospectus and/or statement of additional information for that registration statement or amendment. A registrant submitting electronically a Rule 497 filing for the purpose of "stickering" its prospectus and/or statement of additional information need not submit electronically the prospectus and/or statement of additional information to which the "sticker" relates, provided that the text of the prospectus and/or statement of additional information has already been filed electronically as a public document.

* * * * *

(g) *Paper Copies of Electronic Filings.* Electronic filers shall submit to the Commission a paper copy of their first electronic filing, as follows:

(1) * * *

(2) The paper copy shall be sent to the following address: OFIS Filer Support, SEC Operations Center, 6432 General Green Way, Alexandria, Virginia 22312–2413. The paper copy shall be received by the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS PAPER DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 902(g) OF REGULATION S–T

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

21. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

phased in, under either the mandatory electronic filing provisions of paragraphs (a), (b), or (c) or by reassignment under paragraph (d) of this section, shall file electronically all filings which are mandated electronic submissions under Rule 101 of Regulation S–T (§ 232.101 of this chapter) and which are made on or after a registrant's phase-in date, *Provided, however,* that a registrant need not file electronically a filing, after the Registrant's phase-in date, under Rule 497 under the Securities Act of 1933 (§ 230.497 of this chapter) that relates solely to a registration statement or post-effective amendment filed prior to the registrant's phase-in date and is submitted for the purpose of filing the definitive prospectus and/or statement of additional information for that registration statement or amendment. A registrant submitting electronically a Rule 497 filing for the purpose of "stickering" its prospectus and/or statement of additional information need not submit electronically the prospectus and/or statement of additional information to which the "sticker" relates, provided that the text of the prospectus and/or statement of additional information has already been filed electronically as a public document.

* * * * *

(g) *Paper Copies of Electronic Filings.* Electronic filers shall submit to the Commission a paper copy of their first electronic filing, as follows:

(1) * * *

(2) The paper copy shall be sent to the following address: OFIS Filer Support, SEC Operations Center, 6432 General Green Way, Alexandria, Virginia 22312–2413. The paper copy shall be received by the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS PAPER DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 902(g) OF REGULATION S–T

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

21. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

Note: The text of the following form does not and the amendments will not appear in the Code of Federal Regulations.

22. By amending Form S–6 (referenced in § 239.16) by revising Instruction 5 to Instructions as to Exhibits to read as follows:

Instructions and Form

Form S–6

For Registration Under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

5. When any amendment to a registration statement on this form is filed by an electronic filer, a Financial Data Schedule meeting the requirements of Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

23. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

24. By amending § 240.12b–15 by adding three sentences at the end of the section, to read as follows:

§ 240.12b–15 Amendments.

* * * The requirements of the form being amended shall govern the number of copies to be filed in connection with a paper format amendment. Electronic filers satisfy the provisions dictating the number of copies by filing one copy of the amendment in electronic format. *See* Rule 309 of Regulation S–T (§ 232.309 of this chapter).

§ 240.12b–25 [Amended]

25. By amending § 240.12b–25 by removing the parenthetical phrase "(required to be filed on Form 8)" from paragraph (e)(2).

26. By amending § 240.13d–2 by revising paragraph (c), to read as follows:

§ 240.13d–2 Filing of amendments to Schedules 13D or 13G.

* * * * *

(c) The first electronic amendment to a paper format Schedule 13D (§ 240.13d–101) or Schedule 13G (§ 240.13d–102) shall restate the entire text of the Schedule 13D or Schedule 13G, but previously filed paper exhibits to such Schedules are not required to be restated electronically. *See* Rule 102 of Regulation S–T (§ 232.102 of this chapter) regarding amendments to exhibits filed in electronic format.

* * * * *

27. By amending § 240.14a–4 by adding a note following paragraph (a)(3), to read as follows:

§ 240.14a–4 Requirements as to proxy.

(a) * * *

(3) * * *

Note to electronic filers: Electronic filers shall satisfy the filing requirements of Rule 14a–6(a) or (b) (§ 240.14a–6 (a) or (b)) with respect to the form of proxy by filing the form of proxy as an appendix at the end of the proxy statement. Forms of proxy shall not be filed as exhibits or separate documents within an electronic submission.

* * * * *

28. By amending § 240.14a–6 by adding a sentence to the end of paragraph (m), to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(m) * * * The cover page required by this paragraph need not be distributed to security holders.

29. By amending § 240.14a–101 by revising the cover page after the section heading and before the notes, and by revising paragraph (b) of Item 1 and adding a sentence to the end of Instruction 3 to Item 10, to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant [ ]
Filed by a Party other than the Registrant [ ]

Check the appropriate box:
[ ] Preliminary Proxy Statement
[ ] Confidential, for Use of the Commission Only (as permitted by Rule 14a–6(e)(2))
[ ] Definitive Proxy Statement
[ ] Definitive Additional Materials
[ ] Soliciting Material Pursuant to § 240.14a–11(c) or § 240.14a–12

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):
[ ] $125 per Exchange Act Rules 0–11(c)(1)(ii), 14a–6(i)(1), 14a–6(i)(2) or Investment Company Act Rule 20a–1(c).
[ ] $500 per each party to the controversy pursuant to Exchange Act Rule 14a–6(i)(3).

[ ] Fee computed on table below per Exchange Act Rules 14a–6(i)(4) and 0–11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0–11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

[ ] Fee paid previously with preliminary materials.

[ ] Check box if any part of the fee is offset as provided by Exchange Act Rule 0–11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Notes:

* * * * *

Item 1. Date, time and place information.

* * * * *

(b) On the first page of the proxy statement, as delivered to security holders, state the approximate date on which the proxy statement and form of proxy are first sent or given to security holders.

* * * * *

Item 10. Compensation Plans.

* * * * *

Instructions

* * * * *

3. * * * Electronic filers shall file with the Commission a copy of such written plan document in electronic format as an appendix to the proxy statement. It need not be provided to security holders unless it is a part of the proxy statement.

* * * * *

§ 240.14c–3 [Amended]

30. By amending § 240.14c–3 by removing the note following paragraph (b).

31. By amending § 240.14c–5 by adding a sentence at the end of paragraph (h), to read as follows:

§ 240.14c–5 Filing requirements.

* * * * *

(h) * * * The cover page required by this paragraph need not be distributed to security holders.

32. By amending § 240.14c–101 by revising the cover page after the section heading and before the note to read as follows:

§ 240.14c–101 Schedule 14C. Information required in information statement.

Schedule 14C Information

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934 (Amendment No.)

Check the appropriate box:

[ ] Preliminary Information Statement

[ ] Confidential, for Use of the Commission Only (as permitted by Rule 14c–5(d)(2))

[ ] Definitive Information Statement

(Name of Registrant As Specified In Charter)

Payment of Filing Fee (Check the appropriate box):

[ ] $125 per Exchange Act Rules 0–11(c)(1)(ii), or 14c–5(g).

[ ] Fee computed on table below per Exchange Act Rules 14c–5(g) and 0–11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0–11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

[ ] Fee paid previously with preliminary materials.

[ ] Check box if any part of the fee is offset as provided by Exchange Act Rule 0–11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Note:

* * * * *

33. By amending § 240.14e–1 by revising the first sentence of paragraph (e), to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(e) *Electronic filings.* If a bidder is required (or elects to file its tender offer documents in electronic format as provided by Rule 901(c)(1) of Regulation S–T (§ 232.901(c)(1) of this chapter)), the periods of time required by paragraphs (a) and (b) of this section shall be tolled for any period during which it has failed to file in electronic format, absent a hardship exemption (§§ 232.201 and 232.202 of this chapter), the Schedule 14D–1 Tender Offer Statement [§ 240.14d-100 of this chapter], any tender offer material specified in paragraph (a) of Item 11 of that Schedule, and any amendments thereto. * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

34. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted:

* * * * *

§ 249.208a [Amended]

35. By amending Form 8–A (referenced in § 249.208a), Instruction II.2 of Instructions as to Exhibits by revising the phrase "pursuant to Instruction I above," to read "pursuant to Instruction 3, above,".

Note: The text of Form 8–A is not and the amendment will not appear in the Code of Federal Regulations.

§ 240.308 [Amended]

36. By amending Form 8–K (referenced in § 240.308) by revising the first sentence of paragraph (a)(4)(iv) of Item 7, to read as follows:

Note: The text of Form 8–K is not and the amendment will not appear in the Code of Federal Regulations.

Form 8–K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

Item 7. Financial Statements and Exhibits.

* * * * *

(a) * * *

(4) * * *

(iv) file the required financial statements for an acquired business as an amendment to this Form as soon as practicable, but not later than 60 days after the report on Form 8–K must be filed. * * *

* * * * *

37. By amending § 249.310 by revising the section heading and by removing the last sentence of the section, to read as follows:

§ 249.310 Form 10–K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

§ 249.310 [Amended]

38. By amending Form 10–K (referenced in § 249.310) by removing the last sentence of General Instruction A and by revising the second sentence of General Instruction G.(3), to read as follows:

Note: The text of Form 10–K is not and the amendment will not appear in the Code of Federal Regulations.

Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

General Instructions

* * * * *

G. Information to be Incorporated by Reference.

* * * * *

(3) * * * However, if such definitive proxy statement or information statement is not filed with the Commission in the 120-day period or is not required to be filed with the Commission by virtue of Rule 3a12–3(b) under the Exchange Act, the Items comprising the Part III information must be filed as part of the Form 10–K, or as an amendment to the Form 10–K, not later than the end of the 120-day period. * * *

* * * * *

§ 249.310 [Amended]

39. By amending Form 10–KSB (referenced in § 249.310b) by revising the last sentence of General Instruction E.3, to read as follows:

Note: The text of Form 10–KSB is not and the amendment will not appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

General Instructions

* * * * *

E. * * *

3. * * * If the definitive proxy or information statement is not filed within the 120-day period, the information called for in Part III information must be filed as part of the Form 10–KSB, or as an amendment to the Form 10–KSB, not later than the end of the 120-day period.

* * * * *

§ 249.311 [Amended]

40. By amending Form 11–K (referenced in § 249.311) by revising General Instruction E to read as follows:

Note: The text of Form 11–K is not and the amendment will not appear in the Code of Federal Regulations.

Form 11–K

For Annual Reports of Employee Stock Purchase, Savings and Similar Plans Pursuant to Section 15(d) of the Securities Exchange Act of 1934

General Instructions

* * * * *

E. *Electronic Filers.*

§ 249.310 [Amended]

38. By amending Form 10–K (referenced in § 249.310) by removing the last sentence of General Instruction A and by revising the second sentence of General Instruction G.(3), to read as follows:

Note: The text of Form 10–K is not and the amendment will not appear in the Code of Federal Regulations.

Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

General Instructions

* * * * *

G. Information to be Incorporated by Reference.

* * * * *

(3) * * * However, if such definitive proxy statement or information statement is not filed with the Commission in the 120-day period or is not required to be filed with the Commission by virtue of Rule 3a12–3(b) under the Exchange Act, the Items comprising the Part III information must be filed as part of the Form 10–K, or as an amendment to the Form 10–K, not later than the end of the 120-day period. * * *

* * * * *

§ 249.310 [Amended]

39. By amending Form 10–KSB (referenced in § 249.310b) by revising the last sentence of General Instruction E.3, to read as follows:

Note: The text of Form 10–KSB is not and the amendment will not appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

General Instructions

* * * * *

E. * * *

3. * * * If the definitive proxy or information statement is not filed within the 120-day period, the information called for in Part III information must be filed as part of the Form 10–KSB, or as an amendment to the Form 10–KSB, not later than the end of the 120-day period.

* * * * *

§ 249.311 [Amended]

40. By amending Form 11–K (referenced in § 249.311) by revising General Instruction E to read as follows:

Note: The text of Form 11–K is not and the amendment will not appear in the Code of Federal Regulations.

Form 11–K

For Annual Reports of Employee Stock Purchase, Savings and Similar Plans Pursuant to Section 15(d) of the Securities Exchange Act of 1934

General Instructions

* * * * *

E. *Electronic Filers.*

(a) Plans subject to ERISA that file plan financial statements and schedules prepared in accordance with the financial reporting requirements of ERISA may file the Form 11–K either in paper or in electronic format, at the filer's option. See Rule 101(b)(3) of Regulation S–T (§ 232.101(b)(3) of this chapter).

(b) Financial Data Schedules are not required to be submitted in connection with annual reports on this form. See Item 601(c)(1) of Regulations S–K and S–B (§ 229.601(c)(1) and § 228.601(c)(1). respectively).

§ 249.322 [Amended]

41. By amending Form 12b–25 (referenced in § 249.322 of this chapter) by amending the second sentence of Instruction 5 by revising the parenthetical phrase "(§ 232.12(b) of this chapter)" to read "(§ 232.13(b) of this chapter)".

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

42. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t unless otherwise noted.

§ 250.111 [Removed]

43. By removing § 250.111.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

44. The authority citation for part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t.

§ 259.56 [Amended]

45. By amending Form U5B (referenced in § 259.5b) by revising Instructions for Exhibit B, to read as follows:

Note: The text of Form U5B is not and the amendment will not appear in the Code of Federal Regulations.

Instructions and Form

Form U5B

Registration Statement Filed Pursuant to Section 5 of the Public Utility Holding Company Act of 1935

* * * * *

Exhibits

* * * * *

Instructions

* * * * *

Exhibit B. With respect to the registrant and each subsidiary company thereof, furnish a copy of the charter, articles of incorporation, trust agreement, voting trust agreement, or other fundamental document of organization, and a copy of its by-laws, rules and regulations, or other instruments corresponding thereto. If such documents do not set forth fully the rights, priorities and preferences of the holders of each class of capital stock described in the answer to Item 8(b) and those of the holders of any warrants, options or other securities described in the answer to Item 8(d), and of any limitations on such rights, there shall also be included the text appearing on each certificate or a copy of each resolution or other document establishing or defining such rights and limitations. The text of each such document shall be in the amended form effective at the date of filing the registration statement or shall be accompanied by copies of any amendments to it then in effect.

* * * * *

§ 259.5s [Amended]

46. By amending Form U5S (referenced in § 259.5s) by revising Exhibit B, to read as follows:

Note: The text of Form U5S is not and the amendment will not appear in the Code of Federal Regulations.

Instructions and Form

Form U5S

Annual Report

* * * * *

General Instructions

* * * * *

Exhibits

* * * * *

Exhibit B. With respect to the parent holding company and each subsidiary company thereof, a copy of the charter, articles of incorporation, trust agreement, voting trust agreement, or other fundamental document of organization, and a copy of its bylaws, rules and regulations, or other instruments corresponding thereto. If such documents do not set forth fully the rights, priorities and preferences of the holders of each outstanding class of capital stock and those of the holders of any warrants, options or other rights to acquire capital stock, and of any limitations on such rights, there shall also be included the text appearing on each certificate or a copy of each resolution or other document establishing or defining such rights and limitations. The text of each such document shall be in the amended form effective at the date of filing of the report or shall be accompanied by the text of any amendments to it then in effect.

* * * * *

§ 259.101 [Amended]

47. By amending Form U–1 (referenced in § 259.101) by revising Instruction A to Instructions as to Exhibits, to read as follows:

Note: The text of Form U–1 is not and the amendment will not appear in the Code of Federal Regulations.

Instructions and Form

Form U–1

Application or Declaration Under the Public Utility Holding Company Act of 1935

* * * * *

Instructions as to Exhibits

* * * * *

A. The constituent instruments, or in the case of certificates, the text appearing on the constituent instrument, defining or limiting the rights of the holders of each class of securities proposed to be issued, sold, acquired, guaranteed, assumed, or modified, including any amendments thereto presently proposed. The text of tentative drafts, as a minimum, shall be filed with the original statement.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

48. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

§ 260.0–12 [Removed]

49. Section 260.0–12 is removed.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

50. The general authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39, unless otherwise noted;

51. By revising section 270.20a–4 to read as follows:

§ 270.20a–4 Exhibit Required for Certain Transactions: Electronic Filings.

If action is to be taken with respect to any transaction described in Items 11, 12, or 14 of Schedule 14A (§ 240.14a–101), and the statement on Schedule 14A or Schedule 14C (§ 240.14c–101) is filed electronically, a Financial Data Schedule meeting the requirements of Rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter) shall be included as an exhibit.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

52. The authority citation for part 269 continues to read as folllows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78*ll*(d), unless otherwise noted.

53. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 80a–1, *et seq.*, unless otherwise nqted.

§§ 239.64, 249.444, 259.603, 269.8 and 274.403 [Amended]

54. By amending Form SE (referenced in §§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter) by revising General Instruction II.A to read as follows:

Note: The text of Form SE is not and the amendment will not appear in the Code of Federal Regulations.

Form SE

Form For Submission of Paper Format Exhibits By Electronic Filers

* * * * *

General Instructions to Form SE

* * * * *

II. Preparation and Filing of Form

A. Four complete copies of Form SE and three complete copies of exhibits filed thereunder shall be submitted in paper format.

* * * * *

§§ 239.65, 249.447, 259.604, 269.10 and 274.404 [Amended]

55. By amending Form TH (referenced in §§ 239.65, 249.447, 259.604, 269.10, and 274.404 of this chapter) by revising General Instruction 2, to read as follows:

Note: The text of Form TH is not and the amendment will not appear in the Code of Federal Regulations.

Form TH

Notification of Reliance on Temporary Hardship Exemption

* * * * *

General Instructions

* * * * *

2. Four signed copies of this form shall accompany the paper format document and shall be filed within one business day after the date upon which the document filed in paper originally was to be filed electronically.

* * * * *

Dated: July 8, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17104 Filed 7–14–94; 8:45 am]

BILLING CODE 8010–01–P

Friday
July 15, 1994

Part III

Environmental Protection Agency

40 CFR Part 61
National Emissions Standards for Hazardous Air Pollutants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–5011–1]

RIN 2060–AE23

National Emissions Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is rescinding 40 CFR part 61, subpart T (subpart T) as it applies to owners and operators of uranium mill tailings disposal sites licensed by the Nuclear Regulatory Commission (NRC) or an affected Agreement State (Agreement States). As required by section 112(d)(9) of the Clean Air Act as amended, EPA has determined that the NRC regulatory program protects public health with an ample margin of safety to the same level as would implementation of subpart T. Subpart T is a National Emission Standard for Hazardous Air Pollutants (NESHAPs) which was published on December 15, 1989 and which regulates emissions of radon-222 into the ambient air from uranium mill tailings disposal sites. Subpart T continues to apply to unlicensed uranium mill tailings disposal sites currently regulated under subpart T that are under the control of the Department of Energy (DOE).

DATES: This rule is effective June 29, 1994. The provisions in this rule will be applied immediately to all affected facilities including existing sources. Under section 307(b)(1) of the Clean Air Act, judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication of this rule. Under section 307(b)(2) of the Act, the provisions which are the subject of today's rule will not be subject to judicial review in any civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Gale C. Bonanno, Risk Assessment and Air Standards Branch, Criteria and Standards Division, 6602J, Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, D.C. 20460 (202) 233–9219.

SUPPLEMENTARY INFORMATION:

Docket

Docket A–91–67 contains the rulemaking record. The docket is available for public inspection between the hours of 8 a.m. and 4 p.m., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

Table of Contents

I. Background

A. Description of Uranium Mill Tailings
B. Regulatory History
C. Clean Air Act Amendments of 1990
D. Memorandum of Understanding (MOU) between EPA, NRC and affected Agreement States
E. The Settlement Agreement

II. Rationale for Final Rule to Rescind 40 CFR Part 61 Subpart T for NRC and Agreement State Licensees

A. The Regulatory Scheme Under UMTRCA
B. Clean Air Act Amendments of 1990: Section 112(d)(9) ("Simpson Amendment")
C. Memorandum of Understanding (MOU)
D. Settlement Agreement
E. Actions by NRC and EPA Pursuant to the MOU and Settlement Agreement
1. EPA Regulatory Actions
2. NRC Regulatory Action
3. Amendment of NRC and Agreement State Licenses

III. Final Rule to Rescind 40 CFR Part 61 Subpart T for NRC and Agreement State Licensees

A. EPA Determination under CAA Section 112(d)(9)
1. Background
2. EPA's UMTRCA Standards
3. NRC's Conforming Regulations
4. License Amendments
5. Judicial or Administrative Challenges
B. Reconsideration Provisions
1. December 31, 1991 Proposed Rule to Rescind subpart T
2. Reconsideration Options
3. Reconsideration Provisions Adopted Today

IV. Discussion of Comments and Response to Comments From NPR

V. Miscellaneous

A. Disposition of Pending Judicial Challenges and Petitions for Reconsideration
B. Paperwork Reduction Act
C. Executive Order 12866
D. Regulatory Flexibility Analysis

1. Background

A. Description of Uranium Mill Tailings

Uranium mill tailings are sand-like wastes that result from the processing of uranium ore. Tailings are stored in large surface impoundments, called piles, in amounts from less than one million tons to over thirty million tons, over areas that may cover hundreds of acres. Most piles are located in the Western United States, and all piles emit radon gas, a decay product of radium in the waste material resulting from the processing of ore to recover uranium at the uranium mills.

B. Regulatory History

To deal specifically with the risks associated with these tailings, Congress passed the Uranium Mill Tailings Radiation Control Act (UMTRCA) in 1978 (42 U.S.C. 2022, 7901–7942). In enacting UMTRCA, Congress found that uranium mill tailings may pose a potential and significant radiation health hazard to the public, and that every reasonable effort should be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings. See 42 U.S.C. 7901(a). Under UMTRCA, two programs were established to protect public health and the environment from the hazards associated with uranium mill tailings. One program (Title I) required the Department of Energy (DOE) to conduct the necessary remedial actions at designated inactive uranium mill tailing sites to achieve compliance with the general environmental standards to be promulgated by EPA. These sites were generally abandoned uranium processing sites for which a license issued by the NRC or its predecessor, the Atomic Energy Commission (AEC), was not in effect on January 1, 1978. The other program (Title II) pertained to active sites, which are those that are licensed by the NRC or an affected Agreement State. Requirements for licensed sites include the final disposal of tailings, including the control of radon after milling operations cease. UMTRCA also required that EPA promulgate standards for these licensed sites, including standards that protect human health and the environment in a manner consistent with standards established under Subtitle C of the Solid Waste Disposal Act, as amended. The NRC, or an Agreement State, is responsible for implementing the EPA standards at licensed uranium milling sites.

As part of NRC's 1982 authorization and appropriations, Congress amended UMTRCA on January 4, 1983. Public Law 97–415, sections 18(a) and 22(b), *reprinted in* 2 1982 U.S. Code Cong. & Admin. News (96 Stat.) 2077 and 2080. As partially amended thereby, EPA was required to promulgate standards of general applicability for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material as defined under section 11e(2)

of the AEA, e.g., uranium mill tailings. Requirements established by the NRC with respect to byproduct material must conform to the EPA standards. Any requirements of such standards adopted by the NRC shall be amended as the NRC deems necessary to conform to EPA's standards. In establishing such standards, the Administrator was to consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate. See 42 U.S.C. 2022(b)(1).

As promulgated by EPA under subpart D of 40 CFR part 192 in 1983 and implemented by NRC pursuant to its regulations at 10 CFR part 40, appendix A, a Title II site licensed by NRC or an Agreement State, could indefinitely continue to emit radon at levels that could result in risks higher than allowed under the CAA. It was this possibility which compelled EPA to promulgate subpart T of 40 CFR part 61 under CAA section 112. In addition, the UMTRCA regulations called for an impoundment design that would achieve compliance with the 20 pCi/m^2-s flux standard for 1,000 years, or at least 200 years, but prior to the recent EPA amendments did not include any requirement that monitoring occur to verify the efficacy of the design.

On October 16, 1985, NRC promulgated rules at 10 CFR part 40, appendix A to conform NRC's regulations issued five years earlier to the provisions of EPA's general UMTRCA standards other than those affecting groundwater protection at 40 CFR part 192 (50 FR 41852). NRC completed conforming amendments for groundwater protection in appendix A of 10 CFR part 40 in 1987.

Neither the UMTRCA standards promulgated by EPA in 1983 nor the NRC standards promulgated in 1980 and amended in 1985, established compliance schedules to ensure that non-operational tailings piles would be closed, and that the 20 pCi/m^2-s standard would be met, within a reasonable period of time. Moreover, the EPA standards and NRC criteria also did not require monitoring to ensure compliance with the flux standard. 50 FR 41852 (October 16, 1985). To rectify these shortcomings of the then current EPA and NRC programs regulating uranium mill tailings, EPA promulgated standards under Section 112 of the CAA on October 31, 1989, to ensure that the piles would be closed in a timely manner with monitoring.

On December 15, 1989, EPA published national standards regulating

of the AEA, e.g., uranium mill tailings. Requirements established by the NRC with respect to byproduct material must conform to the EPA standards. Any requirements of such standards adopted by the NRC shall be amended as the NRC deems necessary to conform to EPA's standards. In establishing such standards, the Administrator was to consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate. See 42 U.S.C. 2022(b)(1).

As promulgated by EPA under subpart D of 40 CFR part 192 in 1983 and implemented by NRC pursuant to its regulations at 10 CFR part 40, appendix A, a Title II site licensed by NRC or an Agreement State, could indefinitely continue to emit radon at levels that could result in risks higher than allowed under the CAA. It was this possibility which compelled EPA to promulgate subpart T of 40 CFR part 61 under CAA section 112. In addition, the UMTRCA regulations called for an impoundment design that would achieve compliance with the 20 pCi/m^2-s flux standard for 1,000 years, or at least 200 years, but prior to the recent EPA amendments did not include any requirement that monitoring occur to verify the efficacy of the design.

On October 16, 1985, NRC promulgated rules at 10 CFR part 40, appendix A to conform NRC's regulations issued five years earlier to the provisions of EPA's general UMTRCA standards other than those affecting groundwater protection at 40 CFR part 192 (50 FR 41852). NRC completed conforming amendments for groundwater protection in appendix A of 10 CFR part 40 in 1987.

Neither the UMTRCA standards promulgated by EPA in 1983 nor the NRC standards promulgated in 1980 and amended in 1985, established compliance schedules to ensure that non-operational tailings piles would be closed, and that the 20 pCi/m^2-s standard would be met, within a reasonable period of time. Moreover, the EPA standards and NRC criteria also did not require monitoring to ensure compliance with the flux standard. 50 FR 41852 (October 16, 1985). To rectify these shortcomings of the then current EPA and NRC programs regulating uranium mill tailings, EPA promulgated standards under Section 112 of the CAA on October 31, 1989, to ensure that the piles would be closed in a timely manner with monitoring.

On December 15, 1989, EPA published national standards regulating radionuclide emissions to the ambient air from several source categories, including non-operational sites used for the disposal of uranium mill tailings. (54 FR 51654). These sites are either under the control of the DOE pursuant to Title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, 42 USC 7901 *et. seq.*, or are under the control of NRC or Agreement State-licensees pursuant to Title II of UMTRCA. These standards—subpart T of 40 CFR part 61 (subpart T)—were promulgated pursuant to the authority of Clean Air Act (CAA or Act) section 112 as it existed in 1989.

Prior to today's action, subpart T of 40 CFR part 61, limited radon-222 emissions to the ambient air from non-operational uranium mill tailings disposal sites licensed by the NRC or an affected Agreement State. Subpart T required that these sites, which consist of large (i.e., numerous acre) impoundments or piles, comply with a radon flux standard of 20 pCi/m^2-s. 40 CFR 61.222(a). Moreover, compliance must be achieved within two years of when the site becomes non-operational, 40 CFR 61.222(b), which for piles which had ceased operation prior to the time of promulgation was no later than December 15, 1991. While at the time of promulgation EPA recognized that many sources might not be able to achieve this date, EPA was constrained by then existing CAA section 112(c)(1)(B)(ii) which allows a maximum of two years for facilities to come into compliance. EPA stated that for those sites which could not meet the two-year date, the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. See 54 FR 51683. Subpart T also called for monitoring and recordkeeping to establish and demonstrate compliance. See 40 CFR 61.223 and 61.224.

Subpart T was part of a larger promulgation of radionuclide NESHAPs that represent the Agency's application of the policy for regulating pollutants under then existing CAA section 112, which was first announced in the benzene NESHAPs. 54 FR 38044 (September 14, 1989). The NESHAPs policy utilized a two-step approach. In the first step, EPA considered the lifetime risk to the maximally exposed individual, and found that it is presumptively acceptable if it is no higher than approximately one in ten thousand. This presumptive level provides a benchmark for judging the acceptability of a category of emissions. This first step also considers other health and risk factors such as projected incidence of cancer, the estimated number of persons exposed within each individual lifetime risk range, the weight of evidence presented in the risk assessment, and the estimated incidence of non-fatal cancer and other health effects. After considering all of this information, a final decision on a safe level of acceptable risk is made. This becomes the starting point for the second step, determining the ample margin of safety.

In the second step, EPA strives to provide protection for the greatest number of persons possible to an individual lifetime risk level no higher than approximately one in one million. In this step, the Agency sets a standard which provides an ample margin of safety, again considering all of the health risk and other health information considered in the first step, as well as additional factors such as costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.

EPA noted that standards it had already promulgated pursuant to UMTRCA (42 U.S.C. 2022, 7901–7942) would eventually limit radon emissions from those sites to a flux of 20 pCi/m^2-s (see 40 CFR part 192, subpart D), and thus EPA referred to that level as "baseline." EPA's risk assessment revealed that compliance with the 20 pCi/m^2-s baseline would result in an estimated lifetime risk to the maximally exposed individual of approximately 1×10^{-4}, a level EPA determined to be safe under the first step of the analysis. EPA further concluded in the second step, which considers additional factors such as cost and technological feasibility, that the baseline level also provided an ample margin of safety.

Even though EPA determined that the baseline was protective of public health with an ample margin of safety, EPA still found it was necessary to promulgate subpart T. This was because the baseline assumed compliance with the UMTRCA regulations even though those regulations did not require that compliance occur in the foreseeable future and, in fact, many sites were not proceeding towards the baseline level at the time subpart T was promulgated. In other words, EPA promulgated subpart T to address the timing issue, which was not addressed in the UMTRCA regulations.

The primary subpart T standard is the requirement that radon-222 emissions not exceed a flux of 20 pCi/m^2-s. 40 CFR 61.222(a). Additionally, it requires that, once a uranium mill tailings pile or impoundment ceases to be operational, it must be disposed of and brought into compliance with the emission limit within two years of the effective date of

the standard (by December 15, 1991) or within two years of the day it ceases to be operational, whichever is later. Lastly, it requires monitoring of the disposed pile to demonstrate compliance with the radon emission limit. See 40 CFR 61.223 and 61.224. In its 1989 action, EPA recognized that even though NRC implements general EPA standards (promulgated under UMTRCA) which also regulate these sites and call for compliance with a 20 pCi/m²-s flux standard (see 40 CFR part 192, subpart D), the UMTRCA regulatory program did not answer the critical timing concern addressed by subpart T.

The existing UMTRCA regulations set no time limits for disposal of the piles. Some piles have remained uncovered for decades emitting radon. Although recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years.

54 FR at 51683. However, due to then-existing CAA section 112(c)(1)(B)(ii), EPA was constrained to requiring compliance with the 20 pCi/m²-s baseline within two years, a date the Agency recognized many sites might find impossible to meet. EPA announced that those situations could be dealt with through site-specific enforcement agreements under CAA section 113. Because EPA felt constrained by the CAA as it existed at that time, EPA stated that for those sites the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. See 54 FR 51683. By so doing, subpart T in effect mandated that the cover to meet that emissions level be installed as expeditiously as practicable considering technological feasibility.

The numerical radon emission limit of subpart T is the same as the UMTRCA standard at 40 CFR part 192, subpart D (subpart D) (although under UMTRCA, the limit is to be met through proper design of the disposal impoundment, and is to be implemented by DOE and NRC for the individual sites, while under the CAA, the standard is an emissions limit with compliance established by EPA through monitoring). However, the two year disposal requirement and the radon monitoring requirement were not separately required by the then existing UMTRCA regulations.

EPA amended 40 CFR part 192, subpart D on November 15, 1993, (58 FR 60340) to fill a specific regulatory gap with respect to timing and monitoring. Under subpart D, sites are now required to construct a permanent radon barrier pursuant to a design to achieve compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). EPA announced its goal that this occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU between EPA, NRC and the affected Agreement States (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles. The new requirement for verifying the flux with monitoring is meant to assure the efficacy of the design of the permanent radon barrier following construction.

Section 84a(2) of the Atomic Energy Act requires NRC to conform its regulations to EPA's regulations promulgated under UMTRCA. As noted above, the then existing NRC criteria while providing a comprehensive response to EPA's general UMTRCA standards did not compel sites to proceed to final closure by a certain date nor did they require monitoring to confirm the efficacy of the design of the cover. NRC proposed uranium mill tailings regulations to conform the NRC requirements to EPA's proposed amended standards at 40 CFR part 192 subpart D. 58 FR 58657 (November 3, 1993). The final NRC regulations amend Criterion 6 and add a new Criterion 6A together with new definitions in the Introduction to appendix A to part 40 of title 10 of the CFR. (59 FR 28220, June 1, 1994).

These CAA and UMTRCA programs duplicate each other by creating dual regulatory oversight, including independent procedural requirements, while seeking to ensure compliance with the same numerical 20 pCi/m²-s flux standard. Concern over this duplication inspired several petitions for reconsideration, most notably from NRC, the American Mining Congress (AMC) and Homestake Mining Co. It was also alleged that subpart T was unlawful because it was physically impossible for some sites to come into compliance with subpart T in the time required. While those petitions remained pending before EPA (at least in part), EPA has taken several actions to address the issues they raised, including publishing the proposal to rescind subpart T, as well as the Final Rule to amend 40 CFR part 192, subpart D (UMTRCA regulations) and a Final Rule staying subpart T pending the conclusion of this rulemaking.

C. Clean Air Act Amendments of 1990

After promulgation of subpart T (and receipt of reconsideration petitions), the Clean Air Act was substantially amended in November 1990. Included in the amended Act was an amendment that speaks directly to the duplication issue. Newly enacted section 112(d)(9) provides that no standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under section 112 if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health. This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is protected with an ample margin of safety.

Moreover, Congress expressed sensitivity to the special compliance problems of uranium mill tailings sites through new section 112(i)(3). This provision provides an additional 3-year extension to mining waste operations (e.g., uranium mill tailings) if the 4 years allowed (including a one year extension) for compliance with standards promulgated under the amended section 112 is insufficient to dry and cover the mining waste (thereby controlling emissions).

D. Memorandum of Understanding (MOU) Between EPA, NRC and Affected Agreement States

In July of 1991, EPA, NRC and the affected Agreement States entered into discussions over the dual regulatory programs established under UMTRCA and the CAA. In October 1991, those discussions resulted in a Memorandum of Understanding (MOU) between EPA, NRC and the Agreement States which outlines the steps each party will take to both eliminate regulatory redundancy and to ensure uranium mill tailings piles are closed as expeditiously as practicable. See 56 FR 55434 (MOU reproduced as part of proposal to stay subpart T); see also 56 FR 67537 (final rule to stay subpart T). The primary purpose of the MOU is to ensure that owners of uranium mill tailings disposal sites that have ceased operation, and owners of sites that will cease operation in the future, bring those piles into compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) with the goal that all current disposal sites be closed and in compliance with the radon emission standard by the end of 1997, or within seven years of the date on which existing operations and standby sites enter disposal status. This goal comports with Congress's concern over timing as reflected in CAA section 112(i)(3), as amended.

E. The Settlement Agreement

As contemplated by the MOU, on December 31, 1991, EPA took final action to stay and proposed rescission of subpart T under section 112(d)(9), and issued an advance notice of proposed rulemaking under UMTRCA. See 55 FR 67537, 67561 and 67569. In order to preserve its rights, EDF filed a lawsuit challenging the legality of the stay. *EDF v. Reilly*, No. 92–1082 (D.C. Cir.). Litigation had previously been filed by EDF, NRDC, AMC, Homestake and others, challenging subpart T. *AMC, et al. v. EPA*, Nos. 90–1058, 90–1063, 90–1068, and 90–1074 (D.C. Cir.). NRC, AMC and Homestake had also filed an administrative petition for reconsideration of subpart T.

Discussions continued with the litigants and NRC, and in February 1993, an agreement was reached to settle the pending litigation and the administrative proceeding, avoid potential future litigation, and otherwise agree to a potential approach to regulation of NRC-licensed non-operational uranium mill tailings disposal sites. See 58 FR 17230 (April 1, 1993) (notice announcing settlement agreement under CAA section 113(g)). NRC agreed in principle with the agreement by letter.

The settlement agreement adds comprehensive detail to, and thereby continues, the approach set forth in the MOU. Actions implemented under the settlement agreement should result in the expeditious control of radon-222 emissions at non-operational uranium mill tailings disposal sites without the delays and resource expenditures engendered by litigation and contentious administrative process. This enables EPA to satisfy the criteria of section 112(d)(9) that EPA find, by rule, that the NRC regulatory program protects public health with an ample margin of safety. It does this, in part, by providing for changing EPA's UMTRCA regulations such that public health would be as well protected under UMTRCA as would implementation of subpart T under the CAA.

II. Rationale for Final Rule To Rescind 40 CFR Part 61 Subpart T for NRC and Agreement State Licensees

In light of the new statutory authority provided EPA by section 112(d)(9) of the Clean Air Act as amended, EPA met with NRC and the affected Agreement

seven years of the date on which existing operations and standby sites enter disposal status. This goal comports with Congress's concern over timing as reflected in CAA section 112(i)(3), as amended.

E. The Settlement Agreement

As contemplated by the MOU, on December 31, 1991, EPA took final action to stay and proposed rescission of subpart T under section 112(d)(9), and issued an advance notice of proposed rulemaking under UMTRCA. See 55 FR 67537, 67561 and 67569. In order to preserve its rights, EDF filed a lawsuit challenging the legality of the stay. *EDF* v. *Reilly*, No. 92–1082 (D.C. Cir.). Litigation had previously been filed by EDF, NRDC, AMC, Homestake and others, challenging subpart T. *AMC, et al.* v. *EPA*, Nos. 90–1058, 90–1063, 90–1068, and 90–1074 (D.C. Cir.). NRC, AMC and Homestake had also filed an administrative petition for reconsideration of subpart T.

Discussions continued with the litigants and NRC, and in February 1993, an agreement was reached to settle the pending litigation and the administrative proceeding, avoid potential future litigation, and otherwise agree to a potential approach to regulation of NRC-licensed non-operational uranium mill tailings disposal sites. See 58 FR 17230 (April 1, 1993) (notice announcing settlement agreement under CAA section 113(g)). NRC agreed in principle with the agreement by letter.

The settlement agreement adds comprehensive detail to, and thereby continues, the approach set forth in the MOU. Actions implemented under the settlement agreement should result in the expeditious control of radon-222 emissions at non-operational uranium mill tailings disposal sites without the delays and resource expenditures engendered by litigation and contentious administrative process. This enables EPA to satisfy the criteria of section 112(d)(9) that EPA find, by rule, that the NRC regulatory program protects public health with an ample margin of safety. It does this, in part, by providing for changing EPA's UMTRCA regulations such that public health would be as well protected under UMTRCA as would implementation of subpart T under the CAA.

II. Rationale for Final Rule To Rescind 40 CFR Part 61 Subpart T for NRC and Agreement State Licensees

In light of the new statutory authority provided EPA by section 112(d)(9) of the Clean Air Act as amended, EPA met with NRC and the affected Agreement States to determine whether, with certain modifications to its regulatory program under UMTRCA, the NRC regulatory program might provide an ample margin of safety. If so, subpart T would be rendered superfluous and, therefore, needlessly duplicative and burdensome such that rescission pursuant to CAA section 112(d)(9) would be appropriate.

In applying the risk methodology for CAA section 112 to the risk assessment for subpart T, EPA has already determined that the baseline that would result once the 20 pCi/m²-s UMTRCA standard is met protects public health with an ample margin of safety. Thus, since the regulatory program implemented by NRC assures that sites will achieve the baseline (20 pCi/m²-s) as soon as practicable considering technological feasibility and factors beyond the control of the licensee, the NRC program protects the public to the same extent as subpart T, and subpart T is not necessary for these facilities. More specifically, appropriate modifications to the UMTRCA regulatory scheme as implemented by NRC and the affected Agreement States to ensure specific, enforceable closure deadlines and monitoring requirements such that compliance with the baseline occurs as expeditiously as practicable considering technological feasibility and factors beyond the control of the licensee, protect public health with an ample margin of safety. In so concluding, EPA relies wholly upon the risk analysis it conducted in promulgating subpart T. EPA is not revisiting that analysis here.

A. The Regulatory Scheme Under UMTRCA

As a supplement to the Atomic Energy Act of 1954, as amended, UMTRCA (42 U.S.C. 2022, 7901–7942) was enacted to comprehensively address the dangers presented by uranium mill tailings, including their disposal:

> Uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and * * * the protection of the public health, safety, and welfare * * * require[s] that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment * * *.

42 U.S.C. 7901(a); see *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985), *cert. denied*, 426 U.S. 1158 (1986). As to uranium mill tailings disposal sites in particular, UMTRCA gives the Department of Energy (DOE) the responsibility to clean up and dispose of certain sites (i.e., Title I), and gives NRC the responsibility for regulating those sites that are owned and operated by its licensees (i.e., Title II). EPA is responsible for promulgating the generally applicable environmental standards to be implemented by both NRC and DOE. 42 U.S.C. 2022(a), 7911–7924; *AMC*, 724 F.2d at 621. EPA published its final UMTRCA regulations on December 15, 1982 for Title I sites and on September 30, 1983 for Title II sites. 48 FR 590 and 48 FR 45926 (codified at 40 CFR part 192).

Parts of EPA's final UMTRCA regulations are directed to the permanent disposal of uranium mill tailings. See 40 CFR part 192, subpart D. Among the requirements of subpart D is the mandate that radon releases from the disposal sites not exceed a flux of 20 pCi/m²-s. 40 CFR 192.32 (a) and (b). Other aspects of subpart D pertain to groundwater, monitoring, design, and duration of closure. See 40 CFR 192.32 and 192.33. With the exception of the groundwater provisions at 40 CFR 192.20(a)(2)–(3), applicable to Title I sites, all aspects of EPA's regulations were upheld by the Tenth Circuit in *AMC* v. *Thomas*. 772 F.2d at 640. EPA is currently engaged in rulemaking to address the court's remand of the Title I groundwater provisions.

Because NRC implements EPA's general UMTRCA standards for its licensees (as do its Agreement States), it has promulgated its own implementing regulations in the form of "criteria." *See generally* 10 CFR part 40, appendix A. While these criteria set forth a variety of specific requirements—financial, technical, and administrative—to govern the final reclamation (i.e., closure) design for each disposal site, they also provide for "site-specific" flexibility by authorizing alternatives that are at least as stringent as EPA's general standards and NRC's criteria, "to the extent practicable" as provided in section 84c of the Atomic Energy Act of 1954, as amended. 10 CFR part 40, appendix A, Introduction.

Overall, NRC's implementation criteria set forth a rigorous program governing the reclamation of the disposal sites so that closure will (1) last for 1,000 years to the extent reasonable, but in any event at least 200 years, and (2) limit radon release to 20 pCi/m²-s throughout that period. The design must be able to withstand extreme weather and other natural forces. Upon review, EPA believed the NRC criteria comprise a comprehensive response to EPA's general standards at 40 CFR part 192, subpart D. However, as noted above, nothing in either EPA's 1983 general standards or NRC's 1985 amended

implementing criteria compelled sites to proceed towards final closure by a certain date. This was the reason for EPA's decision in 1989 to promulgate the subpart T NESHAPs under the CAA. Moreover, neither EPA's general UMTRCA regulations, nor NRC's implementing criteria previously required appropriate monitoring to ensure compliance with the 20 pCi/m^2-s standard.

B. Clean Air Act Amendments of 1990: Section 112(d)(9) ("Simpson Amendment")

The purpose of this provision is to preserve governmental resources and avoid needless, burdensome, and potentially contradictory CAA regulations. Specifically, section 112(d)(9) makes explicit that EPA need not regulate radionuclides under section 112 of the CAA for those radionuclide sources that are sufficiently regulated by NRC or its Agreement States (under the Atomic Energy Act or its component Acts, such as UMTRCA). More particularly, section 112(d)(9) allows EPA to decline to regulate under section 112 if the Administrator determines "by rule, and after consultation with the [NRC]," that NRC's regulatory program for a particular source "category or subcategory provides an ample margin of safety to protect the public health."

As EPA interprets section 112(d)(9), the Agency may rescind the subpart T NESHAP as it applies to non-operational uranium mill tailings disposal facilities licensed by NRC or an affected Agreement State *if* the Agency (1) consults with NRC, (2) engages in public notice and comment rulemaking, and (3) finds that the separate NRC regulatory program provides an equivalent level of public health protection (i.e., an ample margin of safety) as would implementation of subpart T. While this rulemaking may commence prior to final development of NRC's regulatory program, that program *must* fully satisfy the statute at the time EPA takes final action. In so doing, EPA must find that the NRC regulatory program satisfies the CAA standard, not that full and final implementation of that program has already successfully occurred.

C. Memorandum of Understanding (MOU)

EPA, NRC and the affected Agreement States entered intensive discussions resulting in the execution of a Memorandum of Understanding (MOU), a copy of which was printed at the end of the proposed rule to rescind subpart T published December 31, 1991 (56 FR 67568). The primary purpose of the MOU is to ensure that non-operational uranium mill tailings piles and impoundments licensed by NRC or an affected Agreement State achieve compliance through emplacement of a permanent radon barrier with the 20 pCi/m^2-s flux standard specified in EPA's UMTRCA standards (40 CFR 192.32(b)(1)) as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). The goal is that this occur at all current disposal sites by the end of 1997, or within seven years of when the existing operating and standby sites enter disposal status. The MOU called for EPA to modify its UMTRCA regulations (at 40 CFR part 192, subpart D) to address the timing concern that resulted in EPA's 1989 decision to promulgate subpart T. In addition, the MOU called for NRC to modify its implementing regulations at 10 CFR part 40, appendix A, as appropriate, and to immediately commence efforts to amend the licenses of the non-operational mill tailings disposal site owners and operators to include reclamation plans that require compliance with the 20 pCi/m^2-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). This was to be accomplished either through voluntary cooperation with the licensees, or through administratively enforceable orders. In accordance with the MOU, the NRC and affected Agreement States agreed to amend the licenses of all sites whose milling operations have ceased and whose tailings piles remain partially or totally uncovered. The amended licenses would require each mill operator to establish a detailed tailings closure plan for radon to include key closure milestones and a schedule for timely emplacement of a permanent radon barrier on all non-operational tailings impoundments to ensure that radon emissions do not exceed a flux of 20 pCi/m^2-s. These actions, coupled with NRC's commitment to enforce the amended licenses, are intended to provide the basis for EPA to make the requisite findings under CAA section 112(d)(9) for rescission of subpart T.

D. Settlement Agreement

In light of CAA section 112(d)(9), and in order to foster a consensus approach to regulation in this area, EPA then commenced discussions with NRC, the American Mining Congress (AMC), and the Environmental Defense Fund (EDF). As a result of discussions after execution of the MOU, a final settlement agreement was executed between EPA, AMC, EDF, NRDC and individual site owners, to which NRC agreed in principle by letter. The settlement agreement continues the regulatory approach set forth in the MOU adding extensive detail to that agreement.

Under the agreement between EDF, AMC, individual sites and EPA, the pending litigation would not be dismissed until after certain terms in the agreement were fulfilled. The parties agreed that upon rescission of subpart T, they would jointly move the court to dismiss the challenges pertaining solely to subpart T. (Paragraph III.1.) By the terms of the agreement (paragraph III.15.), AMC's pending administrative petition for reconsideration of subpart T becomes moot with the final rescission of subpart T. Moreover, the agreement does not legally bind or otherwise restrict EPA's rights or obligations under law; rather, by its terms (paragraph III.12.), there is no recourse for a court order to implement the agreement. Indeed, the only remedy for failure to meet the terms of the final agreement is activation by the litigants of the underlying litigation.

E. Actions by NRC and EPA Pursuant to the MOU and Settlement Agreement

1. EPA Regulatory Actions

On December 31, 1991, EPA took several steps towards fulfilling its responsibilities under the MOU and in implementing CAA section 112(d)(9) by publishing three Federal Register (FR) notices. In the first notice (56 FR 67537), EPA published a Final Rule to stay the effectiveness of 40 CFR part 61, subpart T, as it applies to owners and operators of non-operational uranium mill tailings disposal sites licensed by the NRC or an Agreement State. The stay will remain in effect until the Agency rescinds the uranium mill tailings NESHAPs at 40 CFR part 61, subpart T. However, if EPA fails to complete that rulemaking by June 30, 1994, the stay will expire and the requirements of subpart T will become effective.

In a second notice published on December 31, 1991, the Agency proposed to rescind the NESHAPs for radionuclides that appears at 40 CFR part 61, subpart T, as it applies to non-operational uranium mill tailings disposal sites licensed by the NRC or an Agreement State (56 FR 67561).

In the third notice, EPA published an advanced notice of proposed rulemaking to amend 40 CFR part 192, subpart D (56 FR 67569) to provide for site closure to occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee), and appropriate monitoring requirements for non-operational uranium mill tailings piles. These amendments would ensure timely compliance and add monitoring requirements currently lacking in the UMTRCA regulations.

EPA published a notice on June 8, 1993, proposing to amend 40 CFR part 192, subpart D. (58 FR 32174). On November 15, 1993, EPA published the Final Rule amending 40 CFR part 192, subpart D. (58 FR 60340). This Final Rule requires: (1) Emplacement of a permanent radon barrier constructed to achieve compliance with, including attainment of, the 20 pCi/m^2-s flux standard by all NRC or Agreement State licensed sites that, absent rescission, would be subject to subpart T; (2) interim milestones to assure appropriate progress in emplacing the permanent radon barrier; and (3) closure of the site closure as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the impoundments cease operation. EPA announced a goal that this occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU between EPA, NRC and affected Agreement States (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles.

As intended by EPA, the phrase "as expeditiously as practicable considering technological feasibility," means as quickly as possible considering: (1) The physical characteristics of the tailings and sites; (2) the limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) factors beyond the control of the licensee. While this phrase does not preclude economic considerations to the extent provided by the phrase "available technology," it also does not contemplate utilization of a cost-benefit analysis in setting compliance schedules. The radon control compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site.

EPA recognized that the UMTRCA regulatory scheme encompasses a design standard. EPA made minor amendments to this scheme to better facilitate implementation of the regulation without fundamentally altering the current method of compliance. Subpart D, as amended, requires site control be carried out in accordance with a written tailings closure plan (radon), and in a manner which ensures that closure activities are

monitoring requirements for non-operational uranium mill tailings piles. These amendments would ensure timely compliance and add monitoring requirements currently lacking in the UMTRCA regulations.

EPA published a notice on June 8, 1993, proposing to amend 40 CFR part 192, subpart D. (58 FR 32174). On November 15, 1993, EPA published the Final Rule amending 40 CFR part 192, subpart D. (58 FR 60340). This Final Rule requires: (1) Emplacement of a permanent radon barrier constructed to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard by all NRC or Agreement State licensed sites that, absent rescission, would be subject to subpart T; (2) interim milestones to assure appropriate progress in emplacing the permanent radon barrier; and (3) closure of the site closure as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the impoundments cease operation. EPA announced a goal that this occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU between EPA, NRC and affected Agreement States (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles.

As intended by EPA, the phrase "as expeditiously as practicable considering technological feasibility," means as quickly as possible considering: (1) The physical characteristics of the tailings and sites; (2) the limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) factors beyond the control of the licensee. While this phrase does not preclude economic considerations to the extent provided by the phrase "available technology," it also does not contemplate utilization of a cost-benefit analysis in setting compliance schedules. The radon control compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site.

EPA recognized that the UMTRCA regulatory scheme encompasses a design standard. EPA made minor amendments to this scheme to better facilitate implementation of the regulation without fundamentally altering the current method of compliance. Subpart D, as amended, requires site control be carried out in accordance with a written tailings closure plan (radon), and in a manner which ensures that closure activities are initiated as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees). The tailings closure plan (radon), either as originally written or subsequently amended, will be incorporated into the individual site licenses, including provisions for and amendments to the milestones for control, after NRC or an affected Agreement State finds that the schedule reflects compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). The compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site with a goal that final closure occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU between EPA, NRC and affected Agreement States (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles. These schedules must include key closure milestones and other milestones which are reasonably determined to promote timely compliance with the 20 pCi/m²-s flux standard. Milestones which are not reasonably determined to advance timely compliance with the radon air emissions standard, e.g. installation of erosion protection and groundwater corrective actions, are not relevant to the tailings closure plans (radon). In addition, subpart D requires that licensees ensure that radon closure milestone activities, such as wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and radon barrier construction, are undertaken to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility.

The goal of the amendments to subpart D is for existing sites, or those that become non-operational in the future, to achieve compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees) within the time periods set forth in the MOU, including Attachment A thereto, and for new sites to achieve compliance no later than seven years after becoming non-operational.

However, if the NRC or an Agreement State makes a finding that compliance with the 20 pCi/m²-s flux standard has been demonstrated through appropriate monitoring, after providing an opportunity for public participation, then the performance of the milestone(s) may be extended. If an extension is granted, then during the period of the extension, compliance with the 20 pCi/m²-s flux standard must be demonstrated each year. Additionally, licensees may request, based upon cost, that the final compliance date for emplacement of the permanent radon barrier, or relevant milestone set forth in the applicable license or incorporated in the tailings closure plan (radon), be extended. The NRC or an affected Agreement State may approve such a request if it finds, after providing the opportunity for public participation, that: (1) The licensee is making good faith efforts to emplace a permanent radon barrier constructed to achieve the 20 pCi/m²-s flux standard; (2) such delay is consistent with the definition of "available technology;" and (3) such delay will not result in radon emissions that are determined to result in significant incremental risk to the public health. Such a finding should be accompanied by new deadlines which reasonably correspond to the target dates identified in Attachment A of the MOU. (56 FR 67569).

EPA expects the NRC and Agreement States to act consistently with their commitment in the MOU and provide for public notice and comment on proposals or requests to (1) incorporate radon tailings closure plans or other schedules for effecting emplacement of a permanent radon barrier into licenses and (2) amend the radon tailings closure schedules as necessary or appropriate for reasons of technological feasibility (including factors beyond the control of the licensees). Under the terms of the MOU, NRC should do so with notice timely published in the **Federal Register**. In addition, consistent with the MOU, members of the public may request NRC action on these matters pursuant to 10 CFR 2.206. EPA also expects the Agreement States to provide comparable opportunities for public participation pursuant to their existing authorities and procedures.

The UMTRCA regulations, as promulgated by EPA and implemented by NRC prior to the 1993 amendments, while ultimately limiting emissions to the same numerical level as subpart T, were supported by a variety of design-based substantive and procedural requirements that speak to UMTRCA's unique concern that final site closure occur in a manner that will last 1,000 years or at least 200 years, but did not require monitoring of emissions to confirm the performance of the earthen cover. See generally 10 CFR part 40, appendix A and 40 CFR part 192. Subpart D, as amended, requires all

appropriate monitoring be conducted pursuant to the procedures described in 40 CFR part 61, appendix B, Method 115, or any other measurement method proposed by a licensee and approved by NRC or the affected Agreement State as being at least as effective as EPA Method 115 in demonstrating the effectiveness of the permanent radon barrier in achieving compliance with the 20 pCi/m^2-s flux standard. After emplacement of a permanent radon barrier designed and constructed to achieve compliance with, including attainment of, the 20 pCi/m^2-s flux standard, the licensee shall conduct appropriate monitoring and analysis of the radon flux through the barrier. This monitoring will verify that the design of the permanent radon barrier is effective in ensuring that emissions of radon-222 will not exceed compliance with the 20 pCi/m^2-s flux standard, as contemplated by 40 CFR 192.32(b)(1)(ii). EPA intends that the permanent radon barrier be designed to ensure sustained compliance with the 20 pCi/m^2-s flux standard by all sites, but does not require continuous emissions monitoring. Rather, a single monitoring event may suffice to verify the design of the permanent radon barrier to ensure continued compliance. Note, however, that if the NRC or an Agreement State extends the time for performance of milestones based on a finding that compliance with the 20 pCi/m^2-s flux standard has been demonstrated by appropriate monitoring, compliance with the 20 pCi/m^2-s flux standard must be demonstrated each year during the period of the extension.

2. NRC Regulatory Action

On May 20, 1994, the Commissioners approved final amendments conforming 10 CFR part 40, appendix A to 40 CFR part 192, subpart D. The final regulations adopted by NRC amend Criterion 6, add a new Criterion 6A and new definitions contained in the Introduction to appendix A. Criterion 6 was revised to provide for appropriate verification that the "final" (or "permanent" as defined by EPA) radon barrier, as designed and constructed, is effective in controlling releases of radon-222 to a level no greater than 20 pCi/m^2-s when averaged over the entire pile or impoundment. Criterion 6(2) (59 FR 28220, June 1, 1994). The licensee must use EPA Method 115, or another method approved by the NRC as being at least as effective in demonstrating the effectiveness of the "final" radon barrier. *Id.* If the reclamation plan specifies phased emplacement of the "final" radon barrier, the verification must be performed on the portion of the pile or impoundment as the "final" radon barrier for that portion is emplaced. Additionally, certain reporting and recordkeeping is required in connection with the verification of the effectiveness of the "final" radon barrier. Criterion 6(4) (59 FR 28220, June 1, 1994).

The Introduction section of appendix A to part 40 was amended by adding the following definitions: as expeditiously as practicable considering technological feasibility, available technology, factors beyond the control of the licensee, final radon barrier, milestone, operation and reclamation plan. While subpart D requires emplacement of the "permanent" radon barrier, NRC requires emplacement of the "final" radon barrier. According to NRC, the definition of final radon barrier, is intended to "facilitate the drafting of clear regulatory text and to eliminate any ambiguity with respect to compliance with the 20 pCi/m^2-s 'flux standard' after completion of the final earthen barrier and not as a result of any temporary conditions or interim measures." (59 FR 28222, June 1, 1994). The final definitions of factors beyond the control of the licensee and available technology have been revised to include a list of possible factors and examples of grossly excessive costs respectively, consistent with subpart D.

Criterion 6A paragraph 1 requires completion of the "final" radon barrier as expeditiously as practicable considering technological feasibility after a pile or impoundment containing uranium byproduct materials ceases operation, and requires it to be done in accordance with a written Commission-approved reclamation plan. In addition, this paragraph requires inclusion of specified interim milestones as a condition of the individual site license. Criterion 6A also specifies the conditions for Commission approval of extensions for performance of milestones and continued acceptance of uranium byproduct and other materials in the pile or impoundment. 10 CFR part 40, appendix A Criterion 6A (2) and (3) (59 FR 28220, June 1, 1994). These provisions vary somewhat from NRC's proposal, to reflect changes made in EPA's final amendments to subpart D at §§ 192.32(a)(3) (iv) and (v). The changes are "(1) that only byproduct material, not 'similar' material, will be approved for continued disposal after the final radon barrier is essentially complete and the verification of radon flux levels has been made, and (2) that public participation is specifically to be provided for only in the case of continued disposal after radon flux verification, in addition to general clarification of the paragraph." (59 FR 28224, June 1, 1994).

Additionally, NRC's final regulations in Criterion 6A provide for public participation consistent with the MOU and the settlement agreement. Such public participation will be provided through a notice published in the **Federal Register** including the opportunity for public comment on the proposed license amendment and the opportunity to request an informal hearing in accordance with the Commission's regulations at 10 CFR part 2, subpart L. The final regulations contain various revisions to NRC's proposal, both substantive and editorial in nature, primarily for consistency with EPA's final amendments to subpart D.

EPA believes the final revisions clarify NRC's proposal. EPA further believes that although NRC's conforming regulations are not identical to subpart D, the differences are minor in nature, and properly reflect application of the subpart D requirements to NRC's separate regulatory program. NRC's final rule appropriately conforms its regulations to 40 CFR part 192 subpart D. EPA notes that NRC's conforming amendments are an important consideration in EPA's determination that the NRC regulatory program protects the public health with an ample margin of safety..

3. Amendment of NRC and Agreement State Licenses

Consistent with their commitments under the MOU, as well as EPA's previous proposal to rescind subpart T (56 FR 67561 December 31, 1991), NRC and the affected Agreement States agreed to amend the licenses of all non-operational uranium mill tailings sites to ensure inclusion of schedules for emplacing a permanent radon barrier on the tailings impoundments, as well as interim milestones (e.g., wind blown tailings retrieval and placement on the pile, and interim stabilization). To this end, NRC and the Agreement States requested the licensees to voluntarily seek amended licenses and have completed processing those requests. NRC has continued the spirit of cooperation between EPA and NRC by keeping the Agency apprised of the status of the approval of reclamation plans and amendment of licenses.

As of September 30, 1993, NRC and the Agreement States had completed all license amendments for closure of licensed non-operational impoundments, with the exception of the license amendment incorporating the reclamation plan for the Atlas site located in Moab, Utah.

NRC informed EPA by letter that the Commission received extensive comments on NRC's July 20, 1993 proposal to approve the Atlas reclamation plan, including the closure schedule and interim milestones required by the MOU, and the Environmental Assessment and the Finding of No Significant Impact for the Atlas mill. NRC rescinded its Finding of No Significant Impact for the Atlas mill in October 1993. (58 FR 52516, October 8, 1993). One issue appears to be the potential for flooding of the Atlas impoundment if it is reclaimed on-site, due to the proximity of the site to the Colorado River. This concern and others appear to have caused delays in the license amendment for this site. NRC is actively pursuing a timely final decision on the acceptability of the existing Atlas site and its reclamation plan. To this end, NRC informed EPA by letter dated December 28, 1993, that NRC has conducted several meetings with the various representatives enumerated above and has requested additional technical information from the licensee. On March 30, 1994, NRC published a Notice of Intent to Prepare an Environmental Impact Statement and to Conduct a Scoping Process. (59 FR 14912). In that notice, NRC states its determination "that approval of the revised reclamation plan constitutes a major Federal action and that based on the level of controversy related to the proposed action [on-site reclamation] and uncertainties associated with the unique features of the Moab site, preparation of an EIS in accordance with the National Environmental Policy Act (NEPA) and the NRC's implementing requirements in 10 CFR part 51 is warranted." (59 FR 14913, March 30, 1994). The notice describes the proposed action, possible alternative approaches and the scoping process. The alternative approaches include moving the pile to one of two alternative sites. *Id.*

The near edge of the town of Moab is located about 2 km to the east of the Atlas tailings impoundment. However, it appears the area within a 1.5 km radius of the Atlas mill tailings impoundment site is sparsely populated. An interim cover is being placed over the impoundment for radon emission control as the Atlas tailings impoundment dries sufficiently to allow access of the necessary equipment. As discussed in the Background Information Document (BID) for the amendments to 40 CFR part 192 subpart D, interim covers significantly reduce radon emissions. Technical Support for Amending Standards for Management of

NRC informed EPA by letter that the Commission received extensive comments on NRC's July 20, 1993 proposal to approve the Atlas reclamation plan, including the closure schedule and interim milestones required by the MOU, and the Environmental Assessment and the Finding of No Significant Impact for the Atlas mill. NRC rescinded its Finding of No Significant Impact for the Atlas mill in October 1993. (58 FR 52516, October 8, 1993). One issue appears to be the potential for flooding of the Atlas impoundment if it is reclaimed on-site, due to the proximity of the site to the Colorado River. This concern and others appear to have caused delays in the license amendment for this site. NRC is actively pursuing a timely final decision on the acceptability of the existing Atlas site and its reclamation plan. To this end, NRC informed EPA by letter dated December 28, 1993, that NRC has conducted several meetings with the various representatives enumerated above and has requested additional technical information from the licensee. On March 30, 1994, NRC published a Notice of Intent to Prepare an Environmental Impact Statement and to Conduct a Scoping Process. (59 FR 14912). In that notice, NRC states its determination "that approval of the revised reclamation plan constitutes a major Federal action and that based on the level of controversy related to the proposed action [on-site reclamation] and uncertainties associated with the unique features of the Moab site, preparation of an EIS in accordance with the National Environmental Policy Act (NEPA) and the NRC's implementing requirements in 10 CFR part 51 is warranted." (59 FR 14913, March 30, 1994). The notice describes the proposed action, possible alternative approaches and the scoping process. The alternative approaches include moving the pile to one of two alternative sites. *Id.*

The near edge of the town of Moab is located about 2 km to the east of the Atlas tailings impoundment. However, it appears the area within a 1.5 km radius of the Atlas mill tailings impoundment site is sparsely populated. An interim cover is being placed over the impoundment for radon emission control as the Atlas tailings impoundment dries sufficiently to allow access of the necessary equipment. As discussed in the Background Information Document (BID) for the amendments to 40 CFR part 192 subpart D, interim covers significantly reduce radon emissions. Technical Support for Amending Standards for Management of Uranium Byproduct Materials: 40 CFR Part 192 Background Information Document, EPA 402–R–93–085, October 1993.

NRC announced on May 11, 1994 (59 FR 24490) that Atlas Corporation applied to amend condition 55 of its source material license. Atlas proposed to amend the milestone dates by extending the dates for windblown tailings retrieval and placement on the pile, placement of the interim cover and placement of the final radon barrier by one year. NRC has informed EPA that the Commission approved the extension of the date for placement of the interim cover to February 15, 1995 and that the milestone for emplacement of the "final" radon barrier was not extended. See Docket Entry A91–67 IV–D–50 (Letter from NRC to Atlas).

Since NRC will notice any proposed change in the milestone date for emplacement of the permanent radon barrier, EPA and others will have the opportunity to monitor such an extension at that time. Under the present circumstances, it appears an extension of the MOU target date of 1996 would be consistent with the factors to be considered under the "as expeditiously as practicable" standard at 40 CFR 192.32(a)(3)(i), since NRC has determined there is a need for consistency with mandatory requirements of the National Environmental Policy Act (NEPA) and there may be factors beyond the control of the licensee. 40 CFR 192.31(k). Based on representations from NRC, EPA believes that the extra time NRC is taking to further review the proposed Atlas mill site reclamation plan is necessary to address the large amount of public comments received and that it will result in a final solution that is more responsive to public comment.

NRC and the affected Agreement States have also agreed to enforce the provisions of the amended licenses to ensure compliance with the new schedules for emplacing the permanent radon barriers, including interim milestones, and to ensure (and verify) the efficacy of the design and construction of the barrier to achieve compliance with the 20 pCi/m^2-s flux standard contained in the amendments to subpart D. (56 FR 67568, December 31, 1991) (MOU, a copy of which was printed at the end of the proposed rule to rescind subpart T).

III. Final Rule to Rescind 40 CFR Part 61, Subpart T for NRC and Agreement State Licensees

EPA is rescinding subpart T as it applies to non-operational uranium mill tailings disposal sites licensed by NRC or an affected Agreement State. The Agency sets forth this Final Rule pursuant to its authority under section 112(d)(9) of the CAA, as amended in 1990. The support for this action includes (1) the MOU, which reflects consultation with NRC and the affected Agreement States and sets forth a course of conduct to bolster NRC's regulatory program under UMTRCA so that it is protective of public health with an ample margin of safety, (2) the settlement agreement which adds comprehensive detail to the MOU, (3) EPA's amendments to 40 CFR part 192, subpart D, (4) the relevant NRC and Agreement State actions concerning license amendments, to date, and (5) NRC's amendments to its implementation regulations at appendix A, 10 CFR part 40.

A. EPA Determination Under CAA Section 112(d)(9)

1. Background

Section 112(d)(9) authorizes EPA to decline to regulate radionuclide emissions from NRC-licensees under the CAA provided that EPA determines, by rule, and after consultation with NRC, that the regulatory scheme established by NRC protects the public health with an ample margin of safety. The legislative history of section 112(d)(9) provides additional guidance as to what is meant by "an ample margin of safety to protect the public health" and what process the Administrator should follow in making that determination in a rulemaking proceeding under section 112(d)(9). The Conference Report accompanying S. 1630 points out that the "ample margin of safety" finding under section 112(d)(9) is the same "ample margin of safety" requirement that was contained in section 112 of the CAA prior to its amendment in 1990. The conferees also made clear that the process the Administrator was expected to follow in making any such determination under section 112(d)(9) was that "required under the decision of the U.S. Court of Appeals in *NRDC* v. *EPA*, 824 F.2d 1146 (D.C. Cir 1987) (*Vinyl Chloride*)." H. Rep. No. 101–952, 101st Cong., 2d Sess. 339 (1990), reprinted in 1 A Legislative History of the Clean Air Act Amendments of 1990, at 1789 (1993) (hereinafter "Legislative History CAAA90").

EPA has already made a determination in promulgating subpart T that compliance with the 20 pCi/m^2-s flux standard protects public health with an ample margin of safety. EPA conducted a risk analysis in promulgating subpart T in 1989. At that time, EPA determined that the 20 pCi/

m^2-s flux standard was a "baseline" that was provided by EPA's general UMTRCA standards at 40 CFR part 192, subpart D. EPA further determined that compliance with that baseline would be protective of public health with an ample margin of safety. EPA promulgated subpart T to ensure achievement of the flux standard at non-operational sites in a timely manner. In conducting this rescission rulemaking, EPA is *not* revisiting either the risk analysis or decision methodology that supported the promulgation of subpart T; rather, EPA is only visiting whether NRC's regulatory program under UMTRCA will result in meeting the 20 pCi/m^2-s flux standard established in subpart T as being the level that provides an ample margin of safety, with compliance achieved in a timely manner thereby rendering subpart T unnecessarily duplicative.

EPA's determination that the NRC regulatory program protects public health with an ample margin of safety includes a finding that NRC and the affected Agreement States are implementing and enforcing, in significant part on a programmatic and site-specific basis: (1) The regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC consistent with the settlement agreement described above and (2) the license (i.e., tailings closure plan) requirements that establish milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard.

2. EPA's UMTRCA Standards

As discussed above, EPA has modified its UMTRCA regulations (40 CFR part 192 subpart D) to require compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility (and factors beyond the control of the licensee), and to require appropriate monitoring to verify the efficacy of the design of the permanent radon barrier. By definition, no more rapid compliance can occur, as a practical matter, because this schedule represents the earliest that the sites could be closed when all factors are considered. EPA expects that these compliance schedules were developed and will be modified consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site. When EPA promulgated subpart T it recognized that many sources might not be able to comply with the two year compliance date then required pursuant to section 112. Based on this, subpart T includes a provision that in such a case EPA would "establish a compliance agreement which will assure that disposal will be completed as quickly as possible." 40 CFR 61.222(b). The time period required for closure under subpart D embodies the same approach. In practice, therefore, both subpart T and subpart D establish the same basic timeframes for achievement of the flux standard. Assuming NRC and the Agreement States faithfully implement subpart D and the license amendments required under subpart D, EPA would not expect there to be any significant difference between these two programs in the amount of time required for sites to comply with the flux standard.

As discussed above, subpart D as amended, provides that NRC may grant an extension of time to comply with either of the following deadlines: (1) Performance of milestones based upon a finding that compliance with the 20 pCi/m^2-s flux standard has been met or (2) final compliance beyond the date or relevant milestone based upon cost. EPA considers these two bases upon which NRC may grant an extension to be mutually exclusive, i.e., a request for a specific extension may be based on one or the other but not both grounds. If a milestone is being extended for a basis other than cost, such an extension may be granted if NRC finds that compliance with the 20 pCi/m^2-s flux standard has been demonstrated using EPA Method 115 or an NRC approved alternative. In addition the site must continue to demonstrate compliance with this flux standard on an annual basis. However, if a licensee requests extension of the final compliance date (or relevant milestone) based upon cost, such an extension may only be granted if NRC finds that the three criteria specified in 40 CFR section 192.32(a)(3)(iii) are met. Any extensions of the final compliance date based upon cost will by the nature of the criteria be granted on a site-specific basis.

If a licensee requests an extension of the final compliance date based upon cost, technology may not be used as a basis for granting the extension unless the costs are grossly excessive, as measured by normal practice within the industry. EPA recognizes that the emissions from the pile may exceed the 20 pCi/m^2-s flux standard pending final compliance, but believes these increases will be minimal and of limited duration. EPA does not anticipate the short extensions in the time to complete the radon barrier contemplated in subpart D and the NRC conforming amendments to increase the maximum lifetime individual risk beyond 1 in 10,000, the level which EPA found presumptively safe under the benzene policy, and for this category, protective of the public health with an ample margin of safety in promulgating subpart T. 54 FR 51656 (December 15, 1989). EPA believes that during the short extensions, this is consistent with the reality of short-term risks from radon emissions during the period of delay, and consistent with the risks associated with negotiated compliance agreements when non-operational sites fail to close within the two-year period required by subpart T. EPA believes these emissions should not exceed those emissions which could occur under subpart T if compliance agreements had been negotiated. Extensions based upon cost will only be granted if NRC or an Agreement State finds, after providing an opportunity for public participation, that the emissions caused by the delay will not cause significant incremental risk to the public health. Additionally, a site requesting an extension based upon cost must demonstrate that it is making a good faith effort to emplace the permanent radon barrier. In many situations, where an interim cover is in place, radon emissions are significantly reduced and tailings which are wet or ponded emit no significant levels of radon. If NRC or an Agreement State uses this flexibility, public notice is required, and as appropriate, EPA would be aware of its use and could also monitor extensions under the provisions of § 61.226(c) to determine whether the Agency should reconsider the rescission and seek reinstatement of subpart T, on either a programmatic or site-specific basis. Thus, under the circumstances, EPA believes affording authority for extensions of the final compliance date based upon cost is not inconsistent with protecting the public health.

Additionally, NRC or an Agreement State may extend the date for emplacement of the radon barrier based on "factors beyond the control of the licensee," as that term is implicit in the definition of "as expeditiously as practicable." EPA understands that under subpart D's provisions there is no bar to NRC or an Agreement State reconsidering a prior decision establishing a date for emplacement of the radon barrier that meets the standard of "as expeditiously as practicable considering technological feasibility." Such reconsideration could, for example, be based on the existence of factors beyond the control of the licensee, or on a change in any of the various factors that must be considered in establishing a date that meets the "as expeditiously as practicable" standard of § 192.32(a)(3)(i). However, EPA stresses that such a change in circumstances would not automatically lead to an extension. It would be incumbent on NRC or an Agreement State to evaluate all the factors relevant under § 192.32(a)(3)(i) before it changed a previously established milestone or date for emplacement of the final barrier, and any new date would have to meet the standard set out in § 192.32(a)(3)(i). Finally, NRC's and Agreement States' authority to reconsider previously established milestones or dates would include authority to shorten or speed up such dates, as well as extend them. EPA also expects that public participation consistent with that level of participation provided in the MOU and the settlement agreement will be afforded the public by NRC or an Agreement State in amending a license due to "factors beyond the control of the licensee," or for any other basis.

3. NRC's Conforming Regulations

As discussed previously, the Commission has approved final regulations to conform appendix A of 10 CFR part 40 to EPA's general standards promulgated under UMTRCA. (59 FR 28220, June 1, 1994.) EPA is today making a determination that NRC's final regulations support rescission. EPA believes NRC's final regulations adequately and appropriately implement EPA's amendments to 40 CFR part 192, subpart D. This determination is supported by the comments received in response to EPA's supplemental proposal to rescind subpart T. (59 FR 5674, February 7, 1994.) All commenters agreed that

TABLE 1.—STATUS OF RECLAMATION P

Facility
ANC, Gas Hills, WY
ARCO Coal, Bluewater, New Mexico
Atlas, Moab, Utah
Conoco, Conquista, Texas
Ford-Dawn Mining, Ford, WA
Hecla Mining, Duria, CO
Homestake, Milan, NM
Pathfinder-Lucky Mc, Gas Hills, Wyoming
Petrotomics, Shirley Basin, WY
Quivira, Ambrosia Lake, NM
Rio Algom, Lisbon, UT
Sohio L-Bar, Cebolleta, New Mexico
UMETCO, Gas Hills, Wyoming
UMETCO, Maybell, CO
UMETCO, Uravan, CO
UNC, Church Rock, NM
Union Pacific, Bear Creek, Wyoming
WNI, Sherwood, WA

circumstances would not automatically lead to an extension. It would be incumbent on NRC or an Agreement State to evaluate all the factors relevant under § 192.32(a)(3)(i) before it changed a previously established milestone or date for emplacement of the final barrier, and any new date would have to meet the standard set out in § 192.32(a)(3)(i). Finally, NRC's and Agreement States' authority to reconsider previously established milestones or dates would include authority to shorten or speed up such dates, as well as extend them. EPA also expects that public participation consistent with that level of participation provided in the MOU and the settlement agreement will be afforded the public by NRC or an Agreement State in amending a license due to "factors beyond the control of the licensee," or for any other basis.

3. NRC's Conforming Regulations

As discussed previously, the Commission has approved final regulations to conform appendix A of 10 CFR part 40 to EPA's general standards promulgated under UMTRCA. (59 FR 28220, June 1, 1994.) EPA is today making a determination that NRC's final regulations support rescission. EPA believes NRC's final regulations adequately and appropriately implement EPA's amendments to 40 CFR part 192, subpart D. This determination is supported by the comments received in response to EPA's supplemental proposal to rescind subpart T. (59 FR 5674, February 7, 1994.) All commenters agreed that NRC's proposed conforming regulations support EPA's proposal to rescind subpart T by either adequately and appropriately implementing subpart D, or may reasonably be expected to do so when finalized.

4. License Amendments

Table 1 illustrates that all NRC and affected Agreement State licenses, except one, have been modified pursuant to the MOU. Attachment A to the MOU, developed in conjunction with each site and considering the particular circumstances of that site, lists target dates for emplacement of the permanent radon barrier with "a guiding objective that this occur to all current disposal sites by the end of 1997, and within seven years of when the existing operating and standby sites cease operation." 56 FR 67568 (December 31, 1991). The MOU requires NRC and the Agreement States to "ensure * * * that cover emplacement on the tailings impoundments occurs as expeditiously as practicable considering both short-term reductions in radon releases and long-term stability of the uranium mill tailings." *Id.* Under the MOU, the compliance schedules (i.e., tailings closure plans (radon) under subpart D, as amended) were to be developed consistent with the MOU targets as reasonably applied to the specific circumstances of each site, with a goal that final closure occur by December 31, 1997, for those non-operational uranium mill tailings piles listed in the MOU. EPA believes the NRC and the Agreement States have acted in good faith to implement their commitments under the MOU by amending the site licenses. EPA also believes that uranium mill tailings disposal site owners and operators have acted in good faith by voluntarily requesting the license amendments. The license amendments by NRC and the affected Agreement States appear to reflect closure as expeditiously as practicable under the terms of the MOU and the requirements of subpart D as amended, thus supporting rescission of subpart T and a determination that the NRC program protects public health with an ample margin of safety. See Docket Entry A91–67 IV–D–46 (NRC Comments in Response to EPA's February 7, 1994 Proposal); Docket Entry A91–67 II–D–23 (February 7, 1994, Note to Docket from Gale Bonanno, Office of Radiation and Indoor Air, Criteria and Standards Division detailing approval of NRC licenses and milestone schedules); Docket Entry A91–67 II–D–45 (June 1, 1994, Note to Docket from Gale Bonanno, Office of Radiation and Indoor Air, Criteria and Standards Division detailing approval of Agreement State licenses and milestone schedules); Docket Entry A91–67 IV–D–52 (June 13, 1994, Letter to Gail Bonanno from State of Washington); Docket Entry A91–67 IV–D–49 (Letter to Gail Bonnano [sic] providing information for Washington State licensees, Dawn Mining Company and Western Nuclear, Inc.). In addition, consistent with their commitments under the MOU, NRC and the affected Agreement States are providing opportunities for public participation in the license amendment process.

TABLE 1.—STATUS OF RECLAMATION PLANS FOR NON-OPERATIONAL URANIUM MILL TAILINGS IMPOUNDMENTS [1]

Facility	Approval date for reclamation plan	Approval date for reclamation milestones	MOU date for final radon cover	License date for final radon cover
ANC, Gas Hills, WY	4/10/83	11/5/92	1995	12/31/94 [2] 6/30/96
ARCO Coal, Bluewater, New Mexico	1/30/92	11/9/92	1995	12/28/94
Atlas, Moab, Utah	■	11/4/92	1996	12/31/96
Conoco, Conquista, Texas	9/8/93	9/8/93	1996	12/31/93
Ford-Dawn Mining, Ford, WA	9/30/93	9/30/93	2010	[4] 12/31/18
Hecla Mining, Duria, CO	9/30/93	9/30/93	1997	12/31/95
Homestake, Milan, NM	7/23/93	11/9/92	[5] 1996/2001	[5] 12/31/01
Pathfinder-Lucky Mc, Gas Hills, Wyoming	9/17/93	12/29/92	1998	9/30/98
Petrotomics, Shirley Basin, WY	10/23/89	1/21/93	1995	12/31/95
Quivira, Ambrosia Lake, NM	10/5/90	1/22/93	1997	[7] 12/31/97
Rio Algom, Lisbon, UT	9/29/93	12/31/96	1996	12/31/96
Sohio L-Bar, Cebolleta, New Mexico	5/1/89	11/4/92	1992	12/31/92
UMETCO, Gas Hills, Wyoming	■	12/2/92	1995	12/31/95
UMETCO, Maybell, CO	7/30/93	7/30/93	1997	12/31/97
UMETCO, Uravan, CO	12/31/87	12/31/87	[6] 2002	12/31/96
UNC, Church Rock, NM	3/11/92	10/29/92	1997	12/31/97
Union Pacific, Bear Creek, Wyoming	4/3/92	11/5/92	1996	12/31/96
WNI, Sherwood, WA	9/30/93	9/30/93	1996	[4] 1/31/98

TABLE 1.—STATUS OF RECLAMATION PLANS FOR NON-OPERATIONAL URANIUM MILL TAILINGS IMPOUNDMENTS [1]—Continued

Facility	Approval date for reclamation plan	Approval date for reclamation milestones	MOU date for final radon cover	License date for final radon cover
WNI, Split Rock, WY	6/17/93	11/5/92	1995	12/31/94

[1] NRC and the affected Agreement States committed to complete review and approval of reclamation plants, including schedules for emplacement of earthen covers on non-operational tailings impoundments by September 30, 1993.
[2] Two impoundments: 1996 date is for impoundment which was accepting waste from off-site for disposal. Licensee has requested an amendment for a one year extension of dates for placement of radon barrier on the two piles.
[3] Delayed pending resolution of issues raised in response to *Federal Register* notice dated July 20, 1993.
[4] Closure date change is because of groundwater remediation schedule.
[5] Two impoundments: large impoundment to be completed by 1996, small impoundment by 2001 except for areas covered by evaporation ponds. Final radon barrier placement over the remainder of the small impoundment shall be completed within two years of completion of groundwater corrective actions.
[6] Date in the MOU is for final reclamation.
[7] Two impoundments: final radon barrier placement on both by December 31, 1997. One active cell.
[8] Various early 1980s.

The license amendments noted in Table 1 reflect consistent application of the dates contained in the MOU. Three exceptions are worth noting. First, although the license amendment to incorporate the reclamation plan for the Atlas site is not complete, EPA is confident that NRC is actively pursuing final resolution of the pending reclamation plan. In the notice announcing its intent to prepare an environmental impact statement, NRC published a tentative schedule to: prepare a draft EIS and issue for public comment in October 1994; provide a 45 day comment period; and publish the final EIS in April 1995. (59 FR 14914, March 30, 1994). Pending final approval of a reclamation plan, the Atlas site is continuing to emplace an interim cover on the pile to control radon emissions, and recently received approval to extend the date for placement of the interim cover to February 15, 1995. The date for placement of the "final" radon barrier was not extended by NRC and remains December 31, 1996. See Docket Entry A91–67 IV–E–5 (Note to Docket from Gale Bonanno, Office of Radiation and Indoor Air, Criteria and Standards Division, summary of telephone conversation with legal counsel to AMC); Docket Entry A91–67 IV–D–50 (Letter from NRC to Atlas).

Second, the license amendments for the ANC Gas Hills site address two separate impoundments. Consistent with the MOU, the license amendment for the non-operational impoundment contains a December 31, 1994, date for emplacement of the permanent radon barrier. On February 11, 1994, NRC published a notice of receipt of a request to amend the reclamation schedule at the ANC Gas Hills site. (59 FR 6658). ANC has requested a one-year extension of the current date for emplacement of the permanent radon barrier. ANC "believes [it] cannot begin authorized restoration activities in the time necessary to meet current reclamation milestone dates," due to an NRC communication "that a previous amendment request for a reclamation redesign proposal dated April 16, 1992, would not be reviewed by late 1992 or early 1993." *Id.* NRC notes that ANC is continuing to monitor and maintain the interim cover. Further, NRC states—

> Approval of the request will be based on determination there be no harm to human health or the environment, that reclamation will be completed as expeditiously as practical[sic], verification that rescheduling reclamation will not impact the final closure date for the entire facility.

Additionally, an impoundment previously designated as operational for in-situ waste disposal is now non-operational. Emplacement of the permanent radon barrier on this second impoundment is scheduled to be completed by June 30, 1996, well within the seven year goal of the MOU for impoundments which cease operations after December 31, 1991.

On May 9, 1994, ANC informed NRC by letter that it would be ceasing operations and going out of business by the end of May 1994. On May 13, 1994, NRC issued an Order and Demand for Information to ANC. See Docket Entry A91–67 IV–D–47. This Order requires ANC to continue complying with all applicable license conditions, including monitoring and reclamation activities. The Order further states "[D]iscontinuance of those programs and functions in the manner described by the Licensee in its letter of May 9, 1994, would constitute a willful violation of ANC's license." According to the Order, abandonment would constitute a "deliberate violation" of section 184 of the AEA of 1954, as amended, 10 CFR 40.41.(b), and 10 CFR 40.42. The Order further states that "such a deliberate act of abandonment would be a serious violation of the AEA * * * NRC regulations, and ANC's license," and could subject ANC and the individuals causing the violations to further enforcement actions and potential criminal sanctions. NRC also ordered that ANC submit additional information in order for NRC to determine "whether enforcement action should be taken to ensure compliance with NRC statutory and regulatory requirements."

EPA notes that the actions taken to date by NRC regarding this site indicate a good faith intention to implement the MOU and the requirements of subpart D and to respond quickly as the situation at the ANC Gas Hills site develops. EPA fully expects that NRC will take actions consistent with the Commission's enforcement policy and authority. See 10 CFR part 2, subpart B and appendix C. While difficult enforcement questions are raised about this site, EPA notes that the same questions would be raised if subpart T were not rescinded. Under the provisions of the rule adopted today, if future developments meet the criteria and conditions for reconsideration of rescission, the Agency expects it would receive a petition pursuant to § 61.226(b). EPA would then take action consistent with those provisions at that time. In any case, EPA reserves the right to initiate reconsideration if appropriate.

Lastly, the license amendment dates for two additional sites, the Ford-Dawn Mining site and the Western Nuclear, Inc. (WNI) site both located in the Agreement State of Washington, are also beyond the dates contained in the MOU. However, Washington State notes that for these sites the closure date was changed because of the groundwater remediation schedule, and the difficulty

experienced in drying the piles due to the evaporation and precipitation rates. In sum, EPA believes that the license amendments adopted by the State of Washington for these two sites reflect a good faith attempt to implement the MOU and reflect closure of the sites as expeditiously as practical considering technological feasibility under subpart D.

While NRC and the Agreement States have obtained license amendments for all but one of the relevant sites, they have not as yet established a record for enforcement of the milestones, including action on requests for extensions. To date, only one extension for placement of the interim cover at the Atlas site has been approved by NRC. Based on NRC representations, no milestones occurring after the date of the MOU, October 1991, have been missed and, as noted in footnote 2 of Table 1, an application for another extension is pending but no action has been taken. However, given their response to the requirements of the MOU, and the rulemaking conducted by NRC to implement the requirements of subpart D, EPA expects that the milestones established in the licenses for emplacement of the permanent radon barrier (i.e., the tailings closure plan (radon)) will be implemented and enforced in significant part on a programmatic and site-specific basis. The relevant portions of the amended licenses have been placed in the docket for this action, as well as letters from NRC to EPA apprising the Agency of the status of the license amendments.

EPA and NRC have completed almost all of the actions required by the MOU, including: revising the NRC and affected Agreement State licenses to reflect the MOU and regulatory requirements, promulgating amendments to EPA's UMTRCA regulations at 40 CFR part 192, subpart D, and revising the NRC regulations at 10 CFR part 40 to conform to EPA's revised UMTRCA regulations. Based on EPA's review, to date, of the regulatory program established by NRC under UMTRCA (including amended 10 CFR part 40, appendix A), EPA has determined that the timing and monitoring concerns are fully addressed consistent with EPA's UMTRCA standards, and the NRC criteria result in reclamation designs and schedules fully adequate to ensure compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). EPA today finds that NRC and the affected Agreement States are or will be implementing and enforcing, in significant part, the regulations

experienced in drying the piles due to the evaporation and precipitation rates. In sum, EPA believes that the license amendments adopted by the State of Washington for these two sites reflect a good faith attempt to implement the MOU and reflect closure of the sites as expeditiously as practical considering technological feasibility under subpart D.

While NRC and the Agreement States have obtained license amendments for all but one of the relevant sites, they have not as yet established a record for enforcement of the milestones, including action on requests for extensions. To date, only one extension for placement of the interim cover at the Atlas site has been approved by NRC. Based on NRC representations, no milestones occurring after the date of the MOU, October 1991, have been missed and, as noted in footnote 2 of Table 1, an application for another extension is pending but no action has been taken. However, given their response to the requirements of the MOU, and the rulemaking conducted by NRC to implement the requirements of subpart D, EPA expects that the milestones established in the licenses for emplacement of the permanent radon barrier (i.e., the tailings closure plan (radon)) will be implemented and enforced in significant part on a programmatic and site-specific basis. The relevant portions of the amended licenses have been placed in the docket for this action, as well as letters from NRC to EPA apprising the Agency of the status of the license amendments.

EPA and NRC have completed almost all of the actions required by the MOU, including: revising the NRC and affected Agreement State licenses to reflect the MOU and regulatory requirements, promulgating amendments to EPA's UMTRCA regulations at 40 CFR part 192, subpart D, and revising the NRC regulations at 10 CFR part 40 to conform to EPA's revised UMTRCA regulations. Based on EPA's review, to date, of the regulatory program established by NRC under UMTRCA (including amended 10 CFR part 40, appendix A), EPA has determined that the timing and monitoring concerns are fully addressed consistent with EPA's UMTRCA standards, and the NRC criteria result in reclamation designs and schedules fully adequate to ensure compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). EPA today finds that NRC and the affected Agreement States are or will be implementing and enforcing, in significant part, the regulations governing disposal of tailings and the license requirements (tailings closure plan (radon)) that establish milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard on a programmatic and a site-specific basis. The Agency intends "in significant part" to mean that NRC or an affected Agreement State is implementing and enforcing the regulatory and license requirements in a manner that EPA reasonably expected to not materially (i.e., more than de minimis) [1] interfere with compliance with the 20 pCi/m^2-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

As announced in the February 7, 1994, proposal, EPA is taking today's action since NRC's regulations at 10 CFR part 40, appendix A, were effectively revised, as necessary and appropriate to implement the revisions to EPA's regulations at 40 CFR part 192, subpart D. As stated in the February 1994 proposal, EPA intended to take final action on the proposed rescission prior to the time compliance with the 20 pCi/m^2-s flux standard is achieved at all sites.

5. Judicial or Administrative Challenges

Neither EPA nor any commenter is aware of any judicial or administrative challenge to these regulations that is pending. Thus, EPA is aware of no challenge which would present a significant risk of interference with the purposes and objectives of the MOU, as reflected in the regulatory changes.

B. Reconsideration Provisions

Under the Atomic Energy Act, NRC has the authority to waive, for reasons of practicability, the dual requirement of the MOU that compliance with the 20 pCi/m^2-s flux standard occur as expeditiously as practicable considering technological feasibility. 42 U.S.C. 2114(c). NRC considers the term "practicability" to include certain economic considerations not contemplated by the requirement of the MOU that compliance occur as expeditiously as practicable considering technological feasibility. In promulgating subpart T, the CAA did not permit, and EPA did not consider, site-specific waivers from ultimate compliance with that standard. Thus, as a theoretical matter, EPA recognized in its December 1991 proposal that this waiver authority might be exercised in a manner not addressed in the MOU even after the UMTRCA regulations have been promulgated and each license amended, although EPA has no reason to believe such relaxation of restriction will actually occur. Nevertheless, EPA recognized that this authority would not exist under the CAA and subpart T and, thus, there was some concern over the potential for deviation from the agreements contained in the MOU.

1. December 31, 1991 Proposed Rule to Rescind subpart T

In response to the concern over the waiver authority in the Atomic Energy Act, and in order to ensure its exercise does not alter EPA's finding that the NRC regulatory program protects public health with an ample margin of safety, EPA announced in its December 31, 1991, proposal that certain conditions and grounds for reconsideration would be included in any final decision to rescind subpart T. In this way, EPA might base its rescission finding upon its view of the NRC regulatory program contemplated by the MOU at the time of taking final action, while also providing some assurance that EPA would revisit that finding should NRC or the affected Agreement States substantially deviate from that program. Thus, in December 1991, EPA proposed certain conditions and grounds for reconsideration, to provide assurance that any finding by the Agency that the NRC program is sufficient to justify rescission of subpart T under CAA section 112(d)(9) would be revisited if the NRC program is actually implemented in a manner inconsistent with that finding. The specific reconsideration options proposed by EPA were published at 56 FR 67565 (December 31, 1991).

2. Reconsideration Options

EPA has reviewed the various options for reconsideration proposed in December 1991 in light of the comprehensive details added to the terms of the MOU by the settlement agreement finalized in April 1993. On February 7, 1994, EPA proposed an additional reconsideration option that is a combination of the options proposed in December 1991. It is in effect a hybrid of that December 1991 proposal. While EPA did not withdraw its prior reconsideration proposal and the reconsideration options contained therein, the additional reconsideration option proposed in February 1994 was preferred by EPA.

3. Reconsideration Provisions Adopted Today

EPA believes the following reconsideration provisions adopted

[1] The phrase "de minimis" as used in this notice is not intended to be restricted to the meaning of section 112(g)(1)(A) of the Clean Air Act, as amended.

today, which include both programmatic and site-specific bases for reinstatement, represent a comprehensive approach under both the MOU and settlement agreement. The Agency notes that the 20 pCi/m²-s flux standard must be met by all sites as provided by 40 CFR part 192, subpart D. EPA does not intend to reconsider the decision to rescind subpart T for any site that is in fact meeting the 20 pCi/m²-s flux standard, absent other factors that would indicate the need for reinstatement. For example, EPA may initiate reconsideration under § 61.226 even if a site is meeting the 20 pCi/ m²-s flux standard if there are factors which show that NRC or an Agreement State failed to implement and enforce in significant part, the applicable regulations, e.g., failure of that site to emplace a permanent radon barrier designed to meet the requirements of subpart D.

This action amends subpart T and establishes an obligation for the Administrator to reinstate subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites licensed by NRC or an affected Agreement State provided certain conditions are met. Additionally, this action sets forth the procedures for EPA to act on a petition to reconsider rescission of subpart T which seeks such reinstatement. However, these provisions are not intended to be exclusive. EPA reserves the right to initiate reinstatement of subpart T if appropriate. Pursuant to section 553(e) of the Administrative Procedure Act (5 U.S.C. 553(e) interested persons may petition the EPA to initiate reinstatement of subpart T, in addition to petitions for reinstatement under today's procedures.

The reconsideration provisions set forth in § 61.226 establish procedures for persons to petition EPA for reconsideration of the rescission and seek reinstatement of subpart T and EPA's response to such petitions. Provisions for the substantive conditions for reconsideration of the rescission of this subpart and subsequent reinstatement for NRC-licensees are also included. Under these provisions, a person may petition the Administrator for reconsideration of the rescission and seek reinstatement of subpart T under § 61.226(a) which provides for programmatic and site-specific reinstatement. If reconsideration is initiated it must be conducted pursuant to notice and comment procedures. It is important that any alleged failures by NRC or an affected Agreement State to implement and enforce the regulations governing uranium mill tailings or the applicable license requirements be addressed in a timely manner. These provisions are intended to ensure that persons may seek recourse from the Administrator if they are adversely affected by the failure of NRC or an affected Agreement State to implement and enforce, in significant part, on a programmatic and a site-specific basis the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC, requirements of the tailings closure plan, or license requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard. Thus, EPA is establishing a non-discretionary duty to take final action granting or denying an authorized petition for reconsideration of the rescission of subpart T within 300 days of receipt of the petition. If EPA grants such petition it would then proceed to initiate rulemaking to reinstate subpart T. The rulemaking to reinstate subpart T, however, is not subject to the 300-day time period. This schedule is intended to provide EPA and NRC adequate time to resolve any potential problems identified by a petition. Failure to meet this 300-day deadline for a decision on whether to initiate rulemaking or not could lead to a citizen suit action in a federal District Court under CAA section 304 for an order that EPA take final action on the petition. Review of that final response would be in a federal Circuit Court of Appeals under CAA section 307(b). If EPA grants such a petition and initiates rulemaking to reinstate subpart T, then final agency action would not occur until EPA had concluded such rulemaking. Consistent with the settlement agreement, EPA may propose to grant or deny the petition within 120 days of receipt, allow a comment period of at least 60 days, and take final action granting or denying the petition within 120 days of the close of the comment period.

Under today's procedures, EPA shall summarily dismiss without prejudice a § 61.226(b) petition to reconsider the rescission and seek reinstatement of subpart T on a programmatic basis, unless the petitioner demonstrates that it provided written notice of the alleged failure to NRC or an affected Agreement State at least 60 days before filing its petition with EPA. This notice to NRC must include a statement of the grounds for such a petition. This notice requirement may be satisfied, among other ways, by submissions or pleadings submitted to NRC during a proceeding conducted by NRC. The purpose of this advance notice requirement is to provide NRC or an affected Agreement State with an opportunity to address the concerns raised by the potential petitioner. Additionally, EPA shall summarily dismiss without prejudice a § 61.226(b) petition to reconsider the rescission and seek reinstatement of subpart T on a site-specific basis, unless the petitioner demonstrates that it provided, at least 60 days before filing its petition with EPA, a written request to NRC or an affected Agreement State for enforcement or other relief, and unless the petitioner alleges that NRC or the affected Agreement State failed to respond to such request by taking action, as necessary, to assure timely implementation and enforcement of the 20 pCi/m²-s flux standard. This provision is intended to provide NRC or an Agreement State with an opportunity to address the concerns raised by the potential petitioner through its standard enforcement mechanisms.

The Administrator may also initiate reconsideration of the rescission and reinstatement of subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites if EPA believes it is appropriate to do so. For example, EPA may initiate such reconsideration if it has reason to believe that NRC or an affected Agreement State has failed to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard. Before the Administrator initiates reconsideration of the rescission and reinstatement of subpart T, EPA shall consult with NRC to address EPA's concerns. If the consultation does not resolve the concerns, EPA shall provide NRC with 60 days notice of the Agency's intent to initiate rulemaking to reinstate this subpart.

Upon completion of a reconsideration rulemaking, EPA may: (1) Reinstate subpart T on a programmatic basis if EPA determines, based on the record, that NRC has significantly failed to implement and enforce, in significant part, on a programmatic basis, (a) the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or (b) the license requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard; (2) reinstate subpart T on a site-specific basis if EPA determines, based on the record, that NRC or an affected Agreement State has significantly failed to implement and enforce, in significant part, on a site-specific basis, (a) the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or (b) the license requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard; or (3) issue a finding that NRC is implementing and enforcing on either a site-specific or programmatic basis the regulations and license requirements described above and that reinstatement of subpart T is not appropriate.

The regulations establish an obligation for the Administrator to reinstate subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard. The Administrator also shall reinstate subpart T on a site-specific basis as applied to owners and operators of non-operational uranium mill tailings disposal sites if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States. Under today's action, EPA shall be required to reinstate subpart T only for the failures enumerated in the preceding sentence that may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m²-s flux standard at uranium mill tailings disposal sites. In rescinding subpart T, EPA intends "in significant part" to mean that EPA must find that NRC or an affected Agreement State is implementing and enforcing, on a programmatic and a site-specific basis: (1) The regulations governing the disposal of uranium mill tailings

site-specific basis if EPA determines, based on the record, that NRC or an affected Agreement State has significantly failed to implement and enforce, in significant part, on a site-specific basis, (a) the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or (b) the license requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard; or (3) issue a finding that NRC is implementing and enforcing on either a site-specific or programmatic basis the regulations and license requirements described above and that reinstatement of subpart T is not appropriate.

The regulations establish an obligation for the Administrator to reinstate subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard. The Administrator also shall reinstate subpart T on a site-specific basis as applied to owners and operators of non-operational uranium mill tailings disposal sites if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States. Under today's action, EPA shall be required to reinstate subpart T only for the failures enumerated in the preceding sentence that may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m^2-s flux standard at uranium mill tailings disposal sites. In rescinding subpart T, EPA intends "in significant part" to mean that EPA must find that NRC or an affected Agreement State is implementing and enforcing, on a programmatic and a site-specific basis: (1) The regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC consistent with the MOU and settlement agreement and (2) the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard in a manner that is not reasonably expected to materially (i.e., more than de minimis) interfere with compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Reinstatement would require an EPA finding that NRC or an affected Agreement State has failed to implement and enforce in this manner.

IV. Discussion of Comments and Response to Comments From NPR

Public hearings on EPA's December 31, 1991, proposal to rescind subpart T (56 FR 67561) were held on January 15, 1992 in Washington, D.C. and on January 21–22, 1992 in Santa Fe, New Mexico. Representatives of the Nuclear Regulatory Commission (NRC), the American Mining Congress (AMC), the owners and operators of individual sites and the Southwest Research and Information Center (SWRIC) testified at these hearings. Written comments were also received from the Environmental Defense Fund (EDF), NRC, AMC, owners and operators of individual sites, the Department of Energy and the SWRIC.

In February 1993, an agreement was reached between EPA, EDF, NRDC, AMC, and individual uranium mill tailings disposal sites to settle pending litigation and administrative proceedings, avoid potential future litigation, and otherwise agree to a potential approach to regulation of NRC and Agreement State licensed non-operational uranium mill tailings disposal sites. See 58 FR 17230 (April 1, 1993) (notice announcing settlement agreement under CAA section 113(g)). NRC agreed in principle with the settlement agreement. The settlement agreement added comprehensive detail to, and thereby continued, the approach set forth in the MOU published with the 1991 proposal. (56 FR 67568, December 31, 1991).

Written comments in response to EPA's February 7, 1994 supplemental proposal were received from NRC, EDF, AMC, Homestake Mining Company, Rio Algom Mining Corp., ARCO and Envirocare of Utah, Inc.

Many of the parties who commented on the December 1991 proposal also signed the settlement agreement and commented on the February 1994 proposal. In certain cases, a party's comments to the December 1991 proposal are inconsistent with and conflict with comments later submitted in response to the 1994 proposal. Given the intervening settlement agreement and the revisions to EPA's and NRC's UMTRCA regulations, EPA believes that the more recent comments submitted by a party, in response to the 1994 proposal, should be accorded more weight than comments previously submitted by that same party in 1991, where there is inconsistency between the comments.

In addition, EPA's review of the comments has been limited to the question of whether EPA should rescind subpart T. This rulemaking was not intended to reconsider and did not address whether EPA should have promulgated subpart T in 1989. EPA therefore rejected as irrelevant to this rulemaking, comments addressed to the validity or appropriateness of the promulgation of subpart T.

1. General

In response to the 1991 and 1994 Notices of Proposed Rulemaking (NPR), NRC, environmental and industry groups generally support EPA's proposal to rescind 40 CFR part 61, subpart T as applied to owners and operators of NRC and Agreement State licensed non-operational uranium mill tailings disposal sites. Various commenters to the 1994 proposal suggested specific revisions to the proposed regulatory text and preamble. The Agency has reviewed all comments and suggested revisions carefully. Revisions to the regulatory text and preamble have been made where deemed appropriate.

2. Request for Comments Contained in the 1994 NPR

In the February 1994 proposal, EPA requested comments on its proposed determination that the NRC regulatory program protects public health with an ample margin of safety, including comments on whether: (1) EPA has effectively promulgated appropriate revisions to 40 CFR part 192, subpart D; (2) NRC's regulations at 10 CFR part 40, appendix A either already adequately and appropriately implement the revisions to EPA's regulations, or may reasonably be expected to do so prior to rescission of subpart T; (3) the revision of NRC and affected Agreement State licenses reflect the new requirements of subpart D; and (4) any judicial or administrative challenge to EPA or NRC regulations is expected to present a significant risk of interference with full compliance with the MOU and the settlement agreement.

Several commenters responded to the Agency's request for comments. Commenters believed EPA's amendments to 40 CFR part 192, subpart D fulfill the intent of the settlement agreement with respect to actions required by EPA. However, certain commenters noted that the settlement agreement called for action by both EPA and NRC. The commenters universally agreed that based upon NRC's November 3, 1993 proposal, NRC may reasonably be expected to adequately and appropriately implement the Agency's amendments to 40 CFR part 192, subpart D. These commenters believe that when finalized, NRC's regulations at 10 CFR part 40, appendix A should adequately comply with the settlement agreement and conform to EPA's subpart D UMTRCA regulations.

Many commenters noted that NRC and the Agreement States have faithfully implemented their MOU commitment to complete review and approval by no later than September 1993 of detailed reclamation plans including schedules for emplacing an earthen cover on non-operational tailings impoundments to control emissions of radon-222 to 20 pCi/m^2-s. See 56 FR 67568, December 31, 1991. Several commenters noted that although the license amendment for the Atlas site in Moab, Utah is not yet complete, that site represents a unique situation and should not affect EPA's decision to rescind subpart T.

No commenter was aware of any pending judicial or administrative challenge that would present a significant risk of interference with the MOU and the settlement agreement.

Additionally, EPA requested comments on the proposed reconsideration provisions included in a new §61.226 added to subpart T. In particular EPA requested comments as to whether these provisions effectively implement the regulatory approach of the settlement agreement, especially the terms providing specific time periods for a reconsideration rulemaking. One commenter believed the criteria and procedures for reconsidering the decision to rescind subpart T were consistent with the terms of the settlement agreement. Several other commenters commented as to specific aspects of those provisions and suggested revisions to the regulatory language for consistency with the settlement agreement. Specific comments pertaining to the proposed provisions for reconsideration of the rescission and reinstatement of subpart T are addressed in Section 4 below.

There was widespread agreement among the commenters that the EPA and NRC regulatory and licensing framework that either has been, or is in the process of being, implemented will ensure that non-operational uranium mill tailings disposal sites will achieve the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility.

3. Rescission of Subpart T

3.1 *Timing of Rescission*

Comment: In response to the 1991 proposal, one commenter noted EPA should not rescind subpart T until the Agency is assured that the MOU between EPA, NRC and the affected Agreement States is implemented and EPA's amendments to its UMTRCA regulations at 40 CFR part 192, subpart D are complete.

Response: As stated in the preamble to the 1994 proposal and the final rule amending 40 CFR part 192, subpart D, EPA is now rescinding subpart T for NRC-licensed uranium mill tailings disposal sites due to the completion of the Agency's amendments to subpart D, completion of NRC conforming regulations, and completion by NRC and affected Agreement States of various license amendments containing schedules for emplacement of the permanent radon barrier. EPA believes it is appropriate to rescind subpart T pursuant to the authority of section 112(d)(9) of the CAA, as amended, since NRC has established a regulatory program to ensure that non-operational uranium mill tailings piles will be closed as expeditiously as practicable considering technological feasibility.

3.2 *Section 112(d)(9) of the Clean Air Act, As Amended ("Simpson Amendment")*

Comment: In response to the 1991 proposal, one commenter argued section 112(d)(9) of the CAA, as amended, applies prospectively and does not authorize EPA to rescind a previously promulgated standard.

Response: The Agency disagrees and believes that section 112(d)(9) of the CAA authorizes EPA to rescind previously promulgated regulations if certain determinations are made by EPA. Congress clearly intended to give the Agency the discretion to rescind certain previously promulgated regulations and thereby relieve affected facilities from the burdens associated with parallel regulation when the NRC regulatory program would protect public health with an ample margin of safety. See, e.g., 136 Cong. Rec. S 3797–99 (daily ed. April 3, 1990), reprinted in 4 A Legislative History of the Clean Air Act Amendments of 1990, at 7156–7162 (1993). ("Legislative History, CAAA 1990"). This Senate floor debate on Amendment No. 1457 to S. 1630 evidences a clear intention that section 112(d)(9) authorizes rescission of previously promulgated radionuclide NESHAPs. Senator Simpson, the sponsor of the amendment, stated that "[p]assage of this amendment will allow EPA to replace the emission standards issued by EPA in November 1989, for NRC-licensed facilities, including power plants, uranium fuel cycle facilities, and by-product facilities, if that agency concludes that the existing NRC regulatory program adequately protects public health." 4 Legislative History, CAAA 1990 at 7158. Also see 1 Legislative History, CAAA 1990 at 778 (1993) (statement by Senator Burdick during debate on the Conference Committee Report) ("It is clear that the existing regulatory program under the Atomic Energy Act protects the public health with an ample margin of safety. Under these circumstances, additional or dual regulation under the Clean Air Act does not make any sense.")

Additionally, in commenting on the 1994 proposal, this commenter expressed the belief that the 1994 proposal is consistent with the terms of the settlement agreement between EPA, EDF, NRDC, AMC and individual site owners and operators. The settlement agreement, as described in detail above, promotes the objectives of section 112(d)(9) of the CAA by establishing an agreed upon framework for reconsideration of rescinding subpart T and making minor modifications to the AEA regulatory program for closure of the uranium mill tailings disposal sites. Clearly, rescission of the previously promulgated subpart T was contemplated by the parties to the settlement agreement. This particular commenter and EPA were parties to that agreement. EPA continues to implement the terms of the settlement agreement, including today's action rescinding subpart T. Thus, EPA is rejecting the prior comment to the 1991 proposal.

Comment: In response to the 1991 proposal, a commenter suggested EPA publish its finding that the NRC regulatory program protects the public health with an ample margin of safety.

Response: Pursuant to the settlement agreement, EPA published and invited comment on its proposed determination that the NRC regulatory program protects public health with an ample margin of safety on February 7, 1994 (59 FR 5674). That determination is also contained in this action, which will be published in the **Federal Register**.

Comment: Commenters suggested in response to the 1991 proposal that EPA could not determine that the NRC regulatory program protects public health with an ample margin of safety so long as NRC retains the authority to waive standards and time schedules for compliance, and there are no provisions under the AEA for citizens' suits.

Response: The commenters suggest that the NRC regulatory program does not ensure that EPA's revised UMTRCA regulations (40 CFR part 192, subpart D) would apply, since NRC has the authority to grant waivers under the AEA due to cost or technological feasibility. EPA recognizes that the NRC has authority under the AEA to waive for economic reasons strict compliance with the requirement that sites meet the 20 pCi/m^2-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). AEA section 84c., 42 USC 2114c. However, the full exercise of this authority is not contemplated by either the MOU or the settlement agreement, described above. If this waiver authority is used in a manner inconsistent with the purposes and objectives of the MOU and settlement agreement, today's action includes procedural and substantive provisions designed to facilitate reconsideration of the rescission and possible reinstatement of subpart T.

The amendments to subpart T provide clear authority and procedures for EPA to revisit today's finding should NRC or the affected Agreement States deviate from the regulatory program in place in a manner which materially (i.e., more than de minimis) interferes with compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Additionally, EPA believes the actions taken to date by NRC, including the license amendments and the final amendments to the NRC conforming regulations, as described above, reflect the good faith effort on the part of NRC to implement the MOU. Thus, EPA believes under these circumstances NRC's authority to waive strict compliance with the flux standard and the time for compliance does not preclude EPA from finding NRC's regulatory program protects the public health with an ample margin of safety.

Further, the Agency believes that Congress was aware that the legislative authority under the CAA provided for citizen suits while the AEA did not contain such provisions. Congress clearly envisioned that circumstances might be such that EPA would make the finding required by the Simpson

Comment: Commenters suggested in response to the 1991 proposal that EPA could not determine that the NRC regulatory program protects public health with an ample margin of safety so long as NRC retains the authority to waive standards and time schedules for compliance, and there are no provisions under the AEA for citizens' suits.

Response: The commenters suggest that the NRC regulatory program does not ensure that EPA's revised UMTRCA regulations (40 CFR part 192, subpart D) would apply, since NRC has the authority to grant waivers under the AEA due to cost or technological feasibility. EPA recognizes that the NRC has authority under the AEA to waive for economic reasons strict compliance with the requirement that sites meet the 20 pCi/m^2-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). AEA section 84c., 42 USC 2114c. However, the full exercise of this authority is not contemplated by either the MOU or the settlement agreement, described above. If this waiver authority is used in a manner inconsistent with the purposes and objectives of the MOU and settlement agreement, today's action includes procedural and substantive provisions designed to facilitate reconsideration of the rescission and possible reinstatement of subpart T.

The amendments to subpart T provide clear authority and procedures for EPA to revisit today's finding should NRC or the affected Agreement States deviate from the regulatory program in place in a manner which materially (i.e., more than de minimis) interferes with compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Additionally, EPA believes the actions taken to date by NRC, including the license amendments and the final amendments to the NRC conforming regulations, as described above, reflect the good faith effort on the part of NRC to implement the MOU. Thus, EPA believes under these circumstances NRC's authority to waive strict compliance with the flux standard and the time for compliance does not preclude EPA from finding NRC's regulatory program protects the public health with an ample margin of safety.

Further, the Agency believes that Congress was aware that the legislative authority under the CAA provided for citizen suits while the AEA did not contain such provisions. Congress clearly envisioned that circumstances might be such that EPA would make the finding required by the Simpson Amendment. In making today's ample margin of safety determination, EPA considered whether NRC is implementing and enforcing, in significant part, the regulations governing disposal of tailings and the license requirements which establish milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard on a programmatic and site-specific basis. UMTRCA gives NRC and the Agreement States the responsibility to implement and enforce regulations promulgated under UMTRCA. If, in the future, NRC or the Agreement States do not implement and enforce, in significant part, the regulations governing disposal of tailings and the license requirements which establish milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard on a programmatic or site-specific basis, reconsideration and reinstatement provisions adopted today allow EPA to reconsider its rescission of subpart T, and thus, possibly reinstate the CAA standards. The settlement agreement executed between EPA, EDF, NRDC and AMC which provided the regulatory approach for today's action had as an objective the rescission of subpart T. Moreover, NRC's final amendments to the conforming regulations also provide enhanced opportunities for public participation under certain circumstances.

3.3 *Section 112(q)(3) of the Clean Air Act, As Amended*

Comment: The comments to the 1991 proposal included a comment that the "Savings Provision" (section 112(q)(3)) of the CAA requires that subpart T remain in effect.

Response: Section 112(q)(3) provides . . . this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from . . . disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

EPA believes the plain language of section 112(q)(3) gives the Administrator the discretion to rescind subpart T pursuant to section 112(d)(9) or allow subpart T to remain in effect pursuant to section 112 as in effect prior to the CAAA of 1990. In this rulemaking, EPA acted to apply section 112 as modified by the 1990 amendments, and pursuant to section 112(d)(9) to decline to regulate "radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State)" if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, "that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health." This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is protected with an ample margin of safety. Although the commenter suggests that section 112(q)(3) should cause the Administrator to not rescind subpart T, such an interpretation is not harmonious and is inconsistent with the intent of Congress in enacting the CAAA of 1990.

Additionally, EPA received comments from this commenter supporting the 1994 proposal, expressing the belief that the 1994 proposal is consistent with the terms of the settlement agreement. The settlement agreement promotes the objectives of section 112(d)(9) of the CAA as amended by establishing an agreed upon framework for consideration of the rescission of subpart T and minor modifications to the AEA regulatory program for closure of uranium mill tailings disposal sites. This commenter, together with EPA and others, was a party to that agreement, which clearly envisions rescission of subpart T.

Thus, EPA is rejecting this comment, since a plain reading of section 112(q)(3) authorizes EPA to exercise its discretion under section 112(d)(9) and as a party to the settlement agreement the commenter clearly supports the goal of the agreement that subpart T be rescinded.

3.3 *Section 122(a) of the Clean Air Act, as Amended in 1977*

Comment: The commenter asserts in response to the 1991 proposal that EPA should not rescind subpart T because such rescission is inconsistent with section 122(a) of the CAA of 1977. The commenter contends section 122(a) was not repealed by the 1990 amendments to the CAA and that it required the Agency to list radionuclides as a hazardous air pollutant if the Administrator found that public health was threatened due to air emissions of radionuclides.

Response: EPA disagrees with the commenter's interpretation that rescission of subpart T pursuant to section 112(d)(9) of the CAA is inconsistent with section 122(a) of the

CAA. On December 27, 1979, EPA listed radionuclides, including those defined by the AEA as byproduct material, as a Hazardous Air Pollutant pursuant to section 112(b)(1)(A) of the CAA as amended in 1977. (44 FR 76738). In that notice EPA stated that

> [I]n accordance with the requirements of sections 122 and 112, the Agency finds that studies of the biological effects of ionizing radiation indicate that exposure to radionuclides increases the risk of human cancer and genetic damage. . . . Based on this information, the Administrator has concluded that emission of radionuclides may reasonably be anticipated to endanger public health, and that radionuclides constitute hazardous air pollutants within the meaning of the Clean Air Act.

Id. On April 6, 1983 (48 FR 15076) EPA announced proposed standards for four sources of emissions of radionuclides, and its decision to not regulate uranium mill tailings together with other sources. Under court order, EPA finalized the regulations proposed in 1983 on February 6, 1985. 50 FR 5190. See also *Sierra Club* v. *Ruckelshaus*, No. 84–0656 (U.S. District Court for the Northern District of California). On September 24, 1986, EPA promulgated a final rule regulating radon-222 emissions from licensed uranium mill processing sites by establishing work practices for new tailings. (51 FR 34056). On April 1, 1988, EPA requested a remand for this standard. On EPA's motion, the Court placed the uranium mill tailings NESHAPs on the same schedule as the other radionuclide NESHAPs to reconsider the standards in light of *Natural Resources Defense Council* v. *EPA*, 824 F.2d 1146 (D.C. Cir 1987) (*Vinyl Chloride*). EPA subsequently promulgated 40 CFR part 61, subpart T, the subject of today's action.

EPA believes section 122 of the CAA must be read consistent with and in harmony with the 1990 amendments to the CAA. EPA took action under section 122 when it listed radionuclides. EPA subsequently regulated radionuclides emissions under section 112. Section 112(d)(9) of the CAA authorizes EPA to now decline to regulate radionuclide emissions from any category or subcategory of facilities licensed by the NRC (or an Agreement State) if the Administrator determines, by rule, and after consultation with the NRC, that the regulatory program established by the NRC pursuant to the AEA for such category or subcategory provides an ample margin of safety to protect the public health. This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is protected with an ample margin of safety. While section 122 addresses whether radionuclides should be listed, section 112(d)(9) addresses a separate issue—whether EPA should continue to regulate or initiate regulation of radionuclide air emissions under section 112 based on the NRC regulatory program.

Although the commenter suggests EPA should not rescind subpart T based on section 122(a), EPA believes such a reading of sections 112(d)(9) and 122(a) is not harmonious and is inconsistent with the intent of Congress in enacting section 112(d)(9).

Additionally, EPA received comments from this particular commenter in response to the 1994 proposal expressing the belief that the 1994 proposal to rescind subpart T is consistent with the terms of the settlement agreement. The settlement agreement promotes the objectives of section 112(d)(9) of the CAA as amended through the rescission of subpart T and minor modifications to the AEA regulatory program for closure of the uranium mill tailings disposal sites. This commenter, together with EPA and others, was a party to that agreement. Through today's action rescinding subpart T, EPA is furthering the goal of the settlement agreement.

Thus, EPA is rejecting this comment, since a reading of section 122(a) apparently preventing such rescission is inconsistent with the intent of Congress in enacting section 112(d)(9), and as a party to the settlement agreement the commenter was aware of and supported the goal of the agreement that subpart T be rescinded.

4. Proposed Amendments to 40 CFR Part 61, Subpart T

4.1 *General*

Comment: The rationale for adding the definitions *residual radioactive material* and *tailings*, while deleting the definition of *uranium byproduct material* or *tailings* is not clear. The proposed definitions appear to apply to Title I sites, and significant problems might arise if these definitions were to be applied to Title II sites in the event of reinstatement of subpart T.

Response: § 61.220(a) as adopted today states that subpart T applies only to Title I sites except for the reconsideration and reinstatement procedures in § 61.226. The phrase "or uranium byproduct materials" was deleted to further clarify that subpart T applies to Title I sites. The phrases "residual radioactive materials" and "tailings" currently appear in § 61.220(a). EPA noted in describing DOE sites in the 1989 BID that the tailings located at these sites contain residual radioactive materials, including traces of unrecovered uranium, various heavy metals and other elements. *Background Information Document: Risk Assessments; Environmental Impact Statement; NESHAPs for Radionuclides*, Volume 2 at 8–2 (EPA/520/1–89–006–1, September 1989).

EPA believes it appropriate to define *residual radioactive material* and *tailings* for purposes of this subpart. The Agency proposed these definitions on December 31, 1991 and February 4, 1994. (56 FR 67561; 59 FR 5687). The proposed definitions for these terms were consistent with definitions contained in UMTRCA. 42 U.S.C. 7911, sections 101(7) and 101(8). The terms are defined in the Final Rule by expressly referencing UMTRCA, to ensure consistency with that Act. The Agency does not believe these definitions would be problematic if the Agency decided to reinstate subpart T, since EPA would amend subpart T at that time to apply to the Title II sites and to include appropriate definitions.

Comment: The provisions of subpart T, with the exception of § 61.226, should only apply to Title I sites and some apparent references to Title II sites remain.

Response: EPA is rescinding subpart T as applied to NRC or Agreement State licensed non-operational uranium mill tailings disposal sites, and thus, does not intend any provision of subpart T, excepting § 61.226 and applicable definitions, to apply to these sites. EPA has revised § 61.220(a) to reflect this intent.

Comment: Section 61.226(c)(2) as proposed suggests that no future action can be taken to resolve EPA's concerns after EPA notifies NRC of its intent to initiate a rulemaking to reinstate subpart T.

Response: EPA disagrees with the commenter's suggestion that no further action may be taken to resolve the Agency's then existing concerns after EPA notifies NRC of its intent to proceed with a rulemaking to reinstate subpart T. The purpose of consulting with NRC about the Agency's concerns prior to notifying NRC and the subsequent 60-day period is to provide EPA and NRC with an opportunity to address EPA's concerns prior to EPA actually initiating such a rulemaking. Additionally, EPA expects that the two agencies would continue consultations during the rulemaking process to attempt to resolve any remaining concerns. Section 61.226(c)(2) would not limit such continued consultations.

4.2. Provisions for Reconsideration of the Rescission and Reinstatement of Subpart T

Comment: Many commenters, although generally opposed to the idea of reinstatement of subpart T, favored including provisions for reconsideration and reinstatement of subpart T on either a site-specific or programmatic basis, as set forth in the Agency's 1991 proposal to rescind subpart T.

Response: EPA reviewed the various reconsideration options proposed in December 1991, taking into consideration the comprehensive details added to the terms of the MOU by the settlement agreement finalized in April 1993. In its 1994 supplemental proposal, EPA proposed an additional reconsideration option that was a combination of the options originally proposed. EPA did not withdraw the original options, but instead announced the Agency's preference for provisions on reconsideration and reinstatement of subpart T on both programmatic and site-specific bases. The Agency has reviewed carefully all comments submitted on the proposed reconsideration provisions and has revised the regulatory text and preamble where deemed appropriate. The Agency believes the provisions for reconsideration and reinstatement of subpart T adopted today represent a comprehensive approach based on EPA's current evaluation of the NRC regulatory program, and a regulatory structure designed to address future evaluations of the program.

Comment: EPA received a variety of comments dealing with the consistency of the proposed regulations with the settlement agreement between EPA, EDF, NRDC, AMC, and individual site owners described above; to which NRC agreed in principle. These commenters suggested various minor revisions to the regulations.

Response: EPA has adopted certain comments and suggested minor language changes while rejecting others, depending on whether they effectively implement the goal of rescission of subpart T.

Comment: Several commenters contend the site-specific reconsideration and reinstatement options contained in the December 1991 proposal would unduly restrict NRC's waiver authority, since EPA proposed a non-discretionary duty to reinstate subpart T on a site-specific basis if NRC exercises its waiver authority.

Response: As described in the proposals, EPA was concerned over the potential for deviation from the agreements contained in the MOU and

4.2. Provisions for Reconsideration of the Rescission and Reinstatement of Subpart T

Comment: Many commenters, although generally opposed to the idea of reinstatement of subpart T, favored including provisions for reconsideration and reinstatement of subpart T on either a site-specific or programmatic basis, as set forth in the Agency's 1991 proposal to rescind subpart T.

Response: EPA reviewed the various reconsideration options proposed in December 1991, taking into consideration the comprehensive details added to the terms of the MOU by the settlement agreement finalized in April 1993. In its 1994 supplemental proposal, EPA proposed an additional reconsideration option that was a combination of the options originally proposed. EPA did not withdraw the original options, but instead announced the Agency's preference for provisions on reconsideration and reinstatement of subpart T on both programmatic and site-specific bases. The Agency has reviewed carefully all comments submitted on the proposed reconsideration provisions and has revised the regulatory text and preamble where deemed appropriate. The Agency believes the provisions for reconsideration and reinstatement of subpart T adopted today represent a comprehensive approach based on EPA's current evaluation of the NRC regulatory program, and a regulatory structure designed to address future evaluations of the program.

Comment: EPA received a variety of comments dealing with the consistency of the proposed regulations with the settlement agreement between EPA, EDF, NRDC, AMC, and individual site owners described above; to which NRC agreed in principle. These commenters suggested various minor revisions to the regulations.

Response: EPA has adopted certain comments and suggested minor language changes while rejecting others, depending on whether they effectively implement the goal of rescission of subpart T.

Comment: Several commenters contend the site-specific reconsideration and reinstatement options contained in the December 1991 proposal would unduly restrict NRC's waiver authority, since EPA proposed a non-discretionary duty to reinstate subpart T on a site-specific basis if NRC exercises its waiver authority.

Response: As described in the proposals, EPA was concerned over the potential for deviation from the agreements contained in the MOU and the requirements of revised subpart D. In response, EPA proposed and is now adopting procedural and substantive provisions for site-specific and programmatic reconsideration and reinstatement if certain criteria are met. In promulgating subpart T, the CAA did not permit, and EPA did not consider, site-specific waivers from ultimate compliance with that standard. Thus, in evaluating NRC's regulatory program, EPA recognized in its December 1991 proposal that NRC's waiver authority under the AEA might be exercised in a manner not addressed in the MOU even after the revisions to 40 CFR part 192, subpart D and 10 CFR part 40, appendix A have been promulgated and the licenses amended. However, EPA has no reason to believe such relaxation of the standards will actually occur. EPA believes the provisions adopted today represent a comprehensive approach based on EPA's current evaluation of the NRC regulatory program, and a regulatory structure designed to address future evaluations of the program.

Additionally, in response to the 1994 proposal, EPA received subsequent comments from these commenters supporting the rescission of subpart T. Furthermore, these commenters supported the proposed reconsideration and reinstatement provisions with certain modifications. These commenters believe the 1994 proposal to rescind subpart T is consistent with the terms of the settlement agreement between EPA, EDF, NRDC, AMC and individual sites. Thus, based on the above reasons for adopting reconsideration and reinstatement provisions, and due to the inconsistency between the earlier comments received and the subsequent expressions of support for the rescission of subpart T, EPA is rejecting the earlier comments.

Comment: Many commenters to the 1991 proposal believe that reconsideration of the rescission of subpart T and subsequent reinstatement on a programmatic basis is inappropriate if one site fails to comply.

Response: Today's action sets forth provisions for the reconsideration of the rescission of subpart T and reinstatement of that subpart. The regulations adopted today include provisions for programmatic and site-specific reinstatement with separate but somewhat parallel criteria. At this time, EPA is not aware of a situation which would cause it to reinstate subpart T on a programmatic basis if one site fails to comply, and would not expect to reinstate subpart T on that basis. However, the Agency cannot predict all future circumstances, and cannot at this time preclude the possibility of such reinstatement. EPA does, however, believe the criteria adopted today appropriately address both programmatic and site-specific reinstatement.

EPA rejects this comment for the above reasons, and because of the inconsistent responses to the 1991 and 1994 proposals received from the same commenters.

Comment: Some commenters assert, in response to the 1991 proposal that EPA lacks the authority to reinstate subpart T on a site-specific basis, since section 112(d)(9) is concerned only with NRC's regulatory program.

Response: EPA believes that section 112(d)(9) does not preclude site-specific reinstatement. Section 112(d)(9) of the CAA as amended authorizes EPA to decline to regulate radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health. The text of this section does not appear to preclude reinstatement on a site-specific basis. Section 112(d)(9) allows EPA to categorize and subcategorize, and for any such category or subcategory determine whether the public health is protected with an ample margin of safety by the NRC regulatory program from a particular source of radionuclide emissions. EPA believes that under the appropriate circumstances, the Agency may want to specifically categorize sites. The CAA as amended does not appear to preclude such specific categories on its face.

EPA rejects this comment for the above reasons, and because of the contradictory and inconsistent nature of the comments received from the same commenters in response to the 1991 and 1994 proposals, and the commenters' support of EPA's 1994 proposal which contains provisions for site-specific reinstatement.

Comment: One commenter appears to recognize EPA's authority for site-specific reinstatement of subpart T but is opposed to EPA's exercise of such authority, and questions its appropriateness, since it appears to the commenter that NRC's existing inspection and enforcement programs address site-specific failures.

Response: This commenter does not oppose the proposed reinstatement

provisions and expresses the clear opinion that EPA committed in the settlement agreement to include provisions for site-specific reconsideration and reinstatement of subpart T. EPA anticipates that before initiating a rulemaking to reinstate subpart T on a site-specific basis, there would be extensive consultation with NRC. Based on the actions of NRC to date in implementing the terms of the MOU, EPA hopes that all concerns could be resolved. EPA is adopting the provisions for site-specific reconsideration and reinstatement as part of a comprehensive approach based on EPA's current evaluation of the NRC regulatory program, and a regulatory structure designed to address future evaluations of the program.

Comment: Some commenters contend that in reconsidering the rescission and reinstatement of subpart T on a programmatic basis, section 112(d)(9) requires EPA to determine whether public health is threatened by the failure of a particular site to meet the 20 pCi/m^2-s flux standard.

Response: The Agency disagrees with the commenters' interpretation of section 112(d)(9) as applying to provisions for reinstatement. Section 112(d)(9) does not establish the criteria for reinstatement, rather it authorizes EPA to decline to regulate radionuclide emissions from NRC or Agreement State licensees if the Administrator determines, by rule, and after consultation with the NRC, that the NRC regulatory program protects the public health with an ample margin of safety. Under section 112(d)(9) EPA may rescind subpart T if EPA determines that the NRC regulatory program provides an equivalent level of public health protection (i.e., an ample margin of safety) as would implementation of subpart T in order to rescind subpart T. Section 112(d)(9) does not limit EPA's authority to reinstate subpart T. EPA believes the criteria adopted today appropriately address both programmatic and site-specific reinstatement.

Additionally, this comment was received in response to the 1991 proposal. EPA rejects this comment for the above reasons, and because of the inconsistent responses to the 1991 and 1994 proposals received from the same commenters.

Comment: Some commenters contend in response to the 1994 proposal that EPA should not treat reinstatement at the Administrator's initiative on the same terms as reinstatement based on a third party petition. These comments suggest revising the proposed regulations to reflect the differences between the two, including adding a provision for a third possible result (i.e., a finding that NRC is in compliance).

Response: EPA disagrees with the commenters' suggestion that reinstatement at the Administrator's initiative should be treated differently from reinstatement based on a third party petition.

The commenters are basing their contentions on the terms of the settlement agreement which the Agency entered into with EDF, NRDC, AMC and individual sites in February 1993. That agreement adds comprehensive details to the regulatory approach of the MOU between EPA, NRC and the affected Agreement States. EPA has reviewed the terms of the settlement agreement pertaining to the reconsideration of rescission and reinstatement of subpart T. The settlement agreement specifies at paragraph III.e. that upon completion of a rulemaking reconsidering the rescission of subpart T, EPA may (1) reinstate subpart T on a programmatic basis if certain criteria are met; (2) reinstate subpart T on a site-specific basis if certain criteria are met; or (3) issue a finding that NRC is in compliance with certain criteria and that reinstatement of subpart T is not appropriate.

The Agency believes the criteria in § 61.226(a) for requiring reinstatement upon completion of a reconsideration rulemaking should apply whether the rulemaking is at the Administrator's initiative or based on a third party petition. These criteria are: (1) Failure by the NRC or an Agreement State on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements (i.e., contained in the license) establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard; or (2) failure by NRC or an affected Agreement State on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States. Additionally, EPA would not be required to reinstate subpart T under § 61.226(a) unless those failures may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m^2-s flux standard at uranium mill tailings disposal sites.

The commenters contend that the nature of the party initiating the reconsideration rulemaking should determine whether reinstatement is discretionary (for initiation by the Administrator) or mandatory (for a third party petition), apparently based on a desire to provide EPA with greater flexibility to address concerns over failures of NRC or an Agreement State to implement or enforce applicable requirements. The Agency believes that the nature of the initiating party properly may trigger different procedural requirements. For example, when a private party initiates the process by filing a petition, EPA has established a requirement that it take final action on such a petition within a set time period. However, EPA believes that the nature of the party initiating the process leading to a rulemaking is not relevant to deciding whether to reinstate, assuming the relevant criteria for reinstatement are met under either circumstance. EPA believes that if the Administrator determines, based on the record, that (1) NRC or an Agreement State failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard or (2) NRC or an affected Agreement State failed in significant part, on a site-specific basis, to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States, then there would be the same reason for the Agency to reinstate subpart T whether the process was initiated by a private petition or at EPA's own initiation. If the Agency makes the determination required to reinstate subpart T based on reconsideration of rescission at the Administrator's initiative and such reinstatement is considered discretionary, the Agency is not aware of circumstances which would lead the Agency not to reinstate subpart T. In any case, if the Administrator should make the determination in § 61.226(a) (1) or (2) but decide in her discretion not to reinstate subpart T in a proceeding initiated by the Administrator, then the Agency believes it would promptly receive third party petitions based on the finding made at the Administrator's initiative, and the Agency would then be obligated to

reinstate subpart T. Additionally, upon completion of the reconsideration of rescission pursuant to § 61.226(c) the Administrator may in her discretion issue a finding that reinstatement of this subpart is not appropriate if the Administrator makes certain findings. However, the discretion to issue such a finding is not relevant to the situation where the Administrator has found that the criteria for reinstatement have already been met, since the two findings are mutually exclusive. Finally, the commenters apparently believe that reinstatement at the Administrator's initiative should be discretionary so that EPA and NRC can continue attempts to resolve concerns and thereby avoid the need to reinstate. EPA believes that such ongoing consultation is not precluded by the regulations adopted today, and EPA expects the agencies would continue consultations and make all possible efforts to resolve the concerns during the rulemaking process. The regulation does not establish a time limit for final agency action in this case, and the agency would have discretion to extend the rulemaking if appropriate to continue such inter-agency consultations.

EPA agrees with the commenters that the settlement agreement provides an additional possible result upon completion of a reconsideration rulemaking initiated by the Administrator, namely that the Agency may issue a finding that reinstatement is not appropriate if the Agency finds: (1) NRC and the affected Agreement States are on a programmatic basis implementing and enforcing, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard; or (2) NRC or an affected Agreement State are, in significant part, on a site-specific basis achieving compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States. EPA believes addition of this provision to the regulations will clarify the existence of this option and has revised § 61.226(a) of the reinstatement provisions to provide for this additional result.

Comment: One commenter asserts that EPA's characterization of its authority to reconsider rescission of subpart T in the preamble to the 1994 proposal appears overly broad and reinstatement should be clearly limited

reinstate subpart T. Additionally, upon completion of the reconsideration of rescission pursuant to § 61.226(c) the Administrator may in her discretion issue a finding that reinstatement of this subpart is not appropriate if the Administrator makes certain findings. However, the discretion to issue such a finding is not relevant to the situation where the Administrator has found that the criteria for reinstatement have already been met, since the two findings are mutually exclusive. Finally, the commenters apparently believe that reinstatement at the Administrator's initiative should be discretionary so that EPA and NRC can continue attempts to resolve concerns and thereby avoid the need to reinstate. EPA believes that such ongoing consultation is not precluded by the regulations adopted today, and EPA expects the agencies would continue consultations and make all possible efforts to resolve the concerns during the rulemaking process. The regulation does not establish a time limit for final agency action in this case, and the agency would have discretion to extend the rulemaking if appropriate to continue such inter-agency consultations.

EPA agrees with the commenters that the settlement agreement provides an additional possible result upon completion of a reconsideration rulemaking initiated by the Administrator, namely that the Agency may issue a finding that reinstatement is not appropriate if the Agency finds: (1) NRC and the affected Agreement States are on a programmatic basis implementing and enforcing, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard; or (2) NRC or an affected Agreement State are, in significant part, on a site-specific basis achieving compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States. EPA believes addition of this provision to the regulations will clarify the existence of this option and has revised § 61.226(a) of the reinstatement provisions to provide for this additional result.

Comment: One commenter asserts that EPA's characterization of its authority to reconsider rescission of subpart T in the preamble to the 1994 proposal appears overly broad and reinstatement should be clearly limited to those conditions proposed in § 61.226(a).

Response: EPA believes that the provisions for reconsideration of rescission adopted in § 61.226 represent a comprehensive approach under both the MOU and the settlement agreement. The provisions include substantive and procedural provisions for reconsideration of rescission and the reinstatement of this subpart on a programmatic or site-specific basis. The provisions include the obligation to reinstate subpart T if certain conditions are met, procedures for reconsideration and provisions authorizing the Administrator to initiate reconsideration. Although the Agency does not intend to reconsider its decision to rescind subpart T for a site which is in fact meeting the 20 pCi/m^2-s flux standard absent other factors that would indicate the need for reinstatement, the Agency recognizes that a situation may arise where reconsideration of rescission is nevertheless appropriate. For example, EPA might consider initiating reconsideration under § 61.226 where a site is meeting the 20 pCi/m^2-s flux standard if there are factors which show that NRC or an Agreement State failed to implement and enforce in significant part, the applicable regulations, e.g., clear failure of that site to emplace the permanent radon barrier within the time periods established in implementing subpart D. EPA is not aware of circumstances under which EPA might reconsider rescission for a site that is meeting the 20 pCi/m^2-s flux standard, other than those indicating that the milestone for emplacement of the permanent radon barrier has passed, the delay was not approved by NRC or an Agreement State and the licensee failed to emplace the permanent radon barrier, and there are indications that the licensee does not plan to emplace the barrier and NRC or an Agreement State does not plan to enforce this requirement. EPA does not envision such an unusual situation arising. EPA believes the actions taken to date by NRC, including the license amendments and the final amendments to the NRC conforming regulations, as described above, reflect the good faith effort on the part of NRC and the Agreement States to implement the MOU and EPA's subpart D regulations. However, the Agency is not now in the position to determine that there could be no circumstances which might indicate the need to reconsider the rescission of subpart T for a site that is in fact meeting the 20 pCi/m^2-s flux standard.

Additionally, EPA reserves the right to initiate reinstatement of subpart T if appropriate, since although the § 61.226 provisions adopted today establish an obligation for the Administrator to reinstate if certain conditions are met, they are not intended to be the exclusive basis for reinstatement. Under the regulations adopted today, EPA has the authority to reconsider the rescission of subpart T at the Administrator's initiative and upon the petition of a third party. The Agency is obligated to reinstate subpart T on a programmatic basis if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard. Additionally, EPA is obligated to reinstate subpart T on a site-specific basis as applied to owners and operators of non-operational uranium mill tailings disposal sites if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has failed in significant part on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States. The obligation to reinstate subpart T is limited to those failures which may reasonably be anticipated to significantly interfere with timely emplacement of the permanent radon barrier constructed to achieve compliance with the 20 pCi/m^2-s flux standard. At this time, EPA is not aware of circumstances where it would consider reinstating subpart T if the failure does not significantly interfere with emplacement of the required permanent radon barrier. However, EPA reserves the right to reconsider the rescission where the criteria of § 61.226(a) have not been met, under the Agency's authority to issue NESHAPs contained in section 112 of the CAA. For example, even if the NRC or an Agreement State is implementing and enforcing, in significant part, the applicable regulations and license amendments, the Agency may decide to reconsider the rescission if new information indicated that the public health is not protected with an ample margin of safety. The Agency cannot predict all future circumstances and cannot at this time preclude the possibility of such reconsideration and

possible reinstatement. Despite reserving this authority, the Agency believes this is a theoretical situation and has no current intention to act on this authority.

5. Miscellaneous

5.1. *Monitoring*

Comment: EPA must ensure that the single monitoring event currently required by subpart T would remain in effect if subpart T is reinstated, particularly in light of the recently proposed "enhanced monitoring" regulations.

Response: Subpart T currently requires monitoring to occur only once to demonstrate compliance with the 20 pCi/m^2-s flux standard of § 61.222. However, EPA published a proposed Enhanced Monitoring Program on October 22, 1993, which would require owners and operators of sources subject to existing NESHAPs to perform enhanced monitoring at emissions units. (58 FR 54648). It appears that the proposal applies the enhanced monitoring requirements for hazardous air pollutants to all emissions units which would be required to obtain an operating permit. (58 FR 54651, October 22, 1993). Additionally, although asbestos demolition and renovation projects (subpart M) were exempted from the enhanced monitoring provisions, it does not appear subpart T would be exempted. The rationale for the proposed asbestos demolition exemption, that EPA was not requiring states to permit those sources and the permit program is the established method for implementing the enhanced monitoring program, does not appear to apply to uranium mill tailings disposal sites. It would be premature for EPA to determine today that in the event subpart T is reinstated for Title II sites, the proposed enhanced monitoring provisions would not apply.

5.2 *Discussion of 40 CFR part 192, Subpart D Extension Provisions*

Comment: EPA's discussion of the extension provisions contained in 40 CFR 192.32(a)(3)(ii), (iii) is confusing and should be revised to equally consider the possibility of extensions for factors beyond the control of the licensee.

Response: EPA believes its discussion of the extension provisions contained in the Agency's amendments to its UMTRCA regulations at 40 CFR 192.32(a)(3)(ii) and (iii) does not need further clarification. EPA disagrees with the commenter's claim that an extension based upon "factors beyond the control of the licensee" should be considered equally with the delay provisions encompassed in EPA's UMTRCA regulations. 40 CFR 192.32(a)(3)(ii) and (iii) specifically provide that NRC may grant an extension on either one of two bases. However, an extension due to "factors beyond the control of the licensee" is implicit in the definition of "as expeditiously as practicable." The term "factors beyond the control of the licensee" would be one element for NRC to evaluate in reconsidering a prior decision establishing a date for emplacement of the permanent radon barrier that meets the definition of "as expeditiously as practicable." A change in any one of the factors considered in establishing a date that meets the "as expeditiously as practicable" standard would not automatically lead to an extension, rather NRC would need to evaluate all the relevant factors under § 192.32(a)(3)(i) before it could change a previously established milestone or date for emplacement of the permanent radon barrier.

5.3 *Discussion of Amendment of NRC and Agreement State Licenses*

Comment: There is some concern that EPA may be over scrutinizing the NRC license amendment process, particularly with respect to the Atlas site located in Moab, Utah.

Response: In order to determine that the NRC regulatory program protects the public health with an ample margin of safety and rescind subpart T, EPA must conclude, *inter alia* that NRC and the affected Agreement States are or will be implementing and enforcing the license requirements (tailings closure plan (radon)) that establish the milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility. The Agency is applying the same basic approach in reviewing all of the license amendments. Presently, Atlas is the only site where the site license has not yet been amended, but the tailings closure plan (radon) milestones are in jeopardy. There is a wealth of information for EPA to review due to the unique circumstances of this site.

EPA is interested in the Atlas site because the license amendment incorporating the reclamation plan has not yet been completed, and this may jeopardize the dates contained in the tailings closure plan (radon). The MOU established a target closure date of 1996. EPA recognizes that this is the only site for which a license amendment incorporating the reclamation plan has not been established, thereby possibly impacting the dates currently contained in the approved tailings closure plan (radon) adopted pursuant to the MOU and EPA's revised subpart D regulations, and that the circumstances surrounding the delay are unique. EPA believes NRC, the affected Agreement States and the licensees have acted in good faith to amend the site licenses.

The Agency does not believe it is overly scrutinizing the license amendment process. The Agency believes its interest in the Atlas site reflects EPA's commitment to and review of the applicable criteria in finally determining that NRC and the affected Agreement States are or will be implementing and enforcing the license requirements (tailings closure plan (radon)) to achieve compliance with the 20 pCi/m^2-s flux standard. EPA is merely reviewing current information and monitoring the progress of NRC in implementing the requirements of subpart D. The Agency has not suggested any course of action to NRC.

5.4 *Public Participation*

Comment: An industrial site, other than a uranium mill tailings disposal site, commented that publishing a notice in the Federal Register does not provide sufficient notice for citizens of communities where uranium mill tailings disposal sites are located.

Response: The EPA made every effort to notify the affected public of the proposed rulemaking action. EPA published a NPR on December 31, 1991, and a supplement to that proposal on February 7, 1994, in the Federal Register. There was a public comment period after each proposal; public hearings were held in Washington, DC and Santa Fe, NM after the 1991 proposal and no request for a hearing was received after the 1994 proposal. EPA believes it has afforded the public with full opportunity to participate in this proceeding, as well as satisfied all such requirements under Clean Air Act section 307.

V. Miscellaneous

A. Disposition of Pending Judicial Challenges and Petitions for Reconsideration

By taking today's action rescinding subpart T as applied to owners and operators of uranium mill tailings disposal sites regulated under Title II of UMTRCA, the stay of subpart T is no longer effective. Thus, the challenge to the stay of subpart T filed by EDF is moot, and EPA expects that the pending litigation will be promptly resolved by dismissal. Based on the terms of the settlement agreement between EDF, NRDC, AMC, individual sites and EPA as described above, and based on today's rescission of subpart T, AMC's pending administrative petition for reconsideration of subpart T is denied as moot. Additionally, all other pending petitions for reconsideration of subpart T as applied to Title II sites are denied as moot under today's action.

B. Paperwork Reduction Act

There are no information collection requirements in this rule.

C. Executive Order 12866

Under Executive Order 12866, (58 FR 57735, October 4, 1993) the Agency must determine whether this regulation, if promulgated, is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a significant regulatory action as that term is defined in Executive Order 12866, since it will not result in an annual effect on the economy of $100 million or another adverse economic impact; it does not create a serious inconsistency or interfere with another agency's action; it does not materially alter the budgetary impacts of entitlements, grants, user fees, etc.; and it does not raise novel legal or policy issues. Thus, EPA has determined that rescinding subpart T as it applies to owners and operators of uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the

as described above, and based on today's rescission of subpart T, AMC's pending administrative petition for reconsideration of subpart T is denied as moot. Additionally, all other pending petitions for reconsideration of subpart T as applied to Title II sites are denied as moot under today's action.

B. Paperwork Reduction Act

There are no information collection requirements in this rule.

C. Executive Order 12866

Under Executive Order 12866, (58 FR 57735, October 4, 1993) the Agency must determine whether this regulation, if promulgated, is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a significant regulatory action as that term is defined in Executive Order 12866, since it will not result in an annual effect on the economy of $100 million or another adverse economic impact; it does not create a serious inconsistency or interfere with another agency's action; it does not materially alter the budgetary impacts of entitlements, grants, user fees, etc.; and it does not raise novel legal or policy issues. Thus, EPA has determined that rescinding subpart T as it applies to owners and operators of uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of this rule on small business entities. However, section 604(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Most firms that own uranium mill tailings piles are divisions or subsidiaries of major U.S. and international corporations. Many are parts of larger diversified mining firms which are engaged in a number of raw materials industries; the disposal of uranium mill tailings piles represents only a small portion of their overall operations. Others are owned by major oil companies and electric utilities which were engaged in horizontal and vertical integration, respectively, during the industry's growth phase in the 1960s and 1970s.

It was found in the 1989 rulemaking that there was no significant impact on small business entities. There has been no change in this, and no new tailings piles have been constructed since 1989. I certify that this final rule to rescind 40 CFR part 61, subpart T as applied to owners and operators of NRC licensed non-operational uranium mill tailings disposal sites, will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl chloride.

Dated: June 29, 1994.

Carol M. Browner,

Administrator.

Part 61 of chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.220 is amended by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 61.220 Designation of facilities.

(a) The provisions of this subpart apply to owners and operators of all sites that are used for the disposal of tailings, and that managed residual radioactive material during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings, that are listed in, or designated by the Secretary of Energy under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, except § 61.226 of this subpart which applies to owners and operators of all sites that are regulated under Title II of the Uranium Mill Tailings Radiation Control Act of 1978.

(b) [Reserved]

3. Section 61.221 is amended by revising the introductory text, revising paragraphs (a) and (c), and by adding paragraphs (d) and (e) to read as follows:

§ 61.221 Definitions.

As used in this subpart, all terms not defined here have the meanings given them in the Clean Air Act or subpart A of Part 61. The following terms shall have the following specific meanings:

(a) *Long term stabilization* means the addition of material on a uranium mill tailings pile for the purpose of ensuring compliance with the requirements of 40 CFR 192.02(a). These actions shall be considered complete when the Nuclear Regulatory Commission determines that the requirements of 40 CFR 192.02(a) have been met.

* * * * *

(c) *Residual radioactive materials* shall have the same meaning as in section 101(7) of the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7911(7).

(d) *Tailings* shall have the same meaning as in section 101(8) of the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7911(8).

(e) *In significant part* means in a manner that is not reasonably expected to materially (i.e., more than de minimis) interfere with compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

4. Section 61.222 is amended by revising paragraph (b) to read as follows:

§ 61.222 Standard.

* * * * *

(b) Once a uranium mill tailings pile or impoundment ceases to be operational it must be disposed of and brought into compliance with this standard within two years of the effective date of the standard. If it is not physically possible for an owner or operator to complete disposal within that time, EPA shall, after consultation with the owner or operator, establish a compliance agreement which will assure that disposal will be completed as quickly as possible.

5. Section 61.223 is amended by revising paragraph (b)(5) to read as follows:

§ 61.223 Compliance procedures.

* * * * *

(b) * * *

(5) Each report shall be signed and dated by a public official in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information. I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See 18 U.S.C. 1001.

* * * * *

6. Section 61.226 is added to subpart T to read as follows:

§ 61.226 Reconsideration of rescission and reinstatement of this subpart.

(a) Reinstatement of this subpart upon completion of reconsideration of rescission.

(1) The Administrator shall reinstate 40 CFR part 61, subpart T as applied to owners and operators of non-operational uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State if the Administrator determines by rulemaking, based on the record, that NRC or an affected Agreement State has:

(i) Failed on a programmatic basis to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m ^{2}-s flux standard; and

(ii) Those failures may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m ^{2}-s flux standard at the uranium mill tailings disposal site.

(2) The Administrator shall reinstate 40 CFR part 61 subpart T on a site-specific basis as applied to owners and operators of non-operational uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State if the Administrator determines by rulemaking, based on the record:

(i) That NRC or an affected Agreement State has failed in significant part on a site-specific basis to achieve compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States; and

(ii) Those failures may reasonably be anticipated to significantly interfere (i.e., more than de minimis) with the timely emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m ^{2}-s flux standard at the uranium mill tailings disposal site.

(3) Upon completion of the reconsideration of rescission pursuant to § 61.226(c) the Administrator may issue a finding that reinstatement of this subpart is not appropriate if the Administrator finds:

(i) NRC and the affected Agreement States are on a programmatic basis implementing and enforcing, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) (i.e., contained in the license) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m ^{2}-s flux standard; or

(ii) NRC or an affected Agreement State are on a site-specific basis, in significant part, achieving compliance by the operator of the site or sites with applicable license requirements, regulations, or standards implemented by NRC and the affected Agreement States.

(b) Procedures to Petition for Reconsideration of Rescission of this subpart.

(1) A person may petition the Administrator to reconsider the rescission and seek reinstatement of this subpart under § 61.226(a).

(2) EPA shall summarily dismiss a petition to reconsider rescission and seek reinstatement of this subpart under § 61.226(a)(1) (programmatic basis), without prejudice, unless the petitioner demonstrates that written notice of the alleged failure(s) was provided to NRC at least 60 days before filing the petition with EPA. This notification shall include a statement of the grounds for such a petition and this notice requirement may be satisfied by, but is not limited to, submissions or pleadings submitted to NRC during a proceeding conducted by NRC.

(3) EPA shall summarily dismiss a petition to reconsider rescission and seek reinstatement of this subpart under § 61.226(a)(2) (site-specific basis), without prejudice, unless the petitioner demonstrates that a written request was made to NRC or an affected Agreement State for enforcement or other relief at least 60 days before filing its petition with EPA, and unless the petitioner alleges that NRC or the affected Agreement State failed to respond to such request by taking action, as necessary, to assure timely implementation and enforcement of the 20 pCi/m ^{2}-s flux standard.

(4) Upon receipt of a petition under § 61.226(b)(1) that is not dismissed under § 61.226(b)(2) or (b)(3), EPA will propose to grant or deny an authorized petition to reconsider, take comments on the Agency's proposed action, and take final action granting or denying such petition to reconsider within 300 days of receipt.

(c) Reconsideration of Rescission of this Subpart Initiated by the Administrator.

(1) The Administrator may initiate reconsideration of the rescission and reinstatement of this subpart as applied to owners and operators of non-operational uranium mill tailings disposal sites if EPA has reason to believe that NRC or an affected Agreement State has failed to implement and enforce, in significant part, the regulations governing the disposal of uranium mill tailings promulgated by EPA and NRC or the tailings closure plan (radon) requirements establishing milestones for the purpose of emplacing a permanent radon barrier that will achieve compliance with the 20 pCi/m ^{2}-s flux standard.

(2) Before the Administrator initiates reconsideration of the rescission and reinstatement of this subpart under § 61.226(c)(1), EPA shall consult with NRC to address EPA's concerns and if the consultation does not resolve the concerns, EPA shall provide NRC with 60 days notice of the Agency's intent to initiate rulemaking to reinstate this subpart.

[FR Doc. 94–17089 Filed 7–14–94; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Friday
July 15, 1994

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

July 1, 1994.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 65 rescission proposals and 12 deferrals contained in five special messages for FY 1994. These messages were transmitted to Congress on October 13, November 1, and November 19, 1993; and on February 7, May 2, and June 8, 1994.

Rescissions (Attachments A and C)

As of July 1, 1994, 65 rescission proposals totaling $3,172.2 million had been transmitted to the Congress. Congress approved 45 of the Administration's rescission proposals in P.L. 103–211. A total of $1,286.7 million of the rescissions proposed by the President was rescinded by that measure. There are no rescission proposals pending before the Congress. Attachment C shows the status of the FY rescission proposals.

Deferrals (Attachments B and D)

As of July 1, 1994, $2,993.7 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1994.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

58 FR 54256, Wednesday, October 20, 1993
58 FR 59517, Tuesday, November 9, 1993
58 FR 63264, Tuesday, November 30, 1993
59 FR 7122, Monday, February 14, 1994
59 FR 24006, Monday, May 9, 1994
59 FR 32068, Tuesday, June 21, 1994

Leon E. Panetta,
Director.

BILLING CODE 3110–01–M

STATUS

Rescissions proposed by t

Rejected by the Congress

Amounts rescinded by P.L.
Emergency Supplemental

Currently before the Cong

STATUS

Deferrals proposed by the

Routine Executive release
(OMB/Agency release of
partially offset by cu
adjustment of $452 tho

Overturned by the Congres

Currently before the Cong

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	3,172.2
Rejected by the Congress.....	-1,885.5
Amounts rescinded by P.L. 103-211, the FY 1994 Emergency Supplemental Appropriations Act.....	-1,286.7
Currently before the Congress.....	0.0

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	8,625.8
Routine Executive releases through July 1, 1994.... (OMB/Agency release of $5,632.5 million, partially offset by cumulative positive adjustment of $452 thousand.)	-5,632.1
Overturned by the Congress.....	---
Currently before the Congress.....	2,993.7

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Foreign military financing grants	R94-1		40,000	11-1-93	*			
	R94-1A		25,562	2-7-94	*		65,562	P.L. 103-211
Economic support fund	R94-2		90,000	11-1-93	*		61,350	P.L. 103-211
Military assistance	R94-38		438	2-7-94	*		438	P.L. 103-211
Agency for International Development								
Development assistance fund	R94-3		160,000	11-1-93	*		104,019	P.L. 103-211
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R94-4		16,233	11-1-93	16,233	3-4-94		
Buildings and facilities	R94-5		8,460	11-1-93	8,460	3-4-94		
Cooperative State Research Service								
Cooperative State Research Service	R94-6		30,002	11-1-93	24,268	3-4-94	5,734	P.L. 103-211
Buildings and facilities	R94-7		34,000	11-1-93	31,103	3-4-94	2,897	P.L. 103-211
Agricultural Stabilization and Conservation Service								
Salaries and expenses	R94-8		12,167	11-1-93	12,167	3-1-94		
Soil Conservation Service								
Conservation operations	R94-9		12,167	11-1-93	12,167	3-1-94		
Farmers Home Administration								
Salaries and expenses	R94-10		12,167	11-1-93			12,167	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Rural Development Administration and Farmers Home Administration								
Rural housing insurance fund program account	R94-41		15,645	2-7-94			15,645	P.L. 103-211
Agricultural credit insurance fund program account	R94-39		5,094	2-7-94			5,094	P.L. 103-211
Rural Electrification Administration								
Rural electrification and telephone loans program account	R94-11		6,445	11-1-93	6,445	3-1-94		

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Rural Development Administration and Farmers Home Administration								
Rural housing insurance fund program account	R94-41		15,645	2-7-94			15,645	P.L. 103-211
Agricultural credit insurance fund program account	R94-39		5,094	2-7-94			5,094	P.L. 103-211
Rural Electrification Administration								
Rural electrification and telephone loans program account	R94-11		6,445	11-1-93	6,445	3-1-94		
	R94-40		5,688	2-7-94	2,383	3-1-94	3,305	P.L. 103-211
Food and Nutrition Service								
Commodity supplemental food program	R94-12		12,600	11-1-93	2,600	3-1-94	10,000	P.L. 103-211
Foreign Assistance Programs								
Public Law 480 grants - Titles I (OFD), II, and III	R94-42		49,600	2-7-94	20,000	4-29-94	29,600	P.L. 103-211
Public Law 480 program account	R94-43		35,400	2-7-94	12,500	3-14-94	22,900	P.L. 103-211
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R94-13		6,000	11-1-93	6,000	3-1-94		
Construction	R94-14		4,000	11-1-93	1,000	3-1-94	3,000	P.L. 103-211
International Trade Administration								
Operations and administration	R94-15		2,000	11-1-93			2,000	P.L. 103-211
DEPARTMENT OF DEFENSE								
Procurement								
Missile procurement, Army	R94-44		48,000	2-7-94	48,000	3-24-94		
Aircraft procurement, Navy	R94-45		51,700	2-7-94	41,700	3-17-94	10,000	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Shipbuilding and conversion, Navy	R94-46		50,000	2-7-94	50,000	3-25-94		
Aircraft procurement, Air Force	R94-47		105,600	2-7-94	92,800	3-30-94	12,800	P.L. 103-211
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation, Defense-wide	R94-48		50,000	2-7-94	40,000	3-26-94	10,000	P.L. 103-211
Military Construction								
Military construction, Army	R94-16		116,134	11-1-93	93,815	3-1-94	22,319	P.L. 103-211
Military construction, Air Force	R94-17		85,094	11-1-93	60,307	3-1-94	24,787	P.L. 103-211
Military construction, Army Reserve	R94-18		19,807	11-1-93	17,256	3-1-94	2,551	P.L. 103-211
Military construction, Naval Reserve	R94-19		4,438	11-1-93	3,812	3-1-94	626	P.L. 103-211
Military construction, Air Force Reserve	R94-20		18,759	11-1-93	16,897	3-1-94	1,862	P.L. 103-211
Military construction, Army National Guard	R94-21		251,854	11-1-93	244,286	3-1-94	7,568	P.L. 103-211
Military construction, Air National Guard	R94-22		105,138	11-1-93	98,951	3-1-94	6,187	P.L. 103-211
DEPARTMENT OF THE ARMY-CIVIL								
Army Corps of Engineers								
General investigations	R94-23		24,970	11-1-93	24,970	3-1-94		
Construction, general	R94-24		97,319	11-1-93	97,319	3-1-94		
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R94-25		97,300	11-1-93	97,300	3-1-94		
	R94-49		10,000	2-7-94			10,000	P.L. 103-211
Uranium supply and enrichment activities	R94-25		42,000	11-1-93			42,000	P.L. 103-211

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R94-26		180,000	11-1-93	180,000	3-1-94		
Homeownership and opportunity for people everywhere grants (HOPE grants)	R94-50		66,000	2-7-94			66,000	P.L. 103-211
DEPARTMENT OF INTERIOR								

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R94-26		180,000	11-1-93	180,000	3-1-94		
Homeownership and opportunity for people everywhere grants (HOPE grants)	R94-50		66,000	2-7-94			66,000	P.L. 103-211
DEPARTMENT OF INTERIOR								
Bureau of Reclamation								
Construction	R94-27		16,000	11-1-93	16,000	3-4-94		
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R94-28		600	11-1-93	600	2-28-94		
Buying power maintenance	R94-51		8,800	2-7-94			8,800	P.L. 103-211
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R94-29		2,750	11-1-93	2,000	3-1-94	750	P.L. 103-211
Facilities and equipment	R94-30		40,257	11-1-93			40,257	P.L. 103-211
Grants-in-aid for airports (Airport and airway trust fund)	R94-56		456,200	2-7-94			456,200	P.L. 103-211
Federal Transit Administration								
Discretionary grants	R94-31		52,037	11-1-93	51,228	3-1-94	809	P.L. 103-211
Federal Highway Administration								
Highway demonstration projects	R94-32		187,827	11-1-93	12,858	1-28-94		
	R94-32A		-12,858	2-7-94	174,969	2-28-94		

* Funds were never withheld from obligation

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Federal Railroad Administration								
Railroad research and development	R94-55		17,000	2-7-94			17,000	P.L. 103-211
Coast Guard								
Operating expenses	R94-57		5,000	2-7-94	5,000	4-18-94		
Acquisition, construction, and improvements	R94-58		2,000	2-7-94	2,000	4-18-94		
Office of the Secretary								
Rental payments	R94-59		1,781	2-7-94			1,781	P.L. 103-211
Payments to air carriers (Airport and airway trust fund)	R94-60		10,067	2-7-94			10,067	P.L. 103-211
DEPARTMENT OF THE TREASURY								
Financial Management Service								
Biomass energy development	R94-61		16,275	2-7-94			16,275	P.L. 103-211
GENERAL SERVICES ADMINISTRATION								
Public Buildings Service								
Federal buildings fund	R94-33		126,022	11-1-93	126,022	3-1-94		
	R94-33A		1,669	2-7-94	1,669	3-15-94		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R94-62		88,000	2-7-94	25,000	2-29-94	63,000	P.L. 103-211
Space flight, control, and data communications	R94-63		32,000	2-7-94			32,000	P.L. 103-211
Construction of facilities	R94-64		25,000	2-7-94			25,000	P.L. 103-211
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R94-34		13,100	11-1-93	13,100	3-1-94		

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
OTHER INDEPENDENT AGENCIES								
Board for International Broadcasting								
Israel relay station	R94-65		1,700	2-7-94			1,700	P.L. 103-211
National Science Foundation								
Academic research infrastructure	R94-66		10,000	2-7-94	5,000	3-7-94	5,000	P.L. 103-211

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
OTHER INDEPENDENT AGENCIES								
Board for International Broadcasting								
Israel relay station	R94-65		1,700	2-7-94			1,700	P.L. 103-211
National Science Foundation								
Academic research infrastructure	R94-66		10,000	2-7-94	5,000	3-7-94	5,000	P.L. 103-211
Nuclear Regulatory Commission								
Salaries and expenses	R94-67		12,700	2-7-94			12,700	P.L. 103-211
State Justice Institute								
Salaries and expenses	R94-35		6,775	11-1-93				
United States Information Agency								
Salaries and expenses	R94-36		3,000	11-1-93	1,000	3-1-94	2,000	P.L. 103-211
North/South Center	R94-37		8,700	11-1-93	7,700	3-1-94	1,000	P.L. 103-211
TOTAL RESCISSIONS		0	3,172,183		1,806,885		1,286,750	

* Funds were never withheld from obligation

ATTACHMENT D
Status of FY 1994 Deferrals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 7-1-94
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D94-1	394,175		10-13-93					
	D94-1A		1,164,562	11-19-93					
	D94-1B		23,725	2-7-94	758,890			452	824,025
Foreign military financing grants	D94-9	3,137,279		11-19-93	1,811,558				1,325,721
Foreign military financing program account	D94-10	46,530		11-19-93	38,118				8,412
Agency for International Development									
Demobilization and transition fund	D94-2	8,000		10-13-93					8,000
International disaster assistance, executive	D94-11	118,059		11-19-93	115,147				2,912
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D94-3	461,639		10-13-93					
	D94-3A		45,102	6-8-94					506,741
Expenses, brush disposal	D94-4	40,195		10-13-93					
	D94-4A		8,230	6-8-94					48,425
Timber salvage sales	D94-5	256,897		10-13-93	52,483				204,414
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation; Defense	D94-6	1,852		10-13-93	390				1,462
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D94-7	7,317		10-13-93					
			2	5-2-94					7,319

[FR Doc. 94-17224 Filed 7-14-94; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT D
Status of FY 1994 Deferrals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 7-1-94
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93					
	D94-8A		49,261	11-19-93	20,061				56,300
GENERAL SERVICES ADMINISTRATION									

ATTACHMENT D
Status of FY 1994 Deferrals - As of July 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 7-1-94
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93					
	D94-8A		49,261	11-19-93	20,061				56,300
GENERAL SERVICES ADMINISTRATION									
Public Buildings Service									
Public buildings fund	D94-12	2,835,860		11-19-93	2,835,860				0
TOTAL, DEFERRALS		7,334,903	1,290,883		5,632,508	0		452	2,993,732

[FR Doc. 94-17224 Filed 7-14-94; 8:45 am]
BILLING CODE 3110-01-C

VOL
59
SS
1-3
35
JUL
15
994
MI

federal register

Friday
July 15, 1994

Part V

Department of Transportation

Coast Guard

33 CFR Part 1, et al.
National Vessel Traffic Services Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 1, 26, 160, 161, 162, 164, and 165

[CGD 90–020]

RIN 2115–AD56

National Vessel Traffic Services Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Vessel Traffic Services (VTS) regulations to make participation in all VTSs mandatory. This rule also simplifies existing VTS regulations by amending Part 161 to incorporate standard national vessel traffic management rules applicable to all VTSs, vessel movement reporting requirements for certain vessels operating in the VTS areas, and geographic descriptions and local regulations pertaining to specific VTS areas. Additionally, the rule redesignates other regulations, not unique to VTS operations, into more appropriate parts within Title 33. This rulemaking does not significantly change Coast Guard VTS procedures or requirements. This final rule is intended to promote safe vessel movement by reducing the potential for collisions, rammings, and groundings and their attendant loss of lives, property and environmental harm.

EFFECTIVE DATE: This rule is effective on October 13, 1994.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Ms. Irene Hoffman, Project Manager, Vessel Traffic Services Division (G–NVT), at (202) 267–6277.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Ms. Irene Hoffman, Project Manager, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On August 1, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "National Vessel Traffic Services Regulations" in the **Federal Register** (56 FR 36910). The Coast Guard received 29 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Under the Ports and Waterways Safety Act of 1972, as amended by the Port and Tanker Safety Act (PTSA) and the Oil Pollution Act (OPA 90), the Secretary of Transportation may construct, operate, maintain, improve or expand VTSs in any port or place under the jurisdiction of the United States, including the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to 33 U.S.C. 1230. The Act requires certain designated vessels which operate in a VTS area to utilize and comply with the VTS.

Based on the comments received to the NPRM, the Coast Guard decided to simplify the VTS regulations in Part 161 by reorganizing them. As a result: (1) The National VTS Regulations (General Rules) are now contained in Subpart A; and (2) Vessel Movement Reporting System (VMRS) regulations are in Subpart B; (3) geographic descriptions and local regulations pertaining to VTS Areas, VTS Special Areas, the Cooperative Vessel Traffic Service (CVTS) Area, and Reporting Points are contained in Subpart C.

This final rule also redesignates certain VTS regulations currently in Part 161 into other parts of Subchapter P (Parts 26, 160, 162, 164, and 165). Certain operating requirements applicable to all vessels regardless of VTS participation that had been in Part 161, are now located in Part 165 of this chapter. Specifically, these amendments include operating requirements which are now redesignated as regulated navigation areas. Additionally, this rule amends certain vessel operating requirements to more clearly reflect actual operating procedures.

Discussion of Comments and Changes

Twenty-nine respondents to the NPRM provided over 150 separate comments on various aspects of the proposed regulations. Some issues were raised repeatedly. This section discusses the comments received as well as the Coast Guard's responses and changes to the rule. This discussion on the comments and changes is divided into five sections. These sections include: (1) Broad VTS Issues; (2) Subpart A; (3) Subpart B; (4) Subpart C; and (5) Miscellaneous Rules.

(1) Broad VTS Issues

Some comments addressed general concerns that are noteworthy and relevant to VTS issues. These comments are discussed in the following sections.

A. Participation Requirements

Some comments expressed disapproval with making participation mandatory for certain vessels in existing voluntary systems, whereas other comments were in favor of mandatory participation and lauded the Coast Guard's efforts to standardize this practice.

This final rule changes the participation requirements in three "voluntary" VTS systems, and will affect future VTSs. It does not significantly change the existing standard operating procedures.

Marine accidents in recent years have underscored, often dramatically, the need for continuously improving navigation safety on our nation's waterways. They have heightened public awareness of the serious effects of collisions, rammings, and groundings. This heightened awareness and the importance of VTS participation was reaffirmed by Congress when it mandated such participation, in section 4107 of OPA 90, 33 U.S.C. 1223(a)(2). Additionally, documented incidents support the conclusion that mishaps have been avoided as a result of VTS participation.

B. Vessel Control

The issue of vessel control attracted the greatest number of comments. Comments expressed concern that the Coast Guard would exert direct control over vessel movements within a VTS area.

This final rule does not change the Coast Guard's authority or policy on vessel traffic management. Essentially, the objective of vessel traffic management is to minimize the risk of marine casualties (i.e., collisions, rammings, and groundings), and to facilitate commerce to the greatest extent practicable. The underlying authority for this is contained in the Ports and Waterways Safety Act of 1972 (PWSA), as amended. Title 33 U.S.C. 1223 of the PWSA allows for varying levels of vessel traffic management and control, depending upon the hazards present. The level of control to be exercised, including VTS measures and directions, is typically determined on a case-by-case basis and is directed at a

specific vessel or vessels in a specific situation.

The primary function of a VTS is to instill good order and predictability on a waterway. This is accomplished by coordinating vessel movements through the collection, verification, organization, and dissemination of information. When performing these functions, the VTS is not exerting vessel control or relieving the master of his or her responsibility to control vessel movement.

Furthermore, the master's responsibility is emphasized by specific language that is being added to § 161.12 (Vessel Operating Requirements) in this final rule. In effect, this section states that, subject to the exigencies of safe navigation, a VTS User shall comply with all measures established or directions issued by a VTS. If, due to the particular circumstances of a case, a measure or direction is issued by the VTS and a VTS User deems that it is unable to comply, the VTS User may deviate only to the extent necessary to avoid endangering persons, property or the environment. The deviation shall be reported to the VTS as soon as is practicable.

This final rule includes two delegation of authority provisions contained in § 1.01–30 (Captains of the Port) and § 160.5 (Delegations). These provisions define the relationship between the VTS and the Captain of the Port, and also assure that, when necessary, a VTS has the legal authority to establish VTS measures and vessel operating requirements to enhance vessel traffic management.

These provisions together with § 161.3 (Applicability), § 161.5 (Deviations from the Rules), § 161.10 (Services), § 161.11 (VTS Measures), and § 161.12 (Vessel Operating Requirements), balance the respective roles of the VTS and the vessel, owner, operator, charterer, master, or person directing the movement of the vessel.

The broad information sources of a VTS, coupled with the authority to represent the Captain of the Port and institute VTS measures, issue directions and implement vessel operating procedures will markedly enhance vessel traffic safety. With the collaboration of the marine community as contemplated by this final rule, the VTS's information resources will enhance the more limited, but more immediate information base of the master, pilot, or person directing the movement of the vessel. The determining factor is safe navigation, the ultimate responsibility for which always remains with the master.

specific vessel or vessels in a specific situation.

The primary function of a VTS is to instill good order and predictability on a waterway. This is accomplished by coordinating vessel movements through the collection, verification, organization, and dissemination of information. When performing these functions, the VTS is not exerting vessel control or relieving the master of his or her responsibility to control vessel movement.

Furthermore, the master's responsibility is emphasized by specific language that is being added to § 161.12 (Vessel Operating Requirements) in this final rule. In effect, this section states that, subject to the exigencies of safe navigation, a VTS User shall comply with all measures established or directions issued by a VTS. If, due to the particular circumstances of a case, a measure or direction is issued by the VTS and a VTS User deems that it is unable to comply, the VTS User may deviate only to the extent necessary to avoid endangering persons, property or the environment. The deviation shall be reported to the VTS as soon as is practicable.

This final rule includes two delegation of authority provisions contained in § 1.01–30 (Captains of the Port) and § 160.5 (Delegations). These provisions define the relationship between the VTS and the Captain of the Port, and also assure that, when necessary, a VTS has the legal authority to establish VTS measures and vessel operating requirements to enhance vessel traffic management.

These provisions together with § 161.3 (Applicability), § 161.5 (Deviations from the Rules), § 161.10 (Services), § 161.11 (VTS Measures), and § 161.12 (Vessel Operating Requirements), balance the respective roles of the VTS and the vessel, owner, operator, charterer, master, or person directing the movement of the vessel.

The broad information sources of a VTS, coupled with the authority to represent the Captain of the Port and institute VTS measures, issue directions and implement vessel operating procedures will markedly enhance vessel traffic safety. With the collaboration of the marine community as contemplated by this final rule, the VTS's information resources will enhance the more limited, but more immediate information base of the master, pilot, or person directing the movement of the vessel. The determining factor is safe navigation, the ultimate responsibility for which always remains with the master.

C. VTS Ports and Waterways Criteria

Some comments questioned why VTSs are not being established in other specific waterways. This issue must be addressed in both an operational and an economic context. Vessel Traffic Services provide the most active form of vessel traffic management on the waterways. However, the cost and benefit of such services need to be weighed to determine if a VTS is the most effective management system or if other measures are more appropriate for a particular waterway.

Section 4107 of the Oil Pollution Act of 1990 mandated a study to determine and prioritize those ports in need of new, expanded or improved VTS systems based on certain risk factors. This study was completed in August 1991 and is known as the "Port Needs Study" (PNS). The PNS is in the docket and is available for review or copying where indicated under "ADDRESSES." The three-volume report and 20-page study overview are also available through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, Tel: 1–800–533–6847. Reference: PB 92107 689 and PB 92107 697, respectively.

The PNS provides a cost-benefit analysis wherein the costs of establishing and operating a VTS in a port or waterway are compared to the potential benefits of avoided vessel casualties and the consequences of those casualties. It provides an economic framework necessary to evaluate the need for new or expanded VTSs in the U.S. Various ports reviewed in the study are currently under consideration for VTSs. The Coast Guard intends to establish VTSs and, in a separate rulemaking, make them mandatory in those ports which show a clear benefit from the presence of a VTS.

D. Training and Qualifications of VTS Watchstanders

Various comments expressed concern about the level of experience and expertise of VTS watchstanders. Some comments felt that broad seagoing experience was necessary to become a successful watchstander.

The Coast Guard recognizes that special and thorough training is required to qualify as a Vessel Traffic Center (VTC) watchstander or watch supervisor. Although broad seagoing experience is important, it is not necessarily the only indicator or predictor of VTC watchstander performance. Besides good seamanship skills, numerous other factors, such as communications skills, geographic familiarity, and regulatory knowledge make for a competent watchstander. Coast Guard training and qualifications requirements for VTS watchstanders are aimed at ensuring that all of these elements are present.

The Coast Guard ensures that each trainee receives and successfully completes a thorough training and qualification program prior to assuming duties as a watchstander. This training program includes numerous ship rides to familiarize trainees with the VTS area and with local seamanship practices.

(2) General Rules; Subpart A

A. Purpose

Various comments expressed reservations about the responsibility of a VTS as opposed to the responsibility of a vessel. Section 161.1 clarifies the intent of the VTS rules and delineates the responsibilities of the VTS and those of the vessel, owner, operator, charterer, master, or person directing the movement of the vessel.

Additionally, § 161.1 (Vessel Traffic Services—General Rules), is being broadened to better describe the scope and purpose of the general VTS regulations.

B. Applicability

As a result of comments in general, Section 161.3 (Applicability) is being redefined and rewritten. Under this section, VTS measures and vessel operating procedures established in Subpart A could apply to any vessel in a VTS area as the VTS considers necessary for safe navigation.

However, a VTS measure would usually be temporary in nature, or would be specific to a particular vessel during a transit or part of a transit.

In the NPRM, the class of vessels to which VTS regulations would apply mirrored the radio carriage requirements of the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (the Act). In this final rule, the Coast Guard has established particular requirements, mainly reporting and communication provisions contained in the Vessel Movement Reporting Service (VMRS) section (Subpart B), that are applicable to certain vessels classified as VMRS Users. Additionally, certain vessels classified as VTS Users must comply with VHF–FM monitoring requirements. These requirements reflect a recent amendment to the Act.

C. Definitions

Several comments identified terms in the NPRM that either duplicated or were inconsistent with terms and definitions used in other parts of Title 33 of the Code of Federal Regulations (CFR). As a result, some terms used in the NPRM

have been either removed, clarified, or redesignated in Part 160 to ensure that defined terms convey the same meaning throughout Subchapter P (Parts 160–167).

A new term, "VMRS User", has been introduced and is defined as a vessel, or an owner, operator, charterer, master, or person directing the movement of a vessel, that is required to participate in a VMRS within a VTS area. The term "VTS User" has also been added and is defined as a vessel, or an owner, operator, charterer, master, or person directing the movement of a vessel, that is: (a) subject to the Vessel Bridge-to-Bridge Radiotelephone Act; or (b) required to participate in a VMRS within a VTS area (VMRS User). Additionally, the term "Commanding Officer, Vessel Traffic Service" has been added and defined.

D. Vessel Operation and VTS Directions

The Coast Guard received various comments which expressed reservations about the VTS's ability to direct vessel movement. Concerns were expressed about who would issue these directions and under what circumstances. The final rule delineates VTS authority which is derived from the Captain of the Port, as authorized by the Ports and Waterways Safety Act of 1972, as amended. Section 161.10 (Services) in conjunction with § 161.11 (VTS Measures) has been drafted to better define and address these concerns.

E. Authorization to Deviate From the Rules

The Coast Guard received comments concerning VTS rules and VTS directions and the procedures which must be followed to deviate from them. Section 161.5 is being amended to clarify procedures for obtaining authorization to deviate from these rules for a transit or for an extended period of time. It maintains the existing mechanism for obtaining advance approval to deviate from VTS measures or directions, however, the deviation requests for a transit or part of a transit need not be requested in writing. Additionally, § 161.21(b) (Sailing Plan Deviation Report) requires a vessel to report a deviation from any VTS issued measure.

Section 161.1(b) delineates the responsibility of the owner, operator, charterer, master or person directing the movement of the vessel. It states that compliance with these VTS rules or with a direction of the VTS is at all times contingent upon the exigencies of safe navigation.

F. Traffic Separation Scheme (TSS) Rules (International and Inland Rule 10)

The Coast Guard received two comments concerning TSS applicability and operating procedures. One comment was concerned with the joint use of TSSs by slower traffic, which can transit outside the TSS, and deep draft vessels which can only safely navigate within the TSSs.

Since the NPRM was published, the International Maritime Organization (IMO) has adopted two Coast Guard recommended Traffic Separation Schemes (TSS), located in COLREGS waters within Puget Sound and Prince William Sound VTS areas. COLREGS waters are those waters outside of established lines of demarcation upon which mariners shall comply with the International Regulations for the Prevention of Collisions at Sea, 1972 (72 COLREGS) 33 U.S.C. foll. 1602. Rules concerning the conduct of vessels operating within or near a TSS located in COLREGS waters, have been established and are internationally recognized under Rule 10 of COLREGS. As a result of the IMO adoption of these two TSSs and COLREGS Rule 10 applicability, VTS TSS operating rules are unnecessary. Therefore, the TSS descriptions, rules concerning the purpose of a TSS, and rules for vessel operation in the TSS which were proposed in the NPRM have been removed.

In addition, Rule 10 of the Inland Navigation Rules, applicable in Inland waters, was amended on October 5, 1992, by the Oceans Act of 1992, section 5206 of Public Law 102–587. These amendments changed Inland Rule 10 so as to mirror International Rule 10 of the 72 COLREGS with respect to the requirements imposed upon vessels using a traffic separation scheme. The San Francisco Bay Region vessel traffic routing measures located in inland waters (i.e., traffic lanes, separation zones, precautionary areas, standard route deviations, narrow channels and fairways), which were proposed in the NPRM, would conflict with the subsequently amended Inland Navigational Rule 10 and have therefore been omitted.

The Coast Guard recently modified the charted voluntary traffic routing measures in the San Francisco Bay Region to better conform to International Maritime Organization traffic routing standards. This action has effectively eliminated the need for the standard route deviations discussed in the NPRM. Additionally, due to the geographic constraints of San Francisco Bay, Inland Rule 10 would be unusually restrictive for recreational and harbor tour boats. Therefore, to accommodate these restrictions for the San Francisco Bay Region routing measures, a regulated navigation area will be developed under a separate rulemaking.

G. Communications Rules

There were numerous comments concerning the communications rules delineated in the NPRM.

The timely exchange of information is critical to the success of any VTS, since the quality of service that a VTS provides is only as good as the information it receives. The mutual flow of communications provides necessary information with which to make sound and safe navigation decisions. On November 18, 1991, (56 FR 58292) as mandated by Section 4118 of the Oil Pollution Act of 1990 (OPA 90), the Coast Guard amended regulations in 33 CFR Part 26 (Vessel Bridge-to-Bridge Radiotelephone Regulations) to ensure vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (the Act) are capable of engaging in radio communications with the Coast Guard. This rulemaking incorporates the "Communications Rules," as proposed, into this part.

By revising and redesignating portions of the VTS Communication Rules into Part 26 of this chapter, the importance of VTS communications has not been diminished nor have VTS communications procedures been eliminated. The provisions governing the use of the radiotelephone for VTS are consistent with the provisions governing communications among vessels currently set forth in Part 26 of this chapter and Title 47 CFR (Federal Communications Commission).

By merging radiotelephone and VTS communication requirements into the same part of Title 33 of the CFR, needless duplication is avoided. However, Table 26.03(f), which contains VTS call signs, designated frequencies, monitoring areas and their operating procedures is also listed in Table 161.12(b) contained in Part 161, for ease of use.

The final rule requires VTS Users to maintain a listening watch (consistent with requirements set forth in 33 CFR 26.05(a)) on the VTS designated frequency while within a VTS area, regardless of the requirement to comply with VMRS reporting and communication provisions. This requirement ensures these vessels, namely power-driven vessels between 20 and 40 meters in length, dredges and floating plants will be cognizant of navigational and safety information provided by a VTS.

Nine comments expressed concern about the additional monitoring required for VTS Users and the inability to monitor two frequencies simultaneously. The VTS Regulations will not require any additional monitoring requirements. Presently, the Vessel Bridge-to-Bridge Radiotelephone and Federal Communications Commission (FCC) regulations contain the requirement that vessels subject to the Act must monitor two frequencies (i.e., the designated bridge-to-bridge frequency and the International Distress and Calling Channel; Channel 16). However, as stated in 47 CFR 80.148(b), a VHF watch on Channel 16 is not required on vessels subject to the Act and participating in a VTS system when the watch is maintained on both the bridge-to-bridge frequency and a separately assigned VTS frequency. As such, these regulations do not require any additional monitoring requirements.

One comment proposed that the VTS hail vessels on the designated Vessel Bridge-to-Bridge frequency (Channel 13) then shift to the VTS frequency, while another comment recommended that Channel 13 not be used at all by the VTS. The latter approach is more reasonable, since a dedicated VTS frequency ensures that Channel 13 is always monitored and remains available for bridge-to-bridge communications. However, when necessary, VTS may use Channel 13 as an alternate channel. Additionally, the Coast Guard recognizes that there are two exceptions to the dedicated VTS frequency rule: Prince William Sound, AK and Louisville, KY. In these areas, Channel 13 is used as the VTS frequency because the level of radiotelephone transmissions does not warrant a designated VTS frequency.

Concerns were also raised relative to the requirement that clear and unbroken English be spoken between the vessel and the VTS. The intent in proposing this language was to highlight the problems that a VTS encounters when communications are hampered by language difficulties. One comment stated that, while the English language is the international standard for navigation communication, attempting to define how that standard should be applied does not necessarily address the problem.

The Coast Guard agrees that communication is paramount in navigation safety. Communication denotes the exchange of information so that it is properly received and understood. Whether information has been properly received or understood is a subjective question for the individuals involved.

Nine comments expressed concern about the additional monitoring required for VTS Users and the inability to monitor two frequencies simultaneously. The VTS Regulations will not require any additional monitoring requirements. Presently, the Vessel Bridge-to-Bridge Radiotelephone and Federal Communications Commission (FCC) regulations contain the requirement that vessels subject to the Act must monitor two frequencies (i.e., the designated bridge-to-bridge frequency and the International Distress and Calling Channel; Channel 16). However, as stated in 47 CFR 80.148(b), a VHF watch on Channel 16 is not required on vessels subject to the Act and participating in a VTS system when the watch is maintained on both the bridge-to-bridge frequency and a separately assigned VTS frequency. As such, these regulations do not require any additional monitoring requirements.

One comment proposed that the VTS hail vessels on the designated Vessel Bridge-to-Bridge frequency (Channel 13) then shift to the VTS frequency, while another comment recommended that Channel 13 not be used at all by the VTS. The latter approach is more reasonable, since a dedicated VTS frequency ensures that Channel 13 is always monitored and remains available for bridge-to-bridge communications. However, when necessary, VTS may use Channel 13 as an alternate channel. Additionally, the Coast Guard recognizes that there are two exceptions to the dedicated VTS frequency rule: Prince William Sound, AK and Louisville, KY. In these areas, Channel 13 is used as the VTS frequency because the level of radiotelephone transmissions does not warrant a designated VTS frequency.

Concerns were also raised relative to the requirement that clear and unbroken English be spoken between the vessel and the VTS. The intent in proposing this language was to highlight the problems that a VTS encounters when communications are hampered by language difficulties. One comment stated that, while the English language is the international standard for navigation communication, attempting to define how that standard should be applied does not necessarily address the problem.

The Coast Guard agrees that communication is paramount in navigation safety. Communication denotes the exchange of information so that it is properly received and understood. Whether information has been properly received or understood is a subjective question for the individuals involved.

Therefore, the VTS frequency monitoring and reporting requirements (§ 161.12 and § 161.18) and the language requirements for individuals who are maintaining the listening watch (33 CFR 26.07), is being amended and clarified to require the VTS User, VMRS User, or the person maintaining the listening watch to be able to "communicate" in the English language, rather than "speak" in a clear, unbroken fashion.

(3) Vessel Movement Reporting System (VMRS); Subpart B

The format of this section is being revised from the NPRM and is now redesignated as Subpart B. The following sections address comments which were received and discuss changes that the Coast Guard determined were necessary to clarify and streamline reporting and communication requirements.

A. VMRS Users

Two comments suggested expanding the NPRM communications and reporting requirements to include vessels carrying six or more passengers for hire that are under 100 gross tons (T-boats), and all commercial vessels (e.g., fishing vessels). The Coast Guard agrees that vessels carrying passengers for hire require special consideration, and has broadened the proposed communications and reporting requirements to include all vessels certificated to carry 50 or more passengers, when engaged in trade.

However, the Coast Guard decided not to extend the reporting requirements now contained in the VMRS section (Subpart B) to all commercial vessels, including vessels carrying 1–49 passengers for hire. This was done primarily in an attempt to achieve an operational balance between being able to provide an effective VTS service, given equipment and resource constraints, and being overburdened with participants potentially undermining the overall efficiency of the VTS.

The class of vessels required to report under VMRS (i.e., VMRS Users) now extends to: (a) Power-driven vessels 40 meters or more in length, while navigating; (b) towing vessels 8 meters or more in length, while navigating; and (c) vessels certificated to carry 50 or more passengers for hire, when engaged in trade.

The class of towing vessels noted in the VMRS Users definition is synonymous with the Vessel Bridge-to-Bridge Radiotelephone Act requirements under 33 CFR 26.03(a)(3) (i.e., every towing vessel of over 26 feet in length, while navigating). In addition, the definition of "towing vessel" in part 161 is limited to a commercial vessel actually engaged in towing another vessel astern, alongside, or by pushing ahead (33 CFR 26.02).

This change recognizes that monitoring the movement of, or obtaining information from, every vessel could pose a burden on mariners as well as on the VTS, and that this burden could jeopardize rather than enhance navigation safety.

B. Reporting Requirements

Various comments were concerned that some reporting requirements were unnecessary in certain operating areas. The Coast Guard agrees, but recognizes the vessel information considered necessary in each VTS area may vary. This rule establishes the minimum information required for effective vessel traffic management regardless of the area.

The VMRS is being consolidated into four reports (sailing plan, position, sailing plan deviation and final). The reports use common terminology and procedures.

Under VMRS, additional reporting information may be required, if considered necessary by the VTS. This additional information is consistent with the International Maritime Organization's (IMO) General Principles for Ship Reporting Systems (Resolution A.648(16)), the format of which has been included in this regulation in Table 161.18(a).

Some comments expressed concern that they would not have access to some of the information considered necessary by the VTS. The Coast Guard recognizes this concern. Nonetheless, it is the responsibility of the master or person in charge of the vessel to ensure any information considered necessary by the VTS is provided as required.

Some comments correctly noted that other reporting or notification requirements exist which duplicate information required to be provided to the VTS under its reporting provisions. The VTS's major role is to provide a service to waterborne traffic. As part of this service, the VTS should be the primary source of vessel traffic information, and correspondingly, the primary recipient of vessel movement reporting information required under Coast Guard reporting requirements. Therefore, in most cases or unless directed by the VTC, a VTS User will not be required to duplicate a report in Title 33, Chapter I, to another Coast Guard entity. However, there will not be a reporting exemption for written reports or other requirements set forth in Federal law or regulation.

C. Advance Reporting

There were no comments received on Advance Reporting. However, the Coast Guard has determined that it may be necessary, prior to entry into a VTS area, to require certain vessels to provide advance notification in order to facilitate vessel traffic management. This notification requirement, with some exemptions, has always existed for vessels over 1,600 gross tons bound for or departing from a port or place of the United States (Subpart C of Part 160).

Additionally, although VTS jurisdiction is limited to the navigable waters of the United States, in some VTS areas certain vessels will be encouraged or required, as a condition of port entry, to contact the VTS beyond the navigable waters in order to facilitate advance vessel traffic management and to enhance their transit through the area. Accordingly, this final rule clarifies this desire or need to receive such report(s).

D. Reporting Exemptions

One comment disagreed with exempting ferries from certain VTS reporting requirements. Various VTSs have devised unique reporting requirements for ferries in their operating areas. In some cases, this type of reporting is being expanded to include not only ferries but other vessels with repetitive operations in the area or which are escorting another vessel or assisting another vessel in maneuvering procedures. The operating pattern of these vessels in VTS areas is well known to each VTS.

Because the requirement for continuous position reporting by these vessels is superfluous, they have been granted certain reporting exemptions (Position and Final Reports). This abbreviated form of reporting does not preclude other VTS Users from obtaining information pertaining to the specific operating schedules of these vessels from the VTS, if desired.

In addition, in those VTS areas capable of receiving automated position reports via Automated Dependent Shipborne Surveillance Equipment (ADSSE), and where ADSSE is required, vessels equipped with an operating ADSSE will not be required to make voice radio position reports (§ 161.20(b)) at designated reporting points (§ 161.23(c)), unless directed by the VTC to do so.

(4) VTS Areas, the CVTS Area, VTS Special Areas and Reporting Points; Subpart C

The format of this subpart is being changed from the NPRM and the existing rules. Subpart C now delineates each VTS Area, the CVTS Area and Reporting Points. Additionally, VTS Special Areas have been defined and identify unique areas located within VTS areas.

A. Cooperative Vessel Traffic Management System for the Juan de Fuca Region

The Coast Guard received no comments on this section. The operations of the Cooperative Vessel Traffic Management System (CVTMS) for the Juan de Fuca Region and the VTS Puget Sound have been interwoven to the extent that the operations and administration of both entities is, by and large, unnoticeable to the VTS User. In these revised regulations, the CVTMS and VTS Puget Sound regulations have been unified and are contained in Subparts A and B, and the VTS Puget Sound and CVTMS areas of responsibility are defined in Subpart C.

The CVTMS was renamed Cooperative Vessel Traffic Services (CVTS) which is divided into three sectors, managed by vessel traffic centers in Seattle, WA; Vancouver, BC, Canada; and Tofino, BC, Canada. Additionally, the area of surveillance was extended to the high seas to take advantage of the capability of one of the CVTS centers. However, the area of VTS jurisdiction is limited to the navigable waters of each country.

Future cooperative agreements, similar to the CVTS, are envisioned between the United States and Canada. For that reason, the concept of a cooperative vessel traffic service is being defined in § 161.2.

B. VTS Special Areas

In these newly defined areas, VTS Special Area Operating Requirements are imposed in addition to the general Vessel Operating Requirements. These requirements are delineated in § 161.13.

The Coast Guard recognizes that an operational balance between safety and efficiency may be difficult to achieve in certain waterways, enclosed systems in particular (i.e., rivers, channels, etc.), which impose a unique set of circumstances (e.g., bridge openings, restricted channels, etc.) on vessels. VTS Special Areas have been created to address these unique operating areas. In these areas, applicability may be expanded to include other vessels outside of those defined as VMRS Users.

C. Mississippi River Regulated Navigation Area

One comment suggested that portions of this part of the regulation seemed to regulate access and would be better suited for Part 165 of this chapter. The rules concerning the Mississippi River below Baton Rouge, LA, including South and Southwest Passes, which were once administered by VTS New Orleans (since disestablished) are now under the authority of the Commander, Eighth Coast Guard District. Because these local rules regulate access to a defined area and do not involve interaction with a VTS, they have been appropriately redesignated into Part 165 of this chapter as a regulated navigation area.

D. Reporting Points

Various comments expressed concern or noted errors to some of the established reporting points. Permanent (applicable at all times and to all VMRS Users) reporting points have been corrected and designated in Subpart C.

Additionally, as stated in § 161.11 (VTS Measures), a VTS may establish temporary reporting points, applicable to certain vessels at certain times. Notice of these temporary reporting points, if established, may be published in the Local Notice to Mariners, general broadcast and/or VTS User's Manual.

(5) Miscellaneous Rules

A. Automated Dependent Surveillance (ADS) System

Under a separate rulemaking, on July 17, 1992, the Coast Guard enacted an additional navigation equipment carriage requirement in Prince William Sound for Automated Dependent Surveillance Shipborne Equipment (ADSSE) (§ 161.376).

The compliance date for this equipment is July 1, 1994. Although this rule, as currently enacted, only applies to the Prince William Sound VTS area, the Coast Guard foresees that this may become a widespread equipment carriage requirement. Therefore, the Coast Guard has decided to divide the rule into two sections: (a) a navigation equipment rule (§ 164.43); and (b) a vessel operating rule for Prince William Sound (§ 165.1704). VTS Reporting Exemptions for vessels equipped with an operating ADSSE are set forth in § 161.23(c).

The navigational equipment rule in § 164.43 is appropriately redesignated since ADSSE is an additional electronic navigational equipment requirement similar to equipment already required in 33 CFR Part 164 (e.g., automatic radar plotting aids (ARPA), electronic position fixing devices, etc.). In addition, since ADSSE currently applies only to tank vessels of 20,000 deadweight tons or more transiting Prince William Sound, the carriage requirement is being incorporated into the Prince William Sound vessel operating requirements (§ 165.1704). The "Incorporation by Reference" section (§ 161.109) associated with this rule has been redesignated as § 164.03(b)(2).

B. Implementation: Familiarization Period

An education program on mandatory participation and reporting requirements in VTSs currently operating as "voluntary systems" in San Francisco, Houston/Galveston, and Louisville will be instituted over a 90-day period. This period of familiarization will run concurrently with the 90-day effective date period of this rule.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 164.03 for incorporation by reference under 5 U.S.C. 552 and 1 CFR Part 51. The material is available as indicated in that section.

Assessment

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This rule prescribes certain radiotelephone communications. The provisions of this final rule primarily address listening watches to ensure that VTS Users maintain effective communications within the VTS area. It may, in isolated instances, require that outdated equipment be modified in order to facilitate monitoring of the proper frequencies. However, it would

requirement is being incorporated into the Prince William Sound vessel operating requirements (§ 165.1704). The "Incorporation by Reference" section (§ 161.109) associated with this rule has been redesignated as § 164.03(b)(2).

B. Implementation: Familiarization Period

An education program on mandatory participation and reporting requirements in VTSs currently operating as "voluntary systems" in San Francisco, Houston/Galveston, and Louisville will be instituted over a 90-day period. This period of familiarization will run concurrently with the 90-day effective date period of this rule.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 164.03 for incorporation by reference under 5 U.S.C. 552 and 1 CFR Part 51. The material is available as indicated in that section.

Assessment

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This rule prescribes certain radiotelephone communications. The provisions of this final rule primarily address listening watches to ensure that VTS Users maintain effective communications within the VTS area. It may, in isolated instances, require that outdated equipment be modified in order to facilitate monitoring of the proper frequencies. However, it would only affect a small number of vessel owners or operators. Any additional costs would be minor, especially in comparison to increased vessel safety, and corresponding commercial benefits, which results from monitoring the VTS frequency.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Portions of this final rule contain collection of information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has given 33 CFR 161 a blanket approval. The part is 33 CFR Part 161 and the corresponding OMB approval number is OMB Control Number 2115–0540. New information collection requirements have been added for VTSs in San Francisco, Houston/Galveston and Louisville, but will also be covered by the blanket approval.

The reports required by this rule are considered to be operational communications, transitory in nature, and therefore do not constitute the collection of information under the Paperwork Reduction Act.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. These VTS operating procedures are a matter for which regulations should be developed on the national level, to avoid unreasonably burdensome variances and confusion in applicability and operating requirements. These regulations which provide uniform VTS operating requirements are intended to preempt States from adopting similar requirements.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. This regulatory action requires vessels to comply with VTS measures. While the Coast Guard recognizes that this rule will have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions, groundings, and rammings, the impact is not expected to be significant enough to warrant further documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegation (government agencies), Freedom of Information, Penalties.

33 CFR Part 26

Communications Equipment, Navigation (water), Marine safety, Radio, Telephone, Vessels.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 162

Navigation (water), Waterways.

33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways, Incorporation by reference.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR parts 1, 26, 160, 161, 162, 164, and 165, as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 14 U.S.C. 633; 49 U.S.C. 322; Sec. 6079(d), Pub. L. 100–690, 102 Stat. 4181; 49 CFR 1.45(b), 1.46; section 1.01–70 also issued under the authority of E.O. 12316, 46 FR 42237.

2. In § 1.01–30, paragraph (b) is added to read as follows:

§ 1.01–30 Captains of the Port.

* * * * *

(b) Subject to the supervision of the cognizant Captain of the Port and District Commander, Commanding Officers, Vessel Traffic Services, are delegated authority under the Ports and Waterways Safety Act to discharge the duties of the Captain of the Port that involve directing the operation, movement, and anchoring of vessels within a Vessel Traffic Service area, including management of vessel traffic within anchorages, regulated navigation areas and safety zones, and to enforce Vessel Traffic Service and ports and waterways safety regulations. This authority may be redelegated.

* * * * *

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

3. The authority citation for part 26 is amended to read as follows:

Authority: 33 U.S.C. 1201–1208; 49 CFR 1.46. Sections 26.04 and 26.09 also issued under Sec. 4118, Pub. L. 101–380, 104 Stat. 523 (33 U.S.C. § 1203 note).

4. In § 26.02, the following definitions are added to read as follows:

§ 26.02 Definitions.

* * * * *

Vessel Traffic Services (VTS) means a service implemented under Part 161 of this chapter by the United States Coast Guard designed to improve the safety and efficiency of vessel traffic and to protect the environment. The VTS has the capability to interact with marine traffic and respond to traffic situations developing in the VTS area.

Vessel Traffic Service Area or *VTS Area* means the geographical area encompassing a specific VTS area of service as described in Part 161 of this chapter. This area of service may be subdivided into sectors for the purpose of allocating responsibility to individual Vessel Traffic Centers or to identify different operating requirements.

Note: Although regulatory jurisdiction is limited to the navigable waters of the United States, certain vessels will be encouraged or may be required, as a condition of port entry, to report beyond this area to facilitate traffic management within the VTS area.

5. In § 26.03, paragraph (f) is added to read as follows.

§ 26.03 Radiotelephone required.

* * * * *

(f) In addition to the radiotelephone required by paragraph (b) of this section, each vessel described in paragraph (a) of this section while transiting any waters within a Vessel Traffic Service Area, must have on board a radiotelephone capable of transmitting and receiving on the VTS designated frequency in Table 26.03(f) (VTS Call Signs, Designated Frequencies, and Monitoring Areas).

Note: A single VHF–FM radio capable of scanning or sequential monitoring (often referred to as "dual watch" capability) will not meet the requirements for two radios.

TABLE 26.03(f).—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Vessel traffic services [1] Call Sign	Designated frequency [2] (channel designation)	Monitoring area
New York:		
New York Traffic [3].	156.700 MHz (Ch. 14)	The waters of the Lower New York Bay west of a line drawn from Norton Point to Breezy Point and north of a line drawn from Ambrose Entrance Lighted Gong Buoy #1 to Ambrose Channel Lighted Gong Buoy #9 thence to West Bank Light and thence to Great Kills Light. The Waters of the Upper New York Bay, south of 40°42.40′ N. (Brooklyn Bridge) and 40°43.70′ N. (Holland Tunnel Ventilator Shaft); and in Newark Bay, north of 40°38.25′ N. (Arthur Kill Railroad Bridge), and south of 40°41.95′ N. (Lehigh Valley Draw Bridge); and the Kill Van Kull.
	156.550 MHz (Ch. 11)	The waters of Raritan Bay east of a line drawn from Great Kills Light to Point Comfort in New Jersey and south of a line drawn from Great Kills Light to Ambrose Channel Lighted Gong Buoy #9 thence to Ambrose Channel Lighted Gong Buoy #1 and west of a line drawn from Ambrose Channel Lighted Gong Buoy #9, thence to Ambrose Channel Lighted Gong Buoy #1 and west of a line drawn from Ambrose Channel Lighted Gong Buoy #1 to the Sandy Hook Channel Entrance Buoys (Lighted Gong Buoys #1 and #2).
	156.600 MHz (Ch. 12)	Each vessel at anchor within the above areas.
Houston [3]		The navigable waters north of 29° N., west of 94°20′ W., south of 29°49′ N., and east of 95°20′ W.:
Houston Traffic.	156.550MHz (Ch.11)	The navigable waters north of a line extending due west from the southern most end of Exxon Dock #1 (20°43.37′ N., 95°01.27′ W.).
	156.600 MHz (Ch. 12)	The navigable waters south of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37′ N., 95°01.27′ W.).
Berwick Bay:		
Berwick Traffic.	156.550 MHz (Ch. 11)	The navigable waters south of 29°45′ N., west of 91°10′ W., north of 29°37′ N., and east of 91°18′ W.
St. Marys River:		
Soo Control	156.600 MHz (Ch. 12)	The navigable waters of the St. Marys River between 45°57′ N. (De Tour Reef Light) and 46°38.7′ N. (Ile Parisienne Light), except the St. Marys Falls Canal and those navigable waters east of a line from 46°04.16′ N. and 46°01.57′ N. (La Pointe to Sims Point in Potagannissing Bay and Worsley Bay).
San Francisco [3]		
San Francisco Offshore Vessel Movement Reporting Service.	156.600 MHz (Ch. 12)	The waters within a 38 Nautical mile radius of Mount Tamalpais (37°55.8′ N., 122°34.6′ W.) excluding the San Francisco Offshore Precautionary Area.

TABLE 26.03(f).—VESSEL TRAFFIC SERVIC

Vessel traffic services [1] Call Sign	Designated frequency [2] (channel designation)	
San Francisco Traffic.	156.700 MHz (Ch. 14)	T
Puget Sound [4]		
Seattle Traffic [5].	156.700 MHz (Ch. 14)	T
	156.250 MHz (Ch. 5A)	T
Tofino Traffic [6].	156.725 MHz (Ch. 74)	T
Vancouver Traffic.	156.550 MHz (Ch. 11)	T
Prince William Sound [7]		
Valdez Traffic.	156.650 MHz (Ch. 13)	T
Louisville [7]		
Louisville Traffic.	156.650 MHz (Ch. 13)	T

NOTES:
[1] VTS regulations are denoted in 33 CFR Part 16 of 1983 (NAD 83).
[2] In the event of a communication failure either b communications may be established on an alternat monitored in each VTS area; and it may be used a beyond that provided by other means.
[3] Designated frequency monitoring is required wi frequency monitoring is voluntary. However, prospe
[4] A Cooperative Vessel Traffic Service was estab center administers the rules issued by both nations;
[5] Seattle Traffic may direct a vessel to monitor th on traffic density, weather conditions, or other safet ing area as defined above. This does not require a
[6] A portion of Tofino Sector's monitoring area ex portions outside of VTS jurisdiction, however, prosp
[7] The bridge-to-bridge navigational frequency, 15 missions does not warrant a designated VTS frequ area.

6. In § 26.04, paragraph (e) is added to read as follows:

§ 26.04 Use of the designated frequency.

* * * * *

(e) On those navigable waters of the United States within a VTS area, the designated VTS frequency is the designated frequency required to be monitored in accordance with § 26.05.

Note: As stated in 47 CFR 80.148(b), a VHF watch on Channel 16 (156.800 MHz) is not required on vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act and participating in a Vessel Traffic Service (VTS) system when the watch is maintained on both the vessel bridge-to-bridge frequency and a designated VTS frequency.

7. Section 26.07 is revised to read as follows:

TABLE 26.03(f).—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS—Continued

Vessel traffic services [1] Call Sign	Designated frequency [2] (channel designation)	Monitoring area
San Francisco Traffic.	156.700 MHz (Ch. 14)	The waters of the San Francisco Offshore Precautionary Area eastward to San Francisco Bay including its tributaries extending to the ports of Stockton, Sacramento and Redwood City.
Puget Sound [4]		
Seattle Traffic [5].	156.700 MHz (Ch. 14)	The navigable waters of Puget Sound, Hood Canal and adjacent waters south of a line connecting Marrowstone Point and Lagoon Point in Admiralty Inlet and south of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.
	156.250 MHz (Ch. 5A)	The navigable waters of the Strait of Juan de Fuca east of 124°40′ W. excluding the waters in the central portion of the Strait of Juan de Fuca north and east of Race Rocks; the navigable waters of the Strait of Georgia east of 122°52′ W.; the San Juan Island Archipelago, Rosario Strait, Bellingham Bay; Admiralty Inlet north of a line connecting Marrowstone Point and Lagoon Point and all waters east of Whidbey Island North of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.
Tofino Traffic [6].	156.725 MHz (Ch. 74)	The waters west of 124°40′ W. within 50 nautical miles of the coast of Vancouver Island including the waters north of 48° N., and east of 127° W.
Vancouver Traffic.	156.550 MHz (Ch. 11)	The navigable waters of the Strait of Georgia west of 122°52′ W., the navigable waters of the central Strait of Juan de Fuca north and east of Race Rocks, including the Gulf Island Archipelago, Boundary Pass and Haro Strait.
Prince William Sound [7]		
Valdez Traffic.	156.650 MHz (Ch. 13)	The navigable waters south of 61°05′ N., east of 147°20′ W., north of 60° N., and west of 146°30′ W.; and, all navigable waters in Port Valdez.
Louisville [7]		
Louisville Traffic.	156.650 MHz (Ch. 13)	The navigable waters of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593), only when the McAlpine upper pool gauge is at approximately 13.0 feet or above.

NOTES:

[1] VTS regulations are denoted in 33 CFR Part 161. All geographic coordinates (latitude and longitude) are expressed in North American Datum of 1983 (NAD 83).

[2] In the event of a communication failure either by the vessel traffic center or the vessel or radio congestion on a designated VTS frequency, communications may be established on an alternate VTS frequency. The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is monitored in each VTS area; and it may be used as an alternate frequency, however, only to the extent that doing so provides a level of safety beyond that provided by other means.

[3] Designated frequency monitoring is required within U.S. navigable waters. In areas which are outside the U.S. navigable waters, designated frequency monitoring is voluntary. However, prospective VTS Users are encouraged to monitor the designated frequency.

[4] A Cooperative Vessel Traffic Service was established by the United States and Canada within adjoining waters. The appropriate vessel traffic center administers the rules issued by both nations; however, it will enforce only its own set of rules within its jurisdiction.

[5] Seattle Traffic may direct a vessel to monitor the other primary VTS frequency 156.250 MHz or 156.700 MHz (Channel 5A or 14) depending on traffic density, weather conditions, or other safety factors, rather than strictly adhering to the designated frequency required for each monitoring area as defined above. This does not require a vessel to monitor both primary frequencies.

[6] A portion of Tofino Sector's monitoring area extends beyond the defined CVTS area. Designated frequency monitoring is voluntary in these portions outside of VTS jurisdiction, however, prospective VTS Users are encouraged to monitor the designated frequency.

[7] The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is used in these VTSs because the level of radiotelephone transmissions does not warrant a designated VTS frequency. The listening watch required by § 26.05 of this chapter is not limited to the monitoring area.

6. In § 26.04, paragraph (e) is added to read as follows:

§ 26.04 Use of the designated frequency.

* * * * *

(e) On those navigable waters of the United States within a VTS area, the designated VTS frequency is the designated frequency required to be monitored in accordance with § 26.05.

Note: As stated in 47 CFR 80.148(b), a VHF watch on Channel 16 (156.800 MHz) is not required on vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act and participating in a Vessel Traffic Service (VTS) system when the watch is maintained on both the vessel bridge-to-bridge frequency and a designated VTS frequency.

7. Section 26.07 is revised to read as follows:

§ 26.07 Communications.

No person may use the services of, and no person may serve as a person required to maintain a listening watch under section 5 of the Act, 33 U.S.C. 1204, unless the person can communicate in the English language.

PART 160—PORTS AND WATERWAYS SAFETY: GENERAL

8. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

9. Section 160.3 is revised to read as follows:

§ 160.3 Definitions.

For the purposes of this subchapter:

Bulk means material in any quantity that is shipped, stored, or handled without the benefit of package, label, mark or count and carried in integral or fixed independent tanks.

Captain of the Port means the Coast Guard officer designated by the Commandant to command a Captain of the Port Zone as described in part 3 of this chapter.

Commandant means the Commandant of the United States Coast Guard.

Commanding Officer, Vessel Traffic Services means the Coast Guard officer designated by the Commandant to command a Vessel Traffic Service (VTS) as described in part 161 of this chapter.

Deviation means any departure from any rule in this subchapter.

District Commander means the Coast Guard officer designated by the Commandant to command a Coast

Guard District as described in part 3 of this chapter.

ETA means estimated time of arrival.

Length of Tow means, when towing with a hawser, the length in feet from the stern of the towing vessel to the stern of the last vessel in tow. When pushing ahead or towing alongside, length of tow means the tandem length in feet of the vessels in tow excluding the length of the towing vessel.

Person means an individual, firm, corporation, association, partnership, or governmental entity.

State means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, and any other commonwealth, territory, or possession of the United States.

Tanker means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous materials in bulk in the cargo spaces.

Tank Vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

Vehicle means every type of conveyance capable of being used as a means of transportation on land.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Vessel Traffic Services (VTS) means a service implemented under Part 161 of this chapter by the United States Coast Guard designed to improve the safety and efficiency of vessel traffic and to protect the environment. The VTS has the capability to interact with marine traffic and respond to traffic situations developing in the VTS area.

Vessel Traffic Service Area or *VTS Area* means the geographical area encompassing a specific VTS area of service as described in Part 161 of this chapter. This area of service may be subdivided into sectors for the purpose of allocating responsibility to individual Vessel Traffic Centers or to identify different operating requirements.

Note: Although regulatory jurisdiction is limited to the navigable waters of the United States, certain vessels will be encouraged or may be required, as a condition of port entry, to report beyond this area to facilitate traffic management within the VTS area.

VTS Special Area means a waterway within a VTS area in which special operating requirements apply.

10. In § 160.5, paragraph (d) is added to read as follows:

§ 160.5 Delegations.

* * * * *

(d) Subject to the supervision of the cognizant Captain of the Port and District Commander, Commanding Officers, Vessel Traffic Services are delegated authority under 33 CFR 1.01–30 to discharge the duties of the Captain of the Port that involve directing the operation, movement, and anchorage of vessels within a Vessel Traffic Service area including management of vessel traffic within anchorages, regulated navigation areas and safety zones, and to enforce Vessel Traffic Service and ports and waterways safety regulations. This authority may be exercised by Vessel Traffic Center personnel. The Vessel Traffic Center may, within the Vessel Traffic Service area, provide information, make recommendations, or, to a vessel required under Part 161 of this chapter to participate in a Vessel Traffic Service, issue an order, including an order to operate or anchor as directed; require the vessel to comply with orders issued; specify times of entry, movement or departure; restrict operations as necessary for safe operation under the circumstances; or take other action necessary for control of the vessel and the safety of the port or of the marine environment.

PART 161—[AMENDED]

11. Section 161.402 is redesignated as § 165.810 and the heading is revised to read as follows:

§ 165.810 Mississippi River, LA-regulated navigation area.

12. Part 161 is revised to read as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

Subpart A—Vessel Traffic Services

General Rules

Sec.
161.1 Purpose and Intent.
161.2 Definitions.
161.3 Applicability.
161.4 Requirement to carry the rules.
161.5 Deviations from the rules.

Services, VTS Measures, and Operating Requirements

161.10 Services.
161.11 VTS measures.
161.12 Vessel operating requirements.
161.13 VTS Special Area operating requirements.

Subpart B—Vessel Movement Reporting System (VMRS)

161.15 Purpose and intent.
161.16 Applicability.
161.17 Definitions.
161.18 Reporting requirements.
161.19 Sailing Plan (SP).
161.20 Position Report (PR).
161.21 Sailing Plan Deviation Report (DR).
161.22 Final Report (FR).
161.23 Reporting Exemptions.

Subpart C—Vessel Traffic Service Areas, Cooperative Vessel Traffic Service Area, Vessel Traffic Service Special Areas, and Reporting Points

161.25 Vessel Traffic Service New York.
161.30 Vessel Traffic Service Louisville.
161.35 Vessel Traffic Service Houston/Galveston.
161.40 Vessel Traffic Service Berwick Bay.
161.45 Vessel Traffic Service St. Marys River.
161.50 Vessel Traffic Service San Francisco.
161.55 Vessel Traffic Service Puget Sound and the Cooperative Vessel Traffic Service for the Juan de Fuca Region.
161.60 Vessel Traffic Service Prince William Sound.

Authority: 33 U.S.C. 1231; 33 U.S.C. 1223; 49 CFR 1.46.

Subpart A—Vessel Traffic Services

General Rules

§ 161.1 Purpose and intent.

(a) The purpose of this part is to promulgate regulations implementing and enforcing certain sections of the Ports and Waterways Safety Act (PWSA) setting up a national system of Vessel Traffic Services that will enhance navigation, vessel safety, and marine environmental protection, and promote safe vessel movement by reducing the potential for collisions, rammings, and groundings, and the loss of lives and property associated with these incidents within VTS areas established hereunder.

(b) Vessel Traffic Services provide the mariner with information related to the safe navigation of a waterway. This information, coupled with the mariner's compliance with the provisions set forth in this part, enhances the safe routing of vessels through congested waterways or waterways of particular hazard. Under certain circumstances, a VTS may issue directions to control the movement of vessels in order to minimize the risk of collision between vessels, or damage to property or the environment.

(c) The owner, operator, charterer, master, or person directing the movement of a vessel remains at all times responsible for the manner in which the vessel is operated and maneuvered, and is responsible for the safe navigation of the vessel under all circumstances. Compliance with these rules or with a direction of the VTS is at all times contingent upon the exigencies of safe navigation.

(d) Nothing in this part is intended to relieve any vessel, owner, operator, charterer, master, or person directing the movement of a vessel from the consequences of any neglect to comply with this part or any other applicable law or regulation (e.g., the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS) or the Inland Navigation Rules) or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

§ 161.2 Definitions.

For the purposes of this part:

Cooperative Vessel Traffic Services (CVTS) means the system of vessel traffic management established and jointly operated by the United States and Canada within adjoining waters. In addition, CVTS facilitates traffic movement and anchorages, avoids jurisdictional disputes, and renders assistance in emergencies in adjoining United States and Canadian waters.

Hazardous Vessel Operating Condition means any condition related to a vessel's ability to safely navigate or maneuver, and includes, but is not limited to:

(1) The absence or malfunction of vessel operating equipment, such as propulsion machinery, steering gear, radar system, gyrocompass, depth sounding device, automatic radar plotting aid (ARPA), radiotelephone, automated dependent surveillance equipment, navigational lighting, sound signaling devices or similar equipment.

(2) Any condition on board the vessel likely to impair navigation, such as lack of current nautical charts and publications, personnel shortage, or similar condition.

(3) Vessel characteristics that affect or restrict maneuverability, such as cargo arrangement, trim, loaded condition, underkeel clearance, speed, or similar characteristics.

Precautionary Area means a routing measure comprising an area within defined limits where vessels must navigate with particular caution and within which the direction of traffic may be recommended.

Towing Vessel means any commercial vessel engaged in towing another vessel astern, alongside, or by pushing ahead.

Vessel Movement Reporting System (VMRS) is a system used to manage and track vessel movements within a VTS area. This is accomplished by a vessel providing information under established procedures as set forth in this part, or as directed by the VTS.

Vessel Movement Reporting System (VMRS) User means a vessel, or an owner, operator, charterer, master, or person directing the movement of a vessel, that is required to participate in a VMRS within a VTS area. VMRS participation is required for:

with this part or any other applicable law or regulation (e.g., the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS) or the Inland Navigation Rules) or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

§ 161.2 Definitions.

For the purposes of this part:

Cooperative Vessel Traffic Services (CVTS) means the system of vessel traffic management established and jointly operated by the United States and Canada within adjoining waters. In addition, CVTS facilitates traffic movement and anchorages, avoids jurisdictional disputes, and renders assistance in emergencies in adjoining United States and Canadian waters.

Hazardous Vessel Operating Condition means any condition related to a vessel's ability to safely navigate or maneuver, and includes, but is not limited to:

(1) The absence or malfunction of vessel operating equipment, such as propulsion machinery, steering gear, radar system, gyrocompass, depth sounding device, automatic radar plotting aid (ARPA), radiotelephone, automated dependent surveillance equipment, navigational lighting, sound signaling devices or similar equipment.

(2) Any condition on board the vessel likely to impair navigation, such as lack of current nautical charts and publications, personnel shortage, or similar condition.

(3) Vessel characteristics that affect or restrict maneuverability, such as cargo arrangement, trim, loaded condition, underkeel clearance, speed, or similar characteristics.

Precautionary Area means a routing measure comprising an area within defined limits where vessels must navigate with particular caution and within which the direction of traffic may be recommended.

Towing Vessel means any commercial vessel engaged in towing another vessel astern, alongside, or by pushing ahead.

Vessel Movement Reporting System (VMRS) is a system used to manage and track vessel movements within a VTS area. This is accomplished by a vessel providing information under established procedures as set forth in this part, or as directed by the VTS.

Vessel Movement Reporting System (VMRS) User means a vessel, or an owner, operator, charterer, master, or person directing the movement of a vessel, that is required to participate in a VMRS within a VTS area. VMRS participation is required for:

(1) Every power-driven vessel of 40 meters (approximately 131 feet) or more in length, while navigating;

(2) Every towing vessel of 8 meters (approximately 26 feet) or more in length, while navigating; or

(3) Every vessel certificated to carry 50 or more passengers for hire, when engaged in trade.

Vessel Traffic Center (VTC) means the shore-based facility that operates the vessel traffic service for the Vessel Traffic Service area or sector within such an area.

Vessel Traffic Services (VTS) means a service implemented by the United States Coast Guard designed to improve the safety and efficiency of vessel traffic and to protect the environment. The VTS has the capability to interact with marine traffic and respond to traffic situations developing in the VTS area.

Vessel Traffic Service Area or *VTS Area* means the geographical area encompassing a specific VTS area of service. This area of service may be subdivided into sectors for the purpose of allocating responsibility to individual Vessel Traffic Centers or to identify different operating requirements.

Note: Although regulatory jurisdiction is limited to the navigable waters of the United States, certain vessels will be encouraged or may be required, as a condition of port entry, to report beyond this area to facilitate traffic management within the VTS area.

VTS Special Area means a waterway within a VTS area in which special operating requirements apply.

VTS User means a vessel, or an owner, operator, charterer, master, or person directing the movement of a vessel, that is:

(a) Subject to the Vessel Bridge-to-Bridge Radiotelephone Act; or

(b) Required to participate in a VMRS within a VTS area (VMRS User).

VTS User's Manual means the manual established and distributed by the VTS to provide the mariner with a description of the services offered and rules in force for that VTS. Additionally, the manual may include chartlets showing the area and sector boundaries, general navigational information about the area, and procedures, radio frequencies, reporting provisions and other information which may assist the mariner while in the VTS area.

§ 161.3 Applicability.

The provisions of this subpart shall apply to each VTS User and may also apply to any vessel while underway or at anchor on the navigable waters of the United States within a VTS area, to the extent the VTS considers necessary.

§ 161.4 Requirement to carry the rules.

Each VTS User shall carry on board and maintain for ready reference a copy of these rules.

Note: These rules are contained in the applicable U.S. Coast Pilot, the VTS User's Manual which may be obtained by contacting the appropriate VTS, and periodically published in the Local Notice to Mariners. The VTS User's Manual and the World VTS Guide, an International Maritime Organization (IMO) recognized publication, contain additional information which may assist the prudent mariner while in the appropriate VTS area.

§ 161.5 Deviations from the rules.

(a) Requests to deviate from any provision in this part, either for an extended period of time or if anticipated before the start of a transit, must be submitted in writing to the appropriate District Commander. Upon receipt of the written request, the District Commander may authorize a deviation if it is determined that such a deviation provides a level of safety equivalent to that provided by the required measure or is a maneuver considered necessary for safe navigation under the circumstances. An application for an authorized deviation must state the need and fully describe the proposed alternative to the required measure.

(b) Requests to deviate from any provision in this part due to circumstances that develop during a transit or immediately preceeding a transit, may be made verbally to the appropriate VTS Commanding Officer. Requests to deviate shall be made as far in advance as practicable. Upon receipt of the request, the VTS Commanding Officer may authorize a deviation if it is determined that, based on vessel handling characteristics, traffic density, radar contacts, environmental conditions and other relevant information, such a deviation provides a level of safety equivalent to that provided by the required measure or is a maneuver considered necessary for safe navigation under the circumstances.

Services, VTS Measures, and Operating Requirements

§ 161.10 Services.

To enhance navigation and vessel safety, and to protect the marine environment, a VTS may issue advisories, or respond to vessel requests for information, on reported conditions within the VTS area, such as:

(a) Hazardous conditions or circumstances;

(b) Vessel congestion;

(c) Traffic density;

(d) Environmental conditions;

(e) Aids to navigation status;
(f) Anticipated vessel encounters;
(g) Another vessel's name, type, position, hazardous vessel operating conditions, if applicable, and intended navigation movements, as reported;
(h) Temporary measures in effect;
(i) A description of local harbor operations and conditions, such as ferry routes, dredging, and so forth;
(j) Anchorage availability; or
(k) Other information or special circumstances.

§ 161.11 VTS measures.

(a) A VTS may issue measures or directions to enhance navigation and vessel safety and to protect the marine environment, such as, but not limited to:
(1) Designating temporary reporting points and procedures;
(2) Imposing vessel operating requirements; or
(3) Establishing vessel traffic routing schemes.
(b) During conditions of vessel congestion, restricted visibility, adverse weather, or other hazardous circumstances, a VTS may control, supervise, or otherwise manage traffic, by specifying times of entry, movement, or departure to, from, or within a VTS area.

§ 161.12 Vessel operating requirements.

(a) Subject to the exigencies of safe navigation, a VTS User shall comply with all measures established or directions issued by a VTS.
(1) If, in a specific circumstance, a VTS User is unable to safely comply with a measure or direction issued by the VTS, the VTS User may deviate only to the extent necessary to avoid endangering persons, property or the environment. The deviation shall be reported to the VTS as soon as is practicable.

(b) When not exchanging communications, a VTS User must maintain a listening watch as required by § 26.04(e) of this chapter on the VTS frequency designated in Table 161.12(b) (VTS Call Signs, Designated Frequencies, and Monitoring Areas). In addition, the VTS User must respond promptly when hailed and communicate in the English language

Note: As stated in 47 CFR 80.148(b), a VHF watch on Channel 16 (156.800 MHz) is not required on vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act and participating in a Vessel Traffic Service (VTS) system when the watch is maintained on both the vessel bridge-to-bridge frequency and a designated VTS frequency.

TABLE 161.12(b)—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Vessel traffic services call sign	Designated frequency [1] (channel designation)	Monitoring area
New York:		
New York Traffic [2]	156.700 MHz (Ch. 14)	The waters of the Lower New York Bay west of a line drawn from Norton Point to Breezy Point and north of a line drawn from Ambrose Entrance Lighted Gong Buoy #1 to Ambrose Channel Lighted Gong Buoy #9 thence to West Bank Light and thence to Great Kills Light. The waters of the Upper New York Bay, south of 40°42.40'N. (Brooklyn Bridge) and 40°43.70'N. (Holland Tunnel Ventilator Shaft); and in Newark Bay, north of 40°38.25'N. (Arthur Kill Railroad Bridge), and south of 40°41.95'N. (Lehigh Valley Draw Bridge); and the Kill Van Kull.
	156.550 MHz (Ch. 11)	The waters of Raritan Bay east of a line drawn from Great Kills Light to Point Comfort in New Jersey and south of a line drawn from Great Kills Light to Ambrose Channel Lighted Gong Buoy #9 thence to Ambrose Channel Lighted Gong Buoy #1 and west of a line drawn from Ambrose Channel Lighted Gong Buoy #9, thence to Ambrose Channel Lighted Gong Buoy #1 and west of a line drawn from Ambrose Channel Lighted Gong Buoy #1 to the Sandy Hook Channel Entrance Buoys (Lighted Gong Buoys #1 and #2).
	156.600 MHz (Ch. 12)	Each vessel at anchor within the above areas.
Houston [2]		The navigable waters north of 29°N., west of 94°20'W., south of 29°49'N., and east of 95°20'W.:
Houston Traffic	156.550 MHz (Ch. 11)	The navigable waters north of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37'N., 95°01.27'W.).
	156.600 MHz (Ch. 12)	The navigable waters south of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37'N., 95°01.27'W.).
Berwick Bay:		
Berwick Traffic	156.550 MHz (Ch. 11)	The navigable waters south of 20°45'N., west of 91°10'W., north of 29°37'N., and east of 91°18'W.
St. Marys River:		
Soo Control	156.600 MHz (Ch. 12)	The navigable waters of the St. Marys River between 45°57'N. (De Tour Reef Light) and 46°38.7'N. (Ile Parisienne Light), except the St. Marys Falls Canal and those navigable waters east of a line from 46°04.16'N. and 46°01.57'N. (La Pointe to Sims Point in Potagannissing Bay and Worsley Bay).
San Francisco: [2]		
San Francisco Offshore Vessel Movement Reporting Service.	156.600 MHz (Ch. 12)	The waters within a 38 nautical mile radius of Mount Tamalpais (37°55.8'N., 122°34.6'W.) excluding the San Francisco Offshore Precautionary Area.
San Francisco Traffic	156.700 MHz (Ch. 14)	The waters of the San Francisco Offshore Precautionary Area eastward to San Francisco Bay including its tributaries extending to the ports of Stockton, Sacramento and Redwood City.
Puget Sound: [3]		
Seattle Traffic [4]	156.700 MHz (Ch. 14)	The navigable waters of Puget Sound, Hood Canal and adjacent waters south of a line connecting Marrowstone Point and Lagoon Point in Admiralty Inlet and south of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.

TABLE 161.12(b)—VESSEL TRAFFIC

Vessel traffic services call sign	Designated frequ (channel design
	156.250 MHz (Ch
Tofino Traffic [5]	156.725 MHz (Ch
Vancouver Traffic	156.550 MHz (Ch
Prince William Sound: [6]	
Valdez Traffic	156.650 MHz (Ch
Louisville: [6]	
Louisville Traffic	156.650 MHz (Ch

Notes:
[1] In the event of a communication failure eithe communications may be established on an alter monitored in each VTS area; and it may be use beyond that provided by other means.
[2] Designated frequency monitoring is required frequency monitoring is voluntary. However, pros
[3] A Cooperative Vessel Traffic Service was est center administers the rules issued by both natio
[4] Seattle Traffic may direct a vessel to monitor on traffic density, weather conditions, or other sa ing area as defined above. This does not require
[5] A portion of Tofino Sector's monitoring area portions outside of VTS jurisdiction, however, pro
[6] The bridge-to-bridge navigational frequency, missions does not warrant a designated VTS fre area.

(c) As soon as is practicable, a VTS User shall notify the VTS of any of the following:
(1) A marine casualty as defined in 46 CFR 4.05–1;
(2) Involvement in the ramming of a fixed or floating object;
(3) A pollution incident as defined in § 151.15 of this chapter;
(4) A defect or discrepancy in an aid to navigation;
(5) A hazardous condition as defined in § 160.203 of this chapter;
(6) Improper operation of vessel equipment required by Part 164 of this chapter;
(7) A situation involving hazardous materials for which a report is required by 49 CFR 176.48; and
(8) A hazardous vessel operating condition as defined in § 161.2.

§ 161.13 VTS Special Area Operating Requirements.

The following operating requirements apply within a VTS Special Area:
(a) A VTS User shall, if towing astern, do so with as short a hawser as safety and good seamanship permits.

TABLE 161.12(b)—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS—Continued

Vessel traffic services call sign	Designated frequency [1] (channel designation)	Monitoring area
	156.250 MHz (Ch. 5A) ...	The navigable waters of the Strait of Juan de Fuca east of 124°40'W. excluding the waters in the central portion of the Strait of Juan de Fuca north and east of Race Rocks; the navigable waters of the Strait of Georgia east of 122°52'W.; the San Juan Island Archipelago, Rosario Strait, Bellingham Bay; Admiralty Inlet north of a line connecting Marrowstone Point and Lagoon Point and all waters east of Whidbey Island north of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.
Tofino Traffic [5]	156.725 MHz (Ch. 74) ...	The waters west of 124°40'W. within 50 nautical miles of the coast of Vancouver Island including the waters north of 48°N., and east of 127°W.
Vancouver Traffic	156.550 MHz (Ch. 11) ...	The navigable waters of the Strait of Georgia west of 122°52'W., the navigable waters of the central Strait of Juan de Fuca north and east of Race Rocks, including the Gulf Island Archipelago, Boundary Pass and Haro Strait.
Prince William Sound: [6]		
Valdez Traffic	156.650 MHz (Ch. 13) ...	The navigable waters south of 61°05'N., east of 147°20'W., north of 60°N., and west of 146°30'W.; and, all navigable waters in Port Valdez.
Louisville: [6]		
Louisville Traffic	156.650 MHz (Ch. 13) ...	The navigable waters of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593), only when the McAlpine upper pool gauge is at approximately 13.0 feet or above.

Notes:

[1] In the event of a communication failure either by the vessel traffic center or the vessel or radio congestion on a designated VTS frequency, communications may be established on an alternate VTS frequency. The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is monitored in each VTS area; and it may be used as an alternate frequency, however, only to the extent that doing so provides a level of safety beyond that provided by other means.

[2] Designated frequency monitoring is required within U.S. navigable waters. In areas which are outside the U.S. navigable waters, designated frequency monitoring is voluntary. However, prospective VTS Users are encouraged to monitor the designated frequency.

[3] A Cooperative Vessel Traffic Service was established by the United States and Canada within adjoining waters. The appropriate vessel traffic center administers the rules issued by both nations; however, it will enforce only its own set of rules within its jurisdiction.

[4] Seattle Traffic may direct a vessel to monitor the other primary VTS frequency 156.250 MHz or 156.700 MHz (Channel 5A or 14) depending on traffic density, weather conditions, or other safety factors, rather than strictly adhering to the designated frequency required for each monitoring area as defined above. This does not require a vessel to monitor both primary frequencies.

[5] A portion of Tofino Sector's monitoring area extends beyond the defined CVTS area. Designated frequency monitoring is voluntary in these portions outside of VTS jurisdiction, however, prospective VTS Users are encouraged to monitor the designated frequency.

[6] The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is used in these VTSs because the level of radiotelephone transmissions does not warrant a designated VTS frequency. The listening watch required by § 26.05 of this chapter is not limited to the monitoring area.

(c) As soon as is practicable, a VTS User shall notify the VTS of any of the following:

(1) A marine casualty as defined in 46 CFR 4.05–1;

(2) Involvement in the ramming of a fixed or floating object;

(3) A pollution incident as defined in § 151.15 of this chapter;

(4) A defect or discrepancy in an aid to navigation;

(5) A hazardous condition as defined in § 160.203 of this chapter;

(6) Improper operation of vessel equipment required by Part 164 of this chapter;

(7) A situation involving hazardous materials for which a report is required by 49 CFR 176.48; and

(8) A hazardous vessel operating condition as defined in § 161.2.

§ 161.13 VTS Special Area Operating Requirements.

The following operating requirements apply within a VTS Special Area:

(a) A VTS User shall, if towing astern, do so with as short a hawser as safety and good seamanship permits.

(b) A VMRS User shall: (1) Not enter or get underway in the area without prior approval of the VTS;

(2) Not enter a VTS Special Area if a hazardous vessel operating condition or circumstance exists;

(3) Not meet, cross, or overtake any other VMRS User in the area without prior approval of the VTS; and

(4) Before meeting, crossing, or overtaking any other VMRS User in the area, communicate on the designated vessel bridge-to-bridge radiotelephone frequency, intended navigation movements, and any other information necessary in order to make safe passing arrangements. This requirement does not relieve a vessel of any duty prescribed by the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS) or the Inland Navigation Rules.

Subpart B—Vessel Movement Reporting System

§ 161.15 Purpose and intent.

(a) A Vessel Movement Reporting System (VMRS) is a system used to manage and track vessel movements within a VTS area. This is accomplished by requiring that vessels provide information under established procedures as set forth in this part, or as directed by the VTS.

(b) To avoid imposing an undue reporting burden or unduly congesting radiotelephone frequencies, reports shall be limited to information which is essential to achieve the objectives of the VMRS. These reports are consolidated into four reports (sailing plan, position, sailing plan deviation and final).

§ 161.16 Applicability.

The provisions of this subpart shall apply to the following VMRS Users:

(a) Every power-driven vessel of 40 meters (approximately 131 feet) or more in length, while navigating;

(b) Every towing vessel of 8 meters (approximately 26 feet) or more in length, while navigating; or

(c) Every vessel certificated to carry 50 or more passengers for hire, when engaged in trade.

§ 161.17 Definitions.

As used in this subpart: *Published* means available in a widely-distributed

and publicly available medium (e.g., VTS User's Manual, ferry schedule, Notice to Mariners).

§ 161.18 Reporting requirements.

(a) A VTS may: (1) Direct a vessel to provide any of the information set forth in Table 161.18(a) (IMO Standard Ship Reporting System);

TABLE 161.18(a).—THE IMO STANDARD SHIP REPORTING SYSTEM

A	ALPHA	Ship	Name, call sign or ship station identity, and flag.
B	BRAVO	Dates and time of event	A 6 digit group giving day of month (first two digits), hours and minutes (last four digits). If other than UTC state time zone used.
C	CHARLIE	Position	A 4 digit group giving latitude in degrees and minutes suffixed with N (north) or S (south) and a 5 digit group giving longitude in degrees and minutes suffixed with E (east) or W (west); or.
D	DELTA	Position	True bearing (first 3 digits) and distance (state distance) in nautical miles from a clearly identified landmark (state landmark).
E	ECHO	True course	A 3 digit group.
F	FOXTROT	Speed in knots and tenths of knots	A 3 digit group.
G	GOLF	Port of Departure	Name of last port of call.
H	HOTEL	Date, time and point of entry system.	Entry time expressed as in (B) and into the entry position expressed as in (C) or (D).
I	INDIA	Destination and expected time of arrival.	Name of port and date time group expressed as in (B).
J	JULIET	Pilot	State whether a deep sea or local pilot is on board.
K	KILO	Date, time and point of exit from system.	Exit time expressed as in (B) and exit position expressed as in (C) or (D).
L	LIMA	Route information	Intended track.
M	MIKE	Radio	State in full names of communications stations/frequencies guarded.
N	NOVEMBER	Time of next report	Date time group expressed as in (B).
O	OSCAR	Maximum present static draught in meters.	4 digit group giving meters and centimeters.
P	PAPA	Cargo on board	Cargo and brief details of any dangerous cargoes as well as harmful substances and gases that could endanger persons or the environment.
Q	QUEBEC	Defects, damage, deficiencies or limitations.	Brief detail of defects, damage, deficiencies or other limitations.
R	ROMEO	Description of pollution or dangerous goods lost.	Brief details of type of pollution (oil, chemicals, etc) or dangerous goods lost overboard; position expressed as in (C) or (D).
S	SIERRA	Weather conditions	Brief details of weather and sea conditions prevailing.
T	TANGO	Ship's representative and/or owner.	Details of name and particulars of ship's representative and/or owner for provision of information.
U	UNIFORM	Ship size and type	Details of length, breadth, tonnage, and type, etc., as required.
V	VICTOR	Medical personnel	Doctor, physician's assistant, nurse, no medic.
W	WHISKEY	Total number of persons on board.	State number.
X	XRAY	Miscellaneous	Any other information as appropriate. [i.e., a detailed description of a planned operation, which may include: its duration; effective area; any restrictions to navigation; notification procedures for approaching vessels; in addition, for a towing operation: configuration, length of the tow, available horsepower, etc.; for a dredge or floating plant: configuration of pipeline, mooring configuration, number of assist vessels, etc.].

(2) Establish other means of reporting for those vessels unable to report on the designated frequency; or

(3) Require reports from a vessel in sufficient time to allow advance vessel traffic planning.

(b) All reports required by this part shall be made as soon as is practicable on the frequency designated in Table 161.12(b) (VTS Call Signs, Designated Frequencies, and Monitoring Areas).

(c) When not exchanging communications, a VMRS User must maintain a listening watch as described in § 26.04(e) of this chapter on the frequency designated in Table 161.12(b) (VTS Call Signs, Designated Frequencies, and Monitoring Areas). In addition, the VMRS User must respond promptly when hailed and communicate in the English language.

Note: As stated in 47 CFR 80.148(b), a VHF watch on Channel 16 (156.800 MHz) is not required on vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act and participating in a Vessel Traffic Service (VTS) system when the watch is maintained on both the vessel bridge-to-bridge frequency and a designated VTS frequency.

(d) When reports required by this part include time information, such information shall be given using the local time zone in effect and the 24-hour military clock system.

§ 161.19 Sailing Plan (SP).

Unless otherwise stated, at least 15 minutes before navigating a VTS area, a vessel must report the:

(a) Vessel name and type;
(b) Position;
(c) Destination and ETA;
(d) Intended route;
(e) Time and point of entry; and
(f) Dangerous cargo on board or in its tow, as defined in § 160.203 of this chapter, and other required information as set out in § 160.211 and § 160.213 of this chapter, if applicable.

§ 161.20 Position Report (PR).

A vessel must report its name and position:

(a) Upon point of entry into a VTS area;

(b) At designated reporting points as set forth in subpart C; or

(c) When directed by the VTC.

Note: Notice of temporary reporting points, if established, may be published via Local Notices to Mariners, general broadcast or the VTS User's Manual.

§ 161.21 Sailing Plan Deviation Report (DR).

A vessel must report:

(a) When its ETA to a destination varies significantly from a previously reported ETA;

(b) Any intention to deviate from a VTS issued measure or vessel traffic routing system; or

(c) Any significant deviation from previously reported information.

§ 161.22 Final Report (FR).

A vessel must report its name and position:

(a) On arrival at its destination; or

(b) When leaving a VTS area.

§ 161.23 Reporting exemptions.

(a) Unless otherwise directed, the following vessels are exempted from providing Position and Final Reports due to the nature of their operation:

(1) Vessels on a published schedule and route;

(2) Vessels operating within an area of a radius of three nautical miles or less; or

(3) Vessels escorting another vessel or assisting another vessel in maneuvering procedures.

(b) A vessel described in paragraph (a) of this section must:

(1) Provide a Sailing Plan at least 5 minutes but not more than 15 minutes before navigating within the VTS area; and

(2) If it departs from its promulgated schedule by more than 15 minutes or changes its limited operating area, make

	Precaution
Bolivar Roads	
Red Fish Bar	
Bayport Channel	
Morgans Point	
Upper San Jacinto Bay	
Baytown	
Lynchburg	
Carpenter Bayou	
Jacintoport	
Greens Bayou	
Hunting Bayou	
Sims Bayou	
Brady Island	
Buffalo Bayou	

(a) Upon point of entry into a VTS area;

(b) At designated reporting points as set forth in subpart C; or

(c) When directed by the VTC.

Note: Notice of temporary reporting points, if established, may be published via Local Notices to Mariners, general broadcast or the VTS User's Manual.

§ 161.21 Sailing Plan Deviation Report (DR).

A vessel must report:

(a) When its ETA to a destination varies significantly from a previously reported ETA;

(b) Any intention to deviate from a VTS issued measure or vessel traffic routing system; or

(c) Any significant deviation from previously reported information.

§ 161.22 Final Report (FR).

A vessel must report its name and position:

(a) On arrival at its destination; or

(b) When leaving a VTS area.

§ 161.23 Reporting exemptions.

(a) Unless otherwise directed, the following vessels are exempted from providing Position and Final Reports due to the nature of their operation:

(1) Vessels on a published schedule and route;

(2) Vessels operating within an area of a radius of three nautical miles or less; or

(3) Vessels escorting another vessel or assisting another vessel in maneuvering procedures.

(b) A vessel described in paragraph (a) of this section must:

(1) Provide a Sailing Plan at least 5 minutes but not more than 15 minutes before navigating within the VTS area; and

(2) If it departs from its promulgated schedule by more than 15 minutes or changes its limited operating area, make the established VMRS reports, or report as directed.

(c) In those VTS areas capable of receiving automated position reports from Automated Dependent Surveillance Shipborne Equipment (ADSSE) as required by § 164.43 of this chapter and where ADSSE is required, vessels equipped with an operating ADSSE are not required to make voice radio position reports at designated reporting points as required by § 161.20(b) of this part, unless otherwise directed by the VTC.

(1) Whenever an ADSSE becomes non-operational as defined in § 164.43(c) of this chapter, before entering or while underway in a VTS area, a vessel must:

(i) Notify the VTC;

(ii) Make voice radio position reports at designated reporting points as required by § 161.20(b) of this part;

(iii) Make other voice radio reports as directed; and

(iv) Restore the ADSSE to operating condition as soon as possible.

(2) Whenever an ADSSE becomes non-operational due to a loss of position correction information (i.e., the U.S. Coast Guard differential global positioning system (dGPS) cannot provide the required error correction messages) a vessel must:

(i) Make required voice radio position reports at designated reporting points required by § 161.20(b) of this part; and

(ii) Make other voice radio reports as directed.

Note: Regulations pertaining to ADSSE required capabilities are set forth in § 164.43 of this chapter.

Subpart C—Vessel Traffic Service Areas, Cooperative Vessel Traffic Service Area, Vessel Traffic Service Special Areas and Reporting Points.

Note: All geographic coordinates contained in part 161 (latitude and longitude) are expressed in North American Datum of 1983 (NAD 83).

§ 161.25 Vessel Traffic Service New York.

The VTS area consists of the waters of the Lower New York Bay bounded to the east by a line drawn from Norton Point to Breezy Point, then south to the entrance buoys at Ambrose, Sandy Hook and Swash Channels, and to the west by a line drawn in the Raritan Bay from Great Kills Light on Staten Island to Point Comfort in New Jersey. In addition, VTS New York encompasses the Upper New York Bay waters to the west, including the Kill Van Kull south to the AK Railroad Bridge and Newark Bay north to the Lehigh Valley Draw Bridge, and in the Hudson River, north to a line drawn east-west from the Holland Tunnel ventilator shaft at 40–43.7′ N., 74–01.6′ W., and east to the Brooklyn Bridge.

§ 161.30 Vessel Traffic Service Louisville.

The VTS area consists of the navigable waters of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593), only when the McAlpine upper pool gauge is at 13.0 feet or above.

§ 161.35 Vessel Traffic Service Houston/Galveston.

(a) The VTS area consists of the following major waterways and portions of connecting waterways: Galveston Bay Entrance Channel; Outer Bar Channel; Inner Bar Channel; Bolivar Roads Channel; Galveston Channel; Gulf ICW and Galveston-Freeport Cut-Off from Mile 346 to Mile 352; Texas City Channel; Texas City Turning Basin; Texas City Canal Channel; Texas City Canal Turning Basin; Houston Ship Channel; Bayport Channel; Bayport Turning Basin; Houston Turning Basin; and the following precautionary areas associated with these waterways.

(b) Precautionary Areas.

Precautionary area name	Radius (yds.)	Center point	
		Latitude	Longitude
Bolivar Roads	4000	29–20.90′ N	94–47.00′ W
Red Fish Bar	4000	29–29.80′ N	94–51.90′ W
Bayport Channel	4000	29–36.70′ N	94–57.20′ W
Morgans Point	2000	29–41.00′ N	94–59.00′ W
Upper San Jacinto Bay	1000	29–42.33′ N	95–01.08′ W
Baytown	1000	29–43.57′ N	95–01.40′ W
Lynchburg	1000	29–45.78′ N	95–04.80′ W
Carpenter Bayou	1000	29–45.28′ N	95–05.60′ W
Jacintoport	1000	29–44.82′ N	95–06.02′ W
Greens Bayou	1000	29–44.78′ N	95–10.16′ W
Hunting Bayou	1000	29–44.33′ N	95–12.10′ W
Sims Bayou	1000	29–43.11′ N	95–14.35′ W
Brady Island	1000	29–43.53′ N	95–16.35′ W
Buffalo Bayou	1000	29–44.98′ N	95–17.32′ W

Note: Each Precautionary Area encompasses a circular area of the radius denoted.

(c) Reporting Points.

Designator	Geographic name	Geographic description	Latitude Longitude	Notes
1	Galveston Bay Entrance Channel.	Galveston Bay Entrance Bay Lighted Buoy (LB) "GB".	29–18.25′ N 94–37.60′ W	
2	Galveston Bay Entrance Channel.	Galveston Bay Entrance Channel LB 11 and 12.	29–20.63′ N 94–44.62′ W	
E	Bolivar Land Cut	Mile 349 Intracoastal Waterway (ICW).	29–22.48′ N 94–46.91′ W	Tows entering HSC also report at HSC LB 25 & 26.
W	Pelican Cut	Mile 351 Intracoastal Waterway (ICW).	29–21.40′ N 94–48.42′ W	Tows entering HSC also report at HSC LB 25 & 26.
GCG	Galveston Harbor	USCG Base. At the entrance to Galveston Harbor.	29–20.00′ N 94–46.50′ W	
T	Texas City Channel	Texas City Channel LB 12	29–22.40′ N 94–50.90′ W	
X	Houston Ship Channel ICW Intersection.	Houston Ship Channel (HSC) LB 25 and 26.	29–22.08′ N 94–48.13′ W	Tows entering HSC from ICW or Texas Cut Only
3	Lower Galveston Bay	Houston Ship Channel LB 31 and 32.	29–23.40′ N 94–48.80′ W	
4	Red Fish Reef	Red Fish Bar Lt. 1 and 2	29–30.46′ N 94–52.58′ W	
P	Bayport Ship Channel	Bayport Ship Channel Lt. 7 and 8.	29–36.82′ N 94–59.81′ W	Report at the North Land Cut
4A	Upper Galveston Bay	HSC Buoys 69 and 70	29–34.67′ N 94–55.81′ W	Tows only
5	Morgan's Point	Barbour's Cut	29–41.00′ N 94–58.93′ W	Abeam Barbours Cut
6	Exxon	Baytown Bend	29–43.22′ N 95–01.27′ W	
7	Lynchburg	Ferry crossing	29–45.78′ N 95–04.77′ W	
8	Shell Oil	Boggy Bayou	29–44.06′ N 95–07.95′ W	
9	Greens Bayou	Greens Bayou	29–44.78′ N 95–10.11′ W	
10	Hess Turning Basin	Hunting Bayou Turning Basin	29–44.21′ N 95–12.23′ W	
11	Lyondell Turning Basin	Sims Bayou Turning Basin	29–43.20′ N 95–14.35′ W	
12	I–610 Bridge	I–610 Bridge	29–43.50′ N 95–15.98′ W	
13	Houston Turning Basin	Buffalo Bayou	29–45.00′ N 95–17.30′ W	

§ 161.40 Vessel Traffic Service Berwick Bay.

(a) The VTS area consists of the navigable waters of the following segments of waterways: the Intracoastal Waterway (ICW) Morgan City to Port Allen Alternate Route from Mile Marker 0 to Mile Marker 5; the ICW from Mile Marker 93 west of Harvey Lock (WHL) to Mile Marker 102 WHL; the Atchafalaya River Route from Mile Marker 113 to Mile Marker 122; from Bayou Shaffer Junction (ICW Mile Marker 94.5 WHL) south one statute mile along Bayou Shaffer; and from Berwick Lock northwest one statute mile along the Lower Atchafalaya River.

(b) VTS Special Area. The Berwick Bay VTS Special Area consists of those waters within a 1000 yard radius of the Southern Pacific Railroad Bridge located at Mile .03 MC/PA.

(c) Reporting Points.

Designator	Geographic name	Geographic description	Latitude Longitude	Notes
1	Stouts Pass	Stouts Point Light "1" Mile 113–Atchafalaya River.	29–43′47″ N 91–13′25″ W	
2	Berwick Lock	Mile 1.9 MC/PA	29–43′10″ N 91–13′28″ W	If transiting the Lock.
3	Conrad's Point Junction	Buoy "1" Mile 1.5 MC/PA	29–42′32″ N 91–13′14″ W	
4	Swift Ships Flat Lake Junction	Mile 3 MC/PA	29–43′26″ N 91–12′22″ W	

Designator	Geographic name
5	South Pacific Railroad Bri
6	20 Grant Point Junction
7	ICW
8	Wax Bayou Junction
9	Shaffer Junction

§ 161.45 Vessel Traffic Service St. Marys River.

(a) The VTS area consists of the navigable waters of the St. Marys River

Designator	Geographic name
1	Ile Parisienne
2	Gros Cap Reef
3	Round Island
4	Pointe Louise
5	Clear of Locks
6	Clear of Locks
7	Mission Point
8	Six Mile Point
9	Nine Mile Point
10	West Neebish Channel
11	Munuscong Lake Junction
12	De Tour Reef

§ 161.50 Vessel Traffic Service San Francisco.

(a) The VTS area consists of all the navigable waters of San Francisco Bay Region south of the Mare Island Causeway Bridge and the Petaluma River Entrance Lights "1" and "2" and north of Redwood City; its seaward approaches within a 38 nautical mile radius of Mount Tamalpais (37–55.8′ N., 122–34.6′ W.); and its navigable tributaries as far east as the port of Stockton on the San Joaquin River, as far north as the port of Sacramento on the Sacramento River.

Designator	Geographic name	Geographic description	Latitude Longitude	Notes
5	South Pacific Railroad Bridge	Mile 0.3 MC/PA	29–41′34″ N 91–12′44″ W	
6	20 Grant Point Junction	Bayou Boeuf-Atchafalaya R. Mile 95.5 ICW.	29–41′18″ N 91–12′36″ W	
7	ICW	Overhead Power Cable Mile 96.5 ICW.	29–40′43″ N 91–13′18″ W	
8	Wax Bayou Junction	Light "A" Mile 98.2W ICW	29–39′29″ N 91–14′46″ W	
9	Shaffer Junction	ICW-Bayou Shaffer Mile 94.5 ICW.	29–41′10″ N 91–11′38″ W	

§ 161.45 Vessel Traffic Service St. Marys River.

(a) The VTS area consists of the navigable waters of the St. Marys River and lower Whitefish Bay from 45–57′ N. (De Tour Reef Light) to the south, to 46–38.7′ N. (Ile Parisienne Light) to the north, except the waters of the St. Marys Falls Canal, and to the east along a line from La Pointe to Sims Point, within Potagannissing Bay and Worsley Bay.

(b) Reporting Points.

Designator	Geographic name	Geographic description	Latitude Longitude	Notes
1	Ile Parisienne	Ile Parisienne Light	46–37.3′ N 84–45.9′ W	Downbound only.
2	Gros Cap Reef	Gros Cap Reefs Light	46–30.6′ N 84–45.9′ W	Upbound only.
3	Round Island	Round Island Light 32	46–26.9′ N 84–31.7′ W	
4	Pointe Louise	Pointe Louise Light	46–27.8′ N 84–45.9′ W	
5	Clear of Locks	East End of Locks	46–30.1′ N 84–45.9′ W	Downbound only.
6	Clear of Locks	West End of Locks	46–30.1′ N 84–22.8′ W	Upbound
7	Mission Point	Light 99	46–29.2′ N 84–18.1′ W	
8	Six Mile Point	Six Mile Point	46–26.1′ N 84–12.4′ W	
9	Nine Mile Point	Light 80	46–23.5′ N 84–14.1′ W	
10	West Neebish Channel	Light 29	46–16.9′ N 84–12.5′ W	Downbound only.
11	Munuscong Lake Junction	Lighted Junction Buoy	46–10.8′ N 84–05.6′ W	
12	De Tour Reef	De Tour Reef Light	46–56.9′ N 83–53.7′ W	

§ 161.50 Vessel Traffic Service San Francisco.

(a) The VTS area consists of all the navigable waters of San Francisco Bay Region south of the Mare Island Causeway Bridge and the Petaluma River Entrance Lights "1" and "2" and north of Redwood City; its seaward approaches within a 38 nautical mile radius of Mount Tamalpais (37–55.8′ N., 122–34.6′ W.); and its navigable tributaries as far east as the port of Stockton on the San Joaquin River, as far north as the port of Sacramento on the Sacramento River.

§ 161.55 Vessel Traffic Service Puget Sound and the Cooperative Vessel Traffic Service for the Juan de Fuca Region.

The Vessel Traffic Service Puget Sound area consists of the navigable waters of the United States bounded by a line drawn from the Washington State coastline at 48–23′08″ N., 124–43′37″ W. on Cape Flattery to the Cape Flattery Light at 48–23′30″ N., 124–44′12″ W. on Tatoosh Island, due west to the U.S. Territorial Sea Boundary; thence northward along the U.S. Territorial Sea Boundary to its intersection with the U.S./Canada International Boundary; thence east along the U.S./Canada International Boundary through the waters known as the Strait of Juan de Fuca, Haro Strait, Boundary Pass, and the Strait of Georgia to the Washington State coastline at 49–00′06″ N., 122–45′18″ W. (International Boundary Range C Rear Light). This area includes: Puget Sound, Hood Canal, Possession Sound, the San Juan Island Archipelago, Rosario Strait, Guemes Channel, Bellingham Bay, the U.S. waters of the Strait of Juan de Fuca and the Strait of Georgia, and all waters adjacent to the above.

(b) Vessel Traffic Service Puget Sound participates in a U.S./Canadian Cooperative Vessel Traffic Service (CVTS) to jointly manage vessel traffic in the Juan de Fuca Region. The CVTS for the Juan de Fuca Region consists of

all waters of the Strait of Juan de Fuca and its offshore approaches, southern Georgia Strait, the Gulf and San Juan Archipelagos, Rosario Strait, Boundary Pass and Haro Strait, bounded on the northwest by 48–35′45″ N.; and on the southwest by 48–23′30″ N.; and on the west by the rhumb line joining 48–35′45″ N., 124–47′30″ W. with 48–23′30″ N., 124–48′37″ W.; and on the northeast in the Strait of Georgia, by a line drawn along 49–N. from Vancouver Island to Semiahmoo Bay; and on the southeast, by a line drawn from McCurdy Point on the Quimper Peninsula to Point Partridge on Whidbey Island. Canadian and United States Vessel Traffic Centers (Tofino, B.C., Canada, Vancouver, BC, Canada and Seattle, WA) manage traffic within the CVTS area irrespective of the International Boundary.

(c) VTS Special Areas. (1) The Rosario Strait VTS Special Area consists of those waters bounded to the south by the center of Precautionary Area "RB" (a circular area of 2,500 yards radius centered at 48–26′24″ N., 122–45′12″ W.), and to the north by the center of Precautionary Area "C" (a circular area of 2,500 yards radius centered at 48–40′34″ N., 122–42′44″ W.; Lighted Buoy "C"); and

Note: The center of precautionary area "RB" is not marked by a buoy. All precautionary areas are depicted on National Oceanic and Atmospheric Administration (NOAA) nautical charts.

(2) The Guemes Channel VTS Special Area consists of those waters bounded to the west by Shannon Point on Fidalgo Island and to the east by Southeast Point on Guemes Island.

(d) Additional VTS Special Area Operating Requirements. The following additional requirements are applicable in the Rosario Strait and Guemes Channel VTS Special Areas:

(1) A vessel engaged in towing shall not impede the passage of a vessel of 40,000 dead weight tons or more.

(2) A vessel of less than 40,000 dead weight tons is exempt from the provision set forth in § 161.13(b)(1) of this part.

(3) A vessel of less than 100 meters in length is exempt from the provisions set forth in § 161.13(b)(3) of this part. Approval will not be granted for:

(i) A vessel of 100 meters or more in length to meet or overtake; or cross or operate within 2,000 yards (except when crossing astern) of a vessel of 40,000 dead weight tons or more; or

(ii) A vessel of 40,000 dead weight tons or more to meet or overtake; or cross or operate within 2,000 yards (except when crossing astern) of a vessel of 100 meters or more in length.

(e) Reporting Point. Inbound vessels in the Strait of Juan de Fuca upon crossing 124–W.

§ 161.60 Vessel Traffic Service Prince William Sound.

(a) The VTS area consists of the navigable waters of the United States north of a line drawn from Cape Hinchinbrook Light to Schooner Rock Light, comprising that portion of Prince William Sound between 146–30′ W. and 147–20′ W. and includes Valdez Arm, Valdez Narrows and Port Valdez.

(b) The Valdez Narrows VTS Special Area consists of those waters of Valdez Arm, Valdez Narrows, and Port Valdez northeast of a line bearing 307- True from Tongue Point at 61–02′06″ N., 146–40′ W.; and southwest of a line bearing 307- True from Entrance Island Light at 61–05′06″ N., 146–36′42″ W.

(c) Additional VTS Special Area Operating Requirements. The following additional requirements are applicable in the Valdez Narrows VTS Special Area:

(1) No VMRS User shall proceed north of 61–N. without prior approval of the VTS.

(2) Approval to enter this area will not be granted to a VMRS User when a tank vessel of 20,000 dead weight tons or more is navigating therein. A VMRS User that is northbound and intends to navigate the VTS Special Area shall remain south of 61–N. until the tank vessel has exited the area.

(3) When hazardous ice conditions exist, as determined by the VTS, the VTS Special Area will be extended south to a line from 60–50′02″ N., 147–03′42″ W.; to 60–49′05″ N., 146–58′49″ W. Additionally, a VMRS User proceeding northbound shall not navigate north of 60–40′ N., without prior approval of the VTS.

(4) Subparagraph (c)(3) of this section does not apply to:

(i) A vessel of 1,600 gross tons or less;

(ii) A vessel escort; or

(iii) A public vessel of the Alaska Marine Highway system.

(d) Reporting Points.

Designator	Geographic name	Geographic description	Latitude/longitude	Notes
1A	Cape Hinchinbrook	Cape Hinchinbrook	60–16′18″ N 146–45′30″ W	Northbound Only.
1B	Schooner Rock	Schooner Rock	60–18′42″ N 146–51′36″ W	Southbound Only.
2A	Naked Island	Naked Island	60–40′00″ N 147–01′24″ W	Northbound Only.
2B	Naked Island	Naked Island	60–40′00″ N 147–05′00″ W	Southbound Only.
3A	Bligh Reef	Bligh Reef Light (Pilot Embark)	60–50′36″ N 146–57′30″ W	Northbound Only.
3B	Bligh Reef	Bligh Reef Light (Pilot Disembark).	60–51′00″ N 147–01′24″ W	Southbound Only.
4A	Rocky Point	Rocky Point	60–57′48″ N 146–48′00″ W	Northbound Only.

Designator	Geographic nam
4B	Rocky Point
5	Entrance Island

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

13. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

14. Section 162.100 is added to read as follows:

§ 162.100 Ohio River at Louisville, KY.

(a) *Emergency Mooring Buoys.* The U.S. Army Corp of Engineers has established four pairs of emergency mooring bouys. Each buoy is 10 feet in diameter with retro-reflective sides. The two buoys which comprise each pair are 585 feet apart and are located approximately at:

(1) Indiana Bank—Mile 582.3 (near 18 Mile Island);

(2) Six Mile Island—Mile 597.5; .

(3) Six Mile Island—Mile 598.2; and

(4) Kentucky Bank—Mile 599.8 (Cox's Park).

Note: All buoys, except those at Six Mile Island—Mile 598.2, are removed between May 1 and September 30. Due to the close proximity of the municipal water intakes, mooring of tank vessels laden with petroleum products or hazardous materials is not authorized on the Kentucky Bank, Mile 599.8 (Cox's Park).

(b) *The regulations.* A vessel must not use the emergency mooring buoys that have been established by the U.S. Army Corps of Engineers, unless specifically authorized. The Captain of the Port, upon request, may authorize the use of the emergency mooring buoys by downbound towing vessels that are awaiting Vessel Traffic Center approval to proceed.

15. Section 162.117 is added to read as follows:

§ 162.117 St. Marys River, Sault Ste. Marie, Michigan.

(a) *The area.* The waters of the St. Marys River and lower Whitefish Bay from 45–57′ N. (De Tour Reef Light) to the south, to 46–38.7′ N. (Ile Parisienne Light) to the north, except the waters of the St. Marys Falls Canal, and to the east along a line from La Pointe to Sims Point, within Potagannissing Bay and Worsley Bay.

(b) *Definitions.* As used in this section:

Designator	Geographic name	Geographic description	Latitude/longitude	Notes
4B	Rocky Point	Rocky Point	60–57′48″ N 146–51′00″ W	Southbound Only.
5	Entrance Island	Entrance Island Light	61–05′24″ N 146–37′30″ W	

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

13. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

14. Section 162.100 is added to read as follows:

§ 162.100 Ohio River at Louisville, KY.

(a) *Emergency Mooring Buoys.* The U.S. Army Corp of Engineers has established four pairs of emergency mooring bouys. Each buoy is 10 feet in diameter with retro-reflective sides. The two buoys which comprise each pair are 585 feet apart and are located approximately at:

(1) Indiana Bank—Mile 582.3 (near 18 Mile Island);

(2) Six Mile Island—Mile 597.5; .

(3) Six Mile Island—Mile 598.2; and

(4) Kentucky Bank—Mile 599.8 (Cox's Park).

Note: All buoys, except those at Six Mile Island—Mile 598.2, are removed between May 1 and September 30. Due to the close proximity of the municipal water intakes, mooring of tank vessels laden with petroleum products or hazardous materials is not authorized on the Kentucky Bank, Mile 599.8 (Cox's Park).

(b) *The regulations.* A vessel must not use the emergency mooring buoys that have been established by the U.S. Army Corps of Engineers, unless specifically authorized. The Captain of the Port, upon request, may authorize the use of the emergency mooring buoys by downbound towing vessels that are awaiting Vessel Traffic Center approval to proceed.

15. Section 162.117 is added to read as follows:

§ 162.117 St. Marys River, Sault Ste. Marie, Michigan.

(a) *The area.* The waters of the St. Marys River and lower Whitefish Bay from 45–57′ N. (De Tour Reef Light) to the south, to 46–38.7′ N. (Ile Parisienne Light) to the north, except the waters of the St. Marys Falls Canal, and to the east along a line from La Pointe to Sims Point, within Potagannissing Bay and Worsley Bay.

(b) *Definitions.* As used in this section:

Two-way route means a directional route within defined limits inside which two-way traffic is established, and which is intended to improve safety in waters where navigation is difficult.

Two-way traffic means that traffic flow is permitted in opposing directions, but a vessel may not meet, cross, nor overtake any other vessel in such a manner that it would be abreast of more than one other vessel within the defined limits of a waterway.

(c) *Anchoring Restrictions.* A vessel must not anchor:

(1) Within the waters between Brush Point and the waterworks intake crib off Big Point southward of the Point Aux Pins range; or

(2) Within .2 nautical miles of the intake crib off Big Point.

(d) *Traffic Rules.* (1) A vessel must proceed only in the established direction of traffic flow in the following waters:

(i) West Neebish Channel from Buoy "53" to Buoy "1"—downbound traffic only;

(ii) Pipe Island Course from Sweets Point to Watson Reefs Light-downbound traffic only.

(iii) Middle Neebish Channel from Buoy "2" to Buoy "76"—upbound traffic only; and

(iv) Pipe Island Passage to the east of Pipe Island Shoal and north of Pipe Island Twins from Watson Reefs Light to Sweets Point—upbound traffic only.

(2) A vessel 350 feet or more in length must not overtake or approach within .2 nautical miles of another vessel proceeding in the same direction in the following waterways:

(i) West Neebish Channel between Nine Mile Point and Munuscong Lake Junction Lighted Bell Buoy;

(ii) Middle Neebish Channel between Munuscong Lake Junction Lighted Bell Buoy and Nine Mile Point; and

(iii) Little Rapids Cut from Six Mile Point to Buoy "102".

(3) When two-way traffic is authorized in Middle Neebish Channel, a vessel 350 feet or more in length must not meet, cross, or overtake another vessel at:

(i) Johnson Point from Buoy "18" to Buoy "22";

(ii) Mirre Point from Buoy "26" to Buoy "28"; or

(iii) Stribling Point from Buoy "39" to Buoy "43".

(4) Paragraph (d)(2) of this section does not apply to a vessel navigating through an ice field.

(e) *Winter Navigation.* During the winter navigation season, the following waterways are normally closed:

(1) West Neebish Channel, from Buoy "53' to Buoy "1";

(2) Pipe Island Passage to the east of Pipe Island Shoal; and

(3) North of Pipe Island Twins, from Watson Reef Light to Sweets Point.

(f) *Alternate Winter Navigation Routes.* (1) When West Neebish Channel is closed, Middle Neebish Channel (from Buoy "2" to Buoy "76") will be open either as a two-way route or an alternating one way traffic lane.

(i) When Middle Neebish Channel is a two-way route:

(A) An upbound vessel must use the easterly 197 feet of the channel. However, a vessel of draft 20 feet or more must not proceed prior to Vessel Traffic Center approval; and

(B) A downbound vessel must use the westerly 295 feet of the channel.

(ii) When Middle Neebish Channel is an alternating one-way traffic lane. A vessel must use the westerly 295 feet of the channel in the established direction of traffic flow.

(2) When Pipe Island Passage is closed, Pipe Island Course is a two-way route.

Note: The Vessel Traffic Service closes or opens these channels as ice conditions require after giving due consideration to the protection of the marine environment, waterway improvements, aids to navigation, the need for cross channel traffic (e.g., ferries), the availability of icebreakers, and the safety of the island residents who, in the course of their daily business, must use naturally formed ice bridges for transportation to and from the mainland. Under normal seasonal conditions, only one closing each winter and one opening each spring are anticipated. Prior to closing or opening these channels, interested parties including both shipping entities and island residents, will be given at least 72 hours notice by the Coast Guard.

(g) *Speed Rules.* (1) The following speed limits indicate speed over the ground. Vessels must adhere to the following speed limits:

Maximum speed limit between	Mph	Kts
De Tour Reef Light and Sweets Point Light	14	12.2
Round Island Light and Point Aux Frenes Light "21"	14	12.2
Munuscong Lake Lighted Buoy "8" and Everens Point	12	10.4
Everens Point and Reed Point	9	7.8
Reed Point and Lake Nicolet Lighted Buoy "62"	10	8.7
Lake Nicolet Lighted Buoy "62" and Lake Nicolet Light "80"	12	10.4
Lake Nicolet Light "80" and Winter Point (West Neebish Channel)	10	8.7
Lake Nicolet Light "80" and Six Mile Point Range Rear Light	10	8.7
Six Mile Point Range Rear Light and lower limit of the St. Marys Falls Canal		
Upbound	8	7.0
Downbound	10	8.7
Upper limit of the St. Marys Falls Canal and Point Aux Pins Main Light	12	10.4

Note: A vessel must not navigate any dredged channel at a speed of less than 5 statute miles per hour (4.3 knots).

(2) Temporary speed limit regulations may be established by Vessel Traffic Service St. Marys River. Notice of the temporary speed limits and their effective dates and termination are published in the **Federal Register** and Local Notice to Mariners. These temporary speed limits, if imposed, will normally be placed in effect and terminated during the winter navigation season.

(h) *Towing Requirement.* A towing vessel must: (1) Maintain positive control of its tow south of Gros Cap Reef Light;

(2) Not impede the passage of any other vessel;

(3) Not tow a vessel of 200 feet or less in length with a tow line longer than 250 feet; and

(4) Not tow a vessel of 200 feet or more in length with a tow line longer than the length of the towed vessel plus 50 feet.

PART 164—NAVIGATION SAFETY REGULATIONS

16. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502 sec. 4114(a), Public Law 101–380, 104 Stat. 517 (46 U.S.C. 3703 note). Sec. 164.61 also issued under 46 U.S.C. 6101.

17. Section 164.03 is revised to read as follows:

§ 164.03 Incorporation by Reference.

(a) * * *

(b) The materials approved for incorporation by reference in this part and the sections affected are:

Radio Technical Commission For Maritime Services (RTCM), 655 Fifteenth St., N.W., Suite 300, Washington, D.C. 20005

Minimum Performance Standards (MPS) Marine Loran C Receiving Equipment, RTCM Paper 12–78/DO–100, 1977—164.41

RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.0, RTCM Paper 134–89/SC 104–68, 1990—164.43

* * * * *

18. Section 164.43 is added to read as follows:

§ 164.43 Automated Dependent Surveillance Shipborne Equipment.

(a) Each vessel required to provide automated position reports to a Vessel Traffic Service (VTS) must do so by an installed Automated Dependent Surveillance Shipborne Equipment (ADSSE) system consisting of a:

(1) Twelve-channel all-in-view Differential Global Positioning System (dGPS) receiver;

(2) Marine band Non-Directional Beacon receiver capable of receiving dGPS error correction messages;

(3) VHF—FM transceiver capable of Digital Selective Calling (DSC) on the designated DSC frequency; and

(4) Control unit.

(b) An ADSSE must have the following capabilities:

(1) Use dGPS to sense the position of the vessel and determine the time of the position using Universal Coordinated Time (UTC);

(2) Fully use the broadcast type 1, 2, 3, 5, 6, 7, 9, and 16 messages, as specified in RTCM Recommended Standards for Differential NAVSTAR GPS Service in determining the required information;

(3) Achieve a position error which is less than ten meters (32.8 feet) 2 distance root mean square (2 drms) from the true North American Datum of 1983 (NAD 83) in the position information transmitted to a VTS;

(4) Achieve a course error of less than 0.5 degrees from true course over ground in the course information transmitted to a VTS;

(5) Achieve a speed error of less than 0.05 knots from true speed over ground in the speed information transmitted to a VTS;

(6) Receive and comply with commands broadcast from a VTS as DSC messages on the designated DSC frequency;

(7) Receive and comply with RTCM messages broadcast as minimum shift keying modulated medium frequency signals in the marine radiobeacon band, and supply the messages to the dGPS receiver;

(8) Transmit the vessel's position, tagged with the UTC at position solution, course over ground, speed over ground, and Lloyd's identification number to a VTS;

(9) Display a visual alarm to indicate to shipboard personnel when a failure to receive or utilize the RTCM messages occurs;

(10) Display a separate visual alarm which is triggered by a VTS utilizing a DSC message to indicate to shipboard personnel that the U.S. Coast Guard dGPS system cannot provide the required error correction messages; and

(11) Display two RTCM type 16 messages, one of which must display the position error in the position error broadcast.

(c) An ADSSE is considered non-operational if it fails to meet the requirements of paragraph (b) of this section.

Note: Vessel Traffic Service (VTS) areas and operating procedures are set forth in Part 161 of this chapter.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

19. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and, 160.5; 49 CFR 1.46.

Subpart F—[Amended]

20. Section 165.809 is added to read as follows:

§ 165.809 Mississippi River, LA.

(a) *Purpose and Applicability.* Section 165.810 prescribes rules for vessel operation in the Mississippi River below Baton Rouge, LA, including South and Southwest Passes, to assist in the prevention of collisions and groundings and to protect the navigable waters of the Mississippi River from environmental harm resulting from those incidents.

21. Section 165.811 is added to read as follows:

§ 165.811 Atchafalaya River, Berwick Bay, LA-regulated navigation area.

(a) The following is a regulated navigation area: the waters of the Atchafalaya River in Berwick Bay

bounded on the northside from 2,000 yards north of the U.S. 90 Highway Bridge and on the southside from 4,000 yards south of the Southern Pacific Railroad (SPRR) Bridge.

(b) Within the regulated navigation area described in paragraph (a) of this section, § 161.40 of this chapter establishes a VTS Special Area for waters within a 1000 yard radius of the SPRR Bridge.

(c) When the Morgan City River gauge reads 3.0 feet or above mean sea level, in addition to the requirements set forth in § 161.13 of this chapter, the

MINI

Direction of tow	Daytime (sunr
Upbound	400hp or (Length of tow—300ft)
Downbound ...	600hp or (Length of tow—200ft)

Note: A 5% variance from the available horsep

(2) All tows carrying cargoes of particular hazard as defined in § 160.203 of this chapter must have available horsepower of at least 600 hp or three times the length of tow, whichever is greater.

(f) *Notice of Requirements.* Notice that these rules are anticipated to be put into effect, or are in effect, will be given by:

(1) Marine information broadcasts;

(2) Notices to mariners;

(3) Vessel Traffic Center advisories or upon vessel information request; and

(4) Visual displays on top of the SPRR Bridge, consisting of:

(i) Two vertically arranged red balls by day; or

(ii) Two horizontally arranged flashing white lights by night.

Note: Visual displays are not shown during precautionary periods (when the Morgan City River Gauge reads 2.5 feet above mean sea level). However, precautionary notices will be issued via marine notice to mariners, notice to mariners, VTC advisories or vessel information requests, when water level remains at or above 2.5 feet. Visual displays are Class I, private aids to navigation maintained by SPRR Bridge.

22. Section 165.1303 is added to read as follows:

§ 165.1303 Puget Sound and adjacent waters, WA-regulated navigation area.

(a) The following is a regulated navigation area: the waters of the United States east of a line extending from Discovery Island Light to New Dungeness Light and all points in the Puget Sound area north and south of these lights.

bounded on the northside from 2,000 yards north of the U.S. 90 Highway Bridge and on the southside from 4,000 yards south of the Southern Pacific Railroad (SPRR) Bridge.

(b) Within the regulated navigation area described in paragraph (a) of this section, § 161.40 of this chapter establishes a VTS Special Area for waters within a 1000 yard radius of the SPRR Bridge.

(c) When the Morgan City River gauge reads 3.0 feet or above mean sea level, in addition to the requirements set forth in § 161.13 of this chapter, the requirements of paragraph (d) and (e) of this section apply to a towing vessel which will navigate:

(1) under the lift span of the SPRR Bridge; or

(2) through the navigational opening of the U.S. 90 Highway Bridge: or

(3) through the navigational opening of the Highway 182 Bridge.

(d) *Towing requirements.* (1) Towing on a hawser is not authorized, except that one self-propelled vessel may tow one other vessel without barges upbound;

(2) A towing vessel and barges must be arranged in tandem, except that one vessel may tow one other vessel alongside;

(3) Length of tow must not exceed 1,180 feet; and

(4) Tows with a box end in the lead must not exceed 400 feet in length.

Note: The variation in the draft and the beam of the barges in a multi-barge tow should be minimized in order to avoid unnecessary strain on coupling wires.

(e) *Horsepower Requirement.* (1) The following requirements apply to a towing vessel of 3,000 hp or less:

MINIMUM AVAILABLE HORSEPOWER REQUIREMENT

[The greater value listed.]

Direction of tow	Daytime (sunrise to sunset)	Nighttime (sunset to sunrise)
Upbound	400hp or (Length of tow—300ft) × 3	600hp or (Length of tow—200ft) × 3.
Downbound ...	600hp or (Length of tow—200ft) × 3	600hp or (Length of tow) × 3.

Note: A 5% variance from the available horsepower is authorized.

(2) All tows carrying cargoes of particular hazard as defined in § 160.203 of this chapter must have available horsepower of at least 600 hp or three times the length of tow, whichever is greater.

(f) *Notice of Requirements.* Notice that these rules are anticipated to be put into effect, or are in effect, will be given by:

(1) Marine information broadcasts;

(2) Notices to mariners;

(3) Vessel Traffic Center advisories or upon vessel information request; and

(4) Visual displays on top of the SPRR Bridge, consisting of:

(i) Two vertically arranged red balls by day; or

(ii) Two horizontally arranged flashing white lights by night.

Note: Visual displays are not shown during precautionary periods (when the Morgan City River Gauge reads 2.5 feet above mean sea level). However, precautionary notices will be issued via marine notice to mariners, notice to mariners, VTC advisories or vessel information requests, when water level remains at or above 2.5 feet. Visual displays are Class I, private aids to navigation maintained by SPRR Bridge.

22. Section 165.1303 is added to read as follows:

§ 165.1303 Puget Sound and adjacent waters, WA-regulated navigation area.

(a) The following is a regulated navigation area: the waters of the United States east of a line extending from Discovery Island Light to New Dungeness Light and all points in the Puget Sound area north and south of these lights.

(b) *Regulations.* (1) Tank vessel navigation restrictions: Tank vessels larger than 125,000 deadweight tons bound for a port or place in the United States may not operate in the regulated navigation area.

(2) A vessel in a precautionary area which is depicted on National Oceanic and Atmospheric Administration (NOAA) nautical charts, except precautionary area "RB" (a circular area of 2,500 yards radius centered at 48–26′24″ N., 122–45′12″ W.), must keep the center of the precautionary area to port.

Note: The center of precautionary area "RB" is not marked by a buoy.

23. Section 165.1704 is added to read as follows:

§ 165.1704 Prince William Sound, Alaska-regulated navigation area.

(a) The following is a regulated navigation area: The navigable waters of the United States north of a line drawn from Cape Hinchinbrook Light to Schooner Rock Light, comprising that portion of Prince William Sound between 146–30′ W. and 147–20′ W. and includes Valdez Arm, Valdez Narrows, and Port Valdez.

(b) Within the regulated navigation area described in paragraph (a) of this section, § 161.60 of this chapter establishes a VTS Special Area for the waters of Valdez Arm, Valdez Narrows, and Port Valdez northeast of a line bearing 307- True from Tongue Point at 61–02′06″ N., 146–40′ W.; and southwest of a line bearing 307- True from Entrance Island Light at 61–05′06″ N., 146–36′42″ W.

(c) *Regulations.* In addition to the requirements set forth in § 161.13 and § 161.60(c) of this chapter, a tank vessel of 20,000 deadweight tons or more that intends to navigate within the regulated navigation area must:

(1) Report compliance with part 164 of this chapter, to the Vessel Traffic Center (VTC);

(2) Have at least two radiotelephones capable of operating on the designated VTS frequency, one of which is capable of battery operation;

(3) When steady wind conditions in the VTS Special Area or Port Valdez exceed, or are anticipated to exceed 40 knots, proceed as directed by the VTC (entry into the VTS Special Area and Port Valdez is prohibited);

(4) When steady wind conditions, at the designated anchorage (Knowles Head), in Prince William Sound exceed:

(i) 40 knots: not anchor within Prince William Sound, or if at anchor, must strictly adhere to § 164.19 of this chapter, including maintaining a constant bridge watch and placing the entire main propulsion system on immediate standby;

(ii) 45 knots or any dragging of the anchor occurs: weigh anchor and proceed as directed by the VTC;

(5) When transiting the VTS Special Area, limit speed to 12 knots;

(6) If laden and intending to navigate the VTS Special Area, limit speed to 12 knots except between Middle Rock and Potato Point where the speed limit shall be 6 knots; and

(7) Not later than July 1, 1994, have an operating Automated Dependent Surveillance Shipborne Equipment (ADSSE) system installed.

(i) The designated digital selective calling frequency (DSC) in Prince William Sound is 156.525MHz (VHF Channel 70).

(ii) ADSSE equipped vessels will not be required to make voice radio position reports at designated reporting points required by § 161.20(b), unless otherwise directed by the VTC.

(iii) Whenever a vessel's ADSSE becomes non-operational, as defined in § 164.43(c) of this chapter, before entering or while underway in the VTS area, a vessel must:

(A) Notify the VTC;

(B) Make the required voice radio position reports as set forth in § 161.60 and required by § 161.20(b) of this chapter;

(C) Make other voice radio reports as required by the VTS; and

(D) Restore the ADSSE to operating condition as soon as possible.

(iv) Whenever a vessel's ADSSE becomes non-operational due to a loss of position correction information (i.e., the U.S. Coast Guard dGPS system cannot provide the required error correction messages) a vessel must:

(A) Make the required voice radio position reports as set forth in § 161.60 and required by § 161.20(b) of this chapter; and

(B) Make other voice radio reports as required by the VTS.

(v) Whenever a vessel's ADSSE becomes non-operational before getting underway in the VTS area, permission to get underway must be obtained from the VTC.

Note: Regulations pertaining to Automated Dependent Surveillance Shipborne Equipment (ADSSE) required capabilities are set forth in Part 164 of this chapter.

Dated: June 24, 1994.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterways Services.

[FR Doc. 94–17138 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–14–P

Friday
July 15, 1994

Part VI

Department of Transportation

Federal Highway Administration

49 CFR Part 383

Commercial Driver Physical Fitness as Part of the Commercial Driver's License Process; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

[FHWA Docket No. MC–93–23]

RIN 2125–AD20

Commercial Driver Physical Fitness as Part of the Commercial Driver's License Process

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA is requesting comments on whether to include the certification of fitness to operate a commercial motor vehicle (CMV) in the commercial driver's license (CDL) process. Incorporating the commercial driver fitness determination into State-administered CDL procedures may allow elimination of the requirement that CMV drivers carry a separate medical certificate. The two systems were initially developed separately with one being a motor carrier-based medical qualification program and the other a State licensing program. However, the FHWA believes that logically the two systems should be merged in order for the States to make the medical fitness determination at the time the license is being issued. Thus, the CDL would be evidence that the CMV driver is physically fit as well as operationally qualified to operate CMVs safely. This notice also requests comments concerning whether such a process could be implemented nationwide.

DATES: Comments must be received on or before November 14, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–93–23, Room 4232, HCC–10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Office of Motor Carrier Standards, (202) 366–4001, or Mrs. Allison Smith, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Transportation has the authority to establish standards for physical fitness that must be met by drivers in interstate commerce. 49 U.S.C. 3102 and 49 U.S.C. app. 2505. This authority is delegated to the Federal Highway Administrator. 49 CFR 1.48. The Federal Motor Carrier Safety Regulations (FMCSRs) set forth, in 49 CFR 391.11, the fitness standards that drivers must meet to be qualified to drive a CMV in interstate commerce. The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) provides, in section 12005(a)(8)(49 U.S.C. app. 2704(a)(8)), that Federal standards may be promulgated to require issuance of a certification of fitness to operate a CMV to each person who passes a CDL test and may require such person to have a copy of such certification in his or her possession whenever operating a commercial motor vehicle.

Currently, 49 CFR 391.45 requires that commercial drivers be medically examined and certified as physically qualified once every two years in order to operate in interstate commerce. If the driver meets the physical qualification standards set forth in 49 CFR 391.41, the medical examiner then issues a medical certificate which indicates physical fitness to drive (49 CFR 391.43). Drivers must carry this certificate while driving (49 CFR 391.41(a)) and employers must maintain a copy in the drivers' qualification file (49 CFR 391.51(b)(1)). Enforcement is primarily through roadside inspections of vehicles and drivers or through Federal or State safety compliance reviews of the motor carriers.

In addition, 49 CFR 383.71(a) requires that during the CDL application process a person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to 49 CFR 391, shall certify that he/she meets the qualification requirements contained in Part 391 of that title. In practice, some States rely solely on the driver certification while others also require drivers who certify that they meet the qualification requirements of Part 391 to produce the required medical certificate in order to be issued a CDL. Before issuing the CDL, a few States also review the medical "long form" that the medical examiner completes to assure that the standards are met. It is possible, now that all licensing agencies are linked electronically, that medical status information could, as part of the driver record, be shared and checked among States in the CDL process.

Driver Medical Qualifications as Part of CDL

There are several benefits to merging the motor carrier-based medical qualification program with the State licensing program. First, the driver will no longer be required to carry a medical certificate since the possession of a CDL will be evidence of a driver's fitness to operate a CMV. Secondly, the motor carrier will have no need to maintain driver medical qualification files.

There are specific benefits for State licensing agencies when the two systems are merged together. The FHWA believes that a single, State-run system would be better able to identify unqualified drivers operating without medical cards or with forged cards. The current Federal medical qualification program does not provide an opportunity for a routine independent review by a medical professional of each medical examiner's certification that a driver is qualified under the FMCSRs. Currently, only a driver's employer is required to ensure that the driver holds a valid medical card. To the extent that the State-run medical qualification programs would review doctors' determinations of physical fitness or more effectively ensure that every driver does carry a valid medical card, these systems are better suited to prevent unqualified drivers from operating commercial motor vehicles. Forty-seven States already review the medical fitness of their intrastate drivers through medical advisory boards or other medical review processes. Medical advisory boards advise State licensing agencies on the medical standards for drivers and they review individual cases, as part of the evaluation of drivers who have been identified as having a medical condition that may impair safe driving. The FHWA believes that these States would be able to integrate interstate commercial drivers into their existing medical review programs with little difficulty.

Recognizing the advantages of linking the demonstration of physical fitness with licensing through 49 U.S.C. app. 2704(a)(8), the FHWA has contracted with the Association for the Advancement of Automotive Medicine (AAAM) and American Association of Motor Vehicle Administrators (AAMVA) to explore the options for turning the medical qualification responsibility over to the States. The goal of this research contract is to explore processes States could use to develop and pilot test programs that merge the medical qualification into the CDL process. The contractor was requested to:

(1) Look at existing State medical review programs to determine what infrastructure already exists;

(2) Work with a committee of States to develop standards for State medical review programs and prototype programs to be tested in a pilot program; and

(3) Work with the States and the FHWA to oversee and assess the pilots.

Members of the committee of States for this effort are: Arizona, California, Connecticut, Florida, Indiana, Maryland, Michigan, New York, North Carolina, South Dakota, Texas, Utah, and Wyoming. Four of these States—Arizona, Indiana, North Carolina, and Utah—have developed prototype medical review programs and are now conducting pilot tests. Two States, Alabama and Missouri, not members of the original committee of States, also have pilot tests in place.

Under these pilot tests, the State licensing officials require drivers to show proof that they meet the FHWA medical standards in order to receive a new CDL or to renew an existing CDL. While each pilot test is somewhat different, all include the requirement that each driver submit a medical form signed by a medical examiner that shows specifically that the driver meets each of the medical standards included in 49 CFR 391.41.

Each of these pilot tests will run for a year. When all are completed the contractor will compile the data and evaluate each of the pilot tests to determine the feasibility of State implementation. The FHWA expects to learn from these pilot tests what types of administrative methods and procedures would work best to enable State licensing entities to incorporate driver medical fitness determinations into the CDL process. The pilot test results will also provide needed information about the size and nature of the problem of licensing drivers who may not meet the existing standards.

Other FHWA Activities Related to Driver Medical Fitness

The FHWA has several other ongoing activities that address the many issues related to determining driver fitness, which are summarized below.

Interstate Medical Waiver Program

Drivers who do not meet the current vision standards but who do meet specific preconditions and agree to comply with certain reporting requirements are participating in a waiver program which allows them to

merge the medical qualification into the CDL process. The contractor was requested to:

(1) Look at existing State medical review programs to determine what infrastructure already exists;

(2) Work with a committee of States to develop standards for State medical review programs and prototype programs to be tested in a pilot program; and

(3) Work with the States and the FHWA to oversee and assess the pilots.

Members of the committee of States for this effort are: Arizona, California, Connecticut, Florida, Indiana, Maryland, Michigan, New York, North Carolina, South Dakota, Texas, Utah, and Wyoming. Four of these States—Arizona, Indiana, North Carolina, and Utah—have developed prototype medical review programs and are now conducting pilot tests. Two States, Alabama and Missouri, not members of the original committee of States, also have pilot tests in place.

Under these pilot tests, the State licensing officials require drivers to show proof that they meet the FHWA medical standards in order to receive a new CDL or to renew an existing CDL. While each pilot test is somewhat different, all include the requirement that each driver submit a medical form signed by a medical examiner that shows specifically that the driver meets each of the medical standards included in 49 CFR 391.41.

Each of these pilot tests will run for a year. When all are completed the contractor will compile the data and evaluate each of the pilot tests to determine the feasibility of State implementation. The FHWA expects to learn from these pilot tests what types of administrative methods and procedures would work best to enable State licensing entities to incorporate driver medical fitness determinations into the CDL process. The pilot test results will also provide needed information about the size and nature of the problem of licensing drivers who may not meet the existing standards.

Other FHWA Activities Related to Driver Medical Fitness

The FHWA has several other ongoing activities that address the many issues related to determining driver fitness, which are summarized below.

Interstate Medical Waiver Program

Drivers who do not meet the current vision standards but who do meet specific preconditions and agree to comply with certain reporting requirements are participating in a waiver program which allows them to operate in interstate commerce for at least the duration of the program. 57 FR 31458, July 16, 1992. A similar waiver program for insulin-using diabetic drivers was initiated on July 29, 1993 (58 FR 40690). Waiver programs for hearing deficient drivers and those who have a history of epilepsy are also under consideration. Under these waiver programs, which will each last for approximately three years, studies would be undertaken to compare the experience of the group of commercial drivers who do not meet current medical standards with that of a control group of CMV operators who meet the Federal medical qualification standards. The studies will explore the potential causative relationship between driving with specific disabilities and accident and traffic violation experience.

The FHWA plans to use the data collected from these waiver programs to assist it in making decisions about how or whether existing regulations should be amended to accommodate more individualized driver qualification determinations and to incorporate them into the CDL process.

Motor Carrier Safety Assistance Program (MCSAP) Policy

In another initiative, the FHWA issued an interim final rule, Motor Carrier Safety Assistance Program; Extension of Compliance Date, postponing the deadline in Appendix C to Part 350 regarding compatible physical qualifications (49 CFR 391.41) for CMV drivers in intrastate commerce. 58 FR 40599, July 29, 1993. Under this rule, the States will be able to continue to exempt intrastate drivers from the physical qualification requirements for an additional three years. Additionally, the FHWA is encouraging States to consider developing physical qualification waiver programs that are compatible with the FHWA's program. In the future, intrastate waivers may also be incorporated into the CDL process.

Update of Forms and Materials

The FHWA is also developing guideline materials for medical examiners who certify the medical fitness of commercial drivers. These materials will include updated physical examination and certification forms, and accompanying materials to provide technical and educational assistance to the certifying health care professional. Such materials may be used as part of the programs which State licensing entities would administer in the future within the CDL process.

International Medical Fitness

Canada and Mexico currently certify the medical fitness of commercial drivers in conjunction with the driver's licensing process. The Canadian Provinces utilize the minimum medical qualifications set forth in the Canadian "National Safety Code for Motor Carriers" to assure that each driver is fit. Mexican drivers are medically examined before issuance of a Licencia Federal de Conductor and every two years thereafter in order to maintain this license.

Questions for Comment

In this rulemaking, the FHWA is considering requiring the State licensing entities to verify that CMV drivers who are subject to the physical qualification standards set forth in 49 CFR 391.41 meet those standards in order to receive and retain a CDL. State implementation of this requirement would then be necessary for a State to avoid the loss of a percentage of highway funds for noncompliance.

The FHWA is soliciting comments that, together with the information gained from the pilot projects, will assist the FHWA in developing a proposal that could form the basis of a notice of proposed rulemaking. For this purpose, information in the following areas is requested.

1. Could State licensing programs be used to provide an effective means to verify compliance with the physical qualification standards set forth in 49 CFR 391.41? If so, how should this be accomplished? Given the fact that physical fitness is an appropriate licensing issue pertaining to CDL applicants, should States be required to examine or verify physical qualifications at the time of licensing? Should that verification involve more than inspection of a medical certificate? Should States be required to track a driver's physical qualification status as part of the licensing record?

2. Do State licensing authorities currently possess sufficient authority and resources to determine medical qualifications if that function is required as an element of CDL procedures? If the FHWA determines, as a result of the waiver programs now in progress, that certain persons with disabilities may be allowed to drive in interstate commerce, are the States able to make the required individual driver qualification determinations for CDL applicants in interstate as well as intrastate commerce?

3. What are the most efficient ways to deal with the differences between the two-year medical certification and the

CDL renewal terms? What is the most appropriate interval for medical recertification? Should there be shorter intervals for certain drivers, such as older drivers or ones with physical disabilities or medical conditions that may be progressive? What data is available to support your position or to otherwise assist in determining the appropriate medical recertification interval? Are there obstacles to making the licensing and medical certification intervals the same?

4. Should medical examiners be required to be qualified and certified to perform driver examinations? What is the most efficient means to qualify and certify medical examiners? What are the cost considerations? Should there be a national network of medical examiners?

5. If the CDL cannot serve the function of the current medical certificate, should drivers continue to carry a separate document to show physical fitness? Would an adaptation of the Mexican or Canadian systems work, in which the medical certificate is part of the license but must be revalidated periodically?

6. How much variation among State programs is reasonable? For example, should all States be required to use one approved medical form?

7. Should all States be required to participate in a medical examination or verification program for CDL applicants? If so, when should such participation be required?

8. What should be the role of those who employ or use motor carriers in such a system?

9. What State and industry efficiencies are envisioned with such a medical examination or verification program; for example, reduced paperwork (driver qualification file) for carriers or reduced time being spent by State offices to check medical cards?

10. How should drivers who are required to meet the physical qualifications standards but who do not need CDLs be handled? Should State licensing authorities be responsible for assuring that these drivers meet the appropriate standards?

Commenters are not limited to responding to the above questions. Commenters may submit any facts or views consistent with the intent of this notice.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material. We are considering conducting this rulemaking using the regulatory negotiation process.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The action being considered by the FHWA in this document would incorporate the commercial driver physical fitness determination into the State-administered CDL licensing process. The FHWA has determined that the proposed action, if implemented, would be a "significant regulatory action" under Executive Order 12866 and a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the substantial public interest anticipated in this action. The potential economic impact of this proposed rulemaking is not known at this stage. Therefore, a full regulatory evaluation has not yet been prepared.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency will evaluate the effects of this proposal on small entities. Following the agency's evaluation, the FHWA will certify whether this proposed action will have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action will be analyzed in accordance with the principles and criteria contained in Executive Order 12612 to determine whether it has sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements relating to the medical certification requirement and commercial driver's licensing process have been approved by the Office of Management and Budget (OMB) under OMB control numbers 2125–0080 and 2125–0542, respectively.

National Environmental Policy Act

The agency will analyze this action for the purpose of the National Environmental Policy Act of 1969 to determine whether this action will have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Driver qualifications, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

(49 U.S.C. App. 2505; 49 CFR 1.48.)

Issued on: July 7, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–17175 Filed 7–14–94; 8:45 am]

BILLING CODE 4910–22–P

federal register

Friday
July 15, 1994

Part VII

Department of the Interior

50 CFR Part 32

Addition of Two National Wildlife Refuges to the List of Open Areas for Hunting and Pertinent Refuge-Specific Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AC58

Addition of Two National Wildlife Refuges to the List of Open Areas for Hunting and Pertinent Refuge-Specific Regulations; Closure of Two National Wildlife Refuges to Big Game Hunting and Sport Fishing, Respectively

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to add two national wildlife refuges (NWR(s)) to the list of areas open for migratory game bird hunting, upland game hunting, and/or big game hunting and pertinent refuge-specific regulations for those activities. The Service has determined that such uses will be compatible with and, in some cases, enhance the purposes for which each refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource. In addition, two national wildlife refuges will be closed to big game hunting and sport fishing, respectively.

DATES: Comments may be submitted on or before September 13, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703–358–1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open two refuges to hunting. The hunting programs included in this openings document have refuge-specific hunting regulations which are included in this rulemaking.

In addition, two refuges now open will be closed to big game hunting and sport fishing, respectively. Big game hunting, specifically deer hunting, will not be permitted at Columbia National Wildlife Refuge in Washington State. This decision was prompted by monitoring of the species, habitat status, and Service and public safety and health concerns. The refuge will be appropriately posted for this closure. Sport fishing will not be permitted at Delevan National Wildlife Refuge in California. This decision was prompted by a request by the Maxwell Irrigation District to close the area to fishing since chain, locks, and tension rods on their water control were cut, apparently to gain access across one of the drain canals. In addition to this concern, the refuge made the determination that the fishery resource was not of high-quality and the water quality in the drain canal was questionable. The area has a few regular anglers, but it is estimated that only 25 anglers would be significantly impacted by this closure.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60-day comment period is specified in order to facilitate public input. Accordingly, interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES.** All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Openings Packages

In preparation for these openings, the refuge units have included in their "openings packages" for Regional review and approval from the Washington Office the following documents: a hunting/fishing plan; an environmental assessment; a Finding of No Significant Impact (FONSI), or an Environmental Impact Statement and Record of Decision; a Section 7 evaluation or statement, pursuant to the Endangered Species Act, that these openings are not likely to adversely affect a listed species or critical habitat; a letter of concurrence from the affected States; and refuge-specific regulations, as provided herein. From a review of the totality of these documents, and for each refuge unit specifically, the Secretary determines that the opening of the areas to hunting are compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSAA and the RRA, the Secretary has also determined that these openings for hunting are compatible and consistent with the primary purposes for which each of the refuges listed below was established, and that funds are available to administer the programs. The hunting programs will be generally within State and Federal (migratory game bird) regulatory frameworks. A brief description of the hunting programs follows:

1. Rydell National Wildlife Refuge

The Service proposes to open Rydell National Wildlife Refuge to the hunting of white-tailed deer. Rydell was established in 1992 to preserve and enhance important wildlife habitat in western Minnesota and provide a regional wildlife and fish management education center. The 2,120-acre refuge is located in Grove Park and Woodside Townships in Polk County, just south of U.S. Highway 2 between the communities of Mentor and Erskine, Minnesota. The refuge is situated in the Prairie Pothole Region of western Minnesota between the flat Red River Valley flood plain on the west and the rolling hardwood forest and lake region on the east. The refuge is administered as a unit of the Detroit Lakes Wetland Management District (DLWMD). The DLWMD, which has its headquarters near Detroit Lakes, Minnesota, also currently administers 155 Waterfowl Production Areas, 322 perpetual wetland easements and 14 Farmers' Home Administration (FmHA) Conservation Easements in the five northwestern Minnesota counties of Becker, Clay, Mahnomen, Norman and Polk. Diverse habitat on the refuge attracts an impressive variety and abundance of wildlife. Besides a large white-tailed deer population, refuge habitat is used by both dabbler and diver waterfowl species, moose, mink, ruffed grouse, cormorants, herons, rabbits, raccoon, otter, beaver, muskrat, various hawk and owl species, and more than 100 neotropical, water and other migratory bird species.

Opening the refuge to the hunting of white-tailed deer has been found to be compatible in a separate compatibility determination. This finding was based on findings that (1) hunting is widely recognized by wildlife managers as an integral part of a comprehensive wildlife conservation management plan; (2) the deer population of the refuge and surrounding area has become so large that habitat damage and excessive crop depredation is occurring; (3) reducing the deer population would improve the health and condition of the deer herd, eliminate the damaging effects of over-population on refuge habitat and reduce the depredation damage caused by deer on crops that surround the refuge; and (4) deer hunting would provide wildlife-oriented recreational opportunities in an area of Minnesota where hunting and fishing are important recreational activities.

Historically, this area of Minnesota has attracted large numbers of deer, especially in winter, because both prairie and woodland habitat were available. Over the past 25 years, the previous owner actively encouraged deer to use the area by planting many acres of lure crops, limiting hunting pressure and providing a high degree of protection for the deer herd. Because of this, the deer population has increased and been concentrated in the relatively small refuge area. Today, the refuge and surrounding area host a white-tailed deer population of about 300 during the spring and fall and up to 500 in the winter. Preliminary surveys indicate that winter densities range from 18 to 20 deer per square mile of the total land area of the refuge and 100 deer per square mile of forested habitat in the 27

Valley flood plain on the west and the rolling hardwood forest and lake region on the east. The refuge is administered as a unit of the Detroit Lakes Wetland Management District (DLWMD). The DLWMD, which has its headquarters near Detroit Lakes, Minnesota, also currently administers 155 Waterfowl Production Areas, 322 perpetual wetland easements and 14 Farmers' Home Administration (FmHA) Conservation Easements in the five northwestern Minnesota counties of Becker, Clay, Mahnomen, Norman and Polk. Diverse habitat on the refuge attracts an impressive variety and abundance of wildlife. Besides a large white-tailed deer population, refuge habitat is used by both dabbler and diver waterfowl species, moose, mink, ruffed grouse, cormorants, herons, rabbits, raccoon, otter, beaver, muskrat, various hawk and owl species, and more than 100 neotropical, water and other migratory bird species.

Opening the refuge to the hunting of white-tailed deer has been found to be compatible in a separate compatibility determination. This finding was based on findings that (1) hunting is widely recognized by wildlife managers as an integral part of a comprehensive wildlife conservation management plan; (2) the deer population of the refuge and surrounding area has become so large that habitat damage and excessive crop depredation is occurring; (3) reducing the deer population would improve the health and condition of the deer herd, eliminate the damaging effects of over-population on refuge habitat and reduce the depredation damage caused by deer on crops that surround the refuge; and (4) deer hunting would provide wildlife-oriented recreational opportunities in an area of Minnesota where hunting and fishing are important recreational activities.

Historically, this area of Minnesota has attracted large numbers of deer, especially in winter, because both prairie and woodland habitat were available. Over the past 25 years, the previous owner actively encouraged deer to use the area by planting many acres of lure crops, limiting hunting pressure and providing a high degree of protection for the deer herd. Because of this, the deer population has increased and been concentrated in the relatively small refuge area. Today, the refuge and surrounding area host a white-tailed deer population of about 300 during the spring and fall and up to 500 in the winter. Preliminary surveys indicate that winter densities range from 18 to 20 deer per square mile of the total land area of the refuge and 100 deer per square mile of forested habitat in the 27 square-mile area that includes and surrounds the refuge. A large proportion of these deer use the three square-mile area of the refuge extensively throughout the year. The refuge winter deer population is estimated at 60 to 70 deer per square mile of the total land area of the refuge and more than 200 per square mile of forested habitat. Over-population by deer is evident by the presence of browse lines in the refuge woodlands. The goal of the proposed hunt is to lower the deer population to within the statewide density range (1–15 per square mile of the total land area and 5–80 per square mile of forested habitat). Field studies would be conducted to monitor habitat conditions and population dynamics to determine what the appropriate deer population should be for the refuge and surrounding area.

The Special Permit Area (SPA) would be hunted during the State's 4A and 4B firearms seasons. The SPA covers approximately 2,000 acres, excluding refuge facilities and occupied building sites. About 1,200 acres of the SPA are deemed huntable during a normal hunting season. Initially, until the herd is reduced and under control, only antlerless deer would be taken. As many as 60 permits would be issued for the two-day 4A season and up to 80 permits would be issued for the four-day 4B season. The maximum hunter density would be one hunter per 15 acres. Hunter and Service personnel safety would determine the actual number of permits that are issued each season.

A Section 7 evaluation pursuant to the Endangered Species Act was conducted for the proposed hunt. The refuge is in the breeding range of bald eagles. Eagles also use the refuge regularly for feeding; however, they would have migrated south by the time the firearms deer season opened in November. The refuge is in the peripheral range of the gray wolf; however, no wolves have ever been seen on the refuge. The tight controls of the hunt would make the chance illegal take of a gray wolf unlikely. While western prairie fringed orchids have been found in Polk County, no populations have been identified on the refuge. Even if such a population were discovered, they would be dormant during the hunting season. The proposed action is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats.

Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was conducted and a Finding of No Significant Impact (FONSI) was made regarding the proposed hunt. Detroit Lakes Wetland Management District and refuge staff, along with input from local Minnesota Department of Natural Resources representatives, were primarily responsible for the development of the alternatives reviewed in making the FONSI conclusion. Refuge objectives and Service concerns guided the process. Public needs and expectations were also taken into consideration during the development of the alternatives.

The annual cost of this hunting program would be approximately $3,000. Within the annual DLWMD budget of $676,000, the necessary funds would be available for the development, operation and maintenance of this program pursuant to the Refuge Recreation Act.

2. Ohio River Islands National Wildlife Refuge

The Service proposes to open Ohio River Islands National Wildlife Refuge to the hunting of migratory game birds upland game hunting, and big game hunting. Established in 1990, the refuge became the first national wildlife refuge in West Virginia. The refuge consists of 9 islands in the Ohio River. The acquisition boundary stretches 362 river miles from Shippingport, Pennsylvania to Manchester, Ohio and includes four states (Pennsylvania, Ohio, West Virginia and Kentucky). The refuge was established under the authority of the Fish and Wildlife Act of 1956. The refuge's primary purpose is for the development, advancement, management, conservation, and protection of fish and wildlife resources. This purpose was further defined by the objectives stated in the refuge's management plan to include (1) the management and protection of wildlife habitat, (2) the management and protection of wildlife populations, and (3) to allow appropriate public uses including, but not limited to, hunting, fishing, trapping, wildlife observation and environmental education.

Twenty species of waterfowl have been recorded using the islands and associated riverine habitats of the Ohio River. The majority of these waterfowl are migratory, using the river and island habitats as feeding and resting areas. More than 5,800 individual waterfowl were observed using the islands during the 165 island visits from February 1992 to September 1993. The take of migratory game birds will include waterfowl, coots, gallinules, rails, snipe, woodcock and mourning dove. Seasons on the refuge will coincide with the appropriate State seasons. The take of all other migratory birds will be

prohibited. The proposed migratory game bird hunting program will currently encompass 7 islands and 429 acres. Aside from woodcock hunting, all migratory game bird hunting will, in reality, occur only on the shoreline perimeter of the islands, which constitutes approximately 80 acres (15% of the current refuge acreage).

Cottontail rabbits and fox squirrels are present on the Ohio River islands, with current numbers variable depending on specific islands and their habitats. Much of the island habitats have succeeded beyond the early to late oldfield habitats preferred by cottontail rabbits, and food available for fox squirrels is limited mostly to soft mast. However, it is felt that these species are present in huntable populations. The refuge season for these species will coincide with the appropriate State seasons. Method of take will be restricted to shotgun only for safety reasons. The take of all other upland game, including turkey, grouse, pheasant, and quail, will be prohibited.

White-tailed deer are found in varying numbers on the Ohio River Islands. The size and habitat conditions on each island are different and deer utilization reflects this. Deer move freely from the mainland to the islands, depending on surrounding public use pressures, season, etc., tying island deer densities to surrounding deer populations. Deer hunting is proposed for the refuge within the framework of applicable State regulation. Method of take will be restricted to archery only for safety reasons and season lengths will correspond to State archery deer seasons.

A separate compatibility determination was made for the proposed hunt, and the proposed recreational hunts were found to be compatible. The hunt programs must be monitored and adjusted as necessary to reduce or eliminate adverse impacts to the refuge resources and refuge operations.

A Section 7 evaluation pursuant to the Endangered Species Act was conducted for the proposed hunt. The listed species considered in this evaluation are pink mucket pearly mussel, fanshell mussel, bald eagle and peregrine falcon. The pink mucket pearly mussel and fanshell mussel occur on sand and gravel substrate found on the river bottom. Hunting on the island terrestrial habitats and from boats around the island perimeters will not impact these mussels or freshwater mussel habitat. Areas having concentrated eagle use will be zoned to prohibit hunting. The peregrine falcon is a rare visitor to the Ohio River Valley, and hunting activity is not expected to have any impact on this species. Accordingly, it was concluded that the proposed hunt is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats.

An environmental assessment was developed pursuant to the National Environmental Policy Act (NEPA) and a Finding of No Significant Impact (FONSI) was made with respect to the proposed hunts. During the planning stages of developing the hunt proposal, the refuge was in direct contact with a variety of government agencies, conservation organizations, landowners, and interested members of the public. Alternatives were developed that highlighted all concerns and the alternative for safe management of a hunting program was deemed appropriate. In December 1993, the refuge announced the availability of the environmental assessment to the general public. Public comment was solicited through news releases, radio interviews, writing to area conservation organizations, and contacting individuals who had expressed an interest in the hunting program. The conclusion of the environmental assessment stated that hunting pressure is expected to be low and wildlife disturbance should be minimal. Hunting conditions will be monitored, however, and appropriate actions taken if necessary to protect the biological resources of the refuge.

In addition to staff expenses, estimated at $4,616, the refuge will incur costs for signs, vehicle maintenance, leaflet printing, and miscellaneous supplies at an estimated annual cost of $1,500. These cost estimates bring the total cost for the hunt program to approximately $6,000. Therefore, it is determined that funds are available for the development, operation and maintenance of this proposed program pursuant to the Refuge Recreation Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to the Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), environmental assessments have been prepared for these openings. Based upon the Environmental Assessments, the Service issued Findings of No Significant Impact with respect to the openings. Section 7 evaluations were prepared pursuant to the Endangered Species Act with a finding that no adverse impact would occur to any identified threatened or endangered species.

Primary Author

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.7 *List of refuge units open to hunting and/or fishing* is amended by adding the alphabetical listing of "Rydell National Wildlife Refuge" under the State of Minnesota and "Ohio River Islands National Wildlife Refuge" under the State of West Virginia.

3. Section 32.24 *California* is amended by revising paragraph D. of Delevan National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Delevan National Wildlife Refuge

* * * * *

D. Sport Fishing. [Reserved.]

* * * * *

4. Section 32.42 *Minnesota* is amended by adding the alphabetical listing of Rydell National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Rydell National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.7 *List of refuge units open to hunting and/or fishing* is amended by adding the alphabetical listing of "Rydell National Wildlife Refuge" under the State of Minnesota and "Ohio River Islands National Wildlife Refuge" under the State of West Virginia.

3. Section 32.24 *California* is amended by revising paragraph D. of Delevan National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Delevan National Wildlife Refuge

* * * * *

D. Sport Fishing. [Reserved.]

* * * * *

4. Section 32.42 *Minnesota* is amended by adding the alphabetical listing of Rydell National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Rydell National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required to hunt white-tailed deer in the Special Permit Area of the refuge.

2. Hunting in the Special Permit Area is permitted with firearms only.

3. Antlerless deer only may be taken in the Special Permit Area.

4. Construction or use of permanent blinds, permanent platforms, or permanent ladders is prohibited. Portable stands are permitted but must be removed from the refuge at the end of each day's hunt.

5. Deer taken from the Special Permit Area must be taken to the refuge check station.

D. Sport Fishing. [Reserved.]

* * * * *

5. Section 32.67 *Washington is amended by revising paragraph C. of* Columbia National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Columbia National Wildlife Refuge

* * * * *

C. Big Game Hunting. [Reserved.]

* * * * *

6. Section 32.68 *West Virginia* is revised to read as follows:

§ 32.68 West Virginia.

The following refuge units have been opened to hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Ohio River Islands National Wildlife Refuge

A. Hunting of Migratory Game Birds. Migratory game bird hunting is permitted on designated areas of the refuge subject to the following condition: Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

B. Upland Game Hunting. The hunting of rabbit and squirrel is permitted on designated areas of the refuge subject to the following conditions:

1. The use of dogs for pursuit while rabbit hunting is prohibited.

2. The take of squirrel and rabbit is restricted to shotgun only.

3. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

C. Big Game Hunting. The hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery hunting is permitted.

2. Organized deer drives by two or more hunters are prohibited. A drive is hereby defined as the act of chasing, pursuing, disturbing or otherwise directing deer so as to make the animals more susceptible to harvest.

3. Baiting for deer on refuge lands is prohibited.

4. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Regulations Leaflet while participating in a refuge hunt.

Dated: June 10, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–17267 Filed 7–14–94; 8:45 am]

BILLING CODE 4310-55-P

VOL
59
SS
1
3
5
JUL
15
994
MI

federal register

Friday
July 15, 1994

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

Addition of Rock Lake National Wildlife Refuge to the List of Open Areas for Hunting in North Dakota; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AC60

Addition of Rock Lake National Wildlife Refuge to the List of Open Areas for Hunting in North Dakota

AGENCY: Fish and Wildlife Service, Interior

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to add Rock Lake National Wildlife Refuge to the list of areas open for big game hunting in North Dakota along with pertinent refuge-specific regulations for such activity. The Service has determined that such use will be compatible with the purposes for which the refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

DATES: Comments may be submitted on or before September 13, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703–358–1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open Rock Lake National Wildlife Refuge to deer hunting. The hunt will be in accordance with State regulations pertaining to archery and firearms deer hunting, and as illustrated in the North Dakota Hunting Guide (1993).

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60-day comment period is specified in order to facilitate public input. Accordingly, interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES.** All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Opening Package

In preparation for this opening, the refuge unit has included in its "openings package" for Regional review and approval from the Washington Office the following documents: a hunting/fishing plan; an environmental assessment; a Finding of No Significant Impact (FONSI); a Section 7 evaluation or statement, pursuant to the Endangered Species Act, that these openings are not likely to adversely affect a listed species or critical habitat; and a letter of concurrence from the affected States. From a review of the totality of these documents, the Secretary has determined that the opening of the Rock Lake National Wildlife Refuge to deer hunting is compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSAA and the RRA, the Secretary has also determined that this opening for deer hunting is compatible and consistent with the primary purposes for which the refuge was established, and that funds are available to administer the programs. A brief description of the hunting program is as follows:

Rock Lake National Wildlife Refuge

Rock Lake National Wildlife Refuge (NWR) is a 5,587 acre easement refuge located in Towner County, North Dakota. The refuge was established in 1939 by an Executive Order as a refuge and breeding ground for migratory birds and other wildlife. The refuge is administered by the Service's Devils Lake Wetland Management District, located in Devils Lake, North Dakota. Rock Lake NWR occupies lands that were formed by glacial activity several million years ago. The glacial drift moraine running through North Dakota is characterized by rolling grasslands interspersed with small closed basins. Devils Lake is typical of this area. Principal wildlife found on Rock Lake NWR includes geese, ducks, various non-game bird species, white-tailed deer, muskrat, mink and fox. Bald eagles, whooping cranes, and peregrine falcons use the area on an occasional basis.

Since hunting has been prohibited on Rock Lake NWR, deer from the surrounding area are drawn to the refuge during the State firearms deer season. Unfortunately, following the close of the deer season they do not return to the areas from which they came until the following spring. Heightened winter deer concentrations are destructive to refuge habitat and lead to serious depredation problems on neighboring private lands, particularly during severe winters. This refuge is the only large closed-to-hunting area for many miles.

The primary objective of this hunt is to reduce the degradation of habitat used by nesting waterfowl and other wildlife, migratory wildlife, rare and endangered wildlife, and native (resident) wildlife. The proposed hunt would also reduce depredation problems on privately owned land, redistribute deer, improve the health of the herd, reduce the risk of deer/vehicle collisions, and provide recreational opportunities. A designated area of the refuge would be opened to deer hunting only during the State firearms deer season and archery hunting would be open from the opening of the firearms season until the close of the State archery season. All state regulations pertaining to archery and firearms deer hunting would apply. Deer hunting would be monitored by refuge officers and State game wardens. Hunter numbers, number of deer taken, and refuge deer populations would be monitored. The refuge will be open to all holders of a North Dakota 2E deer hunting permit and all those with a valid North Dakota deer archery permit. The Service projects that 100–150 deer hunting visits will occur each year. If excessive harvest or winter mortality problems are evident, alternative management would be proposed.

Opening the refuge to the hunting of deer has been found to be compatible in a separate compatibility determination. This determination noted also that most migratory birds will have migrated south prior to the opening of the State deer hunting season. A Section 7 evaluation pursuant to the Endangered Species Act was conducted and it was determined that the proposed action is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats. Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was made and a Finding of No Significant Impact (FONSI) was made regarding the hunt. All neighbors and farm operators in the local area were contacted about the proposed action and they concurred with the proposed hunt. The environmental assessment was prepared by the Devils Lake Wetland Management district and Wetland Habitat Office, Bismarck, North Dakota, and with the assistance of the North Dakota Game and Fish Department. As the deer hunt will be monitored cooperatively by refuge personnel and State game wardens, no special funding will be required to monitor and control the hunt. Refuge monitoring would be a collateral duty of certain refuge personnel. No special refuge permits will be required. Therefore, the Service has determined that there would be sufficient funds to administer the proposed hunt pursuant to the requirements of the Refuge Recreation Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget

season until the close of the State archery season. All state regulations pertaining to archery and firearms deer hunting would apply. Deer hunting would be monitored by refuge officers and State game wardens. Hunter numbers, number of deer taken, and refuge deer populations would be monitored. The refuge will be open to all holders of a North Dakota 2E deer hunting permit and all those with a valid North Dakota deer archery permit. The Service projects that 100–150 deer hunting visits will occur each year. If excessive harvest or winter mortality problems are evident, alternative management would be proposed.

Opening the refuge to the hunting of deer has been found to be compatible in a separate compatibility determination. This determination noted also that most migratory birds will have migrated south prior to the opening of the State deer hunting season. A Section 7 evaluation pursuant to the Endangered Species Act was conducted and it was determined that the proposed action is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats. Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was made and a Finding of No Significant Impact (FONSI) was made regarding the hunt. All neighbors and farm operators in the local area were contacted about the proposed action and they concurred with the proposed hunt. The environmental assessment was prepared by the Devils Lake Wetland Management district and Wetland Habitat Office, Bismarck, North Dakota, and with the assistance of the North Dakota Game and Fish Department. As the deer hunt will be monitored cooperatively by refuge personnel and State game wardens, no special funding will be required to monitor and control the hunt. Refuge monitoring would be a collateral duty of certain refuge personnel. No special refuge permits will be required. Therefore, the Service has determined that there would be sufficient funds to administer the proposed hunt pursuant to the requirements of the Refuge Recreation Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared for this opening. Based upon the Environmental Assessments, the Service issued a Finding of No Significant Impact with respect to the opening. A Section 7 evaluation was prepared pursuant to the Endangered Species Act with a finding that no adverse impact would occur to any identified threatened or endangered species.

Primary Author

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

2. Section 32.7 *List of refuge units open to hunting and/or fishing* is amended by adding the alphabetical listing of "Rock Lake National Wildlife Refuge" under the state of North Dakota.

3. Section 32.53 *North Dakota* is amended by adding the alphabetical listing of Rock Lake National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Rock Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. The refuge is open to the hunting of deer only during the State firearms deer season. Archery hunting is open from the opening of the firearms season until the close of the State archery season. All State regulations pertaining to archery and firearms deer hunting apply.

D. Sport Fishing. [Reserved.]

* * * * *

Dated: June 27, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–17268 Filed 7–14–94; 8:45 am]

BILLING CODE 4310–55–P

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc.)
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public L
numbers, Federal Register finding aids, and list of
documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and t
documents on public inspection are available on t
National Archives fax-on-demand system. You mu
from a fax machine. There is no charge for the ser
except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11
35461–35606.....12
35607–35846.....13
35847–36016.....14
36017–36350.....15

Reader Aids

Federal Register

Vol. 59, No. 135

Friday, July 15, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11
35461–35606.....12
35607–35846.....13
35847–36016.....14
36017–36350.....15

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
No. 94–29 of June 27, 1994.....35211
No. 94–30 of June 30, 1994.....35607
No. 94–31 of July 1, 1994.....35609
Memorandums:
June 30, 1994.....34341
July 11, 1994.....36017
Proclamations:
6641 (See Proc. 6704).....34329
6704.....34329
6705.....34343
Executive Orders:
1919½ (Revoked in part by PLO 7065).....35054
12002 (See EO 12923).....34551
12214 (See EO 12923).....34551
12735 (See EO 12923).....34551
12755 (See EO 12923).....34551
12851 (See EO 12923).....34551
12923.....34551

5 CFR

179.....35213, 35215
532.....36019
2610.....34755
2634.....34755
2636.....34755
2641.....34755
Proposed Rules:
575.....34393
3201.....35480

7 CFR

1.....36019
2.....36020
272.....34553
275.....34553
283.....34553
301.....35611
319.....35564
354.....35612
406.....35613
916.....33897
917.....33897
928.....33898
929.....36021
947.....33900
981.....35222, 35847
1205.....33901
1421.....34345
1755.....34353, 34899
Proposed Rules:
46.....35487
925.....36091
944.....36091
989.....36093
1030.....36094
1036.....33922
1106.....36095

8 CFR

103.....33903
212.....35614
245.....33903
245a.....33903
264.....33903
274a.....33903
299.....35978
Proposed Rules:
214.....35866

9 CFR

78.....35615, 36023
92.....34375, 36024
97.....34756
Ch. III.....34375
Proposed Rules:
317.....34396
381.....35639

10 CFR

2.....36026
30.....36026
40.....35618, 36026
50.....35461
70.....36026
72.....35618, 36026
74.....35618
75.....35618
150.....35618
710.....35178
Proposed Rules:
1003.....34767

11 CFR

102.....35785

12 CFR

701.....36040
709.....36040
745.....36040
747.....36040
790.....36040
791.....36040
792.....36040
793.....36040
794.....36040
Proposed Rules:
220.....33923
230.....35271

336 35480

13 CFR

108 36042
120 36042
123 ..... 36042, 36045

14 CFR

21 34572
23 34572
39 ..... 34574, 34576, 34757, 34758, 34899, 34967, 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247, 36046, 36047
71 ..... 34577, 34758, 34759, 34760, 35248, 36050
91 34578
97 ..... 35248, 35250
1209 35623

Proposed Rules:

Ch. I 35868
21 34779
23 35196
33 35272
39 ..... 34396, 34584, 35488, 35490, 36096, 36098
71 ..... 34192, 34585, 35492, 35869, 36099, 36100
93 34192

16 CFR

2 34968
4 34968
305 34014

Proposed Rules:

Chapter II 35857
22 35661
300 34780
301 34780
303 34780
1117 33925
1307 35058
1500 ..... 33928, 33932

17 CFR

1 34376
33 34376
190 34376
228 36258
229 36258
230 36258
232 36262
259 36258

Proposed Rules:

228 36264
229 36264
230 36264
232 36264
239 36264
240 ..... 34781, 36264
249 36264
250 36264
259 36264
260 36264
269 36264
270 36264
274 36264

18 CFR

284 35462

Proposed Rules:

35 35274

19 CFR

174 34970

Proposed Rules:

141 36102
142 36102

20 CFR

416 33906

21 CFR

5 35848
341 36051
510 33908
520 ..... 33908, 35251
558 35251
1220 35252

Proposed Rules:

102 36103
203 36107
205 36107
341 34781

22 CFR

60 33909
61 33909
62 33909
63 33909
64 33909
65 33909
514 34760

23 CFR

655 33909
658 36051

Proposed Rules:

637 35493

24 CFR

17 34578
791 35253
3280 34294

Proposed Rules:

43 34300
92 34300
941 35834
100 34902
570 34300

25 CFR

Proposed Rules:

Ch. I 36108
164 35580
165 35580

26 CFR

1 ..... 34971, 35030, 35414, 35256
31 35414
40 35414
602 ..... 34971, 35030

Proposed Rules:

1 ..... 34398, 35066, 35418, 36114
31 35418
40 35418

27 CFR

5 35623

28 CFR

551 34742
571 35456

29 CFR

1910 ..... 33910, 34580
2610 36054
2619 36055
2622 36054
2644 36058
2676 36055

Proposed Rules:

Ch. XXVI 35067
Ch. XL 35067
1915 34586

30 CFR

914 36059
944 35255

Proposed Rules:

75 35071
Ch. II 36108
Ch. IV 36108
Ch. VI 36108
Ch. VII 36108
914 36114
920 35289
944 35871

31 CFR

51 35624
52 35624
550 35259

32 CFR

90 ..... 34382, 35463
91 ..... 34382, 35463
155 35464
369 35261
383 34382
384 35262
389 34382
552 ..... 34581, 34761
706 ..... 35033, 35849

Proposed Rules:

553 34782

33 CFR

1 36316
4 34210
26 36316
117 36062
130 34210
131 34210
132 34210
137 34210
138 34210
160 36316
161 36316
162 36316
164 36316
165 36316
334 35850

Proposed Rules:

165 ..... 35290, 35661
322 34783
334 33939

34 CFR

74 34722
77 34722
641 34198
668 34964
682 ..... 34964, 35624
685 34278
690 34964

Proposed Rules:

Ch. VI 34398

36 CFR

242 36063
704 35034

Proposed Rules:

Ch. I 36108

38 CFR

3 ..... 34382, 35265, 35464, 35851

39 CFR

111 33911
233 35851
266 35625

Proposed Rules:

111 35873

40 CFR

9 ..... 33912, 34070
35 35852
52 ..... 33914, 34383, 35035, 35036, 35044, 35411
55 36065
61 36280
80 35854
81 35044
85 33912
86 33912
112 34070
141 34320
142 34320
180 ..... 35627, 35629
185 35629
186 35629
271 35266
300 35852
372 34386
600 33912

Proposed Rules:

Ch. I 33940
51 35292
52 ..... 33941, 34399, 34401, 35072, 35079, 35875, 35883, 36116, 36120, 36123, 36128
60 36130
63 36130
81 35079
141 35891
143 35891
152 35662
174 35662
180 35663
185 33941

42 CFR

405 36069
414 36069
417 36072
431 36072
434 36072
1003 36072

Proposed Rules:

421 35664

43 CFR

Public Land Order:

7055 34899
7064 34582
7065 35054
7067 35859
7068 35859
7069 35267

Proposed Rules:

Ch. I 36108
Ch. II 36108
Subtitle A 36108
2800 35596
2810 35596
2880 35596

44 CFR

322 36087

362 35630

45 CFR

Proposed Rules:

615 35079

46 CFR

68 36088

47 CFR

Ch. I 35631
22 35054
43 35632
73 ..... 34391, 34766, 35055, 35268
74 35635
80 35268
87 35268

Proposed Rules:

Chapter I 35664
61 33947
64 33947
69 33947
73 ..... 34404, 34405, 35081, 35082, 3
74 ..... 97 .....

48 CFR

206 .....
222 .....
226 .....
237 .....
252 .....

Proposed Ru

Ch. XIV .....
209 .....
252 .....
926 .....
952 .....
970 .....

49 CFR

172 .....
195 .....
392 .....
393 .....

362.....35630

45 CFR

Proposed Rules:
615.....35079

46 CFR

68.....36088

47 CFR

Ch. I.....35631
22.....35054
43.....35632
73.....34391, 34766, 35055, 35268
74.....35635
80.....35268
87.....35268

Proposed Rules:
Chapter I.....35664
61.....33947
64.....33947
69.....33947
73.....34404, 34405, 35081, 35082, 35292, 35293, 35785, 35893, 35894
74.....35665
97.....36157

48 CFR

206.....36088
222.....36088
226.....36088
237.....36088
252.....36088

Proposed Rules:
Ch. XIV.....36108
209.....35895
252.....35895
926.....35294
952.....35294
970.....35294

49 CFR

172.....35411
195.....35465, 36256
392.....34708
393.....34708, 34712
571.....35636
1056.....34392

Proposed Rules:
383.....36338
541.....3508
571.....34405, 35298, 35300, 35670, 35672

50 CFR

17.....35860
100.....36063
215.....35471
216.....35864
229.....34899
301.....35474, 35475
630.....36090
651.....35056
658.....34582
672.....35056
675.....33920, 34392, 34583, 35056, 35057, 35476, 35638
681.....35270

Proposed Rules:
Ch. I.....36108
Ch. II.....35674
Ch. IV.....36108
17.....34784, 35089, 35303, 35304, 35305, 35307, 35496, 35584, 35674, 35896, 35900
20.....35566
32.....36342, 36348
222.....35089
227.....36158
644.....35308
654.....33947

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 11, 1994

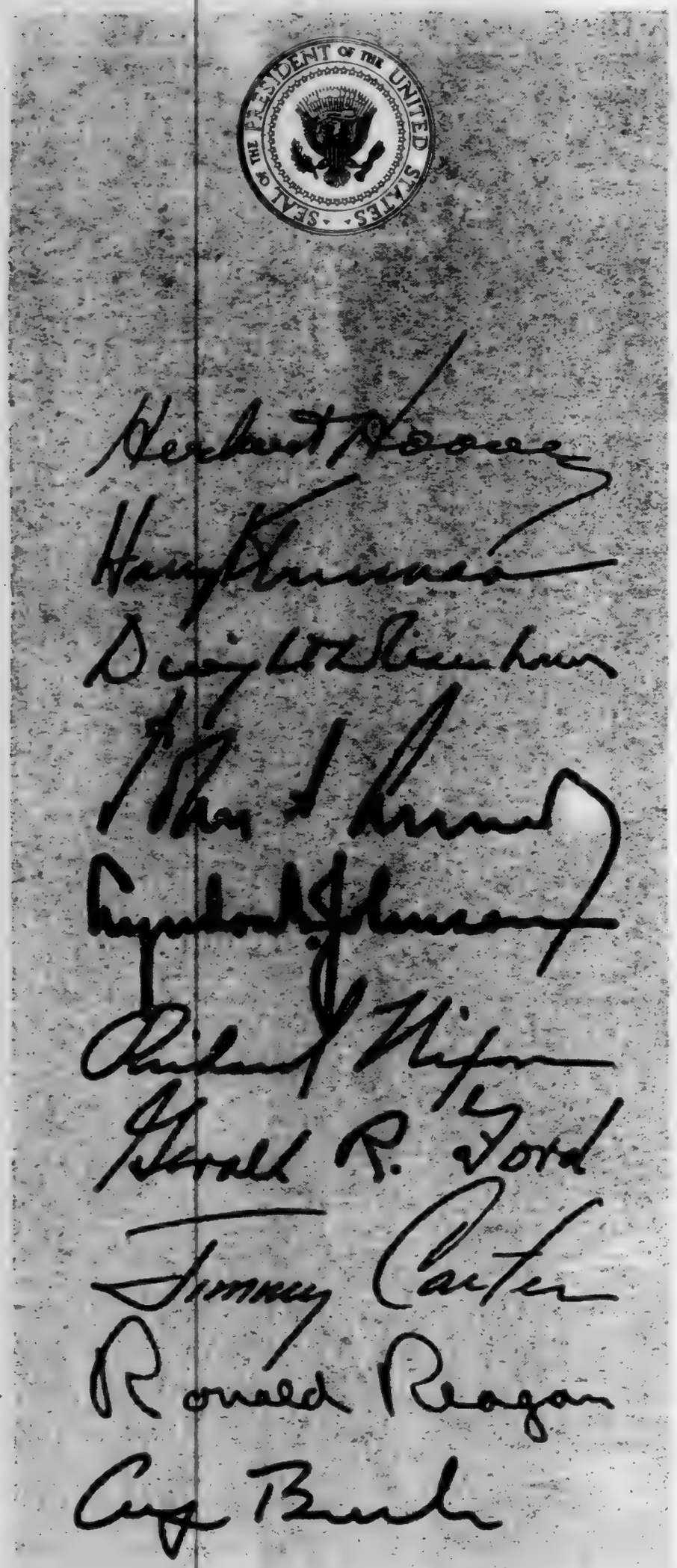

Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House

Volumes for the following years are available; other volumes not listed are out of print

Ronald Reagan

1984 (Book II)	$36.00
1985 (Book I)	$34.00
1985 (Book II)	$30.00
1986 (Book I)	$37.00
1986 (Book II)	$35.00
1987 (Book I)	$33.00
1987 (Book II)	$35.00
1988 (Book I)	$39.00
1988–89 (Book II)	$38.00

George Bush

1989 (Book I)	$38.00
1989 (Book II)	$40.00
1990 (Book I)	$41.00
1990 (Book II)	$41.00
1991 (Book I)	$41.00
1991 (Book II)	$44.00
1992 (Book I)	$47.00
1992–93 (Book II)	$49.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Order Now!

The United States Government Manu 1993/94

As the official handbook of the Federa the *Manual* is the best source of informa activities, functions, organization, and p of the agencies of the legislative, judicia branches. It also includes information on agencies and international organizations United States participates.

Particularly helpful for those interested and who to see about a subject of partic each agency's "Sources of Information" provides addresses and telephone numb obtaining specifics on consumer activitie grants, employment, publications and fil other areas of citizen interest. The *Manu* comprehensive name and agency/subjec

Of significant historical interest is Ap which lists the agencies and functions Government abolished, transferred, or name subsequent to March 4, 1933.

The *Manual* is published by the Office Register, National Archives and Records

$30.00 per copy

Superintendent of

Order Processing Code:
* 6395

☐ **YES,** please send me _____ copi at $30.00 ($37.50 foreign) each.

The total cost of my order is $ _____

(Company or personal name) (Please

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

Order Now!

The United States Government Manual 1993/94

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$30.00 per copy

Superintendent of Documents **Publications** Order Form

Order Processing Code:
* **6395**

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2250

☐ **YES,** please send me _____ copies of the **The United States Government Manual, 1993/94** S/N 069–000–00053–3 at $30.00 ($37.50 foreign) each.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, Zip code)

_____
(Daytime phone including area code)

_____
(Purchase order no.)

Please choose method of payment:

❑ Check payable to the Superintendent of Documents

❑ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐

❑ VISA ❑ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

_____
(Authorizing signature) (Rev 9/93)

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

VOL
59
ISS
1
35
JL
15
994
MI

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before this date.

```
AFR  SMITH212J                DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before this date.

```
AFRDO  SMITH212J              DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐ **YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and LSA List of Code of Federal Regulations Sections Affected, at $490 ($612.50 foreign) each per year.

____ subscriptions to **Federal Register,** *daily only* (FRDO), at $444 ($555 foreign) each per year.

The total cost of my order is $_____. (Includes regular shipping and handling.) Price subject to change.

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

Authorizing signature 1/94

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

---

federal register

Revised 1992

The Federal
What It
And
How To

Superintendent

Order processing code:
*6173

☐ **YES**, please send me the following:

_____ copies of **The Federal Register - What It**

The total cost of my order is $_____. In
postage and handling and are subject to change

(Company or Personal Name) (Please

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other maile

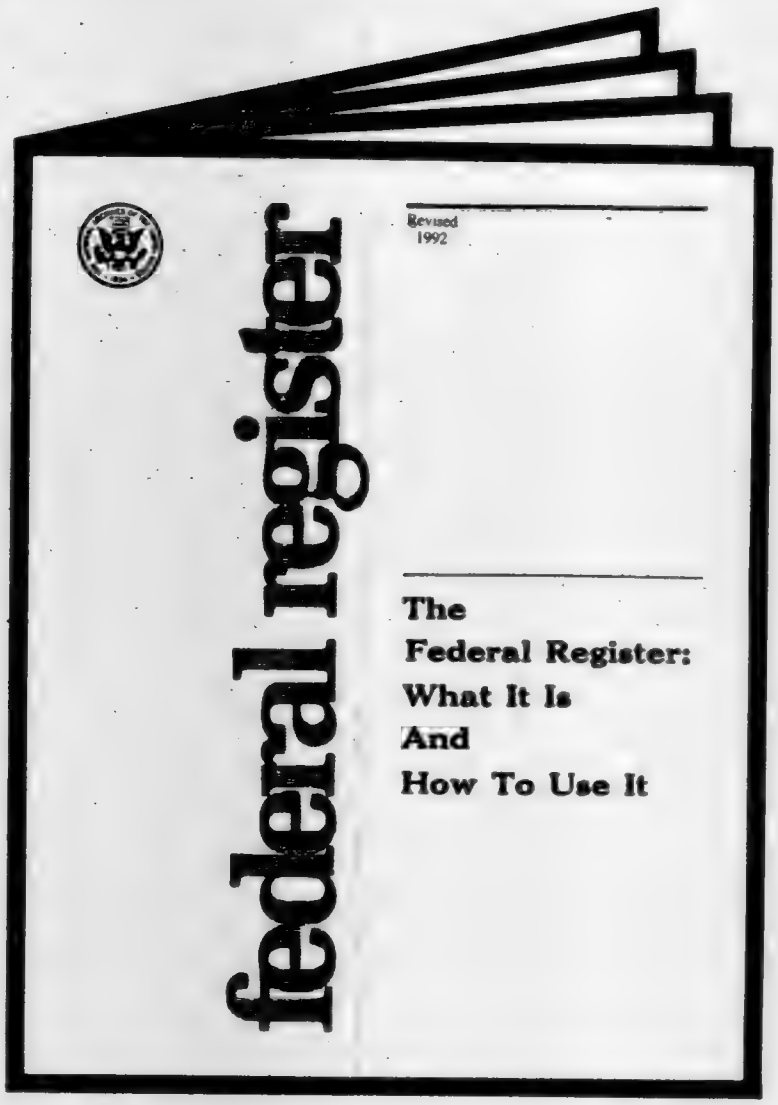

Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
*6173

☐ **YES**, please send me the following:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202)-512-2250

_____ copies of **The Federal Register - What It Is and How To Use It**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

_____
(Company or Personal Name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

_____
(Daytime phone including area code)

_____
(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

_____
(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

New Publication

List of CFR Sections Affected

1973–1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16) $27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27) $25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41) $28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50) $25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*6962

Charge your order. It's easy!

To fax your orders and inquiries–(202) 512–2250

Please Type or Print (Form is aligned for typewriter use.)
Prices include regular domestic postage and handling and are good through 12/92. After this date, please call Order and Information Desk at 202–783–3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021–602–00001–9	Catalog–Bestselling Government Books	FREE	FREE

Total for Publications

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) *Thank you for your order!*

(Signature)

Rev 6–92

VOL
59

ISS
1
3
5

JL
15

994

MI

Printed on recycled paper

VOL
59
ISS
136
JL
18
994
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7–18–94
Vol. 59 No. 136

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****
A FR UMISE346
UMI SERIALS ACQ
300 N ZEEB RD
PO BOX 1346
ANN ARBOR M

7–18–94
Vol. 59 No. 136

Federal Register

Monday
July 18, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********3-DIGIT 481

A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
59
SS
136
JL
18
994
MI

7-18-94
Vol. 59 No. 136
Pages 36351-36690

7–18–94
Vol. 59 No. 136
Pages 36351–36690

federal register

Monday
July 18, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche — 202–512–1800
Assistance with public subscriptions — 512–1806

Online:
Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.
Assistance with online subscriptions — 202–512–1530

Single copies/back copies:
Paper or fiche — 512–1800
Assistance with public single copies — 512–1803

FEDERAL AGENCIES

Subscriptions:
Paper or fiche — 523–5243
Assistance with Federal agency subscriptions — 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Agricultural Marketing Service
RULES
Peanuts, domestically produced, 36353–363

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Ser
See Forest Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and products:
Cattle from Mexico, 36374
Importation and exportation of animals and products:
Honeybees and honeybee semen from New 36373–36374

Army Department
NOTICES
Meetings:
Armed Forces Epidemiological Board, 364

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Michigan, 36428

Committee for the Implementation of Textile
NOTICES
General Agreement on Tariffs and Trade (GA and clothing sector integration; comment 36428–36429

Corporation for National and Community Se
NOTICES
Agency information collection activities unde review, 36429

Defense Department
See Army Department
RULES
Base closure communities revitalization and assistance
Hearing, 36367–36368

Education Department
RULES
Postsecondary education:
Higher Education Act of 1965; institutional
Student financial assistance programs; eli requirements, etc.; reporting and reco requirements, 36368

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Weapons-usable fissile materials; long-term disposition
Public scoping workshops, 36430–36431

Contents

Federal Register

Vol. 59, No. 136

Monday, July 18, 1994

Agricultural Marketing Service
RULES
Peanuts, domestically produced, 36353–36354

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Cattle from Mexico, 36374
Importation and exportation of animals and animal products:
Honeybees and honeybee semen from New Zealand, 36373–36374

Army Department
NOTICES
Meetings:
Armed Forces Epidemiological Board, 36429

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Michigan, 36428

Committee for the Implementation of Textile Agreements
NOTICES
General Agreement on Tariffs and Trade (GATT); textiles and clothing sector integration; comment request, 36428–36429

Corporation for National and Community Service
NOTICES
Agency information collection activities under OMB review, 36429

Defense Department
See Army Department
RULES
Base closure communities revitalization and community assistance
Hearing, 36367–36368

Education Department
RULES
Postsecondary education:
Higher Education Act of 1965; institutional eligibility—
Student financial assistance programs; eligibility requirements, etc.; reporting and recordkeeping requirements, 36368

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Weapons-usable fissile materials; long-term storage and disposition
Public scoping workshops, 36430–36431
Grant and cooperative agreement awards:
Precision Irrigation & Control Systems, Inc., 36431–36432

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
Light-duty vehicles and trucks—
Durability testing procedures and allowable maintenance; 1994 and later model years; extension, 36368–36369
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
New Hampshire, 36408–36414
NOTICES
1987 Chesapeake Bay Agreement; documents for public review, 36433
Agency information collection activities under OMB review, 36433–36435
Meetings:
Local Government Advisory Committee, 36435
National Environmental Justice Advisory Council, 36435–36436
Water pollution control:
National pollutant discharge elimination system; State programs—
Maryland, 36436–36438

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Boeing, 36376–36379
McDonnell Douglas, 36375–36376

Federal Communications Commission
NOTICES
Meetings:
1995 World Radiocommunication Conference Industry Advisory Committee (WRC-95 Advisory Committee), 36438

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Iowa et al., 36370–36372
PROPOSED RULES
Flood elevation determinations:
Ohio et al., 36421–36427
NOTICES
Disaster and emergency areas:
South Dakota, 36438

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 36432–36433
Meetings; Sunshine Act, 36485
Applications, hearings, determinations, etc.:
El Paso Natural Gas Co., 36433

Federal Reserve System
NOTICES
Privately operated large-dollar multilateral netting systems; policy statement, 36438–36444

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Food labeling—
Raw fruit, vegetables, and fish; voluntary nutrition labeling guidelines, 36379–36394
NOTICES
Medical devices; premarket approval:
Allergan Medical Optics Model PC-28LB Ultraviolet-Absorbing Posterior Chamber Intraocular Lens, 36446
Wesley-Jessen Multi-Purpose Solution, 36445–36446

Forest Service
NOTICES
Meetings:
Federal Livestock Grazing Fee Incentive Program Advisory Committee, 39428

General Services Administration
NOTICES
Agency information collection activities under OMB review, 36444
Environmental statements; availability, etc.:
Highgate Springs, VT; border station, 36444

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
PROPOSED RULES
Medicare:
Nurse-midwife services; expanded coverage, 36419–36421
Medicare program:
Medicare Part B services; advance payments to suppliers, 36415–36419

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Assisted housing; preferences for admission, 36616–36659
Certificate and voucher programs conforming rule; admissions, 36662–36690
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Youth development initiative, 36446–36447

Interior Department
See Land Management Bureau
See Reclamation Bureau

Internal Revenue Service
RULES
Income taxes:
Hedging transactions—
Business hedges; clear income reflection, 36356–36360
Business hedges; gain or loss, 36360–36367
PROPOSED RULES
Income taxes:
Hedging transactions—
Consolidated group participation, 36394–36398

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Norfolk Southern Railway Co. et al., 36450–36451
Railroad services abandonment:
Kansas City Southern Railway Co., 36450

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Wyoming, 36447–36448
Environmental statements; availability, etc.:
California Desert Conservation Area, CA, 36448–36449
Meetings:
Federal Livestock Grazing Fee Incentive Program Advisory Committee, 36428
Realty actions; sales, leases, etc.:
Idaho; correction, 36449–36450

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
Vulcan Carriers, Ltd., 36480–36481

National Aeronautics and Space Administration
RULES
Education and training grants definition and incremental grant funding threshold reduction, 36355–36356

National Credit Union Administration
NOTICES
Agency information collection activities under OMB review, 36451

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 36481–36484
Motor vehicle safety standards; exemption petitions, etc.:
Solectria Corp., 36484

National Science Foundation
NOTICES
Meetings:
Astronomical Sciences Special Emphasis Panel, 36451
Meetings; Sunshine Act, 36485

Nuclear Regulatory Commission
PROPOSED RULES
Regulatory agenda
Quarterly report, 36374–36375
NOTICES
Environmental statements; availability, etc.:
Long Island Power Authority, 36451–36452
Meetings; Sunshine Act, 36485

Panama Canal Commission
PROPOSED RULES
Vessel measurement rules and tolls for canal use; revision to bring in line with international practice; recommendation to President, 36398–36408

Personnel Management Office
RULES
Prevailing rate systems, 36351–36352
Whistleblowers; interim relief; personnel actions, 36352–36353

Public Health Service
See Food and Drug Administration
See Substance Abuse and Mental Health Ser Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Southern Nevada Water Authority Treatm Transmission Facility, NV, 36449

Research and Special Programs Administra
PROPOSED RULES
Hazardous materials:
Transportation of dangerous goods in inte commerce, 36488–36613

Securities and Exchange Commission
NOTICES
Agency information collection activities und review, 36452–36453
Self-regulatory organizations; proposed rule
Chicago Stock Exchange, Inc., 36453–3645
MBS Clearing Corp., 36457–36459
National Association of Securities Dealers, 36469
Philadelphia Stock Exchange, Inc., 36469–
Applications, hearings, determinations, etc.:
MassMutual Institutional Funds et al., 364
Presidential Associates I L.P. et al., 36475–
Pruco Life Insurance Co. et al., 36477–364

Small Business Administration
NOTICES
License surrenders:
Advent Industrial Capital Co. II, 36479
Advent V Capital Co. Limited Partnership
Chestnut Capital International II, L.P., 364

State Department
NOTICES
Meetings:
Historical Diplomatic Documentation Advi Committee, 36479

Substance Abuse and Mental Health Servic Administration
NOTICES
Grants and cooperative agreements; availabili
Community partnership program, 36445

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 36485–36486

Public Health Service
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Southern Nevada Water Authority Treatment and Transmission Facility, NV, 36449

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Transportation of dangerous goods in international commerce, 36488–36613

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 36452–36453
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 36453–36457
MBS Clearing Corp., 36457–36459
National Association of Securities Dealers, Inc., 36459–36469
Philadelphia Stock Exchange, Inc., 36469–36470
Applications, hearings, determinations, etc.:
MassMutual Institutional Funds et al., 36470–36475
Presidential Associates I L.P. et al., 36475–36477
Pruco Life Insurance Co. et al., 36477–36479

Small Business Administration
NOTICES
License surrenders:
Advent Industrial Capital Co. II, 36479
Advent V Capital Co. Limited Partnership II, 36479
Chestnut Capital International II, L.P., 36479

State Department
NOTICES
Meetings:
Historical Diplomatic Documentation Advisory Committee, 36479

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Community partnership program, 36445

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 36485–36486

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 36480
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 36479–36480
Hearings, etc.—
Air Serve, Inc., 36480

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Transportation, Research and Special Programs Administration, 36488–36613

Part III
Department of Housing and Urban Development, 36616–36659

Part IV
Department of Housing and Urban Development, 36662–36690

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
532 36351
772 36352

7 CFR
998 36353

Proposed Rules:
322 36373

9 CFR

Proposed Rules:
50 36374
77 36374
92 36374

10 CFR

Proposed Rules:
Ch. I 36374

14 CFR
1260 36355

Proposed Rules:
39 (2 documents) 36375, 36376

21 CFR

Proposed Rules:
101 36379

24 CFR
813 36662
880 36616
881 36616
882 (2 documents) 36616, 36662
883 36616
884 36616
885 36616
886 36616
887 36662
889 36616
904 36616
905 36616
906 36616
960 36616
982 36662

26 CFR
1 (2 documents) 36356, 36360
602 (2 documents) 36356, 36360

Proposed Rules:
1 36394

32 CFR
90 36367
91 36367

34 CFR
668 36368

35 CFR

Proposed Rules:
133 36398
135 36398

40 CFR
86 36368

Proposed Rules:
52 36408

42 CFR

Proposed Rules:
421 36415
440 36419

44 CFR
64 36370

Proposed Rules:
67 36421

49 CFR

Proposed Rules:
171 36488
172 36488
173 36488
175 36488
176 36488
177 36488
178 36488

Rules and Regulation

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG09

Prevailing Rate Systems; Aroostook, ME, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to abolish the Aroostook, Maine, nonappropriated fund (NAF) Federal Wage System wage area and to redefine Aroostook and Washington Counties, Maine, as areas of application to the Cumberland, Maine, NAF wage area for pay-setting purposes. With the scheduled closing of Loring Air Force Base (AFB) on September 30, 1994, and the current downsizing of the Army and Air Force Exchange Service and Loring AFB Morale, Welfare and Recreation Department, there will not be a sufficient number of employees to conduct the wage change survey scheduled for July 1994 or to meet the regulatory requirements for a survey area.

DATES: This interim rule becomes effective on July 18, 1994. Comments must be received by August 17, 1994.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Angela Graham Humes, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Aroostook NAF wage area is composed of two counties. Aroostook County is the survey area, and Washington County

Rules and Regulations

Federal Register
Vol. 59, No. 136
Monday, July 18, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG09

Prevailing Rate Systems; Aroostook, ME, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to abolish the Aroostook, Maine, nonappropriated fund (NAF) Federal Wage System wage area and to redefine Aroostook and Washington Counties, Maine, as areas of application to the Cumberland, Maine, NAF wage area for pay-setting purposes. With the scheduled closing of Loring Air Force Base (AFB) on September 30, 1994, and the current downsizing of the Army and Air Force Exchange Service and Loring AFB Morale, Welfare and Recreation Department, there will not be a sufficient number of employees to conduct the wage change survey scheduled for July 1994 or to meet the regulatory requirements for a survey area.

DATES: This interim rule becomes effective on July 18, 1994. Comments must be received by August 17, 1994.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Angela Graham Humes, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Aroostook NAF wage area is composed of two counties. Aroostook County is the survey area, and Washington County is the area of application. The host activity, Loring AFB, is scheduled to close on September 30, 1994. With the scheduled closing of Loring AFB and the current downsizing of the Army and Air Force Exchange Service and Loring AFB Morale, Welfare and Recreation Department, there will not be a sufficient number of employees to conduct the wage change survey scheduled for July 1994. The Department of Defense projects that no more than 25 Federal Wage System (FWS) employees will work in Aroostook County by September 30, 1994. Cutler Radio Station, in Washington, Maine, the only other installation with NAF employees in the wage area, has eight FWS employees and does not have sufficient capability to serve as host installation. Because neither county meets the minimum of 26 NAF employees required to establish a wage area, Aroostook and Washington Counties must be redefined as areas of application to an existing wage area.

The provisions of 5 CFR 532.219 list the following criteria for consideration when two or more counties are to be combined to constitute a single wage are:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments. These criteria are discussed below.

Loring AFB in Aroostook County and Cutler Radio Station in Washington County are closest to the Cumberland, Maine, NAF wage area. Loring AFB is approximately 461 kilometers (286 miles) and Cutler Radio Station is approximately 298 kilometers (185 miles) from Brunswick Naval Air Station, host installation and largest activity in the Cumberland, Maine, NAF wage area. York, Maine (which was defined as a wage area effective March 23, 1994, by an interim rule 59 FR 13641), is the next closest NAF wage area. Portsmouth Naval Shipyard is the largest activity and host installation in York, Maine, and is located approximately 585 kilometers (363 miles) from Loring AFB and 415 kilometers (258 miles) from Cutler Radio Station.

Transportation facilities consist of interstate highways and principal highways. The most direct route from Loring AFB and Cutler Radio Station to Cumberland, Maine, and Brunswick Naval Air Station is Interstate 95. Interstate 95 then continues to York, Maine, and Portsmouth Naval Shipyard.

An analysis of the 1990 commuting patterns indicates that 37,392 workers live and work within Aroostook County. Aroostook County out-commuters include 113 who commute to work in Washington County, 42 who commute to Cumberland County, and none who commute to York County. The 1990 commuting patterns for Washington County indicate that 12,178 workers live and work within Washington County. Washington County out-commuters include 54 who commute to work in Aroostook County, 11 who commute to Cumberland County, and none who commute to York County.

In overall population, Aroostook (population 86,936) and Washington (population 35,308) Counties are smaller than both York County (population 164,587) and Cumberland County (243,135). In terms of private industry employment in the major industry categories, Aroostook (employment 2,402) and Washington (employment 599) Counties are again smaller than both York County (employment 4,428) and Cumberland County (employment 14,901). As with the employment criteria, the kinds and sizes of private industry establishments in Aroostook and Washington Counties more closely resemble those in York County but are smaller than both Cumberland and York Counties. In summary, both proximity and transportation facilities favor assigning Aroostook and Washington Counties to the Cumberland, Maine, NAF wage area. Aroostook and Washington Counties are more similar to, but substantially smaller than, York County in terms of overall population, private employment in major industry categories, and kinds and sizes of private industrial establishments.

The Federal Prevailing Rate Advisory Committee reviewed this request and recommended approval by consensus.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code,

I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days to avoid the expenditure of resources needed to prepare for the July 1994 wage change survey of the Aroostook, Maine, NAF wage area.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866 Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532 [Amended]

2. In Appendix B to subpart B of Part 532, the listing for the State of Maine is amended by removing the entry for Aroostook.

3. Appendix D to subpart B of Part 532 is amended by removing the wage area list for Aroostook, Maine, and by revising the list for Cumberland, Maine, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Maine

Cumberland

Survey area

Maine:
Cumberland

Area of application: Survey area plus:

Maine:
Aroostook
Hancock
Kennebec
Knox
Penobscot
Sagadahoc
Washington

* * * * *

[FR Doc. 94–17307 Filed 7–15–94; 8:45 am]

BILLING CODE 6325–01–M

---

5 CFR Part 772

RIN 3206–AF76

Interim Relief

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is publishing final regulations which reflect administrative case law on taking personnel actions to provide interim relief under the Whistleblower Protection Act of 1989. These regulations also reflect OPM's initiative to sunset the Federal Personnel Manual.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert (202) 606–2920.

SUPPLEMENTARY INFORMATION: OPM published for comment proposed changes to the regulations on this subject in the **Federal Register** on February 17, 1994 (59 FR 7909). Comments and suggestions were received from three agencies and eighteen individuals. These comments and suggestions, along with the rationale for and explanations of changes to the regulations, are discussed below.

The Whistleblower Protection Act of 1989 (WPA), Pub. L. 101–12 codified at 5 U.S.C. 7701(b)(2)(A), provided that prevailing parties in an appeal to the Merit Systems Protection Board (MSPB) "* * * shall be granted the relief provided in the decision, and remaining in effect pending the outcome of any petition for review * * *." OPM published final regulations on this subject in the **Federal Register** on January 31, 1992 (57 FR 3707–3715). The final regulations authorized agencies to take interim personnel actions to provide a prevailing applicant or employee the interim relief ordered in an MSPB initial decision. Interim personnel actions include, but are not limited to, interim appointments, interim repromotions after demotions, and interim within-grade increases.

After these regulations were published, the Merit Systems Protection Board (MSPB) issued an administrative decision in *Leonard Ginocchi* v. *Department of Treasury*, 53 M.S.P.R. 62 (1992), which explained MSPB's interpretation of the WPA with regard to interim relief. In *Ginocchi*, the Board ruled that it would not look behind the agency's determination under 5 U.S.C. 7701(b)(2)(A) that returning an employee to the workplace would be unduly disruptive. It also held that an agency making a determination of undue disruption did not have to keep the employee on excused absence (administrative leave), but could place the employee in other duties. OPM believes this facet of *Ginocchi* is a reasonable and persuasive interpretation of the WPA. Since this interpretation is inconsistent with a portion of OPM's regulations (which was based on a more restrictive interpretation), OPM proposed to delete that portion of the regulations—section 772.102(d). This change helps reduce any confusion by practitioners before the Board about their respective rights and responsibilities regarding interim relief.

With regard to the proposed change to the regulations, one commenter expressed concern that deletion of the paragraph describing the actions an agency may take to provide interim relief might be misconstrued or misunderstood to mean that an agency no longer would have the flexibility to place an employee in a non-duty, paid status during interim relief. (Several commenters did misconstrue the proposed change in this manner.) OPM emphasizes that this is not the intent of the change. OPM believes that the statute itself and MSPB's administrative case law noted above clearly show that an agency may place an employee or applicant in a non-duty, pay status when an "unduly disruptive" determination is made provided the employee or applicant receives "pay, compensation, and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review * * *." [5 U.S.C. 7701(b)(2)(B)]

Another commenter noted that the current regulations refer to an agency's authority to place an employee "in the same or similar position previously occupied" and wondered whether that authority would remain intact under the proposed change. An agency may continue to place an employee in a "similar" position under the change but under MSPB administrative case law the agency would be required to make a determination of "undue disruption" whenever the employee is not placed in the exact position he or she previously held.

Several commenters stated that they believed that the "unduly disruptive part of the law" has been used against union personnel as a "union busting tactic" and that OPM proposes to "advance the anti labor tactics" of the MSPB. The basis for this belief is unclear. OPM does note that Federal unions with consultation rights under 5 U.S.C. 7117(d)(2) were afforded an opportunity to provide their views and recommendations on the proposed regulations. Similar concerns or beliefs were not raised by these organizations.

Finally, several commenters stated that they believed that MSPB will not enforce its own regulations on interim relief. Another commenter stated that his had occurred in his individual appeal. OPM's changes do not address these concerns about MSPB's enforcement of its regulations.

Since Federal Personnel Manual Supplement 296–33 was discontinued under OPM's initiative to sunset the FPM, OPM has deleted the reference to it in part 772 which provided that interim relief actions needed to be prepared in accordance with the FPM. Now, agencies may rely on The Guide to Processing Personnel Actions, an OPM handbook effective on January 1, 1994 for guidance on how to prepare interim relief actions. No concerns were raised by commenters about this portion of the proposed change.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Part 772

Administrative practice and procedure; Government employees.

U.S. Office of Personnel Management.

James B. King.

Director.

Accordingly, OPM amends part 772 of title 5 of the Code of Federal Regulations as follows:

PART 772—INTERIM RELIEF

1. The authority citation for part 772 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, and 7301; Pub. L. 101–12.

§ 772.102 [Amended]

2. Section 772.102 is amended by removing paragraphs (d) and (g); redesignating paragraphs (e) and (f) as paragraphs (d) and (e) respectively; and by removing the semicolon and the

"advance the anti labor tactics" of the MSPB. The basis for this belief is unclear. OPM does note that Federal unions with consultation rights under 5 U.S.C. 7117(d)(2) were afforded an opportunity to provide their views and recommendations on the proposed regulations. Similar concerns or beliefs were not raised by these organizations.

Finally, several commenters stated that they believed that MSPB will not enforce its own regulations on interim relief. Another commenter stated that his had occurred in his individual appeal. OPM's changes do not address these concerns about MSPB's enforcement of its regulations.

Since Federal Personnel Manual Supplement 296–33 was discontinued under OPM's initiative to sunset the FPM, OPM has deleted the reference to it in part 772 which provided that interim relief actions needed to be prepared in accordance with the FPM. Now, agencies may rely on The Guide to Processing Personnel Actions, an OPM handbook effective on January 1, 1994 for guidance on how to prepare interim relief actions. No concerns were raised by commenters about this portion of the proposed change.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Part 772

Administrative practice and procedure; Government employees.

U.S. Office of Personnel Management.

James B. King.

Director.

Accordingly, OPM amends part 772 of title 5 of the Code of Federal Regulations as follows:

PART 772—INTERIM RELIEF

1. The authority citation for part 772 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, and 7301; Pub. L. 101–12.

§ 772.102 [Amended]

2. Section 772.102 is amended by removing paragraphs (d) and (g); redesignating paragraphs (e) and (f) as paragraphs (d) and (e) respectively; and by removing the semicolon and the word "and" at the end of paragraph (e) and inserting a period in its place.

[FR Doc. 94–17306 Filed 7–15–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV94–998–2IFR]

Clarification of Requirements Established Under Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts for 1994 and Subsequent Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule clarifies that peanut handlers signatory to Peanut Marketing Agreement No. 146 (agreement) may store and shell certain Segregation 2 seed peanut lots with Segregation 1 seed peanut lots when such lots are produced under the auspices of a State agency, which regulates or controls their production. The Peanut Administrative Committee (Committee) believes that the current requirements authorize such commingling of lots but recommended the clarification to remove any chance of confusion. This rule also provides that the unchanged portions of the incoming, outgoing, and indemnification regulations currently in effect under the agreement for 1993 crop peanuts be established for 1994 and subsequent crop peanuts. The clarification of requirements was unanimously recommended by the Committee.

DATES: Effective July 18, 1994. Comments received by August 17, 1994 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administrative Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; FAX: (202) 720–5698. Comments should reference this docket number, the date, and page number of this issue of the **Federal Register**. Comments received will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (813) 299–4770, or FAX: (813) 299–5169; or Jim Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2170, or FAX: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 146 [7 CFR part 998] regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are about 75 handlers of peanuts subject to regulation under the agreement, and about 47,000 peanut producers in the 16 States covered under the program. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the producers may be classified as small entities.

In 1993, the reported U.S. production, mostly covered under the agreement,

was approximately 3.33 billion pounds of peanuts, a 22 percent decrease from 1992 and the lowest level since 1983. The preliminary 1993 peanut crop value is $991.65 million, 77 percent of the 1992 crop value.

The objective of the agreement, in place since 1965, is to ensure that only wholesome peanuts enter edible market channels. About 70 percent of U.S. shellers (handlers), handling approximately 95 percent of the crop, have voluntarily signed the agreement. Under the agreement, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin contamination. Signatory handlers who comply with these requirements may be eligible for indemnification of losses for individual lots of their peanuts which test positive to aflatoxin. Indemnification and administrative costs are paid by assessments levied on handlers signatory to the agreement.

The Committee, which is composed of growers and handlers of peanuts, meets to review the rules and regulations effective on a continuous basis for peanuts regulated under the agreement. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

The Committee met on March 15 and 16, 1994, and unanimously recommended clarifying changes to § 998.100 Incoming quality regulation.

Section 998.34 of the agreement provides authority for the modification of the incoming quality regulation by the Secretary of Agriculture, if the Secretary finds that such modification would tend to effectuate the objectives of the agreement.

After considerable discussion, the Committee unanimously recommended amending paragraph (e) *Seed peanuts* of § 998.100 to clarify that Segregation 2 seed peanuts meeting certain quality requirements may be stored and shelled with Segregation 1 seed peanut lots. Currently, paragraph (e) specifies that Segregation 3 seed peanut lots with visible *Aspergillus flavus* mold must be stored and shelled separate and apart from other peanuts. The regulation does not specifically state that Segregation 2 seed peanuts containing up to three percent damaged kernels and no visible *Aspergillus flavus* mold can be stored and shelled with Segregation 1 seed lots if the seed peanuts were produced under the auspices of a State agency. The Committee believes that the current provisions authorize such commingling but believe that the authority should be expressly stated to avoid confusion.

The Committee noted that requiring Segregation 2 seed peanuts to be stored separately from Segregration 1 seed peanuts would increase the number of storage bins handlers needed to maintain separation. This would increase handler costs. It also noted that requiring the Segregation 2 seed peanuts to be shelled separate and apart from Segregation 1 seed peanuts would increase handler shelling costs with no apparent benefits.

Therefore, the Committee recommended adding a sentence to paragraph (e) clarifying that seed peanut lots may be stored and shelled with Segregation 1 lots if: (1) The seed peanuts do not exceed 3 percent total damage and have no visible *Aspergillus flavus* mold; and (2) both the Segregation 2 seed peanut lot and the Segregation 1 seed peanut lot are produced under the auspices of a State agency which regulates or controls the production of seed peanuts.

This rule also provides that the unchanged portions of the incoming, outgoing, and indemnification regulations currently in effect under the agreement for 1993 crop peanuts be established for 1994 and subsequent crop peanuts.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Written comments, timely received, in response to this action, will be considered before finalization of this rule.

After consideration of all relevant matter presented, the information and recommendations submitted by the Committee, and other information, it is found that the revision set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action clarifies requirements currently in effect for peanut handlers who are signatory to the agreement; (2) this action should be in effect as soon as possible, because the 1994 crop year begins July 1, 1994, and handlers need to know regulations applicable to handling 1994 crop peanuts; and (3) this action provides a 30-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 998.100 is amended by revising the section heading and adding a new sentence at the end of paragraph (e)(2) to read as follows:

§ 998.100 Incoming quality regulation—1994 and subsequent crop peanuts.

* * * * *

(e) * * *

(2) * * * Seed peanuts, produced under the auspices of the State agency, which contain up to 3 percent damaged kernels and are free from visible *Aspergillus flavus*, may be stored and shelled with Segregation I seed peanuts which are also produced under the auspices of the State agency.

* * * * *

3. Section 998.200 is amended by revising the section heading to read as follows:

§ 998.200 Outgoing quality regulation—1994 and subsequent crop peanuts.

4. Section 998.300 is amended by revising the section heading to read as follows:

§ 998.300 Terms and conditions of indemnification—1994 and subsequent crop peanuts.

Dated: July 11, 1994

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division

[FR Doc. 94–17241 Filed 7–15–94; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

Amending the NASA Research Grant Handbook To Address Education Grants, Training Grants, and Reduce the Threshold for Incremental Funding of Grants

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: NASA has revised its Research Grant Handbook to define education and training grants, permit the award of education grants, and decrease the threshold for incremental funding of grants. This regulation is issued as an interim rule to ensure immediate correction of deficiencies in the NASA Research Grant Handbook in these areas.

DATES: This Interim Rule is effective July 18, 1994. Comments are due on or before September 16, 1994.

ADDRESSES: Comments should be addressed to Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, telephone: (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

The Research Grant Handbook, 14 CFR Part 1260, NHB 5800.1C, does not currently apply to training grants, does not specifically address education grants, and does not adequately distinguish these types of grants from the research grants generally covered in the Handbook. Education grants are now covered by the Research Grant Handbook. They may be negotiated and awarded by all Agency grant offices. Training Grants remain outside the scope of the Research Grant Handbook. The award of training grants will continue to be accomplished by NASA Headquarters.

The Research Grant Handbook currently provides for incremental funding of grants exceeding $1 million in annual funding. This notice reduces that amount to $50,000.

Availability of NASA Grant Handbook

The NASA Research Grant Handbook, of which this regulation will become a part, is codified in 14 CFR Part 1260 and is available in its entirety on a subscription basis from the

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

Amending the NASA Research Grant Handbook To Address Education Grants, Training Grants, and Reduce the Threshold for Incremental Funding of Grants

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: NASA has revised its Research Grant Handbook to define education and training grants, permit the award of education grants, and decrease the threshold for incremental funding of grants. This regulation is issued as an interim rule to ensure immediate correction of deficiencies in the NASA Research Grant Handbook in these areas.

DATES: This Interim Rule is effective July 18, 1994. Comments are due on or before September 16, 1994.

ADDRESSES: Comments should be addressed to Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, telephone: (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

The Research Grant Handbook, 14 CFR Part 1260, NHB 5800.1C, does not currently apply to training grants, does not specifically address education grants, and does not adequately distinguish these types of grants from the research grants generally covered in the Handbook. Education grants are now covered by the Research Grant Handbook. They may be negotiated and awarded by all Agency grant offices. Training Grants remain outside the scope of the Research Grant Handbook. The award of training grants will continue to be accomplished by NASA Headquarters.

The Research Grant Handbook currently provides for incremental funding of grants exceeding $1 million in annual funding. This notice reduces that amount to $50,000.

Availability of NASA Grant Handbook

The NASA Research Grant Handbook, of which this regulation will become a part, is codified in 14 CFR Part 1260 and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783–3238. Cite GPO Subscription Stock Number 933–001–00000–8. It is not distributed to the public, whether in whole or in part, directly by NASA.

Impact

NASA certifies that this interim rule will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 14 CFR Part 1260

Grants.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 14 CFR Part 1260 is amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

Authority: Public Law 97–258, 31 U.S.C. 6301 et seq.

Subpart 1—General

2. Section 1260.102 is revised to read as follows:

§ 1260.102 Applicability.

This part 1260 establishes policies and procedures for all research and education grants and cooperative agreements awarded by the National Aeronautics and Space Administration (NASA) to educational institutions and nonprofit organizations. It does not cover training grants, facilities grants, grants for the Centers for the Commercial Development of Space, or contracts.

Subpart 2—Definitions

3. Section 1260.201 is amended by adding the following definitions in alphabetical order:

§ 1260.201 Definitions.

* * * * *

Education Grant. An agreement that provides funds to an educational institution or other nonprofit organization to accomplish a public purpose of support or stimulation authorized by Federal statute within one or more of the following areas: (1) Capturing student interest in science, mathematics, technology, or related fields; (2) improving student performance in science, mathematics, or technology; (3) enhancing the skill, knowledge, or ability of teachers or faculty members in science, mathematics or technology; (4) supporting national educational reform movements; (5) conducting pilot programs or research to increase participation and/or to enhance performance in science, mathematics, or technology education at all levels; and (6) developing instructional materials, (e.g., teacher guides, printed publications, computer software, and videotapes) or networked information services for education. No substantial involvement is expected between NASA and the grantee.

* * * * *

Training Grant. An agreement that provides funds to an educational institution or other nonprofit organization to accomplish a public purpose of support or stimulation authorized by Federal statute solely by providing scholarships, fellowships, or stipends to students or faculty. No substantial involvement is expected between NASA and the grantee.

* * * * *

Subpart 3—The Process

4. In section 1260.302, paragraph (d) is amended by revising the introductory text to read as follows:

§ 1260.302 Evaluation and selection.

* * * * *

(d) *Incremental funding.* Grants with anticipated annual funding exceeding $50,000 may be funded for less than the amount and period of performance stated in the proposal provided:

* * * * *

5. Section 1260.303 is amended by adding paragraphs (i) to read as follows:

§ 1260.303 Award procedures.

* * * * *

(i) *Education grants.* The grant officer shall include in education grants the special condition in § 1260.422(i).

Subpart 4—Provisions and Special Conditions

6. Section 1260.422 is amended by adding paragraph (i) to read as follows:

§ 1260.422 Special conditions.

* * * * *

(i) See § 1260.303(i).

Education Grant (July 1994)

This is an Education Grant. References in other provisions of this grant to "research," "research work," and "technical," shall be deemed to

refer to the efforts or results obtained under this grant.

[FR Doc. 94-17336 Filed 7-15-94; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8554]

RIN 1545-AS96

Clear Reflection of Income in the Case of Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to accounting for business hedging transactions. Elsewhere in the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing final regulations to clarify the character of gain or loss recognized from the sale or exchange of property that is part of a business hedge. The final regulations in this document are needed to provide guidance to taxpayers regarding when gain or loss from common business hedging transactions is taken into account for tax purposes.

DATES: These regulations are effective July 18, 1994.

For dates of applicability of these regulations, see § 1.446-4(g).

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (attn: CC:DOM:FI&P). Telephone (202) 622-3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1412. The estimated annual burden per respondent or recordkeeper varies from .1 to 10 hours, depending on individual circumstances, with an estimated average of .5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On October 20, 1993, the Service published in the **Federal Register** (58 FR 54077) a notice of proposed rulemaking (FI-54-93) relating to accounting for business hedging transactions. The notice also contained proposed amendments to regulations under sections 446 (relating to accounting for notional principal contracts) and 461 (relating to general rules on the taxable year of deduction).

On January 19, 1994, the Service held a public hearing on the proposed regulations. In addition, the Service received a number of written comments on the proposed regulations. The proposed regulations, with certain modifications and changes, are adopted as final regulations. The changes, and several of the suggestions that were not adopted, are discussed below.

Explanation of Provisions

Under the final regulations, a hedging transaction defined in § 1.1221-2(b) must be accounted for under the rules of § 1.446-4. This requirement applies regardless of whether the character of the gain or loss on the hedging transaction is determined under § 1.1221-2. Thus, for example, certain section 988 transactions that are described in § 1.1221-2(b) are accounted for under the rules of this section.

The regulations require taxpayers to clearly reflect income by reasonably matching the timing of the income, deduction, gain, or loss from a hedging transaction with the timing of income, deduction, gain, or loss from the hedged item or items. The regulations generally provide significant flexibility to taxpayers in determining the appropriate method of accounting for their different hedging transactions.

Some commentators suggested that any hedge accounting method employed by a taxpayer for financial statement purposes should be treated as satisfying the matching requirement. Because the financial accounting standards for hedges are in a state of development, however, the final regulations do not expressly sanction the use of financial accounting methods. Nevertheless, the Service and Treasury expect that the hedge accounting methods employed by most taxpayers for financial accounting purposes will satisfy the clear reflection standard in the final regulations.

The final regulations require taxpayers to maintain books and records containing a description of the accounting method used for each type of hedging transaction in sufficient detail to demonstrate how the clear reflection standard is met. For each hedging transaction, in addition to the identification required by the regulations under section 1221, the final regulations require whatever more specific identification is necessary to verify the application of the method of accounting used by the taxpayer for that transaction.

Various commentators requested that the regulations provide specific examples or other guidance on the type of additional information the Service expects taxpayers to provide. Because the identification that is needed depends upon the method of accounting being used and the types of items or risk being hedged, however, specific rules cannot be provided. For example, taxpayers using a mark-and-spread method of accounting for aggregate hedges will identify the spread period in their books and records, but taxpayers using other methods will not.

The proposed regulations provided no specific guidance on the appropriate method of accounting for global hedges and other hedges of aggregate risk. The preamble, however, solicited comments on this issue. Many commentators suggested that the regulations should provide for an aggregate hedge account, in which both the hedging transactions and the hedged items would be accounted for under a particular method. Methods suggested included a periodic mark-to-market method modeled on the mixed straddle accounts of section 1092(b) and realization-based methods with loss-deferral or loss-limitation provisions.

Because these regulations concern only accounting for hedging transactions, the Service and Treasury are concerned about expanding the regulations to allow mark-to-market accounting for hedged items in an aggregate hedge account. Many taxpayers are not currently using mark-to-market accounting, and general changes to their methods of accounting for hedged items would create issues that are beyond the scope of the regulations. Realization-based methods of accounting for aggregate hedge accounts would only be appropriate if coupled with loss-deferral or loss-limitation provisions, and the Service and Treasury are concerned about their authority to impose these restrictions. Accordingly, the regulations do not adopt the suggestion that an aggregate hedge account should be permitted.

The final regulations restate the general matching rule for hedges of aggregate risk and require taxpayers to match the timing of income, deduction, gain, or loss from the hedging transaction to the timing of the aggregate income, deduction, gain, or loss from the items being hedged. The regulations further provide that the "mark-and-spread" method currently employed by many taxpayers to account for hedges of aggregate risk for financial accounting purposes may provide an appropriate and reasonable match. Under the mark-and-spread method described in the regulations, the taxpayer periodically marks the hedging transactions to market and takes the gain or loss into account over the period for which the hedge is intended to reduce exposure to risk. Similar spreading applies to realized income, deduction, gain, and loss. Under this method, the period over which the hedging transaction is intended to reduce risk (and thus the period over which the gains and losses are taken into account) may change over time, depending upon a taxpayer's particular hedging strategies. The period used, however, must be reasonable and consistent with those strategies. It is anticipated that the identification and recordkeeping required by §§ 1.446-4(d) and 1.1221-2(e) will support the reasonableness of a taxpayer's spread period.

The mark-and-spread method is not the only method that clearly reflects income for hedges of aggregate risk. The final regulations also state that, if a taxpayer hedges its aggregate risk with a notional principal contract, taking into account gains and losses in accordance with § 1.446-3 of the regulations may clearly reflect income. Other methods of accounting also may be appropriate. Like the proposed regulations, the final regulations allow flexibility in attaining the reasonable matching required by the general rule.

The proposed regulations contained several provisions applicable to inventory hedging transactions. The general rule in the proposed regulations was that gains and losses on hedges of inventory purchases may be taken into account at the same time they would be taken into account if they were elements of inventory cost. Similarly, gains and losses on hedges of sales of inventory may be taken into account at the same time they would be if they were elements of gross sales proceeds.

In response to comments, the final regulations clarify the general rule for inventory hedges and extend it to hedges of aggregate inventory risk. A

adopt the suggestion that an aggregate hedge account should be permitted.

The final regulations restate the general matching rule for hedges of aggregate risk and require taxpayers to match the timing of income, deduction, gain, or loss from the hedging transaction to the timing of the aggregate income, deduction, gain, or loss from the items being hedged. The regulations further provide that the "mark-and-spread" method currently employed by many taxpayers to account for hedges of aggregate risk for financial accounting purposes may provide an appropriate and reasonable match. Under the mark-and-spread method described in the regulations, the taxpayer periodically marks the hedging transactions to market and takes the gain or loss into account over the period for which the hedge is intended to reduce exposure to risk. Similar spreading applies to realized income, deduction, gain, and loss. Under this method, the period over which the hedging transaction is intended to reduce risk (and thus the period over which the gains and losses are taken into account) may change over time, depending upon a taxpayer's particular hedging strategies. The period used, however, must be reasonable and consistent with those strategies. It is anticipated that the identification and recordkeeping required by §§ 1.446–4(d) and 1.1221–2(e) will support the reasonableness of a taxpayer's spread period.

The mark-and-spread method is not the only method that clearly reflects income for hedges of aggregate risk. The final regulations also state that, if a taxpayer hedges its aggregate risk with a notional principal contract, taking into account gains and losses in accordance with § 1.446–3 of the regulations may clearly reflect income. Other methods of accounting also may be appropriate. Like the proposed regulations, the final regulations allow flexibility in attaining the reasonable matching required by the general rule.

The proposed regulations contained several provisions applicable to inventory hedging transactions. The general rule in the proposed regulations was that gains and losses on hedges of inventory purchases may be taken into account at the same time they would be taken into account if they were elements of inventory cost. Similarly, gains and losses on hedges of sales of inventory may be taken into account at the same time they would be if they were elements of gross sales proceeds.

In response to comments, the final regulations clarify the general rule for inventory hedges and extend it to hedges of aggregate inventory risk. A hedge of an aggregate risk cannot be associated with particular purchase or sales transactions. Accordingly, the final regulations provide that taxpayers may account for hedges of purchases under the mark-and-spread method, with the modification that the gain or loss spread to particular periods is taken into account in the same period it would have been if it had been an increase or decrease to inventory cost incurred in the particular period. Similarly, a taxpayer may account for hedges of sales of inventory under a mark-and-spread approach, with the gain or loss that is spread to a particular period taken into account in the same period it would have been if it had been an increase or decrease to gross sales proceeds.

The final regulations clarify certain simplified methods of accounting for inventory hedges that were provided in the proposed regulations. First, the proposed regulations provided a special rule allowing taxpayers to take hedging gains and losses into account when realized, if the hedging transactions are closed when the hedged inventory items are sold and units are included in inventory at cost. Because the general rule has been clarified to encompass this approach, this provision is not separately stated in the final regulations.

Second, the final regulations continue the simplified method of taking into account gains and losses on hedges of both purchases and sales as though those gains and losses were elements of inventory cost. The regulations make it clear that it is realized gains and losses that are so taken into account. The regulations also continue to prohibit the use of this method by LIFO taxpayers. The Service and Treasury believe that significant distortions of income might result if gains and losses on *sales* hedges became buried in inventory cost layers.

Finally, the simplified method of marking to market inventory hedging transactions is clarified to allow the mark-to-market gain or loss to be taken into account immediately, instead of being treated as an element of cost or gross proceeds. The final regulations continue the proposed prohibition on the use of this method by LIFO taxpayers and by taxpayers employing a lower-of-cost-or-market method of accounting for inventory. Moreover, this method may be used only if items are held in inventory for short periods of time.

The final regulations clarify when the built-in gain or loss on the hedging transaction is taken into account where a taxpayer disposes of the hedged item but does not dispose of the hedging transaction. In this situation, the taxpayer must appropriately match the built-in gain or loss on the hedging transaction to the gain or loss on the disposed item. This matching may be met by marking to market the hedge on the date of disposition of the hedged item. If the taxpayer intends to dispose of the hedging transaction within a reasonable period, the taxpayer may match the realized gain or loss on the hedging transaction with the gain or loss on the disposed item. However, if the taxpayer intends to dispose of the hedging transaction within a reasonable period and the hedging transaction is still in place after that period, the taxpayer must match the gain or loss on the hedge at the end of the reasonable period with the gain or loss on the disposed item. For these purposes, a reasonable period is generally seven days.

The final regulations provide rules of accounting for recycled hedges (positions that previously hedged one item but that the taxpayer has re-identified as hedging another). The new rules are similar to those of the proposed regulations for treatment of hedges after disposition of the hedged asset or liability. A taxpayer recycling a hedge of a particular hedged item to serve as a hedge of another item must match the built-in gain or loss on the hedge at the time of the recycling to the income, deduction, gain, or loss on the original hedged item. Income, deduction, gain, or loss on the hedge after the recycling must be matched to the income, deduction, gain, or loss on the new hedged item, items, or aggregate risk. This matching may be accomplished by marking the hedge to market at the time of the recycling.

The preamble to the proposed regulations invited comments on the appropriate accounting for anticipatory hedges where the anticipated transaction is not consummated. Most commentators suggested that gains or losses be taken into account when realized. Others suggested that any gain or loss realized on the hedging transaction be taken into account at the same time it would have been taken into account if the anticipated transaction had been consummated and the timing of the gain or loss on the hedge had been matched with the timing of the gain or loss on the hedged item. Still others suggested an arbitrary spread period.

The first suggestion was adopted. The regulations provide that, if an anticipated transaction is not consummated, any income, deduction, gain, or loss on the hedging transaction is taken into account when realized. The regulations provide that a transaction is

consummated upon the occurrence, within a reasonable time period, of either the anticipated transaction or a different but similar transaction for which the hedge serves to reasonably reduce risk. The Service will view the "similar transaction" parameters broadly to prevent taxpayers from realizing hedging gains and losses selectively by abandoning a planned transaction and substituting a similar transaction.

Finally, the regulations grant consent for taxpayers to change their methods of accounting for hedging transactions. The change must be made for transactions entered into on or after October 1, 1994, and must be made for the taxable year containing that date. The change is made on a cut-off basis. Therefore, no items of income or deduction are omitted or duplicated, and no adjustment under section 481 is allowed or permitted. Because the consent does not extend to changes for a subsequent tax year, consent for such a change must be requested according to the procedures established under § 1.446–1(e).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.446–3 is amended as follows:

1. The first sentence of paragraph (h)(2) is revised.
2. The second sentence of the introductory language of paragraph (h)(5) is revised.
3. The revisions read as follows:

§ 1.446–3 Notional principal contracts.

* * * * *

(h) * * *

(2) *Taxable year of inclusion and deduction by original parties.* Except as otherwise provided (for example, in section 453, section 1092, or § 1.446–4), a party to a notional principal contract recognizes a termination payment in the year the contract is extinguished, assigned, or exchanged. * * *

* * * * *

(5) * * * The contracts in the examples are not hedging transactions as defined in § 1.1221–2(b), and all of the examples assume that no loss-deferral rules apply.

* * * * *

Par. 3. Section 1.446–4 is added to read as follows:

§ 1.446–4 Hedging transactions.

(a) *In general.* Except as provided in this paragraph (a), a hedging transaction as defined in § 1.1221–2(b) (whether or not the character of gain or loss from the transaction is determined under § 1.1221–2) must be accounted for under the rules of this section. To the extent that provisions of any other regulations governing the timing of income, deductions, gain, or loss are inconsistent with the rules of this section, the rules of this section control.

(1) *Trades or businesses excepted.* A taxpayer is not required to account for hedging transactions under the rules of this section for any trade or business in which the cash receipts and disbursements method of accounting is used or in which § 1.471–6 is used for inventory valuations if, for all prior taxable years ending on or after September 30, 1993, the taxpayer met the $5,000,000 gross receipts test of section 448(c) (or would have met that test if the taxpayer were a corporation or partnership). A taxpayer not required to use the rules of this section may nonetheless use a method of accounting that is consistent with these rules.

(2) *Coordination with other sections.* This section does not apply to—

(i) Any position to which section 475(a) applies;

(ii) Any section 988 hedging transaction if the transaction is integrated under § 1.988–5 or if other regulations issued under section 988(d) (or an advance ruling described in 1.988–5(e)) govern when gain or loss from the transaction is taken into account; or

(iii) The determination of the issuer's yield on an issue of tax-exempt bonds for purposes of the arbitrage restrictions to which § 1.148–4(h) applies.

(b) *Clear reflection of income.* The method of accounting used by a taxpayer for a hedging transaction must clearly reflect income. To clearly reflect income, the method used must reasonably match the timing of income, deduction, gain, or loss from the hedging transaction with the timing of income, deduction, gain, or loss from the item or items being hedged. Taking gains and losses into account in the period in which they are realized may clearly reflect income in the case of certain hedging transactions. For example, where a hedge and the item being hedged are disposed of in the same taxable year, taking realized gain or loss into account on both items in that taxable year may clearly reflect income. In the case of many hedging transactions, however, taking gains and losses into account as they are realized does not result in the matching required by this section.

(c) *Choice of method and consistency.* For any given type of hedging transaction, there may be more than one method of accounting that satisfies the clear reflection requirement of paragraph (b) of this section. A taxpayer is generally permitted to adopt a method of accounting for a particular type of hedging transaction that clearly reflects the taxpayer's income from that type of transaction. See paragraph (e) of this section for requirements and limitations on the taxpayer's choice of method. Different methods of accounting may be used for different types of hedging transactions and for transactions that hedge different types of items. Once a taxpayer adopts a method of accounting, however, that method must be applied consistently and can only be changed with the consent of the Commissioner, as provided by section 446(e) and the regulations and procedures thereunder.

(d) *Recordkeeping requirements*—(1) *In general.* The books and records maintained by a taxpayer must contain

a description of the accounting method used for each type of hedging transaction. The description of the method or methods used must be sufficient to show how the clear reflection requirement of paragraph (b) of this section is satisfied.

(2) *Additional identification.* In addition to the identification required by § 1.1221–2(e), the books and records maintained by a taxpayer must contain whatever more specific identification with respect to a transaction is necessary to verify the application of the method of accounting used by the taxpayer for the transaction. This additional identification may relate to the hedging transaction or to the item, items, or aggregate risk being hedged. The additional identification must be made at the time specified in § 1.1221–2(e)(2) and must be made on, and retained as part of, the taxpayer's books and records.

(3) *Transactions in which character of gain or loss is not determined under § 1.1221–2.* A section 988 transaction, as defined in section 988(c)(1), or a qualified fund, as defined in section 988(c)(1)(E)(iii), is subject to the identification and recordkeeping requirements of § 1.1221–2(e). See § 1.1221–2(a)(4)(i).

(e) *Requirements and limitations with respect to hedges of certain assets and liabilities.* In the case of certain hedging transactions, this paragraph (e) provides guidance in determining whether a taxpayer's method of accounting satisfies the clear reflection requirement of paragraph (b) of this section. Even if these rules are satisfied, however, the taxpayer's method, as actually applied to the taxpayer's hedging transactions, must clearly reflect income by meeting the matching requirement of paragraph (b) of this section.

(1) *Hedges of aggregate risk*—(i) *In general.* The method of accounting used for hedges of aggregate risk must comply with the matching requirements of paragraph (b) of this section. Even though a taxpayer may not be able to associate the hedging transaction with any particular item being hedged, the timing of income, deduction, gain, or loss from the hedging transaction must be matched with the timing of the aggregate income, deduction, gain, or loss from the items being hedged. For example, if a notional principal contract hedges a taxpayer's aggregate risk, taking into account income, deduction, gain, or loss under the provisions of § 1.446–3 may clearly reflect income. See paragraph (e)(5) of this section.

(ii) *Mark-and-spread method.* The following method may be appropriate for taking into account income,

a description of the accounting method used for each type of hedging transaction. The description of the method or methods used must be sufficient to show how the clear reflection requirement of paragraph (b) of this section is satisfied.

(2) *Additional identification.* In addition to the identification required by § 1.1221–2(e), the books and records maintained by a taxpayer must contain whatever more specific identification with respect to a transaction is necessary to verify the application of the method of accounting used by the taxpayer for the transaction. This additional identification may relate to the hedging transaction or to the item, items, or aggregate risk being hedged. The additional identification must be made at the time specified in § 1.1221–2(e)(2) and must be made on, and retained as part of, the taxpayer's books and records.

(3) *Transactions in which character of gain or loss is not determined under § 1.1221–2.* A section 988 transaction, as defined in section 988(c)(1), or a qualified fund, as defined in section 988(c)(1)(E)(iii), is subject to the identification and recordkeeping requirements of § 1.1221–2(e). See § 1.1221–2(a)(4)(i).

(e) *Requirements and limitations with respect to hedges of certain assets and liabilities.* In the case of certain hedging transactions, this paragraph (e) provides guidance in determining whether a taxpayer's method of accounting satisfies the clear reflection requirement of paragraph (b) of this section. Even if these rules are satisfied, however, the taxpayer's method, as actually applied to the taxpayer's hedging transactions, must clearly reflect income by meeting the matching requirement of paragraph (b) of this section.

(1) *Hedges of aggregate risk*—(i) *In general.* The method of accounting used for hedges of aggregate risk must comply with the matching requirements of paragraph (b) of this section. Even though a taxpayer may not be able to associate the hedging transaction with any particular item being hedged, the timing of income, deduction, gain, or loss from the hedging transaction must be matched with the timing of the aggregate income, deduction, gain, or loss from the items being hedged. For example, if a notional principal contract hedges a taxpayer's aggregate risk, taking into account income, deduction, gain, or loss under the provisions of § 1.446–3 may clearly reflect income. See paragraph (e)(5) of this section.

(ii) *Mark-and-spread method.* The following method may be appropriate for taking into account income, deduction, gain, or loss from hedges of aggregate risk:

(A) The hedging transactions are marked to market at regular intervals for which the taxpayer has the necessary data, but no less frequently than quarterly; and

(B) The income, deduction, gain, or loss attributable to the realization or periodic marking to market of hedging transactions is taken into account over the period for which the hedging transactions are intended to reduce risk. Although the period over which the hedging transactions are intended to reduce risk may change, the period must be reasonable and consistent with the taxpayer's hedging policies and strategies.

(2) *Hedges of items marked to market.* In the case of a transaction that hedges an item that is marked to market under the taxpayer's method of accounting, marking the hedge to market clearly reflects income.

(3) *Hedges of inventory*—(i) *In general.* If a hedging transaction hedges purchases of inventory, gain or loss on the hedging transaction may be taken into account in the same period that it would be taken into account if the gain or loss were treated as an element of the cost of inventory. Similarly, if a hedging transaction hedges sales of inventory, gain or loss on the hedging transaction may be taken into account in the same period that it would be taken into account if the gain or loss were treated as an element of sales proceeds. If a hedge is associated with a particular purchase or sales transaction, the gain or loss on the hedge may be taken into account when it would be taken into account if it were an element of cost incurred in, or sales proceeds from, that transaction. As with hedges of aggregate risk, however, a taxpayer may not be able to associate hedges of inventory purchases or sales with particular purchase or sales transactions. In order to match the timing of income, deduction, gain, or loss from the hedge with the timing of aggregate income, deduction, gain, or loss from the hedged purchases or sales, it may be appropriate for a taxpayer to account for its hedging transactions in the manner described in paragraph (e)(1)(ii) of this section, except that the gain or loss that is spread to each period is taken into account when it would be if it were an element of cost incurred (purchase hedges), or an element of proceeds from sales made (sales hedges), during that period.

(ii) *Alternative methods for certain inventory hedges.* In lieu of the method described in paragraph (e)(3)(i) of this section, other simpler, less precise methods may be used in appropriate cases where the clear reflection requirement of paragraph (b) of this section is satisfied. For example:

(A) Taking into account realized gains and losses on both hedges of inventory purchases and hedges of inventory sales when they would be taken into account if the gains and losses were elements of inventory cost in the period realized may clearly reflect income in some situations, but does not clearly reflect income for a taxpayer that uses the last-in, first-out method of accounting for the inventory; and

(B) Marking hedging transactions to market with resulting gain or loss taken into account immediately may clearly reflect income even though the inventory that is being hedged is not marked to market, but only if the inventory is not accounted for under either the last-in, first-out method or the lower-of-cost-or-market method and only if items are held in inventory for short periods of time.

(4) *Hedges of debt instruments.* Gain or loss from a transaction that hedges a debt instrument issued or to be issued by a taxpayer, or a debt instrument held or to be held by a taxpayer, must be accounted for by reference to the terms of the debt instrument and the period or periods to which the hedge relates. A hedge of an instrument that provides for interest to be paid at a fixed rate or a qualified floating rate, for example, generally is accounted for using constant yield principles. Thus, assuming that a fixed rate or qualified floating rate instrument remains outstanding, hedging gain or loss is taken into account in the same periods in which it would be taken into account if it adjusted the yield of the instrument over the term to which the hedge relates. For example, gain or loss realized on a transaction that hedged an anticipated fixed rate borrowing for its entire term is accounted for, solely for purposes of this section, as if it decreased or increased the issue price of the debt instrument.

(5) *Notional principal contracts.* The rules of § 1.446–3 govern the timing of income and deductions with respect to a notional principal contract unless, because the notional principal contract is part of a hedging transaction, the application of those rules would not result in the matching that is needed to satisfy the clear reflection requirement of paragraph (b) and, as applicable, (e)(4) of this section. For example, if a notional principal contract hedges a debt instrument, the method of accounting for periodic payments described in § 1.446–3(e) and the methods of accounting for nonperiodic

payments described in § 1.446–3(f)(2)(iii) and (v) generally clearly reflect the taxpayer's income. The methods described in § 1.446–3(f)(2)(ii) and (iv), however, generally do not clearly reflect the taxpayer's income in that situation.

(6) *Disposition of hedged asset or liability.* If a taxpayer hedges an item and disposes of, or terminates its interest in, the item but does not dispose of or terminate the hedging transaction, the taxpayer must appropriately match the built-in gain or loss on the hedging transaction to the gain or loss on the disposed item. To meet this requirement, the taxpayer may mark the hedge to market on the date it disposes of the hedged item. If the taxpayer intends to dispose of the hedging transaction within a reasonable period, however, it may be appropriate to match the realized gain or loss on the hedging transaction with the gain or loss on the disposed item. If the taxpayer intends to dispose of the hedging transaction within a reasonable period and the hedging transaction is not actually disposed of within that period, the taxpayer must match the gain or loss on the hedge at the end of the reasonable period with the gain or loss on the disposed item. For purposes of this paragraph (e)(6), a reasonable period is generally 7 days.

(7) *Recycled hedges.* If a taxpayer enters into a hedging transaction by recycling a hedge of a particular hedged item to serve as a hedge of a different item, as described in § 1.1221–2(c)(2), the taxpayer must match the built-in gain or loss at the time of the recycling to the gain or loss on the original hedged item, items, or aggregate risk. Income, deduction, gain, or loss attributable to the period after the recycling must be matched to the new hedged item, items, or aggregate risk under the principles of paragraph (b) of this section.

(8) *Unfulfilled anticipatory transactions*—(i) *In general.* If a taxpayer enters into a hedging transaction to reduce risk with respect to an anticipated asset acquisition, debt issuance, or obligation, and the anticipated transaction is not consummated, any income, deduction, gain, or loss from the hedging transaction is taken into account when realized.

(ii) *Consummation of anticipated transaction.* A taxpayer consummates a transaction for purposes of paragraph (e)(8)(i) of this section upon the occurrence (within a reasonable interval around the expected time of the anticipated transaction) of either the anticipated transaction or a different but similar transaction for which the hedge serves to reasonably reduce risk.

(9) *Hedging by members of a consolidated group.* [Reserved.]

(f) *Type or character of income and deduction.* The rules of this section govern the timing of income, deduction, gain, or loss on hedging transactions but do not affect the type or character of income, deduction, gain, or loss produced by the transaction. Thus, for example, the rules of paragraph (e)(3) of this section do not affect the computation of cost of goods sold or sales proceeds for a taxpayer that hedges inventory purchases or sales. Similarly, the rules of paragraph (e)(4) of this section do not increase or decrease the interest income or expense of a taxpayer that hedges a debt instrument or a liability.

(g) *Effective date.* This section applies to hedging transactions entered into on or after October 1, 1994.

(h) *Consent to change methods of accounting.* The Commissioner grants consent for a taxpayer to change its methods of accounting for transactions that are entered into on or after October 1, 1994, and that are described in paragraph (a) of this section. This consent is granted only for changes for the taxable year containing October 1, 1994. The taxpayer must describe its new methods of accounting in a statement that is included in its Federal income tax return for that taxable year.

Par. 4. In § 1.461–1, paragraph (a)(2)(iii)(B) is revised to read as follows:

§ 1.461–1 General rules for taxable year of deduction.

(a) * * *

(2) * * *

(iii) * * *

(B) If the liability of a taxpayer is subject to section 170 (charitable contributions), section 192 (black lung benefit trusts), section 194A (employer liability trusts), section 468 (mining and solid waste disposal reclamation and closing costs), or section 468A (certain nuclear decommissioning costs), the liability is taken into account as determined under that section and not under section 461 or the regulations thereunder. For special rules relating to certain loss deductions, see sections 165(e), 165(i), and 165(l), relating to theft losses, disaster losses, and losses from certain deposits in qualified financial institutions.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.446–4(d)	1545–1412
. . . . .	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved:

Samuel Y. Sessions,
Acting Assistant Secretary of Treasury.

[FR Doc. 94–16868 Filed 7–13–94; 9:10 am]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 602

[TD 8555]

RIN 1545–AR73

Hedging Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations clarifying the character of gain or loss from business hedges. In general, the regulations treat gain or loss on most hedging transactions as ordinary rather than capital. The regulations are needed to provide guidance to businesses entering into hedging transactions and to serve as a basis for resolving pending cases involving gains and losses from hedging.

DATES: These regulations are effective July 18, 1994, except that the amendments relating to the removal of § 1.1221–2T are effective October 1, 1994.

For dates of applicability of these regulations, see the discussion in the Dates of Applicability paragraph in the SUPPLEMENTARY INFORMATION portion of the preamble.

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC 20224 (Attn: CC:DOM:FI&P). Telephone 202–622–3920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1403. The estimated annual burden per recordkeeper varies from .1 to 10 hours, depending on individual circumstances, with an estimated average of .9 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 1221 of the Internal Revenue Code (Code) (relating to the definition of capital asset). The provisions affected relate to the determination of the character of gain or loss from hedging transactions.

On October 20, 1993, temporary regulations (TD 8493) providing that gain or loss on most common business hedges is ordinary rather than capital were published in the **Federal Register** (58 FR 54037). A notice of proposed rulemaking (FI–46–93) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (58 FR 54075). The regulations were intended to resolve questions that had arisen with respect to the tax treatment of business hedging following the decision of the United States Supreme Court in *Arkansas Best Corp.* v. *Commissioner*, 485 U.S. 212 (1988).

Many comments were received on the proposed regulations, and a public hearing was held on January 19, 1994. Most commentators supported the general approach of the proposed regulations, but a number suggested specific revisions to the proposed rules or the addition of rules to resolve remaining issues.

Explanation of Provisions

Paragraph (a) of § 1.1221–2 provides basic rules for the treatment of hedging transactions. Only minor, clarifying changes have been made to the proposed regulations.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1403. The estimated annual burden per recordkeeper varies from .1 to 10 hours, depending on individual circumstances, with an estimated average of .9 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 1221 of the Internal Revenue Code (Code) (relating to the definition of capital asset). The provisions affected relate to the determination of the character of gain or loss from hedging transactions.

On October 20, 1993, temporary regulations (TD 8493) providing that gain or loss on most common business hedges is ordinary rather than capital were published in the **Federal Register** (58 FR 54037). A notice of proposed rulemaking (FI–46–93) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (58 FR 54075). The regulations were intended to resolve questions that had arisen with respect to the tax treatment of business hedging following the decision of the United States Supreme Court in *Arkansas Best Corp.* v. *Commissioner*, 485 U.S. 212 (1988).

Many comments were received on the proposed regulations, and a public hearing was held on January 19, 1994. Most commentators supported the general approach of the proposed regulations, but a number suggested specific revisions to the proposed rules or the addition of rules to resolve remaining issues.

Explanation of Provisions

Paragraph (a) of § 1.1221–2 provides basic rules for the treatment of hedging transactions. Only minor, clarifying changes have been made to the proposed regulations.

Paragraph (a)(1) provides that property that is part of a hedging transaction, as defined in the regulations, is not a capital asset. Paragraph (a)(2) provides a similar rule for short sales and options. Where a short sale or option is part of a hedging transaction, as defined, any gain or loss on the short sale or option is ordinary. Final regulations under sections 1233 and 1234 provide that § 1.1221–2 governs the character of gain or loss on short sales and options that are part of hedging transactions.

Under paragraph (a)(3), if a transaction falls outside the regulations, gain or loss from the transaction is not made ordinary by the fact that property is a surrogate for a non-capital asset, that the transaction serves as insurance against a business risk, that the transaction serves a hedging function, or that the transaction serves a similar function or purpose.

The provisions of this section generally apply to determine the character of gain or loss from transactions that also are subject to various international provisions of the Code. Paragraph (a)(4), however, provides that section 988 transactions are excluded from the character provisions of these regulations because gain or loss on those transactions is ordinary under section 988(a)(1). The regulations do apply to transactions that predate the effective date of section 988. Paragraph (a)(4) also provides that the definition of a hedging transaction under § 1.1221–2(b) does not apply for purposes of the hedging exceptions to the subpart F rules of section 954(c) and certain hedging rules in the interest allocation regulations under section 864(e). The IRS and Treasury are considering the possibility of using the definition of hedging transaction and other provisions of these regulations for purposes of various international tax provisions, except where a modification of the provisions is necessary to carry out the purposes of those international provisions. Comments on this subject are welcomed.

In defining the term hedging transaction, paragraph (b) of § 1.1221–2 retains the rule of the proposed regulations and adopts the concept of hedging in section 1256(e)(2)(A) of the Code. Under this rule, a hedging transaction generally is a transaction that a taxpayer enters into in the normal course of its business primarily to reduce the risk of interest rate or price changes or currency fluctuations.

A number of commentators suggested that the IRS abandon the rule of the proposed regulations and adopt a definition of hedging that looks to risk management rather than risk reduction. This comment was not adopted because the IRS and Treasury believe that the definition in section 1256 represents the best indication of congressional intent with respect to business hedges. Although the risk reduction standard has been retained, the final regulations provide rules of application designed to ensure that the definition of hedging transaction is applied reasonably to include most common types of hedging transactions.

Paragraph (c)(1) deals with the meaning of risk reduction. To enter into a hedging transaction, the taxpayer must have risk when all of its operations are considered—that is, there must be risk on a "macro" basis. Nonetheless, a hedge of a single asset or liability, or pool of assets or liabilities, will be respected if the hedge reduces the risk attributable to the item or items being hedged and if the hedge is reasonably calculated to reduce the overall risk of the taxpayer's operations. In addition, if a taxpayer hedges a particular asset or liability, or a pool of assets or liabilities, and the hedge is undertaken as part of a program to reduce the overall risk of the taxpayer's operations, the taxpayer need not show that the hedge reduces its overall risk.

Paragraph (c)(1) also recognizes that fixed to floating hedges and certain types of written options may be risk reducing and may be used in hedging transactions. For example, a covered call with respect to assets held or a written put option with respect to assets to be acquired may reduce risk.

In addition, paragraph (c)(1) provides that a hedging transaction includes a transaction that is entered into primarily to reverse or counteract a hedging transaction. This rule recognizes that some transactions are used to eliminate some or all of the risk reduction accomplished through a hedging transaction. Although the transactions are not risk reducing if viewed independently, they are considered to be part of the larger hedging transaction.

Paragraph (c)(1) further provides that a taxpayer may hedge any part or all of its risk for any part of the period during which it has risk. The regulations also provide that the frequent entering into and termination of hedging positions is not relevant to whether transactions are hedging transactions.

Finally, paragraph (c)(1) provides that a transaction that is not entered into primarily to reduce risk is not a hedging transaction. For example, the so-called "store-on-the-board" transaction, in which a taxpayer disposes of its production and enters into a long futures or forward contract, is not a

hedging transaction because the long position does not reduce risk. Moreover, gain or loss on the contract is not made ordinary on the grounds that it is a surrogate for inventory.

The IRS and Treasury understand that there are situations in which a taxpayer engages in a store-on-the-board transaction as a hedge of an expected payment under an agricultural price support program. In this situation, a long futures or forward contract may qualify as a hedging transaction with respect to the expected payment.

Paragraph (c)(2) provides that a hedging transaction may be entered into by using a position that was a hedge of one asset or liability to hedge another asset or liability.

Paragraph (c)(3) provides that the acquisition of certain assets, such as investments, may not be a hedging transaction. Even though these assets may reduce risk, they typically are not acquired primarily to reduce risk. For example, a taxpayer's interest rate risk from a floating rate borrowing may be reduced by the purchase of debt instruments that bear a comparable floating rate. The acquisition of the debt instruments, however, is not made primarily to reduce risk and, therefore, is not a hedging transaction. Similarly, borrowings generally are not made primarily to reduce risk.

Paragraph (c)(4) defines the normal course requirement of paragraph (b) to include any transaction entered into in furtherance of a taxpayer's trade or business. Thus, for example, a liability hedge meets this requirement regardless of whether the liability is undertaken to fund current operations, an acquisition, or an expansion of a taxpayer's business. This definition does not apply to other uses of the term "normal course" in the Code or regulations.

Paragraph (c)(5) retains the rule in the proposed regulations that a hedge of property or of an obligation is a hedging transaction only if a sale or exchange of the property, or performance or termination of the obligation, could not produce capital gain or loss. In response to the many comments received, however, a special rule has been added for noninventory supplies. Under this rule, if a taxpayer sells only a negligible amount of a noninventory supply, then, only for purposes of determining whether a hedge of the purchase of that noninventory supply is a hedging transaction, the noninventory supply is treated as ordinary property. In this case, the Service and Treasury believe that the theoretical possibility of ordinary loss on a hedge and capital gain on the sale of supplies should not prevent the transactions from qualifying as hedging transactions. The Service intends to issue guidance on the negligible amount standard. The comments received indicate that most taxpayers sell none of their supplies or a very small amount. Further comments are requested.

For prior years, a transition rule provides a substantially more generous standard for noninventory supplies. If, in each prior year that is open for assessment on September 1, 1994, a taxpayer sold no more than 15 percent of the greater of the total amount of a supply held at the beginning of the year or the total amount of the supply acquired in that year and meets certain other requirements, hedges of purchases of that supply are hedging transactions.

The final regulations do not provide a negligible sales rule for hedges of section 1231 assets. Sales of these assets are less predictable than sales of supplies and may occur many years after the transaction that hedges their purchase. The IRS and Treasury believe that it is inappropriate to provide ordinary treatment for the hedges when it is not known whether the assets will produce capital gains. Nonetheless, the regulations provide a special transition rule applicable to certain hedges of section 1231 assets entered into in prior years.

Paragraph (c)(6) provides that the status of liability hedges as hedging transactions is determined without regard to the use that is made of the proceeds of a borrowing. The IRS and Treasury believe that a liability hedge should not fail to qualify as a hedging transaction because the proceeds of the borrowing being hedged are used to purchase a capital asset.

Paragraph (c)(7) retains the rule in the proposed regulations that, in the case of hedges of aggregate risk, all but a de minimis amount of the risk being hedged must be attributable to ordinary property, ordinary obligations, and borrowings.

Although the purpose of the rules in paragraph (c) is to ensure that the definition of hedging transaction will be interpreted reasonably to cover most common business hedges, not all hedges are intended to be covered. For example, the regulations do not apply where a taxpayer hedges a dividend stream, the overall profitability of a business unit, or other business risks that do not relate directly to interest rate or price changes or currency fluctuations. Moreover, the regulations do not provide ordinary treatment for gain or loss from the disposition of stock where, for example, the stock is acquired to protect the goodwill or business reputation of the acquirer or to ensure the availability of goods.

The status of so-called "gap" hedges is not separately addressed in paragraph (c). Insurance companies, for example, sometimes hedge the "gap" between their liabilities and the assets that fund them. Under the proposed regulations, a hedge of those assets does not qualify as a hedging transaction if the assets are capital. Commentators, therefore, suggested that the final regulations provide a rule that deems all gap hedges to be hedges of the liabilities rather than of the assets. The IRS and Treasury, however, are concerned that, where this type of hedge is more closely associated with the assets than the liabilities, there is a significant possibility of mismatch if the hedges are given ordinary treatment and the assets can be sold for capital gains. Thus, the final regulations do not include the suggested rule.

Whether a gap hedge qualifies as a liability hedge is a question of fact and depends on whether it is more closely associated with the liabilities than with the assets. For example, a contract to purchase assets is generally not a liability hedge even if the assets are being purchased to fund the liability. Other gap hedges may be appropriately treated as liability hedges and, therefore, may qualify as hedging transactions.

The IRS and Treasury understand that the most significant consequence of the failure of gap hedges to qualify as hedging transactions may be that they are then subject to the straddle rules of section 1092. Comments are requested on whether it would be appropriate to exempt these transactions from section 1092 and apply the hedge accounting rules of § 1.446–4 even though the transactions are not hedging transactions and their character is not determined under § 1.1221–2. The IRS and Treasury also note that there may be different considerations for determining whether income or loss from a gap hedge should be treated as an interest equivalent for purposes of international tax provisions, such as section 864(e). Comments are also requested on this point.

Paragraph (d) is reserved in the final regulations to allow development of rules applicable to hedging by members of a consolidated group. Proposed regulations on this subject are published in the Proposed Rules section of this issue of the **Federal Register**.

Paragraph (e)(1) retains the requirement of the proposed regulations that hedging transactions must be identified before the close of the day on which they are entered into. Paragraph (e)(2), however, relaxes the rule of the proposed regulations and requires that the item, items, or aggregate risk being hedged be identified substantially contemporaneously with entering into the hedging transaction. The identification must be made no more than 35 days after entering into the hedging transaction. This time period should make it possible for taxpayers to identify the hedged item, items, or aggregate risk at the time they prepare monthly reports for nontax purposes.

Some commentators suggested eliminating entirely the requirement of identifying the item being hedged. The Service and Treasury believe, however, that this identification is needed to establish that the definition of hedging transaction is satisfied. Moreover, because special identification rules have been provided for hedges of aggregate risk and certain inventory hedges, the requirement of identifying the items being hedged should not be overly burdensome.

A transition rule is provided to extend the time period for identifying a transaction that is a hedging transaction under the final regulations and that the taxpayer reasonably treated as other than a hedging transaction under the proposed regulations. If such a transaction was entered into before October 1, 1994, and remains in existence on that date, the identification and recordkeeping requirements of paragraph (e) apply, except that the identification of both the hedging transaction and the hedged item are timely if made before the close of business on October 1, 1994. However, if the transaction was entered into before October 1, 1994, and does not remain in existence on that date, the identification and recordkeeping requirements of paragraph (e) do not apply.

Paragraph (e)(3) contains a series of special rules for identifying certain types of hedging transactions. In the case of inventory, the identification must specify the type or class of inventory to which the hedge relates. If particular inventory purchases or sales transactions are being hedged, the taxpayer must also identify the expected dates and the amounts to be acquired or sold. In the case of hedges of aggregate risk, the identification requirement is satisfied if a taxpayer's records contain a description of the hedging program and if the taxpayer establishes a system under which transactions are identified as being entered into as part of that program. The intent underlying this rule is to provide verifiable information with respect to the item being hedged without requiring the taxpayer to identify individually the many items

the item, items, or aggregate risk being hedged be identified substantially contemporaneously with entering into the hedging transaction. The identification must be made no more than 35 days after entering into the hedging transaction. This time period should make it possible for taxpayers to identify the hedged item, items, or aggregate risk at the time they prepare monthly reports for nontax purposes.

Some commentators suggested eliminating entirely the requirpment of identifying the item being hedged. The Service and Treasury believe, however, that this identification is needed to establish that the definition of hedging transaction is satisfied. Moreover, because special identification rules have been provided for hedges of aggregate risk and certain inventory hedges, the requirement of identifying the items being hedged should not be overly burdensome.

A transition rule is provided to extend the time period for identifying a transaction that is a hedging transaction under the final regulations and that the taxpayer reasonably treated as other than a hedging transaction under the proposed regulations. If such a transaction was entered into before October 1, 1994, and remains in existence on that date, the identification and recordkeeping requirements of paragraph (e) apply, except that the identification of both the hedging transaction and the hedged item are timely if made before the close of business on October 1, 1994. However, if the transaction was entered into before October 1, 1994, and does not remain in existence on that date, the identification and recordkeeping requirements of paragraph (e) do not apply.

Paragraph (e)(3) contains a series of special rules for identifying certain types of hedging transactions. In the case of inventory, the identification must specify the type or class of inventory to which the hedge relates. If particular inventory purchases or sales transactions are being hedged, the taxpayer must also identify the expected dates and the amounts to be acquired or sold. In the case of hedges of aggregate risk, the identification requirement is satisfied if a taxpayer's records contain a description of the hedging program and if the taxpayer establishes a system under which transactions are identified as being entered into as part of that program. The intent underlying this rule is to provide verifiable information with respect to the item being hedged without requiring the taxpayer to identify individually the many items that give rise to the aggregate risk being hedged.

Paragraph (e)(4) generally retains and expands the rules of the proposed regulations with respect to how an identification is made. It must be clear that the identification is being made for tax purposes. In lieu of separately identifying each transaction, however, a taxpayer may establish a system in which identification is indicated by the type of transaction or the manner in which the transaction is consummated or recorded.

Paragraph (e)(5) is reserved to deal with the required identification where the taxpayer is a member of a consolidated group, and paragraph (e)(6) provides that an identification for purposes of section 1256(e)(2)(C) is also an identification for purposes of § 1.1221–2(e)(1).

Paragraph (f) deals with the effect of identification and non-identification and provides rules that generally are unchanged from the proposed regulations. The only significant change is the addition of a rule that allows correction of an inadvertent identification in some circumstances. If the correction is allowed, the transaction is not subject to the ordinary-gain, capital-loss rule that generally applies to transactions that are incorrectly identified as hedging transactions.

Final regulations under section 1256 retain the rules of the proposed regulations that coordinate the identification of hedges for purposes of section 1256(e). In addition, the regulations provide that, if a taxpayer inadvertently identifies a transaction as a hedging transaction and corrects it in accordance with paragraph (f)(1)(ii) of § 1.1221–2, the transaction is treated as if it were not identified as a hedging transaction for purposes of section 1256(e)(2)(C). Thus, section 1256(f)(1) does not impose ordinary-gain, capital-loss treatment on the transaction.

Dates of Applicability

Except for the identification rules of paragraph (e), which apply to transactions that were entered into on or after January 1, 1994, or were entered into before that date and remained in existence on March 31, 1994, these final regulations generally apply to all open taxable years. Taxpayers may, however, rely on any paragraph in § 1.1221–2T (26 CFR part 1 revised as of April 1, 1994), for transactions entered into prior to October 1, 1994, provided that the taxpayer applies the paragraph reasonably and consistently.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. Effective July 18, 1884 the authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.1221–2 also issued under 26 U.S.C. 6001. * * *

Par. 2. Effective October 1, 1994, the authority citation for part 1 is further amended by removing the entry for § 1.1221–2T.

Par. 3. Effective July 18, 1994, § 1.1221–2 is added to read as follows:

§ 1.1221–2 Hedging transactions.

(a) *Treatment of hedging transactions*—(1) *In general.* This section governs the treatment of hedging transactions under section 1221. Except as provided in paragraph (f)(2) of this section (and notwithstanding the provisions of § 1.1221–1(a)), the term capital asset does not include property

that is part of a hedging transaction (as defined in paragraph (b) of this section).

(2) *Short sales and options.* This section also governs the character of gain or loss from a short sale or option that is part of a hedging transaction. See §§ 1.1233–2 and 1.1234–4. Except as provided in paragraph (f)(2) of this section, gain or loss on a short sale or option that is part of a hedging transaction (as defined in paragraph (b) of this section) is ordinary income or loss.

(3) *Exclusivity.* If a transaction is not a hedging transaction as defined in paragraph (b) of this section, gain or loss from the transaction is not made ordinary on the grounds that property involved in the transaction is a surrogate for a noncapital asset, that the transaction serves as insurance against a business risk, that the transaction serves a hedging function, or that the transaction serves a similar function or purpose.

(4) *Coordination with other sections*—(i) *Section 988.* This section does not apply to determine the character of gain or loss realized on a section 988 transaction as defined in section 988(c)(1) or realized with respect to a qualified fund as defined in section 988(c)(1)(E)(iii). This section does apply, however, to transactions or payments that would be subject to section 988 but for the date that the transactions were entered into or the date that the payments were made.

(ii) *Sections 864(e) and 954(c).* Except as otherwise provided in regulations issued pursuant to sections 864(e) and 954(c), the definition of hedging transaction in paragraph (b) of this section does not apply for purposes of section 864(e) and 954(c).

(b) *Hedging transaction defined.* A hedging transaction is a transaction that a taxpayer enters into in the normal course of the taxpayer's trade or business primarily—

(1) To reduce risk of price changes or currency fluctuations with respect to ordinary property (as defined in paragraph (c)(5) of this section) that is held or to be held by the taxpayer; or

(2) To reduce risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by the taxpayer.

(c) *Rules of application.* The rules of this paragraph (c) apply for purposes of the definition of the term hedging transaction in paragraph (b) of this section. These rules must be interpreted reasonably and consistently with the purposes of this section. Where no specific rules of application control, the definition of hedging transaction must be interpreted reasonably and consistently with the purposes of this section.

(1) *Reducing risk*—(i) *Transactions that reduce risk.* Whether a transaction reduces a taxpayer's risk is determined based on all of the facts and circumstances surrounding the taxpayer's business and the transaction. In general, a taxpayer's hedging strategies and policies as reflected in the taxpayer's minutes or other records are evidence of whether particular transactions reduce the taxpayer's risk.

(ii) *Micro and macro hedges*—(A) *In general.* A taxpayer has risk of a particular type only if it is at risk when all of its operations are considered. Nonetheless, a hedge of a particular asset or liability generally will be respected as reducing risk if it reduces the risk attributable to the asset or liability and if it is reasonably expected to reduce the overall risk of the taxpayer's operations. If a taxpayer hedges particular assets or liabilities, or groups of assets or liabilities, and the hedges are undertaken as part of a program that, as a whole, is reasonably expected to reduce the overall risk of the taxpayer's operations, the taxpayer generally does not have to demonstrate that each hedge that was entered into pursuant to the program reduces its overall risk.

(B) *Fixed-to-floating hedges.* Under the principles of paragraph (c)(1)(ii)(A) of this section, a transaction that economically converts an interest rate or price from a fixed price or rate to a floating price or rate may reduce risk. For example, if a taxpayer's income varies with interest rates, the taxpayer may be at risk if it has a fixed rate liability. Similarly, a taxpayer with a fixed cost for its inventory may be at risk if the price at which the inventory can be sold varies with a particular factor. Thus, a transaction that converts an interest rate or price from fixed to floating may be a hedging transaction.

(iii) *Written options.* A written option may reduce risk. For example, in appropriate circumstances, a written call option with respect to assets held by a taxpayer or a written put option with respect to assets to be acquired by a taxpayer may be a hedging transaction. See also paragraph (c)(1)(v) of this section.

(iv) *Extent of risk reduction.* A taxpayer may hedge all or any portion of its risk for all or any part of the period during which it is exposed to the risk.

(v) *Transactions that counteract hedging transactions.* If a transaction is entered into primarily to counteract all or any part of the risk reduction effected by one or more hedging transactions, the transaction is a hedging transaction. For example, if a written option is used to reduce or eliminate the risk reduction obtained from another position such as a purchased option, then it may be part of a hedging transaction.

(vi) *Number of transactions.* The fact that a taxpayer frequently enters into and terminates positions (even if done on a daily or more frequent basis) is not relevant to whether these transactions are hedging transactions. Thus, for example, a taxpayer hedging the risk associated with an asset or liability may frequently establish and terminate positions that hedge that risk, depending on the extent the taxpayer wishes to be hedged. Similarly, if a taxpayer maintains its level of risk exposure by entering into and terminating a large number of transactions in a single day, its transactions may nonetheless qualify as hedging transactions.

(vii) *Transactions that do not reduce risk.* A transaction that is not entered into to reduce a taxpayer's risk is not a hedging transaction. For example, assume that a taxpayer produces a commodity for sale, sells the commodity, and enters into a long futures or forward contract in that commodity in the hope that the price will increase. Because the long position does not reduce risk, the transaction is not a hedging transaction. Moreover, gain or loss on the contract is not made ordinary on the grounds that it is a surrogate for inventory. See paragraph (a)(3) of this section.

(2) *Entering into a hedging transaction.* A taxpayer may enter into a hedging transaction by using a position that was a hedge of one asset or liability to hedge another asset or liability (recycling).

(3) *No investments as hedging transactions.* If an asset (such as an investment) is not acquired primarily to reduce risk, the purchase or sale of that asset is not a hedging transaction even if the terms of the asset limit or reduce the taxpayer's risk with respect to other assets or liabilities. For example, a taxpayer's interest rate risk from a floating rate borrowing may be reduced by the purchase of debt instruments that bear a comparable floating rate. The acquisition of the debt instruments, however, is not a hedging transaction because the transaction is not entered into primarily to reduce the taxpayer's risk. Similarly, borrowings generally are not made primarily to reduce risk.

(4) *Normal course.* Solely for purposes of paragraph (b) of this section, if a transaction is entered into in furtherance of a taxpayer's trade or business, the transaction is entered into in the normal course of the taxpayer's trade or business. This rule applies even if the risk to be reduced relates to the expansion of an existing business or the acquisition of a new trade or business.

(5) *Ordinary property and obligations*—(i) *In general.* Except as provided in paragraph (g)(3) of this section (which contains transition rules), property is ordinary property to a taxpayer only if a sale or exchange of the property by the taxpayer could not produce capital gain or loss regardless of the taxpayer's holding period when the sale or exchange occurs. Thus, for example, property used in a trade or business within the meaning of section 1231(b) (determined without regard to the holding period specified in that section) is not ordinary property. An obligation is an ordinary obligation if performance or termination of the obligation by the taxpayer could not produce capital gain or loss. For purposes of the preceding sentence, termination has the same meaning as in section 1234A.

(ii) *Hedges of noninventory supplies.* Notwithstanding paragraph (c)(5)(i) of this section, if a taxpayer sells only a negligible amount of a noninventory supply, then, only for purposes of determining whether a transaction to hedge the purchase of that noninventory supply is a hedging transaction, the supply is treated as ordinary property. A noninventory supply is a supply that a taxpayer purchases for consumption in its trade or business and that is not an asset described in sections 1221(1) through (5).

(6) *Borrowings.* Whether hedges of a taxpayer's debt issuances (borrowings) are hedging transactions is determined without regard to the use of the proceeds of the borrowing.

(7) *Hedging an aggregate risk.* The term hedging transaction includes a transaction that reduces an aggregate risk of interest rate changes, price changes, and/or currency fluctuations only if all of the risk, or all but a de minimis amount of the risk, is with respect to ordinary property, ordinary obligations, and borrowings.

(d) *Hedging by members of a consolidated group.* [Reserved].

(e) *Identification and recordkeeping*—(1) *Same-day identification of hedging transactions.* A taxpayer that enters into a hedging transaction (including recycling an existing hedge) must identify it as a hedging transaction. This identification must be made before the close of the day on which the taxpayer enters into the transaction.

(2) *Substantially contemporaneous identification of hedged item*—(i)

business, the transaction is entered into in the normal course of the taxpayer's trade or business. This rule applies even if the risk to be reduced relates to the expansion of an existing business or the acquisition of a new trade or business.

(5) *Ordinary property and obligations*—(i) *In general.* Except as provided in paragraph (g)(3) of this section (which contains transition rules), property is ordinary property to a taxpayer only if a sale or exchange of the property by the taxpayer could not produce capital gain or loss regardless of the taxpayer's holding period when the sale or exchange occurs. Thus, for example, property used in a trade or business within the meaning of section 1231(b) (determined without regard to the holding period specified in that section) is not ordinary property. An obligation is an ordinary obligation if performance or termination of the obligation by the taxpayer could not produce capital gain or loss. For purposes of the preceding sentence, termination has the same meaning as in section 1234A.

(ii) *Hedges of noninventory supplies.* Notwithstanding paragraph (c)(5)(i) of this section, if a taxpayer sells only a negligible amount of a noninventory supply, then, only for purposes of determining whether a transaction to hedge the purchase of that noninventory supply is a hedging transaction, the supply is treated as ordinary property. A noninventory supply is a supply that a taxpayer purchases for consumption in its trade or business and that is not an asset described in sections 1221(1) through (5).

(6) *Borrowings.* Whether hedges of a taxpayer's debt issuances (borrowings) are hedging transactions is determined without regard to the use of the proceeds of the borrowing.

(7) *Hedging an aggregate risk.* The term hedging transaction includes a transaction that reduces an aggregate risk of interest rate changes, price changes, and/or currency fluctuations only if all of the risk, or all but a de minimis amount of the risk, is with respect to ordinary property, ordinary obligations, and borrowings.

(d) *Hedging by members of a consolidated group.* [Reserved].

(e) *Identification and recordkeeping*—(1) *Same-day identification of hedging transactions.* A taxpayer that enters into a hedging transaction (including recycling an existing hedge) must identify it as a hedging transaction. This identification must be made before the close of the day on which the taxpayer enters into the transaction.

(2) *Substantially contemporaneous identification of hedged item*—(i) *Content of the identification.* A taxpayer that enters into a hedging transaction must identify the item, items, or aggregate risk being hedged. Identification of an item being hedged generally involves identifying a transaction that creates risk, and the type of risk that the transaction creates. For example, if a taxpayer is hedging the price risk with respect to its June purchases of corn inventory, the transaction being hedged is the June purchase of corn and the risk is price movements in the market where the taxpayer buys its corn. For additional rules concerning the content of this identification, see paragraph (e)(3) of this section.

(ii) *Timing of the identification.* The identification required by this paragraph (e)(2) must be made substantially contemporaneously with entering into the hedging transaction. An identification is not substantially contemporaneous if it is made more than 35 days after entering into the hedging transaction.

(3) *Identification requirements for certain hedging transactions.* In the case of the hedging transactions described in this paragraph (e)(3), the identification under paragraph (e)(2) of this section must include the information specified.

(i) *Anticipatory asset hedges.* If the hedging transaction relates to the anticipated acquisition of assets by the taxpayer, the identification must include the expected date or dates of acquisition and the amounts expected to be acquired.

(ii) *Inventory hedges.* If the hedging transaction relates to the purchase or sale of inventory by the taxpayer, the identification is made by specifying the type or class of inventory to which the transaction relates. If the hedging transaction relates to specific purchases or sales, the identification must also include the expected dates of the purchases or sales and the amounts to be purchased or sold.

(iii) *Hedges of debt of the taxpayer*—(A) *Existing debt.* If the hedging transaction relates to accruals or payments under an issue of existing debt of the taxpayer, the identification must specify the issue and, if the hedge is for less than the full adjusted issue price or the full term of the debt, the amount and the term covered by the hedge.

(B) *Debt to be issued.* If the hedging transaction relates to the expected issuance of debt by the taxpayer or to accruals or payments under debt that is expected to be issued by the taxpayer, the identification must specify the following information: the expected date of issuance of the debt; the expected maturity or maturities; the total expected issue price of the issue; and the expected interest provisions. If the hedge is for less than the entire expected issue price of the debt or the full expected term of the debt, the identification must also include the amount or the term being hedged. The identification may indicate a range of dates, terms, and amounts, rather than specific dates, terms, or amounts. For example, a taxpayer might identify a transaction as hedging the yield on an anticipated issuance of fixed rate debt during the second half of its fiscal year, with the anticipated amount of the debt between $75 million and $125 million, and an anticipated term of approximately 20 to 30 years.

(iv) *Hedges of aggregate risk*—(A) *Required identification.* If a transaction hedges aggregate risk as described in paragraph (c)(7) of this section, the identification under paragraph (e)(2) of this section must include a description of the risk being hedged and of the hedging program under which the hedging transaction was entered. This requirement may be met by placing in the taxpayer's records a description of the hedging program and by establishing a system under which individual transactions are identified as being entered into pursuant to the program.

(B) *Description of hedging program.* A description of a hedging program must include an identification of the type of risk being hedged, a description of the type of items giving rise to the risk being aggregated, and sufficient additional information to demonstrate that the program is designed to reduce aggregate risk of the type identified. If the program contains controls on speculation (for example, position limits), the description of the hedging program must also explain how the controls are established, communicated, and implemented.

(4) *Manner of identification and records to be retained*—(i) *Inclusion of identification in tax records.* The identification required by this paragraph (e) must be made on, and retained as part of, the taxpayer's books and records.

(ii) *Presence or absence of identification must be unambiguous.* The presence or absence of an identification for purposes of this paragraph (e) must be unambiguous. The identification of a hedging transaction for financial accounting or regulatory purposes does not satisfy this requirement unless the taxpayer's books and records indicate that the identification is also being made for tax purposes. The taxpayer may indicate that individual hedging transactions, or

a class or classes of hedging transactions, that are identified for financial accounting or regulatory purposes are also being identified as hedging transactions for purposes of this section.

(iii) *Manner of identification.* The taxpayer may separately and explicitly make each identification, or, so long as paragraph (e)(4)(ii) of this section is satisfied, the taxpayer may establish a system pursuant to which the identification is indicated by the type of transaction or by the manner in which the transaction is consummated or recorded. An identification under this system is made at the later of the time that the system is established or the time that the transaction satisfies the terms of the system by being entered, or by being consummated or recorded, in the designated fashion.

(iv) *Examples.* The following examples illustrate the principles of paragraph (e)(4)(iii) of this section and assume that the other requirements of paragraph (e) of this section are satisfied.

(A) A taxpayer can make an identification by designating a hedging transaction for (or placing it in) an account that has been identified as containing only hedges of a specified item (or of specified items or specified aggregate risk).

(B) A taxpayer can make an identification by including and retaining in its books and records a statement that designates all future transactions in a specified derivative product as hedges of a specified item, items, or aggregate risk.

(C) A taxpayer can make an identification by placing a designated mark on a record of the transaction (for example, trading ticket, purchase order, or trade confirmation) or by using a designated form or a record that contains a designated legend.

(5) *Identification of hedges involving members of the same consolidated group.* [Reserved].

(6) *Consistency with section 1256(e)(2)(C).* Any identification for purposes of section 1256(e)(2)(C) is also an identification for purposes of paragraph (e)(1) of this section.

(f) *Effect of identification and non-identification—(1) Transactions identified—(i) In general.* If a taxpayer identifies a transaction as a hedging transaction for purposes of paragraph (e)(1) of this section, the identification is binding with respect to gain, whether or not all of the requirements of paragraph (e) of this section are satisfied. Thus, gain from that transaction is ordinary income. If the transaction is not in fact a hedging transaction described in paragraph (b) of this section, however, paragraphs (a)(1) and (a)(2) of this section do not apply and the character of loss is determined without reference to whether the transaction is a surrogate for a noncapital asset, serves as insurance against a business risk, serves a hedging function, or serves a similar function or purpose. Thus, the taxpayer's identification of the transaction as a hedging transaction does not itself make loss from the transaction ordinary.

(ii) *Inadvertent identification.* Notwithstanding paragraph (f)(1)(i) of this section, if the taxpayer identifies a transaction as a hedging transaction for purposes of paragraph (e) of this section, the character of the gain is determined as if the transaction had not been identified as a hedging transaction if—

(A) The transaction is not a hedging transaction (as defined in paragraph (b) of this section);

(B) The identification of the transaction as a hedging transaction was due to inadvertent error; and

(C) All of the taxpayer's transactions in all open years are being treated on either original or, if necessary, amended returns in a manner consistent with the principles of this section.

(2) *Transactions not identified—(i) In general.* Except as provided in paragraphs (f)(2)(ii) and (iii) of this section, the absence of an identification that satisfies the requirements of paragraph (e)(1) of this section is binding and establishes that a transaction is not a hedging transaction. Thus, subject to the exceptions, the rules of paragraphs (a)(1) and (2) of this section do not apply, and the character of gain or loss is determined without reference to whether the transaction is a surrogate for a noncapital asset, serves as insurance against a business risk, serves a hedging function, or serves a similar function or purpose.

(ii) *Inadvertent error.* If a taxpayer does not make an identification that satisfies the requirements of paragraph (e) of this section, the taxpayer may treat gain or loss from the transaction as ordinary income or loss under paragraph (a)(1) or (a)(2) of this section if—

(A) The transaction is a hedging transaction (as defined in paragraph (b) of this section);

(B) The failure to identify the transaction was due to inadvertent error; and

(C) All of the taxpayer's hedging transactions in all open years are being treated on either original or, if necessary, amended returns as provided in paragraphs (a)(1) and (a)(2) of this section.

(iii) *Anti-abuse rule.* If a taxpayer does not make an identification that satisfies all the requirements of paragraph (e) of this section but the taxpayer has no reasonable grounds for treating the transaction as other than a hedging transaction, then gain from the transaction is ordinary. Thus, a taxpayer may not elect to treat gain or loss from a hedging transaction as capital gain or loss. The reasonableness of the taxpayer's failure to identify a transaction is determined by taking into consideration not only the requirements of paragraph (b) of this section but also the taxpayer's treatment of the transaction for financial accounting or other purposes and the taxpayer's identification of similar transactions as hedging transactions.

(3) *Transactions by members of a consolidated group.* [Reserved].

(g) *Effective dates and transition rules—(1) Effective date for identification requirements—(i) In general.* Paragraph (e) of this section applies to transactions that—

(A) Are entered into on or after January 1, 1994; or

(B) Are entered into before that date and remain in existence on March 31, 1994.

(ii) *Transition rule.* In the case of a hedging transaction that is entered into before January 1, 1994, and remains in existence on March 31, 1994, an identification is timely if it is made before the close of business on March 31, 1994.

(iii) *Special rules for hedging transactions not described in § 1.1221–2T(b).* In the case of a transaction that is entered into before October 1, 1994, that is a hedging transaction within the meaning of paragraph (b) of this section (or is treated as a hedging transaction under paragraph (g)(3) of this section), and that the taxpayer reasonably treated as not being a hedging transaction within the meaning of paragraph (b) of § 1.1221–2T (26 CFR part 1 revised as of April 1, 1994)—

(A) If the transaction does not remain in existence on October 1, 1994, paragraph (e) of this section does not apply; and

(B) If the transaction remains in existence on October 1, 1994, paragraph (e) of this section applies, and an identification is timely if it is made before the close of business on October 1, 1994.

(2) *Reliance on § 1.1221–2T—(i) General rule.* A taxpayer may rely on any paragraph in § 1.1221–2T (26 CFR part 1 revised as of April 1, 1994), for transactions entered into prior to October 1, 1994, provided that the taxpayer applies the paragraph reasonably and consistently.

(ii) *Identification.* In the case of a transaction entered into before October 1, 1994, an identification is deemed to satisfy paragraph (e) of this section if it satisfies § 1.1221–2T(c) (26 CFR part 1 revised as of April 1, 1994). For this purpose, identification of the hedged item is timely if it is made within the period specified in paragraph (e)(2)(ii) of this section.

(3) *Transition rules for hedges of certain property—(i) Transition rule for section 1231 assets.* For all taxable years that ended prior to July 18, 1994 and that, as of September 1, 1994, were still open for assessment under section 6501, a taxpayer may treat as hedging transactions all transactions that were entered into during those years and that hedge property used in the trade or business within the meaning of section 1231(b) (a section 1231 asset) if the taxpayer can establish that, during those years—

(A) Sales of section 1231 assets did not give rise to net gain treated as capital gain (after application of section 1231(c));

(B) All of the hedges of section 1231 assets would be hedging transactions under paragraph (b) of this section if section 1231 assets were ordinary property; and

(C) On original or amended returns, the taxpayer consistently treats all of the hedges of section 1231 assets as hedging transactions.

(ii) *Transition rule for noninventory supplies.* For all taxable years that ended prior to July 18, 1994 and that, as of September 1, 1994, were still open for assessment under section 6501, a taxpayer may treat as hedging transactions all hedges of purchases of noninventory supplies (as defined in paragraph (c)(5)(ii) of this section) that would not otherwise qualify as hedging transactions and that were entered into during those years if the taxpayer can establish that, during those years—

(A) The taxpayer did not sell in any of those years more than 15 percent of the greater of the total amount of the supply held at the beginning of the year or the total amount of the supply acquired during that year;

(B) All of the hedges would be hedging transactions under paragraph (b) of this section if noninventory supplies were ordinary property; and

(C) On original or amended returns, the taxpayer consistently treats all of the hedges of noninventory supplies as hedging transactions.

(4) *Effective date for hedges by members of a consolidated group.* [Reserved].

taxpayer applies the paragraph reasonably and consistently.

(ii) *Identification.* In the case of a transaction entered into before October 1, 1994, an identification is deemed to satisfy paragraph (e) of this section if it satisfies § 1.1221–2T(c) (26 CFR part 1 revised as of April 1, 1994). For this purpose, identification of the hedged item is timely if it is made within the period specified in paragraph (e)(2)(ii) of this section.

(3) *Transition rules for hedges of certain property*—(i) *Transition rule for section 1231 assets.* For all taxable years that ended prior to July 18, 1994 and that, as of September 1, 1994, were still open for assessment under section 6501, a taxpayer may treat as hedging transactions all transactions that were entered into during those years and that hedge property used in the trade or business within the meaning of section 1231(b) (a section 1231 asset) if the taxpayer can establish that, during those years—

(A) Sales of section 1231 assets did not give rise to net gain treated as capital gain (after application of section 1231(c));

(B) All of the hedges of section 1231 assets would be hedging transactions under paragraph (b) of this section if section 1231 assets were ordinary property; and

(C) On original or amended returns, the taxpayer consistently treats all of the hedges of section 1231 assets as hedging transactions.

(ii) *Transition rule for noninventory supplies.* For all taxable years that ended prior to July 18, 1994 and that, as of September 1, 1994, were still open for assessment under section 6501, a taxpayer may treat as hedging transactions all hedges of purchases of noninventory supplies (as defined in paragraph (c)(5)(ii) of this section) that would not otherwise qualify as hedging transactions and that were entered into during those years if the taxpayer can establish that, during those years—

(A) The taxpayer did not sell in any of those years more than 15 percent of the greater of the total amount of the supply held at the beginning of the year or the total amount of the supply acquired during that year;

(B) All of the hedges would be hedging transactions under paragraph (b) of this section if noninventory supplies were ordinary property; and

(C) On original or amended returns, the taxpayer consistently treats all of the hedges of noninventory supplies as hedging transactions.

(4) *Effective date for hedges by members of a consolidated group.* [Reserved].

§ 1.1221–2T [Removed]

Par. 4. Effective October 1, 1994, § 1.1221–2T is effectively removed.

Par. 5. Effective July 18, 1994 § 1.1233–2T is redesignated § 1.1233–2 and is revised to read as follows:

§ 1.1233–2 Hedging transactions.

The character of gain or loss on a short sale that is (or is identified as being) part of a hedging transaction is determined under the rules of § 1.1221–2.

Par. 6. Effective July 18, 1994 § 1.1234–4T is redesignated § 1.1234–4 and is revised to read as follows:

§ 1.1234–4 Hedging transactions.

The character of gain or loss on an acquired or a written option that is (or is identified as being) part of a hedging transaction is determined under the rules of § 1.1221–2.

Par. 7. Effective July 18, 1994 § 1.1256(e)–1 is added to read as follows:

§ 1.1256(e)–1 Identification of hedging transactions.

(a) *Identification and recordkeeping requirements.* Under section 1256(e)(2)(C), a taxpayer that enters into a hedging transaction must identify the transaction as a hedging transaction before the close of the day on which the taxpayer enters into the transaction.

(b) *Requirements for identification.* The identification of a hedging transaction for purposes of section 1256(e)(2)(C) must satisfy the requirements of § 1.1221–2(e)(1). Solely for purposes of section 1256(f)(1), however, an identification that does not satisfy all of the requirements of § 1.1221–2(e)(1) is nevertheless treated as an identification under section 1256(e)(2)(C).

(c) *Consistency with § 1.1221–2.* Any identification for purposes of § 1.1221–2(e)(1) is also an identification for purposes of this section. If a taxpayer satisfies the requirements of paragraph (f)(1)(ii) of § 1.1221–2, the transaction is treated as if it were not identified as a hedging transaction for purposes of section 1256(e)(2)(C).

(d) *Effective date.* This section applies to transactions entered into on or after October 1, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. Effective July 18, 1994 § 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
• • • • •	
1.1221–2	1545–1403
• • • • •	

Par. 10. Effective October 1, 1994, in § 602.101(c), the entry for § 1.1221–2T(c) is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 3, 1994.

Samuel Y. Sessions,

Acting Assistant Secretary of the Treasury.

[FR Doc. 94–16867 Filed 7–13–94; 9:10 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 90 and 91

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Interim final rule; notice of public hearing procedures.

SUMMARY: The Department of Defense published in the **Federal Register** on July 12, 1994 (59 FR 35463), plans to hold a public hearing to receive comments on the interim final rule regarding Revitalizing Base Closure Communities published in the **Federal Register** on April 6, 1994 (59 FR 16123). Individuals wishing to present oral testimony are requested to adhere to the following procedures. Due to time limitations, it is expected that approximately 30 will have the opportunity to testify. As a result, interested individuals are asked to call Ms. Jennifer Nuber Atkin on 703–697–5743 to reserve a time slot. All telephone reservations will be taken on a first come, first served basis with each slot consisting of five minutes. Only 20 reservations will be taken over the phone, the remaining time slots (approximately 10) will be assigned on the day of the hearing on a first come, first served basis beginning at 9 a.m. DoD will also be accepting written

statements at the hearing for those unable to present oral testimony.

DATES: Friday, August 5, 1994, 9:30 a.m. to 12:30 p.m.

ADDRESSES: General Services Administration Headquarters Auditorium, 18th and F Streets NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jennifer Nuber Atkin, telephone 703–697–5743.

Dated: July 12, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–17038 Filed 7–15–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC09

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations; compliance with information collection requirements.

SUMMARY: On April 29, 1994, the Secretary of Education published in the **Federal Register** interim final regulations with an invitation for comment for the Student Assistance General Provisions (59 FR 22278). A notice of revised effective date was published for this document on June 30, 1994 (59 FR 33681). This document notifies affected parties that the Office of Management and Budget (OMB) has approved the information collection requirements in § 668.17(f) and (h) and notifies the public of the date for initiating an appeal under § 668.17(f)(3)(x).

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela A. Moran, Acting Chief, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB–3), Washington, DC 20202–5449. Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The final regulations published on April 29, 1994 included certain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1990, as amended. On June 23, 1994, OMB approved these information collection requirements, and affected parties must now comply with these requirements. An OMB control number for § 668.17 was published on July 7, 1994, reflecting this approval.

Under § 668.17(f)(3)(x), an institution has 10 days from the effective date of the regulations to initiate an appeal with the guaranty agency of cohort default rates issued by the Secretary for Federal fiscal years 1989 to 1991. For purposes of filing an appeal for these years, the 10-day period starts with the date this document is published in the **Federal Register**.

(Catalog of Federal Domestic Assistance Number: 84:032 Federal Family Education Loan Program)

Dated: July 13, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–17362 Filed 7–15–94; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–5011–7]

Extension of Interim Revised Durability Procedures for Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 12, 1993, EPA published a final rule establishing interim durability procedures used for demonstrating compliance with emission standards for light-duty vehicles and light-duty trucks, applicable to model years 1994–1996 only. This direct final rule extends the applicability of those durability procedures by two years to model year 1998. The Agency intends to conduct a rulemaking to implement a long-term durability program; however, EPA believes this subsequent regulatory action will not be promulgated soon enough to provide manufacturers with adequate lead time to revise their model year 1998 durability programs in a cost-effective manner. A direct final rule is appropriate because this action resolves the lead time concerns for model year 1998 and adds no new requirements, but rather simply allows the extension of the interim program by two years.

DATES: This action will be effective September 16, 1994 unless notice is received by August 17, 1994 that adverse or critical comments will be submitted, or that an opportunity to submit such comments at a public hearing is requested. If adverse comments are received, the Agency will publish a document in the **Federal Register** withdrawing the rule before the effective date.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–93–46, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Materials relevant to this final rule have been placed in Docket No. A–93–46. The docket is located at the above address in room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and noon, and between 1:30 p.m. and 3:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: James A. McCargar, Certification Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 668–4244.

SUPPLEMENTARY INFORMATION:

I. Background

On January 12, 1993, the Agency published interim procedures for motor vehicle manufacturers to use in demonstrating compliance with emission standards for light-duty vehicles and light-duty trucks (57 FR 3994). That rule, referred to as the "RDP–I rule," made the interim procedures applicable to model years 1994 through 1996, but not thereafter. The Agency plans to revise the RDP–I interim procedures through rulemaking addressing further improvements to the durability process that could not be addressed in the interim rulemaking due to the time constraints for finalizing guidance for Tier 1 vehicle emission certifications. That subsequent rulemaking has been referred to as the "RDP–II rule."

The Agency initially planned that the final RDP–II regulatory action would be effective in the 1997 model year. However, that has become impractical due to lead time constraints for manufacturers wishing to certify vehicles in that model year and the uncertainty that sufficient lead time exists for implementation in the 1998 model year as well. Consequently, the aim of this action is to simply extend the applicability of the RDP–I interim rulemaking through model year 1998. This will provide manufacturers with timely notice of the regulations applicable for certifying vehicles through model year 1998 while EPA continues work on preparing and finalizing further technical and procedural improvements to the durability program. The Agency currently expects that the RDP–II rule will be applicable in the 1999 model year.

II. Environmental Effects and Economic Impacts

A. Economic Impacts

This action only extends an existing program without modification, and as such, the Agency does not expect any new economic impacts over and above those described in the interim rulemaking. In general, the RDP–I interim rulemaking projected annual cost savings with respect to the previously existing program of approximately $8.6 million, and although this number is highly dependent upon the interaction of several variables, all modeled scenarios resulted in some level of savings. A complete description of those impacts is contained in 57 FR 3994 (January 12, 1993).

B. Environmental and Cost-Benefit Impacts

The interim rulemaking revised testing and administrative procedures necessary to determine the compliance of light-duty vehicles and light-duty trucks with the Tier 1 emission standards promulgated in June 1991, and no environmental benefit was claimed over and above that already accounted for in the Tier 1 rule. This two model year extension will similarly claim no environmental benefit. A detailed discussion of the Tier 1 environmental impacts can be found in 56 FR 25734 (June 5, 1991).

III. Public Participation and Effective Date

The Agency is publishing this action as a direct final rule because it views it as non-controversial and anticipates no adverse comments. This action will be effective in 60 days from the date of publication of this **Federal Register** notice unless the Agency receives notice within 30 days of this publication that adverse or critical comments will be submitted, or that a party requests the opportunity to submit such oral comments pursuant to section 307(d)(5) of the Clean Air Act, as amended.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will

timely notice of the regulations applicable for certifying vehicles through model year 1998 while EPA continues work on preparing and finalizing further technical and procedural improvements to the durability program. The Agency currently expects that the RDP–II rule will be applicable in the 1999 model year.

II. Environmental Effects and Economic Impacts

A. Economic Impacts

This action only extends an existing program without modification, and as such, the Agency does not expect any new economic impacts over and above those described in the interim rulemaking. In general, the RDP–I interim rulemaking projected annual cost savings with respect to the previously existing program of approximately $8.6 million, and although this number is highly dependent upon the interaction of several variables, all modeled scenarios resulted in some level of savings. A complete description of those impacts is contained in 57 FR 3994 (January 12, 1993).

B. Environmental and Cost-Benefit Impacts

The interim rulemaking revised testing and administrative procedures necessary to determine the compliance of light-duty vehicles and light-duty trucks with the Tier 1 emission standards promulgated in June 1991, and no environmental benefit was claimed over and above that already accounted for in the Tier 1 rule. This two model year extension will similarly claim no environmental benefit. A detailed discussion of the Tier 1 environmental impacts can be found in 56 FR 25734 (June 5, 1991).

III. Public Participation and Effective Date

The Agency is publishing this action as a direct final rule because it views it as non-controversial and anticipates no adverse comments. This action will be effective in 60 days from the date of publication of this **Federal Register** notice unless the Agency receives notice within 30 days of this publication that adverse or critical comments will be submitted, or that a party requests the opportunity to submit such oral comments pursuant to section 307(d)(5) of the Clean Air Act, as amended.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document will withdraw this final rule and another will begin a new rulemaking by announcing a proposal of the rule and establishing a comment period.

IV. Statutory Authority

Authority for the actions promulgated in this final rule is granted to EPA by sections 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a), and 5 U.S.C. 553(b)).

V. Administrative Designation

Under Executive Order 12866, the Agency must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1990 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

The Agency has determined that this action will not have an adverse impact on small entities. Moreover, this regulation does not create any new regulatory requirements.

Therefore, under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

VII. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain Office of Management and Budget clearance for any activity that will involve collecting substantially the same information from ten or more non-Federal respondents. On December 1, 1992, OMB approved collection of information required in 40 CFR 86.094–26 under ICR control no. 2060–0104. This regulation does not impose any new information collection requirements and will result in no change in the reporting burden.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: June 30, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 86 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

§ 86.094–13 [Amended]

2. In § 86.094–13, paragraphs (a)(1), (c)(1), (d)(1), (e)(1), and (f)(1) are amended by revising the words "1994, 1995, and 1996" to read "1994 through 1998".

§ 86.094–26 [Amended]

3. In § 86.094–26, paragraphs (a)(2), (b)(2)(i), and (b)(2)(ii) are amended by revising the words "1994, 1995, and 1996" to read "1994 through 1998".

[FR Doc. 94–17003 Filed 7–15–94; 8:45 am]

BILLING CODE [illegible]

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7598]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778; October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Iowa: Barnum, city of, Webster County	190528	May 6, 1994	11–5–76
Washington: Creston, town of, Lincoln County	530108	May 12, 1994	9–30–88
Illinois: Hillcrest, village of, Ogle County	170956	May 23, 1994	9–15–78
Iowa:			
Paton, city of, Greene County	190397	do	9–19–75
Palo Alto County, unincorporated areas	190898	do	5–17–77
Swisher, city of, Johnson County	190810	do	8–13–76
Michigan: Kenockee, township of, St. Clair County	260915	do	
Nebraska: Wilsonville, village of, Furnas County	310335	do	12–3–76
Maine: Edinburg, town of, Penobscot County	230383	May 31, 1994	
Texas: Somerset, city of, Bexar County	481264	June 14, 1994	8–9–77
Iowa: Dakota City, city of, Humboldt County	190421	June 16, 1994	11–8–74
Michigan: Muir, village of, Ionia County	260916	June 20, 1994	
Oklahoma: Rogers Mills County, unincorporated areas	400542	do	
Iowa: Rutland, city of, Humboldt County	190422	June 27, 1994	11–5–76
New Eligibles—Regular Program			
Washington: Harrington, city of, Lincoln County	530110	May 12, 1994	9–30–88
South Carolina: James Island,[1] town of, Charleston County	450263	June 30, 1970, Emerg.; April 23, 1971, Reg.	

State/location
Florida: Archer, city of,[2] Alachua County
Illinois: Beach Park, village of, Lake County
Louisiana: Sterlington, town of, Ouachita Parish
Texas: Gun Barrel, city of, Henderson County
Reinstatements—Regular Progra
Pennsylvania: Colwyn, borough of, Delware County
New Mexico: Silver City, city of, Grant County
Pennsylvania:
Hawley, borough of, Berks County
Hereford, township of, Berks County
Utah:
Paragonah, town of, Iron County
Summit County, unincorporated areas
Illinois: Maywood, village of, Cook County
Tennessee: Liberty, city of, DeKalb County
West Virginia: Keystone, town of, McDowell County
New York: Canton, town of, St. Lawrence County
Maine:
Chapman, town of, Aroostook County
Embden, town of, Somerset County
West Virginia: Hurricane, city of, Putnam County
Pennsylvania: Modena, borough of, Chester County
Regular Program Conversions
Region II
New Jersey: New Providence, borough of, Union Co
Region V
Ohio:
Munroe Falls, city of, Summit County
Rock Creek, village of, Ashtabula County
Region VI
Texas: Granbury, city of, Hood County
Region I
Massachusetts: Topsfield, town of, Essex County
Region III
Maryland: Princess Anne, town of, Somerset County
Pennsylvania: Texas, township of, Wayne County
Region V
Indiana: Hendricks County, unincorporated areas
Illinois: Jacksonville, city of, Morgan County
Michigan:
Baldwin, township of, Iosco County
East Tawas, city of, Iosco County

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Florida: Archer, city of,[2] Alachua County	120670	June 9, 1994	
Illinois: Beach Park, village of, Lake County	171022	June 13, 1994	6–2–94
Louisiana: Sterlington, town of, Ouachita Parish	220400	June 14, 1994	3–15–94
Texas: Gun Barrel, city of, Henderson County	480328	do	9–27–91
Reinstatements—Regular Program			
Pennsylvania: Colwyn, borough of, Delware County	420409	September 15, 1972, Emerg.; May 2, 1977, Reg.; December 3, 1993, Susp.; May 5, 1994, Rein.	9–30–93
New Mexico: Silver City, city of, Grant County	350022	July 22, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.; May 12, 1994, Rein.	5–17–88
Pennsylvania:			
Hawley, borough of, Berks County	420863	July 18, 1974, Emerg.; August 19, 1991, Reg.; March, 15, 1994, Susp.; May 20, 1994, Rein.	3–15–94
Hereford, township of, Berks County	421379	November 20, 1975, Emerg.; May 3, 1990, Reg.; May 3, 1990, Susp.; May 20, 1994, Rein.	5–3–90
Utah:			
Paragonah, town of, Iron County	490075	March 12, 1975, Emerg.; September 24, 1984, Reg.; September 15, 1989, Susp.; May 26, 1994, Rein.	9–24–84
Summit County, unincorporated areas	490134	June 10, 1975, Emerg.; July 17, 1986, Reg.; July 17, 1986, Susp.; May 26, 1994, Rein.	7–17–86
Illinois: Maywood, village of, Cook County	170124	July 22, 1975, Emerg.; August 11, 1978, Reg.; March 15, 1993, Susp.; May 31, 1994, Rein.	10–18–88
Tennessee: Liberty, city of, DeKalb County	470044	May 23, 1975, Emerg.; September 4, 1986, Reg.; September 4, 1986, Susp.; May 31, 1994, Rein.	9–4–86
West Virginia: Keystone, town of, McDowell County	540119	May 21, 1975, Emerg.; February 1, 1985, Reg.; February 1, 1985, Susp.; March 6, 1985, Rein.; November 16, 1992, Susp.; June 6, 1994, Rein.	2–1–85
New York: Canton, town of, St. Lawrence County	361172	June 9, 1975, Emerg.; December 19, 1984, Reg.; June 2, 1993, Susp.; June 9, 1994, Rein.	6–2–93
Maine:			
Chapman, town of, Aroostook County	230015	April 20, 1976, Emerg.; September 4, 1985, Reg.; September 4, 1985, Susp.; June 20, 1994, Rein.	9–4–85
Embden, town of, Somerset County	230359	August 11, 1976, Emerg.; September 4, 1985, Reg.; September 4, 1985, Susp.; June 20, 1994, Rein.	9–4–85
West Virginia: Hurricane, city of, Putnam County	540167	July 11, 1975, Emerg.; March 4, 1986, Reg.; November 18, 1992, Susp.; June 20, 1994, Rein.	3–4–86
Pennsylvania: Modena, borough of, Chester County	420282	October 10, 1974, Emerg.; November 19, 1987, Reg.; January 19, 1994, Susp.; June 27, 1994, Rein.	11–19–87
Regular Program Conversions			
Region II			
New Jersey: New Providence, borough of, Union County	345306	May 16, 1994, suspension withdrawn	5–16–94
Region V			
Ohio:			
Munroe Falls, city of, Summit County	390843	do	5–16–94
Rock Creek, village of, Ashtabula County	390665	do	5–16–94
Region VI			
Texas: Granbury, city of, Hood County	480357	do	5–16–94
Region I			
Massachusetts: Topsfield, town of, Essex County	250106	June 2, 1994, suspension withdrawn	6–2–94
Region III			
Maryland: Princess Anne, town of, Somerset County	240063	do	6–2–94
Pennsylvania: Texas, township of, Wayne County	422176	do	6–2–94
Region V			
Indiana: Hendricks County, unincorporated areas	180415	do	3–16–81
Illinois: Jacksonville, city of, Morgan County	170516	do	6–2–94
Michigan:			
Baldwin, township of, Iosco County	260099	do	6–2–94
East Tawas, city of, Iosco County	260100	do	6–2–94

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Tawas City, city of, Ioseo County	260102	....do	6-2-94
Minnesota:			
Afton, city of, Washington County	275226	....do	1-2-76
Belle Plaine, city of, Scott County	270429	....do	12-18-86
Freeborn County, unincorporated areas	270134	....do	5-3-82
Red Lake County, unincorporated areas	270387	....do	7-2-87
Region VI			
Arkansas: Hardy, city of, Sharp County	050330	....do	6-2-94
Louisiana: Concordia Parish, unincorporated areas	220053	....do	6-2-94
Texas: Denton County, unincorporated areas	480774	....do	6-2-94
Region I			
Maine:			
Augusta, city of, Kennebec County	230067	June 15, 1994, Suspension withdrawn	6-15-94
Chelsea, town of, Kennebec County	230234	....do	6-15-94
Strong, town of, Franklin County	230061	....do	6-15-94
Region II			
New York:			
Hebron, town of, Washington County	361443	....do	6-15-94
Dexter, village of, Jefferson County	360333	....do	6-15-94
Region V			
Michigan: Kalamazoo, town of, Kalamazoo County	260429	....do	6-15-94
Region X			
Washington:			
Benton County, unincorporated areas	530011	....do	6-15-94
Kennewick, city of, Benton County	530237	....do	6-15-94

[1] This is a newly incorporated community, eligible May 31, 1994, that was participating in the Regular Program as an unincorporated area of Charleston, SC. The Town has adopted by reference the County's Flood Insurance Study and Flood Insurance Rate Map for flood insurance and floodplain management purposes.

[2] The City of Archer has adopted by reference Alachua County's (#120001) Flood Insurance Study and Flood Insurance Rate Map dated 11-4-88 for flood insurance and floodplain management purposes.

Code for reading third column:
Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 12, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94-17342 Filed 7-15-94; 8:45 am]

BILLING CODE 6718-21-P

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 322

[Docket No. 89-117-3]

Importation of Honeybees and Honeybee Semen From New Zealand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening the comment period for a proposal that would amend the honeybee and honeybee semen regulations to allow honeybees and honeybee semen to be imported from New Zealand into the United States, subject to certain conditions. The proposed action appears warranted based on our determination that New Zealand is free of, and has adequate protection against the introduction of, diseases and parasites of honeybees, and undesirable species or subspecies of honeybees and their semen. The proposed action would relieve certain restrictions on the importation of honeybees and honeybee semen from New Zealand without presenting a significant risk of introducing harmful diseases or parasites of honeybees into the United States. Reopening the comment period will provide interested persons with another opportunity to comment on the proposed rule.

DATES: Consideration will be given only to comments received on or before August 17, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89-117. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence

Proposed Rules

Federal Register
Vol. 59, No. 136
Monday, July 18, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 322

[Docket No. 89–117–3]

Importation of Honeybees and Honeybee Semen From New Zealand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening the comment period for a proposal that would amend the honeybee and honeybee semen regulations to allow honeybees and honeybee semen to be imported from New Zealand into the United States, subject to certain conditions. The proposed action appears warranted based on our determination that New Zealand is free of, and has adequate protection against the introduction of, diseases and parasites of honeybees, and undesirable species or subspecies of honeybees and their semen. The proposed action would relieve certain restrictions on the importation of honeybees and honeybee semen from New Zealand without presenting a significant risk of introducing harmful diseases or parasites of honeybees into the United States. Reopening the comment period will provide interested persons with another opportunity to comment on the proposed rule.

DATES: Consideration will be given only to comments received on or before August 17, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89–117. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. James Fons, Operations Officer, Port Operations Staff, Plant Protection and Quarantine, APHIS, USDA, room 637, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 322 (referred to below as the regulations) govern the importation into the United States of honeybees and honeybee semen. These regulations were established pursuant to the Honeybee Act (7 U.S.C. 281 *et seq.*). The Honeybee Act was designed to prevent the movement into the United States of diseases and parasites harmful to honeybees. In addition, the Honeybee Act was designed to prevent the movement into the United States of undesirable species or subspecies of honeybees, such as *Apis mellifera scutellata*, commonly known in the United States as the African honeybee.

In this regard, 7 U.S.C. 281 provides, in relevant part, that:

(a) In order to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable germplasm of honeybees, the importation into the United States of all honeybees is prohibited, except that honeybees may be imported into the United States—

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) From countries determined by the Secretary of Agriculture—

(A) To be free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees; and

(B) To have in operation precautions adequate to prevent the importation of honeybees from other countries where harmful diseases or parasites, or undesirable species or subspecies, of honeybees exist; or

(3) From Canada or Mexico, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, if the Secretary determines that the region of Canada or Mexico from which the honeybees originated is, and is likely to remain, free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees.

These provisions are set forth at § 322.1 as criteria for determining which countries may be listed in the regulations as countries from which honeybees or honeybee semen may be imported into the United States.

Under the regulations, honeybees may be imported into the United States from New Zealand only by the United States Department of Agriculture (USDA) for experimental or scientific purposes. Honeybee semen may be imported from New Zealand only after issuance of a permit by Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

On February 6, 1990, we published in the **Federal Register** (55 FR 3968–3969, Docket No. 89–117) a proposal to amend the regulations by removing these restrictions on honeybees and honeybee semen imported into the United States from New Zealand. We stated that the proposal was warranted because it had been determined that New Zealand met the criteria set forth in § 322.1, based on USDA review of the scientific literature; an ongoing sampling program of New Zealand honeybees by the USDA; an ongoing exchange of information between New Zealand and the United States relating to bee diseases and parasites, and undesirable species and subspecies of honeybees; and a review by USDA of the bee enforcement program in New Zealand.

However, we recognized that shipments of honeybees or honeybee semen from New Zealand could, during transit through countries from which honeybees and honeybee semen may not be imported into the United States, come in contact with foreign honeybees that may be diseased. We therefore proposed to allow honeybees and honeybee semen to be imported from New Zealand into the United States if they were shipped to the United States nonstop and if they were accompanied by a certificate of origin issued by the New Zealand Department of Agriculture certifying that the honeybees and honeybee semen were of New Zealand origin. We also proposed to amend § 322.2 to add a definition for "certificate of origin."

We solicited comments concerning the 1990 proposal for a 15-day comment period ending February 21, 1990. In response to a comment, we published a notice in the **Federal Register** on March 2, 1990 (55 FR 7499, Docket No. 90–025), that extended the comment period to April 2, 1990. We received 37 comments by that date. The comments were from apiaries, queen breeders, beekeeper associations, and State departments of agriculture.

We did not at that time publish a final rule. However, we now wish to proceed with rulemaking. We have consulted the most current scientific literature and discussed this action with experts within and outside of the Department, and we have confirmed that the actions described in the original proposal are still appropriate. Nevertheless, because considerable time has elapsed since publication of the original proposed rule, we are reopening the comment period on the 1990 proposal to allow interested persons another opportunity to comment.

Done in Washington, DC, this 13th day of July 1994.

B. Glen Lee,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17346 Filed 7–15–94; 8:45 am]

BILLING CODE 3410–34–P

---

9 CFR Parts 50, 77, and 92

[Docket No. 93–014–2]

Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would require that certain steers and spayed heifers imported into the United States from Mexico be sent either to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and a 60-day post-entry tuberculin test. The proposed rule also would deny claims for indemnity for Mexican-origin steers or spayed heifers that test positive to the 60-day post-entry tuberculin test, and to deny claims for indemnity for cattle that were exposed to such animals. This extension will provide interested persons with additional time in which to prepare comments on the proposed rule.

DATES: Consideration will be given only to written comments on Docket No. 93–014–1 that are received on or before September 16, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–014–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Vantiem, Senior Staff Veterinarian, Cattle Disease and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION: On May 9, 1994, we published in the **Federal Register** (59 FR 23810–23817, Docket No. 93–014–1) a proposed rule that would require that certain steers and spayed heifers imported into the United States from Mexico be sent either to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and a 60-day post-entry tuberculin test. The proposed rule also would deny claims for indemnity for Mexican-origin steers or spayed heifers that test positive to the 60-day post-entry tuberculin test, and to deny claims for indemnity for cattle that were exposed to such animals. Comments on the proposed rule were required to be received on or before July 8, 1994.

During the comment period, we received requests that we extend the comment period. The requests came from four State Veterinarians, who stated that they would like to present their views to the Binational Tuberculosis Committee, then submit a comment on the proposed rule. The Binational Tuberculosis Committee is scheduled to meet July 21, 1994.

In response to these requests, and so that we may consider comments received after July 8, 1994, we are reopening and extending the public comment period until 60 days after publication of this notice. This action will allow the requestors and all other interested persons additional time to prepare comments.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111–113, 114, 114a, 114a–1, 115–117, 120, 121, 125, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 13th day of July 1994.

B. Glen Lee,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17347 Filed 7–15–94; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the first quarter, January through March, of 1994. This agenda provides the public with information about NRC's rulemaking activities. The Regulatory Agenda is a quarterly compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition. Issuance of this publication is consistent with Section 610 of the Regulatory Flexibility Act.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936), Vol. 13, No. 1, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 512–2249 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 415–7163, toll-free number (800) 368–5642.

Dated at Bethesda, Maryland, this 11th day of July 1994.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–17334 Filed 7–15–94; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–22–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10–10, –10F, –30, and –30F series airplanes, that currently requires inspections to detect ice or snow accumulation on top of the fuselage and in the inlet of the number 2 engine, and removal of ice and snow accumulation. This action would add certain airplanes to the applicability of the rule and would limit the inspection requirement to only a certain group of airplanes. This proposal is prompted by the development of improved fan blades on certain engines and the identification of additional airplanes that are subject to the unsafe condition. The actions specified by the proposed AD are intended to minimize damage to the number 2 engine due to ingestion of ice and snow.

DATES: Comments must be received by September 7, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–17334 Filed 7–15–94; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–22–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10–10, −10F, −30, and −30F series airplanes, that currently requires inspections to detect ice or snow accumulation on top of the fuselage and in the inlet of the number 2 engine, and removal of ice and snow accumulation. This action would add certain airplanes to the applicability of the rule and would limit the inspection requirement to only a certain group of airplanes. This proposal is prompted by the development of improved fan blades on certain engines and the identification of additional airplanes that are subject to the unsafe condition. The actions specified by the proposed AD are intended to minimize damage to the number 2 engine due to ingestion of ice and snow.

DATES: Comments must be received by September 7, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–22–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA issued AD 75–04–11, amendment 39–2094, applicable to all McDonnell Douglas Model DC–10–10, −10F, −30, and −30F series airplanes, to require inspection to detect ice and snow accumulation on top of the fuselage and in the inlet of the number 2 engine, and removal of ice and snow. That action was prompted by reports from operators of Model DC–10 series airplanes that ice was ingested into the number 2 engine. In these incidents, the number 2 engine on airplanes that had been parked during icing conditions ingested ice and sustained damage shortly after the engine was started. The requirements of that AD are intended to prevent damage to the number 2 engine due to ingestion of ice and snow.

Since the issuance of that AD, the General Electric (GE) Company has issued design changes to the GE Model CF6 series engines that include replacement of the gundrilled fan blades (that is, blades having radial lightening holes) with solid blades. The FAA has determined that in the event of excessive ice ingestion, these solid fan blades are less likely to result in an uncontained failure. Therefore, the FAA finds that the applicability of the existing rule must be revised to exclude airplanes equipped with these engines and fan blades from the AD requirement to inspect to detect ice and snow on top of the fuselage and in the inlet of the number 2 engine. (Similarly, Model DC–10–40 series airplanes equipped with Pratt and Whitney Model JT9D series engines having solid fan blades were excluded from the requirements of AD 75–04–11 since they, too, are not subject to the unsafe condition.)

Further, since the issuance of AD 75–04–11, the FAA has determined that Model DC–10–15 series airplanes and Model KC–10A (military) airplanes are subject to the addressed unsafe condition since they utilize the same gundrilled blade engines as Model DC–10–10, −10F, −30, and −30F series airplanes, which are subject to the requirements of AD 75–04–11 and are also susceptible to ice and snow ingestion into the number 2 engine. Therefore, the FAA finds that the applicability of the existing rule must be expanded to include Model DC–10–15 series airplanes and Model KC–10A (military) airplanes.

Ingestion of ice and snow into the number 2 engine could result in damage to that engine.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 75–04–11 to require inspections to detect ice and snow accumulation on top of the fuselage and in the inlet of the number 2 engine, and removal of ice and snow. The applicability of this proposal would be revised to include all Model DC–10–10, −10F, −30, −30F, and −15 series

airplanes and Model KC–10A (military) airplanes, equipped with GE Model CF6 series turbofan engines having gundrilled blades.

Additionally, paragraph (b) of AD 75–04–11, which relates to making "appropriate maintenance record entries" after accomplishing the requirements of the AD, has not been reiterated in this proposed AD since those requirements are redundant of the requirements contained in sections 43.9 ("Content, form, and disposition of maintenance, preventive maintenance, rebuilding, and alteration records") and 43.11 ("Content, form, disposition of records for inspections . . ") of the Federal Aviation Regulations (14 CFR 43.9 and 43.11). As such, operators are not relieved from the requirement to make appropriate entries in their maintenance records.

There are approximately 379 McDonnell Douglas Model DC–10–10, –10F, –30, –30F, and –15 series airplanes and Model KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 226 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 75–04–11, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the inspection requirement on U.S. operators is estimated to be $12,430, or $55 per airplane, per inspection. This proposal would only add the cost of inspections for the operators of Model KC–10A (military) airplanes. Currently, there are no Model DC–10–15 series airplanes of U.S. registry that would be affected by this proposal.

For operators of Model DC–10–10, –10F, –30, and –30F series airplanes having all solid fan blades in the number 2 engine position, the economic burden would be reduced since the previous requirement to inspect these airplanes in accordance with the existing AD would be eliminated by this proposal. However, this does not relieve operators of the responsibility to comply with the requirements of sections 91.527 ("Operating in icing conditions") and 121.629 ("Operation in icing conditions"—air carriers) of the Federal Aviation Regulations (14 CFR 91.527 and 121.629).

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–2094, and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 94–NM–22–AD. Supersedes AD 75–04–11, Amendment 39–2094.

Applicability: Model DC–10–10, –10F, –30, –30F, and –15 series airplanes, and Model KC–10A (military) airplanes, on which the number 2 engine is a General Electric Model CF6 series turbofan engine having one or more gundrilled fan blades installed, including but not limited to part numbers 9010M33 and 9137M39; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent possible damage to the number 2 engine due to ingestion of ice and snow, accomplish the following:

(a) As of the effective date of this AD, prior to starting the number 2 engine on any airplane that has been parked during icing conditions (freezing rain, snow, sleet) for any period of time during which ice or snow may have accumulated on the airplane in the area of the number 2 engine, inspect to detect ice and snow accumulation on top of the fuselage and in the inlet of the number 2 engine. If ice or snow accumulation is found, prior to further flight, remove the ice or snow accumulation.

Note 1: Guidelines for inspection and safeguarding the aircraft are contained in these documents:

Douglas All Operators Letter (AOL) 10–546, dated January 11, 1974
Douglas AOL 10–673, dated August 7, 1974
DC–10 Airplane Maintenance Manual, Chapter 12–31–01

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 12, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17327 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 94–NM–14–AD]

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 707 and 720 series airplanes, that currently requires repetitive visual and dye penetrant inspections to detect cracks on the upper forward skin panels of the wing center section, and repair, if necessary

That AD also provided an optional terminating modification for the repetitive inspections. This action would require visual and eddy current inspections to detect cracks on the upper forward skin panels of the wing center section, and repair, if necessary. This proposal is prompted by reports that the currently required inspections are not effective in detecting fatigue cracks in a timely manner. The actions specified by the proposed AD are intended to prevent fatigue cracking and subsequent failure of the upper forward skin panels of the wing center section.

DATES: Comments must be received by October 5, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

That AD also provided an optional terminating modification for the repetitive inspections. This action would require visual and eddy current inspections to detect cracks on the upper forward skin panels of the wing center section, and repair, if necessary. This proposal is prompted by reports that the currently required inspections are not effective in detecting fatigue cracks in a timely manner. The actions specified by the proposed AD are intended to prevent fatigue cracking and subsequent failure of the upper forward skin panels of the wing center section.

DATES: Comments must be received by October 5, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–14–AD." The postcard will be date stamped and returned to the commenter

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA issued AD 68–18–03, amendment 39–2056, applicable to certain Boeing Model 707 and 720 series airplanes, to require repetitive inspections to detect cracks on the upper forward skin panels of the wing center section, and repair, if necessary. That AD also provided an optional terminating modification for the repetitive inspections. That action was prompted by several reports of fatigue cracking and one report of skin blowout (failure of the wing skin panel) on Model 720 series airplanes. Model 707 series airplanes were included in the applicability of AD 68–18–03 because those airplanes are similar in design to Model 720 series airplanes. The requirements of that AD are intended to prevent fatigue cracking and subsequent failure of the upper forward skin panels of the wing center section.

Since the issuance of AD 68–18–03, the FAA has received several reports that the visual and dye penetrant inspection techniques required by that AD have not been effective in detecting cracks in a timely manner. The FAA, in conjunction with the airplane manufacturer and the Boeing Model 707 Aging Fleet Structures Working Group (SWG), conducted a structural review of those airplanes and determined that inspections using visual and eddy current methods are necessary in order to effectively detect cracks in a timely manner for airplanes on which the optional terminating modification specified in AD 68–18–03 has not been accomplished.

Fatigue cracking in the upper forward skin panels of the wing center section, if not detected and corrected in a timely manner, could result in failure of the wing skin panels.

The FAA has reviewed and approved Boeing Service Bulletin 2590, Revision 11, dated December 12, 1991, that describes procedures for repetitive visual and eddy current inspections to detect cracks in certain areas of the upper forward skin panels of the wing center section, and repair, if necessary. This service bulletin is part of Boeing Master Inspection Service Bulletins 3484 (for Model 707–100 and –200 airplanes), 3485 (for Model 720 and 720B airplanes), and 3486 (for Model 707–300, –300B, –300C, and –400 airplanes), all dated December 12, 1991. Boeing Service Bulletin 2590 references these master inspection service bulletins as additional sources of service information concerning accomplishment of the repetitive inspections. The master inspection service bulletins describe an expanded inspection area that includes a 4-inch wide strip centered on each chordwise bulb angle stiffener installed in accordance with AD 68–18–03.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 68–18–03 to require repetitive visual and eddy current inspections to detect cracks in certain areas of the upper forward skin panels of the wing center section, and repair, if necessary. This AD also would provide an optional terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with Boeing Service Bulletin 2590, described previously.

There are approximately 416 Model 707 and 720 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 82 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $144,320, or $1,760 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 1,250 work hours to accomplish it, at an average labor rate of $55 per work hour.

The cost of required parts would be approximately $45,000 per airplane. Based on these figures, the total cost impact of the optional terminating action would be $113,750 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–2056, and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–14–AD. Supersedes AD 68–18–03, Amendment 39–2056.

Applicability: All Model 707 and 720 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking and subsequent failure of the upper forward skin panels of the wing center section, accomplish the following:

(a) For Model 707–100, –200, –300, –300B, –300C, and –400 airplanes on which no bulb angle stiffeners have been installed in accordance with Boeing Service Bulletin 2590: Perform a visual inspection and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in paragraphs b. and f.(1) of Part I of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991. Perform the inspections at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with the procedures specified in the service bulletin. Repeat these inspections thereafter at intervals not to exceed 1,000 landings or 18 months, whichever occurs first.

(1) For Model 707–300, –300B, –300C, and –400 airplanes: Inspect at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 6,000 total landings; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(2) For Model 707–100 and –200 airplanes: Inspect at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 7,000 total landings; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(b) For Model 720 and 720B airplanes on which no bulb angle stiffeners have been installed in accordance with Boeing Service Bulletin 2590: Perform a visual inspection and an eddy current inspection to detect cracks in the area of the upper forward skin of the wing center section specified in paragraph b. of Part I of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991. Perform the inspections at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with the procedures specified in the service bulletin. Repeat these inspections thereafter at intervals not to exceed 1,000 landings or 18 months, whichever occurs first.

(1) Prior to the accumulation of 4,000 total landings; or

(2) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(c) For Model 720 and 720B, and 707–100, –200, –300, –300B, –300C, and –400 airplanes on which bulb angle stiffeners have been installed, but on which the wing skin has not been replaced, in accordance with Boeing Service Bulletin 2590: Accomplish the inspections required by paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable, in accordance with Boeing Service Bulletin 2590, Revision 11, dated December 12, 1991 Repeat these inspections thereafter at intervals not to exceed 1,000 landings or 18 months, whichever occurs first

Note 1: Revision 11 of Boeing Service Bulletin 2590 is part of Boeing Master Inspection Service Bulletins 3484 (for Model 707–100 and –200 airplanes), 3485 (for Model 720 and 720B airplanes), and 3486 (for Model 707–300, –300B, –300C, and –400 airplanes), all dated December 12, 1991. Boeing Service Bulletin 2590 references these master inspection service bulletins as additional sources of service information concerning accomplishment of the inspections required by paragraph (c) of this AD.

(1) For Model 720 and 720B airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3485, dated December 12, 1991, at the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(2) For Model 707–300, –300B, –300C, and –400 airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3486, dated December 12, 1991, at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(3) For Model 707–100 and –200 airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3484, dated December 12, 1991, at the later of the times specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(d) If any crack is found during any of the inspections required by paragraphs (a), (b), and (c) of this AD, prior to further flight, repair in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 7, dated September 22, 1969; Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991.

(e) Accomplishment of the "Reinforcing Stiffener Installation and Skin Panel Replacement" in accordance with Part III of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 6, dated July 8, 1968; Revision 7, dated September 22, 1969; Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991; constitutes terminating action for the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 12, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17326 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94N–0155]

RIN 0905–AB68

Food Labeling; Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Guidelines for Voluntary Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Identification of the 20 Most Frequently Consumed Raw Fruit, Vegetables, and Fish

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the guidelines for voluntary nutrition labeling of raw fruit, vegetables, and fish; revise the definition for compliance with respect to adherence by retailers to those guidelines; and revise the labeling regulations and labeling values for the 20 most frequently consumed raw fruit, vegetables, and fish. This action is in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments).

DATES: Submit written comments by September 16, 1994. The agency is proposing that any final rule that may

terminating action for the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 12, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17326 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94N–0155]

RIN 0905–AB68

Food Labeling; Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Guidelines for Voluntary Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Identification of the 20 Most Frequently Consumed Raw Fruit, Vegetables, and Fish

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the guidelines for voluntary nutrition labeling of raw fruit, vegetables, and fish; revise the definition for compliance with respect to adherence by retailers to those guidelines; and revise the labeling regulations and labeling values for the 20 most frequently consumed raw fruit, vegetables, and fish. This action is in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments).

DATES: Submit written comments by September 16, 1994. The agency is proposing that any final rule that may issue based on this proposal become effective 30 days after publication.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jean A.T. Pennington, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–205–5434.

SUPPLEMENTARY INFORMATION:

I. Background

In response to requirements of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535), FDA published final regulations in the **Federal Register** of November 27, 1991 (56 FR 60880, and corrected at 57 FR 8174, March 6, 1992) (hereinafter referred to as the "voluntary nutrition labeling final rule") that: (1) Identified the 20 most frequently consumed raw fruit, vegetables, and fish in the United States; (2) established guidelines for the voluntary nutrition labeling of these foods; and (3) determined the criteria for substantial compliance by food retailers with the guidelines for the voluntary nutrition labeling of these foods.

Under section 403(q)(4)(C)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(q)(4)(C)(i)), FDA was to issue a report by May 8, 1993, on actions taken by food retailers to provide consumers with nutrition information for raw fruit, vegetables, and fish under the guidelines established by the agency for such information. The act states that this report is to include a determination as to whether there is substantial compliance with the guidelines. FDA defined "substantial compliance" in § 101.43(c) (21 CFR 101.43(c)) to mean that at least 60 percent of all stores that are evaluated are in compliance. Under section 403(q)(4)(C)(ii) of the act, if FDA were to find that compliance is substantial, then nutrition labeling of raw fruit, vegetables, and fish would remain voluntary, with compliance to be assessed at 2-year intervals. If the agency were to find that compliance is not substantial, section 403(q)(4)(D)(i) of the act requires that FDA issue proposed regulations requiring that any person who offers raw fruit, vegetables, or raw fish to consumers provide, in a manner prescribed by regulation, the nutrition information required by section 403 (q)(1) and (q)(2) of the act.

In the **Federal Register** of May 18, 1993 (58 FR 28985), FDA announced the availability of its "Report on Voluntary Compliance of Food Retailers in Providing Nutrition Labeling Information for Raw Fruit and Vegetables and for Raw Fish" (Ref. 1). This report was based on the results of a survey conducted in November and December 1992 by the Ehrhart-Babic Group under contract to FDA. Based on the results of the survey (Ref. 2), FDA found that compliance of retailers with the nutrition labeling guidelines is substantial both for fruit and vegetables (75.7 percent compliance) and for fish (73.2 percent compliance). Annual commodity volume (ACV) compliance estimates (reflecting compliance on the basis of sales volume) were similar to compliance based on the number of stores surveyed. For raw fruit and vegetables, stores in compliance accounted for 76.9 percent of annual sales of all food stores. For raw fish, the estimate was 74.3 percent.

FDA interprets the ACV data as showing that a minimum of three-fourths of U.S. consumers are exposed to nutrition labeling information for raw fruit, vegetables, and fish. FDA believes that these percentages represent a minimum estimate because some consumers shop in several different retail stores, which increases their chance of exposure to nutrition labeling of raw fruit, vegetables, and fish.

Thus, the nutrition labeling of raw fruit, vegetables, and fish will remain voluntary until at least May 8, 1995. The agency notes, however, that a lawsuit challenging FDA's criterion for substantial compliance was filed in 1992 (*Arent* v. *Shalala*, Civ. No. 92–0148–JLG). The outcome of this case could affect whether nutrition labeling of raw fruit, vegetables, and fish remains voluntary.

FDA stated in § 101.45(i) (21 CFR 101.45(i)) that it will publish and provide an opportunity for comment on updates of the nutrition labeling values for the 20 most frequently consumed raw fruit, vegetables, and fish (or a notice that nutrition labeling values have not changed from the previous publication) at least every 2 years. In addition, in the preamble to the voluntary nutrition labeling final rule (56 FR 60880 at 60881), FDA advised that in order to make the guidelines as consistent as possible with the regulations governing the rest of the food supply (except for those foods subject to regulation by the United States Department of Agriculture (USDA)), the guidelines would be subject to change after the agency issued its report in 1993 on compliance by retailers.

FDA published the final regulations implementing the 1990 amendments in the **Federal Register** of January 6, 1993, including regulations on mandatory nutrition labeling (58 FR 2079); reference daily intakes (RDI's) and daily reference values (DRV's) (hereinafter referred to as "the RDI/DRV final rule") (58 FR 2206); and serving sizes (hereinafter referred to as "the serving size final rule") (58 FR 2229). It made technical changes in these final rules on August 18, 1993 (58 FR 44020).

FDA is now proposing to update the nutrition labeling values for the 20 most frequently consumed raw fruit, vegetables, and fish and to revise the guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish to reflect the January 1993 final rules as modified.

II. Substantial Compliance by Food Retailers with the Guidelines for the Voluntary Nutrition Labeling of Raw Fruit, Vegetables, and Fish

FDA is proposing to make two minor changes and one substantive change to § 101.43. As explained in detail below, FDA is proposing to revise § 101.45. To reflect these revisions, FDA is proposing to amend § 101.43(a)(1) to reference § 101.45(a)(1) and § 101.43(a)(2) to reference § 101.45(a)(2), (a)(3), and (a)(4).

In addition, FDA is proposing to revise § 101.43(a)(3) to provide that retailers must use the data provided by FDA in proposed Appendices C and D to part 101 (21 CFR part 101) for the 20 most frequently consumed raw fruit, vegetables, and fish to be in compliance with the guidelines for the voluntary nutrition labeling program. Current § 101.43(a)(3) allows for the use of: values that have been provided by FDA, (2) values that have been accepted by FDA, or (3) values that are consistent with current § 101.45 (d) and (e) and have not been found to be out of compliance after a review under § 101.9(e). (This reference is to the version of § 101.9(e) in effect in 1991 and not that in the January 6, 1993, final rule (see 58 FR 2079 at 2181).) FDA provided this flexibility because, given the time constraints imposed by the 1990 amendments, the agency did not have an opportunity to subject the nutrition labeling values that it provided for retailer use (see 56 FR 60880 at 60888 through 60889, and corrected at 57 FR 8174 (hereinafter referred to as the "1991 interim nutrition labeling values")) to public comment. Therefore, FDA did not require that these values be used to achieve retailer compliance. With more time, however, FDA has now developed a set of values that it believes are representative and is soliciting comment on those values, which are set out in proposed Appendices C and D to part 101. Interested persons should comment on the proposed nutrition labeling values themselves and provide any relevant information that would affect those values. The agency intends to require that these specific values be used by those retailers who decide to provide nutrition labeling for raw fruit, vegetables, and fish.

FDA tentatively finds that requiring the use of the nutrition labeling values is appropriate because these values reflect available data for the covered foods; their use will ensure that consumers receive consistent information from retail stores across the country; and will facilitate compliance determinations by FDA. Use of different values for the same food by different stores will likely cause consumer confusion and will only serve to undercut the credibility of the nutrition labeling that is provided.

If this proposal is adopted, retailers who use other data for these foods will not to be in compliance with the guidelines.

III. Updating the Nutrition Labeling Values for the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish

FDA is proposing to revise the nutrition labeling values for the most frequently consumed raw fruit, vegetables, and fish (proposed Appendices C and D to part 101) to: (1) Be consistent with the nutrition labeling requirements in § 101.9 (b), (c), and (d) that affect serving sizes, nutrient content, and label format; (2) reflect newer or additional data for these foods that have been submitted or made available to the agency; and (3) apply FDA compliance calculations, where possible, to data derived from USDA sources.

A. Changes Necessary for Consistency With Nutrition Labeling Requirements in § 101.9 (b), (c), and (d)

FDA has designed proposed Appendices C and D to be consistent with the final regulations on nutrition labeling.

Consistent with § 101.9(c) (58 FR 2229 at 2291), which lists the nutrients that are to be included in the nutrition label, FDA is proposing to add values for calories (cal) from fat, saturated fat, cholesterol, dietary fiber, and sugar to the list of nutrients in the appendices. The 1991 interim nutrition labeling values included dietary fiber for fruits and vegetables, and saturated fat and cholesterol for fish. However, these specific values were not required for retailer compliance with the guidelines. FDA is proposing to require that these items be included in the nutrition label for raw fruit, vegetables, and fish to ensure that consistent nutrition information is provided across the food supply.

Consistent with § 101.9(c)(2) and (c)(2)(i) (58 FR 44063 at 44076, August 18, 1993), FDA is proposing to provide the values for total fat and saturated fat in 0.5-gram (g) increments for quantities of less than 5 g and in whole gram increments for quantities above 5 g. The values for fat and saturated fat in the 1991 interim nutrition labeling values were rounded to whole numbers, but FDA has concluded that for foods other than raw fruit, vegetables, and fish, the available methodology is sensitive enough to present fat and saturated fat levels in half g increments up to 5 grams (58 FR 44063 at 44064). FDA tentatively finds, based on the need for consistency of nutrition labeling among food products (see 58 FR 44063 at 44065), that it is appropriate to declare fat and saturated fat in similar increments for raw fruit, vegetables, and fish.

Consistent with § 101.9(c)(5), information on potassium is provided in the proposed labeling values as a voluntary component. If FDA adopts proposed § 101.43(a)(3) and Appendices C and D to part 101, retailers could comply with the guidelines even if they do not provide the information for potassium. Nevertheless, FDA is proposing to include the information on potassium because many raw fruits, vegetables, and fish are good sources of this nutrient. Some retailers and marketing associations have expressed an interest in providing information on potassium levels. FDA tentatively finds that the potassium information will be useful to consumers who are attempting to increase or restrict their intake of this substance. Inclusion of information on potassium in proposed Appendices C and D makes it likely that this information will be provided to consumers.

Consistent with § 101.9(b)(7) (58 FR 2229 at 2292), FDA is proposing to declare the serving sizes in the appendices in ounce (oz) equivalents, using slashes between metric and oz weights, and rounding to the nearest 0.1-oz increment. Consistent with § 101.9(b)(5)(iv), 28 g is equivalent to 1 oz in the proposed appendices.

FDA is proposing to change the serving sizes for a number of items from those listed in the 1991 interim nutrition labeling final rule. FDA is proposing to change the serving size for peach from "2 medium (174 g)(6 oz)" to "1 medium (98 g/3.5 oz)." The value of 174 g for 2 peaches was derived from Agriculture Handbook No. 8–9 (Ref. 3). However, more recent information (Ref. 4) shows that a medium peach weighs about 98 g.

FDA is proposing to change the serving size for avocado from "⅓ medium (55 g)(2 oz)" to "⅕ medium (30 g/1.1 oz)" to be consistent with the serving size final rule (§ 101.12(b)) for this food. The serving size for avocado was 55 g in the serving size proposal (November 27, 1991, 56 FR 60394 at 60419), but based on comments received in response to this proposal, FDA changed the serving size to 30 g in the final regulation (see 58 FR 2229 at 2296).

FDA is proposing to change the serving size for tangerine from "2 medium, 2⅜" diameter (168 g)(6 oz)" to "1 medium (109 g/3.9 oz)" to reflect newer information available about this fruit from the Produce Marketing Association (PMA) (Ref. 5).

Consistent with § 101.9 (d)(7) and (d)(8) (58 FR 44063 at 44077), FDA is proposing to provide information on the percent daily values (DV's) for potassium and all mandatory nutrients except sugars and protein. The agency calculated the percent DV's in the proposed appendices by dividing the rounded quantitative values by the DRV's for macronutrients and electrolytes and by the RDI's for vitamins and minerals. As provided in § 101.9 (c)(8)(iv) and (c)(9) of the RDI/DRV final rule (58 FR 2206 at 2227), these DRV's are 65 g total fat, 20 g saturated fat, 300 milligram (mg) cholesterol, 2,400 mg sodium, 3,500 mg potassium, 300 g total carbohydrate, and 25 g dietary fiber, and the RDI's are 5,000 International Units (IU) vitamin A, 60 mg vitamin C, 1,000 mg calcium, and 18 mg iron.

Consistent with § 101.9(c)(8)(iii) (58 FR 2079 at 2178), FDA has replaced the asterisks that it used to represent less than 2 percent of the U.S. recommended daily allowance (RDA) for vitamin A, vitamin C, calcium, and iron, with zeros for the percent DV's of these nutrients. Section 101.9(c)(8)(iii) allows the use of zeros or asterisks for values that are less than 2 percent of the DV for vitamins and minerals. However, FDA tentatively finds that the use of asterisks for vitamins and minerals on the charts that are likely to be used for raw fruit, vegetables, and fish will be inconsistent with the zeros used for other nutrients, and that charts presenting a mixture of zeros and asterisks will be confusing for consumers. Therefore, where appropriate, FDA has used zeros for

peach from "2 medium (174 g)(6 oz)" to "1 medium (98 g/3.5 oz)." The value of 174 g for 2 peaches was derived from Agriculture Handbook No. 8–9 (Ref. 3). However, more recent information (Ref. 4) shows that a medium peach weighs about 98 g.

FDA is proposing to change the serving size for avocado from "⅓ medium (55 g)(2 oz)" to "⅕ medium (30 g/1.1 oz)" to be consistent with the serving size final rule (§ 101.12(b)) for this food. The serving size for avocado was 55 g in the serving size proposal (November 27, 1991, 56 FR 60394 at 60419), but based on comments received in response to this proposal, FDA changed the serving size to 30 g in the final regulation (see 58 FR 2229 at 2296).

FDA is proposing to change the serving size for tangerine from "2 medium, 2⅜" diameter (168 g)(6 oz)" to "1 medium (109 g/3.9 oz)" to reflect newer information available about this fruit from the Produce Marketing Association (PMA) (Ref. 5).

Consistent with § 101.9 (d)(7) and (d)(8) (58 FR 44063 at 44077), FDA is proposing to provide information on the percent daily values (DV's) for potassium and all mandatory nutrients except sugars and protein. The agency calculated the percent DV's in the proposed appendices by dividing the rounded quantitative values by the DRV's for macronutrients and electrolytes and by the RDI's for vitamins and minerals. As provided in § 101.9 (c)(8)(iv) and (c)(9) of the RDI/DRV final rule (58 FR 2206 at 2227), these DRV's are 65 g total fat, 20 g saturated fat, 300 milligram (mg) cholesterol, 2,400 mg sodium, 3,500 mg potassium, 300 g total carbohydrate, and 25 g dietary fiber, and the RDI's are 5,000 International Units (IU) vitamin A, 60 mg vitamin C, 1,000 mg calcium, and 18 mg iron.

Consistent with § 101.9(c)(8)(iii) (58 FR 2079 at 2178), FDA has replaced the asterisks that it used to represent less than 2 percent of the U.S. recommended daily allowance (RDA) for vitamin A, vitamin C, calcium, and iron, with zeros for the percent DV's of these nutrients. Section 101.9(c)(8)(iii) allows the use of zeros or asterisks for values that are less than 2 percent of the DV for vitamins and minerals. However, FDA tentatively finds that the use of asterisks for vitamins and minerals on the charts that are likely to be used for raw fruit, vegetables, and fish will be inconsistent with the zeros used for other nutrients, and that charts presenting a mixture of zeros and asterisks will be confusing for consumers. Therefore, where appropriate, FDA has used zeros for vitamins and minerals as well as for other nutrients in the proposed appendices.

B. Data Submitted or Made Available to the Agency

In proposed Appendix C to part 101, FDA has used information on the composition of bananas submitted to FDA by Nutrition Network on behalf of the International Banana Association (Ref. 6). The nutrition labeling values that FDA provided for bananas in the 1991 interim values were based on data provided by PMA (Ref. 7). The information provided by Nutrition Network included the data provided by PMA plus data on additional samples of bananas. Therefore, FDA tentatively concludes that the revised values for bananas in Appendix C to part 101 are superior to the 1991 interim nutrition labeling values because the revised values are based on a larger number of analytical values.

In proposed Appendix C to part 101, FDA has used information on the serving size and composition of tangerines that was provided by PMA (Ref. 5) after the final rule on the nutrition labeling of raw fruit and vegetables was published. The new information has permitted FDA to arrive at values for tangerines that are based on FDA calculations using procedures derived from the FDA Nutrition Labeling Manual (Ref. 8). The nutrition labeling values that FDA provided for tangerines in the 1991 interim values were based on mean nutrient values from the Agriculture Handbook No. 8–9 (Ref. 3). Therefore, FDA tentatively concludes that the revised values for tangerines in Appendix C to part 101 are superior to the 1991 interim nutrition labeling values, which are based on mean values, because the revised values are more reliable.

The labeling values previously provided by FDA for grapes reflected "American type" (adherent skin) grapes. USDA informed FDA, after the publication of the final rule on nutrition labeling of raw fruit, vegetables, and fish, that the grapes described as "American type" include varieties, such as concord, that are not generally consumed without processing, and that the grapes described as "European type" are the most common type of raw grapes consumed in the United States (Ref. 9). USDA stated that it would be more appropriate for FDA to use data for "European type" grapes as the type most frequently consumed in the United States.

Therefore, the nutrition labeling values for grapes proposed in Appendix C to part 101 are based on data from the USDA National Nutrient Databank (Ref. 10) and reflect European type (slipskin) grapes. FDA used the USDA National Nutrient Databank (Ref. 10) as the source of data because it provides information on sample size, means, and standard deviations. This information is necessary to obtain values appropriate for nutrition labeling.

C. Application of Compliance Calculations to Data From USDA

In the preamble to the voluntary nutrition labeling final rule (56 FR 60880 at 60884), FDA stated that if it did not receive new data for specific foods, it would subject the 1991 interim nutrition labeling values derived from USDA data to FDA compliance calculations and publish the revised labeling values in the **Federal Register**. Compliance calculations, which are fully discussed in the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases" (Ref. 8), consider the variation of nutrients in foods. The nutrient content of foods varies according to inherent, environmental, and processing factors. Some nutrients are more variable than others.

FDA believes that, when possible, the nutrition labeling values provided for raw fruit, vegetables, and fish should be based on FDA compliance calculations, rather than on mean nutrient values. When mean nutrient values are used on a nutrition label, they provide only a 50 percent confidence level that the declared values accurately reflect the nutrient levels in the food. Compliance calculations, on the other hand, involve the use of algorithms (formulas) that use mean values for nutrients in the food and estimates of variance (i.e., standard deviations) to produce labeling values. These values are less likely than mean nutrient values to overestimate nutrients like vitamins and minerals or to underestimate nutrients like sodium, fat, saturated fat, and calories. When compliance calculations are used, they provide 95 percent confidence that the levels of protein, vitamins, and minerals will be at least 80 percent of label declarations, and that the levels of calories, fat, saturated fat, cholesterol, and sodium will not be more than 120 percent of label declarations.

Compliance calculations require information on the number of samples, mean nutrient content, and estimates of variance (i.e., standard deviations). The 1991 interim nutrition labeling values derived from Agriculture Handbooks (Refs. 3, 11, and 12), Seafood Nutri-Facts (Ref. 13), and other sources (Refs. 14 through 16) had not been subjected to compliance calculations because

information on number of samples and variance was not consistently available from these sources.

When using USDA data for nutrition labeling values for this proposed revision, FDA obtained the data, where possible, directly from the USDA National Nutrient Databank (Ref. 10) (which is the source of the aggregated data provided in Refs. 3, and 11 through 13). The agency used the USDA National Nutrient Databank (Ref. 10) because it provides individual data points from analyses completed by various sources (i.e., government, academic, industry, and private laboratories). The other sources of USDA data (Refs. 3, and 11 through 13) provide aggregated mean values. The agency used the individual points from the USDA National Nutrient Databank to determine the number of samples, mean nutrient values, and estimates of variance that are necessary to complete the compliance calculations. Statutory deadlines for publishing the 1991 proposed and final regulations for the voluntary nutrition labeling program did not allow the agency sufficient time to obtain, evaluate, and perform compliance calculations on data from the USDA National Nutrient Databank (Ref. 10).

The tentative selection of the USDA National Nutrient Databank (Ref. 10) as the preferred source of data for purposes of applying compliance calculations results in some changes in the listing of the names and descriptors (i.e., presence of skin and cooking method) for fish. The listing of fish names in the 1991 interim nutrition labeling values was accompanied by specific cooking methods and, where appropriate, the term "skinless." These descriptive terms were derived from Seafood Nutri-Facts (Ref. 13). The data sources used for the proposed fish nutrition labeling values (Refs. 10 and 12) do not include a detailed description of how the fish were cooked (although they do indicate if dry or moist heat was applied), or whether the skin was present or removed. Therefore, FDA is not including detailed descriptive terms in the listing of fish names with the proposed nutrition labeling values in Appendix D to part 101. The nutrient values in Appendix D to part 101 reflect cooking methods that do not add fat, breading, or seasoning. The footnote for this appendix states this fact.

D. Nutrient Data

The derivation of each nutrition labeling value in proposed Appendices C and D to part 101 is documented in Reference 17. Reference 17 also lists the 1991 interim nutrition labeling values, so that the proposed values can be compared with the previous values.

1. Fruits and Vegetables

The information that FDA used in arriving at the 1991 interim nutrition labeling values for fruits and vegetables included data from PMA (Ref. 18) (subjected to compliance calculations), mean values from Agriculture Handbooks No. 8–9 (Ref. 3) and No. 8–11 (Ref. 11), and data from other sources (Refs. 15 and 16). The data that FDA used in arriving at the proposed nutrition labeling values for fruits and vegetables include (in descending order of priority):

a. Market basket sampling and analyses completed by PMA (Refs. 5, 18, and 19) and Nutrition Network (on behalf of the International Banana Association) (Ref. 6). PMA submitted sampling plans, analytical data, and suggested nutrition labeling values for various fruits and vegetables to FDA for review between 1982 and 1991. PMA subjected the data to FDA compliance calculations and subsequently revised the nutrition labeling values that it had developed (Ref. 19) to be in accordance with the mandatory nutrition labeling final rules (58 FR 2079) with regard to label content, serving size, DV's, and rounding. One of the changes that PMA made in revising its values was to include both available carbohydrate and dietary fiber in the values for total carbohydrate. The values for raw fruit and vegetables that FDA obtained from PMA and used in arriving at the 1991 interim nutrition labeling values included only available carbohydrate.

Nutrition Network (Ref. 6) submitted information on the sampling, analysis, and suggested nutrition labeling values of bananas on behalf of the International Banana Association. FDA reviewed the data provided by Nutrition Network and developed nutrition labeling values for bananas based on FDA compliance calculations (Ref. 8). In some cases, the nutrition labeling values developed by FDA for bananas (shown in Appendix C to part 101) were different than those suggested by Nutrition Network.

b. Data from the USDA National Nutrient Databank (Ref. 10) subjected to FDA compliance calculations with appropriate rounding. FDA obtained nutrient data tapes and disks from USDA and used the data to arrive at mean nutrient values and standard deviations and to develop nutrition labeling values, using FDA compliance calculations.

c. Mean values from Agriculture Handbook No. 8–9 for fruits (Ref. 3) and from No. 8–11 for vegetables (Ref. 11).

2. Fish

The information that FDA used in arriving at the 1991 interim nutrition labeling values for raw fish included Seafood Nutri-Facts (Ref. 13), Agriculture Handbook No. 8–15 (Ref. 12), and a technical memorandum from the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service (Ref. 14). The data that FDA used in arriving at the proposed nutrition labeling values for fish (in descending order of priority) are:

a. Data for cooked fish (3 oz basis) from the USDA National Nutrient Databank (Ref. 10), subjected to FDA compliance calculations with appropriate rounding. FDA obtained data tapes and disks from USDA, estimated mean nutrient values and standard deviations, and developed nutrition labeling values using FDA compliance calculations.

b. Data for raw fish (4 oz basis for finfish and crustacea and 5 oz basis for mollusks) from the USDA National Nutrient Databank (Ref. 10), subjected to FDA compliance calculations with appropriate rounding. FDA obtained data tapes and disks from USDA, estimated mean nutrient values and standard deviations, and developed nutrition labeling values using FDA compliance calculations.

c. Mean values for cooked fish from Agriculture Handbook No. 8–15 for fish (Ref. 12). A special situation is presented by orange roughy. Orange roughy is one of the few edible plants and animals that contains wax esters. Because the wax esters are extracted with lipids during analysis, under § 101.9(c)(2), which requires that the nutrition label list the total fat in a serving of food, the fat value for orange roughy should reflect the presence of these wax esters (even though they do not provide a metabolizable source of energy for humans). The value for fat in cooked orange roughy in Agriculture Handbook 8–15 (1990 Supplement), upon which FDA relied in developing proposed Appendix D, does not, however, include the wax esters. FDA is not aware of any other source for a value for this nutrient in this food that includes the wax esters. Therefore, FDA requests that information that provides a basis for establishing a value for total fat in cooked orange roughy that reflects the presence of the wax esters be submitted in comments on this proposal. If the agency receives acceptable information, FDA intends to include that value in any version of Appendix D that it adopts.

d. Mean values for raw fish (4 oz basis for finfish and crustacea and 5 oz basis for mollusks) from Agriculture Handbook No. 8–15 for fish (Ref. 12).

3. Corrections for Cooking

As stated above, FDA used analytical data for cooked (rather than raw) fish when they were available. If data for cooked fish were not available, it used data for raw fish. When it was necessary to use data for raw fish, the agency used a weight retention factor of 75 percent to convert the weight of raw finfish to a cooked weight and a factor of 60 percent to convert the raw weight of mollusks to a cooked weight (Refs. 12 and 20). Based on information provided by USDA, FDA assumed that the weight loss during cooking resulted from moisture only, and that there was no loss of fat or minerals with cooking (Ref. 20). Therefore, 4 oz of raw finfish were used to obtained data for 3 oz cooked finfish, and 5 oz of raw mollusk (clam, oyster, scallop) were used to obtain data for 3 oz cooked mollusk.

FDA applied a retention factor of 90 percent to the vitamin A value of raw chum/pink salmon to achieve the value for the cooked chum/pink salmon (Ref. 12). The application of this retention factor did not change the value of 2 percent DV for this vitamin. All the other vitamin A values for the fish were either negligible or were available on a cooked basis.

4. Calories from Fat

FDA calculated calories from fat using 8.37 cal per g of fat for fruits and vegetables and 9.02 cal per g of fat for fish. These caloric equivalents are provided in Agriculture Handbook No. 8–9 for fruits (Ref. 3), No. 8–11 for vegetables (Ref. 11), and No. 8–15 for fish (Ref. 12).

5. Saturated Fat

Saturated fat is defined in § 101.9(c)(2)(i) (58 FR 2079 at 2176) as the sum of fatty acids without double bonds. Because complete fatty acid profiles are not available for most foods in the National Nutrient Databank (Ref. 10), FDA was not able to obtain the saturated fat value for these foods by summing the individual saturated fatty acids or to apply the compliance calculations to this component. FDA used mean saturated fat values obtained from Agriculture Handbooks 8–9 (Ref. 3), No. 8–11 (Ref. 11), and No. 8–15 (Ref. 12) in proposed Appendices C and D to part 101.

6. Sugars

The sugars values included in proposed Appendix C to part 101 reflect total sugars and are derived primarily from the USDA Home Economics

for mollusks) from Agriculture Handbook No. 8–15 for fish (Ref. 12).

3. Corrections for Cooking

As stated above, FDA used analytical data for cooked (rather than raw) fish when they were available. If data for cooked fish were not available, it used data for raw fish. When it was necessary to use data for raw fish, the agency used a weight retention factor of 75 percent to convert the weight of raw finfish to a cooked weight and a factor of 60 percent to convert the raw weight of mollusks to a cooked weight (Refs. 12 and 20). Based on information provided by USDA, FDA assumed that the weight loss during cooking resulted from moisture only, and that there was no loss of fat or minerals with cooking (Ref. 20). Therefore, 4 oz of raw finfish were used to obtained data for 3 oz cooked finfish, and 5 oz of raw mollusk (clam, oyster, scallop) were used to obtain data for 3 oz cooked mollusk.

FDA applied a retention factor of 90 percent to the vitamin A value of raw chum/pink salmon to achieve the value for the cooked chum/pink salmon (Ref. 12). The application of this retention factor did not change the value of 2 percent DV for this vitamin. All the other vitamin A values for the fish were either negligible or were available on a cooked basis.

4. Calories from Fat

FDA calculated calories from fat using 8.37 cal per g of fat for fruits and vegetables and 9.02 cal per g of fat for fish. These caloric equivalents are provided in Agriculture Handbook No. 8–9 for fruits (Ref. 3), No. 8–11 for vegetables (Ref. 11), and No. 8–15 for fish (Ref. 12).

5. Saturated Fat

Saturated fat is defined in § 101.9(c)(2)(i) (58 FR 2079 at 2176) as the sum of fatty acids without double bonds. Because complete fatty acid profiles are not available for most foods in the National Nutrient Databank (Ref. 10), FDA was not able to obtain the saturated fat value for these foods by summing the individual saturated fatty acids or to apply the compliance calculations to this component. FDA used mean saturated fat values obtained from Agriculture Handbooks 8–9 (Ref. 3), No. 8–11 (Ref. 11), and No. 8–15 (Ref. 12) in proposed Appendices C and D to part 101.

6. Sugars

The sugars values included in proposed Appendix C to part 101 reflect total sugars and are derived primarily from the USDA Home Economics Research Report No. 48 (Ref. 21). FDA also obtained some newer data on the sugars content of raw fruit from USDA by personal communication (Ref. 22). For some fruits, the sugars values from reference 19 were high relative to the values for total carbohydrate and dietary fiber, i.e., the sugars value when added to dietary fiber exceeded total carbohydrate. Ideally, the sugars value when added to dietary fiber should be less than or equal to total carbohydrate. FDA adjusted the total carbohydrate for apple, watermelon, and grapes to reflect the sum of sugars and dietary fiber. FDA considers this adjustment to be appropriate because analysis of individual sugars and dietary fiber is more accurate than estimation of total carbohydrate, which is calculated by subtracting the sum of the weight of water, fat, protein, and ash from the weight of the food (i.e., carbohydrate by difference) (Ref. 22).

7. Other Values

Information on the vitamin C content of fish was available for only four species on the most frequently consumed list. Two of these values were negligible (Atlantic/Pacific mackerel and swordfish), and two of them were 4 percent of the DV (ocean perch and rainbow trout). FDA assigned a value of zero to the vitamin C content of the other 18 listed fish based on information provided by USDA (Ref. 20) indicating that fish are not a reliable source of vitamin C because the quantity of this vitamin in fish flesh is low and variable.

In the absence of other information, FDA used several well-known principles of food composition to develop the nutrition labeling values in proposed Appendices C and D to part 101. FDA used a value of zero for each of the following: (1) Cholesterol in fruit and vegetables because cholesterol is found only in animal tissues; (2) saturated fat in all fruit and vegetables that have a zero total fat content because saturated fat is included in total fat; (3) dietary fiber in fish because dietary fiber is found only in plant materials; and (4) sugars in fish because sugars are not found (or are very low) in fish.

IV. Identification of the 20 Most Frequently Consumed Raw Fruit, Vegetables, and Fish in the United States

FDA is not proposing any changes in the listing of the 20 most frequently consumed raw fruit and vegetables in § 101.44 (21 CFR 101.44) because it is not aware of any information that suggests that different or additional fruit or vegetables need to be added to the list. However, FDA is proposing to make four changes to the list of the 20 most frequently consumed raw fish.

First, FDA is proposing to list chum, pink, and sockeye subspecies of salmon instead of just Atlanta/Coho. FDA initially listed in § 101.44(c) only the subspecies "salmon, Atlantic/Coho" (56 FR 60880 at 60890). However, comments that the agency has received (Refs. 23 and 24) since the publication of the voluntary nutrition labeling final rule have requested that FDA include listings for salmon subspecies that have different nutrient profiles than the Atlantic/Coho subspecies. In addition to Atlantic and Coho (silver), other subspecies of salmon consumed in the United States include chum, pink, chinook (king), and sockeye (red) (Ref. 23).

The U.S. market for fresh salmon species varies with availability of the catch, and economic factors dictate which species are sold fresh or canned and which are exported (Ref. 23). In addition to Atlantic and Coho salmon, chum, pink, and sockeye salmon are generally available in the fresh fish section of retail stores, whereas chinook salmon is most often smoked before retail sale or is sold to restaurants (Ref. 23). Atlantic and Coho salmon contain 6 to 7 g of fat and 160 cal per 3 oz cooked (proposed Appendix D to part 101). Chum and pink salmon are lower in fat and calories than other species. They contain 4 g of fat and 130 cal per 3 oz cooked (proposed Appendix D to part 101). Sockeye salmon has higher fat and calorie levels, containing 9 g of fat and 180 cal per 3 oz cooked (proposed Appendix D to part 101).

Based on the differences in fat and calorie levels of salmon subspecies, FDA is proposing to revise § 101.44(c) to add chum/pink salmon and sockeye salmon to the list of the most frequently consumed raw fish as subspecies under salmon. FDA has tentatively concluded that chinook salmon should not be added to the list because it is not widely available in the fresh fish section of retail stores (Ref. 23).

Secondly, FDA is proposing to consolidate the listing for flounder and sole as one item, "flounder/sole," because the nutrient data for these two species are very similar, and they are grouped together in Agriculture Handbook No. 8–15 (Ref. 12), the primary source of the values for these fish that are presented in proposed Appendix D to part 101. Agriculture Handbook No. 8–15 groups these fish together under the heading of "flatfish." FDA is continuing to use "flounder/sole," however, because the agency notes that these names are commonly used at the retail level. The agency's

tentative view is that the term "flatfish" would not be commonly known or understood among consumers and could lead to consumer confusion.

The nutrition labeling values for flounder and sole in the 1991 voluntary nutrition labeling final rule were obtained from Seafood Nutri-Facts (Ref. 13), which provided separate nutrient profiles for these fish. As explained in section III.C. of this document, FDA has tentatively decided to use the USDA National Nutrient Databank as the primary source for data on fish, when available, and the Agriculture Handbook No. 8–15 (Ref. 12) as the secondary source. These sources are more up-to-date, and provide more documentation, than Seafood Nutri-Facts (Ref. 13).

Thirdly, FDA is proposing to remove the word "jack" from the description of mackerel. FDA is proposing this change because the previous data source used for determining the nutrition labeling values, Seafood Nutri-Facts (Ref. 13), provided a single nutrient profile for "Pacific & jack mackerel," whereas the data source that FDA is using as a basis for the proposed nutrition labeling for this fish, the USDA National Nutrient Databank (Ref. 10), describes the species as "Pacific mackerel." Nutrient data for both Atlantic and Pacific mackerel are available in the USDA National Nutrient Databank (Ref. 10), but data for jack mackerel are available only on the canned form from this source. Therefore, to include both the Atlantic and Pacific subspecies (which have similar nutrient profiles); to reflect raw, rather than canned, mackerel; and to accurately identify the fish associated with the nutrition labeling values, FDA is proposing to describe the fish as "Mackerel, Atlantic/Pacific."

Fourthly, FDA is proposing to add swordfish to the list to keep the number of fish at 20. The 1990 amendments directed FDA to identify the 20 most frequently consumed raw fruit, vegetables, and fish (section 403(q)(4)(B)(i) of the act). FDA used information provided by the National Fisheries Institute (Ref. 25) to identify the most frequently consumed species of fish in the United States for the voluntary nutrition labeling final rule. According to this information, swordfish is the next fish in decreasing order of consumption after lobster.

FDA is proposing to revise § 101.44(c) based on the four changes discussed above to read as follows: "The 20 most frequently consumed raw fish are: Shrimp, cod, pollock, catfish, scallop, salmon (Atlantic/Coho, chum/pink, sockeye), flounder/sole, oyster, orange roughy, Atlantic/Pacific mackerel, ocean perch, rockfish, whiting, clam, haddock, blue crab, rainbow trout, halibut, lobster, and swordfish."

V. Updating the Guidelines for the Nutrition Labeling of the 20 Most Frequently Consumed Raw Fruit, Vegetables, and Fish

As stated above, FDA is proposing to revise the guidelines in § 101.45 for the nutrition labeling of raw fruit, vegetables, and fish to make them as consistent as possible with the nutrition labeling requirements that FDA has established in § 101.9 (b), (c), and (d). The agency believes that consistency in nutrition labeling among various types of food products is necessary to help consumers compare products and make appropriate food choices. It is also consistent with section 2(b)(1)(A) of the 1990 amendments because it will foster consumer understanding of the nutrition label and help consumers to put the nutrient values that are presented into the context of the total daily diet.

The agency is proposing to subdivide § 101.45(a) into four parts. In § 101.45(a)(1), FDA is proposing to provide how the nutrition labeling of raw fruit, vegetables, and fish should be displayed. The agency states that the information should be displayed at the point of purchase by appropriate means, such as by a label affixed to the food or through labeling including shelf labels, signs, posters, brochures, notebooks, or leaflets. The agency also states that the information should be readily available and in close proximity to the foods. Proposed § 101.45(a)(1) remains the same as current § 101.45(a), except that the agency has made editorial changes to the first sentence to distinguish between nutrition labels (nutrition information affixed to foods), and nutrition labeling (nutrition information in proximity but not necessarily attached to foods), and to clarify that shelf labels and posters may be used as a form of labeling for raw fruit, vegetables, and fish.

To be consistent with the final mandatory nutrition labeling rule (58 FR 2079), FDA is proposing in § 101.45(a)(2) that serving sizes should be determined, and required nutrients should be declared, in accordance with § 101.9 (b) and (c).

Current § 101.45(b) provides that nutrition labeling on raw fruit, vegetables, and fish should be provided in accordance with § 101.9, but it does not explicitly refer to the provisions of § 101.9 that have direct application to the nutrition labeling of raw fruit, vegetables, and fish. Proposed § 101.45(a)(2) acknowledges the specific applicability of new § 101.9 (b) and (c) to the voluntary nutrition labeling program. If consumers are to make meaningful comparisons between raw and processed foods, the serving sizes on which those comparisons are based must have a consistent basis. By cross-referencing § 101.9(b), which it adopted in response to section 403(q)(1)(A)(i) of the act, FDA is proposing to ensure that the serving sizes for raw fruit, vegetables, and fish are consistent with the serving sizes for processed foods.

By cross-referencing § 101.9(c), FDA is proposing to make explicit the list of nutrients that must be included in nutrition labeling for raw fruit, vegetables, and fish, if the nutrition labeling is to be in compliance with FDA's regulations. Under this proposal, and to reflect the changes made by the January 1993 final rules, this list will supersede the nutrient list in current § 101.45(b)(1), which allows for voluntary labeling of thiamine, riboflavin, and niacin, as well as complex carbohydrates, sugars, dietary fiber, saturated fat, and cholesterol. In addition, proposed § 101.45(a)(2) incorporates current § 101.45(b)(4), which states that the nutrition label values should be based on a raw edible portion for fruit and vegetables and on a cooked edible portion for fish, and that the methods used to cook the fish must not add fat, breading, or seasoning.

In proposed Appendices C and D to part 101, FDA is providing serving sizes and nutrient values that fully comply with proposed § 101.45(a)(2) for the 20 most frequently consumed fruit, vegetables, and fish.

Proposed § 101.45(a)(3) provides that nutrition labeling may be presented on charts in horizontal or vertical columns. Proposed § 101.45(a)(3) will allow for increased flexibility over current § 101.45(b)(2) in the development of posters, brochures, and other labeling materials by allowing for horizontal columns. However, to be consistent with § 101.9(d)(2), adopted as part of the January 1993 final rules, the agency is proposing that any nutrition labeling that is provided must bear the heading "Nutrition Facts" in type larger than all other print used in the nutrition label. Consumers will be familiar with this heading and understand its significance from its use on packaged foods.

Under proposed § 101.45(a)(3), nutrition labeling on raw fruit, vegetables, or fish that is presented in a linear (as opposed to columnar) format will not be considered to be in compliance by FDA. Although presentation of nutrition information in lines is allowed by current § 101.45(b)(2), FDA is concerned that this format is too difficult for consumers

to read when so many items are listed. Given that the space constraints that apply to labels on food packages do not apply to the signs, placards, and notebooks that are used to label raw fruit, vegetables, and fish, FDA tentatively concludes that there is no basis to permit the use of this format in the labeling of these products. Therefore, FDA is proposing to provide that it will not accept the use of this format. FDA requests comment on this change from the current regulation.

FDA is also proposing in § 101.45(a)(3) that the nutrition information be clearly presented and of sufficient type size and color contrast to be plainly legible. This provision is authorized by section 2(b)(1)(A) of the 1990 amendments, which states that nutrition labeling must be readily observable and comprehensible. Moreover, FDA's view is that nutrition information will only be of use to consumers if it is clearly visible.

Consistent with § 101.9(d)(1)(iv), FDA is proposing in § 101.45(a)(3) that the values for percent DV's be highlighted in contrast to the quantitative amounts by weight. FDA believes that this highlighting, which may be accomplished by bolding the percent DV's, will assist the consumer in focusing on the most important information on the label.

Proposed § 101.45(a)(3)(i) provides that the number of servings per container need not be included in the nutrition labeling of foods under the voluntary program. This provision remains the same as in current § 101.45(b)(3). FDA's view is that retailers need not provide the number of servings per container because raw fruits, vegetables, and fish are not usually available in containers, and even when they are, retailers may not be able to determine the number of servings per container because it could vary from one container to another. The number of servings is variable and difficult to predict because whole sizes of fruits, vegetables, and fish vary, and when containers are used the number of items per container varies. Thus, FDA tentatively concludes that it is not reasonable to expect retailers to predict the number of items per container.

In proposed § 101.45(a)(3)(ii), FDA provides that the statement "Percent Daily Values are based on a 2,000 calorie diet" be a required part of the nutrition labeling information (i.e., on posters, brochures, or other labeling materials) for raw fruits, vegetables, and fish. Requiring that this information be included is consistent with information requirements for other foods under § 101.9(d)(9)(i). However, FDA is not

to read when so many items are listed. Given that the space constraints that apply to labels on food packages do not apply to the signs, placards, and notebooks that are used to label raw fruit, vegetables, and fish, FDA tentatively concludes that there is no basis to permit the use of this format in the labeling of these products. Therefore, FDA is proposing to provide that it will not accept the use of this format. FDA requests comment on this change from the current regulation.

FDA is also proposing in § 101.45(a)(3) that the nutrition information be clearly presented and of sufficient type size and color contrast to be plainly legible. This provision is authorized by section 2(b)(1)(A) of the 1990 amendments, which states that nutrition labeling must be readily observable and comprehensible. Moreover, FDA's view is that nutrition information will only be of use to consumers if it is clearly visible.

Consistent with § 101.9(d)(1)(iv), FDA is proposing in § 101.45(a)(3) that the values for percent DV's be highlighted in contrast to the quantitative amounts by weight. FDA believes that this highlighting, which may be accomplished by bolding the percent DV's, will assist the consumer in focusing on the most important information on the label.

Proposed § 101.45(a)(3)(i) provides that the number of servings per container need not be included in the nutrition labeling of foods under the voluntary program. This provision remains the same as in current § 101.45(b)(3). FDA's view is that retailers need not provide the number of servings per container because raw fruits, vegetables, and fish are not usually available in containers, and even when they are, retailers may not be able to determine the number of servings per container because it could vary from one container to another. The number of servings is variable and difficult to predict because whole sizes of fruits, vegetables, and fish vary, and when containers are used the number of items per container varies. Thus, FDA tentatively concludes that it is not reasonable to expect retailers to predict the number of items per container.

In proposed § 101.45(a)(3)(ii), FDA provides that the statement "Percent Daily Values are based on a 2,000 calorie diet" be a required part of the nutrition labeling information (i.e., on posters, brochures, or other labeling materials) for raw fruits, vegetables, and fish. Requiring that this information be included is consistent with information requirements for other foods under § 101.9(d)(9)(i). However, FDA is not proposing to require that the entire footnote specified in § 101.9(d)(9)(i), which lists the DV's for six nutrients for two levels of caloric intake. FDA tentatively concludes that the space required for this footnote is likely to be such that retailers will make it so small that it will be difficult for consumers to read or will simply not provide nutrition labeling at all because the poster that would be needed to provide all the required information would be so large as to be unwieldy. However, FDA does encourage the use of this footnote when nutrition labeling information for raw fruit and vegetables or for raw fish is provided in brochures, notebooks, or leaflets, where the space in which to present information is less at a premium.

In proposed § 101.45(a)(3)(iii), FDA is providing that when the nutrition labeling information for raw fruits and vegetables is provided on a chart, the columns for saturated fat and cholesterol may be omitted with use of the following footnote, "Most fruits and vegetables provide negligible amounts of saturated fat and cholesterol; avocados provide 1.0 g of saturated fat per oz." FDA is also proposing in this section that when the nutrition labeling information for raw fish is provided on a chart, the columns for dietary fiber and sugars may be omitted with use of the following footnote, "Fish provide negligible amounts of dietary fiber and sugars." FDA is proposing these changes, as stated above, because fruits and vegetables (other than avocados which contain saturated fat) do not contain saturated fat and cholesterol, and because fish do not contain dietary fiber or sugars. FDA tentatively concludes that these changes will reduce the size of the charts (making them easier to read) without reducing the amount of information that is provided to consumers.

FDA is aware that producers and packers who package fruit, vegetables, and fish may wish to put nutrition information directly on food packages. When that is done, FDA believes that the nutrition label format can and should be entirely consistent with the format requirements in § 101.9(d) if there is sufficient space for meeting the nutrition label format requirements. The nutrition label format requirements under proposed § 101.45 are designed to cover the situation in which raw fruit, vegetables, and fish are sold in bulk and nonpackaged form, circumstances that create space constraints on the voluntary presentation of nutrition information and that require the use of such mechanisms as posters, signs, or shelf labels. If producers and packers choose to provide nutrition labeling on raw fruit, vegetables, or fish that are sold in packaged form, that labeling should comply with format and other regulations that apply to other foods sold in packaged form. In addition, if retailers or producers wish to provide nutrition labeling on individual signs posted above, or in close proximity to bins or containers of raw fruit, vegetables, or fish, the nutrition information should be presented in a format that is consistent with the format requirements in § 101.9(d).

Therefore, proposed § 101.45(a)(4) states that when nutrition information is provided on foods sold in packaged form or on signs for individual foods in retail stores, it should be displayed in accordance with § 101.9(d), except that consistent with proposed § 101.45(a)(3)(i), the declaration of the number of servings per container need not be provided. As stated above, the number of servings is variable and difficult to predict because whole sizes of fruits, vegetables, and fish vary, and the number of items per container varies. FDA tentatively concludes that it is not reasonable to expect producers and packers to predict the number of items per container.

FDA is also proposing in § 101.45(a)(4) to accept the use of the simplified format set forth in § 101.9(f) if the food contains insignificant amounts of seven or more of the following food components: Calories, total fat, saturated fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars, protein, vitamin A, vitamin C, calcium, or iron. FDA allows the use of simplified nutrition label formats on packaged, processed foods under section 403(q)(5)(C) of the act and is not aware of any reason why the simplified nutrition labeling format should not be allowed on raw fruit, vegetables, or fish that bear individual labels. Fruits and vegetables among the 20 most frequently consumed that qualify for a simplified format (based on the nutrition labeling values in proposed Appendix C to part 101) include: Apple, avocado, pineapple, lime, mushrooms, and radishes. Fish that qualify for a simplified format (based on the nutrition labeling values in proposed Appendix D to part 101) are pollock, catfish, and orange roughy.

Proposed § 101.45(b) provides that the nutrition labeling values provided by FDA in proposed Appendices C and D to part 101 for the 20 most frequently consumed raw fruit, vegetables, and fish must be used by retailers who participate in the voluntary nutrition labeling program if they are to be in compliance. As explained above, FDA

believes that the use of these values will help to ensure uniformity in the values presented to consumers in various retail stores, and that uniformity will prevent or decrease consumer confusion. Consumers could be confused by seeing different values for the same foods in different retail stores. FDA believes that the nutrition labeling values that it has provided in proposed Appendices C and D to part 101 are the most appropriate values for these foods based on data currently available. FDA intends to keep these values up-to-date by revising them based on additional or newer information and by making the revised values available for public comment in the **Federal Register** at least every 2 years. This provision is the same as in current § 101.45(i).

In proposed § 101.45(b)(1), FDA encourages interested persons to submit data bases to the agency with new or additional nutrient data for any of the 20 most frequently consumed raw fruit, vegetables, and fish. FDA intends to review data for these foods as it receives them (including data received during the public comment period) and incorporate them, as appropriate, into the biennial revisions of the nutrition labeling values.

Proposed § 101.45(b)(1)(i) states that FDA guidance in the development of data bases can be found in the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases" (Ref. 6), which is available from the FDA Office of Food Labeling (HFS–150). This provision is an update of current § 101.45(e), which references the older version of the FDA Nutrition Labeling Manual.

Proposed § 101.45(b)(1)(ii) provides that the submission of data to FDA should include, but need not be limited to, information on the following: Source of the data, number of samples, sampling design, analytical method, and statistical treatment of the data. This provision remains the same as current § 101.45(c) with editorial changes. Proposed § 101.45(b)(1)(ii) also states that proposed quantitative label declarations may be included. It states that these proposed values should be determined in accordance with the FDA Nutrition Labeling Manual (Ref. 6).

Current § 101.45(c) describes how to submit data bases and proposed nutrition labeling values for raw fruit, vegetables, and fish to the agency for review and possible acceptance. The current provision includes data bases for raw fruit, vegetables, and fish that are not among those identified as most frequently consumed, as well as data bases for items identified as most frequently consumed.

FDA is proposing in new § 101.45(c) that data bases of nutrient values for specific varieties, species, or cultivars of raw fruit, vegetables, and fish, that are not among the 20 most frequently consumed, may be used to develop nutrition labeling values for these foods and may be submitted for review under § 101.9(g)(8). Although these fruits, vegetables, and fish need not bear nutrition labeling, FDA is aware that various retail stores and trade associations have developed nutrition labeling values for them. While the agency does not have resources to develop nutrition labeling values for these foods, it encourages the voluntary provision of such information because it will assist consumers in making healthy food choices.

Data bases for these raw fruit, vegetables, and fish may voluntarily be submitted to FDA for review if the developers wish to avail themselves of the provisions in § 101.9(g). FDA believes that individuals or organizations that desire FDA acceptance of data bases and nutrition labeling values should be able to submit this information to the agency for review. Proposed § 101.45(c)(1) provides that if a food retailer decides to provide nutrition information about raw fruit, vegetables, and fish not among the most frequently consumed, it should use food names and descriptions that clearly identify these raw fruit, vegetables, and fish as distinct from those for which FDA is providing nutrition labeling values. This provision remains the same, except for editorial changes, as the second sentence of current § 101.45(d). FDA believes the information for the foods will only be useful to consumers if the foods are clearly identified, so that consumers will not confuse them with the foods listed in proposed Appendices C and D to part 101. For example, retailers might provide nutrition labeling values for red cabbage, valencia oranges, or winter squash, foods for which FDA is not currently providing values.

Proposed § 101.45(c)(2) states that guidance on the development of data bases may be found in the FDA Nutrition Labeling Manual (Ref. 6). This provision, like proposed § 101.45(b)(1)(i), is an update of current § 101.45(e) which references the older version of the FDA Nutrition Labeling Manual.

In proposed § 101.45(c)(3), FDA states that the nutrition labeling values computed from data bases for raw fruit, vegetables, and fish that are not among the 20 most frequently consumed, or for specific species or cultivars of raw fruit, vegetables, and fish, are subject to the compliance provisions of § 101.9(g). This provision is the same as current § 101.45(h) except that the reference to review and acceptance of data bases is removed. FDA intends to provide surveillance of the nutrition labeling of raw fruit, vegetables, and fish that are not among the 20 most frequently consumed in the same manner that it provides surveillance for foods for which nutrition labeling is mandatory.

In proposed § 101.45(c)(3)(i), FDA states that compliance with the provisions of § 101.9(g) may be achieved by use of a data base that has been developed following FDA guideline procedures and that has been approved by FDA. Proposed § 101.45(c)(3)(i)(A) provides that the submission of a data base to FDA should include, but need not be limited to, information on the following: Source of the data, number of samples, sampling design, analytical methods, statistical treatment of the data, and proposed quantitative label declarations. This provision remains the same, except for editorial changes, as current § 101.45(c). Proposed § 101.45(c)(3)(i)(A) states that the values for declaration should be determined in accordance with the FDA Nutrition Labeling Manual (Ref. 8).

Proposed § 101.45(c)(3)(i)(B) provides information about FDA approval of data bases, namely the need for written approval by FDA, the time limits on approval, revocation of approval, and approval requests. This provision replaces current § 101.45(b) and is consistent with § 101.9(g)(8), which concerns approval of data bases for nutrition labeling of most foods.

The agency notes that in this document it is modifying the terminology that it uses to describe the results of the FDA review process from "accept" to "approve." The agency is making this change in § 101.45 to reflect the terminology that it used in the final rule on mandatory labeling of food in § 101.9.

Although the agency is proposing to change the terminology in § 101.45, it is not proposing any change in the underlying process. The purpose of § 101.45(c) has been, and continues to be under this proposal, to provide a mechanism whereby interested persons may obtain agency agreement that the values in the data bases that they have developed are an accurate reflection of the nutrient levels in the subject food. It is the agency's intent to evaluate data bases whether for the voluntary or mandatory labeling programs in a consistent manner. Thus, for the purposes of the FDA data base review process, the terms "accept" and "approve" are interchangeable. Because "approve" is the term that FDA used in § 101.9, the agency is moving to make its use consistent across its regulations.

The agency notes, however, that the process by which it reviews data bases has been a problem for a variety of reasons, especially given the greatly increased interest in data base use following the passage of the 1990 amendments. In the preamble to the nutrition labeling final rule that issued on January 6, 1993 (58 FR 2079 at 2164), FDA encouraged manufacturers who wish to use a data base for nutrition labeling to follow the statistical procedures outlined in the FDA Nutrition Labeling Manual (Ref. 8) and to have the data base reviewed and approved by FDA. Several food companies and trade associations have submitted data bases, ingredient data base systems, and proposed nutrition labeling values to FDA for review and evaluation. The agency has found that its resources for data base review simply are not adequate to handle the volume of submissions that the agency has received. Thus, the agency has been left trying to decide how it can accommodate the interest in agency review and approval of data bases, and the assurances that approval provides, and at the same time maintain a system that is responsive to review requests; that is, that provides reasonable and timely responses to requests for agency review but that does not overwhelm the resources that the agency has available for such reviews.

Based on its very preliminary review of the situation in the short time since the January 6, 1993, final rule was published, FDA believes that some modifications in its approach to data bases may be necessary. The agency is considering the possibility that it can adequately evaluate a data base using less information than it would expect to receive under the guidance in FDA's Nutrition Labeling Manual. The agency is also considering the possibility that the system can be made more flexible and responsive if manufacturers could be authorized to begin labeling their products, if they choose to do so, based on an abbreviated, preliminary review by FDA. Such a system could offer a manufacturer some assurance that FDA would not take action against its products, although the manufacturer would have to agree to quickly move to modify its labeling should the agency find the data base to be unrepresentative or inadequate.

Thus, FDA is soliciting comments on all aspects of the FDA data base review process. The agency is specifically requesting comments about the evaluation criteria as related to: (1) The

"approve" is the term that FDA used in § 101.9, the agency is moving to make its use consistent across its regulations.

The agency notes, however, that the process by which it reviews data bases has been a problem for a variety of reasons, especially given the greatly increased interest in data base use following the passage of the 1990 amendments. In the preamble to the nutrition labeling final rule that issued on January 6, 1993 (58 FR 2079 at 2164), FDA encouraged manufacturers who wish to use a data base for nutrition labeling to follow the statistical procedures outlined in the FDA Nutrition Labeling Manual (Ref. 8) and to have the data base reviewed and approved by FDA. Several food companies and trade associations have submitted data bases, ingredient data base systems, and proposed nutrition labeling values to FDA for review and evaluation. The agency has found that its resources for data base review simply are not adequate to handle the volume of submissions that the agency has received. Thus, the agency has been left trying to decide how it can accommodate the interest in agency review and approval of data bases, and the assurances that approval provides, and at the same time maintain a system that is responsive to review requests; that is, that provides reasonable and timely responses to requests for agency review but that does not overwhelm the resources that the agency has available for such reviews.

Based on its very preliminary review of the situation in the short time since the January 6, 1993, final rule was published, FDA believes that some modifications in its approach to data bases may be necessary. The agency is considering the possibility that it can adequately evaluate a data base using less information than it would expect to receive under the guidance in FDA's Nutrition Labeling Manual. The agency is also considering the possibility that the system can be made more flexible and responsive if manufacturers could be authorized to begin labeling their products, if they choose to do so, based on an abbreviated, preliminary review by FDA. Such a system could offer a manufacturer some assurance that FDA would not take action against its products, although the manufacturer would have to agree to quickly move to modify its labeling should the agency find the data base to be unrepresentative or inadequate.

Thus, FDA is soliciting comments on all aspects of the FDA data base review process. The agency is specifically requesting comments about the evaluation criteria as related to: (1) The nature and rigor of the evaluation process, including the need for information on the source of the data, number of samples, sampling design, analytical methods, statistical treatment of data, and proposed quantitative label declarations; and (2) the appropriate basis for an "interim" approval and guidelines to determine key minimal criteria for such "interim" status, as well as guidelines to establish followup procedures and timeframes to ensure that data base developers are stimulated to continue to collect data and continue to improve their data bases intended for nutrition labeling purposes.

As background information for comments, FDA notes that the "FDA Nutrition Labeling Manual: A Guide to Developing and Using Databases" (Ref. 8) and the "Guide to FDA's Database Review System" (Ref. 26) are available from the Office of Food Labeling, HFS–150, 200 C Street SW., Washington, DC 20204.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because compliance with the guidelines for the labeling of raw fruit, vegetables, and fish is voluntary, the agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

A. Regulatory Options

Executive Order 12866 requires agencies also to estimate costs to government. The 1990 amendments require that FDA determine every 2 years if there is substantial compliance with the labeling guidelines. If substantial compliance does not exist, FDA must make compliance mandatory FDA estimates that the costs to government are approximately $150,000 every 2 years to establish a contract to survey food retailers, oversee the contract, and publish a report on the status of voluntary compliance.

If compliance with the guidelines becomes mandatory, costs to the government will not significantly change because the costs associated with determining if there is substantial compliance would be replaced by enforcement costs. If compliance becomes mandatory, costs to retailers would increase to $9.9 million in the first year.

B. Benefits of the Proposed Regulation

In the "Regulatory Impact Analysis of the Proposed Rules to Amend the Food Labeling Regulations" (November 27, 1991, 56 FR 60856), FDA stated that the benefit of labeling raw fruit, vegetables, and fish is "some change in purchase behavior." At present, the majority of consumers are exposed to the nutrition labeling of raw fruit, vegetables, and fish. As stated previously, approximately 75.7 percent of retailers (representing 76.9 percent of annual sales) of raw fruit and vegetables are in compliance with current nutrition labeling guidelines. Approximately 73.2 percent of retailers (representing 74.3 percent of annual sales) of raw fish are in compliance. Therefore, this regulation will continue to inform consumers by providing them with information on the nutrient content of raw fruit, vegetables, and fish and allowing them to compare the nutrient content of these foods with other raw and processed foods. By providing nutrient values for the 20 most frequently consumed raw fruit, vegetables, and fish, this regulation has the benefit of facilitating the provision of this information to consumers.

The actions proposed in this document are designed to promote consistency. FDA is revising the guidelines for the voluntary nutrition labeling of raw fruits, vegetables, and fish to be more consistent with the nutrition labeling of foods subject to § 101.9. Similarly, FDA is specifying that compliance requires that retailers

use the nutrition values provided by FDA for the 20 most frequently consumed raw fruit, vegetables, and fish, thus providing consistency among retailers. FDA believes that the flexibility of allowing manufacturers to use other appropriate values does not outweigh the consumer confusion caused by different values for the same food in different stores. Thus, the regulations will benefit consumers by helping them to recognize and understand nutrition labeling information and to avoid confusion.

C. Costs of the Proposed Regulation

The costs of a labeling regulation are the incremental administrative, analytical, redesign, label inventory, and label disposal costs associated with the regulatory action. Because FDA is requiring that retailers use the nutrition values provided by FDA, there will be no analytical costs or other costs of obtaining the information. FDA has information that the typical sign, which is the most frequently used form of labeling of raw products, has an expected useful life of 6 months. Therefore, there will be no label inventory disposal costs because existing with current §§ 101.42 to 101.45 or with the provisions of this proposal. However, for all surveys after fall 1994, only values in accordance with the regulations in place at the time will constitute compliance.

IX. Comments

Interested persons may, on or before September 16, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office between 9 a.m. and 4 p.m., Monday through Friday.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Food and Drug Administration, Center for Food Safety and Applied Nutrition, "Report on the Voluntary Compliance of Food Retailers in Providing Nutrition Labeling Information for Raw Fruit and Vegetables and for Raw Fish," Washington, DC, May 8, 1993.
2. The Ehrhart-Babic Group, National Retail Tracking Index, "Results of the Survey on the Compliance of Retailers with FDA's Guidelines for the Voluntary Nutrition Labeling of Raw Fruit, Vegetables, and Fish," (FDA contract 223–92–2003), Englewood Cliffs, NJ, March 1993.
3. Gebhardt, S.E., R. Cutrufelli, and R. H. Matthews, "Composition of Foods Raw, Processed, Prepared, Fruits and Fruit Juices, Agriculture Handbook No. 8–9, Human Nutrition Information Service, USDA, Washington, DC, 1982.
4. Gebhardt, S.E., Human Nutrition Information Service, USDA, Hyattsville, MD, memorandum of phone conversation between Human Nutrition Information Service, USDA, and the Office of Food Labeling, FDA, October 15, 1993.
5. Hegenauer J., and E. Pivonka, "Tangerine Nutrition Study," Produce Marketing Association Nutrition Labeling Program, Newark, DE, August 3, 1992.
6. Rainey, C.J., and L.A. Nyquist, "Updated Nutrition Labeling Values for Bananas," Prepared by Nutrition Network for the International Banana Association, Irving, CA, February 23, 1993.
7. Hegenauer J., and N.J. Tucker, "Banana Nutrition Study," Produce Marketing Association Nutrition Labeling Program, Newark, DE, December 13, 1990.
8. McClure, F.D., and J.K. Lee, Division of Mathematics, Office of Toxicological Sciences, Center for Food Safety and Applied Nutrition, FDA, "FDA Nutrition Labeling Manual: A Guide for Developing and Using Databases," 1993.
9. Gebhardt, S.E., Human Nutrition Information Service, USDA, Hyattsville, MD, letter to FDA dated February 12, 1992.
10. National Nutrient Databank, maintained at the Human Nutrition Information Service, USDA, 6505 Belcrest Rd., Hyattsville, MD.
11. Haytowitz D.B., and R.H. Matthews, "Composition of Foods—Raw, Processed, Prepared, Vegetables and Vegetable Products," Agriculture Handbook No. 8–11, Human Nutrition Information Service, USDA, Washington, DC, 1984.
12. Exler, J. "Composition of Foods— Raw, Processed, Prepared, Finfish and Shellfish Products," Agriculture Handbook No. 8–15, Human Nutrition Information Service, USDA, Washington, DC, 1987.
13. Food Marketing Institute and National Fisheries Institute, Seafood Nutri-Facts, Fresh Seafood Nutrition Information Program, Washington, DC, 1988.
14. Sidwell, V.D., "Chemical and Nutritional Composition of Finfishes, Whales, Crustaceans, Mollusks, and their Products," NOAA Technical Memorandum NMFS F/SEC–11, National Oceanic and Atmospheric Administration (NOAA) and National Marine Fisheries Service, 1981.
15. Paul, A.A., and D.A.T. Southgate, *McCance and Widdowson's The Composition of Foods*, 4th ed. Elsevier/North-Holland Biomedical Press, NY, 1978.
16. Davies, J., and J. Dickerson, "Nutrient Content of Food Portions," The Royal Society of Chemistry, Cambridge, UK, 1991.
17. Pennington, J.A.T., "FDA Voluntary Nutrition Labeling Program for Raw Fruit, Vegetables, and Fish: Documentation for the Proposed Nutrition Labeling Values," FDA, Washington, DC, October 1993.
18. "Individual Reports on the Nutrient Content of Raw Fruits and Vegetables," Produce Marketing Association (PMA), Newark, DE, 1982–91.
19. "Updates on the Nutrition Labeling Information for Raw Fruit and Vegetables," Produce Marketing Association, Newark, DE, March 1993.
20. Exler, J., Human Nutrition Information Service, USDA, Hyattsville, MD, memorandum of phone conversation between Human Nutrition Information Service, USDA, and the Office of Food Labeling, FDA, March 1, 1993.
21. Matthews, R.H., P.R. Pehrsson, and M. Farhat-Sabet, "Sugar Content of Selected Foods: Individual and Total Sugars," USDA Home Economics Research Report No. 48, September 1987.
22. Pehrsson, P.R., Human Nutrition Information Service, USDA, Hyattsville, MD, memorandum of phone conversation between Human Nutrition Information Service, USDA, and the Office of Food Labeling, FDA, November 19, 1992.
23. Weddig, L., National Fisheries Institute (NFI), Arlington, VA, memorandum of phone conversation between NFI, and the Office of Food Labeling, FDA, February 4, 1993.
24. O'Sullivan, K., Alaska Seafood Marketing Institute, letter to FDA dated March 25, 1993.
25. Weddig, L., National Fisheries Institute, Arlington, VA, letter to FDA dated January 4, 1991 and updated March 1 and 4, 1991.
26. Pennington, J.A.T., J.I. Rader, and F.D. McClure, "Guide to FDA's Database Review System," FDA, Washington, DC, April 1994.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.43 is amended by revising paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 101.43 Substantial compliance of food retailers with the guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish.

(a) * * *

(1) Be presented in the store or other type of establishment in a manner that is consistent with § 101.45(a)(1);

(2) Be presented in content and format that are consistent with § 101.45 (a)(2), (a)(3), and (a)(4); and

(3) Include data that have been provided by FDA in Appendices C and D to part 101 of this chapter, except that the information on potassium is voluntary.

* * * * *

3. Section 101.44 is amended by revising paragraph (c) to read as follows:

§ 101.44 Identification of the 20 most frequently consumed raw fruit, vegetables, and fish in the United States.

* * * * *

(c) The 20 most frequently consumed raw fish are: Shrimp, cod, pollock, catfish, scallop, salmon (Atlantic/Coho, chum/pink, sockeye), flounder/sole, oyster, orange roughy, Atlantic/Pacific mackerel, ocean perch, rockfish, whiting, clam, haddock, blue crab, rainbow trout, halibut, lobster, and swordfish.

4. Section 101.45 is revised to read as follows:

§ 101.45 Guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish.

(a) Nutrition labeling for raw fruit, vegetables, and fish listed in § 101.44 should be presented to the public in the following manner:

(1) Nutrition labeling information should be displayed at the point of purchase by an appropriate means such as by a label affixed to the food or through labeling including shelf labels, signs, posters, brochures, notebooks, or leaflets that are readily available and in close proximity to the foods. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media.

(2) Serving sizes should be determined, and required nutrients declared, in accordance with § 101.9 (b)

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.43 is amended by revising paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 101.43 Substantial compliance of food retailers with the guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish.

(a) * * *

(1) Be presented in the store or other type of establishment in a manner that is consistent with § 101.45(a)(1);

(2) Be presented in content and format that are consistent with § 101.45 (a)(2), (a)(3), and (a)(4); and

(3) Include data that have been provided by FDA in Appendices C and D to part 101 of this chapter, except that the information on potassium is voluntary.

* * * * *

3. Section 101.44 is amended by revising paragraph (c) to read as follows:

§ 101.44 Identification of the 20 most frequently consumed raw fruit, vegetables, and fish in the United States.

* * * * *

(c) The 20 most frequently consumed raw fish are: Shrimp, cod, pollock, catfish, scallop, salmon (Atlantic/Coho, chum/pink, sockeye), flounder/sole, oyster, orange roughy, Atlantic/Pacific mackerel, ocean perch, rockfish, whiting, clam, haddock, blue crab, rainbow trout, halibut, lobster, and swordfish.

4. Section 101.45 is revised to read as follows:

§ 101.45 Guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish.

(a) Nutrition labeling for raw fruit, vegetables, and fish listed in § 101.44 should be presented to the public in the following manner:

(1) Nutrition labeling information should be displayed at the point of purchase by an appropriate means such as by a label affixed to the food or through labeling including shelf labels, signs, posters, brochures, notebooks, or leaflets that are readily available and in close proximity to the foods. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media.

(2) Serving sizes should be determined, and required nutrients declared, in accordance with § 101.9 (b) and (c), respectively, except that the nutrition labeling data should be based on the raw edible portion for fruit and vegetables and on the cooked edible portion for fish. The methods used to cook fish should be those that do not add fat, breading, or seasoning (e.g., salt or spices).

(3) When nutrition labeling information is provided on signs, posters, brochures, notebooks, or leaflets, it may be presented in charts in horizontal or vertical columns. Nutrition labeling that is presented in a linear format will not be considered to be in compliance. The nutrition labeling must bear the identifying heading "Nutrition Facts" in type larger than all other print size in the nutrition label. The required information (i.e., headings, serving sizes, list of nutrients, quantitative amounts by weight (except for vitamins and minerals), and percent of DV's (except for sugars and protein)) must be clearly presented and of sufficient type size and color contrast to be plainly legible, with numeric values for percent of DV highlighted in contrast to the quantitative amounts by weight.

(i) Declaration of the number of servings per container need not be included in nutrition labeling of raw fruit, vegetables, and fish.

(ii) Except for the statement "Percent Daily Values are based on a 2,000 calorie diet," the footnote required in § 101.9(d)(9) is not required. However, when labeling is provided in brochures, notebooks, leaflets, or similar types of materials, retailers are encouraged to provide such information.

(iii) When the nutrition labeling information for raw fruits and vegetables is provided on a chart, the columns for saturated fat and cholesterol may be omitted with use of the following footnote, "Most fruits and vegetables provide negligible amounts of saturated fat and cholesterol; avocados provide 1.0 g of saturated fat per ounce." When the nutrition labeling information for raw fish is provided on a chart, the columns for dietary fiber and sugars may be omitted with use of the following footnote, "Fish provide negligible amounts of dietary fiber and sugars."

(4) When nutrition information is provided on foods sold in packaged form or on signs for individual foods in retail stores, it should be displayed in accordance with § 101.9(d), except that the declaration of the number of servings per container need not be included. The declaration of nutrition information may be presented in the simplified format set forth in § 101.9(f) when the food contains insignificant amounts of seven or more of the following: Calories, total fat, saturated fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars, protein, vitamin A, vitamin C, calcium, and iron.

(b) Nutrition label values provided by the Food and Drug Administration (FDA) in Appendices C and D to this part 101 for the 20 most frequently consumed raw fruit, vegetables, and fish listed in § 101.44 shall be used to ensure uniformity in declared values. FDA will publish proposed updates of the nutrition label data for these foods (or a notice that the data sets have not changed from the previous publication) at least every 2 years in the **Federal Register**.

(1) The agency encourages the submission of data bases with new or additional nutrient data for any of the most frequently consumed raw fruit, vegetables, and fish to the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street SW., Washington, DC 20204, for review and evaluation. FDA may incorporate these data in the next revision of the nutrition labeling information for the top 20 raw fruit, vegetables, and fish.

(i) Guidance in the development of data bases may be found in the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases," available from the FDA Office of Food Labeling.

(ii) The submission to FDA should include, but need not be limited to, information on the following: Source of the data (names of investigators, name of organization, place of analysis, dates of analyses), number of samples, sampling design, analytical methods, and statistical treatment of the data. Proposed quantitative label declarations may be included. The proposed values for declaration should be determined in accordance with the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases."

(2) [Reserved]

(c) Data bases of nutrient values for raw fruit, vegetables, and fish that are not among the 20 most frequently consumed may be used to develop nutrition labeling values for these foods This includes data bases of nutrient values for specific varieties, species, or cultivars of raw fruit, vegetables, and fish not specifically identified among the 20 most frequently consumed.

(1) The food names and descriptions for the fruit, vegetables, and fish should clearly identify these foods as distinct from foods among the most frequently consumed list for which FDA has provided data.

(2) Guidance in the development of data bases may be found in the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases."

(3) Nutrition labeling values computed from data bases are subject to the compliance provisions of § 101.9(g).

(i) Compliance with the provisions of § 101.9(g) may be achieved by use of a data base that has been developed following FDA guideline procedures and approved by FDA.

(A) The submission to FDA for approval should include but need not be limited to information on the following: Source of the data (names of investigators, name of organization, place of analysis, dates of analyses), number of samples, sampling design, analytical methods, statistical treatment of the data, and proposed quantitative label declarations. The values for declaration should be determined in accordance with the "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases."

(B) FDA approval of a data base and nutrition labeling values shall not be considered granted until the Center for Food Safety and Applied Nutrition has agreed to all aspects of the data base in writing. Approvals will be in effect for a limited time, e.g., 10 years, and will be eligible for renewal in the absence of significant changes in agricultural or industry practices (e.g., a change occurs in a predominant variety produced). FDA will take steps to revoke its approval of the data base and nutrition labeling values if FDA monitoring suggests that the data base or nutrition labeling values are no longer representative of the item sold in this country. Approval requests shall be submitted in accordance with the provisions of § 10.30 of this chapter.

(ii) [Reserved]

5. Appendices C and D are added to part 101 to read as follows:

BILLING CODE 4160-01-P

59

Appendix C to Part 101
Nutrition Facts for Raw Fruit and Vegetables

Nutrition Facts[1] for Raw Fruit and Vegetables Edible Portion	Calories	Calories from fat	Total Fat (g)	(%)	Saturated Fat (g)	(%)	Cholesterol (mg)	(%)	Sodium (mg)	(%)	Potassium (mg)	(%)	Total Carbohydrate (g)	(%)	Dietary Fiber (g)	(%)	Sugars (g)	Protein (g)	Vitamin A (%)	Vitamin C (%)	Calcium (%)	Iron (%)
Banana, 1 medium (126g / 4.5 oz)	110	0	0.5	1	0	0	0	0	0	0	390	11	29	10	3	12	21	1	2	15	2	2
Apple, 1 medium (154g / 5.5 oz)	80	10	1.0	2	0	0	0	0	0	0	160	5	24	8	4	16	20	0	0	6	0	0
Watermelon, 1/18 medium melon; 2 cups diced pieces (280g / 10.0 oz)	90	0	0	0	0	0	0	0	0	0	330	7	26	9	1	4	25	1	18	25	2	4
Orange, 1 medium (154 g / 5.5 oz)	80	0	0	0	0	0	0	0	0	0	250	7	21	7	5	20	14	1	0	120	4	0
Cantaloupe, 1/4 medium melon (134 g / 4.8 oz)	50	0	0	0	0	0	0	0	0	0	210	6	13	4	1	4	11	1	60	80	2	2
Grapes, 1 1/2 cups (138 g / 4.8 oz)	90	10	1.0	2	0	0	0	0	0	0	270	8	24	8	1	4	23	1	2	35	2	2
Grapefruit, 1/2 medium (154 g / 5.5 oz)	70	0	0.5	1	0	0	0	0	0	0	210	6	18	6	5	20	18	1	18	80	4	0
Strawberries, 8 medium (147 g / 5.3 oz)	70	0	0.5	1	0	0	0	0	0	0	220	6	17	6	3	12	8	1	0	130	2	2

Appendix C to Part 101
Nutrition Facts for Raw Fruit and Vegetables

Nutrition Facts[1] for Raw Fruit and Vegetables Edible Portion	Calories	Calories from fat	Total Fat (g)	(%)	Saturated Fat (g)	(%)	Cholesterol (mg)	(%)	Sodium (mg)	(%)	Potassium (mg)	(%)	Total Carbohydrate (g)	(%)	Dietary Fiber (g)	(%)	Sugars (g)	Protein (g)	Vitamin A (%)	Vitamin C (%)	Calcium (%)	Iron (%)
Banana, 1 medium (126g / 4.5 oz)	110	0	0.5	1	0	0	0	0	0	0	390	11	28	10	1	4	21	1	0	0	0	0
Apple, 1 medium (154g / 5.5 oz)	80	10	1.0	2	0	0	0	0	0	0	160	5	24	8	4	16	20	0	0	6	0	0
Watermelon, 1/10 medium melon; 2 cups diced pieces (280g / 10.0 oz)	90	0	0	0	0	0	0	0	10	0	230	7	26	9	1	4	25	1	10	25	0	2
Orange, 1 medium (154 g / 5.5 oz)	60	0	0	0	0	0	0	0	0	0	250	7	21	7	5	20	14	1	0	120	4	0
Cantaloupe, 1/4 medium melon (134 g / 4.8 oz)	50	0	0	0	0	0	0	0	15	1	210	6	13	4	1	4	11	1	80	80	2	2
Grapes, 1 1/2 cups (130 g / 4.9 oz)	90	10	1.0	2	0	0	0	0	0	0	270	8	24	8	1	4	23	1	2	25	2	2
Grapefruit, 1/2 medium (154 g / 5.5 oz)	70	0	0.5	1	0	0	0	0	0	0	210	6	18	6	5	20	18	1	10	80	4	0
Strawberries, 8 medium (147 g / 5.3 oz)	70	0	0.5	1	0	0	0	0	0	0	220	6	17	6	3	12	8	1	0	130	2	2
Peach, 1 medium (98 g / 3.5 oz)	40	0	0	0	0	0	0	0	0	0	190	5	10	3	2	8	8	1	2	10	0	0
Pear, 1 medium (166 g / 5.9 oz)	100	10	1.0	2	0	0	0	0	0	0	210	6	25	8	4	16	17	1	0	10	2	0
Nectarine, 1 medium (140 g / 5.0 oz)	70	0	0.5	1	0	0	0	0	0	0	280	9	18	5	2	8	12	1	6	10	0	2
Honeydew Melon, 1/10 medium melon (134 g / 4.8 oz)	50	0	0	0	0	0	0	0	45	2	290	8	14	5	1	4	12	1	0	40	0	2
Plums, 2 medium (132 g / 4.7 oz)	80	10	1.0	2	0	0	0	0	0	0	220	6	18	6	2	8	10	1	4	20	0	0
Avocado, California, 1/5 medium (30 g / 1.1 oz)	50	50	6	9	1.0	5	0	0	0	0	105	3	2	1	1	4	0	0	0	2	0	0
Lemon, 1 medium (58 g / 2.1 oz)	20	0	0	0	0	0	0	0	10	0	65	2	6	2	1	4	1	0	0	35	2	0
Pineapple, 2 slices, 3" diameter, 3/4" thick (112 g / 4 oz)	70	0	0	0	0	0	0	0	10	0	180	5	19	6	1	4	13	0	0	25	0	0
Tangerine, 1 medium (109 g / 3.9 oz)	80	10	1.0	2	0	0	0	0	5	0	128	3	20	7	1	12	12	0	0	35	2	0
Sweet cherries, 21 cherries; 1 cup (140 g / 5.0 oz)	90	10	1.0	2	0	0	0	0	0	0	260	7	23	8	3	12	19	1	0	15	2	0
Kiwifruit, 2 medium (148 g / 5.3 oz)	100	15	1.5	2	0	0	0	0	0	0	450	13	28	9	4	16	16	2	2	200	6	4
Lime, 1 medium (67 g / 2.4 oz)	20	0	0	0	0	0	0	0	0	0	75	2	7	2	2	8	0	0	0	35	0	0

Appendix C to Part 101
Nutrition Facts for Raw Fruit and Vegetables (Continued)

Nutrition Facts[1] for Raw Fruit and Vegetables Edible Portion	Calories	Calories from fat	Total Fat (g)	Total Fat (%)	Saturated Fat (g)	Saturated Fat (%)	Cholesterol (mg)	Cholesterol (%)	Sodium (mg)	Sodium (%)	Potassium (mg)	Potassium (%)	Total Carbohydrate (g)	Total Carbohydrate (%)	Dietary Fiber (g)	Dietary Fiber (%)	Sugars (g)	Protein (g)	Vitamin A (%)	Vitamin C (%)	Calcium (%)	Iron (%)
Tomato, 1 medium (148g / 5.3oz)	120	0	0	0	0	0	0	0	5	0	680	19	27	9	3	12	3	3	0	40	0	6
Lettuce, 1/6 medium head (89g / 3.2oz)	20	0	0	0	0	0	0	0	10	0	85	2	3	1	1	4	2	1	2	8	0	0
Tomato, 1 medium (148g / 5.3oz)	35	10	1.0	2	0	0	0	0	5	0	300	9	7	2	1	4	4	1	15	35	0	0
Onion, 1 medium (148g / 5.3oz)	60	0	0	0	0	0	0	0	5	0	200	6	15	5	3	12	7	1	0	15	4	0
Carrot, 7" long, 1 1/4" diameter (78g / 2.8oz)	40	0	0	0	0	0	0	0	50	2	220	6	9	3	2	8	5	1	220	8	2	0
Celery, 2 medium stalks (110g / 3.9oz)	15	0	0	0	0	0	0	0	125	5	300	9	5	2	2	8	0	1	2	10	4	2
Sweet corn, kernels from 1 medium ear (90g / 3.2oz)	80	10	1.0	2	0	0	0	0	0	0	240	7	18	6	3	12	5	3	2	10	0	2
Broccoli, 1 medium stalk (148g / 5.3oz)	50	0	0.5	1	0	0	0	0	70	3	480	14	9	3	4	16	3	4	10	200	6	4
Green cabbage, 1/12 medium head (84g / 3.0oz)	25	0	0	0	0	0	0	0	25	1	170	5	6	2	3	8	3	1	0	60	4	0
Cucumber, 1/3 medium (99g / 3.5oz)	15	0	0	0	0	0	0	0	0	0	160	5	3	1	0	0	2	1	0	0	2	2
Bell pepper, 1 medium (148g / 5.3oz)	30	0	0	0	0	0	0	0	0	0	240	7	7	2	2	8	4	1	6	150	0	0
Cauliflower, 1/6 medium head (99g / 3.5oz)	25	0	0	0	0	0	0	0	40	2	250	7	5	2	2	8	2	2	0	100	2	2
Leaf lettuce, 1 1/2 cups shredded (85g / 3.0oz)	15	0	0	0	0	0	0	0	40	2	210	6	3	1	1	4	2	1	30	4	2	0
Sweet Potato, medium, 5" long, 2" diameter (130g / 4.6oz)	130	0	0	0	0	0	0	0	45	2	350	10	33	11	4	16	7	2	440	30	2	2
Mushrooms, 5 medium (84g / 3.0oz)	20	0	0	0	0	0	0	0	0	0	280	8	3	1	1	4	0	2	0	0	0	0
Green onion, 1/4 cup chopped (25g / 0.9oz)	10	0	0	0	0	0	0	0	5	0	70	2	2	1	1	4	1	0	2	8	0	0
Green (snap) beans, 3/4 cup cut (83g / 3.0oz)	25	0	0	0	0	0	0	0	0	0	190	5	5	2	3	12	2	1	2	8	4	0
Radishes, 7 radishes (85g / 3.0oz)	20	0	0	0	0	0	0	0	30	1	180	5	4	1	0	0	2	0	0	30	0	0
Summer squash, 1/2 medium (98g / 3.5oz)	20	0	0	0	0	0	0	0	0	0	240	7	4	1	1	4	2	1	4	25	2	2
Asparagus, 5 spears (93g / 3.3oz)	20	0	0	0	0	0	0	0	0	0	210	6	5	2	2	8	2	2	10	10	0	0

[1](g)-grams; (mg)-milligrams; (oz)-ounces; (%)-percent Daily Value. Percent Daily Values are based on a 2,000 calorie diet

Appendix D to Part 101 Nutrition Facts for Cooked Fish

Nutrition Facts[1] Fish-(84 g / 3.0 oz) Edible Portion, cooked[2]	Calories	Calories from fat	Total Fat (g)	Total Fat (%)	Saturated Fat (g)	Saturated Fat (%)	Cholesterol (mg)	Cholesterol (%)	Sodium (mg)	Sodium (%)	Potassium (mg)	Potassium (%)	Total Carbohydrate (g)	Total Carbohydrate (%)	Dietary Fiber (g)	Dietary Fiber (%)	Sugars (g)	Protein (g)	Vitamin A (%)	Vitamin C (%)	Calcium (%)	Iron (%)
Shrimp	80	10	1.0	2	0	0	165	55	190	8	140	4	0	0	0	0	0	18	0	0	2	10
Cod	90	0	0.5	1	0	0	45	15	60	3	450	13	0	0	0	0	0	20	0	0	2	2
Pollock	90	10	1.0	2	0	0	80	27	110	5	360	10	0	0	0	0	0	20	0	0	0	2
Catfish	170	80	9	14	1.5	8	55	18	40	2	350	10	0	0	0	0	0	21	0	0	0	0
Scallops (about 6 large or 14 small)	120	10	1.0	2	0	0	55	18	280	11	280	8	3	1	0	0	0	23	0	0	2	2
Salmon Atlantic / Coho	160	60	7	11	1.0	5	50	17	50	2	490	14	0	0	0	0	0	23	0	0	0	4
Chum / Pink	130	35	4.0	6	1.0	5	70	23	65	3	410	12	0	0	0	0	0	22	2	0	0	2
Sockeye	180	80	9	14	1.5	8	75	25	55	2	320	9	0	0	0	0	0	23	4	0	0	2
Flounder / Sole	100	14	1.5	2	0.5	3	60	20	90	4	390	11	0	0	0	0	0	21	0	0	2	2
Oysters (about 12 medium)	100	35	3.5	5	1.0	5	115	38	190	8	200	6	4	1	0	0	0	10	0	2	6	30

[1](g)-grams; (mg)-milligrams; (%)-percent Daily Value. Percent Daily Values are based on a 2,000 calorie diet

[2]Nutrition facts for fish sticks, frozen fillets, frozen dinners, and other frozen fish products shall be based on the cooked weight of the product.

Appendix D to Part 101 Nutrition Facts for Cooked Fish

Nutrition Facts[1] Fish-(84 g / 3.0 oz) Edible Portion, cooked[2]	Calories	Calories from fat	Total Fat (g)	(%)	Saturated Fat (g)	(%)	Cholesterol (mg)	(%)	Sodium (mg)	(%)	Potassium (mg)	(%)	Total Carbohydrate (g)	(%)	Dietary Fiber (g)	(%)	Sugars (g)	Protein (g)	Vitamin A (%)	Vitamin C (%)	Calcium (%)	Iron (%)
Shrimp	80	10	1.0	2	0	0	165	55	190	8	140	4	0	0	0	0	0	18	0	0	2	15
Cod	90	0	0.5	1	0	0	45	15	60	3	450	13	0	0	0	0	0	20	0	0	2	2
Pollock	90	10	1.0	2	0	0	80	27	110	5	360	10	0	0	0	0	0	20	0	0	0	2
Catfish	170	80	9	14	1.5	8	55	18	40	2	350	10	0	0	0	0	0	21	0	0	0	0
Scallops (about 6 large or 14 small)	120	10	1.0	2	0	0	55	18	260	11	280	8	3	1	0	0	0	22	0	0	2	2
Salmon Atlantic / Coho	160	60	7	11	1.0	5	50	17	50	2	480	14	0	0	0	0	0	22	0	0	0	4
Chum / Pink	130	35	4.0	6	1.0	5	70	23	65	3	410	12	0	0	0	0	0	22	2	0	0	2
Sockeye	180	80	9	14	1.5	8	75	25	55	2	320	9	0	0	0	0	0	23	4	0	0	2
Flounder / Sole	100	14	1.5	2	0.5	3	60	20	90	4	290	8	0	0	0	0	0	21	0	0	2	2
Oysters (about 12 medium)	100	35	3.5	5	1.0	5	115	38	190	8	390	11	4	1	0	0	0	10	0	0	6	45
Orange roughy	80	10	1.0	2	0	0	30	7	70	3	330	9	0	0	0	0	0	16	0	0	0	0
Hankumal, Atlantic / Pacific	210	120	13	20	4	20	60	20	100	4	400	11	0	0	0	0	0	21	0	0	0	6
Ocean perch	110	25	3.5	5	0	0	75	25	200	8	330	9	0	0	0	0	0	20	0	4	4	2
Rockfish	100	20	2.0	3	0	0	40	13	70	3	430	12	0	0	0	0	0	21	4	0	0	0
Whiting	110	35	3.0	5	0.5	3	70	23	95	4	320	9	0	0	0	0	0	19	2	0	6	0
Clams (about 12 small)	100	15	1.5	2	0	0	55	18	95	4	530	15	0	0	0	0	0	22	10	0	0	60
Haddock	100	10	1.0	2	0	0	80	27	85	4	340	10	0	0	0	0	0	21	0	0	2	6
Blue Crab	100	10	1.0	2	0	0	90	30	320	13	360	10	0	0	0	0	0	20	0	0	8	4
Rainbow Trout	140	50	6	9	2.0	10	50	20	35	1	370	11	0	0	0	0	0	21	4	4	6	2
Halibut	110	20	2.0	3	0	0	35	12	60	3	490	14	0	0	0	0	0	23	2	0	4	4
Lobster	80	5	0.5	1	0	0	80	20	320	13	380	9	1	0	0	0	0	17	0	0	4	2
Swordfish	130	35	4.5	7	1.0	5	40	13	100	4	310	8	0	0	0	0	0	22	2	2	0	4

[1] (g)-grams; (mg)-milligrams; (oz)-ounces; (%)-percent Daily Value. Percent Daily Values are based on 2,000 calorie diet

[2] Cooked without fat, breading, or seasoning

Dated: July 11, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17287 Filed 7–15–94; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–34–94]

RIN 1545–AS75

Hedging Transactions by Members of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the character and timing of gain or loss from certain hedging transactions entered into by members of a consolidated group. These proposed regulations apply when one member of the group hedges the risk of another member or enters into a hedge with another member. The regulations are needed because related-party hedging is a common business practice and existing regulations treat as hedging transactions only hedges entered into by a taxpayer to reduce its own risk. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by September 26, 1994. Requests to speak (with outlines of oral comments) at a public hearing scheduled for October 18, 1994, must be received by September 26, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (FI–34–94) room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (FI–34–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. The public hearing has been scheduled to be held in room 3718, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), (202) 622–3920 (not a toll-free number); concerning submissions and the hearing, Carol Savage, (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collections of information are in §§ 1.1221–2(d)(2)(iv) and 1.1221–2(e)(5). This information is required by the IRS to aid it in administering the law and to prevent manipulation, such as recharacterization of transactions in view of later developments. This information will be used to determine whether the taxpayer has elected separate-entity treatment under § 1.1221–2(d)(2) and to verify that the taxpayer is properly reporting its business hedging transactions. The likely respondents and recordkeepers are businesses or other for-profit institutions.

Estimated total annual reporting and recordkeeping burden: 75,000 hrs.

The estimated annual burden per respondent or recordkeeper varies from 1.0 to 40.0 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated number of respondents and recordkeepers: 15,000.

Estimated frequency of responses: once in the existence of each respondent.

Background

Final regulations under section 1221, published elsewhere in this issue of the **Federal Register**, generally provide for ordinary gain or loss from hedging transactions. To qualify as a hedging transaction, a transaction must be entered into in the normal course of business to reduce certain specified risks of the taxpayer. Final regulations under section 446, published elsewhere in this issue of the **Federal Register**, require taxpayers to account for hedging transactions in a manner that clearly reflects income by reasonably matching the timing of income, deduction, gain, or loss from the hedge with the timing of the income, deduction, gain, or loss from the item being hedged.

Because a hedging transaction must reduce the taxpayer's own risk, the regulations do not apply where a taxpayer hedges the risk of another taxpayer, even if that other taxpayer is a related party. In the preamble to TD 8493, which was published on October 20, 1993 (58 FR 54037), the IRS requested comments on the treatment of transactions involving related parties.

Several commentators suggested extending the definition of hedging transaction to the hedging of a related party's risk. Many businesses that are conducted through separate but related entities centralize their hedging operations in a single entity or a small number of entities that hedge the risks of the entire business. Centralizing the hedging function creates economies of scale and allows the risks of the business to be netted or offset against each other, with the hedging entity entering into hedges with unrelated parties only for the remaining net risk. Thus, various commentators suggested that the term hedging transaction should include hedges of the risk of other members of the same consolidated group, of affiliated corporations filing separate returns, of controlled but unaffiliated corporations, and of controlled partnerships.

Explanation of Provisions

As a general rule, the proposed regulations adopt a single-entity approach to consolidated groups, applying the hedging rules to a member's transactions that hedge the risk of other members of the same consolidated group. Proposed § 1.1221–2(d)(1) provides that the risk of one member of a consolidated group is treated for purposes of the hedging rules as the risk of the other members of the group as if all of the members of the group were divisions of a single corporation. Thus, if a transaction entered into by a centralized hedging member reduces the risk of the group as a whole and the other requirements of § 1.1221–2 are met, the transaction qualifies as a hedging transaction.

Many consolidated groups that centralize their hedging operations execute contracts or enter into other transactions between the members to transfer risk from the operating members to the hedging member. For example, an operating member that assumes a floating rate liability may enter into an interest rate swap with the hedging member pursuant to which the operating member will pay fixed and receive floating. The hedging member nets this risk with its other interest rate risk and, if it has a net risk, may enter into an interest rate swap with a third party to offset this net risk.

Under the single-entity approach of the proposed regulations, transactions between members of a consolidated group are not hedging transactions because they do not reduce the risk of the group. Instead, these transactions are subject to the rules of section 1502 and the regulations thereunder, which govern the timing and character of income on intercompany transactions and obligations. Thus, only a transaction with a third party can qualify as a hedging transaction.

Several commentators on the proposed character and timing regulations requested that the IRS adopt a separate-entity regime for related-party hedges. They expressed concern that, under a single-entity regime, a hedging member may not have the information necessary to comply with the identification requirements imposed on hedging transactions. That is, the hedging member may not have information with respect to the transaction that gave rise to the risk that was transferred to it in the intercompany transaction.

Under a separate-entity approach, an intercompany transaction that met the definition in § 1.1221–2(b) would be respected as a hedging transaction and accounted for as such, and the transaction would not be subject to the intercompany transaction regime. In other words, if a member of a consolidated group enters into a transaction to transfer risk to another member, the transaction would be treated as if it had been entered into with an unrelated party.

The IRS and Treasury recognize that, where a consolidated group uses intercompany transactions to transfer risk within the group, the separate-entity approach may facilitate the identification of hedging transactions and simplify the accounting for those transactions. A generally applicable separate-entity approach, however, frequently would not clearly reflect the income of the consolidated group and might be subject to manipulation. Moreover, a general separate-entity approach for hedges would be contrary to the single-entity approach of recently proposed § 1.1502–13, and it would be difficult to coordinate the treatment of intercompany hedging transactions with the treatment of other intercompany transactions.

Despite the concern with a general separate-entity approach, the IRS and Treasury believe that there is less opportunity for manipulation or distortion if a member of a group enters into a hedging transaction with another member that is using mark-to-market accounting for tax purposes. Thus,

Under the single-entity approach of the proposed regulations, transactions between members of a consolidated group are not hedging transactions because they do not reduce the risk of the group. Instead, these transactions are subject to the rules of section 1502 and the regulations thereunder, which govern the timing and character of income on intercompany transactions and obligations. Thus, only a transaction with a third party can qualify as a hedging transaction.

Several commentators on the proposed character and timing regulations requested that the IRS adopt a separate-entity regime for related-party hedges. They expressed concern that, under a single-entity regime, a hedging member may not have the information necessary to comply with the identification requirements imposed on hedging transactions. That is, the hedging member may not have information with respect to the transaction that gave rise to the risk that was transferred to it in the intercompany transaction.

Under a separate-entity approach, an intercompany transaction that met the definition in § 1.1221–2(b) would be respected as a hedging transaction and accounted for as such, and the transaction would not be subject to the intercompany transaction regime. In other words, if a member of a consolidated group enters into a transaction to transfer risk to another member, the transaction would be treated as if it had been entered into with an unrelated party.

The IRS and Treasury recognize that, where a consolidated group uses intercompany transactions to transfer risk within the group, the separate-entity approach may facilitate the identification of hedging transactions and simplify the accounting for those transactions. A generally applicable separate-entity approach, however, frequently would not clearly reflect the income of the consolidated group and might be subject to manipulation. Moreover, a general separate-entity approach for hedges would be contrary to the single-entity approach of recently proposed § 1.1502–13, and it would be difficult to coordinate the treatment of intercompany hedging transactions with the treatment of other intercompany transactions.

Despite the concern with a general separate-entity approach, the IRS and Treasury believe that there is less opportunity for manipulation or distortion if a member of a group enters into a hedging transaction with another member that is using mark-to-market accounting for tax purposes. Thus, when a group contains a hedging member that accounts for the transaction on a mark-to-market method of accounting, a limited separate-entity approach may be acceptable.

Therefore, the proposed regulations allow a consolidated group to make a separate-entity election. The election is made by the group for all of its hedging activities and may not be revoked without the consent of the Commissioner. If a group makes the election, the risk of one member is not treated as risk of the other members. Thus, a member can hedge only its own risk, and an intercompany transaction must be used if one member of the group wishes to transfer risk to another member.

In an electing group, certain intercompany transactions are recognized as hedging transactions for purposes of § 1.1221–2. An intercompany transaction is treated as a hedging transaction if it would be a hedging transaction if entered into with an unrelated party, and if it is entered into with another member that, under its method of accounting, marks the position to market. Thus, for example, an operating member could enter into a hedging transaction with a hedging member that marks the position obtained to market under section 475. As a result of the separate-entity election, the hedging transaction is not treated as an intercompany transaction or obligation for purposes of section 1502 and the regulations thereunder, and any gain or loss to the member marking to market the position obtained is ordinary.

This special treatment is provided only for intercompany transactions entered into with a member that marks its position to market. If an identical transaction is entered into with a member of the group that does not mark to market the position obtained, the transaction is subject to the intercompany transaction rules under section 1502. Thus, the separate-entity election is likely to be made only by a group whose intercompany hedging activity is done with a member that uses a mark-to-market method of accounting.

The proposed regulations provide identification rules that conform to the treatment of hedging transactions described above. If a consolidated group is under the general rule of the regulations (the single-entity approach), identification is done as if the members of the group were divisions of a single corporation. The member engaging in a hedging transaction with an unrelated party identifies the transaction and the item, items, or aggregate risk being hedged, even if the item, items, or aggregate risk is that of another member.

If a group is under the general rule but uses intercompany transactions to transfer risk within the group, it may satisfy the identification requirement by identifying the item, items, or aggregate risk being hedged, its intercompany transactions, and its hedging transactions with unrelated parties. Although the intercompany transactions are not respected as hedging transactions, their identification should enable the group to associate hedging transactions with the item, items, or aggregate risk being hedged.

If a group makes the separate-entity election, each member must identify its hedging transactions with unrelated parties, its intercompany transactions that are treated as hedging transactions under these regulations, and the item, items, or aggregate risk being hedged, as appropriate.

The proposed regulations also provide rules with respect to the effects of identification and nonidentification. If a group is under the general rule, the rules of § 1.1221–2(f) apply to a hedging transaction, but not to intercompany transactions. If a group makes the separate-entity election, the rules of § 1.1221- 2(f) are extended to intercompany transactions that are treated as hedging transactions under these regulations.

Finally, the proposed regulations provide new rules with respect to timing under § 1.446–4. If a group is under the general rule, it accounts for hedging transactions as if the members of the group were divisions of a single corporation. The income, deduction, gain, or loss on a hedging transaction is matched with the income, deduction, gain, or loss on the item, items, or aggregate risk being hedged and not with an intercompany transaction. If a group makes the separate-entity election, the rules of § 1.446–4 apply on a member-by-member basis to hedging transactions with unrelated parties and to intercompany transactions that are treated as hedging transactions under these regulations.

It is anticipated that these regulations will apply to transactions entered into on or after the date that is 60 days after the publication of final regulations on this subject in the **Federal Register**.

All of the rules described above apply only in the case of a consolidated group. Thus, the proposed regulations do not treat as a hedging transaction the hedging of the risk of a related party that is not a member of the same consolidated group. The IRS is concerned that the single-entity approach is generally not appropriate

where the parties are not members of the same consolidated group.

Outside the context of a consolidated group, taxpayers with ordinary business risk sometimes enter into transactions to transfer risk to a related party. Commentators have requested that these transactions be treated as hedging transactions and that the entities to which risk is transferred be treated as realizing ordinary gain or loss on their positions in these transactions. The IRS is concerned, however, about whether these transactions reduce risk, whether the requested ordinary treatment to the entities receiving risk is authorized under the Internal Revenue Code (Code), and whether the approach would create opportunities for manipulation. Therefore, the proposed regulations do not include the requested rule.

The IRS intends to issue guidance under section 475 of the Code to coordinate the hedging exception of section 475(b)(1)(C) with these rules. In particular, if a consolidated group has not made a separate-entity election, the IRS is considering whether the identification of a hedging transaction by a member subject to section 475 should generally be sufficient to identify the transaction as a hedge under section 475(b)(1)(C), provided the hedged item or items are not securities subject to section 475(a). In this case, gain or loss on the hedging transaction would generally be subject to the timing rules of § 1.446–4 rather than to mark-to-market treatment under section 475. Comments are requested on this matter.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, October 18, 1994, at 10:00 a.m. in room 3718, 1111 Constitution Avenue, NW., Washington, DC, 20224. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by September 26, 1994, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 26, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.1221–2 and by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.446–4 also issued under 26 U.S.C. 1502. * * *

Section 1.1221–2 also issued under 26 U.S.C. 1502 and 6001. * *.*

Par. 2. Section 1.446–4 is amended by adding the text of paragraph (e)(9) to read as follows:

§ 1.446–4 Hedging transactions.

* * * * *

(e) * * *

(9) *Hedging by members of a consolidated group*—(i) *General rule.* In general, a member of a consolidated group that hedges the risk of another member must account for its hedging transactions as if all of the members were separate divisions of a single corporation. Thus, the timing of the income, deduction, gain, or loss on a hedging transaction must be matched with the timing of income, deduction, gain, or loss from the item or items being hedged rather than with an intercompany transaction.

(ii) *Separate-entity election.* If a consolidated group makes an election under § 1.1221–2(d)(2), each member of the consolidated group must account for its hedging transactions (including its intercompany transactions that are treated as hedging transactions) in a manner that meets the requirements of paragraph (b) of this section. Thus, each member of the group must comply with this section for its hedging transactions without regard to the fact that the taxpayer is a member of a consolidated group.

(iii) *Definitions.* For definitions of consolidated group, member of a consolidated group, and intercompany transaction, see section 1502 and the regulations thereunder.

(iv) *Effective date.* This paragraph (e)(9) applies to transactions entered into on or after the date 60 days after publication of final regulations on this subject in the **Federal Register**

Par. 3. Section 1221–2 is amended by adding the text of paragraphs (d), (e)(5), (f)(3), and (g)(4) to read as follows:

§ 1.1221–2 Hedging transactions.

* * * * *

(d) *Hedging by members of a consolidated group*—(1) *General rule.* For purposes of this section, the risk of one member of a consolidated group is treated as the risk of the other members as if all of the members of the group were divisions of a single corporation. For example, if any member of a consolidated group hedges the risk of another member of the group by entering into a transaction with an unrelated person, that transaction may potentially qualify as a hedging transaction. Under this rule, intercompany transactions are not hedging transactions because they are treated as transactions between divisions of a single corporation and thus do not reduce the risk of the group.

(2) *Separate-entity election.* In lieu of the treatment specified in paragraph (d)(1) of this section, a consolidated group may elect separate-entity treatment of its hedges. If a group makes this separate-entity election, the following rules apply.

(i) *Risk of one member not risk of other members.* Notwithstanding paragraph (d)(1) of this section, the risk of one member is not treated as the risk of other members.

(ii) *Intercompany transactions.* An intercompany transaction or obligation is a hedging transaction with respect to a member of a consolidated group if and only if it meets the following requirements—

(A) The position of the member in the intercompany transaction or obligation would qualify as a hedging transaction with respect to that member if that member entered into the transaction with an unrelated party; and

(B) The position of the other member (the marking member) in the transaction is marked to market under the marking member's method of accounting.

(iii) *Treatment of intercompany hedging transactions.* An intercompany transaction or obligation that is a hedging transaction (because it meets the requirements of paragraphs (d)(2)(ii)(A) and (B) of this section) is treated as follows—

(A) Neither the hedging transaction nor any intercompany obligation with respect to that transaction is treated as an intercompany transaction or obligation for purposes of section 1502 and the regulations thereunder; and

(B) Except as provided in paragraph (f)(3) of this section, the character of the marking member's gain or loss from the transaction is ordinary.

(iv) *Making and revoking the election.* The election described in this paragraph (d)(2) must be made in a separate statement that is filed with the group's consolidated return for the taxable year that includes the first date for which the election is to apply. The statement must specify that the election is being made and must indicate the date that the election is to be effective. The election applies to all transactions entered into on or after the date so indicated. In no event, however, does the election apply to transactions entered into before the date 60 days after final regulations on this subject are published in the **Federal Register**. The election cannot be revoked without the consent of the Commissioner.

(3) *Definitions.* For definitions of consolidated group, member of a consolidated group, intercompany transaction, and intercompany obligation, see section 1502 and the regulations thereunder.

(4) *Examples.* These examples illustrate this paragraph (d). In these examples, *O* and *H* are members of the same consolidated group. *O*'s business operations give rise to interest rate risk "*A*," which *O* wishes to hedge. *O* enters into an intercompany transaction with *H* that transfers the risk to *H*. *O*'s

paragraph (d)(1) of this section, the risk of one member is not treated as the risk of other members.

(ii) *Intercompany transactions.* An intercompany transaction or obligation is a hedging transaction with respect to a member of a consolidated group if and only if it meets the following requirements—

(A) The position of the member in the intercompany transaction or obligation would qualify as a hedging transaction with respect to that member if that member entered into the transaction with an unrelated party; and

(B) The position of the other member (the marking member) in the transaction is marked to market under the marking member's method of accounting.

(iii) *Treatment of intercompany hedging transactions.* An intercompany transaction or obligation that is a hedging transaction (because it meets the requirements of paragraphs (d)(2)(ii) (A) and (B) of this section) is treated as follows—

(A) Neither the hedging transaction nor any intercompany obligation with respect to that transaction is treated as an intercompany transaction or obligation for purposes of section 1502 and the regulations thereunder; and

(B) Except as provided in paragraph (f)(3) of this section, the character of the marking member's gain or loss from the transaction is ordinary.

(iv) *Making and revoking the election.* The election described in this paragraph (d)(2) must be made in a separate statement that is filed with the group's consolidated return for the taxable year that includes the first date for which the election is to apply. The statement must specify that the election is being made and must indicate the date that the election is to be effective. The election applies to all transactions entered into on or after the date so indicated. In no event, however, does the election apply to transactions entered into before the date 60 days after final regulations on this subject are published in the **Federal Register**. The election cannot be revoked without the consent of the Commissioner."

(3) *Definitions.* For definitions of consolidated group, member of a consolidated group, intercompany transaction, and intercompany obligation, see section 1502 and the regulations thereunder.

(4) *Examples.* These examples illustrate this paragraph (d). In these examples, *O* and *H* are members of the same consolidated group. *O*'s business operations give rise to interest rate risk "*A*," which *O* wishes to hedge. *O* enters into an intercompany transaction with *H* that transfers the risk to *H*. *O*'s position in the intercompany transaction is "*B*," and *H*'s position in the contract is "*C*." *H* enters into position "*D*" with a third party to reduce the interest rate risk it has with respect to its position *C*. *D* would be a hedging transaction with respect to risk *A* if *O*'s risk *A* were *H*'s risk.

Example 1. Single-entity treatment—(i) *General rule.* Under paragraph (d)(1) of this section, *O*'s risk *A* is treated as *H*'s risk, and therefore *D* is a hedging transaction with respect to risk *A*. Thus, the character of *D* is determined under the rules of this section, and *D* must be accounted for under a method of accounting that satisfies § 1.446–4. The intercompany transaction *B–C* is not a hedging transaction, and the *B–C* transaction is accounted for according to the regulations under section 1502.

(ii) *Identification. D* must be identified as a hedging transaction under paragraph (e)(1) of this section, and *A* must be identified as the hedged item under paragraph (e)(2) of this section. Under paragraph (e)(5) of this section, the identification of *A* as the hedged item can be accomplished by identifying the positions in the intercompany transaction as hedges or hedged items, as appropriate. Thus, substantially contemporaneously with entering into *D*, *H* may identify *C* as the hedged item and *O* may identify *B* as a hedge and *A* as the hedged item.

Example 2. Separate-entity election; no marking. In addition to the facts stated above, assume that the group makes a separate-entity election under paragraph (d)(2) of this section. If *H* does not mark *C* to market under its method of accounting, then *B* is not a hedging transaction, and the *B–C* intercompany transaction is accounted for under the rules of section 1502. *D* is not a hedging transaction with respect to *A*, but *D* may be a hedging transaction with respect to *C* if the requirements of paragraph (b) of this section are met. If *D* is not part of a hedging transaction, then *D* may be part of a straddle for purposes of section 1092.

Example 3. Separate-entity election: marking. The facts are the same as in Example 2 above. If *H* marks *C* to market under its method of accounting and *B* would be a hedging transaction with respect to *O* if *O* had entered into that transaction with an unrelated party, then the *B–C* transaction is a hedging transaction with respect to *O*. Thus, *O*'s position *B* is a hedging transaction with respect to its risk *A*, the *B–C* transaction is not treated as an intercompany transaction or obligation, and *H*'s income, deduction, gain or loss on *C* is ordinary. *D* is a hedge of *C* if it meets the requirements of paragraph (b) of this section.

(e) * * *

(5) *Identification of hedges involving members of the same consolidated group*—(i) *General rule.* If one member of a consolidated group hedges the risk of another member under the general rule of paragraph (d)(1) of this section, then the identification requirements of this paragraph (e) must be met as if all of the members of the group were divisions of a single corporation. Thus, the member entering into the hedging transaction with a third party must identify the hedging transaction under paragraph (e)(1) of this section. Under paragraph (e)(2) of this section, that member must also identify the item, items, or aggregate risk that is being hedged, even if the item, items, or aggregate risk relates primarily or entirely to other members of the group. If the members of a group use intercompany transactions or obligations to transfer risk within the group, the requirements of paragraph (e)(2) of this section may be met by identifying the intercompany transactions or obligations as hedges or hedged items, as appropriate. Because identification of the intercompany transaction as a hedge serves solely to identify the hedged item, the identification is timely if made within the period required by paragraph (e)(2) of this section. For example, if a member transfers risk in an intercompany transaction, it may identify under the rules of this paragraph (e) both its position in that transaction and the item, items, or aggregate risk being hedged. The member that hedges the risk outside the group may identify under the rules of this paragraph (e) both its position with the third party and its position in the intercompany transaction. See paragraph (d)(4) of this section for an example of this identification.

(ii) *Rule for taxpayers making the separate-entity election.* If a consolidated group makes the separate-entity election under paragraph (d)(2) of this section, each member of the group must satisfy the requirements of this paragraph (e) as though it were not a member of a consolidated group.

* * * * *

(f) * * *

(3) *Transactions by members of a consolidated group*—(i) *General rule.* If a consolidated group is under the general rule of paragraph (d)(1) of this section, the rules of this paragraph (f) apply only to hedging transactions and not to intercompany transactions.

(ii) *Separate-entity election.* If a consolidated group has made the election under paragraph (d)(2) of this section, then, in addition to the rules of paragraphs (f)(1) and (f)(2) of this section, the following rules apply.

(A) If an intercompany transaction is identified as a hedging transaction but does not meet the requirements of paragraphs (d)(2)(ii) (A) and (B) of this section, then both parties to the transaction are subject to the rules of paragraph (f)(1) of this section with

respect to the transaction as though both had identified their positions in the transaction as hedging transactions, notwithstanding the regulations under section 1502.

(B) If a transaction that meets the requirements of paragraphs (d)(2)(ii) (A) and (B) is not identified as a hedging transaction, then both parties to the transaction are subject to the rules of paragraph (f)(2).

(g) * * *

(4) *Effective date for hedges by members of a consolidated group.* Paragraphs (d), (e)(5), and (f)(3) of this section apply to transactions entered into on or after the date that is 60 days after publication of final regulations in the **Federal Register**.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94-16869 Filed 7-13-94; 9:10 am]

BILLING CODE 4830-01-U

PANAMA CANAL COMMISSION

35 CFR Parts 133 and 135

RIN 3207-AA23

Tolls for Use of Canal and Rules for Measurement of Vessels

AGENCY: Panama Canal Commission.

ACTION: Proposed rule; recommendation to the President.

SUMMARY: The Panama Canal Commission proposes a major revision of the rules for measurement of vessels using the Panama Canal to become effective October 1, 1994. The existing rules of measurement will be replaced with a simplified, objective approach which brings the Commission's system in line with an international practice which will enter into full application worldwide on July 18, 1994. The proposed rules apply a mathematical formula to the vessel's total volume to produce the basis for assessing tolls. The tonnage values computed under the proposed system are comparable to those calculated under the Commission's existing rules and, in the aggregate, are equal to existing tonnages; accordingly, no changes are proposed to the rates of toll for use of the Canal; however, certain administrative changes to the regulations dealing with Canal tolls are necessary to ensure their consistency with the revised rules of measurement.

DATES: The anticipated effective date of the final rule is October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr., Secretary, Panama Canal Commission, 1825 I Street NW., Suite 1050, Washington, DC 20006-5402, (Telephone: (202) 634-6441) (Facsimile: (202) 634-6439).

SUPPLEMENTARY INFORMATION: A complete revision to the Rules for Measurement of Vessels for the Panama Canal contained in 35 CFR part 135 is proposed. The proposed revision is designed to simplify the Commission's measurement procedures which since the Canal's inception have been based on the Moorsom system. The change is designed to bring measurement rules at the Canal in line with the worldwide standard of tonnage measurement and achieve compatibility with the 1969 International Convention on Tonnage Measurement of Ships (Convention). The Convention, which establishes a universal system of measurement for vessels engaged on an international voyage, came into effect in the United States on February 10, 1983.

This new 35 CFR part 135 would provide for:

a. Establishment of measurement rules for the Panama Canal Commission which are based on Annex 1 of the Convention;

b. Transitional relief measures for certain vessels, provided they do not have a structural change which results in an alteration of 10 percent or more in their total volume;

c. Continued use of foreign tonnage authorities, and for acceptance of reasonably accurate volumes provided by them;

d. Correction of tonnage values as necessary to satisfy the Commission's desire for accuracy; and

e. Calculation of volumes for vessels without an International Tonnage Certificate 1969 (ITC 69) through an alternative tonnage estimating formula.

Subpart A contains general provisions concerning use of the Panama Canal Universal Measurement System (PC/UMS) Net Tonnage for the purpose of calculating tolls and measurement fees. It provides for the presentation of an ITC 69 or suitable substitute or the application of alternative measurement procedures. It retains provision for Commission control over the measurement determination, verification of tonnage certificates and the administration of these rules.

Subpart B establishes the PC/UMS. Under it, tolls will be assessed on the basis of the PC/UMS Net Ton. The Commission will apply a mathematical formula to the total volume in order to determine the PC/UMS Net Tonnage. This formula has been established so as to produce tonnage and, hence, revenues that in the aggregate are equal to those produced annually under the current system. The first of the two mathematical factors, K_4, is applied to V (Volume) and reduces it to a value that, in most cases, is equal to the Net Tonnage under existing measurement rules. In some instances—generally, ships, other than passenger ships, with exceptional amounts of enclosed spaces, a second factor, K_5, a gradually increasing additive factor, is applied to V. When the tonnage produced by K_5 is added to the tonnage value developed by K_4 the result once again closely approximates tonnage values produced under the current system. Relevant definitions are set forth in this subpart. The subpart also establishes the rules concerning measurement and calculations. Finally, the subpart addresses measurement rules in the event of a total volume change.

Subpart C continues without substantive change of the present rules for the measurement of warships, dredges and floating drydocks. Tolls for these vessels will continue to be based on their tonnage of actual displacement.

Subpart D provides transitional relief measures for vessels which previously transited the Canal and have not had a significant structural change. These measures provide relief to almost 100% of the Canal's existing customers and will apply during the vessels's entire service life. The relief measures provide that all vessels with a previous transit between March 23, 1976 (the date of the last major measurement rule change) and October 1, 1994 will be grandfathered at the Net Tonnage of their Panama Canal tonnage certificate as of September 30, 1994. This grandfathered tonnage value will continue unless a change is made in the enclosed volume of the vessel of ten percent or more. Changes of less than 10% shall accumulate; however, reductions in volume shall be deducted from any increases. Only a few vessels a year are expected to lose their relief status due to this provision.

Subpart E sets forth the measurement procedures the Commission will use when it becomes necessary for the Commission to determine the total volume of a vessel. The Commission anticipates using digitizing techniques whenever possible and anticipates an accuracy level equal to that of the governmental and commercial classification societies. As a last resort, the Commission has two tonnage estimating formulas. The first and preferred formula, set forth in § 135.42(a)(2)(i), provides for an estimate of the volume of the underdeck that is close to that which would have been developed if adequate plans and documentation were available. The Commissions's testing of this formula on a representative sample of ships demonstrated a standard deviation of 2.8% for this formula. The second formula, § 135.42(a)(2)(ii), has a standard deviation and distribution pattern comparable to the tonnage estimating formula used by the Commission for years and set forth currently at § 135.212 (1993).

In addition to the changes to 35 CFR part 135, certain administrative changes to 35 CFR part 133 (Tolls for Use of Canal) are required. These changes will reconcile the language of part 133 with the revised part 135 by allowing for the use of the ITC 69 to obtain the required total volume information.

Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes the procedures that the Commission must follow in proposing changes in the rules for measurement of vessels. Those procedures have been supplemented by regulations in 35 CFR part 70, which provide interested parties with instructions for participating in the process governing changes in the measurement rules.

Pursuant to the statute and regulations, on April 18, 1994, an advance notice of proposed rulemaking was published in the **Federal Register** (59 FR 18332) recommending the approval of the PC/UMS. At that time, a written analysis showing the basis and justification for the proposed revision or the measurement rules was made available to interested parties.

Written comments were solicited and received from interested parties, and a public hearing was held in Washington DC on May 25, 1994. The views presented by the interested parties, as well as other relevant information, were considered by the Board of Directors of the Commission at its quarterly meeting of July 1994. On July 13, 1994, the Board voted to recommend to the President that the rules for the measurement of vessels using the Panama Canal be revised so as to adopt the PC/UMS effective October 1, 1994. A complete record of the proceedings since the initiation of the proposal, including the data, views and comments submitted by the interested parties will be forwarded to the President with the Commission's recommendation. In considering the proposal, the President has the authority to approve, disapprove, or modify any recommendation of the Commission. The final rule, approved and published by the President, shall be effective October 1, 1994, or 30 days from the date of publication in the **Federal Register**, whichever occurs later.

Commissions's testing of this formula on a representative sample of ships demonstrated a standard deviation of 2.8% for this formula. The second formula, § 135.42(a)(2)(ii), has a standard deviation and distribution pattern comparable to the tonnage estimating formula used by the Commission for years and set forth currently at § 135.212 (1993).

In addition to the changes to 35 CFR part 135, certain administrative changes to 35 CFR part 133 (Tolls for Use of Canal) are required. These changes will reconcile the language of part 133 with the revised part 135 by allowing for the use of the ITC 69 to obtain the required total volume information.

Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes the procedures that the Commission must follow in proposing changes in the rules for measurement of vessels. Those procedures have been supplemented by regulations in 35 CFR part 70, which provide interested parties with instructions for participating in the process governing changes in the measurement rules.

Pursuant to the statute and regulations, on April 18, 1994, an advance notice of proposed rulemaking was published in the **Federal Register** (59 FR 18332) recommending the approval of the PC/UMS. At that time, a written analysis showing the basis and justification for the proposed revision or the measurement rules was made available to interested parties.

Written comments were solicited and received from interested parties, and a public hearing was held in Washington DC on May 25, 1994. The views presented by the interested parties, as well as other relevant information, were considered by the Board of Directors of the Commission at its quarterly meeting of July 1994. On July 13, 1994, the Board voted to recommend to the President that the rules for the measurement of vessels using the Panama Canal be revised so as to adopt the PC/UMS effective October 1, 1994. A complete record of the proceedings since the initiation of the proposal, including the data, views and comments submitted by the interested parties will be forwarded to the President with the Commission's recommendation. In considering the proposal, the President has the authority to approve, disapprove, or modify any recommendation of the Commission. The final rule, approved and published by the President, shall be effective October 1, 1994, or 30 days from the date of publication in the **Federal Register**, whichever occurs later.

The Commission has been exempted from Executive Order 12866 and, accordingly, the provisions of that directive do not apply to this proposed rule. Even if the Order were applicable, the proposed regulation, which concerns "rates" and "practices relating" thereto, would not constitute a "rule" as that term is defined in the Regulatory Flexibility Act (5 U.S.C. 601(2)) and would not have a significant impact on a substantial number of small entities under that Act.

A review of the environmental effect of the proposed measurement rule changes concludes that the proposed change will not have a significant effect on the quality of the human environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

Finally, the Administrator of the Panama Canal Commission certifies that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 35 Parts 133 and 135

Measurement, Navigation, Panama Canal, Vessels.

Accordingly, it is proposed that 35 CFR parts 133 and 135 be amended as follows:

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 is revised to read as follows:

Authority: 22 U.S.C. 3791, E.O. 12215, 45 FR 36043, 3 CFR, 1981 Comp., p. 257.

2. Section 133.1 is amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $2.21 per PC/UMS Net Ton—that is, the Net Tonnage determined in accordance with part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.76 per PC/UMS Net Ton.

* * * * *

3. Section 133.31 is revised to read as follows:

§ 133.31 Measurement of vessels; vessels to secure tonnage certificate.

The rules for the measurement of vessels are fixed by part 135 of this chapter. Vessels desiring to transit the Canal shall provide themselves with a tonnage certificate in accordance with § 133.32.

4. Section 133.32 is revised to read as follows:

§ 133.32 Measurement of vessels; making and correction of measurements; plans and copies.

Measurements may be made by the admeasurers of the Canal or certain other officials worldwide as designated by the Panama Canal Commission. Each transiting vessel should have aboard and available to Canal authorities a full set of plans and a copy of the measurements which were made at the time of issue of its International Tonnage Certificate (1969), as well as the tonnage certificate itself. A copy of the International Tonnage Certificate (1969) shall be provided to Canal authorities. The Commission reserves the right to check and correct the total volume that is to be used in the calculation of the PC/UMS Net Tonnage. (Existing collections of information are approved under Office of Management and Budget (OMB) control number 3207–0001. Modifications are being submitted to OMB for approval)

5. Section 133.33 is revised to read as follows:

§ 133.33 Measurement of vessels; temporary retention of certificate at Canal.

The official PC/UMS Net Tonnage certificate shall be delivered by the Canal authorities to the vessel or to the owner or agent of the vessel after transit completion. This certificate shall be retained on board the vessel and shall be used to certify that the vessel has been inspected and its PC/UMS Net Tonnage has been determined by the Commission.

PART 135—RULES FOR MEASUREMENT OF VESSELS

6. Part 135 is revised to read as follows:

Subpart A—General Provisions

Sec.
135.1 Scope
135.2 Vessels generally to present tonnage certificate or be measured.
135.3 Determination of total volume.
135.4 Administration and interpretation of rules.

Subpart B—PC/UMS Net Tonnage Measurement

135.11 Tonnage.
135.12 Definitions.
135.13 Determination of PC/UMS Net Tonnage.
135.14 Change of PC/UMS Net Tonnage
135.15 Calculation of volumes.
135.16 Measurement and calculation.

Subpart C—Warships, Dredges and Floating Drydocks

135.21 Warships, dredges and floating drydocks to present documents stating displacement tonnage.
135.22 Tolls on warships, dredges and floating drydocks levied on actual displacement.

Subpart D—Transitional Relief Measures

135.31 Transitional relief measures.

Subpart E—Alternative Method for Measurement of Vessels

135.41 Measurement of vessels when volume information is not available.
135.42 Measurement of vessels when tonnage cannot be otherwise ascertained.

Authority: 22 U.S.C. 3791, E.O. 12215, 45 FR 36043, 3 CFR 1981 Comp., p. 257.

Subpart A—General Provisions

§ 135.1 Scope.

This part establishes the procedures for determining the Panama Canal Universal Measurement System (hereinafter PC/UMS) Net Tonnage. The tonnage shall be used to assess tolls for use of the Panama Canal. Also, the tonnage may be used, when adequate volume information is not provided, to assess the charge for admeasurement services.

§ 135.2 Vessels generally to present tonnage certificate or be measured.

All vessels except warships, floating drydocks, dredges, and vessels subject to transitional relief measures, applying for passage through the Panama Canal shall present a duly authenticated International Tonnage Certificate (1969) (hereinafter ITC 69), or suitable substitute (i.e., a certificate derived from a system which is substantially similar to that which was provided for in the 1969 International Convention on Tonnage Measurement of Ships, and which contains the total volume or allows for the direct mathematical determination of total volume). Vessels without such total volume information shall be inspected by Canal authorities who shall determine an appropriate volume for use in the calculation of a PC/UMS Net Tonnage of such vessels.

(Existing collections of information are approved under Office of Management and Budget (OMB) control number 3207–0001. Modifications are being submitted to OMB for approval)

§ 135.3 Determination of total volume.

(a) The determination of total volume used in the calculation of PC/UMS Net Tonnage shall be carried out by the Panama Canal Commission. In so doing, however, the Commission may rely upon total volume information provided by such officials as are authorized by national governments to undertake surveys and issue national tonnage certificates. Total volume information presented at the Panama Canal shall be subject to verification, and if necessary, correction insofar as may be necessary to ensure accuracy to a degree acceptable to the Panama Canal Commission.

(b) The Commission may, when it is deemed necessary to verify information contained on the ITC 69, require the submission of additional documents. Failure to submit the requested documentation may result in the Commission's developing a figure that accurately reflects the vessel's volume.

(Existing collections of information are approved under Office of Management and Budget (OMB) control number 3207–0001. Modifications are being submitted to OMB for approval)

§ 135.4 Administration and interpretation of rules.

The rules of measurement provided in this part shall be administered and interpreted by the Administrator of the Panama Canal Commission.

Subpart B—PC/UMS Net Tonnage Measurement

§ 135.11 Tonnage.

(a) The tonnage of a ship shall consist of PC/UMS Net Tonnage.

(b) The net tonnage shall be determined in accordance with the provisions of the regulations in this subpart.

(c) The net tonnage of novel types of craft whose constructional features are such as to render the application of the provisions of the regulations in this subpart unreasonable or impracticable shall be determined in a manner which is acceptable to the Panama Canal Commission.

§ 135.12 Definitions.

(a) *Upper deck* means the uppermost complete deck exposed to weather and sea, which has permanent means of weathertight closing of all openings in the weather part thereof, and below which all openings in the sides of the ship are fitted with permanent means of watertight closing. In a ship having a stepped upper deck, the lowest line of the exposed deck and the continuation of that line parallel to the upper part of the deck is taken as the upper deck.

(b) *Moulded depth* means the vertical distance measured from the top of the keel to the underside of the upper deck at side.

(1) In wood and composite ships the distance is measured from the lower edge of the keel rabbet. Where the form at the lower part of the midship section is of a hollow character, or where thick garboards are fitted, the distance is measured from the point where the line of the flat of the bottom continued inwards cuts the side of the keel.

(2) In ships having rounded gunwales, the moulded depth shall be measured to the point of intersection of the moulded lines of the deck and side shell plating, the lines extending as though the gunwales were of angular design.

(3) Where the upper deck is stepped and the raised part of the deck extends over the point at which the moulded depth is to be determined, the moulded depth shall be measured to a line of reference extending from the lower part of the deck along a line parallel with the raised part.

(c) *Breadth* or *moulded breadth* means the maximum breadth of the ship, measured amidships to the moulded line of the frame in a ship with a metal shell and to the outer surface of the hull in a ship with a shell of any other material.

(d) *Enclosed spaces* mean all spaces which are bounded by the ship's hull, by fixed or portable partitions or bulkheads, by decks or coverings other than permanent or movable awnings. No break in a deck, nor any opening in the ship's hull, in a deck or in a covering of a space, or in the partitions or bulkheads of a space, nor the absence of a partition or bulkhead, shall preclude a space from being included in the enclosed space.

(e) *Excluded spaces* mean, notwithstanding the provisions of paragraph (d) of this section, the spaces referred to in paragraphs (e)(1) to (e)(5) of this section. Excluded spaces shall not be included in the volume of enclosed spaces, except that any such space which fulfills at least one of the following three conditions shall be treated as an enclosed space:

—The space is fitted with shelves or other means for securing cargo or stores;
—The openings are fitted with any means of closure; or
—the construction provides any possibility of such openings being closed:

(1)(i) A space within an erection opposite an end opening extending from deck to deck except for a curtain plate of a depth not exceeding by more than 25 millimeters (one inch) the depth of the adjoining deck beams, such opening having a breadth equal to or greater than 90 percent of the breadth of the deck at the line of the opening of the space. This provision shall be applied so as to exclude from the enclosed spaces only the space between the actual end

opening and a line drawn parallel to the line or face of the opening at a distance from the opening equal to one-half of the width of the deck at the line of the opening (Figure 1).

In the figure:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.
B = breadth of the deck in way of the opening

opening and a line drawn parallel to the line or face of the opening at a distance from the opening equal to one-half of the width of the deck at the line of the opening (Figure 1).

In the figure:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.
B = breadth of the deck in way of the opening

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).

(1)(ii) Should the width of the space because of any arrangement except by convergence of the outside plating, become less than 90 percent of the breadth of the deck, only the space between the line of the opening and a parallel line drawn through the point where the athwartships width of the space becomes equal to, or less than, 90 percent of the breadth of the deck shall be excluded from the volume of enclosed spaces. (Figures 2, 3 and 4).

In the figures:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.
B = breadth of the deck in way of the opening.

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).

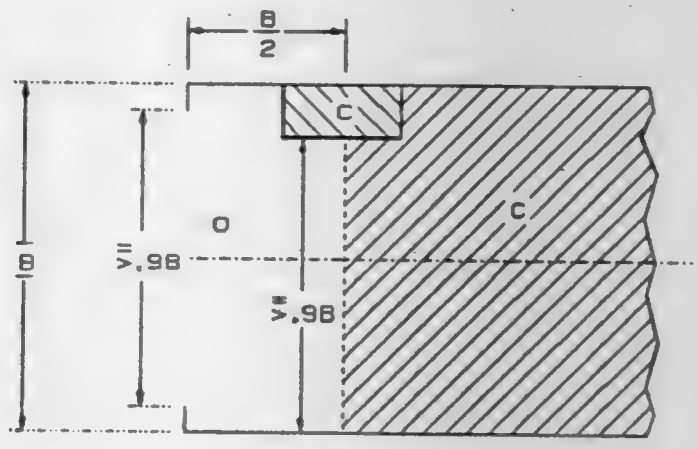

FIG 1

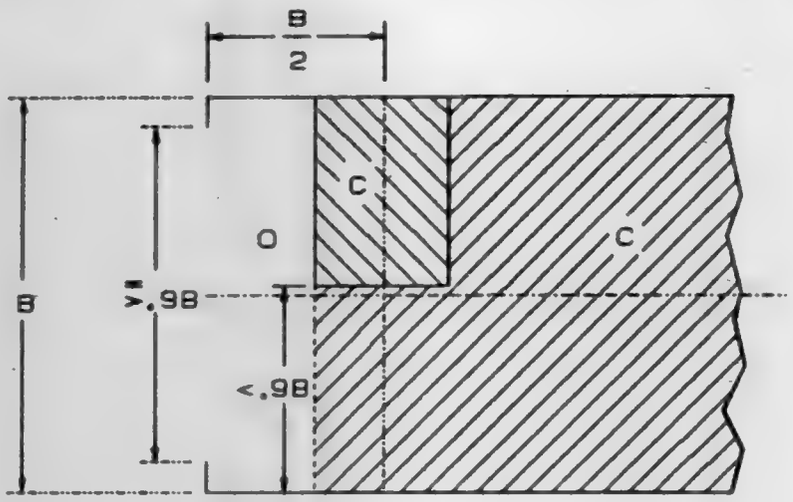

Fig 2

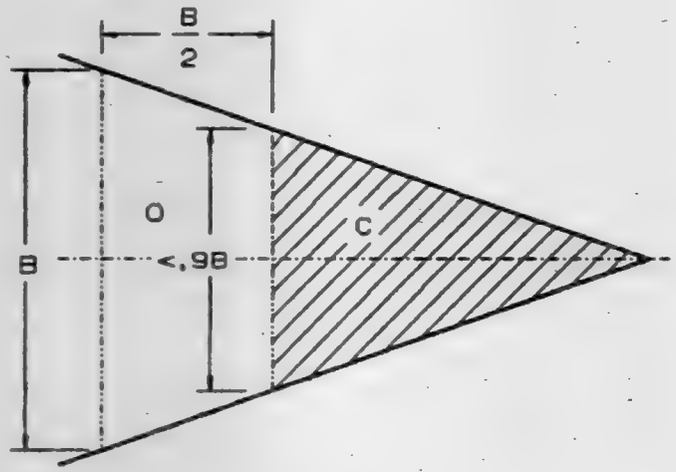

Fig 3

(1)(iii) Where an interval which is completely open except for bulwarks or open rails separates any two spaces, the exclusion of one or both of which is permitted under paragraphs (e)(1)(i) and/or (e)(1)(ii) of this section, such exclusion shall not apply if the separation between the two spaces is less than the least half breadth of the deck in way of the separation. (Figures 5 and 6).

In the figures:

O = excluded space

C = enclosed space

I = space to be considered as an enclosed space

Hatched-in parts to be included as enclosed spaces.

B = breadth of the deck in way of the opening.

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).

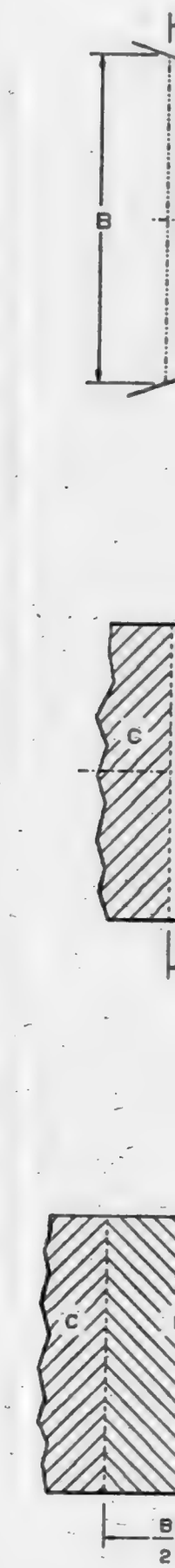

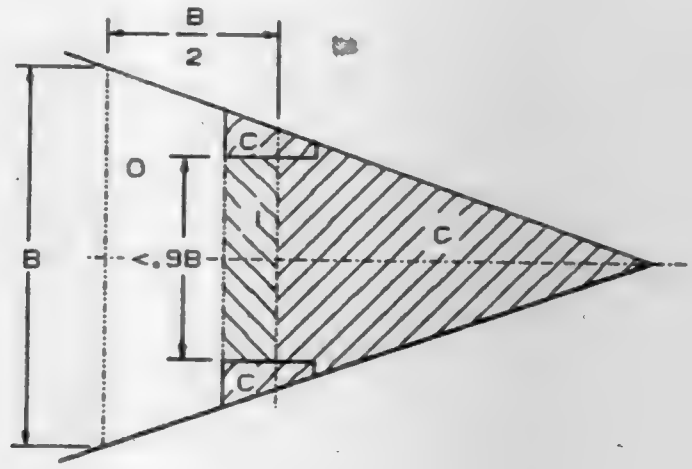

Fig. 4

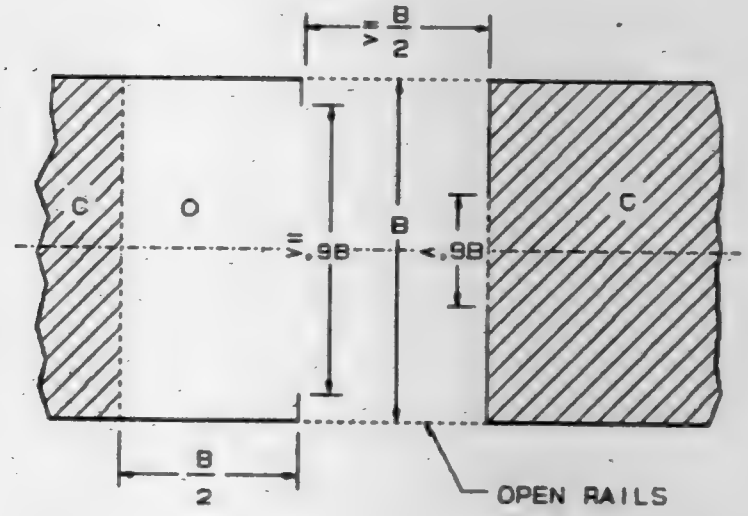

Fig. 5

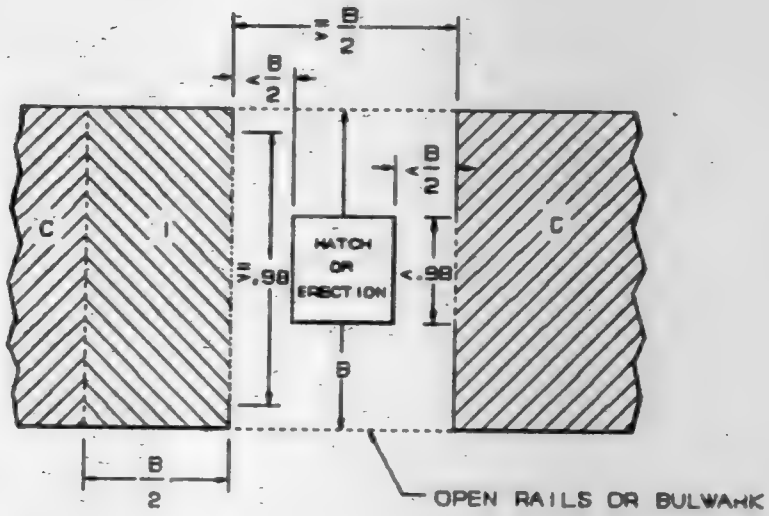

Fig. 6

(2) A space under an overhead deck covering open to the sea and weather, having no other connection on the exposed sides with the body of the ship than the stanchions necessary for its support. In such a space, open rails or a bulwark and curtain plate may be fitted or stanchions fitted at the ship's side, provided that the distance between the top of the rails or the bulwark and the curtain plate is not less than 0.75 meters (2.5 feet) or one-third of the height of the space, whichever is the greater. (Figure 7).

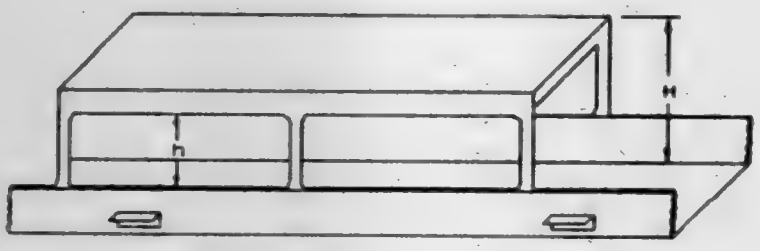

FIG. 7

h=AT LEAST $\frac{H}{3}$ OR
0.75 m (2.5 FEET)
WHICHEVER IS
THE GREATER

(3) A space in a side-to-side erection directly in way of opposite side openings not less in height than 0.75 meters (2.5 feet) or one-third of the height of the erection, whichever is the greater. If the opening in such an erection is provided on one side only, the space to be excluded from the volume of enclosed spaces shall be limited inboard from the opening to a maximum of one-half of the breadth of the deck in way of the opening. (Figure 8).

In the figures:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.
B = breadth of the deck in way of the opening.

In ships with rounded gunwales the breadth is measured as indicated in Figure 11 in paragraph (e)(5).

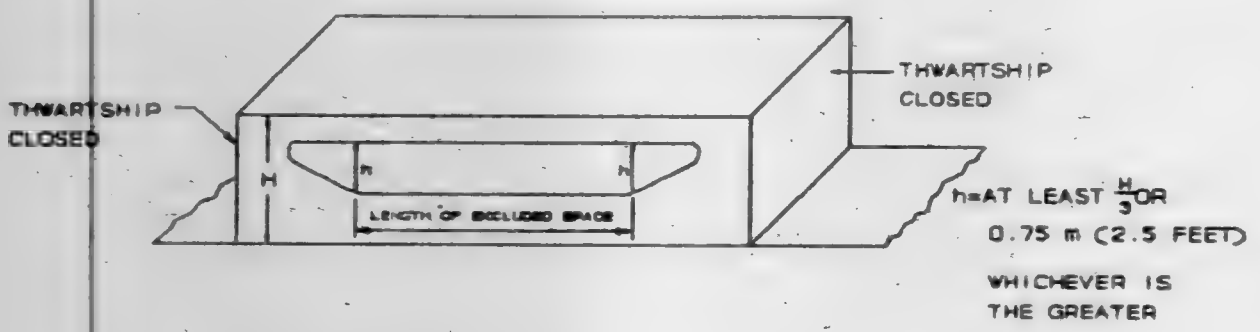

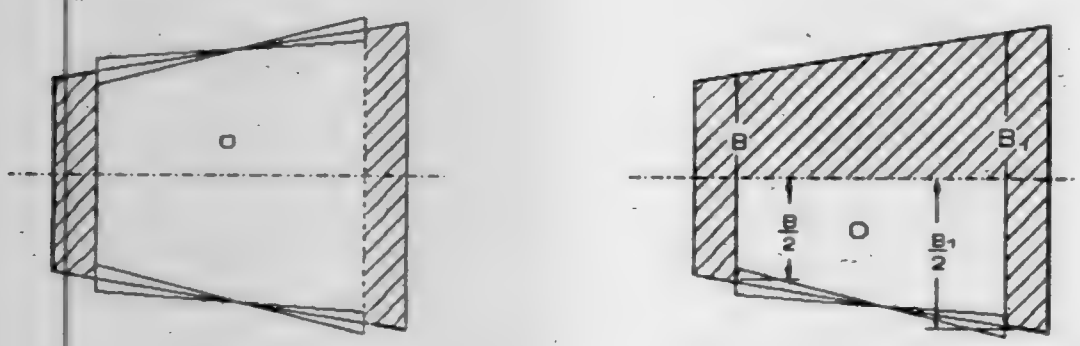

OPPOSITE SIDE OPENINGS

OPENING ON ONE SIDE ONLY

FIG. 8

(4) A space in an erection immediately below an uncovered opening in the deck overhead, provided that such an opening is exposed to the weather and the space excluded from enclosed spaces is limited to the area of the opening. (Figure 9).

(5) A recess in the boundary bulkhead of an erection which is exposed to the weather and the opening of which extends from deck to deck without means of closing, provided that the

enclosed spaces is limited to the area of the opening. (Figure 9).

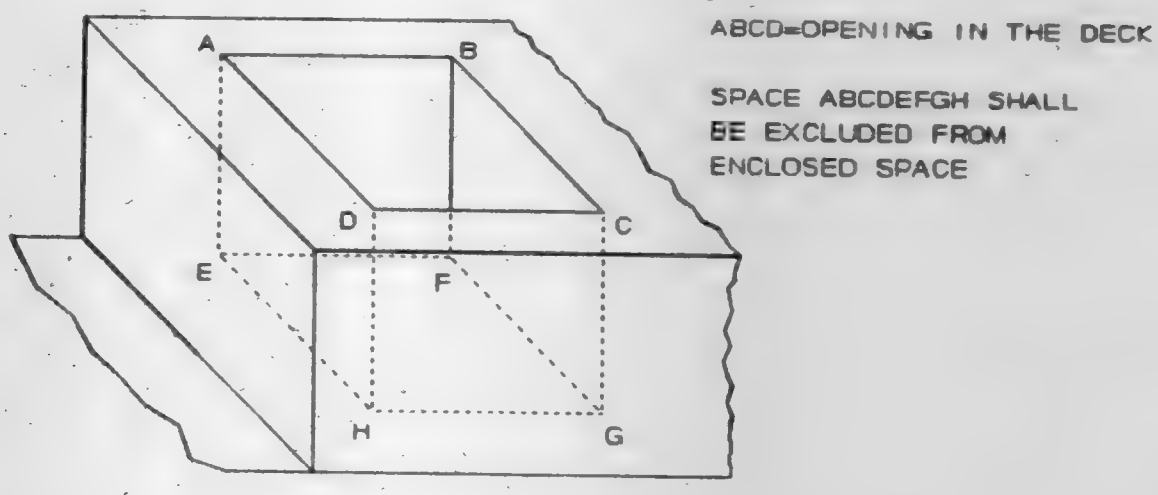

Fig 9

(5) A recess in the boundary bulkhead of an erection which is exposed to the weather and the opening of which extends from deck to deck without means of closing, provided that the interior width is not greater than the width at the entrance and its extension into the erection is not greater than twice the width of its entrance. (Figure 10).

In the figure:

O = excluded space
C = enclosed space
I = space to be considered as an enclosed space
Hatched-in parts to be included as enclosed spaces.

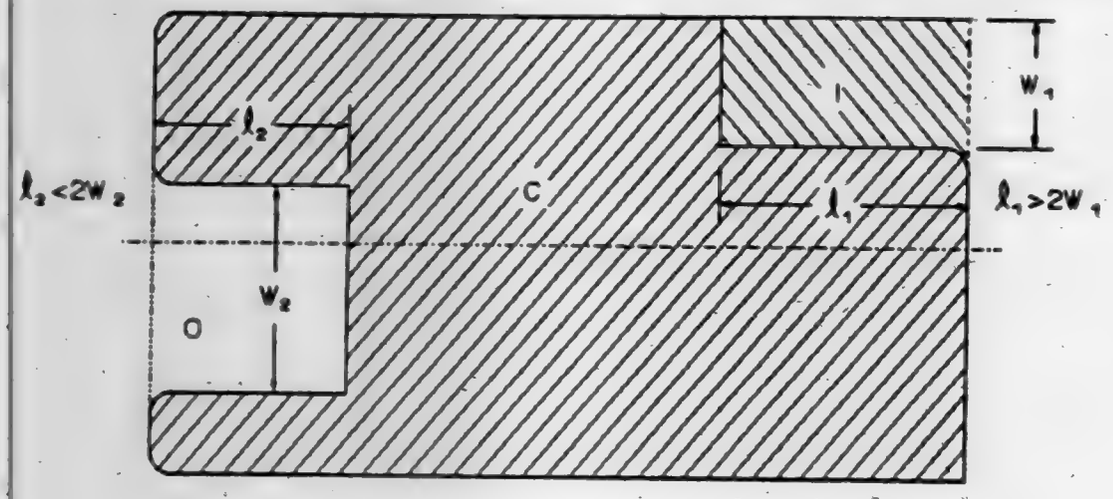

Fig. 10

SHIPS WITH ROUNDED GUNWALES

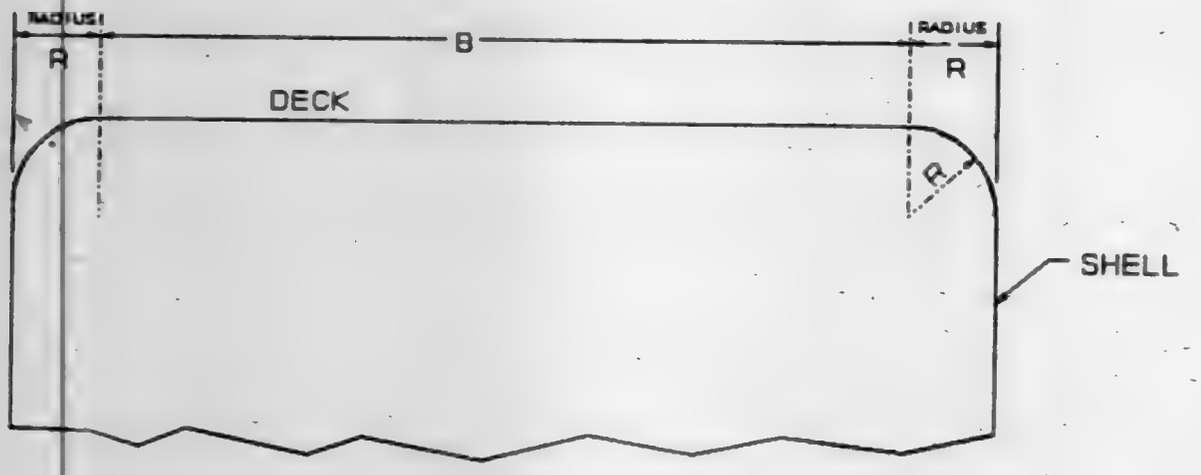

Fig. 11

(f) *Passenger* means every person other than:

(1) The master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and

(2) A child under one year of age.

(g) *Weathertight* means that in any sea conditions water will not penetrate into the ship.

§ 135.13 Determination of PC/UMS Net Tonnage.

PC/UMS Net Tonnage shall be determined as follows:

(a) For all vessels with tolls fixed in accordance with § 133.1 (a) or (b) of this chapter, unless subject to the transitional relief measures established in § 135.31 of this chapter, the formula for determining PC/UMS Net Tonnage is:

PC/UMS Net Tonnage=$K_4(V)+K_5(V)$

in which formula:

(1) "K_4"=$\{0.25+[0.01\times Log_{10}(V)]\}\times 0.830$.

(2) "K_5"=$[Log_{10}(DA-19)]/\{[Log_{10}(DA-16)]\times 17\}$. If the number of passengers (N1+N2) is greater than 100 or DA is equal to or less than 20.0 meters then K_5 is equal to zero.

(3) "V"=Total volume of all enclosed spaces of the ship in cubic meters and is identical to V as specified in the 1969 International Convention on Tonnage Measurement of Ships.

(4) "DA" (Average depth)=The result of the division of the Total Volume by the product of the length in meters multiplied by the moulded breadth in meters. DA=V/(L×MB).

(5) "L" (Length) is defined as 96 percent of the total length on a waterline at 85 percent of the least moulded depth measured from the top of the keel, or the length from the fore side of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline.

(6) Moulded breadth is defined in § 135.12(c).

(7) N_1=number of passengers in cabins with not more than 8 berths.

(8) N^2=number of other passengers.

(9) N_1+N_2=total number of passengers the ship is permitted to carry as indicated in the ship's passenger certificate.

(b) For vessels subject to transitional relief measures, the existing Panama Canal Net Tonnage as specified on the certificate issued by Panama Canal Commission shall be the PC/UMS Net Tonnage. In such case, the formula for determining PC/UMS Net Tonnage is: PC/UMS Net Tonnage = Panama Canal Net Tonnage.

§ 135.14 Change of PC/UMS Net Tonnage.

(a) Vessels whose PC/UMS Net Tonnage is determined in accordance with § 135.13(a) shall have a new PC/UMS Net Tonnage issued if "V" changes.

(b) A vessel whose PC/UMS Net Tonnage is determined in accordance with § 135.13(b) shall retain that tonnage until the vessel undergoes a significant structural change as defined in § 135.14(c). In the event of a significant structural change, the vessel's PC/UMS Net Tonnage shall be determined in accordance with § 135.13(a).

(c) For the purposes of paragraph (b) of this section, significant structural change means an actual change of at least 10 percent in the total volume of the vessel. Vessels without comparative ITC 69 total volumes, or other suitable sources of total volume comparison, shall have a fair and equitable volume comparison made by the Commission to determine if a significant structural change has occurred.

§ 135.15 Calculation of volumes.

(a) All volumes included in the calculation of PC/UMS Net Tonnage shall be measured, irrespective of the fitting of insulation or the like, to the inner side of the shell or structural boundary plating in ships constructed of metal, and to the outer surface of the shell or to the inner side of structural boundary surfaces in ships constructed of any other material.

(b) Volumes of appendages shall be included in the total volume.

(c) Volumes of spaces open to the sea may be excluded from the total volume.

§ 135.16 Measurement and calculation.

(a) All measurements used in the calculation of volumes shall be taken to the nearest centimeter or one-twentieth of a foot.

(b) The volumes shall be calculated by generally accepted methods for the space concerned and with an accuracy acceptable to the Commission.

(7) N_1=number of passengers in cabins with not more than 8 berths.

(8) N^2=number of other passengers.

(9) N_1+N_2=total number of passengers the ship is permitted to carry as indicated in the ship's passenger certificate.

(b) For vessels subject to transitional relief measures, the existing Panama Canal Net Tonnage as specified on the certificate issued by Panama Canal Commission shall be the PC/UMS Net Tonnage. In such case, the formula for determining PC/UMS Net Tonnage is: PC/UMS Net Tonnage = Panama Canal Net Tonnage.

§ 135.14 Change of PC/UMS Net Tonnage.

(a) Vessels whose PC/UMS Net Tonnage is determined in accordance with § 135.13(a) shall have a new PC/UMS Net Tonnage issued if "V" changes.

(b) A vessel whose PC/UMS Net Tonnage is determined in accordance with § 135.13(b) shall retain that tonnage until the vessel undergoes a significant structural change as defined in § 135.14(c). In the event of a significant structural change, the vessel's PC/UMS Net Tonnage shall be determined in accordance with § 135.13(a).

(c) For the purposes of paragraph (b) of this section, significant structural change means an actual change of at least 10 percent in the total volume of the vessel. Vessels without comparative ITC 69 total volumes, or other suitable sources of total volume comparison, shall have a fair and equitable volume comparison made by the Commission to determine if a significant structural change has occurred.

§ 135.15 Calculation of volumes.

(a) All volumes included in the calculation of PC/UMS Net Tonnage shall be measured, irrespective of the fitting of insulation or the like, to the inner side of the shell or structural boundary plating in ships constructed of metal, and to the outer surface of the shell or to the inner side of structural boundary surfaces in ships constructed of any other material.

(b) Volumes of appendages shall be included in the total volume.

(c) Volumes of spaces open to the sea may be excluded from the total volume.

§ 135.16 Measurement and calculation.

(a) All measurements used in the calculation of volumes shall be taken to the nearest centimeter or one-twentieth of a foot.

(b) The volumes shall be calculated by generally accepted methods for the space concerned and with an accuracy acceptable to the Commission.

(c) The calculation shall be sufficiently detailed to permit easy checking.

Subpart C—Warships, Dredges and Floating Drydocks

§ 135.21 Warships, dredges and floating drydocks to present documents stating displacement tonnage.

All warships, dredges and floating drydocks shall present documents stating accurately the tonnage of displacement at each possible mean draft. The term "warship" means any vessel of government ownership that is being employed by its owners for military or naval purposes and shall include armed coast guard vessels and vessels devoted to naval training purposes, but shall not include naval auxiliary vessels such as tankers, ammunition ships, refrigerator ships, repair ships, tenders or vessels used to transport general military supplies.

(Existing collections of information are approved under Office of Management and Budget (OMB) control number 3207–0001. Modifications are being submitted to OMB for approval)

§ 135.22 Tolls on warships, dredges and floating drydocks levied on actual displacement.

The toll on warships, dredges and floating drydocks shall be based upon their tonnage of actual displacement at the time of their application for passage through the Canal. The actual displacement of these vessels shall be determined in a manner acceptable to the Commission and shall be expressed in tons of 2240 pounds. Should any of these vessels not have on board documents from which the displacement can be determined, Commission officials may use any practicable method to determine the displacement tonnage for assessment of tolls.

Subpart D—Transitional Relief Measures

§ 135.31 Transitional relief measures.

Transitional relief measures as specified in § 135.13(b) shall be applied to a vessel which has made a transit of the Panama Canal between March 23, 1976 and September 30, 1994, inclusive, and has not had a significant structural change as defined in § 135.14(c) since the last transit during the above period. Any significant structural change made after the granting of transitional relief measures shall disqualify a vessel for further relief, and the vessel shall be handled in accordance with the provisions of § 135.13(a). Transitional relief measures are applied to the vessel during its entire active service life as long as the vessel does not undergo a significant structural change. Vessels subject to transitional relief measures shall present their existing Panama Canal Tonnage Certificate on their first transit after September 30, 1994. Vessels subject to relief measures shall not be required to present an ITC 69 or any other total volume certification.

(Existing collections of information are approved under Office of Management and Budget (OMB) control number 3207–0001. Modifications are being submitted to OMB for approval)

Subpart E—Alternative Method for Measurement of Vessels

§ 135.41 Measurement of vessels when volume information is not available.

When an ITC 69 or suitable substitute is not presented or the certificate or substitute presented does not have an accuracy acceptable to the Commission, vessels shall be measured in a manner which includes the entire cubical contents as required by the definition of total volume and enclosed spaces. The Commission shall endeavor to determine an accurate total volume of the vessel using the best information available at the time of the determination. The total volume shall be calculated by generally accepted methods for the space concerned and with an accuracy acceptable to the Commission.

§ 135.42 Measurement of vessels when tonnage cannot be otherwise ascertained.

(a) Vessels without an ITC 69, a suitable substitute or documentation from which to calculate total volume shall be measured as follows:

(1) The volume of structures above the upper deck may be determined by any accepted method or combination of methods. These methods include but are not limited to simple geometric formulas, Simpson's rules, and other standard mathematical formulas. If special procedures are used, they should be identified. In all cases, measurements and calculations should be sufficiently detailed to permit easy review.

(2) The volume of the hull below the upper deck (UDV) shall be determined as follows:

(i) The formula:

$$UDV=(0.91\times[(LOA\times MB)\times(1-SLD)])+(SLDISP/1.025)$$

Where:

UDV=Total volume of all enclosed spaces below the upper deck in cubic meters.

LOA=The Length overall, i.e., the length of the ship in meters from the

foremost to the aftermost points, including a bulbous bow if present.

MB=Moulded breadth in meters as defined in § 135.12(c).

D=Moulded depth in meters as defined in § 135.12(b).

SLD=Summer loaded draft (in meters) i.e., the maximum depth to which the vessel's hull may be immersed when in a summer zone.

SLDISP=Summer loaded displacement, i.e., the actual weight in metric tons of the water displaced by the vessel when immersed to her SLD.

(ii) If § 135.42(a)(2)(i) proves unworkable, the total volume of the hull below the upper deck shall be determined by multiplying the product of the LOA, MB and D by the appropriate coefficient listed in the following table:

LOA in meters	Coefficient
0 to 30	.7150
>30 to 60	.7250
>60 to 90	.7360
>90 to 120	.7453
>120 to 150	.7328
>150 to 180	.7870
>180 to 210	.8202
>210 to 240	.7870
>240 to 270	.7328
>270	.7453

(3) The total volume of a vessel is the sum of the volume of the structures above the upper deck as determined in accordance with § 135.42(a)(1) and the volume of the hull below the upper deck as determined in accordance with § 135.42(a)(2) (i) or (ii).

(b) Vessels which have had their total volume determined in accordance with § 135.41 or this section may apply for readmeasurement when they have a new or corrected ITC 69, a suitable substitute or present documentation sufficient to calculate total volume.

Dated: July 7, 1994.

Gilberto Guardia F.,

Administrator, Panama Canal Commission.

[FR Doc. 94–17331 Filed 7–15–94; 8:45 am]

BILLING CODE 3640–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH14–1–6483; A–1–FRL–5014–6]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Enhanced Inspection and Maintenance in Hillsborough, Merrimack, Rockingham, and Strafford Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA proposes to conditionally approve or, in the alternative, disapprove the New Hampshire Enhanced Inspection and Maintenance (I/M) State Implementation Plan (SIP) which was submitted to EPA for approval on March 1, 1994, April 20, 1994, and April 28, 1994. These submittals were supplemented by letters dated May 19, 1994 and June 28, 1994 providing additional information and specific assurances regarding changes New Hampshire is making to the program and stating the State's intent to submit further information to EPA by August 19, 1994. The content of the State's letters is described in detail in this notice. If such information is submitted for inclusion in the SIP on or before that date, EPA proposes to conditionally approve the New Hampshire I/M SIP. If such information is not submitted by August 19, 1994, EPA proposes to disapprove the SIP. Since the August 19, 1994 submittal will not be included in the docket for this notice in time to provide adequate public review and comment during the normal comment period, the comment period will remain open only for comments concerning the August 19, 1994 submittal until August 29, 1994. Conditional approval is based on the state's commitment to satisfy specified conditions by July 29, 1995. If such conditions are not met by July 29, 1995, the conditional approval automatically will convert to a disapproval.

New Hampshire submitted this I/M SIP revision to EPA to satisfy the requirements of sections 182(b)(4), 182(c)(3) and 184(b)(1)(A) of the Clean Air Act, and EPA's I/M rule at 40 CFR Part 51, Subpart S. These SIP revisions will require vehicle owners to comply with the New Hampshire I/M program in four New Hampshire counties that are part of the Northeast Ozone Transport Region namely, Hillsborough, Merrimack, Rockingham and Strafford. This action is being taken under Section 110 of the Clean Air Act.

DATES: Comments must be received on or before August 17, 1994. Only public comments on the submittal due on August 19, 1994 by the state of New Hampshire may be received after August 17, 1994 but not later than August 29, 1994. Public comments on these documents are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, New England Region, JFK Federal Bldg. (AAA), Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, New England Region, One Congress Street, 10th floor, Boston, MA and the New Hampshire Department of Environmental Services, Air Resources Division, 64 North Main Street, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Peter X. Hagerty, (617) 565–3224.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act, as amended in 1990 (CAA or Act), requires certain States to revise and improve existing I/M programs or implement new ones. All ozone nonattainment areas classified as moderate or worse must implement a basic or enhanced I/M program depending upon its nonattainment classification, regardless of previous requirements. In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States must then incorporate this guidance into the SIP for all areas required by the Act to have an I/M program. Metropolitan statistical areas with populations of 100,000 or more that are within the Northeast Ozone Transport Region are required to meet EPA guidance for enhanced I/M programs.

II. Background

The EPA has designated three areas as nonattainment for ozone in the State of New Hampshire. The New Hampshire portion of the Boston-Lawrence-Salem Consolidated Metropolitan Statistical Area is classified serious for ozone, the Portsmouth-Dover-Rochester Metropolitan Statistical Area (MSA) also is classified serious for ozone, and the Manchester MSA is classified marginal for ozone. The designations for ozone were published in the **Federal Register** (FR) on November 6, 1991 (56 FR 56694) and November 30, 1992 (57 FR 56762) and have been codified in the Code of Federal Regulations (CFR) at 40 CFR sections 81.300–81.437. Based on these nonattainment designations, an enhanced I/M program is required in Hillsborough, Rockingham, Strafford. In addition, these MSAs have populations of over 100,000 or more and are included in the Ozone Transport Region. Although parts of Merrimack County are in the Manchester MSA, the county could be exempted since, in New England, MSAs are defined by town, not by county and more than fifty percent of the MSA population would be in the I/M program and the population density is less than 200 persons per square mile. Under EPA's I/M rule 40 CFR 51.350(b)(1) such portions of Merrimack county are not required to implement I/M. However, all of Merrimack County is included to generate emission reductions which may be used as offsets or trading credits.

By this action, EPA is proposing to conditionally approve and in the alternative, disapprove the New Hampshire I/M SIP revision. EPA has reviewed the State submittals against the statutory requirements under the Act and for consistency with EPA regulations. In letters dated May 19, 1994 and June 28, 1994, New Hampshire indicated its intent to address a number of outstanding issues discussed further in this notice and to submit necessary revisions to EPA by August 19, 1994. If such revisions are submitted in a timely manner, are consistent with this notice and fully meet the requirements of the I/M rule, EPA will conditionally approve the SIP. Three parts of the program, on-road testing, compliance via diagnostic inspection, and enforcement against inspectors require more time to resolve and provide the basis for today's proposed conditional approval. As requested by New Hampshire, the state will have until July 29, 1995 to submit these revisions to address these three areas. If such revisions are submitted by that date, fulfill the conditions set forth in this notice, and fully meet the requirements of the I/M rule, the state will have met the specified conditions and the I/M SIP will be fully approved. A summary of EPA's analysis is provided below. In addition, more detailed support for conditionally

Portsmouth-Dover-Rochester Metropolitan Statistical Area (MSA) also is classified serious for ozone, and the Manchester MSA is classified marginal for ozone. The designations for ozone were published in the **Federal Register** (FR) on November 6, 1991 (56 FR 56694) and November 30, 1992 (57 FR 56762) and have been codified in the Code of Federal Regulations (CFR) at 40 CFR sections 81.300–81.437. Based on these nonattainment designations, an enhanced I/M program is required in Hillsborough, Rockingham, Strafford. In addition, these MSAs have populations of over 100,000 or more and are included in the Ozone Transport Region. Although parts of Merrimack County are in the Manchester MSA, the county could be exempted since, in New England, MSAs are defined by town, not by county and more than fifty percent of the MSA population would be in the I/M program and the population density is less than 200 persons per square mile. Under EPA's I/M rule 40 CFR 51.350(b)(1) such portions of Merrimack county are not required to implement I/M. However, all of Merrimack County is included to generate emission reductions which may be used as offsets or trading credits.

By this action, EPA is proposing to conditionally approve and in the alternative, disapprove the New Hampshire I/M SIP revision. EPA has reviewed the State submittals against the statutory requirements under the Act and for consistency with EPA regulations. In letters dated May 19, 1994 and June 28, 1994, New Hampshire indicated its intent to address a number of outstanding issues discussed further in this notice and to submit necessary revisions to EPA by August 19, 1994. If such revisions are submitted in a timely manner, are consistent with this notice and fully meet the requirements of the I/M rule, EPA will conditionally approve the SIP. Three parts of the program, on-road testing, compliance via diagnostic inspection, and enforcement against inspectors require more time to resolve and provide the basis for today's proposed conditional approval. As requested by New Hampshire, the state will have until July 29, 1995 to submit these revisions to address these three areas. If such revisions are submitted by that date, fulfill the conditions set forth in this notice, and fully meet the requirements of the I/M rule, the state will have met the specified conditions and the I/M SIP will be fully approved. A summary of EPA's analysis is provided below. In addition, more detailed support for conditionally approving the State submittal is contained in the technical support document (TSD), dated June 28, 1994, which is available from the New England Regional Office, listed above.

On November 5, 1992 (57 FR 52950), EPA published a final regulation establishing the I/M requirements, pursuant to sections 182 and 187 of the Act. The I/M regulation was codified at 40 CFR Part 51, Subpart S, and requires States to submit, by November 15, 1993, an I/M SIP revision including all necessary legal authority and the items specified in 40 CFR 51.350 (a)(1) through 51.373.

III. State Submittal

On March 1, 1994, April 20, 1994, and April 28, 1994, the State of New Hampshire submitted an I/M SIP for its three nonattainment areas. Public hearings for the submittals were held on January 5 and 6, 1994, for the March 1, 1994 SIP submittal, and on March 8, 1994 for the April 20, 1994 SIP submittal. The April 28, 1994 submittal contained only administrative materials to supplement the April 20 submission. EPA submitted written comments to the state on March 18, 1994. EPA's primary comments concerned the State's modeling analysis demonstrating achievement of the performance standard, and the motorist compliance enforcement program. In letters dated May 19, 1994 and June 28, 1994, the state agreed to submit by August 19, 1994 additional information to address these and other areas identified in this notice and discussed further below.

The submittals provide for the implementation of an enhanced I/M program in four counties in New Hampshire beginning on January 1, 1995. New Hampshire will be implementing a biennial, test-only I/M program meeting the requirements of the I/M performance standard and other requirements contained in EPA's I/M rule. Testing will be overseen by the New Hampshire Department of Safety (NHDOS) and the New Hampshire Department of Environmental Services (NHDES), with actual testing done by a contractor. Other aspects of the New Hampshire I/M program include: testing of 1968 and later light duty vehicles and trucks, and heavy duty trucks, evaporative emission testing for 1975 and later model year vehicles, a test fee to ensure the State has adequate resources to implement the program, enforcement by registration suspension, a repair effectiveness program, contractual requirements for testing convenience, quality assurance, data collection, minimum expenditure, time extension and hardship waivers, reporting, test equipment and test procedure specifications, public information and consumer protection, inspector training and certification, and penalties against inspector incompetence. In addition, the enhanced I/M program will include: IM240 testing for 1981 and newer vehicles, an on-road testing program, and emission recall enforcement. A section-by-section analysis of how the New Hampshire I/M program meets the SIP requirements of the federal I/M rule is provided below.

A. Applicability

Under EPA's I/M rule, the SIP must describe the applicable areas in detail and, consistent with 40 CFR Section 51.372, must include legal authority necessary to establish program boundaries and implement the program.

The New Hampshire I/M legislation in Chapter 353 of the Laws of 1993 specifies that vehicles registered in Hillsborough, Merrimack, Rockingham, and Strafford counties be subject to an enhanced I/M program.

EPA's I/M regulation requires that the state program shall not terminate prior to the attainment deadline for each applicable area. The New Hampshire program has no sunset date.

B. Enhanced I/M Performance Standard

Under EPA's I/M rule, an I/M SIP must meet the enhanced I/M performance standard for pollutants that cause the affected area to come under I/M requirements. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP also must provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

New Hampshire has submitted a modeling demonstration using the EPA computer model MOBILE5a showing that the enhanced performance standard will be met. This demonstration will need to be revised since the assumptions for gasoline Reid Vapor Pressure (RVP) and vehicle refueling emissions used in the model program were not the same as those used in the New Hampshire proposed program. In addition, the State used national average vehicle age data because the existing registration data is believed to be unreliable, and the State assumed a 99% compliance rate and waiver rate of 1%. EPA agreed to allow the use of national vehicle age data but questioned the use of the 99% compliance and 1% waiver rates given the unreliable registration model year data and the lack of an

adequate description of the motorist enforcement system. EPA believes that a 96% compliance rate and 3% waiver rate are achievable for a well operated program, but rates in excess of these require measures which go beyond normal enforcement and quality control measures. EPA has evaluated these matters and determined that the program will meet the performance standard with the correct RVP and vehicle refueling emissions assumptions and with either a 99% compliance rate and 1% waiver rate or with the rates provided in EPA's I/M rule, namely, a 96% compliance rate and a 3% waiver rate. In a letter dated May 19, 1994, the State agreed to reconsider the compliance and waiver rates and submit additional information by August 19, 1994 justifying these rates, or revising them to lower rates. At a minimum, the state intends to meet a 96% compliance rate and 3% waiver rate as required by the EPA rule.

New Hampshire has submitted a separate SIP submittal for the 15% rate of progress demonstration required by the Act. That SIP is being evaluated by EPA and will be discussed in a separate **Federal Register** notice. Any implications of New Hampshire's decision on compliance and waiver rates on their 15% rate of progress SIP will be discussed in that notice.

C. Network Type and Program Evaluation

Under EPA's I/M rule, the SIP must include a description of the network to be employed, the required legal authority, and, in the case of areas making claims for case-by-case equivalency, the required demonstration. Also, for enhanced I/M areas, the SIP must include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation and related details of the evaluation program, and the legal authority enabling the evaluation program.

New Hampshire has chosen to implement a test-only I/M network program design utilizing a contractor to implement the inspection portion of the program. Legal authority contained in Chapter 353 of the Laws of 1993 authorizes the NHDOS to implement this contractor operated test-only program and conduct the program evaluation. The contractor will be required to use a computer program to randomly select 0.1% of the vehicles for evaluation testing. The state has indicated in the May 19, 1994 letter that these tests will be monitored by either a NHDOS referee at the station, the station manager, or a representative of the NHDES. The required data will be collected by the contractor. NHDES will analyze this data with the resources assigned to the program.

The May 19, 1994 letter also indicates that the August 19, 1994 submittal will include provisions with appropriate penalties in the contract to bar employees of the contractor from referring motorists to particular repair shops.

D. Adequate Tools and Resources

Under EPA's I/M rule, the SIP must include a description of the resources that will be used for program operation and must discuss how the performance standard will be met including: (1) a detailed budget plan describing the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and other requirements discussed throughout, for the period prior to the next biennial self-evaluation required by the Federal I/M rule, and (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

Within the New Hampshire I/M SIP revision, Chapter 353 of the New Hampshire Laws of 1993 authorizes the collection of $2.75 in addition to the cost of each inspection to cover the administration, oversight, and enforcement of the I/M program. The SIP narrative describes the budget, staffing support, and equipment needed to implement the program. The State expects to dedicate a staff of 12.5 full-time equivalent employees to support the program. EPA is concerned that the resources identified may not be sufficient to administer and oversee the program properly. The resources identified are significantly lower than resources other states have planned which will be implementing programs of approximately the same size. EPA will monitor the program closely during the first year to determine if administration, enforcement and oversight are adequate. The submittal also calls for audit gases (gases used to calibrate emission analyzers) for state audits to be supplied by the contractor. These gases should be independently named. In its letter dated June 28, 1994 the state has agreed to have audit gases independently named by sending them to EPA. EPA will also ensure that this requirement is met during audits of the New Hampshire program.

E. Test Frequency and Convenience

Under EPA's I/M rule, the SIP must describe the test schedule in detail, including the test year selection scheme if testing is other than annual. Also, the SIP must include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in enhanced I/M programs, the SIP must demonstrate that the network of stations providing test services is sufficient to insure consumer convenience including short waiting times to get a test and short driving distances to get to a test center.

The New Hampshire SIP requires biennial inspections for all subject motor vehicles that are at least one year old. The inspections will be conducted on odd or even years corresponding to the model year of the vehicle and timed with the registration process explained in the SIP. The authority for the enforcement of the testing frequency is contained in the Chapter 353 of the Laws of 1993. Short waiting times and short driving distances relating to network design are required by Chapter 353 and are addressed in the RFP and will be required of the chosen contractor under the contract. The State is requiring, by contract, a 15 minute average waiting time and short driving distances such that 80% of the vehicle population is located within five miles of an inspection facility, and 95% of the vehicle population is located within twelve miles of an inspection facility.

F. Vehicle Coverage

Under EPA's I/M rule, the SIP must include a detailed discription of the number and types of vehicles to be covered by the program, and a plan for identifying vehicles, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP must include a description of any special exemptions authorized by the program, along with an estimate of the percentage and number of affected vehicles. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP must include the legal authority necessary to implement and enforce the vehicle coverage requirement.

The New Hampshire program includes coverage of all 1968 and newer model year gasoline powered light-duty vehicles and light-duty and heavy-duty trucks, registered, or required to be registered, within the above-mentioned four county area, and of fleets primarily operated within an I/M program area. Vehicles will be identified by the NHDOS vehicle registration database. The NHDOS computer system and registration data base needs to be updated. In its letter dated May 19, 1994 New Hampshire stated it's intention to update this information with a table of subject vehicles by model year by August 19, 1994. Diesels, motorcycles and vehicles over 26,000 lbs Gross Vehicle Weight Rating GVWR are exempt from the emission testing program. Legal authority for the vehicle coverage is contained in the New Hampshire Chapter 353 of the Laws of 1993.

G. Test Procedures and Standards

Under EPA's I/M rule, the SIP must include a description of each test procedure. The SIP also needs to include the rule, ordinance or law describing and establishing the test procedures.

The New Hampshire I/M SIP requires IM240 (transient) testing in accordance with EPA's guidance document entitled, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications" dated April 1994 (Technical Guidance). New Hampshire referenced an older version of this document but in its May 19, 1994 letter to EPA confirmed that the state already has notified potential vendors of this change through the April 25, 1994 communication the state advised all potential contractors that the most recent version of EPA specifications and guidelines should be used. The State requires IM240 and evaporative purge tests on 1981 and later model year vehicles up to and including 10,000 lbs gross vehicle weight rating (GVWR). All 1968 thru 1980 vehicles up to, and including, 10,000 lbs GVWR and all 1968 and newer vehicles 10,001–26,000 lbs will be tested with a two-speed test. All 1979 and newer vehicles will receive a pressure test. A visual tampering inspection will be conducted on all 1975 and newer vehicles.

The test procedures are authorized by Chapter 353 of NH Laws of 1993 and further defined in the NHDOS Enhanced Emissions Inspection and Maintenance Program Rules (NH Enhanced I/M Rules). The May 19, 1994 letter stated that the State will establish the cutpoints necessary to achieve a 20% stringency rate for vehicles being idle tested in 1999. The need to revise the final cutpoints will be assessed once actual test data is available from the New Hampshire program. The results of such assessment could require revision of the State's regulations prior to the 1999 testing cycle.

NHDOS vehicle registration database. The NHDOS computer system and registration data base needs to be updated. In its letter dated May 19, 1994 New Hampshire stated it's intention to update this information with a table of subject vehicles by model year by August 19, 1994. Diesels, motorcycles and vehicles over 26,000 lbs Gross Vehicle Weight Rating GVWR are exempt from the emission testing program. Legal authority for the vehicle coverage is contained in the New Hampshire Chapter 353 of the Laws of 1993.

G. Test Procedures and Standards

Under EPA's I/M rule, the SIP must include a description of each test procedure. The SIP also needs to include the rule, ordinance or law describing and establishing the test procedures.

The New Hampshire I/M SIP requires IM240 (transient) testing in accordance with EPA's guidance document entitled, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications" dated April 1994 (Technical Guidance). New Hampshire referenced an older version of this document but in its May 19, 1994 letter to EPA confirmed that the state already has notified potential vendors of this change through the April 25, 1994 communication the state advised all potential contractors that the most recent version of EPA specifications and guidelines should be used. The State requires IM240 and evaporative purge tests on 1981 and later model year vehicles up to and including 10,000 lbs gross vehicle weight rating (GVWR). All 1968 thru 1980 vehicles up to, and including, 10,000 lbs GVWR and all 1968 and newer vehicles 10,001–26,000 lbs will be tested with a two-speed test. All 1979 and newer vehicles will receive a pressure test. A visual tampering inspection will be conducted on all 1975 and newer vehicles.

The test procedures are authorized by Chapter 353 of NH Laws of 1993 and further defined in the NHDOS Enhanced Emissions Inspection and Maintenance Program Rules (NH Enhanced I/M Rules). The May 19, 1994 letter stated that the State will establish the cutpoints necessary to achieve a 20% stringency rate for vehicles being idle tested in 1999. The need to revise the final cutpoints will be assessed once actual test data is available from the New Hampshire program. The results of such assessment could require revision of the State's regulations prior to the 1999 testing cycle.

H. Test Equipment

Under EPA's I/M rule, the SIP must include written technical specifications for all test equipment used in the program and must address each of the requirements in 40 CFR 51.358. The specifications must describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The New Hampshire I/M SIP requires the use of the equipment specifications in EPA's Technical Guidance. As previously stated, New Hampshire referenced an older version of this document but updated the reference in the State's May 19, 1994 letter to EPA. The New Hampshire SIP and RFP address the requirements in 40 CFR 51.358 and include descriptions of performance features and functional characteristics of the computerized test systems. The necessary test equipment, required features, and acceptance testing criteria are mandated by contract through the RFP.

I. Quality Control

Under EPA's I/M rule, the SIP must include a description of quality control and recordkeeping procedures. The SIP must include the procedures manual, rule, and ordinance or law describing and establishing quality control procedures and requirements.

The New Hampshire I/M SIP narrative and RFP contain descriptions and requirements establishing the quality control procedures in accordance with the Federal I/M rule. These requirements will help ensure that equipment calibrations are properly performed and recorded and that compliance document security is maintained. The quality control procedures manual will be developed as part of the contract and is required by New Hampshire in the RFP. New Hampshire's May 19, 1994 letter to EPA states its intent to follow specifications for quality control per EPA's Technical Guidance. The August 19, 1994 submittal will address this.

J. Waivers and Compliance via Diagnostic Inspection

Under EPA's I/M rule, the SIP must include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate is used for estimating emission reduction benefits in the modeling analysis. Also, the State must take corrective action if the waiver rate exceeds that estimated in the SIP or revise the SIP accordingly and the emission reductions claimed. In addition, the SIP must describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP must include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions. Cost limits for the minimum expenditure waivers must be in accordance with the CAA and EPA's I/M rule.

In the New Hampshire I/M SIP revision, legal authority for waivers is set forth in Chapter 353 of the Laws of 1993. Consistent with EPA's I/M rule, waiver cost limits are established at $450 and adjusted annually in the New Hampshire enhanced I/M the program. The SIP revision also includes a 1% waiver rate expressed as a percentage of initially failed vehicles. This 1% waiver rate was used in the New Hampshire modeling demonstration. The state is reconsidering this rate as discussed in section B. above, and will provide additional justification to support it or revise it in the August 19, 1994 submittal. The SIP provides that, if the waiver rates are higher than estimated, NHDES will take corrective action to address the deficiency.

The SIP describes three types of waivers the State may allow. Such waivers include a minimum expenditure waiver, a time extension waiver, and a one-time hardship waiver. These waivers are consistent with EPA's I/M rule. The proper criteria, procedures, quality assurance and administration for issuing waivers is ensured by the NHDOS and its managing contractor and are described in the SIP narrative, Section 6 of the New Hampshire Enhanced I/M rules and the RFP.

Compliance via diagnostic inspections were allowed for all model years in the original submission, but in a letter dated May 19, 1994, the state indicated that it will establish procedures and a policy which will allow compliance by this mechanism only on 1981 and newer vehicles subject to IM240 tests at final cutpoints or lower. The state commits to submitting this revision by July 29, 1995. This part of the New Hampshire SIP provides one basis for EPA's proposal of a conditional approval of this SIP revision.

K. Motorist Compliance Enforcement

Under EPA's I/M rule, the SIP must provide information concerning the motorist compliance enforcement process, including: (1) A description of the existing compliance mechanism if it

is to be used in the future; and the demonstration that it is as effective, or more effective, than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, for example, those operated in (but not necessarily registered in) the program area. Also, the SIP must include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism need to be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP needs to include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

The State has chosen to use registration suspension as its primary enforcement mechanism. Motorists will have 45 days from the registration date to comply with the I/M program requirements or their vehicle registration will be suspended. The motorist compliance enforcement program will be implemented by the NHDOS. The SIP does not describe the computer matching system necessary to implement this system. Motorcycles and diesel vehicles are exempt from this program as permitted by the I/M rule. Fleet vehicles, rental car fleets, and leased vehicles are required to meet the same program requirements as all other subject vehicles. The State has not yet developed a plan for fleet vehicles, but requires this as part of the contract. The State has not addressed tracking out-of-state exemptions. The State has estimated a 99% compliance rate without a detailed description of how this will be accomplished. The legal authority to implement and enforce the program is included in Chapter 353 of the Laws of 1993. In its letters of May 19, 1994 and June 28, 1994, the State submitted a detailed description of the enforcement process and committed to justifying the compliance rate, or revising the compliance rate in the SIP and to address the other deficiencies described in this section by August 19, 1994.

L. Motorist Compliance Enforcement Program Oversight

Under EPA's I/M rule, the SIP must include a description of enforcement program oversight and information management activities.

The New Hampshire I/M SIP did not address this area specifically. However, in its letter dated June 28, 1994, New Hampshire committed to comply with 40 CFR 51.362, motorist compliance enforcement oversight and explained that the SIP committed to achieving the highest quality assurance and quality control to meet this requirement.

M. Quality Assurance

Under EPA's I/M rule, the SIP must include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

The New Hampshire I/M SIP revision includes a description of its quality assurance program. The program includes overt and covert audits of all emission inspectors and emission inspection lanes and will be conducted by the NHDOS. Procedures and techniques for overt and covert performance, record, and equipment audits will be developed by the state or a contractor, given to auditors and updated as needed. The SIP does not indicate whether audit results will be recorded and retained in station and inspector files, whether records are of sufficient detail to support civil and administrative hearings, whether stations and inspectors suspected of violating program regulations will be audited more frequently, or whether covert auditors will be rotated. By its letter dated May 19, 1994, the state commits to addressing these points by August 19, 1994. The state has assured EPA that all required training elements are included in the auditor training program and that this will be detailed in the SIP submission of August 19, 1994.

N. Enforcement Against Contractors, Stations and Inspectors

Under EPA's I/M rule, the SIP must include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the state Attorney General must furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP must describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases, and other aspects of the enforcement program. In addition, the SIP must describe the resources to be allocated to this enforcement function and the source of funding for such resources. In states without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

The New Hampshire I/M SIP includes specific penalties in its enforcement against contractors, stations and inspectors in accordance with EPA's I/M rule. The SIP includes the State's enforcement procedures which can be pursued through either contract provisions or Section 16 of the NH Enhanced I/M Rules. The NHDOS has the authority to immediately suspend a station inspector for violations that directly affect emission reduction benefits. Legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations are contained in the New Hampshire Chapter 353 of the Laws of 1993, and Enhanced Emissions Inspection and Maintenance Program Rules (NHDOS). In addition, contractual enforcement mechanisms are contained in the RFP. As discussed in the I/M SIP in Section M. NHDOS referees will spend 20 hours per week in each inspection station.

NH Enhanced I/M Rule, Section 16 does not require imposition of substantial penalties as required by EPA's I/M rule (six month suspension) or equivalent retainage on the first offense by inspectors for violations that directly affect emission reduction benefits. Section M. of the New Hampshire narrative indicates that mandatory retraining will be required of inspectors for violations, however, this is not stated in the regulation. In its letter to EPA dated June 28, 1994 New Hampshire stated that mandatory retraining will be a requirement of the contract, and that Section 16 will be revised to be consistent with the penalty required by the EPA rule. The state commits to submitting the revision to Section 16 by July 29, 1995. This part of the New Hampshire SIP provides another basis for EPA's proposal of a conditional approval of this SIP revision.

O. Data Analysis and Reporting

Under EPA's I/M rule, the SIP must describe the types of data to be collected.

The New Hampshire I/M SIP narrative, Section O, and Section 18 of the NH Enhanced I/M Rule provides for collecting data required by EPA regulation and submitting required reports.

P. Inspector Training and Licensing or Certification

Under EPA's I/M rule, the SIP must include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The New Hampshire I/M SIP provides for the implementation of training, certification, and refresher programs for emission inspectors. The SIP describes this program and curriculum, including written and hands-on testing required at least every two years. All inspectors will be required to be certified to inspect vehicles in the New Hampshire I/M program. In the letter of May 19, 1994, New Hampshire describes the written and hands-on tests, how they will be developed, and how the State will audit contractor administered tests.

Q. Improving Repair Effectiveness

Under EPA's I/M rule, the SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for enhanced I/M programs, and a description of the repair technician training resources available in the community.

The New Hampshire SIP includes a description of the technical assistance, performance monitoring and repair technician training programs to be implemented. The State did not specify a mechanism to regularly inform repair facilities regarding changes to the inspection program, training course schedules, common problems, potential solutions for particular engine families, diagnostic tips, repairs, and other assistance issues. In a letter dated May 19, 1994 the state agreed to provide a plan to EPA by August 19, 1994 that will provide the means to transmit the above-referenced information to the repair community. The NHDOS, as described in the SIP, will also ensure that a repair technician hotline will be available for repair technicians. Performance monitoring statistics of certified repair facilities will be provided to motorists whose vehicles fail the I/M tests in enhanced I/M areas.

O. Data Analysis and Reporting

Under EPA's I/M rule, the SIP must describe the types of data to be collected.

The New Hampshire I/M SIP narrative, Section O, and Section 18 of the NH Enhanced I/M Rule provides for collecting data required by EPA regulation and submitting required reports.

P. Inspector Training and Licensing or Certification

Under EPA's I/M rule, the SIP must include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The New Hampshire I/M SIP provides for the implementation of training, certification, and refresher programs for emission inspectors. The SIP describes this program and curriculum, including written and hands-on testing required at least every two years. All inspectors will be required to be certified to inspect vehicles in the New Hampshire I/M program. In the letter of May 19, 1994, New Hampshire describes the written and hands-on tests, how they will be developed, and how the State will audit contractor administered tests.

Q. Improving Repair Effectiveness

Under EPA's I/M rule, the SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for enhanced I/M programs, and a description of the repair technician training resources available in the community.

The New Hampshire SIP includes a description of the technical assistance, performance monitoring and repair technician training programs to be implemented. The State did not specify a mechanism to regularly inform repair facilities regarding changes to the inspection program, training course schedules, common problems, potential solutions for particular engine families, diagnostic tips, repairs, and other assistance issues. In a letter dated May 19, 1994 the state agreed to provide a plan to EPA by August 19, 1994 that will provide the means to transmit the above-referenced information to the repair community. The NHDOS, as described in the SIP, will also ensure that a repair technician hotline will be available for repair technicians. Performance monitoring statistics of certified repair facilities will be provided to motorists whose vehicles fail the I/M tests in enhanced I/M areas. The State will also ensure that adequate repair technician training exists through the establishment of an advisory workgroup.

R. Compliance With Recall Notices

Under EPA's I/M rule, the SIP must describe, for enhanced I/M programs, the procedures used to incorporate vehicle recall lists provided by EPA into the inspection or registration database, the quality control methods used to ensure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The NH RFP Section 6.9 requires the contractor to notify vehicle owners of recalls in accordance with EPA requirements, NH Enhanced I/M Rules Section 4.F.1.h., requires that vehicle owners whose vehicle is included in an emission recall, comply with the recall requirement in order to be inspected. Motorists with unresolved recall notices will be required to show proof of compliance or will be denied the opportunity for inspection. In the May 19, 1994 submission, New Hampshire explains that the RFP requires tracking and verification of recall repairs. Such data will include reference to the recall campaign number.

S. On-Road Testing

Under EPA's I/M rule, the SIP must include a detailed description of the on-road testing program required in enhanced I/M areas, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP must include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs can only be granted for a program designed to obtain significant emission reductions over and above those already predicted to be achieved by other aspects of the I/M program. The SIP must include technical support for the claimed additional emission reductions.

The New Hampshire I/M SIP includes a description of its on-road testing program. The testing program will include no less than 0.5% of the subject vehicles as required by Section 9 of the NH Enhanced I/M Rules. The program will be included as part of the testing contract and the contractor will provide data collection analysis and utilize this data to identify high emitting vehicles. The state has not established standards for this program or identified the type of testing that will be conducted. The legal authority for this program is contained in the New Hampshire I/M Chapter 353 of the Laws of 1993. In a letter dated May 19, 1994, the state commits to develop and submit standards to EPA. The state commits to submitting this revision by July 29, 1995. This part of the New Hampshire SIP provides the third basis for EPA's proposal of a conditional approval of this SIP revision.

T. Concluding Statement

A more detailed analysis of the State's I/M SIP submittal and how it meets the Federal requirements is contained in the EPA's technical support document dated June 28, 1994, which is available from the EPA-New England Regional office listed above. The criteria used to review the SIP revision submitted are based on the requirements of Section 182 of the CAA and EPA's I/M regulations. Based on these requirements, EPA developed a detailed I/M approvability checklist to be used nationally to assist in determining whether I/M programs meet the requirements of the CAA and the federal I/M rule. The checklist is formatted by stating the Federal requirement by each section, and followed by information indicating whether or not the New Hampshire program meets the criteria and where in the New Hampshire SIP submittal the requirements are addressed. This checklist, the CAA and EPA's I/M regulations formed the basis for EPA's technical review. EPA has reviewed the I/M SIP revision submitted by New Hampshire. Using the criteria stated above, the New Hampshire regulations and accompanying materials contained in the SIP represent an acceptable plan to comply with the I/M requirements and meet all the criteria required for conditional approval of such SIP revision.

IV. New Hampshire I/M Committal SIP

On September 27, 1993, EPA proposed conditional approval of the New Hampshire I/M committal SIP submitted on January 12, 1993, including a schedule for implementation of the program. At that time, EPA believed that conditional approvals were appropriate for I/M committal SIPs because the States could not be expected to begin developing an I/M program meeting the requirements of the CAA and the I/M regulations until

the I/M regulations were adopted as a final rule which occurred on November 5, 1992. In a letter dated October 21, 1993, the Natural Resource Defense Council (NRDC) commented on the proposed approval of the committal SIP arguing that States should have submitted full I/M SIPs by November 15, 1992. In addition, in a Court order dated May 6, 1994, the United States Circuit Court of Appeals for the District of Columbia concluded, in the context of an NRDC lawsuit concerning I/M, that EPA's acceptance of I/M committal SIPs was contrary to law and improperly delayed SIP submissions beyond the statutory deadlines. Further, the Court directed EPA to review and either approve or disapprove by no later that September 15, 1994 all I/M SIPs already received. As a result of that court order, EPA is taking this action on the New Hampshire SIP submitted on March 1, 1994, April 20, 1994, April 28, 1994, May 19, 1994, and June 28, 1994 and will not be taking further action on the "committal" I/M SIP submitted by the State of New Hampshire on January 12, 1993.

The conditional approval proposed today is based upon New Hampshire's commitment to develop and submit on-road testing standards, compliance via diagnostic procedures, and revised inspector penalties by July 29, 1995. If this commitment is not met, the conditional approval will convert to a disapproval. In the alternative, EPA proposes to disapprove the New Hampshire I/M SIP revision if the submittals described in this package are not revised by August 19, 1994 or are incomplete.

Proposed Action

EPA is proposing to conditionally approve or in the alternative disapprove New Hampshire's enhanced inspection and maintenance SIP.

Pursuant to Section 110(k)(4) of the Act, the conditional approval is based on the commitment articulated by New Hampshire in its May 19, 1994 and June 28, 1994 letters to submit a revised SIP revision by July 29, 1995, that complies with the requirements for on-road testing, compliance via diagnostic inspection, and inspector penalties. Section 110(k)(4) of the CAA provides that, if a state fails to comply with its commitment, such conditional approval will convert to a disapproval.

In the alternative, this action proposes to disapprove the New Hampshire I/M SIP revision if New Hampshire does not adequately address the issues articulated in this notice by on or before August 19, 1994.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The EPA requests comments on this proposal including the EPA's proposal to conditionally approve or, in the alternative, disapprove the I/M SIP for New Hampshire as meeting the requirements of the CAA and EPA's Federal I/M rule. As indicated at the outset of this notice, the EPA will consider any comments received by August 17, 1994 and will make the TSD available upon request. EPA will also consider any comments received by on or before August 29, 1994 regarding the information specified herein that is due by August 19, 1994 from New Hampshire.

This action has been classified as a Table 1 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables.

Under 5 U.S.C. Section 605(b), the Administrator certifies that SIP approvals under Sections 107, 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already state law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. EPA.*, 427 U.S. 246, 96 S. Ct. 2518 (1976); 42 U.S.C. Section 7410(a)(2).

If EPA issues a final disapproval or if the conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that in the event EPA disapproves the state submittal, this disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing state requirements nor does it substitute a new federal requirement.

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of Section 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: June 27, 1994.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 94–17375 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 421

[BPO–105–P]

RIN 0938

Medicare Program; Part B Advance Payments to Suppliers Furnishing Items or Services under Medicare Part B

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule would establish requirements and procedures for advance payments to suppliers of Medicare Part B services. An advance payment would be made only if the carrier is unable to process a claim timely, the supplier requests advance payment, and we determine that payment of interest is insufficient to compensate the supplier for loss of the use of the funds and approve the advance payment.

These rules are necessary to correct deficiencies noted by the General Accounting Office in its report of a review of current procedures for making advance payments.

The intent of this proposal is to ensure more efficient and effective administration of this aspect of the Medicare program.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on September 16, 1994.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–105–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or, Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPO–105–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 421

[BPO–105–P]

RIN 0938

Medicare Program; Part B Advance Payments to Suppliers Furnishing Items or Services under Medicare Part B

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule would establish requirements and procedures for advance payments to suppliers of Medicare Part B services. An advance payment would be made only if the carrier is unable to process a claim timely, the supplier requests advance payment, and we determine that payment of interest is insufficient to compensate the supplier for loss of the use of the funds and approve the advance payment.

These rules are necessary to correct deficiencies noted by the General Accounting Office in its report of a review of current procedures for making advance payments.

The intent of this proposal is to ensure more efficient and effective administration of this aspect of the Medicare program.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on September 16, 1994.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–105–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or, Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPO–105–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jim O'Shea, (410) 966–7521.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

The Medicare Supplementary Medical Insurance (SMI or Part B) program is a voluntary program that pays all or part of the costs for physicians' services; outpatient hospital services; certain home health services; services furnished by rural health clinics, ambulatory surgical centers and comprehensive outpatient rehabilitation facilities; and certain other items or medical and hospital health services not covered by the Medicare Hospital Insurance program.

B. Use of Carriers

Statutory Basis—Under section 1842(a) of the Social Security Act (the Act), public and private organizations and agencies may participate in the administration of the Medicare program under contracts entered into with the Secretary. These Medicare contractors, known as "carriers," process and pay Part B claims.

Usually, these payments are made on a claim-by-claim basis. Regulations at 42 CFR Part 421, Subpart C—Carriers, set forth the functions performed by Medicare carriers, which include:

- Determining the eligibility status of a beneficiary.
- Determining whether the services for which payment is claimed is covered under Medicare, and if so, the correct payment amounts.
- Making correct payment to the beneficiary or the supplier of the items or services, as appropriate.

Carriers must also observe the "prompt payment" requirements set forth in section 1842(c) of the Act. As amended by section 13568 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, enacted on August 10, 1993, this provision currently requires interest to be paid on all "clean" claims for which payment is not issued within 30 calendar days.

Advance Payments to Suppliers—Under Part B, a carrier makes an advance partial payment to a supplier if the carrier is not able to process a claim. (For purposes of the Medicare program, § 400.202 of the HCFA rules defines "supplier" as a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare, and "services" as medical care or services and items. such as medical diagnosis and treatment, drugs and biologicals, supplies, appliances, and equipment, medical social services, and use of hospital or SNF facilities.) An advance payment is made to a supplier eligible to receive Medicare payments.

In rare instances, such as when major administrative changes are made in processing Part B claims, a backlog of pending claims may occur. To avoid or reduce payment of interest on claims that are not processed timely, we sometimes authorize advance payments for pending backlogged claims, subject to later recoupment, once the claims are processed. However, since generally, Medicare Part B payments are made after a claim is processed, there are no regulations or guidelines for making advance payments.

II. General Accounting Office Report Finding—"HCFA Should Improve Internal Controls Over Part B Advance Payments"

As a result of administrative changes made in processing Part B claims at two carriers in two States during 1988, a large backlog of pending claims occurred. In order to minimize the effects of these disruptions on suppliers, in 1989 we authorized the two carriers to make advance payments for pending backlogged claims, subject to later recoupment, once the claims were actually processed. The difficulties experienced by the suppliers resulted in the General Accounting Office (GAO) investigating these two carriers and their claims processing systems. This investigation led the GAO to question whether we had sufficient guidelines and safeguards in place to ensure that advance payments were promptly recouped.

The GAO found that inconsistencies in handling occurred and administrative problems resulted from the lack of specific regulations and guidelines. The criteria for approving advance payments by these two carriers differed, as did progress in recouping these payments. One carrier made advance payments only to medical equipment suppliers. It based these advances on the level of payments the suppliers had received in the previous year. Another carrier, in contrast, made advance payments to all suppliers. It based the advance payment on the value of claims that had been on

hand at the carrier for more than 14 days.

In August 1989, one carrier began to recoup advance payments either through repayments from suppliers or by withholding a portion of subsequent payments to them. By February 1990, the carrier had recouped about 94 percent of the $1.3 million it had advanced to the suppliers; by September 1990, $17,071 was outstanding, including $14,592 owed by one supplier that the carrier was unable to contact.

The second carrier recouped advance payments by withholding 25 percent of subsequent payments to medical equipment suppliers and 50 percent of payments to other suppliers. In February 1990, when the carrier began more aggressive efforts to recoup advance payments, about $34 million of the $80 million it had advanced to the suppliers was still outstanding. By September 1990, $14 million (about 18 percent of the amount advanced) had not yet been recouped. Suppliers who had not repaid their advances had, in effect, received an interest-free loan from the Medicare Trust Fund.

The carrier encountered particular difficulty in recouping advances made to suppliers that used more than one Medicare billing number. Some of these suppliers had obtained an advance under one number and later billed Medicare exclusively under the other number, frustrating efforts to offset new payments to collect the advance payment. The carrier noted this problem in January 1990 and began to identify suppliers who had used multiple billing numbers to obtain payments. The carrier then identified other related numbers the suppliers used for billing Medicare and withheld payments from these claims.

As a result of its review of these cases, the GAO recommended that we determine whether it is appropriate for carriers to make advance payments to suppliers and that we be in compliance with the Federal Manager's Financial Integrity Act (31 U.S.C. 3512) when making these determinations.

The Federal Managers' Financial Integrity Act requires Federal agencies to establish internal control systems that provide reasonable assurance that agency expenditures are consistent with laws and regulations. The Comptroller General, in implementing this Act, has prescribed internal control standards for agency use. These standards require that significant transactions must be "authorized and executed only by persons acting within the scope of their authority." In applying this standard to Part B advance payments, the GAO expressed the opinion that HCFA, rather than the carriers, should authorize advance payments, to be executed by the carriers. In addition, the GAO asserted that we should clearly communicate our approval to make advance payments to carriers and include the terms under which these payments must be made. Therefore, the GAO recommended that we develop regulations and instructions for carriers regarding Part B advance payments to suppliers. (GAO report, GAO/HRD-91-81 (April 1991), entitled: "Medicare: HCFA Should Improve Internal Controls Over Part B Advance Payments")

III. Provisions of the Proposed Regulations

In response to the GAO report and recommendation, we are adding § 421.214 ("Advance payments to suppliers of Part B services") to part 421, subpart C of this chapter.

New § 421.214 would ensure the smooth and uniform issuance and recoupment of Part B advance payments that may be authorized from time to time to counter the negative consequences of disruptions in Medicare Part B claims processing. The regulation would be entirely self-contained. Advance payments would be made when a carrier is unable to process a claim timely, not when delay is the result of late or incomplete submittal of a claim by a supplier. Processing delays would be highlighted to us to ensure that payment disruptions and risks to the Medicare Trust Fund would be minimized.

There are some entities with provider agreements under section 1866 of the Act that are paid for certain Part B services from the Part B Trust Fund through intermediaries (performing as a carrier when making Part B payments). These providers generally have access to the existing accelerated payment provisions under § 413.64(g). The purpose of this proposed regulation is to create a Part B advance payment procedure for suppliers, not to supplant the existing Part A advance payment procedure for some providers. Therefore, this section does not apply to claims for Part B items or services that are furnished by entities with provider agreements under section 1866 of the Act that receive payments from intermediaries.

In new § 421.214(b), we would define the term "advance payment" to mean a carrier's conditional partial payment to a supplier on a Part B claim that the carrier is unable to process within the prescribed time limits.

Section 421.214(c) would specify that an advance payment may be made if the carrier is unable to process claims timely, we determine that the prompt payment interest provision in section 1842(c) of the Act is insufficient to make claimants whole, and if expressly approved by us in writing. The prompt payment interest provision currently requires us to pay interest on clean claims when the carrier is unable to make payment within 30 calendar days. The determination to issue advance payments must take into consideration elements that are, or may be, subject to changes such as legislation related to prompt payment; system enhancements; severity of system malfunctions; regulatory changes; change in contractors; and any number of other factors that may necessitate the issuance of advance payments. Our ability to respond appropriately and timely would be restricted if we were required to publish criteria regarding a threshold through the rulemaking procedure. Therefore, we would implement the threshold criterion or criteria through manual instructions to the carriers. This would give us the flexibility to respond promptly to providers without going through the rulemaking process each time a unique situation occurs. We specifically request public comments on this approach. In making changes, we would ensure that advance payments would be made in a way that would ensure budget neutrality.

Section 421.214(d) would specify that no advance payment may be made to any supplier delinquent in repaying a Medicare overpayment, has been advised of being under active medical review or program integrity investigation, has not submitted any claims, or has not accepted claims' assignments within the most recent 180-day period preceding the system malfunction.

In § 421.214, paragraph (e)(1) would specify that a supplier must request, in writing, an advance payment for providing Part B items or services. Paragraph (e)(2) would specify that a supplier must accept an advance payment as a conditional payment subject to adjustment, recoupment, or both based on an eventual determination of the actual amount due on the claim, and subject to the other rules found in § 421.214.

In § 421.214, paragraph (f)(1) would state that a carrier will calculate an advance payment at no more than 80 percent of historical assigned claims payment data paid a supplier. Historical data is defined as a representative 90-day assigned claims payment trend within the most recent 180-day experience before the system malfunction. Based on this amount and the number of claims pending for the supplier, the carrier will determine and issue advance payments not to exceed 80 percent of the average per claim amount paid during the 90-day trend period, times the number of assigned claims pending. If historical data are not available or if backlogged claims cannot be identified, the carrier will determine and issue advance payments based on some other methodology approved by us. Advance payments would be made no more frequently than once every 2 weeks to a supplier.

In § 421.214, paragraph (f)(2) would specify that generally, a supplier will not receive advance payments for more assigned claims than were paid, on a daily average, for the 90 days before the system malfunction. This is to prevent and discourage suppliers from submitting assigned claims that may lack merit in order to maximize the receipt of advance payments. However, an example of a permissible exception would be when a supplier does not receive payments from a carrier for services during the early months of the year when beneficiary deductibles are being met. In this case, the carrier would use more representative payment months for the suppliers' daily average.

In § 421.214, paragraph (f)(3) would specify that a carrier recovers an advance payment by applying it against the amount due on the claim on which the advance was made. If the advance payment exceeds the Medicare Payment amount, the carrier applies the unadjusted balance of the advance payment against further Medicare payments due the supplier.

It is not our intent to permit repayment of an advance payment by an option that could delay the recovery process or that would create a duplicate payment or an overpayment. A supplier, of Part B services, could not elect to receive full payment for a claim and repay the advance payment separately at some other time.

In § 421.214, paragraph (f)(4) would specify that in accordance with our instructions, a carrier must maintain financial records in accordance with the Statement of Federal Financial Accounting Standards to track advance payments and to recoup them expeditiously.

In § 421.214, paragraph (g)(1) would permit us to waive the requirements of paragraph (e)(1) if we determine it is appropriate to make advance payments to all affected suppliers. Paragraph (g)(2) would specify that if adjusting Medicare payments fails to recover an advance payment, we may authorize the use of any other recoupment method available (for example, lump sum repayment or an extended repayment schedule).

supplier, the carrier will determine and issue advance payments not to exceed 80 percent of the average per claim amount paid during the 90-day trend period, times the number of assigned claims pending. If historical data are not available or if backlogged claims cannot be identified, the carrier will determine and issue advance payments based on some other methodology approved by us. Advance payments would be made no more frequently than once every 2 weeks to a supplier.

In § 421.214, paragraph (f)(2) would specify that generally, a supplier will not receive advance payments for more assigned claims than were paid, on a daily average, for the 90 days before the system malfunction. This is to prevent and discourage suppliers from submitting assigned claims that may lack merit in order to maximize the receipt of advance payments. However, an example of a permissible exception would be when a supplier does not receive payments from a carrier for services during the early months of the year when beneficiary deductibles are being met. In this case, the carrier would use more representative payment months for the suppliers' daily average.

In § 421.214, paragraph (f)(3) would specify that a carrier recovers an advance payment by applying it against the amount due on the claim on which the advance was made. If the advance payment exceeds the Medicare Payment amount, the carrier applies the unadjusted balance of the advance payment against further Medicare payments due the supplier.

It is not our intent to permit repayment of an advance payment by an option that could delay the recovery process or that would create a duplicate payment or an overpayment. A supplier, of Part B services, could not elect to receive full payment for a claim and repay the advance payment separately at some other time.

In § 421.214, paragraph (f)(4) would specify that in accordance with our instructions, a carrier must maintain financial records in accordance with the Statement of Federal Financial Accounting Standards to track advance payments and to recoup them expeditiously.

In § 421.214, paragraph (g)(1) would permit us to waive the requirements of paragraph (e)(1) if we determine it is appropriate to make advance payments to all affected suppliers. Paragraph (g)(2) would specify that if adjusting Medicare payments fails to recover an advance payment, we may authorize the use of any other recoupment method available (for example, lump sum repayment or an extended repayment schedule).

Paragraph (g)(2) also allows an unpaid balance from a past advance payment to be converted into an overpayment. In the unlikely event that after the adjustment process is completed more money has been advanced to the supplier than was due, we would consider that amount to be an overpayment. We would attempt to recover the overpayment under the Medicare recovery procedures in part 401, subpart F and part 405, subpart C.

In § 421.214, paragraph (h) would clarify that the advance payment is to be considered a payment that would satisfy the "prompt payment" requirements of section 1842(c) of the Act for the amount of the advance. Therefore, if an advance payment is made before the "prompt payment" time limit and the actual amount of payment for the claim is determined after the time limit, interest would be paid only on the balance due the supplier after the carrier deducts the amount of the advance. (Of course, no interest would accrue if the amount of the advance exceeds the actual payment amount to be made on the claim. If the advance payment is issued after the time limit, interest would accrue on the advance (or on the amount of the claim, which ever is smaller) up to the date that the advance payment is issued, and on the balance due the supplier, if any, up to the date of payment.

In § 421.214, paragraph (i) would explain that the decision to advance payments and the determination of the amount to be advanced on any given claim are committed to agency discretion and are not subject to review or appeal. However, the carrier would notify the supplier receiving the advance payment about the amounts advanced and recouped, and how any Medicare payment amounts have been adjusted. If the supplier believes the carrier's reconciliation of the amounts advanced and recouped is incorrectly computed, it may request an administrative review from the carrier. If a review is requested, the carrier would provide a written explanation of the adjustments. This review and explanation is separate from a supplier's right to appeal the amount and computation of benefits paid on the claim, as provided at 42 CFR part 405, subpart H. The carrier's reconciliation of amounts advanced and recouped is not an initial determination as defined at § 405.803, and any written explanation of such reconciliation is not subject to further administrative review. We expect that this review process will help to eliminate unnecessary appeals that might result from errors in computation.

IV. Regulatory Impact Statement

We generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all suppliers that provide services under Medicare Part B to be small entities. We do not consider carriers to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would amend Medicare regulations to ensure that when carriers make advance payments to suppliers and those payments are greater than the amounts actually due after the claim is processed, the excess payments are recovered promptly. We expect this proposed rule would result in marginal administrative savings to carriers and suppliers. In addition, we do not believe this regulation would have a negative effect on the economy. Therefore, the overall benefits are positive and indeed provide stability during potentially disruptive claims processing delays.

We have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared analyses for either the RFA or small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Collection of Information

Section 421.214(f)(4), (g)(2), and (i)(3) of this document contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These reporting and recordkeeping requirements are not

effective until a notice of OMB's approval is published in the Federal Register. The information collection requirements in § 421.214(f)(4) require that a carrier maintain a financial system of data in accordance with the Statement of Federal Financial Accounting Standards for tracking each advance payment and its recoupment. We estimate that it would take a carrier 4 minutes for entry of an advance payment into the tracking system and 2 minutes for any update (including recoupment).

The reporting requirements in § 421.214(g)(2) may require a carrier to send a written notice to the supplier converting any unpaid balances of advance payments to overpayments if adjusting Medicare payments fails to recover an advance payment. We estimate that it would take a carrier 5 minutes to issue a computer-generated letter with an attached worksheet detailing adjustments to the advance payment and any resulting overpayment.

Section 421.214(i)(3) would require a carrier to provide a written explanation of the adjustments if the supplier requests an administrative review because it believes the carrier's reconciliation of the amounts advanced and recouped is incorrectly computed. We estimate this written explanation would require 5 minutes using a computer-generated letter.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

VI. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are unable to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and we will respond to comments in the preamble to the final rule.

List of Subjects in 42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR part 421 would be amended as follows:

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation for Part 421, Subpart C continues to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1834(a) and (h), 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395(g), 1395h, 1395l, 1395m(a) and (h), 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–1.

Subpart C—Carriers

2. A new § 421.214 is added to Subpart C to read as follows:

§ 421.214 Advance payments to suppliers furnishing items or services under Part B.

(a) *Scope and applicability.* This section provides for the following:

(1) Sets forth requirements and procedures for the issuance and recovery of advance payments to suppliers of Part B services and the rights and responsibilities of suppliers under the payment and recovery process.

(2) Does not limit HCFA's right to recover unadjusted advance payment balances.

(3) Does not affect suppliers' rights under part 405, subpart H of this chapter relating to substantive determinations on suppliers' claims.

(4) Does not apply to claims for Part B services furnished by suppliers that have in effect provider agreements under section 1866 of the Act and part 489 of this chapter, and are paid by intermediaries.

(b) *Definition.* As used in this section, *advance payment* means a conditional partial payment made by the carrier in response to a claim that it is unable to process within established time limits.

(c) *When advance payments may be made.* An advance payment may be made if all of the following conditions are met:

(1) The carrier is unable to process the claim timely.

(2) HCFA determines that the prompt payment interest provision specified in section 1842(c) of the Act is insufficient to make a claimant whole.

(3) HCFA approves, in writing to the carrier, the making of an advance payment by the carrier.

(d) *When advance payments are not made.* Advance payments are not made to any supplier that meets any of the following conditions:

(1) Is delinquent in repaying a Medicare overpayment.

(2) Has been advised of being under active medical review or program integrity investigation.

(3) Has not submitted any claims.

(4) Has not accepted claims' assignments within the most recent 180-day period preceding the system malfunction.

(e) *Requirements for suppliers.* (1) Except as provided for in paragraph (g)(1) of this section, a supplier must request, in writing to the carrier, an advance payment for providing Part B items or services.

(2) A supplier must accept an advance payment as a conditional payment subject to adjustment, recoupment, or both based on an eventual determination of the actual amount due on the claim, and subject to the other rules found in this section.

(f) *Requirements for carriers.* (1) A carrier must calculate an advance payment at no more than 80 percent of historical assigned claims payment data paid a supplier. *Historical data* is defined as a representative 90-day assigned claims payment trend within the most recent 180-day experience before the system malfunction. Based on this amount and the number of claims pending for the supplier, the carrier must determine and issue advance payments not to exceed 80 percent of the average per claim amount paid during the 90-day trend period times the number of assigned claims pending. If historical data are not available or if backlogged claims cannot be identified, the carrier must determine and issue advance payments based on some other methodology approved by HCFA. Advance payments can be made no more frequently than once every 2 weeks to a supplier.

(2) Generally, a supplier will not receive advance payments for more assigned claims than were paid, on a daily average, for the 90 days before the system malfunction.

(3) A carrier must recover an advance payment by applying it against the amount due on the claim on which the advance was made. If the advance payment exceeds the Medicare payment amount, the carrier must apply the unadjusted balance of the advance payment against future Medicare payments due the supplier.

(4) In accordance with HCFA instructions, a carrier must maintain a financial system of data in accordance with the Statement of Federal Financial Accounting Standards for tracking each advance payment and its recoupment.

(g) *Requirements for HCFA.* (1) HCFA may determine that circumstances warrant the issuance of advance payments to all affected suppliers furnishing Part B items or services except that no advance payments may be made to any supplier furnishing Part B items or services that meets any of the conditions in paragraph (d) of this section. HCFA may waive the requirement in paragraph (e)(1) of this section as part of that determination.

(2) If adjusting Medicare payments fails to recover an advance payment, HCFA may authorize the use of any other recoupment method available (for example, lump sum repayment or an extended repayment schedule) including, upon written notice from the carrier to the supplier, converting any unpaid balances of advance payments to overpayments. Overpayments are resolved in accordance with part 401, subpart F of this chapter concerning claims collection and compromise and part 405, subpart C of this chapter concerning recovery of overpayments.

(h) *Prompt payment interest.* An advance payment is a "payment" under section 1842(c)(2)(C) of the Act for purposes of meeting the time limit for the payment of clean claims, to the extent of the advance payment.

(i) *Notice, review, and appeal rights.* (1) The decision to advance payments and the determination of the amount of any advance payment are committed to agency discretion and are not subject to review or appeal.

(2) The carrier must notify the supplier receiving an advance payment, about the amounts advanced and recouped, and how any Medicare payment amounts have been adjusted.

(3) The supplier may request an administrative review from the carrier if it believes the carrier's reconciliation of the amounts advanced and recouped is incorrectly computed. If a review is requested, the carrier must provide a written explanation of the adjustments.

(4) The review and explanation described in paragraph (i)(3) of this section is separate from a supplier's right to appeal the amount and computation of benefits paid on the claim, as provided at part 405, subpart H of this chapter. The carrier's reconciliation of amounts advanced and recouped is not an initial determination as defined at § 405.803 of this chapter, and any written explanation of a reconciliation is not subject to further administrative review.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance and No. 93.774 Supplementary Medical Insurance Program)

Dated: October 19, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: April 7, 1994.

Donna Shalala,

Secretary.

[FR Doc. 94–17219 Filed 7–15–94; 8:45 am]

BILLING CODE 4120-01-P

requirement in paragraph (e)(1) of this section as part of that determination.

(2) If adjusting Medicare payments fails to recover an advance payment, HCFA may authorize the use of any other recoupment method available (for example, lump sum repayment or an extended repayment schedule) including, upon written notice from the carrier to the supplier, converting any unpaid balances of advance payments to overpayments. Overpayments are resolved in accordance with part 401, subpart F of this chapter concerning claims collection and compromise and part 405, subpart C of this chapter concerning recovery of overpayments.

(h) *Prompt payment interest.* An advance payment is a "payment" under section 1842(c)(2)(C) of the Act for purposes of meeting the time limit for the payment of clean claims, to the extent of the advance payment.

(i) *Notice, review, and appeal rights.* (1) The decision to advance payments and the determination of the amount of any advance payment are committed to agency discretion and are not subject to review or appeal.

(2) The carrier must notify the supplier receiving an advance payment, about the amounts advanced and recouped, and how any Medicare payment amounts have been adjusted.

(3) The supplier may request an administrative review from the carrier if it believes the carrier's reconciliation of the amounts advanced and recouped is incorrectly computed. If a review is requested, the carrier must provide a written explanation of the adjustments.

(4) The review and explanation described in paragraph (i)(3) of this section is separate from a supplier's right to appeal the amount and computation of benefits paid on the claim, as provided at part 405, subpart H of this chapter. The carrier's reconciliation of amounts advanced and recouped is not an initial determination as defined at § 405.803 of this chapter, and any written explanation of a reconciliation is not subject to further administrative review.

Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance and No. 93.774 Supplementary Medical Insurance Program)

Dated: October 19, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: April 7, 1994.

Donna Shalala,

Secretary.

[FR Doc. 94–17219 Filed 7–15–94; 8:45 am]

BILLING CODE 4120–01–P

42 CFR Part 440

[MB–085–P]

RIN 0938–AG73

Medicaid Program: Nurse-Midwife Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would expand coverage of nurse-midwife services under the Medicaid program by including coverage for those services that nurse-midwives perform outside the maternity cycle as allowed by State law and regulation. This proposal would conform Medicaid regulations to provisions of the Omnibus Budget Reconciliation Act of 1993.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 16, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–085–P, P.O. Box 7518, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–085–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Lauren Oliven, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Wardwell, (410) 966–5659.

SUPPLEMENTARY INFORMATION:

I. Background

A. Scope of Covered Services

Title XIX of the Social Security Act (the Act) authorizes States to establish Medicaid programs to provide medical assistance to needy individuals. Section 1902(a)(10) of the Act describes the two broad classifications of most individuals to whom medical assistance may be provided: the categorically needy (section 1902(a)(10)(A)) and the medically needy (section 1902(a)(10)(C)). Section 1905 of the Act defines medical assistance as payment of part or all of the costs of specified services to eligible individuals.

Section 1905(a)(17) of the Act includes, as a service for which medical assistance may be available, nurse-midwife services which the nurse-midwife is authorized to practice under State law or regulation. Nurse-midwife services are mandatory for the categorically needy under section 1902(a)(10)(A) of the Act. At the State's option, a State may also provide these services to the medically needy.

Prior to October 1, 1993, section 1905(a)(17) of the Act (through a cross-reference to section 1861gg of the Act) and implementing regulations at 42 CFR 440.165 required that a nurse-midwife must be a registered nurse who (1) is either certified as a nurse-midwife by an organization recognized by the Secretary or has completed a program of study and clinical experience that has been approved by the Secretary and (2) performs services in the care of mothers and babies throughout the maternity cycle. Section 1905(a)(17) (again, through a cross-reference to section 1861gg of the Act) also specifies that the services that a nurse-midwife is legally authorized to perform under State law and regulations must be covered whether or not the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider.

Section 13605 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103–66, amended section 1905(a)(17) of the Act to remove the limitation that a nurse-midwife can provide services only during the maternity cycle.

B. Current Regulatory Provisions

There are four existing sections of Medicaid regulations in the CFR which are affected by this legislation. Section 440.165 of the existing Medicaid regulations defines nurse-midwife services as a distinct service category and lists the requirements for coverage

of services under that category. Three other existing sections, §§ 440.10, 440.20, and 440.90, contain cross-references to § 440.165 to indicate that nurse-midwife services may be performed in specified settings. Sections 440.10 and 440.20 provide that nurse-midwife services may be performed in inpatient and outpatient hospital settings. Section 440.90 provides that nurse-midwife services may be performed in clinic settings. These Federal regulations allow State laws or regulations governing nurse-midwife services, the policies of hospitals regarding the granting of staff privileges, and the judgments of health professionals to govern the need for supervision of nurse-midwife services in inpatient and outpatient settings.

II. Provisions of the Proposed Regulations

We are proposing the following changes to the Medicaid regulations based on the provisions of OBRA '93 and our reexamination of existing regulations.

- We would amend § 440.165 by removing paragraphs (a)(1) and (c) to delete the definition of, and all other references to, the maternity cycle in accordance with the OBRA '93 amendment that provides for the coverage of nurse-midwife services whether or not the services are performed in the management of care of mothers and babies throughout the maternity cycle. Removal of this limitation will allow nurse-midwives to perform any service that is allowed under State law or regulation.
- We would remove the exception cross-references to § 440.165 contained in §§ 440.10, 440.20, and 440.90. Because nurse-midwife services are defined as a distinct service category under § 440.165, we have determined that the inclusion of cross-references to the description of covered nurse-midwife services within the descriptions of other covered Medicaid services is more confusing than clarifying.

III. Impact Statement

We generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all providers and suppliers of health care and services for Medicaid recipients to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

We have determined, and the Secretary certifies, that these proposed regulations would not have a significant impact on a substantial number of small entities and would not have a significant impact on the operation of a substantial number of small rural hospitals. Therefore we have not prepared a regulatory flexibility analysis or an analysis of the effect on small rural hospitals.

For the most part, cost savings as a result of these proposed regulations will be incurred regardless of the promulgation of these regulations. The provisions of this rule merely conform the regulations to the legislative provisions of OBRA '93.

In accordance with the provisions of Executive Order 12866, this proposed rule has not been reviewed by the Office of Management and Budget.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and we will respond to the comments in the preamble of the final rule.

List of Subjects

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR part 440 would be amended as set forth below:

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 440.10 the introductory text of paragraph (a) is republished, paragraph (a)(2) is revised, the text of paragraph (a)(3) introductory text is republished, and paragraph (a)(3)(iii) is revised to read as follows:

§ 440.10 Inpatient hospital services, other than services in an institution for mental diseases.

(a) *Inpatient hospital services* means services that—* * *

(2) Are furnished under the direction of a physician or dentist; and

(3) Are furnished in an institution that—* * *

(iii) Meets the requirements for participation in Medicare as a hospital; and

* * * * * *

3. In section 440.20 the introductory text to paragraph (a) is republished, paragraph (a)(2) is revised, the text of paragraph (a)(3) introductory text is republished and paragraph (a)(3)(ii) is revised to read as follows:

§ 440.20 Outpatient hospital services and rural health clinic services.

(a) *Outpatient hospital services* means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that—* * *

(2) Are furnished by or under the direction of a physician or dentist; and

* * * * * *

(3) Are furnished by an institution that—* * *

(ii) Meets the requirements for participation in Medicare as a hospital; and

* * * * * *

4. Section 440.90 is amended by removing paragraph (c).

5. In § 440.165, paragraph (a) is revised and paragraph (c) is removed to read as follows:

§ 440.165 Nurse-midwife service

(a) *Nurse-midwife services* means services that—

(1) Are furnished by a nurse-midwife within the scope of practice authorized by State law or regulation, and in the case of inpatient or outpatient hospital services or clinic services, are furnished by or under the direction of a nurse-midwife to the extent permitted by the facility; and

(2) Unless required by State law or regulation or a facility, are paid without regard to whether the nurse-midwife is under the supervision of, or associated with a physician or other health care provider. (See § 441.21 of this chapter for provisions on independent provider agreements for nurse-midwives.)

* * * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 4, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 6, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94-17220 Filed 7-15-94; 8:45 am]

BILLING CODE 4120-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7097]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood

under the supervision of, or associated with a physician or other health care provider. (See § 441.21 of this chapter for provisions on independent provider agreements for nurse-midwives.)

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 4, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 6, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–17220 Filed 7–15–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7097]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Ohio	
Harrisburg (Village), Franklin County	
Big Darby Creek:	
At downstream corporate limits	*766
At upstream corporate limits	*786
Maps available for inspection at the Village Hall, 1092 High Street, Harrisburg, Ohio.	
Send comments to The Honorable Timothy A. Belt, Mayor of the Village of Harrisburg, Franklin County, P.O. Box 17, Harrisburg, Ohio 43126	
Milford Center (Village), Union County	
Big Darby Creek:	
Approximately .3 mile downstream of U.S. Route 36	*977
At upstream corporate limit	*985
Maps available for inspection at the Town Hall, 12 Railroad Street, Milford Center, Ohio.	
Send comments to The Honorable Robert G. Mitchell, Mayor of the Village of Milford Center, Union County, 12 Railroad Street, Milford Center, Ohio 43045.	
Richwood (Village), Union County	
Ash Run:	
At confluence with Fulton Creek	*941
At Race Road	*943
Fulton Creek:	
At confluence of Ash Road	*941
Approximately 1,050 feet upstream of confluence of Ash Run	*941
Maps available for inspection at Village Hall, 101 South Franklin Street, Richwood, Ohio.	
Send comments to The Honorable Jeff Holtschulte, Mayor of the Village of Richwood, Union County, 101 South Franklin Street, Richwood, Ohio 43344.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Altamonte Springs (City), Seminole County.	Lake Harriet	Entire shoreline within community	None	*57

Maps available for inspection at the Altamonte Springs Public Library, 281 North Maitland, Altamonte Springs, Florida.
Send comments to Mr. Phillip D. Penland, Altamonte Springs City Manager, Seminole County, 225 Newburyport Avenue, Altamonte Springs, Florida 32701.

Florida	Casselberry (City) Seminole County.	Tributary to Howell Lake	Upstream corporate limits	None	*76
			At downstream side of State Route 436	None	*57

Maps available for inspection at City Hall, 95 Triplet Lake Drive, Casselberry, Florida.
Send comments to The Honorable Joseph Hillebrandt, Mayor of the City of Casselberry, Seminole County, 95 Triplet Lake Drive, Casselberry, Florida 32707.

Florida	Lake Mary (City) Seminole County.	Soldier Creek	Backwater area between CSX Transportation.	None	*42
			AH Zone: Shallow flooding area at Lake Emma Road approximately 1.6 miles north of Longwood Markham Road.	None	*49
			AH Zone: Shallow flooding area at Lake Emma Road approximately 2.3 miles north of Longwood Markham Road.	None	*45
		Twin Lakes	Approximately 0.5 mile east of intersection of Interstate Route 4.	None	*52

Maps available for inspection at the City Engineering Department, 100 North Country Club Road, Lake Mary, Florida.
Send comments to Mr. John C. Litton, Lake Mary City Manager, Seminole County, P.O. Box 950700, Lake Mary, Florida 32795–0700.

Florida	Longwood (City) Seminole County.	Soldier Creek	Approximately 1,200 feet downstream of Longwood Mills Raod.	None	*54
			At upstream side of 14th Avenue	None	*60
		Unnamed Ponding Area	South of Longwood Mills Road approximately 1,300 feet west of Longwood Lake Mary Road.	None	*58

Maps available for inspection at the Building and Planning Department, 174 West Church Avenue, Longwood, Florida.
Send comments to Mr. W. Shelton Smith, Longwood City Administrator, Seminole County, 175 West Warren Avenue, Longwood, Florida. 32750

Florida	Oviedo (City) Seminole County.	Little Econlockhatchee River.	Approximately 0.6 mile upstream of Lockwood Road.	None	*32
			Approximately 1.5 mile upstream of Lockwood Road.	None	*33
		Bath Lake	Entire shoreline within community	None	*68

Maps available for inspection at the Engineering Department, 400 Alexandria Boulevard, Oviedo, Florida.
Send comments to Mr. V. Eugene Williford, III, Oviedo City Manager, Seminole County, 400 Alexandria Boulevard, Oviedo, Florida 32765.

Florida	Sanford (City) Seminole County.	Six Mile Creek Tributary	Approximately 0.4 mile upstream of State Route S–427.	None	*31
			At Airport Boulevard	None	*34
		Lake Monroe	Entire shoreline	*10	*9

Maps available for inspection at City Hall, 300 North Park Avenue, Sanford, Florida.
Send comments to Mr. William A. Simmons, Sanford City Manager, Seminole County, P.O. Box 1788, Sanford, Florida 32772–1788.

Florida	Winter Springs (City) Seminole County.	Boat Lake	Entire shoreline within community	None	*55

Maps available for inspection at the City Engineering Department, 1126 East State Route 434, Winter Springs, Florida.
Send comments to Mr. John Govoruhk, Winter Springs City Manager, Seminole County, 1126 East State Route 434, Winter Springs, Florida 32708.

Georgia	Hall County (Unincorporated Areas).	Flat Creek	Upstream side of State Route 13	None	*1,166
			Approximately 100 feet upstream of Southern Railway.	None	*1,179
		Limestone Creek	At the confluence with Chattahoochee River.	None	*1,077
			At upstream side of second crossing of State Route 13.	None	*1,126

State	City/town/county	So
		Limest Tributa

Maps available for inspection at the Hall County En
Send comments to Ms. Brenda Branch, Chairman o

Georgia	Oconee County (Unincorporated Areas).	Apalac

Maps available for inspection at the Planning and In
Send comments to Mr. Wendell T. Dawson, Chair
30677.

Georgia	Walton County (Unincorporated Areas).	Apalach

Maps available for inspection at the Code Enforcem
Send comments to Mr. Rick Holder, Chairman of th
Georgia 30655.

Indiana	Allen County (Unincorporated Areas).	Maume St. Jose

Maps available for inspection at the City/County Buil
Send comments to Mr. Jack R. Worthman, Presider
Main Street, Fort Wayne, Indiana 46802.

Michigan	Bangor Charter (Township), Bay County.	Kawkaw Saginaw Saginaw

Maps available for inspection at the Bangor Charter T
Send comments to Mr. C. Joseph Carland, Supervis
48706.

Michigan	Bay City (City), Bay County.	Saginaw

Maps available for inspection at the Code Enforceme
Send comments to The Honorable Michael Buda, M
Michigan 48708.

Michigan	Essexville (City), Bay County.	Saginaw

Maps available for inspection at the Essexville City Ha

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Limestone Creek	At confluence with Limestone Creek	None	*1,089
		Tributary	Approximately 1,000 feet upstream of confluence with Limestone Creek.	None	*1,091

Maps available for inspection at the Hall County Engineering Department, 300 Green Street, Gainesville, Georgia.

Send comments to Ms. Brenda Branch, Chairman of the Hall County Commissioners, Drawer 1435, Gainesville, Georgia 30503.

Georgia	Oconee County (Unincorporated Areas).	Apalachee River	Approximately 3 miles downstream of State Route 186 bridge.	None	*574
			Approximately 250 feet upstream of westbound span of U.S. Highway 78 bridge.	None	*692

Maps available for inspection at the Planning and Inspections Building, 23 Water Street, Watkinsville, Georgia.

Send comments to Mr. Wendell T. Dawson, Chairman of the Oconee County Board of Commissioners, P.O. Box 145, Watkinsville, Georgia 30677.

Georgia	Walton County (Unincorporated Areas).	Apalachee River	At State Route 186 bridge	None	*624
			Approximately 125 feet upstream of the westbound U.S. Highway 78 bridge.	None	*692

Maps available for inspection at the Code Enforcement Building, Courthouse Annex 1, Court Street, Monroe, Georgia.

Send comments to Mr. Rick Holder, Chairman of the Walton County Board of Commissioners, 132 East Spring Street, P.O. Box 585, Monroe, Georgia 30655.

Indiana	Allen County (Unincorporated Areas).	Maumee River	Approximately 3.7 miles downstream of U.S. Route 24.	*751	*750
			Approximately 1.1 miles downstream of U.S. Route 24.	*753	*752
		St. Joseph River	Approximately 1,600 feet upstream of confluence of Becketts Run.	*769	*768
			Approximately 0.7 mile upstream of confluence of Becketts Run.	*769	*768

Maps available for inspection at the City/County Building, Room 200, One East Main Street, Fort Wayne, Indiana.

Send comments to Mr. Jack R. Worthman, President of the Allen County Board of Commissioners, City/County Building, Room 200, One East Main Street, Fort Wayne, Indiana 46802.

Michigan	Bangor Charter (Township), Bay County.	Kawkawlin River	At confluence with Saginaw Bay	*585	*586
			Approximately 125 feet upstream of Euclid Road.	*585	*586
		Saginaw River	At confluence with Saginaw Bay	*585	*586
			At upstream corporate limits	*585	*592
		Saginaw Bay	Shoreline along Donahue Road	*585	*592
			Shoreline along Bay Shore Road	*585	*589
			Remaining shoreline of Bangor Charter Township.	*585	*586

Maps available for inspection at the Bangor Charter Township Hall, 180 State Park Drive, Bay City, Michigan.

Send comments to Mr. C. Joseph Carland, Supervisor of the Bangor Charter Township, Bay County, 180 State Park Drive, Bay City, Michigan 48706.

Michigan	Bay City (City), Bay County.	Saginaw River	Downstream of corporate limits	*585	*586
			Approximately 0.4 mile downstream of the upstream corporate limits.	*585	*586

Maps available for inspection at the Code Enforcement Office, 310 Washington Avenue, Bay City, Michigan.

Send comments to The Honorable Michael Buda, Mayor of the City of Bay City, Bay County, 301 Washington Avenue, City Hall, Bay City, Michigan 48708.

Michigan	Essexville (City), Bay County.	Saginaw River	At the downstream corporate limits	*585	*586
			Approximately 380 feet upstream of Detroit & Mackinaw Railroad.	*585	*586

Maps available for inspection at the Essexville City Hall, 1107 Woodside Avenue, Essexville, Michigan.

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Send comments to The Honorable John Freel, Mayor of the City of Essexville, Bay County, Essexville City Hall, 1107 Woodside Avenue, Essexville, Michigan 48732.					
Michigan	Frankenlust (Township), Bay County.	Saginaw River	At the downstream corporate limits (Hotchkiss Road).	*585	*586
			At the upstream corporate limits (the Bay/Saginaw County Boundary).	*586	*587
		Dutch Creek	At the confluence with Saginaw River West Channel.	*585	*586
			At Hotchkiss Road	*585	*586
		Squaconning Creek	At confluence with Dutch Creek	*585	*586
			At Northbound Interstate Highway 75	*585	*586
Maps available for inspection at the Frankenlust Township Hall, 2401 Delta Road, Bay City, Michigan.					
Send comments to Ms. Hilda M. Dijak, Supervisor of the Township of Frankenlust, Bay County, Frankenlust Township Hall, 2401 Delta Road, Bay City, Michigan 48706.					
Michigan	Hampton (Township), Bay County.	Saginaw Bay	Entire shoreline within community	*585	*586
Maps available for inspection at the Hampton Township Hall, 801 West Center, Essexville, Michigan.					
Send comments to Ms. Margaret Van Sumeren, Supervisor of the Township of Hampton, Bay County, P.O. Box 178, Bay City, Michigan 48707.					
Michigan	Merritt (Township), Bay County.	Saginaw Bay	Entire shoreline within community	*585	*586
Maps available for inspection at the Merritt Township Hall, 48 East Munger Road, Munger, Michigan.					
Send comments to Mr. Donald A. Meyer, Supervisor of the Township of Merritt, Bay County, 48 East Munger Road, P.O. Box 126, Munger, Michigan 48747.					
Michigan	Portsmouth (Township), Bay County.	Saginaw Bay	Approximately 1.7 miles downstream of the downstream corporate limits (near McGraw Avenue).	*585	*586
			At the upstream corporate limits	*586	*587
Maps available for inspection at the Portsmouth Township Hall, 1711 West Cass Avenue, Bay City, Michigan.					
Send comments to Mr. Robert J. Pawlak, Supervisor of the Township of Portsmouth, Bay County, Portsmouth Township Hall, 1711 West Cass Avenue, Bay City, Michigan 48708.					
Mississippi	Coahoma (County) Unincorporated Areas.	Lake Bayou	At confluence with Oxbow Bayou	None	*159
			Approximately 1 mile upstream of the confluence with Oxbow Bayou.	None	*159
		Oxbow Bayou	Confluence with Cassidy Bayou	None	*158
			Approximately 1–2 miles upstream of Laney Road.	None	*161
Maps available for inspection at the Road Department, 17290 Highway 61 North, Clarksdale, Mississippi.					
Send comments to Mr. Jim Humber, President of the Coahoma County Board of Supervisors, P.O. Box 98, Clarksdale, Mississippi 38614.					
New Jersey	Clinton (Town) Hunterdon County.	Beaver Brook	Upstream of I–78	None	*205
			Upstream corporate limits	None	*207
Maps available for inspection at Town Hall, 43 Leigh Street, Clinton, New Jersey.					
Send comments to The Honorable Allie McGaheran, Mayor of the Town of Clinton, Hunterdon County, P.O. Box 5194, Clinton, New Jersey 08809.					
North Carolina	Bertie (County) Unincorporated Areas.	Roanoke River	At mouth of Roanoke River	*5	*8
			At Washington and Martin County boundary.	None	*9
Maps available for inspection at the Bertie County Building, Inspectors Department, County Courthouse, Windsor, North Carolina.					
Send comments to Mr. John E. Whitehurst, County Manager, P.O. Box 530, Windsor, North Carolina 27983.					
North Carolina	Craven (County) Unincorporated Areas.	Mills Branch	Approximately 2,500 feet downstream of Wildlife Road–SR 1431.	*10	*9
			Approxmately 1,100 feet upstream of U.S. Highway 17.	None	*17
Maps available for inspection at Craven County Planning Department, 406 Craven Street, New Bern, North Carolina.					
Send comments to Mr. Earl Wright, Chairman of the Craven County Board of Commissioners, 406 Craven Street, New Bern, North Carolina 28560.					

State	City/town/county	
North Carolina	Dare County Unincorporated Areas.	Atlan
		Curri
		Atlan
Maps available for inspection at the Dare County		
Send comments to Mr. Terry Wheeler, Dare Cou		
North Carolina	Plymouth (Town)	Roan
	Washington County	Welc
Maps available for inspection at City Hall, 132 Ea		
Send comments to Ms. Wanda Jones, Plymouth		
Ohio	Bexley (City)	Alum
	Franklin County	
Maps available for inspection at City Hall, 2242 E		
Send comments to The Honorable David H. Madi		
Ohio	Brice (Village)	Powe
	Franklin County	
Maps available for inspection at Village Municipal		
Send comments to The Honorable Cathy Compto		
Ohio	Canal Winchester (Village), Franklin County	Georg
Maps available for inspection at Village Hall, 10 N		
Send comments to The Honorable Marsha Hall, Ohio 43110.		
Ohio	Dublin (City), Franklin County.	South
		Cosg
		Cram
		Tri-C
Maps available at the Planning and Zoning Buildin		
Send comments to Mr. Tim Hansley, Dublin City M		
Ohio	Gahanna (City), Franklin County.	Utzing
Maps available for inspection at the City Hall, 200		
Send comments to The Honorable James F. M Ohio 43230.		
Ohio	Groveport (Village) Franklin County.	Little
Maps available for inspection at the Municipal Buil		

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
North Carolina	Dare County Unincorporated Areas.	Atlantic Ocean	Approximately 100 feet east of intersection of Balm Trail on North Balm Trail.	*18	#1
			At Northern terminus of Martin Lane	*7	#1
		Currituck Sound	At intersection of Balm Trail and North Balm Trail.	#1	*7
		Atlantic Ocean	Approximately 400 feet east of intersection of unnamed access road to Station Bay Drive and State Route 1200.	#1	*18

Maps available for inspection at the Dare County Administration Building, 211 Budleigh Street, 3rd Floor, Manteo, North Carolina.
Send comments to Mr. Terry Wheeler, Dare County Manager, P.O. Box 1000, Manteo, North Carolina 27954.

North Carolina	Plymouth (Town)	Roanoke River	At downstream extraterritorial corporate limit.	None	*8
	Washington County		At upstream corporate limits	None	*8
		Welch Creek	At downstream corporate limits	None	*9
			At upstream extraterritorial limits	*7	*9

Maps available for inspection at City Hall, 132 East Water, Plymouth, North Carolina.
Send comments to Ms. Wanda Jones, Plymouth Town Manager, Washington County, P.O. Box 806, Plymouth, North Carolina 27962.

Ohio	Bexley (City)	Alum Creek	Approximately 1,000 feet upstream of downstream corporate limits.	*748	*749
	Franklin County		Approximately 1,250 feet downstream of CONRAIL.	*757	*756

Maps available for inspection at City Hall, 2242 East Main Street, Bexley, Ohio.
Send comments to The Honorable David H. Madison, Mayor of the City of Bexley, Franklin County, 2242 East Main Street, Bexley, Ohio 43209.

Ohio	Brice (Village),	Powell Ditch	Approximately 600 feet downstream of Refugee Road.	None	*776
	Franklin County		Approximately 800 feet upstream of Refugee Road.	None	*781

Maps available for inspection at Village Municipal Building, 5990 Columbus Street, Brice, Ohio.
Send comments to The Honorable Cathy Compton, Mayor of the Village of Brice, Franklin County, 5990 Columbus Street, Brice, Ohio 43109.

Ohio	Canal Winchester (Village),	Georges Creek	Approximately 250 feet downstream of U.S. Route 33.	None	*752
	Franklin County		At downstream side of Winchester Pike	None	*757

Maps available for inspection at Village Hall, 10 North High Street, Canal Winchester, Ohio.
Send comments to The Honorable Marsha Hall, Mayor of the Village of Canal Winchester, Franklin County, P.O. Box 226, Canal Winchester, Ohio 43110.

Ohio	Dublin (City), Franklin County.	South Fork Indian Run	Approximately 1,400 feet upstream of Avery Road.	None	*914
			At upstream Dublin corporate limits	None	*940
		Cosgray Ditch	Approximately 425 feet upstream of confluence with Scioto River.	None	*775
			Approximately 2,200 feet upstream of Wilcox Road.	None	*921
		Cramer Ditch	At upstream side of Dublin Road	None	*824
			Approximately 2,500 feet upstream of Wilcox Road.	None	*920
		Tri-County Ditch	At confluence with South Ford Indian Run	None	*914
			At county boundary	None	*918

Maps available at the Planning and Zoning Building, 6665 Coffman Road, Dublin, Ohio.
Send comments to Mr. Tim Hansley, Dublin City Manager, Franklin County, 6665 Coffman Road, Dublin, Ohio 43017.

Ohio	Gahanna (City), Franklin County.	Utzinger Ditch	At downstream corporate limits (downstream of CONRAIL).	None	*893

Maps available for inspection at the City Hall, 200 S. Hamilton Road, Gahanna, Ohio.
Send comments to The Honorable James F. McGregor, Mayor of the City of Gahanna, Franklin County, 200 S. Hamilton Road, Gahanna, Ohio 43230.

Ohio	Groveport (Village) Franklin County.	Little Walnut Creek	Approximately 0.47 mile upstream of Hayes Road.	None	*730
			Approximately 250 feet east of Crescent Drive and Delane Road intersection.	None	*734

Maps available for inspection at the Municipal Building, 605 Cherry Street, Groveport, Ohio.

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Send comments to The Honorable J. Harold Carley, Mayor of the Village of Groveport, Franklin County, 605 Cherry Street, Groveport, Ohio 43124.					
Ohio	Hilliard (City) Franklin County.	Hayden Run	At upstream side of Avery Road	*916	*909
			Approximately 900 feet upstream of Avery Road.	*916	*910
		Molcomb Ditch	Approximately 225 feet upstream of confluence with Tudor Ditch.	None	*821
			Approximately 175 feet downstream of Lyman Drive.	*875	*874
		Tudor Ditch	Approximately 675 feet downstream of Fishinger Boulevard.	None	*849
			Approximately 140 feet downstream of Parkway Lane.	*872	*873
		Clover Groff	At downstream corporate limits	*938	*936
			Approximately 0.66 mile downstream of Elliot Road.	*942	*941
Maps available for inspection at the City Hall, 3800 Municipal Way, Hilliard, Ohio. Send comments to The Honorable Roger Reynolds, Mayor of the City of Hilliard, Franklin County, 3800 Municipal Way, Hilliard, Ohio 43026.					
Ohio	Marble Cliff (Village) Franklin County.	Scioto River	Approximately 1,950 feet downstream of Fifth Avenue.	None	*737
			At CONRAIL	None	*740
Maps available for inspection at the Village Hall, 1600 Fernwood Avenue, Columbus, Ohio (please contact Joan Klitch, Village Clerk at (614) 486–6993 to arrange for viewing). Send comments to The Honorable Paul J. Falco, Mayor of the Village of Marble Cliff, Franklin County, 1600 Fernwood Avenue, Columbus, Ohio 43212.					
Ohio	Riverlea (Village), Franklin County.	Olentangy River	At downstream corporate limits	None	*746
			At upstream corporate limits	None	*749
Maps available for inspection at the home of the Clerk/Treasurer, 125 West Riverglen, Worthington, Ohio. Send comments to The Honorable Patricia Anderson, Mayor of the Village of Riverlea, Franklin County, P.O. Box 191, Worthington, Ohio 43085.					
Ohio	Upper Arlington (City), Franklin County.	Turkey Run	At downstream corporate limits of Upper Arlington.	None	*781
			Approximately 1,600 feet upstream of downstream corporate limits for Upper Arlington.	None	*794
Maps available for inspection at the City Hall, 3600 Tremont Road, Upper Arlington, Ohio. Send comments to The Honorable John R. Allen, Mayor of the City of Upper Arlington, Franklin County, 3600 Tremont Road, Upper Arlington, Ohio 43221.					
Ohio	Urbancrest (Village), Franklin County.	Daumgardner Ditch	Approximately 100 feet downstream of CSX Transportation.	None	*824
			At upstream corporate limits	None	*849
Maps available for inspection at the City Hall, 3492 First Avenue, Urbancrest, Ohio. Send comments to The Honorable Vaughn E. Hairston, Mayor of the Village of Urbancrest, Franklin County, 3492 First Avenue, Urbancrest, Ohio 43123.					
Ohio	Valleyview (Village) Franklin County.	Dry Run	At downstream Village of Valleyview corporate limits.	*770	*769
			At upstream Village of Valleyview corporate limits.	*781	*779
		South Fork Dry Run	Approximately 600 feet upstream of confluence with Dry Run.	*771	*772
			At upstream Village of Valleyview corporate limits.	*787	*786
Maps available for inspection at the Village Hall, 432 N. Richardson Avenue, Columbus, Ohio. Send comments to The Honorable Michael Russolillo, Mayor of the Village of Valleyview, Franklin County, 432 N. Richardson Avenue, Columbus, Ohio 43204–3472.					

State	City/town/county	S
Pennsylvania	Briar Creek (Borough) Columbia County.	Briar East B
Maps available for inspection at Borough Hall, RR Send comments to The Honorable Oscar Welsh, Pennsylvania 18603.		
Pennsylvania	Juniata (Township), Huntingdon County.	Juniat Rayst Rive
Maps available for inspection at Ms. Alice Kocik, S Send comments to Mr. Dean Parks, Chairman of Huntingdon, Pennsylvania 16652.		
Pennsylvania	St. Clair (Borough), Schuylkill County. Schuylkill County ...	Mill C
Maps available for inspection at the Borough Hall, Send comments to The Honorable Richard E. To Pennsylvania 17970.		
Pennsylvania	Upper Chichester (Township), Delaware County.	Spring Bezor
Maps available for inspection at the Town Hall, Fu Send comments to Mr. Stephen E. Barrar, Presid Box 2187, Boothwyn, Pennsylvania 19061.		
Pennsylvania	Upper Dublin (Township) Montgomery County.	Pine R
Maps available for inspection at Code Enforceme sylvania Send comments to Mr. Richard Rulon, President Pennsylvania 19034		
Tennessee	Ripley (Town) Lauderdale County.	Cane
Maps available for inspection at City Hall, 110 Sou Send comments to The Honorable Richard Dougl Tennessee 38063.		

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 11, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–17341 Filed 7–15–94; 8:45 am]

BILLING CODE 6718–03–P

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Pennsylvania	Briar Creek (Borough) Columbia County.	Briar Creek	At the upstream side of CONRAIL	*495	*492
			Approximately 1,170 feet upstream of Rittenhouse Road Bridge.	None	*512
		East Branch Briar Creek	At the confluence with Briar Creek	*501	*502
			Approximately 0.4 mile upstream of State Route 93.	*510	*511

Maps available for inspection at Borough Hall, RR #3, Berwick, Pennsylvania and at 2606 West Front Street, Berwick, Pennsylvania.

Send comments to The Honorable Oscar Welsh, Mayor of the Borough of Briar Creek, Columbia County, 2606 West Front Street, Berwick, Pennsylvania 18603.

Pennsylvania	Juniata (Township), Huntingdon County.	Juniata River	At downstream corporate limits	*603	*602
			At upstream corporate limits	*614	*608
		Raystown Branch Juniata River.	From the confluence with Juniata River to the T–428.	*609	*606

Maps available for inspection at Ms. Alice Kocik, Secretary/Treasurer's residence, R.D. 1, Box 378, Huntingdon, Pennsylvania.

Send comments to Mr. Dean Parks, Chairman of the Township of Juniata Board of Supervisors, Huntingdon County, P.O. Box 141, R.D. 3, Huntingdon, Pennsylvania 16652.

Pennsylvania	St. Clair (Borough), Schuylkill County.	Mill Creek	Approximately 590 feet downstream of Twing Street.	*700	*691
	Schuylkill County		At upstream corporate limits	*810	*806

Maps available for inspection at the Borough Hall, 16 South Third Street, St. Clair, Pennsylvania.

Send comments to The Honorable Richard E. Tomko, Mayor of the Borough of St. Clair, Schuylkill County, 16 South Third Street, St. Clair, Pennsylvania 17970.

Pennsylvania	Upper Chichester (Township), Delaware County.	Spring Run	At confluence with Naaman Creek	None	*99
			Approximately 120 feet upstream of West Colonial Drive.	None	*111
		Bezor's Run	At confluence with Marcus Hook Creek	None	*84
			Approximately 0.9 mile upstream of Bethel Road.	None	*164

Maps available for inspection at the Town Hall, Furey Road, Boothwyn, Pennsylvania.

Send comments to Mr. Stephen E. Barrar, President of the Township of Upper Chichester Board of Commissioners, Delaware County, P.O. Box 2187, Boothwyn, Pennsylvania 19061.

Pennsylvania	Upper Dublin (Township) Montgomery County.	Pine Run	At the confluence with Sandy Run	None	*172
			Approximately 250 feet upstream of Dresher Town Road Bridge.	None	*232

Maps available for inspection at Code Enforcement Office/Upper Dublin Township Building, 801 Loch Alsh Avenue, Fort Washington, Pennsylvania

Send comments to Mr. Richard Rulon, President of Upper Dublin Township, Montgomery County, 801 Loch Alsh Avenue, Fort Washington, Pennsylvania 19034

Tennessee	Ripley (Town) Lauderdale County.	Cane Creek	Upstream side of State Route 19 Bridge	*323	*322
			Approximately 260 feet downstream of Illinois Central Gulf Railroad Bridge.	*334	*335

Maps available for inspection at City Hall, 110 South Washington Street, Ripley, Tennessee.

Send comments to The Honorable Richard Douglas, Mayor of the Town of Ripley, Lauderdale County, 110 South Washington Street, Ripley, Tennessee 38063.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 11, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–17341 Filed 7–15–94; 8:45 am]

BILLING CODE 6718–03–P

Notices

Federal Register
Vol. 59, No. 136
Monday, July 18, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–4320–02–24–1A]

Federal Livestock Grazing Fee Incentive Program Advisory Committee; Meeting

AGENCY: Forest Service, USDA; and Bureau of Land Management, USDI.

ACTION: Notice of meeting.

SUMMARY: The Federal Livestock Grazing Fee Incentive Program Advisory Committee will meet at the Silver King, 1485 Empire Avenue, Park City, Utah 84060, in the Silver Room, beginning on Tuesday, August 2, 1994, and ending on Thursday, August 4, 1994. The meeting will convene each day at 8:00 a.m. and dismiss at approximately 5:00 p.m. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Lee Otteni, Strategic Planner, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240–1050, (202) 208–6932; or Jerry McCormick, Range Management Staff, United States Forest Service, Auditors Building, 201 14th Street, SW., Washington, DC 20250, 9202) 205–1746.

SUPPLEMENTARY INFORMATION: The formation of the Federal Livestock Grazing Fee Incentive Program Advisory Committee was announced in the **Federal Register**, July 12, 1994, (59 FR 35680). The committee was formed to provide advice to the Bureau of Land Management and the Forest Service on the types of activities associated with livestock grazing that would provide incentives to encourage the proper stewardship of rangeland resources; the criteria by which eligibility for an incentive-based grazing fee should be determined; and implementation options the agencies might consider.

The committee will consider written statements from the public. Written comments will be accepted at the meeting or may be mailed to the Federal Livestock Grazing Incentive Fee Program Advisory Committee, Bureau of Land Management, Rangeland Resources (220), Room 201–L, 1849 C Street NW., Washington, DC 20240–1050. All comments must be received by August 1, 1994.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Lee Otteni, Bureau of Land Management, at least five days prior to the meeting.

Mike Dombeck,
Acting Director, Bureau of Land Management.

David G. Unger,
Associate Chief, Forest Service.

[FR Doc. 94–17474 Filed 7–15–94; 8:45 am]
BILLING CODE 4310–84–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will be held from 9:00 a.m. until 9:00 p.m. on Wednesday, August 3, 1994, at the Holiday Inn South, 6820 South Cedar Street, Lansing, Michigan 48911, and Thursday, August 4, 1994, from 9:00 a.m. to 5:00 p.m. at the Holiday Inn East, 3750 Washtenaw, Ann Arbor, Michigan 48104. The purpose of these meetings are to examine whether there is disparate discipline of minorities in the Michigan secondary schools and the government enforcement of equal education opportunity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Janice G. Frazier, 313–259–8180, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 5, 1994.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.

[FR Doc. 94–17335 Filed 7–15–94; 8:45 am]
BILLING CODE 6335–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Notice Extending the Period for Public Comments on the Integration of the Textiles and Clothing Sector into the GATT 1994

July 14, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Extend Period for Public Comment

FOR FURTHER INFORMATION CONTACT: Keith Daly, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 19, 1994 notice was published in the **Federal Register** (see **Federal Register** notice 59 FR 26212) by the Chairman of the Committee for the Implementation of Textile Agreements requesting public comments on Paragraph 6 of Article 2 of the Agreement on Textiles and Clothing. This Agreement provides for the eventual integration of the textiles and clothing sector in the General Agreement on Tariffs and Trade (GATT) 1994.

The request for interested parties to submit comments was made in anticipation of the passing of the terms of the Agreement by Congress, and even though the final process for determining which products are to be integrated as yet has not been decided upon, **Federal Register** notice 59 FR 26212 stated that comments must be received on or before July 18, 1994 (60 days from date of publication).

The Chairman is extending the public comment period by 30 days. Comments must be received on or before August 17, 1994 (90 days from the date **Federal Register** notice 59 FR 26212 was published). Comments may be mailed to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW, Washington, DC 20230.

Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17590 Filed 7–15–94; 8:45 am]
BILLING CODE 3510–DR–F

THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection Request Submitted to the Federal Office of Management and Budget (FOMB) for Review

AGENCY: The Corporation for National and Community Service (CNCS).

SUMMARY: This notice provides information about an information proposal by CNSC, currently under review by the Office of Management and Budget (OMB).

DATES: OMB and CNCS will consider comments on the proposed collection of information and record keeping requirements received on or before August 2, 1994. Copies of the proposed forms and supporting documents may be obtained by contacting CNCS.

ADDRESSES: Send comments to both:

Gary Kowalczyk, Chief Financial Officer, 1100 Vermont Avenue, NW., Washington, DC 20525

Steve Semenuk, Desk Officer for CNCS, Office of Management and Budget, 3002 New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk (202) 606–5000 Ex. 340.

SUPPLEMENTARY INFORMATION:

Office of the Corporation for National and Community Service issuing proposal

Title of Forms: Education Award Voucher and Payment Request Form.

Need and Use: The National and Community Service Act of 1993 requires the Corporation for National and Community Service to provide education awards to individuals who complete a term of service in an

comments must be received on or before July 18, 1994 (60 days from date of publication).

The Chairman is extending the public comment period by 30 days. Comments must be received on or before August 17, 1994 (90 days from the date **Federal Register** notice 59 FR 26212 was published). Comments may be mailed to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW, Washington, DC 20230.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17590 Filed 7–15–94; 8:45 am]

BILLING CODE 3510–DR–F

THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection Request Submitted to the Federal Office of Management and Budget (FOMB) for Review

AGENCY: The Corporation for National and Community Service (CNCS).

SUMMARY: This notice provides information about an information proposal by CNSC, currently under review by the Office of Management and Budget (OMB).

DATES: OMB and CNCS will consider comments on the proposed collection of information and record keeping requirements received on or before August 2, 1994. Copies of the proposed forms and supporting documents may be obtained by contacting CNCS.

ADDRESSES: Send comments to both:

Gary Kowalczyk, Chief Financial Officer, 1100 Vermont Avenue, NW., Washington, DC 20525

Steve Semenuk, Desk Officer for CNCS, Office of Management and Budget, 3002 New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk (202) 606–5000 Ex. 340.

SUPPLEMENTARY INFORMATION:

Office of the Corporation for National and Community Service issuing proposal

Title of Forms: Education Award Voucher and Payment Request Form.

Need and Use: The National and Community Service Act of 1993 requires the Corporation for National and Community Service to provide education awards to individuals who complete a term of service in an approved national service position. By providing awards to individuals, the Trust assists in expanding educational opportunity and rewards individual responsibility.

Type of Request: Submission of a new collection.

Respondent's Obligation to Reply: Required to obtain a benefit.

Frequency of Collection: One time only.

Estimated Number of Responses: 40,000.

Average Burden Hours Per Response: 2.5.

Estimated Annual Reporting or Disclosure Burden: 1,867 Hours.

Regulatory Authority: 42. U.S.C. 5066 (a).

Dated: July 13, 1994.

G. Gary Kowalczyk,

Acting Chief Financial Officer.

[FR Doc. 94–17361 Filed 7–15–94; 8:45 am]

BILLING CODE 6050–28–M

Information Collection Request Submitted to the Federal Office of Management and Budget (FOMB) for Review

AGENCY: The Corporation for National and Community Service (CNCS).

SUMMARY: This notice provides information about an information proposal by CNCS, currently under review by the Office of Management and Budget (OMB).

DATES: OMB and CNCS will consider comments on the proposed collection of information and record keeping requirements received on or before August 2, 1994. Copies of the proposed forms and supporting documents may be obtained by contacting CNGS.

ADDRESSES: Send comments to both:

David Rymph, Study Coordinator, Corporation for National and Community Service, 1100 Vermont Ave., NW., Washington, DC 20525

Steve Semenuk, Desk Officer for CNCS, Office of Management and Budget, 3002 New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Bill Millsap (703) 642–5561.

SUPPLEMENTARY INFORMATION:

Office of the Corporation for National and Community Service Issuing Proposal: Evaluation and Policy Coordination.

Title of Forms: Participant Exit Form.

Need and Use: The National and Community Service Trust Act of 1993 (PL 103–82) requires the Corporation for National and Community Service to evaluate its programs on a regular basis. This information is required for program management, planning, and required record keeping.

Type of Request: Submission of a new collection.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: One time only.

Estimated Number of Responses: 5436.

Average Burden Hours Per Response: 0.15 Hours.

Estimated Annual Reporting or Disclosure Burden: 1359 Hours.

Regulatory Authority: 42 U.S.C. 5056 (a).

Dated: July 1, 1994.

David Rymph,

Director, Evaluation and Policy Coordination Unit.

[FR Doc. 94–17360 Filed 7–15–94; 8: 45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Department of the Army

Closed Meeting—Armed Forces Epidemiological Board

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of the Committee: Armed Forces Epidemiological Board, Subcommittee on Disease Control.

Date of Meeting: 3 August 1994.

Time: 0900–1600.

Place: Skyline Six, Room 691–C, Falls Church, Virginia.

Proposed Agenda: 3 August 1994—Review of Vaccine Program.

This meeting will be closed to the public in accordance with section 552b(c) of Title 5 U.S. Code, specifically subparagraph (1) thereof and Title 5 U.S. Code, appendix 1, subsection 10(d). Should additional information be desired, please contact the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258, telephone: (703) 756–8012.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–17355 Filed 7–15–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Announcement of Public Scoping Workshops, Storage and Disposition of Weapons-Usable Fissile Materials; Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Announcement of public scoping workshops, programmatic environmental impact statement for long-term storage and disposition of weapons-usable fissile materials.

SUMMARY: The Department of Energy (DOE) will hold twelve public scoping workshops during August and September 1994 to enable the public to provide comments on the proposed scope of the Programmatic Environmental Impact Statement (PEIS) being prepared for the Storage and Disposition of Weapons-Usable Fissile Materials. Comments received by DOE will be considered in determining the issues to be addressed in the Storage and Disposition PEIS. The Notice of Intent to prepare a PEIS for Storage and Disposition of Weapons-Usable Fissile Materials was issued by DOE on June 21, 1994 (59FR31985).

Through this notice, DOE invites comments on the scope of the PEIS, announces the locations, dates and times for the public workshops, and provides the format it will follow for conducting the workshops.

DATES: The dates on which each of the public scoping workshops will be held are given below. Agencies, organizations, and the general public are invited to present oral comments pertinent to preparation of the PEIS at the public scoping workshops. DOE will also accept written material at the workshops. Written and oral comments will be given equal weight in the scoping process. To ensure consideration, written comments, not submitted at the public scoping workshops, must be postmarked by October 17, 1994. Late comments will be considered to the extent practicable.

ADDRESSES: Addresses for the public meeting locations are provided below.

Written comments on the scope of the PEIS should be sent to: U.S. Department of Energy, c/o Oak Ridge Institute for Science & Education, P.O. Box 117, Oak Ridge, TN 37831–0117, Attn: Robert Menard, EESD.

FOR FURTHER INFORMATION: Requests for information on the DOE Storage and Disposition of Weapons-Usable Fissile Materials Project, requests for copies of the NAS Report, the Implementation Plan (when available), and requests for copies of the PEIS or PEIS Executive Summary (when available) may also be requested from the above address.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: *Invitation to comment.* DOE invites comments on the scope of this PEIS from all interested parties, including affected Federal, State, and local agencies and American Indian tribes. DOE solicits comments regarding the scope of the PEIS analysis, suggestions on significant environmental issues, alternatives to be included in the PEIS, and other matters of content.

Public scoping workshops. Rather than holding a formal hearing for the PEIS scoping meetings, an interactive workshop forum will be used. This workshop format enables the public to interact directly and exchange information with DOE representatives from the project. The program for each scoping workshop consists of a short plenary session followed by two small group discussions and ends with questions and answers or comments from the public. The two small group discussion sessions will be divided topically and reflect the proposed scope of the PEIS as presented in the Notice of Intent. The small group discussion topics will be storage and disposition. The program will usually be repeated three times during the day: morning, afternoon, and evening. The evening session will also include closing remarks by DOE officials. This approach is intended to provide flexibility for individuals wishing to attend the meetings.

DOE will hold twelve public scoping workshops to provide information and discuss and receive comments on the scope of the PEIS during August, September and the first week of October 1994, both regionally and in the vicinity of the sites which may be affected by potential decisions and their implementation. A national scoping workshop will be held in Washington, D.C. Most workshops will be held from 8:30 a.m. to 9:30 p.m., with breaks from 12:00 p.m. to 1:00 p.m. and 4:30 p.m. to 6:30 p.m. Sessions may be adjusted depending on the number of persons registered to participate.

The resource/comment room will contain information relevant to the project, including fact sheets and exhibits. The room will also have an area and materials available for preparing and submitting written comments on the scope of the PEIS.

Registration. Advance registration to provide oral comments at these public scoping workshops will be facilitated using an "800 number" and on-site registration will be accommodated to the extent possible.

Preregistration for all meetings is encouraged and may be done by telephoning 1–800–448–4235. The operators will gather information on each participant's discussion group selection (storage or disposition) as well as information concerning interest in future mailings and other project related information they would like to receive. Preregistration requests will be taken for each meeting up until 9:00 p.m.(EST) on the Monday prior to the specific meeting. Written requests for preregistration may be mailed to: Mr. Robert Menard, Oak Ridge Associated Universities/EESD, P.O. Box 117, Oak Ridge, TN 37831–0117, ATTN: Storage and Disposition PEIS.

Preregistered participants are requested to sign in at the meeting registration desk. Elected officials wishing to participate for their constituencies are asked to identify their office when registering. People who wish to participate on behalf of an organization are asked to identify the organization when registering. Written and oral comments will be accepted at the scoping workshops and are given equal weight in the development of the PEIS. Participants registering at the meeting location are asked to sign in at the registration desk.

Schedule of Public Scoping Workshops

Wednesday, August 17, 1994

Savannah River Site

North Augusta Community Center, 495 Brookside Avenue, N. Augusta, South Carolina 29841

Wednesday, August 24, 1994

Chicago Regional Meeting

University of Illinois at Chicago, Chicago Circle Center, Illinois Room, 750 S. Halsted Street, Chicago, Illinois 60607 and

Rocky Flats Plant

Ramada Hotel, 8773 Yates Drive, Westminster, Colorado 80030

Wednesday, August 31, 1994

Hanford Site

Red Lion Inn/Hanford House, 802 George Washington Way, Richland, Washington 99352

Wednesday, September 7, 1994

Pantex Plant

Amarillo Civic Center, 401 S Buchanan, Amarillo, Texas 79101

Wednesday, September 14, 1994

Boston Regional Meeting

John B. Hynes Veterans Memorial Convention Center, 900 Boylston Street, Boston, Massachusetts 02115 and

Nevada Test Site

Cashman Field Center, 850 Las Vegas Boulevard North, Las Vegas, Nevada 89101

Wednesday, September 21, 1994

Idaho National Engineering Laboratory

Shilo Inn, 780 Lindsay Blvd., Idaho Falls, Idaho 83402

Wednesday, September 28, 1994

Oak Ridge Reservation

Pollard Auditorium, 210 Badger Avenue, Oak Ridge, Tennessee 37830–0117 and

Lawrence Livermore National Laboratory

Holiday Inn Livermore, 720 Las Flores Road, Livermore, California 94550

Wednesday, October 5, 1994

Los Alamos National Laboratory

Hilltop House Hotel, 400 Trinity at Central, Los Alamos, New Mexico 87544

Wednesday, October 12, 1994

Washington, D.C.

Radisson Plaza Hotel-Mark Center, 5000 Seminary Road, Alexandria, VA 22311

SUPPORTING DOCUMENTS: DOE will prepare summary reports of the scoping workshops and make these available for public review. DOE will issue a PEIS Implementation Plan to provide information on how the PEIS will be prepared in light of the scoping comments. DOE will announce the availability of the draft PEIS, when completed, in the **Federal Register**, and will solicit public review and comment. Comments on the draft will be considered in preparing the final PEIS.

Copies of all summary reports, and copies of other material related to the preparation of the PEIS, will be made available for public review at the DOE reading rooms listed in this notice for the reader's convenience.

California

U.S. Department of Energy, Oakland Operations Office, Public Reading Room, 1301 Clay Street, Room 700N, Oakland, California 94612–5208, (510) 637–1762

Colorado

U.S. Department of Energy, Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, Colorado 80030, (303) 469–4435

Idaho

U.S. Department of Energy, Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83402, (208) 526–1144

Wednesday, September 14, 1994

Boston Regional Meeting

John B. Hynes Veterans Memorial Convention Center, 900 Boylston Street, Boston, Massachusetts 02115 and

Nevada Test Site

Cashman Field Center, 850 Las Vegas Boulevard North, Las Vegas, Nevada 89101

Wednesday, September 21, 1994

Idaho National Engineering Laboratory

Shilo Inn, 780 Lindsay Blvd., Idaho Falls, Idaho 83402

Wednesday, September 28, 1994

Oak Ridge Reservation

Pollard Auditorium, 210 Badger Avenue, Oak Ridge, Tennessee 37830–0117 and

Lawrence Livermore National Laboratory

Holiday Inn Livermore, 720 Las Flores Road, Livermore, California 94550

Wednesday, October 5, 1994

Los Alamos National Laboratory

Hilltop House Hotel, 400 Trinity at Central, Los Alamos, New Mexico 87544

Wednesday, October 12, 1994

Washington, D.C.

Radisson Plaza Hotel-Mark Center, 5000 Seminary Road, Alexandria, VA 22311

SUPPORTING DOCUMENTS: DOE will prepare summary reports of the scoping workshops and make these available for public review. DOE will issue a PEIS Implementation Plan to provide information on how the PEIS will be prepared in light of the scoping comments. DOE will announce the availability of the draft PEIS, when completed, in the **Federal Register**, and will solicit public review and comment. Comments on the draft will be considered in preparing the final PEIS.

Copies of all summary reports, and copies of other material related to the preparation of the PEIS, will be made available for public review at the DOE reading rooms listed in this notice for the reader's convenience.

California

U.S. Department of Energy, Oakland Operations Office, Public Reading Room, 1301 Clay Street, Room 700N, Oakland, California 94612–5208, (510) 637–1762

Colorado

U.S. Department of Energy, Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, Colorado 80030, (303) 469–4435

Idaho

U.S. Department of Energy, Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83402, (208) 526–1144

Illinois

Government Document Department, University Library, University of Illinios at Chicago, 801 South Morgan Street, 3rd Floor Center, Chicago, Illinois 60680, (312) 413–2594 or (312) 996–2738

Massachusetts

U.S. Department of Energy, Boston Operations Office, Public Reading Room, 1 Congress Street, Boston, Massachusetts 02114, (617) 565–9707

Nevada

U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada 89193, (702) 295–1274

New Mexico-Albuquerque

U.S. Department of Energy, Public Reading Room, National Atomic Museum, Kirtland Air Force Base, 20358 Wyoming Boulevard, SE, Kirtland AFB, New Mexico 87117, (505) 845–4378

New Mexico-Los Alamos

U.S. Department of Energy, Community Reading Room, 1450 Central Avenue, Suite 101, Los Alamos, New Mexico 87544, (505) 665–2127

South Carolina

U.S. Department of Energy, Public Reading Room, Gregg-Graniteville Library, University of South Carolina, Aiken Campus, 171 University Parkway, Aiken, South Carolina 29801, (803) 725–2889

Tennessee

U.S. Department of Energy, Oak Ridge Operations Office, Freedom of Information Reading Room, 55 Jefferson Circle, Room 112, Oak Ridge, Tennessee 37830, (615) 576–1216

Texas

U.S. Department of Energy Reading Room, Lynn Library/Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, Texas 79109, (806) 371–5400

Washington

U.S. Department of Energy, Public Reading Room, Washington State University, Tri-Cities Branch Campus, P.O. Box 999, Richland, Washington 99352, (509) 376–8583

District of Columbia

U.S. Department of Energy, Freedom of Information Reading Room,Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020

For information on the availability of specific documents and hours of operation, please contact the reading rooms at the telephone numbers provided.

Issued in Washington, DC this 11th day of July, 1994.

Robert W. DeGrasse, Jr.,

Director, Surplus Fissile Materials Control and Disposition Project.

[FR Doc. 94–17260 Filed 7–15–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance: Precision Irrigation and Control Systems, Inc.

AGENCY: Department of Energy, Idaho Field Office.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.14(e) it plans a non-competitive award of a Cooperative Agreement No. DE–FC07–94ID13314 to Precision Irrigation and Control Systems, Inc. (PICS).

FOR FURTHER INFORMATION CONTACT: Marshall C. Garr, Contract Specialist, (208) 526–1536; U.S. Department of Energy, 850 Energy Drive, MS 1221, Idaho Falls, ID 83401–1563.

SUPPLEMENTARY INFORMATION: The objective of the cooperative agreement with PICS is to provide funds to develop and test a sprinkler irrigation system that will place precise amounts of water and agricultural chemicals on a field. Developing and demonstrating this system on a typical farm will reduce the commercialization risk and facilitate industry adoption. The system will use a micro-processor based controller and independently controlled valves to meter out water to specific areas of a field. The system will use digitized maps depicting soil type, topography, and dynamic growing conditions to determine optimal application of water and chemicals. This system has the potential to increase energy efficiency, enhance environmental quality, and improve farm profitability. The proposed project is a 12-month effort at a total estimated cost of $200.000 of which approximately 62% will be cost-shared by industry through PICS. The technology was developed under a USDA research grant to the University of Idaho to evaluate opportunities to improve water quality affected by agriculture. Statutory authority for this award is provided by Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The proposed activity supports activities of the Department of Energy's Office of Industrial Programs to pursue R&D and commercialization applications consistent with provisions of Sections 2101 and 2107 of the Energy Policy Act of 1992.

PROCUREMENT REQUEST NUMBER: 07–94ld13314.000.

Dated: June 3, 1994.

David W. Newnam,

Acting Director, Procurement Services Division.

[FR Doc. 94–17350 Filed 7–15–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Application Filed With the Commission

July 12, 1994.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Action:* Intent to Prepare Environmental Impact Statement and Conduct Scoping Meeting.

b. *Project No:* 2114–024.

c. *Date Filed:* N/A.

d. *Applicant:* Grant County Public Utility District No. 2.

e. *Name of Project:* Priest Rapids.

f. *Location:* Grant and Chelan Counties, Washington.

g. *Filed Pursuant to:* N/A.

h. *Applicant Contact:* Mr. Don Godard, Grant County PUD, P.O. Box 878, Ephrata, WA 98823, (509) 759–3541.

i. *FERC Contact:* Timothy Welch, (202) 219–2666.

j. *Comment Date:* August 30, 1994.

k. *Description of Proceeding:* In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing has evaluated four downstream fish passage alternatives addressed in the Mid-Columbia Proceeding (Docket No. E–9569–003) for the Priest Rapids Project. Staff's initial evaluation of the proposed modifications was issued on May 25, 1994, in an environmental assessment (EA). The June 3, 1994 transmittal letter for the EA stated our intent to prepare an environmental impact statement (EIS).

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by staff and considered in the final EIS. Staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final decision.

Scoping Meetings

To obtain information from the public regarding relevant environmental issues that should be analyzed in the EIS, the Commission will conduct two public scoping meetings. The first scoping meeting will be held on Monday July 25, 1994 in Portland Oregon, at the Portland Building, 2nd Floor Auditorium, 1120 SW 5th Avenue, from 1 pm to 5 pm. The second scoping meeting will be held on Wednesday July 27, 1994 in Ephrata, Washington, at the City of Ephrata Recreation Center, 112 Basin Street SW, from 7 pm to 11 pm. All interested individuals, organizations, and agencies are invited to attend.

The EA will be considered the initial scoping document. Copies of the EA have been mailed to all entities who have expressed interest in this proceeding. The EA is also available in the Commission's Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426 and will be available at the scoping meeting. We encourage all interested parties to read the EA prior to the scoping meeting.

Objectives

At the meeting the staff will: (1) Describe the range of issues being considered in this post-licensing proceeding (2) review the conclusions and recommendations in the EA; (3) receive input from meeting participants on the alternatives considered in the EA; (4) identify any additional issues that should be included in the EIS; and (5) obtain any additional information that any entity feels should be considered during the preparation of the EIS.

Procedures

The scoping meeting will be recorded by a stenographer and all statements (oral and written) will become part of the Commission's public record for this proceeding. Interested persons who are unable to attend, or do not choose to speak at the scoping meeting, may submit written statements for inclusion in the public record. All written comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before August 30, 1994.

All written correspondence should clearly show on the first page of each document the following caption: Priest Rapids Project, FERC Project No. 2114–024.

Further, please note the Commission's Rules of Practice and Procedure, requires all entities to file an original and eight copies of any filing with the Commission. Parties filing documents must also serve the documents on each person whose name is on the official service list.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17321 Filed 7–15–94; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

July 12, 1994.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Intent to Prepare Environmental Impact Statement and Conduct Scoping Meeting.

b. Project No.: 2145–021.

c. Date Filed: September 19, 1991.

d. Applicant: Public Utility District No. 1 of Chelan County.

e. Name of Project: Rocky Reach Project.

f. Location: Chelan County, Washington.

g. Filed Pursuant to: N/A.

h. Applicant Contact: Roger L. Purdom, Public Utility District No. 1 of Chelan County, Washington, P.O. Box 1231, Wenatchee, WA 98807, (509) 663–8121.

i. FERC Contact: Him Hastreiter, (503) 326–5846.

j. Comment Date: September 8, 1994.

k. Description of Proceeding: In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing has reviewed the licensee's amendment application that proposes modifications to the Rocky Reach Project facilities and operation. Staff's initial evaluation of the proposed modifications was issued on October 15, 1993, in a draft environmental assessment.

A draft Environmental Impact Statement (EIS) will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be anlyzed by staff and considered in the final EIS. Staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final decision.

Scoping Meeting

A public scoping meeting will be held Thursday, July 28, 1994, beginning at 7:00 p.m. at the Grant County Auditorium, 400 Douglas Street, Wenatchee, Washington. An agency scoping meeting will be held on Monday, July 25, 1994, from 8:00 a.m. until noon at the Portland Building, 2nd Floor Auditorium, 1120 S.W. 5th Avenue, Portland, Oregon. All interested individuals and organizations are invited to attend and assist staff in identifying the scope of environmental issues that should be analyzed in the EIS.

The environmental assessment will be considered the intitial scoping document. Copies of the environmental assessment will be mailed to all entities who have expressed interest in this proceeding. The environmental assessment is also available in the Commission's Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426 and will be available at the scoping meeting. We encourage all interested parties to read the environmental assessment prior to the scoping meeting.

Objectives

At the scoping meeting the staff will: (1) Describe the range of issues being considered in this amendment application proceeding; (2) review the conclusions and recommendations in the environmental assessment; (4) identify any additional issues that should be included in the EIS; and (5) obtain any additional information that any entity feels should be considered during preparation of the EIS.

Procedures

The scoping meeting will be recorded by a stenographer and all statements (oral and written) will become part of the Commission's public record for this proceeding that was noticed on October 22, 1991. Interested persons who are unable to attend, or do not choose to speak at the scoping meeting, may submit written statements for inclusion in the public record. All written comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, on or before September 8, 1994.

All written correspondence should clearly show on the first page of each document the following caption: Rocky Reach Project, FERC Project No. 2145–021.

Further, please note the Commission's Rules of Practice and Procedures, requiring all entities to file an original and eight copies of any filing with the Commission. Parties filing documents must also serve the documents on each

scoping meeting will be held on Monday, July 25, 1994, from 8:00 a.m. until noon at the Portland Building, 2nd Floor Auditorium, 1120 S.W. 5th Avenue, Portland, Oregon. All interested individuals and organizations are invited to attend and assist staff in identifying the scope of environmental issues that should be analyzed in the EIS.

The environmental assessment will be considered the intitial scoping document. Copies of the environmental assessment will be mailed to all entities who have expressed interest in this proceeding. The environmental assessment is also available in the Commission's Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426 and will be available at the scoping meeting. We encourage all interested parties to read the environmental assessment prior to the scoping meeting.

Objectives

At the scoping meeting the staff will: (1) Describe the range of issues being considered in this amendment application proceeding; (2) review the conclusions and recommendations in the environmental assessment; (4) identify any additional issues that should be included in the EIS; and (5) obtain any additional information that any entity feels should be considered during preparation of the EIS.

Procedures

The scoping meeting will be recorded by a stenographer and all statements (oral and written) will become part of the Commission's public record for this proceeding that was noticed on October 22, 1991. Interested persons who are unable to attend, or do not choose to speak at the scoping meeting, may submit written statements for inclusion in the public record. All written comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, on or before September 8, 1994.

All written correspondence should clearly show on the first page of each document the following caption: Rocky Reach Project, FERC Project No. 2145–021.

Further, please note the Commission's Rules of Practice and Procedures, requiring all entities to file an original and eight copies of any filing with the Commission. Parties filing documents must also serve the documents on each person whose name is on the official service list.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17322 Filed 7–15–94; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. CP94–634–000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

July 12, 1994.

Take notice that on June 30, 1994, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94–634–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a new delivery point so that El Paso can deliver gas to Transok, Inc.'s (Transok) Canute Plant in Washita County, Oklahoma, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that Transok has agreed to modify one of its meter runs so that El Paso can deliver gas into Transok at its Canute Plant. It is stated that the establishment of this point is not prohibited by El Paso's tariff, and there would be no detriments to El Paso's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17320 Filed 7–15–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5013–7]

Chesapeake Bay Program; 1987 Chesapeake Bay Agreement; Proposals for Review

The following draft documents, prepared pursuant to the 1987 Chesapeake Bay Agreement by the Living Resources Subcommittee of the Chesapeake Bay Program, are now available for public review:

- Revised Chesapeake Bay Oyster Management Plan,
- Revised Chesapeake Bay Blue Crab Management Plan,
- Aquatic Reef Habitat Plan.

Public comments will be accepted through July 31, 1994. Comments should be sent to Jennifer Gavin, Chesapeake Bay Program Office, Suite 410, Annapolis, Maryland 21403. To obtain copies of the draft plans, call Jennifer Gavin at (800) 968–7229.

William Matuszeski,

Director, Chesapeake Bay Program Office.

[FR Doc. 94–17377 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5014–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 17, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

TITLE: FIFRA Reregistration Fees (EPA ICR No.: 1495.03; OMB #2070–0101). This is a request for extension of the expiration date of a currently approved collection with no changes.

ABSTRACT: Under the 1988 amendments to the Federal Insecticide, Fungicide,

and Rodenticide Act (FIFRA), pesticide registrants must pay a one-time fee to cover the costs of reregistering the active ingredients in their products. To determine the amount of this fee, EPA will ask registrants to indicate the source of the active ingredient in their products and the quantity marketed. The Agency uses this information to apportion fees based on market share and, in some cases, to decide whether a pesticide producer is exempt from the fee requirement. Small businesses may apply for a waiver of fees by completing a certification form.

BURDEN STATEMENT: The public reporting burden for this collection of information is estimated to average less than 4 hours per response annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Pesticide Producers.

Estimated No. of Respondents: 50.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 185 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW, Washington, DC 20460.

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: July 8, 1994.

Jane Stewart,

Acting Director,

[FR Doc. 94–17380 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5014–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost an burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 17, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (EPA ICR #1702.01). This ICR requests approval of a new collection.

Abstract: On April 21, 1993, (58 FR 21359) EPA promulgated regulations establishing provisions for an urban bus rebuild/retrofit program but did not request OMB approval under the Paperwork Reduction Act (PRA) for the information requirements. The Agency is now seeking PRA clearance for these information activities.

The program affects model year 1993 and earlier buses rebuilt or replaced after January 1, 1995 and is limited to urban buses operating in metropolitan areas with 1980 populations of 750,000 or more. Urban bus operators in these areas may chose between two options. Option 1 sets particulate matter (PM) emissions requirements for each urban bus in an operator's fleet whose engine is replaced or rebuilt. Option 2 is a fleet averaging program that requires an operator to meet a specified annual target level for the average PM emissions level from the 1993 and earlier MY urban buses in the operator's fleet. The target levels for an individual operator's fleet are based on age and engine model distribution of the urban buses in the operator's fleet. The rebuild/retrofit program is intended to reduce the ambient levels of particulate matter in urban areas.

Retrofit equipment manufacturers may apply to the EPA to have their retrofit equipment certified. The request for certification includes identifying the engine family(s) for which the equipment will be sold, results and documentation of tests and testing procedures, a copy of the written instructions for proper maintenance, and a copy of the warranty language to be provided to the urban bus operator. EPA will use this certification information to assess compliance with option 1. Retrofit equipment manufacturers may also include information in their application for certification on the maximum price charged to an urban bus operator for equipment, a detailed breakout of the time required to install the equipment including the number of hours that are incremental to a standard rebuild, the percent change in fuel economy when using the retrofit equipment, the required quantity of any necessary fuel additives and the price per gallon, and a list of scheduled maintenance including the cost for parts. This additional information will qualify the rebuild equipment for use in option 2. Retrofit equipment manufacturers are also required to maintain records for 5 years including detailed production drawings, all testing data, a quality control plan and all in-service data. Urban bus operators are required to maintain records which EPA believes are already kept as part of their normal course of business. The required records include rebuild/retrofit equipment purchased, engine rebuilds and replacements, records of clean diesel fuel purchases, and evidence that the urban buses are in compliance with either the first or second option of the rebuild/retrofit program. Urban bus operators may also voluntarily provide EPA with information on the composition of the pre-1994 urban bus fleet, a listing of buses that have been rebuilt or retired, and for operators using option 2, a demonstration that the average annual fleet target level for PM has been met.

Burden Statement: Public reporting burden for this collection of information is estimated to average a minimum of 115 hours per certifier for option 1 and a maximum of 184 hours per certifier for option 2, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information. Public reporting burden for urban bus operators is estimated to average 24 hours per response including time for reviewing instructions, searching existing data sources, gathering the data needed and completing the collection of information. Public recordkeeping burden for this collection of information is estimated to average 40 hours per certifier.

Respondents: Rebuild equipment manufacturers and urban bus operators.

Estimated Number of Respondents: 160.

Estimated Total Annual Burden on Respondents: 7,200 hours.

Frequency of Collection: one-time and annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street SW., Washington, DC 20460; and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: July 8, 1994.

Jane Stewart,

Director, (Acting) Regulatory Management Division.

[FR Doc. 94–17381 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5013–9]

Meeting of the Local Government Advisory Committee

On August 8–10, 1994, the Local Government Advisory Committee will conduct its second meeting. The purpose of the meeting is to provide members with updated information on several EPA activities since the last meeting, share information on subcommittee activities, and provide time for subcommittee meetings.

The Committee is charged with identifying and recommending a series of activities to improve the implementation of environmental programs by local governments. These activities should be developed to address unmet local government needs caused by a lack of coordination and communication among various governmental agencies and programs; an inability to develop priorities as to the problems to be addressed; the need for data and information on the costs and benefits of regulation and on technical, legal, and scientific aspects of regulation; limited financing; and, inflexible requirements resulting from the nature of regulations.

The meeting will be held at the Crystal Gateway Marriott located at 1700 Jefferson Davis Highway in Arlington, VA. The meeting will begin at 1 p.m. on August 8th and conclude at noon on August 10th.

The Designated Federal Officer (DFO) for this Committee is Denise Zabinski. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0419 or by writing to 401 M Street, SW. (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available within thirty days after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: July 8, 1994.

Jane Stewart,

Director, (Acting) Regulatory Management Division.

[FR Doc. 94–17381 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5013–9]

Meeting of the Local Government Advisory Committee

On August 8–10, 1994, the Local Government Advisory Committee will conduct its second meeting. The purpose of the meeting is to provide members with updated information on several EPA activities since the last meeting, share information on subcommittee activities, and provide time for subcommittee meetings.

The Committee is charged with identifying and recommending a series of activities to improve the implementation of environmental programs by local governments. These activities should be developed to address unmet local government needs caused by a lack of coordination and communication among various governmental agencies and programs; an inability to develop priorities as to the problems to be addressed; the need for data and information on the costs and benefits of regulation and on technical, legal, and scientific aspects of regulation; limited financing; and, inflexible requirements resulting from the nature of regulations.

The meeting will be held at the Crystal Gateway Marriott located at 1700 Jefferson Davis Highway in Arlington, VA. The meeting will begin at 1 p.m. on August 8th and conclude at noon on August 10th.

The Designated Federal Officer (DFO) for this Committee is Denise Zabinski. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0419 or by writing to 401 M Street, SW. (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available within thirty days after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible.

Shelley H. Metzenbaum,

Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 94–17376 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5013–4]

National Environmental Justice Advisory Council; Notification of Public Advisory Committee Meeting(s); Open Meeting(s)

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, notice is hereby given that the National Environmental Justice Advisory Council (NEJAC) and four subcommittees will meet on the dates and times described below. All times noted are Mountain Standard Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are subject of NEJAC reviews are normally available from the originating EPA office and are *not* available from the NEJAC.

The full NEJAC will meet to discuss the role of the FACA, Environmental Impacts, EPA's Environmental Justice Draft Strategic Action Document, and the NEJAC Bylaws from Wednesday to Friday, August 3–5, 1994 from 8 a.m. to 9 p.m. Mountain Standard Time at the Albuquerque Hyatt Regency Hotel, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234.

Members of the public who wish to make a brief oral presentation at the meeting(s) should contact Linda K. Smith no later than July 27, 1994 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments received by July 25, 1994 may be mailed to the NEJAC prior to the meeting; comments received after that date will be provided to the Council as logistics allow. Written comments of any length (at least 35 copies) should be provided to the Committee no later than July 27, 1994. They should be sent to Office of Environmental Justice (3103), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone number is (202) 260–6357 or 1–800–962–6215 or FAX (202) 260–0852.

1. Waste and Facility Siting Subcommittee Meeting—August 4–5, 1994

The Waste and Facility Siting Subcommittee (WFSS) of the National Environmental Justice Advisory Council (NEJAC) will hold its first meeting on Thursday and Friday, August 4–5, 1994, from 8 a.m. to 5:30 p.m. on Thursday, and from 8 a.m. to Noon on Friday. Location of this meeting will be the Albuquerque Hyatt Regency, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the WFSS intends to initiate discussion and solicit input on environmental justice definitions and guidelines, the Office of Solid Waste and Emergency Response (OSWER) Environmental Justice Task Force recommendations, options developed by OSWER's siting workgroup, OSWER's proposed rule on public participation and future field hearings on specific topics. The meeting is open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Ms. Jan Young, Designated Federal Official, OSWER, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by telephone at (202) 260–1691, Fax at (202) 260–6606.

2. Enforcement Subcommittee (ES) Meeting—August 4–5, 1994

The Enforcement Subcommittee (ES) of the National Environmental Justice Advisory Council (NEJAC) will conduct a meeting on Thursday and Friday, August 4–5, from 8 a.m. to 5:30 p.m. on Thursday and from 8 a.m. to Noon on Friday at the Albuquerque Hyatt Regency Hotel, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the ES intends to develop a mission statement for the Subcommittee and review the Office of Enforcement and Compliance Assurance's draft strategy on Environmental Justice and recommend actions for EPA to address. At this meeting, the ES will discuss future issues and a mechanism to review enforcement activities. The meeting is open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Ms. Sherry Milan, Designated Federal Official, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 by telephone at (202) 260–9807, FAX at (202) 260–9437.

3. Health and Research Subcommittee Meeting—August 4–5, 1994

The Health and Research Subcommittee (HRS) of the National Environmental Justice Advisory Council (NEJAC) will conduct a meeting on Thursday and Friday, August 4–5 1994, from 8 a.m. to 5:30 p.m. on Thursday and from 8 a.m. to Noon on Friday at the Albuquerque Hyatt Regency Hotel, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the HRS intends to review the Office of Research and Development's (ORD) draft process description for development of the Agency's Environmental Justice research strategy HRS will also evaluate and recommend options on the U.S. Environmental Protection Agency's overall research priorities and science policy setting as it relates to environmental justice. The subcommittee will review ORD's research strategy and definitions. The meeting is open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Mr. Lawrence Martin, Designated Federal Official, Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by telephone (202) 260–0673, Fax at (202) 260–0507.

4. Public Participation and Accountability Subcommittee Meeting—August 4–5, 1994

The Public Participation and Accountability Subcommittee (PPAS) of the National Environmental Justice Advisory Council (NEJAC) will hold its first meeting on Thursday and Friday, August 4–5, 1994, from 8 a.m. to 5:30 p.m. on Thursday and from Thursday and from 8 am. to Noon on Friday at the Albuquerque Hyatt Regency Hotel, 330 Tijeras N.W., Albuquerque, New Mexico 87102, (505) 842–1234. In this meeting, the PPAS intends to find ways to improve communications, develop trust and involve affected communities. To this end, the Subcommittee will explore the creation of business and industry, stakeholder and other types of public/private partnerships to address environmental justice concerns. Finally, PPAS will evaluate the Agency's strategy to use the Geographic Information System (GIS) program to identify potential geographic areas of environmental justice concern, i.e., define potential patterns of inequity and insure environmental justice accountability. The meeting is open to the public and seating will be available on a first-come basis.

Any member of the public wishing further information, such as proposed agenda on the meeting, should contact Mr. Bob Knox, Designated Federal Official, Office of Environmental Justice, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by telephone at (202) 260–6357 or 1–800–962–6215 or by Fax at (202) 260–0852.

FOR FURTHER INFORMATION CONTACT: Copies of the NEJAC Charter are available upon request. Please contact the Office of Environmental Justice (3103), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 1–800–962–6215. For hearing impaired individuals or non-English speaking attendees wishing to make arrangements for a sign language or foreign language interpreter, please call or fax Kathy Ackley at (703) 934–3293 or (703) 934–9740 (fax).

Dated: July 13, 1994.

Clarice E. Gaylord,

Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 94–17382 Filed 7–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5014–7]

Approval of Maryland's Submission of a Substantial Program Revision to Its Authorized National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Approval of Maryland's revisions to its NPDES program; publication of EPA's response to public comments on Maryland's regulation revisions.

SUMMARY: The State of Maryland submitted amendments to its Code of Maryland Regulations (COMAR) (adopted by the Secretary of the Environment on May 6, 1993) to EPA for review as a revision to the State's authorized NPDES program. The submitted revisions to Maryland's regulations are considered to be substantial revisions to Maryland's NPDES program and can be found at COMAR 26.08.03.07 and COMAR 26.08.04.02–1. EPA requested comments from the public on the regulation revisions in **Federal Register** notices dated November 10, 1993 and January 3, 1994 at 58 FR 59724 and 59 FR 87, respectively. EPA considered all public comments in review of Maryland's regulation revisions. A summary of the comments and EPA's response can be found below.

After careful consideration of the regulation revisions and all public comments, EPA has determined that the revisions satisfy the Clean Water Act (CWA) and minimum federal requirements. Therefore, EPA has approved the revisions found at COMAR 26.08.03.07 and COMAR 26.08.04.02–1. These permit regulation revisions may now be considered effective and may be implemented.

DATES: Maryland's regulation revisions, COMAR 26.08.03.07 and COMAR 26.08.04.02–1, were approved by EPA on May 6, 1994. The regulation revisions are effective on May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Helene Drago, (215) 597–8242, U.S. EPA, Region III, 3WM55, 841 Chestnut Building, Philadelphia, PA 19107

SUPPLEMENTARY INFORMATION: On May 6, 1993, the State of Maryland, adopted changes to its NPDES permit program regulations found at COMAR 26.08.03.07 and COMAR 26.08.04.02–1. Pursuant to 40 CFR 123.62 and CWA 304 and 402, EPA reviewed the NPDES permit program regulation for compliance with federal regulation. The revisions to Maryland's regulations were described in **Federal Register** notices dated November 10, 1993 and January 3, 1994 at 58 FR 59724 and 59 FR 87, respectively. A public notice of the regulation revisions was also published in the Baltimore Sun on November 12, 1993. Copies of Maryland's regulation revisions were available for review at the EPA Region III office in Philadelphia, PA. Copies were also available for purchase. As part of the public comment period, EPA provided the opportunity for a public hearing. However, there were no requests for a public hearing. All comments or objections received by EPA Region III were considered by EPA in its review of the NPDES regulation revisions. A list of persons who provided comment are provided below. A summary of the comments and EPA's response can be found below.

After careful consideration of the regulation revisions, all public comment, and supplemental information submitted by Maryland Department of the Environment (MDE) in letters dated June 1, 1993, February 15, 1994 and March 23, 1994, EPA has determined that the substantial revisions to the Maryland's NPDES regulations found at COMAR 26.08.03.07 and COMAR 26.08.04.02–1 meet the requirements of the CWA and federal regulations. Therefore, EPA has approved the regulation revisions on May 6, 1994. EPA's approval letter, dated May 6, 1994, to David A. C. Carroll, Secretary of MDE, provides a full explanation of EPA's grounds for approval. These permit regulation revisions may now be considered effective and may be implemented.

Response Summary to Public Comments

Comment: EPA should not disapprove any part of the NPDES regulations since disapproval will jeopardize the agreement reached by a group of plaintiffs, MDE and the Chesapeake Bay Foundation.

EPA's response: EPA understands that MDE, the Chesapeake Bay Foundation and a large group of litigants underwent a lengthy and complex negotiation to reach the agreement that is reflected in the revisions to Maryland's NPDES program.

However, EPA is obligated under the CWA and federal regulations to review any substantial revisions to a State's NPDES regulations to ensure that the revisions meet minimum federal requirements. It is not reasonable for any party to request that EPA forgo its legal duty to carefully review the regulation revisions. EPA must have the freedom to review, and if necessary disapprove, any part of the regulations regardless of whether that disapproval will impact a lawsuit settlement.

Comment: Maryland's intake credit regulation is similar if not more restrictive than that proposed in the Great Lakes Water Quality Initiative (GLWQI) and therefore should be approved.

EPA's response: EPA agrees with the commentor that Maryland's intake credit regulation appears to be similar to EPA's preferred option found in the proposed GLWQI. The implementation of the intake credit regulation should assure that any discharger that meets the requirements of the regulation has no reasonable potential to cause or contribute to an exceedance of an applicable numeric or narrative water quality standard. EPA finds the intake credit provisions in Maryland's regulations acceptable at this time with the understanding that changes may be appropriate once the GLWQI is finalized.

Comment: Maryland's regulations provide adequate provisions for whole effluent toxicity (WET) and are consistent with federal law and regulations.

EPA's response: Under 40 CFR 122.44(d)(1), permitting authorities must establish whole effluent toxicity or chemical-specific effluent limitations in NPDES permits where a discharge

May 6, 1994. EPA's approval letter, dated May 6, 1994, to David A. C. Carroll, Secretary of MDE, provides a full explanation of EPA's grounds for approval. These permit regulation revisions may now be considered effective and may be implemented.

Response Summary to Public Comments

Comment: EPA should not disapprove any part of the NPDES regulations since disapproval will jeopardize the agreement reached by a group of plaintiffs, MDE and the Chesapeake Bay Foundation.

EPA's response: EPA understands that MDE, the Chesapeake Bay Foundation and a large group of litigants underwent a lengthy and complex negotiation to reach the agreement that is reflected in the revisions to Maryland's NPDES program.

However, EPA is obligated under the CWA and federal regulations to review any substantial revisions to a State's NPDES regulations to ensure that the revisions meet minimum federal requirements. It is not reasonable for any party to request that EPA forgo its legal duty to carefully review the regulation revisions. EPA must have the freedom to review, and if necessary disapprove, any part of the regulations regardless of whether that disapproval will impact a lawsuit settlement.

Comment: Maryland's intake credit regulation is similar if not more restrictive than that proposed in the Great Lakes Water Quality Initiative (GLWQI) and therefore should be approved.

EPA's response: EPA agrees with the commentor that Maryland's intake credit regulation appears to be similar to EPA's preferred option found in the proposed GLWQI. The implementation of the intake credit regulation should assure that any discharger that meets the requirements of the regulation has no reasonable potential to cause or contribute to an exceedance of an applicable numeric or narrative water quality standard. EPA finds the intake credit provisions in Maryland's regulations acceptable at this time with the understanding that changes may be appropriate once the GLWQI is finalized.

Comment: Maryland's regulations provide adequate provisions for whole effluent toxicity (WET) and are consistent with federal law and regulations.

EPA's response: Under 40 CFR 122.44(d)(1), permitting authorities must establish whole effluent toxicity or chemical-specific effluent limitations in NPDES permits where a discharge causes, has the reasonable potential to cause, or contributes to an exceedance of a numeric or narrative water quality standard. Because Maryland's regulation does not require WET limits where standards violations are possible, Maryland's regulation is not consistent with federal regulations. However, EPA understands that Maryland is committed to working toward providing WET regulatory provisions that adequately address federal regulations. EPA has agreed to approve the regulation revisions under the following conditions:

(1) MDE has provided an Attorney General's Certification, dated May 10, 1993, that defines MDE's legal authority to impose WET limits.

(2) MDE has agreed to continue to discuss its WET program and the issue of WET limits outside the context of the this regulation revision. MDE will work with EPA to finalize, within three months of this approval, mutually acceptable permitting procedures that will be used to place WET limits in permits where appropriate.

(3) MDE has agreed to revise the regulations to embody the concepts of 40 CFR 122.44(d)(1) within two years of March 23, 1994.

Comment: 40 CFR 122.44(d)(1) allows an NPDES authorized State to exercise discretion in establishing whether pollutants are discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard. Maryland's regulation 26.08.04.02–1C implements this discretion by allowing the State to determine that no "reasonable potential" exists if a facility meets certain specific criteria.

EPA's response: EPA agrees that the State determines whether a discharge will cause, contribute or have the reasonable potential to cause or contribute to an excursion of a water quality standard. However, in making this determination a State must consider, at a minimum, the criteria found at 40 CFR 122.44(d)(1)(ii). "When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water". Maryland must consider these minimum criteria in determining "reasonable potential".

Comment: There is no provision in EPA's regulations stating that a State cannot exercise its discretion in NPDES permitting on the basis of generally applicable criteria. If EPA's position is that any decision under 40 CFR 122.44(d)(1)(i) must be made in the context of an individual permit, EPA's position is legally incorrect. Maryland's regulation at 26.08.04.02–1C is a valid determination that any discharges meeting the listed criteria will not cause, have the reasonable potential to cause, or contribute to an excursion of water quality standard.

EPA's response: EPA agrees that reasonable potential determinations need not be made only in the context of individual permits. EPA does not have an objection to the concept of using a categorical provision, as opposed to a permit-by-permit decision, to determine reasonable potential. However, when EPA approves the use of any general criteria, it is important that that general criteria is rigorously examined to ensure that its use will adequately satisfy all federal requirements.

As it is written, it is difficult to determine whether Maryland's regulation at 26.08.04.02–1C would prevent a discharge from causing, contributing or having the reasonable potential to cause or contribute to an excursion of a water quality standard. However, the State of Maryland has determined that the criteria listed in the regulation is so narrowly defined that the regulation applies only to dry weather copper discharges to Colgate Creek from the General Motors facility, outfalls 001–003 and 010, located in Baltimore, MD. EPA and Maryland have examined the discharge in question and have determined that it does not cause, contribute or have the reasonable potential to cause or contribute to a water quality standard violation. All the criteria listed in 26.08.04.02–1C ensure no other facility or discharger can use the regulation in the State of Maryland and it is uniquely applicable to only the General Motors facility. Due to dilution and tidal flow found at Colgate Creek, the specific outfalls in question do not discharge concentrations that cause, contribute or have the reasonable potential to cause or contribute to an excursion of a water quality standard.

Should another discharger attempt to use this regulation, or another State wish to adopt similar provisions in their NPDES permit regulations, EPA would require specific site information, the State's exact rationale for a finding of "no reasonable potential" and definitive language which would limit use of such

an exemption to an appropriate discharge. EPA has worked closely with Maryland regarding this regulation and we have determined that this regulation is acceptable based on the specific data obtained from MDE in letters dated June 1, 1993; February 15, 1994; and March 23, 1994.

Written Comments Received

1. Frances Dubrowski, Attorney, Chesapeake Bay Foundation
2. George Van Cleve, Attorney, General Motors Corporation
3. Alan Bahl, Environmental Engineer, Red Star Yeast & Products, Baltimore, MD
4. Deborah Jennings, Potomac Electric Power Company
5. Colleen Lamont, Baltimore Gas and Electric, Baltimore, MD
6. The Plaintiffs including: Baltimore Gas and Electric Company, Delmarva Power & Light Company, General Motors Corporation, Bethlehem Steel Corporation, Potomac Electric Power Company, Maryland Chamber of Commerce
7. William Riley, Bethlehem Steel Corporation, Bethlehem, PA
8. David Carroll, Secretary, Maryland Department of the Environment

Dated: June 27, 1994.

Peter H. Kostmayer,

Regional Administrator, Environmental Protection Agency, Region III.

[FR Doc. 94–17379 Filed 7–15–94; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

1995 World Radiocommunication Conference Industry Committee

AGENCY: Federal Communications Commission.

ACTION: FCC announcement of second WRC–95 Advisory Committee Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice also advises interested persons of the second meeting of the WRC–95 Advisory Committee.

DATES: July 20, 1994; 9:00–11:30 a.m.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, D.C. 20554

SUPPLEMENTARY INFORMATION: The WRC–95 Advisory Committee was established by the Federal Communications Commission to provide to the agency advice, technical support and recommendations relating to preparation of U.S. proposals and positions for the 1995 World Radiocommunication Conference.

The proposed agenda for the second meeting is as follows:

Agenda

Second meeting of the WRC–95 Industry Advisory Committee, FCC, 1919 M Street, NW., Room 856, Washington, DC, July 20, 1994, 9:00–11:30 a.m.

1. Introduction of Attendees
2. Approval of Agenda
3. Introductory Remarks by Chairman
4. Formation of Interim Working Group on Future WRC Agendas (IWG–6)
5. Reports and Discussion of Informal Working Group Activities:
   - IWG–1: Regulatory Coordination Group
   - IWG–2: Mobile-Satellite Service Below 1 GHz
   - IWG–3: Mobile-Satellite Service Above 1 GHz
   - IWG–4: Mobile-Satellite Service Feeder Links
   - IWG–5: Space Services
6. Brief by NTIA Representative on Government-sector Preparatory Activities
7. Discussion of Model Under Development for MSS Spectrum Requirements
8. Future Meeting Schedule
9. Other Business.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17385 Filed 7–15–94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1031–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1301–DR), dated June 21, 1994, and related determinations.

EFFECTIVE DATE: June 21, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 21, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms and flooding beginning on March 1, 1994, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency management Agency under Executive Order 12148, I hereby appoint David P. Grier of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

Brookings, Brown, Clark, Codington, Day, Edmunds, Grant, Hand, Hanson, Kingsbury, McPherson, Marshall, Roberts, Sanborn, and Spink for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–17340 Filed 7–15–94; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

[Docket No. R–0842]

Proposed Policy Statement on Privately Operated Large-Dollar Multilateral Netting Systems

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board of Governors is requesting comment on a proposal to update its policies on "Privately Operated Large-Dollar Funds Transfer Networks" and "Offshore Dollar-Clearing and Netting Systems" and integrate those policies into a single policy statement on "Privately Operated Large-Dollar Multilateral Netting Systems." In general, the policy statement would apply to such arrangements as domestic, privately operated, large-dollar multilateral payment netting systems; offshore large-dollar multilateral payment netting systems; multilateral foreign exchange clearinghouses involving settlements in U.S. dollars; and multicurrency payment netting systems involving settlements in U.S. dollars. The Board is proposing to incorporate into the new policy statement minimum standards for the design and operation of privately operated large-dollar multilateral netting systems. These minimum standards are based on those set out in the *Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries* ("Lamfalussy Report"), which was published in November 1990 by the Bank for International Settlements. The Board is also requesting comment on the need for, and possible specifications of, a higher standard with respect to assuring settlement that might be applied to large-dollar multilateral netting systems that present a high degree of systemic risk.

DATES: Comments must be received on or before October 17, 1994.

ADDRESSES: Comments should refer to Docket No. R–0842, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or to the security control room anytime. Both Room B–2222 and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452–2360), Paul Bettge, Manager (202/452–3174), Kelly Shaw, Project Leader (202/452–3054), Division of Reserve Bank Operations and Payment Systems; or Oliver Ireland, Associate General Counsel (202/452–3625), Stephanie Martin, Senior Attorney (202/

update its policies on "Privately Operated Large-Dollar Funds Transfer Networks" and "Offshore Dollar-Clearing and Netting Systems" and integrate those policies into a single policy statement on "Privately Operated Large-Dollar Multilateral Netting Systems." In general, the policy statement would apply to such arrangements as domestic, privately operated, large-dollar multilateral payment netting systems; offshore large-dollar multilateral payment netting systems; multilateral foreign exchange clearinghouses involving settlements in U.S. dollars; and multicurrency payment netting systems involving settlements in U.S. dollars. The Board is proposing to incorporate into the new policy statement minimum standards for the design and operation of privately operated large-dollar multilateral netting systems. These minimum standards are based on those set out in the *Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries* ("Lamfalussy Report"), which was published in November 1990 by the Bank for International Settlements. The Board is also requesting comment on the need for, and possible specifications of, a higher standard with respect to assuring settlement that might be applied to large-dollar multilateral netting systems that present a high degree of systemic risk.

DATES: Comments must be received on or before October 17, 1994.

ADDRESSES: Comments should refer to Docket No. R–0842, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or to the security control room anytime. Both Room B–2222 and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452–2360), Paul Bettge, Manager (202/452–3174), Kelly Shaw, Project Leader (202/452–3054), Division of Reserve Bank Operations and Payment Systems; or Oliver Ireland, Associate General Counsel (202/452–3625), Stephanie Martin, Senior Attorney (202/452–3198), Legal Division, Board of Governors of the Federal Reserve System; for the hearing impaired *only*, Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Board's current Policy Statement on Payments System Risk incorporates two policies directed specifically at large-dollar funds transfer systems: "Private Large-Dollar Funds Transfer Networks" and "Offshore Dollar-Clearing and Netting Systems." Neither of these policies addresses multicurrency clearing and settlement arrangements involving settlements in U.S. dollars, such as the multilateral foreign exchange clearinghouses that are under development in North America and Europe. Further, the Board intended its existing policy statement on "Offshore Dollar-Clearing and Netting Systems" to be an interim measure until an international consensus was reached among central banks on the minimum standards for the development and operation of multilateral cross-border netting systems.

That consensus was reached with the 1990 publication of the *Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries* ("Lamfalussy Report"). The Lamfalussy Report recognized that multilateral netting arrangements for interbank payment orders and forward-value contractual commitments, such as foreign exchange contracts, have the potential to improve the efficiency and the stability of interbank settlements through the reduction of settlement costs, along with credit and liquidity risks, provided that certain conditions are met. In this regard, the report developed and discussed, in some detail, "Minimum Standards for Netting Schemes" ("Lamfalussy Minimum Standards") and "Principles for Co-operative Central Bank Oversight" of such arrangements.

Central banks have now had a period of time to analyze the practical implications of the Lamfalussy Minimum Standards, and the Board believes that it would be appropriate to revise its "Policy Statement on Payments System Risk" to incorporate the Lamfalussy Minimum Standards and to address explicitly privately operated, large-dollar multicurrency netting arrangements involving settlements in U.S. dollars.[1] The Board is proposing to integrate its policies on "Private Large-Dollar Funds Transfer Networks" and "Offshore Dollar-Clearing and Netting Systems" into a single comprehensive policy on "Privately Operated Large-Dollar Multilateral Netting Systems" that would include the Lamfalussy Minimum Standards. Large-dollar multilateral, multicurrency netting systems would be covered by the same policy.

Scope and Application of the Policy

Specifically, the Board's proposed policy statement would apply to such arrangements as domestic, privately operated, large-dollar multilateral payment netting systems; offshore large-dollar multilateral payment netting systems; multilateral foreign exchange clearinghouses involving settlements in U.S. dollars; and multicurrency payment netting systems involving settlements in U.S. dollars. The inclusion of multilateral foreign exchange clearinghouses and multicurrency payment netting systems involving a settlement in U.S. dollars represents an expansion of existing policy, as neither of these arrangements are covered explicitly by the Board's current policy statement on payment system risk. The Board is proposing to apply the policy statement to such systems if they meet certain size criteria, in order to cover more completely the range of multilateral netting systems involving settlements in U.S. dollars that have the potential to increase systemic risk in the financial markets. These arrangements have the potential to generate the same types of risks as single currency systems. Moreover, the Lamfalussy Minimum Standards were developed explicitly to address, among other things, risks in multilateral foreign exchange netting arrangements.

The Board's proposed policy statement contains criteria that delimit the scope and application of the policy. Specifically, the policy will apply to systems that: (1) have three or more participants that net payments or foreign exchange contracts involving the U.S. dollar, whether or not netted amounts are legally binding; and either (2) have, or are likely to have, on any day, settlements with a system-wide aggregate value of net settlement credits (or debits) larger than $500 million (in U.S. dollars and any foreign currencies combined); or (3) routinely process individual payments or foreign exchange contracts, with a stated dollar value larger than $500,000. A multilateral netting system that meets the above criteria will be subject to the policy if (1) it is a state-chartered member of the Federal Reserve System,

[1] The Lamfalussy Minimum Standards have been endorsed by the European Union central banks as minimum standards for domestic large-value netting systems within the European Union.

(2) any of its agent(s) or participants are state-chartered members of the Federal Reserve System, (3) its participants' net positions are settled through a Federal Reserve settlement account, (4) its participants settle their net positions in the multilateral netting system through their individual Federal Reserve accounts or the Federal Reserve account of the settlement agent(s), or (5) one or more bank holding companies have an investment in the multilateral netting system. The Board believes that these relatively simple criteria will enable the operators of multilateral netting systems to determine when they are subject to the policy and will provide that only systems which present systemic risk will be covered.

The Board believes that the Lamfalussy Minimum Standards may apply, for example, to all large-dollar multilateral payment netting systems irrespective of the type of financial instrument or contractual obligation netted by the system. However, the Board recognizes that in the case of privately operated large-dollar multilateral netting systems for the batch processing of paper-based as well as electronic payments, including privately operated Automated Clearing House ("ACH") systems, certain electronic controls that would be required to implement the Lamfalussy Minimum Standards may not be feasible. Further, the rights and responsibilities of parties within such systems as well as the characteristics of the instruments to be cleared or netted require further analysis. Consequently, the Board intends to study further the implications of the Lamfalussy Minimum Standards, and the arrangements to implement the Lamfalussy Minimum Standards, for privately operated large-dollar multilateral netting systems for the batch processing of paper-based as well as electronic payments. The Board expects that it may issue, in due course, a proposal for minimum standards for the design and operation of such systems.

Implementation of the Lamfalussy Minimum Standards

The Board believes that large-dollar multilateral netting systems, whether on-shore or off-shore, should meet in full the Lamfalussy Minimum Standards, as set forth in the proposed policy statement. The Board has developed five risk management measures that a large-dollar multilateral netting system would be expected to implement in order to satisfy Lamfalussy Minimum Standards III and IV, which deal with risk management and settlement completion. Risk management devices that lead to a substantially equivalent degree of risk management and control could also be adopted, as approved by the Board on a case-by-case basis. The proposed measures are: (1) a requirement that each participant establish bilateral net credit limits vis-a-vis each other participant in the system; (2) establish and monitor in real time system-specific net debit limits; (3) establish a system to reject or hold any payment or foreign exchange contract that would exceed the relevant bilateral and net debit limits; (4) establish liquidity resources, such as cash, committed lines of credit secured by collateral, or a combination thereof, at least equal to the largest single net debit position;[2] and (5) establish rules and procedures for the sharing of credit losses among the participants in a netting system.

The first two measures are contained in the Board's existing policy statement on Private Large-Dollar Funds Transfer Networks. The third measure is also contained in the existing policy statement but it applies only to bilateral net credit limits. In the proposed policy statement, the Board has expanded the third measure to apply also to system-specific net debit limits. Requirements (4) and (5) are new and would help ensure that the funds needed for settlement are available to multilateral clearing organizations at the proper moment and clarify how any losses will affect participants.

Timeframe for Implementation of the Lamfalussy Minimum Standards

The Board recognizes that not all existing large-dollar multilateral netting systems may meet the Lamfalussy Minimum Standards, and the associated requirements for implementation of those standards, contained in the proposed policy statement. The Board also recognizes that existing large-dollar multilateral netting systems will need a period of time in which to make any needed changes to their organization or operations. Consequently, the Board believes that an eighteen-month transition period would be appropriate for large-dollar multilateral netting systems that are operating on the date of any final action by the Board on the proposed policy. Such systems will be expected to comply fully with the policy statement within the eighteen-month transition period. Large-dollar multilateral netting systems established subsequent to the date of final adoption of the policy by the Board will be expected to comply fully with the policy statement, without benefit of a transition period.

[2] The term "largest single net debit position" means the largest intraday net debit position of any individual participant at any time during the daily operating hours of the netting system.

Specific Issues on Which the Board Seeks Comment

The Board seeks comment on all aspects of the proposed policy statement. In addition, the Board is seeking comment on the following specific issues:

1. The proposed criteria for identifying large-dollar multilateral netting systems subject to the policy statement.

- Are the thresholds for system-wide aggregate daily net settlement debits or credits, as well as for the size of individual transactions, set at appropriate levels such that the policy will apply to those systems that pose systemic risk?
- Are there other criteria the Board should consider in the determination of whether to apply the policy to a particular system?

2. The five risk management measures for implementation of the Lamfalussy Minimum Standards.

- Do the requirements provide operators of large-dollar multilateral netting systems with appropriate and adequate mechanisms to control the credit, liquidity, and settlement risks inherent in such systems?
- What additional risk management measures would be useful?
- What alternative mechanisms would provide substantially equivalent degrees of risk management and control?

3. The timeframe for implementation of the Lamfalussy Minimum Standards.

- Does the proposed eighteen-month transition period provide existing large-dollar multilateral netting systems with sufficient time to make any organizational or operational changes needed to meet the Lamfalussy Minimum Standards?

The Board also seeks comment on whether large-dollar multilateral netting systems that present a high degree of systemic risk should be expected to meet a standard for ensuring settlement that is higher than Lamfalussy Minimum Standard IV. Standard IV requires that a netting system be capable of ensuring the completion of daily settlement in the event that the participant with the *largest* net debit position is unable to settle its obligation to the system. For example, the Board could require that certain large-dollar multilateral netting systems would be expected to ensure timely completion of daily settlement in the event of an inability to settle by the participant with the largest net debit position, as well as the participants with the second or third largest net debit positions.

In multilateral netting systems that extend credit among participants, the failure of a participant could trigger a chain of defaults and liquidity problems at other participants or in the financial markets more generally. This concern is the basis for Lamfalussy Minimum Standard IV, which ensures that a default by a single net debtor, including the largest, will not, by itself, initiate a chain of defaults within the netting arrangement. A requirement that a netting system be able to ensure daily settlement in the event of settlement defaults by participants in addition to the largest net-debtor would be based on the risk of a simultaneous default by two or more participants. Such an event could be precipitated by financial market difficulties in the country of origin of the defaulting participants, or some other market disturbance that could cause financial institutions with similar or interlinked assets and liabilities simultaneously to experience liquidity or credit problems. Such simultaneous defaults, however, may be much less likely than a single default, and the incremental expected costs and benefits of requiring multilateral netting systems to meet a higher standard than Lamfalussy Minimum Standard IV must be carefully weighed.[3]

An additional consideration is which multilateral netting systems should be expected to meet a higher standard. The Board anticipates that any higher standard would be applied only to multilateral netting systems that present a high degree of systemic risk. In determining this degree of systemic risk, the Board could, as an example, utilize a threshold approach in which systems that exceed a particular measure would be expected to meet the higher standard. Such measures might include: (1) a specific dollar amount of the aggregate system-wide net debit positions; (2) the ratio of the net debit positions of selected members of a particular multilateral netting system relative to their capital; or (3) the ratio of an aggregate measure of net debit positions

[3] For example, costs would presumably include the opportunity cost of pledging collateral to ensure settlement and of taking any other steps to ensure that funds will be available for settlement, while benefits would include avoidance of potential credit losses, liquidity effects, or both, through the greater protection afforded by a higher standard. The expected benefits, in particular, may be difficult to quantify. In addition, there may well be other measures of costs and benefits that would be appropriate to apply in the analysis of a higher standard.

inability to settle by the participant with the largest net debit position, as well as the participants with the second or third largest net debit positions.

In multilateral netting systems that extend credit among participants, the failure of a participant could trigger a chain of defaults and liquidity problems at other participants or in the financial markets more generally. This concern is the basis for Lamfalussy Minimum Standard IV, which ensures that a default by a single net debtor, including the largest, will not, by itself, initiate a chain of defaults within the netting arrangement. A requirement that a netting system be able to ensure daily settlement in the event of settlement defaults by participants in addition to the largest net-debtor would be based on the risk of a simultaneous default by two or more participants. Such an event could be precipitated by financial market difficulties in the country of origin of the defaulting participants, or some other market disturbance that could cause financial institutions with similar or interlinked assets and liabilities simultaneously to experience liquidity or credit problems. Such simultaneous defaults, however, may be much less likely than a single default, and the incremental expected costs and benefits of requiring multilateral netting systems to meet a higher standard than Lamfalussy Minimum Standard IV must be carefully weighed.[3]

An additional consideration is which multilateral netting systems should be expected to meet a higher standard. The Board anticipates that any higher standard would be applied only to multilateral netting systems that present a high degree of systemic risk. In determining this degree of systemic risk, the Board could, as an example, utilize a threshold approach in which systems that exceed a particular measure would be expected to meet the higher standard. Such measures might include: (1) a specific dollar amount of the aggregate system-wide net debit positions; (2) the ratio of the net debit positions of selected members of a particular multilateral netting system relative to their capital; or (3) the ratio of an aggregate measure of net debit positions to the capital of a central counterparty (if one is used).

The Board is seeking specific comments on:

4. Application of a higher standard for individual large-dollar multilateral netting systems that may present a high degree of systemic risk.

- What factors should be considered in analyzing the incremental expected costs and benefits of requiring multilateral netting systems to meet a higher standard than Lamfalussy Minimum Standard IV?
- Should a quantitative threshold level be established? What indicator or indicators should be employed in setting a threshold?

Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payments system participants.[4] Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications would mitigate the adverse competitive effects, the Board will determine whether the anticipated benefits are significant enough to proceed with the change despite the adverse effects.

The Board does not believe that the Lamfalussy Minimum Standards will have a direct and material impact on the ability of other service providers to compete effectively with the Reserve Banks' payments services. The Board notes that in several cases the payment services potentially covered by the policy statement are not offered by the Federal Reserve Banks. For example, the Federal Reserve Banks do not offer services relating to the electronic clearing and settlement of payments or contracts in foreign currencies.

In the case of domestic large-dollar multilateral netting systems, a number of the risk control measures proposed to meet the Lamfalussy Minimum Standards as well as certain of the standards themselves have grown out of the experience of the private sector in developing robust netting arrangements and are currently employed in multilateral netting systems. To the extent an incremental burden might be imposed on large-dollar systems, the need to reduce and control the large potential systemic risks of such systems would justify the adoption of prudent standards and measures to control risk. The Board does not expect at this time, however, that the adoption of the Lamfalussy Minimum Standards would have a direct and material impact on the ability of other service providers to compete with the Federal Reserve Banks.

Federal Reserve System Policy Statement on Payments System Risk

The Board proposes to amend its "Federal Reserve System Policy Statement on Payments System Risk" under the heading "II. Policies for Private-Sector Networks" by replacing in the heading the word "Networks" with the word "Systems;" deleting "A. Private Large-Dollar Funds Transfer Networks" in its entirety and replacing that part with "A. Privately Operated Large-Dollar Multilateral Netting Systems;" and deleting "C. Offshore Dollar Clearing and Settlement Systems" and redesignating "D. Private Small-Dollar Clearing and Settlement Systems" as "C. Private Small-Dollar Clearing and Settlement Systems."

II. Policies For Private-Sector Systems

A. Privately Operated Large-Dollar Multilateral Netting Systems

Large-dollar multilateral netting systems can create a significant degree of credit and liquidity risk for their participants and also expose the U.S. payments system and financial markets to systemic risk. In the context of large-dollar multilateral netting systems, systemic risk is the risk that the inability of one institution within such a system, including a central counterparty if one exists, to meet its obligations when due will lead to the illiquidity or failure of other institutions, either within the particular system or in the financial markets as a whole.

Large-dollar multilateral netting systems may produce efficiencies in the clearance and settlement of payments and financial contracts. At the same time, multilateral netting may obscure, concentrate, and redistribute the credit and liquidity risks associated with clearance and settlement. As the size of netted positions increases, for example, so do the potential liquidity effects on such systems and their participants, as well as third parties, in the event of a settlement failure. In addition, if the high volumes of interrelated large-value financial contracts and payments, which

[3] For example, costs would presumably include the opportunity cost of pledging collateral to ensure settlement and of taking any other steps to ensure that funds will be available for settlement, while benefits would include avoidance of potential credit losses, liquidity effects, or both, through the greater protection afforded by a higher standard. The expected benefits, in particular, may be difficult to quantify. In addition, there may well be other measures of costs and benefits that would be appropriate to apply in the analysis of a higher standard.

[4] These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System," as revised in March 1990. (55 FR 11648, March 29, 1990).

reflect money and capital market activity, are not settled in a timely manner, there is a significant potential for widespread financial market disruption.

Certain types of netting system rules may also create sizable systemic liquidity risks, if employed by systems that process large-value payments that are central to the operation of financial markets. For example, privately operated payment systems that permit a system operator to unwind, recast, or otherwise reverse same-day funds transfers made by system participants, whether for reasons of general financial market stress or because of the inability of a system participant to settle its obligations on time, can obscure and greatly increase the level of systemic liquidity risk associated with the system. As a general matter, the Board does not view a same-day recast, unwind, or reversal of payments as a satisfactory mechanism for managing liquidity and settlement risks in large-dollar multilateral netting arrangements.

The Board also recognizes that the development of offshore multilateral netting systems for large-dollar payments and foreign exchange contracts may raise concerns about systemic risk that extend beyond the potential for disturbances to payment and settlement systems, or financial markets, in the United States. For example, the offshore clearing of U.S. dollar payments, for subsequent net settlement in the United States, may create transactional and other efficiencies for participants in such offshore systems. At the same time, these arrangements have the potential to concentrate settlement risks at clearing organizations and their associated settlement agents either in the United States or abroad. If the allocation of credit and liquidity risks associated with the netting is not clearly defined, understood, and managed, offshore dollar-clearing arrangements may also obscure, or even increase, the level of systemic risk in U.S. and offshore large-dollar payments systems, as well as in the international dollar settlement process. Poorly designed and managed systems may, therefore, increase risks to the international banking and financial system. In addition, offshore arrangements have the potential to operate without sufficient official oversight.

As the Federal Reserve implements fees for daylight overdrafts, along with other risk management measures, it also is important that risks not simply be shifted from the Federal Reserve's payment services to private, inadequately structured multilateral netting arrangements, either domestically or in other countries. For example, the Board has been concerned that the steps being taken to reduce systemic risk in U.S. large-dollar payments systems may themselves induce the further development of "offshore" large-dollar multilateral netting systems. These offshore systems can settle directly through payments on Fedwire or indirectly through a private large-dollar clearing system, which in turn settles on a net basis using Fedwire.

In response to potential systemic risks and the possibility that efforts to avoid risk controls will lead to inadequately structured and managed systems, the Board is adopting minimum standards within which privately operated large-dollar multilateral netting systems should operate. The minimum standards apply whether or not these systems operate domestically or in other countries. These minimum standards are identical to those set out in the *Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries* (Lamfalussy Report).[5] The Board recognizes that from time to time, in specific cases, questions of interpretation of these standards, as they apply to large-dollar multilateral netting systems, may have to be resolved by the Board.

It is important to note that the Board's adoption of the Lamfalussy Minimum Standards in no way diminishes the primary responsibilities of participants in, and operators of, large-dollar netting systems for ensuring that these systems have adequate credit, liquidity, and operational safeguards. It is the Board's intent to heighten awareness of the risks associated with multilateral netting arrangements and of the need for their prudent management. The Board also seeks to provide the financial system with a set of minimum criteria, which have been discussed by the G–10 central banks, against which structural and risk management features of large-dollar multilateral netting systems can be evaluated.

[5] In November 1990, the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries produced a report on multilateral netting schemes. The Committee was chaired by Mr. Alexandre Lamfalussy, General Manager of the Bank for International Settlements. That report recognized that netting arrangements for interbank payment orders and forward-value contractual commitments, such as foreign exchange contracts, have the potential to improve the efficiency and the stability of interbank settlements through the reduction of costs along with credit and liquidity risks, provided certain conditions are met. In this regard, the Lamfalussy Report developed and discussed, in some detail, both "Minimum Standards for Netting Schemes" and "Principles for Co-operative Central Bank Oversight" of such arrangements.

Scope and Application of the Policy

This policy statement is directed toward any privately operated, multilateral netting system that settles, or seeks to settle, U.S. dollar obligations through payments affecting one or more accounts at Federal Reserve Banks, either directly or indirectly ("multilateral netting systems"). Multilateral netting systems include clearing house organizations, with or without a central counterparty, for netting payments or foreign exchange contracts among financial institutions.

The scope of the policy statement is limited to multilateral netting systems that involve large-dollar settlements or payments. In particular, such systems that: (1) have three or more participants that net payments or foreign exchange contracts involving the U.S. dollar, whether or not netted amounts are legally binding; and either (2) have, or are likely to have, on any day, settlements with a system-wide aggregate value of net settlement credits (or debits) larger than $500 million (in U.S. dollars and any foreign currencies combined); or (3) routinely process individual payments or foreign exchange contracts, with a stated dollar value larger than $500,000.

A multilateral netting system that meets the above criteria is subject to the policy if (1) it is a state-chartered member of the Federal Reserve System, (2) any of its agent(s) or participants are state-chartered members of the Federal Reserve System, (3) its participants' net positions are settled through a Federal Reserve settlement account, (4) its participants settle their net positions in the multilateral netting system through their individual Federal Reserve accounts or the Federal Reserve account of the settlement agent(s), or (5) one or more bank holding companies have an investment in the multilateral netting system. The Board also reserves the right to apply the elements of this policy to any non-dollar system based, or operated, in the United States that engages in the multilateral clearing or netting of non-dollar payments among financial institutions and that would otherwise be subject to this policy. This policy does not apply to systems dealing with exchange-traded futures and options. Systems in the United States that undertake only the clearance and settlement of debt and equity securities are subject to the Board's policy statement on "Private Delivery-Against-Payment Securities Systems."

In applying the policy, the Board seeks to distinguish between routine banking relationships and arrangements that create a multilateral "system" for clearing and settling U.S. dollar payment and other obligations. This policy statement is not intended to apply to routine bilateral relationships between financial institutions, such as those involved in correspondent banking. In certain borderline cases, for example involving netting systems operated by a single financial institution and that combine elements of bilateral and multilateral netting, a case-by-case determination that an arrangement is a large-dollar multilateral netting system may be necessary for the purpose of applying this policy statement.

In general, the participation in, and operation of, a multilateral netting system is governed by rules and procedures designed to facilitate multilateral clearance and settlement. Settlement risks are typically shared by the participants in some fashion, either implicitly or through employment of explicit loss-sharing and liquidity arrangements. In contrast, correspondent banking relationships generally focus on bilateral relationships and risks; the risk of a settlement failure typically falls, at least initially and sometimes primarily, on the service provider's or settlement agent's liquidity and capital.

The Board believes that the Lamfalussy Minimum Standards may apply, for example, to all large-dollar multilateral payment netting systems irrespective of the type of financial instrument or contractual obligation netted by the system. However, the Board recognizes that in the case of privately operated large-dollar multilateral netting systems for the batch processing of paper-based as well as electronic payments, including privately operated Automated Clearing House (ACH) systems, certain electronic controls that would be required to implement the Lamfalussy Minimum Standards may not be feasible. Further, the rights and responsibilities of parties within such systems may require further analysis. Consequently, the Board intends to study further the implications of the Lamfalussy Minimum Standards, and the arrangements to implement the Lamfalussy Minimum Standards, for privately operated large-dollar multilateral netting systems for the batch processing of paper-based as well as electronic payments. As such, the Board does not intend to apply the Lamfalussy Minimum Standards to these systems at this time.

banking relationships and arrangements that create a multilateral "system" for clearing and settling U.S. dollar payment and other obligations. This policy statement is not intended to apply to routine bilateral relationships between financial institutions, such as those involved in correspondent banking. In certain borderline cases, for example involving netting systems operated by a single financial institution and that combine elements of bilateral and multilateral netting, a case-by-case determination that an arrangement is a large-dollar multilateral netting system may be necessary for the purpose of applying this policy statement.

In general, the participation in, and operation of, a multilateral netting system is governed by rules and procedures designed to facilitate multilateral clearance and settlement. Settlement risks are typically shared by the participants in some fashion, either implicitly or through employment of explicit loss-sharing and liquidity arrangements. In contrast, correspondent banking relationships generally focus on bilateral relationships and risks; the risk of a settlement failure typically falls, at least initially and sometimes primarily, on the service provider's or settlement agent's liquidity and capital.

The Board believes that the Lamfalussy Minimum Standards may apply, for example, to all large-dollar multilateral payment netting systems irrespective of the type of financial instrument or contractual obligation netted by the system. However, the Board recognizes that in the case of privately operated large-dollar multilateral netting systems for the batch processing of paper-based as well as electronic payments, including privately operated Automated Clearing House (ACH) systems, certain electronic controls that would be required to implement the Lamfalussy Minimum Standards may not be feasible. Further, the rights and responsibilities of parties within such systems may require further analysis. Consequently, the Board intends to study further the implications of the Lamfalussy Minimum Standards, and the arrangements to implement the Lamfalussy Minimum Standards, for privately operated large-dollar multilateral netting systems for the batch processing of paper-based as well as electronic payments. As such, the Board does not intend to apply the Lamfalussy Minimum Standards to these systems at this time.

Lamfalussy Minimum Standards for the Design and Operation of Privately-Operated Large-Dollar Multilateral Netting Systems

The Federal Reserve's policy on privately operated large-dollar multilateral netting systems is designed to strike an appropriate balance between the requirements of market efficiency and payments system stability. A direct means of achieving this balance is to ensure that large-dollar multilateral netting systems are designed and operated so that the participants and service providers have both the incentives and the ability to manage the associated credit and liquidity risks. The Board's approach to privately operated large-dollar multilateral netting systems will be guided by the following minimum standards for such systems:[6]

1. Netting systems should have a well-founded legal basis under all relevant jurisdictions.

2. Netting system participants should have a clear understanding of the impact of the particular system on each of the financial risks affected by the netting process.

3. Multilateral netting systems should have clearly-defined procedures for the management of credit risks and liquidity risks which specify the respective responsibilities of the netting provider and the participants. These procedures should also ensure that all parties have both the incentives and the capabilities to manage and contain each of the risks they bear and that limits are placed on the maximum level of credit exposure that can be produced by each participant.

4. Multilateral netting systems should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single net debit position.

5. Multilateral netting systems should have objective and publicly-disclosed criteria for admission which permit fair and open access.

6. All netting systems should ensure the operational reliability of technical systems and the availability of backup facilities capable of completing daily processing requirements.

The Federal Reserve reserves the right to prohibit the use of Federal Reserve payment services to support funds transfers that are used to settle, directly or indirectly, obligations on large-dollar multilateral netting systems that do not meet the Lamfalussy Minimum Standards. The Federal Reserve will also take appropriate supervisory steps, or refer matters to the appropriate supervisory or regulatory authority, in cases of systems not in compliance with the aforementioned Lamfalussy Minimum Standards, or their equivalent. Moreover, in order for Federal Reserve Banks to monitor properly the use of intraday credit, no future or existing privately operated large-dollar multilateral netting system will be permitted to settle on the books of a Federal Reserve Bank unless its participants authorize the system to provide position data to the Reserve Bank on request.

Implementation of the Lamfalussy Minimum Standards

The Board believes that large-dollar multilateral netting systems, whether onshore or offshore, should meet in full the Lamfalussy Minimum Standards, as set forth in this policy statement. In order to satisfy the Lamfalussy Minimum Standards, the Board expects that individual large-dollar multilateral netting systems will meet the following risk management standards, or their equivalent: (1) a requirement that each participant establish bilateral net credit limits vis-a-vis each other participant in the system; (2) establish and monitor in real-time system-specific net debit limits for each participant; (3) establish real-time controls to reject or hold any payment or foreign exchange contract that would exceed the relevant bilateral and net debit limits; (4) establish liquidity resources, such as cash, committed lines of credit secured by collateral, or a combination thereof, at least equal to the largest single net debit position;[7] and (5) establish rules and procedures for the sharing of credit losses among the participants in the netting system. The Board will consider, on a case-by-case basis, alternative risk management measures that provide for risk management systems and controls that are equivalent to the five measures listed above. The Board notes that the Lamfalussy Minimum Standards and the arrangements to implement the Lamfalussy Minimum Standards, as discussed above, in no way diminish the responsibilities of the participants in, and the operator of, a large-dollar multilateral netting system to determine

[6] These standards are identical to the minimum standards for netting systems in the Lamfalussy Report, with the exception that the words "netting system" have been substituted for "netting scheme" in minimum standards one, two, and six, and the words "particular system" have been substituted for "particular scheme" in standard two

[7] The term "largest single net debit position" means the largest intraday net debit position of any individual participant at any time during the daily operating hours of the netting system.

if additional safeguards would be appropriate.

Timeframe for Implementation of the Lamfalussy Minimum Standards

The Board recognizes that not all existing large-dollar multilateral netting systems may meet the Lamfalussy Minimum Standards, and the associated requirements for implementation of those standards, set forth in this policy statement. The Board also recognizes that existing large-dollar multilateral netting systems will need a period of time in which to make any needed changes to their organization and operations. Consequently, the Board believes that an eighteen-month transition period would be appropriate for large-dollar multilateral netting systems that are operating on [insert date of final adoption by the Board]. Such systems will be expected to comply fully with the policy statement by [insert date eighteen months after the date of final adoption by the Board]. Large-dollar multilateral netting systems established subsequent to [insert date of final adoption by the Board] will be expected to comply fully with the policy statement, without benefit of a transition period.

The Board intends to review periodically the scale and nature of the credit, liquidity, and settlement risks in privately operated large-dollar multilateral netting systems. Operators of such systems should ensure that as the scale of risks in their systems increase, risk management systems are designed and operated to control the increased scale of risk. The Board expects that over time, whenever systems are changed or redesigned, significant attention will be given to the issue of risk management in order to ensure that high standards of risk control are achieved.

In addition, offshore, large-dollar multilateral netting systems and multicurrency netting systems should at a minimum be subject to oversight or supervision, as a system, by the Federal Reserve, or by another relevant central bank or supervisory authority. The Board recognizes that central banks have common policy objectives with respect to large-value netting arrangements. Accordingly, the Board expects that it will cooperate, as necessary, with other central banks and foreign banking supervisors in the application of the aforementioned Lamfalussy Minimum Standards to offshore and multicurrency systems. In this regard, the Principles for Co-operative Central Bank Oversight outlined in the Lamfalussy Report provide an important international framework for cooperation.

By order of the Board of Governors of the Federal Reserve System, July 12, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–17330 Filed 7–15–94; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0038, Uniform Tender of Rates and/or Charges for Transportation Services, OF 280.

The OF 280 standardizes the language and methodology for the mutual benefit of the carriers and the Government when copies of rate tenders are submitted under the provisions of 49 U.S.C. 10721.

AGENCY: Federal Supply Service, GSA.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets, NW, Washington, DC 20405.

ANNUAL REPORTING BURDEN: 13,500 responses per year; 1 hour per response; annual burden hours 13,500.

FOR FURTHER INFORMATION CONTACT: Edward Kelliher (703–305–7389).

COPY OF PROPOSAL: A copy of this proposal may be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F Street, NW, Washington, DC 20405, or by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: July 8, 1994.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 93–17310 Filed 7–15–93; 8:45 am]

BILLING CODE 6820–24–M

New Border Station, Highgate Springs, VT

On January 13, 1994, the General Services Administration (GSA) published a Notice of Intent in the **Federal Register** to prepare an Environmental Impact Statement (EIS) relating to the planned construction of a new Border Station at Highgate Springs, Vermont. Subsequently, a Scoping Meeting was held on March 8, 1994, in furtherance of this stated intent. For the reasons outlined below, the GSA has determined that an Environmental Assessment (EA) will satisfy National Environmental Protection Act requirements for the level of construction anticipated at this time.

Subsequent to Congressional authorization and funding of this project, it was determined that there was a need to expand the scope of the project to include a facility for the capture and temporary, short term storage of hazardous materials that might be accidentally discharged from trucks being inspected upon entering the United States. Because of the potential environmental impacts associated with the transportation, handling, and storage of hazardous materials, GSA determined that it was in the best interests of the Government and the public to prepare an EIS.

GSA has now determined that the construction of the facilities for handling hazardous materials will not be undertaken at this time. The construction of the Border Station, however, is still scheduled to commence in September of 1994.

If, in the future, GSA determines that the construction of the facilities for handling hazardous materials is necessary, GSA will initiate a second EA to assess the potential impacts of this additional facility. In the event that the second EA does not result in a Finding Of No Significant Impact (FONSI), GSA will proceed with the preparation of an EIS, pursuant to GSA regulations.

For further information please contact Mr. Peter A. Sneed, Director of Planning Staff, Public Buildings Service, General Services Administration, 26 Federal Plaza, Room 1609, New York, New York 10278. Telephone: (212) 264–3581.

Issued in New York, NY on July 8, 1994.

William B. Jenkins,

Acting Regional Administrator, General Services Administration.

[FR Doc. 94–17311 Filed 7–15–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Supplemental Awards to Current Community Partnership Demonstration Program Grantees

AGENCY: Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Availability of Supplemental Funds for Six Currently Funded Grantees in the Center for Substance Abuse Prevention's Community Partnership Demonstration Grant Program.

SUMMARY: This notice informs the public that CSAP is making available approximately $300,000 in Fiscal Year 1994 for six supplemental awards to existing grantees in its Community Partnership Program (CPP). The supplemental funding is intended to enable these grantees to assume the lead role for substance abuse prevention services and collaborate with six Department of Justice (DOJ) funded Weed and Seed projects selected as sites for a National Performance Review (NPR) Laboratory in support of anti-crime and social service delivery strategies. A criterion for selection of the NPR sites is the existence of a CSAP Community Partnership grant in the community. The total number of NPR applicants will therefore be limited to twelve cities where this criterion is met. The six Partnership grants will be identified as soon as the DOJ completes its reviews and determines the priority scores for selection of the six NPR sites. Only these partnership grantees geographically collocated with the NPR sites will then be eligible to apply for the CSAP supplemental funding. The need for collocation requires this noncompetitive selection by CSAP, to support the competitively selected NPR sites.

This funding will implement HHS' commitment to a Memorandum of Understanding among the U.S. Departments of Justice, Housing and Urban Development, Labor, Agriculture, and Health and Human Services. The Department Heads have expressed support for the Administration's principle that the Federal Government should use its resources in concert to respond more effectively to community needs.

The NPR lab will focus on enhancing Federal support for comprehensive community strategies that utilize

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Supplemental Awards to Current Community Partnership Demonstration Program Grantees

AGENCY: Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Availability of Supplemental Funds for Six Currently Funded Grantees in the Center for Substance Abuse Prevention's Community Partnership Demonstration Grant Program.

SUMMARY: This notice informs the public that CSAP is making available approximately $300,000 in Fiscal Year 1994 for six supplemental awards to existing grantees in its Community Partnership Program (CPP). The supplemental funding is intended to enable these grantees to assume the lead role for substance abuse prevention services and collaborate with six Department of Justice (DOJ) funded Weed and Seed projects selected as sites for a National Performance Review (NPR) Laboratory in support of anti-crime and social service delivery strategies. A criterion for selection of the NPR sites is the existence of a CSAP Community Partnership grant in the community. The total number of NPR applicants will therefore be limited to twelve cities where this criterion is met. The six Partnership grants will be identified as soon as the DOJ completes its reviews and determines the priority scores for selection of the six NPR sites. Only these partnership grantees geographically collocated with the NPR sites will then be eligible to apply for the CSAP supplemental funding. The need for collocation requires this noncompetitive selection by CSAP, to support the competitively selected NPR sites.

This funding will implement HHS' commitment to a Memorandum of Understanding among the U.S. Departments of Justice, Housing and Urban Development, Labor, Agriculture, and Health and Human Services. The Department Heads have expressed support for the Administration's principle that the Federal Government should use its resources in concert to respond more effectively to community needs.

The NPR lab will focus on enhancing Federal support for comprehensive community strategies that utilize Federal, State and local public and private resources. It is designed to: (1) identify obstacles and possible solutions which communities encounter in utilizing Federal resources when designing and implementing neighborhood-based programs. This will involve mapping the flow of Federal resources into the community; (2) assist neighborhoods to refine and enhance their anti-crime and social service delivery strategies, and evaluate their programs; and (3) implement flexible funding approaches which involve the leveraging of Federal, State, local public and private resources in support of a comprehensive strategy.

In order to receive a supplemental award, a grantee must have a minimum of one full project year remaining in the current grant as of September 30, 1994. Awards will be limited to one year and cannot exceed $50,000 in direct costs plus allowable indirect costs. The application receipt and review and the award process will be handled in an expedited manner. Those applications judged by an objective review panel to have sufficient technical merit to warrant funding will receive awards no later than September 30, 1994.

CONTACTS FOR FURTHER INFORMATION: Mr. David Robbins at (301) 443–9438 (Community Prevention and Demonstration Branch, Division of Community Prevention and Training), or Mr. Mel Segal at (301) 443–5266 (Office of Intergovernmental and External Affairs), CSAP, Rockwall II, 5600 Fishers Lane, Rockville, MD 20857.

Authority: Awards will be made under the authority of Section 516 of the Public Health Service Act, as amended.

The Catalog of Federal Domestic Assistance Number for the Community Partnership Demonstration Grant Program is 93.194.

Dated: July 12, 1994.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 94–17332 Filed 7–15–94; 8:45 am]

BILLING CODE 4162–20–P

Food and Drug Administration

[Docket No. 94M–0220]

Wesley-Jessen; Premarket Approval of Wesley-Jessen® Multi-Purpose Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Wesley-Jessen, Des Plaines, IL, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Wesley-Jessen® Multi-Purpose Solution. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 1, 1994, of the approval of the application.

DATES: Petitions for administrative review by August 17, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On December 19, 1991, Wesley-Jessen, Des Plaines, IL 60018, submitted to CDRH an application for premarket approval of the Wesley-Jessen® Multi-Purpose Solution. The device is a chemical disinfection solution and is indicated for use in the chemical (NOT HEAT) disinfection, cleaning, rinsing, and storage of soft (hydrophilic) contact lenses.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On June 1, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request

either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 17, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 1, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–17373 Filed 7–15–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0213]

Allergan Medical Optics; Premarket Approval of the Model PC–28LB Ultraviolet-Absorbing Posterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Medical Optics, Irvine, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Model PC–28LB ultraviolet-absorbing posterior chamber intraocular lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 26, 1994, of the approval of the application.

DATES: Petitions for administrative review by August 17, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donna L. Rogers, Center for Devices and Radiological Health (HFZ–463), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2053.

SUPPLEMENTARY INFORMATION: On February 8, 1990, Allergan Medical Optics, Irvine, CA 92718, submitted to CDRH an application for premarket approval of the Model PC–28LB ultraviolet-absorbing posterior chamber intraocular lens. This device is indicated for primary implantation for the visual correction of aphakia in persons 60 years of age or older where a cataractous lens has been removed by extracapsular cataract extraction methods. The lens is intended to be placed in either the ciliary sulcus or capsular bag.

On April 19, 1990, the Ophthalmic Devices Panel, an FDA advisory panel, reviewed and recommended approval of the application. On May 26, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 17, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 1, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–17374 Filed 7–15–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3758; FR–3707–N–02]

NOFA for Youth Initiative Under Public and Indian Housing Family Investment Centers: Amendment and Notice of Application Changes

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Amendment of NOFA and notice of application changes.

SUMMARY: This amendment extends the application due date and revises the application procedure for funds made available for the Public and Indian Housing Youth Development Initiative under Family Investment Centers (FIC). The NOFA for this program was published in the **Federal Register** on May 13, 1994 (59 FR 25262). Direct notice of the application changes also has been provided to persons who have already requested an application kit.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Office of Resident Initiatives, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4112, Washington, D.C. 20410; telephone (202) 708–4233. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: In order to provide potential applicants with sufficient time to complete their applications and address the revised application procedures, which have been provided directly to persons who have requested applications and are also set out in this notice, the Department is extending the deadline for applications under the NOFA for Youth Development Initiative Under Public and Indian Housing Family Investment Centers. The Department is also increasing the number of points available in the ranking factor that addresses the need for services by eligible residents under both the category for conversion/renovation/supportive services and the category for supportive services (only). Any applicant that has already submitted an application may elect to submit a revised application by July 29, 1994.

In addition, the Department clarifies that although term Service Coordinator is defined in the NOFA (59 FR 25263), the activities referenced in that definition should not be included as supportive services. The Service Coordinator salary should be listed as a separate line item in the grant application budget. This clarification is also indicated in the Youth Development Initiative Application Kit.

The Department is taking these actions based on its authority under 42 U.S.C. 1437t and 3535(d).

ACTION: Amendment of NOFA and notice of application changes.

SUMMARY: This amendment extends the application due date and revises the application procedure for funds made available for the Public and Indian Housing Youth Development Initiative under Family Investment Centers (FIC). The NOFA for this program was published in the **Federal Register** on May 13, 1994 (59 FR 25262). Direct notice of the application changes also has been provided to persons who have already requested an application kit.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Office of Resident Initiatives, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4112, Washington, D.C. 20410; telephone (202) 708–4233. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: In order to provide potential applicants with sufficient time to complete their applications and address the revised application procedures, which have been provided directly to persons who have requested applications and are also set out in this notice, the Department is extending the deadline for applications under the NOFA for Youth Development Initiative Under Public and Indian Housing Family Investment Centers. The Department is also increasing the number of points available in the ranking factor that addresses the need for services by eligible residents under both the category for conversion/renovation/supportive services and the category for supportive services (only). Any applicant that has already submitted an application may elect to submit a revised application by July 29, 1994.

In addition, the Department clarifies that although term Service Coordinator is defined in the NOFA (59 FR 25263), the activities referenced in that definition should not be included as supportive services. The Service Coordinator salary should be listed as a separate line item in the grant application budget. This clarification is also indicated in the Youth Development Initiative Application Kit.

The Department is taking these actions based on its authority under 42 U.S.C. 1437t and 3535(d).

Amendment of NOFA

Accordingly, FR Doc. 94–11610, the NOFA for Youth Development Initiative Under Public and Indian Housing Family Investment Centers, published at 59 FR 25262 (May 13, 1994), is amended as follows:

1. On page 25262, column 1, the second sentence in the paragraph following the heading "Dates" is revised to read as follows:

* * * The application deadline will be 4:30 p.m., local time, on July 29, 1994.

2. On page 25265, column 2, in the first paragraph under the heading "G. Ranking Factors" each of the two references to "150 points" is revised to read "170 points", and the last sentence is revised to read as follows:

* * * HUD may fund grants out of rank order based on project size and geographical diversity.

* * * * *

3. On page 25265, column 2, under the section headed "(1) *Conversion/Renovation/Supportive Services Activities"* in Section I.G of the NOFA, the parenthetical phrase immediately after the heading is revised to read "(Maximum 170 points)", and paragraph (a) is revised to read as follows:

(a) Evidence of the need for supportive services by eligible residents (30 points);

4. On page 25265, column 3, under the section headed "(2) *Supportive Services Only"* in Section I.G of the NOFA, the parenthetical phrase immediately after the heading is revised to read "(Maximum 170 points)", and paragraph (a) is revised to read as follows:

(a) Evidence of the need for supportive services by eligible youth (30 points);

Revision of Application Kit

5. In the Youth Development Application Kit, Tab 5 (Applicants for Funds to Provide Renovation/Conversion Activities/New Construction Activities (only)), the following cover sheets should be included with a submission:

G. Need for Supportive Services

Provide a description of the need for supportive services that will be provided in the proposed facility by eligible residents.

H. Description of Public/Private Assistance

Provide a description of public or private sources of assistance that can reasonably be expected to fund or provide supportive services, including evidence of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including nonprofit organizations).

I. Service Agency Certification

Provide a certification from an appropriate agency that the provision of supportive services is well designed to provide families better access to educational and employment opportunities and there is reasonable likelihood that such services will be provided for the entire period specified.

J. Evidence of Firm Commitment

Provide evidence of a firm commitment of assistance from one or more sources that ensures that the supportive services will be provided for not less than one year following the completion of activities under the NOFA. Evidence shall be in the form of a letter or a resolution.

K. Description of Plan for Continuing Services

Provide a description of the plan for continuing the operation of the Youth FIC and the provision of supportive services to families for at least one year following the completion of the activities funded.

Applicants should submit the above in addition to cover sheets "A" through "F" provided in the application kit under tab 5.

Date: July 12, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–17404 Filed 7–15–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–04–4120–03; WYW132706]

Coal Leases, Exploration Licenses, etc.; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as Subpart 3410, Title 43 Code of Federal Regulations, all interested parties are hereby invited to participate with

Carbon County UCG, Inc., on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Carbon County, Wyoming:

T. 21 N., R. 89 W., 6th P.M., Wyoming
Sec. 2: Lots 1 thru 4, S2N2, S2;
Sec. 12: All;
Sec. 14: All;
T. 22 N., R. 89 W., 6th P.M., Wyoming
Sec. 4: Lots 1 thru 4, S2N2, S2;
Sec. 8: All;
Sec. 22: All;
Sec. 26: All;
Sec. 28: All;
Sec. 34: All;
T. 23 N., R. 89 W., 6th P.M., Wyoming
Sec. 20: All;
Sec. 32: All.
Containing 7,031.87 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal. The purpose of the exploration program is to identify coal resources suitable for underground gasification.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW132706): BLM, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82003; and, BLM, Rawlins District Office, 1300 Third Street, Rawlins, WY 82301.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the *Daily Times* of Rawlins, WY, once each week for two consecutive weeks beginning the week of July 18, 1994, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Carbon County UCG, Inc., no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Kent McAllister, One Williams Center, P.O. Box 70, Tulsa, OK 74101–0070, and the BLM, Wyoming State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, § 3410.2–1(c)(1).

Vernon G. Rulli,

Acting Chief, Branch of Mining Law and Solid Minerals.

[FR Doc. 94–17325 Filed 7–15–94; 8:45 am]

BILLING CODE 4310–22–M

[CA–060–85–5101–10–B045, CA–31567]

Intent To Consider an Amendment to the California Desert Conservation Area Plan of 1980 and To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the California Desert District of the Bureau of Land Management (BLM), pursuant to regulatory procedures for land use planning under the Federal Land Policy and Management Act of 1976 (43 CFR 1610.5–5), intends to consider an amendment to the California Desert Conservation Area Plan for the purpose of identifying public land areas which may be suitable for wind energy development and to analyze the impacts of any proposed amendment and alternatives in an environmental impact statement (EIS). The primary purpose of this notice is to seek the public's assistance in identifying planning issues and concerns to be addresses in the plan amendment. This notice also satisfies the requirements of Section 102(2)(c) of the National Environmental Policy Act of 1969 which calls for a 30-day public scoping period for EISs to enable the public to identify environmental and other issues to be addressed in the EIS.

DATES: Written comments on this proposed plan amendment and associated EIS will be accepted on or before August 12, 1994. The public is also invited to make comments at the following public scoping meetings:

Tues., July 26, 1994
Recreation Hall, 6:30 p.m., Junction of "O" and Barstow Streets, Mojave, California
Wed., July 27, 1994
Recreation District Gym, 6:30 p.m., 410 West D St., Tehachapi, California
Thur., July 28, 1994
Weldon School, 6:30 p.m., Hwy 178 and Fay Ranch Rd., Weldon, California
Tues., August 9, 1994
Ed Oakly Hall, 6:30 p.m., Twin Oaks, California

A fourth public scoping meeting will also be held. Date and location is to be announced.

ADDRESSES: Please mail comments, issues and concerns to Ahmed Mohsen, Team Leader, Bureau of Land Management, Ridgecrest Resource Area, 300 S. Richmond Rd., Ridgecrest, CA 93555, Attn: Wind Energy PA/EIS.

FOR FURTHER INFORMATION CONTACT: Ahmed Moshen, Environmental Coordinator, at the above address (619) 375–7125.

SUPPLEMENTARY INFORMATION: The CDCA Plan Amendment/Environmental Impact Statement will study approximately 66,200 acres of public lands in the Mojave-Tehachapi Pass area in Kern County to determine the area's suitability for potential wind energy development.

The study was initiated after the BLM was approached by several energy companies interested in future development of public lands for wind energy.

BLM's Ridgecrest Resource Area, California Desert District, agreed to begin the administrative and environmental process contingent on the following: (1) A regional, ecosystem-based approach to defining the area of study, (2) long-term planning decisions rather than case-by-case approach, (3) a preparation of a plan amendment and an environmental impact statement (PA/EIS), (4) development is not guaranteed and will be based on the results of the PA/EIS and (5) the project proponents (Proponents) would fund the entire planning process.

Based on these conditions, BLM and the Proponents signed an agreement, early in 1993, to begin the process. Based on experience with wind energy development in the 1980s, BLM staff drew boundaries that encompassed both BLM and non-BLM administered lands in the general area. BLM held a competitive bid in September 1993, which brought $825,000 to the U.S. Treasury. Five companies successfully bid on approximately 24,000 acres. Successful wind energy bidders receive a preference right to file an application for the parcel(s) within the study area. If after completion of the EIS a parcel(s) is determined suitable, BLM will process the application.

Applications for parcels found unsuitable will be rejected. This preference right provides the necessary site control required by the California Public Utilities Commission.

Last year, BLM sent letters to adjacent landowners and placed notices in three local newspapers and the **Federal Register**. BLM also formed a Technical Review Team (TRT) that included representation of local residents, environmental groups, Heritage, outdoor activities/hunting, ranching/grazing and economic interests to help coordinate the study. The TRT has been meeting since July 1993 on a monthly basis and will be assisting BLM as needed throughout the process. These meetings are held every second Tuesday of each month and are open to the public.

Dated: July 12, 1994.

Lee Delaney,

Resource Area Manager.

[FR Doc. 94–17470 Filed 7–15–94; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Reclamation

Southern Nevada Water Authority Treatment and Transmission Facility, Clark County, NV

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement and notice of scoping meetings.

SUMMARY: The Southern Nevada Water Authority (SNWA) proposes to construct an intake structure, water treatment plant and associated transmission pipelines to treat and convey Colorado River water from Lake Mead to the Las Vegas Valley. Studies and analysis have indicated that there is a need for the additional Treatment and Transmission Facility (TTF). Reclamation proposes to prepare a draft Environmental Impact Statement (EIS) to address the additional impacts associated with the construction of the facilities. A series of public meetings are planned to provide information and receive oral comments from interested parties.

DATES AND ADDRESSES: There will be five public meetings:

- August 22, 1994, 7 p.m., Boulder City Hall, City Council Chambers, 401 California Avenue, Boulder City, NV.
- August 24, 1994, 2 p.m., Cashman Field Center, Meeting Rooms 101–102, 850 Las Vegas Boulevard North, Las Vegas, NV.
- August 24, 1994, 7 p.m., Cashman Field Center, Meeting Rooms 101–102, 850 Las Vegas Boulevard North, Las Vegas, NV.
- August 30, 1994, 6:30 p.m., North Las Vegas City Library, Community Room, 2300 Civic Center Drive, North Las Vegas, NV.
- September 1, 1994, 7 p.m., Henderson Convention Center, 200 South Water Street, Henderson, NV.

FOR FURTHER INFORMATION CONTACT: Michael T. Walker, Chief, Environmental Compliance and Technical Services Branch, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293–8526; or Michael D. Noah, EIS Manager, Southern Nevada Water Authority, 1850 East Flamingo Road, Suite 234, Las Vegas, Nevada 89119, Telephone: (702) 732–7954.

Dated: July 12, 1994.
Lee Delaney,
Resource Area Manager.
[FR Doc. 94–17470 Filed 7–15–94; 8:45 am]
BILLING CODE 4310–84–M

Bureau of Reclamation

Southern Nevada Water Authority Treatment and Transmission Facility, Clark County, NV

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement and notice of scoping meetings.

SUMMARY: The Southern Nevada Water Authority (SNWA) proposes to construct an intake structure, water treatment plant and associated transmission pipelines to treat and convey Colorado River water from Lake Mead to the Las Vegas Valley. Studies and analysis have indicated that there is a need for the additional Treatment and Transmission Facility (TTF). Reclamation proposes to prepare a draft Environmental Impact Statement (EIS) to address the additional impacts associated with the construction of the facilities. A series of public meetings are planned to provide information and receive oral comments from interested parties.

DATES AND ADDRESSES: There will be five public meetings:

- August 22, 1994, 7 p.m., Boulder City Hall, City Council Chambers, 401 California Avenue, Boulder City, NV.
- August 24, 1994, 2 p.m., Cashman Field Center, Meeting Rooms 101–102, 850 Las Vegas Boulevard North, Las Vegas, NV.
- August 24, 1994, 7 p.m., Cashman Field Center, Meeting Rooms 101–102, 850 Las Vegas Boulevard North, Las Vegas, NV.
- August 30, 1994, 6:30 p.m., North Las Vegas City Library, Community Room, 2300 Civic Center Drive, North Las Vegas, NV.
- September 1, 1994, 7 p.m., Henderson Convention Center, 200 South Water Street, Henderson, NV.

FOR FURTHER INFORMATION CONTACT: Michael T. Walker, Chief, Environmental Compliance and Technical Services Branch, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293–8526; or Michael D. Noah, EIS Manager, Southern Nevada Water Authority, 1850 East Flamingo Road, Suite 234, Las Vegas, Nevada 89119, Telephone: (702) 732–7954.

SUPPLEMENTARY INFORMATION: The Las Vegas Valley currently relies on the Southern Nevada Water System (SNWS) to provide 85 percent of the Valley water supply. Because the SNWS is currently the only major water supply system serving southern Nevada's population of nearly 1 million residents and over 20 million visitors each year, planning efforts have been initiated to identify the necessary elements required to develop a back-up water treatment and transmission facility to provide relief capacity. The goal of the planning efforts for a SNWA TTF project is:

To develop a reliable and demand-responsive municipal water system that will supplement the existing Southern Nevada Water System during periods of curtailed production or system failure, and provide the State of Nevada full access to its Colorado River water entitlement.

The results of supply and demand projections for the SNWA service area suggest that summer shortages due to insufficient facility capacity could occur as soon as the summer of 1996 unless system improvements are made. Improvements to the SNWS, and the groundwater pumping and distribution systems, may prolong the ability of the SNWA purveyors to provide adequate water supplies to the year 2000.

Planning efforts have focused on identifying potential projects that provide reliable, efficient, and environmentally acceptable alternatives to supply water drawn from Lake Mead and delivered to the Las Vegas Valley.

The alternatives contain three major components: a raw water intake structure, a water treatment plant, and a transmission system. Preliminary analyses have been conducted on each of these major project components to identify and evaluate possible configurations of the project. The results of these studies have defined three primary groups, or "families," of project alternatives grouped geographically into Northern, Central, and Southern Families.

The Northern Family includes intake locations in the north shore of Las Vegas Bay to Callville Bay. Studies indicate that the water quality at Callville Bay is adequate, but visual impacts resulting from the construction of an intake and new overhead power lines to service the treatment plant could pose significant environmental constraints. Treatment of water from Las Vegas Bay would be more expensive than water from the mainstream of the Colorado River or Lake Mead, because the Bay is affected by its proximity to existing and proposed wastewater treatment plant outfalls.

The Central Family of alternative alignments includes an intake at or near the existing SNWS intake. Evaluation of this alternative benefits from a vast amount of water quality data collected during ongoing SNWS research. However, proximity to the SNWS would likely expose the SNWA-TTF to any catastrophic event that could impair the SNWS, thus defeating one of the primary goals of developing an independent back-up system.

The Southern Family alternative includes intake sites at either Promontory Point or Hoover Dam. This alternative alignment is benefited by its accessibility to an available power supply, and its distance from wastewater discharge. While the Hoover Dam intake alternative is potentially less environmentally damaging, approvals from Reclamation to alter the design of Hoover Dam must be secured for this option to be viable.

Preliminary analyses have been conducted for project need, water demand, geotechnical and seismic conditions, water quality, intake depth, water treatment facility, water delivery system requirements, and power supply alternatives. Planning analyses will continue throughout the course of the project. To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be directed to the contact provided above.

Dated: July 11, 1994.
Robert W. Johnson,
Acting Regional Director, Lower Colorado Region.
[FR Doc. 94–17329 Filed 7–15–94; 8:45 am]
BILLING CODE 4310–94–P

Bureau of Land Management

[ID–050–406A–02; IDI–29779]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Blaine County, Idaho

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of Realty Action; R&PP Act Classification; Correction to legal description previously published in the Federal Register on Thursday, June 2, 1994, Vol. 59, No. 105, page 28558.

SUMMARY: Change: Portion of legal description identified as Lot 1 should read Lot 3. (second paragraph, second line, first column).

Dated: July 8, 1994.
Janis L. VanWyhe,
Associate District Manager.
[FR Doc. 94–17312 Filed 7–15–94; 8:45 am]
BILLING CODE 4310–GG–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–103 (Sub-No. 7X)]

The Kansas City Southern Railway Company—Abandonment Exemption—In LeFlore County, OK

The Kansas City Southern Railway Company (KCS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 9.49-mile line of railroad extending between approximately milepost 27.56 F at the connection of the KCS main line in Poteau, OK, and milepost 37.05 F at Wister, OK, in LeFlore County, OK.[1]

KCS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 17, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by July 28, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 8, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Jay M. Nadlman, 114 West Eleventh St., Kansas City, MO 64105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

MP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 22, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 12, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.
Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 94–17357 Filed 7–15–94; 8:45 am]
BILLING CODE 7035–01–P

[Finance Docket No. 32536]

Norfolk Southern Railway Company and CSX Transportation, Inc.—Joint Relocation Project Exemption—Between Wateree and Foxville, SC

On June 21, 1994, Norfolk Southern Railway Company (NS) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad in a joint project with CSX Transportation, Inc. (CSX). The transaction was to have been consummated on or as soon as possible after July 1, 1994.

NS and CSX have separate tracks between Wateree and Foxville, SC. The joint project involves: (1) CSX's granting, under an agreement with NS, trackage rights to NS between Milepost AKB–351.9 (Wateree) and Milepost AKA–344.1 (Foxville), via Eastover Junction, SC (Milepost AKA–349.3) (the joint track), a distance of approximately 7.8 miles in Sumter and Richland Counties, SC; (2) NS' incidental abandonment of its track extending between NS Milepost SB–5.0 at Wateree and NS Milepost SB–12.2 at Foxville, a distance of 7.2 miles; and (3) NS' construction of a connecting track at Foxville, between CSX Milepost AKA–344.1 and NS Milepost SB–12.2.

The line relocation project will provide an alternate route for NS' operations, thus obviating the need for NS trains to travel through an area between Wateree and Foxville which is both swampy and difficult to maintain. NS states that no shippers are located on the track to be abandoned and that NS overhead traffic will be rerouted over the joint track. NS asserts that the joint project will not generate any new traffic, that there will not be an extension of NS rail service into new territory, and that there will be no change in the competitive structure of the rail carriers in the area.

The Commission will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN*, 4 I.C.C.2d 95 (1987). The Commission has determined that line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.& I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the embraced incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: July 11, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.
Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 94–17358 Filed 7–15–94; 8:45 am]
BILLING CODE 7035–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

July 13, 1994.

The National Credit Union Administration submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Office of Administration, Room 5107, 1775 Duke Street, Alexandria, VA 22314–3428.

National Credit Union Administration

OMB Number: New Collection
Form Number: None
Type of Review: Clearance of new collection required by statute and regulation.

---

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of June 10, 1994. Because the verified notice was not filed until June 27, 1994, however, consummation should not have been proposed to take place prior to August 16, 1994. Applicant's representative has been contacted and informed of the correct consummation date.

The Rails to Trails Conservancy (Conservancy) supports and joins in the notice. It also supports issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d). KCS and the City of Poteau, OK, also support the issuance of a NITU. The Commission will address the Conservancy's trail use request, and any others that may be filed, in a subsequent decision.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

that line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.& I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the embraced incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: July 11, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17356 Filed 7–15–94; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

July 13, 1994.

The National Credit Union Administration submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Office of Administration, Room 5107, 1775 Duke Street, Alexandria, VA 22314–3428.

National Credit Union Administration

OMB Number: New Collection
Form Number: None
Type of Review: Clearance of new collection required by statute and regulation.
Title: Truth-In-Savings—12 CFR Part 707
Description: The Truth In Savings Act of 1991 (TISA) sets forth a comprehensive scheme of written disclosures to be provided under various circumstances by credit unions to their members and potential members. The statute and the regulation require credit unions to provide specific disclosures in the following instances: upon request or when an account is opened (12 CFR Part 707); when a disclosure term changes or when certain term share accounts are close to renewal (12 CFR 707.5); on periodic statements of account activity (12 CFR 707.6); and in advertisements (12 CFR 707.8). The purpose of TISA is to enable consumers to make informed decisions about accounts at credit unions.
Respondents: All credit unions.
Estimated Number of Respondents: 12,967
Estimated Burden Hours per Response: 1 minute.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,467,679 hours.
Clearance Officer: Wilmer A. Theard (703) 518–6410, National Credit Union Administration, Room 5107, 1775 Duke Street, Alexandria, VA 22314–3428.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 94–17369 Filed 7–15–94; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences.
Date and Time: August 2, 1994 8:30 A.M. Until 4:00 P.M.
Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Benjamin B. Snavely, Program Director, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. Telephone: (703) 306–1820.
Purpose of Meeting: To review and evaluate Starfire Optical Range proposals.
Agenda: Review and evaluation of Starfire Optical Range proposals.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 12, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–17324 Filed 7–15–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–322]

Long Island Power Authority; Shoreham Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the requirements of 10 CFR 140.11(a)(4) to Facility Operating License No. NPF–82, issued to the Long Island Power Authority (LIPA or the licensee), for the Shoreham Nuclear Power Station (SNPS), Unit 1 at Wading River, New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements from 10 CFR 140.11(a)(4) to the extent that primary financial protection in the amount of $100,000,000 shall be maintained and an exemption from participation in the industry retrospective rating plan (secondary level financial protection) for SNPS. The licensee requested the exemption in a letter dated January 20, 1994.

The Need for the Proposed Action

SNPS was permanently shut down on February 28, 1989, and all spent fuel has been shipped offsite to Philadelphia Electric Company. On July 19, 1991, the NRC modified Facility Operating License No. NPF–82 to a Possession-Only License (POL). The SNPS is being dismantled in accordance with the approved SNPS Decommissioning Plan. The requested exemption addresses two areas for relief in financial protection requirements: (1) A reduction in the primary financial protection coverage requirements from $200,000,000 to $100,000,000; and (2) withdrawal from

participation in the industry retrospective rating plan.

Since LIPA no longer contributes as great a risk to the retrospective rating plan participants as does an operating plant, this reduction in risk should be reflected in the indemnification requirements to which the licensee is subject. Approval of this request would allow a more equitable allocation of financial risk.

Environmental Impact of the Proposed Action

The proposed action does not involve any environmental impacts. The proposed exemption is in a subject area, changes in surety, insurance and/or indemnity requirements, for which the NRC in 10 CFR 51.22(c)(10) has determined that a license amendment would meet the criteria for categorical exclusion from the need for either an environmental assessment or an environmental impact statement.

Since the proposed action does not involve a change in plant operation or configuration, there is reasonable assurance that the proposed action would not increase the probability or the consequences of an accident or reduce the margin of safety. No changes would be made in the types or quantities of effluents that may be released offsite. Further, there would be no significant increase in the allowable individual or cumulative radiation exposure.

Accordingly, the NRC concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant non-radiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC has concluded that there are no measurable environmental impacts associated with the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Supplement to the Environmental report for the SNPS.

Agencies and Persons Consulted

The license initiated this exemption. The NRC staff reviewed the request. The NRC staff consulted with a representative of the State of New York regarding the environmental impact of the proposed action, and the State did not provide comments.

Finding of No Significant Impact

Based upon this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee application for exemption dated April 29, 1991, and January 20, 1994, which is available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Shoreham Wading River Public Library, Shoreham Wading River High School, Route 25A, Shoreham, NY 11792.

Dated at Rockville, Maryland, this 11th day of July, 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–17333 Filed 7–15–94; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office: John J. Lane, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions

Rule 489 and Form F–N
File No. 270–361
Rule 3 and Form U–3A3–1
File No. 270–77
Rule 95 and Form U–13E–1
File No. 270–74
Form U–7D
File No. 270–75
Rules 1(a) and 1(b) and Forms U5A and U5B
File No. 270–168
Rule 26
File No. 270–78
Rule 62 and Form U–R–1
File No. 270–166
Rule 44
File No. 270–162
Rule 88 and Form U–13–1
File No. 270–80

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget requests for extension on previously approved collections on the following rules and forms:

Rule 489 requires entities that are excepted from the definition of investment company by virtue of rule 3a–6 under the Investment Company Act of 1940 (1940 Act) to file Form F–N to appoint a United States agent for service of process when making a public offering of securities in the United States. It is estimated that each of the fifty respondents on Form F–N incur an average of one burden hour annually.

Rule 3 permits a bank which is also a public utility holding company to claim exemption from the Public Utility Holding Company Act of 1934 (Act) by filing an annual statement on Form U–3A3–1. The Commission receives five filings from banks annually, each taking about two hours to complete, thus imposing a total annual burden of ten hours.

Rule 95 requires service companies to file reports on Form U–13E–1 with the Commission prior to performing under contracts for registered holding companies or their subsidiaries, for services, construction, or the sale of goods. One company meets this requirement annually, at an estimated average annual burden of two hours.

Form U–7D establishes the filing company's right to the exemption authorized for financing entities holding title to utility assets leased to a utility company. The form imposes a total burden of 126 hours on 42 respondents.

Rule 1(a) and 1(b) and Forms U5A and U5B implement Sections 5(a) and 5(b) of the Act which require any holding company or any person proposing to become a holding company to file with the Commission a notification of registration and registration statement, respectively. The burden of this requirement is approximately 80 hours annually for one respondent.

Rule 26 sets forth the financial statement and recordkeeping requirements for registered holding companies and subsidiaries. The burden of this filing is included in the burden of filing Form U5S, which is submitted separately, thus Rule 26 imposes no annual burden.

Rule 62 prohibits the solicitation of authorization regarding any security of a regulated company in connection with reorganization subject to Commission approval or regarding any transaction which is the subject of an application or declaration, except pursuant to a declaration regarding the solicitation which has become effective. The rule and Form U–R–1 impose a burden of 50 hours annually on 10 companies.

Rule 44 implements Section 12(d) of the Act by prohibiting sales of utility securities or any utility assets owned by a registered holding company, except pursuant to a declaration which notifies the Commission of the proposed sale and which has become effective. The rule imposes a burden of 72 hours annually on 3 respondents.

Rule 88 requires the filing of Form U–13–1 for a mutual or subsidiary service company performing services for affiliate companies of a holding company system. The rule imposes a burden of 36 hours annually on 18 respondents.

Direct general comments to the Desk Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, (Project Numbers 3235–0411, 3235–0160, 3235–0162, 3235–0165, 3235–0170, 3235–0183, 3235–0152, 3235–0147 and 3235–0182), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 5, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17313 Filed 7–15–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–34344; File No. SR–MSE–93–9]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Exchange's Arbitration Rules

July 11, 1994.

I. Introduction

On April 26, 1993, the Chicago Stock Exchange, Inc., formally the Midwest Stock Exchange, ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section

a regulated company in connection with reorganization subject to Commission approval or regarding any transaction which is the subject of an application or declaration, except pursuant to a declaration regarding the solicitation which has become effective. The rule and Form U–R–1 impose a burden of 50 hours annually on 10 companies.

Rule 44 implements Section 12(d) of the Act by prohibiting sales of utility securities or any utility assets owned by a registered holding company, except pursuant to a declaration which notifies the Commission of the proposed sale and which has become effective. The rule imposes a burden of 72 hours annually on 3 respondents.

Rule 88 requires the filing of Form U–13–1 for a mutual or subsidiary service company performing services for affiliate companies of a holding company system. The rule imposes a burden of 36 hours annually on 18 respondents.

Direct general comments to the Desk Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, (Project Numbers 3235–0411, 3235–0160, 3235–0162, 3235–0165, 3235–0170, 3235–0183, 3235–0152, 3235–0147 and 3235–0182), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 5, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17313 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34344; File No. SR–MSE–93–9]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Exchange's Arbitration Rules

July 11, 1994.

I. Introduction

On April 26, 1993, the Chicago Stock Exchange, Inc., formally the Midwest Stock Exchange, ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's arbitration rules. On March 31, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3] On June 1, 1994, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 34141 (June 1, 1994), 59 FR 29454 (June 7, 1994). No comments were received on the proposal. This order approves the proposed rule change as amended.

II. Description of the Proposal

The CHX is amending its arbitration rules as set forth in Rules 23 and 24 of Article VIII to bring them more closely in line with the Uniform Code of Arbitration developed by the Securities Industry Conference on Arbitration ("SICA").[5] The CHX is amending its arbitration rules concerning, among other things, redesignation of the section references in Rule 24, class action claims, the circumstances under which the CHX will arbitrate a claim, simplified arbitration, peremptory challenges, joinder and consolidation, filing amended pleadings, monetary awards, and the fee schedule for arbitrating at the CHX. The specific amendments are described more fully below.

The CHX is adding a provision (CHX Rule 24, Section 1(c)) to its arbitration rules providing that class actions will not be eligible for submission to arbitration. However, an individual may pursue a claim in arbitration if class certification is denied; the case is decertified; the customer is excluded from the class; or the customer elects not to participate in the putative or certified class action or has complied with other court prescribed conditions for withdrawal. The Exchange is amending Section 33 of Rule 24 (redesignated as Section 31) requiring the addition of a provision to pre-dispute arbitration agreements regarding the ineligibility of class actions for arbitration.[6]

Rule 24, Section 1 adds Interpretation and Policy .01 which addresses an existing Exchange policy regarding the determination whether to accept a claim for arbitration at the Exchange. The Exchange's policy is to accept a claim for arbitration if the Exchange is the Designated Examining Authority ("DEA") of the Respondent member or if the enforcement of the applicable rules has not been ceded to another self-regulatory organization ("SRO") pursuant to its Rule 17d–2 Agreement.[7] In other cases, the Exchange may decline the use of its arbitration facilities if the nexus between the dispute and the Exchange is minimal.

The Exchange considers claims submitted to the arbitration department on a case-by-case basis and examines the policy described above in determining whether a claim will be accepted. Under the Exchange's policy, the only discretion whether the Exchange will accept a claim for arbitration occurs when the Exchange is not the DEA for the Respondent member and the enforcement of a particular rule has not been ceded to another SRO pursuant to Rule 17d–2. In this event, as stated above, the Exchange may reject the claim for arbitration if the nexus between the dispute and the Exchange is minimal.

The Exchange believes that the policy places fair limitations upon the responsibility of the Exchange to make its arbitration facilities available by

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* letter from David T. Rusoff, Attorney, Foley & Lardner, to Sandra Sciole, Special Counsel, SEC, dated March 30, 1994.

[4] *See* letter from David T. Rusoff, Attorney, Foley & Lardner, to Sandra Sciole, Special Counsel, SEC, dated May 31, 1994. Amendment No. 2 made certain changes to Interpretation and Policy .01 and .02 to Rule 24.

[5] SICA is comprised of a representative from each self-regulatory organization ("SRO") that administers an arbitration program, a representative of the securities industry, and four representatives of the public. The SROs that administer an arbitration program are the New York Stock Exchange, American Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange, CHX, Pacific Stock Exchange, Philadelphia Stock Exchange, the Chicago Board Options Exchange, the National Association of Securities Dealers, and the Municipal Securities Rulemaking Board.

[6] Rule 24, Section 31, Paragraph 5 is amended to state that all agreements shall include a statement that "no person shall bring a punitive or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

[7] Pursuant to Rule 17d–2 under the Act, any two or more SROs may file with the Commission a plan for allocating among the SROs the responsibility to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. *See* 17 CFR 240.17d–2 (1994).

requiring that the underlying dispute have some minimal nexus (or contacts) to the Exchange.

Rule 24, Section 1 also adds interpretation and policy .02 which extends jurisdiction over former members and member organizations for controversies which had their genesis during the period in which the former member was an Exchange member.[8]

Rule 24, Section 2(c) (Simplified Arbitration) amends the fee requirements for simplified arbitrations (cases not exceeding a dollar amount of $10,000).[9]

Rule 24, Section 2(h) provides a mechanism for resolving pre-hearing matters in a simplified proceeding. This amendment codifies the applicability of the discovery procedures set forth in Section 14 (redesignated as Section 20) to simplified arbitrations.

Rule 24, Section 8(a)(2)(v) classifies individuals who are registered under the Commodities Exchange Act or are members of a registered futures association or any commodities exchange as being from the securities industry for purposes of classification of arbitrators.

Rule 24, Section 10 is amended to clarify the time limitations applicable to a party wishing to utilize a peremptory challenge. Rule 24, Section 13(c)(5) is amended to state that the Director of Arbitration may extend any time period in this section (whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply, or Third-Party pleading).

Rule 24, Section 13(d) is amended to clarify the rule with respect to joinder and consolidation. It also authorizes the Director of Arbitration to make preliminary determinations in cases where issues concerning joinder and consolidation are in dispute. However, all further determinations with respect to joinder and consolidation will remain with the arbitration panel.[10]

Rule 24, Section 19 (redesignated as Section 18) requires a party requesting an adjournment to deposit a fee, not to exceed $1,000, upon making the request. If granted, the arbitrators may waive the deposit or, in their award, return the deposit.[11]

Rule 24, Section 24 (redesignated as Section 22) clarifies that arbitrators are empowered to take appropriate action, which can include the assessment of fees or costs, preclusion of documents or witnesses, and making disciplinary referrals in order to obtain compliance with all rulings by the arbitrators.[12]

Rule 24, Section 28 (redesignated as Section 26) requires parties filing amended pleadings to serve such different pleadings on all other parties. This change relieves the Director of Arbitration from the requirement to serve such pleadings.[13]

Rule 24, Section 30 (redesignated as Section 28) sets forth the requirement that all monetary awards be paid within 30 days of receipt unless a motion to vacate has been filed with the court. Additionally, the section mandates that interest accrue from the date of the award, until paid, if the award is not paid within 30 days, or the motion to vacate is unsuccessful, or as specified by the arbitrators. Interest shall be assessed at the prevailing legal rate in the state where the award is rendered or at a rate set by the arbitrator(s). This change will encourage the prompt payment of awards.[14]

Rule 24, Section 32 (redesignated as Section 30) amends the current fee schedule in place at the CHX and conforms its fee schedule to those at the other SROs. The CHX is adopting the following Schedule of Fees:

SCHEDULE OF FEES—PUBLIC CUSTOMER CLAIMANT

Amount in dispute	Filing fee	Paper	Hearing deposit	
			1 Arb.*	Arb.
$1,000 or less	$15	$15	*$15	
$1,001–$2,500	25	25	*25	
$2,501–$5,000	50	75	*100	
$5,001–$10,000	75	75	*200	

[8] Interpretation and Policy .02 to Rule 24, Section 1 states that for purposes of this Rule and Rule 23 under Article VIII, the terms "member," "member organization," "associated person" and an "employee of a member," shall be deemed to encompass those persons and entities who were Exchange members or persons associated with a member at the time the circumstances occurred which gave rise to the controversy.

[9] Rule 24, Section 2(c) is amended to state that the Claimant shall pay a filing fee and remit a hearing deposit as specified in Section 30 of this Rule upon filing the Submission Agreement. The final disposition of the sum shall be determined by the arbitrator. The CHX is also amending Section 2(d) to state that the costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Section 30 of this Rule.

[10] In addition, the Exchange is amending Section 13(d) to state that in arbitrations where there are multiple Claimants, Respondents or Third party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determinations will be considered subsequent to the filing of all responsive pleadings. The Director of Arbitration shall be authorized to determine preliminary whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.

Section 13(d)(1) is amended to state that all persons may join in one action as Claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all these Claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them jointly or severally any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A Claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

Rule 24, Section 14 is amended to state that the time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators. Notice of the time and place for the initial hearing shall be given at least eight business days prior to the date fixed for the hearing by personal service, registered, or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this section. Notice for each hearing, thereafter, shall be given as the arbitrators may determine. Attendance at a hearing waives notice thereof.

[11] Section 18(b) is amended to state that a party requesting an adjournment after arbitrators have been appointed shall, if an adjournment is granted, deposit a fee, equal to the initial deposit of forum fees for the first adjournment and twice the initial deposit of forum fees, not to exceed $1,000, for a second or subsequent adjournment requested by that party. The arbitrators may waive the deposit of this fee or in their awards may direct the return of the adjournment fee.

[12] Section 22 to Rule 24 provides: "the arbitrator(s) shall be empowered to interpret and determine the applicability of all provisions under this Rule and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties."

[13] Amended Rule 24, Section 26 states, in part, that the party filing a new or different pleading shall serve on all other parties, a copy of the new or different pleading in accordance with the provisions set forth in Section 13(b). The other parties may, within ten business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Section 13(b).

[14] Rule 24, Section 28 is amended to include Paragraphs (f) and (g). Rule 24, Section 28(f) states that the awards shall be made publicly available, provided however, that the name of the customer party to the arbitration will not be publicly available if he or she so requests in writing.

SCHEDULE OF

Amount in

$10,001–$30,000	
$30,001–$50,000	
$50,001–$100,000	
$100,001–$500,000	
$500,001–$5,000,000	
Over $5,000,000	

*The 1 Arbitrator column also sets forth the foru

Amount in

$1,000 or less	
$1,001–$2,500	
$2,501–$5,000	
$5,001–$10,000	
$10,001–$30,000	
$30,001–$50,000	
$50,001–$100,000	
$100,001–$500,000	
$500,001–$5,000,000	
Over $5,000,000	

*This is the fee schedule for claims submitted b non-members other than public customers, and for against members or member organizations or non-m with a single arbitrator.

Amoun

$10,000 or less	
$10,001 to $100,000	
$100,001 or more	

The Exchange is amending Rule 23 to clarify that members must arbitrate controversies unless the parties agree to bring a matter before the Exchange's Floor Procedure Committee.[15] The rule also provides that the Floor Procedure Committee may appoint an arbitrator if a member party fails to do so after due notice.[16]

[15] The Committee on Floor Procedure has general supervision of the conduct and dealings on the Floor of the Exchange and recommends for adoption by the Executive Committee such rules and regulations as may be necessary for the convenient and orderly transaction of business of the Floor of the Exchange. The Committee has the power to enforce such rules and regulations by recommending staff investigations for violations thereof, in accordance with the procedure provided in Article XII. See CHX Article IV, Rule 3.

[16] CHX Rule 23(a) is amended to state that any controversy between parties who are members, member organizations or their nominees or associated persons which arises out of the Exchange business of such parties shall be submitted to arbitration, through the Director of Arbitration, to an Arbitration Panel composed of members of the Committee on Floor Procedure, unless non-members are also parties to the controversy. If non-members are also parties to such controversies, the arbitrator shall be appointed in accordance with Section 8 of Rule 24 under this Article unless the

SCHEDULE OF FEES—PUBLIC CUSTOMER CLAIMANT—Continued

Amount in dispute	Filing fee	Paper	Hearing deposit	
			1 Arb.*	Arb.
$10,001–$30,000	100	.....	300	$400
$30,001–$50,000	120	.....	300	400
$50,001–$100,000	150	.....	300	500
$100,001–$500,000	200	.....	300	750
$500,001–$5,000,000	250	.....	300	1,000
Over $5,000,000	300	.....	300	1,500

*The 1 Arbitrator column also sets forth the forum fees for pre-hearing conferences with a single arbitrator.

INDUSTRY CLAIMANT*

Amount in dispute	Filing fee	Paper	Hearing deposit	
			1 Arb.*	3 Arb.
$1,000 or less	$500	$75	*$300	.....
$1,001–$2,500	500	75	*300	.....
$2,501–$5,000	500	75	*300	.....
$5,001–$10,000	500	75	*300	.....
$10,001–$30,000	500	.....	300	$600
$30,001–$50,000	500	.....	300	600
$50,001–$100,000	500	.....	300	600
$100,001–$500,000	500	.....	300	750
$500,001–$5,000,000	500	.....	300	1,000
Over $5,000,000	500	.....	300	1,500

*This is the fee schedule for claims submitted by members or member organizations, against public customers, registered representatives or non-members other than public customers, and for claims submitted by registered representatives or non-members other than public customers against members or member organizations or non-members. The one arbitrator column also sets forth the forum fee for pre-hearing conferences with a single arbitrator.

MEMBER CONTROVERSIES

Amount in dispute	Filing fee	Pre-hearing	Hearing
$10,000 or less	$100	$150	$200
$10,001 to $100,000	200	300	750
$100,001 or more	300	500	1,000

The Exchange is amending Rule 23 to clarify that members must arbitrate controversies unless the parties agree to bring a matter before the Exchange's Floor Procedure Committee.[15] The rule also provides that the Floor Procedure Committee may appoint an arbitrator if a member party fails to do so after due notice.[16]

The Exchange believes that the rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[17] The Commission believes the amendments to the CHX's arbitration rules are consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest.

The Commission believes that the Exchange's amendments relating to, among other things, class actions, pre-dispute arbitration agreements, simplified arbitration, classification of arbitrators, peremptory challenges, pleadings, joinder and consolidation, monetary awards, and arbitration fees should increase customer confidence in the securities markets and promote the efficient resolution of disputes for both investors and broker-dealers.

More specifically, amending Rule 24, Section 1(c) to provide that class actions will not be eligible for submission to arbitration should ensure that investors

[15] The Committee on Floor Procedure has general supervision of the conduct and dealings on the Floor of the Exchange and recommends for adoption by the Executive Committee such rules and regulations as may be necessary for the convenient and orderly transaction of business of the Floor of the Exchange. The Committee has the power to enforce such rules and regulations by recommending staff investigations for violations thereof, in accordance with the procedure provided in Article XII. *See* CHX Article IV, Rule 3.

[16] CHX Rule 23(a) is amended to state that any controversy between parties who are members, member organizations or their nominees or associated persons which arises out of the Exchange business of such parties shall be submitted to arbitration, through the Director of Arbitration, to an Arbitration Panel composed of members of the Committee on Floor Procedure, unless non-members are also parties to the controversy. If non-members are also parties to such controversies, the arbitrator shall be appointed in accordance with Section 8 of Rule 24 under this Article unless the non-members consent to arbitration before an arbitration panel selected by parties as provided in this Rule. However, controversies shall be resolved by the Committee on Floor Procedure if the parties to such controversy agree to be bound by the decision of that Committee or if Exchange rules otherwise require resolution by the Committee on Floor Procedure. The rules and procedures applicable to arbitrations which are set forth in Rule 24 do not apply to controversies which are to be resolved by the Committee on Floor Procedure.

[17] 15 U.S.C. 78f (1988).

and broker-dealers are not put to the expense of duplicative litigation by assuring that class action Claimants have access to the courts. The amendment relating to simplified arbitration proceedings which, among other things, codifies the applicability of the discovery procedures to simplified arbitrations, should establish clear procedures for discovery requests and document production. This will assist in the fair resolution of arbitration controversies involving small claims. The amendment to Rule 24, Section 8(a)(2)(v), which classifies an individual who is registered under the Commodities Exchange Act or are members of a registered futures association or any commodities exchange as being from the securities industry for purposes of classification of arbitrators, is reasonable given the similarity between the futures and securities industry.

The Commission believes that amending Rule 24, Section 10 to clarify the time limitations applicable to a party wishing to utilize a peremptory challenge should provide parties with clear guidelines regarding the time limitations applicable to peremptory challenges, and as a result contribute to the prompt resolution of the parties' disputes. In addition, amending Rule 24, Section 30 to require that all monetary awards be paid within 30 days of receipt unless a motion to vacate has been filed should encourage prompt payment of arbitration awards and increase investor confidence in the arbitration process.

The Commission believes that it is appropriate to amend Section 22 of Rule 24 to affirm the arbitrators' authority to take appropriate action to obtain compliance with any of their rulings and to provide that such interpretations and actions to obtain compliance are final and binding on the parties. The Commission believes that the amendment should raise customer confidence in the arbitration process by assuring that those individuals who utilize the CHX's arbitration forum comply with the rulings of an arbitrator.

The Commission also finds that the amendments to Rule 24, Section 30, which lists the Exchange's arbitration fees is consistent with the requirements of Section 6(b)(4) of the Act,[18] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members of the Exchange and others using its facilities. Specifically, the Commission finds that the amended or newly adopted fees in Section 30 are reasonable and should help to reimburse the Exchange for various costs incurred pursuant to the arbitration process.

Finally, the Commission believes that Interpretation and Policy .01 to Rule 24, Section 1, which adopts the CHX's policy for determining whether the Exchange will accept a claim for arbitration, appropriately defines the controversies that may be arbitrated at the Exchange. The Commission believes that the adopted Interpretation and Policy reasonably balances the Exchange's interest in efficiently allocating its arbitration resources with investor's interests in obtaining access to an open forum to arbitrate claims. For example, while the new Interpretation and Policy provides that the CHX may decline the use of its arbitration facilities if the nexus between the dispute and the Exchange is minimal, the Exchange will accept a claim for arbitration if the Exchange is the DEA for the Respondent member, if the enforcement of the applicable rules has not been ceded to another SRO pursuant to its Rule 17d–2 Agreement, or if the nexus between the dispute and the Exchange is more than minimal.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17315 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34353; File No. SR–CHX–94–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to New Organizational Structures.

July 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 7, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to submit the following rule proposal to amend Article II, Section 1 of the Exchange's Constitution, and amend Article I, Rule 1 of the Exchange's rules. The CHX proposes the following changes:[1]

CONSTITUTION

Article II

Membership

Number and Ownership of Members

Sec. 1. The number of equity memberships shall not exceed 465. Memberships may be owned by individuals, partnerships, [and] corporations *and other organizations*, under such conditions and qualifications as shall be prescribed in the Rules of the Exchange (these and all other Rules of the Exchange adopted by the Board of Directors being hereinafter referred to as the "Rules").

RULES

Article I

Rule 1. An applicant for membership shall meet, and a member shall continue to meet, the following basic qualifications:

Citizenship, Age, and Form of Organization

(a) If an individual, an applicant or member shall be of an age so as to be responsible for his or her contracts under the laws of the State or Country in which he or she engages in the securities business. If a partnership, an applicant or member shall have at least two general partners. If a corporation, an applicant or member shall be organized under the laws of one of the states of the United States, under the Canada Corporations Act or the incorporation statute of a Canadian province, or under a comparable statute of such other Country in which the corporation is domiciled. *The Exchange may, in its discretion, and on such terms and conditions as the Exchange may prescribe, approve as a member organization entities that have characteristics essentially similar to corporations, partnerships or both. Such entities, and persons associated therewith, shall, upon approval, be fully, formally and effectively subject to the jurisdiction of, and to the Constitution and Rules of, the Exchange to the same extent and degree as are any other members organized as a corporation or partnership and persons associated therewith.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed change is to amend the Exchange's Constitution and rules relating to the admission of entities with new organizational structures as members. Specifically, the proposed amendments permit the Exchange, in its discretion, and on such terms and conditions as the Exchange may prescribe, to approve business trusts,[2] limited liability companies[3] or other organizational structures as member organizations so long as the characteristics of the entity in question are essentially similar to those of corporations or partnerships. Currently, memberships on the Exchange can be owned by individuals, partnerships and corporations.[4] Recent changes to state corporate laws, however, have expanded the types of organizational

---

[1] With respect to the following language, brackets indicates material to be deleted and italicizing indicates new material.

[2] The term "business trust" is generally used to describe a trust in which the managers are principals, and the shareholders are cestuis que trust. The essential attribute is that property is placed in the hands of trustees who manage and deal with it for use and benefit of beneficiaries. *Black's Law Dictionary* 180 (5th ed. 1979).

[3] A limited liability company ("LLC") combines various characteristics of both corporations and partnerships. For example, an LLC is a non-corporate entity under which neither the owners nor those managing the business are personally liable for the entities obligations, however, the LLC is treated as a pass-through entity for federal income tax purposes. *See* Robert R. Keatinge et al., *The limited Liability Company: A Study of the Emerging Entity*, 47 Bus. Law. 378 (1992).

[4] The Exchange stated that noncorporate or partnership entities would have to be structured in such a format that would qualify as a broker or dealer registered with the SEC pursuant to the Act, since this is a prerequisite to becoming an Exchange member organization. Telephone conversation between David Rusoff, Attorney, Foley & Lardner, and Louis A. Randazzo, Attorney, SEC, on July 11, 1994.

[18] 15 U.S.C. 78f(b)(4) (1988).

[19] 15 U.S.C. 78S(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1991).

other members organized as a corporation or partnership and persons associated therewith.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed change is to amend the Exchange's Constitution and rules relating to the admission of entities with new organizational structures as members. Specifically, the proposed amendments permit the Exchange, in its discretion, and on such terms and conditions as the Exchange may prescribe, to approve business trusts,[2] limited liability companies[3] or other organizational structures as member organizations so long as the characteristics of the entity in question are essentially similar to those of corporations or partnerships. Currently, memberships on the Exchange can be owned by individuals, partnerships and corporations.[4] Recent changes to state corporate laws, however, have expanded the types of organizational structures available. This change merely permits these new organizational structures to qualify for Exchange membership if the Exchange deems it appropriate.[5]

(2)-Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and opened market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C,. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–17 and should be submitted by August 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[FR Doc. 94–17349 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[2] The term "business trust" is generally used to describe a trust in which the managers are principals, and the shareholders are cestuis que trust. The essential attribute is that property is placed in the hands of trustees who manage and deal with it for use and benefit of beneficiaries. *Black's Law Dictionary* 180 (5th ed. 1979).

[3] A limited liability company ("LLC") combines various characteristics of both corporations and partnerships. For example, an LLC is a non-corporate entity under which neither the owners nor those managing the business are personally liable for the entities obligations, however, the LLC is treated as a pass-through entity for federal income tax purposes. *See* Robert R. Keatinge et al., *The limited Liability Company: A Study of the Emerging Entity*, 47 Bus. Law. 378 (1992).

[4] The Exchange stated that noncorporate or partnership entities would have to be structured in such a format that would qualify as a broker or dealer registered with the SEC pursuant to the Act, since this is a prerequisite to becoming an Exchange member organization. Telephone conversation between David Rusoff, Attorney, Foley & Lardner, and Louis A. Randazzo, Attorney, SEC, on July 11, 1994.

[5] The Exchange stated that CHX staff would review each Exchange member organization application on a case-by-case basis, and prior to approving any such organization for membership, the staff would have to be satisfied that: (1) The Exchange would legally have appropriate jurisdiction over such an entity; and (2) the permanency of the entity's capital is consistent with that required of other member organizations. Telephone conversation between David Rusoff, Attorney, Foley & Lardner, and Louis A. Randazzo, Attorney, SEC, on July 11, 1994.

[Release No. 34–34337; File No. SR–MBSCC–94–3]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by MBS Clearing Corporation Relating to Corporate Governance Changes

July 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchanges Act of 1934 ("Act"),[1] notice is hereby given that on June 21, 1994, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MBSCC proposes to amend Article FOURTH of MBSCC's Certificate of Incorporation; Sections 2.2, 2.3, 2.4, 2.10, 3.1, 3.2, 3.9, 4A.1, 4A.2, 5.2, and 10.4 of MBSCC's By-Laws; and Article V, Rule 6, Section 3 of MBSCC's Rules. MBSCC also proposes to enter into a shareholders agreement.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Background

MBSCC is currently a wholly owned subsidiary of the Chicago Stock Exchange, Incorporated ("CHX"). On March 31, 1994, certain participants of MBSCC entered into a letter of intent with the CHX pursuant to which the CHX will sell all of the issued and outstanding capital stock of MBSCC to Acquiror. Acquiror is a corporation that will be formed for the sole purpose of acquiring MBSCC stock. All current participants of MBSCC will be eligible to purchase stock of Acquiror if they agree to sign the shareholders agreement, as discussed more fully below. New participants will be eligible to purchase one share upon admission as a participant. In addition, the National Securities Clearing Corporation ("NSCC"), which also will be a signatory to the shareholders agreement, will purchase approximately 10% of the stock of Acquiror. Immediately after Acquiror's acquisition of the stock of MBSCC, Acquiror will be merged into MBSCC with MBSCC as the surviving corporation. Pursuant to the merger, participant shareholders of Acquiror will own 100% of the Class A common shares of MBSCC and NSCC will own 100% of the Class B common shares of MBSCC, as discussed below.

Description of Amendments

The purpose of the proposed rule change is to adopt appropriate corporate governance changes for MBSCC in light of the proposed acquisition discussed above. It is anticipated that the proposed rule change will become effective concurrent with the closing of the CHX's sale of MBSCC's stock to Acquiror. In furtherance of this objective, MBSCC proposes to amend Article FOURTH of its Certificate of Incorporation, to amend various provisions of its By-Laws and Rules, and to enter into a shareholders agreement.

With respect to its Certificate of Incorporation, MBSCC proposes to amend Article FOURTH both to increase the number of shares of stock that MBSCC is authorized to issue and to divide the common stock into Class A and Class B shares. The increased number of authorized shares will permit MBSCC to sell shares to its participants in proportion to their usage of MBSCC without creating fractional shares. The division of the common stock into Class A and Class B shares will provide a mechanism whereby NSCC, the purchaser of 100% of Class B shares, will be assured one seat on the board of directors of MBSCC.

The proposed amendments to the By-Laws and the proposed shareholders agreement set forth, among other things, the number of directors, their eligibility, and the manner in which directors will be elected. Specifically, the proposed changes to Article 3, Section 3.1 of the By-Laws will increase the size of the MBSCC board to thirteen from its present size of eleven directors and will establish eligibility requirements for directors. Pursuant to the proposed changes to Article 3, Section 3.2 of the By-Laws and pursuant to the proposed shareholders agreement, one of the newly created slots on the MBSCC board will be for NSCC's delegate to the board, and one slot will be for an additional representative of participants. In addition, Article 3, Section 3.1 of the By-Laws and Section 2 of the shareholders agreement will require that all directors, other than the NSCC director and one director that represents the management of MBSCC as designated by the board, be officers or general partners or hold similar management positions of participants of MBSCC ("Participant Directors").

The proposed rule change also will amend provisions of the By-Laws to lower the number of votes required to call a special meeting (Article 2, Section 2.3), to provide for waiver of notice of a stockholders' meeting (Article 2, Section 2.4), and to authorize the board of directors to establish the salaries of MBSCC's officers (Article 5, Section 5.2).

Section 2 of the shareholders agreement specifies how Participant Directors and members of the nominating committee are to be elected. As is currently the practice, the nominating committee will nominate candidates for Participant Directors and members of the following year's nominating committee. Section 2(A)(ii) of the shareholders agreement establishes the eligibility requirements for members of the nominating committee. Participants will be given the opportunity to petition for additional candidates. If no petitions are filed, the participant shareholders must elect the candidates nominated by the nominating committee. If there are competing candidates due to a petition or petitions being filed, a ballot will be mailed to all participants. Pursuant to Section 2(A)(iii) of the shareholders agreement, each participant of MBSCC will be entitled to the number of votes for each class of nominees determined as follows: the number of persons to be elected in each class multiplied by one vote for each $1,000 of average monthly volume-related fees (rounded down to the nearest one thousand dollars) payable or paid by the participant to MBSCC during the preceding year (such amount known as "Voting Entitlement"). Every participant shall have at least one vote. Each participant may cast all of its votes for a single nominee or distribute its votes among several nominees. Participants that own Class A stock must vote their shares as determined by the vote of all of the participants, whether or not they are shareholders. In the event of a tie vote, the nominating committee will select the person who is to be elected director.

The shareholders agreement also contains provisions relating to shareholder votes for other than the election of directors which direct shareholders to vote in a certain manner. For example, Section 2(C) limits removal of directors, Section 7(A) establishes a ⅔ majority voting requirements, and Section 7(B) limits and restricts certain shareholders votes to the manner directed by board resolution.

In addition, the shareholders agreement contains provisions relating to required transfers of MBSCC's stock (*e.g.* upon insolvency or the termination of the shareholders agreement) (Section 8), permitted transfers of MBSCC's Class A and Class B stock (Sections 9 and 10), and MBSCC's option to repurchase the shares (Section 11). The shareholders agreement also provides that the provisions governing the voting of shares shall continue in force for ten years and shall be automatically renewed for a subsequent ten year period. Finally, MBSCC has proposed to amend Article V, Rule 6, Section 3 of its Rules to delete references to the CHX.

The proposed rule change is consistent with Section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions and helps assure a fair representation of shareholders and participants in the selection of directors and administration of MBSCC's affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MBSCC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MBSCC has received no written comments. MBSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to File No. SR–MBSCC–94–3 and should be submitted by August 8, 1994.

participants in the selection of directors and administration of MBSCC's affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MBSCC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MBSCC has received no written comments. MBSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to File No. SR–MBSCC–94–3 and should be submitted by August 8, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17316 Filed 7–15–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–34352; File No. SR–NASD–94–27]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Storage of Account Information for Options Customers for Supervisory Purposes

July 12, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its options rules governing the manner in which members may store account statements and other information for options customers for supervisory purposes. Specifically, the proposal would permit NASD members to satisfy their record retention requirements for options accounts by storing required options account information in locations other than the respective principal supervisory office for the options accounts, provided such account information is readily accessible and promptly retrievable. Presently, NASD rules require that certain customer account information be maintained at both the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that office. The proposal would not change the record retention requirements with respect to branch offices, only supervisory offices. The text of the proposed rule change is as follows: (Additions are italicized.)

[1] The proposed rule change was originally filed on May 23, 1994, and was amended on June 20, 1994, in order to correct a technical deficiency.

Section 33 of the NASD Rules of Fair Practice

* * * * *

Section 33(b)(17) Maintenance of Records

(A) No change.

(B) Background and financial information of customers who have been approved for options trading shall be maintained at both the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that branch office. Copies of account statements of options customers shall also be maintained at both the branch office supervising the accounts and the principal supervisory office having jurisdiction over that branch for the most recent six-month period. *With respect solely to the above-noted record retention requirements applicable to principal supervisory offices, however, the customer information and account statements may be maintained at a location other than the principal supervisory office if such documents and information are readily accessible and promptly retrievable.* Other records necessary to the proper supervision of accounts shall be maintained at a place easily accessible both to the branch office servicing the customer's account and to the principal supervisory office having jurisdiction over that branch office.

* * * * *

Section 33(b)(20) Supervision of Accounts

(A)–(C) No change

(D) Headquarters Review of Accounts

Each member shall maintain at the principal supervisory office having jurisdiction over the office servicing customer accounts, *or have readily accessible and promptly retrievable,* information to permit review of each customer's options account on a timely basis to determine (i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (ii) the size and frequency of options transactions; (iii) commission activity in the account; (iv) profit or loss in the account; (v) undue concentration in any options class or classes, and (vi) compliance with the provisions of Regulation T of the Federal Reserve Board.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, NASD rules and the rules of the options exchanges uniformly require that both the branch office servicing an options customer's account and the principal supervisory office having jurisdiction over that branch office retain account statements and other financial and background information for the account for supervisory purposes.[2] With the advances in data storage and retrieval through such means as optical disks, fax machines, computers, and mircofiche, among others, coupled with the increased expenses of storing records on-site in major financial centers such as New York City, however, member firms increasingly are storing their records away from their principal supervisory offices.

In light of the record retention requirements for options accounts, however, these new storage arrangements have necessitated action by the options Self-Regulatory Organizations ("SROs"). Specifically, member firms have obtained no-action positions from the Options Self-Regulatory Council ("OSRC") on a case-by-case basis when moving their operational facilities off-site.[3] In this regard, the OSRC has determined that these arrangements are consistent with the record retention requirement rules so long as the documents are readily accessible and promptly retrievable. Thus, the OSRC has asked each of the options exchanges and the NASD to consider amending their rules to permit these types of off-site document storage arrangements. Given the realities of today's business environment, the NASD agrees with the OSRC and believes its options rules should be amended accordingly.

In addition, the NASD does not believe that the important supervisory obligations imposed on member firms will be compromised by allowing members to store options customer account statements and information off-site. Under the proposal, member firms will continue to have easy access to all customer account information necessary to discharge their supervisory responsibilities. In this connection, in order to ensure that off-site document storage arrangements will not jeopardize or constrain members' supervisory activities with respect to options accounts, the options SROs commit to periodically examine the document retrieval capabilities of members using off-site document storage arrangements.

Therefore, the NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general to protect investors and the public interest. Specifically, the NASD believes that the proposal will promote the maintenance of fair and orderly markets because it will afford member firms with the opportunity to discharge their supervisory responsibilities in a more cost-effective manner, thereby improving the efficiency of member firms, and, in turn, benefiting investors in the marketplace. Moreover, as noted above, because the NASD does not believe that the proposal will compromise the ability of member firms to satisfy their supervisory obligations, the NASD believes the proposal is consistent with the principle of investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–27 and should be submitted by August 8, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17351 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–14

[2] See Sections 33(b) (17) and (20) of the NASD Rules of Fair Practice.

[3] The OSRC is a committee comprised of representatives from each of the options exchanges and the NASD that was created pursuant to the plan submitted by the options exchanges and the NASD under Rule 17d–2 of the Act ("17d–2 Plan"). The 17d–2 Plan was adopted to reduce regulatory duplication relative to options-related sales practice matters for a large number of firms which are currently members of two or more SRO's. The purpose of the OSRC is: (1) To administer the 17d–2 Plan; and (2) to address options-related sales practice matters in a common forum.

[4] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34354; File No. SR–NASD–93–69]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Guidelines Regarding the Use of Rankings in Mutual Fund Advertisements and Sales Literature

July 12, 1994.

I. Introduction

On November 22, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposal would adopt Guidelines Regarding the Use of Rankings in Investment Company Advertisements and Sales Literature ("Guidelines") following Article III, Section 35 of the NASD's Rules of Fair Practice.[3]

Notice of the proposed rule change, as originally filed, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 33606, February 9, 1994) and by publication in the **Federal Register** (59 FR 7276, February 15, 1994). Six comments were received in response to the Commission release.

On June 7, 1994, the NASD submitted Amendment No. 1 to the proposed rule change. Amendment No. 1 responds to the comment letters received by the Commission, amends the language of the filng to clarify the intent of the NASD, and prohibits members from using rankings other than those developed and produced by an entity meeting the Guidelines' definition of "Ranking Entity."

Amendment No. 2, filed on June 13, 1994, further clarifies the rule change by making certain technical changes to the text of the rule change, and clarifies that rankings based on yield may use only the SEC standardized yield.

By this release, the Commission: (i) solicits comments on Amendment Nos. 1 and 2; and (ii) approves the proposed rule change, as amended, on an accelerated basis.

Below is the text of the rule change, as amended by Amendment Nos. 1 and

[1] 15 U.S.C. 78s(b)(1)(1988).

[2] 17 CFR 240.19b–4 (1993).

[3] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 35(d)(2)(M), (CCH) ¶ 2195.

[Release No. 34–34354; File No. SR–NASD–93–69]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Guidelines Regarding the Use of Rankings in Mutual Fund Advertisements and Sales Literature

July 12, 1994.

I. Introduction

On November 22, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposal would adopt Guidelines Regarding the Use of Rankings in Investment Company Advertisements and Sales Literature ("Guidelines") following Article III, Section 35 of the NASD's Rules of Fair Practice.[3]

Notice of the proposed rule change, as originally filed, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 33606, February 9, 1994) and by publication in the **Federal Register** (59 FR 7276, February 15, 1994). Six comments were received in response to the Commission release.

On June 7, 1994, the NASD submitted Amendment No. 1 to the proposed rule change. Amendment No. 1 responds to the comment letters received by the Commission, amends the language of the filng to clarify the intent of the NASD, and prohibits members from using rankings other than those developed and produced by an entity meeting the Guidelines' definition of "Ranking Entity."

Amendment No. 2, filed on June 13, 1994, further clarifies the rule change by making certain technical changes to the text of the rule change, and clarifies that rankings based on yield may use only the SEC standardized yield.

By this release, the Commission: (i) solicits comments on Amendment Nos. 1 and 2; and (ii) approves the proposed rule change, as amended, on an accelerated basis.

Below is the text of the rule change, as amended by Amendment Nos. 1 and 2. Language added to the original proposal is italicized; proposed deletions to the language originally filed as SR–NASD–93–69 are in brackets.

Guidelines for the Use of Rankings *In Investment Companies* [Mutual Fund] Advertisements and Sales Literature

I. Definition of "Ranking Entity"

For purposes of these guidelines, the term "Ranking Entity" refers to any entity that provides general information about *investment companies* [mutual funds] to the public, that is independent of the *investment company* [mutual Funds] and its affiliates, and whose services are not procured by the *investment company* [mutual fund] or any of its affiliates to assign the *investment company* [fund] a ranking.

II. General Prohibition

Members shall not use in investment company advertisements, sales literature or general promotional material any investment company rankings other than those developed and produced by entities that meet the definition of "Ranking Entity," and which conform to the requirements of the Guidelines herein.

[II.] *III.* Required Disclosures

A. Headlines/Prominent Statements

1. A headlines or other prominent statement must not state or imply than a*n investment company* [mutual fund] is the best performer in a category unless it is actually ranked first in the category.

2. Prominent disclosure of the *investment comany's* [mutual fund's] ranking, the total number of *investment companies* [mutual funds] in the category, the name of the category, and the period on which the ranking is based (i.e., the length of the period and the ending date; or, the first day of the period and the ending date), must appear in close proximity to any headline or other prominent statement that refers to a ranking.

B. All advertisements and sales literature containing a*n investment company* [mutual fund] ranking must disclose, with respect to the ranking:

1. the name of the category (e.g., growth [funds]);

2. the number of *investment companies* [funds] in the category;

3. the names of the Ranking Entity;

4. the length of the period and the ending date, or, the first day of the period and the ending date;

5. criteria on which the ranking is based;

6. for *investment companies* [load funds] *which assess front-end sales loads,* whether the ranking takes into account sales charges;

7. if *the ranking is based on total return or the current SEC standardized yield,* fees have been waived or expenses advanced during the period on which the ranking is based, and the waiver or advancement had a material effect on the *total return or yield for that period* [ranking], a statement to that effect; and

8. the publisher of the ranking data (e.g., "ABC Magazine, June 1993"). The disclosure required by B1, B2, [and] B3, *and B4* must be set forth prominently in the body of the advertisement or sales literature.

C. If the *investment company* [mutual fund] ranking consists of a symbol (e.g., a star system) rather than a number, the advertisement or sales literature also must disclose the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all *investment companies* [mutual funds]).

D. All advertisements and sales literature containing *an investment company* [mutual fund] ranking must disclose that past performance is no guarantee of future results.

[III.] *IV.* Time Periods

A. Any *investment company* [mutual fund] ranking set forth in an advertisement or sales literature must be, at a minimum, current to the most recent calendar quarter ended, in the case of advertising, prior to the submission for publication, or, in the case of sales literature, prior to use.

B. Except for money market mutual funds:

1. advertisements and sales literature must not use any ranking based on a period of less than one year;

2. a*n investment company* [mutual fund] ranking based on total return must be accompanied by rankings based on total return for the [one, five and ten year periods (or life of the fund)] *one year period for investment companies in existence for at least one year; the one and five year periods for investment companies in existence for at least five years, and the one, five and ten year periods for investment companies in existence for at least ten years* supplied by the same Ranking Entity in the category and based on the same time period; and,

3. *an investment company ranking based on yield may be based only on the current SEC standardized yield. An* [A] *investment company* [mutual fund] ranking based on the current SEC standardized yield must be accompanied by rankings based on total return for the [one, five and ten year periods (or life of the fund)] *one year period for investment companies in*

---

[1] 15 U.S.C. 78s(b)(1)(1988).

[2] 17 CFR 240.19b–4 (1993).

[3] *NASD Manual,* Rules of Fair Practice, Art. III, Sec. 35(d)(2)(M), (CCH) ¶ 2195.

existence for at least one year; the one and five year periods for investment companies in existence for at least five years, and the one, five and ten year periods for investment companies in existence for at least ten years supplied by the same Ranking Entity in the category and based on the same time period.

[IV.] *V.* Categories

A. The choice of category (including a subcategory of a broader category) on which the *investment company* [mutual fund] ranking is based must be one that provides a sound basis for evaluating the performance of the *investment company* [fund].

B. Subject to the standards below, an *investment company* [mutual fund] ranking must be based only on (1) a published category or subcategory created by a Ranking Entity or (2) a category or subcategory created by an *investment company* [fund] or an *investment company* [fund] affiliate, but based on the performance measurements of a Ranking Entity.

C. When the *investment company* [mutual fund] ranking is based on a subcategory, the advertisement or sales literature must disclose the name of the full category and the *investment company's* [fund's] ranking and the number of *investment companies* [funds] in the full category. This requirement does not apply if the subcategory is (1) based solely on the investment objectives of the *investment companies* [funds] included and (2) created by a Ranking Entity. This disclosure could be included in a footnote.

D. The advertisement or sales literature must not use any category or subcategory that is based upon the *investment company's* [mutual funds'] asset size (whether or not it has been created by a Ranking Entity).

E. If an advertisement uses a category created by the *investment company* [mutual fund] or an *investment company* [fund] affiliate, including a "subcategory" of a category established by a Ranking Entity, the advertisement must prominently disclose:

1. the fact that the *investment company* [fund] or its affiliate has created the ranking category;
2. the number of *investment companies* [funds] in the category;
3. the basis for selecting the category; and
4. the Ranking Entity that developed the research on which the ranking is based.

F. An advertisement or sales literature containing a headline or other prominent statement that proclaims an *investment company* [mutual fund] ranking created by an *investment company* [fund] or its affiliate must indicate, in close proximity to the headline or statement, that the *investment company* [mutual fund] ranking is based upon a category created by the *investment company* [fund] or its affiliate.

[V.] *VI.* Multiple Class/Two-Tier Funds

Investment company [Mutual Fund] rankings for more than one class or *investment company* [fund] with the same portfolio must be accompanied by prominent disclosure of the fact that the *investment companies* [funds] or classes have a common portfolio.

II. Background

The number of investment company ranking entities has increased substantially in recent years. There has been a corresponding increase in references to investment company rankings in investment company advertisements and sales literature. The use of these rankings has proven in many instances to be a source of confusion to investors, because an investment company's ranking may depend upon, among other things, the other investment companies against which its performance is compared, the time period during which the performance of the investment company is measured and whether the performance measurement used to rank the investment company reflects sales charges imposed. In response to the increasing reference by investment company groups to such investment company rankings in investment company advertisements and sales literature, the NASD filed the proposed rule change to provide guidance on the use of investment company rankings.

III. Comment Letters

The Commission received letters from six commenters.[4] All commenters except Blanchard, are explicitly in favor of the Guidelines, with recommended changes. Blanchard does not explicitly support or oppose the proposed rule change, and also recommends changes.

1. Several commenters object to Guidelines IV.B.2. and IV.B.3., which would require an investment company to obtain a ranking from a ranking agency for the life of an investment company if an investment company is less than 10 years old. These commenters state that it is impossible to obtain a rankings from ranking agencies for the life of an investment company.

In response to these comments, the NASD has amended Sections IV.B.2. and IV.B.3. to require that investment company rankings based on total return or the current SEC standardized yield must be accompanied by rankings for one year where the investment company has been in existence for at least one year but fewer than five, one and five years where the investment company has been in existence for at least five years but fewer than ten, and one, five and ten years where the investment company has been in existence for ten years or more. The NASD believes that a meaningful comparison of rankings in excess of one year should include multiple time periods for comparison to avoid the possibility of "cherry picking" only those time periods in which any particular investment company was highly ranked. The requirement in the proposed Guidelines to supply life of investment company rankings has been eliminated.

2. Commenters also object to the requirement that all rankings include rankings over 1, 5, and 10 year periods. The ICI notes that if a Ranking Entity ranks funds over a 3 year period, the member could not use that ranking.

The NASD believes that it is important to require a one-year time period to be included to permit the evaluation of an investment company's immediate performance against its performance over time. The required use of one-year ranking periods reduces the potential for rankings to be deceptive or misleading. The Guidelines do not foreclose the use of a three-year time period, or any other time period, so long as all time periods required to be used by the Guidelines are included.

3. The ICI also objects to Guideline III.B.7., which would require a statement that an investment company's ranking was materially improved by virtue of a fee waiver or expense advancement if that fee waiver or expense advancement had an effect on the rankings. The ICI's suggested alternative is to focus on the waiver or advancement's effect on *total return* or *yield* rather than the investment company's ranking. The ICI states that if the ranking is based upon total return or yield, the investment company has benefited from a fee waiver or expense advancement, and that waiver or advancement has had a material impact upon total return or yield, the advertisement should state that the fee waiver or expense advancement has had a material impact upon total return or yield.

The NASD recognizes that an investment company would most likely not know if fee waivers or expense advancements had a material effect on the investment company's ranking since Ranking Entities, rather than funds, develop the rankings. It would be very difficult to provide data concerning such effects since the data would not have been compiled by either the investment company or the Ranking Entity.

Therefore the NASD has amended Section III.B.7. to require that where the ranking is based on total return or SEC standardized yield, and where fees waived or expenses advanced during the period on which the ranking is based had a material effect on total return or yield for such period, a statement to that effect shall be included. Thus, members are still capable of providing investors disclosure concerning the potential effects of fee waivers and expense advancements on investment company performance and rankings without having to provide data that is not available. The requirement of whether such waived fees or advanced expenses had a material effect on the ranking has been eliminated.

4. Scudder suggests that load funds should be required to disclose their actual load, rather than just disclosing that they have a load if a ranking does not reflect that load.

The NASD believes that it is important for investors to know whether a ranking for a particular investment company has taken into account the investment company's sales load. However, the NASD has determined not to require the disclosure of the actual sales load, which is already required to be disclosed by other provisions of the securities laws.

5. Scudder also suggests that the Guidelines should focus on *total return* over 1, 5, and 10 year periods rather than on rankings.

The NASD believes that a focus on total return would not address the types of harm against which the Guidelines are designed to protect. The Guidelines were developed to address the dissemination to the public of information about investment company rankings as a basis for the purchase and sale of investment company shares.

[4] *See* letter from Michael E. Freedman, President & CEO, The Blanchard Group of Funds ("Blanchard") to Jonathan Katz, Secretary, SEC, dated February 20, 1994, letter from Paul Schott Stevens, General Counsel, Investment Company Institute ("ICI"), dated March 8, 1994; letter from Richard S. Cortese, Chair, NASAA Investment Company Sales Practices Committee ("NASAA"), dated March 7, 1994; letter from Thomas W. Joseph, Principal, Scudder, Stevens & Clark, Inc. ("Scudder"), dated March 8, 1994; letter from Forrest R. Foss, Vice President and Assistant Legal Counsel, T. Rowe Price Associates, Inc. ("Price"), dated March 14, 1994; and letter from Diane Brock, Vice President, Charles Schwab & Co., Inc. ("Schwab"), dated March 31, 1994.

yield, the investment company has benefited from a fee waiver or expense advancement, and that waiver or advancement has had a material impact upon total return or yield, the advertisement should state that the fee waiver or expense advancement has had a material impact upon total return or yield.

The NASD recognizes that an investment company would most likely not know if fee waivers or expense advancements had a material effect on the investment company's ranking since Ranking Entities, rather than funds, develop the rankings. It would be very difficult to provide data concerning such effects since the data would not have been compiled by either the investment company or the Ranking Entity.

Therefore the NASD has amended Section III.B.7. to require that where the ranking is based on total return or SEC standardized yield, and where fees waived or expenses advanced during the period on which the ranking is based had a material effect on total return or yield for such period, a statement to that effect shall be included. Thus, members are still capable of providing investors disclosure concerning the potential effects of fee waivers and expense advancements on investment company performance and rankings without having to provide data that is not available. The requirement of whether such waived fees or advanced expenses had a material effect on the ranking has been eliminated.

4. Scudder suggests that load funds should be required to disclose their actual load, rather than just disclosing that they have a load if a ranking does not reflect that load.

The NASD believes that it is important for investors to know whether a ranking for a particular investment company has taken into account the investment company's sales load. However, the NASD has determined not to require the disclosure of the actual sales load, which is already required to be disclosed by other provisions of the securities laws.

5. Scudder also suggests that the Guidelines should focus on *total return* over 1, 5, and 10 year periods rather than on rankings.

The NASD believes that a focus on total return would not address the types of harm against which the Guidelines are designed to protect. The Guidelines were developed to address the dissemination to the public of information about investment company rankings as a basis for the purchase and sale of investment company shares.

6. Price raises a specific issue with respect to Morningstar rankings. Morningstar produces a single blended ranking taking into account performance over 3, 5, and 10 year periods, taking into account risk. Price states that if this ranking is used, it should not be required to use component rankings.

The NASD does not believe that a blended ranking is an appropriate substitute for the component rankings of three, five and ten years. First, the NASD's proposed Guidelines require time-frame components of one, five and ten years. Second, a blended rating could significantly obscure that would otherwise be meaningful information to an investor. As noted above, the NASD believes that a meaningful comparison of rankings in excess of one year should include multiple time periods for comparison to avoid the possibility of investor confusion. Also, as noted above, the NASD believes that it is important to require a one-year time period to be included to permit the evaluation of an investment company's immediate performance against its performance over time. The required use of one-year ranking periods reduces the potential for rankings to be deceptive or misleading.

7. NASAA objects to permitting funds to self-select a universe of funds against which they rank themselves. NASAA would prefer to prohibit self-selected rankings, or, alternatively, would require a comparison against a relevant unmanaged index in addition to the comparison against the self-selected universe.

Pursuant to Section 35(c) to Article III of the NASD Rules of Fair Practice, all new advertisements and sales literature concerning registered investment companies that include or incorporate rankings must be filed within 10 days of first use with the NASD's Advertising Regulation Department for review, along with a copy of the data, ranking or comparison on which the ranking is based. If the ranking is not generally published or is the creation of the investment company, its underwriter or affiliate, it must be filed for review and approval at least 10 days prior to first use.[5] In either case, the NASD shall have the opportunity to determine whether rankings based on a self-selected universe of funds comport with the basic requirements of Section 35 that communications to the public be based on fair dealing and good faith.

8. NASAA also suggests that the core elements of the Guidelines be incorporated into Article III, Section 35 of the NASD Rules of Fair Practice.

The Guidelines will be incorporated as guidelines to Article III, Section 35 to the Rules of Fair Practice. Pursuant to Article I, Section (o) to the NASD By-Laws, the rules of the NASD include the Rules of Fair Practice and any interpretations promulgated thereunder. Any guideline, policy or interpretation promulgated under a Rule of Fair Practice is, therefore, enforceable by the NASD as if it were a Rule of Fair Practice.

9. Schwab publishes the *Schwab Mutual Funds Performance Guide ("Schwab Guide")*. The Schwab Guide provides twenty items of information about each investment company available in Schwab's Mutual Fund Marketplace. Schwab states that the Schwab Guide does not resemble typical investment company advertisements or sales literature, but would fall under the Guidelines because Schwab sells each investment company listed in the Schwab Guide. Schwab objects to the application of the Guidelines to the Schwab Guide and similar publications.

The NASD understands that Schwab has requested exemption from application of the proposed Guidelines to the Schwab Guide on the basis that such a requirement would entail significant additional information to the Schwab Guide, making it "too long and complicated and too expensive to produce and distribute." However, the Schwab Guide is distributed by Schwab, a member firm, to the public in connection with the purchase or sale of funds offered through Schwab's Mutual Fund Marketplace" ("MFMP"), and thus qualifies under NASD definitions as "advertisement" or "sales literature." Additionally, the performance rankings in the Schwab Guide will be subject to the proposed Guidelines since Schwab qualifies under the definition of "Ranking Entity" in the proposed Guidelines.

If Schwab, or any other member firm, uses Schwab's investment company rankings, or any other Ranking Entity's investment company rankings, in connection with the purchase or sale of such investment companies, then the use of such rankings is subject to compliance not only with the general requirements of Article III, Section 35 to the NASD Rules of Fair Practice, but also with the specific requirements under the proposed Guidelines, if adopted.

IV. Amendment Nos. 1 and 2

As mentioned above, the NASD filed Amendment No. 1 to the rule filing in order to respond to the six comment

[5] *See* Securities Exchange Act Release No. 33780 (Mar. 17, 1994), 59 FR 14005 (Mar. 24, 1994).

letters received by the NASD and the Commission. Amendment No. 2 was filed to further clarify the proposed rule change and to ensure that the text of the proposed rule change was consistent with the definition of similar terms used in the federal securities laws.[6] Amendment No. 2 adds a new Section II. to the Guidelines to clarify that members only use the rankings of those entities included in the definition of "Ranking Entity," and are precluded from using rankings of any entity that falls outside the definition. Sections II–V. will be redesignated Sections III.–VI. Amendment No. 2 also replaces the phrase "Mutual Fund" in the heading of the Guidelines and throughout the text with the phrase "investment company" to clarify that the Guidelines apply to all registered investment companies, including both open-end and closed-end management companies, as those terms are defined and classified in the Investment Company Act of 1940.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–93–69 and should be submitted by August 8, 1994.

V. Discussion and Findings

The Commission believes that the NASD has addressed the relevant question raised in the comment letters. The Commission believes that the amendments to the proposed rule change adequately respond to the concerns of commenters that certain provisions of the Guidelines as initially proposed imposed undue burdens upon members (*e.g.*, "life of fund" rankings; judgments as to whether a fee waiver or expense advancement materially improved the ranking of an investment company). The Commission believes that the Guidelines, as amended, will assist investment company investors in making informed investment decisions based upon information set forth in a clear and uniform manner.

Certain commenters objected that the Guidelines require the use of rankings over 1, 5 and 10 years periods. They noted that certain Ranking Entities do not produce one-year rankings, and that members would be precluded from using Ranking Entities using other time periods. The NASD has stated that it recognizes that the proposed rule change may prevent members from using certain Ranking Entities.[7] However, the NASD stated that it believes that the protection and benefits to the investing public of a consistent and unitary standard for the use of mutual fund rankings outweigh the competitive disadvantage for certain Ranking Entities that do not currently produce rankings in conformance with the Guidelines. The NASD also noted that it believes that the fiscal burden that Ranking Entities would need to incur to conform their publication to the requirements of the Guidelines would be slight. The Commission agrees with the NASD that any competitive burdens imposed by the Guidelines are outweighed by the investor protection benefits that the Guidelines will provide.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission believes that rule change is consistent with the provisions of Section 15A(b)(6) of the Act.[8] Section 15A(b)(6), among other things, requires that the rules of the NASD be designed to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Guidelines will enhance investor protection and the public interest because they promote a clear and uniform manner in which to disseminate to the public information about investment company rankings as a basis for the purchase and sale of investment company shares.

By letter dated July 6, 1994, the NASD requests that the Commission find good cause to approve the proposed rule change as amended by Amendment Nos. 1 and 2, prior to the 30th day following publication of notice of the filing of such Amendments in the Federal Register.[9] The NASD states that the proposed rule change is necessary to address regulatory concerns regarding the disparate information being provided to investors in investment company advertising and sales literature. The NASD notes that there are currently no specific guidelines regulating the use of rankings in investment company advertising and sales literature, and that the proposed rule change will ensure that investors are provided clear information and fair and balanced ranking comparisons.

Pursuant to Section 19(b)(2) of the Act[10], the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publication of Amendment Nos. 1 and 2 in the **Federal Register**. The proposed rule change, which was published in the **Federal Register** for the full statutory period, would have: (1) Required members to provide "life of fund" rankings for investment companies less than 10 years old; (2) required members to state whether a fee waiver or expense advancement materially improved the ranking of an investment company; and (3) applied only to mutual funds. The proposed amendment simply eliminates the "life of fund" ranking requirement, requires members to state whether fees waived or expenses advanced during the period on which the ranking is based had a material effect on total return or yield for such period, and applies the guidelines to all investment companies. The Commission also believes it is important for ranking information to be provided to investors in a uniform manner and in a format that permits investors to make educated comparisons of investment company rankings. Because the Commission believes that the Guidelines will improve the ability of investment company investors to make sound judgments based upon clear and uniform information, the Commission believes that the rule filing should be approved, as amended, without delay.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR–NASD–93–69 be, and hereby is, approved effective immediately.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17352 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34355; File No. SR–NASD–93–38]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Interim Injunctive Relief in Intra-Industry Disputes and Certain Other Changes in the NASD Code of Arbitration Procedure

July 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its Code of Arbitration Procedure ("Code") to: (1) redesignate Part III, Section 44[2] *et seq.* as new Part IV; (2) amend Sections 22 and 44; and (3) add a new Section to the Code. Below is the text of the proposed rule change. Proposed new

---

[6] The NASD proposes to:

1. Reposition Subsection I.A., which was added as a new Subsection in SR–NASD–93–69, Amendment No. 2, to new Section II. entitled "General Prohibition," and renumber the remaining Sections accordingly;

2. Subsection III.B.6.: replace the phrase "sales charges" in the first line (which was added in Amendment No. 2) with the phrase "front-end sales loads" to retain consistency with the definition of "sales load" in Section 2(a)(35) of the Investment Company Act of 1940 and to clarify that the Subsection applies only to front-end sales loads;

3. Subsection IV.A.: insert the phrase "in the case of advertising" between the words "ended" and "prior," and insert the phrase "or, in the case of sales literature, prior to use" after the word "publication," to make the Subsection consistent with SEC Rule 43b–1; and

4. Subsection IV.B.3.: insert the sentence "an investment company ranking based on yield may be based only on the current SEC standardized yield" in the beginning of the Subsection to clarify that rankings based on yield may use only the SEC standardized yield.

[7] *See* letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, SEC, dated July 5, 1994.

[8] 15 U.S.C. 78o–3(b)(6) (1988).

[9] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC, dated July 6, 1994.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1993).

[1] The NASD initially submitted the proposed rule change on July 13, 1993. Amendment No. 1 made technical changes to the text of the rule. *See* Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, SEC (available in Commission's Public Reference Room).

[2] *NASD Manual*, Code of Arbitration Procedure, Art. III, Sec. 44 (CCH) ¶ 3744.

comparisons of investment company rankings. Because the Commission believes that the Guidelines will improve the ability of investment company investors to make sound judgments based upon clear and uniform information, the Commission believes that the rule filing should be approved, as amended, without delay.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that SR–NASD–93–69 be, and hereby is, approved effective immediately.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17352 Filed 7–15–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–34355; File No. SR–NASD–93–38]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Interim Injunctive Relief in Intra-Industry Disputes and Certain Other Changes in the NASD Code of Arbitration Procedure

July 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend its Code of Arbitration Procedure ("Code") to: (1) redesignate Part III, Section 44[2] *et seq.* as new Part IV; (2) amend Sections 22 and 44; and (3) add a new Section to the Code. Below is the text of the proposed rule change. Proposed new language is in *italics*, proposed deletions are in **brackets**.

CODE OF ARBITRATION PROCEDURE

* * * * *

PART III

UNIFORM CODE OF ARBITRATION

* * * * *

Peremptory Challenge

Sec. 22. In any arbitration proceeding, *except as provided in Section (XX—Injunctions),* each party shall have the right to one peremptory challenge. In arbitration where there are multiple Claimants, Respondents and/or Third-Party Respondents, the Claimants shall have one peremptory challenge, the Respondents shall have one peremptory challenge, and the Third-Party Respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identify of the person(s) named under Section 21 or Section 32(d) or (e), whichever comes first. There shall be unlimited challenges for cause.

* * * * *

PART IV

MISCELLANEOUS

* * * * *

Schedule of Fees for Industry and Clearing Controversies

Sec. 44.

* * * * *

(h) In each industry or clearing controversy which is required to be submitted to arbitration before the Association as set forth in Section 8, above, [requiring] *where interim injunctive relief is requested or where a court has issued a temporary injunction and a party requests* expedited [hearings] *proceedings,* a *total* non-refundable surcharge of $2,500 shall be paid by [all Claimants, collectively, and a non-refundable surcharge of $2,500 shall be paid by all Respondents, collectively] *the party or parties requesting the expedited proceedings as provided in Section (XX—Injunctions).* These surcharge fees shall be in addition to all other non-refundable filing fees, hearing deposits, or costs which may be required. *The arbitrator may determine that a party shall reimburse another party for any non-refundable surcharge it has paid.*

* * * * *

Injunctions

Sec. XX. In industry or clearing disputes required to be submitted to arbitration pursuant to Section 8, parties to the arbitration may seek injunctive relief either within the arbitration process or from a court of competent jurisdiction. Within the arbitration process, parties may seek either an "interim injunction" from a single arbitrator or a permanent injunction from a full arbitration panel. From a court of competent jurisdiction, parties may seek a temporary injunction. This section (XX—Injunctions) contains procedures for obtaining an interim injunction. Paragraph(g) of this Section relates to the effect of court-imposed injunctions on arbitration proceedings. If any injunction is sought as part of the final award, such request should be made in the remedies portion of the Statement of Claim, pursuant to Section 25(a).

Single Arbitrator

(a) Applicants for interim injunctive relief shall be heard by a single arbitrator.

Showing Required

(b) In order to obtain an interim injunction, the party seeking the injunction must make a clear showing that it is likely to succeed on the merits, that it will suffer irreparable injury unless the relief is granted, and that the balancing of the equities lies in its favor.

Application for Relief

(c) Interim injunctions include both Immediate Injunctive Orders and Regular Injunctive Orders, as described in paragraph (d) below. In either case, the applicator shall make application for relief by serving a Statement of Claim, a statement of facts demonstrating the necessity for injunctive relief, and a properly-executed Submission Agreement on the party or parties against whom injunctive relief is sought. The above documents shall simultaneously and in the same manner be filed with the Director of Arbitration, together with an extra copy of each document for the arbitrator, proof of service on all parties, and all fees required under Section 44. Filings and service required under this Section (XX—Injunctions) may be made by United States mail, overnight delivery service or messenger.

(d) The procedures and timetable for handling applications for interim injunctive relief are as follows:

---

[11] 17 CFR 200.30–3(a)(12) (1993).

[1] The NASD initially submitted the proposed rule change on July 13, 1993. Amendment No. 1 made technical changes to the text of the rule. *See* Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, SEC (available in Commission's Public Reference Room).

[2] *NASD Manual,* Code of Arbitration Procedure, Art. III, Sec. 44 (CCH) ¶ 3744.

(1) Immediate Injunctive Orders.

(A) Upon receipt of an application for an Immediate Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than one and no later than three business days after receipt of the application by the respondent and the Director.

(B) The filing of a response to an application for an Immediate Injunctive Order is optional to the party against whom the immediate order is sought. Any response shall be served on the applicant. If a response is submitted, the responding party shall, prior to the hearing or at the hearing, file with the Director two copies of the response and proof of service on all parties.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Section 21; and any information required to be disclosed by the arbitrator pursuant to Section 23 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for an Immediate Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Immediate Injunctive Order. Unless the parties agree otherwise, however, the order will expire no later than the earlier of the issuance or denial of a Regular Injunctive Order under subparagraph (2) or a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

(2) Regular Injunctive Orders.

(A) Upon receipt of an application for a Regular Injunctive Order, the Director shall endeavor to schedule a hearing no sooner than three and no later than five business days after the response is filed or due to be filed, whichever comes first.

(B) The party against which a Regular Injunctive Order is sought shall serve a response on the applicant within three business days of receipt of the application. The responding party shall simultaneously and in the same manner file with the Director two copies of the response and proof of service on all parties. Failure to file a response within the specified time period shall not be grounds for delaying the hearing, nor shall it bar the respondent from presenting evidence at the hearing.

(C) Notice of the date, time and place of the hearing; the name and employment history of the single arbitrator required by Section 21; and any information required to be disclosed by the arbitrator pursuant to Section 23 shall be provided to all parties via telephone, facsimile transmission or messenger delivery prior to the hearing.

(D) The hearing on the application for a Regular Injunctive Order may be held, at the discretion of the arbitrator or the Director, by telephone or in person in a city designated by the Director of Arbitration.

(E) The arbitrator shall endeavor to grant or deny the application within one business day after the hearing and record are closed.

(F) If the application is granted, the arbitrator shall determine the duration of the Regular Injunctive Order. Unless the parties agree otherwise, however, a Regular Injunctive Order shall expire no later than a decision on the merits of the entire controversy by an arbitration panel appointed under this Code.

Challenges to Arbitrators

(e) There shall be unlimited challenges for cause to the single arbitrator appointed to hear the application for injunctive relief, but there shall be no peremptory challenges. Parties wishing to object to the arbitrator shall do so by telephone to the Director, and shall confirm such objection immediately in writing or by facsimile transmission, with a copy to all parties. A peremptory challenge may not be made to an arbitrator who heard an application for an injunctive order and who subsequently participates or is to participate on the arbitration panel hearing the same arbitration case on the merits.

Hearing on the Merits

(f) If an Immediate or Regular Injunctive Order is issued by an arbitrator, the arbitration concerning the matter of the injunction shall proceed in an expedited manner, according to a time schedule and procedures specified by the arbitration panel appointed under this Code.

Effect of Court Injunction

(g) If a court has issued an injunction against one of the parties to an arbitration agreement, unless otherwise specified by the court, any requested arbitration concerning the matter of the injunction shall proceed in an expedited manner according to a time schedule and procedures specified by the arbitration panel appointed under this Code.

Security

(h) The arbitrator issuing the Immediate or Regular Injunctive Order may require the applicant, as a condition to effectiveness of the order, to deposit security in an amount that the arbitrator deems proper for the payment of any costs and damages that may be incurred or suffered by the party against whom injunctive relief is sought if it is found to have been wrongfully enjoined.

Effective Date

(i) This Section (XX—Injunctions) shall apply to arbitration claims filed on or after the effective date of this section. Except as otherwise provided in this Section (XX—Injunctions), the remaining provisions of the Code shall apply to proceedings instituted under Section (XX—Injunctions). Section (XX—Injunctions) shall expire one year after its effective date unless extended by the NASD Board of Governors.

* * * * *

Resolution of the Board of Governors

Failure to Act Under Provisions of Code of Arbitration Procedure

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Article III, Section 1 of the Rules of Fair Practice for a member or a person associated with a member to fail to submit a dispute for arbitration under the Code of Arbitration Procedure as required by that Code, *to fail to comply with any injunctive order issued pursuant to Section (XX—Injunctions),* to fail to appear or to produce any documents in his possession or control as directed pursuant to provisions of the Code of Arbitration Procedure, or to fail to honor an award of arbitrators properly rendered pursuant to the Uniform Code of Arbitration under the auspices of the National Association of Securities Dealers, Inc., the New York, American, Boston, Cincinnati, Chicago, Pacific, or Philadelphia Stock Exchanges, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of securities disputes before the American Arbitration Association, where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The NASD is proposing to amend the Code to codify the authority of arbitrators to grant interim injunctive relief in intra-industry disputes under Section 8 of the Code that are subject to NASD arbitration, to provide that peremptory challenges may not later be made to arbitrators who handled requests for interim injunctive relief in the same case, to provide that the $2,500 nonrefundable surcharge for expedited proceedings shall be paid by the party requesting such proceedings, and to provide that failure to comply with any injunctive order issued pursuant to the new injunction section may be deemed to be a violation of Article III, Section 1 of the Rules of Fair Practice.

(1) *Peremptory Challenge to Arbitrator Who Handled Request for Injunction:* The proposed rule change to Section 22 excepts proceedings for injunctive orders under the proposed new section from the provision granting a party one peremptory challenge to an arbitrator. This provision is compatible with the expedited nature of injunctive proceedings. *See* discussion below of subsection (e) of the proposed new section.

(2) *Non-refundable Surcharge for Expedited Proceedings:* Currently, Section 44 imposes a non-refundable surcharge of $2,500 on all parties in an expedited proceeding. Expedited proceedings are provided in connection with a request for injunctive relief under the proposed new section and as a result of a court granting injunctive relief. The proposed rule change would amend Section 44 to provide that the total surcharge of $2,500 is to be paid only by the party or parties requesting expedited proceedings. In addition, the rule change provides that the arbitrator may determine that a party shall

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The NASD is proposing to amend the Code to codify the authority of arbitrators to grant interim injunctive relief in intra-industry disputes under Section 8 of the Code that are subject to NASD arbitration, to provide that peremptory challenges may not later be made to arbitrators who handled requests for interim injunctive relief in the same case, to provide that the $2,500 nonrefundable surcharge for expedited proceedings shall be paid by the party requesting such proceedings, and to provide that failure to comply with any injunctive order issued pursuant to the new injunction section may be deemed to be a violation of Article III, Section 1 of the Rules of Fair Practice.

(1) *Peremptory Challenge to Arbitrator Who Handled Request for Injunction:* The proposed rule change to Section 22 excepts proceedings for injunctive orders under the proposed new section from the provision granting a party one peremptory challenge to an arbitrator. This provision is compatible with the expedited nature of injunctive proceedings. *See* discussion below of subsection (e) of the proposed new section.

(2) *Non-refundable Surcharge for Expedited Proceedings:* Currently, Section 44 imposes a non-refundable surcharge of $2,500 on all parties in an expedited proceeding. Expedited proceedings are provided in connection with a request for injunctive relief under the proposed new section and as a result of a court granting injunctive relief. The proposed rule change would amend Section 44 to provide that the total surcharge of $2,500 is to be paid only by the party or parties requesting expedited proceedings. In addition, the rule change provides that the arbitrator may determine that a party shall reimburse another party for any such surcharge it has paid.

(3) *Procedure for Granting Interim Injunctive Relief:* The introduction to the proposed new section gives arbitrators authority to grant interim injunctive relief in intra-industry disputes and clarifies the ability of parties to seek injunctive relief in court if they wish. The introduction sets out that under the proposed new section, the parties may seek either an "interim injunction" or a "permanent injunction" and that subsection (g) of the proposed new section describes the effect of court-imposed injunctions on an arbitration proceeding. Finally, the introduction clarifies that if any injunction is sought as part of the final award, the request must by made pursuant to Section 25(a).

Paragraph (a) provides that applications for interim injunctions are to be heard by a single arbitrator. Paragraph (b) requires the party seeking interim injunctive relief to make a clear showing that it is likely to succeed on the merits, that it will suffer irreparable injury unless the relief is granted, and that the balancing of the equities lies in its favor. Thus, the proposed standards for granting injunctive relief are similar to those traditionally employed in many courts. Paragraph (c) lists the documents that must be filed to apply for interim injunctive relief. Paragraph (d) sets forth the procedure and timetable for handling applications for interim injunctive relief. Under subparagraph (d)(1), an expedited timetable is provided for handling applications for Immediate Injunctive Orders, which are similar to temporary restraining orders ("TROs") that might be issued by a court, in that a response to such an application is optional. In such cases, that Director is to endeavor to schedule a hearing within one to three business days after receipt of the application. Information required to be given to parties may be sent by facsimile transmission, and the hearing may be held by telephone or in a limited number of cities, at the discretion of the arbitrator or the Director of Arbitration. At present, the NASD contemplates holding such hearings in New York, Chicago and San Francisco. The arbitrator will endeavor to grant or deny the application within one business day after the hearing and record are closed. The duration of an Interim Injunction will be determined by the arbitrator, but in any event it will expire no later than the date of the issuance or denial or a Regular Injunctive Order (if any) or a decision on the merits of the entire controversy.

Subsection (d)(2) of the proposed new section deals with Regular Injunctive Orders, which are similar to preliminary injunctions issued by the courts. Under these provisions, the Director will endeavor to schedule a hearing within three to five business days after the response is filed or due to be filed, whichever comes first. Failure to file a response will not, however, delay the hearing, and the responding party may choose to present evidence at the hearing whether or not it has previously filed a response. As in paragraph (d)(1), hearings may be held by telephone or in selected cities. Regular injunctions expire as determined by the arbitrator, but in no event later than the date of a decision on the merits of the underlying controversy.

Subsection (e) of the proposed new section provides that there can be unlimited challenges for cause to the single arbitrator appointed to hear the application for an interim injunction, but no peremptory challenges are permitted. Moreover, peremptory challenges may not later be made to an arbitrator who heard an application for an injunctive order and who subsequently is appointed to participate on the arbitration panel hearing the same arbitration on the merits. As stated above with regard to Section 22, the elimination of peremptory challenges promotes the expedited nature of injunctive proceedings, while still preserving the parties' rights to challenge an arbitrator for cause.

Subsection (f) of the proposed new section provides that the arbitration of the underlying controversy is to proceed in an expedited manner according to a timetable and procedures specified by the arbitration panel. This continues the expedited treatment of cases in which interim injunctive relief has been granted, to provide a faster resolution of the merits of the dispute. Paragraph (g) provides that if a court has issued an injunction against one of the parties to an arbitration agreement, any arbitration that might be requested will be handled expeditiously, according to a timetable and procedures determined by the arbitration panel. Paragraph (h) permits the arbitrator to require a party to deposit security in an amount that the arbitrator deems proper for the payment of any costs or damages that might be incurred by the adverse party if it were wrongfully enjoined.

Subsection (i) of the proposed new section contains a "sunset" clause, causing the section to expire in one year unless the NASD files a rule change under Rule 19b–4 to amend the proposed rule change to extend its period of effectiveness or eliminate the

expiration date. This will provide for a pilot period during which the feasibility of allowing arbitrators to issue interim injunctions can be assessed.

(4) *Resolution of the Board of Governors:* The proposed rule change would amend the Resolution of the Board of Governors currently found at paragraph 3744 of the Manual to provide that failure to comply with any interim injunctive order issued pursuant to the proposed new section will be added to the types of conduct that may be considered to be violative of Article III, Section 1 of the Rules of Fair Practice.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] in that the proposed rule change will facilitate the arbitration process in the public interest by codifying authority of arbitrators to grant interim injunctive relief in intra-industry disputes under Section 8 of the Code that are subject to NASD arbitration, providing that peremptory challenges may not later be made to arbitrators who handled requests for interim injunctive relief in the same case, providing that the $2,500 non-refundable surcharge for expedited proceedings shall be paid by the party or parties requesting such proceedings, and providing that failure to comply with any injunctive order issued pursuant to the new injunction section may be deemed to be a violation of Article III, Section 1 of the Rules of Fair Practice.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. The Commission requests that, in addition to any general comments concerning whether the proposed rule change is consistent with Section 15A(b)(6) of the Act, commentators address the following:

1. The proposed new section would permit parties to seek injunctive relief from a court of competent jurisdiction. Section 6 of the Code of Arbitration Procedure provides that "no party shall commence any suit, action or proceeding against any other party touching upon any of the matters referred to arbitration pursuant to this Code". Should the relationship between the two sections be clarified?

It is not clear under the proposed amendment whether the new section clarifies the parties' access to existing procedures under certain state statutes allowing for injunctive actions even where parties have entered into arbitration agreements, or whether it establishes a new contractual agreement by the parties excepting injunctive actions in court from the parties' agreements to arbitrate under NASD rules. Should the proposal be amended to clarify that it is limited to existing rights under statute, or to clarify that it is intended to extend to all agreements to arbitrate under NASD rules?

2. The proposed rule change would amend an existing Resolution of the Board of Governors to provide that failure to comply with any injunctive order issued pursuant to the proposed new section may be considered to be violative of Article III, Section 1 of the Rules of Fair Practice. Since the proposed new section authorizes both court-issued injunctions (discussed in question 1 of this solicitation of comments) and interim injunctions issued by an arbitrator, should the proposed change to the resolution be clarified to indicate whether the amendment would extend to both types of injunctions or only to the interim injunctions issued by arbitrators pursuant to the section? Should the resolution be limited to arbitrator-issued interim injunctions?

3. The proposed rule change provides for two different types of interim injunctions, "immediate injunctive orders" and "regular injunctive orders". Should the proposed rule change make it clear whether different standards apply for the granting of the two types of orders, or whether the only difference in the two types of injunctive proceedings consists of the number of days in which decisions under the section are to be made?

Subsection (d)(1) of the proposed new section provides that an immediate injunctive order expires no later than the earlier of the issuance or denial of a regular injunctive order or a decision on the merits of the entire controversy. Should the proposed rule change make it clear how and when proceedings for a regular injunctive proceeding would follow an immediate injunctive proceeding?

4. Subsections (f) and (g) of the proposed new section provide that the arbitration concerning a matter in which either an interim injunction under the section or a court injunction has been issued will be expedited, under a schedule specified by the arbitration panel appointed under the Code. Since it appears under the proposal that the arbitration panel would be appointed after a decision on the application for injunctive relief is made, should there be a time frame in the proposed new section for the Director of Arbitration to appoint the panel? Should it be made clear under the expedited procedures in the proposed new section how the prehearing procedures under section 32 of the Code would operate to assure that parties can obtain access to necessary information prior to the hearing on the merits?

5. Although the introduction to the section provides that if any injunction is sought as part of the final award, the request should be made in the remedies portion of the statement of claim under Section 25(a) of the Code, and although subsection (c) provides that applications for interim injunctions must be accompanied by a statement of claim, it is not clear under the proposal whether applications for interim injunctive relief must be submitted together with the statement of claim for the full case on the merits or merely a statement of claim to support the application for injunctive relief. If the full statement of claim is not required at the time of the application for injunctive relief, should the proposed new section impose a fixed time period for the submission of the statement of claim in order to avoid prejudice to the party against which interim injunctive relief has been awarded? If the full statement of claim for the case on the merits is required at the time of the application for an interim injunction, should the proposed new section be amended to clarify that point?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–93–38 and should be submitted by August 8,1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30=3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17353 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34349; File No. SR–PHLX–93–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc., Relating to the Intra-Day Addition of Strike Prices

July 11, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[1] The

[3] 15 U.S.C. Sec 78o–3.

[1] On March 30, 1994, the PHLX submitted a letter deleting a provision which would have allowed the Exchange to add new strike prices under extraordinary circumstances. *See* Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Sharon Lawson, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 30, 1994 ("Amendment No. 1"). Amendment No. 1 also clarified that new strikes may be added in response to bona fide off-floor customer interest, and defined customer

new section be amended to clarify that point?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–93–38 and should be submitted by August 8,1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30=3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17353 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34349; File No. SR–PHLX–93–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc., Relating to the Intra-Day Addition of Strike Prices

July 11, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its rules to adopt Floor Procedure Advice ("Advice") F–22, "Intra-Day Addition of Strike Prices," to establish a procedure for the listing of new option series on an intra-day basis, with the approval of the appropriate floor committee chairperson or his designee. Specifically, under proposed Advice F–22, the PHLX may list new strikes under the following circumstances: (1) There is bona fide off-floor customer interest in effecting a sizable transaction at a strike price at or within five points of the price of the underlying instrument; or (2) there has been an operational error in not adding a requested exercise strike price.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, the addition of strike prices, which is governed by PHLX Rules 1012, "Series of Options Open for Trading," and 1101A, "Terms of Option Contracts," is determined by the movement of the underlying stock, index, or foreign currency, such that strike prices reasonably close to the value of the underlying security are listed for trading. When the Exchange plans to add a new strike price, a memorandum is distributed to the trading floor as well as over electronic systems notifying the membership and their customers of the new strike. Generally, the new strike price is available for trading on the day following such notification. The PHLX states that, increasingly, it has become necessary, due to market conditions as well as customer and specialist requests, to add new strike prices within the same day with the approval of a floor official and Exchange staff. In such instances, notification is given and the strike can often become available for trading the same day. The PHLX's proposal is intended to codify a written procedure for these instances to facilitate compliance as well as to help to ensure that notification is properly given.

The Exchange proposes to incorporate the proposed procedure into the form of an advice to make it available to the trading floor in the Exchange's Floor Procedure Handbook. Proposed Advice F–22 would apply to the equity option, index option and foreign currency option trading floors.

In order to provide the guidance necessary to determine when and how the same-day addition of a new strike price is effected, the PHLX has incorporated certain standards into proposed Advice F–22. For example, the proposed Advice provides that where the Exchange has erroneously failed to list a strike price, an intra-day addition would be appropriate. In addition, the proposed Advice provides that an off-floor customer request to list a strike at or within five points of the price of the underlying stock, or within a comparable amount of "ticks," in the case of a foreign currency option, in order to effect a sizeable transaction, would warrant an intra-day addition.

---

[1] On March 30, 1994, the PHLX submitted a letter deleting a provision which would have allowed the Exchange to add new strike prices under extraordinary circumstances. *See* Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Sharon Lawson, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 30, 1994 ("Amendment No. 1"). Amendment No. 1 also clarified that new strikes may be added in response to bona fide off-floor customer interest, and defined customer interest to "include institutional (firm), corporate or customer interest expressed directly to the PHLX or through the customer's floor brokerage unit, but not interest expressed by a registered options trader ("ROT") with respect to trading in the ROT's own account. On June 23, 1994, the PHLX submitted a letter deleting a provision which would have allowed the Exchange to list additional strike prices when there is significant volatility in the price of the underlying instrument. *See* Letter from Gerald D. O'Connell, First Vice President, PHLX, to Sharon Lawson, Assistant Director, Division, Commission, dated June 23, 1994 ("Amendment No. 2"). Amendment No. 2 also states that strike prices added under the proposal must be consistent with PHLX Rules 1101A, "Terms of Option Contracts," and 1012, "Series of Options Open for Trading." In addition, the PHLX clarified its proposal by noting that the purpose of the proposal is to allow the Exchange to add strike prices intra-day in order to respond to market changes. The PHLX states that the proposal will not affect the number of strike prices which the Exchange will list, and that the determination of which strike prices will be added will continue to be governed by Exchange Rules 1012 and 1101A. *See* Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Sharon Lawson, Assistant Director, Division, Commission, dated March 1, 1994 ("March 1 Letter"). On July 7, 1994, the PHLX submitted a letter requesting accelerated approval of the proposal. *See* Letter from Gerald D. O'Connell, First Vice President, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division, dated July 7, 1994 ("July 7 Letter").

Moreover, the approval of the chairperson of the appropriate floor committee, or his designee, would be required to list an intra-day strike under the proposed Advice. Proposed Advice F–22 also requires that prior notice of any such intra-day addition be disseminated for the benefit of off-floor firms and customers.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as well as to protect investors and the public interest. Specifically, the Exchange believes that the adoption of proposed Advice F–22 should codify the procedure for adding new strike prices intra-day so that the procedure may be referred to by PHLX member organizations and implemented uniformly.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PHLX has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act because the proposal codifies the Exchange's existing procedures for adding intra-day strikes.[2]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[3] Specifically, the Commission believes that the proposal will protect investors and further the public interest by clarifying the Exchange's procedures for adding intra-day strike prices and by ensuring that notice of a new intra-day strike price is disseminated to the Exchange's options members before the new strike is listed.

The Commission also believes that the PHLX's proposal strikes a reasonable balance between the Exchange's need to accommodate the needs of investors and the need to avoid the excessive proliferation of options series. In this regard the Commission notes that the proposal allows the PHLX to list only intra-day strikes at or within five points of the underlying instrument, (strikes that normally would be added the next day), only if there is bona fide customer interest [4] in the additional strikes or to correct an operational error, in addition to requiring the approval of the appropriate floor committee chairman or his designee. Moreover, the PHLX proposes to list only those additional intra-day strikes which are "reasonably close" to the price of the underlying instrument, consistent with PHLX Rules 1012 and 1101A.[5] The Commission believes that these requirements provide the Exchange with the flexibility to list additional intra-day strike prices in response to genuine customer interest or to correct an operational error while, at the same time, appropriately limiting the number of options series that may be outstanding at any one time. The Commission notes that the proposal, which is a codification of the Exchange's current practice, is designed to affect only the timing of the listing of additional strikes without affecting the number of strike prices the Exchange lists.[6]

The Commission expects the PHLX to monitor the additional intra-day strikes listed under the proposal to ensure that the strikes are added in response to a bona fide customer request or to correct an operational error, and are consistent with Exchange Rules 1012 and 1101A.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register because the proposal codifies the Exchange's existing policy for the addition of intra-day strike prices and is a clarification of the PHLX's current rule for adding strikes. The Commission finds good cause for approving Amendment Nos. 1 and 2 because they make the proposal consistent with the Exchange's current policy for listing intra-day strike prices and clarify that intra-day strikes listed under the proposal must be consistent with PHLX Rules 1012 and 1101A. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 8, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–PHLX–93–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17317 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

---

[2] *See* July 7 Letter, *supra* note 1.

[3] 15 U.S.C. 78f(6)(5) (1982)

[4] The proposal defines customer interest to include "institutional (firm), corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by an ROT with respect to trading for the ROT's own account." *See* Amendment No. 1, *supra* note 1.

[5] *See* Amendment No. 2, *supra* note 1.

[6] *See* March 1 Letter, *supra* note 1.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20392; 812–8716]

MassMutual Institutional Funds, et al.

July 11, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: MassMutual Institutional Funds (the "Trust"), Massachusetts Mutual Life Insurance Company (the "Advisor"), and Oppenheimer Funds Distributor, Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 18(f), 18(g) and 18(i) and under Section 17(b) for exemption from Section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to (i) permit MassMutual Institutional Funds to issue and sell multiple classes of securities representing interests in some or all of the Trust's existing and future investment portfolios and (ii) permit the transfer of assets of seven separate accounts of the Adviser to corresponding series of the Trust in exchange for shares of a certain class of each such series.

FILING DATE: The application was filed on December 10, 1993 and amended on June 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1994, and should be accompanied by proof of service on the Applicants, in the form an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1295 State Street, Springfield, Massachusetts 01111.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the 1940 Act as a diversified, open-end management investment company. The Advisor is a mutual life insurance company organized under Massachusetts law. The Distributor is a registered broker-dealer which serves as

Mutual Life Insurance Company (the "Advisor"), and Oppenheimer Funds Distributor, Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 18(f), 18(g) and 18(i) and under Section 17(b) for exemption from Section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to (i) permit MassMutual Institutional Funds to issue and sell multiple classes of securities representing interests in some or all of the Trust's existing and future investment portfolios and (ii) permit the transfer of assets of seven separate accounts of the Adviser to corresponding series of the Trust in exchange for shares of a certain class of each such series.

FILING DATE: The application was filed on December 10, 1993 and amended on June 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1994, and should be accompanied by proof of service on the Applicants, in the form an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1295 State Street, Springfield, Massachusetts 01111.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the 1940 Act as a diversified, open-end management investment company. The Advisor is a mutual life insurance company organized under Massachusetts law. The Distributor is a registered broker-dealer which serves as principal underwriter to the Trust. A majority of the outstanding voting stock of the Distributor is indirectly owned by the Adviser. The Trust presently consists of seven separate series (the "Funds"), each of which has separate investment objectives and policies.

2. Applicants request that relief pursuant to Section 6(c) of the 1940 Act be extended to any future series of the Trust and to any other registered open-end investment management company (which is not a separate account) for which (a)(i) the Adivser or a person controlled by the Adviser serves as investment adviser, or (ii) the Distributor or a person controlled by the Distributor serves as principal underwriter and (b) that (i) is within the same "group of investment companies" as that term is defined in Rule 11a–3 under the 1940 Act and (ii) may in the future offer separate classes of shares on a basis identical in all material respects to that set forth in the application. Applicants represent that all representations made herein, as well as any conditions imposed by any order issued by the Commission with respect to this Application, will apply to all investment companies that elect to rely on such order.

3. The Trust intends to offer multiple classes of shares of each Fund (the "Multiple Class System"). Each Fund proposes to have four classes of shares Class 1, Class 2, Class 3 and Class 4.

4. Class 1, Class 2 and Class 3 shares will be marketed primarily to defined contribution plans to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"), which include 401(k) plans, profit sharing plans, money purchase plans and target benefit plans. Under defined contribution plans, an individual account is established for each plan participant. Class 1, Class 2 and Class 3 shares will also be available to custodial tax-sheltered accounts described in Code Section 403(b)(7), deferred compensation plans described in Code section 457, individual retirement accounts described in Code section 408, voluntary employees' beneficiary associations described in Code section 501(c)(9), defined benefit plans that qualify under Section 401(a) of the Code, other non-qualified plans, and other institutional or sophisticated investors (collectively, "Institutional Investors").

5. Class 4 shares of each Fund will be available only to the unregistered separate accounts of the Adviser and life insurance company affiliates of the Adviser ("Separate Accounts"). Each of the Separate Accounts is expected from the definition of an investment company pursuant to Section 3(c)(11) of the 1940 Act and interests in the Separate Accounts are exempt securities pursuant to Section 3(a)(2) of the Securities Act of 1933. Interests in the Separate Accounts are offered only to corporate qualified plans, including defined contribution plans (which are generally participant-directed) and defined benefit plans.

6. Class 1 shares will be offered to Institutional Investors. Each Fund will adopt with respect to Class 1 a plan pursuant to Rule 12b–1 under the 1940 Act (a "Rule 12b–1 Plan") which will provide for payment to the Distributor of an amount (currently expected to be .40% of the average daily net asset value of the Class 1 shares) as an "asset-based sales charge" (as such term is defined in section 26 of Article III of the Rules of Fair Practice of The National Association of Securities Dealers, Inc. (the "NASD Rule"). In addition, the Class 1 shares will bear an annual "service fee" (as defined in the NASD Rule) of up to .25%. Class 1 shares will be offered at net asset value without a front-end or contingent deferred sales charge.

7. Class 2 shares will be offered to Institutional Investors who are either a retirement arrangement covering 400 or more lives or who initially invest a minimum of $2,000,000. For purposes of determining whether an initial investor has satisfied the minimum initial investment requirement for Class 2 shares, amounts invested in certain other products of the Adviser by the Institutional Investor will be counted toward the minimum initial investment requirement. In addition, when determining the number of lives covered by a retirement arrangement investing in Class 2 shares of a Fund, the number of lives covered by that retirement arrangement, including lives covered in certain products of the Adviser, will be counted toward the number of lives covered by the retirement arrangement purchasing Fund shares. Each Fund will adopt with respect to Class 2 a Class 2 Rule 12b–1 Plan which will provide for payment to the Distributor of an amount (currently expected to be .15% of the average daily net asset value of the Class 2 shares) as an asset-based sales charge. It is not expected that Class 2 shares will be subject to a service fee. Class 2 shares will be offered at net asset value without a front-end or contingent deferred sales charge.

8. Class 3 shares will be offered to Institutional Investors who are either a retirement arrangement covering 750 or more lives or who initially invest a minimum of $10,000,000. For purposes of determining whether the minimum

number of lives or initial investment requirements have been met, the same approach will be followed as described above for Class 2 shares. It is not expected the Class 3 shares will be subject to any payments pursuant to a Rule 12b–1 Plan or service fee. They will be offered at net asset value without a front-end or contingent deferred sales charge.

9. Class 4 shares of each Fund will be offered only to the Separate Accounts of the Adviser and life insurance company affiliates of the Adviser. Class 4 shares will be offered at net asset value and will not be subject to a sales load or payment pursuant to a Rule 12b–1 Plan or service fee. However, the corporate qualified plans are subject to certain charges as a result of their investment in the Separate Accounts. The amount of these charges depends on the particular provisions and services of the respective plans and the unregistered group annuity contracts purchased to fund such plans and, therefore, vary from plan to plan.

10. The adoption and implementation of a Rule 12b–1 Plan as to one Fund and class thereof will necessarily be made independently of, and will not be conditioned upon, the adoption or implementation of such a Plan as to any other class within that Fund or as to any other Fund of the Trust or class thereof. Similarly, the Distributor will not use the Rule 12b–1 Plan fees charged to one class within a Fund to support the marketing or services of any other class within the Fund or any other Fund or class thereof. The different maximum Rule 12b–1 fees for Class 1 and Class 2 shares generally reflect the different type and amount of marketing and service effort required with respect to these two classes. Class 1 shares will be sold primarily through brokers, whereas Class 2 shares will be marketed primarily by employees of an affiliate of the Adviser. Were these expenses allocated pro rata to all shares without regard to the size of the shareholder's purchase, some shareholders would be subsidizing the expenses incurred by or on account of other shareholders. Class 3 shares will be subject to no 12b–1 fees because it is anticipated that no commissions will be paid upon the sale of such shares and that servicing expenses will be minimal in relation to the size of the accounts; any expenses related to sales and distribution would be borne by the Adviser and not by the Trust. With respect to Class 4 shares, because of the nature of the investors eligible to purchase them, there are not expected to be any distribution or service expenses attributable to that class.

11. Each share of the Trust, regardless of class, will have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (a) each class will have a different class designation; (b) each class offered in connection with a Rule 12b–1 Plan will bear the expense of the payments that would be made pursuant to such Rule 12b–1 Plan; (c) each class will also bear certain other expenses ("Identifiable Class Expenses") that are directly attributable only to the class; (d) only the holders of the shares of the appropriate class involved will be entitled to vote on matters pertaining to a Rule 12b–1 Plan relating to such class (for example, the adoption, amendment or termination of a Rule 12b–1 Plan) in accordance with the requirements and procedures set forth in Rule 12b–1; (e) each class will have different exchange privileges; and (f) Class 1 and Class 2 will have the conversion feature described below.

12. All expenses of the Trust that cannot be attributed directly to any one Fund will be allocated to each Fund based on the relative net assets of such Fund. Certain other expenses may be attributable to a Fund, but not to a particular class of the Fund's shares. All such Expenses incurred by a Fund would be borne by the outstanding shares of the Fund regardless of class.

13. The Adviser may choose to reimburse or waive the Identifiable Class Expenses of certain classes on a voluntary, temporary basis. The amount of such expenses waived or reimbursed by the Adviser may vary from class to class. In addition, the Adviser may waive or reimburse expenses attributable to the Trust generally and/or expenses attributable to a Fund (with or without a waiver or reimbursement of Identifiable Class Expenses) but only if the same proportionate amount of such expenses are waived or reimbursed for each class. Thus, any expenses attributable to the Trust generally that are waived or reimbursed would be credited to each class of a Fund based on the relative net assets of the classes. Similarly, any expenses attributable to a Fund that are waived or reimbursed would be credited to each class of that Fund according to the relative net assets of the classes.

14. Because of the Rule 12b–1 fees and Identifiable Class Expenses that may be borne by each class of shares, the net income of (and dividends payable to) each class may be different from the net income of the other classes of shares of the Trust.

15. Class 1 and Class 2 shares of the Funds will have the following conversion feature: Once the aggregate net asset value of a shareholder's Class 1 or Class 2 shares equal the minimum investment or the investing retirement arrangement reaches the minimum number of lives requirement for Class 2 or Class 3 shares, semi-annually, as of predetermined dates, the shareholder's Class 1 or Class 2 shares will be converted into Class 2 or Class 3 shares of equal aggregate net asset value in the same Fund. Such shares will thereafter be subject to the lower Rule 12b–1 Plan fee applicable to Class 2 shares or to no Rule 12b–1 Plan fee in the case of Class 3 shares.

16. The Adviser serves as investment adviser to seven Separate Accounts through which are invested the assets of underlying contracts between the Adviser and certain retirement plans or other arrangements. Each of the Separate Accounts has a distinct portfolio of assets and its own investment objectives that correspond to those of a Fund. The Adviser has determined that, as part of a plan of reorganization to be carried out prior to commencement of the public offering of shares of the Funds, it would be desirable to transfer assets of each of the seven Separate Account to the Fund having corresponding investment objectives in exchange for Class 4 shares of that Fund (the "Exchange").

17. The Exchange has been or will be reviewed and approved both by the Board of Trustees of the Trust and by the Adviser in the exercise of its investment discretion over the Separate Accounts. The number of shares of a Fund to be issued to a Separate Account will be determined by dividing the value of a Separate Account's net assets on the date set for the Exchange by the net asset value of one share of the corresponding Fund on the same date. The value of a Separate Account's assets to be exchanged will be determined by the same method used to value the assets of the Funds. Each Fund will assume liability for any settlement costs of securities transactions of the corresponding Separate Account outstanding at the time of transfer, however, in no event will a Fund bear the expenses, if any, associated with the transfer of assets. The value of the assets transferred, taking account of the liabilities transferred therewith, will equal the value of the Class 4 shares received in return.

Applicants' Legal Analysis

1. Applicants request an order exempting them from the provisions of Sections 18(f)(1), 18(g) and 18(i) to the extent that the proposed issuance and sale of various classes of shares representing interests in the same Fund might be deemed: (a) to result in a "senior security" within the meaning of Section 18(g) of the 1940 Act; (b) prohibited by Section 18(f)(1) of the 1940 Act; and (c) to violate the equal voting provisions of Section 18(i) of the 1940 Act.

2. Applicants believe that the proposed allocation of expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. Applicants assert that the proposed arrangement does not involve borrowings and does not affect the Trust's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares of the Trust since all shares will participate based on relative net asset value in all of the Trust's income and expenses, with the exception of the Rule 12b–1 Plan payments and Identifiable Class Expenses.

3. The Applicants believe that by creating and offering shares in connection with Rule 12b–1 Plans as described above, and by also creating and offering shares independently of the Rule 12b–1 Plans, the Trust will be able to achieve added flexibility in meeting the service and investment needs of its shareholders and future investors. The Applicants believe further that, to the extent shares are created and Rule 12b–1 Plans adopted as described above, the Trust will be able to address more precisely the needs of the particular investors and to cause the associated expenses to be borne by such investors. The Trust believes that it would be inefficient, and probably economically or operationally unfeasible, to organize a separate series for each class of shares. Not only would the Trust incur unnecessary accounting and bookkeeping costs in organizing and operating such new series, but the Trust's management of the new series, as well as its existing Funds, might be hampered.

4. Because the proposed Exchange might be deemed to be a transaction between the Trust and an affiliated person of an affiliated person of the Trust and, therefore, prohibited by Section 17(a) of the 1940 Act, Applicants also request an order pursuant to Section 17(b) exempting the Exchange transaction from the provisions of Section 17(a).

5. According to the Applicants, the exchange will avoid unnecessary brokerage expenses which would otherwise be borne by the Funds and the Separate Accounts if the Separate

extent that the proposed issuance and sale of various classes of shares representing interests in the same Fund might be deemed: (a) to result in a "senior security" within the meaning of Section 18(g) of the 1940 Act; (b) prohibited by Section 18(f)(1) of the 1940 Act; and (c) to violate the equal voting provisions of Section 18(i) of the 1940 Act.

2. Applicants believe that the proposed allocation of expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. Applicants assert that the proposed arrangement does not involve borrowings and does not affect the Trust's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares of the Trust since all shares will participate based on relative net asset value in all of the Trust's income and expenses, with the exception of the Rule 12b–1 Plan payments and Identifiable Class Expenses.

3. The Applicants believe that by creating and offering shares in connection with Rule 12b–1 Plans as described above, and by also creating and offering shares independently of the Rule 12b–1 Plans, the Trust will be able to achieve added flexibility in meeting the service and investment needs of its shareholders and future investors. The Applicants believe further that, to the extent shares are created and Rule 12b–1 Plans adopted as described above, the Trust will be able to address more precisely the needs of the particular investors and to cause the associated expenses to be borne by such investors. The Trust believes that it would be inefficient, and probably economically or operationally unfeasible, to organize a separate series for each class of shares. Not only would the Trust incur unnecessary accounting and bookkeeping costs in organizing and operating such new series, but the Trust's management of the new series, as well as its existing Funds, might be hampered.

4. Because the proposed Exchange might be deemed to be a transaction between the Trust and an affiliated person of an affiliated person of the Trust and, therefore, prohibited by Section 17(a) of the 1940 Act, Applicants also request an order pursuant to Section 17(b) exempting the Exchange transaction from the provisions of Section 17(a).

5. According to the Applicants, the exchange will avoid unnecessary brokerage expenses which would otherwise be borne by the Funds and the Separate Accounts if the Separate Accounts were required to liquidate their portfolios in order to purchase shares of the Funds and the Funds, in turn, were to use such purchase proceeds for investment in their respective portfolio securities. Moreover, the Separate Accounts might be forced to sustain losses caused by the untimely sale of one or more of their portfolio securities. Applicants argue that there appears to be no persuasive reason for requiring the Separate Accounts' reorganizations to be accomplished in a manner subjecting both the Separate Accounts and the Funds to unnecessary disadvantages in view of the safeguards which will assure fairness in the terms of the Exchange if effected in the manner described.

6. Applicants submit that, because the value of shares of the Funds and the value of the assets of the Separate Accounts will be determined as described above, the terms of the Exchange are reasonable and fair, and that there is no inadequacy of consideration to be received by any party to the transaction. The parties further submit that the Exchange is consistent with the recited policies of the Separate Accounts and the Funds, since the investment objectives of the Separate Accounts and the corresponding Funds are the same. Finally, the Applicants submit that the Exchange is consistent with the general purposes of the Act by avoiding the possibility that the Separate Accounts or the Funds will incur unnecessary expenses of losses in connection with the reorganization of the Separate Accounts.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order granting the requested relief:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same Fund will related solely to: (a) the impact of the respective Rule 12b–1 Plan payments made by each class of shares (or the absence of any such distribution or service fees), and any Identifiable Class Expenses that may be imposed upon a particular class of shares and which are limited to (i) transfer agency fees attributable to a specific class of shares, (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class, (iii) Blue Sky registration fees incurred by a class of shares, (iv) SEC registration fees incurred by a class of shares, (v) shareholder and administrative service fees payable under each class's respective administrative service agreement, if any, and (vi) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (b) voting rights on matters which pertain to Rule 12b–1 Plans; (c) the different exchange privileges of the various classes of shares as described in the prospectuses (and as more fully described in the statement of additional information) of the Funds; (d) the conversion feature applicable to the Class 1 and Class 2 shares as described in the prospectus; and (e) the designation of each class of shares of a Fund.

2. If a Fund implements any amendments to its Rule 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-Rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by a class of shares under the plan into which another class will convert (the "Target Class"), shares of the class that will convert (the "Purchase Class") will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve such a proposal. If (i) holders of Purchase Class shares do not approve such a proposal; (ii) such proposal is approved by the holders of Target Class shares; and (iii) such material increase occurs, than the Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares (the "New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing Purchase Class shares in all material respects except that the New Purchase shares will convert into the New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with Condition 6, any additional cost associated with the creation, exchange, or conversion of the

New Target Class or the New Purchase Class shall be borne solely by the Adviser and the Distributor. The Purchase Class shares sold after implementation of the proposal may convert into the Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

3. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in the NASD Rule), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they are subject prior to the conversion.

The Trustees of the Trust, including a majority of the Trustees who are not interested persons of the Trust, shall have approved the multiple class system prior to the implementation of the multiple class system by a particular Fund and will approve the creation and issuance of any new class of shares. The minutes of the meetings of the Trustees regarding their deliberations with respect to the approvals necessary to implement the multiple class system or to create new classes will reflect in detail the reasons for determining that such action is in the best interests of both the Funds and their respective shareholders.

5. The initial determination of the Identifiable Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by a Fund to meet Identifiable Class Expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

6. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

7. The Trustees of the Trust will receive quarterly and annual statements complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the statements, only distribution and/or service expenditures properly attributable to the sale or servicing of a class of shares will be used to support the Rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sale or servicing of the relevant class of shares will not be presented to the Trustees to support Rule 12b–1 fees charged to shareholders of such class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their Fiduciary duties.

8. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that fee payments made under the Rule 12b–1 Plans relating to a particular class of shares, will be borne exclusively by such class and except that any Identifiable Class Expenses may be borne by the applicable class of shares.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of income expenses among such classes have been reviewed by an expert (the "Expert"), and the Expert has rendered a report to the Applicants, as set forth in Exhibit B as filed December 10, 1993. The Expert has demonstrated that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in that report. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The Reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to Section 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, any Assistant Director, and any Regional Administrator or Associate and Assistant Administrator. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in the Statement of Accounting Standards No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition (9) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (9) above. The Applicants agree to take immediate corrective action if the Expert, or an appropriate substitute Expert, does not so concur in the ongoing reports.

11. The prospectus or prospectuses of the Funds relating to Class 1, Class 2, Class 3 and Class 4 shares will include a statement to the effect that a dealer or other organization selling shares of those classes may receive different levels of compensation for selling one particular class of shares over another in the Funds.

12. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the multiple class system will be set forth in guidelines which will be furnished to the Trustees as part of the materials setting forth the duties and responsibilities of the Trustees.

14. Each Fund will disclose the expenses, performance data, distribution arrangements, services, fees, sales loads, conversion features, and exchange privileges applicable to each class of shares of the Fund in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to a Fund as a whole generally and not on a per class basis. A Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class 1, Class 2, and Class 3 shares, it will also disclose (i) the expenses and/or performance data applicable to each of Class 1, Class 2 and Class 3 shares and (ii) the existence of Class 4 shares. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class 4 shares, it will also disclose (i) that Class 4 shares are only available to the Separate Accounts and are not offered to the public, (ii) the fact that the investors purchasing Class 4 shares though a Separate Account are subject to additional charges, and (iii) the existence of Class 1, Class 2 and Class 3 shares. Any such performance information applicable to Class 4 shares will be provided net of Separate Account and Fund expenses. The information provided by Applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each outstanding class of shares separately.

15. Applicants acknowledge that the grant of the requested exemptive order will not imply Commission approval or authorization of are acquiescence in any particular level of payments that the Funds may make pursuant to Rule 12b–1 Plans in reliance on the order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17318 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

materials setting forth the duties and responsibilities of the Trustees.

14. Each Fund will disclose the expenses, performance data, distribution arrangements, services, fees, sales loads, conversion features, and exchange privileges applicable to each class of shares of the Fund in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to a Fund as a whole generally and not on a per class basis. A Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class 1, Class 2, and Class 3 shares, it will also disclose (i) the expenses and/or performance data applicable to each of Class 1, Class 2 and Class 3 shares and (ii) the existence of Class 4 shares. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class 4 shares, it will also disclose (i) that Class 4 shares are only available to the Separate Accounts and are not offered to the public, (ii) the fact that the investors purchasing Class 4 shares though a Separate Account are subject to additional charges, and (iii) the existence of Class 1, Class 2 and Class 3 shares. Any such performance information applicable to Class 4 shares will be provided net of Separate Account and Fund expenses. The information provided by Applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each outstanding class of shares separately.

15. Applicants acknowledge that the grant of the requested exemptive order will not imply Commission approval or authorization of are acquiescence in any particular level of payments that the Funds may make pursuant to Rule 12b–1 Plans in reliance on the order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17318 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20393; 812–8638]

Presidential Associates I Limited Partnership, et al.; Application

July 11, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Presidential Associates I Limited Partnership (the "Partnership") and Winthrop Financial Co., Inc. (the "Managing General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to amend a prior order (the "Prior Order") issued under section 6(c) of the Investment Company Act of 1940.[1] The Prior Order exempts the Partnership from all provisions of the Act and permits the Partnership to invest in another partnership, Presidential Towers, Ltd. (the "Operating Partnership"), which owns and operates residential apartments for moderate income persons. Applicants seek to amend the Prior Order to permit a new investor to invest in the Operating Partnership.

FILING DATES: The application was filed on May 11, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One International Place, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Because of the Partnership's investment in the Operating Partnership, the Partnership may be an investment company under sections 3(a)(1) or 3(a)(3) of the Act. The Prior Order granted applicants an exemption under section 6(c) of the Act from all provisions of the Act permitting the Partnership to invest in the Operating Partnership, which in turn would own and operate a residential project (the "Project") for moderate income persons in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release 8456"). Release 8456 states that an exemption for a two-tier partnership, such as the Partnership, is appropriate if two criteria are met: (a) The interests in the partnership must be sold only to persons for whom investment in limited profit, essentially tax shelter, investments would not be unsuitable and (b) requirements for fair dealing by the general partner of the partnership with the limited partners should be included in the basic organizational documents of the partnership.

2. Applicants propose to effect two changes that would change the structure of the Project's ownership from that represented in the application for the Prior Order. These changes would dilute the Partnership's interest in the Operating Partnership to less than 50% of the total interests in the Operating Partnership and effectively transfer to a new investor in the Operating Partnership, as the new majority partner, certain rights concerning the Operating Partnership currently held by the Partnership. Applicants seek to amend the Prior Order to permit these changes.

3. The Partnership was formed in 1983 for the sole purpose of acquiring and holding a limited partner interest in the Operating Partnership. The Operating Partnership's sole asset is 100% of the beneficial interest in an Illinois land trust that holds title to the Project.

4. The Partnership offered 590 units of limited partnership interest in the Partnership (the "Units") at $100,000 per Unit to " Accredited Investors" as defined in Regulation D under the Securities Act of 1933 and to not more than 30 other "Non-Accredited

[1] *Presidential Associates I Limited Partnership*, Investment Company Act Release Nos. 13483 (Sept. 2, 1983) (notice) and 13538 (Sept. 27, 1983) (order).

Investors" who met certain suitability requirements. Each prospective limited partner also was required to provide certain certifications in his subscription agreement to insure that the investment was suitable for such prospective limited partner.

5. The Partnership currently has approximately 573 limited partners (the "Limited Partners") holding 590 Units. The Limited Partners collectively hold a 99% interest in the Partnership. The Managing General Partner and an affiliate of the Managing General Partner each hold a 0.5% general partner interest in the Partnership. The Partnership holds a 94.99% limited partner interest in the Operating Partnership. WFC Realty Co., Inc. ("WFC Realty"), an affiliate of the Managing General Partner, holds a 0.01% limited partner interest in the Operating Partnership, and McHugh Levin Associates Venture, the managing general partner of the Operating Partnership, and Madison-Canal Company collectively hold a 5% general partner interest in the Operating Partnership.

6. Due to lower than projected occupancy and rental rates and higher than projected real estate taxes, the Project has been unable to generate sufficient income to meet debt service on the approximately $185 million mortgage (the "Mortgage") upon the Project currently held by the United States Department of Housing and Urban Development ("HUD"). To prevent foreclosure of the Mortgage, the Operating Partnership, with the concurrence of the Managing General Partner, has entered into a workout agreement with HUD (the "Workout Agreement") and, to implement the Workout Agreement, has developed a comprehensive debt and ownership restructuring plan (the "Restructuring Plan").

7. The Workout Agreement provides for the replacement of the note evidencing the indebtedness secured by the Mortgage with a new $127 million first note and a second note in the amount of the balance of the principal and accrued interest secured by the Mortgage (approximately $58 million). The Workout Agreement also provides that monthly payments of principal and interest will be payable only on the first $71 million of the new first note, thereby reducing the mandatory monthly mortgage payment for the Project by more than 50%. Additional payments of principal and interest on the first note will be payable semiannually in an amount of 80% of the Project's net cash flow remaining after a specified priority payment to the Operating Partnership. The Workout Agreement further provides that the Operating Partnership will raise and pay to HUD $13 million to reduce the outstanding principal of the new first note and to fund a deficit escrow. In addition, HUD has required that the Operating Partnership set aside and subsidize seven percent of the apartments in the Project for occupancy by very low and low income tenants.

8. To raise $13 million required by HUD, the Operating Partnership proposes to admit, as a general partner of the Operating Partnership, Penguin Presidential Partners (the "New Investor"). The New Investor will contribute $14 million to the capital of the Operating Partnership (the $13 million required by the Workout Agreement plus $1 million to pay costs and expenses) in exchange for a general partner interest constituting a 79% interest in the Operating Partnership and specified preferential interests in cash flow, losses, and proceeds from a sale or refinancing.

9. In recognition of the New Investors's majority interest in the Operating Partnership, the New Investor will receive certain rights to propose and approve actions of the Operating Partnership, including the right to direct the sale of all or substantially all of the assets of the Operating Partnership, the right to approve all annual capital expenditure budgets for the Project, and the right, under specified circumstances, to designate a replacement managing general partner for the Operating Partnership or to remove and replace the management agent for the Project. These provisions will grant the New Investor rights similar to, but more extensive then, rights now held by the Partnership or WFC Realty.

10. To implement the Workout Agreement and facilitate the entry of the New Investor into the Operating Partnership, the Managing General Partner will seek the approval of the Limited Partners to implement the Restructuring Plan through a proxy statement and consent solicitation made in accordance with the requirements of Regulation 14A and Schedule 14A promulgated under the Securities Exchange Act of 1934. The principal provisions of the Restructuring Plan are: (a) Restructuring the Mortgage indebtedness pursuant to the terms of the Workout Agreement; (b) amending the limited partnership agreement of the Partnership to, among other things, remove a provision concerning dilution and rights to participate in additional capital contributions; and (c) adopting an amended and restated limited partnership agreement of the Operating Partnership that, among other things, will (i) admit the New Investor as a general partner with a 79% interest in the Operating Partnership, thus diluting each of the present partner's interests and leaving the Partnership with a 19.998% interest in the Operating Partnership, and (ii) grant the New Investor the rights discussed above.

Applicants' Legal Analysis

1. Section 6(c) provides that the SEC may exempt any person, security or transaction from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The Partnership provides a vehicle for private investment in government assisted low and moderate housing in accordance with the express Congressional policy to encourage the widest possible participation by private enterprise in the provision of housing for low and moderate income families. Pursuant to the provisions of the Workout Agreement, the Project's original target population of moderate income persons and families will be supplemented by a commitment to provide, at the expense of the owner of the Project, rent-subsidized housing for a substantial number of very low and low income persons or families.

3. The application for the Prior Order noted that both the Partnership Agreement and the Confidential Offering Memorandum relating to the Units contained numerous provisions designed to insure fair dealing by the general partners of the Partnership with the Limited Partners. In addition, the Units were offered only to persons for whom investment in limited profit, tax-sheltered investments would be suitable. The Restructuring Plan does not in any way modify any of these suitability or fair dealing provisions.

4. The failure of the Operating Partnership to implement the Restructuring Plan will almost certainly result in the foreclosure of the Mortgage by HUD. Foreclosure will result in a total loss of the Partnership's indirect ownership interest in the Project. In addition, a foreclosure as of December 31, 1993 would have produced approximately $133,300,000 of non-cash taxable income to the Operating Partnership, resulting in an allocation of taxable income per Unit of approximately $217,800. Thus, foreclosure would produce a substantial tax bill for the limited partners—a tax bill that would not be accompanied by a distribution of any cash with which to pay the tax. It also will deprive the Limited Partners of a chance to share in the net cash flow projected to be produced by the Project after the Restructuring Plan is implemented and the opportunity to share, should the Project be sold or refinanced, in any proceeds of such a sale or refinance paid to the Operating Partnership. The application is being made in the context of a workout of a financial troubled, existing project that faces virtually certain foreclosure if the workout is not consummated. Accordingly, applicants believe that it would be consistent with the public interest and the protection of investors for the SEC, pursuant to section 6(c), to issue the requested order.

Applicants' Condition

Applicants agree that the order granting the requested relief shall be subject to the following condition:

The Restructuring Plan shall be approved by the holders of not less than 51% of the Units by written consents obtained by a proxy statement and consent solicitation in accordance with the requirements of Regulation 14A and Schedule 14A promulgated under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-17319 Filed 7-15-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20396; No. 812-9022]

Pruco Life Insurance Company, et al.

July 12, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Pruco Life Insurance Company ("Pruco"), Pruco Life Individual Variable Annuity Account ("Variable Account"), and Pruco Securities Corporation ("PruSec") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Variable Account of a mortality and expense risk charge

bill that would not be accompanied by a distribution of any cash with which to pay the tax. It also will deprive the Limited Partners of a chance to share in the net cash flow projected to be produced by the Project after the Restructuring Plan is implemented and the opportunity to share, should the Project be sold or refinanced, in any proceeds of such a sale or refinance paid to the Operating Partnership. The application is being made in the context of a workout of a financial troubled, existing project that faces virtually certain foreclosure if the workout is not consummated. Accordingly, applicants believe that it would be consistent with the public interest and the protection of investors for the SEC, pursuant to section 6(c), to issue the requested order.

Applicants' Condition

Applicants agree that the order granting the requested relief shall be subject to the following condition:

The Restructuring Plan shall be approved by the holders of not less than 51% of the Units by written consents obtained by a proxy statement and consent solicitation in accordance with the requirements of Regulation 14A and Schedule 14A promulgated under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17319 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20396; No. 612–9022]

Pruco Life Insurance Company, et al.

July 12, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Pruco Life Insurance Company ("Pruco"), Pruco Life Individual Variable Annuity Account ("Variable Account"), and Pruco Securities Corporation ("PruSec") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Variable Account of a mortality and expense risk charge in connection with the offer and sale of certain flexible premium combination fixed/variable annuity contracts ("Contracts").

FILING DATE: The application was filed on May 31, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 8, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Pruco Life Insurance Company, 213 Washington Street, Newark, New Jersey 07102–222992.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, or Michael Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Pruco, a stock life insurance company, is a wholly owned subsidiary of The Prudential Insurance Company of America ("Prudential"). Pruco is licensed to conduct business in the District of Columbia, Guam, and all states except New York.

2. The Variable Account was established as a separate account by Pruco to fund its variable annuity contracts. The Separate Account has filed a notification of registration on Form N–8A and a registration statement on Form N–4 with the Commission as a unit investment trust under the 1940 Act. Applicants have filed on Form N–4 a registration statement to register the Contracts as securities under the Securities Act of 1933.

The Variable Account currently consists of eleven subaccounts (Money Market, Bond, High Yield Bond, Government Securities, Common Stock, Stock Index, High Dividend Stock, Natural Resources, Global Equity, Conservatively Managed Flexible, and Aggressive Managed Flexible) ("Subaccounts"), each investing in shares of a corresponding portfolio ("Portfolio(s)") of The Prudential Series Fund, Inc. ("Series Fund"). Other portfolios of the Series Fund or of other funds or investment vehicles may be made available for investment in the future through additional subaccounts.

3. The Series Fund is a no-load, diversified, open-end management investment company registered under the 1940 Act. The Series Fund currently offers fourteen Portfolios, of which eleven are available for investment by the Variable Account. Prudential, an investment adviser registered under the Investment Advisers Act of 1940, will be the investment adviser for the Series Fund.

4. PruSec is an indirect wholly-owned subsidiary of Prudential and the principal underwriter of the Contracts, which will be sold and distributed by PruSec's registered representatives. PruSec is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts are flexible premium combination fixed/variable annuity contracts offered in connection with either non-tax qualified plans or as an Individual Retirement Annuity ("IRA") that qualify for favorable tax-deferred treatment under Section 408(b) of the Internal Revenue Code of 1986, as amended. The Contracts also may be made available to certain other retirement plans that qualify for special federal income tax treatment in the future. The Contracts initially will be issued as individual contracts but also may be issued as group contracts used in connection with either immediate or deferred annuities. The Contracts permit premiums to vary in amount and frequency but require certain minimum initial premium payments and additional payments. The Contracts further provide for accumulation of values on either a variable or a fixed basis, or both. The fixed-rate option is part of Pruco's general account. Premiums allocated to the fixed-rate option will earn interest at a minimum guaranteed effective annual rate of 3 percent. Initially, the fixed-rate applicable at the time of allocation to the fixed-rate option will be earned for a one-year period, with a new interest rate set monthly thereafter. At the end of each guarantee period, amounts allocated to that period will automatically be "rolled over" and receive the new guarantee rate, unless transferred to the Subaccounts.

6. During the accumulation period, a full or partial surrender of the Contract may be made, subject to certain minimums and constraints or partial withdrawals. Withdrawals from fixed-rate option guarantee periods maybe effected only on the maturity date.

7. The Contracts also will provide for a death benefit and a variety of payout options at annuitization. The death benefits will equal the greater of (a) total purchase payments (less previous withdrawals), and (b) the Account Value. Payout options include both variable and fixed payment options, and payment options based on fixed periods or on one or more measuring lives.

8. No sales charges are deducted under the Contracts. All expenses relating to the sale of the Contracts will be paid by Pruco from its general assets, including amounts derived from the mortality and expenses risk charge. Shares of the Series Fund will be sold to the Variable Account at the net asset value, which reflects the investment advisory fee and other expenses deducted from Fund assets.

9. Various fees and expenses are deducted under the Contracts and the Variable Account. A charge may be deducted for state, local or federal premium taxes, and any income, excise, business or other type of tax measured by or based on the amount of premium received by Pruco. The tax rates currently range from 1% to 5% and may be imposed upon purchase payments, on Account Value upon surrender, or when converted into an annuity or other benefit payment. Pruco may also charge Account Value or the Separate Account for any taxes attributable to the Separate Account or the Contract, including income taxes incurred by Pruco attributable to the Separate Account.

10. Initially, Pruco will charge $15 for each transfer or withdrawal from or among the Subaccounts after the first four transfers or withdrawals in each Contract year. No charge is imposed for transfers or withdrawals in connection with dollar cost averaging, the systematic withdrawal programs or from the fixed-rate option. Initially, an annual maintenance fee of $30 may be deducted proportionately from Contract Value allocated among the Subaccounts and the fixed-rate option if the Contract Value is less than $10,000 on December 31 or at the time a full withdrawal is effected. Pruco reserves the right to deduct a separate charge against the assets in the Separate Account to compensate it for administration of the Contract and the Separate Account, but does not currently intend to do so. This charge is guaranteed not to exceed .15% for the duration of the Contract.

Applicants represent that current and future charges for administration of the Contract will be deducted from the Subaccounts in reliance on Rule 26a-1 under the 1940 Act and will not be greater than the cost of administrative services provided under the Contract. Pruco does not expect or intend to make a profit from these charges.

11. A daily charge equal to an annual rate of .95% of the value of the net assets in each Subaccount attributable to the Contracts will be imposed to compensate Pruco for bearing certain mortality and expense risks it assumes in offering and administering the Contracts and in operating the Variable Account. Of this amount, .63% is attributable to mortality risks, and .32% is attributable to expense risks. The aggregate charge is guaranteed by Pruco not to increase. The charge may be a source of profit for Pruco, which will be added to its surplus and may be used for, among other things, the payment of distribution, sales and other expenses. Pruco currently anticipates a profit from this charge.

12. The mortality risk arises from Pruco's contractual obligation to make periodic annuity payments (determined in accordance with Pruco's annuity tables and other Contract provisions) regardless of how long all annuitants or any individual annuitant lives. Contract owners thus are assured that neither annuitant's longevity nor an improvement in life expectancy generally (which is greater than expected) will adversely effect annuity payments the payee will receive under the Contracts. This eliminates the risk of outliving the funds accumulated for retirement. Morality risk also is assumed in connection with payment of the death benefit because the death benefit guarantee could exceed the Account Value. There is no charge for the guaranteed death benefit.

13. The expense risk assumed by Pruco is that its actual expenses in issuing and administering the Contracts and operating the Variable Account will exceed the amount recovered through the administrative charges.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of the Separate Account of the charge for mortality and expense risks. Applicants believe that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants submit that Pruco is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the mortality and expense risk charge is consistent with the protection of investors because it is a reasonable and proper insurance charge. The charge is a reasonable charge to compensate Pruco for the risks that: (a) Annuitants under the Contract will live longer individually or as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; (b) the Account Value will be less than the death benefit; and (c) administrative expenses will be greater than amounts derived from the administrative charges.

5. Applicants represent that the .95% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity products. This representation is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, death benefit guarantees, and guaranteed annuity rates. Applicants represent that Pruco will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses. Pruco has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contract Owners. The basis for that conclusion is set forth in a memorandum which will be maintained by Pruco at its administrative offices and will be available to the Commission.

7. Applicants also represents that the Variable Account will invest only in open-end management investment companies that undertake, in the event that such company should adopt a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not "interested persons" of the company, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Accordingly, Applicants request relief from Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment and deduction of the mortality and expense risk charge under the Contracts. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-17354 Filed 7-15-94; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0332]

Advent Industrial Capital Company II; Notice of Surrender of License

Notice is hereby given that Advent Industrial Capital Company, 75 State Street, Suite 2500, Boston, Massachusetts 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Advent Industrial Capital Company, was licensed by the Small Business Administration on November 9, 1984.

Under the authority vested by the Act and pursuant to the Regulations

concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contract Owners. The basis for that conclusion is set forth in a memorandum which will be maintained by Pruco at its administrative offices and will be available to the Commission.

7. Applicants also represents that the Variable Account will invest only in open-end management investment companies that undertake, in the event that such company should adopt a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not "interested persons" of the company, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Accordingly, Applicants request relief from Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment and deduction of the mortality and expense risk charge under the Contracts. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17354 Filed 7–15–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0332]

Advent Industrial Capital Company II; Notice of Surrender of License

Notice is hereby given that Advent Industrial Capital Company, 75 State Street, Suite 2500, Boston, Massachusetts 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Advent Industrial Capital Company, was licensed by the Small Business Administration on November 9, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 25, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 6, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–17337 Filed 7–15–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–0331]

Advent V Capital Company Limited Partnership II; Surrender of License

Notice is hereby given that Advent V Capital Company Limited Partnership, 75 State Street, Suite 2500, Boston, Massachusetts 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Advent V Capital Company Limited Partnership, was licensed by the Small Business Administration on September 5, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 27, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 6, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–17343 Filed 7–15–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–0336]

Chestnut Capital International II, L.P.; Surrender of License

Notice is hereby given that Chestnut Capitol International II, L.P., 75 State Street, Suite 2500, Boston, Massachusetts 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Chestnut Capital International II, L.P., was licensed by the Small Business Administration on July 10, 1985.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 19, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 6, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–17344 Filed 7–15–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2037]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet Friday, August 5, 1994 in the Department of State.

The Committee will meet in open session from 9:00 a.m. to 11:00 a.m. on the morning of Friday, August 5, 1994, in Room 1205, Main State. The remainder of the Committee's session until 5:00 p.m. on that day will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withhold from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123.

Dated: July 8, 1994.

William Z. Slany,

Executive Secretary.

[FR Doc. 94–17323 Filed 7–15–94; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 8, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or

Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49638.

Date filed: July 5, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 2, 1994.

Description: Application of Uzbekistan Airways, pursuant to Section 402 of the Act requests a foreign air carrier permit authorizing it to engage in foreign scheduled air transportation of persons, property and mail from a point or points in Uzbekistan to New York, New York, United States of America, via Manchester, England. In addition, Uzbekistan Airways requests authority to operate passenger and cargo charter services between all points in the Republic of Uzbekistan and all points in the United States of America, and between points in the United States of America and points not in Uzbekistan or in the United States.

Docket Number: 49644.

Date filed: July 8, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 5, 1994.

Description: Application of Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc., and Wings West Airlines, Inc. (d/b/a American Eagle), pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for amendment of their certificate of public convenience and necessity for Route 537, as reissued by Order 92–6–15, June 6, 1992, to authorize foreign air transportation of persons, property, and mail between the United States and the Bahamas.

Docket Number: 45723.

Date filed: July 8, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 5, 1994.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for Amendment of its Foreign Air Carrier Permit issued to it in Order 89–8–29, to the extent necessary to permit TAESA to engage in the scheduled air transportation of persons, property and mail on its Mexico-U.S. scheduled combination routes.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–17371 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended July 8, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49637.
Date filed: July 5, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC3 Telex Mail Vote 694, Japan-China fares, Amendment to Mail Vote, r-1—043i r-4—063ii r-7—092f r-2—053i r-5—076t r-8—092v r-3—063i r-6—085hh.
Proposed Effective Date: September 7, 1994.

Docket Number: 49642.
Date filed: July 7, 1994.
Parties: Members of the International Air Transport Association.
Subject: COMP Reso/C 0599 dated June 3, 1994, Composite Resos 003rr (r-1) & 501 (r-2).
Proposed Effective Date: September 1, 1994.

Docket Number: 49643.
Date filed: July 7, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1585 dated June 3, 1994, Mid Atlantic-Europe/Middle East Resos r-1; TC12 Reso/P 1586 dated June 3, 1994, Mid Atlantic-Europe r-2 to r-34; TC12 Reso/P 1587 dated June 3, 1994, Mid Atlantic-Middle East Resos r-35 to r-43.
Proposed Effective Date: October 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–17372 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Applications of Air Serve, Inc.; For Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 94–7–14), Dockets 49100 and 49101.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order; (1) Finding Air Serve, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than July 27, 1994.

ADDRESSES: Objections and answers to objections should be filed in Dockets 49100 and 49101 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: July 12, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–17338 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–62–P

Maritime Administration

[Docket S–909]

Vulcan Carriers, Ltd.; Application for Waiver Under Section 804 and for Written Permission Under Section 805(a) of the Merchant Marine Act of 1936, as Amended

Pursuant to sections 804 and 805 of the Merchant Marine Act of 1936, as amended, (Act), the current and future shareholders of Vulcan Carriers, Ltd. (Vulcan), by letter dated July 12, 1994, request a waiver under section 804 and permission under section 805 to own a fraction of one percent of the shares of stock in OMI Corp. (OMI) for some or all of the limited period of time remaining during which Vulcan will be receiving Operating Differential Subsidy (ODS) pursuant to Operating Differential Subsidy Agreements (ODSA), Contracts MA/MSB–167 (a), (b), (c), and (d).

Vulcan advises that this request is being submitted in order to permit the sale of Vulcan from Captain Jack Gordon, the current president of Vulcan, to Captain Enrico Fenzi. Vulcan advises that its request for approval of the sale of Vulcan to Captain Fenzi under section 608 of the Act was submitted to the Maritime Administration on June 9, 1994.

Vulcan states that its request of July 12, 1994, is being submitted because the purchaser of the Vulcan stock is a retired former employee of OMI who is entitled to receive upon his retirement shares of stock purchased for him by the trustee of OMI's Employee Stock Ownership Plan (ESOP). The seller of the Vulcan stock also is seeking approval of the ownership of an even smaller amount of OMI stock (approximately .007%) which he purchased unaware that approval was required.

Vulcan advises that Captain Fenzi, the purchaser of Vulcan, is a retired former vice president of OMI Corp. As an employee of OMI, Captain Fenzi became vested in OMI's ESOP. OMI no longer has a separate defined benefit pension plan for its employees. The ESOP acts as the primary pension benefit available to OMI employees along with a 401(k) program which became effective July 1, 1993, and which currently provides minimal lump sum distribution on an employee's retirement. As an eight-year employee of OMI prior to his retirement, Captain Fenzi is the beneficiary of 38,248 shares of OMI stock currently held by the trustee of the ESOP.[1] Upon application to transfer these shares to him, the stock would be transferred to him as his main source of pension income from OMI or for his "rollover" into other pension assets. If Captain Fenzi were to retain all of these shares of stock, they would constitute one-tenth of one percent (0.1%) of the outstanding shares of OMI stock.

Vulcan advises that during his employment at OMI, Captain Fenzi, like all other senior management employees at OMI, was also eligible for stock options pursuant to three separate option plans governing the grant of stock options as a portion of an employee's compensation. Captain Fenzi received his first grant in 1986 and continued to receive them though his time at OMI. However, during his entire tenure at OMI, Captain Fenzi never exercised any option to purchase additional stock, nor does he have any immediate plans to do so. Nevertheless, Captain Fenzi is eligible to exercise options on up to 41,882 shares of OMI for the next one to three years. Captain Fenzi requests permission to include these options in this approval to ensure all potential purchases are covered,

[1] As an employee who retired in 1994, Captain Fenzi will be entitled to one more distribution of stock through the ESOP at the end of the year. The number of shares to be provided to 1994 retirees is not determined until that time. This request therefore covers all shares of stock available to Captain Fenzi through his participation in the ESOP.

Vulcan states that its request of July 12, 1994, is being submitted because the purchaser of the Vulcan stock is a retired former employee of OMI who is entitled to receive upon his retirement shares of stock purchased for him by the trustee of OMI's Employee Stock Ownership Plan (ESOP). The seller of the Vulcan stock also is seeking approval of the ownership of an even smaller amount of OMI stock (approximately .007%) which he purchased unaware that approval was required.

Vulcan advises that Captain Fenzi, the purchaser of Vulcan, is a retired former vice president of OMI Corp. As an employee of OMI, Captain Fenzi became vested in OMI's ESOP. OMI no longer has a separate defined benefit pension plan for its employees. The ESOP acts as the primary pension benefit available to OMI employees along with a 401(k) program which became effective July 1, 1993, and which currently provides minimal lump sum distribution on an employee's retirement. As an eight-year employee of OMI prior to his retirement, Captain Fenzi is the beneficiary of 36,248 shares of OMI stock currently held by the trustee of the ESOP.[1] Upon application to transfer these shares to him, the stock would be transferred to him as his main source of pension income from OMI or for his "rollover" into other pension assets. If Captain Fenzi were to retain all of these shares of stock, they would constitute one-tenth of one percent (0.1%) of the outstanding shares of OMI stock.

Vulcan advises that during his employment at OMI, Captain Fenzi, like all other senior management employees at OMI, was also eligible for stock options pursuant to three separate option plans governing the grant of stock options as a portion of an employee's compensation. Captain Fenzi received his first grant in 1986 and continued to receive them though his time at OMI. However, during his entire tenure at OMI, Captain Fenzi never exercised any option to purchase additional stock, nor does he have any immediate plans to do so. Nevertheless, Captain Fenzi is eligible to exercise options on up to 41,882 shares of OMI for the next one to three years. Captain Fenzi requests permission to include these options in this approval to ensure all potential purchases are covered, even if not contemplated. In the highly unlikely event that all of these options were exercised, Captain Fenzi's holding would constitute only (at most) 0.2% of the outstanding shares of OMI stock.

Vulcan advises that Captain Gordon was also a retiree of OMI at the time he established Vulcan. At or near the time of the creation of Vulcan, Captain Gordon sold the OMI stock he received through the ESOP for other retirement investments, but over the last several years, Captain Gordon has purchased on the open market or received through option exercises a total of 2,243 shares of OMI stock. (At this time, Captain Gordon no longer retains any right to exercise options for the purchase of additional OMI stock.) Captain Gordon's shares represent .007% of the shares of OMI stock. Captain Gordon requests approval of his ownership of this stock retroactive to the dates of purchase through the date of sale of Vulcan.

Vulcan states that OMI currently operates only four U.S.-flag vessels in the coastwise trade. OMI operates, on a spot market basis, a crude oil carrier in the Alaska trade and three chemical product carriers in the coastwise trade. OMI's other U.S.-flag vessels (three bulk carriers and four product tankers) operate in the foreign trade. OMI also operates 34 foreign flag tankers, dry bulk vessels, and liquefied petroleum gas carriers (28 are owned, often with joint venture partners, and six are chartered in).

Vulcan states that approval for the ownership of these shares of stock is being requested for a limited period of time (until the sale of Vulcan is completed or until the termination of the ODSAs) and under special circumstances that are very limited in scope. Ownership by Captain Fenzi and Captain Gordon of such a small portion of the shares of a publicly traded company would not result in unfair competition to any U.S.-flag operator either an avenue by which such subsidy could be "leaked" to OMI. Vulcan states that based on these special circumstances and upon the lack of any competitive disadvantage to any U.S.-flag operator, a waiver of section 804(a) and granting permission under section 805(a) would not be contrary to the objectives and policies of the Merchant Marine Act.

This application and Vulcan's application of June 9, 1994, may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest in the application of July 12, 1994, within the meaning of section 804 or section 805(a) of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on July 22, 1994, including petition for leave to intervene under section 805(a) of the Act. Any petition for leave to intervene under section 805(a) of the Act shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no comments are received within the specified time, including any petition for leave to intervene under section 805(a) of the Act, or if it is determined that such petition does not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).

By Order of the Maritime Administration.

Dated: July 13, 1994.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 94–17436 Filed 7–15–94; 8:45 am]

BILLING CODE 4910-81-M

[1] As an employee who retired in 1994, Captain Fenzi will be entitled to one more distribution of stock through the ESOP at the end of the year. The number of shares to be provided to 1994 retirees is not determined until that time. This request therefore covers all shares of stock available to Captain Fenzi through his participation in the ESOP.

National Highway Traffic Safety Administration

[Docket No. 94–52; Notice 1]

Receipt of Petition for Determination That Nonconforming 1971 Lancia Fulvia Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1971 Lancia Fulvia passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1971 Lancia Fulvia that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is August 17, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Liphardt & Associates, Inc. of Ronkonkoma, New York ("Liphardt") (Registered Importer R–92–004) has petitioned NHTSA to determine whether 1971 Lancia Fulvia passenger cars are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1971 Lancia Fulvia that was manufactured for importation into and sale in the United States and certified by its manufacturer, Lancia & Company S.p.A., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it carefully compared the non-U.S. certified version of the 1971 Lancia Fulvia to its U.S. certified counterpart, and found that the two vehicles are substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Liphardt submitted information with its petition intended to demonstrate that the non-U.S. certified 1971 Lancia Fulvia, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1971 Lancia Fulvia is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, and 212 *Windshield Retention*.

Petitioner also contends that the 1971 Lancia Fulvia is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of rear sidemarkers.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 114 *Theft Protection*: installation of a buzzer relay and a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number*: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 12, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17368 Filed 7–15–04; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–34; Notice 2]

Determination That Nonconforming 1971 Rolls Royce Corniche Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1971 Rolls Royce Corniche passenger care are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1971 Rolls Royce Corniche passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1971 Rolls Royce Corniche), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202)–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108 (c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397 (c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the FEDERAL REGISTER of each petition that is receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the FEDERAL REGISTER.

J.K. Motors of Kingsville, Maryland (Registered Importer R–90–006) petitioned NHTSA to determine whether 1971 Rolls Royce Corniche passenger cares are eligible for importation into the United States. NHTSA published notice of the petition on May 5, 1994 (59 FR 23259) to afford an opportunity for public comment. The reader is referred to that notice or a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 72 is the vehicle eligibility number assigned to vehicles admissible under this determination.

SUPPLEMENTARY INFORMATION:

Background

Under section 108 (c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397 (c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the FEDERAL REGISTER of each petition that is receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the FEDERAL REGISTER.

J.K. Motors of Kingsville, Maryland (Registered Importer R–90–006) petitioned NHTSA to determine whether 1971 Rolls Royce Corniche passenger cares are eligible for importation into the United States. NHTSA published notice of the petition on May 5, 1994 (59 FR 23259) to afford an opportunity for public comment. The reader is referred to that notice or a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 72 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1971 Rolls Royce Corniche not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1971 Rolls Royce Corniche originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is cpable of being readily modified t o conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397 (c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on July 12, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17367 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–33; Notice 2]

Determination That Nonconforming 1988 Volkswagen Golf Rallye Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1988 Volkswagen Golf Rallye passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1988 Volkswagen Golf Rallye passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1988 Volkswagen Golf GTI), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to determine whether 1988 Volkswagen Golf Rallye passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 5, 1993 (58 FR 23258) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 73 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1988 Volkswagen Golf Rallye is substantially similar to a 1988 Volkswagen Golf GTI originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic

and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.c. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 12, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17366 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–38; Notice 1]

Solectria Corporation; Receipt of Petition for Temporary Exemption From Four Federal Motor Vehicle Safety Standards

Solectria Corporation of Arlington, Massachusetts, has petitioned to be exempted from four Federal motor vehicle safety standards for passenger cars that it converts to electric power. The basis of the petition is that compliance with the standards would cause substantial economic hardship.

Notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency on the merits of the petition (49 CFR 555.7(a)).

Previously, petitioner received NHTSA Exemption No. 92–2 covering Geo Metro passenger cars that it converts to electric power, and markets under the name "Solectria Force." Its petition seeks renewal of the exemption from four Federal motor vehicle safety standards which expired on May 1, 1994. As the petition was not received until after the expiration date of the previous exemption, the matter must be considered de novo. NHTSA notes that the petitioner is also manufacturing electric truck conversions under NHTSA Exemption No. 94–2.

Petitioner has sold 45 Solectria Forces under its previous exemption. This exemption extended to seven Federal motor vehicle safety standards. Petitioner was able to ensure conformance of the Force with three of these. The Geo Metros to be converted have been certified by their original manufacturer to conform to all applicable Federal motor vehicle safety standards. However, petitioner determined that the vehicles may not conform with all or part of four Federal motor vehicle safety standards after their modification. The standards for which exemptions are requested are discussed below.

1. Standard No. 204, Steering Control Rearward Displacement

The conversion affects the ability to meet paragraph S4.2, although the petitioner is confident that it will be able to certify compliance for perpendicular frontal impact under the conditions of S5 of Standard No. 208.

2. Standard No. 208, Occupant Crash Protection

The conversion affects the ability to meet paragraph S4.1.4. Solectria has completed certification testing for a perpendicular frontal barrier test, but has yet to complete testing for an angled barrier test, side-impact test or roll-over test. [NHTSA note: Paragraph S4.1.4 does not require manufacturers to certify compliance with the side-impact or rollover tests if the vehicle is equipped with seat belts at every seating position.]

3. Standard No. 214, Side Door Strength

The modifications will affect compliance with the requirements of S3.1.3 and S3.2.3 requiring a minimum peak crush resistance based on the vehicle curb weight. Solectria is confident that the Force will meet this standard though it has not recertified the vehicle. In addition, the Geo Metro may not have been certified by its original manufacturer to meet the dynamic side impact test due to the phase-in provision of this portion of the standard.

4. Standard No. 216, Roof Crush Resistance

According to the petitioner, the modifications will affect the requirements in S4(a) which specifies a maximum crush force based on the vehicle curb weight. However, the petitioner is confident that the vehicle is capable of meeting Standard No. 216.

Exemption was requested from these four standards for a period of eight months.

Petitioner argued that to require immediate compliance would create substantial economic hardship. As of September 30, 1993, the company had cumulative net losses of $107,300. It estimates that the total cost of testing for compliance with the four standards would be $122,825. If modifications appear indicated, further testing would be required. An exemption would permit vehicle sales and the generation of cash permitting testing and full certification of compliance while the exemptions are in effect. It anticipates orders for 50 additional Forces while the exemption is in effect. A denial of the petition would remove the Force from production for a year, with total revenue losses of $1,300,000. It could result in discontinuing production altogether.

According to the petitioner, granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act (the Act) because it "will be able to make a substantial contribution to the country's transportation needs both in themselves and as precursor to future electric vehicles." The petitioner believes that "it is critical that low-emission electric vehicles be brought to market as quickly as possible to advance the field and relieve the environmental and economic problems associated with pollution and dependence on fossil fuel."

Interested persons are invited to submit comments on the petition described above. Comments should refer to the Docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 17, 1994.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50)

Issued on July 12, 1994.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 94–17370 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–59–P

Sunshine Act Meeting

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: July 12, 1994, 59 FR 35560.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 13, 1994, 10 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Item have been added on the Agenda scheduled for July 13, 1994:

Item No., Docket No., and Company

CAG–17—RP85–177–121, *et al.*, RP92–171–005, RP93–122–002, RP93–125–006, *et al.*, RP93–128–003, RP93–181–005, RP93–204–005, RP94–33–004, RP94–66–006, RP94–99–002, RP94–135–002, TM93–2–17–002 and TM94–2–17–004, Texas Eastern Transmission Corporation

CAG–52—CP92–606–002, Great Lakes Gas Transmission Limited Partnership

Lois D. Cashell,

Secretary.

[FR Doc. 94–17542 Filed 7–14–94; 1:34 pm]

BILLING CODE 6717–01–M

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD EXECUTIVE COMMITTEE

DATE AND TIME: July 25, 1994, 1:00 p.m.—Closed Session.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1205.1, Arlington, Virginia 22230.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Monday, July 25, 1994

CLOSED SESSION (1:00 p.m.–1:30 p.m.)

—On behalf of the National Science Board, consideration of grant proposal.

Marta Cehelsky,

Executive Officer.

[FR Doc. 94–17479 Filed 7–14–94; 10:29 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 18, 25, August 1, and 8, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Sunshine Act Meetings

Federal Register
Vol. 59, No. 136
Monday, July 18, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: July 12, 1994, 59 FR 35560.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 13, 1994, 10 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Item have been added on the Agenda scheduled for July 13, 1994:

Item No., Docket No., and Company

CAG–17—RP85–177–121, *et al.*, RP92–171–005, RP93–122–002, RP93–125–006, *et al.*, RP93–128–003, RP93–181–005, RP93–204–005, RP94–33–004, RP94–66–006, RP94–99–002, RP94–135–002, TM93–2–17–002 and TM94–2–17–004, Texas Eastern Transmission Corporation

CAG–52—CP92–606–002, Great Lakes Gas Transmission Limited Partnership

Lois D. Cashell,

Secretary.

[FR Doc. 94–17542 Filed 7–14–94; 1:34 pm]

BILLING CODE 6717–01–M

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD EXECUTIVE COMMITTEE

DATE AND TIME: July 25, 1994, 1:00 p.m.—Closed Session.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1205.1, Arlington, Virginia 22230.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Monday, July 25, 1994

CLOSED SESSION (1:00 p.m.–1:30 p.m.)

—On behalf of the National Science Board, consideration of grant proposal.

Marta Cehelsky,

Executive Officer.

[FR Doc. 94–17479 Filed 7–14–94; 10:29 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 18, 25, August 1, and 8, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 18

Tuesday, July 19

10:00 a.m.
Briefing on Fuel Cycle and Waste Management Activities in France (Public Meeting)

Wednesday, July 20

10:00 a.m.
Discussion of Interagency and Management Issues (Closed—Ex. 9 (Part I); 2 and 6 (Part II)

3:00 p.m.
Briefing on Proposed Changes to 10 CFR 50.36—Technical Specifications (Public Meeting)
(Contact: Christopher Grimes, 301–504–1161)

4:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, July 21

3:00 p.m.
Briefing on Proposed Rulemaking on Decommissioning of Nuclear Power Reactors (Public Meeting)
(Contact: David Futoma, 301–504–1621)

Week of July 25—Tentative

There are no meetings scheduled for the Week of July 25.

Week of August 1—Tentative

There are no meetings scheduled for the Week of August 1.

Week of August 8—Tentative

There are no meetings scheduled for the Week of August 8.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill—(301) 504–1661.

Dated: July 13, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–17543 Filed 7–14–94; 1:34 pm]

BILLING CODE 7590–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1467]

Meeting of the Board of Directors

TIME AND DATE: 10 a.m. (EDT), July 20, 1994.

PLACE: TVA West Tower Auditorium, Knoxville, Tennessee.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Agenda

Approval of minutes of meeting held on May 25, 1994.

Action Items

New Business

C—Energy

C1. Low-Sulfur Bituminous Coal and Transportation Contracts Under Requisition 29 for Shawnee Units 1–8 and Allen Fossil Plants.

E—Real Property

E1. Sales of Permanent Easement Affecting Approximately 1.35 Acres of TVA's Great Falls Reservoir Property in White County, Tennessee, to the State of Tennessee.

E2. Public Auction Sale of Approximately 0.12 Acre of Fee-Owned Property and Approximately 8.22 Miles of Access Road Easements of the Jasper, Tennessee, Microwave Reflector Station Site Property in Marion County, Tennessee.

E3. Grant of Permanent Easement Affecting Approximately 1.928 Acres of Land on Chickamauga Lake in McMinn County, Tennessee, to the State of Tennessee.

E4. Grant of Permanent Easement Affecting Approximately 1.09 Acres of Land on Guntersville Lake in Marshall County, Alabama, to the State of Alabama.

E5. Grant of Permanent Easement Affecting Approximately 5.03 Acres of TVA's Widows Creek Fossil Plant Property in Jackson County, Alabama.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Supplement No. 12 to Contract No. TV–85454V–1 with Stone & Webster Engineering Corporation for Sequoyah Nuclear Plant.

F3. Award of an Integrated Maintenance Contract to Concept Automation, Inc. for Onsite Hardware Maintenance and Support Services.

F4. Supplement No. 2 to Contract Nos. 92PGN77052E–01 and –02 with FD Engineers and Constructors, Inc.

F5. Supplement No. 5 to Contracts Nos. 92PGN77052E–03 and –04 with G–UB–MK Constructors.

F6. Award of a Fixed-Price Contract to Babcock and Wilcox To Design and Furnish Low NO_x Burnder Assemblies for Shawnee Fossil Plant Units 1 Through 9.

F7. Award of a Fixed-Price Contract to International Combustion Limited for Low NO_x Tangential Firing System Assemblies for

John Sevier and Kingston Fossil Plants, All Units.

Information Items

1. Valley Economic Development Initiatives.
2. Plans for the Construction and Operation of a Waterfowl Subimpoundment along Chickamauga Lake in Meigs County, Tennessee.
3. Supplement 17 to Performance/Personnel Support Contract No. 91NNP–44970C with Ebasco Constructors, Inc., for Work at Watts Bar Nuclear Plant.
4. Amendments to the Rules and Regulations of the TVA Retirement System to Allow Members of the System Who are Entitled to Veterans' Preference at TVA and Who Retire on or After October 1, 1994, to Obtain Creditable Service in the System for up to Four Years of their pre-TVA Employment Military Service Under Certain Conditions.
5. Authorization for the Senior Vice President, Resource Group, to Enter Into Agreement(s) to Provide Funding and Services in Connection with the 1996 Olympic Whitewater Slalom Venue to be held on the Ocoee River in Polk County, Tennessee.
6. Contract with Calgon Corporation for Raw Water Chemicals and Chemical Treatment Services for TVA Nuclear Facilities and Fossil and Hydro Plants.
7. Amendment to the Rules and Regulations of the TVA Retirement System to Allow Vested Members who Voluntarily leave TVA Employment by December 31, 1994, to Receive an Immediate Retirement Benefit Regardless of Age.
8. Filing of Condemnation Cases.

CONTACT PERSON FOR MORE INFORMATION: Ron Loving, Vice President, Governmental Relations, or a member of this staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: July 13, 1994.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 94–17471 Filed 7–14–94; 3:21 pm]

BILLING CODE 8120–02–M

Monday
July 18, 1994

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Hazardous Materials: Transportation of Dangerous Goods in International Commerce; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, 176, 177, and 178

[Docket No. HM–215A; Notice No. 94–6]

RIN 2137–AC42

Implementation of the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these proposed revisions are necessary to facilitate the transport of hazardous materials in international commerce.

DATES: Comments must be received by September 6, 1994.

ADDRESSES: Address comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m. Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bob Richard, Assistant International Standards Coordinator, telephone (202) 366–0586, Beth Romo or John Gale, Office of Hazardous Materials Standards, telephone (202) 366–8553, Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On December 21, 1990, the Research and Special Programs Administration (RSPA) published a final rule [Docket HM–181; 55 FR 52402] which comprehensively revised the Hazardous Materials Regulations (HMR), 49 CFR Parts 171 to 180, with respect to hazard communication, classification, and packaging requirements, based on the UN Recommendations. One intended effect of the rule was to facilitate the international transportation of hazardous materials by ensuring a basic consistency between the HMR and international regulations.

The UN Recommendations are not regulations, but are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the Committee of Experts and are distributed to nations throughout the world. They serve as the basis for international modal regulations; specifically the IMDG Code, issued by the International Maritime Organization (IMO), and the ICAO Technical Instructions. In 49 CFR 171.12, the HMR authorize shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations. Offering, accepting and transporting hazardous materials by aircraft, in conformance with the ICAO Technical Instructions, and by motor vehicle either before or after being transported by aircraft, are authorized in § 171.11 (with certain exceptions).

On December 22, 1992, RSPA issued an interim final rule [Docket HM–215; 57 FR 60738] amending § 171.7 by incorporating the 1993–1994 edition of the ICAO Technical Instructions and Amendment 26 to the IMDG Code. This rulemaking action authorized the use of the updated international regulations, effective January 1, 1993. Amendment 26 promulgated numerous miscellaneous changes to the IMDG Code regarding classification, labeling, packaging, and documentation. The 1993–1994 edition of the ICAO Technical Instructions contained amendments relating to the seventh revised edition of the UN Recommendations, as well as changes specific to air transportation.

The HMR, as revised under Docket HM–181, are largely based on the sixth revised edition of the UN Recommendations. Selected provisions from the seventh and eighth revised editions of the UN Recommendations have been incorporated into the HMR under subsequent Docket HM–181 rulemaking actions. This NPRM seeks to more fully align the HMR with the seventh and eighth revised editions of the UN Recommendations. These proposed changes to the HMR will provide consistency with the international air and sea transport requirements which, effective January 1, 1995, will be aligned with the eighth revised edition of the UN Recommendations.

While the changes introduced in the seventh and eighth revised editions are extensive and in some cases very detailed, some of the more significant changes are highlighted below.

Major changes in the seventh revised edition include:

—Definitions and criteria for the classification for gases were revised, three subdivisions for gases were created; and the physical states of gases were defined (e.g. liquefied gas, refrigerated liquefied gas, etc). Gases listed in the UN Recommendations were reclassified according to the agreed criteria. This effort will lead to improved harmonization of U.S. and European requirements for the classification of gases. These changes have already been incorporated in the HMR in Subpart D of Part 173.

—Training requirements similar to those introduced into Part 172 Subpart H of the HMR under Docket HM–126F were added.

—Criteria for self-reactive substances assigned to Division 4.1 were developed. The applicable test methods and criteria for self-reactive substances are based on organic peroxide tests and criteria. New generic proper shipping names for self-reactive substances were introduced.

—A number of new "Not Otherwise Specified" (N.O.S.) proper shipping names for substances in Class 4 and Division 5.1 were introduced. Proposals for introducing the new names originated from efforts in Europe to adopt the classification criteria for Class 4 and Division 5.1 into European road and rail regulations.

—Provisions defining conditions under which minor variations of tested design-type packagings and requirements for "V" marked packagings were added. Proposals to include these requirements originated in the U.S. out of concern for the extent of testing that would otherwise be required to certify packagings in accordance with the UN performance standards. These provisions have already been adopted in the HMR in Subpart M of Part 178.

Major changes in the eighth revised edition include:

—Numerous additional types of packaging were added to the explosive packing instructions. This was largely a U.S. initiative arising from a concern for the number of packagings that would otherwise have to be authorized through exemptions.

—Provisions for elevated temperature materials were added. These provisions are consistent with those adopted in the HMR under Docket HM–198A.

—Criteria defining substances not able to sustain combustion were included. The criteria for flammable liquids were amended so that certain substances which meet the flash point criteria for flammable liquids, but which are shown to be incapable of sustaining combustion, are excepted from the Recommendations. This proposal was originally proposed by the United Kingdom, which had similar provisions in its domestic regulations.

—The criteria for corrosive substances were modified to reference the Organization for Economic Cooperation and Development test protocol for skin corrosivity and to clarify the extent of skin damage needed for substances to be classified as corrosives. This was done in response to initial proposals by Germany and the European chemical industry.

—A number of new N.O.S. proper shipping names for substances in Class 3, Division 6.1 and Class 8 were introduced. Proposals for introducing the new names originated from efforts in Europe to adopt the classification criteria for these hazard classes into European road and rail regulations. Proper shipping names for petroleum products also were updated as part of this effort.

—The Recommendations were amended to require that a package bear labels representing each subsidiary risk of a material described using an N.O.S. proper shipping name. This amendment was based on a proposal made by the United Kingdom.

—The current Division 6.1 Packing Group III label was deleted. For a more detailed discussion of the events leading to this decision, see RSPA's Notice 93–21 under Docket HM–217 published in the Federal Register on November 8, 1993 [58 FR 59224].

—Requirements for a freight container packing certificate were added on the basis of a United Kingdom proposal seeking to bring the UN Recommendations in line with the IMDG Code requirements.

—A number of substances meeting the criteria of Division 6.1 Packing Group

—Numerous additional types of packaging were added to the explosive packing instructions. This was largely a U.S. initiative arising from a concern for the number of packagings that would otherwise have to be authorized through exemptions.
—Provisions for elevated temperature materials were added. These provisions are consistent with those adopted in the HMR under Docket HM–198A.
—Criteria defining substances not able to sustain combustion were included. The criteria for flammable liquids were amended so that certain substances which meet the flash point criteria for flammable liquids, but which are shown to be incapable of sustaining combustion, are excepted from the Recommendations. This proposal was originally proposed by the United Kingdom, which had similar provisions in its domestic regulations.
—The criteria for corrosive substances were modified to reference the Organization for Economic Cooperation and Development test protocol for skin corrosivity and to clarify the extent of skin damage needed for substances to be classified as corrosives. This was done in response to initial proposals by Germany and the European chemical industry.
—A number of new N.O.S. proper shipping names for substances in Class 3, Division 6.1 and Class 8 were introduced. Proposals for introducing the new names originated from efforts in Europe to adopt the classification criteria for these hazard classes into European road and rail regulations. Proper shipping names for petroleum products also were updated as part of this effort.
—The Recommendations were amended to require that a package bear labels representing each subsidiary risk of a material described using an N.O.S. proper shipping name. This amendment was based on a proposal made by the United Kingdom.
—The current Division 6.1 Packing Group III label was deleted. For a more detailed discussion of the events leading to this decision, see RSPA's Notice 93–21 under Docket HM–217 published in the **Federal Register** on November 8, 1993 [58 FR 59224].
—Requirements for a freight container packing certificate were added on the basis of a United Kingdom proposal seeking to bring the UN Recommendations in line with the IMDG Code requirements.
—A number of substances meeting the criteria of Division 6.1 Packing Group I toxic by inhalation were reclassified based on U.S. proposals.
—Provisions on the marking of steel drums used to transport dangerous goods and provisions clarifying the requirements applicable to drum reconditioners and remanufacturers were included on the basis of proposals by the International Association for Drum Reconditioners (ICDR).
—Detailed test criteria for lithium batteries were added. The new provisions allow batteries with a higher lithium content to be excepted from regulation if they meet new tests and criteria. The initial proposal on this topic was introduced by Canada.
—Criteria under which air bag modules and air bag inflators could be transported as Class 9 items were introduced. Proper shipping names for these articles were also added. These changes were made on the basis of U.S. proposals.

With a few exceptions described in this paragraph, the following changes are proposed to ensure a basic consistency with many changes contained in the seventh and eighth revised editions of the UN Recommendations, the 1993–1994 and the 1995–1996 ICAO Technical Instructions, and Amendments 26 and 27 of the IMDG Code. However, proposed changes to the KEEP AWAY FROM FOOD label and placard provisions will be addressed in a notice of proposed rulemaking under Docket HM–217. In addition, proposed amendments to provisions for Division 6.2 materials (infectious substances) will be addressed in a separate rulemaking action under Docket HM–181G. Although the eighth revised edition of the UN Recommendations adopted a quality assurance program for the manufacture of performance packagings, RSPA is not proposing a formal quality assurance program in this document. RSPA believes that periodic retest provisions in Subpart M of Part 178 offer an equivalent measure of quality assurance, but RSPA may propose adoption of a more formal quality assurance program in a future rulemaking action. Comments are solicited on this issue.

Summary of Proposed Regulatory Changes by Section

Part 171

Section 171.7. Various standards such as those issued by the International Organization for Standardization (ISO) and the American Society for Testing and Materials (ASTM) would be added or updated, and the most current versions of the ICAO Technical Instructions, the IMDG Code, and the UN Recommendations would be incorporated.

Section 171.8. New definitions for "Asphyxiant gas," "Gas" and "Siftproof packaging" would be added, and definitions for "Box," "Liquid," "Overpack" and "Solid" would be revised for consistency with the seventh and eighth revised editions of the UN Recommendations. The definition for "UN standard packaging" would be revised to clarify that it applies to both U.S-manufactured and foreign-manufactured packagings and to delete reference to Subparts L and M of Part 178.

Section 171.11. Paragraph (d)(5) would be revised to include the word "toxic" when referring to a poison.

Section 171.12. Paragraph (c) would be revised to clarify that this paragraph applies only to the shipment of hazardous materials through U.S. port areas in the course of being transported from one foreign country to another.

In addition, paragraph (b) would be revised for the following reasons. RSPA received three petitions for rulemaking requesting an amendment to the HMR to require a container packing certification attesting that the freight container has been properly packed, stowed, segregated and secured for transport. Those responsible for packing the unit would be required to provide a certificate or declaration to the carrier for international transportation by vessel.

A freight container packing certification requirement was adopted several years ago under Amendment 24 to the IMDG Code and became effective worldwide on January 1, 1994, as mandated under the International Convention on Safety of Life at Sea (SOLAS Convention). When hazardous materials are packed into a freight container or transport vehicle for transportation by vessel, those responsible for packing the unit must provide a certificate or declaration to the carrier attesting that the container is suitable for transport, that it contains compatible materials in packages that have been properly inspected, packed, and secured, and the container and packages are properly marked, labeled, and placarded. This certification may appear either in a separate document or in a signed statement provided on the dangerous goods shipping document.

Because the U.S. is a signatory to the SOLAS Convention, petitioners urged RSPA to adopt a similar container packing certification requirement under the HMR. RSPA is proposing to amend §§ 171.12(b) and 176.27(c) to reference

IMDG Code requirements for a container packing certification for freight containers and transport units intended for carriage by vessel. A "unit" could be a freight container, van trailer, or other transport vehicle. This requirement would apply to persons who load hazardous materials for transportation (including freight forwarders, freight consolidators and non-vessel operating common carriers) or transport hazardous materials by vessel.

Section 171.14. Paragraph (c)(3) contains provisions for intermixing old and new hazard communication requirements. Because of the October 1, 1993 mandatory compliance date for new hazard communication requirements, these provisions no longer apply. Therefore, paragraph (c)(3) would be removed and reserved.

Part 172

Sections 172.101 and 172.102. RSPA is proposing to revise the Hazardous Materials Table (HMT) and the list of special provisions in § 172.102 for basic conformance with the eighth revised edition of the UN Recommendations, the ICAO Technical Instructions (1995–1996 edition) and the 27th edition of the IMDG Code. Under Docket HM–181, the HMT was revised by consolidating the existing HMT, the Optional Table in § 172.102, the UN Recommendations' List of Dangerous Goods, the ICAO Dangerous Goods List, the IMDG Code list of dangerous goods, the list of dangerous goods found in Canada's Transport of Dangerous Goods (TDG), and the IM Tank Table. The IM Tank Table, though not codified in the HMR, authorized the transport of hazardous materials in intermodal (IM) portable tanks. The Optional Table contained in the pre-HM–181 HMR was the table used for selection of proper shipping names to be used in domestic and international transportation by vessel.

RSPA consolidated the tables under Docket HM–181 to simplify the use and reduce the volume of the HMR, as well as to align HMR hazard communication and classification requirements with the UN Recommendations. Since publication of HM–181, the UN, ICAO, and IMO have incorporated changes to their lists of dangerous goods. If RSPA does not incorporate comparable changes to the HMT, the result will be two sets of regulations (one for domestic and one for international transportation) and confusion in the regulated community—which could result in unsafe shipments and restrictions on international trade. In addition, by not adopting such changes, RSPA will expend considerable resources reviewing and issuing approvals and initiating separate rulemakings to authorize shipments prepared in accordance with the international standards.

Proposed changes to shipping descriptions are based primarily on Chapters 2 and 3 of the UN Recommendations. In turn, the changes to the IMO and ICAO lists of dangerous goods also are based on the UN Recommendations. Proposed changes include additions, deletions and revisions of shipping names, classifications, subsidiary hazards, labeling requirements, and packing group assignments—such as adding or changing a material's packing group. In addition, RSPA proposes to permit a special provision to be assigned to a shipping description to clarify the composition of a material described under a specific entry.

Except for certain materials, such as elevated temperature materials and sodium batteries, proposed changes to a material's packaging authorizations are based on a material's packing group and subsidiary hazard, and physical state (solid, liquid, or gas). Packaging authorizations would be consistent with corresponding entries already appearing in the HMT. For example, the non-bulk packaging section for a Class 3, Packing Group I material would be § 173.201. A Division 6.1, Packing Group III material would be assigned § 173.153 for a possible packaging exception, while a Division 6.1, Packing Group I or II material would receive no packaging exception section. A Class 8, Packing Group I liquid material would be assigned § 173.243 for bulk packaging requirements while a Class 8, Packing Group II liquid material would be assigned to § 173.242. It is important to note that any change to a material's classification, packing group, or subsidiary hazards could have an effect on the material's packaging authorizations.

Under HM–181, IM tank authorizations were consolidated into the HMT (through the use of special provisions prefaced by a "T") and were consistent with the sixth revision of the UN Recommendations. In this notice, RSPA is proposing to revise the IM tank authorizations for consistency with the changes in Chapter 12 of the seventh and eighth revised editions of the UN Recommendations. These proposed changes can be found in the "T-note" authorizations that are listed in Column 7 of the HMT.

The aircraft quantity limitations in Column 9 and the vessel stowage requirements in Column 10 would be revised for consistency with the ICAO Technical Instructions and IMDG Code, respectively. In § 172.101(k)(1)–(k)(5), the definitions of the vessel stowage codes, which are prescribed in the § 172.101 Table, would be revised for consistency with the IMDG Code. This proposed revision would broaden current stowage provisions for hazardous materials on cargo vessels to apply to hazardous materials (such as propane) on passenger vessels carrying a limited number of passengers.

Changes proposed to the HMT are quite extensive—approximately 33% of the entries in the HMT would be changed. Therefore, RSPA is publishing the entire proposed HMT in this notice, but does not believe it is necessary to discuss every proposed change in this section review. However, in order to facilitate the reader's understanding of the changes to the HMT, RSPA is providing a list of all entries that would be added, deleted, or made more restrictive. This list includes changes in (1) the shipping name, (2) IM tank authorization, (3) subsidiary labeling, (4) classification, and (5) packaging. In addition, a discussion of some of the more substantive changes is provided.

Many proper shipping names were added in the 1995–1996 ICAO Technical Instructions to reflect both singular and plural forms. The eighth revised edition of the UN Recommendations added a provision allowing the use of either the singular or plural form of a proper shipping name. RSPA is not proposing to add separate entries in the HMT to indicate both the singular and plural form of a proper shipping name because § 172.101(c)(1) currently permits use of either form.

Numerous editorial changes would be made to the HMT to correct misspellings and errors, and to provide more consistency. An entry having only a typographical error corrected is not shown in the list of significant changes. Therefore, it is necessary to review the entire HMT to determine every proposed change.

Currently under the HMR, compressed and liquefied gases of the same material have the same shipping description and identification number (I.D. number). RSPA is proposing to split the generic shipping descriptions for "Compressed *or* Liquefied gases" into separate entries and add new generic entries and I.D. numbers for liquefied gases, consistent with the UN Recommendations. In addition, new generic entries would be added for self-heating liquids and solids. Specific entries for self-reactive materials would be removed from the HMT and replaced with new generic entries.

The UN Recommendations, ICAO Technical Instructions, and IMDG Code replaced the term "poisonous" with the term "toxic." RSPA is proposing to amend the proper shipping names in the HMT that contain the word "poisonous" by replacing the word "poisonous" with the word "toxic" to conform to international terminology. For example, the proper shipping name "Flammable liquid, poisonous, n.o.s." would be revised to read "Flammable liquid, toxic, n.o.s.". However, § 172.101(c)(3) would be revised to allow the use of the word "poisonous" interchangeably with the word "toxic".

The words "inorganic" and "organic" would be added to certain generic shipping descriptions. Comments are invited regarding the safety benefits of these modified descriptions, and as to whether there is a need for domestic exceptions. In addition, RSPA is proposing to add new generic entries for a corrosive material to indicate whether the material is "basic" or "acidic." RSPA also is proposing to add new entries, as adopted in the UN Recommendations, for solid materials containing flammable, corrosive, or toxic liquids.

The eighth revised edition of the UN Recommendations added entries and assigned new UN I.D. numbers for elevated temperature materials. RSPA is proposing to change the I.D. numbers for elevated temperature materials in the HMT to correspond with those in the UN Recommendations.

Currently under the HMR, air bags are assigned to the Division 4.1 hazard class and the proper shipping name is limited to "Air bag inflators" or "Air bag modules." Based on changes in the UN Recommendations, RSPA would revise the proper shipping name for air bags to include seat belt pre-tensioners and modules. The new proper shipping name would be "Air bag inflators *or* Air bag modules *or* Seat-belt modules *or* Seat-belt pre-tensioners." This entry also would reflect a change in classification from Division 4.1 to Class 9, adoption of a new UN number, and removal of the "D" in Column 1.

LIST OF ENTRIES

NA2255*	0416	
NA2810*	1118	
NA2811*	1255	
0273	1256	
0274	1257	

*See new entry added by the UN recommendations.

The UN Recommendations, ICAO Technical Instructions, and IMDG Code replaced the term "poisonous" with the term "toxic." RSPA is proposing to amend the proper shipping names in the HMT that contain the word "poisonous" by replacing the word "poisonous" with the word "toxic" to conform to international terminology. For example, the proper shipping name "Flammable liquid, poisonous, n.o.s." would be revised to read "Flammable liquid, toxic, n.o.s.". However, § 172.101(c)(3) would be revised to allow the use of the word "poisonous" interchangeably with the word "toxic".

The words "inorganic" and "organic" would be added to certain generic shipping descriptions. Comments are invited regarding the safety benefits of these modified descriptions, and as to whether there is a need for domestic exceptions. In addition, RSPA is proposing to add new generic entries for a corrosive material to indicate whether the material is "basic" or "acidic." RSPA also is proposing to add new entries, as adopted in the UN Recommendations, for solid materials containing flammable, corrosive, or toxic liquids.

The eighth revised edition of the UN Recommendations added entries and assigned new UN I.D. numbers for elevated temperature materials. RSPA is proposing to change the I.D. numbers for elevated temperature materials in the HMT to correspond with those in the UN Recommendations.

Currently under the HMR, air bags are assigned to the Division 4.1 hazard class and the proper shipping name is limited to "Air bag inflators" or "Air bag modules." Based on changes in the UN Recommendations, RSPA would revise the proper shipping name for air bags to include seat belt pre-tensioners and modules. The new proper shipping name would be "Air bag inflators *or* Air bag modules *or* Seat-belt modules *or* Seat-belt pre-tensioners." This entry also would reflect a change in classification from Division 4.1 to Class 9, adoption of a new UN number, and removal of the "D" in Column 1.

Two new domestic entries would be added for "Toy caps" and "Toy propellant devices". Toy propellant devices containing 30 grams or less propellant would be classed as Division 1.4S while items containing more than 30 grams but not more than 62.5 grams would be classed as Division 1.4C.

Two new entries for "Batteries, containing sodium" and "Cells, containing sodium" would be added in the HMT based on the UN Recommendations entry (UN 3292). Since these materials were previously authorized only under the terms of an exemption or competent authority approval, RSPA is proposing to add a new packaging section § 173.189 that prescribes general packaging and transport requirements for these materials consistent with the UN Recommendations.

Currently, in Column 1, a "+" is assigned to certain materials meeting the criteria of Division 6.1, Packing Group I, toxic by inhalation, but classed in another hazard class. The eighth revised edition of the UN Recommendations incorporated revisions to the hazard classification of these materials to Division 6.1, Packing Group I, toxic by inhalation. Therefore, the "+" would be removed from Column 1 for any liquid poison by inhalation (PIH) material newly classed in Division 6.1, Packing Group I.

The shipping name "acetonitrile" is proposed to replace the name "methyl cyanide." The hazard class for "Formaldehyde solutions" currently shown as Class 9 would be revised to Class 8. Numerous generic pesticide entries would be revised to remove the "n.o.s." from the shipping names.

Previously under the UN Recommendations, ICAO Technical Instructions, and the IMDG Code, a subsidiary hazard of Division 6.1, Packing Group III was not recognized. However, the international standards now take such a subsidiary hazard into account. Therefore, numerous entries would appear for the first time with a Division 6.1, Packing Group III subsidiary hazard. In addition, an exception in § 172.101(c)(12)(iii), which allows a subsidiary hazard of Division 6.1, Packing Group III to be disregarded when selecting a proper shipping name, would be removed.

Revised generic shipping descriptions for Division 4.3 materials would be prefaced by the words "water-reactive" in lieu of the words "substances which in contact with water emit". The prefix of the identification number for "Polyester resin kits" would be changed to "UN" from "NA" and a special provision "40" would be added in Column 7 that would specify contents and packaging requirements for polyester resin kits. In addition, Special Provision "117" would be removed from the entry corresponding to "UN 0150."

The entry for alcoholic beverages would be revised in Column 7 to include Special Provision "24", which would indicate that alcoholic beverages with more than 70 percent alcohol by volume would be assigned Packing Group II and alcoholic beverages containing more than 24 percent but not more than 70 percent alcohol would be assigned Packing Group III. In addition, § 173.150 would be revised to increase (to five liters per inner packaging) the quantity of alcoholic beverage in a packaging excepted from the HMR and to provide an exception adopted in the UN Recommendations to permit Packing Group III alcoholic beverages transported in receptacles of 250 L (66 gallons) or less to be excepted from the HMR unless transported by air.

The following tables identify those entries that would be: (1) deleted; (2) significantly changed; or (3) added. An entry is considered significantly changed if there is a change in (1) the shipping name, (2) IM tank authorization, (3) subsidiary labeling, (4) classification, or (5) packaging. Each entry is identified by its identification number which, along with the cross-reference table appearing in the HMR prior to the HMT, can be used to identify the affected entries. Unless otherwise indicated, the identification numbers are "UN" numbers:

LIST OF ENTRIES THAT WOULD BE DELETED FROM THE § 172.101 TABLE

NA2255*	0416	1270	1705	2497	3030–3043
NA2810*	1118	1271	1864	2553	NA9259*
NA2811*	1255	1584	2207	2660	NA9276*
0273	1256	1592	2229	2951–2955	
0274	1257	1703	2449	2970–2973	

*See new entry added by the UN recommendations.

List of Entries That Would Be Significantly Changed

NA1760	1322	1474	1731	2006	2379	2534	2818
NA1986	1325	1475	1740	2022	2382	2557	2821
NA2922	1328	1477	1747	2029	2383	2564	2823
1106	1334	1481	1750	2047	2386	2571	2826
1125	1336	1482	1751	2051	2389	2583	2834
1135	1337	1483	1752	2076	2399	2584	2837
1143	1344	1489	1755	2189	2401	2585	2841
1154	1348	1502	1757	2194	2407	2586	2845
1158	1349	1506	1761	2195	2417	2604	2846
1160	1350	1508	1773	2196	2418	2606	2857
1162	1353	1511	1783	2198	2420	2610	2869
1167	1354	1517	1787	2206	2421	2616	2874
1198	1355	1549	1788	2209	2427	2619	2881
1202	1356	1564	1789	2211	2428	2626	2904–2905
1210	1357	1566	1809	2218	2429	2670	2921–2930
1214	1361	1570	1811	2219	2430	2677	2938
1221	1364	1588	1814	2232	2438	2679	2945–2946
1228	1373	1589	1816	2242	2445	2681	2965
1235	1378	1590	1819	2251	2461	2684	2985–2988
1265	1395	1599	1824	2257	2478	2693	2991–3021
1268	1402	1601	1888	2258	2482	2733	3024–3027
1274	1408	1602	1908	2260	2484	2734	3049–3050
1277	1409	1605	1922	2264	2485	2735	3065–3066
1282	1415	1613	1952	2267	2495	2741	3071
1289	1418	1614	1953	2270	2501	2742	3079
1296	1420	1648	1954	2276	2502	2757–2787	3084
1297	1428	1660	1955	2332	2517	2789	3086–3088
1298	1454	1708	1956	2337	2521	2796	3094
1308	1455	1715	1975	2343	2526	2801	3096
1310	1458	1719	1986	2351	2529	2810	3098–3100
1320	1459	1722	1988	2359	2530	2813	3119–3150
1321	1462	1724	1992	2361	2533	2817	

List of Additions to the § 172.101 Table

UN #	SHIPPING NAMF
0491 ..	CHARGES, PROPELLING.
0492 ..	SIGNALS, RAILWAY TRACK, EXPLOSIVE.
0493 ..	SIGNALS, RAILWAY TRACK, EXPLOSIVE.
0494 ..	JET PERFORATING GUNS, CHARGED, oil well, without detonator.
0495 ..	PROPELLANT, LIQUID.
0496 ..	OCTONAL.
0497 ..	PROPELLANT, LIQUID.
0498 ..	PROPELLANT, SOLID.
0499 ..	PROPELLANT, SOLID.
1851 ..	MEDICINE, LIQUID, TOXIC, N.O.S.
1990 ..	BENZALDEHYDE.
3155 ..	PENTACHLOROPHENOL.
3156 ..	COMPRESSED GAS, OXIDIZING, N.O.S.
3157 ..	LIQUEFIED GAS, OXIDIZING, N.O.S.
3158 ..	GAS, REFRIGERATED LIQUID, N.O.S.
3159 ..	1,1,1,2-TETRAFLUOROETHANE.
3160 ..	LIQUEFIED GAS, TOXIC, FLAMMABLE, N.O.S.
3161 ..	LIQUEFIED GAS, FLAMMABLE, N.O.S.
3162 ..	LIQUEFIED GAS, TOXIC, N.O.S.
3163 ..	LIQUEFIED GAS, N.O.S.
3164 ..	ARTICLES, PRESSURIZED PNEUMATIC or HYDRAULIC (containing non-flammable gas).

List of Additions to the § 172.101 Table—Continued

UN #	SHIPPING NAME
3166 ..	ENGINES, INTERNAL COMBUSTION, including when fitted in machinery or vehicles.
3167 ..	GAS SAMPLE, NON-PRESSURIZED, FLAMMABLE, N.O.S., not refrigerated liquid.
3168 ..	GAS SAMPLE, NON-PRESSURIZED, TOXIC, FLAMMABLE, N.O.S., not refrigerated liquid.
3169 ..	GAS SAMPLE, NON-PRESSURIZED, TOXIC, N.O.S., not refrigerated liquid.
3170 ..	ALUMINIUM PROCESSING BY-PRODUCTS.
3171 ..	BATTERY-POWERED VEHICLE or BATTERY-POWERED EQUIPMENT (wet battery).
3174 ..	TITANIUM DISULPHIDE.
3175 ..	SOLIDS CONTAINING FLAMMABLE LIQUID, N.O.S.
3176 ..	FLAMMABLE SOLID, ORGANIC, MOLTEN, N.O.S.
3178 ..	FLAMMABLE SOLID, INORGANIC, N.O.S.
3179 ..	FLAMMABLE SOLID, TOXIC, INORGANIC, N.O.S.
3180 ..	FLAMMABLE SOLID, CORROSIVE, INORGANIC, N.O.S.
3181 ..	METAL SALTS OF ORGANIC COMPOUNDS, FLAMMABLE, N.O.S.
3182 ..	METAL HYDRIDES, FLAMMABLE, N.O.S.
3183 ..	SELF-HEATING LIQUID, ORGANIC, N.O.S.

List of Additions to the § 172.101 Table—Continued

UN #	SHIPPING NAME
3184 ..	SELF-HEATING LIQUID, TOXIC, ORGANIC, N.O.S.
3185 ..	SELF-HEATING LIQUID, CORROSIVE, ORGANIC, N.O.S.
3186 ..	SELF-HEATING LIQUID, INORGANIC, N.O.S.
3187 ..	SELF-HEATING LIQUID, TOXIC, INORGANIC, N.O.S.
3188 ..	SELF-HEATING LIQUID, CORROSIVE, INORGANIC, N.O.S.
3189 ..	METAL POWDER, SELF-HEATING, N.O.S.
3190 ..	SELF-HEATING SOLID, INORGANIC, N.O.S.
3191 ..	SELF-HEATING SOLID, TOXIC, INORGANIC, N.O.S.
3192 ..	SELF-HEATING SOLID, CORROSIVE, INORGANIC, N.O.S.
3194 ..	PYROPHORIC LIQUID, INORGANIC, N.O.S.
3200 ..	PYROPHORIC SOLID, INORGANIC, N.O.S.
3203 ..	PYROPHORIC ORGANOMETALLIC COMPOUND, N.O.S.
3205 ..	ALKALINE EARTH METAL ALCOHOLATES, N.O.S.
3206 ..	ALKALI METAL ALCOHOLATES, SELF-HEATING, CORROSIVE, N.O.S.
3207 ..	ORGANOMETALLIC COMPOUND or COMPOUND SOLUTION or COMPOUND DISPERSION, WATER-REACTIVE, FLAMMABLE, N.O.S.

List of Additions to the § 172.101 Table—Continued

UN #	SHIPPING NAME
3208 ..	METALLIC SUBSTANCE, WATER-REACTIVE, N.O.S.
3209 ..	METALLIC SUBSTANCE, WATER-REACTIVE, SELF-HEATING, N.O.S.
3210 ..	CHLORATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3211 ..	PERCHLORATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3212 ..	HYPOCHLORITES, INORGANIC, N.O.S.
3213 ..	BROMATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3214 ..	PERMANGANATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3215 ..	PERSULPHATES, INORGANIC, N.O.S.
3216 ..	PERSULPHATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3217 ..	PERCARBONATES, INORGANIC, N.O.S.
3218 ..	NITRATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3219 ..	NITRITES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3220 ..	PENTAFLUOROETHANE.
3221 ..	SELF-REACTIVE LIQUID TYPE B.
3222 ..	SELF-REACTIVE SOLID TYPE B.
3223 ..	SELF-REACTIVE LIQUID TYPE C.
3224 ..	SELF-REACTIVE SOLID TYPE C.
3225 ..	SELF-REACTIVE LIQUID TYPE D.
3226 ..	SELF-REACTIVE SOLID TYPE D.
3227 ..	SELF-REACTIVE LIQUID TYPE E.
3228 ..	SELF-REACTIVE SOLID TYPE E.
3229 ..	SELF-REACTIVE LIQUID TYPE F.
3230 ..	SELF-REACTIVE SOLID TYPE F.
3231 ..	SELF-REACTIVE LIQUID TYPE B, TEMPERATURE CONTROLLED.
3232 ..	SELF-REACTIVE SOLID TYPE B, TEMPERATURE CONTROLLED.
3233 ..	SELF-REACTIVE LIQUID TYPE C, TEMPERATURE CONTROLLED.
3234 ..	SELF-REACTIVE SOLID TYPE C, TEMPERATURE CONTROLLED.
3235 ..	SELF-REACTIVE LIQUID TYPE D, TEMPERATURE CONTROLLED.
3236 ..	SELF-REACTIVE SOLID TYPE D, TEMPERATURE CONTROLLED.
3237 ..	SELF-REACTIVE LIQUID TYPE E, TEMPERATURE CONTROLLED.
3238 ..	SELF-REACTIVE SOLID TYPE E, TEMPERATURE CONTROLLED.
3239 ..	SELF-REACTIVE LIQUID TYPE F, TEMPERATURE CONTROLLED.
3240 ..	SELF-REACTIVE SOLID TYPE F, TEMPERATURE CONTROLLED.
3241 ..	2-BROMO-2-NITROPROPANE-1,3-DIOL.
3242 ..	AZODICARBONAMIDE.
3243 ..	SOLIDS CONTAINING TOXIC LIQUID, N.O.S.
3244 ..	SOLIDS CONTAINING CORROSIVE LIQUID, N.O.S.
3246 ..	METHANESULPHONYL CHLORIDE.
3247 ..	SODIUM PEROXOBORATE, ANHYDROUS.
3248 ..	MEDICINE, LIQUID, FLAMMABLE, TOXIC, N.O.S.
3249 ..	MEDICINE, SOLID, TOXIC, N.O.S.
3250 ..	CHLOROACETIC ACID, MOLTEN.
3251 ..	ISOSORBIDE-5-MONONITRATE.

LIST OF ADDITIONS TO THE § 172.101 TABLE—Continued

UN #	SHIPPING NAME
3208 ..	METALLIC SUBSTANCE, WATER-REACTIVE, N.O.S.
3209 ..	METALLIC SUBSTANCE, WATER-REACTIVE, SELF-HEATING, N.O.S.
3210 ..	CHLORATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3211 ..	PERCHLORATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3212 ..	HYPOCHLORITES, INORGANIC, N.O.S.
3213 ..	BROMATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3214 ..	PERMANGANATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3215 ..	PERSULPHATES, INORGANIC, N.O.S.
3216 ..	PERSULPHATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3217 ..	PERCARBONATES, INORGANIC, N.O.S.
3218 ..	NITRATES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3219 ..	NITRITES, INORGANIC, AQUEOUS SOLUTION, N.O.S.
3220 ..	PENTAFLUOROETHANE.
3221 ..	SELF-REACTIVE LIQUID TYPE B.
3222 ..	SELF-REACTIVE SOLID TYPE B.
3223 ..	SELF-REACTIVE LIQUID TYPE C.
3224 ..	SELF-REACTIVE SOLID TYPE C.
3225 ..	SELF-REACTIVE LIQUID TYPE D.
3226 ..	SELF-REACTIVE SOLID TYPE D.
3227 ..	SELF-REACTIVE LIQUID TYPE E.
3228 ..	SELF-REACTIVE SOLID TYPE E.
3229 ..	SELF-REACTIVE LIQUID TYPE F.
3230 ..	SELF-REACTIVE SOLID TYPE F.
3231 ..	SELF-REACTIVE LIQUID TYPE B, TEMPERATURE CONTROLLED.
3232 ..	SELF-REACTIVE SOLID TYPE B, TEMPERATURE CONTROLLED.
3233 ..	SELF-REACTIVE LIQUID TYPE C, TEMPERATURE CONTROLLED.
3234 ..	SELF-REACTIVE SOLID TYPE C, TEMPERATURE CONTROLLED.
3235 ..	SELF-REACTIVE LIQUID TYPE D, TEMPERATURE CONTROLLED.
3236 ..	SELF-REACTIVE SOLID TYPE D, TEMPERATURE CONTROLLED.
3237 ..	SELF-REACTIVE LIQUID TYPE E, TEMPERATURE CONTROLLED.
3238 ..	SELF-REACTIVE SOLID TYPE E, TEMPERATURE CONTROLLED.
3239 ..	SELF-REACTIVE LIQUID TYPE F, TEMPERATURE CONTROLLED.
3240 ..	SELF-REACTIVE SOLID TYPE F, TEMPERATURE CONTROLLED.
3241 ..	2-BROMO-2-NITROPROPANE-1,3-DIOL.
3242 ..	AZODICARBONAMIDE.
3243 ..	SOLIDS CONTAINING TOXIC LIQUID, N.O.S.
3244 ..	SOLIDS CONTAINING CORROSIVE LIQUID, N.O.S.
3246 ..	METHANESULPHONYL CHLORIDE.
3247 ..	SODIUM PEROXOBORATE, ANHYDROUS.
3248 ..	MEDICINE, LIQUID, FLAMMABLE, TOXIC, N.O.S.
3249 ..	MEDICINE, SOLID, TOXIC, N.O.S.
3250 ..	CHLOROACETIC ACID, MOLTEN.
3251 ..	ISOSORBIDE-5-MONONITRATE.

LIST OF ADDITIONS TO THE § 172.101 TABLE—Continued

UN #	SHIPPING NAME
3252 ..	DIFLUOROMETHANE.
3253 ..	DISODIUM TRIOXOSILICATE, PENTAHYDRATE.
3254 ..	TRIBUTYLPHOSPHANE.
3255 ..	tert-BUTYL HYPOCHLORITE.
3256 ..	ELEVATED TEMPERATURE LIQUID, N.O.S. with flash point above 37.8 °C, at or above its flash point.
3257 ..	ELEVATED TEMPERATURE LIQUID, N.O.S., at or above 100 °C and below its flash point.
3258 ..	ELEVATED TEMPERATURE SOLID, N.O.S., at or above 240 °C.
3259 ..	AMINES, SOLID, CORROSIVE, N.O.S. or POLYAMINES, SOLID, CORROSIVE, N.O.S.
3260 ..	CORROSIVE SOLID, ACIDIC, INORGANIC, N.O.S.
3261 ..	CORROSIVE, SOLID, ACIDIC, ORGANIC, N.O.S.
3262 ..	CORROSIVE, SOLID, BASIC, INORGANIC, N.O.S.
3263 ..	CORROSIVE, SOLID, BASIC, ORGANIC, N.O.S.
3264 ..	CORROSIVE, LIQUID, ACIDIC, INORGANIC, N.O.S.
3265 ..	CORROSIVE, LIQUID, ACIDIC, ORGANIC, N.O.S.
3266 ..	CORROSIVE, LIQUID, BASIC, INORGANIC, N.O.S.
3267 ..	CORROSIVE, LIQUID, BASIC, ORGANIC, N.O.S.
3268 ..	AIR BAG INFLATORS or AIR BAG MODULES or SEAT-BELT PRETENSIONERS or SEAT-BELT MODULES.
3269 ..	POLYESTER RESIN KIT.
3270 ..	NITROCELLULOSE MEBRANE FILTERS.
3271 ..	ETHERS, N.O.S.
3272 ..	ESTERS, N.O.S.
3273 ..	NITRILES, FLAMMABLE, TOXIC, N.O.S.
3274 ..	ALCOHOLATES SOLUTION, N.O.S., in alcohol.
3275 ..	NITRILES, TOXIC, FLAMMABLE, N.O.S.
3276 ..	NITRILES, TOXIC, N.O.S.
3277 ..	CHLOROFORMATES, TOXIC, CORROSIVE, N.O.S.
3278 ..	ORGANOPHOSPHORUS COMPOUND, TOXIC N.O.S.
3279 ..	ORGANOPHOSPHORUS COMPOUND, TOXIC, FLAMMABLE, N.O.S.
3280 ..	ORGANOARSENIC COMPOUND, N.O.S.
3281 ..	METAL CARBONYLS, N.O.S.
3282 ..	ORGANOMETALLIC COMPOUND, TOXIC N.O.S.
3283 ..	SELENIUM COMPOUND, N.O.S.
3284 ..	TELLURIUM COMPOUND, N.O.S.
3285 ..	VANADIUM COMPOUND, N.O.S.
3286 ..	FLAMMABLE LIQUID, TOXIC, CORROSIVE, N.O.S.
3287 ..	TOXIC LIQUID, INORGANIC, N.O.S.
3288 ..	TOXIC SOLID, INORGANIC, N.O.S.
3289 ..	TOXIC LIQUID, CORROSIVE, INORGANIC, N.O.S.
3290 ..	TOXIC SOLID, CORROSIVE, INORGANIC, N.O.S.

LIST OF ADDITIONS TO THE § 172.101 TABLE—Continued

UN #	SHIPPING NAME
3292 ..	BATTERIES, CONTAINING SODIUM, or CELLS, CONTAINING SODIUM.
3293 ..	HYDRAZINE, AQUEOUS SOLUTION with not more than 37% hydrazine, by mass.
3294 ..	HYDROGEN CYANIDE, SOLUTION IN ALCOHOL with not more than 45% hydrogen cyanide.
3295 ..	HYDROCARBONS, LIQUID, N.O.S.
3296 ..	HEPTAFLUOROPROPANE.
3297 ..	ETHYLENE OXIDE AND CHLORO-TETRAFLUOROETHANE MIXTURE with not more than 8.8% ethylene oxide.
3298 ..	ETHYLENE OXIDE AND PENTAFLUOROETHANE MIXTURE with not more than 7.9% ethylene oxide.
3299 ..	ETHYLENE OXIDE AND TETRAFLUOROETHANE MIXTURE with not more than 5.6% ethylene oxide.
3300 ..	ETHYLENE OXIDE AND CARBON DIOXIDE MIXTURE with more than 87% ethylene oxide.
3301 ..	CORROSIVE LIQUID, SELF-HEATING, N.O.S.

Appendix B to § 172.101. In a November 5, 1992 final rule entitled "Marine Pollutants" [57 FR 52934], RSPA stated that it would consider, in a future rulemaking action, a criteria-based system to identify marine pollutants. Adoption of a criteria-based system would provide continuity and harmony, as well as permit identification of potential pollutants previously not identified. Therefore, RSPA is proposing to add two notes which are consistent with recent IMO decisions. The first, Note 4, would allow a material meeting criteria for a marine pollutant in the IMDG Code but not listed in Appendix B of § 172.101, to be transported as a marine pollutant. Note 5 would allow the Associate Administrator for Hazardous Materials Safety to except from HMR requirements a material listed in Appendix B of the HMR that does not meet the IMDG Code criteria for a marine pollutant. In addition, a number of materials would be added to, or removed from, the HMR's List of Marine Pollutants.

Section 172.102. Special Provisions 23, 24, 26, 32, 34–40, and 43–51 would be added to § 172.102. These special provisions relate to certain materials' classifications and any special packaging requirements that are necessary to safely transport these materials. Due to an oversight, Special Provision 23 was already added in a

final rule published June 2, 1994 [Docket HM–166Z; 59 FR 28493]. This special provision concerned classification of ammonium nitrate fertilizer. Special Provision 23 in this notice does not apply to ammonium nitrate fertilizer and is not intended to revise the recently adopted Special Provision 23. However, because of a time constraint and the difficulty in amending Column 7 of the HMT, the new provision will be proposed in this notice under Special Provision 23, but will be renumbered to Special Provision 38 in the final rule under Docket HM–215A.

Section 172.203. A new paragraph (o) would be added to require additional information to be included in the shipping paper description for organic peroxides and self-reactive materials. In addition, paragraphs (k) and (m) would be revised based on changes to the HMT. In paragraph (k), the list of shipping names requiring technical names would be revised based on changes to the HMT. In paragraph (m), the reference to "Poison" would be modified to include an alternative reference to "Toxic."

Section 172.204. The certification statement in paragraph (a)(2) would be revised to add "placarded" as a condition for declaring a shipment to be properly prepared for transportation. This wording is consistent with international declarations and would enable one shipper certification statement to be used for both domestic and export shipments so that different preprinted forms are not needed.

Section 172.320. Section 172.320 would be revised to permit all product codes that are traceable to an "EX-number" to be marked on boxes of explosives in lieu of the EX number.

Section 172.400a. A new paragraph (c) would be added to state that a subsidiary POISON label is not required on a package bearing a primary CORROSIVE label if the poison hazard of the material inside is based solely on corrosive destruction of tissue and is not due to systemic poisoning. This provision was omitted inadvertently in the Docket HM–181 final rule, and reinstating it would be consistent with international requirements.

Section 172.402. For consistency with revisions to the UN Recommendations, ICAO Technical Instructions, and the IMDG Code, labeling for certain subsidiary hazards would be required. The subsidiary labeling table in paragraph (a)(2) would be revised to exclude Class 3 Packing Group III subsidiary risk materials having a flash point at or above 38 °C (100 °F) from the requirement to label, except when transporting the materials by air or vessel. This proposed revision would require that a material having a subsidiary risk of Class 3 Packing Group III and a flash point below 38 °C (100 °F) be labeled for the Class 3 subsidiary hazard in accordance with this section. In addition, the exception from subsidiary hazard labeling for Class 8 Packing Group III and Division 6.1 Packing Group III materials transported by highway or rail would be removed. Previously, a Division 6.1 Packing Group III subsidiary hazard was not required internationally or domestically. Based on a change adopted in the eighth revised edition of the UN Recommendations, which removed the STOW AWAY FROM FOODSTUFFS label and placard, packages containing materials having either a primary or subsidiary hazard in Division 6.1 Packing Group III are required to bear a POISON label. As noted previously in this document, RSPA is addressing this issue in a rulemaking action under Docket HM–217. However, RSPA believes that a package containing a material meeting Division 6.1 Packing Group III criteria as either a primary or subsidiary hazard should bear a label which communicates a warning that the material must be kept separate from foodstuffs. Therefore, RSPA is proposing that any material having a subsidiary hazard of Division 6.1 Packing Group III must bear a KEEP AWAY FROM FOOD subsidiary label when transported domestically by any mode. Also, new subsidiary labeling requirements for Class 2 materials would, under this proposal, be added as paragraphs (f) and (g).

Section 172.411. A requirement specifying a minimum height for the compatibility group letter on certain EXPLOSIVE labels would be removed.

Section 172.416. Section 172.416 would be revised to allow the use of the words "TOXIC GAS" on the POISON GAS label.

Section 172.430. Section 172.430 would be revised to allow the use of the word "TOXIC" on the POISON label.

Section 172.540. Section 172.540 would be revised to allow the use of the words "TOXIC GAS" on the POISON GAS placard.

Section 172.547. Section 172.547 would be revised to reduce the size requirement for the word "spontaneously" in the "SPONTANEOUSLY COMBUSTIBLE" placard from 25 mm to 12 mm.

Section 172.554. Section 172.554 would be revised to allow the use of the word "TOXIC" on the POISON placard.

Part 173

Section 173.2a. Consistent with the UN Recommendations, the Precedence of Hazards Table would be amended to account for combinations of Division 4.2 and Class 8 materials which currently are denoted as impossible combinations. In addition, a new footnote 5 would be added to the paragraph (b) table to specify that, for materials having multiple risks which are not listed by technical name in the § 172.101 Table, the most stringent packaging group must be used. Also, a note would be added to the paragraph (b) table to specify the class assignment for a material which meets the definition of Class 8, has an inhalation toxicity by dusts and mists at the Packing Group I level and meets criteria for oral or dermal toxicity.

Section 173.21. A reference to the § 173.224 self-reactive materials table would be revised to reflect proposed changes to the table.

Section 173.22. Paragraph (a)(3)(i) would be revised to indicate that the marking appearing on the bottom of a metal or plastic drum in accordance with § 178.503 would not be an acceptable means of determining if the drum is an authorized packaging.

Section 173.24. Paragraph (d) would be revised to specify the conditions under which foreign-manufactured packagings may be used. The proposed revision would stipulate the conditions under which foreign-manufactured UN packagings may be filled and used in the U.S. Under this proposal, only packagings from countries affording the same degree of acceptance to U.S.-manufactured packagings may be used. Current provisions of the regulations authorize their use only for import/export shipments under §§ 171.11 and 171.12. In addition, paragraph (e)(4)(ii) would be revised to prohibit hazardous materials from being packed or mixed with other hazardous or nonhazardous materials in the same outer packaging if such materials are capable of reacting with each other and causing the evolution of "asphyxiant gases."

Section 173.25. Paragraph (a) would be amended to refer to the definition of "Overpack" in § 171.8, which also would be amended to provide examples of suitable overpacks. Paragraph (b) would be added to authorize shrink-wrapped or stretch-wrapped trays as outer packagings for inner packagings prepared under limited quantity or consumer commodity provisions if the completed package is capable of meeting the Packing Group III performance level and the gross weight of the package does not exceed 20 kg.

Section 173.28. Paragraph (b)(4), as revised under the Docket HM–181 final rule, currently requires that metal and plastic single packagings meet certain minimum thicknesses and that the "minimum" thickness be marked on the package. Since issuance of the Docket HM–181 final rule, the eighth revised edition of the UN Recommendations and the international regulations have adopted a provision that metal drums with a capacity greater than 100 liters must be marked in accordance with tolerances allowed under ISO standard 3574 for each nominal thickness of steel.

Unless the below-described proposed changes to § 173.28 are adopted, thicknesses and thickness marking requirements that differ between the HMR and international regulations could result in confusion, with drum users and reconditioners unsure whether drums are suitable for reuse or remanufacture. Drum manufacturers in the U.S. might find it necessary to mark both minimum and nominal thicknesses on each drum in order to satisfy DOT and international requirements. Consistent with changes proposed in § 178.503(a), RSPA is proposing that metal drums and jerricans which are to be reused be marked with the nominal thickness, in millimeters. The minimum thickness table in paragraph (b)(4) would be revised for metal drums and jerricans to reflect a minimum thickness corresponding to the minimum allowed under ISO standard 3574 for various nominal thicknesses. In developing the minimum thickness proposed for each listed capacity of packaging, the thickness chosen is that most closely corresponding numerically (i.e., without regard to whether it is thicker or thinner) to the minimum thickness previously required. That is, based on the tolerances allowed under ISO 3574 for each nominal thickness of steel, the minimum thickness corresponding to that nominal thickness was determined and compared to the minimum thickness required under the current provisions for the given capacity of packaging. Each proposed minimum thickness would result in a minimum sheet thickness closely corresponding to that required under the current regulations. However, for packagings with a capacity up to and including 120 liters, the proposed minimum thicknesses would result in slight increases in the required thickness.

Drums would continue to be suitable for reuse only if they meet the minimum thickness criteria of the table in paragraph (b)(4). A person reusing a metal drum or jerrican could not rely on the thickness marking appearing on the

Section 173.28. Paragraph (b)(4), as revised under the Docket HM–181 final rule, currently requires that metal and plastic single packagings meet certain minimum thicknesses and that the "minimum" thickness be marked on the package. Since issuance of the Docket HM–181 final rule, the eighth revised edition of the UN Recommendations and the international regulations have adopted a provision that metal drums with a capacity greater than 100 liters must be marked in accordance with tolerances allowed under ISO standard 3574 for each nominal thickness of steel.

Unless the below-described proposed changes to § 173.28 are adopted, thicknesses and thickness marking requirements that differ between the HMR and international regulations could result in confusion, with drum users and reconditioners unsure whether drums are suitable for reuse or remanufacture. Drum manufacturers in the U.S. might find it necessary to mark both minimum and nominal thicknesses on each drum in order to satisfy DOT and international requirements. Consistent with changes proposed in § 178.503(a), RSPA is proposing that metal drums and jerricans which are to be reused be marked with the nominal thickness, in millimeters. The minimum thickness table in paragraph (b)(4) would be revised for metal drums and jerricans to reflect a minimum thickness corresponding to the minimum allowed under ISO standard 3574 for various nominal thicknesses. In developing the minimum thickness proposed for each listed capacity of packaging, the thickness chosen is that most closely corresponding numerically (i.e., without regard to whether it is thicker or thinner) to the minimum thickness previously required. That is, based on the tolerances allowed under ISO 3574 for each nominal thickness of steel, the minimum thickness corresponding to that nominal thickness was determined and compared to the minimum thickness required under the current provisions for the given capacity of packaging. Each proposed minimum thickness would result in a minimum sheet thickness closely corresponding to that required under the current regulations. However, for packagings with a capacity up to and including 120 liters, the proposed minimum thicknesses would result in slight increases in the required thickness.

Drums would continue to be suitable for reuse only if they meet the minimum thickness criteria of the table in paragraph (b)(4). A person reusing a metal drum or jerrican could not rely on the thickness marking appearing on the packaging to satisfy the minimum thickness requirements, since that marking would represent the nominal, rather than the minimum, thickness in accordance with proposed § 178.503(a)(9). Because the eighth revised edition of the UN Recommendations did not address thickness requirements for plastic packagings, RSPA is not proposing any changes to the thickness requirements for plastic packagings.

Based on the merits of a petition for rulemaking (P–1133), a new paragraph (b)(7) would be added to waive retesting requirements for certain packagings used in limited operations prior to each reuse. The petitioner states that this proposed change would provide consistency with corresponding provisions in international requirements. According to both the HMR and the UN Recommendations, a packaging must be design-qualification tested before use. However, unlike the HMR, the UN Recommendations do not require a packaging to be leakproof tested before it is reused for transport, but only after it is reconditioned. Packagings that are reused without reconditioning include metal drums that are refilled with the same or similar compatible contents and transported within distribution chains controlled by the consignor of the product. RSPA is proposing similar provisions in new paragraph (b)(7) for certain packagings to be reused without leakproof testing. Packagings would be limited to stainless steel, monel, or nickel drums (or other packagings approved by the Associate Administrator for Hazardous Materials Safety) refilled with the same or similar compatible contents and transported by a private carrier, contract carrier, or common carrier in a transport vehicle or freight container used exclusively for such service, within a distribution chain controlled by the offeror. In order to ensure an appropriate level of safety, when stainless steel, monel, or nickel drums are reused without undergoing leakproof testing, they would be required to meet more stringent thickness standards than prescribed in paragraph (b)(4). Other packagings could qualify only if approved by the Associate Administrator for Hazardous Materials Safety. Packagings also would require an inspection prior to each reuse, and any packaging showing evidence of a reduction in integrity would not be authorized for reuse without reconditioning.

Section 173.33. Paragraph (c)(5) would be revised to limit the provisions of the paragraph to materials in Packing Groups I and II of Division 6.1.

Section 173.52. In § 173.52, the description of Compatibility Group B would be revised to clarify that detonators and similar articles are included within this description even if they do not contain primary explosives. In addition, in the descriptions for Compatibility Groups E and F, the word "gel" would be added to clarify that articles with a propelling charge containing gel may not be classified in Compatibility Group E or F.

Section 173.59. In § 173.59, the definitions "powder, smokeless," "propellants," and "charges, propelling" would be revised and definitions for "charges, propelling for cannon," "propellent, liquid," and "propellant, solid" would be added.

Section 173.60. In § 173.60, paragraph (b)(15) would be added to require all plastic packagings to be static-resistant.

Section 173.62. In § 173.62, the Explosives Table would be revised to add new descriptions for Class 1 materials. In addition, the packing method for UN0075 and UN0143 would be revised to E–159. The Table of Packing Methods would be editorially revised to change the reference to steel and aluminum boxes from 4A1 or 4A2 and 4B1 or 4B2 to 4A and 4B, respectively. Several packing methods would be revised by authorizing aluminum boxes (4B) as an alternate packaging. For clarity, the entire proposed Explosive Packing Methods Table has been reprinted with the Table of Particular Packaging Requirements and Exceptions following. Paragraph (e) would be revised to update the military packaging exception to allow explosives packaged prior to January 1, 1990, to be transported in accordance with the packaging provisions in effect on that date.

Section 173.115. The definition of a Division 2.2 gas would be expanded to include asphyxiant and oxidizing gases.

Section 173.120. Definitions for Class 3 liquids would be revised to include provisions for evaluating a material's ability to sustain combustion and to measure flame point. A new method of testing for combustibility would be referenced and added as Appendix H to Part 173. Specific exceptions consistent with the UN Recommendations would be added as paragraphs (a)(3), (a)(4), and (a)(5). In addition, references to ASTM standards would be revised to reflect updated versions. Paragraph (b)(2) would be revised to clarify that an elevated temperature material in Class 3 may not be reclassed as a combustible liquid. As explained more fully in a notice of proposed rulemaking and in a final rule issued under Docket HM–198A [54 FR 38931; September 21, 1989

and 56 FR 49981; October 2, 1991], when a liquid is intentionally heated to a temperature that is equal to or greater than its flash point, flammable vapors are produced above the liquid. If these flammable vapors are exposed to an ignition source, an explosion or fire could result.

Section 173.121. Criteria for including viscous Class 3 materials in Packing Group III would be revised. ISO method ISO 1523–1983 would be referenced for determination of flash point. Several modifications to the method would be provided when the temperature of the flash point is too low for the standard procedures. Reference to ISO method 2431–1989 would reflect the latest revision. The table in § 173.121(b)(1)(iv) would be amended for consistency with the eighth revision of the UN Recommendations.

Section 173.124. The definition of self-reactive materials would be revised to conform to the changes in the UN Recommendations, which now contains "generic" shipping descriptions. When a new self-reactive material is introduced into commerce, its transportation hazards currently are determined based on standard tests. The competent authority then assigns the new self-reactive material to a generic type based on the test results.

In the proposed revision to § 173.124, seven types of self-reactive material (Types A–G) are defined in paragraph (a)(2). The procedure for assigning a specific self-reactive material to a generic type is set forth in paragraph (a)(2)(vi). If a self-reactive material is identified by technical name in the Self-Reactive Materials Table in § 173.224, the generic type is assigned in that Table. The lengthy process by which importing and exporting countries agree on the packaging requirements or assignment of a shipping description for a new self-reactive material would be avoided by using this procedure.

Section 173.128. Editorial changes would be made in paragraphs (a), (c)(2) and (c)(3), and procedures for obtaining approvals would be clarified in revised paragraph (d).

Sections 173.136 and 173.137. The definition and packing group assignment for Class 8 materials would be clarified. Specific test protocols developed by the Organization for Economic Cooperation and Development (OECD) and published in the 1992 OECD Guideline for Testing of Chemicals, No. 404, "Acute Dermal Irritation/Corrosion" would be incorporated. A copy of this guideline may be obtained from the OECD Publications and Information Center, 2001 L Street, Suite 700, Washington, DC 20036 or by contacting the RSPA Dockets Unit.

Section 173.150. Paragraph (a) would be revised to allow Class 3 materials that meet the definition of Class 8 Packing Group III or Division 6.1 Packing Group III, to utilize limited quantity exceptions provided in this section. Paragraph (b) would be expanded to include limited quantity exceptions for combustible liquids to provide relief from specification packaging and placarding requirements for combustible liquids which are also hazardous substances or hazardous wastes. The paragraph (d) provisions for alcoholic beverages would be revised to clarify that an alcoholic beverage containing 24 percent or less alcohol by volume is not subject to the HMR. The maximum quantity per package of alcoholic beverage excepted from the HMR would be raised from four liters to five liters, and a Packing Group III alcoholic beverage in a packaging of 250 L or less would not be subject to the HMR unless transported by air.

Section 173.152. The limited quantity provisions for organic peroxides would be amended by increasing the authorized net capacity per inner packaging for Type D, E, or F liquid and solid organic peroxides and Type B or C solid organic peroxides. However, the authorized net capacity for liquid Type B or C organic peroxides would decrease from 30 ml to 25 ml per inner packaging.

Section 173.164. Certain exceptions for mercury (metallic and articles containing mercury), would be clarified and a 4H2 solid plastic box would be authorized as an outer packaging, consistent with the ICAO Technical Instructions.

Section 173.166. This section would be amended to limit its applicability to air bag inflators and modules showing certain specified results when subjected to a bonfire test. Under this proposed revision, airbag modules and inflators not meeting the test criteria must be transported as explosives.

Section 173.168. This section would be added to define a "nonspillable battery", establish separate requirements for nonspillable batteries (as opposed to the requirements for wet batteries contained in § 173.159), and provide vibration and pressure differential testing criteria. Except when transporting a wheelchair or other battery-powered mobility aid equipped with a non-spillable battery by air as checked baggage, a nonspillable battery which is protected against short circuits, securely packaged and durably marked would not be subject to any other HMR requirements.

Section 173.171. Paragraph (a) would be revised to clarify that smokeless powder must be examined and approved as both Division 1.3 and Division 4.1.

Section 173.185. RSPA is proposing to amend the requirements for lithium batteries consistent with changes in the UN Recommendations. While the new requirements apply more severe test requirements to lithium batteries, they also will allow batteries with higher quantities of lithium to be transported without being subject to the regulations, provided specified criteria are met. Existing batteries previously allowed to be transported as Class 9 batteries may continue to be transported under the present requirements indefinitely if the present requirements are met.

Section 173.189. This new section would be added to establish the packaging and general transport requirements for batteries and cells containing sodium. The packagings and transport conditions proposed reflect those prescribed for these articles in the UN Recommendations, the ICAO Technical Instructions and the IMDG Code. Specific conditions under which batteries containing liquid sodium may be transported are proposed based on the conditions prescribed for the transport of batteries containing liquid sodium under DOT–E 10917.

Section 173.196. The seventh edition of the UN Recommendations revised a provision for infectious substances packagings to require that either the primary receptacle or the secondary packaging be capable of withstanding the prescribed pressure differential. RSPA is proposing a similar revision to paragraph (f) to clarify that both the inner and the outer packagings are not required to have this capability.

Sections 173.211–213. These sections would be revised to change packaging identification codes (for steel boxes from 4A1 and 4A2 to 4A and for aluminum boxes from 4B1 and 4B2 to 4B) for consistency with international requirements.

Section 173.224. This section would be revised based on the UN Recommendations. Paragraph (b) sets forth the Self-Reactive Materials Table which identifies the technical name for specific self-reactive materials, the identification number which is used to select the appropriate generic shipping description, specifications for concentrations of the self-reactive material, packing methods that may be used, temperature control requirements, and additional special provisions. The existing packing methods for self-reactive materials would be replaced with the packing methods for organic peroxides which are prescribed in § 173.225.

Paragraph (c) sets forth procedures for new self-reactive materials, formulations and samples. New self-reactive materials and formulations of currently identified self-reactive materials would have to be approved in accordance with the provisions in § 173.124(a)(2)(vi). Paragraph (c)(4) contains provisions for the shipping of samples of new formulations. Paragraph (d) would specify that self-reactive materials of Type F may be transported in bulk only under the approval of the Associate Administrator for Hazardous Materials Safety.

Section 173.225. In § 173.225, paragraph (a) would be revised to prohibit the use of metallic non-bulk packagings meeting a Packing Group I packaging standard. Paragraph (c)(5) would be added to authorize the transportation of mixtures of organic peroxides that are specifically identified in the Organic Peroxides Table without approval by the Associate Administrator for Hazardous Materials Safety. In addition, the Organic Peroxide Table would be revised to add new organic peroxides adopted in the UN Recommendations.

Section 173.304. In the paragraph (a)(2) table, for the entry "carbon dioxide," an erroneous reference to a DOT–311800 cylinder would be corrected to authorize a DOT–3T1800 cylinder for carbon dioxide.

Section 173.306. In paragraph (a)(3)(v), the hot water immersion test for aerosols and small gas receptacles would include a reference temperature of 50 °C (122 °F) in addition to the reference temperature of 55 °C (131 °F). A reference temperature of 50 °C would be permitted if the liquid phase of the materials contained in the receptacle does not exceed 95 percent of the capacity of the receptacle at 50 °C. In addition, provisions would be added for plastic receptacles or contents which are sensitive to heat.

Appendix A to Part 173. Appendix A, which provides a method of testing corrosion to skin, would be removed and reserved for consistency with proposed changes to the definition and packing group assignment for Class 8 materials.

Appendix E to Part 173. New criteria would be added for self-reactive materials possessing explosive properties, and an editorial change would be made to clarify that powders of metals or metal alloys that can be ignited are classified in Division 4.1.

Appendix F to Part 173. In paragraph 1., an editorial revision would be made to correctly reference Division 5.1.

peroxides which are prescribed in § 173.225.

Paragraph (c) sets forth procedures for new self-reactive materials, formulations and samples. New self-reactive materials and formulations of currently identified self-reactive materials would have to be approved in accordance with the provisions in § 173.124(a)(2)(vi). Paragraph (c)(4) contains provisions for the shipping of samples of new formulations. Paragraph (d) would specify that self-reactive materials of Type F may be transported in bulk only under the approval of the Associate Administrator for Hazardous Materials Safety.

Section 173.225. In § 173.225, paragraph (a) would be revised to prohibit the use of metallic non-bulk packagings meeting a Packing Group I packaging standard. Paragraph (c)(5) would be added to authorize the transportation of mixtures of organic peroxides that are specifically identified in the Organic Peroxides Table without approval by the Associate Administrator for Hazardous Materials Safety. In addition, the Organic Peroxide Table would be revised to add new organic peroxides adopted in the UN Recommendations.

Section 173.304. In the paragraph (a)(2) table, for the entry "carbon dioxide," an erroneous reference to a DOT–311800 cylinder would be corrected to authorize a DOT–3T1800 cylinder for carbon dioxide.

Section 173.306. In paragraph (a)(3)(v), the hot water immersion test for aerosols and small gas receptacles would include a reference temperature of 50 °C (122 °F) in addition to the reference temperature of 55 °C (131 °F). A reference temperature of 50 °C would be permitted if the liquid phase of the materials contained in the receptacle does not exceed 95 percent of the capacity of the receptacle at 50 °C. In addition, provisions would be added for plastic receptacles or contents which are sensitive to heat.

Appendix A to Part 173. Appendix A, which provides a method of testing corrosion to skin, would be removed and reserved for consistency with proposed changes to the definition and packing group assignment for Class 8 materials.

Appendix E to Part 173. New criteria would be added for self-reactive materials possessing explosive properties, and an editorial change would be made to clarify that powders of metals or metal alloys that can be ignited are classified in Division 4.1.

Appendix F to Part 173. In paragraph 1., an editorial revision would be made to correctly reference Division 5.1.

Appendix H to Part 173. A new Appendix H would be added to Part 173 to provide a method of testing for combustibility. This method outlines a procedure for determining if a material can sustain combustion if heated under test conditions and exposed to an external source of flame.

Part 175

Section 175.10. The phrase "environmental restoration or protection" would be added as an exception in paragraph (a)(12) to clarify that certain aircraft operations pertaining to environmental restoration may be conducted under the provisions of this paragraph. Exceptions currently contained in paragraphs (a)(13) and (a)(17) for carbon dioxide (dry ice) would be consolidated into paragraph (a)(13) to except this material from regulation from Part 175 when it is used as a refrigerant for a package, intended for use in food or beverage service aboard an aircraft, or when used to pack perishables in carry-on baggage. Paragraph (a)(4) would be revised for consistency with the ICAO Technical Instructions which prohibit the carriage of undeclared flammable aerosols in checked or carry-on luggage. The carriage of such aerosols may create an unnecessary risk to ground handlers, passengers, and air crew members. In addition, a new paragraph (a)(26) would be added to except from regulation small medical or clinical mercury thermometers carried by passengers or crew members for personal use.

Section 175.33. Paragraph (a)(1) would be revised and a new paragraph (a)(9) would be added to require an aircraft operator, in the written notification to the pilot-in-command, to include a compatibility group letter for a Class 1 material and an air waybill number where one has been issued.

Part 176

Section 176.27. A new paragraph (c) would be added to reference a container packing certificate required under the provisions of the SOLAS Convention. (See discussion under § 171.12 of this section review for additional information.)

Section 176.76. A new paragraph (i) is being proposed for inclusion in § 176.76 to address the transport of fumigated transport units on vessels. These proposed fumigation requirements would be in addition to the fumigation requirements contained in § 173.9. The new vessel requirements are generally consistent with the IMDG Code requirements for transporting fumigated transport units and are consistent with Special Permits currently being issued by the Coast Guard for U.S. maritime transport of fumigated transport units. Contrary to the IMDG Code but consistent with the UN Recommendations, RSPA is not proposing that fumigated units be treated as items of Class 9. If the proposed requirements for fumigated transport units on vessels are adopted in the final rule, a Special Permit issued by the Coast Guard would no longer be necessary.

Part 177

Section 177.841. Paragraph (e)(3) would be revised to specify requirements for separating Division 6.1 Packing Group III materials from foodstuffs, consistent with provisions in § 177.848.

Part 178

Section 178.2. Paragraph (a) would be revised to clarify that Part 178 requirements for UN standard packagings apply only to packagings manufactured in the U.S. See § 173.24(d)(2) for foreign-manufactured packagings. A new paragraph (e) would be added to include definitions for "manufacturer" and "specification markings." These new definitions would specify who is to be identified through a specification marking as the "manufacturer" and would clarify the manufacturer's responsibility under Part 178.

Section 178.3. The introductory text in paragraph (a) and the text in subparagraph (a)(2) would be revised editorially for clarity. A new marking provision would be added to paragraph (a)(4) to permit markings of an appropriate, rather than specific, size for packagings of 5 L (1 gallon) or 5 kg (11 pounds) or less capacity. Paragraph (b) would be revised to clarify the requirements for UN standard packagings marked in accordance with HMR requirements and UN standard packagings marked in accordance with the ICAO Technical Instructions or the IMDG Code.

Section 178.502. In paragraph (a) introductory text and paragraph (a)(1), the terms "type" or "types" of packagings would be amended for consistency with international regulations to read "kind" or "kinds" of packagings.

Section 178.503. Consistent with the UN Recommendations, RSPA is proposing revisions to certification marking requirements in this section. Each packaging certified to a UN standard is required to have a series of markings which describe the packaging and its characteristics. Paragraph (a) would be revised to require, for

packagings having a gross mass greater than 30 kg (66 pounds), that these markings appear on the top or side of the packaging. Currently, § 178.503 requires that metal or plastic drums or jerricans intended for reuse be marked with the minimum thickness of the packaging material. Consistent with the UN Recommendations, RSPA is proposing that metal drums and jerricans intended for reuse be marked with the nominal thickness. The nominal thickness marked would be in accordance with ISO 3574; that is, the nominal thickness marked could only exceed the actual minimum thickness of the packaging material by the tolerance specified in ISO 3574. Packagings to be reused would still be subject to the minimum thickness requirements of § 173.28. Because the eighth revised edition of the UN Recommendations did not address thickness requirements for plastic packagings, RSPA is proposing that plastic drums and jerricans intended for reuse continue to be marked with the minimum thickness of the packaging material.

In addition to the full marking on the top or side of a metal or plastic drum having a capacity greater than 100 liters and intended for reuse or reconditioning as a single packaging or the outer packaging of a composite packaging, RSPA is proposing to require a permanent marking of the drum characteristics on the bottom of the drum. The country authorizing the mark, the name and address of the manufacturer, and the packaging thickness would not be required as part of this permanent mark. This marking would identify the packaging as it was originally manufactured, and could not necessarily be used to determine compliance with packaging requirements. For example, if a non-removable head drum had been converted to a removable head drum, this conversion would not be reflected in the marking on the bottom of the drum, but would be evident in the top or side marking. For drums marked permanently on the bottom, the top or side mark would not be required to be permanent (i.e., able to withstand the reconditioning process).

RSPA is proposing a new paragraph (d), which would specify additional requirements for markings on reconditioned metal drums. The paragraph would require that reconditioners reapply markings which no longer appear on drums after the reconditioning process. A reconditioner could duplicate the original markings or apply markings which reflect a lower performance level, but could not apply markings which identify a performance level greater than that for which the original design type had been tested and marked.

Section 178.512. Standards for steel boxes and aluminum boxes would be consolidated by removing the distinction between unlined/uncoated steel or aluminum boxes and steel or aluminum boxes having an inner liner or coating. Therefore, both unlined and lined steel boxes would be identified as 4A and unlined and lined aluminum boxes would be identified as 4B. Corresponding revisions would be reflected in the packaging authorizations of Part 173.

Section 178.513. A new paragraph would be added to the standards for natural wood boxes to specify fastening requirements.

Section 178.516. In paragraph (b)(1), the reference to ISO Standard 535–1976(E) would be updated. Paragraph (b)(2) would be revised to authorize the ends of fiberboard boxes to be constructed of suitable materials other than wood, which is already authorized.

Section 178.521. In paragraph (b)(2), the term "water-resistant" would be revised to "waterproof" and examples of a waterproof ply or barrier would be provided.

Section 178.522. A composite packaging consisting of a plastic receptacle in a protective plastic drum is designated as 6HH in the current HMR standards. The UN Recommendations recently adopted a new composite packaging standard to authorize a plastic receptacle in a protective plastic box. Therefore, in paragraph (b)(3), the previous 6HH composite packaging would be redesignated as 6HH1 and the new composite packaging (the plastic receptacle in a protective plastic box) would be designated as 6HH2.

Section 178.601. Based on the merits of a petition (P–1195), paragraph (b) would be revised to limit the responsibility of shippers to those packaging assembly functions they actually perform or are responsible for performing. The petitioner claims that § 178.601(b) currently requires any shipper who closes a package to ensure that each package is capable of passing prescribed performance tests, thereby making the shipper legally responsible for every aspect of the manufacture and testing of the packaging. RSPA agrees, and is proposing a revision to paragraph (b)(2) to remove the shipper responsibility provision regarding packaging fabrication and testing functions not performed by the shipper. Paragraph (g)(2)(i) would be revised to clarify that selective testing under Variation 2 would require the fragile inner packagings to contain liquids. A new sentence would be added to the end of paragraph (g)(2)(vi) to clarify that where outer packagings are not leakproof or siftproof and consequently require some type of leakproof liner, plastic bag or other means of containment, sufficient absorbent material must be placed inside the liner or bag. A new paragraph (k) would be added to permit several tests to be performed on one sample if the validity of test results is not affected and if approved by the Associate Administrator for Hazardous Materials Safety. Newly designated paragraph (l) would be revised to clarify recordkeeping requirements and provide consistency with test report requirements in the UN Recommendations.

Section 178.602. In paragraph (c) a reference to "§ 178.603(d)(2)" would be corrected to read "§ 178.603(e)".

Section 178.603. In paragraph (a), a new provision would be added to require that the drop test be performed using the package orientation most likely to result in failure if more than one orientation is possible. Paragraph (c) would be revised to clarify that the cold drop test outlined in this paragraph applies only to plastic packagings. A proposed revision to paragraph (f)(1) would clarify that inner packagings of combination packagings are not required to be vented to reach equilibrium after the drop test.

Section 178.604. For consistency with a change in the UN Recommendations, the length of time to conduct a leakproofness test, other than for production testing, would be specified as five minutes in revised paragraph (d).

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. A preliminary regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act contains an express preemption provision (49 App. U.S.C. 1804(a)(4)) that preempts

State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous materials;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This notice of proposed rulemaking addresses covered subjects under items i, ii, iii and v above and, if adopted as final, would preempt State, local, or Indian tribe requirements not meeting the "substantively the same" standard. The HMTA (49 App. U.S.C. 1804(a)(5), as amended, provides that if DOT issues a regulation concerning any of the covered subjects, after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be [insert date six months after date of publication]. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This proposed rule would incorporate changes introduced in the seventh and eighth revised editions of the UN Recommendations, the 1993–1994 and 1995–1996 ICAO Technical Instructions, and Amendments 26 and 27 to the IMDG Code. It would apply to

State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous materials;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This notice of proposed rulemaking addresses covered subjects under items i, ii, iii and v above and, if adopted as final, would preempt State, local, or Indian tribe requirements not meeting the "substantively the same" standard. The HMTA (49 App. U.S.C. 1804(a)(5), as amended, provides that if DOT issues a regulation concerning any of the covered subjects, after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be [insert date six months after date of publication]. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This proposed rule would incorporate changes introduced in the seventh and eighth revised editions of the UN Recommendations, the 1993–1994 and 1995–1996 ICAO Technical Instructions, and Amendments 26 and 27 to the IMDG Code. It would apply to offerors and carriers of hazardous materials and would facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. U.S. companies, including numerous small entities competing in foreign markets, will be forced to comply with a dual system of regulation, to their economic disadvantage, if the changes proposed in this NPRM are not adopted. The proposed changes are intended to avoid this result. I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act Of 1980 (Pub. L. 96–511) under OMB control number 2137–0034 for shipping papers and 2137–0557 for approvals.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, and 1818; 49 CFR part 1.

2. In the § 171.7(a)(3) Table, under the entry *American Society for Testing and Materials* a new entry would be added in numerical order; under the entry *International Organization for Standardization*, two new entries would be added at the end of existing entries; and a new entry would be added in alphabetical order, to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
American Society for Testing and Materials	
ASTM G 31–72 Practice for Laboratory Immersion Corrosion Testing of Metals (Reapproved 1990)	173.137

Source and name of material	49 CFR reference
International Organization for Standardization	
ISO 3574–1986(E) Cold-reduced carbon steel sheet of commercial and drawing qualities	178.503
ISO 2592–1973 Petroleum Products—Determination of Flash and Fire Points Cleveland Cup Method, 1973	173.120
ISO 2604 (IV)-1975 Steel Products for Pressure Purposes—Plates	173.137
Organization for Economic Cooperation and Development (OECD)	
OECD Publications and Information Center, 2001 L Street, Suite 700, Washington, DC 20036	
OECD Guideline for Testing of Chemicals, No.404 "Acute Dermal Irritation/Corrosion", 1992	173.136

* * * * *

§ 171.7 [Amended]

3. In addition, in § 171.7, in the table in paragraph (a)(3), the following changes would be made:

a. In the entry ASTM D 56–79, the wording "D 56–79" would be revised to read "D 56–87".

b. In the entry ASTM D 93–80, the wording "D 93–80" would be revised to read "D 93–90".

c. In the entry ASTM D 3278–78, the wording "D 3278–78" would be revised to read "ASTM D 3278–89".

d. In the entry ASTM D 4359–84, the wording "D 4359–84" would be revised to read "ASTM D 4359–90".

e. Under International Civil Aviation Organization (ICAO), for the entry "Technical Instructions for the Safe Transport of Dangerous Goods by Air", the date "1993–1994" would be revised to read "1995–1996".

f. Under International Maritime Organization (IMO), the entry "International Maritime Dangerous Goods (IMDG) Code, 1990 Consolidated Edition, as amended by Amendment 26 thereto" would be amended by removing the wording "Amendment 26" and replacing it with "Amendment 27".

g. Under International Organization for Standardization, the words "ISO–535–1976(E)" would be revised to read "ISO–535–1991(E)".

h. Under Transport Canada, the entry "Transportation of Dangerous Goods Regulations, as of July 1, 1985, incorporating Registration Numbers SOR/85–77, SOR/85–585 and SOR/85–609" would be revised to read "Transportation of Dangerous Goods Regulations, 1 July 1985, SOR/85/77, incorporating the following Registration Numbers: SOR/85–314, SOR/85–585, SOR/85–609, SOR/86–526, SOR/88–635, SOR/87–335, SOR/87–186, SOR/89–39, SOR/89–294, SOR/90–847, SOR/91–711, SOR/91–712, SOR/92–447, SOR/92–600, SOR/93–203, SOR/93–274, SOR/93–525, SOR/94–146 and SOR/94–264".

i. Under United Nations, for the entry "UN Recommendations on the Transport of Dangerous Goods, Sixth Revised Edition (1989)" the wording "Sixth Revised Edition (1989)" would be revised to read "Eighth Revised Edition (1993)".

j. Under United Nations, for the entry "UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria", in column 2, the references "173.124;" "173.128;" "173.166;" and "173.185" would be added in appropriate numerical order.

4. In § 171.8, the following definitions would be added or revised, as indicated, in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

[Add:]

* * * * *

Asphyxiant gas means a gas which dilutes or replaces oxygen normally in the atmosphere.

* * * * *

Gas means a material which, at a standard pressure of 101.3 kPa (14.7 psi), has a vapor pressure greater than 300 kPa (43.5 psi) at 50 °C (122 °F) or is completely gaseous at 20 °C (68 °F).

* * * * *

Siftproof packaging means a packaging impermeable to dry contents, including fine solid material produced during transportation.

* * * * *

[Revise:]

* * * * *

Box means a packaging with complete rectangular or polygonal faces, made of metal, wood, plywood, reconstituted wood, fiberboard, plastic, or other suitable material. Small holes for purposes such as ease of handling or opening, or to meet classification requirements, are permitted as long as they do not compromise the integrity of the packaging during transportation, and are not otherwise prohibited in this subchapter.

* * * * *

Liquid means a material, other than an elevated temperature material, with a melting point or initial melting point of 20 °C (68 °F) or lower at a standard pressure of 101.3 kPa (14.7 psi). A viscous material for which a specific melting point cannot be determined must be subjected to the procedures specified in ASTM D 4359–90 "Standard Test Method for Determining Whether a Material is Liquid or Solid".

* * * * *

Overpack, except as provided in subpart K of part 178 of this subchapter, means an enclosure that is used by a single consignor to provide protection or convenience in handling of a package or to consolidate two or more packages. *Overpack* does not include a transport vehicle, freight container, or aircraft unit load device. Examples of overpacks are one or more packages:

(1) Placed or stacked onto a load board such as a pallet and secured by strapping, shrink wrapping, stretch wrapping, or other suitable means; or

(2) Placed in a protective outer packaging such as a box or crate.

* * * * *

Solid means a material which is not a gas or a liquid.

* * * * *

UN standard packaging means a packaging conforming to standards in the UN Recommendations on the Transport of Dangerous Goods.

* * * * *

§ 171.11 [Amended]

5. In § 171.11, in the last sentence of paragraph (d)(5), the wording "Poison" would be revised to read "'Poison' or 'Toxic'".

§ 171.12 [Amended]

6. In § 171.12, the following changes would be made:

a. In paragraph (b) introductory text, in the second sentence, the wording

"stowed and segregated, and certified in accordance with the IMDG Code" would be revised to read "stowed and segregated, and certified (including a container packing certification, if applicable) in accordance with the IMDG Code".

b. In the first sentence of paragraph (c) introductory text, the wording "being imported into or exported from the United States or" would be removed.

§ 171.14 [Amended]

7. In § 171.14, paragraph (c)(3) would be removed.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

8. The authority citation for part 172 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

9. In § 172.101, paragraphs (c)(3), (c)(13) and (k)(1) through (k)(5) would be revised and, in paragraph (g), a new sentence would be added as the last sentence to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(3) The word "poison" or "poisonous" may be used interchangeably with the word "toxic"

"stowed and segregated, and certified in accordance with the IMDG Code" would be revised to read "stowed and segregated, and certified (including a container packing certification, if applicable) in accordance with the IMDG Code".

b. In the first sentence of paragraph (c) introductory text, the wording "being imported into or exported from the United States or" would be removed.

§ 171.14 [Amended]

7. In § 171.14, paragraph (c)(3) would be removed.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

8. The authority citation for part 172 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

9. In § 172.101, paragraphs (c)(3), (c)(13) and (k)(1) through (k)(5) would be revised and, in paragraph (g), a new sentence would be added as the last sentence to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(3) The word "poison" or "poisonous" may be used interchangeably with the word "toxic" when only domestic transportation is involved. The abbreviation "n.o.i." or "n.o.i.b.n." may be used interchangeably with "n.o.s.".

* * * * *

(13) *Self-reactive materials and organic peroxides.* Generic proper shipping names for self-reactive materials and organic peroxides, as listed in Column 2 of the Table, must be selected based on the material's technical name and concentration, in accordance with the provisions of §§ 173.224 or 173.225 of this subchapter, respectively.

* * * * *

(g) * * * No label is required for a material classed as a combustible liquid or for a Class 3 material that is reclassed as a combustible liquid.

* * * * *

(k) * * *

(1) Stowage category "A" means the material may be stowed "on deck" or "under deck" on a passenger or cargo vessel.

(2) Stowage category "B" means—

(i) The material may be stowed "on deck" or "under deck" on a cargo vessel;

(ii) The material may be stowed "under deck" on a passenger vessel carrying not more than 25 passengers or, alternatively, one passenger per each three meters of overall vessel length, whichever is larger; and

(iii) "On deck only" on passenger vessels in which the number of passengers specified in paragraph (k)(2)(ii) of this section is exceeded.

(3) Stowage category "C" means the material must be stowed "on deck only" on a cargo vessel and on a passenger vessel.

(4) Stowage category "D" means material must be stowed "on deck only" on a cargo vessel and on a passenger vessel carrying a number of passengers limited to not more than the larger of 25 passengers, or one passenger per each three meters of overall vessel length, but is prohibited on passenger vessels in which the limiting number of passengers is exceeded.

(5) Stowage category "E" means material may be stowed "on deck" or "under deck" on a cargo vessel and on a passenger vessel carrying a number of passengers limited to not more than the larger of 25 passengers, or one passenger per each three meters of overall vessel length, but is prohibited from carriage on passenger vessels in which the limiting number of passengers is exceeded.

* * * * *

§ 172.101 [Amended]

10. In addition, in § 172.101, in paragraph (c)(12)(iii), the last sentence would be removed.

11. In § 172.101, the Hazardous Materials Table would be revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	Non-bulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Accellerene, see p-Nitrosodimethylaniline												
	Accumulators, electric, see Batteries, wet *etc.*												
D	Accumulators, pressurized, pneumatic *or* hydraulic *(containing non-flammable gas)*	2.2	NA1956		NONFLAMMABLE GAS		306	306	None	No limit	No limit	A	
	Acetal	3	UN1088	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	Acetaldehyde	3	UN1089	I	FLAMMABLE LIQUID	A3, B16, T20, T26, T29.	None	201	243	Forbidden	30 L	E	
A	Acetaldehyde ammonia	9	UN1841	III	CLASS 9		156	204	240	200 kg	200 kg	A	54
	Acetaldehyde oxime	3	UN2332	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	
	Acetic acid, glacial *or* Acetic acid solution, *with more than 80 percent acid, by mass*	8	UN2789	II	CORROSIVE, FLAMMABLE LIQUID.	A3, A6, A7, A10, B2, T8.	154	202	243	1 L	30 L	A	
	Acetic acid solution, *with more than 10 percent but not more than 80 percent acid, by mass*	8	UN2790	II	CORROSIVE	A3, A6, A7, A10, B2, T8.	154	202	242	1 L	30 L	A	
	Acetic anhydride	8	UN1715	II	CORROSIVE, FLAMMABLE LIQUID.	A3, A6, A7, A10, B2, T8.	154	202	243	1 L	30 L	A	40
	Acetone	3	UN1090	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Acetone cyanohydrin, stabilized	6.1	UN1541	I	POISON	2, A3, B9, B14, B32, B76, B77, N34, T38, T43, T45.	None	227	244	Forbidden	30 L	D	25, 40, 49
	Acetone oils	3	UN1091	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
	Acetonitrile	3	UN1648	II	FLAMMABLE LIQUID	T14	150	202	242	1 L	60 L	B	40
	Acetonitrile, see Methyl cyanide												
	Acetyl acetone peroxide with more than 9 percent by mass active oxygen	Forbidden											
	Acetyl benzoyl peroxide, solid, or with more than 40 percent in solution	Forbidden											
	Acetyl bromide	8	UN1716	II	CORROSIVE	B2, T12, T26	154	202	242	1 L	30 L	C	40
	Acetyl chloride	3	UN1717	II	FLAMMABLE LIQUID, CORROSIVE.	A3, A6, A7, N34, T18, T26.	None	202	243	1 L	5 L	B	40
	Acetyl cyclohexanesulfonyl peroxide, with more than 82 percent wetted with less than 12 percent water	Forbidden											
	Acetyl iodide	8	UN1898	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	C	40
	Acetyl methyl carbinol	3	UN2621	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Acetyl peroxide, solid, or with more than 25 percent in solution	Forbidden											
	Acetylene, dissolved	2.1	UN1001		FLAMMABLE GAS		None	303	None	Forbidden	15 kg	D	25, 40, 57
	Acetylene (liquefied)	Forbidden											
	Acetylene silver nitrate	Forbidden											
	Acetylene tetrabromide, see Tetrabromoethane												
	Acid butyl phosphate, see Butyl acid phosphate												
	Acid, sludge, *see* Sludge acid												
	Acridine	6.1	UN2713	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Acrolein dimer, stabilized	3	UN2607	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40
	Acrolein, inhibited	6.1	UN1092	I	POISON, FLAMMABLE LIQUID.	1, B9, B12, B14, B30, B42, B72, B77, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Acrylamide	6.1	UN2074	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	12
	Acrylic acid, inhibited	8	UN2218	II	CORROSIVE, FLAMMABLE LIQUID.	B2, T8	154	202	243	1 L	30 L	C	25, 40
	Acrylonitrile, inhibited	3	UN1093	I	FLAMMABLE LIQUID, POISON.	B9, T18, T26	None	201	243	Forbidden	30 L	E	40
	Actuating cartridge, explosive, see Cartridges, power device												
	Adhesives, *containing a flammable liquid*	3	UN1133	II	FLAMMABLE LIQUID	B52, T7, T30	150	173	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	173	242	60 L	220 L	A	
	Adiponitrile	6.1	UN2205	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Aerosols, *corrosive, Packing Group II or III, (each not exceeding 1 L capacity)*	2.2	UN1950		NONFLAMMABLE GAS, CORROSIVE.	A34	306	None	None	75 kg	150 kg	A	40, 48, 85
	Aerosols, *flammable, (each not exceeding 1 L capacity)*	2.1	UN1950		FLAMMABLE GAS	N82	306	None	None	75 kg	150 kg	A	40, 48, 85
	Aerosols, *non-flammable, (each not exceeding 1 L capacity)*	2.2	UN1950		NONFLAMMABLE GAS		306, 307	None	None	75 kg	150 kg	A	48, 85
	Aerosols, *poison, each not exceeding 1 L capacity*	2.2	UN1950		NONFLAMMABLE GAS		306	None	None	Forbidden	Forbidden	A	40, 48, 85
	Air bag inflators *or* Air bag modules *or* Seat-belt pre-tensioners *or* Seat-belt modules	9	UN3268	III	CLASS 9		166	166	188	25 kg	100 kg	A	
	Air, compressed	2.2	UN1002		NONFLAMMABLE GAS		306	302	302	75 kg	150 kg	A	
	Air, refrigerated liquid, *(cryogenic liquid)*	2.2	UN1003		NONFLAMMABLE GAS, OXIDIZER.		320	316	318, 319	Forbidden	150 kg	D	51
	Air, refrigerated liquid, *(cryogenic liquid) non-pressurized*	2.2	UN1003		NONFLAMMABLE GAS, OXIDIZER.		320	316	318, 319	Forbidden	Forbidden	D	51
	Aircraft evacuation slides, *see* Life saving appliances *etc.*												
	Aircraft hydraulic power unit fuel tank *(containing a mixture of anhydrous hydrazine and monomethyl hydrazine) (M86 fuel)*	3	UN3165	I	FLAMMABLE LIQUID, POISON, CORROSIVE.		None	172	None	Forbidden	1 L	E	
	Aircraft survival kits, *see* Life saving appliances *etc.*												
	Alcoholates solution, n.o.s., *in alcohol*	3	UN3274	II	FLAMMABLE LIQUID, CORROSIVE.		None	202	243	1 L	5 L	B	
	Alcoholic beverages	3	UN3065	II	FLAMMABLE LIQUID	24, B1, T1	150	202	242	5 L	60 L	A	
				III	FLAMMABLE LIQUID	24, B1, N11, T1	150	203	242	60 L	220 L	A	
	Alcohols, n.o.s	3	UN1987	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Alcohols, toxic, n.o.s.	3	UN1986	I	FLAMMABLE LIQUID, POISON.	T8, T31	None	201	243	Forbidden	30 L	E	40
				II	FLAMMABLE LIQUID, POISON.	T8, T31	None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM	B1, T8, T31	None	203	242	60 L	220 L	A	

Aerosols, *corrosive*, Packing Group II or III, *(each not exceeding 1 L capacity)*	2.2	UN1950		NONFLAMMABLE GAS, CORROSIVE.	A34	306	None	None	75 kg	150 kg	A	40, 48, 85		
Aerosols, *flammable, (each not exceeding 1 L capacity)*	2.1	UN1950		NONFLAMMABLE GAS	N82	306	None	None	75 kg	150 kg	A	40, 48, 85		
Aerosols, *non-flammable, (each not exceeding 1 L capacity)*	2.2	UN1950		NONFLAMMABLE GAS		306, 307	None	None	75 kg	150 kg	A	48, 85		
Aerosols, *poison, each not exceeding 1 L capacity*	2.2	UN1950		NONFLAMMABLE GAS		306	None	None	Forbidden	Forbidden	A	40, 48, 85		
Air bag inflators *or* Air bag modules *or* Seat-belt pre-tensioners *or* Seat-belt modules	9	UN3268	III	CLASS 9		166	166	166	25 kg	100 kg	A			
Air, compressed	2.2	UN1002		NONFLAMMABLE GAS		306	302	302	75 kg	150 kg	A			
Air, refrigerated liquid, *(cryogenic liquid)*	2.2	UN1003		NONFLAMMABLE GAS, OXIDIZER.		320	316	318, 319	Forbidden	150 kg	D	51		
Air, refrigerated liquid, *(cryogenic liquid) non-pressurized*	2.2	UN1003		NONFLAMMABLE GAS, OXIDIZER.		320	316	318, 319	Forbidden	Forbidden	D	51		
Aircraft evacuation slides, *see* Life saving appliances *etc.*														
Aircraft hydraulic power unit fuel tank *(containing a mixture of anhydrous hydrazine and monomethyl hydrazine) (M86 fuel)*	3	UN3165	I	FLAMMABLE LIQUID, POISON, CORROSIVE.		None	172	None	Forbidden	42 L	E			
Aircraft survival kits, *see* Life saving appliances *etc.*														
Alcoholates solution, n.o.s., *in alcohol*	3	UN3274	II	FLAMMABLE LIQUID, CORROSIVE.		None	202	243	1 L	5 L	B			
Alcoholic beverages	3	UN3065	II	FLAMMABLE LIQUID	24, B1, T1	150	202	242	5 L	60 L	A			
			III	FLAMMABLE LIQUID	24, B1, N11, T1	150	203	242	60 L	220 L	A			
Alcohols, n.o.s	3	UN1987	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E			
			II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B			
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A			
Alcohols, toxic, n.o.s.	3	UN1986	I	FLAMMABLE LIQUID, POISON.	T8, T31	None	201	243	Forbidden	30 L	E	40		
			II	FLAMMABLE LIQUID, POISON.	T8, T31	None	202	243	1 L	60 L	B	40		
			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8, T31	None	203	242	60 L	220 L	A			
Aldehydes, n.o.s.	3	UN1989	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E			
			II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B			
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A			
Aldehydes, toxic, n.o.s.	3	UN1988	I	FLAMMABLE LIQUID, POISON.	T8, T31	None	201	243	Forbidden	30 L	E	40		
			II	FLAMMABLE LIQUID, POISON.	T8, T31	None	202	243	1 L	60 L	B	40		
			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8, T31	150	203	242	60 L	220 L	A			
Aldol	6.1	UN2839	II	POISON	T8	None	202	243	5 L	60 L	A	12		
D Aldrin, *liquid*	6.1	NA2762	II	POISON		None	202	243	5 L	60 L	B			
D Aldrin, *solid*	6.1	NA2761	II	POISON		None	212	242	25 kg	100 kg	A	40		
Alkali metal alcoholates, self-heating, corrosive, n.o.s.	4.2	UN3206	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	212	242	15 kg	50 kg	B			
			III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	213	241	25 kg	100 kg	B			
Alkali metal alloys, liquid, n.o.s.	4.3	UN1421	I	DANGEROUS WHEN WET.	A2, A3, B48, N34	None	201	244	Forbidden	1 L	D			
Alkali metal amalgams	4.3	UN1389	I	DANGEROUS WHEN WET.	A2, A3, N34	None	201	244	Forbidden	1 L	D			
Alkali metal amides	4.3	UN1390	II	DANGEROUS WHEN WET.	A6, A7, A8, A19, A20.	None	212	241	15 kg	50 kg	E	40		
Alkali metal dispersions, *or* Alkaline earth metal dispersions	4.3	UN1391	I	DANGEROUS WHEN WET.	A2, A3	None	201	244	Forbidden	1 L	D			
Alkaline corrosive liquids, n.o.s., see Caustic alkali liquids, n.o.s.														
Alkaline earth metal alcoholates, n.o.s.	4.2	UN3205	II	SPONTANEOUSLY COMBUSTIBLE.		None	212	241	15 kg	50 kg	B			
			III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	15 kg	100 kg	B			
Alkaline earth metal alloys, n.o.s.	4.3	UN1393	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	E			
Alkaline earth metal amalgams	4.3	UN1392	I	DANGEROUS WHEN WET.	A19, N34, N40	None	211	242	Forbidden	15 kg	D			
Alkaloids, liquid, n.o.s., *or* Alkaloid salts, liquid, n.o.s.	6.1	UN3140	I	POISON	A4, T42	None	201	243	1 L	30 L	A			
			II	POISON	T14	None	202	243	5 L	60 L	A			
			III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A			
Alkaloids, solid, n.o.s. *or* Alkaloid salts, solid, n.o.s. *poisonous*	6.1	UN1544	I	POISON		None	211	242	5 kg	50 kg	A			
			II	POISON		None	212	242	25 kg	100 kg	A			
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A			
Alkyl sulfonic acids, liquid *or* Aryl sulfonic acids, liquid *with more than 5 percent free sulfuric acid*	8	UN2584	II	CORROSIVE	B2, T8, T27	154	202	240	1 L	30 L	B			
Alkyl sulfonic acids, liquid *or* Aryl sulfonic acids, liquid *with not more than 5 percent free sulfuric acid*	8	UN2586	III	CORROSIVE	T8	154	203	241	5 L	60 L	B			

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Alkyl sulfonic acids, solid *or* Aryl sulfonic acids, solid, *with more than 5 percent free sulfuric acid*	8	UN2583	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Alkyl sulfonic acids, solid *or* Aryl sulfonic acid, solid *with not more than 5 percent free sulfuric acid*	8	UN2585	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Alkylphenols, liquid, n.o.s. *(including C2-C12 homologues)*	8	UN3145	I	CORROSIVE	T8	None	201	243	0.5 L	2.5 L	B	
				II	CORROSIVE	T8	154	202	242	1 L	30 L	B	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Alkylphenols, solid, n.o.s. *(including C2-C12 homologues)*	8	UN2430	I	CORROSIVE	T8	None	211	242	1 kg	25 kg	B	
				II	CORROSIVE	T8	154	212	240	15 kg	50 kg	B	
				III	CORROSIVE	T6	154	213	240	25 kg	100 kg	A	
	Alkylsulfuric acids	8	UN2571	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	C	14
	Allethrin, see Pesticides, liquid, toxic, n.o.s.												
	Allyl acetate	3	UN2333	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	E	40
	Allyl alcohol	6.1	UN1098	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Allyl bromide	3	UN1099	I	FLAMMABLE LIQUID, POISON.	T18	None	201	243	Forbidden	30 L	B	40
	Allyl chloride	3	UN1100	I	FLAMMABLE LIQUID, POISON.	T18, T26	None	201	243	Forbidden	30 L	E	40
	Allyl chlorocarbonate, see Allyl chloroformate												
	Allyl chloroformate	6.1	UN1722	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	1, A3, B9, B14, B30, B72, N41, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Allyl ethyl ether	3	UN2335	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	E	40
	Allyl formate	3	UN2336	I	FLAMMABLE LIQUID, POISON.	T18, T26	None	201	243	Forbidden	30 L	E	40
	Allyl glycidyl ether	3	UN2219	III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A	
	Allyl iodide	3	UN1723	II	FLAMMABLE LIQUID, CORROSIVE.	A3, A6, N34, T18	None	202	243	1 L	5 L	B	40
	Allyl isothiocyanate, stabilized	6.1	UN1545	II	POISON	2, A3, A7, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	D	40
	Allylamine	6.1	UN2334	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Allyltrichlorosilane, stabilized	8	UN1724	II	CORROSIVE, FLAMMABLE LIQUID.	A7, B2, B6, N34, T8, T26.	None	202	243	Forbidden	30 L	C	40
	Aluminium processing by-products	4.3	UN3170	II	DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	S	85, 103
				III	DANGEROUS WHEN WET.		None	213	241	25 kg	100 kg	S	85, 103
	Aluminum alkyl halides	4.2	UN3052	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Aluminum alkyl hydrides	4.2	UN3076	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Aluminum alkyls	4.2	UN3051	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Aluminum borohydride *or* Aluminum borohydride in devices	4.2	UN2870	I	SPONTANEOUSLY COMBUSTIBLE, DANGEROUS WHEN WET.	B11	None	181	244	Forbidden	Forbidden	D	
	Aluminum bromide, anhydrous	8	UN1725	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40
	Aluminum bromide, solution	8	UN2580	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Aluminum carbide	4.3	UN1394	II	DANGEROUS WHEN WET.	A20, N41	None	212	242	15 kg	50 kg	A	
	Aluminum chloride, anhydrous	8	UN1726	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40
	Aluminum chloride, solution	8	UN2581	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Aluminum dross, wet or hot	Forbidden											
	Aluminum ferrosilicon powder	4.3	UN1395	II	DANGEROUS WHEN WET, POISON.	A19	None	213	242	15 kg	50 kg	A	40, 85, 103
				III	DANGEROUS WHEN WET, KEEP AWAY FROM FOOD.	A19, A20	None	213	241	25 kg	100 kg	A	40, 85, 103
	Aluminum hydride	4.3	UN2463	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
D	Aluminum, molten	9	NA9260	III	CLASS 9		None	None	247	Forbidden	Forbidden	D	
	Aluminum nitrate	5.1	UN1438	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Aluminum phosphate solution, see Corrosive liquids, n.o.s.												
	Aluminum phosphide	4.3	UN1397	I	DANGEROUS WHEN WET, POISON.	A8, A19, N40	None	211	242	Forbidden	15 kg	E	40, 85
	Aluminum phosphide pesticides	6.1	UN3048	I	POISON	A8	None	211	242	Forbidden	15 kg	E	40, 85
	Aluminum powder, coated	4.1	UN1309	II	FLAMMABLE SOLID		151	212	240	15 kg	50 kg	A	13, 39, 101
				III	FLAMMABLE SOLID		151	213	240	25 kg	100 kg	A	13, 39, 101
	Aluminum powder, uncoated	4.3	UN1396	II	DANGEROUS WHEN WET.	A19, A20	None	212	242	15 kg	50 kg	A	39
				III	DANGEROUS WHEN WET.	A19, A20	None	213	241	25 kg	100 kg	A	39
	Aluminum resinate	4.1	UN2715	III	FLAMMABLE SOLID		151	213	240	25 kg	100 kg	A	
	Aluminum silicon powder, uncoated	4.3	UN1398	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	40, 85, 103
	Amatols, see Explosives, blasting, type B												
	Amines, flammable, corrosive, n.o.s. *or* Polyamines, flammable, corrosive, n.o.s.	3	UN2733	I	FLAMMABLE LIQUID, CORROSIVE.	T42	None	201	243	0.5 L	2.5 L	D	40
				II	FLAMMABLE LIQUID, CORROSIVE.	T8, T31	None	202	243	1 L	5 L	B	40
				III	FLAMMABLE LIQUID,	B1, T8, T31	150	203	242	5 L			

	Aluminum dross, wet or hot	Forbidden																
	Aluminum ferrosilicon powder	4.3	UN1395	II	DANGEROUS WHEN WET, POISON.	A19	None	212	242	15 kg	50 kg	A	40, 85, 103					
				III	DANGEROUS WHEN WET, KEEP AWAY FROM FOOD.	A19, A20	None	213	241	25 kg	100 kg	A	40, 85, 103					
	Aluminum hydride	4.3	UN2463	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E						
D	Aluminum, molten	9	NA9260	III	CLASS 9		None	None	247	Forbidden	Forbidden	D						
	Aluminum nitrate	5.1	UN1438	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A						
	Aluminum phosphate solution, see Corrosive liquids, n.o.s.																	
	Aluminum phosphide	4.3	UN1397	I	DANGEROUS WHEN WET, POISON.	A8, A19, N40	None	211	242	Forbidden	15 kg	E	40, 85					
	Aluminum phosphide pesticides	6.1	UN3048	I	POISON	A8	None	211	242	Forbidden	15 kg	E	40, 85					
	Aluminum powder, coated	4.1	UN1309	II	FLAMMABLE SOLID		151	212	240	15 kg	50 kg	A	13, 39, 101					
				III	FLAMMABLE SOLID		151	213	240	25 kg	100 kg	A	13, 39, 101					
	Aluminum powder, uncoated	4.3	UN1396	II	DANGEROUS WHEN WET.	A19, A20	None	212	242	15 kg	50 kg	A	39					
				III	DANGEROUS WHEN WET.	A19, A20	None	213	241	25 kg	100 kg	A	39					
	Aluminum resinate	4.1	UN2715	III	FLAMMABLE SOLID		151	213	240	25 kg	100 kg	A						
	Aluminum silicon powder, uncoated	4.3	UN1398	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	40, 85, 103					
	Amatols, see Explosives, blasting, type B																	
	Amines, flammable, corrosive, n.o.s. *or* Polyamines, flammable, corrosive, n.o.s.	3	UN2733	I	FLAMMABLE LIQUID, CORROSIVE.	T42	None	201	243	0.5 L	2.5 L	D	40					
				II	FLAMMABLE LIQUID, CORROSIVE.	T8, T31	None	202	243	1 L	5 L	B	40					
				III	FLAMMABLE LIQUID, CORROSIVE.	B1, T8, T31	150	203	242	5 L	60 L	A	40					
	Amines, liquid, corrosive, flammable, n.o.s. *or* Polyamines, liquid, corrosive, flammable, n.o.s.	8	UN2734	I	CORROSIVE, FLAMMABLE LIQUID.	A3, A6, N34, T8, T31.	None	201	243	0.5 L	2.5 L	A						
				II	CORROSIVE, FLAMMABLE LIQUID.	T8, T31	None	202	243	1 L	30 L	A						
	Amines, liquid, corrosive, n.o.s. *or* Polyamines, liquid, corrosive, n.o.s.	8	UN2735	I	CORROSIVE	A3, A6, B10, N34, T42.	None	201	243	0.5 L	2.5 L	A						
				II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A						
				III	CORROSIVE	T8	154	203	241	5 L	60 L	A						
	Amines, solid, corrosive, n.o.s., *or* Polyamines, solid, corrosive n.o.s.	8	UN3259	I	CORROSIVE		None	211	242	1 kg	25 kg	A						
				II	CORROSIVE		154	212	240	15 kg	50 kg	A						
				III	CORROSIVE		154	213	240	25 kg	100 kg	A						
	2-Amino-4-chlorophenol	6.1	UN2673	II	POISON		None	212	242	25 kg	100 kg	A						
	2-Amino-5-diethylaminopentane	6.1	UN2946	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A						
	2-(2-Aminoethoxy) ethanol	8	UN3055	III	CORROSIVE	T2	154	203	241	5 L	60 L	A						
	N-Aminoethylpiperazine	8	UN2815	III	CORROSIVE	T7	154	203	241	5 L	60 L	A						
	Aminophenols (*o-; m-; p-*)	6.1	UN2512	III	KEEP AWAY FROM FOOD.	T1	153	213	240	100 kg	200 kg	A	12					
	Aminopropyldiethanolamine, see Alkylamines, n.o.s.																	
	n-Aminopropylmorpholine, see Alkylamines, n.o.s.																	
	Aminopyridines (*o-; m-; p-*)	6.1	UN2671	II	POISON	T7	None	212	242	25 kg	100 kg	B	12, 40					
I	Ammonia, anhydrous, liquefied *or* Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia*	2.3	UN1005		POISON GAS	4	None	304	314, 315	Forbidden	25 kg	D	40, 57					
D	Ammonia, anhydrous, liquefied *or* Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia*	2.2	UN1005		NONFLAMMABLE GAS	13	None	304	314, 315	Forbidden	25 kg	D	40, 57					
	Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia*	8	UN2672	III	CORROSIVE	T14	154	203	241	5 L	60 L	A	40, 85					
	Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 35 percent but not more than 50 percent ammonia*	2.2	UN2073		NONFLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40, 57					
	Ammonium arsenate	6.1	UN1546	II	POISON		None	212	242	25 kg	100 kg	A						
	Ammonium azide	Forbidden																
	Ammonium bifluoride, solid, see Ammonium hydrogen fluoride, solid																	
	Ammonium bifluoride solution, see Ammonium hydrogen fluoride, solution																	
	Ammonium bromate	Forbidden																
	Ammonium chlorate	Forbidden																
	Ammonium dichromate	5.1	UN1439	II	OXIDIZER		152	212	242	5 kg	25 kg	A						
	Ammonium dinitro-o-cresolate	6.1	UN1843	II	POISON	T8	None	212	242	25 kg	100 kg	B	36, 65, [illegible], 77					
	Ammonium fluoride	6.1	UN2505	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26					
	Ammonium fluorosilicate	6.1	UN2854	III	KEEP AWAY FROM FOOD		153	213	240	1[illegible] kg	200 kg	A	26					

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	(8) Non-bulk packaging	(8) Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	(9) Quantity limitations Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	(10) Vessel stowage requirements Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Ammonium fulminate	Forbidden											
	Ammonium hydrogen difluoride, solid	8	UN1727	II	CORROSIVE	N34	154	212	240	15 kg	50 kg	A	25, 26, 40
	Ammonium hydrogen difluoride, solution	8	UN2817	II	CORROSIVE, POISON	N34, T15	None	202	243	1 L	30 L	B	40
				III	CORROSIVE, KEEP AWAY FROM FOOD.	T8	154	203	241	5 L	60 L	B	40, 95
	Ammonium hydrogen sulfate	8	UN2506	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40
	Ammonium hydrosulfide, solution, see Ammonium sulfide solution												
D	Ammonium hydroxide, *see* Ammonia solutions, *etc.*												
	Ammonium metavanadate	6.1	UN2859	II	POISON		None	212	242	25 kg	100 kg	A	
D	Ammonium nitrate fertilizers	5.1	NA2072	III	OXIDIZER	7	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
AW	Ammonium nitrate fertilizers: *uniform non-segregating mixtures of nitrogen/phosphate or nitrogen/potash types or complete fertilizers of nitrogen/phosphate/potash type, with not more than 70 percent ammonium nitrate and not more than 0.4 percent total added combustible material or with not more than 45 percent ammonium nitrate with unrestricted combustible material*	9	UN2071	III	CLASS 9		155	213	240	200 kg	200 kg	A	
D	Ammonium nitrate-fuel oil mixture *containing only prilled ammonium nitrate and fuel oil*	1.5D	NA0331	II	EXPLOSIVE 1.5D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Ammonium nitrate, liquid *(hot concentrated solution)*	5.1	UN2426		OXIDIZER	B5, T25	None	None	243	Forbidden	Forbidden	D	59, 60
D	Ammonium nitrate mixed fertilizers	5.1	NA2069	III	OXIDIZER	10	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
	Ammonium nitrate, *with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance*	1.1D	UN0222	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Ammonium nitrate, *with not more than 0.2 percent of combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance*	5.1	UN1942	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	48, 59, 60, 116
	Ammonium nitrite	Forbidden											
	Ammonium perchlorate	1.1D	UN0402	II	EXPLOSIVE 1.1D	107	None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Ammonium perchlorate	5.1	UN1442	II	OXIDIZER	107, A9	152	212	242	5 kg	25 kg	E	58, 89, 106
	Ammonium permanganate	Forbidden											
	Ammonium persulfate	5.1	UN1444	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Ammonium picrate, *dry or wetted with less than 10 percent water, by mass*	1.1D	UN0004	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Ammonium picrate, wetted *with not less than 10 percent water, by mass*	4.1	UN1310	I	FLAMMABLE SOLID	23, A2, N41	None	211	None	0.5 kg	0.5 kg	D	28, 36
	Ammonium polysulfide, solution	8	UN2818	II	CORROSIVE, POISON	T14	None	202	243	1 L	30 L	B	12, 26, 40
				III	CORROSIVE, KEEP AWAY FROM FOOD.	T7	154	203	241	5 L	60 L	B	12, 26, 40
	Ammonium polyvanadate	6.1	UN2861	II	POISON		None	212	242	25 kg	100 kg	A	
	Ammonium silicofluoride, see Ammonium fluorosilicate												
	Ammonium sulfide solution	8	UN2683	II	CORROSIVE, POISON, FLAMMABLE LIQUID.	T14	None	202	243	1 L	30 L	B	12, 22, 26, 100
	Ammunition, blank, see Cartridges for weapons, blank												
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge*	1.2G	UN0171	II	EXPLOSIVE 1.2G			62	None	Forbidden	Forbidden	B	
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge*	1.3G	UN0254	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge*	1.4G	UN0297	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	24E
	Ammunition, incendiary *liquid or gel, with burster, expelling charge or propelling charge*	1.3J	UN0247	II	EXPLOSIVE 1.3J			62	None	Forbidden	Forbidden	E	7E, 13E, 23E
	Ammunition, incendiary (water-activated contrivances) with burster, expelling charge or propelling charge, see Contrivances, water-activated, etc.												
	Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge*	1.2H	UN0243	II	EXPLOSIVE 1.2H			62	None	Forbidden	Forbidden	E	8E, 14E, 15E, 17E
	Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge*	1.3H	UN0244	II	EXPLOSIVE 1.3H			62	None	Forbidden	Forbidden	E	8E, 14E, 15E, 17E
	Ammunition, incendiary *with or without burster, expelling charge, or propelling charge*	1.2G	UN0009	II	EXPLOSIVE 1.2G			62	None	Forbidden	Forbidden	B	
	Ammunition, incendiary *with or without burster, expelling charge, or propelling charge*	1.3G	UN0010	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	
	Ammunition, incendiary *with or without burster, expelling charge or propelling charge*	1.4G	UN0300	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	24E
	Ammunition, practice	1.4G	UN0362	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	24E
	Ammunition, practice	1.3G	UN0488	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	
	Ammunition, proof	1.4G	UN0363	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	24E
	Ammunition, rocket, see Warheads, rocket *etc.*												
	Ammunition, SA (small arms), see Cartridges for weapons, *etc.*												
	Ammunition, smoke (water-activated contrivances), white phosphorus, with burster, expelling charge or propelling charge, see Contrivances, water-activated, *etc. (UN 0248)*												
	Ammunition, smoke (water-activated contrivances), without white phosphorus or phosphides, with burster, expelling charge or propelling charge, see Contrivances, water-activated, *etc. (UN 0249)*												
	Ammunition smoke, white phosphorus *with burster,expelling charge, or propelling charge*	1.2H	UN0245	II	EXPLOSIVE 1.2H			62	None	Forbidden	Forbidden	E	8E, 14E, 15E, 17E
	Ammunition, smoke, white phosphorus *with burster, expelling charge, or propelling charge*	1.3H	UN0246	II	EXPLOSIVE 1.3H			62	None	Forbidden	Forbidden	E	8E, 14E, 15E, 17E
	Ammunition, smoke *with or without burster, expelling charge or propelling charge*	1.2G	UN0015	II	EXPLOSIVE 1.2G, CORROSIVE.			62	None	Forbidden	Forbidden	E	17E, 20E
	Ammunition, smoke *with or without burster, expelling charge or propelling charge*	1.3G	UN0016	II	EXPLOSIVE 1.3G, CORROSIVE.			62	None	Forbidden	Forbidden	E	17E, 20E

Ammunition, incendiary with or without burster, expelling charge, or propelling charge	1.3G	UN0010	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	
Ammunition, incendiary with or without burster, expelling charge or propelling charge	1.4G	UN0300	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	24E
Ammunition, practice	1.4G	UN0362	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	24E
Ammunition, practice	1.3G	UN0488	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	
Ammunition, proof	1.4G	UN0363	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	24E
Ammunition, rocket, see Warheads, rocket etc.												
Ammunition, SA (small arms), see Cartridges for weapons, etc.												
Ammunition, smoke (water-activated contrivances), white phosphorus, with burster, expelling charge or propelling charge, see Contrivances, water-activated, etc. (UN 0248)												
Ammunition, smoke (water-activated contrivances), without white phosphorus or phosphides, with burster, expelling charge or propelling charge, see Contrivances, water-activated, etc. (UN 0249)												
Ammunition smoke, white phosphorus with burster,expelling charge, or propelling charge	1.2H	UN0245	II	EXPLOSIVE 1.2H			62	None	Forbidden	Forbidden	E	8E, 14E, 15E, 17E
Ammunition, smoke, white phosphorus with burster, expelling charge, or propelling charge	1.3H	UN0246	II	EXPLOSIVE 1.3H			62	None	Forbidden	Forbidden	E	8E, 14E, 15E, 17E
Ammunition, smoke with or without burster, expelling charge or propelling charge	1.2G	UN0015	II	EXPLOSIVE 1.2G, CORROSIVE.			62	None	Forbidden	Forbidden	E	17E, 20E
Ammunition, smoke with or without burster, expelling charge or propelling charge	1.3G	UN0016	II	EXPLOSIVE 1.3G, CORROSIVE.			62	None	Forbidden	Forbidden	E	17E, 20E
Ammunition, smoke with or without burster, expelling charge or propelling charge	1.4G	UN0303	II	EXPLOSIVE 1.4G, CORROSIVE.			62	None	Forbidden	75 kg	E	17E, 20E
Ammunition, sporting, see Cartridges for weapons, etc. (UN 0012; UN 0328; UN 0339)												
Ammunition, tear-producing, non-explosive, without burster or expelling charge, non-fuzed	6.1	UN2017	II	POISON, CORROSIVE		None	212	None	Forbidden	50 kg	E	13, 40
Ammunition, tear-producing with burster, expelling charge or propelling charge	1.2G	UN0018	II	EXPLOSIVE 1.2G, CORROSIVE, POISON.			62	None	Forbidden	Forbidden	E	20E
Ammunition, tear-producing with burster, expelling charge or propelling charge	1.3G	UN0019	II	EXPLOSIVE 1.3G, CORROSIVE, POISON.			62	None	Forbidden	Forbidden	E	17E, 20E
Ammunition, tear-producing with burster, expelling charge or propelling charge	1.4G	UN0301	II	EXPLOSIVE 1.4G, CORROSIVE, POISON.			62	None	Forbidden	75 kg	E	17E, 20E
Ammunition, toxic, non-explosive, without burster or expelling charge, non-fuzed	6.1	UN2016	II	POISON		None	212	None	Forbidden	100 kg	E	13, 40
Ammunition, toxic (water-activated contrivances), with burster, expelling charge or propelling charge, see Contrivances, water-activated, etc.												
Ammunition, toxic with burster, expelling charge, or propelling charge	1.2K	UN0020	II	EXPLOSIVE 1.2K, POISON.			62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
Ammunition, toxic with burster, expelling charge, or propelling charge	1.3K	UN0021	II	EXPLOSIVE 1.3K, POISON.			62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
Amyl acetates	3	UN1104	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Amyl acid phosphate	8	UN2819	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
Amyl alcohols	3	UN1105	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, B3, T1	150	203	242	60 L	220 L	A	
Amyl butyrates	3	UN2620	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Amyl chlorides	3	UN1107	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
Amyl formates	3	UN1109	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Amyl mercaptans	3	UN1111	II	FLAMMABLE LIQUID	A3, T8	None	202	242	5 L	60 L	B	95, 102
Amyl methyl ketone	3	UN1110	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Amyl nitrate	3	UN1112	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40
Amyl nitrites	3	UN1113	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	40
Amylamines	3	UN1106	II	FLAMMABLE LIQUID, CORROSIVE.	T1	None	202	243	1 L	5 L	B	
			III	FLAMMABLE LIQUID, CORROSIVE.	B1	150	203	242	5 L	60 L	A	
n-Amylene	3	UN1108	I	FLAMMABLE LIQUID	T14	150	201	243	1 L	30 L	E	
Amyltrichlorosilane	8	UN1728	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
Anhydrous ammonia see Ammonia, anhydrous, liquefied												
Anhydrous hydrofluoric acid, see Hydrogen fluoride, anhydrous												
Aniline	6.1	UN1547	II	POISON	T8	None	202	243	5 L	60 L	A	40
Aniline hydrochloride	6.1	UN1548	III	KEEP AWAY FROM FOOD		153	213	240	100 kg	200 kg	A	
Aniline oil, see Aniline												

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Anisidines	6.1	UN2431	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Anisole	3	UN2222	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Anisoyl chloride	8	UN1729	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	C	40
	Anti-freeze, liquid, see Flammable liquids, n.o.s.												
	Antimonous chloride, see Antimony trichloride												
	Antimony compounds, inorganic, liquid, n.o.s.	6.1	UN3141	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Antimony compounds, inorganic, solid, n.o.s.	6.1	UN1549	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony lactate	6.1	UN1550	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony pentachloride, liquid	8	UN1730	II	CORROSIVE	B2, T8, T26	None	202	242	1 L	30 L	C	40
	Antimony pentachloride, solutions	8	UN1731	II	CORROSIVE	B2, T8, T27	154	202	242	1 L	30 L	C	40
				III	CORROSIVE	T7, T26	154	203	241	5 L	60 L	C	40
	Antimony pentafluoride	8	UN1732	II	CORROSIVE, POISON	A3, A6, A7, A10, N3, T12, T26.	None	202	243	Forbidden	30 L	D	40
	Antimony potassium tartrate	6.1	UN1551	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony powder	6.1	UN2871	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony sulfide and a chlorate, mixtures of	Forbidden											
	Antimony sulfide, solid, see Antimony compounds, inorganic, n.o.s.												
D	Antimony tribromide, solid	8	NA1549	II	CORROSIVE		154	212	240	25 kg	100 kg	A	13
D	Antimony tribromide, solution	8	NA1549	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	13
	Antimony trichloride, liquid	8	UN1733	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	40
	Antimony trichloride, solid	8	UN1733	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40
D	Antimony trifluoride, solid	8	NA1549	II	CORROSIVE		154	212	240	25 kg	25 kg	A	13
D	Antimony trifluoride solution	8	NA1549	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	13
	Aqua ammonia, see Ammonia solution, *etc.*												
	Argon, compressed	2.2	UN1006		NONFLAMMABLE GAS		306	302	314, 315	75 kg	150 kg	A	
	Argon, refrigerated liquid *(cryogenic liquid)*	2.2	UN1951		NONFLAMMABLE GAS		320	316	318	50 kg	500 kg	B	
	Arsenic	6.1	UN1558	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenic acid, liquid	6.1	UN1553	I	POISON	T18, T27	None	201	243	1 L	30 L	B	46
	Arsenic acid, solid	6.1	UN1554	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenic bromide	6.1	UN1555	II	POISON		None	212	242	25 kg	100 kg	A	12, 40
	Arsenic chloride, see Arsenic trichloride												
	Arsenic compounds, liquid, n.o.s. *including arsenates, n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*	6.1	UN1556	I	POISON		None	201	243	1 L	30 L	B	40
				II	POISON		None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	B	40
	Arsenic compounds, solid, n.o.s. *including arsenates, n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*	6.1	UN1557	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Arsenic pentoxide	6.1	UN1559	II	POISON		None	212	242	25 kg	100 kg	A	
D	Arsenic sulfide	6.1	NA1557	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenic sulfide and a chlorate, mixtures of	Forbidden											
	Arsenic trichloride	6.1	UN1560	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40
	Arsenic trioxide	6.1	UN1561	II	POISON		None	212	242	25 kg	100 kg	A	
D	Arsenic trisulfide	6.1	NA1557	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenic, white, solid, see Arsenic trioxide												
	Arsenical dust	6.1	UN1562	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenical pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2760	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Arsenical pesticides, liquid, toxic	6.1	UN2994	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Arsenical pesticides, liquid, toxic, flammable *flashpoint not less than 23 degrees C*	6.1	UN2993	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Arsenical pesticides, solid, toxic	6.1	UN2759	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Arsenious acid, solid, see Arsenic trioxide												
	Arsenious and mercuric iodide solution, see Arsenic compounds, liquid, n.o.s.												
	Arsine	2.3	UN2188		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40
	Articles, explosive, extremely insensitive *or* Articles, EEI	1.6N	UN0486	II	EXPLOSIVE 1.6N	101	None	62	None	Forbidden	Forbidden	B	
	Articles, explosive, n.o.s.	1.4S	UN0349	II	EXPLOSIVE 1.4S	101	None	62	None	25 kg	100 kg	A	
	Articles, explosive, n.o.s.	1.4B	UN0350	II	EXPLOSIVE 1.4B	101	None	62	None	Forbidden	Forbidden	A	24E
	Articles, explosive, n.o.s.	1.4C	UN0351	II	EXPLOSIVE 1.4C	101	None	62	None	Forbidden	Forbidden	A	24E

				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40				
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1,	150	203	242	60 L	220 L	B	40				
	Arsenical pesticides, liquid, toxic	6.1	UN2994	I	POISON	T42	None	201	243	1 L	30 L	B	40				
				II	POISON	T14	None	202	243	5 L	60 L	B	40				
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40				
	Arsenical pesticides, liquid, toxic, flammable *flashpoint not less than 23 degrees C*	6.1	UN2993	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40				
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40				
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40				
	Arsenical pesticides, solid, toxic	6.1	UN2759	I	POISON		None	211	242	5 kg	50 kg	A	40				
				II	POISON		None	212	242	25 kg	100 kg	A	40				
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40				
	Arsenious acid, solid, see Arsenic trioxide																
	Arsenious and mercuric iodide solution, see Arsenic compounds, liquid, n.o.s.																
	Arsine	2.3	UN2188		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40				
	Articles, explosive, extremely insensitive *or* Articles, EEI	1.6N	UN0486	II	EXPLOSIVE 1.6N	101	None	62	None	Forbidden	Forbidden	B					
	Articles, explosive, n.o.s.	1.4S	UN0349	II	EXPLOSIVE 1.4S	101	None	62	None	25 kg	100 kg	A					
	Articles, explosive, n.o.s.	1.4B	UN0350	II	EXPLOSIVE 1.4B	101	None	62	None	Forbidden	Forbidden	A	24E				
	Articles, explosive, n.o.s.	1.4C	UN0351	II	EXPLOSIVE 1.4C	101	None	62	None	Forbidden	Forbidden	A	24E				
	Articles, explosive, n.o.s.	1.4D	UN0352	II	EXPLOSIVE 1.4D	101	None	62	None	Forbidden	Forbidden	A	24E				
	Articles, explosive, n.o.s.	1.4G	UN0353	II	EXPLOSIVE 1.4G	101	None	62	None	Forbidden	Forbidden	A	24E				
	Articles, explosive, n.o.s.	1.1L	UN0354	II	EXPLOSIVE 1.1L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E				
	Articles, explosive, n.o.s.	1.2L	UN0355	II	EXPLOSIVE 1.2L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E				
	Articles, explosive, n.o.s.	1.3L	UN0356	II	EXPLOSIVE 1.3L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E				
	Articles, explosive, n.o.s.	1.1C	UN0462	II	EXPLOSIVE 1.1C	101	None	62	None	Forbidden	Forbidden	B					
	Articles, explosive, n.o.s.	1.1D	UN0463	II	EXPLOSIVE 1.1D	101	None	62	None	Forbidden	Forbidden	B					
	Articles, explosive, n.o.s.	1.1E	UN0464	II	EXPLOSIVE 1.1E	101	None	62	None	Forbidden	Forbidden	B					
	Articles, explosive, n.o.s.	1.1F	UN0465	II	EXPLOSIVE 1.1F	101	None	62	None	Forbidden	Forbidden	B					
	Articles, explosive, n.o.s.	1.2C	UN0466	II	EXPLOSIVE 1.2C	101	None	62	None	Forbidden	Forbidden	E					
	Articles, explosive, n.o.s.	1.2D	UN0467	II	EXPLOSIVE 1.2D	101	None	62	None	Forbidden	Forbidden	B					
	Articles, explosive, n.o.s.	1.2E	UN0468	II	EXPLOSIVE 1.2E	101	None	62	None	Forbidden	Forbidden	B					
	Articles, explosive, n.o.s.	1.2F	UN0469	II	EXPLOSIVE 1.2F	101	None	62	None	Forbidden	Forbidden	B					
	Articles, explosive, n.o.s.	1.3C	UN0470	II	EXPLOSIVE 1.3C	101	None	62	None	Forbidden	Forbidden	E					
	Articles, explosive, n.o.s.	1.4E	UN0471	II	EXPLOSIVE 1.4E	101	None	62	None	Forbidden	Forbidden	B					
	Articles, explosive, n.o.s.	1.4F	UN0472	II	EXPLOSIVE 1.4F	101	None	62	None	Forbidden	Forbidden	B					
	Articles, pressurized pneumatic *or* Hydraulic *containing non-flammable gas*	2.2	UN3164		NONFLAMMABLE GAS		None	62	None	Forbidden	Forbidden	E					
	Articles, pyrophoric	1.2L	UN0380	II	EXPLOSIVE 1.2L		306	302, 304	None	No limit	No limit	A					
	Articles, pyrotechnic *for technical purposes*	1.1G	UN0428	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E				
	Articles, pyrotechnic *for technical purposes*	1.2G	UN0429	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B					
	Articles, pyrotechnic *for technical purposes*	1.3G	UN0430	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B					
	Articles, pyrotechnic *for technical purposes*	1.4G	UN0431	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	Forbidden	B					
	Articles, pyrotechnic *for technical purposes*	1.4S	UN0432	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A					
D	Asbestos	9	NA2212	III	CLASS 9		155	216	240	200 kg	200 kg	A	34, 40				
	Ascandole (organic peroxide)	Forbidden															
D	Asphalt, *at or above its flashpoint*	3	NA1999	III	FLAMMABLE LIQUID		150	203	247	Forbidden	Forbidden	D					
D	Asphalt, cut back, *see* Tars, liquid, *etc.*																
	Automobile, motorcycle, tractor, or other self-propelled vehicle, engine, or other mechanical apparatus, see Vehicles, self-propelled																
	Azaurolic acid (salt of) (dry)	Forbidden															
	Azido guanidine picrate (dry)	Forbidden															
	5-Azido-1-hydroxy tetrazole	Forbidden															
	Azido hydroxy tetrazole (mercury and silver salts)	Forbidden															
	3-Azido-1,2-Propylene glycol dinitrate	Forbidden															
	Azidodithiocarbonic acid	Forbidden															
	Azidoethyl nitrate	Forbidden															
	1-Azridinyl phosphine oxide-(tris), see Tris-(1-aziridinyl) phosphine oxide, solution																
	Azodicarbonamide	4.1	UN3242	II	FLAMMABLE SOLID		151	212	240	Forbidden	Forbidden	D	12, 61, 74				
	Azotetrazole (dry)	Forbidden															
	Barium	4.3	UN1400	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	E					

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or rail car (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Barium alloys, pyrophoric	4.2	UN1854	I	SPONTANEOUSLY COMBUSTIBLE.		None	181	None	Forbidden	Forbidden	D	
	Barium azide, *dry or wetted with less than 50 percent water, by mass*	1.1A	UN0224	II	EXPLOSIVE 1.1A, POISON.	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Barium azide, *wetted with not less than 50 percent water, by mass*	4.1	UN1571	I	FLAMMABLE SOLID, POISON.	A2	None	182	None	Forbidden	0.5 kg	D	28
	Barium bromate	5.1	UN2719	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	56, 58, 106
	Barium chlorate	5.1	UN1445	II	OXIDIZER, POISON	A9, N34, T8	None	212	242	5 kg	25 kg	A	56, 58, 106
	Barium compounds, n.o.s.	6.1	UN1564	II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Barium cyanide	6.1	UN1565	I	POISON	N74, N75	None	211	242	5 kg	50 kg	A	26, 40
	Barium hypochlorite *with more than 22 percent available chlorine*	5.1	UN2741	II	OXIDIZER, POISON	A7, A9, N34	152	212	None	5 kg	25 kg	B	56, 58, 106
	Barium nitrate	5.1	UN1446	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	
	Barium oxide	6.1	UN1884	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Barium perchlorate	5.1	UN1447	II	OXIDIZER, POISON	T8	None	212	242	5 kg	25 kg	A	56, 58, 106
	Barium permanganate	5.1	UN1448	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Barium peroxide	5.1	UN1449	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	13, 75, 106
	Barium selenate, *see* Selenates *or* Selenites												
	Barium selenite, *see* Selenates *or* Selenites												
D	Barium styphnate	1.1A	NA0473	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Batteries, containing sodium	4.3	UN3292	II	DANGEROUS WHEN WET.		189	189	189	Forbidden	No limit	A	
	Batteries, dry, containing potassium hydroxide solid, *electric, storage*	8	UN3028	III	CORROSIVE		None	213	None	25 kg gross	230 kg gross	A	
	Batteries, wet, filled with acid, *electric storage*	8	UN2794	III	CORROSIVE		159	159	None	25 kg gross	No limit	A	
	Batteries, wet, filled with alkali, *electric storage*	8	UN2795	III	CORROSIVE		159	159	None	25 kg gross	No limit	A	
	Batteries, wet, non-spillable, *electric storage*	8	UN2800	III	CORROSIVE		159	159	None	No Limit	No Limit	A	
	Battery, dry, not subject to the requirements of this subchapter												
	Battery fluid, alkali	8	UN2797	II	CORROSIVE	B2, N6, T8	154	202	242	1 L	30 L	A	
	Battery lithium type, see Lithium batteries *etc.*												
	Battery-powered vehicle *or* Battery-powered equipment *wet battery*	9	UN3171		CLASS 9		220	220	None	No limit	No limit	A	
	Battery, wet, filled with acid or alkali with automobile (or named self-propelled vehicle or mechanical equipment containing internal combustion engine) see Vehicles, self-propelled *etc.*												
	Battery, wet, with wheelchair, see Wheelchair, electric												
	Benzaldehyde	9	UN1990	III	CLASS 9		155	203	241	100 L	220 L	A	
	Benzene	3	UN1114	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Benzene diazonium chloride (dry)	Forbidden											
	Benzene diazonium nitrate (dry)	Forbidden											
	Benzene phosphorus dichloride, see Phenyl phosphorus dichloride												
	Benzene phosphorus thiodichloride, see Phenyl phosphorus thiodichloride												
	Benzene sulfonyl chloride	8	UN2225	III	CORROSIVE	T5	154	203	241	5 L	60 L	A	40
	Benzene triozonide	Forbidden											
	Benzenethiol, see Phenyl mercaptan												
	Benzidine	6.1	UN1885	II	POISON		None	212	242	25 kg	100 kg	A	
	Benzoic derivative pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2770	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	E	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Benzoic derivative pesticides, liquid, toxic	6.1	UN3004	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Benzoic derivative pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3003	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40

				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40
	Benzoic derivative pesticides, solid toxic	6.1	UN2769	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Benzol, see Benzene												
	Benzonitrile	6.1	UN2224	II	POISON	T14	None	202	243	5 L	60 L	A	26, 40
	Benzoquinone	6.1	UN2587	II	POISON		None	212	242	25 kg	100 kg	A	
	Benzotrichloride	8	UN2226	II	CORROSIVE	B2, T15	154	202	242	1 L	30 L	A	40
	Benzotrifluoride	3	UN2338	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	40
	Benzoxidiazoles (dry)	Forbidden											
	Benzoyl azide	Forbidden											
	Benzoyl chloride	8	UN1736	II	CORROSIVE	B2, T9, T26	154	202	242	1 L	30 L	C	40
	Benzyl bromide	6.1	UN1737	II	POISON, CORROSIVE	A3, A7, N33, N34, T12, T26.	None	202	243	1 L	30 L	D	13, 40
	Benzyl chloride	6.1	UN1738	II	POISON, CORROSIVE	A3, A7, B41, B70, N33, N43, T12, T26.	None	202	243	1 L	30 L	D	13, 40
	Benzyl chloride *unstabilized*	6.1	UN1738	II	POISON, CORROSIVE	A3, A7, B8, B11, N33, N34, N43, T12, T26.	None	202	243	1 L	30 L	D	13, 40
	Benzyl chloroformate	8	UN1739	I	CORROSIVE	A3, A6, B4, N41, T18, T26	None	201	243	Forbidden	2.5 L	D	40
	Benzyl iodide	6.1	UN2653	II	POISON	T8	None	202	243	5 L	60 L	B	40

			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40	
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40	
Benzoic derivative pesticides, solid toxic	6.1	UN2769	I	POISON		None	211	242	5 kg	50 kg	A	40	
			II	POISON		None	212	242	25 kg	100 kg	A	40	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40	
Benzol, see Benzene													
Benzonitrile	6.1	UN2224	II	POISON	T14	None	202	243	5 L	60 L	A	26, 40	
Benzoquinone	6.1	UN2587	II	POISON		None	212	242	25 kg	100 kg	A		
Benzotrichloride	8	UN2226	II	CORROSIVE	B2, T15	154	202	242	1 L	30 L	A	40	
Benzotrifluoride	3	UN2338	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	40	
Benzoxidiazoles (dry)	Forbidden												
Benzoyl azide	Forbidden												
Benzoyl chloride	8	UN1736	II	CORROSIVE	B2, T9, T26	154	202	242	1 L	30 L	C	40	
Benzyl bromide	6.1	UN1737	II	POISON, CORROSIVE	A3, A7, N33, N34, T12, T26.	None	202	243	1 L	30 L	D	13, 40	
Benzyl chloride	6.1	UN1738	II	POISON, CORROSIVE	A3, A7, B41, B70, N33, N43, T12, T26	None	202	243	1 L	30 L	D	13, 40	
Benzyl chloride *unstabilized*	6.1	UN1738	II	POISON, CORROSIVE	A3, A7, B8, B11, N33, N34, N43, T12, T26.	None	202	243	1 L	30 L	D	13, 40	
Benzyl chloroformate	8	UN1739	I	CORROSIVE	A3, A6, B4, N41, T18, T26	None	201	243	Forbidden	2.5 L	D	40	
Benzyl iodide	6.1	UN2653	II	POISON	T8	None	202	243	5 L	60 L	B	12, 40	
Benzyldimethylamine	8	UN2619	II	CORROSIVE, FLAMMABLE LIQUID.	B2, T1	154	202	243	1 L	30 L	A	40, 48	
Benzylidene chloride	6.1	UN1886	II	POISON	T8	None	202	243	5 L	60 L	D	40	
Beryllium compounds, n.o.s.	6.1	UN1566	II	POISON		None	212	242	25 kg	100 kg	A		
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
Beryllium nitrate	5.1	UN2464	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A		
Beryllium, powder	6.1	UN1567	II	POISON, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	A		
Biphenyl triozonide	Forbidden												
Bipyridilium pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2782	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	E		
			II	FLAMMABLE LIQUID, POISON		None	202	243	1 L	60 L	B	40	
			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD	B1	150	203	242	60 L	220 L	B	40	
Bipyridilium pesticides, liquid, toxic	6.1	UN3016	I	POISON	T42	None	201	243	1 L	30 L	B	40	
			II	POISON	T14	None	202	243	5 L	60 L	B	40	
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40	
Bipyridilium pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3015	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	21, 40	
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	21, 40	
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	21, 40	
Bipyridilium pesticides, solid, toxic	6.1	UN2781	I	POISON		None	211	242	5 kg	50 kg	A	40	
			II	POISON		None	212	242	25 kg	100 kg	A	40	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40	
Bis (Aminopropyl) piperazine, see Corrosive liquid, n.o.s.													
Bisulfate, aqueous solution	8	UN2837	II	CORROSIVE	A7, B2, N34, T8, T26.	154	202	242	1 L	30 L	A		
			III	CORROSIVE	A7, N34, T7, T26	154	203	241	5 L	60 L	A		
Bisulfites, aqueous solutions, n.o.s.	8	UN2693	III	CORROSIVE	T8	154	203	241	1 L	30 L	A	26, 40	
Black powder, compressed *or* Gunpowder, compressed *or* Black powder, in pellets *or* Gunpowder, in pellets	1.1D	UN0028	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E	
Black powder *or* Gunpowder, *granular or as a meal*	1.1D	UN0027	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	10E, 26E	
Blasting agent, n.o.s., see Explosives, blasting *etc*													
Blasting cap assemblies, see Detonator assemblies, non-electric, *for blasting*													
Blasting caps, electric see Detonators, electric *for blasting*													
Blasting caps, non-electric, see Detonators, non-electric, *for blasting*													

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Bleaching powder, see Calcium hypochlorite mixtures, etc.												
I	Blue asbestos *(Crocidolite)* or Brown asbestos *(amosite, mysorite)*	9	UN2212	II	CLASS 9		155	216	240	Forbidden	Forbidden	A	34, 40
	Bombs, photo-flash	1.1F	UN0037	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	E	
	Bombs, photo-flash	1.1D	UN0038	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	
	Bombs, photo-flash	1.2G	UN0039	II	EXPLOSIVE 1.2G			62	None	Forbidden	Forbidden	B	
	Bombs, photo-flash	1.3G	UN0299	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	
	Bombs, smoke, non-explosive; *with corrosive liquid, without initiating device*	8	UN2028	II	CORROSIVE		None	160	None	Forbidden	50 kg	E	40
	Bombs, *with bursting charge*	1.1F	UN0033	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	E	
	Bombs, *with bursting charge*	1.1D	UN0034	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	3E, 7E
	Bombs, *with bursting charge*	1.2D	UN0035	II	EXPLOSIVE 1.2D			62	None	Forbidden	Forbidden	B	3E, 7E
	Bombs, *with bursting charge*	1.2F	UN0291	II	EXPLOSIVE 1.2F			62	None	Forbidden	Forbidden	E	
	Bombs with flammable liquid, *with bursting charge*	1.1J	UN0399	II	EXPLOSIVE 1.1J			62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Bombs with flammable liquid, *with bursting charge*	1.2J	UN0400	II	EXPLOSIVE 1.2J			62	None	Forbidden	Forbidden	E	7E, 16E, 23E
D	Boosters with detonator	1.4B	NA0350	II	EXPLOSIVE 1.4B	116	None	62	None	Forbidden	75 kg	A	24E
	Boosters with detonator	1.1B	UN0225	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Boosters with detonator	1.2B	UN0268	II	EXPLOSIVE 1.2B		None	62	None	Forbidden	Forbidden	E	1E, 7E
	Boosters, *without detonator*	1.1D	UN0042	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Boosters, *without detonator*	1.2D	UN0283	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Borate and chlorate mixtures, see Chlorate and borate mixtures												
	Borneol	4.1	UN1312	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	A	
•	Boron tribromide	8	UN2692	I	CORROSIVE, POISON	2, A3, A7, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	2.5 L	C	12
	Boron trichloride	2.3	UN1741		POISON GAS, CORROSIVE.	3, 25, B9, B14	None	304	314	Forbidden	Forbidden	D	25, 40
	Boron trifluoride	2.3	UN1008		POISON GAS	2, B9, B14	None	302	314, 315	Forbidden	Forbidden	D	40
	Boron trifluoride acetic acid complex	8	UN1742	II	CORROSIVE	B2, B6, T9, T27	154	202	242	1 L	30 L	A	
	Boron trifluoride diethyl etherate	8	UN2604	I	CORROSIVE, FLAMMABLE LIQUID.	A19, T8, T26	None	201	243	0.5 L	2.5 L	D	40
	Boron trifluoride dihydrate	8	UN2851	II	CORROSIVE	T9, T27	154	212	240	15 kg	50 kg	B	12, 40,
	Boron trifluoride dimethyl etherate	4.3	UN2965	I	DANGEROUS WHEN WET, CORROSIVE, FLAMMABLE LIQUID.	A19, T12, T26	None	201	243	Forbidden	1 L	D	21, 28, 40, 49, 100
	Boron trifluoride propionic acid complex	8	UN1743	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	A	
	Box toe gum, see Nitrocellulose *etc.*												
	Bromates, inorganic, aqueous solution, n.o.s.	5.1	UN3213	II	OXIDIZER	T8	152	202	242	1 L	5 L	B	56, 58, 106
	Bromates, inorganic, n.o.s.	5.1	UN1450	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
	Bromine azide	Forbidden											
•	Bromine *or* Bromine solutions	8	UN1744	I	CORROSIVE, POISON	1, A3, A6, B9, B12, B64, B85, N34, N43, T18, T41.	None	226	249	Forbidden	2.5 L	D	12, 40, 66, 74, 89, 90
	Bromine chloride	2.3	UN2901		POISON GAS, CORROSIVE, OXIDIZER.	2, B9, B12, B14	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90
•	Bromine pentafluoride	5.1	UN1745	I	OXIDIZER, POISON, CORROSIVE.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	25, 40, 66, 90
•	Bromine trifluoride	5.1	UN1746	I	OXIDIZER, POISON, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	226	244	Forbidden	Forbidden	D	25, 40, 66, 90
	4-Bromo-1,2-dinitrobenzene	Forbidden											
	4-Bromo-1,2-dinitrobenzene (unstable at 59 degrees C.)	Forbidden											
	1-Bromo-3-methylbutane	3	UN2341	III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	1-Bromo-3-nitrobenzene (unstable at 56 degrees C)	Forbidden											
	2-Bromo-2-nitropropane-1,3-diol	6.1	UN3241	III	KEEP AWAY FROM FOOD.	46	153	213	240	50 kg	50 kg	C	12, 25, 40
	Bromoacetic acid, *solid*	8	UN1938	II	CORROSIVE	A7, N34, T9	154	212	240	15 kg	50 kg	A	
	Bromoacetic acid, *solution*	8	UN1938	II	CORROSIVE	B2, T9	154	202	242	1 L	30 L	A	40

•	Bromoacetone	6.1	UN1569	II	POISON	2	None	193	245	Forbidden	Forbidden	D	40
	Bromoacetyl bromide	8	UN2513	II	CORROSIVE	B2, T9, T26	154	202	242	1 L	30 L	C	40
	Bromobenzene	3	UN2514	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Bromobenzyl cyanides, *liquid*	6.1	UN1694	I	POISON	T18	None	201	243	Forbidden	30 L	D	12, 40
	Bromobenzyl cyanides, *solid*	6.1	UN1694	I	POISON	T18	None	211	242	Forbidden	50 kg	D	12, 40
	2-Bromobutane	3	UN2339	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	40
	Bromochloromethane	6.1	UN1887	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	2-Bromoethyl ethyl ether	3	UN2340	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40
	Bromoform	6.1	UN2515	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	12, 40
	Bromomethylpropanes	3	UN2342	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
	2-Bromopentane	3	UN2343	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	2-Bromopropanes	3	UN2344	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40
	3-Bromopropyne	3	UN2345	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	D	40
	Bromosilane	Forbidden											
	Bromotoluene-alpha, see Benzyl bromide												
	Bromotrifluoroethylene	2.1	UN2419		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	B	40
	Bromotrifluoromethane, *R13B1*	2.2	UN1009		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Brucine	6.1	UN1570	I	POISON		None	211	242	5 kg	50 kg	A	
	Bursters, *explosive*	1.1D	UN0043	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Butadienes, inhibited	2.1	UN1010		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Butane *or* Butane mixtures *see also* Petroleum gases, liquefied	2.1	UN1011		FLAMMABLE GAS	19	306	304	314, 315	Forbidden	150 kg	E	40
	Butane, butane mixtures and mixtures, butane, nitrogen	2.1	UN1011		FLAMMABLE GAS	19	306	304	314, 315	Forbidden	150 kg	E	40

Bromoacetic acid, *solid*	8	UN1938	II	CORROSIVE	A7, N34, T9	154	212	240	15 kg	50 kg	A	
Bromoacetic acid, *solution*	8	UN1938	II	CORROSIVE	B2, T9	154	202	242	1 L	30 L	A	40
Bromoacetone	6.1	UN1569	II	POISON	2	None	193	245	Forbidden	Forbidden	D	40
Bromoacetyl bromide	8	UN2513	II	CORROSIVE	B2, T9, T26	154	202	242	1 L	30 L	C	40
Bromobenzene	3	UN2514	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Bromobenzyl cyanides, *liquid*	6.1	UN1694	I	POISON	T18	None	201	243	Forbidden	30 L	D	12, 40
Bromobenzyl cyanides, *solid*	6.1	UN1694	I	POISON	T18	None	211	242	Forbidden	50 kg	D	12, 40
2-Bromobutane	3	UN2339	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	40
Bromochloromethane	6.1	UN1887	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
2-Bromoethyl ethyl ether	3	UN2340	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40
Bromoform	6.1	UN2515	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	12, 40
Bromomethylpropanes	3	UN2342	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
2-Bromopentane	3	UN2343	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
2-Bromopropane	3	UN2344	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40
3-Bromopropyne	3	UN2345	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	D	40
Bromosilane	Forbidden											
Bromotoluene-alpha, see Benzyl bromide												
Bromotrifluoroethylene	2.1	UN2419		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	B	40
Bromotrifluoromethane, *R13B1*	2.2	UN1009		NONFLAMMABLE GAS		308	304	314, 315	75 kg	150 kg	A	
Brucine	6.1	UN1570	I	POISON		None	211	242	5 kg	50 kg	A	
Bursters, *explosive*	1.1D	UN0043	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
Butadienes, inhibited	2.1	UN1010		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
Butane *or* Butane mixtures *see also* Petroleum gases, liquefied	2.1	UN1011		FLAMMABLE GAS	19	306	304	314, 315	Forbidden	150 kg	E	40
Butane, butane mixtures and mixtures having similar properties in cartridges each not exceeding 500 grams, see Receptacles, etc.												
Butanedione	3	UN2346	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
1,2,4-Butanetriol trinitrate	Forbidden											
Butanols	3	UN1120	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
tert-Butoxycarbonyl azide	Forbidden											
Butoxyl	3	UN2708	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Butyl acetates	3	UN1123	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Butyl acid phosphate	8	UN1718	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
Butyl alcohols, see Butanols												
Butyl benzenes	3	UN2709	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
n-Butyl bromide	3	UN1126	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	40
n-Butyl chloride, see Chlorobutanes												
D sec-Butyl chloroformate	6.1	NA2742	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100
n-Butyl chloroformate	6.1	UN2743	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	1 L	30 L	A	12, 13, 21, 25, 40, 100
Butyl ethers, see Dibutyl ethers												
Butyl ethyl ether, see Ethyl butyl ether												
n-Butyl formate	3	UN1128	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
tert-Butyl hydroperoxide, with more than 90 percent with water	Forbidden											
tert-Butyl hypochlorite	4.2	UN3255	I	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	211	243	Forbidden	Forbidden	D	
N-n-Butyl imidazole	6.1	UN2690	II	POISON	T8	None	202	243	5 L	60 L	A	
Tert-Butyl isocyanate	6.1	UN2484	I	POISON, FLAMMABLE LIQUID.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
n-Butyl isocyanate	6.1	UN2485	I	POISON, FLAMMABLE LIQUID.	1, A7, B9, B14, B30, B72, B77, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40
Butyl mercaptans	3	UN2347	II	FLAMMABLE LIQUID	A3, T8	150	202	242	5 L	60 L	D	26, 40
n-Butyl methacrylate	3	UN2227	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Butyl methyl ether	3	UN2350	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
Butyl nitrites	3	UN2351	I	FLAMMABLE LIQUID	T8	150	201	243	1 L	30 L	E	40
			II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
			III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	40
tert-Butyl peroxyacetate, with more than 76 percent in solution	Forbidden											
n-Butyl peroxydicarbonate, with more than 52 percent in solution	Forbidden											
tert-Butyl peroxyisobutyrate, with more than 77 percent in solution	Forbidden											
Butyl phosphoric acid, see Butyl acid phosphate												
5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk xylene	4.1	UN2956	III	FLAMMABLE SOLID		None	214	None	Forbidden	Forbidden	D	12
Butyl vinyl ether, inhibited	3	UN2352	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40
Butyl acrylate	3	UN2348	III	FLAMMABLE LIQUID	B1, T8, T31	150	203	242	60 L	220 L	A	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	Non-bulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	n-Butylamine	3	UN1125	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	242	1 L	5 L	B	40
	N-Butylaniline	6.1	UN2738	II	POISON	T8	None	202	243	5 L	60 L	A	
	tert-Butylcyclohexylchloroformate	6.1	UN2747	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	12, 13, 25
	Butylene *see also* Petroleum gases, liquefied	2.1	UN1012		FLAMMABLE GAS	19	None	304	314, 315	Forbidden	150 kg	E	40
	1,2-Butylene oxide, stabilized	3	UN3022	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	49
	Butylpropionate	3	UN1914	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Butyltoluenes	6.1	UN2667	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Butyltrichlorosilane	8	UN1747	II	CORROSIVE, FLAMMABLE LIQUID.	A7, B2, B6, N34, T8, T26.	None	202	243	Forbidden	30 L	C	40
	1,4-Butynediol	6.1	UN2716	III	KEEP AWAY FROM FOOD.	A1	None	213	240	100 kg	200 kg	A	61, 70
	Butyraldehyde	3	UN1129	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Butyraldoxime	3	UN2840	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Butyric acid	8	UN2820	III	CORROSIVE	T1	154	203	241	5 L	60 L	A	12
	Butyric anhydride	8	UN2739	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	
	Butyronitrile	3	UN2411	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	E	40
	Butyryl chloride	3	UN2353	II	FLAMMABLE LIQUID, CORROSIVE.	T9, T26	None	202	243	1 L	5 L	C	40
	Cacodylic acid	6.1	UN1572	II	POISON		None	212	242	25 kg	100 kg	E	26
	Cadmium compounds	6.1	UN2570	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Caesium hydroxide	8	UN2682	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Caesium hydroxide solution	8	UN2681	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Calcium	4.3	UN1401	II	DANGEROUS WHEN WET.		None	212	241	15 kg	50 kg	E	
	Calcium arsenate	6.1	UN1573	II	POISON		None	212	242	25 kg	100 kg	A	
	Calcium arsenate and calcium arsenite, mixtures, solid	6.1	UN1574	II	POISON		None	212	242	25 kg	100 kg	A	
D	Calcium arsenite, solid	6.1	NA1574	II	POISON		None	212	242	25 kg	100 kg	A	
	Calcium bisulfite solution, see Bisulfites, inorganic, aqueous solutions, n.o.s.												
	Calcium carbide	4.3	UN1402	I	DANGEROUS WHEN WET.	A1, A8, B55, N34	None	211	242	Forbidden	15 kg	B	
				II	DANGEROUS WHEN WET.	A1, A8, B55, N34	None	212	241	15 kg	50 kg	B	
	Calcium chlorate	5.1	UN1452	II	OXIDIZER	N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Calcium chlorate aqueous solution	5.1	UN2429	II	OXIDIZER	A2, N41, T8	152	202	242	1 L	5 L	B	56, 58, 106
	Calcium chlorite	5.1	UN1453	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Calcium cyanamide *with more than 0.1 percent of calcium carbide*	4.3	UN1403	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	
	Calcium cyanide	6.1	UN1575	I	POISON	N79, N80	None	211	242	5 kg	50 kg	A	26, 40
	Calcium dithionite *or* Calcium hydrosulfite	4.2	UN1923	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20	None	212	241	15 kg	50 kg	E	13
	Calcium hydride	4.3	UN1404	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Calcium hydrosulfite, *see* Calcium dithionite												
	Calcium hypochlorite, dry *or* Calcium hypochlorite mixtures dry *with more than 39 percent available chlorine (8.8 percent available oxygen)*	5.1	UN1748	II	OXIDIZER	A7, A9, N34	152	212	None	5 kg	25 kg	D	48, 56, 58, 69, 106, 118
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 10 percent water*	5.1	UN2880	II	OXIDIZER		152	212	240	5 kg	25 kg	A	50, 56, 58, 69, 106
	Calcium hypochlorite mixtures, dry, *with more than 10 percent but not more than 39 percent available chlorine*	5.1	UN2208	III	OXIDIZER	A1, A29, N34	152	213	240	25 kg	100 kg	A	56, 58, 69, 106

	Calcium manganese silicon	4.3	UN2844	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	85, 103
	Calcium nitrate	5.1	UN1454	III	OXIDIZER	34	152	213	240	25 kg	100 kg	A	
A	Calcium oxide	8	UN1910	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Calcium perchlorate	5.1	UN1455	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
	Calcium permanganate	5.1	UN1456	II	OXIDIZER		152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Calcium peroxide	5.1	UN1457	II	OXIDIZER		152	212	242	5 kg	25 kg	A	13, 75, 106
	Calcium phosphide	4.3	UN1360	I	DANGEROUS WHEN WET, POISON.	A8, A19, N40	None	211	242	Forbidden	15 kg	E	40, 85
	Calcium, pyrophoric *or* Calcium alloys, pyrophoric	4.2	UN1855	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	None	Forbidden	Forbidden	D	
	Calcium resinate	4.1	UN1313	III	FLAMMABLE SOLID	A1, A19	None	213	240	25 kg	100 kg	A	
	Calcium resinate, fused	4.1	UN1314	III	FLAMMABLE SOLID	A1, A19	None	213	240	25 kg	100 kg	A	
	Calcium selenate, *see* Selenates *or* Selenites												
	Calcium silicide	4.3	UN1405	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	B	85, 103
				III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	B	85, 103
	Camphor oil	3	UN1130	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Camphor, *synthetic*	4.1	UN2717	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	A	
	Cannon primers, see Primers, tubular												
	Caproic acid	8	UN2829	III	CORROSIVE	T1	154	203	241	5 L	60 L	A	
	Caps, blasting, see Detonators, *etc.*												
	Carbamate pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2758	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40

	Calcium hypochlorite mixtures, dry, *with more than 10 percent but not more than 39 percent available chlorine*	5.1	UN2208	III	OXIDIZER	A1, A29, N34	152	213	240	25 kg	100 kg	A	56, 58, 69, 106
	Calcium manganese silicon	4.3	UN2844	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	85, 103
	Calcium nitrate	5.1	UN1454	III	OXIDIZER	34	152	213	240	25 kg	100 kg	A	
A	Calcium oxide	8	UN1910	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Calcium perchlorate	5.1	UN1455	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
	Calcium permanganate	5.1	UN1456	II	OXIDIZER		152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Calcium peroxide	5.1	UN1457	II	OXIDIZER		152	212	242	5 kg	25 kg	A	13, 75, 106
	Calcium phosphide	4.3	UN1360	I	DANGEROUS WHEN WET, POISON.	A8, A19, N40	None	211	242	Forbidden	15 kg	E	40, 85
	Calcium, pyrophoric *or* Calcium alloys, pyrophoric	4.2	UN1855	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	None	Forbidden	Forbidden	D	
	Calcium resinate	4.1	UN1313	III	FLAMMABLE SOLID	A1, A19	None	213	240	25 kg	100 kg	A	
	Calcium resinate, fused	4.1	UN1314	III	FLAMMABLE SOLID	A1, A19	None	213	240	25 kg	100 kg	A	
	Calcium selenate, *see* Selenates *or* Selenites												
	Calcium silicide	4.3	UN1405	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	B	85, 103
				III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	B	85, 103
	Camphor oil	3	UN1130	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Camphor, *synthetic*	4.1	UN2717	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	A	
	Cannon primers, see Primers, tubular												
	Caproic acid	8	UN2829	III	CORROSIVE	T1	154	203	241	5 L	60 L	A	
	Caps, blasting, see Detonators, *etc.*												
	Carbamate pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2758	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Carbamate pesticides, liquid, toxic	6.1	UN2992	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Carbamate pesticides, liquid, toxic, flammable, *flash point not less than 23 degrees C*	6.1	UN2991	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Carbamate pesticides, solid, toxic	6.1	UN2757	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Carbolic acid, see Phenol, solid *or* Phenol, molten												
	Carbolic acid solutions, see Phenol solutions												
I	Carbon, activated	4.2	UN1362	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	0.5 kg	0.5 kg	A	12
I	Carbon, *animal or vegetable origin*	4.2	UN1361	II	SPONTANEOUSLY COMBUSTIBLE.		None	212	242	Forbidden	Forbidden	A	12
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	A	12
	Carbon bisulfide, see Carbon disulfide												
	Carbon dioxide	2.2	UN1013		NONFLAMMABLE GAS		306	302, 304	302, 314, 315	75 kg	150 kg	A	
	Carbon dioxide and nitrous oxide mixtures	2.2	UN1015		NONFLAMMABLE GAS		306	None	314, 315	75 kg	150 kg	A	
	Carbon dioxide and oxygen mixtures	2.2	UN1014		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Carbon dioxide, refrigerated liquid	2.2	UN2187		NONFLAMMABLE GAS	B43	306	304	314, 315	50 kg	500 kg	B	
AW	Carbon dioxide, solid *or* Dry ice	9	UN1845	III	None	B12	217	217	240	200 kg	200 kg	C	40
	Carbon disulfide	3	UN1131	I	FLAMMABLE LIQUID, POISON.	B16, T18, T26, T29.	None	201	243	Forbidden	Forbidden	D	18, 40, 115
	Carbon monoxide	2.3	UN1016		POISON GAS, FLAMMABLE GAS.	4	None	302	314, 315	Forbidden	25 kg	D	40
	Carbon monoxide and hydrogen mixture	2.3	UN2600		POISON GAS, FLAMMABLE GAS.	8	None	302	302	Forbidden	Forbidden	D	40
D	Carbon monoxide, refrigerated liquid *(cryogenic liquid)*	2.3	NA9202		POISON GAS, FLAMMABLE GAS	4	None	316	318	Forbidden	Forbidden	D	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Carbon tetrabromide	6.1	UN2516	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	25
	Carbon tetrachloride	6.1	UN1846	II	POISON	N36, T8	None	202	243	5 L	60 L	A	40
	Carbonyl chloride, see Phosgene												
	Carbonyl fluoride	2.3	UN2417		POISON GAS, CORROSIVE.	2	None	302	None	Forbidden	Forbidden	D	40
	Carbonyl sulfide	2.3	UN2204		POISON GAS, FLAMMABLE GAS.	3, 25, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Cartridge cases, empty primed, see Cases, cartridge, empty, with primer												
	Cartridges, actuating, for aircraft ejector seat catapult, fire extinguisher, canopy removal or apparatus, see Cartridges, power device												
	Cartridges, explosive, see Charges, demolition												
	Cartridges, flash	1.1G	UN0049	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Cartridges, flash	1.3G	UN0050	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Cartridges for weapons, blank	1.1C	UN0326	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, blank	1.2C	UN0413	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, blank *or* Cartridges, small arms, blank	1.4S	UN0014	II	None	112	None	62	None	25 kg	100 kg	A	
	Cartridges for weapons, blank *or* Cartridges, small arms, blank	1.3C	UN0327	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, blank *or* Cartridges, small arms, blank	1.4C	UN0338	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Cartridges for weapons, inert projectile	1.2C	UN0328	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, inert projectile *or* Cartridges, small arms	1.4S	UN0012	II	None	112	None	62	None	25 kg	100 kg	A	
	Cartridges for weapons, inert projectile *or* Cartridges, small arms	1.4C	UN0339	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	B	
	Cartridges for weapons, inert projectile *or* Cartridges, small arms	1.3C	UN0417	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, *with bursting charge*	1.1F	UN0005	II	EXPLOSIVE 1.1F		None	62	None	Forbidden	Forbidden	E	
	Cartridges for weapons, *with bursting charge*	1.1E	UN0006	II	EXPLOSIVE 1.1E		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, *with bursting charge*	1.2F	UN0007	II	EXPLOSIVE 1.2F		None	62	None	Forbidden	Forbidden	E	
	Cartridges for weapons, *with bursting charge*	1.2E	UN0321	II	EXPLOSIVE 1.2E		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, *with bursting charge*	1.4F	UN0348	II	EXPLOSIVE 1.4F		None	62	None	Forbidden	Forbidden	E	
	Cartridges for weapons, *with bursting charge*	1.4E	UN0412	II	EXPLOSIVE 1.4E		None	62	None	Forbidden	75 kg	A	24E
	Cartridges, oil well	1.3C	UN0277	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Cartridges, oil well	1.4C	UN0278	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Cartridges, power device	1.3C	UN0275	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	75 kg	B	
	Cartridges, power device	1.4C	UN0276	II	EXPLOSIVE 1.4C	110	None	62	None	Forbidden	75 kg	A	24E
	Cartridges, power device	1.4S	UN0323	II	EXPLOSIVE 1.4S	110, 112	None	62	None	25 kg	100 kg	A	
	Cartridges, power device	1.2C	UN0381	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Cartridges, safety, blank, *see* Cartridges for weapons, blank *(UN 0014)*												
	Cartridges, safety, *see* Cartridges for weapons, *other than blank or* Cartridges, power device *(UN 0323)*												
	Cartridges, signal	1.3G	UN0054	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Cartridges, signal	1.4G	UN0312	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Cartridges, signal	1.4S	UN0405	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
D	Cartridges, small arms	ORM-D			None	112	230	None	None	30 kg gross	30 kg gross	A	
	Cartridges, sporting, see Cartridges for weapons, *other than blank*												
	Cartridges, starter, jet engine, see Cartridges, power device												
I	Cases, cartridge, empty with primer	1.4S	UN0055	II	EXPLOSIVE 1.4S	50	None	62	None	25 kg	100 kg	A	
I	Cases, cartridges, empty with primer	1.4C	UN0379	II	EXPLOSIVE 1.4C	50	None	62	None	Forbidden	75 kg	A	24E
	Cases, combustible, empty, without primer	1.4C	UN0446	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Cases, combustible, empty, without primer	1.3C	UN0447	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Casinghead gasoline see Natural gasoline												
AW	Castor beans *or* Castor meal *or* Castor pomace *or* Castor flake	9	UN2969	II	None		155	204	240	No limit	No limit	E	34, 40
	Caustic alkali liquids, n.o.s.	8	UN1719	II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Caustic potash, see Potassium hydroxide *etc.*												
	Caustic soda, (etc.) see Sodium hydroxide *etc.*												
	Cells, containing sodium	4.3	UN3292	II	DANGEROUS WHEN WET.		189	189	189	25 kg	No limit	A	
	Celluloid, *in block, rods, rolls, sheets, tubes, etc., except scrap*	4.1	UN2000	III	FLAMMABLE SOLID		None	213	240	25 kg	100 kg	A	
	Celluloid, scrap	4.2	UN2002	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	D	
	Cement, see Adhesives *containing flammable liquid*												
	Cerium, *slabs, ingots, or rods*	4.1	UN1333	II	FLAMMABLE SOLID	N34	None	212	240	15 kg	50 kg	A	74, 91
	Cerium, *turnings or gritty powder*	4.3	UN3078	II	DANGEROUS WHEN WET.	A1	None	212	242	15 kg	50 kg	E	

	Cesium *or* Caesium	4.3	UN1407	I	DANGEROUS WHEN WET.	A19, N34, N40	None	211	242	Forbidden	15 kg	D	
	Cesium nitrate *or* Caesium nitrate	5.1	UN1451	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
D	Charcoal *briquettes, shell, screenings, wood, etc.*	4.2	NA1361	III	SPONTANEOUSLY COMBUSTIBLE.		151	213	240	25 kg	100 kg	A	12
	Charges, bursting, plastics bonded	1.1D	UN0457	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Charges, bursting, plastics bonded	1.2D	UN0458	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Charges, bursting, plastics bonded	1.4D	UN0459	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E
	Charges, bursting, plastics bonded	1.4S	UN0460	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Charges, demolition	1.1D	UN0048	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Charges, depth	1.1D	UN0056	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	3E, 7E
	Charges, expelling, explosive, for fire extinguishers, see Cartridges, power device												
	Charges, explosive, commercial *without detonator*	1.1D	UN0442	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Charges, explosive, commercial *without detonator*	1.2D	UN0443	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Charges, explosive, commercial *without detonator*	1.4D	UN0444	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E
	Charges, explosive, commercial *without detonator*	1.4S	UN0445	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Charges, propelling	1.1C	UN0271	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	
	Charges, propelling	1.3C	UN0272	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Charges, propelling	1.2C	UN0415	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Charges, propelling	1.4C	UN0491		EXPLOSIVE 1.4C		None	62	None	Forbidden	Forbidden	B	
	Charges, propelling, for cannon	1.3C	UN0242	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	75 kg	A	1E, 5E
	Charges, propelling, for cannon	1.1C	UN0279	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Charges, propelling, for cannon	1.2C	UN0414	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Charges, shaped, commercial, *without detonator*	1.1D	UN0059	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Charges, shaped, commercial *without detonator*	1.2D	UN0439	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Charges, shaped, commercial *without detonator*	1.4D	UN0440	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	Forbidden	B	
	Charges, shaped, commercial *without detonator*	1.4S	UN0441	II	EXPLOSIVE 1.4S		None	62	None	Forbidden	75 kg	A	24E

	Cesium *or* Caesium	4.3	UN1407	I	DANGEROUS WHEN WET.	A19, N34, N40	None	211	242	Forbidden	15 kg	D			
	Cesium nitrate *or* Caesium nitrate	5.1	UN1451	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A			
D	Charcoal *briquettes, shell, screenings, wood, etc.*	4.2	NA1361	III	SPONTANEOUSLY COMBUSTIBLE.		151	213	240	25 kg	100 kg	A		12	
	Charges, bursting, plastics bonded	1.1D	UN0457	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B			
	Charges, bursting, plastics bonded	1.2D	UN0458	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B			
	Charges, bursting, plastics bonded	1.4D	UN0459	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A		24E	
	Charges, bursting, plastics bonded	1.4S	UN0460	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A			
	Charges, demolition	1.1D	UN0048	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B			
	Charges, depth	1.1D	UN0056	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B		3E, 7E	
	Charges, expelling, explosive, for fire extinguishers, see Cartridges, power device														
	Charges, explosive, commercial *without detonator*	1.1D	UN0442	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B			
	Charges, explosive, commercial *without detonator*	1.2D	UN0443	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B			
	Charges, explosive, commercial *without detonator*	1.4D	UN0444	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A		24E	
	Charges, explosive, commercial *without detonator*	1.4S	UN0445	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A			
	Charges, propelling	1.1C	UN0271	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B			
	Charges, propelling	1.3C	UN0272	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B			
	Charges, propelling	1.2C	UN0415	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B			
	Charges, propelling	1.4C	UN0491		EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A		1E, 5E	
	Charges, propelling, for cannon	1.3C	UN0242	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B		1E, 5E	
	Charges, propelling, for cannon	1.1C	UN0279	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B		1E, 5E	
	Charges, propelling, for cannon	1.2C	UN0414	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B		1E, 5E	
	Charges, shaped, commercial, *without detonator*	1.1D	UN0059	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B			
	Charges, shaped, commercial *without detonator*	1.2D	UN0439	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B			
	Charges, shaped, commercial *without detonator*	1.4D	UN0440	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A		24E	
	Charges, shaped, commercial *without detonator*	1.4S	UN0441	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A			
	Charges, shaped, flexible, linear	1.4D	UN0237	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A		24E	
	Charges, shaped, flexible, linear	1.1D	UN0288	II	EXPLOSIVE 1.1D	101	None	62	None	Forbidden	Forbidden	B			
	Charges, supplementary explosive	1.1D	UN0060	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B		1E, 5E	
D	Chemical kit	8	NA1760	II	CORROSIVE		154	161	None	1 L	30 L	B		40	
	Chemical kits *(must be classified and labelled according to the hazard class of the constituent(s) and must meet the requirements of special provision 15 in 172.102(c)(1))*														
	Chloral, anhydrous, inhibited	6.1	UN2075	II	POISON	T14	None	202	243	5 L	60 L	D		40	
	Chlorate and borate mixtures	5.1	UN1458	II	OXIDIZER	A9, N34	152	212	240	5 kg	25 kg	A		56, 58, 106	
				III	OXIDIZER	A9, N34	152	213	240	25 kg	100 kg	A		56, 58, 106	
	Chlorate and magnesium chloride mixtures	5.1	UN1459	II	OXIDIZER	A9, N34, T8	152	212	240	5 kg	25 kg	A		56, 58, 106	
				III	OXIDIZER	A9, N34, T8	152	213	240	25 kg	100 kg	A		56, 58, 106	
	Chlorate of potash, see Potassium chlorate														
	Chlorate of soda, see Sodium chlorate														
	Chlorates, inorganic, aqueous solution, n.o.s.	5.1	UN3210	II	OXIDIZER	T8	152	202	242	1 L	5 L	B		56, 58, 106	
	Chlorates, inorganic, n.o.s.	5.1	UN1461	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A		56, 58, 106	
	Chloric acid aqueous solution, *with not more than 10 percent chloric acid*	5.1	UN2626	II	OXIDIZER	T25	None	229	None	Forbidden	Forbidden	D		56, 58, 106	
	Chloride of phosphorus, see Phosphorus trichloride														
	Chloride of sulfur, see Sulfur chloride														
	Chlorinated lime, see Calcium hypochlorite mixtures, *etc.*														
	Chlorine	2.3	UN1017		POISON GAS, CORROSIVE, OXIDIZER.	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D		40, 51, 55, 62, 68, 89, 90	
	Chlorine azide	Forbidden													
D	Chlorine dioxide, hydrate, frozen	5.1	NA9191	II	OXIDIZER, POISON		None	229	None	Forbidden	Forbidden	E			
	Chlorine dioxide (not hydrate)	Forbidden													
	Chlorine pentafluoride	2.3	UN2548		POISON GAS, OXIDIZER, CORROSIVE.	1, B7, B9, B14	None	304	314	Forbidden	Forbidden	D		40, 89, 90	
	Chlorine trifluoride	2.3	UN1749		POISON GAS, OXIDIZER, CORROSIVE.	2, 25, B7, B9, B14	None	304	314	Forbidden	Forbidden	D		40, 89, 90	
	Chlorite solution *with more than 5 percent but less than 16 percent available chlorine*	8	UN1908	III	CORROSIVE	A3, A6, A7, B2, N34, T8.	154	203	241	5 L	60 L	B		26	
	Chlorite solution *with not less than 16 percent available chlorine*	8	UN1908	II	CORROSIVE	A3, A6, A7, B2, N34, T8.	154	202	242	1 L	30 L	B		26	
	Chlorites, inorganic, n.o.s.	5.1	UN1462	II	OXIDIZER	A7, N34	152	212	242	5 kg	25 kg	A		56, [illegible], 10[illegible]	
	1-Chloro-3-bromopropane	6.1	UN2688	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A			
	1-Chloro-1,1-difluoroethane, see Chlorodifluoroethanes														
	1-Chloro-1,1-difluoroethanes, *R142b*	2.1	UN2517		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B		40	
	3-Chloro-4-methylphenylisocyanate	6.1	UN2236	II	POISON		None	202	243	5 L	60 L	B		40	
	1-Chloro-1,2,2,2,-tetrafluoroethane, *R124*	2.2	UN1021		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A			
	4-Chloro-o-toluidine hydrochloride	6.1	UN1579	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A			
	1-Chloro-2,2,2-trifluoroethane, *R133a*	2.2	UN1983		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A			

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Chloroacetic acid, molten	8	UN3250	II	POISON, CORROSIVE	T9	None	202	243	Forbidden	Forbidden	C	40
	Chloroacetic acid, solid	8	UN1751	II	POISON, CORROSIVE	A3, A7, N34	None	212	242	15 kg	50 kg	A	40
	Chloroacetic acid, solution	8	UN1750	II	POISON, CORROSIVE	A7, N34, T8, T27	None	202	243	1 L	30 L	C	40
+	Chloroacetone, stabilized	6.1	UN1695	II	POISON	2, B9, B14, B32, B74, N12, N32, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Chloroacetone (unstabilized)	Forbidden											
+	Chloroacetonitrile	6.1	UN2668	II	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	A	12, 26, 40
	Chloroacetophenone *(CN), liquid*	6.1	UN1697	II	POISON	A3, N12, N32, N33.	None	202	243	Forbidden	60 L	D	12, 40
	Chloroacetophenone *(CN), solid*	6.1	UN1697	II	POISON	A3, N12, N32, N33, N34.	None	212	None	Forbidden	100 kg	D	12, 40
	Chloroacetyl chloride	6.1	UN1752	I	POISON, CORROSIVE	2, A3, A6, A7, B3, B8, B9, B14, B32, B74, B77, N34, N43, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Chloroanilines, liquid	6.1	UN2019	II	POISON	T14	None	202	243	5 L	60 L	A	
	Chloroanilines, solid	6.1	UN2018	II	POISON	T14, T38	None	212	242	25 kg	100 kg	A	
	Chloroanisidines	6.1	UN2233	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Chlorobenzene	3	UN1134	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Chlorobenzol, see Chlorobenzene												
	Chlorobenzotrifluorides	3	UN2234	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40
	Chlorobenzylchlorides	6.1	UN2235	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	
	Chlorobutanes	3	UN1127	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Chlorocresols, *liquid*	6.1	UN2669	II	POISON	T8	None	202	243	5 L	60 L	A	12
	Chlorocresols, *solid*	6.1	UN2669	II	POISON		None	212	242	25 kg	100 kg	A	12
	Chlorodifluorobromomethane, *R12B1*	2.2	UN1974		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Chlorodifluoromethane and chloropentafluoroethane mixture *with fixed boiling point with approximately 49 percent chlorodifluoromethane, R502*	2.2	UN1973		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Chlorodifluoromethane, *R22*	2.2	UN1018		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Chlorodinitrobenzenes	6.1	UN1577	II	POISON	T14	None	212	242	25 kg	100 kg	A	91
	2-Chloroethanal	6.1	UN2232	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Chloroform	6.1	UN1888	III	KEEP AWAY FROM FOOD.	N36, T14	153	203	241	5 L	60 L	A	40
	Chloroformates, toxic, corrosive, flammable, n.o.s.	6.1	UN2742	II	POISON, CORROSIVE, FLAMMABLE LIQUID.	5	None	202	243	1 L	30 L	A	12, 13, 21, 25, 40, 100
	Chloroformates, toxic, corrosive, n.o.s.	6.1	UN3277	II	POISON, CORROSIVE	T12, T26	None	202	243	1 L	30 L	A	12, 13, 25, 40
	Chloromethyl ethyl ether	3	UN2354	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	E	40
	Chloromethylchloroformate	6.1	UN2745	II	POISON, CORROSIVE	T18	None	202	243	1 L	30 L	A	12, 13, 21, 25, 40, 100
	Chloronitroanilines	6.1	UN2237	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
•	Chloronitrobenzene, *ortho, liquid*	6.1	UN1578	II	POISON	T14	None	202	243	5 L	60 L	A	
•	Chloronitrobenzenes *meta or para, solid*	6.1	UN1578	II	POISON	T14	None	212	242	25 kg	100 kg	A	
	Chloronitrotoluenes *liquid*	6.1	UN2433	III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	
	Chloronitrotoluenes, solid	6.1	UN2433	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Chloropentafluoroethane, *R115*	2.2	UN1020		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	

	Chlorophenolates, liquid *or* Phenolates, liquid	8	UN2904	III	CORROSIVE		154	203	241	5 L	60 L	A	
	Chlorophenolates, solid *or* Phenolates, solid	8	UN2905	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Chlorophenols, liquid	6.1	UN2021	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Chlorophenols, solid	6.1	UN2020	III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Chlorophenyltrichlorosilane	8	UN1753	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
•	Chloropicrin	6.1	UN1580	I	POISON	2, B7, B9, B14, B32, B46, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Chloropicrin and methyl bromide mixtures	2.3	UN1581		POISON GAS	2, B9, B14	None	193	314, 315	Forbidden	Forbidden	D	25, 40
	Chloropicrin and methyl chloride mixtures	2.3	UN1582		POISON GAS	2	None	193	245	Forbidden	Forbidden	D	25, 40
	Chloropicrin mixture, flammable (pressure not exceeding 14.7 psia at 115 degrees F flash point below 100 degrees F) see Poisonous liquids, flammable, n.o.s.												
	Chloropicrin mixtures, n.o.s.	6.1	UN1583	I	POISON	5	None	201	243	Forbidden	Forbidden	C	40
				II	POISON		None	202	243	Forbidden	Forbidden	C	40
				III	KEEP AWAY FROM FOOD.		153	203	241	Forbidden	Forbidden	C	40
D	Chloropivaloyl chloride	6.1	NA9263	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40
	Chloroplatinic acid, solid	8	UN2507	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Chloroprene, inhibited	3	UN1991	I	FLAMMABLE LIQUID, POISON.	B57, T15	None	201	243	Forbidden	30 L	D	40
	Chloroprene, uninhibited	Forbidden											

	Chlorophenolates, liquid *or* Phenolates, liquid	8	UN2904	III	CORROSIVE		154	203	241	5 L	60 L	A		
	Chlorophenolates, solid *or* Phenolates, solid	8	UN2905	III	CORROSIVE		154	213	240	25 kg	100 kg	A		
	Chlorophenols, liquid	6.1	UN2021	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A		
	Chlorophenols, solid	6.1	UN2020	III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A		
	Chlorophenyltrichlorosilane	8	UN1753	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40	
◆	Chloropicrin	6.1	UN1580	I	POISON	2, B7, B9, B14, B32, B46, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40	
	Chloropicrin and methyl bromide mixtures	2.3	UN1581		POISON GAS	2, B9, B14	None	193	314, 315	Forbidden	Forbidden	D	25, 40	
	Chloropicrin and methyl chloride mixtures	2.3	UN1582		POISON GAS	2	None	193	245	Forbidden	Forbidden	D	25, 40	
	Chlorpicrin mixture, flammable (pressure not exceeding 14.7 psia at 115 degrees F flash point below 100 degrees F) see Poisonous liquids, flammable, n.o.s.													
	Chloropicrin mixtures, n.o.s.	6.1	UN1583	I	POISON	5	None	201	243	Forbidden	Forbidden	C	40	
	"	"	"	II	POISON		None	202	243	Forbidden	Forbidden	C	40	
	"	"	"	III	KEEP AWAY FROM FOOD.		153	203	241	Forbidden	Forbidden	C	40	
D	Chloropivaloyl chloride	6.1	NA9263	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40	
	Chloroplatinic acid, solid	8	UN2507	III	CORROSIVE		154	213	240	25 kg	100 kg	A		
	Chloroprene, inhibited	3	UN1991	I	FLAMMABLE LIQUID, POISON.	B57, T15	None	201	243	Forbidden	30 L	D	40	
	Chloroprene, uninhibited	Forbidden												
	2-Chloropropane	3	UN2356	I	FLAMMABLE LIQUID	N36, T14	150	201	243	1 L	30 L	E		
	3-Chloropropanol-1	6.1	UN2849	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A		
	2-Chloropropene	3	UN2456	I	FLAMMABLE LIQUID	A3, N36, T20	150	201	243	1 L	30 L	E		
	2-Chloropropionic acid	8	UN2511	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	8	
	2-Chloropyridine	6.1	UN2822	II	POISON	T14	None	202	243	5 L	60 L	A	40	
	Chlorosilanes, corrosive, flammable, n.o.s.	8	UN2986	II	CORROSIVE, FLAMMABLE LIQUID.		None	202	243	1 L	30 L	C	40	
	Chlorosilanes, corrosive, n.o.s.	8	UN2987	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	40	
	Chlorosilanes, flammable, corrosive, n.o.s.	3	UN2985	II	FLAMMABLE LIQUID, CORROSIVE.	T18, T26	None	201	243	1 L	5 L	B	40	
	Chlorosilanes, water-reactive, flammble, corrosive, n.o.s.	4.3	UN2988	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID, CORROSIVE.	A2	None	201	244	Forbidden	1 L	D	21, 28, 40, 49, 100	
◆	Chlorosulfonic acid *(with or without sulfur trioxide)*	8	UN1754	I	CORROSIVE, POISON	2, A3, A6, A10, B9, B10, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C	40	
	Chlorotoluenes	3	UN2238	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	Chlorotoluidines *liquid*	6.1	UN2239	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A		
	Chlorotoluidines *solid*	6.1	UN2239	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
	Chlorotrifluoromethane and trifluoromethane azeotropic mixture *with approximately 60 percent chlorotrifluoromethane, R503*	2.2	UN2599		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A		
	Chlorotrifluoromethane, *R13*	2.2	UN1022		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A		
D	Chromic acid, solid	5.1	NA1463	II	OXIDIZER, CORROSIVE		None	212	242	5 kg	25 kg	A		
	Chromic acid solution	8	UN1755	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	C	40	
	"	"	"	III	CORROSIVE	T8, T26	154	203	241	5 L	60 L	C	40	
	Chromic anhydride, see Chromium trioxide, anhydrous													
	Chromic fluoride, solid	8	UN1756	II	CORROSIVE		154	212	240	15 kg	50 kg	A	26	
	Chromic fluoride, solution	8	UN1757	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A		
	"	"	"	III	CORROSIVE	T7	154	203	241	5 L	60 L	A		
	Chromium nitrate	5.1	UN2720	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A		
	Chromium oxychloride	8	UN1758	I	CORROSIVE	A3, A6, A7, B10, N34, T12, T26.	None	201	243	0.5 L	2.5 L	C	40, 66, 74, 89, 90	
	Chromium trioxide, anhydrous	5.1	UN1463	II	OXIDIZER, CORROSIVE		None	212	242	5 kg	25 kg	A		
	Chromosulfuric acid	8	UN2240	I	CORROSIVE	A3, A6, A7, B4, B6, N34, T12, T27	None	201	243	0.5 L	2.5 L	B	40, 66, 74, 89, 90	
	Chromyl chloride, see Chromium oxychloride													
	Cigar and cigarette lighters, charged with fuel, see Lighters for cigars, cigarettes, etc													
	Coal briquettes, hot	Forbidden												
	Coal gas	2.3	UN1023		POISON GAS, FLAMMABLE GAS	3	None	302	314, 315	Forbidden	25 kg	D	40	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	Non-bulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Coal tar distillates, flammable	3	UN1136	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Coal tar dye, corrosive, liquid, n.o.s., see Dyes, liquid *or* solid, n.o.s. *or* Dye intermediates, liquid *or* solid, n.o.s., *corrosive*												
	Coating solution	3	UN1139	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Cobalt naphthenates, powder	4.1	UN2001	III	FLAMMABLE SOLID	A19	151	213	240	25 kg	100 kg	A	
	Cobalt resinate, precipitated	4.1	UN1318	III	FLAMMABLE SOLID	A1, A19	151	213	240	25 kg	100 kg	A	
	Coke, hot	Forbidden											
	Collodion, see Nitrocellulose *etc.*												
D	Combustible liquid, n.o.s.	Combustible liquid	NA1993	III	None	T1	150	203	241	60 L	220 L	A	
	Components, explosive train, n.o.s.	1.2B	UN0382	II	EXPLOSIVE 1.2B	101	None	62	None	Forbidden	Forbidden	B	1E, 6E
	Components, explosive train, n.o.s.	1.4B	UN0383	II	EXPLOSIVE 1.4B	101	None	62	None	Forbidden	75 kg	A	24E
	Components, explosive train, n.o.s.	1.4S	UN0384	II	EXPLOSIVE 1.4S	101	None	62	None	25 kg	100 kg	A	
	Components, explosive train, n.o.s.	1.1B	UN0461	II	EXPLOSIVE 1.1B	101	None	62	None	Forbidden	Forbidden	B	1E, 6E
	Composition B, see Hexolite, *etc.*												
D	Compounds, cleaning liquid		NA1760	I	CORROSIVE	A7, B10, T42	None	201	243	0.5 L	2.5 L	B	40
				II	CORROSIVE	B2, N37, T14	154	202	242	1 L	30 L	B	40
				III	CORROSIVE	N37, T7	154	203	241	5 L	60 L	A	40
D	Compounds, cleaning liquid		NA1993	I	FLAMMABLE LIQUID	T42	150	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	203	242	60 L	220 L	A	
D	Compounds, tree killing, liquid *or* Compounds, weed killing, liquid		NA1760	I	CORROSIVE	A7, B10, T42	None	201	243	0.5 L	2.5 L	B	40
				II	CORROSIVE	B2, N37, T14	154	202	242	1 L	30 L	B	40
				III	CORROSIVE	N37, T7	154	203	241	5 L	60 L	A	40
D	Compounds, tree killing, liquid *or* Compounds, weed killing, liquid		NA1993	I	FLAMMABLE LIQUID	T42	150	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	203	242	60 L	220 L	A	
D	Compounds, tree killing, liquid *or* Compounds, weed killing, liquid	6.1	NA2810	I	POISON		153	201	243	1 L	30 L	B	40
				II	POISON		153	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	40
	Compressed gas, oxidizing, n.o.s.	2.2	UN3156		NONFLAMMABLE GAS, OXIDIZER.		306	302	314, 315	75 kg	150 kg	D	
	Compressed gases, flammable, n.o.s.	2.1	UN1954		FLAMMABLE GAS		306	302, 305	314, 315	Forbidden	150 kg	D	40
	Compressed gases, n.o.s.	2.2	UN1956		NONFLAMMABLE GAS		306, 307	302, 305	314, 315	75 kg	150 kg	A	
	Compressed gases, toxic, flammable, n.o.s. *Inhalation hazard Zone A*	2.3	UN1953		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40, 95
	Compressed gases, toxic, flammable, n.o.s. *Inhalation hazard Zone B*	2.3	UN1953		POISON GAS, FLAMMABLE GAS.	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gases, toxic, flammable, n.o.s. *Inhalation Hazard Zone C*	2.3	UN1953		POISON GAS, FLAMMABLE GAS.	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gases, toxic, flammable, n.o.s. *Inhalation Hazard Zone D*	2.3	UN1953		POISON GAS, FLAMMABLE GAS.	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gases, toxic, n.o.s. *Inhalation Hazard Zone A*	2.3	UN1955		POISON GAS	1	None	192	245	Forbidden	Forbidden	D	40
	Compressed gases, toxic, n.o.s. *Inhalation Hazard Zone B*	2.3	UN1955		POISON GAS	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gases, toxic, n.o.s. *Inhalation Hazard Zone C*	2.3	UN1955		POISON GAS	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Compressed gases, toxic, n.o.s. *Inhalation Hazard Zone D*	2.3	UN1955		POISON GAS	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40
D	Consumer commodity	ORM-D			None		156, 306	156, 306	None	30 kg gross	30 kg gross	A	
	Contrivances, water-activated, *with burster, expelling charge or propelling charge*	1.2L	UN0248	II	EXPLOSIVE 1.2L	101	None	62	None	Forbidden	Forbidden	E	2E, 6E, 11E, 17E
	Contrivances, water-activated, *with burster, expelling charge or propelling charge*	1.3L	UN0249	II	EXPLOSIVE 1.3L	101	None	62	None	Forbidden	Forbidden	E	2E, 6E, 11E, 17E
	Copper acetoarsenite	6.1	UN1585	II	POISON		None	212	242	25 kg	100 kg	A	
	Copper acetylide	Forbidden											
	Copper amine azide	Forbidden											
	Copper arsenite	6.1	UN1586	II	POISON		None	212	242	25 kg	100 kg	A	
	Copper based pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2776	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Copper based pesticides, liquid, toxic	6.1	UN3010	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Copper based pesticides, liquid, toxic, flammable *flashpoint not less than 23 degrees C*	6.1	UN3009	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Copper based pesticides, solid, toxic	6.1	UN2775	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM		153	213	240	100 kg	200 kg	A	40

Copper acetylide	Forbidden														
Copper amine azide	Forbidden														
Copper arsenite	6.1	UN1586	II	POISON		None	212	242	25 kg	100 kg	A				
Copper based pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2776	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40			
			II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40			
			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40			
Copper based pesticides, liquid, toxic	6.1	UN3010	I	POISON	T42	None	201	243	1 L	30 L	B	40			
			II	POISON	T14	None	202	243	5 L	60 L	B	40			
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40			
Copper based pesticides, liquid, toxic, flammable *flashpoint not less than 23 degrees C*	6.1	UN3009	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40			
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40			
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40			
Copper based pesticides, solid, toxic	6.1	UN2775	I	POISON		None	211	242	5 kg	50 kg	A	40			
			II	POISON		None	212	242	25 kg	100 kg	A	40			
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40			
Copper chlorate	5.1	UN2721	II	OXIDIZER	A1	152	212	242	5 kg	25 kg	A	56, 58, 100			
Copper chloride	8	UN2802	III	CORROSIVE		154	213	240	25 kg	100 kg	A				
Copper cyanide	6.1	UN1587	II	POISON		None	204	242	25 kg	100 kg	A	26			
Copper selenate, *see* Selenates *or* Selenites															
Copper selenite, *see* Selenates *or* Selenites															
Copper tetramine nitrate	Forbidden														
AW Copra	4.2	UN1363	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	A	13, 19, 48, 119			
Cord, detonating, *flexible*	1.1D	UN0065	II	EXPLOSIVE 1.1D	102	63(a)	62	None	Forbidden	Forbidden	B				
Cord, detonating, *flexible*	1.4D	UN0289	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E			
Cord detonating *or* Fuse detonating *metal clad*	1.2D	UN0102	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B				
Cord, detonating *or* Fuse, detonating *metal clad*	1.1D	UN0290	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B				
Cord, detonating, mild effect *or* Fuse, detonating, mild effect *metal clad*	1.4D	UN0104	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E			
Cord, igniter	1.4G	UN0066	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E			
Cordeau detonant fuse, see Cord, detonating, *etc.*; Cord, detonating, *flexible*															
Cordite, see Powder, smokeless															
Corrosive liquid, acidic, inorganic, n.o.s.	8	UN3264	I	CORROSIVE	B10	None	201	243	0.5 L	2.5 L	B	40			
			II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	B	40			
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A	40			
Corrosive liquid, acidic, organic, n.o.s.		UN3265	I	CORROSIVE	B10	None	201	243	0.5 L	2.5 L	B	40			
			II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	B	40			
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A	40			
Corrosive liquid, basic, inorganic, n.o.s.		UN3266	I	CORROSIVE	B10	None	201	243	0.5 L	2.5 L	B	40			
			II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	B	40			
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A	40			
Corrosive liquid, basic, organic, n.o.s.		UN3267	I	CORROSIVE	B10	None	201	243	0.5 L	2.5 L	B	40			
			II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	B	40			
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A	40			
Corrosive liquid, self-heating, n.o.s.		UN3301	I	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.	B10	None	201	243	0.5 L	2.5 L	D				
			II	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.	B2	154	202	242	1 L	30 L	D				
Corrosive liquids, flammable, n.o.s.	8	UN2920	I	CORROSIVE, FLAMMABLE LIQUID.	B10, T42	None	201	243	0,5 L	2.5 L	C	25, 40			
			II	CORROSIVE, FLAMMABLE LIQUID.	B2, T15, T26	None	202	243	1 L	30 L	C	25, 40			
Corrosive liquids, n.o.s.	8	UN1760	I	CORROSIVE	A7, B10, T42	None	201	243	0.5 L	2.5 L	B	40			
			II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	B	40			
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A	40			
Corrosive liquids, oxidizing, n.o.s.		UN3093	I	CORROSIVE, OXIDIZER		None	201	243	Forbidden	2.5 L	C	89			
			II	CORROSIVE, OXIDIZER		None	202	243	1 L	30 L	C	89			
Corrosive liquids, toxic, n.o.s.	8	UN2922	I	CORROSIVE, POISON	A7, B10	None	201	243	0.5 L	2.5 L	B	40			
			II	CORROSIVE, POISON	B3	None	202	243	1 L	30 L	B	40			
			III	CORROSIVE, KEEP AWAY FROM FOOD.		154	203	241	5 L	60 L	B	40			

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or rail car (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Corrosive liquids, water-reactive, n.o.s.	8	UN3094	I	CORROSIVE, DANGEROUS WHEN WET.		None	201	243	Forbidden	1 L	E	
				II	CORROSIVE, DANGEROUS WHEN WET.		None	202	243	1 L	5 L	E	
	Corrosive solid, acidic, inorganic, n.o.s.	8	UN3260	I	CORROSIVE		None	211	242	1 kg	25 kg	B	
				II	CORROSIVE		154	212	240	15 kg	50 kg	B	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Corrosive solid, acidic, organic, n.o.s.	8	UN3261	I	CORROSIVE		None	211	242	1 kg	25 kg	B	
				II	CORROSIVE		154	212	240	15 kg	50 kg	B	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Corrosive solid, basic, inorganic, n.o.s.	8	UN3262	I	CORROSIVE		None	211	242	1 kg	25 kg	B	
				II	CORROSIVE		154	212	240	15 kg	50 kg	B	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Corrosive solid, basic, organic, n.o.s.	8	UN3263	I	CORROSIVE		None	211	242	1 kg	25 kg	B	
				II	CORROSIVE		154	212	240	15 kg	50 kg	B	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Corrosive solids, flammable, n.o.s.	8	UN2921	I	CORROSIVE, FLAMMABLE SOLID.		None	211	242	1 kg	25 kg	B	12, 25
				II	CORROSIVE, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	B	12, 25
	Corrosive solids, n.o.s.	8	UN1759	I	CORROSIVE		None	211	242	1 kg	25 kg	B	
				II	CORROSIVE		154	212	240	15 kg	50 kg	A	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Corrosive solids, oxidizing, n.o.s.	8	UN3084	I	CORROSIVE, OXIDIZER		None	211	242	1 kg	25 kg	C	
				II	CORROSIVE, OXIDIZER		None	212	242	15 kg	50 kg	C	
	Corrosive solids, self heating, n.o.s.	8	UN3095	I	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.		None	211	243	1 kg	25 kg	C	
				II	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.		None	212	242	15 kg	50 kg	C	
	Corrosive solids, toxic, n.o.s.	8	UN2923	I	CORROSIVE, POISON		None	211	242	1 kg	25 kg	B	40
				II	CORROSIVE, POISON		None	212	240	15 kg	50 kg	B	40
				III	CORROSIVE, KEEP AWAY FROM FOOD.		154	213	240	25 kg	100 kg	B	40, 95
	Corrosive solids, water-reactive, n.o.s.	8	UN3096	I	CORROSIVE, DANGEROUS WHEN WET.		None	211	243	1 kg	25 kg	D	
				II	CORROSIVE, DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	D	
DW	Cotton	9			CLASS 9	W41	None	None	None	No limit	No limit	A	
AIW	Cotton waste, oily	4.2	UN1364	III	SPONTANEOUSLY COMBUSTIBLE.	N9	None	213	None	Forbidden	Forbidden	A	54
AIW	Cotton, wet	4.2		III	SPONTANEOUSLY COMBUSTIBLE.		None	204	241	Forbidden	Forbidden	A	
	Coumarin derivative pesticides, liquid, flammable, toxic, *flashpoint less than 23 degrees C*	3	UN3024	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
	Coumarin derivative pesticides, liquid, flammable, toxic, *flashpoint less than 23 degrees C*	6.1	UN3025	I	POISON, FLAMMABLE LIQUID.		None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.		None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1	153	203	242	60 L	220 L	A	40
	Coumarin derivative pesticides, liquid, toxic	6.1	UN3026	I	POISON		None	201	243	1 L	30 L	B	40
				II	POISON		None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD		153	203	241	60 L	220 L	A	40
	Coumarin derivative pesticides, solid, toxic	6.1	UN3027	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40

				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Cresols	6.1	UN2076	II	POISON, CORROSIVE	T8	None	202	243	1 L	30 L	B	
	Cresylic acid	6.1	UN2022	II	POISON, CORROSIVE	T8	None	202	243	1 L	30 L	B	
	Crotonaldehyde, stabilized	6.1	UN1143	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	30 L	B	40
	Crotonic acid *liquid*	8	UN2823	III	CORROSIVE		154	203	241	5 L	60 L	A	12
	Crotonic acid, *solid*	8	UN2823	III	CORROSIVE		154	213	240	25 kg	100 kg	A	12
	Crotonylene	3	UN1144	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
	Cupriethylenediamine solution	8	UN1761	II	CORROSIVE, POISON	T8, T26	None	202	243	1 L	30 L	A	95
				III	CORROSIVE, KEEP AWAY FROM FOOD.	T7	154	203	242	5 L	60 L	A	95
	Cutters, cable, explosive	1.4S	UN0070	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Cyanide or cyanide mixtures, dry, see Cyanides, inorganic, n.o.s.												
	Cyanide solutions, n.o.s.	6.1	UN1935	I	POISON	B37, T18, T26	None	201	243	1 L	30 L	B	40, 52
				II	POISON	T18, T26	None	202	243	5 L	60 L	A	40, 52
				III	KEEP AWAY FROM FOOD.	T18, T26	153	203	241	60 L	220 L	A	40, 52
	Cyanides, inorganic, solid, n.o.s.	6.1	UN1588	I	POISON	N74, N75	None	211	242	5 kg	50 kg	A	52
				II	POISON	N74, N75	None	212	242	25 kg	100 kg	A	52
				III	KEEP AWAY FROM FOOD.	N74, N75	153	213	240	100 kg	200 kg	A	52
	Cyanogen bromide	6.1	UN1889	I	POISON, CORROSIVE	25, A6, A8	None	211	242	Forbidden	Forbidden	D	40
	Cyanogen chloride, inhibited	2.3	UN1589		POISON GAS, CORROSIVE.	1	None	192	245	Forbidden	Forbidden	D	40
	Cyanogen, liquefied	2.3	UN1026		POISON GAS, FLAM-	2	None	192	245	Forbidden	Forbidden	D	40

			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
Cresols	6.1	UN2076	II	POISON, CORROSIVE	T8	None	202	243	1 L	30 L	B	
Cresylic acid	6.1	UN2022	II	POISON, CORROSIVE	T8	None	202	243	1 L	30 L	B	
Crotonaldehyde, stabilized	6.1	UN1143	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	30 L	B	40
Crotonic acid *liquid*	8	UN2823	III	CORROSIVE		154	203	241	5 L	60 L	A	12
Crotonic acid, *solid*	8	UN2823	III	CORROSIVE		154	213	240	25 kg	100 kg	A	12
Crotonylene	3	UN1144	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
Cuprietylenediamine solution	8	UN1761	II	CORROSIVE, POISON	T8, T26	None	202	243	1 L	30 L	A	95
			III	CORROSIVE, KEEP AWAY FROM FOOD.	T7	154	203	242	5 L	60 L	A	95
Cutters, cable, explosive	1.4S	UN0070	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
Cyanide or cyanide mixtures, dry, see Cyanides, inorganic, n.o.s.												
Cyanide solutions, n.o.s.	6.1	UN1935	I	POISON	B37, T18, T26	None	201	243	1 L	30 L	B	40, 52
			II	POISON	T18, T26	None	202	243	5 L	60 L	A	40, 52
			III	KEEP AWAY FROM FOOD.	T18, T26	153	203	241	60 L	220 L	A	40, 52
Cyanides, inorganic, solid, n.o.s.	6.1	UN1588	I	POISON	N74, N75	None	211	242	5 kg	50 kg	A	52
			II	POISON	N74, N75	None	212	242	25 kg	100 kg	A	52
			III	KEEP AWAY FROM FOOD.	N74, N75	153	213	240	100 kg	200 kg	A	52
Cyanogen bromide	6.1	UN1889	I	POISON, CORROSIVE	25, A6, A8	None	211	242	Forbidden	Forbidden	D	40
Cyanogen chloride, inhibited	2.3	UN1589		POISON GAS, CORROSIVE.	1	None	192	245	Forbidden	Forbidden	D	40
Cyanogen, liquefied	2.3	UN1026		POISON GAS, FLAMMABLE GAS.	2	None	192	245	Forbidden	Forbidden	D	40
Cyanuric chloride	8	UN2670	II	CORROSIVE		None	212	240	15 kg	50 kg	A	12, 40
Cyanuric triazide	Forbidden											
Cyclobutane	2.1	UN2601		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
Cyclobutylchloroformate	6.1	UN2744	II	POISON, CORROSIVE	T18	None	202	243	1 L	30 L	A	12, 13, 21, 25, 40, 100
1,5,9-Cyclododecatriene	6.1	UN2518	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	40
Cycloheptane	3	UN2241	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	40
Cycloheptatriene	3	UN2603	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	E	40
Cycloheptene	3	UN2242	II	FLAMMABLE LIQUID	B1, T7	150	202	242	5 L	60 L	B	
Cyclohexane	3	UN1145	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
Cyclohexanone	3	UN1915	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Cyclohexene	3	UN2256	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
Cyclohexenyltrichlorosilane	8	UN1762	II	CORROSIVE	A7, B2, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
Cyclohexyl acetate	3	UN2243	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Cyclohexyl isocyanate	6.1	UN2488	II	POISON	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	5 L	60 L	D	40
Cyclohexyl mercaptan	3	UN3054	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40, 95
Cyclohexylamine	8	UN2357	II	CORROSIVE, FLAMMABLE LIQUID.	T8, T26	None	202	243	1 L	30 L	A	40
Cyclohexyltrichlorosilane	8	UN1763	II	CORROSIVE	A7, B2, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
Cyclonite and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*ed												
Cyclonite and HMX mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*												
Cyclonite and octogen mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*												
Cyclonite, *see* Cyclotrimethylenetrinitramine, *etc.*												
Cyclooctadiene phosphines, *see* 9-Phosphabicyclononanes												
Cyclooctadienes	3	UN2520	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Cyclooctatetraene	3	UN2358	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
Cyclopentane	3	UN1146	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	E	
Cyclopentane, methyl, see Methyl cyclopentane												
Cyclopentanol	3	UN2244	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Cyclopentanone	3	UN2245	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Cyclopentene	3	UN2246	II	FLAMMABLE LIQUID	T13	150	202	242	5 L	60 L	E	
Cyclopropane, liquefied	2.1	UN1027		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
Cyclotetramethylene tetranitramine (dry or unphlegmatized) (HMX)	Forbidden											
Cyclotetramethylenetetranitramine, desensitized *or* Octogen, desensitized *or* HMX, desensitized	1.1D	UN0484	II	EXPLOSIVE 1.1D		None	62	[illegible]	Forbidden	Forbidden	B	1E, 5E
Cyclotetramethylenetetranitramine, wetted *or* HMX, wetted *or* Octogen, wetted *with not less than 15 percent water, by mass*	1.1D	UN0[illegible]6	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Cyclotrimethylenenitramine and octogen, mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*												
	Cyclotrimethylenetrinitramine and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted or desensitized *etc.*												
	Cyclotrimethylenetrinitramine and HMX mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*												
	Cyclotrimethylenetrinitramine, desensitized *or* Cyclonite, desensitized *or* Hexogen, desensitized *or* RDX, desensitized	1.1D	UN0483	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Cyclotrimethylenetrinitramine, wetted *or* Cyclonite, wetted *or* Hexogen, wetted *or* RDX, wetted *with not less than 15 percent water by mass*	1.1D	UN0072	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Cymenes	3	UN2046	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Decaborane	4.1	UN1868	II	FLAMMABLE SOLID, POISON.	A19, A20	None	212	None	Forbidden	50 kg	A	
	Decahydronaphthalene	3	UN1147	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	n-Decane	3	UN2247	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Deflagrating metal salts of aromatic nitroderivatives, n.o.s	1.3C	UN0132	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Delay electric igniter, see Igniters												
D	Denatured alcohol	3	NA1986	I	FLAMMABLE LIQUID, POISON.	T8, T31	None	201	243	Forbidden	30 L	E	40
				II	FLAMMABLE LIQUID, POISON.	T8, T31	None	202	243	1 L	60 L	E	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8, T31	150	203	242	60 L	220 L	E	40
D	Denatured alcohol	3	NA1987	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Depth charges, see Charges, depth												
	Detonating relays, see Detonators, *etc.*												
	Detonator assemblies, non-electric *for blasting*	1.1B	UN0360	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Detonator assemblies, non-electric, *for blasting*	1.4B	UN0361	II	EXPLOSIVE 1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	A	24E
	Detonators, electric, *for blasting*	1.1B	UN0030	II	EXPLOSIVE 1.1B		63(f), 63(g)	62	None	Forbidden	Forbidden	B	2E, 6E
	Detonators, electric, *for blasting*	1.4B	UN0255	II	EXPLOSIVE 1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	A	24E
	Detonators, electric *for blasting*	1.4S	UN0456	II	EXPLOSIVE 1.4S	104	63(f), 63(g)	62	None	25 kg	100 kg	A	
	Detonators for ammunition	1.1B	UN0073	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Detonators for ammunition	1.2B	UN0364	II	EXPLOSIVE 1.2B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Detonators for ammunition	1.4B	UN0365	II	EXPLOSIVE 1.4B	103	None	62	None	Forbidden	75 kg	A	24E
	Detonators for ammunition	1.4S	UN0366	II	EXPLOSIVE 1.4S	104	None	62	None	25 kg	100 kg	A	
	Detonators, non-electric, *for blasting*	1.1B	UN0029	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Detonators, non-electric, *for blasting*	1.4B	UN0267	II	EXPLOSIVE 1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	A	24E
	Detonators, non-electric *for blasting*	1.4S	UN0455	II	EXPLOSIVE 1.4S	104	None	62	None	25 kg	100 kg	A	
	Deuterium	2.1	UN1957		FLAMMABLE GAS		306	302	None	Forbidden	150 kg	E	40
	Devices, small, hydrocarbon gas powered *or* Hydrocarbon gas refills for small devices *with release device*	2.1	UN3150		FLAMMABLE GAS		306	304	None	Forbidden	150 kg	B	40
	Di-n-amylamine	3	UN2841	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8	150	203	242	60 L	220 L	A	
	Di-n-butyl peroxydicarbonate, with more than 52 percent in solution	Forbidden											
	Di-n-butylamine	8	UN2248	II	CORROSIVE, FLAMMABLE LIQUID.	T8	None	202	243	1 L	30 L	A	
	2,2-Di-(tert-butylperoxy) butane, with more than 55 percent in solution	Forbidden											
	Di-(tert-butylperoxy) phthalate, with more than 55 percent in solution	Forbidden											
	2,2-Di-(4,4-di-tert-butylperoxycyclohexyl) propane, with more than 42 percent with inert solid	Forbidden											
	Di-2,4-dichlorobenzoyl peroxide, with more than 75 percent with water	Forbidden											
	1,2-Di-(dimethylamino) ethane	3	UN2372	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Di-2-ethylhexyl phosphonic acid, see Diisooctyl acid phosphate												
	Di-(1-hydroxytetrazole) (dry)	Forbidden											

	Di-(1-naphthoyl) peroxide	Forbidden											
	a,a'-Di-(nitroxy) methylether	Forbidden											
	Di-(beta-nitroxyethyl) ammonium nitrate	Forbidden											
	Diacetone alcohol	3	UN1148	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diacetone alcohol peroxides, with more than 57 percent in solution with more than 9 percent hydrogen peroxide, less than 26 percent diacetone alcohol and less than 9 percent water; total active oxygen content more than 9 percent by mass	Forbidden											
	Diacetyl, see Butanedione												
	Diacetyl peroxide, solid, or with more than 25 percent in solution	Forbidden											
	Diallylamine	3	UN2359	II	FLAMMABLE LIQUID, POISON, CORROSIVE.	T8	None	202	243	1 L	5 L	B	21, 40, 100
	Diallylether	3	UN2360	II	FLAMMABLE LIQUID, POISON.	N12, T8	None	202	243	1 L	60 L	E	40
	4,4'-Diaminodiphenyl methane	6.1	UN2651	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	p-Diazidobenzene	Forbidden											
	1,2-Diazidoethane	Forbidden											
	1,1'-Diazoaminonaphthalene	Forbidden											
	Diazoaminotetrazole (dry)	Forbidden											
	Diazodinitrophenol (dry)	Forbidden											
	Diazodinitrophenol, wetted *with not less than 40 percent water or mixture of alcohol and water, by mass*	1.1A	UN0074	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Diazodiphenylmethane	Forbidden											
	Diazonium nitrates (dry)	Forbidden											
	Diazonium perchlorates (dry)	Forbidden											

	Di-(1-naphthoyl) peroxide	Forbidden														
	a,a'-Di-(nitroxy) methylether	Forbidden														
	Di-(beta-nitroxyethyl) ammonium nitrate	Forbidden														
	Diacetone alcohol	3	UN1148	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B				
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A				
	Diacetone alcohol peroxides, with more than 57 percent in solution with more than 9 percent hydrogen peroxide, less than 26 percent diacetone alcohol and less than 9 percent water; total active oxygen content more than 9 percent by mass	Forbidden														
	Diacetyl, see Butanedione															
	Diacetyl peroxide, solid, or with more than 25 percent in solution	Forbidden														
	Diallylamine	3	UN2359	II	FLAMMABLE LIQUID, POISON, CORROSIVE.	T8	None	202	243	1 L	5 L	B	21, 40, 100			
	Diallylether	3	UN2360	II	FLAMMABLE LIQUID, POISON.	N12, T8	None	202	243	1 L	60 L	E	40			
	4,4'-Diaminodiphenyl methane	6.1	UN2651	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A				
	p-Diazidobenzene	Forbidden														
	1,2-Diazidoethane	Forbidden														
	1,1'-Diazoaminonaphthalene	Forbidden														
	Diazoaminotetrazole (dry)	Forbidden														
	Diazodinitrophenol (dry)	Forbidden														
	Diazodinitrophenol, wetted *with not less than 40 percent water or mixture of alcohol and water, by mass*	1.1A	UN0074	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E			
	Diazodiphenylmethane	Forbidden														
	Diazonium nitrates (dry)	Forbidden														
	Diazonium perchlorates (dry)	Forbidden														
	1,3-Diazopropane	Forbidden														
	Dibenzyl peroxydicarbonate, with more than 87 percent with water	Forbidden														
	Dibenzyldichlorosilane	8	UN2434	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	40			
	Diborane	2.3	UN1911		POISON GAS, FLAMMABLE GAS.	1	None	302	None	Forbidden	Forbidden	D	40, 57			
	Diborane mixtures	2.1	NA1911		FLAMMABLE GAS	5	None	302	245	Forbidden	Forbidden	D	40, 57			
	Dibromoacetylene	Forbidden														
	Dibromobenzene	3	UN2711	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A				
	1,2-Dibromobutan-3-one	6.1	UN2648	II	POISON		None	202	243	5 L	60 L	B	40			
	Dibromochloropropane	6.1	UN2872	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A				
A	Dibromodifluoromethane, *R12B2*	9	UN1941	III	None	T22	155	203	241	100 L	220 L	A	25			
	1,2-Dibromoethane, see Ethylene dibromide															
	Dibromomethane	6.1	UN2664	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A				
	Dibutyl ethers	3	UN1149	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A				
	Dibutylaminoethanol	6.1	UN2873	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A				
	N,N'-Dichlorazodicarbonamidine (salts of) (dry)	Forbidden														
	1,1-Dichloro-1-nitroethane	6.1	UN2650	II	POISON	T8	None	202	243	5 L	60 L	A	12, 40			
D	3,5-Dichloro-2,4,6-trifluoropyridine	6.1	NA9264	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	A	40, 95			
	Dichloroacetic acid	8	UN1764	II	CORROSIVE	A3, A6, A7, B2, N34, T9, T27.	154	202	242	1 L	30 L	A				
	1,3-Dichloroacetone	6.1	UN2649	II	POISON		None	212	242	25 kg	100 kg	B	12, 40			
	Dichloroacetyl chloride	8	UN1765	II	CORROSIVE	A3, A6, A7, B2, B6, N34, T8, T26.	154	202	242	1 L	30 L	D	40			
	Dichloroacetylene	Forbidden														
	Dichloroanilines, liquid	6.1	UN1590	II	POISON	T14	None	202	243	5 L	60 L	A	40			
	Dichloroanilines, solid	6.1	UN1590	II	POISON	T14	None	212	242	25 kg	100 kg	A	40			
	o-Dichlorobenzene	6.1	UN1591	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A				
D	Dichlorobutene	8	NA2920	I	CORROSIVE, FLAMMABLE LIQUID.		None	201	243	0.5 L	2.5 L	C	12, 21, 25, 40, 48			
	2,2'-Dichlorodiethyl ether	6.1	UN1916	II	POISON, FLAMMABLE LIQUID.	N33, N34, T8	None	202	243	5 L	60 L	A				
	Dichlorodifluoromethane and difluoroethane azeotropic mixture *with approximately 74 percent dichlorodifluoromethane, R500*	2.2	UN2602		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A				
	Dichlorodifluoromethane, *R12*	2.2	UN1028		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A				
	Dichlorodimethyl ether, symmetrical	6.1	UN2249	I	POISON	T25	None	201	243	Forbidden	Forbidden	D	40			
	1,1-Dichloroethane	3	UN2362	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40			
	1,2-Dichloroethane, see Ethylene dichloride															
	Dichloroethyl sulfide	Forbidden														
	Dichloroethylene	3	UN1150	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	B				
	Dichlorofluoromethane, *R21*	2.2	UN1029		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A				

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Dichloroisocyanuric acid, dry *or* Dichloroisocyanuric acid salts	5.1	UN2465	II	OXIDIZER	28	152	212	240	5 kg	25 kg	A	13
	Dichloroisopropyl ether	6.1	UN2490	II	POISON	T8	None	202	243	5 L	60 L	B	
	Dichloromethane	6.1	UN1593	III	KEEP AWAY FROM FOOD.	N36, T13	153	203	241	60 L	220 L	A	
	Dichloropentanes	3	UN1152	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Dichlorophenyl isocyanates	6.1	UN2250	II	POISON		None	212	242	25 kg	100 kg	A	28, 40, 48
	Dichlorophenyltrichlorosilane	8	UN1766	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	Dichloropropane, see Propylene dichloride												
	1,3-Dichloropropanol-2	6.1	UN2750	II	POISON	T8	None	202	243	5 L	60 L	A	12, 40
	Dichloropropene and propylene dichloride mixture, see Propylene dichloride												
	Dichloropropenes	3	UN2047	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	
	Dichlorosilane	2.3	UN2189		POISON GAS, FLAMMABLE GAS, CORROSIVE.	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	17, 40
	Dichlorotetrafluoroethane, *R114*	2.2	UN1958		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Dichlorovinylchloroarsine	Forbidden											
	Dicycloheptadiene, *see* Norbornadiene												
	Dicyclohexylamine	8	UN2565	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Dicyclohexylammonium nitrite	4.1	UN2687	III	FLAMMABLE SOLID		153	213	240	25 kg	100 kg	A	48
	Dicyclopentadiene	3	UN2048	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Didymium nitrate	5.1	UN1465	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
D	Dieldrin	6.1	NA2761	II	POISON		None	212	242	0.5 kg	5 kg	A	40
D	Diesel fuel	3	NA1993	III	None	B1	150	203	242	60 L	220 L	A	
	Diethanol nitrosamine dinitrate (dry)	Forbidden											
	Diethoxymethane	3	UN2373	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	3,3-Diethoxypropene	3	UN2374	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	N,N-Diethyl aniline	6.1	UN2432	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Diethyl carbonate	3	UN2366	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diethyl cellosolve, see Ethylene glycol diethyl ether												
	Diethyl ether *or* Ethyl ether	3	UN1155	I	FLAMMABLE LIQUID	T21	150	201	243	1 L	30 L	E	40
	Diethyl ketone	3	UN1156	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Diethyl peroxydicarbonate, with more than 27 percent in solution	Forbidden											
	Diethyl sulfate	6.1	UN1594	II	POISON	T14	None	202	243	5 L	60 L	C	
	Diethyl sulfide	3	UN2375	II	FLAMMABLE LIQUID	T14	None	202	243	1 L	60 L	E	
	Diethylamine	3	UN1154	II	FLAMMABLE LIQUID, CORROSIVE.	N34, T8	None	202	243	1 L	5 L	E	40
	Diethylaminoethanol	3	UN2686	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diethylaminopropylamine	3	UN2684	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T8	150	203	242	5 L	60 L	A	
	Diethylbenzene	3	UN2049	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diethyldichlorosilane	8	UN1767	II	CORROSIVE, FLAMMABLE LIQUID.	A7, B6, N34, T8, T26.	None	202	243	Forbidden	30 L	C	40
	Diethylene glycol dinitrate	Forbidden											
	Diethyleneglycol dinitrate, desensitized *with not less than 25 percent non-volatile water-insoluble phlegmatizer, by mass*	1.1D	UN0075	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 4E, 21E
	Diethylenetriamine	8	UN2079	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	40
	N,N-Diethylethylenediamine	8	UN2685	II	CORROSIVE, FLAMMABLE LIQUID.	T8	None	202	243	1 L	30 L	A	
	Diethylgold bromide	Forbidden											
	Diethylthiophosphoryl chloride	8	UN2751	II	CORROSIVE	B2, T8	None	212	240	15 kg	50 kg	C	40
	Diethylzinc	4.2	UN1366	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T28, T40	None	181	244	Forbidden	Forbidden	D	18
	Difluorochloroethanes, see Chloro-1,1-difluoroethanes												
	1,1-Difluoroethane, *R152a*	2.1	UN1030		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	1,1-Difluoroethylene, *R1132a*	2.1	UN1959		FLAMMABLE GAS		306	304	None	Forbidden	150 kg	E	40
	Difluoromethane	2.1	UN3252		FLAMMABLE GAS		306	302	314, 315	Forbidden	150 kg	D	40

	Difluorophosphoric acid, anhydrous	8	UN1768	II	CORROSIVE	A6, A7, B2, N5, N34, T9, T27.	None	202	242	1 L	30 L	A	40
	2,3-Dihydropyran	3	UN2376	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	1,8-Dihydroxy-2,4,5,7-tetranitroanthraquinone (chrysamminic acid)	Forbidden											
	Diiodoacetylene	Forbidden											
	Diisobutyl ketone	3	UN1157	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diisobutylamine	3	UN2361	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T1	150	203	242	5 L	60 L	A	
	Diisobutylene, isomeric compounds	3	UN2050	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Diisooctyl acid phosphate	8	UN1902	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Diisopropyl ether	3	UN1159	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	40
	Diisopropylamine	3	UN1158	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	
	Diisopropylbenzene hydroperoxide, with more than 72 percent in solution	Forbidden											
	Diketene, inhibited	6.1	UN2521	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40, 48
	1,2-Dimethoxyethane	3	UN2252	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	1,1-Dimethoxyethane	3	UN2377	II	FLAMMABLE LIQUID	T13	150	202	242	5 L	60 L	B	
	Dimethyl carbonate	3	UN1161	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Dimethyl chlorothiophosphate, see Dimethyl thiophosphoryl chloride												
	2,5-Dimethyl-2,5-dihydroperoxy hexane, with more than 82 percent with water	Forbidden											
	Dimethyl disulfide	3	UN2381	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Dimethyl ether	2.1	UN1033		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Dimethyl-N-propylamine	3	UN2266	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	

Difluorophosphoric acid, anhydrous	8	UN1768	II	CORROSIVE	A6, A7, B2, N5, N34, T9, T27.	None	202	242	1 L	30 L	A	40
2,3-Dihydropyran	3	UN2376	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
1,8-Dihydroxy-2,4,5,7-tetranitroanthraquinone (chrysamminic acid)	Forbidden											
Diiodoacetylene	Forbidden											
Diisobutyl ketone	3	UN1157	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Diisobutylamine	3	UN2361	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T1	150	203	242	5 L	60 L	A	
Diisobutylene, isomeric compounds	3	UN2050	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
Diisooctyl acid phosphate	8	UN1902	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
Diisopropyl ether	3	UN1159	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	40
Diisopropylamine	3	UN1158	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	
Diisopropylbenzene hydroperoxide, with more than 72 percent in solution	Forbidden											
Diketene, inhibited	6.1	UN2521	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40, 49
1,2-Dimethoxyethane	3	UN2252	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
1,1-Dimethoxyethane	3	UN2377	II	FLAMMABLE LIQUID	T13	150	202	242	5 L	60 L	B	
Dimethyl carbonate	3	UN1161	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
Dimethyl chlorothiophosphate, see Dimethyl thiophosphoryl chloride												
2,5-Dimethyl-2,5-dihydroperoxy hexane, with more than 82 percent with water	Forbidden											
Dimethyl disulfide	3	UN2381	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
Dimethyl ether	2.1	UN1033		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
Dimethyl-N-propylamine	3	UN2266	II	FLAMMABLE LIQUID, CORROSIVE.	T14, T26	None	202	243	1 L	5 L	B	40
Dimethyl sulfate	6.1	UN1595	I	POISON, CORROSIVE	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
Dimethyl sulfide	3	UN1164	II	FLAMMABLE LIQUID	T14	None	202	242	5 L	60 L	E	40
Dimethyl thiophosphoryl chloride	6.1	UN2267	II	POISON, CORROSIVE	T7	None	202	243	1 L	30 L	B	25
Dimethylamine, anhydrous	2.1	UN1032		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	D	40
Dimethylamine solution	3	UN1160	II	FLAMMABLE LIQUID, CORROSIVE.	T8, T34	None	202	243	1 L	5 L	B	
2-Dimethylaminoacetonitrile	3	UN2378	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	A	26, 40
2-Dimethylaminoethanol	8	UN2051	III	CORROSIVE, FLAMMABLE LIQUID.	B1, T8	154	203	242	60 L	220 L	A	
Dimethylamindethyl methacrylate	6.1	UN2522	II	POISON	T8	None	202	243	5 L	60 L	B	40
N,N-Dimethylaniline	6.1	UN2253	II	POISON	T8	None	202	243	5 L	60 L	A	
2,3-Dimethylbutane	3	UN2457	II	FLAMMABLE LIQUID	T13	150	202	242	5 L	60 L	E	
1,3-Dimethylbutylamine	3	UN2379	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	
Dimethylcarbamoyl chloride	8	UN2262	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	40
Dimethylcyclohexanes	3	UN2263	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
Dimethylcyclohexylamine	8	UN2264	II	CORROSIVE, FLAMMABLE LIQUID.	B2, T8	154	202	243	1 L	30 L	A	40
Dimethyldichlorosilane	3	UN1162	II	FLAMMABLE LIQUID, CORROSIVE.	B77, T15, T26	None	202	243	Forbidden	Forbidden	B	40
Dimethyldimethoxysilane	3	UN2380	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
Dimethyldioxanes	3	UN2707	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
N,N-Dimethylformamide	3	UN2265	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Dimethylhexane dihydroperoxide (dry)	Forbidden											
Dimethylhydrazine, symmetrical	6.1	UN2382	I	POISON, FLAMMABLE LIQUID.	2, A7, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
Dimethylhydrazine, unsymmetrical	6.1	UN1163	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, B9, B14, B32, B74, B79, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	21, 38, 40, 100
2,2-Dimethylpropane	2.1	UN2044		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
Dimethylzinc	4.2	UN1370	I	SPONTANEOUSLY COMBUSTIBLE.	B11, B16, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	18
Dinitro-o-cresol, *solid*	6.1	UN1598	II	POISON	T14	None	212	242	25 kg	100 kg	A	
Dinitro-o-cresol, *solution*	6.1	UN1598	II	POISON	T14	None	202	243	5 L	60 L	A	
1,3-Dinitro-5,5-dimethyl hydantoin	Forbidden											
Dinitro-7,8-dimethylglycoluril (dry)	Forbidden											
1,3-Dinitro-4,5-dinitrosobenzene	Forbidden											
1,4-Dinitro-1,1,4,4-tetramethylolbutanetetranitrate (dry)	Forbidden											
2,4-Dinitro-1,3,5-trimethylbenzene	Forbidden											
Dinitroanilines	6.1	UN1596	II	POISON	T14	None	212	242	25 kg	100 kg	A	91

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Dinitrobenzenes, liquid	6.1	UN1597	II	POISON	11, T14	None	202	243	5 L	60 L	A	91
	Dinitrobenzenes, solid	6.1	UN1597	II	POISON	11	None	212	242	25 kg	100 kg	A	91
	Dinitrochlorobenzene, *see* Chlorodinitrobenzene												
	1,2-Dinitroethane	Forbidden											
	1,1-Dinitroethane (dry)	Forbidden											
	Dinitrogen tetroxide, liquefied	2.3	UN1067		POISON GAS, OXIDIZER, CORROSIVE.	1, B7, B12, B14, B45, B46, B61, B66, B67, B77.	None	336	314	Forbidden	Forbidden	D	40, 89, 90
	Dinitroglycoluril *or* Dingu	1.1D	UN0489	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitromethane	Forbidden											
	Dinitrophenol, dry or wetted with less than 15 percent water, by mass	1.1D	UN0076	II	EXPLOSIVE 1.1D, POISON.		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitrophenol solutions	6.1	UN1599	II	POISON	T8	None	202	243	5 L	60 L	A	36
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	36
	Dinitrophenol, wetted with not less than 15 percent water, by mass	4.1	UN1320	I	FLAMMABLE SOLID, POISON.	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	Dinitrophenolates alkali metals, dry or wetted with less than 15 percent water, by mass	1.3C	UN0077	II	EXPLOSIVE 1.3C, POISON.		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitrophenolates, wetted with not less than 15 percent water, by mass	4.1	UN1321	I	FLAMMABLE SOLID, POISON.	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	Dinitropropylene glycol	Forbidden											
	Dinitroresorcinol, dry or wetted with less than 15 percent water, by mass	1.1D	UN0078	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	2,4-Dinitroresorcinol (heavy metal salts of) (dry)	Forbidden											
	4,6-Dinitroresorcinol (heavy metal salts of) (dry)	Forbidden											
	Dinitroresorcinol, wetted with not less than 15 percent water, by mass	4.1	UN1322	I	FLAMMABLE SOLID	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	3,5-Dinitrosalicylic acid (lead salt) (dry)	Forbidden											
	Dinitrosobenzene	1.3C	UN0406	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitrosobenzylamidine and salts of (dry)	Forbidden											
	2,2-Dinitrostilbene	Forbidden											
	Dinitrotoluenes, liquid	6.1	UN2038	II	POISON	T8	None	202	243	5 L	60 L	A	
	Dinitrotoluenes, molten	6.1	UN1600	II	POISON	T14	None	202	243	Forbidden	Forbidden	C	
	Dinitrotoluenes, solid	6.1	UN2038	II	POISON	T8	None	212	242	25 kg	100 kg	A	
	1,9-Dinitroxy pentamethylene-2,4, 6,8-tetramine (dry)	Forbidden											
	Dioxane	3	UN1165	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Dioxolane	3	UN1166	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Dipentene	3	UN2052	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40
	Diphenylamine chloroarsine	6.1	UN1698	I	POISON		None	201	None	Forbidden	Forbidden	D	40
	Diphenylchloroarsine, liquid	6.1	UN1699	I	POISON	A8, B14, B32, N33, N34.	None	201	243	Forbidden	30 L	D	40
	Diphenylchloroarsine, solid	6.1	UN1699	I	POISON	A8, B14, B32, N33, N34.	None	211	242	Forbidden	15 kg	D	40
	Diphenyldichlorosilane	8	UN1769	II	CORROSIVE	A7, B2, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	Diphenylmethane-4,4'diisocyanate	6.1	UN2489	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	48
	Diphenylmethyl bromide	8	UN1770	II	CORROSIVE		154	212	240	15 kg	50 kg	D	40
	Dipicryl sulfide, dry or wetted with less than 10 percent water, by mass	1.1D	UN0401	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dipicryl sulfide, wetted with not less than 10 percent water, by mass	4.1	UN2852	I	FLAMMABLE SOLID	A2, N41	None	211	None	Forbidden	0.5 kg	D	28
	Dipicrylamine, *see* Hexanitrodiphenylamine												
	Dipropionyl peroxide, with more than 28 percent in solution	Forbidden											
	Dipropyl ether	3	UN2384	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Dipropylamine	3	UN2383	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	
	Dipropylketone	3	UN2710	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Disinfectants, liquid, corrosive n.o.s.	8	UN1903	II	CORROSIVE	B2	154	202	242	1 L	30 L	B	
				III	CORROSIVE		154	203	241	5 L	60 L	A	
	Disinfectants, liquid, toxic, n.o.s	6.1	UN3142	I	POISON	A4, T42	None	201	243	1 L	30 L	A	40
				II	POISON	T14	None	202	243	5 L	60 L	A	40
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	40

	Disinfectants, solid, toxic, n.o.s.	6.1	UN1601	II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Disodium trioxosilicate, pentahydrate	8	UN3253	III	CORROSIVE		154	215	240	25 kg	100 kg	A	
	Dispersant gases, n.o.s. *see* Refrigerant gases, n.o.s.												
	Dithiocarbamate pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2772	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Dithiocarbamate pesticides, liquid, toxic	6.1	UN3006	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Dithiocarbamate pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3005	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	243	60 L	220 L	A	40
	Dithiocarbamate pesticides, solid, toxic	6.1	UN2771	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40

Disinfectants, solid, toxic, n.o.s.	6.1	UN1601	II	POISON		None	212	242	25 kg	100 kg	A	40
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
Disodium trioxosilicate, pentahydrate	8	UN3253	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
Dispersant gases, n.o.s. *see* Refrigerant gases, n.o.s.												
Dithiocarbamate pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2772	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
			II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
Dithiocarbamate pesticides, liquid, toxic	6.1	UN3006	I	POISON	T42	None	201	243	1 L	30 L	B	40
			II	POISON	T14	None	202	243	5 L	60 L	B	40
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
Dithiocarbamate pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3005	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40
Dithiocarbamate pesticides, solid, toxic	6.1	UN2771	I	POISON		None	211	242	5 kg	50 kg	A	40
			II	POISON		None	212	242	25 kg	100 kg	A	40
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
Divinyl ether, inhibited	3	UN1167	I	FLAMMABLE LIQUID	T14	None	201	243	5 L	60 L	E	40
D Dodecylbenzenesulfonic acid	8	NA2584	II	CORROSIVE	B2	154	202	242	1 L	30 L	B	9
Dodecyltrichlorosilane	8	UN1771	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
Dry ice, *see* Carbon dioxide, solid												
Dyes, liquid, corrosive n.o.s. *or* Dye intermediates, liquid, corrosive, n.o.s.	8	UN2801	II	CORROSIVE	11, B2, T14	154	202	242	1 L	30 L	A	
			III	CORROSIVE	11, T7	154	203	241	5 L	60 L	A	
Dyes, liquid, toxic, n.o.s *or* Dye intermediates, liquid, toxic, n.o.s.	6.1	UN1602	II	POISON		None	202	243	5 L	60 L	A	
			III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220	A	
Dyes, solid, corrosive, n.o.s. *or* Dye intermediates, solid, corrosive, n.o.s.	8	UN3147	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
			III	CORROSIVE		154	213	240	25 kg	100 kg	A	
Dyes, solid, toxic, n.o.s. *or* Dye intermediates, solid, toxic, n.o.s.	6.1	UN3143	I	POISON	A5	None	211	242	5 kg	50 kg	A	
			II	POISON		None	212	242	25 kg	100 kg	A	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
Dynamite, see Explosive, blasting, type A												
Electrolyte (acid or alkali) for batteries, see Battery fluid, acid *or* Battery fluid, alkali												
Elevated temperature liquid, flammable, n.o.s., *with flash point above 37.8 C, at or above its flash point*	3	UN3256	III	FLAMMABLE LIQUID	T1	None	None	247	Forbidden	Forbidden	A	
Elevated temperature liquid, n.o.s., *at or above 100 C and below its flash point*	9	UN3257	III	CLASS 9	T1	None	None	247	Forbidden	Forbidden	A	85
Elevated temperature solid, n.o.s., *at or above 240 C, see section 173.247(h)(4)*	9	UN3258	III	CLASS 9		247(h)(4)	None	247	Forbidden	Forbidden	A	85
Engine starting fluid, *with flammable gas*	2.1	UN1960		FLAMMABLE GAS		None	304	None	Forbidden	150 kg	D	40
Engines, internal combustion, *including when fitted in machinery or vehicles*	9	UN3166		CLASS 9		220	220	None	Forbidden	No limit	A	
Engines, internal combustion, *see* Vehicle, self-propelled												
Environmentally hazardous substances, liquid, n.o.s.	9	UN3082	III	CLASS 9	8, N50, T1	155	203	241	None	None	A	
Environmentally hazardous substances, solid, n.o.s.	9	UN3077	III	CLASS 9	8, B50, B54	155	213	240	None	None	A	
Epibromohydrin	6.1	UN2558	I	POISON	T18, T26	None	201	243	Forbidden	Forbidden	D	40
Epichlorohydrin	6.1	UN2023	II	POISON	T14	None	202	243	5 L	60 L	A	40
1,2-Epoxy-3-ethoxypropane	3	UN2752	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Esters, n.o.s.	3	UN3272	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A	
Etching acid, liquid, n.o.s., see Hydrofluoric acid, solution *etc.*												
Ethane, compressed	2.1	UN1035		FLAMMABLE GAS		306	304	302	Forbidden	150 kg	E	40
D Ethane-Propane mixture, refrigerated liquid	2.1	NA1961		FLAMMABLE GAS		None	316	314, 315	Forbidden	Forbidden	D	40
Ethane, refrigerated liquid	2.1	UN1961		FLAMMABLE GAS		None	None	315	Forbidden	Forbidden	D	40
Ethanol amine dinitrate	Forbidden											
Ethanol *or* Ethyl alcohol *or* Ethanol solutions *or* Ethyl alcohol solutions	3	UN1170	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	A	
			III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Ethanolamine *or* Ethanolamine solutions	8	UN2491	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
Ether, see Diethyl ether												

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Ethers, n.o.s.	3	UN3271	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A	
	Ethyl acetate	3	UN1173	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	
	Ethyl acrylate, inhibited	3	UN1917	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Ethyl alcohol, *see* Ethanol												
	Ethyl aldehyde, see Acetaldehyde												
	Ethyl amyl ketone	3	UN2271	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	N-Ethyl-N-benzylaniline	6.1	UN2274	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Ethyl borate	3	UN1176	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Ethyl bromide	6.1	UN1891	II	POISON	T17	None	202	243	5 L	60 L	B	40, 86
	Ethyl bromoacetate	6.1	UN1603	II	POISON	T14	None	202	243	Forbidden	Forbidden	D	40
	Ethyl butyl ether	3	UN1179	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
	Ethyl butyrate	3	UN1180	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ethyl chloride	2.1	UN1037		FLAMMABLE GAS	B63, B77	None	322	314, 315	Forbidden	150 kg	B	40
	Ethyl chloroacetate	6.1	UN1181	II	POISON	T14	None	202	243	5 L	60 L	A	
	Ethyl chloroformate	6.1	UN1182	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, A3, A6, A7, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	21, 40, 100
	Ethyl-2-chloropropionate	3	UN2935	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
*	Ethyl chlorothioformate	8	UN2826	II	CORROSIVE, POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	A	40
	Ethyl crotonate	3	UN1862	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Ethyl cyanoacetate	6.1	UN2666	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	26
	Ethyl ether, *see* Diethyl ether												
	Ethyl fluoride	2.1	UN2453		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
	Ethyl formate	3	UN1190	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	Ethyl hydroperoxide	Forbidden											
	Ethyl isobutyrate	3	UN2385	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
*	Ethyl isocyanate	3	UN2481	I	FLAMMABLE LIQUID, POISON.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40
	Ethyl lactate	3	UN1192	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ethyl mercaptan	3	UN2363	I	FLAMMABLE LIQUID	T21	None	201	243	Forbidden	30 L	E	95, 102
	Ethyl methacrylate	3	UN2277	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Ethyl methyl ether	2.1	UN1039		FLAMMABLE GAS	B63	None	324	314, 315	Forbidden	150 kg	B	40
	Ethyl methyl ketone *or* Methyl ethyl ketone	3	UN1193	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Ethyl nitrite solutions	3	UN1194	I	FLAMMABLE LIQUID, POISON.		None	201	None	Forbidden	Forbidden	E	40, 105
	Ethyl orthoformate	3	UN2524	III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A	
	Ethyl oxalate	6.1	UN2525	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Ethyl perchlorate	Forbidden											
D	Ethyl phosphonothioic dichloride, anhydrous	6.1	NA2927	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
D	Ethyl phosphorous dichloride, anhydrous *pyrophonc liquid*	6.1	NA2845	I	POISON, SPONTANEOUSLY COMBUSTIBLE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	18
D	Ethyl phosphorodichloridate	6.1	NA2927	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
	Ethyl propionate	3	UN1195	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Ethyl propyl ether	3	UN2615	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	Ethyl silicate, see Tetraethyl silicate												
	Ethylacetylene, inhibited	2.1	UN2452		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	B	40

	Ethylamine	2.1	UN1036		FLAMMABLE GAS	B77	None	321	314, 315	Forbidden	150 kg	D	40
	Ethylamine, aqueous solution *with not less than 50 percent but not more than 70 percent ethylamine*	3	UN2270	II	FLAMMABLE LIQUID, CORROSIVE.	T14	None	202	242	1 L	5 L	B	40
	N-Ethylaniline	6.1	UN2272	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	2-Ethylaniline	6.1	UN2273	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Ethylbenzene	3	UN1175	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	N-Ethylbenzyltoluidines liquid	6.1	UN2753	III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	
	N-Ethylbenzyltoluidines solid	6.1	UN2753	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	2-Ethylbutanol	3	UN2275	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	2-Ethylbutyl acetate	3	UN1177	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	2-Ethylbutyraldehyde	3	UN1178	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
	Ethyldichloroarsine	6.1	UN1892	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Ethyldichlorosilane	4.3	UN1183	I	DANGEROUS WHEN WET, CORROSIVE, FLAMMABLE LIQUID.	A2, A3, A7, N34, T18, T26.	None	201	244	Forbidden	1 L	D	21, 28, 40, 49, 100
	Ethylene, acetylene and propylene in mixtures, refrigerated liquid *with at least 71.5 percent ethylene with not more than 22.5 percent acetylene and not more than 6 percent propylene*	2.1	UN3138		FLAMMABLE GAS		None	304	314,	Forbidden	Forbidden	D	40

Ethylamine	2.1	UN1036		FLAMMABLE GAS	B77	None	321	314, 315	Forbidden	150 kg	D	40
Ethylamine, aqueous solution *with not less than 50 percent but not more than 70 percent ethylamine*	3	UN2270	II	FLAMMABLE LIQUID, CORROSIVE.	T14	None	202	243	1 L	5 L	B	40
N-Ethylaniline	6.1	UN2272	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
2-Ethylaniline	6.1	UN2273	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
Ethylbenzene	3	UN1175	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
N-Ethylbenzyltoluidines liquid	6.1	UN2753	III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	
N-Ethylbenzyltoluidines solid	6.1	UN2753	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
2-Ethylbutanol	3	UN2275	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
2-Ethylbutyl acetate	3	UN1177	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
2-Ethylbutyraldehyde	3	UN1178	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
Ethyldichloroarsine	6.1	UN1892	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
Ethyldichlorosilane	4.3	UN1183	I	DANGEROUS WHEN WET, CORROSIVE, FLAMMABLE LIQUID.	A2, A3, A7, N34, T18, T26.	None	201	244	Forbidden	1 L	D	21, 28, 40, 49, 100
Ethylene, acetylene and propylene in mixtures, refrigerated liquid *with at least 71.5 percent ethylene with not more than 22.5 percent acetylene and not more than 6 percent propylene*	2.1	UN3138		FLAMMABLE GAS		None	304	314, 315	Forbidden	Forbidden	D	40
Ethylene chlorohydrin	6.1	UN1135	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
Ethylene, compressed	2.1	UN1962		FLAMMABLE GAS		306	304	302	Forbidden	150 kg	E	40
Ethylene diamine diperchlorate	Forbidden											
Ethylene dibromide	6.1	UN1605	I	POISON	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
Ethylene dibromide and methyl bromide liquid mixtures, see Methyl bromide and ethylene dibromide, liquid mixtures												
Ethylene dichloride	3	UN1184	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	B	40
Ethylene glycol diethyl ether	3	UN1153	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Ethylene glycol dinitrate	Forbidden											
Ethylene glycol monobutyl ether	6.1	UN2369	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
Ethylene glycol monoethyl ether	3	UN1171	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Ethylene glycol monoethyl ether acetate	3	UN1172	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Ethylene glycol monomethyl ether	3	UN1188	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Ethylene glycol monomethyl ether acetate	3	UN1189	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Ethylene oxide and carbon dioxide mixture *with more than 87 percent ethylene oxide*	2.3	UN3300		POISON GAS, FLAMMABLE GAS.	4	None	304	314, 315	Forbidden	75 kg	D	40
Ethylene oxide and carbon dioxide mixtures, see Carbon dioxide and ethylene oxide mixtures, *etc.*												
Ethylene oxide and carbon dioxide mixtures *with more than 9 percent but not more than 87 percent ethylene oxide*	2.1	UN1041		FLAMMABLE GAS	25	306	304	314, 315	Forbidden	25 kg	B	40
Ethylene oxide and carbon dioxide mixtures *with not more than 9 percent ethylene oxide*	2.2	UN1952		NONFLAMMABLE GAS	25	306	304	314, 315	75 kg	150 kg	A	
Ethylene oxide and chlorotetrafluoroethane mixture *with not more than 8.8 percent ethylene oxide*	2.2	UN3297		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
Ethylene oxide and dichlorodifluoromethane mixture, *with not more than 12.5 percent ethylene oxide*	2.2	UN3070		NONFLAMMABLE GAS	25	306	304	314, 315	75 kg	150 kg	A	
Ethylene oxide and pentafluoroethane mixture *with not more than 7.9 percent ethylene oxide*	2.2	UN3298		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
Ethylene oxide and propylene oxide mixtures, *with not more than 30 percent ethylene oxide*	3	UN2983	I	FLAMMABLE LIQUID, POISON.	5, A11, N4, N34, T24, T29.	None	201	243	Forbidden	30 L	E	40
Ethylene oxide and tetrafluoroethane mixture *with not more than 5.6 percent ethylene oxide*	2.2	UN3299		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	~~Ethylene oxide or Ethylene oxide with nitrogen up to a total pressure of 1MPa (10 bar) at 50 degrees C~~												
	1MPa (10 bar) at 50 degrees C	2.3	UN1040		POISON GAS, FLAMMABLE GAS.	4, 25	None	323	323	Forbidden	25 kg	D	40
	Ethylene, refrigerated liquid *(cryogenic liquid)*	2.1	UN1038		FLAMMABLE GAS		None	316	318, 319	Forbidden	Forbidden	D	40
	Ethylenediamine	8	UN1604	II	CORROSIVE, FLAMMABLE LIQUID.	T14	154	202	243	1 L	30 L	A	40
	Ethyleneimine, inhibited	6.1	UN1185	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, B77, N25, N32, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Ethylhexaldehyde, see Octyl aldehydes *etc.*												
	2-Ethylhexylamine	3	UN2276	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T2	150	203	242	5 L	60 L	A	40
	2-Ethylhexylchloroformate	6.1	UN2748	II	POISON, CORROSIVE	T42	None	202	243	1 L	30 L	A	12, 13, 21, 25, 40, 100
	Ethylphenyldichlorosilane	8	UN2435	II	CORROSIVE	A7, B2, N34, T8, T26.	None	202	242	Forbidden	30 L	C	
	1-Ethylpiperidine	3	UN2386	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	
	N-Ethyltoluidines	6.1	UN2754	II	POISON	T14	None	202	243	5 L	60 L	A	
	Ethyltrichlorosilane	3	UN1196	II	FLAMMABLE LIQUID, CORROSIVE.	A7, N34, T15, T26	None	202	243	1 L	5 L	B	40
	Etiologic agent, see Infectious substances, *etc.*)												
	Explosive articles, see Articles, explosive , n.o.s. *etc.*												
	Explosive, blasting, type A	1.1D	UN0081	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 21E
	Explosive, blasting, type B	1.1D	UN0082	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, blasting, type B *or* Agent blasting, Type B	1.5D	UN0331	II	EXPLOSIVE 1.5D	105, 106	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, blasting, type C	1.1D	UN0083	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, blasting, type D	1.1D	UN0084	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, blasting, type E	1.1D	UN0241	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, blasting, type E *or* Agent blasting, Type E	1.5D	UN0332	II	EXPLOSIVE 1.5D	105, 106	None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Explosive, forbidden. See Sec. 173.54	Forbidden											1E, 5E
D	Explosive pest control devices	1.1E	NA0006	II	EXPLOSIVE 1.1E		None	62	None	Forbidden	Forbidden	E	
D	Explosive pest control devices	1.4E	NA0412	II	EXPLOSIVE 1.4E		None	62	None	Forbidden	75 kg	A	24E
	Explosive substances, see Substances, explosive, n.o.s. *etc.*												
	Explosives, slurry, see Explosive, blasting, type E												
	Explosives, water gels, see Explosive, blasting, type E												
	Extracts, aromatic, liquid	3	UN1169	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Extracts, flavoring, liquid	3	UN1197	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Fabric with animal or vegetable oil, see Fibers *or* fabrics, *etc.*												
	Ferric arsenate	6.1	UN1606	II	POISON		None	212	242	25 kg	100 kg	A	
	Ferric arsenite	6.1	UN1607	II	POISON		None	212	242	25 kg	100 kg	A	
	Ferric chloride, anhydrous	8	UN1773	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Ferric chloride, solution	8	UN2582	III	CORROSIVE	B15, T8	154	203	241	5 L	60 L	A	
	Ferric nitrate	5.1	UN1466	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Ferrocerium	4.1	UN1323	II	FLAMMABLE SOLID	A19	151	212	240	15 kg	50 kg	A	
	Ferrosilicon, *with 30 percent or more but less than 90 percent silicon*	4.3	UN1408	III	DANGEROUS WHEN WET, KEEP AWAY FROM FOOD.	A1, A19	None	213	240	25 kg	100 kg	A	13, 40, 85, 103
	Ferrous arsenate	6.1	UN1608	II	POISON		None	212	242	25 kg	100 kg	A	
D	Ferrous chloride, solid	8	NA1759	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
D	Ferrous chloride, solution	8	NA1760	II	CORROSIVE	B3	154	202	242	1 L	30 L	B	40
	Ferrous metal borings *or* Ferrous metal shavings *or* Ferrous metal turnings *or* Ferrous metal cuttings *in a form liable to self-heating*	4.2	UN2793	III	SPONTANEOUSLY COMBUSTIBLE.	A1, A19	None	213	241	25 kg	100 kg	A	
	Fertilizer ammoniating solution *with free ammonia*	2.2	UN1043		NONFLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
AIW	Fibers *or* Fabrics, animal *or* vegetable *or* Synthetic, n.o.s. *with animal or vegetable oil*	4.2	UN1373	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	A	
	Fibers *or* Fabrics impregnated with weakly nitrated nitrocellulose, n.o.s.	4.1	UN1353	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	D	
	Films, nitrocellulose base, from which gelatine has been removed; film scrap, see Celluloid scrap												
	Films, nitrocellulose base, *gelatine coated (except scrap)*	4.1	UN1324	III	FLAMMABLE SOLID		None	183	None	25 kg	100 kg	D	91
	Fire extinguisher charges, *corrosive liquid*	8	UN1774	II	CORROSIVE	N41	154	202	None	1 L	30 L	A	
	Fire extinguisher charges, expelling, explosive, see Cartridges, power device												
	Fire extinguishers *containing compressed or liquefied gas*	2.2	UN1044		NONFLAMMABLE GAS		309	309	None	75 kg	150 kg	A	
	Firelighters, solid *with flammable liquid*	4.1	UN2623	II	FLAMMABLE SOLID	A19	None	212	None	15 kg	50 kg	A	119
				III	FLAMMABLE SOLID	A1, A19	None	213	None	25 kg	100 kg	A	119
	Fireworks	1.1G	UN0333	II	EXPLOSIVE 1.1G	108	None	62	None	Forbidden	Forbidden	B	
	Fireworks	1.2G	UN0334	II	EXPLOSIVE 1.2G	108	None	62	None	Forbidden	Forbidden	B	
	Fireworks	1.3G	UN0335	II	EXPLOSIVE 1.3G	108	None	62	None	Forbidden	Forbidden	B	
	Fireworks	1.4G	UN0336	II	EXPLOSIVE 1.4G	108	None	62	None	Forbidden	75 kg	A	24E
	Fireworks	1.4S	UN0337	II	EXPLOSIVE 1.4S	108	None	62	None	25 kg	100 kg	A	
W	Fish meal, stabilized *or* Fish scrap, stabilized	9	UN2216	III	None		155	218	218	No limit	No limit	A	88
	Fish meal, unstabilized *or* Fish scrap, unstabilized	4.2	UN1374	II	SPONTANEOUSLY COMBUSTIBLE.	A1, A19	None	212	241	15 kg	50 kg	A	119, 120
	Fissile radioactive materials, see Radioactive material, fissile, n.o.s.												
	Flammable compressed gas, see Compressed *or* Liquefied gas, flammable, *etc.*												
	Flammable compressed gas (small receptacles not fitted with a dispersion device, not refillable), see Receptacles, *etc.*												
	Flammable gas in lighters, *see* Lighters for cigars *or* cigarettes, *with flammable gas*												
	Flammable liquid, toxic, corrosive, n.o.s.	3	UN3286	I	FLAMMABLE LIQUID, POISON, CORROSIVE.		None	201	243	Forbidden	2.5 L	E	21, 40, 100

	Fibers *or* Fabrics impregnated with weakly nitrated nitrocellulose, n.o.s.	4.1	UN1353	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	D		
	Films, nitrocellulose base, from which gelatine has been removed; film scrap, see Celluloid scrap													
	Films, nitrocellulose base, *gelatine coated (except scrap)*	4.1	UN1324	III	FLAMMABLE SOLID		None	183	None	25 kg	100 kg	D		91
	Fire extinguisher charges, *corrosive liquid*	8	UN1774	II	CORROSIVE	N41	154	202	None	1 L	30 L	A		
	Fire extinguisher charges, expelling, explosive, see Cartridges, power device													
	Fire extinguishers *containing compressed or liquefied gas*	2.2	UN1044		NONFLAMMABLE GAS		309	309	None	75 kg	150 kg	A		
	Firelighters, solid *with flammable liquid*	4.1	UN2623	II	FLAMMABLE SOLID	A19	None	212	None	15 kg	50 kg	A		119
				III	FLAMMABLE SOLID	A1, A19	None	213	None	25 kg	100 kg	A		119
	Fireworks	1.1G	UN0333	II	EXPLOSIVE 1.1G	108	None	62	None	Forbidden	Forbidden	B		
	Fireworks	1.2G	UN0334	II	EXPLOSIVE 1.2G	108	None	62	None	Forbidden	Forbidden	B		
	Fireworks	1.3G	UN0335	II	EXPLOSIVE 1.3G	108	None	62	None	Forbidden	Forbidden	B		
	Fireworks	1.4G	UN0336	II	EXPLOSIVE 1.4G	108	None	62	None	Forbidden	75 kg	A		24E
	Fireworks	1.4S	UN0337	II	EXPLOSIVE 1.4S	108	None	62	None	25 kg	100 kg	A		
W	Fish meal, stabilized *or* Fish scrap, stabilized	9	UN2216	III	None		155	218	218	No limit	No limit	A		88
	Fish meal, unstabilized *or* Fish scrap, unstabilized	4.2	UN1374	II	SPONTANEOUSLY COMBUSTIBLE.	A1, A19	None	212	241	15 kg	50 kg	A		119, 120
	Fissile radioactive materials, see Radioactive material, fissile, n.o.s.													
	Flammable compressed gas, see Compressed *or* Liquefied gas, flammable, *etc.*													
	Flammable compressed gas (small receptacles not fitted with a dispersion device, not refillable), see Receptacles, *etc.*													
	Flammable gas in lighters, *see* Lighters for cigars *or* cigarettes, *with flammable gas*													
	Flammable liquid, toxic, corrosive, n.o.s.	3	UN3286	I	FLAMMABLE LIQUID, POISON, CORROSIVE.		None	201	243	Forbidden	2.5 L	E		21, 40, 100
				II	FLAMMABLE LIQUID, POISON, CORROSIVE.	T14	None	202	243	1 L	5 L	B		21, 40, 100
	Flammable liquids, corrosive, n.o.s.	3	UN2924	I	FLAMMABLE LIQUID, CORROSIVE.	T42	None	201	243	0.5 L	2.5 L	E		40
				II	FLAMMABLE LIQUID, CORROSIVE.	T15, T26	None	202	243	1 L	5 L	B		40
				III	FLAMMABLE LIQUID, CORROSIVE.	B1, T15, T26	150	203	242	5 L	60 L	A		40
	Flammable liquids, n.o.s.	3	UN1993	I	FLAMMABLE LIQUID	T42	150	201	243	1 L	30 L	E		
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B		
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	203	242	60 L	220 L	A		
	Flammable liquids, toxic, n.o.s.	3	UN1992	I	FLAMMABLE LIQUID, POISON.	T42	None	201	243	Forbidden	30 L	E		40
				II	FLAMMABLE LIQUID, POISON.	T18	None	202	243	1 L	60 L	B		40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T18	150	203	242	60 L	220 L	A		
	Flammable solid, corrosive, inorganic, n.o.s.	4.1	UN3180	II	FLAMMABLE SOLID, CORROSIVE.	A1	151	212	242	15 kg	50 kg	D		40
				III	FLAMMABLE SOLID, CORROSIVE.	A1	151	213	242	25 kg	100 kg	D		40
	Flammable solid, inorganic, n.o.s.	4.1	UN3178	II	FLAMMABLE SOLID	A1	151	212	240	15 kg	50 kg	B		
				III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	B		
	Flammable solid, organic, molten, n.o.s.	4.1	UN3176	II	FLAMMABLE SOLID	T9	151	212	240	Forbidden	Forbidden	C		
				III	FLAMMABLE SOLID	T9	151	213	240	Forbidden	Forbidden	C		
	Flammable solid, toxic, inorganic, n.o.s.	4.1	UN3179	II	FLAMMABLE SOLID, POISON.	A1	151	212	242	15 kg	50 kg	B		40
				III	FLAMMABLE SOLID, KEEP AWAY FROM FOOD.	A1	151	213	242	25 kg	100 kg	B		40
	Flammable solids, corrosive, organic, n.o.s.	4.1	UN2925	II	FLAMMABLE SOLID, CORROSIVE.	A1	None	212	242	15 kg	50 kg	D		40
				III	FLAMMABLE SOLID, CORROSIVE.	A1	151	213	242	25 kg	100 kg	D		40
	Flammable solids, organic, n.o.s.	4.1	UN1325	II	FLAMMABLE SOLID	A1	151	212	240	15 kg	50 kg	B		
				III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	B		
	Flammable solids, toxic, organic, n.o.s.	4.1	UN2926	II	FLAMMABLE SOLID, POISON.	A1	None	212	242	15 kg	50 kg	B		40
				III	FLAMMABLE SOLID, KEEP AWAY FROM FOOD.	A1	151	213	242	25 kg	100 kg	B		40
	Flares, aerial	1.3G	UN0093	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B		
	Flares, aerial	1.4G	UN0403	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A		24E
	Flares, aerial	1.4S	UN0404	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A		
	Flares, aerial	1.1G	UN0420	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B		
	Flares, aerial	1.2G	UN0421	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B		
	Flares, airplane, see Flares, aerial													

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Flares, signal, see Cartridges, signal												
	Flares, surface	1.3G	UN0092	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Flares, surface	1.1G	UN0418	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Flares, surface	1.2G	UN0419	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Flares, water-activated, see Contrivances, water-activated, etc.												
	Flash powder	1.1G	UN0094	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	E	1E, 5E
	Flash powder	1.3G	UN0305	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	E	1E, 5E
	Flue dusts, poisonous, see Arsenical dust												
	Fluoric acid, see Hydrofluoric acid, solution, etc.												
	Fluorine, compressed	2.3	UN1045		POISON GAS, OXIDIZER, CORROSIVE.	1	None	302	None	Forbidden	Forbidden	D	40, 89, 90
	Fluoroacetic acid	6.1	UN2642	I	POISON		None	211	242	1 kg	15 kg	E	
	Fluoroanilines	6.1	UN2941	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	
	Fluorobenzene	3	UN2387	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Fluoroboric acid	8	UN1775	II	CORROSIVE	A6, A7, B2, B15, N3, N34, T15, T27.	154	202	242	1 L	30 L	A	
	Fluorophosphoric acid anhydrous	8	UN1776	II	CORROSIVE	A6, A7, B2, N3, N34, T9, T27.	None	202	242	1 L	30 L	A	
	Fluorosilicates, n.o.s.	6.1	UN2856	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26
	Fluorosilicic acid	8	UN1778	II	CORROSIVE	A6, A7, B2, B15, N3, N34, T12, T27.	None	202	242	1 L	30 L	A	
	Fluorosulfonic acid	8	UN1777	I	CORROSIVE	A3, A6, A7, A10, B6, B10, B41, N3, T9, T27.	None	201	243	0.5 L	2.5 L	D	40
	Fluorotoluenes	3	UN2388	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Forbidden materials. See 173.21	Forbidden											
	Formaldehyde, solutions, flammable	3	UN1198	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T8	150	203	242	1 L	60 L	A	40
	Formaldehyde, solutions, *with not less than 25 percent formaldehyde*	8	UN2209	III	CORROSIVE	T1	154	203	241	5 L	60 L	A	
	Formalin, see Formaldehyde, solutions												
	Formic acid	8	UN1779	II	CORROSIVE	B2, B12, B26, T8	154	202	242	1 L	30 L	A	40
	Fracturing devices, explosive, *without detonators for oil wells*	1.1D	UN0099	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Fuel, aviation, turbine engine	3	UN1863	I	FLAMMABLE LIQUID	T7	150	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
D	Fuel oil *(No. 1, 2, 4, 5, or 6)*	3	NA1993	III	FLAMMABLE LIQUID	B1	150	203	242	60 L	220 L	A	
	Fulminate of mercury (dry)	Forbidden											
	Fulminate of mercury, wet, see Mercury fulminate, etc.												
	Fulminating gold	Forbidden											
	Fulminating mercury	Forbidden											
	Fulminating platinum	Forbidden											
	Fulminating silver	Forbidden											
	Fulminic acid	Forbidden											
	Fumaryl chloride	8	UN1780	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	8, 40
	Furan	3	UN2389	I	FLAMMABLE LIQUID	T18	None	201	243	1 L	30 L	E	40
	Furfural	3	UN1199	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Furfuryl alcohol	6.1	UN2874	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	26, 74
	Furfurylamine	3	UN2526	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T1	150	203	242	5 L	60 L	A	40
	Fuse, detonating, *metal clad, see* Cord, detonating, *metal clad*												
	Fuse, detonating, mild effect, *metal clad, see* Cord, detonating, mild effect, *metal clad*												
	Fuse, igniter *tubular metal clad*	1.4G	UN0103	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Fuse, instantaneous, non-detonating *or* Quickmatch	1.3G	UN0101	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	
	Fuse, safety	1.4S	UN0105	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
D	Fusee *(railway or highway)*	4.1	NA1325	II	FLAMMABLE SOLID		None	184	None	15 kg	50 kg	B	
	Fusel oil	3	UN1201	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Fuses, tracer, see Tracers for ammunition												
	Fuzes, combination, percussion and time, see Fuzes, detonating *(UN 0257, UN 0367)*; Fuzes, igniting (UN 0317, UN 0368)												
	Fuzes, detonating	1.1B	UN0106	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 8E
	Fuzes, detonating	1.2B	UN0107	II	EXPLOSIVE 1.2B		None	62	None	Forbidden	Forbidden	B	2E, 8E
	Fuzes, detonating	1.4B	UN0257	II	EXPLOSIVE 1.4B	116	None	62	None	Forbidden	75 kg	A	24E
	Fuzes, detonating	1.4S	UN0367	II	EXPLOSIVE 1.4S	116	None	62	None	25 kg	100 kg	A	
	Fuzes, detonating, *with protective features*	1.1D	UN0408	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Fuzes, detonating, *with protective features*	1.2D	UN0409	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Fuzes, detonating, *with protective features*	1.4D	UN0410	II	EXPLOSIVE 1.4D	115	None	62	None	Forbidden	75 kg	A	24E
	Fuzes, igniting	1.3G	UN0316	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	
	Fuzes, igniting	1.4G	UN0317	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Fuzes, igniting	1.4S	UN0368	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Galactsan trinitrate	Forbidden											
AW	Gallium	8	UN2803	III	CORROSIVE		None	162	240	20 kg	20 kg	B	8B
	Gas generator assemblies (aircraft), *containing a non-flammable non-toxic gas and a propellant cartridge*	2.2			NONFLAMMABLE GAS		None	335	None	75 kg	150 kg	A	
D	Gas identification set	2.3	NA9035		POISON GAS	6	None	194	None	Forbidden	Forbidden	D	
	Gas oil *or* Diesel fuel *or* Heating oil, light	3	UN1202	III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Gas, refrigerated liquid, n.o.s.	2.2	UN3158		NONFLAMMABLE GAS		306	304	314, 315	50 kg	500 kg	D	
	Gas sample, non-pressurized, flammable, n.o.s., *not refrigerated liquid*	2.1	UN3167		FLAMMABLE GAS	35	306	302, 304	None	1 L	5 L	D	
	Gas sample, non-pressurized, toxic, flammable, n.o.s., *not refrigerated liquid*	2.3	UN3168		POISON GAS, FLAMMABLE GAS.	35	306	302	None	Forbidden	1 L	D	
	Gas sample, non-pressurized, toxic, n.o.s., *not refrigerated liquid*	2.3	UN3169		POISON GAS	35	306	302, 304	None	Forbidden	1 L	D	

	Fuses, combination, percussion and time, see Fuses, detonating *(UN 0257, UN 0367);* Fuses, igniting (UN 0317, UN 0368)															
	Fuze, detonating	1.1B	UN0106	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Fuze, detonating	1.2B	UN0107	II	EXPLOSIVE 1.2B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Fuze, detonating	1.4B	UN0257	II	EXPLOSIVE 1.4B	116	None	62	None	Forbidden	75 kg	A	24E
	Fuze, detonating	1.4S	UN0367	II	EXPLOSIVE 1.4S	116	None	62	None	25 kg	100 kg	A	
	Fuze, detonating, *with protective features*	1.1D	UN0408	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Fuze, detonating, *with protective features*	1.2D	UN0409	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Fuze, detonating, *with protective features*	1.4D	UN0410	II	EXPLOSIVE 1.4D	116	None	62	None	Forbidden	75 kg	A	24E
	Fuze, igniting	1.3G	UN0316	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	
	Fuze, igniting	1.4G	UN0317	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Fuze, igniting	1.4S	UN0368	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Galactsan trinitrate	Forbidden											
AW	Gallium	8	UN2803	III	CORROSIVE		None	162	240	20 kg	20 kg	B	48
	Gas generator assemblies (aircraft), *containing a non-flammable non-toxic gas and a propellant cartridge*	2.2			NONFLAMMABLE GAS		None	335	None	75 kg	150 kg	A	
D	Gas identification set	2.3	NA9035		POISON GAS	6	None	194	None	Forbidden	Forbidden	D	
	Gas oil *or* Diesel fuel *or* Heating oil, light	3	UN1202	III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Gas, refrigerated liquid, n.o.s.	2.2	UN3158		NONFLAMMABLE GAS		306	304	314, 315	50 kg	500 kg	D	
	Gas sample, non-pressurized, flammable, n.o.s., *not refrigerated liquid*	2.1	UN3167		FLAMMABLE GAS	35	306	302, 304	None	1 L	5 L	D	
	Gas sample, non-pressurized, toxic, flammable, n.o.s., *not refrigerated liquid*	2.3	UN3168		POISON GAS, FLAMMABLE GAS.	35	306	302	None	Forbidden	1 L	D	
	Gas sample, non-pressurized, toxic, n.o.s., *not refrigerated liquid*	2.3	UN3169		POISON GAS	35	306	302, 304	None	Forbidden	1 L	D	
D	Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol*	3	NA1203	II	FLAMMABLE LIQUID		150	202	242	5 L	60 L	E	
	Gasoline	3	UN1203	II	FLAMMABLE LIQUID	B33, T8	150	202	242	5 L	60 L	E	
	Gasoline, casinghead, see Natural gasoline												
	Gelatine, blasting, see Explosive, blasting, type A												
	Gelatine dynamites, see Explosive, blasting, type A												
	Germane	2.3	UN2192		POISON GAS, FLAMMABLE GAS.	2, 25	None	192	245	Forbidden	Forbidden	D	40
	Glycerol-1,3-dinitrate	Forbidden											
	Glycerol gluconate trinitrate	Forbidden											
	Glycerol lactate trinitrate	Forbidden											
	Glycerol alpha-monochlorohydrin	6.1	UN2689	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Glyceryl trinitrate, see Nitroglycerin, etc.												
	Glycidaldehyde	3	UN2622	II	FLAMMABLE LIQUID, POISON.	T8	150	202	243	1 L	60 L	A	40
D	Grenades, empty primed	1.4S	NA0349	II	None		None	62	None	25 kg	100 kg	A	
	Grenades, *hand or rifle, with bursting charge*	1.1D	UN0284	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	
	Grenades, *hand or rifle, with bursting charge*	1.2D	UN0285	II	EXPLOSIVE 1.2D			62	None	Forbidden	Forbidden	B	
	Grenades, *hand or rifle, with bursting charge*	1.1F	UN0292	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	E	
	Grenades, *hand or rifle, with bursting charge*	1.2F	UN0293	II	EXPLOSIVE 1.2F			62	None	Forbidden	Forbidden	E	
	Grenades, illuminating, see Ammunition, illuminating, etc.												
	Grenades, practice, *hand or rifle*	1.4S	UN0110	II	EXPLOSIVE 1.4S			62	None	25 kg	100 kg	A	
	Grenades, practice, *hand or rifle*	1.3G	UN0318	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	
	Grenades, practice, *hand or rifle*	1.2G	UN0372	II	EXPLOSIVE 1.2G			62	None	Forbidden	Forbidden	B	
	Grenades practice *Hand or rifle*	1.4G	UN0452	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	24E
	Grenades, smoke, see Ammunition, smoke, etc.												
	Guanidine nitrate	5.1	UN1467	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	73
	Guanyl nitrosáminoguanylidene hydrazine (dry)	Forbidden											
	Guanyl nitrosaminoguanylidene hydrazine, wetted *with not less than 30 percent water, by mass*	1.1A	UN0113	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Guanyl nitrosaminoguanyltetrazene (dry)	Forbidden											
	Guanyl nitrosaminoguanyltetrazene, wetted *or* Tetrazene, wetted *with not less than 30 percent water or mixture of alcohol and water, by mass*	1.1A	UN0114	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Gunpowder, compressed *or* Gunpowder in pellets, *see* Black powder *(UN 0028)*												
	Gunpowder, *granular or as a meal, see* Black powder *(UN 0027)*												
	Hafnium powder, dry	4.2	UN2545	I	SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	Forbidden	D	
				II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N34	None	212	241	15 kg	50 kg	D	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	D	
	Hafnium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns*	4.1	UN1326	II	FLAMMABLE SOLID	A6, A19, A20, N34	None	212	241	15 kg	50 kg	E	
	Halogenated irritating liquids, n.o.s.	6.1	UN1610	I	POISON	T42	None	201	243	Forbidden	Forbidden	D	40

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
				II	POISON	T14	None	202	243	5 L	60 L	D	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	D	40
	Hand signal device, see Signal devices, hand												
	Hazardous substances, liquid or solid, n.o.s., see Environmentally hazardous substances, *etc.*												
D	Hazardous waste, liquid, n.o.s.												
D	Hazardous waste, solid, n.o.s.	9	NA3082	III	CLASS 9		155	203	241	No limit	No limit	A	
	Helium, compressed	9	NA3077	III	CLASS 9	B54	155	213	240	No limit	No limit	A	
		2.2	UN1046		NONFLAMMABLE GAS		306	302	302, 314	75 kg	150 kg	A	6A
	Helium-oxygen mixture, see Rare gases and oxygen mixtures												
	Helium, refrigerated liquid *(cryogenic liquid)*	2.2	UN1963		NONFLAMMABLE GAS		320	316	318	50 kg	500 kg	B	
	Heptafluoropropane	2.2	UN3296		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	n-Heptaldehyde	3	UN3056	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Heptanes	3	UN1206	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	
	n-Heptene	3	UN2278	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Hexachloroacetone	6.1	UN2661	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	B	12, 40
	Hexachlorobenzene	6.1	UN2729	III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	
	Hexachlorobutadiene	6.1	UN2279	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Hexachlorocyclopentadiene	6.1	UN2646	I	POISON	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Hexachlorophene	6.1	UN2875	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Hexadecyltrichlorosilane	8	UN1781	II	CORROSIVE	A7, B2, B6, N34, T8.	None	202	242	Forbidden	30 L	C	40
	Hexadienes	3	UN2458	II	FLAMMABLE LIQUID	T7	None	202	242	5 L	60 L	B	
	Hexaethyl tetraphosphate and compressed gas mixtures	2.3	UN1612		POISON GAS	3	None	334	None	Forbidden	Forbidden	D	40
	Hexaethyl tetraphosphate *liquid*	6.1	UN1611	I	POISON	A4	None	201	243	1 L	30 L	E	40
				II	POISON	N76	None	202	243	5 L	60 L	E	40
				III	KEEP AWAY FROM FOOD.	N77	None	203	241	60 L	220 L	E	40
	Hexaethyl tetraphosphate, *solid*	6.1	UN1611	I	POISON		None	211	242	Forbidden	15 kg	E	40
				II	POISON	N76	None	212	242	25 kg	100 kg	E	40
				III	KEEP AWAY FROM FOOD.	N77	153	213	240	100 kg	200 kg	E	40
	Hexafluoroacetone	2.3	UN2420		POISON GAS, CORROSIVE.	2, B9, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Hexafluoroacetone hydrate	6.1	UN2552	II	POISON	T14	None	202	243	5 L	60 L	B	40
	Hexafluoroethane, *R116*	2.2	UN2193		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Hexafluorophosphoric acid	8	UN1782	II	CORROSIVE	A6, A7, B2, N3, N34, T9, T27	None	202	242	1 L	30 L	A	
D	Hexafluoropropylene oxide	2.2	NA1956		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Hexafluoropropylene, *R1216*	2.2	UN1858		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Hexaldehyde	3	UN1207	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Hexamethylene diisocyanate	6.1	UN2281	II	POISON	T14	None	202	243	5 L	60 L	B	13, 40
	Hexamethylene triperoxide diamine (dry)	Forbidden											
	Hexamethylenediamine, solid	8	UN2280	III	CORROSIVE		154	213	240	25 kg	100 kg	A	12
	Hexamethylenediamine solution	8	UN1783	II	CORROSIVE	T8	None	202	242	1 L	30 L	A	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Hexamethyleneimine	3	UN2493	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	40
	Hexamethylenetetramine	4.1	UN1328	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Hexamethylol benzene hexanitrate	Forbidden											
	Hexanes	3	UN1208	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	2,2',4,4',6,6'-Hexanitro-3,3'-dihydroxyazobenzene (dry)	Forbidden											

	Hexanitroazoxy benzene	Forbidden											
	N,N'-(hexanitrodiphenyl) ethylene dinitramine (dry)	Forbidden											
	Hexanitrodiphenyl urea	Forbidden											
	2,2',3',4,4',6-Hexanitrodiphenylamine	Forbidden											
	Hexanitrodiphenylamine *or* Dipicrylamine *or* Hexyl	1.1D	UN0079	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	2,3',4,4',6,6'-Hexanitrodiphenylether	Forbidden											
	Hexanitroethane	Forbidden											
	Hexanitrooxanilide	Forbidden											
	Hexanitrostilbene	1.1D	UN0392	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Hexanoic acid, see Corrosive liquids, n.o.s.												
	Hexanols	3	UN2282	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	1-Hexene	3	UN2370	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	Hexogen and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*												
	Hexogen and HMX mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*												
	Hexogen and octogen mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*												
	Hexogen, *see* Cyclotrimethylenetrinitramine, *etc.*												
	Hexolite, *or* Hexotol *dry or wetted with less than 15 percent water, by mass*	1.1D	UN0118	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Hexotonal	1.1D	UN0393	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Hexyl, *see* Hexanitrodiphenylamine												
	Hexyltrichlorosilane	8	UN1784	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	High explosives, see individual explosive entries												

Hexanitroazoxy benzene	Forbidden													
N,N'-(hexanitrodiphenyl) ethylene dinitramine (dry)	Forbidden													
Hexanitrodiphenyl urea	Forbidden													
2,2',3',4,4',6-Hexanitrodiphenylamine	Forbidden													
Hexanitrodiphenylamine *or* Dipicrylamine *or* Hexyl	1.1D	UN0079	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
2,3',4,4',6,6'-Hexanitrodiphenylether	Forbidden													
Hexanitroethane	Forbidden													
Hexanitrooxanilide	Forbidden													
Hexanitrostilbene	1.1D	UN0392	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
Hexanoic acid, *see* Corrosive liquids, n.o.s.														
Hexanols	3	UN2282	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
1-Hexene	3	UN2370	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E			
Hexogen and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*														
Hexogen and HMX mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*														
Hexogen and octogen mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*														
Hexogen, *see* Cyclotrimethylenetrinitramine, *etc.*														
Hexolite, *or* Hexotol *dry or wetted with less than 15 percent water, by mass*	1.1D	UN0118	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
Hexotonal	1.1D	UN0393	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
Hexyl, *see* Hexanitrodiphenylamine														
Hexyltrichlorosilane	8	UN1784	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40		
High explosives, see individual explosives' entries														
HMX, *see* Cyclotetramethylenetetranitramine, *etc.*														
Hydrazine, anhydrous *or* Hydrazine aqueous solutions *with more than 64 percent hydrazine, by mass*	8	UN2029	I	CORROSIVE, FLAMMABLE LIQUID, POISON.	A3, A6, A7, A10, B16, B53, T25.	None	201	243	Forbidden	2.5 L	D	21, 40, 42, 100		
Hydrazine, aqueous solution *with not more than 37 percent hydrazine, by mass*	6.1	UN3293	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A			
Hydrazine azide	Forbidden													
Hydrazine chlorate	Forbidden													
Hydrazine dicarbonic acid diazide	Forbidden													
Hydrazine hydrate *or* Hydrazine aqueous solutions, *with not less than 37 percent but not more than 64 percent hydrazine, by mass*	8	UN2030	II	CORROSIVE, POISON	B16, B53, T15	None	202	243	Forbidden	30 L	D	40, 42, [illegible]		
Hydrazine perchlorate	Forbidden													
Hydrazine selenate	Forbidden													
Hydriodic acid, anhydrous, see Hydrogen iodide, anhydrous														
Hydriodic acid, solution	8	UN1787	II	CORROSIVE	A3, A6, [illegible], N41, T9, T27.	154	202	242	1 L	30 L	C			
			III	CORROSIVE	T8, T26	154	203	241	5 L	60 L	C	8		
Hydrobromic acid, anhydrous, see Hydrogen bromide, anhydrous														
Hydrobromic acid solution, *with more than 49 percent hydrobromic acid*	8	UN1788	II	CORROSIVE	B2, B15, N41, T9, T27.	154	202	242	Forbidden	Forbidden	C			
			III	CORROSIVE	T8, T26	154	203	241	Forbidden	Forbidden	C	8		
Hydrobromic acid solution, *with not more than 49 percent hydrobromic acid*	8	UN1788	II	CORROSIVE	A3, A6, B2, B15, N41, T9, T27.	154	202	242	1 L	30 L	C			
			III	CORROSIVE	T8, T26	154	203	241	5 L	30 L	C	8		
Hydrocarbon gases, compressed, n.o.s. *or* Hydrocarbon gases mixtures, compressed, n.o.s.	2.1	UN1964		FLAMMABLE GAS		306	302	314, 315	Forbidden	150 kg	E	40		
Hydrocarbon gases, liquefied, n.o.s. *or* Hydrocarbon gases mixtures, liquefied, n.o.s.	2.1	UN1965		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40		
Hydrocarbons, liquid, n.o.s.	3	UN3295	I	FLAMMABLE LIQUID		150	201	243	1 L	30 L	E			
			II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B			
			III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
Hydrochloric acid, anhydrous, see Hydrogen chloride, anhydrous														
Hydrochloric acid, solution	8	UN1789	II	CORROSIVE	A3, A6, B3, B15, N41, T9, T27.	154	202	242	1 L	30 L	C			
			III	CORROSIVE	T8, T26	154	203	241	5 L	60 L	C	8		
Hydrocyanic acid, anhydrous, see Hydrogen cyanide *etc.*														
Hydrocyanic acid, aqueous solutions *or* Hydrogen cyanide, aqueous solutions *with not more than 20 percent hydrocyanic acid*	6.1	UN1613	I	POISON	2, B12, B61, [illegible], B77, B82.	None	196	244	Forbidden	Forbidden	D	40		
D Hydrocyanic acid, aqueous solutions *with less than 5 percent hydrocyanic acid*	6.1	NA1613	II	POISON	B12, T18, T26	None	195	243	Forbidden	5 L	D	40		
Hydrocyanic acid, liquefied, see Hydrogen cyanide, *etc.*														
Hydrocyanic acid (prussic), unstabilized	Forbidden													
Hydrofluoric acid and Sulfuric acid mixtures	8	UN1786	I	CORROSIVE, POISON	A6, A7, B15, B23, N5, N34, T18, T27.	None	201	243	Forbidden	2.5 L	D	40, 95		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Hydrofluoric acid, anhydrous, see Hydrogen fluoride, anhydrous												
	Hydrofluoric acid, solution, *with more than 60 percent strength*	8	UN1790	I	CORROSIVE, POISON	A6, A7, B4, B12, B15, B23, N5, N34, T18, T27.	None	201	243	0.5 L	2.5 L	D	12, 40
	Hydrofluoric acid, solution, *with more than 60 percent strength*	8	UN1790	II	CORROSIVE, POISON	A6, A7, B12, B15, N5, N34, T18, T27.	None	202	243	1 L	30 L	D	12, 40
	Hydrofluoroboric acid, see Fluoboric acid												
	Hydrofluorosilicic acid, see Fluorosilicic acid												
	Hydrogen and Methane mixtures, compressed	2.1	UN2034		FLAMMABLE GAS		306	302	302, 314, 315	Forbidden	150 kg	E	40
	Hydrogen bromide, anhydrous	2.3	UN1048		POISON GAS, CORROSIVE.	3, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Hydrogen chloride, anhydrous	2.3	UN1050		POISON GAS, CORROSIVE.	3	None	304	None	Forbidden	Forbidden	D	40
	Hydrogen chloride, refrigerated liquid	2.3	UN2186		POISON GAS, CORROSIVE.	3, B6, B43	None	None	314, 315	Forbidden	Forbidden	B	40
	Hydrogen, compressed	2.1	UN1049		FLAMMABLE GAS		306	302	302, 314	Forbidden	150 kg	E	40, 57
	Hydrogen cyanide, anhydrous, stabilized *with less than 3 percent water*	6.1	UN1051	I	POISON, FLAMMABLE LIQUID.	1, B12, B35, B61, B65, B77, B82.	None	195	244	Forbidden	Forbidden	D	40
	Hydrogen cyanide, solution in alcohol *with not more than 45 percent hydrogen cyanide*	6.1	UN3294	I	POISON	T18, T26	None	201	243	Forbidden	Forbidden	D	40
	Hydrogen cyanide, stabilized, *with less than 3 percent water and absorbed in a porous inert material*	6.1	UN1614	I	POISON	5	None	195	None	Forbidden	Forbidden	D	25, 40
	Hydrogen fluoride, anhydrous	8	UN1052	I	CORROSIVE, POISON	3, B7, B12, B46, B71, B77, T24, T27.	None	163	243	Forbidden	Forbidden	D	40
	Hydrogen iodide, anhydrous	2.3	UN2197		POISON GAS	3, 25, B14	None	304	314, 315	Forbidden	Forbidden	D	40
	Hydrogen iodide solution, see Hydriodic acid, solution												
	Hydrogen peroxide and peroxyacetic acid mixtures, stabilized with acids, water and not more than 5 percent peroxyacetic acid	5.1	UN3149	II	OXIDIZER, CORROSIVE	A2, A3, A6, B12, B53, T14.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary)*	5.1	UN2014	II	OXIDIZER, CORROSIVE	12, A3, A6, B12, B53, B80, B81, B85, T14, T37.	None	202	243	Forbidden	Forbidden	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary)*	5.1	UN2984	III	OXIDIZER	17, A1, T8, T37	152	203	241	2.5 L	30 L	B	25, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary)*	5.1	UN2014	II	OXIDIZER, CORROSIVE	A2, A3, A6, B12, B53, T14, T37.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hydrogen peroxide, stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 percent hydrogen peroxide*	5.1	UN2015	I	OXIDIZER, CORROSIVE	12, A3, A6, B12, B53, B80, B81, B85, T15, T37.	None	201	243	Forbidden	Forbidden	D	25, 66, 75, 106
	Hydrogen, refrigerated liquid *(cryogenic liquid)*	2.1	UN1966		FLAMMABLE GAS		None	316	318, 319	Forbidden	Forbidden	D	40
	Hydrogen selenide, anhydrous	2.3	UN2202		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40
	Hydrogen sulfate, see Sulfuric acid												
	Hydrogen sulfide, liquefied	2.3	UN1053		POISON GAS, FLAMMABLE GAS.	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40
	Hydrogendifluorides, n.o.s. *solid*	8	UN1740	II	CORROSIVE	N3, N34	None	212	240	15 kg	50 kg	A	25, 26, 40
				III	CORROSIVE	N3, N34	154	213	240	25 kg	100 kg	A	25, 26, 40
	Hydrogendifluorides, n.o.s. *solutions*	8	UN1740	II	CORROSIVE	N3, N34	None	202	242	1 L	30 L	A	25, 26, 40
				III	CORROSIVE	N3, N34	154	203	241	5 L	60 L	A	25, 26, 40
	Hydroquinone	6.1	UN2662	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Hydrosilicofluoric acid, see Fluorosilicic acid												
	Hydroxyl amine iodide	Forbidden											
	Hydroxylamine sulfate	8	UN2865	III	CORROSIVE		154	213	240	25 kg	100 kg	A	

	Hypochlorite solutions *with more than 5 percent but less than 16 percent available chlorine*	8	UN1791	III	CORROSIVE	N34, T7	154	203	241	5 L	60 L	B	26
	Hypochlorite solutions *with 16 percent or more available chlorine*	8	UN1791	II	CORROSIVE	A7, B2, B15, N34, T7.	154	202	242	1 L	30 L	B	26
	Hypochlorites, inorganic, n.o.s.	5.1	UN3212	II	OXIDIZER		152	212	240	5 kg	25 kg	D	48, 56, 58, 69, 106, 116, 118
	Hyponitrous acid	Forbidden											
	Igniter fuse, metal clad, see Fuse, igniter, tubular, metal clad												
	Igniters	1.1G	UN0121	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Igniters	1.2G	UN0314	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Igniters	1.3G	UN0315	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	A	
	Igniters	1.4G	UN0325	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Igniters	1.4S	UN0454	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	3,3'-Iminodipropylamine	8	UN2269	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Infectious substances, affecting animals *only*	6.2	UN2900		INFECTIOUS SUBSTANCE.		196	196	None	50 mL or 50 g.	4 L or 4 kg	B	
	Infectious substances, affecting humans	6.2	UN2814		INFECTIOUS SUBSTANCE.		196	196	None	50 mL or 50 g.	4 L or 4 kg	B	
	Inflammable, see Flammable												
	Initiating explosives (dry)	Forbidden											
	Inositol hexanitrate (dry)	Forbidden											
	Insecticide gases *flammable* n.o.s.	2.1	UN1968		FLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	D	
	Insecticide gases, n.o.s.	2.2	UN1968		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	

Hydrosilicofluoric acid, *see* Fluorosilicic acid															
Hydroxyl amine iodide	Forbidden														
Hydroxylamine sulfate	8	UN2865	III	CORROSIVE		154	213	240	25 kg	100 kg	A				
Hypochlorite solutions *with more than 5 percent but less than 16 percent available chlorine*	8	UN1791	III	CORROSIVE	N34, T7	154	203	241	5 L	60 L	B	26			
Hypochlorite solutions *with 16 percent or more available chlorine*	8	UN1791	II	CORROSIVE	A7, B2, B15, N34, T7.	154	202	242	1 L	30 L	B	26			
Hypochlorites, inorganic, n.o.s.	5.1	UN3212	II	OXIDIZER		152	212	240	5 kg	25 kg	D	48, 56, 58, 69, 106, 118, 118			
Hyponitrous acid	Forbidden														
Igniter fuse, metal clad, see Fuse, igniter, tubular, metal clad															
Igniters	1.1G	UN0121	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B				
Igniters	1.2G	UN0314	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B				
Igniters	1.3G	UN0315	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	A				
Igniters	1.4G	UN0325	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E			
Igniters	1.4S	UN0454	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A				
3,3'-Iminodipropylamine	8	UN2269	III	CORROSIVE	T8	154	203	241	5 L	60 L	A				
Infectious substances, affecting animals *only*	6.2	UN2900		INFECTIOUS SUBSTANCE.		196	196	None	50 mL or 50 g.	4 L or 4 kg	B				
Infectious substances, affecting humans	6.2	UN2814		INFECTIOUS SUBSTANCE.		196	196	None	50 mL or 50 g.	4 L or 4 kg	B				
Inflammable, see Flammable															
Initiating explosives (dry)	Forbidden														
Inositol hexanitrate (dry)	Forbidden														
Insecticide gases *flammable* n.o.s.	2.1	UN1968		FLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	D				
Insecticide gases, n.o.s.	2.2	UN1968		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A				
Insecticide gases, toxic, n.o.s.	2.3	UN1967		POISON GAS	3	None	193, 334	245	Forbidden	Forbidden	D	40			
Inulin trinitrate (dry)	Forbidden														
Iodine azide (dry)	Forbidden														
Iodine monochloride	8	UN1792	II	CORROSIVE	B6, N41, T8, T26	None	212	240	Forbidden	50 kg	D	40, 66, 74, 89, 90			
Iodine pentafluoride	5.1	UN2495	I	OXIDIZER, POISON, CORROSIVE.		None	208	243	Forbidden	2.5 L	D	25, 40, 66, 90			
2-Iodobutane	3	UN2390	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B				
Iodomethylpropanes	3	UN2391	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B				
Iodopropanes	3	UN2392	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A				
Iodoxy compounds (dry)	Forbidden														
Iridium nitratopentamine iridium nitrate	Forbidden														
Iron chloride, see Ferric chloride															
Iron oxide, spent, *or* Iron sponge, spent *obtained from coal gas purification*	4.2	UN1376	III	SPONTANEOUSLY COMBUSTIBLE.	B18	None	213	240	Forbidden	Forbidden	E				
Iron pentacarbonyl	6.1	UN1994	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, B77, T38, T43, T44.	None	192	244	Forbidden	Forbidden	D	40			
Iron sesquichloride, see Ferric chloride															
Irritating material, see Tear gas substances, etc.															
Isobutane *or* Isobutane mixtures *see also* Petroleum gases, liquefied	2.1	UN1969		FLAMMABLE GAS	19	306	304	314, 315	Forbidden	150 kg	E	40			
Isobutanol *or* Isobutyl alcohol	3	UN1212	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A				
Isobutyl acetate	3	UN1213	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B				
Isobutyl acrylate	3	UN2527	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A				
Isobutyl alcohol, *see* Isobutanol															
Isobutyl aldehyde, *see* Isobutyraldehyde															
D Isobutyl chloroformate	6.1	NA2742	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100			
Isobutyl formate	3	UN2393	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B				
Isobutyl isobutyrate	3	UN2528	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A				
+ Isobutyl isocyanate	3	UN2486	II	FLAMMABLE LIQUID, POISON.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	1 L	60 L	D	40			
Isobutyl methacrylate	3	UN2283	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A				
Isobutyl propionate	3	UN2394	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	B				
Isobutylamine	3	UN1214	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	40			
Isobutylene *see also* Petroleum gases, liquefied	2.1	UN1055		FLAMMABLE GAS	19	306	304	314, 316	Forbidden	150 kg	E	40			
Isobutyraldehyde *or* Isobutyl aldehyde	3	UN2045	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	40			
Isobutyric acid	3	UN2529	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T1	150	203	242	5 L	60 L	A				
Isobutyric anhydride	3	UN2530	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T1	150	203	242	5 L	60 L	A				
Isobutyronitrile	3	UN2284	II	FLAMMABLE LIQUID, POISON.	T17	None	202	243	1 L	60 L	E	40			

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Isobutyryl chloride	3	UN2395	II	FLAMMABLE LIQUID, CORROSIVE.	T9, T26	None	202	243	1 L	5 L	C	40
	Isocyanates, flammable, toxic, n.o.s. *or* Isocyanate solutions, flammable, toxic, n.o.s. *flashpoint less than 23 degrees C*	3	UN2478	II	FLAMMABLE LIQUID, POISON.	5, A3, A7, T15	None	202	243	1 L	60 L	D	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8	150	203	242	60 L	220 L	A	
	Isocyanates, toxic, flammable, n.o.s. *or* Isocyanate solutions, toxic, flammable, n.o.s., *flash point not less than 23 degrees C but not more than 61 degrees C and boiling point less than 300 degrees C*	6.1	UN3080	II	POISON, FLAMMABLE LIQUID.	T15	None	202	243	5 L	60 L	D	25, 40, 48
	Isocyanates, toxic, n.o.s. *or* Isocyanate, toxic, solutions, n.o.s., *flash point more than 61 degrees C and boiling point less than 300 degrees C*	6.1	UN2206	II	POISON	T15	None	202	243	5 L	60 L	D	25, 40, 48
				III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	D	25, 40, 48
	Isocyanatobenzotrifluorides	6.1	UN2285	II	POISON	5, T14	None	202	243	5 L	60 L	B	25, 40, 48
	Isoheptenes	3	UN2287	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	Isohexenes	3	UN2288	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	Isooctane, see Octanes												
	Isooctenes	3	UN1216	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Isopentane, *see* n-Pentane												
	Isopentanoic acid, see Corrosive liquids, n.o.s.												
	Isopentenes	3	UN2371	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
	Isophorone diisocyanate	6.1	UN2290	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	B	40
	Isophoronediamine	8	UN2289	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Isoprene, inhibited	3	UN1218	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
	Isopropanol *or* Isopropyl alcohol	3	UN1219	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropenyl acetate	3	UN2403	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropenylbenzene	3	UN2303	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropyl acetate	3	UN1220	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropyl acid phosphate	8	UN1793	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	
	Isopropyl alcohol, *see* Isopropanol												
	Isopropyl butyrate	3	UN2405	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropyl chloroacetate	3	UN2947	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropyl chloroformate	6.1	UN2407	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40
	Isopropyl-2-chloropropionate	3	UN2934	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropyl isobutyrate	3	UN2406	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
+	Isopropyl isocyanate	3	UN2483	I	FLAMMABLE LIQUID, POISON.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40
	Isopropyl mercaptan, see Propanethiols												
	Isopropyl nitrate	3	UN1222	II	FLAMMABLE LIQUID	T26	150	202	None	5 L	60 L	D	
	Isopropyl phosphoric acid, see Isopropyl acid phosphate												
	Isopropyl propionate	3	UN2409	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropylamine	3	UN1221	I	FLAMMABLE LIQUID, CORROSIVE.	T20	None	201	243	0.5 L	2.5 L	E	
	Isopropylbenzene	3	UN1918	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropylcumyl hydroperoxide, with more than 72 percent in solution	Forbidden											
	Isosorbide dinitrate mixture *with not less than 60 percent lactose, mannose, starch or calcium hydrogen phosphate*	4.1	UN2907	II	FLAMMABLE SOLID		None	212	None	15 kg	50 kg	E	
	Isosorbide-5-mononitrate	4.1	UN3251	III	FLAMMABLE SOLID		151	213	240	Forbidden	Forbidden	D	12
	Isothiocyanic acid	Forbidden											
	Jet fuel, see Fuel aviation, turbine engine												
D	Jet perforating guns, charged *oil well, without detonator*	1.4D	NA0124	II	EXPLOSIVE 1.4D	114	None	62	None	Forbidden	Forbidden	A	24E
	Jet perforating guns, charged *oil well, without detonator*	1.1D	UN0124	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Jet perforating guns, charged, *oil well, without detonator*	1.4D	UN0494		EXPLOSIVE 1.4D		None	62	None	Forbidden	300 kg	A	24E
	Jet perforators, see Charges, shaped, commercial *etc.*												
	Jet tappers, without detonator, see Charges, shaped commercial, *etc.*												
	Jet thrust igniters, for rocket motors or Jato, see Igniters												

	Jet thrust unit (Jato), *see* Rocket motors												
	Kerosene	3	UN1223	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ketones, liquid, n.o.s.	3	UN1224	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Krypton, compressed	2.2	UN1056		NONFLAMMABLE GAS		306	302	None	75 kg	150 kg	A	
	Krypton, refrigerated liquid *(cryogenic liquid)*	2.2	UN1970		NONFLAMMABLE GAS		320	None	None	50 kg	500 kg	B	
	Lacquer base or lacquer chips, nitrocellulose, dry, see Nitrocellulose, *etc. (UN 2557)*												
	Lacquer base or lacquer chips, plastic, wet with alcohol or solvent, see Nitrocellulose *(UN 2059, UN 2060, UN 2555, UN2556) or* Paint *etc. (UN1263)*												
	Lead acetate	6.1	UN1616	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Lead arsenates	6.1	UN1617	II	POISON		None	212	242	25 kg	100 kg	A	
	Lead arsenites	6.1	UN1618	II	POISON		None	212	242	25 kg	100 kg	A	
	Lead azide (dry)	Forbidden											
	Lead azide, wetted *with not less than 20 percent water or mixture of alcohol and water, by mass*	1.1A	UN0129	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Lead compounds, soluble, n.o.s.	6.1	UN2291	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Lead cyanide	6.1	UN1620	II	POISON		None	212	242	25 kg	100 kg	A	26
	Lead dioxide	5.1	UN1872	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	34
	Lead dross, see Lead sulphate, *with more than 3 percent free acid*												
D	Lead mononitroresorcinate	1.1A	NA0473	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Lead nitrate	5.1	UN1469	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	

	Jet thrust unit (Jato), see Rocket motors														
	Kerosene	3	UN1223	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Ketones, liquid, n.o.s.	3	UN1224	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E			
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B			
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A			
	Krypton, compressed	2.2	UN1056		NONFLAMMABLE GAS		306	302	None	75 kg	150 kg	A			
	Krypton, refrigerated liquid (cryogenic liquid)	2.2	UN1970		NONFLAMMABLE GAS		320	None	None	50 kg	500 kg	B			
	Lacquer base or lacquer chips, nitrocellulose, dry, see Nitrocellulose, etc. (UN 2557)														
	Lacquer base or lacquer chips, plastic, wet with alcohol or solvent, see Nitrocellulose (UN 2059, UN 2060, UN 2555, UN2556) or Paint etc. (UN1263)														
	Lead acetate	6.1	UN1616	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A			
	Lead arsenates	6.1	UN1617	II	POISON		None	212	242	25 kg	100 kg	A			
	Lead arsenites	6.1	UN1618	II	POISON		None	212	242	25 kg	100 kg	A			
	Lead azide (dry)	Forbidden													
	Lead azide, wetted with not less than 20 percent water or mixture of alcohol and water, by mass	1.1A	UN0129	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E		
	Lead compounds, soluble, n.o.s.	6.1	UN2291	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A			
	Lead cyanide	6.1	UN1620	II	POISON		None	212	242	25 kg	100 kg	A	28		
	Lead dioxide	5.1	UN1872	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	34		
	Lead dross, see Lead sulphate, with more than 3 percent free acid														
D	Lead mononitroresorcinate	1.1A	NA0473	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E		
	Lead nitrate	5.1	UN1469	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A			
	Lead nitroresorcinate (dry)	Forbidden													
	Lead perchlorate, solid	5.1	UN1470	II	OXIDIZER, POISON	T8	None	212	242	5 kg	25 kg	A	56, 58, 106		
	Lead perchlorate, solution	5.1	UN1470	II	OXIDIZER, POISON	T8	None	202	243	1 L	5 L	A	56, 58, 106		
	Lead peroxide, see Lead dioxide														
	Lead phosphite, dibasic	4.1	UN2989	II	FLAMMABLE SOLID		None	212	240	5 kg	25 kg	B	34		
				III	FLAMMABLE SOLID		151	213	240	15 kg	50 kg	B	34		
	Lead picrate (dry)	Forbidden													
	Lead styphnate (dry)	Forbidden													
	Lead styphnate, wetted or Lead trinitroresorcinate, wetted with not less than 20 percent water or mixture of alcohol and water, by mass	1.1A	UN0130	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E		
	Lead sulfate with more than 3 percent free acid	8	UN1794	II	CORROSIVE		154	212	240	15 kg	50 kg	A			
	Lead trinitroresorcinate, see Lead styphnate, etc.														
	Life-saving appliances, not self inflating containing dangerous goods as equipment	9	UN3072		None		None	219	None	No limit	No limit	A			
	Life-saving appliances, self inflating	9	UN2990		None		None	219	None	No limit	No limit	A			
	Lighter replacement cartridges containing liquefied petroleum gases (and similar devices, each not exceeding 65 grams), see Lighters for cigars, cigarettes, etc. with flammable gas														
D	Lighters for cigars, cigarettes, etc., with lighter fluids	3	NA1226	II	FLAMMABLE LIQUID	N10	None	21	None	Forbidden	Forbidden	B			
	Lighters, fuse	1.4S	UN0131	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A			
	Lighters or Lighter refills cigarettes containing flammable gas	2.1	UN1057		FLAMMABLE GAS	N10	None	21, 306	None	1 kg	15 kg	B	40		
	Lime, unslaked, see Calcium oxide														
	Liquefied gas, flammable, n.o.s.	2.1	UN3161		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	D	40		
	Liquefied gas, n.o.s.	2.2	UN3163		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A			
	Liquefied gas, oxidizing, n.o.s.	2.2	UN3157		NONFLAMMABLE GAS, OXIDIZER		306	304	314, 315	75 kg	150 kg	D			
	Liquefied gas, toxic, flammable, n.o.s. Inhalation Hazard Zone A	2.3	UN3160		POISON GAS, FLAMMABLE GAS	1	None	192	245	Forbidden	Forbidden	D	40		
	Liquefied gas, toxic, flammable, n.o.s. Inhalation Hazard Zone B	2.3	UN3160		POISON GAS, FLAMMABLE GAS	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40		
	Liquefied gas, toxic, flammable, n.o.s. Inhalation Hazard Zone C	2.3	UN3160		POISON GAS, FLAMMABLE GAS	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40		
	Liquefied gas, toxic, flammable, n.o.s. Inhalation Hazard Zone D	2.3	UN3160		POISON GAS, FLAMMABLE GAS	4	None	304	314, 315	Forbidden	Forbidden	D	40		
	Liquefied gas, toxic, n.o.s. Inhalation Hazard Zone A	2.3	UN3162		POISON GAS	1	None	192	245	Forbidden	Forbidden	D	40		
	Liquefied gas, toxic, n.o.s. Inhalation Hazard Zone B	2.3	UN3162		POISON GAS	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40		
	Liquefied gas, toxic, n.o.s. Inhalation Hazard Zone C	2.3	UN3162		POISON GAS	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40		
	Liquefied gas, toxic, n.o.s. Inhalation Hazard Zone D	2.3	UN3162		POISON GAS	4	None	304	314, 315	Forbidden	Forbidden	D	40		
	Liquefied gases, non-flammable charged with nitrogen, carbon dioxide or air	2.2	UN1058		NONFLAMMABLE GAS		306	304	None	75 kg	150 kg	A			
	Liquefied hydrocarbon gas, see Hydrocarbon gases, liquefied, n.o.s., etc.														
	Liquefied natural gas, see Methane, etc. (UN 1972)														
	Liquefied petroleum gas see Petroleum gases, liquefied														

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Lithium	4.3	UN1415	I	DANGEROUS WHEN WET.	A7, A19, N43	None	211	244	Forbidden	15 kg	E	
	Lithium acetylide ethylenediamine complex, see Substances which in contact with water emit flammable gases												
	Lithium alkyls	4.2	UN2445	I	SPONTANEOUSLY COMBUSTIBLE, DANGEROUS WHEN WET.	B11, T28, T40	None	181	244	Forbidden	Forbidden	D	
	Lithium aluminum hydride	4.3	UN1410	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium aluminum hydride, ethereal	4.3	UN1411	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID.	A2, A3, A11, N34	None	201	244	Forbidden	1 L	D	40
	Lithium batteries, contained in equipment	9	UN3091	II	CLASS 9	18, 29, A12	185(i)	185	None	Forbidden	See A12	A	
	Lithium battery, liquid cathode	9	UN3090	II	CLASS 9	29	185(i)	185	None	Forbidden	35 kg gross	A	
	Lithium battery, solid cathode	9	UN3090	II	CLASS 9	29	185(i)	185	None	Forbidden	35 kg gross	A	
	Lithium borohydride	4.3	UN1413	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium ferrosilicon	4.3	UN2830	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	E	40, 85, 103
	Lithium hydride	4.3	UN1414	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium hydride, fused solid	4.3	UN2805	II	DANGEROUS WHEN WET.	A8, A19, A20	None	212	241	15 kg	50 kg	E	
	Lithium hydroxide, monohydrate *or* Lithium hydroxide, solid	8	UN2680	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Lithium hydroxide, solution	8	UN2679	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T8	154	203	241	5 L	60 L	A	96
	Lithium hypochlorite, dry *or* Lithium hypochlorite mixtures, dry	5.1	UN1471	II	OXIDIZER	A9, N34	152	212	240	5 kg	25 kg	A	48, 56, 58, 69, 106, 116
	Lithium in cartridges, see Lithium												
	Lithium nitrate	5.1	UN2722	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Lithium nitride	4.3	UN2806	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium peroxide	5.1	UN1472	II	OXIDIZER	A9, N34	152	212	None	5 kg	25 kg	A	13, 75, 106
	Lithium silicon	4.3	UN1417	II	DANGEROUS WHEN WET.	A19, A20	None	212	241	15 kg	50 kg	A	85, 103
	LNG, see Methane etc. *(UN 1972)*												
	London purple	6.1	UN1621	II	POISON		None	212	242	25 kg	100 kg	A	
	LPG, see Petroleum gases, liquefied												
	Lye, see Sodium hydroxide, solutions												
	Magnesium alkyls	4.2	UN3053	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	18
	Magnesium aluminum phosphide	4.3	UN1419	I	DANGEROUS WHEN WET, POISON.	A19, N34, N40	None	211	242	Forbidden	15 kg	E	40, 85
	Magnesium arsenate	6.1	UN1622	II	POISON		None	212	242	25 kg	100 kg	A	
	Magnesium bisulfite solution, *see* Bisulfites, inorganic aqueous solutions, n.o.s.												
	Magnesium bromate	5.1	UN1473	II	OXIDIZER	A1	152	212	242	5 kg	25 kg	A	56, 58, 106
	Magnesium chlorate	5.1	UN2723	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
	Magnesium diamide	4.2	UN2004	II	SPONTANEOUSLY COMBUSTIBLE.	A8, A19, A20	None	212	241	15 kg	50 kg	C	
	Magnesium diphenyl	4.2	UN2005	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	244	Forbidden	Forbidden	C	
	Magnesium dross, wet or hot	Forbidden											
	Magnesium fluorosilicate	6.1	UN2853	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26
	Magnesium granules, coated *particle size not less than 149 microns*	4.3	UN2950	III	DANGEROUS WHEN WET.	A1, A19	None	213	240	25 kg	100 kg	A	
	Magnesium hydride	4.3	UN2010	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Magnesium *or* Magnesium alloys *with more than 50 percent magnesium in pellets, turnings or ribbons*	4.1	UN1869	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	39
	Magnesium nitrate	5.1	UN1474	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Magnesium perchlorate	5.1	UN1475	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
	Magnesium peroxide	5.1	UN1476	II	OXIDIZER		152	212	242	5 kg	25 kg	A	13, 75, 106
	Magnesium phosphide	4.3	UN2011	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Magnesium, powder *or* Magnesium alloys, powder	4.3	UN1418	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, B56	None	211	244	Forbidden	15 kg	A	39
				II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, B56	None	212	241	15 kg	50 kg	A	39
				III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, B56	None	213	241	25 kg	100 kg	A	39
	Magnesium scrap, see Magnesium, etc. *(UN 1869)*												
	Magnesium silicide	4.3	UN2624	II	DANGEROUS WHEN WET.	A19, A20	None	212	241	15 kg	50 kg	B	85, 103
	Magnetized material, see section 173.21												
D	Maleic acid	8	NA2215	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Maleic anhydride	8	UN2215	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	
	Malononitrile	6.1	UN2647	II	POISON		None	212	242	25 kg	100 kg	A	12
	Maneb *or* Maneb preparations *with not less than 60 percent maneb*	4.2	UN2210	III	SPONTANEOUSLY COMBUSTIBLE, DANGEROUS WHEN WET.	A1, A19	None	213	242	25 kg	100 kg	A	34
	Maneb stabilized *or* Maneb preparations, stabilized *against self-heating*	4.3	UN2968	III	DANGEROUS WHEN WET.	A1, A19	None	213	242	25 kg	100 kg	B	34
	Manganese nitrate	5.1	UN2724	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Manganese resinate	4.1	UN1330	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	

	Magnesium peroxide	5.1	UN1476	II	OXIDIZER		152	212	242	5 kg	25 kg	A	13, 75, 1
	Magnesium phosphide	4.3	UN2011	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Magnesium, powder *or* Magnesium alloys, powder	4.3	UN1418	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, B56	None	211	244	Forbidden	15 kg	A	39
				II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, B56	None	212	241	15 kg	50 kg	A	39
				III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, B56	None	213	241	25 kg	100 kg	A	39
	Magnesium scrap, see Magnesium, *etc. (UN 1869)*												
	Magnesium silicide	4.3	UN2624	II	DANGEROUS WHEN WET.	A19, A20	None	212	241	15 kg	50 kg	B	85, 103
	Magnetized material, see section 173.21												
D	Maleic acid	8	NA2215	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Maleic anhydride	8	UN2215	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	
	Malononitrile	6.1	UN2647	II	POISON		None	212	242	25 kg	100 kg	A	12
	Maneb *or* Maneb preparations *with not less than 60 percent maneb*	4.2	UN2210	III	SPONTANEOUSLY COMBUSTIBLE, DANGEROUS WHEN WET.	A1, A19	None	213	242	25 kg	100 kg	A	34
	Maneb stabilized *or* Maneb preparations, stabilized *against self-heating*	4.3	UN2968	III	DANGEROUS WHEN WET.	A1, A19	None	213	242	25 kg	100 kg	B	34
	Manganese nitrate	5.1	UN2724	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Manganese resinate	4.1	UN1330	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Mannitan tetranitrate	Forbidden											
	Mannitol hexanitrate (dry)	Forbidden											
D	Mannitol hexanitrate, wetted *or* Nitromannite, wetted *with not less than 40 percent water, by mass or mixture of alcohol and water*	1.1A	NA0133	II	EXPLOSIVE 1.1A	111	None	62	None	Forbidden	Forbidden	E	1E, 5E
	Marine pollutants, liquid or solid, n.o.s., see Environmentally hazardous substances, liquid *or* solid, n.o.s.												
	Matches, block, see Matches, 'strike anywhere'												
	Matches, fusee	4.1	UN2254	III	FLAMMABLE SOLID		186	186	None	Forbidden	Forbidden	A	
	Matches, safety *(book, card or strike on box)*	4.1	UN1944	III	FLAMMABLE SOLID		186	186	None	25 kg	100 kg	A	
	Matches, strike anywhere	4.1	UN1331	III	FLAMMABLE SOLID		186	186	None	Forbidden	Forbidden	B	
	Matches, wax, Vesta	4.1	UN1945	III	FLAMMABLE SOLID		186	186	None	25 kg	100 kg	B	
	Matting acid, see Sulfuric acid												
	Medicine, liquid, flammable, toxic, n.o.s.	3	UN3248	II	FLAMMABLE LIQUID, POISON.	36	None	202	None	1 L	5 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	36	150	203	None	5 L	5 L	A	
	Medicine, liquid, toxic, n.o.s.	6.1	UN1851	II	POISON		None	202	243	5 L	5 L	C	40
				III	KEEP AWAY FROM FOOD.		153	203	241	5 L	5 L	C	40
	Medicine, solid, toxic, n.o.s.	6.1	UN3249	II	POISON	36	None	212	None	5 kg	5 kg	C	40
				III	KEEP AWAY FROM FOOD.	36	153	213	None	5 kg	5 kg	C	40
D	Medicines, *corrosive, liquid,* n.o.s.	8	NA1760	II	CORROSIVE	B3	154	202	242	1 L	30 L	B	40
				III	CORROSIVE		164	203	241	5 L	60 L	A	40
D	Medicines, *corrosive, solid,* n.o.s.	8	NA1759	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
D	Medicines, *flammable, liquid,* n.o.s.	3	NA1993	I	FLAMMABLE LIQUID		150	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID		150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1	150	203	242	60 L	220 L	A	
D	Medicines, *flammable, solid,* n.o.s.	4.1	NA1325	II	FLAMMABLE SOLID		151	212	240	15 kg	50 kg	B	
D	Medicines, *oxidizing substance, solid,* n.o.s.	5.1	NA1479	II	OXIDIZER		152	212	242	5 kg	25 kg	B	56, 58, 69, 106
	Memtetrahydrophthalic anhydride, see Corrosive liquids, n.o.s.												
	Mercaptans, liquid, flammable, toxic, n.o.s. *or* Mercaptan mixtures, liquid, flammable, toxic, n.o.s.	3	UN1228	II	FLAMMABLE LIQUID, POISON	T13	None	202	243	Forbidden	60 L	B	40, 95
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD	B1, T8	150	203	242	5 L	220 L	A	40, 95
	Mercaptans, liquid, toxic, flammable, n.o.s. *or* Mercaptan mixtures, liquid, toxic, flammable, n.o.s., *flash point not less than 23 degrees C*	6.1	UN3071	II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	C	40, 121
	5-Mercaptotetrazol-1-acetic acid	1.4C	UN0448	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	1E, 5E, 24E
	Mercuric arsenate	6.1	UN1623	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercuric chloride	6.1	UN1624	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercuric compounds, see Mercury compounds, *etc.*												
	Mercuric nitrate	6.1	UN1625	II	POISON	N73	None	212	242	25 kg	100 kg	A	
*	Mercuric potassium cyanide	6.1	UN1626	I	POISON	N74, N75	None	211	242	5 kg	50 kg	A	26

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Mercuric sulfocyanate, see Mercury thiocyanate												
	Mercurol, see Mercury nucleate												
	~~Mercurous azide~~	Forbidden											
	Mercurous compounds, see Mercury compounds, *etc.*												
	Mercurous nitrate	6.1	UN1627	II	POISON		None	212	242	25 kg	100 kg	A	
A, W	Mercury	8	UN2809	III	CORROSIVE		164	164	240	35 kg	35 kg	B	40, 97
	Mercury acetate	6.1	UN1629	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury acetylide	Forbidden											
	Mercury ammonium chloride	6.1	UN1630	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury based pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2778	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	40
	Mercury based pesticides, liquid, toxic	6.1	UN3012	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Mercury based pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3011	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40
	Mercury based pesticides, solid, toxic	6.1	UN2777	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Mercury benzoate	6.1	UN1631	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury bromides	6.1	UN1634	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury compounds, liquid, n.o.s.	6.1	UN2024	I	POISON		None	201	243	1 L	30 L	B	40
				II	POISON		None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	B	40
	Mercury compounds, solid, n.o.s.	6.1	UN2025	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
A	Mercury *contained in manufactured articles*	8	UN2809	I	CORROSIVE		None	164	None	No limit	No limit	B	40, 97
	Mercury cyanide	6.1	UN1636	II	POISON	N74, N75	None	212	242	25 kg	100 kg	A	26
	Mercury fulminate, wetted *with not less than 20 percent water, or mixture of alcohol and water, by mass*	1.1A	UN0135	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	26E, 6E
	Mercury gluconate	6.1	UN1637	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury iodide	6.1	UN1638	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury iodide aquabasic ammonobasic (Iodide of Millon's base)	Forbidden											
	Mercury iodide, *solution*	6.1	UN1636	II	POISON		None	202	243	5 L	60 L	A	
	Mercury nitride	Forbidden											
	Mercury nucleate	6.1	UN1639	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury oleate	6.1	UN1640	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury oxide	6.1	UN1641	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury oxycyanide	Forbidden											
	Mercury oxycyanide, desensitized	6.1	UN1642	II	POISON		None	212	242	25 kg	100 kg	A	26, 91
	Mercury potassium iodide	6.1	UN1643	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury salicylate	6.1	UN1644	II	POISON		None	212	242	25 kg	100 kg	A	
+	Mercury sulfates	6.1	UN1645	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury thiocyanate	6.1	UN1646	II	POISON		None	212	242	25 kg	100 kg	A	
	Mesityl oxide	3	UN1229	III	FLAMMABLE LIQUID	B1, T1	None	203	242	60 L	220 L	A	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Metal alkyl halides, n.o.s. *or* Metal aryl halides, n.o.s.	4.2	UN3049	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Metal alkyl hydrides, n.o.s. *or* Metal aryl hydrides, n.o.s.	4.2	UN3050	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
D	Metal alkyl, solution, n.o.s.	3	NA9195	II	FLAMMABLE LIQUID		150	202	242	1 L	4 L	B	
	Metal alkyls, n.o.s. *or* Metal aryls, n.o.s.	4.2	UN2003	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T42	None	181	244	Forbidden	Forbidden	D	
	Metal carbonyls, n.o.s.	6.1	UN3281	I	POISON		None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	40
	Metal catalyst, dry	4.2	UN2881	I	SPONTANEOUSLY COMBUSTIBLE.	N34	None	187	None	Forbidden	Forbidden	C	
				II	SPONTANEOUSLY COMBUSTIBLE.	N34	None	187	None	Forbidden	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE.	N34	None	187	None	25 kg	100 kg	C	
	Metal catalyst, wetted *with a visible excess of liquid*	4.2	UN1378	II	SPONTANEOUSLY COMBUSTIBLE.	A2, A8, N34	None	212	None	Forbidden	50 kg	C	
	Metal hydrides, flammable, n.o.s.	4.1	UN3182	II	FLAMMABLE SOLID	A1	151	212	240	15 kg	50 kg	E	
				III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	E	
	Metal hydrides, water reactive, n.o.s.	4.3	UN1409	I	DANGEROUS WHEN WET.	A19, N34, N40	None	211	242	Forbidden	15 kg	D	
				II	DANGEROUS WHEN WET.	A19, N34, N40	None	212	242	15 kg	50 kg	D	

	Metal alkyl halides, n.o.s. *or* Metal aryl halides, n.o.s.	4.2	UN3049	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D		
	Metal alkyl hydrides, n.o.s. *or* Metal aryl hydrides, n.o.s.	4.2	UN3050	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D		
D	Metal alkyl, solution, n.o.s.	3	NA9195	II	FLAMMABLE LIQUID		150	202	242	1 L	4 L	B		
	Metal alkyls, n.o.s. *or* Metal aryls, n.o.s.	4.2	UN2003	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T42	None	181	244	Forbidden	Forbidden	D		
	Metal carbonyls, n.o.s.	6.1	UN3281	I	POISON		None	201	243	1 L	30 L	B		40
	"	"	"	II	POISON	T14	None	202	243	5 L	60 L	B		40
	"	"	"	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A		40
	Metal catalyst, dry	4.2	UN2881	I	SPONTANEOUSLY COMBUSTIBLE.	N34	None	187	None	Forbidden	Forbidden	C		
	"	"	"	II	SPONTANEOUSLY COMBUSTIBLE.	N34	None	187	None	Forbidden	50 kg	C		
	"	"	"	III	SPONTANEOUSLY COMBUSTIBLE.	N34	None	187	None	25 kg	100 kg	C		
	Metal catalyst, wetted *with a visible excess of liquid*	4.2	UN1378	II	SPONTANEOUSLY COMBUSTIBLE.	A2, A8, N34	None	212	None	Forbidden	50 kg	C		
	Metal hydrides, flammable, n.o.s.	4.1	UN3182	II	FLAMMABLE SOLID	A1	151	212	240	15 kg	50 kg	E		
	"	"	"	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	E		
	Metal hydrides, water reactive, n.o.s.	4.3	UN1409	I	DANGEROUS WHEN WET.	A19, N34, N40	None	211	242	Forbidden	15 kg	D		
	"	"	"	II	DANGEROUS WHEN WET.	A19, N34, N40	None	212	242	15 kg	50 kg	D		
	Metal powder, self-heating, n.o.s.	4.2	UN3189	II	SPONTANEOUSLY COMBUSTIBLE.		None	212	241	15 kg	50 kg	C		
	"	"	"	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	C		
	Metal powders, flammable, n.o.s.	4.1	UN3089	II	FLAMMABLE SOLID		151	212	240	15 kg	50 kg	B		
	"	"	"	III	FLAMMABLE SOLID		151	213	240	25 kg	100 kg	B		
	Metal salts of methyl nitramine (dry)	Forbidden	"	"	"	"	"	"	"	"	"	"		
	Metal salts of organic compounds, flammable, n.o.s.	4.1	UN3181	II	FLAMMABLE SOLID	A1	151	212	240	15 kg	50 kg	B		40
	"	"	"	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	B		40
	Metaldehyde	4.1	UN1332	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A		
	Metallic substance, water-reactive, n.o.s.	4.3	UN3208	I	DANGEROUS WHEN WET.		None	211	242	Forbidden	15 kg	E		40
	"	"	"	II	DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	E		40
	"	"	"	III	DANGEROUS WHEN WET.		None	213	241	25 kg	100 kg	E		40
	Metallic substance, water-reactive, self-heating, n.o.s.	4.3	UN3209	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	15 kg	E		40
	"	"	"	II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	212	242	15 kg	50 kg	E		40
	"	"	"	III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	213	242	25 kg	100 kg	E		40
	Methacrylaldehyde	3	UN2396	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	E		40
	Methacrylic acid, inhibited	8	UN2531	III	CORROSIVE	T8	154	203	241	5 L	60 L	A		
+	Methacrylonitrile, inhibited	3	UN3079	I	FLAMMABLE LIQUID, POISON.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	30 L	D		12, 40, 48
	Methallyl alcohol	3	UN2614	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	Methane and hydrogen, mixtures, see Hydrogen and methane, mixtures, etc.	"	"	"	"	"	"	"	"	"	"	"		
	Methane, compressed *or* Natural gas, compressed *(with high methane content)*	2.1	UN1971		FLAMMABLE GAS		306	302	302	Forbidden	150 kg	E		40
	Methane, refrigerated liquid *(cryogenic liquid) or* Natural gas, refrigerated liquid *(cryogenic liquid, with high methane content)*	2.1	UN1972		FLAMMABLE GAS		None	None	318	Forbidden	Forbidden	D		40
	Methanesulphonyl chloride	6.1	UN3246	I	POISON, CORROSIVE	T24, T26	None	201	243	0.5 L	2.5 L	D		40
I	Methanol, *or* Methyl alcohol	3	UN1230	II	FLAMMABLE LIQUID, POISON.	T8	150	202	242	1 L	60 L	B		40
D	Methanol, *or* Methyl alcohol	3	UN1230	II	FLAMMABLE LIQUID	T8	150	202	242	1 L	60 L	B		40
	Methazoic acid	Forbidden	"	"	"	"	"	"	"	"	"	"		
	4-Methoxy-4-methylpentan-2-one	3	UN2293	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	1-Methoxy-2-propanol	3	UN3092	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
+	Methoxymethyl isocyanate	3	UN2605	I	FLAMMABLE LIQUID, POISON.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	30 L	D		40
	Methyl acetate	3	UN1231	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Methyl acetylene and propadiene mixtures, stabilized	2.1	UN1060		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Methyl acrylate, inhibited	3	UN1919	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Methyl alcohol, *see* Methanol												
	Methyl allyl chloride	3	UN2554	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	Methyl amyl ketone, see Amyl methyl ketone												
	Methyl benzoate	6.1	UN2938	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Methyl bromide	2.3	UN1062		POISON GAS	3, B14	None	193	314, 315	Forbidden	25 kg	D	40
	Methyl bromide and chloropicrin mixtures with more than 2 percent chloropicrin, see Chloropicrin and methyl bromide mixtures												
	Methyl bromide and chloropicrin mixtures with not more than 2 percent chloropicrin, see Methyl bromide												
	Methyl bromide and ethylene dibromide mixtures, liquid	6.1	UN1647	I	POISON	2, B9, B14, B32, B74, N65, T38, T43, T45.	None	227	244	Forbidden	30 L	C	40
	Methyl bromoacetate	6.1	UN2643	II	POISON	T8	None	202	243	5 L	60 L	D	40
	2-Methyl-1-butene	3	UN2459	I	FLAMMABLE LIQUID	T14	None	201	243	1 L	30 L	E	
	2-Methyl-2-butene	3	UN2460	II	FLAMMABLE LIQUID	T14	None	202	242	5 L	60 L	E	
	3-Methyl-1-butene	3	UN2561	I	FLAMMABLE LIQUID	T20	None	201	243	1 L	30 L	E	
	Methyl tert-butyl ether	3	UN2398	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	E	
	Methyl butyrate	3	UN1237	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Methyl chloride	2.1	UN1063		FLAMMABLE GAS		306	304	314, 315	5 kg	100 kg	D	40
	Methyl chloride and chloropicrin mixtures, see Chloropicrin and methyl chloride mixtures												
	Methyl chloride and methylene chloride mixtures	2.1	UN1912		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	D	40
	Methyl chloroacetate	6.1	UN2295	II	POISON	T11	None	202	243	5 L	60 L	C	
	Methyl chlorocarbonate, see Methyl chloroformate												
	Methyl chloroform, see 1,1,1-Trichloroethane												
	Methyl chloroformate	6.1	UN1238	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	1, A3, A6, A7, B9, B14, B30, B72, N34, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	21, 40, 100
	Methyl-2-chloropropionate	3	UN2933	III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A	
	Methyl cyclohexane	3	UN2296	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
	Methyl cyclohexanone	3	UN2297	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methyl cyclopentane	3	UN2298	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Methyl dichloroacetate	6.1	UN2299	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Methyl ethyl ether, see Ethyl methyl ether												
	Methyl ethyl ketone, *see* Ethyl methyl ketone												
	Methyl ethyl ketone peroxide, in solution with more than 9 percent by mass active oxygen	Forbidden											
	2-Methyl-5-ethylpyridine	6.1	UN2300	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Methyl fluoride	2.1	UN2454		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
	Methyl formate	3	UN1243	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
	Methyl iodide	6.1	UN2644	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	A	12, 40
	Methyl isobutyl carbinol	3	UN2053	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methyl isobutyl ketone	3	UN1245	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Methyl isobutyl ketone peroxide, in solution with more than 9 percent by mass active oxygen	Forbidden											
	Methyl isocyanate	6.1	UN2480	I	POISON, FLAMMABLE LIQUID.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	26, 40
	Methyl isopropenyl ketone, inhibited	3	UN1246	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
+	Methyl isothiocyanate	3	UN2477	II	FLAMMABLE LIQUID, POISON.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	A	
	Methyl isovalerate	3	UN2400	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Methyl magnesium bromide, in ethyl ether	4.3	UN1928	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID.		None	201	243	Forbidden	1 L	D	
	Methyl mercaptan	2.3	UN1064		POISON GAS, FLAMMABLE GAS.	3, 25, B7, B9, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Methyl mercaptopropionaldehyde, see Thia-4-pentanal												
	Methyl methacrylate monomer, inhibited	3	UN1247	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Methyl nitramine (dry)	Forbidden											
	Methyl nitrate	Forbidden											
	Methyl nitrite	Forbidden											
	Methyl norbornene dicarboxylic anhydride, see Corrosive liquids, n.o.s.												
	Methyl orthosilicate	6.1	UN2606	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	30 L	E	40
D	Methyl parathion *liquid*	6.1	NA3018	II	POISON	N76, T14	None	202	242	Forbidden	1 L	A	40
D	Methyl parathion *solid*	6.1	NA2783	II	POISON	N77	None	212	242	25 kg	100 kg	A	40
D	Methyl phosphonic dichloride	6.1	NA9206	I	POISON, CORROSIVE	2, A3, B9, B14, B32, B74, N34, N43, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C	
	Methyl phosphonothioic dichloride, anhydrous, see Corrosive liquid, n.o.s.												

	Methyl isothiocyanate	3	UN2477	II	FLAMMABLE LIQUID, POISON.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	A	
	Methyl isovalerate	3	UN2400	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Methyl magnesium bromide, in ethyl ether	4.3	UN1928	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID.		None	201	243	Forbidden	1 L	D	
	Methyl mercaptan	2.3	UN1064		POISON GAS, FLAMMABLE GAS.	3, 25, B7, B11, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Methyl mercaptopropionaldehyde, see Thia-4-pentanal												
	Methyl methacrylate monomer, inhibited	3	UN1247	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Methyl nitramine (dry)	Forbidden											
	Methyl nitrate	Forbidden											
	Methyl nitrite	Forbidden											
	Methyl norbornene dicarboxylic anhydride, see Corrosive liquids, n.o.s.												
	Methyl orthosilicate	6.1	UN2606	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	30 L	E	40
D	Methyl parathion *liquid*	6.1	NA3018	II	POISON	N76, T14	None	202	243	Forbidden	1 L	A	40
D	Methyl parathion *solid*	6.1	NA2783	II	POISON	N77	None	212	242	25 kg	100 kg	A	40
D	Methyl phosphonic dichloride	6.1	NA9206	I	POISON, CORROSIVE	2, A3, B9, B14, B32, B74, N34, N43, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C	
	Methyl phosphonothioic dichloride, anhydrous, see Corrosive liquid, n.o.s.												
D	Methyl phosphonous dichloride, *pyrophoric liquid*	6.1	NA2845	I	POISON, SPONTANEOUSLY COMBUSTIBLE.	2, B9, B14, B16, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	18
	Methyl picric acid (heavy metal salts of)	Forbidden											
	Methyl propionate	3	UN1248	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	
	Methyl propyl ether	3	UN2612	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	E	40
	Methyl propyl ketone	3	UN1249	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Methyl sulfate, see Dimethyl sulfate												
	Methyl sulfide, see Dimethyl sulfide												
	Methyl trichloroacetate	6.1	UN2533	III	KEEP AWAY FROM FOOD.	45, T1	153	203	241	60 L	220 L	A	
	Methyl trimethylol methane trinitrate	Forbidden											
	Methyl vinyl ketone	3	UN1251	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Methylal	3	UN1234	II	FLAMMABLE LIQUID	T14	None	202	242	5 L	60 L	E	
	Methylamine, anhydrous	2.1	UN1061		FLAMMABLE GAS	25	306	304	314, 315	Forbidden	150 kg	B	40
	Methylamine, aqueous solution	3	UN1235	II	FLAMMABLE LIQUID, CORROSIVE.	B1, T8	150	202	243	1 L	5 L	E	41
	Methylamine dinitramine and dry salts thereof	Forbidden											
	Methylamine nitroform	Forbidden											
	Methylamine perchlorate (dry)	Forbidden											
	Methylamyl acetate	3	UN1233	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	N-Methylaniline	6.1	UN2294	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	alpha-Methylbenzyl alcohol	6.1	UN2937	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	3-Methylbutan-2-one	3	UN2397	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	N-Methylbutylamine	3	UN2945	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	40
	Methylchloromethyl ether	6.1	UN1239	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Methylchlorosilane	2.3	UN2534		POISON GAS, FLAMMABLE GAS, CORROSIVE.	2, A2, A3, A7, B9, B14, N34.	None	226	314, 315	Forbidden	Forbidden	D	17, 40
	Methylcyclohexanols, *flammable*	3	UN2617	III	FLAMMABLE LIQUID	B1, T2	150	203	242	60 L	220 L	A	
D	Methyldichloroarsine	6.1	NA1556	I	POISON	2	None	192	None	Forbidden	Forbidden	D	40, 95
	Methyldichlorosilane	4.3	UN1242	I	DANGEROUS WHEN WET, CORROSIVE, FLAMMABLE LIQUID.	A2, A3, A7, B6, B77, N34, T16, T26.	None	201	243	Forbidden	1 L	D	21, 28, 40, 49, 100
	Methylene chloride, see Dichloromethane												
	Methylene glycol dinitrate	Forbidden											
	2-Methylfuran	3	UN2301	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	a-Methylglucoside tetranitrate	Forbidden											
	a-Methylglycerol trinitrate	Forbidden											
	5-Methylhexan-2-one	3	UN2302	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methylhydrazine	6.1	UN1244	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	1, B9, B14, B30, B72, B77, N34, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	21, 40, 49, 100
	Methylmorpholine	3	UN2535	II	FLAMMABLE LIQUID, CORROSIVE	B6, T8	None	202	243	1 L	5 L	B	40

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Methylpentadienes	3	UN2461	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	2-Methylpentan-2-ol	3	UN2560	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methylpentanes, see Hexanes												
	Methylphenyldichlorosilane	8	UN2437	II	CORROSIVE	T8, T26	154	202	242	1 L	30 L	C	40
	1-Methylpiperidine	3	UN2399	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	
	Methyltetrahydrofuran	3	UN2536	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	Methyltrichlorosilane	3	UN1250	I	FLAMMABLE LIQUID, CORROSIVE.	A7, B6, B77, N34, T14, T26.	None	201	243	Forbidden	2.5 L	B	40
	alpha-Methylvaleraldehyde	3	UN2367	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
	Mine rescue equipment containing carbon dioxide, see Carbon dioxide												
	Mines *with bursting charge*	1.1F	UN0136	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	E	
	Mines *with bursting charge*	1.1D	UN0137	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	3E, 7E
	Mines *with bursting charge*	1.2D	UN0138	II	EXPLOSIVE 1.2D			62	None	Forbidden	Forbidden	B	3E, 7E
	Mines *with bursting charge*	1.2F	UN0294	II	EXPLOSIVE 1.2F			62	None	Forbidden	Forbidden	E	
	Mixed acid, see Nitrating acid, mixtures *etc.*												
	Mobility aids, see Wheel chair, electric												
D	Model rocket motor	1.4C	NA0276	II	EXPLOSIVE 1.4C	51	None	62	None	Forbidden	75 kg	A	24E
D	Model rocket motor	1.4S	NA0323	II	EXPLOSIVE 1.4S	51	None	62	None	25 kg	100 kg	A	9E
	Molybdenum pentachloride	8	UN2508	III	CORROSIVE	T8, T26	154	213	240	25 kg	100 kg	C	40
	Monochloroacetone (unstabilized)	Forbidden											
	Monochloroethylene, see Vinyl chloride, inhibited												
	Monoethanolamine, see Ethanolamine, solutions												
	Monoethylamine, see Ethylamine												
	Morpholine	3	UN2054	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Morpholine, aqueous, mixture, see Corrosive liquids, n.o.s.												
	Motor fuel anti-knock compounds *see* Motor fuel anti-knock mixtures												
+	Motor fuel anti-knock mixtures	6.1	UN1649	I	POISON, FLAMMABLE LIQUID.	14, B9, B12, B90, T26, T39.	None	201	244	Forbidden	30 L	D	25, 40
	Motor spirit, *see* Gasoline												
	Motor vehicle, see Vehicles, self-propelled												
	Motorcycles, see Vehicles, self-propelled												
	Muriatic acid, see Hydrochloric acid solution												
	Musk xylene, *see* 5-tert-Butyl2,4,6-trinitro-m-xylene												
	Naphthalene, crude *or* Naphthalene, refined	4.1	UN1334	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Naphthalene diozonide	Forbidden											
	Naphthalene, molten	4.1	UN2304	III	FLAMMABLE SOLID	A1, T8	151	213	241	Forbidden	Forbidden	C	
	Naphthyl amineperchlorate	Forbidden											
	beta-Naphthylamine	6.1	UN1650	II	POISON	T12, T26	None	212	242	25 kg	100 kg	A	
	alpha-Naphthylamine	6.1	UN2077	III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Naphthylthiourea	6.1	UN1651	II	POISON		None	212	242	25 kg	100 kg	A	
	Naphthylurea	6.1	UN1652	II	POISON		None	212	242	25 kg	100 kg	A	
	Natural gases (with high methane content), see Methane, etc. (UN 1971, UN 1972)												
	Neohexane, see Hexanes												
	Neon, compressed	2.2	UN1065		NONFLAMMABLE GAS		306	302	302	75 kg	150 kg	A	
	Neon, refrigerated liquid *(cryogenic liquid)*	2.2	UN1913		NONFLAMMABLE GAS		320	316	None	50 kg	500 kg	B	
	New explosive or explosive device, see sections 173.51 and 173.56												
	Nickel carbonyl	6.1	UN1259	I	POISON, FLAMMABLE LIQUID.	1	None	198	None	Forbidden	Forbidden	D	18, 40
	Nickel cyanide	6.1	UN1653	II	POISON	N74, N75	None	212	242	25 kg	100 kg	A	26
	Nickel nitrate	5.1	UN2725	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Nickel nitrite	5.1	UN2726	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	56, 58
	Nickel picrate	Forbidden											
	Nicotine	6.1	UN1654	II	POISON		None	202	243	5 L	60 L	A	
	Nicotine compounds, liquid, n.o.s. *or* Nicotine preparations, liquid, n.o.s.	6.1	UN3144	I	POISON	A4, T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	B	40
	Nicotine compounds, solid, n.o.s. *or* Nicotine preparations, solid, n.o.s.	6.1	UN1655	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON		None	212	242	25 kg	100 kg	A	

				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Nicotine hydrochloride *or* Nicotine hydrochloride solution	6.1	UN1656	II	POISON		None	202	243	5 L	60 L	A	
	Nicotine salicylate	6.1	UN1657	II	POISON		None	212	242	25 kg	100 kg	A	
	Nicotine sulfate, *solid*	6.1	UN1658	II	POISON		None	212	242	25 kg	100 kg	A	
	Nicotine sulfate, *solution*	6.1	UN1658	II	POISON	T14	None	202	243	5 L	60 L	A	
	Nicotine tartrate	6.1	UN1659	II	POISON		None	212	242	25 kg	100 kg	A	
	Nitrated paper (unstable)	Forbidden											
	Nitrates, inorganic, aqueous solution, n.o.s.	5.1	UN3218	II	OXIDIZER	T8	152	202	242	1 L	5 L	B	46
				III	OXIDIZER	T8	152	203	241	2.5 L	30 L	B	46
	Nitrates, inorganic, n.o.s.	5.1	UN1477	II	OXIDIZER		152	212	240	5 kg	25 kg	A	46
				III	OXIDIZER		152	213	240	25 kg	100 kg	A	46
	Nitrates of diazonium compounds	Forbidden											
	Nitrating acid mixtures, spent *with more than 50 percent nitric acid*	8	UN1826	I	CORROSIVE, OXIDIZER	B47, T12, T27	None	158	243	Forbidden	2.5 L	D	40, 66
	Nitrating acid mixtures spent *with not more than 50 percent nitric acid*	8	UN1826	II	CORROSIVE	B2, B47, T12, T27	None	158	242	Forbidden	30 L	D	40
	Nitrating acid mixtures *with more than 50 percent nitric acid*	8	UN1796	I	CORROSIVE, OXIDIZER	B47, T12, T27	None	158	243	Forbidden	2.5 L	D	40, 66
	Nitrating acid mixtures *with not more than 50 percent nitric acid*	8	UN1796	II	CORROSIVE	B2, B47, T12, T27	None	158	242	Forbidden	30 L	D	40
	Nitric acid *other than red fuming, with more than 70 percent nitric acid*	8	UN2031	I	CORROSIVE	B12, B53, T9, T27	None	158	243	Forbidden	2.5 L	D	44, 66, 89, 90, 110, 111
	Nitric acid *other than red fuming, with not more than 70 percent nitric acid*	8	UN2031	II	CORROSIVE	B2, B12, B53, T9, T27.	None	158	242	Forbidden	30 L	D	44, 66, 89, 90, 110, 111
+	Nitric acid, red fuming	8	UN2032	I	CORROSIVE, OXIDIZER, POISON.	2, B9, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40, 66, 74, 89, 90
	Nitric oxide	2.3	UN1660		POISON GAS, OXIDIZER, CORROSIVE.	1, 25, B12, B37, B46, B50, B60, B77.	None	337	None	Forbidden	Forbidden	D	40, 89, 90
	Nitric oxide and dinitrogen tetroxide mixtures or Nitric oxide and nitrogen tetroxide mixtures	2.3	UN1975		POISON GAS, OXIDIZER, CORROSIVE.	1, 25, B12, B37, B46, B50, B60, B77.	None	337	None	Forbidden	Forbidden	D	40, 89, 90

			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A			
Nicotine hydrochloride *or* Nicotine hydrochloride solution	6.1	UN1656	II	POISON		None	202	243	5 L	60 L	A			
Nicotine salicylate	6.1	UN1657	II	POISON		None	212	242	25 kg	100 kg	A			
Nicotine sulfate, *solid*	6.1	UN1658	II	POISON		None	212	242	25 kg	100 kg	A			
Nicotine sulfate, *solution*	6.1	UN1658	II	POISON	T14	None	202	243	5 L	60 L	A			
Nicotine tartrate	6.1	UN1659	II	POISON		None	212	242	25 kg	100 kg	A			
Nitrated paper (unstable)	Forbidden													
Nitrates, inorganic, aqueous solution, n.o.s.	5.1	UN3218	II	OXIDIZER	T8		152	202	242	1 L	5 L	B	46	
			III	OXIDIZER	T8		152	203	241	2.5 L	30 L	B	46	
Nitrates, inorganic, n.o.s.	5.1	UN1477	II	OXIDIZER			152	212	240	5 kg	25 kg	A	46	
			III	OXIDIZER			152	213	240	25 kg	100 kg	A	46	
Nitrates of diazonium compounds	Forbidden													
Nitrating acid mixtures, spent *with more than 50 percent nitric acid*	8	UN1826	I	CORROSIVE, OXIDIZER	B47, T12, T27	None	158	243	Forbidden	2.5 L	D	40, 66		
Nitrating acid mixtures spent *with not more than 50 percent nitric acid*	8	UN1826	II	CORROSIVE	B2, B47, T12, T27	None	158	242	Forbidden	30 L	D	40		
Nitrating acid mixtures *with more than 50 percent nitric acid*	8	UN1796	I	CORROSIVE, OXIDIZER	B47, T12, T27	None	158	243	Forbidden	2.5 L	D	40, 66		
Nitrating acid mixtures *with not more than 50 percent nitric acid*	8	UN1796	II	CORROSIVE	B2, B47, T12, T27	None	158	242	Forbidden	30 L	D	40		
Nitric acid *other than red fuming, with more than 70 percent nitric acid*	8	UN2031	I	CORROSIVE	B12, B53, T9, T27	None	158	243	Forbidden	2.5 L	D	44, 66, 89, 90, 110, 111		
Nitric acid *other than red fuming, with not more than 70 percent nitric acid*	8	UN2031	II	CORROSIVE	B2, B12, B53, T9, T27.	None	158	242	Forbidden	30 L	D	44, 66, 89, 90, 110, 111		
Nitric acid, red fuming	8	UN2032	I	CORROSIVE, OXIDIZER, POISON.	2, B9, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40, 66, 74, 89, 90		
Nitric oxide	2.3	UN1660		POISON GAS, OXIDIZER, CORROSIVE.	1, 25, B12, B37, B46, B50, B60, B77.	None	337	None	Forbidden	Forbidden	D	40, 89, 90		
Nitric oxide and dinitrogen tetroxide mixtures *or* Nitric oxide and nitrogen dioxide mixtures	2.3	UN1975		POISON GAS, OXIDIZER, CORROSIVE.	1, 25, B7, B9, B12, B14, B45, B46, B61, B66, B67, B77.	None	337	None	Forbidden	Forbidden	D	40, 89, 90		
Nitriles, flammable, toxic, n.o.s.	3	UN3273	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	E	40, 52		
			II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	B	40, 52		
Nitriles, toxic, flammable, n.o.s.	6.1	UN3275	I	POISON, FLAMMABLE LIQUID.		None	201	243	1 L	30 L	B	40		
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40		
Nitriles, toxic, n.o.s.	6.1	UN3276	I	POISON		None	201	243	1 L	30 L	B			
			II	POISON	T14	None	202	243	5 L	60 L	B			
			III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A			
Nitrites, inorganic, aqueous solution, n.o.s.	5.1	UN3219	II	OXIDIZER	T8	152	202	242	1 L	5 L	B	46, 56, 58		
			III	OXIDIZER	T8	152	203	241	2.5 L	30 L	B	46, 56, 58		
Nitrites, inorganic, n.o.s.	5.1	UN2627	II	OXIDIZER	33	152	212	None	5 kg	25 kg	A	46, 56, 58		
3-Nitro-4-chlorobenzotrifluoride	6.1	UN2307	II	POISON	T8	None	202	243	5 L	60 L	A	40		
6-Nitro-4-diazotoluene-3-sulfonic acid (dry)	Forbidden													
Nitro isobutane triol trinitrate	Forbidden													
N-Nitro-N-methylglycolamide nitrate	Forbidden													
2-Nitro-2-methylpropanol nitrate	Forbidden													
Nitro urea	1.1D	UN0147	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
N-Nitroaniline	Forbidden													
Nitroanilines *(o-; m-; p-)*	6.1	UN1661	II	POISON	T14	None	212	242	25 kg	100 kg	A			
Nitroanisole	6.1	UN2730	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A			
Nitrobenzene	6.1	UN1662	II	POISON	T14	None	202	243	5 L	60 L	A	40		
m-Nitrobenzene diazonium perchlorate	Forbidden													
Nitrobenzenesulfonic acid	8	UN2305	II	CORROSIVE		154	202	242	1 L	30 L	A			
Nitrobenzol, see Nitrobenzene														
5-Nitrobenzotriazol	1.1D	UN0385	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E		
Nitrobenzotrifluorides	6.1	UN2306	II	POISON	T8	None	202	243	5 L	60 L	A	40		
Nitrobromobenzenes *liquid*	6.1	UN2732	III	KEEP AWAY FROM FOOD.	T8, T38	153	203	241	60 L	220 L	A			
Nitrobromobenzenes *solid*	6.1	UN2732	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A			
Nitrocellulose, *dry or wetted with less than 25 percent water (or alcohol), by mass*	1.1D	UN0340	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	4E, 27E		
Nitrocellulose membrane filters	4.1	UN3270	II	FLAMMABLE SOLID	43, A1	151	212	240	1 kg	15 kg	D			
Nitrocellulose, plasticized *with not less than 18 percent plasticizing substance, by mass*	1.3C	UN0343	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E		
Nitrocellulose, solution, flammable *with not more than 12.6 percent nitrogen, by mass, and not more than 55 percent nitrocellulose*	3	UN2059	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B			
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A			
Nitrocellulose, *unmodified or plasticized with less than 18 percent plasticizing substance, by mass*	1.1D	UN0341	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	4E, 27E		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Nitrocellulose, wetted *with not less than 25 percent alcohol, by mass*	1.3C	UN0342	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Nitrocellulose with alcohol *with not less than 25 percent alcohol by mass, and with not more than 12.6 percent nitrogen, by dry mass*	4.1	UN2556	II	FLAMMABLE SOLID		151	212	None	1 kg	15 kg	D	28
	Nitrocellulose with plasticizer *or* Nitrocellulose without plasticizer *or* Nitrocellulose with pigment *or* Nitrocellulose without pigmnet *with not more than 12.6 percent nitrogen, by dry mass*	4.1	UN2557	II	FLAMMABLE SOLID	44	151	212	None	1 kg	15 kg	D	28
	Nitrocellulose with water *with not less than 25 percent water, by mass*	4.1	UN2555	II	FLAMMABLE SOLID		151	212	None	15 kg	50 kg	E	28
	Nitrochlorobenzene, see Chloronitrobenzenes etc.												
	Nitrocresols	6.1	UN2446	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Nitroethane	3	UN2842	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	
	Nitroethyl nitrate	Forbidden											
	Nitroethylene polymer	Forbidden											
	Nitrogen, compressed	2.2	UN1066		NONFLAMMABLE GAS		306	302	314, 315	75 kg	150 kg	A	
	Nitrogen dioxide, liquefied *see* Dinitrogen tetroxide, liquefied												
	Nitrogen fertilizer solution, see Fertilizer ammoniating solution etc.												
	Nitrogen, mixtures with rare gases, see Rare gases and nitrogen mixtures												
	Nitrogen peroxide, see Dinitrogen tetroxide, liquefied												
	Nitrogen, refrigerated liquid *cryogenic liquid*	2.2	UN1977		NONFLAMMABLE GAS		320	316	318	50 kg	500 kg	D	
	Nitrogen tetroxide and nitric oxide mixtures, see Nitric oxide and nitrogen tetroxide mixtures												
	Nitrogen tetroxide, see Dinitrogen tetroxide, liquefied												
	Nitrogen trichloride	Forbidden											
D	Nitrogen trifluoride	2.2	UN2451		NONFLAMMABLE GAS, OXIDIZER.		None	302	None	Forbidden	25 kg	D	40
I	Nitrogen trifluoride	2.3	UN2451		POISON GAS, OXIDIZER.		None	302	None	Forbidden	25 kg	D	40
	Nitrogen triiodide	Forbidden											
	Nitrogen triiodide monoamine	Forbidden											
	Nitrogen trioxide	2.3	UN2421		POISON GAS, OXIDIZER, CORROSIVE.	1	None	336	245	Forbidden	Forbidden	D	40, 89, 90
	Nitroglycerin, desensitized *with not less than 40 percent non-volatile water insoluble phlegmatizer, by mass*	1.1D	UN0143	II	EXPLOSIVE 1.1D, POISON.		None	62	None	Forbidden	Forbidden	B	1E, 4E, 21E
	Nitroglycerin, liquid, not desensitized	Forbidden											
	Nitroglycerin, solution in alcohol, *with more than 1 percent but not more than 5 percent nitroglycerin*	3	UN3064	II	FLAMMABLE LIQUID	N8	None	202	None	Forbidden	5 L	E	
	Nitroglycerin, solution in alcohol, *with more than 1 percent but not more than 10 percent nitroglycerin*	1.1D	UN0144	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 21E
	Nitroglycerin solution in alcohol *with not more than 1 percent nitroglycerin*	3	UN1204	II	FLAMMABLE LIQUID	N34, T25	None	202	None	5 L	60 L	B	
	Nitroguanidine nitrate	Forbidden											
	Nitroguanidine *or* Picrite, *dry or wetted with less than 20 percent water, by mass*	1.1D	UN0282	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Nitroguanidine, wetted *or* Picrite, wetted *with not less than 20 percent water, by mass*	4.1	UN1336	I	FLAMMABLE SOLID	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28
	1-Nitrohydantoin	Forbidden											
	Nitrohydrochloric acid	8	UN1798	I	CORROSIVE	A3, B10, N41, T18, T27.	None	201	243	Forbidden	2.5 L	D	40, 66, 74, 89, 90
	Nitromannite (dry)	Forbidden											
	Nitromannite, wetted, *see* Mannitol hexanitrate, etc.												
	Nitromethane	3	UN1261	II	FLAMMABLE LIQUID	T25	150	202	None	Forbidden	60 L	A	
	Nitromuriatic acid, see Nitrohydrochloric acid												
	Nitronaphthalene	4.1	UN2538	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Nitrophenols (*o-, m-; p-,*)	6.1	UN1663	III	KEEP AWAY FROM FOOD.	T8, T38	153	213	240	100 kg	200 kg	A	
	m-Nitrophenyldinitromethane	Forbidden											
	Nitrotoluenes	3	UN2608	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	p-Nitrosodimethylaniline	4.2	UN1369	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N34	None	212	241	15 kg	50 kg	D	34
D	Nitrosoguanidine	1.1A	NA0473	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Nitrostarch *dry or wetted with less than 20 percent water, by mass*	1.1D	UN0146	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E

	Nitrostarch, wetted *with not less than 20 percent water, by mass*	4.1	UN1337	I	FLAMMABLE SOLID	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	D	28
	Nitrosugars (dry)	Forbidden											
	Nitrosyl chloride	2.3	UN1069		POISON GAS, CORROSIVE.	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40
	Nitrosylsulfuric acid	8	UN2308	II	CORROSIVE	A3, A6, A7, B2, N34, T9, T27.	154	202	242	1 L	30 L	D	40, 66, 74, 89, 90
	Nitrotoluenes, *liquid o-; m-; p-;*	6.1	UN1664	II	POISON	T14	None	202	243	5 L	60 L	A	
	Nitrotoluenes, *solid m-, or p-*	6.1	UN1664	II	POISON	T14	None	212	242	25 kg	100 kg	A	
	Nitrotoluidines (mono)	6.1	UN2660	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Nitrotriazolone *or* NTO	1.1D	UN0490	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Nitrous oxide and carbon dioxide mixtures, see Carbon dioxide and nitrous oxide mixtures												
	Nitrous oxide, compressed	2.2	UN1070		NONFLAMMABLE GAS, OXIDIZER.		306	304	314, 315	75 kg	150 kg	A	40
	Nitrous oxide, refrigerated liquid	2.2	UN2201		NONFLAMMABLE GAS	B6	None	304	314, 315	75 kg	150 kg	B	40
	Nitroxylenes, (o-; m-; p-)	6.1	UN1665	II	POISON	T14	None	202	243	5 L	60 L	A	
	Nitroxylol, see Nitroxylenes												
	Nonanes	3	UN1920	III	FLAMMABLE LIQUID	B1, T1	150	203	242	50 L	220 L	A	
	Nonflammable gas, n.o.s., see Compressed *or* Liquefied gases, *etc. (UN 1955, UN 1956)*												
	Nonliquefied gases, see Compressed gases, *etc.*												
	Nonliquefied hydrocarbon gas, see Hydrocarbon gases, compressed, n.o.s.												
	Nonyltrichlorosilane	8	UN1799	II	CORROSIVE	A7, B2, B6, N34, T9, T27.	None	202	242	1 L	30 L	D	40, 66, 74, 89, 90

Nitrostarch, wetted with not less than 20 percent water, by mass	4.1	UN1337	I	FLAMMABLE SOLID	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	D	28	
Nitrosugars (dry)	Forbidden												
Nitrosyl chloride	2.3	UN1069		POISON GAS, CORROSIVE.	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40	
Nitrosylsulfuric acid	8	UN2308	II	CORROSIVE	A3, A6, A7, B2, N34, T9, T27.	154	202	242	1 L	30 L	D	40, 52, 74, 89, 90	
Nitrotoluenes, *liquid o-; m-; p-;*	6.1	UN1664	II	POISON	T14	None	202	243	5 L	60 L	A		
Nitrotoluenes, *solid m-, or p-*	6.1	UN1664	II	POISON	T14	None	212	242	25 kg	100 kg	A		
Nitrotoluidines (mono)	6.1	UN2660	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
Nitrotriazolone *or* NTO	1.1D	UN0490	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E	
Nitrous oxide and carbon dioxide mixtures, see Carbon dioxide and nitrous oxide mixtures													
Nitrous oxide, compressed	2.2	UN1070		NONFLAMMABLE GAS, OXIDIZER.		306	304	314, 315	75 kg	150 kg	A	40	
Nitrous oxide, refrigerated liquid	2.2	UN2201		NONFLAMMABLE GAS	B6	None	304	314, 315	75 kg	150 kg	B	40	
Nitroxylenes, (o-; m-; p-)	6.1	UN1665	II	POISON	T14	None	202	243	5 L	60 L	A		
Nitroxylol, see Nitroxylenes													
Nonanes	3	UN1920	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Nonflammable gas, n.o.s., see Compressed *or* Liquefied gases, *etc. (UN 1955, UN 1956)*													
Nonliquefied gases, see Compressed gases, *etc.*													
Nonliquefied hydrocarbon gas, see Hydrocarbon gases, compressed, n.o.s.													
Nonyltrichlorosilane	8	UN1799	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40	
2,5 Norbornadiene *or* Dicycloheptadiene	3	UN2251	II	FLAMMABLE LIQUID		150	202	242	5 L	60 L	D		
Nordhausen acid, see Sulfuric acid, fuming *etc.*													
Octadecyltrichlorosilane	8	UN1800	II	CORROSIVE	A7, B2, B6 N34, T8.	None	202	242	Forbidden	30 L	C	40	
Octadiene	3	UN2309	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B		
1,7-Octadine-3,5-diyne-1,8-dimethoxy-9-octadecynoic acid	Forbidden												
Octafluorobut-2-ene	2.2	UN2422		NONFLAMMABLE GAS		None	304	314, 315	75 kg	150 kg	A		
Octafluorocyclobutane, *RC318*	2.2	UN1976		NONFLAMMABLE GAS		None	304	314, 315	75 kg	150 kg	A		
Octafluoropropane, *R218*	2.2	UN2424		NONFLAMMABLE GAS		None	304	314, 315	75 kg	150 kg	A		
Octanes	3	UN1262	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
Octogen, *see* Cyclotetramethylene tetranitramine, *etc.*													
Octolite *or* Octol, *dry or wetted with less than 15 percent water, by mass*	1.1D	UN0266	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E	
Octonal	1.1D	UN0496	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E	
Octyl aldehydes, *flammable*	3	UN1191	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
tert-Octylmercaptan	6.1	UN3023	II	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	B	40, 102	
Octyltrichlorosilane	8	UN1801	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40	
Oil gas	2.3	UN1071		POISON GAS, FLAMMABLE GAS.	6	None	304	314, 315	Forbidden	150 kg	D	40	
Oleum, see Sulfuric acid, fuming													
Organic peroxide type A, liquid or solid	Forbidden												
Organic peroxide type B, liquid	5.2	UN3101	II	ORGANIC PEROXIDE, EXPLOSIVE.	53	152	225	None	Forbidden	Forbidden	D	12, 40	
Organic peroxide type B, liquid, temperature controlled	5.2	UN3111	II	ORGANIC PEROXIDE, EXPLOSIVE.	53	None	225	None	Forbidden	Forbidden	D	2, 40	
Organic peroxide type B, solid	5.2	UN3102	II	ORGANIC PEROXIDE, EXPLOSIVE.	53	152	225	None	Forbidden	Forbidden	D	12, 40	
Organic peroxide type B, solid, temperature controlled	5.2	UN3112	II	ORGANIC PEROXIDE, EXPLOSIVE.	53	None	225	None	Forbidden	Forbidden	D	2, 40	
Organic peroxide type C, liquid	5.2	UN3103	II	ORGANIC PEROXIDE		152	225	None	5 L	10 L	D	12, 40	
Organic peroxide type C, liquid, temperature controlled	5.2	UN3113	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40	
Organic peroxide type C, solid	5.2	UN3104	II	ORGANIC PEROXIDE		152	225	None	5 kg	10 kg	D	12, 40	
Organic peroxide type C, solid, temperature controlled	5.2	UN3114	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40	
Organic peroxide type D, liquid	5.2	UN3105	II	ORGANIC PEROXIDE		152	225	None	5 L	10 L	D	12, 40	
Organic peroxide type D, liquid, temperature controlled	5.2	UN3115	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40	
Organic peroxide type D, solid	5.2	UN3106	II	ORGANIC PEROXIDE		152	225	None	5 kg	10 kg	D	12, 40	
Organic peroxide type D, solid, temperature controlled	5.2	UN3116	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40	
Organic peroxide type E, liquid	5.2	UN3107	II	ORGANIC PEROXIDE		152	225	None	10 L	25 L	D	12, 40	
Organic peroxide type E, liquid, temperature controlled	5.2	UN3117	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40	
Organic peroxide type E, solid	5.2	UN3108	II	ORGANIC PEROXIDE		152	225	None	10 kg	25 kg	D	12, 40	
Organic peroxide type E, solid, temperature controlled	5.2	UN3118	II	ORGANIC PEROXIDE		None	225	None	Forbidden	Forbidden	D	2, 40	
Organic peroxide type F, liquid	5.2	UN3109	II	ORGANIC PEROXIDE		152	225	225	10 L	25 L	D	12, 40	

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Organic peroxide type F, liquid, temperature controlled	5.2	UN3119	II	ORGANIC PEROXIDE		154	225	None	Forbidden	Forbidden	D	2, 40
	Organic peroxide type F, solid	5.2	UN3110	II	ORGANIC PEROXIDE	T42	152	225	None	10 kg	25 kg	D	12, 40
	Organic peroxide type F, solid, temperature controlled	5.2	UN3120	II	ORGANIC PEROXIDE		225	225	None	Forbidden	Forbidden	D	2, 40
D	Organic phosphate, mixed with compressed gas *or* Organic phosphate compound, mixed with compressed gas *or* Organic phosphorus compound, mixed with compressed gas	2.3	NA1955		POISON GAS	3	None	334	None	Forbidden	Forbidden	D	40
	Organoarsenic compound, n.o.s.	6.1	UN3280	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON	T14	None	212	242	25 kg	100 kg	B	
				III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Organochlorine pesticides liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2762	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Organochlorine pesticides, liquid, toxic	6.1	UN2996	I	POISON	T43	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Organochlorine pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN2995	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	150	203	242	60 L	220 L	A	40
	Organochlorine pesticides, solid toxic	6.1	UN2761	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Organometallic compound *or* Compound solution *or* Compound dispersion, water-reactive, flammable, n.o.s.	4.3	UN3207	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID.		None	201	244	Forbidden	1 L	E	40
				II	DANGEROUS WHEN WET, FLAMMABLE LIQUID.		None	202	243	1 L	5 L	E	40
				III	DANGEROUS WHEN WET, FLAMMABLE LIQUID.		None	203	242	5 L	60 L	E	40
	Organometallic compound, toxic n.o.s.	6.1	UN3282	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON	T14	None	212	242	25 kg	100 kg	B	
				III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Organophosphorus compound, toxic, flammable, n.o.s.	6.1	UN3279	I	POISON, FLAMMABLE LIQUID.		None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
	Organophosphorus compound, toxic n.o.s.	6.1	UN3278	I	POISON		None	201	243	1 L	30 L	B	
				II	POISON	T14	None	202	243	5 L	60 L	B	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Organophosphorus pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2784	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Organophosphorus pesticides, liquid, toxic	6.1	UN3018	I	POISON	N76, T42	None	201	243	1 L	30 L	B	40
				II	POISON	N76, T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	N76, T14	153	203	241	60 L	220 L	A	40
	Organophosphorus pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3017	I	POISON, FLAMMABLE LIQUID.	N76, T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	N76, T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, N76, T14	150	203	242	60 L	220 L	A	40
	Organophosphorus pesticides, solid, toxic	6.1	UN2783	I	POISON	N77	None	211	242	5 kg	50 kg	A	40
				II	POISON	N77	None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.	N77 [8]	153	213	240	100 kg	200 kg	A	40
	Organotin compounds, liquid, n.o.s.	6.1	UN2788	I	POISON	A3, N33, N34, T42	None	201	243	1 L	30 L	B	40
				II	POISON	A3, N33, N34, T14	None	202	243	5 L	60 L	A	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Organotin compounds, solid, n.o.s.	6.1	UN3146	I	POISON	A5	None	211	242	5 kg	50 kg	B	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM		153	213	240	100 kg	200 kg	A	40

			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A		
Organophosphorus pesticides, liquid, toxic	6.1	UN3018	I	POISON	N76, T42	None	201	243	1 L	30 L	B	40	
			II	POISON	N76, T14	None	202	243	5 L	60 L	B	40	
			III	KEEP AWAY FROM FOOD.	N76, T14	153	203	241	60 L	220 L	A	40	
Organophosphorus pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3017	I	POISON, FLAMMABLE LIQUID.	N76, T42	None	201	243	1 L	30 L	B	40	
			II	POISON, FLAMMABLE LIQUID.	N76, T14	None	202	243	5 L	60 L	B	40	
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, N76, T14	153	203	242	60 L	220 L	A	40	
Organophosphorus pesticides, solid, toxic	6.1	UN2783	I	POISON	N77	None	211	242	5 kg	50 kg	A	40	
			II	POISON	N77	None	212	242	25 kg	100 kg	A	40	
			III	KEEP AWAY FROM FOOD.	N77 [8]	153	213	240	100 kg	200 kg	A	40	
Organotin compounds, liquid, n.o.s.	6.1	UN2788	I	POISON	A3, N33, N34, T42	None	201	243	1 L	30 L	B	40	
			II	POISON	A3, N33, N34, T14	None	202	243	5 L	60 L	A	40	
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40	
Organotin compounds, solid, n.o.s.	6.1	UN3146	I	POISON	A5	None	211	242	5 kg	50 kg	B	40	
			II	POISON		None	212	242	25 kg	100 kg	A	40	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40	
Organotin pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2787	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40	
			II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40	
Organotin pesticides, liquid, toxic	6.1	UN3020	I	POISON	T42	None	201	243	1 L	30 L	B	40	
			II	POISON	T14	None	202	243	5 L	60 L	B	40	
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40	
Organotin pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN3019	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40	
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40	
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40	
Organotin pesticides, solid, toxic	6.1	UN2786	I	POISON		None	211	242	5 kg	50 kg	A	40	
			II	POISON		None	212	242	25 kg	100 kg	A	40	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40	
Orthonitroaniline, see Nitroanilines *etc.*													
Osmium tetroxide	6.1	UN2471	I	POISON	A8, N33, N34	None	211	242	5 kg	50 kg	B	40	
AD Other regulated substances, liquid, n.o.s.	9	NA3082	III	CLASS 9		155	203	241	No limit	No limit	A		
AD Other regulated substances, solid, n.o.s.	9	NA3077	III	CLASS 9	B54	155	213	240	No limit	No limit	A		
Oxidizing, liquid, corrosive, n.o.s.	5.1	UN3098	I	OXIDIZER, CORROSIVE		None	201	244	Forbidden	2.5 L	B		34, 56, 58, 69, 106
			II	OXIDIZER, CORROSIVE		None	202	243	1 L	5 L	D		34, 56, 58, 69, 106
			III	OXIDIZER, CORROSIVE		152	203	242	2.5 L	30 L	B		34, 56, 58, 69, 106
Oxidizing, liquid, n.o.s.	5.1	UN3139	II	OXIDIZER	A2	152	202	242	1 L	5 L	B		56, 58, 69, 106
			III	OXIDIZER	A2	152	203	241	2.5 L	30 L	B		56, 58, 69, 106
Oxidizing, liquid, toxic, n.o.s.	5.1	UN3099	I	OXIDIZER, POISON		None	201	244	Forbidden	2.5 L	D		56, 58, 95, 106
			II	OXIDIZER, POISON		None	202	243	1 L	5 L	B		56, 58, 95, 106
			III	OXIDIZER KEEP AWAY FROM FOOD.		152	203	242	2.5 L	30 L	B		56, 58, 95, 106
Oxidizing, solid, corrosive, n.o.s.	5.1	UN3085	I	OXIDIZER, CORROSIVE		None	211	242	1 kg	15 kg	D		13, 34, 56, 58, 69, 106
			II	OXIDIZER, CORROSIVE		None	212	242	5 kg	25 kg	B		13, 34, 56, 58, 69, 106
			III	OXIDIZER, CORROSIVE		152	213	240	25 kg	100 kg	B		13, 34, 56, 58, 69, 106

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Oxidizing, solid, flammable, n.o.s.	5.1	UN3137	I	OXIDIZER, FLAMMABLE SOLID.		None	214	214	Forbidden	Forbidden		
	Oxidizing, solid, self heating, n.o.s.	5.1	UN3100		OXIDIZER, SPONTANEOUSLY COMBUSTIBLE.		None	214	214	Forbidden	Forbidden		
	Oxidizing solid, toxic, n.o.s.	5.1	UN3087	I	OXIDIZER, POISON		None	211	242	1 kg	15 kg	D	56, 58, 69, 95, 106
				II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	B	56, 58, 69, 95, 106
				III	OXIDIZER, KEEP AWAY FROM FOOD.		152	213	240	25 kg	100 kg	B	56, 58, 69, 95, 106
	Oxidizing, solid, water-reactive, n.o.s.	5.1	UN3121		OXIDIZER, DANGEROUS WHEN WET.		None	214	214	Forbidden	Forbidden		
	Oxidizing solid, n.o.s.	5.1	UN1479	I	OXIDIZER		152	211	242	1 kg	15 kg	D	58, 58, 69, 106
				II	OXIDIZER		152	212	240	5 kg	25 kg	B	56, 58, 69, 106
				III	OXIDIZER		152	213	240	25 kg	100 kg	B	56, 58, 69, 106
	Oxygen and carbon dioxide mixtures, see Carbon dioxide and oxygen mixtures												
	Oxygen, compressed	2.2	UN1072		NONFLAMMABLE GAS, OXIDIZER.		306	302	314, 315	75 kg	150 kg	A	
	Oxygen difluoride	2.3	UN2190		POISON GAS, OXIDIZER, CORROSIVE.	1	None	304	None	Forbidden	Forbidden	D	13, 40, 90
	Oxygen, mixtures with rare gases, see Rare gases and oxygen mixtures												
	Oxygen, refrigerated liquid *(cryogenic liquid)*	2.2	UN1073		NONFLAMMABLE GAS, OXIDIZER.		320	316	318	Forbidden	Forbidden	D	
	Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base*	3	UN1263	II	FLAMMABLE LIQUID	B52, T7, T30	150	173	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	173	242	60 L	220 L	A	
	Paint *or* Paint related material	8	UN3066	II	CORROSIVE	B2, N71, T14	154	202	242	1 L	30 L	A	
				III	CORROSIVE	B52, N71, T7	154	203	241	5 L	60 L	A	
	Paint related material *including paint thinning, drying, removing, or reducing compound*	3	UN1263	II	FLAMMABLE LIQUID	B52, T7, T30	150	173	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	173	242	60 L	220 L	A	
	Paper, unsaturated oil treated *incompletely dried (including carbon paper)*	4.2	UN1379	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	A	
	Paraformaldehyde	4.1	UN2213	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Paraldehyde	3	UN1264	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Parannitroaniline, solid, see Nitroanilines *etc.*												
D	Parathion	6.1	NA2783	I	POISON	T42	None	201	243	Forbidden	1 L	A	40
				II	POISON	T14	None	202	243	Forbidden	5 L	A	40
D	Parathion and compressed gas mixture	2.3	NA1967		POISON GAS	3	None	334	245	Forbidden	Forbidden	E	40
	Paris green, solid, see Copper acetoarsenite												
A,W	PCB, *see* Polychlorinated biphenyls												
+	Pentaborane	4.2	UN1380	I	SPONTANEOUSLY COMBUSTIBLE, POISON.	1	None	205	245	Forbidden	Forbidden	D	
	Pentachloroethane	6.1	UN1669	II	POISON	T14	None	202	243	5 L	60 L	A	40
	Pentachlorophenol	6.1	UN3155	II	POISON		None	212	242	25 kg	100 kg	A	
	Pentaerythrite tetranitrate (dry)	Forbidden											
	Pentaerythrite tetranitrate *or* Pentaerythritol tetranitrate *or* PETN, *with not less than 7 percent wax by mass*	1.1D	UN0411	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
D	Pentaerythrite tetranitrate, wetted *or* Pentaerythritol tetranitrate, wetted, *or* PETN, wetted *with not less than 25 percent water, by mass, or* Pentaerythrite tetranitrate, *or* Pentaerythritol tetranitrate *or* PETN, desensitized *with not less than 15 percent phlegmatizer by mass*	1.1D	UN0150	II	EXPLOSIVE 1.1D	25	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Pentaerythritol tetranitrate, *see* Pentaerythrite tetranitrate, *etc.*												
	Pentafluoroethane	2.2	UN3220		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Pentamethylheptane	3	UN2286	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Pentan-2,4-dione	3	UN2310	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Pentanes	3	UN1265	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	

	Pentanitroaniline (dry)	Forbidden											
	1-Pentol	8	UN2705	II	CORROSIVE	T8, T9	154	202	242	1 L	30 L	B	38
	Pentolite, *dry or wetted with less than 15 percent water, by mass*	1.1D	UN0151	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Percarbonates, inorganic, n.o.s.	5.1	UN3217	III	OXIDIZER		152	213	240	25 kg	100 kg	A	13
	Perchlorates, inorganic, aqueous solution, n.o.s.	5.1	UN3211	II	OXIDIZER	T8	152	202	242	1 L	5 L	B	46, 56, 90
	Perchlorates, inorganic, n.o.s.	5.1	UN1481	II	OXIDIZER		152	212	242	5 kg	25 kg	A	46, 56
				III	OXIDIZER		152	213	240	25 kg	100 kg	A	46, 56
	Perchloric acid, with more than 72 percent acid by mass	Forbidden											
	Perchloric acid *with more than 60 percent but not more than 72 percent acid, by mass*	5.1	UN1873	I	OXIDIZER, CORROSIVE	A2, A3, N41, T9, T27.	None	201	243	Forbidden	2.5 L	D	66
	Perchloric acid *with not more than 50 percent acid by mass*	8	UN1802	II	CORROSIVE, OXIDIZER	N41, T9	None	202	243	Forbidden	30 L	C	66
	Perchloroethylene, see Tetrachloroethylene												
	Perchloromethylmercaptan	6.1	UN1670	I	POISON	2, A3, A7, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Perchloryl fluoride	2.3	UN3083		POISON GAS, OXIDIZER.	2, 25, B9, B12, B14.	None	302	314, 315	Forbidden	Forbidden	D	40
	Percussion caps, see Primers, cap type												
	Perfluoro-2-butene, see Octafluorobut-2-ene												
	Perfluoroethylvinyl ether	2.1	UN3154		FLAMMABLE GAS		306	302, 304, 305	314, 315	Forbidden	150 kg	E	40
	Perfluoromethylvinyl ether	2.1	UN3153		FLAMMABLE GAS		306	302, 304, 305	314, 315	Forbidden	150 kg	E	40

Pentamethylheptane	3	UN2286	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Pentan-2,4-dione	3	UN2310	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Pentanes	3	UN1265	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
			II	FLAMMABLE LIQUID	T20	150	202	242	5 L	60 L	E	
Pentanitroaniline (dry)	Forbidden											
1-Pentol	8	UN2705	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	B	38
Pentolite, *dry or wetted with less than 15 percent water, by mass*	1.1D	UN0151	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
Percarbonates, inorganic, n.o.s.	5.1	UN3217	III	OXIDIZER		152	213	240	25 kg	100 kg	A	13
Perchlorates, inorganic, aqueous solution, n.o.s.	5.1	UN3211	II	OXIDIZER	T8	152	202	242	1 L	5 L	B	46, 56,
Perchlorates, inorganic, n.o.s.	5.1	UN1481	II	OXIDIZER		152	212	242	5 kg	25 kg	A	46, 56
			III	OXIDIZER		152	213	240	25 kg	100 kg	A	46, 56
Perchloric acid, with more than 72 percent acid by mass	Forbidden											
Perchloric acid *with more than 60 percent but not more than 72 percent acid, by mass*	5.1	UN1873	I	OXIDIZER, CORROSIVE	A2, A3, N41, T9, T27.	None	201	243	Forbidden	2.5 L	D	66
Perchloric acid *with not more than 50 percent acid by mass*	8	UN1802	II	CORROSIVE, OXIDIZER	N41, T9	None	202	243	Forbidden	30 L	C	66
Perchloroethylene, see Tetrachloroethylene												
Perchloromethylmercaptan	6.1	UN1670	I	POISON	2, A3, A7, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
Perchloryl fluoride	2.3	UN3083		POISON GAS, OXIDIZER.	2, 25, B9, B12, B14.	None	302	314, 315	Forbidden	Forbidden	D	40
Percussion caps, see Primers, cap type												
Perfluoro-2-butene, see Octafluorobut-2-ene												
Perfluoroethylvinyl ether	2.1	UN3154		FLAMMABLE GAS		306	302, 304, 305	314, 315	Forbidden	150 kg	E	40
Perfluoromethylvinyl ether	2.1	UN3153		FLAMMABLE GAS		306	302, 304, 305	314, 316	Forbidden	150 kg	E	40
Perfumery products *with flammable solvents*	3	UN1266	II	FLAMMABLE LIQUID	T7, T30	150	202	242	15 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
Permanganates, inorganic, aqueous solution, n.o.s.	5.1	UN3214	II	OXIDIZER	26, T8	152	202	242	1 L	5 L	D	56, 58, 69, 106, 107
Permanganates, inorganic, n.o.s.	5.1	UN1482	II	OXIDIZER	26, A30	152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
			III	OXIDIZER	26, A30	152	213	240	25 kg	100 kg	D	56, 58, 69, 106, 107
Peroxides, inorganic, n.o.s.	5.1	UN1483	II	OXIDIZER	A7, A20, N34	None	212	242	5 kg	25 kg	A	13, 75, 106
			III	OXIDIZER	A7, A20, N34	152	213	240	25 kg	100 kg	A	13, 75, 106
Peroxyacetic acid, with more than 43 percent and with more than 6 percent hydrogen peroxide	Forbidden											
Persulphates, inorganic, aqueous solution, n.o.s.	5.1	UN3216	III	OXIDIZER	T2	152	203	241	2.5 L	30 L	A	
Persulphates, inorganic, n.o.s.	5.1	UN3215	III	OXIDIZER		152	213	240	25 kg	100 kg	A	
Pesticides, liquid, flammable, toxic, (flashpoint less than 23 degrees C)	3	UN3021	I	FLAMMABLE LIQUID, POISON.	B5	None	201	243	Forbidden	30 L	B	
			II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	
			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	B	
Pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C*	6.1	UN2903	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
			II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
Pesticides, liquid, toxic, n.o.s.	6.1	UN2902	I	POISON	T42	None	201	243	1 L	30 L	B	40
			II	POISON	T14	None	202	243	5 L	60 L	B	40
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
Pesticides, solid, toxic, n.o.s.	6.1	UN2588	I	POISON		None	211	242	5 kg	50 kg	A	40
			II	POISON		None	212	242	25 kg	100 kg	A	40
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
PETN, *see* Pentaerythrite tetranitrate												
PETN/TNT, *see* Pentolite, *etc.*												
Petrol, *see* Gasoline												
Petroleum crude oil	3	UN1267	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E	
			II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
Petroleum distillates, n.o.s. *or* Petroleum products, n.o.s.	3	UN1268	I	FLAMMABLE LIQUID	T8, T31	150	201	243	1 L	30 L	E	
			II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
Petroleum ether, see Petroleum spirit												

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Petroleum gases, liquefied *or* Liquefied petroleum gas	2.1	UN1075		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
	Petroleum naphtha, see Naphtha, *petroleum*												
	Phenacyl bromide	6.1	UN2645	II	POISON		None	212	242	25 kg	100 kg	B	40
	Phenetidines	6.1	UN2311	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Phenol, molten	6.1	UN2312	II	POISON	B14, T8	None	202	243	Forbidden	Forbidden	B	40
+	Phenol, solid	6.1	UN1671	II	POISON	N78, T14	None	212	242	25 kg	100 kg	A	
	Phenol solutions	6.1	UN2821	II	POISON	T14	None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Phenolsulfonic acid, liquid	8	UN1803	II	CORROSIVE	B2, N41, T8	154	202	242	1 L	30 L	C	14
	Phenoxy pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2766	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Phenoxy pesticides, liquid, toxic	6.1	UN3000	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Phenoxy pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN2909	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Phenoxy pesticides, solid, toxic	6.1	UN2765	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Phenyl isocyanate	6.1	UN2487	II	POISON	2, A3, B9, B14, B32, B74, B77, N33, N34, T38, T43, T45.	None	227	244	5 L	60 L	D	40
	Phenyl mercaptan	6.1	UN2337	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	26, 40
	Phenyl phosphorus dichloride	8	UN2798	II	CORROSIVE	B2, B15, T8, T26	154	202	242	Forbidden	30 L	B	40
	Phenyl phosphorus thiodichloride	8	UN2799	II	CORROSIVE	B2, B15, T8, T26	154	202	242	Forbidden	30 L	B	40
	Phenyl urea pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2768	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Phenyl urea pesticides, liquid, toxic	6.1	UN3002	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Phenyl urea pesticides, liquid, toxic, flammable, *flash point not less than 23 degrees C*	6.1	UN3001	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40

			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
Phenyl urea pesticides, solid, toxic	6.1	UN2767	I	POISON		None	211	242	5 kg	50 kg	A	40
			II	POISON		None	212	242	25 kg	100 kg	A	40
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
Phenylacetonitrile, liquid	6.1	UN2470	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	26
Phenylacetyl chloride	8	UN2577	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	40
Phenylcarbylamine chloride	6.1	UN1672	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
Phenylchloroformate	8	UN2746	II	POISON, CORROSIVE	T12	None	202	243	1 L	30 L	A	12, 13, 21, 25, 40, 100
m-Phenylene diaminediperchlorate (dry)	Forbidden											
Phenylenediamines (*o*-; *m*-; *p*-;)	6.1	UN1673	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
Phenylhydrazine	6.1	UN2572	II	POISON	T8	None	202	243	5 L	60 L	A	40
Phenylmercuric acetate	6.1	UN1674	II	POISON		None	212	242	25 kg	100 kg	A	
Phenylmercuric compounds, n.o.s.	6.1	UN2026	I	POISON		None	211	242	5 kg	50 kg	A	
			II	POISON		None	212	242	25 kg	100 kg	A	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
Phenylmercuric hydroxide	6.1	UN1894	II	POISON		None	212	242	25 kg	100 kg	A	
Phenylmercuric nitrate	6.1	UN1895	II	POISON		None	212	242	25 kg	100 kg	A	
Phenyltrichlorosilane	8	UN1804	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	40

			III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40	
Phenyl urea pesticides, solid, toxic	6.1	UN2767	I	POISON		None	211	242	5 kg	50 kg	A	40	
			II	POISON		None	212	242	25 kg	100 kg	A	40	
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40	
Phenylacetonitrile, liquid	6.1	UN2470	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	26	
Phenylacetyl chloride	8	UN2577	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	40	
Phenylcarbylamine chloride	6.1	UN1672	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40	
Phenylchloroformate	6.1	UN2746	II	POISON, CORROSIVE	T12	None	202	243	1 L	30 L	A	12, 13, 21, 25, 40, 100	
m-Phenylene diaminediperchlorate (dry)	Forbidden												
Phenylenediamines (*o*-; *m*-; *p*-;)	6.1	UN1673	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
Phenylhydrazine	6.1	UN2572	II	POISON	T8	None	202	243	5 L	60 L	A	40	
Phenylmercuric acetate	6.1	UN1674	II	POISON		None	212	242	25 kg	100 kg	A		
Phenylmercuric compounds, n.o.s.	6.1	UN2026	I	POISON		None	211	242	5 kg	50 kg	A		
			II	POISON		None	212	242	25 kg	100 kg	A		
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
Phenylmercuric hydroxide	6.1	UN1894	II	POISON		None	212	242	25 kg	100 kg	A		
Phenylmercuric nitrate	6.1	UN1895	II	POISON		None	212	242	25 kg	100 kg	A		
Phenyltrichlorosilane	8	UN1804	II	CORROSIVE	A7, B6, N34, T8	None	202	242	Forbidden	30 L	C	40	
Phosgene	2.3	UN1076		POISON GAS, CORROSIVE.	1, B7, B46	None	192	314	Forbidden	Forbidden	D	40	
9-Phosphabicyclononanes *or* Cyclooctadiene phosphines	4.2	UN2940	II	SPONTANEOUSLY COMBUSTIBLE.	A19	None	212	241	15 kg	50 kg	A		
Phosphine	2.3	UN2199		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40	
Phosphoric acid	8	UN1805	III	CORROSIVE	A7, N34, T7	154	203	241	5 L	60 L	A		
Phosphoric acid triethylenemine, see Tri-(1-aziridiyl) phosphine oxide, solution													
Phosphoric anhydride, see Phosphorus pentoxide													
Phosphorous acid	8	UN2834	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	48	
Phosphorus, amorphous	4.1	UN1338	III	FLAMMABLE SOLID	A1, A19, B1, B9, B12, B26.	None	213	243	25 kg	100 kg	A	74	
Phosphorus bromide, see Phosphorus tribromide													
Phosphorus chloride, see Phosphorus trichloride													
Phosphorus heptasulfide, *free from yellow or white phosphorus*	4.1	UN1339	II	FLAMMABLE SOLID	A20, N34	None	212	240	15 kg	50 kg	B	74	
Phosphorus oxybromide	8	UN1939	II	CORROSIVE	B6, N41, N43	None	212	240	Forbidden	50 kg	C	12, 40	
Phosphorus oxybromide, molten	8	UN2576	II	CORROSIVE	B2, B8, N41, N43, T8, T27.	None	202	242	Forbidden	Forbidden	C	40	
+ Phosphorus oxychloride	8	UN1810	II	CORROSIVE, POISON	2, A7, B9, B14, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	30 L	C	40	
Phosphorus pentabromide	8	UN2691	II	CORROSIVE	A7, N34	154	212	240	Forbidden	50 kg	B	12, 40	
Phosphorus pentachloride	8	UN1806	II	CORROSIVE	A7, N34	None	212	240	Forbidden	50 kg	C	40	
Phosphorus pentafluoride	2.3	UN2198		POISON GAS, CORROSIVE.	1	None	302	None	Forbidden	Forbidden	D	40	
Phosphorus pentasulfide, *free from yellow or white phosphorus*	4.3	UN1340	II	DANGEROUS WHEN WET.	A20, B59	None	212	242	15 kg	50 kg	B	74	
Phosphorus pentoxide	8	UN1807	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A		
Phosphorus sesquisulfide, *free from yellow or white phosphorus*	4.1	UN1341	II	FLAMMABLE SOLID	A20, N34	None	212	240	15 kg	50 kg	B	74	
Phosphorus tribromide	8	UN1808	II	CORROSIVE	A3, A6, A7, B2, B25, N34, N43, T8.	None	202	242	Forbidden	30 L	C	40	
+ Phosphorus trichloride	8	UN1809	I	CORROSIVE, POISON	2, A3, A7, B9, B14, B15, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	2.5 L	C	40	
Phosphorus trioxide	8	UN2578	III	CORROSIVE		154	213	240	25 kg	100 kg	A	12	
Phosphorus trisulfide, *free from yellow or white phosphorus*	4.1	UN1343	II	FLAMMABLE SOLID	A20, N34	None	212	240	15 kg	50 kg	B	74	
Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus white, in solution *or* Phosphorus, yellow dry *or* Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution	4.2	UN1381	I	SPONTANEOUSLY COMBUSTIBLE, POISON.	B9, B12, B26, N34, T15, T26, T33.	None	188	243	Forbidden	Forbidden	E		
Phosphorus white, molten	4.2	UN2447	I	SPONTANEOUSLY COMBUSTIBLE, POISON.	B9, B12, B26, N34, T15, T26, T29.	None	188	243	Forbidden	Forbidden	D		
Phosphorus (white or red) and a chlorate, mixtures of	Forbidden												

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	Non-bulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Phosphoryl chloride, see Phosphorus oxychloride												
	Phthalic anhydride *with more than .05 percent maleic anhydride*	8	UN2214	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	
	Phthalimide derivative pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2774	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Phthalimide derivative pesticides, liquid, toxic	6.1	UN3008	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Phthalimide derivative pesticides, liquid, toxic, flammable *flashpoint not less than 23 degrees C*	6.1	UN3007	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40
	Phthalimide derivative pesticides, solid, toxic	6.1	UN2773	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Picolines	3	UN2313	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	40
	Picric acid, *see* Trinitrophenol, *etc.*												
D	Picric acid, wet, *with not less than 10 percent water*	4.1	NA1344	I	FLAMMABLE SOLID	A19, A20, N41	None	211	None	Forbidden	Forbidden	D	
	Picrite, *see* Nitroguanidine, *etc.*												
	Picryl chloride, *see* Trinitrochlorobenzene												
	Pine oil	3	UN1272	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	alpha-Pinene	3	UN2368	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Piperazine	8	UN2579	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	12
	Piperidine	3	UN2401	II	FLAMMABLE LIQUID, CORROSIVE.	T2	None	202	243	1 L	5 L	B	
	Pivaloyl chloride, see Trimethyl acetyl chloride												
A	Plastic molding material *in dough, sheet or extruded rope form*	9		III	CLASS 9		186	213	None	100 kg	200 kg	A	
	Plastic solvent, n.o.s., see Flammable liquids, n.o.s.												
	Plastics, nitrocellulose-based, self-heating, n.o.s.	4.2	UN2006	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	None	Forbidden	Forbidden	C	
	Poisonous gases, n.o.s., see Compressed *or* liquefied gases, flammable *or* toxic, n.o.s.												
	Polyalkylamines, n.o.s., *see* Alkylamines, *etc.*												
AW	Polychlorinated biphenyls	9	UN2315	II	CLASS 9	9, 81	155	202	241	100 L	220 L	A	34
	Polyester resin kit	3	UN3269		FLAMMABLE LIQUID	40	None	225	None	5 kg	5 kg	B	
	Polyhalogenated biphenyls, liquid *or* Polyhalogenated terphenyls liquid	9	UN3151	II	CLASS 9		155	204	241	100 L	220 L	A	34
	Polyhalogenated biphenyls, solid *or* Polyhalogenated terphenyls, solid	9	UN3152	II	CLASS 9		155	204	241	100 kg	200 kg	A	34
	Polymeric beads, expandable, *evolving flammable vapor*	9	UN2211	III	None	32	155	221	240	100 kg	200 kg	A	85, 87
	Potassium	4.3	UN2257	I	DANGEROUS WHEN WET.	A19, A20, B27, N6, N34, T15, T26.	None	211	244	1 kg	15 kg	D	
	Potassium arsenate	6.1	UN1677	II	POISON		None	212	242	25 kg	100 kg	A	
	Potassium arsenite	6.1	UN1678	II	POISON		None	212	242	25 kg	100 kg	A	
	Potassium bisulfite solution, *see* Bisulfites, inorganic, aqueous solutions, n.o.s.												
	Potassium borohydride	4.3	UN1870	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Potassium bromate	5.1	UN1484	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
	Potassium carbonyl	Forbidden											
	Potassium chlorate	5.1	UN1485	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Potassium chlorate, aqueous solution	5.1	UN2427	II	OXIDIZER	A2, T8	152	202	241	1 L	5 L	B	56, 58, 106
	Potassium chlorate mixed with mineral oil, see Explosive, blasting, type C												
	Potassium cuprocyanide	6.1	UN1679	II	POISON		None	212	242	25 kg	100 kg	A	26

	Potassium cyanide	6.1	UN1680	I	POISON	B69, B77, N74, N75, T18, T26.	None	211	242	5 kg	50 kg	B	52
	Potassium dichloro isocyanurate or Potassium dichloro-s-triazinetrione, see Dichloroisocyanuric acid, dry or Dichloroisocyanuric acid salts *etc*												
	Potassium dithionite *or* Potassium hydrosulfite	4.2	UN1929	II	SPONTANEOUSLY COMBUSTIBLE.	A8, A19, A20	None	212	241	15 kg	50 kg	E	13
	Potassium fluoride	6.1	UN1812	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	26
	Potassium fluoroacetate	6.1	UN2628	I	POISON		None	211	242	5 kg	50 kg	E	
	Potassium fluorosilicate	6.1	UN2655	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26
	Potassium hydrate, see Potassium hydroxide, solid												
	Potassium hydrogen fluoride, see Potassium bifluoride												
	Potassium hydrogen fluoride solution, see Corrosive liquid, n.o.s.												
	Potassium hydrogen sulfate	8	UN2509	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A	
	Potassium hydrogendifluoride, *solid*	8	UN1811	II	CORROSIVE, POISON	N3, N34, T8	154	212	240	15 kg	50 kg	A	25, 26, 40
	Potassium hydrogendifluoride, *solution*	8	UN1811	II	CORROSIVE, POISON	N3, N34, T8	154	202	243	1 L	30 L	A	26, 40, 95
	Potassium hydrosulfite, *see* Potassium dithionite												
	Potassium hydroxide, liquid, see Potassium hydroxide solution												
	Potassium hydroxide, solid	8	UN1813	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Potassium hydroxide, solution	8	UN1814	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Potassium hypochlorite, solution, see Hypochlorite solutions, *etc.*												
	Potassium, metal alloys	4.3	UN1420	I	DANGEROUS WHEN WET.	A19, A20, B27	None	211	244	1 kg	15 kg	D	
	Potassium metal, liquid alloy, see Alkali metal alloys, liquid												
	Potassium metavanadate	6.1	UN2864	II	POISON		None	212	242	25 kg	100 kg	A	

Potassium cyanide	6.1	UN1680	I	POISON	B69, B77, N74, N75, T18, T26.	None	211	242	5 kg	50 kg	B	52	
Potassium dichloro isocyanurate or Potassium dichloro-s-triazinetrione, see Dichloroisocyanuric acid, dry or Dichloroisocyanuric acid salts *etc*													
Potassium dithionite *or* Potassium hydrosulfite	4.2	UN1929	II	SPONTANEOUSLY COMBUSTIBLE.	A8, A19, A20	None	212	241	15 kg	50 kg	E	13	
Potassium fluoride	6.1	UN1812	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	26	
Potassium fluoroacetate	6.1	UN2628	I	POISON		None	211	242	5 kg	50 kg	E		
Potassium fluorosilicate	6.1	UN2655	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26	
Potassium hydrate, see Potassium hydroxide, solid													
Potassium hydrogen fluoride, see Potassium bifluoride													
Potassium hydrogen fluoride solution, see Corrosive liquid, n.o.s.													
Potassium hydrogen sulfate	8	UN2509	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A		
Potassium hydrogendifluoride, *solid*	8	UN1811	II	CORROSIVE, POISON	N3, N34, T8	154	212	240	15 kg	50 kg	A	25, 26, 40	
Potassium hydrogendifluonde, *solution*	8	UN1811	II	CORROSIVE, POISON	N3, N34, T8	154	202	243	1 L	30 L	A	26, 40, 95	
Potassium hydrosulfite, *see* Potassium dithionite													
Potassium hydroxide, liquid, see Potassium hydroxide solution													
Potassium hydroxide, solid	8	UN1813	II	CORROSIVE		154	212	240	15 kg	50 kg	A		
Potassium hydroxide, solution	8	UN1814	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A		
			III	CORROSIVE	T7	154	203	241	5 L	60 L	A		
Potassium hypochlorite, solution, see Hypochlorite solutions, *etc.*													
Potassium, metal alloys	4.3	UN1420	I	DANGEROUS WHEN WET.	A19, A20, B27	None	211	244	1 kg	15 kg	D		
Potassium metal, liquid alloy, see Alkali metal alloys, liquid													
Potassium metavanadate	6.1	UN2864	II	POISON		None	212	242	25 kg	100 kg	A		
Potassium monoxide	8	UN2033	II	CORROSIVE		154	212	240	15 kg	50 kg	A		
Potassium nitrate	5.1	UN1486	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A		
Potassium nitrate and sodium nitrite mixtures	5.1	UN1487	II	OXIDIZER	B12, B78	152	212	240	5 kg	25 kg	A	56, 58	
Potassium nitrite	5.1	UN1488	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58	
Potassium perchlorate, solid	5.1	UN1489	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106	
Potassium perchlorate, solution	5.1	UN1489	II	OXIDIZER		152	202	242	1 L	5 L	A	56, 58, 106	
Potassium permanganate	5.1	UN1490	II	OXIDIZER	B12	152	212	240	5 kg	25 kg	D	56, 58, 69, 106, 107	
Potassium peroxide	5.1	UN1491	I	OXIDIZER	A20, N34	None	211	None	Forbidden	15 kg	B	13, 75, 106	
Potassium persulfate	5.1	UN1492	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A		
Potassium phosphide	4.3	UN2012	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85	
Potassium salts of aromatic nitro-derivatives, *explosive*	1.3C	UN0158	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E	
Potassium selenate, *see* Selenates *or* Selenites													
Potassium selenite, *see* Selenates *or* Selenites													
Potassium sodium alloys	4.3	UN1422	I	DANGEROUS WHEN WET.	A19, B27, N34, N40, T15, T26.	None	211	244	Forbidden	15 kg	D		
Potassium sulfide, anhydrous *or* Potassium sulfide *with less than 30 percent water of crystallization*	4.2	UN1382	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, B16, N34.	None	212	241	15 kg	50 kg	A		
Potassium sulfide, hydrated *with not less than 30 percent water of crystallization*	8	UN1847	II	CORROSIVE		154	212	240	15 kg	50 kg	A	26	
Potassium superoxide	5.1	UN2466	I	OXIDIZER	A20	None	211	None	Forbidden	15 kg	B	13, 75, 106	
Powder cake, wetted *or* Powder paste, wetted *with not less than 17 percent alcohol by mass*	1.1C	UN0433	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	1E, 5E	
Powder cake, wetted *or* Powder paste, wetted *with not less than 25 percent water, by mass*	1.3C	UN0159	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E	
Powder paste, *see* Powder cake, *etc.*													
Powder, smokeless	1.1C	UN0160	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	10E, 26E	
Powder, smokeless	1.3C	UN0161	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	10E, 26E	
Power device, explosive, see Cartridges, power device													
Primers, cap type	1.4S	UN0044	II	None		None	62	None	25 kg	100 kg	A		
Primers, cap type	1.1B	UN0377	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E	
Primers, cap type	1.4B	UN0378	II	EXPLOSIVE 1.4B		None	62	None	Forbidden	75 kg	A	24E	
Primers, small arms, see Primers, cap type													
Primers, tubular	1.3G	UN0319	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B		
Primers, tubular	1.4G	UN0320	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E	
Primers, tubular	1.4S	UN0376	II	None		None	62	None	25 kg	100 kg	A		
Printing ink, *flammable*	3	UN1210	I	FLAMMABLE LIQUID	T8, T31	150	173	243	1 L	30 L	E		
			II	FLAMMABLE LIQUID	T7, T30	150	173	242	5 L	60 L	B		
			III	FLAMMABLE LIQUID	B1, T7, T30	150	173	242	60 L	220 L	A		
Projectiles, illuminating, see Ammunition, illuminating, *etc.*													
Projectiles, *inert* with tracer	1.4S	UN0345	II	EXPLOSIVE 1.4S			62	None	25 kg	100 kg	A	3E, 7E, 9E	
Projectiles, *inert*, with tracer	1.3G	UN0424	II	EXPLOSIVE 1.3G			62	None	Forbidden	Forbidden	B	3E, 7E	
Projectiles, *inert*, with tracer	1.4G	UN0425	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	3E, 7E, 24E	
Projectiles, *with burster or expelling charge*	1.2D	UN0346	II	EXPLOSIVE 1.2D			62	None	Forbidden	Forbidden	B	3E, 7E	
Projectiles, *with burster or expelling charge*	1.4D	UN0347	II	EXPLOSIVE 1.4D			62	None	Forbidden	75 kg	A	3E, 7E, 24E	
Projectiles, *with burster or expelling charge*	1.2F	UN0426	II	EXPLOSIVE 1.2F			62	None	Forbidden	Forbidden	E		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Projectiles, *with burster or expelling charge*	1.4F	UN0427	II	EXPLOSIVE 1.4F			62	None	Forbidden	Forbidden	E	
	Projectiles, *with burster or expelling charge*	1.2G	UN0434	II	EXPLOSIVE 1.2G			62	None	Forbidden	Forbidden	B	3E, 7E
	Projectiles, *with burster or expelling charge*	1.4G	UN0435	II	EXPLOSIVE 1.4G			62	None	Forbidden	75 kg	A	3E, 7E, 24E
	Projectiles, *with bursting charge*	1.1F	UN0167	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	E	
	Projectiles, *with bursting charge*	1.1D	UN0168	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	3E, 7E
	Projectiles, *with bursting charge*	1.2D	UN0169	II	EXPLOSIVE 1.2D			62	None	Forbidden	Forbidden	B	3E, 7E
	Projectiles, *with bursting charge*	1.2F	UN0324	II	EXPLOSIVE 1.2F			62	None	Forbidden	Forbidden	E	
	Projectiles, *with bursting charge*	1.4D	UN0344	II	EXPLOSIVE 1.4D			62	None	Forbidden	75 kg	A	3E, 7E, 24E
	Propadiene, inhibited	2.1	UN2200		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	B	40
	Propadiene mixed with methyl acetylene, see Methyl acetylene and propadiene mixtures, stabilized												
	Propane *or* Propane mixtures *see also* Petroleum gases, liquefied	2.1	UN1978		FLAMMABLE GAS	19	306	304	314, 315	Forbidden	150 kg	E	40
	Propanethiols	3	UN2402	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	86, 10#
	n-Propanol *or* Propyl alcohol normal	3	UN1274	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
D	Propargyl alcohol	3	NA1986	II	FLAMMABLE LIQUID, POISON.		None	202	243	Forbidden	1 L	B	40
D	Propellant explosive, liquid	1.1C	NA0474	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	1E, 5E
D	Propellant explosive, liquid	1.3C	NA0477	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Propellant, liquid	1.3C	UN0495		EXPLOSIVE 1.3C	37	None	62	None	Forbidden	Forbidden	B	
	Propellant, liquid	1.1C	UN0497		EXPLOSIVE 1.1C	37	None	62	None	Forbidden	Forbidden	B	
	Propellant, solid	1.1C	UN0496		EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	A	
	Propellant, solid	1.3C	UN0499		EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	A	
	Propionaldehyde	3	UN1275	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	E	
	Propionic acid	8	UN1848	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Propionic anhydride	8	UN2496	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	
	Propionitrile	3	UN2404	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	Forbidden	60 L	E	40
	Propionyl chloride	3	UN1815	II	FLAMMABLE LIQUID, CORROSIVE.	T8, T26	None	202	243	1 L	5 L	B	40
	n-Propyl acetate	3	UN1276	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Propyl alcohol, *see* Propanol												
	n-Propyl benzene	3	UN2364	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Propyl chloride	3	UN1278	II	FLAMMABLE LIQUID	N34, T14	None	202	242	Forbidden	60 L	E	
	n-Propyl chloroformate	6.1	UN2740	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, A3, A6, A7, B9, B14, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	2.5 L	B	21, 40, 100
	Propyl formates	3	UN1281	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	n-Propyl isocyanate	6.1	UN2482	I	POISON, FLAMMABLE LIQUID.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Propyl mercaptan, see Propanethiols												
	n-Propyl nitrate	3	UN1865	II	FLAMMABLE LIQUID	T25	150	202	None	5 L	60 L	D	
	Propylamine	3	UN1277	II	FLAMMABLE LIQUID, CORROSIVE.	N34, T14	None	202	243	1 L	5 L	E	40
	Propylene *see also* Petroleum gases, liquefied	2.1	UN1077		FLAMMABLE GAS	19	306	304	314, 315	Forbidden	150 kg	E	40
	Propylene chlorohydrin	6.1	UN2611	II	POISON	T9	None	202	243	5 L	60 L	A	12, 40, 48
	Propylene dichloride	3	UN1279	II	FLAMMABLE LIQUID	N36, T1	150	202	242	5 L	60 L	B	
	Propylene oxide	3	UN1280	I	FLAMMABLE LIQUID	A3, N34, T20, T28	None	201	243	1 L	30 L	E	40
	Propylene tetramer	3	UN2850	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	1,2-Propylenediamine	8	UN2258	II	CORROSIVE, FLAMMABLE LIQUID.	A3, A6, N34, T8	None	202	243	1 L	30 L	A	40
	Propyleneimine, inhibited	3	UN1921	I	FLAMMABLE LIQUID	A3, N34, T25	None	201	243	1 L	30 L	B	40
	Propyltrichlorosilane	8	UN1816	II	CORROSIVE, FLAMMABLE LIQUID.	A7, B2, B6, N34, T8, T26.	None	202	243	Forbidden	30 L	C	40
	Prussic acid, see Hydrogen cyanide												
	Pyridine	3	UN1282	II	FLAMMABLE LIQUID	T8	None	202	242	5 L	60 L	B	21, 100
	Pyridine perchlorate	Forbidden											

	Pyrophoric liquid, inorganic, n.o.s.	4.2	UH3194	I	SPONTANEOUSLY COMBUSTIBLE.		None	181	244	Forbidden	Forbidden	D	18
	Pyrophoric liquids, organic, n.o.s.	4.2	UN2845	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T42	None	181	244	Forbidden	Forbidden	D	18
	Pyrophoric metals, n.o.s., *or* Pyrophoric alloys, n.o.s.	4.2	UN1383	I	SPONTANEOUSLY COMBUSTIBLE.	B11	None	187	242	Forbidden	Forbidden	D	
	Pyrophoric organometallic compound, n.o.s.	4.2	UN3203	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	242	Forbidden	Forbidden	D	
	Pyrophoric solid, inorganic, n.o.s.	4.2	UN3200	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	242	Forbidden	Forbidden	D	
	Pyrophoric solids, organic, n.o.s.	4.2	UN2846	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	242	Forbidden	Forbidden	D	
	Pyrosulfuryl chloride	8	UN1817	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	C	40
	Pyroxylin solution or solvent, see Nitrocellulose												
	Pyrrolidine	3	UN1922	II	FLAMMABLE LIQUID, CORROSIVE.	T1	None	202	243	1 L	5 L	B	40
	Quebrachitol pentanitrate	Forbidden											
	Quicklime, see Calcium oxide												
	Quinoline	6.1	UN2656	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	12
	R 114, see Dichlorotetrafluoroethane												
	R 115, see Chloropentafluoroethane												
	R 116, see Hexafluoroethane												
	R 124, see Chlorotetrafluoroethane												
	R 133a, see Chlorotrifluoroethane												
	R 152a, see Difluoroethane												
	R 500, see Dichlorodifluoromethane and difluorethane, *etc.*												
	R 502, see Chlorodifluoromethane and chloropentafluoroethane mixture,												

Prussic acid, see Hydrogen cyanide														
Pyridine	3	UN1282	II	FLAMMABLE LIQUID	T8	None	202	242	5 L	60 L	B	21, 100		
Pyridine perchlorate	Forbidden													
Pyrophoric liquid, inorganic, n.o.s.	4.2	UN3194	I	SPONTANEOUSLY COMBUSTIBLE.		None	181	244	Forbidden	Forbidden	D	18		
Pyrophoric liquids, organic, n.o.s.	4.2	UN2845	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T42	None	181	244	Forbidden	Forbidden	D	18		
Pyrophoric metals, n.o.s., *or* Pyrophoric alloys, n.o.s.	4.2	UN1383	I	SPONTANEOUSLY COMBUSTIBLE.	B11	None	187	242	Forbidden	Forbidden	D			
Pyrophoric organometallic compound, n.o.s.	4.2	UN3203	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	242	Forbidden	Forbidden	D			
Pyrophoric solid, inorganic, n.o.s.	4.2	UN3200	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	242	Forbidden	Forbidden	D			
Pyrophoric solids, organic, n.o.s.	4.2	UN2846	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	242	Forbidden	Forbidden	D			
Pyrosulfuryl chloride	8	UN1817	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	C	40		
Pyroxylin solution or solvent, see Nitrocellulose														
Pyrrolidine	3	UN1922	II	FLAMMABLE LIQUID, CORROSIVE.	T1	None	202	243	1 L	5 L	B	40		
Quebrachitol pentanitrate	Forbidden													
Quicklime, see Calcium oxide														
Quinoline	6.1	UN2656	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	12		
R 114, see Dichlorotetrafluoroethane														
R 115, see Chloropentafluoroethane														
R 116, see Hexafluoroethane														
R 124, see Chlorotetrafluoroethane														
R 133a, see Chlorotrifluoroethane														
R 152a, see Difluoroethane														
R 500, see Dichlorodifluoromethane and difluorethane, *etc.*														
R 502, see Chlorodifluoromethane and chloropentafluoroethane mixture, *etc.*														
R 503, see Chlorotrifluoromethane and trifluoromethane, *etc.*														
R 12, see Dichlorodifluoromethane														
R 12B1, see Chlorodifluorobromomethane														
R 13, see Chlorotrifluoromethane														
R 13B1, see Bromotrifluoromethane														
R 14, see Tetrafluoromethane														
R 21, see Dichlorofluoromethane														
R 22, see Chlorodifluoromethane														
Radioactive material, excepted package-articles manufactured from natural *or* depleted uranium *or* natural thorium	7	UN2910		None		421-1, 424	421-1, 424	421-1, 424			A			
Radioactive material, excepted package-empty packaging	7	UN2910		EMPTY		427	427	427			A			
Radioactive material, excepted package-instruments *or* articles	7	UN2910		None		421-1, 422	421-1, 422	421-1, 422			A			
Radioactive material, excepted package-limited quantity of material	7	UN2910		None		421, 421-1	421, 421-1	421, 421-1			A			
Radioactive material, fissile, n.o.s.	7	UN2918		RADIOACTIVE		453	417	417			A		40, 95	
Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s.	7	UN2912		RADIOACTIVE		421, 422, 424	425	425			A			
Radioactive material, n.o.s.	7	UN2982		RADIOACTIVE		421, 422, 424	416, 416	416, 416			A		40, 95	
Radioactive material, special form, n.o.s.	7	UN2974		RADIOACTIVE		421, 422	415, 416	415, 416			A			
Railway torpedo, see Signals, railway track, explosive														
Rare gases and nitrogen mixtures	2.2	UN1981		NONFLAMMABLE GAS		306	302	None	75 kg	150 kg	A			
Rare gases and oxygen mixtures	2.2	UN1980		NONFLAMMABLE GAS		306	302	None	75 kg	150 kg	A			
Rare gases, mixtures	2.2	UN1979		NONFLAMMABLE GAS		306	302	None	75 kg	150 kg	A			
RC 318, see Octafluorocyclobutane														
RDX and cyclotetramethylenetetranitramine, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized														
RDX and HMX mixtures, wetted *with not less than 15 percent water by mass or* RDX and HMX mixtures, desensitized *with not less than 10 percent phlegmatizer by mass*	1.1D	UN0391	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
RDX and Octogen mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*														
RDX, see Cyclotrimethylene trinitramine, etc.														
Receptacles, small, containing gas *flammable, without release device, not refillable and not exceeding 1 L capacity*	2.1	UN2037		FLAMMABLE GAS		306	304	None	1 kg	15 kg	B	40		
Receptacles, small, containing gas *non-flammable, without release device, not refillable and not exceeding 1 L capacity*	2.2	UN2037		NONFLAMMABLE GAS		306	304	None	1 kg	15 kg	B	40		
Red phosphorus, see Phosphorus, amorphous														
Refrigerant gases, n.o.s.	2.2	UN1078		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A			

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	Non-bulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
D	Refrigerant gases, n.o.s. *or* Dispersant gases, n.o.s.	2.1	NA1954		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	D	40
D	Refrigerating machine	3	NA1993	III	FLAMMABLE LIQUID		174	174	None	10 L	10 L	A	
D	Refrigerating machines, *containing flammable, non-poisonous, liquefied gas*	2.1	NA1954		FLAMMABLE GAS		306	306	306	Forbidden	25 kg	C	40
	Refrigerating machines, *containing non-flammable, non-toxic, liquefied gas or ammonia solutions (UN2073)*	2.2	UN2857		NONFLAMMABLE GAS		306, 307	306	306, 307	Forbidden	450 kg	A	
D	Regulated medical waste	6.2	NA9275	II	INFECTIOUS SUBSTANCE.		197	197	None	Forbidden	Forbidden	E	
	Release devices, explosive	1.4S	UN0173	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Resin solution, *flammable*	3	UN1866	II	FLAMMABLE LIQUID	B52, T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30	150	203	242	60 L	220 L	A	
	Resorcinol	6.1	UN2876	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Rifle grenade, see Grenades, *hand or rifle, etc.*												
	Rifle powder, see Powder, smokeless *(UN 0160)*												
	Rivets, explosive	1.4S	UN0174	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Road asphalt or tar liquid, see Tars, liquid, *etc.*												
	Rocket motors	1.3C	UN0186	II	EXPLOSIVE 1.3C	109	None	62	None	Forbidden	220 kg	B	
	Rocket motors	1.1C	UN0280	II	EXPLOSIVE 1.1C	109	None	62	None	Forbidden	Forbidden	B	
	Rocket motors	1.2C	UN0281	II	EXPLOSIVE 1.2C	109	None	62	None	Forbidden	Forbidden	B	
	Rocket motors, liquid fueled	1.2J	UN0395	II	EXPLOSIVE 1.2J	109	None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rocket motors, liquid fueled	1.3J	UN0396	II	EXPLOSIVE 1.3J	109	None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rocket motors with hypergolic liquids *with or without an expelling charge*	1.3L	UN0250	II	EXPLOSIVE 1.3L	109	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Rocket motors with hypergolic liquids *with or without an expelling charge*	1.2L	UN0322	II	EXPLOSIVE 1.2L	109	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Rockets, line-throwing	1.2G	UN0238	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Rockets, line-throwing	1.3G	UN0240	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Rockets, line-throwing	1.4G	UN0453	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Rockets, liquid fueled *with bursting charge*	1.1J	UN0397	II	EXPLOSIVE 1.1J		None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rockets, liquid fueled *with bursting charge*	1.2J	UN0398	II	EXPLOSIVE 1.2J		None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rockets, *with bursting charge*	1.1F	UN0180	II	EXPLOSIVE 1.1F		None	62	None	Forbidden	Forbidden	E	
	Rockets, *with bursting charge*	1.1E	UN0181	II	EXPLOSIVE 1.1E		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with bursting charge*	1.2E	UN0182	II	EXPLOSIVE 1.2E		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with bursting charge*	1.2F	UN0295	II	EXPLOSIVE 1.2F		None	62	None	Forbidden	Forbidden	E	
	Rockets, *with expelling charge*	1.2C	UN0436	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with expelling charge*	1.3C	UN0437	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with expelling charge*	1.4C	UN0438	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Rockets, *with inert head*	1.3C	UN0183	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Rosin oil	3	UN1286	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Rubber solution	3	UN1287	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Rubidium	4.3	UN1423	I	DANGEROUS WHEN WET.	22, A7, A19, N34, N40, N45.	None	211	242	Forbidden	15 kg	D	
	Rubidium hydroxide	8	UN2678	II	CORROSIVE	T8	154	212	240	15 kg	50 kg	A	
	Rubidium hydroxide solution	8	UN2677	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Safety fuse, see Fuse, safety												
	Samples, explosive, *other than initiating explosives*		UN0190	II		113	None	62	None	Forbidden	Forbidden	E	12E
	Sand acid, see Fluorosilicic acid												
	Seed cake, *containing vegetable oil solvent extractions and expelled seeds, with not more than 10 percent of oil and when the amount of moisture is higher than 11 percent, with not more than 20 percent of oil and moisture combined.*	4.2	UN1386	III	None	N7	None	213	241	Forbidden	Forbidden	A	13
I	Seed cake *with more than 1.5 percent oil and not more than 11 percent moisture*	4.2	UN1386	III	None	N7	None	213	241	Forbidden	Forbidden	E	13

I	Seed cake *with not more than 1.5 percent oil and not more than 11 percent moisture*	4.2	UN2217	III	None	N7	None	213	241	Forbidden	Forbidden	A	13
	Selenates *or* Selenites	6.1	UN2630	I	POISON		None	211	242	5 kg	50 kg	E	
	Selenic acid	8	UN1905	I	CORROSIVE	N34	None	211	242	Forbidden	25 kg	A	
	Selenites, *see* Selenates *or* Selenites												
	Selenium compound, n.o.s.	6.1	UN3283	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON	T14	None	212	242	25 kg	100 kg	B	
				III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Selenium disulfide	6.1	UN2657	II	POISON		None	212	242	25 kg	100 kg	A	
	Selenium hexafluoride	2.3	UN2194		POISON GAS, CORROSIVE.	1	None	302	None	Forbidden	Forbidden	D	40
	Selenium nitride	Forbidden											
D	Selenium oxide	6.1	NA2811	I	POISON		None	211	242	5 kg	50 kg	B	
	Selenium oxychloride	8	UN2879	I	CORROSIVE, POISON	A3, A6, A7, N34, T12, T27.	None	201	243	0.5 L	2.5 L	E	40
	Selenium powder	6.1	UN2658	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Self-heating liquid, corrosive, inorganic, n.o.s.	4.2	UN3188	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	202	243	1 L	5 L	C	
				III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	203	241	5 L	60 L	C	
	Self-heating liquid, corrosive, organic, n.o.s.	4.2	UN3185	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	202	243	1 L	5 L	C	

	ture is higher than 11 percent, with not more than 20 percent of oil and moisture combined.	4.2	UN1386	III	None	N7	None	213	241	Forbidden	Forbidden	A	13			
I	Seed cake *with more than 1.5 percent oil and not more than 11 percent moisture*	4.2	UN1386	III	None	N7	None	213	241	Forbidden	Forbidden	E	13			
I	Seed cake *with not more than 1.5 percent oil and not more than 11 percent moisture*	4.2	UN2217	III	None	N7	None	213	241	Forbidden	Forbidden	A	13			
	Selenates *or* Selenites	6.1	UN2630	I	POISON		None	211	242	5 kg	50 kg	E				
	Selenic acid	8	UN1905	I	CORROSIVE	N34	None	211	242	Forbidden	25 kg	A				
	Selenites, see Selenates *or* Selenites															
	Selenium compound, n.o.s.	6.1	UN3283	I	POISON		None	211	242	5 kg	50 kg	B				
				II	POISON	T14	None	212	242	25 kg	100 kg	B				
				III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A				
	Selenium disulfide	6.1	UN2657	II	POISON		None	212	242	25 kg	100 kg	A				
	Selenium hexafluoride	2.3	UN2194		POISON GAS, CORROSIVE.	1	None	302	None	Forbidden	Forbidden	D	40			
	Selenium nitride	Forbidden														
D	Selenium oxide	6.1	NA2811	I	POISON		None	211	242	5 kg	50 kg	B				
	Selenium oxychloride	8	UN2879	I	CORROSIVE, POISON	A3, A6, A7, N34, T12, T27.	None	201	243	0.5 L	2.5 L	E	40			
	Selenium powder	6.1	UN2658	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A				
	Self-heating liquid, corrosive, inorganic, n.o.s.	4.2	UN3186	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	202	243	1 L	5 L	C				
				III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	203	241	5 L	60 L	C				
	Self-heating liquid, corrosive, organic, n.o.s.	4.2	UN3185	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	202	243	1 L	5 L	C				
				III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	203	241	5 L	60 L	C				
	Self-heating liquid, inorganic, n.o.s.	4.2	UN3186	II	SPONTANEOUSLY COMBUSTIBLE.		None	202	242	1 L	5 L	C				
				III	SPONTANEOUSLY COMBUSTIBLE.		None	203	241	5 L	60 L	C				
	Self-heating liquid, organic, n.o.s.	4.2	UN3183	II	SPONTANEOUSLY COMBUSTIBLE.		None	202	242	1 L	5 L	C				
				III	SPONTANEOUSLY COMBUSTIBLE.		None	203	241	5 L	60 L	C				
	Self-heating liquid, toxic, inorganic, n.o.s.	4.2	UN3187	II	SPONTANEOUSLY COMBUSTIBLE, POISON.		None	202	243	1 L	5 L	C				
				III	SPONTANEOUSLY COMBUSTIBLE, KEEP AWAY FROM FOOD.		None	203	241	5 L	60 L	C				
	Self-heating liquid, toxic, organic, n.o.s.	4.2	UN3184	II	SPONTANEOUSLY COMBUSTIBLE, POISON.		None	202	243	1 L	5 L	C				
				III	SPONTANEOUSLY COMBUSTIBLE, KEEP AWAY FROM FOOD.		None	203	241	5 L	60 L	C				
	Self-heating solid, corrosive, inorganic, n.o.s.	4.2	UN3192	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	212	242	15 kg	50 kg	C				
				III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	213	242	25 kg	100 kg	C				
	Self-heating, solid, corrosive, organic, n.o.s.	4.2	UN3126	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	212	242	15 kg	50 kg	C				
				III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	213	242	25 kg	100 kg	C				
	Self-heating solid, inorganic, n.o.s.	4.2	UN3190	II	SPONTANEOUSLY COMBUSTIBLE.		None	212	241	15 kg	50 kg	C				
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	C				
	Self-heating, solid, organic, n.o.s.	4.2	UN3088	II	SPONTANEOUSLY COMBUSTIBLE.		None	212	241	15 kg	50 kg	C				
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	C				
	Self-heating, solid, oxidizing, n.o.s.	4.2	UN3127		SPONTANEOUSLY COMBUSTIBLE, OXIDIZER.		None	214	214	Forbidden	Forbidden					

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Self-heating solid, toxic, inorganic, n.o.s.	4.2	UN3191	II	SPONTANEOUSLY COMBUSTIBLE, POISON.		None	212	242	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE, KEEP AWAY FROM FOOD.		None	213	242	25 kg	100 kg	C	
	Self-heating, solid, toxic, organic, n.o.s.	4.2	UN3128	II	SPONTANEOUSLY COMBUSTIBLE, POISON.		None	212	242	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE, KEEP AWAY FROM FOOD.		None	213	242	25 kg	100 kg	C	
	Self-propelled vehicle, see Vehicles, self-propelled												
	Self-reactive liquid type B	4.1	UN3221	II	FLAMMABLE SOLID	53	None	224	None	Forbidden	Forbidden	D	61
	Self-reactive liquid type B, temperature controlled	4.1	UN3231	II	FLAMMABLE SOLID	53	None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive liquid type C	4.1	UN3223	II	FLAMMABLE SOLID		None	224	None	5 L	10 L	D	61
	Self-reactive liquid type C, temperature controlled	4.1	UN3233	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive liquid type D	4.1	UN3225	II	FLAMMABLE SOLID		None	224	None	5 L	10 L	D	61
	Self-reactive liquid type D, temperature controlled	4.1	UN3235	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive liquid type E	4.1	UN3227	II	FLAMMABLE SOLID		None	224	None	10 L	25 L	D	61
	Self-reactive liquid type E, temperature controlled	4.1	UN3237	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive liquid type F	4.1	UN3229	II	FLAMMABLE SOLID		None	224	None	10 L	25 L	D	61
	Self-reactive liquid type F, temperature controlled	4.1	UN3239	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive solid type B	4.1	UN3222	II	FLAMMABLE SOLID	53	None	224	None	Forbidden	Forbidden	D	61
	Self-reactive solid type B, temperature controlled	4.1	UN3232	II	FLAMMABLE SOLID	53	None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive solid type C	4.1	UN3224	II	FLAMMABLE SOLID		None	224	None	5 kg	10 kg	D	61
	Self-reactive solid type C, temperature controlled	4.1	UN3234	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive solid type D	4.1	UN3226	II	FLAMMABLE SOLID		None	224	None	5 kg	10 kg	D	61
	Self-reactive solid type D, temperature controlled	4.1	UN3236	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive solid type E	4.1	UN3228	II	FLAMMABLE SOLID		None	224	None	10 kg	25 kg	D	61
	Self-reactive solid type E, temperature controlled	4.1	UN3238	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Self-reactive solid type F	4.1	UN3230	II	FLAMMABLE SOLID		None	224	None	10 kg	25 kg	D	61
	Self-reactive solid type F, temperature controlled	4.1	UN3240	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Shale oil	3	UN1288	I	FLAMMABLE LIQUID	T7	None	201	243	1 L	30 L	B	
				II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Shaped charges, commercial, see Charges, shaped, commercial *etc.*												
	Signal devices, hand	1.4G	UN0191	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Signal devices, hand	1.4S	UN0373	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Signals, distress, *ship*	1.1G	UN0194	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Signals, distress, *ship*	1.3G	UN0195	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Signals, highway, see Signal devices, hand; Fireworks, type D												
	Signals, railway track, explosive	1.1G	UN0192	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Signals, railway track, explosive	1.4S	UN0193	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	
	Signals, railway track, explosive	1.3G	UN0492		EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	E	1E, 8E
	Signals, railway track, explosive	1.4G	UN0493		EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Signals, ship distress, water-activated, see Contrivances, water-activated, *etc.*												
	Signals, smoke	1.1G	UN0196	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Signals, smoke	1.4G	UN0197	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Signals, smoke	1.2G	UN0313	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Signals, smoke	1.3G	UN0487	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	
	Silane	2.1	UN2203		FLAMMABLE GAS		None	302	None	Forbidden	Forbidden	E	40, 57, 104
	Silicofluoric acid, see Fluorosilicic acid												
	Silicon chloride, see Silicon tetrachloride												
	Silicon powder, amorphous	4.1	UN1346	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	A	
	Silicon tetrachloride	8	UN1818	II	CORROSIVE	A3, A6, B2, B6, T18, T26, T29.	154	202	242	1 L	30 L	C	40
	Silicon tetrafluoride	2.3	UN1859		POISON GAS, CORROSIVE.	2, 26	None	302	None	Forbidden	25 kg	D	40
	Silver acetylide (dry)	Forbidden											
	Silver arsenite	6.1	UN1683	II	POISON		None	212	242	25 kg	100 kg	A	
	Silver azide (dry)	Forbidden											
	Silver chlorite (dry)	Forbidden											
	Silver cyanide	6.1	UN1684	II	POISON		None	212	242	25 kg	100 kg	A	26, 40
	Silver fulminate (dry)	Forbidden											
	Silver nitrate	5.1	UN1493	II	OXIDIZER		152	213	242	5 kg	25 kg	A	
	Silver oxalate (dry)	Forbidden											
	Silver picrate (dry)	Forbidden											
	Silver picrate, wetted *with not less than 30 percent water, by mass*	4.1	UN1347	I	FLAMMABLE SOLID		None	211	None	Forbidden	Forbidden	D	28, 36
	Sludge, acid	8	UN1906	II	CORROSIVE	A3, A7, B2, N34, T9, T27.	None	202	242	Forbidden	30 L	C	14
D	Smokeless powder for small arms (*100 pounds or less*)	4.1	NA3178	I	FLAMMABLE SOLID	16	None	171	None	Forbidden	Forbidden	A	
	Soda lime *with more than 4 percent sodium hydroxide*	8	UN1907	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Sodium	4.3	UN1428	I	DANGEROUS WHEN WET.	A7, A8, A19, A20, B9, B28, B48, B68, N34, T15, T29, T46.	None	211	244	1 kg	15 kg	D	
	Sodium aluminate, solid	8	UN2812	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Sodium aluminate, solution	8	UN1819	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Sodium aluminum hydride	4.3	UN2835	II	DANGEROUS WHEN WET.	A8, A19, A20	None	212	242	Forbidden	50 kg	E	
	Sodium ammonium vanadate	6.1	UN2863	II	POISON		None	212	242	25 kg	100 kg	A	
	Sodium arsanilate	6.1	UN2473	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Sodium arsenate	6.1	UN1685	II	POISON		None	212	242	25 kg	100 kg	A	
	Sodium arsenite, aqueous solutions	6.1	UN1686	II	POISON	T15	None	202	242	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.	T15	153	203	241	60 L	220 L	A	

	Silver acetylide (dry)	Forbidden														
	Silver arsenite	6.1	UN1683	II	POISON		None	212	242	25 kg	100 kg	A				
	Silver azide (dry)	Forbidden														
	Silver chlorite (dry)	Forbidden														
	Silver cyanide	6.1	UN1684	II	POISON		None	212	242	25 kg	100 kg	A	26, 40			
	Silver fulminate (dry)	Forbidden														
	Silver nitrate	5.1	UN1493	II	OXIDIZER		152	212	242	5 kg	25 kg	A				
	Silver oxalate (dry)	Forbidden														
	Silver picrate (dry)	Forbidden														
	Silver picrate, wetted *with not less than 30 percent water, by mass*	4.1	UN1347	I	FLAMMABLE SOLID		None	211	None	Forbidden	Forbidden	D	28, 36			
	Sludge, acid	8	UN1906	II	CORROSIVE	A3, A7, B2, N34, T9, T27.	None	202	242	Forbidden	30 L	C	14			
D	Smokeless powder for small arms (*100 pounds or less*)	4.1	NA3178	I	FLAMMABLE SOLID	16	None	171	None	Forbidden	Forbidden	A				
	Soda lime *with more than 4 percent sodium hydroxide*	8	UN1907	III	CORROSIVE		154	213	240	25 kg	100 kg	A				
	Sodium	4.3	UN1428	I	DANGEROUS WHEN WET.	A7, A8, A19, A20, B9, B28, B48, B68, N34, T15, T29, T46.	None	211	244	1 kg	15 kg	D				
	Sodium aluminate, solid	8	UN2812	III	CORROSIVE		154	213	240	25 kg	100 kg	A				
	Sodium aluminate, solution	8	UN1819	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A				
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A				
	Sodium aluminum hydride	4.3	UN2835	II	DANGEROUS WHEN WET.	A8, A19, A20	None	212	242	Forbidden	50 kg	E				
	Sodium ammonium vanadate	6.1	UN2863	II	POISON		None	212	242	25 kg	100 kg	A				
	Sodium arsanilate	6.1	UN2473	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A				
	Sodium arsinate	6.1	UN1685	II	POISON		None	212	242	25 kg	100 kg	A				
	Sodium arsinite, aqueous solutions	6.1	UN1686	II	POISON	T15	None	202	243	5 L	60 L	A				
				III	KEEP AWAY FROM FOOD.	T15	153	203	241	60 L	220 L	A				
	Sodium arsenite, solid	6.1	UN2027	II	POISON		None	212	242	25 kg	100 kg	A				
	Sodium azide	6.1	UN1687	II	POISON	B28	None	212	242	25 kg	100 kg	A	36, 52, 91			
	Sodium bifluoride, see Sodium hydrogen fluoride															
	Sodium bisulfate, solution, see Sodium hydrogen sulfate, solution															
	Sodium bisulfite, solution, see Bisulfites, inorganic, aqueous solutions, n.o.s.															
	Sodium borohydride	4.3	UN1426	I	DANGEROUS WHEN WET.	N40	None	211	242	Forbidden	15 kg	E				
	Sodium bromate	5.1	UN1494	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106			
	Sodium cacodylate	6.1	UN1688	II	POISON		None	212	242	25 kg	100 kg	A	26			
	Sodium chlorate	5.1	UN1495	II	OXIDIZER	A9, N34, T8	152	212	240	5 kg	25 kg	A	56, 58, 106			
	Sodium chlorate, aqueous solution	5.1	UN2428	II	OXIDIZER	A2, B6, T8	152	202	241	1 L	5 L	B	56, 58, 106			
	Sodium chlorate mixed with dinitrotoluene, see Explosive blasting, type C															
	Sodium chlorite	5.1	UN1496	II	OXIDIZER	A9, N34, T8	None	212	242	5 kg	25 kg	A	56, 58, 106			
	Sodium chloroacetate	6.1	UN2659	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A				
	Sodium cuprocyanide, solid	6.1	UN2316	I	POISON		None	211	242	5 kg	50 kg	A	26			
	Sodium cuprocyanide, solution	6.1	UN2317	I	POISON	T8, T26	None	201	243	1 L	30 L	B	26, 40			
	Sodium cyanide	6.1	UN1689	I	POISON	B69, B77, N74, N75, T42.	None	211	242	5 kg	50 kg	B	52			
	Sodium dichloroisocyanurate or Sodium dichloro-s-triazinetrione, see Dichloroisocyanuric acid *etc.*															
	Sodium dinitro-o-cresolate, *dry or wetted with less than 15 percent water, by mass*	1.3C	UN0234	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E			
	Sodium dinitro-o-cresolate, wetted *with not less than 15 percent water, by mass*	4.1	UN1348	I	FLAMMABLE SOLID, POISON.	23, A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, [illegible]			
	Sodium dithionite *or* Sodium hydrosulfite	4.2	UN1384	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20	None	212	241	15 kg	50 kg	E	13			
	Sodium fluoride	6.1	UN1690	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	26			
	Sodium fluoroacetate	6.1	UN2629	I	POISON		None	211	242	5 kg	50 kg	E				
	Sodium fluorosilicate	6.1	UN2674	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26			
	Sodium hydrate, see Sodium hydroxide, solid															
	Sodium hydride	4.3	UN1427	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E				
	Sodium hydrogendifluoride	8	UN2439	II	CORROSIVE	N3, N34	154	212	240	15 kg	50 kg	A	12, 25, 26, 40			
	Sodium hydrogendifl[illegible] *solution*	8	UN2439	II	CORROSIVE	N3, N34	154	202	242	1 L	30 L	A	12, 25, 26, 40			
D	Sodium hydrosulfide, solution	8	NA2922	II	CORROSIVE, POISON	B2	154	202	243	1 L	30 L	B	40, 95			
	Sodium hydrosulfide, *with less than 25 percent water of crystallization*	4.2	UN2318	II	SPONTANEOUSLY COMBUSTIBLE.	A7, A19, A20	None	212	241	15 kg	50 kg	A				
	Sodium hydrosulfide *with not less than 25 percent water of crystallization*	8	UN2949	II	CORROSIVE	A7	154	212	240	15 kg	50 kg	A	26			
	Sodium hydrosulfite, *see* Sodium dithionite															
	Sodium hydroxide, solid	8	UN1[illegible]3	II	CORROSIVE		154	212	240	15 kg	50 kg	A				
	Sodium hydroxide solution	8	UN1[illegible]4	II	CORROSIVE	B2, N34, T8	154	202	242	1 L	30 L	A				

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	Non-bulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	.....	.....	.....	III	CORROSIVE	N34, T7	154	203	241	5 L	60 L	A	
	Sodium hypochlorite, solution, see Hypochlorite solutions *etc.*	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Sodium metal, liquid alloy, see Alkali metal alloys, liquid, n.o.s.	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Sodium methylate	4.2	UN1431	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.	A19	None	212	242	15 kg	50 kg	B	
	Sodium methylate solutions *in alcohol*	3	UN1289	II	FLAMMABLE LIQUID, CORROSIVE.	T8, T31	None	202	243	1 L	5 L	B	
	.....	.....	.....	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T7, T30	150	203	242	5 L	60 L	A	
	Sodium monoxide	8	UN1825	II	CORROSIVE	.....	154	212	240	15 kg	50 kg	A	
	Sodium nitrate	5.1	UN1498	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Sodium nitrate and potassium nitrate mixtures	5.1	UN1499	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Sodium nitrite	5.1	UN1500	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	56, 58
	Sodium pentachlorophenate	6.1	UN2567	II	POISON	.....	None	212	242	25 kg	100 kg	A	
	Sodium percarbonate	5.1	UN2467	III	OXIDIZER	27, A1, A29	152	213	240	25 kg	100 kg	A	13
	Sodium perchlorate	5.1	UN1502	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	A	56, 58, 106
	Sodium permanganate	5.1	UN1503	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Sodium peroxide	5.1	UN1504	I	OXIDIZER	A20, N34	None	211	None	Forbidden	15 kg	B	13, 75, 106
	Sodium peroxoborate, anhydrous	5.1	UN3247	II	OXIDIZER	.....	152	212	240	5 kg	25 kg	A	13, 25, 106
	Sodium persulfate	5.1	UN1505	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Sodium phosphide	4.3	UN1432	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Sodium picramate, *dry or wetted with less than 20 percent water, by mass*	1.3C	UN0234	II	EXPLOSIVE 1.3C	.....	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Sodium picramate, wetted *with not less than 20 percent water, by mass*	4.1	UN1349	I	FLAMMABLE SOLID	23, A8, A19, N41	None	211	None	Forbidden	15 kg	E	28, 36
	Sodium picryl peroxide	Forbidden	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Sodium potassium alloys, see Potassium sodium alloys	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Sodium salts of aromatic nitro-derivatives, n.o.s. *explosive*	1.3C	UN0203	II	EXPLOSIVE 1.3C	.....	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Sodium selenate, see Selenates *or* Selenites	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
D	Sodium selenite	6.1	NA2630	II	POISON	.....	None	212	242	25 kg	100 kg	E	
	Sodium sulfide, anhydrous *or* Sodium sulfide *with less than 30 percent water of crystallization*	4.2	UN1385	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N34	None	212	241	15 kg	50 kg	A	
	Sodium sulfide, hydrated *with at least 30 percent water*	8	UN1849	II	CORROSIVE	T8	154	212	240	15 kg	50 kg	A	26
	Sodium superoxide	5.1	UN2547	I	OXIDIZER	A20, N34	None	211	None	Forbidden	15 kg	E	13, 75, 106
	Sodium tetranitride	Forbidden	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Solids containing corrosive liquid, n.o.s.	8	UN3244	II	CORROSIVE	48	154	212	240	15 kg	50 kg	B	40
	Solids containing flammable liquid, n.o.s.	4.1	UN3175	II	FLAMMABLE SOLID	47	151	212	240	15 kg	50 kg	B	
	Solids containing toxic liquid, n.o.s.	6.1	UN3243	II	POISON	48	None	212	240	25 kg	100 kg	B	40
	Sounding devices, explosive	1.2F	UN0204	II	EXPLOSIVE 1.2F	.....	None	62	None	Forbidden	Forbidden	E	
	Sounding devices, explosive	1.1F	UN0296	II	EXPLOSIVE 1.1F	.....	None	62	None	Forbidden	Forbidden	E	
	Sounding devices, explosive	1.1D	UN0374	II	EXPLOSIVE 1.1D	.....	None	62	None	Forbidden	Forbidden	B	
	Sounding devices, explosive	1.2D	UN0375	II	EXPLOSIVE 1.2D	.....	None	62	None	Forbidden	Forbidden	B	
	Spirits of salt, see Hydrochloric acid	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Squibs, see Igniters *etc.*	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Stannic chloride, anhydrous	8	UN1827	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	
	Stannic chloride, pentahydrate	8	UN2440	III	CORROSIVE	.....	154	213	240	25 kg	100 kg	A	
	Stannic phosphide	4.3	UN1433	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	242	Forbidden	15 kg	E	40, 85
	Steel swarf, *see* Ferrous metal borings, *etc.*	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Stibine	2.3	UN2676		POISON GAS, FLAMMABLE GAS.	1	None	304	None	Forbidden	Forbidden	D	40
	Storage batteries, wet, see Batteries, wet *etc.*	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Strontium arsenite	6.1	UN1691	II	POISON	.....	None	212	242	25 kg	100 kg	A	
	Strontium chlorate, solid	5.1	UN1506	II	OXIDIZER	A1, A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Strontium chlorate, solution	5.1	UN1506	II	OXIDIZER	A1, A9, N34	152	202	242	1 L	5 L	A	56, 58, 106
	Strontium nitrate	5.1	UN1507	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Strontium perchlorate	5.1	UN1508	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	A	56, 58, 106
	Strontium peroxide	5.1	UN1509	II	OXIDIZER	.....	152	212	242	5 kg	25 kg	A	13, 75, 106
	Strontium phosphide	4.3	UN2013	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Strychnine *or* Strychnine salts	6.1	UN1692	I	POISON	.....	None	211	242	5 kg	50 kg	A	40
	Styphnic acid, *see* Trinitroresorcinol, *etc.*	.....	.....		.....	.....	.....	.....	.....	.....	.....	.....	
	Styrene monomer, inhibited	3	UN2055	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Substances, explosive, n.o.s.	1.1L	UN0357	II	EXPLOSIVE 1.1L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.2L	UN0358	II	EXPLOSIVE 1.2L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.3L	UN0359	II	EXPLOSIVE 1.3L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.1A	UN0473	II	EXPLOSIVE 1.1A	101, 111	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Substances, explosive, n.o.s.	1.1C	UN0474	II	EXPLOSIVE 1.1C	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Substances, explosive, n.o.s.	1.1D	UN0475	II	EXPLOSIVE 1.1D	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Substances, explosive, n.o.s.	1.1G	UN0476	II	EXPLOSIVE 1.1G	101	None	62	None	Forbidden	Forbidden	E	1E, 8E
	Substances, explosive, n.o.s.	1.3C	UN0477	II	EXPLOSIVE 1.3C	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Substances, explosive, n.o.s.	1.3G	UN0478	II	EXPLOSIVE 1.3G	101	None	62	None	Forbidden	Forbidden	E	1E, 8E
	Substances, explosive, n.o.s.	1.4C	UN0479	II	EXPLOSIVE 1.4C	101	None	62	None	Forbidden	75 kg	A	1E, 5E
	Substances, explosive, n.o.s.	1.4D	UN0480	II	EXPLOSIVE 1.4D	101	None	62	None	Forbidden	75 kg	A	1E, 5E, 24E
	Substances, explosive, n.o.s.	1.4S	UN0481	II	EXPLOSIVE 1.4S	101	None	62	None	25 kg	75 kg	A	
	Substances, explosive, very insensitive, n.o.s., *or* Substances, EVI, n.o.s. .	1.4G	UN0485	II	EXPLOSIVE 1.4G	101	None	62	None	Forbidden	75 kg	E	1E, 8E
	Substituted nitrophenol pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	1.5D	UN0482	II	EXPLOSIVE 1.5D	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
	.....	3	UN2780	I	FLAMMABLE LIQUID, POISON.	.....	None	201	243	Forbidden	30 L	B	40
	.....	.....	.....	II	FLAMMABLE LIQUID, POISON.	.....	None	202	243	1 L	60 L	B	40
	.....	.....	.....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Substituted nitrophenol pesticides, liquid, toxic	6.1	UN3014	I	POISON	.....	None	201	243	Forbidden	30 L	B	40

	Styphnic acid, *see* Trinitroresorcinol, *etc.*																
	Styrene monomer, inhibited	3	UN2055	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Substances, explosive, n.o.s.	1.1L	UN0357	II	EXPLOSIVE 1.1L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.2L	UN0358	II	EXPLOSIVE 1.2L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.3L	UN0359	II	EXPLOSIVE 1.3L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Substances, explosive, n.o.s.	1.1A	UN0473	II	EXPLOSIVE 1.1A	101, 111	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Substances, explosive, n.o.s.	1.1C	UN0474	II	EXPLOSIVE 1.1C	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Substances, explosive, n.o.s.	1.1D	UN0475	II	EXPLOSIVE 1.1D	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Substances, explosive, n.o.s.	1.1G	UN0476	II	EXPLOSIVE 1.1G	101	None	62	None	Forbidden	Forbidden	E	1E, 8E
	Substances, explosive, n.o.s.	1.3C	UN0477	II	EXPLOSIVE 1.3C	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Substances, explosive, n.o.s.	1.3G	UN0478	II	EXPLOSIVE 1.3G	101	None	62	None	Forbidden	Forbidden	E	1E, 8E
	Substances, explosive, n.o.s.	1.4C	UN0479	II	EXPLOSIVE 1.4C	101	None	62	None	Forbidden	75 kg	A	1E, 5E
	Substances, explosive, n.o.s.	1.4D	UN0480	II	EXPLOSIVE 1.4D	101	None	62	None	Forbidden	75 kg	A	1E, 5E, 24E
	Substances, explosive, n.o.s.	1.4S	UN0481	II	EXPLOSIVE 1.4S	101	None	62	None	25 kg	75 kg	A	
	Substances, explosive, very insensitive, n.o.s., *or* Substances, EVI, n.o.s.	1.4G	UN0485	II	EXPLOSIVE 1.4G	101	None	62	None	Forbidden	75 kg	E	1E, 8E
	Substituted nitrophenol pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	1.5D	UN0482	II	EXPLOSIVE 1.5D	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
		3	UN2780	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
				III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A	
	Substituted nitrophenol pesticides, liquid, toxic	6.1	UN3014	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Substituted nitrophenol pesticides, liquid, toxic, flammable *flashpoint not less than 23 degrees C*	6.1	UN3013	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Substituted nitrophenol pesticides, solid, toxic	6.1	UN2779	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Sucrose octanitrate (dry)	Forbidden											
	Sulfamic acid	8	UN2967	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
D	Sulfur	9	NA1350	III	CLASS 9	30, A1	None	None	240	25 kg	100 kg	A	19, 74
I	Sulfur	4.1	UN1350	III	FLAMMABLE SOLID	A1, N20, T1	151	213	240	25 kg	100 kg	A	19, 74
	Sulfur and chlorate, loose mixtures of	Forbidden											
	Sulfur chlorides	8	UN1828	I	CORROSIVE	5, A3, B10, B77, N34.	None	201	243	Forbidden	2.5 L	C	40
	Sulfur dichloride, see Sulfur chlorides												
	Sulfur dioxide, liquefied	2.3	UN1079		POISON GAS, CORROSIVE.	3, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Sulfur dioxide solution, see Sulfurous acid												
	Sulfur hexafluoride	2.2	UN1080		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
D	Sulfur, molten	9	NA2448	III	CLASS 9	T9, T38	None	213	247	Forbidden	Forbidden	C	61
I	Sulfur, molten	4.1	UN2448	III	FLAMMABLE SOLID	T9, T38	None	213	247	Forbidden	Forbidden	C	61
	Sulfur tetrafluoride	2.3	UN2418		POISON GAS, CORROSIVE.	1	None	302	245	Forbidden	25 kg	D	40
+	Sulfur trioxide, inhibited	8	UN1829	I	CORROSIVE, POISON	2, A7, B9, B12, B14, B32, B49, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	25 kg	A	40
+, D	Sulfur trioxide, uninhibited	8	NA1829	I	CORROSIVE, POISON	2, A7, B9, B12, B14, B32, B49, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	25 kg	C	10, 40
	Sulfuretted hydrogen, see Hydrogen sulfide, liquefied												
	Sulfuric acid, fuming *with less than 30 percent free sulfur trioxide*	8	UN1831	I	CORROSIVE	A3, A7, B84, N34, T18, T27.	None	201	243	Forbidden	2.5 L	C	14, 40
+	Sulfuric acid, fuming *with 30 percent or more free sulfur trioxide*	8	UN1831	I	CORROSIVE, POISON	2, A3, A6, A7, B9, B14, B32, B74, B77, B84, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C	14, 40

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	Non-bulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Sulfuric acid, spent	8	UN1832	II	CORROSIVE	A3, A7, B2, B83, B84, N34, T9, T27.	None	202	242	Forbidden	30 L	C	14
	Sulfuric acid *with more than 51 percent acid*	8	UN1830	II	CORROSIVE	A3, A7, B3, B83, B84, N34, T9, T27.	154	202	242	1 L	30 L	C	14
	Sulfuric acid *with not more than 51% acid*, or Battery fluid, acid	8	UN2796	II	CORROSIVE	A3, A7, B2, B15, N6, N34, T9, T27.	154	202	242	1 L	30 L	B	
	Sulfuric and hydrofluoric acid mixtures, *see* Hydrofluoric and sulfuric acid mixtures												
	Sulfuric anhydride, see Sulfur trioxide, inhibited												
	Sulfurous acid	8	UN1833	II	CORROSIVE	B3, T8	154	202	242	1 L	30 L	B	40
✦	Sulfuryl chloride	8	UN1834	I	CORROSIVE, POISON	1, A3, B6, B9, B10, B14, B30, B74, B77, N34, T38, T43, T44.	None	226	244	Forbidden	Forbidden	C	40
	Sulfuryl fluoride	2.3	UN2191		POISON GAS	4	None	304	314, 316	Forbidden	25 kg	D	40
	Tars, liquid *including road asphalt and oils, bitumen and cut backs*	3	UN1999	II	FLAMMABLE LIQUID	B13, T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B13, T7, T30	150	203	242	60 L	220 L	A	
	Tear gas candles	6.1	UN1700	II	POISON, FLAMMABLE SOLID.		None	340	None	Forbidden	50 kg	D	40
	Tear gas cartridges, see Ammunition, tear-producing, *etc.*												
D	Tear gas devices *with more than 2 percent tear gas substances, by mass*	6.1	NA1693	I	POISON		None	340	None	Forbidden	Forbidden	D	40
				II	POISON		None	340	None	Forbidden	Forbidden	D	40
	Tear gas devices, with not more than 2 percent tear gas substances, by mass, see Aerosols, *etc.*												
	Tear gas grenades, see Tear gas candles												
	Tear gas substances, liquid, n.o.s.	6.1	UN1693	I	POISON		None	201	None	Forbidden	Forbidden	D	40
				II	POISON		None	202	None	Forbidden	5 L	D	40
	Tear gas substances, solid, n.o.s.	6.1	UN1693	I	POISON		None	211	None	Forbidden	Forbidden	D	40
				II	POISON		None	212	None	Forbidden	25 kg	D	40
	Tellurium compound, n.o.s.	6.1	UN3284	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON	T14	None	212	242	25 kg	100 kg	B	
				III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Tellurium hexafluoride	2.3	UN2195		POISON GAS, CORROSIVE.	1	None	302	None	Forbidden	Forbidden	D	40
	Terpene hydrocarbons, n.o.s.	3	UN2319	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Terpinolene	3	UN2541	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tetraazido benzene quinone	Forbidden											
	Tetrabromoethane	6.1	UN2504	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Tetrachloroethane	6.1	UN1702	II	POISON	N36, T14	None	202	243	5 L	60 L	A	40
	Tetrachloroethylene	6.1	UN1897	III	KEEP AWAY FROM FOOD.	N36, T1	153	203	241	60 L	220 L	A	40
	Tetraethyl dithiopyrophosphate	6.1	UN1704	II	POISON		None	212	242	25 kg	100 kg	D	40
D	Tetraethyl lead, liquid	6.1	NA1649	I	POISON, FLAMMABLE LIQUID.		None	201	None	Forbidden	Forbidden	E	40
D	Tetraethyl pyrophosphate, *liquid*	6.1	NA3018	I	POISON		None	201	243	Forbidden	1 L	A	40
D	Tetraethyl pyrophosphate *solid*	6.1	NA2783	I	POISON	N77	None	211	242	Forbidden	50 kg	A	40
	Tetraethyl silicate	3	UN1292	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tetraethylammonium perchlorate (dry)	Forbidden											
	Tetraethylenepentamine	8	UN2320	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	
	1,1,1,2-Tetrafluoroethane	2.2	UN3159		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
	Tetrafluoroethylene, inhibited	2.1	UN1081		FLAMMABLE GAS		306	304	None	Forbidden	150 kg	E	40
	Tetrafluoromethane, *R14*	2.2	UN1982		NONFLAMMABLE GAS		None	302	None	75 kg	150 kg	A	
	1,2,3,6-Tetrahydrobenzaldehyde	3	UN2498	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tetrahydrofuran	3	UN2056	II	FLAMMABLE LIQUID	T8	None	202	242	5 L	60 L	B	
	Tetrahydrofurfurylamine	3	UN2943	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tetrahydrophthalic anhydrides *with more than 0.05 percent of maleic anhydride*	8	UN2698	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	1,2,3,6-Tetrahydropyridine	3	UN2410	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Tetrahydrothiophene	3	UN2412	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	

	Tetramethylammonium hydroxide	8	UN1835	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
	Tetramethylene diperoxide dicarbamide	Forbidden											
	Tetramethyllead	3	UN2749	I	FLAMMABLE LIQUID	T21, T26	None	201	243	Forbidden	30 L	D	
	Tetranitro diglycerin	Forbidden											
	Tetranitroaniline	1.1D	UN0207	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
✦	Tetranitromethane	5.1	UN1510	I	OXIDIZER, POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	None	Forbidden	Forbidden	D	40, 66, 106
	2,3,4,6-Tetranitrophenol	Forbidden											
	2,3,4,6-Tetranitrophenyl methyl nitramine	Forbidden											
	2,3,4,6-Tetranitrophenylnitramine	Forbidden											
	Tetranitroresorcinol (dry)	Forbidden											
	2,3,5,6-Tetranitroso-1,4-dinitrobenzene	Forbidden											
	2,3,5,6-Tetranitroso nitrobenzene (dry)	Forbidden											
	Tetrapropylorthotitanate	3	UN2413	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	
	Tetrazene, *see* Guanyl nitrosaminoguanyltetrazene												
	Tetrazine (dry)	Forbidden											
	Tetrazol-1-acetic acid	1.4C	UN0407	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	1E, 5E, 24E
	Tetrazolyl azide (dry)	Forbidden											
	Tetryl, *see* Trinitrophenylmethylnitramine												
	Thallium chlorate	5.1	UN2573	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	
	Thallium compounds, n.o.s.	6.1	UN1707	II	POISON		None	212	242	25 kg	100 kg	A	56, 58, 106
	Thallium nitrate	6.1	UN2727	II	POISON, OXIDIZER		None	212	242	5 kg	25 kg	A	
D	Thallium sulfate, solid	6.1	NA1707	II	POISON		None	212	242	5 kg	50 kg	A	
	4-Thiapentanal	6.1	UN2785	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	D	25, 40

Tetramethylammonium hydroxide	8	UN1835	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A				
Tetramethylene diperoxide dicarbamide	Forbidden														
Tetramethyllaillane	3	UN2749	I	FLAMMABLE LIQUID	T21, T26	None	201	243	Forbidden	30 L	D				
Tetranitro diglycerin	Forbidden														
Tetranitroaniline	1.1D	UN0207	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E			
+ Tetranitromethane	5.1	UN1510	I	OXIDIZER, POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	None	Forbidden	Forbidden	D	40, 64, 106			
2,3,4,6-Tetranitrophenol	Forbidden														
2,3,4,6-Tetranitrophenyl methyl nitramine	Forbidden														
2,3,4,6-Tetranitrophenylnitramine	Forbidden														
Tetranitroresorcinol (dry)	Forbidden														
2,3,5,6-Tetranitroso-1,4-dinitrobenzene	Forbidden														
2,3,5,6-Tetranitroso nitrobenzene (dry)	Forbidden														
Tetrapropylorthotitanate	3	UN2413	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A				
Tetrazene, *see* Guanyl nitrosaminoguanyltetrazene															
Tetrazine (dry)	Forbidden														
Tetrazol-1-acetic acid	1.4C	UN0407	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	1E, 5E, 24E			
Tetrazolyl azide (dry)	Forbidden														
Tetryl, *see* Trinitrophenylmethylnitramine															
Thallium chlorate	5.1	UN2573	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	58, 58, 106			
Thallium compounds, n.o.s.	6.1	UN1707	II	POISON		None	212	242	25 kg	100 kg	A				
Thallium nitrate	6.1	UN2727	II	POISON, OXIDIZER		None	212	242	5 kg	25 kg	A				
D Thallium sulfate, solid	6.1	NA1707	II	POISON		None	212	242	5 kg	50 kg	A				
4-Thiapentanal	6.1	UN2785	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	D	25, 40			
Thioacetic acid	3	UN2436	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B				
Thiocarbonylchloride, see Thiophosgene															
Thioglycol	6.1	UN2966	II	POISON	T8	None	202	243	5 L	60 L	A				
Thioglycolic acid	8	UN1940	II	CORROSIVE	A7, B2, N34, T8	154	202	242	1 L	30 L	A				
Thiolactic acid	6.1	UN2936	II	POISON	T8	None	212	242	25 kg	100 kg	A				
Thionyl chloride	8	UN1836	I	CORROSIVE	25, A7, B6, B10, N34, T42.	None	201	243	Forbidden	Forbidden	C	40			
Thiophene	3	UN2414	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	40			
+ Thiophosgene	6.1	UN2474	II	POISON	2, A7, B9, B14, B32, B74, N33, N34, T38, T43, T45.	None	227	244	Forbidden	60 L	B	26, 40			
Thiophosphoryl chloride	8	UN1837	II	CORROSIVE	A3, A7, B2, B8, B25, N34, T12.	None	202	242	Forbidden	30 L	C	40			
Thorium metal, pyrophoric	7	UN2975		RADIOACTIVE, SPONTANEOUSLY COMBUSTIBLE.		None	418	None	Forbidden	Forbidden	D				
Thorium nitrate, solid	7	UN2976		RADIOACTIVE, OXIDIZER.		None	419	None	Forbidden	15 kg	A				
Tin chloride, fuming, see Stannic chloride, anhydrous															
Tin perchloride or Tin tetrachloride, see Stannic chloride, anhydrous															
Tinctures, medicinal	3	UN1293	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B				
			III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A				
Tinning flux, see Zinc chloride															
Titanium disulphide	4.2	UN3174	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	A				
Titanium hydride	4.1	UN1871	II	FLAMMABLE SOLID	A19, A20, N34	None	212	241	15 kg	50 kg	E				
Titanium powder, dry	4.2	UN2546	I	SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	Forbidden	D				
			II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N5, N34	None	212	241	15 kg	50 kg	D				
			III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	D				
Titanium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns*	4.1	UN1352	II	FLAMMABLE SOLID	A19, A20, N34	None	212	240	15 kg	50 kg	E				
Titanium sponge granules *or* Titanium sponge powders	4.1	UN2878	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	D				
D Titanium sulfate solution	8	NA1760	II	CORROSIVE	B2, B15	None	202	242	1 L	30 L	B	40			
+ Titanium tetrachloride	8	UN1838	II	CORROSIVE, POISON	2, A3, A6, B7, B9, B14, B32, B41, B74, B77, N41, T38, T43, T45.	None	227	244	Forbidden	30 L	C	40			
Titanium trichloride mixtures	8	UN2869	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A	40			
			III	CORROSIVE	A7, N34	154	213	240	25 kg	100 kg	A	40			
Titanium trichloride, pyrophoric *or* Titanium trichloride mixtures, pyrophoric	4.2	UN2441	I	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.	A7, A8, A19, A20, N34.	None	181	244	Forbidden	Forbidden	D	40			
TNT mixed with aluminum, see Tritonal															

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	Non-bulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	TNT, *see* Trinitrotoluene, *etc.*												
	Toluene	3	UN1294	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Toluene diisocyanate	6.1	UN2078	II	POISON	T14	None	202	243	5 L	60 L	D	25, 40
	Toluene sulfonic acid, *see* Alkyl, Aryl *or* Toluene sulfonic acid *etc.*												
	Toluidines *liquid*	6.1	UN1708	II	POISON	T14	None	202	243	5 L	60 L	A	
	Toluidines *solid*	6.1	UN1708	II	POISON		None	212	242	25 kg	100 kg	A	
	2,4-Toluylenediamine *or* 2,4-Toluenediamine	6.1	UN1709	III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Torpedoes, liquid fueled, *with inert head*	1.3J	UN0450	II	EXPLOSIVE 1.3J			62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Torpedoes, liquid fueled, *with or without bursting charge*	1.1J	UN0449	II	EXPLOSIVE 1.1J			62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Torpedoes *with bursting charge*	1.1E	UN0329	II	EXPLOSIVE 1.1E			62	None	Forbidden	Forbidden	B	
	Torpedoes *with bursting charge*	1.1F	UN0330	II	EXPLOSIVE 1.1F			62	None	Forbidden	Forbidden	B	
	Torpedoes *with bursting charge*	1.1D	UN0451	II	EXPLOSIVE 1.1D			62	None	Forbidden	Forbidden	B	
	Toxic liquid, corrosive, inorganic, n.o.s.	6.1	UN3289	I	POISON, CORROSIVE		None	201	243	0.5 L	2.5 L	A	
				II	POISON, CORROSIVE	T14	None	202	243	1 L	30 L	A	
	Toxic liquid, corrosive, inorganic, n.o.s. *Inhalation Hazard, Packing Group I, Zone A*	6.1	UN3289	I	POISON, CORROSIVE	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	B	40
	Toxic liquid, corrosive, inorganic, n.o.s. *Inhalation Hazard, Packing Group I, Zone B*	6.1	UN3289	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40
	Toxic liquid, inorganic, n.o.s.	6.1	UN3287	I	POISON		None	201	243	1 L	30 L	A	
				II	POISON	T14	None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Toxic liquid, inorganic, n.o.s. *Inhalation Hazard, Packing Group I, Zone A*	6.1	UN3287	I	POISON	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	B	40
	Toxic liquid, inorganic, n.o.s. *Inhalation Hazard, Packing Group I, Zone B*	6.1	UN3287	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40
	Toxic liquids, corrosive, organic, n.o.s.	6.1	UN2927	I	POISON, CORROSIVE	T42	None	201	243	0.5 L	2.5 L	B	40
				II	POISON, CORROSIVE		None	202	243	1 L	30 L	B	40
	Toxic liquids, corrosive, organic, n.o.s., *inhalation hazard, Packing Group I, Zone A*	6.1	UN2927	I	POISON, CORROSIVE	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	20, 40, 95
	Toxic liquids, corrosive, organic, n.o.s., *inhalation hazard, Packing Group I, Zone B*	6.1	UN2927	I	POISON, CORROSIVE	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
	Toxic liquids, flammable, organic, n.o.s.	6.1	UN2929	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T15	None	202	243	5 L	60 L	B	40
	Toxic liquids, flammable, organic, n.o.s., *inhalation hazard, Packing Group I, Zone A*	6.1	UN2929	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	20, 40, 95
	Toxic liquids, flammable, organic, n.o.s., *inhalation hazard, Packing Group I, Zone B*	6.1	UN2929	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
	Toxic, liquids, organic, n.o.s.	6.1	UN2810	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	40

	Toxic, liquids, organic, n.o.s. *Inhalation hazard, Packing Group I, Zone A*	6.1	UN2810	I	POISON	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	20, 40, 95
	Toxic, liquids, organic, n.o.s. *Inhalation hazard, Packing Group I, Zone B*	6.1	UN2810	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
	Toxic liquids, oxidizing, n.o.s.	6.1	UN3122	I	POISON, OXIDIZER	A4	None	201	243	Forbidden	2.5 L	C	
				II	POISON, OXIDIZER		None	202	243	1 L	5 L	C	
	Toxic liquids, oxidizing, n.o.s. *Inhalation hazard, Packing Group I, Zone A*	6.1	UN3122	I	POISON, OXIDIZER	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	2.5 L	C	
	Toxic liquids, oxidizing, n.o.s. *Inhalation Hazard, Packing Group I, Zone B*	6.1	UN3122	I	POISON, OXIDIZER	2, B9, B14, B32, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C	
	Toxic liquids, water-reative, n.o.s.	6.1	UN3123	I	POISON, DANGEROUS WHEN WET.	A4	one	201	243	Forbidden	1 L	E	40
				II	POISON, DANGEROUS WHEN WET.		None	202	243	1 L	5 L	E	40
	Toxic liquids, water-reative, n.o.s. *Inhalation hazard, packing group I, Zone A*	6.1	UN3123	I	POISON, DANGEROUS WHEN WET.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	E	40
	Toxic liquids, water-reative, n.o.s. *Inhalation hazard, packing group I, Zone B*	6.1	UN3123	I	POISON, DANGEROUS WHEN WET.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	E	40
	Toxic solid, corrosive, inorganic, n.o.s.	6.1	UN3290	I	POISON, CORROSIVE		None	211	242	1 kg	25 kg	B	

Toxic, liquids, organic, n.o.s. *Inhalation hazard, Packing Group I, Zone A*	6.1	UN2810	I	POISON	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	20, 40, 95		
Toxic, liquids, organic, n.o.s. *Inhalation hazard, Packing Group I, Zone B*	6.1	UN2810	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95		
Toxic liquids, oxidizing, n.o.s.	6.1	UN3122	I	POISON, OXIDIZER	A4	None	201	243	Forbidden	2.5 L	C			
			II	POISON, OXIDIZER		None	202	243	1 L	5 L	C			
Toxic liquids, oxidizing, n.o.s. *Inhalation hazard, Packing Group I, Zone A*	6.1	UN3122	I	POISON, OXIDIZER	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	2.5 L	C			
Toxic liquids, oxidizing, n.o.s. *Inhalation Hazard, Packing Group I, Zone B*	6.1	UN3122	I	POISON, OXIDIZER	2, B9, B14, B32, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C			
Toxic liquids, water-reative, n.o.s.	6.1	UN3123	I	POISON, DANGEROUS WHEN WET.	A4	one	201	243	Forbidden	1 L	E	40		
			II	POISON, DANGEROUS WHEN WET.		None	202	243	1 L	5 L	E	40		
Toxic liquids, water-reative, n.o.s. *Inhalation hazard, packing group I, Zone A*	6.1	UN3123	I	POISON, DANGEROUS WHEN WET.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	E	40		
Toxic liquids, water-reative, n.o.s. *Inhalation hazard, packing group I, Zone B*	6.1	UN3123	I	POISON, DANGEROUS WHEN WET.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	E	40		
Toxic solid, corrosive, inorganic, n.o.s.	6.1	UN3290	I	POISON, CORROSIVE		None	211	242	1 kg	25 kg	A			
			II	POISON, CORROSIVE		None	212	242	15 kg	50 kg	A			
Toxic solid, inorganic, n.o.s.	6.1	UN3288	I	POISON		None	211	242	5 kg	50 kg	A			
			II	POISON		None	212	242	25 kg	100 kg	A			
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A			
Toxic solids, corrosive, organic, n.o.s.	6.1	UN2928	I	POISON, CORROSIVE		None	211	242	1 kg	25 kg	B	40		
			II	POISON, CORROSIVE		None	212	242	15 kg	50 kg	B	40		
Toxic solids, flammable, organic, n.o.s.	6.1	UN2930	I	POISON, FLAMMABLE SOLID.		None	211	242	1 kg	15 kg	B			
			II	POISON, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	B			
Toxic solids, organic, n.o.s.	6.1	UN2811	I	POISON		None	211	242	5 kg	50 kg	B			
			II	POISON		None	212	242	25 kg	100 kg	B			
			III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A			
Toxic solids, oxidizing, n.o.s.	6.1	UN3086	I	POISON, OXIDIZER		None	211	242	1 kg	15 kg	C			
			II	POISON, OXIDIZER		None	212	242	15 kg	50 kg	C			
Toxic solids, self heating, n.o.s.	6.1	UN3124	I	POISON, SPONTANEOUSLY COMBUSTIBLE.	A5	None	211	242	5 kg	15 kg	D	40		
			II	POISON, SPONTANEOUSLY COMBUSTIBLE.		None	212	242	15 kg	50 kg	D	40		
Toxic solids, water-reative, n.o.s.	6.1	UN3125	I	POISON, DANGEROUS WHEN WET.	A5	None	211	242	5 kg	15 kg	D	40		
			II	POISON, DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	D	40		
D Toy Caps	1.4S	NA0337	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E		
Tracers for ammunition	1.3G	UN0212	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B			
Tracers for ammunition	1.4G	UN0306	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E		
Tractors, see Vehicles, self propelled														
Tri-(b-nitroxyethyl) ammonium nitrate	Forbidden													
Triallyl borate	6.1	UN2609	III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	13		
Triallylamine	3	UN2610	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T1	None	203	242	5 L	60 L	A	40		
Triazine pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN2764	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40		
			II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40		
			III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60 L	220 L	A			
Triazine pesticides, liquid, toxic	6.1	UN2966	I	POISON	T42	None	201	243	1 L	30 L	B	40		
			II	POISON	T14	None	202	243	5 L	60 L	B	40		
			III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40		
Triazine pesticides, liquid, toxic, flammable, *flashpoint not less than 23 degrees C*	6.1	UN2997	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40		

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40
	Triazine pesticides, solid, toxic	6.1	UN2763	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Tributylamine	8	UN2542	III	CORROSIVE	T2	None	203	241	5 L	60 L	A	
	Tributylphosphane	4.2	UN3254	I	SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	Forbidden	D	
D	mono-(Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry (*with more than 39 percent available chlorine*)	5.1	NA2468	II	OXIDIZER		152	212	240	5 kg	25 kg	A	13
	Trichloro-s-triazinetrione dry, with more than 39 percent available chlorine, see Trichloroisocyanuric acid, dry												
	Trichloroacetic acid	8	UN1839	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A	
	Trichloroacetic acid, solution	8	UN2564	II	CORROSIVE	A3, A6, A7, B2, N34, T8.	154	202	242	1 L	30 L	B	
				III	CORROSIVE	A3, A6, A7, N34, T7.	154	203	241	5 L	60 L	B	8
+	Trichloroacetyl chloride	8	UN2442	II	CORROSIVE, POISON	1, A3, A7, B9, B14, B30, B72, N34, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Trichlorobenzenes, liquid	6.1	UN2321	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Trichlorobutene	6.1	UN2322	II	POISON	T8	None	202	243	5 L	60 L	A	25, 40
	1,1,1-Trichloroethane	6.1	UN2831	III	KEEP AWAY FROM FOOD.	N36, T7	153	203	241	60 L	220 L	A	40
	Trichloroethylene	6.1	UN1710	III	KEEP AWAY FROM FOOD.	N36, T1	153	203	241	60 L	220 L	A	40
	Trichloroisocyanuric acid, dry	5.1	UN2468	II	OXIDIZER		152	212	240	5 kg	25 kg	A	13
	Trichloromethyl perchlorate	Forbidden											
	Trichlorosilane	4.3	UN1295	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID, CORROSIVE.	A7, N34, T24, T26	None	201	244	Forbidden	Forbidden	D	21, 28, 40, 49, 100
	Tricresyl phosphate *with more than 3 percent ortho isomer*	6.1	UN2574	II	POISON	A3, N33, N34, T8	None	202	243	5 L	60 L	A	
	Triethyl phosphite	3	UN2323	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Triethylamine	3	UN1296	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	40
	Triethylenetetramine	8	UN2259	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	B	40
	Trifluoroacetic acid	8	UN2699	I	CORROSIVE	A3, A6, A7, B4, N3, N34, T18, T27.	None	201	243	0.5 L	2.5 L	B	12, 40
	Trifluoroacetylchloride	2.3	UN3057		POISON GAS	2, 25, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40
	Trifluorochloroethylene, inhibited, *R1113*	2.3	UN1082		POISON GAS	3, 25, B14	None	304	314, 315	Forbidden	150 kg	B	40
	Trifluoroethane, compressed, *R143*	2.1	UN2035		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Trifluoromethane	2.2	UN1984		NONFLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	A	
D	Trifluoromethane and chlorotrifluoromethane mixture (*constant boiling mixture) (R-503*). *See* Refrigerant gases, n.o.s.												
	Trifluoromethane, refrigerated liquid	2.2	UN3136		NONFLAMMABLE GAS		306	None	314, 315	50 kg	500 kg	D	
	2-Trifluoromethylaniline	6.1	UN2942	III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	
	3-Trifluoromethylaniline	6.1	UN2948	II	POISON	T14	None	202	243	5 L	60 L	A	40
	Triformoxime trinitrate	Forbidden											
	Triisobutylene	3	UN2324	III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Triisocyanatoisocyanurate of isophoronediisocyanate, solution, *with 70 percent, by mass*	3	UN2906	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	

	Triisopropyl borate	3	UN2616	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	A	
				III	FLAMMABLE LIQUID	B1, T8, T31	150	203	242	60 L	220 L	A	
D	Trimethoxysilane	6.1	NA9269	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	E	40
	Trimethyl borate	3	UN2416	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	B	
	Trimethyl phosphite	3	UN2329	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	1,3,5-Trimethyl-2,4,6-trinitrobenzene	Forbidden											
	Trimethylacetyl chloride	6.1	UN2438	I	POISON, CORROSIVE, FLAMMABLE LIQUID.	2, A3, A6, A7, B3, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	25, 40
	Trimethylamine, anhydrous	2.1	UN1083		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Trimethylamine, aqueous solutions *with not more than 50 percent trimethylamine by mass*	3	UN1297	I	FLAMMABLE LIQUID, CORROSIVE.	T42	None	201	243	0.5 L	2.5 L	D	40, 41
				II	FLAMMABLE LIQUID, CORROSIVE.	B1, T14	None	202	243	1 L	5 L	B	40, 41
				III	FLAMMABLE LIQUID, CORROSIVE.	B1	150	203	242	5 L	60 L	A	40, 41
	1,3,5-Trimethylbenzene	3	UN2325	III	FLAMMABLE LIQUID	B1, T1	None	203	242	60 L	220 L	A	
	Trimethylchlorosilane	3	UN1298	II	FLAMMABLE LIQUID, CORROSIVE.	A3, A7, B77, N34, T14, T26.	None	202	243	1 L	5 L	E	40
	Trimethylcyclohexylamine	8	UN2326	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	
	Trimethylene glycol diperchlorate	Forbidden											

	Triisopropyl borate	3	UN2616	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	A	
				III	FLAMMABLE LIQUID	B1, T8, T31	150	203	242	60 L	220 L	A	
D	Trimethoxysilane	6.1	NA9269	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	E	40
	Trimethyl borate	3	UN2416	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	B	
	Trimethyl phosphite	3	UN2329	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	1,3,5-Trimethyl-2,4,6-trinitrobenzene	Forbidden											
	Trimethylacetyl chloride	6.1	UN2438	I	POISON, CORROSIVE, FLAMMABLE LIQUID.	2, A3, A6, A7, B3, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	25, 40
	Trimethylamine, anhydrous	2.1	UN1083		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Trimethylamine, aqueous solutions *with not more than 50 percent trimethylamine by mass*	3	UN1297	I	FLAMMABLE LIQUID, CORROSIVE.	T42	None	201	243	0.5 L	2.5 L	D	40, 41
				II	FLAMMABLE LIQUID, CORROSIVE.	B1, T14	None	202	243	1 L	5 L	B	40, 41
				III	FLAMMABLE LIQUID, CORROSIVE.	B1	150	203	242	5 L	60 L	A	40, 41
	1,3,5-Trimethylbenzene	3	UN2325	III	FLAMMABLE LIQUID	B1, T1	None	203	242	60 L	220 L	A	
	Trimethylchlorosilane	3	UN1298	II	FLAMMABLE LIQUID, CORROSIVE.	A3, A7, B77, N34, T14, T26.	None	202	243	1 L	5 L	E	40
	Trimethylcyclohexylamine	8	UN2326	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	
	Trimethylene glycol diperchlorate	Forbidden											
	Trimethylhexamethylene diisocyanate	6.1	UN2328	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	B	
	Trimethylhexamethylenediamines	8	UN2327	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Trimethylol nitromethane trinitrate	Forbidden											
	Trinitro-meta-cresol	1.1D	UN0216	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	2,4,6-Trinitro-1,3-diazobenzene	Forbidden											
	2,4,6-Trinitro-1,3,5-triazido benzene (dry)	Forbidden											
	Trinitroacetic acid	Forbidden											
	Trinitroacetonitrile	Forbidden											
	Trinitroamine cobalt	Forbidden											
	Trinitroaniline *or* Picramide	1.1D	UN0153	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitroanisole	1.1D	UN0213	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrobenzene, *dry or wetted with less than 30 percent water, by mass*	1.1D	UN0214	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrobenzene, wetted *with not less than 30 percent water, by mass*	4.1	UN1354	I	FLAMMABLE SOLID	23, A2, A8, A19, N41.	None	211	None	0.5 kg	0.5 kg	E	28
	Trinitrobenzenesulfonic acid	1.1D	UN0386	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	E	1E, 5E
	Trinitrobenzoic acid, *dry or wetted with less than 30 percent water, by mass*	1.1D	UN0215	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrobenzoic acid, wetted *with not less than 30 percent water, by mass*	4.1	UN1355	I	FLAMMABLE SOLID	23, A2, A8, A19, N41.	None	211	None	0.5 kg	0.5 kg	E	28
	Trinitrochlorobenzene *or* Picryl chloride	1.1D	UN0155	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitroethanol	Forbidden											
	Trinitroethylnitrate	Forbidden											
	Trinitrofluorenone	1.1D	UN0387	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitromethane	Forbidden											
	1,3,5-Trinitronaphthalene	Forbidden											
	Trinitronaphthalene	1.1D	UN0217	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrophenetole	1.1D	UN0218	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrophenol *or* Picric acid, *dry or wetted with less than 30 percent water, by mass*	1.1D	UN0154	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrophenol, wetted *with not less than 30 percent water, by mass*	4.1	UN1344	I	FLAMMABLE SOLID	23, A8, A19, N41	None	211	None	1 kg	15 kg	E	28, 36
	2,4,6-Trinitrophenyl guanidine (dry)	Forbidden											
	2,4,6-Trinitrophenyl nitramine	Forbidden											
	2,4,6-Trinitrophenyl trimethylol methyl nitramine trinitrate (dry)	Forbidden											
	Trinitrophenylmethylnitramine *or* Tetryl	1.1D	UN0208	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitroresorcinol *or* Styphnic acid, *dry or wetted with less than 20 percent water, or mixture of alcohol and water, by mass*	1.1D	UN0219	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitroresorcinol, wetted *or* Styphnic acid, wetted *with not less than 20 percent water, or mixture of alcohol and water by mass*	1.1D	UN0394	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	2,4,6-Trinitroso-3-methyl nitraminoanisole	Forbidden											
	Trinitrotetramine cobalt nitrate	Forbidden											
	Trinitrotoluene and Trinitrobenzene mixtures *or* TNT and trinitrobenzene mixtures *or* TNT and hexanitrostilbene mixtures *or* Trinitrotoluene and hexanitrostilbene mixtures	1.1D	UN0388	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrotoluene mixtures containing Trinitrobenzene and Hexanitrostilbene *or* TNT mixtures containing trinitrobenzene and hexanitrostilbene	1.1D	UN0389	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrotoluene *or* TNT, *dry or wetted with less than 30 percent water, by mass*	1.1D	UN0209	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrotoluene, wetted *with not less than 30 percent water, by mass*	4.1	UN1356	I	FLAMMABLE SOLID	23, A2, A8, A19, N41.	None	211	None	0.5 kg	0.5 kg	E	28

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Tripropylamine	3	UN2260	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T8	150	203	242	5 L	60 L	A	40
	Tripropylene	3	UN2057	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tris-(1-aziridinyl) phosphine oxide, solution	6.1	UN2501	II	POISON	T8	None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Tris, bis-difluoramino diethoxy propane (TVOPA)	Forbidden											
	Tritonal	1.1D	UN0390	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Tungsten hexafluoride	2.3	UN2196		POISON GAS, CORROSIVE.	3	None	338	None	Forbidden	Forbidden	D	40
	Turpentine	3	UN1299	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Turpentine substitute	3	UN1300	I	FLAMMABLE LIQUID	T1	None	201	243	1 L	30 L	B	
				II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Undecane	3	UN2330	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Uranium hexafluoride, *fissile excepted or non-fissile*	7	UN2978		RADIOACTIVE, CORROSIVE.		421-2	420, 425	420, 426				
	Uranium hexafluoride, fissile (*with more than 1 percent U-235*)	7	UN2977		RADIOACTIVE, CORROSIVE.		453	417, 420	417, 420			A	
	Uranium metal, pyrophoric	7	UN2979		RADIOACTIVE, SPONTANEOUSLY COMBUSTIBLE.		None	418	None			D	
	Uranyl nitrate hexahydrate solution	7	UN2980		RADIOACTIVE, CORROSIVE.		421, 425	415, 416, 417	415, 416, 417			D	
	Uranyl nitrate, solid	7	UN2981		RADIOACTIVE, OXIDIZER.		None	419	None	Forbidden	15 kg	A	
	Urea hydrogen peroxide	5.1	UN1511	III	OXIDIZER, CORROSIVE	A1, A7, A29	152	213	240	25 kg	100 kg	A	13
	Urea nitrate, *dry or wetted with less than 20 percent water, by mass*	1.1D	UN0220	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Urea nitrate, *wetted with not less than 20 percent water, by mass*	4.1	UN1357	I	FLAMMABLE SOLID	39, A8, A19, N41	None	211	None	1 kg	15 kg	A	28
	Urea peroxide, see Urea hydrogen peroxide												
	Valeraldehyde	3	UN2058	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Valeric acid, see Corrosive liquids, n.o.s.												
	Valeryl chloride	8	UN2502	II	CORROSIVE, FLAMMABLE LIQUID.	A3, A6, A7, B2, N34, T8.	154	202	243	1 L	30 L	C	40
	Vanadium compound, n.o.s.	6.1	UN3285	I	POISON		None	211	242	5 kg	50 kg	B	
				II	POISON	T14	None	212	242	25 kg	100 kg	B	
				III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Vanadium oxytrichloride	8	UN2443	II	CORROSIVE	A3, A6, A7, B2, B16, N34, T8, T26.	154	202	242	Forbidden	30 L	C	40
	Vanadium pentoxide, *non-fused form*	6.1	UN2862	II	POISON		None	212	242	25 kg	100 kg	A	
	Vanadium tetrachloride	8	UN2444	I	CORROSIVE	A3, A6, A7, B4, N34, T8, T26.	None	201	243	Forbidden	2.5 L	C	40
	Vanadium trichloride	8	UN2475	III	CORROSIVE		154	213	240	25 kg	100 kg	A	40
	Vanadyl sulfate	6.1	UN2931	II	POISON		None	212	242	25 kg	100 kg	A	
D	*Vehicles, self-propelled including internal combustion engines or other apparatus containing an internal combustion Engine or electric storage battery, see* Engines *etc. or* Battery powered *etc. or* Wheel chair, electric)												
	Very signal cartridge, see Cartridges, signal												
	Vinyl acetate, inhibited	3	UN1301	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Vinyl bromide, inhibited	2.1	UN1085		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Vinyl butyrate, inhibited	3	UN2838	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	Vinyl chloride, inhibited *or* Vinyl chloride, stabilized	2.1	UN1086		FLAMMABLE GAS	B44	306	304	314, 315	Forbidden	150 kg	B	40
	Vinyl chloroacetate	6.1	UN2589	II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	A	
	Vinyl ethyl ether, inhibited	3	UN1302	I	FLAMMABLE LIQUID	A3, T14	None	201	243	1 L	30 L	D	
	Vinyl fluoride, inhibited	2.1	UN1860		FLAMMABLE GAS	B43	306	304	314, 315	Forbidden	150 kg	E	40
	Vinyl isobutyl ether, inhibited	3	UN1304	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Vinyl methyl ether, inhibited	2.1	UN1087		FLAMMABLE GAS	B44	306	304	314, 315	Forbidden	150 kg	B	40
	Vinyl nitrate polymer	Forbidden											
	Vinyl toluene, inhibited *mixed isomers*	3	UN2618	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Vinylidene chloride, inhibited	3	UN1303	I	FLAMMABLE LIQUID	T23, T29	150	201	243	1 L	30 L	E	40
	Vinylpyridines, inhibited	6.1	UN3073	II	POISON, FLAMMABLE LIQUID.	T8	None	202	243	5 L	60 L	B	40
	Vinyltrichlorosilane	3	UN1305	I	FLAMMABLE LIQUID, CORROSIVE.	A3, A7, B6, N34, T14, T26.	None	201	243	Forbidden	2.5 L	B	40
	Warheads, rocket *with burster or expelling charge*	1.4D	UN0370	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	3E, 7E, 24F
	Warheads, rocket *with burster or expelling charge*	1.4F	UN0371	II	EXPLOSIVE 1.4F		None	62	None	Forbidden	Forbidden	E	
	Warheads, rocket *with bursting charge*	1.1D	UN0286	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	3E, 7E
	Warheads, rocket *with bursting charge*	1.2D	UN0287	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	3E, 7E
	Warheads, rocket *with bursting charge*	1.1F	UN0369	II	EXPLOSIVE 1.1F		None	62	None	Forbidden	Forbidden	E	
	Warheads, torpedo *with bursting charge*	1.1D	UN0221	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	3E, 7E
	Water-reactive liquid, corrosive, n.o.s.	4.3	UN3129	I	DANGEROUS WHEN WET, CORROSIVE.		None	201	243	Forbidden	1 L	D	
				II	DANGEROUS WHEN WET, CORROSIVE.		None	202	243	1 L	5 L	E	85
				III	DANGEROUS WHEN WET, CORROSIVE.		None	203	242	5 L	60 L	E	
	Water-reactive liquid, n.o.s.	4.3	UN3148	I	DANGEROUS WHEN WET.		None	201	244	Forbidden	1 L	E	40
				II	DANGEROUS WHEN WET.		None	202	243	1 L	5 L	E	40
				III	DANGEROUS WHEN		None	203	242	5 L	60 L	E	40

Vinyl methyl ether, inhibited	2.1	UN1087		FLAMMABLE GAS	B44	306	304	314, 315	Forbidden	150 kg	B	40	
Vinyl nitrate polymer	Forbidden												
Vinyl toluene, inhibited *mixed isomers*	3	UN2618	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
Vinylidene chloride, inhibited	3	UN1303	I	FLAMMABLE LIQUID	T23, T29	150	201	243	1 L	30 L	E	40	
Vinylpyridines, inhibited	6.1	UN3073	II	POISON, FLAMMABLE LIQUID.	T8	None	202	243	5 L	60 L	B	40	
Vinyltrichlorosilane	3	UN1305	I	FLAMMABLE LIQUID, CORROSIVE.	A3, A7, B6, N34, T14, T26.	None	201	243	Forbidden	2.5 L	B	40	
Warheads, rocket *with burster or expelling charge*	1.4D	UN0370	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	3E, 7E, 24F	
Warheads, rocket *with burster or expelling charge*	1.4F	UN0371	II	EXPLOSIVE 1.4F		None	62	None	Forbidden	Forbidden	E		
Warheads, rocket *with bursting charge*	1.1D	UN0286	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	3E, 7E	
Warheads, rocket *with bursting charge*	1.2D	UN0287	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	3E, 7E	
Warheads, rocket *with bursting charge*	1.1F	UN0369	II	EXPLOSIVE 1.1F		None	62	None	Forbidden	Forbidden	E		
Warheads, torpedo *with bursting charge*	1.1D	UN0221	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	3E, 7E	
Water-reactive liquid, corrosive, n.o.s.	4.3	UN3129	I	DANGEROUS WHEN WET, CORROSIVE.		None	201	243	Forbidden	1 L	D		
			II	DANGEROUS WHEN WET, CORROSIVE.		None	202	243	1 L	5 L	E	85	
			III	DANGEROUS WHEN WET, CORROSIVE.		None	203	242	5 L	60 L	E		
Water-reactive liquid, n.o.s.	4.3	UN3148	I	DANGEROUS WHEN WET.		None	201	244	Forbidden	1 L	E	40	
			II	DANGEROUS WHEN WET.		None	202	243	1 L	5 L	E	40	
			III	DANGEROUS WHEN WET.		None	203	242	5 L	60 L	E	40	
Water-reactive liquid, toxic, n.o.s.	4.3	UN3130	I	DANGEROUS WHEN WET, POISON.	A4	None	201	243	Forbidden	1 L	D		
			II	DANGEROUS WHEN WET, POISON.		None	202	243	1 L	5 L	E	85	
			III	DANGEROUS WHEN WET, KEEP AWAY FROM FOOD.		None	203	242	5 L	60 L	E	85	
Water-reactive solid, corrosive, n.o.s.	4.3	UN3131	I	DANGEROUS WHEN WET, CORROSIVE.	N40	None	211	242	Forbidden	15 kg	D		
			II	DANGEROUS WHEN WET, CORROSIVE.		None	212	242	15 kg	50 kg	E	85	
			III	DANGEROUS WHEN WET, CORROSIVE.		None	213	241	25 kg	100 kg	E	85	
Water-reactive solid, flammable, n.o.s.	4.3	UN3132	I	DANGEROUS WHEN WET, FLAMMABLE SOLID.	N40	None	211	242	Forbidden	15 kg	E		
			II	DANGEROUS WHEN WET, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	E		
			III	DANGEROUS WHEN WET, FLAMMABLE SOLID.		None	213	241	25 kg	100 kg	E		
Water-reactive solid, n.o.s.	4.3	UN3813	I	DANGEROUS WHEN WET.	N40	None	211	242	Forbidden	15 kg	E	40	
			II	DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	E	40	
			III	DANGEROUS WHEN WET.		None	213	241	25 kg	100 kg	E	40	
Water-reactive solid, oxidizing, n.o.s.	4.3	UN3133		DANGEROUS WHEN WET, OXIDIZER.		None	214	214	Forbidden	Forbidden			
Water-reactive solid, self-heating, n.o.s.	4.3	UN3135	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	N40	None	211	242	Forbidden	15 kg	E		
			II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	212	242	15 kg	50 kg	E		
			III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	E		
Water-reactive solid, toxic, n.o.s.	4.3	UN3134	I	DANGEROUS WHEN WET, POISON.	A5, N40	None	211	242	Forbidden	15 kg	D		
			II	DANGEROUS WHEN WET, POISON.		None	212	242	15 kg	50 kg	E	85	
			III	DANGEROUS WHEN WET, KEEP AWAY FROM FOOD.		None	213	241	25 kg	100 kg	E	85	
Water reactive substances, n.o.s., see Substances which in contact with water, etc.													

§172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
AD	Wheel chair, electric *(spillable or non-spillable type batteries)*	9		III	CLASS 9		222	222	None	No limit	No limit	A	
	White acid, see Hydrofluoric acid mixtures												
I	White asbestos *(chrysotile, actinolite, anthophyllite, tremolite)*	9	UN2590	III	CLASS 9		155	216	240	200 kg	200 kg	A	34, 40
	Wood preservatives, liquid	3	UN1306	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	40
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	40
	Xenon	2.2	UN2036		NONFLAMMABLE GAS		306	302	None	75 kg	150 kg	A	
	Xenon, refrigerated liquid *(cryogenic liquids)*	2.2	UN2591		NONFLAMMABLE GAS		320	None	None	50 kg	500 kg	B	
	Xylenes	3	UN1307	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Xylenols	6.1	UN2261	II	POISON	T8	None	212	242	25 kg	100 kg	A	
	Xylidines, solid	6.1	UN1711	II	POISON	T14	None	212	242	25 kg	100 kg	A	
	Xylidines, solution	6.1	UN1711	II	POISON	T14	None	202	243	5 L	60 L	A	
	Xylyl bromide	6.1	UN1701	II	POISON	A3, A6, A7, N33	None	340	None	Forbidden	60 L	D	40
	p-Xylyl diazide	Forbidden											
	Zinc ammonium nitrite	5.1	UN1512	II	OXIDIZER		None	212	242	5 kg	25 kg	E	
	Zinc arsenate *or* Zinc arsenite *or* Zinc arsenate and zinc arsenite mixtures	6.1	UN1712	II	POISON		None	212	242	25 kg	100 kg	A	
	Zinc ashes	4.3	UN1435	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	
	Zinc bisulfite solution *see* Bisulfites, inorganic aqueous solutions, n.o.s.												
	Zinc bromate	5.1	UN2469	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	56, 58, 106
	Zinc chlorate	5.1	UN1513	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Zinc chloride, anhydrous	8	UN2331	III	CORROSIVE		None	213	240	25 kg	100 kg	A	
	Zinc chloride, solution	8	UN1840	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Zinc cyanide	6.1	UN1713	I	POISON		None	211	242	5 kg	50 kg	A	26
	Zinc dithionite *or* Zinc hydrosulfite	9	UN1931	III	None		155	204	240	100 kg	200 kg	A	49
	Zinc ethyl, see Diethylzinc												
	Zinc fluorosilicate	6.1	UN2855	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26
	Zinc hydrosulfite, *see* Zinc dithionite												
	Zinc muriate solution, see Zinc chloride, solution												
	Zinc nitrate	5.1	UN1514	II	OXIDIZER		152	212	240	5 kg	25 kg	A	
	Zinc permanganate	5.1	UN1515	II	OXIDIZER		152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Zinc peroxide	5.1	UN1516	II	OXIDIZER		152	212	242	5 kg	25 kg	A	13, 75, 106
	Zinc phosphide	4.3	UN1714	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Zinc powder *or* Zinc dust	4.3	UN1436	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, N40	None	211	242	Forbidden	15 kg	A	
				II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19	None	212	242	15 kg	50 kg	A	
				III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	213	242	25 kg	100 kg	A	
	Zinc resinate	4.1	UN2714	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Zinc selenate, *see* Selenates *or* Selenites												
	Zinc selenite, *see* Selenates *or* Selenites												
	Zinc silicofluoride, see Zinc fluorosilicate												
	Zirconium, dry, *coiled wire, finished metal sheets, strip (thinner than 254 microns but not thinner than 18 microns)*	4.1	UN2858	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Zirconium, dry, *finished sheets, strip or coiled wire*	4.2	UN2009	III	SPONTANEOUSLY COMBUSTIBLE.	A1, A19	None	213	240	25 kg	100 kg	D	
	Zirconium hydride	4.1	UN1437	II	FLAMMABLE SOLID	A19, A20, N34	None	212	240	15 kg	50 kg	E	
	Zirconium nitrate	5.1	UN2728	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Zirconium picramate, *dry or wetted with less than 20 percent water, by mass*	1.3C	UN0236	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Zirconium picramate, wetted *with not less than 20 percent water, by mass*	4.1	UN1517	I	FLAMMABLE SOLID	23, N41	None	211	None	1 kg	15 kg	D	28, 3E
	Zirconium powder, dry	4.2	UN2009	I	SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	Forbidden	D	
				II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N5, N34	None	212	241	15 kg	50 kg	D	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	D	
	Zirconium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns*	4.1	UN1358	II	FLAMMABLE SOLID	A19, A20, N34	None	212	241	15 kg	50 kg	E	
	Zirconium scrap	4.2	UN1932	III	SPONTANEOUSLY COMBUSTIBLE.	N34	None	213	240	Forbidden	Forbidden	D	
D	Zirconium sulfate	8	NA9163	III	CORROSIVE	N34	None	213	240	50 kg	No limit	A	
	Zirconium suspended in a liquid	3	UN1308	I	FLAMMABLE LIQUID		None	201	243	Forbidden	Forbidden	B	
				II	FLAMMABLE LIQUID		None	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1	150	203	242	60 L	220 L	B	
	Zirconium tetrachloride	8	UN2503	III	CORROSIVE		154	213	240	25 kg	100 kg	A	

			II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N5, N34	None	212	241	15 kg	50 kg	D		

			III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	D		
Zirconium powder, wetted with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns	4.1	UN1358	II	FLAMMABLE SOLID	A19, A20, N34	None	212	241	15 kg	50 kg	E		
Zirconium scrap	4.2	UN1932	III	SPONTANEOUSLY COMBUSTIBLE.	N34	None	213	240	Forbidden	Forbidden	D		
D Zirconium sulfate	8	NA9163	III	CORROSIVE	N34	None	213	240	50 kg	No limit	A		
Zirconium suspended in a liquid	3	UN1308	I	FLAMMABLE LIQUID		None	201	243	Forbidden	Forbidden	B		
			II	FLAMMABLE LIQUID		None	202	242	5 L	60 L	B		
			III	FLAMMABLE LIQUID	B1	150	203	242	60 L	220 L	B		
Zirconium tetrachloride	8	UN2503	III	CORROSIVE		154	213	240	25 kg	100 kg	A		

12. In Appendix B to § 172.101, two notes would be added to the notes preceding the List of Marine Pollutants to read as follows:

Appendix B to § 172.101—List of Marine Pollutants

* * * * *

4. If a material not listed in this appendix meets the criteria for a marine pollutant, as provided in the General Introduction of the IMDG Code, Guidelines for the Identification of Harmful Substances in Packaged Form, the material may be transported as a marine pollutant in accordance with the applicable requirements of this subchapter.

5. If approved by the Associate Administrator for Hazardous Materials Safety, a material listed in this appendix which does not meet the criteria for a marine pollutant, as provided in the General Introduction of the IMDG Code, Guidelines for the Identification of Harmful Substances in Packaged Form, is excepted from the requirements of this subchapter as a marine pollutant.

* * * * *

13. In addition, in Appendix B to § 172.101, the List of Marine Pollutants would be amended by removing the entry "Ammonium arsenate" and adding the following materials to the List of Marine Pollutants in appropriate alphabetical order:

Appendix B to § 172.101—List of Marine Pollutants

* * * * *

S.M.P.	Marine pollutant
[ADD]	
(1)	(2)
	Acetal
	Alkyl (C12–C14)dimethylamine
	Alkyl (C7–C9)nitrates
	n-Amylbenzene
	Benomyl
	Bromoacetone
	1–Butanethiol
	n-Butyl butyrate
	Carbendazim
	Chloroacetone, stabilized
	2–Chloro-6-nitrotoluene
	alpha-Chloropropylene
	Copper arsenate
PP	Copper chloride (solution)
	Copper metal powder
	Cupric sulfate
PP	1,5,9–Cyclododecatriene
	Decyloxytetrahydrothiophene dioxide
	Diethylbenzenes (mixed isomers)
	Diisopropylnaphthalene
	Dimethyl glyoxal (butanedione)
	Dimethyl sulphide
	4,4°-Diaminodiphenylmethane
	1,4–Di-tert-butylbenzene
	Dinoseb acetate
	Dodecyl diphenyl oxide disulphonate
	Dodecyl hydroxypropyl sulfide
	1–Dodecylamine
	Epibromohydrin
	Epichlorohydrin
	Estenvalerate
	Ethyl mercaptan
	1–Ethyl-2-methylbenzene
	2–Ethylhexyl nitrate
	Fenbutatin oxide
	n-Heptylbenzene
	n-Hexylbenzene
	Iron oxide, spent
	Isobenzan
	Isobutyl propionate
	Isobutyl isobutyrate
	Isobutyl butyrate
	Isobutylbenzene
	Isopropyltoluene
	1–Methyl-2-ethylbenzene
	3–Methylpyradine
	Mononitrobenzene (nitro benzene)
	Nitrotoluenes (o-: m-: p-)
	Oleylamine
	n-Pentylbenzene
	d-Phenothrin
	Propachlor
	n-Propylbenzene
	Propanethiols
	Quizalofop
	Quizalofop-p-ethyl
	Tetrachlorvinphos
	Tetramethrin
	Tetramethylbenzenes
	Triisopropylated phenyl phosphates
	1,2,3-Trimethylbenzene
	1,2,4-Trimethylbenzene
	1,3,5-Trimethylbenzene

* * * * *

14. In § 172.102, in paragraph (c)(1), Special Provision 41 would be removed, Special Provision 16 would be revised, and Special Provisions 23 (Note: Since Special Provision 23 was already added at 59 FR 28493, this proposed 23 will be renumbered 38 in the final rule), 24, 26, 32, 34, 35, 36, 37, 39, 40, 43, 44, 45, 46, 47, 48, 49, 50, 51 would be added and in paragraph (c)(2), Special Provision A33 would be removed, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

* * * * *

16 This description applies to smokeless powder and other solid propellants that are used as powder for small arms and have been classed as Division 1.3 and 4.1 in accordance with § 173.56 of this subchapter.

* * * * *

23 This material may be transported under the provisions of Division 4.1 only if it is so packed that the percentage of diluent will not fall below that stated in the shipping description at any time during transport.

24 Alcoholic beverages containing more than 70 percent alcohol by volume must be transported as materials in Packing Group II. Alcoholic beverages containing more than 24 percent but not more than 70 percent alcohol by volume must be transported as materials in Packing Group III.

* * * * *

26 This entry does not include ammonium permanganate, the transport of which is prohibited except when approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

32 These beads are made from polystyrene, poly(methyl methacrylate) or other polymeric material.

* * * * *

34 The commercial grade of calcium nitrate fertilizer, when consisting mainly of a double salt (calcium nitrate and ammonium nitrate) containing not more than 10 percent ammonium nitrate and at least 12 percent water of crystallization, is not subject to the requirements of this subchapter.

35 The gas must be at a pressure corresponding to an ambient atmospheric pressure at the time the containment system is closed and not to exceed 105 kPa absolute (15.22 psig). The gas must be contained in hermetically sealed glass or metal inner packagings and with a maximum net quantity per package of 5 liters (1 gallon) or, in the case of a toxic gas, a maximum net quantity per package of 1 liter (0.3 gallons).

36 The maximum net quantity per package is 5 liters (1 gallon) or 5 kg (11 pounds).

37 Unless it can be demonstrated by testing that the sensitivity of the substance in its frozen state is no greater than in its liquid state, the substance must remain liquid during normal transport conditions. It must not freeze at temperatures above -15°C (5°F).

39 This substance may be carried under provisions other than those of Class 1 only if it is so packed that the percentage of water will not fall below that stated at any time during transport. When phlegmatized with water and inorganic inert material, the content of urea nitrate must not exceed 75 percent by mass and the mixture should not be capable of being detonated by test 1(a)(i) or test 1(a) (ii) in the UN Recommendations Tests and Criteria.

40 Polyester resin kits consist of two components: a base material (Class 3, Packing Group II or III) and an activator (organic peroxide), each separately packed in an inner packaging. The organic peroxide must be type D, E, or F, not requiring temperature control, and be limited to a quantity of 125 ml (4.22 ounces) per inner packaging if liquid, and 500 g (1 pound) if solid. The components may be placed in the same outer packaging provided they will not interact dangerously in the event of leakage. Packing group will be II or III, according to the criteria for Class 3, applied to the base material.

* * * * *

43 The nitrogen content of the nitrocellulose must not exceed 11.5 percent. Each single filter sheet must be packed between sheets of glazed paper. The portion of glazed paper between the filter sheets must not be less than 65 percent, by mass. The membrane filters/paper arrangement must not be liable to propagate a detonation as tested by one of the tests described in the UN Recommendations, Tests and Criteria, Part I, Test series 1 (a).

44 The formulation must be prepared so that it remains homogeneous and does not separate during transport. Formulations with low nitrocellulose contents and neither showing dangerous properties when tested for their ability to detonate, deflagrate or explode when heated under defined confinement by the appropriate test methods and criteria in the UN Recommendations, Tests and Criteria, nor being a flammable solid when tested in accordance with Appendix E to Part 173 of this subchapter (chips, if necessary, crushed and sieved to a particle size of less than 1.25 mm) are not subject to this subchapter.

45 Temperature should be maintained between 18°C (64.4°F) and 40°C (104°F). Tanks containing solidified methacrylic acid must not be reheated during transport.

46 This material must be packed in accordance with packing method OP6B (see § 173.225 of this subchapter). During transport, it must be protected from direct sunshine and stored (or kept) in a cool and well-ventilated place, away from all sources of heat.

47 Mixtures of solids which are not subject to this subchapter and flammable liquids may be transported under this entry without first applying the classification criteria of Division 4.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level.

48 Mixtures of solids which are not subject to this subchapter and toxic liquids may be transported under this entry without first applying the classification criteria of Division 6.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Each packaging must

interact dangerously in the event of leakage. Packing group will be II or III, according to the criteria for Class 3, applied to the base material.

* * * * *

43 The nitrogen content of the nitrocellulose must not exceed 11.5 percent. Each single filter sheet must be packed between sheets of glazed paper. The portion of glazed paper between the filter sheets must not be less than 65 percent, by mass. The membrane filters/paper arrangement must not be liable to propagate a detonation as tested by one of the tests described in the UN Recommendations, Tests and Criteria, Part I, Test series 1 (a).

44 The formulation must be prepared so that it remains homogeneous and does not separate during transport. Formulations with low nitrocellulose contents and neither showing dangerous properties when tested for their ability to detonate, deflagrate or explode when heated under defined confinement by the appropriate test methods and criteria in the UN Recommendations, Tests and Criteria, nor being a flammable solid when tested in accordance with Appendix E to Part 173 of this subchapter (chips, if necessary, crushed and sieved to a particle size of less than 1.25 mm) are not subject to this subchapter.

45 Temperature should be maintained between 18°C (64.4°F) and 40°C (104°F). Tanks containing solidified methacrylic acid must not be reheated during transport.

46 This material must be packed in accordance with packing method OP6B (see § 173.225 of this subchapter). During transport, it must be protected from direct sunshine and stored (or kept) in a cool and well-ventilated place, away from all sources of heat.

47 Mixtures of solids which are not subject to this subchapter and flammable liquids may be transported under this entry without first applying the classification criteria of Division 4.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level.

48 Mixtures of solids which are not subject to this subchapter and toxic liquids may be transported under this entry without first applying the classification criteria of Division 6.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level. This entry may not be used for solids containing a Packing Group I liquid.

49 Mixtures of solids which are not subject to this subchapter and corrosive liquids may be transported under this entry without first applying the classification criteria of Class 8, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level.

50 Cases, cartridge, empty with primer which are made of metallic casings and meeting the classification criteria of Division 1.4 are not regulated for domestic transportation.

51 This description applies to items previously described as "Toy propellant devices, Class C" and includes reloadable kits.

* * * * *

15. In § 172.203, the list of shipping names in paragraph (k)(3) would be revised and a new paragraph (o) would be added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(k) * * *
(3) * * *

Alcoholates solution, n.o.s., *in alcohol*
Alcohols, toxic, n.o.s.
Aldehydes, toxic, n.o.s.
Alkali metal alcoholates, self-heating, corrosive, n.o.s.
Alkaline earth metal alcoholates, n.o.s.
Amines, liquid, corrosive, flammable, n.o.s. *or* Polyamines, liquid, corrosive, flammable, n.o.s.
Amines, liquid, flammable, corrosive, n.o.s. *or* Polyamines, liquid, flammable, corrosive, n.o.s.
Articles, explosive, n.o.s.
Caustic alkali liquids, n.o.s.
Charges, propelling
Chloroformates, toxic, corrosive, n.o.s.
Combustible liquid, n.o.s.
Components, explosive train, n.o.s.
Compounds, tree *or* weed killing, liquid, *flammable, corrosive, toxic*
Compounds, cleaning liquid, *corrosive, flammable, toxic*
Compressed *or* Liquefied gases, toxic, flammable, n.o.s.
Compressed *or* Liquefied gases, flammable, n.o.s.
Compressed *or* Liquefied gases, n.o.s.
Compressed *or* Liquefied gases, toxic, n.o.s.
Compressed *or* Liquefied gases, oxidizing, n.o.s.
Contrivances, water-activated
Corrosive, liquid, acidic, inorganic *or* organic, n.o.s.
Corrosive, liquid, basic, inorganic *or* organic, n.o.s.
Corrosive liquids, flammable, n.o.s.
Corrosive liquids, n.o.s.
Corrosive liquids, oxidizing, n.o.s.
Corrosive liquids, toxic, n.o.s.
Corrosive liquids, water-reactive, n.o.s.
Corrosive, solid, acidic, inorganic *or* organic, n.o.s.
Corrosive, solid, basic, inorganic *or* organic, n.o.s.
Corrosive solids, flammable, n.o.s.
Corrosive solids, n.o.s.
Corrosive solids, oxidizing, n.o.s.
Corrosive solids, self heating, n.o.s.
Corrosive solids, toxic, n.o.s.
Corrosive solids, water-reactive, n.o.s.
Disinfectants, liquid, toxic, n.o.s.
Disinfectants, solids, toxic, n.o.s.
Disinfectants, liquid, corrosive, n.o.s.
Dispersant gas, n.o.s.
Dyes, liquid, toxic, n.o.s. *or* Dye intermediates, liquid, toxic, n.o.s.
Dyes, liquid, corrosive, n.o.s. *or* Dye intermediates, liquid, corrosive, n.o.s.
Dyes, solid, toxic, n.o.s. *or* Dye intermediates, solid, toxic, n.o.s.
Dyes, solid, corrosive, n.o.s. *or* Dye intermediates, solid, corrosive, n.o.s.
Environmentally hazardous substances, liquid *or* solid, n.o.s.
Flammable gases, solid, corrosive, n.o.s.
Flammable liquids, corrosive, n.o.s.
Flammable liquids, n.o.s.
Flammable liquid, toxic, corrosive, n.o.s.
Flammable liquids, toxic, n.o.s.
Flammable solids, corrosive, organic *or* inorganic, n.o.s.
Flammable solids, organic, molten, n.o.s.
Flammable solids, organic *or* inorganic, n.o.s.
Flammable solids, toxic, organic *or* inorganic, n.o.s.
Halogenated irritating liquids, n.o.s.
Hazardous waste, liquid *or* solid, n.o.s.
Infectious substances, affecting animals
Infectious substances, affecting humans
Insecticide gases, n.o.s.
Insecticide gases, toxic, n.o.s.
Isocyanates, toxic, flammable, n.o.s. *or* Isocyanates solutions, toxic, flammable, n.o.s.
Isocyanates, flammable, toxic, n.o.s. *or* Isocyanates solutions, flammable, toxic, n.o.s.
Medicine, liquid, flammable, toxic, n.o.s.
Medicines, liquid, toxic, n.o.s.
Medicine, solid, toxic, n.o.s.
Metal powder, self-heating, n.o.s.
Metal salts of organic compounds, flammable, n.o.s.
Metal powders, flammable, n.o.s.
Metallic substance, water-reactive, n.o.s.
Metallic substance, water-reactive, self-heating, n.o.s.
Nitriles, toxic, flammable, n.o.s.
Nitriles, flammable, toxic, n.o.s.
Nitriles, toxic, n.o.s.
Organic peroxide type B, liquid
Organic peroxide type B, liquid, temperature controlled
Organic peroxide type B, solid
Organic peroxide type B, solid, temperature controlled
Organic peroxide type C, liquid
Organic peroxide type C, liquid, temperature controlled
Organic peroxide type C, solid
Organic peroxide type C, solid, temperature controlled

Organic peroxide type D, liquid
Organic peroxide type D, liquid, temperature controlled
Organic peroxide type D, solid
Organic peroxide type D, solid, temperature controlled
Organic peroxide type E, liquid
Organic peroxide type E, liquid, temperature controlled
Organic peroxide type E, solid
Organic peroxide type E, solid, temperature controlled
Organic peroxide type F, liquid
Organic peroxide type F, liquid, temperature controlled
Organic peroxide type F, solid
Organic peroxide type F, solid, temperature controlled
Organometallic compound dispersion, water-reactive, flammable, n.o.s.
Organometallic compound solution, water-reactive, flammable, n.o.s.
Organometallic compound, toxic, n.o.s.
Other regulated substances, liquid, n.o.s.
Other regulated substances, solid, n.o.s.
Oxidizing solid, n.o.s.
Oxidizing solid, corrosive, n.o.s.
Oxidizing solid, flammable, n.o.s.
Oxidizing solid, self-heating, n.o.s.
Oxidizing solid, toxic, n.o.s.
Oxidizing solid, water-reactive, n.o.s.
Oxidizing liquid, n.o.s.
Oxidizing liquid, corrosive, n.o.s.
Oxidizing liquid, toxic, n.o.s.
Pesticides, liquid, toxic, flammable, n.o.s.
Pesticides, liquid, toxic, n.o.s.
Pesticides, liquid, flammable, toxic, n.o.s.
Pesticides, solid, toxic, n.o.s.
Propellant, liquid
Propellant, solid
Pyrophoric liquids, organic *or* inorganic, n.o.s.
Pyrophoric metals, n.o.s. *or* Pyrophoric alloys, n.o.s.
Pyrophoric organometallic compound, n.o.s.
Pyrophoric solids, organic *or* inorganic, n.o.s.
Refrigerant gases, n.o.s.
Samples, explosive (*other than initiating explosives*)
Self-heating liquid, corrosive, inorganic, n.o.s.
Self-heating liquid, corrosive, organic, n.o.s.
Self-heating liquid, inorganic, n.o.s.
Self-heating liquid, organic, n.o.s.
Self-heating liquid, toxic, inorganic, n.o.s.
Self-heating liquid, toxic, organic, n.o.s.
Self-heating solid, corrosive, inorganic, n.o.s.
Self-heating solid, corrosive, organic, n.o.s.
Self-heating solid, organic or inorganic, n.o.s.
Self-heating solid, oxidizing, n.o.s.
Self-heating solid, toxic, organic or inorganic, n.o.s.
Self-reactive liquid type B
Self-reactive liquid type B, temperature controlled
Self-reactive liquid type C
Self-reactive liquid type C, temperature controlled
Self-reactive liquid type D
Self-reactive liquid type D, temperature controlled
Self-reactive liquid type E
Self-reactive liquid type E, temperature controlled
Self-reactive liquid type F
Self-reactive liquid type F, temperature controlled
Self-reactive solid type B
Self-reactive solid type B, temperature controlled
Self-reactive solid type C
Self-reactive solid type C, temperature controlled
Self-reactive solid type D
Self-reactive solid type D, temperature controlled
Self-reactive solid type E
Self-reactive solid type E, temperature controlled
Self-reactive solid type F
Self-reactive solid type F, temperature controlled
Solids containing corrosive liquid, n.o.s.
Solids containing flammable liquid, n.o.s.
Solids containing toxic liquid, n.o.s.
Substances, explosive, n.o.s.
Substances, explosive, very insensitive (substances, EVI) n.o.s.
Tear gas substances, liquid *or* solid, n.o.s.
Toxic liquids, corrosive, organic *or* inorganic, n.o.s.
Toxic liquids, flammable, organic *or* inorganic, n.o.s.
Toxic liquids, organic *or* inorganic, n.o.s.
Toxic liquids, oxidizing, n.o.s.
Toxic liquids, water-reactive, n.o.s.
Toxic solids, corrosive, organic *or* inorganic, n.o.s.
Toxic solids, flammable, organic *or* inorganic, n.o.s.
Toxic solids, organic *or* inorganic, n.o.s.
Toxic solids, oxidizing, n.o.s.
Toxic solids, self-heating, n.o.s.
Toxic solids, water-reactive, n.o.s.
Water-reactive, liquid, n.o.s.
Water-reactive, liquid, corrosive, n.o.s.
Water-reactive, liquid, toxic, n.o.s.
Water-reactive, solid, n.o.s.
Water-reactive, solid, corrosive, n.o.s.
Water-reactive, solid, flammable n.o.s.
Water-reactive, solid, oxidizing, n.o.s.
Water-reactive, solid, self-heating, n.o.s.
Water-reactive, solid, toxic, n.o.s.

* * * * *

(o) *Organic peroxides and self-reactive materials.* The description on a shipping paper for a Division 4.1 (self-reactive) material or a Division 5.2 (organic peroxide) material must include the following additional information, as appropriate:

(1) If notification or competent authority approval is required, the shipping paper must contain a statement of approval of the classification and conditions of transport.

(2) For Division 4.1 (self-reactive) and Division 5.2 (organic peroxide) materials that require temperature control during transport, the control and emergency temperature must be included on the shipping paper.

(3) The word "SAMPLE" must be included in association with the basic description when a sample of a Division 4.1 (self-reactive) material (see § 173.224(c)(4) of this subchapter) or Division 5.2 (organic peroxide) material (see § 173.225(c)(4) of this subchapter) is offered for transportation or transported.

§ 172.203 [Amended]

16. In addition, in § 172.203, in paragraph (m)(1), the wording "(Poison)" would be revised to read "'Poison' or 'Toxic'".

§ 172.204 [Amended]

17. In § 172.204, in paragraph (a)(2), the wording "packed, marked and labeled," would be revised to read "packed, marked and labeled/placarded,".

§ 172.320 [Amended]

18. In § 172.320, in paragraph (b), the wording "or identifying information" would be revised to read "or identifying information, such as a product code".

19. In § 172.400a, a new paragraph (c) would be added to read as follows:

§ 172.400a Exceptions from labeling.

* * * * *

(c) Notwithstanding the provisions of § 172.402(a), a subsidiary hazard label is not required on a package containing a Class 8 (corrosive) material which has a subsidiary hazard of Division 6.1 (poisonous) if the toxicity of the material is based solely on the corrosive destruction of tissue rather than systemic poisoning.

20. In § 172.402, new paragraphs (f) and (g) would be added to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(f) *Division 2.2 materials.* In addition to the label specified in Column 6 of the § 172.101 Table, each package of Division 2.2 material that also meets the definition for Division 5.1 (oxidizer) must be labeled "OXIDIZER".

(g) *Division 2.3 materials.* In addition to the label specified in Column 6 of the § 172.101 Table, each package of Division 2.3 material that also meets the definition for:

(1) Division 2.1, must be labeled FLAMMABLE GAS;

(2) Division 5.1, must be labeled OXIDIZER; and

(3) Class 8, must be labeled "CORROSIVE".

§ 172.402 [Amended]

21. In addition, in § 172.402, the following changes would be made:

a. In paragraph (a)(2), in the text preceding the table, the wording "For other than Class 2 or Class 1 materials (for subsidiary labeling requirements for Class 1 materials see paragraph (e) of this section)" would be revised to read "For other than Class 1 or Class 2 materials (for subsidiary labeling requirements for Class 1 or Class 2 materials see paragraph (e) or paragraphs (f) and (g), respectively, of this section)".

b. In the paragraph (a)(2) table, in the column "8", for the entry "III", the footnote reference "**" would be removed and replaced with "X", and footnote ** would be removed and reserved.

c. In paragraph (a)(2), in the footnotes following the table, the footnote identified as "*" would be revised to read "If the flash point of a material is at or above 38 °C (100 °F), required for transport by air or vessel only."

§ 172.411 [Amended]

22. In § 172.411, in the third sentence of paragraph (d), the wording "measuring at least 12.7 mm (0.5 inches) in height" would be removed.

23. In § 172.416, a new sentence would be added as the last sentence of paragraph (b) to read as follows:

§ 172.416 POISON GAS label.

* * * * *

(b) * * * The words "TOXIC GAS" may be used in lieu of the words "POISON GAS".

24. In § 172.430, a new sentence would be added as the last sentence of paragraph (b) to read as follows:

§ 172.430 POISON label.

* * * * *

(b) * * * The word "TOXIC" may be used in lieu of the word "POISON".

25. In § 172.540, a new sentence would be added to the end of paragraph (b) to read as follows:

§ 172.540 POISON GAS placard.

* * * * *

(b) * * * The words "TOXIC GAS" may be used in lieu of the words "POISON GAS".

§ 172.547 [Amended]

26. In § 172.547, in paragraph (b), the wording "25 mm (0.98 inches)" would be removed and replaced with "12 mm (0.5 inch)".

27. In § 172.554, a new sentence would be added to the end of paragraph (b) to read as follows:

§ 172.554 POISON placard.

* * * * *

(b) * * * The word "TOXIC" may be used in lieu of the word "POISON".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

28. The authority citation for part 173 would continue to read as follows:

requirements for Class 1 or Class 2 materials see paragraph (e) or paragraphs (f) and (g), respectively, of this section)".

b. In the paragraph (a)(2) table, in the column "8", for the entry "III", the footnote reference "**" would be removed and replaced with "X", and footnote ** would be removed and reserved.

c. In paragraph (a)(2), in the footnotes following the table, the footnote identified as "*" would be revised to read "If the flash point of a material is at or above 38 °C (100 °F), required for transport by air or vessel only."

§ 172.411 [Amended]

22. In § 172.411, in the third sentence of paragraph (d), the wording "measuring at least 12.7 mm (0.5 inches) in height" would be removed.

23. In § 172.416, a new sentence would be added as the last sentence of paragraph (b) to read as follows:

§ 172.416 POISON GAS label.

* * * * *

(b) * * * The words "TOXIC GAS" may be used in lieu of the words "POISON GAS".

24. In § 172.430, a new sentence would be added as the last sentence of paragraph (b) to read as follows:

§ 172.430 POISON label.

* * * * *

(b) * * * The word "TOXIC" may be used in lieu of the word "POISON".

25. In § 172.540, a new sentence would be added to the end of paragraph (b) to read as follows:

§ 172.540 POISON GAS placard.

* * * * *

(b) * * * The words "TOXIC GAS" may be used in lieu of the words "POISON GAS".

§ 172.547 [Amended]

26. In § 172.547, in paragraph (b), the wording "25 mm (0.98 inches)" would be removed and replaced with "12 mm (0.5 inch)".

27. In § 172.554, a new sentence would be added to the end of paragraph (b) to read as follows:

§ 172.554 POISON placard.

* * * * *

(b) * * * The word "TOXIC" may be used in lieu of the word "POISON".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

28. The authority citation for part 173 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

29. In § 173.2a, in the paragraph (b) table, two notes would be added at the end of the table to read as follows:

§ 173.2a Classification of a material having more than one hazard.

* * * * *

(b) * * *

Precedence of Hazard Table

* * * * *

Note 1: The most stringent packing group assigned to a hazard of the material takes precedence over other packing groups; for example, a material meeting Class 3 PG II and Division 6.1 PG I (oral toxicity) is classified as Class 3 PG I.

Note 2: A material which meets the definition of Class 8 and has an inhalation toxicity by dusts and mists which meets criteria for Packing Group I specified in § 173.133(a)(1) must be classed as Division 6.1 if the oral or dermal toxicity meets criteria for Packing Group I or II. If the oral or dermal toxicity meets criteria for Packing Group III, the material must be classed as Class 8.

§ 173.2a [Amended]

30. In addition, in the paragraph (b) table, the following changes would be made:

a. At the intersection of the line entry "4.2 II" and the column entry "8 I liquid", the wording "(3)" would be revised to read "8".

b. At the intersection of the line entry "4.2 II" and the column entry "8 II liquid", the wording "(3)" would be revised to read "4.2".

c. At the intersection of the line entry "4.2 II" and the column entry "8 III liquid", the wording "(3)" would be revised to read "4.2".

d. At the intersection of the line entry "4.2 III" and the column entry "8 I liquid", the wording "(3)" would be revised to read "8".

e. At the intersection of the line entry "4.2 III" and the column entry "8 II liquid", the wording "(3)" would be revised to read "8".

f. At the intersection of the line entry "4.2 III" and the column entry "8 III liquid", the wording "(3)" would be revised to read "4.2".

31. In § 173.9, a new paragraph (e) would be added to read as follows:

§ 173.9 Cars, truck bodies, freight containers, or trailers containing lading which has been fumigated or treated with Class 3, Division 2.1, 2.3, or 6.1 materials.

* * * * *

(e) See § 176.76(i) of this subchapter for requirements for fumigated transport units on vessels.

§ 173.21 [Amended]

32. In § 173.21, in the first sentence of paragraph (f)(2), the wording "Columns 4a and 4b," would be revised to read "Columns 5 and 6,".

§ 173.22 [Amended]

33. In § 173.22, in paragraph (a)(3)(i), the first word "The" would be removed and replaced with the wording "Except for the marking on the bottom of a metal or plastic drum with a capacity over 100 liters which has been reconditioned, remanufactured or otherwise converted, the".

34. In § 173.24, paragraph (d) would be revised to read as follows:

§ 173.24 General requirements for packagings and packages.

* * * * *

(d) *Specification packagings and UN standard packagings manufactured outside the U.S.*—(1) *Specification packagings.* A specification packaging, including a UN standard packaging manufactured in the United States, must conform in all details to the applicable specification or standard in part 178 or part 179 of this subchapter.

(2) *UN standard packagings manufactured outside the United States.* A UN standard packaging manufactured outside the United States, in accordance with national or international regulations based on the UN Recommendations on the Transport of Dangerous Goods, may be imported and used as an authorized packaging under the provisions of paragraph (c)(1) of this section, subject to the following conditions and limitations:

(i) The packaging fully conforms to applicable provisions in the UN Recommendations on the Transport of Dangerous Goods and the requirements of this subpart, including reuse provisions;

(ii) The packaging is capable of passing the prescribed tests in part 178 of this subchapter applicable to that standard; and

(iii) The competent authority of the country of manufacture provides reciprocal treatment for UN standard packagings manufactured in the U.S.

* * * * *

§ 173.24 [Amended]

35. In addition, in § 173.24, in paragraph (e)(4)(ii), the wording "flammable or poisonous gases;" would be revised to read "flammable, poisonous, or asphyxiant gases;".

36. In § 173.25, paragraph (a) introductory text would be revised and a new paragraph (b) would be added to read as follows:

§ 173.25 Authorized packages and overpacks.

(a) Authorized packages containing hazardous materials may be offered for transportation in an overpack as defined in § 171.8 of this subchapter, if all of the following conditions are met:

* * * * *

(b) Shrink-wrapped or stretch-wrapped trays may be used as outer packagings for inner packagings prepared in accordance with the limited quantity provisions or consumer commodity provisions of this subchapter, provided that the complete package is capable of meeting performance standards at the Packing Group III performance level. Each package may not exceed 20 kg (44 lbs) gross weight.

* * * * *

37. In § 173.28, paragraph (b)(1) would be amended by adding a new first sentence, paragraph (b)(4) would be revised and new paragraphs (b)(7) and (c)(4) would be added to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(b) * * *

(1) Before reuse, a packaging must be examined and determined to be capable of withstanding the performance tests specified in subpart M of Part 178 of this subchapter. * * *

* * * * *

(4) Metal and plastic drums and jerricans used as single packagings or the outer packagings of composite packagings are authorized for reuse only when they are marked in a permanent manner (e.g., embossed) in millimeters with the nominal or minimum thickness of the packaging material, as required by § 178.503(a)(9) of this subchapter, and conform to the following minimum thickness criteria:

Maximum capacity not over	Minimum thickness of packaging material	
	Metal drum or jerrican	Plastic drum or jerrican
20 L	0.63 mm (0.025 inch).	1.1 mm (0.043 inch)
30 L	0.73 mm (0.029 inch).	1.1 mm (0.043 inch)
40 L	0.73 mm (0.029 inch).	1.8 mm (0.071 inch)
60 L	0.92 mm (0.036 inch).	1.8 mm (0.071 inch)
120 L ...	0.92 mm (0.036 inch).	2.2 mm (0.087 inch)
220 L ...	0.92 mm (0.036 inch) [1].	2.2 mm (0.087 inch)
450 L ...	1.77 mm (0.070 inch).	5.0 mm (0.197 inch)

[1] Metal drums or jerricans constructed with a minimum thickness of 0.8 mm (0.03 inch) body and 1.1 mm (0.043 inch) heads are authorized.

* * * * *

(7) Notwithstanding the provisions of paragraph (b)(2) of this section, a packaging otherwise authorized for reuse may be reused without being subjected to the leakproofness test with air provided the packaging:

(i) Is refilled with a material compatible with the previous lading;

(ii) Is offered for transportation or transported by a private carrier, contract carrier, or by a common carrier in a transport vehicle or freight container used exclusively for such service, within a distribution chain controlled by the offeror; and

(iii) Is constructed of stainless steel, monel or nickel with a thickness not less than one and one-half times the nominal thickness prescribed in paragraph (b)(4) of this section or, if constructed of another material or thickness, is approved by the Associate Administrator for Hazardous Materials Safety for reuse without retesting in accordance with the provisions of this paragraph.

(c) * * *

(4) The markings applied by the reconditioner may be different from those applied by the manufacturer at the time of original manufacture, but may not identify a greater performance capability than that for which the original design type had been tested (for example, the reconditioner may mark a drum which was originally marked as 1A1/Y1.8 as 1A1/Y1.2 or 1A1/Z1.8).

* * * * *

§ 173.28 [Amended]

38. In addition, in § 173.28(c)(3), in the first sentence, the reference "§ 178.503(c)" would be revised to read "§ 178.503(c) and (d)".

§ 173.33 [Amended]

39. In § 173.33, in paragraph (c)(5), the wording "Division 6.1" would be revised to read "Division 6.1, Packing Group I or II".

§ 173.52 [Amended]

40. In § 173.52, in paragraph (b), Table 1, the following changes would be made:

a. In the second entry, the wording "Some articles, such as detonators for blasting, detonator assemblies for blasting and primers, cap-type, are included, even though they do not contain primary explosives." would be added at the end of the entry following the wording "features.".

b. In the fifth and sixth entries, the wording ", gel" would be added immediately following the wording "flammable liquid" and immediately preceding the wording "or hypergolic liquid".

41. In § 173.59, the following definitions would be added in appropriate alphabetical order to read as follows:

§ 173.59 Descriptions of terms for explosives.

* * * * *

Charges, propelling for cannon. Articles consisting of a propellant charge in any physical form, with or without a casing, for use in a cannon.

* * * * *

Propellant, liquid. Substances consisting of a deflagrating liquid explosive, used for propulsion.

Propellant, solid. Substances consisting of a deflagrating solid explosive, used for propulsion.

* * * * *

§ 173.59 [Amended]

42. In addition, in § 173.59, the following changes would be made:

a. For the description "*Charges, propelling*", the wording "or for reducing drag for projectiles" would be added immediately following "in cannon or".

b. For the description "*Powder, smokeless*", in the first sentence, the word "generally" would be removed, and the wording "and *charges propelling for cannon*" would be added at the end of the last sentence, immediately following the wording "*charges, propelling*".

c. For the description "*Propellants*", the wording "or for reducing the drag of projectiles" would be added at the end of the sentence immediately following the word "propulsion".

43. In § 173.60, paragraph (b)(15) would be added to read as follows:

§ 173.60 General packaging requirements for explosives.

* * * * *

(b) * * *

(15) Plastic packagings must not be liable to generate or accumulate sufficient static electricity that a discharge could cause the packaged explosive to ignite or the packaged article to function.

44. In § 173.62, paragraph (a) would be revised, a new sentence would be added after the second sentence in paragraph (b), the Explosives Table in paragraph (b) would be amended by adding or removing entries, in appropriate alpha-numerical sequence; and the Table of Packing Methods in paragraph (c) and paragraph (d) would be revised to read as follows:

§ 173.62 Specific packaging requirements.

(a) Except as provided in paragraph (e) of this section, when the § 172.101 Table specifies that an explosive must be packaged in accordance with this section, only non-bulk packagings which conform to the provisions of paragraphs (b), (c), and (d) of this section, and the applicable requirements in §§ 173.60 and 173.61 may be used,

Packing method (1)	Inner packaging (2)
E–1(a)	Not necessary
E–1(b)	Bags: Paper, Kraft Plastic Sheets: Plastic
E–2	Receptacles: Metal Paper Plastic Sheets: Plastic Bags: paper, multiwall, water resistant woven plastics
E–3	Bags: Plastic Rubber Textile Rubberized textile Intermediate Bags: Plastic Rubber Textile Rubberized textile Barrels: Wood Receptacles Plastic

added after the second sentence in paragraph (b), the Explosives Table in paragraph (b) would be amended by adding or removing entries, in appropriate alpha-numerical sequence; and the Table of Packing Methods in paragraph (c) and paragraph (d) would be revised to read as follows:

§ 173.62 Specific packaging requirements.

(a) Except as provided in paragraph (e) of this section, when the § 172.101 Table specifies that an explosive must be packaged in accordance with this section, only non-bulk packagings which conform to the provisions of paragraphs (b), (c), and (d) of this section, and the applicable requirements in §§ 173.60 and 173.61 may be used, unless otherwise approved by the Associate Administrator for Hazardous Materials Safety.

(b) * * * However, the packing method authorized under E–103 may replace the packing method listed in the Explosives Table. * * *

Explosives Table

Identification No.	Packing methods
[ADD]	
UN0075	E–159
UN0143	E–159
UN0491	E–158
UN0492	E–151
UN0493	E–151
UN0494	E–140
UN0495	E–159

Explosives Table—Continued

Identification No.	Packing methods
UN0496	E–13
UN0497	E–159
UN0498	E–22
UN0499	E–22
NA0276	E–114
NA0323	E–114
NA0337	E–134
[REMOVE]	
UN0075	US001
UN0143	US001
UN0273	E–158(a),(b),(c)
UN0274	E–158(a),(b),(c)
NA0273	E–22(a),(b),(c)
NA0274	E–22(a),(b),(c)

(c) * * *

TABLE OF PACKING METHODS

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–1(a)	Not necessary	Bags: Paper, multiwall, water resistant (5M2) Textile, sift-proof (5L2) Textile, water resistant (5L3) Plastic, woven, sift-proof (5H2) Plastic, woven, water resistant (5H3) Plastic, film (5H4) Barrels: Wood, removable head (2C2) Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Steel, removable head (1A2)	
E–1(b)	Bags: Paper, Kraft Plastic Sheets: Plastic		
E–2	Receptacles: Metal Paper Plastic Sheets: Plastic Bags: paper, multiwall, water resistant woven plastics	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G) Steel, removable head (1A2) *Note:* Removable head plastic drums (1H2) are authorized for UN 0219.	1 for all entries 2 for all entries except UN 0402.
E–3	Bags: Plastic Rubber Textile Rubberized textile Intermediate Bags: Plastic Rubber Textile Rubberized textile Barrels: Wood Receptacles Plastic	Barrels: Wood, removable head (2C2) Drums: Plastic, removable head (1H2) Steel, removable head (1A2)	3, 4, D1.

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–4(a)	Receptacles: Fiberboard Metal Paper Plastic Rubberized textile	Barrels: Wood, removable head (2C2) Boxes: Steel (4A) Fiberboard (4G) natural wood, ordinary (4C1) Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F)	
E–4(b)	Optional	Drums: Aluminum, removable head (1B2) Fiber (1G) Steel, removable head (1A2) *Note:* steel drums (1A2) must be dust tight	
E–5	Bags: Plastic Sheets: Paper, Kraft Paper, waxed	Boxes: Fiberboard (4G) Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F)	
E–6 (a)(i)	For wetted explosives: Bags: Plastic Rubberized, textile	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Steel, removable head (1A2) Fiber (1G)	
E–6 (a)(ii)	For wetted explosives: Bags: Rubber Textile Rubberized textile Intermediate: Bags: Rubber Rubberized textile Plastics	Barrels: Wood, removable head (2C2) Drums: Steel, removable head (1A2) Fiber (1G)	
E–6(b)	For desensitized explosives: Same as for wetted explosives except that any fiberboard boxes may be used as inner packaging and any textile bags as intermediate packaging	For desensitized explosives: Same as for wetted explosives except that any fiberboard boxes may be used as inner packagings and any textile bags as intermediate packaging	
E–8	Receptacles: Waterproof material Sheets: Waterproof	Barrels: Wood, removable head (2C2) Boxes: Steel (4A) Aluminum (4B) Plastics, solid (4H2) Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G) Steel, removable head (1A2) Aluminum, removable head (1B2)	D15, D13.

T

Packing method (1)	Inner packaging (2)
E–9	Bags: Oil-resistant Sheets: Plastic Cans: Metal
E–10	Bags: Waxed paper Plastic Rubberized textile Sheets: waxed paper, plastics, rubberized textile
E–11	Bags: Waxed paper Plastic Rubberized textile Sheets: Waxed paper Plastic Textile Rubberized textile
E–12	Bags: Oil-resistant Sheets: Plastic

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–9	Bags: Oil-resistant Sheets: Plastic Cans: Metal	Bags: Paper, multiwall water resistant (5M2) Textile, sift-proof (5L2) Textile, water resistant (5L3) Woven plastic, without inner lining or coating (5H1) Woven plastic, sift- proof (5H2) Woven plastic, water resistant (5H3) Plastic film (5H4) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Drums: Fiber (1G) Steel, removable head (1A2) *Note:* If bags of 5H2, 5H3, 5H4, or 5M2 are used, no inner packaging necessary.	D13
E–10	Bags: Waxed paper Plastic Rubberized textile Sheets: waxed paper, plastics, rubberized textile	Barrels: Wood, removable head (2C2) Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	
E–11	Bags: Waxed paper Plastic Rubberized textile Sheets: Waxed paper Plastic Textile Rubberized textile	Barrels: Wood, removable head (2C2) Boxes: Wood, ordinary (4C1) Fiberboard (4G) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G)	
E–12	Bags: Oil-resistant Sheets: Plastic	Bags: Paper, multiwall, water resistant (5M2) Woven plastic, without inner lining or coating (5H1) Woven plastic, sift-proof (5H2) Woven plastic, water resistant (5H3) Plastic film (5H4) Textile, sift-proof (5L2) Textile, water resistant (5L3) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Plastics, solid (4H2) Drums: Fiber (1G) Steel, removable head (1A2) Aluminum, removable head (1B2) *Note:* If bags of 5H2 or 5H3 are used, no inner packaging is necessary.	D14

TABLE OF PACKING METHODS—Continued

Packing method	Inner packaging	Outer packaging	Particular packaging exception/requirement
(1)	(2)	(3)	(4)
E–13(a)	For wetted explosives Bags: Plastic Woven plastics Paper, multiwall, water resistant Sheets: Plastic	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G)	
E–13(b)	For dry explosives Bags: Paper Plastic woven plastics Paper, multiwall, water resistant Boxes: Fiberboard Sheets: Plastic	Barrels: Wood, removable head xl (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G)	
E–15(a)	Not necessary	Drums: Aluminum, removable head (1B2) Steel, removable head (1A2)	
E–15(b)	Bags: Waterproof paper Plastic Rubbenzed textile Sheets: Plastic Rubberized textile	Barrels: Wood, removable head (2C2) Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Fiberboard (4G) Drums: Fiber (1G)	
E–17	Cans: Metal Receptacles: Glass Plastic	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	
E–18	Bags: Paper Plastic Sheets: Plastic	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G) Plywood (1D) Steel, removable head (1A2)	
E–19(a)	Not necessary	Drums: Aluminum, removable head (1B2) Steel, removable head (1A2) Plastic, removable head (1H2)	7
E–19(b)	Bags: Plastic Sheets: Plastic	Barrels: Wood, removable head (2C2) Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G)	

TA

Packing method	Inner packaging
(1)	(2)
E–20	Receptacles: Metal Plastic Wood Fiberboard
E–21	Boxes: Fiberboard Cans: Metal Receptacles: Waterproof paper Plastic *Note:* Plastic used must not be generate static electricity tained substances.
E–22(a)	Bags: Paper, Kraft Plastic Textile Rubberized textile
E–22(b)	Receptacles: Fiberboard Metal Plastic
E–22(c)	Not Necessary
E–24(a)	Bags: Rubber Rubberized textile Plastic
E–24(b)	Bags: Rubber Rubberized textile Plastic Intermediate: Bags: Rubber Rubber textile Plastic
E–25	Bags: Plastic

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–20	Receptacles: Metal Plastic Wood Fiberboard	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Plastics, solid (4H2) Drums: Fiber (1G)	55.
E–21	Boxes: Fiberboard Cans: Metal Receptacles: Waterproof paper Plastic *Note:* Plastic used must not be liable to generate static electricity by contained substances.	Boxes: Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F)	2.
E–22(a)	Bags: Paper, Kraft Plastic Textile Rubberized textile	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F) Steel (4A) Drums: Fiber (1G) Plywood (1D)	11 for UN 0411.
E–22(b)	Receptacles: Fiberboard Metal Plastic	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F)	10.
E–22(c)	Not Necessary	Drums: Steel, removable head (1A2) Fiber (1G) Plywood (1D) Jerricans: Steel (3A1) Steel, removable head (3A2)	8, 9, 10.
E–24(a)	Bags: Rubber Rubberized textile Plastic	Boxes: Fiberboard (4G)	
E–24(b)	Bags: Rubber Rubberized textile Plastic Intermediate: Bags: Rubber Rubber textile Plastic	Drums: Steel, removable head (1A2) with coating other than lead	
E–25	Bags: Plastic	Drums: Fiber (1G) Steel, removable head (1A2)	

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–26	Bags: Plastic Paper Paper, multiwall, water resistant Sheets: Plastic Receptacles: Metal Paper Plastic	Barrels: Wood, removable head (2C2) Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G) Bags: Plastic, sift-proof (5H2)	53.
E–102	Optional	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1) Fiberboard (4G) Plastics, solid (4H2) Crates: (For large articles) Drums: Steel, removable head (1A2) Fiber (1G) Aluminum, removable head (1B2)	13, 48, 49.
E103	Must be specifically authorized by the Associate Administrator for Hazardous Materials Safety prior to transportation. See §§ 173.57 and 173.58. For an international shipment, the package must be marked with "Packaging authorized by competent authority of the United States of America (USA)."		
E–106	Not necessary	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Plastics, solid (4H2) Drums: Steel, removable head (1A2)	49 for all entries except UN 0434 and UN 0435.
E–107	Not necessary	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	57.
(a)	*Note:* This packaging method is to be used for boosters which are finished articles consisting of closed metal, plastic, or fiberboard receptacles that contain a detonating explosive, or consisting of a plastic-bonded detonating explosive.	*Note:* This packaging method is to be used for boosters which are finished articles consisting of closed metal, plastic, or fiberboard receptacles that contain a detonating explosive, or consisting of a plastic-bonded, detonating explosive.	
E–107 (b)	Receptacles: Fiberboard Metal Plastic Sheets: Plastic Paper *Note:* This packaging method is to be used for cast or pressed boosters in tube or capsules without end closures.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) *Note:* This packaging method is to be used for cast or pressed boosters in tube or capsules without end closures.	57.

TA

Packing method (1)	Inner packaging (2)
E–108	Receptacles Metal Plastic Wooded NOTE: Dividing partitions in packaging may be used in inner packagings.
E–109	Receptacles: Metal Plastic Wood Paper fiberboard
E–113	Receptacles: Fiberboard Plastic Metal
E–114	Receptacles: Fiberboard Plastic Metal Wood
E–115	Receptacles: Fiberboard Metal Paper, Kraft (for cartridge of 1.4G and 1.4 Plastic Wood
E–116	Bags: Plastic Textile Boxes: Fiberboard Plastic Wood NOTE: (1) Bags are authorized cases only. (2) Dividing par the outer packaging may be place of inner packagings.
E–117	Not necessary

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–108	Receptacles Metal Plastic Wooded NOTE: Dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes Wooden, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	23
E–109	Receptacles: Metal Plastic Wood Paper fiberboard	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	28
E–113	Receptacles: Fiberboard Plastic Metal	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Natural wood, with sift-proof walls (4C2) Steel (4A)	
E–114	Receptacles: Fiberboard Plastic Metal Wood	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Natural wood, with sift-proof walls (4C2) Drums: Steel, removable head (1A2)	
E–115	Receptacles: Fiberboard Metal Paper, Kraft (for cartridge of 1.4G and 1.4S) Plastic Wood	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1) Plastics, solid (4H2)	
E–116	Bags: Plastic Textile Boxes: Fiberboard Plastic Wood NOTE: (1) Bags are authorized for small cases only. (2) Dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E–117	Not necessary	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Fiberboard (4G) Drums: Steel, removable head.	57.

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E-119	Not necessary	Boxes: Wood, ordinary (4C1) Wood, sift-proof (4C2) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Fiberboard (4G) Plastics, solid (4H2) Drums: Steel, removable head (1A2) Aluminum, removable head (1B2) *Note:* Packaging 4C1 is authorized for cased charges only	
E-120	Tubes: Fiberboard Other materials *Note:* Dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	30, 31.
E-121	Not necessary	Boxes: Fiberboard (4G1) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2) Aluminum (1B2)	32, 57.
E-122	Boxes: Metal Plastic Wood Fiberboard	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E-123	Receptacles: Fiberboard Metal Plastics *Note:* Dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes: Wood, ordinary (4C1), with metal liner Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1)	35, 49.
E-124	Reels Receptacles: Metal	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Aluminum (4B) Steel (4A) Drums: Steel, removable head (1A2) Aluminum (1B2) Fiber (1G)	33
E-125	Bags: Plastic Sheets: Paper, Kraft Plastic *Note:* Reels may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2) Aluminum (1B2)	34

TA

Packing method (1)	Inner packaging (2)
E-126	Receptacles: Fiberboard NOTE: Reels may be used in inner packagings.
E-127	Receptacles: Fiberboard Metals Plastics
E-128	Boxes: Fiberboard Plastic Wood Trays: Fiberboard Plastic Wood Cans: Metal *Note:* All inner packagings fitted with dividing partitions.
E-129	Receptacles: Fiberboard Plastic Sheets: Paper
E-130	Receptacles: Fiberboard Plastic Metal Sheets: Paper
E-133	Receptacles: Fiberboard Metal Plastic Sheets: Paper, Kraft *Note:* Dividing partitions in th package may be used in p inner packagings.

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–126	Receptacles: Fiberboard NOTE: Reels may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2) Aluminum (1B2)	
E–127	Receptacles: Fiberboard Metals Plastics	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Fiberboard (4G)	
E–128	Boxes: Fiberboard Plastic Wood Trays: Fiberboard Plastic Wood Cans: Metal *Note:* All inner packagings must be fitted with dividing partitions.	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Fiberboard (4G)	23, 36.
E–129	Receptacles: Fiberboard Plastic Sheets: Paper	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Drums: Fiber (1G)	
E–130	Receptacles: Fiberboard Plastic Metal Sheets: Paper	Boxes: Fiberboard (4G) Wood, ordinary (4C1), Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1) Drums: Fiber (1G) Plastic, removable head (1H2) Steel, removable head (1A2) Aluminum, removable head (1B2)	
E–133	Receptacles: Fiberboard Metal Plastic Sheets: Paper, Kraft *Note:* Dividing partitions in the outer package may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1) Solid plastics (4H2) Drums: Fiber (1G) Plastic, removable head (1H2) Steel, removable head Aluminum, removable head (1B2)	

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–134	Receptacles: Fiberboard Metal Plastic Wood	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2) Aluminum (4B)	
E–135	Bags: Plastic Reels Sheets: Paper, Kraft Plastic	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	
E–136	Not necessary	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded solid (4H2) Drums: Fiber (1G) Steel, removable head (1A2) Aluminum, removable head (1B2)	32, 57
E–137	Receptacles: Fiberboard Metal Plastic Wood Trays: Plastic Wood *Note:* Dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Fiberboard (4G) Plastics, solid (4H2) Drums: Steel, removable head (1A2)	56, 38 for UN 0106, 0107, 0257, 0367, 0408, 0409 and 0410 only.
E–138	Optional	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Plastics, solid (4H2)	
E–139	Receptacles: Metal Plastic Wood Fiberboard	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2)	28 for UN 0121 only.
E–141	Receptacles: Fiberboard Metal Wood Sheets: Paper Trays: Plastic	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	

TAB

Packing method (1)	Inner packaging (2)
E–142	Boxes: Fiberboard Metal Plastic Wood Cans: Metal Trays: Fiberboard, sleeved Plastic, sleeved Intermediate: (Optional with inner boxes b datory with trays.) Boxes: Fiberboard
E–143	Boxes: Fiberboard Metal Wood Tubes: Fiberboard Trays: Plastic
E–145	Receptacles: Fiberboard Metal (for rivets, explosives) Plastic Wood
E–146(a)	Not necessary
E–146(b)	Not necessary
E–146(c)	Not necessary
E–147	Receptacles: Fiberboard Metal
E–149	Optional

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–142	Boxes: Fiberboard Metal Plastic Wood Cans: Metal Trays: Fiberboard, sleeved Plastic, sleeved Intermediate: (Optional with inner boxes but mandatory with trays.) Boxes: Fiberboard	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	40, D11, D39.
E–143	Boxes: Fiberboard Metal Wood Tubes: Fiberboard Trays: Plastic	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E–145	Receptacles: Fiberboard Metal (for rivets, explosives) Plastic Wood	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E–146(a)	Not necessary	Boxes: Fiberboard (4G) Plywood (4D) Reconstituted wood (4F) Steel (4A) Wood, ordinary (4C1)	
E–146(b)	Not necessary	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	
E–146(c)	Not necessary	Boxes: Steel (4A1) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	
E–147	Receptacles: Fiberboard Metal	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F)	
E–149	Optional	Drums: Fiber (1G) Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Solid plastics (4H2) Steel (4A) Aluminum (4B)	42, 50.

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E-150	Boxes: Fiberboard metal Receptacles: Metal Plastic Sheets: Paper, Kraft	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Expanded plastics (4H1) Plastics, solid (4H2) Drums: Fiber (1G) Steel, removable head (1A2) Aluminum, removable head (1B2) Plastics, removable head (1H2)	12.
E-151	Receptacles: Metal Plastic Wood Fiberboard	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Fiber (1G)	43, 44, 45.
E-153	Sheets: Fiberboard, corrugated Tubes: Fiberboard Intermediate: Receptacles: Fiberboard Metal Plastic	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	46.
E-156	Bags: Plastic Boxes: Fiberboard Tubes: Fiberboard Plastic Metal NOTE: Dividing partitions in the outer packaging may be used in place of inner packaging.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E-157	Not necessary	Boxes: Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	
E-158(a)	Bags: Paper, Kraft Plastics Textile Rubberized textile	Boxes: Fiberboard(4G) Wood, ordinary(4C1) Wood, sift-proof(4C2) Plywood(4D) Reconstituted wood(4F) Solid plastics(4H2) Drums: Steel, removable head (1A2) Fiber(1G) Plywood(1D)	8, 10.
E-158(b)	Receptacles: Fiberboard Metal Plastics	Boxes: Fiberboard(4G) Wood, ordinary(4C1) Wood, sift-proof(4C2) Plywood(4D) Reconstituted wood(4F) Solid plastics(4H2)	10

TA

Packing method (1)	Inner packaging (2)
E-158(c)	
E-159(a)	Receptacles: Plastics Intermediate: Bags Plastic, in metal cans
E-159(b)	Receptacles: Plastics Intermediate: Drums Metal
US002	Receptacles: Fiberboard Metal Paper
US003	Receptacles: Fiberboard Metal Plastic Intermediate: Boxes: Fiberboard Wood Sheets: Paper, Kraft Plastic
US004	Receptacles: Fiberboard Metal Paper
US005	Boxes: Fiberboard Metal Plastic Wood NOTE: Metal clips or dividing p in the outer packaging may b in place of inner packagings.
US006	Jet perforating guns, charged, oil a. Initiation devices carried on th other kind, and from the guns, pockets for each such device initiation devices per gun shall b. Each shaped charge affixed to c. Each shaped charge if not co tion in the gun. d. Jet perforating guns classed as well operations. 1. Motor vehicles must have spec in place during transportation a ried in the vehicle, and; 2. The assembled gun or guns pa e. Jet perforating guns classed as ried in motor vehicles as specif that: 1. All the conditions specified in p

TABLE OF PACKING METHODS—Continued

Packing method (1)	Inner packaging (2)	Outer packaging (3)	Particular packaging exception/requirement (4)
E–158(c)		Composite packagings: Plastic receptacle with outer solid plastic box (6HH2)	
E–159(a)	Receptacles: Plastics Intermediate: Bags Plastic, in metal cans	Boxes: Natural wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) NOTE: DOT Spec. MC–200, motor vehicle container may be used as the outer packaging.	58.
E–159(b)	Receptacles: Plastics Intermediate: Drums Metal	Drums: Steel, removable head (1A2) Aluminum, removable head (1B2) NOTE: DOT Spec. MC–200, motor vehicle container may be used as the outer packaging.	59.
US002	Receptacles: Fiberboard Metal Paper	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	D2, D3.
US003	Receptacles: Fiberboard Metal Plastic Intermediate: Boxes: Fiberboard Wood Sheets: Paper, Kraft Plastic	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	D2, D3, D4, D10.
US004	Receptacles: Fiberboard Metal Paper	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B)	D2, D5, D6, D7, D8.
US005	Boxes: Fiberboard Metal Plastic Wood NOTE: Metal clips or dividing partitions in the outer packaging may be used in place of inner packagings.	Boxes: Fiberboard (4G) Wood, ordinary (4C1) Plywood (4D) Reconstituted wood (4F) Steel (4A) Aluminum (4B) Drums: Steel, removable head (1A2)	13
US006	Jet perforating guns, charged, oiled well may be transported under the following conditions: a. Initiation devices carried on the same motor vehicle or offshore supply vessel must be segregated; each kind from every other kind, and from the guns, tools or other supplies. Initiation devices shall be carried in a container having individual pockets for each such device or in a fully enclosed steel container lined with a non-sparking material. No more than two initiation devices per gun shall be carried on the same motor vehicle. b. Each shaped charge affixed to the gun may not contain more than 112 g (4 ounces) of explosives. c. Each shaped charge if not completely enclosed in glass or metal, must be fully protected by a metal cover after installation in the gun. d. Jet perforating guns classed as 1.1D or 1.4D may be transported by highway by private or contract carriers engaged in oil well operations. 1. Motor vehicles must have specially built racks or carrying cases designed and constructed so that guns are securely held in place during transportation and are not subject to damage by contact, one to the other or other articles or materials carried in the vehicle, and; 2. The assembled gun or guns packed on the vehicle may not extend beyond the body of the motor vehicle. e. Jet perforating guns classed as 1.4D may be transported by private offshore supply vessels only when the guns are carried in motor vehicles as specified in paragraph (d) of this packing method or on offshore down-hole tool pallets provided that: 1. All the conditions specified in paragraphs (a), (b), and (c) of this packing method are met;		

	2. The total explosive contents does not exceed 9.1 kg (20 pounds) per pallet; 3. Each cargo vessel compartment may contain up to 90.8 kg (200 pounds) of explosive content if the segregation requirements in § 176.83(b)(3) of this subchapter are met; and 4. When more than one vehicle or pallet is stowed "on deck" a minimum horizontal separation of 3 m (9.8 feet) must be provided.

(d) *Table of particular packaging requirements or exceptions.*

Number identifying packaging requirement or exception	Explanation of packaging requirement or exception
1	Water soluble substances must be packed in waterproof receptacles.
2	Packages must be lead-free.
3	The barrels and drums must have a watertight seal.
4	The intermediate and outer packagings must be filled with water or an appropriate water saturated material when the intermediate packaging is a rubber or rubberized textile bag.
7	Metal drums used for powder paste must be so constructed that explosion is not possible by reason of increase in internal pressure from internal or external causes.
8	The inside of drums and jerricans must be galvanized, painted or otherwise protected. Bare steel must not come into contact with smokeless powder.
9	Drums or jerricans of steel must be constructed without pockets or crevices in which smokeless powder could be trapped or nipped.
10	Metal receptacles must be so constructed that the risk of explosion, by reason of increase in internal pressure from internal or external causes, is reduced.
11	The inner packagings must be sealed.
12	Outer boxes of natural wood may be provided with tin-plate liner having a sealed lid.
13	Open ends of inner packagings must be fitted with padded end caps or the outer packaging must be padded.
22	The inner packagings must be separated from the outer packaging by a gap of not less than 25 mm (1 inch) of cushioning material, e.g., sawdust, wood, wool.
28	Metal inner packagings must be padded with cushioning material.
30	The shaped charges must be packed so that contact between them is prevented.
31	The conical cavities of the shaped charges must face inward in pairs or groups to minimize the shaped charge (jetting) effect in the event of accidental initiation.
32	The ends of the articles must be sealed or the use of bags, plastics, as inner packaging is mandatory.
33	The ends of the detonating cord must be sealed and tied fast.
34	The ends of the detonating cord must be sealed. Spaces must be filled with packing material.
35	Packagings must be sealed against the ingress of water.
36	The detonators must be cushioned to prevent significant movement and contact between them.
38	The detonating fuses must be separated from each other in the inner packaging.
41	The primers must be packed with shock absorbent layers of felt, paper or plastic to prevent propagation within the outer packaging.
42	The outer plastic packagings must be reinforced with metal at corners and edge.
43	The signals must be separated to prevent contact with one another and kept apart from the bottom, walls, and lid of the outer packaging, e.g., by cushioning material.
44	Where the signals are contained in magazines for fitting into automatic units, the magazine may replace the inner packaging provided adequate cushioning material is used.
45	Tin-plate inner packagings must be sealed.
46	The sounding device must be wrapped individually in corrugated fiberboard sheets or inserted in fiberboard tubes.
47	Absorbent cushioning material must be inserted.
48	Large articles without propelling charge and without means of ignition or initiation may be carried unpacked.
49	Large articles without their means of initiation, or with their means of initiation containing at least two effective protective features, may be carried unpackaged.
50	Large articles without their means of ignition may be carried unpackaged.
53	Bags, sift-proof (5H2) recommended only for flake or prilled TNT in the dry state and a maximum net mass of 30 kg (66 pounds).
55	Not more than 50 g (1.8 ounces) of a substance shall be packed in an inner packaging.
56	Fiberboard boxes (4G) are not authorized outer packagings for UN0106 or UN0107.
57	Liner or inner coating required for metal outer packagings unless another means, such as the use of an inner packaging or cushing material protects the explosive substance from contact with the metal outer packaging during normal conditions of transport.
58	Plastic receptacles must have taped screw cap closures and be of not more than 5 liters capacity each. Each receptacle should be contained within an intermediate packaging. Each plastic bag should be surrounded on all sides with at least 50 mm of non-combustible absorbent cushioning material: metal cans in the outer packaging must also be cushioned from each other in all directions. Net mass of propellent should be limited to 30 kg for each package.
59	The intermediate drum must be surrounded on all sides with at least 50 mm of non-combustible absorbent cushioning material. A composite packaging consisting of a plastic receptacle in a metal drum may be used instead of the inner and intermediate packagings. The net volume of propellent in each packaging must not exceed 120 liters.
D1	The intermediate packaging must be entirely surrounded by wetted cushioning material within the outer packaging.

Number identifying packaging requirement or exception	
D2	Quantity limitations for all detonat (a) For detonators containing no (i) No more than 50 detonators (ii) No more than 500 detonator (b) For detonators containing no (i) No more than 100 detonators (ii) No more than 1000 detonato (c) There are no quantity limitati each inner or outer (if inner pac (i) The ability for that package t or (ii) The gross weight limitations
D3	Inner packaging is not required fo on spools with the caps either p movement of the caps and to p one outer packaging.
D4	Intermediate packagings are requi
D5	Blasting caps are not required to tube.
D6	Inner packagings are not required from impact forces.
D7	Quantity limitations for detonator a (a) No more than 50 detonator (b) No more than 500 detonator
D8	Quantity limitations for detonator a (a) No more than 50 detonator a (b) No more than 1,000 detonato
D9	Primers fitted with anvil, compositio (a) The primers must be packed (b) Not more than 500 primers a
D10	Detonators that are blasting caps lows: (a) The detonators must be pack ioning material; (b) Inner packagings must be sn (c) Intermediate packagings mus (d) Detonators containing no mo (i) No more than 50 detonators i (ii) No more than 500 detonators (e) Detonators containing no mo (i) No more than 110 detonators (ii) No more than 5,000 detonato
D11	Primers not fitted with an anvil, cor
D12	Large articles may be carried unpa
D13	No inner packaging required for dr
D14	Inner packaging is not required wit
D15	Sheets, waterproof, when used, mu

§ 173.62 [Amended]

45. In addition, in § 173.62, in paragraph (e), the phrase "January 1, 1988" would be removed and replaced with the phrase "January 1, 1990" each place it appears.

46. In § 173.115, paragraphs (b)(3) and (b)(4) would be added to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(b) * * *

(3) Is asphyxiant. An asphyxiant gas is a gas which dilutes or replaces oxygen normally in the atmosphere; or

Number identifying packaging requirement or exception	Explanation of packaging requirement or exception
D2	Quantity limitations for all detonators are as follows unless specifically defined for each type of detonator: (a) For detonators containing no more than 10 g of explosive (excluding ignition and delay charges): (i) No more than 50 detonators may be packed in one inner packaging. (ii) No more than 500 detonators may be packed in one outer packaging. (b) For detonators containing no more than 3 g of explosive (excluding ignition and delay charges): (i) No more than 100 detonators may be packed in one inner packaging. (ii) No more than 1000 detonators may be packed in one outer packaging. (c) There are no quantity limitations for detonators classed as 1.4B or 1.4S. The number of detonators that may be packed in each inner or outer (if inner packaging is not required) packaging is determined by: (i) The ability for that package to pass certain tests (see §173.57) that qualify the detonators to be classed as 1.4B or 1.4S; or (ii) The gross weight limitations of the packaging used.
D3	Inner packaging is not required for electric blasting caps when packed in pasteboard tubes, or when their leg wires are wound on spools with the caps either placed inside the spool or securely taped to the wire on the spool, so as to restrict freedom of movement of the caps and to protect them from impact forces. No more than 500 electric blasting caps shall be contained in one outer packaging.
D4	Intermediate packagings are required only for non-electric detonators that are blasting caps or delay connectors in metal tubes.
D5	Blasting caps are not required to be attached to the safety fuse, metal clad mild detonating cord, detonating cord, or shock tube.
D6	Inner packagings are not required if the packing configuration restricts freedom of movement of the caps and protects them from impact forces.
D7	Quantity limitations for detonator assemblies with detonating cord are: (a) No more than 50 detonator assemblies shall be packed in one inner packaging. (b) No more than 500 detonator assemblies shall be packed in one outer packaging.
D8	Quantity limitations for detonator assemblies with safety fuse or shock tube are: (a) No more than 50 detonator assemblies shall be packed in one inner packaging. (b) No more than 1,000 detonator assemblies shall be packed in one outer packaging.
D9	Primers fitted with anvil, composition not covered with a disc of metal foil or other material (varnished only). (a) The primers must be packed in rows in single layers in trays of fiberboard or plastic. (b) Not more than 500 primers shall be packed in an inner packaging.
D10	Detonators that are blasting caps (including percussion activated) or delay connectors in metal tubes must be packed as follows: (a) The detonators must be packed in an inner packaging with the open end of any detonator covered with appropriate cushioning material; (b) Inner packagings must be snugly packed in an intermediate packaging; (c) Intermediate packagings must be separated from the outside packaging by at least 25 mm (1 inch) of cushioning material; (d) Detonators containing no more than 10 g of explosive (excluding ignition and delay charges) must be packed as follows: (i) No more than 50 detonators in one inner packaging. (ii) No more than 500 detonators in one outer packaging. (e) Detonators containing no more than 3 g of explosive (excluding ignition and delay charges) must be packed as follows: (i) No more than 110 detonators in one inner packaging. (ii) No more than 5,000 detonators in one outer packaging.
D11	Primers not fitted with an anvil, composition covered, not more than 5,000 primers shall be packed in an inner packaging.
D12	Large articles may be carried unpackaged.
D13	No inner packaging required for drums, fiber (1G).
D14	Inner packaging is not required with fiberboard boxes (4G) for packaging UN 0332.
D15	Sheets, waterproof, when used, must also be impervious to any liquid explosive ingredients of the substance.

* * * * *

§ 173.62 [Amended]

45. In addition, in § 173.62, in paragraph (e), the phrase "January 1, 1988" would be removed and replaced with the phrase "January 1, 1990" each place it appears.

46. In § 173.115, paragraphs (b)(3) and (b)(4) would be added to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(b) * * *

(3) Is asphyxiant. An asphyxiant gas is a gas which dilutes or replaces oxygen normally in the atmosphere; or

(4) Is oxidizing. An oxidizing gas is defined as a gas which may, generally by providing oxygen, cause or contribute to the combustion of other material more than air does.

* * * * *

§ 173.115 [Amended]

47. In addition, in § 173.115, the wording ", and" at the end of paragraph (b)(1) and the period at the end of paragraph (b)(2) would be removed and replaced with a semicolon.

48. Section 173.120 would be amended by revising paragraph (a) and adding a sentence at the end of paragraph (b)(2) to read as follows:

§ 173.120 Class 3—Definitions.

(a) *Flammable liquid.* For the purpose of this subchapter, a *flammable liquid* (Class 3) means a liquid having a flash point of not more than 60.5 °C (141 °F), or any material in a liquid phase with a flash point at or above 37.8 °C (100 °F) that is intentionally heated and offered for transportation or transported at or above its flash point in a bulk packaging, with the following exceptions:

(1) Any liquid meeting one of the definitions specified in § 173.115.

(2) Any mixture having one or more components with a flash point of 60.5 °C (141 °F) or higher, that make up at

least 99 percent of the total volume of the mixture, if the mixture is not offered for transportation or transported at or above its flash point.

(3) Any liquid with a flash point greater than 35 °C (95 °F) which does not sustain combustion. A procedure for determining if a material sustains combustion when heated under test conditions and exposed to an external source of flame is provided in Appendix H of this part.

(4) Any liquid with a flash point greater than 35 °C (95 °F) and with a fire point greater than 100 °C (212 °F) according to ISO 2592–1973.

(5) Any liquid with a flash point greater than 35 °C (95 °F) which is in a water miscible solution with a water content of more than 90 percent by mass.

(b) * * *

(2) * * * An elevated temperature material that meets the definition of a Class 3 material because it is intentionally heated and offered for transportation or transported at or above its flash point may not be reclassed as a combustible liquid.

* * * * *

§ 173.120 [Amended]

49. In addition, in § 173.120, the following changes would be made:

a. In paragraph (c)(1)(i)(A), the wording "ASTM D56–79" would be revised to read "ASTM D 56–87".

b. In paragraphs (c)(1)(i)(B) and (c)(1)(ii)(B), the wording "ASTM D3278–78" would be revised to read "ASTM D 3278–89".

c. In paragraph (c)(1)(ii)(A), the wording "ASTM D93–80" would be revised to read "ASTM D 93–90".

50. Section 173.121 would be amended by adding a parenthetical note at the end of paragraph (b)(1)(ii) before the semicolon and revising the paragraph (b)(1)(iv) table and paragraph (b)(2)(i) to read as follows:

§ 173.121 Class 3—Assignment of packing group.

* * * * *

(b) * * *

(1) * * *

(ii) * * * (Note: The mixture is not necessarily required to bear a POISON or CORROSIVE subsidiary risk label);

* * * * *

(iv) * * *

Flow time t in seconds	Jet diameter in mm	Flash point c.c.
20<t≤60	4	Above 17 °C (62.6 °F).
60<t≤100	4	Above 10 °C (50 °F).
20<t≤32	6	Above 5 °C (41 °F).
32<t≤44	6	Above −1 °C (31.2 °F).
44<t≤100	6	Above −5 °C (23 °F).
100<t	6	−5 °C (23 °F) and below.

(2) * * *

(i) *Viscosity test.* The flow time in seconds is determined at 23 °C (73.4 °F) using the ISO standard cup with a 4 mm (0.16 inch) jet (ISO 2431:1984). Where the flow time exceeds 100 seconds, a further test is carried out using the ISO standard cup with a 6 mm (0.24 inch) jet.

* * * * *

51. In § 173.124, the section heading and paragraph (a)(2) would be revised to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

(a) * * *

(2)(i) Self-reactive materials are materials that are thermally unstable and that can undergo a strongly exothermic decomposition even without participation of oxygen (air). A material is excluded from this definition if any of the following applies:

(A) The material meets the definition of an explosive as prescribed in subpart C of this part, in which case it must be classed as an explosive;

(B) The material is forbidden from being offered for transportation according to § 172.101 of this subchapter or § 173.21;

(C) The material meets the definition of an oxidizer or organic peroxide as prescribed in subpart D of this part, in which case it must be so classed;

(D) The material meets one of the following conditions:

(*1*) Its heat of decomposition is less than 300 J/g; or

(*2*) Its self-accelerating decomposition temperature (SADT) is greater than 75 °C (167 °F); or

(E) The Associate Administrator for Hazardous Materials Safety has determined that the material does not present a hazard which is associated with a Division 4.1 material.

(ii) *Generic types.* Division 4.1 self-reactive materials are assigned to a generic system consisting of seven types. A self-reactive substance identified by technical name in the Self-Reactive Materials Table in § 173.224 is assigned to a generic type in accordance with that Table. Self-reactive materials not identified in the Self-Reactive Materials Table in § 173.224 are assigned to generic types under the procedures of paragraph (a)(2)(iii) of this section.

(A) *Type A.* Self-reactive material type A is a self-reactive material which, as packaged for transportation, can detonate or deflagrate rapidly. Transportation of type A self-reactive material is forbidden.

(B) *Type B.* Self-reactive material type B is a self-reactive material which, as packaged for transportation, neither detonates nor deflagrates rapidly, but is liable to undergo a thermal explosion in a package.

(C) *Type C.* Self-reactive material type C is a self-reactive material which, as packaged for transportation, neither detonates nor deflagrates rapidly and cannot undergo a thermal explosion.

(D) *Type D.* Self-reactive material type D is a self-reactive material which—

(*1*) Detonates partially, does not deflagrate rapidly and shows no violent effect when heated under confinement;

(*2*) Does not detonate at all, deflagrates slowly and shows no violent effect when heated under confinement; or

(*3*) Does not detonate or deflagrate at all and shows a medium effect when heated under confinement.

(E) *Type E.* Self-reactive material type E is a self-reactive material which, in laboratory testing, neither detonates nor deflagrates at all and shows only a low or no effect when heated under confinement.

(F) *Type F.* Self-reactive material type F is a self-reactive material which, in laboratory testing, neither detonates in the cavitated state nor deflagrates at all and shows only a low or no effect when heated under confinement as well as low or no explosive power.

(G) *Type G.* Self-reactive material type G is a self-reactive material which, in laboratory testing, does not detonate in the cavitated state, deflagrate, all, show any effect when heated under confinement, or show any explosive power. A type G self-reactive material is not subject to the requirements of this subchapter for self-reactive material of Division 4.1 provided that it is thermally stable (self-accelerating decomposition temperature is 50 °C (122 °F) or higher for a 50 kg (110 pounds) package). A self-reactive material meeting all characteristics of type G except thermal stability and requiring temperature control is classed as a type F self-reactive material.

(iii) *Procedures for assigning a self-reactive material to a generic type.* A self-reactive material shall be assigned to a generic type based on—

(A) Its physical state (i.e. liquid or solid), in accordance with the definition of liquid and solid in § 171.8 of this subchapter;

(B) A determination as to its control temperature and emergency temperature, if any, under the provisions of § 173.21(f);

(C) Performance of the self-reactive material under the test procedures specified in the United Nations Recommendations and the provisions of paragraph (a)(2)(iii) of this section; and

(D) For other than a self-reactive material which is identified by technical name in the Self-Reactive Materials Table in § 173.224(b) or a self-reactive material which may be shipped as a sample under the provisions of § 173.224, written approval by the Associate Administrator for Hazardous Materials Safety. The person requesting approval shall submit to the Associate Administrator for Hazardous Materials Safety the tentative shipping description and generic type and—

(*1*) All relevant data concerning physical state, temperature controls, and tests results; or

(*2*) An approval issued for the self-reactive material by the competent authority of a foreign government.

(iv) *Tests.* The generic type for a self-reactive material shall be determined using the testing protocol from Figure 14.2 (Flow Chart for Assigning Self-Reactive Substances to Division 4.1) from the UN Recommendations.

* * * * *

52. In § 173.128, paragraph (b)(7) would be revised, paragraph (c)(4) would be removed, paragraph (d) would be redesignated paragraph (e) and a new paragraph (d) would be added to read as follows:

§ 173.128 Class 5, Division 5.2—Definitions and types.

* * * * *

(b) * * *

(*7*) *Type G.* Organic peroxide type G is an organic peroxide which will not detonate in a cavitated state, will not deflagrate, shows no effect when heated under confinement, and has no explosive power. A type G organic peroxide is not subject to the requirements of this subchapter for organic peroxides of Division 5.2 provided it is thermally stable (self-accelerating decomposition temperature is 50° C (122° F) or higher for a 50 kg (110 pounds) package). An organic peroxide meeting all characteristics of type G except thermal stability and requiring temperature control is classed as a type F organic peroxide.

* * * * *

(A) Its physical state (i.e. liquid or solid), in accordance with the definition of liquid and solid in § 171.8 of this subchapter;

(B) A determination as to its control temperature and emergency temperature, if any, under the provisions of § 173.21(f);

(C) Performance of the self-reactive material under the test procedures specified in the United Nations Recommendations and the provisions of paragraph (a)(2)(iii) of this section; and

(D) For other than a self-reactive material which is identified by technical name in the Self-Reactive Materials Table in § 173.224(b) or a self-reactive material which may be shipped as a sample under the provisions of § 173.224, written approval by the Associate Administrator for Hazardous Materials Safety. The person requesting approval shall submit to the Associate Administrator for Hazardous Materials Safety the tentative shipping description and generic type and—

(*1*) All relevant data concerning physical state, temperature controls, and tests results; or

(*2*) An approval issued for the self-reactive material by the competent authority of a foreign government.

(iv) *Tests.* The generic type for a self-reactive material shall be determined using the testing protocol from Figure 14.2 (Flow Chart for Assigning Self-Reactive Substances to Division 4.1) from the UN Recommendations.

* * * * *

52. In § 173.128, paragraph (b)(7) would be revised, paragraph (c)(4) would be removed, paragraph (d) would be redesignated paragraph (e) and a new paragraph (d) would be added to read as follows:

§ 173.128 Class 5, Division 5.2—Definitions and types.

* * * * *

(b) * * *

(7) *Type G.* Organic peroxide type G is an organic peroxide which will not detonate in a cavitated state, will not deflagrate, shows no effect when heated under confinement, and has no explosive power. A type G organic peroxide is not subject to the requirements of this subchapter for organic peroxides of Division 5.2 provided it is thermally stable (self-accelerating decomposition temperature is 50° C (122° F) or higher for a 50 kg (110 pounds) package). An organic peroxide meeting all characteristics of type G except thermal stability and requiring temperature control is classed as a type F organic peroxide.

* * * * *

(d) *Approvals.* (1) An organic peroxide must be approved, in writing, by the Associate Administrator for Hazardous Materials Safety, before being offered for transportation, including assignment of a generic type and shipping description, except for—

(i) An organic peroxide which is identified by technical name in the Organic Peroxides Table in § 173.225(b);

(ii) A mixture of organic peroxides prepared according to § 173.225(c)(5); or

(iii) An organic peroxide which may be shipped as a sample under the provisions of § 173.225(c).

(2) A person applying for an approval must submit all relevant data concerning physical state, temperature controls, and tests results or an approval issued for the organic peroxide by the competent authority of a foreign government.

* * * * *

§ 173.128 [Amended]

53. In addition, in § 173.128, the following changes would be made:

a. In paragraph (a) introductory text, the word "apply" would be revised to read "applies".

b. In paragraph (c)(2), the word "and" would be added at the end of the paragraph, and in paragraph (c)(3), at the end of the paragraph, the wording "; and" would be removed and replaced with a period.

54. In § 173.136, paragraph (a) would be revised to read as follows:

§ 173.136 Class 8—Definitions.

(a) For the purpose of this subchapter, "corrosive material" (Class 8) means a liquid or solid that causes full thickness destruction of human skin at the site of contact within a specified period of time. A liquid that has a severe corrosion rate on steel or aluminum based on the criteria in § 173.137(c)(2) is also a corrosive material.

* * * * *

55. In § 173.137, the second sentence of the introductory text, and paragraphs (a), (b), and (c) would be revised to read as follows:

§ 173.137 Class 8—Assignment of packing group.

* * * When the § 172.101 Table provides more than one packing group for a Class 8 material, the packing group must be determined using data obtained from tests conducted in accordance with the 1992 OECD Guidelines for Testing of Chemicals Number 404 "Acute Dermal Irritation/Corrosion" as follows:

(a) *Packing Group I.* Materials that cause full thickness destruction of intact skin tissue within an observation period of up to 60 minutes starting after the exposure time of three minutes or less.

(b) *Packing Group II.* Materials that cause full thickness destruction of intact skin tissue within an observation period of up to 14 days starting after the exposure time of more than three minutes but not more than 60 minutes.

(c) *Packing Group III.* Materials, other than those meeting Packing Group I or II criteria—

(1) That cause full thickness destruction of intact skin tissue within an observation period of up to 14 days starting after the exposure time of more than 60 minutes but not more than 4 hours; or

(2) Materials which do not cause full thickness destruction of intact skin tissue but which exhibit a corrosion rate on steel or aluminum surfaces exceeding 6.25 mm (0.25 inch) a year at a test temperature of 55 °C (130 °F). For the purpose of testing steel P3 (ISO 2604 (IV):1975) or a similar type, and for testing aluminum, non-clad types 7075–T6 or AZ5GU–T6 should be used. An acceptable test is described in ASTM G 31–72 (Reapproved 1990).

56. In § 173.150, the section heading and paragraph (d) would be revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable) and combustible liquids.

* * * * *

(d) *Alcoholic beverages.* An alcoholic beverage (wine and distilled spirits as defined in 27 CFR 4.10 and 5.11) is not subject to the requirements of this subchapter if it—

(1) Contains 24 percent or less alcohol by volume;

(2) Is in a packaging of five liters or less; or

(3) Is a Packing Group III alcoholic beverage in a packaging of 250 L (66 gallons) or less, unless transported by air.

* * * * *

§ 173.150 [Amended]

57. In addition, in § 173.150, the following changes would be made:

a. In paragraph (a), the wording "another hazard class." would be revised to read "another hazard class except Division 6.1, Packing Group III or Class 8, Packing Group III.".

b. In the introductory text of paragraph (b), the wording "flammable liquids (Class 3)" would be revised to read "flammable liquids (Class 3) and combustible liquids".

c. In paragraph (b)(3), the wording "flammable liquids in Packing Group III," would be revised to read "flammable liquids in Packing Group III and combustible liquids,".

58. In § 173.152, paragraph (b)(3) would be revised to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(b) * * *

(3) For organic peroxides which do not require temperature control during transportation—

(i) For Type D, E, or F organic peroxides, inner packagings not over 125 ml (4.22 ounces) net capacity each for liquids or 500 g (17.64 ounces) net capacity for solids, packed in strong outer packagings.

(ii) For Type B or C organic peroxides, inner packagings not over 25 ml (0.845 ounces) net capacity each for liquids or 100 g (3.528 ounces) net capacity for solids, packed in strong outer packagings.

* * * * *

§ 173.159 [Amended]

59. In § 173.159, paragraph (d) would be removed and reserved.

60. Section 173.164 would be amended by revising the paragraph (b) introductory text and the last sentence of paragraph (b)(1), redesignating paragraphs (c) and (d) as paragraphs (d) and (e) respectively, and adding a new paragraph (c) to read as follows:

§ 173.164 Mercury (metallic and articles containing mercury).

* * * * *

(b) Manufactured articles or apparatuses containing more than 100 mg (0.0035 ounce) mercury are excepted from the specification packaging requirements of this subchapter when packaged as follows:

(1) * * * Mercury switches and relays are excepted from these packaging requirements, if they are totally enclosed, leakproof and in sealed metal or plastic units.

* * * * *

(c) Manufactured articles or apparatuses, each containing not more than 100 mg (0.0035 ounce) of mercury and packaged so that the quantity of mercury per package does not exceed 1 g (0.035 ounce) are not subject to the requirements of this subchapter.

* * * * *

§ 173.164 [Amended]

61. In addition, in § 173.164, the following changes would be made:

a. In paragraph (a)(1), in the first sentence, the wording "not more than 250 ml (8 oz) capacity each" would be revised to read "not more than 3.5 kg (7.7 pounds) capacity each".

b. In paragraphs (a)(1) and (a)(2), the wording "or reconstituted wood (4F) boxes," would be revised to read ", reconstituted wood (4F) or solid plastic (4H2) boxes," each place it appears.

c. In paragraph (a)(2), immediately following the wording " 'quicksilver flasks' " the wording "of not more than 3.5 kg (7.7 pounds) capacity each" would be added.

62. Section 173.166 would be amended by revising the section heading, adding a new last sentence in paragraph (a), revising paragraph (b), the last sentence of paragraph (c) and paragraph (d)(1) to read as follows:

§ 173.166 Air bag inflators, air bag modules, seat-belt pre-tensioners, and seat-belt modules.

(a) * * * A seat-belt pre-tensioner contains similar hazardous materials and is used in the operation of a seat-belt restraining system in a motor vehicle. A seat-belt module is the seat belt pre-tensioner plus seat-belt hardware.

(b) *Classification.* An air bag inflator, air bag module, seat-belt pre-tensioner or seat-belt module may be classed as Class 9 only if it meets the following requirements—

(1) The manufacturer has submitted each design type air bag inflator or seat-belt pre-tensioner to the Bureau of Explosives (BOE) or the Bureau of Mines (BOM) for examination and testing. The submission must contain a detailed description of the inflator or pre-tensioner (or, if more than a single inflator or pre-tensioner is involved, the maximum parameters of each particular inflator or pre-tensioner design type for which approval is sought) and details on the complete package.

(2) Samples of the inflator or pre-tensioner, packaged as for transport, have been subjected to test series 6(c) of the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Second Edition, 1990 with no explosion of the device, no fragmentation of device casings, and no projection hazard or thermal effect which would significantly hinder fire-fighting or other emergency response efforts in the immediate vicinity.

(3) The manufacturer submits an application, including—

(i) The BOE or BOM test results and report recommending the shipping description and classification for each device or design type; or

(ii) An approved classification issued by the competent authority of a foreign government, to the Associate Administrator for Hazardous Materials Safety, and is notified in writing by the Associate Administrator that the device has been classed as Class 9 and approved for transportation.

(4) No approval applications are required for air bag or seat-belt modules containing an approved air bag inflator or seat-belt pre-tensioner.

(c) * * * A module must be identified with the same EX number or product code of the approved inflator or pre-tensioner.

(d) * * * (1) An air bag or seat-belt module that has been approved by the Associate Administrator for Hazardous Materials Safety and is installed in a motor vehicle or in completed vehicle components, such as steering columns or door panels, is not subject to the requirements of this subchapter.

* * * * *

§ 173.166 [Amended]

63. In addition, in § 173.166, the following changes would be made:

a. In paragraph (c), in the first and second sentences, the wording "or pre-tensioner" would be added immediately following the wording "inflator" each place it appears.

b. In paragraph (d)(2), the wording "or seat-belt" would be added immediately following the wording "air bag" and the wording "or pre-tensioner" would be added immediately following the wording "inflator".

c. In paragraph (f), the wording "FLAMMABLE SOLID label" would be revised to read "CLASS 9 label".

64. Section 173.168 would be added to read as follows:

§ 173.168 Nonspillable wet electric storage batteries.

(a) Nonspillable wet electric storage batteries are batteries from which electrolyte will not flow in the event of a ruptured or cracked case. These batteries must be capable of withstanding the vibration test and the pressure differential test listed below without leakage of battery fluid.

(1) *Vibration test.* The battery must be rigidly clamped to the platform of a vibration machine, and a simple harmonic motion having an amplitude of 0.8 mm (0.03 inches), with a 1.6 mm (0.063 inches) maximum total excursion must be applied. The frequency must be varied at the rate of 1 Hz/min between the limits of 10 Hz to 55 Hz. The entire range of frequencies and return must be traversed in 95±5 minutes for each mounting position (direction of vibrator) of the battery. The battery must be tested in three mutually perpendicular positions (to include testing with fill openings and vents, if any, in an inverted position) for equal time periods.

(2) *Pressure differential test.* Following the vibration test, the battery must be stored for six hours at 24 °C±4 °C (75 °±7 °F) while subjected to a pressure differential of at least 88 kPa (13 psi). The battery must be tested in three mutually perpendicular positions (to include testing with fill openings and vents, if any, in an inverted position) for at least six hours in each position.

(b) Except as provided in § 175.10(a)(19) of this subchapter, a nonspillable battery is not subject to any other requirements of this subchapter if—

(1) The battery is protected against short circuits and securely packaged; and

(2) For a battery manufactured after September 30, 1995, the battery and any outer packaging is plainly and durably marked "NONSPILLABLE" or "NONSPILLABLE BATTERY".

§ 173.171 [Amended]

65. In § 173.171, in paragraph (a), the wording "Division 1.3 classification" would be revised to read "Division 1.3 and Division 4.1 classification".

66. Section 173.185 would be revised to read as follows:

§ 173.185 Lithium cells and batteries.

(a) Except as otherwise provided in this subpart, a lithium cell or battery is authorized for transportation only if it conforms to the provisions of this section.

(b) *Exceptions.* Cells and batteries are not subject to the requirements of this subchapter if they meet the following requirements:

(1) Each cell with a liquid cathode may contain no more than 0.5 g (0.02 ounce) of lithium or lithium alloy, and each cell with a solid cathode may contain no more than 1.0 g (0.04 ounce) lithium or lithium alloy;

(2) Each battery with a liquid cathode may contain an aggregate quantity of no more than 1.0 g (0.04 ounce) lithium or lithium alloy, and each battery with a solid cathode may contain an aggregate quantity of no more than 2.0 g (0.07 ounce) of lithium or lithium alloy;

(3) Each cell must be hermetically sealed;

(4) Cells and batteries must be separated so as to prevent short circuits and must be packed in strong packagings, except when installed in equipment; and

(5) If a liquid cathode battery contains more than 0.5 g (0.02 ounce) of lithium or lithium alloy or a solid cathode battery contains more than 1.0 g (0.04 ounce) lithium or lithium alloy, it may not contain a liquid or gas that is a hazardous material according to this subchapter unless the liquid or gas, if free, would be completely absorbed or

°C (75 °±7 °F) while subjected to a pressure differential of at least 88 kPa (13 psi). The battery must be tested in three mutually perpendicular positions (to include testing with fill openings and vents, if any, in an inverted position) for at least six hours in each position.

(b) Except as provided in § 175.10(a)(19) of this subchapter, a nonspillable battery is not subject to any other requirements of this subchapter if—

(1) The battery is protected against short circuits and securely packaged; and

(2) For a battery manufactured after September 30, 1995, the battery and any outer packaging is plainly and durably marked "NONSPILLABLE" or "NONSPILLABLE BATTERY".

§ 173.171 [Amended]

65. In § 173.171, in paragraph (a), the wording "Division 1.3 classification" would be revised to read "Division 1.3 and Division 4.1 classification".

66. Section 173.185 would be revised to read as follows:

§ 173.185 Lithium cells and batteries.

(a) Except as otherwise provided in this subpart, a lithium cell or battery is authorized for transportation only if it conforms to the provisions of this section.

(b) *Exceptions.* Cells and batteries are not subject to the requirements of this subchapter if they meet the following requirements:

(1) Each cell with a liquid cathode may contain no more than 0.5 g (0.02 ounce) of lithium or lithium alloy, and each cell with a solid cathode may contain no more than 1.0 g (0.04 ounce) lithium or lithium alloy;

(2) Each battery with a liquid cathode may contain an aggregate quantity of no more than 1.0 g (0.04 ounce) lithium or lithium alloy, and each battery with a solid cathode may contain an aggregate quantity of no more than 2.0 g (0.07 ounce) of lithium or lithium alloy;

(3) Each cell must be hermetically sealed;

(4) Cells and batteries must be separated so as to prevent short circuits and must be packed in strong packagings, except when installed in equipment; and

(5) If a liquid cathode battery contains more than 0.5 g (0.02 ounce) of lithium or lithium alloy or a solid cathode battery contains more than 1.0 g (0.04 ounce) lithium or lithium alloy, it may not contain a liquid or gas that is a hazardous material according to this subchapter unless the liquid or gas, if free, would be completely absorbed or neutralized by other materials in the battery.

(c) Cells and batteries also are not subject to this subchapter if they meet the following requirements:

(1) Each cell contains not more than 5 g (0.18 ounces) of lithium or lithium alloy;

(2) Each battery contains not more than 25 g (0.88 ounces) of lithium or lithium alloy;

(3) Each cell or battery is of the type proved to be non-dangerous by testing in accordance with tests in Part IV of the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Third Edition 1994; such testing should be carried out on each type prior to the initial transport of that type; and

(4) Cells and batteries are designed or packed in such a way as to prevent short circuits under conditions normally encountered in transportation.

(d) Cells and batteries and equipment containing cells and batteries which were first transported prior to January 1, 1995 and were assigned to Class 9 on the basis of the requirements of this subchapter in effect on October 1, 1993 may continue to be transported in accordance with the applicable requirements in effect on October 1, 1993.

(e) Cells and batteries may be transported as items of Class 9 if they meet the requirements in paragraphs (e)(1) through (e)(9) of this section:

(1) Cells must not contain more than 12 g (0.42 ounce) of lithium or lithium alloy. When transported by passenger aircraft, cells must not contain more than 3 g (0.11 ounces) of lithium or lithium alloy.

(2) Batteries must not contain more than 500 g (17.6 ounces) of lithium or lithium alloy. When transported by passenger aircraft, batteries must not contain more than 125 g (4.4 ounces) of lithium or lithium alloy.

(3) Each cell and battery must be equipped with an effective means of preventing external short circuits.

(4) Each cell and battery must incorporate a safety venting device or be designed in a manner that will preclude a violent rupture under conditions normally incident to transportation.

(5) Batteries containing cells or series of cells connected in parallel must be equipped with diodes to prevent reverse current flow.

(6) Cells and batteries must be packed in strong inner packagings containing not more than 500 g (17.6 ounces) of lithium or lithium alloy. When transported by passenger aircraft, inner packagings must not contain more than 125 g (4.4 ounces) of lithium or lithium alloy.

(7) Cells and batteries must be packed in inner packagings in such a manner as to effectively prevent short circuits and to prevent movement which could lead to short circuits.

(8) Cells and batteries must be packaged in packagings conforming to the requirements of part 178 of this subchapter at the Packing Group II performance level:

(i) Inner packagings must be packed within a wooden box (4C1, 4C2, 4D, or 4F), fiberboard box (4G), fiber drum (1G), or metal drum (1A2 or 1B2);

(ii) Cells and batteries intended for air transportation must be packaged in metal drums (1A1 or 1B2) fitted with gas-tight gaskets; and

(iii) When the outer packaging is metal, the inner packagings must be separated from each other and from the outer packaging by at least 25 mm (1 inch) of non-combustible cushioning material.

(9) One of the following criteria must be met:

(i) Each cell or battery is of the type proven to meet the criteria of Class 9 by testing in accordance with tests in Part IV of the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Third Edition 1994; or

(ii) Ten cells and one battery of each type taken from production each week should be subjected to extreme temperature exposure and the short circuit test procedures in Part IV of the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Third Edition 1994, or, equivalent tests approved by the Associate Administrator for Hazardous Materials Safety. There should be no evidence of distortion, leakage or internal heating in conducting the extreme temperature exposure test procedure. In conducting the short circuit test procedure, if venting occurs, an open flame applied to venting fumes should not produce an explosive condition; or

(iii) Cells and batteries that are hermetically sealed are excepted from paragraphs (e)(8)(ii) and (e)(8)(iii) if the cells and batteries are subjected to the altitude simulation, extreme temperature exposure, vibration, and shock tests described in the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Third Edition 1994, or equivalent tests approved by the Associate Administrator for Hazardous Materials Safety, and show no visible evidence of out-gassing, leakage, loss of mass or distortion.

(10) Except as provided in paragraph (i) of this section, cells or batteries may not be offered for transportation or transported if any cell has been

discharged to the extent that the open circuit voltage is less than two volts or is less than 2/3 of the voltage of the fully charged cell, whichever is less.

(f) Equipment containing or packed with cells and batteries meeting the requirements of paragraph (b) or (c) of this section are excepted from all other requirements of this subchapter.

(g) Equipment containing or packed with cells and batteries may be transported as items of Class 9 if the batteries and cells meet all the requirements of paragraph (e) of this section and are packaged as follows:

(1) Equipment containing cells and batteries must be packed in a strong outer packaging that is waterproof or is made waterproof through the use of a liner. The equipment must be secured within the outer packaging and be packed as to effectively prevent movement, short circuits, and accidental operation during transport; and

(2) Cells and batteries packed with equipment should be packed in inner packagings conforming to paragraph (e)(9) of this section in such a manner as to effectively prevent movement and short circuits. Not more than 5 kg of cells and batteries may be packed with each item of equipment.

(h) Cells and batteries, for disposal, may be offered for transportation or transported to a permitted storage facility and disposal site by motor vehicle when they meet the following requirements:

(1) Cells must not contain more than 12 g (0.42 ounce) and batteries must not contain more than 500 g (17.6 ounces) of lithium or lithium alloy;

(2) Be equipped with an effective means of preventing external short circuits; and

(3) Are packed in a strong outer packaging conforming to the requirements of §§ 173.24 and 173.24a. The packaging need not conform to performance requirements of part 178 of this subchapter.

(i) Cells and batteries and equipment containing or packed with cells and batteries which do not comply with the provisions of this section may be transported only if they are approved by the Associate Administrator for Hazardous Materials Safety.

(j) For testing purposes, cells containing not more than 12 g (0.42 ounce) of lithium or lithium alloy and batteries containing not more than 500 g (17.6 ounces) of lithium or lithium alloy may be offered for transportation or transported by highway only as items of Class 9. Packaging must conform with paragraphs (e)(8)(i) and (iii) of this section with not more than 100 cells per package.

67. Section 173.189 would be added to read as follows:

§ 173.189 Batteries containing sodium or cells containing sodium.

(a) Batteries and cells may not contain any hazardous material other than sulfur. Cells not forming a component of a completed battery may not be offered for transportation at a temperature at which any liquid sodium is present in the cell. Batteries may only be offered for transportation, or transported, at a temperature at which any liquid sodium present in the battery conforms to the conditions prescribed in paragraph (d) of this section.

(b) Cells must consist of hermetically sealed metal casings which fully enclose the hazardous materials and which are so constructed and closed as to prevent the release of the hazardous materials under normal conditions of transport. Cells must be placed in suitable outer packagings with sufficient cushioning material to prevent contact between cells and between cells and the internal surfaces of the outer packaging, and to ensure that no dangerous movement of the cells within the outer packaging occurs in transport. Cells must be packaged in 1A2, 1B2, 1D, 1G, 1H2, 4C, 4D, 4F, 4G or 4H2 outer packagings which meet the requirements of part 178 of this subchapter at the Packing Group II performance level.

(c) Batteries must consist of cells secured within, and fully enclosed by a metal casing so constructed and closed as to prevent the release of the hazardous materials under normal conditions of transport. Batteries may be offered for transportation, and transported, unpacked or in protective packagings that are not subject to the requirements of part 178 of this subchapter.

(d) Batteries containing any liquid sodium may not be offered for transportation, or transported, by aircraft. Batteries containing liquid sodium may be transported by motor vehicle, rail car or vessel under the following conditions:

(1) Batteries must be equipped with an effective means of preventing external short circuits, such as by providing complete electrical insulation of battery terminals or other external electrical connectors. Battery terminals or other electrical connectors penetrating the heat insulation fitted in battery casings must be provided with thermal insulation sufficient to prevent the temperature of the exposed surfaces of such devices from exceeding 55 °C (130 °F).

(2) No battery may be offered for transportation if the temperature at any point on the external surface of the battery exceeds 55 °C (130 °F).

(3) If any external source of heating is used during transportation to maintain sodium in batteries in a molten state, means must be provided to ensure that the internal temperature of the battery does not reach or exceed 400 °C (752 °F).

(4) When loaded in a transport vehicle or freight container:

(i) Batteries must be secured so as to prevent significant movement within the transport vehicle or freight container under conditions normally incident to transportation;

(ii) Adequate ventilation and/or separation between batteries must be provided to ensure that the temperature at any point on the external surface of the battery casing will not exceed 240 °C (464 °F) during transportation; and

(iii) No other hazardous materials, with the exception of cells containing sodium, may be loaded in the same transport vehicle or freight container. Batteries must be separated from all other freight by a distance of not less than 0.5 meters (1.6 feet).

§ 173.196 [Amended]

68. In § 173.196, in paragraph (f), the wording "the primary receptacle and secondary packaging" would be revised to read "the primary receptacle or secondary packaging".

§ 173.211 [Amended]

69. In § 173.211, in paragraph (c), for the entry "Steel box with liner:", the wording "4A2" would be revised to read "4A"; and for the entry "Aluminum box with liner:" the wording "4B2" would be revised to read "4B".

§ 173.212 [Amended]

70. In § 173.212, in paragraph (c), for the entry "Steel box:" the wording "4A1" would be revised to read "4A"; for the entry "Steel box with liner:" the wording "4A2" would be revised to read "4A"; for the entry "Aluminum box:" the wording "4B1" would be revised to read "4B"; and for the entry "Aluminum box with liner:" the wording "4B2" would be revised to read "4B".

§ 173.213 [Amended]

71. In § 173.213, in paragraph (c), for the entry "Steel box with liner:" the wording "4A2" would be revised to read "4A"; for the entry "Steel box:" the wording "4A1" would be revised to read "4A"; and for the entry "Aluminum box with liner:" the wording "4B2" would be revised to read "4B".

72. Section 173.224 would be revised to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

(a) *General.* When the § 172.101 Table of this subchapter specifies that a Division 4.1 material be packaged in accordance with this section, only packagings which conform to the provisions of this section may be used. Each packaging must conform to the general packaging requirements of subpart B of this part and the applicable requirements of part 178 of this subchapter. Non-bulk packagings must meet Packing Group II performance levels. To avoid unnecessary confinement, metallic non-bulk packagings meeting Packing Group I are not authorized. Self-reactive materials which require temperature control are subject to the provisions of § 173.21(f). Packagings required to bear a Class 1 subsidiary label must conform to §§ 173.60 through 173.62.

Self-reactive substance	(1)
Azodicarbonamide formulation type B	
Azodicarbonamide formulation type C	
Azodicarbonamide formulation type D	
2,2'-Azodi(2,4-dimethyl-4-methoxyvaleronitrile)	
2,2'-Azodi(2,4-dimethylvaleronitrile)	
2,2'-Azodi(ethyl 2-methylpropionate)	
1,1-Azodi(hexahydrobenzonitrile)	
2,2'-Azodi(isobutyronitrile)	
2,2'-Azodi(2-methylbutyronitrile)	
Benzene-1,3-disulphohydrazide, as a paste	
Benzene sulphohydrazide	
4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride.	
4-(Benzyl(methyl)amino)-3-ethoxybenzenediazonium zinc chloride.	
3-Chloro-4-Diethylamino-benzenediazonium zinc chloride.	
2-Diazo-1-Naphthol-4-sulphochloride	
2-Diazo-1-Naphthol-5-sulphochloride	
2,5-Diethoxy-4-morpholino-benzenediazonium zinc chloride.	
2,5-Diethoxy-4-morpholino-benzenediazonium zinc chloride.	
2,5-Diethoxy-4-morpholino-benzenediazonium tetrafluoroborate.	
2,5-Diethoxy-4-(phenylsulphonyl)benzenediazonium zinc chloride.	
2,5-Dimethoxy-4-(4-methylphenylsulphony)benzene-diazonium zinc chloride.	
4-Dimethylamino-6-(2-dimethylaminoethoxy)toluene-2-diazonium zinc chloride.	
N,N'-Dinitroso-N,N'-dimethyl- terephthalamide, as a paste.	

wording "4B2" would be revised to read "4B".

72. Section 173.224 would be revised to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

(a) *General.* When the § 172.101 Table of this subchapter specifies that a Division 4.1 material be packaged in accordance with this section, only packagings which conform to the provisions of this section may be used. Each packaging must conform to the general packaging requirements of subpart B of this part and the applicable requirements of part 178 of this subchapter. Non-bulk packagings must meet Packing Group II performance levels. To avoid unnecessary confinement, metallic non-bulk packagings meeting Packing Group I are not authorized. Self-reactive materials which require temperature control are subject to the provisions of § 173.21(f). Packagings required to bear a Class 1 subsidiary label must conform to §§ 173.60 through 173.62.

(b) *Self-Reactive Materials Table:* The self-reactive materials table specifies, by technical name, those self-reactive materials that are authorized for transportation and not subject to the approval provisions of § 173.124(a)(2)(vii). A self-reactive material identified by technical name in the following table is authorized for transportation only if it conforms to all applicable provisions of the table. The column headings of the Self-Reactive Materials Table are as follows:

(1) *Technical name.* Column 1 specifies the technical name.

(2) *ID number.* Column 2 specifies the identification number which is used to identify the proper shipping name in the § 172.101 Table.

(3) *Concentration of self-reactive material.* Column 3 specifies the concentration (percent) limitations, if any, in mixtures or solutions for the self-reactive material. Limitations are given as minimums, maximums, or a range, as appropriate. A range includes the lower and upper limits (i.e., "53–100" means from, and including, 53 percent to, and including 100 percent).

(4) *Packing method.* Column 4 species the highest packing method which is authorized for the self-reactive material. A packing method corresponding to a smaller package size may be used, but a packing method corresponding to a larger package size may not be used. The Table of Packing Methods in § 173.225(d) defines the packing methods. Additional bulk packagings are authorized in paragraph (d) of this section for Type F self-reactive materials.

(5) *Control temperature.* Column 5 specifies the control temperature in °C. Temperatures are specified only when temperature controls are required (see § 173.21(f)).

(6) *Emergency temperature.* Column 6 specifies the emergency temperature in °C. Temperatures are specified only when temperature controls are required (see § 173.21(f)).

(7) *Notes.* Column 7 specifies other applicable provisions, as set forth in notes following the table.

SELF-REACTIVE MATERIALS TABLE

Self-reactive substance (1)	Identification number (2)	Concentration (%) (3)	Packing method (4)	Control temperature (°C) (5)	Emergency temperature (°C) (6)	Notes (7)
Azodicarbonamide formulation type B	3232	<100	OP5B			
Azodicarbonamide formulation type C	3234	<100	OP6A			
Azodicarbonamide formulation type D	3236	<100	OP7B			
2,2'-Azodi(2,4-dimethyl-4-methoxyvaleronitrile)	3236	100	OP7B	−5	+5	
2,2'-Azodi(2,4-dimethylvaleronitrile)	3236	100	OP7B	+10	+15	
2,2'-Azodi(ethyl 2-methylpropionate)	3235	100	OP7A	+20	+25	
1,1-Azodi(hexahydrobenzonitrile)	3236	100	OP7B			
2,2'-Azodi(isobutyronitrile)	3234	100	OP6B	+40	+45	
2,2'-Azodi(2-methylbutyronitrile)	3236	100	OP7B	+35	+40	
Benzene-1,3-disulphohydrazide, as a paste	3236	52	OP7B			
Benzene sulphohydrazide	3236	100	OP7B			
4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride.	3236	100	OP7B			
4-(Benzyl(methyl)amino)-3-ethoxybenzenediazonium zinc chloride.	3236	100	OP7B	+40	+45	
3-Chloro-4-Diethylamino-benzenediazonium zinc chloride.	3236	100	OP7B			
2-Diazo-1-Naphthol-4-sulphochloride	3222	100	OP5B			
2-Diazo-1-Naphthol-5-sulphochloride	3222	100	OP5B			
2,5-Diethoxy-4-morpholino-benzenediazonium zinc chloride.	3236	67–100	OP7B	+35	+40	
2,5-Diethoxy-4-morpholino-benzenediazonium zinc chloride.	3236	66	OP7B	+40	+45	
2,5-Diethoxy-4-morpholino-benzenediazonium tetrafluoroborate.	3236	100	OP7B	+30	+35	
2,5-Diethoxy-4-(phenylsulphonyl)benzenediazonium zinc chloride.	3236	67	OP7B	+40	+45	
2,5-Dimethoxy-4-(4-methylphenylsulphony)benzene-diazonium zinc chloride.	3236	79	OP7B	+40	+45	
4-Dimethylamino-6-(2-dimethylaminoethoxy)toluene-2-diazonium zinc chloride.	3236	100	OP7B	+40	+45	
N,N'-Dinitroso-N,N'-dimethyl- terephthalamide, as a paste.	3224	72	OP6B			

SELF-REACTIVE MATERIALS TABLE—Continued

Self-reactive substance (1)	Identification number (2)	Concentration (%) (3)	Packing method (4)	Control temperature (°C) (5)	Emergency temperature (°C) (6)	Notes (7)
N,N'-Dinitrosopentamethylenetetramine	3224	82	OP6B			1
Diphenyloxide-4,4'-Disulphohydrazide	3226	100	OP7B			
4-Dipropylaminobenzenediazonium zinc chloride	3226	100	OP7B			
2-(N,N-Ethoxycarbonylphenylamino)-3-methoxy-4-(N-methyl-N-cyclohexylamino)benzenediazonium zinc chloride.	3236	63–92	OP7B	+40	+45	
2-(N,N-Ethoxycarbonylphenylamino)-3-methoxy-4-(N-methyl-N-cyclohexylamino)benzenediazonium zinc chloride.	3236	62	OP7B	+35	+40	
N-Formyl-2-(nitromethylene)-1,3-perhydrothiazine	3236	100	OP7B	+45	+50	
2-(2-Hydroxyethoxy)-1-(pyrrolidin-1-yl)benzene-4-diazonium zinc chloride.	3236	100	OP7B	+45	+50	
3-(2-Hydroxyethoxy)-4-(pyrrolidin-1-yl)benzenediazonium zinc chloride.	3236	100	OP7B	+40	+45	
2-(N,N-Methylaminoethylcarbonyl)-4-(3,4-dimethylphenylsulphonyl)benzene-diazonium zinc chloride.	3236	96	OP7B	+45	+50	
4-Methylbenzenesulphonylhydrazide	3226	100	OP7B	+40	+45	
3-Methyl-4-(pyrrolidin-1-yl) benzenediazonium tetrafluoroborate.	3234	95	OP6B	+45	+50	
4-Nitrosophenol	3236	100	OP7B	+35	+40	
Self-reactive liquid, sample	3223		OP2A			2
Self-reactive liquid, sample, temperature control	3233		OP2A			2
Self-reactive solid, sample	3224		OP2B			2
Self-reactive solid, sample, temperature control	3234		OP2B			2
Sodium 2-diazo-1-naphthol-4-sulphonate	3226	100	OP7B			
Sodium 2-diazo-1-naphthol-5-sulphonate	3226	100	OP7B			
Tetramine palladium (II) nitrate	3234	100	OP6B	+30	+35	

1. With a compatible diluent having a boiling point of not less than 150 C.
2. Samples may only be offered for transportation when all available data indicate that the sample is no more dangerous than a self-reactive substance type C, and the sample is packaged using packaging method OP2A for liquids or OP2B for solids, as appropriate, in quantities less than 10 kg per shipment, employing any necessary temperature controls.

(c) *New self-reactive materials, formulations and samples.* (1) Except as provided for samples in paragraph (c)(4) of this section, no person may offer, accept for transportation, or transport a self-reactive material which is not identified by technical name in the Self-Reactive Materials Table of this section, or a formulation of one or more self-reactive materials which are identified by technical name in the table, unless the self-reactive material is assigned a generic type and shipping description and is approved by the Associate Administrator for Hazardous Materials Safety under the provisions of § 173.124(a)(2)(vii).

(2) Except as provided by an approval issued under § 173.124(a)(2)(vii), intermediate bulk and bulk packagings are not authorized.

(3) Non-bulk packagings are authorized as specified in the Packing Method Table for Generic Types, as follows. Column 1 of the table specifies the generic type by identification number. Column 2 of the table specifies the generic proper shipping name from the § 172.101 Table. Column 3 of the table specifies the series of packing methods authorized for use. The Table of Packing Methods in § 173.225(d) defines the packing methods. The Packing Method Table for Generic Types is as follows:

Packing Method Table for Generic Types

PACKING METHOD TABLE FOR GENERIC TYPES

UN No. (1)	Proper shipping name (2)	Packing method (3)
3221 ..	Self-reactive liquid Type B.	OP1A–OP5A
3222 ..	Self-reactive solid Type B.	OP1B–OP5B
3223 ..	Self-reactive liquid Type C.	OP1A–OP6A
3224 ..	Self-reactive solid Type C.	OP1B–OP6B
3225 ..	Self-reactive liquid Type D.	OP1A–OP7A
3226 ..	Self-reactive solid Type D.	OP1B–OP7B

PACKING METHOD TABLE FOR GENERIC TYPES—Continued

UN No. (1)	Proper shipping name (2)	Packing method (3)
3227 ..	Self-reactive liquid Type E.	OP1A–OP8A
3228 ..	Self-reactive solid Type E.	OP1B–OP8B
3229 ..	Self-reactive liquid Type F.	OP1A–OP8A
3230 ..	Self-reactive solid Type F.	OP1B–OP8B
3231 ..	Self-reactive liquid Type B, temperature controlled.	OP1A–OP5A
3232 ..	Self-reactive solid Type B, temperature controlled.	OP1B–OP6B
3233 ..	Self-reactive liquid Type C, temperature controlled.	OP1A–OP6A
3234 ..	Self-reactive solid Type C, temperature controlled.	OP1B–OP7B
3235 ..	Self-reactive liquid Type D, temperature controlled.	OP1A–OP7A

PACKING METHOD TABLE FOR GENERIC TYPES—Continued

UN No. (1)	Proper shipping name (2)	Packing method (3)
3236 ..	Self-reactive solid Type D, temperature controlled.	OP1B–OP8B
3237 ..	Self-reactive liquid Type E, temperature controlled.	OP1A–OP8A
3238 ..	Self-reactive solid Type E, temperature controlled.	OP1B–OP8B
3239 ..	Self-reactive liquid Type F, temperature controlled.	OP1A–OP8A
3240 ..	Self-reactive solid Type F, temperature controlled.	OP1B–OP8B

(4) *Samples.* Samples of new self-reactive materials or new formulations of self-reactive materials identified in the Self-Reactive Materials Table in paragraph (b) of this section, for which complete test data are not available, and

Technical Name (1)
Acetyl acetone peroxide
Acetyl acetone peroxide *as a paste*
Acetyl benzoyl peroxide
Acetyl cyclohexanesulfonyl peroxide
Acetyl cyclohexanesulfonyl peroxide
tert-Amyl hydroperoxide
tert-Amyl peroxyacetate
tert-Amyl peroxybenzoate
tert-Amyl peroxy-2-ethylhexanoate
tert-Amyl peroxy-2-ethylhexyl carbonate
tert-Amyl peroxyneodecanoate
tert-Amyl peroxypivalate
tert-Amylperoxy-3,5,5-trimethylhexanoate
2,2-Bis(4,4-di(tert-butylperoxycyclohexyl)propane
tert-Butyl cumyl peroxide
tert-Butyl cumyl peroxide
n-Butyl-4,4-di-(tert-butylperoxy)valerate
n-Butyl-4,4-di-(tert-butylperoxy)valerate
n-Butyl-4,4-di-(tert-butylperoxy)valerate
tert-Butyl hydroperoxide
tert-Butyl hydroperoxide
tert-Butyl hydroperoxide
tert-Butyl hydroperoxide
tert-Butyl hydroperoxide
tert-Butyl hydroperoxide + Di-tert-butylperoxide
tert-Butyl monoperoxymaleate
tert-Butyl monoperoxymaleate
tert-Butyl monoperoxymaleate
tert-Butyl monoperoxymaleate *as a paste*
tert-Butyl monoperoxymaleate *as a paste*
tert-Butyl monoperoxyphthalate
tert-Butyl peroxyacetate
tert-Butyl peroxyacetate
tert-Butyl peroxyacetate
tert-Butyl peroxyacetate
tert-Butyl peroxybenzoate
tert-Butyl peroxybenzoate
tert-Butyl peroxybenzoate
tert-Butyl peroxybutyl fumarate
tert-Butyl peroxycrotonate
tert-Butyl peroxydiethylacetate
tert-Butyl peroxydiethylacetate + tert-Butyl peroxybenzoate

PACKING METHOD TABLE FOR GENERIC TYPES—Continued

UN No. (1)	Proper shipping name (2)	Packing method (3)
3236 ..	Self-reactive solid Type D, temperature controlled.	OP1B–OP8B
3237 ..	Self-reactive liquid Type E, temperature controlled.	OP1A–OP8A
3238 ..	Self-reactive solid Type E, temperature controlled.	OP1B–OP8B
3239 ..	Self-reactive liquid Type F, temperature controlled.	OP1A–OP8A
3240 ..	Self-reactive solid Type F, temperature controlled.	OP1B–OP8B

(4) *Samples.* Samples of new self-reactive materials or new formulations of self-reactive materials identified in the Self-Reactive Materials Table in paragraph (b) of this section, for which complete test data are not available, and which are to be transported for further testing or evaluation, may be assigned an appropriate shipping description for Self-reactive materials Type C, packaged and offered for transportation under the following conditions:

(i) Data available to the person offering the material for transportation must indicate that the sample would pose a level of hazard no greater than that of a self-reactive material Type B and that the control temperature, if any, is sufficiently low to prevent any dangerous decomposition and sufficiently high to prevent any dangerous phase separation;

(ii) The sample must be packaged in accordance with packing method OP2A or OP2B, for a liquid or a solid, respectively;

(iii) Packages of the self-reactive material may be offered for transportation and transported in a quantity not to exceed 10 kg (22 pounds) per transport vehicle; and

(iv) One of the following shipping descriptions must be assigned:

(A) Self-reactive, liquid, type C, 4.1, UN3223.

(B) Self-reactive, solid, type C, 4.1, UN3224.

(C) Self-reactive, liquid, type C, temperature controlled, 4.1, UN3233.

(D) Self-reactive, solid, type C, temperature controlled, 4.1, UN3234.

(d) Self-reactive substances of Type F may not be transported in bulk or intermediate bulk containers except as approved, in writing, by the Associate Administrator for Hazardous Materials Safety.

73. In § 173.225, the fourth sentence of paragraph (a) and the Organic Peroxides Table in paragraph (b) would be revised, and a new paragraph (c)(5) would be added to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

(a) * * * To avoid unnecessary confinement, metallic non-bulk packagings meeting Packing Group I are not authorized. * * *

(b) * * *

ORGANIC PEROXIDES TABLE

Technical Name (1)	ID Number (2)	Concentration (Mass %) (3)	Diluent (Mass %) A (4a)	Diluent (Mass %) B (4b)	Diluent (Mass %) I (4c)	Water (Mass %) (5)	Packing Method (6)	Temperature(°C) Control (7a)	Temperature(°C) Emergency (7b)	Notes
Acetyl acetone peroxide	UN3105	≤42	≥48			≥8	OP7A			2
Acetyl acetone peroxide *as a paste*	UN3106	≤32					OP7B			21
Acetyl benzoyl peroxide	UN3105	≤45	≥55				OP7A			
Acetyl cyclohexanesulfonyl peroxide	UN3112	≤82				≥12	OP4B	-10	0	
Acetyl cyclohexanesulfonyl peroxide	UN3115	≤32		≥68			OP7A	-10	0	
tert-Amyl hydroperoxide	UN3107	≤88	≥6			≥6	OP5A			
tert-Amyl peroxyacetate	UN3107	≤62	≥32				OP8A			
tert-Amyl peroxybenzoate	UN3105	≤96	≥4				OP7A			
tert-Amyl peroxy-2-ethylhexanoate	UN3115	≤100					OP7A	+20	+25	
tert-Amyl peroxy-2-ethylhexyl carbonate	UN3103	92-100					OP5A			
tert-Amyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	0	+10	
tert-Amyl peroxypivalate	UN3113	≤77		≥23			OP5A	+10	+15	
tert-Amylperoxy-3,5,5-trimethylhexanoate	UN3101	≤100					OP5A			
2,2-Bis(4,4-di(tert-butylperoxycyclohexyl)propane	UN3107	≤25		≥75			OP8A			
tert-Butyl cumyl peroxide	UN3105	>42 - 100					OP7A			1, 9
tert-Butyl cumyl peroxide	UN3106	≤42			≥58		OP7B			
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3103	>52 - 100					OP5A			
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3106	>42 - 52			≥48		OP7B			
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3108	≤42			≥58		OP8A			
tert-Butyl hydroperoxide	UN3103	>79 - 90				≥10	OP5A			13
tert-Butyl hydroperoxide	UN3105	≤80	≥20				OP7A			4, 13
tert-Butyl hydroperoxide	UN3107	≤79				>14	OP8A			13, 16
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP8A			14
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP5A			13, 14
tert-Butyl hydroperoxide + Di-tert-butylperoxide	UN3103	<82 + >9				≥7	OP5A			13
tert-Butyl monoperoxymaleate	UN3102	>52 - 100					OP5B			
tert-Butyl monoperoxymaleate	UN3103	≤52	≥48				OP6A			
tert-Butyl monoperoxymaleate	UN3108	≤52			≥48		OP8B			
tert-Butyl monoperoxymaleate *as a paste*	UN3010	≤42					OP8B			21
tert-Butyl monoperoxymaleate *as a paste*	UN3108	≤52					OP8B			21
tert-Butyl monoperoxyphthalate	UN3102	≤100					OP5B			
tert-Butyl peroxyacetate	UN3101	>52 - 77	≥23				OP5A			
tert-Butyl peroxyacetate	UN3103	>32 - 52	≥48				OP5A			
tert-Butyl peroxyacetate	UN3109	≤32	≥68				OP8A			10
tert-Butyl peroxyacetate	UN3119	≤32		≥68				+30	+35	10, 14
tert-Butyl peroxybenzoate	UN3103	>77 - 100	≤22				OP5A			
tert-Butyl peroxybenzoate	UN3105	>52 - 77	≥23				OP7A			1
tert-Butyl peroxybenzoate	UN3106	≤52			≥48		OP7B			
tert-Butyl peroxybutyl fumarate	UN3105	≤52	≥48				OP7A			
tert-Butyl peroxycrotonate	UN3105	≤77	≥23				OP7A			
tert-Butyl peroxydiethylacetate	UN3113	≤100					OP5A	+20	+25	
tert-Butyl peroxydiethylacetate + tert-Butyl peroxybenzoate	UN3105	≤33 + ≤33	≥33				OP7A			

ORGANIC PEROXIDES TABLE—Continued

Technical Name	ID Number	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing Method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
tert-Butyl peroxy-2-ethylhexanoate	UN3113	>52 - 100					OP6A	+20	+25	
tert-Butyl peroxy-2-ethylhexanoate	UN3117	>32 - 52		≥48			OP6A	+30	+35	
tert-Butyl peroxy-2-ethylhexanoate	UN3118	≤52			≥48		OP6B	+20	+25	
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32		≥68			OP8A	+50	+45	14
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32		≥68			OP8A	+40	+45	
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32		≥68				+30	+35	10
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32		≥68				+10	+15	14
tert-Butyl peroxy-2-ethylhexanoate + 2,2-di-(tert-Butylperoxy)butane	UN3106	≤12 + ≤14	>14		≥60		OP7B			
tert-Butyl peroxy-2-ethylhexanoate + 2,2-di-(tert-Butylperoxy)butane	UN3115	≤31 + ≤36		≥33			OP7A	+35	+40	
tert-Butyl peroxy-2-ethylhexylcarbonate	UN3105	≤100					OP7A			
tert-Butyl peroxyisobutyrate	UN3111	>52 - 77		≥23			OP5A	+15	+20	
tert-Butyl peroxyisobutyrate	UN3115	≤52		≥48			OP7A	+15	+20	
tert-Butylperoxy isopropylcarbonate	UN3103	≤77	≥23				OP5A			
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenz	UN3105	≤77	≥23				OP7A			
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene	UN3106	≤42			≥58		OP8B			
tert-Butyl peroxy-2-methylbenzoate	UN3103	≤100					OP5A			
tert-Butyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	0	+10	
tert-Butyl peroxyneodecanoate	UN3115	>77 - 100					OP7A	-5	+5	
tert-Butyl peroxyneodecanoate *as a paste*	UN3117	≤42					OP8A	0	+10	21
tert-Butyl peroxyneodecanoate *as a paste (frozen)*	UN3118	≤42					OP8B	0	+10	21
3-tert-Butylperoxy-3-phenylphthalide	UN3106	≤100					OP7B			
tert-Butyl peroxypivalate	UN3113	>67 - 77	≥23				OP5A	0	+10	
tert-Butyl peroxypivalate	UN3115	>27 - 67		≥33			OP7A	0	+10	
tert-Butyl peroxypivalate	UN3119	≤27		≥73			OP8A	+30	+35	14
tert-Butyl peroxypivalate	UN3119	≤27		≥73			OP8A	+30	+35	
tert-Butyl peroxypivalate	UN3119	≤27		≥73				+10	+15	10
tert-Butyl peroxypivalate	UN3119	≤27		≥73				-5	+5	14
tert-Butylperoxy stearylcarbonate	UN3106	≤100					OP7B			
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3105	>32 - 100					OP7A			
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3109	≤32	≥68				OP8A			10
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3119	≤32	≥68					+35	+40	14
3-Chloroperoxybenzoic acid	UN3102	>57 - 86			≥14		OP1B			
3-Chloroperoxybenzoic acid	UN3106	≤57			≥3	≥40	OP7B			
3-Chloroperoxybenzoic acid	UN3106	≤72			≥10	≥18	OP7B			
Cumyl hydroperoxide	UN3107	>90 - 98	≤10				OP8A			13
Cumyl hydroperoxide	UN3109	≤90	≥10				OP8A			14
Cumyl hydroperoxide	UN3109	≤90	≥10				OP8A			13, 15, 14
Cumyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	-10	0	
Cumyl peroxypivalate	UN3115	≤77		≥23			OP7A	-5	+5	
Cyclohexanone peroxide(s)	UN3104	≤91				≥9	OP6B			13
Cyclohexanone peroxide(s)	UN3105	≤72		≥28			OP7A			5
Cyclohexanone peroxide(s)	Exempt	≤32			≥68		Exempt			
Cyclohexanone peroxide(s) *as a paste*	UN3106	≤72					OP7B			5, 21
Diacetone alcohol peroxides	UN3115	≤57		≥26		≥8	OP7A	+40	+45	5
Diacetyl peroxide	UN3115	≤27		≥73			OP7A	+30	+25	8
Diacetyl peroxide	UN3115	≤27		≥73			OP7A	+20	+25	8, 13
Di-tert-amyl peroxide	UN3107	≤100					OP8A			
1,1-Di-(tert-amylperoxy)cyclohexane	UN3103	≤80	≥20				OP5A			
Dibenzoyl peroxide	UN3102	>51 - 100			≤48		OP2B			
Dibenzoyl peroxide	UN3102	>77 - 94				≥6	OP4B			3
Dibenzoyl peroxide	UN3104	≤77				≥23	OP6B			
Dibenzoyl peroxide	UN3106	>35 - 52			≥48		OP7B			
Dibenzoyl peroxide	UN3106	≤62			≥28	≥10	OP7B			
Dibenzoyl peroxide	UN3107	>36 - 42	≥18			≤40	OP8A			
Dibenzoyl peroxide	UN3107	>36 - 42	≥58				OP8A			
Dibenzoyl peroxide	Exempt	≤35			≥65		Exempt			
Dibenzoyl peroxide *as a paste*	UN3106	>52 - 62					OP7B			21
Dibenzoyl peroxide *as a paste*	UN3108	≤52					OP8B			21
Dibenzoyl peroxide *as a paste*	UN3108	≤56				≥15	OP8B			21
Dibenzoyl peroxide *as a paste*	Exempt	≤50				≥18	Exempt			21
Dibenzyl peroxydicarbonate	UN3112	≤87				≥13	OP5B	+25	+30	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate	UN3114	≤100					OP6B	+30	+35	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate	UN3114	≤100					OP6B	+30	+35	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate *as a stable dispersion in water*	UN3115	≤42					OP8A	+30	+35	10
Di-tert-butyl peroxide	UN3107	>32 - 100					OP8A			
Di-tert-butyl peroxide	UN3109	≤22		≥78			OP8A			14
Di-tert-butyl peroxide	UN3109	≤32	≥68				OP8A			14
Di-tert-butyl peroxyazelate	UN3105	≤52	≥48				OP7A			
2,2-Di-(tert-butylperoxy)butane	UN3103	≤52	≥48				OP5A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3101	>80 - 100					OP5A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3103	>52 - 80	≥20				OP5A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3105	≤52	≥48				OP7A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3106	≤42	≥13		≥45		OP7B			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3107	≤27	≥36				OP8A			22
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤13	≥13	≥74			OP8A			14
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤25	≥25	≥50			OP8A			14
Di-n-butyl peroxydicarbonate	UN3115	>27 - 52		≥48			OP7A	-15	-5	
Di-n-butyl peroxydicarbonate	UN3117	≤27		≥73			OP8A	-10	0	
Di-sec-butyl peroxydicarbonate	UN3113	>52 - 100					OP4A	-20	-10	

OR

Technical Name
(1)
Di-sec-butyl peroxydicarbonate
Di-(2-tert-butylperoxyisopropyl)benzene(s)
Di-(2-tert-butylperoxyisopropyl)benzene(s)
Di-(tert-butylperoxy)phthalate
Di-(tert-butylperoxy)phthalate
Di-(tert-butylperoxy)phthalate *as a paste*
2,2-Di-(tert-butylperoxy)propane
2,2-Di-(tert-butylperoxy)propane
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane
Dicetyl peroxydicarbonate
Dicetyl peroxydicarbonate *as a stable dispersion in water*
Di-4-chlorobenzoyl peroxide
Di-4-chlorobenzoyl peroxide
Di-4-chlorobenzoyl peroxide *as a paste*
Dicumyl peroxide
Dicumyl peroxide
Dicumyl peroxide
Dicyclohexyl peroxydicarbonate
Dicyclohexyl peroxydicarbonate
Didecanoyl peroxide
2,2-Di-(4,4-di(tert-butylperoxy)cyclohexyl)propane
Di-2,4-dichlorobenzoyl peroxide
Di-2,4-dichlorobenzoyl peroxide *as a paste with silicon oil*
Di-(2-ethylhexyl) peroxydicarbonate
Di-(2-ethylhexyl) peroxydicarbonate
Di-(2-ethylhexyl) peroxydicarbonate *as a stable dispersion in water*
Di-(2-ethylhexyl) peroxydicarbonate *as a stable dispersion in water (fro*
Diethyl peroxydicarbonate
2,2-Dihydroperoxypropane
Di-(1-hydroxycyclohexyl)peroxide
Diisobutyryl peroxide
Diisobutyryl peroxide
Di-isopropylbenzene dihydroperoxide
Diisopropyl peroxydicarbonate
Diisopropyl peroxydicarbonate
Diisotridecyl peroxydicarbonate
Dilauroyl peroxide
Dilauroyl peroxide *as a stable dispersion in water*
Di-(2-methylbenzoyl) peroxide
Di-(4-methylbenzoyl)peroxide *as a paste with silicon oil*
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane *as a paste*
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3
2,5-Dimethyl-2,5-di-(2-ethylhexanoylperoxy)hexane
2,5-Dimethyl-2,5-dihydroperoxyhexane
2,5-Dimethyl-2,5-di-(3,5,5-trimethylhexanoylperoxy)hexane
1,1-Dimethyl-3-hydroxybutylperoxyneoheptanoate
Dimyristyl peroxydicarbonate
Dimyristyl peroxydicarbonate *as a stable dispersion in water*
Dimyristyl peroxydicarbonate *as a stable dispersion in water*
Di-(2-neodecanoylperoxyisopropyl) benzene
Di-n-nonanoyl peroxide
Di-n-octanoyl peroxide
Diperoxy azelaic acid
Diperoxy dodecane diacid
Diperoxy dodecane diacid
Di-(2-phenoxyethyl)peroxydicarbonate
Di-(2-phenoxyethyl)peroxydicarbonate
Dipropionyl peroxide
Di-n-propyl peroxydicarbonate
Distearyl peroxydicarbonate
Disuccinic acid peroxide
Disuccinic acid peroxide
Disuccinic acid peroxide
Di-(3,5,5-trimethyl-1,2-dioxolanyl-3) peroxide *as a paste*

ORGANIC PEROXIDES TABLE—Continued

Technical Name (1)	ID Number (2)	Concentration (Mass %) (3)	Diluent (Mass %) A (4a)	Diluent (Mass %) B (4b)	Diluent (Mass %) I (4c)	Water (Mass %) (5)	Packing Method (6)	Temperature(°C) Control (7a)	Temperature(°C) Emergency (7b)	Notes (8)
Di-sec-butyl peroxydicarbonate	UN3115	≤ 52		≥ 48			OP7A	-15	-5	
Di-(2-tert-butylperoxyisopropyl)benzene(s)	UN3106	42 - 100			≤ 57		OP7B			1, 9
Di-(2-tert-butylperoxyisopropyl)benzene(s)	Exempt	≤ 42			≤ 58		Exempt			
Di-(tert-butylperoxy)phthalate	UN3105	42 - 52	≥ 48				OP7A			
Di-(tert-butylperoxy)phthalate	UN3107	≤ 42	≥ 58				OP8A			
Di-(tert-butylperoxy)phthalate *as a paste*	UN3106	≤ 52					OP7B			21
2,2-Di-(tert-butylperoxy)propane	UN3105	≤ 52	≥ 48				OP7A			
2,2-Di-(tert-butylperoxy)propane	UN3106	≤ 42	≥ 13		≤ 45		OP7B			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3101	>90 - 100					OP5A			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3103	>57 - 90	≥ 10				OP5A			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3106	≤ 57			≥ 43		OP7B			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3107	≤ 32	≥ 26	≥ 42			OP8A			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3107	≤ 57	≥ 43				OP8A			
Dicetyl peroxydicarbonate	UN3116	≥ 100					OP7B	+20	+25	
Dicetyl peroxydicarbonate *as a stable dispersion in water*	UN3119	≤ 42					OP8A	+30	+35	10
Di-4-chlorobenzoyl peroxide	UN3102	≤ 77				≥ 23	OP5B			
Di-4-chlorobenzoyl peroxide	Exempt	≤ 32			≥ 68		Exempt			
Di-4-chlorobenzoyl peroxide *as a paste*	UN3106	≤ 52					OP7B			21
Dicumyl peroxide	UN3109	≥ 42 - 100					OP8A			9, 14
Dicumyl peroxide	UN3110	≥ 42 - 100			≤ 57		OP8B			9, 11, 14
Dicumyl peroxide	Exempt	≤ 42			≥ 58		Exempt			
Dicyclohexyl peroxydicarbonate	UN3112	≥ 91 - 100					OP5B	+5	+10	
Dicyclohexyl peroxydicarbonate	UN3114	≤ 91				≥ 9	OP7B	+5	+10	
Didecanoyl peroxide	UN3114	≤ 100					OP7B	+30	+35	
2,2-Di-(4,4-di(tert-butylperoxy)cyclohexyl)propane	UN3106	≤ 42			≥ 58		OP7B			
Di-2,4-dichlorobenzoyl peroxide	UN3102	≤ 77				≥ 23	OP5B			
Di-2,4-dichlorobenzoyl peroxide *as a paste with silicon oil*	UN3106	≤ 52					OP7B			
Di-(2-ethylhexyl) peroxydicarbonate	UN3113	≥ 77 - 100					OP5A	-20	-10	
Di-(2-ethylhexyl) peroxydicarbonate	UN3115	≤ 77					OP7A	-15	-5	
Di-(2-ethylhexyl) peroxydicarbonate *as a stable dispersion in water*	UN3117	≤ 42					OP8A	-15	-5	
Di-(2-ethylhexyl) peroxydicarbonate *as a stable dispersion in water (frozen)*	UN3118	≤ 42					OP8B	-15	-5	
Diethyl peroxydicarbonate	UN3115	≤ 27		≥ 73			OP7A	-10	0	
2,2-Dihydroperoxypropane	UN3102	≤ 27			≥ 73		OP5B			
Di-(1-hydroxycyclohexyl)peroxide	UN3106	≤ 100					OP7B			
Diisobutyryl peroxide	UN3111	≥ 32 - 52		≥ 48			OP5A	-20	-10	
Diisobutyryl peroxide	UN3115	≤ 32		≥ 68			OP7A	-20	-10	
Di-isopropylbenzene dihydroperoxide	UN3106	≤ 82	≥ 5			≥ 5	OP7B			17
Diisopropyl peroxydicarbonate	UN3112	≥ 52 - 100					OP5B	-15	-5	
Diisopropyl peroxydicarbonate	UN3115	≤ 52		≥ 48			OP7A	-10	0	
Diisotridecyl peroxydicarbonate	UN3115	≤ 100					OP7A	-10	0	
Dilauroyl peroxide	UN3106	≤ 100					OP7B			
Dilauroyl peroxide *as a stable dispersion in water*	UN3109	≥ 42					OP8A			10
Di-(2-methylbenzoyl) peroxide	UN3112	≤ 87				≥ 13	OP5B	+30	+35	
Di-(4-methylbenzoyl)peroxide *as a paste with silicon oil*	UN3106	≤ 52					OP7B			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3102	≥ 82 - 100					OP5B			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3104	≤ 82				≥ 18	OP5B			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3106	≤ 82			≥ 18		OP7B			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3105	>52 - 100					OP7A			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3106	≤ 70			≥ 30		OP7B			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3109	≤ 52	≥ 48				OP8A			14
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3109	≤ 52	≥ 48				OP8A			14
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane *as a paste*	UN3108	≤ 47					OP7B			
2,5-Dimethyl-2,5-di-(tert-bufylperoxy)hexyne-3	UN3103	>52 - 100					OP5A			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3	UN3106	≤ 52			≥ 48		OP7B			
2,5-Dimethyl-2,5-di-(2-ethylhexanoylperoxy)hexane	UN3115	≤ 100					OP7A	+20	+25	
2,5-Dimethyl-2,5-dihydroperoxyhexane	UN3104	≤ 82				≥ 18	OP8B			
2,5-Dimethyl-2,5-di-(3,5,5-trimethylhexanoylperoxy)hexane	UN3105	≤ 77	≥ 23				OP7A			
1,1-Dimethyl-3-hydroxybutylperoxyneoheptanoate	UN3117	≤ 52		≥ 48			OP8A	+0	+10	
Dimyristyl peroxydicarbonate	UN3116	≤ 100					OP7B	+20	+25	
Dimyristyl peroxydicarbonate *as a stable dispersion in water*	UN3119	≤ 42					OP8A	+20	+25	
Dimyristyl peroxydicarbonate *as a stable dispersion in water*	UN3119	≤ 42						+15	+25	10
Di-(2-neodecanoylperoxyisopropyl) benzene	UN3115	≤ 52	≥ 48				OP7A	-10	0	
Di-n-nonanoyl peroxide	UN3116	≤ 100					OP7B		+10	
Di-n-octanoyl peroxide	UN3114	≤ 100					OP5B	+10	+15	
Diperoxy azelaic acid	UN3116	≤ 27			≥ 73		OP7B	+35	+40	
Diperoxy dodecane diacid	UN3116	>13 - 42			≥ 58		OP7B	+40	+45	
Diperoxy dodecane diacid	Exempt	≤ 13			≥ 87		Exempt			
Di-(2-phenoxyethyl)peroxydicarbonate	UN3102	>85 - 100					OP5B			
Di-(2-phenoxyethyl)peroxydicarbonate	UN3106	≤ 85				≥ 15	OP7B			
Dipropionyl peroxide	UN3117	≤ 27		≥ 73			OP8A	+15	+20	
Di-n-propyl peroxydicarbonate	UN3113	≤ 100					OP4A	-25	-15	
Distearyl peroxydicarbonate	UN3106	≤ 87			≥ 13		OP7B			
Disuccinic acid peroxide	UN3102	>72, ≤ 100					OP4B			18
Disuccinic acid peroxide	UN3102	>72 - 100					OP4B			18
Disuccinic acid peroxide	UN3116	≤ 72				≥ 28	OP7B	+10	+15	18
Di-(3,5,5-trimethyl-1,2-dioxolanyl-3) peroxide *as a paste*	UN3116	≤ 52					OP7B	+30	+35	21

ORGANIC PEROXIDES TABLE—Continued

Technical Name (1)	ID Number (2)	Concentration (Mass %) (3)	Diluent (Mass %) A (4a)	Diluent (Mass %) B (4b)	Diluent (Mass %) † (4c)	Water (Mass %) (5)	Packing Method (6)	Temperature(°C) Control (7a)	Temperature(°C) Emergency (7b)	Notes (8)
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3115	>38 - 82	≥18				OP7A	D	+10	
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62				OP8A	+20	+25	
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62					+10	+15	10
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62					-10	0	14
Di-(3,5,5-trimethylhexanoyl)peroxide *as a stable dispersion in water*	UN3117	≤52					OP8A	+10	+15	
Ethyl 3,3-di-(tert-amylperoxy)butyrate	UN3105	≤67	≥33				OP7A			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3103	>77 - 100					OP5A			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3105	≤77	≥23				OP7A			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3106	≤52			≥48		OP7B			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane	UN3102	>52 - 100					OP4B			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane	UN3105	≤52	≥48				OP7A			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane	UN3106	≤52			≥48		OP7B			
Isopropylcumyl hydroperoxide	UN3109	≤72	≥28				OP8A			14
Isopropylcumyl hydroperoxide	UN3109	≤72	≥28				OP8A			13, 14
p-Menthyl hydroperoxide	UN3105	56 - 100					OP7A			13
p-Menthyl hydroperoxide	UN3109	≤55	≥45				OP8A			14
p-Menthyl hydroperoxide	UN3109	< 56	>44				OP8A			14
Methylcyclohexanone peroxide(s)	UN3115	≤67		≥33			OP7A	+35	+40	
Methyl ethyl ketone peroxide(s)	UN3101	≤52	≥48				OP5A			5, 13
Methyl ethyl ketone peroxide(s)	UN3105	≤45	≥55				OP7A			5
Methyl ethyl ketone peroxide(s)	UN3107	≤40	≥60				OP8A			5
Methyl isobutyl ketone peroxide(s)	UN3105	≤62	≥19				OP7A			5, 23
Organic peroxide, liquid, sample, temperature controlled	UN3113						OP2A			12
Organic peroxide, solid, sample	UN3104						OP2B			12
Organic peroxide, solid, sample, temperature controlled	UN3114						OP2B			12
Peracetic acid with 20% hydrogen peroxide	Exempt	≤5				≥60	Exempt			
Peracetic acid with 7% hydrogen peroxide	UN3107	≤36				≥15	OP8A			
Peroxyacetic acid, type D, stabilized	UN3105	≤43					OP7A			13, 20
Peroxyacetic acid, type E, stabilized	UN3107	≤43					OP8A			13, 20
Peroxyacetic acid, type F, stabilized	UN3109	≤43					OP8A			13, 20
Pinanyl hydroperoxide	UN3105	56 - 100					OP7A			13
Pinanyl hydroperoxide	UN3109	≤55	≥45				OP8A			14
Pinanyl hydroperoxide	UN3109	< 56	>44				OP8A			14
Tetrahydronaphthyl hydroperoxide	UN3106	≤100					OP7B			
1,1,3,3-Tetramethylbutyl hydroperoxide	UN3105	≤100					OP7A			
1,1,3,3-Tetramethylbutylperoxy-2-ethylhexanoate	UN3115	≤100					OP7A	+20	+25	
2,4,4-Trimethylpentyl-2-peroxyneodecanoate	UN3115	≤72		≥28			OP7A	-5	+5	
2,4,4-Trimethylpentyl-2-peroxy phenoxyacetate	UN3115	≤37		≥63			OP7A	-10	0	

1. For domestic shipments, OP8A is authorized.
2. Available oxygen must be <4.7 percent.
3. For concentrations <80 percent OP5B is allowed. For concentrations 80 percent but <85 percent, OP4B is allowed. For concentrations ≥85 percent, maximum package size is OP2B.
4. The diluent may be replaced by di-tert-butyl peroxide.
5. Available oxygen must be percent.
6. For domestic shipments, OP5A is authorized.
7. [Reserved]
8. Only non-metallic packagings are authorized.
9. For domestic shipments, this material may be transported in bulk packagings under the provisions of §173.225(e)(3)(c)(ii).
10. This material may be transported in intermediate bulk containers under the provisions of §173.225(e).
11. Up to 2000 kg per container authorized.
12. Samples may only be offered for transportation when all available data indicate that the sample is no more dangerous than an Organic Peroxide type C, and the sample is packaged using packaging method OP2A for liquids or OP2B for solids, as appropriate, in quantities less than 10 kg per shipment, employing any necessary temperature controls.
13. "Corrosive" subsidiary risk label is required.
14. This material may be transported in bulk packagings under the provisions of §173.225(e).
15. No "Corrosive" subsidiary risk label is required for concentrations below 80%.
16. With <8% di-tert-butyl peroxide.
17. With <= 8% 1-isopropylhydroperoxy-4-isopropylhydroxybenzene.
18. Addition of water to this organic peroxide will decrease its thermal stability.
19. [Reserved]
20. Mixtures with hydrogen peroxide, water and acid(s).
21. With diluent type A, with or without water.
22. With <36 percent, by mass, ethylbenzene.
23. With >19 percent, by mass, methyl isobutyl ketone.

(c) * * *

(5) *Mixtures.* Mixtures of organic peroxides individually identified in the Organic Peroxides Table in paragraph (b) of this section may be classified as the same type of organic peroxide as that of the most dangerous component and be transported under the conditions for transportation given for this type. If the stable components form a thermally less stable mixture, the SADT of the mixture must be determined and the new control and emergency temperature derived under the provisions of § 173.21(f).

* * * * *

§ 173.226 [Amended]

73a. In § 173.226(c)(1), the wording "4A1 or 4A2" and "4B1 or 4B2" would be removed and the wording "4A" or "4B", respectively, would be added in its place.

§ 173.304 [Amended]

74. In § 173.304, in the paragraph (a)(2) table, for the entry "Carbon dioxide", in Column 3, "DOT–311800" would be removed and replaced with "DOT–3T1800".

75. In § 173.306, paragraph (a)(3)(v) would be revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

(a) * * *

(3) * * *

(v) Each container must be subjected to a test performed in a hot water bath; the temperature of the bath and the duration of the test must be such that the internal pressure reaches that which would be reached at 55 °C (131 °F) (50 °C) (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F). If the contents are sensitive to heat or if the containers are made of plastics material which softens at this test temperature, the temperature of the bath must be set at between 20 °C (68 °F) and 30 °C (86 °F) but, in addition, one container in 2000 must be tested at the higher temperature. No leakage or permanent deformation of a container may occur, except that a plastic container may be deformed through softening provided that it does not leak.

* * * * *

Appendix A to Part 173 [Removed]

76. Appendix A to part 173 would be removed and reserved.

77. In Appendix E to part 173, paragraph 2.b.(4) would be redesignated 2.b.(5) and a new 2.b.(4) would be added to read as follows:

Appendix E to Part 173—Guidelines for the Classification and Packing Group Assignment of Class 4 Materials

* * * * *

2. * * *

b. * * *

(4) A self-reactive material shall be regarded as possessing explosive properties when, in laboratory testing, the formulation is liable to detonate, to deflagrate rapidly or show a violent effect when heated under confinement.

* * * * *

Appendix E to Part 173 [Amended]

78. In addition, in Appendix E to part 173, in paragraph 2.c.(3)(B), the wording "Powders of metals or metal alloys are classified when they can be ignited" would be revised to read "Powders of metals or metal alloys are classified in Division 4.1 when they can be ignited".

Appendix F to Part 173 [Amended]

79. In Appendix F to part 173, in paragraph 1., the phrase "Division 4.1" would be removed and replaced with "Division 5.1".

80. Appendix H would be added to part 173 to read as follows:

Appendix H to Part 173—Method of Testing for Sustained Combustibility

1. *Method.* The method describes a procedure for determining if the material when heated under the test conditions and exposed to an external source of flame applied in a standard manner sustains combustion.

2. *Principle of the method.* A metal block with a concave depression (test portion well) is heated to a specified temperature. A specified volume of the material under test is transferred to the well and its ability to sustain combustion is noted after application

°C) (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F). If the contents are sensitive to heat or if the containers are made of plastics material which softens at this test temperature, the temperature of the bath must be set at between 20 °C (68 °F) and 30 °C (86 °F) but, in addition, one container in 2000 must be tested at the higher temperature. No leakage or permanent deformation of a container may occur, except that a plastic container may be deformed through softening provided that it does not leak.

* * * * *

Appendix A to Part 173 [Removed]

76. Appendix A to part 173 would be removed and reserved.

77. In Appendix E to part 173, paragraph 2.b.(4) would be redesignated 2.b.(5) and a new 2.b.(4) would be added to read as follows:

Appendix E to Part 173—Guidelines for the Classification and Packing Group Assignment of Class 4 Materials

* * * * *

2. * * *

b. * * *

(4) A self-reactive material shall be regarded as possessing explosive properties when, in laboratory testing, the formulation is liable to detonate, to deflagrate rapidly or show a violent effect when heated under confinement.

* * * * *

Appendix E to Part 173 [Amended]

78. In addition, in Appendix E to part 173, in paragraph 2.c.(3)(B), the wording "Powders of metals or metal alloys are classified when they can be ignited" would be revised to read "Powders of metals or metal alloys are classified in Division 4.1 when they can be ignited".

Appendix F to Part 173 [Amended]

79. In Appendix F to part 173, in paragraph 1., the phrase "Division 4.1" would be removed and replaced with "Division 5.1".

80. Appendix H would be added to part 173 to read as follows:

Appendix H to Part 173—Method of Testing for Sustained Combustibility

1. *Method.* The method describes a procedure for determining if the material when heated under the test conditions and exposed to an external source of flame applied in a standard manner sustains combustion.

2. *Principle of the method.* A metal block with a concave depression (test portion well) is heated to a specified temperature. A specified volume of the material under test is transferred to the well and its ability to sustain combustion is noted after application and subsequent removal of a standard flame under specified conditions.

3. *Apparatus.* A combustibility tester consisting of a block of aluminum alloy or other corrosion-resistant metal of high thermal conductivity is used. The block has a concave well and a pocket drilled to take a thermometer. A small gas jet assembly on a swivel is attached to the block. The handle and gas inlet for the gas jet may be fitted at any convenient angle to the gas jet. A suitable apparatus is shown in Figure 5.1 of the UN Recommendations and the essential dimensions are given in Figures 5.1 and 5.2 of the UN Recommendations. The following equipment is needed:

(a) *Gauge,* for checking that the height of the center of the gas jet above the top of the test portion well is 2.2 mm (see Figure 5.1);

(b) *Thermometer,* mercury in glass, for horizontal operation, with a sensitivity not less than 1 mm/°C, or other measuring device of equivalent sensitivity permitting reading at 0.5 °C intervals. When in position in the block, the thermometer bulb must be surrounded with thermally conducting thermoplastic compound;

(c) *Hotplate,* fitted with a temperature-control device. (Other types of apparatus with suitable temperature-control facilities may be employed to heat the metal block);

(d) *Stopwatch,* or other suitable timing device;

(e) *Syringe,* capable of delivering 2 ml to an accuracy of ± 0.1 ml; and

(f) *Fuel source,* butane test fuel.

4. *Sampling.* The sample must be representative of the material to be tested and must be supplied and kept in a tightly closed container prior to test. Because of the possibility of loss of volatile constituents, the sample must receive only the minimum treatment necessary to ensure its homogeneity. After removing each test portion, the sample container must be immediately closed tightly to ensure that no volatile components escape from the container; if this closure is incomplete, an entirely new sample must be taken.

5. *Procedure.* Carry out the determination in triplicate.

WARNING—Do not carry out the test in a small confined area (for example a glove box), because of the hazard of explosions.

(a) It is essential that the apparatus be set up in a completely draft-free area (see warning) and in the absence of strong light to facilitate observation of flash, flame, etc.

(b) Place the metal block on the hotplate or heat the metal block by other suitable means so that its temperature, as indicated by the thermometer placed in the metal block, is maintained at the specified temperature within a tolerance of ± 1 °C. The test temperature is 60.5 °C or 75 °C, (see (h)). Correct this temperature for the difference in barometric pressure from the standard atmospheric pressure (101.3 kPa) by raising the test temperature for a higher pressure or lowering the test temperature for a lower pressure by 1.0 °C for each 4 kPa difference. Ensure that the top of the metal block is exactly horizontal. Use the gauge to check that the jet is 2.2 mm above the top of the well when in the test position.

(c) Light the butane test fuel with the jet away from the test position (i.e. in the "off" position, away from the well). Adjust the size of the flame so that it is 8 mm to 9 mm high and approximately 5 mm wide.

(d) Using the syringe, take from the sample container at least 2 ml of the sample and rapidly transfer a test portion of 2 ml ± 0.1 ml to the well of the combustibility tester and immediately start the timing device.

(e) After a heating time of 60 seconds (s), by which time the test portion is deemed to have reached its equilibrium temperature, and if the test fluid has not ignited, swing the test flame into the test position over the edge of the pool of liquid. Maintain it in this position for 15 s and then return it to the "off" position while observing the behavior of the test portion. The test flame must remain lighted throughout the test.

(f) For each test observe and record:

(i) whether there is ignition and sustained combustion or flashing, or neither, of the test portion before the test flame is moved into the test position;

(ii) whether the test portion ignites while the test flame is in the test position, and, if so, how long combustion is sustained after the test flame is returned to the "off" position.

(g) If sustained combustion interpreted in accordance with paragraph 6. of this appendix is not found, repeat the complete procedure with new test portions, but with a heating time of 30 s.

(h) If sustained combustion interpreted in accordance with paragraph 6. of this appendix is not found at a test temperature of 60.5 °C (141 °F), repeat the complete procedure with new test portions, but at a test temperature of 75 °C (167 °F).

6. *Interpretation of observations.*

The material must be assessed either as not sustaining combustion or as sustaining combustion. Sustained combustion must be reported at either of the heating times if one of the following occurs with either of the test portions:

(a) When the test flame is in the "off" position, the test portion ignites and sustains combustion;

(b) The test portion ignites while the test flame is in the test position for 15 s, and sustains combustion for more than 15 s after the test flame has been returned to the "off" position.

Note: Intermittent flashing may not be interpreted as sustained combustion. Normally, at the end of 15 s, the combustion has either clearly ceased or continues. In cases of doubt, the material must be deemed to sustain combustion.

§§ 173.201, 173.202, 173.203, 173.211, 173.212, 173.213, 173.226 [Amended]

81. In addition to the amendments set forth above, part 173 would be amended by removing the wording "4A1 or 4A2" and inserting in its place "4A" each place it appears; removing the wording "4B1 or 4B2" and inserting in its place "4B" each place it appears; and by removing the wording "6HH" and inserting in its place "6HH1" each place it appears in the following sections:

a. Section 173.201 (b) and (c);

b. Section 173.202 (b) and (c);

c. Section 173.203 (b) and (c);
d. Section 173.211 (b) and (c);
e. Section 173.212 (b) and (c); and
f. Section 173.213 (b) and (c).

PART 175—CARRIAGE BY AIRCRAFT

82. The authority citation for part 175 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808; 49 CFR part 1.

83. In § 175.10, paragraphs (a)(4) introductory text and (a)(13) would be revised, paragraph (a)(17) would be removed and reserved, and a new paragraph (a)(26) would be added to read as follows:

§ 175.10 Exceptions.

(a) * * *

(4) Non-radioactive medicinal and toilet articles carried by a crew member or passenger in checked or carry-on baggage, and non-flammable and non-toxic aerosols, with no subsidiary risk, for sporting or home use, when carried in checked baggage only, when:

* * * * *

(13) Carbon dioxide, solid (dry ice) when:

(i) In quantities not exceeding 2.3 kg (5.07 pounds) per package packed as prescribed by § 173.217 of this subchapter and used as a refrigerant for the contents of the package. The package must be marked with the name of the contents being cooled, the net weight of the dry ice or an indication that the net weight is 2.3 kg (5.07 pounds) or less, and also marked "Carbon Dioxide, Solid" or "Dry Ice";

(ii) Intended for use in food and beverage service aboard aircraft; or

(iii) In quantities not exceeding 2 kg (4.4 pounds) per passenger when used to pack perishables in carry-on baggage provided the package permits the release of carbon dioxide gas.

* * * * *

(26) A small medical or clinical mercury thermometer for personal use, when carried in protective cases by passengers or crew members.

§ 175.10 [Amended]

84. In addition, in § 175.10, in paragraph (a)(12) introductory text, the wording "environmental restoration or protection," would be added immediately following "weather control," and immediately preceding "forest preservation".

85. In § 175.33, a new sentence would be added in paragraph (a)(1) introductory text after the first sentence, and a new paragraph (a)(9) would be added to read as follows:

§ 175.33 Notification of pilot-in-command.

(a) * * *

(1) * * * In the case of Class 1 material, the compatibility group letter also must be shown. * * *

* * * * *

(9) The air waybill number (when issued).

* * * * *

§ 175.33 [Amended]

86. In addition, in § 175.33, in paragraph (a)(6), the word "and" at the end of the sentence would be removed; in paragraph (a)(7), the period at the end of the sentence would be removed and replaced with a semicolon; and in paragraph (a)(8), the period at the end of the sentence would be removed and replaced with "; and".

PART 176—CARRIAGE BY VESSEL

87. The authority citation for part 176 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1.

88. A new paragraph (c) would be added in § 176.27 to read as follows:

§ 176.27 Certificate.

* * * * *

(c) (1) A person responsible for packing or loading a freight container or transport vehicle containing hazardous materials for transportation by a manned vessel in ocean or coastwise service, must provide the vessel operator with a signed container packing certificate stating, at a minimum, that—

(i) The freight container or transport unit is serviceable for the materials loaded therein, contains no incompatible goods, and is properly marked, labeled or placarded, as applicable; and

(ii) When the freight container or transport unit contains packages, those packages have been inspected prior to loading, are properly marked, labeled or placarded, as applicable; are not damaged; and are properly secured.

(2) The certificate may be either on a separate document or be provided on the certificate required in § 172.204 of this subchapter.

89. In § 176.76, a new paragraph (i) would be added to read as follows:

§ 176.76 Transport vehicles, freight containers, and portable tanks containing hazardous materials.

* * * * *

(i) A fumigated transport unit may only be transported on board a vessel subject to the following conditions and limitations:

(1) The fumigated transport unit may be placed on board a vessel only if at least 24 hours have elapsed since the unit was last fumigated;

(2) The fumigated transport unit is accompanied by a document showing the date of fumigation and the type and amount of fumigant used;

(3) Prior to loading, the master is informed of the intended placement of the fumigated transport unit on board the vessel and the information provided on the accompanying document;

(4) Equipment that is capable of detecting the fumigant and instructions for the equipment's use is provided on the vessel;

(5) The fumigated transport unit must be stowed at least five meters from any opening to accommodation spaces;

(6) Fumigated transport units may only be transported on deck on vessels carrying more than 25 passengers; and

(7) Fumigants may not be added to transport units while on board a vessel.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

90. The authority citation for part 177 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

§ 177.841 [Amended]

91. In § 177.841, in paragraph (e)(3), the wording "is separated as required in § 177.848(e)(3) for classes identified with the letter 'O' in the Segregation Table for Hazardous Materials." would be revised to read "is separated in a manner that, in the event of leakage from packages under conditions normally incident to transportation, commingling of hazardous materials with foodstuffs, feed, or any other edible material would not occur."

PART 178—SPECIFICATIONS FOR PACKAGINGS

92. The authority citation for part 178 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

93. In § 178.2, paragraph (a) would be revised and paragraph (e) would be added to read as follows:

§ 178.2 Applicability and responsibility.

(a) *Applicability.* (1) The requirements of this part apply to packagings manufactured—

(i) To a DOT specification, regardless of country of manufacture; or

(ii) To a UN standard, for packagings manufactured within the United States. For UN standard packagings manufactured outside the United States, see § 173.24(d)(2) of this subchapter. For UN standard packagings for which standards are not prescribed in this part, see § 178.3(b).

(2) A manufacturer of a packaging subject to the requirements of this part is primarily responsible for compliance with the requirements of this part. However, any person who performs a function prescribed in this part shall perform that function in accordance with this part.

* * * * *

(e) *Definitions.* For the purpose of this part—

Manufacturer means the person whose name and address or symbol appears as part of the specification markings required by this part or, for a packaging marked with the symbol of an approval agency, the person on whose behalf the approval agency certifies the packaging.

Specification markings mean the packaging identification markings required by this part including, where applicable, the name and address or symbol of the packaging manufacturer or approval agency.

94. In § 178.3, paragraph (a) introductory text, the first sentence of paragraph (a)(2) and paragraph (b) would be revised, a sentence would be added at the end of paragraph (a)(4) and a new paragraph (a)(5) would be added, to read as follows:

§ 178.3 Marking of packagings.

(a) Each packaging manufactured to a DOT specification or a UN standard must be marked with specification markings conforming to the applicable specification, and with the following:

(1) * * *

(2) Unless otherwise specified in this part, with the name and address or symbol of the packaging manufacturer or, where specifically authorized, the symbol of the approval agency certifying compliance with a UN standard. * * *

* * * * *

(4) * * * For packagings having a capacity of 5 L (1 gallon) or 5 kg (11 pounds) or less, letters and numerals must be of an appropriate size.

(5) For packages with a gross mass of more than 30 kg (66 pounds), the markings or a duplicate thereof must appear on the top or on a side of the packaging.

(b) A UN standard packaging for which the UN standard is set forth in this part may be marked with the United Nations symbol and other specification markings only if it fully conforms to the requirements of this part. A UN standard packaging for which the UN standard is not set forth in this part may be marked with the United Nations symbol and other specification markings for that standard as provided in the ICAO Technical Instructions or Annex 1

(2) A manufacturer of a packaging subject to the requirements of this part is primarily responsible for compliance with the requirements of this part. However, any person who performs a function prescribed in this part shall perform that function in accordance with this part.

* * * * *

(e) *Definitions.* For the purpose of this part—

Manufacturer means the person whose name and address or symbol appears as part of the specification markings required by this part or, for a packaging marked with the symbol of an approval agency, the person on whose behalf the approval agency certifies the packaging.

Specification markings mean the packaging identification markings required by this part including, where applicable, the name and address or symbol of the packaging manufacturer or approval agency.

94. In § 178.3, paragraph (a) introductory text, the first sentence of paragraph (a)(2) and paragraph (b) would be revised, a sentence would be added at the end of paragraph (a)(4) and a new paragraph (a)(5) would be added, to read as follows:

§ 178.3 Marking of packagings.

(a) Each packaging manufactured to a DOT specification or a UN standard must be marked with specification markings conforming to the applicable specification, and with the following:

(1) * * *

(2) Unless otherwise specified in this part, with the name and address or symbol of the packaging manufacturer or, where specifically authorized, the symbol of the approval agency certifying compliance with a UN standard. * * *

* * * * *

(4) * * * For packagings having a capacity of 5 L (1 gallon) or 5 kg (11 pounds) or less, letters and numerals must be of an appropriate size.

(5) For packages with a gross mass of more than 30 kg (66 pounds), the markings or a duplicate thereof must appear on the top or on a side of the packaging.

(b) A UN standard packaging for which the UN standard is set forth in this part may be marked with the United Nations symbol and other specification markings only if it fully conforms to the requirements of this part. A UN standard packaging for which the UN standard is not set forth in this part may be marked with the United Nations symbol and other specification markings for that standard as provided in the ICAO Technical Instructions or Annex 1 of the IMDG Code subject to the following conditions:

(1) The U.S. manufacturer must establish that the packaging conforms to the applicable provisions of the ICAO Technical Instructions or Annex 1 of the IMDG Code, respectively.

(2) If an indication of the name of the manufacturer or other identification of the packaging as specified by the competent authority is required, the name and address or symbol of the manufacturer must be entered. Symbols, if used, must be registered with the Associate Administrator for Hazardous Materials Safety.

(3) The letters "USA" shall be used to indicate the State authorizing the allocation of the specification marks if manufactured in the United States.

* * * * *

§ 178.502 [Amended]

95. In § 178.502, the following changes would be made:

a. In the paragraph (a) introductory text, the wording "types" would be revised to read "kinds".

b. In the paragraph (a)(1) introductory text and the first sentence in paragraph (a)(3), the wording "type" would be revised to read "kind".

96. In § 178.503, paragraph (d) would be redesignated paragraph (e); new paragraphs (a)(11) and (d) would be added; paragraph (a) introductory text, paragraph (a)(9), and paragraph (a)(10) would be revised; and newly designated paragraph (e)(3) would be amended by revising the illustration, to read as follows:

§ 178.503 Marking of packagings.

(a) The manufacturer must mark every packaging that is required to meet a UN standard with the marks specified in this section. The markings must be legible and placed in a location and of such a size relative to the packaging as to be readily visible, as specified in § 178.3(a). For packages with a gross mass of more than 30 kg (66 pounds), the markings or a duplicate thereof must appear on the top or on a side of the packaging. Except as otherwise provided in this section, every reusable packaging liable to undergo a reconditioning process which might obliterate the packaging marks must bear the marks specified in paragraphs (a)(1) through (a)(6) and (a)(9) of this section in a permanent form (e.g. embossed) able to withstand the reconditioning process. A marking may be applied in a single line or in multiple lines provided the correct sequence is respected. As illustrated by the examples in paragraph (e) of this section, the following information must be presented in the correct sequence. Slash marks should be used to separate this information. A packaging conforming to a UN standard must be marked as follows:

* * * * *

(9) For metal or plastic drums or jerricans intended for reuse or reconditioning as single packagings or the outer packagings of a composite packaging, the thickness of the packaging material, expressed in millimeters, as follows:

(i) Metal drums or jerricans must be marked with the nominal thickness of the metal used in the body. The marked nominal thickness must not exceed the minimum thickness of the steel used by more than the thickness tolerance stated in ISO Standard 3574. The unit of measure is not required to be marked. When the nominal thickness of either head of a metal drum is thinner than that of the body, the nominal thickness of the top head, body, and bottom head must be marked (eg., "1.0–1.2–1.0" or "0.9–1.0–1.0").

(ii) Plastic drums or jerricans must be marked with the minimum thickness (in mm, rounded to the nearest 0.1 mm) of the packaging material. Minimum thicknesses of plastic must be as determined in accordance with § 173.28(b)(4). The unit of measure is not required to be marked.

(10) In addition to the markings prescribed in paragraphs (a)(1) through (a)(9) of this section, every new metal or plastic drum having a capacity greater than 100 L and intended for reuse or reconditioning as a single packaging or the outer packaging of a composite packaging, must bear the marks described in paragraphs (a)(1) through (a)(6), and (a)(9) of this section, in a permanent form, on the bottom. For these packagings, the markings on the top head or side of the packaging need not be applied in a permanent form and need not include the thickness mark described in paragraph (a)(9) of this section. This marking describes a drum's characteristics at the time it was manufactured and must be consistent with the original manufacturer's UN marking on the top head or side. Subsequent remanufacture may render some of the information provided in this bottom mark to be invalid (e.g., a 1A1 drum may be remanufactured into a 1A2 drum). This marking should not be used to evaluate compliance with § 173.24 of this subchapter.

(11) Rated capacity of the packaging expressed in liters may be marked.

* * * * *

(d) When, after reconditioning, the markings required by paragraph (a)(1)

through (a)(6) of this section no longer appear on the top head or the side of the metal drum, the reconditioner must apply them in a durable form followed by the markings in paragraph (c) of this section. These markings may identify a different performance capability than that for which the original design type had been tested and marked, but may not identify a greater performance capability. The markings applied in accordance with this paragraph may be different from those which are permanently marked on the bottom of a drum in accordance with paragraph (a)(10) of this section.

(e) * * *

(3) * * *

BILLING CODE 4910-60-P

IA1/Y1.4/150/92
USA/RB/10-93 RL

BILLING CODE 4910-60-C

* * * * *

§ 178.503 [Amended]

97. In addition, in § 178.503, the reference "§ 178.503(a)(1) through (a)(10)" following the illustration would be revised to read "§ 178.503(a)(1) through (a)(9)".

§ 178.508 [Amended]

98. In § 178.508, in paragraph (a)(2), the wording "plywood or plastic material" would be revised to read "plywood, plastics, or other suitable material".

99. In § 178.512, paragraphs (a)(3) and (a)(4) would be removed and paragraphs (a)(1), (a)(2), and (b)(2) would be revised to read as follows:

§ 178.512 Standards for steel or aluminum boxes.

(a) * * *

(1) 4A for a steel box; and

(2) 4B for an aluminum box.

(b) * * *

(2) Boxes must be lined with fiberboard or felt packing pieces or must have an inner liner or coating of suitable material in accordance with subpart C of part 173 of this subchapter. If a double seamed metal liner is used, steps must be taken to prevent the ingress of materials, particularly explosives, into the recesses of the seams.

* * * * *

100. In § 178.513, paragraphs (b)(2) and (b)(3) would be redesignated (b)(3) and (b)(4), respectively, and a new paragraph (b)(2) would be added to read as follows:

§ 178.513 Standards for boxes of natural wood.

* * * * *

(b) * * *

(2) Fastenings must be resistant to vibration experienced under normal conditions of transportation. End grain nailing must be avoided whenever practicable. Joints which are likely to be highly stressed must be made using clenched or annular ring nails or equivalent fastenings.

* * * * *

§ 178.516 [Amended]

101. In § 178.516, the following changes would be made:

a. In paragraph (b)(1), at the end of the second sentence, the wording "ISO International Standard 535–1976(E)" would be revised to read "ISO International Standard 535–1991(E)".

b. In paragraph (b)(2), at the end of the first sentence, the wording "of wood." would be revised to read "of wood or other suitable material."; and in the second sentence the wording "or other suitable material" would be added immediately following the word "battens".

c. Paragraphs (b)(4) and (b)(5) would be redesignated as paragraphs (b)(5) and (b)(6) and paragraph (b)(3)(iii) would be redesignated as paragraph (b)(4).

§ 178.521 [Amended]

102. In § 178.521, in paragraph (b)(2), in the penultimate sentence, the wording "water-resistant ply or barrier must also be placed" would be revised to read "waterproof ply or barrier, such as double-tarred kraft paper, plastics-coated kraft paper, plastics film bonded to the inner surface of the bag, or one or more inner plastics liners, must also be placed".

103. In § 178.522, paragraphs (a)(10) and (b)(3)(viii) would be revised and paragraphs (a)(11) and (b)(3)(ix) would be added to read as follows:

§ 178.522 Standards for composite packagings with inner plastic receptacles.

(a) * * *

(10) 6HH1 for a plastic receptacle within a protective plastic drum; and

(11) 6HH2 for a plastic receptacle within a protective plastic box.

(b) * * *

(3) * * *

(viii) 6HH1: Protective packaging must conform to the requirements for plastic drums, in § 178.509(b).

(ix) 6HH2: Protective packaging must conform to the requirements for plastic boxes, in § 178.517(b).

* * * * *

§ 178.522 [Amended]

104. In addition, in § 178.522, the following changes would be made;

a. In paragraph (a)(9), the word "and" at the end of the paragraph would be removed.

b. In paragraph (b)(4), the wording "6HH" would be revised to read "6HH1"; and the wording ", 6HH2" would be added immediately following "6HG2".

c. In paragraph (b)(5), the wording "6HH" would be revised to read "6HH1", and the wording ", 6HH2" would be added immediately following "6HG2".

105. In § 178.601, paragraph (k) would be redesignated as paragraph (l) and revised, a new paragraph (k) would be added, and paragraphs (b), (g)(2)(i), and (g)(2)(vi) would be revised to read as follows:

§ 178.601 General requirements.

* * * * *

(b) *Responsibility.* It is the responsibility of the packaging manufacturer to assure that each package is capable of passing the prescribed tests. To the extent that a package assembly function, including final closure, is performed by the person who offers a hazardous material for transportation, that person is responsible for performing the function in accordance with §§ 173.22 and 178.2 of this subchapter.

* * * * *

(g) * * *

(2) * * *

(i) The outer packaging must have been successfully tested in accordance with § 178.603 with fragile (e.g. glass) inner packagings containing liquids at the Packing Group I drop height;

* * * * *

(vi) When the outer packaging is intended to contain inner packagings for liquids and is not leakproof, or is intended to contain inner packagings for solids and is not siftproof, a means of containing any liquid or solid contents in the event of leakage must be provided in the form of a leakproof liner, plastic bag, or other equally efficient means of containment. For packagings containing liquids, the absorbent material required in paragraph (g)(2)(v) of this section must be placed inside the means of containing liquid contents; and

* * * * *

(k) *Number of test samples.* Provided the validity of the test results is not affected and with the approval of the Associate Administrator for Hazardous Materials Safety, several tests may be performed on one sample.

(l) *Record retention.* Following each design qualification test and each periodic retest on a packaging, a test report must be prepared. The test report must be maintained at each location where the packaging is manufactured, at each location where the design qualification tests are conducted for as long as the packaging is produced and for at least two years thereafter, and at

(h) *Responsibility.* It is the responsibility of the packaging manufacturer to assure that each package is capable of passing the prescribed tests. To the extent that a package assembly function, including final closure, is performed by the person who offers a hazardous material for transportation, that person is responsible for performing the function in accordance with §§ 173.22 and 178.2 of this subchapter.

* * * * *

(g) * * *

(2) * * *

(i) The outer packaging must have been successfully tested in accordance with § 178.603 with fragile (e.g. glass) inner packagings containing liquids at the Packing Group I drop height;

* * * * *

(vi) When the outer packaging is intended to contain inner packagings for liquids and is not leakproof, or is intended to contain inner packagings for solids and is not siftproof, a means of containing any liquid or solid contents in the event of leakage must be provided in the form of a leakproof liner, plastic bag, or other equally efficient means of containment. For packagings containing liquids, the absorbent material required in paragraph (g)(2)(v) of this section must be placed inside the means of containing liquid contents; and

* * * * *

(k) *Number of test samples.* Provided the validity of the test results is not affected and with the approval of the Associate Administrator for Hazardous Materials Safety, several tests may be performed on one sample.

(l) *Record retention.* Following each design qualification test and each periodic retest on a packaging, a test report must be prepared. The test report must be maintained at each location where the packaging is manufactured, at each location where the design qualification tests are conducted for as long as the packaging is produced and for at least two years thereafter, and at each location where the periodic retests are conducted until such tests are successfully performed again and a new test report produced. In addition, a copy of the test report must be maintained by a person certifying compliance with this part. The test report must be made available to users of a packaging or a representative of the Department upon request. The test report must contain the following information:

(1) Name and address of test facility;

(2) Name and address of applicant (where appropriate);

(3) A unique test report identification;

(4) Date of the test report;

(5) Manufacturer of the packaging;

(6) Description of the packaging design type (e.g. dimensions, materials, closures, thickness, etc.), including methods of manufacture (e.g. blow molding) and which may include drawing(s) and/or photograph(s);

(7) Maximum capacity;

(8) Characteristics of test contents, e.g. viscosity and relative density for liquids and particle size for solids;

(9) Test descriptions and results; and

(10) Signed with the name and address of signatory.

§ 178.601 [Amended]

106. In addition, in § 178.601, the following changes would be made:

a. In paragraph (g)(2) introductory text, the wording "Inner packagings" would be revised to read "Articles or inner packagings".

b. In paragraph (g)(5)(i), the reference "§ 178.602" would be revised to read "§ 178.603".

c. In paragraph (g)(5)(ii), the reference "§ 178.603" would be revised to read "§ 178.604".

§ 178.602 [Amended]

107. In § 178.602, in the second sentence of paragraph (c), the reference "§ 178.603(d)(2)" would be revised to read "§ 178.603(e)".

108. In § 178.603, in paragraph (a) introductory text, a sentence would be added following the second sentence, the first sentence in paragraph (c) would be revised, and paragraph (f)(1) would be revised to read as follows:

§ 178.603 Drop test.

(a) * * * Where more than one orientation is possible for a given drop test, the orientation most likely to result in failure of the packaging must be used. * * *

* * * * *

(c) * * * Testing of plastic drums, plastic jerricans, plastic boxes other than expanded polystyrene boxes, composite packagings (plastic material), combination packagings with plastic inner packagings, textile bags with inner plastic liners, woven plastic bags, and plastic film bags must be carried out when the temperature of the test sample and its contents has been reduced to − 18 °C (0 °F) or lower. * * *

* * * * *

(f) * * *

(1) For packagings containing liquid, each packaging does not leak when equilibrium has been reached between the internal and external pressures, except for inner packagings of combination packagings when it is not necessary that the pressures be equalized:

* * * * *

§ 178.604 [Amended]

109. In § 178.604, in paragraph (d), in the second sentence, the wording "for a period of time sufficient to pressurize the interior of the packaging to the specified air pressure and to determine if there is leakage of air from the packaging" would be revised to read ", for other than production testing, for a minimum time of five minutes"

Issued in Washington, DC on July 1, 1994 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–16542 Filed 7–15–94; 8:45 am]

BILLING CODE 4910–60–F,P

VOL
69
SS
1
3
6
JUL
18
994
MI

Federal Register

Monday
July 18, 1994

Part III

Department of Housing and Urban Development

24 CFR Part 880, et al.
Preferences for Admission to Assisted Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 880, 881, 882, 883, 884, 885, 886, 889, 904, 905, 906 and 960

[Docket No. R–94–1671; FR–3122–F–03]

RIN 2501–AB35

Preferences for Admission to Assisted Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This document revises the tenant selection preference provisions of regulations of several project-based assisted housing programs. The rule implements a statutory change that decreases the number of families that must be admitted on the basis of qualifying for a federal selection preference and specifically authorizes adoption of local selection preferences by housing agencies to be used in admitting some applicants. If a housing agency wants to use such local preferences, the rule requires the agency to adopt ones that respond to local housing needs and priorities after conducting public hearings. If the owner of a project assisted under one of the covered Section 8 programs wants to admit applicants that do not qualify for the federal preferences, the owner would be required to use the housing agency's duly adopted local preferences for the Section 8 Certificate and Voucher program.

With respect to the public housing, Indian housing, and Section 8 Moderate Rehabilitation programs, the rule also disqualifies from a selection preference for three years any individual or family that has been evicted from certain HUD assisted housing for drug-related criminal activity.

EFFECTIVE DATE: August 17, 1994, except for §§ 905.303(b)(2)(i) and 960.211(b)(2)(i), which become effective January 18, 1995.

FOR FURTHER INFORMATION CONTACT: For the public housing and Section 8 Moderate Rehabilitation programs (Parts 882, 904, and 960), Edward Whipple, Director, Occupancy Division, Office of Public Housing, (202) 708–0744 (voice); (202) 708–9300 (TDD).

For the Section 8 programs except for the Moderate Rehabilitation program (Parts 880, 881, 883, 884, 885, 886, and 889), Barbara D. Hunter, Acting Director, Planning and Procedures Division, Office of Multifamily Housing, (202) 708–3944 (voice); (202) 708–4594 (TDD).

For the Indian housing programs (Part 905), Dominic A. Nessi, Director, Office of Native American Housing, (202) 708–1015 (voice); (202) 708–0850 (TDD).

For the Section 5(h) homeownership program (Part 906), Gary F. Van Buskirk, Office of Resident Initiatives, (202) 708–4233 (voice); (202) 708–0850 (TDD).

None of these telephone numbers is toll-free. All of the individuals listed are located at the Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The information collection requirements for the preference provisions of the assisted housing programs are included in the paperwork burden of the application procedures and have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520) under approval numbers 2502–0372, for the programs administered by the Office of Housing, 2577–0105 for the Indian housing and public housing programs, and 2577–0169 for the Section 8 Moderate Rehabilitation program.

Table of Contents

I. Background
II. Response to Public Comments
A. Overall System of Preferences
1. Counting Federal Preference and Local Preference Admissions
2. Management of Waiting Lists; Ranking Preferences
3. Non-Preference Selection Issues
4. Preference Disqualification for Eviction Based on Drug-Related Activity
5. Eligibility of Public Housing Residents for Federal Preference
B. Preference for Working Families
C. Broad Range of Incomes
D. Residency Preference
E. Other Local Preferences
F. Definitions of Federal Preferences
1. Flexibility
2. Substandard Housing
3. Involuntary Displacement
4. Rent Burden
G. Interaction of Section 8 and Public Housing
III. Transition
IV. Findings and Certifications
A. Impact on the Economy
B. Impact on the Environment
C. Federalism Impact
D. Impact on the Family
E. Impact on Small Entities
F. Regulatory Agenda
G. Public Reporting Burden
H. Catalog

I. Background

This final rule is being issued pursuant to the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3672, approved October 28, 1992). Section 104 of that Act requires that the Department give notice and opportunity for public comment before issuing a rule for effect. That section also requires issuance of a final rule to implement the tenant selection preference provisions originally enacted by the National Affordable Housing Act (Pub. L. 101–625, 104 Stat. 4079, approved November 28, 1990), no later than April 26, 1993, to take effect upon issuance.

Although the deadline for issuance of a final rule had passed, the Department published a proposed rule, as required by the statute, on August 25, 1993 (58 FR 44968) to solicit public comments on its content. See the final rule published elsewhere in this issue of the **Federal Register** for the provisions dealing with the tenant selection preference provisions enacted in 1990 that are not covered by this rule.

One additional statutory amendment enacted since the publication of the proposed rule has been implemented in this final rule. That is to add to the examples of owner action that qualifies an applicant for the involuntary displacement federal preference, "displacement because of disposition of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978," in accordance with the amendments made by section 101(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (108 Stat. 342).

This rule will take effect 30 days following publication, except for the provisions requiring that a housing agency must adopt local preferences for admission of families that do not qualify for federal preference only after conducting public hearings. Those provisions, §§ 905.303(b)(2)(i) and 960.211(b)(2)(i), do not become effective until 6 months after publication of this rule, because it may take HAs that long to comply with the hearing requirement. Other provisions of the rule, such as the use of ranking preferences for organizing an owner's list of applicants who are federal preference holders, may be implemented without conducting public hearings. Since the review of residency preferences is to be handled in a separate rulemaking, residency preferences are unaffected by this rule.

II. Response to Public Comments

A. Overall System of Preferences

1. Counting Federal Preference and Local Preference Admissions

There were several criticisms of the way the proposed rule provided for counting an admission as either a federal preference admission or a local preference admission. Permitting admission of an applicant who does not qualify for a federal preference to count as a federal preference admission when there is no federal preference holder eligible for the assistance (so long as the applicant is not chosen using a local income-based preference) was criticized as unjustified under the statute. Concern was expressed about the difficulty of maintaining the data necessary to document that, on the date of admission, there were no similarly situated applicants who qualified for a federal preference.

The language of the final rule dealing with this issue differs somewhat from that of the proposed rule. It frames the "counting" in terms of a limit on the number of "local preference" admissions that can be made during a one-year period. Only 30 or 50 percent of annual admissions, depending on the program involved, may be families selected on the basis of local preference. Under the rule, a family that qualifies for a "federal preference" is not precluded from being admitted on the basis of its "local preference," but the admission would be counted against the HA's local preference limit.

This method of counting was developed to respond to the situation that occurs with some frequency, particularly with respect to the project-based Section 8 programs. There may not be the required percentage (70%) of federal preference holders available to occupy a project. Since the concept of a "preference" operates when there is competition between a family that qualifies for it and one that does not, it is incongruous to apply the limit when there is no such competition. This method of counting may provide somewhat of a documentation problem, but it offers infinitely more flexibility in the admissions procedures in areas where there is not an abundant supply of federal preference holders.

One commenter asked at what point the percentages must be met—throughout the year, end of calendar year, end of fiscal year. The final rule continues the practice of referring only to annual admissions. The housing agency or owner may determine what 12-month period is used for this purpose.

One commenter asked why the percentage of local preference admissions is different in the various programs, and, in particular, why the percentage for Indian housing (30%) is different from the percentage for public housing (50%). The percentages were specified in sections 501 and 545 of NAHA: 10% for tenant-based assistance, and 30% for project-based assistance. In the Housing and Community Development Act of 1992, the

qualify for a federal preference to count as a federal preference admission when there is no federal preference holder eligible for the assistance (so long as the applicant is not chosen using a local income-based preference) was criticized as unjustified under the statute. Concern was expressed about the difficulty of maintaining the data necessary to document that, on the date of admission, there were no similarly situated applicants who qualified for a federal preference.

The language of the final rule dealing with this issue differs somewhat from that of the proposed rule. It frames the "counting" in terms of a limit on the number of "local preference" admissions that can be made during a one-year period. Only 30 or 50 percent of annual admissions, depending on the program involved, may be families selected on the basis of local preference. Under the rule, a family that qualifies for a "federal preference" is not precluded from being admitted on the basis of its "local preference," but the admission would be counted against the HA's local preference limit.

This method of counting was developed to respond to the situation that occurs with some frequency, particularly with respect to the project-based Section 8 programs. There may not be the required percentage (70%) of federal preference holders available to occupy a project. Since the concept of a "preference" operates when there is competition between a family that qualifies for it and one that does not, it is incongruous to apply the limit when there is no such competition. This method of counting may provide somewhat of a documentation problem, but it offers infinitely more flexibility in the admissions procedures in areas where there is not an abundant supply of federal preference holders.

One commenter asked at what point the percentages must be met—throughout the year, end of calendar year, end of fiscal year. The final rule continues the practice of referring only to annual admissions. The housing agency or owner may determine what 12-month period is used for this purpose.

One commenter asked why the percentage of local preference admissions is different in the various programs, and, in particular, why the percentage for Indian housing (30%) is different from the percentage for public housing (50%). The percentages were specified in sections 501 and 545 of NAHA: 10% for tenant-based assistance, and 30% for project-based assistance. In the Housing and Community Development Act of 1992, the percentage was increased for public housing to 50%. However, since this change did not specifically refer to its applicability to Indian housing, it did not apply (by virtue of section 201(b)(2) of the 1937 Act, 42 U.S.C. 1437aa(b)(2)). Therefore, the percentage that still applies to Indian housing is 30%.

While the Department believes that this difference in percentages of local preference admissions between public housing and Indian housing is the result of an oversight on the part of Congress, it does not have the discretion to change the law and expand the percentage for IHAs without legislative change.

2. Management of Waiting Lists; Ranking Preferences

Several commenters urged the rule to specify one particular way of managing waiting lists. They suggested that there should be three categories of applicants on the waiting list: those with federal preference, those with local preference, and those with no preference. Within each group, the applicants could then be ordered by date and time of application. If no other "ranking preferences" were applied, the system would be easier to understand for applicants, Housing Agency (HA) employees, and anyone attempting to audit the system. The commenter suggested that this system be described as an option.

The Department agrees that such a system is permissible under the rule and may be suitable for many HAs. No HA or owner is required to use ranking preferences to select among federal preference holders. However, many HAs may have goals with respect to their own circumstances that warrant the use of ranking preferences. For example, if an HA determined that applicants were refusing offers of units because of the racial composition of the project or the location, it could adopt a ranking preference for applicants that had not previously been offered a unit or who had not refused an offer other than for good cause. As another example, an HA or owner may have determined that it wants to provide role models for children living in its developments, where most families are on public assistance, and therefore adopts a preference for working families.

Other commenters suggested that HAs should not be allowed to rank federal preference holders through the use of local preferences, because that practice would defeat the purpose of requiring federal preferences. Under current regulations, HAs and owners are permitted to use their own system to select among applicants who qualify for a federal preference. The use of these "ranking preferences" has allowed HAs and owners to address local objectives while meeting the statutory requirement to serve federal preference holders. "Ranking preferences" is the term used in this rule and preamble for factors used only to distinguish among federal preference-holders, whereas "local preferences" is used to refer to those factors adopted after the hearing procedure to use in admitting applicants as an alternative to admission of federal preference holders.

This rule continues to permit selecting among federal preference holders according to ranking preferences. Permitting different elements of federal preference to be given differing weight, which the current rule has permitted, is similar to permitting the use of other ranking preferences.

The statutory change that is being implemented in this rule is one that opens up the admissions process to more flexibility for local choice and increasing the percentage of locally based admissions preferences for other programs. The Department believes that it would be contrary to the spirit of that statute to use this rule to limit the existing practices of using ranking preferences or to prescribe one method of managing a waiting list.

Another commenter stated that date and time should not be considered independently for federal preference holders and for local preference holders. The rule does not prescribe such a result. An applicant should be placed on every preference's waiting list (federal and local) for which the persons qualifies, one commenter suggested. This is a permissible method of administering preferences under the rule.

Ranking preferences should be the subject of public hearings, one commenter advocated, suggesting that HUD should review these preferences for their impact on fair housing goals. Another commenter expressed the view that ranking preferences should not be required to be the subject of a public hearing.

In fact, HUD does periodic monitoring reviews of HA activities to assure that there are no violations of fair housing requirements. Owners' preference systems are also subject to review for fair housing impact, if they use residency preferences or any system of local preferences. If citizens in a particular jurisdiction wish to challenge the ranking preferences used by an HA, they may raise the issue in the required public hearing if the HA chooses to use a system of local preferences.

3. Non-Preference Selection Issues

Commenters praised the recognition given to the question of matching family characteristics to the unit. That provision of the proposed rule is retained in the final rule.

One commenter recommended that the rule be more specific about the minimum and maximum family sizes for units. It suggested that the Occupancy Task Force's recommendation that HAs inform applicants of the minimum and maximum sizes for which they qualify and let them decide the size of unit(s) for which they would like to be considered be embodied in the rule. Although the Department believes this approach may be useful, the Department intends to address it in a separate proposed rulemaking to be instituted in the near future.

4. Preference Disqualification for Eviction Based on Drug-Related Activity

There was general approval of the disqualification from a preference for persons evicted from housing assisted under United States Housing Act of 1937 ("1937 Act") for drug-related criminal activity. A suggestion was made that the disqualification should be extended to evictions from State-aided housing, as well. There was also a complaint from one HA that it should not be required to research evictions from housing programs that it does not administer. The rule provides only what the statute requires: disqualification from a preference for families evicted on this basis from housing assisted under the 1937 Act. However, the statute does not limit the use of general screening criteria that an HA may apply to all applicants.

This disqualification applies to the public housing, Indian housing, and Section 8 Existing Housing programs. The Section 8 Existing Housing programs covered by this rule are the Moderate Rehabilitation program (Part 882, Subparts D and E), the Loan Management Setaside program (Part 886, Subpart A), and the Property Disposition program (Part 886, Subpart C). The other Section 8 programs covered by this rulemaking are not subject to this disqualification.

One question raised by commenters was when the three year disqualification starts to run—from the date of eviction or the date the family applies for assistance. The statute states that the disqualification is based on the eviction. Another question was whether a family can be prevented from applying for assistance until the three years has expired. There is no legal basis for a refusal to accept an application, but such an applicant would not qualify for a preference until the expiration of the three year period. In addition, an owner or HA may screen applicants for previous criminal activity as well as disruptive behavior and other factors at any point, so long as it considers mitigating circumstances, if it has a stated policy to that effect.

One organization suggested that an eviction for drug use, as distinguished from drug distribution, should not be considered an eviction for drug-related criminal activity. However, the rule covering when such evictions are authorized (24 CFR 966.4) specifies that drug use is a "drug-related criminal activity" for which eviction is appropriate.

The issue of what is successful completion of an approved rehabilitation of a person evicted for drug-related criminal activity was also raised. A few HAs suggested that HUD should provide examples. One example suggested by another commenter was completion of a drug rehabilitation program that is federally funded. As a test of "successful completion" of a program, an HA could require certification from a health professional that the person was tested and found drug free on a particular date before admission. On this issue, as on a number of others, the Department prefers to give maximum flexibility to HAs to adopt standards that make sense in their own communities.

Guidance was also sought by a commenter for adequate proof that an individual did not participate in or have knowledge of drug-related criminal activity—a basis for permitting members of a family that had been evicted to distinguish themselves from the family member who had been the cause of a previous eviction. Again, the Department leaves this type of determination to the HA's best judgment.

One commenter suggested that persons undergoing such rehabilitation or who have completed it are entitled to reasonable accommodation as "disabled persons." Even if such persons are "disabled persons," the specific statutory disqualification applies unless the HA or owner has determined that there has been successful completion of an appropriate program by the person evicted for drug-related criminal activity.

5. Eligibility of Public Housing Residents for Federal Preference

One commenter expressed concern about a resident of an assisted project never being able to establish eligibility for a federal preference because of an assumption that all assisted housing is not substandard. The commenter asked that HUD at least prohibit a housing provider from categorically refusing to consider applicants residing in assisted housing based on presumptive ineligibility for a federal preference. The Department agrees that each family's application should be considered on the facts presented by its own situation, rather than automatically treated in a particular way because of residency in another type of assisted housing. The rule has been revised to include such a provision.

The commenter also sought assurance in the rule that an applicant for the Section 8 program who had accepted a unit in a public housing development who had originally qualified for a federal preference would be permitted to retain that preference on the Section 8 waiting list. That issue is addressed in the rule being published concerning admissions issues in Section 8 tenant-based assistance.

B. Preference for Working Families

Public comments addressed the question of a preference for working families in several respects. One comment requested that HUD clarify whether a local preference can be given for working families, designed to achieve a broad range of incomes, to permit admission of a higher income working family before a lower income non-working family whose place on the waiting list is higher. Other comments were received on the proposed language of § 960.205 permitting a preference based on a family's employment status. One housing agency and two organizations of housing agencies expressed approval of the change, and a legal services organization expressed disapproval of this change.

The Department is convinced that housing agencies must have the flexibility to give preference to working families to assure diversity in the residency of projects and to include families who can serve as role models for other families. Consequently, the final rule preserves the removal of the current rule's prohibition on using employment as a selection criterion.

Moreover, an HA is free to adopt a preference for working families as a "local preference" for admission of families who do not qualify for a "federal preference", as well as to use such a criterion as a "ranking preference", to be used to select among applicants who do qualify for a "federal preference." Housing owners also may use this criterion as a "ranking preference", and as a "local preference" if it is included in the local preference system adopted by the relevant HA for the Section 8 Certificate and Voucher programs.

There are, however, two limits on the use of a preference for working families. First, the preference may not be administered in a way that will violate the legal prohibitions against discrimination. Second, the preference may not be used in a way that will violate the legal prohibition contained in section 16 of the United States Housing Act of 1937 (42 U.S.C. 1437n) against selecting a higher income applicant before a lower income applicant who is higher on the waiting list.

Both of these limits are expressed in an example of the use of a ranking preference in the rule: this type of preference may be used so long as the prohibition against selection of higher income families and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. If such a preference is used, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member, are age 62 or older, or are receiving social security disability or supplemental security income disability benefits, or any other payments based on an individual's inability to work. The owner also could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market.

When used as a "local preference" instead of as a "ranking preference," the concern about selection of a higher income applicant is not a limitation if it is being used in the public housing program or the Indian housing program. In these programs, a local preference for working families, designed to achieve a broad range of incomes, may be used to admit a higher income working family over a lower income non-working family whose place on the waiting list is higher.

The distinction between programs is made because of specific language found in section 16 with respect to public housing that exempts such projects when "local preferences" are being used (to attain a broad range of incomes, presumably), and because the section 16 restriction does not apply to Indian housing. The nondiscrimination limitation does continue to apply when such a preference is applied as a local preference. It should be noted that section 16's exception for IHAs permits

if it is included in the local preference system adopted by the relevant HA for the Section 8 Certificate and Voucher programs.

There are, however, two limits on the use of a preference for working families. First, the preference may not be administered in a way that will violate the legal prohibitions against discrimination. Second, the preference may not be used in a way that will violate the legal prohibition contained in section 16 of the United States Housing Act of 1937 (42 U.S.C. 1437n) against selecting a higher income applicant before a lower income applicant who is higher on the waiting list.

Both of these limits are expressed in an example of the use of a ranking preference in the rule: this type of preference may be used so long as the prohibition against selection of higher income families and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. If such a preference is used, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member, are age 62 or older, or are receiving social security disability or supplemental security income disability benefits, or any other payments based on an individual's inability to work. The owner also could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market.

When used as a "local preference" instead of as a "ranking preference," the concern about selection of a higher income applicant is not a limitation if it is being used in the public housing program or the Indian housing program. In these programs, a local preference for working families, designed to achieve a broad range of incomes, may be used to admit a higher income working family over a lower income non-working family whose place on the waiting list is higher.

The distinction between programs is made because of specific language found in section 16 with respect to public housing that exempts such projects when "local preferences" are being used (to attain a broad range of incomes, presumably), and because the section 16 restriction does not apply to Indian housing. The nondiscrimination limitation does continue to apply when such a preference is applied as a local preference. It should be noted that section 16's exception for IHAs permits them to use income ranges as a local preference, ranking preference, or both.

Housing agencies are not the only entities that may avail themselves of a preference for working families. Private owners may also adopt such a preference as a ranking preference—with both limits described above applicable to them.

C. Broad Range of Incomes

The statutory requirement for an HA to seek a tenancy that represents a broad range of incomes applies to public housing and Indian housing, but not to the Section 8 program. The rule's elimination of the requirement for studies of the income level of families in an HA's jurisdiction was praised as beneficial, while the rule's retention of the requirement that an HA's admission policies further selection of families with a broad range of incomes was praised. One commenter also commended the rule for recognizing that the goal of attaining residents with a broad range of incomes might be furthered through means other than local preferences.

One commenter sought approval of a practice of selection of applicants from waiting lists of federal preference holders organized by income within the category of very low-income families where higher income families would be selected ahead of lower income families—all from the category of very low income families. The commenter argued that section 16 of the 1937 Act does not prohibit such use of income categories for federal preference holders so long as the family selected is a very low-income family. The Department's legal interpretation is that selection of higher income families over lower income families that are higher on the waiting list is permitted only pursuant to admission on the basis of a local preference. Therefore, a practice as described above, which involves federal preference admissions, would violate our interpretation of the law.

One commenter asked what is meant by the term "project" in the requirement that families with a broad range of incomes be sought for each project. The term "project" is used in the public housing program to mean the entity with a single project number.

When an HA has only scattered sites or small concentrations of assisted units, how is the requirement to be applied? It can be applied to the project that includes several sites. The regulatory language focuses on the goal to be achieved, rather than the specific method used by the HA.

Can a rural HA use each waiting list (for a geographical area) as a project? If so, the rent range policy can be implemented in a manner that would obviate the need for operating subsidy. If an HA determines that it can achieve the broad range of income in each project result by applying an income range local preference for a group of projects, HUD would not object to that procedure.

The language of § 960.204(a)(2)(i) on avoiding concentrations of families with serious social problems should be revised to eliminate the reference to "low-income families" and to emphasize preventing concentrations of "the most economically deprived families [with serious social problems]." The Department agrees, and the rule has been revised accordingly.

D. Residency Preference

There was great praise for and great criticism of the requirement for advance HUD approval of the use of residency preferences in all of the programs covered by this rule. The praise was based on the greater assurance the procedure would give to furthering fair housing goals, an objective that HUD is charged with advancing. The criticism focused on the lack of stated criteria to be used for disapproving residency preferences and the lack of a mechanism for HAs to challenge a disapproval action.

The Department agrees with the commenters that residency preferences need to be reviewed for their impact on fair housing goals. The Department also agrees that more specific criteria need to be provided for HAs to use in assessing the impact of any residency preference they might consider adopting. Therefore, a separate rulemaking is being initiated to provide the opportunity for public comment on criteria that the Department is developing. Until that rule takes effect, the current requirements with respect to residency preferences will continue to apply.

E. Other Local Preferences

Commenters suggested that the rule text should list the statutory examples of local preferences. Since the list is only advisory, the Department believes it unnecessary to include it in the rule. However, the examples (from section 545 of the Cranston-Gonzalez National Affordable Housing Act) are repeated here, for reference:

—Assisting very low-income families who either reside in transitional housing assisted under the McKinney Act or participate in a program designed to provide public assistance recipients with greater access to

employment and educational opportunities;
—Assisting families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care, or in preventing the discharge of a child from foster care and reunification with the child's family;
—Assisting youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available; and
—Assisting persons displaced by the rental rehabilitation program.
—Assisting disabled veterans who are being discharged from a medical facility but do not have an accessible unit to which to return.
—Achieving other objectives of national housing policy as affirmed by Congress.

Another commenter suggested that the preamble should give more useful examples of local preferences. Additional examples of local preferences would be preferences for working families, veterans, and category of time on the waiting list (such as more than two years).

While one commenter advocated that any local preferences should be required to be consistent with the goal of promoting access to assisted housing by those most in need and the objectives of national housing policy, another stated that local preferences need not further any of the objectives of national housing policy. Yet another commenter urged that the local preferences be required to be consistent with the needs identified in the jurisdiction's Comprehensive Housing Affordability Strategy, unless the HA justifies a variation. Under current policy for the public housing program, the Department does not purport to review local preferences for approval, despite a suggestion by a commenter to the contrary. Therefore, HAs, in consultation with the public in hearings, will make the decision about what needs and priorities local preferences should serve.

Various arguments were advanced for circumstances that would warrant an exemption for an HA from holding public hearings on the adoption of local preferences:

—Date and time for non-federal preference admissions;
—Preferences based on income, to advance the broad range of income goal;
—Adoption of preferences, such as a veteran's preference, that are required by State law;
—When cost of hearings is high, low response is typical, and the HA is a "high-performing housing authority."

The statute requires that an HA establish its written system of local priorities after conducting a public hearing to respond to local housing needs and priorities. The hearing provides citizens an opportunity to suggest alternatives. Since it is required by the statute, this rule provides no exemptions from the requirement.

Some commenters wanted the rule to give more specific requirements concerning the hearing: specific requirements for notice to the public and public participation in the hearing, and more detail about the purpose of the hearing. The Department believes that each HA will conduct its hearing in accordance with the federal statute, and with State and local laws. Many localities have ordinances concerning the conduct of public hearings. The Department has no desire to add to such requirements.

A comment was made that the three month period given in the proposed rule for HAs to conduct a public hearing on local preferences after the effective date of a final rule was insufficient time. The period of time has been lengthened to six months. Of course, HAs are encouraged to act as soon as possible after the effective date of this rule to establish any system of local preferences in accordance with the hearing requirement. However, existing local preferences that have not been approved in that manner by the expiration of six months after the effective date of this rule will become invalid. Thereafter, until the procedure is followed, the only authorized preferences used in admitting applicants will be the federal preferences (including any ranking preferences).

One organization recommended that the rule provide that applicants denied eligibility for a local preference be given an opportunity to contest the denial. The Department believes that this suggestion has merit. The final rule extends to denials of local preferences the same informal meeting/review process that the current rules provide for federal preference denials.

In the preamble to the proposed rule, an example of a valid local preference was stated to be one that would prefer members of one Indian tribe over members of other tribes and over non-Indians. Some commenters stated that such a preference violates nondiscrimination laws. An Indian Housing Authority commented that such a preference presumes that all such persons are eligible for its programs, which they may not be if tribal law limits eligibility for housing operated by the tribal housing authority.

Under the Indian housing program, there are federal statutory provisions that recognize limits to the eligibility of some types of housing. (In the Mutual Help Homeownership Opportunity program, non-Indians may only be admitted under very limited circumstances.) Moreover, in recognition of the status of IHAs created under tribal law, tribal law as well as federal law governs the operation of the IHA programs. Therefore, the example still stands as a legitimate type of local preference, but there may not be any need for such a preference.

F. Definitions of Federal Preferences

1. Flexibility for HAs To Define Terms

One legal services organization stated that HAs should not be allowed to adopt their own definitions of the federal preference categories because there should be uniformity. Most HAs, as represented by an organization of housing administrators and one HA, like this flexibility. The statute being implemented by this rule is not a cause for a change to the Department's longstanding policy of permitting this flexibility.

Two legal services organizations suggested that HAs be given standards for exercising the discretion and that they not be permitted to adopt more restrictive definitions (or verification procedures) than those set forth in the regulations. In HUD's experience, HAs do not seek approval of more restrictive definitions.

One HA asked for examples of acceptable expansions of the definitions. HUD would consider favorably such an expansion as a definition of "income" for purposes of the rent burden preference to use adjusted income instead of annual income. This change would benefit larger families, families with large medical expenses, and elderly and disabled persons. The Department would also give favorable consideration to a definition of "substandard housing" that included overcrowding, as requested by two commenters.

A legal services organization advocated that HAs be able to adopt their own definitions with respect to all Section 8 programs, as well as for their public housing or Indian housing and Section 8 moderate rehabilitation programs. HAs have a different role with respect to any project-based Section 8 program. In such a case, there is still a project owner who is responsible for tenant selection.

HUD field offices must be directed to give great weight to local conditions when reviewing an HA's revised definitions, one organization urged. This type of instruction is appropriate for inclusion in the HUD handbook, which provides operational guidance, rather than in this rule.

The verification procedures that have been included in the Indian housing and public housing rules for federal preferences have been optional, and the rule has specifically stated that HAs could adopt different procedures. These programs have traditionally given HAs the discretion to adopt verification procedures with respect to eligibility issues. Only the regulations with respect to federal preferences have attempted to specify verification procedures. Therefore, the Department is taking this opportunity to deregulate by removing the suggested procedures from the regulations for these programs.

The provision that purports to give HUD authority to specify special conditions that would satisfy federal preference definitions for owner-administered housing (comparable to the HA's flexibility), § 880.614(l), is of no effect, one commenter argued. Any change other than an interpretation would require advance publication and opportunity for comment.

Under this rule, HAs administering the public housing and Section 8 Moderate Rehabilitation programs may adopt local definitions of the individual federal preferences. These definitions must be approved by HUD, within the requirements of the statute. For Section 8 programs where tenants are selected by a private owner, the rule provides that HUD may specify additional conditions under which the federal preferences can be satisfied, referring to HUD Handbook 4350.3. This procedure is comparable to the action taken with respect to HAs in approving their proposed definitions that may vary from those specified in the regulation.

2. Substandard Housing

Several HAs and a management agent supported the Department's decision not to include overcrowding in the rule's definition of "substandard housing." They agreed with this position since the term is traditionally used (for census purposes, for example) to deal solely with the condition of the unit and not its ability to properly house the number of occupants residing in it. On the other hand, one HA and a few organizations advocating including overcrowding in this definition, at least where the extent of overcrowding constitutes a housing code or health code violation. Another commenter

HUD field offices must be directed to give great weight to local conditions when reviewing an HA's revised definitions, one organization urged. This type of instruction is appropriate for inclusion in the HUD handbook, which provides operational guidance, rather than in this rule.

The verification procedures that have been included in the Indian housing and public housing rules for federal preferences have been optional, and the rule has specifically stated that HAs could adopt different procedures. These programs have traditionally given HAs the discretion to adopt verification procedures with respect to eligibility issues. Only the regulations with respect to federal preferences have attempted to specify verification procedures. Therefore, the Department is taking this opportunity to deregulate by removing the suggested procedures from the regulations for these programs.

The provision that purports to give HUD authority to specify special conditions that would satisfy federal preference definitions for owner-administered housing (comparable to the HA's flexibility), § 880.614(l), is of no effect, one commenter argued. Any change other than an interpretation would require advance publication and opportunity for comment.

Under this rule, HAs administering the public housing and Section 8 Moderate Rehabilitation programs may adopt local definitions of the individual federal preferences. These definitions must be approved by HUD, within the requirements of the statute. For Section 8 programs where tenants are selected by a private owner, the rule provides that HUD may specify additional conditions under which the federal preferences can be satisfied, referring to HUD Handbook 4350.3. This procedure is comparable to the action taken with respect to HAs in approving their proposed definitions that may vary from those specified in the regulation.

2. Substandard Housing

Several HAs and a management agent supported the Department's decision not to include overcrowding in the rule's definition of "substandard housing." They agreed with this position since the term is traditionally used (for census purposes, for example) to deal solely with the condition of the unit and not its ability to properly house the number of occupants residing in it. On the other hand, one HA and a few organizations advocating including overcrowding in this definition, at least where the extent of overcrowding constitutes a housing code or health code violation. Another commenter suggested that overcrowding could amount to imminent displacement.

The final rule maintains virtually the same definition of substandard housing. If an HA wants to include overcrowding, it may. If an HA believes overcrowding constitutes imminent involuntary displacement, it may submit such a definition to HUD for approval. The HA may include overcrowding as a ranking preference without HUD approval.

With reference to a person with mobility impairment, one commenter urged that the definition of substandard housing should include housing that is inaccessible. Since a bathroom that cannot be entered or used by a person with a mobility impairment causes the unit to be without a "usable flush toilet" or "usable bathtub" for that person, it constitutes substandard housing for that person, the commenter argued. Given the Department's preference for dealing with the fit of a unit with an individual family under the category of involuntary displacement, we would prefer to permit qualification under that category of preference for a person whose mobility impairment renders the person's current unit significantly deficient and the owner cannot make changes to the unit as a reasonable accommodation for the disabled person. The rule has ben amended to reflect this decision.

The same commenter also urged coverage under the substandard housing category of preference of a person in an institution who is ready for discharge but cannot be released because the person's prior unit is no longer available. If that person has no housing unit to which to return, the person would qualify under the definition of a "homeless person," discussed below.

Two organizations urged that the definition of "homeless person" in the definition of substandard housing be revised to require either that the person lacks a fixed, regular and adequate nighttime residence or that one has a primary nighttime residence that is a temporary shelter, an institution that is a temporary residence for individuals to be institutionalized, or a place not intended as habitation for human beings. The statute and implementing regulations now require satisfaction of both sets of conditions. Therefore, this rule also requires that they both be satisfied.

Commenters advocated that the definition of "homeless person" should explicitly include persons living in transitional housing, since it is temporary housing. The definition has been revised to include transitional housing in the examples of temporary living accommodations.

One commenter also had a suggestion with respect to deferring the effectiveness of a preference for a family in transitional housing. When an applicant in transitional housing reaches the top of the waiting list and is selected for housing, the commenter suggested that the family be given the option of being admitted or remaining at the same place on the waiting list while completing the transitional program. The Department agrees that if the applicant is not ready or able to leave the transitional housing unit when an offer is made, the applicant's rejection of the unit would be for good cause and the applicant's qualification for preference would continue. However, the rule does not require any change to reflect this position.

3. Involuntary Displacement

Comments were submitted dealing with the qualification for this preference if displacement is anticipated within six months. Some HAs erroneously believed that if displacement had occurred more than six months before the applicant applied and the applicant had been living in temporary quarters, the applicant would lose preference status. Another commenter stated that the six month period might present insurmountable verification problems. Nothing about this six month period is new. It reflects the current rule.

The language concerning domestic violence victims was praised. One commenter wanted acknowledgement in the rule that the HA has a "right to exercise prudent judgment and to establish reasonable criteria for determining, on a case-by-case basis, the legitimacy of a claimed preference." Any standards that an HA wants to establish as part of its admissions policy are welcome. Moreover, the language of the final rule excluding the alleged abuser from the unit has been made stronger. The new language responds to comments by making it clear that the alleged abuser *may not be included in the household without the advance written approval of the HA or owner.* Violation of the applicant's certification that this person will be excluded is stated as grounds for denial or termination of assistance. These revisions should assist in assuring that the preference is not claimed unjustifiably.

Two commenters suggested that an abuser should be permitted to live in the unit if the abuser has successfully completed a rehabilitation program, and that standards should be provided in the rule to guide the HAs and owners in

making such a determination. The Department has not added anything on this subject to the rule. HAs and owners should use their own best judgment on this issue.

One commenter recommended that the definition of involuntarily displaced should be expanded to include a person in an institution who is ready for discharge but cannot be released because the person's current unit is inaccessible because of disability. This is one of the examples given in the statute of a local preference. It is certainly an appropriate category of persons to be given a preference under an HA's system of local preferences, and would be covered under involuntary displacement by mobility impairment, discussed above.

Two changes have been made in the final rule's definition of involuntary displacement—not in response to public comment—but as part of the Administration's efforts to support law enforcement activities and protect families against hate crimes. A category of displacement has been added to cover displacement to avoid reprisals. This category is to cover situations where a family member was a witness to a crime and the family must be rehoused to avoid risk of violence as a result of the person's cooperation with law enforcement officials. The second category covers actual or constructive displacement caused by "hate crimes"—actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

Two other changes have been made to improve the organization of the discussion of displacement resulting from owner action and to include a provision enacted by Congress to cover displacement resulting from HUD disposition of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978 [Multifamily Housing Property Disposition Reform Act of 1994, section 101(c), 108 Stat. 357]. The change with respect to owner action places the non-exclusive list of examples of owner action with the initial statement of that category of involuntary displacement. The addition of the element of HUD disposition of a project is added at the end of the categories of involuntary displacement.

4. Rent Burden

There were only two types of comment on the rent burden category of federal preference. The first dealt with the 90-day period for demonstrating excessive rent burden. The second dealt with the exclusion from the definition of rent any utility costs covered by an energy assistance program.

The provision that this preference applies only to applicants who experience excessive rent burden for at least 90 days was added to assure that applicants would not purposely place themselves in a rent burdened situation for a very short period merely to qualify for a preference. Eleven commenters favored this approach. Five commenters opposed it, indicating that it is unnecessary (because applicants wait so long to be admitted) and that it would be burdensome to enforce. Although in some areas waiting lists are so long that this 90-day provision is unnecessary, there are other areas where waiting lists may be short. Where it is unnecessary, it will not have any effect, but elsewhere it will help prevent sham preference applications.

The Department of Health and Human Services submitted the comment criticizing the exclusion from rent the amount of costs covered by its Low Income Home Energy Assistance Program. It stated that the statute authorizing that program prohibits the benefits from being counted as income or resources under any federal or state law. HUD has had previous correspondence with the HHS on this matter (1989). Our position then remains unchanged. Since the amount paid by LIHEAP is not included in income of the family, the expense it covers is also not counted as a rental expense of the family.

G. Interaction of Section 8 and Public Housing

It was suggested that this rule explicitly authorize merged waiting lists for the Section 8 Certificate/Voucher and public housing programs, and that an HA be required to notify the public before it actually merges them. The rule for the Section 8 Certificate/Voucher program does mention merger of waiting lists. The Department believes it is unnecessary to discuss this subject in this rule, as well.

A few commenters indicated that they thought it would be difficult for an HA that maintains one waiting list for its public housing and Section 8 programs to comply with the provisions of this rule and the one governing the Section 8 Certificate/Voucher rule. The two rules have been developed in coordination with each other, and compliance with them should not be difficult. If an HA is looking for particular characteristics of an applicant when it is selecting a participant for one program, it can search its merged list for that characteristic.

One commenter urged that differences between an HA's Section 8 program preferences and its public housing program preferences should be required to be justified on the basis of statutory differences or other compelling reasons. Another commenter stated that the ability to adopt different local preferences for the two programs was good. The Department disagrees with the former suggestion because it would limit HA discretion unnecessarily. The Department believes that HAs should be provided flexibility in tailoring their local preferences to local needs, and, therefore, agrees with the latter suggestion. Since the HA must respond to the public in the development of local preferences, its system should not be arbitrary.

Two commenters asked why a system of local preferences that has been approved by HUD (as it is in the Section 8 Certificate/Voucher program) must be submitted for approval by a Section 8 project owner. It is possible that a system of preferences that is applied to applicants selected for a program in which the participants are dispersed throughout the jurisdiction may have a very different, and discriminatory, impact when applied to a particular project.

Two commenters objected to the requirement that if an owner wanted to use a system of preferences other than the federal preferences it is required to use the HA's. This is a statutory requirement. Therefore, the commenter who advocated that an owner should be able to submit its own system of preferences if the HA in the jurisdiction of the project had not adopted any must also be disappointed. The statute does not authorize such a practice.

One organization criticized the provision allowing owners to establish their own ranking preferences. It stated that a uniform national system of ordering applicants with federal preference by date and time only would be fair and easy to monitor. The Department recognizes that private owners have invested in their projects and need to have some say over how they select tenants, while complying with the statutorily required preferences. This is a continuation of existing policy, which was not changed by Congress when it made other changes.

One commenter advocated that owners should be able to select tenants by income categories in order to achieve a stable and desirable economic mix of residents. However, another commenter pointed out that the rule's provision prohibiting income-based admissions in the Section 8 program must be retained, since such admissions are not authorized under the law.

Commenters objected to permitting an owner to select the HA whose local preferences it will apply when there is more than one that has jurisdiction in the area where the housing is located. In the Section 8 program, an HA may operate anywhere it may legally enter into contracts—which results in a theoretical multiplicity of HAs with jurisdiction over a particular project area. The final rule requires use of the local preferences of the HA for the jurisdiction (using the statutory language). However, it clarifies that when there is more than one HA with jurisdiction, the local preferences of the "HA for the lowest level of government that has jurisdiction where the project is located" are used.

III. Transition

If an HA has not adopted local preferences following a public hearing in accordance with this rule by six months after August 17, 1994, no local preferences will be in effect, and the federal preferences (including any ranking preferences) will be used for all admissions until such time as local preferences are duly adopted.

IV. Findings and Certifications

A. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291, Regulatory Planning Process. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk.

prohibiting income-based admissions in the Section 8 program must be retained, since such admissions are not authorized under the law.

Commenters objected to permitting an owner to select the HA whose local preferences it will apply when there is more than one that has jurisdiction in the area where the housing is located. In the Section 8 program, an HA may operate anywhere it may legally enter into contracts—which results in a theoretical multiplicity of HAs with jurisdiction over a particular project area. The final rule requires use of the local preferences of the HA for the jurisdiction (using the statutory language). However, it clarifies that when there is more than one HA with jurisdiction, the local preferences of the "HA for the lowest level of government that has jurisdiction where the project is located" are used.

III. Transition

If an HA has not adopted local preferences following a public hearing in accordance with this rule by six months after August 17, 1994, no local preferences will be in effect, and the federal preferences (including any ranking preferences) will be used for all admissions until such time as local preferences are duly adopted.

IV. Findings and Certifications

A. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291, Regulatory Planning Process. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule have impact on States or their political subdivisions only to the extent required by the statute being implemented. The rule specifies to what extent preferences for admission of particular categories of applicants that are established by the local housing agency, in accordance with a statutorily-prescribed hearing procedure, may be used to admit participants. The only guidelines stated for the local agency's discretion are those required by the statute: the preferences are to respond to local housing needs and priorities. Since the rule merely carries out a statutory mandate and does not create any new significant requirements, it is not subject to review under the Executive Order.

D. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. The rule merely carries out the mandate of federal statute with respect to admission preferences. (To the extent that an HA adopts a local preference for admitting families whose children would otherwise be put in foster care, as is suggested by the statute, there would be a positive impact on families. However, neither the statute nor the rule requires adoption of such a preference.)

E. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it does not place major burdens on housing authorities or housing owners.

F. Regulatory Agenda

This rule was listed as sequence number 1552 under the Office of the Secretary in the Department's Semiannual Regulatory Agenda published on April 25, 1994 (59 FR 20424, 20440) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

G. Regulatory Review

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh St. SW., Washington, DC 20410.

H. Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.157, 14.182, 14.850, and 14.856.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and record keeping requirements, Rural areas.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and record keeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 889

Aged, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate

income housing, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 905

Aged, Grant programs—Indians, Grant programs—housing and community development, Handicapped, Indians, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and record keeping requirements.

24 CFR Part 906

Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and record keeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Handicapped, Public housing.

Accordingly, chapters VIII and IX of title 24 of the Code of Federal Regulations are amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

§ 880.603 [Amended]

2. Section 880.603 is amended by removing from the introductory text of paragraph (b) the phrase "a Federal selection preference in accordance with § 880.613", and by adding in its place the phrase "selection preferences in accordance with §§ 880.613 through 880.617"; by removing paragraph (b)(1); and by redesignating paragraphs (b) (2), (3), and (4) as paragraphs (b) (1), (2), and (3).

3. Section 880.613 is revised and new §§ 880.614 through 880.617 are added to read as follows:

§ 880.613 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 880.614(a).

(2) "Ranking preferences" are preferences that may be established by the owner for use in selecting among applicants that qualify for federal preference. See § 880.614(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families (see subpart D of this part).

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If the owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209 of this title) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences.* (1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or a local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (d)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 880.614 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or a local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (d)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 880.614 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 880.613(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If an owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.*

(1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 880.615(c) (involuntary displacement); § 880.616(c) (substandard housing); and § 880.617(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) Approval of special conditions satisfying preference definitions. HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 880.615 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.*

An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Develoment Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement

is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 880.616 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 880.616 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 880.617 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

4. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

§ 881.603 [Amended]

5. Section 881.603 is amended by removing from the introductory text of paragraph (b) the phrase, "a Federal selection preference in accordance with § 881.613", and by adding in its place the phrase, "selection preferences in accordance with §§ 881.613 through 881.617".

6. Section 881.613 is revised and new §§ 881.614 through 881.617 are added, to read as follows:

§ 881.613 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 881.614(a).

(2) "Ranking preferences" are preferences that may be established by the owner to use in selecting among applicants that qualify for federal preferences. See § 881.614(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families (see subpart D of this part).

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If the owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209 of this title) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences.* (1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or a local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (h)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 881.614 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or a local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (h)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 881.614 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 881.613(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If an owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.*

(1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 881.615(c) (involuntary displacement); § 881.616(c) (substandard housing); and § 881.617(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section,

can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 881.615 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant's family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant's family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State of local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 881.616 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State of local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 881.616 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 881.617 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using

the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

6. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

Subpart E—Special Procedures for Moderate Rehabilitation—Program Development and Operation

7. Section 882.517 is revised and new §§ 882.518 through 882.521 are added, to read as follows:

§ 882.517 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 882.518(a).

(2) "Ranking preferences" are preferences that may be established by the HA to use in selecting among applicants that qualify for federal preferences. See § 882.518(b).

(3) "Local preferences" are preferences used to select among applicants without regard to their federal preference status.

(b) *System.* The HA's admission policy, in accordance with its regulations, must include the following:

(1) How the federal preferences will be used, including any changes in the definitions of the federal preferences or changes in the verification procedures from those specified in §§ 882.518 through 882.521;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The HA may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the HA must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If the HA wants to use preferences to select among applicants without regard to their federal preference status, it may use its local preference system (see § 982.209 of this title).

(ii) "Local preference limit" means thirty percent of total annual admissions to an HA's project-based Section 8 Moderate Rehabilitation programs. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The HA may not give a preference to an applicant (federal preference, local preference or ranking preference) if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the HA may give an admission preference in any of the following cases:

(i) If the HA determines that the evicted person has successfully completed a rehabilitation program approved by the HA;

(ii) If the HA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the HA determines that the evicted person no longer participates in any drug-related criminal activity.

(d) *Informing applicants about admission preferences.*

(1) The HA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the HA determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the HA may provide this notification to fewer than all applicants on the list at any given time. The HA, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the HA's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the HA's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences*—(1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an HA must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the HA's HUD-approved equal opportunity plan.

(g) *Income-based admission.* The HA may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the HA determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the HA must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the HA to review the determination. The meeting may be conducted by any person or persons designated by the HA, who may be an officer or employee of the HA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2577–0169)

§ 882.518 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The HA's admission policy may provide for use of ranking preference to select among applicants who qualify for federal preference.

(1) The HA could give preference to working families—so long as the prohibition of § 882.517(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If an HA adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security

applicable) the HA's HUD-approved equal opportunity plan.

(g) *Income-based admission.* The HA may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the HA determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the HA must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the HA to review the determination. The meeting may be conducted by any person or persons designated by the HA, who may be an officer or employee of the HA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2577–0169)

§ 882.518 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The HA's admission policy may provide for use of ranking preference to select among applicants who qualify for federal preference.

(1) The HA could give preference to working families—so long as the prohibition of § 882.517(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If an HA adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An HA could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The HA also could use its "local preferences" to rank federal preference holders.

(2) The HA may limit the number of applicants who may qualify for any ranking preference.

(3) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference—(1) Basis of federal preference.* The HA must use the following definitions of the federal preferences unless it has received HUD approval of alternative definitions.

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the HA.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the HA that the family qualifies for federal preference. The HA must accept this certification, unless the HA verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the HA must require the applicant to provide information needed by the HA to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) Once the HA has verified an applicant's qualification for a federal preference, the HA need not require the applicant to provide information needed by the HA to verify such qualification again unless:

(A) The HA determines reverification is desirable because a long time has passed since verification, or

(B) The HA has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(Approved by the Office of Management and Budget under OMB control number 2577–0169)

§ 882.519 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the HA.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The PHA must determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the PHA has given advance written approval. If the family is admitted, the PHA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The PHA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The PHA must determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Develoment Amendments of 1978.

§ 882.520 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(*3*) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

§ 882.521 Federal preference: rent burden.

(a) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(2) "Rent" means:

(i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

§ 882.521 Federal preference: rent burden.

(a) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(2) "Rent" means:

(i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

8. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

9. Section 883.714 is revised and new §§ 883.715 through 883.718 are added, to read as follows:

§ 883.714 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 883.715(a).

(2) "Ranking preferences" are preferences that may be established by the owner to use in selecting among applicants that qualify for federal preferences. See § 883.715(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If an owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209 of this title) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given a preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given

time. The owner, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences*—(1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–19) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (h)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 883.715 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 883.714(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If the owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference*—(1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 883.716(c) (involuntary displacement); § 883.717(c) (substandard housing); and § 883.718(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 883.716 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 883.716(c) (involuntary displacement); § 883.717(c) (substandard housing); and § 883.718(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 883.716 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 883.717 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 883.718 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

10. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

11. Section 884.226 is revised and new §§ 884.227 through 884.230 are added, to read as follows:

§ 884.226 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 884.227(a).

(2) "Ranking preferences" are preferences that may be established by the owner to use in selecting among applicants that qualify for federal preferences. See § 884.227(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If an owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209 of this title) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the

preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences.* (1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (h)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 884.227 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 884.228(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If the owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.* (1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 884.228(c) (involuntary displacement); § 884.229(c) (substandard housing); and § 884.230(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 884.228 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 884.228(c) (involuntary displacement); § 884.229(c) (substandard housing); and § 884.230(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 684.228 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 884.229 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized: or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 884.230 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

12. The authority citation for part 885 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

12. The authority citation for part 885 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

13. Section 885.427 is revised to read as follows:

§ 885.427 Selection preferences.

The provisions of §§ 880.613–880.617 of this chapter are applicable to projects assisted under subpart B of this part.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

14. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

15. Section 886.133 is redesignated as § 886.138; § 886.132 is revised; and new §§ 886.133 through 886.136 are added, to read as follows:

§ 886.132 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 886.133(a).

(2) "Ranking preferences" are preferences that may be established by the owner to use in selecting among applicants that qualify for federal preferences. See § 886.133(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If an owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209 of this title) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The owner may not give a preference to an applicant (federal preference, local preference or ranking preference) if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the owner may give an admission preference in any of the following cases:

(i) If the owner determines that the evicted person has successfully completed a rehabilitation program approved by the owner;

(ii) If the owner determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the owner determines that the evicted person no longer participates in any drug-related criminal activity.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences.* (1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (h)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 886.133 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 886.132(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If the owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.*

(1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 886.134(c) (involuntary displacement); § 886.135(c) (substandard housing); and § 886.136(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook

preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 886.134(c) (involuntary displacement); § 886.135(c) (substandard housing); and § 886.136(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 886.134 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Develoment Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 886.135 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 886.136 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

§ 886.136 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

Subpart C—Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

16. Section 886.337 is revised to read as follows:

§ 886.337 Selection preferences.

Sections 886.132 through 886.136 govern the use of preferences in the selection of tenants under this subpart.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

17. The authority citation for part 889 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 3535(d).

18. Sections 889.611–889.615 are added to subpart F, to read as follows:

§ 889.611 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 889.612(a).

(2) "Ranking preferences" are preferences that may be established by the owner to use in selecting among applicants that qualify for federal preferences. See § 889.612(b).

(3) "Local preferences" are preferences that may be established by the housing agency administering the Section 8 Certificate and Voucher program in the area, for use in selecting among applicants without regard to their federal preference status.

(b) *System.* The owner must establish a system for selection of applicants from the waiting list that includes the following:

(1) How the federal preferences will be used;

(2) How any ranking preferences will be used;

(3) How any local preferences will be used; and

(4) How any residency preference will be used.

(c) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The owner may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the owner must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See part 812 of this chapter.

(2) *Local preference admissions.*

(i) If the owner wants to use preferences to select among applicants without regard to their federal preference status, the owner must use the local preference system adopted for use in the Section 8 Certificate and Rental Voucher programs (see § 982.209) by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located.

(ii) Before the owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to assure that they are applicable with respect to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iii) "Local preference limit" means thirty percent of total annual admissions to the project. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(d) *Informing applicants about admission preferences.*

(1) The owner must inform all applicants about available preferences

and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the owner determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(e) *Residency preferences.* (1) *Restrictions.* Local residency requirements are prohibited. With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. A residency preference may not be based on how long the applicant has resided in or worked in the jurisdiction.

(2) *HUD review.* [Reserved]

(f) *Nondiscrimination.* (1) Any selection preferences that are used by an owner must be established and administered in accordance with the following authorities:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD's affirmative fair housing objectives and (where applicable) the owner's HUD-approved affirmative fair housing marketing plan.

(g) *Income-based admission.* The owner may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Notice and opportunity for a meeting where preference is denied.*

(1) If the owner determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the owner must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the owner to review the determination. The meeting may be conducted by any person or persons designated by the owner, who may be an officer or employee of the owner, including the person who made or reviewed the determination or a subordinate employee. The procedures specified in this paragraph (h)(1) must be carried out in accordance with HUD's requirements.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 889.612 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The owner's system of administering the federal preferences may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The owner could give preference to working families—so long as the prohibition of § 889.611(g) against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If the owner adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) An owner could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The owner also could use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.* (1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 889.613(c) (involuntary displacement); § 889.614(c) (substandard housing); and § 889.615(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the owner that the family qualifies for federal preference. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the owner must require the applicant to provide information needed by the owner to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) The owner must use the verification procedures in § 889.613(c) (involuntary displacement); § 889.614(c) (substandard housing); and § 889.615(b) (rent burden).

(iii) Once the owner has verified an applicant's qualification for a federal preference, the owner need not require the applicant to provide information needed by the owner to verify such qualification again unless:

(A) The owner determines reverification is desirable because a long time has passed since verification, or

(B) The owner has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* HUD may specify additional conditions under which the federal preferences, as defined in paragraph (a) of this section, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502–0372)

§ 889.613 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the owner.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The owner must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the owner has given advance written approval. If the family is admitted, the owner may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The owner may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The owner must determine, in accordance with HUD's administrative instructions, that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Develoment Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

§ 889.614 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized: or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.*

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit is "substandard housing" (as described in this section).

(2) In the case of a "homeless family" (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

§ 889.615 Federal preference: rent burden.

(a) *Rent burden preference: how determined.*

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(1) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(2) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(*1*) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program, or

(*2*) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

19. The authority citation for part 904 is revised to read as follows:

Authority: 42 U.S.C. 1437–1437ee and 3535(d).

20. Section 904.122 is revised, to read as follows:

§ 904.122 Statutory preferences.

In selecting applicants for assistance under this part, the LHA must give preference, in accordance with the authorized preference requirements described in §§ 960.211 through 960.215. Notwithstanding those preferences, the LHA can limit homeownership admission to eligible homeownership candidates.

PART 905—INDIAN HOUSING PROGRAMS

21. The authority citation for part 905 is revised to read as follows;

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa–1437ee and 3535(d).

22. Section 905.301 is amended by removing from paragraphs (e)(1) and (e)(4) the phrase, "the Federal preferences contained in § 905.305" and adding in its place the phrase, "the federal preferences, ranking preferences, and local preferences in accordance with §§ 905.303 through 905.307"; by removing from paragraph (e)(2) the word "Fig."; by removing from paragraph (e)(4) the phrase "10 percent" and adding in its place the phrase "30 percent"; by removing from paragraph (e)(4) the phrase, ", as set out in § 905.305(b)(2)(ii)"; and by revising paragraph (a), to read as follows:

§ 905.301 Admission policies.

(a) *Admission policies.* (1) The IHA shall establish and adopt written policies for admission of participants. The policies shall cover all programs operated by the housing authority and, as applicable, will address the programs individually to meet their specific requirements (*i.e.*, Rental, MH, or Turnkey III). A copy of the policies shall be posted prominently in the IHA's office for examination by prospective participants and shall be submitted to the HUD field office promptly after adoption by the IHA. (See § 905.416 with respect to Mutual Help admission policies.)

(2) These policies shall be designed:

(i) To attain, to the maximum extent feasible, residency that includes families with a broad range of incomes and that avoids concentrations of the most economically deprived families with serious social problems;

(ii) To preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

(iii) To give a preference in selection of tenants and homebuyers to applicants who qualify for a federal preference, ranking preference, or local preference, in accordance with §§ 905.303 through 905.307; and

(iv) To establish objective and reasonable policies for selection by the IHA among otherwise eligible applicants.

(3) The IHA admission policies shall include the following:

(i) Requirements for applications and waiting lists;

(ii) Description of the policies for selection of applicants from the waiting list that includes the following:

(A) How the "federal preferences" (described in § 905.303) will be used;

(B) How any "ranking preferences" (described in § 905.303) will be used;

(C) How any "local preferences" (described in § 905.303) will be used; and

(D) How any residency preference will be used;

(iii) Policies for verification and documentation of information relevant to acceptance or rejection of an applicant;

(iv) Policies for resident transfer between units, projects, and programs. For example, an IHA could adopt a criterion for voluntary transfer that the resident had met all obligations under the current program, including payment of charges to the IHA and completion of maintenance requirements;

(v) Policies for compliance with 24 CFR part 750, which requires applicants and participants to disclose and verify social security numbers at the time eligibility is determined and at later income reexaminations; and

(vi) Policies for compliance with 24 CFR part 760, which requires applicants

and participants to sign and submit consent forms for the obtaining of wage and claims information from State wage and information collections agencies.

(4) These selection policies shall:

(i) Be duly adopted; and

(ii) Be publicized by posting copies thereof in each office where applications are received and by furnishing copies to applicants or residents upon request, free or at their expense, at the discretion of the IHA.

(5) Such policies shall be submitted to the HUD field office upon request from that office.

(6) "Residency preference" means a preference for admission of families living in the jurisdiction of the IHA. Residency provisions are subject to the following:

(i) Residency requirements are not permitted;

(ii) A residency preference may not be based on how long the applicant has resided in the jurisdiction; and

(iii) Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

* * * * *

23. New §§ 905.303 905.304, 905.306, and 905.307 are added and § 905.305 is revised, to read as follows:

§ 905.303 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 905.304(a).

(2) "Ranking preferences" are preferences that may be established by the IHA to use in selecting among applicants that qualify for federal preferences. See § 905.304(b).

(3) "Local preferences" are preferences that may be established by the IHA for use in selecting among applicants without regard to their federal preference status.

(b) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The IHA may match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the IHA must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families.

(ii) *Singles preference.* See § 905.102.

(2) *Local preference admissions.*

(i) If the IHA wants to use preferences to select among applicants without regard to their federal preference status, it may adopt a preference system for this purpose. These "local preferences" may only be adopted after the IHA has conducted a public hearing to establish preferences that respond to local housing needs and priorities. The IHA may only use local preferences in selection for admission if the IHA has conducted the required public hearing.

(ii) "Local preference limit" means thirty percent of total annual admissions to the program. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The IHA may not give a preference to an applicant (federal preference, local preference or ranking preference) if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the IHA may give an admission preference in any of the following cases:

(i) If the IHA determines that the evicted person has successfully completed a rehabilitation program approved by the IHA;

(ii) If the IHA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the IHA determines that the evicted person no longer participates in any drug-related criminal activity.

(c) *Informing applicants about admission preferences.*

(1) The IHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the IHA determines that the notification to all applicants on a waiting list required by paragraph (d)(1) of this section is impracticable because of the length of the list, the IHA may provide this notification to fewer than all applicants on the list at any given time. The IHA, must, however, have notified a sufficient number of applicants at any given time that, on the basis of the IHA's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the IHA's framework for applying the preferences and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(d) *Nondiscrimination.*

(1) Any selection preference used by an IHA must be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives.

(2) The Indian Civil Rights Act may apply to operations of the IHA.

(3) In addition, the following nondiscrimination requirements may apply:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(e) *Notice and opportunity for a meeting where preference is denied.*

(1) If the IHA determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the IHA must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the IHA to review the determination. The meeting may be conducted by any person or persons designated by the IHA, who may be an officer or employee of the IHA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against in violation of requirements stated in paragraph (d) of this section.

(Approved by the Office of Management and Budget under OMB control number 2577–0105)

§ 905.304 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The IHA's admission policy may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The IHA could give preference to working families. (If an IHA adopts such a preference, an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) A IHA also could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. An IHA also could use its "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The IHA may limit the number of applicants who may qualify for any ranking preference.

(3) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.*

(1) *Basis of federal preference.* The IHA

(Approved by the Office of Management and Budget under OMB control number 2577–0105)

§ 905.304 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The IHA's admission policy may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The IHA could give preference to working families. (If an IHA adopts such a preference, an applicant household shall be given the benefit of the preference if the head and spouse, or sole member is age 62 or older or is receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) A IHA also could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. An IHA also could use its "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The IHA may limit the number of applicants who may qualify for any ranking preference.

(3) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.* (1) *Basis of federal preference.* The IHA must use the following definitions of the federal preferences (as elaborated upon in §§ 905.305, 905.306, and 905.307) unless it has received HUD approval of alternative definitions.

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the IHA.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the IHA that the family qualifies for federal preference. The IHA must accept this certification, unless the IHA verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the IHA must require the applicant to provide information needed by the IHA to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) Once the IHA has verified an applicant's qualification for a federal preference, the IHA need not require the applicant to provide information needed by the IHA to verify such qualification again unless:

(A) The IHA determines reverification is desirable because a long time has passed since verification, or

(B) The IHA has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

§ 905.305 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the IHA.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The IHA must determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the IHA has given advance written approval. If the family is admitted, the IHA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The IHA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The IHA must determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Develoment Amendments of 1978.

§ 905.306 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State or tribal law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

§ 905.307 Federal preference: rent burden.

(a) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in § 905.102.

(2) "Rent" means:

(i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the IHA's programs, or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period,

(3) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act.

24. Section 905.416 is amended by removing from paragraph (d) the phrase, "Federal preference in accordance with § 905.305", and adding in its place the phrase, "federal preferences, ranking preferences, and local preferences, in accordance with §§ 905.303 through 905.307"; by removing the last sentence from paragraph (f); and by revising paragraph (a)(3), to read as follows:

§ 905.416 Selection of MH homebuyers.

(a) * * *

(3) *Different standards for MH program.* (i) The IHA's admission policies for MH projects should be different from those for its rental or Turnkey III projects. The policies for the MH program should provide standards for determining a homebuyer's:

(A) Ability to provide maintenance for the unit; and

(i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the IHA's programs, or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act.

24. Section 905.416 is amended by removing from paragraph (d) the phrase, "Federal preference in accordance with § 905.305", and adding in its place the phrase, "federal preferences, ranking preferences, and local preferences, in accordance with §§ 905.303 through 905.307"; by removing the last sentence from paragraph (f); and by revising paragraph (a)(3), to read as follows:

§ 905.416 Selection of MH homebuyers.

(a) * * *

(3) *Different standards for MH program.* (i) The IHA's admission policies for MH projects should be different from those for its rental or Turnkey III projects. The policies for the MH program should provide standards for determining a homebuyer's:

(A) Ability to provide maintenance for the unit; and

(B) Potential for maintaining at least the current income level.

(ii) The policies for the Mutual Help program must include procedures for determining the successor to a unit upon the death of a homebuyer (in the event that the homebuyer has not designated a successor or the successor fails to qualify).

* * * * *

25. In § 905.1008, the introductory text and the first sentence of paragraph (a) is revised to read as follows:

§ 905.1008 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) Subject to the preference provisions of §§ 905.303 through 905.307 and any additional eligibility and preference standards that are required or permitted under this section, a homeownership plan may provide for the eligibility of residents of public housing owned or leased by the seller IHA, and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller IHA; provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be purchased). * * *

* * * * *

PART 906—SECTION 5(h) HOMEOWNERSHIP PROGRAM

26. The authority citation for part 906 is revised to read as follows:

Authority: 42 U.S.C. 1437c(h), 1437d, and 3535(d).

27. In § 906.8, the introductory text and the first sentence of paragraph (a) are revised to read as follows:

§ 906.8 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) Subject to the preference provisions of §§ 960.211–960.215 (except for the restriction against use of a ranking preference that would cause selection of a relatively higher income family and any additional eligibility and preference standards that are required or permitted under this section), a homeownership plan may provide for the eligibility of residents of public housing owned or leased by the seller IHA, and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller IHA; provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be purchased). * * *

* * * * *

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

28. The authority citation for part 960 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

29. Section 960.203 is revised to read as follows:

§ 960.203 Nondiscrimination requirements.

(a) The tenant selection criteria and requirements used by a PHA must be established and implemented in accordance with the following authorities:

(1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(2) The Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(3) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(5) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; and

(6) The Americans with Disabilities Act (42 U.S.C. 12101–12213) to the extent applicable.

(b) Any tenant selection policies also must be consistent with HUD's affirmative fair housing objectives.

30. Section 960.204 is revised to read as follows:

§ 960.204 Tenant selection policies.

(a) *Selection policies.* (1) The PHA shall establish and adopt written policies for admission of tenants.

(2) These policies shall be designed:

(i) To attain, to the maximum extent feasible, a tenant body in each project that is composed of families with a broad range of incomes and to avoid concentrations of the most economically deprived families with serious social problems;

(ii) To preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

(iii) To give a preference in selection of tenants to applicants who qualify for a federal preference, ranking preference, or local preference, in accordance with §§ 960.211 through 960.215; and

(iv) To establish objective and reasonable policies for selection by the PHA among otherwise eligible applicants.

(3) The PHA tenant selection policies shall include the following:

(i) Requirements for applications and waiting lists (see 24 CFR 1.4);

(ii) Description of the policies for selection of applicants from the waiting list that includes the following:

(A) How the "federal preferences" (described in § 960.211) will be used;

(B) How any "ranking preferences" (described in § 960.211) will be used;

(C) How any "local preferences" (described in § 960.211) will be used; and

(D) How any residency preference will be used;

(iii) Policies for verification and documentation of information relevant to acceptance or rejection of an applicant; and

(iv) Policies for participant transfer between units, projects, and programs. For example, a PHA could adopt a criterion for voluntary transfer that the tenant had met all obligations under the current program, including payment of charges to the PHA.

(b) These selection policies shall:

(1) Be duly adopted; and

(2) Be publicized by posting copies thereof in each office where applications are received and by furnishing copies to applicants or tenants upon request, free or at their expense, at the discretion of the PHA.

(c) Such policies shall be submitted to the HUD field office upon request from that office.

(d) "Residency preference" means a preference for admission of families living in the jurisdiction of the PHA. Residency provisions are subject to the following:

(1) Residency requirements are not permitted;

(2) A residency preference may not be based on how long the applicant has resided in the jurisdiction; and

(3) Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

32. In § 960.205, paragraphs (a) and (c) is revised to read as follows:

§ 960.205 Standards for PHA tenant selection criteria.

(a) The tenant selection criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member. The PHA may use preferences based on the employment status of family members.

* * * * *

(c) The criteria to be established shall be reasonably related to attaining, to the maximum extent feasible, a tenant body in each project that is composed of families with a broad range of incomes. PHAs shall develop criteria, by local preference (see § 960.211) or otherwise, which will be reasonably calculated to attain the basic objective. (But see § 960.211(d).) The criteria developed shall be sufficiently flexible to assure administrative feasibility. A dwelling unit should not be allowed to remain vacant for the purpose of awaiting application by a family falling within the appropriate range.

* * * * *

§ 960.206 [Amended]

33. In § 960.206, the last sentence of paragraph (a) is amended by removing the term, "under § 960.211," and adding in its place the phrase, "a ranking preference, or a local preference, under §§ 960.211 through 960.215,".

§ 960.207 [Amended]

34. In § 960.207, paragraph (a) is amended by removing the last sentence, and by adding, before the period in the first sentence, the phrase, "(see § 960.211)"; and paragraph (b) is amended by removing the second sentence, and paragraphs (b)(1) and (b)(2).

35. Section 960.211 is revised and new §§ 960.212 through 960.215 are added, to read as follows:

§ 960.211 Selection preferences.

(a) *Types of preference.* There are three types of admission preferences.

(1) "Federal preferences" are preferences that are prescribed by federal law and required to be used in the selection process. See § 960.212(a).

(2) "Ranking preferences" are preferences that may be established by the PHA for use in selecting among applicants that qualify for federal preferences. See § 960.212(b).

(3) "Local preferences" are preferences that may be established by the PHA for use in selecting among applicants without regard to their federal preference status.

(b) *Use of preference in selection process.*

(1) *Factors other than preference.*

(i) *Characteristics of the unit.* The PHA may match other characteristics of the applicant's family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the PHA must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the owner will give preference to elderly families and disabled families, as provided by subpart D.

(ii) *Singles preference.* See part 912 of this chapter.

(2) *Local preference admissions.*

(i) If the PHA wants to use preferences to select among applicants without regard to their federal preference status, it may adopt a preference system for this purpose. These "local preferences" may only be adopted after the PHA has conducted a public hearing to establish preferences that respond to local housing needs and priorities. The PHA may only use local preferences in selection for admission if the PHA has conducted the required public hearing.

(ii) "Local preference limit" means fifty percent of total annual admissions to the program. In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The PHA may not give a preference (federal preference, local preference or ranking preference) to an applicant if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the PHA may give an admission preference in any of the following cases:

(i) If the PHA determines that the evicted person has successfully completed a rehabilitation program approved by the PHA;

(ii) If the PHA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the PHA determines that the evicted person no longer participates in any drug-related criminal activity.

(c) *Informing applicants about admission preferences.*

(1) The PHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (c)(1) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the PHA's framework for applying the preferences and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(d) *Income-based admission.* The PHA may only give preference to select a relatively higher income family for admission if the preference is pursuant to a "local preference" admission. (For other income-related restrictions on selection, see 24 CFR 913.105.)

(e) *Notice and opportunity for a meeting where preference is denied.*

(1) If the PHA determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the PHA must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the PHA to review the determination. The meeting may be conducted by any person or persons designated by the PHA, who may be an officer or employee of the PHA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2577-0105)

(1) The PHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (c)(1) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the PHA's framework for applying the preferences and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(d) *Income-based admission.* The PHA may only give preference to select a relatively higher income family for admission if the preference is pursuant to a "local preference" admission. (For other income-related restrictions on selection, see 24 CFR 913.105.)

(e) *Notice and opportunity for a meeting where preference is denied.*

(1) If the PHA determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the PHA must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the PHA to review the determination. The meeting may be conducted by any person or persons designated by the PHA, who may be an officer or employee of the PHA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(Approved by the Office of Management and Budget under OMB control number 2577–0105)

§ 960.212 Federal preferences: general.

(a) *Definition.* A federal preference is a preference under federal law for selection of families that are:

(1) Involuntarily displaced;

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(3) Paying more than 50 percent of family income for rent.

(b) *Ranking preferences: selection among federal preference holders.* The PHA's admission policy may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The PHA may give ranking preference to working families—so long as the preference does not result in violation of the restriction of § 960.211(d) concerning income based admissions or the nondiscrimination provisions that protect against discrimination on the basis of age or disability. (If a PHA adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) The PHA also could give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market.

(2) The PHA may limit the number of applicants who may qualify for any ranking preference.

(3) The system may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular federal preference (e.g., provide that an applicant living in substandard housing has greater need for housing than—and, therefore, would be considered for assistance before—an applicant paying more than 50 percent of family income for rent); or

(iii) Giving greater weight to a federal preference holder who fits a particular category of a single federal preference (e.g., provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(c) *Qualifying for a federal preference.*

(1) *Basis of federal preference.* The PHA must use the following definitions of the federal preferences (as elaborated upon in §§ 960.213, 960.214, and 960.215), unless it has received HUD approval of alternative definitions.

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the PHA.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the PHA that the family qualifies for federal preference. The PHA must accept this certification, unless the PHA verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before admitting an applicant on the basis of a federal preference, the PHA must require the applicant to provide information needed by the PHA to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) Once the PHA has verified an applicant's qualification for a federal preference, the PHA need not require the applicant to provide information needed by the PHA to verify such qualification again unless:

(A) The PHA determines reverification is desirable because a long time has passed since verification, or

(B) The PHA has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Effect of current residence in assisted housing.* No applicant is to be

denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(Approved by the Office of Management and Budget under OMB control number 2577–0105)

§ 960.213 Federal preference: involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the PHA.

(2) (i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.*

(i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence, or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The PHA must determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the PHA has given advance written approval. If the family is admitted, the PHA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.*

(i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The PHA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.*

(i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The PHA must determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

§ 960.214 Federal preference: substandard housing.

(a) *When unit is substandard.* A unit is substandard if it:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions.*

(1) *Dilapidated unit.* A housing unit is dilapidated if:

(i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or repair or from serious damage to the structure.

(2) *Homeless family.*

(i) An applicant that is a "homeless family" is considered to be living in substandard housing.

(ii) A "homeless family" includes any person or family that:

(A) Lacks a fixed, regular, and adequate nighttime residence; and also

(B) Has a primary nighttime residence that is:

(*1*) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(*2*) An institution that provides a temporary residence for individuals intended to be institutionalized: or

(*3*) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

§ 960.215 Federal preference: rent burden.

(a) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in 24 CFR 913.102.

(2) "Rent" means:

(i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the PHA tenant-based program, or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act.

Dated: June 3, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–16886 Filed 7–13–94; 8:45 am]

BILLING CODE 4210–32–P

MI
994
JUL
18
SS
1
3
6
OL
9

federal register

federal register

Monday
July 18, 1994

Part IV

Department of Housing and Urban Development

24 CFR Part 813, et al.
Section 8 Certificate and Voucher Programs Conforming Rule: Admissions; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 813, 882, 887, and 982

[Docket No. R–94–1628; FR–3727–F–01]

RIN 2577–AB47

Section 8 Certificate and Voucher Programs Conforming Rule: Admissions

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule amends requirements for admission of eligible families to receive tenant-based Section 8 rental assistance under the rental certificate program and the rental voucher program. The rule includes procedures for waiting list and non-waiting list admission, including federal and local preferences for admission from the Housing Agency waiting list. The rule makes these changes to implement a statutory change and to reorganize and clarify the admissions process.The statutory change implemented by this rule decreases the number of families that must be admitted on the basis of qualifying for a federal selection preference and specifically authorizes adoption of local selection preferences by housing agencies. The rule also consolidates and clarifies existing policies concerning the admissions process.

EFFECTIVE DATES: Except for § 982.209(b), this rule is effective on October 18, 1994. Section 982.209(b) is effective January 18, 1995.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Director, Rental Assistance Division, Room 4204. Telephone numbers (202) 708–2841 (voice); (202) 708–0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB Control Number 2577–0169.

Background

On February 24, 1993, HUD published a comprehensive proposed rule to combine and conform the rules for tenant-based Section 8 rental assistance under the rental certificate program and the rental voucher program. [58 FR 11292]

This final rule only covers unified admission procedures for the tenant-based program. Admission procedures are contained in Subpart E of a new tenant-based rule at 24 CFR Part 982. As soon as possible, HUD will issue a comprehensive final rule covering all aspects of the tenant-based programs. The final rule may include further revisions of program admission procedures.

Eligibility

When HA Can Admit Non Very Low-Income Families

The proposed rule listed the categories of non very low-income families who may be selected for the tenant-based programs. Public comments state that the list is confusing, administratively cumbersome and unfair. Comments also claim HUD is improperly restricting admission of non very low-income families.

Under the law, there are different income limits for admission to the certificate and voucher programs. In the certificate program, the law permits assistance for low-income families (income below 80 percent of area median). However, in the voucher program, the law generally limits participation to very low-income families (income below 50 percent of area median). Families that are not very low-income can be admitted to the voucher program only in cases specified in the law—families who reside in specified types of housing affected by various HUD programs or activities.

A central goal of this rule is to unify regulatory requirements for the tenant-based certificate and voucher programs, except for differences that are required by the law. To this end, the rule largely sets the same eligibility requirements for the two tenant-based programs. For both programs, the rule allows admission of non very low-income families within the statutory categories prescribed by law for the Section 8 voucher program (such as a family previously assisted in public housing), and also within the statutory lower income limit for admission to the Section 8 non-voucher programs. Thus families that meet the uniform eligibility requirements under this rule are within the statutory eligibility limits for both the Section 8 voucher and certificate programs.

For the certificate program only, the rule permits admission of a low-income family that lives in a property sold by HUD or in a property sold at foreclosure of a HUD-held mortgage. This is the only difference between the uniform eligibility requirements for the tenant-based programs under this rule.

In the certificate and voucher programs, the law establishes the outer boundaries of statutory eligibility. However, the law does not assure assistance for any eligible family. Unlike entitlement programs, in which assistance is provided to any eligible person, the availability of Section 8 certificate or voucher assistance is constrained by the amount of funding appropriated by the Congress, and by the funding available to the HA at which a family applies. Many may apply, but the HA can only assist the number of families that can be supported with available funding.

In this context, the rule defines uniform eligibility criteria for admission of non very low-income families. The law does not require HUD to set eligibility limits at the boundaries of statutory program eligibility. Rather, the law specifically recognizes HUD's authority to limit admission of non very low-income families. [See 42 U.S.C. 1437n]

HUD agrees with comments which note that the list of specific eligibility categories (for non very low-income admissions) is clumsy and confusing. However, since the voucher law does not permit assistance for other non very low-income families, use of the statutory voucher categories is the only way to define a uniform standard for admission of low-income families other than very low-income families. HUD may not totally prohibit admission of low-income families other than very low income families. [42 U.S.C. 1437n(c)] In addition, the eligibility definition in this rule focuses most available assistance on very low-income families, while permitting assistance for other low-income families affected by specific HUD programs and activities.

Under this rule, a Housing Agency (HA) can only admit non very low-income families in the special categories defined in the rule. Before this rule, low-income families were, in theory, broadly eligible for admission to the certificate program. However, admission of such families was sharply restricted by HUD.

By law, only 15 percent (5 percent before a 1990 amendment) of Section 8 and public housing units added nationally since federal fiscal year 1982 can be leased to non very low-income families. [U.S.H. Act, § 16, 42 U.S.C. 1437n(b)(1)] The restrictions on leasing Section 8 units to non very low-income families are stated in a cross-cutting regulation for the various Section 8 programs. [24 CFR § 813.104 and § 813.105] For the certificate program, the limit is applied by regulation to families admitted to the certificate program since July 1984. [§ 813.105(c)] In practice, almost all Section 8 tenant-based units are covered by the regulatory restriction. In general, the HA may not admit a non very low-income (but statutorily eligible) family unless HUD has given the HA approval to grant an "exception".

In implementing the limit on non very low-income admissions, exceptions were routinely permitted by HUD for the types of non very low-income admissions allowed under this rule. In practice, non very low-income occupancies have represented less than five percent of the Section 8 and public housing programs as a whole, or of the certificate program or voucher program separately. Even in the categories for which exceptions have been granted by HUD, most families are very low-income at admission to the certificate and voucher programs.

For tenant-based assistance, this rule now lists the categories of non very low-income families that may be admitted to the program. For this reason, HUD has decided to delete the separate regulatory limitations (in Part 813) on non very low-income occupancy in the certificate programs, and to delete also the accompanying requirement to secure grant of a HUD "exception" permitting admission of non very low-income families. In essence, the exception cases are now built into the definition of income eligibility in the program rule. Since the number of non very low-income certificate and voucher admissions in these special categories is limited (in relation to the aggregate number of program admissions), experience indicates such admissions will continue to be well below 15 percent of certificate and voucher admissions, and will not jeopardize compliance with the global 15 percent limitation for the Section 8 and public housing programs as a whole. Deletion of the certificate and voucher procedures for restricting and tracking non very low-income occupancy will simplify program administration by HAs and HUD, but will not substantially affect actual levels of occupancy in these programs.

Applicable Income Limit

HUD establishes sets of income limits for each area of the country. The HA determines whether a family is income-eligible by comparing the family's annual income (gross income) and the HUD-established very low-income limit or low-income limit for the appropriate

programs. [24 CFR § 813.104 and § 813.105] For the certificate program, the limit is applied by regulation to families admitted to the certificate program since July 1984. [§ 813.105(c)] In practice, almost all Section 8 tenant-based units are covered by the regulatory restriction. In general, the HA may not admit a non very low-income (but statutorily eligible) family unless HUD has given the HA approval to grant an "exception".

In implementing the limit on non very low-income admissions, exceptions were routinely permitted by HUD for the types of non very low-income admissions allowed under this rule. In practice, non very low-income occupancies have represented less than five percent of the Section 8 and public housing programs as a whole, or of the certificate program or voucher program separately. Even in the categories for which exceptions have been granted by HUD, most families are very low-income at admission to the certificate and voucher programs.

For tenant-based assistance, this rule now lists the categories of non very low-income families that may be admitted to the program. For this reason, HUD has decided to delete the separate regulatory limitations (in Part 813) on non very low-income occupancy in the certificate programs, and to delete also the accompanying requirement to secure grant of a HUD "exception" permitting admission of non very low-income families. In essence, the exception cases are now built into the definition of income eligibility in the program rule. Since the number of non very low-income certificate and voucher admissions in these special categories is limited (in relation to the aggregate number of program admissions), experience indicates such admissions will continue to be well below 15 percent of certificate and voucher admissions, and will not jeopardize compliance with the global 15 percent limitation for the Section 8 and public housing programs as a whole. Deletion of the certificate and voucher procedures for restricting and tracking non very low-income occupancy will simplify program administration by HAs and HUD, but will not substantially affect actual levels of occupancy in these programs.

Applicable Income Limit

HUD establishes sets of income limits for each area of the country. The HA determines whether a family is income-eligible by comparing the family's annual income (gross income) and the HUD-established very low-income limit or low-income limit for the appropriate income limit area. The final rule codifies how the HA determines the applicable income limit area for a family admitted to the tenant-based assistance programs.

In the public housing program, and in the project-based Section 8 assistance programs, family income eligibility at admission to the program is governed by the income limit for the area where the project is located, and the family is initially assisted. In the tenant-based programs, at initial issuance of a certificate or voucher to a family, the HA does not know where the family will initially rent with assistance under the program.

At admission, a family may generally choose to rent a unit anywhere in the HA jurisdiction, and (if qualified for initial portability) may elect to rent a unit outside the HA jurisdiction under portability procedures. For some HAs, such as an HA with Statewide jurisdiction, the HA jurisdiction may include more than one income limit area. If the family moves to a different HA jurisdiction under portability, the receiving HA may be in a different income limit area (or areas) than the HA that admitted the family. The HA needs to know what income limit applies, both when the HA initially issues the family a certificate or voucher, and also when the HA initially executes a HAP contract for the family.

The rule provides that in determining the applicable income limit for issuance of a certificate or voucher upon selection for the program, the HA uses the highest income limit (for the family unit size) of all the income limit areas in the HA jurisdiction. However, the family may only use the certificate or voucher to rent a unit in an area where the family is income eligible at admission to the program (that is, when the HA executes a HAP contract for the unit selected by the family). The applicable income limit for admission to the program is the income limit for the area where the family is initially assisted. [§ 982.201(b)(2)] For admission as a very low-income family, the family income must be within the very low-income limit for the area. For admission as a low-income family (which meets criteria for admission of a non very low-income family), the family income must be within the low-income limit for the area.

Continuously Assisted Family

The rule provides that the HA may assist a low-income family that is continuously assisted under the 1937 Housing Act. [§ 982.201(b)(1)(ii)(A)] The rule lists the 1937 Housing Act programs. ["1937 Housing Act program" defined at § 982.3] The 1937 Act programs include the public housing program and all of the Section 8 project and tenant-based programs (as well as the old Section 23 leased housing and Section 23 housing assistance payments programs).

Public comments express concern about the process for determining if families are "continuously assisted" under the 1937 Housing Act. Families do not know if they have been continuously assisted under a 1937 Act program. The HA would have to conduct investigations to determine if families qualify as continuously assisted. Comments ask for guidance on how to get this information.

If a family is currently assisted in a 1937 Act program of the same HA at which it is applying for assistance under the certificate or voucher program, the HA should usually have no difficulty getting this information. If the family was receiving assistance under one of the 1937 Housing Act programs from another HA or a private Section 8 owner, the family must generally provide the information to the HA. The HA may verify the information by inquiry to the HA or owner.

The rule provides that an applicant is considered to be continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the certificate or voucher program. [§ 982.201(d)(1)] The Department recognizes that in a variety of circumstances there may be a brief interruption in the transition from another 1937 Act program to assistance under the 1937 Act tenant-based programs. For example, tenant-based assistance may be provided for continued assistance to residents of a Section 8 project after the HAP contract expires or is terminated for owner breach, and there may be a short delay in arranging for continued assistance for project-residents.

This rule allows the HA flexibility to deal with brief breaks that do not interrupt the essential continuity of 1937 Act assistance to the family. The rule provides, as proposed, that an HA must establish policies concerning whether and to what extent a brief interruption between assistance under a 1937 Act program and admission to the HA's tenant-based program will be considered to break continuity of assistance. [§ 982.201(d)(2)] Comments approve this approach.

Limit on Assistance for Aliens

Comments suggest that proof of citizenship should be an eligibility

requirement, and that foreign students should be ineligible for the program.

Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) prohibits Section 8 assistance for persons other than United States citizens or eligible aliens. Section 214 will be implemented in a separate rule.

Definition of a Family

In the Section 8 and public housing programs, the statutory term "family" refers to a group or single person that can be assisted under the program. A 1992 law redefined the term "family". [42 U.S.C. 1437a(b)(3), as amended by the Housing and Community Development Act of 1992, section 621; 106 Stat. 3812] The February 24, 1993 proposed rule contained a new "family" definition based on the 1992 law. HUD did not propose to amend the general Section 8 definition of "family" and other related terms in 24 CFR 812.2. The statutory family definition was amended again, on April 11, 1994. [42 U.S.C. 1437a(b)(3)(B), amended by Section 301 of Public Law 103–233, 108 Stat. 342, 369]

Public comments raise important questions about the new definition of the term "family" under the 1992 law and proposed rule. The Section 8 and public housing programs are covered by the same statutory "family" definition in the U.S. Housing Act of 1937. Since there should be substantially uniform regulatory treatment of family eligibility in these programs, the Department is deferring implementation of any substantive changes because of the family redefinition under the 1992 law.

The 1992 law provided that the term "families" "*means* families with children". [106 Stat. 3812] Many public comments echo HUD's concern in the proposed rule, that this new statutory definition might not permit admission of a multi-person family without children, such as a married couple without children or two adults. In 1994, the law was amended to provide that "the term 'families' *includes* families with children".

This final rule does not give a new family definition. However, the rule restates how the family concept is used in determining program eligibility. The rule states that a "family" may receive assistance under the certificate or voucher programs. [§ 982.201(a)] The "family" may be either a single person or a group of persons. [§ 982.201(c)(1)] In accordance with the 1994 amendment, the rule is revised to provide that the group of persons constituting a family "includes a family with a child or children". [§ 982.201(c)(2)] This provision allows admission of a family with children, but does not preclude the admission of a multi-person family without children.

Over time, successive amendments of the U.S.H. Act "family" definition have widened the qualification of single individuals for assistance under the program. Originally, the term covered only aged, displaced or disabled single persons. Currently, any single person may qualify as a "family". Although the rule does not include a new family definition, the rule specifies that a single person family may be an elderly person, a disabled person, a displaced person or "any other single person". [§ 982.201(c)(4)(iv)]

Through successive statutory amendments, the 1937 Housing Act specified when a single person qualifies as a family, but did not contain a comprehensive definition stating when a group of persons (other than an elderly family or disabled family) qualifies as a family. HUD does not impose a national definition of a multi-person family, but has substantially left this term to local definition by individual HAs for application to their programs.

The rule confirms that "family" includes an elderly or disabled person or persons residing with a live-in aide who provides necessary supportive services. In accordance with historical practice and understanding, the rule provides that the HA determines if any other group of persons qualifies as a family. [§ 982.201(c)(3)]

A 1993 rule removed restrictions on assistance for singles who are not elderly, disabled or displaced. [58 FR 39658, July 26, 1993] HAs now have broad authority to house other single persons, but must house the elderly, disabled or displaced ahead of other singles.

Near-elderly

In accordance with the 1992 law, the family definition in the proposed rule contains several provisions on assistance to a "near-elderly" person—defined as a person from 50 to 61 years old. The proposed rule provides that a statutory "family" (the entity eligible for program assistance) includes a family whose head or spouse is near-elderly, and also provides that a single person family includes a near-elderly person. Comments approve assistance for the near-elderly. The comments generally appear to assume that qualification as near-elderly makes a single person eligible for assistance, or confers priority over younger single persons. Such comment indicates confusion as to the impact of the near-elderly designation on program eligibility. Since any single person may now qualify as a statutory family, the near-elderly designation is not necessary to confer single person program eligibility. Also, near elderly singles do not have a statutory priority for admission.

This rule does not include the proposed near-elderly definition and provisions on family eligibility of a near-elderly person. Under the 1992 law, the near-elderly characterization chiefly affects use of Section 8 project-based assistance in units or projects designated for the elderly. In the tenant-based programs, there are no projects or units designated for Section 8 elderly occupancy. Each family chooses a unit in the private market.

Temporary Absence of Foster Child

Comments asked HUD to clarify a rule which states that the temporary absence of a child from the home due to placement in foster care may not be considered in determining what constitutes a family. A 1990 law provides that: The temporary absence of a child from the home due to placement in foster child care shall not be considered in considering family composition and family size. [1990 NAHA, section 574, amending 42 U.S.C. 1437a(b)(3); 104 Stat. 4238]

In determining family composition, the temporarily absent child is considered to be part of the assisted household. For example, a single woman with two children who are currently and temporarily living in foster care homes, is considered as a family of three people, one adult and two children, instead of a single person family. The statutory provision is intended to promote family re-unification by permitting the family to rent a subsidized unit that will be big enough for the whole family when the absent child returns from foster care. To clarify this concept, the rule provides that: A child who is temporarily away from the home because of placement in foster care is considered a member of the family. [§ 982.201(c)(5)]

The statutory and regulatory provisions only pertain to the foster child's "temporary" absence from the home, but are not intended to artificially enlarge the space available for other family members.

Remaining Family Member

Comments ask HUD to clarify a proposed provision stating that the "remaining" members of an assisted family qualify as a "family". Since the beginning of the Section 8 program, the law has provided that a "family" includes a "remaining" member of the tenant family. [Definition now at 42 U.S.C. 1437a(b)(3)(A)] Under the existing regulatory definition of a "family", the term "family" includes the "remaining member of a tenant family" (at § 812.2, not amended by this rule).

If composition of an assisted family changes by death or departure of family members after initial admission to the program, the remaining members or individual member of the assisted family are a statutory "family". The definition of a "family" as including a "remaining" family member merely confirms that the HA may continue assistance on behalf of a remaining family member after departure of other members of the original assisted family. The "remaining" family member concept does not affect original eligibility or admission to the program—whether of a single individual or of a multi-person family.

Since this rule only covers HA admission processes (Part 982, Subpart E), the rule deletes the proposed provision on remaining family members. The final stage of this rulemaking will clarify that remaining family members constitute a family.

Disability

The family definition in the 1992 law includes a new definition of "person with disabilities" (essentially combining defining elements of three separate disability definitions under prior law). [106 Stat. 3812, amending 42 U.S.C. 1437a(b)(3)(E)] The law provides that "person with disabilities" may not exclude persons with the disease of acquired immunodeficiency syndrome (AIDS), or conditions resulting from the AIDS syndrome. The proposed rule would incorporate the new AIDS-related elements in the definition of "person with disabilities".

Comments ask HUD to clarify whether the disability definition includes a person who is HIV positive, but who does not exhibit symptoms or conditions associated with AIDS. Comments ask why persons with terminal illnesses other than AIDS are not included in the definition, and suggest that HUD expand the definition of the term disabled person to include persons in recovery programs for substance abuse or other conditions.

As indicated above, substantive changes in the "family" definition under the 1992 law will be implemented by HUD in a separate rulemaking for the whole universe of covered Section 8 and public housing programs. This rule does not include special provisions on eligibility of individuals with AIDS and related conditions. To qualify for assistance as

U.S.C. 1437a(b)(3)(A)] Under the existing regulatory definition of a "family", the term "family" includes the "remaining member of a tenant family" (at § 812.2, not amended by this rule).

If composition of an assisted family changes by death or departure of family members after initial admission to the program, the remaining members or individual member of the assisted family are a statutory "family". The definition of a "family" as including a "remaining" family member merely confirms that the HA may continue assistance on behalf of a remaining family member after departure of other members of the original assisted family. The "remaining" family member concept does not affect original eligibility or admission to the program—whether of a single individual or of a multi-person family.

Since this rule only covers HA admission processes (Part 982, Subpart E), the rule deletes the proposed provision on remaining family members. The final stage of this rulemaking will clarify that remaining family members constitute a family.

Disability

The family definition in the 1992 law includes a new definition of "person with disabilities" (essentially combining defining elements of three separate disability definitions under prior law). [106 Stat. 3812, amending 42 U.S.C. 1437a(b)(3)(E)] The law provides that "person with disabilities" may not exclude persons with the disease of acquired immunodeficiency syndrome (AIDS), or conditions resulting from the AIDS syndrome. The proposed rule would incorporate the new AIDS-related elements in the definition of "person with disabilities".

Comments ask HUD to clarify whether the disability definition includes a person who is HIV positive, but who does not exhibit symptoms or conditions associated with AIDS. Comments ask why persons with terminal illnesses other than AIDS are not included in the definition, and suggest that HUD expand the definition of the term disabled person to include persons in recovery programs for substance abuse or other conditions.

As indicated above, substantive changes in the "family" definition under the 1992 law will be implemented by HUD in a separate rulemaking for the whole universe of covered Section 8 and public housing programs. This rule does not include special provisions on eligibility of individuals with AIDS and related conditions. To qualify for assistance as a disabled person, a single person must meet the general disability standards carried forward from the prior law (and consolidated under the term "disabled person"). In addition, since the law and rule now permit assistance to any single person (not only the aged, disabled or displaced), disabled or non-disabled single persons are broadly eligible for Section 8 assistance.

The definition of "disabled person" includes a person with a disability as defined in section 223 of the Social Security Act. [Definition of "disabled person" in § 982.3; 42 U.S.C. 1437a(b)(3)(E)(i)] Comments state that the HUD rule should use the disabled definition in the Americans with Disabilities Act instead of the definition of disabled under section 223 of the Social Security Act. Since the disability definition in the 1937 Housing Act explicitly incorporates the disability definition in the Social Security Act, HUD has not followed this recommendation.

Live-in Aide

The rule defines the term "live-in aide". [§ 982.3] A live-in aide resides with the assisted family to care for a family member who is disabled or elderly. Section 8 family income does not include income of the live-in aide (either for determination of family eligibility at admission to the program, or for determination of the family share at admission and reexamination). If the Section 8 participant leaves the unit, the live-in aide is not considered a "remaining" family member or program participant, and does not receive any assistance for continued occupancy of the unit.

The definition of live-in aide in this rule substantially tracks the definition in other cross-cutting Section 8 rules that apply to the certificate and voucher programs. [24 CFR Parts 812 and 813] The 1992 law also authorizes the use of a live-in aide for a near-elderly person. This change will be implemented in the future rulemaking for programs affected by the 1992 family amendments.

The final rule deletes a proposed change of the live-in aide definition (not included in the parallel language of other Section 8 rules) to provide that a live-in aide may not be related by blood, marriage or operation of law to the persons receiving Section 8 assistance for occupancy of the unit. Comments objected to this proposal, stating that HUD should encourage a family relative to act as a live-in aide.

Single Persons: Preference for Admission of Elderly or Disabled

By law, a single person who is elderly (over 62), disabled or displaced must be admitted before other single person families. [42 U.S.C. 1437a(b)(3)(A)] This singles preference is implemented in the existing HUD rule on admission of single persons in the Section 8 programs. [§ 812.3, as amended at 58 Federal Register 39658–59, 7/26/93]

In HUD's existing rules, the statutory preference for a disabled or elderly single person is broadened to provide a preference for an "elderly family" or displaced person over other single persons. [§ 812.3(e)] An "elderly family" includes both a single person family consisting of a person who is disabled or over 62, and a multi-person family whose head or spouse is disabled or over 62. [Definition of "elderly family" in § 812.2]

The proposed rule merely states the bare statutory preference for an elderly, disabled or displaced single person over other single persons, without stating the preference for an "elderly" multi-person family. [Proposed § 982.201(a)(2)(ii)] In this rule, the statement of the preference has been conformed to the existing rule that gives preference to any family with an elderly or disabled head or spouse, not limited to a preference for elderly or disabled single person families.

The rule provides that: In selecting applicants, the HA must give preference to:

(1) A family (with or without federal preference):

(i) Whose single member is a displaced person or,

(ii) Whose head or spouse or single member is an elderly person or a disabled person, over

(2) A single person (with or without federal preference) who is not elderly, disabled or displaced. [§ 982.207(d)]

Comments note that the proposed rule does not explain how the statutory singles preference (for single persons who are elderly, disabled or displaced) relates to the statutory federal preferences (for single or multi-person families that are displaced, rent-burdened or live in substandard housing). Comments recommend that the rule should specify that the preference for singles applies between applicants with the same federal preference status (i.e., applicants with or without a federal preference). As HUD understands this proposal, the singles preference would require the admission of a federal preference single who is elderly, disabled or displaced before a federal preference single who is not elderly, disabled or displaced.

The statutes do not state the relation between the two types of statutory preference, nor prescribe which type of preference takes precedence. HUD has decided to provide that the federal statutory preference for elderly, disabled or displaced singles will take precedence over the so-called "federal preferences". Under this rule, the singles preference is not limited—as proposed by the comment—to applicants with the same federal preference status. The rule is revised to provide that the singles preference applies to a family "with or without a federal preference" over a single person with or without a federal preference. The rule requires admission of a single individual who is elderly, disabled or displaced, but does not qualify for federal preference, before a single individual who qualifies for federal preference, but is not elderly, disabled or displaced. [§ 982.207(d)]

Comments state that HAs should not be required to accept applications from non-elderly applicants, when these applicants will never be reached on the waiting list because of the preference for elderly or disabled persons.

The rule does not require the admission of "other" single persons, who are not entitled to the statutory singles preference. The rule also permits the HA to adopt a policy on opening or closing the waiting list to applications from such other singles. The HA may adopt local policy on who may apply for assistance when the waiting list is open. [§ 982.206(a)(3) and § 982.206(b)(1)] If singles with statutory preference will absorb available program openings, the HA may elect to stop accepting new applications from other single persons.

Verifying Eligibility

The proposed rule requires that an HA must verify family eligibility during the 90 day period before the family initially receives assistance under the program. Comments note that HAs will have difficulty in satisfying this requirement. The Department is also asked to clarify whether "initially receiving assistance" means the date a certificate or voucher is issued or the effective date of the HAP contract.

After considering comments, HUD has decided to require that the HA obtain information verifying family eligibility no more than 60 days before the HA initially issues a certificate or voucher to an applicant family. [§ 982.201(e)] This timing of the verification process will eliminate scheduling problems that might be caused if the time for eligibility verification is linked to the commencement of assistance (effective date of the HAP contract).

Comments state that the requirement to verify eligibility 90 days before commencement of assistance is inconsistent with handbook guidance providing that verifications are valid for 120 days from receipt by the HA. The 120 day validity period is and will remain applicable for annual reexaminations and interim redetermination of family income and composition after admission to the program. The program handbook will give additional guidance on how to administer the initial income eligibility verification deadline in this rule.

The proposed rule provides that the HA must make a preliminary eligibility determination before placing a family's name on the waiting list. Comments criticize HUD for trying to micro-manage the admission process. An HA should have discretion whether to make an eligibility determination before a family is added to the waiting list. Family circumstances change. A family that is ineligible at the time of application may become eligible before its name is reached on the waiting list. Comments also ask HUD to clarify that the HA is not required to verify family eligibility before adding a family's name to the waiting list.

An HA must determine and verify eligibility before a family is admitted. However, HUD agrees that HAs need flexibility to design an admission process and timing that fits the need of the local program. For most HAs, there are many qualified applicants and a long wait for entrance to the program. Families may move away or lose interest. Eligibility information must be current when the family is finally selected for admission to a program. The HA needs to balance administrative cost and problems against the need for an adequate pool of families for orderly admission to available program openings.

Various program requirements apply to the HA "waiting list", including the federal preference scheme, and provisions governing the relation of the Section 8 waiting list to waiting lists for other assisted housing programs. The proposed rule provides that the HA must make a preliminary eligibility determination before a family is placed on the Section 8 waiting list. This provision was intended to specify that the universe to which "waiting list" requirements apply is the universe of families for which the HA has made a preliminary determination of eligibility (which need not be verified at that time). The proposed requirement was not intended to accelerate the HA's preliminary eligibility determination, or to require the HA to verify family eligibility before adding the family to the waiting list.

In the rule, HUD does not require a preliminary eligibility determination before the HA puts the family on the waiting list.

Selecting Families

Family Size—Effect on Selection

In the tenant-based programs, HAs currently apportion available program funding resources by unit size (1 bedroom, 2 bedroom * * *). The HA selects an applicant for the unit size opening for which the family qualifies under the HA occupancy standards. To match available program resources for each bedroom size with families who qualify for a particular bedroom size, waiting lists are organized by bedroom size.

In the certificate program, an HA is currently required to use program resources in accordance with a HUD approved unit size distribution. The target unit distribution for the program is stated in the consolidated ACC for the program. Generally, HUD must approve substantial deviation from the distribution allowed under the ACC. In the voucher program, the HA has discretion to determine the bedroom distribution of the program units supported with available program resources.

In both programs, families are selected by bedroom size for available program openings for the appropriate bedroom sizes. In this respect, the current selection procedure for the tenant-based programs is the same as the selection procedure by which HAs and owners fill vacant units in project-based assisted housing programs. For example, when there is a vacant two bedroom unit in an assisted project, the HA or owner selects a family that needs a two bedroom unit. In the project-based programs, selection is inherently constrained by the existing configuration of the subsidized unit, and the need to assure an appropriate match between the size of the project unit and the housing needs of the assisted family.

In the tenant-based programs, however, there are no project units. The family chooses among units available for rent in the assisted housing market. Once admitted to the tenant-based program, a family that qualifies for any unit size can search for a suitable sized unit in the local rental market. The HA is limited by the total program funds available under the consolidated ACC. However, there is no inherent need to match the unit size needs of the family with any particular assisted unit, or

with program funds apportioned to support rental of a particular size unit.

In the tenant-based programs, the unit size for which the family qualifies determines the maximum subsidy for the family. For example, in the certificate program a four bedroom family must lease a unit that rents under the four bedroom fair market rent.

Under the existing program procedures, the distribution of available program resources by unit size may result in different waiting periods for the different unit sizes. For example, at a particular HA the wait for a four bedroom certificate may be three years, while the wait for a two bedroom certificate is only one year. In general, the length of the time a family has to wait for assistance is determined by the amount of funding allocated by the HA for a given unit size, and the number of waiting list families who qualify for that unit size. In this system, federal and other locally determined preferences determine the order of admission among waiting list families who qualify for a given unit size.

In this rulemaking, comments recommend that families should not be selected by unit size. Families should be chosen from the top of the waiting list without regard to unit size. HUD should not allocate funding by unit size.

After careful consideration, HUD has decided to prohibit HA selection of families for tenant-based assistance on the basis of the unit size needed by the family. HAs are no longer permitted to select families to meet a pre-determined program unit size distribution. Instead, families must be selected by the HA without regard to family size, or to the unit size for which a family qualifies under the HA occupancy policy. When selected, a family receives the appropriate subsidy for the family size: The HA selects families of any size in order from the waiting list, up to the limit of available funding. The program unit size distribution is no longer the basis for selection, but the result of selection.

To accomplish this important change in program selection procedures, the rule provides that "the order of admission from the waiting list may not be based on family size, or on the family unit size for which the family qualifies under the HA occupancy policy." [§ 982.204(d)(1)]

At the time when a family comes to the top of the waiting list, the HA may or may not immediately have enough funds to support the amount of subsidy required for the family. The new rule provides that if the HA does not have sufficient funds to subsidize the family unit size of the family at the top of the

with program funds apportioned to support rental of a particular size unit.

In the tenant-based programs, the unit size for which the family qualifies determines the maximum subsidy for the family. For example, in the certificate program a four bedroom family must lease a unit that rents under the four bedroom fair market rent.

Under the existing program procedures, the distribution of available program resources by unit size may result in different waiting periods for the different unit sizes. For example, at a particular HA the wait for a four bedroom certificate may be three years, while the wait for a two bedroom certificate is only one year. In general, the length of the time a family has to wait for assistance is determined by the amount of funding allocated by the HA for a given unit size, and the number of waiting list families who qualify for that unit size. In this system, federal and other locally determined preferences determine the order of admission among waiting list families who qualify for a given unit size.

In this rulemaking, comments recommend that families should not be selected by unit size. Families should be chosen from the top of the waiting list without regard to unit size. HUD should not allocate funding by unit size.

After careful consideration, HUD has decided to prohibit HA selection of families for tenant-based assistance on the basis of the unit size needed by the family. HAs are no longer permitted to select families to meet a pre-determined program unit size distribution. Instead, families must be selected by the HA without regard to family size, or to the unit size for which a family qualifies under the HA occupancy policy. When selected, a family receives the appropriate subsidy for the family size: The HA selects families of any size in order from the waiting list, up to the limit of available funding. The program unit size distribution is no longer the basis for selection, but the result of selection.

To accomplish this important change in program selection procedures, the rule provides that "the order of admission from the waiting list may not be based on family size, or on the family unit size for which the family qualifies under the HA occupancy policy." [§ 982.204(d)(1)]

At the time when a family comes to the top of the waiting list, the HA may or may not immediately have enough funds to support the amount of subsidy required for the family. The new rule provides that if the HA does not have sufficient funds to subsidize the family unit size of the family at the top of the waiting list, the HA may not skip the top waiting list family in order to admit an applicant family with a smaller family unit size (that can be immediately supported with available funding). [§ 982.204(d)(2)]

In eliminating selection by unit size, the rule also eliminates HA administrative problems in managing available assistance resources to meet a pre-determined unit distribution. Moreover, the rule has also eliminated the need and authority for the HA to establish priorities for families requiring different size units.

At any given funding level, the HA can assist more families with a smaller subsidy, and fewer families with a larger subsidy. This proposition is equally true of the old system and of the system established under this rule. However, under the prior system, the choice of the pre-determined program unit distribution is also a choice of how many families will be assisted in the program. Under the new rule, the number of assisted families is the number of families supported by the available funding.

HUD has developed a new form of consolidated annual contributions contract (ACC) for the certificate and voucher programs. The unified contract covers both tenant-based programs administered by an HA, and eliminates the HA's obligation to meet a pre-determined program unit size mix in administration of the certificate program under the old certificate program ACC form. HUD will also eliminate the current certificate handbook provision requiring HUD approval of unit size redistributions for more than 12 units.

Prohibited Admission Criteria

In deciding whether to admit a family, the rule does not permit the HA to consider certain types of "family characteristics" listed in the rule. [§ 982.202(b)(4)]

Discrimination Against Family With Children

The proposed rule provides that HA selection of families may not be based on "whether the family includes children (family status)". Comments state that presence or absence of children may be key to determining if a family is eligible for assistance. Contrary to the comment, program "eligibility" is not based on whether there are children in the family.

Comments note that waiting lists are organized by unit size, and that the unit size for which a family qualifies is determined by the number and relationship of family members. As discussed above, this rule eliminates waiting list selection based on the size of the unit for which a family qualifies under the HA occupancy policy. [§ 982.204(d)]

In response to comments, the rule is revised to clarify, as originally intended, that the HA is prohibited from using selection criteria which result in "*discrimination because* a family includes children (familial status discrimination)". [§ 982.202(b)(4)(i)(C)]

Employment or Education

The proposed rule would have prohibited the HA from basing selection of participants on the "employment history or education" of family members.

The final rule removes the proposed prohibition against selection based on employment history of family members. In addition, the rule now specifically permits the HA to give a preference among Federal preference holders for "working families". [§ 982.210(b)(3)(iv)] For admissions not subject to Federal preference, the HA may also give preference ("local preference") to working families.

In affording a preference for "working families," the HA is subject to the statutory and regulatory prohibitions against discrimination because of age or disability. To provide protection against such discrimination, the rule provides that an applicant family must be given the benefit of a working family preference if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.

Regulations for the tenant-based programs do not allow an HA to adopt a preference for admission of higher income waiting list families over families of lower income. [§ 982.202(b)(4)(ii)] For tenant-based programs, this restriction is Departmental policy, but is not required by statute. In accordance with this policy, the rule provides that when an HA elects to adopt a ranking preference for Federal preference-qualified "working families", the HA admission preference "may not give greater preference to an applicant based on the amount of employment income." [§ 982.210(b)(3)(iv)]

The final rule does not include the proposed prohibition of selection based on "education" of family members. An HA has discretion whether or not to adopt an admission policy with a preference for this purpose. For selection among federal preference holders, the rule explicitly provides that an HA admission policy may give

ranking preference for graduates of, or active participants in educational and training programs that are designed to prepare individuals for the job market. [§ 982.210(b)(4)] (However, the law and regulation prohibit a special preference for applicant families that agree to participate in the HA's family self-sufficiency program.)

Suitability for Tenancy

The rule restates the old rule requirement that the owner, not the HA, determines whether a family is suitable for tenancy. Admission to the program may not be based on a family's suitability for tenancy. [§ 982.202(b)(1)] Comments state that the HA determines suitability for tenancy when the HA denies assistance because of drug or violent crime by family members. Since 1990, program rules allow the HA to deny assistance if family members engage in drug crimes and crimes of violence. The rule has been revised to confirm that the HA may deny assistance to an applicant (under existing provisions of the program rule) because of drug-related criminal activity or violent criminal activity by family members. [§ 982.202(b)(1)]

Special Admission—Non Waiting List

Sometimes HUD gives an HA program funding for families living in specified units, for example, funding for families displaced because of demolition or disposition of a public housing project. The final rule provides that: "If HUD awards an HA program funding that is targeted for families living in specified units:

(1) The HA must use the assistance for the families living in these units.

(2) The HA may admit a family that is not on the HA waiting list, or without considering the family's waiting list position. The HA must maintain records showing that the family was admitted with HUD-targeted assistance." [§ 982.203(a)]

The rule also lists examples of types of cases in which HUD may give the HA program funding for a family living in a specified unit. [§ 982.203(b)] In general, these are cases where HUD provides certificate or voucher funding for continued assistance to low income residents of projects in various HUD programs. The funding is granted to an HA by HUD to provide assistance for families who would be displaced from a project by the termination of assistance or some other event. The HA must use the funding for that purpose. The HA is not free to "select" other families.

In the proposed rule, a non-waiting list admission is called a "special family *selection*". In the final rule, HUD now uses the term "special *admission*" to more accurately reflect the nature of these cases—which do not involve an authentic HA selection between eligible applicants. In the rule a "special admission" is defined as: "Admission of an applicant that is not on the HA waiting list, or without considering the applicant's waiting list position." [§ 982.3]

The proposed rule would have allowed special admission of: (1) families forced to vacate housing because of rehabilitation under the former rental rehabilitation grant program; (2) families living in Section 8 Moderate Rehabilitation or Project-based Certificate Projects in units that are too big or too small; (3) families living in such projects when an assistance contract expires; (4) when HUD gives the HA funding for settlement of litigation. Under the terms of the final rule, special admission is limited to cases when HUD provides the HA funding for families living in specified units.

Special Admission: Overcrowded or Overhoused Family in Federally-Assisted Project

Under the proposed rule, the HA would be permitted to make a non-waiting list admission of a family that lives in a project-based assisted unit that is too large or too small for the family (if there is no vacant unit of appropriate size in the project or program). This proposed provision would have applied to families living in project-based units assisted under certain HA-administered programs: a public housing unit, a moderate rehabilitation unit, or a project-based certificate unit.

Comments recommend that HUD should allow non-waiting list admission of a family living in an inappropriate-sized unit assisted under the Section 8 new construction or substantial rehabilitation programs. Comments also ask HUD to clarify that an HA has the option whether to use the authority for non-waiting list admission of families in units that are too big or too small.

HUD has decided to eliminate altogether the proposed authority for special admission of families who occupy assisted units that are not suitable for the actual family size. Instead, the HA has latitude to grant preference for such families in the context of the HA's general scheme for federal preference and non-federal preference admissions, or to open the waiting list for such families. In administering the limit on non-federal preference admissions, the HA may choose to grant a local preference for these families.

Special Admission: Proposal for Expansion

Comments ask HUD to permit additional categories of non-waiting list admission. Comments suggest that special admission should be allowed:

—For persons who are terminally ill.
—For moderate rehabilitation and project-based certificate program families whose health, welfare or safety is threatened, or families who have provided drug activity testimony.
—For families that need to move closer to medical or social services.

HUD has not adopted the recommendation to expand the list of non-waiting list categories (special admission). Each of the situations noted in the public comments may be a legitimate basis for preferential admission. Within the scheme of federal preference and non-federal preference admissions, the HA can employ admission techniques that expedite assistance for waiting list families with special and urgent needs described in the HA administrative plan. The HA may, for example, open a closed waiting list to such families. The HA may adopt "ranking" preferences for selection among federal preference holders, or "local" preferences for a local preference admission. Use of the HA local preference quota is the appropriate vehicle for rationing available local assistance resources among eligible families who do not qualify for federal preference. Non-waiting list treatment does not solve or avoid the burden of local choice in allocation of program resources.

Special Admission: Funding for Specific Families; Terminology

The rule provides that if HUD awards the HA funding that is targeted for families living in specified units, the HA must use the funding for the designated purpose. [§ 982.203(a)]

Comments suggest that the limit on use of targeted funding should only restrict the HA's initial use of the funding. This recommendation is not adopted. The HA must use targeted funding in accordance with the conditions imposed when the funds are awarded to and accepted by an HA. Sometimes HUD funding may be earmarked for specific families, even after turnover. In most cases, special admission funding is only restricted on initial use for a particular family. On turnover, such funding becomes available for general use in the HA tenant-based program. HUD determines how long the HA is bound by the requirement to use special funding for the purpose awarded. If HUD does not require continued use of the funding for a special purpose, the funding is released from special use requirements.

Waiting List

Status of Applicant

The rule provides that an applicant does not have any right or entitlement to be listed on the waiting list, to any particular position on the waiting list, or to admission to the programs. Further, the rule states that this provision does not affect or prejudice any applicant right, independent of the certificate and voucher regulations, to bring a judicial action challenging an HA violation of a constitutional or statutory requirement. [§ 982.202(c)]

Comments ask HUD to delete this provision, asserting that qualified applicants have a right to be listed on and selected from a waiting list if funding is available. Other comments expressed concern that this rule could be construed to mean that an HA may be sued if HUD fails to take action to implement a statutory provision.

The rule language at issue substantially restates provisions of the current rule. [See 49 FR 12215, 12224, March 29, 1984] The language makes clear that the rule is not intended to create any right or entitlement of individual applicants to apply for or participate in the programs.

Metropolitan Area Admission Procedures

Comments recommend that HUD require the establishment of a metropolitan-wide waiting list and nonprofit clearinghouse to take and process tenant applications for all subsidized housing programs in a metropolitan area. Comments state that this type of process is needed to ensure equitable treatment of applicants, and to maximize fair housing opportunities.

The proposal to restructure metropolitan area admission procedures would affect operation of all HUD public and assisted housing programs. In this rulemaking, HUD will not require adoption of metropolitan-wide waiting lists for all subsidized programs, or the use of non-profit clearinghouses for processing applications.

HUD plans to develop and implement a metropolitanwide strategy for the delivery of HUD-assisted housing programs. Initially HUD expects to develop a model for implementation of a pilot program in up to three metropolitan areas.

tenant-based program. HUD determines how long the HA is bound by the requirement to use special funding for the purpose awarded. If HUD does not require continued use of the funding for a special purpose, the funding is released from special use requirements.

Waiting List

Status of Applicant

The rule provides that an applicant does not have any right or entitlement to be listed on the waiting list, to any particular position on the waiting list, or to admission to the programs. Further, the rule states that this provision does not affect or prejudice any applicant right, independent of the certificate and voucher regulations, to bring a judicial action challenging an HA violation of a constitutional or statutory requirement. [§ 982.202(c)]

Comments ask HUD to delete this provision, asserting that qualified applicants have a right to be listed on and selected from a waiting list if funding is available. Other comments expressed concern that this rule could be construed to mean that an HA may be sued if HUD fails to take action to implement a statutory provision.

The rule language at issue substantially restates provisions of the current rule. [See 49 FR 12215, 12224, March 29, 1984] The language makes clear that the rule is not intended to create any right or entitlement of individual applicants to apply for or participate in the programs.

Metropolitan Area Admission Procedures

Comments recommend that HUD require the establishment of a metropolitan-wide waiting list and nonprofit clearinghouse to take and process tenant applications for all subsidized housing programs in a metropolitan area. Comments state that this type of process is needed to ensure equitable treatment of applicants, and to maximize fair housing opportunities.

The proposal to restructure metropolitan area admission procedures would affect operation of all HUD public and assisted housing programs. In this rulemaking, HUD will not require adoption of metropolitan-wide waiting lists for all subsidized programs, or the use of non-profit clearinghouses for processing applications.

HUD plans to develop and implement a metropolitanwide strategy for the delivery of HUD-assisted housing programs. Initially HUD expects to develop a model for implementation of a pilot program in up to three metropolitan areas.

Admission to Different Subsidized Housing Programs

This rule gives a unified statement of provisions on the relationship between admission to the Section 8 tenant-based programs, and provisions on admission to other subsidized housing programs. These provisions cover:

—The relation between the Section 8 tenant-based certificate and voucher programs. [§ 982.205(a)]

—The relation between the Section 8 tenant-based programs and other assisted housing programs. [§ 982.205 (b) and (c)]

Single Waiting List for Tenant-Based Programs

The rule provides that an HA which uses residency preferences for a county or municipality in the HA jurisdiction may use a separate waiting list for the county or municipality. [§ 982.205(a)(1)] However, an HA must use the same waiting list for admission to its tenant-based certificate and voucher programs. [§ 982.205(a)(2)] The HA may not have separate waiting lists for its certificate and voucher programs.

Refusing Tenant-Based Assistance

An applicant may decline an offer of admission to the certificate or voucher program, preferring to wait for admission to the other tenant-based program. However, if an applicant refuses offers of admission to both of the tenant-based programs, the HA may remove the applicant from the waiting list for tenant-based assistance. [§ 982.205(c)(2)]

Relation to Other Subsidized Housing Programs

The rule provides that a family may apply for, receive or refuse other housing assistance without losing the opportunity for listing on the Section 8 tenant-based waiting list. For this purpose, "other housing assistance" means a federal, State or local housing subsidy, as determined by HUD, including public or Indian housing. [§ 982.205(c)(1)] Of course, the family may not continue to receive two forms of housing subsidy after admission to the tenant-based program.

The proposed rule provided that an HA *must* combine the waiting list for the tenant-based programs with the waiting list for project-based certificate assistance, and that the HA *may* merge its tenant-based waiting list with the waiting list for its public or Indian housing program, or Section 8 moderate rehabilitation program. Comments object to requiring a common waiting list for tenant-based subsidy and the project-based certificate program. Comments note that many families on a common waiting list would only accept the offer of a tenant-based subsidy, and that it is cumbersome for the HA to administer a waiting list covering tenant-based and project-based units.

HUD concurs that the decision whether to combine the tenant-based and certificate project-based waiting lists should be left to local choice by individual HAs. The rule removes the proposed requirement to use the same waiting list for the tenant-based programs as for the HA's project-based certificate program.

The rule provides that an HA may merge the waiting list for tenant-based assistance with HA waiting lists for admission to other assisted housing programs—including project-based programs administered by the HA (such as the project-based certificate program or the public housing program). The decision whether to merge the program waiting lists rests in the discretion of the HA. If the HA elects to merge the program waiting lists, selection from the merged waiting list is subject to HUD regulations and requirements for each of the covered programs. [§ 982.205(b)(1)]

Management of the Waiting List

An HA must give public notice that the waiting list is open. The HA may adopt criteria defining who can apply, but the limitations must be stated in the public notice. [§ 982.206] The final rule adds a new provision clarifying that the HA may not arbitrarily refuse applications when the waiting list is open. The rule now provides that if the waiting list is open, the HA must accept applications from families who meet the criteria in the HA notice unless there is a "good cause" for not accepting the application, such as a denial of assistance for one of the grounds listed in the regulation. [§ 982.206(b)(2)]

Comments ask HUD to provide guidance on how and when to "purge" or "update" the waiting list. They state that the rule should not allow the HA to drop families who fail to demonstrate continued interest in assistance under the program. Comments state that the HA should have a rational process for updating the waiting list. They state that HAs should be required to establish procedures to protect applicants from being arbitrarily dropped from the waiting list.

HUD does not require an HA to purge its waiting list. Usually, an HA purges the waiting list when the list becomes unmanageable, or the HA is unable to contact families. HUD believes that the HA should retain discretion in management of the waiting list, in

determining when names should be dropped from the list, or in using a new or updated list. HUD has not adopted recommendations to add new restrictions on HA procedures for determining the active waiting list.

Individual applicant families do not have a right to be placed on the waiting list, or to a waiting list position. [§ 982.202(c)] The HA is charged with the task of distributing limited available assistance resources among eligible families. To this end, the HA is legitimately vested with broad discretion to develop reasonable local policies for managing the process for admission of eligible families. The HA policies may properly reflect local values and local choices.

The HA must comply with HUD requirements, including requirements for eligibility and preference. Within these requirements, HAs have wide latitude to develop a fair, orderly and economical process for admission of families. Because the universe of eligible families is generally much larger than the number of available slots, an HA needs to achieve a balance between the need to maintain a pool of families for admission to the program as openings occur, and the burden and expense entailed to support a waiting list that is disproportionate to available program resources. So long as the size of the HA waiting list is sufficient to fill available openings, an increase in the waiting list does not increase the number of families assisted. Rather, enlargement of the list absorbs funds that could otherwise be used for assistance to families—for example, by providing additional search assistance to selected families.

Under this rule, HAs may decide when and how to purge the waiting list. The exercise of this discretion does not affect any property or procedural rights of individual applicants. The rule provides that: "The HA administrative plan must state HA policy on when applicant names may be removed from the waiting list. For example, the policy may provide that the HA will remove names of applicants who do not respond to HA requests for information or updates, or who have refused offers of tenant-based assistance under both the certificate program and the voucher program." [§ 982.204(c)(1)]

The rule emphasizes that the HA's system for purging the waiting list may not prejudice the rights of a disabled applicant. The HA may not strike the name of a disabled applicant whose failure to respond to HA requests was caused by the applicant's disability. The HA must provide a reasonable accommodation that allows the disabled applicant a fair opportunity for response to the HA. [§ 982:204(c)(2)]

Comments ask HUD to require all HAs to accept completed applications by mail. The Department has not accepted this recommendation. HAs use many different methods of taking applications. The Department has no reason to impose a particular method for taking applications. HAs are encouraged to use various locally-determined methods of taking applications, including home visits to applicants who are unable to reach the HA office. However, HAs should be aware of their obligation to make the application process accessible to applicants with a full range of disabilities.

Preference in Admission

Residency Preference

As in the past, the rule provides that an HA may adopt a residency preference for admission of families on the HA waiting list. [§ 982.208] "Residency preference" means an HA preference for admission of families that reside in a specified area, including a family with a member who works or has been hired to work in the area. "Residency preference area" means the specified area where a family must reside to qualify for a residency preference. [§ 982.208(a)]

The final rule also clarifies when an HA may establish a residency preference for a part of the HA jurisdiction. If HUD approves, an HA may adopt a residency preference that establishes a county or municipality as a residency preference area. However, an HA may not establish a residency preference for an area smaller than a county or municipality. [§ 982.208(c)] An HA may elect to use a separate waiting list for a county or municipality. [§ 982.205(a)(1)]

In addition, the final rule provides that selection for admission to the program may not be based on where a family lives before admission to the program. As an exception to this prohibition, the rule provides that an HA may target assistance for families who live in public housing or other federally assisted housing. [§ 982.202(b)(2)]

The rule provides that an HA may use a residency preference either (1) as a "ranking preference"—to select among federal preference holders, or (2) as a "local preference"—to select among families that do not hold a federal preference. [§ 982.208(f)] Applicants with family members who work or who have been hired to work in the residency preference area must be treated the same as families that reside in the residency preference area. [§ 982.208(d)] A residency preference may not be based on how long the family has lived in or worked in the HA jurisdiction or the residency preference area. [§ 982.208(e)] A residency preference must be approved by HUD. [§ 982.208(b)]

Some public comments approve local residency preferences. Other comments object to such preferences.

Comments claim that HA residency preferences are not authorized under the preference statute, arguing that such preferences do not further any other national housing objective. HUD does not agree with this comment. Nothing in the preference statute precludes use of residency preferences.

In admission of families who qualify for the federal preference, federal law does not dictate the order of admission among preference holders. An HA may adopt a residency preference for admission of federal preference holders who are local residents before admission of federal preference holders who are not local residents.

In a non-federal preference admission, the law allows broad scope for HA adoption of local preferences to meet "local needs and priorities". The local need and priority may accommodate the desire to serve local residents before families who do not reside in the community. The law provides that the purposes of a local preference "may *include*" a preference adopted to achieve statutory objectives of national housing policy. The listing of preference purposes in the law is not an exclusive enumeration of the purposes for which the HA may adopt a local preference. In addition, the adoption of a local residency preference may be consistent with the objective of providing housing to local residents in accordance with the broad objectives of national housing policy. [§ 982.209(a)]

Comments state that an HA should use a single waiting list for the whole HA jurisdiction. Other comments state that HUD should not permit an HA to establish a separate waiting list for an area smaller than a county. Comments recommend that a large-area HA should be allowed to maintain a separate waiting list or preference for residents of a "reasonable subdivision" or region of the HA jurisdiction.

In the tenant-based programs, an HA residency preference affects entry to the housing program, and availability of the HA's housing subsidy resources for applicant families. However, the use of a residency preference does not affect geographic mobility of families once admitted to the program. During the first year after admission, all families may move anywhere in the HA jurisdiction. After the first year in the program, families may move anywhere in the State or metropolitan area under statutory portability procedures. (For a family that lives in the HA's jurisdiction when the family applies for assistance, the right of portability applies as soon as the family is admitted to the program.)

Comments state that local residency preferences must comply with civil rights requirements, and should be approved in advance by HUD Fair Housing and Equal Opportunity. Comments also state that HUD should not approve a residency preference that would have a "racially exclusionary effect". The comments also allege that HUD routinely approves HA residency preferences, and that HUD approval is not founded on an adequate fair housing analysis.

HUD emphatically agrees that HA admission policies, including any residency or other preference, are subject to civil rights requirements. HA selection policies are included in the HA administrative plan and the HA equal opportunity plan.

As in the past, any residency preferences must be submitted for review and approval by HUD. The Department will be undertaking a full notice and comment rulemaking on standards or procedures for approval of HA residency preferences.

Federal Preference: General

Under federal law, a housing authority with a Section 8 certificate or voucher program must give preference for selection of families that are:

(1) Involuntarily displaced.

(2) Homeless or living in substandard housing.

(3) Paying more than 50 percent of income for rent.

These are known as the "federal preferences".

The law requires federal preference for at least 90 percent of the families who initially receive tenant-based assistance in a one-year period. For the other 10 percent of admissions, the HA is not required to award a federal preference.

The new rule establishes the same federal preference requirements and non-federal preference admission limit for the tenant-based certificate and voucher programs. The rule provides that at least 90 percent of total waiting list admissions to the Section 8 tenant-based programs in each successive one-year period must be families that qualify for federal preference (if federal preference holders are available on the waiting list). However, up to ten percent

move anywhere in the HA jurisdiction. After the first year in the program, families may move anywhere in the State or metropolitan area under statutory portability procedures. (For a family that lives in the HA's jurisdiction when the family applies for assistance, the right of portability applies as soon as the family is admitted to the program.)

Comments state that local residency preferences must comply with civil rights requirements, and should be approved in advance by HUD Fair Housing and Equal Opportunity. Comments also state that HUD should not approve a residency preference that would have a "racially exclusionary effect". The comments also allege that HUD routinely approves HA residency preferences, and that HUD approval is not founded on an adequate fair housing analysis.

HUD emphatically agrees that HA admission policies, including any residency or other preference, are subject to civil rights requirements. HA selection policies are included in the HA administrative plan and the HA equal opportunity plan.

As in the past, any residency preferences must be submitted for review and approval by HUD. The Department will be undertaking a full notice and comment rulemaking on standards or procedures for approval of HA residency preferences.

Federal Preference: General

Under federal law, a housing authority with a Section 8 certificate or voucher program must give preference for selection of families that are:

(1) Involuntarily displaced.

(2) Homeless or living in substandard housing.

(3) Paying more than 50 percent of income for rent.

These are known as the "federal preferences".

The law requires federal preference for at least 90 percent of the families who initially receive tenant-based assistance in a one-year period. For the other 10 percent of admissions, the HA is not required to award a federal preference.

The new rule establishes the same federal preference requirements and non-federal preference admission limit for the tenant-based certificate and voucher programs. The rule provides that at least 90 percent of total waiting list admissions to the Section 8 tenant-based programs in each successive one-year period must be families that qualify for federal preference (if federal preference holders are available on the waiting list). However, up to ten percent of such admissions during the year period may be families that do not qualify for federal preference. [§ 982.207(b)]

This rule amends requirements for federal preference selection of assisted families in the Section 8 certificate and voucher tenant-based programs. The National Affordable Housing Act of 1990 (NAHA) enacted changes concerning HA preferences in selecting Section 8 program participants. [1990 NAHA, Section 545, Pub. L. 101–625, 104 Stat. 4218–4220] Later legislation provides that the NAHA Section 8 preference changes must be implemented by April 26, 1993, through a notice and comment rulemaking. [Housing and Community Development Act of 1992, Section 104, Pub. L. 102–550, 106 Stat. 3684] This rule implements the NAHA preference changes for the certificate and voucher programs.

Comments state that an HA needs clarification of federal preference requirements for consistent program administration. The rule is re-written and re-organized for greater clarity in how to apply the statutory preferences. For the same reason, the rule also includes a number of new or revised definitions of preference terms.

However, the rule has left largely unchanged the regulatory definitions of the three statutory preferences. With HUD field office approval, an HA can adopt local modifications of the standard preference definitions.

The old rule stated procedures that could be used by an HA to verify the federal preference claimed by an applicant family. However, an HA was not required to use these procedures. Since the verification procedures are not mandatory, they need not be stated in the rule. The final rule deletes the description of optional verification procedures.

Limit on Non-Federal Preference Admissions

Under the law, federal preference applies for 90 percent of the families who "initially receive assistance in any 1-year period". [42 U.S.C. 1437f(d)(1)(A)(i) (certificates) and 1437f(o)(3)(B) (vouchers)] Public comments object to the 10 percent limit on non-federal preference admissions, and challenge the value of the statutory federal preference scheme. Comments state that assistance should be distributed first-come first-served. Comments state that the rule should increase the permitted percentage of non-federal preference admissions, so an HA can serve more families who do not qualify for federal preference—such as the working poor or families who need help to become economically self-sufficient; families at risk of becoming homeless; families in rural areas.

Comments state that the federal preference requirements produce much paperwork for little benefit. Almost all families that are income eligible also qualify for federal preference. By contrast, other comments assert that only a fraction of waiting list families qualify for federal preference, and that 10 percent of admissions is not a sufficient allowance for non-preference admissions. Commenters doubt that the preference requirements are effective in achieving self-sufficiency and equity. Others object to the difference in the percentage of non-preference admissions allowed by the law for public housing (50 percent), Section 8 project-based assistance (30 percent) and Section 8 tenant-based assistance (10 percent). Many comments are criticisms of the statutory preference requirements, rather than objections to HUD's implementation of the law.

Comments indicate that the regulation should clarify how to apply the limit on non-federal preference admissions. Should the limit be tracked program-by-program? Does the count of families that initially "receive assistance" include a family that receives a certificate or voucher from the HA, or only count if the HA has executed an assistance contract for the family? What is the time period for applying the local preference admission limit? Comments state that the rule should make clear that the requirement to admit a federal preference holder before a non-federal preference holder does not apply to a local preference admission within the 10 percent limit.

The rule provides that: "'Local preference limit' means ten percent of total annual waiting list admissions to the an HA's tenant-based certificate and voucher programs. In any year, the number of families given preference in admission to the HA tenant-based certificate program and voucher program over families with a federal preference may not exceed the local preference limit." [§ 982.207(b)(1)]

Under the old certificate and voucher program rules, the 10 percent limit on non-federal preference admissions was applied separately for admissions to each program. In this rule, the limit applies to total waiting list admissions to the HA tenant-based certificate and voucher programs, rather than as a limit on admission to each separate tenant-based program. The HA is not required to apply the 10 percent limit in each separate tenant-based program, so long

as the HA does not breach the limit for admissions to both programs together.

The statutory preference quota applies to a family that "initially receives assistance" in the certificate or voucher program. [42 U.S.C. 1437f(d)(1)(A)(i) (certificates) and 1437f(o)(3)(B) (vouchers)] Under this rule, "admission" for tenant-based assistance is defined as the effective date of the first HAP contract executed by the HA for a family in a tenant-based program. [§ 982.3] The HAP contract is effective on the first day of the initial lease term. The term of a HAP contract for tenant-based assistance follows the term of the lease between the family and the owner. Calculation of the local preference limit, and of non-federal preference admissions charged against the limit, does not include cases where the HA has only issued a voucher or certificate to an applicant family, but the initial lease term has not commenced.

Under this rule, the local preference limit on admission of families that do not qualify for federal preference only applies to admissions from the HA waiting list. The local preference limit does not apply to a "special admission" using funding awarded to the HA to provide assistance for specific families. For example, the federal preference requirement and local preference limit do not apply if HUD has given the HA funding for specific families in a specific project, such as a family living in a project sold by HUD. Non waiting list admissions are not included in the base of program admissions to which the federal preference percentage is applied. In addition, such admissions are not counted against the 10 percent limit on non federal preference admissions. [§ 982.207(b)(2)]

The law mandates a "preference" in selection of families. The law therefore implies that federal preference applies when the HA is exercising a choice between a qualifying family and a non-qualifying family. In such an admission, the HA must "prefer" a qualifying family over a non qualifying family. Conversely, however, if a qualified family is not available for admission, the HA is not presented with a choice between a qualifying and a non-qualifying family, and is not required to give preference to a qualifying over a non qualifying family.

Under the proposed rule, federal preference requirements would only apply to admissions where there is a choice between a federal preference holder and a non federal preference holder. Otherwise such an admission would not be included in the computation of families which initially receive assistance during the year (the base to which the statutory percentage applies), and selection of the family would not be counted against the 10 per cent limit on non federal preference selections.

For ease of administration and understanding, the final rule changes the proposed procedure for calculating and applying the limit on non federal preference admissions. In this rule, all waiting list admissions (that is, all admissions other than a "special admission") are included in the base used to determine the 10 per cent local preference limit on non federal preference admissions. The base is not limited to admissions where there is a choice between a federal preference holder and a non-federal preference holder.

However, if a federal preference holder is not available, the admission of a family that does not qualify for preference does not count against the federal preference limit. The final rule provides that the 10 percent local preference limit only applies to the admission of a non-qualifying family "over families with a federal preference." [§ 982.207(b)(1)] If a federal preference holder is available for admission, the admission of a non-federal preference family is counted against the 10 per cent local preference limit. Conversely, if a federal preference holder is not available for admission, the admission of a non-federal preference holder is not counted against the HA's 10 percent local preference limit.

The federal preference requirements and limit also do not apply when a family is received in an HA's tenant-based program under portability procedures. The rule clarifies that in applying local preference limit for a receiving HA, the beginning of assistance for the portability family is not counted against the receiving HA local preference limit. [§ 982.207(b)(3)] However, admission of the family is counted against the initial HA's local preference limit.

The local preference limit applies to admissions "in any 1-year period". The rule does not prescribe the HA choice of an appropriate year period for applying the limit, such as the calendar year, the federal fiscal year or the HA fiscal year.

Types of Preference

In the vocabulary of the proposed rule, HUD distinguished between "federal preferences" and other "local preferences". As used in the proposed rule, the term "local preferences" would refer to HA admission preferences adopted by an HA to meet local needs and priorities, including preferences used to select between families that qualify for federal preference (admissions that count toward the 90 per cent of federal preference admissions), as well as preferences used to select between families that do not qualify for federal preference (selections counted against the 10 per cent limit on non federal preference admissions).

In the text of the law for the Section 8 certificate program, the term "local preferences" refers to preferences used in selection of families who do not qualify for a federal preference (subject to the 10 per cent limit). For such "remaining assistance" the HA must give preference under a system of "local preferences" established by the public housing agency in writing and after public hearing to respond to local housing needs and priorities. [42 U.S.C. 1437f(d)(1)(A)(ii)] The voucher statute refers to a "system of preferences" established by the HA for this purpose. [42 U.S.C. 1437f(o)(3)(B)]

This final rule adopts the terminology used in the certificate statute. In the rule, the term "local preference" refers only to a preference used by the HA to select among waiting list families without regard to their federal preference status. [§ 982.3 and § 982.207(a)(3)(iii)] The rule has also added a new term "ranking preference", designating a preference used by the HA to select among families that qualify for a federal preference. [§ 982.3 and § 982.207(a)(3)(ii)] To summarize, the HA scheme for selection from the waiting list may comprise three types of preference: a federal preference directed by federal law for at least 90 percent of waiting list admissions, a ranking preference used to select among federal preference holders, and a local preference used to select among families that do not qualify for federal preference.

Drug Crime Eviction: Disqualification for Preference

The rule implements legislation that denies federal or local preference for a person or family evicted from Section 8 or public housing in the last three years because of drug-related criminal activity. [1990 NAHA, Section 545, 104 Stat. 4218–4220] The proposed rule would only have denied a federal preference. The rule is broadened to provide that the evicted family may not be granted a federal preference, local preference or ranking preference. [§ 982.207(f)] An applicant family may not be granted a preference if any member of the family was evicted in the last three years from Section 8 housing (project-based or tenant-based) or from public or Indian housing because of drug-related criminal activity.

Public comments largely approve denying an admission preference to persons who were evicted from assisted housing for drug-related criminal activity. However, comments note that implementation of this requirement involves the HA in screening for prior behavior of applicants. In the Section 8 tenant-based programs, the HA is generally prohibited from screening program applicants as prospective tenants.

By law, the family may not be granted a federal or local preference if the family was evicted for drug-related criminal activity in the last three years. Comments urge HUD to set a "statute of limitations" on denial of preference for drug-related criminal activity, asserting that the rule should allow admission of person who have paid their debt to society.

This rule follows the limitation prescribed in the law. Under the law and this rule, preference is denied only if the family member was evicted in the last three years; but is not denied for an eviction prior to that time. The limitation in the law is pegged to the time of eviction for drug-related criminal activity, rather than the time when the crime was committed. The statutory scheme should not be complicated by adding a secondary limitation based on when the person committed a crime for which the person was evicted in the last three years.

Comments assert that families whose members engage in drug crime should be barred from the program, not merely denied an admission "preference". The HA should not be required to place the family on the waiting list.

The federal preference scheme governs the order of admission among families otherwise eligible and qualified for admission. However, the statute and regulation requiring denial of an admission "preference" because family members were evicted from assisted housing because of drug related criminal activity do not affect at all the independent authority of the HA to deny program admission for drug-related criminal activity, or for other bases allowed under the rule. The allowable grounds for denying assistance are explicitly listed in the program rules. (Currently at § 882.210 for the certificate program and § 887.403 for the voucher program. These provisions will be combined and conformed in the second stage of this unified rule.) Program regulations provide that the HA may deny assistance if a family member has engaged in drug-related or violent

public or Indian housing because of drug-related criminal activity.

Public comments largely approve denying an admission preference to persons who were evicted from assisted housing for drug-related criminal activity. However, comments note that implementation of this requirement involves the HA in screening for prior behavior of applicants. In the Section 8 tenant-based programs, the HA is generally prohibited from screening program applicants as prospective tenants.

By law, the family may not be granted a federal or local preference if the family was evicted for drug-related criminal activity in the last three years. Comments urge HUD to set a "statute of limitations" on denial of preference for drug-related criminal activity, asserting that the rule should allow admission of person who have paid their debt to society.

This rule follows the limitation prescribed in the law. Under the law and this rule, preference is denied only if the family member was evicted in the last three years; but is not denied for an eviction prior to that time. The limitation in the law is pegged to the time of eviction for drug-related criminal activity, rather than the time when the crime was committed. The statutory scheme should not be complicated by adding a secondary limitation based on when the person committed a crime for which the person was evicted in the last three years.

Comments assert that families whose members engage in drug crime should be barred from the program, not merely denied an admission "preference". The HA should not be required to place the family on the waiting list.

The federal preference scheme governs the order of admission among families otherwise eligible and qualified for admission. However, the statute and regulation requiring denial of an admission "preference" because family members were evicted from assisted housing because of drug related criminal activity do not affect at all the independent authority of the HA to deny program admission for drug-related criminal activity, or for other bases allowed under the rule. The allowable grounds for denying assistance are explicitly listed in the program rules. (Currently at § 882.210 for the certificate program and § 887.403 for the voucher program. These provisions will be combined and conformed in the second stage of this unified rule.) Program regulations provide that the HA may deny assistance if a family member has engaged in drug-related or violent criminal activity. [For the certificate program, see § 882.118(b)(4) and § 882.210(b)(4)] If the HA has grounds for denial of assistance, the HA is not required to list the family on the waiting list, or to admit the family off the waiting list.

Comments state that the HA should be permitted to deny a preference even if the family was not evicted for drug-related criminal activity. They recommend that the HA should be permitted to deny preference if the family was evicted for other reasons, or moved out before eviction, or if the family violated program requirements.

If a family qualifies for a federal preference under the HA selection procedures (including the HA definition of the individual federal preferences), and was not evicted for drug-related criminal activities, the HA may not deny the federal preference. However, the HA may deny admission to the tenant-based programs for any of the grounds stated in the program regulations, such as failure to pay public housing rent, or fraud in a federal housing program. In addition, since preferences for selection among federal preference holders are not prescribed by federal law or program rules, the HA is free to adopt a system of ranking preferences to reflect local policies and concerns (so long as the preference system does not incorporate prohibited selection criteria).

Comments ask the meaning of "drug-related criminal activity". Comments note that there should be objective standards for determining when a family member has engaged in such activity, such as arrest or conviction. The term drug-related criminal activity is defined in the law and rule. [42 U.S.C. 1437f(f)(5); § 982.3] The definition covers both illegal dealing in drugs (manufacture, sale or distribution) and illegal use of drugs. The term embraces drug crimes that are illegal under State or federal law. The definition of a specific criminal drug crime is found in the State or federal criminal codes and caselaw that define the elements of a criminal act. In principle, the determination that a family member was evicted for drug-related criminal activity does not depend on an arrest or conviction, though the fact of an arrest or conviction may facilitate the HA determination whether the family member was evicted because of the crime.

Comments point out the practical problems in determining whether family members were evicted from Section 8 or public housing for drug-related criminal activity. Comments remark that it will be hard to implement the preference disqualification without a national tracking system. An HA does not know what happened in another program or jurisdiction.

HUD agrees that it will not be easy to enforce the statutory denial of preference for families evicted for drug-related criminal activity. For families evicted by a Section 8 owner, there may be no records, or readily accessible records, of such eviction. For example, local court records may show only that the court issued a judgment or order of eviction, but without stating the grounds, and may not identify the names of residents other than the defendant tenant. The HA is most likely to know about prior drug eviction only if the family lived in the HA's own public housing and was evicted by the HA itself. HAs may be forced to rely largely on the representation or certification by the applicant family that no family members were evicted for drug crime from a Section 8 or public housing program in the three preceding years.

By contrast, it may be easier for an HA to simply deny admission to the program because of drug-related or violent criminal activities by family members (rather than to deny a *preference* because of such activities, or because of an eviction for such activities). This HA determination does not require a finding that the family had also been evicted for the criminal activity.

The law provides that the HA may grant a federal or local preference if the evicted "tenant" has completed an HA-approved rehabilitation program. In this context, HUD construes the word "tenant" as referring to a person who engaged in drug-related criminal activity at a prior residence. The rule provides that the HA may grant a selection preference to a family with a member evicted in the last three years for drug-related criminal activity "if the HA determines that the evicted person has successfully completed a rehabilitation program approved by the HA". [§ 982.207(f)(1)]

The law also provides that the HA may "waive" the preference prohibition under standards established by HUD. 42 U.S.C. 1437f(d)(1)(A)(iii) and 42 U.S.C. 1437f(o)(3)(B). The standards must permit the HA to grant a waiver for an individual who "clearly did not participate in and had no knowledge of" the drug-related criminal activity, or when "circumstances leading to eviction no longer exist". The rule provides that the HA may waive the federal preference prohibition if the HA determines either that the evicted person "clearly did not participate in or

know about the drug-related criminal activity", or that the evicted person "no longer participates in any drug-related criminal activity". [§ 982.207(f) (2) and (3)]

Comments note that it is hard for an HA to determine if a family member has "successfully completed" a rehabilitation program, or knew of drug-related criminal activity in a prior unit. Comments recommend that HUD define the meaning of successful completion. HUD agrees that it will be hard for HAs to render a sound judgment on these questions. However, these problems are inherent in the waiver law as enacted by the Congress. Ultimately, the decision on whether to grant relief from the preference prohibition rests in the judgment of the HA. The HA may require the family to present information or testimony that will satisfy the HA. HUD will not prescribe additional definitions or instructions. Each HA is free to work out the most practical ways of dealing with these questions.

Denying Admission to Preference Holder

Comments ask if the HA can deny assistance to a family that was previously terminated from the Section 8 program, but applies for readmission and now qualifies for federal preference. The HA may deny admission to the tenant-based programs for the grounds listed in the program rules. (This rule on program admissions does not affect the current program rules on grounds for denial or termination of assistance in the certificate and voucher programs. This subject will be covered in the second phase of this rule.) As previously remarked, the federal preference scheme affects the order of admission of otherwise qualified families, but does not affect the determination of who may be qualified for admission. The allowable grounds for terminating assistance to a participant are also grounds for denial of assistance. If there are proper grounds for denial, the HA may refuse listing on the waiting list without regard to the family's federal preference status.

Under the current program rule, behavior in a prior tenancy is not a ground for denial of assistance. Comments state that a family that causes damage or infestation to a prior residence should not qualify for federal preference. The proposed rule provided that a participant in the tenant-based programs is responsible for family-caused damage to an assisted unit, and for infestation caused by poor family housekeeping. [See Subpart L of the February 24, 1993 proposed rule. 58 FR 11352 et seq.]

Provisions on family obligations, and on grounds for denial of assistance will be included in the second phase of this rule. At this time, family-caused damage or infestation in a prior assisted or unassisted unit is not a ground for denial of assistance. Moreover, such behavior is not grounds for denying a statutory federal preference for which the family is otherwise qualified. In development of the rule, HUD will consider whether the HA should be authorized to deny admission for such behavior in prior assisted or unassisted occupancy, not just for such behavior as a participant in the Section 8 tenant-based programs.

Denying Claim of Federal or Other Preference: Procedure

Comments state that the rule should require the HA to provide the same procedural protections when the HA denies a claim of Federal preference as for a denial of assistance. The rule provides that the HA must give the applicant a brief statement of the reasons for a determination that the applicant does not qualify for federal preference, and must afford the applicant an opportunity to meet with an HA representative to review the HA determination. [§ 982.210(d)(1)] The same procedures are used under the existing rule. In addition, the final rule provides that the HA must give an applicant the same opportunity for review of the HA's decision denying a ranking preference (among Federal preference holders), or a local preference (among families that do not qualify for Federal preference).

HUD believes the procedures provide adequate opportunity for a second look at an HA determination denying a federal, local or ranking preference. The HA must determine federal or other preference for the great mass of program applicants, in the routine processing of each individual application for admission. A decision granting a preference does not assure ultimate admission. Most HAs have long waiting lists. After listing, federal and other preference holders may wait years for admission to the program.

Federal Preference: Definitions

Federal law requires a preference for displaced families, families living in substandard housing and families with an excessive rent burden. The preference rule defines each of these preferences. Comments recommend some revisions of these definitions. Comments state that an HA should have authority to grant exceptions to the standard preference definitions in the rule.

For the most part, this rule does not substantially change the existing regulatory preference definitions. Under the rule, the HA has room to tailor the definition of each federal preference to local circumstances and local preference policy. If the HA wants to use a different or modified preference definition, the HA may submit an alternative definition for review and approval by the local HUD office. [§ 982.210(a)] In addition, the HA may adopt its own procedures to verify that an applicant qualifies for a federal preference. [§ 982.210(c)(3)(ii)] The HA does not have to get HUD approval before implementing its own verification procedures.

Comments note that HAs need guidance in interpreting the rule. In a program handbook, HUD will furnish additional guidance on how to interpret and apply the rule.

Involuntary Displacement Preference

Displacement by domestic violence. The definition of involuntary displacement gives federal preference to a family that is forced to move because of physical violence by a member of the household. [§ 982.211(b)(4)] This preference allows other household members to move away from a spouse or other person who has abused members of the family.

The applicant must certify that the former abuser will not reside with the applicant family unless the HA has given advance written approval. If the abuser returns to the family, household members are again exposed to the threat of domestic violence. [§ 982.211(b)(4)(iii)(B)] The purpose of the certification is two-fold: to minimize or sanction cases where there is a bogus claim for federal preference because of domestic violence, as well as cases where the abuser's return to the household defeats the purpose of the federal preference.

Comments support the certification requirement, but recommend that the rule provide that violation of the certification is grounds for termination from the program. The recommendation is adopted. The rule provides that if a family is admitted on the basis of this preference (involuntary displacement because of domestic violence), the HA may deny or terminate assistance for breach of this certification. Composition of the assisted family must be approved by the HA. The HA must approve return of the former abuser to the assisted household. Thus the HA may also deny or terminate assistance where the family has not asked and obtained HA permission for occupancy by a former family member.

In any individual case, the decision to deny or terminate assistance for this reason lies in the discretion of the HA. The HA "may" terminate assistance, but is not required to exercise this authority. Even if the family was admitted with federal preference, so that the family can escape a threat of domestic violence, changes in family circumstance after admission may justify continued assistance for the family, for example, if the former abuser has received therapy or counselling that appears to minimize likelihood of recurrence.

Displacement by owner action. The definition of involuntary displacement gives preference to applicants forced to vacate a dwelling unit by certain types of owner action, such as owner action that withdraws the unit from the rental market. [§ 982.211(b)(3)]

Comments recommend that involuntary displacement should not cover a displacement because a landlord evicts the family, but should only cover displacement because of disaster, displacement by a government program, or displacement because of spousal abuse.

No change is required. Under the rule, a family that is evicted by an owner for violation of the lease does not qualify for preference. To qualify for preference, the family must have "met all previously imposed conditions of occupancy". [§ 982.211(b)(3)(ii)(B)] In addition, with HUD approval, an HA may adopt an alternative definition that specifically excludes displacement because of owner eviction.

Comments suggest that in a case where an adult "child" is forced out of the parent's unit, the child should not be treated as involuntarily displaced unless there was a prior rental agreement between the owner and child. This comment may reflect concern that in a family context an alleged involuntary displacement may not be genuine. However, HUD is not persuaded that this change should be included in the national definition of involuntary displacement. In any case, an individual HA may incorporate the suggested modification in the local definition.

Displacement by government action. The definition of involuntary displacement in the rule gives preference to a family displaced by government action in connection with code enforcement, or with a public improvement or development program. [§ 982.211(b)(2)] Comments argue that displacement because of code enforcement results from private action,

permission for occupancy by a former family member.

In any individual case, the decision to deny or terminate assistance for this reason lies in the discretion of the HA. The HA "may" terminate assistance, but is not required to exercise this authority. Even if the family was admitted with federal preference, so that the family can escape a threat of domestic violence, changes in family circumstance after admission may justify continued assistance for the family, for example, if the former abuser has received therapy or counselling that appears to minimize likelihood of recurrence.

Displacement by owner action. The definition of involuntary displacement gives preference to applicants forced to vacate a dwelling unit by certain types of owner action, such as owner action that withdraws the unit from the rental market. [§ 982.211(b)(3)]

Comments recommend that involuntary displacement should not cover a displacement because a landlord evicts the family, but should only cover displacement because of disaster, displacement by a government program, or displacement because of spousal abuse.

No change is required. Under the rule, a family that is evicted by an owner for violation of the lease does not qualify for preference. To qualify for preference, the family must have "met all previously imposed conditions of occupancy". [§ 982.211(b)(3)(ii)(B)] In addition, with HUD approval, an HA may adopt an alternative definition that specifically excludes displacement because of owner eviction.

Comments suggest that in a case where an adult "child" is forced out of the parent's unit, the child should not be treated as involuntarily displaced unless there was a prior rental agreement between the owner and child. This comment may reflect concern that in a family context an alleged involuntary displacement may not be genuine. However, HUD is not persuaded that this change should be included in the national definition of involuntary displacement. In any case, an individual HA may incorporate the suggested modification in the local definition.

Displacement by government action. The definition of involuntary displacement in the rule gives preference to a family displaced by government action in connection with code enforcement, or with a public improvement or development program. [§ 982.211(b)(2)] Comments argue that displacement because of code enforcement results from private action, and should not be treated as displacement by government action. Comments claim that the regulatory definition rewards the building owner, as well as a family which "elects" to live in a building that violates the code.

HUD does not agree that the grant of federal preference for a family that is forced to live in sub-code housing is an inappropriate "reward" for a family that is forced to live in such circumstances. Moreover, the preference is not a reward for the owner of the housing. The family has the right to move to any available standard unit, not just to another unit of the same landlord. The issuance of a certificate or voucher helps the family move from substandard housing.

Some HAs claim that families move into substandard housing in order to qualify for federal preference, and thereby speed up access to subsidized housing. It is likely that such cases occur only or principally for HAs that do not have long waiting lists of federal preference holders, and where federal preference qualification may lead to rapid entry to the programs. HAs that want to minimize possible abuse of the federal preferences for persons displaced by code enforcement, or for residents of substandard housing, may adopt ranking preferences based on duration of a family's residence in substandard housing. Alternatively, with HUD approval, the HAs could adopt modified preference definitions designed to deal with this problem.

Displacement to avoid reprisals. The definition of involuntary displacement is amended to permit the HA to grant federal preference status if there is a danger of reprisal against a family member who provides information on criminal activities to a law enforcement agency. The HA may only grant a preference on this basis if the law enforcement agency has carried out a threat assessment, and recommends rehousing a family to avoid or minimize a risk of violence against family members. [§ 982.211(b)(5)]

Displacement by hate crimes. The definition of involuntary displacement is amended to permit the HA to grant federal preference status for a family displaced by a "hate crime"—defined as actual or threatened violence or intimidation against a person or the person's property because of race, color, religion, sex, national origin, handicap or familial status. [§ 982.211(b)(6)] An applicant qualifies for preference if a family member is a hate crime victim, and the family has been forced to vacate its housing, or fear has destroyed the family's peaceful enjoyment of its home. The HA must determine that the hate crime occurred recently or is of a continuing nature.

Displacement: Need for accessible unit. The definition of involuntary displacement is amended to provide that an applicant is involuntarily displaced if:

—A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

—The owner is not legally obligated to make changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation. [§ 982.211(b)(7)]

Displacement: HUD disposition of multifamily project. A recent law amends requirements governing HUD disposition of multifamily rental projects (that were previously insured or assisted under the National Housing Act or were subject to a loan under Section 202 of the Housing Act of 1959). [Pub. L. 103–233, 108 Stat. 342, April 11, 1994] This law amends the various federal preference statutes to specify that the preference for families that are involuntarily displaced applies to displacement "because of disposition of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978". [Multifamily Housing Property Disposition Reform Act of 1994. Section 101(c) ("Clarification of Federal preferences"), 108 Stat. _____, amending 42 U.S.C. 1437f(d)(1)(A)(i) (certificates) and 1437f(o)(3)(B) (vouchers)]

The rule is amended to reflect this statutory change. [§ 982.211(b)(8)] A family that is displaced because of the HUD disposition may be assisted either as a federal preference admission from the HA waiting list in accordance with the new law, or as a special admission (non-waiting list) with funding provided by HUD for this purpose [§ 982.203(b)(2)].

Substandard Housing

Substandard housing—Definition. The statute and rule give admission preference to families that are homeless or live in substandard housing. The rule defines when a unit is considered substandard. [§ 982.212(a)]

Public comments recommend several changes in the definition of substandard housing. In the existing preference rule, and in this final rule, substandard housing is described by the physical attributes of the unit. Conversely, substandardness is not defined by who occupies or will occupy the unit. Comments recommend that the HA should be allowed to treat as substandard—housing that is "over-

crowded", or that is occupied by more than one family, or that does not meet HA occupancy standards (for the configuration of persons occupying the unit).

HUD has not followed the recommendations. A definition based on unit occupancy patterns, as recommended by comment, would be more subject to manipulation. Families can claim over-occupancy to accelerate admission to the program. Over-crowding is harder to verify than the physical condition of the unit. With HUD approval, an individual HA can elect to adopt a local definition of substandard housing that covers housing that is over-crowded.

Comments state that a disabled person who needs a home adapted for disabled occupancy should be treated as an occupant of substandard housing. However, a unit is not substandard merely because the unit is inappropriate for its disabled occupant. Instead, it is more appropriate to treat a disabled person who cannot continue to live in an unsuitable unit as a person who has been involuntarily displaced, and to afford a federal preference on this basis. In addition, for admissions not subject to federal preference (10 percent of annual waiting list admissions), an HA may adopt a local preference for admission of disabled persons.

Substandard Housing: Family in Public Housing

If a family is living in public housing, and the family's apartment is in fact substandard, the family qualifies for federal preference. Comments agreed that a family should not be denied a federal preference simply because the unit where the family lives is public housing. In the certificate program, the law provides that a family may not be denied a preference "solely because the family resides in public housing". [42 U.S.C. 1437f(d)(1)(A)(i)]

Comments note that a family living in substandard public housing may not be able to verify that the unit is substandard. However, if the family is living in public housing run by the same HA (to which the family is applying for Section 8), the HA is the family's present landlord. An HA can readily verify if its own public housing unit is substandard.

Of course, an HA may be embarrassed by the claim that the family's public housing unit is substandard. However, the HA cannot properly refuse verification for this reason, or refuse to take actions to determine whether the unit is substandard.

Preference for Homeless

1990 legislation confirms that the preference for families in substandard housing applies to families that are homeless or living in a shelter for the homeless. Pub. L. 101–625 (Cranston-Gonzalez National Affordable Housing Act), 11/28/90, section 545, 104 Stat. 4218–4219. Since HUD's rules already provide that homeless families qualify for the federal preference, no substantive change is required in this rulemaking. [§ 982.212(c)]

The existing rule defines the term "homeless family". Comments state that each locality should be allowed to define homelessness. An HA may ask HUD approval to use local definitions of federal preference terms, including local definitions of "substandard housing" and "homeless family". [§ 982.210(a)]

Comments state that HA admission of a homeless family should be based on the family's current status, but should not be based on the cause of homelessness. HUD has not adopted this comment. In addition, in admission of homeless families, the HA may use ranking preferences based on the cause of homelessness.

Federal or Local Preference for Resident of Temporary or Transitional Housing

A family may currently reside in a homeless shelter or another form of temporary housing. Under the HA preference system, the family may qualify for a federal or local preference.

The proposed rule provides that the HA may adopt a local preference for families that move from "transitional housing or a homeless shelter". The 1990 preference law explicitly permits non-federal preference admission of families who "reside in transitional housing . . ." (that is assisted under the Mckinney Act). [42 U.S.C. 1437f(d)(1)(A)(ii) (certificates) and 1437f(o)(3)(B) (vouchers)]

Comments assert that a resident of transitional housing should be given a local preference. Other comments correctly point out that a family residing in a homeless shelter will generally qualify for federal preference, and state that the family should not be admitted under the authority for local preference.

The rule does not list examples of the statutory local preference, including the HA option to grant a local preference for residents of transitional housing. The HA does not need to use its local preference admissions quota for families who qualify for federal preference. Under existing preference rules, a family that is living in transitional housing or a homeless shelter may qualify for federal preference.

The old preference rule provides that the definition of a "homeless family" includes a family living in a supervised "shelter" that is designed to provide "temporary living accommodations". The old rule also specifies that such shelters "include" certain types of housing, such as "transitional housing for the mentally ill". However, the listing of these shelter types is illustrative, not exclusive, and includes transitional housing for populations other than the mentally ill. The existing homeless family definition also allows the HA to give a preference for persons in a "temporary residence" for persons to be institutionalized—a category also embraced in the broader preference for persons in temporary living accommodations.

In this rulemaking, the preference for persons living in temporary accommodations is left substantially unchanged. However the list of shelter type examples is revised to explicitly cover "transitional housing" broadly, instead of referring to transitional housing "for the mentally ill". [§ 982.212(c)(2)(ii)(A)] This revision does not change the substantive import of the rule, and is merely intended to make clear that the preference is not restricted to residents of transitional housing for the mentally ill, but applies broadly to residents of temporary housing accommodations, including transitional housing.

Comments suggest that when the HA offers a certificate or voucher to a family in transitional housing, the family should be allowed to wait for completion of transitional housing services without losing its place on the waiting list. HUD will not change the rule in response to this comment. The decision whether to hold a family's waiting list place should be left to the HA. However, the HA procedure may not discriminate against persons with disabilities.

Rent Burden

Treatment of energy assistance payments. Federal law gives an admission preference to families that pay more than 50 percent of income for rent. For this purpose, the rule defines "income" and "rent". [§ 982.213(b)]

A family may draw benefits under a program that helps the family pay for energy costs (utilities). The rule provides that if energy assistance payments are not included in family income, the payments are also subtracted in calculating the family's rent burden. [§ 982.213(b)(3)] This provision is not changed from the prior rule. Comments ask why energy assistance payments are subtracted from rent.

The purpose of the rent burden calculation is to determine how much of a family's available income is consumed for payment of the family's rent. Energy assistance payments cover a portion of family utility costs. Energy costs that are covered by energy assistance payments are not an additional rent burden for the family.

The calculation of family income excludes payments under the HHS Energy Assistance Program. [58 FR 41287, 41288, August 3, 1993 (paragraph (v) on list of federally mandated exclusions)] Since such payments are not included in income, inclusion in rent burden of costs covered by the HHS payments would distort calculation of the family rent burden (essentially by double-counting energy costs: first by deducting from income, and second by counting as rent burden against the balance of family income).

Amount of rent. Comments ask if the HA can verify the amount *paid* as rent, instead of the amount *due* as rent. The statute is framed as a preference for families that "are paying" more than 50 percent of income for rent. Under the definition of "rent" in the existing rule, rent is the "actual amount due" under the family's lease.

In implementing the statutory rent burden preference, HUD defines "rent" as the amount a tenant is contractually bound to pay the owner as rent, not necessarily the amount that the tenant actually pays the owner against the monthly rent due under the lease. [§ 982.212(b)(2)(i)] A family's contractual obligation to pay rent is a better gauge of the family's rent burden, than the amount the family is able to scrape up for payment to the landlord. A family may be unable to pay the full rent, and may be under the shadow of eviction for non-payment. If the amount actually paid to the landlord is less than 50 percent of income, the family would not qualify for a preference based on the actual amount "paid" to the landlord. (The smaller the amount "paid" as rent, the more difficulty in qualifying for the rent burden preference.) In the present rule, as in the existing rule, the determination of rent burden is based on rent owed to the landlord.

Rent burden in rural areas. Comments state that some families don't qualify for rent burden preference because rural areas have lower rent. The comments urge flexibility in determining rent burden for rural families.

The percentage rent burden (50 percent) needed to qualify for preference is set by law. HUD does not

assistance payments are subtracted from rent.

The purpose of the rent burden calculation is to determine how much of a family's available income is consumed for payment of the family's rent. Energy assistance payments cover a portion of family utility costs. Energy costs that are covered by energy assistance payments are not an additional rent burden for the family.

The calculation of family income excludes payments under the HHS Energy Assistance Program. [58 FR 41287, 41288, August 3, 1993 (paragraph (v) on list of federally mandated exclusions)] Since such payments are not included in income, inclusion in rent burden of costs covered by the HHS payments would distort calculation of the family rent burden (essentially by double-counting energy costs: first by deducting from income, and second by counting as rent burden against the balance of family income).

Amount of rent. Comments ask if the HA can verify the amount *paid* as rent, instead of the amount *due* as rent. The statute is framed as a preference for families that "are paying" more than 50 percent of income for rent. Under the definition of "rent" in the existing rule, rent is the "actual amount due" under the family's lease.

In implementing the statutory rent burden preference, HUD defines "rent" as the amount a tenant is contractually bound to pay the owner as rent, not necessarily the amount that the tenant actually pays the owner against the monthly rent due under the lease. [§ 982.212(b)(2)(i)] A family's contractual obligation to pay rent is a better gauge of the family's rent burden, than the amount the family is able to scrape up for payment to the landlord. A family may be unable to pay the full rent, and may be under the shadow of eviction for non-payment. If the amount actually paid to the landlord is less than 50 percent of income, the family would not qualify for a preference based on the actual amount "paid" to the landlord. (The smaller the amount "paid" as rent, the more difficulty in qualifying for the rent burden preference.) In the present rule, as in the existing rule, the determination of rent burden is based on rent owed to the landlord.

Rent burden in rural areas. Comments state that some families don't qualify for rent burden preference because rural areas have lower rent. The comments urge flexibility in determining rent burden for rural families.

The percentage rent burden (50 percent) needed to qualify for preference is set by law. HUD does not have authority to allow use of a lower percentage in rural areas. If rural or non-rural families can rent units for less than the preference threshold, they do not qualify for the preference.

Preference for Public Housing Residents

Summary of Law and Rule

For the certificate program, a 1990 law provides that a family may not be denied federal preference or "delayed or otherwise adversely affected" in receiving tenant-based assistance "solely because the family resides in public housing". [42 U.S.C. 1437f(d)(1)(A)(i); 1990 National Affordable Housing Act, Section 545, 104 Stat. 4218–4219] The amendment was introduced by Congressman Bartlett to preserve Section 8 federal preference status of families on the Section 8 waiting list when admitted to public housing. [Transcript of May 21, 1990 markup by Housing Subcommittee of Housing Banking Committee] Another law provides that in selecting families for Section 8 certificate or voucher assistance a housing agency may not "exclude or penalize" a family solely because the family resides in a public housing project. [42 U.S.C. 1437f(s)]

For both tenant-based programs, the rule provides that if a public housing family was on the HA Section 8 tenant-based waiting list when admitted to the HA's public housing (since April 26, 1993), the HA federal preference determination must be based on the situation of the applicant at the time of admission to public housing (beginning of initial public housing lease). [§ 982.210(c)(4)(ii)]

Example

At the time a family is admitted to an HA's public housing program, the family is on the HA's waiting list for Section 8 tenant-based assistance. The family also qualifies for federal preference as a homeless family. The family keeps its federal preference status (homeless) on the Section 8 waiting list.

Preference Retention: Purpose and Effect

The new rule implements the law which provides that a family may not be denied federal preference or "otherwise adversely affected" in admission to the certificate program "solely because" the family resides in public housing. [42 U.S.C. 1437f(d)(1)(A)(i)] The law is a statutory exception to the broad federal preference requirement (that 90 percent of certificate admissions must be families who *currently* qualify for federal preference). The statutory exception does not apply to the voucher program. However, under the voucher law, for good cause HUD may permit an HA to admit more than 10 percent non-federal preference holders before families who qualify for federal preference. [42 U.S.C. 1437f(o)(3)(B)] HUD finds that the need for uniformity in administration of the tenant-based programs is good cause to require that HAs give preference for voucher admission of public housing residents who would not otherwise currently qualify for federal preference.

The new rule applies the same requirements for both Section 8 tenant-based assistance programs. An applicant for an HA's Section 8 program that is currently living in public housing of the same HA qualifies for Section 8 federal preference if the applicant was qualified for preference *at the time the applicant was admitted to public housing.* [§ 982.210(c)(4)(ii)] This provision only applies if the applicant:

(1) Was admitted to public housing on or after April 26, 1993—the statutory deadline for implementation of preference requirements in the National Affordable Housing Act of 1990. [Pub. L. 102–550, Section 104, October 28, 1992, 106 Stat. 3684]

(2) Was qualified for federal preference at the time of such admission.

(3) Was on the HA's Section 8 tenant-based waiting list at the time of admission to the same HA's public housing.

Preference Retention: Family Need

Federal preferences direct housing assistance resources to families with urgent housing needs. Usually, public housing residents do not currently qualify for federal preference. For the most part, public housing residents are not displaced, do not pay over fifty percent of income for rent (most public housing families pay 30 percent of adjusted income), and do not live in substandard housing.

Under the rule, federal preference for the public housing resident is based on the family's federal preference situation at the time when the family was admitted to public housing (if the family was on the HA's Section 8 waiting list when admitted to the HA's public housing program on or after April 26, 1993). Thus a family that was homeless when admitted to public housing, but is now living in secure and decent public housing, is treated the same as a homeless family on the street. Both families benefit from the federal preference for admission of families living in substandard housing.

In some cases, a public housing family will qualify for federal preference because of the family's current situation. For example, a family may currently live in a public housing unit that is substandard. Thus a public housing family may receive federal preference for admission to the Section 8 tenant-based assistance programs either (1) because of the family's preference situation when admitted to public housing, or (2) because of the family's current federal preference status. The rule provides that the HA may not deny any admission preference for which the applicant is currently qualified (federal, local or ranking preference) because the applicant already resides in public or other assisted housing. [§ 982.205(c)(1)]

HUD received many public comments on the proposed provision that allows a family to retain its federal preference status at the time of admission to public housing. Most comments strongly oppose this requirement. Comments state that scarce housing resources should be directed to families with the greatest need, not to families already residing in decent, safe and sanitary public housing. Some comments acknowledge that the regulation follows the intention of the law.

Comments assert that the language of the law does not support grant of a preference based on the family's situation at a past time, before the family entered public housing. Comments claim that the required preference retention unfairly delays or denies assistance to other families. The family's need and preference should be based on the condition of the family's current housing.

Comments state that the preference for public housing residents is unfair and harmful to:

—families that currently qualify for federal preference.
—families without federal preference.
—families living in other project-based assisted housing (non-public housing).
—families living in private housing.
—families not currently receiving any form of housing assistance.

Other comments commend HUD's implementation of the requirement for retention of federal preference. The comments state that the preference is essential so a public housing family is not locked into public housing projects which are highly segregated or disproportionally minority.

HUD notes that the grant of federal preference to public housing families that would not otherwise qualify for preference will necessarily operate to limit Section 8 openings for other families. Program selection is the competitive distribution of available openings. By requiring the retention of a family's original preference status, at the time of admission to public housing, the Section 8 rule carries out the specific purpose of the law—that a family may not be denied federal preference or "otherwise adversely affected" in admission to the Section 8 program because the family resides in public housing.

Preference Retention: Administration

Comments state that preference retention increases the HA administrative burden. To implement this requirement, the HA must track and verify the family's original preference status. By allowing HA public housing families to move to the HA Section 8 program, the rule will create public housing vacancy, turnover and financial burden.

Comments object that the preference retention rule treats public housing as transitional housing. The rule implies that public housing is bad housing, from which families are allowed to escape by operation of an artificial preference. Operation of the preference undercuts initiatives for improvement of public housing.

HUD agrees that the preference retention will cause public housing turnover and associated HA administrative costs. However, the rule faithfully implements the purpose of the law as expressed in committee markup. The law is designed to facilitate a family's move from public housing to Section 8. HUD is seeking repeal of the law. However, at this time, there is no way to avoid the costs and administrative burden of carrying out the law.

An HA must determine and verify the family's federal preference status at admission to the HA's public housing program. At the subsequent admission to Section 8, the HA can rely on information obtained for the prior determination and verification.

Comments state that the preferential admission of public housing families should not apply to more than five percent of annual admissions to the HA Section 8 program. This recommendation is not adopted. Under the law, HUD is not authorized to set a limit on the percentage of Section 8 housing admissions for which the HA is prohibited from denying a federal preference because a family resides in public housing.

Preference Retention: For Families on Section 8 Waiting List

Under the proposed rule, the retention of federal preference would apply if a family was on the Section 8 waiting list when admitted to public housing on or after *September 1, 1991*. Under this final rule, the retention of federal preference will apply to a family on the Section 8 waiting list when admitted to public housing on or after *April 26, 1993*. This date is the statutory deadline for rulemaking to implement the 1990 preference law (six months from enactment of the Housing and Community Development Act of 1992). [Pub. Law 102–550, October 28, 1992, Section 104, 106 Stat. 3684]

Comments object that the retention of federal preference only applies if a family is (1) on the Section 8 waiting list (2) at the time of admission of public housing (3) after a specified date. The comments state that preference retention should also apply to families which apply for Section 8 after admission to public housing.

Comments state that the preference retention should cover families admitted to public housing at any time in the past, or admitted since passage of the Cranston-Gonzalez National Affordable Housing Act (NAHA) on November 28, 1990 (prohibits denial of preference because a family resides in public housing). Comments state that the rule favors new public housing residents over older residents.

The Housing and Community Development Act of 1992 provides that the preference amendments under the Cranston-Gonzalez Act must be implemented through notice and comment rulemaking by expiration of the 180-day period beginning on the date of enactment of the 1992 law (October 28, 1992). The 180-day period expired on April 26, 1993. Although the Department did not complete the rulemaking by this deadline, the final rule provides that the retention of federal preference status applies to Section 8 waiting list families admitted to public housing on or after that date. Such families would have qualified for preference if the rule had been issued by the deadline date.

HUD has not adopted recommendations to go beyond the requirements of the law—by covering families that were admitted to public housing before April 26, 1993, or who applied for Section 8 after admission to public housing.

Public Housing Family: Denial of Preference

The rule provides that the fact that a family lives in public or other assisted housing may not be used as a ground for denying a federal, local or ranking preference for which the applicant is currently qualified. [§ 982.205(c)(1)] If the family's public housing unit is substandard, the family qualifies for federal preference, the same as a resident of private substandard housing. Comments generally approve allowing a federal preference for a public housing resident who currently qualifies for federal preference.

Comments assert that the rule favors public housing residents over applicants in private housing, and is therefore unfair. The rule does not direct favored treatment for public housing residents (other than by implementing the law that allows a public housing family to keep the same preference status as at admission to public housing). Conversely, however, the rule does not prohibit the adoption of a ranking or local preference for residents of public housing. The rule provides that the HA may target assistance for families who live in public or other federally assisted housing. [§ 982.202(b)(2)]

Family Receiving HOME Tenant-Based Assistance

In the HOME Program, HUD allocates funds to State and local governments for support of affordable housing. [24 CFR part 92] A participating jurisdiction may choose to use HOME funds to provide tenant-based rental assistance for low-income families during a period of up to 24 months. Since the period of HOME rental assistance is limited, Section 8 tenant-based assistance may be used to provide continued rental assistance for a family after termination of the HOME subsidy.

A family may meet Section 8 federal preference criteria at the time the family begins tenant-based assistance under the HOME Program. Usually, the family does not qualify for preference while receiving the HOME subsidy. To facilitate the transition from short-term tenant-based assistance under the HOME Program, the HOME statute provides that recipients of HOME tenant based rental assistance qualify for Section 8 tenant selection preferences to the same extent as when they initially received the HOME rental assistance. [42 U.S.C. 12742(a)(3)(D)] As in the case of the public housing preference retention provisions discussed above, the HOME statute permits the family to retain its prior federal preference situation.

This rule provides that if a Section 8 applicant is currently receiving tenant-based assistance under the HOME program, the HA determines whether the applicant qualifies for Section 8

housing may not be used as a ground for denying a federal, local or ranking preference for which the applicant is currently qualified. [§ 982.205(c)(1)] If the family's public housing unit is substandard, the family qualifies for federal preference, the same as a resident of private substandard housing. Comments generally approve allowing a federal preference for a public housing resident who currently qualifies for federal preference.

Comments assert that the rule favors public housing residents over applicants in private housing, and is therefore unfair. The rule does not direct favored treatment for public housing residents (other than by implementing the law that allows a public housing family to keep the same preference status as at admission to public housing). Conversely, however, the rule does not prohibit the adoption of a ranking or local preference for residents of public housing. The rule provides that the HA may target assistance for families who live in public or other federally assisted housing. [§ 982.202(b)(2)]

Family Receiving HOME Tenant-Based Assistance

In the HOME Program, HUD allocates funds to State and local governments for support of affordable housing. [24 CFR part 92] A participating jurisdiction may choose to use HOME funds to provide tenant-based rental assistance for low-income families during a period of up to 24 months. Since the period of HOME rental assistance is limited, Section 8 tenant-based assistance may be used to provide continued rental assistance for a family after termination of the HOME subsidy.

A family may meet Section 8 federal preference criteria at the time the family begins tenant-based assistance under the HOME Program. Usually, the family does not qualify for preference while receiving the HOME subsidy. To facilitate the transition from short-term tenant-based assistance under the HOME Program, the HOME statute provides that recipients of HOME tenant based rental assistance qualify for Section 8 tenant selection preferences to the same extent as when they initially received the HOME rental assistance. [42 U.S.C. 12742(a)(3)(D)] As in the case of the public housing preference retention provisions discussed above, the HOME statute permits the family to retain its prior federal preference situation.

This rule provides that if a Section 8 applicant is currently receiving tenant-based assistance under the HOME program, the HA determines whether the applicant qualifies for Section 8 federal preference based on the situation of the applicant at the time the applicant began to receive tenant-based assistance under the HOME program. [§ 982.210(c)(4)(i)] The family must show that it qualifies for preference on this basis.

Local Preference

For non-federal preference admissions, the law provides that the HA may use a system of local preferences "to respond to local housing needs and priorities". In the vocabulary of this rule, the term "local preference" means a preference used by the HA to select among applicant families that do not qualify for federal preference. [§ 982.3, § 982.207(a)(3)(iii)] Each year, ten per cent of admissions can be families that do not qualify for federal preference.

The HA is not required to use or exhaust the 10 percent quota of admissions not subject to federal preference. The HA may elect to admit federal preference holders without drawing on the limit for local preference admission.

Preference Hearing

The law provides that local preferences must be established in writing and after public hearing. [42 U.S.C. 1437f(d)(1)(A)(ii) and 1437f(o)(3)(B); amended by 1990 NAHA, Section 545 (104 Stat. 4219), and 1992 Housing Act, Section 144 (106 Stat. 3714)] The law does not contain any parallel public hearing requirement for HA policies implementing the federal preference, or for HA preferences in selecting among federal preference holders (called "ranking preferences" in this rule). In the proposed rule, HUD proposed to require public hearing both for adoption of preferences used to select among federal preference holders, and also for adoption of preferences used to select among families not qualifying for the federal preference.

Comment: Some comments approve the requirement to conduct a public hearing on HA selection preferences, asserting that the hearing process will provide valuable input. Other comments oppose the hearing requirement. Comments claim that the hearing will be an administrative burden, or that the hearing will attract attention of special interest groups. HAs are able to establish other local policies without hearing. HUD review of the HA preference policy is a sufficient check on the HA policy.

Comments request that HUD relieve HAs of the hearing requirement in communities where there is a "CHAS" (Community Housing Affordability Strategy) that determines local needs and priorities. Comments suggest that HUD allow an HA to use a published local notice, instead of a public meeting or hearing. Comments ask whether, if the HA serves a large area, a hearing in one part of the area is sufficient.

Response: The solicitation of public comments may elicit helpful ideas or information, but necessarily entails some burden for the HA. In the final rule, a hearing is only required for adoption of preferences used in a non-federal preference admission, as required by the law. This rule provides that local preferences may be adopted after public hearing to respond to local housing needs and priorities. [§ 982.209] The HA is not required to adopt a hearing process for adoption of ranking preferences for selection among federal preference holders (representing 90 percent or more of HA admissions).

At this time, HUD will not attempt to dictate a set hearing procedure. The essence of the hearing requirement is that there should be a reasonable process for soliciting representative comment by interested publics, and for the comment to be "heard" (i.e., considered) by the HA. A variety of processes can be devised to satisfy the hearing requirement, and the process used need not be elaborate or expensive. The HA may consider appropriate ways of giving public notice—whether by publication in the local press, posting in HA offices and projects, notice to legal services offices or other service organizations, or notice to applicants. The rule does not require that the hearing must necessarily be cast as a "meeting" between HA representatives and the public, so long as the HA has a procedure for gathering and considering public comment. If the HA elects to frame the hearing process as an open public meeting, the rule does not prescribe any number of meetings or the number of hearing venues within the HA jurisdiction.

Comments object to requiring public hearings for local preferences already contained in the HUD-approved administrative plan, or ask if hearing will only be required for new proposed preferences. Comments state that hearing should only be required for a change in existing local preferences.

Under this rule, the local preference hearing requirements will be effective six months after publication of the rule (see "effective date" provision of rule). The hearing requirements apply to local preference admissions after expiration of the six month period. (The hearing requirements are stated in § 982.209(b).) After that point, the HA may not continue to use existing local

preferences until the HA has conducted the public hearing required by law and this rule.

Hearings are only required for HA selection preferences that are used for admission of families that do not qualify for federal preference. In admitting families that qualify for federal preference, HAs can continue to apply the scheme of federal and ranking preferences in the HA's administrative plan.

In a separate rulemaking, HUD proposed revisions of federal preference requirements for the public housing program (and for other assisted housing programs). [58 FR 44968 (August 25, 1993)] HA representatives asked whether an HA can hold a single hearing to consider at the same time local preferences to be used both in the HA's public housing program, and in its certificate and voucher programs. Nothing prevents an HA from conducting a single hearing for this purpose.

Purpose of Local Preference

For local preference admissions, the law leaves broad authority for an HA to develop a local preference system to meet local housing needs and priorities. The local needs and priorities "may *include*" certain possible purposes listed in the law, or "other objectives" of national housing policy. The law does not contain any comprehensive or exclusive enumeration of allowable local "needs and priorities". The law merely states that the "specific purposes" and "other objectives" are included among the local needs and priorities that may be served by adoption of a local preference.

In the proposed rule, HUD listed some examples of the purposes for which the HA may establish a system of local preferences, including preferences designed to achieve "other objectives of national housing policy".

Comments approve allowing HA discretion to adopt local selection preferences. Comments state that HUD should offer examples of the national housing policy objectives for which the HA may adopt a local preference. Comments stress that the HA should not be limited by the "examples" listed in the rule.

This final rule provides that the HA may establish a system of local preferences "to respond to local housing needs and priorities". [§ 982.209(a)] The law states that the local preference system may be designed to achieve "objectives of national housing policy affirmed by the Congress".

The local needs and priorities may include the objective to remedy unsafe and unsanitary housing conditions, and to improve housing opportunities for residents of the United States, particularly disadvantaged minorities, on a nondiscriminatory basis, or may promote other objectives of national housing policy affirmed by the Congress. For example, see the statements of national housing policy in the United States Housing Act of 1937 (which contains Section 8) [42 U.S.C. 1437]; and in the Cranston-Gonzalez National Affordable Housing Act of 1990 [Pub. L. 101–625, November 28, 1990, Section 102(3), 42 U.S.C. 12702(3).

An HA has broad discretion to adopt local preferences in accordance with local circumstances and local judgment. The final rule does not give examples of local preference purposes. The HUD program handbook will give examples of possible local preferences, and advice on how to set up a local preference system.

Other comments state that the HA preferences must not violate fair housing requirements, and should be subject to HUD review and approval. The HA policies for selection of program participants, including local preferences and ranking preferences, must be contained in the HA's administrative plan or equal opportunity plan. The selection policy must meet fair housing requirements. Residency preferences must be approved by HUD.

Particular Preferences

Comments recommend that the HA should have discretion to grant preference for an elderly person who lives in an assisted project, but who needs to move closer to family members or medical facilities. An HA may adopt a ranking or local preference for this purpose.

Comments recommend that HUD require the HA to grant a preference for a disabled veteran who is eligible for discharge from a hospital or nursing home. Under the rule, the HA may choose to adopt a ranking or a local preference for a disabled veteran who needs a rental subsidy to lease accessible standard housing. However, the rule does not force the HA to adopt such a preference.

The law provides that an HA may grant a local preference for the purpose of assisting "youth" after discharge from foster care. The proposed rule recited this optional local preference. Comments ask if the "youth" would have to live with an adult. The adoption of such a preference does not require any change in the criteria for admission of families to the HA program. If the HA chooses to adopt such a local youth preference, the HA may limit the preference to cases where a minor will live with a parent or guardian or other person capable of establishing and managing a household. The HA has the authority and responsibility to define the operation of its local preference.

Comments recommend that the rule allow a preference for the "near-elderly" (a person from 50 to 61 years of age). The HA has wide latitude to fashion its systems of ranking and local preference, and could adopt a ranking or local preference for admission of the near elderly.

Comments recommend that the rule allow HA's with a large jurisdiction to award preference to a family that wants to live in a certain "region" of the HA jurisdiction. This suggestion is not adopted. The rule continues traditional program policy that admission may not be based on where the family will live with assistance under the program. [§ 982.202(b)(3)] The tenant-based programs are designed to maximize the ability of poor families to choose where they want to live, and also to maximize opportunities for economic advancement by free choice of housing. An assisted family may move anywhere in the HA jurisdiction, or anywhere outside the HA jurisdiction under portability procedures.

The HA preference system may limit the number of families that may qualify for any ranking or local preference. [§ 982.207(a)(3)(iv)]

Selection by Random Choice or Time of Application

The proposed rule provides that date and time of application govern selection among families with the same preference status. Comments asked if the HA may select by "lottery" instead of date and time of application.

The proposed rule was not intended to prohibit selection by techniques of random choice among families on the waiting list. HUD agrees that use of a variety of random choice procedures may be a fair and workable way to distribute program openings among a large number of applicants. The rule clarifies, as originally intended, that use of date and time of application is not the only permitted technique for sorting among applicants in a given preference category. The final rule specifically sanctions use of random choice procedures for selection among applicants with the same preference status.

The rule provides that the HA must use one of two techniques to select among applicants with the same preference status (federal, ranking or

local preference): (1) Date and time of application, or (2) A drawing or other random choice technique. [§ 982.207(e)(1)] In all cases, the selection process must be consistent with the preferences required by federal law and regulation (both the federal preference requirements, and the preference for elderly, disabled or displaced over other singles). [§ 982.207(e)(2)] Whatever the process for selection of applicants, the HA must use procedures which provide a clear audit trail, that permits verification that each applicant has been selected in accordance with the method specified in the administrative plan. [§ 982.207(e)(3)]

Findings and Certifications

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291, Regulatory Planning Process. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made in connection with the proposed rule in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule have impact on States or their political subdivisions only to the extent required by the statute being implemented. The rule specifies to what extent preferences for admission of particular categories of applicants that are established by the local housing

local preference): (1) Date and time of application, or (2) A drawing or other random choice technique.
[§ 982.207(e)(1)] In all cases, the selection process must be consistent with the preferences required by federal law and regulation (both the federal preference requirements, and the preference for elderly, disabled or displaced over other singles).
[§ 982.207(e)(2)] Whatever the process for selection of applicants, the HA must use procedures which provide a clear audit trail, that permits verification that each applicant has been selected in accordance with the method specified in the administrative plan.
[§ 982.207(e)(3)]

Findings and Certifications

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291, Regulatory Planning Process. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made in connection with the proposed rule in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule have impact on States or their political subdivisions only to the extent required by the statute being implemented. The rule specifies to what extent preferences for admission of particular categories of applicants that are established by the local housing agency, in accordance with a statutorily-prescribed hearing procedure, may be used to admit participants. The only guidelines stated for the local agency's discretion are those required by the statute: the preferences are to respond to local housing needs and priorities. Since the rule merely carries out a statutory mandate and does not create any new significant requirements, it is not subject to review under the Executive Order.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. The rule carries out the mandate of federal statute with respect to admission preferences.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it does not place major burdens on housing authorities or housing owners.

Regulatory Agenda

This rule was listed as sequence number 1691 under the Office of the Assistant Secretary for Public and Indian Housing in the Department's Semiannual Regulatory Agenda published on April 25, 1994 (59 FR 20424, 20471) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Regulatory Review

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh St. SW., Washington, DC 20410.

List of Subjects

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, chapters VIII and IX of title 24 of the Code of Federal Regulations are amended as follows:

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

1. The authority citation for part 813 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n, and 3535(d).

§ 813.104 [Amended]

2. In § 813.104, paragraph (b)(2) is removed, and paragraph (b)(3) is redesignated as paragraph (b)(2).

§ 813.105 [Amended]

3. Section 813.105 is amended as follows:

a. In the first sentence of paragraph (a) introductory text, the words "five percent" are removed and the words "fifteen percent" are added in their place.

b. Paragraph (c) is removed and reserved.

c. Paragraphs (e)(2) and (e)(4) are removed, and paragraph (e)(3) is redesignated as paragraph (e)(2).

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

4. The authority citation for part 882 is revised to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

5. In § 882.103, the introductory text of § 882.103 is removed, and paragraph (b) is revised to read as follows:

§ 882.103 "Finders-keepers" policy.

* * * * *

(b) The PHA may not, either in the provision of assistance to any Family in finding a unit or by any other action,

directly or indirectly reduce any Family's opportunity to choose among the available units in the housing market.

* * * * *

6. In § 882.116, paragraph (c) is revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(c) Receipt and review of applications for participation; selection of applicants; verification of family income and other factors relating to eligibility and amount of assistance; and maintenance of a waiting list;

* * * * *

§ 882.207 [Removed and reserved]

7. Section 882.207 is removed and reserved.

8. In § 882.209, paragraph (a) is revised to read as follows:

§ 882.209 Selection and participation.

(a) *Selection for participation.* For provisions on selection of participants for the Section 8 certificate and voucher programs, see Part 982, Subpart E of this title.

* * * * *

§ 882.216 [Amended]

9. In § 882.216, paragraph (a)(4) is removed.

§ 882.219 [Removed and reserved]

10. Section 882.219 is removed and reserved.

11. In § 882.335, paragraph (a)(2)(i) is revised to read as follows:

§ 882.335 Special requirements for related lease shared housing.

(a) * * *

(2) * * *

(i) The PHA must require an applicant Family that is issued a Certificate on the basis of its willingness to share a unit with a particular Family to use the Certificate for occupancy of a unit with that Family under a Contract for Related Lease Shared Housing. However, if the Family later wants to move to another dwelling unit with continued participation in the PHA's program, the Family may select a dwelling unit in any area where the PHA is not legally barred from entering into Contracts.

* * * * *

12. In § 882.701, paragraph (c) is revised to read as follows:

§ 882.701 Purpose and applicability.

* * * * *

(c) Except as otherwise expressly modified or excluded by this subpart G, project-based assistance under this subpart G is subject to all provisions of subparts A and B of part 882, and of part 982 of this title.

* * * * *

13. In § 882.753, paragraph (a) is revised to read as follows:

§ 882.753 Family participation.

* * * * *

(a) *Participation.* For purposes of this subpart G, a Family becomes a participant on the effective date of the first lease with the owner (first date of initial lease term).

* * * * *

PART 887—HOUSING VOUCHERS

14. The authority citation for part 887 is revised to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 887.5 [Amended]

15. Section 887.5 is amended by removing paragraph (c).

16. In § 887.59, paragraphs (c) (1) and (d) are revised to read as follows:

§ 887.59 Equal opportunity housing plan.

* * * * *

(c) * * *

(1) Outreach and public notice to eligible families;

* * * * *

(d) The plan must include any special rules for use of HUD-targeted housing vouchers.

* * * * *

§ 887.105 [Amended]

17. Section 887.105 is amended as follows:

a. By removing from paragraph (b)(1) the phrase "(see § 887.107)".

b. By removing from paragraph (b)(2) the phrase "in accordance with § 887.157".

§ 887.107 [Removed and reserved]

18. Section 887.107 is removed and reserved.

19. In Part 887, the title of Subpart D is revised to read as follows:

"Subpart D—Issuing Housing Vouchers"

20. In Subpart D of Part 887, § 887.151 is revised to read as follows:

§ 887.151 Selection for participation.

For provisions on selection of participants for the Section 8 certificate and voucher programs, see Part 982, Subpart E of this title.

§§ 887.152—887.157 [Removed and reserved]

21. In Subpart D of Part 887, §§ 887.153, 887.155, and 887.157 are removed and reserved.

22. In § 887.565, paragraph (c) is revised to read as follows:

§ 887.565 Portability: responsibilities of the receiving PHA.

* * * * *

(c) The receiving PHA must recertify the family's income initially and at least annually thereafter for purposes of determining the housing assistance payments.

* * * * *

23–24. Part 982, consisting of §§ 982.1 through 982.213, is added to chapter IX to read as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

Subpart A—General Information

Sec.
982.1 General program description.
982.2 Applicability.
982.3 Definitions.

Subparts B–D—[Reserved]

Subpart E—Admission to Tenant-Based Program

982.201 Eligibility.
982.202 How applicants are selected: General requirements.
982.203 Special admission (non-waiting list): Assistance targeted by HUD.
982.204 Waiting list: Administration of waiting list.
982.205 Waiting list: Different programs.
982.206 Waiting list: Opening and closing; public notice.
982.207 Waiting list: Use of preferences.
982.208 Waiting list: Residency preference.
982.209 Waiting list: How applicant qualifies for local preference.
982.210 Waiting list: How applicant qualifies for federal preference.
982.211 Federal preference: Involuntary displacement.
982.212 Federal preference: Substandard housing.
982.213 Federal preference: Rent burden.

Authority: 42 U.S.C. 1437f and 3535(d).

Subpart A—General Information

§ 982.1 General program description.

In the HUD rental voucher program and the HUD rental certificate program, a rent subsidy is paid to help eligible families afford rent for decent, safe, and sanitary housing. Both programs are administered by State, local governmental or tribal bodies called housing agencies (HAs). HUD provides funds to an HA for rent subsidy on behalf of eligible families. HUD also provides funds for HA administration of the programs.

§ 982.2 Applicability.

Part 982 is a unified statement of requirements for admission to the

tenant-based housing assistance programs under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The tenant-based programs are the Section 8 tenant-based rental certificate program and the Section 8 rental voucher program.

§ 982.3 Definitions.

Admission. The effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program. This is the point when the family becomes a participant in the program.

Annual income. Defined in 24 CFR 813.106.

Applicant (or applicant family). A family that has applied for admission to a program, but is not yet a participant in the program.

Certificate. A document issued by an HA to a family selected for admission to the rental certificate program. The certificate describes the program, and the procedures for HA approval of a unit selected by the family. The certificate also describes the obligations of the family under the program.

Certificate or voucher holder. A family holding a voucher or certificate with unexpired search time.

Certificate program. Rental certificate program.

Continuously assisted. An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the certificate or voucher program.

Disabled person. A person who is any of the following:

(1) A person who has a disability as defined in section 223 of the Social Security Act. (42 U.S.C. 423)

(2) A person who has a physical, mental, or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that ability to live independently could be improved by more suitable housing conditions.

(3) A person who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

Displaced person. A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under federal disaster relief laws.

Drug-related criminal activity. The illegal manufacture, sale, distribution,

tenant-based housing assistance programs under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The tenant-based programs are the Section 8 tenant-based rental certificate program and the Section 8 rental voucher program.

§ 982.3 Definitions.

Admission. The effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program. This is the point when the family becomes a participant in the program.

Annual income. Defined in 24 CFR 813.106.

Applicant (or applicant family). A family that has applied for admission to a program, but is not yet a participant in the program.

Certificate. A document issued by an HA to a family selected for admission to the rental certificate program. The certificate describes the program, and the procedures for HA approval of a unit selected by the family. The certificate also describes the obligations of the family under the program.

Certificate or voucher holder. A family holding a voucher or certificate with unexpired search time.

Certificate program. Rental certificate program.

Continuously assisted. An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the certificate or voucher program.

Disabled person. A person who is any of the following:

(1) A person who has a disability as defined in section 223 of the Social Security Act. (42 U.S.C. 423)

(2) A person who has a physical, mental, or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that ability to live independently could be improved by more suitable housing conditions.

(3) A person who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

Displaced person. A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under federal disaster relief laws.

Drug-related criminal activity. The illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

Elderly person. A person who is at least 62 years of age.

EO plan. Equal opportunity housing plan. The EO plan establishes HA policies for implementing civil rights requirements.

Fair Market Rent. FMR. Defined in 24 CFR 882.102.

Family. Defined in 24 CFR 812.2. Family composition is discussed at § 982.201(c) of this chapter.

Family unit size. The appropriate number of bedrooms for a family. Family unit size is determined by the HA under the HA occupancy standards.

Federal preference. A preference under federal law for admission of applicant families that are any of the following:

(1) Involuntarily displaced.

(2) Living in substandard housing (including families that are homeless or living in a shelter for the homeless).

(3) Paying more than 50 percent of family income for rent.

Federal preference holder. An applicant that qualifies for a federal preference.

FMR. Fair market rent.

HA. Housing Agency.

HAP contract. Housing assistance payments contract.

Housing agency (HA). A State, county, municipality or other governmental entity or public body authorized to administer the program. The term "HA" includes an Indian housing authority (IHA). ("PHA" and "HA" mean the same thing.)

HUD. The U.S. Department of Housing and Urban Development.

Indian housing authority (IHA). A housing agency established either:

(1) By exercise of the power of self-government of an Indian Tribe, independent of State law; or

(2) By operation of State law providing specifically for housing authorities for Indians.

Live-in aide. A person who resides with an elderly person or disabled person and who:

(1) Is determined to be essential to the care and well-being of the person.

(2) Is not obligated for the support of the person.

(3) Would not be living in the unit except to provide necessary supportive services.

Local preference. A preference used by the HA to select among applicant families without regard to their federal preference status.

Local preference limit. Ten percent of total annual waiting list admissions to the HA's tenant-based certificate and voucher programs. The local preference limit is used to select among applicants without regard to their federal preference status.

Low-income family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. For admission to the certificate program, HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

1937 Housing Act. The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.). The HUD tenant-based programs are authorized by Section 8 of the 1937 Housing Act (42 U.S.C. 1437f).

1937 Housing Act program. Any of the following programs:

(1) The public housing program or Indian housing program.

(2) Any program assisted under Section 8 of the 1937 Act (42 U.S.C. 1437f) (including assistance under a Section 8 tenant-based or project-based program).

(i) The Section 23 leased housing program.

(ii) The Section 23 housing assistance payments program. ("Section 23" means Section 23 of the United States Housing Act of 1937 prior to enactment of the Housing and Community Development Act of 1974.)

Occupancy standards. Standards established by an HA to determine the appropriate number of bedrooms for families of different sizes and compositions. See definition of "family unit size".

Participant. A family that has been admitted to the HA's certificate program or voucher program. The family becomes a participant on the effective date of the first HAP contract executed by the HA for the family (first day of initial lease term).

PHA. Public housing agency. See definition of "HA". ("PHA" and "HA" mean the same thing.)

Program. The tenant-based certificate program or voucher program.

Public housing agency (PHA). A State, county, municipality or other governmental entity or public body authorized to administer the programs. The term "PHA" includes an Indian housing authority (IHA). ("PHA" and "HA" mean the same thing. In this rule, a "PHA" is referred to as a "housing agency" (HA)).

Ranking preference. A preference used by the HA to select among

applicant families that qualify for federal preference.

Rental certificate. Certificate.

Rental certificate program. Certificate program.

Rental voucher. Voucher.

Rental voucher program. Voucher program.

Residency preference. An HA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

Residency preference area. The specified area where families must reside to qualify for a residency preference.

Special admission. Admission of an applicant that is not on the HA waiting list, or without considering the applicant's waiting list position.

Unit. Dwelling unit.

United States Housing Act of 1937 (1937 Housing Act). The basic law that authorizes the public and Indian housing programs, and the Section 8 programs. (42 U.S.C. 1437 et seq.)

Very low-income family. A family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish very low-income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Voucher (rental voucher). A document issued by an HA to a family selected for participation in the rental voucher program. The voucher describes the program, and the procedures for HA approval of a unit selected by the family. The voucher also states the obligations of the family under the program.

Voucher program. Rental voucher program.

Waiting list admission. An admission from the HA waiting list.

Subparts B–D—[Reserved]

Subpart E—Admission to Tenant-Based Program

§ 982.201 Eligibility.

(a) *When applicant is eligible: general.* The HA may only admit an eligible family to a program. To be eligible, the applicant must be a "family", and must be income-eligible.

(b) *Income.*

(1) To be income eligible, the family must be either:

(i) A "very low-income" family; or

(ii) A "low-income" family in any of the following categories:

(A) A low-income family that is "continuously assisted" under the 1937 Housing Act.

(B) A low-income family physically displaced by rental rehabilitation activity under 24 CFR part 511.

(C) A low-income non-purchasing family residing in a HOPE 1 (HOPE for Public and Indian Housing Homeownership) or HOPE 2 (HOPE for Homeownership of Multifamily Units) project.

(D) A low-income non-purchasing family residing in a project subject to a homeownership program under 24 CFR 248.173.

(E) A low-income family displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract under 24 CFR 248.165.

(F) For the certificate program only, a low-income family residing in a HUD-owned multifamily rental housing project when HUD sells, forecloses or demolishes the project.

(2) The HA determines whether the family is income-eligible by comparing the family's annual income (gross income) with the HUD-established very low-income limit or low-income limit for the area. The applicable income limit for issuance of a certificate or voucher when a family is selected for the program is the highest income limit (for the family unit size) for areas in the HA jurisdiction. The applicable income limit for admission to the program is the income limit for the area where the family is initially assisted in the program. The family may only use the certificate or voucher to rent a unit in an area where the family is income eligible at admission to the program.

(c) *Family composition.* (1) A "family" may be a single person or a group of persons.

(2) A "family" includes a family with a child or children.

(3) A group of persons consisting of two or more elderly persons or disabled persons living together, or one or more elderly or disabled persons living with one or more live-in aides is a family. The HA determines if any other group of persons qualifies as a "family".

(4) A single person family may be:

(i) An elderly person.

(ii) A displaced person.

(iii) A disabled person.

(iv) Any other single person.

(5) A child who is temporarily away from the home because of placement in foster care is considered a member of the family.

(d) *Continuously assisted.* (1) An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the certificate or voucher program.

(2) The HA must establish policies concerning whether and to what extent a brief interruption between assistance under one of these programs and admission to the certificate or voucher program will be considered to break continuity of assistance under the 1937 Housing Act.

(e) *When HA verifies that applicant is eligible.* The HA must receive information verifying that an applicant is eligible within the period of 60 days before the HA issues a certificate or voucher to the applicant.

(f) *Decision to deny assistance.*

(1) *Notice to applicant.* The HA must give an applicant prompt written notice of a decision denying admission to the program (including a decision that the applicant is not eligible, or denying assistance for other reasons). The notice must give a brief statement of the reasons for the decision. The notice must also state that the applicant may request an informal review of the decision, and state how to arrange for the informal review.

(2) *Grounds for decision.* For a discussion of the grounds for denying assistance because of action or inaction by the applicant, see § 882.210 (certificate program) of this title and § 887.403 (voucher program) of this title

§ 982.202 How applicants are selected: General requirements.

(a) *Waiting list and other admission* The HA may admit an applicant for participation in the program either:

(1) As a special admission (see § 982.203).

(2) As a waiting list admission (see § 982.204 through § 982.210).

(b) *Prohibited admission criteria.*

(1) *Family suitability for tenancy.* The owner selects the tenant. The owner decides whether the family is suitable for tenancy. The HA decision whether to admit an applicant to the program may not be based on an applicant's suitability for tenancy. The HA may deny assistance to an applicant because of drug-related criminal activity or violent criminal activity by family members. (See § 882.210(b) (certificate program) of this title and § 887.403(b) (voucher program) of this title.)

(2) *Where family lives.* Admission to the program may not be based on where the family lives before admission to the program. However, the HA may target assistance for families who live in public housing or other federally assisted housing.

(3) *Where family will live.* Admission to the program may not be based on

where the family will live with assistance under the program.

(4) *Family characteristics.*

(i) Admission to the program may not be based on:

(A) Discrimination because members of the family are unwed parents, recipients of public assistance, or children born out of wedlock;

(B) Discrimination because a family includes children (familial status discrimination);

(C) Discrimination because of age, race, color, religion, sex, or national origin;

(D) Discrimination because of disability; or

(E) Whether a family decides to participate in a family self-sufficiency program.

(ii) The HA may not adopt a preference for admission of higher income families over families of lower income.

(c) *Applicant status.* An applicant does not have any right or entitlement to be listed on the HA waiting list, to any particular position on the waiting list, or to admission to the programs. The preceding sentence does not affect or prejudice any right, independent of this rule, to bring a judicial action challenging an HA violation of a constitutional or statutory requirement.

(d) *Admission policy.* The HA must admit applicants for participation in accordance with HUD regulations and other requirements, and with policies stated in the HA administrative plan and EO plan. The HA admission policy must state the system of admission preferences that the HA uses to select applicants from the waiting list, including any federal preference, ranking preference, local preference and residency preference.

§ 982.203 Special admission (non-waiting list): Assistance targeted by HUD.

(a) If HUD awards an HA program funding that is targeted for families living in specified units:

(1) The HA must use the assistance for the families living in these units.

(2) The HA may admit a family that is not on the HA waiting list, or without considering the family's waiting list position. The HA must maintain records showing that the family was admitted with HUD-targeted assistance.

(b) The following are examples of types of program funding that may be targeted for a family living in a specified unit:

(1) A family displaced because of demolition or disposition of a public or Indian housing project;

(2) A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;

where the family will live with assistance under the program.

(4) *Family characteristics.*

(i) Admission to the program may not be based on:

(A) Discrimination because members of the family are unwed parents, recipients of public assistance, or children born out of wedlock;

(B) Discrimination because a family includes children (familial status discrimination);

(C) Discrimination because of age, race, color, religion, sex, or national origin;

(D) Discrimination because of disability; or

(E) Whether a family decides to participate in a family self-sufficiency program.

(ii) The HA may not adopt a preference for admission of higher income families over families of lower income.

(c) *Applicant status.* An applicant does not have any right or entitlement to be listed on the HA waiting list, to any particular position on the waiting list, or to admission to the programs. The preceding sentence does not affect or prejudice any right, independent of this rule, to bring a judicial action challenging an HA violation of a constitutional or statutory requirement.

(d) *Admission policy.* The HA must admit applicants for participation in accordance with HUD regulations and other requirements, and with policies stated in the HA administrative plan and EO plan. The HA admission policy must state the system of admission preferences that the HA uses to select applicants from the waiting list, including any federal preference, ranking preference, local preference and residency preference.

§ 982.203 Special admission (non-waiting list): Assistance targeted by HUD.

(a) If HUD awards an HA program funding that is targeted for families living in specified units:

(1) The HA must use the assistance for the families living in these units.

(2) The HA may admit a family that is not on the HA waiting list, or without considering the family's waiting list position. The HA must maintain records showing that the family was admitted with HUD-targeted assistance.

(b) The following are examples of types of program funding that may be targeted for a family living in a specified unit:

(1) A family displaced because of demolition or disposition of a public or Indian housing project;

(2) A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;

(3) For housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990 (41 U.S.C. 4101 et seq.):

(i) A non-purchasing family residing in a project subject to a homeownership program (under 24 CFR 248.173); or

(ii) A family displaced because of mortgage prepayment or voluntary termination of a mortgage insurance contract (as provided in 24 CFR 248.165);

(4) A family residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term; and

(5) A non-purchasing family residing in a HOPE 1 or HOPE 2 project.

§ 982.204 Waiting list: Administration of waiting list.

(a) *Admission from waiting list.* Except for special admissions, participants must be selected from the HA waiting list. The HA must select participants from the waiting list in accordance with admission policies in the HA administrative plan and EO plan.

(b) *Organization of waiting list.* The HA must maintain information that permits the HA to select participants from the waiting list in accordance with the HA admission policies. The waiting list must contain the following information for each applicant listed:

(1) Applicant name;

(2) Family unit size (number of bedrooms for which family qualifies under HA occupancy standards);

(3) Date and time of application;

(4) Qualification for federal preference;

(5) Qualification for any ranking preference or local preference; and

(6) Racial or ethnic designation of the head of household.

(c) *Removing applicant names from the waiting list.*

(1) The HA administrative plan must state HA policy on when applicant names may be removed from the waiting list. For example, the policy may provide that the HA will remove names of applicants who do not respond to HA requests for information or updates, or who have refused offers of tenant-based assistance under both the certificate program and the voucher program.

(2) The system for removing applicant names from the waiting list may not violate the rights of a disabled person under HUD regulations and requirements. For example, if an applicant's failure to respond to HA requests for information or updates was caused by the applicant's disability, the HA must provide reasonable accommodation to give the applicant an opportunity to respond.

(d) *Family size.* (1) The order of admission from the waiting list may not be based on family size, or on the family unit size for which the family qualifies under the HA occupancy policy.

(2) If the HA does not have sufficient funds to subsidize the family unit size of the family at the top of the waiting list, the HA may not skip the top family to admit an applicant with a smaller family unit size. Instead, the family at the top of the waiting list will be admitted when sufficient funds are available.

(e) *Funding for specified category of waiting list families.* When HUD awards an HA program funding for a specified category of families on the waiting list, the HA must select applicant families in the specified category.

(Approved by the Office of Management and Budget under OMB control number 2577–0169.)

§ 982.205 Waiting list: Different programs.

(a) *Tenant-based programs: Number of waiting lists.*

(1) An HA may use a single waiting list for admission to its tenant-based certificate and voucher programs, or may use separate waiting lists for a county or municipality.

(2) An HA must use the same waiting list for admission to its tenant-based certificate and voucher programs.

(b) *Merger and cross-listing.*

(1) *Merged waiting list.* An HA may merge the waiting list for tenant-based assistance with the HA waiting list for admission to another assisted housing program, including a federal or local program. In admission from the merged waiting list, admission for each federal program is subject to federal regulations and requirements for the particular program.

(2) *Non-merged waiting list: Cross-listing.* If the HA decides not to merge the waiting list for tenant-based assistance with the waiting list for the HA's public or Indian housing program, project-based certificate program or moderate rehabilitation program:

(i) If the HA's waiting list for tenant-based assistance is open when an applicant is placed on the waiting list for the HA's public or Indian housing program, project-based certificate program or moderate rehabilitation program, the HA must offer to place the applicant on its waiting list for tenant-based assistance.

(ii) If the HA's waiting list for its public or Indian housing program, project-based certificate program or moderate rehabilitation program is open when an applicant is placed on the waiting list for its tenant-based program, and if the other program includes units

suitable for the applicant, the HA must offer to place the applicant on its waiting list for the other program.

(c) *Other housing assistance: Effect of application for, receipt or refusal.*

(1)(i) The HA may not take any of the following actions because an applicant has applied for, received or refused other housing assistance:

(A) Refuse to list the applicant on the HA waiting list for tenant-based assistance;

(B) Deny any admission preference for which the applicant is currently qualified; or

(C) Remove the applicant from the waiting list.

(ii) For this purpose, "other housing assistance" means a federal, State or local housing subsidy, as determined by HUD, including public or Indian housing. However, the HA may remove such applicants from the waiting list in accordance with § 982.204(c).

(2) If an applicant refuses offers of tenant-based assistance under both the certificate program and the voucher program, the HA may remove the applicant from the waiting list for tenant-based assistance.

(3) See § 982.210(c)(4) for provisions concerning retention of federal preference by an applicant that either:

(i) Receives assistance under the HOME program, or

(ii) Resides in the HA's public or Indian housing.

§ 982.206 Waiting list: Opening and closing; public notice.

(a) *Public notice.* (1) When the HA opens a waiting list, the HA must give public notice that families may apply for tenant-based assistance. The public notice must state where and when to apply.

(2) The HA must give the public notice by publication in a local newspaper of general circulation, and also by minority media and other suitable means described in the EO plan. The notice must comply with the HUD-approved EO plan and with HUD fair housing requirements.

(3) The public notice must state any limitations on who may apply for available slots in the program.

(b) *Criteria defining what families may apply.*

(1) The HA may adopt criteria defining what families may apply for assistance under a public notice.

Example A

The HA decides that applications will only be accepted from families that qualify for federal preference, or from homeless federal preference families.

Example B

In admission to the program, the HA must give preference to elderly families, displaced families and displaced persons over other single persons (24 CFR 812.3). The HA decides that applications from other single persons will not be accepted.

(2) If the waiting list is open, the HA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as a denial of assistance because of action or inaction by members of the family) for the grounds stated in § 882.210 (certificate program) of this title and § 887.403 (voucher program) of this title).

(c) *Closing waiting list.* (1) If the HA determines that the existing waiting list contains an adequate pool for use of available program funding, the HA may stop accepting new applications, or may accept only applications meeting criteria adopted by the HA.

(2) Even if the HA is not otherwise accepting additional applications, the HA must accept applications from applicants who claim a federal preference unless the HA determines that the waiting list already contains an adequate pool of applicants who are likely to qualify for a federal preference.

§ 982.207 Waiting list: Use of preferences.

(a) *Types of preferences.* (1) There are three types of admission preferences:

(i) "Federal preferences."

(ii) "Ranking preferences."

(iii) "Local preferences".

(2) *Federal preference.* (i) "Federal preferences" are required by federal law. Under federal law, the HA must give preference for admission of applicants that are:

(A) Involuntarily displaced;

(B) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or

(C) Paying more than 50 percent of family income for rent.

(ii) The federal preference requirements determine how many selected applicants must be families with a federal preference, and how many selected applicants may be families without a federal preference.

(3) *Other preferences.* (i) In addition to the federal preferences, the HA may establish "ranking preferences" or "local preferences" to meet local needs and priorities.

(ii) "Ranking preferences" are used in selecting among applicants that qualify for federal preference.

(iii) "Local preferences" are used in selecting among applicants without regard to their federal preference status.

(iv) The HA preference system may limit the number of applicants that may qualify for any ranking preference or local preference.

(b) *Limit on local preference admission.* (1) "Local preference limit" means ten percent of total annual waiting list admissions to an HA's tenant-based certificate and voucher programs. In any year, the number of families given preference in admission to the HA tenant-based certificate program and voucher program pursuant to a local preference over families with a federal preference may not exceed the local preference limit.

(2) The local preference limit only applies to admission of an applicant from the HA waiting list. A special admission is not counted against the local preference limit.

(3) The local preference limit does not apply when an applicant is received in an HA program under portability procedures. The admission of a portability family by a receiving HA does not count against the receiving HA local preference limit. The admission of such a family (not qualified for federal preference) counts against the local preference limit of the initial HA.

(c) *Use of preferences in admission.* (1) In selecting applicants, the HA determines if an applicant qualifies for a federal preference, ranking preference or local preference.

(2) Ranking preference governs selection among applicants that qualify for a federal preference.

(3) Local preference governs selection among applicants that do not qualify for a federal preference.

(d) *Singles preference: Admission of elderly, disabled or displaced over other singles.* In selecting applicants, the HA must give preference to:

(1) A family (with or without federal preference):

(i) Whose single member is a displaced person; or,

(ii) Whose head or spouse or single member is an elderly person or a disabled person, over

(2) A single person (with or without federal preference) who is not elderly, disabled or displaced.

(e) *Methods for selection.* (1) The HA must use the following to select among applicants on the waiting list with the same preference status:

(i) Date and time of application, or

(ii) A drawing or other random choice technique.

(2) The method for selecting applicants from preference categories must be consistent with requirements governing federal preference, and the singles preference (described in paragraph (d) of this section).

(3) The method for selecting applicants from preference categories must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the administrative plan.

(f) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The HA may not give a preference to an applicant (federal preference, ranking preference or local preference) if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the HA may give an admission preference in any of the following cases:

(1) If the HA determines that the evicted person has successfully completed a rehabilitation program approved by the HA.

(2) If the HA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity.

(3) If the HA determines that the evicted person no longer participates in any drug-related criminal activity.

(g) *Fair Housing requirements.* (1) Any admission preferences that are used by an HA must be established and administered in accordance with the following authorities, and HUD implementing regulations:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d);

(ii) The Fair Housing Act (42 U.S.C. 3601–3619);

(iii) Executive Order 11063 on Equal Opportunity in Housing (27 FR 11527 (3 CFR, 1959–1963 Comp., p. 652);

(iv) Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794);

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213).

(2) Preferences must be consistent with HUD's affirmative fair housing objectives. The HA may not discriminate against families or family members on the basis of race, color, religion, sex, national origin, age, familial status or disability.

(h) *Informing applicants about admission preferences.* The HA must inform applicants about available preferences. The HA must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference or local preference).

§ 982.208 Waiting list: Residency preference.

(a) "Residency preference" is a preference for admission of families that

(3) The method for selecting applicants from preference categories must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the administrative plan.

(f) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* The HA may not give a preference to an applicant (federal preference, ranking preference or local preference) if any member of the family is a person who was evicted during the past three years because of drug-related criminal activity from housing assisted under a 1937 Housing Act program. However, the HA may give an admission preference in any of the following cases:

(1) If the HA determines that the evicted person has successfully completed a rehabilitation program approved by the HA.

(2) If the HA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity.

(3) If the HA determines that the evicted person no longer participates in any drug-related criminal activity.

(g) *Fair Housing requirements.* (1) Any admission preferences that are used by an HA must be established and administered in accordance with the following authorities, and HUD implementing regulations:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d);

(ii) The Fair Housing Act (42 U.S.C. 3601–3619);

(iii) Executive Order 11063 on Equal Opportunity in Housing (27 FR 11527 (3 CFR, 1959–1963 Comp., p. 652);

(iv) Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794);

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101–12213).

(2) Preferences must be consistent with HUD's affirmative fair housing objectives. The HA may not discriminate against families or family members on the basis of race, color, religion, sex, national origin, age, familial status or disability.

(h) *Informing applicants about admission preferences.* The HA must inform applicants about available preferences. The HA must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference or local preference).

§ 982.208 Waiting list: Residency preference.

(a) "Residency preference" is a preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area. The area where families must reside to qualify for the preference is called a "residency preference area".

(b) Any residency preference must be approved by HUD.

(c) If approved by HUD, the HA may adopt a residency preference that establishes a county or municipality as a residency preference area. An HA may not adopt a residency preference for an area smaller than a county or municipality.

(d) A residency preference must apply to families with a member who works or has been hired to work anywhere in a residency preference area. In applying the residency preference, such families must be treated like families that reside in the residency preference area.

(e) A residency preference may not be based on how long the applicant has resided in or worked in the HA jurisdiction or residency preference area.

(f) The HA may use a HUD-approved residency preference as a ranking or local preference.

§ 982.209 Waiting list: How applicant qualifies for local preference.

(a) *Local preference: Use and purpose.* "Local preferences" are used to select among applicants that do not qualify for a federal preference. The HA may adopt a system of local preferences to respond to local housing needs and priorities.

(b) *Procedure.* Local preferences may only be adopted or amended after the HA has conducted a public hearing. The HA may only use local preferences in selection for admission if the HA has conducted the required public hearing.

§ 982.210 Waiting list: How applicant qualifies for federal preference.

(a) *Applicable definitions.* Unless HUD has reviewed and approved alternative definitions, the HA must use the definitions of the following terms in this part:

(1) "Standard, permanent replacement housing".

(2) "Involuntary displacement".

(3) "Substandard housing".

(4) "Homeless family".

(5) "Family income".

(6) "Rent".

(b) *Ranking preferences: Selection among federal preference holders.* (1) The HA admission policy may provide for use of ranking preferences to select among applicants that qualify for federal preference.

(2) The HA may limit the number of applicants who may qualify for any ranking preference.

(3) The HA ranking preferences may determine the relative weight of the federal preferences through means such as:

(i) Aggregating the federal preferences (*such as,* two federal preferences outweigh one and three outweigh two).

(ii) Ranking the federal preferences. For example, the HA admission policy may provide that an applicant who lives in substandard housing has preference over an applicant who qualifies for a rent burden preference (paying more than 50 percent of income for rent).

(iii) Ranking the definitional elements of a federal preference. For example, the HA admission policy may provide that an applicant living in substandard housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government has preference over an applicant whose housing is substandard only because the housing does not have a usable bathtub or shower inside the unit for the exclusive use of the family.

(iv) The HA admission policy may give ranking preference for working families. However, the preference may not violate the prohibitions against discrimination on the basis of age or disability. An applicant must be given the benefit of the preference for working families if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work. If an HA adopts a ranking preference for working families, the admission policy may not give greater preference to an applicant based on the amount of employment income.

(4) The HA admission policy may give ranking preference for graduates of, or active participants in, educational and training programs that are designed to prepare individuals for the job market.

(c) *Qualifying for a federal preference.* (1) *Basis of federal preference.*

(i) *Displacement.* An applicant qualifies for federal preference if:

(A) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(B) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the HA.

(ii) *Substandard housing.* An applicant qualifies for a federal preference if the applicant is living in substandard housing. An applicant that is homeless or living in a shelter for the homeless is considered as living in substandard housing.

(iii) *Rent burden.* An applicant qualifies for a federal preference if the applicant is paying more than 50 percent of family income for rent.

(2) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the HA that the family qualifies for federal preference. The HA must accept this certification, unless the HA verifies that the applicant is not qualified for federal preference.

(3) *Verification of preference.*

(i) Before an applicant is admitted on the basis of a federal preference, the applicant must provide information needed by the HA to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the certification and selection for admission, including a change from one federal preference category to another.

(ii) The HA may adopt its own verification procedures.

(iii) Once the HA has verified an applicant's qualification for a federal preference, the HA need not require the applicant to provide information needed by the HA to verify such qualification again unless:

(A) The HA determines reverification is desirable because a long time has passed since verification; or

(B) The HA has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(4) *Retention of preference.* (i) If a Section 8 applicant is currently receiving tenant-based assistance under the HOME program (24 CFR part 92), the HA determines whether the applicant qualifies for Section 8 federal preference based on the situation of the applicant at the time the applicant began to receive tenant-based assistance under the HOME program.

(ii) If an applicant seeking admission to an HA's tenant-based program currently resides in public or Indian housing of the same HA, and was on the HA's tenant-based program waiting list when admitted to the HA's public or Indian housing on or after April 26, 1993, the HA determines whether the applicant qualifies for Section 8 federal preference based on the situation of the applicant at the time the applicant was admitted to the HA's public or Indian housing program (beginning of initial public housing lease).

(d) *Notice and opportunity for a meeting where federal preference is denied.* (1) If the HA determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the HA must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with an HA representative to review the determination. The meeting may be conducted by any person or persons designated by the HA, who may be an officer or employee of the HA, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

§ 982.211 Federal preference: Involuntary displacement.

(a) *How applicant qualifies for displacement preference.*

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing.

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the HA.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.* (i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence; or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) For an applicant to qualify as involuntarily displaced because of domestic violence:

(A) The HA must determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the HA has given advance written approval. If the family is admitted, the HA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.* (i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency, and

(B) Based on a threat assessment, the law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The HA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.* (i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The HA must determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under Section 203 of the Housing

(iii) For an applicant to qualify as involuntarily displaced because of domestic violence:

(A) The HA must determine that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the HA has given advance written approval. If the family is admitted, the HA may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.* (i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency, and

(B) Based on a threat assessment, the law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The HA may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.* (i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The HA must determine that the hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under Section 203 of the Housing and Community Development Amendments of 1978.

§ 982.212 Federal preference: Substandard housing.

(a) *When a unit is substandard.* A unit is substandard if the unit:

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit or government.

(b) *Dilapidated unit.* A housing unit is dilapidated if:

(1) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

(2) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(c) *Homeless family.* (1) An applicant that is a homeless family is considered to be living in substandard housing.

(2) A "homeless family" includes any person or family that:

(i) Lacks a fixed, regular, and adequate nighttime residence; and also

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(B) An institution that provides a temporary residence for persons intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) A "homeless family" does not include any person imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(d) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because the unit does not contain sanitary or food preparation facilities.

§ 982.213 Federal preference: Rent burden.

(a) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(b) For purposes of determining whether an applicant qualifies for the rent burden preference:

(1) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(2) "Rent" means:

(i) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) For utilities purchased directly by tenants from utility providers:

(A) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program; or

(B) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(3) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(4) For an applicant who owns a manufactured home, but who rents the space upon which it is located, rent includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(5) For members of a cooperative, rent means the charges under the occupancy agreement between the members and the cooperative.

(c) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(1) The applicant has been paying more than 50 percent of income for rent for less than 90 days;

(2) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(i) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(ii) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or

(iii) Rental assistance payments under section 236(f)(2) of the National Housing Act (12 U.S.C. 1715z–1).

Dated: June 24, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–16887 Filed 7–13–94; 8:45 am]

BILLING CODE 4210–33–P

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc.)
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public L
numbers, Federal Register finding aids, and list of
documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and t
documents on public inspection are available on t
National Archives fax-on-demand system. You mu
from a fax machine. There is no charge for the ser
except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11
35461–35606.....12
35607–35846.....13
35847–36016.....14
36017–36350.....15
36351–36690.....18

Reader Aids

Federal Register

Vol. 59, No. 136

Monday, July 18, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342	1
34343–34552	5
34553–34754	6
34755–34966	7
34967–35210	8
35211–35460	11
35461–35606	12
35607–35846	13
35847–36016	14
36017–36350	15
36351–36690	18

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
No. 94–29 of June 27, 1994 35211
No. 94–30 of June 30, 1994 35607
No. 94–31 of July 1, 1994 35609
Memorandums:
June 30, 1994 34341
July 11, 1994 36017
Proclamations:
6641 (See Proc. 6704) 34329
6704 34329
6705 34343
Executive Orders:
1919½ (Revoked in part by PLO 7065) 35054
12002 (See EO 12923) 34551
12214 (See EO 12923) 34551
12735 (See EO 12923) 34551
12755 (See EO 12923) 34551
12851 (See EO 12923) 34551
12923 34551

5 CFR

179 ..... 35213, 35215
532 ..... 36019, 36351
772 36352
2610 34755
2634 34755
2636 34755
2641 34755
Proposed Rules:
575 34393
3201 35480

7 CFR

1 36019
2 36020
272 34553
275 34553
283 34553
301 35611
319 35564
354 35612
406 35613
916 33897
917 33897
928 33898
929 36021
947 33900
981 ..... 35222, 35847
998 36353
1205 33901
1421 34345
1755 ..... 34353, 34899
Proposed Rules:
46 35487
322 36373
925 36091
944 36091
989 36093
1030 36094
1036 33922
1106 36095

8 CFR

103 33903
212 35614
245 33903
245a 33903
264 33903
274a 33903
299 35978
Proposed Rules:
214 35866

9 CFR

78 ..... 35615, 36023
92 ..... 34375, 36024
97 34756
Ch. III 34375
Proposed Rules:
50 36374
77 36374
92 36374
317 34396
381 35639

10 CFR

2 36026
30 36026
40 ..... 35618, 36026
50 35461
70 36026
72 ..... 35618, 36026
74 35618
75 35618
150 35618
710 35178
Proposed Rules:
Ch. I 36374
1003 34767

11 CFR

102 35785

12 CFR

701 36040
709 36040
745 36040
747 36040
790 36040
791 36040

792 36040
793 36040
794 36040

Proposed Rules:
220 33923
230 35271
336 35480

13 CFR
108 36042
120 36042
123 ..... 36042, 36045

14 CFR
21 34572
23 34572
39 ..... 34574, 34576, 34757, 34758, 34899, 34967, 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247, 36046, 36047
71 ..... 34577, 34758, 34759, 34760, 35248, 36050
91 34578
97 ..... 35248, 35250
1209 35623
1260 36355

Proposed Rules:
Ch. I 35868
21 34779
23 35196
33 35272
39 ..... 34396, 34584, 35488, 35490, 36096, 36098, 36375, 36376
71 ..... 34192, 34585, 35492, 35869, 36099, 36100
93 34192

16 CFR
2 34968
4 34968
305 34014

Proposed Rules:
Chapter II 35657
22 35661
300 34780
301 34780
303 34780
1117 33925
1307 35058
1500 ..... 33928, 33932

17 CFR
1 34376
33 34376
190 34376
228 36258
229 36258
230 36258
232 36262
259 36258

Proposed Rules:
228 36264
229 36264
230 36264
232 36264
239 36264
240 ..... 34781, 36264
249 36264
250 36264
259 36264
260 36264
269 36264
270 36264
274 36264

18 CFR
284 35462

Proposed Rules:
35 35274

19 CFR
174 34970

Proposed Rules:
141 36102
142 36102

20 CFR
416 33906

21 CFR
5 35848
341 36051
510 33908
520 ..... 33908, 35251
558 35251
1220 35252

Proposed Rules:
101 36379
102 36103
203 36107
205 36107
341 34781

22 CFR
60 33909
61 33909
62 33909
63 33909
64 33909
65 33909
514 34760

23 CFR
655 33909
658 36051

Proposed Rules:
637 35493

24 CFR
17 34578
791 35253
813 36662
880 36616
881 36616
882 ..... 36616, 36662
883 36616
884 36616
885 36616
886 36616
887 36662
889 36616
904 36616
905 36616
906 36616
960 36616
982 36662
3280 34294

Proposed Rules:
43 34300
92 34300
941 35834
100 34902
570 34300

25 CFR

Proposed Rules:
Ch. I 36108
164 35580
165 35580

26 CFR
1 ..... 34971, 35030, 35414, 36256, 36356, 36360
31 35414
40 35414
602 ..... 34971, 35030, 36356, 36360

Proposed Rules:
1 ..... 34398, 35066, 35418, 36114, 36394
31 35418
40 35418

27 CFR
5 35623

28 CFR
551 34742
571 35456

29 CFR
1910 ..... 33910, 34580
2610 36054
2619 36055
2622 36054
2644 36058
2676 36055

Proposed Rules:
Ch. XXVI 35067
Ch. XL 35067
1915 34586

30 CFR
914 36059
944 35255

Proposed Rules:
75 35071
Ch. II 36108
Ch. IV 36108
Ch. VI 36108
Ch. VII 36108
914 36114
920 35289
944 35871

31 CFR
51 35624
52 35624
550 35259

32 CFR
90 ..... 34382, 35463, 36367
91 ..... 34382, 35463, 36367
155 35464
369 35261
383 34382
384 35262
389 34382
552 ..... 34581, 34761
706 ..... 35033, 35849

Proposed Rules:
553 34782

33 CFR
1 36316
4 34210
26 36316
117 36062
130 34210
131 34210
132 34210
137 34210
138 34210
160 36316
161 36316
162 36316
164 36316
165 36316
334 35850

Proposed Rules:
165 ..... 35290, 35661
322 34783
334 33939

34 CFR
74 34722
77 34722
641 34198
668 ..... 34964, 36368
682 ..... 34964, 35624
685 34278
690 34964

Proposed Rules:
Ch. VI 34398

35 CFR

Proposed Rules:
133 36398
135 36398

36 CFR
242 36063
704 35034

Proposed Rules:
Ch. I 36108

38 CFR
3 ..... 34382, 35265, 35464, 35851

39 CFR
111 33911
233 35851
266 35625

Proposed Rules:
111 35873

40 CFR
9 ..... 33912, 34070
35 35852
52 ..... 33914, 34383, 35035, 35036, 35044, 35411
55 36065
61 36280
80 35854
81 35044
85 33912
86 ..... 33912, 36368
112 34070
141 34320
142 34320
180 ..... 35627, 35629
185 35629
186 35629
271 35266
300 35852
372 34386
600 33912

Proposed Rules:
Ch. I 33940
51 35292
52 ..... 33941, 34399, 34401, 35072, 35079, 35875, 35883, 36116, 36120, 36123, 36128, 36408
60 36130
63 36130
81 35079
141 35891
143 35891
152 35662
174 35662
180 35663
185 33941

42 CFR
405 36069
414 36069
417 36072
431 36072
434 36072
1003 36072

Proposed Rules:
421 ..... 35664, 36415
440 36419

43 CFR

Public Land Order:
7055 34899
7064 34582
7065 35054
7067 35859
7068 35859
7069 35267

Proposed Rules:
Ch. I 36108
Ch. II 36108
Subtitle A 36108
2800 35596
2810 35596
2880 35596

44 CFR
64 36370
322 35892
362 35892

Proposed Rules:
67 35893

45 CFR

Proposed Rules:
615 35893

46 CFR
68 35893

47 CFR
Ch. I 35893
22 35893
43 35893
73 35894

74 35894
80 35894
87 35894

Proposed Rules:
Chapter I 35894
61 35894
64 35894
69 35894
73 ..... 34402, 35082, 35895

74 35895
97 35895

48 CFR
206 35895
222 35895
226 35895

141.....35891
143.....35891
152.....35662
174.....35662
180.....35663
185.....33941

42 CFR

405.....36069
414.....36069
417.....36072
431.....36072
434.....36072
1003.....36072

Proposed Rules:

421.....35664, 36415
440.....36419

43 CFR

Public Land Order:

7055.....34899
7064.....34582
7065.....35054
7067.....35859
7068.....35859
7069.....35267

Proposed Rules:

Ch. I.....36108
Ch. II.....36108
Subtitle A.....36108
2800.....35596
2810.....35596
2880.....35596

44 CFR

64.....36370
322.....36087
362.....35630

Proposed Rules:

67.....36421

45 CFR

Proposed Rules:

615.....35079

46 CFR

68.....36088

47 CFR

Ch. I.....35631
22.....35054
43.....35632
73.....34391, 34766, 35055, 35268
74.....35635
80.....35268
87.....35268

Proposed Rules:

Chapter I.....35664
61.....33947
64.....33947
69.....33947
73.....34404, 34405, 35081, 35082, 35292, 35293, 35785, 35893, 35894
74.....35665
97.....36157

48 CFR

206.....36088
222.....36088
226.....36088
237.....36088
252.....36088

Proposed Rules:

Ch. XIV.....36108
209.....35895
252.....35895
926.....35294
952.....35294
970.....35294

49 CFR

172.....35411
195.....35465, 36256
392.....34708
393.....34708, 34712
571.....35636
1056.....34392

Proposed Rules:

171.....36488
172.....36488
173.....36488
175.....36488
176.....36488
177.....36488
178.....36488
383.....36338
541.....3508
571.....34405, 35298, 35300, 35670, 35672

50 CFR

17.....35860
100.....36063
215.....35471
216.....35864
229.....34899
301.....35474, 35475
630.....36090
651.....35056
658.....34582
672.....35056
675.....33920, 34392, 34583, 35056, 35057, 35476, 35638
681.....35270

Proposed Rules:

Ch. I.....36108
Ch. II.....35674
Ch. IV.....36108
17.....34784, 35089, 35303, 35304, 35305, 35307, 35496, 35584, 35674, 35896, 35900
20.....35566
32.....36342, 36348
222.....35089
227.....36158
644.....35308
654.....33947

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 11, 1994

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $829.00 domestic, $207.25 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 512–1800 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2233.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
4	(869–022–00003–9)	5.50	Jan. 1, 1994
5 Parts:			
1–699	(869–022–00004–7)	22.00	Jan. 1, 1994
700–1199	(869–022–00005–5)	19.00	Jan. 1, 1994
1200–End, 6 (6 Reserved)	(869–022–00006–3)	23.00	Jan. 1, 1994
7 Parts:			
0–26	(869–022–00007–1)	21.00	Jan. 1, 1994
27–45	(869–022–00008–0)	14.00	Jan. 1, 1994
46–51	(869–022–00009–8)	20.00	[6] Jan. 1, 1993
52	(869–022–00010–1)	30.00	Jan. 1, 1994
53–209	(869–022–00011–0)	23.00	Jan. 1, 1994
210–299	(869–022–00012–8)	32.00	Jan. 1, 1994
300–399	(869–022–00013–6)	16.00	Jan. 1, 1994
400–699	(869–022–00014–4)	18.00	Jan. 1, 1994
700–899	(869–022–00015–2)	22.00	Jan. 1, 1994
900–999	(869–022–00016–1)	34.00	Jan. 1, 1994
1000–1059	(869–022–00017–9)	23.00	Jan. 1, 1994
1060–1119	(869–022–00018–7)	15.00	Jan. 1, 1994
1120–1199	(869–022–00019–5	12.00	Jan. 1, 1994
1200–1499	(869–022–00020–9)	30.00	Jan. 1, 1994
1500–1899	(869–022–00021–7)	30.00	Jan. 1, 1994
1900–1939	(869–022–00022–5)	15.00	Jan. 1, 1994
1940–1949	(869–022–00023–3)	30.00	Jan. 1, 1994
1950–1999	(869–022–00024–1)	35.00	Jan. 1, 1994
2000–End	(869–022–00025–0)	14.00	Jan. 1, 1994
8	(869–022–00026–8)	22.00	Jan. 1, 1994
9 Parts:			
1–199	(869–022–00027–6)	29.00	Jan. 1, 1994
200–End	(869–022–00028–4)	23.00	Jan. 1, 1994
10 Parts:			
0–50	(869–022–00029–2)	29.00	Jan. 1, 1994
51–199	(869–022–00030–6)	22.00	Jan. 1, 1994
200–399	(869–022–00031–4)	15.00	[6] Jan. 1, 1993
400–499	(869–022–00032–2)	21.00	Jan. 1, 1994
500–End	(869–022–00033–1)	37.00	Jan. 1, 1994
11	(869–022–00034–9)	14.00	Jan. 1, 1994
12 Parts:			
1–199	(869–022–00035–7)	12.00	Jan. 1, 1994
200–219	(869–022–00036–5)	16.00	Jan. 1, 1994
220–299	(869–022–00037–3)	28.00	Jan. 1, 1994
300–499	(869–022–00038–1)	22.00	Jan. 1, 1994
500–599	(869–022–00039–0)	20.00	Jan. 1, 1994
600–End	(869–022–00040–3)	32.00	Jan. 1, 1994
13	(869–022–00041–1)	30.00	Jan. 1, 1994
14 Parts:			
1–59	(869–022–00042–0)	32.00	Jan. 1, 1994
60–139	(869–022–00043–8)	26.00	Jan. 1, 1994
140–199	(869–022–00044–6)	13.00	Jan. 1, 1994
200–1199	(869–022–00045–4)	23.00	Jan. 1, 1994
1200–End	(869–022–00046–2)	16.00	Jan. 1, 1994
15 Parts:			
0–299	(869–022–00047–1)	15.00	Jan. 1, 1994
300–799	(869–022–00048–4)	26.00	Jan. 1, 1994
800–End	(869–022–00049–7)	23.00	Jan. 1, 1994
16 Parts:			
0–149	(869–022–00050–1)	6.50	Jan. 1, 1994
150–999	(869–022–00051–9)	18.00	Jan. 1, 1994
1000–End	(869–022–00052–7)	25.00	Jan. 1, 1994
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–019–00055–1)	23.00	June 1, 1993
240–End	(869–019–00056–9)	30.00	June 1, 1993
18 Parts:			
1–149	(869–019–00057–7)	16.00	Apr. 1, 1993
150–279	(869–022–00058–6)	19.00	Apr. 1, 1994
*280–399	(869–022–00059–4)	13.00	Apr. 1, 1994
400–End	(869–022–00060–8)	11.00	Apr. 1, 1994
19 Parts:			
1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–022–00062–4)	12.00	Apr. 1, 1994
20 Parts:			
1–399	(869–022–00063–2)	20.00	Apr. 1, 1994
400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
500–End	(869–022–00065–9)	31.00	Apr. 1, 1994
21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
100–169	(869–019–00067–4)	21.00	Apr. 1, 1993
170–199	(869–019–00068–2)	20.00	Apr. 1, 1993
200–299	(869–022–00069–1)	7.00	Apr. 1, 1994
300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
500–599	(869–019–00071–2)	21.00	Apr. 1, 1993
600–799	(869–022–00072–1)	8.50	Apr. 1, 1994
*800–1299	(869–022–00073–0)	22.00	Apr. 1, 1994
1300–End	(869–022–00074–8)	13.00	Apr. 1, 1994
22 Parts:			
*1–299	(869–022–00075–6)	32.00	Apr. 1, 1994
300–End	(869–022–00076–4)	23.00	Apr. 1, 1994
23	(869–019–00077–1)	21.00	Apr. 1, 1993
24 Parts:			
0–199	(869–019–00078–0)	38.00	Apr. 1, 1993
200–499	(869–019–00079–8)	36.00	Apr. 1, 1993
500–699	(869–022–00080–2)	20.00	Apr. 1, 1994
700–1699	(869–019–00081–0)	39.00	Apr. 1, 1993
*1700–End	(869–022–00082–9)	17.00	Apr. 1, 1994
25	(869–019–00083–6)	31.00	Apr. 1, 1993
26 Parts:			
§§ 1.0-1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–019–00085–2)	37.00	Apr. 1, 1993
§§ 1.170–1.300	(869–019–00086–1)	23.00	Apr. 1, 1993
§§ 1.301–1.400	(869–019–00087–9)	21.00	Apr. 1, 1993
§§ 1.401–1.440	(869–019–00088–7)	31.00	Apr. 1, 1993
§§ 1.441–1.500	(869-019-00089-5)	23.00	Apr. 1, 1993
§§ 1.501–1.640	(869–019–00090–9)	20.00	Apr. 1, 1993
*§§ 1.641–1.850	(869–022–00091–8)	24.00	Apr. 1, 1994
§§ 1.851–1.907	(869–019–00092–5)	27.00	Apr. 1, 1993
§§ 1.908–1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
§§ 1.1001–1.1400	(869–019–00094–1)	22.00	Apr. 1, 1993
§§ 1.1401–End	(869–019–00095–0)	31.00	Apr. 1, 1993
*2–29	(869–022–00096–9)	24.00	Apr. 1, 1994
30–39	(869–019–00097–6)	18.00	Apr. 1, 1993
40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–019–00099–2)	13.00	Apr. 1, 1993
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–022–00101–9)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Pric
600–End	(869–019–00102–6)	8.
27 Parts:		
1–199	(869–019–00103–4)	37.
200–End	(869–022–00104–3)	13.
28 Parts:		
1–42	(869–019–00105–1)	27.
43–end	(869-019-00106-9)	21.
29 Parts:		
0–99	(869–019–00107–7)	21.
100–499	(869–019–00108–5)	9.
500–899	(869–019–00109–3)	36.
900–1899	(869–019–00110–7)	17.
1900–1910 (§§ 1901.1 to 1910.999)	(869–019–00111–5)	31.
1910 (§§ 1910.1000 to end)	(869–019–00112–3)	21.
1911–1925	(869–019–00113–1)	22.
1926	(869–019–00114–0)	33.
1927–End	(869–019–00115–8)	36.
30 Parts:		
1–199	(869–019–00116–6)	27.
200–699	(869–019–00117–4)	20.
700–End	(869–019–00118–2)	27.
31 Parts:		
0–199	(869–019–00119–1)	18.
200–End	(869–019–00120–4)	29.
32 Parts:		
1–39, Vol. I		15.
1–39, Vol. II		19.
1–39, Vol. III		18.
1–190	(869–019–00121–2)	30.
191–399	(869–019–00122–1)	36.
400–629	(869–019–00123–9)	26.
630–699	(869–019–00124–7)	14.
700–799	(869–019–00125–5)	21.
800–End	(869–019–00126–3)	22.
33 Parts:		
1–124	(869–019–00127–1)	20.
125–199	(869–019–00128–0)	25.
200–End	(869–019–00129–8)	24.
34 Parts:		
1–299	(869–019–00130–1)	27.
300–399	(869–019–00131–0)	20.
400–End	(869–019–00132–8)	37.
35	(869–019–00133–6)	12.
36 Parts:		
1–199	(869–019–00134–4)	16.
200–End	(869–019–00135–2)	35.
37	(869–019–00136–1)	20.
38 Parts:		
0–17	(869–019–00137–9)	31.
18–End	(869–019–00138–7)	30.
39	(869–019–00139–5)	17.
40 Parts:		
1–51	(869–019–00140–9)	39.
52	(869–019–00141–7)	37.
53–59	(869–019–00142–5)	11.
60	(869-019-00143-3)	35.
61–80	(869–019–00144–1)	29.
81–85	(869–019–00145–0)	21.
86–99	(869–019–00146–8)	39.
100–149	(869–019–00147–6)	36.
150–189	(869–019–00148–4)	24.
190–259	(869–019–00149–2)	17.
260–299	(869–019–00150–6)	39.
300–399	(869–019–00151–4)	18.
400–424	(869–019–00152–2)	27.
425–699	(869–019–00153–1)	28.
700–789	(869–019–00154–9)	26.

Title	Stock Number	Price	Revision Date
600–End	(869–019–00102–6)	8.00	Apr. 1, 1993
27 Parts:			
1–199	(869–019–00103–4)	37.00	Apr. 1, 1993
200–End	(869–022–00104–3)	13.00	Apr. 1, 1994
28 Parts:			
1–42	(869–019–00105–1)	27.00	July 1, 1993
43–end	(869–019–00106–9)	21.00	July 1, 1993
29 Parts:			
0–99	(869–019–00107–7)	21.00	July 1, 1993
100–499	(869–019–00108–5)	9.50	July 1, 1993
500–899	(869–019–00109–3)	36.00	July 1, 1993
900–1899	(869–019–00110–7)	17.00	July 1, 1993
1900–1910 (§§ 1901.1 to 1910.999)	(869–019–00111–5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869–019–00112–3)	21.00	July 1, 1993
1911–1925	(869–019–00113–1)	22.00	July 1, 1993
1926	(869–019–00114–0)	33.00	July 1, 1993
1927–End	(869–019–00115–8)	36.00	July 1, 1993
30 Parts:			
1–199	(869–019–00116–6)	27.00	July 1, 1993
200–699	(869–019–00117–4)	20.00	July 1, 1993
700–End	(869–019–00118–2)	27.00	July 1, 1993
31 Parts:			
0–199	(869–019–00119–1)	18.00	July 1, 1993
200–End	(869–019–00120–4)	29.00	July 1, 1993
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–019–00121–2)	30.00	July 1, 1993
191–399	(869–019–00122–1)	36.00	July 1, 1993
400–629	(869–019–00123–9)	26.00	July 1, 1993
630–699	(869–019–00124–7)	14.00	[5] July 1, 1991
700–799	(869–019–00125–5)	21.00	July 1, 1993
800–End	(869–019–00126–3)	22.00	July 1, 1993
33 Parts:			
1–124	(869–019–00127–1)	20.00	July 1, 1993
125–199	(869–019–00128–0)	25.00	July 1, 1993
200–End	(869–019–00129–8)	24.00	July 1, 1993
34 Parts:			
1–299	(869–019–00130–1)	27.00	July 1, 1993
300–399	(869–019–00131–0)	20.00	July 1, 1993
400–End	(869–019–00132–8)	37.00	July 1, 1993
35	(869–019–00133–6)	12.00	July 1, 1993
36 Parts:			
1–199	(869–019–00134–4)	16.00	July 1, 1993
200–End	(869–019–00135–2)	35.00	July 1, 1993
37	(869–019–00136–1)	20.00	July 1, 1993
38 Parts:			
0–17	(869–019–00137–9)	31.00	July 1, 1993
18–End	(869–019–00138–7)	30.00	July 1, 1993
39	(869–019–00139–5)	17.00	July 1, 1993
40 Parts:			
1–51	(869–019–00140–9)	39.00	July 1, 1993
52	(869–019–00141–7)	37.00	July 1, 1993
53–59	(869–019–00142–5)	11.00	July 1, 1993
60	(869–019–00143–3)	35.00	July 1, 1993
61–80	(869–019–00144–1)	29.00	July 1, 1993
81–85	(869–019–00145–0)	21.00	July 1, 1993
86–99	(869–019–00146–8)	39.00	July 1, 1993
100–149	(869–019–00147–6)	36.00	July 1, 1993
150–189	(869–019–00148–4)	24.00	July 1, 1993
190–259	(869–019–00149–2)	17.00	July 1, 1993
260–299	(869–019–00150–6)	39.00	July 1, 1993
300–399	(869–019–00151–4)	18.00	July 1, 1993
400–424	(869–019–00152–2)	27.00	July 1, 1993
425–699	(869–019–00153–1)	28.00	July 1, 1993
700–789	(869–019–00154–9)	26.00	July 1, 1993
790–End	(869–019–00155–7)	26.00	July 1, 1993
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–019–00156–5)	10.00	July 1, 1993
101	(869–019–00157–3)	30.00	July 1, 1993
102–200	(869–019–00158–1)	11.00	[5] July 1, 1991
201–End	(869–019–00159–0)	12.00	July 1, 1993
42 Parts:			
1–399	(869–019–00160–3)	24.00	Oct. 1, 1993
400–429	(869–019–00161–1)	25.00	Oct. 1, 1993
430–End	(869–019–00162–0)	36.00	Oct. 1, 1993
43 Parts:			
1–999	(869–019–00163–8)	23.00	Oct. 1, 1993
1000–3999	(869–019–00164–6)	32.00	Oct. 1, 1993
4000–End	(869–019–00165–4)	14.00	Oct. 1, 1993
44	(869–019–00166–2)	27.00	Oct. 1, 1993
45 Parts:			
1–199	(869–019–00167–1)	22.00	Oct. 1, 1993
200–499	(869–019–00168–9)	15.00	Oct. 1, 1993
500–1199	(869–019–00169–7)	30.00	Oct. 1, 1993
1200–End	(869–019–00170–1)	22.00	Oct. 1, 1993
46 Parts:			
1–40	(869–019–00171–9)	18.00	Oct. 1, 1993
41–69	(869–019–00172–7)	16.00	Oct. 1, 1993
70–89	(869–019–00173–5)	8.50	Oct. 1, 1993
90–139	(869–019–00174–3)	15.00	Oct. 1, 1993
140–155	(869–019–00175–1)	12.00	Oct. 1, 1993
156–165	(869–019–00176–0)	17.00	Oct. 1, 1993
166–199	(869–019–00177–8)	17.00	Oct. 1, 1993
200–499	(869–019–00178–6)	20.00	Oct. 1, 1993
500–End	(869–019–00179–4)	15.00	Oct. 1, 1993
47 Parts:			
0–19	(869–019–00180–8)	24.00	Oct. 1, 1993
20–39	(869–019–00181–6)	24.00	Oct. 1, 1993
40–69	(869–019–00182–4)	14.00	Oct. 1, 1993
70–79	(869–019–00183–2)	23.00	Oct. 1, 1993
80–End	(869–019–00184–1)	26.00	Oct. 1, 1993
48 Chapters:			
1 (Parts 1–51)	(869–019–00185–9)	36.00	Oct. 1, 1993
1 (Parts 52–99)	(869–019–00186–7)	23.00	Oct. 1, 1993
2 (Parts 201–251)	(869–019–00187–5)	16.00	Oct. 1, 1993
2 (Parts 252–299)	(869–019–00188–3)	12.00	Oct. 1, 1993
3–6	(869–019–00189–1)	23.00	Oct. 1, 1993
7–14	(869–019–00190–5)	31.00	Oct. 1, 1993
15–28	(869–019–00191–3)	31.00	Oct. 1, 1993
29–End	(869–019–00192–1)	17.00	Oct. 1, 1993
49 Parts:			
1–99	(869–019–00193–0)	23.00	Oct. 1, 1993
100–177	(869–019–00194–8)	30.00	Oct. 1, 1993
178–199	(869–019–00195–6)	20.00	Oct. 1, 1993
200–399	(869–019–00196–4)	27.00	Oct. 1, 1993
400–999	(869–019–00197–2)	33.00	Oct. 1, 1993
1000–1199	(869–019–00198–1)	18.00	Oct. 1, 1993
1200–End	(869–019–00199–9)	22.00	Oct. 1, 1993
50 Parts:			
1–199	(869–019–00200–6)	20.00	Oct. 1, 1993
200–599	(869–019–00201–4)	21.00	Oct. 1, 1993
600–End	(869–019–00202–2)	22.00	Oct. 1, 1993
CFR Index and Findings Aids	(869–022–00053–5)	38.00	Jan. 1, 1994

Title	Stock Number	Price	Revision Date
Complete 1994 CFR set		829.00	1994
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
Complete set (one-time mailing)		223.00	1993
Subscription (mailed as issued)		244.00	1994
Individual copies		2.00	1994

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

s volumes

only for
egulations
containing

note only
egulations
of July 1,

riod Apr.
hould be

riod July
retained.
January
3, should

VOL
59
SS
1
3
6
JL
18
994
MI

Printed on recycled paper

VOL
59
SS
137
JUL
19
1994
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7–19–94
Vol. 59 No. 137

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****
A FR UMISE346
UMI SERIALS ACQ
300 N ZEEB RD
PO BOX 1346
ANN ARBOR M

7–19–94
Vol. 59 No. 137

federal register

Tuesday
July 19, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********3-DIGIT 481
A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
59
SS
1
3
7
JL
19
994
MI

7-19-94
Vol. 59 No. 137
Pages 36691-36892

7-19-94
Vol. 59 No. 137
Pages 36691-36892

federal register

Tuesday
July 19, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806

Online:
Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.
Assistance with online subscriptions 202–512–1530

Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803

FEDERAL AGENCIES

Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Agriculture Department
See Animal and Plant Health Inspection Serv
See Forest Service
NOTICES
Import quotas and fees:
Upland cotton, 36739

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and anima
(quarantine):
Tuberculosis in cattle and bison—
State and area classifications, 36691–366

Army Department
NOTICES
Meetings:
Science Board, 36743

Arts and Humanities, National Foundation
See National Foundation on the Arts and the

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availabili
Occupational safety and health—
Tuberculosis training program for primar
physicians and other health-care pro
36768

Coast Guard
NOTICES
Drawbridge operations:
Louisiana, 36826
Port-state control initiative; identification and
of substandard ships in U.S. waters; impl
36826–36828

Commerce Department
See Minority Business Development Agency
See National Oceanic and Atmospheric Admi

Committee for the Implementation of Textile
NOTICES
Textile and apparel categories:
Silk blend and other vegetable fiber textile
Hong Kong; export limits, 36740–36741
Textile consultation; review of trade:
Pakistan, 36741–36742

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Board of Trade—
Corn, wheat, oats, and soybeans, 36742–3

Comptroller of the Currency
NOTICES
Federal banking and thrift agencies; capital an
standards differences; report to Congress,

Contents

Federal Register

Vol. 59, No. 137

Tuesday, July 19, 1994

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
NOTICES
Import quotas and fees:
Upland cotton, 36739

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classifications, 36691–36692

Army Department
NOTICES
Meetings:
Science Board, 36743

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Occupational safety and health—
Tuberculosis training program for primary care physicians and other health-care providers, 36767–36768

Coast Guard
NOTICES
Drawbridge operations:
Louisiana, 36826
Port-state control initiative; identification and elimination of substandard ships in U.S. waters; implementation, 36826–36828

Commerce Department
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Silk blend and other vegetable fiber textile products from Hong Kong; export limits, 36740–36741
Textile consultation; review of trade:
Pakistan, 36741–36742

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Board of Trade—
Corn, wheat, oats, and soybeans, 36742–36743

Comptroller of the Currency
NOTICES
Federal banking and thrift agencies; capital and accounting standards differences; report to Congress, 36833–36839

Customs Service
NOTICES
Camera lenses imported in same shipment with camera bodies; tariff classification, 36839–36840

Defense Department
See Army Department
See Navy Department
NOTICES
Foreign military financing for direct commercial contracts, 36743

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
Schedule I—
1994 proposed aggregate, 36785
Schedules I and II—
1994 aggregate, 36784–36785
Applications, hearings, determinations, etc.:
Abbott Laboratories, 36785–36786
Applied Science Labs, 36786
Arenol Chemical Corp., 36786
Cranston, Jay Wheeler, M.D., 36786–36789
Radian Corp., 36789–36790
Sigma Chemical Co., 36790
Stanford Seed Co., 36790

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Direct grant and fellowship programs, 36744
Meetings:
National Assessment Governing Board, 36744–36745

Employment and Training Administration
NOTICES
Adjustment assistance:
Elf Atochem North America, Inc., et al., 36790–36791
Gandalf Systems Corp., 36791
Greif Companies, 36791–36792
Harwood Companies, Inc., 36792
Northrop Corp., 36794
Adjustment assistance and NAFTA transitional adjustment assistance:
Lyons Falls Pulp & Paper, Inc., et al., 36792–36794
NAFTA transitional adjustment assistance:
Philips Electronics North American et al., 36794–36795

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
Washington Water Power Co., 36745–36746
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Oak Ridge, TN—
K–705 Water Intake Structure demolition, 36746–36747
Grant and cooperative agreement awards:
Awerbuch, Shimon, Ph.D., 36747
Princeton University, 36748
South Carolina Health and Environmental Control Department, 36747–36748

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 36700–36703
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 36731–36733
Indiana, 36731
NOTICES
Superfund; response and remedial actions, proposed settlements, etc.:
Middletown Airfield Site, PA, 36757
Water pollution control:
Clean Water Act—
Class II administrative penalty assessments, 36757–36758
Marine sanitation device standard; petitions—
Massachusetts, 36758–36759

Federal Aviation Administration
RULES
Restricted areas, 36692
PROPOSED RULES
Terminal areas, 36730–36731
NOTICES
Meetings:
RTCA, Inc., 36828–36829
Passenger facility charges; applications, etc.:
Chicago Midway Airport, IL, 36829

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Alabama, 36735
California, 36735–36736
Television stations; table of assignments:
Michigan et al., 36736–36737
NOTICES
Agency information collection activities under OMB review, 36759–36760
Television broadcasting:
Cable television system regulatory fees, 36760–36762
Applications, hearings, determinations, etc.:
Santa Monica Community College District et al., 36762

Federal Deposit Insurance Corporation
NOTICES
Federal institutions in receivership; insufficiency of assets to satisfy all claims; determinations, 36762

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Florida, 36763
Georgia, 36764
Pennsylvania, 36764

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 36748–36752
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 36753
Canyon Creek Compression Co., 36753
Columbia Gas Transmission Corp., 36753–36754
Natural Gas Pipeline Co. of America, 36754–36755
Sea Robin Pipeline Co., 36755
Southern Natural Gas Co., 36755
South Georgia Natural Gas Co., 36755
Stingray Pipeline Co., 36756
Trailblazer Pipeline Co., 36756
West Texas Gas, Inc., 36756–36757

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 36764–36765
Applications, hearings, determinations, etc.:
Banc One Corp. et al., 36765
Johnson International, Inc., et al., 36765–36766
St. Francis Capital Corp. et al., 36766
Thompson, Sharon E., et al., 36766

Fish and Wildlife Service
RULES
Importation, exportation, and transportation of wildlife:
Humane and healthful transportation to U.S. of wild mammals and birds, 36719
PROPOSED RULES
Endangered and threatened species:
Goliath frog, 36737–36738

Food and Drug Administration
NOTICES
Meetings:
Advisory committees, panels, etc., 36768–36769

Forest Service
RULES
National recreation areas:
Hells Canyon National Recreation Area, ID and OR; management standards and guidelines, 36866–36884

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Public Health Service
RULES
Privacy Act; implementation, 36717–36718

Health Care Financing Administration
RULES
Medicare:
Hospitals and other providers; periodic interim payments, 36707–36713

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Community facilities:
Supportive housing program; services for homeless, 36886–36892
Mortgage and loan insurance programs:
Minimum property standards changes; seismic design for housing and swimming pools, 36692–36695
PROPOSED RULES
Public and Indian housing:
Certificate and voucher programs; conforming rules, 36846–36863
NOTICES
Mortgage and loan programs:
Debenture interest rates, 36779–36780

Immigration and Naturalization Service
PROPOSED RULES
Immigration:
Immigrant petitions—
Additional evidence requests, 36729–3

Interior Department
See Fish and Wildlife Service
See Interior Department
See Land Management Bureau
RULES
Assistance programs; administrative and au
and cost principles:
Buy American requirements, 36713–3671

International Development Cooperation Ag
See Overseas Private Investment Corporatio

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction
Wheeling & Lake Erie Railway Co., 36783

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Archer Daniels Midland Co., 36783
Solvents Recovery Service of New Englan
36783–36784
Straits Steel & Wire Co. et al., 36784

Labor Department
See Employment and Training Administratio
See Occupational Safety and Health Admini
NOTICES
Meetings:
Glass Ceiling Commission, 36790

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Idaho, 36780
Withdrawal and reservation of lands:
Idaho, 36780–36782

Minority Business Development Agency
NOTICES
Business development center program applic
Massachusetts, 36739–36740

National Foundation on the Arts and the Hu
NOTICES
Meetings:
Museum Advisory Panel, 36795
Presenting and Commissioning Advisory Pa
36796

National Highway Traffic Safety Administrati
NOTICES
Grants and cooperative agreements; availabilit
Motor vehicle crash injuries; functional cap
validity, 36829–36832
Motor vehicle safety standards; exemption pet
Uniroyal Goodrich Tire Co., 36832

Immigration and Naturalization Service
PROPOSED RULES
Immigration:
Immigrant petitions—
Additional evidence requests, 36729–36720

Interior Department
See Fish and Wildlife Service
See Interior Department
See Land Management Bureau
RULES
Assistance programs; administrative and audit requirements and cost principles:
Buy American requirements, 36713–36717

International Development Cooperation Agency
See Overseas Private Investment Corporation

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Wheeling & Lake Erie Railway Co., 36783

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Archer Daniels Midland Co., 36783
Solvents Recovery Service of New England, Inc., et al., 36783–36784
Straits Steel & Wire Co. et al., 36784

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
NOTICES
Meetings:
Glass Ceiling Commission, 36790

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Idaho, 36780
Withdrawal and reservation of lands:
Idaho, 36780–36782

Minority Business Development Agency
NOTICES
Business development center program applications:
Massachusetts, 36739–36740

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Museum Advisory Panel, 36795
Presenting and Commissioning Advisory Panel, 36795–36796

National Highway Traffic Safety Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Motor vehicle crash injuries; functional capacity index validity, 36829–36832
Motor vehicle safety standards; exemption petitions, etc.:
Uniroyal Goodrich Tire Co., 36832

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 36769–36770
National Institute of General Medical Sciences, 36769
National Library of Medicine, 36770
Research Grants Division Behavioral and Neurosciences Special Emphasis Panel, 36769

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic sea scallop, 36720–36724
Bering Sea and Aleutian Islands groundfish, 36727–36728
Northeast multispecies, 36725–36727
Summer flounder; correction, 36720
Pacific Halibut Commission, International:
Pacific halibut fisheries, 36719–36720

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 36796

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Naval Air Station Lemoore, CA, 36744

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 36796
Meetings; Sunshine Act, 36843
Open enforcement conferences; two-year program; trial program continuation; policy statement, 36796–36797
Organization, functions, and authority delegations:
Local public document room relocation and establishment—
Shieldalloy Metallurgical Corp., Cambridge, OH, 36797
Site commissioning management plan; removals from list:
Pawling Site, NY, 36797

Occupational Safety and Health Administration
RULES
Safety and health standards, etc.:
Hazardous materials; markings, placards, and labels retention, 36695–36700

Overseas Private Investment Corporation
NOTICES
Agency information collection activities under OMB review, 36782–36783

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
RULES
Grants:
Maternal and child health project grants, 36703–36707
PROPOSED RULES
Grants:
Family medicine—
Departments establishment, 36733–36735
NOTICES
National toxicology program:
Annual report (1993 FY); availability, 36770

Toxicology and carcinogenesis studies—
1,2,3-trichloropropane, 36773
1,3-butadiene, 36772–36773
2,3-dibromo-1-propanol, 36775–36776
Benzyl acetate, 36770–36771
Manganese (II) sulfate monohydrate, 36771
Oxazepam, 36773–36774
p-Nitroaniline, 36771–36772
Polybrominated biphenyls, 36772
Promethazine hydrochloride, 36774
Triamterene, 36774–36775
Turmeric oleoresin, 36775
Privacy Act:
Systems of records, 36776–36779

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 36798–36801
Boston Stock Exchange, Inc., 36801–36803
Chicago Board Options Exchange, Inc., 36804–36808
New York Stock Exchange, Inc., 36808–36811
Options Clearing Corp., 36811–36813
Pacific Stock Exchange, Inc., 36813–36818
Philadelphia Stock Exchange, Inc., 36818–36819
Self-regulatory organizations; unlisted trading privileges:
Chicago Stock Exchange, Inc., 36803–36804
Applications, hearings, determinations, etc.:
Chubb Life Insurance Co. of America et al., 36823–36826
PNC Fund et al., 36819–36823

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Customs Service
NOTICES
Boycotts, international:
Countries requiring cooperation; list, 36832–36833

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Origins of Impressionism, 36841

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review
Funeral arrangements, etc., 36841–36842
Request for armed forces records from veteran, 36842
Request for determination of reasonable value (real estate); HUD application for property appraisal and commitment, 36841

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 36846–36863

Part III
Department of Agriculture, Forest Service, 36866–36884

Part IV
Department of Housing and Urban Development, 36886–36892

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month ca
Reader Aids section at the end of this issue.

8 CFR
Proposed Rules:
204 36729

9 CFR
77 36691

14 CFR
73 36692
Proposed Rules:
71 36730

24 CFR
200 36692
583 36886
Proposed Rules:
203 36846
982 36846
984 36846

29 CFR
1910 36695
1915 36695
1917 36695
1918 36695
1926 36695
1928 36695

36 CFR
292 36866

40 CFR
52 36700
Proposed Rules:
52 (2 documents) 36731

42 CFR
51a 36703
412 36707
413 36707
418 36707
Proposed Rules:
57 36733

43 CFR
12 36713

45 CFR
5b 36717

47 CFR
Proposed Rules:
73 (4 documents) 36735, 36736

50 CFR
14 36719
301 36719
625 36720
650 36720
651 36725
675 36727
Proposed Rules:
17 36737

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

8 CFR
Proposed Rules:
204 36729

9 CFR
77 36691

14 CFR
73 36692
Proposed Rules:
71 36730

24 CFR
200 36692
583 36886
Proposed Rules:
203 36846
982 36846
984 36846

29 CFR
1910 36695
1915 36695
1917 36695
1918 36695
1926 36695
1928 36695

36 CFR
292 36866

40 CFR
52 36700
Proposed Rules:
52 (2 documents) 36731

42 CFR
51a 36703
412 36707
413 36707
418 36707
Proposed Rules:
57 36733

43 CFR
12 36713

45 CFR
5b 36717

47 CFR
Proposed Rules:
73 (4 documents) 36735, 36736

50 CFR
14 36719
301 36719
625 36720
650 36720
651 36725
675 36727
Proposed Rules:
17 36737

VOL
59
SS
1
3
7
JL
19
994
MI

Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 94–068–1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Louisiana from a modified accredited State to an accredited-free State. We have determined that Louisiana meets the criteria for designation as an accredited-free State.

DATES: Effective Date: Interim rule effective July 19, 1994.

Comments: Consideration will be given only to comments received on or before September 19, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–068–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph S. VanTiem, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services,

APH
Buil
Hya
SUP
Bac
B
infe
caus
tube
CFR
regu
mov
tube
to b
tube
mov
catt
juris
free
Stat
inte
not
expo
biso
desi
Stat
Th
free
the
tube
the
with
"Un
Tub
of th
refer
no fi
or bi
in or
accr
Be
rule,
of th
accr
now
desig
Ther
regu
the l
§ 77.
accr
Imm
Th
Plant
deter
publ
prior
Imm
Louis
for d

Rules and Regulations

Federal Register
Vol. 59, No. 137
Tuesday, July 19, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 94–068–1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Louisiana from a modified accredited State to an accredited-free State. We have determined that Louisiana meets the criteria for designation as an accredited-free State.

DATES: Effective Date: Interim rule effective July 19, 1994.

Comments: Consideration will be given only to comments received on or before September 19, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–068–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph S. VanTiem, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The tuberculosis regulations, contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which is part of the regulations via incorporation by reference in part 77. A State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years in order to be designated as an accredited-free State.

Before publication of this interim rule, Louisiana was designated in § 77.1 of the regulations as a modified accredited State. However, Louisiana now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing Louisiana from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted, as Louisiana currently meets the criteria for designation as an accredited-free State. This action provides prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

There are approximately 19,500 cattle herds in Louisiana. An estimated 905 of the herds are owned by small entities. Changing the status of Louisiana may enhance the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition for *Modified accredited states*, paragraph (2) is amended by removing "Louisiana,".

3. In § 77.1, in the definition for *Accredited-free states*, paragraph (2) is amended by adding "Louisiana," immediately after "Kentucky,".

Done in Washington, DC, this 13th day of July 1994.

B. Glen Lee,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17517 Filed 7–18–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 94–AWP–10]

Revocation of Restricted Area R–3104, Island of Kahoolawe, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Restricted Area R–3104, Island of Kahoolawe, HI. Legislation returning Kahoolawe Island to the State of Hawaii was signed into law by the President on November 11, 1993, as part of the Defense Appropriations Bill. The Department of the Navy subsequently submitted a proposal to disestablish the restricted area.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7666.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations removes Restricted Area R–3104, Island of Kahoolawe, HI. Legislation returning Kahoolawe Island to the State of Hawaii was signed into law by the President on November 11, 1993, as part of the Defense Appropriations Bill. The Department of the Navy has terminated the use of R–3104 as a weapons range and has determined the area to be in excess of naval requirements. The Navy has requested that the FAA disestablish R–3104. This action returns formerly restricted airspace to public use. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.31 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore,—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action disestablishes restricted airspace. In accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," this action is not subject to environmental assessments and procedures.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§73.31 [Amended]

2. Section 73.31 is amended as follows:

R–3104 Island of Kahoolawe, HI [Removed]

Issued in Washington, DC, on July 7, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–17393 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 200

[Docket No. R–94–1623; FR–3028–F–02]

RIN: 2502–AF26

Changes to the Minimum Property Standards: Seismic Standards

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule would amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S, to specify that seismic design is a mandatory standard requirement for applicable housing. In addition, the rule would update a reference to a private sector seismic design standard currently incorporated into the MPS. This change to the MPS is needed to comply with the requirements of Executive Order 12699, the National Earthquake Hazards Reduction Program Reauthorization Act, and the Cranston-Gonzalez National Affordable Housing Act. These revisions would ensure the structural integrity of applicable housing, and would protect the Department's insurance fund.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Donald R. Fairman, Acting Director, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street SW, Mail Room B133, Washington, DC 20410–8000, telephone (202) 755–7440, or (202) 708–4594 (voice/TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1993, the Department published in the **Federal Register** a proposed rule (58 FR 41445) to amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. All housing constructed under the Department of Housing and Urban Development ("Department" or "HUD") mortgage insurance and low-rent public housing programs is required to meet or exceed the HUD-established MPS.

Section 526 of the National Housing Act (12 U.S.C. 1735f–4) authorizes the Secretary of Housing and Urban Development (Secretary) to prescribe standards for determining the acceptability of care-type facilities and one- and two-family and multifamily residential structures. Accordingly, the Secretary prescribed minimum property standards in 24 CFR part 200, subpart S. Provisions governing the health and safety criteria applicable to multifamily housing were simplified in 1984 (49 FR 18690, May 1, 1984), to rely on criteria already established in State or local codes or nationally recognized model codes.

This simplification was extended to care-type housing insured under HUD programs by a final rule published August 11, 1986 (51 FR 28696). The change implemented by that rule consolidated the requirements applicable to multifamily and care-type housing, allowing the Department to rely on established codes that have been determined by HUD to be comparable to one of the national model codes.

By a separate rule (50 FR 39586, September 27, 1985), the minimum property standards applicable to one- and two-family dwellings also were simplified to rely on criteria already established in State or local codes or one of the nationally recognized model codes. This rule was described (50 FR 39586) as being similar in many respects to the 1984 rule amending the minimum property standards for multifamily housing.

would ensure the structural integrity of applicable housing, and would protect the Department's insurance fund.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Donald R. Fairman, Acting Director, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street SW, Mail Room B133, Washington, DC 20410–8000, telephone (202) 755–7440, or (202) 708–4594 (voice/TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1993, the Department published in the **Federal Register** a proposed rule (58 FR 41445) to amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S. All housing constructed under the Department of Housing and Urban Development ("Department" or "HUD") mortgage insurance and low-rent public housing programs is required to meet or exceed the HUD-established MPS.

Section 526 of the National Housing Act (12 U.S.C. 1735f–4) authorizes the Secretary of Housing and Urban Development (Secretary) to prescribe standards for determining the acceptability of care-type facilities and one- and two-family and multifamily residential structures. Accordingly, the Secretary prescribed minimum property standards in 24 CFR part 200, subpart S. Provisions governing the health and safety criteria applicable to multifamily housing were simplified in 1984 (49 FR 18690, May 1, 1984), to rely on criteria already established in State or local codes or nationally recognized model codes.

This simplification was extended to care-type housing insured under HUD programs by a final rule published August 11, 1986 (51 FR 28696). The change implemented by that rule consolidated the requirements applicable to multifamily and care-type housing, allowing the Department to rely on established codes that have been determined by HUD to be comparable to one of the national model codes.

By a separate rule (50 FR 39586, September 27, 1985), the minimum property standards applicable to one- and two-family dwellings also were simplified to rely on criteria already established in State or local codes or one of the nationally recognized model codes. This rule was described (50 FR 39586) as being similar in many respects to the 1984 rule amending the minimum property standards for multifamily housing.

Executive and Legislative Mandates

The Department is subject to three separate directives that require it to address seismic safety issues in regulations governing programs operated by the Department. The first of these directives is an Executive Order issued by former President Bush. The other two directives are the National Earthquake Hazards Reduction Program Reauthorization Act, approved November 16, 1990 (Pub. L. 101–614) (NEHRP Reauthorization Act), and section 947 of the Cranston-Gonzalez National Affordable Housing Act, approved November 28, 1990 (Pub. L. 101–625) (NAHA).

On January 5, 1990, former-President Bush signed Executive Order 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction" (Executive Order). In part, the purpose of this Executive Order is "to reduce risks to the lives of persons who would be affected by earthquake failures of federally assisted or regulated buildings, and to protect public investments, all in a cost-effective manner." The Executive Order applies only to new buildings being constructed with Federal involvement. Each Federal agency is made responsible for developing and implementing its own cost-effective seismic safety program commensurate with its specific program responsibilities. However, section 4(a) of the Executive Order charges the Interagency Committee on Seismic Safety in Construction (ICSSC) to use consensus procedures in recommending cost-effective seismic design and construction standards that would satisfy the requirements of the Executive Order. The Department has been working with the ICSSC to identify and meet the Department's responsibilities under the Executive Order.

Although the Executive Order does not create rights that make it privately enforceable, its provisions are made mandatory by section 8(a) of the NEHRP Reauthorization Act. Under the NEHRP Reauthorization Act each Federal agency is required to issue final regulations that comply with the Executive Order.

Finally, section 947 of NAHA requires the Secretary to develop seismic safety standards for properties assisted under HUD programs. The Secretary expressly is permitted to defer to local building codes that meet the seismic safety requirements established, and is authorized to utilize the resources of the National Earthquake Hazards Reduction Program (see 42 U.S.C. 7704).

The ICSSC was established as part of this Program in 1978, in response to the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701–7706). Since that time, the ICSSC has been working with Federal agencies and the private sector to develop appropriate, generally recognized, seismic safety standards. This final rule permits the Department to benefit from the efforts of the ICSSC, by referencing private sector seismic design and construction standards, as intended under section 3(a) of the Executive Order. In accordance with ICSSC recommendations, in this final rule the Department is adopting the seismic requirements included in the American Society of Civil Engineers (ASCE) standard ASCE 7–88, Minimum Design Loads for Buildings and Other Structures.

The Department expects to follow the recommendations of the ICSSC in applying the requirements that would be established by this final rule, as long as those recommendations would promote the purposes of the Department's programs. For example, the seismic safety requirements would apply where HUD assistance is provided through loan or mortgage insurance programs, and the requirements will apply to additions and renovations to existing buildings. Further, an addition or renovation should not decrease the seismic resistance of an existing building.

Elements of Final Rule

Since 1984, most of the private standards referenced in the MPS have been changed, often because the sponsoring organization has updated a standard. ASCE 7–88, adopted by the sponsoring organization in 1988, but not published until July 1990, recently was incorporated by reference in 24 CFR part 200, Appendix A (58 FR 60246, November 15, 1993). This standard was formerly listed as ANSI A58.1–1982; with a sponsorship change of the standard from the American National Standards Institute (ANSI) to the American Society of Civil Engineers (ASCE), and the revisions published by ASCE in 1990, the Department revised its reference to this standard to be consistent with section 526 of the National Housing Act, OMB Circular A–119, and the goals of the Department. This final rule will simply mandate compliance with the seismic design requirements of ASCE 7–88.

In addition, the Department is correcting minor typographical errors in current regulatory text. Other changes that had been included in the proposed rule have already been adopted recently by the Department in a separate

rulemaking and, therefore, are not included in this final rule.

This final rule concerns those property standards applicable to multifamily and care-type housing and to one- and two-family dwellings. Because manufactured homes eligible for insurance are subject to different minimum standards, the Department will propose a separate rule to mandate seismic standards appropriate for that category of housing.

Comments

Two public comments were received on the proposed rule published in the **Federal Register** on August 4, 1993. One comment was from the American Society of Civil Engineers (ASCE), and the other was from the National Institute of Standards and Technology (NIST), U.S. Department of Commerce.

The ASCE comment stated that ANSI/ASCE Standard 7–88, Minimum Design Loads for Buildings and Other Structures (November 1990) (ASCE 7–88 in this preamble), was under review for change and should be considered as an interim standard. They also pointed out that ASCE was planning to publish changes to ASCE 7–88 in late 1993 or early 1994 and requested the Department to consider waiting for these changes. Although the Department appreciates the ASCE comment, we must comply with the mandate in Executive Order 12699 and the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA), which requires HUD to adopt seismic requirements for its programs. Therefore, this rule references the standard that has been reviewed by the Department and approved for incorporation by reference. Newer ASCE requirements can be considered for possible revisions to any HUD standards to which they would apply.

The Department of Commerce, National Institute of Standards and Technology (NIST), point out that the 1982 and 1984 editions of the model codes are not considered acceptable for seismic design. The Department acknowledges this problem and has changed these references to refer to the 1993 editions of the model codes. These changes are in conformity with changes to the MPS that were made in a final rule published November 15, 1993, in the **Federal Register** (58 FR 60246).

NIST also noted that the Interagency Committee on Seismic Safety in Construction (ICSSC) has reviewed the 1991 edition of the ICBO Building Code, the 1992 edition of the BOCA National Building Code, and the 1992 edition of the SBCCI Southern Standard Building Code, and found that all provide a level of safety substantially equivalent to that defined in the NEHRP Recommended Provisions.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The major portion of the rule is designed to effectuate statutory requirements broadly, so that affected parties are permitted to choose among reasonable alternatives in complying with the statutory requirements. Generally, these requirements are imposed separately through State and local building codes that have been, or are being, updated to include the seismic safety standards. This rule would comply with the statutory requirements by specifically referencing existing standards, which have been reviewed and determined to be adequate.

Environmental Impact

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule have federalism implications, and are subject to review under the order. Specifically, the rule provides for additional building design and construction standards to be applied to certain buildings in which federal assistance is provided. Because current building standards are met largely through compliance with existing State and local building codes, the additional requirement imposed by this rule may encourage States and local jurisdictions to adopt more stringent seismic design standards. This approach would allow local contractors to continue to rely upon the State and local codes in building to meet any federal requirements.

However, this rule is intended to implement statutory requirements that are broadly applicable to federal programs government-wide, and are not limited to HUD programs. In an effort for consistency and simplification, and as a result of information provided by the Interagency Committee on Seismic Safety in Construction, a great majority of State and local governments have already adopted acceptable seismic design and construction standards in their State and local codes. In large part, the movement to include seismic standards in building design and construction was led by the national model code organizations, whose model codes are often adopted by State and local governments.

Therefore, while the Department recognizes the potential federalism implications of this rule, the Department believes any federalism impact on State and local governments would be a function of the government-wide Federal requirements, rather than this discrete rule. Therefore, a more comprehensive review under Executive Order 12612 is not required, because the implementation of the statutes and Executive Order 12699 leaves little discretion with the Department to lessen these impacts.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as Item No. 1590 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20448), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage

insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

For the reasons set out in the preamble, title 24, subpart S of the Code of Federal Regulations, is amended as follows:

PART 200—INTRODUCTION

Subpart S—Minimum Property Standards

1. The authority citation for Part 200 is revised to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. Section 200.925a is amended by revising paragraph (c)(2) and by adding a sentence at the end of paragraph (c)(3), to read as follows:

§ 200.925a Multifamily and care-type minimum property standards.

* * * * *

(c) * * *

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. However, no code may be partially accepted if it fails to regulate the subarea for seismic design (see § 200.925b(c)(5)), or if it fails to regulate subareas in more than one of the following major areas listed in § 200.925b: fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, electrical, and elevators.

(3) * * * However, for earthquake loads (see § 200.925b(c)(5)), ASCE 7–88 is mandatory.

* * * * *

3. Section 200.925b is amended by revising the heading for paragraph (c) and paragraph (c)(5) to read as follows:

§ 200.925b Residential and institutional building code comparison items.

* * * * *

(c) *Structural loads and seismic design.* * * *

(5) Earthquake loads (in localities identified by ASCE 7–88 (formerly ANSI A58.1–82) as being in seismic zones 1, 2, 3, or 4, and Guam).

* * * * *

4. Section 200.925c is amended by revising the introductory text of paragraph (c) to read as follows:

§ 200.925c Model codes.

* * * * *

(c) *Designation of Model Codes.* When a multifamily or care-type property is to comply with a model code, it shall comply with one of the model codes

insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

For the reasons set out in the preamble, title 24, subpart S of the Code of Federal Regulations, is amended as follows:

PART 200—INTRODUCTION

Subpart S—Minimum Property Standards

1. The authority citation for Part 200 is revised to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. Section 200.925a is amended by revising paragraph (c)(2) and by adding a sentence at the end of paragraph (c)(3), to read as follows:

§ 200.925a Multifamily and care-type minimum property standards.

* * * * *

(c) * * *

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. However, no code may be partially accepted if it fails to regulate the subarea for seismic design (see § 200.925b(c)(5)), or if it fails to regulate subareas in more than one of the following major areas listed in § 200.925b: fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, electrical, and elevators.

(3) * * * However, for earthquake loads (see § 200.925b(c)(5)), ASCE 7–88 is mandatory.

* * * * *

3. Section 200.925b is amended by revising the heading for paragraph (c) and paragraph (c)(5) to read as follows:

§ 200.925b Residential and institutional building code comparison items.

* * * * *

(c) *Structural loads and seismic design.* * * *

(5) Earthquake loads (in localities identified by ASCE 7–88 (formerly ANSI A58.1–82) as being in seismic zones 1, 2, 3, or 4, and Guam).

* * * * *

4. Section 200.925c is amended by revising the introductory text of paragraph (c) to read as follows:

§ 200.925c Model codes.

* * * * *

(c) *Designation of Model Codes.* When a multifamily or care-type property is to comply with a model code, it shall comply with one of the model codes designated in paragraphs (c)(1), (2), or (3) of this section, and with any other code or codes identified in the same paragraph. However, seismic design is a mandatory requirement. In addition, the property shall comply with all of the standards that are incorporated into the code or codes by reference. By the time of application for insurance or other benefits, the developer or other interested party shall notify the Department of the code or group of codes to which the developer intends to comply.

* * * * *

5. Section 200.926 is amended by revising paragraph (c)(2) and adding a sentence at the end of paragraph (c)(3), to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

* * * * *

(c) * * *

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. However, no code may be partially accepted if it fails to regulate the subarea for seismic design (see § 200.926a(c)(5)), or if it fails to regulate subareas in more than one of the following major areas listed in § 200.926a: fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, and electrical.

(3) * * * However, for earthquake loads (see § 200.926a(c)(5)), ASCE 7–88 is mandatory.

* * * * *

6. Section 200.926a is amended by revising the heading of paragraph (c) and paragraphs (c)(3) and (c)(5), to read as follows:

§ 200.926a Residential building code comparison items.

* * * * *

(c) *Structural loads and seismic design.* * * *

(3) Snow loads (for jurisdictions with snow loading conditions identified in Section 7 of ASCE–7–88 (formerly ANSI A58.1–82); * * *

(5) Earthquake loads (for jurisdictions in seismic zones 3 or 4, as identified in Section 9 of ASCE–7–88 (formerly ANSI A58.1–82)).

* * * * *

§ 200.926c [Amended]

7. The table titled "Schedule for Model Code Supplements to Local or State Codes" in § 200.926c is amended by revising the heading, "Deficient major from § 200.926a as determined by field office review", and item (c), "Structural loads * * *", in the first (left-hand) column, to read, respectively, as follows: "Deficient major items from § 200.926a as determined by field office review" and "(c) Structural loads and seismic design * * *".

§ 200.926e [Amended]

8. Section 200.926e is amended by removing each reference to "ANSI A58.1–82" where it occurs in paragraphs (b), (c) introductory text (two occurrences), (c)(2), and (d), and replacing each occurrence with the reference "ASCE 7–88".

§ 200.937 [Amended]

9. Section 200.937(a)(2) is amended by revising the address, "1430 Broadway, New York, NY 10018", listed for the American National Standards Institute, Inc., to read as follows: "11 West 42nd Street, New York, NY 10036".

Dated: June 28, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–17403 Filed 7–18–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

RIN: 1218–AB42

Retention of DOT Markings, Placards, and Labels

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA is hereby issuing a final rule that requires employers who receive a package, transport vehicle, freight container, motor vehicle or rail freight car which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with the U.S. Department of Transportation's (DOT) Hazardous Materials Regulations, to retain the markings, placards, and labels on the package, transport vehicle, freight container, motor vehicle or rail freight car. Such markings, placards and labels generally must be retained on packages until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards and retained on transport vehicles, freight containers, motor vehicles or rail freight cars until hazardous material which requires the marking or placarding is removed therefrom. This rule is issued pursuant to section 6(b) of the

Occupational Safety and Health Act of 1970 (the Act) and in accordance with section 29 of Public Law 101–615, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA).

DATES: Effective date: This final rule shall take effect on October 17, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: Public Law 101–615, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), 104 Stat. 3244, was enacted by Congress on November 17, 1990. Section 29 of HMTUSA reads as follows:

> Not later than 18 months after the date of enactment of this Act, the Secretary of Labor, in consultation with the Secretary of Transportation and the Secretary of the Treasury, shall issue under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)) standards requiring any employer who receives a package, container, motor vehicle, rail freight car, aircraft, or vessel which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with regulations issued under the Hazardous Materials Transportation Act to retain the markings, placards, and labels, and any other information as may be required by such regulations on the package, container, motor vehicle, rail freight car, aircraft, or vessel, until the hazardous materials have been removed therefrom.

The Congressional rationale for this requirement was provided in Senate Report No. 101–449, (p. 16), as follows:

> In November 1988, six Kansas City firemen were killed when the arson-caused fire they were fighting caused the violent explosion of an unmarked truck-trailer parked at a highway construction site. Because the trailer's hazardous materials placards had been removed, the firemen were unaware of the danger it posed. The Secretaries of Labor, Transportation and the Treasury should cooperate in order to ensure that placards and labels required on hazardous materials and explosives, both in transportation and at stationary facilities, be retained until such materials have been removed to the extent that they no longer pose a safety risk.

In response to the Congressional mandate, OSHA issued a proposed rule on September 10, 1993 to address the requirements of HMTUSA (58 FR 47690). A 30-day period was provided during which interested parties were invited to submit comments and information relative to the proposed rule. All comments submitted were collected in Docket No. H–022I, Exhibit No. 5, and prefixed with "Ex. 5" or "Ex. L5" (the latter denotes comments received after the close of the comment period). All comments received were reviewed and considered in developing this final rule. Most commenters supported OSHA's proposal; however, certain issues were raised that persuaded OSHA to modify the final standard in some respects or otherwise provide further clarification.

As with the proposed rule, OSHA believes that this final rule will impose no significant compliance burdens on industry. This was also substantiated in comments to the record.

Congress was specific in its mandate to OSHA for this rule, and the rule itself is limited to implementing the Congressional mandate. In this final rule, OSHA has slightly elaborated on the statutory language to the extent necessary to ensure that its requirements are clear and do not impose undue burdens on affected employers vis-a-vis other federal regulations. This regulation is essentially a continuation of the DOT's Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). Employers may wish to consult those regulations in regard to complying with this section.

Discussion of Comments to NPRM and Summary and Explanation of the Final Rule

OSHA received 45 comments in response to its Notice of Proposed Rulemaking on the Retention of Markings and Placards. The NPRM requested specific information on costs, current practices with respect to the retention of DOT markings, placards and labels and any foreseeable problems in achieving the requirements of the proposed rule.

Most commenters supported the Agency's approach in responding to the congressional mandate for this action. However, some commenters pointed out potential sources of confusion for affected employers if appropriate modifications were not made to the final rule. Other commenters expressed a need for clarification of certain aspects of the proposal, particularly those relating to the scope of the standard and the relationship between DOT-required labeling and that required by OSHA's Hazard Communication Standard (HCS) at 29 CFR 1910.1200.

Only minimal information was submitted regarding costs. However, of those commenters who responded to this question, the majority agreed with OSHA's assessment that the rule would have only minimal economic impact. The commenters who stated that the costs would not be insignificant appeared to base their findings on what OSHA believes was a misunderstanding of the intent of the proposed rule.

Major Issues Raised

A. Scope

The NPRM did not make a distinction as to the size of packagings of hazardous materials for which employers would be required to retain the necessary DOT marking, label or placard. A significant number of commenters, however, (see, e.g., Exs. 5–3, 5–21, 5–23, 5–24, 5–25, 5–30, 5–32, 5–34, 5–35 and 5–36) pointed out that without restricting the regulation to bulk packaging, employers would be faced with confusing, redundant, and sometimes, inconsistent labeling requirements between DOT and OSHA's HCS. (There was no criticism about the retention provisions for transport vehicles, freight containers, motor vehicles or rail freight cars.)

The HCS requires, in 29 CFR 1910.1200 (f), that manufacturers, importers, and distributors label, tag, or mark any containers of hazardous materials leaving the workplace with the identity of the hazardous material, appropriate hazard warnings and the name and address of the chemical manufacturer, importer or other responsible party. The HCS further requires that such labels, tags and markings be affixed in a manner that does not conflict with the HMR. Consequently, the HCS warning labels, tags or markings do not appear on the outer packagings of combination packagings (e.g., bottles in a box). The inner packagings are required to be labeled in accordance with the HCS, while the outside packaging is marked or labeled in accordance with the HMR. However, in some cases the DOT label and marking may appear on the same non-bulk packages as those required to be labeled under the HCS. This situation caused concern among commenters who questioned the need to retain DOT labels and marking where labeling was already required under HCS.

The Amoco Corporation (Ex. 5–21) summarized its concerns as follows:

> Amoco supports OSHA's proposal requiring employers who receive bulk packages of materials defined as hazardous * * * to maintain the markings, labels, or placards in accordance with the requirements set forth in 49 CFR Part 171 to 180. However, we feel that retention and maintenance of the markings and labels for non-bulk packages would be significantly burdensome to both large and small businesses alike.
>
> * * * We approve of OSHA limiting their rulemaking to the intent expressed by Congress, and from the rationale excerpted from the report, we believe that intent focused solely on hazardous materials transported in bulk packages.

Similar concerns were expressed by the Organization Resources Counselors (Ex. 5–23):

> * * * [T]he proposed rule raises concerns over the broad range of containers proposed to be covered. In achieving the congressional mandate, we believe the rule should be limited to requirements for retention and maintenance of placards on bulk containers, such as truck trailers and rail tank cars, only.
>
> * * * ORC believes the congressional mandate does not extend to labeling of non-bulk containers for which labeling requirements already exist under other regulations.

If the final rule were to apply to non-bulk packagings, according to at least one commenter, potential liability issues could arise. With respect to replacing labels that may be lost or deteriorated, Oxychem (Ex. 5–35) cautioned:

> * * * Sending a replacement placard for bulk shipping containers does not pose a liability issue for a company because the product is easy to trace through the transportation equipment number. * * * [S]ending a replacement label to be affixed by nonvendor employees to a nonbulk package raises several liability issues. The nonbulk package could be mislabeled resulting in improper handling or misuse of the product.

OSHA has crafted language which it concludes fulfills the intent of the statute, is protective of employees and meets the concerns of the commenters. All bulk packages must at all times retain their DOT marking until they are cleaned or purged. Such packages are often reshipped and the large size of the DOT marking is a safety advantage. DOT markings must be retained on non-bulk packages which will be reshipped. Clearly, the DOT marking is needed for reshipment.

However, OSHA concludes that the OSHA HCS label is fully protective for all employees and emergency responders for non-bulk packages which will not be reshipped. That label was designed to protect against all types of hazards. OSHA concludes therefore that it will be sufficient if an HCS label is on a non-bulk package when it is out of transportation, will not be reshipped and is at its final location at a factory or other worksite. This should respond to the commenters who feared that retaining both HCS and DOT labels at that stage might confuse their employees.

Additional concerns were expressed regarding the labeling of inner packagings of combination packagings. For example, Penske Truck Leasing Co. (Ex.5–20) stated:

> * * * Manufacturers and distributors pack hazardous materials for transportation in various packaging, i.e., cans, plastic cases,

Similar concerns were expressed by the Organization Resources Counselors (Ex. 5–23):

* * * [T]he proposed rule raises concerns over the broad range of containers proposed to be covered. In achieving the congressional mandate, we believe the rule should be limited to requirements for retention and maintenance of placards on bulk containers, such as truck trailers and rail tank cars, only.

* * * ORC believes the congressional mandate does not extend to labeling of non-bulk containers for which labeling requirements already exist under other regulations.

If the final rule were to apply to non-bulk packagings, according to at least one commenter, potential liability issues could arise. With respect to replacing labels that may be lost or deteriorated, Oxychem (Ex. 5–35) cautioned:

* * * Sending a replacement placard for bulk shipping containers does not pose a liability issue for a company because the product is easy to trace through the transportation equipment number. * * * [S]ending a replacement label to be affixed by nonvendor employees to a nonbulk package raises several liability issues. The nonbulk package could be mislabeled resulting in improper handling or misuse of the product.

OSHA has crafted language which it concludes fulfills the intent of the statute, is protective of employees and meets the concerns of the commenters. All bulk packages must at all times retain their DOT marking until they are cleaned or purged. Such packages are often reshipped and the large size of the DOT marking is a safety advantage. DOT markings must be retained on non-bulk packages which will be reshipped. Clearly, the DOT marking is needed for reshipment.

However, OSHA concludes that the OSHA HCS label is fully protective for all employees and emergency responders for non-bulk packages which will not be reshipped. That label was designed to protect against all types of hazards. OSHA concludes therefore that it will be sufficient if an HCS label is on a non-bulk package when it is out of transportation, will not be reshipped and is at its final location at a factory or other worksite. This should respond to the commenters who feared that retaining both HCS and DOT labels at that stage might confuse their employees.

Additional concerns were expressed regarding the labeling of inner packagings of combination packagings. For example, Penske Truck Leasing Co. (Ex.5–20) stated:

* * * Manufacturers and distributors pack hazardous materials for transportation in various packaging, i.e., cans, plastic cases, cylinders, etc. These receptacles generally require an outer packaging for various reasons such as ease of handling, palletization, and storage. The packaging may contain one or more receptacles (containers) of the same hazardous material. The packaging is properly labeled with the DOT hazard warning. Upon entering the workplace, the employer * * * removes the packaging to find that the receptacle is not marked with the corresponding DOT hazard label and markings. * * * Under the proposed rule, it is implied that the employer would have to label and mark each container in this situation.

The above commenter was also concerned that the rule would require the labeling of packages that, when in transportation, are excepted from the labeling requirement of the DOT's HMR. It was not OSHA's intention to require labeling of containers that were not originally required to be labeled in accordance with the DOT's HMR. As previously stated, this final rule requires employers to retain labels on packages, this rulemaking does not require employers to label the packages. Inner packagings removed from an outer packaging that is required to be marked or labeled under DOT's HMR are not required to have the DOT marking or label affixed. However, those inner packages are required to have the OSHA HCS label. If the inner packages are to be reshipped, they would, of course, need the appropriate DOT label. In addition, packages which are excepted from the DOT's marking, labeling or placarding requirements, are not required under the DOT's HMR to be marked, labeled or placarded when stored at the workplace, but they would be required to be labeled under the OSHA HCS.

One commenter pointed out that sometimes employers receive hazardous materials which have the DOT-required labels affixed and subsequently store them at remote sites in trailers that are not intended for transportation and therefore are not required to be placarded (Ex. 5–2). The situation that the commenter raises is a small part of a much broader problem. OSHA believes that the communication of hazards at all storage locations (e.g. trailers, warehouses and storage tanks) is an important area for consideration. However, this issue is not within the scope of the statute directing this rulemaking.

In another matter related to the scope of this rule, the American Trucking Association requested a clarification as to whether the rule placed an obligation on operators of transport vehicles (5–22). Similarly, the Agricultural Retailers Association (Ex. L5–37) wanted assurance that the responsibility for retaining DOT placards, markings and labels transfers to the receiving employer. In response to both concerns, the final rule applies to the employer who receives the containers of hazardous materials and not the person responsible for transporting such material unless the material is still under the control of the transporter at its final destination when it is out of transportation.

B. Discrepancy Between DOT and OSHA Definitions of Flammable and Combustible

A number of commenters (Exs. 5–9, 5–25, 5–29, 5–34 and L5–41) raised the issue of the discrepancy between DOT and OSHA with respect to the definitions of flammable and combustible liquids. Commenters correctly stated that OSHA defines a flammable liquid as one with a flashpoint less than 100° F. and a combustible liquid as one with a flashpoint between 100° F and 200° F. Commenters stated that DOT defines a flammable liquid as a material with a flashpoint of below 141° F. and a combustible liquid as a material with a flash point greater than 141° F but below 200° F. OSHA has conferred with the DOT on this issue and was informed that while these statements are correct, DOT does allow in 49 CFR 173.150 (f), for domestic transportation, flammable liquids with a flash point greater than 100° F to be reclassed as a combustible liquid. A combustible liquid is not required to be labeled under DOT's HMR and, therefore, the provisions of this rule regarding the retention of required DOT labels would not apply. OSHA believes that this clarification should satisfy the concerns of commenters who raised the issue of combustible and flammable liquids being defined differently by OSHA and DOT. However, the broader issue of different definitions presents other technical, policy and legal issues and involves many institutions nationally and internationally. These issues cannot be properly addressed nor be solved in this rulemaking.

C. Duration Required for Retention of Hazard Warnings

Paragraph (a)(1) of the proposed standard required that markings, placards and labels remain on the package, freight container, etc. of hazardous material until the hazardous materials are removed therefrom so that they no longer pose a health or safety risk. A number of comments (see, e.g. Exs. 5–10, 5–13, 5–17, 5–23, 5–25, 5–27, 5–29, 5–34, 5–36, L5–40, L5–41 and L5–42) suggested that the language in this

provision was ambiguous and employers would be uncertain as to when DOT labels, placards and markings could be removed without being in violation of the rule. Various suggestions were offered regarding how to clarify this issue, ranging from deleting paragraph (a)(1) (Exs. 5–25, 5–29, L5–40) to allowing removal of the markings and placards as long as no more than a *de minimis* amount of the hazardous material remains in a container (Ex 5–10).

In the final standard OSHA has amended the language in paragraphs (a) and (b) so that it is now clear. Employers need only retain the DOT label, marking or placard until such time as the packaging which contained the hazardous material is sufficiently cleaned of residue and purged of vapor to remove any potential hazard. Paragraph (b), which requires the retention of markings and placards on transport vehicles, etc., states that markings and placards may be removed from transport vehicles if the transport vehicle no longer contains hazardous material subject to the marking or placarding requirements of the DOT's HMR. In the alternative, employers will be in compliance if they choose to retain the appropriate DOT hazard warning on packaging containing only the residue of the hazardous chemical in the same manner as when it contained a greater quantity of the hazardous material.

In the case where an outside package, (including transport vehicles), contains smaller packages of hazardous materials, DOT hazard warnings need be retained on the outside packaging only until the inner packages are removed. However, if a contained package leaks into the outer packaging, the cleaning and purging requirement applies.

D. Other Issues

The Edison Electric Institute (Ex 5–26) requested an exemption from this standard for Nuclear Regulatory Commission licensees whose radioactive material handling practices are already regulated by the NRC. This request was made on the basis of a Memorandum of Understanding (MOU) between the NRC and OSHA which gives the NRC jurisdiction in regulating most situations involving hazards that may be associated with NRC-licensed nuclear facilities, including worksite conditions which affect the safety of radioactive materials and thus the health and safety of workers.

The MOU, however, is not relevant in this case since OSHA is not regulating radioactive materials themselves but is only requiring an extension of DOT requirements. Since the DOT requirements already apply to employers handling radioactive materials, this standard does not represent any change. Therefore, including an exemption in the standard is not appropriate.

There was some confusion regarding paragraph (a)(2) of the proposed rule which required that markings, placards and labels be maintained in a manner that ensures the legend is visible. In effect, all that was intended by this provision was to assure that the label, placard, or marking be kept sufficiently clean (unobscured by dust, dirt, mud, etc.) that it would be easily seen in the event of an emergency or as necessary to prevent a hazardous situation. The provision was never intended to place restrictions on how or where DOT-labeled materials should be stored. However, since one commenter (Ex. L5–42) objected to the use of the term "legend," the provision has been revised as paragraph (c) in the final rule to read: "Such markings, placards and labels shall be maintained in a manner that assures they are readily visible." This does not mean that non-bulk packages with DOT labels that are stored in a warehouse (e.g. cartons containing 4-gallon cans of a hazardous material) have to be arranged in a manner which allows every label to be in view at all times. Rather it requires that where DOT hazard warnings are required to be retained, that such warnings are maintained in a manner that ensures that the message which the hazard warning is intended to convey is not compromised. In other words, at least some labeling should be visible for each type of hazardous material.

Additional minor changes were also suggested (Exs. 5–33 and L5–42) that OSHA agrees are appropriate for completeness and has incorporated in the final rule. Specifically, the title of the final rule has been amended to include the term "label." The terms "aircraft" and "vessel" have been deleted from the regulatory text as there are no specific DOT requirements to affix warning labels to an aircraft or vessel. The term "container" was also changed to "freight container" as Ex. 5–33 suggested. The section has been editorially revised in order to be more consistent with the DOT's HMR and in order that the section is more readily understandable. For example, the requirements for packages versus transport vehicles have been separated into two separate paragraphs.

Suggestions also were made (Exs. 5–19 and 5–25) to delete the phrase "* * * and other information as may be required by such regulations * * *" from paragraph (a). The commenters were concerned that the phrase might be interpreted as requiring materials not designed for display (e.g. manifests) to be kept on the container, package, etc. by the receiving employer. While this language was consistent with Section 29 of HMTUSA, OSHA did not intend it to place an additional burden on employers. OSHA is therefore removing this language from the final rule to eliminate any misconceptions about the requirements of the final rule.

Several commenters suggested that OSHA should go beyond the Congressional mandate in developing this rule. For example, the Laborers' Health & Safety Fund of North America recommended that the rule be expanded to cover hazardous materials being loaded or stored prior to shipment (Ex. 5–8). DOT's regulations generally do not apply until a material is offered for transportation. To require marking, labeling or placarding in accordance with the HMR prior to a material being offered for transportation is beyond the scope of this rulemaking.

The New York Department of State pointed out that mixed loads of hazardous materials are identified with the all purpose "dangerous" placard. While the vehicle may be parked, the shipping papers may have been taken away by the driver, thus removing a vital asset to the identification of hazards of the contents (Ex. 5–14). OSHA interprets the Congressional mandate to be limited to the retention of DOT hazards warnings which are designed for display. Consequently, shipping papers are not included.

Finally, Growmark suggested that this rulemaking presents OSHA with an opportunity to consider making all hazard warnings on vehicles, warehouses, storage tanks, etc. more uniform so that emergency responders could recognize and respond to one type of marking instead of having to learn dual systems (Ex. 5–11).

OSHA is aware that employers and others have expressed a need for consistency in labeling practices. However, this issue is beyond the scope of the specific authorizing statute and would require a major and lengthy interagency approach to complete. Moreover, the Agency published a Request for Information in the context of the Hazard Communication Standard on May 17, 1990 (see 55 FR 20580). The issue is still being considered with respect to what action the Agency should take in the context of that standard.

In a similar matter concerning the authority granted the Agency by the HMTUSA legislation, at least one commenter (Ex. 5–4) suggested that since the real issue addressed in the legislation was hazard communication, the requirement to retain DOT hazard warnings should have been integrated in the Hazard Communication Standard in lieu of issuing a separate regulation. OSHA, however, believes that Congress was quite specific in its instructions to the Secretary of Labor that this requirement apply to DOT regulations and that it be addressed as a separate rule. Paragraph (d) does, however, make this final rule better integrated with the Hazard Communication Standard.

Finally, Amoco (Ex. 5–21) raised the issue of whether the rule would apply to an employer's current inventory of DOT-labeled materials and whether changes to the existing markings and labels would be required. In response to this comment, the Agency is allowing 90 days following publication of the final rule in the **Federal Register** for employers to come into compliance. The rule requires no changes in the content of the label. However, OSHA is providing what it believes is sufficient time for employers to replace labels, markings or placards that may have been removed, or to empty containers of hazardous materials. Once the effective date of the rule has passed, employers will be subject to OSHA citations if packages, transport vehicles, freight containers, etc. of hazardous materials covered by DOT's HMR are present in the workplace, do not have the appropriate DOT hazard warning and violate the standard. It is not possible for OSHA compliance officers to readily know the date transport vehicles or packages were received and DOT warnings were removed. The 90-day period is a realistic time in which to replace removed placards, markings or labels or to empty containers.

Because Congress has directed that OSHA issue this regulation for all employers covered by the OSH Act, this notice includes separate but identical standards for general industry (§ 1910.1201), construction (§ 1926.60), shipyards (§ 1915.100), marine terminals (§ 1917.29) and longshoring (§ 1918.100). The general industry standard will also be added to the list of Part 1910 standards which apply to agricultural operations, as a new paragraph (a)(7) of § 1928.21.

As with the proposed rule, OSHA has consulted with delegated officials of the Secretary of Transportation and the Secretary of the Treasury, as required by HMTUSA, in preparing this final rule.

Regulatory Flexibility Act

OSHA has not performed a Regulatory Impact Analysis for this standard since adoption of the proposed requirements

since the real issue addressed in the legislation was hazard communication, the requirement to retain DOT hazard warnings should have been integrated in the Hazard Communication Standard in lieu of issuing a separate regulation. OSHA, however, believes that Congress was quite specific in its instructions to the Secretary of Labor that this requirement apply to DOT regulations and that it be addressed as a separate rule. Paragraph (d) does, however, make this final rule better integrated with the Hazard Communication Standard.

Finally, Amoco (Ex. 5–21) raised the issue of whether the rule would apply to an employer's current inventory of DOT-labeled materials and whether changes to the existing markings and labels would be required. In response to this comment, the Agency is allowing 90 days following publication of the final rule in the **Federal Register** for employers to come into compliance. The rule requires no changes in the content of the label. However, OSHA is providing what it believes is sufficient time for employers to replace labels, markings or placards that may have been removed, or to empty containers of hazardous materials. Once the effective date of the rule has passed, employers will be subject to OSHA citations if packages, transport vehicles, freight containers, etc. of hazardous materials covered by DOT's HMR are present in the workplace, do not have the appropriate DOT hazard warning and violate the standard. It is not possible for OSHA compliance officers to readily know the date transport vehicles or packages were received and DOT warnings were removed. The 90-day period is a realistic time in which to replace removed placards, markings or labels or to empty containers.

Because Congress has directed that OSHA issue this regulation for all employers covered by the OSH Act, this notice includes separate but identical standards for general industry (§ 1910.1201), construction (§ 1926.60), shipyards (§ 1915.100), marine terminals (§ 1917.29) and longshoring (§ 1918.100). The general industry standard will also be added to the list of Part 1910 standards which apply to agricultural operations, as a new paragraph (a)(7) of § 1928.21.

As with the proposed rule, OSHA has consulted with delegated officials of the Secretary of Transportation and the Secretary of the Treasury, as required by HMTUSA, in preparing this final rule.

Regulatory Flexibility Act

OSHA has not performed a Regulatory Impact Analysis for this standard since adoption of the proposed requirements would add no new regulatory burden on employers with respect to either cost or information collection.

Executive Orders 12866, 12612, and 12778

This rule is not a significant regulatory action for the purposes of Executive Order 12866. It also does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. This rule has been certified in accordance with Executive Order 12778 regarding Civil Justice Reform.

Paperwork Reduction Act

This rulemaking action imposes no paperwork burdens under the Paperwork Reduction Act.

List of Subjects in 29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Occupational safety and health, hazardous materials transportation, hazardous substances, explosives, chemicals, health, safety.

Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

Accordingly, pursuant to section 29 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244), sections 4 and 6(b) of the Occupational Safety and Health Act (29 U.S.C. 653, 655), Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR Part 1911, Parts 1910, 1915, 1917, 1918, 1926 and 1928 of 29 CFR are amended as set forth below.

Signed this 14th day of July 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

OSHA is amending Parts 1910, 1915, 1917, 1918, 1926, and 1928 of Title 29 of the Code of Federal Regulations as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

PART 1917—MARINE TERMINALS

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

1. The authority citation for subpart Z of Part 1910 is revised to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Order 12–71 (36 FR 8754), 9–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR Part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances which have exposure limits listed in Tables Z–1, Z–2 and Z–3 of 29 CFR 1910.1000. The latter were issued under Section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 533. Section 1910.1000, Tables Z–1, Z–2 and Z–3 not issued under 29 CFR Part 1911 except for the arsenic (organic compounds), benzene and cotton dust listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Section 1910.1025 also issued under 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Section 1910.1201 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. The authority citation for part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; and 29 CFR part 1911.

Section 1915.99 also issued under 5 U.S.C. 553.

Section 1915.100 also issued under Section 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

3. The authority citation for part 1917 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; 29 CFR Part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Section 1917.129 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244) and 5 U.S.C. 553.

4. The authority citation for part 1918 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

Section 1918.100 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819, 5 U.S.C. 553, and 29 U.S.C. Part 1911).

5. The authority citation for subpart D of part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

Section 1926.60 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244), 5 U.S.C. 553, and 29 U.S.C. Part 1911.

PARTS 1910, 1915, 1917, 1918, AND 1926—[AMENDED]

6. Parts 1910, 1915, subpart F; 1917, subpart B; 1918, subpart I and 1926, subpart D of Title 29 of the Code of Federal Regulations are amended by adding identical sections as §§ 1910.1201, 1915.100, 1917.29, 1918.100 and 1926.61 to read as follows:

§ *.*** Retention of DOT markings, placards and labels.**

(a) Any employer who receives a package of hazardous material which is required to be marked, labeled or placarded in accordance with the U. S. Department of Transportation's Hazardous Materials Regulations (49 CFR Parts 171 through 180) shall retain those markings, labels and placards on the package until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

(b) Any employer who receives a freight container, rail freight car, motor vehicle, or transport vehicle that is required to be marked or placarded in accordance with the Hazardous Materials Regulations shall retain those markings and placards on the freight container, rail freight car, motor vehicle or transport vehicle until the hazardous materials which require the marking or placarding are sufficiently removed to prevent any potential hazards.

(c) Markings, placards and labels shall be maintained in a manner that ensures that they are readily visible.

(d) For non-bulk packages which will not be reshipped, the provisions of this section are met if a label or other acceptable marking is affixed in accordance with the Hazard Communication Standard (29 CFR 1910.1200).

(e) For the purposes of this section, the term "hazardous material" and any other terms not defined in this section have the same definition as in the Hazardous Materials Regulations (49 CFR Parts 171 through 180).

PART 1928—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

7. The authority citation for Part 1928 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR Part 1911.

Section 1928.21 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

PART 1926—[AMENDED]

8. Section 1928.21 is amended by adding and reserving paragraph (a)(6) and adding a new paragraph (a)(7) reading as follows:

§ 1928.21 Applicable standards in 29 CFR Part 1910.

(a) * * *

(6) [Reserved]

(7) Retention of DOT markings, placards and labels —§ 1910.1201.

* * * * *

[FR Doc. 94–17534 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN43–1–6393A; FRL–5014–1]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: United States Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves Indiana's 1990 base year ozone precursor emissions inventory for Lake and Porter Counties as a revision to the Indiana ozone State Implementation Plan (SIP). The emissions inventory was submitted by the State of Indiana to satisfy a Federal requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address the comments received in response to this final rule in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

EFFECTIVE DATE: This action will be effective September 19, 1994, unless notice is received by August 18, 1994, that someone wishes to submit adverse comments. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois. 60604. Copies of Indiana's emission inventory submittals and USEPA's technical support documents are available for public review during normal business hours, between 8:00 a.m. and 4:30 p.m., at the above address.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604 Telephone: (312) 886–6057.

SUPPLEMENTARY INFORMATION:

I. Emission Inventory Policy and Guidelines

Under the Clean Air Act (Act), as amended in 1990, States have the responsibility to inventory emissions contributing to the violation of a National Ambient Air Quality Standard (NAAQS), to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment of the NAAQS. States containing ozone nonattainment areas are required, under section 182(a)(1) of the Act, to submit by November 15, 1992, a comprehensive, accurate, and current inventory of actual ozone precursor emissions (emissions of Volatile Organic Compounds [VOC], Oxides of Nitrogen [NO_x], and Carbon Monoxide [CO]) for each ozone nonattainment area. This inventory must include base year (1990) emissions from point, area, on-road mobile, and non-road mobile anthropogenic (man-made) sources and biogenic (natural or plant generated) sources in the ozone nonattainment area(s) and the ozone precursor emissions from major stationary sources (with VOC, CO, or NO_x emissions equal to or exceeding 100 tons per year) located within 25 miles of the nonattainment area(s). The emissions inventory must be established for the peak ozone season (those months when peak hourly ozone concentrations occur in excess of the primary ozone National Ambient Air Quality Standard [NAAQS], generally June through August in Indiana) and must represent typical weekday emissions. Available guidance for preparing and reviewing the emission inventories is provided in the General Preamble to Title I of the Act. See 57 FR 13498 (April 16, 1992). Additional guidance is identified in the Technical Support Document (TSD) for this rulemaking.

The Act also requires States with ozone nonattainment areas designated as moderate, serious, severe, or extreme to submit a plan by November 15, 1993, to reduce VOC emissions by 15 percent by November 15, 1996. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year emissions inventory to exclude biogenic emissions and certain emission reductions not creditable toward the 15 percent Reasonable Further Progress (RFP) requirement. The 1990 base year emissions inventory is the primary emissions inventory from which the RFP projection inventory, future periodic inventories, and attainment demonstration modeling inventories are

SUPPLEMENTARY INFORMATION:

I. Emission Inventory Policy and Guidelines

Under the Clean Air Act (Act), as amended in 1990, States have the responsibility to inventory emissions contributing to the violation of a National Ambient Air Quality Standard (NAAQS), to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment of the NAAQS. States containing ozone nonattainment areas are required, under section 182(a)(1) of the Act, to submit by November 15, 1992, a comprehensive, accurate, and current inventory of actual ozone precursor emissions (emissions of Volatile Organic Compounds [VOC], Oxides of Nitrogen [NO_X], and Carbon Monoxide [CO]) for each ozone nonattainment area. This inventory must include base year (1990) emissions from point, area, on-road mobile, and non-road mobile anthropogenic (man-made) sources and biogenic (natural or plant generated) sources in the ozone nonattainment area(s) and the ozone precursor emissions from major stationary sources (with VOC, CO, or NO_X emissions equal to or exceeding 100 tons per year) located within 25 miles of the nonattainment area(s). The emissions inventory must be established for the peak ozone season (those months when peak hourly ozone concentrations occur in excess of the primary ozone National Ambient Air Quality Standard [NAAQS], generally June through August in Indiana) and must represent typical weekday emissions. Available guidance for preparing and reviewing the emission inventories is provided in the General Preamble to Title I of the Act. See 57 FR 13498 (April 16, 1992). Additional guidance is identified in the Technical Support Document (TSD) for this rulemaking.

The Act also requires States with ozone nonattainment areas designated as moderate, serious, severe, or extreme to submit a plan by November 15, 1993, to reduce VOC emissions by 15 percent by November 15, 1996. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year emissions inventory to exclude biogenic emissions and certain emission reductions not creditable toward the 15 percent Reasonable Further Progress (RFP) requirement. The 1990 base year emissions inventory is the primary emissions inventory from which the RFP projection inventory, future periodic inventories, and attainment demonstration modeling inventories are derived. Further information on these inventories and their purposes can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991.

As a primary tool for the review of the quality of emission inventory submittals, the USEPA has developed three levels (I, II, and III) of emission inventory quality assurance review checklists. The Level I and II reviews are used to determine that all required components of the base year emission inventory and its associated documentation are present. These reviews also evaluate the level of quality of the supporting documentation and data provided by the State and assess whether the emission estimates were developed according to current USEPA guidance. The Level III review evaluates 10 crucial aspects and the overall acceptability of the emission inventory submittal. Failure to meet one of these crucial aspects would lead to disapproval of the emission inventory submittal. The 10 crucial requirements of the emission inventory submittal are:

1. An Inventory Preparation Plan (IPP) must be submitted by the State and approved by the USEPA. In addition, a Quality Assurance (QA) plan contained within the IPP must have been implemented and documented.

2. The emission inventory submittal must contain adequate documentation showing the procedures and input data used and the input data sources.

3. The point source portion of the inventory must be complete.

4. The point source emissions must have been prepared or calculated in accordance with current USEPA guidance.

5. The area source portion of the inventory must be complete.

6. The area source emissions must have been calculated in accordance with current USEPA policy.

7. The biogenic emissions must have been calculated using USEPA's PC-Biogenic Emissions Inventory System (PC–BEIS) or other equivalent techniques in accordance with current USEPA guidance.

8. The Vehicle Miles Travelled (VMT) estimates used in the calculation of on-road mobile source emissions must have been developed in accordance with USEPA guidance and must have been adequately documented in the inventory submittal.

9. The MOBILE emission factor model must have been correctly applied to produce emission factors for each of the vehicle classes.

10. Non-road mobile source emissions must have been prepared in accordance with current USEPA guidance for all of the non-road source categories.

The base year emission inventory may be approved if it passes the Level I, II, and III reviews. Detailed Level I and II review procedures and questions can be found in the "Quality Review Guidelines for 1990 Base Year Emission Inventories," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, July 27, 1992. Level III review procedures and criteria are specified in a memorandum from David Mobley, Emission Inventory Branch, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, to the Chief of the Regulation Development Branch, Region V, et al., titled "Final Emission Inventory Level III Acceptance Criteria," October 7, 1992.

The Act requires States to observe certain procedural requirements in developing and submitting SIP revisions, including the base year emissions inventory submittal. Section 110(a)(2) of the Act provides that each SIP revision submitted by a State must be adopted after reasonable notice and public hearing. Final approval of the emissions inventory will not occur until the State revises the emissions inventory to address public comments. Future changes to the base year inventory (due to previously missed sources or to corrected source emission factors or activity levels) that impact the 15 percent RFP calculations or demonstration of attainment and that require a revised emission control strategy will be required to be addressed in a SIP revision.

II. Indiana's Emission Inventory Submittals

On January 15, 1994, the Indiana Department of Environmental Management (IDEM) submitted the final, adopted base year ozone precursor emissions inventory for Lake and Porter Counties. The emissions inventory submittal covers the emissions of VOC, NO_X, and CO for this ozone nonattainment area. In addition to emissions from the ozone nonattainment area, the submittals also cover VOC, NO_X, and CO emissions from major stationary sources (with actual emissions for any of the covered pollutants equal to or in excess of 100 tons per year) in all counties located within 25 miles of the ozone nonattainment area.

Prior to developing the base year emission inventories, the State of Indiana developed an IPP as required by the USEPA. This IPP was approved by the USEPA in March 1992.

Emissions contained in the emissions inventory cover the general source categories of point sources, area sources, on-road mobile sources, off-road mobile sources, and biogenic sources. Emission inventory summary tables in the submittal include a more detailed source category breakdown as requested by the USEPA. All emission summaries were accompanied by documentation covering the sources and values of input data and by sample calculations.

To determine up-to-date point source emissions, the State sent emission inventory questionnaires to all facilities contained in the State's Aerometric Information Retrieval System (AIRS) and to all sources in the subject area which hold an air emissions permit issued by the State. The questionnaires contained all key data fields necessary to calculate typical summer weekday emissions. To assure full coverage of emitting point sources, the State also consulted other data sources, such as manufacturer's listings, newly issued construction permits, and other databases, including Superfund Amendments and Reauthorization Act (SARA) Title III, section 313 summaries, and the Toxic Release Inventory.

The point source portion of the emissions inventory includes detailed facility-specific emission listings with emissions determined at the segment level and at the facility total level. Point source emissions at these source levels were listed for all facilities in the ozone nonattainment area with emissions of VOC or NO_X equal to or greater than 10 tons per year or with emissions of CO equal to or greater than 100 tons per year (facilities with less emissions were also included in the point source portion of the emissions inventory). Exceedance of the emission cutoff for VOC, NO_X, or CO resulted in the reporting of all VOC, NO_X, and CO emissions for a given facility. Point source emissions were calculated using emission factors contained in AIRS or using techniques outlined in the approved IPP. Emission factors used were generally obtained from the AIRS Facility Subsystem (AFS), AP–42 Compilation of Air Pollution Emission Factors, National Acid Precipitation Assessment Program emission inventory, direct stack test data, or other USEPA guidelines. The point source listings included with emission inventory submittals (on file at the Region 5 office) identify the emission factors, source activity levels or throughputs, operating schedules, control equipment efficiencies, and rule effectiveness estimates used for each facility and facility segment.

Area source emissions were calculated using a variety of information sources and guidance from the USEPA. Where appropriate, point source emissions have been subtracted from the calculated area source emissions to account for source coverage overlap and to avoid double counting of emissions in the emission totals. For all appropriate source categories, the State assumed a rule effectiveness level of 80 percent.

In preparing the area source emissions, the State used the following USEPA guidance documents: *Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volumes I and II,* EPA–450/4–91–016 and EPA–450/4–91–014, May 1991; and *Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,* EPA–450/4–81–026d, revised in July 1989. The new Volume IV guidance, issued in the Spring of 1992, was used to estimate railroad and aircraft emissions. Estimates of other off-road mobile source emissions were based on USEPA's 1991 off-road mobile source emission study. In making other area source estimates, the State followed the approved IPP.

The State has entered the calculated area source emission estimates into USEPA's AIRS Area and Mobile Source System (AIRS/AMS). The data are well documented in both hardcopy and in computer data files submitted with the emission inventory submittals as additional documentation.

On-road mobile source emissions were calculated using USEPA's *Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources* (as revised in 1989) and USEPA's MOBILE5A model. Daily Vehicle Miles Travelled (VMT) and speed data by county and roadway type were obtained from the Indiana Department of Transportation (InDOT), who used the Highway Performance Monitoring System (HPMS) to determine VMT by roadway functional class. The VMT provided by InDOT were annual average daily traffic levels. Insufficient data existed to allow the VMT to be adjusted to the summer months and the day of week levels. To QA the VMT estimates, the local Metropolitan Planning Organization (MPO) was requested to confirm the VMT estimates or to correct them if needed based on more representative data. The VMT were quality assured through comparison with current roadway traffic counts.

The MPO recommended vehicle speeds based on the use of local transportation models. The estimated speeds were used in conjunction with USEPA-recommended defaults for vehicle mixtures to determine emission rates for each roadway type. Fuel volatility was assumed to comply with USEPA requirements for the area. The ambient temperature used in the mobile source emissions modeling was derived from the average maximum and minimum temperatures on the ten highest ozone days for the period of 1988 through 1990 using an approach recommended by the USEPA. The emission factors determined using MOBILE5A were combined with the total VMT for each functional roadway class to determine the total mobile source emissions for each county. All parameters used in the mobile source emissions modeling, including the parameters used by the MOBILE5A model, were well documented.

The biogenic emissions for each of the counties were determined using USEPA's PC–BEIS model. Included in the documentation of the application of this model was a description of the methodology used to determine temperature inputs for the model. The temperature inputs were determined using the technique recommended by the USEPA. The applications of PC–BEIS also included the use of land use data supplied by the USEPA.

The State of Indiana held public hearings on the emissions inventory on June 28, 1993, and July 6, 1993. Comments received during these public hearings were used to make appropriate corrections in the emissions inventory.

The emissions in units of tons/day for an average day are summarized below:

LAKE AND PORTER COUNTIES

Source type	VOC	CO	NO_X
Point Sources ..	79.23	709.32	302.94
Area Sources ..	41.91	5.14	5.60
On-Road Mobile Sources .	134.54	771.28	83.10
Off-Road Mobile Sources .	11.68	78.16	27.94
Biogenic Sources	21.44	.....	.....
Totals	288.80	1,563.90	419.58

III. Final Rulemaking Action

The USEPA has conducted Level I, II, and III quality assurance reviews of the emission inventory submittals and has concluded that the State of Indiana has met the requirements of section 182(a)(1) of the Act by submitting an ozone precursor emissions inventory that include comprehensive, accurate, and current actual emissions from all identified sources in the subject ozone nonattainment area. In particular, the Indiana submittals meet the 10 crucial criteria contained in the Level III quality assurance review. The emissions inventory is, therefore, approved for incorporation in the SIP as satisfying the requirements of section 182(a)(1) of the Act.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on September 19, 1994. However, if the USEPA receives adverse comments by August 18, 1994, then the USEPA will publish a notice that withdraws the action, and will address the comments received in response to this final rule in the final rule on the requested SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. The comment period will not be extended or reopened.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this section should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a

and current actual emissions from all identified sources in the subject ozone nonattainment area. In particular, the Indiana submittals meet the 10 crucial criteria contained in the Level III quality assurance review. The emissions inventory is, therefore, approved for incorporation in the SIP as satisfying the requirements of section 182(a)(1) of the Act.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on September 19, 1994. However, if the USEPA receives adverse comments by August 18, 1994, then the USEPA will publish a notice that withdraws the action, and will address the comments received in response to this final rule in the final rule on the requested SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. The comment period will not be extended or reopened.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this section should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, and Volatile organic compounds.

Dated: June 30, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (g) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(g) The base year ozone precursor emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for Lake and Porter Counties, Indiana.

* * * * *

[FR Doc. 94–17431 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Health Resources and Services Administration

42 CFR Part 51a

RIN 0905–AD88

Maternal and Child Health (MCH) Project Grants

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends existing regulations governing the Maternal and Child Health (MCH) Federal Set-Aside programs under sections 502(a) and 502(b) of Title V of the Social Security Act (42 U.S.C. 702(a) and 702(b)). This rule revises the regulations to: increase flexibility to fit changing policy concerns; implement requirements established under the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) addressing collection of data from funded projects, and make other changes that are technical or clarifying in nature. The rule updates the existing regulations in accord with current Department policy and statutory amendments made to sections 501(a), 502(a), 502(b), and 506(a)(3).

EFFECTIVE DATE: This regulation is effective August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Lynn Squire, Legislative Officer, Maternal and Child Health Bureau, HRSA, HHS, Office of Program Development, Parklawn Building, room 18–20, 5600 Fishers Lane, Rockville, MD 20857; telephone number: 301–443–2778.

SUPPLEMENTARY INFORMATION: On July 21, 1993, the Secretary published in the **Federal Register** (58 FR 38995) a Notice of Proposed Rulemaking (NPRM) proposing to revise existing regulations governing the MCH Federal Set-Aside programs to bring them into conformity with current Department policy and statutory amendments to these programs. The Maternal and Child Health (MCH) Services Block Grant is the only federally authorized program devoted exclusively to maternal and child health. First authorized under Title V of the Social Security Act (the Act) in 1935 and reorganized as a block grant under the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the program provides funds primarily to States to develop the maternal and child health infrastructure and public health system which supports the establishment of

community-based, family-centered systems of preventive, primary and specialized care that coordinate and integrate public and private sector resources for women of childbearing age, infants, children, adolescents, and families, particularly those who are low income, have limited access to care, or have a child with special health care needs.

Sections 502(a) and 502(b) of Title V, as amended by the Omnibus Budget Reconciliation Act (OBRA) of 1989 (Pub. L. 101–239), govern the MCH Federal Set-Aside programs. These sections require that specified portions of the annual appropriation for the MCH Block Grant be set aside and retained by the Secretary to support projects in designated categories. Section 502(a) established the federal set-aside for Special Projects of Regional and National Significance (SPRANS), which supports grants, contracts, and cooperative agreements for: training; research; genetic disease and newborn screening; hemophilia treatment centers; and special Maternal and Child Health Improvement Projects (MCHIP). Section 502(b) was authorized under section 6502(a)(3)(b) of OBRA '89. It establishes a set-aside, consisting of 12.75 percent of annual appropriated amounts above $600 million, for special projects termed "Community Integrated Service Systems (CISS)" projects. The purposes of these special projects are identified under section 501(a)(3) of the Act. They include the development and expansion of: maternal and infant home visiting programs; programs to increase the numbers of obstetricians and gynecologists participating in Titles V and XIX; integrated MCH service delivery systems; MCH centers operating under not-for-profit hospitals; rural MCH projects; and outpatient and community based services for children with special health care needs. Regulations published at 51 FR 7726, March 5, 1986 (and codified at 42 CFR 51a), focus only on the SPRANS federal set-aside under 502(a). The regulations have not been revised since their initial publication.

The NPRM proposed to: (1) Replace references to "crippled children" with "children with special health care needs" in all sections of the regulations, as mandated under section 9527 of COBRA; (2) change the heading and revise the wording in § 51a.1 to reflect the intent of the section, which is to expand the regulation's applicability to the CISS program under section authorized under section 502(b)(1)(A) of the Act by OBRA '89; (3) In § 51a.3, change the language to clarify and more clearly distinguish between eligibility requirements for applicants for research, training, and other grant categories under the Federal Maternal and Child Health Set-Aside program; (4) make minor wording changes in § 51a.4, to better describe the application process and to more clearly distinguish between requirements for research applications and those for other grant categories; (5) amend § 51a.5 to incorporate into the Secretary's funding decisions consideration of MCH-related Healthy People 2000 objectives, as required by OBRA '89 under section 501(a) of the Act. The amended § 51a.5 would also incorporate a statutory funding preference for certain CISS project strategies in areas of high infant mortality, as required by OBRA '89 under section 502(b)(2) of the Act. In addition, to better reflect the diversity of project categories for which applications are currently solicited and their responsiveness to changing needs, the NPRM proposed to replace obsolete and inflexible evaluation criteria in the section. The new criteria would be consistent with Part 116 of the PHS Grants Administration Manual, applicable to decisions on funding awards, while increasing opportunities for the Secretary to develop criteria as needed for specific project categories. Category-specific evaluation criteria would be published in program announcements and/or application guidances; (6) In § 51a.7, make technical changes to eliminate obsolete references as a result of changes in Department regulations, and to correct other errors in references; and (7) add a new § 51a.8 to set out conditions which grantees must meet. Requirements in paragraph (a) would implement amendments to section 506(a)(3) of the Act made by OBRA '89, which address collection of data from funded SPRANS projects concerning the number of individuals served or trained, as appropriate.

In addition, the NPRM proposed information collections which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and assigned control number 0915–0169. It also proposed to add a provision giving the Secretary discretion to impose such additional conditions on grantees as the Secretary views as necessary, using language identical to that in many other PHS grant program regulations. Additionally, technical and ministerial revisions were proposed to bring existing regulations into compliance with current major departmental policy initiatives and grants policy language.

The public comment period on the proposed regulations closed on September 20, 1993. The Department received 4 letters of public comment on this NPRM. All significant comments have been considered and discussed. Comments relating to the information collection requirements in § 51a.8 highlight the Department's responsibility to provide grantees with clear and explicit instructions for completing prescribed forms. There are no substantive differences between the proposed rule and the final rule as a result of our review of public comments.

The comments received on the proposed rule and the Department's responses to the comments are discussed below under the section numbers of the regulations affected.

Part 51a—Project Grants for Maternal and Child Health

One respondent expressed support for the proposed replacement of all references to "crippled" children in all sections of the regulation to "children with special health care needs." The Department is making this change to conform with Section 9527 of the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) [Pub. L. 99–272], which substitutes the term 'Children with Special Health Care Needs' for 'Crippled Children' throughout Title V

Section 51a.5 What criteria will DHHS use to decide which projects to fund?

One respondent was concerned that some potential SPRANS and CISS applicants do not work closely enough or early enough with the State Title V agency in developing their grant proposals. This respondent suggested adding "the quality of coordination with the state Title V program" to the criteria used by the Department to review projects for funding.

The Department wishes to stress that it considers a key objective of these new rules to be the elimination of obsolete and overly-rigid evaluation criteria in order to better accommodate the broad diversity of project categories in which grants are awarded; in recent years, the number of separate categories and subcategories has exceeded 35. Limiting regulatory review criteria to the minimum required by Part 116 of the Public Health Service (PHS) Grants Administration Manual does not affect the Department's ability to publish in annual program announcements and/or application guidelines additional criteria for any grant category. This limitation is also consistent with Executive Order 12875 of October 26, 1993, which discourages executive departments from promulgating any regulation "that is not required by

statute and that creates a mandate upon a State, local, or tribal government".

The Department will include category-appropriate review criteria in the application guidelines it distributes for each grant category. Most demonstration grant categories can be expected to contain review criteria relating to meaningful and timely consultation and collaboration by applicants with the State Title V agency, as well as with other State, local, and tribal governments regarding matters that uniquely affect their communities. The Department notes, however, that the statute does not condition awards under the MCH Federal Set-Aside programs on coordination with the State Title V agency and that such coordination may not be relevant for every grant category. The statutory emphasis on "regional and national significance" reflects Congressional intent that some categories should properly serve interests beyond those of the host State. Because both categorical diversity and changing priorities over time are fully accommodated by customizing annual announcements and/or guidelines, the Department is making no changes to the review criteria in this section.

This respondent also suggested that priorities for funding within the SPRANS and CISS programs be determined in consultation with State Title V programs. Agency discretion in selection of priorities for funding in both the SPRANS and CISS programs is actually extremely limited. The major SPRANS categories are identified in section 502(a) and CISS project categories are specified in some detail in sections and 502(b) of Title V. Subcategories and priorities under SPRANS can change from year to year; typically, however, they are designed to fulfill specific Congressional or Administration program directives. The Department has an established mechanism for soliciting comments from the public on proposed priorities for Title V grant programs. Annual announcements of the availability of funding for SPRANS and CISS invite public comment on the published program priorities. When application deadlines prevent consideration of public comments in developing priorities for the current fiscal year, they are considered for the following fiscal year. In addition, numerous formal and informal opportunities currently exist for consultation and exchanges of views on grant priorities between the Department's central and regional office officials and State Title V programs and their chosen representatives.

statute and that creates a mandate upon a State, local, or tribal government".

The Department will include category-appropriate review criteria in the application guidelines it distributes for each grant category. Most demonstration grant categories can be expected to contain review criteria relating to meaningful and timely consultation and collaboration by applicants with the State Title V agency, as well as with other State, local, and tribal governments regarding matters that uniquely affect their communities. The Department notes, however, that the statute does not condition awards under the MCH Federal Set-Aside programs on coordination with the State Title V agency and that such coordination may not be relevant for every grant category. The statutory emphasis on "regional and national significance" reflects Congressional intent that some categories should properly serve interests beyond those of the host State. Because both categorical diversity and changing priorities over time are fully accommodated by customizing annual announcements and/or guidelines, the Department is making no changes to the review criteria in this section.

This respondent also suggested that priorities for funding within the SPRANS and CISS programs be determined in consultation with State Title V programs. Agency discretion in selection of priorities for funding in both the SPRANS and CISS programs is actually extremely limited. The major SPRANS categories are identified in section 502(a) and CISS project categories are specified in some detail in sections and 502(b) of Title V. Subcategories and priorities under SPRANS can change from year to year; typically, however, they are designed to fulfill specific Congressional or Administration program directives. The Department has an established mechanism for soliciting comments from the public on proposed priorities for Title V grant programs. Annual announcements of the availability of funding for SPRANS and CISS invite public comment on the published program priorities. When application deadlines prevent consideration of public comments in developing priorities for the current fiscal year, they are considered for the following fiscal year. In addition, numerous formal and informal opportunities currently exist for consultation and exchanges of views on grant priorities between the Department's central and regional office officials and State Title V programs and their chosen representatives.

One respondent pointed out a misprint in the NPRM listing of CISS funding preferences, which is corrected in the final regulation. The misprint resulted in incorrectly combining two separate statutory categories—integrated maternal and child health service systems and maternal and child health centers operating under the direction of not-for-profit hospitals—and in omitting the category of outpatient and community based services for children with special health care needs.

Section 51a.8 What other conditions apply to these grants?

OBRA '89 added a requirement (under sec. 506(a)(3) of the Act) for annual collection of data from SPRANS and CISS project grants, including: (1) Information on the number of individuals served or trained; (2) a copy of any evaluation conducted by the recipient; and (3) a list of Healthy Children 2000 objectives addressed by the project and data on how the project met the objectives.

Two respondents raised concerns regarding the applicability of individual-oriented reporting requirements to projects whose objectives or activities are primarily population-based, such as infrastructure building, needs assessment, quality control, or policy development. The Department appreciates these concerns. To accommodate variations in the targeting of the major types of SPRANS/CISS grants, the Department has developed and OMB has approved for a one-year period, through November 1994, a "SPRANS/CISS Uniform Data Collection Instrument" for use in this annual data collection, which will usually take place in the spring of each fiscal year. Following the submission by SPRANS/CISS grantees of their completed data forms, the Maternal and Child Health Bureau (MCHB) will compile the data in compliance with the legislative mandate for information on the number of persons served or trained. Four separate SPRANS/CISS Uniform Data Collection Instrument forms have been designed for use in FY 1994, customized for projects focusing on: (1) Training; (2) research; (3) data analysis; and (4) other discretionary grants. The development of the forms to be used in this information collection was guided by an active data development committee within the MCHB. The forms were sent to all Public Health Service Regional Offices for review. In addition, draft data collection instruments were disseminated in FY 1993 for field testing to nine institutions representing each major type of SPRANS/CISS grantee, i.e. training, research, genetics, hemophilia, and MCH improvement projects.

Smoke Free Workplace

Public Law 103–227, enacted on March 31, 1994, prohibits smoking in certain facilities in which minors will be present. The Department of Health and Human Services is now preparing to implement the provision of that law. Until those implementation plans are in place, PHS continues to strongly encourage all grant recipients to provide a smoke free workplace and promote the nonuse of all tobacco products.

Regulatory Flexibility Act and Executive Order 12866

These regulations govern a financial assistance program in which participation is voluntary. The Department believes that the resources required to implement the new requirements in this final rule are minimal. In accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

The Department also has determined that this rule is not a major rule under Executive Order 12866; therefore, a regulatory impact analysis is not required. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12866.

Paperwork Reduction Act

This rule contains information collections which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and assigned control number 0915–0169. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting, notification and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: SPRANS/CISS Uniform Data Collection Instrument.

Description: Information will be collected from funded projects to enable the Secretary to respond to congressional reporting mandates required by OBRA '89 concerning individuals served or trained by projects, their responsiveness to Healthy Children 2000 objectives, and their evaluation status.

Description of Respondents: Recipients of SPRANS and CISS project awards.

Estimated Annual Reporting and Recordkeeping Burden:

Section	No. of respondents	Responses per respondent	Hours per response	Total hours
Reporting:				
§51a.8	580	1	4	2,320
Total Burden				2,320

We received one comment on the estimated annual reporting burden published in the NPRM. The estimate of four hours per response was based on initial information provided to MCHB by a sampling of grantees' data specialists. Feedback from the field test has confirmed the general accuracy of the estimated burden. Prior to expiration of OMB approval for this data collection, in November 1994, the utility of the data instrument will be reviewed and an analysis of grantee experience in complying with the requirements will be done. The estimated reporting burden remains the same as in the proposed rule.

List of Subjects in 42 CFR Part 51a

Grand programs—health, Health care, Health professions, Handicapped, Maternal and child health.

Dated: April 12, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: July 7, 1994.

Donna E. Shalala,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 93.110, Maternal and Child Health Consolidated Federal Programs).

Accordingly, 42 CFR Part 51a is amended as set forth below:

PART 51a—PROJECT GRANTS FOR MATERNAL AND CHILD HEALTH

1–2. The authority citation for Part 51a is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302); sec. 502(a), 502(b)(1)(A), and 506(a)(3) of the Social Security Act, 95 Stat. 819–20 (42 U.S.C. 702(a), 702(b)(1)(A) and 706(a)(3)).

3. Section 51a.1 is revised to read as follows:

§ 51a.1 To which programs does this regulation apply?

The regulation in this part applies to grants, contracts, and other arrangements under section 502(a) and 502(b)(1)(A) of the Social Security Act, as amended (42 U.S.C. 702(a) and 702(b)(1)(A)), the Maternal and Child Health (MCH) Federal Set-Aside project grant programs. Section 502(a) authorizes funding for special projects of regional and national significance (SPRANS), research and training projects with respect to maternal and child health and children with special health care needs (including early intervention training and services development); genetic disease testing, counseling and information programs; comprehensive hemophilia diagnostic and treatment centers; projects for screening and follow-up of newborns for sickle cell anemia and other genetic disorders; and special maternal and child health improvement projects. Section 502(b)(1)(A) authorizes funding for projects termed community integrated service system (CISS) projects for the development and expansion of: maternal and infant health home visiting; projects to increase the participation of obstetricians and pediatricians in title V and title XIX programs; integrated maternal and child health service systems; maternal and child health centers operating under the direction of not-for-profit hospitals; rural maternal and child health programs; and outpatient and community-based services programs for children with special health care needs.

4. Section 51a.3 is revised to read as follows:

§ 51a.3 Who is eligible to apply for Federal funding?

(a) With the exception of training and research, as described in paragraph (b) of this section, any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for federal funding under this Part.

(b) Only public or nonprofit private institutions of higher learning may apply for training grants. Only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply for grants contracts or cooperative agreements for research in maternal and child health services or in services for children with special health care needs.

5. Section 51a.4 is revised to read as follows:

§ 51a.4 How is application made for Federal funding?

An application for funding under the MCH Federal Set-Aside project grant programs must be submitted to the Secretary at such time and in such manner as the Secretary may prescribe. It must include a budget and narrative plan of the manner in which the project will meet each of the requirements prescribed by the Secretary. The plan must describe the project in sufficient detail to identify clearly the nature, need, and specific objectives of, and methodology for carrying out, the project. (Approved by the Office of Management and Budget under control number 0915–0050)

6. Section 51a.5 is revised to read as follows:

§ 51a.5 What criteria will DHHS use to decide which projects to fund?

(a) The Secretary will determine the allocation of funds available under sections 502(a) and 502(b)(1)(A) of the Act for each of the activities described in § 51a.1.

(b) Within the limit of funds determined by the Secretary to be available for each of the activities described in § 51a.1, the Secretary may award Federal funding for projects under this part to applicants which will, in his or her judgment, best promote the purpose of title V of the Social Security Act and address achievement of Healthy Children 2000 objectives,[1] taking, the following factors into account:

(1) The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;

(2) The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.

(3) The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results;

(4) The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel; and

(5) The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

(c) For the following types of CISS projects, preference for funding will be given to qualified applicants in areas with a high infant mortality rate (relative to the latest average infant mortality rate in the United States or in the State in which the area is located):

(1) Projects for the development and expansion of maternal and infant health home visiting;

(2) Projects to increase the participation of obstetricians and pediatricians in title V and title XIX programs;

(3) Integrated maternal and child health service systems;

(4) Maternal and child health centers operating under the direction of not-for-profit hospitals;

(5) Rural maternal and child health programs; and

(6) Outpatient and community based services for children with special health care needs.

7. Section 51a.7(a) is revised to read as follows:

§ 51a.7 What other DHHS regulations apply?

(a) Several other DHHS regulations apply to awards under this part. These include, but are not limited to:

42 CFR Part 50—Policies of general applicability:

Subpart B—Sterilization of persons in federally assisted family planning projects.

Subpart C—Abortions and related medical services in federally assisted programs of the Public Health Service.

Subpart E—Maximum allowable cost for drugs.

[1] Healthy Children 2000: National Health Promotion and Disease Prevention Objectives Related to Mothers, Infants, Children, Adolescents, and Youth is a special compendium of health status goals and national health objectives affecting mothers, infants, children, adolescents, and youth originally published in Healthy People 2000 in September 1990. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0 or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office Washington, DC 20402–9325, (telephone: 202 783–3238).

(1) The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;

(2) The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.

(3) The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results;

(4) The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel; and

(5) The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

(c) For the following types of CISS projects, preference for funding will be given to qualified applicants in areas with a high infant mortality rate (relative to the latest average infant mortality rate in the United States or in the State in which the area is located):

(1) Projects for the development and expansion of maternal and infant health home visiting;

(2) Projects to increase the participation of obstetricians and pediatricians in title V and title XIX programs;

(3) Integrated maternal and child health service systems;

(4) Maternal and child health centers operating under the direction of not-for-profit hospitals;

(5) Rural maternal and child health programs; and

(6) Outpatient and community based services for children with special health care needs.

7. Section 51a.7(a) is revised to read as follows:

§ 51a.7 What other DHHS regulations apply?

(a) Several other DHHS regulations apply to awards under this part. These include, but are not limited to:

42 CFR Part 50—Policies of general applicability:

Subpart B—Sterilization of persons in federally assisted family planning projects.

Subpart C—Abortions and related medical services in federally assisted programs of the Public Health Service.

Subpart E—Maximum allowable cost for drugs.

45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants).

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Service—Effectuation of title VI of the Civil Rights Act of 1964.

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title.

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

45 CFR Part 93—New restrictions on lobbying.

(b) In addition to the above regulations, the following apply to projects funded through grants:

42 CFR Part 50—Policies of general applicability:

Subpart D—Public Health Service grant appeals procedure.

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.

45 CFR Part 74—Administration of grants to nonprofit organizations.

45 CFR Part 75—Informal grant appeals procedures.

45 CFR Part 92—Administration of grants to State and local governments.

* * * * *

8. Section 51a.8 is added to read as follows:

§ 51a.8 What other conditions apply to these grants?

(a) Recipients of project grants will be required to submit such additional information to the Secretary on an annual basis as the Secretary determines, including:

(1) the number of individuals served or trained, as appropriate under the project;

(2) a copy of any evaluation conducted by the recipient; and

(3) a list of Healthy Children 2000 objectives addressed by the project and data on how the project contributed toward meeting the objectives.

(b) The Secretary may at the time of award of project grants under this Part impose additional conditions, including conditions governing the use of information or consent forms, when, in the Secretary's judgment, they are necessary to advance the approved program, the interest of public health, or the conservation of grant funds.

[FR Doc. 94–17218 Filed 7–18–94; 8:45 am]

BILLING CODE 4150–15–M

Health Care Financing Administration

42 CFR Parts 412, 413, and 418

[BPD–436–F]

RIN 0938–AD71

Medicare Program; Periodic Interim Payments for Hospitals and Other Providers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to public comments on the January 21, 1988 final rule with comment period that implemented section 9311 of the Omnibus Budget Reconciliation Act of 1986. The January 21, 1988 rule described the circumstances under which the periodic interim payment (PIP) method is available for services furnished by hospitals and other providers.

EFFECTIVE DATE: This final regulation is effective on August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Linda Hite, (410) 966–4530.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) defines reasonable cost under Medicare as the cost actually incurred, excluding any cost unnecessary in the efficient delivery of needed health services. That section of the Act also provides that reasonable costs must be determined in accordance with regulations that establish the methods to be used and the items to be included for purposes of determining which costs are allowable for various types or classes of institutions, agencies, and services.

Under Medicare, providers are paid for inpatient and outpatient services that they furnish to beneficiaries under Part A (Hospital Insurance) or Part B (Supplementary Medical Insurance). Currently, most hospitals are paid for their hospital inpatient operating costs and capital-related costs under the prospective payment systems in accordance with sections 1886(d) and (g) of the Act and regulations at 42 CFR part 412. Under these systems, Medicare payment is made at a predetermined,

specific rate for inpatient operating costs and inpatient capital-related costs for each hospital discharge based on the information contained in actual bills submitted.

Hospital outpatient services, hospitals and hospital units that are excluded from the prospective payment systems, as well as most other providers, are paid, in part, an amount based on the reasonable cost of items and services furnished to beneficiaries, in accordance with the regulations at 42 CFR part 413.

Since actual reasonable cost cannot be determined until the end of a provider's cost reporting period, an interim rate of payment, approximating actual cost as closely as possible, is determined by the intermediaries for each provider, and interim payments are made on that basis during the year. These interim payments are required by section 1815(a) of the Act, which states that we must pay providers at least monthly during the cost reporting period, pending a final determination of cost on the basis of a submitted cost report and any necessary adjustments. After receipt of the provider's cost report, the intermediary determines what the actual payment for the period should have been and a retroactive adjustment is made. The regulations that implement these policies are located at § 413.64.

There are two methods of interim payment for inpatient hospital services for hospitals not receiving payment under the prospective payment systems. One method is based on actual bills submitted by the hospital. Under this method, interim payments are calculated by applying a predetermined per diem amount to the number of Medicare patient days reflected on actual bills or by applying a predetermined percentage to the charges reflected on the actual bills submitted. The predetermined per diem amount or percentage factor applied to billed patient days or charges represents an estimate of the hospital's previous year's costs, adjusted to ensure that the current year's rate of payment is as close as possible to the current year's costs.

Under the second method, referred to as the periodic interim payment (PIP) method, interim payments are not based on individual bills. Instead, payment is based on the estimated annual costs attributable to estimated Medicare utilization of a hospital, and equal biweekly payments are made to hospitals without regard to the submission of individual bills. PIP has been available for inpatient hospital services since 1968. It was offered to qualified hospitals as an alternative to regular interim reimbursement, which requires submission of a bill to receive payment.

With either of these interim payment methods, any overestimation or underestimation of the hospital's actual costs, to the extent not adjusted during the year, is adjusted at the time of cost report settlement.

Under the prospective payment system, hospitals are paid, for most of the Part A inpatient services they furnish, a prospectively determined amount for each discharge based on actual bills submitted. This amount constitutes final payment for each discharge claimed. Although no form of interim payment is necessary for hospitals operating under the prospective payment system, we extended the option to these hospitals to elect to receive PIP when the prospective payment system was implemented in order to avoid cash flow problems in the early stages of the system. Thus, prospective payment hospitals that met the qualifications for receiving PIP could elect to receive this type of interim payment, which would be based on their estimated annual prospective payment amounts. The PIP payment is made 2 weeks after the end of a biweekly period of services. In these circumstances, year-end reconciliation is required.

Although the PIP method of interim payment is not based on actual bills submitted, a PIP hospital must continue to submit bills for subsequent intermediary verification of the accuracy of the rate. The rate is reviewed at least twice per year for hospitals paid under the prospective payment system and at least quarterly for hospitals and other providers paid on a reasonable cost basis. If necessary, as determined by the reviews, the rate is adjusted. Interim payments may be further adjusted based on cumulative payment data for the year.

On August 15, 1986, we published a final rule in the **Federal Register** (51 FR 29386) concerning interim payments. In that rule, we took the following actions, which were to be effective on July 1, 1987:

- We eliminated PIP as an optional method of payment for inpatient hospital services furnished to Medicare beneficiaries, except for services furnished by a rural hospital with fewer than 100 beds.
- In order to alleviate the cash flow problems that certain hospitals encounter, we provided for one interim payment to hospitals subject to the prospective payment system for each case in which a patient remains in the hospital more than 30 covered days. Under this provision any interim payment made was to be applied against the final payment made for the discharge.
- We also eliminated PIP for hospitals receiving payment under a demonstration project authorized by section 402(a) of the Social Security Amendments of 1967 (Public Law 90-248) or section 222(a) of the Social Security Amendments of 1972 (Public Law 92–603), and for those hospitals paid under State reimbursement control systems authorized by section 1886(c) of the Act and approved by HCFA. However, under this provision, these hospitals were to be permitted to use a form of interim payment similar to PIP if that type of payment is specifically approved by HCFA as a part of the demonstration or control system.
- We provided that payment for direct medical education and other inpatient hospital costs excluded from the prospective payment system was to continue to be made biweekly on an interim payment basis.

We issued the August 15, 1986 final rule because evidence indicated that the PIP method had increasingly become a burden for the intermediaries and that it resulted in the expenditures of considerable resources in attempting to identify and correct overpayments and underpayments. We stated that eliminating PIP for all hospitals (that is, those paid on the basis of reasonable costs and those subject to prospective payment) would allow intermediaries to utilize their resources more effectively to better control payments to hospitals and all other providers. Furthermore, we stated that the elimination of PIP would encourage hospitals to submit their bills on a more timely basis since hospitals receiving PIP have less incentive to bill timely than hospitals not receiving PIP.

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509) was enacted. In effect, except for the provision dealing with a special interim payment to prospective payment hospitals experiencing unusually long lengths of stay (discussed below), section 9311 of Public Law 99–509 overrode the August 15, 1986, final rule. Specifically, section 9311(a) of Public Law 99–509 added a new paragraph (e) to section 1815 of the Act that provides for the following——

- Payment must be made available for inpatient hospital services furnished by a prospective payment hospital, including distinct part psychiatric or rehabilitation units, on a PIP basis (rather than on the basis of bills actually submitted) in the following cases:

—The hospital's fiscal intermediary fails to meet the requirements of section 1816(c)(2) of the Act concerning the prompt payment of claims for 3 consecutive months, the hospital requests payment on a PIP basis, and the hospital meets the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986. The hospital can continue to receive PIP payments until its fiscal intermediary meets the prompt payment of claims requirements for 3 consecutive calendar months.

—The hospital has a disproportionate share adjustment percentage (as established in section 1886(d)(5)(F)(iv) of the Act) of at least 5.1 percent as computed for purposes of establishing the average standardized amounts for discharges occurring during Federal fiscal year (FY) 1987 and the hospital requests payment on a PIP basis. Hospitals meeting this criterion can receive PIP only if they were being paid on a PIP basis as of June 30, 1987 and the hospital continues to meet the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986.

—The hospital is located in a rural area, has 100 or fewer beds, and the hospital requests payment on a PIP basis. Again, hospitals meeting this criterion can receive PIP only if they were being paid on a PIP basis as of June 30, 1987, and the hospital continues to meet the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986.

- Payment on a PIP basis must be made available under the standards established in § 405.454(j) (redesignated as § 413.64(h)), as in effect on October 1, 1986, for the following services if the provider qualifies for and elects to receive PIP payment:

—Inpatient hospital services of a hospital excluded from the prospective payment system.

—Inpatient hospital services of a hospital receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c) of the Act, if payment on a PIP basis is an integral part of that reimbursement system.

—Skilled nursing facility services.

—Home health services.

—Hospice care.

- The Secretary may make appropriate accelerated payments to hospitals subject to the prospective payment system that have significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation.

1816(c)(2) of the Act concerning the prompt payment of claims for 3 consecutive months, the hospital requests payment on a PIP basis, and the hospital meets the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986. The hospital can continue to receive PIP payments until its fiscal intermediary meets the prompt payment of claims requirements for 3 consecutive calendar months.

—The hospital has a disproportionate share adjustment percentage (as established in section 1886(d)(5)(F)(iv) of the Act) of at least 5.1 percent as computed for purposes of establishing the average standardized amounts for discharges occurring during Federal fiscal year (FY) 1987 and the hospital requests payment on a PIP basis. Hospitals meeting this criterion can receive PIP only if they were being paid on a PIP basis as of June 30, 1987 and the hospital continues to meet the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986.

—The hospital is located in a rural area, has 100 or fewer beds, and the hospital requests payment on a PIP basis. Again, hospitals meeting this criterion can receive PIP only if they were being paid on a PIP basis as of June 30, 1987, and the hospital continues to meet the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986.

• Payment on a PIP basis must be made available under the standards established in § 405.454(j) (redesignated as § 413.64(h)), as in effect on October 1, 1986, for the following services if the provider qualifies for and elects to receive PIP payment:

—Inpatient hospital services of a hospital excluded from the prospective payment system.

—Inpatient hospital services of a hospital receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c) of the Act, if payment on a PIP basis is an integral part of that reimbursement system.

—Skilled nursing facility services.

—Home health services.

—Hospice care.

• The Secretary may make appropriate accelerated payments to hospitals subject to the prospective payment system that have significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation.

On January 21, 1988, we published a final rule with comment period (53 FR 1621) that implemented section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509, enacted October 21, 1986). In that final rule, in addition to implementing section 9311(a) of Public Law 99–509, we deleted the provision at § 413.64(k)(5) permitting a special interim payment for long lengths of stay cases.

This provision had been set forth in our August 15, 1986, final rule (51 FR 29386), before the enactment of Public Law 99–509. As explained in detail in our January 21, 1988, final rule (53 FR 1625), the amendments made by section 9311(a) of Public Law 99–509 did not include any provision for interim payments to prospective payment hospitals that are not on PIP, and we believed that, in light of the changes it was making to PIP, Congress did not believe such a provision was necessary. Therefore, we deleted this provision from the regulations. However, as a result of comments received objecting to the elimination of this provision, we reconsidered our position and subsequently revised our policy in regulations at § 412.116(d) in the final rule published on September 1, 1989 (54 FR 36495). (This issue is also discussed below in response to public comments.)

II. Discussion of Comments

In response to the January 21, 1988 final rule with comment period (53 FR 1621), we received 31 comments from or on behalf of hospitals and their associations. The following is a summary of the comments and our responses to them.

A. Capital-Related Costs of Inpatient Hospital Services

As part of the January 21, 1988 final rule, which dealt primarily with PIP, we made an unrelated change to the regulations. Section 413.64(k)(6), dealing with reductions in capital payments under section 1886(g)(3) of the Act, was revised and redesignated as a new § 412.113(a)(2). As part of that change, we made a technical change in § 412.113(a)(1) by removing the language, "For cost reporting periods beginning before October 1, 1986," to reflect the fact that hospitals subject to the prospective payment system continued to be paid in part on a hospital-specific basis during the transition period to fully prospective payment, which was in effect for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1987.

Comment: One commenter requested that the date be changed to October 1, 1987 and that the language be reinserted in § 412.113(a)(1). The request was made to reflect the fact that for cost reporting periods beginning on or after October 1, 1987, with the exception of sole community hospitals (see § 412.92), prospectively determined payments based on national and regional standardized rates do not depend upon an individual hospital's cost experience. Therefore, according to the commenter, the capital consistency rule (discussed fully in the final prospective payment system rule published September 30, 1988 (53 FR 38517)) addressed in § 412.113(a)(1) would not be applicable for periods beginning on or after October 1, 1987. The commenter also believed that the capital consistency rule should not be applicable to sole community hospitals after that date, notwithstanding that those hospitals continue to receive a prospective payment, part of which is based on their own cost experience.

Response: As we explained in our September 30, 1988, final rule (53 FR 38517), the consistency rule required that the classification of capital-related and direct medical education costs remain constant for each hospital during the prospective payment transition period. This rule was necessary since a portion of the prospectively determined payment during the transition to fully Federal standardized rates was based upon a hospital's own cost experience (that is, the hospital-specific rate).

In that final rule, we noted that the consistency rule, for capital-related costs and for direct medical education costs, was no longer necessary due to the expiration of the prospective payment transition period. Accordingly, we removed the language from the regulations text concerning the consistency rule. With regard to the commenter's concern regarding sole community hospitals, we agree that the capital consistency rule is no longer applicable for these hospitals.

Comment: A commenter noted that the capital reduction percentages in § 412.113(a)(2) have been superseded by section 4006 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203).

Response: Section 4006 of OBRA 1987 amended section 1886(g)(3)(A) of the Act and provided that the inpatient capital reduction be increased to 12 percent for FY 1988, effective for discharges or portions of cost reporting periods occurring on or after January 1, 1988. For discharges or portions of cost reporting periods occurring in FY 1989, the reduction was 15 percent. Section

6002 of OBRA 1989 amended section 1886(g)(3)(A) of the Act and mandated a reduction of 15 percent of payments for capital-related costs of hospital inpatient services identified under section 1886(d) attributable to portions of cost reporting periods or discharges occurring during the period beginning January 1, 1990 and ending September 30, 1990. Section 4001(a) of OBRA 1990 extended the 15 percent reduction applicable to prospective payment hospitals to September 30, 1991. These provisions were incorporated into regulations at § 412.113 on August 30, 1991 (56 FR 43448).

In addition to those changes, additional changes to § 412.113 were necessary to conform the regulations with the statute. Specifically, we revised § 412.113(a)(2) (B), (C), and (D) to conform the dates and the percentages specified in these sections to the law.

B. Special Interim Payment for Unusually Long Lengths of Stay

Comment: Twenty-nine commenters objected to our elimination of the provision for special interim payments for unusually long lengths of stay. The commenters generally stated that the fact that the legislation did not address this provision indicated Congressional intent that it be retained. They noted that the legislation included a specific provision permitting the Secretary to make appropriate accelerated payments to a hospital subject to the prospective payment system that has significant cash-flow problems resulting from the operation of its intermediary or from unusual circumstances of the hospital's operation. They asserted that this provision was intended to address a variety of unusual circumstances that cause cash-flow problems, including situations in which a hospital experiences cash-flow problems due to long-stay patients.

Many commenters said that we had originally provided for the special interim payments in order to alleviate the cash-flow problems that certain hospitals might encounter after they no longer received PIP. The commenters indicated that a cash-flow shortage continues to be a problem for a hospital that cannot receive any Medicare payment for a patient who has been in the hospital for an unusually long stay. Some commenters stated that the problem was more acute for small hospitals or for rural hospitals, but all believed that not receiving an interim payment for a long-stay patient represented a hardship to a hospital.

Some pointed out that an interim payment is particularly important for long-stay patients because, generally, the most intensive resource consumption occurs early in a patient's stay. Others commented that the problem is exacerbated in areas where there is a shortage of Medicare-participating skilled nursing facility (SNF) beds, since such shortages tend to increase the number of long-stay patients remaining in the hospitals awaiting SNF placement.

One commenter recommended that the threshold for interim billing be based on the outlier threshold for the DRG assigned to the case and that the hospital should be given an opportunity to submit an interim bill for long-stay patients every 30 days after the original interim bill.

Response: Due to the importance of this issue to the hospital industry, we have already responded to these comments and addressed these issues in a final rule published on September 1, 1989 (54 FR 36495). As we explained in detail in that document, based on our review of these comments, we reconsidered our position on this issue and revised § 412.116(d) accordingly.

Prospective payment system hospitals that do not receive PIP may request special interim payments after a patient has been in the hospital at least 60 covered days and thereafter at intervals of at least 60 days. The initial special interim payment will be made at the rate for the appropriate DRG based on the diagnosis, procedures and other pertinent information reported on the initial interim bill.

The payment for the initial interim bill will be determined as if the bill were the final bill. That is, the intermediary will pay the hospital based on the DRG determined for the bill plus any outlier payments as of the date of the last day for which services have been billed. Subsequent interim bills, including the final bill, will be processed as adjustment bills, with payment determined as if the bill were the final bill. Generally, the adjusted payment from subsequent bills will result from outlier payments accruing since the previous bill. These special interim payments were effective September 1, 1989 for all qualifying current and subsequent inpatient admissions.

C. Method of Payment

Comment: One commenter asked that we reconsider our position and revoke the regulation that eliminates PIP for many hospitals. The commenter pointed out that as hospitals deplete their working capital, operating cash becomes very critical, and the new regulation will create additional cash-flow problems for the hospital industry.

Response: We believe that the regulation properly implements the statutory provisions, and, therefore, should continue in effect. However, as discussed above, we have reconsidered our elimination of the provision for an interim payment after a Medicare beneficiary's length of stay exceeds 60 days. The special interim payment provision at § 412.116(d) should assist prospective payment hospitals in maintaining cash flow in cases of long-stay Medicare patients.

D. Periodic Interim Payments

Comment: One commenter stated that certain disproportionate share hospitals and small rural hospitals that could elect PIP under the provisions in § 412.116 (b)(1)(ii) or (b)(1)(iii) may not have been given clear instructions in sufficient time to make a proper request for PIP prior to July 1, 1987, as required in §§ 412.116 (b)(1)(ii) and (b)(1)(iii). Accordingly, the commenter requested that HCFA provide a 60-day window of opportunity to eligible disproportionate share and small rural hospitals to request PIP.

Response: We believe that eligible disproportionate share and small rural hospitals had adequate notice to request PIP prior to July 1, 1987. In May of 1987, we issued Program Memorandum A–87–4 that advised intermediaries to notify the hospitals to request PIP. (Subsequent instructions were included in the Intermediary Manual Part 3, section 3600.1.) Intermediaries, accordingly, notified their providers. Since we received no other comments indicating any problems in this regard, we do not believe that an additional extension was necessary for these hospitals to request PIP.

E. Payment to Providers of Service

Comment: One commenter asked whether a small rural hospital that qualifies for prospective payment as an urban hospital under section 1886(d)(8)(B) of the Act, as added by section 4005(a) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), would become ineligible to receive PIP when section 4005(a) went into effect.

Response: Section 1886(d)(8)(B) of the Act provides that if certain conditions are met, hospitals located in a rural county adjacent to one or more urban areas are treated, for purposes of determining prospective payment amounts, as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute. This provision relates solely to the amount of prospective payment a hospital will receive based on its geographic classification, and does not change the status of small rural hospitals that have qualified to receive PIP under section 1815(e) of the Act.

F. Payment to Hospitals Subject to the Prospective Payment System

Comment: In the January 21, 1988 final rule, we stated that when an intermediary that had not met the prompt payment standard has again met that standard for 3 consecutive calendar months, the hospitals will receive notice (concurrent with their removal from PIP) that they will no longer receive PIP, effective with discharges occurring the first day of the month following the third consecutive month in which the requirements were met (53 FR 1624). One commenter asserted that this policy did not provide sufficient time for intermediaries to change the payment method from PIP to claim-by-claim. The commenter also pointed out that providers would have no advance notice of PIP removal. Another commenter suggested that removal should be no sooner than 2 weeks after notification.

Response: We agree that providers need advance notification of removal from PIP, and intermediaries need additional time to make changes in their payment method. Accordingly, intermediaries now will notify hospitals as follows:

If an intermediary that has consistently failed (that is, for 3 consecutive months) to meet the prompt payment requirements subsequently meets the requirements for 2 consecutive calendar months, it must so notify its hospitals within 7 working days after the end of the 2nd month. Within 7 working days after the end of the following month, the intermediary must notify the hospitals whether it met or failed the prompt payment requirements for that month.

- If the intermediary failed to meet the requirements, its hospitals may continue to receive PIP, and the intermediary is not required to further notify the hospitals until the intermediary again meets the prompt payment requirements for 2 consecutive calendar months.
- If the intermediary met the requirements (that is, complied with the prompt payment requirements for 3 consecutive calendar months), the intermediary will notify its hospitals that they will no longer receive PIP effective with discharges occurring on the first day of the following month, that is, 30 days after the intermediary meets the requirements. The intermediary is not required to further notify the hospitals regarding its timeliness in paying claims until it again fails to meet

on its geographic classification, and does not change the status of small rural hospitals that have qualified to receive PIP under section 1815(e) of the Act.

F. Payment to Hospitals Subject to the Prospective Payment System

Comment: In the January 21, 1988 final rule, we stated that when an intermediary that had not met the prompt payment standard has again met that standard for 3 consecutive calendar months, the hospitals will receive notice (concurrent with their removal from PIP) that they will no longer receive PIP, effective with discharges occurring the first day of the month following the third consecutive month in which the requirements were met (53 FR 1624). One commenter asserted that this policy did not provide sufficient time for intermediaries to change the payment method from PIP to claim-by-claim. The commenter also pointed out that providers would have no advance notice of PIP removal. Another commenter suggested that removal should be no sooner than 2 weeks after notification.

Response: We agree that providers need advance notification of removal from PIP, and intermediaries need additional time to make changes in their payment method. Accordingly, intermediaries now will notify hospitals as follows:

If an intermediary that has consistently failed (that is, for 3 consecutive months) to meet the prompt payment requirements subsequently meets the requirements for 2 consecutive calendar months, it must so notify its hospitals within 7 working days after the end of the 2nd month. Within 7 working days after the end of the following month, the intermediary must notify the hospitals whether it met or failed the prompt payment requirements for that month.

- If the intermediary failed to meet the requirements, its hospitals may continue to receive PIP, and the intermediary is not required to further notify the hospitals until the intermediary again meets the prompt payment requirements for 2 consecutive calendar months.
- If the intermediary met the requirements (that is, complied with the prompt payment requirements for 3 consecutive calendar months), the intermediary will notify its hospitals that they will no longer receive PIP effective with discharges occurring on the first day of the following month, that is, 30 days after the intermediary meets the requirements. The intermediary is not required to further notify the hospitals regarding its timeliness in paying claims until it again fails to meet the prompt payment requirements for 2 consecutive calendar months.

If an intermediary has consistently met the requirements but subsequently fails to meet them for 2 consecutive calendar months, it must so notify the hospitals within 7 working days after the end of the 2nd month. Within 7 working days after the end of the following month, the intermediary must notify the hospitals whether it met or failed to meet the requirements for that month.

- If the intermediary met the requirements, the hospitals continue not to receive PIP, and the intermediary is not required to further notify the hospitals until the intermediary again fails to meet the requirements for 2 consecutive calendar months.
- If the intermediary failed to meet the requirements (that is, did not comply with prompt payment requirements for 3 consecutive calendar months), the intermediary will notify the hospitals that they may request to receive PIP.

If a hospital's request is received by the intermediary by the 15th day of the month (or the first regular business day after the 15th day of the month), the intermediary will initiate PIP for a qualifying hospital effective with discharges occurring on or after the first day of the following month, that is, 30 days after the intermediary failed to meet the requirements for 3 consecutive calendar months. If the hospital's request is not received by the intermediary by the 15th day of the month (or the first regular business day after the 15th day of the month), the intermediary will process the request for PIP under its usual procedures for PIP requests. The intermediary is not required to further notify its hospitals regarding its timeliness in paying claims until it meets the prompt payment requirements for 2 consecutive calendar months.

G. Limitation on Reelection

In addition to the changes discussed above, we are making an additional revision to the PIP regulations at § 412.116(b)(4)(iii) concerning the limitation on the reelection of PIP. Although we received no public comments on this issue, we believe that the change is necessary to remedy a flaw in the regulations set forth in our January 21, 1988, final rule, and that it is clearly beneficial to hospitals. Section 412.116(b)(4)(iii) provides that if a disproportionate share hospital or a small rural hospital receiving PIP under the criteria set forth in § 412.116 (b)(1)(ii) or (b)(1)(iii), respectively, is removed from PIP, either by its own request or by the intermediary, it may reelect to receive PIP only under the criteria set forth in § 412.116(b)(1)(i). (That is, the availability of PIP to the hospital would be subject to the intermediary's prompt payment of claims.) We believe that if a hospital requests to be removed from PIP, § 412.116(b)(4)(iii) should continue to apply. However, § 412.116(b)(4)(iii) may, in some cases, discourage intermediaries from properly removing hospitals that no longer qualify since such hospitals could no longer receive PIP except under the provisions of § 412.116(b)(1)(i).

Accordingly, we are revising § 412.116(b)(4)(iii) to provide that if an intermediary removes a qualifying disproportionate share hospital or a small rural hospital from PIP because the hospital no longer meets the requirements for PIP under § 413.64(h), a hospital qualifying under § 412.116 (b)(1)(ii) or (b)(1)(iii) may subsequently reelect to receive PIP, subject to the requirements of § 413.64(h). This reelection also applies in situations, with regard to a hospital that has changed ownership or undergone a change in management, in which the intermediary removes the hospital from PIP temporarily to evaluate whether or not the hospital, under its new ownership or new management, meets the requirements of § 413.64(h).

H. Editorial Comment

Comment: One commenter pointed out two errors in the preamble of the January 21, 1988 final rule. Specifically, the commenter noted that on page 1621, column 3, paragraph 3, in the sentence reading "These interim payments are determined by estimating the reimbursable amount for the year based on the previous year's experience and on information for the current year and dividing that amount in to 29 equal payments made biweekly.", "29" should be changed to "26". Also, in the same paragraph, the last sentence reading "These payments will continue to be made on a biweekly basis" should have read "These payments will continue to be made 2 weeks after the end of a biweekly period of service."

Response: The commenter correctly suggested that the preamble read incorrectly. However, the regulations at § 412.116(c) do read correctly, and thus we did not believe it was necessary to publish a correction notice. We note that payment for the indirect teaching adjustment and capital-related costs are no longer made on a biweekly basis. As discussed in the September 30, 1988 **Federal Register** (53 FR 38517), payment for the indirect teaching

adjustment is now made on a bill-by-bill basis. In addition, the payment methodology for hospital inpatient capital-related costs for hospitals paid under the prospective payment system has been revised. Under the current methodology, in effect since October 1, 1991, a predetermined amount per discharge is made for Medicare inpatient capital-related costs. However, payments on an interim basis are still made for direct medical education.

III. Changes to the Regulations

This final rule responds to the comments concerning the changes we made in the January 21, 1988, final rule with comment period (53 FR 1621). As discussed in section II above, we are making, or have made, the following changes to the regulations.

- As a result of comments received objecting to the elimination of the provision for special interim payments for unusually long lengths of stay, we reconsidered our position and revised our policy. Due to the importance of this issue to the hospital industry, we have already published this policy in regulations at § 412.116(d) in the final rule published on September 1, 1989 (54 FR 36495).
- As discussed above, we are revising § 412.116(b)(4)(iii) to provide that if a hospital that is receiving periodic interim payments under the criterion set forth in §§ 412.116 (b)(1)(ii) or (b)(1)(iii) is removed from that method of payment at its own request, it may reelect to receive periodic interim payments only under the criterion set forth in paragraph § 412.116(b)(1)(i). However, if the hospital is removed from that method of payment by its intermediary because it no longer meets the requirements for PIP under § 413.64(h), a hospital qualifying under the provisions of §§ 412.116 (b)(1)(ii) or (b)(1)(iii) may later reelect to receive periodic interim payments subject to the requirements in § 413.64(h).
- As a result of section 9311(a) of Public Law 99–509, PIP was made available for prospective payment hospitals, including distinct part psychiatric or rehabilitation units, if—(1) The intermediary fails to meet the prompt payment requirements for three consecutive months, (2) the hospital has a disproportionate share adjustment percentage of at least 5.1 percent, or (3) the hospital is a rural hospital that has 100 or fewer beds. These provisions were discussed extensively in the January 21, 1988, final rule with comment period (53 FR 1623), and were at that time incorporated in regulations at § 412.116(b). Section 9311(a) of Public Law 99–509 also allowed hospices to receive PIP. This provision was also addressed in the preamble to the January 21, 1988, final rule with comment period (53 FR 1625), and was at that time incorporated in regulations at § 418.307. However, when we added § 412.116(b) in the January 21, 1988 rule, we did not also specify in § 413.64(h) that PIP was available to distinct part psychiatric and rehabilitation units, and to hospices. To remedy that inadvertent omission, we are now adding § 413.64(h)(2) (v) and (vi) to specify that PIP is available to distinct part psychiatric units and rehabilitation units, and to hospices, respectively. In addition, we are revising § 418.307 by adding the explanation of how payments are made under the PIP method, now located only in § 413.64(h).

IV. Impact Statement

Unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612). For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds.

This final rule confirms and responds to comments on our January 21, 1988 interim final rule. We received no comments on our statement in that rule that the PIP provisions would not have a substantial economic impact, and we are making no significant changes in this final rule.

We have determined, and the Secretary certifies, that this final rule will not have a significant effect on either a substantial number of small entities or on small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV, is amended as follows:

A. Part 412 is amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1820, 1871 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395i–4, 1395hh and 1395ww).

2. In § 412.116, paragraph(b)(4)(iii) is revised to read as follows:

§ 412.116 Method of Payment.

* * * * *

(b) *Periodic interim payments* * * *

* * * * * *

(4) *Termination of periodic interim payments.* * * *

* * * * * *

(iii) *Limitation on reelection.* If a hospital that is receiving periodic interim payments under the criterion set forth in paragraph (b)(1)(ii) or (b)(1)(iii) of this section is removed from that method of payment at its own request, it may reelect to receive periodic interim payments only under the criterion set forth in paragraph (b)(1)(i) of this section. However, if the hospital is removed from that method of payment by its intermediary because it no longer meets the requirements of § 413.64(h) of this chapter, that hospital may subsequently reelect to receive periodic interim payments if it qualifies under the provisions of paragraph (b)(1)(ii) or (b)(1)(iii) of this section, subject to the requirements in § 413.64(h) of this chapter.

* * * * *

B. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100–360 as amended by sec. 608(d)(3) of Pub. L. 100–485 (42 U.S.C. 1395ww (note)); and sec. 101(c) of Pub. L. 101–234 (42 U.S.C. 1395ww (note)).

2. In § 413.64, paragraphs (h) (2), (3), (4), (5), and (6), are redesignated as paragraphs (h) (3), (4), (5), (6), and (7), respectively; a new paragraph (h)(2) is added; paragraphs (h)(1) (i), (ii), (iii), and (iv) are redesignated as paragraphs (h)(2) (i), (ii), (iii), and (iv) respectively; paragraph (h)(1) is revised; and new paragraphs (h)(2) (v) and (vi) are added to read as follows:

§ 413.64 Payments to providers: Specific rules.

* * * * *

(h) *Periodic interim payment method of reimbursement*—(1) *Covered services furnished before July 1, 1987.* In addition to the regular methods of interim payment on individual provider billings for covered services, the periodic interim payment (PIP) method is available for Part A hospital and SNF inpatient services and for both Part A and Part B HHA services.

(2) *Covered services furnished on or after July 1, 1987.* Effective with claims received on or after July 1, 1987, the periodic interim payment (PIP) method is available for the following:

* * * * *

(v) Part A services furnished in hospitals paid under the prospective payment system, including distinct part psychiatric or rehabilitation units, as described in § 412.116(b) of this chapter.

(vi) Services furnished in a hospice as specified in part 418 of this chapter. Payment on a PIP basis is described in § 418.307 of this chapter.

* * * * *

C. Part 418 is amended as follows:

under the provisions of paragraph (b)(1)(ii) or (b)(1)(iii) of this section, subject to the requirements in § 413.64(h) of this chapter.

* * * * *

B. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100–360 as amended by sec. 608(d)(3) of Pub. L. 100–485 (42 U.S.C. 1395ww (note)); and sec. 101(c) of Pub. L. 101–234 (42 U.S.C. 1395ww (note)).

2. In § 413.64, paragraphs (h) (2), (3), (4), (5), and (6), are redesignated as paragraphs (h) (3), (4), (5), (6), and (7), respectively; a new paragraph (h)(2) is added; paragraphs (h)(1) (i), (ii), (iii), and (iv) are redesignated as paragraphs (h)(2) (i), (ii), (iii), and (iv) respectively; paragraph (h)(1) is revised; and new paragraphs (h)(2) (v) and (vi) are added to read as follows:

§ 413.64 Payments to providers: Specific rules.

* * * * *

(h) *Periodic interim payment method of reimbursement*—(1) *Covered services furnished before July 1, 1987.* In addition to the regular methods of interim payment on individual provider billings for covered services, the periodic interim payment (PIP) method is available for Part A hospital and SNF inpatient services and for both Part A and Part B HHA services.

(2) *Covered services furnished on or after July 1, 1987.* Effective with claims received on or after July 1, 1987, the periodic interim payment (PIP) method is available for the following:

* * * * *

(v) Part A services furnished in hospitals paid under the prospective payment system, including distinct part psychiatric or rehabilitation units, as described in § 412.116(b) of this chapter.

(vi) Services furnished in a hospice as specified in part 418 of this chapter. Payment on a PIP basis is described in § 418.307 of this chapter.

* * * * *

C. Part 418 is amended as follows:

PART 418—HOSPICE CARE

1. The authority citation for Part 418 continues to read as follows:

Authority: Secs. 1102, 1812(a)(4), 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), 1816(e)(5), 1861(dd), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395d(a)(4), 1395d(d), 1395e(a)(4), 1395f(a)(7), 1395f(i), 1395h(e)(5), 1395x(dd), and 1395hh); and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

2. Section 418.307 is revised to read as follows:

§ 418.307 Periodic interim payments.

Subject to the provisions of § 413.64(h) of this chapter, a hospice may elect to receive periodic interim payments (PIP) effective with claims received on or after July 1, 1987. Payment is made biweekly under the PIP method unless the hospice requests a longer fixed interval (not to exceed one month) between payments. The biweekly interim payment amount is based on the total estimated Medicare payments for the reporting period (as described in §§ 418.302–418.306). Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(5) of this chapter. Under certain circumstances that are described in § 413.64(g) of this chapter, a hospice that is not receiving PIP may request an accelerated payment.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: March 24, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 16, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–17309 Filed 7–18–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

RIN 1090–AA41

Administrative and Audit Requirements and Cost Principles for Assistance Programs

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This final rule is in response to section 310 of Public Law 103–138 and sections 502 and 503 of Public Law 103–126. Public Law 103–138, the "Department of the Interior and Related Agencies Appropriations Act, 1994," and Public Law 103–126, the "Energy and Water Development Appropriations Act, 1994," extend the Buy American requirements which had been included in the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, to awards of financial assistance under the Department's general appropriation for Fiscal Year 1994, as well as to similar awards by the Bureau of Reclamation. These provisions require that no funds appropriated or transferred pursuant to the Act can be expended by an entity unless the entity agrees that in expending the assistance they will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–10c, popularly known as the "Buy American Act").

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb (Chief, Acquisition and Assistance Division), (202) 208–6431.

SUPPLEMENTARY INFORMATION: On October 5, 1992, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 ("the Act") was signed into law. Section 319 of the Act was entitled "Buy American Requirements." The section applied to funds appropriated or transferred pursuant to the Act for the purchase of any equipment or product that may be authorized to be purchased with financial assistance. The provision expressed the "sense of the Congress" that entities receiving the assistance, purchase only American-made equipment and products.

Section 319(b)(2) required that in providing the financial assistance under the Act, the Secretary shall provide to each recipient of the assistance a notice describing the requirement. No other specific guidance was given regarding the implementation of this requirement.

The Department proposed to revise 43 CFR part 12, by adding subpart E to implement these requirements. No specific guidance was provided by Congress, so the Department decided to base its implementation upon similar rules in the Federal Acquisition Regulation (FAR).

The Department published a notice of proposed rulemaking on August 12, 1993 (58 FR 42918) to implement the requirements included in the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993. However, the final rule was not published before the end of Fiscal Year 1993.

Following the inclusion of the Buy American Requirements in the Department of the Interior and Related Agencies Appropriations Act, 1994 and the Energy and Water Development Appropriations Act, 1994, the Department published a notice reopening the comment period on January 14, 1994 (59 FR 2343).

The Department proposed to continue its plans to revise 43 CFR part 12, by adding subpart E to implement the requirements and to issue a final rule based on the proposed rule published on August 12, 1993.

Only one public comment was received in response to the notice of proposed rulemaking. Although the purpose of reopening the comment period was to allow for the receipt of more comments to be considered prior to publication of the final rule, no additional public comments were received.

Comments on the Proposed Rule

The commenter requested an exemption from the provisions of the "Buy American Act" because application of the provisions would entail unreasonable costs unless documentation of the exempted articles or the applicability of exception criteria was done. In addition, the commenter stated that although these criteria are reasonable, maintaining the additional layer of administration to monitor and document such exceptions would be burdensome and self-defeating for using the Department's funding assistance most effectively.

While we are sympathetic with their dilemma, the Department lacks the authority to grant a blanket exemption to the provisions of the Act.

Several internal comments received were considered and changes were made in the final rule to reflect them. A discussion of these changes follows:

Definitions for *concern, labor surplus area, labor surplus area concern* and *small business* have been added to § 12.705 in response to a comment that without definitions, the terms are subject to more than one interpretation.

Language in subparagraph (e) of § 12.710(e) has been revised and reflects a modified version of FAR coverage.

In subparagraph (d)(4) of § 12.710; subparagraphs (a) and (c) of § 12.715; subparagraph (a) of § 12.720; subparagraphs (b) (3) and (4) of § 12.730; subparagraphs (a) (2) and (3) of § 12.810; and subparagraphs (a) and (b) of § 12.815 the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official now makes the nonavailability determination or has approval authority. This change was made in response to a comment that to require recipients to obtain Departmental approval when not specifically required by statute imposed an unnecessary administrative and paperwork burden.

In § 12.720, the list of excepted articles, materials and supplies has been removed from the rule. A reference to the existing list in FAR § 25.108 (48 CFR 25.108) is included instead.

In § 12.820, the language has been changed to state that violation of the Buy American Act is a cause for debarment and information concerning a failure to comply with the requirements shall be promptly reported, investigated, and referred when appropriate to the Department of the Interior employee responsible for administering the assistance agreement. This change was made in response to a comment that the existing language precluded application of any discretion or judgement in applying debarment remedy in the case of a Buy American Act violation. The commenter also stated that the existing language denied the recipient any opportunity for the due process hearings required by the debarment regulations and denied the recipient any opportunity to lessen the punishment by implementing corrective or remedial actions. The new language describes the review process more comprehensively.

In subparagraph (b) of § 12.725, the word, "grantee" has been added to more clearly specify that the awarding official of the organization shall insert the clause at § 12.730, Buy American Act-Supplies and the word, "in" was inserted before solicitations.

In § 12.825, the word, "grantee" has been added to more clearly specify that the awarding official of the grantee organization shall insert the clause at § 12.830, Buy American Act-Construction Materials.

Several typographical errors have now been corrected. These include the following:

Section 12.110 Policy, has been corrected to read § 12.710.

The reference to § 12.120 in subparagraph (a)(3) in § 12.810 has been corrected to read § 12.720.

Because of the applicability of different appropriation acts and a slight change in the language, the wording in the notice in subparagraph (b) of § 12.710 has been changed to account for the reference to language in Public Law 103–138. A separate notice has been added with subparagraph (c) of § 12.710 to account for the reference to language in Public Law 103–126 and its use only for awards made by the Bureau of Reclamation.

Clarification was requested regarding the use of the term "agency" since in the rule it could be read in some places as referring to the Federal granting agency, but in others it looked like it meant some level in the recipient organization. The change made to use the term, "head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official" adds clarity.

Another commenter asked that clarification be added concerning whether the Buy American Act takes precedence over related State laws (thus requiring equal consideration of all domestic products) or whether States may continue to apply their own restriction, as long as the resultant award is for a domestic product. Our interpretation of 43 CFR part 12, Subpart C, is that States are required to ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. On this basis, the requirements of the Act take precedence over related State laws.

Executive Order 12866, Paperwork Reduction Act, and Regulatory Flexibility Act

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities since it is anticipated that no additional costs will be imposed on a substantial number of small entities as a result of the rule. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Effects

The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

Dated: June 29, 1994.

Ira Michael Heyman,

Acting Assistant Secretary-Policy, Management and Budget.

Title 43, part 12 of the Code of Federal Regulations is amended as set forth below:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 7501; 41 U.S.C. 701 *et seq.*; sec. 310, Pub. L. 103–138, 107 Stat. 1379; sections 502 and 503, Pub. L. 103–126, 107 Stat. 1312; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., p. 215; E.O. 12731, 3 CFR, 1990 Comp., p. 306; OMB Circular A–102; OMB Circular A–110; OMB Circular A–128; and OMB Circular A–133.

2. Part 12 is amended by adding Subpart E to read as set forth below.

Subpart E—Buy American Requirements for Assistance Programs

Buy American Act—Supplies

Sec.

12.700 Scope.
12.705 Definitions.
12.710 Policy.
12.715 Evaluating offers.
12.720 Excepted articles, materials, and supplies.
12.725 Solicitation provisions and contract clause.
12.730 Buy American Act—Supplies.

Buy American Act—Construction Materials

12.800 Scope.
12.805 Definitions.
12.810 Policy.
12.815 Evaluating offers.
12.820 Violations.
12.825 Solicitation provision and contract clause.
12.830 Buy American Act—Construction materials.

Subpart E—Buy American Requirements for Assistance Programs

Buy American Act—Supplies

§ 12.700 Scope.

This subpart implements section 310 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1994 (Public Law 103–138, 107 Stat. 1312) and section 502 of the Energy and Water Development Appropriations Act, 1994 (Public Law 103–126, 107 Stat. 1379). This subpart requires that no funds appropriated or transferred pursuant to the respective Act may be expended by an entity unless the entity agrees that in

Dated: June 29, 1994.

Ira Michael Heyman,

Acting Assistant Secretary-Policy, Management and Budget.

Title 43, part 12 of the Code of Federal Regulations is amended as set forth below:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 7501; 41 U.S.C. 701 *et seq.*; sec. 310, Pub. L. 103–138, 107 Stat. 1379; sections 502 and 503, Pub. L. 103–126, 107 Stat. 1312; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., p. 215; E.O. 12731, 3 CFR, 1990 Comp., p. 306; OMB Circular A–102; OMB Circular A–110; OMB Circular A–128; and OMB Circular A–133.

2. Part 12 is amended by adding Subpart E to read as set forth below.

Subpart E—Buy American Requirements for Assistance Programs

Buy American Act—Supplies

Sec.

12.700 Scope.
12.705 Definitions.
12.710 Policy.
12.715 Evaluating offers.
12.720 Excepted articles, materials, and supplies.
12.725 Solicitation provisions and contract clause.
12.730 Buy American Act—Supplies.

Buy American Act—Construction Materials

12.800 Scope.
12.805 Definitions.
12.810 Policy.
12.815 Evaluating offers.
12.820 Violations.
12.825 Solicitation provision and contract clause.
12.830 Buy American Act—Construction materials.

Subpart E—Buy American Requirements for Assistance Programs

Buy American Act—Supplies

§ 12.700 Scope.

This subpart implements section 310 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1994 (Public Law 103–138, 107 Stat. 1312) and section 502 of the Energy and Water Development Appropriations Act, 1994 (Public Law 103–126, 107 Stat. 1379). This subpart requires that no funds appropriated or transferred pursuant to the respective Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–10c, popularly known as the "Buy American Act"). It applies to procurement contracts under grants and cooperative agreements which provide for the purchase of equipment and products. Section 502 of Public Law 103–126, 107 Stat. 1379, only applies to awards made by the Bureau of Reclamation.

§ 12.705 Definitions.

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into the end products.

Concern, as used in this subpart, means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, to an individual, partnership, corporation, joint venture, association, or cooperative.

Domestic end product, as used in this subpart, means (a) an unmanufactured end product mined or produced in the United States; or (b) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining if an end product is domestic, only the end product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the end product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with § 12.710(c) (3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above $25,000 in value, components of Canadian origin are treated as domestic.

Domestic offer, as used in this subpart, means an offered price for a domestic end product, including transportation to destination.

End product, as used in this subpart, means those articles, materials, and supplies to be acquired for public use under the grant, cooperative agreement, or procurement contract awarded under the grant or cooperative agreement.

Foreign end product, as used in this subpart, means an end product other than a domestic end product.

Foreign offer, as used in this subpart, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).

Instrumentality, as used in this subpart, does not include an agency or division of the government of a country.

Labor surplus area, as used in this subpart, means a geographical area identified by the Department of Labor in accordance with 20 CFR part 654, subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

Labor surplus area concern, as used in this subpart, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

United States, as used in this subpart, means the states thereof, the District of Columbia, and the territories and possessions of the United States.

§ 12.710 Policy.

(a) In the case of any equipment or product that may be authorized to be purchased with financial assistance provided under Public Law 103–138, it is the sense of Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(b) In awarding financial assistance under Public Law 103–138, bureaus and offices excluding the Bureau of Reclamation shall provide to each recipient of the assistance a notice providing the statement in the following format:

Notice

Pursuant to Sec. 310 of the Department of the Interior and Related Agencies Appropriations Act, 1994, Public Law 103–138, 107 Stat. 1312, please be advised of the following:

In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(c) In awarding financial assistance under Public Law 103–126, the Bureau

of Reclamation shall provide to each recipient of the assistance a notice providing the statement in the following format:

Notice

Pursuant to Sec. 503 of the Energy and Water Development Appropriations Act, 1994, Public Law 103–126, please be advised of the following:

In the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this Act, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

(d) The Buy American Act requires that only domestic end products be acquired for public use, except articles; materials, and supplies—

(1) For use outside the United States;

(2) For which the cost would be unreasonable, as determined in accordance with § 12.715;

(3) For which the agency head determines that domestic preference would be inconsistent with the public interest; or

(4) That are not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities, of a satisfactory quality (see § 12.720).

(e) The grantee's contracting officer may make a nonavailability determination under § 12.710(d)(4) for a procurement contract awarded under the grant or cooperative agreement if—

(1) The procurement action was conducted by full and open competition;

(2) The procurement action was publicly advertised; and

(3) No offer for a domestic end product was received; or

(f) The head of the grantee's contracting activity or designee may make a nonavailability determination under § 12.710(d)(4) for any circumstance other than specified in paragraph (e) of this section.

§ 12.715 Evaluating offers.

(a) Unless the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see § 12.705), inclusive of duty, by—

(1) More than 6 percent, if the domestic offer is from a large business that is not a labor surplus area concern; or

(2) More than 12 percent, if the domestic offer is from a small business concern or any labor surplus area concern.

(b) The evaluation in paragraph (a) of this section shall be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation.

(c) If an award of more than $250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official shall decide whether award to the domestic concern would involve unreasonable cost.

§ 12.720 Excepted articles, materials, and supplies.

(a) As indicated in the Federal Acquisition Regulation (FAR), one or more agencies have determined that the articles, materials, and supplies on the list referred to in paragraph (b) of this section are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. This referenced list in paragraph (b) of this section is furnished for information only; an article, material or supply listed therein may be treated as domestic only when the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official has made a determination that it is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.

(b) Refer to the current list of excepted articles, materials, and supplies in FAR 25.108 (48 CFR 25.108).

§ 12.725 Solicitation provisions and contract clause.

(a) When quotations are obtained orally, vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual basis (see § 12.720), shall be acceptable, unless the price for an offered domestic end product is unreasonable (see § 12.715).

(b) The grantee awarding officer shall insert the clause at § 12.730, Buy American Act—Supplies, in solicitations for procurement contracts awarded under the grant or cooperative agreement for the purchase of supplies, or for services involving the furnishing of supplies, for use within the United States.

§ 12.730 Buy America Act—Supplies

As prescribed in § 12.725, insert the following clause:

Buy American Act—Supplies

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Domestic end product, as used in this clause, means an unmanufactured end product mined or produced in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in paragraphs (b)(2) or (3) of this clause shall be treated as domestic.

End products, as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The contractor shall deliver only domestic end products, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines that domestic preference would be inconsistent with the public interest; or

(4) For which the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines the cost to be unreasonable (see § 12.715).

(End of clause)

Buy American Act—Construction Materials

§ 12.800 Scope.

This subpart implements the Buy American Act (41 U.S.C. 10). It applies to procurement contracts awarded under a grant or cooperative agreement for the construction, alteration, or repair of any public building or public work in the United States.

§ 12.805 Definitions.

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into construction materials.

Construction, as used in this subpart, means construction, alteration, or repair of any public building or public work in the United States.

Construction materials, as used in this subpart, means an article, material, and supply brought to the construction site for incorporation into the building or work.

Construction material also includes an item brought to the site pre-assembled from articles, materials, and supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material, as used in this section, means: (a) An unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining whether a construction material is domestic, only the construction material and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with § 12.810(a)(3) are treated as domestic.

Foreign construction material, as used in this section, means as construction material other than a domestic construction material.

United States (see § 12.705).

§ 412.810 Policy.

(a) The Buy American Act requires that only domestic construction materials be used in construction in the United States, except when—

(1) The cost would be unreasonable as determined in accordance with § 12.815;

(2) The head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines that use of a particular domestic construction material would be impracticable; or

(3) The head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (see § 12.720).

(b) When it is determined for any reasons stated in this section that certain foreign construction materials

assembled from articles, materials, and supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material, as used in this section, means: (a) An unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining whether a construction material is domestic, only the construction material and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with § 12.810(a)(3) are treated as domestic.

Foreign construction material, as used in this section, means as construction material other than a domestic construction material.

United States (see § 12.705).

§ 412.810 Policy.

(a) The Buy American Act requires that only domestic construction materials be used in construction in the United States, except when—

(1) The cost would be unreasonable as determined in accordance with § 12.815;

(2) The head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines that use of a particular domestic construction material would be impracticable; or

(3) The head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (see § 12.720).

(b) When it is determined for any reasons stated in this section that certain foreign construction materials may be used, the excepted materials shall be listed in the agreement. Findings justifying the exception shall be available for public inspection.

§ 12.815 Evaluating offers.

(a) The restrictions of the Buy American Act do not apply when the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines that using a particular domestic construction material would unreasonably increase the cost or would be impracticable.

(b) When proposed awards are submitted to the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials.

§ 12.820 Violations.

Violation of the Buy American Act in the performance of a procurement construction contract under a grant or cooperative agreement is a cause for debarment. Information concerning a failure to comply with the clause at § 12.830, Buy American Act—Construction Materials, shall be promptly reported, investigated, and referred, when appropriate to the appropriate U.S. Department of the Interior employee responsible for administering the grant or cooperative agreement. (For debarment procedures, see subpart D of this part).

§ 12.825 Solicitation provision and contract clause.

The grantee awarding official shall insert the clause at § 12.830, Buy American Act—Construction Materials, in solicitations for procurement contracts awarded under a grant or cooperative agreement for construction inside the United States.

§ 12.830 Buy American Act—Construction materials.

As prescribed in § 12.825, insert the following clause in solicitations for procurement contracts awarded under a grant or cooperative agreement for construction inside the United States:

Buy American Act—Construction Materials

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

Components, used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

Construction material, as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material, as used in this clause, means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to § 12.810(a)(3) of 43 CFR part 12, subpart E shall be treated as domestic.

(b) The contractor agrees that only domestic construction material will be used by the contractor, subcontractors, materialmen, and suppliers in the performance of this agreement, except for foreign construction materials, if any, listed in this agreement.

(End of clause)

[FR Doc. 94–17359 Filed 7–18–94; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5b

RIN: 0925–AD31

Privacy Act; Exempt System

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is exempting a proposed system of records, 09–37–0021, "Public Health Service Records Related to Investigations of Scientific Misconduct, HHS/OASH/ORI," from certain requirements of the Privacy Act to protect records compiled during investigations of scientific misconduct and other related decision records leading to the investigation and to protect the identity of confidential sources in such investigations.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Bullman, J.D. (301) 443–5300.

SUPPLEMENTARY INFORMATION: In 1989, the Public Health Service (PHS) established two offices, the Office of Scientific Integrity Review (OSIR) and the Office of Scientific Integrity (OSI), to address matters relating to scientific misconduct in the course of research funded by the Public Health Service (54 FR 11080, March 16, 1989). The OSIR and OSI were abolished recently and their functions transferred to the Office of Research Integrity (ORI) (57 FR 24262–3, June 8, 1992).

The records in the ORI contain information obtained prior to, during, and following investigations of scientific misconduct. The records are located in the ORI, in the PHS Agency Misconduct Program Officers' files and in PHS Agency senior intramural research managers' offices. The system also contains records that were transferred to ORI from the other offices which had primary responsibility for misconduct functions prior to ORI's establishment. The PHS is preparing to organize and operate these records as a "system of records" as defined by the Privacy Act. This system will be published so that the system becomes final on or after the date this rule becomes final.

Section 552a(k)(2) of the Privacy Act provides that an agency head may exempt a system of records from certain provisions of the Act, if the system of records contains investigatory material compiled for law enforcement purposes. If the records result in a denial of any right, privilege, or benefit to an individual, that individual would be entitled by Federal law to access the file, except for that information which would reveal a confidential source who was provided information under an express promise of confidentiality. Further, section 552a(k)(5) permits an agency to exempt a system of records which is comprised of investigatory material for use in determining suitability, eligibility, or qualifications for Federal civilian employment or financial assistance, but only to the extent that the exemption is required to prevent revealing a confidential source.

On June 12, 1992, the Secretary published a proposed rule in the **Federal Register** to exempt the ORI-related system of records from certain provisions of the Privacy Act (57 FR 25005). The comment period was open through July 13, 1992. Three responses were received that addressed the exemptions. The comments were from one institutional representative and two representatives of professional associations. PHS has also considered comments received from members of the PHS Advisory Committee on Scientific Integrity.

In general, these comments opposed withholding from the respondent the identity of individuals who provide information on allegations of misconduct under an express promise of confidentiality pursuant to exemptions (k)(5) and (k)(2). The comments indicated that the accused had a right to know the identity and source of the accusations and that this right outweighed the need to protect the identity of the individuals providing such information. In addition, one of the commenters believed that the subject of an investigation should have access to all the records in the file prior to a determination of misconduct.

After considering the comments, PHS believes that the exemptions are necessary to carry out its responsibilities effectively. It is essential to the credibility and effectiveness of the ORI that ORI be able to maintain the confidentiality of individuals providing information pertinent to scientific misconduct cases. In certain instances, sources of information necessary for a thorough investigation may be reluctant to provide sensitive information unless they can be assured that their identities will not be revealed. In addition, the exemptions are necessary to prevent premature disclosure of records which may impede the investigation. In practice, the respondent during the course of the investigation has an opportunity to be interviewed by ORI on matters related to the alleged or apparent incidents of research misconduct. The interviews are transcribed and a copy provided to the respondent. In addition, the respondent may have (1) Reasonable access to copies of any research data under review and (2) an opportunity to submit information and evidence and obtain a copy of the draft investigative report to comment on.

Other Federal agencies that conduct investigations into violations of law or regulations have established systems that are exempt from the access, amendment and certain other provisions permitted by the exemption provisions of the Privacy Act. PHS believes that the (k)(2) and (k)(5) exemptions are essential to assure that the investigative files will not be disclosed inappropriately. Except for information that would reveal the identity of a confidential source, the exemptions will not prohibit a respondent from having a reasonable opportunity of obtaining access to his or her file in those cases in which a finding of scientific misconduct has become final and an administrative action has been imposed.

There is no substantive difference between the proposed rule and the final rule. Accordingly, the Department is exempting this system under paragraphs (k)(2) and (k)(5) of the Privacy Act from the notification, access, correction, and amendment provisions of the Privacy Act (paragraphs (c)(3), (d), (e)(4) (G) and (H), and (f)). However, consideration will be given on a case-by-case basis to requests for access, notification, and corrections which are addressed to the system manager.

Impact Analyses

The Department has determined that the amendment to exempt a system of records from certain requirements of the Privacy Act is not a major rule within the meaning of Executive Order 12291 and it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The rule affects only a small number of research grants funded by the PHS as compared to the total number awarded annually. Finally, this rule does not impose any new information collection requirement under the Paperwork Reduction Act.

List of Subjects in 45 CFR Part 5b

Privacy.

For the reasons set out in the preamble, title 45, part 5b is amended as set forth below:

Dated: June 30, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: July 5, 1994.

Donna E. Shalala,

Secretary, Health and Human Services.

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b is unchanged and reads as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. In part 5b, § 5b.11 is amended by adding paragraph (b)(2)(vii) as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(vii) Pursuant to subsections (k)(2) and (k)(5) of the Act:

Public Health Service Records Related to Investigations of Scientific Misconduct, HHS/OASH/ORI.

[FR Doc. 94–17482 Filed 7–18–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AB22

Humane and Healthful Transport of Wild Mammals and Birds to the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service issues a technical amendment to regulations published on June 17, 1992, pertaining to the humane and healthful transport of wild mammals and birds to the United States. This technical amendment updates the edition of the Live Animals Regulations (LAR) published by the International Air Transport Association (IATA), that is incorporated by reference. This action to incorporate by reference the 20th edition of the International Air Transport Association Live Animals Regulations is for the convenience of the public and in order to facilitate consistency and enforceability.

EFFECTIVE DATE: This final rule is effective on July 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 432, Arlington, VA 22203, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: On June 17, 1992, the U.S. Fish and Wildlife Service (Service) published a final rule (57 FR 27094) amending regulations pertaining to the humane and healthful transport of wild mammals and birds to the United States. That rule became effective September 15, 1992. That rule, 50 CFR part 14, Subpart J, incorporates by reference the 18th edition of the LAR of the IATA, such that all primary enclosures used to transport live wild mammals or birds to the United States are required to comply with the Container Requirements of the 18th LAR. Since the publication of the final rule, IATA has published the 20th edition of the LAR, effective October 1, 1993. The 20th LAR contains no major substantive differences from the 18th LAR, but does clarify some of the Container Requirements. When the public orders the LAR from IATA, they can only obtain the 20th edition. If the public complies with the 20th LAR, they will satisfy all of the requirements of the final rule for the Humane and Healthful Transport of Wild Mammals and Birds (50 CFR Part 14). This final

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AB22

Humane and Healthful Transport of Wild Mammals and Birds to the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service issues a technical amendment to regulations published on June 17, 1992, pertaining to the humane and healthful transport of wild mammals and birds to the United States. This technical amendment updates the edition of the Live Animals Regulations (LAR) published by the International Air Transport Association (IATA), that is incorporated by reference. This action to incorporate by reference the 20th edition of the International Air Transport Association Live Animals Regulations is for the convenience of the public and in order to facilitate consistency and enforceability.

EFFECTIVE DATE: This final rule is effective on July 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 432, Arlington, VA 22203, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: On June 17, 1992, the U.S. Fish and Wildlife Service (Service) published a final rule (57 FR 27094) amending regulations pertaining to the humane and healthful transport of wild mammals and birds to the United States. That rule became effective September 15, 1992. That rule, 50 CFR part 14, Subpart J, incorporates by reference the 18th edition of the LAR of the IATA, such that all primary enclosures used to transport live wild mammals or birds to the United States are required to comply with the Container Requirements of the 18th LAR. Since the publication of the final rule, IATA has published the 20th edition of the LAR, effective October 1, 1993. The 20th LAR contains no major substantive differences from the 18th LAR, but does clarify some of the Container Requirements. When the public orders the LAR from IATA, they can only obtain the 20th edition. If the public complies with the 20th LAR, they will satisfy all of the requirements of the final rule for the Humane and Healthful Transport of Wild Mammals and Birds (50 CFR Part 14). This final rule to incorporate by reference the 20th edition of the LAR is therefore for the convenience of the public and in order to facilitate consistency and enforceability. On March 17, 1994, the Service published in the **Federal Register** (59 FR 12578) a proposed rule to implement this technical amendment to the IATA regulations. The Service received no comments on this proposed rule. The 20th edition of the LAR is the only edition of the LAR that is currently available to the public. Therefore, the Service has determined that this final rule can be effective upon publication in the **Federal Register**.

Executive Orders 12866, 12612, and 12630 and the Regulatory Flexibility Act

The Department has determined that the revision to 50 CFR Part 14 has not been reviewed by the Office of Management and Budget under Executive Order 12866. This final rule is a technical amendment that allows the regulation to conform with the current edition of a publication that has been incorporated by reference, which will make compliance and enforcement more practical and efficient. Also, this current action is not expected to have significant taking implications, as per Executive Order 12630, since compliance with the revised regulations will have neither greater nor lesser effect on constitutionally protected individual property rights. This revision to Part 14 does not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Small entities are already required to comply with the current regulations and the 18th edition of the IATA Live Animals Regulations. It is expected that the revisions would reduce the burden on small entities by adopting the current edition of the industry guidelines rather than imposing a requirement for an outdated version. Since the rule applies to importations of live wildlife into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

Author

The author of this final rule is Mark Phillips, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/358–2093).

List of Subjects in 50 CFR Part 14

Exports, Imports, Incorporation by reference, Labeling, Reporting requirements, Transportation, and wildlife.

Final Regulation Promulgation

Accordingly, part 14 of Chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 14—[AMENDED]

1. The authority citation for part 14 continues to read as follows:

Authority: 18 U.S.C. 42(c); 16 U.S.C. 3371–3378; 16 U.S.C. 1538 (d)–(f), 1540(f); 16 U.S.C. 1382; 16 U.S.C. 705, 712; 31 U.S.C. 483(a).

2. Section 14.106 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 14.106 Primary enclosures.

* * * * *

(a) The Container Requirements of the Live Animal Regulations (LAR), 20th edition, October 1, 1993, published by the International Air Transport Association (IATA) shall be complied with by all parties transporting wild mammals or birds to the United States.

* * *

* * * * *

Dated: June 30, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–17505 Filed 7–18–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 931235–4107; I.D. 071194A]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: June 27, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, telephone 907-586-7221; Gary Smith, telephone 206-526-

6140; or Donald McCaughran, telephone 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State (59 FR 22522, May 2, 1994). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 8

Area 4C Closes on June 30

The IPHC estimates that the 700,000 lb (317.5 mt) catch limit for Area 4C, the waters surrounding the Pribilof Islands, will be obtained by June 30. Area 4C will be closed to halibut fishing at 12:00 noon Alaska Daylight Time on that date until further notice.

Area 4B Commercial Fishery

Landings through June 25 from Area 4B total nearly 100,000 lb (45.4 mt). Vessel operators intending to fish in this area are reminded that the vessel clearances required prior to fishing, and prior to unloading and/or departing from Area 4B, can only be obtained at Nazan Bay on Atka Island. A 10,000 lb (4.5 mt) fishing period limit will apply to each 12-hour fishing period in Area 4B. After 15 percent (315,000 lb (142.9 mt)) of the Area 4B catch limit has been taken, the area will be closed until August 15, when it will reopen for a 96-hour fishing period without fishing period limits.

Dated: July 12, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-17434 Filed 7-18-94; 8:45 am]

BILLING CODE 3510-22-F

---

50 CFR Part 625

[Docket No. 940241-4155; I.D. 062294B]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on Friday, June 3, 1994 (59 FR 28809), that amended the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508-281-9101.

Correction of Publication

Accordingly, the publication on June 3, 1994, of the final rule [I.D. 013194A], which was the subject of FR Doc. 94-13518, is corrected as follows:

§ 625.8 [Corrected]

1. On page 28810, in the first column, amendatory instruction "2." the designation "(c)(9)" is corrected to read "(c)(11)."

2. On page 28810, in the first column, § 625.8, under paragraph (c)(9), the paragraph designation "(9)" is corrected to read "(11)".

Dated: July 13, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94-17514 Filed 7-18-94; 8:45 am]

BILLING CODE 3510-22-W

---

50 CFR Part 650

[Docket No. 940798-4198; I.D. 061094A]

RIN 0648-AG83

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 1 to the Atlantic Sea Scallop Fishery Management Plan (FMP). This framework adjustment temporarily adjusts the maximum crew limit, redesignates the fishing year for sea scallops to begin on March 1 each year, and refines existing gear requirements.

EFFECTIVE DATE: August 17, 1994.

ADDRESSES: Copies of Amendment 4, its regulatory impact review, initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Framework Adjustment 1 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906-1097, telephone 617-565-8937

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, NMFS, Fishery Policy Analyst, 508-281-9273.

SUPPLEMENTARY INFORMATION:

Background

The final rule for Amendment 4 to the FMP was published on January 19, 1994 (59 FR 2757), with implementation for most measures on March 1, 1994, including a call-in notification system for the days-at-sea (DAS) program. The amendment retained the FMP's objectives to: (1) Restore adult stock abundance and age distribution; (2) increase yield per recruit for each stock; (3) evaluate plan research, development and enforcement costs; and (4) minimize adverse environmental impacts on sea scallops.

Amendment 4 changed the primary management strategy from a meat count (size) control to effort control. The amendment controls total fishing effort through limited-access permits and a schedule of reductions in allowable DAS. Supplemental measures limit increases in vessel fishing power to control the amount of fishing pressure and to help control the size of scallops landed, gear restrictions, and limits on the number of crew members. Additionally, the amendment includes a framework procedure for adjusting the management measures in the FMP.

Framework Adjustment 1 temporarily adjusts the maximum crew limit, redesignates the fishing year to begin on March 1, and refines existing gear requirements.

NMFS is adjusting the regulations under the framework abbreviated rulemaking procedure established by Amendment 4 and contained in 50 CFR part 650 subpart C. This procedure requires the New England Fishery Management Council (Council), when considering specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis and with the opportunity to comment on them prior to and at the second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Director, Northeast Region, NMFS (Regional Director), that the measures be published as a final rule if certain conditions are met. The Regional Director may publish the measures as a final rule, or as a proposed rule, if additional public comment is needed.

In accordance with the regulations, public comments on the framework adjustment were taken by the Council during its February 16, 1994 (59 FR 6949), and March 17, 1994 (59 FR 12265), meetings. Seven members of the industry commented at these meetings. The comments were generally in support of the recommended adjustment. Seven written responses were received, mostly offering negative commentary. The Council voted to approve Framework Adjustment 1 on March 17, 1994.

The Council also held a joint sea scallop industry advisor and Plan Development Team (PDT) meeting on March 21, 1994. The industry discussed wide-area closures to protect small scallops and, after listening to PDT members express concern over the ability to identify distinct areas of small scallops to close, decided not to recommend closures. The general consensus at the meeting was to let the new regulations go into effect, along with the seven-member crew limit proposed in Framework Adjustment 1.

Measure 1—Protection of Small Scallops

In response to very high levels of recruitment that have been documented in the Mid-Atlantic resource area (Regional Director's Status Report, January 1994), the Council recommended measures to reduce the maximum crew limit and to ensure the adequate escapement of small scallops from dredge gear.

The expected impact of the proposed seven-member crew limit was analyzed in Amendment 4. There are two possible ways for vessel operators to respond to reduced crew limits. They can try to fish for larger scallops, and if catches are sufficient, land as much weight of scallop meat as with a crew of nine; or they can continue catching and processing fewer small scallops; or a combination of both. Either response effectively reduces the number of scallops harvested by a vessel per day at sea. For example, in the analysis done for this framework adjustment, it is estimated that a crew of seven can shuck and process 900 lb (408.2 kg) (meat weight) of scallops per day at sea, at an average of 45 meats per lb (45 meats per 0.453 kg). A crew of nine, however, would be capable of shucking 1,500 lb (680.4 kg). Under ideal conditions, this impact would translate into a 40 percent reduction in fishing mortality.

final rule, or as a proposed rule, if additional public comment is needed.

In accordance with the regulations, public comments on the framework adjustment were taken by the Council during its February 16, 1994 (59 FR 6949), and March 17, 1994 (59 FR 12265), meetings. Seven members of the industry commented at these meetings. The comments were generally in support of the recommended adjustment. Seven written responses were received, mostly offering negative commentary. The Council voted to approve Framework Adjustment 1 on March 17, 1994.

The Council also held a joint sea scallop industry advisor and Plan Development Team (PDT) meeting on March 21, 1994. The industry discussed wide-area closures to protect small scallops and, after listening to PDT members express concern over the ability to identify distinct areas of small scallops to close, decided not to recommend closures. The general consensus at the meeting was to let the new regulations go into effect, along with the seven-member crew limit proposed in Framework Adjustment 1.

Measure 1—Protection of Small Scallops

In response to very high levels of recruitment that have been documented in the Mid-Atlantic resource area (Regional Director's Status Report, January 1994), the Council recommended measures to reduce the maximum crew limit and to ensure the adequate escapement of small scallops from dredge gear.

The expected impact of the proposed seven-member crew limit was analyzed in Amendment 4. There are two possible ways for vessel operators to respond to reduced crew limits. They can try to fish for larger scallops, and if catches are sufficient, land as much weight of scallop meat as with a crew of nine; or they can continue catching and processing fewer small scallops; or a combination of both. Either response effectively reduces the number of scallops harvested by a vessel per day at sea. For example, in the analysis done for this framework adjustment, it is estimated that a crew of seven can shuck and process 900 lb (408.2 kg) (meat weight) of scallops per day at sea, at an average of 45 meats per lb (45 meats per 0.453 kg). A crew of nine, however, would be capable of shucking 1,500 lb (680.4 kg). Under ideal conditions, this impact would translate into a 40 percent reduction in fishing mortality.

Measure 2—Effort Reduction Schedule

Amendment 4 relies largely on annual incremental reductions in fishing effort to reduce fishing mortality. However, because Amendment 4 was based on a calendar year and was not implemented until March 1, 1994, the DAS allocations for 1994 would be allocated over a 10-month period instead of a 12-month period; therefore, there probably would have been no reduction in fishing effort for Atlantic sea scallops until 1995. Forestalling effort reduction in the first year may impose larger economic burdens on the fishing industry in later years if adjustments become necessary to make up these shortcomings.

This final rule will implement an adjustment to the effort-reduction program so that each allocation of DAS is done on a 365-day program year beginning with the first year of the plan. A given fishing year will begin March 1 and end on the last day of February of the following year.

Measure 3—Changes to the Gear Restriction Requirements

The Council has also included gear-restriction measures that: (1) Allow vessels to carry one spare dredge or net so that they would not be forced to return to port to make major dredge repairs, (2) define a legal scallop dredge to enhance the likelihood that ring-size restrictions will reduce harvest of smaller scallops, and (3) allow the use of triple links and broken links in the scallop dredge to accommodate practical considerations concerning the use of scallop dredges.

Comments and Responses

The Council received comments on Framework Adjustment 1 from two fishing industry associations and five individuals. Specific comments are discussed and responded to below.

The Council held a joint sea scallop industry advisor and PDT meeting on March 21, 1994. These comments are also summarized as follows.

Seven-Person Crew Limit

Comment: Limiting the crew to seven is unsafe, particularly in the winter. Some skippers will overwork their crews and the resulting fatigue will cause accidents.

Response: The analysis included in the Council's framework package suggests that, based on available Coast Guard data for the scallop fishery, there is no relationship between the size of the crew and accidents aboard scallop vessels. Fishermen have publicly stated that most New Bedford scallop boats carried less than seven crew members in the winter of 1993–1994 simply because scallop stocks were low. Fishermen also stated, and NMFS concurs, that there is nothing inherently dangerous about using a seven-person crew and that safety ultimately depends upon on-board safety practices rather than crew size. The seven-crew limit will be implemented only through December 1994, with the option of extending or modifying that limit through another frameworking action.

Comment: The Coast Guard will have trouble enforcing the seven-person crew limit.

Response: Enforcing a seven-member crew limit is no different than enforcing the nine-member crew limit considered and approved under Amendment 4. A Coast Guard representative informed the Scallop Committee that the Coast Guard is experienced in procedures for inspecting space used to conceal contraband goods aboard vessels and therefore will be able to detect attempts to hide crew.

Comment: No changes should be made until the provisions of Amendment 4 are allowed to work for a reasonable period.

Response: In its discussion before the final vote to submit Amendment 4, and by including the framework adjustment process, the Council explicitly recognized the possible need for immediate adjustments to protect small scallops once the meat count regulations were eliminated. Initial reports and data since approval of Amendment 4 indicate that small scallops are being taken in significant quantities. The reduction in the crew limit is the type of action the Council anticipated. NMFS approved the plan, contingent on the Council's intention to make such adjustments, if needed.

Comment: Freezing scallops at sea should be prohibited. It encourages the harvesting of small scallops because frozen scallops can be landed with counts ranging from 50 to 100.

Response: Amendment 4 does not include controls on the size of scallops landed, frozen or otherwise. Therefore, freezing at sea does not offer any advantage to vessel operations that would encourage the harvesting of small scallops. Frozen-at-sea scallops, if properly processed, provide some of the highest quality products made from Atlantic sea scallops.

Comment: NMFS should be looking to increase the number of jobs. As boats are retired from the fishery, those who have suffered because of the failed meat count plan should be able to increase the size of their crews when the resource improves.

Response: The proposed actions are part of a group of measures designed to

eliminate overfishing over the long term. A healthy scallop resource will provide the greatest overall opportunity for employment. Also, this action will implement the crew-limit reduction only through December 1994. The Council may recommend adjustments to the crew-limit measure as necessary under the framework procedures implemented under Amendment 4.

Comment: A crew limit of seven is not needed because both production and price fall off dramatically once vessels try to harvest scallops as small as 50-count.

Response: Scallop industry advisors have informed the Council that more protection for small scallops is needed and that carrying nine crew members would allow some vessels to exploit concentrations of small scallops to a greater extent than if they were limited to seven crew members. Reduction in crew size, working in tandem with market forces, can only expedite conservation of small scallops.

Comment: A closing of the fishery is warranted, for 3, 6, 9 months, or whatever it takes to allow juvenile scallops to reach the size needed for a sustainable resource.

Response: The Council cannot implement area closures under the framework adjustment process using abbreviated rulemaking at this time and, therefore, this type of measure would inherently take longer to implement. Scientists, moreover, have expressed concern over the ability to identify distinct areas of small scallops to close because most areas are dominated by small scallops. Also, the Council and NMFS have determined that the type of measures currently included in Amendment 4 have the potential to eliminate overfishing for scallops and should be given a chance to work before major changes are made.

Full-Year Implementation

Comment: The licensing process will not be synchronized with the calendar year permitting system.

Response: These administrative considerations are outweighed by the need to begin the effort-reduction program as soon as possible. The economic viability of the industry in the second year of the program depends, in part, on achieving improvements in yield-per-recruit through effort reductions in the first year. Such first year effort-reduction benefits would be dissipated if the reduction measures are not changed to a non-calendar year basis. Any need to make adjustments to the licensing system to address administrative problems can be made in the future. Having the permitting process on a different time schedule than the licensing process does not interfere in any significant way with the administration or objectives of Amendment 4.

Scallop Ring Linkage

Comment: Scallopers should be able to use triple linking in the bottom of the dredge to minimize the need for repairs and because there is little or no escapement through the bottom of the dredge.

Response: The measure to prohibit triple links in the dredge has been modified through this framework adjustment to allow triple linking in the bottom of the dredge.

Classification

This regulation is not subject to the requirements to prepare a proposed rule because adequate opportunity was provided for prior public comment when the action was proposed and discussed over the course of several Council meetings. Because no proposed rule was required, this action is exempt from the procedures of the Regulatory Flexibility Act.

This final rule is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA finds there is good cause to waive prior notice under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate opportunity for public comment to be considered. Thus, additional opportunity for public comment is unnecessary.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: July 13, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is amended as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 650.2 is amended by adding definitions for "dredge bottom," "fishing year," and "link," in alphabetical order to read as follows:

§ 650.2 Definitions.

* * * * *

Dredge bottom means the rings and links found between the bail of the dredge and the club stick which, when fishing, would be in contact with the sea bed. This definition includes the triangular shaped portions of the ring bag commonly known as "diamonds."

* * * * *

Fishing year means the 12-month period beginning March 1 and extending through the end of February of the following year.

* * * * *

Link means the material, usually made of a ⅜-inch (10-mm) or 7/16-inch (11-mm) diameter metal rod, which joins two adjacent rings within the ring bag of a dredge.

* * * * *

3. Section 650.9 is amended by revising paragraphs (b)(8), (b)(11), (b)(14), (b)(15), (b)(16), (c)(2), (c)(5), and (c)(6) to read as follows:

§ 650.9 Prohibitions.

* * * * *

(b) * * *

(8) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or participate in the DAS allocation program with, trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 650.21(a)(2)(iii).

* * * * *

(11) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or participate in the DAS allocation program with, dredge gear that has a maximum combined dredge width exceeding 31 feet (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 650.21(b)(1).

* * * * *

(14) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or participate in the DAS allocation program with, dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 650.21(b)(4)(ii).

(15) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or participate in the DAS allocation program with, dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 650.21(b)(4).

(16) Participate in the DAS allocation program with more than the number of persons specified in § 650.21(c), including the operator, on board when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Director.

* * * * *

(c) * * *

(2) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 650.21(b)(1).

* * * * *

(5) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 650.21(b)(4)(ii).

(6) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 650.21(b)(4).

* * * * *

4. Section 650.21 is amended by revising paragraphs (a)(1), (b)(1), (b)(4)(ii), (b)(4)(iii), and (c) to read as follows:

DAS category
Full-time
Part-time
Occasional

Each fishing year shall begin on March 1 and extend 12 months through the last day of February of the following year.

* * * * *

persons specified in § 650.21(c), including the operator, on board when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Director.

* * * * *

(c) * * *

(2) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 650.21(b)(1).

* * * * *

(5) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 650.21(b)(4)(ii).

(6) Possess more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 650.21(b)(4).

* * * * *

4. Section 650.21 is amended by revising paragraphs (a)(1), (b)(1), (b)(4)(ii), (b)(4)(iii), and (c) to read as follows:

§ 650.21 Gear and crew restrictions.

(a) * * *

(1) *Maximum sweep.* The trawl sweep of nets in use by or available for immediate use, as specified in paragraph (a)(2)(iii) of this section, shall not exceed 144 ft (43.9 m) as measured by the total length of the footrope that is directly attached to the webbing of the net.

* * * * *

(b) * * *

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section. However, component parts may be onboard the vessel such that they do not conform with the definition of "dredge or dredge gear" in § 650.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component parts.

* * * * *

(4) * * *

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links which are connected to only one ring, i.e., "hangers", are allowed unless they occur between two links that both couple the same two rings (see Figure 1 to part 650). Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings will be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns (see Figure 1 to part 650).

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge as, described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

* * * * *

(c) *Crew restrictions.* Limited-access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people on board when not docked or moored in port through December 31, 1994, and nine people on board when not docked or moored in port thereafter, including the operator, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Regional Director.

* * * * *

5. Section 650.24 is amended by revising paragraph (c)(1) as follows:

§ 650.24 Days-at-sea (DAS) allocations.

* * * * *

(c) * * *

(1) *Annual DAS allocations.* The annual allocations of DAS for each category of vessel specified in paragraph (a) of this section shall be based on fishing years described as follows:

DAS category	1994–95	1995–96 and 1996–97	1997–98	1998–99 and 1999–2000	2000+
Full-time	204	182	164	142	120
Part-time	91	82	66	57	48
Occasional	18	16	14	12	10

Each fishing year shall begin on March 1 and extend 12 months through the last day of February of the following year.

* * * * *

6. Figure 1 is added to the end of part 650 as follows:

BILLING CODE 3510-22-P

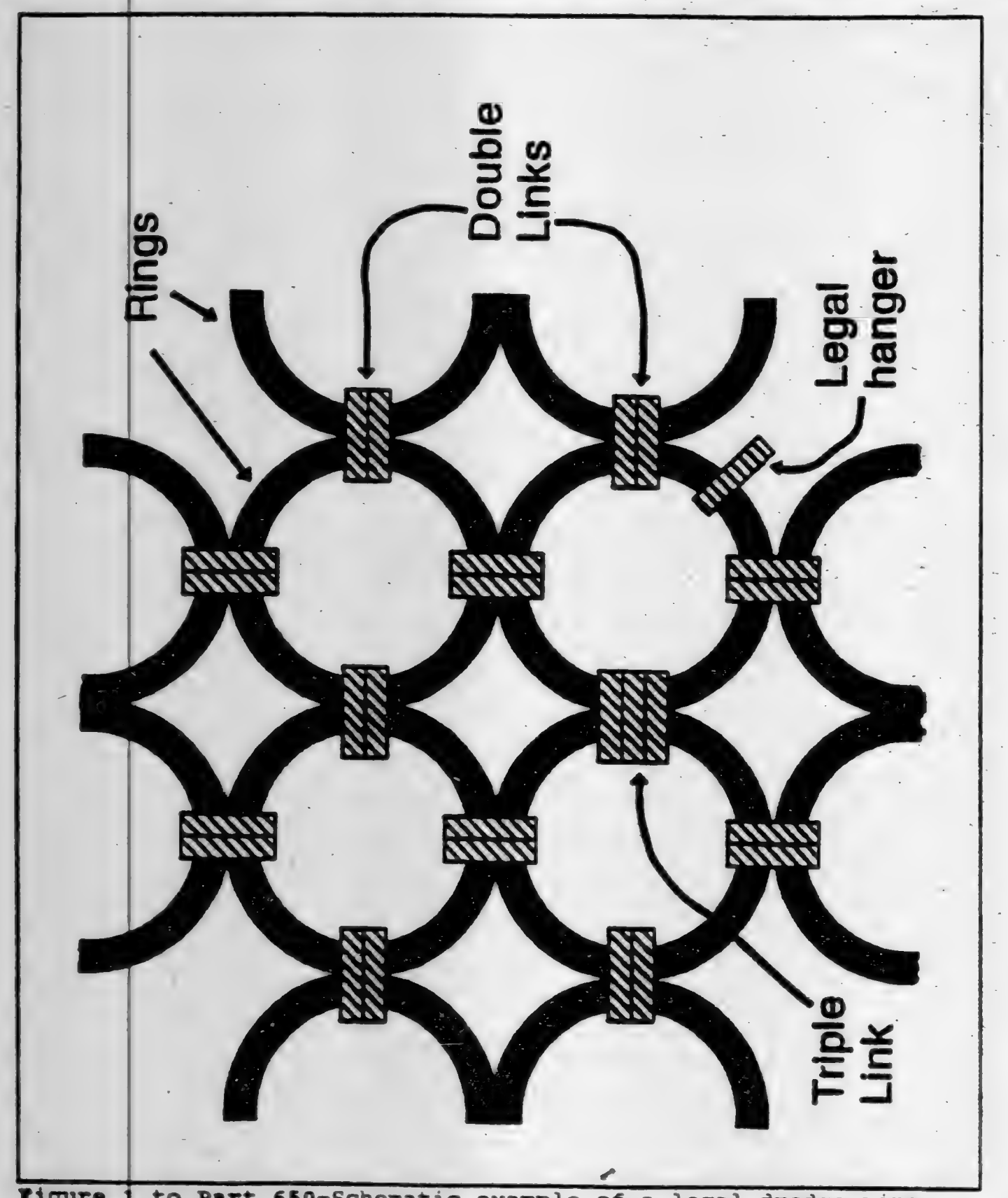

Figure 1 to Part 650-Schematic example of a legal dredge ring pattern. A triple link is shown that is legal only in the dredge bottom. A legal broken link (i.e. hanger) is also shown. Not drawn to scale.

[FR Doc. 94-17515 Filed 7-18-94; 8:45 am]
BILLING CODE 3510-22-C

50 CFR Part 651

[Docket No. 940796-4196; I.D. 061094B]

RIN 0648-AG84

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 3 to the Northeast Multispecies Fishery Management Plan (FMP). The intent of this rule is to reduce the potential for vessels to direct fishing effort on regulated multispecies finfish with mesh smaller than the regulated minimum size. This rule limits the amount of regulated species allowed on board vessels fishing with small mesh to either 500 lb (226.8 kg) or 10 percent of the weight of non-regulated species, whichever is less.

EFFECTIVE DATE: August 17, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the initial regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment 3 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION:

Background

NMFS approved Amendment 5 to the FMP on January 3, 1994. The primary purpose of Amendment 5 is to eliminate the overfished condition of the primary stocks of the multispecies complex by increasing the spawning stock biomass per recruit. This objective is to be achieved primarily through an effort reduction program supplemented by an increase in the minimum mesh size that vessels can use while fishing for regulated species.

By increasing mesh size, fishing mortality rates on fully recruited ages would not have to be reduced as much to achieve the same increase in spawning stock biomass per recruit. Therefore, under Amendment 5, vessels fishing for non-regulated species and using nets with mesh smaller than the regulated minimum size were limited to 500 lb (226.8 kg) of regulated species. The intent of this limited allowance was

50 CFR Part 651

[Docket No. 940796–4196; I.D. 061094B]

RIN 0648–AG84

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 3 to the Northeast Multispecies Fishery Management Plan (FMP). The intent of this rule is to reduce the potential for vessels to direct fishing effort on regulated multispecies finfish with mesh smaller than the regulated minimum size. This rule limits the amount of regulated species allowed on board vessels fishing with small mesh to either 500 lb (226.8 kg) or 10 percent of the weight of non-regulated species, whichever is less.

EFFECTIVE DATE: August 17, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the initial regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment 3 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION:

Background

NMFS approved Amendment 5 to the FMP on January 3, 1994. The primary purpose of Amendment 5 is to eliminate the overfished condition of the primary stocks of the multispecies complex by increasing the spawning stock biomass per recruit. This objective is to be achieved primarily through an effort reduction program supplemented by an increase in the minimum mesh size that vessels can use while fishing for regulated species.

By increasing mesh size, fishing mortality rates on fully recruited ages would not have to be reduced as much to achieve the same increase in spawning stock biomass per recruit. Therefore, under Amendment 5, vessels fishing for non-regulated species and using nets with mesh smaller than the regulated minimum size were limited to 500 lb (226.8 kg) of regulated species. The intent of this limited allowance was to enable legitimate small-mesh fisheries to continue without compromising efforts to conserve regulated species through the mesh-size increase.

NMFS implemented minimum mesh size increases, regulated mesh areas, and the 500-lb (226.8-kg) possession limit of regulated species that applies to fishing vessels fishing with small mesh included in Amendment 5 on March 1, 1994 (59 FR 9872). The New England Fishery Management Council (Council) developed Framework Adjustment 3 in response to industry concerns that, under current stock conditions, the 500-lb (226.8-kg) possession limit is sufficient incentive for vessel operators to target regulated species with small-mesh nets. When the Council began development of Amendment 5, a 500-lb (226.8-kg) possession limit was considered too low to encourage targeting. Since then, the stocks have further deteriorated and, as a result, catch rates are reduced to the point where 500 lb (226.8 kg) is viewed as an opportunity to catch what many vessel operators now consider a reasonable day's catch in less time, using small mesh. Therefore, instead of directing their effort during times and in areas where small-mesh species are traditionally caught with a relatively small (less than 10 percent) bycatch of regulated species, these vessels could target areas where regulated species have historically been caught, with a potentially far greater impact on those stocks.

The Council's and NMFS' intent is to prevent vessels from targeting regulated species with small-mesh nets, consistent with the explicit objectives of Amendment 5. From the time Amendment 5 was approved in January 1994, fishermen and their association representatives have described to the Council how vessels are gearing up to target regulated species with small-mesh nets under the 500-lb (226.8-kg) possession limit. The purpose of this framework adjustment is to preserve the continuation of legitimate small mesh fisheries, with limited incidental catches of regulated species, while preventing a directed small-mesh fishery for regulated species under the 500-lb (226.8-kg) possession limit. Restricting the amount of regulated species a vessel may retain on board, or land per trip, while fishing with small mesh nets, unless the vessel is fishing under the net stowage exemption specified under § 651.20(c)(3)(i) or (d)(3)(ii), to 10 percent of the weight of non-regulated species, to a maximum of 500 lb (226.8 kg), will not impose any significant restrictions on existing small-mesh fisheries, but will create a disincentive for vessels to begin targeting regulated species with small mesh. Therefore, this framework action preserves the Council's intent by: (1) Discouraging this practice, (2) allowing a reasonable bycatch in legitimate small-mesh fisheries, and (3) allowing a 500-lb (226.8-kg) trip limit for vessels targeting regulated species using nets with the regulated minimum mesh size.

In this rule, NMFS is also adding language to the small-mesh provisions for the Mid-Atlantic area and the Southern New England area to clarify that small mesh may not be used to harvest more than the possession limit of regulated species.

NMFS is amending the multispecies regulations following the framework abbreviated rulemaking procedure established by Amendment 5 and codified at 50 CFR part 651, subpart C. The Council followed the procedure required in 50 CFR part 651 when making specifically allowed adjustments to the FMP, by developing and analyzing the actions over the span of a minimum of two Council meetings on March 17, and April 7, 1994. The Council provided the public with advance notice of both the proposal and the analysis, and an opportunity to comment on them prior to and at the second Council meeting on April 7. Upon review of the analysis and public comment, the Council recommended to the Director, Northeast Region, NMFS (Regional Director), that the measures contained in Framework 3 be published as a final rule. The Regional Director has further determined that the measures in Framework 3 are appropriate to publish as a final rule.

Since the Council undertook development of Amendment 5, the condition of several stocks of regulated species has deteriorated further. In fact, each new assessment of multispecies stocks underlines the urgency of implementing rigorous and effective management measures. The framework adjustment that this rule implements will enhance the conservation impact of the FMP without generating a significant economic or social impact.

Comments and Responses

During the period following the approval of Amendment 5 and preceding the Council's formal initiation of this framework adjustment, a number of industry members and interested members of the public commented on the problems with the current possession limit rule for regulated species. All comments were in support of the Council expeditiously making the adjustment contained in this

rule. During this pre-framework period, two individuals submitted written comments alerting the Council to the problem and urging it to take appropriate action.

During the comment period spanning the two required Council meetings, the Council received written comments from the West End Fishermen's Association and one individual. Oral comments were made to the Council by representatives of the Conservation Law Foundation, Mid-Atlantic Fisheries Management Council, Point Judith Fishermen's Co-operative Association, Offshore Mariner's Association, Gloucester Fisheries Commission, and two individuals.

After the Council submitted its recommendations to NMFS, NMFS received additional written comments from the New Hampshire Commercial Fishermen's Association and 37 individuals.

Comment: During the period in which the Council was developing the framework recommendation, four associations and one individual stated support for the proposed adjustment. After the Council submitted its recommendation, one association submitted comments to NMFS, also in support.

Response: The comments have been noted and the adjustment has been approved.

Comment: Two associations questioned whether the rule is a "possession limit," enforced at sea, or a "trip limit," enforced at the dock at the end of the trip.

Response: The 500-lb (226.8-kg) possession limit and the 10 percent limit of regulated species when using small mesh will be enforced at sea and at the dock. However, the Coast Guard acknowledged the difficulty in enforcing the percentage of the total catch at sea and indicated that discretion will have to be used by the boarding official when evaluating the catch for regulated versus non-regulated species.

Comment: During the period in which the Council was developing the framework recommendation, three individuals opposed adding the percentage aspect of the rule. After the Council submitted its recommendation, 37 individuals submitted comments to NMFS also opposing adding the percentage aspect of the rule. They maintained that a straight 500-lb (226.8-kg) limit would enable small vessels to survive economically and would not force these boats to search for and catch non-regulated species in order to keep the limit of regulated species, or to discard regulated species if the non-regulated species could not be caught or landed. It was stated that a directed fishery on regulated species with small mesh is only perceived as a problem and is not substantiated. Further, it was maintained that there has been sufficient time for public comment throughout the development of Amendment 5 and that the 500-lb (226.8-kg) provision should be given a chance to work.

Response: Based on Council findings and other public comments, the potential of a directed small-mesh fishery on regulated species is strong. This potential was not as evident at the time Amendment 5 was approved. In adopting the original possession limit in Amendment 5, the Council did not intend to allow directed small-mesh effort on regulated species. Given the severely depleted state of the primary regulated species, NMFS has determined that it must support the Council's framework recommendation as a necessary, risk averse measure. Nevertheless, the new possession limit measure will still allow vessels fishing with small mesh to continue with a minimum allowance for incidentally caught regulated species. Accordingly, there should be no negative impact on traditional small-mesh fisheries.

Classification

This regulation is not subject to the requirements to prepare a proposed rule because adequate opportunity was provided for prior public comment when the action was proposed and discussed over the course of two Council meetings. Because no proposed rule was required, this action is exempt from the procedures of the Regulatory Flexibility Act.

This final rule is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, finds there is good cause to waive prior notice under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate opportunity for public comment to be considered. Thus, additional opportunity for public comment is unnecessary.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 12, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 651.9 is amended by revising paragraphs (b)(1), (d), and (e)(2) introductory text to read as follows:

§ 651.9 Prohibitions.

* * * * *

(b) * * *

(1) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species per trip as specified in § 651.27(a), after accruing the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22.

* * * * *

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a possession-limit-only permit under § 651.4(c) to possess at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a).

(e) * * *

(2) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a) unless:

* * * * *

3. Section 651.20 is amended by revising paragraphs (a)(3)(i), (a)(4)(i)(A), (c)(3)(i), (c)(3)(ii), (d)(3)(i), (d)(3)(ii), (e)(1)(iv), and (f)(4) to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(i) *Possession limit exemption.* A vessel may not possess on board at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a).

* * * * *

(4) * * *

(i) * * *

(A) A bycatch limit not to exceed the possession limit of regulated species as specified in § 651.27(a).

* * * * *

(c) * * *

(3) * * *

(i) *Possession limit exemption.* Vessels in the Southern New England regulated mesh area may fish with nets of mesh size smaller than the minimum size specified in paragraph (c)(2) of this section, provided such vessels do not possess at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a).

(ii) *Net stowage exemption.* Vessels may possess more than the possession limit of regulated species as specified in § 651.27(a) while in possession of nets with mesh less than the minimum size specified in paragraph (c)(2) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that more than the possession limit of regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2) of this section.

* * * * *

(d) * * *

(3) * * *

(i) *Possession limit exemption.* Vessels in the Mid-Atlantic regulated mesh area may fish with nets of mesh size smaller than the minimum size specified in paragraph (d)(2) of this section, provided such vessels do not possess or land per trip more than the possession limit of regulated species as specified in § 651.27(a).

(ii) *Net stowage exemption.* Vessels may possess more than the possession limit of regulated species as specified in § 651.27(a) while in possession of nets with mesh less than the minimum size specified in paragraph (d)(2) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that more than the possession limit of regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (d)(2) of this section.

(e) * * *

(1) * * *

(iv) The bycatch does not exceed the possession limit of regulated species as specified in § 651.27(a).

* * * * *

(f) * * *

(4) The bycatch of regulated species does not exceed the possession limit of regulated species as specified in § 651.27(a).

* * * * *

4. Section 651.22 is amended by revising paragraphs (c)(1)(i) heading, (c)(1)(i)(B), and (d)(2)(ii) to read as follows:

§ 651.22 Effort-control program for limited access vessels.

* * * * *

(c) * * *

(1) * * *

(i) *Days in which vessels may not possess more than the possession limit*

land per trip, more than the possession limit of regulated species as specified in § 651.27(a).

(ii) *Net stowage exemption.* Vessels may possess more than the possession limit of regulated species as specified in § 651.27(a) while in possession of nets with mesh less than the minimum size specified in paragraph (c)(2) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that more than the possession limit of regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2) of this section.

* * * * *

(d) * * *

(3) * * *

(i) *Possession limit exemption.* Vessels in the Mid-Atlantic regulated mesh area may fish with nets of mesh size smaller than the minimum size specified in paragraph (d)(2) of this section, provided such vessels do not possess or land per trip more than the possession limit of regulated species as specified in § 651.27(a).

(ii) *Net stowage exemption.* Vessels may possess more than the possession limit of regulated species as specified in § 651.27(a) while in possession of nets with mesh less than the minimum size specified in paragraph (d)(2) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that more than the possession limit of regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (d)(2) of this section.

(e) * * *

(1) * * *

(iv) The bycatch does not exceed the possession limit of regulated species as specified in § 651.27(a).

* * * * *

(f) * * *

(4) The bycatch of regulated species does not exceed the possession limit of regulated species as specified in § 651.27(a).

* * * * *

4. Section 651.22 is amended by revising paragraphs (c)(1)(i) heading, (c)(1)(i)(B), and (d)(2)(ii) to read as follows:

§ 651.22 Effort-control program for limited access vessels.

* * * * *

(c) * * *

(1) * * *

(i) *Days in which vessels may not possess more than the possession limit of regulated species as specified in § 651.27(a).*

* * * * *

(B) During each period of time declared, the applicable vessel may not possess more than the possession limit of regulated species as specified in § 651.27(a).

* * * * *

(d) * * *

(2) * * *

(ii) A sink gillnet vessel greater than 45 ft (13.7 m) in length that intends to fish for, possess or land, or does possess or land, more than the possession limit of regulated species as specified in § 651.27(a) with gear other than sink gillnet gear, or has other gear on board that is not stowed as described in § 651.20(c)(4), at any time during a calendar year may fish under and shall be subject to, the DAS effort reduction program of this part, except on trips that qualify for the exemption set forth in paragraph (d)(2)(i) of this section;

* * * * *

5. Section 651.27 is amended by revising paragraphs (a) heading, (a)(1), (a)(2), and (a)(4) to read as follows:

§ 651.27 Possession limits.

(a) *Regulated Species possession limit.*—(1)(i) *Vessels fishing with nets of mesh size as specified in § 651.20.* Vessels subject to the effort control programs specified in § 651.22 and issued a limited access permit under § 651.4(a) that are not fishing under the DAS program, or have declared out of the DAS program, vessels subject to effort control programs specified in § 651.22 that have used up their DAS allocations, vessels issued hook-gear-only permits that are fishing with gear other than hook gear, vessels fishing exclusively with a sink gillnet permit that are fishing with gear other than gillnet gear, and vessels issued a possession-limit-only permit under § 651.4(c) are prohibited from possessing on board at any time during a trip, or landing per trip, more than 500 lb (226.8 kg) of regulated species, provided that the regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in § 651.20 (a)(2), (b)(2), (c)(2), and (d)(2).

(ii) *Vessels fishing with nets of mesh smaller than the minimum mesh size as specified in § 651.20.* (A) Any vessel fishing with or possessing on board nets of mesh smaller than the regulated minimum size as specified § 651.20(a) while fishing in the small-mesh exemption area as described under § 651.20(a)(3), or any vessel fishing with nets of mesh smaller than the regulated minimum size as specified in § 651.20 (c) and (d), is prohibited from possessing on board at any time during a trip, or landing per trip, regulated species in excess of 10 percent, by weight, of all other species on board, or 500 lb (226.8 kg), whichever is less.

(B) While fishing in areas as specified in § 651.20 (c) and (d), vessels may possess on board at any time during a trip, or land per trip, regulated species in excess of 10 percent, by weight, of all other species on board, up to a maximum of 500 lb (226.8 kg) while in possession of nets of mesh smaller than the minimum size if these nets are stowed and are not available for immediate use in accordance with § 651.20 (c)(4) and (d)(3)(i), provided that more than the possession limit of regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in § 651.20 (c) and (d).

(2) Vessels subject to the regulated species possession limit shall have on board the vessel at least one standard box or one standard tote.

* * * * *

(4) The maximum possession limit of regulated species, as specified in paragraph (a)(1) of this section, is equal to 500 lb (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes. The 10-percent requirement, specified under paragraph (a)(1)(ii) of this section, may be measured volumetrically.

* * * * *

[FR Doc. 94–17437 Filed 7–18–94; 8:45 am]

BILLING CODE 3510–22–W

---

50 CFR Part 675

[Docket No. 931100–4043; I.D. 071394B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 14, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Pacific ocean perch TAC for the AI was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) and later augmented from the reserve (59 FR 21673, April 26, 1994) to a total of 10,900 metric tons (mt). The directed fishery for Pacific ocean perch was closed on April 4, 1994 (59 FR 16570, April 7, 1994). That prohibition was rescinded on July 4, 1994 (59 FR 33920, July 1, 1994), upon determination that the 1994 TAC for Pacific ocean perch in the AI had not been reached.

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Pacific ocean perch TAC in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 10,700 mt, with consideration that 200 mt will be taken as incidental catch in directed fishing for other species in the AI. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the AI, effective from 12 noon, A.l.t., July 14, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 13, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17504 Filed 7–14–94; 2:16 am]

BILLING CODE 3510–22–F

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1659–94]

RIN 1115–AD70

Requests for Additional Evidence To Support Immigrant Visa Petitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Immigration and Naturalization Service (Service) regulations by providing a petitioner in an immigrant visa petition proceeding with a period of 12 weeks to respond to the Service's request for additional information and/or documentation. This amendment is necessary to ensure that the time provided for response in certain immigration proceedings is consistent with the requirements contained elsewhere in Service regulations. If adopted, this rule would have a beneficial impact on all parties and will provide consistency among Service regulations relating to processing procedures for certain immigrants.

DATES: Written comments must be received on or before September 19, 1994.

ADDRESSES: Please submit written comments in triplicate to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper and timely handling, please reference INS Number 1659–94 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Jack Tabaka, Senior Immigration Examiner, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Occasionally, the Service receives an

Proposed Rules

Federal Register
Vol. 59, No. 137
Tuesday, July 19, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1659–94]

RIN 1115–AD70

Requests for Additional Evidence To Support Immigrant Visa Petitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Immigration and Naturalization Service (Service) regulations by providing a petitioner in an immigrant visa petition proceeding with a period of 12 weeks to respond to the Service's request for additional information and/or documentation. This amendment is necessary to ensure that the time provided for response in certain immigration proceedings is consistent with the requirements contained elsewhere in Service regulations. If adopted, this rule would have a beneficial impact on all parties and will provide consistency among Service regulations relating to processing procedures for certain immigrants.

DATES: Written comments must be received on or before September 19, 1994.

ADDRESSES: Please submit written comments in triplicate to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper and timely handling, please reference INS Number 1659–94 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Jack Tabaka, Senior Immigration Examiner, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Occasionally, the Service receives an application or petition along with supporting documentation which meets the threshold evidentiary requirements for a particular immigration benefit. However, upon closer review, the Service may determine that the supporting documentation fails to properly or adequately establish eligibility for the immigration benefit requested, or raises questions that must be answered before the Service can adjudicate the case. In such an instance, the Service provides the applicant or petitioner with an opportunity to respond to its questions and/or to submit additional evidence, which may include original documentation, in support of the request for immigration benefits.

Regulations at 8 CFR 103.2 (b)(5) and (b)(8), which were added by a final rule published on January 11, 1994, at 59 FR 1455–1466, require that the petitioner or applicant submit the requested supporting documentation, answers, and/or, original documentation to the Service within 12 weeks. That final rule inadvertently conflicts with the existing regulation at 8 CFR 204.1(h), under which a petitioner in an immigrant visa petition proceeding must respond to the Service within 60 days, unless an extension is granted. This rule proposes to amend 8 CFR 204.1(h) to conform with the 12-week provision of 8 CFR 103.2 (b)(5) and (b)(i), thereby guaranteeing the petitioner or applicant more than 60 days in which to respond to a request for additional information.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities for the following reason: the proposed rule is administrative in nature and is necessary in order to ensure that the time period for a petitioner to respond to the Service's request for additional information and/or documentation in immigrant visa proceedings is consistent with 8 CFR 103.2 (b)(5) and (b)(8).

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will have no adverse effect on family well-being. This regulation will provide consistency in Service regulations as they relate to processing procedures for certain immigrants.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

2. In § 204.1, paragraph (h) is revised to read as follows:

§ 204.1 General information about relative petitions.

* * * * *

(h) *Requests for additional evidence.* Unless otherwise provided in this chapter, requests by the Service for additional evidence shall be governed by the provisions of 8 CFR 103.2 (b)(5) and (b)(8).

Dated: June 13, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–17473 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 26968; Notice No. 93–70]

Offshore Airspace Reconfiguration; Valparaiso, FL, Terminal Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: On July 1, 1994, the FAA proposed to retain the Valparaiso, Florida Terminal Area and Special Air Traffic Rules in part 93 of the Federal Aviation Regulations (FAR); amend the Class D airspace areas for Eglin Air Force Base (AFB), Eglin AF Auxiliary No. 3 Duke Field, and Hurlburt Field; amend the Crestview Class E airspace area; and delete the Eglin Class D North-South corridor. Additionally, the FAA proposed to modify the established North-South and East-West corridors associated with the Valparaiso, Florida Terminal Area and Eglin AFB in part 93 of the FAR. The Notice of proposed rulemaking (NPRM), as published, incorrectly described the Class D airspace area for Eglin AFB; and inadvertently deleted the Hurlburt Field Class D airspace area and the Crestview Class E airspace area. The intended effect of this SNPRM is to correct the description of the Eglin AFB Class D airspace area, and to retain the Hurlburt Field Class D airspace area and the Crestview Class E airspace area.

DATES: Comments must be received on or before August 15, 1994.

ADDRESSES: Comments on this proposal may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 26968, 800 Independence Avenue, SW., Washington, DC 20591; or delivered in triplicate to: Federal Aviation Administration, Rules Docket, Room 915–G, 800 Independence Avenue SW., Washington, DC. Comments delivered must be marked Docket No. 26968. The official docket may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules and Procedures Branch, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments relating to the overall regulatory, aeronautical, environmental, energy-related, federalism, or economic aspects of the proposals contained in this SNPRM are also invited. Comments should identify the regulatory docket number and notice number and be submitted in triplicate to the address listed above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on the proposed amendments. The proposals contained in this SNPRM may be changed in light of comments received. All comments received will be available for examination by interested persons in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comment submitted in response to this SNPM must include a pre-addresses, stamped postcard on which the following statement is made: "Comments to Docket No. 2698." The postcard will be date stamped and mailed to the commenter.

Background

On July 1, 1994 (59 FR 34192), the FAA proposed to retain the Valparaiso, Florida Terminal Area and Special Air Traffic Rules in part 93 of the Federal Aviation Regulations (FAR); amend the Class D airspace areas for Eglin AFB and Eglin AF Auxiliary No. 3 Duke Field, and Hurlburt Field; amend the Crestview Class E airspace area; and delete the Eglin Class D North-South corridor. Additionally, the FAA proposed to modify the established North-South and East-West corridors associated with the Valparaiso, Florida Terminal Area and the Eglin AFB in part of the FAR. The NPRM, as published, incorrectly described the Class D airspace area for Eglin AFB; and inadvertently deleted the Hurlburt Field Class D airspace area and the Crestview Class E airspace area. The intended effect of this SNPRM is to correct the description of the Eglin AFB Class D airspace area and to retain and revise the Hurlburt Field Class D airspace area and the Crestview, Florida Class E airspace area.

The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace area designations are published in paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document would be published subsequently in order.

The Proposal

The FAA proposes to revise the description of the Class D airspace are for Eglin AFB, Florida; and retain and revise the Hurlburt Filed, Florida Class D airspace area, and the Crestview, Florida Class E airspace area.

The FAA has determined that this proposed regulation only involves an established body of technical regulation for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations, (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1345(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71.1, of the Federal Aviation Administration Order 74.00.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is revised to read as follows:

Paragraph 5000—Class D Airspace

* * * * *

ASO FL D Eglin AFB, FL [Revised]

Eglin AFB, FL
(Lat. 30°29′13″ N, long. 86°31′34″ W)
Destin-Fort Walton Beach Airport
(Lat. 30°24′01″ N, long. 86°28′18″ W)
Duke Field
(Lat. 30°39′07″ N, long. 86°31′23″ W)
Hurlburt Field
(Lat. 30°25′44″ N, long. 86°41′20″ W)

That airspace extending upward form the surface to and including 2,600 feet MSL within a 5.5-mile radius of Eglin AFB and within a 4-mile radius of Destin-Fort Walton Beach Airport; excluding the portion north of a line connecting the 2 points of intersection within a 5.2-mile radius circle centered on Duke Field; excluding the portion southwest of a line connecting the 2 points of intersection within a 5.3-mile radius of Hurlburt Field; excluding a portion east of a line beginning at lat. 30°30′43″ N, long. 86°26′21″ W, extending north to the 5.5-mile radius and north of a line beginning at lat. 30°30′43″ N, long. 86°26′21″ W, extending east to the 5.5-mile radius.

ASO FL D Eglin Hurlburt Field, FL [Revised]

Eglin, Hurlburt Field, FL
(Lat. 30°25′44″ N, long. 86°41′20″ W)
Eglin AFB
(Lat. 30°29′13″ N, long. 86°31′34″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.3-mile radius of Hurlburt Field; excluding the portion northeast of a line connecting the 2 points of intersection with a 5.5-mile radius circle centered on Eglin AFB.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO FL E2 Crestview, FL [Revised]

Crestview, Bob Sikes Airport, FL
(Lat. 30°46′44″ N, long. 86°31′20″ W)
Duke Field
(Lat. 30°39′07″ N, long. 86°31′23″ W)

Within a 4.2-mile radius of Bob Sikes Airport; excluding the portion south of a line connecting the 2 points of intersection with

Authority: 49 U.S.C. app. 1348(a), 1345(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71.1, of the Federal Aviation Administration Order 74.00.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is revised to read as follows:

Paragraph 5000—Class D Airspace

* * * * *

ASO FL D Eglin AFB, FL [Revised]

Eglin AFB, FL
(Lat. 30°29′13″ N, long. 86°31′34″ W)
Destin-Fort Walton Beach Airport
(Lat. 30°24′01″ N, long. 86°28′18″ W)
Duke Field
(Lat. 30°39′07″ N, long. 86°31′23″ W)
Hurlburt Field
(Lat. 30°25′44″ N, long. 86°41′20″ W)

That airspace extending upward form the surface to and including 2,600 feet MSL within a 5.5-mile radius of Eglin AFB and within a 4-mile radius of Destin-Fort Walton Beach Airport; excluding the portion north of a line connecting the 2 points of intersection within a 5.2-mile radius circle centered on Duke Field; excluding the portion southwest of a line connecting the 2 points of intersection within a 5.3-mile radius of Hurlburt Field; excluding a portion east of a line beginning at lat. 30°30′43″ N, long. 86°26′21″ W, extending north to the 5.5-mile radius and north of a line beginning at lat. 30°30′43″ N, long. 86°26′21″ W, extending east to the 5.5-mile radius.

ASO FL D Eglin Hurlburt Field, FL [Revised]

Eglin, Hurlburt Field, FL
(Lat. 30°25′44″ N, long. 86°41′20″ W)
Eglin AFB
(Lat. 30°29′13″ N, long. 86°31′34″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.3-mile radius of Hurlburt Field; excluding the portion northeast of a line connecting the 2 points of intersection with a 5.5-mile radius circle centered on Eglin AFB.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO FL E2 Crestview, FL [Revised]

Crestview, Bob Sikes Airport, FL
(Lat. 30°46′44″ N, long. 86°31′20″ W)
Duke Field
(Lat. 30°39′07″ N, long. 86°31′23″ W)

Within a 4.2-mile radius of Bob Sikes Airport; excluding the portion south of a line connecting the 2 points of intersection with a 5.2-mile radius circle centered on Duke Field.

* * * * *

Nancy B. Kalinowski,
Assistant Manager, Airspace-Rules and Aeronautical Informaiton Division.

[FR Doc. 94–17544 Filed 7–14–94; 3:35 pm]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN39–1–6393B; FRL–5014–2]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is proposing to approve Indiana's 1990 base year ozone precursor emissions inventory for Lake and Porter Counties as a revision to the Indiana ozone State Implementation Plan (SIP). The emissions inventory was submitted by the State of Indiana to satisfy a Federal requirement that States containing ozone nonattainment areas submit inventories of actual ozone precursor emissions. In the final rules section of this **Federal Register**, the USEPA is approving the State's SIP revision request without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule based on this proposed rule. A second comment period on this action will not be held. Parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before August 18, 1994.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 30, 1994.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 94–17432 Filed 7–18–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[OAQPS CA 22–0–6559; FRL–5016–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) that concern the control of emissions of volatile organic compounds (VOCs) from operations related to the loading of marine tank vessels. The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate this rule into the federally approved SIP. EPA has evaluated Rule 1142 and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before August 18, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revision and EPA's evaluation report of rule 1142 are

available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revision are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being proposed for approval into the California SIP is South Coast Air Quality Management District (SCAQMD) Rule 1142, Marine Tank Vessel Operations. This rule was submitted by the California Air Resources Board (CARB) to EPA on January 28, 1992.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin. 43 CFR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on January 28, 1992, including the rule being acted on in this document. This document addresses EPA's proposed action for SCAQMD Rule 1142, Marine Tank Vessel Operations. Rule 1142 was adopted by SCAQMD on July 19, 1991. This submitted rule was found to be complete on April 3, 1992, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[3] and is being proposed for approval into the SIP.

SCAQMD Rule 1142 requires all marine vessels to limit emissions of VOCs during loading, lightering, ballasting, and housekeeping events. VOCs contribute to the production of ground level ozone and smog. The rule was adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for this rule.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). Rule 1142 controls emissions from a source category for which EPA has not issued a CTG. Accordingly, Rule 1142 was evaluated against the general RACT requirements of the CAA (section 110 and part D), 40 CFR Part 51, the Blue Book referenced in footnote 1 and other EPA policy. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 1142 is a new rule which was adopted to control VOC emissions from loading operations associated with marine vessels. Its major provisions include:

1. Operating standards and component leak thresholds.
2. Inspection and repair requirements, and submission of an operator management plan.
3. Recordkeeping requirements, test methods, and definitions.

EPA has evaluated the Rule 1142 and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1142 is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Los Angeles-South Coast Air Basin retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental Protection Agency, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental Protection Agency, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: July 5, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–17553 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905–AE17

Grant for Construction of Teaching Facilities, et al.; Grants for the Establishment of Departments of Family Medicine

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the existing regulations governing the program for Grants for the Establishment of Departments of Family Medicine authorized by section 747(b) of the Public Health Service Act (the Act), to bring the regulations into conformity with technical amendments made by the Health Professions Extension Amendments of 1992 and to include other changes for consistency with current grant program policies.

DATES: Comments must be received by August 18, 1994.

ADDRESSES: Written comments should be addressed to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 8A–55, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Marc L. Rivo, M.D., Director, Division of Medicine, Bureau of Health Professions, HRSA, Room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–6190.

SUPPLEMENTARY INFORMATION: This proposed rule amends the existing regulations for Grants for the Establishment of Departments of Family Medicine, authorized under section 747(b) of the Public Health Service Act (the Act) (42 U.S.C. 293k). The Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408) amended and renumbered former section 780 of the Act (42 U.S.C. 295g) to section 747.

Section 747(b) of the Act, as amended, authorizes the Secretary to make grants to and enter into contracts with accredited schools of medicine or osteopathic medicine to meet the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine. The primary purpose of the program is to assist family medicine academic administrative units to achieve comparability in status, faculty, and curriculum with those of other clinical units at the applying schools.

The proposed amendments made by Pub. L. 102–408 to section 747(b) are described below, according to the section numbers and the headings of the regulations they affect.

Section 57.1702 Definitions

The Department is proposing to revise or add the following terms to this section:

Academic administrative unit or *unit* means a department, division, or other formal academic unit of a school of medicine or osteopathic medicine or clinical campus of this school that provides clinical instruction in family medicine.

The phrase "or clinical campus of such schools" is being inserted to permit family medicine adminsitrative units at such clinical campuses to apply for support of their unit separately from the parent medical school. The medical school, however, as the accredited entity, would have general oversight of such support.

The Department encourages the movement of clinical training to areas that more closely resemble the future practice locations of the generalist physician. Increasing numbers of medical schools are initiating substantial training programs some distance from the school. In some instances, the external training site has taken the form of a new clinical campus with its own departmental structure. Typically these clinical campuses are responsible for providing most, if not all, of the clinical training for a cohort of medical students.

This specific wording change and the related changes that follow will assist these remote clinical training programs by permitting both the parent school and the clinical campus to receive Federal assistance under this program.

Clinical campus means a geographically separate educational entity of an accredited medical school

that has been given the responsibility to coordinate or provide all clinical training for at least 10 percent of the school's third-year students.

This new definition is being proposed to limit the expansion of an academic administrative unit to entities that have education as their principal purpose and have the capability and charge to provide the full range of experiences needed for clinical training of physicians.

Other major clinical units means formal academic units at the applicant school or its clinical campus that offer clinical instruction in internal medicine, obstetrics and gynecology, pediatrics, psychiatry, or surgery.

The phrase "or its clinical campus" is added to reflect the change to the definition of "academic administrative unit" cited above.

Section 57.1704 Program Requirements

The Department is proposing to revise paragraph (a) of this section. The phrase "in an administrative unit" is added to permit a program applicant to use a program director from the clinical campus rather than the parent medical school. In many instances the level of medical school involvement in the remote campus is not sufficient to exercise effective management of the grant funds at the clinical campus.

The Department is deleting a parenthetical phrase in paragraph (d) of this section, "(or in the case of a school of osteopathic medicine, have control over or be closely affiliated with)", to remove the redundancy within this paragraph. We are proposing to add a phrase "or clinical campus" to extend the requirement to control a residency program to the clinical campus program. Otherwise, a residency program controlled by the parent medical school department would not meet the residency requirement for an application for assistance for a clinical campus.

We are also proposing to add a parenthetical phrase in paragraph (e) of this section, "(or units in the case of schools with one or more decentralized units)", to clarify that the requirement to provide training to all medical students can be met by the combined efforts of the parent family medicine administrative unit and the clinical campus administrative unit.

The Department is adding the phrase "or clinical campus" in paragraph (f) of this section to clarify that in comparing numbers of clinical faculty, the clinical campus family medicine administrative unit should be compared to other clinical campus units.

In addition to the changes proposed above, a number of technical and ministerial changes are included to conform the existing regulations with amendments made by Pub. L. 102–408. These changes affecting the program for the Grants for the Establishment of Departments of Family Medicine are being made to the regulations to:

1. Revise the section number of the Act from "780" to "747" wherever it appears in subpart R, as renumbered, and the United States Code citation from "(42 U.S.C. 295g)" to "(42 U.S.C. 293k)", in accordance with Pub. L. 102–408.

2. Revise § 57.1702, entitled "*Definitions.*", to amend the section number of the Act in the definition of "School of medicine or school of osteopathic medicine" from "701(5)" to "799(1)(E)", in accordance with Pub. L. 102–408.

3. Revise § 57.1704, entitled "*Program requirements.*", to revise the section number "786(a)" in paragraph (h) to "747", in accordance with Pub. L. 102–408.

4. Revise § 57.1705, entitled "*How will applications be evaluated?*", to reflect current statutory language regarding the evaluation and recommendation process of awarding grant applications by removing the reference to the National Advisory Council on Health Professions Education and the section of the Act which established it. Pub. L. 102–408 repealed the Advisory Council effective October 1, 1992.

5. Revise § 57.1709, entitled "*What other audit and inspection requirements apply to grantees?*", to revise the section number "705" in the text to "798(e)", in accordance with Pub. L. 102–408.

Further, Public Law 103–227, enacted on March 31, 1994, prohibits smoking in certain facilities in which minors will be present. The Department of Health and Human Services is now preparing to implement the provision of that law. Until those implementation plans are in place, PHS continues to strongly encourage all grant recipients to provide a smoke free workplace and promote the nonuse of all tobacco products.

Economic Impact

This proposed rule governs a financial assistance training grant program in which participation is voluntary. Because this proposed rule makes minor changes in an existing grant program, it will have no consequential effect on the economy, small businesses, or small governments. Therefore, the Secretary certifies that this rule will not have a significant economic impact on small entities.

Paperwork Reduction Act of 1980

This proposed rule does not affect the recordkeeping or reporting requirements in the existing regulations for the Grants for the Establishment of Departments of Family Medicine.

List of Subjects

Denatal health, Educational facilities, Grant programs—education, Medicine and dental schools, Education of the disadvantaged, Education study programs, Grant programs—health, Student aid.

(*Catalog of Federal Domestic Assistance*, No. 93.984, Grants for the Establishment of Departments of Family Medicine)

Dated: April 12, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: July 7, 1994.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR part 57, subpart R is proposed to be amended as set forth below:

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

1. The authority citation for subpart R of part 57 is revised to read as follows:

Authority: 42 U.S.C. 216, 293k, 295g.

§ 57.1701 [Amended]

2. Section 57.1701 is amended by revising the number "780" to read "747" and the cite "(42 U.S.C. 295g)" to read "(42 U.S.C. 293k)".

3. Section 57.1702 is amended by revising the number "701(5)" in the definition of "School of medicine or osteopathic medicine" to read "799(1)(E)"; by revising the definitions of "Academic administrative unit" or "unit" and "Other major clinical units"; and by adding the term "Clinical campus" to read as follows:

§ 57.1702 Definitions.

Academic administrative unit or unit means a department, division, or other formal academic unit of a school of medicine or osteopathic medicine or clinical campuses of such schools that provides clinical instruction in family medicine.

* * * * *

Clinical campus means a geographically separate educational entity of an accredited medical school that has been given the responsibility to coordinate or provide all clinical training for at least 10 percent of the school's third-year students.

* * * * *

Other major clinical units means formal academic units at the applicant school or its clinical campus that offer clinical instruction in internal medicine, obstetrics and gynecology, pediatrics, psychiatry, or surgery.

* * * * *

4. Section 57.1704 is amended by revising the number "786(a)" in paragraph (h) to read "747"; and by revising paragraphs (a), (d), (e), and (f) to read as follows:

§ 57.1704 Program requirements.

* * * * *

(a) Each project must have a project director, who works at the grantee institution in an administrative unit of the grantee institution on an appointment consistent with other major departments, heads or will head the unit, and has relevant training and experience in family medicine.

* * * * *

(d) The unit must have control over a residency training program. The program must have the capacity to enroll a total of at least 9 interns or residents annually. A unit whose applicant school or clinical campus does not have a residency program accredited under its direct authority will be considered as meeting this requirement if it has a written affiliation agreement with a hospital which conducts a residency program as described.

(e) The unit (or units in the case of schools with one or more decentralized unit) must have responsibility for providing instruction to each member of the student body who is engaged in an education program leading to a degree in doctor of medicine or doctor of osteopathic medicine. The amount of mandatory and elective curriculum must be comparable to the amount of mandatory and elective curriculum time required for other major clinical units at the school.

(f) The unit must have, in the judgment of the Secretary, a sufficient number of full-time faculty to conduct the instruction. The number of family medicine faculty in the unit must be comparable to that of full-time faculty responsible for conducting the instruction of one of the other major clinical units either at the school or at the clinical campus, whichever is the same as the unit receiving the grant funds.

5. The introductory text to § 57.1705 is revised to read as follows:

training for at least 10 percent of the school's third-year students.

* * * * *

Other major clinical units means formal academic units at the applicant school or its clinical campus that offer clinical instruction in internal medicine, obstetrics and gynecology, pediatrics, psychiatry, or surgery.

* * * * *

4. Section 57.1704 is amended by revising the number "786(a)" in paragraph (h) to read "747"; and by revising paragraphs (a), (d), (e), and (f) to read as follows:

§ 57.1704 Program requirements.

* * * * *

(a) Each project must have a project director, who works at the grantee institution in an administrative unit of the grantee institution on an appointment consistent with other major departments, heads or will head the unit, and has relevant training and experience in family medicine.

* * * * *

(d) The unit must have control over a residency training program. The program must have the capacity to enroll a total of at least 9 interns or residents annually. A unit whose applicant school or clinical campus does not have a residency program accredited under its direct authority will be considered as meeting this requirement if it has a written affiliation agreement with a hospital which conducts a residency program as described.

(e) The unit (or units in the case of schools with one or more decentralized unit) must have responsibility for providing instruction to each member of the student body who is engaged in an education program leading to a degree in doctor of medicine or doctor of osteopathic medicine. The amount of mandatory and elective curriculum must be comparable to the amount of mandatory and elective curriculum time required for other major clinical units at the school.

(f) The unit must have, in the judgment of the Secretary, a sufficient number of full-time faculty to conduct the instruction. The number of family medicine faculty in the unit must be comparable to that of full-time faculty responsible for conducting the instruction of one of the other major clinical units either at the school or at the clinical campus, whichever is the same as the unit receiving the grant funds.

5. The introductory text to § 57.1705 is revised to read as follows:

§ 57.1705 How will applications be evaluated?

The Secretary will award grants to applicants whose projects will best promote the purposes of section 747 of the Act and these regulations. The Secretary will consider, among other factors:

* * * * *

§ 57.1709 [Amended]

6. Section 57.1709 is amended by revising the number "705" to read "798(e)".

[FR Doc. 94–17223 Filed 7–18–94; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–78, RM–8472]

Radio Broadcasting Services; Cloverdale, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Pulaski Broadcasting, Inc. ("petitioner") seeking the allotment of FM Channel 254A to Cloverdale, Alabama, as that locality's first local aural transmission service. Petitioner is requested to provide additional information to establish Cloverdale's status as a community for allotment purposes. Coordinates used for this proposal are North Latitude 34–56–19 and West Longitude 87–46–17.

DATES: Comments must be filed on or before September 3, 1994, and reply comments on or before September 20, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and its consultant, as follows: Hershel Lake, President, Pulaski Broadcasting, Inc., P.O. Box 738, Pulaski, Tennessee 38478; Kirk A. Tollett, Commsouth Media Associates, 4001 Highway 78 East, Jasper, AL 35501 (consultant).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–78, adopted June 29, 1994, and released July 13, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17486 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–76, RM–8477]

Radio Broadcasting Services; Chester, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by m. JAYNE sawyer, requesting the allotment of Channel 296A to Chester, California, as that community's second local FM service. Coordinates used for this proposal are North Latitude 40–20–34 and West Longitude 121–16–15.

DATES: Comments must be filed on or before Sept. 3, 1994, and reply comments on or before Sept. 20, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: m. JAYNE sawyer, P.O. Box 1074, Cico, CA 95927.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–76, adopted June 28, 1994, and released July 13, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's reference Canter (Room 239), 1919 M Street NW; Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17481 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 94–77, RM–8476]

Radio Broadcasting Services; Shasta Lake City, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mark C. Allen, requesting the allotment of FM Channel 276A to Shasta Lake City, California, as that community's first local aural transmission service. Coordinates used for this proposal are North Latitude 40–43–58 and West Longitude 122–21–59.

DATES: Comments must be filed on or before September 7, 1994, and reply comments on or before September 22, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mark C. Allen, 3745 McHale Way, Redding, CA 96001.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–77, adopted June 28, 1994, and released July 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17488 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 94–80, RM–8445]

Television Broadcasting Services, Menominee and Iron Mountain, MI; Wittenberg, WI; and Ely, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The document requests comments on a petition filed by Douglas A. Maszka, d/b/a Tri-Cities Television Company, requesting the substitution of Channel *25+ for vacant Channel *17+ at Iron Mountain, Michigan, allotment of channel 17– at Wittenberg, Wisconsin, and allotment of channel 31+ at Menominee, Michigan. Since alternate channels are available for Wittenberg and Menominee that do not require a substitution at Iron Mountain, we shall propose the allotment of Channel 25+ at Menominee, Michigan, with a site restriction 17.8 kilometers north at coordinates 45–16–00 and 87–36–48 and the allotment of channel 46 at Wittenberg, Wisconsin, with a site restriction 30.7 kilometers north at coordinates 45–05–53 and 89–07–31. In the alternative, we shall also propose, as requested by petitioner, the allotment of channel 31+ at Menominee, Michigan, at coordinates 45–16–00 and 87–36–48, the substitution of Channel *25+ for vacant Channel *17+ at Iron Mountain, Michigan, at coordinates 45–49–12 and 88–04–31, and the allotment of Channel 17– to Wittenberg, Wisconsin, at coordinates 45–05–00 and 89–10–06. We shall also change the offset for vacant Channel *17 at Ely, Minnesota, from minus to plus at coordinates 47–54–06 and 91–51–48 to accommodate Channel 17– at Wittenberg. Since Menominee, Wittenberg, Iron Mountain and Ely are located within 400 kilometers (250 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for these allotments.

DATES: Comments must be filed on or before September 6, 1994, and reply comments on or before September 21, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Douglas A. Maszka, d/b/a Tri-Cities Television Company, 600 Vroman Street, Green Bay, Wisconsin 54303.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–80, adopted June 30, 1994, and released July 13, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc: 94–17487 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Goliath Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces that additional information received during the comment period on the proposed rule to list the goliath frog (*Conraua goliath*) as threatened leaves questions as to whether the listing is warranted. The Service has therefore reopened the comment period through October 17, 1994, on the proposed action to list the goliath frog as threatened. Information received indicated that the species has a slightly wider distribution, occurs in a wider range of aquatic habitats, and may be more abundant than believed at the time that the proposed rule was issued. In addition, local utilization and international trade appears to be less of a threat to the species. Additional information on each of these considerations is sought. Furthermore, there remains the concern about the effect of the unquantified and

Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch; Policy and Rules Division, Mass Media Bureau.

[FR Doc: 94–17487 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Goliath Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces that additional information received during the comment period on the proposed rule to list the goliath frog (*Conraua goliath*) as threatened leaves questions as to whether the listing is warranted. The Service has therefore reopened the comment period through October 17, 1994, on the proposed action to list the goliath frog as threatened. Information received indicated that the species has a slightly wider distribution, occurs in a wider range of aquatic habitats, and may be more abundant than believed at the time that the proposed rule was issued. In addition, local utilization and international trade appears to be less of a threat to the species. Additional information on each of these considerations is sought. Furthermore, there remains the concern about the effect of the unquantified and undescribed effect of loss of rainforest habitat on goliath frog populations, and the projections for additional habitat loss. Information is also sought of these issues, as well as any population estimates or surveys.

DATES: The comment period, which originally closed on November 12, 1991, now closes October 17, 1994.

ADDRESSES: Comments, information, and questions should be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC. 20240. (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority, room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION:

Background

The goliath frog (*Conraua goliath*) of Central Africa, reaches a recorded weight of up to 7.2 pounds (3.3 kilograms), a head and body length of 12.6 inches (320 millimeters), and a total length, including the hind leg and foot of about 32 inches (813 millimeters); there have been reports of even larger individuals (Sabater-Pi 1985; Zahl 1967). However, this giant amphibian has a relatively small range. It occurs along major rivers in dense rainforest within an area of about 10,000 square miles (26,000 square kilometers) in Equatorial Guinea, Gabon, and southwestern Cameroon.

In a petition dated April 9, 1991, the Service was requested to add the goliath frog to the List of Endangered and Threatened Wildlife. The petition was submitted by Dr. Cristina M. Richards (Biology Department, Wayne State University, Detroit, Michigan 48202) and Dr. Victor H. Hutchison (Department of Zoology, University of Oklahoma, Norman, Oklahoma 73069). It was accompanied by data on the biology of the goliath frog, and pointed out such concerns as slow maturation, rarity, restricted distribution, habitat destruction, local hunting, international trade, high price for living specimens, and poor adaptation to captivity.

Section 4(b)(3) of the Endangered Species Act of 1973 as amended (Act) requires two findings with respect to a petition to list a species. To the maximum extent practical, within 90 days of receipt, a finding must be made on whether the petition presents substantial information indicating that the requested action may be warranted; and if it is determined that the petition presents such information, the Service usually announces this finding and initiates a status review seeking additional information on the status of the species. Then, within 12 months of receipt of the petition, the Service must make a finding as to whether the action is warranted, not warranted, or warranted but precluded by other listing activity.

The Service examined the data submitted by the petitioners and consulted other authorities. It also learned that the goliath frog is classified as vulnerable by the World Conservation Union (IUCN). This review led the Service to make both of the required findings, determining that the requested action was warranted. These findings were incorporated in a proposal to list the goliath frog as a threatened species, which was published in the **Federal Register** of September 12, 1991 (56 FR 46397).

Concurrently with the petition submitted under the Act, the Service received a request to propose the listing of the goliath frog in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in response to a February 7, 1991, **Federal Register** notice (56 FR 4965). The Service requested comments on this proposal in the July 24, 1991, **Federal Register** (56 FR 33894). After reviewing the information received, the Service submitted a proposal to include the species in Appendix II on October 4, 1991, in order to fully consider information that might become available before or at the Eighth Meeting of the Conference of the Parties to CITES, which was held March 2–13, 1992, in Kyoto, Japan. That proposal was withdrawn at the CITES meeting.

The information received in response to the request for comments contained in the proposed rule, as well as the comments received at the CITES meeting, left questions as to whether listing under the Act is warranted. Consequently, a final decision has yet to be announced.

Additional Information Received

The range of the goliath frog is at least somewhat larger than presented in the proposed rule. The original petitioners have indicated that the species does occur in a small part of Gabon. The species does not appear to be limited to areas of cascades and rapids, but

appears to be found in broad rivers and deep streams. However, there remains a question of whether these river/streams must be well oxygenated and whether the species also occurs in slightly brackish water. There is concern that the "frog's habitat is being destroyed to open land for cultivation and provide firewood" (Amiet, pers. comm.), but the loss of habitat has not been quantified and establishment of protected areas may have stabilized any population decline.

The species may not be as rare as was thought, and it appears that the species may be readily found in small numbers by knowledgeable persons. However, no population estimates or surveys are known. Local utilization may not be as much of a threat as was originally reported. Although the frog may be utilized for food when encountered in Cameroon, it is reported that Gabonese do not eat frogs in general or use them for traditional medical or religious reasons and that the goliath frog is not the object of much trade (Gabon's Director of Wildlife per 10/22/91 cable). Furthermore, relatively little is known about the reproductive biology of this species; the suggested slow maturation is based only on the large size of fully grown individuals. Without information on the reproductive biology and productivity, one cannot calculate sustainable utilization rates, although this might be inferred from other information.

The threat of international trade appears to be less than believed when the proposed rule was published. In response to the proposal by the United States to include the goliath frog in Appendix II, a report (Brautigam, 1992) cited two negative responses to the Service's proposal to list the goliath frog as threatened under the Act plus comments from one of the same respondents but addressing the CITES Appendix II proposal. This review also noted that the Government of Cameroon reportedly prohibits the export of the species for the pet trade. Based on the information presented in the U.S. proposal and the new information, the CITES Secretariat recommended rejection of the U.S. proposal stating that the species does not seem to be threatened by international trade. TRAFFIC International also recommended rejection of the proposal, but stated that such a listing could serve as a monitoring tool to gather trade data (Report on Recommendations on Proposals to Amend the CITES Appendices at the Eighth Meeting of the Confesence of the Parties, TRAFFIC, March 1992).

The exact number of individuals exported is unknown but most reports suggest a figure in the hundreds during the 1980s. Most of the international trade was presumed to be to the United States. The reported ban on exportation from Cameroon apparently has not been fully successful. Service records indicate that at least 78 individuals were exported from Equatorial Guinea and Cameroon to the United States in 1992 and 1993, with only six of these being imported in 1993, one as recently as October 21, 1993. Recent information on other international trade is lacking.

A consensus among correspondents is that it is possible to successfully transport and maintain the goliath frog, and that some individuals have survived for months or years in captivity, but that such efforts involve considerable effort and diligence and that many have been lost. Furthermore, no one as reported successful breeding of this species in captivity. Advertisements submitted by the petitioners showed that the asking price in early 1990 was $599.00 for "small" specimens and $2,500.00 for individuals weighing 6–9 pounds. In July 1992, a zoo purchased six frogs from an importer at $1,200.00 each. After a recent inquiry it was suggested that the price might be between $1,500.00 and $1,800.00, but this was qualified by the statement that nobody was buying this species.

Public Comments Solicited

The Service intends that any final decision on the proposed rule will accurately reflect the status of the species and will be based on the best available scientific and commercial information. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Information is sought on the following listing criteria described in the Act:

(1) The present or threatened destruction, modification, or curtailment of this species' habitat or its range;

(2) Any overutilization for commercial, recreational, scientific, or education purposes;

(3) Disease factors or natural predation that may threaten this species;

(4) Any inadequacies of existing regulatory mechanisms; and

(5) Other natural or manmade factors affecting this species' continued existence.

The Service is particularly interested in the following information:

(1) Information on habitat requirements, distribution of that habitat, and threats to that habitat, as well as documentation of past or future habitat losses and threats to that habitat throughout the range of the goliath frog; and in particular quantification of the loss of rainforest in the species' range, and information on the displacement or extirpation of the species when rainforest along river habitat of the species is opened for cultivation.

(2) Information as to any known population estimates or surveys of this species;

(3) Further information on local utilization of this species;

(4) Any information on the reproductive biology of this species, especially as it may be related to its ability to sustain harvest;

(5) Information as to the extent of commercial trade in this species, especially information on international trade other than imports into the United States;

(6) Information as to current ability to transport and maintain this species in captivity; and

(7) Information as to current ability to reproduce this species in captivity

Literature Cited

Brautigam, A. 1992. Analyses of proposals to amend the CITES Appendices. Prepared by IUCN Species Survival Commission Trade Specialist Group, TRAFFIC, and World Conservation Monitoring Center. Submitted to the Eighth Meeting of the Conference of the Parties, Kyoto, Japan. IUCN—the World Conservation Union.

Sabater-Pi, J. 1985. Contribution to the biology of the giant frog (*Conraua goliath*, Boulenger). Amphibia-Reptilia 6:143–153.

Zahl, P.A. 1967. In quest of the world's largest frog. Natl. Geogr. 134: 446–452.

Authority: 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 14, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–17545 Filed 7–15–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Secretary of Agriculture's Special Limited Global Import Quota Announcement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special limited global import quota for upland cotton equal to 183,694,813 kilograms (404,978,070 pounds) is established in accordance with section 103B(n) of the Agricultural Act of 1949, as amended (1949 Act). This quota is covered under Presidential Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Limited Global Import Quota Announcement, chapter 99, subchapter III, subheading 9903.52.00 of the Harmonized Tariff Schedule (HTS).

DATES: The quota is established for the 90-day period beginning on June 3 and ending on August 31.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special limited global import quota for upland cotton, above the quota established under section 22 of the Agricultural Adjustment Act of 1933, as amended, be determined and announced immediately whenever the average price of the base quality of upland cotton in the designated spot markets for a month exceeds 130 percent of the average price of such quality of cotton in such markets for the preceding 36 months. The May 1994 spot market average for base quality cotton was 79.30 cents per pound, which is 134 percent of the 59.15 cents-

Notices

Federal Register
Vol. 59, No. 137
Tuesday, July 19, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Secretary of Agriculture's Special Limited Global Import Quota Announcement

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special limited global import quota for upland cotton equal to 183,694,813 kilograms (404,978,070 pounds) is established in accordance with section 103B(n) of the Agricultural Act of 1949, as amended (1949 Act). This quota is covered under Presidential Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Limited Global Import Quota Announcement, chapter 99, subchapter III, subheading 9903.52.00 of the Harmonized Tariff Schedule (HTS).

DATES: The quota is established for the 90-day period beginning on June 3 and ending on August 31.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special limited global import quota for upland cotton, above the quota established under section 22 of the Agricultural Adjustment Act of 1933, as amended, be determined and announced immediately whenever the average price of the base quality of upland cotton in the designated spot markets for a month exceeds 130 percent of the average price of such quality of cotton in such markets for the preceding 36 months. The May 1994 spot market average for base quality cotton was 79.30 cents per pound, which is 134 percent of the 59.15 cents-per-pound average of the previous 36-month period from May 1991 through April 1994.

The quota amount is equivalent to 21 days of domestic mill consumption of upland cotton at the seasonally-adjusted average rate of the most recent 3 months for which data are available. The 183,694,813-kilogram (404,978,070-pound) quota is based on consumption data for the period February through April 1994. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations.

Authority: 7 U.S.C. 1444–2 (n) and U.S. Note 6(b), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on July 12, 1994.

Mike Espy,
Secretary.

[FR Doc. 94–17518 Filed 7–18–94; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Boston, MA (Service Area)

AGENCY: Minority Business Development Agency, Commerce.
ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from December 1, 1994 to November 30, 1995 is estimated at $222,196. The total Federal Amount is $188,867 and is composed of $184,260 plus the Audit Fee Amount of $4,607. The application must include a minimum cost-share of 15% ($33,329) of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Boston, Massachusetts geographic service area.

The funding instrument for the MBDC will be a cooperative agreement.

Competition is open to individuals, non-profit and for-profit organizations, state, and local governments, American Indian tribes and educational institutions.

The MBDC Program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal Awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at

20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is August 25, 1994. Applications must be postmarked on or before August 25, 1994.

The mailing address for submission is:

ADDRESSES: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room–3720, New York, New York 10278 (Area Code & Telephone Number): (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: William R. Fuller, Acting Regional Director, New York Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: July 12, 1994.

William R. Fuller,

(Acting Regional Director), New York (Regional Office).

[FR Doc. 94–17546 Filed 7–18–94; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Limit for Certain Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Hong Kong

July 13, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on June 1, 1994 (59 FR 28343) announced that the United States Government had requested consultations with the Government of Hong Kong on men's and boys' coats and jackets in Category 834.

Inasmuch as no agreement was reached in recent consultations between the Governments of the United States and Hong Kong, the Government of the United States, under paragraph 7(e)(I) of the U.S.-Hong Kong Bilateral Textile Agreement, has requested the Government of Hong Kong to limit exports to the United States of textile products in Category 834 to a level of 10,500 dozen for 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The United States remains committed to finding a solution concerning Category 834. Should such a solution be reached in further consultations with the Government of Hong Kong, notice will be published in the **Federal Register.**

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17384 Filed 7–18–94; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations With the Government of Pakistan on Certain Man-Made Fiber Textile Products

July 13, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 20, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 29, 1994, under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber

Inasmuch as no agreement was reached in recent consultations between the Governments of the United States and Hong Kong, the Government of the United States, under paragraph 7(e)(f) of the U.S.-Hong Kong Bilateral Textile Agreement, has requested the Government of Hong Kong to limit exports to the United States of textile products in Category 834 to a level of 10,500 dozen for 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The United States remains committed to finding a solution concerning Category 834. Should such a solution be reached in further consultations with the Government of Hong Kong, notice will be published in the **Federal Register.**

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17384 Filed 7–18–94; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations With the Government of Pakistan on Certain Man-Made Fiber Textile Products

July 13, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 20, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 29, 1994, under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United States and Pakistan, the United States Government requested consultations with the Government of Pakistan with respect to man-made twill and sateen staple/filament fabric in Category 628.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Category 628, the Government of the United States has decided to control imports during the ninety-day period which began on June 29, 1994 and extends through September 26, 1994 at a level of 1,079,634 square meters.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 628, produced or manufactured in Pakistan and exported during the prorated period beginning on September 27, 1994 and extending through December 31, 1994, of not less than 973,572 square meters.

A summary market statement concerning Category 628 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 628, under the agreement with the Government of Pakistan, or to comment on domestic production or availability of products included in Category 628, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Pakistan.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 628. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 5756, published on February 8, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Pakistan

Category 628—Man-Made Fiber Twill/Sateen Staple/Filament Fabric

June 1994

Import Situation and Conclusion

U.S. imports of manmade fiber twill and sateen staple/filament fabric, Category 628, from Pakistan began in September 1993. During the eight month period September 1993 through April 1994, U.S. imports from Pakistan reached 3,191,471 square meters. In just eight months, Pakistan has become the number one supplier of manmade fiber twill and sateen staple/filament fabric to the U.S. market, accounting for 37 percent of total Category 628 imports in the year ending April 1994. In the first four months of 1994, imports from Pakistan reached 1,774,924 square meters, 67 percent of total U.S. imports of Category 628 during January-April 1994. There were no Category 628 imports from Pakistan in 1990, 1991, and 1992. Category 628 imports from Pakistan totaled 249,523 square meters in 1989.

The sharp and substantial increase of Category 628 imports from Pakistan is causing a real risk of disruption in the U.S. market for manmade fiber twill and sateen staple/filament fabric.

U.S. Production, Import Penetration and Market Share

U.S. production of manmade fiber twill and sateen staple/filament fabric, Category 628, declined from 98,766,000 square meters in 1989 to 83,441,000 square meters in 1993, a 16 percent decrease. U.S. production for the year ending March 1994 was 9 percent below the year ending March 1993 level.

In contrast, U.S. imports of Category 628 from all sources remained relatively stable during the years 1989-1992, averaging 4,655,000 square meters per year. In 1993, imports surged to 7,259,000 square meters, 56 percent above the 1989-1992 average. Imports continue to surge in 1994, reaching 2,660,000 square meters in the first four months, more than double the January-April 1993 level. Imports reached 8,728,000 square meters in the year-ending April 1994, 83 percent above the 4,772,000 square meters imported during the year ending April 1993.

The ratio of imports to domestic production remained relatively stable, averaging 5.1 percent during the years 1989-1992. The ratio of imports to production increased to 8.7 percent in 1993 and 10.5 percent in the year ending March 1994, double the 1989-1992 average percent.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 628 imports from Pakistan during the year ending April 1994 entered the U.S. under HTSUSA 5407.81.0040—Woven satin or twill synthetic filament fabrics, less than 85% by weight synthetic, mixed primarily with cotton, whether or not bleached. These fabrics entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable fabrics.

Committee for the Implementation of Textile Agreements

July 13, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 1, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 20, 1994, you are directed to establish a limit for man-made fiber twill and sateen staple/filament fabric in Category 628 for the period beginning on June 29, 1994 and extending through September 26, 1994 at a level of 1,079,634 square meters [1].

Textile products in Category 628 which have been exported to the United States prior to June 29, 1994 shall not be subject to the limit established in this directive.

Textile products in Category 628 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

[1] The limit has not been adjusted to account for any imports exported after June 28, 1994.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-17383 Filed 7-18-94; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade: Proposed Amendments Modifying the Load-Out Requirements for Grain Delivered Into Barges at Burns Harbor, IN, Applicable to the Corn, Wheat, Oats, and Soybean Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Board of Trade (CBT) has submitted proposed amendments to its corn, wheat, oats, and soybeans ("grain") futures contracts regarding the deliverer's options for loading grain into barges from regular delivery warehouses at Burns Harbor, Indiana. The proposed amendments will modify the delivery procedures so that deliverers in Burns Harbor no longer would be allowed to load-out futures-delivery grain into barges at regular warehouses operated by the deliverer in Chicago as an alternative to loading the delivery grain into barges at regular delivery warehouses in Burns Harbor.

In accordance with Section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting public comment on the proposal.

DATES: Comments must be received on or before August 18, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT's proposed changes in the barge load-out requirements for deliveries at Burns Harbor, Indiana, for the corn, wheat, oats, and soybeans futures contracts.

FOR FURTHER INFORMATION CONTACT: Frederick Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254-7303.

SUPPLEMENTARY INFORMATION: Under the CBT's existing regulations, when futures delivery grain in store in regular delivery warehouses in Burns Harbor, Indiana is ordered out for shipment by barge, it is the obligation of the deliverer to protect the barge freight rate from the Chicago Switching District, if so requested by the receiver. The existing regulations further specify that the deliverer can protect the barge freight rate by either: (1) Making the grain available to load into a barge at one regular on-water delivery warehouse operated by the deliverer which is located in the Chicago Switching District; or (2) by paying the receiver an amount equal to all expenses for the movement of the barge from the Chicago Switching District to the Burns Harbor Switching District, and the return movement to the Chicago Switching District.

Under the proposed amendments, deliverers will no longer be able to exercise the first alternative above; *i.e.*, making futures delivery grain available for loading into barges at the warehouse operator's Chicago delivery warehouse. As amended, the CBT's regulations will continue to require that the deliverer protect the barge freight rate from the Chicago switching district by paying the receiver the expense of moving barges from Chicago to Burns Harbor and back to Chicago, as described above. In addition, the proposed amendments will make the requirement that the deliverer protect the barge freight rate from the Chicago switching district mandatory, rather than at the request of the party taking delivery.

The Exchange intends to make the changes effective for all existing and newly listed contract months following receipt of notice of approval from the Commission.

In support of the proposed amendments, the Exchange stated that:

> The purpose of the proposed regulation changes is to ensure that the party taking delivery is not economically disadvantaged by the Burns Harbor warehouseman's exercise of the option to provide barge load-out in Chicago. For example, under the current regulation[,] the Burns Harbor warehouseman has the right to switch its barge load-out obligations to Chicago even if the load-out lineup at Chicago is longer than at Burns Harbor. Assuming a 3-day lineup for barge load-out exists at Burns Harbor and a 10-day lineup exists at the Chicago warehouse, the taker of delivery would incur an additional 7 days costs for demurrage and storage if the warehouseman chooses to load-out the barge in Chicago * * *.
>
> The proposed regulation change will ensure that takers of delivery at Burns Harbor who request barge load-out receive grain with the same value as takers of delivery at Chicago, and thus, will improve the fairness between makers and takers of delivery on the [CBT] grain contracts.

The Commission is requesting comments on the proposed amendments specifically in regard to: (1) the extent to which, if any, the proposed amendments will affect the level of deliverable supplies available for the CBT's corn, wheat, oats and soybeans futures contracts; and (2) the extent to which, if any, the application of the proposed amendments to all currently listed contract months will affect the value of existing positions in such months or impair the ability of futures deliverers and receivers to carryout their rights and obligations under these existing futures contracts.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, at the above address. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the same address or by telephone at (202) 254-6314.

The materials submitted by the CBT in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, at the above address by the specified date.

Issued in Washington, DC, on July 13, 1994.

John R. Mielke,

Acting Director Division of Economic Analysis.

[FR Doc. 94-17547 Filed 7-18-94; 8:45 am]

BILLING CODE 6351-01-P

an additional 7 days costs for demurrage and storage if the warehouseman chooses to load-out the barge in Chicago * * *.

The proposed regulation change will ensure that takers of delivery at Burns Harbor who request barge load-out receive grain with the same value as takers of delivery at Chicago, and thus, will improve the fairness between makers and takers of delivery on the [CBT] grain contracts.

The Commission is requesting comments on the proposed amendments specifically in regard to: (1) the extent to which, if any, the proposed amendments will affect the level of deliverable supplies available for the CBT's corn, wheat, oats and soybeans futures contracts; and (2) the extent to which, if any, the application of the proposed amendments to all currently listed contract months will affect the value of existing positions in such months or impair the ability of futures deliverers and receivers to carryout their rights and obligations under these existing futures contracts.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, at the above address. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the same address or by telephone at (202) 254–6314.

The materials submitted by the CBT in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, at the above address by the specified date.

Issued in Washington, DC, on July 13, 1994.

John R. Mielke,

Acting Director Division of Economic Analysis.

[FR Doc. 94–17547 Filed 7–18–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Policy Revision Concerning Foreign Military Financing for Direct Commercial Contracts

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

SUMMARY: Section 572 of the FY94 Foreign Operations Appropriations Act (Public Law 103–87), required DOD to continue the use of Foreign Military Financing (FMF) for funding Direct Commercial Contracts (DCCs) until all parties affected by any such changes were consulted. Accordingly, DOD completed consultations with eligible countries, U.S. Industry, and Congress on the new policy and recommended that the Secretary of Defense continue FMF of DCCs on an exception basis. The Deputy Secretary of Defense accepted the recommendation and has approved the continued use of FMF of DCCs on an exception basis. This new policy is effective as on July 1, 1994, and will be phased-in with full implementation effective January 1, 1995.

Implementation of the new policy will require new Guidelines and Contractor's Certification which are expected to be published by the end of September 1994. The following are the major changes to be included:

—DCCs will not be permitted for standard DOD items. Exceptions may be granted on a case-by-case basis if DOD determines that the Foreign Military Sales (FMS) system cannot satisfy the requirement. The purchasing country must request exceptions for procurement of standard DOD items through the Defense Security Assistance Agency (DSAA) and provide written justification explaining why the requirement should be obtained through DCC.

—Proof of competition, to include offer prices, will be required on all competitive buys. If the lowest offeror is not selected, the country will be required to justify its choice.

—Cost analysis/price evaluations will be conducted by the Defense Logistics Agency (paid for by the foreign country) on all sole-source contracts of $500,000 or more.

—Contract administration services will be performed by the Defense Logistics Agency (paid for by the foreign country) on contracts over $500,000.

—The Defense Contract Audit Agency will continue to conduct audits of contracts.

—Commissions and agent's fees will not be permitted unless paid for from country national funds. Progress or milestone payments to the contractor will be limited to actual costs incurred.

DOD will continue to consider financing contracts or amendments signed by December 31, 1994, and submitted to the Defense Security Assistance Agency (DSAA) by March 30, 1995, under existing guidelines. All contracts or amendments regardless of signature date received after this cut-off date will be processed under the new policy procedures. For additional information contact the Defense Security Assistance Agency, Operations Management Division, (703) 604–6365 or FAX (703) 604–6541.

Dated: July 14, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–17511 Filed 7–18–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 10–12 August 1994.

Time of Meeting: 0900–1700.

Place: MIT Lincoln Laboratory, Bedford, MA.

Agenda

The Army Science Board's Ad Hoc Study on "Aided Target Recognition" (ATR) will meet to receive briefings on military-funded programs in aided and automatic target recognition. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5 U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Herbert J. Gallagher,

COL, GS Executive Secretary

[FR Doc. 94–17415 Filed 7–18–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement for Base Realignment of Naval Air Station Lemoore, Lemoore, CA

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for base realignment of Naval Air Station (NAS) Lemoore, Lemoore, California.

In response to the recommendations of the 1993 Defense Base Closure and Realignment Commission (BRAC–93) and to legislative requirements of the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510), the U.S. Navy plans to relocate facilities and operations from NAS Miramar, San Diego, California, to NAS Lemoore, California. The relocation will consist of 56 F–14 aircraft, 16 E–2 aircraft, 12 F/A–18 aircraft, approximately 3993 military personnel, and 484 civilians. The proposed BRAC relocation to NAS Lemoore will result in the construction of approximately 98 projects. These projects have been placed into the following twelve military construction categories: hangar rehabilitation, airfield operational facilities, airfield operational pavement, industrial support facilities, instruction facilities, training facilities, personnel support facilities, utility upgrades, community support facilities/housing, storage facilities, administrative facilities, and weapons facilities. In addition, the Navy is proposing to establish the Lemoore Military Operating Area (MOA) and two Air Traffic Control Assigned Areas (ATCAAs). The Lemoore MOA and the ATCAAs will become designated airspace for military training over the Central San Joaquin Valley. This airspace is necessary to accommodate the increase in air operations resulting from the relocation of squadrons to the base.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice for public review and comment. A public hearing to inform the public of the DEIS findings and to solicit comments will be held on August 4, 1994, beginning at 7:00 p.m. at the Lemoore High School, 101 East Bush Street, Lemoore, California.

The public hearing will be conducted by the Navy. Federal, state, local agencies, interested groups, and individuals are invited and encouraged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. Longer statements should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by August 22, 1994, to become part of the official record.

Additional information concerning this notice may be obtained by contacting Mr. Surinder Sikand Code (Code 09F2SU), Western Division, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066–2402, telephone (415) 244–3721.

Dated: July 14, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–17478 Filed 7–18–94; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No: 84.029]

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training and Parent Training and Information Centers

ACTION: Notice of withdrawal.

Purpose

On June 10, 1994 the Secretary published in the **Federal Register** (59 FR 30190) a combined application notice (CAN) inviting applications for new awards for fiscal year 1995 under a number of the Department's direct grant and fellowship programs. Included in the CAN were 10 competitions under Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training and Parent Training and Information Centers. The purpose of this notice is to withdraw two of those competitions each of which addressed a separate absolute priority:

CFDA 84.029M (Absolute Priority-8)—Parent Training and Information Centers

CFDA 84.029P (Absolute Priority-9)—Experimental Parent Centers

These competitions will be incorporated into another initiative of the Department and announced at a later date.

For Applications or Information Contact

Cecelia Aldridge, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3072, Switzer Building, Washington, DC 20202–2651. Telephone: (202) 205–9058. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9999.

Authority: 20 U.S.C. 1431.

Dated: July 13, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–17433 Filed 7–18–94; 8:45 am]

BILLING CODE 4000–01–P

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Closed and Partially Closed Meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Assessment Governing Board and its committees. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meetings.

DATES: August 4–6, 1994.

TIMES: August 4, 1994—Subject Area Committee #2, 2:00 P.M.–8:00 P.M. (closed); Achievement Levels Committee, 4:15 P.M.–6:15 P.M. (open). August 5, 1994—Executive Committee, 7:00 A.M.–8:15 A.M. (open); 8:15 A.M.–8:30 A.M. (closed); Full Board, 8:45 A.M.–10:15 A.M. (open); Design and Analysis Committee, 10:15 A.M.–12:15 P.M. (open); Joint meeting, Subject Area Committee #1 and Reporting and Dissemination Committee, 10:15 A.M.–11:15 A.M. (open); Subject Area Committee #1, 11:15 A.M.–12:15 P.M. (open); Reporting and Dissemination Committee, 11:15 A.M.–12:15 P.M. (open); Full Board, 12:15 P.M.–1:30 P.M. (closed); Full Board, 1:30 P.M.–3:45 P.M. (open). August 6, 1994–Nominations Committee, 8:00 A.M.–9:00 A.M. (closed); Full Board, 9:00 A.M. until adjournment at approximately 12:00 Noon (open).

LOCATION: The Brown Palace Hotel, 321 17th Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under Section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e-1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On August 4, two committees will be in session. The Subject Area Committee #2 will meet in closed session from 2:00 P.M. to 8:00 P.M. to review secure field test exercises in science and mathematics. This meeting must be conducted in closed session because premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. The Achievement Levels Committee will meet in open session from 4:15 P.M. until 6:15 P.M. The Committee will be briefed on the progress of the 1994 level setting activities in geography and history and the plans for validating the 1992 achievement levels.

On August 5, the Executive Committee will meet in partially closed session. The agenda for the open session, from 7:00 A.M. until 8:15 A.M. includes a follow-up on NAEP inclusion issues, a summary of comments on "Principles to Govern Scheduling of NAEP Assessments," and a report from the Ad Hoc Committee studying

(open); Reporting and Dissemination Committee, 11:15 A.M.–12:15 P.M. (open); Full Board, 12:15 P.M.–1:30 P.M. (closed); Full Board, 1:30 P.M.–3:45 P.M. (open). August 6, 1994–Nominations Committee, 8:00 A.M.–9:00 A.M. (closed); Full Board, 9:00 A.M. until adjournment at approximately 12:00 Noon (open).

LOCATION: The Brown Palace Hotel, 321 17th Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under Section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e-1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On August 4, two committees will be in session. The Subject Area Committee #2 will meet in closed session from 2:00 P.M. to 8:00 P.M. to review secure field test exercises in science and mathematics. This meeting must be conducted in closed session because premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. The Achievement Levels Committee will meet in open session from 4:15 P.M. until 6:15 P.M. The Committee will be briefed on the progress of the 1994 level setting activities in geography and history and the plans for validating the 1992 achievement levels.

On August 5, the Executive Committee will meet in partially closed session. The agenda for the open session, from 7:00 A.M. until 8:15 A.M. includes a follow-up on NAEP inclusion issues, a summary of comments on "Principles to Govern Scheduling of NAEP Assessments," and a report from the Ad Hoc Committee studying Hierarchial Linear Modeling. The Committee will meet in closed session from 8:15 A.M. to 8:30 A.M. to discuss the qualifications of current Board members to serve as Chairman and Vice Chairman of NAGB. Based upon these discussions, the Board will elect a Vice Chairman and recommend a Chairman to the Secretary. This session will relate solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosures would constitute a clearly unwarranted invasion of personal privacy and, as such, is protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Also on August 5, the full Board will convene in open session at 8:45 A.M. The morning session of the full Board meeting, to 10:15 A.M., includes approval of the agenda, a report on assessment in Colorado, and an overview of the activities of the Education Commission of the States (ECS). From 10:15 A.M. until 12:15 P.M., three of the Board's standing committees will meet in open session. The Design and Analysis Committee will meet during this time. From 10:15 A.M. until 11:15 A.M., Subject Area Committee #1 and the Reporting and Dissemination Committee will meet jointly on parent and other background questionnaires. From 11:15 A.M. until 12:15 P.M., Subject Area Committee #1 and the Reporting and Dissemination Committee will meet separately.

Beginning at 12:15 P.M., until 3:45 P.M., the full Board will meet in partially closed session. From 12:15 P.M., until 1:30 P.M., the meeting will be closed to the public. The Board will hear a report on the 1992 NAEP Writing Portfolio Study. This presentation will include references to specific items from the assessment. This portion of the meeting must be closed because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of these data would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. From 1:30 P.M. until 3:45 P.M. the meeting will be open to the public to hear a report from the Ad Hoc Committee on Hierarchical Linear Modeling, a report on the Board on Testing and Assessment, and a presentation on issues related to reducing NAEP reporting time.

On August 6, the Nominations Committee will meet in closed session from 8:00 A.M. until 9:00 A.M. to review and discuss the personal qualifications and experience of potential nominees to the Board. The review and subsequent discussion of this information will touch upon matters that relate solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

At 9:00 A.M., the full Board will reconvene to receive a presentation on the policy interests of the Education Information Advisory Committee of the Council of Chief State School Officers, (EIAC) and an overview of the October 4–6 NCES/NAGB Joint Conference on Standard-Setting and to hear reports from Subject Area Committees #1 and #2 and the Reporting and Dissemination, Design and Analysis, Achievement Levels, Nominations, and Executive Committees. This meeting of the National Assessment Governing Board will be adjourned at approximately 12:00 Noon.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 A.M. to 5:00 P.M., Monday through Friday. A summary of the activities at each closed portion of these meetings, including related matters that are informative to the public, consistent with the policy of title 5 U.S.C. 552b(c), will be available to the public within fourteen days of the closed and partially closed meetings.

Dated: July 14, 1994.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94–17541 Filed 7–18–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–101]

Application for Authorization To Export Electricity; Washington Water Power Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Washington Water Power Company has requested authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before August 18, 1994.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Warren E. Williams (Program Office) 202–586–9629 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country may not occur without authorization under section 202(e) of the Federal Power Act (FPA).

On May 24, 1994, the Washington Water Power Company (WWP) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. Specifically, WWP has applied for authorization to sell firm capacity and associated energy to West Kootenay Power, Limited (WKP), in the Provence of British Columbia, Canada. The electric energy proposed for export would be delivered to WKP over the existing Boundary/Waneta, 230,000-volt international transmission line which is owned and operated by the Bonneville Power Administration (BPA). The construction, connection, operation, and maintenance of this line was previously authorized by Presidential Permit PP–36.

WWP requested that the period of the export be from November 1, 1994, through February 28, 1995. During that period, WWP proposes to make available, and WKP proposes to purchase, firm capacity and associated energy in the following amounts:

November 1994	30 megawatts (MW).
December 1994	30 MW.
January 1995	40 MW.
February 1995	30 MW.

Upon request from WKP, WWP may, at its sole discretion, increase the amount of firm capacity made available during any month within the term of the agreement. However, in no event, would the amount of exported capacity exceed 100 MW.

The electric energy would be delivered to WKP utilizing the BPA transmission system and the appropriate transmission rate schedules in effect during the transaction period.

In an associated matter, on January 13, 1994, in FE Docket EA–86 (Order EA–86), the Office of Fossil Energy authorized WWP to export to West Kootenay Power 40 MW of firm capacity and associated energy during January 1994, and 30 MW of firm capacity and associated energy during February 1994.

It is noted that this is the second application filed by WWP within the year requesting similar authorizations. In the event WWP has intentions of re-applying for subsequent four-month export authorizations, the DOE will review this application for the appropriateness of issuing a multi-year authorization in this proceeding. The DOE feels that such an action, if warranted, may facilitate WWP's participation in future beneficial commercial arrangements and reduce regulatory burden.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Charles M. Goligoski, Power Resource Analyst, Washington Water Power, East 1411 Mission, P.O. Box 3727, Spokane, Washington 99220–3727.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE on whether the proposed action would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities as required by Section 202(e) of the FPA.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, July 13, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR-Doc. 94–17540 Filed 7–18–94; 8:45 am]

BILLING CODE 6450–01–P

Floodplain Statement of Findings K–705 Water Intake Structure Demolition at the Oak Ridge, TN K–25 Site

AGENCY: Department of Energy (DOE).

ACTION: Floodplain Statement of Findings.

SUMMARY: This is a Floodplain Statement of Findings K–705 Water Intake Structure Demolition at the Oak Ridge K–25 Site, prepared in accordance with 10 CFR Part 1022. DOE proposes to remove out-of-service equipment and materials and demolish the K–705 water intake structure, a part of the K–700 Powerhouse Area. DOE prepared a floodplain assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. Portions of the K–705 structure are located within the 100-year floodplain of the Clinch River, located in Roane County, Tennessee. DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Information on the proposed action, including maps of potentially disturbed floodplain area, is available from: Mr. Robert C. Sleeman, Director, Environmental Restoration Division, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831–8541, (615) 576–0715.

Further information on general DOE floodplain environmental review requirements is available from: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or leave a message, at (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the K–705 Water Intake Structure Demolition at the Oak Ridge K–25 Site, prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain/Wetlands Involvement for Environmental Restoration and Waste Management Activities at the DOE Oak Ridge Reservation was published in the **Federal Register** and a floodplain assessment was prepared; no wetlands [58 FR 51624 (October 4, 1993)] are involved in the proposed action.

DOE is proposing to characterize the facility, perform waste removal, and undertake demolition of the K–705 water intake structure. The K–705 water intake structure consists of the water intake filter wall, sidewalls, and a berm. The water intake filter wall is a metal filtration wall that extends approximately 100 feet into the main channel of the Clinch River and acts to screen water prior to intake. The sidewalls are constructed of solid sheet metal piles and are embedded into a berm. K–705 has been shutdown since the 1960s; it is not currently being used or maintained and has reached a state of significant deterioration. As a result, additional access control measures are required to ensure personnel safety around the structure.

The purpose of the proposed action is to remove the potential for adverse environmental, health, and safety impacts, including potential hazards to navigation, that may result from the deteriorated facility. The proposed action would involve facility characterization, removal of all accessory materials, and demolition to grade level using the most cost-effective method. Removal of K–705 would be conducted in accordance with the removal methods described in the U.S. Army Corps of Engineers Nationwide Wetlands Permit. Temporary disturbance of the Floodplain may occur during the removal of the steel sidewalls of the water intake filter wall from the river bank sediment if this specific activity proved necessary. The temporary disturbance would last approximately 2–3 weeks. If removal of the berm of the structure protruding into the water was necessary, dust/debris-control procedures would be applied during demolition. Best management practices would be implemented to ensure that minimal disturbance to the 100-year Floodplain would occur as a result of taking the proposed action.

Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or leave a message, at (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the K–705 Water Intake Structure Demolition at the Oak Ridge K–25 Site, prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain/Wetlands Involvement for Environmental Restoration and Waste Management Activities at the DOE Oak Ridge Reservation was published in the **Federal Register** and a floodplain assessment was prepared; no wetlands [58 FR 51624 (October 4, 1993)] are involved in the proposed action.

DOE is proposing to characterize the facility, perform waste removal, and undertake demolition of the K–705 water intake structure. The K–705 water intake structure consists of the water intake filter wall, sidewalls, and a berm. The water intake filter wall is a metal filtration wall that extends approximately 100 feet into the main channel of the Clinch River and acts to screen water prior to intake. The sidewalls are constructed of solid sheet metal piles and are embedded into a berm. K–705 has been shutdown since the 1960s; it is not currently being used or maintained and has reached a state of significant deterioration. As a result, additional access control measures are required to ensure personnel safety around the structure.

The purpose of the proposed action is to remove the potential for adverse environmental, health, and safety impacts, including potential hazards to navigation, that may result from the deteriorated facility. The proposed action would involve facility characterization, removal of all accessory materials, and demolition to grade level using the most cost-effective method. Removal of K–705 would be conducted in accordance with the removal methods described in the U.S. Army Corps of Engineers Nationwide Wetlands Permit. Temporary disturbance of the Floodplain may occur during the removal of the steel sidewalls of the water intake filter wall from the river bank sediment if this specific activity proved necessary. The temporary disturbance would last approximately 2–3 weeks. If removal of the berm of the structure protruding into the water was necessary, dust/debris-control procedures would be applied during demolition. Best management practices would be implemented to ensure that minimal disturbance to the 100-year Floodplain would occur as a result of taking the proposed action.

The alternative to the proposed action is to take no action. The no action alternative would mean that DOE would be unable to remove this potentially adverse environmental, health, and safety impact.

On the basis of the Floodplain Assessment, DOE has determined that the proposed action would not alter the storage capacity of the Clinch River Floodplain or increase risks to individuals, property, or the environment. The Floodplain Assessment was performed to assess the potential hydrologic impacts of the proposed action. The Floodplain Assessment addresses (1) the potential for alteration of the Clinch River Floodplain as a result of the proposed action, (2) the increase in water surface elevations during flood events, and (3) the potential impacts of the proposed action on adjacent properties and the environment. Results of the Floodplain Assessment indicate inconsequential hydrologic impacts. Therefore, the proposed characterization, waste removal, and demolition of the K–705 structure would not affect the existing normal channel or 100-year Floodplain of the Clinch River. The proposed action conforms to applicable State Floodplain standards. DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings prior to implementing the proposed action.

Kimberly A. Chaney,

Acting Director, Office of Eastern Area Programs, Office of Environmental Restoration.

[FR Doc. 94–17538 Filed 7–18–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Shimon Awerbuch, PhD.

AGENCY: Department of Energy.

ACTION: Notice of Non-competitive Financial Assistance Award.

SUMMARY: Pursuant to 10 CFR 600.7, and 600.202, the Department of Energy, Region 1 Office intends to award a cooperative agreement to Dr. Shimon Awerbuch. The cooperative agreement will provide funding in the amount of $14,000 to make it possible for Dr. Awerbuch to participate in various seminars and conferences in support of renewable energy for the purpose of educating professionals in the utility industry, state regulatory authorities and renewable industry investors in the valuation of renewables.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This project is suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a recent, current, or planned solicitation.

The initial budget period will be twelve (12) months from the date of the effective date of the award. The project is expected to run for five years. Possible funding in future years will be based on satisfactory completion of the initial term and upon availability of funds.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Region 1 Office, Attn: Richard C. Michaud, One Congress Street, Boston, MD, 02114–2021, 617–565–9713.

Issued in Golden, Colorado, on May 18, 1994.

Christine A. Phoebe,

Director, Administrative Division.

[FR Doc. 94–17537 Filed 7–18–94; 8:45 am]

BILLING CODE 6450–01–M

Savannah River Operations Office

Financial Assistance Award Intent To Award a Noncompetitive Grant

AGENCY: Savannah River Operations Office, DOE.

ACTION: Notice.

SUMMARY: The DOE announces that it plans to award a renewal grant to South Carolina Department of Health and Environmental Control (SCDHEC), 2600 Bull Street, Columbia, SC 29201. The grant, "Oversight and Implementation of the Federal Facility Agreement (FFA)," will be renewed for a five-year period at a projected funding level of $9,097,668. Funds of $1,390,911 are available for the first budget period, and subject to the availability of funds, the reminder will be awarded thereafter. Pursuant to Section 10 CFR Part 600.7(b)(2)(i)(C) of the DOE Assistance Regulations (10 CFR Part 600), DOE has determined that a noncompetitive award is appropriate since SCDHEC is the authorized regulatory agency qualified to perform the activities covered under the grant within the subject jurisdiction.

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Martin, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–2191.

SUPPLEMENTARY INFORMATION:

Procurement Request Number: 09–94SR18233.001.

Project Scope: The proposed renewal grant allows the State of South Carolina to continue implementing the Federal Facility Agreement (FFA) and maintain

a program to oversee the remediation activities at the Savannah River Site (SRS). The FFA (effective August 13, 1993) is a collaborative effort among the Department of Energy, the Environmental Protection Agency and the South Carolina Department of Health and Environmental Control to direct the comprehensive remediation of the SRS. The Agreement governs the corrective/remedial action process from site investigation through site remediation and describes procedures to set annual work priorities for that process. The Parties will coordinate the administrative and public participation processes prescribed by the various statutes (e.g., RCRA and CERCLA) governing the corrective/remedial action process at the SRS.

Based on documentation presented and appropriate evaluation, it is determined that this award to SCDHEC on a noncompetitive basis is appropriate and is in the best interest of DOE.

Issued in Aiken, South Carolina, on June 15, 1994.

Robert E. Lynch,

DOE Savannah River Operations Office, Head of Contracting Activity, Designee.

[FR Doc. 94–17536 Filed 7–18–94; 8:45 am]

BILLING CODE 6450–01–M

Noncompetitive Financial Assistance Award

AGENCY: Department of Energy (DOE) Albuquerque Operations Office (AL).

ACTION: Notice of Program Interest.

SUMMARY: Based upon a determination pursuant to 10 CFR part 600.14(e)(i), which authorizes a financial assistance award to be made on an unsolicited proposal if the activity to be funded is meritorious based on a general evaluation of the unsolicited proposal, AL gives notice of its plans to award a one-year grant to Princeton University for a proposal entitled "Asymmetric Whirl Combustion." The total estimated cost to DOE is $174,930. The distribution and availability of funds is subject to budget limitations. The public purpose to be served by this award is to characterize the asymmetric whirl combustion process. The novel burner design enables combustion to occur well beyond the flammability limits of natural gas and thereby produces very low NO_x emissions. DOE is sponsoring this project under the Office of Industrial Technologies.

DATES: This will be a one-year grant starting in 1994.

FOR FURTHER INFORMATION CONTACT:

Robert D. Lowther, U.S. Department of Energy, Albuquerque Operations Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185, Telephone: (505) 845–6839.

SUPPLEMENTARY INFORMATION: NA.

Issued in Albuquerque, New Mexico, June 8, 1994.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–17539 Filed 7–18–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 11428–000, et al.]

Hydroelectric Applications; City of St. Louis, MI, et al.; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Minor License.

b. Project No.: 11428–000.

c. Date Filed: August 5, 1993.

d. Applicant: The City of St. Louis, Michigan.

e. Name of Project: Municipal Dam.

f. Location: On the Pine River, in the City of St. Louis, Gratiot County, Michigan.

g. Filed Pursuant to: Federal Power Act, §§ 791(a)–825(r).

h. Applicant Contact: Larry W. Burkhart, 108 West Saginaw Street, St. Louis, MI 48880, (517) 681–2137.

i. FERC Contact: Charles T. Raabe (tag), (202) 219–2811.

j. Deadline for Interventions and Protests: August 29, 1994.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D8.

l. Description of Project: The existing project would consist of: (1) a 21-foot-high, 126-foot-long reinforced concrete dam surmounted by six 19-foot-wide, 8-foot-high radial gates; (2) a 60-foot-long left embankment, a 55-foot-long center embankment, and 250-foot-long right embankment; (3) a reservoir with a 205-acre surface area and a 1,575-acre-foot storage capacity at normal water surface elevation 719 feet MSL; (4) a gated 18-foot-wide, 12-foot-deep intake flume; (5) a powerhouse containing two generating units each rated at 225-kW for a total installed capacity of 450-kW; (6) a tailra e; (7) a short 2400-volt transmission line; and (8) appurtenant facilities.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D8.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the City of St. Louis, 108 West Saginaw Street, St. Louis, Michigan 48880, (517) 681–2137.

2a. Type of Application: Preliminary Permit.

b. Project No. 11468–000.

c. Date filed: April 1, 1994.

d. Applicant: North Side Canal Company, Ltd.

e. Name of Project: Crossroads Conduit Water Power Project.

f. Location: The U Canal & North Side Main Canal, near the town of Jerome, T7S., R16E., sections 23, 24, 25 and 26, Boise Meridian. The project would occupy lands administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. Kip Runyan, Ida-West Energy Company, P.O. Box 7867, Boise, ID 83707, (208) 336–4254.

Mr. John Rosholt, Rosholt, Robertson & Tucker, P.O. Box 1906, Twin Falls, ID 83301, (208) 734–0700.

i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 219–2842.

j. Comment Date: September 3, 1994.

k. Description of Project: The proposed project would consist of: (1) The existing Main Canal intake structure at Milner Dam, which consists of four 8-feet by 12-feet steel radial gates; (2) approximately 20 miles of the existing Main Canal; (3) an existing regulating reservoir; (4) a diversion dam in the existing U Canal; (5) an intake structure; (6) 0.5 mile of open canal; (7) a powerhouse containing a generating unit with an installed capacity of 3,200 kilowatts; (8) a one-mile long tailrace; (9) a 4-mile-long, 12.5-kV transmission line tying into an existing Idaho Power Company line.

The project would generate approximately 11,000 MWh of energy annually.

The applicant estimates the cost of the studies to be conducted under the preliminary permit at $196,900. No new roads will be needed for the purpose of conducting these studies.

There are four exempted hydro projects located within the project boundary, Project Nos. 9070, 10164, 10326, and 10454.

l. Project Boundary: The project boundary is located approximately ±100 feet from the center line of the canals. A detailed project boundary map may be obtained from the applicant.

m. Purpose of Project: Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3a. Type of Application: Preliminary Permit.

b. Project No. 11469–000.

c. Date filed: April 1, 1994.

d. Applicant: North Side Canal Company, Ltd.

e. Name of Project: Headworks Conduit Water Power Project.

f. Location: The North Side Main Canal and the U Canal in Jerome County, Idaho, near the town of Jerome, T8S., R18E., sec. 5, 6, 8; T7 S., R18E., sec. 31; T7S., R17E., sect. 35, 36; T8S., R17E., sec. 1., Boise Meridian. The project would occupy Bureau of Land Management lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact:

Mr. Kip Runyan, Ida-West Energy Company, P.O. Box 7867, Boise, ID 83707, (208) 336–4254.

Mr. John Rosholt, Rosholt, Robertson & Tucker, P.O. Box 1906, Twin Falls, ID 83301, (208) 734–0700.

i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 219–2842.

j. Comment Date: September 30, 1994.

k. Description of Project: The proposed project would consist of: (1) an existing concrete intake structure at Milner Dam which consists of four 8-feet by 12-feet steel radial gates; (2) approximately 20 miles of the existing Main Canal; (3) an existing regulating reservoir; (4) a diversion dam and intake structure at the terminus of the Main Canal and beginning of the U canal, replacing the P, R, and M canals diversion structures; (5) .25-miles of open canal; (6) a powerhouse containing two generating units with a combined installed capacity of 4,500 kilowatts; (7) a 1.5-mile-long tailrace discharging project flows into the U canal; (8) a 3-mile-long, 46-kV transmission line tying into Idaho Power Company's Flat Top Substation.

The project would generate approximately 18,700 MWh of energy annually.

The applicant estimates the cost of the studies to be conducted under the preliminary permit at $207,600. No new roads will be needed for the purpose of conducting these studies.

boundary. Project Nos. 9070, 10164, 10326, and 10454.

l. Project Boundary: The project boundary is located approximately ±100 feet from the center line of the canals. A detailed project boundary map may be obtained from the applicant.

m. Purpose of Project: Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3a. Type of Application: Preliminary Permit.

b. Project No. 11469–000.

c. Date filed: April 1, 1994.

d. Applicant: North Side Canal Company, Ltd.

e. Name of Project: Headworks Conduit Water Power Project.

f. Location: The North Side Main Canal and the U Canal in Jerome County, Idaho, near the town of Jerome. T8S., R18E., sec. 5, 6, 8; T7 S. R18E., sec. 31; T7S., R17E., sect. 35, 36; T8S., R17E., sec. 1., Boise Meridian. The project would occupy Bureau of Land Management lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact:

Mr. Kip Runyan, Ida-West Energy Company, P.O. Box 7867, Boise, ID 83707, (208) 336–4254.

Mr. John Rosholt, Rosholt, Robertson & Tucker, P.O. Box 1906, Twin Falls, ID 83301, (208) 734–0700.

i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 219–2842.

j. Comment Date: September 30, 1994.

k. Description of Project: The proposed project would consist of: (1) an existing concrete intake structure at Milner Dam which consists of four 8-feet by 12-feet steel radial gates; (2) approximately 20 miles of the existing Main Canal; (3) an existing regulating reservoir; (4) a diversion dam and intake structure at the terminus of the Main Canal and beginning of the U canal, replacing the P, R, and M canals diversion structures; (5) .25-miles of open canal; (6) a powerhouse containing two generating units with a combined installed capacity of 4,500 kilowatts; (7) a 1.5-mile-long tailrace discharging project flows into the U canal; (8) a 3-mile-long, 46-kV transmission line tying into Idaho Power Company's Flat Top Substation.

The project would generate approximately 18,700 MWh of energy annually.

The applicant estimates the cost of the studies to be conducted under the preliminary permit at $207,600. No new roads will be needed for the purpose of conducting these studies.

There are four exempted hydro projects located within the project boundary, Project Nos. 9070, 10164, 10326, and 10454.

l. Project Boundary: The project boundary is located approximately ±100 feet from the center line of the canals. A detail project boundary map may be obtained from the applicant.

m. Purpose of Project: Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4a. Type of Application: Preliminary Permit.

b. Project No. 11470–000.

c. Date filed: April 1, 1994.

d. Applicant: North Side Canal Company, Ltd.

e. Name of Project: Jerome Conduit Water Power Project.

f. Location: The North Side Main Canal, U, J, and S canals in Jerome County, near the town of Jerome. T7S., R17E., sections 31, 32, 33 and 34; T8S., R17., sect. 6., Boise Meridian. The project would occupy Bureau of Land Management Lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact:

Mr. Kip Runyan, Ida-West Energy Company, P.O. Box 7867, Boise, ID 83707, (208) 336–4254.

Mr. John Rosholt, Rosholt, Robertson & Tucker, P.O. Box 1906, Twin Falls, ID 83301, (208) 734–0700.

i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 219–2842.

j. Comment Date: September 3, 1994.

k. Description of Project: The proposed project would consist of two developments. The Upper Jerome Conduit Development would consist of: (1) an existing intake structure at the Milner Dam; (2) the existing main canal; (3) an existing regulating reservoir; (4) the existing U canal; (5) a diversion structure diverting flows into; (6) a 1.5-mile-long open channel canal; (7) a concrete intake at the end of the new canal structure; (8) a 13-foot-diameter, 1-mile-long penstock; (9) a powerhouse containing two generating units with a combined installed capacity of 9,900 kW; (10) a 2-mile-long tailrace, discharging project flows into the U canal; (11) a .5-mile-long, 34.5-kV transmission line tying into an existing line; (12) a bypass pipe and regulating gate adjacent to the powerhouse.

The Lower Jerome Conduit Development would consist of; (1) .5 miles of open canal, just below the Upper Jerome tailrace; (2) a concrete intake structure; (3) a 60-foot-long penstock; (3) a powerhouse containing two generating units with a combined installed capacity of 1,400 kW; (4) a tailrace channel discharging project flows into the S and J canals; (5) a .5-mile-long, 34.5-kV transmission line tying into an existing Idaho Power Company line; (6) a bypass pipe and regulating gate near powerhouse; and (7) access roads.

The project would generate approximately a total of 31,500 MWh of energy annually.

The applicant estimates the cost of the studies to be conducted under the preliminary permit at $390,200. No new roads will be needed for the purpose of conducting these studies.

There are four exempted hydro projects located within the project boundary, Project Nos. 9070, 10164, 10326, and 10454.

l. Project Boundary: The project boundary is located approximately ±100 feet from the center line of the canals. A detail project boundary map may be obtained from the applicant.

m. Purpose of Project: Project power would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5a. Type of Application: Surrender of License.

b. Project No.: 8289–014.

c. Date filed: June 20, 1994.

d. Applicant: Rivers Electric Co., Inc.

e. Name of Project: Tuxedo Falls Hydroelectric Project.

f. Location: Ramapo River, Town of Tuxedo, Orange County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)–825 (r).

h. Applicant contact: Charles R. Pepe, Rivers Electric Co., Inc., P.O. Box 707, Alpine, NJ 07620, (201)768–4040.

i. FERC contact: Etta Foster, (202) 219–2679.

j. Comment Date: August 22, 1994.

k. Description of Proposed Action: Rivers Electric Co., Inc. has determined that it would not be economically feasible to construct the Tuxedo Falls Project.

l. This notice also consists of the following standard paragraphs: B & C1 and D2.

6a. Type of Application: Subsequent License.

b. Project No.: 2523–007.

c. Date Filed: August 12, 1993.

d. Applicant: N.E.W. Hydro, Inc.

e. Name of Project: Oconto Falls Hydro Project.

f. Location: On the Oconto River in Oconto County, near Oconto Falls, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Charles A. Alsberg, N.E.W. Hydro, Inc., P.O. Box

167, 116 State Street, Neshkoro, WI 54960, (414) 293–4628.

i. FERC Contact: Ed Lee (202) 219–2809.

j. Comment Date: September 6, 1994.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. Description of Project: The project consists of the following: (1) an existing reservoir with a surface area of 166.5 acres and a total storage volume of about 1,700 acre-feet at the normal maximum surface elevation of 729.7 feet (USGS); (2) an existing earth embankment, about 1,350 feet long with a crest width ranging from 15 feet to 60 feet, constructed of sand and gravel fill with reinforced concrete corewalls to bedrock; (3) an existing non overflow concrete gravity dam, 110 feet long and about 28 feet high; (4) an existing spillway, 65 feet long and about 16.6 feet high, constructed of reinforced concrete keyed into bedrock, consisting of three, 11 foot high by 20 foot wide, manually operated tainter gates and a fourth nonoperational gate, 11 feet high by 5 feet high; (5) an existing powerhouse with a substructure, constructed of reinforced concrete bedrock, about 86 feet long by 72 feet wide, and a superstructure, constructed of stone masonry with a steel frame roof; (6) existing powerhouse generating equipment consisting of (a) three horizontal shaft Francis turbines, Units 1 and 2 rated at 600 hp at 28.5 feet of head, each with a maximum hydraulic capacity of 254 cfs, and Unit 3 rated at 450 hp at 28.5 feet of head with a maximum hydraulic capacity of 250 cfs (providing a maximum plant hydraulic capacity of 758 cfs), and (b) three horizontal shaft generators, Unit 1 manufactured by Electric Machinery Company and rated at 480 kW; Unit 2 manufactured by Westinghouse and rated at 480 kW as well, and Unit No. 3 manufactured by Westinghouse and rated at 360 kW (providing a total plant capacity of 1,320 kW); (7) an existing earth embankment, about 175 feet long with a crest width ranging from 15 feet to 60 feet, constructed of sand and gravel fill with reinforced concrete corewalls to bedrock; and (8) appurtenant facilities. No changes are being proposed for this subseqent license. The applicant estimates the average annual generation for this project would be 7,495 MWh. The dam and existing project facilities are owned by Wisconsin Electric Power Company, 231 W. Michigan, P.O. Box 2046, Milwaukee, WI 53201.

m. Purpose of Project: Project power would be sold to Wisconsin Electric Power Company.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at N.E.W. Hydro, Inc., P.O. Box 167, 116 State Street, Neshkoro, WI 54960 or by calling (414) 293–4628.

7a. Type of Application: Declaration of Intention.

b. Docket No: DI94–3.

c. Date Filed: 06/17/94.

d. Applicant: Powerwheel Corporation.

e. Name of Project: Reading Public Museum Hydroelectric Project.

f. Location: Wyomissing Creek, tributary to Schuylkill River; Reading Public Museum in Berks County, Pennsylvania.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b).

Applicant Contact: Kenneth R. Broome, President, Powerwheel Corporation, 15 Fawn Drive, Reading, PA 19607, (215) 775–9399, (215) 775–5886—FAX.

i. FERC Contact: Diane M. Murray, (202) 219–2682.

j. Comment Date: August 19, 1994.

k. Description of Project: The proposed project will consist of: (1) a small reservoir; (2) a 10-foot-high dam; (3) a flume; (4) a 25-kilowatt induction generator; (5) a transmission line; (6) a tailrace; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: To operate new floodlights and new fountain pumps in the Reading Public Museum in Berks County, Pennsylvania.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

8a. Type of Application: Major License (Notice of Tendering).

b. Project No.: 10819–002.

c. Date filed: June 23, 1994.

d. Applicant: Idaho Water Resource Board.

e. Name of Project: Dworshak Small Hydro.

f. Location: On the existing water conveyance system providing water from Dworshak Dam to two fish hatcheries. North Fork Clearwater River, Clearwater County, Idaho. Section 34, Township 37 North, Range 1 East, Boise Meridian.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r)

h. Applicant Contact: Mr. Ralph Mellin, Idaho Department of Water Resources, 1301 North Orchard, Boise, ID 83706–2237, (208) 327–7991.

i. FERC Contact: James Hunter, (202) 219–2839

j. Brief Description of Project: The proposed project will consist of one 2-megawatt and one 0.5-megawatt generating unit connected to existing water lines at the system's distribution tank and a transmission line connecting to an existing Clearwater Power Company distribution line. The project would occupy lands of the United States under the jurisdiction of the Corps of Engineers and the Bureau of Land Management.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

l. In accordance with § 4.32 (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

9a. Type of Application: Surrender of Exemption for Small Conduit Hydroelectric Facility.

b. Project No: 3350–001.

c. Date Filed: 06/21/94.

d. Applicant: Turlock Irrigation District.

e. Name of Project: Drop No. 6.

f. Location: The District's Main Canal at the sixth control structure (Drop No. 6), downstream of Turlock Lake, the District's regulating reservoir, in Stanislaus County, CA.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Norman Boberg, Turlock Irrigation District, 333 East Canal Drive, P.O. Box 949, Turlock, CA 95381, (209) 883–8211.

i. FERC Contact: Diane Murray, (202) 219–2682

j. Comment Date: August 22, 1994

k. Description of Project: The existing project, for which the exemption is being surrendered, consists of a powerplant, at one end of and below an existing control structure, containing a turbine-generator unit that is a prototype design of the Schneider Hydrodynamic Power Generator with a rated capacity of 200 kilowatts.

The exemptee is requesting surrender of the exemption because the project failed during commissioning and subsequent studies indicated that it was not feasible to develop the project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

10a. Type of Application: Preliminary Permit.

b. Project No.: 11481–000.

c. Date Filed: May 18, 1994.

d. Applicant: Cuffs Run Energy Partners.

e. Name of Project: Cuffs Run Pumped Storage.

f. Location: On Cuffs Run and the Susquehanna River in York and Lancaster Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Frank W. Frisk, Jr., Attorney, Suite 125, 1054 31st Street, N.W., Washington, DC 20007, (202) 333–8433.

i. FERC Contact: Charles T. Raabe (tag) (202) 219–2811.

j. Comment Date: September 12, 1994.

k. Competing Application: Project No. 11446–000.

Date Filed: November 2, 1993.

Due Date: May 19, 1994.

l. Description of Project: The proposed pumped storage project would consist of: (1) an upper reservoir having a 580-acre surface area and a 25,000-acre-foot storage capacity at water surface elevation 680 feet MSL, created by a 225-foot-high, 10,000-foot-long dam, a 95-foot-high, 700-foot-long dike, and a 35-foot-high, 1300-foot-long dike; (2) a submerged intake structure; (3) a 45-foot-diameter vertical shaft and a horizontal tunnel trifurcating into three 20-foot-diameter steel-lined conduits;

e. Name of Project: Drop No. 6.

f. Location: The District's Main Canal at the sixth control structure (Drop No. 6), downstream of Turlock Lake, the District's regulating reservoir, in Stanislaus County, CA.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Norman Boberg, Turlock Irrigation District, 333 East Canal Drive, P.O. Box 949, Turlock, CA 95381, (209) 883–8211.

i. FERC Contact: Diane Murray, (202) 219–2682

j. Comment Date: August 22, 1994

k. Description of Project: The existing project, for which the exemption is being surrendered, consists of a powerplant, at one end of and below an existing control structure, containing a turbine-generator unit that is a prototype design of the Schneider Hydrodynamic Power Generator with a rated capacity of 200 kilowatts.

The exemptee is requesting surrender of the exemption because the project failed during commissioning and subsequent studies indicated that it was not feasible to develop the project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

10a. Type of Application: Preliminary Permit.

b. Project No.: 11481–000.

c. Date Filed: May 18, 1994.

d. Applicant: Cuffs Run Energy Partners.

e. Name of Project: Cuffs Run Pumped Storage.

f. Location: On Cuffs Run and the Susquehanna River in York and Lancaster Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Frank W. Frisk, Jr., Attorney, Suite 125, 1054 31st Street, N.W., Washington, DC 20007, (202) 333–8433.

i. FERC Contact: Charles T. Raabe (tag) (202) 219–2811.

j. Comment Date: September 12, 1994.

k. Competing Application: Project No. 11446–000.

Date Filed: November 2, 1993.

Due Date: May 19, 1994.

l. Description of Project: The proposed pumped storage project would consist of: (1) an upper reservoir having a 580-acre surface area and a 25,000-acre-foot storage capacity at water surface elevation 680 feet MSL, created by a 225-foot-high, 10,000-foot-long dam, a 95-foot-high, 700-foot-long dike, and a 35-foot-high, 1300-foot-long dike; (2) a submerged intake structure; (3) a 45-foot-diameter vertical shaft and a horizontal tunnel trifurcating into three 20-foot-diameter steel-lined conduits; (4) an underground powerhouse containing three reversible pump-turbine units rated at 300- MW each operated at a 450-foot head; (5) a 1,500-foot-long powerhouse access tunnel and a 20-foot-diameter vent and cable shaft; (6) three concrete-lined conduits leading to an outlet structure at the lower reservoir separate from the main body of Lake Clarke; (7) an above-ground switchyard; (8) a three-mile-long transmission line; and (9) appurtenant facilities. Lake Clarke, an existing reservoir formed by the Safe Harbor Dam (FERC Project No. 1025) would be utilized for the initial fill of the upper reservoir and for makeup water. Core boring of the foundation overburden and underlying rock formation would be required. Applicant estimates that the cost of the studies under the terms of the permit would be $3,000,000. Project energy would be purchased from and sold to local utilities. A portion of the proposed project boundary for Project No. 11481–000 lies within the approved project boundary for licensed project No. 1025. However, the proposed project facilities could be mutually compatible.

m. This notice also consists of the following standard paragraphs A8, A10, B, C, and D2.

11a. Type of Application: Surrender of License.

b. Project No.: P–5833–016.

c. Date Filed: June 29, 1994.

d. Applicant: Pennsylvania Hydroelectric Development Corporation.

e. Name of Project: Easton Raubsville Project.

f. Location: Located at the existing Easton Dam in Northhampton County, Pennsylvania, on the Lehigh River, which is a tributary of the Delaware River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Larry Gleeson, P.O. Box 402, Belfast, ME 04915, (207) 338–2131, (207) 338–2507—FAX.

i. FERC Contact: Diane M. Murray, (202) 219–2682.

j. Comment Date: August 26, 1994.

k. Description of Project: The licensee states that the project is infeasible to construct at this time.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number

of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: July 13, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17438 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–319–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of August 1, 1994:

Original Sheet No. 98E
Eleventh Revised Sheet No. 20A

Algonquin states that the purpose of this filing is to provide for the recovery of certain transition costs associated with upstream capacity retained by Algonquin. Specifically, Algonquin seeks to recover Account no. 858 stranded costs billed to Algonquin by Texas Eastern Transmission Corporation (Texas Eastern). Algonquin requests that the Commission waive Section 154.22 of the Commission's regulations to the extent that may be necessary to place these tariff sheets into effect as requested.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17469 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–258–001]

Canyon Creek Compression Co.; Compliance Filing

July 13, 1994.

Take notice that on July 8, 1994, Canyon Creek Compression Company (Canyon Creek) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet Nos. 147 and 148, and

[Docket No. RP94–319–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of August 1, 1994:

Original Sheet No. 98E
Eleventh Revised Sheet No. 20A

Algonquin states that the purpose of this filing is to provide for the recovery of certain transition costs associated with upstream capacity retained by Algonquin. Specifically, Algonquin seeks to recover Account no. 858 stranded costs billed to Algonquin by Texas Eastern Transmission Corporation (Texas Eastern). Algonquin requests that the Commission waive Section 154.22 of the Commission's regulations to the extent that may be necessary to place these tariff sheets into effect as requested.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17469 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–258–001]

Canyon Creek Compression Co.; Compliance Filing

July 13, 1994.

Take notice that on July 8, 1994, Canyon Creek Compression Company (Canyon Creek) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet Nos. 147 and 148, and Substitute Original Sheet No. 148A, with a proposed effective date of June 23, 1994.

Canyon Creek states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's (Commission) "Order Accepting Certain Tariff Sheets, Subject to Conditions, and Rejecting Other Tariff Sheets" issued June 23, 1994 relating to the : (1) Definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Canyon Creek requests whatever waivers may be necessary to permit the proposed tariff sheets to become effective June 23, 1994.

Canyon Creek states that copies of its filing were served on all parties to this proceeding, jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17462 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–315–000]

Columbia Gas Transmission Corp.; Petition for Approval of Stipulation

July 13, 1994.

Take notice that on July 8, 1994, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Columbia Gas Transmission Corporation (Columbia) filed a petition requesting that the Commission issue an order approving a stipulation entered into by Columbia and Wyoming Interstate Company, LTD. (WIC) on April 26, 1994. Columbia states that the stipulation terminates Columbia's contractual obligations under its firm transportation contract between Columbia and WIC through the payment of a negotiated exit fee by Columbia to WIC in consideration for WIC's agreement to the termination and abandonment of WIC's services to Columbia pursuant to said contract.

The stipulation is contingent upon Bankruptcy Court and Commission approval, including Commission approval of Columbia's full recovery of the exit fee paid to WIC from Columbia's customers.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before August 2, 1994. Reply comments should be filed on or before August 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17464 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–316–000]

Columbia Gas Transmission Corp.; Petition for Approval of Stipulation

July 13, 1994.

Take notice that on July 8, 1994, pursuant to Rule 207 of the Commission's Rule of Practice and Procedure, 18 CFR 385.207, Columbia Gas Transmission Corporation (Columbia) filed a petition requesting that the Commission issue an order approving a stipulation entered into by Columbia and Trailblazer Pipeline Company (Trailblazer) on May 10, 1994 Columbia states that the stipulation terminates Columbia's contractual obligations under its firm transportation contracts between Columbia and Trailblazer through the payment of a negotiated exit fee by Columbia to Trailblazer in consideration for Trailblazer's agreement to the termination and abandonment of Trailblazer's services to Columbia pursuant to said contracts.

The stipulation is contingent upon Bankruptcy Court and Commission approval, including Commission approval of Columbia's full recovery from Columbia's customers of the exit fee paid to Trailblazer.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North

Capitol Street, NE., Washington, DC 20426, on or before August 2, 1994. Reply comments should be filed on or before August 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17465 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–317–000]

Columbia Gas Transmission Corp.; Petition for Approval of Stipulation

July 13, 1994.

Take notice that on July 8, 1994, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Columbia Gas Transmission Corporation (Columbia) filed a petition requesting that the Commisssion issue an order approving a stipulation entered into by Columbia and Natural Gas Pipeline Company of America (NGPL) on May 26, 1994. Columbia states that the stipulation terminates Columbia's contractual obligations under its transportation, exchange, and assignment contracts between Columbia and NGPL through the payment of a negotiated exit fee by Columbia to NGPL in consideration for NGPL's agreement to the termination and abandonment of NGPL's services to Columbia under Contract No. 27864–CN (X–134).

The stipulation is contingent upon Bankruptcy Court and Commission approval, including Commission approval of Columbia's full recovery from Columbia's customers of the exit fee paid to NGPL.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before August 2, 1994. Reply comments should be filed on or before August 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17466 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–318–000]

Columbia Gas Transmission Corp.; Petition for Approval of Stipulation

July 13, 1994.

Take notice that on July 11, 1994, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Columbia Gas Transmission Corporation (Columbia) filed a petition requesting that the Commission issue an order approving a stipulation entered into by Columbia and Transcontinental Gas Pipe Line Corporation (Transco) on June 20, 1994. Columbia states that the stipulation terminates Columbia's contractual obligations under a firm transportation contract between Columbia and Transco through the payment of a negotiated exit fee by Columbia and Transco in consideration for Transco's agreement to the termination and abandonment of Transco's services to Columbia pursuant to said contract.

The stipulation is contingent upon bankruptcy Court and Commission approval, including Commission approval of Columbia's full recovery from Columbia's customers of the exit fee paid to Transco.

Comments on the settlement, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before August 2, 1994. Reply comments should be filed on or before August 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file a motion to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17467 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–255–001]

Natural Gas Pipeline Company of America; Compliance Filing

July 13, 1994.

Take notice that on July 8, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet Nos. 297 and 298, with a proposed effective date of June 23, 1994.

Natural states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's (Commission) "Order Accepting Certain Tariff Sheets, Subject to Conditions, and Rejecting Other Tariff Sheets" issued June 23, 1994 relating to the: (1) Definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Natural requests whatever waivers may be necessary to permit the proposed tariff sheets to become effective June 23, 1994.

Natural states that copies of its filing were served on all parties to this proceeding, jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17459 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–313–001]

Natural Gas Pipeline Co. of America; Proposed Changes In FERC Gas Tariff

July 13, 1994.

Take notice that on July 8, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 149A, to be effective August 4, 1994.

Natural states that the purpose of the filing is to add subsection (f) to Section 7.2 of Rate Schedule S–1 to provide Shippers the option to utilize confirmed nominated injections under Rate Schedule S–1 to balance volumes taken at delivery points in excess of confirmed nominated deliveries.

Natural requested whatever waivers may be necessary to permit the tariff sheet to become effective August 4, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17463 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–8–000]

Sea Robin Pipeline Co.; Proposed Changes to FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective August 1, 1994:

Second Revised Sheet No. 1
First Revised Sheet Nos. 49–52
First Revised Sheet No. 55
First Revised Sheet No. 58
Second Revised Sheet No. 77
First Revised Sheet No. 193

Sea Robin states that the purpose of this filing is to revise its tariff to comply with the changes made to the marketing affiliate reporting requirements by the Commission's Order No. 566. Sea Robin has requested all waivers necessary to make these sheets effective August 1, 1994, the effective date of Order No. 566.

Sea Robin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion

Natural states that the purpose of the filing is to add subsection (f) to Section 7.2 of Rate Schedule S–1 to provide Shippers the option to utilize confirmed nominated injections under Rate Schedule S–1 to balance volumes taken at delivery points in excess of confirmed nominated deliveries.

Natural requested whatever waivers may be necessary to permit the tariff sheet to become effective August 4, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17463 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–8–000]

Sea Robin Pipeline Co.; Proposed Changes to FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective August 1, 1994:

Second Revised Sheet No. 1
First Revised Sheet Nos. 49–52
First Revised Sheet No. 55
First Revised Sheet No. 58
Second Revised Sheet No. 77
First Revised Sheet No. 193

Sea Robin states that the purpose of this filing is to revise its tariff to comply with the changes made to the marketing affiliate reporting requirements by the Commission's Order No. 566. Sea Robin has requested all waivers necessary to make these sheets effective August 1, 1994, the effective date of Order No. 566.

Sea Robin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17457 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–7–000]

South Georgia Natural Gas Company; Proposed Changes to FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective August 1, 1994:

First Revised Sheet No. 1
First Revised Sheet Nos. 21–23
First Revised Sheet Nos. 39–40
First Revised Sheet No. 62
First Revised Sheet Nos. 77–78
First Revised Sheet Nos. 101–104
First Revised Sheet No. 106
First Revised Sheet No. 121

South Georgia states that the purpose of this filing is to revise its transportation tariff to comply with the changes made to the marketing affiliate reporting requirements by the Commission's Order No. 566. South Georgia has requested all waivers necessary to make these sheets effective August 1, 1994, the effective date of Order No. 566.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should filed a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 or the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17456 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–6–000]

Southern Natural Gas Company; Proposed Changes to FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective August 1, 1994:

First Revised Sheet Nos. 99–101
First Revised Sheet Nos. 182–183
First Revised Sheet No. 191
First Revised Sheet Nos. 215–219
First Revised Sheet No. 223
First Revised Sheet Nos. 232–235
First Revised Sheet No. 260

Southern states that the purpose of this filing is to revise its transportation tariff to comply with the changes made to the marketing affiliate reporting requirements by the Commission's Order No. 566. Southern has requested all waivers necessary to make these sheets effective August 1, 1994, the effective date of Order No. 566.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 20, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17455 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94-256-001]

Stingray Pipeline Co.; Compliance Filing

July 13, 1994.

Take notice that on July 8, 1994, Stingray Pipeline Company (Stingray) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet Nos. 156 and 157, and Substitute Original Sheet No. 157A, with a proposed effective date of June 23, 1994.

Stingray states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's (Commission) "Order Accepting Certain Tariff Sheets, Subject to Conditions, and Rejecting Other Tariff Sheets" issued June 23, 1994 relating to the: (1) Definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Stingray requests whatever waivers may be necessary to permit the proposed tariff sheets to become effective June 23, 1994.

Stingray states that copies of its filing were served on all parties to this proceeding, jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-17460 Filed 7-18-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-320-000]

Trailblazer Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 13, 1994.

Take notice that on July 11, 1994, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 124, with a proposed effective date of August 26, 1994.

Trailblazer states that the purpose of the filing is to modify the first-of-the-month deadline of its Tariff to permit nominations up until 10:00 a.m. on the last business day preceding the first day of the month.

Trailblazer requested whatever waivers may be necessary to permit the tariff sheet to become effective August 26, 1994.

Trailblazer states that a copy of the filing was mailed to Trailblazer's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-17468 Filed 7-18-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-257-001]

Trailblazer Pipeline Co.; Compliance Filing

July 13, 1994.

Take notice that on July 8, 1994, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute First Revised Sheet Nos. 155 and 156, and Substitute Original Sheet No. 156A, with a proposed effective date of June 23, 1994.

Trailblazer states that the purpose of the filing is to comply with the Federal Energy Regulatory Commission's (Commission) "Order Accepting Certain Tariff Sheets, Subject to Conditions, and Rejecting Other Tariff Sheets" issued June 23, 1994 relating to the: (1) Definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Trailblazer requests whatever waivers may be necessary to permit the proposed tariff sheets to become effective June 23, 1994.

Trailblazer states that copies of its filing were served on all parties to this proceeding, jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-17461 Filed 7-18-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ94-3-35-000]

West Texas Gas, Inc.; Notice of Filing

July 13, 1944.

Take notice that on July 8, 1994, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eleventh Revised Sheet No. 4, proposed to be effective July 1, 1994.

WTG states that this tariff sheet and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations. WTG's transmittal letter requests leave to file out-of-time this tariff sheet and further requests waiver of the Commission's regulations to the extent necessary to allow the proposed rates, which reflect a reduction from WTG's currently effective rates, to become effective on July 1, 1994.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-17458 Filed 7-18-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5015-2]

Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under Section 122(h)(1) of CERCLA concerning the Middletown Airfield Site in Dauphin County, Pennsylvania, which was signed by the EPA Regional Administrator, Region III, on June 21, 1994. The settlement resolves an EPA claim under Section 107(a) of CERCLA against the U.S. Air Force. The settlement requires the settling party to pay $3,960,958.89 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before July 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17458 Filed 7–18–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5015–2]

Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under Section 122(h)(1) of CERCLA concerning the Middletown Airfield Site in Dauphin County, Pennsylvania, which was signed by the EPA Regional Administrator, Region III, on June 21, 1994. The settlement resolves an EPA claim under Section 107(a) of CERCLA against the U.S. Air Force. The settlement requires the settling party to pay $3,960,958.89 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before August 18, 1994.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed settlement may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the Middletown Airfield Site, Dauphin County, Pennsylvania and EPA Docket No. III–94–14–DC and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Laura M. Bulatao (3RC23), Assistant Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–8448.

Dated: June 21, 1994.

Peter H. Kostmayer,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 94–17550 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5015–4]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding: Kansas City Power & Light Company, La Cygne, KS

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Kansas City Power & Light Company, La Cygne, Kansas.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Federal Water Pollution Control Act, commonly referred to as the "Clean Water Act", 33 U.S.C. 1251. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under Section 311 of the Clean Water Act, 33 U.S.C. 1321, EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding are set forth at 40 CFR 22.38. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On March 29, 1994, EPA commenced the following Class II proceedings for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Kansas City Power & Light Co., La Cygne, Kansas, EPCRA Docket No. VII–94E–033 and CWA Docket No. VII–94–W–0001.

The Complaint proposes a penalty of $10,000 for the discharge of a hazardous substance under the authority of Section 311 of the Clean Water Act, 33 U.S.C. 1321.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaints or other documents filed in this proceeding, comment upon the proposed penalty assessments, or otherwise participate in the proceedings should contact the Regional Hearing Clerk identified above.

The administrative records for the proceedings are located in the EPA Regional Office at the address stated above, and the files will be open for public inspection during normal business hours. All information submitted by the Kansas City Power and Light Company, La Cygne, Kansas is available as part of the administrative records, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final orders assessing penalties in these proceedings prior to thirty (30) days from the date of this notice.

Dated: June 29, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94–17557 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5015–6]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding: Texaco Trading and Transportation, Inc., El Dorado, KS

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Texaco Trading and Transportation, Inc., El Dorado, Kansas.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Federal Water Pollution Control Act, commonly referred to as the "Clean Water Act", 33 U.S.C. 1251. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1321, EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding are set forth at 40 CFR 22.38. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On May 23, 1994, Environmental Protection Agency commenced the following Class II proceedings for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Texaco Trading and Transportation, Inc., El Dorado, Kansas, Docket No. VII–93–W–0003.

The Complaint proposes a penalty of $120,000 for the discharge of oil under the authority of Section 311 of the Clean Water Act, 33 U.S.C. 1321.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaints or other documents filed in this proceeding, comment upon the proposed penalty assessments, or otherwise participate in the proceedings should contact the Regional Hearing Clerk identified above.

The administrative records for the proceedings are located in the EPA Regional Office at the address stated above, and the files will be open for public inspection during normal business hours. All information submitted by Texaco Trading and Transportation, Inc., El Dorado, Kansas is available as part of the administrative records, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final orders assessing penalties in these proceedings prior to thirty (30) days from the date of this notice.

Dated: June 29, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94–17558 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL 5015–5]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding: Kaw Pipe Line Company, Russell, KS

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Kaw Pipe Line Company, Russell, Kansas.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Federal Water Pollution Control Act, commonly referred to as the "Clean Water Act", 33 U.S.C. 1251. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under Section 311 of the Clean Water Act, 33 U.S.C. 1321, EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding are set forth at 40 CFR 22.38. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On May 25, 1994, EPA commenced the following Class II proceedings for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Kaw Pipe Line Company, Russell, Kansas, Docket No. VII–94–W–0002.

The Complaint proposes a penalty of $125,000 for the discharge of oil under the authority of Section 311 of the Clean Water Act, 33 U.S.C. 1321.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaints or other documents filed in this proceeding, comment upon the proposed penalty assessments, or otherwise participate in the proceedings should contact the Regional Hearing Clerk identified above.

The administrative records for the proceedings are located in the EPA Regional Office at the address stated above, and the files will be open for public inspection during normal business hours. All information submitted by Kaw Pipe Line Company, Russell, Kansas is available as part of the administrative records, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final orders assessing penalties in these proceedings prior to thirty (30) days from the date of this notice.

Dated: June 29, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94–17560 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5016–4]

Massachusetts Marine Sanitation Device Standard; Petition

Notice is hereby given that a petition has been received from the State of Massachusetts requesting a determination by the Regional Administrator, Environmental Protection Agency, pursuant to Section 312(f)(3) of Pub. L. 92–500 as amended by Pub. L. 95–217 and Pub. L. 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Westport Harbor and the East and West Branches of the Westport River that border the Town of Westport, within the State of Massachusetts to qualify as a "No Discharge Area".

The State of Massachusetts (MA) has certified that there are two pump-out facilities available to service vessels in the Westport Harbor and the Westport River.

One pump-out facility, which is mobile, is located at the Town Pier on the north side of the Westport Harbor. This facility has a holding capacity of 650 gallons and it is marked with a yellow and maroon U.S. EPA issued boat pump-out sign. The hours of operation will be upon request during the summer season from Memorial Day through Columbus Day seven days a week from 8:00 a.m. to 2:00 p.m. by calling the Harbormaster's office at (508) 636–1105 or by radio on Channel 9 VHF. The mobile boat pump-out has a draft requirement of 2 feet. Vessels located in waters with depths of less than 2 feet may need to move to deeper water to be pumped out. The cost is free and will be absorbed through boating licenses for the season.

A second pump-out facility will be established at Tripps Marina. The hours of operation during the summer season from Memorial Day through Columbus Day are seven days a week from 8:00 a.m. to 5:00 p.m. Monday through Friday, and from 9:00 a.m. to 5:00 p.m. Saturday and Sunday. There is no fee to use the pump-out facility. Tripps is the largest marina in Westport with 250 slips and 150 moorings. There are fuel facilities, on-shore toilet and shower facilities, and a waste oil receptacle available to boaters.

The Town operates and maintains a 1000 gallon above ground holding tank for septage with secondary containment on the south side of Westport Harbor. The tank is located adjacent to the State Boat Ramp and may be accessed from the water.

Septage is collected by Ocean Arks, Inc., a research facility located in Marion, MA. In the event that Ocean Arks, Inc. ceases to accept the boat septage, the Town of Westport has a renewable contract with New England Sanitation, a licensed septic hauler, located in Westport, MA. Septage that is removed by New England Sanitation will be treated at the Fall River Wastewater Treatment Facility in Fall River, MA.

Westport has both coastal and estuarine waters which support year-round commercial fishing and shellfishing activities. Additionally, recreational swimming and boating draws tens of thousands of daily visitors to the Town in the summer. Currently, there are a total of 1,250 acres closed to

River that border the Town of Westport, within the State of Massachusetts to qualify as a "No Discharge Area".

The State of Massachusetts (MA) has certified that there are two pump-out facilities available to service vessels in the Westport Harbor and the Westport River.

One pump-out facility, which is mobile, is located at the Town Pier on the north side of the Westport Harbor. This facility has a holding capacity of 650 gallons and it is marked with a yellow and maroon U.S. EPA issued boat pump-out sign. The hours of operation will be upon request during the summer season from Memorial Day through Columbus Day seven days a week from 8:00 a.m. to 2:00 p.m. by calling the Harbormaster's office at (508) 636–1105 or by radio on Channel 9 VHF. The mobile boat pump-out has a draft requirement of 2 feet. Vessels located in waters with depths of less than 2 feet may need to move to deeper water to be pumped out. The cost is free and will be absorbed through boating licenses for the season.

A second pump-out facility will be established at Tripps Marina. The hours of operation during the summer season from Memorial Day through Columbus Day are seven days a week from 8:00 a.m. to 5:00 p.m. Monday through Friday, and from 9:00 a.m. to 5:00 p.m. Saturday and Sunday. There is no fee to use the pump-out facility. Tripps is the largest marina in Westport with 250 slips and 150 moorings. There are fuel facilities, on-shore toilet and shower facilities, and a waste oil receptacle available to boaters.

The Town operates and maintains a 1000 gallon above ground holding tank for septage with secondary containment on the south side of Westport Harbor. The tank is located adjacent to the State Boat Ramp and may be accessed from the water.

Septage is collected by Ocean Arks, Inc., a research facility located in Marion, MA. In the event that Ocean Arks, Inc. ceases to accept the boat septage, the Town of Westport has a renewable contract with New England Sanitation, a licensed septic hauler, located in Westport, MA. Septage that is removed by New England Sanitation will be treated at the Fall River Wastewater Treatment Facility in Fall River, MA.

Westport has both coastal and estuarine waters which support year-round commercial fishing and shellfishing activities. Additionally, recreational swimming and boating draws tens of thousands of daily visitors to the Town in the summer. Currently, there are a total of 1,250 acres closed to shellfishing, 550 acres open on a conditional basis, and 1489 acres permanently open. As a result of Westport's economy needing the recreational and commercial money derived from this resource, it is necessary to insure that the coastal and estuarine waters of the Town are pollution free. Programs are in place to help identify those areas that are most polluted and the sources of those pollutants. There are an estimated 350 moored boats in the East Branch of the Westport River, 100 moored boats in the West Branch, 770 moored boats in the Westport Harbor, and approximately 20 transient vessels which enter the harbor each day through the mouth of the harbor during the boating season. Westport is approximately 14 miles long, 5.2 miles wide, with a total area of 57 square miles.

Comments and views regarding this request for action may be filed on or before August 5, 1994. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Janet C. Labonte, U.S. Environmental Protection Agency—Region I, Marine and Estuarine Protection Section (WQE), JFK Federal Building, Boston, MA, 02203. Telephone: 617/565–3550.

Dated: July 5, 1994.

John P. DeVillars,

Regional Administrator.

[FR Doc. 94–17552 Filed 7–18–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Infomation Collection Requirements Submitted to Office of Management and Budget for Review

July 11, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0340

Title: Section 73.51, Determining operating power

Action: Extension of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: Recordkeeping requirement

Estimated Annual Burden: 4,975 recordkeepers; .25 hours average burden per recordkeeper; 1,244 hours total annual burden

Needs and Uses: When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power may be used on a temporary basis. Section 73.51(d) requires that a notation be made in the station log indicating the dates of commencement and termination of measurement using the indirect method of power determination. Section 73.51(e) requires that AM stations determining the antenna input power by the indirect method must determine the value F (efficiency factor) applicable to each mode of operation and must maintain a record thereof with a notation of its derivation. This recordkeeping requirement is used by FCC staff in field investigations to monitor licensees' compliance with the FCC's technical rules and to ensure that licensee is operating in accordance with its station authorization. The value F is used by station personnel in the event that measurement by the indirect method of power is necessary.

OMB Number: 3060–0427

Title: Section 73.3523, Dismissal of applications in renewal proceedings

Action: Extension of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 19 responses; 1.37 hours average burden per response; 26 hours total annual burden

Needs and Uses: Section 73.3523 requires an applicant for a construction permit to obtain approval from the FCC to dismiss or withdraw its application when that application is mutually exclusive with a renewal application. This request for approval must contain a copy of any written agreement and an affidavit, stating that is has not received any consideration (pre-Initial Decision) or is has not received any

consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/withdrawal of its application. In addition, within 5 days of the applicant's request for approval, each remaining competing applicant and the renewal applicant must submit an affidavit certifying that it has not paid any consideration (pre-Initial Decision), or that is has not paid consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/withdrawal of a competing application. The data is used by FCC staff to ensure that an application was filed under appropriate circumstances and not to extract payments prohibited by the Commission.

OMB Number: 3060–0213

Title: Section 73.3525, Agreements for removing application conflicts

Action: Extension of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 62 responses; 8 hours average burden per response; 496 hours total annual burden

Needs and Uses: Section 73.3525 requires applicants for a construction permit for a broadcast station to obtain approval from the FCC to withdraw, dismiss or amend its application when that application is in conflict with another application pending before the FCC. This request for approval to withdraw, dismiss or amend an application should contain a copy of the agreement and an affidavit of each party to the agreement. The data is used by FCC staff to assure that the agreement is in compliance with its rules and regulations and Section 311* of the Communications Act of 1934, as amended.

*Section 311(c) of the Communications Act of 1934, as amended, provides that it shall be unlawful for any applicant for broadcast facilities to effect by agreement the removal of any mutually exclusive applications without approval of the Commission and that the Commission shall approve such agreement only if it finds it to be consistent with the public interest, convenience and necessity.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17386 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–F

Cable Television System Regulatory Fees

The Federal Communications Commission issues this Public Notice in order to provide information concerning the payment of regulatory fees in 1994. If you are an operator of a cable television system or a licensee of a cable antenna relay service (CARS) or broadcast auxiliary service, you should carefully review this Public Notice.

Who Must Pay Regulatory Fees in 1994

Cable television systems operating on or before *December 31, 1993* must pay regulatory fees in 1994. Governments and nonprofit (exempt under Section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, or a certification of governmental authority. All cable television systems must pay regulatory fees of $0.37 per subscriber for each community unit in which it operates. Additionally, each system must pay a $220.00 fee for each CARS license held and, if applicable, a $25.00 fee for each Broadcast Auxiliary Service license held.

Why the Commission Must Collect New Fees

The new requirement to collect annual regulatory fees from cable television systems was contained in Public Law 103–66, "The Omnibus Budget Reconciliation Act of 1993." These new regulatory fees, which are likely to change each fiscal year, will be used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. The new fees are in addition to any application processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

All cable systems must pay the following regulatory fees to the Commission by August 12, 1994, in order to avoid a 25% late penalty:

Type of fee	Regulatory fee payment	Fee code
Cable system subscriber fee.	$0.37 per subscriber.	TOCN
CARS license ...	$220 per license.	TQCN
Broadcast auxiliary services license.	$25 per license	MUBN

Please see "Special Instructions for Completing FCC Forms 159 & 159–C" for correct Payment Type Codes to use when making installment payments.

FCC Form 159

Regulatory fee payments *must* be accompanied by FCC Form 159 ("FCC Remittance Advice"). A copy of this form, with specific instructions, is attached to this Public Notice. Please see "Special Instructions for Completing FCC Forms 159 & 159–C" for detailed information on how to correctly complete these Forms.

Where To Send Regulatory Fee Payments

All regulatory fee payments must be sent to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made electronically provided prior approval has been obtained from the Commission. Contact Thomas M. Holleran at (202) 418–1925 for prior approval.

Note: We encourage arrangements to consolidate regulatory fee payments for different entities into a single payment instrument by a single payee. We recognize the benefits to be gained by all the parties involved. Notwithstanding the scheduled payment due dates specified in this Public Notice, consolidation of 100 or more regulatory fees due from different entities by a single payee will be due on *September 2, 1994*. Entities participating in such consolidated payment arrangements that are eligible, and choose, to pay by installment should pay one-half of the regulatory fee eligible for installment payment by September 2, 1994. The second installment payment will then be due *September 30, 1994*. Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C ("Advice Continuation Sheets") should contact Thomas M. Holleran at (202) 418–1925 at least four weeks prior to the payment due date.

Installment Payments

Cable television systems are permitted to make installment payments if their total subscriber fee (for all community units in which it is the franchisee *or* for all community units of a group of commonly-owned cable systems) *exceeds $18,500*. Fee payments for CARS or Broadcast Auxiliary Service licenses cannot be counted toward the $18,500 installment threshold. Eligible systems choosing to make installment payments must pay one-half of their total system fee by *August 12, 1994*. The regulatory fees for CARS and Broadcast Auxiliary Service license fees cannot be paid by installment; these fees must be paid in full by August 12, 1994. The second installment payment for the subscriber fee is due no later than *September 9, 1994*. Entities participating in consolidated payment arrangements that are eligible, and elect, to pay by installment should note the different due dates for their installment payments (see "Method of Payment" above).

Compliance

Cable television systems are solely responsible for accurately accounting for all CARS and Broadcast Auxiliary Service licenses, as well as subscribers within each community unit, and for paying the proper regulatory fees. Any omission or payment deficiency can result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission will invoke its authority under the Debt Collection Act against any cable television system failing to meet its regulatory fee payment obligations.

Waivers, Reductions, and Deferments of Regulatory Fees

The Commission will consider requests for waivers, reductions or deferments of regulatory fees, in extraordinary and compelling circumstances only, upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany requests for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid a 25% late-payment penalty if its request is denied. The regulatory fee would be refunded if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the regulatee or licensee) will the Commission accept a petition to defer payment along with a waiver or reduction request. All requests for deferments must be filed before *August 12, 1994*, in order to avoid the 25% late-payment penalty.

CARS or Broadcast Auxiliary Service licenses cannot be counted toward the $18,500 installment threshold. Eligible systems choosing to make installment payments must pay one-half of their total system fee by *August 12, 1994*. The regulatory fees for CARS and Broadcast Auxiliary Service license fees cannot be paid by installment; these fees must be paid in full by August 12, 1994. The second installment payment for the subscriber fee is due no later than *September 9, 1994*. Entities participating in consolidated payment arrangements that are eligible, and elect, to pay by installment should note the different due dates for their installment payments (see "Method of Payment" above).

Compliance

Cable television systems are solely responsible for accurately accounting for all CARS and Broadcast Auxiliary Service licenses, as well as subscribers within each community unit, and for paying the proper regulatory fees. Any omission or payment deficiency can result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission will invoke its authority under the Debt Collection Act against any cable television system failing to meet its regulatory fee payment obligations.

Waivers, Reductions, and Deferments of Regulatory Fees

The Commission will consider requests for waivers, reductions or deferments of regulatory fees, in extraordinary and compelling circumstances only, upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany requests for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid a 25% late-payment penalty if its request is denied. The regulatory fee would be refunded if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the regulatee or licensee) will the Commission accept a petition to defer payment along with a waiver or reduction request. All requests for deferments must be filed before *August 12, 1994*, in order to avoid the 25% late-payment penalty.

Additional Information

The Commission has prepared a number of informative Fee Filing Guides for information on *application* fees for cable services, and for information on *application* and *regulatory* fees for the common carrier, mass media, engineering and technology, field operations or private radio services. These Guides are available from the Commission's Public Service Division, from its various field office locations and can be downloaded from the Internet (ftp@fcc.gov). For additional information, please contact the Fees Hotline at (202) 632–FEES, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919 M Street NW., Washington, DC 20554.

Filing Procedures for Cable Television Systems

Who Must Pay: Cable television systems operating on or before *December 31, 1993* must pay the regulatory fee. Governments and nonprofit (exempt under Section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, or a certification of governmental authority.

Fee Requirement: All cable television systems are subject to a fee of $0.37 per subscriber.[1] Systems may also be required to pay a $220.00 fee for each Cable Antenna Relay Service (CARS) license it holds and a $25.00 fee for each Broadcast Auxiliary Service license it holds.

A system's total subscriber fee can be determined by multiplying $0.37 times the number of subscribers within all community units in which it operates (as defined below and at page 2 of the Instructions for FCC Form 325 "Annual Report of Cable Television Systems"). Use the same number of subscribers as reported to the Commission during the 1993 Annual Report of Cable Television Systems—FCC Form 325 (see FCC News Release of April 13, 1994). You may pay for multiple community units with a single payment instrument as long as the community units are all part of the same cable system or are part of a group of commonly-owned cable systems. It this total subscriber fee is greater than $18,500, payment may be made in two installments (see "Installment Payments").

CARS and Broadcast Auxiliary Licenses

Cable systems holding CARS licenses must pay a regulatory fee of $220.00 for *each* CARS license and, if applicable, a regulatory fee of $25.00 for *each* Broadcast Auxiliary Service license held.

Note: One payment may be submitted for all regulatory fee obligations ("subscriber fees" and all Cable Antenna Relay Service and Broadcast Auxiliary Service licenses).

Payment Due Date: All regulatory fee payments for cable television systems must be *received* by the Commission by August 12, 1994 (except the second installment payment for the subscriber fee which must be received by September 9, 1994.

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 ("FCC Remittance Advice") and, as necessary, FCC Form 159–C ("Advice Continuation Sheet") must accompany all regulatory fee payments. Form 159 allows payors to report information on one or two payment items (e.g., multiple community units, CARS licenses, Broadcast Auxiliary Service licenses, or a combination of any two). Use Form 159–C to report additional community units or licenses.

FCC Form 159 and 159–C have been attached to this Public Notice for you to complete and remit with your payment. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form), the following information applies specifically to cable television payors:

Block (12)—"FCC CALL SIGN/OTHER ID"

- Enter your community unit identification number for reporting subscribers in *each community unit* within your system, or group of commonly-owned systems.
- Enter your call sign for CARS or Auxiliary Service licenses.

Block (14)—"Payment Type Code"

TOCN: Use this code when paying a subscriber fee ($0.37 per subscriber). Please note that subscriber information must be provided for *each community unit* of which the system is the operator.

TOC1: To be used ONLY for installment payments (an option when the total system subscriber fee exceeds

[1] Number of Subscribers In a Community Unit = Number of single family dwellings + Number of individual households in multiple dwelling units (e.g., apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + Number of bulk-rate customers + Number of courtesy and free service. (NOTE: Bulk-Rate Customers = total annual bulk rate charge ÷ basic annual subscription rate for individual households). See also, FCC Form 325 Instructions (page 2).

$18,500). Use this code when making your *first* installment payment. Please note that subscriber information must be provided for *each community unit* of which the system is the operator.

TOC2: To be used ONLY for installment payments (see above). Use this code when making your *second* installment payment. Please note that subscriber information must be provided for *each community unit* of which the system is the operator.

TQCN: Use this code when making a regulatory fee payment for a CARS license ($220.00 per license).

MUBN: Use this code when making a regulatory fee payment for a Broadcast Auxiliary Services license ($25.00 per license).

Block (15)—"Quantity"

For subscriber fees (payment type codes TOCN, TOC1 or TOC2) enter the number of subscribers within each *community unit*. For CARS or Broadcast Auxiliary Service licenses, enter "1" in this block.

Block (16)—"Amount Due"

- For subscriber fees (payment type code TOCN), multiply the amount in Block 15 ("Quantity") by $0.37 and enter the result here.
- For subscriber fees with a payment type code of TOC1 or TOC2, multiply the figure in Block 15 ("Quantity") by $0.37 and then divide that amount by 2. Enter the result here.
- For CARS licenses (payment type code TQCN) enter $220.00.
- For Broadcast Auxiliary Service licenses (payment type code MUBN) enter $25.00.
- Round *down* to the nearest cent when applicable.

Block (17)—"FCC Code 1": Leave Blank

Block (18)—"FCC Code 2"

- For subscriber fees only (i.e., payment type codes TOCN, TOC1 or TOC2): Provide the *name* of the community unit.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17387 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–M

Applications For Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications, one for a new noncommercial educational ("NCE–FM") station serving Mojave, California, and one for a new NCE–FM serving Lancaster, California.

Applicant	City/state	File No.	MM docket No.
A. Santa Monica Community College District	Mojave, CA	BPED–920305ME	94–71
B. Living Way Ministries	Lancaster, CA	BPED–920511MC	94–71

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing on a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 FR 19,347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. 307(b)—Noncommercial Education FM.	A, B
2. Contingent Comparative—Noncommercial Educational FM.	A, B
3. See Appendix	A
4. Ultimate	A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202–452–1422).

Linda Blair,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

3. To determine whether there is a reasonable possibility that the tower heights and locations proposed by SMCCD and Living Way would constitute a hazard to air navigation.

[FR Doc. 94–17480 Filed 7–18–94; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets To Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for the financial institution specified in SUPPLEMENTARY INFORMATION. The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estate are insufficient to wholly satisfy the priority claims of depositors against the receivership estate. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor or lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 1717 H Street, NW., Washington, DC 20006. Telephone: (202) 736–3134.

SUPPLEMENTARY INFORMATION: Financial Institution in Receivership Determined to Have Insufficient Assets to Satisfy All Claims: Texas Bank and Trust Company, #2599, Lubbock, Texas.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–17485 Filed 7–18–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3114–EM]

Florida; Emergency Declaration and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3114–EM), dated July 8, 1994, and related determinations.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in an letter dated July 8, 1994, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida from severe storms and flooding resulting from Tropical Storm Alberto which began on July 2, 1994, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Pursuant to this emergency declaration, you are authorized to provide technical and advisory assistance under Title V of the Stafford Act. You are also authorized to provide 75 percent reimbursement of reasonable eligible expenses incurred by the State and affected local governments in anticipation of and immediately preceding the predicted flooding.

The time period prescribed for the implementation of section 301(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dave Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State Florida to have been

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3114–EM]

Florida; Emergency Declaration and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3114–EM), dated July 8, 1994, and related determinations.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in an letter dated July 8, 1994, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida from severe storms and flooding resulting from Tropical Storm Alberto which began on July 2, 1994, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Pursuant to this emergency declaration, you are authorized to provide technical and advisory assistance under Title V of the Stafford Act. You are also authorized to provide 75 percent reimbursement of reasonable eligible expenses incurred by the State and affected local governments in anticipation of and immediately preceding the predicted flooding.

The time period prescribed for the implementation of section 301(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dave Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State Florida to have been affected adversely by this declared emergency: Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton and Washington for Technical and Advisory Assistance under Title V of the Stafford Act and reimbursement of reasonable eligible expenses incurred by the State and affected local governments in anticipation of and immediately preceding the predicted flooding.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–17509 Filed 7–18–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1035–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster of the State of Florida (FEMA–1035–DR), dated July 10, 1944, and related determinations.

EFFECTIVE DATE: July 10, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 10, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from severe storms and flooding resulting from Tropical Storm Alberto on July 2, 1944, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dave Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster: Calhoun, Holmes, Walton and Washington for Individual and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–17510 Filed 7–18–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1035–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FMEA–1035–DR), dated July 10, 1994, and related determinations.

EFFECTIVE DATE: July 12, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida dated July 10, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 10, 1994:

Gulf and Jackson Counties for Individual and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17507 Filed 7–18–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1033–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1033–DR), dated July 7, 1994, and related determinations.

EFFECTIVE DATE: July 12, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated July 7, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1994:

Baker, Clay, Decatur, Miller, Mitchell, Pulaski, Seminole, Stewart and Wilcox Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17506 Filed 7–18–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1015–DR]

Pennsylvania; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Pennsylvania, (FEMA–1015–DR), dated March 10, 1994, and related determinations.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Pennsylvania dated March 10, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 10, 1994:

Bedford, Clearfield, Lycoming, Mifflin, Perry, Somerset and Sullivan Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17508 Filed 7–18–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3829)

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–7340)

Final Approval Under OMB Delegated Authority the Extension, with Revision, of the Following Report(s)

1. Report title: Government Securities Dealers Reports

Agency form number: FR 2004A, B, C, and WI

OMB Docket number: 7100–0003

Frequency: Weekly and on occasion

Reporters: Primary dealers in U.S. government securities

Annual reporting hours: 11,544

Estimated average hours per response: 1

Number of respondents: 39

Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. §§ 248(a)(2), 353–359a, and 461] and is given confidential treatment [5 U.S.C. § 552(b)(4)].

This group of reports (the "FR 2004 series") is used to collect data on positions, transactions and financing activity from U.S. government securities dealers. Data needs with respect to the FR 2004 series have changed in light of the *Joint Report on the Government Securities Market* submitted to the Congress in January 1992 by the Federal Reserve, the U.S. Treasury Department, and the Securities and Exchange Commission. Based on that report, significant changes to the FR 2004 series of reports have been recommended. A summary of those changes follows.

For the Weekly Report of Dealer Positions (FR 2004A):

- Money market instruments and the addendum section are eliminated.
- Pass-through mortgage-backed securities and all other mortgage-backed securities are combined into one category.
- Federal agency securities are combined into one maturity category and two maturity categories of Treasury securities are eliminated.
- Option positions are reduced to long and short categories rather than purchased and sold calls, purchased and sold puts.
- Forward positions are reported with immediate positions under the title "outright positions".

For the Weekly Report of Cumulative Transactions (FR 2004B):

- The addendum section is eliminated and the Treasury, agency and mortgage-backed categories are abbreviated as on the proposed revised FR 2004A.
- "Buys" and "Sells" categories are combined.
- Primary Dealers are combined with "customers" (now called "with others") rather than brokers, and the "all other" category is eliminated.
- Forward transactions are reported with immediate positions under the title "outright transactions".

For the Weekly Report of Dealer Financing (FR 2004C):

- Customer categories are eliminated
- Term agreements are reduced to one category
- The categories "cash collateral" and "securities and LC's" are eliminated and replaced by securities received as pledge or pledged.
- Fails are condensed on the proposed report.

For the Daily Report of Dealer Positions in Treasury Financings (FR 2004WI):

- Gross long and short positions are replaced by purchases and sales.
- Net financing commitments are added.

For the new Report of Specific Issues (FR 2004SI):

- This is an entirely new report that is similar to the addendum sections of the current FR 2004A and B, except that it incorporates financing and fails. It is designed to collect information on specific Treasury securities for market surveillance purposes. It will be collected weekly on a routine basis. Also, the Federal Reserve will have the authority to call for reporting of any issue daily, on an as-needed basis.

For the Report of Suggested Evidence of Accuracy (FR 2004B.1):

- Eliminated.

By order of the Board of Governors of the Federal Reserve System, July 13, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–17492 Filed 7–18–94; 8:45 am]

BILLING CODE 6210–01–P

Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 12, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio and Banc One Illinois Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of American Holding Company, Glencoe, Illinois, and thereby indirectly acquire First Bank of Highland Park, Highland Park, Illinois.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104

specific Treasury securities for market surveillance purposes. It will be collected weekly on a routine basis. Also, the Federal Reserve will have the authority to call for reporting of any issue daily, on an as-needed basis.

For the Report of Suggested Evidence of Accuracy (FR 2004B.1):

- Eliminated.

By order of the Board of Governors of the Federal Reserve System, July 13, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-17492 Filed 7-18-94; 8:45 am]

BILLING CODE 6210-01-P

Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 12, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio and Banc One Illinois Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of American Holding Company, Glencoe, Illinois, and thereby indirectly acquire First Bank of Highland Park, Highland Park, Illinois.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Trustmark Corporation, Jackson, Mississippi; to merge with First National Financial Corporation, Vicksburg, Mississippi, and thereby indirectly acquire First National Bank of Vicksburg, Vicksburg, Mississippi.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. F&M Bancorporation, Inc., Kaukauna, Wisconsin; to acquire 90 percent of the voting shares of Union State Bank, Wautoma, Wisconsin.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Boatmen's Bancshares, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Dalhart, Bancshares, Inc., Dalhart, Texas, and Dalhart Bancshares of Delaware, Wilmington, Delaware, amd thereby indirectly acquire Citizens State Bank of Dalhart, Dalhart, Texas.

2. Magna Group, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Goreville Bancorporation, Inc., and thereby indirectly acquire Goreville State Bank, Goreville, Illinois.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Heights Delaware Financial Corporation, Dover, Delaware; to acquire 100 percent of the voting shares of Heights State Bank, Harker Heights, Texas.

2. Herring Bancorp, Inc., Vernon, Texas; to acquire 100 percent of the voting shares of First Bank & Trust of Clarendon, Clarendon, Texas.

3. Herring Bancorp, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of First Bank & Trust of Clarendon, Clarendon, Texas.

4. Texas State Bancshares, Inc., Harker Heights, Texas; to acquire 100 percent of the voting shares of Heights Delaware Financial, Dover, Delaware, and thereby indirectly acquire Heights State Bank, Harker Heights, Texas.

Board of Governors of the Federal Reserve System, July 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17484 Filed 7-18-94; 8:45 am]

BILLING CODE 6210-01-F

Johnson International, Inc. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 12, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Johnson International, Inc., Racine, Wisconsin; to acquire Seaboard Savings Bank, F.S.B., Stuart, Florida, and thereby engage in nonbanking activities of operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to acquire Norwest Financial Guam, Inc., Guam, and thereby engage in making loans pursuant to § 225.25(b)(1) of the Board's Regulation Y and to engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. **Comments on this application must be received by August 2, 1994.**

Board of Governors of the Federal Reserve System, July 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17494 Filed 7-18-94; 8:45 am]

BILLING CODE 6210-01-F

St. Francis Capital Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. St. Francis Capital Corporation, Milwaukee, Wisconsin; to acquire St. Francis Insurance Corporation, Milwaukee, Wisconsin, a wholly owned subsidiary of St. Francis Bank F.S.B., Milwaukee, Wisconsin, and thereby engage in insurance agency activities relating to tax deferred annuities pursuant to § 225.25(b)(8) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Talco, Inc., Menomonie, Wisconsin; to become a bank holding company by acquiring 57.94 percent of the voting shares of Menomonie Shares, Inc., Menomonie, Wisconsin, Clarence Talen Charitable Trust, Menomonie, Wisconsin; to become a bank holding company by acquiring 20.55 percent of the voting shares of Menomonie Shares, Inc.; and Menomonie Shares, Inc., Menomonie, Wisconsin; to acquire an additional 56.67 percent for a total of 81.64 percent of the voting shares of Menomonie Financial Services, Inc., Menomonie, Wisconsin, and thereby indirectly acquire First Bank & Trust, Menomonie, Wisconsin.

In connection with this application, Talco, Inc., The Clarence Talen Charitable Trust, and Menomonie Shares Inc., also have applied to acquire Electronic Strategies, Inc., and thereby engage in the nonbanking activities of providing data processing and data transmission services for the processing and transmission of financial, banking or economic data pursuant to § 225.25(b)(7) of the Board's Regulation Y, and providing management consulting services to non-affiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17495 Filed 7-18-94; 8:45 am]

BILLING CODE 6210-01-F

Sharon E. and Howard C. Thompson, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 8, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Sharon E. and Howard C. Thompson, Pittsburg, Kansas; Sharon E. Thompson, Co-Trustee of the Jon A. Simoncic Trust, Pittsburg, Kansas, to acquire an additional 22.73 percent for a total of 44.7 percent of the voting shares; and Joyce L. and Barry D. Draper, Pittsburg, Kansas, Joyce L. Draper, Co-Trustee of the Jon A. Simoncic Trust, Pittsburg, Kansas, to acquire an additional 22.73 percent for a total of 44.7 percent of the voting shares of S.T.D. Investments, Inc., Mindenmines, Missouri, and thereby indirectly acquire Bank of Minden, Mindenmines, Missouri.

Board of Governors of the Federal Reserve System, July 13, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17493 Filed 7-18-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

[Announcement Number 497]

Implementing TB Training for Primary Care Physicians and Other Health-Care Workers

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for cooperative agreements to conduct a training program for primary care physicians and allied health-care providers to avoid or reduce their exposure to tuberculosis (TB).

In April 1992, the National Multiple Drug Resistance-TB Task Force published a National Action Plan to Combat Multidrug Resistant Tuberculosis. This document elaborates upon the CDC's approach to eliminating TB through those action steps for which the CDC has lead responsibility.

Problem 27 of this plan states that nosocomial transmission of TB to health-care workers and patients is occurring. Such transmission is preventable if recommended infection control practices are implemented. The objective is to disseminate information on the prevention of TB transmission to individuals and facilities that provide services to persons with TB or to persons at high risk for TB.

Implementation Step 4 calls for the establishment of infection control programs. A list of Training and Education Materials is available and can be ordered. To order the National Action Plan to Combat Multiple Drug Resistant Tuberculosis, see the section, Where to Obtain Additional Information.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Health Promotion and Disease Prevention. (To order a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority: This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 670 (a)].

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

[Announcement Number 497]

Implementing TB Training for Primary Care Physicians and Other Health-Care Workers

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for cooperative agreements to conduct a training program for primary care physicians and allied health-care providers to avoid or reduce their exposure to tuberculosis (TB).

In April 1992, the National Multiple Drug Resistance-TB Task Force published a National Action Plan to Combat Multidrug Resistant Tuberculosis. This document elaborates upon the CDC's approach to eliminating TB through those action steps for which the CDC has lead responsibility.

Problem 27 of this plan states that nosocomial transmission of TB to health-care workers and patients is occurring. Such transmission is preventable if recommended infection control practices are implemented. The objective is to disseminate information on the prevention of TB transmission to individuals and facilities that provide services to persons with TB or to persons at high risk for TB.

Implementation Step 4 calls for the establishment of infection control programs. A list of Training and Education Materials is available and can be ordered. To order the National Action Plan to Combat Multiple Drug Resistant Tuberculosis, see the section, Where to Obtain Additional Information.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Health Promotion and Disease Prevention. (To order a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority: This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 670 (a)].

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, groups representing physicians and health-care workers, hospitals, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $250,000 is available in FY 1994 to fund up to two awards. It is expected that the average award will be $125,000. It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of 1 year. Funding estimates may vary and are subject to change. It is not anticipated that the funding period will be extended beyond 1 year.

Purpose

The purpose of this award is to assist in the implementation of a national training program for primary health-care providers to reduce their risk of exposure to tuberculosis.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. (Recipient Activities), and CDC shall be responsible for conducting activities under B., (CDC/NIOSH/DTBE Activities).

A. Recipient Activities

1. Select appropriate curriculum or identify topics which meet the needs of the target populations as defined in the application. Develop sample agenda, initial training, refresher training, and updated skills training, and identify course materials. A list of existing CDC TB educational materials is available. (To order the National Action Plan to Combat Multiple Drug Resistant Tuberculosis, see the section "Where to Obtain Additional Information.")

2. Select appropriate participants who will serve as trainers and conduct training programs.

3. Conduct training programs within the designated region, as defined by the applicant, for the selected applicants.

4. Provide audiovisual support, space, facilities, and equipment to conduct the training.

5. Document and conduct an evaluation program to measure the impact and success of the training effort.

6. Develop a plan for a program announcing the availability of the training for all target audiences within the region or nationally.

B. CDC/NIOSH/DTBE Activities

1. Provide technical assistance and consultation, through site visits and correspondence, in areas of identifying needs, and program development and implementation.

2. Provide scientific and technical consultation in the modification of curriculum materials and their subsequent review.

3. Provide on-site technical consultation during the training programs with recommendations to assist the trainers.

4. Provide training materials, such as videotapes and printed documents, to the recipient, when appropriate and needed.

5. Provide technical assistance in the evaluation of the results and efficacy of the training conducted.

6. Assist in the dissemination of training information to appropriate organizations.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement as defined in the context of the applicant responsibilities including: (a) the applicant's understanding of the objectives of the proposed cooperative agreement, and (b) the relevance of the proposal to the objectives. (20%)

2. Feasibility of meeting the proposed goals of the cooperative agreement including: (a) the proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement and, (b) the proposed method for evaluating the accomplishments. (20%)

3. Strengths and comprehensiveness of the training program plan which addresses the distinct characteristics and needs of the target audience and includes the essential program element for planning, conducting, and evaluating of training programs. (25%)

4. Training and experience of the Program Director and staff including: (a) Program Director with experience in managing cooperative agreements and grants and with technical expertise in primary prevention education and in the occupational safety and health field, (b) faculty with training and experience in the appropriate technical areas, and (c) staff with experience in developing curricula in infectious disease transmission, TB prevention, and control measures in the primary health-care occupational setting. (15%)

5. The capability of accessing, on a regional or national level, primary health-care providers who are presently involved in TB prevention programs to ensure consistency in delivering training programs, and to assure credibility with professional/worker organizations and health departments. (10%)

6. Experience in delivering health and safety programs for the target population, particularly in the primary health-care provider arena. (10%)

7. The budget will be evaluated to the extent it is reasonable, clearly justified, and consistent with the intended use for funds. (Not scored)

Executive Order 12372 Review

Applications submitted by State and local governments are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Indian tribes are strongly encouraged to request tribal government review of the proposed application. State and local governments should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 30 days after the application due date (a waiver for the 60 day requirement has been requested). The Program Announcement number and Program title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

All other applications are not subject to E.O. 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assurance number for this program is 93.263.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Room 300, Mailstop E–13, Atlanta, GA 30305, on or before August 23, 1994.

1. Deadline: Applications shall be considered as meeting the deadline above if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 2.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE, Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6630.

Programmatic technical assistance may be obtained from N. Jack Berberich, Jr., Ph.D., Chief, Curriculum Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop C–12, Cincinnati, Ohio 45226, telephone (513) 533–8231.

Please refer to Announcement Number 497 when requesting information and submitting an application.

Potential applicants may obtain a copy of the National Action Plan to Combat Multiple Drug Resistant Tuberculosis from Information Services, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop O–6, Atlanta, Georgia 30333, or by calling telephone (404) 639–1819.

Potential applicants may obtain a copy of Healthy People 2000, (Full Report, Stock Number 017–001–00474–0) or Healthy People 2000, (Summary Report, Stock Number 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 13, 1994.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–17472 Filed 7–18–94; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Antiviral Drugs Advisory Committee. This meeting was announced in the **Federal Register** of June 24, 1994 (59 FR 32699 at 32700). The amendment is being made to reflect a change in the date of the meeting from a 1-day to a 2-day meeting and a change in the meeting room locations, and to announce a closed portion of the meeting, which is now scheduled for the second day. The open committee discussion remains the same, except for the date the discussions will be held. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857 301–443–4695.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 1994, FDA announced that a meeting of the Antiviral Drugs Advisory Committee would be held on June 29, 1994. On page 32700, in the first column, the *"Date, time, and place"* and *"Type of meeting and contact person"* portions of this meeting are amended, and because the committee will now have a closed portion on July 29, 1994, a *"Closed committee deliberations"* portion is added to read as follows:

Date, time, and place. July 28, 1994, 8 a.m., Parklawn Bldg., Conference rms. D and E, and July 29, 1994, 8:30 a.m., Parklawn Bldg., Conference rms. G, H, I, and J, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, July 28, 1994, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; closed committee deliberations, July 29, 1994, 8:30 a.m. to 12 m.; Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

Closed committee deliberations. On July 29, 1994, the committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dated: July 13, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–17475 Filed 7–18–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Division of Research Grants; a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Name of SEP: Behavioral and Neurosciences.

Date: August 10, 1994.

Time: 2 p.m.

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857 301–443–4695.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 1994, FDA announced that a meeting of the Antiviral Drugs Advisory Committee would be held on June 29, 1994. On page 32700, in the first column, the *"Date, time, and place"* and *"Type of meeting and contact person"* portions of this meeting are amended, and because the committee will now have a closed portion on July 29, 1994, a *"Closed committee deliberations"* portion is added to read as follows:

Date, time, and place. July 28, 1994, 8 a.m., Parklawn Bldg., Conference rms. D and E, and July 29, 1994, 8:30 a.m., Parklawn Bldg., Conference rms. G, H, I, and J, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, July 28, 1994, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; closed committee deliberations, July 29, 1994, 8:30 a.m. to 12 m.; Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

Closed committee deliberations. On July 29, 1994, the committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dated: July 13, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–17475 Filed 7–18–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Division of Research Grants; a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Name of SEP: Behavioral and Neurosciences.

Date: August 10, 1994.

Time: 2 p.m.

Place: NIH, Westwood Bldg., Room 304 (Telephone Conference).

Contact Person: Dr. Stephen Gobel, Scientific Review Admin., 5333 Westbard Ave., Room 304, Bethesda, MD 20892; (301) 594–7293.

Purpose/Agenda

To review individual grant applications.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: July 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17441 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 19 and 20, 1994, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on September 19, from 8:30 a.m. to 1 p.m. for opening remarks; the report of the Acting Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 19 from 1 p.m. to 5:30 p.m., and on September 20, from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Ann Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 938, Bethesda, Maryland 20892, telephone: 301–594–7751 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: July 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17440 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of Sep: Child and Adolescent Trial for Cardiovascular Health—Phase III (CATCH).

Date: August 7–8, 1994.

Time: 7:30 p.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Anthony M. Ceolho, Jr., Ph.D., 5333 Westbard Avenue, Room 648, Bethesda, Maryland 20892, (301) 594–7485.

Purpose/Agenda

To review and evaluate grant application(s).

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular

Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Date: July 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17442 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the special meeting of the Biomedical Library Review Committee, July 20–21, 1994, which was published in the **Federal Register** on June 27, 1994, Volume 59, No. 122.

This committee was to have convened at 8:30 a.m. on July 20 and 21, but the meeting has been changed to August 3–4, 1994, at 8:30 a.m., Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be closed to the public.

Dated: July 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–17443 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Fiscal Year 1993 Annual Report

The National Toxicology Program (NTP) announces the availability of the *NTP Annual Plan for Fiscal Year 1993*, solicits comments on it, and urges all interested persons to propose chemicals for possible toxicological evaluation. In the interest of accuracy due to the lateness of publication, the fifteenth edition has been titled the *NTP Annual Report*, and as such it primarily contains program accomplishments for FY 1992. Accomplishments for FY 1993 and program plans for FY 1994 are reported in the FY 1994 *Annual Plan* (in press).

Background

The National Toxicology Program (NTP) was established within the Public Health Service of the Department of Health and Human Services (DHHS) in November 1978. The continuing broad goals of the NTP are to coordinate and strengthen DHHS basic and applied toxicology research and methods development and validation, and to provide toxicological information for use by health research and regulatory agencies and others in protecting the public health. Overall objectives are to:

Broaden the spectrum of toxicological information obtained on selected chemicals;

Increase the numbers of chemicals studied, within funding limits;

Develop and validate assays and protocols responsive to regulatory needs;

Communicate Program plans and results to governmental agencies, the medical and scientific communities, and the public.

The NTP coordinates selected toxicology activities of the National Institute of Environmental Health Sciences, National Institutes of Health; the National Center for Toxicological Research, Food and Drug Administration; and the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

Primary program oversight is provided by the NTP Executive Committee, which links DHHS health research institutes and centers with Federal health regulatory agencies to ensure that the basic and applied toxicology research and development activities are responsive to regulatory and public health needs. Agencies represented on the Executive Committee are:

Agency for Toxic Substances and Disease Registry
Consumer Product Safety Commission
Environmental Protection Agency
Food and Drug Administration
National Cancer Institute
National Institute for Occupational Safety and Health
National Institute of Environmental Health Sciences
National Institutes of Health
Occupational Safety and Health Administration

The NTP Board of Scientific Counselors provides scientific oversight, advising the NTP Director and the NTP Executive Committee on scientific content and evaluating the scientific merit and overall quality of NTP science. The members (listed in the 1993 *Annual Report*) are appointed by the Secretary, DHHS. For the purposes of the Program, the NTP Director reports to the Assistant Secretary for Health.

Scientific activities are divided into three major program areas: carcinogenesis; genetic toxicology; and toxicologic characterization. The latter area covers activities in cardiac, immunologic, neurobehavioral, respiratory and reproductive and developmental toxicologies, and includes efforts in chemical disposition. There are special programs in studying the toxicities of AIDS therapeutics and the toxicities of Superfund chemicals. Program and project leaders, along with addresses and telephone numbers, are identified in the 1993 *Annual Report*.

The chemical nomination and selection process is integral to the effective long-term operation and success of the NTP with respect to toxicological studies of chemicals using modern techniques and to the development and validation of new assay methods, as well as for use in evaluation of new concepts of mechanisms of toxicity. Thus, the NTP welcomes nominations of chemicals for study from everyone. Especially sought are nominations of chemicals for study of noncancer endpoints. At a minimum, the nominator should give the name of the chemical or substance, the rationale for the nomination, and recommend the type study(s) to be considered. In addition, it is desirable, but not essential, to supplement each nomination with the following information, if known:

I. Chemical and physical properties.
II. Production, use, occurrence, and analysis data.
III. Toxicology information.
IV. Chemical disposition and structure-activity relationships.
V. Planned or ongoing or recently completed toxicological and environmental studies.

To receive the *NTP Annual Report for Fiscal Year 1993*, please write or telephone the NTP Central Data Management, P.O. Box 12233, MD A0–01, Research Triangle Park, N.C. 27709, (telephone 919/541–3419).

Comments on the FY 1993 NTP *Annual Report* are requested and welcome. These should be addressed to Dr. Larry Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, N.C. 27709, (telephone 919/541–3971).

Richard Griesemer,

Deputy Director, National Toxicology Program.

[FR Doc. 94–17439 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–P

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Benzyl Acetate

The HHS' National Toxicology Program announces the availability of the MTP Technical Report on the toxicology and carcinogenesis studies of benzyl acetate, which is used as a flavoring agent in foods, as a fragrance in soaps and perfumes, as a solvent for cellulose acetate and nitrate, and as a component of printing inks and varnish removers. The NTP previously studied the toxicology and carcinogenicity of this chemical in F344/N rats and $B6C3F_1$ mice using the gavage route of administration and corn oil as a vehicle. Benzyl acetate increased the incidences of pancreatic acinar cell adenomas in male rats and the incidences of hepatocellular adenomas and forestomach neoplasms in male and female mice. Because of the confounding effect of corn oil on the incidences of pancreatic neoplasms and because of controversy over the use of the gavage route of administration, the NTP decided to restudy benzyl acetate using the dosed feed route of administration.

Toxicology and carcinogenesis studies were conducted by feeding groups of 60 male and female F344/N rats diets containing 0, 3,000, 6,000, or 12,000 ppm benzyl acetate and groups of 60 male and female $B6C3F_1$ mice diets containing 0, 330, 1,000, or 3,000 ppm benzyl acetate for 2 years.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity* of benzyl acetate in male or female F344/N rats receiving 3,000, 6,000, or 12,000 ppm; however, rats may have tolerated higher doses. There was no evidence of carcinogenic activity of benzyl acetate in male or female $B6C3F_1$ mice receiving 330, 1,000, or 3,000 ppm.

Nasal lesions associated with benzyl acetate exposure in male and female mice included nasal mucosa atrophy and degeneration (primarily of the olfactory epithelium), cystic hyperplasia of the nasal submucosal gland, and luminal exudate and pigmentation of the nasal mucosal epithelium.

In premius 2-year gavage studies, benyzl acetate increased the incidence of acinar cell adenomas of the exocrine pancreas in male F344/N rats; the gavage vehicle may have been a contributing factor. There was no evidence of carcinogenic activity in female F344/N rats receiving 250 or 550 mg/kg a day.

There was some evidence of carcinogenic activity in male and female $B6C3F_1$ mice, indicated by the increased incidences of hepatocellular adenomas and squamous cell neoplasms of the forestomach.

*The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

component of printing inks and varnish removers. The NTP previously studied the toxicology and carcinogenicity of this chemical in F344/N rats and B6C3F$_1$ mice using the gavage route of administration and corn oil as a vehicle. Benzyl acetate increased the incidences of pancreatic acinar cell adenomas in male rats and the incidences of hepatocellular adenomas and forestomach neoplasms in male and female mice. Because of the confounding effect of corn oil on the incidences of pancreatic neoplasms and because of controversy over the use of the gavage route of administration, the NTP decided to restudy benzyl acetate using the dosed feed route of administration.

Toxicology and carcinogenesis studies were conducted by feeding groups of 60 male and female F344/N rats diets containing 0, 3,000, 6,000, or 12,000 ppm benzyl acetate and groups of 60 male and female B6C3F$_1$ mice diets containing 0, 330, 1,000, or 3,000 ppm benzyl acetate for 2 years.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity* of benzyl acetate in male or female F344/N rats receiving 3,000, 6,000, or 12,000 ppm; however, rats may have tolerated higher doses. There was no evidence of carcinogenic activity of benzyl acetate in male or female B6C3F$_1$ mice receiving 330, 1,000, or 3,000 ppm.

Nasal lesions associated with benzyl acetate exposure in male and female mice included nasal mucosa atrophy and degeneration (primarily of the olfactory epithelium), cystic hyperplasia of the nasal submucosal gland, and luminal exudate and pigmentation of the nasal mucosal epithelium.

In premius 2-year gavage studies, benyzl acetate increased the incidence of acinar cell adenomas of the exocrine pancreas in male F344/N rats; the gavage vehicle may have been a contributing factor. There was no evidence of carcinogenic activity in female F344/N rats receiving 250 or 550 mg/kg a day.

There was some evidence of carcinogenic activity in male and female B6C3F$_1$ mice, indicated by the increased incidences of hepatocellular adenomas and squamous cell neoplasms of the forestomach.

*The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluateo because of major flaws ("inadequate study").

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Benzyl Acetate (CAS No. 140–11 1) in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR–431) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17449 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Manganese (II) Sulfate Monohydrate

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of manganese sulfate monohydrate. Manganese is the 12th most abundant element in the earth's crust. The base metal does not occur naturally, but is a component of more than 100 minerals, including sulfides, oxides, carbonates, silicates, phosphates, and borates. In addition to occurring in foods and drinking water, manganese occurs in the atmosphere from dust, volcanic activity, forest fires, and industrial emissions. Manganese (II) sulfate monohydrate was chosen for study because of its stability, solubility, and availability.

Toxicology and carcinogenicity studies were conducted by administering manganese (II) sulfate monohydrate (97% pure) in feed to groups of 70 male and 70 female F344/N rats and B6C3$_1$ mice at doses of 1, 1,500, 5,000, or 15,000 ppm for up to 2 years.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity * of manganese (II) sulfate monohydrate in male or female F344/N rats receiving 1,500, 5,000, or 15,000 ppm. There was equivocal evidence of carcinogenic activity of manganese (II) sulfate monohydrate in male and female B6C3F$_1$ mice, based on the marginally increased incidences of thyroid gland follicular cell adenoma and the significantly increased incidences of follicular cell hyperplasia.

The ingestion of diets containing manganese (II) sulfate monohydrate was associated with an increased severity of nephropathy in male rats, focal squamous hyperplasia of the forestomach in male and female mice, and ulcers and inflammation of the forestomach in male mice. These studies were not designed to assess any neurotoxicity that might have been expected with chronic exposure to sufficiently high doses of manganese.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Manganese (II) Sulfate Monohydrate (CAS No. 10034–96–5) in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR–428) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 13, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17450 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of p-Nitroaniline

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of p-nitroaniline, an intermediate in the preparation of several azo dyes used for coloring consumer products.

Two-year toxicology and carcinogenesis studies were conducted by administering to both sexes of B6C3F$_1$ mice doses of 0, 3, 30, or 100 mg p-nitroaniline per kg body weight in corn oil by gavage 5 days per week for up to 103 weeks.

Under the conditions of these 2-year gavage studies, there was equivocal evidence of carcinogenic activity * of p-

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for no observable effect ("no evidence"), and one category for uncertain findings ("equivocal evidence"), one category for studies that cannot be

Continued

nitroaniline in male B6C3F$_1$ mice based on the increased incidences of hemangiosarcoma of the liver and hemangioma or hemangiosarcoma (combined) at all sites. There was no evidence of carcinogenic activity of p-nitroaniline in female B6C3F$_1$ mice receiving doses of 3, 30, 0r 100 mg/kg.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of p-Nitroaniline (CAS No. 100–01–6) in B6C3F$_1$ Mice (Gavage Studies)* (TR–418) are available without charge from Central Data Management, NIEHS, M.D. AO–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 12, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17746 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Polybrominated Biphenyls (Firemaster FF–1®)

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of Polybrominated biphenyls, synthetic chemicals used as flame retardants. The technical product used in these studies, Firemaster FF–1®, is a mixture of brominated biphenyls. Firemaster FF–1® is a known liver carcinogen in rats and mice and is one of three compounds chosen by the National Toxicology Program to investigate the potential value of perinatal exposures in assessing chemical carcinogenicity.

Chronic toxicity and carcinogenicity studies were performed by administering polybrominated biphenyls (Firemaster FF–1®) at concentrations of 0, 1, 3, 10, or 30 ppm in feed to groups of 50 F344/N rats and B6C3F$_1$ mice of each sex. The studies were designed to determine: a) the effects of polybrominated biphenyls in rats and mice receiving adult (F$_1$) exposure only (a typical carcinogenicity study), b) the toxic and carcinogenic effects of polybrominated biphenyls in rats and mice receiving perinatal (F$_0$) exposure only (dietary exposure of dams prior to breeding and throughout gestation and lactation), and c) the effects of combined perinatal and adult exposure to polybrominated biphenyls.

Adult-Only Exposure: Under the conditions of these 2-year, adult-only, dietary exposure studies, there was clear evidence of carcinogenic activity* for polybrominated biphenyls in male and female F344/N rats and male and female B6C3F$_1$ mice based on increased incidences of hepatocellular neoplasms.

Perinatal-Only Exposure: Perinatal exposure alone (through dietary administration of 10 ppm polybrominated biphenyls to the dams) had no effect on the incidences of neoplasms in female F344/N rats, but in male F344/N rats, perinatal exposure was associated with a marginally increased incidence of hepatocellular adenomas that may have been related to chemical administration. In male and female B6C3F$_1$ mice, perinatal exposure to 30 ppm polybrominated biphenyls resulted in significantly increased incidences of hepatocellular neoplasms. The incidences of a number of nonneoplastic lesions in the liver (cytomegaly, eosinophilic focus, and clear cell focus) were increased in male and female B6C3F$_1$ mice.

Combined Perinatal and Adult Exposure: Combined perinatal and adult dietary exposure to polybrominated biphenyls confirmed findings of the adult-only exposures for the increased incidences of hepatocellular neoplasms in F344/N rats and B6C3F$_1$ mice. In male F344/N rats, there were no enhancing effects of combined perinatal and adult exposure. However, perinatal exposure enhanced the susceptibility of female F344/N rats receiving adult exposure of 10 or 30 ppm to the induction of liver neoplasms.

For male and female F344/N rats, a combined analysis of the incidences of leukemia in the adult-only, perinatal-only, and combined perinatal and adult exposure groups revealed an apparent association between increasing incidences of mononuclear cell leukemia and exposure to polybrominated biphenyls.

In male and female B6C3F$_1$ mice, it was not possible to adequately assess the enhancing effects of combined perinatal and adult exposure on hepatocellular neoplasms, because adult-only exposure to 10 or 30 ppm polybrominated biphenyls resulted in high incidences (84% to 98%) of liver neoplasms. However, with increased perinatal exposure, there were increases in the numbers of B6C3F$_1$ mice with hepatocellular carcinomas and in the numbers of B6C3F$_1$ mice with multiple hepatocellular adenomas, which suggests an enhancement of polybrominated biphenyls-related hepatocellular carcinogenicity associated with perinatal exposure.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Polybrominated Biphenyls (Firemaster FF–1®) (CAS No. 67774–32–7) in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR–398) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 12, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17445 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 1,3-Butadiene

The HHS' National Toxicology Program announces the availability of the NIP Technical Report on the toxicology and carcinogenesis studies of 1,3-Butadiene, which is used in the manufacture of synthetic rubber and of thermoplastic resins.

To better characterize exposure-response relationships for neoplasms and nonneoplastic lesions, toxicology and carcinogenesis studies were conducted by exposing groups of male and female B6C3F$_1$ mice to air containing 1,3-butadiene (greater than 99% pure) for up to 2 years. An additional study in male B6C3F$_1$ mice, in which exposure to 1,3-butadiene was stopped after limited exposure periods (13, 26, 40, or 52 weeks), was performed to assess the effects of varying concentration and duration of exposure on the incidences of 1,3-butadiene-induced neoplasms.

Groups of 70 male and 70 female mice were exposed to air containing 0, 6.25, 20, 62.5, or 200 ppm 1,3-butadiene for 6 hours per day, 5 days per week for up to 2 years; groups of 90 male and 90 female mice were exposed to 625 ppm, 1,3-butadiene on the same schedule. Up to 10 animals from each group were examined after 9 and 15 months of exposure.

The stop-exposure study consisted of groups of 50 male mice exposed to 1,3-butadiene at concentrations of 200 ppm for 40 weeks, 625 ppm for 13 weeks, 312 ppm for 52 weeks, or 625 ppm for 26 weeks. After the exposures were completed, these groups were placed in control chambers for the remainder of the 2-year study. The total exposure to 1,3-butadiene (concentration times duration of exposure) in the 13, and 40-week stop-exposure was approximately 8,000 ppm weeks, while that in the 26- and 52-week stop-exposure groups was approximately 16,000 ppm weeks.

Previous inhalation studies of 1,3-butadiene in male and female B6C3F$_1$ mice provided clear evidence of carcinogenicity at exposure concentrations of 625 or 1,250 ppm. The present inhalation studies—2-year exposures of 6.25, 20, 62.5, 200, or 625 ppm or shorter duration exposures of 200, 312, or 625 ppm—provide a better characterization of the concentration-dependent responses for 1,3-butadiene-induced neoplasms and nonneoplastic lesions. The present studies confirmed the clear evidence of carcinogenic activity * of 1,3-butadiene in male B6C3F$_1$ mice based on increased incidences of neoplasms in the hematopoietic system, heart, lung, forestomach, liver, harderian gland, preputial gland, brain, and kidney. There was clear evidence of carcinogenicity of 1,3-butadiene in female B6C3F$_1$ mice based on increased incidences of neoplasms in the hematopoietic system, heart, lung, forestomach, liver, harderian gland, ovary, and mammary gland.

Low incidences of intestinal carcinomas in male mice, Zymbal's gland carcinomas in male and female mice, and renal tubule adenomas and skin sarcomas in female mice may also have been related to administration of 1,3-butadiene.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of 1,3-Butadiene (CAS No. 106–99–0) in B6C3F$_1$ Mice (Inhalation Studies)* (TR–434) are

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

examined after 9 and 15 months of exposure.

The stop-exposure study consisted of groups of 50 male mice exposed to 1,3-butadiene at concentrations of 200 ppm for 40 weeks, 625 ppm for 13 weeks, 312 ppm for 52 weeks, or 625 ppm for 26 weeks. After the exposures were completed, these groups were placed in control chambers for the remainder of the 2-year study. The total exposure to 1,3-butadiene (concentration times duration of exposure) in the 13, and 40-week stop-exposure was approximately 8,000 ppm weeks, while that in the 26- and 52-week stop-exposure groups was approximately 16,000 ppm weeks.

Previous inhalation studies of 1,3-butadiene in male and female B6C3F$_1$ mice provided clear evidence of carcinogenicity at exposure concentrations of 625 or 1,250 ppm. The present inhalation studies—2-year exposures of 6.25, 20, 62.5, 200, or 625 ppm or shorter duration exposures of 200, 312, or 625 ppm—provide a better characterization of the concentration-dependent responses for 1,3-butadiene-induced neoplasms and nonneoplastic lesions. The present studies confirmed the clear evidence of carcinogenic activity * of 1,3-butadiene in male B6C3F$_1$ mice based on increased incidences of neoplasms in the hematopoietic system, heart, lung, forestomach, liver, harderian gland, preputial gland, brain, and kidney. There was clear evidence of carcinogenicity of 1,3-butadiene in female B6C3F$_1$ mice based on increased incidences of neoplasms in the hematopoietic system, heart, lung, forestomach, liver, harderian gland, ovary, and mammary gland.

Low incidences of intestinal carcinomas in male mice, Zymbal's gland carcinomas in male and female mice, and renal tubule adenomas and skin sarcomas in female mice may also have been related to administration of 1,3-butadiene.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of 1,3-Butadiene (CAS No. 106–99–0) in B6C3F$_1$ Mice (Inhalation Studies)* (TR–434) are available without charge from Central Data Management, NIEHS, M.D. A0–01. P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 12, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17447 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 1,2,3-Trichloropropane

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 1,2,3-Trichloropropane, a colorless liquid used as a paint and varnish remover, solvent, and degreasing agent, and as a crosslinking agent in the synthesis of polysulfides and hexafluoropropylene. 1,2,3-Trichloropropane may be found as an impurity in certain nematocides and soil fumigants and as a contaminant of drinking and ground water.

Toxicology and carcinogenesis studies were performed by administering 1,2,3-trichloropropane in corn oil by gavage to groups of 60 F344/N rats of each sex at doses of 0, 3, 10, or 30 mg/kg body weight and to 60 B6C3F$_1$ mice of each sex at doses of 0, 6, 20, or 60 mg/kg body weight 5 days per week for up to 104 weeks.

Under the conditions of these 2-year gavage studies, there was clear evidence of carcinogenic activity* of 1,2,3,-trichloropropane in male F344/N rats based on increased incidences of squamous cell papillomas and carcinomas of the oral mucosa and forestomach, adenomas of the pancreas and kidney, adenomas or carcinomas of the preputial gland, and carcinomas of the Zymbal's gland. Adenomatous polyps and adenocarcinomas of the intestine may have been related to chemical administration. There was clear evidence of carcinogenic activity of 1,2,3-trichloropropane in female F344/N rats based on increased incidences of squamous cell papillomas and carcinomas of the oral mucosa and forestomach, adenomas or carcinomas of the clitoral gland, adenocarcinomas of the mammary gland, and carcinomas of the Zymbal's gland. Adenocarcinomas of the intestine may have been related to chemical administration.

There was clear evidence of carcinogenic activity of 1,2,3-trichloropropane in male B6C3F1 mice based on increased incidences of squamous cell papillomas and carcinomas of the forestomach, hepatocellular adenomas or carcinomas, and harderian gland adenomas. Squamous cell papillomas of the oral mucosa may have been related to chemical administration. There was clear evidence of carcinogenic activity of 1,2,3-trichloropropane in female B6C3F$_1$, mice based on increased incidences of squamous cell carcinomas of the oral mucosa, squamous cell papillomas and carcinomas of the forestomach, hepatocellular adenomas or carcinomas, harderian gland adenomas, and uterine adenomas, adenocarcinomas, and stromal polyps.

Nonneoplastic lesions associated with exposure to 1,2,3-trichloropropane included increased severity of nephropathy in male rats and increased incidences of basal cell and squamous hyperplasia of the forestomach, acinar hyperplasia of the pancreas, renal tubule hyperplasia, and preputial or clitoral gland hyperplasia in male and female rats. Increased incidences of squamous hyperplasia of the forestomach and eosinophilic foci in the liver in male and female mice were chemical related.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of 1,2,3-Trichloropropane (CAS No. 96–18–4) in F344/N Rats and B6C3F$_1$ Mice (Gavage Studies)* (TR–384) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 14, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17454 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Oxazepam

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of

oxazepam, which is one of a number of benzodiazepines used therapeutically as a sedative-hypnotic and antianxiety agent.

Toxicology and carcinogenesis studies were performed by administering oxazepam (greater than 99% pure) to groups of 60 male and 60 female Swiss-Webster and B6C3F$_1$ mice in feed at concentrations of 0, 2,5000, or 5,000 ppm for 57 weeks (Swiss-Webster), or 2 years (B6C3F$_1$). Additional groups of 60 male and 60 female B6C3F$_1$ mice received 125 ppm of oxazepam in feed to allow for concentrations similar to those achieved in humans taking a therapeutic dose.

Under the conditions of these feed studies, there was clear evidence of carcinogenic activity* of oxazepam in male and female Swiss-Webster mice based on increased incidences of hepatocellular adenoma and carcinoma. There was clear evidence of carcinogenic activity of oxazepam in male and female B6C3F$_1$ mice based on increased incidences of hepatoblastoma and hepatocellular adenoma and carcinoma. Increased incidences of hyperplasia of thyroid gland follicular cells in male and female B6C3F$_1$ mice and of follicular cell adenomas in female B6C3F$_1$ mice were also related to oxazepam exposure.

Administration of oxazepam to Swiss-Webster mice resulted in centrilobular hepatocellular hypertrophy and increased incidences and severity of systemic amyloidosis. Administration of oxyazepam to B6C3F$_1$ mice also resulted in centrilobular hepatocellular hypertrophy.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Oxazeham (CAS No. 604–75–1] in Swiss-Webster and B6C3F$_1$ Mice (Feed Studies)* (TR–443) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dated: July 12, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17448 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of promethazine Hydrochloride

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of promethazine hydrochloride, a drug used for the management of allergic conditions, motion sickness and nausea, and as a sedative to treat psychiatric disorders.

Toxicology and carcinogenicity studies were conducted by administering promethazine hydrochloride (>99% pure) in distilled water by gavage to groups of 60 male and 60 female F344/N rats and B6C3F$_1$ mice once daily, 5 days per week for up to 103 weeks. Rats received doses of 0, 8.3, 16.6, and 33.3 mg/kg; male mice received doses of 0, 11.25, 22.5, and 45 mg/kg and female mice received 0, 3.75, 7.5, and 15 mg/kg.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity * of promethazine hydrochloride in male or female F344/N rates receiving 8.3, 16.6, or 33.3 mg/kg. There was no evidence of carcinogenic activity of promethazine hydrochloride in male B6C3F$_1$ mice receiving 11.25, 22.5 or 45 mg/kg. There was no evidence of carcinogenic activity of promethazine hydrochloride in female B6C3F$_1$ mice receiving 3.75, 7.5, or 15 mg/kg.

The decrease in the incidences of adrenal medullary pheochromocytoma in male rates was considered to be related to promethazine hydrochloride administration. The decrease in the incidences of pituitary gland adenoma in male rates and uterine stromal polyp in female rates may have been related to promethazine administration.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study"),

Copies of *Toxicology and Carcinogenesis Studies of Promethazine Hydrochloride (CAS No. 58–33–3) in F344/N Rates and B6C3F$_1$ Mice (Gavage Studies)* (TR–425) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 13, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17453 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Triamterene

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of triamterene, a potassium-sparing diuretic used in the treatment of edema associated with congestive heart failure, cirrhosis of the liver, and other diseases in which edema may occur.

Toxicity and carcinogenicity studies were conducted by administering triamterene (greater than 99% pure) in feed to groups of 50 male and female F344/N rats at doses of 0, 150, 300, or 600 ppm and to 50 male and female B6C3F$_1$ mice at doses of 0, 100, 200, or 400 ppm for 2 years. Because of a dosing error involving the high-dose mice at week 40, a second study was conducted with groups of 50 male and female mice fed diets containing 0 or 400 ppm triamterene. Additional animals were included for interim evaluations at 3 and 15 months.

Under the conditions of these 2-year feed studies, there was equivocal evidence of carcinogenic activity* of triamterene in male F344/N rats based on a marginal increase in the incidence of hepatocellular adenoma. There was no evidence of carcinogenic activity of triamterene in female F344/N rats administered 150, 300, or 600 ppm. There was some evidence of carcinogenic activity of triamterene in male B6C3F$_1$ mice based on a marginal increase in the incidence of hepatocellular carcinoma in the first study and a significantly increased incidence of hepatocellular adenoma in the second study. There was some evidence of carcinogenic activity of triamterene in female B6C3F$_1$ mice based on significantly increased incidences of hepatocellular adenoma and of adenoma and carcinoma (combined).

Exposure to triamterene was associated with an increased incidence of hepatocellular foci, primarily mixed cell type, and an increase in the severity of nephropathy in female rats. In mice, exposure to triamterene was associated with an increased incidence of hepatocellular foci in females and an increased incidence of thyroid gland follicular cell hyperplasia in males and females.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Triamterene (CAS No. 396–01–0) in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR–420) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 13, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17452 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Turmeric Oleoresin

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of turmeric oleoresin, the organic extract of turmeric, a ground powder from the root of the Curcuma plant, which is added to food items as a spice and coloring agent.

Toxicity and carcinogenicity studies were conducted by administering turmeric oleoresin in feed containing 0, 2,000, 10,000, or 50,000 ppm to groups of 60 F344/N rats and B6C3F$_1$ mice of each sex for 2 years.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity* of turmeric

* The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be

incidence of hepatocellular adenoma in the second study. There was some evidence of carcinogenic activity of triamterene in female B6C3F$_1$ mice based on significantly increased incidences of hepatocellular adenoma and of adenoma and carcinoma (combined).

Exposure to triamterene was associated with an increased incidence of hepatocellular foci, primarily mixed cell type, and an increase in the severity of nephropathy in female rats. In mice, exposure to triamterene was associated with an increased incidence of hepatocellular foci in females and an increased incidence of thyroid gland follicular cell hyperplasia in males and females.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of Triamterene (CAS No. 396–01–0) in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR–420) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 13, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17452 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Turmeric Oleoresin

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of turmeric oleoresin, the organic extract of turmeric, a ground powder from the root of the Curcuma plant, which is added to food items as a spice and coloring agent.

Toxicity and carcinogenicity studies were conducted by administering turmeric oleoresin in feed containing 0, 2,000, 10,000, or 50,000 ppm to groups of 60 F344/N rats and B6C3F$_1$ mice of each sex for 2 years.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity* of turmeric oleoresin in male F344/N rats administered 0, 2,000, 10,000, or 50,000 ppm. There was equivocal evidence of carcinogenic activity of turmeric oleoresin in female F344/N rats based on increased incidences of clitoral gland adenomas in the exposed groups. There was equivocal evidence of carcinogenic activity of turmeric oleoresin in male B6C3F$_1$ mice based on a marginally increased incidence of hepatocellular adenoma at the 10,000 ppm level, and the occurrence of carcinomas of the small intestine in the 2,000 and 10,000 ppm groups. There was equivocal evidence of carcinogenic activity of turmeric oleoresin in female B6C3F$_1$ mice based on an increased incidence of hepatocellular adenomas in the 10,000 ppm group.

Turmeric oleoresin ingestion was also associated with increased incidences of ulcers, hyperplasia, and inflammation of the forestomach, cecum, and colon in male rats and of the cecum in female rats. In female mice, ingestion of diets containing turmeric oleoresin was also associated with an increased incidence of thyroid gland follicular cell hyperplasia.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of the *Toxicology and Carcinogenesis Studies of Turmeric Oleoresin (CAS No. 8024–37–1) (Major Component 79%–85% Curcumin, CAS No. 458–37–7) In F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR–427) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 12, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17444 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 2,3-Dibromo-1-Propanol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 2,3-Dibromo-1-propanol, a colorless liquid that has been used as a flame retardant, as an intermediate in the preparation of the flame retardant tris(2,3-dibromopropyl) phosphate, and as an intermediate in the manufacture of pesticides and pharmaceutical preparations.

Toxicology and carcinogenicity studies were conducted by applying 2,3-dibromo-1-propanol (approximately 98% pure) in ethanol to the subscapular area of the skin to groups of 50 F344/N rats and 50 B6C3F$_1$ mice 5 days per week for 48 to 51 weeks (male rats), 52 to 55 weeks (female rats), 36 to 39 weeks (male mice), or 39 to 42 weeks (female mice). Rats received dermal applications of 0, 188, or 375 mg/kg 2,3-dibromo-1-propanol; mice received dermal applications of 0, 88, or 177 mg/kg.

Originally planned to last for 2 years, the chronic study in rats was terminated early because of reduced survival in the high-dose groups related to chemical induced neoplasms. The chronic study in mice was also terminated early because of the detection of antibodies to lymphocytic choriomeningitis virus in sentinel mice.

Under the conditions of these long-term dermal studies, there was clear evidence of carcinogenic activity* of 2,3-dibromo-1-propanol in the male F344/N rats based on increased incidences of neoplasms of the skin, nose, oral mucosa, esophagus, forestomach, small and large intestine, Zymbal's gland, liver, kidney, tunica vaginalis, and spleen. There was clear evidence of carcinogenic activity of 2,3-dibromo-1-propanol in female F344/N rats based on increased incidences of neoplasms of the skin, noses, oral mucosa, esophagus, forestomach, small and large intestine, Zymbal's gland, liver, kidney, clitoral gland, and mammary gland. There was clear evidence of carcinogenic activity of 2,3-dibromo-1-propanol in female B6C3F$_1$ mice based on increased incidences of neoplasms of the skin and the forestomach. The increased incidences of alveolar/bronchiolar adenomas in female mice may have been related to chemical administration.

In rats, 2,3-dibromo-1-propanol caused increased incidences of hyperkeratosis in the skin, forestomach, and esophagus, epithelial dysplasia in the nose, pleomorphism and basophilic and clear cell changes in the liver, and nuclear enlargement in the kidney. There was also chemical-related

*The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

*The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

increases in the incidences of forestomach ulcers and acanthosis, angiectasis in the liver, and renal hyperplasia in male rats and epithelial dysplasia of the forestomach and bile duct hyperplasia in the liver in famale rats. Chemical-related increases occurred in the incidences of hyperplasia in the skin, epithelial dysplasia of the forestomach, bronchiolar epithelial pleomorphism and hyperplasia in male and female mice and in the incidence of eosinophilic cytoplasmic change in the liver in males.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of *Toxicology and Carcinogenesis Studies of 2,3-Dibromo-1-Propanol (CAS No. 96–13–9) in F344/N Rats and B6C3F; Mice (Dermal Studies)* (TR–400) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: July 13, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–17451 Filed 7–18–94; 8:45 am]

BILLING CODE 4140–01–M

Office of the Assistant Secretary for Health; Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09–37–0021, "Public Health Service Records Related to Inquiries and Investigations of Science Misconduct, HHS/OASH/ORI." We are also proposing twelve routine uses for this new system. As set forth in 45 CFR 5b.11(b)(2)(vii), this system is exempted from certain provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to subsections (k)(2) and (k)(5) of the Privacy Act, which apply to investigatory materials compiled for law enforcement purposes and to protection of confidential sources of information.

DATES: PHS invites interested parties to submit comments on the proposed routine uses on or before August 29, 1994. PHS has sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on June 29, 1994. The routine uses will be effective 40 days after submission of the Report to OMB unless PHS receives comments which would result in a contrary determination. In no event shall this system be effective prior to the effective date of the amendment to 5 CFR 5b.11 which exempt this system under subsections (k)(2) and (k)(5) of the Privacy Act.

ADDRESSES: Please submit comments to: PHS Privacy Act Officer, room 17–45, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2055 (This is not a toll-free number.) Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara Bullman, Esq., Division of Policy and Education, Office of Research Integrity, Rockwall II, suite 700, 5515 Security Lane, Rockville, Maryland 20852, (301) 443–5300 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Health (OASH), Office of Research Integrity (ORI), proposes to establish a new system of records: 09–37–0021, "Public Health Service Records Related to Inquiries and Investigations of Scientific Misconduct, HHS/OASH/ORI." This system will consist of records related to current allegations, inquiries or investigations of scientific misconduct and/or to actions that PHS has taken in connection with such allegations, inquiries, investigations or findings. Records in this system will be maintained according to the name of the individual who is the subject of the inquiry or investigation with which they are associated.

The records in the system will be maintained in a secure manner compatible with the content, sensitivity and use of the data. Access will be given only to ORI staff and to other appropriate HHS personnel whose official duties require the use of the records. Individually identifiable records in the ORI will be kept in locked files in a room locked during non-working hours. Access to the room is limited to specific personnel, and the room is protected by access and intrusion alarms. The records in this system which are maintained in the appropriate PHS Agency Research Integrity Liaison Office (ARILO), the PHS Agency Intramural Research Integrity Offices, the PHS Agency Extramural Research Integrity Office and applicable NIH Misconduct Program offices will be kept in locked files in locked offices.

Computerized records will be maintained in accordance with the HHS Automated Information Systems Security Handbook.

We are proposing twelve routine uses. Any disclosure pursuant to these routine uses will be limited to the minimum necessary to accomplish the purpose of the disclosure and will be made so as to protect the identities of confidential sources of information. The first routine use proposed for this system allows disclosure to the Department of Justice or the courts or other tribunals (including administrative law proceedings) in the event of litigation. The second routine use is proposed to allow experts to review the records in order to provide the government with an opinion relevant to the inquiry and investigation. The third routine use allows disclosures to current employers and to responsible officials of the awardee institution in connection with an inquiry and or investigation of scientific misconduct by an individual sponsored by the institution. The fourth routine use allows PHS to disclose information to other Federal Agencies which also are providing support or are considering providing support to the awardee institution or which have utilized or relied on the relevant research. The records only will be disclosed when necessary to enable the agencies to effectively perform their responsibilities. The fifth routine use allows PHS to disclose information to other Federal, State and local agencies and to other individuals and entities assisting the PHS in the investigation and to person(s) making the allegations who have knowledge concerning the factual basis of the allegation(s). The sixth routine use allows disclosure to State licensing boards or certifying bodies to aid in their review of the individual in order to effectively protect the health and welfare of the population within their jurisdictions and the integrity of the profession. The seventh routine use allows disclosure of information to journal editors, publishers, professional societies or others in order to correct inaccurate or misleading research results or to notify the public of invalid studies. The eighth routine use allows disclosure to appropriate agencies in cases of investigations or prosecutions under a statute, rule, regulation or order. The ninth routine use allows disclosure to HHS contractors for the purpose of collating, aggregating, analyzing or otherwise refining or processing records in this system. The contractor is required to maintain the Privacy Act safeguards with respect to these records. The tenth routine use allows the ORI to disclose information where there has been a finding of misconduct or the inquiry or investigation has become a public dispute, to communications and news media, scientific journals and publications, and to the public. Providing this information to the media, journals, publications and public will serve an educational purpose and as a deterrent and will assist institutional officials in making informed decisions affecting their institutions and organizations. The eleventh routine use allows disclosure of necessary records that were filed with or generated by the Departmental Appeals Board. These records concern a specific case of scientific misconduct where a hearing has been requested before the Research Integrity Adjudication Panel (RIAP) of the DAB. The RIAP conducts the hearings on the ORI findings and proposed administrative actions at the request of the respondent. The twelfth routine use allows disclosure of information to the General Services Administration (GSA) after there is a final agency action to debar. The GSA publishes and makes available this information to the scientific community.

We have obtained an exemption for these records as provided by the Privacy Act to maintain the integrity of the investigative process. Therefore, at the discretion of the system manager, the system is exempt from the notification, access, correction and amendment provisions of the Privacy Act.

This system notice is written in the present rather than the future tense in order to avoid the unnecessary expenditure of public funds to republish the notice should it become final.

Dated: July 1, 1994.

Wilford J. Forbush,

Director, Office of Management.

09–37–0021

SYSTEM NAME:

Public Health Service Records Related to Inquiries and Investigations of Scientific Misconduct, HHS/OASH/ORI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

For Intramural and Extramural Research Programs: Office of Research Integrity, Rockwall II, suite 700, 5515 Security Lane, Rockville, Maryland 20852; and at offices for (1) each of the Agency Extramural Research Integrity Officers (AERIOs), (2) each of the Agency Research Integrity Liaison Officers (ARILOs), (3) each of the

safeguards with respect to these records. The tenth routine use allows the ORI to disclose information where there has been a finding of misconduct or the inquiry or investigation has become a public dispute, to communications and news media, scientific journals and publications, and to the public. Providing this information to the media, journals, publications and public will serve an educational purpose and as a deterrent and will assist institutional officials in making informed decisions affecting their institutions and organizations. The eleventh routine use allows disclosure of necessary records that were filed with or generated by the Departmental Appeals Board. These records concern a specific case of scientific misconduct where a hearing has been requested before the Research Integrity Adjudication Panel (RIAP) of the DAB. The RIAP conducts the hearings on the ORI findings and proposed administrative actions at the request of the respondent. The twelfth routine use allows disclosure of information to the General Services Administration (GSA) after there is a final agency action to debar. The GSA publishes and makes available this information to the scientific community.

We have obtained an exemption for these records as provided by the Privacy Act to maintain the integrity of the investigative process. Therefore, at the discretion of the system manager, the system is exempt from the notification, access, correction and amendment provisions of the Privacy Act.

This system notice is written in the present rather than the future tense in order to avoid the unnecessary expenditure of public funds to republish the notice should it become final.

Dated: July 1, 1994.

Wilford J. Forbush,

Director, Office of Management.

09–37–0021

SYSTEM NAME:

Public Health Service Records Related to Inquiries and Investigations of Scientific Misconduct, HHS/OASH/ORI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

For Intramural and Extramural Research Programs: Office of Research Integrity, Rockwall II, suite 700, 5515 Security Lane, Rockville, Maryland 20852; and at offices for (1) each of the Agency Extramural Research Integrity Officers (AERIOs), (2) each of the Agency Research Integrity Liaison Officers (ARILOs), (3) each of the Agency Intramural Research Integrity Officers for those agencies covered by this notice; and (4) each of the NIH Misconduct Program Offices and (5) the Federal Records Centers for inactive records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subject of allegation(s) of scientific misconduct or related matters. These categories include: (1) Researchers currently or formerly employed by the Federal Government, (2) guest researchers, (3) Advisory Committee members, and (4) investigators or applicants for research grants, research training grants, fellowships, cooperative agreements or contracts. Investigators may include principal investigators, co-investigators, program directors, trainees, recipients of career awards or fellowships, or other individuals who conduct or are responsible for research or research training funded by the PHS or who are the subject of applications for PHS funding.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records related to allegations, inquiries, investigations or findings of misconduct in science and/or to actions that PHS has taken in connection with such allegations, inquiries, investigations or findings. Scientific misconduct is defined as fabrication, falsification, plagiarism or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting or reporting research. It does not include honest error or honest differences in interpretation or judgment of data.

This system consists of records concerning or collateral to pending, ongoing or completed inquiries and investigations of alleged scientific misconduct. It includes information about the individuals under investigation or under an inquiry; the other PHS agencies or other federal agencies involved; the organization responsible for conducting the inquiry or investigation; the funding mechanism identification number(s) involved; names of individual involved; names of witnesses; general nature of the allegation; and the documentation used in the inquiry or investigation, including relevant research data and reagents, proposals, publications, copies of relevant publications by persons under investigation, qualification statements and curriculum vitae of expert consultants, correspondence, memoranda of telephone calls, summaries of interviews, social security numbers, interim and final reports prepared by the institution, Office of Research Integrity (ORI), Department Appeals Board (DAB) and other related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authorities for maintaining the system are Sections 215(b), 301 and 493 of the Public Health Service Act; 42 U.S.C. 216(b), 241, and 289b; 5 U.S.C. 301, and 44 U.S.C. 3101, 42 CFR Part 50, subpart A; 45 CFR part 76.

PURPOSE(S):

The purposes of this system are (1) to enable PHS agencies to discharge effectively their responsibilities in managing PHS intramural and extramural research programs and in the application, award, and administration of research and training awards, cooperative agreements and contracts while protecting the rights and privacy of the individuals under investigation as well as confidential sources of information; (2) to determine whether there has been scientific misconduct in research relevant to funding; (3) to assure the institutions applying for or receiving PHS funds have appropriate mechanisms for detailing with allegations of scientific misconduct and the protection of whistleblowers; (4) to determine whether results of PHS-related research may be inaccurate so that PHS can notify the scientific community or others who may rely on the results; (5) to serve as a working file and enable the ORI to inform PHS agency officials of the status and results of inquiries and investigations so that they may take actions appropriate to each case; (6) to investigate allegations of misconduct and take appropriate remedial and corrective actions with respect to individuals who are found to have committed misconduct; and (7) to ensure that inquiries and investigations are timely, thorough, complete and objective in accordance with applicable federal regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure may be made for the routine uses as indicated below: 1. To the Department of Justice, or to a court or other tribunal, when (a) the Department of Health and Human Services (HHS), or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or

any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the government party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

2. To qualified expert(s) for the purpose of obtaining the expert's assistance on matters pertinent to the inquiry, investigation, or related legal proceeding.

3. To responsible officials of the awardee institutions or organizations, when in connection with an inquiry, investigation or finding of misconduct by an individual previously or currently employed by or affiliated with the institution or organization, a PHS agency makes a finding or takes an action potentially affecting research and research training awards to the institution or organization.

4. To other Federal Agencies who have supported, are supporting or are considering support of a research grant, fellowship, cooperative agreement or contract with an affected individual or institution or which have utilized or relied on the relevant research to the extent that the record is relevant and necessary to the Agency's decision on the matter.

5. To the relevant PHS-supported or other institution(s), Federal, State and local agencies, the persons(s) making the allegations and other entities or individuals who may have knowledge concerning the factual basis of the allegation or otherwise be able to assist in an inquiry, investigation or related proceeding, provided however, that in each case HHS determines that such disclosure is desirable or necessary in order to conduct a thorough and fair investigation into allegations of scientific misconduct.

6. To a State licensing board or certifying body conducting a review of the individual to aid the board or body in meeting its responsibility to protect the health of the population in its jurisdiction or the integrity of the profession.

7. To journal editors, publishers, professional societies or others in order to correct inaccurate or misleading research results or to notify the public of invalid studies.

8. To the appropriate agency, whether Federal, State or local, charged with the responsibility of investigation or enforcing a statute, or rule, regulation, or order issued pursuant thereto where such responsibility rests outside of HHS when there exists a violation or potential violation of law whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute or by regulation, rule or order.

9. To HHS contractors for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system. The contractor shall be required to maintain Privacy Act safeguards with respect to the records.

10. To professional journals, news media, other publications and to the public after there is a final agency finding of scientific misconduct or where the inquiry or investigation has become a public dispute.

11. To persons who request records filed with or generated by the Departmental Appeals Board regarding a specific case of alleged scientific misconduct where a hearing was requested.

12. To the General Services Administration (GSA), after there is a final agency action to debar, for the purpose of distributing and publishing that decision to debar.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on computer discs.

RETRIEVABILITY:

Records are retrieved by name of the individual who is the subject of an allegation, inquiry or investigation.

SAFEGUARDS:

1. *Authorized users.* Extramural and Intramural records in ORI are available to the system manager, to the Director of ORI, and to other appropriate ORI staff. Records specifically related to the Intramural Research Program are available to the system manager, to the Deputy Director for Intramural Research, and to other appropriate HHS officials, including the Agency Research Integrity Liaison Officer (ARILOs), the Agency Intramural Research Integrity Officer, and the Misconduct Program Officers (MPOs) located in the Bureaus, Centers, and Divisions of the NIH that are associated with the allegation, inquiry or investigation.

2. *Procedural safeguards.* For records located in the ORI, access is strictly controlled by the system manager and the ORI, Director. For records located at the other sites, access is strictly controlled by the PHS Agency Heads, Deputy Director for Intramural Research, the AIRLOs, and MPOs and other appropriate PHS officials. HHS employees who receive disclosures from this system are informed that the information is confidential. All questions and inquiries from any party should be addressed to the system manager.

3. *Physical safeguards.* ORI records are kept in locked file cabinets in a room that is locked during non-working hours. Access to this room is restricted to specific personnel. The ORI office is protected by access and intrusion alarms at the front and emergency entrances. Access to computer files are protected through access permissions and user-invisible encryption. Special measures commensurate with the sensitivity of the record are taken to prevent unauthorized copying or disclosure of the records. Records at other locations are protected from unauthorized access by the AERIO's, ARILOs, MPOs, or AIRIOs.

RETENTION AND DISPOSAL:

Allegation, inquiry and investigative files are retained and disposed of in accordance with the OASH Record Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Research Investigations, Office of Research Integrity, Rockwell II, suite 700, 5515 Security Lane, Rockville, Maryland 20852.

NOTIFICATION PROCEDURES:

This system is exempt from access; however, consideration will be given to requests addressed to the system manager. For general inquiries, state your name, the name of the institution, and the date of the award.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Exempt. However, consideration will be given requests addressed to the system manager. Requests for corrections should reasonably identify the record and specify the information to be contested, the corrective action sought and the reasons for the corrections with supporting justification.

RECORD SOURCE CATEGORIES:

Information in this system is obtained: (1) Directly from the individual, (2) derived from materials supplied by the individual, (3) from information supplied by the institutions, informants, witnesses, and others and (4) from existing government files.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted under subsections (k)(2) and (k)(5) of the Privacy Act from access, notification, correction, and amendment provisions of the Privacy Act [5 U.S.C. 552a (c)(3), (d) (1)–(4), (e)(4)(G)–(H), and (f)], to the extent that it includes (1) investigatory materials compiled for law enforcement purposes, including criminal law enforcement, where access would be likely to prejudice the conduct of the investigation, and (2) material, whose disclosure would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality.

[FR Doc. 94–17483 Filed 7–18–94; 845 am]

BILLING CODE 4160–17

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–94–3796; FR–3745–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning July 1, 1994, is 7¼ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed

supplied by the individual, (3) from information supplied by the institutions, informants, witnesses, and others and (4) from existing government files.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted under subsections (k)(2) and (k)(5) of the Privacy Act from access, notification, correction, and amendment provisions of the Privacy Act [5 U.S.C. 552a (c)(3), (d) (1)–(4), (e)(4)(G)–(H), and (f)], to the extent that it includes (1) investigatory materials compiled for law enforcement purposes, including criminal law enforcement, where access would be likely to prejudice the conduct of the investigation, and (2) material, whose disclosure would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality.

[FR Doc. 94–17483 Filed 7–18–94; 845 am]

BILLING CODE 4160–17

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–94–3796; FR–3745–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning July 1, 1994, is 7¼ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1994, is 7¾ percent.

FOR FURTHER INFORMATION CONTACT:

Fred E. McLaughlin, Financial Services Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, room 3119, Washington, DC 20026. Telephone (202) 755–7450 ext. 127, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rates higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203,479, 207,259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 1994, is 7¾ percent and (2) has approved establishment of the debenture interest rate by the Secretary of HUD at 7¾ percent for the six-month period beginning July 1, 1994. The interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1994.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	Jan. 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅜	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅜	July 1, 1984	Jan. 1, 1985
11⅝	Jan. 1, 1985	July 1, 1985
11⅛	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986
8¼	July 1, 1986	Jan. 1, 1987
8	Jan. 1, 1987	July 1, 1987
9	July 1, 1987	Jan. 1, 1988
9⅛	Jan. 1, 1988	July 1, 1988
9⅜	July 1, 1988	Jan. 1, 1989
9¼	Jan. 1, 1989	July 1, 1989
9	July 1, 1989	Jan. 1, 1990
8⅛	Jan. 1, 1990	July 1, 1990
9	July 1, 1990	Jan. 1, 1991
8¾	Jan. 1, 1991	July 1, 1991
8½	July 1, 1991	Jan. 1, 1992
8	Jan. 1, 1992	July 1, 1992
8	July 1, 1992	Jan. 1, 1993
7¾	Jan. 1, 1993	July 1, 1993
7	July 1, 1993	Jan. 1, 1994
6⅞	Jan. 1, 1994	July 1, 1994
7¼	July 1, 1994	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year.

Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the six-month period beginning July 1, 1994, is 7¼ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1995.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: July 6, 1994.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–17405 Filed 7–18–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–020–406A–02; IDI–28350]

Realty Action, Recreation and Public Purpose (R&PP) Act Classification, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Cassia County, Idaho, have been examined and found suitable for classification for lease to the State of Idaho, Department of Parks and Recreation under the provisions of the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 et seq.). The Idaho Department of Parks and Recreation proposes to use the land as an administrative site for the City of Rocks National Reserve.

T. 15 S., R 24 E., Boise Meridian

section 27: SW¼SE¼
section 34: NW¼NE¼, NE¼NW¼

The area described contains 120 acres, more or less, in Cassia County.

A visitor center/administrative office, parking lot, operations buildings and yard complex, and an employee housing area is proposed to be constructed on the above described public land.

The above described lands are not needed for Federal purposes. The lease of these lands is consistent with the Cassia Resource Management Plan and would be in the public interest.

The lease, when issued, will be subject to the following terms, conditions, and reservations: 1. Provisions of the Recreation and Public Purposes Act and to all applicable regulation of the Secretary of the Interior.

2. Those rights for powerline purposes granted to Raft River Electric by right-of-way I–30027.

3. Those rights for road use purposes reserved to the United States by right-of-way reservation I–30770.

4. A right-of-way for ditches and canals construction by the authority of the United States.

5. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

6. The BLM will review and approve the building design, construction, materials, and landscaping plans to assure that the facilities blend with the existing landscape character of the adjoining lands. The BLM will also review and approve the design plans for other facilities such as cattle guards and fences to assure that they meet BLM specifications.

7. Sixty days prior to an abandonment of the City of Rocks Administrative Site, the lessee shall contact the authorized officer to arrange a joint inspection of the lease area. The inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Burley District, 200 South 15 East, Burely, Idaho,

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all other forms of appropriation under the public lands laws, including the general mining laws, except for lease under the Recreation and Public Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested persons may submit comments regarding the proposed classification or lease of the lands to District Manager, Burely District Office, Route 3, Box 1, Burley, Idaho 83318.

Classification Comments

Interested parties may submit comments involving the suitability of the land for an administrative facility for the City of Rocks National Reserve. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments.

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an administrative facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: July 6, 1994.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 94–17406 Filed 7–18–94; 8:45 am]

BILLING CODE 4310–GG–P

[ID–943–4070–02; IDI–1682, et al.]

Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that the withdrawals of 5049.95 acres for Public Water Reserve No. 107 be continued for an additional 20 years. The lands and waters involved would remain withdrawn and the lands would remain closed to surface entry and nonmetalliferous mining.

DATES: Comments should be received by October 17, 1994.

ADDRESSES: Comments should be sent to State Director, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500.

FOR FURTHER INFORMATION CONTACT: Robert Hale, BLM Idaho State Office, 208–384–3165.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that the existing land withdrawals made by Executive Order 1926, and further designated by Secretarial Orders of Interpretation No. 38 dated February 9, 1927; No. 51 dated January 17, 1928; No. 83 dated February 16, 1929; No. 106 dated August 29, 1929; No. 123 dated March 13, 1930; No. 125 dated March 15, 1930; No. 142 dated January 17, 1931; No. 145 dated April 15, 1931; No. 156 dated February 3, 1932; No. 160 dated April 8, 1932; No. 171 dated September 27, 1932; No. 177 dated February 15, 1933; No. 205 dated August 30, 1934; No. 214 dated March 28, 1935; No. 220 dated September 11, 1935; No. 228 dated February 26, 1937; No. 251 dated March 8, 1939; and No. 169 dated August 4, 1932; Bureau Orders of Interpretation dated July 8, 1959; August 1, 1967; January 26, 1968; September 23, 1968; October 19, 1970; and September 11, 1974; and Government Land Office Order of

Interpretation dated march 24, 1942, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The lands are described as follows:

Boise Meridian

IDI–1682 (BLM O 8/1/1967)

T. 5 S., R. 40 E.,
Sec. 6.
T. 6 S., R. 35 E.,
Sec. 34.
T. 6 S., R. 43 E.,
Sec. 30.
T. 10 S., R. 37 E.,
Sec. 2.
T. 12 S., R. 18 E.,
Sec. 6.
T. 12 S., R. 37 E.,
Sec. 11.

IDI–2125 (BLM O 1/26/1968)

T. 12 S., R. 21 E.,
Sec. 28.

IDI–2499 (BLM O 9/23/1968)

T. 7 S., R. 25 E.,
Sec. 10.

IDI–3788 (BLM O 10/19/1970)

T. 14 N., R. 20 E.,
secs. 29, 30, and 32.

IDI–8964 (BLM O 9/11/1974)

T. 21 N., R. 1 E.,
Sec. 11.
T. 22 N., R. 1 E.,
Sec. 9.

IDI–14534 (SO 205 8/30/1934)

T. 9 S., R. 1 W.,
Sec. 31.

IDI–15352 (SO 228 2/26/1937)

T. 5 N., R. 1 W.,
Sec. 26.

IDI–15353 (SO 145 4/15/1931)

T. 3 S., R. 29 E.,
secs. 3, 9, 10 and 11.
T. 9 S., R. 5 W.,
secs. 9, 14, 15, 22, 23, 27, and 28.
T. 13 N., R. 27 E.,
secs. 24 and 34.

IDI–15354 (SO 169 8/4/1932)

T. 13 N., R. 27 E.,
secs. 4, 5, and 9.

IDI–15355 (BLM O 7/8/1959)

T. 12 N., R. 24 E.,
secs. 4 and 17.

IDI–15356 (SO 160 4/8/1932)

T. 8 S., R. 38 E.,
secs. 24 and 35.
T. 11 N., R. 24 E.,
Sec. 4.
T. 12 N., R. 24 E.,
Sec. 34.

IDI–15357 (SO 125 3/15/1930)

T. 2 N., R. 24 W.,
Sec. 28.
T. 14 S., R. 14 E.,

Interpretation dated march 24, 1942, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The lands are described as follows:

Boise Meridian

IDI–1682 (BLM O 8/1/1967)
T. 5 S., R. 40 E.,
Sec. 6.
T. 6 S., R. 35 E.,
Sec. 34.
T. 6 S., R. 43 E.,
Sec. 30.
T. 10 S., R. 37 E.,
Sec. 2.
T. 12 S., R. 18 E.,
Sec. 6.
T. 12 S., R. 37 E.,
Sec. 11.

IDI–2125 (BLM O 1/26/1968)
T. 12 S., R. 21 E.,
Sec. 28.

IDI–2499 (BLM O 9/23/1968)
T. 7 S., R. 25 E.,
Sec. 10.

IDI–3788 (BLM O 10/19/1970)
T. 14 N., R. 20 E.,
secs. 29, 30, and 32.

IDI–8964 (BLM O 9/11/1974)
T. 21 N., R. 1 E.,
Sec. 11.
T. 22 N., R. 1 E.,
Sec. 9.

IDI–14534 (SO 205 8/30/1934)
T. 9 S., R. 1 W.,
Sec. 31.

IDI–15352 (SO 228 2/26/1937)
T. 5 N., R. 1 W.,
Sec. 26.

IDI–15353 (SO 145 4/15/1931)
T. 3 S., R. 29 E.,
secs. 3, 9, 10 and 11.
T. 9 S., R. 5 W.,
secs. 9, 14, 15, 22, 23, 27, and 28.
T. 13 N., R. 27 E.,
secs. 24 and 34.

IDI–15354 (SO 169 8/4/1932)
T. 13 N., R. 27 E.,
secs. 4, 5, and 9.

IDI–15355 (BLM O 7/8/1959)
T. 12 N., R. 24 E.,
secs. 4 and 17.

IDI–15356 (SO 160 4/8/1932)
T. 8 S., R. 38 E.,
secs. 24 and 35.
T. 11 N., R. 24 E.,
Sec. 4.
T. 12 N., R. 24 E.,
Sec. 34.

IDI–15357 (SO 125 3/15/1930)
T. 2 N., R. 24 W.,
Sec. 28.
T. 14 S., R. 14 E.,
Sec. 33.
T. 15 S., R. 14 E.,
secs. 19 and 33.

IDI–15359 (SO 83 2/16/1929)
T. 12 N., R. 19 E.,
Sec. 13.
T. 12 N., R. 20 E.,
Sec. 18.

IDI–15360 (SO 177 2/15/1933)
T. 6 S., R. 4 W.,
Sec. 13.
T. 10 S., R. 1 E.,
secs. 11 and 14.
T. 13 N., R. 19 E.,
Sec. 7.

IDI–15362 (SO 142 1/17/1931)
T. 2 S., R. 13 E.,
Sec. 26.

IDI–15363 (SO 251 3/8/1939)
T. 4 S., R. 6 W.,
Sec. 13.
T. 34 N., R. 3 E.,
Sec. 28.

IDI–15365 (SO 214 3/28/1935)
T. 4 S., R. 9 E.,
Sec. 19.

IDI–15367 (SO 156 2/3/1932)
T. 9 S., R. 3 W.,
Sec. 11.

IDI–15368 (SO 123 3/13/1930)
T. 4 S., R. 5 W.,
Sec. 19.

IDI–15369 (SO 171 9/27/1932)
T. 5 S., R. 10 E.,
Sec. 27.

IDI–15372 (SO 51 1/17/1928)
T. 1 S., R. 24 E.,
secs. 13 and 14.
T. 2 S., R. 24 E.,
secs. 10, 21, and 28.
T. 3 S., R. 24 E.,
secs. 7, 8, 9, 10, and 26.
T. 2 S., R. 25 E.,
Sec. 19.
T. 3 S., R. 25 E.,
Sec. 17.

IDI–15373 (SO 106 8/29/1929)
T. 1 S., R. 29 E.,
Sec. 1.

IDI–15374 (SO 220 9/11/1935)
T. 2 S., R. 31 E.,
Sec. 10.

IDI–15378 (GLO O 3/24/1942)
T. 3 S., R. 20 E.,
Sec. 31.

IDI–17193 (SO 38 2/9/1927)
T. 10 S., R. 29 E.,
Secs. 34 and 35.

The areas described aggregate 5049.95 acres in Ada, Bannock, Bingham, Blaine, Butte, Camas, Caribou, Cassia, Custer, Elmore, Lemhi, Lewis, Lincoln, Minidoka, Owyhee, and Twin Falls Counties.

The purpose of the withdrawals is to protect the water sources located on the lands for livestock and wildlife uses. The withdrawals segregate the lands and water from settlement, sale, location, and entry, including mining for nonmetalliferous minerals but not location and entry under the mining laws for metalliferous minerals or the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Chief, Branch of Land Operations, in the Idaho State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: July 7, 1994.

Jimmie A. Buxton,

Chief, Branch of Land Operations.

[FR Doc. 94–17407 Filed 7–18–94; 8:45 am]
BILLING CODE 4310–66–M

[ID–943–4070–02; IDI–14533, et al]

Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that the withdrawals of 7167.96 acres for Public Water Reserve Nos. 28, 30, 47, 66, 76, 82, 83, 91, 106, 157, and 160 be continued for an additional 20 years. The lands and waters involved would remain withdrawn and the lands would remain closed to surface entry and nonmetalliferous mining.

DATES: Comments should be received by October 17, 1994.

ADDRESSES: Comments should be sent to State Director, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500.

FOR FURTHER INFORMATION CONTACT: Robert Hale, BLM Idaho State Office, 208–384–3165.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes

that the existing land withdrawals made by Executive Orders dated May 31, 1915; February 15, 1916; April 7, 1917; August 15, 1919; January 4, 1921; April 4, 1922; April 15, 1922; June 13, 1925; April 7, 1926; October 5, 1934; and November 18, 1938; and Secretarial Order of Interpretation No. 22 dated January 12, 1926, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The lands are described as follows:

Boise Meridian

IDI–14533 (EO 4/4/1922)

T. 11 S., R. 2 W.,
Sec. 19.
T. 11 S., R. 3 W.,
Sec. 24.

IDI–14544 (EO 5/31/1915)

T. 4 S., R. 5 W.,
Sec. 29.
T. 6 S., R. 35 E.,
Sec. 33.
T. 15 S., R. 13 E.,
Secs. 22, 23, and 26.
T. 16 S., R. 12 E.,
Secs. 12, 13, 24, and 25.
T. 16 S., R. 13 E.,
Secs. 5, 8, 11, 14, 21, and 28.

IDI–14546 (EO 4/7/1926)

T. 9 S., R. 4 W.,
Secs. 20, 29, 31, and 32.

IDI–15322 (EO 6/13/1925)

T. 6 S., R. 8 E.,
Secs. 1 and 12.

IDI–15324 (EO 4/15/1922)

T. 11 S., R. 3 E.,
Sec. 24.
T. 11 S., R. 4 E.,
Sec. 30.

IDI–15325 (EO 4/7/1917)

T. 16 S., R. 12 E.,
Secs. 21, 27, 33, and 34.
T. 12 N., R. 22 E.,
Sec. 24.
T. 12 N., R. 23 E.,
Sec. 31.
T. 13 N., R. 23 E.,
Sec. 30.

IDI–15327 (EO 1/4/1921)

T. 10 S., R. 2 E.,
Secs. 20 and 32.
T. 12 S., R. 4 E.,
Secs. 10 and 15.
T. 20 N., R. 24 E.,
Sec. 4.
T. 10 S., R. 29 E.,
Sec. 35.

IDI–15328 (EO 2/15/1916)

T. 11 N., R. 20 E.,
Secs. 1 and 12.
T. 11 N., R. 21 E.,
Secs. 4, 24, 25, and 35.
T. 11 N., R. 22 E.,
Sec. 30.

IDI–15593 (EO 8/15/1919 and SO 1/12/1926)

T. 1 N., R. 5 E.,
Sec. 4.
T. 10 N., R. 22 E.,
Secs. 17 and 18.

IDI–17094 (EO 6867 10/5/1934)

T. 13 S., R. 29 E.,
Sec. 3.

IDI–17774 (EO 8009 11/18/1938)

T. 31 N., R. 3 W.,
Secs. 26 and 27.

These areas described aggregate 7167.96 acres in Bannock, Cassia, Custer, Lemhi, Owyhee, and Twin Falls Counties.

The purpose of the withdrawals is to protect the water sources located on the lands for livestock and wildlife uses. The withdrawals segregate the lands and water from settlement, sale, location, and entry, including mining for nonmetalliferous minerals but not location and entry under the mining laws for metalliferous minerals or the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Chief, Branch of Land Operations, in the Idaho State Office. The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: July 7, 1994.

Jimmie A. Buxton,

Chief, Branch of Land Operations.

[FR Doc. 94–17408 Filed 7–18–94; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8565.

OMB Reviewer: Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 3201, Washington, DC 20503; 202/395–7340.

Summary of Form Under Review

Type of Request: New form.

Title: OPIC Expedited Screening Questionnaire—Downstream Investments.

Form Number: OPIC 168.

Frequency of Use: Once per project submission.

Type of Respondents: OPIC fund managers.

Standard Industrial Classification Codes: All.

Description of Affected Public: OPIC fund managers.

Reporting Hours: One hour per form.

Number of Responses: 150 per year.

Federal Cost: $913.50 per year.

Authority for Information Collection: Section 231 (a–1) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): This application will be sent to OPIC's fund managers. The fund managers will complete the information for companies in which the Fund proposes to invest. The information collected will be reviewed to determine the expected effects of the projects on the U.S. economy and employment, as well as on the environment, economic development, and worker rights abroad.

Dated: July 8, 1994.

James R. Offutt,

Assistant General Counsel Department of Legal Affairs.

[FR Doc. 94–17410 Filed 7–18–94; 8:45 am]

BILLING CODE 3210–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32525]

Wheeling & Lake Erie Railway Company—Trackage Rights Exemption—Norfolk and Western Railway

Norfolk and Western Railway (N&W) has agreed to grant overhead trackage rights to Wheeling & Lake Erie Railway Company (W&LE) on N&W's line of railroad between approximately milepost B242 at Bellevue, OH and approximately milepost B229 at Berlin Heights, OH, a distance of approximately 13.0 miles, and between approximately milepost B232 at Shinrock, OH (on the Bellevue-Berlin Heights segment) and approximately milepost HU12.2 at the Huron Dock connection in Huron, OH, a distance of approximately 4.06 miles.[1] The total distance of the trackage rights to be acquired is approximately 17.06 miles. The proposed trackage rights will connect with W&LE's rail lines at Huron and Bellevue, OH, and are restricted to the overhead movement of certain iron ore traffic by W&LE. The trackage rights were to become effective July 4, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: William C. Sippel, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 N. Stetson Ave., Chicago, IL 60601.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN.* 354 I.C.C. 605 (1978), as modified in

[1] The numbering of milepost HU12.2 reflects distances on another, now-abandoned N&W line which extended south from Huron. The actual distance between Huron and Shinrock on N&W's existing line is 4.06 miles.

effects of the projects on the U.S. economy and employment, as well as on the environment, economic development, and worker rights abroad.

Dated: July 8, 1994.

James R. Offutt,

Assistant General Counsel Department of Legal Affairs.

[FR Doc. 94–17410 Filed 7–18–94; 8:45 am]

BILLING CODE 3210–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32525]

Wheeling & Lake Erie Railway Company—Trackage Rights Exemption—Norfolk and Western Railway

Norfolk and Western Railway (N&W) has agreed to grant overhead trackage rights to Wheeling & Lake Erie Railway Company (W&LE) on N&W's line of railroad between approximately milepost B242 at Bellevue, OH and approximately milepost B229 at Berlin Heights, OH, a distance of approximately 13.0 miles, and between approximately milepost B232 at Shinrock, OH (on the Bellevue-Berlin Heights segment) and approximately milepost HU12.2 at the Huron Dock connection in Huron, OH, a distance of approximately 4.06 miles.[1] The total distance of the trackage rights to be acquired is approximately 17.06 miles. The proposed trackage rights will connect with W&LE's rail lines at Huron and Bellevue, OH, and are restricted to the overhead movement of certain iron ore traffic by W&LE. The trackage rights were to become effective July 4, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: William C. Sippel, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 N. Stetson Ave., Chicago, IL 60601.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN.* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 11, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17513 Filed 7–18–94; 8:45 am]

BILLING CODE 7035–01–P

[1] The numbering of milepost HU12.2 reflects distances on another, now-abandoned N&W line which extended south from Huron. The actual distance between Huron and Shinrock on N&W's existing line is 4.06 miles.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Archer Daniels Midland Company*, Civil Action No. 4–94–CV–10436, was lodged on July 6, 1994 with the United States District Court for the Southern District of Iowa.

The proposed Consent Decree is a settlement resolving violations of the Clean Air Act's new source performance standards ("NSPS"), conditions of specific Prevention of Significant Deterioration ("PSD") Permits, and conditions of specific New Source Review Permits at Archer Daniels Midland's processing plants located in Des Moines and Cedar Rapids, Iowa.

Under the terms of the proposed Consent Decree, Archer Daniels Midland Co. has agreed to conduct a complete environmental management audit of the practices and procedures of its company relative to ensuring compliance with all applicable federal, state and local environmental laws and regulations. Archer Daniels Midland has also agreed to pay a civil penalty of $700,000 to the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Archer Daniels Midland Company*, DOJ Ref. No. 90–5–2–1–1535.

The proposed Consent Decree may be examined at the office of the United States Attorney, 115 U.S. Courthouse, East 1st and Walnut Streets, Des Moines, Iowa 50309; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 94–17412 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Solvents Recovery Service of New England, Inc., et al.*, Civil Actions Nos. –79–704 & H–90–598 (JAC) was lodged on July 1, 1994, with the Untied States District Court for the District of Connecticut. The complaint in this action (1) seeks to recover, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, response costs incurred and to be incurred by EPA at the Solvents Recovery Service Superfund Site located in Southington Township, Connecticut ("Site"), and (2) seeks injunctive relief and civil penalties under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S. C. 6901, *et seq.*

The proposed Consent Decree embodies an agreement by Solvents Recovery Service of New England Inc., SRS, Inc. and Carleton Boll ("Settling Defendants"): (1) To reimburse EPA and the State of Connecticut Department of Environmental Protection for a portion of their past and future response costs at the Site; (2) to pay partial damages to the Department of the Interior ("DOI") for injury to, destruction of, or loss of natural resources at the Site under the trusteeship of DOI; (3) to provide EPA and any person acting pursuant to a consent order or administrative order regarding the performance of response actions at the Site, with access to property owned by SRSNE for purposes of performing all response actions at the Site; and (4) upon the completion of the remedy, to sell their presently contaminated property and pay the proceeds to EPA. The Consent Decree also provides the Settling Defendants

with a release for civil liability for both EPA's past and future CERCLA response costs and natural resource damages at the Site for resources under the trusteeship of the Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration ("NOAA").

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Solvents Recovery Service of New England, Inc., et al.*, DOJ Ref. No. 90–7–1–23A.

The proposed consent decree may be examined at the Office of the United States Attorney, 141 Church Street, New Haven, Connecticut 06508; the Region I Office of the Environmental Protection Agency, Region I Records Center, 90 Canal Street, First Floor, Boston, MA 02203; and at the Consent Decree Library, 1120 G Street, NW., Fourth Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G STreet, Fourth Floor, NW., Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $28.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17413 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree United States v. Straits Steel & Wire Company, et al.

Notice is hereby given that a Consent Decree in *United States* v. *Straits Steel & Wire Company, et al.*, Civil Action No. 1:91 CV 383 (W.D. Mich.), was lodged with the United States District Court for the Western District of Michigan on June 30, 1994. This action was brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607. The Consent Decree provides that defendants will pay $1,350,000 of the past response costs, operation and maintenance costs and oversight costs incurred by the U.S. Environmental Protection Agency in connection with the Mason County Landfill Superfund Site in Ludington, Michigan.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Straits Steel & Wire Company, et al.*, D.O.J. Ref. No. 90–11–3–282.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, 399 Federal Building, 110 Michigan St. NW., Grand Rapids, Michigan 49503 and at the Region 5 office of the U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Consent Decree also may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone number (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. The proposed Consent Decree package consists of a 56 page Consent Decree. A request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $14.00 (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17411 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Controlled Substances: Established Revised 1994 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim rule establishing 1994 aggregate production quotas and request for comments.

SUMMARY: This interim rule establishes revised 1994 aggregate production quotas for some controlled substances in Schedules I and II, as required under the Controlled Substances Act of 1970.

DATES: This is effective on July 19, 1994. Comments must be submitted on or before August 18, 1994.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

On October 8, 1993 and January 3, 1994, DEA published notices establishing initial 1994 aggregate production quotas for controlled substances in Schedules I and II in the **Federal Register** (58 FR 52508 and 59 FR 96 respectively). In accordance with Title 21, Code of Federal Regulations, section 1303.13, the Deputy Administrator, after consideration of all relevant factors, may adjust aggregate production quotas if needed.

On April 13, 1994, DEA published a notice proposing revised 1994 aggregate production quotas for some controlled substances in Schedules I and II in the **Federal Register** (59 FR 17568). All interested persons were invited to comment on or object to those proposed aggregate production quotas on or before May 13, 1994. Since publication of the proposed revised 1994 aggregate production quotas, information has been submitted which necessitates increases for other controlled substances. Because these increases are immediately required to meet the 1994 year-end medical needs of the United States, an interim rule is being established.

Based on a review of 1993 year-end inventories, 1994 manufacturing quotas, actual and projected 1994 sales, export requirements and other information available to the DEA, the Deputy Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator by section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994), hereby establishes the following revised 1994 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous base:

Basic class	Established revised 1994 quotas
Schedule I:	
Cathinone	4
3,4-Methylenedioxy methamphetamine	14
Schedule II:	
Dextropropoxyphene	123,398,000
Hydrocodone	8,344,000
Hydromorphone	407,000
Noroxymorphone (for conversion)	1,781,000
Phenylacetone (for conversion)	3,352,000

All interested persons are invited to submit their comments in writing regarding this interim rule. A person may comment on any of the above mentioned substances without filing comments regarding the others.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: July 13, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–17418 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Proposed 1994 Aggregate Production Quota for a Schedule I Controlled Substance

AGENCY: Drug Enforcement Administration.

ACTION: Notice of a proposed 1994 aggregate production quota.

controlled substances, expressed in grams of anhydrous base:

Basic class	Established revised 1994 quotas
Schedule I:	
Cathinone	4
3,4-Methylenedioxy methamphetamine	14
Schedule II:	
Dextropropoxyphene	123,398,000
Hydrocodone	8,344,000
Hydromorphone	407,000
Noroxymorphone (for conversion)	1,781,000
Phenylacetone (for conversion)	3,352,000

All interested persons are invited to submit their comments in writing regarding this interim rule. A person may comment on any of the above mentioned substances without filing comments regarding the others.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: July 13, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–17418 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Proposed 1994 Aggregate Production Quota for a Schedule I Controlled Substance

AGENCY: Drug Enforcement Administration.

ACTION: Notice of a proposed 1994 aggregate production quota.

SUMMARY: This notice proposed a 1994 aggregate production quota for 3,4-methylenedioxy-N-ethylamphetamine (MDEA), a controlled substance in Schedule I of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before August 18, 1994.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

A company submitted an application for a manufacturing quota for 3,4-methylenedioxy-N-ethylamphetamine, a Schedule I controlled substance. Based on the review of this application and other information available to the DEA, the Deputy Administrator of the DEA, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994), hereby proposes the 1994 aggregate production quota for the following controlled substance, expressed in grams of anhydrous base, be established as follows:

Basic class	Proposed 1994 aggregate production quota (grams)
3,4-Methylenedioxy-N-ethylamphetamine	5

All interested persons are invited to submit comments or objections, in writing, regarding this proposal. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria contained in the Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C., 601. *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: July 13, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–17419 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 24, 1994, Abbott Laboratories, 14th Street & Sheridan Road, Attn: Customer Service D–345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Dextropropoxyphene, bulk (non-dosage forms) (9273).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21

CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 18, 1994.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–17525 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 13, 1994, Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxy-amphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxy-methamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclo-hexyl]piperidine (7470)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II

The firm plans to manufacture small quantities of these controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 18, 1994.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 94–17526 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Importation Of Controlled Substances; Notice Of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 27, 1994, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 18, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–17527 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–70]

Jay Wheeler Cranston, M.D.; Revocation of Registration

On July 10, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jay Wheeler Cranston, M.D. (Respondent), of Kent, Ohio, proposing to revoke Respondent's DEA Certificate of Registration, AC0808076, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent

with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held, beginning on February 24, 1993, in Cleveland, Ohio.

On December 21, 1993, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied. Respondent filed exceptions pursuant to 21 CFR 1316.66. Shortly thereafter, Judge Bittner transmitted the entire record to the then-Acting Administrator, including Respondent's exceptions. The Government moved to reopen the proceedings and file a response to Respondent's exceptions because the Government was given inadequate time to respond. This request was granted and the Government filed a response to Respondent's exceptions. Respondent filed a reply to the Government's response which was received by DEA on February 28, 1994. The Government then filed a motion to strike this pleading based upon the grounds that it was not authorized under 21 CFR 1316.66. The Deputy Administrator agrees with the Government's contention and has not considered this pleading.

The Deputy Administrator has carefully considered the record and adopts the opinion and recommended decision of the administrative law judge. Pursuant to 21 CFR 1316.67, the Deputy Administrator hereby issues his final order in this matter.

The Deputy Administrator finds that Respondent was employed as a physician in 1972 at the Kent State University (KSU) Health Center, located in Kent, Ohio. For most of the time period in issue, Respondent was the physician-in-charge of the KSU Health Center.

An investigation was initiated in 1989, when the KSU Police Department obtained information that a student was boasting that he was able to obtain drugs from Respondent by deception at the KSU Health Center. The KSU Police Department interviewed the KSU Health Center pharmacist who alerted the campus police to other illegal activity, relating to controlled substances, taking place at KSU. The KSU Police then contacted the State of Ohio Pharmacy Board (Pharmacy Board) and DEA. This joint investigation led to the discovery

with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held, beginning on February 24, 1993, in Cleveland, Ohio.

On December 21, 1993, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied. Respondent filed exceptions pursuant to 21 CFR 1316.66. Shortly thereafter, Judge Bittner transmitted the entire record to the then-Acting Administrator, including Respondent's exceptions. The Government moved to reopen the proceedings and file a response to Respondent's exceptions because the Government was given inadequate time to respond. This request was granted and the Government filed a response to Respondent's exceptions. Respondent filed a reply to the Government's response which was received by DEA on February 28, 1994. The Government then filed a motion to strike this pleading based upon the grounds that it was not authorized under 21 CFR 1316.66. The Deputy Administrator agrees with the Government's contention and has not considered this pleading.

The Deputy Administrator has carefully considered the record and adopts the opinion and recommended decision of the administrative law judge. Pursuant to 21 CFR 1316.67, the Deputy Administrator hereby issues his final order in this matter.

The Deputy Administrator finds that Respondent was employed as a physician in 1972 at the Kent State University (KSU) Health Center, located in Kent, Ohio. For most of the time period in issue, Respondent was the physician-in-charge of the KSU Health Center.

An investigation was initiated in 1989, when the KSU Police Department obtained information that a student was boasting that he was able to obtain drugs from Respondent by deception at the KSU Health Center. The KSU Police Department interviewed the KSU Health Center pharmacist who alerted the campus police to other illegal activity, relating to controlled substances, taking place at KSU. The KSU Police then contacted the State of Ohio Pharmacy Board (Pharmacy Board) and DEA. This joint investigation led to the discovery of a diverse number of controlled substance violations committed within the University, and for the most part, involving Respondent.

Various Schedule II, III and IV narcotic and non-narcotic controlled substances were stored at the KSU athletic department's two training rooms for some period of time prior to the 1989 investigation. Respondent wrote "prescriptions" for these controlled substances in the name of the head trainer or the athletic department. Based upon these "prescriptions" the controlled substances were then transferred from the KSU Health Center to the athletic training rooms. Although the KSU Health Center had a DEA registration, the training room facilities, which were located quite a distance from the health center, did not have DEA registrations. When Respondent was interviewed about this arrangement he indicated that he thought the training rooms were an extension of the health facility, but he later admitted that the practice "was not entirely proper." The athletic trainer, testifying on behalf of Respondent, noted that he had on many occasions questioned Respondent about the practice, but Respondent ignored the inquiries.

Respondent also issued standing orders to the athletic trainers to administer controlled substances to injured athletes even though a physician could not be contacted until after the drug was given to the athlete. When Respondent was interviewed about this practice by a KSU policeman, he initially explained that trainers were instructed to administer controlled substances to athletes only in the presence of a physician. When Respondent was told that the police had received other information from the head athletic trainer, Respondent admitted that trainers were authorized to provide medication to athletes in situations where a physician could not be contacted.

The head athletic trainer did keep an informal record of the receipt and dispensing of controlled substances from the training rooms. No such records were kept at the KSU Health Facility itself nor did Respondent attempt to reconcile the records kept by the head athletic trainer. Although athletes were required to submit to random urine tests during this period, the tests did not screen for certain controlled substances that were stored at the athletic training rooms.

Between 1986 and 1989, Respondent wrote a number of "prescriptions" for controlled substances, including cocaine, morphine and Seconal. These "prescriptions" were issued to students who obtained the drugs from the KSU Health Center pharmacy and then used the controlled substances for both animal and human research. The KSU psychology department had its own separate DEA registration and the department supervised the students' controlled substance research. The "prescriptions" issued by Respondent did not indicate a DEA number nor an address; most did not indicate the reason for issuing the "prescription"; and many of these prescriptions did not have the student's name but were simply written for "Taylor Research". (Dr. Taylor was a KSU psychology professor.) One of the psychology professors did discuss with Respondent the possibility of using DEA official order forms to transfer the Schedule II controlled substances from the KSU Health Center to the psychology department, but Respondent dismissed this suggestion.

DEA conducted an audit of the KSU psychology department in 1989 which revealed a 60 milliliter overage of morphine. There were no records to verify where this morphine was procured. DEA discovered that the discrepancy was based upon the morphine "prescriptions" that Respondent issued for the research experiments. The investigation of the psychology department uncovered that the students disposed of unused controlled substances by pouring any excess down a drain. There were, however, no records of such disposal and no way to verify if all excess substances were destroyed in this manner. In addition, Respondent authorized three prescriptions for Schedule II controlled substances with the notation "outdated". These controlled substance prescriptions were also issued to the psychology department for the purpose of conducting research experiments.

While Respondent was in charge of operating the KSU Health Center, he allowed three physician assistants to diagnose and write prescriptions for various medications, including controlled substances. The physician assistants were given initial training and supervision by a physician. After such training was deemed complete by Respondent, the physician assistants could issue Schedule III, IV and V controlled substances to treat students without supervision by a physician.

Respondent expressed misgivings about this system when he was questioned by the KSU police in 1989. He admitted that prescriptions signed by physician assistants could not be honored in a pharmacy other than the KSU Health Center Pharmacy. In fact

the health center pharmacy's records showed that such prescriptions were issued by a physician rather than a physician assistant. The KSU Health Center pharmacist questioned Respondent about this arrangement, but Respondent convinced him that the system should continue.

As early as 1985, Respondent was instructed by the Dean of Student Affairs to have physicians supervise the physician assistants instead of allowing the assistants to issue prescriptions independently. After some initial hesitation, Respondent complied by countersigning such prescriptions. Such countersigning, however, was accomplished well after the prescription was issued to the student/patient. In any event, after this particular dean left the university, Respondent stopped countersigning the physician assistants' prescriptions and continued this practice until 1989 when he was confronted by the KSU Police Department and the DEA.

Respondent treated a student in 1986. Sometime later, this student was being treated by an off-campus psychiatrist. Respondent occasionally issued controlled substance prescriptions to this student at the request of the treating psychiatrist. In January 1989, Respondent received a handwritten list of drugs on the treating psychiatrist's letterhead which was unsigned. The list of drugs included methylphenidate (spelled "methyilfenidayt") and Librium, Schedules II and IV controlled substances, respectively. Based upon this person's representation that it was a valid prescription by his psychiatrist, Respondent issued this ex-student a prescription for these controlled substances. Only after Respondent was confronted with a report from a dormitory resident director that he heard this person boasting that he was able to obtain drugs from Respondent by deception, did Respondent contact the psychiatrist who informed Respondent that the "prescription" was, indeed, not authentic.

Another person, who was a student at KSU from 1967 to 1976, was treated by Respondent from about 1975 to 1986 or 1987. Respondent indicated that he treated this person for chronic anxiety. Respondent prescribed Valium for this person on a consistent basis, despite being warned by a pharmacist in 1983 that this person "bugged" physicians to obtain controlled substances he desired and despite Respondent's own admission in 1985 that he was prescribing too much Valium to this person. He often issued these prescriptions based only on telephone conversations with this individual, who lived fifty miles from the KSU campus.

In 1990, Respondent was interviewed by a DEA investigator about the Valium prescriptions he issued to this ex-student and if Respondent suspected this individual was addicted. Respondent replied that he had no reason to suspect such a problem because the individual had reassured Respondent that he was not addicted and that Respondent believed there was a difference between abuse and addiction.

In December of 1987, Respondent asked another KSU Health Center physician to issue Respondent a prescription (which was undated) for forty dosage units of Percodan, a Schedule II controlled substance, in anticipation of surgery. Respondent altered this prescription by changing it to fifty dosage units of Demerol, another Schedule II controlled substance. During a subsequent Pharmacy Board hearing, the physician who signed the prescription believed, but was not absolutely certain, that he signed the prescription before it was altered. In any event, Respondent admitted that he was the one who altered the prescription.

Respondent wrote two prescriptions, for Percodan and Demerol, both Schedule II controlled substances, in his own name in 1988. The purpose of these prescriptions was to supply his own medical bag. In December of 1990, Respondent issued as prescription for Ritalin, a Schedule II controlled substance and authorized two refills. Schedule II prescriptions are not allowed to be refilled. Respondent testified at the hearing that he had no explanation for issuing the prescription with two refills other than it was simply a mistake.

Although no criminal or administrative action by any state or Federal agency was initiated against Respondent prior to these proceedings, DEA and the Pharmacy Board did take action against other participants involved in the controlled substance violations occurring throughout the university. In October 1989, the Pharmacy Board filed an accusation against the KSU Health Center pharmacy and its pharmacist alleging violations, including: filling and maintaining prescriptions known to have been written by physician assistants; filling and maintaining an altered prescription for a Schedule II controlled substance; providing controlled substances to the athletic department pursuant to prescriptions; and providing controlled substances to the psychology department pursuant to prescriptions. Following a hearing in May of 1990, the Pharmacy Board found that these violations occurred and that the university pharmacy and pharmacist were responsible for such violations. The pharmacist was fined $500.00 and placed on probation for five years. The pharmacy also was placed on probation for the same period of time.

In August of 1990, DEA entered into a memorandum of understanding with the KSU Psychology Department, in which the department agreed to use DEA official order forms to obtain Schedule I and II controlled substances; maintain proper records for receipt and disposition of controlled substances; and generally comply with the Controlled Substances Act and its attendant regulations.

Also, in August of 1990, DEA entered into a memorandum of understanding with the KSU Health Service, in which the service agreed to terminate the practice of distributing controlled substances to the athletic facilities; to fill only those prescriptions signed by physicians who were properly registered with DEA to issue them; to not dispense controlled substances for research activities via prescriptions or documents purporting to be prescriptions; to not distribute controlled substances for physicians' medical bags; and to maintain valid prescription and other records required by the Controlled Substances Act and its attendant regulations.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 824(a)4), the Deputy Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Deputy Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Deputy Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. *See David E. Trawick, D.D.S.*, Docket No. 88-69, 53 FR 5326 (1988).

The Deputy Administrator concurs with the opinion and recommended decision of the administrative law judge and finds that factors two, four and five apply. Respondent, by writing unauthorized prescriptions in order to distribute controlled substances to an unregistered location, violated 21 CFR 1306.04(b). Respondent allowed athletic trainers to dispense Schedule III and IV controlled substances to athletes without any supervision by a physician in violation of 21 U.S.C. 829(b). The prescriptions written by Respondent for the psychology department for purposes of conducting research on animals and humans violated 21 CFR 1306.04 (a) and (b). Such "prescriptions" were not for individual patients, were not in the course of Respondent's practice and were not for the purpose of dispensing to an ultimate user as defined under 21 CFR 1306.02(f). Respondent authorized physician assistants to issue and sign controlled substance prescriptions to patients without direct supervision of a physician in violation of 21 CFR 1306.03 and 1306.05(a).

By issuing a prescription to a student based upon an unsigned document on which one of the controlled substances was misspelled, Respondent again dispensed controlled substances in violation of 21 U.S.C. 829 (a) and (b). Respondent also issued Valium prescriptions to an ex-student over a long period of time well after Respondent was aware that this person was abusing this controlled substance. Although Respondent's initial treatment with Valium of this person may have been justified, the continued prescribing of Valium was not proper under 21 CFR 1306.04(a). Respondent authorized unregistered athletic training room facilities to store and dispense controlled substances in violation of 21 CFR 1301.12. Respondent also violated applicable Federal law when he wrote several Schedule II controlled substance prescriptions in 1988 for the purpose of supplying his medical bag. 21 CFR 1306.04(b).

By allowing physician assistants to prescribe controlled substances, Respondent's actions violated applicable state law, Ohio Administrative Code 4731–4–03(C) and 4731–4–01(A). Allowing the psychology department to use controlled substances which were outdated also violated applicable state law, Ohio Administrative Code, 4729–9–01)B) and Ohio Revised Code 3715.52 (A) and (C).

The Deputy Administrator finds that Respondent committed these long

and circumstances of each case. *See David E. Trawick, D.D.S.*, Docket No. 88-69, 53 FR 5326 (1988).

The Deputy Administrator concurs with the opinion and recommended decision of the administrative law judge and finds that factors two, four and five apply. Respondent, by writing unauthorized prescriptions in order to distribute controlled substances to an unregistered location, violated 21 CFR 1306.04(b). Respondent allowed athletic trainers to dispense Schedule III and IV controlled substances to athletes without any supervision by a physician in violation of 21 U.S.C. 829(b). The prescriptions written by Respondent for the psychology department for purposes of conducting research on animals and humans violated 21 CFR 1306.04 (a) and (b). Such "prescriptions" were not for individual patients, were not in the course of Respondent's practice and were not for the purpose of dispensing to an ultimate user as defined under 21 CFR 1306.02(f). Respondent authorized physician assistants to issue and sign controlled substance prescriptions to patients without direct supervision of a physician in violation of 21 CFR 1306.03 and 1306.05(a).

By issuing a prescription to a student based upon an unsigned document on which one of the controlled substances was misspelled, Respondent again dispensed controlled substances in violation of 21 U.S.C. 829 (a) and (b). Respondent also issued Valium prescriptions to an ex-student over a long period of time well after Respondent was aware that this person was abusing this controlled substance. Although Respondent's initial treatment with Valium of this person may have been justified, the continued prescribing of Valium was not proper under 21 CFR 1306.04(a). Respondent authorized unregistered athletic training room facilities to store and dispense controlled substances in violation of 21 CFR 1301.12. Respondent also violated applicable Federal law when he wrote several Schedule II controlled substance prescriptions in 1988 for the purpose of supplying his medical bag. 21 CFR 1306.04(b).

By allowing physician assistants to prescribe controlled substances, Respondent's actions violated applicable state law, Ohio Administrative Code 4731–4–03(C) and 4731–4–01(A). Allowing the psychology department to use controlled substances which were outdated also violated applicable state law, Ohio Administrative Code, 4729–9–01)B) and Ohio Revised Code 3715.52 (A) and (C).

The Deputy Administrator finds that Respondent committed these long standing systemic violations despite warnings and, in one case, despite an order to desist from the unlawful behavior. Respondent often rationalized and tried to justify these violations to investigators as well as during the hearing. Respondent, for example, made an unsupported assertion that other universities employed similar systems with regard to storing and dispensing controlled substances from their athletic training rooms.

The administrative law judge in her opinion and recommended ruling, findings of fact, conclusions of law and decision recommended that Respondent's DEA registration be revoked. In his exceptions to the administrative law judge's ruling, Respondent argues that such action is not appropriate due to the fact that the state medical board took no action against Respondent nor were any criminal changes filed against Respondent based upon these acts. Revocation of a registration based upon the public interest is intended to allow DEA to take action when other law enforcement or regulatory agencies have not taken action. The Deputy Administrator notes that action has been taken against other registrants involved in these activities even though Respondent was a key player, if not the initiator, in all of these illegal practices.

Respondent also argues that his actions did not result in diversion. Respondent's conduct, however, resulted in controlled substances being stored, dispensed and utilized outside of the closed system created by DEA registration. Under these circumstances, the potential for diversion of controlled substances is increased. It is not a valid defense to violate controlled substance laws and then, in hindsight, claim that such violations are of no matter because no illicit use of controlled substances actually resulted. If no actual abuse of the controlled substances occurred, it was in spite of, and not because of, Respondent's illegal actions. Moreover, Respondent's actions of prescribing controlled substances based upon an obviously forged document and the continual prescribing of Valium to an ex-student when Respondent knew this person was abusing Valium, can certainly be characterized as diversion.

Respondent additionally argues that DEA has not alleged, much less proven, any violations since 1989 (with the exception of the December 1990 Schedule II prescription which authorized two refills) and therefore revocation is not justified. This argument fails to account for the fact that Respondent continually ignored warnings and even directives that his conduct was unlawful. It was not until various agencies initiated investigations that the university made any substantial changes to comply with applicable controlled substance laws. Moreover, Respondent's continual rationalizations and disingenuous statements both at the hearing and to investigators, gives DEA no assurance that he will not resume his cavalier behavior regarding controlled substances.

Under these circumstances, the Deputy Administrator cannot be assured that the public interest will be protected if Respondent is allowed to retain his registration at this time. The Deputy Administrator concurs with the administrative law judge's recommendation and also orders that a new application for registration shall be considered no earlier than one year after the effective date of this final order and only after a convincing showing by Respondent of his rehabilitation.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, AC0808076, previously issued to Jay Wheeler Cranston, M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. Furthermore, no new application will be considered until at least one year from the effective date of this final order. This order is effective August 18, 1994.

Dated: July 13, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–17417 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 27, 1994, Radian Corporation, 8501 Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance N-Ethylamphetamine (1475).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 18, 1994.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–17528 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application Withdrawal for Sigma Chemical Company

By letter dated April 18, 1994, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63178, withdrew their request to be registered as a bulk manufacturer of Amphetamine (1100) and Methamphetamine (1105).

Therefore, the notice dated May 4, 1994, in the Federal Register (FR Doc. 94–10679), Vol. 59, No. 85 at page 23083 is hereby withdrawn.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–17529 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated May 13, 1994, and published in the Federal Register on May 25, 1994, (59 FR 27034), Stanford Seed Company, 340 South Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basis class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 11, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–17530 Filed 7–18–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Open Meeting; Notice of Partially Closed Meeting

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a Notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Thursday, August 4, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on Thursday August 4, 1994. There will be a closed portion of the meeting from 1 p.m. to 2 p.m. The public meeting will be from 2 p.m. to 5 p.m. at the U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, in room S2508.

The Commission will meet in closed session in order to discuss internal personnel issues. The closing of this portion of the meeting is authorized by section 10(d) of the Federal Advisory Committee Act and Section (c)(6) of the Government in the Sunshine Act. This closing allows the Commission to discuss matters which if disclosed in an open meeting could constitute a clearly unwarranted invasion of personal privacy.

AGENDA: The agenda for the meeting is as follows:

Opening Remarks
Review of Work Plan
Discussion of Budget
Discussion of Final Report
Status of Research
New York Hearing
Perkins/Dole Award

PUBLIC PARTICIPATION: The meeting from 2 to 5 p.m. will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than Monday July 25, 1994, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Ms. René Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue NW., room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 14th day of July 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–17549 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than July 29, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 29, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training

Petitioner: Union/workers/firm—	Loca
Elf Atochem North America, Inc(Co) ..	Tacoma,
NEC America, Inc(Wkrs)	Hillsboro,
Clinton Swan Clothers, Inc(Wkrs)	Carlstadt,
Panhandle Equipment Co(Co)	Pampa, T
Norris/O'Bannon(Co)	Tulsa, OK
Air Products & Chemicals, Inc(IAM) ...	Wilkes-Ba
Parson Industrial Diamond(Wkrs)	W. Hartfor
Con Agra(Wkrs)	Edgar, WI
Williams Southwest Drilling Co(Wkrs)	Corpus Ch
Thomas & Betts Corp(Co)	Inman, SC
Reynolds & Reynolds(UAW)	Chambers
Robinson Manufacturing(Wkrs)	Oxford, MI
Hartz Mountain Corp(Wkrs)	Harrison,
Hilton Clothes, Inc(Co)	Linden, NJ
Ford New Holland, Inc(Wkrs)	Dallas, TX
American Exploration Co(Wkrs)	Houston,
Laidlaw Corp(Wkrs)	Stockton,
Kezar Falls Wolen(Wkrs)	Kezar Falls
Portac, Inc(Wkrs)	Tacoma, W

[FR Doc. 94–17395 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,450]

Gandalf Systems Corp., Cherry Hill, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Operating in the Following States

TA–W–29,450A—Connecticut
TA–W–29,450B—Georgia
TA–W–29,450C—Illinois
TA–W–29,450D—Maryland
TA–W–29,450E—Massachusetts
TA–W–29,450F—Minnesota
TA–W–29,450G—North Carolina
TA–W–29,450H—Ohio
TA–W–29,450I—Pennsylvania
TA–W–29,450J—Michigan
TA–W–29,450K—Missouri

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 19, 1994, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on June 1, 1994 (59 FR 28429).

At the request of the State Agency, the Department reviewed its certification for the workers of Gandalf Systems

subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 29, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, D.C. this 27th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Elf Atochem North America, Inc(Co) ..	Tacoma, WA	06/27/94	06/09/94	30,037	Industrial chemicals.
NEC America, Inc(Wkrs)	Hillsboro, OR	06/27/94	04/19/94	30,038	Car mount cellular phones and bag phones.
Clinton Swan Clothers, Inc(Wkrs)	Carlstadt, NJ	06/27/94	06/13/94	30,039	Shipping and distribution of clothes.
Panhandle Equipment Co(Co)	Pampa, TX	06/27/94	06/15/94	30,040	Gas compressors and component parts.
Norris/O'Bannon(Co)	Tulsa, OK	06/27/94	06/16/94	30,041	Parts for oilwells and oil well pumps.
Air Products & Chemicals, Inc(IAM) ...	Wilkes-Barre, PA	06/27/94	06/15/94	30,042	Cryogenic air separators.
Parson Industrial Diamond(Wkrs)	W. Hartford, CT	06/27/94	06/08/94	30,043	Electro plating and compounding.
Con Agra(Wkrs)	Edgar, WI	06/27/94	06/06/94	30,044	Beef packing.
Williams Southwest Drilling Co(Wkrs)	Corpus Christi, TX .	06/27/94	06/09/94	30,045	Oil and gas drilling.
Thomas & Betts Corp(Co)	Inman, SC	06/27/94	06/03/94	30,046	Electronic connectors.
Reynolds & Reynolds(UAW)	Chambersburg, PA	06/27/94	06/06/94	30,047	Computer paper.
Robinson Manufacturing(Wkrs)	Oxford, ME	06/27/94	06/14/94	30,048	Woolen and wool blend fabrics.
Hartz Mountain Corp(Wkrs)	Harrison, NJ	06/27/94	06/16/94	30,049	pet food and pet accessories.
Hilton Clothes, Inc(Co)	Linden, NJ	06/27/94	06/09/94	30,050	Men's suits, sportscoats and trousers.
Ford New Holland, Inc(Wkrs)	Dallas, TX	06/27/94	06/19/94	30,051	Parts distribution.
American Exploration Co(Wkrs)	Houston, TX	06/27/94	06/09/94	30,052	Oil and gas exploration.
Laidlaw Corp(Wkrs)	Stockton, CA	06/27/94	04/25/94	30,053	Coat hangers.
Kezar Falls Wolen(Wkrs)	Kezar Falls, ME	06/27/94	06/14/94	30,054	Woolen and wool blend fabrics.
Portac, Inc(Wkrs)	Tacoma, WA	06/27/94	05/17/94	30,055	Dimension softwood lumber.

[FR Doc. 94–17395 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,450]

Gandalf Systems Corp., Cherry Hill, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Operating in the Following States

TA–W–29,450A—Connecticut
TA–W–29,450B—Georgia
TA–W–29,450C—Illinois
TA–W–29,450D—Maryland
TA–W–29,450E—Massachusetts
TA–W–29,450F—Minnesota
TA–W–29,450G—North Carolina
TA–W–29,450H—Ohio
TA–W–29,450I—Pennsylvania
TA–W–29,450J—Michigan
TA–W–29,450K—Missouri

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 19, 1994, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on June 1, 1994 (59 FR 28429).

At the request of the State Agency, the Department reviewed its certification for the workers of Gandalf Systems Corporation. The findings show that Gandalf Systems had several field worker separations occurring in Connecticut, Georgia, Illinois, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, Pennsylvania, Michigan and Missouri.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending its certification to include worker separations in the below cited States.

Also, on further review the Department found a typographical error in the impact date. The new impact date is changed to January 11, 1993 from January 11, 1994.

The amended notice applicable to TA–W–29,450 is hereby issued as follows:

All workers of Gandalf Systems Corporation, Cherry Hill, New Jersey engaged in employment related to the production of mechanical and circuit board assemblies and all field workers of Gandalf Systems Corporation engaged in employment related to the production of mechanical and circuit board assemblies in Connecticut, Georgia, Illinois, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, Pennsylvania, Michigan, and Missouri who became totally or partially separated from employment on or after January 11, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

This certification does not apply to workers engaged in regional sales.

Signed in Washington, DC, this 30th day of June, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–17399 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,757, TA–W–29,758, TA–W–29,759, TA–W–29,760]

The Greif Companies Allentown/Lehigh Valley, PA, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued Certifications of Eligibility to Apply for Worker Adjustment Assistance on June 15, 1994, applicable to all workers of the subject firm. The certification notices were published in the **Federal Register** on June 30, 1994 (59 FR 33787).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The Department is changing the April 5, 1993 impact date to May 22, 1994 for workers at Shippensburg and Allentown, Pennsylvania and Verona, Virginia because they were already covered for certification under petitions TA–W–27,070, TA–W–27,220, and TA–W–27,219, respectively, which expired on May 22, 1994.

Accordingly, the Department is amending the subject certifications by deleting the old impact date of April 5, 1993 and inserting a new impact date of May 22, 1994.

The amended notice applicable to TA–W–29,757 (Allentown, Pennsylvania) TA–W–29,758 (Shippensburg, Pennsylvania) and TA–W–29,759 (Verona, Virginia) are hereby issued as follows:

All workers of The Greif Companies, Allentown/Lehigh Valley, Pennsylvania (TA–W–29,757), Shippensburg, Pennsylvania (TA–W–29,758), Verona, Virginia (TA–W–29,759) engaged in employment related to the production of men's suits, pants, sportcoats and vests and provided management, office, sales, marketing, warehousing and distribution services who became totally or partially separated from employment on or after May 22, 1994 through two years from the date of the initial certifications (TA–W–29,757–TA–W–29,759) are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Also, all workers of the Greif Companies, New York, New York engaged in employment related to the production of men's suits, pants, sportcoats and vests and provided management, office, sales, marketing, warehousing and distribution services who became totally or partially separated from employment on or after April 5, 1993 through two years from the date of the initial certification (TA–W–29,760) are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 7th day of July 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–17398 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,857]

The Harwood Companies, Incorporated, Marion, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 24, 1994, applicable to all workers of the subject firm. The certification will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The Department is changing the April 15, 1993 impact date to February 20, 1994 for workers at the Marion, Virginia facility of The Harwood Companies, Inc., because they were already covered for certification under petition TA–W–26,753 which expired on February 20, 1994.

Accordingly, the Department is amending the subject certification by deleting the old impact date of April 15, 1993 and inserting a new impact date of February 20, 1994.

The amended notice applicable to TA–W–29,857 is hereby issued as follows:

All workers of The Harwood Companies, Incorporated, Marion, Virginia engaged in employment related to the production of activewear, underwear, robes and sleepwear who became totally or partially separated from employment on or after February 20, 1994 through two years from the date of the initial certification (TA–W–29,857) are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 7th day of July 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–17397 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,797; Lyons Falls Pulp & Paper, Inc., Lyons Falls, NY

TA–W–29,756; UCAR Carbon Co., Inc., Robinson, IL

TA–W–29,742; Sunnyside Coal Co., Sunnyside, UT

TA–W–29,697; Columbia Tanning Corp., Brockton, MA

TA–W–29,720; Sola Optical USA, Inc., Muskogee, OK

TA–W–29,704; Power Piping Co., Donora, PA

TA–W–29,839; Asten Forning Fabrics, Greenville, SC

TA–W–29,795; Freeport Sulphur, New Orleans, LA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,637; The Eureka Pipe Line Co., Vienna, WV (Formerly Located in Parkersburg, WV)

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,885; Peerless-Winsmith, Inc., Warren, OH

The investigation revealed that production of electric motors increased in 1993 compared with 1992 and in the first quarter of 1994 compared with the same period in 1993.

TA–W–29,834; Amerada Hess Corp., Tulsa, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,874, & TA–W–20,875; Alcoa Recycling Co., Inc., Knoxville, TN and Maryville, TN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,952; Westinghouse Electric Corp., Pittsburgh District Sales Office, Pittsburgh, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,835; Alta Energy Corp., Accounting Office, Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,858; Wetterau/Supervalu, Bloomington, IN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,865; Prudential Insurance & Financial Services, Group Operations Bldg., Minneapolis, MN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,713; Woodward Governor Co., (North 2nd St.), Rockford, IL

TA–W–29,714; Woodward Governor Co., (35th Street), Rockford, IL

TA–W–29,714A; Woodward Governor Co., Service Center, Rockford, IL

U.S. imports of both military and civilian aircraft parts declined during the period under investigation.

TA–W–29,636; Concurrent Computer Corp., Oceanport, MJ

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations For Worker Adjustment Assistance

TA–W–29;746; Micro Link Alaska, Inc., Anchorage, AK

A certification was issued covering all workers separated on or after April 5, 1993.

TA–W–29,884; Jockey International, Inc., Belzoni, MS

A certification was issued covering all workers separated on or after May 11, 1993.

TA–W–29,848; Waynesboro Apparel, Inc., Waynesboro, GA

A certification was issued covering all workers separated on or after April 27, 1993.

TA–W–29,610; Mary Nell Industries, Mayfield, KY

A certification was issued covering all workers separated on or after February 21, 1993.

TA–W–29,691; 502 Corp., Bethlehem, PA

TA–W–29,835; Alta Energy Corp., Accounting Office, Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,858; Wetterau/Supervalu, Bloomington, IN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,865; Prudential Insurance & Financial Services, Group Operations Bldg., Minneapolis, MN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,713; Woodward Governor Co., (North 2nd St.), Rockford, IL

TA–W–29,714; Woodward Governor Co., (35th Street), Rockford, IL

TA–W–29,714A; Woodward Governor Co., Service Center, Rockford, IL

U.S. imports of both military and civilian aircraft parts declined during the period under investigation.

TA–W–29,636; Concurrent Computer Corp., Oceanport, MJ

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations For Worker Adjustment Assistance

TA–W–29,746; Micro Link Alaska, Inc., Anchorage, AK

A certification was issued covering all workers separated on or after April 5, 1993.

TA–W–29,884; Jockey International, Inc., Belzoni, MS

A certification was issued covering all workers separated on or after May 11, 1993.

TA–W–29,848; Waynesboro Apparel, Inc., Waynesboro, GA

A certification was issued covering all workers separated on or after April 27, 1993.

TA–W–29,610; Mary Nell Industries, Mayfield, KY

A certification was issued covering all workers separated on or after February 21, 1993.

TA–W–29,691; 502 Corp., Bethlehem, PA

A certification was issued covering all workers separated on or after March 21, 1993.

TA–W–29,857; The Harwood Companies, Inc., Marion, VA

A certification was issued covering all workers separated on or after April 15, 1993.

TA–W–29,753; C & R Cedar, Forks, WA

A certification was issued covering all workers separated on or after April 5, 1993.

TA–W–29,806; Miller Redwood, Crescent City, OK

A certification was issued covering all workers separated on or after April 12, 1993.

TA–W–29,661; Michigan California Lumber Co., Camino, CA

A certification was issued covering all workers separated on or after March 14, 1993.

TA–W–29,762; Kirschner Medical Corp., Marlow, OK

A certification was issued covering all workers separated on or after April 4, 1993.

TA–W–29,836; Hy-Test Shoe Co., West Plains, MO

A certification was issued covering all workers separated on or after April 1, 1993.

TA–W–29,796; Kinston Shirt Co., Kinston, NC

A certification was issued covering all workers separated on or after April 13, 1993.

TA–W–29,642; Reynolds Metals Co., McCook, IL

A certification was issued covering all workers separated on or after March 3, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–000114; Portac, Inc., Tacoma, WA

The investigation revealed that criteria (3) & criteria (4) were not met. Production has not been shifted from the workers' firm to Canada or Mexico, and the sales declines at the subject firm were due to a loss of export sales.

NAFTA–TAA–00123; Safeway, Inc., Oakland, CA

The investigation revealed that workers of the subject firm did not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article as required by the Trade Act of 1974.

NAFTA–TAA–00084; Laidlaw Corp., Stockton, CA

The investigation revealed that criteria (3) & criterion (4) were not met. There was no shift of production from the workers' firm to Mexico or Canada during the relevant period. Production at the Stockton, CA plant has ceased by March 1994 and has been transferred to another company facility in Kingman, AZ. Employment remained constant throughout the fourth quarter of 1993. Monthly employment declines in the first quarter of 1994 were offset by increasing employment at the Kingman plant.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00126; Xentek, Inc., San Marcos, CA

A certification was issued covering all workers of Xentek, Inc., San Marcos, CA separated on or after December 8, 1993.

NAFTA–TAA–00117; Lennon Foods, Inc., Seattle, WA

A certification was issued covering all workers of Lennon Foods, Inc., Seattle, WA separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of June, 1994. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 30, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–17394 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,158]

Northrop Corporation, Norwood, MA; Revised Determination on Reconsideration

On April 21, 1994, the United States Court of International Trade (USCIT) in *John C. Dennis* v. *United States Secretary of Labor*, (USCIT 93–07–00405) granted the Secretary of Labor's motion for a voluntary remand for further investigation.

The Department's initial denial of certification for all workers of Northrop Corporation, Norwood, Massachusetts was based on the fact that the contributed importantly test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of the subject firm's major declining customers showed that none increased their imports of gyroscopes while decreasing their purchases of gyroscopes from the subject firm.

The plaintiffs raised the question of the adequacy of the Department's investigation which focused on the production of gyroscopes, The petition dated December 3, 1992 was for workers in the Electromagnetic Assembly Department (Department #4817) who produce components for gyroscopes.

As a result of the investigation pursuant to the remand, the Department found that the major products produced in Department 4817, Electromagnetic Assembly, were the G5 and G6 microsyns and pickoff coils. The workers were not separately identifiable by product.

Further, the Department obtained information from Northrop which showed decreased production of G5 and G6 microsyns in Department 4817 at Norwood in 1992 compared to 1991 and in 1993 compared to 1992. Other findings show that G5 microsyn production accounted for the major portion of production in Department 4817.

Other findings show increased purchases of G5 microsyns from a domestic supplier in 1992 compared to 1991. The purchased G5 microsyns were predominately made in Mexico when measured in production hours or standard cost in dollars.

Other findings show that pickoff coils last produced at Norwood in 1991 have been replaced in 1992 and in 1993 by purchased coils which are almost totally made in Mexico when measured in production hours or standard cost.

Conclusion

After careful consideration of the new facts obtained during the remand, it is concluded that workers in the Electromagnetic Assembly Department (Department #4817) were adversely affected by increased imports of articles that are like or directly competitive with those produced in Department #4817 of Northrop Corporation in Norwood, Massachusetts. In accordance with the provisions of the Act, I make the following revised determination for workers of Department #4817 of Northrop Corporation, Norwood, Massachusetts.

All workers of the Electromagnetic Assembly Department (Department #4817) of Northrop Corporation in Norwood, Massachusetts who became totally or partially separated from employment on or after December 3, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

The Department's negative determination for all other workers at Northrop Corporation, Norwood, Massachusetts remains in effect.

Signed at Washington, D.C., this 1st day of July, 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–17396 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certification of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than July 29, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than July 29, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of July, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

Petitioner (union/workers/firm)	
Philips Electronics, North American; Philips Lighting Company (Teamsters).	Wa
Magne Tek Inc.; Ballast or Lighting Div. (Wkrs).	Hu
Technology Marketing Group (Wkrs)	Lor
Sola Optical USA, Inc. (Wkrs)	Co
Lipe-Rollway Corporation; Rollway Bearing Division (UAW).	Liv
Dana Corporation; Perfect Circle Division (Co.).	Pu
Lockheed; Ft. Worth Division (IAM)	Ft.
Sara Lee; Sara Lee Knit Products (Co.)	Mi
Sara Lee; Sara Lee Knit Products—Textile (Co.).	Ma

[FR Doc. 94–17400 Filed 7–18–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources: Panel A Section) to the National Council on the Arts will be held on August 9–10, 1994 from 9:00 a.m. to 5:30 p.m. in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 9:00 a.m. to 9:30 a.m. on August 9 for opening remarks and a policy discussion.

The remaining portions of this meeting from 9:30 a.m. to 5:30 p.m. on August 9 and from 9:00 a.m. to 5:30 p.m. on August 10 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Philips Electronics, North American; Philips Lighting Company (Teamsters).	Washington, PA	06/24/94	NAFTA–00160.	Incandescent electric lamps.
Magne Tek Inc.; Ballast or Lighting Div. (Wkrs).	Huntington, IN	06/21/94	NAFTA–00161.	Electronic flourescent ballast.
Technology Marketing Group (Wkrs)	Longwood, FL	06/23/94	NAFTA–00162.	Wholesale of PC parts and assembly.
Sola Optical USA, Inc. (Wkrs)	Colonial Heights, VA.	06/27/94	NAFTA–00163.	Plastic ophthalmalic lenses, plastic gaskets.
Lipe-Rollway Corporation; Rollway Bearing Division (UAW).	Liverpool, NY	06/28/94	NAFTA–00164.	Precision cylindrical roller bearings.
Dana Corporation; Perfect Circle Division (Co.).	Pueblo, CO	06/29/94	NAFTA–00165.	Aluminum automotive pistons.
Lockheed; Ft. Worth Division (IAM)	Ft. Worth, TX	06/29/94	NAFTA–00166.	I.T.L. units.
Sara Lee; Sara Lee Knit Products (Co.)	Midway, GA	07/01/94	NAFTA–00167.	Fleece garments.
Sara Lee; Sara Lee Knit Products—Textile (Co.).	Martinsville, VA	06/29/94	NAFTA–00168.	Fleece garments.

[FR Doc. 94–17400 Filed 7–18–94; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources: Panel A Section) to the National Council on the Arts will be held on August 9–10, 1994 from 9:00 a.m. to 5:30 p.m. in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 9:00 a.m. to 9:30 a.m. on August 9 for opening remarks and a policy discussion.

The remaining portions of this meeting from 9:30 a.m. to 5:30 p.m. on August 9 and from 9:00 a.m. to 5:30 p.m. on August 10 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington D.C. 20506, 202/682–5532, TYY 202/682–5496, at lease seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5439.

Dated: July 13, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–17477 Filed 7–18–94; 8:45 am]
BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel; Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Music Presenters Panel B Section) to the National Council on the Arts will be held on August 9–12, 1994. The panel will meet from 9:00 a.m. to 5:30 p.m. on August 9 and from 8:30 a.m. to 5:30 p.m. on August 10–12. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on August 10–12, from 8:30 a.m. to 9:00 a.m. for guideline discussion and from 4:00 p.m. to 5:30 p.m. on August 12, for a guideline review and policy discussion.

The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on August 9–11 and from 9:00 a.m. to 4:00 p.m. on August 12, are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management

Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 13, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–17476 Filed 7–18–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act and request for comments.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for the United States Antarctic Program (USAP), submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before August 13, 1994. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755. Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, 22230.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham or Peter R. Karasik at the above address or at (703) 306–1031.

SUPPLEMENTARY INFORMATION: Antarctic Waste Regulations in 45 CFR Part 671 require U.S. citizens, corporations, or other entities to obtain a permit for the use or release of a designated pollutant in Antarctica and for the release of any waste in Antarctic. NSF has received a permit application under this regulation for USAP activities in Antarctica. The permit applicants are:

Co-Applicants

U.S. Naval Support Force, Antarctica, Building 836, Construction Battalion Center, 651 Lyon Street, Port Hueneme, CA 93043–43455

Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, CO 80112.

The permit application applies to USAP activities at all of its facilities and operations in Antarctica. The proposed duration of the permit is from October 1, 1994 through September 30, 1999.

The Naval Support Force, Antarctica (NSFA) and Antarctic Support Associates (ASA) provide broad-based logistical and technical support services to USAP. NSFA duties include procurement and transport of personnel and materials to and from Antarctica. This includes the transport of both hazardous and nonhazardous waste from Antarctica to the United States.

ASA operations include procuring, transporting to Antarctica, and tracking materials containing designated pollutants that are required for USAP operations, and for NSF and NSF grantees. ASA is also responsible for fuel operations including fuel storage, distribution, and resupply; and recordkeeping of fuel use. ASA collects, stores, and ships both hazardous and nonhazardous waste materials and is responsible for the final disposition of these materials once they are returned to the United States. ASA also provides training and technical guidance to enhance the safety of U.S. waste management practices in Antarctica.

Dated: July 12, 1994.

Robert S. Cunningham,

NEPA Compliance Manager, Office of Polar Programs, National Science Foundation.

[FR Doc. 94–17414 Filed 7–18–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on August 3, 1994, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Wednesday, August 3, 1994—2:00 p.m. until the conclusion of business.*

The Subcommittee will discuss proposed ACRS activities and related matters. Also, it will discuss qualifications of candidates nominated for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contracting the cognizant ACRS staff person, Dr. John T. Larkins, (telephone 301/415–7000) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 12, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–17516 Filed 7–18–94; 8:45 am]

BILLING CODE 7590–01–M

Two-Year Trial Program for Conducting Open Enforcement Conferences; Continuation of Trial Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplement to Policy Statement; Continuation of Trial Program.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing a supplement to its two-year trial program for conducting open enforcement conferences. The purpose of this supplement is to inform the public of the NRC's continuation of the trail program until the commission acts upon the NRC staff's recommendations regarding open enforcement conferences.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–504–2741).

SUPPLEMENTARY INFORMATION: The Commission published a policy statement on the implementation of a two-year trial program to allow selected enforcement conferences to be open to public observation on July 10, 1992 (57 FR 30762). The purpose of the trial program was to determine whether to maintain the current policy stated in Section V of the "General Statement of Policy and Procedure for Enforcement Action," (Enforcement Policy) 10 CFR Part 2, Appendix C that, "enforcement conferences will not normally be open to the public," or to adopt a new policy that would allow most enforcement conferences to be open to attendance by all members of the public. Comments were required to be provided to the Commission on or before the completion date of the trial program. A correction to the original notice was issued on July 17, 1992 (57 FR 31754) to correctly identify the scheduled completion of the trial program as July 11, 1994.

On May 13, 1994, the Executive Director for Operations directed a reexamination of the NRC enforcement program by a Review Team of senior NRC staff. As part of this comprehensive review of the Enforcement Policy, the NRC intends to consider the issue of whether the Commission should establish open enforcement conferences as the normal practice. In the interim, the NRC is continuing the open enforcement conference trial program pending the outcome of the Enforcement Policy Review. The Review Team intends to complete its review of the Enforcement Policy in early 1995.

As part of its review of the Enforcement Policy, the NRC intends to issue a Federal Register notice soliciting public comments to assist the Review Team. This notice will include soliciting comments on the issue of open enforcement conferences.

Dated at Rockville, MD, this 13th day of July 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–17500 Filed 7–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Number 40–8948]

Shieldalloy Metallurgical Corporation, Establishment of Local Public Document Room

The Nuclear Regulatory Commission (NRC) has established a local public document room (LPDR) for Shieldalloy Metallurgical Corporation's (Shieldalloy) Cambridge, Ohio, site.

SUPPLEMENTARY INFORMATION: The Commission published a policy statement on the implementation of a two-year trial program to allow selected enforcement conferences to be open to public observation on July 10, 1992 (57 FR 30762). The purpose of the trial program was to determine whether to maintain the current policy stated in Section V of the "General Statement of Policy and Procedure for Enforcement Action," (Enforcement Policy) 10 CFR Part 2, Appendix C that, "enforcement conferences will not normally be open to the public," or to adopt a new policy that would allow most enforcement conferences to be open to attendance by all members of the public. Comments were required to be provided to the Commission on or before the completion date of the trial program. A correction to the original notice was issued on July 17, 1992 (57 FR 31754) to correctly identify the scheduled completion of the trial program as July 11, 1994.

On May 13, 1994, the Executive Director for Operations directed a reexamination of the NRC enforcement program by a Review Team of senior NRC staff. As part of this comprehensive review of the Enforcement Policy, the NRC intends to consider the issue of whether the Commission should establish open enforcement conferences as the normal practice. In the interim, the NRC is continuing the open enforcement conference trial program pending the outcome of the Enforcement Policy Review. The Review Team intends to complete its review of the Enforcement Policy in early 1995.

As part of its review of the Enforcement Policy, the NRC intends to issue a Federal Register notice soliciting public comments to assist the Review Team. This notice will include soliciting comments on the issue of open enforcement conferences.

Dated at Rockville, MD, this 13th day of July 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–17500 Filed 7–18–94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Number 40–8948]

Shieldalloy Metallurgical Corporation, Establishment of Local Public Document Room

The Nuclear Regulatory Commission (NRC) has established a local public document room (LPDR) for Shieldalloy Metallurgical Corporation's (Shieldalloy) Cambridge, Ohio, site.

Members of the public may now inspect and copy documents related to the Shieldalloy Cambridge, Ohio, site at the Guernsey County District Public Library, 800 Steubenville Avenue, Cambridge, Ohio 43725–2385. The library is open on the following schedule: Monday through Friday 9:00 a.m. to 8:00 p.m.; Saturday 9:00 a.m. to 5:00 p.m.; and Sunday 1:00 p.m. to 5:00 p.m. Current summer hours are: Monday, Tuesday, Wednesday 9:00 a.m. to 8:00 p.m.; Thursday and Friday 9:00 a.m. to 5:30 p.m.; Saturday 9:00 a.m. to 1:00 p.m.; and Sunday closed.

For Further Information: Interested parties in the Guernsey County area may contact the LPDR directly through Ms. Sally Ondrejko, Reference Librarian, telephone number (614) 432–5946. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Jona Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (301) 415–7170 or toll-free 1–800–638–8081.

Dated at Rockville, Maryland, this 13th day of July, 1994.

For the Nuclear Regulatory Commission.

Walter E. Oliu,

Acting Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–17499 Filed 7–18–94; 8:45 am]

BILLING CODE 7590-01-M

Release of Site for Unrestricted Use and Removal From the Site Decommissioning Management Plan, Pawling Site, NY

July 8, 1994.

AGENCY: Nuclear Regulatory Commission.

This notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) is releasing the formerly licensed Gulf Nuclear Fuel Corporation (GNFC) site (currently owned by the National Park Service) near Pawling, New York, for unrestricted use. General Atomics Company was the last licensee for the activities carried out at this GNFC site. Following a series of corporation changes, Chevron Corporation is the corporate successor to General Atomics. Remedial action has been completed at the site because residual radioactive material had been present in excess of NRC's current unrestricted use criteria. The Pawling site was listed in the NRC's Site Decommissioning Management Plan, but has now been removed.

Results of the radiological surveys and analyses performed indicate that, after the remedial actions, residual radioactive material on building surfaces and in soils at the site is less than the criteria found in the NRC's "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material," August 1987. After reviewing Chevron Corporation's reports and radiological surveys of this facility, and Oak Ridge Institute for Science and Education's confirmatory radiological survey, NRC staff concludes that further remedial action is not required, and that the site is suitable for unrestricted use.

As noted in the Action Plan (57 FR 13389), this is the final action of the NRC on the Pawling site. NRC will not require any additional decommissioning in response to future NRC criteria or standards, except in the event that additional contamination, or noncompliance with the decommissioning plans approved by NRC in December 1992 and July 1993, is found, indicating a significant threat to public health and safety. Noncompliance would occur if the licensee had not complied with an approved decommissioning plan, or had provided false information.

Dated: at Rockville, MD, this 8th day of July 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–17501 Filed 7–18–94; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34356; File No. SR-Amex-93-42]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Disciplinary Jurisdiction and Settlement of Disciplinary Actions

July 12, 1994.

I. Introduction

On December 23, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its disciplinary rules relating to the retention of disciplinary jurisdiction and the settlement of disciplinary actions. On May 11, 1994, the Exchange notified the Commission that the Constitutional changes had been approved by the Exchange membership, and that no further Exchange action was required for the Commission to proceed with the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33501 (January 21, 1994), 59 FR 4126 (January 28, 1994). No comments were received on the proposal.

II. Description

Under current Exchange Rule 341.09 member firms must file a termination notice with the Exchange whenever a registered employee leaves their employ.[4] Member firms also are required to file amended termination notices, subsequent to the registered employee's departure, if they become aware of customer complaints or other possible wrongdoing by the employee.[5] Currently, Article V, Section 6 of the Exchange's Constitution and Rule 341.08 permit the Exchange to retain disciplinary jurisdiction even after the termination of a person's or an entity's status as a member, member organization, or registered employee, provided that the Exchange gives them written notice that it is retaining jurisdiction within one year immediately following its receipt of the written notice of termination by member firms.

In an appeal to the Commission last year, a respondent in an Amex disciplinary proceeding asserted that the Exchange lacked jurisdiction over him because it failed to notify him within one year from the time his former firm filed the termination notice reporting his voluntary resignation.[6] The Commission's decision agreed with the respondent, stating that the Amex Rule required it to retain jurisdiction within one year of its receipt of the original termination notice. However, the Commission indicated that it was sensitive to the Exchange's position that the one year time period should begin to run only after the Exchange is notified by the member firm of possible violative conduct in the amended termination notice, and suggested that the Amex amend its rules to strengthen its jurisdictional position.

The proposed rule change provides that the Exchange must assert disciplinary jurisdiction over a person or entity within one year of the filing of a termination notice or within one year of any amendment to such notice. By amending the applicable Constitutional and Rule provisions, the Exchange will be able to retain jurisdiction for one year after it is notified by the member firm of possible violative conduct by the registered employee in an amended termination notice.[7]

The Exchange also is amending its Rules regarding settlement of disciplinary matters. Article V, Section 1(b)(4) of the Amex's Constitution and Amex Rule 345 currently require that the Exchange issue formal charges against persons or entities it believes have committed serious infractions of the Exchange's Rules or the federal securities laws. The issuance of formal charges begins a lengthy process which includes the filing of an answer to the charges, the exchange of documents, and the scheduling of a disciplinary hearing.

The Amex's present disciplinary procedures do not provide for the settlement of charges before formal charges are issued. In some circumstances, however, persons who are the subject of Exchange investigations may wish to avoid the time and expense of a hearing and settle the matter by stipulating to certain facts and consenting to a penalty. The rule change would allow such parties to settle claims without undergoing the process for formal charges by allowing the party to proceed directly to the procedures that are currently contained in Article V, Section 2 of the Amex's Constitution and in Amex Rule 345 for "Stipulation of Facts and Consent to Penalty."

The procedures contained in the above provisions provide for a hearing before a Disciplinary Panel to determine whether the party is guilty of having committed an offense on the basis of a written stipulation of facts and consent to a specified penalty entered into between the party and an officer of the Exchange. The Disciplinary Panel may fix and impose the penalty agreed to in the stipulation and consent, or any lesser penalty. If the Disciplinary Panel rejects the stipulation and consent to a specified penalty, the matter will proceed as if the stipulation and consent had not been entered into, and the stipulation and consent will be disregarded in any subsequent proceeding.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Sections 6(b) (5) and (6) of the Act.[8] Specifically, Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public. Section 6(b)(6) of the Act requires that the rules of an exchange provide that its members, and persons associated with its members, be appropriately disciplined for violation of the rules of the exchange.

The Commission believes that the rule change to provide the Exchange with disciplinary jurisdiction over persons or entities suspected of wrongdoing for one year after any amendment to the termination of employment notice is made will ensure that the Exchange will retain jurisdiction over persons for a year after it is notified of possible offenses, and accordingly is consistent with the Exchange's regulatory responsibilities under Section 6(b)(6) of the Act. The rule change will enable the Exchange to investigate and conduct disciplinary hearings pursuant to its established rules and procedures to determine if a person or entity has committed violations of Exchange rules or the federal securities laws, and to impose appropriate sanctions thereon. The rule change also is consistent with Section 6(b)(5) of the Act in that it serves to protect investors and the public interest by enabling the Exchange to discipline persons who violate Exchange Rules or the federal securities laws within a reasonable time after learning of possible wrongdoing.

The Commission further believes that the rule change to allow parties to settle claims against them without undergoing a lengthy formal charging process is consistent with Section 6(b) (5) and (6) of the Act. The Commission believes that the rule change will save substantial time and expense for the Exchange and its members, and give the Exchange more flexibility in negotiating the resolution of enforcement actions. The rule also will continue to ensure that all settlements will be reviewed by the Amex's Disciplinary Panel and continues to give to the panel the ability to reject any settlement as is appropriate. Accordingly, we believe the change should make the Amex's enforcement proceedings more efficient without reducing the effectiveness of its procedures. Furthermore, the Commission finds that the proposed procedures for settling disciplinary actions are similar to those of other national securities exchanges.[9]

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR-Amex-93-42) is approved.

---

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] The original 19b-4 filing was filed with the Commission in December 1993 and noted that the membership had not yet voted on the proposed rule change to the Amex's Constitution. The Constitutional change was approved by the Exchange membership at a special meeting of the regular members held on April 12, 1994. See letter from Geraldine Brindisi, Corporate Secretary, Amex, to Diana Luka-Hopson, Branch Chief, SEC, dated May 10, 1994.

[4] Amex Rule 341.09 requires that immediate notification to the Exchange of any termination of employment of a registered employee or officer be submitted on Form U-5.

[5] Instruction 5 to Form U-5 states that reporting firms have a continuing obligation to amend and update Form U-5 as it pertains to disciplinary action against the person or entity and complaints of possible wrongdoing. This obligation includes reportable matters which occur or become known after initial submission of Form U-5.

[6] *In re* Leavitt, Securities Exchange Act Release No. 32441, 1993 SEC LEXIS 1427 (June 10, 1993) (Admin. Proc. File No. 3-7836).

[7] As the Commission noted in the *Leavitt* opinion, the NASD Rules provide for retention of disciplinary jurisdiction after an amended notice. Specifically, Article IV, Section 4 of the NASD By-Laws provides that the NASD may retain disciplinary jurisdiction within two years after the effective date of termination, provided, however, that any amendment to a notice of termination that is filed within two years of the original notice which discloses that such person may have engaged in conduct actionable under any applicable statute, rule or regulation, shall operate to recommence the running of the two-year period.

[8] 15 U.S.C. § 78f(b) (5) and (6) (1988).

[9] *See, e.g.*, New York Stock Exchange Rule 476(g); Chicago Board Options Exchange Rule 17.8.

[10] 15 U.S.C. 78s(b)(2) (1988).

persons associated with its members, be appropriately disciplined for violation of the rules of the exchange.

The Commission believes that the rule change to provide the Exchange with disciplinary jurisdiction over persons or entities suspected of wrongdoing for one year after any amendment to the termination of employment notice is made will ensure that the Exchange will retain jurisdiction over persons for a year after it is notified of possible offenses, and accordingly is consistent with the Exchange's regulatory responsibilities under Section 6(b)(6) of the Act. The rule change will enable the Exchange to investigate and conduct disciplinary hearings pursuant to its established rules and procedures to determine if a person or entity has committed violations of Exchange rules or the federal securities laws, and to impose appropriate sanctions thereon. The rule change also is consistent with Section 6(b)(5) of the Act in that it serves to protect investors and the public interest by enabling the Exchange to discipline persons who violate Exchange Rules or the federal securities laws within a reasonable time after learning of possible wrongdoing.

The Commission further believes that the rule change to allow parties to settle claims against them without undergoing a lengthy formal charging process is consistent with Section 6(b) (5) and (6) of the Act. The Commission believes that the rule change will save substantial time and expense for the Exchange and its members, and give the Exchange more flexibility in negotiating the resolution of enforcement actions. The rule also will continue to ensure that all settlements will be reviewed by the Amex's Disciplinary Panel and continues to give to the panel the ability to reject any settlement as is appropriate. Accordingly, we believe the change should make the Amex's enforcement proceedings more efficient without reducing the effectiveness of its procedures. Furthermore, the Commission finds that the proposed procedures for settling disciplinary actions are similar to those of other national securities exchanges.[9]

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–93–42) is approved.

[9] *See, e.g.*, New York Stock Exchange Rule 476(g); Chicago Board Options Exchange Rule 17.8.

[10] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17429 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34359; File No. SR–Amex–91–35]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Development of Stock Indexes for Index Option Trading.

July 12, 1994.

On December 26, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide the Exchange with greater flexibility in developing stock indexes for index option trading. Notice of the proposal appeared in the **Federal Register** on February 14, 1992.[3] No comment letters were received on the proposed rule change.[4] The Amex subsequently filed Amendment No. 1 to the proposed rule change on May 20, 1994.[5] This order approves the Exchange's proposal, as amended.

When exchange-traded stock index options were developed, there was a concern with allowing options to trade on indexes composed of a relatively small number of stocks where a substantial portion of those stocks were traded on the same exchange. As a result, the Exchange has rules restricting the number of Amex-traded stocks that can be included in a stock index upon which options are also traded on the Amex. Specifically, no components of an index may be traded on the Amex if the index is composed of less than 25 stocks; less than 10% of the market value of the index may be accounted for by stocks traded on the Amex if the index is composed of 25 or more stocks but less than 50 stocks; and 10% or more of the market value of the index may be accounted for by stocks traded on the Amex if the index is composed of 50 or more components.[6]

Further, the first indexes on which options were traded were valued either on the price of the components of the index (price-weighted) or on the market capitalizations of the components of the index (capitalization-weighted). Accordingly, Exchange Rule 900C defines the term "stock index group" as a group of stocks each of whose inclusion and relative representation in the group is determined by the inclusion and relative representation of their current market values or market prices in a widely disseminated stock index.

As a result of significant changes in the options industry, the Exchange believes that the restrictions on the inclusion of Amex-traded stocks in indexes on which options are traded on the Exchange are no longer appropriate. Similarly, the Exchange believes that the definition of stock index group is now too restrictive because of the creation of new and different methods of calculating and determining the relative representation of the stocks underlying an index (*e.g.* equal dollar-weighting).[7] The Exchange is, therefore, proposing to revise Exchange Rule 901C to provide for greater flexibility in the design and development of new stock

[11] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] *See* Securities Exchange Act Release No. 30356 (February 10, 1992), 57 FR 30356 (February 14, 1992).

[4] The Commission, however, did receive a letter from Congressman Edward Markey requesting additional information regarding the subject matter of the proposed rule change and seeking assurances that the proposal would not result in any enhanced opportunities for market manipulation or other improper trading activities. *See* Letter from Rep. Edward Markey, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, to Richard Breeden, Chairman, Commission, dated March 5, 1992. For the reasons discussed below, the Commission believes that the proposal is structured to minimize any potential for market manipulation and other improper trading activity.

[5] In Amendment No. 1, the Amex represents that: (1) members will be prohibited from using hand signals for purposes of communicating between the Exchange's main equity trading floor ("Equity Floor") and the mezzanine trading level ("Mezzanine") when index options on indexes where Amex-listed stocks comprise more than 10% of the index value, by weight, are being traded in the Mezzanine; (2) members will be notified by the Exchange of the prohibition on the use of hand signal communications; and (3) no trading of index options on indexes containing Amex-listed stocks will be allowed on the Mezzanine in areas visible from the Equity Floor. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated May 20, 1994 ("Amendment No. 1").

[6] *See* Amex Rule 901C(a).

[7] An equal dollar-weighted index is based on the number of shares of each component that could be purchased spending the same dollar amount on each. The value of the index equals the sum of the current market value of the assigned number of shares of each of the stocks in the index portfolio divided by the current index divisor. *See, e.g.*, Securities Exchange Act Release No. 33720 (March 7, 1994), 59 FR 11630 (March 11, 1994).

index option products which can be listed and traded on the Exchange, and to revise Rule 900C to reflect the changes in the methods of valuing indexes. With regard to Rule 900C, the Exchange proposes to eliminate references to market value and market price as the methods of determining the relative representation of a stock within an index. This will clarify that an index need not be based on a strictly proportional representation of the prices or market values of its component stocks. The Exchange believes this is necessary because the Exchange either currently trades or has had approved for trading, index options on several indexes which are neither capitalization-weighted or price-weighted (*e.g.*, the Morgan Stanley Consumer and Cyclical Indexes, the Biotechnology Index, and the Natural Gas Index).

The Exchange also proposes to revise Rule 901C to remove the limitation on the number of Amex-listed stocks that can be included in an index on which stock index options trade on the Exchange. The proposed revision would allow indexes composed of less than 50 securities to have Amex-listed stocks account for more than 10% of the index's value, by weight, and it would allow Amex-listed stocks to be included in indexes that are composed of less than 25 stocks. The Exchange believes that concerns that certain market participants would have an informational advantage when trading an option on an index that is composed of stocks that also trade on the same exchange have lessened considerably since index options were first developed, due in large part to the real-time electronic quotation and transaction information dissemination systems that now link today's securities markets. The Exchange also believes that there is less concern that an index value can be influenced by any one stock, given the preference for insuring that no one security represents a large portion of the value of an index.

In order to further minimize these concerns, however, the Exchange is proposing certain restrictions on the trading of such index options. First, index option trading areas shall not be located on the Exchange's Equity Floor.[8] Secondly, for index options traded on the Mezzanine where Amex-listed stocks comprise more than 10% of the value of the index, by weight, (1) those options shall not be traded in the portion of the Mezzanine that is visible from the Equity Floor, and (2) members will be prohibited from using hand signals to communicate between the Mezzanine and the Equity Floor.[9]

Finally, if greater than 10% of the value of a narrow-based index is represented by Amex-traded stocks, the index options and each Amex-listed component of the index must be treated as a "paired security."[10] Treating the stocks and the narrow-based index options as paired securities invokes several additional safeguards designed to prevent the misuse of market information and market manipulation by Amex members. First, as discussed earlier, trading of the index option and the underlying securities must take place in physically separated trading rooms. Secondly, a registered options trader ("ROT") who is also a registered equity trader or a registered equity market maker would be prohibited from executing a proprietary transaction in the index option if, during the preceding 60 minutes, he or she had been on the Equity Floor. Third, an Amex equity specialist in any of the stocks contained in the narrow-based index would be prohibited from acting as a specialist or ROT in the index options. Finally, odd-lot dealers in the Amex-traded stocks would be prohibited from being ROTs in the index option. These restrictions are an extension of the restrictions currently in place regarding paired securities of Amex-listed options on Amex-listed stocks.[11]

The Commission believes that the Amex proposal is consistent with the requirements of Section 6 of the Act, in general, and Section 6(b)(5)[12] in particular, in that it should help to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade and protect investors and the public interest. Specifically, the proposal will provide the Exchange with greater flexibility to construct new indexes which may offer additional means to investors of hedging exposure to market risk. The Commission believes that the proposal will allow this flexibility while at the same time minimizing the potential for abuse by ensuring that Amex traders will not be able to obtain unfair informational advantages as a result of increasing the representation of Amex-listed stocks as components of indexes on which index options trade on the Exchange. The Commission agrees with the Exchange that the real-time electronic dissemination of quotation and transaction information dissemination has improved in recent years in both stock and options markets. The Commission, however, still believes that floor traders and market makers, by virtue of their close proximity to the trading crowds and access to market information, may have a time and place advantage over other market participants.[13] For the reasons stated below, however, the Commission believes that the restrictions contained in the Amex proposal adequately minimize any potential for misuse of information or market manipulation.

First, regardless of how an index is weighted or constructed, the Exchange is still required to submit all index option proposals to the Commission for approval.[14] During this review process, the Commission will examine, among other things, whether the proposal is consistent with the protection of investors and the maintenance of fair and orderly markets. In reviewing Amex narrow-based index option proposals, the Commission will examine the number of Amex-listed stocks comprising each particular index. The Commission will only approve those indexes found not to be readily susceptible to manipulation.

Secondly, where Amex-listed stocks comprise more than 10% of the value of a particular index,[15] (1) options on that index must be traded in a room physically separated from the Equity Floor, (2) if index options are traded on the Mezzanine, the trading area must be located so as to avoid direct sight lines with the Equity Floor, and (3) communication by means of hand signals between the mezzanine and the Equity Floor will be prohibited.[16] The Commission believes that each of these restrictions will further serve to minimize the informational advantages that can be gained by Amex equity and options floor traders as a result of permitting the Amex to trade index options with Amex-listed stock components.

Finally, the Commission believes that treating a narrow-based index and each Amex-listed component in the index as paired securities in those cases where the Amex-listed components comprise more than 10% of the index value, further minimizes any potential for manipulation. This requirement would establish the same restrictions that are currently in place regarding the trading of equity options on Amex-listed securities, to narrow-based index options with Amex-listed components representing over 10% of the value of the index. For example, a ROT who is also a registered equity trader would be prohibited from executing a proprietary trade in such an index option for 60 minutes after he or she had been on the Equity Floor.[17] The Commission believes that these restrictions severely restrict the potential for the abuse of informational advantages by Amex traders thereby ensuring that any narrow-based index option constructed pursuant to the proposed rule change will, as with narrow-based index options currently traded on the Exchange, not be readily susceptible to manipulation. Accordingly, the Commission believes it is appropriate to extend these restrictions to Amex-listed stocks and options on narrow-based indexes containing those stocks in cases where the Amex-listed stocks account for more than 10% of the index.

The Commission also believes that the proposed change to the definition of "stock index group" is appropriate in light of changes in the securities market since that definition was adopted.

---

[8] Currently, all index options traded on the Exchange are physically traded on the Mezzanine, which abuts and overlooks the Exchange's equity trading floor. *See* Amendment No. 1, *supra* note 5.

[9] *Id.*

[10] Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on May 31, 1994. A paired security is defined as a security which is the subject of securities trading on the Amex as well as options trading. *See* Amex Rule 900(b) (38).

[11] *See* Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988).

[12] 15 U.S.C. § 78f(b)(5) (1988).

[13] Specifically, floor traders in the crowd may be able to gain an insight into the future direction of a market on the basis of, among other things, the other traders in the crowd and their bidding/offering patterns. Likewise, market makers have an informational advantage about order flow and quote changes.

[14] Pursuant to the recently-approved generic standards for options on narrow-based indexes, the Exchange may submit proposals to list and trade options on indexes, which become effective upon filing. The Exchange, however, cannot begin trading options on the index until 30 days after the filing date. During this time period, the Commission will be able to review the index and consider any comments received on the proposal. If the Commission determines that an Amex proposal submitted pursuant to the generic standards is susceptible to manipulation because, for example, of the number of Amex-listed components in the Index, the Commission will have 60 days from the filing date in which to abrogate the rule change. *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

[15] For indexes where Amex-listed stocks comprise less than 10% of the value of the index, changes in the prices of the Amex-listed stocks should not have a significant impact on the value of the index. As a result, the Commission believes that any informational advantage that might exist in these circumstances as a result of an Amex member being present on the Exchange floor will be deminimis. Nevertheless, the Amex will apply its existing surveillance procedures to all index options, which should deter as well as detect any potential manipulation.

[16] The Amex shall deliver written notice to its membership informing them of the prohibition against the use of hand signal communications.

[17] *See supra* notes 10 and 11, and accompanying text.

index must be traded in a room physically separated from the Equity Floor, (2) if index options are traded on the Mezzanine, the trading area must be located so as to avoid direct sight lines with the Equity Floor, and (3) communication by means of hand signals between the mezzanine and the Equity Floor will be prohibited.[16] The Commission believes that each of these restrictions will further serve to minimize the informational advantages that can be gained by Amex equity and options floor traders as a result of permitting the Amex to trade index options with Amex-listed stock components.

Finally, the Commission believes that treating a narrow-based index and each Amex-listed component in the index as paired securities in those cases where the Amex-listed components comprise more than 10% of the index value, further minimizes any potential for manipulation. This requirement would establish the same restrictions that are currently in place regarding the trading of equity options on Amex-listed securities, to narrow-based index options with Amex-listed components representing over 10% of the value of the index. For example, a ROT who is also a registered equity trader would be prohibited from executing a proprietary trade in such an index option for 60 minutes after he or she had been on the Equity Floor.[17] The Commission believes that these restrictions severely restrict the potential for the abuse of informational advantages by Amex traders thereby ensuring that any narrow-based index option constructed pursuant to the proposed rule change will, as with narrow-based index options currently traded on the Exchange, not be readily susceptible to manipulation. Accordingly, the Commission believes it is appropriate to extend these restrictions to Amex-listed stocks and options on narrow-based indexes containing those stocks in cases where the Amex-listed stocks account for more than 10% of the index.

The Commission also believes that the proposed change to the definition of "stock index group" is appropriate in light of changes in the securities market since that definition was adopted. Specifically, the Amex currently is trading, or has had approved for trading, options on equal dollar-weighted indexes, which do not fit within the current definition. The Commission believes the proposed change more accurately reflects the current index option products approved for trading and is sufficiently broad enough to allow further innovations in the methods for calculating and determining index values.[18] Accordingly, the Commission believes the proposed rule change to Rule 900C is consistent with the Act.

Based on the foregoing, the Commission believes that the proposal will provide the Exchange with flexibility to construct new hedging vehicles for use by investors while sufficiently protecting investors by minimizing the susceptibility of these securities to manipulation. Accordingly, the Commission believes the proposed rule change, as amended, is consistent with the Act.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 proposes certain restrictions on the trading of index options on narrow-based indexes comprised of Amex-listed stocks accounting for more than 10% of the value of the index, by weight. For the reasons discussed above, the Commission believes these restrictions adequately minimize any potential for misuse of information or market manipulation. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the Amex's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–91–35 and should be submitted by August 9, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–91–35), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

[FR Doc. 94–17524 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

---

informational advantage that might exist in these circumstances as a result of an Amex member being present on the Exchange floor will be deminimis. Nevertheless, the Amex will apply its existing surveillance procedures to all index options, which should deter as well as detect any potential manipulation.

[16] The Amex shall deliver written notice to its membership informing them of the prohibition against the use of hand signal communications.

[17] *See supra* notes 10 and 11, and accompanying text.

[18] The Commission, however, will continue to examine any new weighting methods when reviewing new index option proposals pursuant to Section 19(b) of the Act.

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34367; File No. SR–BSE–94–4]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to Proposed Rule Change Relating to Listing Requirements for Common Stock.

July 13, 1994.

On February 25, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its listing requirements for securities listed on the Exchange. On June 7, 1994, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] On June 9, 1994, the BSE submitted to the Commission Amendment No. 2 to the proposed rule change.[4]

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* letter from Neal E. Sullivan, Vice President, Listings and Government Relations, BSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated June 2, 1994. Amendment No. 1 proposed that the number of required beneficial holders be changed from 500 to 600, instead of to 750 as originally requested.

[4] *See* letter from Neal E. Sullivan, Vice President, Listings and Government Relations, BSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated June 8, 1994. Amendment No. 2 changed the proposal to state that the Exchange shall file and application for delisting should the company fail to meet certain

Continued

The proposed rule change was published for comment in Securities Exchange Act Release No. 33827 (March 28, 1994), 59 FR 15754 (April 4, 1994). No comments were received on the proposal. This order approves the proposed rule change, and grants accelerated approval to Amendment Nos. 1 and 2.

I. Description of the Proposal

The Exchange is amending Chapter XXVII, Section 1 of the BSE Rules to revise the listing requirements for initial listing of securities on the Exchange. The Exchange will impose more stringent listing criteria by increasing mandatory minimum requirements, modernizing the language of the rule, and responding to the Commission's concerns regarding certain issuers and promoters seeking listing on regional exchanges solely as a means to avoid the requirements of Rule 15c2–6 under the Act.[5]

Specifically, the BSE is amending the listing requirements for common stock relating to tangible assets, public float, beneficial stockholders, and minimum bid prices.

The Exchange is increasing the portion of the required total assets ($3,000,000) that must constitute tangible assets. The amount of required tangible assets has been increased from $1,500,000 to $2,000,000. The Exchange defines tangible assets as assets less any intangible assets. Intangible assets currently include, but are not limited to, goodwill, patents, licenses, and trademarks. This definition is being amended to include other assets as the Exchange shall deem intangible.[6] Additionally, the BSE is increasing the amount of required public float from 500,000 shares to 750,000 shares, exclusive of shares held by directors, officers or other concentrated holdings of five percent or more (currently 10% or more).

The BSE is also amending the requirement relating to the minimum number of beneficial stockholders.[7] Specifically, the Exchange is increasing the number of required beneficial stockholders from 500 to 600, exclusive of the holdings of directors, officers or other concentrated holdings of five percent or more (currently 10% or more). In addition, the BSE is adding a delisting provision to the minimum stockholder requirement. Currently, with respect to a company which seeks to list a common stock issue following an initial public offering, the Exchange must receive assurances from the company or its representatives that the minimum beneficial stockholder requirement will be met following the distribution of the shares. If not met within six months of listing, the Exchange will take action to suspend dealings in the specific issue until the stockholder requirement is met. The BSE is adopting a provision that limits the period in which a company, listed following an initial public offering, can remain below the beneficial stockholder requirement once dealings in the issue have been suspended. Specifically, if a company fails to meet the beneficial stockholder requirement within 30 days of the suspension of dealings in the issue, the Exchange shall file an application for delisting with the Commission.[8]

Furthermore, the BSE is amending the minimum bid price required for listing. For a company involved in an initial public offering, the BSE is increasing the minimum bid price from $1.00 per share to $2.00 per share at the time of listing. The new standards require a company not involved in an initial public offering to maintain a bid price of $2.00 per share for 45 days prior to listing up from $1.00 per share for 30 days prior to listing.

Finally, the BSE is amending the listing requirement relating to net tangible assets and net income. The common stock listing criteria relating to net tangible assets and net income currently requires that the company have either net income of $100,000 in two of the past three years, or net tangible assets in the amount of $500,000. The BSE is increasing this criteria to require either net income of $100,000 in two of the past three years, or in the alternative, $2,000,000 in net tangible assets.[9]

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) under the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect the mechanism of a free and open market system, and, in general, to protect investors and the public interest.

II. Discussion

The development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to exchange markets and to the investing public. Listing standards serve as a means for the self-regulatory organizations to screen issuers and to provide listed status only to *bona fide* companies with substantial float, investor base, and adequate financial stability to ensure sufficient liquidity for fair and orderly markets.

The Commission believes that the Exchange's rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b)(5) of the Act.[10] Section 6(b)(5) of the requires, among other things, that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission believes that the amendments to Chapter XXVII, Section 1, which increase certain BSE requirements for listing common stock, should benefit investors trading these securities at the Exchange. The Commission believes that the revised listing requirements should help to ensure that only legitimate companies with substantial public float, investor base, and demonstrated financial stability would be listed on the BSE. The new requirements also should enable the Exchange to assure that a fair and orderly market can be maintained in BSE listed securities. In particular, increasing the required minimum number of beneficial stockholders to 600 and the number of outstanding public float to 750,000 shares should help to ensure a wide public distribution of an issuer's stock, and a minimum initial level of liquidity in BSE listed securities. A wider public distribution of shares resulting from a larger number of holders will decrease the opportunities for manipulation, and will help create a more liquid market for trading.

Moreover, the Commission believes that the more stringent requirements to be met will prevent the continuous listing of a company that fails to meet the minimum listing standards. Because the BSE will file a delisting application upon a company's failure to meet the minimum beneficial shareholder (600) requirement within 30 days of suspension of dealings in the issue,[11] the liquidity of the marketplace will be preserved and investors will be protected.

In addition, the increased requirements would enable the BSE to verify the financial health of the company by requiring upon listing a higher minimum bid price per share, and a higher amount of tangible assets. For example, the amendment increases the proportion of total assets required ($3 million) to qualify as tangible assets from $1,500,000 to $2,000,000.[12] It also requires that a listed company have either net income of $100,000 in two of the past three years, or net tangible assets in the amount of $2,000,000. Additionally, with respect to an initial public offering, the amendment increases the minimum bid price at the time of listing from $1 to $2 per share. With respect to a company not involved in an initial public offering, a minimum bid price of $2 per share must be maintained for 45 days prior to listing. The Commission believes that these increased listing standards should help ensure that only companies with sufficient financial resources to meet their financial obligations continue to be listed on the Exchange.

Finally, the Commission believes that the proposed rule change will increase the effectiveness of Rule 15c2–6 under

---

requirements within 30 days of suspension, rather than 90 days as originally proposed.

[5] Rule 15c2–6 provides, in part, that as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it is unlawful for a broker or dealer to sell a designated security to, or to effect the purchase of a designated security unless certain conditions are fulfilled, such as, approving a person's account for transactions in designated securities by, among other things, obtaining information concerning the person's financial situation, investment experience, and investment objectives. *See* 17 CFR 240.15c2–6 (1994). The Commission enacted this rule to address the concern with regard to the widespread incidence of misconduct by some broker-dealers in connection with transactions in low-priced stocks, commonly referred to as "penny stocks," that are traded predominantly in the over-the-counter market. Because exchange-listed securities are exempt from the rule, stringent quantitative listing and maintenance standards for exchange-listed securities should help ensure that certain issuers do not circumvent the rule's requirements by seeking to list their securities on regional exchanges.

[6] *See* BSE Chapter XXVII, Paragraph 2260, Section 1.

[7] The Exchange defines a "beneficial holder" as the ultimate owner of the stock even though the stock may be kept in street name. *See* BSE Chapter XXVII, Section 1(C).

[8] A security registered with a national securities exchange may be stricken from listing and registration pursuant to Section 12(d) of the Act, and rule 12d2–2 thereunder. SEC Rule 12d2–2 contains the Commission's procedures for delisting a security from an exchange, including, but not limited to, a requirement to file an application for delisting with the Commission. *See* 15 U.S.C. § 781(d) (1988); 17 CFR 240.12d2–2 (1994).

[9] The Exchange defines "net tangible assets" as stockholders' equity less any intangible assets as described in Paragraph A of Section 1, Chapter XXVII of the BSE Rules. *See also, supra* note 6 and accompanying text.

[10] 15 U.S.C. § 78f(b)(5) (1988).

[11] As stated above, currently, with respect to a company which seeks to list on the BSE following an initial public offering, the Exchange must receive assurances from the company or its representatives that the minimum beneficial stockholder requirement will be met following the distribution of the shares. If not met within six months of listing, the Exchange shall take action to suspend dealings until the stockholder requirement is met.

[12] The Exchange is not changing the listing standard relating to the amount of total assets. Current listing standards require a company to have at least $3,000,000 in total assets.

number of beneficial stockholders to 600 and the number of outstanding public float to 750,000 shares should help to ensure a wide public distribution of an issuer's stock, and a minimum initial level of liquidity in BSE listed securities. A wider public distribution of shares resulting from a larger number of holders will decrease the opportunities for manipulation, and will help create a more liquid market for trading.

Moreover, the Commission believes that the more stringent requirements to be met will prevent the continuous listing of a company that fails to meet the minimum listing standards. Because the BSE will file a delisting application upon a company's failure to meet the minimum beneficial shareholder (600) requirement within 30 days of suspension of dealings in the issue,[11] the liquidity of the marketplace will be preserved and investors will be protected.

In addition, the increased requirements would enable the BSE to verify the financial health of the company by requiring upon listing a higher minimum bid price per share, and a higher amount of tangible assets. For example, the amendment increases the proportion of total assets required ($3 million) to qualify as tangible assets from $1,500,000 to $2,000,000.[12] It also requires that a listed company have either net income of $100,000 in two of the past three years, or net tangible assets in the amount of $2,000,000. Additionally, with respect to an initial public offering, the amendment increases the minimum bid price at the time of listing from $1 to $2 per share. With respect to a company not involved in an initial public offering, a minimum bid price of $2 per share must be maintained for 45 days prior to listing. The Commission believes that these increased listing standards should help ensure that only companies with sufficient financial resources to meet their financial obligations continue to be listed on the Exchange.

Finally, the Commission believes that the proposed rule change will increase the effectiveness of Rule 15c2–6 under the Act.[13] The Commission adopted Rule 15c2–6 to address a growing concern with the widespread incidence of misconduct by some broker-dealers in connection with transactions in low-priced stocks, commonly referred to as "penny stocks." These stocks are traded predominantly in the over-the-counter market and quoted in the "pink sheets." Rule 15c2–6, which became effective on January 1, 1990, imposes various sales practice requirements on broker-dealers who recommend purchases of certain low-priced securities to persons who are not established customers. Because exchange-listed securities or securities authorized for quotation on the National Association of Securities Dealers, Inc.'s Automated Quotation ("NASDAQ") system are exempt from Rule 15c6–6,[14] stringent quantitative listing and maintenance standards for exchange-listed securities should help ensure that certain issuers do not circumvent the requirements of this rule by seeking to list their securities on regional exchanges. As the Commission noted in the release adopting Rule 15c2–6, it expects the exchanges to join it in closely monitoring for fraudulent sales practices in exchange-listed securities in order to prevent the transfer of such activities from the pink sheet market to the exchange market.[15] The new, more stringent listing requirements of the BSE will help prevent low-priced securities of companies without substantial float, assets, and shareholders from evading the application of Rule 15c2–6 by listing on the BSE.

The Commission finds good cause for accelerated approval of Amendment Nos. 1 and 2 to the rule change prior to the thirtieth day after publication of notice of filing thereof. The BSE's proposed listing requirements were published in the **Federal Register** for the full statutory period and no comments were received.[16] Amendment Nos. 1 and 2 modify the rule filing to make certain adjustments to the rule change that are not substantially more burdensome and that leave its overall structure unchanged. The Commission finds that accelerated approval of Amendment Nos. 1 and 2 is necessary in order for the BSE to be able to effectuate its new listing standards in a timely manner upon approval.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of Amendment Nos. 1 and 2 will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–4 and should be submitted by August 9, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–BSE–94–4), including Amendment Nos. 1 and 2 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17523 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Privileges in an Over-the-Counter Issue

July 13, 1994.

On July 7, 1994, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under Section 12(b) of the Act.

---

[11] As stated above, currently, with respect to a company which seeks to list on the BSE following an initial public offering, the Exchange must receive assurances from the company or its representatives that the minimum beneficial stockholder requirement will be met following the distribution of the shares. If not met within six months of listing, the Exchange shall take action to suspend dealings until the stockholder requirement is met.

[12] The Exchange is not changing the listing standard relating to the amount of total assets. Current listing standards require a company to have at least $3,000,000 in total assets.

[13] 17 CFR 240.15c2–6 (1994).

[14] Rule 15c2–6 exempts from its requirements securities that are registered on a national securities exchange that makes transaction reports available pursuant to Rule 11Aa3–1 under the Act or approved for quotation in the NASDAQ system. 17 CFR 240.15c2–6(c) (1994). *See supra* note 5.

[15] *See* Securities Exchange Act Release No. 27160 (August 22, 1989), 54 FR 35468 (August 28, 1989).

[16] *See* Securities Exchange Act Release No. 33827 (March 28, 1994), 59 FR 15754 (April 4, 1994).

[17] 15 U.S.C. § 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1994).

File No.	Symbol	Issuer
7–12628	IDTI . ..	Integrated Device Technologies, Common Stock, $.01 par value.

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7–12629	CYTO ..	Cytogen Corp., Common Stock, $.001 par value.

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before August 3, 1994, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17425 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in Three Over-the-Counter Issues and To Withdraw Unlisted Privileges in Three Over-the-Counter Issues

July 13, 1994.

On July 12, 1994, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–12630	ATML ...	Atmel Corporation, Common Stock, No par value.
7–12631	CGNE ..	Calgene Incorporated, Common Stock, $.001 par value.
7–12632	CYRX ..	Cyrix Corporation, Common Stock, $.004 par value.

The above-referenced issues are being applied for as replacements for the following securities, which form a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issues:

File No.	Symbol	Issuer
7–12633	CHKR ..	Checkers Drive-In, Restaurants Inc., Common Stock, $.001 par value.
7–12634	CMAG .	Casino Magic Corporation, Common Stock, $.014 par value.
7–12635	PCTL ...	Picturetel Corporation, Common Stock, $.014 par value.

Replacement issues are being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before August 3, 1994, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Commentators are asked to address whether they believe the requested grant to UTP as well as the withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17424 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34370; International Series Release No. 685; File No. SR–CBOE–93–55]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Options and Long-Term Options on the CBOE Israeli Index and Long-Term Options on a Reduced-Value CBOE Israeli Index

July 13, 1994.

I. Introduction

On December 8, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the CBOE Israeli Index ("Israeli Index" or "Index"). The Exchange filed Amendment No. 1 to the proposed rule change on April 29, 1994, and Amendment No. 2 on May 12, 1994.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] Amendment No. 2, which supersedes Amendment No. 1, proposes to: (1) reduce the number of components of the proposed Israeli Index ("Index") from 20 to 15; (2) require that the Index be maintained such that at least 85% of the Index, by weight, and at least 80% of the number of components of the Index are eligible for standardized options trading pursuant to CBOE Rule 5.3; (3) classify the Index as a narrow-based index for purposes of CBOE's rules; (4) provide position and exercise limits of 7,500 contracts on the same side of the market for Index options pursuant to CBOE Rule 24.4A; and (5) provide that the Exchange shall submit a proposed rule change pursuant to Section 19 of the Act and Rule 19b–4 thereunder prior to increasing the number of components of the Index to greater than 20 or fewer than 10. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office of Market Supervision ("Office"), Division of Market Regulation ("Division"), Commission, dated May 12, 1994.

Notice of the proposal appeared in the **Federal Register** on June 6, 1994.[4] No comment letters were received on the proposed rule change. The Exchange subsequently filed Amendment No. 3 to the proposed rule change on June 27, 1994,[5] and Amendment No. 4 to the proposed rule change on July 11, 1994.[6] This order approves the Exchange's proposal, as amended.

II. Description of Proposal

A. General

The CBOE proposes to list for trading options on the CBOE Israeli Index, a new securities index developed by the CBOE and based on Israeli stocks and ADRs[7] that are traded on the American Stock Exchange ("Amex"), the New York Stock Exchange ("NYSE"), or are National Market ("NM") securities traded through the facilities of the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). The CBOE also proposes to list either long-term options on the full-value Index or long-term options on a reduced-value Index that will be computed at one-tenth of the value of the Israeli Index ("Israeli LEAPS" or "Index LEAPS").[8] Israeli LEAPS will trade independent of and in addition to

[4] *See* Securities Exchange Act Release No. 34132 (May 31, 1994), 59 FR 29314 (June 6, 1994).

[5] In Amendment No. 3, the Exchange provides that: (1) any time that a replacement security is chosen for the Index, the security will be traded either on a U.S. securities exchange or as a National Market security traded through the facilities of NASDAQ (as defined herein); and (2) all components of the Index shall be "reported securities" under Rule 11Aa3–1 of the Act. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office, Division, Commission, dated June 27, 1994 ("Amendment No. 3").

[6] In Amendment No. 4, the CBOE proposed to alter the composition of the Index by removing Elbit Ltd. and Elron Electronic Industries as components of the Index, and replacing them with (1) Ampal-American Israel, and (2) Electronics for Imaging. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office Division, Commission, dated July 11, 1994.

[7] An ADR is a negotiable receipt which is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. *See* discussion of standards for ADR components, *infra* notes 11 and 29.

[8] LEAPS is an acronym for Long-Term Equity Anticipation Securities. LEAPS are long-term index option series that expire from twelve to thirty-six months from their date of issuance. *See* CBOE Rule 24.9(b)(1).

Notice of the proposal appeared in the Federal Register on June 6, 1994.[4] No comment letters were received on the proposed rule change. The Exchange subsequently filed Amendment No. 3 to the proposed rule change on June 27, 1994,[5] and Amendment No. 4 to the proposed rule change on July 11, 1994.[6] This order approves the Exchange's proposal, as amended.

II. Description of Proposal

A. General

The CBOE proposes to list for trading options on the CBOE Israeli Index, a new securities index developed by the CBOE and based on Israeli stocks and ADRs[7] that are traded on the American Stock Exchange ("Amex"), the New York Stock Exchange ("NYSE"), or are National Market ("NM") securities traded through the facilities of the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). The CBOE also proposes to list either long-term options on the full-value Index or long-term options on a reduced-value Index that will be computed at one-tenth of the value of the Israeli Index ("Israeli LEAPS" or "Index LEAPS").[8] Israeli LEAPS will trade independent of and in addition to regular Israeli Index options traded on the Exchange,[9] however, as discussed below, position and exercise limits of Index LEAPS and regular Index options will be aggregated.

B. Composition of the Index

The Index was designed by the Exchange and is presently based on securities representing fifteen Israeli companies that the Exchange believes are representative of the Israeli economy, all of which trade in the U.S. as either stocks or ADRs. Fourteen of these securities currently trade through NASDAQ as NM securities, and one trades on the NYSE. The Index is price-weighted and will be calculated on a real-time basis using last sale prices.

As of the close of trading on June 28, 1994, the Index was valued at 100.37. As of March 31, 1994, the market capitalizations of the individual securities in the Index ranged from a high of $2.08 billion to a low of $124.11 million, with the mean and median being $566.83 million and $324.83 million, respectively. The market capitalization of all the securities in the Index was $8.50 billion. The total number of shares outstanding for the stocks and ADRs in the Index ranged from a high of 76.07 million shares to a low of 10.38 million shares. The average price per share in the U.S. of the securities in the Index, for the six-month period between October 1, 1993, and March 31, 1994, ranged from a high of $39.75 to a low of $5.34. In addition, the average daily trading volume in the U.S. of the stocks and ADRs in the Index, for the same six-month period, ranged from a high of 750,492 shares per day to a low of 28,444 shares per day. Lastly, no one component accounted for more than 13.12% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 51.25% of the Index's value. The percentage weighting of the lowest weighted component was 1.92% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 19.03% of the Index's value.

C. Maintenance

The Index will be maintained by the CBOE. The CBOE may change the composition of the Index at any time, subject to compliance with the maintenance criteria discussed herein, to reflect the conditions in the market for Israeli securities. If it becomes necessary to replace a security in the Index, the Exchange represents that it will only add new Israeli stocks and/or ADRs that are traded in the U.S. securities markets[10] and will take into account a security's capitalization, liquidity, volatility, and name recognition of the proposed replacement. Further, securities may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. If, however, the Exchange determines to increase the number of Index component securities to greater than twenty or reduce the number of Index component securities to fewer than ten, the proposal provides that the CBOE will submit a rule filing with the Commission pursuant to Section 19(b) of the Act. In addition, in choosing replacement securities for the Index, the CBOE will be required to ensure that at least 85% of the weight of the Index and at least 80% of the number of components continues to be made up of stocks and ADRs that are eligible for standardized options trading.[11] Finally, the CBOE will be required to ensure that each component of the Index is subject

---

pursuant to Section 19 of the Act and Rule 19b–4 thereunder prior to increasing the number of components of the Index to greater than 20 or fewer than 10. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office of Market Supervision ("Office"), Division of Market Regulation ("Division"), Commission, dated May 12, 1994.

[4] *See* Securities Exchange Act Release No. 34132 (May 31, 1994), 59 FR 29314 (June 6, 1994).

[5] In Amendment No. 3, the Exchange provides that: (1) any time that a replacement security is chosen for the Index, the security will be traded either on a U.S. securities exchange or as a National Market security traded through the facilities of NASDAQ (as defined herein); and (2) all components of the Index shall be "reported securities" under Rule 11Aa3–1 of the Act. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office, Division, Commission, dated June 27, 1994 ("Amendment No. 3").

[6] In Amendment No. 4, the CBOE proposed to alter the composition of the Index by removing Elbit Ltd. and Elron Electronic Industries as components of the Index, and replacing them with (1) Ampal-American Israel, and (2) Electronics for Imaging. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office Division, Commission, dated July 11, 1994.

[7] An ADR is a negotiable receipt which is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. *See* discussion of standards for ADR components, *infra* notes 11 and 29.

[8] LEAPS is an acronym for Long-Term Equity Anticipation Securities. LEAPS are long-term index option series that expire from twelve to thirty-six months from their date of issuance. *See* CBOE Rule 24.9(b)(1).

[9] According to the CBOE, the Israeli Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as much, the CBOE concludes, should offer investors a low-cost means of achieving diversification of their portfolios toward or away from Israeli securities. The CBOE believes the Index will provide retail and institutional investors with a means of benefitting from their forecasts of the performance of Israeli securities. Options on the Index also can be utilized by portfolio managers and investors as a means of hedging the risks of investing in Israeli securities.

[10] *See* Amendment No. 3, *supra* note 5.

[11] The CBOE's options listing standards, which are uniform among the options exchanges, provides that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the preceding twelve months; and (4) the U.S. market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE Rule 5.3. With respect to ADRs, in addition to the above standards: (1) the Exchange must have in place a comprehensive surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded; or (2) the trading volume for the three month period preceding the date of listing in the U.S. markets for ADRs overlying any class of the foreign issuer's common stock (on a share-equivalent basis) is at least 50% of the sum of the (i) combined world-wide trading volume for all classes of the foreign issuer's common stock, and (ii) combined trading volume for all ADRs overlying any of these classes of stock; or (3) the SEC must otherwise authorize the listing. In addition, the percentage of the world-wide trading volume for the security underlying an ADR that occurs in the U.S. ADR market must meet a maintenance standard of 30% or more in order for options on that particular ADR to continue to be traded on the CBOE. *See* Securities Exchange Act Release No. 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

to last sale reporting pursuant to Rule 11Aa3–1 of the Act.[12]

D. Applicability of CBOE Rules Regarding Index Options

Except as modified by this order, the rules in Chapter XXIV of the CBOE Rules will be applicable to Israeli Index options and full-value and reduced-value Index LEAPS. Those rules address, among other things, the applicable position and exercise limits, policies regarding trading halts and suspensions, and margin treatment for narrow-based index options.

E. Calculation of the Index

The CBOE Israeli Index is a price-weighted index and reflects changes in the prices of the Index component securities relative to the Index's base date of January 2, 1992. Specifically, the Index value is calculated by adding the prices of the component stocks and ADRs and then dividing this summation by a divisor that is equal to the number of the components of the Index to get the average price. To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes that may result in divisor adjustments include, but are not limited to, stock splits and dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

The Index will be calculated continuously and will be disseminated to the Options Price Reporting Authority ("OPRA") every fifteen seconds by the CBOE, based on the last-sale prices of the component stocks and ADRs.[13] OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron.

The Index value for purposes of settling outstanding regular Index options and Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component securities in their primary market on the last trading day prior to expiration. In the case of securities traded on and through NASDAQ, the first reported sale price will be used. Once all of the component stocks and ADRs have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks or ADRs do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, normally Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component security for purposes of determining the settlement value of the Index, the CBOE will wait until the end of the trading pay on expiration Friday.

F. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[14] Standard options trading hours (8:30 a.m. to 3:15 p.m. Central Standard time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be $5.00 for full-value Index options with a duration of one year or less to expiration.[15] In addition, pursuant to CBOE Rule 24.9, there may be up to six expiration months outstanding at any given time. Specifically, there may be up to three expiration months from the March, June, September, and December cycle plus up to three additional near-term months so that the two nearest term months will always be available. As described in more detail below, the Exchange also intends to list several Index LEAPS series that expire from twelve to thirty-six months from the date of issuance.

Lastly, the options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Accordingly, since options on the Index will settle based upon opening prices of the component securities on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

G. Listing of Long-Term Options on the Full-Value or Reduced-Value Israeli Index

The proposal provides that the Exchange may list long-term Index options that expire from 12 to 36 months from listing based on the full-value Israeli Index or a reduced-value Israeli Index that will be computed at one-tenth the value of the full-value Index. Existing Exchange requirements applicable to full-value and reduced-value LEAPS will apply to full-value and reduced-value Index LEAPS.[16] The current and closing Index value for reduced-value Israeli LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 100.76 would be 10.08 for the Index LEAPS and 100.74 would become 10.07. The reduced-value Index LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. Pursuant to CBOE Rule 24.9, the strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00

H. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is classified as an "industry index" under CBOE rules,[17] Exchange rules that are applicable to the trading of options on narrow-based indexes will apply to the trading of Israeli Index options and Israeli Index LEAPS. Specifically, Exchange rules governing margin requirements,[18] position and exercise limits,[19] and trading halt procedures[20] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that, for purposes of determining whether a given position in reduced-value Index LEAPS complies with applicable position and exercise limits, positions in reduced-value Index LEAPS will be aggregated with positions in the full-value Index options. For these purposes, ten reduced-value contracts will equal one full-value contract.

I. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in regular Index options and in full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[21]

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[22] Specifically, the Commission finds that the trading of Israeli Index options, including full-value and reduced-value Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with Israeli securities.[23]

---

[12] *See* Amendment No. 3, *supra* note 5.

[13] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the CBOE will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[14] A European-style option can be exercised only during a specified period before the option expires.

[15] For a description of the strike price intervals for reduced-value Index options and long-term Index options, *See infra*, Section II.G.

[16] *See* CBOE Rule 24.9(b).

[17] *See* CBOE Rule 24.1(i).

[18] Pursuant to CBOE Rule 24.11, the margin requirements for the Index options will be: (1) for short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

[19] Pursuant to CBOE Rules 24.4A and 24.5, respectively, the position and exercise limits for the Index options will be 7,500 contracts, unless the Exchange determines, pursuant to Rules 24.4A and 24.5 that a lower limit is warranted.

[20] Pursuant to CBOE Rule 24.7, the trading on the CBOE of Index options may be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index value are halted or suspended

[21] The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD"); the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[22] 15 U.S.C. 78f(b)(5)(1988).

[23] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options and full-value Index LEAPS will provide investors with a hedging vehicle that should reflect the overall movement of Israeli stocks and ADRs in the U.S. securities markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions regarding Israeli securities traded in the U.S. securities markets, allowing them to establish positions or increase

Exchange's other index options will also be used to monitor trading in regular Index options and in full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[21]

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[22] Specifically, the Commission finds that the trading of Israeli Index options, including full-value and reduced-value Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with Israeli securities.[23]

The trading of options on the Israeli Index, including full-value and reduced-value Index LEAPS, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE adequately has addressed these concerns.

A. Index-Design and Structure

The Commission finds that the Israeli Index is a narrow-based index. The Israeli Index is composed of only fifteen securities, all of which represent Israeli companies.[24] Accordingly, in light of the limited number of stocks in the Index, the Commission believes it is proper to classify the Israeli Index as narrow-based and apply CBOE's rules governing narrow-based index options to trading in the Index options.[25]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component securities significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the components that comprise the Index are actively traded, with an average daily trading volume for the period from October 1, 1993 through March 31, 1994, ranging from a high of 750,492 shares per day to a low of 28,444 shares per day. Second, the market capitalizations of the securities in the Index are very large, ranging from a high of $2.08 billion to a low of $124.11 million as of March 31, 1994, with the mean and median being $566.83 million and $324.83 million, respectively. Third, although the Index is only comprised of fifteen component securities, no one particular security or group of securities dominates the Index. Specifically, no one stock or ADR comprises more than 13.12% of the Index's total value and the percentage weighting of the five largest issues in the Index account for 51.25% of the Index's value.[26] Fourth, at least 85% of the securities in the Index, by weight, and at least 80% of the number of components of the Index, must be eligible for standardized options trading. This proposed maintenance requirement will ensure that the Index is substantially comprised of options eligible securities. Fifth, if the CBOE increases the number of component securities to more than twenty or decreases that number to less than ten, the CBOE will be required to seek Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price or expiration month series of Israeli Index options and Index LEAPS. This will help protect against material changes in the composition and design of the Index that might adversely affect the CBOE's obligations to protect investors and to maintain fair and orderly markets in Israeli Index options and Index LEAPS. Sixth, the CBOE will be required to ensure that each component of the Index is subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act.[27] This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that the expense of attempting to manipulate the value of the Israeli Index in any significant way through trading in component stocks, ADRs, or securities underlying ADRs (options on those securities) coupled with, as discussed below, existing mechanisms to monitor trading activity in those securities, will help deter such illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Israeli Index options (including full-value and reduced-value Israeli LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently

---

[21] The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD"); the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[22] 15 U.S.C. 78f(b)(5)(1988).

[23] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options and full-value Index LEAPS will provide investors with a hedging vehicle that should reflect the overall movement of Israeli stocks and ADRs in the U.S. securities markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions regarding Israeli securities traded in the U.S. securities markets, allowing them to establish positions or increase existing positions in such markets in a cost effective manner. Moreover, the Commission believes that the reduced-value Index LEAPS, which will be traded on an index computed at one-tenth the value of the Israel Index, will serve the needs of retail investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.

[24] The reduced-value Israeli Index, which is imposed of the same component securities as the Index and calculated by dividing the Index value by ten, is identical to the Israeli Index.

[25] *See supra* notes 17 through 20, and accompanying text.

[26] For an index with a significantly greater number of securities than fifteen components, the Commission might come to a different conclusion if only a few securities accounted for a significant portion of the index's weighting. Further, if an index contained only a few stocks, the Commission might question whether it can be traded as an index product.

[27] *See* Amendment No. 3, *supra* note 5.

traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Israeli index options and full-value and reduced-value Israeli Index LEAPS.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the exchange(s) trading the securities underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation.[28] In this regard, the CBOE, NYSE, Amex, and NASD are all members of the ISG, which provides for the exchange of all necessary surveillance information.[29] Further, as to present and future ADR components of the Index,[30] either the Exchange will have comprehensive surveillance sharing agreements with the primary foreign markets for the securities underlying the ADRs or the U.S. will be the relevant market for surveillance purposes.[31]

D. Market Impact

The Commission believes that the listing and trading of Israeli Index options, including full-value and reduced-value Index LEAPS, on the CBOE will not adversely impact the underlying securities markets.[32] First, as described above, for the most part, no one security or group of securities dominates the Index. Second, because at least 85% of the numerical value of the Index and at least 80% of the components of the Index must be accounted for by securities that meet the Exchange's options listing standards, and because each of the component securities must be subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act,[33] the component securities generally will be actively-traded, highly-capitalized securities. Third, the 7,500 contract position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns.

Lastly, the Commission believes that settling expiring Israeli Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.[34]

The Commission finds good cause for approving Amendment Nos. 3 and 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 3 provides that only securities that are subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act and that are traded in the U.S. either on an exchange or through NASDAQ as NM securities may be added to the Index. The Commission believes that these requirements strengthen the customer protection and surveillance aspects of the proposal by ensuring that the value of the Index that is disseminated is based on the most current component pricing information and that surveillance will be facilitated through the ISG.[35] Amendment No. 4 merely substitutes two of the originally proposed components of the Index with two new components that satisfy the eligibility and maintenance criteria discussed above. As a result, the Commission believes that good cause exists for approving Amendment Nos. 3 and 4 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3 and 4. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR–CBOE–93–55 and should be submitted by [insert date 21 days after the date of this publication].

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–CBOE–93–55), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17520 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

[28] Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[29] *See* note 21, *supra*. If the prices of the ADR components, or the composition of the Index, should change so that greater than 20% of the weight of the Index would be represented by ADRs whose underlying securities were not the subject of a comprehensive surveillance sharing agreement with the CBOE, then it would be difficult for the Commission to reach the conclusions reached in this order and the Commission would have to determine whether it would be suitable for the Exchange to continue to trade options on this Index. The CBOE should, accordingly, notify the Commission immediately if more than 20% of the numerical value of the Index is represented by ADRs whose underlying securities are not subject to a comprehensive surveillance sharing agreement. Such a change in the current relative weights of the Index or in the composition of the Index may warrant the submission of a rule filing pursuant to Section 19 of the Act. In determining whether a particular ADR is subject to a comprehensive surveillance sharing agreement *see, e.g.*, Securities Exchange Act Release Nos. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992); and 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[30] Presently, Teva Pharmaceuticals is the only ADR component of the Index.

[31] *See* Securities Exchange Act Release Nos. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992); and 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994).

[32] In addition, the CBOE has represented that the CBOE and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and Index LEAPS. *See* Memorandum from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, Director, Product Development, Research Department, CBOE, dated February 14, 1994.

[33] *See* Amendment No. 3, *supra* note 5.

[34] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[35] *See supra* note 21.

[36] 15 U.S.C. 78s(b)(2) (1988).

[37] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34363; File No. SR–NYSE 93–40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposing Rule Change To Amend Exchange Rule 95 to Add New Intra-Day Trading Provisions

July 13, 1994.

I. Introduction

On October 28, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 95 ("Discretionary Transactions") to add new intra-day trading provisions.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33372 (December 23, 1993), 58 FR 69430 (December 30, 1993). Two comment letters were received on the proposal.[3] This order approves the proposed rule change.

II. Description of the Proposal

Under Exchange Rule 95, and NYSE Floor broker cannot effect a transaction if that broker has discretion regarding the choice of security to be bought or sold; the total amount of the security to be bought or sold; or whether the transaction shall be a purchase or a sale. Currently, there are no provisions, in Rule 95 or otherwise, specifically governing the practice of intra-day trading. The term "intra-day trading" refers to the practice whereby a market participant places orders on both sides of the market and attempts to garner the spread by buying at the bid and selling at the offer.

The NYSE proposes to amend Rule 95 to add new intra-day trading provisions. These provisions, as discussed below, will apply only when a Floor broker simultaneously represents, for the same account,[4] market or limit orders on both sides (*i.e.*, a buy order and a sell order) of a minimum variation market.[5]

Under the NYSE proposal, if a Floor broker acquires a position on behalf of an intra-day trader's account, Rule 95(c) will place certain restrictions on how the broker can liquidate or cover that position during the same trading session. Specifically, the broker will be

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* letter from Daniel P. Barry to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated November 10, 1993 ("Barry comment letter"); and anonymous letter to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, received on November 18, 1993 ("anonymous comment letter").

[4] For purposes of Rule 95, the NYSE will define the term "account" to include any account in which the same person or persons is directly or indirectly interested. The NYSE has indicated that the Rule 95 amendments will not apply to a Floor broker who simultaneously represents an agency order on one side of a minimum variation market and a principal order (or an agency order for a different "account," as defined above) on the other side of the market. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on March 9, 1994.

[5] NYSE Rule 62 sets forth the minimum variation permitted for securities traded on the Exchange.

"Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 95 ("Discretionary Transactions") to add new intra-day trading provisions.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33372 (December 23, 1993), 58 FR 69430 (December 30, 1993). Two comment letters were received on the proposal.[3] This order approves the proposed rule change.

II. Description of the Proposal

Under Exchange Rule 95, and NYSE Floor broker cannot effect a transaction if that broker has discretion regarding the choice of security to be bought or sold; the total amount of the security to be bought or sold; or whether the transaction shall be a purchase or a sale. Currently, there are no provisions, in Rule 95 or otherwise, specifically governing the practice of intra-day trading. The term "intra-day trading" refers to the practice whereby a market participant places orders on both sides of the market and attempts to garner the spread by buying at the bid and selling at the offer.

The NYSE proposes to amend Rule 95 to add new intra-day trading provisions. These provisions, as discussed below, will apply only when a Floor broker simultaneously represents, for the same account,[4] market or limit orders on both sides (*i.e.*, a buy order and a sell order) of a minimum variation market.[5]

Under the NYSE proposal, if a Floor broker acquires a position on behalf of an intra-day trader's account, Rule 95(c) will place certain restrictions on how the broker can liquidate or cover that position during the same trading session. Specifically, the broker will be required to obtain a new liquidating order (*i.e.*, one entered subsequent to the acquisition of the contra-side position) from his or her customer.[6] Thereafter, proposed Rule 95(d) will require that the Floor broker must execute the liquidating order entered pursuant to Rule 95(c) *before* he or she can execute any other order for the same account on the same side of the market as that liquidating order.[7] Neither provision of Rule 95, however, will apply to the execution of an order to liquidate or cover a position carried over from a previous trading session; a position assumed as part of a strategy relating to bona fide arbitrage; or a position assumed in reliance on the exemption for block positioners.[8]

Finally, the Exchange proposes to clarify its existing rule prohibiting members from handling discretionary transactions.[9] In particular, Paragraph 95.30 provides examples of what types of orders a broker can handle simultaneously, without violating Rule 95's prohibition against a broker choosing whether a transaction will be a purchase or a sale.

The NYSE states that the amendments to Rule 95 are intended to address trading situations where a Floor broker may be perceived as having an advantage over other market participants in that he or she may be able to trade for the same customer without leaving the Crowd. According to the NYSE, by requiring the entry of a new liquidating order, these amendments can be expected to minimize any such perceived advantage. The Exchange states that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest.

III. Comments Received and NYSE Response

The Commission received two comment letters on the proposed rule change, one from a public customer who trades stocks on the NYSE and another from an anonymous NYSE employee.[10] These letters raise various issues and concerns with respect to the NYSE proposal.

In his letter, Mr. Barry, the public customer, recommends that the proposed rule change be disapproved and argues that the amendments to Rule 95 are anti-competitive. The commenter provides two examples in support of his position. In the first scenario, an individual investor places buy and sell orders at the minimum variation with a "two-dollar broker;" there are no orders on the specialist's limit order book at the best bid or offer. The Barry comment letter asserts that, under the NYSE proposal, the specialist could freely buy and sell at the minimum variation for his own account, but the individual investor could not do so. According to the commenter, this is equivalent to allowing the specialist to trade ahead of public orders on the book.

In the second scenario, the commenter begins from the premise that NYSE limit order books (particularly for bond funds, which he contends are the focus of the proposed amendments to Rule 95) are dominated by large orders of other specialists. His letter states that, as a result, the public must wait behind the professionals or use two-dollar brokers. From the commenter's perspective, the NYSE proposal will allow those market participants with the most resources to continue to engage in minimum variation trading, but will force two-dollar brokers and their retail customers out of the "game" through regulation.

The Barry comment letter also argues that, if there is a problem with minimum variation trading, the practice

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* letter from Daniel P. Barry to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated November 10, 1993 ("Barry comment letter"); and anonymous letter to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, received on November 18, 1993 ("anonymous comment letter").

[4] For purposes of Rule 95, the NYSE will define the term "account" to include any account in which the same person or persons is directly or indirectly interested. The NYSE has indicated that the Rule 95 amendments will not apply to a Floor broker who simultaneously represents an agency order on one side of a minimum variation market and a principal order (or an agency order for a different "account," as defined above) on the other side of the market. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on March 9, 1994.

[5] NYSE Rule 62 sets forth the minimum variation permitted for securities traded on the Exchange.

[6] To obtain a new order, the Floor broker must leave the trading Crowd. The new liquidating order must be time-recorded upstairs (if initially received there) and upon receipt on the trading Floor. Telephone conversation between Donald Seimer, Director, Market Surveillance, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on March 9, 1994. The new order must be marked "BC" for a buy order to cover a short position, or "SLQ" for a sell order to liquidate a long position.

[7] Paragraph 95.20 contains the following example:

In a minimum variation market, a Floor broker simultaneously represents a 5,000 share buy order and a 5,000 share sell short order for the same account. If the broker sells 2,000 shares short, he or she must obtain a 2,000 share "BC" order to cover that position that day. Until the "BC" order has been executed, and the short position has been unwound, the broker cannot execute any part of the original 5,000 share buy order.

For discussion of exceptions to the above requirements, *see infra*, note 8 and accompanying text.

[8] Under the circumstances described above, *see supra* note 7, the broker has carried a 2,000 share short position over from a previous trading session. If the broker sells 3,000 shares short, he or she still must obtain a 3,000 share "BC" order to cover that position that day. However, in this case, 2,000 shares of the original 5,000 share buy order may be executed to cover the carry-over position. Thereafter, the "BC" order must be executed, and the short position unwound, before the broker can execute the balance of the original buy order.

[9] Telephone conversation between Brian McNamara, Managing Director, Market Surveillance, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on November 19, 1993.

[10] *See supra*, note 3.

should be restricted not only for the NYSE, but also for the third market (*i.e.*, over-the-counter trading of listed stocks) and broker-dealers who internalize their order flow. Above all, the commenter recommends that whatever restriction is imposed not single out small public investors.

Finally, the commenter questions whether the NYSE has the authority to prohibit him from entering buy and sell orders at the minimum variation, or to dictate that such orders can be placed on the specialist's book but not given to a two-dollar broker. In his opinion, the NYSE's actions create the impression that the Exchange has been influenced by political pressure from the specialist community. The commenter predicts that approval of the proposed rule change will grant specialists a monopoly on commission dollars from trades in their specialty stocks, and will allow them to dominate the limit order book in their non-specialty stocks.

The second commenter, an anonymous NYSE employee, states that the purpose of his letter is to inform the Commission of the "real story" leading up to the proposed amendments to Rule 95. According to the commenter, this story casts doubt on the effectiveness of self-regulation and Commission oversight of the self-regulatory organizations. In brief, the letter alleges that certain Exchange constituencies (*e.g.*, specialists) pressured NYSE staff and a committee of the Exchange's Board of Directors ("Board") to find a way to stop intra-day trading. The commenter suggests, among other things, that this practice has become so controversial because the specialist community is losing trading opportunities to public customers who participate when there is a market disparity, and losing commission dollars to the two-dollar brokers who execute their orders.

The anonymous comment letter notes that the Exchange staff initially drafted rules similar to the proposal before the Commission which, in the commenter's opinion, would have eliminated the two-dollar broker's (and thus the small public customer's) ability to engage in minimum variation trading, allegedly to protect the specialists' business. According to the anonymous comment letter, membership outrage forced the Exchange to withdraw its initial proposal; thereafter, NYSE staff drafted these amendments to Rule 95 and submitted them to the Commission without seeking comment from the Floor.

The NYSE responded to the issues raised by the two comment letters.[11] First, in response to Mr. Barry's concerns about the proposal's effect on public customers, the NYSE contends that the amendments to Rule 95 are not intended to preclude individual investors, or anyone else, from engaging in the practice of minimum variation trading. In this regard, the NYSE notes that no distinction is made between orders entered by individuals and those entered by so-called professionals.

According to the NYSE response letter, the proposed amendments are intended to address the perception that a Floor broker, who simultaneously represents buy and sell orders at the minimum variation for the same customer, may have an advantage over other market participants, such as individual investors, because that broker can trade on both sides of the market without leaving the Crowd. The NYSE argues that, by requiring the broker to obtain a new liquidating order, the proposed rule change should minimize any such possible advantage from the intra-day trading strategy, and thus should enhance investors' confidence in the fairness and orderliness of the Exchange market.

The NYSE letter also responds to the anonymous commentator's concerns about its internal rule development process. The NYSE states that the amendments to Rule 95 were developed by an advisory committee to the Exchange Board that included representatives from all major constituent groups. That panel's recommendations were reviewed by the Floor trading community and the appropriate constituent committees, before being approved by the Board and authorized for filing with the Commission. In the NYSE's opinion, all major constituent groups had the opportunity to contribute to the rule development process, and the proposal that was submitted to the Commission reflects a consensus among their views.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[12] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission previously has recognized that it is not inconsistent with the Act for a self-regulatory organization ("SRO") to limit certain types of trading activity in order to minimize interference with the execution of public customer orders and preserve the quality of its market.[13] The NYSE believes that intra-day trading constitutes activity that can interfere with public customer orders and present the perception of an unfairness trading advantage to larger market participants. Under current NYSE rules, orders for the account of intra-day traders can compete, often on equal footing, with orders for the account of retail investors.[14] To the extent that the public may have to share incoming order flow with intra-day traders, customer orders may, on the whole, be allotted fewer shares than they otherwise would receive.

The Commission believes that it is not unreasonable for the NYSE to be concerned about the impact of such trading on public participation in its market. Intra-day traders place orders on both sides of the market; by executing one order immediately after the other, their floor broker can garner the spread for them without ever leaving the trading crowd. The NYSE argues, and the Commission agrees, that such "instantaneous representation" may create a perception that intra-day traders have a time and place advantage over other market participants. Such a time and place advantage has, in the past, led the Commission to place restrictions on members' floor trading.[15]

After careful review, the Commission has concluded that the NYSE proposal could minimize intra-day traders' perceived time and place advantage, thereby enhancing investors' confidence in the fairness and orderliness of the Exchange market. Under the proposed amendments to Rule 95, market participants whose conduct reasonably suggests that they are engaged in intra-day trading activity will be subject to certain new requirements. Specifically, a floor broker who acquires a position for an account, while simultaneously representing orders at the minimum variation for that same account, will be required to obtain a new order to liquidate or cover that position during that trading session. This, in effect, forces the broker to leave the trading Crowd and re-establish contact with the customer, thus ending the broker's continuous representation of orders at the trading post. This extra responsibility will dampen the ability of floor brokers to represent two-sided orders of intra-day traders.

The Commission agrees with the NYSE that this restriction will lessen the perception that professionals or institutional participants have a large time and place advantage over small public customers. Intra-day trading in a strategy employed by professionals or sophisticared traders. Intra-day orders can crowd-out small customer limit orders and delay or prevent their execution. This provides the perception that public customer orders are being disadvantaged by the time and place advantage of intra-day traders. By lessening this advantage, the NYSE proposal should increase public confidence in the market.

The Commission also notes that the NYSE proposal is very limited in scope. It does not prohibit any market participant from engaging in minimum variation trading. Rather, the amendments to Rule 95 are narrowly drafted to ensure that market participants are not receiving an undue advantage from the method in which they engage in such trading activity.

Moreover, in the Commission's opinion, the NYSE proposal contains sufficient safeguards to ensure that the new requirements will not impinge upon bona fide short-term trading

---

[11] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sandra Sciole, Special Counsel, Division of Market Regulation, SEC, dated March 16, 1994 ("NYSE response letter").

[12] 15 U.S.C. § 78f(b) (1988).

[13] *See, e.g.*, Securities Exchange Act Releases Nos. 33678 (February 24, 1994), 59 FR 10192 (March 3, 1994) (File No. SR–NYSE–92–13) (approving NYSE proposal to identify and preclude the use of certain odd-lot trading practices, including intra-day trading, that the NYSE believes are inconsistent with the purpose of its odd-lot order execution system); and 25842 (June 23, 1988), 53 FR 24539 (June 29, 1988) (File No. SR–NYSE–87–18) (approving NYSE telephone policy which, among other things, prohibits members from using portable telephones on the Exchange floor, on the grounds that such a large time and place advantage for relatively few large investors could create a perception of unfairness or inequality).

[14] NYSE Rule 72 provides for the manner in which bids and offers at the same price will be sequenced for execution. A member who makes the first bid or offer at a particular price has "priority" at that price, which means that the member is the first one in the market entitled to receive an execution at that price. If no member can claim priority, all members who are bidding or offering at a particular price are deemed to be on "parity" with each other, or equivalent in status. When members are on parity, a member whose bid or offer is larger than other bids or offers may claim "precedence based on size" and thereby be entitled to the next execution at that price.

Accordingly, if size precedence is not invoked, orders for the account of intra-day traders (except for those orders required to yield pursuant to Section 11(a)(1)(G) of the Act and the rules thereunder) may be on parity with public customer orders.

[15] *See, e.g.*, SEC Rule 11a1–1(T).

the Commission agrees, that such "instantaneous representation" may create a perception that intra-day traders have a time and place advantage over other market participants. Such a time and place advantage has, in the past, led the Commission to place restrictions on members' floor trading.[15]

After careful review, the Commission has concluded that the NYSE proposal could minimize intra-day traders' perceived time and place advantage, thereby enhancing investors' confidence in the fairness and orderliness of the Exchange market. Under the proposed amendments to Rule 95, market participants whose conduct reasonably suggests that they are engaged in intra-day trading activity will be subject to certain new requirements. Specifically, a floor broker who acquires a position for an account, while simultaneously representing orders at the minimum variation for that same account, will be required to obtain a new order to liquidate or cover that position during that trading session. This, in effect, forces the broker to leave the trading Crowd and re-establish contact with the customer, thus ending the broker's continuous representation of orders at the trading post. This extra responsibility will dampen the ability of floor brokers to represent two-sided orders of intra-day traders.

The Commission agrees with the NYSE that this restriction will lessen the perception that professionals or institutional participants have a large time and place advantage over small public customers. Intra-day trading in a strategy employed by professionals or sophisticared traders. Intra-day orders can crowd-out small customer limit orders and delay or prevent their execution. This provides the perception that public customer orders are being disadvantaged by the time and place advantage of intra-day traders. By lessening this advantage, the NYSE proposal should increase public confidence in the market.

The Commission also notes that the NYSE proposal is very limited in scope. It does not prohibit any market participant from engaging in minimum variation trading. Rather, the amendments to Rule 95 are narrowly drafted to ensure that market participants are not receiving an undue advantage from the method in which they engage in such trading activity.

Moreover, in the Commission's opinion, the NYSE proposal contains sufficient safeguards to ensure that the new requirements will not impinge upon bona fide short-term trading strategies. In this regard, the Commission notes that these provisions of Rule 95 will not apply in certain situation where orders have been placed on both sides of a minimum variation market for purposes unrelated to intra-day trading.[16]

Similarly, the Commission believes that Paragraph 95.30, by providing specific examples of the types of orders a Floor broker may, and may not, represent simultaneously, will clarify the NYSE's policy regarding discretionary transactions. In the Commission's opinion, this should facilitate the Exchange's efforts to detect and deter violations of Rule 95.

Finally, the Commission does not agree with the commenters' arguments in opposition to the proposed rule change. As part of its review of the NYSE proposal, the Commission specifically evaluated the possible effects on small public customer orders. The Commission is not persuaded that the amendments to Rule 95 were intended to disadvantage public customers. In fact, the opposite is the case. As a practical matter, public customers will be a main beneficiary if the Rule 95 amendments successfully enhances the perception of fairness of the Exchange market and the ability of public customer limit orders to be executed.

In regard to the comment letters' allegations about the influence certain Exchange constituencies may have exerted on the rule development process, the Commission is satisfied with the NYSE's response.[17] In light of the Exchange's representations and all available facts, the Commission has no basis to conclude that the NYSE did not follow proper procedures in the development, approval and submission of the proposed rule change.

In sum, although the Commission recognizes that there may be a variety of approaches to address the concerns raised by intraday trading, the Commission believes that the proposed rule change adequately balances the needs of market participants to effectuate their trading strategies unhampered, with concerns about the potential for certain market participants to have unfair time and place advantages by using Floor brokers to garner the spread in minimum variation markets. For these reasons, as discussed more fully above, the Commission finds that the new intra-day trading provisions of Rule 95 are consistent with the Act in that they will further the protection of investors and the public interest and will remove impediments to and perfect the mechanism of a free and open market.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSE–93–40) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17430 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34351; International Series Release No. 680; File No. SR–OCC–94–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Inverse Foreign Currency Options and Inverse Cross-rate Foreign Currency Options

July 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 13, 1994, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to accommodate within OCC's existing By-Laws and Rules the clearance and settlement of inverse foreign currency options and inverse cross-rate foreign currency options.

---

[15] *See, e.g.*, SEC Rule 11a1–1(T).

[16] *See, e.g.*, note 8 and accompanying test.

[17] In particular, the Commission has not been persuaded by the commenters' allegations regarding the NYSE's motives for allowing specialists to continue to garner the bid-ask spread. Specialists differ from intra-day traders in two respects. First, specialists are under a continuous obligation to maintain fair and orderly markets and are subject to affirmative and negative market making responsibilities. Their ability to quote a two-sided market is integral to their market making function. Second, they are required to yield to public customer orders in all circumstances.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to accommodate within OCC's existing By-Laws and Rules the clearance and settlement of inverse foreign currency and cross-rate foreign currency options proposed for trading by the Philadelphia Stock Exchange ("PHLX").[2] Trading in these inverse foreign currency and cross-rate foreign currency options will be offered through the PHLX's customized option facility.

As explained in the PHLX proposal, existing foreign currency option contracts are quoted in U.S. dollars ("USDs"), premium is paid in USDs, and the foreign currency is delivered upon exercise. The proposed inverse foreign currency option contracts will be quoted in the foreign currency, premium will be paid in the foreign currency, and U.S. dollars will be delivered upon exercise. For instance, the existing French franc ("FF")/USD foreign currency option contract is quoted in USD, premium is paid in USD, and FF are delivered upon exercise. Whereas the inverse USD/FF contract will be quoted in FF, the premium will be paid in FF, and USD will be delivered upon exercise.

The proposed inverse cross-rate foreign currency option contract will be the inverse of existing cross-rate foreign currency option contracts. For instance, the existing Deutsche mark ("DM")/Japanese Yen ("JY") contract is quoted in JY, premium is paid in JY, and DM are delivered upon exercise. Whereas the inverse contract, the JY/DM contract, will be quoted in DM, premium will be paid in DM, and JY will be the deliverable currency. The other inverse cross-rate foreign currency contracts will be the DM/British pound ("BP") and the JY/BP contracts.

From a clearance and settlement perspective, inverse foreign currency and cross-rate foreign currency options will be processed and margined like existing foreign currency and cross-rate foreign currency option contracts and in accordance with existing banking arrangements. Accordingly, only a few of OCC's By-Laws and Rules need to be adjusted to accommodate inverse foreign currency options and inverse cross-rate foreign currency options. A description of those proposed changes follows.

A definition of currency is being added to Article I, Section 1 ("Definitions") of OCC's By-Laws. The proposed definition of currency will include any standard unit of the official medium of exchange of a sovereign government including the European Currency Unit ("ECU"). The addition of the term currency is necessary in order to clarify that with the addition of inverse contracts the price quote, the premium to be paid, and the deliverable or underlying currency for a foreign currency option contract will in some cases be in terms of USDs and in other cases will be in terms of a foreign currency. For example, existing foreign currency options are quoted in USDs, premium is paid in USDs, and a foreign currency is the deliverable or underlying currency. Whereas in the case of inverse foreign currency options, the price will be quoted in a foreign currency, premium will be paid in a foreign currency, and USDs will be the underlying or deliverable currency. Accordingly, where appropriate, references to foreign currency in OCC's By-Laws and Rules as the deliverable or the underlying currency for a foreign currency option contract and references to USDs as the trading currency for a foreign currency option contract are in many cases being changed to the more general term currency. Other references to foreign currency or to USDs are being changed, where appropriate, to the more generic terms trading currency, underlying currency, price, or settlement amount.

The term trading currency in Article I, Section 1 of OCC's By-Laws is being amended. The amended definition of trading currency will be the currency (*i.e.*, rather than the foreign currency) in which premium and/or exercise prices are denominated for a class of foreign currency options or cross-rate foreign currency options. The proposed changes will clarify that the two components of the trading currency, the premium and the exercise price, may be either a foreign currency or USDs. Because PHLX is proposing to offer percentage quoting for all customized foreign currency options, the premium and the exercise price will not longer always be in the same currency. In addition, the term trading currency is being deleted from Article XX ("Cross-Rate Foreign Currency Options"), Section 1 of OCC's By-Laws because that term will be defined in Article I, Section 1. A definition of underlying currency also is being added to Article I, Section 1, and is being deleted from the Definition Sections of Article XV ("Foreign Currency Options") and Article XX.

A definition of settlement time is being added to the Definition Section of Article XV. In order to accommodate inverse foreign currency options, such definition will distinguish between the settlement time for foreign currency options settling in the United States and foreign currency options settling outside the United States. Specifically, foreign currency options setting in the United States will settle at 9:00 A.M. Central Time (10:00 A.M. Eastern Time) on the first business day immediately following the day on which OCC receives a report of a matched trade with respect to such transaction from the exchange on which such transaction was effected. Foreign currency options settling outside the United States will settle at 11:00 A.M. local time in the country of origin of the trading currency or at such other time as OCC may specify on the first foreign business day in that country immediately following the day on which OCC receives a report of a matched trade with respect to such transaction from the exchange on which such transaction was effected. Because of this difference in settlement times, the definition of settlement time in Article I, Section 1 is being amended to clarify that such time does not apply to foreign currency option settling outside the United States.

The definition of the term class of options in the Definitions Sections of Article XV and Article XXII ("Cash-Settled Foreign Currency Options") is being amended to provide that with respect to foreign currency and cash-settled foreign currency options, a class of options means all option contracts of the same type and style covering the same underlying currency and having the same unit of trading and the same trading currency. Under this amended definition, existing foreign currency contracts covering the same underlying foreign currency will be in one class, and the inverse contracts, which will have a different trading currency, will be in another class. For example, all USD/FF contracts will be in one class of options, and all FF/USD contracts will be in another class.

Language respecting the netting scheme for foreign currency option settlement obligations in Rule 1605 ("Allocation of Exercise Settlement Obligations With Respect to Foreign Currency Options") is being amended to accommodate inverse foreign currency options. Specifically, the proposed changes to Rule 1605(a)(2) will clarify that netting will first occur within the same class of options (as is currently done). However, in accordance with the proposed modifications to the definition of class of options in order to be in the same class the options must have the same trading currency in addition to being of the same type and covering the same unit of trading of the same currency. The proposed changes to Rule 1605(a)(3) will clarify that following the netting of settlement obligations within a class, netting will occur across classes (as is currently done) of foreign currency and inverse foreign currency options.

The Introduction to Chapter XVI, which governs foreign currency options, is being amended to clarify that with the introduction of inverse foreign currency options, the rules of that chapter will be applicable only to option contracts where either the trading currency or the underlying security is a foreign currency and the other side of the contract is USDs. Likewise, the Introduction to Chapter XXIII, which governs cash-settled foreign currency options, is being amended to clarify that with the introduction of inverse options, the rules of that chapter will be applicable only to cash-settled option contracts where either the trading currency or the underlying security is a foreign currency. Finally, the Introduction to Chapter XXI, which governs cross-rate foreign currency options, is being amended to clarify that with the commencement of percentage quoting, premium and exercise prices of cross-rate foreign currency options will not always be in the same currency.

The proposed rule change is consistent with the purposes and the requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because it will provide for the prompt and accurate settlement of transactions in inverse foreign currency and cross-rate foreign currency options and will provide for the safeguarding of related securities and funds. The proposed rule change meets such requirements by establishing a framework in which existing, reliable OCC systems, rules, and procedures will be extended to the processing of such inverse options.

[2] For a description of the PHLX proposed rule change, refer to Securities Exchange Act Release No. 34308 (July 5, 1994), 59 FR 35551, [File No. SR-PHLX-94-18] (notice of filing of proposed rule change).

Language respecting the netting scheme for foreign currency option settlement obligations in Rule 1605 ("Allocation of Exercise Settlement Obligations With Respect to Foreign Currency Options") is being amended to accommodate inverse foreign currency options. Specifically, the proposed changes to Rule 1605(a)(2) will clarify that netting will first occur within the same class of options (as is currently done). However, in accordance with the proposed modifications to the definition of class of options in order to be in the same class the options must have the same trading currency in addition to being of the same type and covering the same unit of trading of the same currency. The proposed changes to Rule 1605(a)(3) will clarify that following the netting of settlement obligations within a class, netting will occur across classes (as is currently done) of foreign currency and inverse foreign currency options.

The Introduction to Chapter XVI, which governs foreign currency options, is being amended to clarify that with the introduction of inverse foreign currency options, the rules of that chapter will be applicable only to option contracts where either the trading currency or the underlying security is a foreign currency and the other side of the contract is USDs. Likewise, the Introduction to Chapter XXIII, which governs cash-settled foreign currency options, is being amended to clarify that with the introduction of inverse options, the rules of that chapter will be applicable only to cash-settled option contracts where either the trading currency or the underlying security is a foreign currency. Finally, the Introduction to Chapter XXI, which governs cross-rate foreign currency options, is being amended to clarify that with the commencement of percentage quoting, premium and exercise prices of cross-rate foreign currency options will not always be in the same currency.

The proposed rule change is consistent with the purposes and the requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because it will provide for the prompt and accurate settlement of transactions in inverse foreign currency and cross-rate foreign currency options and will provide for the safeguarding of related securities and funds. The proposed rule change meets such requirements by establishing a framework in which existing, reliable OCC systems, rules, and procedures will be extended to the processing of such inverse options.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approved the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–OCC–94–05 and should be submitted by August 9, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17427 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34364; File No. SR–PSE–93–13]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to a Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Flexible Exchange Options ("FLEX Options") on the Wilshire Small Cap Index and the PSE Technology Index

July 13, 1994.

I. Introduction

On June 21, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to list and trade large-size, customized index options, referred to as Flexible Exchange Options ("FLEX Options") based on the Wilshire Small Cap Index ("Wilshire Index") and the PSE Technology Index ("Technology Index"). On October 1, 1993, the PSE filed Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on November 1, 1993.[4] On February 7, 1994, the PSE filed Amendment No. 2 to the proposed rule change.[5] On May 26, 1994, the PSE filed

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

[3] In Amendment No. 1, the PSE proposes: (1) to reduce the proposed position limits for FLEX Options to 200,000 contracts on the same side of the market; (2) that the proposal be approved as a three-year pilot program; (3) to submit a monitoring report to the Commission after the first year of trading FLEX Options on the Exchange; (4) provide that the Exchange will use its best efforts to assure that bids and offers will be in compliance with Section 11(a) of the Act; (5) establish the trading hours for FLEX Options; (6) specify the permissible averaging methods for calculating exercise settlement values; and (7) establish the range for Request Response Times between 10 and 30 minutes. *See* Letter from Michael Pierson, Senior Attorney, PSE, to Jeffrey Burns, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated September 28, 1993 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 33100 (October 25, 1993), 58 FR 56368 (November 1, 1993).

[5] Amendment No. 2 adds Rule 7.50(a)(1), which specifies the indexes on which FLEX Options have

Continued

Amendment No. 3 to the proposed rule change.[6] This order approves the proposal, as amended.

II. Background

The purpose of the PSE's FLEX Option proposal is to provide a framework for the Exchange to list and trade index options that give investors the ability, within specified limits, to designate certain of the terms of the options. The PSE is currently proposing to trade FLEX Options only on the Wilshire and Technology Indexes. In recent years, an over-the-counter ("OTC") market in customized index options has developed which permits participants to designate the basic terms of the options, including size, term to expiration, exercise style, exercise price, and exercise settlement value, in order to meet their individual investment needs. Participants in this OTC market are typically institutional investors, who buy and sell options in large-size transactions[7] through a relatively small number of securities dealers. The Exchange believes FLEX Options will help it compete with this growing OTC market in customized index options. In particular, the PSE's proposal will allow FLEX Option market participants to designate the following FLEX Option contract terms: (1) exercise price; (2) exercise style (*i.e.*, American,[8] European,[9] or capped);[10] (3) expiration date;[11] (4) option type (*i.e.*, put, call, or spread); and (5) form of settlement (*i.e.*, a.m.-settlement v. p.m.-settlement).

The PSE believes that market participants will benefit from the trading of FLEX Options in several ways, including, but not limited to: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of the Options Clearing Corporation ("OCC") as issuer and guarantor of FLEX Options.[12]

III. Description of the Proposal

Transactions in FLEX Options traded on the PSE generally will be subject to the same rules that presently apply to the trading of PSE index options.[13] In order, however, to provide investors with the flexibility to designate certain of the terms of the options and to accommodate other special features of FLEX Options and the way in which they are traded, the PSE has proposed several new rules.

The princpal rules proposed by the PSE that are uniquely applicable to the FLEX Option market include a rule containing new definitions (Rule 7.50(b)), a rule regarding hours of trading FLEX Options (Rule 7.51(a)), a special rule regarding trading rotations (Rule 7.51(b)), rules setting forth the special terms of FLEX Option contracts and certain special pieces of information that must be included in FLEX Option Requests for Quotes and Responsive Quotes (Rule 7.52), rules prescribing the mechanics of initiating a FLEX Option Request for Quotes and bidding and offering in response thereto, rules setting forth the principles applicable to the formation of binding FLEX Option contracts, rules defining the applicable priority principles (Rules 7.53(e)), special position limit and exercise limit rules (Rues 7.55 and 7.56), special FLEX Option market maker appointment rules (Rule 7.57), and special market maker and floor broker capital and letter of guarantee rules (Rules 7.59(a), (b), and (c)). Discussion of each of these rules follows.

Proposed Rule 7.50(b) adopts nomenclature uniquely tailored to fit the special characteristics of FLEX Options and the FLEX Option market. For example, the term "Request Response Time" refers to the time interval, set by the submitting member in its Request for Quotes, during which responsive bidding and offering is to take place.[14] Similarly, the term "FLEX Quote" has both its usual connotation—market maker bids and offers—and a new connotation—floor brokers' orders to purchase and orders to sell—that is necessary in view of the unique mechanics of the FLEX Option exchange auction.

Proposed Rule 7.51(a) provides that FLEX Option trading will commence at 7 a.m. Pacific Time, one-half hour later than the opening time currently set for the trading of regular index options, and, will conclude at 1:15 p.m. Pacific Time, the existing close of trading at the Exchange for regular index options. The Exchange may, from time to time, determine to amend the trading hours set for FLEX Options.[15] As a complementary rule uniquely applicable to FLEX Options, Proposed Rule 7.51(b) specifies that there will be no trading rotations in FLEX Options, either at the opening or at the close of trading.

Proposed Rule 7.52 specifies the term elements and other informational ingredients that must be included in Requests for Quotes, FLEX Quotes submitted in response to such requests, and, ultimately, FLEX Option contracts that are the product of FLEX Option trading. As paragraph (b) of this proposed rule indicates, the content of certain terms of each FLEX Option contract is to be determined by the parties of the contract. Other terms, such as the level of the index multiplier and the nature of the rights and obligations of FLEX Option purchasers and sellers, are the same for FLEX Options as for regular index options.

More specifically, Paragraph (b) of Proposed Rule 7.52 specifies the term elements that a submitting member must include in its Request for Quotes and indicates the alternatives available for each term. Under this paragraph, a submitting member must designate, among other terms, the day, month, and year of the FLEX Option's expiration, subject to certain limitations designed to avoid the overlap of FLEX Option expirations with expirations of regular index options.[16] To further ensure against any adverse market impact, expirations for FLEX Options may not fall within 3 business days (before or after) of conventional options expirations (generally, the third Friday of the month). Similarly, a submitting member must identify the exercise price[17] and the exercise settlement value[18] of the FLEX Option, and those variable FLEX Option terms must fit within stated parameters.

Paragraph (c) of this proposed rule lists certain additional categories of information that must be addressed by the submitting member in its Request for Quotes. In particular, under this paragraph a submitting member must indicate the type and form of quote sought, the length of the Request Response Time (*i.e.*, the time interval during which FLEX Option-participating members may enter quotes responsive to the request), and the submitting member's intention, if any, to cross a customer order or act as principal with respect to any part of the FLEX Option trade.

---

been approved for trading by the Exchange. *See* Letter from Michael Pierson, Senior Attorney, PSE, to Sharon Lawson, Assistant Director, OMS, Division, Commission, dated February 7, 1994.

[6] In Amendment No. 3, the PSE proposes to: (1) define the term "Market Maker" to include lead market makers; (2) provide that the automatic executive system shall not be available for transactions in FLEX Options; (3) provide that PSE Rules 6.76 (Priority on Split Price Transactions) and 6.80 (Accommodation Transactions) shall not apply to transactions in FLEX Options; (4) state in the language of the rule that all transactions must be in compliance with Section 11(a) of the Act; (5) provide, in certain circumstances, for aggregation of p.m.-settled FLEX Options with positions in quarterly index expiration options on the same index; (6) clarify that the position limits for FLEX Options are limited to 200,000 contracts on the same side of the market; (7) provide minimum financial requirements for floor brokers of at least $100,000 in net liquidating equity in order to effect transactions in FLEX Options; and (8) provide that floor brokers effecting transactions in FLEX Options must be issued one or more Letters of Authorization by a clearing member accepting responsibility for the clearance of FLEX Options transactions of the floor broker. *See* Letter from Michael Pierson, Senior Attorney, PSE, to Brad Ritter, Attorney, OMS, Division, Commission, dated May 26, 1994 ("Amendment No. 3").

[7] Large size in this context is intended to mean options having an underlying contract value equal to or greater than $1 million.

[8] An American-style index option is one that may be exercised at any time on or before the expiration date.

[9] A European-style index option is one that may be exercised only during a limited period of time prior to expiration of the option.

[10] A capped-style index option is one of that is exercised automatically prior to expiration when the cap price is less than or equal to the closing index value for calls or when the cap price is greater than or equal to the closing index value for puts.

[11] The FLEX Options proposal, however, requires that the expiration dates for FLEX Options be at least three business days away from the expiration dates for existing listed options in order to protect against possible market disruptions that may otherwise result from the concurrent expiration of existing listed non-FLEX index options and FLEX Options.

[12] The Commission has designated FLEX Options as standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act. *See* Securities Exchange Act Release No. 31919 (February 24, 1993), 58 FR 12286 (March 3, 1993) ("9b–1 Order"). As described in note 33 *infra*, and for the same reasons stated in the 9b–1 Order, Wilshire and Technology Index FLEX Options are deemed "standardized options" for purposes of the Rule 9b–1 options disclosure framework.

[13] *See PSE Rule 7.*

[14] The "Request Response Time" is intended by the Exchange to initially be set at a minimum of 10 minutes and a maximum of 30 minutes. *See* Amendment No. 1, *supra* note 3.

[15] Specifically, the PSE proposes to implement the hours of trading for FLEX Options as follows: (1) initial hours of FLEX trading will be 7 a.m.—1:15 p.m. (Pacific Time); (2) FLEX trading hours may be altered at the discretion of the Exchange by 15 minutes or less so long as the change does not extend trading beyond the normal PSE business hours of 6:30 a.m.—1:15 p.m. (Pacific Time); (3) FLEX trading hours that are altered by more than 15 minutes but remain within normal business hours must be submitted by the Exchange to the Commission in a Section 19(b)(3)(A) filing; (4) FLEX trading hours extended beyond the PSE's normal business hours must be submitted to the Commission for approval pursuant to Section 19(b)(2); and (5) the Exchange will provide adequate advance notification to its members and member organizations of such changes in FLEX trading hours. *id.*

[16] *See* Securities Exchange Act Release No. 33700 (March 2, 1994), 59 FR 11342 (March 10, 1994) (order approving quarterly index expiration options on Wilshire Index).

[17] Specifically, exercise prices can be determined in reference to (a) a specific index value number, (b) a method for fixing such a number at the time a FLEX Quote is accepted, (c) a percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, or (d) the cap interval in the case of capped-style options.

[18] The Exchange proposes that the averaging parameters will be limited to three alternatives: the average of the opening and closing index values; the average of the intra-day high and low index values; values; and the average of the opening, closing, and intra-day high and low index values. *See* Amendment No. 1, *supra* note 3.

and, ultimately, FLEX Option contracts that are the product of FLEX Option trading. As paragraph (b) of this proposed rule indicates, the content of certain terms of each FLEX Option contract is to be determined by the parties of the contract. Other terms, such as the level of the index multiplier and the nature of the rights and obligations of FLEX Option purchasers and sellers, are the same for FLEX Options as for regular index options.

More specifically, Paragraph (b) of Proposed Rule 7.52 specifies the term elements that a submitting member must include in its Request for Quotes and indicates the alternatives available for each term. Under this paragraph, a submitting member must designate, among other terms, the day, month, and year of the FLEX Option's expiration, subject to certain limitations designed to avoid the overlap of FLEX Option expirations with expirations of regular index options.[16] To further ensure against any adverse market impact, expirations for FLEX Options may not fall within 3 business days (before or after) of conventional options expirations (generally, the third Friday of the month). Similarly, a submitting member must identify the exercise price[17] and the exercise settlement value[18] of the FLEX Option, and those variable FLEX Option terms must fit within stated parameters.

Paragraph (c) of this proposed rule lists certain additional categories of information that must be addressed by the submitting member in its Request for Quotes. In particular, under this paragraph a submitting member must indicate the type and form of quote sought, the length of the Request Response Time (*i.e.*, the time interval during which FLEX Option-participating members may enter quotes responsive to the request), and the submitting member's intention, if any, to cross a customer order or act as principal with respect to any part of the FLEX Option trade.

Finally, paragraph (d) of this proposed rule specifies the maximum term and the minimum value size of any FLEX Option contract and provides that the term and size may be set, within the stated limits, at the discretion of the submitting member or the quoting party, as applicable. Under this paragraph, the maximum FLEX Option term is five years; the minimum value size (*i.e.*, the aggregate underlying dollar value that is the subject of the option) for a FLEX Request for Quotes is $10 million in an opening transaction in a new FLEX Option series and $1 million in an opening or closing transaction in any currently-opened FLEX Option series (or less in a closing transaction where the remaining underlying value is less than $1 million); and the minimum value size for quotes of market makers in response to a Request for Quotes is $1 million or any lesser amount reflected in a Request for Quotes (except that market makers appointed to FLEX Options on the underlying index that is the subject of the Request for Quotes must be prepared to respond to a Request for Quotes in a size of at least $10 million underlying value or the dollar amount indicated in the Request for Quote, whichever is less).

These provisions, collectively, provide investors and FLEX Option-participating members with significant latitude in structuring the terms of FLEX Options contracts. The Exchange believes that such latitude is both important and necessary to the Exchange's effort to create a product and a market that provides members and investors interested in FLEX Options with an improved but comparable alternative to the OTC options market. To enable the efficient, centralized clearance and active secondary trading of opened FLEX Options, however, the extent of variability in structuring FLEX Options is necessarily limited. Only certain terms are subject to flexible structuring by the parties to FLEX Option transactions, and most of such terms have a specified number of alternative configurations. In addition to the specified term alternatives indicated above, FLEX Options will be limited to transactions on the Wilshire and Technology Indexes (Rule 750(a)(1)) and shall be denominated for settlement in cash in U.S. dollars only (Rule 7.52(e)).

Proposed Rule 7.53 prescribes in some detail the mechanics of submitting Requests for Quotes and entering responsive bids and offers. These mechanics, described below, are designed to create a modified auction that takes into account the relatively small number of transactions that are lively to occur in this institutional, large-size market, while at the same time providing the FLEX Option market with the price improvement and transparency benefits of competitive Exchange floor bidding and offering, as compared with the OTC market.[19] Proposed Rule 7.53 establishes time and price priority principles and contains special rules respecting the bidding and offering process and the method of allocating trades in instances in which the submitting member expresses an intention to cross or act as principal on a Request for Quotes. These proposed rules are designed to promote active bidding and offering that will generate the best price available, while also providing incentives to market makers appointed to FLEX Options, floor brokers, other floor participants, and upstairs firms alike to participate in the FLEX Option market.

In particular, paragraphs (a) and (b) of proposed Rule 7.53 indicate that the FLEX Option bidding and offering process is initiated once a submitting member has supplied a Request for Quotes in proper form and the terms and specifications of the Request for Quotes are disseminated at the post and over FLEX Option communications facilities. Thereafter, FLEX Quotes in proper form may be entered, modified, or withdrawn (subject to special limitations imposed on appointed market makers) by public outcry at any time during the Request Response Time The length of the Request Response Time, which must fall within time parameters to be set by the Exchange, is to be specified in the Request for Quotes. At the expiration of the Request Response Time, the FLEX Post Official will determine the best bid and/or offer ("BBO").

Proposed paragraph (c) of Rule 7.53 provides that the BBO will be displayed at the post and over communication facilities and, at that point, or after further bidding and offering that occurs in certain specified circumstances the submitting member will have the opportunity to accept or reject the BBO. The submitting member, however, has no obligation to accept the BBO. Thus, whenever the BBO is rejected the Request for Quotes expires, although FLEX Option-participating members other than the submitting member may accept the unfilled balance of the BBO. Similarly, whenever the BBO is accepted, the transaction (or transactions) will be executed in accordance with the crossing principles

---

[16] *See* Securities Exchange Act Release No. 33700 (March 2, 1994), 59 FR 11342 (March 10, 1994) (order approving quarterly index expiration options on Wilshire Index).

[17] Specifically, exercise prices can be determined in reference to (a) a specific index value number, (b) a method for fixing such a number at the time a FLEX Quote is accepted, (c) a percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, or (d) the cap interval in the case of capped-style options.

[18] The Exchange proposes that the averaging parameters will be limited to three alternatives: the average of the opening and closing index values; the average of the intra-day high and low index values; values; and the average of the opening, closing, and intra-day high and low index values. *See* Amendment No. 1, *supra* note 3.

[19] All FLEX Option transactions must be in compliance with Section 11(a) of the At and the rules thereunder. *See* Amendment No. 3, *supra* note 6.

and priority principles set forth in paragraph (e) of proposed Rule 7.53, although, again, FLEX Option-participating members may accept any unfilled balance of the BBO.

Proposed Rule 7.55 states position limits that will be unique to FLEX Options.[20] Specifically, the PSE is proposing that FLEX Options will be subject to a maximum limit of 200,000 contracts on the same side of the market on a given underlying index, without aggregation for other contracts on the same index with one exception. Under the proposal members must, at the close of business two days prior to the last day of trading of the calendar quarter, aggregate positions in p.m.-settled FLEX Options on the Wilshire Index with quarterly expiration index options ("QIXs") with the same expiration date and those positions may not exceed the QIX limits specified in Rule 7.6(d)(2) (*i.e.*, 37,500 contracts on the same side of the market in the case of QIX options on the Wilshire Index).[21] In this case, the applicable hedge exemptions under Rule 7.6 may be applied to the aggregate positions.[22]

Proposed Rule 7.57 provides for separate appointments of market makers to FLEX Options, although the appointment process will be essentially the same as appointments to other options. This rule further provides that appointed market makers will have an affirmative obligation to quote in a size of at least $10 million in response to every Request for Quotes on a FLEX Option on an index to which the market maker is appointed. Such quotes must be firm, unless modified or withdrawn prior to the end of the Request Response Time, for the duration of the Request Response Time and, if applicable, the BBO Improvement Interval. As noted earlier, market makers have no obligation to maintain continuous quotes or to quote a minimum spread, and quotes expire at the end of each FLEX Option bidding and offering period.

Proposed Rules 7.59(a)–(c) set minimum financial requirements for market makers trading or appointed to FLEX Options. The financial minimums stated in proposed Rules 7.59(a) and (b) are unique to FLEX Options.

Specifically, proposed Rule 7.59(a) requires every market maker approved to effect transactions in FLEX Options to maintain at least $100,000 in net liquidating equity in any FLEX Option trading account with each given clearing member. Similarly, proposed Rule 7.59(b)(2) requires every floor broker eligible to effect FLEX Option transactions to maintain at least $100,000 in net liquidating equity in any FLEX Option trading account with each given clearing member. The Exchange believes that these stated minimums provide an adequate and suitable financial floor for FLEX Options trading activity without unduly restricting access to these markets.

Proposed Rule 7.59(b) requires FLEX Option-appointed market makers to maintain at least $1 million in net liquidating equity or net capital, as applicable. Again, although this minimum requirement is unique to FLEX Options, the Exchange believes that it represents a suitable and adequate financial floor for FLEX Option-appointed market makers undertaking the substantial FLEX Quote responsibility.

Proposed Rule 7.59(c) extends the general letter of guarantee requirement under existing Exchange Rule 6.36(a) to FLEX Option market makers and FLEX Options floor brokers, thereby subjecting them to a focused credit worthiness review by their clearing members. The review and issuance requirement imposed under proposed Rule 7.59(c) substantially supplements the independent financial requirements of proposed Rules 7.59(a) and (b).[23]

IV. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5)[24] and 11A.[25] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored or customized product for broad-based indexes currently traded on the Exchange that may be more suitable to their investment needs than other outstanding FLEX Options.[26] Moreover, consistent with Section 11A, the proposal should encourage fair competition among brokers and dealers and exchange markets, by allowing the PSE to compete with the growing OTC market in customized index options.

For instance, as noted by the PSE, the OTC market in customized index options has developed, in part, to meet the needs of institutional investors who require increased flexibility for the purpose of satisfying particular investment objectives that could not be met by existing standardized exchange markets in options. Accordingly, the Commission believes the PSE proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs, and will thereby promote competition among these markets.

In addition, the Commission believes that the PSE proposal will help to promote the maintenance of a fair a orderly market, consistent with Sections 6(b)(5) and 11A of the Act, because the purpose of the proposal is to extend the benefits of a listed, exchange market in Wilshire Index and Technology Index options that have certain terms varied by the particular investor. The attributes of the Exchange's options market versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.

In general, transactions in FLEX Options will be subject to many of the same rules that apply to index options traded on the PSE. In order to provide investors with the flexibility to designate terms of the options and accommodate the special trading of FLEX Options, however, several new rules will apply solely to FLEX Options. Due to the customized nature of these options, FLEX Options will not have trading rotations at either the opening or closing of trading. In addition, the auction process outlined above in proposed Rule 7.53 sets forth a procedure of customized negotiation for those investors seeking particular flexibility in setting certain options terms.[27] Accordingly, the PSE proposed rules specific to FLEX Options vary from the traditional procedure for trading regular index options.

The Commission believes that the FLEX Option auction process, as outlined in PSE's proposal, appears reasonably designed to provide the benefits of an Exchange auction environment for Wilshire and Technology Index options with features of a negotiated transaction between investors. The Commission recognizes that PSE's proposal marks, in many respects, an experiment in trading option contracts of substantial value, for which continuous quotation may be difficult to sustain. Accordingly, PSE has established procedures for quotes upon request, which must then be firm for a designated period and which will be disseminated through the Options Price Reporting Authority ("OPRA").

The Commission notes that FLEX Options based on the Wilshire and Technology Indexes can be constructed with expiration exercise settlement based on the closing values of the component securities, which could potentially result in adverse effects for the markets in these securities.[28] Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Friday helps alleviate stock market volatility,[29] these concerns are reduced in the case of FLEX Options because expiration of these stock index options will not correspond to the normal expiration of stock index options, stock index futures, and options on stock index futures. In particular, FLEX Options will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September and December, thereby diminishing the impact that FLEX Options could have on the market.

Also, as noted above, the proposal would limit the effect on securities markets by addressing the relationship between FLEX Options and QIXs. As

---

[20] Proposed Rule 7.56 establishes exercise limit provisions that correspond to the position limits prescribed in proposed Rule 7.55.

[21] QIX options have not been approved for trading on the Technology Index.

[22] Under the proposal, FLEX Options would be listed for trading by the Exchange on a three-year pilot, during or following which adjustments may be required. In addition, among other things, the PSE has stated that it will monitor the effect of the position limits at the end of the first year of trading and provide the Commission with a report concerning the adequacy of the limits and its effects on the underlying cash market. *See*, Amendment No. 1 *supra* note 3.

[23] The proposed rule changes include the following changes as well as the changes discussed in the text. Proposed Rule 7.54 enables a Floor Broker to exercise discretion with respect to the number of FLEX Option contracts to be purchased or sold (notwithstanding contrary limitations in Rule 6.48) in view of the special features that will be associated with FLEX Option bidding and offering. Finally, proposed Rule 7.58 establishes a new class of Exchange employee (a FLEX Post Official) and sets forth the FLEX Post Official's special duties.

[24] 15 U.S.C. 78f(b)(5) (1982).

[25] 15 U.S.C. 78k–1 (1982).

[26] The Chicago Board Options Exchange, Inc. ("CBOE") trades FLEX Options based on the S&P 100, S&P 500, and Russell 2000 stock indexes. *See* Securities Exchange Act Release Nos. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993); and 32694 (July 29, 1993), 58 FR 41814 (August 5, 1993). The American Stock Exchange, Inc. ("AMEX") trades FLEX Options based on the Major Market, Institutional, and S&P MidCap 400 indexes. *See* Securities Exchange Act Release No. 32781 (August 20, 1993), 58 FR 45360 (August 27, 1993).

[27] A submitting member (the Exchange member that initiates the FLEX Option auction process by submitting a request for quotes) is under no obligation to accept any FLEX Option bid or offer, even if it is the BBO. *See*, Proposed PSE Rule 7.53.

[28] *See, e.g.*, Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[29] *Id.*

Due to the customized nature of these options, FLEX Options will not have trading rotations at either the opening or closing of trading. In addition, the auction process outlined above in proposed Rule 7.53 sets forth a procedure of customized negotiation for those investors seeking particular flexibility in setting certain options terms.[27] Accordingly, the PSE proposed rules specific to FLEX Options vary from the traditional procedure for trading regular index options.

The Commission believes that the FLEX Option auction process, as outlined in PSE's proposal, appears reasonably designed to provide the benefits of an Exchange auction environment for Wilshire and Technology Index options with features of a negotiated transaction between investors. The Commission recognizes that PSE's proposal marks, in many respects, an experiment in trading option contracts of substantial value, for which continuous quotation may be difficult to sustain. Accordingly, PSE has established procedures for quotes upon request, which must then be firm for a designated period and which will be disseminated through the Options Price Reporting Authority ("OPRA").

The Commission notes that FLEX Options based on the Wilshire and Technology Indexes can be constructed with expiration exercise settlement based on the closing values of the component securities, which could potentially result in adverse effects for the markets in these securities.[28] Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Friday helps alleviate stock market volatility,[29] these concerns are reduced in the case of FLEX Options because expiration of these stock index options will not correspond to the normal expiration of stock index options, stock index futures, and options on stock index futures. In particular, FLEX Options will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September and December, thereby diminishing the impact that FLEX Options could have on the market.

Also, as noted above, the proposal would limit the effect on securities markets by addressing the relationship between FLEX Options and QIXs. As proposed, PSE Rule 7.55(c) requires P.M.-settled FLEX Options to be aggregated with QIXs that are based on the same index and have the same expiration date. In such a case, the FLEX Options would be aggregated two days prior to expiration subject to the lower position limits of 37,500 contracts for QIX options on the Wilshire Index. The Commission believes that these rules should help prevent an investor for using FLEX Options for the purpose of avoiding the position limits applicable to QIXs.

Nevertheless, because the position limits for FLEX Options are much higher than those currently existing for outstanding exchange-traded index options and open interest in one or more FLEX Option series could grow to significant exposure levels, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying FLEX Option stock indices. The PSE has taken several steps to address this concern, including establishing the proposed FLEX Options as a three-year pilot and undertaking to monitor open interest, position limit compliance and potential adverse market effects carefully and to report to the Commission after one year's experience trading FLEX Options.[30] That report will include, among other things:

- The type of strategies used by FLEX Options market participants and whether FLEX Options are being used, in lieu of existing standardized stock index options.
- The type of market participants using FLEX Options.
- The terms which are predominantly being "flexed" by market participants, *i.e.*, strike prices, settlement value (A.M. v. P.M.), term of duration, European v. American style.
- The size of the FLEX Option position on average, the size of the largest FLEX Option positions on any given day and size of the largest FLEX Option position held by any single customer/member.
- The relationship between strike prices and current index value.
- Whether there is significant interest in long-term expirations greater than nine months.
- Any effect FLEX Option positions have had on the underlying cash market, including an analysis of FLEX Option positions and their market impact on days Rule 80A of the New York Stock Exchange is invoked.

In addition, the Commission expects the PSE to monitor the actual effect of FLEX Options once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any anticipated adverse market effects develop.

Lastly, based on representations from the PSE, the Commission believes that the PSE and OPRA will have adequate systems processing capacity to accommodate the additional options listed in connection with FLEX Options Specifically, the Exchange represents that PSE and OPRA have the necessary systems capacity to support the new series which could result from introduction of FLEX Options.[31]

The Commission finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 merely proposes to include in the PSE's rules applicable to FLEX Options those particular broad-based indexes on which FLEX Options have been approved for trading. The Commission believes this will serve to minimize investor confusion. Amendment No. 3 to the proposed rule change makes several clarifying amendments and other changes designed to conform the PSE's rules regarding FLEX Options to those rules approved for the listing and trading of FLEX Options by the CBOE and the Amex,[32] which to the Commission's knowledge, have not resulted in any problems. Accordingly, for the reasons discussed herein, the Commission believes that the changes contained in Amendment No. 3 strengthen the PSE's proposal and thus will help to promote the maintenance of a fair and orderly market.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

---

[27] A submitting member (the Exchange member that initiates the FLEX Option auction process by submitting a request for quotes) is under no obligation to accept any FLEX Option bid or offer, even if it is the BBO. *See*, Proposed PSE Rule 7.53.

[28] *See, e.g.*, Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[29] *Id.*

[30] *See* Amendment No. 1, *supra* note 3.

[31] *See* Letter from Michael Pierson, Senior Attorney, Market Regulation, PSE, to Brad Ritter, Attorney, OMS, Division, Commission, dated May 27, 1994; and Letter from Joe Corrigan, Executive Director, OPRA, to Kim Koppien, PSE, dated May 26, 1994.

[32] *See supra* note 26.

proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–13 and should be submitted by August 9, 1994.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and sections 6 and 11A of the Act in particular. In addition, the Commission finds pursuant to Rule 9b–1 under the Act, that FLEX Options based on the Wilshire and Technology Indexes are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act.[33]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–PSE–93–13) is approved, as amended, on a pilot basis until July 13, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17522 Filed 7–18–94; 8:45 am]

[Release No. 34–34357; International Series Release No. 682; File No. SR–PHLX–94–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Quote Spread Parameters for Long-Term Foreign Currency Options

July 12, 1994.

On February 7, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal to amend Exchange Rule 1014, "Obligations and Restrictions Applicable to Specialists and Registered Options Traders," and Floor Procedure Advice ("Advice") F–6, "Option Quote Spread Parameters" to: (1) establish quote spread parameters for long-term foreign currency options ("FCOs"); (2) revise the quote spread parameters for options on the French franc; and (3) revise the quote spread parameters for cross-rate FCOs.

The proposal was published for comment in Securities Exchange Act Release No. 33693 (February 28, 1994), 59 FR 10659 (March 7, 1994). No comments were received on the proposal.[3]

The PHLX has traded long-term FCOs since 1992, when PHLX Rule 1012 was amended to permit the listing of options with an expiration of up to 36 months in the future.[4] The Long-Term FCO Approval Order stated specifically that long-term FCOs would not be subject to existing quote spread parameters because, at that time, there was no basis for establishing reasonable prices for long-term FCOs due to the lack of historical pricing. Under the Long-Term FCO Approval Order, long-term FCOs are subject to Advice F–6 once there is less than twelve months remaining until expiration.

Currently, the PHLX trades four long-term FCOs: British pound, German mark, French franc, and Japanese yen.[5] The PHLX proposes to codify specific parameters for long-term FCOs in order to demonstrate consistency in quote width to FCO customers and to prevent overly wide quotes.

Specifically, the PHLX proposes to establish the following quote spread parameters for long-term FCOs: for options on the British pound, a maximum quote spread of $.0100 where the bid is $.1500 or less and $.0150 where the bid is more than $.1500; for options on the French franc, a maximum quote spread of $.00100 where the bid is $.01500 or less and $.00150 where the bid is more than $.1500; for options on the German mark and Swiss franc, a maximum quote spread of $.0030 where the bid is $.0500 or less and $.0050 where the bid is more than $.0500; and for options on the Japanese yen, a maximum quote spread of $.000040 where the bid is $.000500 or less and $.000070 where the bid is over $.000500.

In addition, the PHLX proposes to correct the parameters for cross-rate FCOs, which appear in the incorrect base currency, and for French franc options, which cannot be quoted in odd numbers due to system limitations. Specifically, for options on the French Franc, the PHLX proposes to establish a maximum quote spread of $.00014 where the bid is $.00250 or less; $.00024 where the bid is between $.00252 and .00750; and $.00034 where the bid is over $.00750.

With respect to cross-rate options, the PHLX states that the original quote spread parameters were incorrect because the bids, which determine the quote spread, should be based on bids relating to the first currency. Under the current rule, for British pound/German mark cross-rate options, if the bid is .0100 German marks or less, the maximum quote spread is .0015 German marks. The PHLX states that this has proved incompatible with the parameters commonly employed by traders to quote the British pound/German mark cross-rate option for two reasons: (1) the range of bids did not correspond to the ranges previously used for British pound quotes;[6] and (2) the actual parameters (.0015, .0025 and .0035 German marks) proved to be too narrow in view of the unique pricing and settlement of cross-rate options. Thus, for British pound/German mark cross-rate options, the PHLX proposes the following parameters: a maximum quote spread of .0030 German marks where the bid is .0250 German marks or less; .0050 German marks where the bid is more than .0250 but does not exceed .0750 German marks; and .0070 German marks where the bid is more than .0750 German marks.

For German mark/Japanese yen cross-rate options, the PHLX proposes the following parameters: a maximum quote spread of .12 Japanese yen where the bid is .40 Japanese yen or less; .16 Japanese yen where the bid is more than .40 but does not exceed 1.60 Japanese yen; and .20 Japanese yen where the bid is more than 1.60 Japanese yen.

For British pound/Japanese yen options, the PHLX proposes to establish the following parameters:[7] a maximum quote spread of .0030 Japanese yen where the bid is .0250 Japanese yen or less; .0050 Japanese yen where the bid is more than .0250 but does not exceed .0750 Japanese yen; and .0070 Japanese yen where the bid is more than .0750 Japanese yen. The exchange proposes to correct the cross-rate parameters both in the text of exchange Rule 1014 as well as in Advice F–6 in order to facilitate the efficient trading and quoting of the relevant cross-rate options, as well as to inform members and customers of the maximum quote spread parameters.

The PHLX believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the PHLX believes that established quote spread parameters for long-term FCOs should prevent overly wide quotes and foster uniformity in quote width, consistent with Section 6(b)(5). In addition, the

---

[33] As part of the original approval process of the FLEX Options framework, the Commission delegated to the Director of the Division of Market Regulation the authority to authorize the issuance of orders designating securities as standardized options pursuant to Rule 9b–1(a)(4) under the Act. *See* Securities Exchange Act Release No. 31911 (February 23, 1993), 58 FR 11792 (March 1, 1993). On May 4, 1993, Chairman Breeden, pursuant to Public Law 87–592, 76 Stat. 394 [15 U.S.C. 78d–1, 78d–2], and Article 30–3 of the Commission's Statement of Organization; Conduct and Ethics; and Information and Requests [17 CFR 200.30–3], designated that persons serving in the position of Deputy Director, Associate Director, and Assistant Director, in the Division of Market Regulation, be authorized to issue orders designating securities as "standardized options" pursuant to Rule 9b–1(A)(4). Accordingly, this subdelegation provides the necessary authority for Wilshire and Technology FLEX Options to be designated as "standardized options" by the Division of Market Regulation. *See* Designation of Personnel to Perform Delegated Functions in the Division of Market Regulation, dated May 4, 1993.

[34] 15 U.S.C. 78s(b)(2) (1982).

[35] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] On June 27, 1994, the PHLX submitted a letter explaining the rationale for the proposed quote spread parameters for long-term FCOs. The PHLX notes that foreign currency swaps and forward contracts are used frequently to hedge long-term FCOs and that foreign currency swaps are the basis for pricing long-term FCOs because the swap market takes into account the interest rate differential among the relevant countries, which becomes less certain over time. In light of the hedging process for long-term FCOs, and based on its experience in trading long-term FCOs, the PHLX believes that the foreign currency swap market provides a reasonable basis for measuring quote spread parameters for long-term FCOs. *See* Letter from Edith Hallahan, Special Counsel, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated June 23, 1994 ("June 23 Letter").

[4] *See* Securities Exchange Act Release No. 30672 (May 6, 1992), 57 FR 20546 (order approving File No. SR–PHLX–91–30) ("Long-Term FCO Approval Order").

[5] Although the PHLX has not yet listed a long-term option on the Swiss franc, the PHLX may do so in the future. Its proposed Swiss franc spread parameter would be identical to the proposed quote spread parameter applicable to the long-term German mark option.

[6] The range of bids that determine the quote spread parameters applicable to British pound options is: $.0250 or less, $.0251 to $.0750, and over $.0750.

[7] Although the PHLX has not yet listed the British pound/Japanese yen option, the same inconsistency with British pound bid ranges requires correction and the quote spread parameters were also proposed too narrowly.

parameters commonly employed by traders to quote the British pound/German mark cross-rate option for two reasons: (1) the range of bids did not correspond to the ranges previously used for British pound quotes;[6] and (2) the actual parameters (.0015, .0025 and .0035 German marks) proved to be too narrow in view of the unique pricing and settlement of cross-rate options. Thus, for British pound/German mark cross-rate options, the PHLX proposes the following parameters: a maximum quote spread of .0030 German marks where the bid is .0250 German marks or less; .0050 German marks where the bid is more than .0250 but does not exceed .0750 German marks; and .0070 German marks where the bid is more than .0750 German marks.

For German mark/Japanese yen cross-rate options, the PHLX proposes the following parameters: a maximum quote spread of .12 Japanese yen where the bid is .40 Japanese yen or less; .16 Japanese yen where the bid is more than .40 but does not exceed 1.60 Japanese yen; and .20 Japanese yen where the bid is more than 1.60 Japanese yen.

For British pound/Japanese yen options, the PHLX proposes to establish the following parameters:[7] a maximum quote spread of .0030 Japanese yen where the bid is .0250 Japanese yen or less; .0050 Japanese yen where the bid is more than .0250 but does not exceed .0750 Japanese yen; and .0070 Japanese yen where the bid is more than .0750 Japanese yen. The exchange proposes to correct the cross-rate parameters both in the text of exchange Rule 1014 as well as in Advice F–6 in order to facilitate the efficient trading and quoting of the relevant cross-rate options, as well as to inform members and customers of the maximum quote spread parameters.

The PHLX believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the PHLX believes that established quote spread parameters for long-term FCOs should prevent overly wide quotes and foster uniformity in quote width, consistent with Section 6(b)(5). In addition, the PHLX believes that the correction to cross-trade quote spread parameters should promote just and equitable principles of trade by providing a more feasible bid/ask differential, which, in turn, should facilitate trading in those options.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) in that proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.[8] Specially, the Commission believes that the PHLX's proposal to establish quote spread parameters for long-term FCO's should result in improved price continuity and tighter, more liquid markets. In light of the hedging process for long-term FCOs and the PHLX's experience in trading long-term FCOS, the Commission believes that it is reasonable for the Exchange to base the quote spread parameters for long-term FCOs on the foreign currency swap and forward markets.[9] The Commission believes that the quote spread parameters for long-term FCOs should prevent overly wide quotes and are designed to be consistent with the obligations of PHLX specialists and Registered Options Treaders ("ROTs") under the Act to provide fair and orderly markets.

In addition, the Commission believes that it is reasonable for the PHLX to establish new even-numbered quote spread parameters for options on the French franc, which cannot be quoted in odd numbers, and to establish new quote spread parameters for cross-rate FCOs, which the PHLX believes should be based on bids relating to the first currency. The Commission believes that these amendments should benefit investors by helping the PHLX to maintain a fair and orderly market for FCOs.

In additional, the Commission believes that the proposed quote spread parameters for cross-fire FCOs are based on the PHLX's experience in trading cross-rate FCOs and more accurately reflect the market for those options. The Commission believes that the proposed parameters for cross-rate FCOs are intended to facilities tightly quoted markets without impairing specialist's and ROT's ability to provide market depth and liquidity. Accordingly, the Commission believes that the cross-rate FCO parameters are consistent with the obligations of PHLX specialists and ROTs to provide fair and orderly markets.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PHLX–94–05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17426 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

---

[6] The range of bids that determine the quote spread parameters applicable to British pound options is: $.0250 or less, $.0251 to $.0750, and over $.0750.

[7] Although the PHLX has not yet listed the British pound/Japanese yen option, the same inconsistency with British pound bid ranges requires correction and the quote spread parameters were also proposed too narrowly.

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] The PHLX states that swaps and forward contracts are often used to hedge FCOs and that swaps provide the basis for pricing long-term FCOs because the swap market takes into account the interest rate differential among the relevant countries. Because of the interest rate differential and the corresponding less-liquid nature of the market for long-term FCO forward contracts, the forward markets for long-term FCOs are wider than the FCO spot market, which provides the basis for pricing shorter-term FCOs. Accordingly, the quote spread parameters for long-term FCOs are wider than the quote spread parameters for shorter-term FCOs. *See* June 23 Letter, *supra* note 3.

[10] 15 U.S.C. § 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20403; 812–8954]

The PNC Fund, et al.; Notice of Application

July 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The PNC Fund ("PNC"), PNC Institutional Management Corporation ("PIMC"), and Provident Distributors, Inc. ("PDI"), on behalf of themselves and other investment companies for which PIMC or PDI acts as investment adviser and distributor and which adhere to the representations and conditions set forth in the application (collectively, with PNC, the "Funds").[1]

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d), and rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek to amend an existing order that permits the portfolios of PNC to issue up to three classes of shares. The

[1] Although PIMC and PDI act as investment adviser or distributor, respectively, to other investment companies not named as parties to the application, none of those companies currently intends to rely on the requested relief. Such companies may in the future rely on the requested exemption if they determine to issue multiple classes of shares and impose a contingent deferred sales charge in accordance with the representations and conditions in the application.

amended order will permit each Fund's existing and future investment portfolios to issue an unlimited number of classes of shares, add a conversion feature, and assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") upon certain redemptions of shares.

FILING DATES: The application was filed on April 28, 1994, and amended on July 1, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 8, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicants: PNC and PIMC, Bellevue Corporate Center, 103 Bellevue Parkway, Wilmington, Delaware 19809; PDI, 259 Radnor-Chester Road, Suite 120, Radnor, Pennsylvania 19087.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. PNC is a Massachusetts business trust registered under the Act as an open-end management investment company. PNC currently is authorized to offer shares in twenty-five portfolios, and may create new portfolios in the future. PIMC serves as PNC's investment adviser. PDI serves as PNC's distributor.

2. On March 14, 1994, the SEC issued an order (the "Existing Order")[2] permitting each portfolio of PNC to offer up to three classes of shares—Investor Shares, Service Shares, and Institutional Shares. Applicants seek to amend the Existing Order to permit each Fund's existing and future portfolios to issue an unlimited number of classes of shares, add a conversion feature, and assess, and under certain circumstances, waive a CDSC upon certain redemptions of shares. The requested relief will supersede the Existing Order in its entirety. Investor Shares, Service Shares, and Institutional Shares will be offered as described in the application for the Existing Order.

3. Under the requested order, applicants may offer classes of shares subject to rule 12b–1 plans or shareholder services plans (each a "Plan"), certain class expenses described in condition 1 below that are attributable only to certain of the classes, certain conversion features as further described below, and/or the imposition of various front-end sales loads and/or CDSCs. The services provided under a Plan will augment or replace, but not duplicate, services otherwise provided by a Fund's investment adviser, transfer agent, and administrator. When a class of shares is subject to a rule 12b–1 Plan and a shareholder services Plan, the services provided under one Plan will augment (and not be duplicative of) the services provided under the other Plan.

4. All shares of a portfolio will bear Fund and portfolio expenses allocated *pro rata* to each class on the basis of the relative net asset value of the respective class. Expenses specific to a class will be allocated to that class. A Fund's investment adviser or other service contractor may reimburse or waive class expenses on certain classes on a voluntary, temporary basis, and the amount waived or reimbursed may vary from time to time.

5. Because of class expenses and payments made under a Plan that may be borne by each class of shares, the per share net income of, and dividends to, each class may differ from the net income of, and dividends to, the other classes of shares of a portfolio. In addition, except for portfolios that seek to maintain a stable net asset value and declare dividends daily, the net asset value attributable to each class of shares of a portfolio may differ.

6. Shares of a class of one portfolio will be exchangeable for shares of another portfolio that have similar characteristics. In addition, shares of an equity or fixed income portfolio will be exchangeable for shares of a money market portfolio, and vice-versa, and shares of one class of a portfolio will be exchangeable for shares of another class of the same portfolio. Exchanges will be effected in accordance with the provisions of rule 11a–3 under the Act.

7. Shares of certain of the classes may be subject to the imposition of a CDSC if they are redeemed within a prescribed time after their purchase. The amount of the CDSC will be calculated as the lesser of a specified percentage of the net asset value at the time of purchase or at the time of redemption.

8. No CDSC will be imposed on amounts representing increases in the value of shares due to capital appreciation, redemptions of shares acquired through reinvestment of dividends or capital gain distributions, or redemptions of shares held for longer than the CDSC period. In addition, no charge will be imposed on any shares purchased prior to the effective date of the requested order or prior to the disclosure of such CDSC in the prospectus of the applicable portfolio. In determining whether the CDSC is payable, it will be assumed that shares not subject to the CDSC are redeemed first and that other shares then are redeemed in the order purchased.

9. If a shareholder pays a CDSC upon redemption and a reinvestment occurs within a specified time period stated in the prospectus at the time the shares were sold, the shareholder may receive a credit, paid by the distributor, for any CDSC paid.

10. Any change in the specified terms of a CDSC arrangement will be reflected in the prospectus of the applicable portfolio. Such change will not affect shares that already have been issued, unless the change would result in terms more favorable to the shareholder.

11. Applicants request the ability to waive the CDSC on redemptions: (a) in connection with required (or, in some cases, discretionary) distributions to participants or beneficiaries of an employee pension, profit-sharing, or other trust or qualified retirement plan or Keogh plan, individual retirement account, or custodial account maintained pursuant to section 403(b)(7) of the Internal Revenue Code (the "Code"); (b) in connection with required (or, in some cases, discretionary) distributions to participants in qualified retirement or Keogh plans, individual retirement accounts, or custodial accounts maintained pursuant to section 403(b)(7) of the Code due to death, disability, or the attainment of age 59½; (c) in whole or in part, by shareholders whose accounts exceed $50,000, with additional reductions of the CDSC occurring in connection with redemptions of shares by shareholders whose accounts exceed certain higher breakpoints; (d) effected pursuant to a portfolio's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the minimum account size; (e) in connection with the combination of the portfolio with any other investment company registered under the Act by merger, acquisition of assets, or by any other transaction; (f) of shares that qualify for rights of accumulation, privileges under a letter of intent, or quantity discount; (g) resulting from a tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code; (h) made in connection with a systematic withdrawal plan; (i) of shares held by current and/or former board members, officers, and employees (and their families) of applicants and current and/or former registered representatives or employees (and their families) of banks or broker/dealers that have entered into selling agreements with applicants; (j) by a state, county, or city, or any instrumentality thereof, and/or by trust companies and bank trust departments; (k) effected by advisory accounts managed by PIMC, PDI, or other firms registered (or exempt from registration) under the Investment Advisers Act of 1940; or ; (l) pursuant to a qualified domestic relations order, as defined in section 414(p) of the Code.

12. Shares of some classes subject to a CDSC ("Convertible CDSC Shares") could automatically convert into shares of other classes not subject to a CDSC ("Non-CDSC Shares") after a prescribed period following the purchase of Convertible CDSC Shares without the imposition of any sales charges. Shares acquired through the reinvestment of dividends and other distributions paid with respect to Convertible CDSC Shares will also be Convertible CDSC Shares, but will convert to Non-CDSC Shares on the earlier of a prescribed period following the date of such reinvestment or the conversion date of the most recently purchased Convertible CDSC Shares not acquired through the reinvestment of dividends or other distributions.

13. Applicants in all cases will comply with article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc., as it relates to the maximum amount of asset-based sales charges that may be imposed by an investment company, when and in the form (as amended from time to time) the provisions of such rules relating to such charges become effective, and for as long as they remain in effect.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of any of the classes

[2] *The PNC Fund*, Investment Company Act Release Nos. 20081 (Feb. 17, 1994) (notice) and 20133 (Mar. 15, 1994) (order).

net asset value of shares held in the account is less than the minimum account size; (e) in connection with the combination of the portfolio with any other investment company registered under the Act by merger, acquisition of assets, or by any other transaction; (f) of shares that qualify for rights of accumulation, privileges under a letter of intent, or quantity discount; (g) resulting from a tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code; (h) made in connection with a systematic withdrawal plan; (i) of shares held by current and/or former board members, officers, and employees (and their families) of applicants and current and/or former registered representatives or employees (and their families) of banks or broker/dealers that have entered into selling agreements with applicants; (j) by a state, county, or city, or any instrumentality thereof, and/or by trust companies and bank trust departments; (k) effected by advisory accounts managed by PIMC, PDI, or other firms registered (or exempt from registration) under the Investment Advisers Act of 1940; or ; (1) pursuant to a qualified domestic relations order, as defined in section 414(p) of the Code.

12. Shares of some classes subject to a CDSC ("Convertible CDSC Shares") could automatically convert into shares of other classes not subject to a CDSC ("Non-CDSC Shares") after a prescribed period following the purchase of Convertible CDSC Shares without the imposition of any sales charges. Shares acquired through the reinvestment of dividends and other distributions paid with respect to Convertible CDSC Shares will also be Convertible CDSC Shares, but will convert to Non-CDSC Shares on the earlier of a prescribed period following the date of such reinvestment or the conversion date of the most recently purchased Convertible CDSC Shares not acquired through the reinvestment of dividends or other distributions.

13. Applicants in all cases will comply with article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc., as it relates to the maximum amount of asset-based sales charges that may be imposed by an investment company, when and in the form (as amended from time to time) the provisions of such rules relating to such charges become effective, and for as long as they remain in effect.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of any of the classes of shares might be deemed to result in a "senior security" within the meaning of section 18(g) and prohibited by section 18(f)(1) and to violate the equal voting provisions of section 18(i).

2. Applicants believe that the ability to offer various classes of shares in each portfolio with different levels of service will better enable the Funds to meet the competitive demands of today's financial services industry. The proposed arrangement will permit the Funds both to facilitate the distribution of its securities and expand the depth and scope of its services without assuming excessive operational costs or unnecessary investment risks. In addition, the Funds would be able, under the proposed arrangement, to match more precisely its distribution costs, administrative support, and other expenses with those investors on whose behalf such costs and expenses are incurred.

3. Applicants assert that the proposed allocation of expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. Moreover, since the rights and privileges of all classes of shares of a portfolio would be substantially identical, the possibility that their interests would conflict would be remote.

4. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that their request to permit the CDSC arrangement would permit shareholders the option of having more investment dollars working for them from the time of their share purchases than if they chose a class with a front-end sales load.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares representing interests in the same portfolio of a Fund will be identical in all respects, except as set forth below. The only differences between the classes of shares of the same portfolio will relate solely to: (a) the impact of (i) expenses assessed to a class pursuant to a Plan, (ii) other class expenses which would be limited to (A) transfer agency fees identified by the transfer agent as being attributable to a specific class of shares, (B) fees and expenses of a Fund's administrator that are identified and approved by the Fund's board as being attributable to a specific class of shares, (C) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholder of a class, (D) blue sky registration fees incurred by a class of shares, (E) SEC registration fees incurred by a class of shares, (F) the expense of administrative personnel and services as required to support the shareholders of a specific class, (G) litigation or other legal expenses or audit or other accounting expenses relating solely to one class of shares, and (H) trustees' fees incurred as a result of issues relating to one class of shares, and (iii) any other incremental expenses subsequently identified that should be properly allocated to one class and which are approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to a portfolio's Plans and any matter submitted to shareholders relating to class expenses, except as provided in condition 17 below; (c) the different exchange privileges of the classes of shares; (d) the designation of each class of shares of a portfolio; and (e) certain conversion features offered by some of the classes.

2. The board of trustees [3] of a Fund, including a majority of the independent trustees, will approve the offering of different classes of shares under the multi-class distribution system. The minutes of the meetings of the trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement a multi-class system will reflect in detail the reasons for the trustees' determination that the proposed multi-class system is in the best interests of both the Fund involved and its shareholders.

3. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of a Fund, including a majority of the trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet class expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees of a Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each portfolio having a multi-class system for the

[3] Any reference to "trustees" includes directors of a Fund that is organized as a corporation.

existence of any material conflicts among the interests of the various classes of each portfolio. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. A portfolio's investment adviser and distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, a portfolio's investment adviser and/or distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. Any shareholder services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. The trustees of a Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing expenditure charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

7. Dividends paid by a portfolio with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that payments made under a Plan relating to each respective class of shares and the class expenses relating to each class of shares will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes in any portfolio having a multi-class distribution system and the proper allocation of expenses among the various classes in each such portfolio have been reviewed by an expert (the "Expert") who has rendered a report to the Fund involved, which report has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund involved that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund involved (which the Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management or a regional office of the SEC. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert will be a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the various classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition 8 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants will take immediate corrective measures if this representation is not concurred with by the Expert or appropriate substitute Expert.

10. The prospectus of each portfolio having a multi-class system will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares in a portfolio may receive different compensation with respect to one particular class of shares over another in the same portfolio.

11. The distributor for a Fund having a multi-class system will adopt compliance standards for any portfolio which has a multi-class system, which standards will relate to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of a portfolio having a multi-class system to conform to such applicable standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the multi-class system will be set forth in guidelines which will be furnished to the trustees of a Fund having a multi-class system.

13. Each portfolio having a multi-class system will disclose the respective expenses, performance data, distribution arrangements, services, fees, front-end sales loads, CDSCs, conversion features, and exchange privileges applicable to each class of shares in a portfolio in every prospectus relating to such portfolio, regardless of whether all classes of shares are offered through each prospectus. Each such portfolio will disclose the respective expenses and performance data applicable to all classes of shares in a portfolio in every shareholder report relating to such portfolio to the extent required by SEC rule or interpretation. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the portfolio as a whole generally and not on a per class basis (each portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such portfolio). To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of any portfolio's net asset value and public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the amended order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the portfolios may make pursuant to a Plan in reliance on the exemptive order.

15. If a CDSC arrangement is implemented with respect to shares of a portfolio, applicants agree to comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

16. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

17. If a Fund implements any amendment to its 12b–1 Plan(s) (or, if presented to shareholders, adopts or implements any amendment to a shareholder services Plan or Plans) that would increase materially the amount that may be borne by the Non-CDSC Shares under the Plan, existing Convertible CDSC Shares will stop converting into the Non-CDSC Shares unless the Convertible CDSC Shares, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Convertible CDSC Shares are exchanged or converted into a new class of shares ("New Non-CDSC Shares"), identical in all material respects to the Non-CDSC Shares as they existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Non-CDSC Shares. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Convertible CDSC Shares for a new class ("New Convertible CDSC Shares"), identical to the existing Convertible CDSC Shares in all material respects except that the New Convertible CDSC Shares will convert into New Non-CDSC Shares. New Non-CDSC Shares or New Convertible CDSC Shares may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Non-CDSC Shares or New Convertible CDSC Shares shall be borne solely by the adviser and the distributor. Convertible CDSC Shares sold after the implementation of the proposal may convert into Non-CDSC Shares subject to the higher maximum payment, provided that the material features of the Non-CDSC Share plan and the

such rule is currently proposed and as it may be reproposed, adopted or amended.

16. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

17. If a Fund implements any amendment to its 12b–1 Plan(s) (or, if presented to shareholders, adopts or implements any amendment to a shareholder services Plan or Plans) that would increase materially the amount that may be borne by the Non-CDSC Shares under the Plan, existing Convertible CDSC Shares will stop converting into the Non-CDSC Shares unless the Convertible CDSC Shares, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Convertible CDSC Shares are exchanged or converted into a new class of shares ("New Non-CDSC Shares"), identical in all material respects to the Non-CDSC Shares as they existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Non-CDSC Shares. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Convertible CDSC Shares for a new class ("New Convertible CDSC Shares"), identical to the existing Convertible CDSC Shares in all material respects except that the New Convertible CDSC Shares will convert into New Non-CDSC Shares. New Non-CDSC Shares or New Convertible CDSC Shares may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Non-CDSC Shares or New Convertible CDSC Shares shall be borne solely by the adviser and the distributor. Convertible CDSC Shares sold after the implementation of the proposal may convert into Non-CDSC Shares subject to the higher maximum payment, provided that the material features of the Non-CDSC Share plan and the relationship of such plan to the Convertible CDSC Shares are disclosed in an effective registration statement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17519 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20401; File No. 812–8720]

Chubb Life Insurance Company of America, et al.

July 12, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Chubb Life Insurance Company of America ("Chubb Life"), Chubb Separate Account C (the "Account"), any other separate account established in the future (the "Future Accounts") by Chubb Life or an affiliated life insurance company to support scheduled premium, single premium, or flexible premium variable life insurance contracts (the "Contracts"), and Chubb Securities Corporation ("Chubb Securities").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(c)(2) of the 1940 Act and Rules 6e–2(c)(4)(v) and 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to deduct from premiums received under the Contracts an amount that is reasonable in relation to Chubb Life's increased federal income tax burden resulting from Chubb Life's receipt of such premiums in connection with the Contracts.

FILING DATE: The application was filed on December 10, 1993. An amended and restated application was filed on May 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 8, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Shari J. Lease, Esq., Chubb Life Insurance Company of America, One Granite Place, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Michael V. Wible, Special Counsel, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Chubb Life, a stock life insurance company chartered under the laws of Tennessee and redomesticated in New Hampshire in 1991, is the depositor, for purposes of the 1940 Act, of the Account.

2. The Account, organized under New Hampshire law as an insurance company separate account, is registered with the Commission as a unit investment trust (File No. 33–72830). The Account will fund the Contracts issued by Chubb Life and the Contracts will be registered under the Securities Act of 1933. Chubb Series Trust (the "Trust"), a registered open-end management investment company (File No. 33–72834), will serve as the underlying investment medium for the Account. Applicants incorporate by reference the above-mentioned registration statements into the application.

3. Chubb Securities, a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., is the principal underwriter for the Contracts. Chubb Securities is a wholly-owned subsidiary of Chubb Life.

4. The Contracts which are the subject of the application are flexible premium individual variable life insurance policies and flexible premium survivorship variable life insurance policies. Applicants state that the Contracts will be issued in reliance on Rule 6e–3(T)(b)(13)(i)(B). Applicants state that Chubb Life will deduct 1.25% of each premium payment to cover

Chubb Life's estimated cost for the federal income tax treatment of deferred acquisition costs.

5. Applicants state that they intend to offer the Contracts to the public pursuant to an offering registered under the Securities Act of 1933. Applicants further note that they will rely upon Rule 6e–3(T) in connection with the offering.

6. In the Omnibus Budget Reconciliation Act of 1990 ("OBRA 1990"), Congress amended the Internal Revenue Code of 1986 (the "Code") by, among other things, enacting Section 848 thereof. Section 848 changed how a life insurance company must compute its itemized deductions from gross income for federal income tax purposes. Section 848 requires an insurance company to capitalize and amortize over a period of ten years part of the company's general expenses for the current year. Under prior law, these general expenses were deductible in full from the current year's gross income.

7. The amount of deductions that must be capitalized and amortized over ten years rather than deducted in the year incurred is based solely upon "net premiums" received in connection with certain types of insurance contracts. Section 848 of the Code defines "net premium" for a type of contract as gross premiums received by the insurance company on the contracts minus return premiums and premiums paid by the insurance company for reinsurance of its obligations under such contracts. Applicants state that the effect of Section 848 is to accelerate the realization of income from insurance contracts covered by that Section, and, accordingly, the payment of taxes on the income generated by those contracts.

8. The amount of general deductions that must be capitalized depends upon the type of contract to which the premiums received relate and varies according to a schedule set forth in Section 848. Applicants state that the Contracts are "specified insurance contracts" that fall into the category of life insurance contracts, and under Section 848, 7.7% of the year's net premiums received must be capitalized and amortized.

9. Applicants state that the increased tax burden on Chubb Life resulting from Section 848 may be quantified as follows. For each $10,000 of net premiums received by Chubb Life under the Contracts in a given year, Section 848 requires Chubb Life to capitalize $770 (7.7% of $10,000) and $38.50 of this $770 may be deducted in the current year. This leaves $731.50 ($770 minus $38.50) subject to taxation at the corporate tax rate of 35% which results in Chubb Life owing $256.03 (.35 × $731.50) more in taxes for the current year than would have been owed by Chubb Life prior to OBRA 1990. This current increase in federal income tax will be partially offset by deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

10. In the business judgment of Chubb Life, a discount rate of 10% is approximate for use in calculating the present value of Chubb Life's future tax deductions resulting from the amortization described above. Applicants state that Chubb Life seeks an after tax rate of return on the investment of its capital in excess of 10%. To the extent that capital must be used by Chubb Life to meet its increased federal tax burden under Section 848 resulting from the receipt of premiums, such capital is not available to Chubb Life for investment. Thus, Applicants argue, the cost of capital used to satisfy Chubb Life's increased federal income tax burden under Section 848 is, in essence, Chubb Life's after tax rate of return on capital; and, accordingly, the rate of return on capital is appropriate for use in this present value calculation. To the extent that the 10% discount rate is lower than Chubb Life's actual targeted rate of return, Applicants submit that a measure of comfort is provided that the calculation of Chubb Life's increased tax burden attributable to the receipt of premiums will continue to be reasonable over time, even if the corporate tax rate applicable to Chubb Life is reduced, or its targeted rate of return is lowered.

11. In determining the after tax rate of return used in arriving at this discount rate, Applicants state that Chubb Life considered a number of factors, including: market interest rates; Chubb Life's anticipated long term growth rate; the risk level for this type of business; inflation; and available information about the rates of return obtained by other life insurance companies. Chubb Life represents that such factors are appropriate factors to consider in determining Chubb Life's cost of capital. Applicants state that Chubb Life first projects its future growth rate based on the sales projections, the current interest rates, the inflation rate, and the amount of capital that Chubb Life can provide to support such growth. Chubb Life then uses the anticipated growth rate and the other factors enumerated above to set a rate of return on capital that equals or exceeds this rate of growth. Of these other factors, market

12. Using a corporate federal income tax rate of 35% and assuming a discount rate of 10%, the present value of the federal income tax effect of the increased deductions allowable in the following 10 years, which partially offsets the increased federal income tax burden, comes to $160.40. The effect of Section 848 on the Contracts is, therefore, an increased federal income tax burden with a present value of $95.63 for each $10,000 of net premiums, *i.e.*, $256.03 minus $160.40.

13. State premium taxes are deductible in computing federal income taxes. Thus, Chubb Life does not incur incremental federal income tax when it passes on state premium taxes to owners of the Contracts. Conversely, federal taxes are not deductible in computing Chubb Life's federal income taxes. To compensate Chubb Life fully for the impact of Section 848, therefore, it would be necessary to allow Chubb Life to impose an additional charge that would make it whole not only for the $95.63 additional federal income tax burden attributable to Section 848 but also for the federal income tax on the additional $95.63 itself. This federal income tax can be determined by dividing $95.63 by the complement of the 35% federal corporate income tax rate, *i.e.*, 65%, resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.47%.

14. Based on prior experience, Chubb Life expects that all of its current and future deductions will be fully taken. It is Chubb Life's judgment that a charge of 1.25% would reimburse Chubb Life for the impact of Section 848 on Chubb Life's federal income tax liabilities. Applicants represent that the charge to be deducted by Chubb Life pursuant to the relief requested is reasonably related to Chubb Life's increased federal income tax burden under Section 848, taking into account the benefit to Chubb Life of the amortization permitted by Section 848, and the use by Chubb Life of a discount rate of 10% in computing the future deductions resulting from such amortization, such rate being the equivalent of Chubb Life's cost of capital.

15. While the application states that Chubb Life believes that a charge of 1.25% of premium payments would reimburse it for the impact of Section 848 (as currently written) on Chubb Life's federal income tax liabilities, the application also states, however, that Chubb Life believes that it will have to increase this charge if any future change in, or interpretation of Section 848, or any successor provision, results in an increased federal income tax burden due to the receipt of premiums. Such an

increase could result from a change in the corporate federal income tax rate, a change in the 7.7% figure, or a change in the amortization period.

Applicants' Legal Analysis

1. Applicants request an order of the Commission pursuant to Section 6(c) exempting them from the provisions of Section 27(c)(2) of the 1940 Act and Rules 6e–2(c)4)(v) and 6e–3(T)(c) (4)(v) thereunder to the extent necessary to permit deductions to be made from premium payments received in connection with the Contracts. The deductions would be in an amount that is reasonable in relation to Chubb Life's increased federal income tax burden related to the receipt of such premiums. Applicants further request an exemption from Rule 6e–3(T)(c)(4)(v) of the 1940 Act to permit the proposed deductions to be treated as other than "sales load" for the purposes of Section 27 of the 1940 Act and the exemptions from various provisions of that Section found in Rule 6e–3(T)(b)(13).

2. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act.

3. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act. Applicants note that certain provisions of Rule 6e–3(T) provide a range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Contracts. Rule 6e–3(T)(b)(13)(iii) provides, subject to certain conditions, exemptions from Section 27(c)(2) that include permitting a payment of certain administrative fees and expenses, the deduction of a charge for certain mortality and expense risks, and the "deduction of premium taxes imposed by any state or other governmental entity".

4. Rule 6e–2(c)(4)(v) defines "sales load" charged on any payment as the excess of the payment over certain specified charges and adjustments, including "a deduction approximately equal to state premium taxes". Rule 6e–

increase could result from a change in the corporate federal income tax rate, a change in the 7.7% figure, or a change in the amortization period.

Applicants' Legal Analysis

1. Applicants request an order of the Commission pursuant to Section 6(c) exempting them from the provisions of Section 27(c)(2) of the 1940 Act and Rules 6e–2(c)4)(v) and 6e–3(T)(c) (4)(v) thereunder to the extent necessary to permit deductions to be made from premium payments received in connection with the Contracts. The deductions would be in an amount that is reasonable in relation to Chubb Life's increased federal income tax burden related to the receipt of such premiums. Applicants further request an exemption from Rule 6e–3(T)(c)(4)(v) of the 1940 Act to permit the proposed deductions to be treated as other than "sales load" for the purposes of Section 27 of the 1940 Act and the exemptions from various provisions of that Section found in Rule 6e–3(T)(b)(13).

2. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act.

3. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act. Applicants note that certain provisions of Rule 6e–3(T) provide a range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Contracts. Rule 6e–3(T)(b)(13)(iii) provides, subject to certain conditions, exemptions from Section 27(c)(2) that include permitting a payment of certain administrative fees and expenses, the deduction of a charge for certain mortality and expense risks, and the "deduction of premium taxes imposed by any state or other governmental entity".

4. Rule 6e–2(c)(4)(v) defines "sales load" charged on any payment as the excess of the payment over certain specified charges and adjustments, including "a deduction approximately equal to state premium taxes". Rule 6e–3(T)(c)(4)(v) defines "sales load" charged during a contract period as the excess of any payments made during the period over the sum of certain specified charges and adjustments, including "a deduction for and approximately equal to state premium taxes".

5. Applicants submit that the deduction for federal income tax charges, proposed to be deducted in connection with the Contracts, is akin to a state premium tax charge in that it is an appropriate charge related to Chubb Life's tax burden attributable to premiums received. Thus, applicants submit that the proposed deduction be treated as other than sales load, as is a state premium tax charge, for purposes of the 1940 Act.

6. Applicants argue that the requested exemptions from Rules 6e–2(c)(4) and 6e–3(T)(c)(4) are necessary in connection with Applicants' reliance on certain provisions of Rules 6e–2(b)(13) and 6e–3(T)(b)(13), and particularly on subparagraphs (b)(13)(i) of the Rules, which provide exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates may only rely on Rules 6e–2(b)(13)(i) or 6e–3(T)(b)(13)(i) if they meet the respective Rule's alternative limitations on sales load as defined in Rule 6e–2(c)(4) or Rule 6e–3(T)(c)(4). Applicants state that, depending upon the load structure of a particular Contract, these alternative limitations may not be met if the deduction for the increase in an issuer's federal tax burden is included in sales load. Although a deduction for an insurance company's increased federal tax burden does not fall squarely within any of the specified charges or adjustments which are excluded from the definition of "sales load" in Rules 6e–2(c)(4) and 6e–3(T)(c)(4), applicants state that they have found no public policy reason for including them in "sales load".

7. The public policy that underlies Rules 6e–2(b)(13)(i) and 6e–3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1) of the 1940 Act, is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a federal income tax charge attributable to premium payments as sales load would not in any way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of "sales load" in Rules 6e–2(c)(4) and 6e–3(T)(c)(4).

8. Applicants assert that the source for the definition of "sales load" found in the Rules supports this analysis. Applicants state that the Commission's intent in adopting such provisions was to tailor the general terms of Section 2(a)(35) of the 1940 Act to variable life insurance contracts. Just as the percentage limits of Sections 27(a)(1) and 27(h)(1) depend on the definition of "sales load" in Section 2(a)(35) for their efficacy, the percentage limits in Rules 6e–2(b)(13)(i) and 6e–3(T)(b)(13)(i) depend on Rules 6e–2(c)(4) and 6e–3(T)(c)(4), respectively, which do not depart, in principle, from Section 2(a)(35).

9. Section 2(a)(35) excludes deductions from premiums for "issue taxes" from the definition of "sales load" under the 1940 Act. Applicants submit that this suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of "sales load" in Rules 6e–2 and 6e–3(T) deductions made to pay an insurance company's costs attributable to its tax obligations. Section 2(a)(35) also excludes administrative expenses or fees that are "not properly chargeable to sales or promotional activities". Applicants argue that this suggests that the only deductions intended to fall within the definition of "sales load" are those that are properly chargeable to such activities. Because the proposed deductions will be used to compensate Chubb Life for its increased federal income tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, this language in Section 2(a)(35) is another indication that not treating such deductions as "sales load" is consistent with the policies of the 1940 Act.

10. Applicants assert that the terms of the relief requested with respect to Contracts to be issued through the Account or through Future Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Chubb Life would have to request and obtain exemptive relief for each Contract to be issued through a Future Account. Applicants state that such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this request for exemptive relief.

11. Applicants assert that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for Chubb Life or Future Accounts to file redundant exemptive applications, thereby reducing

administrative expenses and maximizing efficient use of resources. The delay and expense involved in having to seek repeated exemptive relief would impair the ability of Chubb Life and the Future Accounts to take advantage fully of business opportunities as those opportunities arise. Additionally, Applicants state that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Chubb Life and the Future Accounts were required to seek exemptive relief repeatedly with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses for Chubb Life and the Future Accounts.

Conditions for Relief

1. Applicants represent that Chubb Life will monitor the reasonableness of the charge to be deducted by Chubb Life pursuant to the requested exemptive relief.

2. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to Chubb Life's increased federal income tax burden under Section 848 of the Code resulting from the receipt of premiums.

3. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to the Account's increased federal income tax burden under Section 848 resulting from the receipt of premiums; (ii) the reasonableness of the after tax rate of return that is used in calculating such charge; and (iii) the appropriateness of the factors taken into account by Chubb Life in determining the after tax rate of return.

Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions from Section 27(c)(2) of the 1940 Act, and Rules 6e–2(c)(4)(v) and 6e–3(T)(c)(4)(v) thereunder, to permit Chubb Life to deduct 1.25% of premium payments under the Contracts meet the standards in Section 6(c) of the 1940 Act. In this regard, Applicants assert that granting the relief requested in the application would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17428 Filed 7–18–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–94–016]

RIN 2115–AE47

Drawbridge Operation Regulations; Humble Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of a drawbridge over the Humble Canal, from July 25, through August 8, 1994. This deviation requires the Louisiana department of Transportation and Development (LDOTD) to close the bridge for a continuous 15-day period. The purpose of the closure is to allow the South Terrebonne Parish Tidewater Management & Conservation District to complete construction of a hurricane protection levee south of the bridge.

EFFECTIVE DATES: The period of deviation begins on Monday, July 25, 1994, and continues through Monday, August 8, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Rose A. Payne, Bridge Program Manager, Eighth Coast Guard District. Telephone Number (504) 589–2965.

SUPPLEMENTARY INFORMATION: The only economic consequences involve the rerouting of navigation presently using Humble Canal. However, an alternate route is available via Bayou Terrebonne and Lake Barre. This deviation is for the purpose of providing a specific time frame to complete construction of a hurricane protection levee for many residents living in the low area of South Terrebonne Parish.

This deviation from normal operating regulations (33 CFR 117.5) is authorized in accordance with the provisions of Title 33 of the Code of Federal Regulations, parts 117.35 and 117.37.

Dated: July 4, 1994.

R.C. North,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 94–17533 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 94–047]

Implementation of the Port-State Control Initiative

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard has implemented a port-state control initiative to identify and eliminate the operation of substandard ships in U.S. waters. The Coast Guard is increasing its enforcement efforts against these vessels. This notice is published to ensure wide dissemination of this information to those who may be affected by it.

DATES: Effective May 1, 1994.

ADDRESSES: Commandant (G–M), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1464.

FOR FURTHER INFORMATION CONTACT: Commander Joseph J. Saboe, Project Manager, Merchant Vessel Inspection and Documentation Division (G–MVI–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–1464.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard examines and inspects ships under the authority of a number of existing statutory and international convention provisions. This port-state control initiative uses a risk management approach to focus the Coast Guard's attention and resources on those foreign vessels which potentially pose the greatest threat to the safety of U.S. ports and the marine environment.

On September 27, 1993, the U.S. Senate Appropriations Committee published a report (103–150) on the 1994 Department of Transportation and Related Agencies Appropriations Bill. In part, the Committee expressed a strong interest in eliminating substandard ships from U.S. waters. To accomplish this the U.S. Coast Guard was directed to develop and initiate stricter port-state controls to identify substandard ships entering U.S. waters for boarding and examination. The Coast Guard was also directed to develop a system to ensure accountability if a substandard ship is found and deficiencies were not detected in prior Coast Guard boardings or examinations.

A substandard vessel presents an unacceptable risk to the persons on board or to the marine environment. Under Coast Guard policy and applicable international guidelines, a ship is considered substandard if its hull, crew, machinery, or lifesaving, firefighting, or pollution prevention equipment are substantially below the standards required by U.S. laws or international conventions due to:

a. the absence of principal equipment or arrangements required by U.S. laws or international conventions;

b. gross noncompliance with equipment standards or arrangements under U.S. laws or international conventions;

c. substantial deterioration of the ship's structure or its essential equipment;

d. noncompliance with the operational and/or manning standards required by U.S. laws or international conventions;

e. clear lack of appropriate certification; or,

f. demonstrated lack of competence on the part of the crew.

The Coast Guard is authorized under several international maritime safety conventions to intervene if a vessel is not in compliance with existing international treaties and, if necessary, detain it until conditions are corrected. Conventions that provide port-state control intervention and/or detention authority include: the International Convention for the Safety of Life at Sea (SOLAS); the International Convention for the Prevention of Pollution From Ships, 1973 and its Protocol of 1978 (MARPOL 73/78); the International Conference on LoadLines, 1966 (LOADLINE 66); and the International Convention on Standards of Training, Certification and Watchkeeping, 1978 (STCW 78).

This initiative will also have a positive effect for vessels which are owned, managed, classed, and flagged by responsible parties who ensure their vessels meet U.S. and international safety standards. These vessels should be subject to a decrease in the number of boardings by the Coast Guard. This would result in a savings of vessel personnel time and operation costs.

The Coast Guard developed a matrix for determining vessel boarding priorities. This matrix uses information on a vessel's owner, operator and managing operator; destination; flag of registry; classification society; Coast Guard boarding history; and the type of ship to determine the vessel's relative risk. These criteria are assigned various

detected in prior Coast Guard boardings or examinations.

A substandard vessel presents an unacceptable risk to the persons on board or to the marine environment. Under Coast Guard policy and applicable international guidelines, a ship is considered substandard if its hull, crew, machinery, or lifesaving, firefighting, or pollution prevention equipment are substantially below the standards required by U.S. laws or international conventions due to:

a. the absence of principal equipment or arrangements required by U.S. laws or international conventions;

b. gross noncompliance with equipment standards or arrangements under U.S. laws or international conventions;

c. substantial deterioration of the ship's structure or its essential equipment;

d. noncompliance with the operational and/or manning standards required by U.S. laws or international conventions;

e. clear lack of appropriate certification; or,

f. demonstrated lack of competence on the part of the crew.

The Coast Guard is authorized under several international maritime safety conventions to intervene if a vessel is not in compliance with existing international treaties and, if necessary, detain it until conditions are corrected. Conventions that provide port-state control intervention and/or detention authority include: the International Convention for the Safety of Life at Sea (SOLAS); the International Convention for the Prevention of Pollution From Ships, 1973 and its Protocol of 1978 (MARPOL 73/78); the International Conference on LoadLines, 1966 (LOADLINE 66); and the International Convention on Standards of Training, Certification and Watchkeeping, 1978 (STCW 78).

This initiative will also have a positive effect for vessels which are owned, managed, classed, and flagged by responsible parties who ensure their vessels meet U.S. and international safety standards. These vessels should be subject to a decrease in the number of boardings by the Coast Guard. This would result in a savings of vessel personnel time and operation costs.

The Coast Guard developed a matrix for determining vessel boarding priorities. This matrix uses information on a vessel's owner, operator and managing operator; destination; flag of registry; classification society; Coast Guard boarding history; and the type of ship to determine the vessel's relative risk. These criteria are assigned various point values in the matrix. Each of these criteria is discussed below.

Owner, Operator, and Managing Operator

A ship will be assigned points in the matrix if its owner, operator or managing operator had any of its ships subjected to an intervention by the U.S. Coast Guard within the past twelve months. All vessels associated with that owner, operator or managing operator will be assigned points in the matrix, not just the vessel that was subjected to intervention.

Destination

Coast Guard historical data indicates that substandard ships are more likely to call at certain facilities. A vessel will be assigned points in the matrix if it is enroute to a facility that has been identified by the local Capital of the Port as a facility that has a previous record of receiving substandard vessels.

Flag of Registry

Points may also be assigned in the matrix based on a vessel's flag of registry. Points will be assigned to a vessel if its flag state's rate of interventions to fleet size exceeds the average intervention ratio for all flag states calling in the U.S. Intervention ratios are calculated based on the number of ships of each flag state that are subject to intervention in U.S. waters in comparison to the total number of ships from the flag state which call at U.S. ports.

Yearly totals of interventions and port calls will be developed and averages over a three-year period will be calculated. A three-year rolling average of flag state intervention ratios will be used to reduce the effect of any anomalies in the annual data. This three-year average will be compared to the three-year average for all flag states. Baseline data for these ratios were obtained using the Coast Guard's records of interventions for the years 1991 through 1993.

The initial three-year rolling average intervention rate for all foreign vessels calling in the U.S. for the period 1991–1993 is 0.50 percent. Thus, vessels of flags of registry which experienced an average intervention rate greater than 0.50 percent will be assigned points in the boarding priority matrix.

Classification Society

A classification society is an organization that issues certificates of class or issues international convention certificates to a vessel under the authority of a flag state. Currently, approximately 68 entities have been identified that issue classification certificates or international convention certificates.

The Coast Guard will determine which of the organizations identified meet the guidelines in International Maritime Organization (IMO) Resolution A.739(18), "Guidelines for the Authorization of Organizations Acting on Behalf of the Administration." Resolution A.739(18) provides the following guidelines for organizations:

a. extensive experience;

b. publication of rules in English;

c. significant technical staffs;

d. qualified professional staffs;

e. a written code of ethics;

f. written policy and objectives;

g. an internal audit system based on an internationally recognized quality management system such as ISO 9000; and,

h. subject to certification of its quality system by independent auditors recognized by the appropriate flag administration.

The Coast Guard has sent a letter to each classification society or other organization it has identified, and requested information needed to determine if the society or organization meets the guidelines in Resolution A.739(18). The Chief, Merchant Vessel Inspection and Documentation Division will review the responses, and develop a list of those societies or organizations that meet the guidelines. Vessels that have received certificates from those organizations that are not considered to meet the criteria in IMO Resolution A.739(18) will be automatically assigned points in the matrix.

A vessel that has received a certificate from a classification society or other organization that meets IMO Resolution A.739(18) may also be assigned points in the matrix based on the classification society's intervention rate. A classification society's intervention rate will be calculated based on the number of ships classed by each classification society that are subject to intervention in U.S. waters in comparison to the total number of ships classed by that classification society which call on U.S. ports. Each society's rate will be compared to the average intervention ratio for all classification societies. Vessels that have received certificates of class from societies with intervention rates higher than the average will be assigned points in the matrix.

Boarding History

A vessel will also be assigned points in the matrix based upon its record in U.S. waters. A vessel will be assigned points if it has not been boarded within the past six months, or has been

involved in an intervention, civil penalty action, marine casualty, or oil or hazardous material pollution incident within the past 12 months.

Vessel Type

Vessel type will also be a factor in determining priorities for examination or inspection. Points are assigned within the matrix for vessels with inherent high risks, such as bulk chemical tankers, oil tankers, gas carriers, bulk freighters ten or more years old, passenger vessels, and ships carrying low-value commodities (e.g., tallow, scrap metal, asphalt, paper).

Boarding Priorities

The cumulative point total, determined by using the matrix, is one of the factors taken into account in establishing the Coast Guard priority for boarding that vessel.

Four priority levels have been established:

a. Priority I: targeted for examination prior to port entry;

b. Priority II: targeted for examination after port entry and prior to cargo operations or passenger embarkation;

c. Priority III: targeted for examination after port entry with no restriction on cargo or passenger operations; and,

d. Priority IV: not targeted.

The port-state control initiative is also intended to assist the Coast Guard to allocate its resources for inspection or examination of ships making future port calls. Personnel and logistics concerns, weather, or specific local conditions may affect a decision to board or not to board a particular vessel. Although identified as Priority I–III, a ship is not considered substandard unless a boarding reveals that its physical conditions or manning is substantially below applicable U.S. or international requirements. The authority of the District Commander or Captain of the Port, pursuant to the Ports and Waterways Safety Act, 33 Code of Federal Regulations (CFR), Part 160, or other applicable authorities, are neither expanded nor limited by the port state control initiative.

Additional information on this port-state control initiative may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or by writing to the address under **ADDRESSES.**

Dated: July 11, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–17531 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc.; RTCA Special Committee 180; Joint RTCA Special Committee 180 and Eurocae Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware; Sixth Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 180 meeting to be held September 27–29, starting at 8:30 a.m. on the first day and 8:00 a.m. on subsequent days. The meeting will be held at the EUROCAE, 17, rue Hamelin, Paris France.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Installation of new co-chairperson; (3) Review and approval of meeting agenda; (4) Review and approval of EUROCAE WG–46 third meeting minutes held April 20–21, 1994; (5) Approve summary of first joint meeting held May 24–26, 1994; (6) Leadership team meeting report; (7) Review action items; (8) review issue logs; (9) Joint team status reports; (10) Joint team assignments; (11) Adjourn to joint team sessions; (12) Joint team reports; (13) Other business; (14) Agenda for next meeting; (15) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 12, 1994.

James I. McDaniel,

Acting Designated Officer.

[FR Doc. 94–17389 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; RTCA Special Committee 177; Test Criteria and Guidance Relative to Portable Electronic Devices Carried on Board Aircraft; Eleventh Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 177 meeting to be held August 9–10, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036 on August 9. On August 10 the meeting will be held at the Electronics Industries Association, 2001 Pennsylvania Avenue NW, Washington, DC, 9th floor.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Review of meeting agenda; (3) Approval of the summary of the tenth meeting; (4) Presentations of subcommittees: (a) PED testing update (Aviles); (b) Susceptibility analysis and testing (Covell); (c) In-aircraft test results (Aviles/Waltho); (5) Medical Device Review (Kern); (6) Computer modelling status (Hughes); (7) Report in-put review (Wright); (8) New/Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 11, 1994.

James I. McDaniel,

Acting Designated Officer.

[FR Doc. 94–17390 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Meeting Change

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for a change in the dates of the meeting Special Committee 165, Aeronautical Mobile Satellite Services. The meeting will be held August 17–19, instead of August 16–18. Please note this change.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 11, 1994.

James I. McDaniel,

Acting Designated Officer.

[FR Doc. 94–17391 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., RTCA Special Committee 169; Aeronautical Data Link Applications; Twelfth Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 169 meeting to be held August 10, starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the summary of the eleventh meeting held April 12, 1994, (4) Report on Working Group 3, Flight Information Services Communications, activities; (5) Ground to ground data link systems; (6) Other business (RTCA TMC Taskings); (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on July 11, 1994.

James I. McDaniel,

Acting Designated Officer.

[FR Doc. 94–17392 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Chicago Midway Airport, Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 18, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation

RTCA, Inc., RTCA Special Committee 169; Aeronautical Data Link Applications; Twelfth Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 169 meeting to be held August 10, starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the summary of the eleventh meeting held April 12, 1994, (4) Report on Working Group 3, Flight Information Services Communications, activities; (5) Ground to ground data link systems; (6) Other business (RTCA TMC Taskings); (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on July 11, 1994.

James I. McDaniel,

Acting Designated Officer.

[FR Doc. 94–17392 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Chicago Midway Airport, Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 18, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 258, Des Plaines, IL 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David R. Mosena, Commissioner of the City of Chicago Department of Aviation at the following address: O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 258, Des Plaines, IL 60018, (708) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 13, 1994, the FAA determined that the application to use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 10, 1994.

The following is a brief overview of the application:

Level of the PFC: $3.00.

Actual charge effective date: September 1, 1993.

Estimated charge expiration date: August 1, 2001.

Total approved net PFC revenue: $79,920,958.00.

Brief description of proposed projects: Airport Maintenance Complex, and Terminal/Concourse Emergency Power System. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on June 27, 1994.

Benito DeLeon,

Manager, Planning/Programming Branch, Great Lakes Region.

[FR Doc. 94–17388 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement To Support Research To Evaluate the Validity of a Functional Capacity Index That Measures the Consequences of Injuries Sustained in Motor Vehicle Crashes

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of Discretionary Cooperative Agreement Program.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA), having developed an index for measuring the reduction of functional capacity as a result of injuries sustained in motor vehicle crashes, announces a discretionary cooperative agreement program to support research in the validation of this index and solicits applications for projects under this program.

DATES: Applications must be received at the office designated below on or before September 14, 1994.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attn: Linda Boor, 400 7th Street SW., room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–94H–06014. Interested applicants are advised that no separate application package exists beyond the content of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Linda Boor, Office of Contracts and Procurement, at (202) 366–0607. Questions relating to this cooperative agreement should be directed to Joan Harris, Planning and Policy Development Division, (NPP–32), National Highway Traffic Safety Administration, 400 7th Street SW., room 5208, Washington, DC 20590; (202) 366–2578. Copies of documents referenced in this announcement will be provided upon request to Joan Harris. Such documents include the final report

results from NHTSA Cooperative Agreement No. DTNH22–89–Z–06019 and the list of approximately 300 injuries that most frequently occur in motor vehicle crashes.

SUPPLEMENTARY INFORMATION:

Background

As a result of numerous improvements in highway and traffic safety, the number of fatalities resulting from motor vehicle crashes has been in a long term downtrend. The incidence of injured survivors, however, has been increasing. As a result, although NHTSA's attention to countermeasures to reduce fatalities continues undiminished, it is being supplemented by attention to countermeasures that reduce the long term consequences of serious injuries both to the injured individual and society as a whole. In order to estimate these long term societal and personal impacts, new analytical tools are being developed. One such tool, called the Functional Capacity Index, measures the degree to which an injured person will not be able to function as he/she did before the injury. The Functional Capacity Index combines decrements in each of ten dimensions of functioning into a whole body score. The index was described in a request for comment on the proposed index (57 FR 13157; April 15, 1992). Basically, the index consists of qualitative descriptions of level of functioning for ten attributes of total functioning, (eating, excretory function, sexual function, ambulation, hand and arm function, bending and lifting, visual function, auditory function, speech, and cognitive function), and a numerical value for each combination of levels of functioning derived from a sample of value judgments of a diverse set of sub-populations.

General Description

The basic assumption of the Functional Capacity Index is that life is its own best measure of value. This is in distinction to the human capital economic approach to measuring consequences that assumes that people are producers and consumers of goods and services. If there are things a person cannot do as well following an injury as before, there is a reduction in the person's overall functional capacity. With the functional capacity approach, the consequences of an injury to individuals of the same age and gender are the same, independent of their economic contribution to society.

The Functional Capacity Index (FCI) assigns scores to the AIS injury descriptions on a scale of 0 to 1.00, where 0 represents no limitation of function and 1.00 represents maximum limitation of function. The overall consequences of an injury are found by multiplying the FCI by the injured person's remaining life expectancy. This results in the Life-years Lost to Injury (LLI). The Functional Capacity Index can vary with time as the injured person's condition changes. Any effects of reduced life expectancy as a result of the injury also can be accounted for. If the injury was fatal, all of the remaining life expectancy is counted.

The initial phase of the development of the Functional Capacity Index has been completed. It consisted of developing definitions of the functional attributes and their various capacity levels, choosing a scaling approach, obtaining judgments of a cross section of the population on the value of each attribute and capacity level, developing an algorithm for combining values into a "whole-body" index based on multiattribute rating techniques, and applying the attributes and capacity levels to the injuries described in the AIS 90 dictionary according to the composite opinion of a multi-disciplinary panel of experts.

This request for applications is concerned with the next phase of the development of the Functional Capacity Index, which is to perform the necessary research to validate the conclusions reached through initial development of the Index under Cooperative Agreement No. DTNH22–89–Z–06019. It is assumed that the applicant is thoroughly familiar with the Abbreviated Injury Scale 1990 revision.

The experimental design should consider a number of issues of interest to the agency. In general, these relate to the need for balance between a thorough and complete validation of the index, and validation of injuries or categories of injuries of particular interest to the agency.

1. The recipient will evaluate the functional capacity of people injured in motor vehicle crashes, and the evaluation methods identified may differ for injuries to the different body regions. In some cases existing data may be available, and in others data may have to be obtained by testing people for performance of the functional capacity descriptors. It also is possible that disparate data sets will be used for different body regions. The validation will be conducted for the different body regions and different severity levels shown in the AIS '90 dictionary with priority given to those injuries described in a NHTSA listing of approximately 300 injuries that most frequently occur in motor vehicle crashes. In addition, the validation process shall not neglect minor and moderate injuries in any body region. The methodology for each body region shall balance the cost and time required for acquiring the data and the resulting statistical significance. In order to apply the FCI, all injury data used in the evaluation shall be converted, if necessary, to AIS–90.

2. The validation must include as a minimum a representative sample of injuries to each body region and each severity level, as well as injuries that affect each of the attributes of the index. This must be balanced against the need to emphasize the less than 300 injuries that most frequently occur in motor vehicle crashes out of the more than 1,300 injuries listed in the AIS '90 dictionary.

3. When weighted to the incidence of injury in motor vehicle crashes, 88.5 percent of the most frequently occurring injuries had a zero value for the FCI, as estimated by the expert panel. The research effort must include validation of injuries with a zero value of FCI as well as those with non-zero values.

4. The research design must include objective criteria for determining agreement/disagreement with the results of the prior effort.

Limitations

The concept of the Functional Capacity Index is broadly applicable to all injuries, all ages, and changes in functional capacity as the injured person experiences long term effects either to increase or decrease capacity. At its present state of development, the index has certain limitations which must be recognized in the validation research:

1. The current index is directly applicable only to the conditions one year post-injury for a previously healthy adult between the ages of 18 and 55. Changes in functional capacity from pre-existing conditions are not included.

2. The index in its present form is not applicable to young children, as the present functional capacity definitions do not take into account the age dependent developmental levels of normal healthy children.

3. The index in its present state of development is not applicable to older persons, as it is well documented that similar trauma has a greater effect on older persons.

4. The index in its present form is applicable to single injuries. Methodologies to estimate the change in functional capacity resulting from any synergistic effects of more than one injury, particularly injuries to different body regions, remain to be developed.

5. The present Functional Capacity Index is limited to the injury definitions in the 1990 version of the Abbreviated Injury Scale. Although the International Classification of Disease (ICD) injury descriptions are widely used, they generally do not contain sufficient detail for the agency's countermeasure development purposes. Any efforts to revise the current translation programs between ICD–9 and AIS 85 to reflect the descriptions in AIS 90 would be applicable to the Functional Capacity Index and minimize this limitation.

6. Although the psycho-behavioral consequences of injuries are known to be significant, they are not included in the Functional Capacity Index in its present state of development.

7. The Functional Capacity Index does not intend to include the effect of "fates worse than death". These are states where people say they would rather die than continue living with the particular impairment. The agency position is that these are states of preference rather than states of function.

NHTSA Involvement

NHTSA, Planning and Policy Development Division, will be involved in all activities undertaken as part of the performance of this cooperative agreement and will:

1. Provide, on an as-available basis, one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and to coordinate activities between the organization and NHTSA.

2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.

3. Provide liaison with other government agencies and organizations, as appropriate.

Period of Support

The research effort described in this announcement will be supported through the award of a single cooperative agreement. It is anticipated that the project performance period will be for up to 27 months. The total anticipated funding level is $250,000, with $125,000 provided in the first incremental period. The application for Federal Assistance should address what is proposed and can be accomplished within the time and funding constraints.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be an educational insfitution or research organization. For-

5. The present Functional Capacity Index is limited to the injury definitions in the 1990 version of the Abbreviated Injury Scale. Although the International Classification of Disease (ICD) injury descriptions are widely used, they generally do not contain sufficient detail for the agency's countermeasure development purposes. Any efforts to revise the current translation programs between ICD–9 and AIS 85 to reflect the descriptions in AIS 90 would be applicable to the Functional Capacity Index and minimize this limitation.

6. Although the psycho-behavioral consequences of injuries are known to be significant, they are not included in the Functional Capacity Index in its present state of development.

7. The Functional Capacity Index does not intend to include the effect of "fates worse than death". These are states where people say they would rather die than continue living with the particular impairment. The agency position is that these are states of preference rather than states of function.

NHTSA Involvement

NHTSA, Planning and Policy Development Division, will be involved in all activities undertaken as part of the performance of this cooperative agreement and will:

1. Provide, on an as-available basis, one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and to coordinate activities between the organization and NHTSA.

2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.

3. Provide liaison with other government agencies and organizations, as appropriate.

Period of Support

The research effort described in this announcement will be supported through the award of a single cooperative agreement. It is anticipated that the project performance period will be for up to 27 months. The total anticipated funding level is $250,000, with $125,000 provided in the first incremental period. The application for Federal Assistance should address what is proposed and can be accomplished within the time and funding constraints.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be an educational insfitution or research organization. For-profit research organizations may apply; however, no fee or profit will be allowed.

Application Procedure

Applicants must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), 400 7th Street SW., Room 5301, Washington, DC 20590. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–94H–06014. Only complete application packages received on or before September 14, 1994 shall be considered. Submission of three additional copies will expedite processing, but is not required.

Application Content

1. The application package must be submitted with OMB Standard Form 424 (rev. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and certified assurances signed. While the Form 424A deals with budget information and Section B identifies budget categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs. In preparing their cost proposals, applicants shall assume that awards will be made by September 30, 1994, and should prepare their applications accordingly.

2. A description of the objectives, goals, and anticipated outcomes of the proposed research effort and the method or methods that will be used must be included. This shall include an overall description of the experimental design including a discussion of why this design is the minimal cost program that can lead to a reliable validation of the Functional Capacity Index. The validation effort should address representative injuries for each body region and severity level, even though those injuries may not be included on the priority listing. The discussion will include at least the following:

(a) The approaches to be taken to compare the functional capacity of persons who have received a variety of injuries to the estimated level of functional capacity one year following injury for a previously healthy adult. This discussion should cover the methods to be used for each of the ten attributes as described in a request for comment on the proposed index (57 F.R. 13157; April 15, 1992), and for each body region described in the Abbreviated Injury Scale 1990 Revision as published by the Association for the Advancement of Automotive Medicine.

(b) The types and sources of data that will be used in the validation process and how the actual comparison with the expert judgement from the earlier work, as provided by NHTSA, will be accomplished. It is recognized that a number of approaches may be taken to validate the Functional Capacity Index pertaining to injuries to different body regions or different severity levels. If the use of disparate data sources are planned, the discussion shall indicate how these data will be treated to insure that they are compatible.

(c) The arrangements made or agreements entered into to assure access to data needed in the validation process. Prior to submitting any such data to NHTSA, the recipient will be required to purge any information from which the personal identity of individuals may be determined.

(d) The size of the population(s) used for the validation and the statistical significance that can be expected from such a population.

(e) The criteria that will be used to accept or reject differences between the final report from the earlier work to be provided by NHTSA and the evaluation data.

(f) The approaches to insuring compatibility of data, particularly if data from disparate data sets are used. In addition, applicant shall address coordination of effort if multiple sites are included in the proposal.

(g) An outline of the anticipated milestones and projected schedule for completion of work.

3. In addition to the minimal cost program recommended that will lead to a reliable validation of the Functional Capacity Index, applicants may choose to describe alternate methodologies that may be more costly than the basic approach but will result in greater statistical validity or have other desirable features compared to the basic approach.

4. The proposed program director and other key personnel identified for participation in the proposed research effort, including description of their qualifications and their respective organizational responsibilities.

5. A discussion of the management approach to be employed to ensure that the research will be completed in a timely manner.

6. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

7. If data sources other than those owned by the applicant are to be used

in the proposed research, letters of intent to release the data shall be included.

Review Process and Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The technical merit of the proposed research effort, including the feasibility of the approach, planned methodology and anticipated results.

2. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, the relative level of effort proposed for professional, technical and support staff.

3. The approaches to be employed to ensure timely completion of the research.

Terms and Conditions of the Award

1. Prior to award, each recipient must comply with the certification requirements of 49 CFR Part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR Part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. During the effective period of the cooperative agreement awarded as a result of this notice, the agreement shall be subject to the general administrative requirements of 49 CFR Part 19, Department of Transportation Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Learning, Hospitals and Other Non-Profit Organizations; the cost principles of OMB Circulars A–21, or A–122, or FAR 31.2, as applicable to the recipients, and the requirements for a drug-free workplace set forth in 49 CFR Part 29.

3. If human subjects are to be used in any portions of this research, applications must include certification that the applicable provisions of 49 CFR Subtitle A Part 11 and NHTSA Order 700–1 will be followed.

4. Reporting Requirements and Deliverables: The recipient shall submit a quarterly performance report in letter format within 15 days after each quarter, a draft final report and draft technical summary within 24 months after contract award, any data bases and computer programs developed as part of this cooperative agreement on or before the completion date of this award, and a camera ready reproducible final report and technical summary within 27 months of contract award. An original and two copies of each report shall be submitted to the COTR.

Issued on: July 14, 1994.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 94–17497 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–61; Notice 1]

Uniroyal Goodrich Tire Company; Receipt of Petition for Determination of Inconsequential Noncompliance

The Uniroyal Goodrich Tire Company (Uniroyal) of Greenville, South Carolina, has determined that some of its tires fail to comply with 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Uniroyal has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.3.3(b) of FMVSS No. 109 specifies that each tire be labeled with an identification number. The last three digits of this identification number should represent the week and year of manufacture.

During the period of the 17th through the 20th week of 1994, Uniroyal manufactured approximately 2,800 P175/70R13 MOTOMASTER LE tires with an incorrect week and year of manufacture contained in the tire identification number. The last three digits in the identification number on the subject tires are incorrectly marked "167," "168," "169," and "120." The last three digits in the identification numbers for these tires should be "174," "184," "194," and "204" signifying the 17th, 18th, 19th, and 20th weeks of 1994. All tires are sold only in the replacement market.

Uniroyal supports its petition for inconsequential noncompliance with the following.

[Uniroyal does] not believe that this error will impact motor vehicle safety since only the week and year of manufacture is incorrect.

Uniroyal offers further rationale in its Part 573 Report.

The dates marked on these tires could be interpreted as the year 1987 through 1990 or 1997 through 2000. This tire line was introduced during the fourth quarter of 1992; therefore, there would not be pre-existent tires with these numbers. In the event a recall is necessary prior to the week and year (years 1997 through 2000) marked on these tires, there will be no difficulty in identifying them since there will be no tires that were actually manufactured during these weeks. If it is necessary to recall these tires during or after the weeks marked, the recall population would comprise both the mismarked and properly marked tires.

Interested persons are invited to submit written data, views, and arguments on the petition of Uniroyal, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 18, 1994.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 13, 1994.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 94–17491 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986.)

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: July 7, 1994.

Cynthia G. Beerbower,

Deputy Assistant Secretary for Tax Policy.

[FR Doc. 94–17420 Filed 7–18–94; 8:45 am]

BILLING CODE 4810–25–M

Office of the Comptroller of the Currency

[Docket No. 94–12]

Report to the Congress Regarding the Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives regarding differences in capital and accounting standards among the federal banking and thrift agencies.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has prepared this 1993 report as required by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). FDICIA requires the OCC to provide a report to Congress on any differences in capital standards among the federal financial regulatory agencies. This notice is intended to satisfy the FDICIA requirement that the report be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Roger Tufts, Senior Economic Advisor,

of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986.)

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: July 7, 1994.

Cynthia G. Beerbower,

Deputy Assistant Secretary for Tax Policy.

[FR Doc. 94–17420 Filed 7–18–94; 8:45 am]
BILLING CODE 4810–25–M

Office of the Comptroller of the Currency

[Docket No. 94–12]

Report to the Congress Regarding the Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives regarding differences in capital and accounting standards among the federal banking and thrift agencies.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has prepared this 1993 report as required by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). FDICIA requires the OCC to provide a report to Congress on any differences in capital standards among the federal financial regulatory agencies. This notice is intended to satisfy the FDICIA requirement that the report be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874–5070, or Ronald Shimabukuro, Senior Attorney, Banking Operations and Assets Division, (202) 874–4460, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Section 121 of FDICIA, Pub. L. 102–242, 105 Stat. 2236 (December 19, 1991), requires each federal banking agency to report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives on any differences between the capital standards used by the OCC and the capital standards used by the other financial institutions supervisory agencies. The text of that report is provided as follows:

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies,[1] Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives, 1993

This annual report details the differences in the capital requirements of the OCC, the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS).[2] This report is divided into three sections. The first section briefly discusses recent efforts of the agencies to promote more consistent capital standards; the second section discusses the differences in the capital standards; and the third section discusses the differences in accounting standards.

A. Recent Efforts of the Agencies

Representatives of each of the agencies meet regularly to discuss capital and related accounting issues as part of an ongoing effort to promote consistent interpretation and application of capital requirements and to develop uniform capital standards. The agencies are committed to achieve full uniformity in their capital and accounting standards. During this past year, the banking agencies have been extremely busy in these efforts. The agencies have issued several final and proposed rules relating to:

- Identifiable intangible assets.
- Multifamily housing loans.
- Interest rate risk.
- Risks from concentrations of credit and nontraditional activities.
- Collateralized transactions.
- Bilateral netting contracts.
- Deferred tax assets (FAS 109).
- Unrealized gains and losses on securities available for sale (FAS 115).

In addition, the agencies issued changes to regulatory reporting requirements for sales of other real estate owned (OREO) as part of the initiative to implement the President's March 10, 1993, program to improve the availability of credit to businesses and individuals. The reporting change for OREO generally made the regulatory reporting requirements consistent with generally accepted accounting principles.

B. Differences in Capital Standards Among the Federal Financial Institution Regulatory Agencies

In 1989 the banking agencies and OTS adopted the risk-based capital guidelines. The risk-based capital guidelines impose capital requirements based on the credit risk profiles of the assets held by an institution and provide a means to measure off-balance sheet risks. The risk-based capital guidelines implement the Accord on International Convergence of Capital Measurement and Capital Standards of July 1988, as adopted by the Committee on Banking Regulation and Supervisory Practice (Basle Accord). Under the risk-based capital guidelines bank and thrift institutions are required to maintain total capital[3] of at least 8 percent of risk-weighted assets. The risk-based capital requirements are the minimum capital requirements.

Most institutions are expected to, and generally do, maintain capital well above this minimum level.

In addition to the risk-based capital guidelines, the federal banking agencies impose leverage capital requirements based on the ratio of Tier 1 capital to total assets. The leverage capital requirements work in conjunction with the risk-based capital guidelines and

---

[1] This report is made pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) which superseded section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

[2] The OCC is the primary supervisor of national banks. Bank holding companies and state-chartered banks that are members of the Federal Reserve System are supervised by the FRB. State-chartered nonmember banks are supervised by the FDIC. The OTS supervises savings and loan associations.

[3] Total capital consists of Tier 1 capital plus Tier 2 capital less required deductions. Tier 1 capital is defined to include common stockholders' equity, noncumulative perpetual preferred stock and related surplus, and minority interests in consolidated subsidiaries. Tier 2 capital is generally defined to include the allowance for loan and lease losses, up to 1.25% of risk weighted assets, cumulative perpetual preferred stock and other qualifying subordinated debt and hybrid capital instruments.

impose minimum capital requirements regardless of the risk weights assigned to the assets held by the institution.

Although the agencies have adopted common leverage capital requirements and risk-based capital guidelines, there remain some technical differences in language and interpretation of the capital standards among the agencies. These minor differences are detailed below.

1. Leverage Capital Requirements

Under the leverage capital requirements, highly-rated banks (composite CAMEL rating of 1) must maintain a minimum leverage capital ratio of 3 percent of Tier 1 capital to total assets. All other banks must maintain an additional 100 to 200 basis points of Tier 1 capital to total assets.

In addition to the leverage ratio requirements, thrift institutions also must maintain a tangible equity ratio of 1.5 percent of total assets. This additional tangible equity requirement is required by the Financial Institution Reform, Recovery and Enforcement Act (FIRREA). The OTS is currently amending its leverage ratio requirement to make it more consistent with the leverage ratio requirements of the other banking agencies. The only notable difference will be the definition of core capital. While the definition of core capital will generally be consistent with the definition of Tier 1 capital, certain adjustments, such as supervisory goodwill,[4] will result in some differences.

2. Equity Investments

In general, commercial banks are not permitted to invest in equity securities, not are they generally permitted to engage in real estate investment or development activities. To the extent that a bank is permitted to hold equity securities (as with securities obtained in connection with debts previously contracted), the risk-based capital guidelines of the banking agencies require these investments to be risk-weighted at 100 percent. However, on a case-by-case basis, the banking agencies may require deduction of equity investments from the capital of the parent bank or impose other requirements in order to assess an appropriate capital charge above the minimum capital requirements. The capital treatment of equity investments is also discussed in the section on operating subsidiaries.

[4] With respect to supervisory goodwill, it should be noted that supervisory goodwill for thrifts will be phased out by the end of 1994.

The OTS risk-based capital requirements require thrift institutions to deduct equity investment from capital over a phased-in period ending July 1, 1994. This phased-in period may be extended to July 1, 1996, by the OTS on a case-by-case basis. In the interim, the portion of these equity investments not deducted will be risk-weighted at 100 percent.

3. Assets subject to Guarantee Arrangements by the Federal Savings and Loan Insurance Corporation (FLSIC)/Federal Deposit Insurance Corporation

The risk-based capital guidelines of the banking agencies assign assets subject to FLSIC or FDIC guarantees to the 20 percent risk-weight category, the same category to which claims on depository institutions and government-sponsored agencies are assigned. The OTS assigns these assets to the zero percent risk weight category.

4. Limitation on Subordinated Debt and Limited-Life Preferred Stock

Consistent with the Basle Accord, the banking agencies limit the amount of subordinated debt and limited-life preferred stock that may be included in Tier 2 capital to 50 percent of Tier 1 capital. This limitation is in addition to the overall limitation on Tier 2 capital which restricts the amount of Tier 2 capital that may be included in total capital to 100 percent of Tier 1 capital. In addition, the risk-based capital guidelines of the banking agencies require that subordinated debt and limited-life preferred stock by discounted 20 percent in each of the five years prior to maturity.

While subordinated debt and limited-life preferred stock do provide some measure of protection to the FDIC insurance fund, neither are a permanent source of funds. Moreover, subordinated debt cannot absorb losses while the bank continues to operate as a going concern. This limitation permits the inclusion of some subordinated debt and limited-life preferred stock in capital, while assuring that permanent stockholders' equity capital remains the predominant element in bank regulatory capital.

The OTS risk-based capital guidelines do not contain any sublimit on the total amount of limited-life instruments that may be included within Tier 2 capital. In addition, the OTS allows thrift institutions the option of either (1) discounting maturing capital instruments (issued on or after November 7, 1989) by 20 percent a year over the last five years of their term, or (2) including the full amount of such instruments, provided that the amount maturing in any of the next seven years does not exceed 20 percent of the total capital of the thrift institution.

5. Subsidiaries

The banking agencies generally require that all significant majority-owned subsidiaries be consolidated with the parent organization for both regulatory reporting and capital purposes. This requirement is consistent with the Basle Accord and is designed to ensure that all risk exposures of the banking organization are taken into account.

While significant majority-owned subsidiaries are generally consolidated, in some instances the OCC does not require a bank to consolidate certain subsidiaries. In these instances the bank's investment in the subsidiary constitutes a capital investment in the subsidiary. The OCC risk-based capital guidelines specifically provide that capital investment in an unconsolidated banking or financial subsidiary must be deducted from the total capital of the bank. In addition, the OCC risk-based capital guidelines permit the OCC to require the deduction of investment in other subsidiaries and associated companies on a case-by-case basis.

Similarly, the FRB risk-based capital guidelines generally require the deduction of investments in unconsolidated banking and finance subsidiaries. With respect to the investment in other types of unconsolidated subsidiaries (other than banking and finance subsidiaries) or joint ventures and associated companies, the FRB does retain flexibility in the capital treatment. The FRB may require the investments in such subsidiaries (1) to be deducted, (2) to be appropriately risk-weighted against the proportionate share of the assets of the entity, (3) to be consolidated line-by-line with the entity, or (4) otherwise to require the parent organization to maintain capital above the minimum standard sufficient to compensate for any risks associated with the investment.

In addition, the FRB risk-based capital guidelines also explicitly permit the deduction of investments in certain subsidiaries that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes. For example, the FRB deducts investments in, and unsecured advances to, Section 20 securities subsidiaries from the capital of the parent bank holding company. The FDIC accords similar treatment to securities subsidiaries of state-chartered nonmember banks.

Moreover, under the FDIC rules, investments in, and extensions of credit to, certain mortgage banking subsidiaries are also deducted in computing the capita of the parent bank. Neither the OCC nor the FRB has a similar requirement with regard to mortgage banking subsidiaries.

The deduction of investments in subsidiaries from the capital of the parent bank is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent bank. In deducting investments in, and advances to, certain subsidiaries from the capital of the parent bank, the banking agencies expect the parent bank to satisfy or exceed minimum regulatory capital requirements without reliance on the capital invested in the subsidiary. In assessing the overall capital adequacy of the parent bank, the banking agencies may also consider the parent bank's fully consolidated capital position.

Under OTS risk-based capital guidelines, a distinction is made between subsidiaries engaged in activities permissible for national banks and subsidiaries engaged in activities "impermissible" for national banks. This distinction is mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Subsidiaries of thrift institutions that engage only in activities permissible for national banks are consolidated on a line-for-line basis if majority-owned and on a *pro rata* basis if ownership is between 5 percent and 50 percent. As a general rule, investments, including loans, in subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent thrift institution. The remaining assets (the percent of assets corresponding to the nondeducted portion of the investment in the subsidiary) are consolidated with the parent thrift. However, investments, including loans, outstanding as of April 12, 1989, to subsidiaries that were engaged in impermissible activities prior to that date are grandfathered and will be phased-out of capital over a transition period that expires on July 1, 1994. The transition period may be extended to July 1, 1996, by the OTS on a case-by-case basis. During this transition period, investments in subsidiaries engaged in impermissible activities that have not been phased out of capital are to be consolidated on a *pro rata* basis.

Moreover, under the FDIC rules, investments in, and extensions of credit to, certain mortgage banking subsidiaries are also deducted in computing the capita of the parent bank. Neither the OCC nor the FRB has a similar requirement with regard to mortgage banking subsidiaries.

The deduction of investments in subsidiaries from the capital of the parent bank is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent bank. In deducting investments in, and advances to, certain subsidiaries from the capital of the parent bank, the banking agencies expect the parent bank to satisfy or exceed minimum regulatory capital requirements without reliance on the capital invested in the subsidiary. In assessing the overall capital adequacy of the parent bank, the banking agencies may also consider the parent bank's fully consolidated capital position.

Under OTS risk-based capital guidelines, a distinction is made between subsidiaries engaged in activities permissible for national banks and subsidiaries engaged in activities "impermissible" for national banks. This distinction is mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Subsidiaries of thrift institutions that engage only in activities permissible for national banks are consolidated on a line-for-line basis if majority-owned and on a *pro rata* basis if ownership is between 5 percent and 50 percent. As a general rule, investments, including loans, in subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent thrift institution. The remaining assets (the percent of assets corresponding to the nondeducted portion of the investment in the subsidiary) are consolidated with the parent thrift. However, investments, including loans, outstanding as of April 12, 1989, to subsidiaries that were engaged in impermissible activities prior to that date are grandfathered and will be phased-out of capital over a transition period that expires on July 1, 1994. The transition period may be extended to July 1, 1996, by the OTS on a case-by-case basis. During this transition period, investments in subsidiaries engaged in impermissible activities that have not been phased out of capital are to be consolidated on a *pro rata* basis.

6. Qualifying Multifamily Mortgage Loans

Pursuant to Section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA), the banking agencies and OTS have amended their risk-based capital guidelines to lower the risk weight of certain multifamily housing loans, and securities backed by such loans, from 100 percent to 50 percent. Specifically, loans secured by multifamily residential properties may qualify for a 50 percent risk weight subject to the following conditions:

(1) The loan must be secured by a first mortgage on a multifamily residential property consisting of five or more dwelling units;

(2) The original amortization of principal and interest must not exceed 30 years;

(3) The original minimum maturity for repayment of principal must not be less than seven years;

(4) All principal and interest payments must have been made on a timely basis in accordance with the terms of the loan for at least one year immediately preceding the risk weighting of the loan in the 50 percent risk weight category;

(5) The loan cannot be otherwise 90 days or more past due, or carried in nonaccrual status;

(6) The loan must be in accordance with applicable lending limit requirements and prudent underwriting standards; and

(7) If the rate of interest does not change over the term of the loan, then the current loan amount must not exceed 80 percent of the current value of the property, and in the most recent fiscal year, the ratio of annual net operating income generated by the property to annual debt service on the loan must not be less than 120 percent; or

(8) If the rate of interest changes over the term of the loan, then the current loan amount must not exceed 75 percent of the current value of the property, and in the most recent fiscal year, the ratio of annual net operating income generated by the property to annual debt service on the loan must not be less than 115 percent.

7. Goodwill

As required by FIRREA, the federal banking agencies do not allow banks or FDIC-supervised savings banks to include goodwill as capital for either risk-based capital guidelines or the leverage capital requirements. Bank holding companies included goodwill acquired prior to March 12, 1988, in Tier 1 for the purposes of the risk-based capital guidelines (although not for leverage capital requirements) until the end of 1992. After 1992, all goodwill must be deducted from bank holding company capital.

As permitted by FIRREA, OTS allows "qualifying supervisory goodwill" to be included as part of core capital through year-end 1994. After this date, thrift institutions must satisfy their minimum core capital requirement without reliance on goodwill.

8. Nonresidential Construction and Land Loans

Under the risk-based capital guidelines of the banking agencies, loans for real estate development and construction are assigned to the 100 percent risk-weight category. Reserves or charge-offs are required for such loans when weaknesses or losses develop. The banking agencies have no requirement for an automatic charge-off when the amount of a loan exceeds the fair value of the property pledged as collateral for the loan.

OTS generally also assigns these loans to the 100 percent risk weight category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, that excess portion must be deducted from capital in accordance with a phase-in rule which ends on July 1, 1994.

9. Mortgage-Backed Securities (MBS)

The risk-based capital guidelines of the banking agencies generally assign a risk weight to privately-issued MBSs according to the underlying assets, but in no case would it be assigned to the zero percent risk-weight category. Privately-issued MBSs where the direct underlying assets are mortgages, are generally assigned a risk weight of 50 percent or 100 percent. Privately-issued MBSs that have government agency or government-sponsored agency securities as their direct underlying assets are generally assigned to the 20 percent risk-weight category.

The OTS assigns privately-issued high quality mortgage-related securities to the 20 percent risk-weight category. However, these are privately-issued MBSs with AA or better investment ratings from private rating companies.

With respect to other MBSs, the federal banking agencies assign to the 100 percent risk weight category certain MBSs, including interest-only strips, residuals, and similar instruments that can absorb more than their *pro rata* share of loss. The OCC, in conjunction with the other banking agencies and the OTS, on January 10, 1992, issued more

specific guidance as to the types of "high types" MBSs that require a 100 percent risk weight.

10. Assets Sold With Recourse

In general, recourse is any risk of loss retained by an institution when it sells an asset. Recourse arrangements allow the purchaser of an asset to seek recovery against the originating institution that sold the asset under the conditions in the agreement. Recovery may take various forms, but usually permits the buyer to "put," or resell, the asset back to the selling institution or to obtain reimbursement from the selling institution for the amount of the loss. A typical condition for recourse would be if the asset ceases to perform satisfactorily. Therefore, recourse provisions generally expose the originating institution to loss associated with the asset.

Generally, under the risk-based capital guidelines of the banking agencies, sales of assets involving any recourse must be reported as financings, so that the assets are retained on the balance sheet of the selling bank. This has the effect of requiring a full leverage and risk-based capital charge whenever assets are sold with recourse, including limited recourse.

The OCC has recently revised its risk-based capital guidelines to clarify the definition of recourse and to permit a limited exception for transactions involving the sale of certain mortgage loan pools where the selling bank has retained only minimal recourse and generally has provided for all potential losses.

The FRB generally applies a capital charge to any recourse arrangement that is the equivalent of an off-balance sheet guarantee, regardless of the nature of the transaction that gives rise to the recourse obligation. As with the OCC, the FRB provides an exception for pools of one-to four-family residential mortgages and for certain farm mortgage loans. These recourse transactions are reported by the bank as sales, removing them from leverage capital requirements. These transactions, which are the equivalent of off-balance sheet guarantees, involve the type of credit risk that is addressed by the risk-based capital guidelines. However, some questions have been raised because of the treatment afforded these transactions for the purposes of the leverage capital requirements. The FRB has clarified its risk-based capital guidelines to ensure that recourse sales involving residential mortgages are to be taken into account for determining compliance with risk-based capital requirements. The FDIC has also clarified their risk-based capital guidelines on this issue in 1993.

In general, OTS also requires a full capital charge against assets sold with recourse. However, for certain limited recourse arrangements, OTS limits the capital charge to the lesser of the amount of recourse or the actual amount of capital that would otherwise be required against that asset, that is, the normal full capital charge.

At present the banking agencies do not provide for any special treatment of securitized assets. Some securitized asset arrangements may involve the issuance of senior and subordinated classes of securities against pools of assets. When a bank originates such a transaction by placing loans that it owns in a trust and retains any portion of the subordinated securities, the banking agencies require that capital be maintained against the entire amount of the asset pool. Regardless of whether a bank acquires a subordinated or senior security in a pool of assets that it did not originate, the banking agencies assign both the investment in the subordinated piece or the senior piece to the 100 percent risk-weight category. The banking agencies review these instruments to determine if additional reserves, asset write-downs, or capital are necessary to protect the bank.

The OTS requires that capital be maintained against the entire amount of the asset pool in both of the situations described in the preceding paragraph. Additionally, the OTS applies a capital charge to the full amount of assets being serviced when the servicer is required to absorb credit losses on the assets being serviced.

In 1990, under the auspices of the FFIEC, the banking agencies and the OTS issued for public comment a fact finding paper pertaining to the full range of issues relating to recourse arrangements. These issues include the definition of "recourse" and the appropriate reporting and capital treatments to be applied to recourse arrangements, as well as so-called recourse servicing arrangements and limited recourse. The objective of this effort was to develop in a comprehensive and consistent fashion an appropriate and uniform approach to recourse arrangements for capital adequacy, reporting, and other regulatory purposes. The comments received were very extensive and generally illustrated the complexity of the subject. In view of the significance and complexity of this project, the FFIEC in December 1990 decided to narrow the scope of the initial phase of the recourse project to credit-related recourse arrangements that involve limited recourse or that support a third party's assets.

A recourse working group, composed of representatives from all four agencies, presented a report and recommendations to the FFIEC in August 1992 and were directed to carry out a study of the impact of their recommendations on depository institutions, financial markets, and other affected parties. The interagency working group completed a study in early 1993. As a result of that study, the interagency working group has revised several of its recommendations to reflect market practice especially for securitized assets. A joint interagency notice of proposed rulemaking and advance notice of proposed rulemaking was published in the **Federal Register** on May 25, 1994 (59 Fed. Reg. 27116).

11. Agricultural Loan Loss Amortization

In determining regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 are permitted to defer and amortize losses incurred on agricultural loans between January 1, 1984, and December 31, 1991. The program also applies to losses incurred between January 1, 1983, and December 31, 1991, as a result of reappraisals and sales of agricultural and other real estate owned and agricultural personal property. These losses must be fully amortized over a period not to exceed seven years and, in any case, must be fully amortized by year-end 1998. Thrift institutions are not eligible to participate in the agricultural loan loss amortization program established by this statute.

12. Treatment of Junior Liens on One- to Four-Family Properties

In some cases, a banking organization may make two loans secured by a single piece of residential property—one loan secured by a first lien, the other by a second lien. The OCC and OTS generally assign first liens on one- to four-family properties to the 50 percent risk-weight category. All second liens on residential property are assigned to the 100 percent risk-weight category, regardless of whether the institution also holds the first lien. The assignment of first lien mortgages to the 50 percent risk-weight category is based upon the requirement that banks will adhere to prudent underwriting standards with respect to the maximum loan-to-value ratio, the borrower's paying capacity and the long-term expectations for the real estate market in which the bank is lending.

The FDIC similarly assigns all second liens to the 100 percent risk-weight category. However, in determining the risk-weight of the first lien, the FDIC considers the first and second liens together to assess whether the first lien satisfies prudent underwriting standards. When evaluated together, if the first and second liens are within the prudent loan-to-value ratio and satisfy all other underwriting standards, then the first lien will be assigned to the 50 percent risk-weight category; otherwise, it will be assigned to the 100 percent risk category.

The FRB and OTS consider the first and second liens as a single loan, provided there are no intervening liens. Therefore, the total amount of these transactions may be assigned to the 100 percent risk-weight category, if, in the aggregate, the two loans exceeds a prudent loan-to-value ratio and, therefore, do not qualify for the 50 percent risk-weight category. This approach is intended to avoid possible circumvention of the capital requirements and capture the risks associated with the combined transactions. However, if the total amount of the transaction does satisfy a prudent loan-to-value ratio and other underwriting standards, then both the first and second liens may be assigned to the 50 percent risk-weight category.

Although there are some technical differences in the methodology, all the agencies have the same ability to adjust the capital requirements of an individual bank to account for imprudent loans secured by first liens on one- to four-family properties.

13. Pledged Deposits and Nonwithdrawable Accounts

The OTS capital guidelines permit thrift institutions to include in capital certain pledged deposits and nonwithdrawal accounts that satisfy specified OTS criteria. Income capital certificates and mutual capital certificates held by OTS may also be included in capital by thrift institutions. These instruments are not relevant to commercial banks, and, therefore, they are not addressed in the risk-based capital guidelines of the banking agencies.

14. Mutual Funds

The three banking agencies assign all of the holdings of a bank in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is *permitted* to hold under its operating rules. The purposes of this is to take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual

The FDIC similarly assigns all second liens to the 100 percent risk-weight category. However, in determining the risk-weight of the first lien, the FDIC considers the first and second liens together to assess whether the first lien satisfies prudent underwriting standards. When evaluated together, if the first and second liens are within the prudent loan-to-value ratio and satisfy all other underwriting standards, then the first lien will be assigned to the 50 percent risk-weight category; otherwise, it will be assigned to the 100 percent risk category.

The FRB and OTS consider the first and second liens as a single loan, provided there are no intervening liens. Therefore, the total amount of these transactions may be assigned to the 100 percent risk-weight category, if, in the aggregate, the two loans exceeds a prudent loan-to-value ratio and, therefore, do not qualify for the 50 percent risk-weight category. This approach is intended to avoid possible circumvention of the capital requirements and capture the risks associated with the combined transactions. However, if the total amount of the transaction does satisfy a prudent loan-to-value ratio and other underwriting standards, then both the first and second liens may be assigned to the 50 percent risk-weight category.

Although there are some technical differences in the methodology, all the agencies have the same ability to adjust the capital requirements of an individual bank to account for imprudent loans secured by first liens on one- to four-family properties.

13. Pledged Deposits and Nonwithdrawable Accounts

The OTS capital guidelines permit thrift institutions to include in capital certain pledged deposits and nonwithdrawal accounts that satisfy specified OTS criteria. Income capital certificates and mutual capital certificates held by OTS may also be included in capital by thrift institutions. These instruments are not relevant to commercial banks, and, therefore, they are not addressed in the risk-based capital guidelines of the banking agencies.

14. Mutual Funds

The three banking agencies assign all of the holdings of a bank in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is *permitted* to hold under its operating rules. The purposes of this is to take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund in view of the fact that the future composition and risk characteristics of the fund cannot be known in advance.

The OTS applies a capital charge based on the riskiest asset that is *actually* held by the mutual fund at a particular time. In addition the OTS guidelines also permit, on a case-by-case basis, investments in mutual funds to be allocated on a *pro rata* basis dependent on the actual composition of the fund.

15. Interest Rate Risk

The risk-based capital guidelines were designed primarily as a broad measure of the relative credit risk of the assets. However, the banking agencies and OTS are continuing their efforts to refine the risk-based capital guidelines to take into account other noncredit risks, including interest rate risk. The agencies are required to consider interest rate risk, as well as the risk of concentrations of credit and the risks of nontraditional activities, under Section 305 of FDICIA.

The OTS has adopted an interest rate risk component to its risk-based capital guidelines, which became effective on January 1, 1994. Under this new rule, thrift institutions with an above normal level of interest rate risk will be subject to a capital charge commensurate to their risk exposure.

The banking agencies also are developing an interest rate risk component. On September 14, 1993, the banking agencies published a joint notice of proposed rulemaking in the **Federal Register** and are currently in the process of drafting a final rule.

16. Concentrations of Credit and Nontraditional Activities

As required by Section 305 of FDICIA, the banking agencies and the OTS published a joint proposal in the **Federal Register** on February 22, 1994. The proposed rule would amend the capital standards of the banking agencies and the OTS by explicitly identifying concentration of credit risk and certain risks arising from nontraditional activities as important factors in assessing an institution's overall capital adequacy. The banking agencies and the OTS are currently reviewing the comment letters received and are drafting a final rule.

17. Collateralized Transactions

In December 1992, the FRB amended its risk-based capital guidelines to lower the risk-weight on loans collateralized by cash or government securities from 20 percent to zero percent. In August 1993, the OCC issued a proposed rule that would similarly lower the risk-weight on loans collateralized by cash or government securities from 20 percent of zero percent for national banks. The OCC is currently drafting a final rule. The FDIC and OTS are also considering this issue.

18. Deferred Tax Assets

On December 23, 1993, the OCC published in the **Federal Register** a proposed rule on deferred tax assets. This proposal was developed jointly by the banking agencies and the OTS in response to Financial Accounting Standard (FAS) Number 109 which was adopted for regulatory reporting purposes beginning January 1, 1993. The proposed rule would amend the capital standards to limit the amount of certain deferred tax assets that may be included in an institution's Tier 1 capital. The other banking agencies and the OTS have issued or are considering similar proposals. The OCC will be working with the other banking agencies and the OTS in drafting a final rule.

19. Unrealized Gains and Losses on Securities Available for Sale

On April 18, 1994, the OCC published in the **Federal Register** a proposed rule on unrealized gains and losses on securities available for sale. This proposal was developed jointly by the banking agencies and OTS in response to FAS 115, which was adopted for regulatory reporting purposes beginning December 15, 1993. The proposed rule would amend the definition of "common stockholders' equity" in the capital guidelines to include both unrealized gains and losses on securities available for sale. The other banking agencies and the OTS have issued or are planning to issue similar proposals. The OCC will be working with the other banking agencies and the OTS in drafting a final rule.

20. Bilateral Netting Contracts

The banking agencies and the OTS have been meeting to discuss an amendment to the risk-based capital guideline to provide for the recognition of bilateral netting contracts for the purpose of determining the capital requirement for off-balance sheet rate contracts. In May of 1994, the OCC and the FRB have issued a joint proposed rule that generally would permit an institution to net positive and negative mark-to-market values of interest rate and foreign exchange rate contracts with a single counterparty if those rate contracts are subject to qualifying bilateral netting contracts. The OTS and the FDIC are considering the issuance of similar proposed rules.

C. Interagency Differences in Accounting Principles

The OCC, as well as the other banking agencies, requires banks to follow generally accepted accounting principles (GAAP), except when the agency determines that a specific accounting standard under GAAP does not meet the accounting objectives included in Section 121 of FDICIA. In such cases, the use of accounting principles more stringent than GAAP may be required. For the most part, the regulatory accounting standards for all commercial banks, whether regulated by the OCC, the FRB, or the FDIC, are prescribed in the Instructions to the Report of Condition and Income (Call Report).

The Call Report instructions are established by the FFIEC and are generally consistent with GAAP. Differences in interpretations between the OCC and the other banking agencies may occur. However, such differences are usually infrequent and involve immaterial or emerging issues, which the FFIEC has not yet reviewed on a joint agency basis.

Under Section 121 of FDICIA, the federal banking agencies must require financial institutions to use accounting principles "no less stringent than GAAP." The banking agencies believe that GAAP generally satisfies the accounting objectives included in FDICIA Section 121. However, as previously noted, in certain circumstances, accounting principals more stringent than GAAP are required to satisfy accounting objectives included in FDICIA.

The OTS requires each thrift institution to file the Thrift Financial Report. That report is filed on a basis consistent with GAAP, as it is applied by thrift institutions, which differs in a few respects from GAAP as it is applied by banks.

These differences in accounting principles between the banks and thrift institutions may cause differences in financial statement presentation and in amounts of regulatory capital required to be maintained by depository institutions.

The following summarizes the significant differences in accounting standards between the Thrift Financial Report and the Call Report. These differences generally arise because of either: (1) differences between regulatory reporting standards and GAAP applicable to banks, or (2) differences in GAAP applicable to banks and GAAP applicable to thrift institutions.

1. Futures and Forward Contracts

Differences in this area result because the banking regulators generally require future and forward contracts to be marked to market, whereas thrift institutions may defer gains and losses resulting from hedging activities. The banking agencies do not follow GAAP, but require banks to report changes in the market value of futures and forward contracts, even when used as hedges, in current income. However, futures contracts used to hedge mortgage banking operations are reported in accordance with GAAP. This issue will be reexamined as part of an ongoing project on accounting for derivatives.

The OTS requires thrift institutions to follow GAAP to account for futures contracts. Accordingly, when specified hedging criteria are satisfied, the accounting for the futures contract is matched with the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the income effects of the hedged item are recognized. This reporting can result in the deferral of both gains and losses. Although there is no specific GAAP for forward contracts, the OTS applies these same principles to forward contracts.

2. Push-Down Accounting

When a depository institution is acquired by a holding company in a purchase transaction, the holding company is required to revalue all of the assets and liabilities of the depository institution at fair value at the time of acquisition. When push-down accounting is applied, the same fair value adjustments recorded by the parent holding company are also recorded at the depository institution level.

All of the agencies require the use of push-down accounting when there has been a substantial change in the ownership of the institution. However, differing standards have been applied to determine when this substantial change has occurred.

The three banking agencies require push-down accounting when there is at least a 95 percent change in ownership of the institution. This approach is consistent with interpretations of the Securities and Exchange Commission.

The OTS requires push-down accounting when there is at least a 90 percent change of ownership.

3. Excess Service Fees

Thrift institutions consider excess servicing fees in the determination of the gain or loss on a loan sale, whereas banks generally recognize the excess fee over the life of the loan.

The banking agencies require banks to follow GAAP for residential first mortgage loans. This requires that when loans are sold with servicing retained and the stated servicing fee is sufficiently higher than a normal servicing fee, the sales price is adjusted to determine the gain or loss from the sale. This allows additional gain recognition at the time of sale and recognizes a normal servicing fee in each subsequent year. This gain cannot exceed the gain assuming the loans were sold with servicing released.

For all other loans, the banking agencies require that excess servicing fees retained on loans sold be recognized over the contractual life of the transferred assets.

The OTS follows GAAP in valuing all excessive service fees. Therefore, the accounting stated above for sales of mortgage loans with excess servicing at banking institutions would apply to all loan sales with excess servicing at thrift institutions.

4. In-Substance Defeasance of Debt

The banking agencies do not permit banks to defease their liabilities in accordance with FASB Statement Number 76, whereas thrift institutions may eliminate defeased liabilities from the balance sheet.

The banking agencies report in-substance defeased debt as a liability and the securities contributed to a trust as assets with no recognition of any gain or loss on the transaction.

The OTS accounts for debt that has been in-substance defeased in accordance with GAAP.

Therefore, when a debtor irrevocably places risk-free monetary assets in a trust solely for satisfying the debt and the possibility that the debtor will be required to make further payments is remote, the debt is considered extinguished. The transfer can result in a gain or loss in the current period.

5. Sales of Assets with Recourse

The banking agencies generally do not allow banks to report sales of receivables if any risk of loss is retained. Thrift institutions report sales when the risk of loss can be estimated in accordance with FASB Statement Number 77.

The banking agencies generally allow banks to report transfers of receivables as sales only when the transferring institution: (1) retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, assets transferred with recourse are reported as financings, not sales.

However, this rule does not apply to the transfer of mortgage loans under certain government programs (GNMA, FNMA, etc.). Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, private transfers of pools of mortgages are also reported as sales if the transferring institution does not retain more than an insignificant risk of loss on the assets transferred.

The OTS follows GAAP to account for a transfer of all receivables with recourse. A transfer of receivables with recourse is recognized as a sale if: (1) the seller surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

The FFIEC has a study under way involving the topic of transfers with recourse. As part of this study, the staff of the OCC is reviewing the reporting requirements for sales of assets with recourse. The purpose of this study is to determine whether a reduction or elimination of the differences between regulatory reporting requirements and GAAP may be achieved in this area.

6. Negative Goodwill

The three banking agencies require that negative goodwill [5] be reported as a liability, and not netted against the goodwill asset.

The OTS permits negative goodwill to offset the goodwill assets resulting from other acquisitions.

7. Offsetting of Amounts Related to Certain Contracts

FASB Interpretation Number 39 (FIN 39) became effective in 1994. FIN 39 allows the offsetting of certain assets and liabilities on the balance sheet (e.g., loans, deposits, etc.), as well as the netting of assets and liabilities arising from off-balance sheet derivative instruments, when four conditions are met. These conditions relate to whether a valid right of offset exists. The three banking agencies are planning to adopt FIN 39 sometime in 1994 solely for on-balance sheet amounts arising from conditional and exchange contracts (e.g., interest rate swaps, options, etc.). The Call Report's existing guidance, which generally prohibits netting of assets and liabilities, will continue to be followed in all other cases.

[5] Negative goodwill typically is created when a bank purchases assets for less than the determined fair value of the assets.

However, this rule does not apply to the transfer of mortgage loans under certain government programs (GNMA, FNMA, etc.). Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, private transfers of pools of mortgages are also reported as sales if the transferring institution does not retain more than an insignificant risk of loss on the assets transferred.

The OTS follows GAAP to account for a transfer of all receivables with recourse. A transfer of receivables with recourse is recognized as a sale if: (1) the seller surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

The FFIEC has a study under way involving the topic of transfers with recourse. As part of this study, the staff of the OCC is reviewing the reporting requirements for sales of assets with recourse. The purpose of this study is to determine whether a reduction or elimination of the differences between regulatory reporting requirements and GAAP may be achieved in this area.

6. Negative Goodwill

The three banking agencies require that negative goodwill [5] be reported as a liability, and not netted against the goodwill asset.

The OTS permits negative goodwill to offset the goodwill assets resulting from other acquisitions.

7. Offsetting of Amounts Related to Certain Contracts

FASB Interpretation Number 39 (FIN 39) became effective in 1994. FIN 39 allows the offsetting of certain assets and liabilities on the balance sheet (e.g., loans, deposits, etc.), as well as the netting of assets and liabilities arising from off-balance sheet derivative instruments, when four conditions are met. These conditions relate to whether a valid right of offset exists. The three banking agencies are planning to adopt FIN 39 sometime in 1994 solely for on-balance sheet amounts arising from conditional and exchange contracts (e.g., interest rate swaps, options, etc.). The Call Report's existing guidance, which generally prohibits netting of assets and liabilities, will continue to be followed in all other cases.

[5] Negative goodwill typically is created when a bank purchases assets for less than the determined fair value of the assets.

The OTS policy on netting of assets and liabilities is consistent with GAAP and FIN 39.

8. Specific Valuation Allowance for and Charge-Offs of Troubled Loans

The banking agencies generally consider real estate loans that lack acceptable cash flows or other repayment sources to be "collateral dependent." When the fair value of the collateral of such a loan has declined below book value, the loan is reduced to fair value. This approach is consistent with GAAP applicable to banks.

Prior to September 30, 1993, the OTS required specific valuation allowances for troubled loans based on the net realizable value of the collateral. Effective September 30, 1993, the OTS issued a revised policy that requires a specific valuation allowance against, or partial charge-off, of a loan when its book value exceeds its "value," as defined. The "value" is either the present value of the expected future cash flows discounted at the loan's effective interest rate, the observable market price, or the fair value of the collateral. This revised policy, which is similar to the requirements of FASB Statement No. 114, narrows the differences between banks and thrifts.

Dated: July 11, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94–17435 Filed 7–18–94; 8:45 am]

BILLING CODE 4810–33–M

U.S. Customs Service

[T.D. 94–59]

Tariff Classification of Camera Lenses Imported in Same Shipment With Camera Bodies

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice of a change of position regarding the classification of different sized camera lenses imported in the same shipment with an equal number of 35mm camera bodies under the Harmonized Tariff Schedule of the United States (HTSUS). Pursuant to rulings on such shipments, Customs has classified as a single tariff entity each camera body and "normal" lens which could be matched together. Camera bodies and lenses, if they are imported in the same shipment but are not packaged together for retail sale as cameras and lenses, are now presumed to retain their separate commercial identities and are separately classifiable under the HTSUS. The result of this change of position under the HTSUS is an increase in the rate of duty on lenses not put up together for retail sale with matched camera bodies at the time of entry, because the lenses will no longer be classifiable together with camera bodies as cameras, but will be separately classifiable as lenses. This change of position does not apply to lenses and camera bodies, imported together in the same shipment in equal numbers, which are put up together for retail sale at the time of entry into the U.S. Comments received in response to the notice proposing this change were carefully considered prior to determining that our previous position needed to be changed.

DATES: The change in tariff classification resulting from this decision will be effective as to merchandise entered for consumption or withdrawn from warehouse on or after October 17, 1994.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Office of Regulations and Rulings (202) 482–7030.

SUPPLEMENTARY INFORMATION:

Background

In a ruling dated May 2, 1988 (HQ 076497), it was determined by Customs that, under the Tariff Schedules of the United States (TSUS), the precursor to the Harmonized Tariff Schedule of the United States (HTSUS), a 35mm camera body matched up with a "normal" lens in the same shipment was a single tariff entity. Specifically, it was held that a 35mm single lens reflex camera body imported with a 50–55mm lens was a single article subject to classification under item 722.16, TSUS, as a camera. It was also determined that zoom lenses with a focal length of 35mm to 70mm had also become "normal" lenses when imported with the 35mm camera bodies.

The position of classifying a 35mm camera body imported with a "normal" lens in the same shipment as a single entity continued after the transition from the TSUS to the HTSUS on January 1, 1989.

Under the HTSUS, the subheadings under consideration are as follows:

9006.51.00: [o]ther cameras: [w]ith through-the-lens viewfinder (single lens reflex (SLR)), for roll film of a width not exceeding 35mm.

The general, column one rate of duty is 3 percent *ad valorem*.

9002.11.80: [o]bjective lenses and parts and accessories thereof: [f]or cameras, projectors or photographic enlargers or reducers: [o]ther.

The general, column one rate of duty is 6.6 percent *ad valorem*.

In understanding the language of the HTSUS, the Harmonized Commodity

Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive, should be consulted for guidance in determining the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). In part, Explanatory Note 90.06(I) (p.1465) provides that heading 9006, HTSUS, covers all kinds of photographic cameras (other than cinematographic cameras), whether for professional or amateur use, and whether or not presented with their optical elements (objective lenses, viewfinders, etc.). It further states that there are many different types of cameras, but the conventional types consist essentially of a light-tight chamber, a lens, a shutter, a diaphragm, a holder for a photographic plate or film, and a viewfinder.

Explanatory Note 90.06(I) states that a camera body with a lens constitutes a camera. Therefore, a lens and a camera body, imported in the same shipment and put up together for retail sale at the time of entry into the U.S., are classifiable under subheading 9006.51.00, HTSUS, as a camera. However, the note also states that a camera body is classifiable as a camera whether or not presented with the optical element. The issue, then, is whether camera bodies, imported with numerous camera lenses in the same shipment and not put up together for retail sale once entered into the U.S., constitute complete and unassembled cameras.

It is noted that imported merchandise must be classified under the HTSUS with reference to its condition as imported.

General Rule of Interpretation (GRI) 2(a), HTSUS, provides that "any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled."

Explanatory Note 2(a)(V) (p. 2) states that the second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.

In a notice published in the **Federal Register** on December 7, 1993 (58 FR 64423), Customs furnished notice that the classification of the subject merchandise was under review and comments from interested parties were requested. An extension of time to file comments was published in the **Federal Register** on February 15, 1994 (59 FR 7297).

Only four submissions were received in response to the notice. While all four opposed the proposed change of position, only one provided a substantive discussion of the legal issues involved.

Discussion of Comments

Comment: The continued classification of lenses with their accompanying camera bodies as cameras is required by GRI 2(a).

Response: Customs disagrees, unless, the lenses and camera bodies, imported together in the same shipment in equal numbers, are put up together for retail sale at the time of entry into the U.S. Otherwise, it is the position of Customs that lenses and camera bodies, not put up together for retail sale, retain their separate commercial identities and are separately classifiable under the HTSUS. GRI 2(a) does not apply in this instance because the lenses and camera bodies are not entered packaged separately primarily for reasons such as convenience of packing, handling or transport, but so that the lenses will receive the lower duty rate for cameras, even if the lenses will not be used with those camera bodies.

Comment: Lenses and camera bodies, imported in the same shipment but not put up together for retail sale, are to be classifiable as cameras because they constitute composite goods under GRI 3(b).

Response: In part, Explanatory Note 3(b)(IX) (p. 4) states that "[f]or the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts."

It is the position of Customs that the lenses and camera bodies retain their separate commercial identities. Therefore, they cannot together constitute composite goods, because they do not together form a whole. Also, the lenses and camera bodies are quite often offered for sale one without the other.

Comment: The change of position is inconsistent with the Doctrine of Entireties.

Response: The Doctrine of Entireties, applicable under the TSUS, has been supplanted by GRI 2(a). As previously noted, GRI 2(a) does not apply in this instance.

Comment: The change of position should not apply to "normal" lenses.

Response: The HTSUS does not distinguish "normal" lenses from other types of camera lenses.

Conclusion

After careful analysis of the comments submitted and further review of this matter, Customs deems that numerous camera lenses, imported together with an equal amount of 35mm camera bodies in the same shipment and not put up together for retail sale at the time of entry into the U.S., do not constitute complete and unassembled cameras, and the different sized lenses are separately classifiable under subheading 9002.11.80, HTSUS, as objective lenses for cameras. The camera lenses and the camera bodies possess separate commercial identities. In the absence of any evidence to the contrary, Customs is of the opinion that they lack the degree of commercial integration to be considered as cameras with lenses, unassembled, for the purposes of GRI 2(a).

The change of position also applies to different sized lenses imported together with an unequal amount of 35mm camera bodies. Those lenses and camera bodies put up together for retail sale will be classifiable under subheading 9006.51.00, HTSUS, as cameras. The remaining lenses in the shipment, not put up together for retail sale at the time of entry with corresponding camera bodies, will be classifiable under subheading 9002.11.80, HTSUS, as objective lenses for cameras.

Pursuant to section 177.10(e), Customs Regulations [19 CFR 177.10(e)], to allow sufficient time for interested parties to be aware of this change and to make necessary arrangements, this change in classification is being delayed 90 days from the date of publication in the **Federal Register**.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: June 8, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–17548 Filed 7–18–94; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Origins of Impressionism" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York from on or about September 19, 1994 to on or about January 8, 1995, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: July 14, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–17535 Filed 7–18–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: VA Request for Determination of Reasonable Value Real Estate)—HUD Application for Property Appraisal and Commitment, VA Form 26–1805/HUD Form 92800–1

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Origins of Impressionism" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York from on or about September 19, 1994 to on or about January 8, 1995, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 14, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–17535 Filed 7–18–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: VA Request for Determination of Reasonable Value Real Estate)—HUD Application for Property Appraisal and Commitment, VA Form 26–1805/HUD Form 92800–1

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 18, 1994.

Dated: June 29, 1994.

By direction of the Secretary.

Donald L. Neilson,

Director, Records Management Service.

Extension

1. VA Request for Determination of Reasonable Value (Real Estate)—HUD Application for Property Appraisal and Commitment, VA Form 26–1805/HUD Form 92800–1
2. The form is used to determine the reasonable value of properties proposed as security for guaranteed or direct loans and to require minimum property standards. The request provides information to permit assignment of appraisal and inspection of the property for these purposes.
3. Individuals or households
4. 97,000 hours
5. 12 minutes
6. On occasion
7. 485,000 respondents.

[FR Doc. 94–17422 Filed 7–18–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Funeral Arrangements, VA Form 10–2065; Application for Medical Benefits, VA Form 10–10; Financial Worksheet, VA Form 10–10F; Insurance Information, VA Form 10–101; and Spouse's Verification of Income, Form Letter 10–490

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 535–7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 18, 1994.

Dated: June 29, 1994.

By direction of the Secretary.

Donald L. Neilson,

Director, Records Management Service.

Revision

1. The Title and Form Number.

a. Funeral Arrangements, VA Form 10–2065.

b. Application for Medical Benefits, VA Form 10–10.

c. Financial Worksheet, VA Form 10–10F.

d. Insurance Information, VA Form 10–10I.

e. Spouse's Verification of Income, Form Letter 10–490.

2. Description of the Need and Use.

a. VA Form 10–2065 is used primarily in VA medical facilities and serves as an official records of the funeral director to which the person making funeral arrangements wishes the remains to be released.

b. VA Form 10–10 is used primarily in VA medical facilities to collect information to determine eligibility of applicants for VA medical benefits.

c. VA Form 10–10F is used by VA personnel to determine the eligibility for VA medical care of those veterans who must certify their inability to defray the cost of needed medical care through resources other than VA.

d. VA Form 10–10I is used by VA personnel to complete claims to health insurance carriers which will allow VA

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

to recover the cost of medical care furnished to veterans for treatment of nonservice-connected conditions.

e. Form Letter 10–490 is used by VA personnel for spouses of veterans whose eligibility for VA medical care is based on income.

3. Individuals or households.

4. Estimated Total Annual Reporting Hours—3,210,303.

a. VA Form 10–2065—3,071 hours.
b. VA Form 10–10—2,175,000 hours.
c. VA Form 10–10F—454,667 hours.
d. VA Form 10–10I—580,000 hours.
e. Form Letter 10–490—

5. Estimated Average Burden Hours Per Respondent.

a. VA Form 10–2064—5 minutes.
b. VA Form 10–10—45 minutes.
c. VA Form 10–10F—20 minutes.
d. VA Form 10–10I—12 minutes.
e. Form Letter 10–490—None, for verification only.

6. On occasion.

7. Estimated Number of Respondents—9,000,850.

a. VA Form 10–2064—34,850.
b. VA Form 10–10—2,900,000.
c. VA Form 10–10F—1,364,000.
d. VA Form 10–10I—2,900,000.
e. Form Letter 10–490—1,800,000.

[FR Doc. 94–17423 Filed 7–18–94; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: Request for Armed Forces Records From Veteran, VA Form Letter 21–80e

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do no send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: June 29, 1994.

By direction of the Secretary:

Donald L. Neilson,

Director, Records Management Service.

Reinstatement

1. Request for Armed Forces Records from Veteran, VA Form Letter 21–80e.

2. The form letter is completed by the veteran to furnish information related to his/her military service. The information is used by VA to help obtain verification of service.

3. Individuals or households.

4. 17,700 hours.

5. 10 minutes.

6. On occasion.

7. 102,000 respondents.

[FR Doc. 94–17421 Filed 7–18–94; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetin

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 18, 25, August 1, and 8, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 18

Tuesday, July 19

10:00 a.m.
Briefing on Fuel Cycle and Waste Management Activities in France (Public Meeting)

Wednesday, July 20

10:00 a.m.

Sunshine Act Meetings

Federal Register

Vol. 59, No. 137

Tuesday, July 19, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 18, 25, August 1, and 8, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 18

Tuesday, July 19

10:00 a.m.
Briefing on Fuel Cycle and Waste Management Activities in France (Public Meeting)

Wednesday, July 20

10:00 a.m.
Discussion of Interagency and Management Issues (Closed—Ex. 9 (Part I); 2 and 6 (Part II)

3:00 p.m.
Briefing on Proposed Changes to 10 CFR 50.36—Technical Specifications (Public Meeting)
(Contact: Christopher Grimes, 301–504–1161)

Thursday, July 21

3:00 p.m.
Briefing on Proposed Rulemaking on Decommissioning of Nuclear Power Reactors (Public Meeting)
(Contact: David Futoma, 301–504–1621)

4:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Response to Stay Motion in Sequoyah Fuels Proceeding (Tentative)

Week of July 25—Tentative

There are no meetings scheduled for the Week of July 25.

Week of August 1—Tentative

There are no meetings scheduled for the Week of August 1.

Week of August 8—Tentative

There are no meetings scheduled for the Week of August 8.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. It there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: July 14, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–17620 Filed 7–15–94; 10:58 am]

BILLING CODE 7590–01–M

CONTROL
6 9
CLASS
1 3
7
JUL
1 9
1994
MI

federal register

Tuesday
July 19, 1994

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 203, 982, and 984
Section 8 Certificates and Vouchers Homeownership Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 203, 982, and 984

[Docket No. R-94-1716; FR-3385-P-01]

RIN 2577-AB23

Section 8 Certificates and Vouchers Homeownership Program

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes additional amendments to the Section 8 Certificate and Voucher programs at 24 CFR part 982, in addition to those amendments previously proposed by HUD on February 24, 1993 (58 FR 11292). These amendments would implement section 185 of the Housing and Community Development Act of 1992 (HCD Act), which authorizes public housing agencies, including Indian housing authorities (HAs), to make available to eligible families section 8 certificates or vouchers to pay for homeownership costs under a mortgage. The proposed rule would amend 24 CFR part 203 to authorize the use of FHA insurance in connection with a mortgage receiving section 8 certificate or voucher assistance, and would also make technical conforming amendments. In addition, the proposed rule would amend the Family Self-Sufficiency (FSS) regulations at 24 CFR part 984 to enable a family receiving section 8 certificate or voucher assistance under this homeownership authority to use a portion of its FSS escrow account to pay for the cost of major repairs and replacements in the dwelling, and for down payment expenses.

DATES: Comments must be submitted by September 19, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500.

Comments should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Louise Hunt, Director of Policies and Procedures Branch, Rental Assistance Division, Public and Indian Housing, Department of Housing and Urban Development, Room 4216, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-3887. Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

II. Background

The purpose of this proposed rule is to implement section 185 of the Housing and Community Development Act of 1992 (HCD Act) (Pub. L. 102-550, approved October 28, 1992), which amended section 8 of the United States Housing Act of 1937 to authorize public housing agencies (including Indian housing authorities) (HAs) to make available to eligible families section 8 certificates or vouchers for the purchase of a home owned by one or more members of the family.

[The reader is advised that on February 24, 1993, HUD published a rule that proposed to unify the rules for tenant-based section 8 rental assistance under the rental certificate program and the rental voucher program (*see* 58 FR 11292). Under that rule, HUD proposed consolidating the rental certificate program (currently 24 CFR part 882) and the rental voucher program (currently 24 CFR part 887) into a unified tenant-based program at 24 CFR part 982 ("unified rule"). Today's proposed amendments to the section 8 program should be read in conjunction with the amendments already proposed by HUD in its February 24, 1993 unified rule.]

The Department is proposing to implement the section 185 amendments to the section 8 program by adding a new form of "Special Housing" under 24 CFR part 982, subpart M, of the unified rule. Section 8 certificates and vouchers used in accordance with this new subheading would be designated as homeownership vouchers and certificates. The rule refers to this component of the section 8 certificate and voucher program as simply the "homeownership program."

The proposed rule requires HAs to implement the homeownership provisions of the section 8 certificate and voucher program. The rule states that a family meeting the homeownership eligibility criteria (either an applicant or a participant) may choose to use its certificate or voucher for homeownership purposes and clarifies that there is no separate funding for homeownership purposes. Rather, any eligible applicant selected to participate in the section 8 program, or any eligible current participant, may exercise the option to pursue homeownership opportunities in accordance with the program rules.

Since families determined by an HA to be eligible to participate in the homeownership program must secure their own mortgage financing, section 185 of the HCD Act also amended section 203 of the National Housing Act to authorize the use of FHA insurance in connection with a mortgage for which section 8 assistance is provided under the homeownership program. Such a mortgage will be treated as an obligation of the General Insurance Fund. HUD has included in this rule a number of proposed amendments to 24 CFR part 203 to implement this statutory authority.

Finally, section 185 amended the Family Self-Sufficiency Program (FSS) to permit an eligible family to use a portion of its FSS escrow account to pay for the down payment, and for major repairs and replacements, on a unit receiving homeownership assistance. The Department is proposing to implement this statutory authority by amending the section 8 FSS regulations at 24 CFR part 984.

III. Section-By-Section Analysis

A. Amendments to 24 CFR Part 203—Single Family Mortgage Insurance

Under section 185 of the HCD Act, a mortgage that is insured under section 203 of the National Housing Act (NHA), and for which assistance is provided under the homeownership program, is

treated as an obligation of the General Insurance Fund. This provision alters the general rule under the NHA that a mortgage insured under section 203 must be treated as an obligation of the Mutual Mortgage Insurance Fund. A technical amendment to reflect this modification to the applicable insurance fund is included at § 203.391 ("Title objection waiver with reduced insurance benefits").

Section 185 also provides that a FHA-insured mortgage for which assistance is provided under the homeownership program is subject to both an upfront mortgage insurance premium (MIP) as well as an annual MIP. HUD is proposing to implement this statutory directive at §§ 203.259a ("Scope"); 203.284 ("Calculation of up-front and annual MIP on or after July 1, 1991"); and 203.285 ("Fifteen-year mortgages: calculation of up-front and annual MIP on or after December 26, 1992").

HUD has also included in this proposed rule a new § 203.559 ("Responsibilities of FHA-insured mortgagees accepting section 8 tenant-based assistance"). This provision is directed at FHA-insured mortgagees that are receiving assistance under the homeownership program on behalf of an eligible family. The purpose of the section is to inform such mortgagees that, as a result of their acceptance of the section 8 assistance payments, the mortgagee is required to comply with the notification requirements set forth in this proposed rule. The Department will include in FHA-insured mortgages that receive section 8 homeownership assistance a specific rider to this effect, so that the mortgagee and subsequent purchasers have actual notice of these requirements. HUD requests public comment as to how non-FHA-insured mortgagees and their assignees can be given actual notice of their obligations under this proposed rule while still preserving the viability of these mortgages on the secondary mortgage market.

HUD notes that underwriting for a FHA-insured mortgage in connection with assistance provided under the homeownership program will follow standard FHA single family requirements (see HUD Handbook 4155.1 REV-4). Moreover, such mortgages will be eligible for streamline refinancing with the mortgage remaining an obligation of the General Insurance Fund, if the family still holds a homeownership certificate or voucher at the time of refinancing.

treated as an obligation of the General Insurance Fund. This provision alters the general rule under the NHA that a mortgage insured under section 203 must be treated as an obligation of the Mutual Mortgage Insurance Fund. A technical amendment to reflect this modification to the applicable insurance fund is included at § 203.391 ("Title objection waiver with reduced insurance benefits").

Section 185 also provides that a FHA-insured mortgage for which assistance is provided under the homeownership program is subject to both an upfront mortgage insurance premium (MIP) as well as an annual MIP. HUD is proposing to implement this statutory directive at §§ 203.259a ("Scope"); 203.284 ("Calculation of up-front and annual MIP on or after July 1, 1991"); and 203.285 ("Fifteen-year mortgages: calculation of up-front and annual MIP on or after December 26, 1992").

HUD has also included in this proposed rule a new § 203.559 ("Responsibilities of FHA-insured mortgagees accepting section 8 tenant-based assistance"). This provision is directed at FHA-insured mortgagees that are receiving assistance under the homeownership program on behalf of an eligible family. The purpose of the section is to inform such mortgagees that, as a result of their acceptance of the section 8 assistance payments, the mortgagee is required to comply with the notification requirements set forth in this proposed rule. The Department will include in FHA-insured mortgages that receive section 8 homeownership assistance a specific rider to this effect, so that the mortgagee and subsequent purchasers have actual notice of these requirements. HUD requests public comment as to how non-FHA-insured mortgagees and their assignees can be given actual notice of their obligations under this proposed rule while still preserving the viability of these mortgages on the secondary mortgage market.

HUD notes that underwriting for a FHA-insured mortgage in connection with assistance provided under the homeownership program will follow standard FHA single family requirements (see HUD Handbook 4155.1 REV–4). Moreover, such mortgages will be eligible for streamline refinancing with the mortgage remaining an obligation of the General Insurance Fund, if the family still holds a homeownership certificate or voucher at the time of refinancing.

B. Amendments to 24 CFR part 982 (Including Amendments to Subpart M—Assistance for Homeownership)

—§ 982.52 HUD requirements. This section states that for purposes of the section 8 homeownership program, HUD must comply with 24 CFR part 50 (Protection and Enhancement of Environmental Quality). This section also requires that HAs supply HUD with environmental threshold data to assist it in complying with the applicable Federal environmental laws and authorities listed in 24 CFR § 50.4.

—§ 982.552 HA denial or termination of assistance for family. This proposed rule revises § 982.552(b)(1) of the unified rule ("HA denial or termination of assistance for family") by providing that a HA may deny or terminate program assistance on behalf of an applicant or participant in the section 8 homeownership program if the family has violated any of its obligations under the section 8 program (§ 982.551), or under the section 8 homeownership program at subpart M (§§ 982.631–982.633). In such instances, the procedural requirements applicable to denials or terminations of assistance under the general section 8 program will apply (*see* § 982.553).

—§ 982.629 Homeownership Program: Purpose, implementation and applicability. This section states the purpose of the homeownership program, which is to provide homeownership opportunities for low-income families. The section states that the HA must allow a certificate or voucher family that meets the homeownership eligibility criteria to use the certificate or voucher in the homeownership program. The proposed rule specifies that HAs must inform families of the homeownership option during the briefing session. Families that have already been issued certificates or vouchers (both a participant with a unit under HAP contract and a family that was issued a certificate or voucher to search for a rental unit) must be informed of the homeownership option no later than the next regularly scheduled recertification.

The Department is aware that some HAs may wish to give current public housing tenants the opportunity to participate in the section 8 homeownership option. While families receiving section 8 certificates and vouchers must be selected from the section 8 waiting list, HAs are reminded that the proposed unified rule published on February 24, 1993 allows HAs to provide a selection preference to public housing residents, and that such a preference could be provided to families interested in participating in the homeownership program.

In addition, the Department will soon implement legislation that allows certain public housing residents to retain their federal preference status for the section 8 program (i.e., their preference status on the certificate and voucher waiting list) even after they move into public housing, and even after the federal preference condition no longer exists (e.g., rent burden, substandard housing). Implementation of this provision may increase the number of former public housing families receiving section 8 assistance who meet the eligibility criteria for the section 8 homeownership program.

Section 982.629 clarifies the relationship of the homeownership program to other sections under subpart M, and notes that the requirements contained in the other subparts of part 982 also apply to the homeownership program, except as expressly indicated under this section and as provided in the proposed rule.

The proposed rule states that homeownership certificates and vouchers may not be used in conjunction with part 882, subpart G, project-based assistance under the certificate program. This is because section 185 of the HCD Act of 1992 specifically limits participation in the section 8 homeownership program to "families receiving tenant-based assistance." However, even aside from this statutory impediment, the Department believes that it would not be appropriate to allow project-basing under this program. Since the subsidy for both homeownership vouchers and certificates would permit families to pay more than 30 percent of their income for housing costs, project-basing in the homeownership program could result in a "take it or leave it" offer of a homeownership unit at a price set by the owner, forcing families to accept a higher financial burden than if they shopped for their own units, or to have their assistance delayed. Furthermore, since there are specific eligibility criteria (e.g., a minimum income threshold) under the homeownership program, above and beyond the eligibility requirements for rental families, federal preference holders and other needy families could be unfairly skipped over on the waiting list to reach "homeownership families" to fill the project-based units. Finally, the tenant-based certificate and voucher programs offer housing choice opportunities not

available under project-based subsidy programs. HUD believes that this housing choice opportunity should not be negated in the homeownership program by tying the homeowner subsidy to specific units.

The Department recognizes that many nonprofit sponsors have been looking to homeownership certificates and vouchers to finance their development projects as part of larger neighborhood transformation efforts. There are ways, other than through project-basing, that these sponsors can use homeownership certificates and vouchers. There is nothing to prevent HAs from establishing cooperative relationships with these sponsors, referring families to them or even sharing waiting lists with them.

—§ 982.630 Homeownership Program: Definitions. The proposed rule defines a number of terms used in the homeownership program, including: "average equity," "average passbook savings rate," "default," "down payment," "first-time homeowner," "homeownership assistance," "homeownership unit," "imputed amount of family contribution for assets," "major repairs and replacements," "monthly homeownership expenses," "mortgage," "mortgagee," "net sales proceeds," "public assistance," and "Statement of Family Responsibilities." The definitions under the homeownership program supplement the definitions already proposed in § 982.4 of the section 8 unified rule.

Following are the salient points the Department considered in developing some of the homeownership program definitions:

1. "*Default.*" HUD believes that the determination of whether a default has occurred under the mortgage instrument must be left to the determination of the mortgagee, not HUD. Hence, the proposed rule provides that a default under a FHA-insured mortgage must be determined in accordance with the general rules set forth in 24 CFR part 200. A default under a non-FHA-insured mortgage must be determined by the mortgagee under the terms of the mortgage instrument.

2. "*Down payment.*" Under section 185 of the HCD Act, a family is required to contribute from its own resources (which HUD is defining to mean cash resources obtained through a gift or inheritance, personal savings, or amounts in its FSS escrow account) 80 percent of the down payment for the home. HUD has defined the term "down payment" to mean the difference between the purchase price and the mortgage amount. The Department opted not to include in this definition other expenses, such as the cost of points, appraisals, legal fees, and other closing costs, since this would increase the amount the family must pay out-of-pocket.

3. "*First-time homeowner.*" Section 185 of the HCD Act limits eligibility under the homeownership program to a "first-time homeowner," and defines the term to mean "a family, no member of which has had a present ownership interest in a principal residence during the 3 years preceding the date on which the family initially receives [homeownership assistance] . . ."

Once a family establishes that it is a first-time homeowner under this definition, and is in compliance with all program (including eligibility) requirements, it will not lose its status as a first-time homeowner simply because it wants to sell its existing home and buy a new one. This is because the statutory definition of "first-time homeowner" establishes eligibility based upon the date the family *initially* received assistance for homeownership. However, to retain its eligibility, the family must be participating continuously in the section 8 homeownership program, and may not have been in default under a previous section 8-assisted mortgage.

In this proposed rule, HUD has declined to exercise the statutory authority granted to it under the HCD Act that would enable it to expand the definition of a first-time homeowner. The Department specifically requests comments from the public as to how HUD might expand the definition of a first-time homeowner so that participation in the homeownership program may be broadened.

4. "*Imputed amount of family contribution for assets.*" See discussion below concerning § 982.641.

5. "*Monthly homeownership expenses.*" HUD is proposing in this rule to define "monthly homeownership expenses" to include a family's total monthly expenses for the homeownership unit, including the cost of mortgage principal and interest (limited to the lesser of the principal and interest payment on the initial first mortgage or any subsequent refinancing, but excluding principal and interest payments on any second mortgages, home equity loans, or cash-out refinancings), real estate taxes and special assessments, imputed maintenance expenses equal to 5% of the FMR for the unit size purchased at the time of move-in or at the regular re-examination, home insurance, and an allowance for utilities using the HA's utility allowance schedule.

6. "*Net sales proceeds.*" Upon sale of the homeownership unit, the HA is to recapture from any net proceeds the amount of additional assistance paid to or on behalf of the eligible family because the HA did not take into account the value of the family's equity in the homeownership unit for purposes of calculating the monthly assistance payment. (See discussion below regarding the exclusion and recapture provisions.) HUD has defined net sales proceeds to be the market value of the house (as opposed to the selling price), less the sum of any unpaid balance on the first mortgage. HUD decided to use the current market value of the house rather than the actual sale price to prevent families from either giving away or under-pricing the house as a means of circumventing the recapture provision. The Department is only taking into account the unpaid balance of the first mortgage in order to prevent families from cashing out all equity at the time of the sale through a vehicle such as a home equity loan in order to escape the recapture provision.

—§ 982.631 Homeownership Program: Initial family eligibility. Section 185 of the HCD Act establishes the criteria for determining a family's eligibility for participation under the homeownership program. A family that expresses interest in the homeownership program, but that does not meet the criteria listed in this section, may not be considered for the homeownership program. A family that meets these conditions is eligible for assistance under the homeownership program, provided it fulfills the requirements listed in § 982.632. The initial eligibility requirements include:

1. *First-time homeowner.* Section 185 requires that the family be a first-time homeowner. See the discussion at § 982.630 for the statutory definition of a "first-time homeowner." It is noted that a family that previously participated in the homeownership program, but that subsequently defaulted, is ineligible to participate in the homeownership program again, regardless if three years have passed from the date it last owned a home (see § 982.640).

2. *Participation in FSS or adequate income.* Under the homeownership program, a family must either be participating in the HA's Family Self-Sufficiency (FSS) Program and be in compliance with the FSS contract of participation, or it must demonstrate that it has an adequate income, from sources other than public assistance, to cover its homeownership expenses.

A family not participating in an HA's FSS program, can still be considered for participation in the homeownership program if its gross monthly income (not including public assistance) is at least two and a half times the Existing Housing fair market rent (FMR) for the area in which the homeownership unit is located. The proposed rule separately defines the meaning of "public assistance," thereby identifying the types of income that may *not* be included in determining whether a family meets the homeownership income standard.

3. *Employment.* Section 185 states that, except as provided by HUD, the family must be able to demonstrate at the time that it initially receives homeownership certificate or voucher assistance that one or more adult members of the family have been employed for the time period established by HUD.

The Department is proposing in this rule that one or more adult members of the family must be currently employed on a full-time basis, and must have been continuously so employed for at least one year before the date the HA determines family eligibility for homeownership assistance. If a family is eligible to participate under the homeownership program because it is participating in the FSS program (rather than because it met the homeownership income test), it is still subject to the one-year employment requirement.

The Department requests public comment concerning whether it should grant an exception to the one-year employment requirement in the case of disabled persons who can establish that they have an adequate income (from sources other than public assistance) to cover their monthly homeownership expenses.

—§ 982.632 Homeownership Program: Actions after an HA determines that an interested family is eligible for the homeownership program. This section details the actions that must occur after the HA determines a family is eligible for the homeownership program.

In drafting this section of the proposed rule, the Department seriously considered, but decided against, requiring or allowing the HA to disapprove homeownership units if it considered either the purchase price of the unit or the financing terms to be unreasonable. HUD is concerned with the added administrative burden such a requirement would place on HAs and questions whether HA staff have

sources other than public assistance, to cover its homeownership expenses.

A family not participating in an HA's FSS program, can still be considered for participation in the homeownership program if its gross monthly income (not including public assistance) is at least two and a half times the Existing Housing fair market rent (FMR) for the area in which the homeownership unit is located. The proposed rule separately defines the meaning of "public assistance," thereby identifying the types of income that may *not* be included in determining whether a family meets the homeownership income standard.

3. *Employment.* Section 185 states that, except as provided by HUD, the family must be able to demonstrate at the time that it initially receives homeownership certificate or voucher assistance that one or more adult members of the family have been employed for the time period established by HUD.

The Department is proposing in this rule that one or more adult members of the family must be currently employed on a full-time basis, and must have been continuously so employed for at least one year before the date the HA determines family eligibility for homeownership assistance. If a family is eligible to participate under the homeownership program because it is participating in the FSS program (rather than because it met the homeownership income test), it is still subject to the one-year employment requirement.

The Department requests public comment concerning whether it should grant an exception to the one-year employment requirement in the case of disabled persons who can establish that they have an adequate income (from sources other than public assistance) to cover their monthly homeownership expenses.

—§ 982.632 Homeownership Program: Actions after an HA determines that an interested family is eligible for the homeownership program. This section details the actions that must occur after the HA determines a family is eligible for the homeownership program.

In drafting this section of the proposed rule, the Department seriously considered, but decided against, requiring or allowing the HA to disapprove homeownership units if it considered either the purchase price of the unit or the financing terms to be unreasonable. HUD is concerned with the added administrative burden such a requirement would place on HAs and questions whether HA staff have adequate expertise in these areas. In addition, delays attributable to HA review and approval of these items could result in families losing the desired homeownership unit to another interested buyer.

There are other timing problems that affected HUD's decision. Requiring the HA to determine if the listed purchase price is reasonable is not necessarily an accurate reflection of the real purchase price, since in most cases buyers and sellers negotiate a final price. As for evaluating the financing terms, buyers do not typically secure financing before executing a contract to purchase a homeownership unit. In most cases, the family would already have entered into a legally binding contract to purchase the property before the HA disapproved the terms of the financing.

The Department believes that requiring the family to wait for the HA to determine the reasonableness of the listed price or of the family's offer, or requiring that the family convince the owner to accept a contract contingent on the family's obtaining financing satisfactory to the HA, would place a severe handicap on section 8 homeownership families' ability to make an offer that is timely and, thus, acceptable to the seller.

Alternatively, though, the Department is prohibiting in this proposed rule seller-financing (except in the case of financing provided by a nonprofit entity), since HUD believes that seller-financing poses the greatest risk to homebuyers of artificially inflated sales prices or unreasonable financing terms. As a result, in the vast majority of cases the family will be required to secure mortgage financing from a lender that will require an appraisal, and that would be unlikely to approve a mortgage for a homeownership unit that has an inflated purchase price. In addition, HUD is prohibiting in this proposed rule the use of balloon mortgages, since it considers these financing instruments to be inherently risky, and particularly so when used by low-income families. The Department believes that this approach, in conjunction with homeownership counseling at the front-end, is the more efficient and effective strategy to prevent bad deals.

HUD requests specifically public comment as to whether the final rule should authorize the use by families of adjustable rate mortgages (so-called "ARMs"). While these types of mortgages tend to increase the number of families that can qualify for financing and, thus, participate in the program, HUD is concerned that they may also result in an increased risk of default. This is because the homebuyer's mortgage payment could rise precipitously during periods of high inflation, while the family's income and homeownership subsidy payment remain constant.

In addition, the Department requests comments as to whether it should establish certain guidelines or restrictions with respect to the types of seller-financing instruments that may be utilized by a nonprofit, including whether to limit such entities to the use of fixed-rate mortgages.

Finally, HUD considered requiring that the family's share of the monthly homeownership expenses could not exceed 40 percent of the family's monthly adjusted income, but ultimately decided against a limit. The Department believes that such a limit would be very difficult to administer since the actual purchase price is subject to negotiation and the financing terms often would not be known until near the end of the purchase process. HUD further believes that the lender should make the determination of the family's risk of default. The homeownership counseling will also play an important role in assisting families in determining an acceptable percentage of income to devote to homeownership expenses.

The Department specifically invites comments concerning whether a cap on the amount of a family's monthly homeownership expenses relative to its income should be imposed in the final rule, and whether the HA or another entity should approve the purchase price or financing terms.

Section 982.632 outlines the sequence of actions that take place once the family has been determined by the HA to be eligible initially for the program. These actions are:

1. *Family Participation in a homeownership and housing counseling program.* The family must attend a homeownership and housing counseling program that covers areas such as: negotiating purchase prices; securing mortgage financing; home maintenance; budgeting; credit counseling; credit repair; money management; transportation options and opportunities for housing and schools located throughout the metropolitan area; and the availability of multiple listing services through local realtors so that families can explore the full range of housing options located throughout the metropolitan area.

The HA must provide such counseling to prospective homebuyers through a HUD-approved counseling agency, where it exists, or by developing its own program or arranging to make

use of an existing program in the community. Eligible sources of funding that an HA may use to pay for the cost of a homeownership and housing counseling program include administrative fees, local resources, and the section 8 administrative fee reserve.

The Department believes that homeownership counseling is an integral and vital component of the section 8 homeownership program, and will be critical to the program's ultimate success or failure. Consequently, HUD specifically requests public comment as to whether implementation of the section 8 homeownership option should be limited to PHAs that have adequate resources (e.g., local resources, section 8 administrative fee reserves, etc.) to provide initial and ongoing homeownership and housing counseling to eligible families.

2. *HA issues the family a homeownership certificate or voucher.* The term of the homeownership certificate or voucher is 120 days, and the family must submit a completed Request for Authorization to Purchase a Homeownership Unit and either make an offer to purchase, or execute a contract of sale, before the expiration date of the certificate or voucher. There are no extensions for homeownership certificates and vouchers. However, once a family submits a completed Request for Authorization to Purchase a Homeownership Unit, the HA must suspend the term of the certificate or voucher until the HQS inspection is completed (see discussion below).

The family may only submit one Request for Authorization to Purchase a Homeownership Unit at a time. The Request for Authorization to Purchase serves several functions. First, its submission suspends the term of the family homeownership certificate or voucher. It identifies the location of the property and the identity of the seller, and, in the same manner as the Request for Lease Approval in the rental program, triggers the HQS inspection.

It is important to note that the term of the homeownership certificate and voucher only controls a family's search-time to locate a homeownership unit, submit a Request for Authorization to Purchase a homeownership unit, and either make an offer to purchase the unit or execute a contract of sale for the unit. The family is not required to have secured mortgage financing, obtained title to the property, or brought the unit up to HQS before the certificate or voucher expires, although all three conditions must be met before housing assistance payments may be made on behalf of the family. The family has nine months (plus tolling, i.e., the time between when the family submits a Request for Authorization to Purchase a Homeownership Unit for HA approval and the time when the HA approves or denies the request) from the date the HA issued the homeownership certificate or voucher in which to satisfy these conditions. The proposed rule also provides that during the 120-day term of the homeownership certificate or voucher, the family may request to convert the certificate or voucher into a rental certificate or voucher. The HA must determine the term of the rental certificate or voucher in accordance with § 982.302, except that the time period used under the homeownership certificate or voucher must first be deducted. It is possible that if such a request occurred after the initial sixty days, the HA may have to consider giving the family an extension, in accordance with its administrative policy, to convert the certificate or voucher back to the rental program. The family is not entitled to the expiration date on the homeownership certificate or voucher if it requests to change to the rental program.

3. *Request for Authorization to Purchase a Homeownership Unit; HQS Inspection.* Once the family submits a Request for Authorization to Purchase a Homeownership Unit, the HA must inspect the unit to determine whether it is in compliance with the HQS. If the homeownership unit does not meet HQS, the HA must provide the family with a list of deficiencies. The family does not have to wait for the HQS inspection before making an offer or signing a purchase contract, since such a restriction would severely limit the family's chances of purchasing the unit. However, the family must be informed that the housing assistance payments may not be made until the unit is in compliance with HQS. The HA may disapprove the Request for Authorization to Purchase a Homeownership Unit if the unit is structurally unsound or if there are many serious HQS violations and the HA determines that the family will be unable to have the HQS violations corrected within nine months (plus tolling) from the date the HA issued the homeownership certificate or voucher. Although disapproving a unit after the family has made a purchase offer or executed a contract of sale is undesirable, this protection is necessary to prevent immediate mortgage defaults. In such cases, a section 8 family may lose its down payment, and possibly other out-of-pocket expenses, depending on the contract terms.

The Department solicits comments as to whether it should require all participating families to have their proposed homeownership unit inspected professionally by a third party before entering into a purchase offer or contract of sale; whether the purchase offer or contract should be made contingent on the outcome of the inspection; or whether implementation of a homeownership program should be limited to areas where pre-purchase inspections are available at no cost to the family (e.g., funded from community development block grants). HUD believes that such an inspection would be extremely beneficial in alerting the family to potentially costly defects in the home. This is especially important since the HQS inspection conducted by the HA is unlikely to determine whether the unit is structurally sound, and the extent to which the family is likely to incur significant repair and replacement costs. On the other hand, the Department also recognizes that participating families have limited income and may have difficulty paying for such an inspection.

In addition, the Department wants to request comment as to whether it should consider establishing a time period in which the HA must complete its HQS inspection of the unit. HUD believes that such a deadline may be beneficial for purposes of minimizing the amount of time between the family's offer to purchase the unit (or execution of the contract of sale) and its need to obtain financing.

4. *Mortgage Financing; title.* The family is responsible for securing mortgage financing to purchase the property. Before monthly assistance payments can commence, the family must provide evidence to the HA that it has a mortgage on the homeownership unit, although purchase-money mortgages (i.e., a mortgage taken by the seller on the homeownership unit in exchange for its agreement to finance the family's purchase of the unit) and "balloon" mortgages are expressly prohibited. HUD is providing an exception to the prohibition on purchase-money mortgages in the case of financing provided by a bona fide nonprofit entity. Because of the requirement that the family obtain a mortgage on the homeownership unit, it is anticipated that lenders will require appraisals as a condition of providing financing to the family. The Department believes that this requirement will enable the family to assess the reasonableness of the purchase price.

The family is also required to execute a second mortgage on behalf of the HA to secure the repayment of the recapture amount due under § 982.641. This second mortgage must be executed and recorded by the HA before section 8 homeownership assistance may commence on behalf of the family. As a result of this second mortgage, the HA will be able to recover the recapture amount at the time the family subsequently sells the dwelling. However, if for any reason there are inadequate cash proceeds generated by the sale of the unit to repay the full recapture amount, the family will be required to repay this amount to the HA. One method the HA may employ to recover this amount from the family is to offset the amount against any future section 8 rental payments paid on behalf of the family, in accordance with a schedule established by the HA. The Department believes that there will be few instances in which the HA will have to resort to such offsetting measures, particularly since any financial mechanisms a family may employ to withdraw the equity in its home (e.g., home equity loans or cash-out refinancings) would be limited by the amount of HUD's second mortgage on the property.

In addition, the proposed rule requires the family to obtain title to the property. Title may be held by any member or members of the family, and the family must provide the HA with adequate evidence of its ownership.

The family is required to secure mortgage financing, obtain title to the unit, and bring the unit into compliance with the HQS within nine months (plus tolling) of the date the HA issued the family the homeownership certificate or voucher. Monthly housing assistance payments may not commence until these conditions are met.

5. *Statement of Family Responsibilities; section 8 payments to mortgagee and utility suppliers.* Once the family brings the unit into compliance with the HQS within the nine month deadline, the HA must reinspect the unit. If the unit meets the HQS and the family has taken possession of the unit, the family must execute a Statement of Family Responsibilities (SFR) in the form prescribed by HUD. In the SFR, the family agrees to combine the HA's payment with its own required contributions, and to pay such amounts directly to the mortgagee and utility suppliers. The family also agrees that, if the HA determines that the family's past performance in making such payments so warrants, the HA may pay housing assistance payments directly to the mortgagee and utility suppliers.

The Department has decided to give the monthly housing assistance payment to the family rather than sending it directly to the mortgagee, to

recorded by the HA before section 8 homeownership assistance may commence on behalf of the family. As a result of this second mortgage, the HA will be able to recover the recapture amount at the time the family subsequently sells the dwelling. However, if for any reason there are inadequate cash proceeds generated by the sale of the unit to repay the full recapture amount, the family will be required to repay this amount to the HA. One method the HA may employ to recover this amount from the family is to offset the amount against any future section 8 rental payments paid on behalf of the family, in accordance with a schedule established by the HA. The Department believes that there will be few instances in which the HA will have to resort to such offsetting measures, particularly since any financial mechanisms a family may employ to withdraw the equity in its home (e.g., home equity loans or cash-out refinancings) would be limited by the amount of HUD's second mortgage on the property.

In addition, the proposed rule requires the family to obtain title to the property. Title may be held by any member or members of the family, and the family must provide the HA with adequate evidence of its ownership.

The family is required to secure mortgage financing, obtain title to the unit, and bring the unit into compliance with the HQS within nine months (plus tolling) of the date the HA issued the family the homeownership certificate or voucher. Monthly housing assistance payments may not commence until these conditions are met.

5. *Statement of Family Responsibilities; section 8 payments to mortgagee and utility suppliers.* Once the family brings the unit into compliance with the HQS within the nine month deadline, the HA must reinspect the unit. If the unit meets the HQS and the family has taken possession of the unit, the family must execute a Statement of Family Responsibilities (SFR) in the form prescribed by HUD. In the SFR, the family agrees to combine the HA's payment with its own required contributions, and to pay such amounts directly to the mortgagee and utility suppliers. The family also agrees that, if the HA determines that the family's past performance in making such payments so warrants, the HA may pay housing assistance payments directly to the mortgagee and utility suppliers.

The Department has decided to give the monthly housing assistance payment to the family rather than sending it directly to the mortgagee, to eliminate the need for the mortgagee to maintain a dual system for recording payments from the HA and the family. HUD also chose not to require the family to make its payment to the HA, with the HA sending one consolidated payment to the mortgagee, simply because this procedure appears to be at odds with the fundamental notion of family homeownership. Nevertheless, the Department requests comments from mortgagees and others concerning these issues, as well as any other issues that may affect the sale on the secondary mortgage market of mortgages receiving section 8 assistance.

6. *Submission of documents from mortgagee.* Before commencement of homeownership assistance, the family must submit to the HA any documents prescribed by HUD, and executed by the mortgagee, indicating that the mortgagee agrees to comply with the notification requirements established under this proposed rule. These requirements consist primarily of notifying the HA in the event the family defaults on the mortgage, or when a defaulting family has complied with the conditions for the resumption of section 8 rental assistance. In addition, FHA-insured mortgagees must inform the HA as to whether the family has elected to participate in, and has qualified for, HUD's Assignment Program under 24 CFR part 203, subpart C.

7. *Down payment requirements.* The family must provide from its own resources (which may include cash resources obtained through a gift or inheritance, or from the family's personal savings) at least 80 percent of the down payment on a homeownership unit. The family may use up to 50 percent of the amount contained in its FSS escrow account to meet this down payment requirement. Not more than 20 percent of the down payment may be provided from other sources, such as funds provided by nonprofit entities or from state or local government programs.

8. *Environmental review.* HUD must comply with the applicable environmental laws and authorities listed in 24 CFR § 50.4. HAs must assist HUD by establishing procedures to assure that prior to approval of any "Request for Authorization to Purchase a Unit," full compliance is made with Federal laws and authorities related to coastal barriers, flood insurance, and runway clear zones. In addition, HAs must supply HUD with threshold data to assist HUD in complying with the historic preservation requirements set forth in 24 CFR § 50.4. HUD will carry out a historic preservation review with respect to any property that requires rehabilitation to bring it up to HQS. If the HA determines during its HQS inspection of the unit that, as a condition of meeting the HQS, the family must undertake rehabilitation of the dwelling, it must so inform the family. Thereafter, until such time as HUD completes its environmental review, the family may not carry out any rehabilitation work in the dwelling. It is noted that many HQS violations will not require the family to undertake rehabilitation work in order to correct the deficiencies and bring the unit into compliance with HQS. For instance, minor interior repairs would not be subject to a historic preservation review. When the homeownership program is implemented, the Department will issue specific guidance on what conditions would require actual rehabilitation work and would be subject to the historic preservation review.

—§ 982.633 Homeownership Program: Continued assistance requirements.

In addition to initial eligibility requirements, HUD is also proposing a number of requirements concerning continued homeownership assistance. These requirements are in addition to the general section 8 requirements contained in § 982.551 that apply to all families receiving tenant-based assistance.

The proposed continued assistance requirements include: (1) attending homeownership and housing counseling on a continuing basis (if required by the HA); (2) complying with the terms of its mortgage with the mortgagee and its SFR with the HA; (3) notifying the HA before the family refinances the mortgage or sells the homeownership unit, and of any change in the family's monthly homeownership expenses or when the mortgage on the property is paid off; (4) maintaining the unit in accordance with the HQS, and allowing the HA to inspect the unit; (5) paying the monthly mortgage installment and utility payments in a timely manner; (6) maintaining the unit as the family's residence without leasing or subleasing any portion of the premises; and (7) maintaining all lender- or federally-required home insurance for the unit, including flood insurance.

The unit must meet the HQS throughout the period the family is receiving monthly homeownership assistance payments from the HA. Assistance payments may not commence until the HA determines that the unit meets the HQS. Failure of the family to maintain the unit in compliance with the HQS may result in the termination of assistance payments.

After purchasing the homeownership unit, the family may use amounts in its FSS escrow account to pay for the cost of major repairs and replacements. (See § 982.630 for the definition of "major repairs and replacements".) This proposed rule would require the HA to inspect the homeownership unit before the closing date, and to reinspect the unit within the nine month deadline for meeting HQS deficiencies to determine whether housing assistance payments may commence. Thereafter, the HA would inspect the unit at least annually, and at other times as needed, to determine if the family is meeting its obligation to maintain the unit in accordance with HQS.

The family's ability to budget successfully adequate amounts to make necessary repairs is a prime concern of the Department. Homeownership counseling will play a vital role in assuring that the family is prepared to handle repair and replacement needs. In addition, the Department has decided to include as part of the family's monthly homeownership expenses an imputed maintenance expense equal to 5% of the FMR for the unit size for the area in which the homeownership unit is located. This will assist some families in meeting repair and replacement costs as they occur, without putting an undue strain on the family. However, since families may not actually set aside funds for maintenance expenses on a monthly basis, and since the statutory formula for determining the monthly homeownership assistance payment is not necessarily predicated upon the amount of the family's monthly homeownership expenses, there is no assurance that a family will be able to meet routine or unexpected maintenance expenses.

For example, if a family's monthly assistance payment is calculated based upon the extent to which FMR exceeds 30 percent of the family's monthly adjusted income, the family would not receive any credit for imputed maintenance expenses (i.e., since the family's formula calculation does not rely upon its monthly homeownership expenses). Conversely, if the family's monthly assistance payment is calculated based upon the extent to which the family's monthly homeownership expenses exceed 10 percent of the family's monthly income, then a certain portion of the monthly assistance payment would be imputed by the HA for maintenance expenses. The Department does not have the discretion to authorize the use of one subsidy formulation over the other, since this is statutorily mandated.

The Department considered having the HA establish and maintain a replacement reserve to help offset the costs of major repairs and replacements that are essential for ensuring that the family's unit complies with HQS. However, concerns surfaced regarding both the added burden on HAs to maintain the reserves and what, if any, control the HA would exercise over releasing the reserve for use by the family. Another concern is whether amounts in the reserve would be sufficient to cover necessary expenditures. Experience with the homeownership program under section 235 of the National Housing Act was that when the homeownership units were not newly constructed, the replacement reserve balance was often insufficient to cover the costs of replacing roofs and other major expenditure items.

The Department requests comments concerning the establishment and operation of the maintenance reserve, in light of the family's obligation to maintain the unit in accordance with the HQS. In particular, the Department is requesting comments concerning whether participation in the homeownership program should be limited to families agreeing to deposit funds in a replacement reserve, or to locations where there are adequate local resources to establish and maintain a replacement reserve on behalf of each homeownership family.

—§ 982.634 Homeownership Program: Use of Family Self Sufficiency escrow account.

In addition to a family's ability to use a portion of its FSS escrow account toward the down payment on the unit, section 185 also authorizes the family to use any amounts remaining in the FSS escrow account to cover the costs of major repairs and replacements of the homeownership unit.

The rule proposes to adopt to a significant degree the IRS definition of the term "major repairs and replacements." The IRS defines this term to mean a capital expenditure (an expenditure to acquire property having a useful life of more than one year, to increase the value of the property, or to prolong the property life) to repair or replace a major building system, equipment or component. The Department has modified this definition in one respect by requiring the HA to make the determination that the family's proposed expenditure actually qualifies as a capital expenditure.

Examples of major repairs and replacements provided in the proposed rule are repairing or replacing a roof, repairing or replacing a heating system, replacing a hot water heater and rewiring. The Department specifically requests public comment as to whether a different definition of "major repairs and replacements" should be substituted in the final rule, or whether HUD should consider modifications to its proposed definition.

The rule also proposes to establish a procedure to be followed by the family and the HA before allowing a family to draw down funds from the FSS escrow account for major repairs and replacements. This procedure would require the family to submit to the HA documentation to substantiate that the proposed repairs and replacements are eligible work items, and that the amount proposed to be spent by the family on such repairs and replacements is reasonable. The family may not draw down funds from its FSS escrow account without the HA's approval.

Section 185(a) further provides that if a family defaults in connection with a homeownership program-supported mortgage, the family may not receive section 8 rental assistance unless it agrees that "any amounts the family is required to pay to reimburse the escrow account under section 23(d)(3) [the FSS statutory provision] may be deducted by the [HA] from the assistance payment otherwise payable on behalf of the family."

The Department has decided to implement this statutory provision, notwithstanding the fact that section 185(b), the provision that actually amends the FSS statutory provision, refers only to the Secretary's obligation to recapture any "remaining amounts" contained in the FSS escrow account, but does not refer to the family's obligation to reimburse the escrow account for amounts previously expended.

The Department has adopted this approach to discourage families from defaulting on their mortgages and reverting without consequence to rental status, and to protect the integrity of the General Insurance Fund. Moreover, HUD's approach is consistent with language contained in the Senate Committee Report to the HCD Act of 1992, which makes clear that Congress fully intended that defaulting homebuyers would be obligated to reimburse the FSS account for all amounts obtained from the account. Specifically, the Committee Report states:

> * * * The family could not continue to receive voucher or certificate assistance unless it transferred the dwelling to HUD, moved from the dwelling within the deadlines established or approved by HUD, agreed that any amounts the family is required to pay to reimburse the Family Self-Sufficiency program escrow account, as required by section 23(d)(3) may be deducted by the public housing agency from the assistance payment otherwise payable on behalf of the family (the family would have to make up any difference with additional payments to the owner) and meet other requirements established or approved by HUD. In this way, unsuccessful families would have an incentive to minimize the loss to HUD that occurs through the often lengthy process of foreclosure. (See S. Rep. No. 332, 102d Cong., 2d Sess. 161–62 (1992).)

Consequently, under this proposed rule, the HA would be able to recover from the family all amounts that the family obtained from the FSS escrow account pursuant to § 982.634 of the rule. To recover this amount, the HA would deduct from any future section 8 monthly rental payments provided on behalf of the family a certain sum based upon a schedule established by the HA. As a result of this reduced subsidy paid on behalf of the family, the family would be required to increase its contribution toward the monthly rent on the unit. The family would continue to pay this higher rent until it reimbursed the full amount of the FSS escrow account.

In addition, section 185(b), which amends the FSS program by adding the new section 23(d)(3), provides that "[I]f a family defaults in connection with the loan to purchase a dwelling and the mortgage is foreclosed, the remaining amounts in the escrow account shall be recaptured by the Secretary." HUD is implementing this statutory provision in this proposed rule, and provides that the HA may use such recaptured amounts as program receipts under the Consolidated ACC.

—§ 982.635 Homeownership Program: Monthly housing assistance payment.

Section 185 establishes the amount of the monthly subsidy payment to be provided by the HA to the eligible family. Under the statutory formula, the amount of the subsidy is the lesser of: (1) the Existing Housing FMR for the family unit size for the area in which the homeownership unit is located, minus 30 percent of the family's monthly adjusted income; or (2) the family's monthly homeownership expenses minus 10 percent of the family's gross monthly income. The proposed rule directs the HA to make the monthly assistance payment directly to the family, which must then combine the HA's payment with its own contribution to pay both the mortgage and utility expenses.

Furthermore, in determining the monthly housing assistance payment,

agreed that any amounts the family is required to pay to reimburse the Family Self-Sufficiency program escrow account, as required by section 23(d)(3) may be deducted by the public housing agency from the assistance payment otherwise payable on behalf of the family (the family would have to make up any difference with additional payments to the owner) and meet other requirements established or approved by HUD. In this way, unsuccessful families would have an incentive to minimize the loss to HUD that occurs through the often lengthy process of foreclosure. (See S. Rep. No. 332, 102d Cong., 2d Sess. 161–62 (1992).)

Consequently, under this proposed rule, the HA would be able to recover from the family all amounts that the family obtained from the FSS escrow account pursuant to § 982.634 of the rule. To recover this amount, the HA would deduct from any future section 8 monthly rental payments provided on behalf of the family a certain sum based upon a schedule established by the HA. As a result of this reduced subsidy paid on behalf of the family, the family would be required to increase its contribution toward the monthly rent on the unit. The family would continue to pay this higher rent until it reimbursed the full amount of the FSS escrow account.

In addition, section 185(b), which amends the FSS program by adding the new section 23(d)(3), provides that "[I]f a family defaults in connection with the loan to purchase a dwelling and the mortgage is foreclosed, the remaining amounts in the escrow account shall be recaptured by the Secretary." HUD is implementing this statutory provision in this proposed rule, and provides that the HA may use such recaptured amounts as program receipts under the Consolidated ACC.

—§ 982.635 Homeownership Program: Monthly housing assistance payment.

Section 185 establishes the amount of the monthly subsidy payment to be provided by the HA to the eligible family. Under the statutory formula, the amount of the subsidy is the lesser of: (1) the Existing Housing FMR for the family unit size for the area in which the homeownership unit is located, minus 30 percent of the family's monthly adjusted income; or (2) the family's monthly homeownership expenses minus 10 percent of the family's gross monthly income. The proposed rule directs the HA to make the monthly assistance payment directly to the family, which must then combine the HA's payment with its own contribution to pay both the mortgage and utility expenses.

Furthermore, in determining the monthly housing assistance payment, HUD has decided that the HA will use the greater of the Existing Housing FMR in effect at the time of the regular re-examination for the area in which the homeownership unit is located, or the FMR in effect for the area in which the homeownership unit is located when the family initially received homeownership assistance for that unit.

Section 185 specifically states that the HA may not reduce the amount of the subsidy payment to take into account the family's imputed equity in the homeownership unit. Thus, section 185 expressly authorizes the HA to disregard the normal section 8 procedure at 24 CFR § 813.106(b)(3) for taking equity into account when calculating the amount of a family's subsidy payment.

Nevertheless, section 185 also provides that upon the sale of the unit, the family is required to repay to HUD from the net sales proceeds the amount of additional assistance provided to the family because HUD did not consider the family's equity in calculating the monthly assistance payment. (See preamble discussion titled "Sale of homeownership unit.")

This section also includes a provision that states that any mortgagee accepting section 8 homeownership certificate or voucher payments from a family or an HA under the homeownership program thereby agrees to comply with the responsibilities of a mortgagee, as set forth in these regulations. This provision gives notice to such mortgagees that they are subject to certain obligations under the homeownership program because of their acceptance of the section 8 subsidy.

Section 982.635(e) clarifies that housing assistance payments may only be paid on behalf of the family for the period that the unit is occupied by the family.

Section 982.635(f) states that the HA may receive the ongoing administrative fee described in § 982.151(c) for each month that a homeownership subsidy is paid on behalf of the family.

—982.636 Homeownership Program: HA periodic unit inspections; HA remedies.

This section requires the HA to inspect the homeownership unit at least annually, and at other times as needed, to determine if the family is meeting its obligation to maintain the unit in accordance with the HQS. In addition, the section provides that if the family fails to so maintain the unit, the HQ must take prompt and vigorous action to enforce the family's obligations, which may include termination or reduction of the housing assistance payment. This provision also provides that the HA must not make any housing assistance payments for a homeownership unit that fails to meet the HQS, unless the family corrects the defect within the period specified by the HA and the HA verifies correction of the defect(s).

—§ 982.637 Homeownership Program: Prohibition on use of additional homeownership assistance.

Section 185 prohibits a family receiving section 8 assistance under the homeownership program from receiving additional assistance under other Federal homeownership programs, as determined by HUD, subsequent to the purchase date of the unit (e.g., mortgage principal or interest rate reductions). Assistance under other Federal homeownership programs may be used, however, for pre-purchase activities. For instance, assistance under other federal homeownership programs could be used to write down the initial purchase price, to complete pre-purchase rehabilitation, and for other pre-purchase activities.

In addition, language contained in the Senate Committee Report to the HCD Act of 1992 makes clear that Congress also intended that assistance under the section 8 homeownership program could be used to purchase homes sold under the FHA Property Disposition (PD) program, or properties held by the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC). The Senate also expressed its view that state programs funded from the proceeds of mortgage revenue bonds could be used to finance dwellings being purchased with homeownership assistance. (See S. Rep. No. 332, 102d Cong., 2d Sess. 61 (1992).) Accordingly, the Department has included in this proposed rulemaking the Senate's recommendations.

The Department has also concluded that section 8 homeownership assistance may be used in conjunction with an unsubsidized VA- or FmHA-guaranteed loan. HUD believes that these programs operate in a manner very similar to FHA insurance. Since unsubsidized FHA insurance is expressly permitted by section 185 to be used in conjunction with section 8 homeownership assistance, there appears to be little basis for prohibiting unsubsidized VA- and FmHA-guarantee assistance as well. These programs will promote the availability of mortgage capital, which in turn will help to ensure the success of the section 8 homeownership program.

A non-exclusive statutory listing of Federal homeownership programs that are included under the post-purchase

prohibition include assistance under the HOME Investment Partnerships Act, the Homeownership and Opportunity Through HOPE Act, Emergency Low Income Housing Preservation Act of 1987, financial assistance provided by the Farmers Home Administration pursuant to section 502 of the Housing Act of 1949.

—§ 982.638 Homeownership Program: Automatic termination of assistance.

This section states that a family will be terminated automatically from the section 8 homeownership program when six months have elapsed from the date of the last housing assistance payment because assistance payments are no longer necessary (i.e., 10 percent of the family's monthly gross income equals or exceeds the monthly homeownership expenses, or when the first mortgage is paid off. (The proposed rule defines "mortgage" as a first lien to secure the unpaid purchase price of real estate under the laws of the jurisdiction where the property is located. Other mortgages assumed by the family, home equity loans and cash-out refinancings are not covered by the homeownership program, since the program is intended to enable families to become homeowners, and not to subsidize families that have retired the debt incurred to initially purchase the unit.)

—§ 982.639 Homeownership Program: Termination of assistance for mortgage default.

Section 982.639 specifies the procedures to be followed when a family that is complying with its obligations under the section 8 program (including requirements for continued assistance under the homeownership program) defaults on its mortgage for the homeownership unit. This section of the proposed rule also sets forth the obligations of the mortgagee and the HA in the event of a default on the mortgage, and describes the conditions under which section 8 rental assistance on behalf of the family may be reinstated.

Specifically, the proposed rule provides that a mortgagee must inform the HA in writing if the family defaults. FHA-insured mortgagees are also required to comply with the requirements governing assignment of FHA-insured mortgages to HUD before proceeding to acquire the property through foreclosure or deed in lieu of foreclosure. Consequently, the proposed rule requires a FHA-insured mortgagee to inform the HA in writing as to whether the family has elected to participate in, and has qualified for, the HUD Assignment Program.

If an HA receives notice from a FHA-insured mortgagee that a family has defaulted on its mortgage, the HA must await notice from the mortgagee as to whether the family has elected to participate in, and has qualified for, the HUD Assignment Program. If the mortgagee notifies the HA that the family has so elected and qualified under the Assignment Program, the HA must discontinue further termination action related to the default against the family.

However, if the HA receives written notice from the mortgagee that a family has defaulted on a FHA-insured mortgage and has elected not to participate in, or has failed to qualify for, the HUD Assignment Program, the HA must take steps to terminate promptly homeownership assistance on behalf of the family.

Similarly, if the HA determines that the family has defaulted on a non-FHA mortgage (i.e., a mortgage that is not eligible under the FHA Insured Assignment Program), it must also take steps to terminate promptly homeownership assistance on behalf of the family.

In terminating assistance on behalf of a family receiving assistance under the homeownership program, the HA is required generally to follow the same procedures proposed under the section 8 unified rule. In a number of instances, however, this proposed rule would supplement or modify those requirements.

For example, before terminating assistance, the HA must send to the family and the mortgagee the required notice of termination of assistance under the section 8 unified rule (*see* § 982.553(c)). However, in cases where the HA is terminating assistance because of a mortgage default, the HA must include in that notice a statement that the family can move from the homeownership unit and receive section 8 rental certificate or voucher assistance if the family: (1) transfers to the mortgagee (or HUD, if applicable) marketable title to the dwelling in lieu of foreclosure within the period established or approved by HUD; (2) moves from the dwelling within a specified time period; and (3) agrees that any amounts the family is required to pay to reimburse the FSS escrow account for funds obtained pursuant to § 982.634 may be deducted by the HA from the assistance payment otherwise payable on behalf of the family.

The HA must also inform the family that section 8 assistance on behalf of the family will be terminated unless the family can demonstrate within a specified period of time that it has complied with the conditions for resumption of section 8 rental certificate or voucher assistance. As noted, this would require the family to demonstrate that it has conveyed title to the property either to the mortgagee or to HUD, and has certified that it will move from the homeownership unit within the time period established by the HA, and will pay a higher contribution toward the monthly rental payment until such time as the FSS escrow account is completely reimbursed for amounts expended by the family pursuant to § 982.634. If the family is unable or unwilling to comply with all of these requirements, the HA must terminate promptly section 8 assistance on behalf of the family.

HUD notes that while section 185 sets forth the conditions for the resumption of section 8 rental assistance on behalf of a family that has defaulted on a FHA-insured mortgage, it does not identify the conditions under which assistance should be reinstated on behalf of a family that has defaulted on a non-FHA mortgage. In this proposed rule, HUD has decided to employ the same conditions for the resumption of section 8 rental assistance, regardless of the type of mortgage. The public is invited to comment on whether this decision might pose problems for mortgagees, and to suggest possible alternative courses of action.

In addition, the Department has decided not to specify in this proposed rule the time period in which the family must move from the homeownership unit to be eligible to receive section 8 rental assistance payments. HUD believes that this determination is best left to the HA to decide on a case-by-case basis.

Finally, the proposed rule specifies that if HUD accepts assignment of a FHA-insured mortgage, and the family subsequently defaults in making payments under the HUD-held mortgage, HUD will assume the responsibilities of a mortgagee by notifying the HA of the family's default under the mortgage.

—§ 982.640 Homeownership Program: Effect of default on subsequent purchases.

The proposed rule tracks the language of section 185 in providing that a family that receives homeownership assistance under the homeownership program, and that subsequently defaults on its mortgage, is precluded from receiving homeownership assistance for another unit owned by one or more members of the family. This prohibition extends beyond the three-year time period required to establish eligibility as a "first-time homebuyer," and

permanently disqualifies such a family from participating in the homeownership program. In addition, the family will be required to reimburse the FSS escrow account for all amounts that it obtained pursuant to § 982.634, and to forfeit any remaining FSS escrow account balance. (See § 982.634.)

—§ 982.641 Homeownership Program: Sale of homeownership unit; recapture. Once a family that has received assistance payments under the homeownership program sells the homeownership unit, it is required to repay to the HA the amount of additional assistance paid to or on behalf of the eligible family because the HA did not take into account the value of the family's equity in the homeownership unit for purposes of calculating the monthly assistance payment.

The amount of "additional assistance" to be recaptured by the HA is based upon the amount that the HA disregarded under § 813.106(b)(3) when it calculated the amount of the subsidy payment, and which was secured by a second mortgage on the property. When the family sells the homeownership unit, the HA will obtain at settlement the amount due under the recapture provision and release the second mortgage. The recaptured amount may be used by the HA as program receipts under the Consolidated ACC.

This section also explains how to calculate the value of the family's equity in the homeownership unit for purposes of determining the recapture amount. The recapture amount is the lesser of: (1) the net sales proceeds; or (2) the amount of family contribution not paid during the ownership period that would have been paid if the equity in the home had been treated as an asset with income imputed to that asset (referred to in this proposed rule as "imputed amount of family contribution for assets"). The recapture amount is not automatically the imputed amount of family contribution for assets because the statute directs HUD to recapture the amount from the net sales proceeds. Therefore, the amount recaptured can never exceed the net sales proceeds. However, as noted earlier, if for any reason there are insufficient cash proceeds generated at the time of sale to repay the HA the full recapture amount, the HA may elect to recover this amount from any future section 8 rental

permanently disqualifies such a family from participating in the homeownership program. In addition, the family will be required to reimburse the FSS escrow account for all amounts that it obtained pursuant to § 982.634, and to forfeit any remaining FSS escrow account balance. (See § 982.634.)

—§ 982.641 Homeownership Program: Sale of homeownership unit; recapture. Once a family that has received assistance payments under the homeownership program sells the homeownership unit, it is required to repay to the HA the amount of additional assistance paid to or on behalf of the eligible family because the HA did not take into account the value of the family's equity in the homeownership unit for purposes of calculating the monthly assistance payment.

The amount of "additional assistance" to be recaptured by the HA is based upon the amount that the HA disregarded under § 813.106(b)(3) when it calculated the amount of the subsidy payment, and which was secured by a second mortgage on the property. When the family sells the homeownership unit, the HA will obtain at settlement the amount due under the recapture provision and release the second mortgage. The recaptured amount may be used by the HA as program receipts under the Consolidated ACC.

This section also explains how to calculate the value of the family's equity in the homeownership unit for purposes of determining the recapture amount. The recapture amount is the lesser of: (1) the net sales proceeds; or (2) the amount of family contribution not paid during the ownership period that would have been paid if the equity in the home had been treated as an asset with income imputed to that asset (referred to in this proposed rule as "imputed amount of family contribution for assets"). The recapture amount is not automatically the imputed amount of family contribution for assets because the statute directs HUD to recapture the amount from the net sales proceeds. Therefore, the amount recaptured can never exceed the net sales proceeds. However, as noted earlier, if for any reason there are insufficient cash proceeds generated at the time of sale to repay the HA the full recapture amount, the HA may elect to recover this amount from any future section 8 rental assistance payments paid on behalf of the family, in accordance with a schedule established by the HA.

The term "imputed amount of family contribution for assets" is defined in § 982.630 as being equal to the average equity in the property (AE), multiplied by the average passbook savings rate (APSR), multiplied by the number of full years of family ownership, multiplied by 30 percent. The Department believes that calculating this amount based on equity at the times the family buys and sells the unit, and the interest rate in effect at those times, will involve a much simpler and less burdensome procedure.

To calculate the imputed amount of family contribution for assets, the HA must record the first year market value at the time of the purchase less the mortgage amount (initial equity amount) and the passbook savings rate at the time of the purchase. When the family sells the unit, the HA determines the market value of the unit at the time of sale less the unpaid mortgage debt (equity at time of sale), and the current passbook savings rate. The HA then adds the equity at time of sale to the initial equity amount, and divides by two to come up with the average equity. The HA then adds the current passbook savings rate to the passbook savings rate in effect at the time of the purchase, and divides by two to calculate the average passbook savings rate. The HA then simply multiplies the average equity by the average passbook savings rate by the number of full years of family ownership by 30 percent. (That is, AE × APSR × # of full years of ownership × 30%.)

The proposed rule uses the estimated market value, rather than the purchase and selling prices, to capture the actual value of the asset and to prevent families from either giving away or under-pricing the house as a way of circumventing the recapture provision. The following example illustrates this calculation.

A family purchases a home worth $50,000 in January 1994 and sells the house after 10 full years in April 2004. The estimated market value of the house in 2004 is $60,000, and the mortgage debt balance is $40,000. The passbook savings rates in 1994 and 2004 respectively were 3 percent and 5 percent. The family assumed a mortgage debt of $45,000 at the time of purchase. When the family purchases the house, the HA takes the market value of the house and subtracts the mortgage debt (i.e., $50,000–$45,000) and records the initial equity amount ($5,000). Ten years later, the family sells the house. The HA takes the current market value and subtracts the outstanding mortgage debt at the time of sale ($60,000–$40,000) to determine the equity at the time of sale ($20,000). The HA calculates the average equity ($5,000+$20,000÷2=$12,500) and the average passbook savings rate (3%+5%÷2=4%), and then multiplies the average equity x the average passbook savings rate x number of full years of family ownership x 30 percent ($12,500x4%x10x30%) to determine the recapture amount ($1500). Thus, in this example, the recapture amount is $1,500, since this amount is less than the net sales proceeds of $10,000.

D. Amendments to 24 CFR part 984—Section 8 FSS Program.—§ 984.305 FSS Account. Section 984.305 is being amended to implement section 185(b) of the HCD Act, which provides that if an HA elects to implement a homeownership program, the family may use up to 50 percent of the amount in its FSS escrow account for a down payment on the homeownership unit. This section also provides that after the family purchases the homeownership unit, the family may use any amounts remaining in its FSS escrow account to cover the major repair and replacement needs of the unit. If the family defaults on the mortgage, it must reimburse the FSS escrow account for all amounts expended from the account pursuant to § 982.634 by agreeing to a reduced section 8 rental subsidy paid by the HA on behalf of the family, and by paying a higher tenant contribution toward its monthly section 8 rental payment in accordance with a schedule established by the HA. In addition, any remaining amounts in its FSS escrow account will be recaptured.

IV. Other Matters

The information collection requirements for the section 8 Homeownership Program have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

SECTION 8.—HOMEOWNERSHIP RULE

Description	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
Homeownership vouchers and certificates	2,500 PHAs	7	17,500	0.08	1,400	982.632(b)
Request for authorization to purchase unit	10,500	1	10,500	0.08	840	982.632(c)
Statement of family responsibilities	7,500	1	7,500	0.25	1,875	982.632(e)
Mortgagee compliance letter	7,500	1	7,500	0.08	600	982.632(h)
Request to draw-down FSS escrow funds	1,875	1	1,875	0.25	470	982.634(b)
Mortgagee notification of default	375	1	375	0.08	30	982.639(a)
Total Burden Hours					5,215	

NEPA. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:00 p.m. weekdays) in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Executive Order 12866. This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action. Any changes made in this proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of HUD's Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

Semiannual Agenda. This proposed rule was listed as sequence number 1686 in the Department's Semiannual Regulatory Agenda published on April 25, 1994 (59 FR 20424, 20469) under Executive Order 12866 and the Regulatory Flexibility Act.

Regulatory Flexibility Act. Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule does not purport to fund a new program of rental assistance, but rather adds an additional use to those already authorized under the section 8 rental certificate and voucher programs. Hence, HUD does not anticipate a significant economic impact on small entities since the amount of funding under the section 8 rental certificate and voucher program will remain constant.

Anti-lobbying provisions. On February 26, 1990, the Department published an interim rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The interim rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds. These requirements do not apply to IHAs organized under tribal law.

The certification and disclosure requirements apply to all grants in excess of $100,000. All potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds $100,000. Potential grantees should refer to 24 CFR part 87 for the language for the certification and disclosure. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

Executive Order 12612, Federalism. This proposed rule has been developed in accordance with Executive Order 12612, *Federalism*, and determined by the General Counsel not to have substantial, direct effects on PHAs. The section 8 homeownership program authorizes the use of section 8 rental certificates and vouchers to be used for homeownership purposes, but does not allocate additional funding for such purposes. The new program is consistent with federalism principles. In addition, since the changes in this proposed rule relate solely to the establishment of an alternative use of section 8 rental certificates and vouchers, the proposed rule lacks the direct and substantial effects on PHAs required for a policy with federalism implications under the Order.

Executive Order 12606, the Family. This proposed rule has been developed in accordance with Executive Order 12606, *the Family.* The proposed rule does have the potential for significant positive impact on family formation, maintenance, and general well-being, since its effect will be to increase homeownership opportunities for low income families, which can be expected to yield numerous benefits, such as increased opportunities for affordable homeownership, strengthened family ties to the community, and increased personal empowerment.

Catalog of Domestic Assistance Numbers. The Catalog of Domestic Assistance numbers for the programs affected by this proposed rule are 14.146, 14.147, 14.850, 14.851, 14.852, and 15.141.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 984

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 24 CFR parts 203 and 984 would be amended and 24 CFR part 982, as it was proposed in the **Federal Register** on February 24, 1993 (58 FR 11292), would be further amended, as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 203 would continue to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715u.

2. Section 203.259a would be amended by redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c), to read as follows:

§ 203.259a Scope.

* * * * *

(c) The Commissioner shall charge an up-front MIP pursuant to §§ 203.284 or 203.285 for any mortgage that is insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR Part 982, Subpart M, entitled, "Homeownership Program," if the mortgage would have been an obligation of the Mutual Mortgage Insurance Fund in the absence of section 8 assistance.

* * * * *

3. Section 203.284 would be amended by revising paragraph (a) introductory text and paragraph (b) introductory text, to read as follows:

§ 203.284 Calculation of up-front and annual MIP on or after July 1, 1991.

* * * * *

(a) *Permanent provisions.* Any mortgage executed on or after October 1, 1994 that is an obligation of the Mutual Mortgage Insurance Fund, or that is an obligation of the General Insurance Fund and insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR part 982, Subpart M, entitled, "Homeownership Program," shall be subject to the following requirements:

* * * * *

(b) *Transition provisions.* Mortgage insurance premiums on mortgages executed during fiscal years 1991 through 1994 that are obligations of the Mutual Mortgage Insurance Fund, or that are an obligation of the General Insurance Fund and insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR Part 982, Subpart M, entitled, "Homeownership Program," shall be subject to the following requirements:

* * * * *

4. Section 203.285 would be amended by revising the first sentence of paragraph (a), to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 203 would continue to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715u.

2. Section 203.259a would be amended by redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c), to read as follows:

§ 203.259a Scope.

* * * * *

(c) The Commissioner shall charge an up-front MIP pursuant to §§ 203.284 or 203.285 for any mortgage that is insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR Part 982, Subpart M, entitled, "Homeownership Program," if the mortgage would have been an obligation of the Mutual Mortgage Insurance Fund in the absence of section 8 assistance.

* * * * *

3. Section 203.284 would be amended by revising paragraph (a) introductory text and paragraph (b) introductory text, to read as follows:

§ 203.284 Calculation of up-front and annual MIP on or after July 1, 1991.

* * * * *

(a) *Permanent provisions.* Any mortgage executed on or after October 1, 1994 that is an obligation of the Mutual Mortgage Insurance Fund, or that is an obligation of the General Insurance Fund and insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR part 982, Subpart M, entitled, "Homeownership Program," shall be subject to the following requirements:

* * * * *

(b) *Transition provisions.* Mortgage insurance premiums on mortgages executed during fiscal years 1991 through 1994 that are obligations of the Mutual Mortgage Insurance Fund, or that are an obligation of the General Insurance Fund and insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR Part 982, Subpart M, entitled, "Homeownership Program," shall be subject to the following requirements:

* * * * *

4. Section 203.285 would be amended by revising the first sentence of paragraph (a), to read as follows:

§ 203.285 Fifteen-year mortgages: calculation of up-front and annual MIP on or after December 26, 1992.

(a) *Up Front.* Any mortgage for a term of 15 or fewer years executed on or after December 26, 1992 that is an obligation of the Mutual Mortgage Insurance Fund, or that is an obligation of the General Insurance Fund and insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR part 982, Subpart M, entitled, "Homeownership Program," shall be subject to a single up-front premium payment, established and collected by the Commissioner in an amount equal to 2.0 percent of the amount of the original insured principal obligation of the mortgage. * * *

* * * * * *

5. Section 203.391 would be amended by adding at the end of the section a new sentence, to read as follows:

§ 203.391 Title objection waiver with reduced insurance benefits.

* * *In such instances, the claim will be paid if the mortgagee agrees to accept a reduction in insurance benefits considered adequate by the Commissioner to compensate for any anticipated loss to the appropriate insurance fund as a result of the existence of the title condition at the time of claim.

6. A new § 203.559 would be added to the end of the undesignated center heading "GENERAL REQUIREMENTS", to read as follows:

§ 203.559 Responsibilities of FHA-insured mortgagees accepting section 8 tenant-based assistance.

A mortgagee accepting assistance payments from a public housing agency or Indian housing authority under a mortgage insured in connection with section 8 assistance provided under the undesignated subheading in 24 CFR Part 982, Subpart M ("Homeownership Program") thereby agrees to comply with all of the responsibilities of a mortgagee, as set forth in that subheading.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

7. The authority citation for 24 CFR Part 982 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

8. Section 982.52 would be amended by adding a new paragraph (d), to read as follows:

§ 982.52 HUD requirements.

* * * * *

(d) For the homeownership program under Subpart M of this part, HUD must comply with 24 CFR part 50 (Protection and Enhancement of Environmental Quality). HAs shall supply HUD with environmental threshold data to assist HUD in complying with applicable Federal environmental laws and authorities listed in 24 CFR § 50.4.

9. Section 982.552 would be amended by revising paragraphs (b) introductory text and (b)(1), to read as follows:

§ 982.552 HA denial or termination of assistance for family.

* * * * *

(b) *Grounds for denial or termination of assistance.* The HA may at any time deny or terminate program assistance for a family for any of the following grounds:

(1) If the family has violated any family obligations under the program (*see* § 982.551 and, for the section 8 homeownership program under subpart M of this part, *see also* §§ 982.631 through 982.633).

* * * * *

10–11. Subpart M would be amended by adding at the end a new undesignated center heading entitled, "Homeownership Program" and under it sections §§ 982.629 through 982.641, to read as follows:

Subpart M—Special Housing Types

* * * * *

Homeownership Program

Sec.

982.629 Homeownership Program: Purpose, implementation and applicability.
982.630 Homeownership Program: Definitions.
982.631 Homeownership Program: Initial family eligibility.
982.632 Homeownership Program: Actions after an HA determines that an interested family is eligible for the homeownership program.
982.633 Homeownership Program: Continued assistance requirements.
982.634 Homeownership Program: Use of Family Self Sufficiency escrow account.
982.635 Homeownership Program: Monthly housing assistance payment.
982.636 HA periodic unit inspections; HA remedies.
982.637 Homeownership Program: Prohibition on use of additional homeownership assistance.
982.638 Homeownership Program: Automatic termination of assistance.
982.639 Homeownership Program: Termination of assistance for mortgage default.

982.640 Homeownership Program: Effect of default on subsequent purchases.
982.641 Homeownership Program: Sale of homeownership unit; recapture.

Subpart M—Special Housing Types

* * * * *

Homeownership Program

§ 982.629 Homeownership Program: Purpose, implementation and applicability.

(a) *Purpose.* The purpose of the section 8 homeownership program is to provide homeownership opportunities for low-income families. In lieu of providing rental subsidies to landlords, the monthly section 8 certificate or voucher housing assistance payments, as determined under this section, will be used to enable eligible families to purchase a homeownership unit owned by one or more family members.

(b) *Implementation.* Implementation of the homeownership program is mandatory for HAs administering certificate and voucher programs. Participation by families in the homeownership program is at the sole option of the family and is restricted to those families that meet the initial eligibility criteria and other requirements for homeownership assistance. HAs must inform families of the homeownership option during the briefing, or no later than the next regularly scheduled recertification for participants and families that have been issued certificates and vouchers. There is no separate funding designated for the homeownership program. Instead, the HA will use funds under the consolidated ACC for the rental certificate and rental voucher programs for this purpose.

(c) *Applicability.* Provisions under this undesignated heading apply only to the sections under this subheading and do not apply to any other forms of special housing under subpart M of this part.

(1) *Applicability of other requirements.* Except as otherwise modified by the provisions of this subpart or section, the requirements contained in the other subparts of 24 CFR part 982 apply to section 8 homeownership assistance. The following provisions are not applicable to section 8 homeownership assistance:

(i) All provisions or references relating to owners and to the housing assistance payment contract with the owner, including the amount a section 8 owner receives if the family moves from the assisted unit (§ 982.309); owner responsibility for maintaining the unit at HQS (§ 982.403); HA periodic unit inspections to determine whether an owner is complying with its obligations to maintain the unit at HQS (§ 982.404); and Subpart J—Housing Assistance Payments Contract and Owner Responsibilities of this part;

(ii) All provisions governing the assisted tenancy, including the provisions concerning HA approval for assisted tenancy (§ 982.305); the assisted lease (§ 982.306); owner termination of tenancy (§ 982.307); and security deposits payable by tenants to the section 8 owner (§ 982.308);

(iii) The term of the certificate or voucher (§ 982.302); the prohibition against using a unit occupied by an owner or person with an interest in the unit (§ 982.304(a)(6)); and the prohibition against any unit receiving, or which has received in the past five years, a local or state mortgage interest subsidy, construction or rehabilitation subsidy, or project-based rent subsidy (§ 982.304(a)(8));

(iv) The prohibition against selecting families based on participation in a Family Self Sufficiency program (§ 982.202(c)(3)(i)(F)); or based on income level (§ 982.202 (c)(3)(ii));

(v) All provisions and references relating to rent, including Subpart K—Rent and Housing Assistance Payment of this part (except for the provisions concerning HA examinations of family income and composition and utility allowances (§§ 982.509 and 982.510));

(vi) The provision at § 982.551(c), HQS breach caused by family, since all HQS violations are the responsibility of the family; and the provision at § 982.551(g) that prohibits the family from owning or having any interest in the unit;

(vii) Subpart M—Special Housing Types of this part (except the portion of Subpart M beginning at § 982.629); and

(viii) Subpart G of Part 882 of this title—Project-Based Certificate Program.

(2) [Reserved]

§ 982.630 Homeownership Program: Definitions.

Average equity. The imputed equity amount accrued by the family in the homeownership unit during the ownership period. Average equity is calculated as one-half of the sum of:

(1) The market value of the homeownership unit at the time of purchase, less any unpaid balance on the mortgage; and

(2) The market value of the homeownership unit at the time of sale, less any unpaid balance on the mortgage.

Average passbook savings rate. The imputed average passbook savings rate during the length of the ownership period. The average passbook savings rate is calculated as one-half of the sum of:

(1) The passbook savings rate at the time of purchase; and

(2) The passbook savings rate at the time of sale.

Default. The point at which an eligible family breaches its obligations under a mortgage for a homeownership unit. For purposes of a FHA-insured mortgage, "default" means a default in accordance with 24 CFR part 200. For purposes of a non-FHA-insured mortgage, "default" means a default in accordance with the terms of the mortgage instrument.

Down payment. The difference between the purchase price and the mortgage amount.

First-time homeowner. A family, no member of which has had a present ownership interest in a principal residence during the 3 years preceding the date on which the family initially receives homeownership assistance. For a family to retain its eligibility as a first-time homeowner even after selling its homeownership unit, it must participate continuously in the section 8 homeownership program and not be in default on any previous section 8-assisted mortgage.

Homeownership assistance. Monthly homeownership assistance payments provided by the HA to an eligible family pursuant to this undesignated heading.

Homeownership unit. A unit for which section 8 certificate or voucher homeownership assistance is provided.

Imputed amount of family contribution for assets. The amount of additional assistance provided by the HA to the family because the HA did not take into account the value of the family's equity in the homeownership unit when it calculated the family's monthly assistance payment. The imputed amount of family contribution for assets is equal to the average equity in the property (AE), multiplied by the average passbook savings rate (APSR), multiplied by the number of full years of family ownership, multiplied by 30 percent (i.e., AE × APSR × # of full years of ownership × 30%).

Major repairs and replacements. A capital expenditure (an expenditure, as approved by the HA, to acquire property having a useful life of more than one year, to increase the value of the property, or to prolong the property life) to repair or replace a major building system, equipment or component. Repairing or replacing a roof, repairing or replacing a heating system, replacing a hot water heater and rewiring are examples of major repairs and replacements.

Monthly homeownership expenses. A family's total monthly expenses for the homeownership unit to cover the cost of the mortgage principal and interest (limited to the lesser of the initial first mortgage or any subsequent refinancing, but excluding any second mortgage, home equity loan, or cash-out refinancing), real estate taxes and special assessments, home insurance, imputed maintenance expenses equal to 5 percent of the FMR for the size unit purchased at the time of move-in or at the regular re-examination, and an allowance for utilities using the HA's utility allowance schedule for the size unit purchased by the homebuyer.

Mortgage. A first lien to secure the unpaid purchase price of real estate under the laws of the jurisdiction where the homeownership unit is located, and for which homeownership assistance is provided. A mortgage may refer both to a security instrument creating a lien (whether called a mortgage, deed of trust, security deed or another term used in a particular jurisdiction), as well as the credit instrument, or note, secured thereby. Unless otherwise stated, "mortgage" does not include other mortgages assumed by the family, home equity loans, or cash-out refinancings.

Mortgagee. The original lender under a mortgage and its successors and assigns.

Net sales proceeds. The market value of the house when sold, less the sum of outstanding first mortgage indebtedness (limited to the lesser of the initial first mortgage or any subsequent refinancing, but excluding any other mortgage, home equity loan, or cash-out refinancing).

Public assistance. Income assistance from Federal, state or local welfare programs, and includes assistance provided under the Aid to Families with Dependent Children (AFDC) Program; Supplemental Security Income (SSI) that is subject to an income eligibility test; food stamps, general assistance or other assistance provided under a Federal, state or local program directed to meeting general living expenses, such as food, health care, child care, but does not include assistance directed solely to meeting housing expenses (e.g., rent, mortgage or utilities payments), and does not include transitional welfare assistance (e.g., Medicaid) provided to JOBS participants.

Statement of Family Responsibilities (SFR). A document executed by the family that evidences the family's agreement to comply with requirements under the homeownership program. The SFR, which must be in a form prescribed by HUD, is executed by the family before the HA begins housing

Monthly homeownership expenses. A family's total monthly expenses for the homeownership unit to cover the cost of the mortgage principal and interest (limited to the lesser of the initial first mortgage or any subsequent refinancing, but excluding any second mortgage, home equity loan, or cash-out refinancing), real estate taxes and special assessments, home insurance, imputed maintenance expenses equal to 5 percent of the FMR for the size unit purchased at the time of move-in or at the regular re-examination, and an allowance for utilities using the HA's utility allowance schedule for the size unit purchased by the homebuyer.

Mortgage. A first lien to secure the unpaid purchase price of real estate under the laws of the jurisdiction where the homeownership unit is located, and for which homeownership assistance is provided. A mortgage may refer both to a security instrument creating a lien (whether called a mortgage, deed of trust, security deed or another term used in a particular jurisdiction), as well as the credit instrument, or note, secured thereby. Unless otherwise stated, "mortgage" does not include other mortgages assumed by the family, home equity loans, or cash-out refinancings.

Mortgagee. The original lender under a mortgage and its successors and assigns.

Net sales proceeds. The market value of the house when sold, less the sum of outstanding first mortgage indebtedness (limited to the lesser of the initial first mortgage or any subsequent refinancing, but excluding any other mortgage, home equity loan, or cash-out refinancing).

Public assistance. Income assistance from Federal, state or local welfare programs, and includes assistance provided under the Aid to Families with Dependent Children (AFDC) Program; Supplemental Security Income (SSI) that is subject to an income eligibility test; food stamps, general assistance or other assistance provided under a Federal, state or local program directed to meeting general living expenses, such as food, health care, child care, but does not include assistance directed solely to meeting housing expenses (e.g., rent, mortgage or utilities payments), and does not include transitional welfare assistance (e.g., Medicaid) provided to JOBS participants.

Statement of Family Responsibilities (SFR). A document executed by the family that evidences the family's agreement to comply with requirements under the homeownership program. The SFR, which must be in a form prescribed by HUD, is executed by the family before the HA begins housing assistance payments for the homeownership unit.

§ 982.631 Homeownership Program: Initial family eligibility.

To be eligible initially to receive section 8 homeownership assistance, a family must:

(a) Be a first-time homeowner;

(b)(1) Be a participant of the HA's Family Self-Sufficiency (FSS) Program and be in compliance with the FSS contract of participation; or

(2) Have a gross monthly income from sources other than public assistance that is not less than two and a half times the Existing Housing FMR for the area in which the homeownership unit is located; and

(c) Demonstrate that one or more adult members of the family are currently employed on a full-time basis, and have been continuously so employed for at least one year prior to the date the HA determines family eligibility for homeownership assistance.

§ 982.632 Homeownership Program: Actions after an HA determines that an interested family is eligible for the homeownership program.

After an HA determines that an interested family is eligible for the homeownership program, the following actions must occur:

(a) *Counseling.* The family must participate in a homeownership and housing counseling program provided by a HUD-approved counseling agency that covers areas such as: home maintenance; budgeting; money management; credit counseling; credit repair; negotiating purchase price; securing mortgage financing; transportation options and opportunities for housing and schools located throughout the metropolitan area; and the availability of multiple listing services through local realtors, so that families can explore the full range of housing options located throughout the metropolitan area. If a HUD-approved housing counseling agency is not available, the counseling may be provided by the HA or another qualified entity.

(b) *Issuance of certificate or voucher.* The HA must issue the family a certificate or voucher with a term of 120 days. The running of the term for the certificate or voucher stops from the time the family submits a Request for Authorization to Purchase a Homeownership Unit until the time when the HA completes the HQS inspection and either approves or denies the request. During the term of the homeownership certificate or voucher, the HA may require the family to report progress in purchasing a homeownership unit. Such reports may be required at such intervals or times as determined by the HA. During the term of the homeownership certificate or voucher, the family may request to exchange the homeownership certificate or voucher for a rental certificate or voucher. The HA must determine the term of the rental certificate or voucher in accordance with § 982.302, except that the time period already used while searching for a homeownership unit under the homeownership certificate or voucher must be subtracted from the term of the rental certificate or voucher.

(c) *Request for Authorization to Purchase a Homeownership Unit.* The family must submit to the HA a completed Request for Authorization to Purchase a Homeownership Unit and, during the term of the certificate or voucher, execute a contract or other agreement that demonstrates the owner's willingness to sell the homeownership unit. The family may only submit one Request for Authorization to Purchase a Homeownership Unit at a time. This request must include the information prescribed by HUD, such as the location of the homeownership unit and the name of the seller. The HA must notify promptly the family whether the Request for Authorization to Purchase a Homeownership Unit is approved or disapproved. The family has nine months (plus tolling, i.e., the time between when the family submits a Request for Authorization to Purchase a Homeownership Unit for HA approval and the time when the HA approves or denies the request) from the date of issuance of the homeownership certificate or voucher in which to secure mortgage financing and execute a second mortgage on behalf of the HA to secure the repayment of the recapture amount under § 982.641; obtain title to the homeownership unit; and bring the unit into compliance with the HQS. In no event may monthly assistance payments be made to a family before these requirements are met.

(d)(1) *HQS requirements.* Housing assistance payments may not commence until the HA determines that the unit meets the HQS requirements set forth in § 982.401. It is the family's responsibility to ensure that the homeownership unit meets the HQS throughout the period when it is receiving monthly homeownership assistance payments from the HA. The family may use amounts in its FSS escrow account to pay for major repairs and replacements in the homeowners[illegible]ip unit.

(2) Before approving a Request for Authorization to Purchase a Homeownership Unit, the HA must inspect the homeownership unit to determine whether it meets the HQS. If the homeownership unit does not meet the HQS, the HA must provide the family with a list of deficiencies. The family is not required to wait for the HQS inspection before making an offer or executing a contract of sale, although the HA must inform the family that housing assistance payments will not commence until the unit is in compliance with the HQS. The HA may disapprove the Request for Authorization to Purchase a Homeownership Unit if the unit is structurally unsound or if there are many serious HQS violations and the HA determines that the family will be unable to have the HQS violations corrected within the time period set forth in paragraph (d)(3) of this section. If the HA disapproves the Request for Authorization to Purchase a Homeownership Unit, the family may lose any out of pocket costs it may have incurred at the time it made the offer to purchase the unit or executed the contract of sale, depending upon the contract terms with the seller.

(3) Any HQS deficiencies must be corrected within nine months (plus tolling, i.e., the time when the family submits for HA approval a Request for Authorization to Purchase a Homeownership Unit and the time when the HA approves or denies the request) from the date of issuance of the homeownership certificate or voucher and the HA must reinspect the unit to determine whether housing assistance payments may commence.

(e) *Statement of Family Responsibilities.* If the HA determines that the homeownership unit meets the HQS, and that the family has secured mortgage financing and obtained title to the homeownership unit, the family must execute a Statement of Family Responsibilities (SFR), in the form prescribed by HUD. Housing assistance payments may not commence until the family executes the SFR. In the SFR:

(1) The family agrees to combine the HA's payment with its own required contributions toward the mortgage and utility payments, and to pay such amounts directly to the mortgagee and utility suppliers. The family also agrees that, if the HA determines that the family's past performance in making such payments so warrants, the HA may pay the housing assistance payment directly to the mortgagee and the utility suppliers.

(2) The family agrees that it must comply with all applicable requirements pertaining to the section 8 program, in addition to special requirements established under the section 8 homeownership program.

(f) *Mortgage.* Before commencement of homeownership assistance, the family must obtain and provide evidence to the HA that it has a mortgage to purchase the homeownership unit. Purchase-money mortgages (i.e., a mortgage taken back by the seller on the homeownership unit in exchange for its agreement to finance the family's purchase of the unit) and "balloon" mortgages are expressly prohibited. An exception to the prohibition on purchase-money mortgages is that a family may obtain such a mortgage from a seller that is a bona fide nonprofit entity. In addition, the family must execute on behalf of the HA a second mortgage to secure the repayment of the recapture amount under § 982.641. The family must secure mortgage financing for the homeownership unit and execute the second mortgage within nine months (plus tolling) from the date of issuance of the homeownership certificate or voucher.

(g) *Title.* Monthly housing assistance payments may not commence until such time as the family obtains title to the homeownership unit. Title may be held by any member or members of the family, and the family must furnish the HA with adequate evidence of its ownership. The family must obtain title to the homeownership unit within nine months (plus tolling) from the date of issuance of the homeownership certificate or voucher.

(h) *Submission of documents from mortgagee.* Before commencement of homeownership assistance, the family must submit to the HA any documents prescribed by HUD, and executed by the mortgagee, indicating that the mortgagee agrees to comply with its responsibilities under § 982.639.

(i) *Down payment requirement.* The family must provide from its own resources (which may include cash resources obtained through a gift or inheritance, or from the family's personal savings) at least 80 percent of the down payment on a homeownership unit. The family may use up to 50 percent of the amount contained in its FSS escrow account to meet this 80 percent down payment requirement. Not more than 20 percent of the down payment may be provided from other sources, such as funds provided by nonprofit entities or programs of states and units of general local government.

(j)(1) *Environmental review.* HUD is responsible for complying with the applicable Federal environmental laws and authorities listed in 24 CFR 50.4. HAs shall assist HUD by establishing procedures to assure that prior to approval of any "Request for Authorization to Purchase a Homeownership Unit," full compliance is made with the following Federal environmental laws and authorities:

(i) *Site within designated coastal barrier resources:* Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (15 U.S.C. 3501), financial assistance under the homeownership program may not be used for activities undertaken in the Coastal Barrier Resources System.

(ii)(A) *Buildings requiring flood insurance protection:* Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), Federal financial assistance for acquisition and construction purposes (including repair and improvement) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(*1*) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(*2*) Flood insurance protection is to be obtained as a condition of the HA's approval of financial assistance to the family.

(B) HAs assisting acquisition and construction (including repair and improvement) located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained by the family.

(iii) *Site within runway clear zones of airports:* In cases involving HUD assistance for the purchase or sale of an existing property in a Runway Clear Zone of a civil airport or Clear Zone of a military airfield, as defined in 24 CFR part 51, HAs shall advise the family that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. In these cases, the family must sign, as part of the Request for Authorization to Purchase a Homeownership Unit, a statement acknowledging receipt of this information from the HA.

(2) *Historic preservation.* HAs shall supply HUD with threshold data to assist HUD in complying with the historic preservation requirements set forth in 24 CFR 50.4(a). HUD shall carry out a historic preservation review pursuant to § 50.4(a) with respect to any property that requires rehabilitation to bring it up to HQS. If the HA determines during its HQS inspection of the unit that, as a condition of meeting the HQS, the family must undertake rehabilitation of the dwelling, it must so inform the family. Thereafter, until such time as HUD completes its environmental review, the family may not carry out any rehabilitation work on the dwelling.

§ 982.633 Homeownership Program: Continued assistance requirements.

To continue to receive homeownership assistance, a family must comply with the obligations set forth in § 982.551, in addition to the following requirements:

(a) *Ongoing counseling.* Attend homeownership and housing counseling on a continuing basis, as deemed appropriate by the HA;

(b) *Compliance with mortgage and Statement of Family Responsibilities.* Comply with the terms of its mortgage with the mortgagee and its Statement of Family Responsibilities with the HA;

(c) *Notification to HA.* Notify the HA before the family refinances the mortgage on the homeownership unit or sells the unit. In addition, the family must notify the HA of any change in the family's monthly homeownership expenses, and when the mortgage on the property is paid off. Failure to notify the HA of these changes shall be considered fraud by the family and will result in appropriate enforcement action by the HA.

(d) *HQS requirements.* Maintain the homeownership unit in accordance with the HQS, including performance of ordinary and extraordinary maintenance. In addition, the family must allow the HA to inspect the unit at least annually, and at other times as needed, to determine if the family is meeting its obligation to maintain the unit in accordance with the HQS.

(e) *Timely monthly payments.* Pay in a timely manner to the mortgagee the monthly mortgage installment, and to utility suppliers the amounts owed for utilities and services, using the HA's monthly contributions toward these expenditures.

(f) *Maintain unit as family's residence.* Maintain the unit as the family's residence without leasing or sub-leasing any portion of the homeownership unit.

(g) *Insurance.* Maintain all lender- or Federally-required insurance for the unit, including flood insurance.

forth in 24 CFR 50.4(a). HUD shall carry out a historic preservation review pursuant to § 50.4(a) with respect to any property that requires rehabilitation to bring it up to HQS. If the HA determines during its HQS inspection of the unit that, as a condition of meeting the HQS, the family must undertake rehabilitation of the dwelling, it must so inform the family. Thereafter, until such time as HUD completes its environmental review, the family may not carry out any rehabilitation work on the dwelling.

§ 982.633 Homeownership Program: Continued assistance requirements.

To continue to receive homeownership assistance, a family must comply with the obligations set forth in § 982.551, in addition to the following requirements:

(a) *Ongoing counseling.* Attend homeownership and housing counseling on a continuing basis, as deemed appropriate by the HA;

(b) *Compliance with mortgage and Statement of Family Responsibilities.* Comply with the terms of its mortgage with the mortgagee and its Statement of Family Responsibilities with the HA;

(c) *Notification to HA.* Notify the HA before the family refinances the mortgage on the homeownership unit or sells the unit. In addition, the family must notify the HA of any change in the family's monthly homeownership expenses, and when the mortgage on the property is paid off. Failure to notify the HA of these changes shall be considered fraud by the family and will result in appropriate enforcement action by the HA.

(d) *HQS requirements.* Maintain the homeownership unit in accordance with the HQS, including performance of ordinary and extraordinary maintenance. In addition, the family must allow the HA to inspect the unit at least annually, and at other times as needed, to determine if the family is meeting its obligation to maintain the unit in accordance with the HQS.

(e) *Timely monthly payments.* Pay in a timely manner to the mortgagee the monthly mortgage installment, and to utility suppliers the amounts owed for utilities and services, using the HA's monthly contributions toward these expenditures.

(f) *Maintain unit as family's residence.* Maintain the unit as the family's residence without leasing or sub-leasing any portion of the homeownership unit.

(g) *Insurance.* Maintain all lender- or Federally-required insurance for the unit, including flood insurance.

§ 982.634 Homeownership Program: Use of Family Self Sufficiency escrow account.

(a) *Down payment assistance.* A family that is in compliance with its FSS contract of participation may use up to 50 percent of the amount in its Family Self-Sufficiency escrow account toward the down payment on a homeownership unit.

(b) *Major repairs and replacements.* After a family purchases a homeownership unit, a family that is in compliance with its FSS contract of participation may use any amounts in the FSS escrow account to cover the costs of major repairs and replacements in the homeownership unit. Before approving the use of FSS funds for this purpose, the HA shall require the family to submit evidence, as required by the HA, to substantiate that the proposed repairs and replacements are eligible work items, and that the amount proposed to be spent on such repairs and replacements is reasonable. Funds may not be drawn down from the FSS escrow account without the HA's approval.

(c) *Recapture.* If the family defaults on a mortgage used to purchase the homeownership unit, and the mortgage is foreclosed, the family must reimburse the FSS escrow account for amounts obtained by the family pursuant to paragraphs (a) and (b) of this section by agreeing to a reduced section 8 rental subsidy paid by the HA on behalf of the family, and by paying a higher tenant contribution toward its monthly section 8 rental payment in accordance with a schedule established by the HA. In addition, any remaining amounts in its FSS escrow account will be recaptured by the HA and used by the HA as program receipts under the Consolidated ACC.

§ 982.635 Homeownership Program: Monthly housing assistance payment.

(a) *Amount of monthly housing assistance payment.* The HA shall make a monthly housing assistance payment to the family that is equal to the *lesser* of:

(1) The Existing Housing FMR for the family unit size for the area in which the homeownership unit is located, minus 30 percent of the family's monthly adjusted income; or

(2) The family's monthly homeownership expenses minus 10 percent of the family's monthly gross income.

(b) *FMR used in subsidy calculation.* In determining the monthly housing assistance payment, the HA will use the greater of the Existing Housing FMR in effect at the time of the regular re-examination for the area in which the homeownership unit is located, or the FMR in effect for the area in which the homeownership unit is located when the family initially received homeownership assistance for that unit.

(c) *Exclusion of equity from calculation of monthly income.* In determining a family's monthly income for purposes of calcalating the family's monthly assistance payment, the family's equity in the homeownership unit is excluded when applying § 813.106(b)(3) of this title, which provides that where the family has net family assets in excess of $5,000, annual income includes the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate. Upon sale of the homeownership unit, the family shall be required to repay to HUD from the net sales proceeds the amount of additional assistance provided to the family because HUD did not consider the family's equity in calculating the monthly assistance payment.

(d) *Responsibility of mortgagee accepting section 8 payments.* Any mortgagee accepting section 8 homeownership certificate or voucher housing assistance payments from a family or HA thereby agrees to comply with the responsibilities of a mortgagee, as set forth in § 982.639.

(e) *Occupancy of homeownership unit.* Housing assistance payments may only be paid for the period the homeownership unit is occupied by the family.

(f) *Administrative fees.* The ongoing administrative fee described in § 982.151(c) is paid to the HA for each month that a homeownership subsidy is paid on behalf of the family or until the family's participation in the program is terminated.

§ 982.636 HA periodic unit inspections; HA remedies.

(a) (1) *HA period inspections.* The HA must inspect the homeownership unit at least annually, and at other times as needed, to determine if the family is meeting the obligation to maintain the unit in accordance with HQS.

(2) In scheduling inspections, the HA must consider complaints and any other information brought to the attention of the HA.

(b) (1) *HA remedies.* If the family fails to maintain the homeownership unit in compliance with HQS, the HA must take prompt and vigorous action to enforce the family obligations. HA rights and remedies include termination or reduction of housing assistance payments.

(2) The HA must not make any housing assistance payments for a homeownership unit that fails to meet the HQS, unless the family corrects the defect within the period specified by the HA and the HA verifies the correction.

§ 982.637 Homeownership Program: Prohibition on use of additional homeownership assistance.

A family receiving section 8 homeownership assistance may not receive additional assistance (e.g., mortgage principal or interest rate reduction subsidy) under other Federal homeownership assistance programs, including assistance under the HOME Investment Partnerships Act, the Homeownership and Opportunity Through HOPE Act, Emergency Low Income Housing Preservation Act of 1987, or financial assistance provided by the Farmers Home Administration pursuant to section 502 of the Housing Act of 1949 subsequent to the purchase date of the homeownership unit. Assistance under these programs may be used, however, to write down the initial purchase price, to complete pre-purchase rehabilitation, provide down payment or closing cost funds, and for other pre-purchase activities. In addition, homeownership assistance may be used in combination with state or local tax-exempt bond financing programs, or with unsubsidized VA- or FmHA-guaranteed mortgages. Homeownership assistance can also be used to purchase a unit under the FHA Property Disposition Program, from the Resolution Trust Corporation or from the Federal Deposit Insurance Corporation.

§ 982.638 Homeownership Program: Automatic termination of assistance.

A family will be terminated automatically from the section 8 homeownership program when six months have elapsed since the date of the last housing assistance payment because assistance payments are no longer necessary, or when the first mortgage is paid off.

§ 982.639 Homeownership Program: Termination of assistance for mortgage default.

If a family defaults on the mortgage, the following procedures apply:

(a) *Mortgagee obligations.* The mortgagee must inform the HA in writing of the family's default. In addition, a FHA-insured mortgagee must comply with 24 CFR part 203, subpart C, before acquiring the property through foreclosure or deed in lieu of foreclosure, and must inform the HA in writing as to whether the family has elected to participate in, and has qualified for, the HUD Assignment Program under 24 CFR part 203, subpart C. In the case of a family that has defaulted on an assigned FHA-insured mortgage, HUD shall notify the HA of the family's default.

(b) *When assistance is terminated.* The HA must take steps to terminate promptly homeownership assistance on behalf of a family that has defaulted on its mortgage if the HA receives written notice from the mortgagee (or HUD) that:

(1) For a family that has defaulted on a FHA-insured mortgage, the family has elected not to participate in, or has failed to qualify for, the HUD Assignment Program; or

(2) The family has defaulted on a non-FHA insured mortgage; or

(3) In the case of a mortgage held by HUD, when HUD determines that the family has defaulted on the assigned mortgage.

(c) *Notice to family.* If the family defaults on the mortgage, the HA must include in the required notice of termination of assistance (see § 982.553(c)) a statement that the family can move from the homeownership unit with continued section 8 certificate or voucher assistance for a rental unit if the family:

(1) Transfers to the mortgagee or HUD marketable title to the homeownership unit in lieu of foreclosure within the period established or approved by the mortgagee or HUD;

(2) Moves from the homeownership unit within the period established by the HA; and

(3) Agrees in writing that any amounts the family is required to pay to reimburse the FSS escrow account for amounts expended by the family pursuant to § 982.634 may be deducted by the HA from the section 8 rental assistance payment otherwise payable on behalf of the family, and that the family will accordingly pay a higher monthly tenant contribution in accordance with a schedule established by the HA until such time as the account is fully reimbursed.

(d) *Continuation or termination of section 8 rental assistance.* The family will be issued a rental certificate or voucher to locate suitable rental housing if the family demonstrates that it has conveyed title to the property either to the mortgagee or to HUD within the period established or approved by the mortgagee or HUD, and certifies it will move from the homeownership unit within the period established by the HA and agrees to reimburse the FSS escrow account for all amounts expended by the family pursuant to § 982.634 for the homeownership unit in accordance with the schedule established by the HA. If the family is unable to demonstrate within the period specified by the HA that it has met the conditions for continuing section 8 rental certificate or voucher assistance (or if the HA otherwise has a basis for terminating assistance on behalf of the family in accordance with § 982.552), the HA shall terminate promptly section 8 assistance on behalf of the family.

§ 982.640 Homeownership Program: Effect of default on subsequent purchases.

A family receiving homeownership assistance that defaults under a mortgage may not receive homeownership assistance for occupancy of another dwelling owned by one or more members of the family. Additionally, the family will be required to reimburse the FSS account for all amounts that it expended pursuant to § 982.634, and to forfeit any remaining FSS escrow account balance.

§ 982.641 Homeownership Program: Sale of homeownership unit; recapture.

(a) *General.* Upon the sale of the homeownership unit, the HA shall recapture from any net sales proceeds the amount of additional assistance paid to or on behalf of the eligible family because the HA did not take into account the value of the family's equity in the homeownership unit for purposes of calculating the monthly assistance payment.

(b) *Calculation of recapture amount.* The amount of additional assistance to be recovered by the HA pursuant to paragraph (a) of this section is the lesser of:

(1) The net sales proceeds; or

(2) the imputed amount of family contribution for assets. If there are insufficient cash proceeds generated by the sale to repay HUD for the recapture amount, the family shall continue to owe the HA the remaining recapture amount. The HA may elect, as one option, to recover this amount by deducting from any future section 8 rental payments otherwise payable on behalf of the family the full amount required under this paragraph (b). Such deductions shall be made in accordance with a schedule established by the HA, and shall result in the family's making a higher tenant contribution toward the monthly rental on the unit until such time as the full recapture amount is paid off. Recaptured amounts shall be used by the HA as program receipts under the Consolidated ACC.

PART 984—SECTION 8 FAMILY SELF-SUFFICIENCY PROGRAM

12. The authority citation for part 984 would be revised to read as follows:

Authority: 42 U.S.C. 1437f, 1437u, and 3535(d).

13. Section 984.305 would be amended by redesignating paragraph (e) as paragraph (f), and by adding a new paragraph (e), to read as follows:

§ 984.305 FSS account.

* * * * *

(e) *Use of FSS account for section 8 homeownership.* Notwithstanding paragraphs (c) and (f)(l)(ii) of this section, a family that is in compliance with the FSS contract of participation may use up to 50 percent of the amount

PART 984—SECTION 8 FAMILY SELF-SUFFICIENCY PROGRAM

12. The authority citation for part 984 would be revised to read as follows:

Authority: 42 U.S.C. 1437f, 1437u, and 3535(d).

13. Section 984.305 would be amended by redesignating paragraph (e) as paragraph (f), and by adding a new paragraph (e), to read as follows:

§ 984.305 FSS account.

* * * * *

(e) *Use of FSS account for section 8 homeownership.* Notwithstanding paragraphs (c) and (f)(l)(ii) of this section, a family that is in compliance with the FSS contract of participation may use up to 50 percent of the amount in its FSS escrow account for a down payment on a homeownership unit receiving section 8 homeownership assistance under 24 CFR part 982, subpart M ("Homeownership Program"). In addition, after the family purchases the homeownership unit, a family that is in compliance with the FSS contract of participation may use any amounts in the FSS escrow account to cover major repairs and replacements in the homeownership unit, as those terms are defined at § 982.630 of this chapter. If the family defaults on the mortgage for which section 8 homeownership certificate or voucher assistance is being provided under 24 CFR part 982, subpart M, it must reimburse the FSS escrow account for all amounts expended by the family pursuant to § 982.634 of this chapter by agreeing to a reduced section 8 rental subsidy paid by the HA on behalf of the family, and by paying a higher tenant contribution toward its monthly section 8 rental payment in accordance with a schedule established by the HA. In addition, any remaining amounts in its FSS escrow account will be recaptured in accordance with paragraph (f)(2) of this section. A PHA may use recaptured amounts as program receipts under the Consolidated ACC.

* * * * *

Dated: July 7, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–17152 Filed 7–18–94; 8:45 am]

BILLING CODE 4210–32–P

VOL
59
NO
1
3
7
JUL
19
994
MI

federal register

Federal Register

Tuesday
July 19, 1994

Part III

Department of Agriculture

Forest Service

36 CFR Part 292

Hells Canyon National Recreation Area, Federal Lands; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

RIN 0596–AB08

Hells Canyon National Recreation Area—Federal Lands

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements Sections 10(b)–(e) of the Hells Canyon National Recreation Area Act of 1975 (hereafter "the Act"). The Act established the Hells Canyon National Recreation Area (hereafter "the HCNRA") and directed the Secretary of Agriculture to promulgate rules and regulations for federal lands in the HCNRA that would: insure the full protection and preservation of the historic, archeological, and paleontological resources; provide for the control of the use of motorized and mechanical equipment; provide for the control of the use and number of motorized and non-motorized river craft; and, establish standards for the management, utilization, and disposal of natural resources by timber harvesting, mining and grazing which are compatible with the provisions of the Act. This rule will ensure that the HCNRA will be administered in such a way as to protect the values for which it was established.

EFFECTIVE DATE: This rule is effective July 19, 1994.

FOR FURTHER INFORMATION CONTACT: Tom Lennon, Branch Chief, Special Designations, Recreation, Cultural Resources, and Wilderness Management Staff, (202) 205–1423 or Ed Cole, Area Ranger, (503) 426–4978.

SUPPLEMENTARY INFORMATION:

Background

Congress established the HCNRA in the Act in order to "assure that the natural beauty, and historical and archeological values of the Hells Canyon area * * * are preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced." P.L. 94–199, 89 Stat. 1117 at § 1 (codified at 16 U.S.C. § 460gg). While the overarching goals and objectives of the Act are to preserve and enhance the natural, historic, paleontologic, recreation, and other values in the HCNRA, Congress also expressly recognized as "valid" certain timber harvesting, grazing and rivercraft uses of the area that predated the establishment of the HCNRA. *Id.* at §§ 10, 13 (codified at 16 U.S.C. §§ 460gg–7, –10).

The HCNRA consists of 625,193 acres of federal land. Included in this acreage is the Hells Canyon Wilderness which totals 219,500 acreas and a portion of the Eagle Cap Wilderness which totals 3,553 acres. Also included in the total HCNRA acreage are 33,767 acres in the Snake, Rapid, and Imnaha Wild and Scenic River corridors. The Hells Canyon Wilderness was designated by Congress in Section 2 of the Act; the Snake and Rapid Wild and Scenic Rivers were designated in Section 3 of the Act.

Section 10 of the Act authorized the Secretary to promulgate regulations addressing several issues that were of concern to Congress when it established the HCNRA in 1975. Section 10(b) authorized the promulgation of regulations which would ensure the full protection and preservation of the historic, archeological, and paleontological resources in the HCNRA. Section 10(c) authorized the promulgation of regulations which would provide for the control of the use of motorized and mechanical equipment for transportation over, or alteration of, the surface of any Federal land in the HCNRA. Section 10(d) authorized the promulgation of regulations which would provide for the control of the use and number of motorized and nonmotorized rivercraft while recognizing the validity of the use of such craft on the Snake River in the HCNRA. Section 10(e) authorized the promulgation of regulations which would establish standards compatible with the provisions of the Act for the management, utilization, and disposal of natural resources in the HCNRA through timber harvesting, mining, and grazing. Parenthetically, it should be noted that Section 10(a) authorized the Secretary to promulgate regulations which would establish standards for the use and development of privately owned lands in the HCNRA. This section was the subject of a separate rulemaking in which a final rule was adopted on June 13, 1994 (59 Federal Register 30492). Accordingly, it is not discussed further in this proceeding.

Following enactment of the Act in 1975, the Forest Service construed the authority in Section 10 to promulgate regulations as discretionary and that the issues identified therein could be adequately addressed under existing statutory and regulatory authority. This interpretation was challenged in a 1988 lawsuit which contended that the regulatory authority in Section 10 was mandatory, not discretionary. *Oregon Natural Resources Council* v. *Lyng*, slip op. No. 88–680PA (D. Or. 1989) (hereafter "*ONRC* v. *Lyng*"). The district court in Oregon rejected ONRC's argument that the Secretary had a non-discretionary duty to issue regulations under Section 10 and dismissed the case. On appeal, however, the Ninth Circuit reversed the district court and concluded that the regulations were, in fact, required by Section 10. According to the Ninth Circuit, Section 10 "compels the Secretary to promulgate nonduplicative regulations of the sort described by subsections 10(a) through (e). *ONRC* v. *Lyng*, 882 F.2d 1417, 1421 (9th Cir. 1989).

Within three months of the 9th Circuit's decision in *ONRC* v. *Lyng*, an interim rule establishing standards and guidelines for the federal lands in the HCNRA had been adopted and public comment solicited. 54 FR 41089 (Oct. 5, 1989). Only two comments were received on the interim rule. The interim rule has never been published as a final rule.

Recently, another lawsuit was filed against the Forest Service alleging that the agency had unreasonably delayed promulgation of the regulations for the HCNRA following the Ninth Circuit's 1989 decision in *ONRC* v. *Lyng*. *Hells Canyon Preservation Council* v. *Richmond*, Slip Op. Cv. No. 92–1432–ST (D. Or.). The district court agreed that the Forest Service had unreasonably delayed the promulgation of rules for the HCNRA and established a schedule for their completion. As it related to regulations for the federal lands in the HCNRA, the court directed that a proposed rule be published in the Federal Register not later than January 20, 1994; that the comment period on the proposed rule close not later than March 21, 1994; and that a final rule be adopted and published in the Federal Register not later than July 19, 1994.

On January 19, 1994, the Forest Service published a proposed rule for the National Forest System lands in the HCNRA pursuant to Sections 10(b)–(e) of the Act (59 FR 2782). The proposed rule consisted of the following sections: purpose and scope, definitions, management standards and guidelines, protection and preservation of cultural and paleontological resources, use of motorized and mechanical equipment, use of motorized and non-motorized rivercraft, timber harvesting activities, mining activities, and grazing activities. In recognition of the proportionately greater protection that Congress felt the wilderness areas should receive over other parts of the HCNRA, the proposed rule also divided the HCNRA into Wilderness Lands, consisting of the approximately 223,000 acres of designated wilderness in the HCNRA and Other Lands, consisting of the remaining approximately 402,000 acres of federal lands in the HCNRA. This latter category included the approximately 33,000 acres of federal lands in the Snake, Rapid, and Imnaha Wild and Scenic River corridors.

Against this backdrop, the proposed rule then established standards for each of the items identified in Sections 10(b) through (e) of the Act. Some of the standards varied depending on whether the affected activity or use occurred on or was contemplated in the Wilderness Lands or the Other Lands. The standards for the grazing activities were, however, identical for Wilderness Lands and Other Lands. The standards for motorized and non-motorized rivercraft use did not differentiate between Wilderness Lands and Other Lands. Rather, this section of the proposed rule established standards applicable only to river segments that had been designated as wild and scenic rivers.

Nineteen letters expressing a variety of viewpoints were received by the expiration of the 60 day comment period on March 21, 1994. These letters contained the views of, among others, a utility company, a recreation group, several environmental groups, a federal agency, a grazing permittee, an association representing the personal watercraft industry, a commercial river outfitter and numerous concerned citizens. Two individuals submitted two separate comments on the proposed rule. The comments contained in these letters have been considered in the adoption of this final rule. The Department appreciates the time and energy the reviewers invested in preparing these letters and articulating their concerns with the proposed rule.

All comments received are available for review in the Office of the Director, Recreation, Cultural Resources, and Wilderness Management Staff, Auditors Building, 4th Floor, 201 14th Street, SE., at Independence Ave., SW., Washington DC, during regular business hours (8 a.m. to 5 p.m.) Monday through Friday.

Analysis of Public Comment

Comments on the proposed rule dealt with general issues like the terminology, enforceability, and format of the regulation. Comments also were made concerning the specific standards enumerated in the proposed rule. A brief statement of the salient issues, responses, and modifications in the proposed rule follows.

designated wilderness in the HCNRA and Other Lands, consisting of the remaining approximately 402,000 acres of federal lands in the HCNRA. This latter category included the approximately 33,000 acres of federal lands in the Snake, Rapid, and Imnaha Wild and Scenic River corridors.

Against this backdrop, the proposed rule then established standards for each of the items identified in Sections 10(b) through (e) of the Act. Some of the standards varied depending on whether the affected activity or use occurred on or was contemplated in the Wilderness Lands or the Other Lands. The standards for the grazing activities were, however, identical for Wilderness Lands and Other Lands. The standards for motorized and non-motorized rivercraft use did not differentiate between Wilderness Lands and Other Lands. Rather, this section of the proposed rule established standards applicable only to river segments that had been designated as wild and scenic rivers.

Nineteen letters expressing a variety of viewpoints were received by the expiration of the 60 day comment period on March 21, 1994. These letters contained the views of, among others, a utility company, a recreation group, several environmental groups, a federal agency, a grazing permittee, an association representing the personal watercraft industry, a commercial river outfitter and numerous concerned citizens. Two individuals submitted two separate comments on the proposed rule. The comments contained in these letters have been considered in the adoption of this final rule. The Department appreciates the time and energy the reviewers invested in preparing these letters and articulating their concerns with the proposed rule.

All comments received are available for review in the Office of the Director, Recreation, Cultural Resources, and Wilderness Management Staff, Auditors Building, 4th Floor, 201 14th Street, SE., at Independence Ave., SW., Washington DC, during regular business hours (8 a.m. to 5 p.m.) Monday through Friday.

Analysis of Public Comment

Comments on the proposed rule dealt with general issues like the terminology, enforceability, and format of the regulation. Comments also were made concerning the specific standards enumerated in the proposed rule. A brief statement of the salient issues, responses, and modifications in the proposed rule follows.

General Comments on Proposed Subpart E of 36 CFR Part 292

1. The Ambiguity of the Standards in the Proposed Rule

A number of reviewers contended that many of the standards set out in §§ 292.43 through 292.48 of the proposed rule were vague and imprecise. As a result, these reviewers noted, the Forest Service could exercise unfettered discretion in the administration of the HCNRA. These reviewers suggested that this could result in arbitrary decisions allowing or, in some cases, disallowing certain activities or uses in the HCNRA. They concluded that the standards should be clarified to further circumscribe the agency's decisionmaking authority. If additional clarification could not be achieved, then some of the reviewers recommended that the affected standard simply be eliminated.

Response. The Forest Service generally disfavors the use of rigid and fixed standards in a rule notwithstanding the fact that such standards might reduce the potential for arbitrary agency action and might enhance the agency's and the public's ability to predict whether certain behavior would be in conformance with them. The reason that the agency resists this practice is twofold. First, the agency believes that there is a significant risk that rigid and fixed standards in a rule, though perhaps appropriate at the time of adoption, may quickly be rendered obsolete or impractical due to changes or developments in law, science, technology, or societal norms and understandings. Second, where such standards are deemed desirable, they can typically be incorporated in the forest plan or a related document, like the Comprehensive Management Plan for the HCNRA, which are, by their nature, more fluid and dynamic and thus better suited than a rule to respond to evolution and change.

As a result, the Forest Service acknowledges that some discretion exists in most, if not all, of the standards in the proposed rule. It is the agency's view that an element of discretion is essential if the HCNRA is to be successfully administered in conformance with the Act.

Nonetheless, the agency has reviewed the standards of the proposed rule to determine whether additional clarification can be supplied without compromising the flexibility necessary to administer the HCNRA. To the extent a standard might appear to be so vague as to be unenforceable, additional clarification has been supplied in the rule. Such clarification is explained in the section-by-section comments that follow. In many circumstances, additional clarification may also be supplied in the Comprehensive Management Plan (CMP) for the HCNRA which will apply the general goals and objectives of the Act in conjunction with the standards of this rule to the specific uses or activities occurring in or contemplated on the HCNRA.

Finally, it should be noted that the mere existence of discretion in an agency decisionmaker does not necessarily mean that the discretion will be abused. This is neither the purpose nor intent of this rule. In the event that a party believes that the Forest Service has acted arbitrarily or capriciously or has otherwise abused its discretion, judicial review is available in accordance with the Administrative Procedures Act, 5 U.S.C. §§ 706 *et seq.*

2. Absence of a Mechanism in the Proposed Rule To Enforce the Standards Contained Therein

Many reviewers submitted comments that supported the standards in the proposed rule with the caveat that the Forest Service implement and enforce them. One reviewer was concerned that the proposed rule failed to supply any mechanism by which the standards could be enforced. Presumably, this reviewer believed that the lack of a viable enforcement mechanism would make the rule a paper tiger and render it ineffectual as a means of protecting against depredations in the HCNRA and enhancing the values for which the HCNRA was established.

Response. Notwithstanding the lack of a specific enforcement mechanism in the proposed rule, the Forest Service does not consider the standards of §§ 292.43 through 292.48 to be unenforceable. The Forest Service has several tools at its disposal which can help to ensure compliance with the standards of this rule.

As was noted in § 292.40(b) of the proposed rule, this rule for the HCNRA would supplement, not supplant, existing statutory and regulatory authorities generally applicable to National Forest System lands. This authority includes, but is not limited to, Forest Service regulations governing prohibitions at 36 CFR part 261 *et seq.* These regulations provide for fines of up to $5000 and/or imprisonment of up to six months for violations of the enumerated prohibitions. At a minimum, prohibitions in Subpart A of 36 CFR part 261 concerning timber and other forest products (36 CFR 261.6), livestock (36 CFR 261.7), property (36 CFR 261.9), occupancy and use (36 CFR 261.10), forest development roads and

trails (36 CFR 261.12), use of vehicles off roads (36 CFR 261.13), and national forest wilderness (36 CFR 261.16) may directly apply to the HCNRA and the standards set out herein.

Prohibitions may also be established by order of the Chief, Regional Forester, or Forest Supervisor pursuant to Subpart B of 36 CFR 261.50 *et seq.* In the event that such an order was issued, prohibitions concerning special closures (36 CFR 261.53), forest development roads (36 CFR 261.54), forest development trails (36 CFR 261.55), use of vehicles off forest development roads (36 CFR 261.56), national forest wilderness (36 CFR 261.57), and occupancy and use (36 CFR 261.58) may directly apply to the HCNRA and the standards set out in this rule.

Furthermore, the authorizations for domestic livestock grazing and rivercraft use will be dependent upon compliance with, among other things, the applicable standards in this rule. Thus, violations of the standards set out herein could result in the loss of grazing privileges or rivercraft use. This, in and of itself, is a valuable enforcement mechanism.

In addition to all of the above enforcement tools, the Forest Service may always pursue a civil enforcement action to enjoin an offending use or activity.

The Forest Service is currently considering whether the prohibition regulations at 36 CFR part 261 *et seq.* should be amended to include a section specifically related to the HCNRA. If this is deemed advisable, it would be the subject of a separate rulemaking. In the meantime, to clarify that the Forest Service may utilize the prohibition regulations to enforce the standards set out in this rule, a new subsection (c) has been added to § 292.42.

3. Inconsistency of Certain Standards for Other Lands in the HCNRA With the Management of Wild and Scenic Rivers

One reviewer contended that several standards for Other Lands in the HCNRA could result in uses of or activities on wild and scenic river corridor lands that would otherwise be precluded under the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271 *et seq.* In particular, this reviewer noted that standards regarding motorized and mechanical equipment and timber harvesting could be problematic, especially for wild and scenic river sections classified "wild." This reviewer recommended that the Other Lands category be further subdivided into Wild and Scenic River Areas and Recreation Lands. In splitting this category, standards could be specifically tailored to wild and scenic river corridor lands to avoid any potential conflict with the Wild and Scenic Rivers Act.

Response: As noted above and in the proposed rule, when Congress established the HCNRA it also designated the Hells Canyon Wilderness and the Snake and Rapid Wild and Scenic Rivers within the HCNRA. Portions of the Eagle Cap Wilderness and the Imnaha Wild and Scenic River are also within the HCNRA boundary. While these wilderness areas and wild and scenic rivers are within the HCNRA boundaries, they are administered pursuant to the Wilderness Act and Wild and Scenic Rivers Act, respectively. Therefore, the standards in this rule as applied to federal lands within a designated wilderness in the HCNRA can not be in conflict with the Wilderness Act. So too, the standards in this rule as applied to federal lands in a designated wild and scenic river corridor in the HCNRA can not run afoul of the Wild and Scenic Rivers Act.

It was the initial opinion of the Forest Service that the standards for the Wilderness Lands were consistent with the Wilderness Act and that the standards for the Other Lands in the proposed rule were consistent with the Wild and Scenic Rivers Act where wild and scenic river corridor lands were involved and the Act where the remaining federal lands in the HCNRA were involved. On further reflection, however, the Forest Service agrees with the reviewer that some additional adjustments are necessary to ensure that there is no inconsistency between activities or uses that may be authorized under this rule and those that may be authorized under the Wild and Scenic Rivers Act. To that end, the final rule has split out Wild and Scenic Rivers from the Other Lands category. This new category includes the approximately 33,000 acres of federal lands in the Snake, Rapid, and Imnaha Wild and Scenic River corridors. The standards have been revised accordingly and are more thoroughly discussed in the section by section comments which follow. The remaining federal lands in the HCNRA are still referred to as the Other Lands.

4. Opportunities for Public Involvement in Decisionmaking Should Be Maximized in the HCNRA

Several reviewers encouraged the Forest Service to involve the public in decisions affecting the National Forest System lands in the HCNRA.

Response. The Forest Service remains absolutely committed to involving the public in decisions affecting the HCNRA to the maximum extent allowable by law. To that end, the Forest Service has solicited and will continue to solicit the public's input on the broad array of resource, recreation, and other issues currently affecting the HCNRA. Recent examples of public involvement include discussions concerning the administration of rivercraft on the Snake River and preventing the spread of disease in bighorn sheep. The agency steadfastly believes that public involvement is the key to the successful administration of the HCNRA in conformance with the Act.

5. Regulatory Flexibility Act Analysis

One reviewer was critical of the statement in the proposed rule that this regulation would "not have a significant economic impact on a substantial number of small entities." This reviewer classified himself as one of the "small entities" on whom the rule would have a major effect.

Response. Section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601 *et seq.*, requires the preparation of a regulatory flexibility analysis whenever an agency is engaged in a notice and comment rulemaking. However, section 5(a) of the RFA negates this requirement if the agency certifies that the rule will not have a "significant economic impact on a substantial number of small entities."

In this instance, the Forest Service determined that preparation of a regulatory flexibility analysis was not required pursuant to Section 5(a) of the RFA since this rule would neither pose a significant economic impact nor would it affect a substantial number of small entities. The economic impact of this rule, if any, would be slight since it only establishes standards and guidelines for the administration of the HCNRA. Furthermore, the number of small entities affected by this rule is not substantial. In fact, the number of affected small entities is relatively small and generally confined to businesses that operate in and around the HCNRA.

6. Substitution of Authorized Officer for Area Ranger

The final rule uses the term "authorized officer" instead of the term "Area Ranger" that was used in the proposed rule to describe the agency official responsible for implementing the various provisions of this rule. This change was deemed necessary in order to avoid any confusion regarding which Forest Service line officer has the delegated authority to undertake actions that are authorized by this rule. In some instances, the authorized officer would be the Area Ranger. In most other cases, the authorized officer would be the Forest Supervisor. The use of the term "authorized officer" preserves the status quo of Forest Service line officer authority and ensures that there will be no confusion regarding whether this rule contains an implied delegation of authority from the Forest Supervisor to the Area Ranger. A definition of "authorized officer" is supplied in the rule.

Specific Comments on Proposed Subpart E of 36 CFR Part 292

The following is a discussion of comments that were received pertaining to specific sections of the proposed rule and the changes in the final rule, if any, resulting therefrom. Section 292.40, Purpose and Scope, is not specifically covered in this analysis since there were no comments on or changes made to the provisions of this section. Additionally, § 292.41, Definitions, and § 292.42, Management Standards and Guidelines are also not specifically covered in this analysis because the comments on and modifications to the provisions of these sections are discussed elsewhere in this analysis. Additions, deletions, or modifications to definitions in § 292.41 are discussed in the context of the standards in §§ 292.43 through 292.48 with appropriate cross references to § 292.41. The only change to § 292.42 was the inclusion of a new subsection (c) dealing with enforcement which was discussed in the General Comment analysis above.

1. Section 292.43, Protection and Preservation of Cultural and Paleontological Resources

The proposed rule established four standards for the administration of cultural and paleontological resources in the Other Lands of the HCNRA. These same four standards and two additional ones were established for the administration of these resources in the Wilderness Lands of the HCNRA. Briefly, the standards in the proposed rule were: (1) that protection should be the Forest Service's primary management objective for cultural resources in the HCNRA; (2) that management priorities for cultural resources in the HCNRA should be based on the significance of the resource; (3) that significant cultural resources should be protected on-site if possible; (4) that the primary management objective for paleontological resources should be scientific study; (5) that information regarding cultural resources on Wilderness Lands should be provided outside Wilderness Lands; and (6) that trails may not be developed or relocated

Forest Supervisor. The use of the term "authorized officer" preserves the status quo of Forest Service line officer authority and ensures that there will be no confusion regarding whether this rule contains an implied delegation of authority from the Forest Supervisor to the Area Ranger. A definition of "authorized officer" is supplied in the rule.

Specific Comments on Proposed Subpart E of 36 CFR Part 292

The following is a discussion of comments that were received pertaining to specific sections of the proposed rule and the changes in the final rule, if any, resulting therefrom. Section 292.40, Purpose and Scope, is not specifically covered in this analysis since there were no comments on or changes made to the provisions of this section. Additionally, § 292.41, Definitions, and § 292.42, Management Standards and Guidelines are also not specifically covered in this analysis because the comments on and modifications to the provisions of these sections are discussed elsewhere in this analysis. Additions, deletions, or modifications to definitions in § 292.41 are discussed in the context of the standards in §§ 292.43 through 292.48 with appropriate cross references to § 292.41. The only change to § 292.42 was the inclusion of a new subsection (c) dealing with enforcement which was discussed in the General Comment analysis above.

1. Section 292.43, Protection and Preservation of Cultural and Paleontological Resources

The proposed rule established four standards for the administration of cultural and paleontological resources in the Other Lands of the HCNRA. These same four standards and two additional ones were established for the administration of these resources in the Wilderness Lands of the HCNRA. Briefly, the standards in the proposed rule were: (1) that protection should be the Forest Service's primary management objective for cultural resources in the HCNRA; (2) that management priorities for cultural resources in the HCNRA should be based on the significance of the resource; (3) that significant cultural resources should be protected on-site if possible; (4) that the primary management objective for paleontological resources should be scientific study; (5) that information regarding cultural resources on Wilderness Lands should be provided outside Wilderness Lands; and (6) that trails may not be developed or relocated in Wilderness Lands solely to gain access to cultural resources.

Comment: Forest Service administration of cultural resources should balance protection and education. One reviewer felt that the standards of the proposed rule could be interpreted by the Forest Service as a way to justify the exclusion of all humans from any cultural resources in the HCNRA since any human presence would present a risk of harm. This reviewer contended that such an interpretation would be contrary to the legislative history of the Act.

Response: The agency does not believe that exclusion of all persons is a reasonable interpretation of the standards in the proposed rule. The proposed rule clearly states that protection of cultural resources in the HCNRA will be the dominant management objective. However, it also clearly states that education about cultural resources is an important management objective. Only in the event of a conflict between protection of and education about a particular cultural resource, would the education efforts have to yield.

Comment: Disturbance or removal of paleontological resources. One reviewer noted that the standard which required prior written authorization before a paleontological resource could be disturbed or removed for scientific study could be construed as requiring no such authorization if the resource was disturbed or removed for any other reason.

Response: The agency agrees with the reviewer's observation. This standard in the final rule has been modified to clarify that disturbance or removal of paleontological resources may only occur in conjunction with scientific studies. And, even in those cases, prior written authorization must be obtained.

Comment: Traditional and cultural properties should be added to archeological and historic properties. Two reviewers urged the Forest Service to expand the type of properties covered by the standards of this section to include "traditional and cultural" properties. These terms were not defined.

Response: Section 10(b) of the Act specifically authorizes the Secretary to promulgate regulations "to insure the full protection and preservation of the historic, archeological, and paleontological resources in the recreation area." In developing this rule, the Forest Service has sought to conform as closely as possible with the precise language of the Act. Therefore, to the extent that "traditional and cultural" properties referenced in the reviewer's comment may also be construed as an historic or archaeologic property, then the standards of this rule would apply. Otherwise, these properties will be administered in accordance with the other relevant statutory and regulatory authorities available.

Comment: References to the National Historic Preservation Act (NHPA), Archeological Resources Protection Act (ARPA), and American Indian Religious Freedom Act (AIRFA) should be included in the rule. In light of the Forest Service's responsibilities pursuant to NHPA, ARPA, and AIRFA, two reviewers suggested that the rule should include explicit references to ensure that the agency complies with their provisions in carrying out the provisions of this rule. These reviewers also urged that the rule include consultation requirements with affected Indian tribes.

Response: Section 292.42 of the proposed rule acknowledged that the administration of the HCNRA must be in accordance with all the laws and regulations applicable to National Forest System lands and resources, not just those specifically applicable to the HCNRA. The Forest Service determined that it would be too unwieldy to call out in the text of the rule each statute and/or regulation that applies to a particular use or activity in the HCNRA. Consequently, the Supplementary Information section of the proposed rule referenced those authorities. For historic, archeological, and paleontological resources, the proposed rule listed NHPA, ARPA, the Antiquities Act, and regulations at 36 CFR parts 296, 800. This list should also have included AIRFA. Express consultation requirements with Indian tribes would be duplicative of existing authority and thus not necessary in this rule.

Comment: Access to archeological sites should be limited and Forest Service personnel should be present for interpretation and protection purposes. One reviewer agreed with the proposed rule that protection should be the dominant management objective for cultural resources but attributed two recent acts of vandalism at an archeological site to the Forest Service's reconstruction of a road to this site and the lack of protection there. Based on the above, this reviewer suggested that the rule should be strengthened to include standards which would bar further development of roads or other access routes to archeological sites. In addition, this reviewer recommended that all interpretation activities occur off-site unless a site is already developed and regularly visited, in

which case Forest Service personnel should be available at the site to interpret it and guard against theft and vandalism.

Response: The recent incidents of vandalism at Pittsburgh Landing, a popular recreation site, are truly unfortunate. The Forest Service is currently evaluating steps that can be taken to prevent a recurrence of this type of incident in the future. The agency strongly believes that these incidents are the exception rather than the rule and that thousands of people enjoy and learn from the historic and archeological properties in the HCNRA every year.

The agency does not believe that the reviewer's recommended modifications to the rule would significantly strengthen the protection afforded cultural resources in the HCNRA. Sufficient authority exists under the standards of this rule to address problems like the one experienced at Pittsburgh Landing on a case by case basis. While the reviewer's recommendations would not necessarily improve the level of protection afforded under the rule, it would greatly impair efforts to manage these resources for education and enjoyment. As a result, this suggestion did not result in a change in the final rule.

Comment: Funding for the protection of cultural resources should be a priority for the HCNRA and should be written into the rule. One reviewer noted that funding for the protection of cultural resources should be one of three funding priorities for the HCNRA and that this should be explicitly written into the rule.

Response: Funding for the various functions and operations of the HCNRA, or any other unit of the National Forest System for that matter, is extremely complicated and depends on, among other things, the annual budget and appropriations processes. Establishing priorities in a rule is neither appropriate nor an accepted means of allocating funds.

2. Section 292.44, Use of Motorized and Mechanical Equipment

The proposed rule established four standards for the use of motorized and mechanical equipment in the Other Lands of the HCNRA. Briefly, the standards for the Other Lands were: (1) that motorized and mechanical equipment could be used on Forest Service roads and airstrips; (2) that motorized and mechanical equipment could be used on Forest Service trails if the use is compatible with Section 7 of the Act; (3) that mechanical equipment could be used off roads, airstrips, and trails if the use is compatible with Section 7 of the Act; and (4) that motorized equipment would be prohibited off roads, airstrips, and trails unless it was necessary to comply with Section 7 of the Act. For the Wilderness Lands in the HCNRA, the proposed rule simply explained that the use of motorized and mechanical equipment was prohibited except as provided for under the Wilderness Act. The Wilderness Act prohibits the use of motorized and mechanical equipment except for administrative purposes, and to control fire, insects, and disease.

The proposed rule adopted the definitions of "motorized equipment" and "mechanical transport" currently located in 36 CFR 293.6 rather than derive a new definition for these terms. The proposed rule also exempted from these standards administrative functions, scientific research, public health or safety emergencies, access to inholdings, and timber harvesting, grazing and mining as authorized under this rule.

Comment: The definition of motorized and mechanical equipment is confusing. Several reviewers commented that the definition of motorized and mechanical equipment in the proposed rule was confusing and that a specific definition for those terms should be provided rather than including a cross reference to another section of the Code of Federal Regulations (CFR). One reviewer suggested that the rule adopt the terms "motorized equipment" and "mechanical transport" as used in the Wilderness Act.

Response: The Forest Service agrees and has included a full definition of motorized and mechanical equipment in § 292.41 of the final rule rather than a citation to a different section of the CFR. The meaning of this term is unchanged. The final rule does not substitute "motorized equipment" and "mechanical transport" for "motorized and mechanical equipment" since the latter term was specifically used in Section 10(c) of the Act.

Comment: The exceptions to the standards restricting use of motorized and mechanical equipment in the HCNRA swallow the rule. One reviewer felt that the exceptions for administration, access, research, health and safety, timber harvesting, grazing and mining listed at the beginning of this section rendered the motorized and mechanical equipment use standards of little force and effect.

Response: The Forest Service disagrees. The exceptions listed in this section are intended to be narrowly construed. They were deemed necessary for two reasons. The administrative, access, research, and health and safety exceptions were thought necessary to meet the fundamental needs of the Forest Service to administer the HCNRA in conformance with the Act. The timber harvesting, mining, and grazing exceptions were deemed necessary to avoid any potential internal conflict between this section and the sections governing those activities. That is, conceivably some activities that could be authorized under the timber harvesting, mining, or grazing activities sections of the rule could be foreclosed if the use of motorized or mechanical equipment was required for these activities but prohibited under this section. Therefore, the Forest Service decided that, in those limited circumstances prescribed by this rule where timber harvesting, mining or grazing could occur within the HCNRA, the standards for use of motorized and mechanical equipment could not operate to impair or preclude that activity.

Comment: More restrictive conditions should apply to the use of motorized and mechanical equipment in the HCNRA. Two reviewers urged that the restrictions on the use of motorized and mechanical equipment should be more stringent. One reviewer urged that all motorized equipment should be banned which conflicts with non-motorized use of the HCNRA. Another reviewer urged that all use of motorized and mechanical equipment should be prohibited except that necessary for emergency responses and for the delivery of mail. Another reviewer suggested that the impacts of the use of motorized and mechanical equipment on rivers and fish and wildlife habitat should be evaluated and banned where damage can be documented.

Response: More restrictive conditions on the use of motorized and mechanical equipment as described above are both unnecessary and undesirable. The Forest Service believes that conflicts between motorized and non-motorized use can be better addressed through the planning process and amendments to the Comprehensive Management Plan which would designate roads and trails where the use of motorized equipment can occur. The agency also believes that an outright ban on all use of motorized and mechanical equipment except to deal with emergencies and to deliver mail is not a reasonable proposal in light of the Act's acknowledgment that such use is permissible, the sheer magnitude of the HCNRA, and the nature of the agency's administrative and other responsibilities.

Comment: Off Road Vehicles (ORVs), All Terrain Vehicles (ATVs), Bulldozers, and other Land Disturbing Vehicles should be Specifically Addressed in the Rule. One reviewer commented that the above types of vehicles should be expressly dealt with in the rule.

Response: ORVs, ATVs, bulldozers and other land disturbing vehicles are covered by the definition of motorized equipment. Specific reference to these types of vehicle is not necessary.

Comment: Activities on or uses of the Other Lands in the HCNRA that could be authorized under these standards may be contrary to the Wild and Scenic Rivers Act. As described in the General Comments section above, one reviewer noted that the standards for Other Lands which authorized the use of motorized and mechanical equipment off of roads, trails, and airstrips subject to its consistency with the management objectives of Section 7 of the Act presented a potential conflict where wild and scenic river corridor lands were concerned. The potential for conflict would be exacerbated on wild and scenic river segments classified as "wild" which is defined by the Wild and Scenic Rivers Act as "* * * generally inaccessible except by trail, which watersheds or shorelines essentially primitive." 16 U.S.C. § 1274(b).

Response: The Forest Service agrees with this reviewer's observations and has split out Wild and Scenic Rivers from the Other Lands category. Accordingly, in Section 292.41, the definition of "Other Lands" has been modified to exclude Wild and Scenic Rivers from its scope and the definition of "Wild and Scenic Rivers" has been modified to clarify that lands within the wild and scenic corridor are included as part of this category.

In this section, the final rule includes two new standards for wild and scenic rivers. The first authorizes the use of this equipment on segments designated "scenic" or "recreational" provided that such use is compatible with the Wild and Scenic Rivers Act. The second authorizes the use of this equipment on segments designated "wild" only if this use is necessary to protect and enhance the values for which the river was designated.

Comment: The role of airstrips in the HCNRA. Several reviewers objected to the number and use of airstrips in the HCNRA and urged that standards should be adopted which would reduce or eliminate airstrips in the HCNRA. One reviewer remarked that the term "designated" should apply to airstrips as well as roads and trails.

Response: There are only eight airstrips in the 625,00 acre HCNRA. These airstrips have been used for more

and other Land Disturbing Vehicles should be Specifically Addressed in the Rule. One reviewer commented that the above types of vehicles should be expressly dealt with in the rule.

Response: ORVs, ATVs, bulldozers and other land disturbing vehicles are covered by the definition of motorized equipment. Specific reference to these types of vehicle is not necessary.

Comment: Activities on or uses of the Other Lands in the HCNRA that could be authorized under these standards may be contrary to the Wild and Scenic Rivers Act. As described in the General Comments section above, one reviewer noted that the standards for Other Lands which authorized the use of motorized and mechanical equipment off of roads, trails, and airstrips subject to its consistency with the management objectives of Section 7 of the Act presented a potential conflict where wild and scenic river corridor lands were concerned. The potential for conflict would be exacerbated on wild and scenic river segments classified as "wild" which is defined by the Wild and Scenic Rivers Act as "* * * generally inaccessible except by trail, which watersheds or shorelines essentially primitive." 16 U.S.C. § 1274(b).

Response: The Forest Service agrees with this reviewer's observations and has split out Wild and Scenic Rivers from the Other Lands category. Accordingly, in Section 292.41, the definition of "Other Lands" has been modified to exclude Wild and Scenic Rivers from its scope and the definition of "Wild and Scenic Rivers" has been modified to clarify that lands within the wild and scenic corridor are included as part of this category.

In this section, the final rule includes two new standards for wild and scenic rivers. The first authorizes the use of this equipment on segments designated "scenic" or "recreational" provided that such use is compatible with the Wild and Scenic Rivers Act. The second authorizes the use of this equipment on segments designated "wild" only if this use is necessary to protect and enhance the values for which the river was designated.

Comment: The role of airstrips in the HCNRA. Several reviewers objected to the number and use of airstrips in the HCNRA and urged that standards should be adopted which would reduce or eliminate airstrips in the HCNRA. One reviewer remarked that the term "designated" should apply to airstrips as well as roads and trails.

Response: There are only eight airstrips in the 625,00 acre HCNRA. These airstrips have been used for more than 40 years. Of these eight strips, seven are primitive, two-wheeled routes on naturally flat land surfaces. Only one is roughly surfaced with rock to allow for water drainage. The primitive strips do not appear on Forest Service or FAA maps and are primarily used for low use and emergency landings. The Forest Service believes that the primitive landing strips are a necessary adjunct of administering an area as expansive as the HCNRA and may be an important, though seldom used, safety feature. Whether and to what extent some or all of these airstrips should be closed is an issue that should be discussed in the context of the Comprehensive Management Plan and not this rule. The Forest Service has inserted the term "designated" as a modifier for "airstrips" in the final rule.

3. Section 292.45, Use of Motorized and Non-Motorized Rivercraft

The proposed rule established seven standards for the use of motorized and non-motorized rivercraft in the HCNRA. The standards only applied to the Snake, Rapid, and Imnaha Wild and Scenic Rivers and any other rivers in the HCNRA which might be subsequently designated pursuant to the Wild and Scenic Rivers Act. Briefly, the standards were: (1) that the use of non-motorized rivercraft was authorized subject to certain terms and conditions; (2) that the use of motorized rivercraft was prohibited except on the Snake Wild and Scenic River; (3) that all rivercraft use is subject to boating safety and registration laws; (4) that the use of motorized and non-motorized rivercraft on the Snake River required prior written authorization and was subject to certain terms and conditions; (5) that the authorization of motorized and non-motorized rivercraft use on the Snake River must reasonably accommodate private and commercial users of each type of rivercraft; (6) that authorization of motorized and non-motorized rivercraft use on the Snake River must not exceed the user capacity of the Snake River; and (7) that authorization of motorized and non-motorized rivercraft use on the Snake River must be done in such a way as to minimize conflicts between motorized and non-motorized rivercraft users and between rivercraft users and all other users of the Snake River.

By far, the greatest number of comments received on the proposed rule concerned this section. The comments were exceptionally diverse, generally sound, and frequently included diametrically opposed solutions to improve the rule. For instance, some reviewers concluded that no conflict existed between motorized and non-motorized rivercraft use, others concluded that the conflict threatened the very integrity of the HCNRA. Some reviewers felt that the commercial users were principally responsible for the conflict, others concluded that the private users were as much, if not more, to blame. Some reviewers wanted to accommodate personal watercraft (jet ski) use in the HCNRA, others wanted to prohibit it.

Comment: The Forest Service lacks the legal authority to regulate rivercraft use on the Snake and Salmon Rivers. One reviewer argued that the Forest Service had vastly exceeded the scope of its legal authority by developing standards for recreational uses of rivercraft on the Snake and Salmon Rivers since those rivers are navigable waterways and thus "owned" by the States of Oregon and Idaho. Accordingly, this reviewer suggested that only Oregon and Idaho could regulate recreational activities on the Snake and Salmon Rivers. The Forest Service authority could only extend to activities on those streams that could be regulated pursuant to the Property and Commerce Clauses of the Constitution. The only way a standard in this section could be valid under the Property Clause would be if that standard was "reasonably necessary to protect federal land." Likewise, the only way a standard in this section could be valid under the Commerce Clause would be if that standard was related to and necessary for navigation. The reviewer noted that standards in the proposed rule dealing with safe use and enjoyment of the river, seasons of use, noise limits, user capacity, and conflicts between rivercraft and other users of the HCNRA all exceeded the federal government's limited authority under the Commerce and Property Clauses.

Response: The Forest Service disagrees and believes that the reviewer has adopted an unusually pinched view of the Federal Government's authority under the Commerce and Property Clauses of the Constitution.

Congress has defined "navigable waters" to include those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several states, and which either in their natural or improved condition are used or suitable for use for the transportation of persons or property in interstate or foreign commerce. 16 U.S.C. § 796(8). It would appear, based on the above definition, that the Snake River clearly qualifies as a navigable water of the United States.

Assuming the Snake River is navigable, the Federal Government has paramount control over it for purposes or regulating interstate and foreign commerce. The power of the United States over navigable waters extends to any matter that may properly be considered a regulation of interstate or foreign commerce on such waters and is not limited to control for purposes of navigation only. In *United States* v. *Appalachian Electric Power Co.*, 311 U.S. 377, 426 (1941), the Supreme Court categorically rejected a similar view to that proffered by this reviewer when it stated,

> In our view, it cannot properly be said that the constitutional power of the United States over its waters is limited to control for navigation. By navigation, respondent means no more than operation of boats and improvement of the waterway itself. In truth, the authority of the United States is the regulation of commerce on its waters. Navigability, in the sense just stated, is but a part of this whole. Flood protection, watershed development, recovery of the cost of improvements through utilization of power are likewise parts of commerce control.

While the States may exercise substantial control over navigable waters, they may only do so to the point that it is not inconsistent with federal actions or functions and does not materially or unreasonably interfere with or burden commerce.

In this instance, as the reviewer correctly pointed out, the Federal Government may also regulate under the Property Clause of the Constitution which enables Congress to "* * * make all needful rules and regulations respecting the * * * property of the United States." U.S. Const. Art. IV, § 3, cl. 2. The reviewer also correctly noted that such regulations may regulate conduct on non-federal land when reasonably necessary to protect adjacent federal property or navigable waters. *United States* v. *Lindsay, 595 F.2d 5, 6 (9th Cir. 1979).*

Inasmuch as a considerable amount of commerce takes place on the Snake River annually and thousands of acres of National Forest land surround it, the Forest Service believes that each of the standards challenged by the reviewer is authorized under either the Commerce Clause or the Property Clause.

Comment: Because the Forest Service has been unable to demonstrate that a conflict exists involving motorized and non-motorized rivercraft, this section should be eliminated. One reviewer commented that he had repeatedly requested information from the Forest Service concerning the existence and scope of the conflict between motorized and non-motorized rivercraft and, to date, had not received a satisfactory response from the agency. Therefore, this reviewer stated that this section of the rule is unnecessary and should be deleted.

Response: As a factual matter, there may be some dispute over the existence of a conflict between motorized and non-motorized rivercraft. Contrary to this reviewer, several other noted that the conflict between rivercraft users was extreme.

However, the reviewer misses the point by suggesting that a conflict must exist in order to justify this regulation. As described in some detail above, the Act authorized the Secretary to promulgate regulations for "the control of the use and number of motorized and non-motorized rivercraft * * *". The United State Court of Appeals for the 9th Circuit concluded that this authority was non-discretionary in *ONRC* v. *Lyng.* Therefore, regardless of the existence or absence of a conflict, this rule must be promulgated.

Comment: The standards should not distinguish between designated wild and scenic rivers and other rivers in the HCNRA. Several reviewers commented that it was confusing and potentially difficult to comply with the standards in this section that pertained only to rivers in the HCNRA that had been designated wild and scenic. Most reviewers thought that the standards should be more broadly applied to all rivers in the HCNRA regardless of wild and scenic designation. One reviewer felt that this section improperly overemphasized wild and scenic rivers over the HCNRA.

Response: The Forest Service agrees that the selective application of standards to motorized and non-motorized rivercraft use based solely on the location of the craft on a river might be difficult to comply with and to administer. This would especially be the case on the Snake River where one segment of the river is undesignated while the adjacent segments are designated. Therefore, the scope of the section dealing with rivercraft use standards will be broadened to apply to rivers throughout the HCNRA.

Wild and scenic rivers have not been overemphasized in this rule. It is important to remember, though, that the wild and scenic rivers in the HCNRA are administered pursuant to the Wild and Scenic Rivers Act, not the HCNRA Act. The inclusion of this language simply ensures that the application of these standards to wild and scenic rivers will not be contrary to direction in the Wild and Scenic River Act.

Comment: Motorized use of the "wild" sections of the Snake Wild and Scenic River should be prohibited. One reviewer noted that notwithstanding the HCNRA Act's recognition of motorized rivercraft use as "valid" on the Snake River, such use is inconsistent with and should be prohibited on those segments of the Snake Wild and Scenic River that are classified as "wild" under the Wild and Scenic Rivers Act.

Response: The legislative history of the Act indicates that a 32.4 mile segment of the Snake River, from Hells Canyon Dam downstream to Pittsburg Landing is classified as a "wild" river under the Wild and Scenic Rivers Act. 94th Cong., 1st Sess., Comm. on Interior and Insular Affairs, Rept. No. 153 at 4 (May 22, 1975).

Section 2(b) of the Wild and Scenic Rivers Act defines "wild" in the context of classifying segments of rivers designated under the Wild and Scenic Rivers Act as "[t]hose rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America." 16 U.S.C. § 1272(b)(1). In the Guidelines for Eligibility, Classification, and Management of River Areas (hereafter "Guidelines") published jointly by the Department of the Interior and the Department of Agriculture, the criteria for classifying a river segment as "wild" was further detailed. 47 Federal Register 39454, 39457 (Sept. 7, 1982).

Based on the above, "wild" as defined in the Wild and Scenic Rivers Act and further developed in the Guidelines relates principally to the quantum and type of development that exists on the shorelines and in the corridors through which a wild and scenic river traverses. It does not relate to the type of rivercraft used on the river itself.

Even assuming that the definition of "wild" in the Wild and Scenic Rivers Act could be construed to foreclose or discourage motorized use on segments so classified, Section 10 of the HCNRA Act included a clear expression of congressional intent that recognized motorized rivercraft use of the Snake River as valid. The Forest Service believes that this clear statement of congressional policy in the HCNRA Act overcomes any contrary interpretation of the Wild and Scenic Rivers Act and Guidelines which might be proffered as a means of categorically prohibiting motorized rivercraft use on the Snake River.

Comment: Specific standards for motorized rivercraft use of the Snake River should include provisions for slowing for floaters, speed limits for specific locations, noise level limits, no-wake zones, use of music or sound devices, water skiing, visible identification numbers, limited jet boat runs, defining jet boat launches, prohibiting operation while under the influence of intoxicants, requiring fuel leakage reduction, rights of way for floaters in rapids, prohibiting jet skis and other nontraditional rivercraft. One reviewer argued that the proposed rule, in general, is "grossly inadequate" and this section, in particular, "completely fails to satisfy the requirement of the NRA Act * * *". This reviewer interpreted the 9th Circuit decision in *ONRC* v. *Lyng* as requiring site specific standards tailored to the unique situation on the Snake River where both motorized and non-motorized rivercraft use is present. The proposed regulations, however, "simply defer to another undescribed forum, and have virtually no force in carrying out the requirements of the Act." To remedy this flaw, this reviewer asserted that the above lengthy and nearly exhaustive list of standards should be included in this section and posted at all portals. Furthermore, the reviewer stated that all jet boat operators should be required to sign a statement that they have read and understood these standards.

Response: The scope and extent of standards which this reviewer seeks to include in this rule is not legally mandated under either the Act or the 9th Circuit's decision in *ONRC* v. *Lyng.* The Act authorized regulations "for the control of the use and number of motorized and non-motorized rivercraft: Provided that the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area." 16 U.S.C. § 460gg–7(d). The 9th Circuit decision in *ONRC* v. *Lyng* merely interpreted the Act as mandating the promulgation of "nonduplicative regulations of the sort described by Sections 10(a) through (e)." Neither the Act nor the 9th Circuit prescribed the form or content that those regulations should take.

Not only are the adoption of standards in this rule such as those recommended by this reviewer not legally required, they are also not conducive to prudent and responsible land and resource management. The Forest Service believes that the inclusion in rule form of these standards would hamstring their ability to administer the HCNRA in conformance with the Act. For instance, the inclusion of these standards in this rule might require the agency to allocate scarce resources for enforcement of matters which rate relatively low in an overall scale of management priorities. Furthermore, the standards would inevitably become obsolete at some

wake zones, use of music or sound devices, water skiing, visible identification numbers, limited jet boat runs, defining jet boat launches, prohibiting operation while under the influence of intoxicants, requiring fuel leakage reduction, rights of way for floaters in rapids, prohibiting jet skis and other nontraditional rivercraft. One reviewer argued that the proposed rule, in general, is "grossly inadequate" and this section, in particular, "completely fails to satisfy the requirement of the NRA Act * * *". This reviewer interpreted the 9th Circuit decision in *ONRC* v. *Lyng* as requiring site specific standards tailored to the unique situation on the Snake River where both motorized and non-motorized rivercraft use is present. The proposed regulations, however, "simply defer to another undescribed forum, and have virtually no force in carrying out the requirements of the Act." To remedy this flaw, this reviewer asserted that the above lengthy and nearly exhaustive list of standards should be included in this section and posted at all portals. Furthermore, the reviewer stated that all jet boat operators should be required to sign a statement that they have read and understood these standards.

Response: The scope and extent of standards which this reviewer seeks to include in this rule is not legally mandated under either the Act or the 9th Circuit's decision in *ONRC* v. *Lyng*. The Act authorized regulations "for the control of the use and number of motorized and non-motorized rivercraft; Provided that the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area." 16 U.S.C. § 460gg–7(d). The 9th Circuit decision in *ONRC* v. *Lyng* merely interpreted the Act as mandating the promulgation of "nonduplicative regulations of the sort described by Sections 10(a) through (e)." Neither the Act nor the 9th Circuit prescribed the form or content that those regulations should take.

Not only are the adoption of standards in this rule such as those recommended by this reviewer not legally required, they are also not conducive to prudent and responsible land and resource management. The Forest Service believes that the inclusion in rule form of these standards would hamstring their ability to administer the HCNRA in conformance with the Act. For instance, the inclusion of these standards in this rule might require the agency to allocate scarce resources for enforcement of matters which rate relatively low in an overall scale of management priorities. Furthermore, the standards would inevitably become obsolete at some point in the future. That point could come in six weeks, six months, or six years and could depend on advances in science, technology, or the law. It could also simply be dependent on changing social norms. Once the point of obsolescence was reached, however, another rulemaking would be necessary. This is a poor way to address and respond to development which requires a shift in management emphasis.

Far better from the agency's point of view that these developments be accommodated in the Comprehensive Management Plan. This document can be amended and revised more expeditiously than a regulation which requires notice and comment under the Administrative Procedures Act. Of course, as was noted in the proposed rule, management direction in the Comprehensive Management Plan would necessarily have to conform with the provisions of the Act and the standards in this rule.

Finally, the agency wishes to point out that one of the standards in the proposed rule required compliance with all Federal and State boating safety and registration laws. This would include, but not be limited to the Idaho Safe Boating Act, I.C. §§ 67–7001 *et seq.*, and the Oregon Small Watercraft Act, O.R.S. §§ 830.005 *et seq.* Many of the items that the reviewer wanted to include as explicit standards in this rule are amply treated in these enactments and may be enforced in the HCNRA pursuant to this provision in the rule.

Comment: Rivercraft use standards should not discriminate against users of personal watercraft in the HCNRA. One reviewer wrote to ensure that standards for the use of motorized rivercraft not unfairly discriminate against personal watercraft which are commonly, though incorrectly, referred to as "jet skis." This reviewer acknowledged that the proposed rule did not, on its face, include any such discrimination and encouraged that any further refinement of these standards in the final rule or Comprehensive Management Plan classify and treat personal watercraft just like any other form of motorized rivercraft.

Response: The reviewer is correct that no attempt is made in this rule to consider personal watercraft separately from other forms of motorized rivercraft. However, the inclusion of personal watercraft, jet boats, motor boats, and other vessels as "motorized rivercraft" in this rule does not mean that they are identical or should be treated identically in all situations that may arise in the future. Clearly, there are differences in the size, weight, speed, maneuverability, and other features of these vessels which may suggest, or indeed dictate, that they be under different management regimes in order to protect the HCNRA or to protect public health and safety. Those management decisions will be made in the context of the Comprehensive Management Plan. In the event such management decisions distinguishing between the various types of motorized rivercraft are made, they would be well-reasoned, based on credible evidence, and would include the benefit of public involvement.

Comment: The term "carrying capacity" should be used instead of "user capacity." Several reviewers urged that the term "carrying capacity," rather than the term "user capacity," be employed in the section concerning standards for rivercraft use. One reviewer felt that the phrase "limits of acceptable change" would be preferable to "user capacity" or "carrying capacity" for determining the benchmark for rivercraft use. The reviewers encouraged that these terms should be defined.

Response: The Forest Service agrees with the reviewers who felt that the term "carrying capacity" was more appropriate in this rule and has substituted that term for "user capacity" in the final rule. However, since this is a well understood term in the planning and recreation professions and would not be subject to a special meaning under this rule, a definition is deemed unnecessary.

Comment: Definitions should be included in the rule for "numbers," "values," "user conflicts," "seasons," "noise limits," "private users," and "commercial users." One reviewer noted that several key terms in this section of the rule should be specifically defined. Presumably, this reviewer felt that definitions would be necessary to ensure that the Forest Service's interpretation is not unreasonable, is not changed over time, or is not selectively applied.

Response: The above terms are neither unusual nor do they have a special connotation as applied in this rule. Common sense will be the guide in defining these terms. Special definitions in this rule are unnecessary for these terms.

Comment: Rivercraft use levels should be restricted to the levels in existence as of 1975, the date of establishment of the HCNRA. Two reviewers commented that rivercraft use has greatly expanded since Congress designated the HCNRA in 1975 and that this rule should be used to scale back the amount of rivercraft use to 1975 levels.

Response: In enacting the Act, Congress authorized regulations for "the control of the use and number of motorized and non-motorized rivercraft: Provided that the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area." There is no indication in the Act that Congress intended to restrict the use of rivercraft to the level that existed in 1975. Clearly, Congress could have included such a condition if it had been so inclined.

Absent clear congressional expressions in the Act stipulating that rivercraft use be locked into 1975 levels, the Forest Service has adopted the well-reasoned and balanced approach that the amount of rivercraft use will depend on what use can be sustained while meeting the management goals and objectives of the Act and the Wild and Scenic Rivers Act. Therefore, the Forest Service declines to modify the rule in the manner recommended by these reviewers.

Comment: The authorization of motorized rivercraft use should extend to that portion of the Salmon River in the HCNRA. One reviewer mentioned that a short ¼ mile segment of the Salmon River is located within the HCNRA and that motorized rivercraft are currently used on this segment. This reviewer urged that the standards be revised to extend the authorization of motorized rivercraft to this ¼ mile segment of the Salmon River.

Response: The Forest Service agrees that the standard which prohibits motorized rivercraft use in the HCNRA should exclude both the Snake River and that portion of the Salmon River in the HCNRA. The rule has been changed accordingly.

Comment: Violations of the standards of this section should result in forfeiture of private land. One reviewer explained that compliance with the provisions of this section is as important as compliance with the land uses set out in the private rules. Therefore, this reviewer queried why violations of the motorized rivercraft standards shouldn't also result in the forfeiture of private land.

Responses: The "private rules" referred to by this reviewer are the recently adopted final regulations under Section 10(a) of the Act which established standards for the use and development of private land. That rule established standards and guidelines for development of privately-owned land in the HCNRA which, if violated, could lead to the Forest Service's acquisition of the land or an interest therein with or without the landowner's consent. Acquisition without the landowner's consent is technically referred to as "condemnation," not "forfeiture." Since the Forest Service may not regulate private land uses per se, condemnation was deemed to be the most effective means by which the agency could ensure that private land uses and developments would not compromise the integrity of the HCNRA. Condemnation of private land would be a highly inappropriate response to violations of the motorized rivercraft use standards. Condemnation is available only to acquire lands used in a manner inconsistent with the private land use regulations. Use of watercraft has nothing to do with private lands. The rule already includes a sufficient array of mechanisms by which the standards of this section can be enforced. These enforcement mechanisms include issuing citations under 36 CFR §§ 261 *et seq.*, revoking the authorization for rivercraft use, or pursuing an injunction in a civil enforcement action.

4. Section 292.46, Timber Harvesting Activities

The proposed rule established two standards for timber harvesting in the Other Lands of the HCNRA. Briefly, the standards for the Other Lands were: (1) that timber could only be harvested to protect and enhance ecosystem health and wildlife habitat, promote recreational activities, remove hazard trees, or in response to disease or pest infestation, fire, flood, earthquake, or similar natural events; and (2) that where authorized, the harvesting could be accomplished only by means of selective or intermediate cuttings in which the openings created by the cutting would be limited to the minimum size and number necessary to accomplish the purpose of the harvest. For the Wilderness Lands in the HCNRA, the proposed rule simply explained that timber harvesting was prohibited except in accordance with the provisions of the Wilderness Act.

Comment: The rule should expressly include a standard stating that timber will not be harvested principally for commercial purposes. Two reviewers noted that in the preamble to the proposed rule it was noted that timber would not be harvested solely for commercial gain but that this statement was not reiterated in the text of the proposed rule. These reviewers recommended that the text of the regulation include this language. One of these reviewers also noted that the primary objective of these standards should be to overrule and void the provision in the Comprehensive Managemment Plan that includes forests in the HCNRA as part of the regulated component of the Wallowa-Whitman National Forest timber base.

Response. The Forest Service agrees and has revised the first standard in this section to explain that timber may "only" be harvested for the reasons set out in this standard. In so doing, the Forest Service expects that the situations where timber harvesting may be authorized will be better understood. It should be noted, however, that in those instances where timber harvesting is consistent with the standards in this rule, it will usually be accomplished by means of a commercial harvest. That is, the Forest Service will identify the area where harvesting is desired and the conditions under which the harvesting can occur. Then a written agreement would be entered into with a timber purchaser who would carry out the harvest in accordance with the terms and conditions of the agreement.

The inclusion of a specific standard overruling that portion of the Comprehensive Management Plan is unnecessary since § 292.42 clearly states that "[t]he standards and guidelines of this [rule] govern the previous programmatic direction in the Comprehensive Management Plan that has been incorporated into the Wallowa-Whitman National Forest Land and Resource Management Plan."

Comment: Timber harvesting by means of intermediate cutting should be eliminated. Several reviewers were critical of the inclusion of "intermediate cutting" as a viable means of harvesting timber where that activity would be authorized under the standards for the HCNRA. They urged that the term be removed.

Response: Where authorized under the standards in this rule, the Forest Service will restrict timber harvesting to selective cutting in conformance with the standards in this rule. All references to "intermediate cutting" have been removed from the final rule.

Comment: Insect infestation, rather than pest infestation, should be listed as a recognized purpose of timber harvesting in the HCNRA. One reviewer felt that it was more appropriate and less pejorative to use the term "insect infestation" instead of "pest infestation" to describe one of the purposes for which timber harvesting may be engaged in the HCNRA.

Response: The Forest Service agrees and has inserted the term "insect" for the term "pest" in the final rule.

Comment: Timber harvesting should be authorized only in situations where hazard trees threaten popular sites and where fires threaten campgrounds or picnic areas. One reviewer was concerned that the exceptions under which timber harvesting could be authorized were too broad and would be abused by the Forest Service. This reviewer suggested that timber harvesting should only occur to remove hazard trees from popular areas or to protect campgrounds or picnic areas from fire. Otherwise, there should be no further logging in the HCNRA.

Response: Section 13 of the Act recognizes the harveting of timber as a valid use of the HCNRA. Section 10 of the Act authorizes regulations for timber harvesting as are consistent with the management objectives of the HCNRA which include, among other things, the protection of free-flowing streams, the conservation of scenic, wilderness, cultural, and scientific values, the preservation of biologically unique features, the protection of fish and wildlife habitat, the protection of archeological and paleontologic sites, and the preservation and restoration of historic sites.

The standards in this section fully comply with the management objectives of the Act. Furthermore, additional limitations on situations where harvesting could be authorized may severely impair the agency's ability to administer the HCNRA in conformance with the Act. As a case in point, consider the windstorm that blew down several acres of spruce trees in a roadless area just outside the HCNRA boundary a few years ago. There, a decision was made not to harvest those tree. Subsequently, an endemic spruce bark beetle population grew to epidemic proportions, spreading out from the site of the original blowdown and killing most of the spruce trees in the HCNRA. Many of these spruce trees were located near streams and in riparian areas which have suffered in their absence from the loss of critical shade which kept the streams cool and root systems which kept the streambanks stabilized. In hingsight, it is worth considering whether this loss of trees and resultant damage to riparian areas could have been averted by the prompt removal of the windthrown trees.

These standards will enable the agency to address this type of situation efficiently and with due regard for the resources in the HCNRA and objectives for which they are to be managed.

Comment: Where timber harvesting is to be authorized it should be done sensitively, holistically, or by using non-mechanized equipment like draft horses. Several reviewers urged that in those cases where timber harvesting would be authorized under the standards in this rule, it should be accomplished in the most sensitive

concerned that the exceptions under which timber harvesting could be authorized were too broad and would be abused by the Forest Service. This reviewer suggested that timber harvesting should only occur to remove hazard trees from popular areas or to protect campgrounds or picnic areas from fire. Otherwise, there should be no further logging in the HCNRA.

Response: Section 13 of the Act recognizes the harveting of timber as a valid use of the HCNRA. Section 10 of the Act authorizes regulations for timber harvesting as are consistent with the management objectives of the HCNRA which include, among other things, the protection of free-flowing streams, the conservation of scenic, wilderness, cultural, and scientific values, the preservation of biologically unique features, the protection of fish and wildlife habitat, the protection of archeological and paleontologic sites, and the preservation and restoration of historic sites.

The standards in this section fully comply with the management objectives of the Act. Furthermore, additional limitations on situations where harvesting could be authorized may severely impair the agency's ability to administer the HCNRA in conformance with the Act. As a case in point, consider the windstorm that blew down several acres of spruce trees in a roadless area just outside the HCNRA boundary a few years ago. There, a decision was made not to harvest those tree. Subsequently, an endemic spruce bark beetle population grew to epidemic proportions, spreading out from the site of the original blowdown and killing most of the spruce trees in the HCNRA. Many of these spruce trees were located near streams and in riparian areas which have suffered in their absence from the loss of critical shade which kept the streams cool and root systems which kept the streambanks stabilized. In hingsight, it is worth considering whether this loss of trees and resultant damage to riparian areas could have been averted by the prompt removal of the windthrown trees.

These standards will enable the agency to address this type of situation efficiently and with due regard for the resources in the HCNRA and objectives for which they are to be managed.

Comment: Where timber harvesting is to be authorized it should be done sensitively, holistically, or by using non-mechanized equipment like draft horses. Several reviewers urged that in those cases where timber harvesting would be authorized under the standards in this rule, it should be accomplished in the most sensitive manner possible. For example, these reviewers recommended that draft horse logging could be required as an alternative to the construction of costly and environmentally damaging logging roads.

Response. When authorized under this rule, timber harvesting activities will be conducted using the most appropriate technique that fits the particular situation. Clearly, in some instances logging by means of draft horses would be feasible and entirely appropriate. In other cases, harvesting by mechanized and/or motorized equipment may be necessary due to the location of the harvest and/or the urgency associated with it. All of these factors will be duly considered in fashioning the harvest method.

Timber harvesting will be conducted using an ecological approach to management, subject to the limits imposed by this rule, and will generally be designed to maintain or create forest vegetation patterns and landscapes that mimic those from historic natural disturbances.

Comment: Standards for timber harvesting activities within wild and scenic river corridors in the HCNRA are inconsistent with the Wild and Scenic Rivers Act. One reviewer remarked that the timber harvesting standards for Other Lands in the HCNRA would result in the authorization of certain timber harvesting activities within wild and scenic river corridors that exceed the legal authority for such activities under the Wild and Scenic Rivers Act. This would particularly be the case on wild and scenic river segments classified "wild" under the Wild and Scenic Rivers Act.

Response. The Forest Service believes that the standards in the proposed rule for Other Lands were sufficiently restrictive that they would pass muster under the Wild and Scenic River Act where wild and scenic river corridor lands were involved. However, in order to maintain consistency with the other sections of this rule, separate timber harvesting standards have been developed in the final rule for wild and scenic river corridor lands and the other non-wilderness National Forest Lands in the HCNRA.

For river segments classified "scenic" or "recreational," timber may be harvested only when to do so would protect and enhance the values for which the river was designated. For river segments classified "wild," timber could only be harvested to provide for recreational facilities like trails, remove hazard trees, or to respond to natural events. In those cases where timber harvesting would be authorized within the corridors of wild and scenic rivers, the harvest would be conducted in the same manner as harvests on the Other Lands of the HCNRA.

5. Section 292.47, Mining Activities

The proposed rule established four standards for mining activities in the Other Lands of the HCNRA. These same four standards and an additional one were established for mining activities in the Wilderness Lands in the HCNRA. Briefly those standards were: (1) That all mining activities were prohibited subject to valid existing rights; (2) that the impact of mining activities would be limited and directed away from Wilderness Lands and Wild and Scenic Rivers; (3) that mineral materials may be used in the HCNRA only for the construction and maintenance of roads, airfields, trails, and recreation developments; (4) that sources of mineral materials should be located outside the HCNRA unless the costs are significant or the transportation presents a safety concern; and (5) that the extraction of mineral materials is prohibited on Wilderness Lands.

Comment: Restrictions by the United States on mining activities in the bed and banks of navigable rivers in the HCNRA are impermissible since that land is owned and controlled by the States of Oregon and Idaho. One reviewer contended that the bed and banks of the Snake River below the mean high water line are owned by the States of Oregon and Idaho and therefore any mining activities occurring thereon would be subject to the control of the state, not the federal, government. This reviewer encouraged the Forest Service to clarify the ownership of these lands in the final rule in order to avoid future confusion.

Response: At the outset, it should be noted that no provision in the proposed rule purported to prohibit or restrict mining activities on non-National Forest System lands. Section 292.42(b) of the proposed rule specifically stated that the standards in the rule applied only to National Forest System lands in the HCNRA. Obviously, lands owned by the States of Oregon and Idaho would not fall under the provisions of this rule.

The Forest Service agrees that clarifying the issue of who owns the bed and banks of navigable rivers in the HCNRA and who has regulatory authority over them would be beneficial and may reduce the potential for controversy and confusion in the future. However, such clarification cannot be done in this Federal Regulation since it may involve the adjudication of property rights.

The reviewer is correct that the rights and interests in the beds and banks of navigable waters are owned by the state in which they are located, and that the regulation of the land under navigable waters is properly the subject of the state's police power regulatory authority. However, the state's regulatory authority over these matters is not absolute. Rather, as is the case with navigable waters, lands underneath navigable waters are also subject to the paramount authority of the United States. This paramount authority is derived from the Commerce and Property Clauses and extends to matters involving commerce, navigation, and protection of Federal lands, among other things. Mining would clearly fall into the category of activities that could be regulated by the United States under this paramount authority.

Comment: By including activities under the Materials Act of 1947 in the definition of "mining," there is an inconsistency in the standards which prohibit all mining activities but provide for certain mineral material extraction activities. One reviewer noted that the standards for mining activities were confusing based on the definition of "mining" in the rule which encompassed activities under the Materials Act. By including the Materials Act in the definition of mining, the first standard of § 292.47(a) would be read to prohibit all mineral material extraction activities. However, the third and fourth standards specifically treat mineral material extraction activities.

Response: The Forest Service agrees that there is an internal conflict in the standards of this section based on the definition of "mining." As a result, the definition of "mining" in the final rule has been modified to delete references to the Materials Act. The standards of the Mining Activities section remain unchanged.

Comment: Gold panning is a legitimate recreational activity that should be accommodated in the rule. One reviewer criticized the proposed rule's prohibition of gold panning subject to valid existing rights. This reviewer contended that panning was a recreational activity, not a mining activity, that could be accomplished without threatening the HCNRA if it was limited to hand work and no tools except the pan itself. Therefore, this reviewer felt it was inappropriate to prohibit this activity.

Response: Individuals engaged in the extraction of minerals from federal lands whether it be by pan, sluice box, suction dredge, or some other means, are subject to the applicable federal and state mining laws. It is immaterial that the underlying purpose of the mineral extraction activity is recreational. It is also immaterial that the impact of the mineral extraction activity would not negatively impact the HCNRA.

In this case, Section 11 of the HCNRA Act withdrew all federal lands in the HCNRA from the operation of the mining and mineral leasing laws subject to valid existing rights. Similar withdrawal provisions exist in Section 9 of the Wild and Scenic Rivers Act and Section 4(d)(3) of the Wilderness Act. This provision did not make an exception for mining conducted for recreational purposes nor did it make an exception for mining that would not threaten the values for which the HCNRA was established.

Therefore, in order to engage in panning or any other mining activity for recreational purposes on federal lands in the HCNRA, it is necessary to demonstrate that the individual wishing to engage in that activity held valid existing rights prior to the date of withdrawal.

Comment: If the Mining Law of 1872 is amended, royalties derived from mining activities in the HCNRA should go to the HCNRA. One reviewer suggested that if the Mining Law of 1872 is amended to provide for the payment of royalties, all royalties derived from mining activities in the HCNRA should be returned there and be used in the administration of the area.

Response. Currently, as this reviewer indicated, there is no legal authority under the Mining Law of 1872 to adopt this reviewer's position. Since this comment is based on pure conjecture over whether, and to what extent, the Mining Law of 1872 will be amended, it is premature to address this comment at this time.

Comment: No additional gravel pits should be constructed in the HCNRA. One reviewer recommended that any mineral materials removed from the HCNRA should be taken from existing gravel pits and that no new gravel pits should be excavated.

Response. The proposed rule greatly reduced the potential for additional excavation of gravel pits in the HCNRA. It did not, however, completely eliminate that possibility. Where non-wilderness HCNRA lands are involved, § 292.47(a)(4) of the proposed rule required that development of gravel pits or other sites for mineral materials should first be considered on lands outside the HCNRA. This section also provided that sites within the HCNRA would only be considered if there were significant economic or safety reasons militating in its favor. Additionally, the proposed rule required that mineral materials used inside the HCNRA must be for constructing or maintaining facilities that are consistent with and in furtherance of the management objectives of the Act. If the mineral materials are used outside the HCNRA, it must be for a project which has a direct benefit to the HCNRA. Finally, this section directed that a mineral material extraction site inside the HCNRA must be reclaimed to its original condition, or as close to that condition as is practicable, upon the completion of the extraction activities. Section 292.47(b)(2) prohibits the extraction of mineral materials in the wilderness lands of the HCNRA.

Given the preference for development of gravel pits and other mineral material extraction sites on non-HCNRA lands and the stringent controls on the uses to which such mineral materials may be applied and the reclamation requirements, the Forest Service does not think it is necessary to completely foreclose all potential future development of these sites inside the HCNRA. There may come a time when the development of a mineral material extraction site inside the HCNRA is necessary and appropriate and fully consistent with the purposes for which the HCNRA was established. This provision preserves that possibility.

Comment: Additional specifications for revegetation should be provided in the rule. One reviewer noted that the standard in § 292.47(a)(4) requiring land contouring and reestablishing vegetation failed to inform the reader as to the extent of such activities that would be required following the extraction of mineral materials. This reviewer contended that this provision would be abused by those seeking to minimize the responsibility and cost associated with such activities. This reviewer recommended that the rule include a standard directing that land contouring, revegetation, and other appropriate measures be required as necessary to restore the area to its original condition.

Response: The Forest Service agrees that additional clarification to this standard is desirable. However, it may be impossible to return every mineral material site precisely to its original condition. As a result, the new standard will require the party responsible for the extraction of mineral materials to reclaim the site to its original condition, or as reasonably close thereto as is practicable, by land contouring and revegetation. The Forest Service believes that this will clarify the purpose of the revegetation and land contouring without creating an insurmountable obstacle to mineral material extraction activities.

Comment: Performance bonds should be required prior to the initiation of any ground disturbing activity related to mining. One reviewer recommended that the rule include a specific provision requiring a miner to post a bond which would be sufficient to enable the Forest Service to restore the mining site to its original condition if the miner does not and to serve as security for compliance with other environmental protection requirements.

Response: Bonding is specifically required by the Forest Service for the extraction and development of locatable minerals and mineral materials on National Forest System lands with a few minor exceptions. These requirements are set forth in 36 CFR 228.13 and 228.51, respectively. Since this rule supplements existing authority, it was deemed unnecessary to incorporate a specific bonding provision in this rule.

Comment: Geothermal development should be prohibited in the HCNRA. One reviewer suggested that the rule should contain a provision prohibiting geothermal development in the HCNRA.

Response: Section 15 of the Geothermal Steam Leasing Act of 1970, 30 U.S.C. 1014, precludes the issuance of geothermal leases by the Secretary of the Interior on National Forest System lands located within a national recreation area. Since existing law already precludes this type of development in the HCNRA, it was deemed unnecessary to include an express provision in the rule reiterating that prohibition.

Comment: All valid existing rights in the HCNRA should be bought out by the Forest Service. Two reviewers suggested that the Forest Service consider buying out all current valid existing rights. Presumably, in this fashion the Forest Service could consolidate landownership patterns, improve administration of the HCNRA, and eliminate a potentially incompatible land use from the HCNRA.

Response: Acquisition of mining lands, or interests therein, in the HCNRA is governed by the regulations which established standards for the use and development of private lands in the HCNRA which were promulgated pursuant to Section 10(a) of the Act. Briefly, those regulations are consistent with Section 9(g) of the Act which authorized the Secretary to acquire all mining lands in the HCNRA with or without the consent of the landowner.

Although the authority exists to acquire all valid existing mineral interests in the HCNRA, it is not viewed by the Forest Service as a prudent step

insurmountable obstacle to mineral material extraction activities.

Comment: Performance bonds should be required prior to the initiation of any ground disturbing activity related to mining. One reviewer recommended that the rule include a specific provision requiring a miner to post a bond which would be sufficient to enable the Forest Service to restore the mining site to its original condition if the miner does not and to serve as security for compliance with other environmental protection requirements.

Response: Bonding is specifically required by the Forest Service for the extraction and development of locatable minerals and mineral materials on National Forest System lands with a few minor exceptions. These requirements are set forth in 36 CFR 228.13 and 228.51, respectively. Since this rule supplements existing authority, it was deemed unnecessary to incorporate a specific bonding provision in this rule.

Comment: Geothermal development should be prohibited in the HCNRA. One reviewer suggested that the rule should contain a provision prohibiting geothermal development in the HCNRA.

Response: Section 15 of the Geothermal Steam Leasing Act of 1970, 30 U.S.C. 1014, precludes the issuance of geothermal leases by the Secretary of the Interior on National Forest System lands located within a national recreation area. Since existing law already precludes this type of development in the HCNRA, it was deemed unnecessary to include an express provision in the rule reiterating that prohibition.

Comment: All valid existing rights in the HCNRA should be bought out by the Forest Service. Two reviewers suggested that the Forest Service consider buying out all current valid existing rights. Presumably, in this fashion the Forest Service could consolidate landownership patterns, improve administration of the HCNRA, and eliminate a potentially incompatible land use from the HCNRA.

Response: Acquisition of mining lands, or interests therein, in the HCNRA is governed by the regulations which established standards for the use and development of private lands in the HCNRA which were promulgated pursuant to Section 10(a) of the Act. Briefly, those regulations are consistent with Section 9(g) of the Act which authorized the Secretary to acquire all mining lands in the HCNRA with or without the consent of the landowner.

Although the authority exists to acquire all valid existing mineral interests in the HCNRA, it is not viewed by the Forest Service as a prudent step to take at this time in light of the prohibitive potential cost associated with such acquisitions and the very limited acquisition funds available. At this juncture, it is preferable to regulate such activity where it exists to protect HCNRA values.

6. Section 292.48, Grazing Activities

The proposed rule established four standards for the administration of domestic livestock grazing activities in the HCNRA. These standards applied to both the Other Lands and the Wilderness Lands of the HCNRA. Briefly, the standards were: (1) That grazing could only occur on rangeland suitable for grazing and in satisfactory condition; (2) that domestic livestock grazing practices would be modified if they are incompatible with preserving fish and wildlife habitat, recreation uses, or other natural resource values and that the grazing would be terminated if the incompatibility couldn't be eliminated; (3) that range improvements must be designed and located in such a way as to minimize their impact on scenic, natural, and other values in the HCNRA; and (4) that grazing permits must include provisions to protect and conserve riparian areas.

Comment: Additional restrictions on domestic livestock grazing should be instituted in the HCNRA in this rule. Several reviewers encouraged the Forest Service to include additional and express restrictions on all forms of domestic livestock grazing activity in the HCNRA. For instance, one reviewer recommended that all grazing should be terminated in the HCNRA and all permits should be "bought out" by the Forest Service. Another reviewer recommended that grazing in designated wilderness areas in the HCNRA should be phased out gradually through annual 10% reductions in the numbers of livestock.

Response. Section 13 of the HCNRA Act states that "[r]anching [and] grazing, * * * are recognized as traditional and valid uses of the recreation area."

Section 4(d)(4)(2) of the Wilderness Act states that "the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture." In the legislative history to the Colorado Wilderness Act of 1980, Congress interpreted this provision to mean that grazing permits and privileges will not be curtailed or phased out in an area simply because that area is designated as wilderness. In a nationwide guideline and statement of legislative policy, Congress declared

> There shall be no curtailments of grazing in wilderness areas simply because an area is, or has been designated as wilderness, nor should wilderness designations be used as an excuse by administrators to slowly "phase out" grazing. Any adjustments in the numbers of livestock permitted to graze in wilderness areas should be made as a result of revisions in the normal grazing and land management planning and policy setting process, giving consideration to legal mandates, range condition, and the protection of the range resource from deterioration.

(Designating Certain National Forest System Lands in the National Wilderness Preservation System, and for Other Purposes, H. Rept. 617, 96th Cong., 1st Sess. at 11 (Nov. 14, 1979)).

Based on the above statutes and legislative history, reductions in or outright termination of livestock grazing in the HCNRA or designated wilderness in the HCNRA cannot occur simply by virtue of the designation of these areas as a national recreation area or a wilderness area. Furthermore, even if such a course of action were an option, the Forest Service would not have to "buy out" the permits. Permits to graze on federal lands have been recognized by Congress and the courts for almost a century as only conferring a license or privilege to graze upon the permittee. As a result, except in extremely limited circumstances, cancellation or revocation of grazing permits does not require the payment of compensation.

Based on the above, these reviewers' suggestions are not adopted and no change in the rule is necessary.

Comment: Future of livestock grazing activities in conflict with natural, scenic, resource and other values for which the HCNRA established. One reviewer suggested that the provision in the proposed rule enabling a permittee to modify his or her livestock grazing practices to avoid a conflict with the values for which the HCNRA was established should be stricken. This reviewer argued that wherever a conflict exists, the grazing activity should be terminated since, in many instances, the modification proposed to avoid the conflict has an equally deleterious impact on the HCNRA. Another reviewer argued in favor of allowing the permittee to make the adjustments in the grazing area necessary to avoid the conflict while allowing the grazing activity to continue.

Response. Section 13 of the HCNRA Act states that "[r]anching [and] grazing, * * * are recognized as traditional and valid uses of the recreation area." This section of the proposed rule, developed pursuant to section 10(e) of the Act, establishes standards for the continuation of grazing in the HCNRA

which are compatible with the provisions of the HCNRA Act.

The Forest Service believes that a reasonable interpretation of the HCNRA Act, is to work with the grazing permittees and other interested parties to determine whether the grazing activity could be adjusted to avoid conflicts. This provision of the rule remains unchanged.

Comment: Grazing should only occur if the rangeland is in excellent, not satisfactory, condition. Two reviewers noted that the standard limiting grazing to rangelands lands in satisfactory condition, while an improvement over existing management of the HCNRA, was still inadequate under Section 7 of the HCNRA Act which requires, among other things, that the HCNRA be administered in a manner compatible with the "conservation of scenic, wilderness, cultural, scientific and other values contributing to the public benefit." According to this reviewer, that objective can be achieved only if the rule is revised to accommodate grazing on rangeland which is at or above 76% Potential Natural Vegetation (PNV), or 76% of the natural vegetation community that would exist if the area remained ungrazed. This is typically referred to by the Forest Service as "excellent condition."

Response. The Forest Service disagrees with the reviewer's proposition that the only way to ensure that the scenic, wilderness, cultural, scientific and other values of the HCNRA are conserved is to require rangelands to be in excellent condition prior to the authorization of any grazing activities. The Forest Service believes that authorizing grazing on rangelands in satisfactory condition is fully consistent with each of the management objectives in Section 7 of the HCNRA Act including the one referenced by this reviewer. The satisfactory condition requirement is also in conformance with Section 13 of the HCNRA Act which recognizes ranching and grazing as traditional and valid uses of the HCNRA. Arguably, limiting grazing to rangelands deemed to be in excellent condition may be inconsistent with this provision.

Finally, it bears mentioning that the satisfactory condition is a minimum threshold which must be maintained throughout the duration of the permit term which is normally ten years. As a result, assuming rangelands are in satisfactory condition in the first year of the permit, the grazing activity and the allotment must be managed in such a way as to ensure that the rangelands do not fall below this minimum threshold. If such a threat exists, it may necessitate adjustments in livestock numbers, seasons of use, locations of grazing, and the development of range improvements during the permit term. It may even require the partial or total removal of livestock from the area if the other management options are unavailing.

Thus, the rule which requires that rangelands be maintained in satisfactory condition, at a minimum, throughout the term of the authorized grazing activity, is consistent with Sections 7 and 13 of the HCNRA Act. No additional changes to the proposed rule are warranted based on this comment.

Comment: Grazing should be authorized not only on rangelands that are currently in satisfactory condition, but also on rangelands that are moving toward satisfactory condition. One reviewer noted that limiting domestic livestock grazing only to rangelands in satisfactory condition might be unnecessarily restrictive and might result in the cessation of grazing even in those instances where the rangelands may not be in satisfactory condition at the time the rule goes into effect, but there have been demonstrable strides towards achieving that condition.

Response: The Forest Service agrees. In many situations, livestock grazing may be occurring on rangelands that might be deemed to be in less than satisfactory condition. The status of some of these rangelands may be due not so much to the absence of vegetation and forage, but rather due to the type of vegetation and forage. In other words, the presence of invader species of vegetation may result in an allotment being classified as in unsatisfactory condition. In many of these cases, the elimination of the invader species can only be accomplished through burning or closely monitored livestock grazing.

The intent is not to allow continued grazing on allotments that exhibit an unsatisfactory condition without an aggressively scheduled effort to reach "satisfactory" in a reasonable period of time. The comprehensive plan will identify goals, objectives, and schedules to bring unsuitable lands into a healthy condition, defining "satisfactory."

Therefore, while satisfactory condition is an important benchmark and one which the Forest Service hopes will be achieved on all allotments in the HCNRA in the future, some flexibility should be built into the rule to allow for the continuation of livestock grazing, even on lands that may be in less than satisfactory condition, if that activity results in the rangelands moving towards the satisfactory condition benchmark. In order to determine whether the rangelands are indeed moving towards satisfactory condition, the Forest Service will evaluate the rangelands and the grazing against the specific standards and guidelines related to this activity that are included in the forest plan. Section 292.49(a) has been changed to provide this flexibility.

Comment: The Forest Service should immediately conduct studies to determine the condition of rangelands in the HCNRA and all grazing activities should be prohibited pending their completion. One reviewer was comfortable with the Forest Service's use of satisfactory condition as the threshold condition beyond which livestock grazing in the HCNRA may be authorized. However, this reviewer was concerned that the Forest Service did not possess all the necessary monitoring and other information at this time to determine whether the rangelands were in satisfactory or better condition. Therefore, this reviewer suggested that all grazing be terminated pending the completion of studies indicating the condition of all the rangelands in the HCNRA.

Response. The Forest Service is currently conducting analysis on active allotments. Much of this activity is actually a re-analysis updating information previously gathered. This information is supplemented through range administration and monitoring which is conducted on a regular basis. Each allotment has an annual operating plan which is part of the permit and included the Forest Plan standards and guidelines as well as any new standards developed for resource management reasons. In addition to the range analysis and monitoring, other resource areas such as fish, wildlife, botany, and silviculture are also gathering resource data within the allotments. The data collected from these studies adds to the cumulative picture of the condition of resources within the allotment. Terminating all livestock grazing activities pending the completion of these studies would result in a harsh and unreasonable penalty for many permittees by halting grazing activities on allotments which are in compliance with the terms of the permits and the standards and guidelines of the forest plan.

The Forest Service is aware that if the standards in this section are to be successful in protecting and conserving the HCNRA as well as allowing traditional and valid grazing activities, the studies of range condition must continue. To that end, the Forest Service will, subject to the availability of appropriated funds, continue to take steps to analyze range condition and trend in the HCNRA following the final adoption of this rule. Priorities of the

agency for range condition studies will be those areas which appear to be in less than satisfactory condition and those areas that are associated with permits that are scheduled to expire in the near future. No changes to the proposed rule are warranted based on this comment.

Comment: A definition of rangelands in "satisfactory condition" should be supplied in the rule. Four reviewers encouraged the Forest Service to include a definition for "satisfactory condition" to further delineate the federal lands in the HCNRA where grazing by domestic livestock may occur. Two of the four reviewers offered criteria that could be used in a definition of "satisfactory condition."

Response: The Forest Service determines rangeland conditions based on a professional review and assessment of forage and soil conditions, among other things. The precise contours of what constitutes "satisfactory condition" may change over time as techniques for the review and assessment of forage and soil conditions change, as new information is discovered, or even as changes in societal norms and understandings occur. Accordingly, the appropriate location for the definition of satisfactory condition, like many other terms used in this rule, is in the Comprehensive Management Plan which can more readily address and respond to these potential future developments. Due to their rigidity and relative difficulty to amend, regulations are notoriously poor documents to set out definitions of terms which may change over time. Accordingly, the definition of "satisfactory condition" will appear in the Comprehensive Management Plan for the HCNRA rather than these regulations. The agency intends to identify goals, objectives, and standards pertaining to "satisfactory condition" when the Comprehensive Management Plan is revised. The public will have an opportunity to review and comment in the development of the plans.

Comment: The rule should expressly exclude certain types of rangelands as "suitable" for grazing. One reviewer recommended that riparian areas, highly erodible lands, and threatened and endangered species habitat should be expressly declared as not "suitable" for grazing in the rule.

Response: The Forest Service believes that the types of land listed by this reviewer may or may not be unsuitable for grazing depending on a variety of factors including, but not limited to, the type and amount of forage available, the impact of the grazing activity on the lands, and the management regime under which the livestock grazing

agency for range condition studies will be those areas which appear to be in less than satisfactory condition and those areas that are associated with permits that are scheduled to expire in the near future. No changes to the proposed rule are warranted based on this comment.

Comment: A definition of rangelands in "satisfactory condition" should be supplied in the rule. Four reviewers encouraged the Forest Service to include a definition for "satisfactory condition" to further delineate the federal lands in the HCNRA where grazing by domestic livestock may occur. Two of the four reviewers offered criteria that could be used in a definition of "satisfactory condition."

Response: The Forest Service determines rangeland conditions based on a professional review and assessment of forage and soil conditions, among other things. The precise contours of what constitutes "satisfactory condition" may change over time as techniques for the review and assessment of forage and soil conditions change, as new information is discovered, or even as changes in societal norms and understandings occur. Accordingly, the appropriate location for the definition of satisfactory condition, like many other terms used in this rule, is in the Comprehensive Management Plan which can more readily address and respond to these potential future developments. Due to their rigidity and relative difficulty to amend, regulations are notoriously poor documents to set out definitions of terms which may change over time. Accordingly, the definition of "satisfactory condition" will appear in the Comprehensive Management Plan for the HCNRA rather than these regulations. The agency intends to identify goals, objectives, and standards pertaining to "satisfactory condition" when the Comprehensive Management Plan is revised. The public will have an opportunity to review and comment in the development of the plans.

Comment: The rule should expressly exclude certain types of rangelands as "suitable" for grazing. One reviewer recommended that riparian areas, highly erodible lands, and threatened and endangered species habitat should be expressly declared as not "suitable" for grazing in the rule.

Response: The Forest Service believes that the types of land listed by this reviewer may or may not be unsuitable for grazing depending on a variety of factors including, but not limited to, the type and amount of forage available, the impact of the grazing activity on the lands, and the management regime under which the livestock grazing activity is conducted. In many cases, grazing on riparian areas, highly erodible lands, and land that is habitat for threatened and endangered species may not negatively impact these areas. Therefore, a categorical exclusion in this rule of these areas from rangelands deemed suitable for livestock grazing would be inappropriate.

Comment: Recreation livestock should not be covered by the standards in this section. One reviewer noted that the proposed rule failed to distinguish recreation livestock used in conjunction with recreational activities like hunting or trail riding from domestic livestock which are authorized by a grazing permit. This reviewer asserted that the standards of this rule should be applied only to domestic livestock grazing activities and should exclude recreational livestock grazing activities from its coverage.

Response. The proposed rule was not intended to exclude recreation livestock from its coverage. It was intended to cover all domestic livestock grazing activities occurring on the HCNRA, regardless of the underlying purpose for that activity.

The reviewer fails to offer any additional information upon which the Forest Service could discern a rational basis for distinguishing recreation livestock from other forms of livestock on the HCNRA and exempt them from the provisions of this rule. It may be that in a given situation, the determination of whether an incompatibility exists may differ between recreation livestock and other forms of livestock due to the nature, amount, and location of grazing use. This would be a fact dependent inquiry and would be made on a case-by-case basis. However, once an incompatibility is found to exist between livestock grazing and other listed values for which the HCNRA was established, it matters little whether the grazing is in furtherance of a commercial ranching operation or a commercial recreational enterprise. Under this rule, that livestock grazing activity will have to be modified or abolished. No additional modification of the proposed rule is warranted.

Comment: The standard requiring rangelands to be in satisfactory condition before grazing may be authorized is insufficient for wild and scenic river corridors where that activity must be shown to protect and enhance the values for which the river was designated. Using the Forest Service's definition of "satisfactory condition" in the Forest Service Manual, one reviewer noted that this standard was adequate for federal lands in the HCNRA outside designated wild and scenic river corridors. Once on wild and scenic river corridor lands, however, this reviewer explained that the satisfactory condition standard failed to take into account Section 10 of the Wild and Scenic Rivers Act which requires designated rivers to be administered to protect and enhance the values which caused them to be added to the system. For the Snake and Imnaha Rivers, these values included, among others, vegetation. Merely maintaining the rangeland in satisfactory condition does not equate to "protecting and enhancing" the vegetation of these rivers.

Response: The Forest Service disagrees for two reasons. The first reason is that the Forest Service Manual definition of "satisfactory condition" provided by this reviewer is sufficiently protective of wild and scenic river values. The Forest Service Manual (FSM 2210.5) defines "satisfactory condition" as "[t]he condition in which * * * forage species composition and production meets forest plan objectives * * *". The forest plan in this case is the Wallowa-Whitman National Forest Land and Resource Management Plan (LRMP). Under Section 6(f) of the National Forest Management Act, a LRMP is a forestwide document that establishes management direction for all National Forest System lands within its boundaries. As a forestwide document, it must, by necessity, take into account and be consistent with specially designated conservation system units that are within its boundaries. For the Wallowa-Whitman National Forest, this would mean that the LRMP must incorporate management direction for, among other areas, the HCNRA, the Hells Canyon Wilderness, and the Snake, Rapid, and Imnaha Wild and Scenic Rivers. This management direction for these ares may not be inconsistent with the statutes under which these units were established. In this case that would include the HCNRA Act, Wilderness Act, and Wild and Scenic Rivers Act. Consequently, the Wallowa-Whitman LRMP objectives for forage species composition and production take into account the different conservation system units located within the Forest. To that end, the objectives may, but need not be, different.

The second reason that the Forest Service considers this section to be sufficient as applied to wild and scenic river corridor lands is based on the identification of the traditional ranching use of this area as one of the outstanding remarkable values for which the rivers in the HCNRA were designated. For instance, the Environmental Assessment

for the Imnaha River Wild and Scenic River Management Plan states

> The Imnaha River canyon represents a living vestige typifying the economic and social history of the region and the American West. It is very difficult to describe the mystique which glorifies the frontier cowboy west that is so important to the American psyche. More specifically, and worthy of recognition -and protection, is the fact that the Imnaha River setting is a unique remnant of Euro-American adaptation of the mountainous inland Northwest. [This] * * * is a value that meets the legislative intent of "historical, cultural, or other similar value," of the Wild and Scenic Rivers Act and therefore is an Outstandingly Remarkable Value of the Imnaha Wild and Scenic River.

(Imnaha River EA, App. C. pp. 12–14 (Jan. 1993)). Based on the fact that both traditional ranching use and vegetation are outstandingly remarkable values for which rivers in the HCNRA may have been designated, the Forest Service considers the standards of this section to be a reasonable attempt to reconcile conflicts that may arise in administering the rivers to protect and enhance these values. No change to the proposed rule is warranted based on this comment.

Comment: Concentrated livestock feeding areas should be closed in the HCNRA. One reviewer felt that the rule should specifically deal with confined animal feeding operations (CAFOs) that exist in the HCNRA. There are two CAFOs in the HCNRA, each of which exceeds 100 acres. Cattle may occupy CAFOs anywhere from one to four months. According to this reviewer, CAFOs negatively impact the nearby fish and wildlife habitat, scenic, biological, recreation, and other values for which the HCNRA was established. This reviewer suggested that another standard should be added to this section but failed to note what it should say. Based on the tenor of this reviewer's comments, the proposed standard would prohibit all existing and proposed CAFOs within the HCNRA. Another reviewer inquired as to whether and how these CAFOs would be handled under this section.

Response. The Forest Service does not have any CAFOs on National Forest System lands in the HCNRA. There are two allotments in the HCNRA where animals can be fed during part of the grazing season authorized by the grazing permit. On one allotment, this activity is for emergency purposes only when winter weather conditions or animal health require feeding for short periods of time. on the other allotment, cattle are moved to a pasture and are fed hay during calving. After calving, the cattle are moved to other pastures in the allotment in accordance with the terms of the grazing permit. It should be noted that both of these operations have been reviewed by the Environmental Protection Agency and neither fits the definition of a CAFO.

If these grazing activities present a problem, the incompatibility provisions of § 292.48(b) would apply and require a review of the operation to determine what modifications, if any, could be implemented to avoid the incompatibility. As this section expressly noted, if the incompatibility could not be avoided, the grazing activity would have to terminate. The Forest Service does not consider the addition of another standard addressing this situation to be necessary.

Comment: Domestic sheep grazing should be terminated in the HCNRA. One reviewer noted that disease transmission from domestic to bighorn sheep has resulted in the decimation of bighorn herds in the HCNRA. Based on this impact, this reviewer recommended that the rule include a standard which prohibits domestic sheep grazing in the HCNRA.

Response. As in the discussion concerning CAFOs above, this issue could be easily addressed through § 292.48(b) which requires the modification of livestock grazing activity if it is incompatible with, among other things, the maintenance of wildlife and/or their habitat in the HCNRA. If the incompatibility persists even after the modification, then the grazing activity would have to cease. Accordingly, a specific standard prohibiting domestic sheep grazing in the HCNRA is unnecessary.

It should also be noted that on June 10, 1994, the Forest Supervisor of the Wallowa-Whitman National Forest signed a decision to cancel all domestic sheep grazing permits in the HCNRA. This decision was made after a thorough review of all the research on the transmission of disease between domestic sheep and bighorn sheep. The conclusion drawn from this review was that continuation of domestic sheep grazing as that activity is currently conducted would likely result in the death of bighorn sheep in the future. This decision is fully consistent with the Act which recognized grazing as a traditional and valid use and provided for its continuation only to the extent that it did not impair the values, including protection of wildlife and their habitat, for which the HCNRA was established.

Comment: The standard requiring that grazing permit include terms and conditions to protect and conserve riparian areas should be more specific. One reviewer noted that the standard directing that terms and conditions be included in grazing permits provide for the protection and conservation of riparian areas was "another step in the right direction but [] essentially meaningless * * *". This reviewer thought that specific criteria for grazing permits should be included as standards in this rule including compliance with state Best Management Practices, seasons of use, removal or exclusion of livestock, numbers of animals to be grazed, buffer zones, and unsuitable locations.

Response. As with many of the other responses to comments made on the proposed rule, the Forest Service does not consider a regulation to be the appropriate document to include the level of detail sought by this reviewer. The regulation embodies the standard to which the agency must adhere. How the Forest Service meets this standard may vary and some flexibility must be built into this process to accommodate it. This is especially true in this situation where the variability of the affected riparian areas and management practices that can be employed at a given site may lead to a number of ways in which these areas can be protected and conserved. In this way, the agency can tailor the protection and conservation measures individually, recognizing that not all measures may be appropriate in all situations.

Comment: Range improvement standard is inconsistent with the HCNRA Act. One reviewer contended that the standard in § 292.48(c) concerning range improvements was contrary to the HCNRA Act's direction that any livestock grazing occurring in the HCNRA must be compatible with the protection of cultural and natural values for which the area was established. Specifically, this section required that range improvements be designed and located to have, to the extent practicable, the minimal impact on scenic, cultural, fish and wildlife and other values in the HCNRA. As an alternative, this reviewer suggested that the standard should be modified to simply prohibit any range improvement that has the potential to impact the ecological, recreational, or cultural values of the HCNRA.

Response. As noted earlier in this discussion, Congress expressly recognized in Section 13 of the HCNRA Act that ranching and grazing were "traditional and valid" uses of the HCNRA. In keeping with this recognition, the Forest Service has formulated standards for grazing which will enable it to be continued in perpetuity provided that it is compatible with the management objectives for the HCNRA as articulated in Section 7 of the Act. In other words, this section provides for the continuation of grazing unless it is incompatible with the scenic, fish and wildlife, and other values for which the HCNRA was established. In that case, as the proposed rule makes clear, the ranching or grazing activity must yield.

One means by which incompatibilities between grazing and HCNRA values can potentially be avoided is through the use of range improvements. Range improvements may either be structural or nonstructural in nature and are defined as

> [A]ny activity or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock and wildlife.

(Forest Service Manual 2240.5(8). One example of a range improvement is a fence. Fences can be installed in order to limit access to important riparian areas or to facilitate the rotation of livestock to different parts of an allotment thereby avoiding overuse in any one area. Another example of a range improvement are water tanks or troughs which can be situated in such a way as to entice livestock away from natural water sources like streams and ponds. Suffice it to say that it would be extremely difficult to run a successful livestock operation without using at least some range improvements.

This section of the rule provides that where range improvements are a necessary component of a successful livestock operation, they will have as little impact as possible on the scenic, fish and wildlife and other values for which the HCNRA was established while still accomplishing the objective of the improvement. The impact of range improvements can be reduced through, among other things, the use of special materials, locating the site of the improvement to blend in with the natural topography, and constructing the improvement at special times of the year.

The reviewer's suggestion which would bar all range improvements based simply on their "potential impact" to the HCNRA resources is unreasonable and would inevitably lead to the partial or complete elimination of grazing in the HCNRA due to the exacerbation of incompatibilities between grazing and the other resource values in the HCNRA. No change to the rule has been made based on this reviewer's comment.

Comment: Environmental analysis is necessary prior to the authorization of livestock grazing on allotments that are

HCNRA as articulated in Section 7 of the Act. In other words, this section provides for the continuation of grazing unless it is incompatible with the scenic, fish and wildlife, and other values for which the HCNRA was established. In that case, as the proposed rule makes clear, the ranching or grazing activity must yield.

One means by which incompatibilities between grazing and HCNRA values can potentially be avoided is through the use of range improvements. Range improvements may either be structural or nonstructural in nature and are defined as

> [A]ny activity or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock and wildlife.

(Forest Service Manual 2240.5(8). One example of a range improvement is a fence. Fences can be installed in order to limit access to important riparian areas or to facilitate the rotation of livestock to different parts of an allotment thereby avoiding overuse in any one area. Another example of a range improvement are water tanks or troughs which can be situated in such a way as to entice livestock away from natural water sources like streams and ponds. Suffice it to say that it would be extremely difficult to run a successful livestock operation without using at least some range improvements.

This section of the rule provides that where range improvements are a necessary component of a successful livestock operation, they will have as little impact as possible on the scenic, fish and wildlife and other values for which the HCNRA was established while still accomplishing the objective of the improvement. The impact of range improvements can be reduced through, among other things, the use of special materials, locating the site of the improvement to blend in with the natural topography, and constructing the improvement at special times of the year.

The reviewer's suggestion which would bar all range improvements based simply on their "potential impact" to the HCNRA resources is unreasonable and would inevitably lead to the partial or complete elimination of grazing in the HCNRA due to the exacerbation of incompatibilities between grazing and the other resource values in the HCNRA. No change to the rule has been made based on this reviewer's comment.

Comment: Environmental analysis is necessary prior to the authorization of livestock grazing on allotments that are currently vacant as well as those where grazing activity is occurring. One reviewer noted that the rule should include two express provisions regarding the circumstances under which grazing may be authorized on an allotment in the HCNRA. The first case dealt with allotments currently being grazed. There, this reviewer explained that the rule should authorize grazing only when there has been current environmental analysis that considers range condition and the effects of past livestock use of the allotment. The second case dealt with allotments where no grazing is currently occurring. In this case, this reviewer noted that the rule should include a standard requiring a new environmental analysis prior to the authorization of livestock grazing which would justify that activity on that allotment.

Response. Through the forest planning process, a schedule was established for updating all of the allotment management plans on the Wallowa-Whitman National Forest, including those in the HCNRA. It was recognized that funding would not be available to update all of these plans at once. Therefore, the allotments were prioritized for updating. Allotments with the highest priority were those where evidence suggested that some resource damage had occurred or was occurring. Allotments are also required to be in compliance with the relevant standards and guidelines in the forest plan. These standards and guidelines, as well as any updates, are built into the annual operating plans which become a term of the grazing permit.

Permits for vacant allotments are not issued until the range analysis, NEPA documentation and the allotment management plan are complete.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. In short, little or no effect on the National economy will result from this rule, since it affects only public lands within the HCNRA. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. To the extent that the rule imposes additional requirements on any small entity, these requirements are the minimum necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

Takings Implication

This rule has been reviewed by the agency under Executive Order 12630 to determine whether its adoption presents the risk of a taking which would require the payment of just compensation under the 5th Amendment to the United States Constitution. Because this rule primarily involves the administration of federal lands, neither the adoption of this rule nor its implementation presents the risk of a taking. Furthermore, where mining activities are concerned, the prohibitions contained herein are subject to valid existing rights which also insulates the government against the risk of an adverse decision in a takings claim.

Executive Order 12778, Civil Justice Reform Act

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Accordingly, (1) all state and local laws and regulations that are in conflict with this rule or which impede its full implementation are preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties could file suit in court challenging its provisions.

Environmental Impact

This rule was discussed as a proposed rule in the final Environmental Impact Statement and Comprehensive Management Plan for the Hells Canyon National Recreation Area, pages 155–158. The analysis completed for the Comprehensive Management Plan was revalidated in April 1990 with the signing of the Wallowa-Whitman National Forest Land and Resource Management Plan (pages 1–2). Information pertaining to the environmental analysis may be obtained by writing or calling the persons or offices listed under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**.

Controlling Paperwork Burdens on the Public

As outlined in the proposed rule, prior written authorization will be required under this rule for certain activities related to the scientific research of paleontological resources in the HCNRA and the use of motorized and non-motorized rivercraft use on the Snake and Salmon Rivers in the HCNRA. The information that will need to be submitted to the authorized officer represents a new information requirement as defined in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. In accordance with those regulations and the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the Forest Service has requested the review and approval of the information required. The agency estimates that a private individual preparing seeking authorization under the provisions of this rule will spend an average of 5 hours to gather, prepare, and submit the application for authorization.

List of Subjects in 36 CFR Part 292

National recreation areas.

Therefore, for the reasons set forth in the preamble, part 292 of chapter II of title 36 of the Code of Federal Regulations is hereby amended by revising subpart F to read as follows:

PART 292—NATIONAL RECREATION AREAS

Subpart F—Hells Canyon National Recreation Area—Federal Lands

Sec

292.40 Purpose and scope
292.41 Definitions.
292.42 Management standards and guidelines.
292.43 Protection and preservation of cultural and paleontological resources.
292.44 Use of motorized and mechanical equipment.
292.45 Use of motorized and non-motorized rivercraft.
292.46 Timber harvesting activities.
292.47 Mining activities.
292.48 Grazing activities.

Subpart F—Hells Canyon National Recreation Area—Federal Lands

Authority: 16 U.S.C. 460gg–7.

§ 292.40 Purpose and scope.

(a) *Purpose.* The rules of this subpart establish standards and guidelines for the protection and preservation of historic, archeological, and paleontological resources, the use of motorized and mechanical equipment, the use of motorized and non-motorized rivercraft, and the management, utilization, and disposal of natural resources by timber harvesting, mining and grazing on National Forest System lands that comprise the Hells Canyon National Recreation Area located in the Wallowa-Whitman, Nez Perce, and Payette National Forests in the States of Idaho and Oregon as established by the Act of December 31, 1975, as amended (89 Stat. 1117, 16 U.S.C. 460gg *et seq.*).

(b) *Scope.* Management of National Forest System lands within the Hells Canyon National Recreation Area is subject to all laws, rules, and regulations applicable to the national Forest System, except as otherwise provided in this subpart. In the event of a conflict of inconsistency between rules of this subpart and other rules within this title, the rules of this subpart shall take precedence to the extent permitted by law.

§ 292.41 Definitions.

Special terms used in this subpart are defined as follows:

"*Act*" means the Act of December 31, 1975, as amended (Pub. L. 94–199, 89 Stat. 1117) which established the Hells Canyon National Recreation Area.

"*Authorized Officer*" is a Forest Service line officer who has been delegated the authority to take certain actions pursuant to the provisions of this subpart.

"*Comprehensive Management Plan*" is the document that establishes the array, levels, and manner of resource uses within the HCNRA. It is incorporated as part of the Wallowa-Whitman National Forest Land and Resource Management Plan.

"*Cultural resources*" means historic and archeological resources.

"*HCNRA*" is the abbreviation for the Hells Canyon National Recreation Area.

"*Mechanical equipment*" means any contrivance which travels over ground, snow or water on wheels, tracks, skids, or by flotation that is powered by a living source. This term does not include non-motorized rivercraft which is defined separately herein, wheelchairs, or other similar devices used solely to assist persons with disabilities.

"*Mining*" means any activity related to the discovery, extraction and exploitation of minerals under the Mining Act of 1872, 30 U.S.C. 22 *et seq.*, and the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, through the use of, among other things, hydraulic equipment, pans, ground sluicing, sluice boxes, rockers, or suction dredges.

"*Motorized equipment*" means any machine powered by a nonliving source. This term does not include motorized rivercraft which is defined separately herein or small, hand-held devices such as flashlights, shavers, wristwatches, and Geiger counters.

"*Motorized rivercraft*" means any boat capable of being mechanically propelled by propeller(s) or jet pump(s) upstream through rapids.

"*Non-Motorized rivercraft*" means any boat which is not a motorized rivercraft.

"*Other lands*" means all National Forest System lands in the HCNRA except for Wild and Scenic Rivers and Wilderness Lands.

"*Paleontological resources*" means any remains, trace, or imprint of a plant or animal that has been preserved in the Earth's crust prior to the Holocene epoch.

"*Selective cutting*" means single tree or group selection cutting and is the periodic removal of trees individually or in small groups from an uneven aged forest in order to maintain diverse stands, with the sustainability and improvement of the forest using an ecosystem approach to management being a primary consideration.

"*Suitable*" means it is appropriate to apply certain resource management practices to a particular area of land, as determined by an ecological and environmental analysis of the land. A unit of land may be suitable for a variety of individual or combined management practices.

"*Wild and Scenic Rivers*" means the segments of the Snake, Rapid, and Imnaha Rivers designated as components of the National Wild and Scenic Rivers System and any other river or segment thereof in the HCNRA hereafter designated. Wild and Scenic Rivers include all National Forest System lands within the designated Wild and Scenic River corridor.

"*Wilderness lands*" means the Hells Canyon Wilderness, that portion of the Eagle Cap Wilderness in the HCNRA, and any other wilderness in the HCNRA hereafter designated as components of the National Wilderness Preservation System.

§ 292.42 Management standards and guidelines.

(a) In addition to existing statutory and regulatory authority governing administration of National Forest System lands and resources, the standards and guidelines in §§ 292.43 to 292.48 of this subpart prescribe the scope and extent of certain activities that may occur in the HCNRA. These standards and guidelines are consistent with the overall objective of administering the HCNRA to preserve its natural beauty, historical and archaeological values and enhance its recreational and ecological values and the public's enjoyment. The standards and guidelines may vary depending on whether the land where the proposed activity is contemplated is within the Wilderness Lands, Wild and Scenic Rivers, or the Other Lands.

(b) The standards and guidelines of this subpart govern the previous programmatic direction in the Comprehensive Management Plan that has been incorporated into the Wallowa-Whitman National Forest Land and Resource Management Plan. Site specific environmental analysis may be required even in those situations where a use or activity is permissible under the standards and guidelines set forth in this subpart.

(c) The standards and guidelines of this subpart may be enforced by the authorized officer pursuant to 36 CFR part 261.

§ 292.43 Protection and preservation of cultural and paleontological resources.

(a) Other Lands and Wild and Scenic Rivers. The following standards and guidelines of this section apply to the protection and preservation of cultural and paleontological resources on the Other Lands and the Wild and Scenic Rivers in the HCNRA:

(1) The primary objective of managing cultural resources is the protection of the resource from damage or destruction. To the extent consistent with protection, cultural resources may also be managed for scientific research, public education and enjoyment. Where interpretation of these sites for public benefit and knowledge is developed, it shall be compatible with the protection of cultural resources.

(2) The authorized officer shall establish priorities for management emphasis and protection of cultural resources based, in part, on whether the appropriate State Historic Preservation Office has concurred with the Forest Service's determination that a cultural resource is significant.

(3) Significant cultural resources are to be protected on-site, unless the authorized officer determines that off-site protection is preferable because adequate protection cannot be provided on-site, the resource is already adequately represented and protected on-site elsewhere, protection on-site is not consistent with the administration of Wilderness Lands, or for other good cause shown. Information about significant cultural resources shall be documented.

(4) The primary objective of managing paleontological resources is scientific research. Paleontological resources may only be disturbed or removed in conjunction with scientific research and

the public's enjoyment. The standards and guidelines may vary depending on whether the land where the proposed activity is contemplated is within the Wilderness Lands, Wild and Scenic Rivers, or the Other Lands.

(b) The standards and guidelines of this subpart govern the previous programmatic direction in the Comprehensive Management Plan that has been incorporated into the Wallowa-Whitman National Forest Land and Resource Management Plan. Site specific environmental analysis may be required even in those situations where a use or activity is permissible under the standards and guidelines set forth in this subpart.

(c) The standards and guidelines of this subpart may be enforced by the authorized officer pursuant to 36 CFR part 261.

§ 292.43 Protection and preservation of cultural and paleontological resources.

(a) Other Lands and Wild and Scenic Rivers. The following standards and guidelines of this section apply to the protection and preservation of cultural and paleontological resources on the Other Lands and the Wild and Scenic Rivers in the HCNRA:

(1) The primary objective of managing cultural resources is the protection of the resource from damage or destruction. To the extent consistent with protection, cultural resources may also be managed for scientific research, public education and enjoyment. Where interpretation of these sites for public benefit and knowledge is developed, it shall be compatible with the protection of cultural resources.

(2) The authorized officer shall establish priorities for management emphasis and protection of cultural resources based, in part, on whether the appropriate State Historic Preservation Office has concurred with the Forest Service's determination that a cultural resource is significant.

(3) Significant cultural resources are to be protected on-site, unless the authorized officer determines that off-site protection is preferable because adequate protection cannot be provided on-site, the resource is already adequately represented and protected on-site elsewhere, protection on-site is not consistent with the administration of Wilderness Lands, or for other good cause shown. Information about significant cultural resources shall be documented.

(4) The primary objective of managing paleontological resources is scientific research. Paleontological resources may only be disturbed or removed in conjunction with scientific research and only upon the issuance of prior written authorization of the disturbance or removal activity.

(b) *Wilderness Lands.* The following standards and guidelines apply to the protection and preservation of cultural and paleontological resources in the Wilderness Lands category of the HCNRA.

(1) The standards and guidelines for Other Lands and Wild and Scenic Rivers in paragraph (a) of this section also apply to Wilderness Lands.

(2) Public education and information activities concerning cultural resources on Wilderness Lands may not be offered or established inside Wilderness Lands.

(3) New trails and relocations of existing trails may not be developed for the sole purpose of providing public access to cultural resource sites on Wilderness Lands.

§ 292.44 Use of motorized and mechanical equipment.

The standards and guidelines of this section apply to the use of motorized and mechanical equipment in the HCNRA. These standards and guidelines shall not be construed to impair or preclude use of such equipment in the Forest Service's administration of the HCNRA; authorized scientific and other research activities within the HCNRA; timber harvesting, mining, or grazing activities as authorized in §§ 292.46–292.48 of this subpart; responses by the Forest Service or any other Federal, state, or local agency to public health or safety emergencies; or access to private inholdings within the HCNRA.

(a) *Other Lands.* The following standards and guidelines apply to the use of motorized and mechanical equipment in the Other Lands category of the HCNRA.

(1) Motorized and mechanical equipment may be used on designated Forest Service roads, trails, and airstrips subject to terms and conditions deemed necessary by the authorized officer for the safe use of such facilities.

(2) The use of motorized and mechanical equipment is prohibited off of designated Forest Service roads, trails, and airstrips unless authorized by the authorized officer subject to terms and conditions deemed necessary by the authorized officer for the safe use of such equipment and to ensure that its use is compatible with the Act.

(b) *Wild and Scenic Rivers.* The following standards and guidelines apply to the use of motorized and mechanical equipment in the Wild and Scenic Rivers category in the HCNRA.

(1) The use of motorized and mechanical equipment on designated Forest Service roads, trails and airstrips is permissible on wild and scenic river segments classified "scenic" or "recreational" subject to terms and conditions necessary for safe use of such equipment and to ensure its use is compatible with the Wild and Scenic Rivers Act.

(2) The use of motorized and mechanical equipment on designated Forest Service roads, trails, and airstrips is prohibited on wild and scenic river segments classified "wild" except as provided for by the authorized officer upon a determination that such use is necessary for the administration of the river or to protect and enhance the values for which river was designated.

(c) *Wilderness Lands.* Except as provided for in Sections 4 (c) and (d) of the Wilderness Act and regulations at 36 CFR parts 261 and 293, the use of motorized and mechanical equipment is prohibited on Wilderness Lands.

§ 292.45 Use of motorized and non-motorized rivercraft.

The standards and guidelines of this section apply to the use of motorized and non-motorized rivercraft on rivers within the HCNRA.

(a) The use of non-motorized rivercraft may be permitted subject to restrictions on size, type of craft, numbers, duration, seasons, or other matters which may be deemed by the authorized officer to be necessary to ensure the safe use and enjoyment of the rivers: Provided, that where wild and scenic rivers are concerned, the authorized officer may impose such additional terms and conditions as may be necessary to protect and enhance the values for which the river was designated.

(b) The use of motorized rivercraft is prohibited except on the Snake River and that portion of the Salmon River in the HCNRA administered by the Forest Service where such activity may be permitted subject to restrictions on size, type of craft, numbers, noise limits, duration, seasons or other matters which may be deemed by the authorized officer necessary for the safe use and enjoyment of the rivers: Provided, that where wild and scenic rivers are involved, the authorized officer may impose such additional terms and conditions as may be necessary to protect and enhance the values for which the river was designated.

(c) The use of motorized and non-motorized rivercraft is subject to all federal and state boating registration and safety laws.

(d) The use of motorized or non-motorized rivercraft on the Snake River and that portion of the Salmon River in

the HCNRA administered by the Forest Service requires prior written authorization from the authorized officer.

(e) In authorizing the use of motorized and non-motorized rivercraft on the Snake River, the authorized officer must reasonably accommodate both private and commercial users of each type of rivercraft.

(f) In authorizing the use of motorized and non-motorized rivercraft on the Snake River, the authorized officer must ensure that the carrying capacity of the river is not exceeded.

(g) In authorizing the use of motorized and non-motorized rivercraft on the Snake River, the authorized officer shall seek to minimize, where practicable, conflicts between motorized and non-motorized rivercraft users and between both types of rivercraft users and all other users of the river.

§ 292.46 Timber harvesting activities.

(a) *Other Lands.* The standards and guidelines of this section apply to timber harvesting activities in the Other Lands category of the HCNRA.

(1) Timber may be harvested only to protect and enhance ecosystem health, wildlife habitat, or recreational and scenic uses; to reduce the risk of harm posed by hazard trees; or to respond to natural events such as wildfire, flood, earthquake, volcanic eruption, high winds, and disease or insect infestation.

(2) Where authorized, trees may be harvested by selective cuttings. Openings created by the timber harvesting activity must be limited in size and number to the minimum necessary to accomplish the purpose of the harvest, and must blend with the natural landscape to the extent practicable.

(b) *Wild and Scenic Rivers.* The following standards and guidelines apply to timber harvesting activities in the Wild and Scenic Rivers category of the HNCRA.

(1) Timber may be harvested on river segments classified "scenic" or "recreational" to protect and enhance the values for which the river was designated.

(2) Timber may be harvested on river segments classified "wild" only when necessary to provide for recreational facilities such as trails, to reduce the risk of hazard trees, or to respond to natural events provided that the activity is consistent with the Wild and Scenic Rivers Act.

(3) Where authorized, timber harvesting activities on wild and scenic rivers may be conducted in accordance with and using the same methods as prescribed in section (a)(2) above.

(c) *Wilderness Lands.* Except as provided for in Sections 4 (c) and (d) of the Wilderness Act and regulations at 36 CFR part 293, timber harvesting is prohibited on Wilderness Lands.

§ 292.47 Mining activities.

(a) *Other Lands.* The standards and guidelines of this section apply to mining activities in the Other Lands category of the HCNRA.

(1) All mining activities are prohibited subject to valid existing rights as of December 31, 1975.

(2) The impact of mining activities including, but not limited to, drilling and the development of ingress and egress routes, must be minimized and directed away from Wilderness Lands and Wild and Scenic Rivers to the extent practicable.

(3) Mineral materials including, but not limited to common varieties of gravel, sand, or stone, may be used only within the HCNRA for the purpose of construction and maintenance of facilities including, but not limited to, roads, airfields, trails, and recreation developments.

(4) Sources of mineral materials should be located outside the HCNRA. Sources for mineral materials that may be used to benefit the HCNRA may be located inside the HCNRA if the cost of obtaining the materials outside the HCNRA adds significantly to the costs of the materials, or the transportation of mineral materials from outside the HCNRA presents a safety hazard. When mineral materials are obtained from inside the HCNRA, the environmental effects at the source of extraction must be mitigated by site reclamation upon the termination of the extraction activity. Site reclamation may include contouring the land, re-establishing vegetation, and other measures deemed appropriate by the authorized officer to blend the site into the surrounding environment to the extent practicable. The HCNRA shall not be the source of mineral materials for use outside the HCNRA for projects that do not directly benefit the HCNRA.

(b) *Wilderness Lands and Wild and Scenic Rivers.* The standards and guidelines of this section apply to mining activities in the Wilderness Lands and Wild and Scenic Rivers categories of the HCNRA.

(1) The standards and guidelines for Other Lands in paragraphs (a)(1) and (2) of this section also apply to Wilderness Lands and Wild and Scenic Rivers.

(2) Extraction of mineral materials is prohibited on Wilderness Lands and Wild and Scenic Rivers subject to valid existing rights.

§ 292.48 Grazing activities.

The following standards and guidelines apply to domestic livestock grazing activities on Other Lands, Wild and Scenic Rivers, and Wilderness Lands in the HCNRA.

(a) Grazing may be authorized only on rangeland determined by the authorized officer to be suitable for grazing and meeting or moving towards satisfactory condition and meeting the conditions described in paragraph (b) of this section.

(b) Where domestic livestock grazing is incompatible with the protection, restoration, or maintenance of fish and wildlife or their habitats; public outdoor recreation; conservation of scenic, wilderness, and scientific values; rare combinations of outstanding ecosystems, or the protection and enhancement of the values for which a wild and scenic river was designated, the livestock use shall be modified as necessary to eliminate or avoid the incompatibility. In the event an incompatibility persists after the modification or modification is not feasible, the livestock use shall be terminated.

(c) Range improvements must be designed and located to minimize their impact on scenic, cultural, fish and wildlife, and other resources in the HCNRA.

(d) The authorization of grazing use, through a grazing permit, must provide for terms and conditions which protect and conserve riparian areas.

Dated: July 13, 1994.

James R. Lyons,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 94-17521 Filed 7-18-94, 8:45 am]

BILLING CODE 3410-11-M

Federal Register

Tuesday
July 19, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 583

Supportive Housing Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 583

[Docket No. R-94-1631; FR-3379-F-01]

RIN A506-AB45

Supportive Housing Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This is the final rule for the Supportive Housing Program, a program to provide assistance for housing and supportive services for homeless persons authorized by title IV, subtitle C of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11381 (McKinney Act).

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: The Office of Special Needs Assistance Programs, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; (202) 708-1234 or, TDD for hearing and speech-impaired, (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and approved under OMB control number 2506-0112.

II. Background

Section 1403 of the 1992 HCD Act amended title IV of the McKinney Act by striking subtitles C and D (the Supportive Housing Demonstration and SAFAH programs, respectively), and replacing them with a new subtitle C, which authorizes the Supportive Housing Program. (The Supportive Housing Demonstration program consisted of the Transitional Housing and the Permanent Housing for Handicapped Homeless programs.) On March 15, 1993, the Department published an interim rule (58 FR 13870), hereafter referred to as the "first interim rule," implementing the Supportive Housing Program. The first interim rule is codified at 24 CFR 583. On May 10, 1994, the Department published a second interim rule at 52 FR 24252 which amended the application and selection criteria provisions of the rule and clarified the Comprehensive Housing Affordability provisions.

The Supportive Housing Program combines the features of the Demonstration programs and the SAFAH program into one single program of assistance to governmental entities and private nonprofit organizations to provide housing and supportive services to homeless persons.

As stated in the first interim rule, Transitional Housing, Permanent Housing for Handicapped Homeless, and SAFAH projects previously approved under those program regulations (24 CFR parts 577, 578, and 579, respectively) will continue to be subject to those regulations. However, projects that are renewed under the new Supportive Housing Program are subject to these regulations.

Finally, the Department is publishing this final rule for effect immediately upon publication. Generally, in accordance with section 7(o) of the Department of Housing and Urban Development Act, the Department does not publish a rule or regulation for effect until after the expiration of the 30-day calendar period beginning on the day after the rule or regulation is published. However, because section 427 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1992 (42 U.S.C. 11387) provides that the final rule implementing the new Supportive Housing Program is to be "effective upon issuance," this provision of section 7(o) does not apply to this final rule.

III. Discussion of Public Comments From Interim Rule

The Department received 17 public comments in response to the interim rule. The comments were from local governments, housing authorities, and nonprofit organizations and advocacy groups for homeless individuals. The final rule contains changes made to the interim rule in response to public comments. The following discussion summarizes the comments and provides HUD's responses to those comments.

Definitions: § 583.5

Homeless Family

Several commenters suggested that HUD broaden the definition of homeless family with children to include parent/child relationships that exist without legal recognition of that relationship. One commenter suggested that the definition also include a dependent child over 18 who is mentally or physically disabled. One commenter recommended that homeless parents who have been separated from their children through foster care be permitted to enter SHPs with their children.

The Department does not believe that the definition of homeless families with children restricts serving families that include these types of relationships. A dependent child over 18 who is mentally or physically disabled can certainly be served. The term "homeless family with children" is defined in the rule only so that the Department can determine that it meets the statutory requirement that at least 25 percent of the funds appropriated for the program be used for homeless families with children. Therefore, the definition has not been changed.

Homeless Person

A number of commenters felt that HUD should expand the definition of homeless person. Several commenters recommended that the definition include a person who will be evicted from a dwelling unit within 30 days, released from an institution within 30 days, or required to leave within the time an opening is likely to be available in the supportive housing program. One commenter recommended that the definition include individuals who are doubled or tripled up with family or friends. One commenter stated that the term "adequate" was vague in the definition ("fixed, regular and adequate nighttime residence").

HUD does not believe that the current interpretation of homelessness need be expanded as suggested. The Department's focus remains on serving the most needy. This is most readily determined by the test that a person is homeless if, without HUD assistance, she or he would have to spend the night in a shelter or in a place not meant for human habitation. With regard to the term "adequate", the definition in the rule reflects the statutory language exactly.

Permanent Housing for Homeless Persons With Disabilities

The interim rule defines permanent housing for homeless persons with disabilities to mean community-based housing for homeless persons with disabilities that provides long-term housing and supportive services for not more than (1) 8 such persons in a single structure or contiguous structure; (2) 16 such persons, but only if not more than 20 percent of the units in a structure are designated for such persons; or (3) more than 16 persons if the applicant demonstrates that local market conditions dictate the development of a large project and such development will achieve the neighborhood integration objectives of the program within the context of the affected community.

One commenter objected to the requirement, in the definition of permanent housing for homeless persons with disabilities, that an applicant must demonstrate that local market conditions justify the development of a permanent supportive housing project for more than 16 persons. This requirement is imposed by section 424(c)(1) of the McKinney Act, which requires that an applicant provide a "justification" for a permanent supportive housing project with more than 16 persons.

Supportive Services

Several commenters recommended that the definition of supportive services be expanded to include providing legal assistance to obtain permanent housing, housing subsidies, and other entitlements such as income support, food and medical assistance. The Department does not believe that the current definition of supportive services excludes legal assistance to obtain permanent housing, housing subsidies and other entitlements. Not every eligible supportive service is listed in the definition. However, for clarification, the regulatory definition has been expanded to specifically state that supportive services include "but are not limited to" the services listed. Grantees and participants are reminded that most homeless persons qualify for free legal assistance and that, except for filing lawsuits, persons other than licensed attorneys may provide the services mentioned by the commenters, most likely at a lower cost.

Use of SHP Funds

Eligible Activities/Projects: § 583.1

The interim rule provides in § 583.1 that supportive housing funds may be used for: (1) Transitional housing to facilitate the movement of homeless individuals and families to permanent housing; (2) permanent housing that provides long-term housing for homeless persons with disabilities; (3) housing that is, or is part of, a particularly innovative project for, or alternative methods of, meeting the immediate and long-term needs of homeless persons; or (4) supportive services for homeless persons not provided in conjunction with supportive housing.

Two commenters objected to restricting permanent housing projects

demonstrates that local market conditions dictate the development of a large project and such development will achieve the neighborhood integration objectives of the program within the context of the affected community.

One commenter objected to the requirement, in the definition of permanent housing for homeless persons with disabilities, that an applicant must demonstrate that local market conditions justify the development of a permanent supportive housing project for more than 16 persons. This requirement is imposed by section 424(c)(1) of the McKinney Act, which requires that an applicant provide a "justification" for a permanent supportive housing project with more than 16 persons.

Supportive Services

Several commenters recommended that the definition of supportive services be expanded to include providing legal assistance to obtain permanent housing, housing subsidies, and other entitlements such as income support, food and medical assistance. The Department does not believe that the current definition of supportive services excludes legal assistance to obtain permanent housing, housing subsidies and other entitlements. Not every eligible supportive service is listed in the definition. However, for clarification, the regulatory definition has been expanded to specifically state that supportive services include "but are not limited to" the services listed. Grantees and participants are reminded that most homeless persons qualify for free legal assistance and that, except for filing lawsuits, persons other than licensed attorneys may provide the services mentioned by the commenters, most likely at a lower cost.

Use of SHP Funds

Eligible Activities/Projects: § 583.1

The interim rule provides in § 583.1 that supportive housing funds may be used for: (1) Transitional housing to facilitate the movement of homeless individuals and families to permanent housing; (2) permanent housing that provides long-term housing for homeless persons with disabilities; (3) housing that is, or is part of, a particularly innovative project for, or alternative methods of, meeting the immediate and long-term needs of homeless persons; or (4) supportive services for homeless persons not provided in conjunction with supportive housing.

Two commenters objected to restricting permanent housing projects under the Supportive Housing Program to disabled homeless persons. While section 424(a) of the McKinney Act restricts projects under the permanent housing component to homeless persons with disabilities, the Department does have the authority to make SHP funds available for permanent housing projects for other homeless persons under the innovative component.

One commenter objected to the use of SHP funds to provide services for homeless persons unrelated to housing. Because section 425 of the McKinney Act authorizes the provision of supportive services for homeless persons not provided in conjunction with supportive housing, and section 429 of the McKinney Act requires that at least 10% of appropriations be allocated for providing supportive services not provided in conjunction with supportive housing, the rule remains unchanged in this regard.

One commenter suggested that HUD expand the rule to include new construction of supportive service facilities. Because new construction of supportive service facilities is not an eligible activity under § 423(a)(2) of the McKinney Act, the Department does not have the authority to expand the rule in this respect.

Improving Existing Facilities: § 583.100

One commenter suggested that HUD allow SHP funds to be used to rehabilitate projects to preserve and bring existing housing stock up to code. Another commenter argued that recipients should be allowed to use SHP funds to improve existing transitional housing facilities, or to complete projects in progress.

Currently, SHP funds may be used to expand existing facilities in order to increase the number of homeless persons served and to provide additional supportive services. The Department agrees that existing facilities may also be improved to the extent that such improvements are needed for public health and safety, and has modified § 583.100 to reflect this. Finally, with regard to the use of SHP funds for completion of projects in process, HUD does not believe that it is necessary to broaden the use of SHP funds to cover completion of projects in progress since presumably projects in progress are already funded through completion.

Property Damages: § 583.115(b)(2)

One commenter felt that grant funds should be available to pay for property damages caused by a program participant. The Department agrees, and has added as an eligible leasing cost the use of up to one month's rent to pay a landlord who is not the recipient for any damage to housing due to the action of a homeless participant.

Grants for Supportive Services Costs: § 583.120

One commenter objected to the limitation of six months for providing supportive services after a homeless person leaves a transitional housing project, and recommended that recipients provide supportive services following placement in permanent housing for up to 12 months. The Department believes that providing supportive services beyond six months following placement in permanent housing expands the definition of transitional housing beyond what the statute envisions. SHP funds can be used for permanent housing resources for homeless persons with disabilities.

Grants for Operating Costs: § 583.125

One commenter suggested that maintenance reserve be included as an operating cost. HUD does not believe that it is necessary to include maintenance reserve as an operating cost. Because of recent changes in the homeless programs' financial system, recipients do not lose unexpended operating funds at the end of each year; they are carried over to the next operating year. Since the operating budget may include a repair and maintenance line item, it is no longer necessary to set up a separate reserve account to ensure that funds are available each year; the balance of repair and maintenance grant funds will carry over.

Commitment of Grant Amounts for Leasing, Supportive Services, and Operating Costs: § 583.130

One commenter questioned whether the reference in § 583.130 to HUD's obligation of funds for a period "not to exceed five operating years" meant that grants for supportive services will be available for up to five years. The Department agrees that this point requires clarification, and has modified § 583.120 to show that grants for supportive services will also be available for up to five years.

Administrative Costs: § 583.135

Several commenters objected to the limitation of 5% for administrative expenses, and suggested that the Department increase the cap on administrative expenses to between 7% and 10%. Because section 426(i) of the McKinney Act establishes a 5% cap on administrative expenses, the

Department does not have the authority to increase the cap.

Limitations on Use of Assistance: § 583.150

Several commenters objected to the prohibition against using SHP funding in structures assisted under other Federal programs: This provision has been frequently misinterpreted due, in part, to its complex language and, in part, to a more stringent provision contained in the proposed rule published on January 6, 1992 for the Supportive Housing Demonstration Program. The restriction in the first interim rule prohibited using SHP funds to assist a *structure* that has been assisted with other Federal funds. The first interim rule did not prohibit using SHP funds to assist *residents* of a structure, where either the structure or the residents have been assisted with other Federal funds. For example, applicants could provide supportive services funded by SHP to such residents. Another commenter felt that SHP funds should be allowed to be used for units in any structure receiving Federal assistance, except directly to units receiving HUD rental assistance. Again, the first interim rule did not prevent SHP funds from assisting a pro rata share of the units. That is, if only a portion of a structure's units have been assisted with Federal funds, the unassisted units could be assisted with SHP funds.

Nevertheless, HUD believes that this provision is counterproductive with regard to encouraging the development of permanent affordable housing. This is particularly true given the limited rent-paying ability of homeless participants and the likelihood that recipients will need other resources to meet operating costs. The section has been deleted from the rule.

Predevelopment Costs

One commenter suggested that HUD allow SHP grants to be used for certain predevelopment costs incurred prior to award of HUD funding. HUD does not agree. It has been a long-standing practice not to reimburse for costs such as those incurred to determine project feasibility, options to secure site control, and other costs associated with preparing an application.

Program Requirements

Grants for Acquisition and Rehabilitation; New Construction

Several commenters objected to the development cost caps for acquisition and rehabilitation and new construction in §§ 583.105 and 583.110. Because section 423(a) of the McKinney Act establishes development cost caps for acquisition and rehabilitation, and new construction, HUD does not have the authority to eliminate or raise the development cost caps.

Matching Requirements: § 583.145

Several commenters suggested that HUD reduce the matching requirement of § 583.145 from a 100% match, and permit the use of non-cash resources for matching. Because section 426(e) of the McKinney Act requires a 100% cash match of any grant for acquisition, rehabilitation or new construction under the Supportive Housing Program, the rule remains unchanged in this regard.

Sharing of Supportive Service Costs

One commenter suggested that HUD require a 25% share of supportive service costs of sponsors for each year of the grant. Since section 423(a)(5) of the McKinney Act authorizes HUD to pay 100% of the cost of supportive services the rule remains unchanged in this regard.

Habitability Standards: § 583.300(b)

Several commenters recommended that HUD modify the habitability standards in § 583.300(b) with respect to space and security, and interior air quality. Several commenters recommended that the regulations specifically prohibit funding projects for congregate temporary shelters. A few commenters suggested that each resident should be guaranteed private living space with a lock on the door. One commenter felt that HUD should require that bedroom sizes in supportive housing projects conform with other federal housing programs, and that families have private food storage and preparation facilities. With respect to interior air quality, one commenter suggested more detailed regulatory requirements, including a requirement which assures that building ventilation is sufficient to reduce the risk of transmission of airborne illnesses.

While there are many ways in which the standards could be expanded to address more specific issues, the Department believes that the standards as set forth in § 583.300(b), together with applicable local health and safety standards, adequately address habitability.

Ongoing Assessment of Supportive Services: § 583.300(d)

Several commenters recommended that HUD modify § 583.300(d) to require that if a recipient determines that a participant needs a particular service which is not provided by the recipient, the recipient must either provide the service, contract out the needed service, or refer the participant to another agency. The Department believes that a regulatory provision requiring the recipient to provide supportive services for any identified need of a participant would unreasonably burden recipients. However, the Department expects that recipients who are unable to provide needed services will coordinate with other providers to assure their availability, to the extent practicable.

Residential Supervision: § 583.300(e)

Several commenters objected to the residential supervision requirement for scattered site projects. The Department agrees that in some situations residential supervision may not be necessary, and that recipients should make the determination whether residential supervision is appropriate. Section 583.300(e) has been modified to reflect this.

Participation of Homeless Persons: § 583.300(f)

Section 583.300(f) requires that at least one homeless person or formerly homeless person participate on the board of directors or an equivalent policymaking entity of the Supportive Housing project. This requirement is waived if an applicant is unable to meet it and presents a plan, for HUD approval, to otherwise consult with homeless or formerly homeless persons in considering and making such policies and decisions. One commenter suggested that a waiver to § 583.300(f) be granted only where clear evidence exists that homeless persons are being involved in the decision-making process in meaningful ways. HUD has not received any requests for a waiver of § 583.300(f) and would not grant one except where clearly warranted. As with any other regulatory requirement, grantees who do not meet the provisions of the rule are subject to the normal sanctions of the program.

One commenter asked to what extent should homeless persons be involved in the supportive housing facility. As indicated in the statute, homeless persons should be involved in supportive housing activities to the maximum extent practicable.

Confidentiality: § 583.300(h)

Two commenters felt that § 583.300(h) should be expanded to ensure that all sensitive participant information is confidential. The Department believes that the current regulations adequately address the issue of confidentiality, and is not aware of any problems involving the disclosure of confidential information concerning homeless individuals. If in the future problems arise, the Department will revisit this issue at that time.

Termination of Housing Assistance: § 583.300(i)

Several commenters were concerned that § 583.300(i) did not provide adequate due process protections prior to termination of housing assistance, and argued that participants should be treated as tenants for purposes of due process prior to eviction. Several commenters suggested that the Department make clear that the regulations not preempt any state or local law which guarantees greater protections during the termination process. Two commenters felt that the regulations should be more explicit as to the procedures required prior to termination of housing assistance, and notify homeless participants of their rights prior to termination. One commenter also felt that HUD should carefully monitor a recipient's adherence to due process requirements. Two commenters argued that a violation of program requirements should not serve as basis for termination of housing assistance to residents.

Section 583.300(i) requires that a recipient provide a formal process to a homeless participant that recognizes the homeless participant's right to due process, prior to termination of a homeless participant's housing assistance. Currently, the regulations require, at a minimum, that recipients must provide: (1) Written notice to the participant which contains a clear statement of the reasons for termination; (2) a review of the decision, in which the participant is given the opportunity to present written or oral objections to a person other than the person (or subordinate of such person) who made or approved the termination decision; and (3) prompt written notice of the final decision to the participant. The Department believes that the current regulations adequately protect a homeless person's due process rights. With regard to the preemption concern, the Department cannot affirm that the regulations do not preempt any state or local law. The Transitional Housing component with its 24-month limitation preempts such laws.

Finally, the issue of whether a violation of the SHP rules is a basis for termination of housing assistance has been subject to considerable debate within the Department. Section 426(i) of the McKinney Act allows a recipient to terminate assistance if a homeless participant violates program

the disclosure of confidential information concerning homeless individuals. If in the future problems arise, the Department will revisit this issue at that time.

Termination of Housing Assistance: § 583.300(i)

Several commenters were concerned that § 583.300(i) did not provide adequate due process protections prior to termination of housing assistance, and argued that participants should be treated as tenants for purposes of due process prior to eviction. Several commenters suggested that the Department make clear that the regulations not preempt any state or local law which guarantees greater protections during the termination process. Two commenters felt that the regulations should be more explicit as to the procedures required prior to termination of housing assistance, and notify homeless participants of their rights prior to termination. One commenter also felt that HUD should carefully monitor a recipient's adherence to due process requirements. Two commenters argued that a violation of program requirements should not serve as basis for termination of housing assistance to residents.

Section 583.300(i) requires that a recipient provide a formal process to a homeless participant that recognizes the homeless participant's right to due process, prior to termination of a homeless participant's housing assistance. Currently, the regulations require, at a minimum, that recipients must provide: (1) Written notice to the participant which contains a clear statement of the reasons for termination; (2) a review of the decision, in which the participant is given the opportunity to present written or oral objections to a person other than the person (or subordinate of such person) who made or approved the termination decision; and (3) prompt written notice of the final decision to the participant. The Department believes that the current regulations adequately protect a homeless person's due process rights. With regard to the preemption concern, the Department cannot affirm that the regulations do not preempt any state or local law. The Transitional Housing component with its 24-month limitation preempts such laws.

Finally, the issue of whether a violation of the SHP rules is a basis for termination of housing assistance has been subject to considerable debate within the Department. Section 426(i) of the McKinney Act allows a recipient to terminate assistance if a homeless participant violates program requirements. Section 583.300(i) allows a recipient to determine which program violations will result in a termination of housing assistance; however, section 583.300(i) also provides that recipients should only terminate assistance in the most severe cases. At this time, the Department believes that recipients should continue to have the discretion and flexibility to determine which program violations serve as the basis of termination of assistance.

Term of Commitment; Repayment of Grants; Prevention of Undue Benefits: § 583.305

One commenter objected to the conversion of a project which is no longer needed for supportive housing to one that serves low income persons, arguing that if a project is no longer needed for supportive housing then the project should be approved only for use for the *very* low income, rather than just for low income persons. Section 423(b)(3) of the McKinney Act authorizes the conversion of a project which is no longer needed for supportive housing to a project for low income persons. As such, the Department does not have the authority to limit conversion of SHP projects to serve only very low income persons, rather than just low income persons.

One commenter objected to the requirement that grantees operate for at least 20 years a project which was acquired, rehabilitated or constructed under the SHP unless HUD also provides operating and supportive service funding for 20 years. Section 423(b)(1) of the McKinney Act requires that projects which were acquired, rehabilitated or constructed under the SHP be operated by grantees for the purpose specified in the application for at least 20 years.

Application Process/Selection Criteria

Rating Criteria: § 583.215

Several commenters recommended that the Department modify the rating criteria in § 583.215 to specifically include: (a) Participation of homeless and formerly homeless; (b) provision of employment opportunities for homeless in the project, (c) due process protections to be adopted for a particular project; (d) proven effectiveness of an applicant; or (e) site control by the applicant. One commenter objected to targeting the "hardest to serve" homeless as a rating criterion, arguing that it was too restrictive, One commenter objected to the use of innovation as a rating criterion. Two commenters recommended that the determination of "hardest to serve" be made on the local level. One commenter felt that the current rating criteria will discriminate against rural and suburban communities with few or no shelters and with a homeless population which is living with friends and family.

Section 426(b) of the McKinney Act requires that the rating criteria include: (1) Ability of the applicant to develop and operate a project; (2) innovative quality of the proposal in providing a project; (3) need for the type of project proposed by the applicant in the area to be served; (4) extent to which the amount of assistance to be provided under this part will be supplemented with resources from other public and private sources; (5) cost effectiveness of the proposed project; and (6) extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable.

Section 426(b)(7) also authorizes the Secretary to add additional criteria, if appropriate, to carry out the SHP in an effective and efficient manner. In accordance with § 426(b)(7), the first interim rule added two additional rating criteria: (7) extent to which the project targets homeless persons living in emergency shelters or in places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and (8) quality of the project. Earlier this year, the Department published a second interim rule for SHP in which the rating criteria were revised to reflect the statutory flexibility allowed. Accordingly, the first interim rule was modified by deleting the rating criteria that do not appear in the statute (i.e., criterion 7 (extent of targeting) and criterion 8 (quality of a project)), and including the statutory language that allows such other rating factors as the Department determines to be appropriate. Any additional rating criteria will now appear in the annual notice of funds availability (NOFA) and may be adjusted from year to year based upon experience.

Selecting Applicants: § 583.220

One commenter recommended that HUD modify § 583.220(c) so that in the event of a tie between applicants HUD would use two rating criteria, rather than one, to break the tie. This commenter also suggested that the Department use the rating criteria in 583.215(b)(6) ("extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and

operation of the project") and § 583.215(b)(8) ("quality of the project") to break a tie, rather than the rating criterion in § 583.215(b)(3) ("need for the type of project proposed by the applicant in the area to be served").

The second interim rule made this an issue to be covered in the annual NOFA rather than in the regulations. Moreover, based upon HUD's experience in similar programs and the predecessor programs to the SHP, the Department does not believe that the use of one factor as a tie breaker is problematic. (The Department has never had a tie among applicants at the funding line in the SHP program or predecessor programs.)

Competitive Distribution of SHP Funds

One commenter objected to the competitive process for selecting recipients, and suggested that SHP funds be distributed to localities on a needs basis instead. Section 426(b) of the McKinney Act requires that the Secretary select applicants through a national competition based upon statutory selection criteria, and other selection criteria established by the Secretary.

Miscellaneous Comments

Renewal Grants

One commenter objected to the use of October 28, 1992 in § 583.235(a) as an arbitrary cutoff date for renewal of grants on a noncompetitive basis. The Department selected October 28, 1992 as the cutoff date because that is the date of enactment of the 1992 HCD Act. No grantee has been excluded from renewing a grant in a predecessor program as a result of the October 28, 1992 cutoff date.

One commenter suggested that HUD allow grantees who are recipients of multiple grants to combine these grants into one at the annual renewal date of any grant to provide administrative cost savings to HUD and the grantee. The Department agrees that there may be situations where it is cost effective to combine grants for renewal purposes. However, this may be done only on a case by case basis, and will not be addressed in the program regulations.

Technical Assistance: § 583.140

One commenter suggested that HUD provide technical assistance to help nonprofit providers build the capacity to successfully develop facilities and programs. Another commenter recommended that HUD provide technical assistance to service providers on ways to minimize risk of transmission of infectious diseases.

The first suggestion, since it appears to be for supportive housing projects, would be an eligible use of technical assistance funds under the regulations. The second suggestion would be an eligible use of technical assistance funds under the regulations, if done in conjunction with supportive housing projects.

Because the first interim rule was ambiguous as to whether HUD staff could provide technical assistance, the rule has been revised to make clear that HUD staff may do so. Technical assistance for supportive housing activities can often be provided most effectively by HUD staff.

The rule has also been revised to delete the two percent provision and to clarify the purpose of the technical assistance. While HUD anticipates reserving no more than two percent annually, the provision now enables HUD to spend more than that percent as necessary to improve the capacity of homeless providers and achieve the purpose of the program.

Resident Rent: § 583.315

Two commenters suggested that § 583.315(b), which addresses the use of rent, prohibit rent which is set aside for the participant's use in moving to permanent housing from counting as available income for public assistance programs. The Department does not have the authority in this program to exclude rent which is set aside for a participant's use in moving to permanent housing from counting as available income for public assistance programs. However, the Department is discussing this issue with the Department of Health and Human Services.

Waiting Lists

One commenter recommended that the final rule address a housing authority's use of waiting lists for the SHP. The Department does not believe that a housing authority's waiting list should necessarily be used to fill spaces in a supportive housing project. Homeless persons are often transient, and the Department does not believe that the use of a waiting list is the most effective way of identifying homeless persons.

Advertising SHP Projects

Several commenters felt that HUD should add a detailed regulatory provision for advertising the availability of supportive housing projects. Some of the suggestions included requiring recipients to post notices throughout the community, and send written notice to those on waiting lists with a federal preference based on homelessness. One commenter felt that a more detailed regulatory provision is necessary to assure that supportive housing projects are filled in accordance with fair housing requirements. HUD believes the current regulatory provisions are adequate with regard to fair housing requirements and advertising. The language in section 583.325 (b) and (c) addresses these issues specifically. The regulation states that use of assistance under this program must comply with the requirements of the Fair Housing Act and title VI of the Civil Rights Act of 1964, and that applicants must ensure that homeless persons can obtain information concerning the availability of supportive housing. Compliance with these requirements is a matter which is subject to monitoring by HUD.

Serving Community Residents

One commenter suggested that the SHP be more flexible and permit nonprofit agencies to serve community residents in addition to families or individuals residing in their facilities. Section 424 of the McKinney Act authorizes supportive services for homeless persons. The Department does not have the authority to permit nonprofit agencies to provide supportive services to community residents who are not homeless.

Technical Corrections

Commitment of Grant Amounts for Leasing, Supportive Services, and Operating Costs: § 583.130

This section is amended to clarify that HUD will obligate funds upon execution of a grant agreement, rather than upon approval of an application for assistance, as stated in the first interim rule. This section was in conflict with § 583.410, which states that funds are obligated when HUD and the applicant execute a grant agreement.

Limitations on Use of Assistance: § 583.150

The Department has added § 583.150(c), *Participant control of site*, to clarify that certain uses of SHP funds are not practicable where a homeless family or individual will eventually own or control the site. Applicants requesting acquisition, rehabilitation, or new construction funds must certify that the site will be used for homeless persons for not less than 20 years. As a practical matter, no applicant will be able to make this certification where the participant will eventually control the site. Therefore, this section precludes applicants from requesting acquisition, rehabilitation, or new construction funds under such circumstances.

Displacement, Relocation, and Acquisition: § 583.310

The Department is making three changes to this section. At section 583.310(f) the rule is clarified regarding the definition of "displaced person" when site changes occur. The rule states that one of the determining factors is the date the recipient submits a request for an application amendment to HUD.

At section 583.310(g) the term "selection of the project site, if later" is deleted because it is unnecessary. Formerly the sentence indicated that the term initiation of negotiations occurred at the time of execution of grant agreement or at project selection, if later. However, site control must be obtained before grant agreement execution and, therefore, could not occur at a later time.

A definition of "project" consistent with the use of the term under the Uniform Relocation Act is added at section 583.310(h).

Resident Rent: § 583.315

This section is amended to include the age of family members in the calculation of resident rent in § 583.315(a)(1). This was inadvertently left out of the interim rule.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment was made on the Interim Rule in accordance with HUD regulations in 24 CFR Part 50 which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. That Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW, Washington, DC 20410. Since the environmental provisions of this Final Rule are unchanged from those published in the Interim Rule, the original Finding of No Significant Impact is still valid.

B. Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the provisions in the rule requiring applicants to assume the responsibilities for environmental review, decisionmaking, and action under NEPA and other environmental authorities have Federalism implications. While the assignment of these responsibilities under section 104(g) of the Housing and

Displacement, Relocation, and Acquisition: § 583.310

The Department is making three changes to this section. At section 583.310(f) the rule is clarified regarding the definition of "displaced person" when site changes occur. The rule states that one of the determining factors is the date the recipient submits a request for an application amendment to HUD.

At section 583.310(g) the term "selection of the project site, if later" is deleted because it is unnecessary. Formerly the sentence indicated that the term initiation of negotiations occurred at the time of execution of grant agreement or at project selection, if later. However, site control must be obtained before grant agreement execution and, therefore, could not occur at a later time.

A definition of "project" consistent with the use of the term under the Uniform Relocation Act is added at section 583.310(h).

Resident Rent: § 583.315

This section is amended to include the age of family members in the calculation of resident rent in § 583.315(a)(1). This was inadvertently left out of the interim rule.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment was made on the Interim Rule in accordance with HUD regulations in 24 CFR Part 50 which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. That Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW, Washington, DC 20410. Since the environmental provisions of this Final Rule are unchanged from those published in the Interim Rule, the original Finding of No Significant Impact is still valid.

B. Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the provisions in the rule requiring applicants to assume the responsibilities for environmental review, decisionmaking, and action under NEPA and other environmental authorities have Federalism implications. While the assignment of these responsibilities under section 104(g) of the Housing and Community Development Act of 1974 is discretionary with HUD, it is authorized by and clearly the intent of section 443 of the McKinney Act. Therefore, the policy is not subject to review under Executive Order 12612.

C. Executive Order 12606, the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that some of the policies in this proposed rule may have a potential significant impact on the formation, maintenance, and general well-being of participating homeless families. Participation of families in the program can be expected to support family values, by helping families remain together; by enabling them to live in decent, safe, and sanitary housing; and by offering the supportive services that are necessary to acquire the skills and means to live independently in mainstream American society. Since the impact on the family is considered to be a beneficial one, no further review is necessary.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The program has been designed to allow applicants to design programs that provide housing and supportive services to homeless families and individuals with as little regulation as possible under the existing law.

E. Regulatory Agenda

This rule was listed as item no. 1653 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20462) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 14.235 and 14.236.

For the reasons stated in the preamble, 24 CFR part 583 is amended by adopting the interim rule published in the **Federal Register** on March 15, 1993 (58 FR 13870) and amended by an interim rule published in the **Federal Register** on May 10, 1994 (59 FR 24252) as final with the following amendments to read as follows:

PART 583—SUPPORTIVE HOUSING PROGRAM

1. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11389.

2. In § 583.5, the introductory text for the definition of *"Supportive services"* is revised to read as follows:

§ 583.5 Definitions.

* * * * *

Supportive services means services, which may be designed by the recipient or program participants, designed to address the special needs of the homeless persons to be served by the project. Supportive services include, but are not limited to: * * *

* * * * *

3. In § 583.100, paragraphs (b)(3), (b)(4) and (b)(5) are redesignated (b)(4), (b)(5) and (b)(6), respectively, and a new paragraph (b)(3) is added to read as follows:

§ 583.100 Types and uses of assistance.

* * * * *

(b) * * *

(3) Bring existing facilities up to a level that meets State and local government health and safety standards;

* * * * *

4. In § 583.115, paragraph (b)(2) is amended by adding a sentence to the end, to read as follows:

§ 583.115 Grants for leasing.

* * * * *

(b) * * *

(2) *Leasing individual units.* * * * Recipients may use grant funds in an amount up to one month's rent to pay the non-recipient landlord for any damages to leased units by homeless participants.

5. In § 583.120, paragraph (a) is amended by revising the first sentence, to read as follows:

§ 583.120 Grants for supportive services costs.

(a) *General.* HUD will provide grants to pay (as described in § 583.130 of this part) for the actual costs of supportive services for homeless persons for up to five years. * * *

* * * * *

6. Section 583.130 is revised to read as follows:

§ 583.130 Commitment of grant amounts for leasing, supportive services, and operating costs.

Upon execution of a grant agreement covering assistance for leasing,

supportive services, or operating costs, HUD will obligate amounts for a period not to exceed five operating years. The total amount obligated will be equal to an amount necessary for the specified years of operation, less the recipient's share of operating costs.

(Approved by the Office of Management and Budget under OMB Control Number 2506–0112)

7. Section 583.140 is revised to read as follows:

§ 583.140 Technical assistance.

(a) *General.* HUD may set aside funds annually to provide technical assistance, either directly by HUD staff or indirectly through third-party providers, for any supportive housing project. This technical assistance is for the purpose of promoting the development of supportive housing and supportive services as part of a continuum of care approach, including innovative approaches to assist homeless persons in the transition from homelessness, and promoting the provision of supportive housing to homeless persons to enable them to live as independently as possible.

(b) *Uses of technical assistance.* HUD may use these funds to provide technical assistance to prospective applicants, applicants, recipients, or other providers of supportive housing or services for homeless persons, for supportive housing projects. The assistance may include, but is not limited to, written information such as papers, monographs, manuals, guides, and brochures; person-to-person exchanges; and training and related costs.

(c) *Selection of providers.* From time to time, as HUD determines the need, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary, to implement the technical assistance.

8. In § 583.150, paragraph (b) is removed, paragraph (c) is redesignated as (b), and a new paragraph (c) is added to read as follows:

§ 583.150 Limitations on use of assistance.

* * * * *

(c) *Participant control of site.* Where an applicant does not propose to have control of a site or sites but rather proposes to assist a homeless family or individual in obtaining a lease, which may include assistance with rent payments and receiving supportive services, after which time the family or individual remains in the same housing without further assistance under this part, that applicant may not request assistance for acquisition, rehabilitation, or new construction.

9. In § 583.300, paragraph (e) is amended by revising the first sentence, to read as follows:

§ 583.300 General operation.

* * * * *

(e) *Residential supervision.* Each recipient of assistance under this part must provide residential supervision as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. * * *

* * * * *

10. In § 583.310, paragraphs (f)(1)(i) and (g) are revised; and paragraph (h) is added, to read as follows:

§ 583.310 Displacement, relocation, and acquisition.

* * * * *

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently as a direct result of acquisition, rehabilitation, or demolition for supportive housing projects assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person that moves permanently from the real property after the property owner (or person in control of the site) issues a vacate notice, or refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance, if the move occurs on or after the date the recipient submits to HUD the application or application amendment designating the project site.

* * * * *

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the recipient and HUD.

(h) *Definition of project.* For purposes of this section, the term "project" means an undertaking paid for in whole or in part with assistance under this part. Two or more activities that are integrally related, each essential to the others, are considered a single project, whether or not all component activities receive assistance under this part.

11. In § 583.315, paragraph (a)(1) is revised to read as follows:

§ 583.315 Resident rent.

(a) *Site control.* (1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses);

* * * * *

Dated: July 6, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94–17496 Filed 7–18–94; 8:45 am]

BILLING CODE 4210–29–P

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc.)
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public L
numbers, **Federal Register** finding aids, and list of
documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and th
documents on public inspection are available on th
National Archives fax-on-demand system. You mus
from a fax machine. There is no charge for the serv
except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11
35461–35606.....12
35607–35846.....13
35847–36016.....14
36017–36350.....15
36351–36690.....18
36691–36892.....19

Reader Aids

Federal Register

Vol. 59, No. 137

Tuesday, July 19, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342	1
34343–34552	5
34553–34754	6
34755–34966	7
34967–35210	8
35211–35460	11
35461–35606	12
35607–35846	13
35847–36016	14
36017–36350	15
36351–36690	18
36691–36892	19

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 94–29 of June 27, 1994 35211
No. 94–30 of June 30, 1994 35607
No. 94–31 of July 1, 1994 35609

Memorandums:

June 30, 1994 34341
July 11, 1994 36017

Proclamations:

6641 (See Proc. 6704) 34329
6704 34329
6705 34343

Executive Orders:

1919½ (Revoked in part by PLO 7065) 35054
12002 (See EO 12923) 34551
12214 (See EO 12923) 34551
12735 (See EO 12923) 34551
12755 (See EO 12923) 34551
12851 (See EO 12923) 34551
12901 (See USTR notice of July 15) 36234
12923 34551

5 CFR

179 ..... 35213, 35215
532 ..... 36019, 36351
772 36352
2610 34755
2634 34755
2636 34755
2641 34755

Proposed Rules:

575 34393
3201 35480

7 CFR

1 36019
2 36020
272 34553
275 34553
283 34553
301 35611
319 35564
354 35612
406 35613
916 33897
917 33897
928 33898
929 36021
947 33900
981 ..... 35222, 35847
998 36353
1205 33901
1421 34345
1755 ..... 34353, 34899

Proposed Rules:

46 35487
322 36373
925 36091
944 36091
989 36093
1030 36094
1036 33922
1106 36095

8 CFR

103 33903
212 35614
245 33903
245a 33903
264 33903
274a 33903
299 35978

Proposed Rules:

204 36729
214 35866

9 CFR

77 36691
78 ..... 35615, 36023
92 ..... 34375, 36024
97 34756
Ch. III 34375

Proposed Rules:

50 36374
77 36374
92 36374
317 34396
381 35639

10 CFR

2 36026
30 36026
40 ..... 35618, 36026
50 35461
70 36026
72 ..... 35618, 36026
74 35618
75 35618
150 35618
710 35178

Proposed Rules:

Ch. I 36374
1003 34767

11 CFR

102 35785

12 CFR

701 36040
709 36040

745.....36040
747.....36040
790.....36040
791.....36040
792.....36040
793.....36040
794.....36040

Proposed Rules:
220.....33923
230.....35271
336.....35480

13 CFR
108.....36042
120.....36042
123.....36042, 36045

14 CFR
21.....34572
23.....34572
39.....34574, 34576, 34757, 34758, 34899, 34967, 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247, 36046, 36047
71.....34577, 34758, 34759, 34760, 35248, 36050
73.....36692
91.....34578
97.....35248, 35250
1209.....35623
1260.....36355

Proposed Rules:
Ch. I.....35868
21.....34779
23.....35196
33.....35272
39.....34396, 34584, 35488, 35490, 36096, 36098, 36375, 36376
71.....34192, 34585, 35492, 35869, 36099, 36100, 36730
93.....34192

15 CFR
2.....34968
4.....34968
305.....34014

Proposed Rules:
Chapter II.....35657
22.....35661
300.....34780
301.....34780
303.....34780
1117.....33925
1307.....35058
1500.....33928, 33932

17 CFR
1.....34376
33.....34376
190.....34376
228.....36258
229.....36258
230.....36258
232.....36262
259.....36258

Proposed Rules:
228.....36264
229.....36264
230.....36264
232.....36264
239.....36264
240.....34781, 36264
249.....36264
250.....36264
259.....36264
260.....36264
269.....36264
270.....36264
274.....36264

18 CFR
284.....35462

Proposed Rules:
35.....35274

19 CFR
174.....34970

Proposed Rules:
141.....36102
142.....36102

20 CFR
416.....33906

21 CFR
5.....35848
341.....36051
510.....33908
520.....33908, 35251
558.....35251
1220.....35252

Proposed Rules:
101.....36379
102.....36103
203.....36107
205.....36107
341.....34781

22 CFR
60.....33909
61.....33909
62.....33909
63.....33909
64.....33909
65.....33909
514.....34760

23 CFR
655.....33909
658.....36051

Proposed Rules:
637.....35493

24 CFR
17.....34578
200.....36692
583.....36886
791.....35253
813.....36662
880.....36616
881.....36616
882.....36616, 36662
883.....36616
884.....36616
885.....36616
886.....36616
887.....36662
889.....36616
904.....36616
905.....36616
906.....36616
960.....36616
982.....36662
3280.....34294

Proposed Rules:
43.....34300
92.....34300
100.....34902
203.....36846
570.....34300
941.....35834
982.....36846
984.....36846

25 CFR

Proposed Rules:
Ch. I.....36108
164.....35580
165.....35580

26 CFR
1.....34971, 35030, 35414, 36256, 36356, 36360
31.....35414
40.....35414
602.....34971, 35030, 36356, 36360

Proposed Rules:
1.....34398, 35066, 35418, 36114, 36394
31.....35418
40.....35418

27 CFR
5.....35623

28 CFR
551.....34742
571.....35456

29 CFR
1910.....33910, 34580, 36695
1915.....36695
1917.....36695
1918.....36695
1926.....36695
1928.....36695
2610.....36054
2619.....36055
2622.....36054
2644.....36058
2676.....36055

Proposed Rules:
Ch. XXVI.....35067
Ch. XL.....35067
1915.....34586

30 CFR
914.....36059
944.....35255

Proposed Rules:
75.....35071
Ch. II.....36108
Ch. IV.....36108
Ch. VI.....36108
Ch. VII.....36108
914.....36114
920.....35289
944.....35871

31 CFR
51.....35624
52.....35624
550.....35259

32 CFR
90.....34382, 35463, 36367
91.....34382, 35463, 36367
155.....35464
369.....35261
383.....34382
384.....35262
389.....34382
552.....34581, 34761
706.....35033, 35849

Proposed Rules:
553.....34782

33 CFR
1.....36316
4.....34210
26.....36316
117.....36062
130.....34210
131.....34210
132.....34210
137.....34210
138.....34210
160.....36316
161.....36316
162.....36316
164.....36316
165.....36316
334.....35850

Proposed Rules:
165.....35290, 35661
322.....34783
334.....33939

34 CFR
74.....34722
77.....34722
641.....34198
668.....34964, 36368
682.....34964, 35624
685.....34278
690.....34964

Proposed Rules:
Ch. VI.....34398

35 CFR

Proposed Rules:
133.....36398
135.....36398

36 CFR
242.....36063
292.....36866
704.....35034

Proposed Rules:
Ch. I.....36108

38 CFR
3.....34382, 35265, 35464, 35851

39 CFR
111.....33911
233.....35851
266.....35625

Proposed Rules:
111.....35873

40 CFR
9.....33912, 34070
35.....35852
52.....33914, 34383, 35035, 35036, 35044, 35411, 36700
55.....36065
61.....36280
80.....35854
81.....35044
85.....33912
86.....33912, 36368
112.....34070
141.....34320
142.....34320
180.....35627, 35629

185.....35629
186.....35629
271.....35266
300.....35852
372.....34386
600.....33912

Proposed Rules:
Ch. I.....33940
51.....35292
52.....33941, 34399, 34401, 35072, 35079, 35875, 35883, 36116, 36120, 36123, 36128, 36408, 36731
60.....36130
63.....36130
81.....35079
141.....35891
143.....35891
152.....35662
174.....35662
180.....35663
185.....33941

42 CFR
51a.....36703
405.....36069
412.....36707
413.....36707
414.....36069
417.....36072
418.....36707
431.....36072
434.....36072
1003.....36072

Proposed Rules:
57.....36733
421.....35664, 36415
440.....36419

43 CFR
12.....36713

Public Land Order:
7055.....34899
7064.....
7065.....
7067.....
7068.....
7069.....

Proposed Rules:
Ch. I.....
Ch. II.....
Subtitle A.....
2800.....
2810.....
2880.....

44 CFR
64.....
322.....
362.....

Proposed Rules:
67.....

45 CFR
5b.....

Proposed Rules:
615.....

46 CFR
68.....

47 CFR
Ch. I.....
22.....
43.....
73.....34391
74.....
80.....
87.....

Proposed Rules:
Chapter I.....
61.....
64.....
69.....

185.....35629
186.....35629
271.....35266
300.....35852
372.....34386
600.....33912

Proposed Rules:
Ch. I.....33940
51.....35292
52.....33941, 34399, 34401, 35072, 35079, 35875, 35883, 36116, 36120, 36123, 36128, 36408, 36731
60.....36130
63.....36130
81.....35079
141.....35891
143.....35891
152.....35662
174.....35662
180.....35663
185.....33941

42 CFR

51a.....36703
405.....36069
412.....36707
413.....36707
414.....36069
417.....36072
418.....36707
431.....36072
434.....36072
1003.....36072

Proposed Rules:
57.....36733
421.....35664, 36415
440.....36419

43 CFR

12.....36713

Public Land Order:
7055.....34899
7064.....34582
7065.....35054
7067.....35859
7068.....35859
7069.....35267

Proposed Rules:
Ch. I.....36108
Ch. II.....36108
Subtitle A.....36108
2800.....35596
2810.....35596
2880.....35596

44 CFR

64.....36370
322.....36087
362.....35630

Proposed Rules:
67.....36421

45 CFR

5b.....36717

Proposed Rules:
615.....35079

46 CFR

68.....36088

47 CFR

Ch. I.....35631
22.....35054
43.....35632
73.....34391, 34766, 35055, 35268
74.....35635
80.....35268
87.....35268

Proposed Rules:
Chapter I.....35664
61.....33947
64.....33947
69.....33947
73.....34404, 34405, 35081, 35082, 35292, 35293, 35785, 35893, 35894, 36735, 36736
74.....35665
97.....36157

48 CFR

206.....36088
222.....36088
226.....36088
237.....36088
252.....36088

Proposed Rules:
Ch. XIV.....36108
209.....35895
252.....35895
926.....35294
952.....35294
970.....35294

49 CFR

172.....35411
195.....35465, 36256
392.....34708
393.....34708, 34712
571.....35636
1056.....34392

Proposed Rules:
171.....36488
172.....36488
173.....36488
175.....36488
176.....36488
177.....36488
178.....36488
383.....36338
541.....3508
571.....34405, 35298, 35300, 35670, 35672

50 CFR

14.....36719
17.....35860
100.....36063
215.....35471
216.....35864
229.....34899
301.....35474, 35475, 36719
625.....36720
630.....36090
650.....36720
651.....35056, 36725
658.....34582
672.....35056
675.....33920, 34392, 34583, 35056, 35057, 35476, 35638, 36727
681.....35270

Proposed Rules:
Ch. I.....36108
Ch. II.....35674
Ch. IV.....36108
17.....34784, 35089, 35303, 35304, 35305, 35307, 35496, 35584, 35674, 35896, 35900, 36737
20.....35566
32.....36342, 36348
222.....35089
227.....36158
644.....35308
654.....33947

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 11, 1994

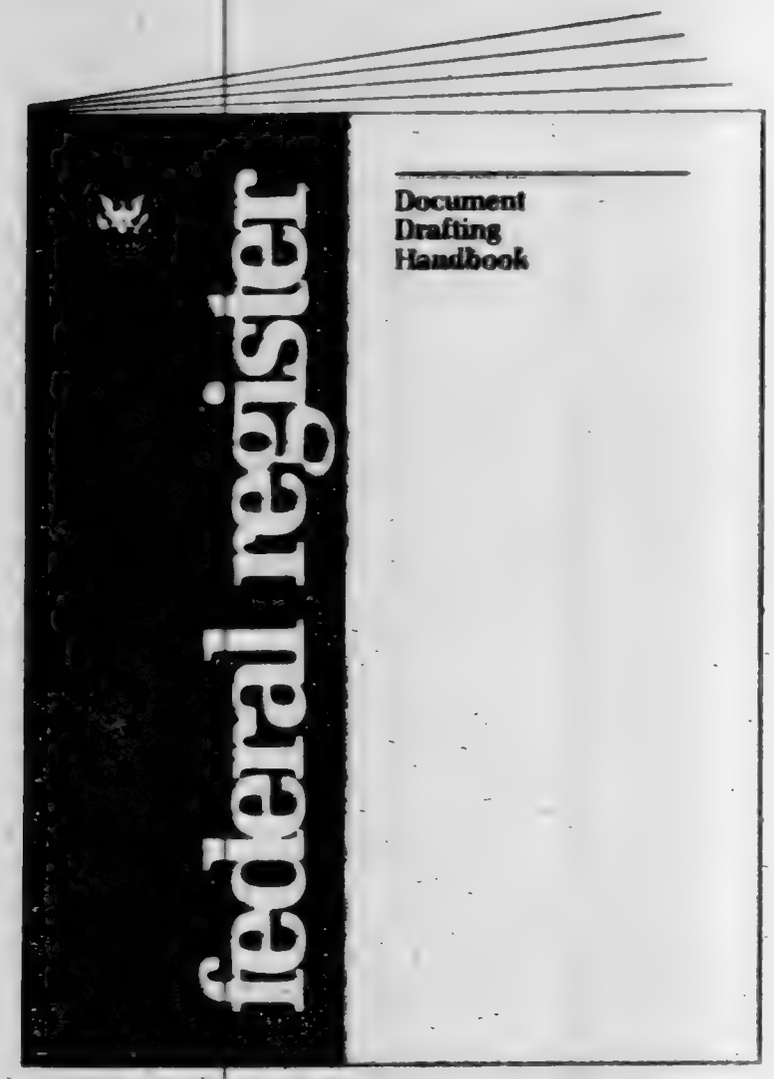

Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy!

To fax your orders and inquiries—(202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069-000-00037-1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%. All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev 12/91)

4. **Mail To:** New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954

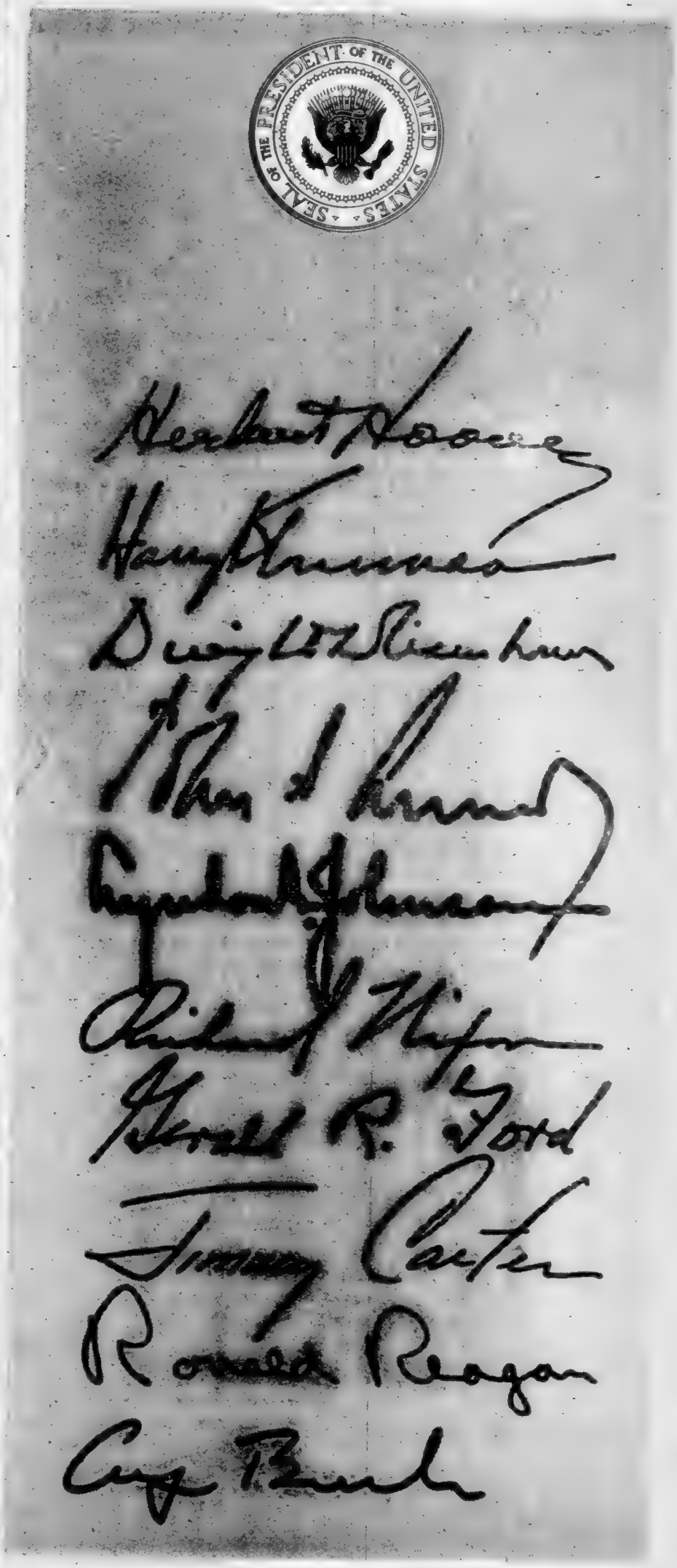

Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House

Volumes for the following years are available; other volumes not listed are out of print

Ronald Reagan

1984
(Book II) $36.00

1985
(Book I) $34.00

1985
(Book II) $36.00

1986
(Book I) $37.00

1986
(Book II) $35.00

1987
(Book I) $33.00

1987
(Book II) $35.00

1988
(Book I) $39.00

1988–89
(Book II) $38.00

George Bush

1989
(Book I) $38.00

1989
(Book II) $40.00

1990
(Book I) $41.00

1990
(Book II) $41.00

1991
(Book I) $41.00

1991
(Book II) $44.00

1992
(Book I) $47.00

1992–93
(Book II) $49.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

103d Congress, 2d Session, 1994

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 2d Session, 1994.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws.)

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code
* 6216

Charge your order.
It's Easy!

MasterCard VISA

To fax your orders (202) 512-2233

☐ **YES**, enter my subscription(s) as follows:

subscriptions to **PUBLIC LAWS** for the 103d Congress, 2d Session, 1994 for $156 per subscription

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES [ ] NO [ ]

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account [ ][ ][ ][ ][ ]-[ ]
☐ VISA or MasterCard Account
[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]
[ ][ ][ ][ ] (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (1/94)

Mail To: New Orders, Superintendent of Documents
PO Box 371954, Pittsburgh, PA 15250-7954

VOL
59

SS

1
3
7

JL
19

994

MI

Printed on recycled paper

VOL
59
SS
138
JL
20
994
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

****

A FR UMISE
UMI SERIALS
300 N ZEEB R
PO BOX 1346
ANN ARBOR

**********3-DIGIT 481

A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106

SMI
994
JUL
20
SS
1
3
8
OL
9
9

7-20-94
Vol. 59 No. 138
Pages 36893–37152

Federal Register

7–20–94
Vol. 59 No. 138
Pages 36893–37152

federal register

Wednesday
July 20, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders; Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche — 202–512–1800
Assistance with public subscriptions — 512–1806

Online:
Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.
Assistance with online subscriptions — 202–512–1530

Single copies/back copies:
Paper or fiche — 512–1800
Assistance with public single copies — 512–1803

FEDERAL AGENCIES

Subscriptions:
Paper or fiche — 523–5243
Assistance with Federal agency subscriptions — 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Agriculture Department
See Animal and Plant Health Inspection Se
See Forest Service
See Rural Electrification Administration

Air Force Department
NOTICES
Environmental statements; availability, etc.
Fort MacArthur Upper Reservation, CA; housing construction, 37034

Animal and Plant Health Inspection Servic
PROPOSED RULES
Plant-related quarantine, domestic:
Fire ants, imported, 36996–36998

Army Department
NOTICES
Military traffic management:
Domestic personal property rate solicitat
Patent licenses; non-exclusive, exclusive, o exclusive:
Hyperproducing cellulase microorganism

Coast Guard
PROPOSED RULES
Inland and international navigation rules:
Technical lighting provisions and interp regulations, 37003–37008

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Ad
NOTICES
Agency information collection activities un review, 37025
Meetings:
National information infrastructure; inter 37025

Commission on Immigration Reform
NOTICES
Meetings, 37033

Committee for the Implementation of Text
NOTICES
Cotton, wool, and man-made textiles:
China, 37032–37033

Community Services Office
NOTICES
Grants and cooperative agreements; availab
Low income home energy assistance prog

Defense Department
See Air Force Department
See Army Department
NOTICES
Agency information collection activities un review, 37033
Meetings:
Science Board task forces, 37033–37034

Contents

Federal Register

Vol. 59, No. 138

Wednesday, July 20, 1994

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See Rural Electrification Administration

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Fort MacArthur Upper Reservation, CA; military family housing construction, 37034

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant-related quarantine, domestic:
Fire ants, imported, 36996–36998

Army Department
NOTICES
Military traffic management:
Domestic personal property rate solicitation, 37034
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Hyperproducing cellulase microorganism, 37034–37035

Coast Guard
PROPOSED RULES
Inland and international navigation rules:
Technical lighting provisions and interpretive regulations, 37003–37008

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 37025
Meetings:
National information infrastructure; international aspects, 37025

Commission on Immigration Reform
NOTICES
Meetings, 37033

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 37032–37033

Community Services Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Low income home energy assistance program, 37046

Defense Department
See Air Force Department
See Army Department
NOTICES
Agency information collection activities under OMB review, 37033
Meetings:
Science Board task forces, 37033–37034

Education Department
NOTICES
Agency information collection activities under OMB review, 37035

Energy Department
NOTICES
Grant and cooperative agreement awards:
Gentrex-Nevada, Inc., 37036
MacCarley, Dr. Carl A., 37036
National Urban Coalition, 37035–37036
Meetings:
National energy policy, 37036–37037

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines, etc.:
Nonroad engine and vehicle standards State regulation preemption, 36969–36987
Clean Air Act:
Fuel and fuel additives; reformulated gasoline, 36944–36969
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Arizona, 37018–37019
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Tetrachlorvinphos, etc.; withdrawn, 37019–37020
NOTICES
Agency information collection activities under OMB review, 37037–37038
Committees; establishment, renewal, termination, etc.:
FIFRA Scientific Advisory Panel, 37038
Pesticide applicator certification; Federal and State plans:
Nebraska, 37038–37039
Pesticides registration, cancellation, etc.:
Triumph 4E Insecticide, etc., 37039–37042

Executive Office of the President
See Presidential Documents

Family Support Administration
See Community Services Office

Federal Aviation Administration
RULES
Airworthiness directives:
General Electric, 36930–36932
McDonnell Douglas, 36932–36935
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 36998–37000

Federal Communications Commission
RULES
Radio stations; table of assignments:
South Dakota et al., 36987
PROPOSED RULES
Radio stations; table of assignments:
Texas, 37020–37021

Federal Emergency Management Agency
NOTICES
Agency information collection activities under OMB review, 37042
Disaster and emergency areas:
Alabama, 37043
Florida, 37043

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Eritrean Air & Sea Services, Inc., et al., 37043
Senior Executive Service:
Performance Review Board; membership, 37043

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 37132
Applications, hearings, determinations, etc.:
Gempeler, Geoffrey J., 37043–37044
SOLO, 37044

Federal Trade Commission
NOTICES
Prohibited trade practices:
Community Associations Institute, 37044
El Portal Luggage, Inc., 37044–37045
Martin Marietta Corp., 37045
Service Corporation International, 37045
Sonic Technology Products, Inc., et al., 37045
W.D.I.A. Corp. et al., 37045–37046

Fish and Wildlife Service
RULES
Endangered and threatened species:
Rio Grande silvery minnow, 36988–36995
PROPOSED RULES
Hunting and fishing:
Refuge-specific regulations, 37134–37140
NOTICES
Endangered and threatened species permit applications, 37050

Food and Drug Administration
RULES
Food additives:
Cellulose triacetate, 36935–36937

Forest Service
NOTICES
Environmental statements; availability, etc.:
Allegheny National Forest, PA, 37023
Ouachita National Forest, AR, 37023–37025

Health and Human Services Department
See Community Services Office
See Food and Drug Administration
See Health Care Financing Administration
See Social Security Administration
NOTICES
Organization, functions, and authority delegations:
National Institutes of Health, 37047

Health Care Financing Administration
NOTICES
Agency information collection activities under OMB review, 37046–37047

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgment of existence determinations, etc.:
Gabrielino Tongva Tribal Council, 37047
Langley Band of Chickamogee Cherokee Indians of Southeastern United States, 37047
Mohegan Indian Tribe of Connecticut; correction, 37144
Tribal-State Compacts approval; Class III (casino) gambling:
Nooksack Indian Tribe, WA, 37142

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Elderly tax counseling program; application packages; availability, 37129–37130
Organization, functions, and authority delegations:
Deputy Assistant Commissioner (International) et al., 37130–37131
Taxable substances, imported:
Monochlorobenzene, etc., 37131

International Trade Administration
NOTICES
Antidumping:
Small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from—
Argentina et al., 37025–37027
Countervailing duties:
Lead and bismuth carbon steel products from—
Germany, 37028
Small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from—
Italy, 37029–37031

International Trade Commission
NOTICES
Import investigations:
Acid-washed denim garments and accessories, including jeans, jackets, bags, and skirts, 37053–37054
Antidumping and countervailing duty orders and suspension agreements; economic effects, 37055
Carbon steel butt-weld pipe fittings from—
India et al., 37054
Personal computers with memory management information stored in external memory and related materials, 37055–37056
Saccharin from—
China, 37056–37057

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Wisconsin & Southern Railroad Co., 37057

Justice Department
NOTICES
Agency information collection activities under OMB review, 37057–37058

Land Management Bureau
NOTICES
Boundary establishment, descriptions, etc.:
Sandy and Salmon Rivers, OR, 37048
Realty actions; sales, leases, etc.:
California, 37048
Withdrawal and reservation of lands:
Arizona, 37048–37049
Colorado, 37049–37050

National Highway Traffic Safety Administra
PROPOSED RULES
Motor vehicle safety standards:
Air brake systems—
Air pressure warning signal requiremen denied, 37021–37022
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations,

National Oceanic and Atmospheric Admini
NOTICES
Meetings:
Monterey Bay National Marine Sanctuary Council, 37031
Pacific Fishery Management Council, 370

National Park Service
NOTICES
Meetings:
Underground Railroad Advisory Committe
National Register of Historic Places:
Pending nominations, 37051–37052
Native American human remains and associ objects:
Denver Art Museum, CO; Elk Tongue Bea 37052–37053
Robert Abbe Museum, ME; inventory, 370

Nuclear Regulatory Commission
RULES
Fee schedules revision; 100% fee recovery (36895–36930
NOTICES
Advanced boiling water reactor standard de approvals:
GE Nuclear Energy, 37058–37059
Environmental statements; availability, etc.:
Toledo Edison Co. et al., 37059
Meetings:
Reactor Safeguards Advisory Committee,
Operating licenses, amendments; no signific considerations; biweekly notices, 37060
Applications, hearings, determinations, etc.:
Connecticut Yankee Atomic Power Co., 37

Peace Corps
NOTICES
Agency information collection activities und review, 37099–37100

Pension Benefit Guaranty Corporation
NOTICES
Multiemployer plans:
Bond/escrow requirement; exemption requ
Home Team L.P., 37100–37101
San Francisco Baseball Associates, L.P.,

Land Management Bureau
NOTICES
Boundary establishment, descriptions, etc.:
Sandy and Salmon Rivers, OR, 37048
Realty actions; sales, leases, etc.:
California, 37048
Withdrawal and reservation of lands:
Arizona, 37048–37049
Colorado, 37049–37050

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Air brake systems—
Air pressure warning signal requirements; petition denied, 37021–37022
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 37124–37127

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Monterey Bay National Marine Sanctuary Advisory Council, 37031
Pacific Fishery Management Council, 37031–37032

National Park Service
NOTICES
Meetings:
Underground Railroad Advisory Committee, 37051
National Register of Historic Places:
Pending nominations, 37051–37052
Native American human remains and associated funerary objects:
Denver Art Museum, CO; Elk Tongue Beaver Bundle, 37052–37053
Robert Abbe Museum, ME; inventory, 37052

Nuclear Regulatory Commission
RULES
Fee schedules revision; 100% fee recovery (1994 FY), 36895–36930
NOTICES
Advanced boiling water reactor standard design; design approvals:
GE Nuclear Energy, 37058–37059
Environmental statements; availability, etc.:
Toledo Edison Co. et al., 37059
Meetings:
Reactor Safeguards Advisory Committee, 37059–37060
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 37060–37099
Applications, hearings, determinations, etc.:
Connecticut Yankee Atomic Power Co., 37099

Peace Corps
NOTICES
Agency information collection activities under OMB review, 37099–37100

Pension Benefit Guaranty Corporation
NOTICES
Multiemployer plans:
Bond/escrow requirement; exemption requests—
Home Team L.P., 37100–37101
San Francisco Baseball Associates, L.P., 37101–37103

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Second-class mail contents, 37011–37018
Walk-sequenced bulk third-class mail standards revisions, 37011

Presidential Documents
PROCLAMATIONS
Special observances:
Captive Nations Week (Proc. 6706), 36893
ADMINISTRATIVE ORDERS
Dominican Republic; emergency military assistance (Presidential Determination No. 94–34 of July 15, 1994), 37149
Iraqi emergency; continuation (Notice of July 19, 1994), 37151
Palestinian refugees in Middle East; designation as qualifying for assistance (Presidential Determination No. 94–33 of July 14, 1994), 37147

Public Health Service
See Food and Drug Administration

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 37127–37129

Rural Electrification Administration
PROPOSED RULES
Electric loans:
Power supply borrowers; credit support; 36998

Securities and Exchange Commission
NOTICES
Joint industry plan:
National Association of Securities Dealers, Inc., et al.; joint transaction reporting plan, 37103–37106
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 37106–37107
Chicago Board Options Exchange, Inc., 37107–37110, 37112–37113
Chicago Stock Exchange, Inc., 37110–37112
Municipal Securities Rulemaking Board, 37113–37114
Options Clearing Corp., 37114–37115
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 37108–37109
Chicago Stock Exchange, Inc., 37113
Cincinnati Stock Exchange, Inc., 37113
Philadelphia Stock Exchange, Inc., 37115–37116
Applications, hearings, determinations, etc.:
First Northern American Life Assurance Co. et al., 37116–37118
North American Security Life Insurance Co. et al., 37118–37121

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 37121

Social Security Administration
PROPOSED RULES
Social security benefits:
Pensions based on noncovered employment; computing benefit amounts, disposing of underpayments, etc., 37000–37002

Presumption of death; evidence requirement, 37002–37003

State Department
NOTICES
Foreign assistance determinations:
Palestine Liberation Organization, 37121–37122

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania, 36937–36944
NOTICES
Agency information collection activities under OMB review, 37053

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
RULES
Organization, functions, and authority delegations:
Maritime Administrator, 36987–36988
NOTICES
Agency information collection activities under OMB review, 37122–37124
Aviation proceedings:
Hearings, etc.—
American International Airways, Inc., et al., 37124

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
PROPOSED RULES
Legal Services, General Counsel:
Expanded remote access to computerized veterans claims records by accredited representatives, 37008–37010

Separate Parts In This Issue

Part II
Department of the Interior, Fish and Wildlife Service, 37134–37140

Part III
Department of the Interior, Bureau of Indian Affairs, 37142

Part IV
Department of the Interior, Bureau of Indian Affairs, 37144

Part V
The President, 37145–37151

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month ca
Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6706.....36893
Executive Orders:
12722 (Continued by Notice of July 19).....37151
12724 (Continued by Notice of July 19).....37151
Administrative Orders:
Presidential Determinations:
No. 94–33 of July 14, 1994.....37147
No. 94–34 of July 15, 1994.....37149
Notice:
July 19, 1994.....37151

7 CFR
Proposed Rules:
301.....36996
1710.....36998

10 CFR
170.....36895
171.....36895

14 CFR
39 (2 documents).....36930, 36932
Proposed Rules:
39.....36998

20 CFR
Proposed Rules:
404 (2 documents).....37000, 37002

21 CFR
173.....36935

30 CFR
938.....36937

33 CFR
Proposed Rules:
80.....37003
82.....37003
84.....37003
87.....37003
88.....37003
90.....37003

38 CFR
Proposed Rules:
14.....37008

39 CFR
Proposed Rules:
111 (2 documents).....37011

40 CFR
80.....36944
85.....36969
Proposed Rules:
52.....37018
180.....37019

47 CFR
73.....36987
Proposed Rules:
73.....37020

49 CFR
1.....36987
Proposed Rules:
552.....37021

50 CFR
17.....36988

Proposed Rul
32.....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6706.....36893
Executive Orders:
12722 (Continued by Notice of July 19).....37151
12724 (Continued by Notice of July 19).....37151
Administrative Orders:
Presidential Determinations:
No. 94–33 of July 14, 1994.....37147
No. 94–34 of July 15, 1994.....37149
Notice:
July 19, 1994.....37151

7 CFR
Proposed Rules:
301.....36996
1710.....36998

10 CFR
170.....36895
171.....36895

14 CFR
39 (2 documents).....36930, 36932
Proposed Rules:
39.....36998

20 CFR
Proposed Rules:
404 (2 documents).....37000, 37002

21 CFR
173.....36935

30 CFR
938.....36937

33 CFR
Proposed Rules:
80.....37003
82.....37003
84.....37003
87.....37003
88.....37003
90.....37003

38 CFR
Proposed Rules:
14.....37008

39 CFR
Proposed Rules:
111 (2 documents).....37011

40 CFR
80.....36944
85.....36969
Proposed Rules:
52.....37018
180.....37019

47 CFR
73.....36987
Proposed Rules:
73.....37020

49 CFR
1.....36987
Proposed Rules:
552.....37021

50 CFR
17.....36988
Proposed Rules:
32.....37134

OL
59
SS
1
38
JL
20
994
MI

Federal Register
Vol. 59, No. 138
Wednesday, July 20, 1994

Pre

Title 3—

The President

Proc

Cap

By t

A Pr

This
natio
to su
stride
wom
shad
faith

For
articu
ages.
expr
long-

Free
maki
will
but
in A
can.

But
still
we a
anim
ourse
for p
worl

The
has a
ing t

NOW
of A
Natio
week
cate
was

IN W
of Ju
of th
and

[FR Doc. 94–17794
Filed 7–18–94; 2:16 pm]
Billing code 3195–01–P

Federal Register
Vol. 59, No. 138
Wednesday, July 20, 1994

Presidential Documents

Title 3—

The President

Proclamation 6706 of July 15, 1994

Captive Nations Week, 1994

By the President of the United States of America

A Proclamation

This year marks the 35th commemoration of "Captive Nations Week," our national expression of support for the people of the world who continue to suffer the yoke of oppressive governments. Freedom has made great strides in recent years, thanks to the quiet heroism of countless men and women. Yet far too many members of the human family still live in the shadows, shackled and intimidated in regimes of fear, and we must keep faith with them.

For over 200 years, this Nation has worked to realize the vision of freedom articulated by our founders, and before them by thinkers throughout the ages. Our commitment to the eternally-unfolding meaning and spirit of liberty expresses not only our most cherished values, but also our best hope for long-term international stability.

Freedom is a work in process. The people of the former Soviet bloc are making the arduous transition to free societies and free markets, and we will endeavor to support them as best we can. Less outwardly dramatic, but no less moving, are the democratic transitions that have taken place in Asia, Africa, and Latin America, and there too, we will do what we can.

But great numbers of men and women are still not free. Authoritarianism still wields an iron grip over the lives of millions. And in this new time we are confronted by the alarming specter of racial, ethnic, and religious animosities and violence. It is thus all the more reason for us to recommit ourselves to the work of promoting respect for universal human rights and for political freedom for people of all races, creeds, and nationalities the world over.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 17 through July 23, 1994, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities, and in so doing to rededicate ourselves to the principles of freedom and justice on which this Nation was founded and by which we will endure.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of July, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94–17794
Filed 7–18–94; 2:16 pm]
Billing code 3195–01–P

OL
5 9
SS
1
3
8
JL
20
994
MI

Rules and Regulation

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150–AF03

Revision of Fee Schedules; 100% Fee Recovery, FY 1994

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement Public Law 101–508, enacted November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1994 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1994 is approximately $513 million.

EFFECTIVE DATE: August 19, 1994.

ADDRESSES: Copies of comments received and the agency workpapers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–415–6213.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to Comments.
III. Final Action—Changes Included In The Final Rule.
IV. Section-by-Section Analysis.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.

Rules and Regulations

Federal Register
Vol. 59, No. 138
Wednesday, July 20, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150–AF03

Revision of Fee Schedules; 100% Fee Recovery, FY 1994

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement Public Law 101–508, enacted November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1994 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1994 is approximately $513 million.

EFFECTIVE DATE: August 19, 1994.

ADDRESSES: Copies of comments received and the agency workpapers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–415–6213.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to Comments.
III. Final Action—Changes Included In The Final Rule.
IV. Section-by-Section Analysis.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.
IX. Backfit Analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. The services provided by the NRC for which these fees are assessed include the review of applications for the issuance of new licenses or approvals, amendments to or renewal of licenses or approvals, and inspections of licensed activities. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

Subsequent to enactment of OBRA–90, the NRC published six final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the **Federal Register** that established the Part 170 professional hourly rate and the materials licensing and inspection fees, as well as the Part 171 annual fees, to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and methodology for determining both the 10 CFR Part 170 hourly rate and fees and the 10 CFR Part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties. The U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on those challenges on March 16, 1993, in *Allied-Signal v. NRC,* remanding two issues to the NRC for further consideration (988 F.2d 146 (D.C. Cir. 1993)). The court decision was also extended to cover the FY 1992 fee rule by court order dated April 30, 1993.

On April 17, 1992 (57 FR 13625), the NRC published in the **Federal Register** two limited changes to 10 CFR Parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR Part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR Part 171 lowered in some cases the maximum annual fee of $1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A lower tier small entity fee of $400 per licensed category was established for small business and non-profit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), the NRC published final rules in the **Federal Register** that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992 and FY 1993 respectively. The basic methodology used in the FY 1992 and FY 1993 final rules was unchanged from that used to calculate the 10 CFR Part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR Part 170, and the 10 CFR Part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472). The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 in response to the judicial decision mentioned earlier. This change was explained in detail in the FY 1993 final rule published July 20, 1993 (58 FR 38669–72). In brief, the NRC created two groups—large waste generators and small waste generators. Licensees within each group are charged a uniform flat fee.

On March 17, 1994 (59 FR 12539), the NRC reinstated the annual fee exemption for nonprofit educational institutions after notice and comment. In response to the March 16, 1993, judicial decision, the exemption had been eliminated in the final rule published by NRC on July 20, 1993 (58 FR 38666).

The American College of Nuclear Physicians and the Society of Nuclear Medicine filed a Petition for Rulemaking which included a request that the Commission exempt medical licensees from fees for services provided

in nonprofit institutions. The Commission denied that request on March 17, 1994 (59 FR 12555).

Section 2903(c) of the Energy Policy Act of 1992 required the NRC to undertake a broad review of its annual fee policies under Section 6101(c) of OBRA–90, solicit public comment on the need for policy changes, and recommend changes in existing law to the Congress that the NRC found were needed to prevent the placement of an unfair burden on certain NRC licensees. To comply with the Energy Policy Act requirements, the NRC reviewed more than 500 public comments submitted in response to the request for comment published in the **Federal Register** on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room.

On May 10, 1994 (59 FR 24065), the NRC published its proposed rule for FY 1994 establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1994, less the appropriation received from the NWF. The basic approach, policies, and methodology used in the proposed rule were unchanged from those used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31477), July 23, 1992 (57 FR 322691), and July 20, 1993 (58 FR 38666), with the following exceptions: (1) The Commission has reinstated the annual fee exemption for nonprofit educational institutions; and (2) in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but are now assigned directly to the class of licensees that they support. Because this direct assignment results in a reduction of overhead costs allocated to each FTE, the cost per FTE is about 3 percent less than it would have been without the additional direct assignment.

On May 19, 1994 (59 FR 26097) the NRC amended its fee regulations in 10 CFR part 171 to establish revised FY 1991 and FY 1992 surcharges for NRC licensees. The revised surcharges reflect the revised method of allocating low-level waste (LLW) costs adopted by the Commission in the FY 1993 final fee rule published July 20, 1993 (58 FR 38666). Refunds/credits totalling $2.2 million will be given to certain NRC materials licensees as a result of the revised surcharges for FY 1991 and FY 1992.

II. Responses to Comments

The NRC received thirty-three comments on the proposed rule. Although the comment period ended on June 9, 1994, the NRC has reviewed and evaluated all comments received. Copies of all comment letters received are available for inspection in the NRC Public Document room, 2120 L Street, NW (lower level) Washington, DC.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments are as follows:

A. Fee Legislation

1. *Comment.* Several commenters noted that NRC had completed its report on fee policy mandated by the Energy Policy Act of 1992 and had sent a report to Congress with legislative recommendations. They expressed their agreement with the legislative recommendation in the report that OBRA–90 be amended to relax the requirement to recover 100 percent of its budget and remove certain costs from the fee base, thereby eliminating many of the burdens they deem to be inequitable. They urged the NRC to work with Congress to modify OBRA–90 to make the assessment of fees more equitable across the board.

Response. The need for legislation is beyond the scope of this rulemaking proceeding. The NRC will continue to work with Congress on fee issues.

2. *Comment.* Several commenters stated that it is very important for the NRC to control its internal costs in order for the nuclear industry to be successful in reducing overall program costs. One commenter suggested that the NRC consider staff reductions and other management improvements to reduce budget needs based on a decline in the number of materials licensees.

Another commenter commended the NRC on its willingness and ability to hold the line on, and indeed reduce, its recoverable budget for FY 1994. While noting that the proposed FY 1994 annual fees for power reactors are lower than those assessed in FY 1993, commenters from utility licensees or their representatives believe that further reductions are possible, especially in the areas where power reactor licensees are required to unfairly subsidize cost recovery for activities that benefit all licensees or for activities that are unrelated to the power reactor class of licensees. While encouraged by the recent recommendations for legislative changes made by the NRC to Congress in the report required by the Energy Policy Act of 1992, commenters recommended that NRC consider the following actions it can take now without waiting for legislative changes:

(1) Reduce costs by eliminating or deferring lower priority research and generic rulemaking activity;

(2) Reduce the amount to be collected under part 171 by increasing part 170 licensing and inspection fees;

(3) Raise the lower tier small entity fee; and

(4) Use an annual escalation, e.g., CPI or some equivalent index, of small entity fee limits which have stayed at $400 and $1,800 since they were set two years ago.

Response. The NRC is working to improve the internal efficiency and effectiveness of its program as a means of controlling operating costs and, therefore, keeping fees billed to licensees as low as practicable. Economies have been achieved through the elimination of the NRC's uranium recovery field office in Denver, Colorado and consolidating the agency's two smallest regional offices—Regions IV and V. The NRC is tightening its financial operations by increasing the effectiveness and efficiency of its program financing. As a result of these efforts, the NRC proposed and Congress approved a $12.7 million recision (reduction) to the original appropriation enacted for FY 1994. Therefore, the total amount to be recovered from fees from all classes of licensees in FY 1994 is about $6 million less than the amount to be recovered in FY 1993.

The Chief Financial Officers Act (CFO) requires that the NRC conduct a biennial review of fees and other charges imposed by the Agency for its services and revise these charges to reflect the costs incurred in providing those services. The 10 CFR Part 170 licensing and inspection fees were increased significantly for some materials licenses in FY 1993 as a result of the first CFO biennial review. The 10 CFR Part 170 fees for FY 1995 will be revised to reflect the results of the second CFO review.

On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. This rule increased the receipts-based SBA size standards due to inflation. The NRC is considering proposing amendments to the NRC size standards that would reflect the SBA action. Any amendments to the NRC size standards will be submitted to SBA for approval and published in the **Federal Register** for public notice and comment as required by the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366). The NRC will reexamine the annual fees assessed for small entities once the NRC completes its evaluation of the NRC size standards, which is expected to be done in FY 1995.

The NRC in this final FY 1994 fee rule is continuing a maximum annual fee of $1,800 and $400 per licensed category, respectively, for those licensees who can qualify as small entities under NRC size standards. The impact of the fees for FY 1994 on small entities has been evaluated in the Regulatory Flexibility Analysis (see Appendix A of this final rule). The small entity subsidy in this final fee rule has been calculated on that basis.

B. Fee Methodology

1. Hourly Rate

Comment. Several commenters indicated that the hourly rate of $133 is excessive and cannot be justified. These commenters noted that the rate is considerably higher than the typical industry charge-out rate for direct employees and equals or exceeds the hourly charges for senior consultants at major national consulting organizations. Other commenters supported the proposed removal of costs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste from overhead and their direct assignment to the reactor and materials programs. Commenters stated that this is an improvement in that it better defines the beneficiaries of certain regulatory activities and more equitably allocates the fees for services provided.

Response. As indicated in previous final rules, the NRC professional hourly rate is established to recover approximately 100 percent of the agency's Congressionally approved budget, less the appropriation from the NWF, as required by OBRA–90. Both the method and budgeted costs used by the NRC in the development of the hourly rate of $133 for FY 1994 are discussed in detail in Part III, Section-by-Section Analysis, for § 170.20 of the proposed rule (59 FR 24069; May 10, 1994) and the same section of this final rule. For example, Table II shows the direct FTEs (full time equivalents) by major program for FY 1994 and Table III shows the budgeted costs (salaries and benefits, administrative support, travel and other G&A contractual support) that

for approval and published in the Federal Register for public notice and comment as required by the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366). The NRC will reexamine the annual fees assessed for small entities once the NRC completes its evaluation of the NRC size standards, which is expected to be done in FY 1995.

The NRC in this final FY 1994 fee rule is continuing a maximum annual fee of $1,800 and $400 per licensed category, respectively, for those licensees who can qualify as small entities under NRC size standards. The impact of the fees for FY 1994 on small entities has been evaluated in the Regulatory Flexibility Analysis (see Appendix A of this final rule). The small entity subsidy in this final fee rule has been calculated on that basis.

B. Fee Methodology

1. Hourly Rate

Comment. Several commenters indicated that the hourly rate of $133 is excessive and cannot be justified. These commenters noted that the rate is considerably higher than the typical industry charge-out rate for direct employees and equals or exceeds the hourly charges for senior consultants at major national consulting organizations. Other commenters supported the proposed removal of costs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste from overhead and their direct assignment to the reactor and materials programs. Commenters stated that this is an improvement in that it better defines the beneficiaries of certain regulatory activities and more equitably allocates the fees for services provided.

Response. As indicated in previous final rules, the NRC professional hourly rate is established to recover approximately 100 percent of the agency's Congressionally approved budget, less the appropriation from the NWF, as required by OBRA–90. Both the method and budgeted costs used by the NRC in the development of the hourly rate of $133 for FY 1994 are discussed in detail in Part III, Section-by-Section Analysis, for § 170.20 of the proposed rule (59 FR 24069; May 10, 1994) and the same section of this final rule. For example, Table II shows the direct FTEs (full time equivalents) by major program for FY 1994 and Table III shows the budgeted costs (salaries and benefits, administrative support, travel and other G&A contractual support) that must be recovered through fees assessed for the hours expended by the direct FTEs. As indicated in the proposed rule and supported by the commenters, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead but are now directly assigned to the class of licensees they support. This change results in the increase in the hourly rate being less than it would have been otherwise. Given the increase in the costs to be recovered through the hourly rate, including increases in the cost of doing business (e.g., inflation), it is necessary to increase the 1994 hourly rate by less than one percent to recover 100 percent of the budget as required by OBRA–90. The specific details regarding the budget for FY 1994 are documented in the NRC's publication "Budget Estimates, Fiscal Year 1994" (NUREG–1100, Volume 9). Copies of NUREG–1100, Vol. 9 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001.

2. Fees Based on Other Factors

Comment. As in FYs 1991–1993, commenters indicated that NRC should assess fees based on the amount or type of material possessed, the number of radioactive sources, the sales generated by the licensed location, the competitive condition of certain markets and the effect of fees on domestic and foreign competition.

Response. The issues of basing fees on the amount of material possessed, the frequency of use of the material, the size of the facilities, and market competitive positions, was addressed by the NRC in previous rules and in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511–31513). The NRC did not adopt that approach because it would require licensees to submit large amounts of new data and would require additional NRC staff to evaluate the data submitted and to develop and administer even more complex fee schedules. The NRC continues to believe that uniformly allocating the generic and other regulatory costs to the specific licensee within a class to determine the amount of the annual fee is a fair, equitable, and practical way to recover those costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Therefore, NRC finds no basis for altering its approach at this time. This approach was upheld by the D.C. Circuit in its March 16, 1993, decision in *Allied-Signal.*

3. High-Level Waste

Comment. One commenter stated that the Department of Energy (DOE) should pay, through user fees, for NRC's costs related to DOE's high-level waste (HLW) activities at Yucca Mountain.

Response. All of NRC's direct costs related to the disposal of civilian high-level waste in DOE's geologic repository are paid for with funds appropriated from the Nuclear Waste Fund (NWF). For FY 1994, the budgeted amount appropriated to the NRC from the NWF is about $22 million. The amount appropriated from the NWF is subtracted from the total NRC appropriation, and is therefore not included in the fee base. This is shown in Table I. Thus, no NRC fees are assessed to recover the direct HLW costs.

C. Specific Fee Issues—Part 170

1. Fees for Special Projects.

Comment. Several commenters supported the proposed change in 10 CFR part 170 special project fees whereby the definition would be revised to indicate that 10 CFR part 170 fees will not be assessed for certain reports submitted to the NRC. Rather, commenters point out these costs are more appropriately assessed as 10 CFR part 171 annual fees because the related activities are in support of generic efforts such as development of regulatory guidance applicable to a class of licensees. One commenter, while supporting the proposed change, stated that the terms "alternate method", "reanalysis", and "unreviewed safety issue" are imprecise and should be further defined or explained. Another commenter requested that the NRC reinstate a fee ceiling for topical report reviews. The commenter indicated that a fee ceiling would encourage the submittal of topical reports and contribute to the advance of the state-of-the-art in the nuclear industry and resultant improvement in nuclear plant safety.

Response. The NRC has revised the definition of special projects as

provided in § 170.3 of the regulations to indicate that 10 CFR part 170 fees will not be assessed for certain requests/reports. Based on a commenter's suggestion, the terms "alternate method", "reanalysis", and "unreviewed safety issue" have been further explained in section IV, Section-by-Section Analysis.

The NRC indicated in the FY 1991 final fee rule that it had decided to eliminate the ceiling for topical report reviews based on the 100 percent recovery requirement and congressional guidance that each licensee or applicant pay the full costs of all identifiable regulatory services received from the NRC. Further, the NRC costs for topical reports reviews vary significantly depending on the particular topical report reviewed. This makes it impractical to establish an equitable ceiling or flat fee (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy that was required by EPA–92. The policy of assessing 10 CFR part 170 fees, without a ceiling, for the review and approval of topical reports was reconfirmed. For these reasons, the NRC is not establishing a fee ceiling for topical reports in this final rule.

2. Fees for Reciprocity

Comment. The NRC charges Agreement State licensees who provide services in non-Agreement States, "reciprocity fees". A few commenters indicated that they were opposed to the fees for reciprocity, particularly the proposed fees for revisions to information submitted on the NRC Form-241 filed by 10 CFR 150.20 general licensees. They stated that fees are an unnecessary burden and suggested that the NRC reconsider its decision to increase the current fees and add additional charges for reciprocity licensees. They stated that these costs would have to be included in proposals for work in non-Agreement States and that, as small firms, they could not absorb such costs and remain competitive with larger firms offering similar services. One commenter suggested that the fee for revisions to NRC Form 241 be established at $25 to $50 per revision rather than $200 as proposed. Commenters questioned whether the establishment of the reciprocity fees is an effort to restrict survey activities to the home-State of the company because the additional costs do not make it feasible to even consider bidding for projects out of the state. Commenters claimed that this allows larger, wealthier companies the opportunity to bid for and secure out-of-state work. Other commenters supported the reciprocity fees, including the proposed fees for revisions. They encouraged NRC to assess fees for services provided specific classes of licensees and to reduce the costs classified as overhead.

Response. The NRC is adopting the approach contained in the proposed rule as this is consistent with the Congressional mandate that, to the extent practicable, a class of licensees bear the costs of providing regulatory services to them. Other approaches suggested by commenters would have the effect of shifting the costs of reviewing revisions to Form 241 to other classes of licensees. Agreement State licensees requesting reciprocity for activities conducted in non-Agreement States or in offshore waters are subject to 10 CFR 150.20. The first time within a calendar year that an Agreement State licensee conducts activities in non-Agreement States or in offshore waters, it must file a completed NRC Form 241. Revisions to the initial NRC Form 241 are filed for review and authorization when persons using the 10 CFR part 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State. Information submitted to the NRC by the 10 CFR 150.20 general licensee that clarifies or deletes specific locations or work sites, work site contacts, or dates of work is considered by the NRC to be a clarification, not a revision. Changes in the equipment to be used under the 10 CFR 150.20 general license do not require a revision if there is no change in (1) activity to be conducted, (2) the radioactive material to be used, and (3) if the Agreement State license authorizes the new equipment.

The fee of $700 for the initial filing of Form-241 is the same as that assessed in FY 1993. The fee of $200 for revisions to the Form-241 has been added to this final rule. The reciprocity fees established by the NRC are not intended to restrict companies from doing work in non-Agreement States. The fees will allow the NRC to recover the costs it expends in reviewing initial applications and revisions filed by 10 CFR part 150.20 general licensees. That is, the fee is intended to recover the cost of identifiable services to a specific applicant in accordance with OBRA–90 and the IOAA. Fee Category 16 of 10 CFR part 170.31 has been revised to add a fee of $200 for each revision filed by Agreement State licensees. The revision fee will be due at the time the applicant files a revision to information submitted on the initial Form-241 with the NRC.

3. Fees for Irradiators

Comment. One commenter indicated that underwater irradiators should not be placed, for fee purposes, in fee Categories 3F and 3G, the same category as "panoramic" or "cell" type irradiators, because the amount of regulation pertaining to unshielded source irradiators is much greater than that which applies to underwater irradiators. The commenter believes the license should be classified as Category 3E, a self-shielded irradiator. The commenter states that the relative complexity of the two designs dictates that this be the case. Therefore, licensing, inspection, and other NRC activities dealing with underwater irradiators must consume much less time and effort compared to their "cell" or "panoramic" counterparts.

Response. The Commission will continue to place underwater irradiators in fee Categories 3F and 3G. Although the sources are not removed from their shielding for irradiator purposes, underwater irradiators are not self-shielded as are the small irradiators in fee Category 3E. The underwater irradiators are large irradiators and possession limits of thousands of curies are authorized in the license. As a result, more regulatory effort is required to regulate underwater irradiators than is required to regulate the small irridiators in fee Category 3E. For example, the provisions of 10 CFR part 36 apply the same requirements to both the underwater irradiators where the source is not exposed for irradiation and the exposed source irradiators. The average cost of conducting license reviews and performing inspection of the underwater irradiators where the source remains shielded during irradiation are similar to the costs for irradiators where the source is exposed during irradiation.

D. Specific Fee Issues—Part 171

1. Exemption From Fees for State-Owned Reactors.

Comment. Several commenters supported the proposed exemption from annual fees for State-owned research reactors. These commenters indicated that the reactors are used primarily for educational training and academic research purposes and contribute significantly to the national research effort and thereby provide significant externalized benefits to society.

Response. The NRC, in this final rule, will amend both §§ 170.11(a) and 171.11(a)(2) to provide that State-owned research reactors used primarily for educational training and academic research purposes will be exempt from fees. The proposed rule would have amended only 10 CFR part 171. The NRC believes that both of these changes are consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from fees if they meet the technical design criteria of the exemption and are used primarily for educational training and academic research purposes.

2. Annual Fee for Uranium Recovery Facilities

Comment. While supporting the NRC's proposed first-time assessment of a $1.5 million annual fee to the Department of Energy (DOE) for Uranium Mill Tailing Control Act (UMTCA) activities, several commenters strongly objected to the proposed annual fees for uranium recovery licensees. They agree that the NRC should be reimbursed by the collection of reasonable fees commensurate with services provided but indicated that the proposed fees are not equitable or reasonable and have not been implemented in a fair and equitable manner. They believe that the Class I fees for mill licensees are entirely disproportionate to the degree of NRC's involvement with the uranium recovery sites. Commenters indicated that the large increases in fees for FY 1994 (approximately $36,000 per mill) demonstrate again the inconsistent and fluctuating nature of the NRC fee system. These licensees asserted that they have no means of anticipating or budgeting for the fees and therefore large increases are unacceptable. One commenter stated that the NRC's argument that the fees have increased because the initial licensing of Envirocare's 11.e(2) facility is complete is irrelevant and without merit because Envirocare's license is a Class 4D byproduct disposal facility and not a uranium recovery license. Commenters note that while the amount to be recovered from uranium recovery licenses was $465,000 for FY 1993, the amount to be recovered for FY 1994 increased to $2.1 million—a 350 percent increase. Commenters state that regulatory services to the industry have not increased from FY 1993 to FY 1994. Commenters find this situation particularly troubling as they believe the costs for uranium recovery facilities should have decreased with the closure of the Uranium Recovery Field Office (URFO) in Denver, Colorado, which was described by NRC "as a cost reduction measure to uranium recovery licensees".

One commenter argues that the annual fee of $8,700 for a Category 4D

fees. The proposed rule would have amended only 10 CFR part 171. The NRC believes that both of these changes are consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from fees if they meet the technical design criteria of the exemption and are used primarily for educational training and academic research purposes.

2. Annual Fee for Uranium Recovery Facilities

Comment. While supporting the NRC's proposed first-time assessment of a $1.5 million annual fee to the Department of Energy (DOE) for Uranium Mill Tailing Control Act (UMTCA) activities, several commenters strongly objected to the proposed annual fees for uranium recovery licensees. They agree that the NRC should be reimbursed by the collection of reasonable fees commensurate with services provided but indicated that the proposed fees are not equitable or reasonable and have not been implemented in a fair and equitable manner. They believe that the Class I fees for mill licensees are entirely disproportionate to the degree of NRC's involvement with the uranium recovery sites. Commenters indicated that the large increases in fees for FY 1994 (approximately $36,000 per mill) demonstrate again the inconsistent and fluctuating nature of the NRC fee system. These licensees asserted that they have no means of anticipating or budgeting for the fees and therefore large increases are unacceptable. One commenter stated that the NRC's argument that the fees have increased because the initial licensing of Envirocare's 11.e(2) facility is complete is irrelevant and without merit because Envirocare's license is a Class 4D byproduct disposal facility and not a uranium recovery license. Commenters note that while the amount to be recovered from uranium recovery licenses was $465,000 for FY 1993, the amount to be recovered for FY 1994 increased to $2.1 million—a 350 percent increase. Commenters state that regulatory services to the industry have not increased from FY 1993 to FY 1994. Commenters find this situation particularly troubling as they believe the costs for uranium recovery facilities should have decreased with the closure of the Uranium Recovery Field Office (URFO) in Denver, Colorado, which was described by NRC "as a cost reduction measure to uranium recovery licensees".

One commenter argues that the annual fee of $8,700 for a Category 4D license is not justified when one considers the fee of $94,300 for a mill license, a difference of $85,600. The commenter states that this disparity is so great that it cannot be explained as anything short of arbitrary and capricious. The commenter asserted that to be equitable, Category 4D licenses should be assessed the same fees as a mill in fee Category 2.A.(1), Class I, because commercial byproduct disposal sites are analogous to uranium recovery tailings impoundments and essentially require the same regulatory oversight.

One commenter was concerned that the new fees collected from DOE will not be used to decrease the fees placed on other uranium recovery licensees.

Response. Contrary to the commenter's claim, the total budget authority to be recovered through fees from Title II uranium recovery licensees has decreased over the past two years. The following table shows the NRC budget authority for Title II uranium recovery licensees for FY 1992, FY 1993, and FY 1994.

Title II facilities	Dollars in thousands		
	FY 1992	FY 1993	FY 1994
Total Budget Authority	$3,668	$3,065	$2,839
Less 10 CFR Part 170 Fees	−1,700	−2,600	−2,200
Total Annual Fees	1,968	465	639

As shown above, the NRC total budget authority for commercial uranium recovery licensees has steadily decreased from $3,668,000 in FY 1992 to $2,839,000 in FY 1994, a 23 percent decrease since FY 1992. However, because of the relatively large collection of 10 CFR Part 170 fees in FY 1993 as a result of the NRC licensing review efforts associated with the Envirocare license application, the FY 1993 amount of $465,000 to be collected through annual fees is $174,000 less than the FY 1994 annual fee amount of $639,000. In FY 1993, the NRC estimated that approximately $2.6 million would be collected from 10 CFR 170 fees, including fees for the major review work for the Envirocare 11.e(2) license. The Envirocare license was issued on November 19, 1993. Therefore, the 10 CFR Part 170 fees estimated to be collected in FY 1994 have decreased.

Another reason for the increase in FY 1994 annual fees for commercial uranium recovery licensees is a reduction in the number of licensees. In FY 1993 there were 14 uranium recovery licensees subject to annual fees, compared with 12 licensees in FY 1994. This is a decrease of 2 licensees (or 14 percent). Because costs are allocated to a class of licensees, any terminations that occur within the class will raise the annual fees for the remaining licensees within that class in order for the NRC to collect approximately 100 percent of its budget in fees. The generic and other regulatory costs allocated to a class of licensees under 10 CFR Part 171 are not dependent on the number of licensees in a class.

While the total amount of annual fees to be recovered from all uranium recovery licensees, commercial (Title II) and DOE (Title I) is $2.1 million in FY 1994, $1.5 million of this amount is for DOE Uranium Mill Tailing Control Act (UMTRCA) activities. The $1.5 million related to DOE UMTRCA activities is being paid by DOE in FY 1994, leaving the $0.6 million to be paid by the commercial Title II facilities. The budget for DOE UMTRCA activities does not affect commercial uranium recovery license fees in FY 1994, nor did it affect their fees prior to FY 1994. As noted by the commenters, DOE is being assessed a $1.5 million annual fee in FY 1994 (10 CFR 171.16(d), fee Category 18b). For FYs 1991–1993, the costs for DOE UMTRCA activities were assessed to operating power reactors as a surcharge because DOE was not an NRC licensee (10 CFR 171.15(c)(2)). In FY 1994, the costs for UMTRCA activities were moved from the power reactor class of licensees to the uranium recovery class because as of September 21, 1993, DOE became a general licensee of the NRC (10 CFR 40.27) because post-reclamation closure of the Spook, Wyoming site had been achieved. As a result, DOE will be billed for the costs ($1.5 million in FY 1994) associated with NRC's UMTRCA review and all activities associated with the facilities assigned to DOE under UMTRCA.

The statement made by a commenter that fees collected from DOE will not be used to decrease NRC's license fees is not correct. The $1.5 million to be collected from DOE will not be assessed to operating power reactors who have paid these costs since FY 1991. Therefore, the fees for operating power reactors will decrease as a result of the reallocation of costs.

Based on the comments regarding the annual fee for licenses authorizing the disposal of 11e.(2) byproduct material, the NRC has reexamined its allocation of the budget for Title II uranium recovery activities. Based on this reexamination and the comments

received, the NRC has concluded that the part of the budgeted costs for the uranium recovery class of licensees should be allocated to licenses that authorize receipt and disposal of 11e.(2) byproduct material, because some of these budgeted resources are used to regulate these licensees. Thus, the $639,000 to be recovered in annual fees will be recovered from fee category 2.A.(2) Class I facilities, Class II facilities and Other facilities, plus licenses authorizing disposal of 11e.(2) byproduct material. Additionally, the Commission has determined that for licenses issued for the primary purpose of disposal of 11e.(2) byproduct material (e.g., the license issued to Envirocare in FY 1994) the annual fee should be 90 percent of the fee for a Class I mill. This is based on a determination that an estimated 90 percent of the budget for regulating Class I mills is related to the mill tailings and the remaining 10 percent to the processing of the ore. Therefore, since essentially the same regulations apply to the mill tailings generated by a Class I mill and the 11e.(2) byproduct material received by a licensee whose primary purpose is to dispose of 11e.(2) byproduct material, the annual fee for a licensee whose primary purpose is the disposal of 11e.(2) byproduct material should be the same as that portion (90 percent) of the annual fee for a Class I facility that is related to the mill tailings. The annual fee for non-operating mills that accept 11e.(2) byproduct material for disposal in tailings piles created by mill operations will not be changed, because such disposal is incidental to the existing tailings that were generated prior to elimination of the mill's authority to operate and the Commission's policy is not to assess an annual fee to non-operating facilities. As a result of the above changes the base annual fee for a Class I facility will be reduced from $94,300 to $74,500 for FY 1994. The annual fee for licenses with the primary purpose of disposal of 11e.(2) byproduct material will be $67,000.

3. Annual Fee for Fuel Facilities

a. *Comment.* Two commenters objected to the proposed reclassification of General Atomics' (GA) special nuclear material license from one subclass to another. Commenters indicated that such a reclassification, with the attendant increase in annual fees, would have the further effect of forcing GA to shut down the manufacture of a limited number of TRIGA research reactor fuel elements, thereby eliminating any U.S. source for this type of reactor fuel. Commenters argued that the licensee is not a "fuel facility" in the same sense as other fee Category 1.A.(1) licensees, in that all of the licensees in fee Category 1.A.(1) are large suppliers of light water reactor fuel to the commercial power industry or the U.S. Navy. Commenters stated that reclassifying the license is inconsistent with the NRC's stated underlying basis of charging a class of licensees for NRC costs attributable to that class of licensees particularly when one considers, for comparison purposes, the special nuclear material (SNM) throughput, facility size, employment numbers, complexity of processes, chemical/physical forms of SNM, and number of process steps. Commenters therefore concluded that the GA license should not be reclassified.

General Atomics, whose license is to be reclassified, commented that after three years of being classified as a fee Category 1.A.(2) licensee, there is no justification for suddenly reclassifying the license as a fee Category 1.A.(1) fuel facility, because there has been no change of any kind in the activities or licensing status since 1991 that would warrant reclassification of the facility. GA also contends that it is unfair to reclassify the license after the beginning of the fiscal year and to impose more than an eight-fold increase in the fee associated with the new category without the licensee having the opportunity to take licensing action to avoid the fee. GA states that when the initial rule for 100 percent recovery was published in FY 1991, the NRC recognized that many licensees might wish to avoid or minimize the fees by terminating or modifying their licenses, and for that reason provided a 30-day period before the effective date of the rule for a licensee to file a request to terminate the license or request a possession-only license and thereby avoid paying the annual fee. GA also stated that imposition of the proposed fee would force them to significantly raise its unit fuel prices to recover the eight-fold fee increase and that many of its customers for research reactor fuel are typically low-budget research facilities such as university research reactors, many of which are operated by nonprofit educational institutions.

Response. The NRC established fuel facilities as a separate class of licensees in FY 1991. Within the class, there are four subclasses of licensees described in 10 CFR 171.16(d): high-enriched uranium (HEU) fuel fabrication, low-enriched uranium (LEU) fuel fabrication, all other materials licenses authorizing critical quantities of special nuclear material, and UF_6 converters. One of the questions raised by the commenters is whether GA license SNM–696 should be placed in the LEU fuel fabrication facility subclass (fee category 1.A.(1)) or the other facility subclass authorizing critical quantities of special nuclear material (fee category 1.A.(2)). Fee Category 1.A.(1) of 10 CFR 171.16(d) is intended to cover those licenses that authorize the possession and use of uranium 235 or plutonium for fuel fabrication activities. In the proposed rule for FY 1994, the NRC concluded that license SNM–696, held by GA, would be reclassified from fee Category 1.A.(2) (all other materials licenses authorizing critical quantities of special nuclear material) to fee Category 1.A.(1) (a low-enriched fuel fabrication facility). This reclassification is based on the fact that (1) the license authorizes the possession and use of uranium 235 for fuel fabrication activities and (2) GA manufactures TRIGA research reactor fuel elements using low-enriched fuel. As a result, the proper classification for license SNM–696 is fee category 1.A.(1) (low-enriched fuel fabrication). In the past, this license was improperly categorized by NRC and as a result, General Atomics was assessed substantially lower fees over the past three years than it should have been. Rather than continue using an incorrect fee classification for this license, now that the NRC is aware of its administrative error, this final rule places the license in its proper fee category. The NRC recently addressed a similar classification issue in response to a Babcock and Wilcox (B&W) request that their LEU fuel fabrication facility be reclassified from fee category 1.A.(1) (LEU facility) to fee category 1.A.(2) (all other materials licenses authorizing critical quantities of special nuclear material). On January 7, 1994, the NRC denied this request for reasons similar to those stated above for the General Atomics license.

The other question raised by the commenter is whether the fee for the GA license should be the same as the other LEU fuel fabrication licenses because their fuel and process is different. That is, would assessing GA the same fee as other LEU fuel fabrication licensees represent a disproportionate allocation of costs to GA. B&W has also raised similar questions relative to their LEU facility. The NRC is considering B&W's request for a partial exemption from annual fees under 10 CFR 171.11(d). This request is currently under review. Some of the comments received concerning the GA fuel facility are similar to the arguments presented by B&W for an exemption. GA states that "Reclassifying GA as a Category 1.A.(1)

licensee is inconsistent with the NRC's stated underlying basis of 'charging a class of licensees for NRC costs attributable to that class of licensees.' It asserts that by any measure of comparison, e.g., SNM * * * complexity of processes, chemical/physical forms of SNM, number of process steps, etc., GA's licensed activities are nowhere close to being in the same class as the licensees listed in Category 1.A.(1). GA's * * * licensed processes are simple small batch-wise operations, there are no processes involving solutions or powders (the fuel is a uranium-zirconium metal alloy), * * *"

The NRC believes that consideration of GA's comment as a request for an exemption under 10 CFR 171.11(d) is appropriate and supported by *Allied-Signal* v. *NRC.* The Court there indicated that they saw no reason to require the Commission to address rare situations in the rule itself, especially since 10 CFR Part 171 provides for exemptions in unusual circumstances. Therefore, the NRC intends to treat the unusual circumstances discussed in GA's comments as an exemption request, which it will address in the near future. The Commission notes, however, that the exemption determination will not be based on factors associated with size, ability to pay, or other economic factors. As stated in the decision to reinstate the exemption from annual fees for non-profit educational institutions, ability to pay is not a basis for an exemption (59 FR 12539). The NRC also addressed these issues in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511). The Commission indicated these generally are not factors it will consider in setting fees and finds no basis for altering its approach at this time.

Given the questions raised by B&W, GA, and other fuel facilities regarding exemptions from fees and proper fee category classification, the NRC plans to reexamine the fuel facility subclass categorizations. Any restructuring that results from this reexamination will be included in the proposed FY 1995 fee rule for notice and comment.

The NRC adopts General Atomics' suggestion that the NRC consider a waiver of the FY 1994 annual fees if, within the 30-day period after the NRC acts on their exemption request, it notifies the NRC in writing, in accordance with 10 CFR 70.38, that it wishes to relinquish the portion of their license permitting fabrication of fuel elements or to obtain a POL. In order to be considered for the waiver of the FY 1994 annual fee, General Atomics must

licensee is inconsistent with the NRC's stated underlying basis of 'charging a class of licensees for NRC costs attributable to that class of licensees.' It asserts that by any measure of comparison, e.g., SNM * * * complexity of processes, chemical/physical forms of SNM, number of process steps, etc., GA's licensed activities are nowhere close to being in the same class as the licensees listed in Category 1.A.(1). GA's * * * licensed processes are simple small batch-wise operations, there are no processes involving solutions or powders (the fuel is a uranium-zirconium metal alloy), * * *"

The NRC believes that consideration of GA's comment as a request for an exemption under 10 CFR 171.11(d) is appropriate and supported by *Allied-Signal* v. *NRC*. The Court there indicated that they saw no reason to require the Commission to address rare situations in the rule itself, especially since 10 CFR Part 171 provides for exemptions in unusual circumstances. Therefore, the NRC intends to treat the unusual circumstances discussed in GA's comments as an exemption request, which it will address in the near future. The Commission notes, however, that the exemption determination will not be based on factors associated with size, ability to pay, or other economic factors. As stated in the decision to reinstate the exemption from annual fees for non-profit educational institutions, ability to pay is not a basis for an exemption (59 FR 12539). The NRC also addressed these issues in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511). The Commission indicated these generally are not factors it will consider in setting fees and finds no basis for altering its approach at this time.

Given the questions raised by B&W, GA, and other fuel facilities regarding exemptions from fees and proper fee category classification, the NRC plans to reexamine the fuel facility subclass categorizations. Any restructuring that results from this reexamination will be included in the proposed FY 1995 fee rule for notice and comment.

The NRC adopts General Atomics' suggestion that the NRC consider a waiver of the FY 1994 annual fees if, within the 30-day period after the NRC acts on their exemption request, it notifies the NRC in writing, in accordance with 10 CFR 70.38, that it wishes to relinquish the portion of their license permitting fabrication of fuel elements or to obtain a POL. In order to be considered for the waiver of the FY 1994 annual fee, General Atomics must permanently cease fuel fabrication activities within the 30-day period after NRC acts on the exemption request.

With respect to the argument that reclassifying the license is inconsistent with the NRC's stated underlying basis of "charging a class of licensees for NRC costs attributable to that class of licensees", costs for providing an identifiable service related to a specific application, license or approval are recovered under the fee regulations in 10 CFR Part 170. For generic and other regulatory costs not recovered under 10 CFR 170, the NRC, in compliance with the requirements of OBRA–90, has allocated these costs to major classes of licensees. The law permits, and the NRC has established, a schedule of annual charges in 10 CFR Part 171 that assesses different annual charges to different licensees or classes of licensees. To the extent practicable, and where necessary for a more fair and equitable allocation of costs, a major class of licensees is divided into subclasses. Within a class or subclass of licensees, the costs are uniformly allocated to each licensee in the class or subclass based on the premise that there is no significant difference in the generic and other regulatory services provided to each licensee within a class or subclass. This approach and principle are used for all classes of licensees (57 FR 32693; July 23, 1992). The Commission has carefully reviewed the costs allocated to the LEU fuel fabrication subclass and concluded that the budgeted costs have been properly assigned to those licensees within the subclass.

b. *Comment.* Commenters also objected to the increases in annual fees for Category 1.A.(1) (low-enriched fuel facilities) and Category 1.A.(2), (other materials licenses authorizing critical quantities of special nuclear material). Commenters indicated that the base fee for low-enriched fuel facilities has increased from about $700,000 in FY 1991 to $1.4 million in FY 1994, while Category 1.A.(2) increased from about $175,000 to $304,000 (including surcharge). These increases, commenters claimed, place an undue hardship on the profitable operation of these facilities and are grossly out of proportion to any warranted increase in the effort expended by the NRC in regulating these classes of licensees. One commenter stated that the NRC's practice of retroactively revising annual fees causes major corporate budgeting problems, especially when large increases between the originally invoiced quarterly payments and actual annual fees are the result.

Response. The amount of the NRC's fees are based on the budget authority for a class of licensees and do not consider impact on a company's profitability. The NRC budgeted costs for this class of licensees have increased because the NRC budgeted and the Congress appropriated greater resources to regulate the safety and safeguards of fuel facilities. Under the 100 percent recovery statute of OBRA–90, charging this class of licensees fees that fail to recover the full budgeted amount, would mean that other licensees must pay additional fees which provide no benefit to them. NRC promulgates its final rules as early as it can subject to certain time-sensitive constraints: the NRC must receive a Congressionally approved budget, calculate the numerous fees in question, issue a proposed rule for comment, evaluate the comments, and issue a final fee rule.

c. *Comment.* One commenter, Allied-Signal (A–S), believed that the costs allocated to the UF_6 conversion subclass should be divided equally between two licensees rather than one, even though the second licensee has a possession only license (POL). A–S argued that the NRC has not provided a rational basis for exempting that licensee from the annual fee. A–S noted the NRC's policy that it is the existence of a license, not operations, that determines allocation of costs for recovery through the annual fee. A–S believes that a licensee that has a license to operate but does not do so is no different from a licensee that has operated, stops doing so, and holds a POL. A–S believes that, in each case, the NRC's regulations are equally applicable and the licensee benefits from them. A–S pointed out that it is the only entity in the U.S. engaging in UF_6 conversion operations and although it has attempted to pass the cost of fees on to its customers, it has not been able to do so on a broad-scale basis. A–S claimed that the proposed fee would raise its costs by 6 cents per pound and that winning bids from Canadian and European UF_6 converters are decided by as little as 1 cent per pound of UF_6.

A–S also argued that the UF_6 conversion license should be removed from the fuel facility class of licensees and included in the uranium recovery class because the operations of the UF_6 converter are more similar to those of a uranium mill than to a fuel facility. Additionally, there is now only one UF_6 converter in the U.S. and a subcategory of one does not accurately reflect the relevant amount of NRC's resources devoted to the license and for that reason is inappropriate. Therefore, according to Allied-Signal, the annual fee is not fairly and equitably allocated as required by OBRA–90, and does not bear a reasonable relationship to the

cost of providing regulatory services, also required by the statute. A–S, therefore, believes the resulting fee for UF_6 converters is disproportionately higher than that charged to licensees in the uranium recovery category and disproportionately close to what is assessed to operating reactors.

Response. The NRC has a long-standing policy of not assessing annual fees to those licensees who have indicated to the NRC that they wish to amend their license to permanently withdraw authority to operate and have been issued a possession only license (POL) (51 FR 33228; September 18, 1986). In FY 1991, the NRC reconsidered and reaffirmed its policy that licensees with POLs would not be subject to the annual fees when it initially established fees to recover 100 percent of its budget authority under OBRA–90 (56 FR 14873; April 12, 1991). Recently, the Commission revisited this issue as part of its fee policy review required by EPA–92, and affirmed its decision to continue the policy of not assessing annual fees to licensees when the license is amended to authorize possession only or decommissioning. This is consistent with the concept that those who benefit from a license that authorizes operation or use of material should pay annual fees. Therefore, consistent with agency policy included in the past fee rules, and the FY 1994 proposed fee rule, the NRC will not assess FY 1994 annual fees to Sequoyah Fuels Corporation, previously a UF_6 converter but now is not authorized to operate as a UF_6 converter.

However, the NRC recognizes that its fee rule including this policy could result in a disproportionate allocation of costs to a licensee in unusual situations. Exemptions for such unusual circumstances are provided for in 10 CFR 171.11(d) and are supported by *Allied-Signal v. NRC*. The NRC concludes that the issues raised by Allied-Signal regarding a disproportionate allocation of the budgeted costs to them, as a result of the elimination of Sequoyah Fuels from the fee base, falls within the confines of an unusual situation. Therefore, the NRC will consider Allied-Signal's comments regarding NRC's allocation of costs to them as an exemption request under 10 CFR 171.11(d). The Commission will issue a decision on this exemption request in the near future.

As indicated in the response in item 3(a), the NRC recognized that there will be adverse impacts on licensees as a result of implementing OBRA–90. The NRC has concluded after notice and comment rulemaking that it would not be appropriate to consider licensees' ability to pass through costs in establishing its fee schedules, an approach now recommended by Allied-Signal. As stated in the decision to reinstate the exemption from annual fees for nonprofit educational institutions, ability to pay is not a basis for an exemption (59 FR 12539). No one sought judicial review of that decision.

The Commission disagrees with Allied-Signal's suggestion that it be placed in the uranium recovery fee category rather than that reserved for fuel facilities, where it is currently located. The NRC includes the regulatory costs for UF_6 conversion facilities in the fuel facility class of licensees. In developing the FY 1994 annual fees the NRC followed the established budget structure. This permitted the NRC to more readily identify and allocate generic and other regulatory costs to a class of licensees, and allowed the NRC to explain and to show the origin of these costs upon public examination of the record.

Although the UF_6 conversion facilities are included in the same class as fuel fabrication facilities for budgeting purposes, the annual fee is based on the NRC's costs attributable to the UF_6 conversion facility subclass of licensees. For example, generic safety and safeguards and other regulatory costs are included in the budgeted costs for the fuel facilities class of licensees. However, none of the safeguards costs are included in the annual fee for the UF_6 conversion facility subclass since none of these costs are attributable to this subclass. Thus, the costs included in the annual fee for the UF_6 subclass of licensees are those budgeted costs attributable to the subclass. These costs, and the resulting annual fee, would be the same independent of where they are included in the budget. Therefore, even if the UF_6 conversion facilities are more akin to uranium recovery facilities, the budgeted costs attributable to them result in a different annual fee.

The NRC further notes that the NRC's costs of promulgating regulations for a type of licensee do not necessarily decrease when the number of licenses in a class goes down. Whether a class of licensees is comprised of one licensee or one hundred, generic safety concerns may well remain the same, and the same research and regulations are necessary. This is what distinguishes the annual fee from the 10 CFR Part 170 fees, which are charged to recapture costs for specific services such as inspections and license amendments. By its very nature the annual fee is levied to recover the costs of providing services, such as the development of new regulations, that cannot be attributed to a specific licensee.

The NRC does recognize the strain this policy unavoidably places on licensees who become, as Allied-Signal has, the single licensee in their class or subclass. The NRC will be reviewing this problem along with others associated with classification of fuel facilities. Any changes resulting from this review will be included in the FY 1995 proposed rule for notice and public comment.

4. Fees for Independent Spent Fuel Storage Installations

Comment. One commenter, while noting that the willingness and ability of the NRC to hold the line on, and indeed reduce, the recoverable budget for FY 1994 is commendable, questioned the increase in fees from $136,200 to $363,500 for Independent Spent Fuel Storage Installations. As a minimum, the commenter believes NRC should identify the additional resources to be expended in this area.

Response. The reasons for the increased fees for independent spent fuel storage licensees are two-fold. First, the budgeted amount necessary to regulate spent fuel activities which is recovered through 10 CFR Part 170 and 171 fees increased to provide regulatory oversight for the increased number of facilities and to accomplish necessary rulemaking activities for spent fuel facilities. Additionally, as the licensing of these facilities are completed, the amount of fees from 10 CFR Part 170 decreased resulting in an increased amount of the budget that must be recovered from 10 CFR Part 171.

5. Proration of Annual Fees

Comment. Several commenters concurred with the proposed proration provisions and permitting a waiver of annual fees for those who either filed for termination of their license prior to October 1, 1993, or permanently ceased licensed activities by September 30, 1993 but had not yet received necessary NRC approvals before the end of the fiscal year.

Response. The NRC has amended 10 CFR 171.17 to revise the proration provision for reactors and add a proration provision for materials licenses. The proration provisions are effective for FY 1994. The NRC proposed to prorate the annual fees for materials licenses upgraded or downgraded during the fiscal year. However, based on lack of sufficient data at this time on upgrades and downgrades of licenses and the administrative burden to implement this part of the proposed proration provision for FY 1994, the NRC will prorate the annual fees only for those licenses for which a termination request or a request for a POL has been filed during the fiscal year and for new licenses issued during the fiscal year. This issue will be revisited in a future rulemaking.

E. Other Issues

1. Impact of Fees on Licensees

Comment. Several commenters expressed concern about the impact of fees, particularly on the practice of nuclear medicine. Some commenters indicated that the increase in annual fees may indirectly limit access to critical radiological care, particularly for small, rural, medical practices. They suggest that the fees be reduced or that NRC freeze the annual license fee for a five-year period in order for them to stay in business.

Response. The NRC is concerned about the impact of its fees but has concluded that significant changes can only come about through the enactment of legislation. The Commission is satisfied that the fee schedule being promulgated for FY 1994 satisfies all statutory obligations. The Commission recently considered the effect of fees on the medical community and decided that it would not provide the significant fee relief requested by the medical commenters (59 FR 12555; March 17, 1994).

2. Deferral of Fees for Standardized Plants and Early Site Reviews

Comment. One commenter urged NRC to reestablish the NRC's previous fee deferral policy for review of standardized plant designs and early site reviews indicating that fee deferral for review of the standardized designs is essential to encourage the development of such designs.

Response. The Commission decided in the FY 1991 final fee rule that the costs for standardized reactor design reviews, whether for domestic or foreign applicants, should be assessed under 10 CFR Part 170 to those filing an application with the NRC for approval or certification of a standardized design (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by the EPA–92 and reconfirmed its FY 1991 decision. The NRC continues to believe the costs of these reviews should be assessed to advanced reactor applicants. The NRC finds no compelling justification for singling out these classes of applications for special treatment and shifting additional costs to operating power reactors or other NRC licensees.

for FY 1994, the NRC will prorate the annual fees only for those licenses for which a termination request or a request for a POL has been filed during the fiscal year and for new licenses issued during the fiscal year. This issue will be revisited in a future rulemaking.

E. Other Issues

1. Impact of Fees on Licensees

Comment. Several commenters expressed concern about the impact of fees, particularly on the practice of nuclear medicine. Some commenters indicated that the increase in annual fees may indirectly limit access to critical radiological care, particularly for small, rural, medical practices. They suggest that the fees be reduced or that NRC freeze the annual license fee for a five-year period in order for them to stay in business.

Response. The NRC is concerned about the impact of its fees but has concluded that significant changes can only come about through the enactment of legislation. The Commission is satisfied that the fee schedule being promulgated for FY 1994 satisfies all statutory obligations. The Commission recently considered the effect of fees on the medical community and decided that it would not provide the significant fee relief requested by the medical commenters (59 FR 12555; March 17, 1994).

2. Deferral of Fees for Standardized Plants and Early Site Reviews

Comment. One commenter urged NRC to reestablish the NRC's previous fee deferral policy for review of standardized plant designs and early site reviews indicating that fee deferral for review of the standardized designs is essential to encourage the development of such designs.

Response. The Commission decided in the FY 1991 final fee rule that the costs for standardized reactor design reviews, whether for domestic or foreign applicants, should be assessed under 10 CFR Part 170 to those filing an application with the NRC for approval or certification of a standardized design (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by the EPA–92 and reconfirmed its FY 1991 decision. The NRC continues to believe the costs of these reviews should be assessed to advanced reactor applicants. The NRC finds no compelling justification for singling out these classes of applications for special treatment and shifting additional costs to operating power reactors or other NRC licensees.

3. Revise 10 CFR 171.13 Notice

Comment. One commenter pointed out that 10 CFR 171.13 states that the NRC will publish a notice concerning the annual fee in the **Federal Register** during the first quarter of each fiscal year and that for the past four years the NRC has not met the requirement stated in the regulation. The commenter suggests that the NRC publish the proposed annual fee and professional hourly rate as early as possible within NRC's fiscal year to facilitate licensees' budget and planning processes.

Response. The NRC agrees with the commenter and acknowledges the realities of the situation that the proposed rule has been published during the third quarter of each of the past four fiscal years. The intent of the NRC is to publish the proposed rule as quickly as is practicable but realizes and agrees that it is unlikely that publication will occur during the first quarter of the fiscal year. To permit appropriate notice and comments, however, 10 CFR 171.13 will not be revised in this final rule but will be revised in a future rulemaking.

III. Final Action—Changes Included in the Final Rule

The NRC is amending its licensing, inspection, and annual fees for FY 1994. OBRA–90 requires that the NRC recover approximately 100 percent of its FY 1994 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF, by assessing licensing, inspection, and annual fees.

For FY 1994, the NRC's budget authority was originally $547.7 million. The Commission, in its effort to streamline operations, proposed a $12.7 million rescission to its original appropriation for FY 1994. Congress approved this NRC-proposed reduction. This resulted in a revised budget authority of $535.0 million. Approximately $22.0 million of the revised budget was appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $513.0 million in FY 1994 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount to be recovered for FY 1994 is about $6 million less than the total amount to be recovered for FY 1993. The NRC estimates that approximately $120.1 million will be recovered in FY 1994 from the fees assessed under 10 CFR part 170. The remaining $392.9 million will be recovered through the 10 CFR part 171 annual fees established for FY 1994.

The NRC has not changed the basic approach, policies, or methodology for calculating the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), with the following exceptions: (1) The Commission has reinstated the annual fee exemption for nonprofit educational institutions and (2) in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead but are now assigned directly to the class of licenses that they support. As a result of this direct assignment, the cost per direct FTE is about 3 percent less than it would have been without the additional direct assignment.

Under this final rule, fees for most materials and fuel cycle licensees will increase because—

(1) The NRC professional rate has increased slightly from $132/hr to $133/hr;

(2) The NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but are now assigned directly to the class of licensees that they support;

(3) The number of licenses in some classes has decreased as compared to FY 1993 due to license termination or consolidation, resulting in fewer licensees to pay for the costs of regulatory activities not recovered under 10 CFR Part 170; and

(4) The budget for some classes of licensees has increased.

The NRC contemplates that any fees to be collected as a result of this final rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1994, as stipulated in OBRA–90. Therefore, as in FY 1991, FY 1992, and FY 1993, the fees will become effective 30 days after publication of the final rule. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment is

due on the effective date of the FY 1994 rule.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

Five amendments have been made to Part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The revisions also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, the agency-wide professional hourly rate, which is used to determine the Part 170 fees, is increased from $132 per hour to $133 per hour ($231,216 per direct FTE). The rate is based on the FY 1994 direct FTEs and that portion of the FY 1994 budget that does not constitute direct program support (contractual services costs) and is not recovered through the appropriation from the NWF. As indicated earlier, the decrease in the FY 1994 budget as compared to the FY 1993 budget is primarily for direct program support, which is not included in the hourly rate. Thus, the reduction in the budget has limited impact on the hourly rate but will show up as a direct reduction to the amount allocated to the various classes of licensees.

Second, the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants and licensees are revised to reflect the very small increase in the hourly rate.

Third, the definition of special projects as provided in § 170.3 of the regulations is revised as a result of (1) the NRC's experience in implementing the 100 percent fee recovery program during the past three years and (2) the NRC's most recent fee policy review, required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR Part 171 annual fees rather than assessing specific fees under 10 CFR Part 170. These reports, although submitted by a specific organization, support NRC's development of generic guidance and regulations (e.g., rules, regulatory guides, and policy statements), and resolution of safety issues applicable to a class of licensees, such as those addressed in generic letters. Therefore, the applicable definition in § 170.3 and the footnotes in §§ 170.21 and 170.31 are revised to indicate that 10 CFR Part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

The terms "alternate method", "reanalysis" and "unreviewed safety issue" are explained in more detail in Section IV, Section-By-Section Analysis.

Fourth, § 170.11(a) is amended to establish an exemption from fees for State-owned research reactors if they meet the technical design criteria for the exemption and are research reactors used primarily for educational training and academic research purposes.

Fifth, Fee Category 2 is amended by establishing two additional fee categories, 2.A.(2) and 2.A.(3), which cover licenses authorizing receipt and disposal of Section 11e.(2) byproduct material as defined by the Atomic Energy Act. The current 2.A. category has been amended to read 2.A.(1). The current 4.D. fee category has been eliminated. This action recognizes that: (1) Source material licenses are issued to cover these licensed activities and therefore they are more appropriately placed in the source material category; and (2) that a further distinction should be made between those licenses whose primary purpose is to authorize receipt and disposal of 11e.(2) material requiring the establishment of a new tailings pile and those licenses authorizing the receipt and disposal of 11e.(2) material incidental to tailings piles created by mill operations.

In addition, Category 16 of § 170.31, reciprocity, is amended to include a fee to recover the NRC's costs of reviewing revisions to the initial NRC Form 241 filed by 10 CFR 150.20 general licensees. Agreement State licensees requesting reciprocity for activities conducted in non-Agreement States or in offshore waters are subject to 10 CFR 150.20. The first time within a calendar year that an Agreement State licensee conducts activities in non-Agreement States or in offshore waters, it must file a completed NRC Form 241. Revisions to the initial NRC Form 241 are filed for review and authorization when persons using the 10 CFR Part 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

Six amendments have been made to 10 CFR Part 171. First, § 171.11(a)(2) is amended to provide that State-owned research reactors used primarily for educational training and academic research purposes will be exempt from the annual fee. The NRC believes that this change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria for the exemption and are used primarily for educational training and academic research purposes.

Second, §§ 171.15 and 171.16 are amended to revise the annual fees for FY 1994 to recover approximately 100 percent of the FY 1994 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Third, fee Category 2 of § 171.16(d) is amended by establishing two new fee categories, 2.A.(3) and 2.A.(4), relating to the disposal of 11e.(2) byproduct material as defined by the Atomic Energy Act. The current fee Category 4.D. has been eliminated. This action recognizes that (1) part of the budgeted costs for the uranium recovery class of licensees should be allocated to source material licenses that authorize receipt and disposal of 11e.(2) material because some of these budgeted resources are used to regulate these licensees and (2) a further distinction should be made between those licenses whose primary purpose is to authorize receipt and disposal of 11e.(2) byproduct material requiring the establishment of a new mill tailings pile and those non-operating mills that accept 11e.(2) byproduct material for disposal incidental to tailings piles created by mill operations.

In addition, fee Category 18 of § 171.16(d) is amended to assess fees to the Department of Energy (DOE) for its general license in 10 CFR 40.27. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Public Law 95–604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The general license provided for in the regulation covers only post-reclamation closure custody and site surveillance. Based on NRC's acceptance of DOE's Long Term Surveillance Plan for the Spook, Wyoming, site on September 21, 1993, the site is now subject to the general license in 10 CFR 40.27. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481; July 10, 1991). As a result, DOE will be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR Part 170 fees. Because DOE, as a Federal agency, cannot be assessed Part 170 fees under the Independent Offices Appropriation Act of 1952 (IOAA), the result is that NRC will assess annual fees to DOE for the total costs of DOE UMTRCA activities.

Fourth, 10 CFR 171.17 is amended to add a proration provision for materials licenses and to revise the proration provision for reactors. The annual fee for materials licensees is prorated based on applications filed after October 1 of the fiscal year to terminate a license or obtain a POL. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to terminate the license or obtain a POL will be assessed one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees filing applications on or after April 1 of the fiscal year to terminate a license or obtain a POL will be assessed the full annual fee for that fiscal year. Those licensees who file for termination or POL must also permanently cease operations of relevant licensed activities during the periods mentioned for the fees to be reduced. Similarly, materials licensees who were issued new licenses during the fiscal year will be charged a prorated annual fee based on the date of issuance of the new license. New materials licenses issued during the period October 1 through March 31 will be assessed one-half of the annual fee stated in § 171.16(d) for the applicable

general license in 10 CFR 40.27. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Public Law 95–604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The general license provided for in the regulation covers only post-reclamation closure custody and site surveillance. Based on NRC's acceptance of DOE's Long Term Surveillance Plan for the Spook, Wyoming, site on September 21, 1993, the site is now subject to the general license in 10 CFR 40.27. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481; July 10, 1991). As a result, DOE will be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR Part 170 fees. Because DOE, as a Federal agency, cannot be assessed Part 170 fees under the Independent Offices Appropriation Act of 1952 (IOAA), the result is that NRC will assess annual fees to DOE for the total costs of DOE UMTRCA activities.

Fourth, 10 CFR 171.17 is amended to add a proration provision for materials licenses and to revise the proration provision for reactors. The annual fee for materials licensees is prorated based on applications filed after October 1 of the fiscal year to terminate a license or obtain a POL. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to terminate the license or obtain a POL will be assessed one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees filing applications on or after April 1 of the fiscal year to terminate a license or obtain a POL will be assessed the full annual fee for that fiscal year. Those licensees who file for termination or POL must also permanently cease operations of relevant licensed activities during the periods mentioned for the fees to be reduced. Similarly, materials licensees who were issued new licenses during the fiscal year will be charged a prorated annual fee based on the date of issuance of the new license. New materials licenses issued during the period October 1 through March 31 will be assessed one-half of the annual fee stated in § 171.16(d) for the applicable fee category(ies) for that fiscal year. New licenses issued on or after April 1 will not be assessed an annual fee for that fiscal year.

The proration provision in § 171.17 applicable to reactors is amended to provide that, for licensees who have requested an amendment to withdraw operating authority permanently during the FY, the annual fee will be prorated based on the number of days during the FY the operating license was in effect before either the possession only license was issued or the license was terminated.

Fifth, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the FY 1994 annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1993, and permanently ceased licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993, are subject to FY 1994 annual fees. This change is in recognition of the fact that since the final FY 1993 rule was published in July 1993, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1993 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1993. Similar situations existed after the FY 1991 and FY 1992 rules were published, and in those cases NRC provided an exemption from the requirement that the annual fee is waived only where a license is terminated before October 1 of each fiscal year.

Sixth, § 171.19 is amended to credit the quarterly partial payments already made by certain licensees in FY 1994 either toward their total annual fee to be assessed or to make refunds, if necessary.

The 10 CFR part 171 annual fees have been determined using the same method used to determine the FY 1991, FY 1992, and FY 1993 annual fees. The amounts to be collected through annual fees in the amendments to 10 CFR part 171 are based on the increased professional hourly rate. The amendments to 10 CFR part 171 do not change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec., at H12692–93).

During the past three years, many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes once again that annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material. To remove any uncertainties regarding agency policy on this issue, the NRC amended 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38666).

C. FY 1994 Budgeted Costs

The FY 1994 budgeted costs, by major activity, that will be recovered through 10 CFR parts 170 and 171 fees are shown in Table I.

TABLE I.— RECOVERY OF NRC'S FY 1994 BUDGET AUTHORITY

[Dollars in millions]

Recovery method	Estimated amount
Nuclear Waste Fund	$22.0
Part 170 (license and inspection fees)	120.1
Other receipts	.1
Part 171 (annual fees):	
Power Reactors	302.1
Nonpower Reactors	.4
Fuel Facilities	16.8
Spent Fuel Storage	2.2
Uranium Recovery	2.1
Transportation	4.0

TABLE I.— RECOVERY OF NRC'S FY 1994 BUDGET AUTHORITY—Continued

[Dollars in millions]

Recovery method	Estimated amount
Material Users	[1] 38.6
Subtotal Part 171	366.2
Costs remaining to be recovered not identified above	26.6
Total	535.0

[1] Includes $6.3 million that will not be recovered from small materials licensees because of the reduced small entity fees.

The $26.6 million identified for those activities which are not identified as either 10 CFR parts 170 or 171 or the NWF in Table I are distributed among the classes of licensees as follows:

$24.4 million to operating power reactors;
$.7 million to fuel facilities; and
$1.5 million to other materials licensees.

In addition, approximately $6.3 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower tier small entity fee of $400 for certain licensees. In order for the NRC to recover 100 percent of its FY 1994 budget authority in accordance with OBRA–90, the NRC will recover $5.3 million of the $6.3 million from operating power reactors and the remaining $1.0 million from other nonreactor entities that do not meet NRC small entity size standards.

This distribution results in an additional charge (surcharge) of approximately $273,000 per operating power reactor; $55,770 for each HEU, LEU, UF_6, and each other fuel facility license; $1,670 for each materials license in a category that generates a significant amount of low level waste; and $170 for other materials licenses. When added to the base annual fee of approximately $2.8 million per reactor, this will result in an annual fee of approximately $3.1 million per operating power reactor. The total fuel facility annual fee will be between approximately $1.2 million and $3.2 million. The total annual fee for materials licenses will vary depending on the fee category(ies) assigned to the license.

The additional charges not directly or solely attributable to a specific class of NRC licensees and costs not recovered from all NRC licensees on the basis of previous Commission policy decisions will be recovered from the designated classes of licensees previously identified. A further discussion and breakdown of the specific costs by major classes of licensees are shown in section IV of this final rule.

IV. Section-by-Section Analysis

The following analysis of those sections that are affected under this final rule provides additional explanatory information. All references are to title 10, chapter I, Code of Federal Regulations.

Part 170

Section 170.3 Definitions

This section is amended to revise the definition of special projects. This change is based on NRC's experience during the past three years in implementing the 100 percent fee recovery program and the fee policy review required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR part 171 annual fees instead of assessing specific fees under 10 CFR part 170. Therefore, the definition in § 170.3, as well as the footnotes in §§ 170.21 and 170.31, are amended to indicate that 10 CFR part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

The terms "alternate method", "reanalysis", and "unreviewed safety issue" as used in item 1 are further explained as follows:

"Alternate method" is a method that deviates significantly (i.e., more than necessary for plant-specific or generic program development) from the method proposed in the Generic Letter or NRC Bulletin;

"Reanalysis" is an analysis of an alternate method but not a review of changes to a method which is consistent with that proposed by the Generic Letter or Bulletin. These types of "consistent" changes could be revisions submitted pursuant to an NRC staff request for additional information or modification, or changes necessary for plant-specific or generic implementation; and

"Unreviewed safety issue" is a safety issue unrelated to the safety issue identified in the generic communication that arises from proposal of an alternate method and will require reanalysis by the NRC staff.

Section 170.11 Exemptions

Paragraph (a)(9) of this section is established to provide an exemption from fees for State-owned research reactors that meet certain technical design criteria and are used primarily for educational training and academic research purposes. Currently, Federal agencies are exempt from payment of 10 CFR part 170 fees under the Independent Offices Appropriation Act (IOAA). The proposed rule would have amended only 10 CFR part 171. The NRC believes however, that this change to 10 CFR part 170 is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from fees if they meet the technical design criteria for the exemption and are used primarily for educational training and academic research purposes. There is currently one research reactor, owned by the Rhode Island Atomic Energy Commission, that will be exempt under this amendment to § 170.11.

Section 170.20 Average Cost Per Professional Staff Hour

This section is amended to reflect an agency-wide, professional staff-hour rate based on FY 1994 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1994 for all fee categories that are based on full cost is $133 per hour, or $231,216 per direct FTE. The rate is based on the FY 1994 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The rate is calculated using the identical method established for FY 1991, FY 1992, and FY 1993. As noted earlier, in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards and the Advisory Committee on Nuclear Waste. The method is as follows:

1. All direct FTEs are identified in Table II by major program. For FY 1994 the NRC has traced additional direct effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee

on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. The budgeted costs for these activities had previously been included in overhead but are now being directly assigned to the class of licensees that they support.

TABLE II.—ALLOCATION OF DIRECT FTES BY MAJOR PROGRAM

Major program	No. of direct FTEs [1]
Reactor Safety and Safeguards Regulation	1,034.4
Reactor Safety Research	111.3
Nuclear Material and Low Level Waste Safety and Safeguards Regulation	352.5
Reactor Special and Independent Reviews, Investigations, and Enforcement	111.7
Nuclear Material Management and Support	19.0
Total direct FTE	[2] 1,628.9

[1] FTE (full-time equivalent) is one person working for a full year. Regional employees are counted in the office of the program each supports.

[2] In FY 1994, 1,628.9 FTEs of the total 3,223 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,594.1 FTEs are considered overhead and general and administrative.

2. NRC FY 1994 budgeted costs are allocated, in Table III, to the following four major categories:
(a) Salaries and benefits.
(b) Administrative support.
(c) Travel.
(d) Program support.

3. Direct program support, which is the use of contract or other services in support of the line organization's direct program, is excluded because these costs are charged directly through the various categories of fees.

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support, and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), and excluding direct Program Support funds, allocating the remaining $376.6 million uniformly to the direct FTEs (1,628.9) results in a rate of $231,216 per FTE for FY 1994. The Direct FTE Hourly Rate is $133 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing $376.6 million by the number of direct FTEs (1,628.9 FTE) and the number of productive hours in one year (1744 hours) as indicated in OMB Circular A–

on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. The budgeted costs for these activities had previously been included in overhead but are now being directly assigned to the class of licensees that they support.

TABLE II.—ALLOCATION OF DIRECT FTES BY MAJOR PROGRAM

Major program	No. of direct FTEs [1]
Reactor Safety and Safeguards Regulation	1,034.4
Reactor Safety Research	111.3
Nuclear Material and Low Level Waste Safety and Safeguards Regulation	352.5
Reactor Special and Independent Reviews, Investigations, and Enforcement	111.7
Nuclear Material Management and Support	19.0
Total direct FTE	[2] 1,628.9

[1] FTE (full-time equivalent) is one person working for a full year. Regional employees are counted in the office of the program each supports.

[2] In FY 1994, 1,628.9 FTEs of the total 3,223 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,594.1 FTEs are considered overhead and general and administrative.

2. NRC FY 1994 budgeted costs are allocated, in Table III, to the following four major categories:

(a) Salaries and benefits.
(b) Administrative support.
(c) Travel.
(d) Program support.

3. Direct program support, which is the use of contract or other services in support of the line organization's direct program, is excluded because these costs are charged directly through the various categories of fees.

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support, and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), and excluding direct Program Support funds, allocating the remaining $376.6 million uniformly to the direct FTEs (1,628.9) results in a rate of $231,216 per FTE for FY 1994. The Direct FTE Hourly Rate is $133 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing $376.6 million by the number of direct FTEs (1,628.9 FTE) and the number of productive hours in one year (1744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities."

TABLE III.—FY 1994 BUDGET AUTHORITY BY MAJOR CATEGORY

(Dollars in millions)

Salaries and benefits	$259.5
Administrative support	86.7
Travel	15.9
Total nonprogram support obligations	362.1
Program support	150.9
Total Budget Authority	513.0
Less direct program support and offsetting receipts	136.4
Budget Allocated to Direct FTE	376.6
Professional Hourly Rate	133

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses.

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1994 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to indentifiable recipients. The fees asssessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1994 rate shown in § 170.20. Although the amounts of the import and export licensing fees in § 170.21, facility Category K, have not changed from FY 1993 as a result of the very small increase in the hourly rate from $132 per hour to $133 per hour, they are being published for purposes of convenience.

For those applications currently on file and pending completion, footnote 2 of § 170.21 is revised to provide that the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993, as appropriate. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses.

The licensing and inspection fees in this section are modified to recover the FY 1994 costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, are adjusted to reflect the very small increase in the professional hourly rate from $132 per hour in FY 1993 to $133 per hour in FY 1994. In many cases, the fees for FY 1994 are the same as those assessed in FY 1993.

The amounts of the licensing and inspection flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than $1,000 are rounded to the nearest $100. Fees under $1,000 are rounded to the nearest $10.

The revised flat fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. The revised fees will be assessed for applications filed or inspections conducted on or after the effective date of this rule.

Fee Category 2 is amended by establishing two additional fee categories 2.A.(2) and 2.A.(3) which cover licenses authorizing receipt and disposal of Section 11e.(2) byproduct material as defined by the Atomic Energy Act. The current 2.A. category has been amended to read 2.A.(1). The current 4.D. fee category has been eliminated. This action recognizes that (1) source material licenses are issued to cover these licensed activities and they are more appropriately placed in the source material category and (2) that a further distinction should be made between those licenses whose primary purpose is to authorize receipt and disposal of 11e.(2) material requiring the establishment of a new tailings pile from those licenses authorizing the receipt and disposal of 11e.(2) material incidental to tailings piles created by mill operations.

Fee Category 16, reciprocity, is also amended to include a fee to recover the costs incurred by the NRC for the review of revisions to the information submitted on the initial NRC Form-241 filed by 10 CFR 150.20 general licensees

during the remainder of the calendar year. Agreement State licensees requesting reciprocity for activities conducted in non-Agreement States or in offshore waters are subject to 10 CFR 150.20. The first time within a calendar year that an Agreement State licensee conducts activities in non-Agreement States or in offshore waters, it must file a completed NRC Form 241. Revisions to the initial NRC Form 241 are filed for review and authorization when persons using the 10 CFR Part 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the revised hourly rate of $133, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of this rule.

Part 171

Section 171.11 Exemptions

Paragraph (a)(2) of this section is amended to exempt State-owned reactors used primarily for educational training and academic research purposes from annual fees. The NRC believes that this change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria of the exemption and are used primarily for educational training and academic research purposes. There is currently one research reactor, owned by the Rhode Island Atomic Energy Commission, that will be exempt under this amendment to § 171.11.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section are revised to reflect FY 1994 budgeted costs. Paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA–90 to recover approximately 100 percent of the NRC budget for FY 1994. Table IV shows the budgeted costs that have been allocated directly to operating power reactors as part of the base fee. They have been expressed in terms of the NRC's FY 1994 programs and program elements. The resulting total base annual fee amount for power reactors is also shown.

TABLE IV.—ALLOCATION OF NRC FY 1994 BUDGET TO POWER REACTORS' BASE FEES [1]

	Program element total		Allocated to power reactors	
	Program support ($, K)	Direct FTE	Program support ($, K)	Direct FTE
Reactor Safety and Safeguards Regulation (RSSR)				
Standard Reactor Designs	$9,531	96.3	$9,361	92.8
Reactor License Renewal	600	33.9	600	33.9
Reactor and Site Licensing	1,810	34.7	1,810	29.8
Resident Inspections	.....	207.0	.....	207.0
Region-Based Inspections	2,780	235.0	2,780	229.8
Interns (HQ and Regions)	.....	23.0	.....	23.0
Special Inspections	970	42.7	970	42.7
License Maintenance and Safety Evaluations	4,142	208.5	4,142	208.5
Plant Performance	927	52.1	927	52.1
Human Performance	4,760	54.7	4,403	51.1
Other Safety Reviews and Assistance	3,443	46.5	3,213	38.8
RSSR program total	.....	.....	$28,206	1,009.5
Reactor Safety Research (RSR)				
Standard Reactor Designs	$16,676	29.3	$16,676	29.3
Reactor Aging & License Renewal	23,273	13.7	22,573	13.6
Plant Performance	3,173	4.2	3,173	4.2
Human Reliability	4,428	7.0	4,428	7.0
Reactor Accident Analysis	20,284	26.7	20,284	26.7
Safety Issue Resolution and Regulatory Improvements	10,240	30.4	10,240	30.4
RSR program total	.....	.....	$77,374	111.2
Nuclear Material & Low Level (NMLL)				
NMLL (NMSS):				
Fuel Cycle Safety and Safeguards	$4,783	85.8	$1,494	2.8
LLW Licensing and Inspection	592	14.3	.....	1.4
Uranium Recovery Licensing and Inspection	265	14.4	21	0
Decommissioning	2,215	30.8	9	6.7
NMLL (RES):				
Environmental Policy and Decommissioning	2,410	9.0	964	3.6
NMLL program total	.....	.....	$2,488	14.5
Reactor Special and Independent Reviews, Investigations, and Enforcement				
AEOD:				
Diagnostic Evaluations	288	5.0	288	5.0
Incident Investigations	26	1.0	26	1.0
NRC Incident Response	1,854	26.0	1,854	24.0
Operational Experience Evaluation	5,447	30.0	5,447	29.0

TABLE IV.—ALLOCATION OF NRC

Committee to Review Generic Requirements	...
AEOD Subtotal	...
Advisory Committee on Reactor Safeguards	...
Office of Investigations	...
Office of Enforcement	...
RSIRIE program total	...
Total base fee amount allocated to power react	
Less estimated part 170 power reactor fees (m	
Part 171 base fees for operating power react	

[1] Base annual fees include all costs attributable to to power reactors for policy reasons.
[2] Amount is obtained by multiplying the direct FTE

Based on the information in Table IV, the base annual fees that will be assessed for FY 1994 are the amounts

TABLE V.—BASE

Reactors	
Westinghouse:	
1. Beaver Valley 1	...
2. Beaver Valley 2	...
3. Braidwood 1	...
4. Braidwood 2	...
5. Byron 1	...
6. Bryon 2	...
7. Callaway 1	...
8. Comanche Peak 1	...
9. Comanche Peak 2	...
10. Diablo Canyon 1	...
11. Diablo Canyon 2	...
12. Farley 1	...
13. Farley 2	...
14. Ginna	...
15. Haddam Neck	...
16. Harris 1	...
17. Indian Point 2	...
18. Indian Point 3	...
19. Kewaunee	...
20. Millstone 3	...
21. North Anna 1	...
22. North Anna 2	...
23. Point Beach 1	...
24. Point Beach 2	...
25. Prairie Island 1	...
26. Prairie Island 2	...
27. Robinson 2	...
28. Salem 1	...
29. Salem 2	...
30. Seabrook 1	...
31. South Texas 1	...
32. South Texas 2	...
33. Summer 1	...
34. Surry 1	...
35. Surry 2	...
36. Turkey Point 3	...
37. Turkey Point 4	...
38. Vogtle 1	...

TABLE IV.—ALLOCATION OF NRC FY 1994 BUDGET TO POWER REACTORS' BASE FEES [1]—Continued

	Program element total		Allocated to power reactors	
	Program support ($, K)	Direct FTE	Program support ($, K)	Direct FTE
Committee to Review Generic Requirements	.....	2.0	.....	2.0
AEOD Subtotal	.....	.....	$7,615	61.0
Advisory Committee on Reactor Safeguards	181	20.5	181	20.5
Office of Investigations	.....	17.0	.....	17.0
Office of Enforcement	10	7.2	10	7.0
RSIRIE program total	.....	.....	$7,806	105.5
Total base fee amount allocated to power reactors	.....	.....	.....	$402.7 (million [2])
Less estimated part 170 power reactor fees (million)	.....	.....	.....	$100.6
Part 171 base fees for operating power reactors	.....	.....	.....	$302.1 (million)

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees that will be assessed for FY 1994 are the amounts shown in Table V below for each nuclear power operating license.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment type	Annual fee
Westinghouse:		
1. Beaver Valley 1	PWR Large Dry Containment	$2,805,000
2. Beaver Valley 2	do	2,805,000
3. Braidwood 1	do	2,805,000
4. Braidwood 2	do	2,805,000
5. Byron 1	do	2,805,000
6. Bryon 2	do	2,805,000
7. Callaway 1	do	2,805,000
8. Comanche Peak 1	do	2,805,000
9. Comanche Peak 2	do	2,805,000
10. Diablo Canyon 1	do	2,803,000
11. Diablo Canyon 2	do	2,803,000
12. Farley 1	do	2,805,000
13. Farley 2	do	2,805,000
14. Ginna	do	2,805,000
15. Haddam Neck	do	2,805,000
16. Harris 1	do	2,805,000
17. Indian Point 2	do	2,805,000
18. Indian Point 3	do	2,805,000
19. Kewaunee	do	2,805,000
20. Millstone 3	do	2,805,000
21. North Anna 1	do	2,805,000
22. North Anna 2	do	2,805,000
23. Point Beach 1	do	2,805,000
24. Point Beach 2	do	2,805,000
25. Prairie Island 1	do	2,805,000
26. Prairie Island 2	do	2,805,000
27. Robinson 2	do	2,805,000
28. Salem 1	do	2,805,000
29. Salem 2	do	2,805,000
30. Seabrook 1	do	2,805,000
31. South Texas 1	do	2,805,000
32. South Texas 2	do	2,805,000
33. Summer 1	do	2,805,000
34. Surry 1	do	2,805,000
35. Surry 2	do	2,805,000
36. Turkey Point 3	do	2,805,000
37. Turkey Point 4	do	2,805,000
38. Vogtle 1	do	2,805,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
39. Vogtle 2	do	2,805,000
40. Wolf Creek 1	do	2,805,000
41. Zion 1	do	2,805,000
42. Zion 2	do	2,805,000
43. Catawba 1	PWR—Ice Condenser	2,804,000
44. Catawba 2	do	2,804,000
45. Cook 1	do	2,804,000
46. Cook 2	do	2,804,000
47. McGuire 1	do	2,804,000
48. McGuire 2	do	2,804,000
49. Sequoyah 1	do	2,804,000
50. Sequoyah 2	do	2,804,000
Combustion Engineering:		
1. Arkansas 2	PWR Large Dry Containment	2,804,000
2. Calvert Cliffs 1	do	2,804,000
3. Calvert Cliffs 2	do	2,804,000
4. Ft. Calhoun 1	do	2,804,000
5. Maine Yankee	do	2,804,000
6. Millstone 2	do	2,804,000
7. Palisades	do	2,804,000
8. Palo Verde 1	do	2,801,000
9. Palo Verde 2	do	2,801,000
10. Palo Verde 3	do	2,801,000
11. San Onofre 2	do	2,801,000
12. San Onofre 3	do	2,801,000
13. St. Lucie 1	do	2,804,000
14. St. Lucie 2	do	2,804,000
15. Waterford 3	do	2,804,000
Babcock & Wilcox:		
1. Arkansas 1	do	2,804,000
2. Crystal River 3	do	2,804,000
3. Davis Besse 1	do	2,804,000
4. Oconee 1	do	2,804,000
5. Oconee 2	do	2,804,000
6. Oconee 3	do	2,804,000
7. Three Mile Island 1	do	2,804,000
General Electric:		
1. Browns Ferry 1	Mark I	2,785,000
2. Browns Ferry 2	do	2,785,000
3. Browns Ferry 3	do	2,785,000
4. Brunswick 1	do	2,785,000
5. Brunswick 2	do	2,785,000
6. Clinton 1	Mark III	2,785,000
7. Cooper	Mark I	2,785,000
8. Dresden 2	do	2,785,000
9. Dresden 3	do	2,785,000
10. Duane Arnold	do	2,785,000
11. Fermi 2	do	2,785,000
12. Fitzpatrick	do	2,785,000
13. Grand Gulf 1	Mark III	2,785,000
14. Hatch 1	Mark I	2,785,000
15. Hatch 2	do	2,785,000
16. Hope Creek 1	do	2,785,000
17. LaSalle 1	Mark II	2,785,000
18. LaSalle 2	do	2,785,000
19. Limerick 1	do	2,785,000
20. Limerick 2	do	2,785,000
21. Millstone 1	Mark I	2,785,000
22. Monticello	do	2,785,000
23. Nine Mile Point 1	do	2,785,000
24. Nine Mile Point 2	Mark II	2,785,000
25. Oyster Creek	Mark I	2,785,000
26. Peach Bottom 2	do	2,785,000
27. Peach Bottom 3	do	2,785,000
28. Perry 1	Mark III	2,785,000
29. Pilgrim	Mark I	2,785,000
30. Quad Cities 1	do	2,785,000
31. Quad Cities 2	do	2,785,000
32. River Bend 1	Mark III	2,785,000
33. Susquehanna 1	Mark II	2,785,000
34. Susquehanna 2	do	2,785,000
35. Vermont Yankee	Mark I	2,785,000

TABLE V.—BASE ANN

Reactors	
36. Washington Nuclear 2	
Other Reactor:	
1. Big Rock Point	

The "Other Reactor" listed in Table V was not included in the fee base because historically Big Rock Point has been granted a partial exemption from the annual fees. With respect to Big Rock Point, a smaller older reactor, the NRC hereby grants a partial exemption from the FY 1994 annual fees based on a request filed with the NRC in accordance with § 171.11. The total amount of $0.2 million to be paid by Big

1. Activities not attributable to an existing NRC lice
   a. Reviews for DOE/DOD reactor projects, and
   b. International cooperative safety program an
   c. Low-level waste disposal generic activities;
2. Activities not assessed Part 170 licensing and in
   a. Licensing and inspection activities associate
   b. Costs not recovered from Part 171 for small

Subtotal budgeted costs
Less amount to be assessed to small olde

Total budgeted costs

The annual additional charge is determined as follows:

Total budgeted cost

Total number of operating

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,805,000 and an additional charge of $273,000 for a total annual fee of $3,078,000 for FY 1994.

Paragraph (d) is revised to show, in summary form, the amount of the total FY 1994 annual fee, including the surcharge, to be assessed for each major type of operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1994 annual fee for nonpower (test and research) reactors. In FY 1994, $373,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
36. Washington Nuclear 2	Mark II	2,782,000
Other Reactor:		
1. Big Rock Point	GE Dry Containment	2,785,000

The "Other Reactor" listed in Table V was not included in the fee base because historically Big Rock Point has been granted a partial exemption from the annual fees. With respect to Big Rock Point, a smaller older reactor, the NRC hereby grants a partial exemption from the FY 1994 annual fees based on a request filed with the NRC in accordance with § 171.11. The total amount of $0.2 million to be paid by Big Rock Point has been subtracted from the total amount assessed operating reactors as a surcharge.

Paragraph (b)(3) is revised to change the fiscal year references from FY 1993 to FY 1994. Paragraph (c)(2) is amended to show the amount of the surcharge for FY 1994. This surcharge is added to the base annual fee for each operating power reactor shown in Table V. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA–90. The NRC has continued its previous policy decision to recover these costs from operating power reactors.

The FY 1994 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

[Dollars in millions]

Category of costs	FY 1994 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. Reviews for DOE/DOD reactor projects, and West Valley Demonstration Project;	$2.4
b. International cooperative safety program and international safeguards activities; and	6.2
c. Low-level waste disposal generic activities;	6.0
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on Commission policy:	
a. Licensing and inspection activities associated with nonprofit educational institutions; and	7.8
b. Costs not recovered from Part 171 for small entities.	5.3
Subtotal budgeted costs	$29.7
Less amount to be assessed to small older reactors	.2
Total budgeted costs	$29.5

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating reactors}} = \frac{\$29.5 \text{ million}}{108} = \$273{,}000 \text{ per operating power reactor}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,805,000 and an additional charge of $273,000 for a total annual fee of $3,078,000 for FY 1994.

Paragraph (d) is revised to show, in summary form, the amount of the total FY 1994 annual fee, including the surcharge, to be assessed for each major type of operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1994 annual fee for nonpower (test and research) reactors. In FY 1994, $373,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of $62,200 per operating license. The Energy Policy Act establishes an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC intends to continue to grant exemptions from the annual fee to those Federally owned research and test reactors who meet the exemption criteria specified in § 171.11. The NRC is amending § 171.11(a)(2) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission.

Section 171.16 Annual fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals,

and Government agencies licensed by the NRC.

§ 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. Currently, the NRC assesses two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $250,000 to $3.5 million pay a maximum annual fee of $1,800 per licensed category. A second or lower-tier small entity fee of $400 is in place for licensees with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000. Although the amounts of the small entity fees have not changed for FY 1994, they are being published for purposes of convenience.

Paragraph (d) is revised to reflect the FY 1994 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1994 generic costs totalling $63.7 million that apply to fuel facilities, uranium recovery facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Fee Category 2 is amended by establishing two new fee categories 2.A.(3) and 2.A.(4) relating to the disposal of Section 11e.(2) byproduct material as defined by the Atomic Energy Act. The current 4.D. category has been eliminated. This action recognizes that (1) part of the budgeted costs for the uranium recovery class of licensees should be allocated to source material licenses that authorize receipt and disposal of 11e.(2) material because some of these budgeted resources are used to regulate these licensees and (2) a further distinction should be made between those licenses whose primary purpose is to authorize disposal of 11e.(2) byproduct material requiring the establishment of a new mill tailings pile for disposal of 11e.(2) material and those non-operating mills that accept 11e.(2) byproduct material for disposal incidental to tailings piles created by mill operations.

In addition, Fee Category 18 is amended to assess fees to the Department of Energy (DOE) for use of the general license provided under 10 CFR 40.27. Currently, DOE is billed for the issuance of transportation Certificates of Compliance. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Public Law 95–604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The § 40.27 general license covers only post-reclamation closure custody and site surveillance. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent in the FY 1991 final fee rule to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481; July 10, 1991). As a result, DOE will be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR Part 170 fees. Because DOE, as a Federal agency, cannot be assessed Part 170 fees under the IOAA, the NRC will assess annual fees for the total costs of DOE UMTRCA activities to DOE.

Tables VI and VII show the NRC program elements and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery research, licensing and inspection. For transportation, the costs are those budgeted for transportation research, licensing, and inspection. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage research, licensing, and inspection.

TABLE VI.—ALLOCATION OF NRC FY 1994 BUDGET TO FUEL FACILITY BASE FEES [1]

	Total program element		Allocated to fuel facility	
	Program support $, K	FTE	Program support $, K	FTE
NMLL (Research)				
Radiation Protection/Health Effects	$1,575	5.3	$315	1.1
Environmental Policy and Decommissioning	2,410	9.0	241	.9
NMLL (RES) program total			556	2.0
NMLL (NMSS)				
Fuel Cycle Safety and Safeguards	$4,783	85.8	$2,432	57.1
Event Evaluation	0	14.9	0	4.2
Decommissioning	2,215	30.8	309	10.5
Uranium Recovery (Dam Safety)	250	7.6	3	0
NMLL (NMSS) program total			2,744	71.8
NMLL (MSIRIE)				
Incident Response	186	6.0	0	1.0
Enforcement	10	6.8	0	1.2
NMLL MSIRIE program total			0	2.2
Total NMLL			$3,300	76.0
Total base fee amount allocated to fuel facilities (million [2])				$20.8
Less part 170 fuel facility fees (million)				4.0

TABLE VI.—ALLOCATION OF N

Part 171 base fees for fuel facilities (milli

[1] Base annual fee includes all costs attributable
cilities for policy reasons.
[2] Amount is obtained by multiplying the direct F

TABLE VII.—ALLOCATI

	NMLL (Re
Materials licensee performance	
Materials regulatory standards	
Radiation protection/health effects	
Environmental policy and decommissioning	
Total NMLL (RES)	
	NMLL (N
Licensing/inspection of materials users	
Event evaluation	
Information technology	
Decommissioning	
Low level waste—on site disposal	
Total NMLL (NMSS)	
	NMLL (M
Analysis and evaluation of operational data	
Office of Investigations	
Office of Enforcement	
Total NMLL Program	
Base amount allocated to materials users (mi	
- Less part 170 material users fees (million)	

PART 171 base fees for material users (

[1] Base annual fee includes all costs attributable
licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FT

The allocation of the NRC's $16.8 million in budgeted costs to the individual fuel facilities is based, as in FYs 1991–1993, primarily on the OBRA–90 conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC safeguards costs (e.g., physical security) are attributable to these facilities. Likewise, more of the safety licensing and inspection costs are allocated to the HEU facilities because more of these resources are used for HEU facilities as

TABLE VI.—ALLOCATION OF NRC FY 1994 BUDGET TO FUEL FACILITY BASE FEES [1]—Continued

	Total program element		Allocated to fuel facility	
	Program support $, K	FTE	Program support $, K	FTE
Part 171 base fees for fuel facilities (million)				$16.8

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1994 BUDGET TO MATERIAL USERS' BASE FEES [1]

	Total program element		Allocated to materials users	
	Program support $, K	FTE	Program support $, K	FTE
NMLL (Research)				
Materials licensee performance	$450	1.2	$405	1.1
Materials regulatory standards	1,495	12.2	1,346	11.0
Radiation protection/health effects	1,575	5.3	1,134	3.8
Environmental policy and decommissioning	2,410	9.0	1,085	4.1
Total NMLL (RES)			3,970	20.0
NMLL (NMSS)				
Licensing/inspection of materials users	5965	109.3	5869	99.5
Event evaluation	.....	16.2	.....	11.4
Information technology	1,100	.....	89	.....
Decommissioning	2,215	30.8	1,707	12.0
Low level waste—on site disposal	592	14.3	71	2.3
Total NMLL (NMSS)			2,736	125.2
NMLL (MSIRIE)				
Analysis and evaluation of operational data	$186	6.0	$167	4.5
Office of Investigations	.....	7.0	.....	6.3
Office of Enforcement	10	6.8	9	5.0
Total NMLL Program			6,882	161.0
Base amount allocated to materials users (million [2])				$44.1
Less part 170 material users fees (million)				5.5
PART 171 base fees for material users (million)				38.6

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

The allocation of the NRC's $16.8 million in budgeted costs to the individual fuel facilities is based, as in FYs 1991–1993, primarily on the OBRA–90 conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC safeguards costs (e.g., physical security) are attributable to these facilities. Likewise, more of the safety licensing and inspection costs are allocated to the HEU facilities because more of these resources are used for HEU facilities as compared to other facilities. However, safety program assessment and safety event evaluation costs for fuel facilities are uniformly allocated to HEU and LEU facilities because these activities apply equally to each of the HEU and LEU facilities.

Using this approach, the base annual fee for each facility is shown below.

Type of facility	Annual fee—safeguards and safety
High enriched fuel:	
Nuclear Fuel Services	$3,176,000
Babcock and Wilcox	3,176,000
Subtotal	6,352,000
Low enriched fuel:	
Siemens Nuclear Power	$1,429,000
Babcock and Wilcox	1,429,000
General Electric	1,429,000
Westinghouse	1,429,000
Combustion Engineering (Hematite)	1,429,000
General Atomics	1,429,000
Subtotal	8,574,000
UF_6 conversion:	
Allied-Signal Corp	$1,114,000

Type of facility	Annual fee—safeguards and safety
Other fuel facilities (3 facilities at $254,000 each)	762,000
Total	16,802,000

One of Combustion Engineering's (CE) low enriched fuel facilities has not been included in the fee base because of the D.C. Circuit Court of Appeals' decision of March 16, 1993, directing the NRC to grant an exemption for FY 1991 to Combustion Engineering for one of its two facilities. As a result of the Court's decision, the NRC granted an exemption to one of CE's low enriched uranium fuel facilities for FY 1994. The NRC has therefore excluded this facility from the calculation of the FY 1994 annual fees for the low enriched fuel category.

Of the $2.1 million attributable to the uranium recovery class of licensees, about $1.5 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). These costs were previously recovered from operating power reactors because DOE was not an NRC licensee prior to September 1993 and therefore could not be billed under 10 CFR Part 171. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. Approximately 44 percent of the remaining costs of $639,000 for uranium recovery is attributable to uranium mills (Class I facilities) and facilities that dispose of 11e.(2) byproduct materials, approximately 39 percent is attributable to those solution mining licensees who do not generate uranium mill tailings (Class II facilities), and the remaining 17 percent is allocated to the other uranium recovery facilities (e.g., extraction of metals and rare earths). The resulting annual fees for each class of licensee are:

2.A.(2)—Class I facilities: $74,500
2.A.(2)—Class II facilities: $41,200
2.A.(2)—Other facilities: $36,200
2.A.(3)—11e.(2) disposal: $67,000
2.A.(4)—11e.(2) disposal incidental to existing tailings site: $8,700

The annual fees for FY 1994 for the uranium recovery class of licensees are less than the FY 1992 fees and are higher than the FY 1993 annual fees. The total amount of fees that must be recovered from uranium recovery commercial licensees has decreased by about 10 percent compared to FY 1993; however, the annual fee per facility has increased for two basic reasons. First, the amount that is expected to be recovered through part 170 fees has decreased as a result of completing the licensing of the Envirocare 11e.(2) byproduct disposal facility. This requires relatively more costs to be recovered through annual fees. The second cause of the increase is a decrease in the number of licensees in the class to be assessed annual fees for FY 1994.

For spent fuel storage licenses, the generic costs of $2.2 million have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of $363,500. This represents a fee increase compared to FY 1993 in order to recover the increased budget necessary to perform rulemakings and the regulatory oversight over the increased number of licensees.

To equitably and fairly allocate the $38.6 million attributable to the approximately 6,500 diverse material users and registrants, the NRC has continued to base the annual fee on the Part 170 application and inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency, which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

Annual Fee=(Application Fee+Inspection Fee/Inspection Priority)xConstant+(Unique Category Costs).

The constant is the multiple necessary to recover $38.6 million and is 2.6 for FY 1994. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1994, unique costs of approximately $2.6 million were identified for the medical improvement program which is attributable to medical licensees. Materials annual fees for FY 1994 are 13 to 17 percent higher compared to the FY 1993 annual fees. There are two basic reasons for the changes in the fees from FY 1993. First, the FY 1994 budgeted amount attributable to materials licensees is about 10 percent higher than the comparable FY 1993 to reflect the cost necessary to regulate this class of licensees and the direct allocation of certain budgeted costs as opposed to including them in the hourly rate. Second, the number of licensees to be assessed annual fees in FY 1994 has decreased (from about 6,800 to about 6,500), resulting in a 4 percent increase in fees. The materials fees must be established at these levels in order to comply with the mandate of OBRA–90 to recover approximately 100 percent of the NRC's FY 1994 budget authority.

A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

To recover the $4.0 million attributable to the transportation class of licensees, $923,000 will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities ($3.1 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $64,700 for users and fabricators and $900 for users only.

The amount or range of the FY 1994 base annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES BASE ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	$3.2 million.
Part 70—Low enriched fuel.	$1.4 million.
Part 40—UF_6 conversion.	$1.1 million.
Part 40—Uranium recovery.	$36,200 to $74,500.
Part 30—Byproduct material.	$970 to $30,900 [1].
Part 71—Transportation of radioactive material.	$900 to $64,700.
Part 72—Independent storage of spent nuclear fuel.	$363,500.

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is $430,500.

Paragraph (e) is amended to establish the additional charge to be added to the base annual fees shown in paragraph (d) of this final rule. The Commission is continuing the approach used in FY 1993 so as to assess the budgeted low-level waste (LLW) costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge continues to be shown, for convenience, with the applicable categories in paragraph (d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered

in order to comply with the requirements of OBRA–90. For FY 1994, the additional charge recovers approximately 18 percent of the NRC budgeted costs of $8.1 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the deletion of LLW disposed by Agreement State licensees. The FY 1994 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

Category of costs	FY 1994 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., LLW disposal generic activities	$8.1

Of the $8.1 million in budgeted costs shown above for LLW activities, 82 percent of the amount ($6.7 million) are allocated to the 120 large waste generators (reactors and fuel facilities) included in 10 CFR Part 171. This results in an additional charge of $55,600 per facility. Thus, the LLW charge will be $55,600 per HEU, LEU, UF_6 facility, and each of the other 3 fuel facilities. The remaining $1.4 million is allocated to the material licensees in categories that generate low level waste (965 licensees) as follows: $1,500 per materials license except for those in Category 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,500 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low level waste, is $22,800.

Of the $6.3 million not recovered from small entities, $1.0 million is allocated to fuel facilities and other materials licensees. This results in a surcharge of $170 per category for each fuel facility and materials licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility (a high enriched fuel fabrication licensee, for example) pays a base annual fee of $3,176,000 and an additional charge of $55,770 for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of $30,900 and an additional charge of $1,670, for a total FY 1994 annual fee of $32,570.

in order to comply with the requirements of OBRA–90. For FY 1994, the additional charge recovers approximately 18 percent of the NRC budgeted costs of $8.1 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the deletion of LLW disposed by Agreement State licensees. The FY 1994 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

Category of costs	FY 1994 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., LLW disposal generic activities	$8.1

Of the $8.1 million in budgeted costs shown above for LLW activities, 82 percent of the amount ($6.7 million) are allocated to the 120 large waste generators (reactors and fuel facilities) included in 10 CFR Part 171. This results in an additional charge of $55,600 per facility. Thus, the LLW charge will be $55,600 per HEU, LEU, UF_6 facility, and each of the other 3 fuel facilities. The remaining $1.4 million is allocated to the material licensees in categories that generate low level waste (965 licensees) as follows: $1,500 per materials license except for those in Category 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,500 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low level waste, is $22,800.

Of the $6.3 million not recovered from small entities, $1.0 million is allocated to fuel facilities and other materials licensees. This results in a surcharge of $170 per category for each fuel facility and materials licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility (a high enriched fuel fabrication licensee, for example) pays a base annual fee of $3,176,000 and an additional charge of $55,770 for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of $30,900 and an additional charge of $1,670, for a total FY 1994 annual fee of $32,570.

Section 171.17 Proration

10 CFR 171.17 is amended to add a proration provision for materials licenses and to revise the provision for reactors. The annual fee for materials licenses would be prorated based on applications filed after October 1 of the fiscal year either to terminate a license or obtain a POL. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to terminate the license or obtain a POL will be assessed one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees who file applications on or after April 1 of the fiscal year to terminate a license or obtain a POL will be assessed the full annual fee for that fiscal year. Those licensees who file for termination or a POL must also permanently cease operations of those licensed activities during the periods mentioned for the fee to be reduced. Similarly, materials licensees who were issued new licenses during the fiscal year will be charged a prorated annual fee based on the date of issuance of the new license. New materials licenses issued during the period October 1 through March 31 will be assessed one-half of the annual fee stated in § 171.16(d) for the applicable fee categories for that fiscal year. New licenses issued on or after April 1 of the fiscal year will not be assessed the annual fee for that fiscal year.

The proration provision in § 171.17 applicable to reactors is amended to provide that for licensees who have requested a license amendment to withdraw operating authority permanently during the FY the annual fee will be prorated based on the number of days during the FY the operating license was in effect before the possession-only license was issued or the license was terminated.

Footnote 1 of 10 CFR 171.16(d) is amended to provide for waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1993, and permanently ceased licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993 are subject to the FY 1994 annual fees.

Section 171.19 Payment

This section is revised to give credit for partial payments made by certain licensees in FY 1994 toward their FY 1994 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1994 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee or to make refunds, as necessary. As in FY 1993, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past three years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1994 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1994 budget of $535.0 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Therefore, when developing the annual fees for operating power reactors, the NRC continued to consider the various reactor vendors, the types of containment, and the location of the operating power reactors. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied-Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1994. The final rule results in an increase in the fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 170, and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.3, the definition *special projects* is revised to read as follows:

§ 170.3 Definitions.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical and other report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, and services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators. As used in this part, special projects does not include requests/reports submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin which does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

Facil
J. Special Projects: [4]
Approvals and preapplication/licensing activitie
Inspections [3]
K. Import and export licenses:
Licenses for the import and export only of produ
for production and utilization facilities issued p
1. Application for import or export of reactors
mission and the Executive Branch, for exam
Application-new license
Amendment
2. Application for import or export of reacto
Branch review only, for example, those actio
Application-new license
Amendment
3. Application for export of components requir
Application-new license
Amendment
4. Application for export or import of other fac
tive Branch review, or foreign government a
Application-new license
Amendment

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.3, the definition *special projects* is revised to read as follows:

§ 170.3 Definitions.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical and other report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, and services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators. As used in this part, special projects does not include requests/reports submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin which does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

* * * * *

3. In § 170.11, a new paragraph (a)(9) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(9) State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term *research reactor* means a nuclear reactor that—

(i) Is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level or more than 1 megawatt, does not contain—

(A) A circulating loop through the core in which the licensee conducts fuel experiments;

(B) A liquid fuel loading; or

(C) An experimental facility in the core in excess of 16 square inches in cross-section.

* * * * *

4. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1994 budget is $133 per hour.

5. In § 170.21, the introductory paragraph, Category J, Category K, and footnotes 1 and 2 to the table are revised and a new footnote 4 is added to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1] [2]
• • • • • • •	
J. Special Projects:[4]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections[3]	Full Cost.
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110.	
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application-new license	$8,600
Amendment	$8,600
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application-new license	$5,300
Amendment	$5,300
3. Application for export of components requiring foreign government assurances only.	
Application-new license	$3,300
Amendment	$3,300
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review, or foreign government assurances.	
Application-new license	$1,300
Amendment	$1,300

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review.	
Amendment	$130

[1] Fees will not be charged for orders issued by the Commission pursuant to §2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20. In no event will the total review costs be less than twice the hourly rate shown in §170.20.

[4] Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;
2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or
3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

6. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application—New license	$570.
Renewal	$680.
Amendment	$360.
Inspections	$670.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	
Application—New license	$600.
Renewal	$430.
Amendment	$330.
Inspections	$1,200.
E. Licenses for construction and operation of a uranium enrichment facility.	
Application	$125,000.
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	

SCH

Category of	
A.(1) Licenses for possession and use of sou leaching, refining uranium mill concentrates processing of ores containing source materi authorizing the possession of byproduct wa licenses authorizing the possession and mai	
License, Renewal, Amendment	
Inspections	
A.(2) Licenses that authorize the receipt, from Atomic Energy Act for possession and dispo	
License, Renewal, Amendment	
Inspections	
A.(3) Licenses that authorize the receipt, from Atomic Energy Act for possession and disp the licensee's milling operations, except thos	
License, Renewal, Amendment	
Inspections	
B. Licenses which authorize only the possessio	
Application—New license	
Renewal	
Amendment	
Inspections	
C. All other source material licenses:	
Application—New license	
Renewal	
Amendment	
Inspections	
3. Byproduct material:	
A. Licenses of broad scope for possession a chapter for processing or manufacturing of it	
Application—New license	
Renewal	
Amendment	
Inspections	
B. Other licenses for possession and use of by or manufacturing of items containing byprodu	
Application—New license	
Renewal	
Amendment	
Inspections	
C. Licenses issued pursuant to §§32.72, 32.73 and distribution or redistribution of radiophar ing byproduct material:	
Application—New license	
Renewal	
Amendment	
Inspections	
D. Licenses and approvals issued pursuant to distribution of radiopharmaceuticals, generat product material:	
Application—New license	
Renewal	
Amendment	
Inspections	
E. Licenses for possession and use of byproc source is not removed from its shield (self-sh	
Application—New license	
Renewal	
Amendment	
Inspections	
F. Licenses for possession and use of less tha materials in which the source is exposed for i irradiation of materials where the source is no	
Application—New license	
Renewal	
Amendment	
Inspections	
G. Licenses for possession and use of 10,000 materials in which the source is exposed for i irradiation of materials where the source is no	
Application—New license	
Renewal	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
A.(2) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.(1).	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
A.(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize only the possession, use and/or installation of source material for shielding:	
Application—New license	$230.
Renewal	$160.
Amendment	$270.
Inspections	$560.
C. All other source material licenses:	
Application—New license	$2,500.
Renewal	$1,400.
Amendment	$450.
Inspections	$2,500.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$2,700.
Renewal	$1,700.
Amendment	$470.
Inspections	$9,800.[5]
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,300.
Renewal	$2,200.
Amendment	$600.
Inspections	$3,000.[5]
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$3,500.
Renewal	$3,000.
Amendment	$490.
Inspections	$3,400.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$1,300.
Renewal	$550.
Amendment	$370.
Inspections	$3,000.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$930.
Renewal	$760.
Amendment	$330.
Inspections	$1,200.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$1,300.
Renewal	$1,000.
Amendment	$330.
Inspections	$1,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$5,300.
Renewal	$4,800.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
Amendment	$640.
Inspections	$4,100.
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$2,400.
Renewal	$2,300.
Amendment	$800.
Inspections	$1,100.
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$4,600.
Renewal	$2,700.
Amendment	$1,100.
Inspections	$1,000.
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$2,100.
Renewal	$1,400.
Amendment	$370.
Inspections	$1,800.
K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$2,000.
Renewal	$1,400.
Amendment	$270.
Inspections	$1,000.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$4,100.
Renewal	$2,200.
Amendment	$630.
Inspections	$4,700.
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,400.
Renewal	$1,500.
Amendment	$690.
Inspections	$2,200.
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:	
Application—New license	$1,700.
Renewal	$2,100.
Amendment	$680.
Inspections	$2,400.
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:	
Application—New license	$3,800.
Renewal	$2,900.
Amendment	$690.
Inspections	$3,500.[5]
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$570.
Renewal	$680.
Amendment	$360.
Inspections	$1,500.
4 Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, Renewal, Amendment	Full Cost.

Sc

Category c
Inspections
B. Licenses specifically authorizing the recei from other persons for the purpose of pack by transfer to another person authorized to
Application—New license
Renewal
Amendment
Inspections
C. Licenses specifically authorizing the recei clear material from other persons. The lice receive or dispose of the material:
Application—New license
Renewal
Amendment
Inspections
5. Well logging:
A. Licenses for possession and use of byprc ging, well surveys, and tracer studies other
Application—New license
Renewal
Amendment
Inspections
B. Licenses for possession and use of byprod
License, Renewal, Amendment
Inspections
6. Nuclear laundries:
A. Licenses for commercial collection and lau cial nuclear material:
Application—New license
Renewal
Amendment
Inspections
7. Human use of byproduct, source, or special nu
A. Licenses issued pursuant to Parts 30, 35, terial, or special nuclear material in sealed
Application—New license
Renewal
Amendment
Inspections
B. Licenses of broad scope issued to medical 70 of this chapter authorizing research and for byproduct material, source material, or s
Application—New license
Renewal
Amendment
Inspections
C. Other licenses issued pursuant to Parts source material, and/or special nuclear mat clear material in sealed sources contained i
Application—New license
Renewal
Amendment
Inspections
8. Civil defense:
A. Licenses for possession and use of byprc activities:
Application—New license
Renewal
Amendment
Inspections
9. Device, product, or sealed source safety evalua
A. Safety evaluation of devices or products except reactor fuel devices, for commercial
Application—each device
Amendment—each device
Inspections
B. Safety evaluation of devices or products manufactured in accordance with the uniqu devices:
Application—each device
Amendment—each device

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$4,000.
Renewal	$2,100.
Amendment	$430.
Inspections	$2,300.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,500.
Renewal	$1,100.
Amendment	$250.
Inspections	$2,800.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,700.
Renewal	$3,900.
Amendment	$650.
Inspections	$3,600.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, Renewal, Amendment	Full Cost.
Inspections	$1,300.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$4,500.
Renewal	$2,900.
Amendment	$700.
Inspections	$4,500.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,700.
Renewal	$1,200.
Amendment	$560.
Inspections	$2,300.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,700.
Renewal	$3,500.
Amendment	$500.
Inspections	$8,700.
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,100.
Renewal	$1,400.
Amendment	$500.
Inspections	$2,100.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$670.
Renewal	$700.
Amendment	$480.
Inspections	$1,100.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,700.
Amendment—each device	$1,300.
Inspections	Full Cost.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$1,900.
Amendment—each device	$670.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
Inspections	Full Cost.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$800.
Amendment—each source	$270.
Inspections	Full Cost.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$400.
Amendment—each source	$130.
Inspections	Full Cost.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application—Approval	$370.
Renewal	$280.
Amendment	$320.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects:[6]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b).	
Application—New license	$8,600.
Amendment	$8,600.
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)–(8).	
Application—New license	$5,300.
Amendment	$5,300.
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.	
Application—New license	$3,300.
Amendment	$3,300.
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances.	
Application—New license	$1,300.
Amendment	$1,300.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review.	
Amendment	$130.
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.	
Application (initial filing of Form 241)	$700.
Renewal	N/A.
Revisions	$200.

[1] *Types of fees*—Separate charges, as shown
for new licenses and approvals, issuance of new
evaluations of sealed sources and devices, and i
(a) *Application fees*—Applications for new ma
and approvals except those subject to fees asse
eral license provisions of 10 CFR 150.20, must b
for licenses covering more than one fee category
tion fee for the highest fee category; and (2)
$125,000.
(b) *License/approval/review fees*—Fees for ap
ject to full cost fees (fee Categories 1A, 1B, 1E,
ance with § 170.12 (b), (e), and (f).
(c) *Renewal/reapproval fees*—Applications for
category, except that fees for applications for ren
10A, 11, 12, 13A, and 14) are due upon notificati
(d) *Amendment/Revision Fees*—
(1) Applications for amendments to licenses a
sessed at full costs, must be accompanied by t
amendment to a license or approval classified in
category affected by the amendment unless the a
highest fee category would apply. For those lice
13A, and 14), amendment fees are due upon not
(2) An application for amendment to a material
new fee category must be accompanied by the pr
(3) An application for amendment to a license
be accompanied by the prescribed amendment fe
(4) Applications to terminate licenses authorizin
not subject to fees.
(e) *Inspection fees*—Although a single inspec
nonroutine inspection performed, including inspec
ment States under the reciprocity provisions of 10
and nonroutine inspections that result from third-p
single location, a fee equal to the highest fee ca
time unless the inspection fees are based on the
the professional staff time required to conduct th
support services costs incurred. Licenses coverin
the license. Inspection fees are due upon notific
notes.

[2] Fees will not be charged for orders issued by
quirements of these types of Commission orders.
Commission's regulations under Title 10 of the Co
or hereafter in effect) regardless of whether the
other form. In addition to the fee shown, an appli
Categories 9A through 9D.

[3] Full cost fees will be determined based on the
cations currently on file and for which fees are de
for the review of the application up to the effective
became effective on June 20, 1984, January 30,
priate. For applications currently on file for which
2, 1990, rules, but are still pending completion
1989, will not be billed to the applicant. Any pro
sessed at the applicable rates established by § 1
ceed $50,000 for each topical report, amendment
through August 8, 1991, will not be billed to the a
applicable rate established in § 170.20. The minim

[4] Licensees paying fees under Categories 1A,
in the same license except in those instances in w
new licenses or renewal of existing licenses that
devices will pay the appropriate application or ren

[5] For a license authorizing shielded radiographi
assessed for inspection of each location, except t
assessed.

[6] Fees will not be assessed for requests/reports
1. In response to a Generic Letter or NRC Bull
ternate method or reanalysis to meet the requirem
2. In response to an NRC request (at the Assoc
issue, or to assist NRC in developing a rule, regul
3. As a means of exchanging information betw
provements or efforts.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
Inspections	Fees as specified in appropriate fee categories in this section.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that: (1) applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and (2) applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

(b) *License/approval/review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12 (b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment/Revision Fees*—

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Although a single inspection fee is shown in the regulation, separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the final rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993 rules, as appropriate. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

[6] Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

7. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by Sec. 5601, Pub. L. 100–203, 101 Stat. 1330–275, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2132 as amended by Sec. 6101, Pub. L. 101–508, 104 Stat. 1388–298 (42 U.S.C. 2214); Sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201(w)); Sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 2903, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2214(c)).

8. In § 171.11, paragraph (a)(2) is revised to read as follows:

§ 171.11 Exemptions.

(a) * * *

(2) Federally-owned and State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that—

(i) Is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(A) A circulating loop through the core in which the licensee conducts fuel experiments;

(B) A liquid fuel loading; or

(C) An experimental facility in the core in excess of 16 square inches in cross-section.

* * * * *

9. In § 171.15, paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual fees: reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11 (a)(1) and (a)(2).

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base FY 1994 annual fees for each operating power reactor subject to fees under this section and which must be collected before September 30, 1994, are shown in paragraph (d) of this section.

(c) * * *

(2) The FY 1994 surcharge to be added to each operating power reactor is $273,000. This amount is calculated by dividing the total cost for these activities ($29.5 million) by the number of operating power reactors (108).

(d) The FY 1994 Part 171 annual fees for operating power reactors are as follows:

PART 171 ANNUAL FEES BY REACTOR CATEGORY[1]

[Fees in thousands]

Reactor vendor	Number	Base fee	Added charge	Total fee	Estimated collections
Babcock/Wilcox	7	$2,804	$273	$3,077	$21,539
Combustion Eng.	15	2,804	273	3,077	46,155
GE Mark I	24	2,785	273	3,058	73,392
GE Mark II	8	2,785	273	3,058	24,464
GE Mark III	4	2,785	273	3,058	12,232
Westinghouse	50	2,805	273	3,078	153,900
Totals	108				331,682

[1]Fees assessed will vary for plants west of the Rocky Mountains and for Westinghouse plants with ice condensers.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor—$62,200

Test reactor—$62,200

* * * * *

10. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1994 as follows:

	Maximum annual fee per licensed category
Small businesses and small not-for-profit organizations (gross annual receipts):	
$250,000 to $3.5 million	$1,800
Less than $250,000	400
Private practice physicians (gross annual receipts):	
$250,000 to $1.0 million	1,800
Less than $250,000	400
Small governmental jurisdictions (including publicly supported educational institutions) (population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational institutions that are not state or publicly supported, and have 500 employees or less	1,800

* * * * *

(4) For FY 1994, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1994 annual fees for mate to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUA

	Ca
1. Special nuclear material:	
A.(1) Licenses for possession and use of U–235	
High Enriched Fuel:	
Babcock and Wilcox	
Nuclear Fuel Services	
Low Enriched Fuel:	
B&W Fuel Company	
Combustion Engineering (Hematite)	
General Electric Company	
Siemens Nuclear Power	
Westinghouse Electric Company	
General Atomics	
Surcharge	
A.(2) All other special nuclear materials licenses of plutonium in unsealed form or 350 grams o in unsealed form	
Surcharge	
B. Licenses for receipt and storage of spent fuel	
Surcharge	
C. Licenses for possession and use of special measuring systems, including x-ray fluorescen	
Surcharge	
D. All other special nuclear material licenses, e bination that would constitute a critical quantit same fees as those for Category 1.A.(2)	
Surcharge	
E. Licenses for the operation of a uranium enrich	
2. Source material:	
A.(1) Licenses for possession and use of source	
Surcharge	
(2) Licenses for possession and use of source m ore buying stations, ion exchange facilities a other than uranium or thorium, including lice source material recovery operations, as well standby mode.	
Class I facilities[4]	
Class II facilities[4]	
Other facilities	
Surcharge	
(3) Licenses that authorize the receipt, from othe Energy Act for possession and disposal, excep	
Surcharge	
(4) Licenses that authorize the receipt, from othe Energy Act for possession and disposal incide milling operations, except those licenses subje	
Surcharge	
B. Licenses which authorize only the possession,	
Surcharge	
C. All other source material licenses	
Surcharge	
3. Byproduct material:	
A. Licenses of broad scope for possession and for processing or manufacturing of items conta	
Surcharge	
B. Other licenses for possession and use of byp manufacturing of items containing byproduct m	
Surcharge	
C. Licenses issued pursuant to §§ 32.72, 32.73, distribution or redistribution of radiopharmace product material. This category also includes th Part 40 of this chapter when included on the sa	
Surcharge	

(d) The FY 1994 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

(See footnotes at end of table)

Category of materials licenses	License No.	Docket No.	Annual fees[1, 2, 3]
1. Special nuclear material:			
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.			
High Enriched Fuel:			
Babcock and Wilcox	SNM–42	70–27	$3,176,000
Nuclear Fuel Services	SNM–124	70–143	3,176,000
Low Enriched Fuel:			
B&W Fuel Company	SNM–1168	70–1201	1,429,000
Combustion Engineering (Hematite)	SNM–33	70–36	1,429,000
General Electric Company	SNM–1097	70–1113	1,429,000
Siemens Nuclear Power	SNM–1227	70–1257	1,429,000
Westinghouse Electric Company	SNM–1107	70–1151	1,429,000
General Atomics	SNM–696	70–734	1,429,000
Surcharge			55,770
A.(2) All other special nuclear materials licenses not included in 1.A.(1) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form			254,000
Surcharge			55,770
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)			363,500
Surcharge			1,670
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers			1,800
Surcharge			170
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)			2,200
Surcharge			1,670
E. Licenses for the operation of a uranium enrichment facility.			[11] N/A
2. Source material:			
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride			1,114,000
Surcharge			55,770
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.			
Class I facilities[4]			74,500
Class II facilities[4]			41,200
Other facilities			36,200
Surcharge			170
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)			67,000
Surcharge			170
(4) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)			8,700
Surcharge			170
B. Licenses which authorize only the possession, use and/or installation of source material for shielding			800
Surcharge			170
C. All other source material licenses			8,700
Surcharge			1,670
3. Byproduct material:			
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.			19,700
Surcharge			1,670
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution			6,000
Surcharge			1,670
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license			12,000
Surcharge			1,670

D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiophar- maceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license	6,000
Surcharge	170
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,500
Surcharge	170
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	4,500
Surcharge	170
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	24,400
Surcharge	170
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	6,800
Surcharge	170
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	12,500
Surcharge	170
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	6,600
Surcharge	170
K. Licenses issued pursuant to Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	6,100
Surcharge	170
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Part 30 and 33 of this chapter for research and development that do not authorize commercial distribution	14,700
Surcharge	1,670
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution	5,100
Surcharge	1,670
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D	6,000
Surcharge	1,670
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license	19,000
Surcharge	170
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,300
Surcharge	170
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 130,200
Surcharge	1,670
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	16,400
Surcharge	1,670
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,500
Surcharge	1,670
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	12,700
Surcharge	170
B. Licenses for possession and use of byproduct material for field flooding tracer studies	15,400
Surcharge	1,670
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	15,600

Surcharge	
7. Human use of byproduct, source, or special nuclea	
A. Licenses issued pursuant to Parts 30, 35, 40, or special nuclear material in sealed sources and use of source material for shielding when	
Surcharge	
B. Licenses of broad scope issued to medical in of this chapter authorizing research and deve product material, source material, or special egory also includes the possession and use o	
Surcharge	
C. Other licenses issued pursuant to Parts 30, material, and/or special nuclear material excep in sealed sources contained in teletherapy de for shielding when authorized on the same lice	
Surcharge	
8. Civil defense:	
A. Licenses for possession and use of byproduc ties	
Surcharge	
9. Device, product, or sealed source safety evaluatio	
A. Registrations issued for the safety evaluation cial nuclear material, except reactor fuel devic	
Surcharge	
B. Registrations issued for the safety evaluation cial nuclear material manufactured in accorda cept reactor fuel devices	
Surcharge	
C. Registrations issued for the safety evaluation nuclear material, except reactor fuel, for comm	
Surcharge	
D. Registrations issued for the safety evaluation nuclear material, manufactured in accordance reactor fuel	
Surcharge	
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package a Spent Fuel, High-Level Waste, and plutoniu Other Casks	
B. Approvals issued of 10 CFR Part 71 quality a Users and Fabricators	
Users	
Surcharge	
11. Standardized spent fuel facilities	
12. Special Projects	
13. A. Spent fuel storage cask Certificate of Compliar	
B. General licenses for storage of spent fuel und	
Surcharge	
14. Byproduct, source, or special nuclear material l reclamation, or site restoration activities pursuant t	
15. Import and Export licenses	
16. Reciprocity	
17. Master materials licenses of broad scope issued	
Surcharge	
18. Department of Energy:	
a. Certificates of Compliance	
b. Uranium Mill Tailing Radiation Control Act (UM	
Surcharge	

[1] Annual fees will be assessed based on whether a and use of radioactive material. However, the annual provals who either filed for termination of their licens permanently ceased licensed activities entirely by Se POL during the fiscal year and for new licenses issue person holds more than one license, certificate, regis tion, or approval held by that person. For licenses tha ties), annual fees will be assessed for each categor subject to the annual fees of category 1.C and 1.D fo 2.A.(2) are not subject to the annual fees for Category

[2] Payment of the prescribed annual fee does not a Renewal applications must be filed in accordance wit

[3] For FYs 1995 through 1998, fees for these mater lished in the Federal Register for notice and comme

[4] A Class I license includes mill licenses issued fo censes (in-situ and heap leach) issued for the extract license includes licenses for extraction of metals, hea

[5] Two licenses have been issued by NRC for land c and source material, the Commission will consider es

Surcharge	1,670
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	16,900
Surcharge	170
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	30,900
Surcharge	1,670
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	5,900
Surcharge	170
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	2,100
Surcharge	170
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	9,600
Surcharge	170
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	4,900
Surcharge	170
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,100
Surcharge	170
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,000
Surcharge	170
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Approvals issued of 10 CFR Part 71 quality assurance programs..	
Users and Fabricators	64,700
Users	900
Surcharge	170
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	363,500
Surcharge	170
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	430,500
Surcharge	22,970
18. Department of Energy:	
a. Certificates of Compliance	[10] 923,000
b. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,449,000
Surcharge	170

[1] Annual fees will be assessed based on whether a licensee held, during the fiscal year, a valid license with the NRC authorizing possession and use of radioactive material. However, the annual fee is waived for those materials licensees and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1993 and permanently ceased licensed activities entirely by September 30, 1993. Annual fees for licensees who filed for termination of a license or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license and licensees paying annual fees under Category 2.A.(2) are not subject to the annual fees for Category 2.A.(4).

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FYs 1995 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the Federal Register for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, Part 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is added for each category for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $55,600 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of $1,500 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 5.B., 6.A., and 7.B.; and an additional charge of $22,800 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of $170 has been added to each fee Category, except Categories 1.E, 10.A., 11., 12., 13.A., 14., 15., and 16., since there is no annual fee for these categories. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the $170 additional charge.

11. Section 171.17 is revised to read as follows:

§ 171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) Reactors. The annual fee for reactors (power or nonpower) that are subject to fees under this part and are granted a license to operate on or after October 1 of a FY is prorated on the basis of the number of days remaining in the FY. Thereafter, the full fee is due and payable each subsequent FY. Licensees who have requested amendment to withdraw operating authority permanently during the FY will be prorated based on the number of days during the FY the license was in effect before the possession only license was issued or the license was terminated.

(b) Materials licenses (including fuel cycle licenses). The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY.

12. In section 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FY 1994 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1994 through 1998, annual fees in the amount of $100,000 or more and described in the **Federal Register** notice pursuant to § 171.13, must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than $100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 12th day of July, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Appendix A to This Final Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

(1) A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

(2) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

(3) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(4) A small educational institution is one that is (i) supported by a qualifying small governmental jurisdiction, or (ii) one that is not state or publicly supported and has 500 employees or less.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount collected was approximately $445 million; for FY 1992, approximately $492.5 million; for FY 1993 about $518.9 million and the amount to be collected in FY 1994 is approximately $513 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR Parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) and in FY 1993 (58 FR 38666; July 20, 1993) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, and FY 1993. The NRC has used the same methodology established in the FY 1991, FY 1992, and FY 1993 rulemakings to establish the fees to be assessed for FY 1994 with the following exceptions: (1) the Commission has reinstated the annual fee exemption for nonprofit educational institutions; and (2) in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146, (D.C. Cir. 1993)). The FY 1993 LLW allocation method has been continued in the FY 1994 final rule.

II. Impact on small entities.

The comments received on the proposed FY 1991, FY 1992, FY 1993 and FY 1994 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, and FY 1993 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount collected was approximately $445 million; for FY 1992, approximately $492.5 million; for FY 1993 about $518.9 million and the amount to be collected in FY 1994 is approximately $513 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR Parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) and in FY 1993 (58 FR 38666; July 20, 1993) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, and FY 1993. The NRC has used the same methodology established in the FY 1991, FY 1992, and FY 1993 rulemakings to establish the fees to be assessed for FY 1994 with the following exceptions: (1) the Commission has reinstated the annual fee exemption for nonprofit educational institutions; and (2) in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146, (D.C. Cir. 1993)). The FY 1993 LLW allocation method has been continued in the FY 1994 final rule.

II. Impact on small entities.

The comments received on the proposed FY 1991, FY 1992, FY 1993 and FY 1994 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, and FY 1993 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, the NRC estimates that about 18 percent (approximately 1,300 licensees) qualify as small entities. This estimate is based on the number of small entity certifications filed in response to the FY 1991, FY 1992, and FY 1993 fee rules. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, FY 1993, and FY 1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past three years, approximately 2,600 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991), in the FY 1992 rule (57 FR 32691; July 23, 1992), and in the FY 1993 rule (58 FR 38666; July 20, 1993). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991, FY 1992, and FY 1993 evaluation of these alternatives. Based on that reexamination, the NRC continues to support the previous conclusion. That is, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1994, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic

impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1994, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity by comparing NRC license and inspection fees under 10 CFR Part 170 with Agreement State fees for those fee categories that are expected to contain a substantial number of small entities. Because these fees have been charged to small entities, the NRC continues to believe that these fees, or any adjustments to these fees during the past year, do not have a significant impact on them. In issuing this final rule for FY 1994, the NRC concludes that the materials license and inspection fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of $1,800 be maintained to alleviate the impact of the fees on small entities.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1994 costs ($33.3 million of the total $38.6 million) attributable to them. Therefore, the NRC is continuing, for FY 1994, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other materials licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of $1,800 for small entities, when added to the Part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992 and FY 1993, the NRC will continue the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts for FY 1994. This lower-tier small entity fee was established in the final rule published in the **Federal Register** on April 17, 1992 (57 FR 13625).

In establishing the annual fee for lower tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA–90. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users were used to measure the reduction in fees because they represent about 40 percent of the materials licensees and most likely would include a larger percentage of lower tier small entities than would other classes of materials licensees. The Commission is continuing an annual fee of $400 for the lower tier small entities to ensure that the lower tier small entities receive a reduction (75 percent for small gauge users) substantial enough to mitigate any severe impact. Although other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts of less than $250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower tier small entity annual fee of $400 for small businesses and non-profit organizations with gross annual receipts of less than $250,000, and small governmental entities with a population of less than 20,000, will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, the FY 1992, and the FY 1993 fee rules in this final rule establishing the FY 1994 fees. Therefore, the analysis and conclusions established in the FY 1991, the FY 1992, and the FY 1993 rules remain valid for this final rule for FY 1994.

[FR Doc. 94–17502 Filed 7–19–94; 8:45 am]
BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–07; Amendment 39–8972; AD 94–15–01]

Airworthiness Directives; General Electric Aircraft Engines CT7 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Aircraft Engines (GE) CT7 series turboprop engines. This action requires a one-time ultrasonic inspection of a suspect population of propeller shafts for metallurgical defects, and if necessary, replacement with a serviceable part. This amendment is prompted by a report of an inflight propeller separation due to a metallurgical defect. The actions specified in this AD are intended to prevent failure of the propeller shaft, which can result in separation of the propeller from the propeller shaft and possible damage to the aircraft.

DATES: Effective August 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 4, 1994.

Comments for inclusion in the Rules Docket must be received on or before September 19, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–07, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from General Electric Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has determined that certain propeller shafts on General Electric Aircraft Engines (GE) CT7 series turboprop engines may have a metallurgical defect that could cause separation of the propeller from the propeller shaft. The FAA's investigation has revealed this population of propeller shafts may contain a metallurgical defect known as a pipe inclusion, which developed during manufacture of the shaft. This defect typically forms during the process of melting the ingot used to form the shaft and positions itself at either end of the ingot. During this phase of the manufacturing process cropping both ends of the ingot normally ensures complete removal of such defects. The FAA has determined, however, that for five heat lots of material, pipe inclusions may not have been completely removed from the material used to form the propeller shaft. The FAA has determined that suspect material was used to manufacture approximately 326 propeller shafts.

The FAA received a report of a propeller separating from a SAAB–SCANIA SF340 series aircraft inflight following severe vibration. The FAA's investigation revealed that the propeller shaft separated due to a pipe inclusion defect positioned in a high stress location of the propeller shaft. That defect initiated a crack which propagated to failure. This condition, if not corrected, could result in failure of the propeller shaft, which can result in separation of the propeller from the propeller shaft and possible damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE (CT7–TP Series) Service Bulletin (SB) No. A72–350, Revision 3, dated June 9, 1994, that describes procedures for a one-time ultrasonic inspection of the propeller shaft flange outer diameter (OD) fillet radius and inner diameter (ID) bore for detection of subsurface defects. In addition, Table 3 of this SB lists by propeller gearbox serial number (S/N) a certain population of suspect propeller shafts to be identified by internal markings during a one-time borescope inspection. Those propeller shafts with markings identified as suspect in accordance with this SB must be ultrasonically inspected prior to further flight.

Since an unsafe condition has been identified that is likely to exist or develop on other GE CT7 series turboprop engines of the same type design, this airworthiness directive (AD) is being issued to prevent separation of

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has determined that certain propeller shafts on General Electric Aircraft Engines (GE) CT7 series turboprop engines may have a metallurgical defect that could cause separation of the propeller from the propeller shaft. The FAA's investigation has revealed this population of propeller shafts may contain a metallurgical defect known as a pipe inclusion, which developed during manufacture of the shaft. This defect typically forms during the process of melting the ingot used to form the shaft and positions itself at either end of the ingot. During this phase of the manufacturing process cropping both ends of the ingot normally ensures complete removal of such defects. The FAA has determined, however, that for five heat lots of material, pipe inclusions may not have been completely removed from the material used to form the propeller shaft. The FAA has determined that suspect material was used to manufacture approximately 326 propeller shafts.

The FAA received a report of a propeller separating from a SAAB–SCANIA SF340 series aircraft inflight following severe vibration. The FAA's investigation revealed that the propeller shaft separated due to a pipe inclusion defect positioned in a high stress location of the propeller shaft. That defect initiated a crack which propagated to failure. This condition, if not corrected, could result in failure of the propeller shaft, which can result in separation of the propeller from the propeller shaft and possible damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE (CT7–TP Series) Service Bulletin (SB) No. A72–350, Revision 3, dated June 9, 1994, that describes procedures for a one-time ultrasonic inspection of the propeller shaft flange outer diameter (OD) fillet radius and inner diameter (ID) bore for detection of subsurface defects. In addition, Table 3 of this SB lists by propeller gearbox serial number (S/N) a certain population of suspect propeller shafts to be identified by internal markings during a one-time borescope inspection. Those propeller shafts with markings identified as suspect in accordance with this SB must be ultrasonically inspected prior to further flight.

Since an unsafe condition has been identified that is likely to exist or develop on other GE CT7 series turboprop engines of the same type design, this airworthiness directive (AD) is being issued to prevent separation of the propeller from the propeller shaft, which could result in damage to the aircraft. This AD requires a one-time ultrasonic inspection of the propeller shaft flange OD fillet radius and ID bore on a suspect population of propeller shafts for subsurface metallurgical defects, and if necessary, replacement with a serviceable part. This inspection must be performed at the next shop visit after the effective date of this AD, or prior to October 31, 1994, whichever occurs first. The FAA has determined that the compliance end-date of October 31, 1994, will be necessary to ensure timely inspection of all propeller shafts and thus minimize the potential for additional propeller shaft failures. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–07." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–15–01 General Electric Aircraft Engines: Amendment 39–8972. Docket 94–ANE–07.

Applicability: General Electric Aircraft Engines (GE) Models CT7–5A2, –5A3, –7A,

-7A1, -9B, -9B1, -9B2, -9C, -9D turboprop engines, with propeller gearboxes listed by serial number in GE (CT7-TP Series) Service Bulletin (SB) No. A72-350, Revision 3, dated June 9, 1994. These engines are installed on but not limited to Construcciones Aeronauticas, SA (CASA) CN-235 series and SAAB-SCANIA SF340 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the propeller shaft, which can result in separation of the propeller from the propeller shaft and possible damage to the aircraft, accomplish the following:

(a) Perform a one-time ultrasonic inspection of the propeller shaft flange outer diameter (OD) fillet radius and inner diameter (ID) bore for subsurface metallurgical defects, and replace, if necessary, with a serviceable part, at the next shop visit after the effective date of this AD, or prior to October 31, 1994, whichever occurs first. Perform the ultrasonic inspection, and replacement, if necessary, in accordance with GE (CT7-TP Series) SB No. A72-350, Revision 3, dated June 9, 1994, on propeller shafts listed by propeller gearbox serial number (S/N) in Table 2 of that SB.

(b) Perform a one-time borescope inspection to identify all markings on the propeller shaft at the next shop visit after the effective date of this AD, or prior to October 31, 1994, whichever occurs first. Perform the borescope inspection in accordance with GE (CT7-TP Series) SB No. A72-350, Revision 3, dated June 9, 1994, on propeller shafts listed by propeller gearbox S/N in Table 3 of that SB, and before further flight, proceed as follows:

(1) For those propeller shafts that are determined to be suspect, perform a one-time ultrasonic inspection, and replace, if necessary with serviceable parts, in accordance with the Accomplishment Instructions of GE (CT7-TP Series) SB No. A72-350, Revision 3, dated June 9, 1994.

(2) For those propeller shafts that are determined not to be suspect, no further action is required.

(c) For the purpose of this AD, a shop visit is defined as the induction of the engine into the shop for maintenance, or separation of the propeller for maintenance.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The inspections, and replacement, if necessary, shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
GE (CT7-TP Series) SB No. A72-350	1-40	3	June 9, 1994.

Total pages: 40.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 4, 1994.

Issued in Burlington, Massachusetts, on July 8, 1994.

Michael H. Borfitz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94-17328 Filed 7-19-94; 8:45 am]

BILLING CODE 4910-13-P

---

14 CFR Part 39

[Docket No. 93-NM-216-AD; Amendment 39-8973; AD 94-15-02]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that currently requires inspections to verify the installation of shear pins, shear pin retainers, and shear pin retainer attaching parts in the aft end of the center pylon thrust link, and repair, if necessary. That AD was prompted by a report that both shear pins that attach the aft end of the center engine pylon thrust link to the tail pylon were missing. This amendment adds inspections to verify that the shear pin retainer attaching parts are tightened within specified limits; and adds a terminating modification for those inspections. This amendment also expands the applicability of the rule to include additional airplanes. The actions specified by this AD are intended to prevent structural damage to the engine mount structure, which could lead to loss of airplane components.

DATES: Effective August 19, 1994.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993, as listed in the regulations, is approved by the Director of the Federal Register as of August 19, 1994.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin A54-31, dated September 17, 1992, as listed in the regulations, was previously approved by the Director of the Federal Register of November 2, 1992 (57 FR 47991, October 21, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, CA 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5324; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92-23-03, amendment 39-8403 (57 FR 47991, October 21, 1992), which is applicable to certain McDonnell Douglas Model MD-11 series airplanes, was published in the **Federal Register** on March 17, 1994 (59 FR 12558). The action proposed to continue to require repetitive visual inspections to verify

the installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in the aft end of the center engine (No. 2) pylon thrust link. It also proposed (1) to add repetitive inspections to verify that the shear pin retainer attaching parts are tightened within specified limits; (2) to delete the previously provided "optional terminating action" (which consists of a one-time verification for tightness of the nuts of the four shear pin retainer attaching bolts); and (3) to require eventual replacement of the existing retainer and attaching parts with a new retainer and attaching parts, as terminating action for the currently required repetitive visual inspections and the proposed repetitive verifications of tightness.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

The Air Transport Association (ATA) of America, on behalf of one member operator, and the manufacturer request that the proposed AD be revised to indicate that the 60-day repetitive inspection specified in paragraph (a) and (b) be required only until either the initial verification for tightness (of the shear pin retainer attaching parts), the terminating action, or an FAA-approved repair is accomplished. These commenters state that the FAA already has approved repairs applicable to paragraphs (a) and (b) of the proposal, which have consisted of the installation of new parts. New parts obviously will be tightened upon installation; therefore, reinspection of the tightness of these parts within 60 days appears to be unwarranted. The commenters request that the repetitive interval for the inspection for installation of parts be revised to 18 months in order to be consistent with the recommendations of Phase 2 of the original issue of McDonnell Douglas Alert Service Bulletin A54-71.

The FAA concurs in part with the commenter's request. Upon further consideration of the procedures specified in the referenced service bulletin, the FAA concurs that a 60-day repetitive inspection interval is not necessary in certain situations, explained as follows:

Paragraphs (a)(1) and (b)(1)(i) of the final rule apply to situations where the shear pins, shear pin retainers, and shear pin retainer attaching parts have been inspected and found to be installed. The FAA finds that inspections to verify the installation of

the installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in the aft end of the center engine (No. 2) pylon thrust link. It also proposed (1) to add repetitive inspections to verify that the shear pin retainer attaching parts are tightened within specified limits; (2) to delete the previously provided "optional terminating action" (which consists of a one-time verification for tightness of the nuts of the four shear pin retainer attaching bolts); and (3) to require eventual replacement of the existing retainer and attaching parts with a new retainer and attaching parts, as terminating action for the currently required repetitive visual inspections and the proposed repetitive verifications of tightness.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

The Air Transport Association (ATA) of America, on behalf of one member operator, and the manufacturer request that the proposed AD be revised to indicate that the 60-day repetitive inspection specified in paragraph (a) and (b) be required only until either the initial verification for tightness (of the shear pin retainer attaching parts), the terminating action, or an FAA-approved repair is accomplished. These commenters state that the FAA already has approved repairs applicable to paragraphs (a) and (b) of the proposal, which have consisted of the installation of new parts. New parts obviously will be tightened upon installation; therefore, reinspection of the tightness of these parts within 60 days appears to be unwarranted. The commenters request that the repetitive interval for the inspection for installation of parts be revised to 18 months in order to be consistent with the recommendations of Phase 2 of the original issue of McDonnell Douglas Alert Service Bulletin A54–71.

The FAA concurs in part with the commenter's request. Upon further consideration of the procedures specified in the referenced service bulletin, the FAA concurs that a 60-day repetitive inspection interval is not necessary in certain situations, explained as follows:

Paragraphs (a)(1) and (b)(1)(i) of the final rule apply to situations where the shear pins, shear pin retainers, and shear pin retainer attaching parts have been inspected and found to be installed. The FAA finds that inspections to verify the installation of these parts must be repeated every 60 days, so long as there is no other action accomplished that will ensure the tightness of the attaching parts. These inspections for installation may be terminated, however, when the initial verification for tightness of the shear pin retainer attaching parts is accomplished in 18 months in accordance with paragraph (c) of the rule; or when the terminating modification described in paragraph (d) is installed, if earlier than 18 months.

The FAA has revised paragraphs (a)(2) and (b)(1)(ii) of the final rule, which apply to situations where any shear pin is missing or has migrated, and any shear pin retainer or shear pin retainer attaching part is missing. In such cases, an FAA-approved repair is required to be installed; the FAA has determined that these approved repairs will be such that no further inspections for installation of parts will be necessary once the approved repair is installed. The FAA has revised these paragraphs of the final rule to reflect this determination.

Additionally, the FAA has added new paragraphs (a)(3) and (b)(1)(iii), which specify that, in situations where the shear pin retainers or shear pin retainer attaching parts are missing or loose, and the shear pin has not migrated, operators may accomplish a repair in accordance with procedures specified as "Condition II" in McDonnell Douglas Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. Subsequent to this repair, no further inspections for installation of parts are required. These paragraphs have been added in order to provide operators with an additional repair procedure that may be used in lieu of obtaining prior FAA-approval of repairs (which was the only option provided for in the proposal).

These same commenters contend that the 15-day compliance time for the initial inspection required by proposed paragraph (b) is not warranted for certain airplanes. The commenters point out that a tightness check was accomplished on airplanes in Groups V and VI (as specified in the referenced McDonnell Douglas service bulletin) prior to delivery; therefore, an initial inspection for installation of the subject parts should not be required for these airplanes. The commenters request that, for these airplanes, only a "re-verification" for tightness be required within 18 months. Additionally, the commenters point out that an initial visual inspection for installation of parts was accomplished on airplanes in Group III and IV prior to delivery; therefore, the compliance time for initial inspection for installation of parts required by this proposed rule should be extended. The commenters suggest extending the initial compliance time to 60 days, since this is the compliance time recommended by the manufacturer in the referenced service bulletin.

The FAA concurs in part with the commenter's requests. The FAA acknowledges that it is appropriate to revise paragraph (b) of the final rule to differentiate between the requirements of the various groups of airplanes specified in the referenced service bulletin:

As for airplanes in Groups III and IV, the FAA does not concur with the commenter's request to extend the initial compliance time for the inspection for installation of parts on these airplanes. While these airplanes may have been inspected prior to delivery, and while the manufacturer's revised service bulletin recommends a repetitive inspection interval of 60 days, the FAA points out that the inspection procedures described in that service bulletin have not been mandated previously. Since the revised service bulletin was released over a year ago, there is no way to guarantee that affected airplanes have been repetitively inspected prior to the issuance of this final rule. In light of this, the FAA considers a compliance time of 15 days necessary in order to ensure that the accomplishment of what may be the first repetitive inspection for some airplanes is carried out in a timely manner. However, the FAA has revised the compliance terms of paragraph (b)(1) to provide a "grace period" for operators of airplanes that may have been visually (re-)inspected recently. The final rule now reflects a compliance time for the initial visual inspection as "within 15 days after the effective date of the AD, or prior to the accumulation of 60 days since the last visual inspection, whichever occurs later."

As for airplanes in Groups V and VI, the FAA concurs that these airplanes need not be subject to the initial inspection for installation of parts as required by paragraph (b), as long as repetitive verifications for tightness are conducted. Therefore, the FAA has revised paragraph (b) by adding a new paragraph (b)(2), which addresses these airplanes and allows them the option of either repetitively inspecting for installation of parts (as originally proposed), or conducting a verification for tightness within 18 months after the last verification was performed. If operators of these airplanes elect to perform the verification for tightness, it must be repeated every 18 months until the terminating modification is

accomplished in accordance with paragraph (d) of the rule.

These same commenters request that proposed paragraph (c) be revised to indicate that accomplishment of the verification for tightness of the shear pin retainer attaching parts terminates the requirement for the repetitive visual inspections for installation of these same parts required by paragraph (a) and (b). The FAA concurs and has revised paragraph (c) of the final rule accordingly.

These commenters also request that proposed paragraph (d) be revised to extend the compliance time for accomplishment of the terminating modification from the proposed 3 years to 5 years. The commenters consider this modification to be only an "improvement change," and operators should be allowed to install it during a convenient and regularly scheduled maintenance period in order to avoid special scheduling of airplanes and additional associated costs. The FAA does not concur. In developing the compliance time for the terminating action, the FAA considered not only the safety implications, but the manufacturer's recommendations, the availability of required modification parts, and the practical aspects of an orderly modification of the fleet. In consideration of all of these items, the FAA determined that 3 years is an appropriate interval that will coincide with regularly scheduled maintenance periods ("C" checks) for the majority of the affected operators. However, under the provisions of paragraph (f) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 94 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD.

Accomplishment of the required inspections for installation of parts will take approximately 4 work hours per airplane, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of these requirements of this AD on U.S. operators is estimated to be $9,240, or $220 per airplane, per inspection.

Accomplishment of the required verification for tightness of the shear pin retainer attaching parts will take approximately 6 work hours per airplane, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of these requirements of this AD on U.S. operators is estimated to be $13,860, or $330 per airplane, per verification.

Accomplishment of the required terminating modification will take approximately 6 work hours per airplane, at an average labor rate of $55 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of these requirements of this AD on U.S. operators is estimated to be $13,860, or $330 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety. Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8403 (57 FR 47991, October 21, 1992), and by adding a new airworthiness directive (AD), amendment 39–8973, to read as follows:

94–15–02 McDonnell Douglas: Amendment 39–8973. Docket 93–NM–216–AD. Supersedes AD 92–23–03, Amendment 39–8403.

Applicability: Model MD–11 series airplanes; as listed in McDonnell Douglas MD–11 Alert Service Bulletin A54–31, dated September 17, 1992, and McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural damage to the engine mount structure, which could lead to loss of airplane components, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD–11 Alert Service Bulletin A54–31, dated September 17, 1992: Within 15 days after November 5, 1992 (the effective date of AD 92–23–03, amendment 39–8403), unless previously accomplished within the last 30 days, perform a visual inspection of the thrust link of the center engine forward mount to verify installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, dated September 17, 1992, or Revision 1, dated June 3, 1993.

(1) If shear pins, shear pin retainers, and shear pin retainer attaching parts are installed, repeat the visual inspection thereafter at intervals not to exceed 60 days until accomplishment of paragraph (c) or (d) of this AD.

(2) If any shear pin retainer or shear pin retainer attaching part is missing or loose, and if any shear pin has migrated, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(3) If any shear pin retainer or shear pin retainer attaching part is missing or loose, and if no shear pin has migrated, prior to further flight, repair in acordance with "Condition II" of McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1994.

(b) For airplanes listed in McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993, and not subject to the requirements of paragraph (a) of this AD, accomplish the following:

(1) For airplanes specified as Groups III and IV in that service bulletin: Within 15 days after the effective date of this AD or prior to the accumulation of 60 days since the last visual inspection performed before the effective date of this AD in accordance McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993, or equivalent, whichever occurs later, perform a visual inspection of the thrust link of the center engine forward mount to verify installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993.

(i) If shear pins, shear pin retainers, and shear pin retainer attaching parts are installed, repeat the visual inspection thereafter at intervals not to exceed 60 days until accomplishment of paragraph (c) or (d) of this AD.

(ii) If any shear pin retainer or shear pin retainer attaching part is loose or missing, and if any shear pin has migrated, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(iii) If any shear pin retainer or shear pin retainer attaching part is loose or missing, and if no shear pin has migrated, prior to further flight, repair in accordance with "Condition II" of McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993.

(2) For airplanes specified as Groups V and VI in that service bulletin: Accomplish the procedures specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD:

(i) Accomplish the visual inspection(s) and necessary follow-on procedures specified in paragraph (b)(1) of this AD, or

(ii) Prior to the accumulation of 18 months since the last verification for tightness of the shear pin retainer parts was accomplished, or within 6 months after the effective date of this AD, whichever occurs later, verify that the tightness of the shear pin retainer parts is within the limits specified in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. Repeat the verification for tightness thereafter at intervals not to exceed 18 months until the accomplishment of paragraph (d) of this AD.

(c) For all airplanes, except those subject to paragraph (b)(2)(ii) of this AD: Within 18 months after the effective date of this AD, verify that the tightness of the shear pin retainer attaching parts is within the limits specified in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. Repeat this verification thereafter at intervals not to exceed 18 months until accomplishment of paragraph (d) of this AD. Accomplishment of the verification for tightness required by this paragraph constitutes terminating action for the repetitive inspections for installation of parts required by paragraphs (a) and (b) of this AD.

(d) For all airplanes: Within 3 years after the effective date of this AD, replace the existing retainer and bolts with safety wire with a new retainer and new bolts with safety wire in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993.

prior to the accumulation of 60 days since the last visual inspection performed before the effective date of this AD in accordance McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993, or equivalent, whichever occurs later, perform a visual inspection of the thrust link of the center engine forward mount to verify installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993.

(i) If shear pins, shear pin retainers, and shear pin retainer attaching parts are installed, repeat the visual inspection thereafter at intervals not to exceed 60 days until accomplishment of paragraph (c) or (d) of this AD.

(ii) If any shear pin retainer or shear pin retainer attaching part is loose or missing, and if any shear pin has migrated, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(iii) If any shear pin retainer or shear pin retainer attaching part is loose or missing, and if no shear pin has migrated, prior to further flight, repair in accordance with "Condition II" of McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993.

(2) For airplanes specified as Groups V and VI in that service bulletin: Accomplish the procedures specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD:

(i) Accomplish the visual inspection(s) and necessary follow-on procedures specified in paragraph (b)(1) of this AD, or

(ii) Prior to the accumulation of 18 months since the last verification for tightness of the shear pin retainer parts was accomplished, or within 6 months after the effective date of this AD, whichever occurs later, verify that the tightness of the shear pin retainer parts is within the limits specified in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. Repeat the verification for tightness thereafter at intervals not to exceed 18 months until the accomplishment of paragraph (d) of this AD.

(c) For all airplanes, except those subject to paragraph (b)(2)(ii) of this AD: Within 18 months after the effective date of this AD, verify that the tightness of the shear pin retainer attaching parts is within the limits specified in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. Repeat this verification thereafter at intervals not to exceed 18 months until accomplishment of paragraph (d) of this AD. Accomplishment of the verification for tightness required by this paragraph constitutes terminating action for the repetitive inspections for installation of parts required by paragraphs (a) and (b) of this AD.

(d) For all airplanes: Within 3 years after the effective date of this AD, replace the existing retainer and bolts with safety wire with a new retainer and new bolts with safety wire in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. Accomplishment of this replacement constitutes terminating action for the repetitive actions required by paragraphs (a), (b) and (c) of this AD.

(e) Within 15 days after detecting any discrepancy during any inspection or verification action required by this AD, submit a report of the inspection results to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; fax (310) 988–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, dated September 17, 1992; and McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. The incorporation by reference of the former service bulletin was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of November 2, 1992 (57 FR 47991, October 21, 1992). The incorporation by reference of the latter service bulletin was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, CA 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on August 19, 1994.

Issued in Renton, Washington, on July 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17196 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 78G–0027]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Cellulose Triacetate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food additive regulations to provide for the safe use of cellulose triacetate as an immobilizing agent for lactase for use in reducing the lactose content of milk. This action is in response to a petition filed by Vitenco, Inc.

DATES: Effective July 20, 1994; written objections and requests for a hearing by August 19, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Owen Fields, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 17, 1978 (43 FR 11266), FDA announced that a generally recognized as safe (GRAS) affirmation petition (GRASP 7G0088) had been filed by Vitenco, Inc., 594 Marett Rd., Lexington, MA 02173, requesting that lactase from *Kluyveromyces* (*Saccharomyces*) *lactis* entrapped in cellulose triacetate fibers be affirmed as GRAS for use in reducing the lactose content of milk. Subsequent to the filing of this petition, FDA affirmed, in response to a separate petition (GRASP 6G0077), that lactase enzyme from *K. lactis* is GRAS for this use (21 CFR 184.1388) (49 FR 47384 at 47387, December 4, 1984). Therefore, this document deals only with the use of cellulose triacetate as an immobilizing agent and with any potential contaminants that might be introduced into food from this use.

Although the information submitted in GRASP 7G0088 allows the agency to conclude that the use of cellulose triacetate as an immobilizing agent is safe, the petition did not establish that the critical data are generally available as required by 21 CFR 170.30(b). Consequently, the agency has evaluated

those portions of the petition that relate to cellulose triacetate as a food additive (rather than as a GRAS affirmation) petition and is issuing this decision in accordance with 21 CFR 170.38(c)(1).

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause," a food additive cannot be listed for a particular use unless a fair evaluation of the evidence establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The Delaney anticancer provision of the general safety clause of the act (section 409(c)(3)(*A*)) further provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to constituents of the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive (see *Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984)).

II. Evaluation of Safety of the Petitioned Use of the Additive

The requested use of cellulose triacetate is as an immobilizing agent for the enzyme lactase in the production of reduced lactose milk. Cellulose triacetate containing physically entrapped lactase enzyme is added to milk that is to be treated; enzymatic digestion of lactose is allowed to occur; and the immobilizing agent and entrapped enzyme are then quantitatively removed from the treated milk. Data submitted by the petitioner demonstrate that when cellulose triacetate is used as an immobilizing agent, it does not affect the milk in which it is used in any way. The data in the petition also demonstrate that no detectable cellulose triacetate is present in the final product intended for human consumption. Based on these factors, FDA concludes that the ingredient itself is safe under these conditions of use.

FDA, in its evaluation of the safety of this additive, has reviewed not only the safety of the additive itself but also the safety of the chemical impurities that may be present in the additive from the manufacturing process. Residual amounts of reactants and manufacturing aids are commonly found as contaminants in chemical products, including food additives.

Methylene chloride is used as a solvent in the initial stages of manufacture of cellulose triacetate-immobilized lactase. Subsequent to the use of methylene chloride, the resultant fibers are completely dried to eliminate any remaining volatile contaminants (such as residual methylene chloride). Furthermore, before it is used in food, the product is washed several times to ensure removal of any such residual contaminants. Data submitted by the petitioner demonstrate that methylene chloride could not be detected in the final product immediately prior to its use in food at a detection limit of 0.5 parts per million (ppm).

Nevertheless, the agency has used risk assessment procedures to estimate the upper-bound risk presented by methylene chloride, a carcinogenic chemical, that may be present as an impurity in the additive. This risk evaluation has two aspects: (1) Assessment of the hypothetical worst-case exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of hypothetical worst-case human exposure.

FDA has estimated the hypothetical worst-case exposure to methylene chloride from the proposed use to be 6.0 nanograms per person per day (ng/p/day) (Ref. 1). This estimate is based on the assumption that methylene chloride is present in the additive at its detection limit, although it was not actually detected in any of the samples tested.

Using risk assessment procedures, FDA used data from the National Toxicology Program report (Ref. 2) of a bioassay on methylene chloride to calculate the potency, or unit risk, from exposure to this chemical (Ref. 3). The results of the bioassay on methylene chloride demonstrated that the material was carcinogenic for mice under the conditions of the study. The test material induced benign and malignant neoplasms in both the liver and lung of both sexes when administered by the inhalation route.

The agency also evaluated data from a second study in mice of the same strain as used in the inhalation study. In this study, methylene chloride was administered in the drinking water of the mice (Ref. 4). In this second study, there was no significant increase in the incidence of neoplasms at any site examined. However, assuming that methylene chloride would induce neoplasia at a dose just above the highest level tested in the drinking water study, a maximum potency can be estimated. This estimate is approximately the same as the potency calculated from the data of the inhalation study, providing confidence that using the inhalation study for upper bound risk assessment is not likely to underestimate any potential risk due to ingested methylene chloride (Ref. 3).

Based on a calculated hypothetical worst-case potential exposure of 6.0 ng/p/day, FDA estimates that the upper-bound limit of individual lifetime risk from the potential exposure to methylene chloride resulting from the use of cellulose triacetate as an immobilizing agent in the production of reduced lactose milk to be 4.4×10^{-11}, or approximately 4 in 100 billion (Ref. 5). Because there is no evidence to suggest, or any reason to believe, that methylene chloride will be present in the final product at the assumed level, the calculated estimate of the upper-bound limit of risk is likely to be substantially higher than any actual risk. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to methylene chloride that might result from the proposed use of cellulose triacetate as an immobilizing agent in the production of reduced lactose milk.

III. Conclusion on Safety

Having evaluated data in the petition and other relevant material, the agency concludes that the proposed use of the food additive is safe, and that the regulations in § 173.357 (21 CFR 173.357) should be amended as set forth below.

The agency has considered whether a specification is necessary to control the amount of methylene chloride in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) The steps utilized in the manufacture of cellulose triacetate that are intended to remove contaminants such as methylene chloride (drying to completion and washing of the resin to remove volatile and nonvolatile components, respectively, either of which could interfere with the intended enzymatic reaction) are a necessary part of the manufacturing process. Therefore, the agency would not expect this impurity to become a component of food at other than extremely small levels; (2) when the additive is manufactured under these conditions, methylene chloride could not be demonstrated to be present in the additive at a level of detection of 0.5 ppm; and (3) the upper-bound limit of lifetime risk from exposure to this impurity, even when calculated by using several worst-case assumptions, is extremely low, less than 4.4 in 100 billion.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before August 19, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each

Substances
Cellulose triacetate .....

* * * * *

Dated: July 13, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17577 Filed 7–19–94; 8:45 am]

BILLING CODE 4160–01–F

impurity, even when calculated by using several worst-case assumptions, is extremely low, less than 4.4 in 100 billion.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before August 19, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify the particular provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from Gregory Cramer, Regulatory Food Chemistry Branch, to L. Lin, Direct Additives Branch, dated July 7, 1986.

2. "Technical Report on the Toxicology and Carcinogenesis Studies of Dichloromethane (Methylene Chloride) in F344/N Rats and B6C3F1 Mice," NTP Draft Report, NTP–TR–306, National Institute of Health Publication No. l 85–2562, 1985.

3. Memorandum from the Quantitative Risk Assessment Committee, dated November 15, 1985.

4. National Coffee Association, "24–Month Oncogenicity Study of Methylene Chloride in Mice—Final Report," Hazelton Laboratories America, Inc., Vienna, VA, November 30, 1983.

5. Memorandum from the Quantitative Risk Assessment Committee dated October 30, 1992.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

2. Section 173.357 is amended in the table in paragraph (a)(2) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 173.357 Materials used as fixing agents in the immobilization of enzyme preparations.

* * * * *

(a) * * *

(2) * * *

Substances	Limitations
Cellulose triacetate	May be used as a fixing material in the immobilization of lactase for use in reducing the lactose content of milk.

* * * * *

Dated: July 13, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17577 Filed 7–19–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania regulatory program (hereinafter referred to as the Pennsylvania program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment establishes a self-bonding program as an alternative to the current financial instrument options available to the permittee for posting a performance bond. The performance bond is required to be submitted and approved by the regulatory authority before the permit is issued or mining initiated.

EFFECTIVE DATE: July 20, 1994.

FOR FURTHER INFORMATION CONTACT: George J. Rieger, Acting Director, Harrisburg Field Office, Office of Surface Mining Reclamation and

Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Proposed Amendment

On May 11, 1993, the Pennsylvania Department of Environmental Resources (PADER) submitted to OSM the rules published in the *Pennsylvania Bulletin* 20 Pa. B. 2517 and 21 Pa. B. 5142 as an amendment (Administrative Record Number PA 823.00) to the approved regulatory program. The amendment provides a permit applicant the option to use a self-bond as a financial instrument instead of a surety or collateral bond for the performance bond required by PADER before a coal mine permit may be issued or coal mining activities conducted. The proposed amendment also allows an eligible permittee to replace an existing surety or collateral bond with a self-bond.

OSM announced receipt of the proposed amendment in the June 7, 1993, **Federal Register** (58 FR 31926), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 7, 1993.

By letter dated January 24, 1994 (Administrative Record No. PA 823.07), OSM provided comments to Pennsylvania on the proposed amendment. By letter dated February 17, 1994 (Administrative Record No. PA 823.09), Pennsylvania submitted responses to OSM's concerns.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 40 CFR 732.17, are the Director's findings concerning the proposed amendment. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal rules.

1. Section 86.142 Definitions

a. Adverse opinion. Pennsylvania proposes to add this definition to mean a statement by an independent certified public accountant (CPA) that the financial statements of the applicant do not present fairly the financial condition of the applicant in conformity with generally accepted accounting principles. Although there is no counterpart Federal definition, the Federal regulations at 30 CFR 800.23(b)(4)(i) require that the applicant submit a financial statement for the latest complete fiscal year accompanied by a report by an independent certified public accountant and containing the accountant's audit opinion or review opinion. If either opinion contains an adverse opinion, the self-bond application must be denied. The independent CPA's audit or review opinion is required on the accuracy of the information in the financial statement. An Environmental Protection Agency (EPA) proposed rule (52 FR 12786, April 17, 1987) in discussing a firm's financial tests states that an "adverse opinion, indicates that, in the opinion of the auditor, a firm's financial statement does not present the firm's financial position, results of operations, or changes in financial position in a manner that conforms to generally accepted accounting principles. . . ." Although the EPA discussion is not controlling on OSM, it is being used for guidance. While there is no Federal definition, the Director finds the proposed definition to be not inconsistent with the requirements of SMCRA and the Federal regulations because the application of the definition will aid Pennsylvania in applying a uniform standard in determining whether or not a self-bond application should be rejected.

b. Applicant. Pennsylvania proposes to add a definition for "applicant" to mean a permittee or an applicant for a permit who is applying to self-bond under this subchapter. There is no corresponding Federal definition for "applicant" under the self-bonding rules. However, at 30 CFR 701.5 the Federal definition of "applicant" means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from a regulatory authority to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration. Under section 86.1, the State's general definition of applicant means any person who seeks to obtain a permit from the Department to conduct coal mining activities under this chapter. Pennsylvania is proposing an additional definition of "applicant" at section 86.142 to include an existing permittee or applicant for a permit who is applying to utilize a self-bond. At first blush it appears that the two definitions conflict with each other. Upon further examination, the definition of "applicant" found at section 86.142 will not supersede the general definition of applicant found at section 86.1 because the entity defined under section 86.142 already has to be a permittee or in the process of becoming one. By its own terms, the section 86.142 definition only concerns the self-bonding regulations. Therefore, the definition of "applicant" as it is applied in the self-bonding regulations is consistent with the self-bonding regulations at 30 CFR 800.23.

c. Continuous business operations. Pennsylvania proposes to add this definition to mean operations in which the applicant has been in business and operating for at least 10 years prior to the filing of its self-bonding application unless the applicant's existence results from a reorganization, consolidation or merger involving a company with this longevity. If the applicant is a majority-owned subsidiary of a corporation, it may rely upon its parent corporation's business history, which has a 10-year business history.

The Pennsylvania definition allows applicants that were once one type of entity but that are now a different type of entity, either as a result of a merger, consolidation or a reorganization, to become self-bonded so long as one of the entities was in existence for 10 years. The Federal regulation at 30 CFR 800.23(b)(2) requires a self-bonding applicant to be in continuous operation for a period of not less than 5 years immediately preceding the self-bond application. Events beyond the control of the applicant and not affecting its continuance as an entity may be excluded. The purpose behind the Federal rule was to "show the business entity's intent and ability to remain in operation and undertake the subsequent mining and reclamation." 48 FR 36418, 36420 (August 10, 1993). Thus, it appears that Pennsylvania's use of its definition may not fulfill the purpose of the Federal rule if the new entity was not in existence for at least 5 years. However, this definition if taken in concert with sections 86.159(b)(5), (c)(4), and (j), which are discussed below, insures as much as the 5-year continuous business operation requirement does, that the applicant will be in existence to complete the mining and the subsequent reclamation.

Section 86.159(b)(5), which requires that the applicant must have honored in the last 3 years all of its self-bonding obligations and section 86.159(b)(6), which prohibits the acceptance of an applicant whose surety bonds were canceled for nonpayment of premiums, fraud or failure to comply with the terms of the surety bond, are both indicators of a history for compliance with bonding obligations and as such are good indicators of a continuance in the future of complying with such obligations. Section 86.159(c)(4), which requires an applicant to certify that it will maintain its corporate status for at least 5 years, is more than just a statement because this certification is subject to criminal penalties for false swearing. Section 86.159(j), which requires the applicant, on a sliding scale of liability and net worth, to submit a security interest to Pennsylvania is an expression of confidence of the company that it expects to be in existence for the term of the permit and to have the security interest which was proffered to the State, released. Therefore, based on the above discussion, the Director finds that the definition of "continuous business operation" in conjunction with the above-noted sections is no less effective than 30 CFR 800.23(b)(2).

d. Current asset. Pennsylvania is proposing a new definition to mean cash or other assets which are reasonably expected to be converted to cash or sold or consumed within 1 year or within the normal operating cycle of the business. The Director finds that the proposed definition is substantively identical to and no less effective than the Federal definition of "current asset" at 30 CFR 800.23(a).

e. Current liability. The State proposes this definition to mean an obligation which is reasonably expected to be paid or liquidated within 1 year or within the normal operating cycle of the business. The Director finds that the proposed definition is substantively identical to the Federal definition of "current liabilities" at 30 CFR 800.23(a).

f. Disclaimer of opinion. The State proposes this definition to mean a statement by an independent certified public accountant (CPA) that he does not express an opinion on the financial statements of the applicant. Pursuant to section 86.159(g), an application will be rejected if a disclaimer of opinion is

concert with sections 86.159(b)(5), (c)(4), and (j), which are discussed below, insures as much as the 5-year continuous business operation requirement does, that the applicant will be in existence to complete the mining and the subsequent reclamation.

Section 86.159(b)(5), which requires that the applicant must have honored in the last 3 years all of its self-bonding obligations and section 86.159(b)(6), which prohibits the acceptance of an applicant whose surety bonds were canceled for nonpayment of premiums, fraud or failure to comply with the terms of the surety bond, are both indicators of a history for compliance with bonding obligations and as such are good indicators of a continuance in the future of complying with such obligations. Section 86.159(c)(4), which requires an applicant to certify that it will maintain its corporate status for at least 5 years, is more than just a statement because this certification is subject to criminal penalties for false swearing. Section 86.159(j), which requires the applicant, on a sliding scale of liability and net worth, to submit a security interest to Pennsylvania is an expression of confidence of the company that it expects to be in existence for the term of the permit and to have the security interest which was proffered to the State, released. Therefore, based on the above discussion, the Director finds that the definition of "continuous business operation" in conjunction with the above-noted sections is no less effective than 30 CFR 800.23(b)(2).

d. Current asset. Pennsylvania is proposing a new definition to mean cash or other assets which are reasonably expected to be converted to cash or sold or consumed within 1 year or within the normal operating cycle of the business. The Director finds that the proposed definition is substantively identical to and no less effective than the Federal definition of "current asset" at 30 CFR 800.23(a).

e. Current liability. The State proposes this definition to mean an obligation which is reasonably expected to be paid or liquidated within 1 year or within the normal operating cycle of the business. The Director finds that the proposed definition is substantively identical to the Federal definition of "current liabilities" at 30 CFR 800.23(a).

f. Disclaimer of opinion. The State proposes this definition to mean a statement by an independent certified public accountant (CPA) that he does not express an opinion on the financial statements of the applicant. Pursuant to section 86.159(g), an application will be rejected if a disclaimer of opinion is expressed by the CPA. There is no counterpart Federal definition for this term. However, the EPA discussed this term when it was proposing financial responsibility for owners of underground petroleum storage tanks. While EPA's discussions are not controlling on OSM's decision, it is helpful. EPA stated that a disclaimer of opinion meant that "the auditor does not express an opinion on the firm's financial statement. Auditors issue disclaimers of opinion of their examinations of a firm's financial statements have been limited in some way or if there are uncertainties regarding the firm's financial statements." 52 FR 12786 (April 17, 1987). The Director concludes that application of this definition will assist Pennsylvania in determining whether or not the applicant is a suitable candidate for self-bonding. Therefore, the Director finds this definition not inconsistent with the requirements of SMCRA and the Federal regulations.

g. Financial statement. The State is proposing a new definition to mean a formal report of the applicant's status of accounts at a particular time, prepared to show the operating results and financial condition of the applicant's business. The term includes, but is not limited to, the balance sheet, income statement, and statement of change in financial position prepared in accordance with generally accepted accounting principles. There is no counterpart Federal definition for this term. However, the State's definition follows basic accounting principles. Therefore, the Director finds the proposed definition to be not inconsistent with the requirements of SMCRA and the Federal regulations.

h. Fixed asset. The State proposes that this term includes plants and equipment, but does not include land or coal in place. Since this proposed rule is substantively identical to the Federal definition of "fixed asset," the Director finds that it is no less effective than the Federal rule.

i. Independent certified public accountant. Pennsylvania proposes this definition to mean a certified public accountant not dependent on or subject to the direct control of the applicant. There is no counterpart Federal definition.

However, the Federal regulations at 30 CFR 800.23(b)(4) require an independent certified public accountant's (CPA) audit or review opinion on the accuracy of the information in the financial statement. By letter of February 17, 1994 (Administrative Record No. 823.09), Pennsylvania stated that the purpose of the definition was to address those circumstances where the CPA was a sole practitioner whose primary client was the applicant. The Director believes the application of this definition to be an additional safeguard to Pennsylvania's self-bonding program. Therefore, the Director finds the proposed definition to be not inconsistent with the requirements of SMCRA and the Federal regulations.

j. Liability. Pennsylvania proposes to add this definition to mean an obligation to transfer assets or provide services to other entities in the future as a result of past transactions. The Director finds that the proposed definition is substantively identical to the Federal definition of "liability" at 30 CFR 800.23(a).

k. Net worth. Pennsylvania proposes to modify its definition to mean total assets minus total liabilities and is equivalent to owner's equity. The Director finds that the proposed definition is identical to the Federal definition of "net worth" at 30 CFR 800.23(a).

l. Parent corporation. Pennsylvania proposes to add this definition to mean the corporation which directly owns or controls the corporation which is the applicant. The Director finds that the proposed definition is substantively identical to the Federal definition of "parent corporation" at 30 CFR 800.23(a).

m. Self-bond. Pennsylvania proposes to revise its definition of "self-bond" to mean an indemnity agreement in a sum certain payable to the Department, executed by the permittee and by each individual and business organization capable of influencing or controlling the investment or financial practices of the permittee by virtue of his authority as an officer or ownership of all or a significant part of the permittee, and supported by agreements granting the Department a security interest in real or personal property pledged to secure performance by the permittee. The proposed State and Federal definitions of "self-bond" are similar with the additional requirements in the State's rule for indemnification by the controllers and significant owners of the self-bonded permittee, and for the pledging of real or personal property collateral to secure the self-bond. In addition, to those reasons discussed at Finding 1.c., the State's requirement for collateralized self-bonds serves to provide security for the self-bonding obligation and elevates the State's position to that of a secured creditor if there is a bankruptcy of the self-bonded permittee. Therefore, the Director finds that the State's revised definition of

"self-bond" is no less effective than the corresponding Federal requirements at 30 CFR 800.5(c).

n. Tangible net worth. Pennsylvania proposes to add this definition to mean net worth minus intangibles such as goodwill and rights to patents or royalties. The Director finds that the proposed definition is identical to and no less effective than the Federal definition of "tangible net worth" at 30 CFR 800.23(a).

o. Liquidity ratio. Pennsylvania proposes to delete this definition. Since there is no counterpart Federal definition for "liquidity ratio," the Director finds that the deletion of this definition does not render the Pennsylvania program less effective than the Federal requirements at 30 CFR 800.23

p. Quick assets. Pennsylvania proposes to delete this definition. There is no counterpart Federal definition for "quick assets." Therefore, the Director finds that the deletion of this definition does not render the Pennsylvania program less effective than the Federal requirements at 30 CFR 800.23.

q. Retained earnings. Pennsylvania proposes to delete this definition. Since there is no counterpart Federal definition for "retained earnings," the Director finds that the deletion of this definition does not render the Pennsylvania program less effective than the Federal requirements at 30 CFR 800.23.

2. Section 86.159

Pennsylvania is proposing to revise section 86.159 to establish the procedures and criteria to be used by the regulatory authority in determining whether a coal mine permittee is eligible to use self-bonding in lieu of a surety or collateral bond.

The Federal self-bonding rules at 30 CFR 800.23 establish minimum standards of financial eligibility to self-bond for States that wish to allow self-bonding. These rules also allow a regulatory authority to accept the guarantee of a qualified parent corporation for its subsidiaries. "States choosing to allow self-bonding may adopt more detailed rules that reflect the financial structures of the local industry, if necessary to provide the regulatory authority additional protection from risk of forfeiture." 48 FR 36418, 36419 (August 10, 1983).

a. Section 86.159(a). Pennsylvania proposes in paragraph (a) that the regulatory authority may accept a self-bond to cover all or part of the permittee's liabilities arising from coal mining activities. The State also proposes that an applicant which is a subsidiary may satisfy the requirements for eligibility to self-bond by relying on its parent corporation. The corresponding Federal requirements are similar with the exception of conditions added by the State to address mining activities that may not be self-bonded such as long-term facilities, acid mine drainage, and restoration of prime farmland. The Federal self-bonding rules do not limit self-bond coverage to certain mining activities. Pennsylvania stated in its May 12, 1990, *Pennsylvania Bulletin* that it was difficult to determine an applicant's financial eligibility to self-bond certain types of liabilities. The acceptance of a self-bond by a state regulatory authority is discretionary and the Director finds it is within the State's discretion to exclude certain liabilities from coverage by a self-bond. The Federal regulation at 30 CFR 773.15 prohibits a regulatory authority from issuing a permit if the permit applicant is, among other things, in violation of SMCRA or state and federal laws pertaining to air or water environmental protection. Pennsylvania's requirement that the applicant must have a positive compliance history with federal and state laws is not inconsistent with the Federal regulations. There is also no Federal counterpart that applicants must pledge collateral (see Finding 1.c.) and provide required security agreements in order for the State to allow an applicant to self-bond. However, the Director finds that these requirements are not inconsistent with the self-bonding regulations at 30 CFR 800.23.

b. Section 86.159 (b) (5), (6), and (c)(4). These sections, which have no Federal counterparts, are discussed at the Director's Finding 1.c.

c. Sections 86.159 (b) (1), (2), (c) (1), (2), (3), (5), and (6) and (f). Pennsylvania is proposing that, to be acceptable, the applicant or its parent corporation must (1) be authorized to do business in Pennsylvania, (2) designate a suitable agent to receive service of process, (3) have a history of continuous business operation, (4) meet certain financial criteria, and (5) submit financial statements of its most recent three fiscal years and any completed quarters in the current fiscal year.

The State's proposed amendment at subsection (b)(1) establishes the requirement that the applicant must be incorporated in or authorized to do business in Pennsylvania. There is no counterpart Federal regulation. However, the Director finds that the proposed rule is not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

The State is proposing at subsection (b)(2) that the applicant designate suitable agents in Pennsylvania to receive service of suits, claims, demands and other services of process. Since this provision is substantively identical to paragraph (b)(1) of 30 CFR 800.23 of the corresponding Federal rule, the Director finds that it is no less effective than the Federal rule.

The State proposes at subsection (b)(3) that the applicant's history of continuous business operation is met if the applicant's existence is the result of a reorganization, consolidation or merger involving a company with a history of continuous business operation or the applicant is a majority-owned subsidiary of a corporation with a history of continuous business operation. The Federal regulations at 30 CFR 800.23(b) allow an applicant to qualify for a self-bond even if it did not meet the 5 years of continuous business operation, so long as its parent corporation did meet the 5-year requirement. Pennsylvania's approach, of allowing an applicant to rely on its parent's time of operation, is consistent with 30 CFR 800.23(b). For a complete discussion of the term "continuous business operation," see the Director's Finding at 1.c.

Pennsylvania's proposed subsection (c) and the Federal regulations for financial statements are similar; however, the State's proposed rule at subsection (c) requires 3 years of audited financial statements and the Federal regulations require 1 year. Both require the submittal of unaudited quarters for the current year. Both require that the audited financial statements must be accompanied by a report prepared by an independent certified public accountant (CPA) that contains the accountant's audit or review opinion of the financial statements with no adverse opinion. In addition, the State's proposed rule requires that forfeiture of the aggregate of Pennsylvania self-bonds would not affect its ability to stay in business or endanger cash flow needed for its current obligations. There are no counterpart Federal regulations for these proposed requirements; however, they have the effect of strengthening the proposed self-bonding program and are no less effective than the Federal regulations. The Director, therefore, finds that the proposed rule at subsection (c) is no less effective than the counterpart Federal regulations at 30 CFR 800.23(b)(4).

Pennsylvania is proposing at subsection (f) that the applicant for self-bonding meet one of the three following financial criteria:

(1) A current rating for its most recent bond issuance of either: AAA, AA or A as issued by Standard and Poor's Corporation; or Aaa, Aa or A as issued by Moody's Investor Services;

(2) A tangible net worth of at least 10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(3) Fixed assets in the United States of at least 20 million and a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater.

The State's proposed rules are essentially the same as the corresponding Federal regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii). In addition to meeting one of the three basic tests, the State's proposed rules also require the applicant to have a tangible net worth that is six times its total self-bonds in Pennsylvania and that amounts to 90 percent of its total assets. This requirement is similar to a financial assurance requirement of the EPA's regulations for hazardous waste facilities (47 FR 15032, April 7, 1982). In it preamble, EPA stated that "This requirement was included to help ensure accessibility to funds in the event of bankruptcy or other default." There is no counterpart Federal requirement for these additional tangible net worth components of the basic financial tests in OSM's regulations at 30 CFR 800.23(b). However, this rule implements the Pennsylvania statute requiring the same. The rules add the assurance of the financial stability of the applicant. Therefore, the State's proposed rules at subsection (f) are no less effective than the Federal regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii).

d. Section 86.159(b)(4). Pennsylvania is proposing at subsection (b)(4) that, in the past 36 months, the applicant has not defaulted on any payments of dividend or sinking fund installments, lease rentals and reclamation fees. There are no counterpart Federal regulations. However, the Director finds that the proposed rule is not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

e. Section 86.159(d). The Federal regulations at 30 CFR 800.23(f) allow the regulatory authority to request update information from the applicant within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee. This was intended to give the regulatory authority flexibility to require additional information if it believed it was necessary. Pennsylvania has submitted a similar requirement at

(1) A current rating for its most recent bond issuance of either: AAA, AA or A as issued by Standard and Poor's Corporation; or Aaa, Aa or A as issued by Moody's Investor Services;

(2) A tangible net worth of at least 10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(3) Fixed assets in the United States of at least 20 million and a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater.

The State's proposed rules are essentially the same as the corresponding Federal regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii). In addition to meeting one of the three basic tests, the State's proposed rules also require the applicant to have a tangible net worth that is six times its total self-bonds in Pennsylvania and that amounts to 90 percent of its total assets. This requirement is similar to a financial assurance requirement of the EPA's regulations for hazardous waste facilities (47 FR 15032, April 7, 1982). In it preamble, EPA stated that "This requirement was included to help ensure accessibility to funds in the event of bankruptcy or other default." There is no counterpart Federal requirement for these additional tangible net worth components of the basic financial tests in OSM's regulations at 30 CFR 800.23(b). However, this rule implements the Pennsylvania statute requiring the same. The rules add the assurance of the financial stability of the applicant. Therefore, the State's proposed rules at subsection (f) are no less effective than the Federal regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii).

d. Section 86.159(b)(4). Pennsylvania is proposing at subsection (b)(4) that, in the past 36 months, the applicant has not defaulted on any payments of dividend or sinking fund installments, lease rentals and reclamation fees. There are no counterpart Federal regulations. However, the Director finds that the proposed rule is not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

e. Section 86.159(d). The Federal regulations at 30 CFR 800.23(f) allow the regulatory authority to request update information from the applicant within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee. This was intended to give the regulatory authority flexibility to require additional information if it believed it was necessary. Pennsylvania has submitted a similar requirement at subsection (d) requesting some of the financial information specified in the Federal rule. Since this is discretionary on the part of the regulatory authority, the Director finds that the proposed rule is no less effective than the Federal regulations at 30 CFR 800.23(f).

f. Section 86.159(e). Pennsylvania is proposing at subsection (e) that if the applicant or the CPA submits false information the application will be disallowed and render the applicant ineligible to self-bond. In addition, this section subjects the applicant and the CPA to criminal penalties for false swearing. There is no direct Federal counterpart. However, the Federal rules envision that an applicant will answer truthfully. Therefore, the Director finds that the proposed rule is not inconsistent with the requirements of SMCRA and the Federal regulations.

g. Section 86.159(g). The State's proposed rule at subsection (g) is similar to the Federal regulations at 30 CFR 800.23(b)(4)(i) which require submittal of an accountant's audit opinion or review opinion on the financial statements with no adverse opinion. However, the State has expanded its rule at this section to disqualify an applicant on the basis of both an adverse opinion and a disclaimer opinion by an accountant. In addition, an applicant may be determined to be ineligible to self-bond on the basis of other qualifications in the opinion expressed by the CPA. The Director finds that the proposed rule is no less effective than the counterpart Federal regulations at 30 CFR 800.23(b)(4)(i).

h. Section 86.159(h). Pennsylvania is proposing at subsection (h) that the total value of outstanding plus proposed self-bonds for coal mining activities may not exceed 25 percent of the applicant's tangible net worth in the United States. This is similar to the counterpart Federal rule at 30 CFR 800.23(d). However, the Federal rule also requires for corporate guarantees that the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for coal mining activities shall not exceed 25 percent of the guarantor's net worth in the United States. Under the proposed Pennsylvania self-bonding rules, the parent corporation is always a party to the self-bond and is established as a co-indemnitor under the self-bond. In applying the proposed Pennsylvania rule, an applicant may rely on its parent's qualifications to be accepted under the self-bonding rules. If this is so, the parent is thus subject to the 25 percent requirements. The Director finds the proposed rule is no less effective than the counterpart Federal regulations at 30 CFR 800.23(d).

i. Section 86.159(i). Pennsylvania is proposing at subsection (i) that the period of liability under a self-bond is determined in accordance with the existing bonding regulations. Similarly, the release of a self-bond is to be governed by the existing regulations. Pennsylvania also proposes that the liability under a self-bond is terminated upon the Department's approval of alternative bonding submitted by the applicant. The Director finds the cross-references to other rules is consistent with the Federal bonding regulations at 30 CFR 800.13 and 800.40 and its replacement provision is similar to and no less effective than the counterpart Federal provision at 30 CFR 800.30.

j. Section 86.159(j). Pennsylvania's proposed rule at subsection (j) requires that part of all of the self-bond amount be collateralized by the permittee's pledge of security interests in real or personal property. There are no counterpart Federal requirements of this kind in the Federal self-bonding program. These regulations implement Pennsylvania's statute requiring the same. Unlike collateral bonds, these security interests for self-bonds are not always the full amount of the bond. The amount of collateral required by the State's proposed rules is determined on a sliding scale of liability and net worth. This collateral is in addition to all the self-bonding rules. Also, as discussed at the Director's Finding 1.c., the requirement that the applicant submit a security interest to Pennsylvania is an expression of confidence of the company that it expects to be in existence for the term of the permit and to have the security interest which was proffered to the State released. Therefore, the Director finds that the State's proposal to require full or partial collateral is no less effective than the Federal regulations.

k. Section 86.159(k) (1), (2) and (3). Proposed subsections (k)(1) through (k)(3) provide the Department with the authority to require appropriate forfeiture terms and conditions within the indemnity agreement that are in addition to the general forfeiture requirements of Pennsylvania's bonding program.

Pennsylvania proposes a subsection (k)(1) that the self-bond will be forfeited if 90 days after the Department is informed or determines that the applicant is no longer eligible to self-bond and within the 90-day period the applicant fails to submit to the Department acceptable security as provided for in subchapter F to cover its self-bonded liability. The Federal rules

at 30 CFR 800.23(g) contain a similar requirement with the statement that if the permittee fails to post an adequate substitute bond the provisions of 30 CFR 800.16(e) shall apply. Under 30 CFR 800.16(e) the operator would have to cease coal extraction and immediately begin reclamation operations. At section 86.151(h) one of the requirements is that the applicant complete the reclamation plan. At section 86.159(k)(2) liability under the self-bond is conditioned on the applicant complying with the various environmental statutes and regulations including Pennsylvania's Surface Mining Conservation and Reclamation Act. This obligation also falls upon the parent who under section 86.159(l)(2) is co-indemnitor under the self-bond. This along with the requirement that the self-bond becomes due and payable upon default is consistent with the Federal regulations at 30 CFR 800.23(e)(4), which require the applicant, parent or non-parent corporate guarantor to complete reclamation or to pay costs of reclamation. Subsection (k)(2) also requires the applicant or its parent to notify Pennsylvania if there is a material adverse change in its financial condition. The Federal regulations at 30 CFR 800.23(g) also require a similar notification concerning the change in financial condition. Therefore, the Director finds that the proposed amendment is no less effective than 30 CFR 800.23 (e)(4) and (g).

At subsection (k)(3) Pennsylvania specifies conditions that relate to performance under the mining permit and Pennsylvania mining statutes and regulations and certain commercial lending based criteria relative to the value of the underlying pledged assets. There are no counterpart Federal regulations. However, the Director finds that the proposed rules are not inconsistent with SMCRA and no less effective than the Federal regulations.

l. Section 86.159(l). Pennsylvania is proposing that the applicant be a party to the self-bond, which is consistent with the definition of self-bond at 30 CFR 800.5. In addition, at subsection (l)(2) Pennsylvania is requiring that all parent corporations be a party to the self-bond whenever its subsidiary is an applicant for a self-bond. This is different than the Federal rules at 30 CFR 800.23(e) which only require a parent to be a party to the bond when it is a parent corporation guarantor. Nonetheless, the Director finds this requirement will reduce the risk of a bond forfeiture and therefore finds it no less effective than 30 CFR 800.23(e)(1).

The Federal regulations at 30 CFR 800.23(e)(2) provide signature requirements for corporate indemnity agreements as well as authorizations and affidavits to assure a corporation is bound to the terms of the agreement. The Federal regulations require that two authorized corporate officers for the applicant as well as the parent corporation execute the agreements; whereas the State's rule does not require two signatures of all the indemnitors. In the preamble to the final self-bonding rules (48 FR 36418, August 10, 1983), OSM explained in response to a comment that "OSM does not consider it a burden on the corporation to obtain the signatures of two corporate officers on the indemnity agreement. For such an infrequent and important action, the approval of two corporate officers will better assure that the corporation and OSM are protected from possible unauthorized actions of an individual. This requirement is retained." The Federal regulations require an affidavit from the corporation(s) certifying that entering into the indemnity agreement is valid under all applicable Federal and State laws. Pennsylvania lacks this requirement for all of its indemnitors. In addition, this section of the Federal regulations also requires that the signatories provide the regulatory authority with documents that evidence their authority to bind the corporation (e.g. board of directors resolutions) and authorization for the parent corporation to enter into the indemnity agreement. Again, Pennsylvania does not require this. Even though the State requires the applicant and the parent to be co-indemnitors under the self-bond, the Director finds that the proposed rule is less effective than the Federal rule because it lacks all the requirements discussed above. Accordingly, the Director is requiring that Pennsylvania amend its program to be no less effective than 30 CFR 800.23(e)(2).

Finally, Pennsylvania at subsection 86.159(1)(3) requires each person with a beneficial interest in a partnership, joint venture or syndicate to be a party and co-indemnitor under the self-bond. This is substantively identical to the Federal requirement at 30 CFR 800.23(e)(3) and is, therefore, no less effective than the Federal regulation.

m. Section 86.159(m). Pennsylvania proposes at subsection (m) that each indemnitor under the self-bond shall be jointly and severally liable. As the proposed amendment is substantively identical to language found at 30 CFR 800.23(e)(1), the Director finds it no less effective than the Federal rule.

n. Section 86.159(n). Pennsylvania is proposing at subsection (n) the types of security interests that may be used to secure the self-bond. In addition, this section sets out the standard the Department will use in determining the acceptability of the security interest being pledged. There are no counterpart Federal regulations. However, the Director finds the proposed rule is not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

o. Section 86.159(o). Pennsylvania is proposing at subsection (o) that during the period of the self-bond and until released in writing by the Department, the parties to the self-bond who are indemnitors may not take action which would adversely affect the Commonwealth's rights, title or interest in the security interests pledged to secure the self-bond. This proposed rule provides for default if the applicant takes action that would reduce the value of the pledged assets. There are no counterpart Federal regulations. However, this provision provides protection for Pennsylvania's security interests, hence the Director finds the proposed rule is not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

p. Section 86.159(p). Pennsylvania proposes at section (p) that in addition to the indemnification and security required in subsection (j), the Department may require a third-party guarantee of an applicant's self-bond. A third-party guarantor shall guarantee and become surety for the performance of the parties who are indemnitors under the self-bond required by subsection (j). The guarantor must submit a perfected security interest that is acceptable to Pennsylvania. It should be noted that these third-party guarantors under the Pennsylvania program are not the same as a non-parent corporate guarantor under 30 CFR 800.23(c)(2), since the applicant and/or its parent must still meet the financial qualification regardless of any third-party guarantors. There are no counterpart Federal regulations. However, the Director finds the proposed rule is not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

q. Section 86.159(q). Pennsylvania is proposing at subsection (q) that when the Department determines that an event of default or forfeiture under the self-bond has occurred, the determination shall also constitute a determination of the applicant's inability to self-bond. There are no counterpart Federal self-bonding regulations. However, the Director finds that the provisions of the proposed rule are not inconsistent with the bonding requirements under 30 CFR Part 800.

r. Section 86.159(r). Pennsylvania proposes at subsection (r) that, at the request of the applicant, the Department will maintain the confidentiality of the applicant's financial information and the terms and the conditions of the security interests unless it is allowed to be disclosed under other laws. There is no comparable Federal counterpart. These regulations implement Pennsylvania's statute at 52 P.S. §§ 1396.4 and 1406.6, which prohibit such disclosure. Therefore, the Director finds that the rule is not inconsistent with the requirements of SMCRA and the Federal regulations.

s. Section 86.159(s). Pennsylvania is proposing at subsection (s) that applications for a self-bond and each annual update of a self-bond shall be accompanied by a nonrefundable fee in the amount of $900. There are no counterpart Federal regulations. However, in a comparable Federal rule at 30 CFR 777.17, permit fees are allowed so long as they do not exceed the costs to the regulatory authority. Pursuant to the October 10, 1987, *Pennsylvania Bulletin*, Pennsylvania stated that the $900 fee was needed to cover the costs of reviewing and verifying the application and to obtain the services of an outside consultant to analyze the applicant's eligibility or continuing eligibility. Therefore, the Director finds that the fee is reimbursement of the costs to Pennsylvania and finds the proposed rule is not inconsistent with SMCRA and the Federal regulations.

t. Section 86.159(t). Proposed subsection (t) establishes the regulatory authority of the Department to seek remedies against a permittee or applicant apart from those specifically set forth in the proposed self-bonding rules. There are no counterpart Federal regulations. However, it is not inconsistent with SMCRA and the Federal regulations because it clarifies that the remedies under SMCRA are not the only ones available to Pennsylvania.

u. Section 86.166(b). Pennsylvania is revising this paragraph to correct the rule reference concerning release of bonds from "Part 4 of this subchapter" to "86.170–86.173 (relating to release of bonds)." The Director finds that this revision is nonsubstantive in nature and will not render the Pennsylvania program inconsistent with the requirements of SMCRA and the Federal regulations.

v. Section 86.166(c). Pennsylvania prohibited a permittee from replacing its existing bond with a self-bond. Pennsylvania is now proposing to delete this prohibition. Since the corresponding Federal rule at 30 CFR

r. Section 86.159(r). Pennsylvania proposes at subsection (r) that, at the request of the applicant, the Department will maintain the confidentiality of the applicant's financial information and the terms and the conditions of the security interests unless it is allowed to be disclosed under other laws. There is no comparable Federal counterpart. These regulations implement Pennsylvania's statute at 52 P.S. §§ 1396.4 and 1406.6, which prohibit such disclosure. Therefore, the Director finds that the rule is not inconsistent with the requirements of SMCRA and the Federal regulations.

s. Section 86.159(s). Pennsylvania is proposing at subsection (s) that applications for a self-bond and each annual update of a self-bond shall be accompanied by a nonrefundable fee in the amount of $900. There are no counterpart Federal regulations. However, in a comparable Federal rule at 30 CFR 777.17, permit fees are allowed so long as they do not exceed the costs to the regulatory authority. Pursuant to the October 10, 1987, *Pennsylvania Bulletin*, Pennsylvania stated that the $900 fee was needed to cover the costs of reviewing and verifying the application and to obtain the services of an outside consultant to analyze the applicant's eligibility or continuing eligibility. Therefore, the Director finds that the fee is reimbursement of the costs to Pennsylvania and finds the proposed rule is not inconsistent with SMCRA and the Federal regulations.

t. Section 86.159(t). Proposed subsection (t) establishes the regulatory authority of the Department to seek remedies against a permittee or applicant apart from those specifically set forth in the proposed self-bonding rules. There are no counterpart Federal regulations. However, it is not inconsistent with SMCRA and the Federal regulations because it clarifies that the remedies under SMCRA are not the only ones available to Pennsylvania.

u. Section 86.166(b). Pennsylvania is revising this paragraph to correct the rule reference concerning release of bonds from "Part 4 of this subchapter" to "86.170–86.173 (relating to release of bonds)." The Director finds that this revision is nonsubstantive in nature and will not render the Pennsylvania program inconsistent with the requirements of SMCRA and the Federal regulations.

v. Section 86.166(c). Pennsylvania prohibited a permittee from replacing its existing bond with a self-bond. Pennsylvania is now proposing to delete this prohibition. Since the corresponding Federal rule at 30 CFR 800.30(a) allows permittees to replace existing bonds with other bonds that provide equivalent coverage, the Director finds that the revised State rule is no less effective than the Federal rule.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

Agency Comments

Pursuant to 30 CFR 732.17(h)(ii)(i), the Director solicited comments from various Federal and State agencies with an actual or potential interest in the Pennsylvania program. The Department of Labor, Mine Safety and Health Administration (MSHA), commented that the proposed amendment would have no effect on MSHA operations or regulations. The Department of Agriculture, Soil Conservation Service, stated that the proposed changes would not have any significant effects on the environmental integrity of the regulations. The Department of the Interior, Bureau of Mines, and the U.S. Army Corps of Engineers responded that they had no comments.

Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.)* or the Clean Air Act (42 U.S.C. 7401 *et seq.)*. None of the revisions that Pennsylvania proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. PA 823.01). The EPA responded that it concurred with the proposed amendment.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Pennsylvania on May 11, 1993, and clarified on February 17, 1994. As discussed at Finding 2.1., the Director finds that, for the most part, the Pennsylvania program does not have a counterpart to the Federal rules at 30 CFR 800.23(e)(2). The Director is, therefore, requiring Pennsylvania to further amend its program to correct the identified deficiencies.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 938.16 that, within 60 days of the publication of this final rule, Pennsylvania must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Pennsylvania's established administrative or legislative procedures.

The Federal regulations at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

For administrative reasons, the Director is reiterating the removal of required amendments (i), (j), and (k) as set forth in 57 FR 48733 (October 28, 1992).

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 13, 1994.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15 is amended by adding paragraph (bb) to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(bb) The following amendment to the Pennsylvania regulatory program, as submitted to OSM on May 11, 1993, and clarified by letter dated February 17, 1994, is approved, except as noted herein, effective July 20, 1994. Revisions to Title 25, Pennsylvania Code Sections 86.142, 86.159, and 86.166 concerning self-bonding provisions, except to the extent that Section 86.159(l)(2) does not contain all the requirements for the execution of indemnity agreements.

3. In § 938.16, paragraphs (i), (j), and (k) are removed and reserved and a new paragraph (nnn) is added to read as follows:

§ 938.16 Required regulatory program amendments.

* * * * *

(nnn) By September 19, 1994, Pennsylvania shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise section 86.159(l)(2) to require two officer signatures for each corporate indemnitor, an affidavit from the corporation(s) certifying that entering into the indemnity agreement is valid under all applicable Federal and State laws, and documents that evidence the authority of the signatories to bind the corporation and an authorization by the parent corporation to enter into the indemnity agreement.

[FR Doc. 94–17633 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–5007–9]

Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Clean Air Act, as amended in 1990 (CAA or the Act), mandated that the Environmental Protection Agency (EPA or the Agency) promulgate regulations requiring that gasoline sold in certain areas be reformulated to reduce vehicle emissions of toxic and ozone-forming compounds and that gasoline sold outside these areas would not be more polluting than it was in 1990. On February 16, 1994, EPA published the final rule establishing performance standards and compliance provisions for conventional and reformulated gasoline (RFG). This direct final rule (DFRM) makes minor corrections, clarifications, and revisions to various provisions in the final reformulated gasoline rule.

This action addresses the following issues: Work-In-Progress (WIP) baseline adjustments; JP–4 baseline adjustments; summer/winter season definition for baseline determination; complex model valid range extension for conventional gasoline baselines; valid range limits for aromatics, oxygen, benzene, and RVP; clarifications to the VOC and NO_x extrapolations in the complex model; clarifications of seasonal condition inconsistencies; and enforcement corrections/clarifications associated with the reformulated gasoline and anti-dumping regulations, as well as several technical clarifications and typographical corrections.

EFFECTIVE DATES: This rule will be effective September 19, 1994 unless notice is received by August 19, 1994 that adverse or critical comments will be submitted or that an opportunity to submit such comments at a public hearing is requested. If such comments or a request for a public hearing are received by the Agency, then EPA will publish a subsequent Federal Register notice withdrawing from this action only those items which are specifically listed in those comments or in the request for a public hearing. See **SUPPLEMENTARY INFORMATION** for further discussion on submission of public comment.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–94–30, at Air Docket Section, U.S. Environmental Protection Agency, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460. The Agency requests that commenters also send a copy of any comments to David Korotney at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Materials relevant to the reformulated gasoline final rule and this direct final rule are contained in Public Dockets A–91–02 and A–92–12, located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

David Korotney, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4507.

To Request Copies of this Action Contact: Delores Frank, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4295.

SUPPLEMENTARY INFORMATION:

Public Comments

For parties that submit adverse or critical comments, notify EPA of intentions to submit adverse comments, or request a public hearing, the Agency requests that commenters identify each of the items at issue by the specific preamble section numbers that discuss those items. For instance, adverse comments on the change to the oxygen valid range limits should include a reference to Section (Item Number) II.A.1 of the preamble. Adverse comments on any of the insubstantial errors in Section I of the preamble should include a reference to the identification code associated with each change in that section. For instance, adverse comments on the paragraph reference change in § 80.41(h)(2)(iii)

Identification code	Regulation reference
A	80.41(h)(2)(iii)
B	80.41(j)(2)
C	80.41(m)(1)
D	80.42(c)(1)
E	80.42(a)

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–94–30, at Air Docket Section, U.S. Environmental Protection Agency, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460. The Agency requests that commenters also send a copy of any comments to David Korotney at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Materials relevant to the reformulated gasoline final rule and this direct final rule are contained in Public Dockets A–91–02 and A–92–12, located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

David Korotney, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4507.

To Request Copies of this Action Contact: Delores Frank, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4295.

SUPPLEMENTARY INFORMATION:

Public Comments

For parties that submit adverse or critical comments, notify EPA of intentions to submit adverse comments, or request a public hearing, the Agency requests that commenters identify each of the items at issue by the specific preamble section numbers that discuss those items. For instance, adverse comments on the change to the oxygen valid range limits should include a reference to Section (Item Number) II.A.1 of the preamble. Adverse comments on any of the insubstantial errors in Section I of the preamble should include a reference to the identification code associated with each change in that section. For instance, adverse comments on the paragraph reference change in § 80.41(h)(2)(iii) should include a reference to Item Number I–A. The EPA will withdraw from this direct final action only those specific provision(s) so identified. All other provisions included in today's notice will become effective on September 19, 1994.

EPA believes that the use of a direct final rule is appropriate because the changes made are generally minor in nature and all are expected to be non-controversial. The DFRM will allow the Agency to finalize such changes in a timely manner. For instance, many of the changes contained herein clarify issues relevant to the development and auditing of individual baselines which, in general, must be submitted by either June 1, 1994 or September 1, 1994. Likewise, the reformulated gasoline program will commence on December 1, 1994. The clarifications and changes contained herein will promote successful implementation of this program.

A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: RFG–DFRM.ZIP. To download this file, type the following instructions and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D *filename.zip*

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

The remainder of this preamble is organized into the following sections:

I. Insubstantial Errors
II. Valid Range Limits
III. Complex Model
IV. Enforcement Corrections and Clarifications
V. Summer/Winter Season
VI. Baseline Determination Adjustments
VII. Public Participation and Effective Date
VIII. Statutory Authority
IX. Administrative Designation
X. Regulatory Flexibility Analysis

I. Insubstantial Errors

The final rulemaking for the regulation of reformulated and conventional gasoline contained a number of errors, ambiguities, and misrepresentations of Agency intent which are being addressed by this direct final rule. Of these errors, many are minor in both form and effect. The minor errors do not require detailed discussions since they all have at most a negligible effect on compliance with the regulations, and require only simple corrections. Such minor errors took the form of typographical errors, grammatical errors, inadvertent omissions, and inadvertent insertions. The table below lists all the insubstantial errors that are being corrected in this direct final rule. Other errors are more substantial. The more substantial errors and the associated corrections have been discussed on an item-by-item basis in the following sections.

Identification code	Regulation reference	Correction
A	80.41(h)(2)(iii)	Correct the paragraph reference from 80.101(g) to 80.101(h).
B	80.41(j)(2)	Correct the paragraph reference from (j)(1)(i) to (j)(1).
C	80.41(m)(1)	A missing word "of" is inserted into the text.
D	80.42(c)(1)	In the table, change the valid range limits for "Oxygenate" in volume percent to valid range limits for "Oxygen" in weight percent to match the values already present.
E	80.42(a)	Correct the definition of exhaust and nonexhaust VOC from nonmethane hydrocarbons to nonmethane, nonethane hydrocarbons. All calculations and equations are correctly based on nonmethane, nonethane hydrocarbons.

Identification code	Regulation reference	Correction
F	80.42(b)(1)(ii), 80.42(b)(2)(ii), and 80.42(b)(3)(ii).	Add a concluding sentence which clarifies that the use of methanol and other non-alcohol, non-ether oxygenates in reformulated gasoline is limited to vehicle testing under the Complex Model.
G	80.45(b)(3)	Correct the inadvertent omission of the first decimal place in the baseline values for exhaust VOC and NO_x in Table 3.
H	80.45(c)(1)(iv)(A)	The footnotes to Table 6 are clarified to indicate that the higher E300 limit can be no higher than 94 percent as described in paragraphs 80.45 (c)(1)(iv)(C)(*6*) and 80.45(c)(1)(iv)(D)(*6*).
I	80.45(c)(1)(iv)(B)	Change the word "and" to "and/or".
J	80.45(c)(1)(iv)(C)(11)	The paragraph references are corrected from (c)(1)(iv)(C)(*8*) and (*9*)" to "(c)(1)(iv)(C)(*9*) and (*10*)."
K	80.45(c)(1)(iv)(C)(12)	Correct the second "E300" to "ΔE300".
L	80.45(c)(1)(iv)(C)(14)	The paragraph references are corrected from "(c)(1)(iv)(C)(*11*) and (*12*)" to "(c)(1)(iv)(C)(*13*)."
M	80.45(c)(1)(iv)(D)(11)	The paragraph references are corrected from "(c)(1)(iv)(D)(*8*) and (*9*)" to "(c)(1)(iv)(D)(*9*) and (*10*)."
N	80.45(c)(1)(iv)(D)(12)	Correct "E30′ 0" to "E300".
O	80.45(c)(1)(iv)(D)(14)	The paragraph references are corrected from "(c)(1)(iv)(D)(*11*) and (*12*)" to "(c)(1)(iv)(D)(*12*) and (*13*)."
P	80.45(c)(8)(ii)	An extraneous word "for" at the end of the paragraph is removed.
Q	80.45(d)(1)(iv)(B)	Change the word "and" to "and/or".
R	80.45(e)(1)(ii)	Correct the toxic emissions baseline values in the equations which were rounded incorrectly to mimic the correct values in Table 5 of 80.45(b)(3): In Phase I, "TOXICS2%=[100%×(TOXICS2–47.58mg/mi)]/(47.58 mg/mi)" In Phase II, "TOXICS1%=[100%×(TOXICS1–86.34mg/mi)]/(86.34 mg/mi)"
S	80.45(e)(4)(iii)	A missing word "an" is inserted into the last sentence.
T	80.45(e)(5)(iv) & 80.45(e)(6)(iv)	Add a concluding sentence which clarifies that the use of methanol and other non-alcohol, non-ether oxygenates in the Complex Model is limited to augmentation through vehicle testing.
U	80.45(e)(9) & 80.45(e)(10)	Correct the variable names in the equations to mimic the variable names in the definition list: "HSVOC1" is corrected to "VOCHS1", "DIVOC1" is corrected to "VOCD11", "RLVOC1" is corrected to "VOCRL1", "RFVOC1" is corrected to "VOCRF1", "HSVOC2" is corrected to "VOCHS2", "DIVOC2" is corrected to "VOCDI2", "RLVOC2" is corrected to "VOCRL2", "RFVOC2" is corrected to "VOCRF2".
V	80.45(f)(1)	The paragraph references are corrected from "(a), (c), and (d)" to "(c), (d), and (e)".
W	80.45(f)(1) (i) & (ii)	The units for E200 and E300 are corrected from "volume percent" to "percent evaporated".
X	80.48(c)(1)	Correct the paragraph reference from "(c)(1)(iv) of this section" to "(c)(1)(iv) of this section and 80.49(d)".
Y	80.48(c)(1)(v)	Revise last sentence to clarify that the model must be re-estimated after dropping the B, term.
Z	80.48(c)(2)(iii)	A concluding sentence is added indicating that the centered form of the Complex Model will be made available upon request.
AA	80.48(g)	Correct "the augmentation petition" to "other augmentation petitions".
AB	80.49(a)(5)(i)	The "Candidate parameter" entry is deleted from the table.
AC	80.49(b)(3)(iii)	The paragraph reference is corrected from "(b)(2)(ii) and (b)(3)" to "(b)(2)(ii)".
AD	80.59(a)	Revise last sentence to clarify that closed-loop systems and adaptive learning components are minimum requirements.
AE	80.65(d)(3)	A cross-reference to the blendstock accounting requirement in 80.102(e) is corrected.
AF	80.66(g)(1) and (g)(2)(ii)	Cross-references to 80.45, pertaining to the calculation of per-gallon values for VOC, NO_x, and toxics emissions performance reduction, are corrected.
AG	80.68(c)(8)(ii)(A) and (c)(9)(ii)(A)	Cross-references to the complex model in 80.45 are corrected.
AH	80.68(c)(9)(ii)(B)	A cross-reference to the annual toxics emissions weighting formula in 80.68(c)(9)(i)(B) is corrected.
AI	80.68(c)(10(i)	A cross-reference to the NO_x emissions reduction percentage in 80.45 is corrected.
AJ	80.69(a)(7)(ii)	A cross-reference to the applicable correlation ranges in 80.65(e)(2)(i) is corrected.
AK	80.69(b)(3)	A cross-reference to the oxygen averaging requirements in 80.67(f) is corrected.
AL	80.70(j)(11)	The spelling of Allegheny County, Pennsylvania, is corrected.
AM	80.75(j)	A cross-reference to the survey provisions in 80.41(q)(2) is corrected.
AN	80.81(h)	A cross-reference to the sampling and analysis methodology in 80.46 is corrected.
AO	80.90(b)(1)	In the equation, correct the variable "BX" to "BZ".
AP	80.90(e)(2)	The paragraph reference is corrected from "(e)(2)" to "(e)(1)".
AQ	80.91(e)(2)(iv)	In the equation only, the variable "N_{p_i}" is corrected to "n_{p_i}"; the variable "n_i" is corrected to "N_i", the variable "p_i" is corrected to "p_{n_i}".
AR	80.91(e)(4)(i)(A)	Correct the equation to include division by 100 as follows: UV=[AV/(100-OV)] – 100

Identification code	Regulation reference
AS	80.91(e)(4)(i)(B)
AT	80.91(e)(4)(ii)(A)
AU	80.91(e)(4)(ii)(A)
AV	80.91(e)(4)(ii)(B)
AW	80.93(a)(3)(ii)
AX	80.93(c)(9)
AY	80.101(e)(3) & (f)(4)
AZ	80.102(b)(1)
BA	80.102(e)(2)(i)
BB	80.102(f)(2)(i)
BC	80.125(a)
BD	80.128(e)(2)
BE	80.128(e)(5)
BF	80.128(g)(3)(iii)
BG	80.129(e)

II. Valid Range Limits

The valid range limits in both the Simple and Complex Models specify the range for each fuel parameter outside of which the models cannot be used for the evaluation of emission performances. These limits ensure that the models will not be used for extremely high or low fuel parameter values which would compromise the validity of the models. Thus the valid range limits were instituted as a means toward maintaining the accuracy of the compliance calculations, and thus the integrity of the reformulated gasoline and anti-dumping programs.

The Agency made every attempt to make the valid range limits as wide as possible to provide flexibility to refiners while maintaining a focus on the need for accurate performance estimates. This was especially true for the conventional gasoline valid range limits, as EPA wanted to avoid, to the extent possible, establishing provisions which would require refiners to reformulate their conventional fuels. To provide additional flexibility, the Agency also allowed the extension of the specified valid range for the Complex Model for conventional gasoline when a refiner's individual 1990 baseline fuel exceeds the valid range in one or more fuel parameters.

Since publication of the final rule, the Agency has determined that the flexibility provided to refiners in the valid range limits requires some revision and clarification to avoid unnecessary and costly refinery modifications which have no long term environmental benefit. The changes to the regulations can be separated into two categories: changes to the specified

Identification code	Regulation reference	Correction
AS	80.91(e)(4)(i)(B)	Correct the equation to include division by 100 in two places: $UR=[BR-\{\Sigma(OV_i \times OR_i)\}/100]/[\{100-\Sigma OV_i\}/100]$
AT	80.91(e)(4)(ii)(A)	Correct the equation to include division by 100 as follows: $AV=UV(100-OV)/100$
AU	80.91(e)(4)(ii)(A)	Correct the definition of UV from "nonoxygenated parameter value" to "non-oxygenated parameter value".
AV	80.91(e)(4)(ii)(B)	Correct the equation to include division by 100 as follows: $BR=\{UR \times [100-\Sigma(OV_i)]+\Sigma(OV_i \times OR_i)\}/100$
AW	80.93(a)(3)(ii)	Re-word the first sentence to read "Petitions, 'showings' and other associated proof may be submitted to EPA prior to submittal of the individual baseline (per paragraphs (a)(1) and (a)(2) of this section)".
AX	80.93(c)(9)	A cross-reference to 80.93 (c)(8) is clarified.
AY	80.101(e)(3) & (f)(4)	References to California gasoline are clarified.
AZ	80.102(b)(1)	An extraneous word is deleted.
BA	80.102(e)(2)(i)	A cross-reference to 80.101(g) is added.
BB	80.102(f)(2)(i)	A typographical error is corrected.
BC	80.125(a)	A cross-reference to the reports required by 80.105 is corrected.
BD	80.128(e)(2)	A cross-reference to the assumptions pertaining to the use of RBOB in 80.69(a)(9) is corrected.
BE	80.128(e)(5)	A cross-reference to the sampling and testing rates in 80.69(a)(7) is corrected.
BF	80.128(g)(3)(iii)	A typographical error is corrected.
BG	80.129(e)	A cross-reference to the sampling and testing rates in 80.69 is corrected.

II. Valid Range Limits

The valid range limits in both the Simple and Complex Models specify the range for each fuel parameter outside of which the models cannot be used for the evaluation of emission performances. These limits ensure that the models will not be used for extremely high or low fuel parameter values which would compromise the validity of the models. Thus the valid range limits were instituted as a means toward maintaining the accuracy of the compliance calculations, and thus the integrity of the reformulated gasoline and anti-dumping programs.

The Agency made every attempt to make the valid range limits as wide as possible to provide flexibility to refiners while maintaining a focus on the need for accurate performance estimates. This was especially true for the conventional gasoline valid range limits, as EPA wanted to avoid, to the extent possible, establishing provisions which would require refiners to reformulate their conventional fuels. To provide additional flexibility, the Agency also allowed the extension of the specified valid range for the Complex Model for conventional gasoline when a refiner's individual 1990 baseline fuel exceeds the valid range in one or more fuel parameters.

Since publication of the final rule, the Agency has determined that the flexibility provided to refiners in the valid range limits requires some revision and clarification to avoid unnecessary and costly refinery modifications which have no long term environmental benefit. The changes to the regulations can be separated into two categories: changes to the specified valid range limits, and clarification of the provision for extending the valid range for individual refiner baseline fuels. Both of these topics will be described in detail below.

A. Revised Valid Range Limits

The valid range limits for the Simple and Complex Models were based on two different sets of data and were developed using different assumptions. The Simple Model valid range limits were determined following the regulatory negotiations held in 1991. The Complex Model valid range limits were based upon an examination of the sufficiency of data in the Complex Model database and the accuracy of extrapolations (See the Regulatory Impact Analysis for the final rule, Section IV.D). Because the valid range limits for the Simple and Complex Models were established independently and through different processes, the valid range limits for the two models were different from one another. Since promulgation of the final rule, the Agency has learned that the specified valid ranges may force refiners to make refinery modifications to comply with the regulations that are unwarranted under the Simple Model, and unnecessary under the Complex Model. Thus EPA is revising the valid range limits for oxygen content, RVP, aromatics content, and benzene content for the Simple Model, and oxygen content for the Complex Model.

1. Change to High End of Oxygen Valid Range

The high end of the valid range limit for oxygen in both the Simple and Complex Models was based on the maximum amount of oxygen that an oxygenated fuel was expected to lawfully contain. Of all the oxygenates that will likely be used in the reformulated gasoline program, ethanol has the highest oxygen content at 0.35 grams of oxygen per gram of ethanol. The Agency used this value as a benchmark in determining the high end of the valid range for oxygen, assuming a 10 volume percent ethanol blend. However, since promulgation of the final rule, the Agency has learned that density variations in gasoline blendstocks may result in wide variations in the oxygen content of an oxygenated fuel on a weight percent basis despite the fact that the volume percent remains fixed. For instance, blending 10 volume percent ethanol into a higher density gasoline could produce a blend with an oxygen content as low as 3.4 weight percent, while blending 10 volume percent ethanol into a lower density gasoline could produce a blend with an oxygen content as high as 4.0 weight percent.

Since the largest excise tax exemption available to refiners for the use of ethanol in gasoline blends is for oxygenated fuels that contain 10 volume percent, many ethanol blends will contain 10 volume percent ethanol. Thus it is essential that the high end of the valid range for both the Simple and Complex Models be raised to 4.0 weight percent. This change will allow fuels which are already being produced to be evaluated with the Simple and Complex Models. The change will also guarantee that no fuel oxygenated with ethanol will be excluded from the reformulated gasoline program due to an oxygen content that is outside the range of the model, as long as it complies with the

volume limits applicable in a waiver issued under section 211(f) of the Clean Air Act. Since fuels with oxygen contents of 4.0 weight percent are already being produced, the change will have no additional impact on vehicle driveability. Also, since the models continue to be accurate between 3.5 and 4.0 weight percent, and the emission standards are not being changed, this change to the high end of the valid range for oxygen content will have no adverse impact on the environment.

2. Change to Low End of RVP Valid Range in the Simple Model

The low end of the valid range for RVP in the Simple Model was based on the distribution of data used in the model's development, as well as a consideration of the needs of the reformulated gasoline and anti-dumping programs under the Simple Model. Since VOC emission reductions under the Simple Model are accomplished primarily through limits on maximum RVP levels, the valid range for RVP in the Simple Model only affects toxics compliance calculations. In promulgating the final regulations, the Agency determined that refiners had no incentive to reduce RVP below 6.6 psi for the purposes of complying with the toxics standards since reductions in fuel benzene and aromatics are much more effective in reducing emissions of toxic compounds.

In contrast to the Simple Model, the absence of RVP caps and the impact of other fuel parameters on emissions under the Complex Model will likely result in large variations in RVP levels in reformulated gasoline. RVP control will continue to be the primary mechanism through which VOC emissions are reduced because RVP is the most cost-effective fuel parameter to control, and because the RVP effect on VOC in the Complex Model is quite large. As in the Simple Model, the valid range for RVP in the Complex Model was determined from an examination of the distribution of data used in the model's development and the needs of the reformulated gasoline and anti-dumping programs. The low end of the valid range was set at 6.4 psi to accommodate large reductions in RVP while maintaining the accuracy of the Complex Model. Fuel RVPs are expected to reach this low level in Phase II of the reformulated gasoline program, and the potential exists for them to be reached in Phase I as well.

California has been developing its own program in which reformulated gasoline must meet more stringent requirements than in the federal program during the years 1996 and 1997 that the Simple Model will be in effect. Given California's more stringent requirements, the potential exists for fuel having an RVP of less than 6.6 psi to be either sold or used as a blendstock in and outside of California. With the low end of the valid range for RVP set at 6.6 psi, these California reformulated gasolines might not be certifiable as federal reformulated gasoline. Also, refiners trying to blend down tanks quickly at terminals in the spring to meet summer volatility requirements may end up with fuels that have RVPs as low as 6.4 psi.

Since the low end of the valid range for RVP under the Complex Model is 6.4 psi, the Agency has determined that the low end of the valid range for RVP under the Simple Model should likewise be 6.4 psi. The change from 6.6 psi to 6.4 psi makes the low end of the valid range for RVP consistent throughout Phase I of the federal reformulated gasoline program, and provides an additional element of flexibility for refiners to complement the already established blending and enforcement tolerances. The change should have no effect on the environment, since presumably only cleaner fuels would be allowed certification under the Simple Model. Both the Simple and Complex Models are linear with respect to RVP for all pollutants, and this linear relationship would simply be extended from 6.6 psi down to 6.4 psi.

3. Change to High End of Aromatics Valid Range in the Simple Model

It was and is the intention of the Agency to avoid, to the extent possible, establishing regulations which require refiners to reformulate their conventional fuels. The anti-dumping program is designed to ensure that a refiner's or importer's conventional gasoline stays as clean as it was in 1990, and does not require reformulation beyond those levels. Thus the valid range limits for conventional gasoline in both the Simple and Complex Models were designed to be as wide as possible while simultaneously ensuring the accuracy of the models. As an additional level of flexibility, the Agency also allowed for the extension of the valid range for conventional gasoline if a refiner's individual 1990 baseline fuel exceeded the specified valid range limits (see discussion in Section II.B. below).

Since promulgation of the final regulations for the anti-dumping program, the Agency has determined that the valid range limits in the Simple Model for aromatics, which are more restrictive than those for conventional gasoline under the Complex Model, could be widened without any detrimental impacts on either the program or on the environment. Without such a change to the regulations, refiners may be forced to make changes to their refineries by 1995 that are not necessary in 1998 when compliance under the Complex Model is mandatory. Thus the Agency is changing the high end of the valid range for aromatics under the Simple Model from 45 volume percent to 55 volume percent. This change will ensure that the Simple Model can be used for as many conventional fuels as possible to show compliance under the anti-dumping program without the need to extend the valid range. The environment will not be adversely impacted since it was the Agency's intent to allow extensions of the valid range when a refiner's 1990 baseline fuel exceeded the specified valid range limits. The change will not affect RFG compliance, since aromatics are controlled by the reformulated gasoline standards for toxics. Driveability will not be affected since fuels with aromatics levels as high as 55 volume percent currently exist in-use. Also, consistency in the high end of the valid range limits for aromatics will be maintained throughout Phase I of the program. Because the relationship between toxic emissions and fuel aromatics levels is linear in the Simple Model, the change will not result in an inaccurate application of the model to higher aromatics levels.

4. Change to Low End of Aromatics Valid Range in the Simple Model

The Agency has also determined that the low end of the valid range for aromatics in the Simple Model may not provide refiners with adequate flexibility under the reformulated gasoline program. For the Complex Model, the Agency determined that the relationships between aromatics and emissions could not be trusted at levels below 10 volume percent. However, the Agency determined that a flat-line extrapolation below 10 volume percent, in which no emission benefits or detriments result from lowering aromatics values below 10 volume percent, would provide greater flexibility without compromising the accuracy of the Complex Model equations in this range. Since promulgation of the final rule, the Agency has determined that the Complex Model approach to low values of aromatics can be appropriately applied to the Simple Model as well. Therefore, the Agency is changing the low end of the valid range for aromatics under the Simple Model from 10 volume percent to 0 volume percent, but will not allow any emission benefits in this range. The Agency did not intend to discourage the production of fuels that had very low levels of aromatics, and were, thus, qualitatively considered to be cleaner burning. If the low end of the valid range for aromatics is left at 10 volume percent, fuels with aromatics values of less than 10 volume percent that would otherwise be complying reformulated gasolines under the Simple Model will not be certifiable, despite the fact that those same fuels may be certifiable under the Complex Model. This change is expected to be environmentally benign, as few refiners will have any incentive to reduce aromatics below 10 volume percent for reformulated gasoline under the Simple Model.

5. Change to High End of Benzene Valid Range in the Simple Model

As stated in Section II.A.3, it was and is the intention of the Agency, to the extent possible, not to establish regulations that require the reformulation of conventional gasoline under the anti-dumping program. However, the valid range limits for benzene under the Simple Model may in fact force refiners to reformulate conventional gasoline. The Agency has determined that the valid range limits in the Simple Model for benzene, which are more restrictive than those for conventional gasoline under the Complex Model, can be widened without any detrimental impacts. Without such a change to the regulations, refiners may be forced to make changes to their refineries by 1995 that are not necessary in 1998 when compliance under the Complex Model is mandatory. Thus the Agency is changing the high end of the valid range for benzene under the Simple Model from 2.5 volume percent to 4.9 volume percent. This change ensures that the Simple Model can be used for as many conventional fuels as possible to show compliance under the anti-dumping program without the need to extend the valid range. The change will not affect RFG compliance, since benzene is controlled by the reformulated gasoline standards for fuel benzene content. In like manner to raising the high end of the valid range for aromatics, consistency in the valid range limits will be maintained throughout Phase I of the program. The environment will not be adversely impacted since it was the Agency's intent to allow extensions of the valid range when a refiner's 1990 baseline fuel exceeded the specified valid range limits. As for aromatics,

under the Simple Model from 10 volume percent to 0 volume percent, but will not allow any emission benefits in this range. The Agency did not intend to discourage the production of fuels that had very low levels of aromatics, and were, thus, qualitatively considered to be cleaner burning. If the low end of the valid range for aromatics is left at 10 volume percent, fuels with aromatics values of less than 10 volume percent that would otherwise be complying reformulated gasolines under the Simple Model will not be certifiable, despite the fact that those same fuels may be certifiable under the Complex Model. This change is expected to be environmentally benign, as few refiners will have any incentive to reduce aromatics below 10 volume percent for reformulated gasoline under the Simple Model.

5. Change to High End of Benzene Valid Range in the Simple Model

As stated in Section II.A.3, it was and is the intention of the Agency, to the extent possible, not to establish regulations that require the reformulation of conventional gasoline under the anti-dumping program. However, the valid range limits for benzene under the Simple Model may in fact force refiners to reformulate conventional gasoline. The Agency has determined that the valid range limits in the Simple Model for benzene, which are more restrictive than those for conventional gasoline under the Complex Model, can be widened without any detrimental impacts. Without such a change to the regulations, refiners may be forced to make changes to their refineries by 1995 that are not necessary in 1998 when compliance under the Complex Model is mandatory. Thus the Agency is changing the high end of the valid range for benzene under the Simple Model from 2.5 volume percent to 4.9 volume percent. This change ensures that the Simple Model can be used for as many conventional fuels as possible to show compliance under the anti-dumping program without the need to extend the valid range. The change will not affect RFG compliance, since benzene is controlled by the reformulated gasoline standards for fuel benzene content. In like manner to raising the high end of the valid range for aromatics, consistency in the valid range limits will be maintained throughout Phase I of the program. The environment will not be adversely impacted since it was the Agency's intent to allow extensions of the valid range when a refiner's 1990 baseline fuel exceeded the specified valid range limits. As for aromatics, because the relationship between toxic emissions and fuel benzene levels is linear in the Simple Model, the change will not result in an inaccurate application of the model to higher benzene levels.

B. Extending the Valid Range for Conventional Gasoline

Under the anti-dumping provisions of the final rule, refiners use their individual 1990 baselines to determine compliance with the regulations under both the Simple and Complex Models. Depending on the compliance model being used, the values for particular fuel parameters are restricted by the valid range limits. For instance, if a refiner is using the Simple Model to comply with the anti-dumping regulations, VOC and NO_X emissions are regulated through caps on the baseline levels of sulfur, olefins, and T90, while toxic emissions are regulated through an equation giving the benzene fraction of VOC emissions. Since the benzene fraction equation contains only benzene and aromatics as independent variables, the only valid range limits that apply to refiners using the Simple Model to comply with the anti-dumping regulations are those specified in § 80.42(c)(1) for benzene and aromatics content. If, alternatively, a refiner is using the Complex Model to comply with the anti-dumping regulations, NO_X and toxics emissions are regulated through the Complex Model. Thus the valid range limits that apply to refiners using the Complex Model to comply with the anti-dumping regulations are those specified in § 80.45(f)(1)(ii) for oxygen content, sulfur content, RVP, E200, E300, aromatics content, olefins content, and benzene content.

Section 80.91(f)(2)(ii) allows a refiner to extend the conventional gasoline valid range for the Complex Model if one or more of the fuel parameter values for its individual 1990 baseline fuel falls outside of the valid range specified in § 80.45(f)(1)(ii). However, the regulations did not adequately specify the method, applicability, or limitations of such a valid range extension. As written, the regulations state that, for each baseline fuel parameter value which is outside of the Complex Model conventional gasoline valid range, the Complex Model valid range is extended only for such fuel parameters. The only stated limitation is that such an extension is applicable only to the applicable summer or winter season. The Agency has determined that this portion of the regulations is ambiguous, and requires revision.

1. Applicability of the Provision for Valid Range Extension

The Agency has only been made aware of the potential need for extension of the valid range for olefins, aromatics, and benzene. Therefore, a provision for the extension of the valid range has only been made for the high end of the specified valid range for these three fuel parameters. In each case, if the valid range limit is extended, the refiner in question must still be limited by a valid range to eliminate the possibility that the Complex Model will be used for aromatics, olefins, and/or benzene values that are very high, which might compromise the primary objective of the anti-dumping program. As specified in the final regulations, a refiner is allowed to extend the Complex Model valid range for both baseline and compliance emissions calculations, but is not directed as to the specification of any new valid range limits. Such a provision for the extension of the valid range that does not include limitations on fuel parameter values that can be evaluated with the Complex Model would defeat the purposes of specifying a valid range, and was not the Agency's intent.

The Agency has determined that the best approach to limiting the extension of the valid range is to allow target fuels to have values at least up to the baseline level. Since the baseline fuel is an "average" fuel of sorts, the Agency has also determined that refiners should be given some flexibility beyond the baseline value. For aromatics, this flexibility will be fixed at a value of 5.0 volume percent. For olefins this flexibility will be fixed at a value of 3.0 volume percent. And for benzene this flexibility will be fixed at a value of 0.5 volume percent. Thus, for example, the extended valid range limit for aromatics would be equal to the individual refiner's baseline fuel value for aromatics, plus 5.0 volume percent. A similar calculation would be necessary for extending the valid range for olefins or benzene.

The Agency has no reason to believe that provisions for the extension of the valid range for fuel parameters other than aromatics, olefins, and benzene on either the low or high ends are necessary. For instance, the Complex Model conventional gasoline valid ranges for oxygen, sulfur, aromatics, olefins, and benzene all have 0.0 as their lower limit. Thus no valid range extension would be required on the low end of the valid range for these fuel parameters. Similarly for E300, a fuel can have an E300 value of no higher than 100 percent, which is also the high

end of the specified valid range. Other limitations, such as ASTM specifications and the volatility rule, should eliminate the need for valid range extensions in other cases.

2. No-Benefit Limitation of the Provision for Valid Range Extension

The Agency continues to believe that the valid range limits specified in § 80.42(c)(1) and § 80.45(f)(1)(ii) identify the fuel parameter values beyond which the compliance models are not considered accurate. Thus the Agency has determined that any extension of the specified valid ranges for conventional gasoline should incorporate flat-line extrapolation. Under flat-line extrapolation, the compliance models provide no emissions benefit or detriment when raising the value of either aromatics or olefins above the values specified in § 80.42(c)(1) and § 80.45(f)(1)(ii). This flat-line extrapolation will apply to both the baseline fuel and any target fuels evaluated with the compliance models under the anti-dumping regulations.

3. Expanding the Applicability of the Valid Range Extension Provision to the Simple Model

This direct final rule expands the applicability of the valid range extension provision given in § 80.91(f)(2)(ii) to the Simple Model. However, as noted above, the only fuel parameters having valid range limits under the Simple Model anti-dumping regulations are aromatics and benzene content. The Simple Model valid ranges for both aromatics and benzene are being expanded to be equal to the corresponding ranges for the Complex Model, as described in sections II.A.3–5 of this rule. Thus the new valid range under the Simple Model will be 0–55 volume percent for aromatics and 0–4.9 volume percent for benzene. No valid range extension will be required for either of these fuel parameters on the low end of the valid range. Thus the only relevant valid range extensions that would be necessary for the Simple Model would be for the high end of aromatics and the high end of benzene.

III. Complex Model

The Complex Model includes separate calculations for exhaust and nonexhaust emissions. The final regulations contained errors in the model descriptions for both exhaust and nonexhaust. The errors in the exhaust portion of the Complex Model were limited to the linear extrapolation methodology, while the errors in the nonexhaust portion arose in the VOC equations themselves. Another error also arose in the calculation procedure for annual average toxics. Each of these errors and the associated corrections will be discussed in detail below.

A. Extrapolation

The exhaust portion of the Complex Model is a statistically-derived set of equations relating fuel parameters to emissions of VOC, NO_X, benzene, 1,3-butadiene, acetaldehyde, formaldehyde, and POM. The Agency determined the conditions under which these exhaust equations must be linearly extrapolated based on the ranges for each fuel parameter within which the equations were considered to be accurate. Linear extrapolation amounts to fixing the slope of the fuel parameter:emission relationship at a constant value. It is used to extend the equations beyond the limits of the data on which they are based, thereby making the reformulated gasoline and anti-dumping programs as flexible as possible.

Of the six separate models in the exhaust portion of the Complex Model, all four toxic models are linear, and thus do not require linear extrapolation. Paragraph (c)(1)(iv) of § 80.45 specifies the conditions and limitations of linear extrapolation for VOC, while § 80.45(d)(1)(iv) specifies the conditions and limitations of linear extrapolation for NO_X. The details of the linear extrapolation methodology included in these two portions of the final regulations contained a number of errors which require correction.

1. Correct Parenthetical Form of Extrapolation Equations

In paragraphs (c)(1)(iv)(B) and (d)(1)(iv)(B) of § 80.45, the linear extrapolation equations contained too many brackets in some regions of the equations, and missing parentheses in other regions. Although these inadvertent omissions and insertions did not change the mathematical nature of the equations, a literal copying of the equations into computer code would result in an error. Thus the Agency has corrected the linear extrapolation equations for both VOC and NO_X to contain the correct number of parentheses and brackets in the correct position and order.

2. Correct Missing Sulfur Term in NO_X Extrapolation Equation

A sulfur term was inadvertently left out of both the Phase I and Phase II NO_X extrapolation equations given in paragraph (d)(1)(iv)(B) of § 80.45. This missing sulfur term represents the linear extrapolation of the NO_X model with respect to sulfur for high emitters. This correction will have a negligible impact on the emission performance estimates provided by the Complex Model because the NO_X equation for high emitters is essentially linear with respect to sulfur.[1] The inclusion of the correct sulfur term in the NO_X extrapolation equation will result in the correct application of the edge target fuel to the NO_X extrapolation equations.

3. Clarify E300 Extrapolation Above 95 Percent

In the process of determining the valid range limits for the use of the Complex Model for both reformulated and conventional gasoline, the Agency determined that the emission changes estimated by the exhaust equations were not accurate above an E300 value of 95 percent. However, comments received from the refining industry indicated a need for an E300 valid range that extended up to 100 percent. The Agency concluded that, although the exhaust equation emission change estimates could not be considered accurate above an E300 level of 95 percent, allowing only a zero change in emissions above this E300 level would ensure that refiners could not receive inappropriate benefits for fuels with very high E300 levels. Therefore, the Agency allowed for flat-line extrapolations of all exhaust equations between the E300 values of 95 and 100 percent. However, some portions of the regulations that specified this allowance contained typographical errors which substantially changed the manner in which this flat-line extrapolation for E300 was to be executed. Specifically, paragraphs (c)(1)(iv)(C)(*5*), (c)(1)(iv)(D)(*5*), and (d)(1)(iv)(C)(*5*) of § 80.45 all indicated that the E300 value of the *edge* target fuel should be held constant at 95 volume percent for target fuels having an E300 value of greater than 95 volume percent. These paragraphs should not have refered to the *edge* target fuel, but rather to the *target* fuel for the purposes of determining emissions performances with the Complex Model. These three paragraphs are thus changed accordingly.

4. Correct Value of ΔARO

The regulations describing the linear extrapolation methodology for exhaust VOC and NO_X contained two other typographical errors that nevertheless were substantial in their effects. The first arose in paragraphs (c)(1)(iv)(C)(*9*), (c)(1)(iv)(D)(*9*), and (d)(1)(iv)(C)(*9*) of § 80.45 in the specification of the value of ΔARO. The value of ΔARO should generally be set equal to (ΔARO—18 volume percent) for any target fuel having an aromatics content of less than 18 volume percent. Thus ΔARO will be negative when the VOC or NO_X equation is linearly extrapolated with respect to aromatics at the low end of the valid range. However, for target fuels having an aromatics content of less than 10 volume percent, the VOC extrapolation should be flat-line instead of linear. In this case, ΔARO should be fixed at a value of −8 volume percent. The value in the regulations was given incorrectly as +8 volume percent.

5. Correct Specification of ΔE300

The second typographical error that requires explanation and correction involves the specification of ΔE300 in paragraphs (c)(1)(iv)(C)(*13*) and (c)(1)(iv)(D)(*13*). The first sentence in each of these two paragraphs contains two conditions that must be met for ΔE300 to be set equal to (E300—94 percent). The first condition incorrectly states that the E300 level of the target fuel must be *less* than 94 percent, when in fact the condition should state that the E300 level of the target fuel must be *greater* than 94 percent. The remainder of both of these paragraphs is correct.

6. Eliminate References to E300 in NO_X Extrapolation

Finally, the linear extrapolation methodology for NO_X in the final rule contained references to the allowable range for E300, despite the fact that the NOx equation is not extrapolated with respect to E300. Thus all references to E300 in paragraphs (d)(1)(iv)(A) and (d)(1)(iv)(B) are removed by this direct final rule. Note that, since all exhaust equations in the Complex Model are flat-line extrapolated for E300 values greater than 95 percent, the flat-line extrapolation for E300 specified in paragraph (d)(1)(iv)(C)(5) is correct (except for the changes described above).

B. Nonexhaust Model

The equations giving nonexhaust VOC as a function of RVP for the Complex Model were originally proposed in the February 1993 NPRM (58 FR 17175). No changes to those equations were intended for the final rule on reformulated gasoline. However, typographical errors arose in a number of the coefficients in the nonexhaust VOC model when they were entered into the final regulations. These errors would have a small, but not

[1] The exhaust portion of the Complex Model includes exponential functions which alters the traditional implications of first- and second-order equations. However, the Complex Model exhaust equations can be referred to and approached as first- and second-order as described in Section IV.D.1 of the Regulatory Impact Analysis for the final rule.

first arose in paragraphs (c)(1)(iv)(C)(*9*), (c)(1)(iv)(D)(*9*), and (d)(1)(iv)(C)(*9*) of § 80.45 in the specification of the value of ΔARO. The value of ΔARO should generally be set equal to (ΔARO—18 volume percent) for any target fuel having an aromatics content of less than 18 volume percent. Thus ΔARO will be negative when the VOC or NO_X equation is linearly extrapolated with respect to aromatics at the low end of the valid range. However, for target fuels having an aromatics content of less than 10 volume percent, the VOC extrapolation should be flat-line instead of linear. In this case, ΔARO should be fixed at a value of −8 volume percent. The value in the regulations was given incorrectly as +8 volume percent.

5. Correct Specification of ΔE300

The second typographical error that requires explanation and correction involves the specification of ΔE300 in paragraphs (c)(1)(iv)(C)(*13*) and (c)(1)(iv)(D)(*13*). The first sentence in each of these two paragraphs contains two conditions that must be met for ΔE300 to be set equal to (E300—94 percent). The first condition incorrectly states that the E300 level of the target fuel must be *less* than 94 percent, when in fact the condition should state that the E300 level of the target fuel must be *greater* than 94 percent. The remainder of both of these paragraphs is correct.

6. Eliminate References to E300 in NO_X Extrapolation

Finally, the linear extrapolation methodology for NO_X in the final rule contained references to the allowable range for E300, despite the fact that the NOx equation is not extrapolated with respect to E300. Thus all references to E300 in paragraphs (d)(1)(iv)(A) and (d)(1)(iv)(B) are removed by this direct final rule. Note that, since all exhaust equations in the Complex Model are flat-line extrapolated for E300 values greater than 95 percent, the flat-line extrapolation for E300 specified in paragraph (d)(1)(iv)(C)(5) is correct (except for the changes described above).

B. Nonexhaust Model

The equations giving nonexhaust VOC as a function of RVP for the Complex Model were originally proposed in the February 1993 NPRM (58 FR 17175). No changes to those equations were intended for the final rule on reformulated gasoline. However, typographical errors arose in a number of the coefficients in the nonexhaust VOC model when they were entered into the final regulations. These errors would have a small, but not insignificant impact on the VOC emission performances provided by the Complex Model.

The errors in the nonexhaust VOC portion of the Complex Model lay in four places. The first was in the sign of the coefficient for RVP in the Phase I running loss equation for Region 1. The second was in the coefficient for RVP in the Phase II hot soak equation for Region 1. The third was in the coefficient for RVP in the Phase II refueling loss equation for Region 1. And the fourth was in the sign of the RVP coefficient for the Phase II running loss equation for Region 2. All the coefficients in the nonexhaust model have been returned to their proper values and signs by this direct final rule.

C. Annual Average Calculations

Since the averaging standards for toxics under the Complex Model are year-round standards, each refiner who is complying under an averaging scenario must determine the average year-round toxics emissions performance for the fuels that it sold during a given year. Each batch of fuel is uniquely associated with toxic emissions as estimated by the Complex Model. Thus refiners require a method for combining per batch emission performances into a single year-round value. The regulations provided two contradictory methods for combining per batch emission performances into such a single year-round value.

Paragraph (g) *et al.* of § 80.67 directs refiners to weight the emission performances by batch volume and then add them in order to determine a year-round value. In calculating emission performances with the Complex Model, fuels sold in the winter are evaluated with the winter model, while fuels sold in the summer are evaluated with the summer model. Thus this "volume-weighted" approach to determining year-round values correctly leads to an average toxic emissions value for the year.

Paragraph (e)(3) of § 80.45 incorrectly directs refiners to weight summer and winter toxic emissions by fixed values to obtain year-round averages. Under this portion of the regulations, summer batches of fuel would be individually weighted by their batch volumes to obtain average summer emission performance estimates. Likewise winter batches would be weighted by their batch volumes to obtain average winter emission performance estimates. However, the fixed weighting of summer and winter emission estimates for the purposes of determining a year-round value would not necessarily mimic a refiner's true ratio of summer to winter fuel. The fixed weightings given in paragraph (e)(3) were used to determine the performance standards, and are not relevant to determining compliance by individual refiners. Therefore, paragraph (e)(3) will be revised to refer to § 80.67(g), and paragraphs (e)(3)(i) and (e)(3)(ii) of § 80.45 will be removed.

IV. Enforcement Corrections and Clarifications

The following section contains corrections and clarifications to the enforcement portions of the final reformulated gasoline and anti-dumping regulations that were published on February 16, 1994 (59 FR 7716), and to enforcement portions of the preamble of the notice of final rulemaking.[2] The reasons for the changes are listed below.

A. Reformulated Gasoline Regulation (40 CFR Part 80, Subpart D)

1. Measurement of Reformulated Gasoline Fuel Parameters (§ 80.46)

The table of aromatic compounds in § 80.46(f)(1)(ii)(K) is being revised. The aromatic compounds listed in the final rule are those used by EPA during the development of the analytical method for the rulemaking. In this notice some compounds that no longer are available commercially have been deleted from the list, and several aromatic compounds that are found in commercial gasolines and are available commercially to make reference materials have been added to the list. Only materials of known purity or those specified as 99% pure or greater should be used as calibration standards.

The number of calibration levels should be sufficient to bracket the expected concentration of each compound. Two calibration levels were used in the initial evaluation of the test method. In the future, however, EPA probably will use five calibration levels with at least three internal standards used in the standards and samples in order to improve precision.

Initially EPA prepared standards by volume. Currently, however, EPA prepares standards, samples, and internal standards by weight. Conversion to volume percent is performed by using the density of the aromatic compound in question. Standards for gasoline that are prepared by weight are considered to be more accurate than standards that are prepared by volume.

[2] Hereinafter in Part IV of this notice (unless otherwise indicated), references to "final rule" or "final regulations" shall refer to the regulations promulgated in the February 16, 1994, notice of final rulemaking.

Neither the use of five calibration levels, nor the preparation of standards by weight, should be viewed as changes to the regulations, but rather as Agency recommendations intended to improve precision.

2. General Requirements for Refiners, Importers and Oxygenate Blenders (§ 80.65)

a. *Designation of Gasoline as Oxygenated Fuels Program Reformulated Gasoline (OPRG) or Non-OPRG.* Section 80.65(d)(2)(iii) is revised in order to clarify the categories of gasoline that may be designated as oxygenated fuels program reformulated gasoline, or OPRG. The final rule, at § 80.65(d)(2)(iii), specifies that reformulated gasoline must be designated as OPRG, or not OPRG, to provide a mechanism to ensure reformulated gasoline outside of oxygenated fuels control areas during oxygenated fuels control periods has at least the 2.0 weight percent oxygen content mandated by the Clean Air Act.[3] The final rule requires parties who meet the oxygen standard on average to meet the oxygen standard separately for gasoline not designated as OPRG. If OPRG and non-OPRG gasoline could be averaged together for oxygen purposes, the gasoline in the OPRG areas—where 2.7 weight percent oxygen is required during the oxygenated fuels control period—could be used to offset gasoline with 1.5 weight percent oxygen intended for use in non-OPRG areas.

Today's revision consists of two parts. First, the regulation is clarified to make specific that the OPRG/non-OPRG designation applies only to reformulated gasoline and not to RBOB. The final rule requires RBOB to be designated as OPRG or non-OPRG, but the OPRG designation for RBOB serves no purpose because RBOB does not become reformulated gasoline until oxygenate has been added. The final rule is unchanged regarding oxygenate blender responsibilities—oxygenate blenders who produce reformulated gasoline by combining RBOB with oxygenate are required to designate the gasoline as OPRG or non-OPRG, and to meet the oxygen standard separately for gasoline not designated as OPRG.

The second change regarding OPRG-designated gasoline is the addition of a new provision, at § 80.65(d)(2)(iii)(B), to clarify that reformulated gasoline that contains at least 2.0 weight percent oxygen may be designated as OPRG regardless of whether or not the gasoline is used in an oxygenated fuels program control area during an oxygenated fuels program control period. This change allows terminals that serve both oxygenated fuels areas and non-oxygenated fuels areas to stock a single reformulated gasoline that could be used in both areas, instead of having to stock both OPRG and non-OPRG designated reformulated gasoline. This change also allows all reformulated gasoline that meets the 2.0 weight percent oxygen per-gallon standard to be designated as OPRG, without such gasoline being restricted to use in oxygenated fuel areas during oxygenated fuel control periods.

A terminal thus could stock reformulated gasoline that contains 2.7 weight percent oxygen and, therefore, that meets the oxygenated fuels oxygen requirement, and deliver this gasoline into both OPRG and non-OPRG markets. A terminal also could stock reformulated gasoline that contains 2.0 weight percent oxygen for delivery into both OPRG and non-OPRG markets, and splash blend additional oxygenate with those batches of gasoline that are delivered into the oxygenated fuel area during the oxygenated fuel control period.[4]

This change, however, keeps intact the regulatory mechanism for ensuring non-OPRG areas receive reformulated gasoline that contains at least 2.0 weight percent oxygen. Any reformulated gasoline used outside an oxygenated fuels control area during an oxygenated fuels control period that contains less than 2.0 weight percent oxygen (and therefore must be designated as non-OPRG) must be offset with other non-OPRG reformulated gasoline that contains more than 2.0 weight percent oxygen, such that the average oxygen content of the non-OPRG gasoline is greater than or equal to the 2.1 weight percent average standard.

b. *Designation of Complex Model Gasoline as Meeting NO_x Standard on Per-Gallon or Average Basis.* Section 80.65(d)(2)(v)(B) is revised in order to clarify that refiners and importers are required to specify whether the NO_x standard is being met on a per-gallon basis or on average only for gasoline certified under the complex model. There is no separate NO_x standard under the simple model.

c. *Designation of Reformulated Gasoline Blendstock for Downstream Oxygenate Blending (RBOB).* Section 80.65(d)(2)(vi) is being revised in order to clarify that refiners and importers have three options regarding the designation of reformulated gasoline blendstock for downstream oxygenate blending (or RBOB). A refiner or importer has three options for the types of RBOB that may be produced or imported: as suitable for blending with any oxygenate, with ether only, or with a refiner- or importer-specified oxygenate type and amount. The gasoline designation requirements at § 80.65(d)(2)(vi) as promulgated in the final rule did not include the refiner- or importer-specified oxygenate option for RBOB, making this provision inconsistent with the downstream oxygenate provisions at § 80.69(a) that specifies the RBOB options and includes the refiner- or importer-specified option, and the product transfer document requirements for RBOB at § 80.77(i)(2) that includes all three options. In order to correct this inconsistency, today's revision adds the refiner- or importer-specified option to the RBOB designation requirement.

d. *Assignment of Batch Numbers.* Section 80.65(d)(3) requires refiners and importers to assign a unique number to each batch of reformulated gasoline that is produced or imported, and this section includes an example of such a batch number. The numbers contained in the example are being modified to reflect the correct number of digits for the portion of the batch number that states the EPA-assigned facility registration number (five digits) and the sequential batch number (six digits).

e. *Computer-Controlled In-Line Blending Exemption.* Section 80.65(e)(1) requires each refiner or importer to obtain test results for each batch of reformulated gasoline prior to the gasoline leaving the refinery or import facility. Refiners who produce reformulated gasoline using a computer-controlled in-line blending process in which the gasoline is blended directly to a pipeline, however, will not have the test results for the "batch" prior to the release of at least some, if not all, of the gasoline. To correct the incompatibility between this requirement and the nature of the computer-controlled in-line blending process, the § 80.65(f)(4) exemption from independent sampling and testing for refiners that produce reformulated gasoline using computer-controlled in-line blending equipment is expanded to include an exemption from the § 80.65(e)(1) requirement that refiners have test results for each batch prior to the gasoline leaving the refinery.

f. *Release of Reformulated Gasoline Certified Under Simple Model as Not VOC-Controlled.* Section 80.65(e)(1) is also revised in order to clarify that reformulated gasoline certified under the simple model that is not VOC-controlled may be released from the refinery or import facility after the refiner or importer has test results for oxygen and benzene only. The final rule requires refiners and importers to have RVP test results in hand prior to release of all simple model-certified reformulated gasoline, but the RVP standard applies under the simple model only to VOC-controlled gasoline.

g. *List of Reformulated Gasoline Properties to be Established by Testing.* Section 80.65(e)(2)(i) contains a list of reformulated gasoline properties that must be established by testing. This list in the final rule includes 50% distillation (T–50) and 90% distillation (T–90) (the temperatures in degrees F at which 50% and 90% of a liquid are evaporated). This list is being revised to add terms for E200 and E300 (the percent of a liquid that are evaporated at 200 and 300 degrees F). E200 and E300 are correlated with T–50 and T–90, and may be approximated from T–50 and T–90 measurements using conversion equations. The most accurate way of determining the E200 and E–300 of gasoline, however, is using ASTM–86–90, the distillation test method specified at § 80.46(d). As a result, the list of mandatory testing is being expanded to include the E–200 and E–300 terms.

This expansion does not constitute a change from the mandatory testing requirements for reformulated gasoline, because the E200 and E300 terms are established as part of the ASTM–86–90 distillation test that already is required. The correlation ranges for E–200 and E–300, 2.5 vol% and 3.5 vol% respectively, that are included in the § 80.65(e)(2)(i) table are the reproducibility figures for these terms from the ASTM test, and are comparable to the five degrees F correlation range provided for the T–50 and T–90 terms.

h. *Reconciliation of Test Results.* Section 80.65(e)(2)(ii)(A) is being revised to clarify one option for reconciling reformulated gasoline test results from a refiner's or importer's laboratory as compared with test results from an independent laboratory. Under this option, where the refiner's or importer's test result for any parameter is not confirmed, the refiner or importer would use the result for that parameter that is the "worst case" for the refiner or importer ("best case" for the environment). Under this option in the final rule, the smaller of the two results

[3] The "oxygenated fuels control areas" are those areas where the use of oxygenated gasoline is required during the winter season pursuant to section 211(m) of the Clean Air Act, 42 U.S.C. 7545(m).

[4] Section 80.78(a)(6) prohibits adding oxygenate to reformulated gasoline, except in the case of reformulated gasoline that is designated as OPRG and is used in an oxygenated fuels program control area during an oxygenated fuels program control period.

f. *Release of Reformulated Gasoline Certified Under Simple Model as Not VOC-Controlled.* Section 80.65(e)(1) is also revised in order to clarify that reformulated gasoline certified under the simple model that is not VOC-controlled may be released from the refinery or import facility after the refiner or importer has test results for oxygen and benzene only. The final rule requires refiners and importers to have RVP test results in hand prior to release of all simple model-certified reformulated gasoline, but the RVP standard applies under the simple model only to VOC-controlled gasoline.

g. *List of Reformulated Gasoline Properties to be Established by Testing.* Section 80.65(e)(2)(i) contains a list of reformulated gasoline properties that must be established by testing. This list in the final rule includes 50% distillation (T–50) and 90% distillation (T–90) (the temperatures in degrees F at which 50% and 90% of a liquid are evaporated). This list is being revised to add terms for E200 and E300 (the percent of a liquid that are evaporated at 200 and 300 degrees F). E200 and E300 are correlated with T–50 and T–90, and may be approximated from T–50 and T–90 measurements using conversion equations. The most accurate way of determining the E200 and E–300 of gasoline, however, is using ASTM–86–90, the distillation test method specified at § 80.46(d). As a result, the list of mandatory testing is being expanded to include the E–200 and E–300 terms.

This expansion does not constitute a change from the mandatory testing requirements for reformulated gasoline, because the E200 and E300 terms are established as part of the ASTM–86–90 distillation test that already is required. The correlation ranges for E–200 and E–300, 2.5 vol% and 3.5 vol% respectively, that are included in the § 80.65(e)(2)(i) table are the reproducibility figures for these terms from the ASTM test, and are comparable to the five degrees F correlation range provided for the T–50 and T–90 terms.

h. *Reconciliation of Test Results.* Section 80.65(e)(2)(ii)(A) is being revised to clarify one option for reconciling reformulated gasoline test results from a refiner's or importer's laboratory as compared with test results from an independent laboratory. Under this option, where the refiner's or importer's test result for any parameter is not confirmed, the refiner or importer would use the result for that parameter that is the "worst case" for the refiner or importer ("best case" for the environment). Under this option in the final rule, the smaller of the two results for oxygenates is used for calculating all standards except RVP.

This option is being revised to refer to oxygenates as a class without separately naming each oxygenate. This change will keep the option from becoming dated if any new oxygenates are used in reformulated gasoline. The option also is being revised to eliminate the larger oxygenate volume assumption in the case of RVP, because RVP is a parameter that is measured directly. Any oxygenate effect on RVP will be measured in the RVP test and would not be changed by a calculation using the "worst case" oxygenate level.

i. *Attest Engagement Requirement.* Section 80.65(h) is being revised to specify that the attest engagement requirement applies to oxygenate blenders who meet the oxygen standard on average, and not to oxygenate blenders who meet the oxygen standard on a per-gallon basis. This change conforms § 80.65(h) with § 80.69(b)(4) which limits the attest engagement requirement to oxygenate blenders who average.

3. Compliance Surveys (§ 80.68)

Section 80.68(c)(13) is being revised to clarify when VOC and NO_X emissions reduction calculations must be reported to EPA by the surveyor under the gasoline quality survey requirements.[5] VOC emissions reduction calculations must be reported only for surveys during June 1 through September 15 of each year, including simple model surveys where a specified simple model VOC emissions reduction equation is cross-referenced. NO_X emission reduction calculations must be reported for all complex model surveys before January 1, 2000, and beginning on January 1, 2000 for surveys outside the period June 1 through September 15. NO_X surveys are not required during June 1 through September 15 under Phase II (beginning on January 1, 2000) because the Clean Air Act's restriction on NO_X increases is satisfied through the NO_X reductions required for VOC-controlled reformulated gasoline under Phase II. The rationale for this approach for NO_X surveys is discussed at 59 FR 7773 (February 16, 1994).

4. Covered Areas (§ 80.70)

a. *Putnam and Orange Counties, New York.* In order to correct an oversight in the final rule, § 80.70(d)(3) is being amended to include Putnam and Orange Counties, New York, as part of the New York-Northern New Jersey-Long Island-Connecticut "covered area." These counties are part of the New York City CMSA and are thus appropriately part of the New York City reformulated gasoline covered area. See 57 FR 13444 (April 16, 1992). Putnam and Orange Counties are also included in the New York City CMSA for purposes of the oxygenated fuels program requirements

b. *Bullitt and Oldham Counties, Kentucky.* Section 80.70(j) is being amended to specify the applicable boundaries for the portions of Bullitt and Oldham Counties, Kentucky, that are nonattainment areas.

c. *Essex County, New York.* The listing of Essex County, New York, is also being amended to include a specific description of the nonattainment area.

d. *Smyth County, Virginia.* Section 80.70(j) is also being amended to delete Smyth County, Virginia, as a covered area for the reformulated gasoline program. This area was expressly excluded from coverage in the Governor's opt-in request and should not have been included in the regulatory list of covered areas.

e. *Richmond, Virginia.* An erroneous reference to the City of Richmond is also being corrected.

5. Reporting Requirements (§ 80.75)

a. *Sulfur, NO_X and T90 Averaging Reports*

Section 80.41(h)(2) of the final rule requires that refiners and importers subject to the simple model meet their 1990 baseline sulfur, olefins and T90 levels on average for the entire year. However, it does not include a requirement to report the average values of these properties to EPA. It was the Agency's intention to have these values reported and so an additional reporting requirement for sulfur, olefins and T90 is being added at § 80.75(b)(2). In addition, the RVP averaging reporting requirements are being renumbered, under § 80.75(b)(1), so that the sulfur, olefin and T90 averaging reporting requirements may be included under § 80.75(b).

b. *Oxygen Averaging Reports.* Section 80.75(f)(2)(ii)(A) is being revised to conform the categories of reformulated gasoline that must be reported separately for oxygen averaging purposes to the categories that are specified in the oxygen averaging section, at § 80.67(h)(1)(v)(A).

6. Registration Requirements (§ 80.76)

The Agency is making several revisions to the registration requirements in § 80.76(c) of the final rule. EPA is removing the requirement to indicate where off-site records are kept from the refiners', importers' and

[5] This notice is also adding the paragraph number for this provision, which was inadvertently omitted in the notice of final rulemaking.

oxygenate blenders' registration information, and instead requiring that information be submitted for each refinery, oxygenate blending facility, and in the case of importers, operations within each PADD. The registration requirement to indicate what type of gasoline each refinery or oxygenate blending facility will produce (reformulated, RBOB, conventional or blendstocks) has been removed because the Agency believes that it is not necessary for registration purposes. The Agency intended that importers would identify the independent laboratories used to comply with the independent sampling and testing requirements, but there was no specific regulatory text requiring them to do so. This notice requires each importer to provide that information to EPA for its operations in each PADD.

7. Product Transfer Documentation (§ 80.77)

a. *Minimum and/or Maximum Standards.* Section 80.77(g)(2), which requires that per-gallon minimum/maximums must be included in product transfer documents, is being revised to clarify the categories of reformulated gasoline for which these values must be specified. Paragraphs (g)(2)(iii), (g)(2)(iv)(A), and (g)(2)(iv)(B) of § 80.77 are being revised to specify that the RVP maximum and the VOC emissions performance minimum must be included only for VOC-controlled reformulated gasoline, because these standards apply only to VOC-controlled gasoline. Paragraphs (g)(2)(iv)(A) and (g)(2)(iv)(B) of § 80.77 also are being revised to specify that the NO_X minimum must be included only for reformulated gasoline certified using the complex model. There is no separate NO_X standard under the simple model.

b. *VOC-Controlled Gasoline That Contains Ethanol.* Section 80.77(g)(3) is being added to require that product transfer documents must identify any VOC-controlled reformulated gasoline that contains any ethanol as an ethanol-containing reformulated gasoline, so that downstream parties will have sufficient knowledge to avoid violation of the prohibition, at § 80.78(a)(8), against combining VOC-controlled reformulated gasoline produced using ethanol with VOC-controlled reformulated gasoline produced using any other oxygenate during the period January 1 through September 15.

c. *Complex Model Gasoline Certified Prior to 1998.* Section 80.77(h) is being revised to clarify that the product transfer document requirements related to gasoline certified using the complex model before January 1, 1998, apply to reformulated gasoline and RBOB. The final rule makes reference to "gasoline" and RBOB without specifying "reformulated gasoline," which could have caused confusion.

8. Controls and Prohibitions (Section 80.78)

Section 80.78(a)(1)(v)(B) and (a)(1)(v)(C), concerning reformulated gasoline prohibited activities, are being revised to clarify that gasoline subject to the per-gallon RVP maximum must have an RVP that is less than or equal to this standard, and that gasoline subject to the VOC and NO_X emissions reduction minimum must have emissions reductions that are greater than or equal to these standards. The final rule describes these requirements only in terms of gasoline that is "less than" or "greater than" these standards, while gasoline that equals these standards also is in compliance.

9. Enforcement Exemptions for California Gasoline (§ 80.81)

a. *Definition of California Gasoline.* The final rule was intended to extend the California enforcement exemptions to gasoline produced at refineries outside California that produce only California reformulated gasoline and federal conventional gasoline. See 59 FR 7759, col. 3 (February 16, 1994). However, the regulatory definition of "California gasoline" could be read to exclude non-California refineries producing California reformulated gasoline from the enforcement exemptions. Therefore, § 80.81(a)(2)(iii) is clarified to exclude from this definition only gasoline produced by non-California refineries that are also producing reformulated gasoline for sale in covered areas outside California.

b. *Compliance Demonstration Submittal.* Section 80.81(b)(4) requires refiners, importers, and oxygenate blenders to submit the compliance demonstration mandated by § 80.81(b)(3) by May 31, 1996 "along with reports required to be submitted under § 80.75(a)(1)." The quoted language is corrected to make clear that the compliance demonstration should accompany the report for the first quarter of 1996 due to be submitted on that date under § 80.75(a)(1)(i).

c. *Use of California Sampling and/or Testing Methodologies.* Section 80.81(h) allows refiners and importers of California gasoline to use sampling and test methods that are set forth in the California reformulated gasoline regulations, in lieu of those methods prescribed under § 80.46 for the federal reformulated gasoline program. This provision is being revised to clarify that these California-approved sampling and test methods may be used only with California gasoline, and that these methods may not be used to satisfy the sampling and testing requirements for reformulated or conventional gasoline that does not meet the definition of California gasoline.

B. Anti-Dumping Regulations (40 CFR Part 80, Subpart E)

1. Standards Applicable to Refiners and Importers (§ 80.101)

a. *Compliance Baseline Formula.* Section 80.101(f)(4) currently provides that refiners and importers who use an individual 1990 baseline, and who increase their gasoline production volume above a certain level, must calculate a compliance baseline for each averaging period. EPA has combined the separate formulas for "V_{cg}" and "CB_i" in § 80.101(f)(4) into a single, simpler formula.

In addition, EPA has specified that the denominator of the compliance baseline equation includes the volume of California gasoline. The final rule excluded the volume of California gasoline produced in 1995 and thereafter from the compliance baseline equation, but this exclusion rendered this equation invalid for refiners of California gasoline because the numerator of this equation includes gasoline produced for the California market in 1990. In order to constitute a valid comparison of the volume of gasoline produced in 1990 versus the volume produced in 1995 and thereafter, both the numerator and the denominator of the compliance baseline equation must contain the volume of gasoline produced for the California market. This approach for including California gasoline in the compliance baseline equation is equivalent to the requirement that reformulated gasoline produced for use in covered areas outside the State of California must be included in the denominator of the compliance baseline equation.

The definitions of the factors "DB_i," "CB_i," and "B_i," are clarified to bring them in conformance with the terms used in the complex model calculations under § 80.101(g).

b. *Compliance Calculations.* Section 80.101(g), entitled "Compliance Calculations," is restructured to reverse the order of the simple model calculation formula currently in § 80.101(g)(1)(i) and the formula for determining the average value for the parameter being evaluated currently in § 80.101(g)(1)(ii). This organizational change is necessary because in order to perform the simple model calculation

for exhaust benzene emissions, the refiner or importer must first determine the average value for certain parameters. In addition, and for purposes of clarity, the heading "Simple Model Calculations" is inserted as a new paragraph (i) under § 80.101(g)(1), and the heading "Complex Model Calculations" is inserted as a new paragraph (ii) under § 80.101(g)(1). These changes restructure the compliance calculations in a logical sequence that will make this section clearer for compliance purposes.

The formula definition of "SG_i" in § 80.101(g)(1)(i)(A) is amended to clarify that the specific gravity term only applies to calculations involving sulfur.

The definitions of the factors "BZ" and "AR" under § 80.101(g)(1)(i)(B), pertaining to compliance calculations for exhaust benzene emissions under the simple model, are clarified as to how these are calculated by expanding them to read "calculated per paragraph (g)(1)(i)(A) of this section."

Section 80.101(g)(1)(iii), (g)(1)(iv), and (g)(1)(v), pertaining to complex model calculations, are consolidated and simplified as a new § 80.101(g)(1)(ii).

c. *Sampling and Testing.* Section 80.101(i)(1), which concerns requirements for sampling and testing of conventional gasoline and other products to which the compliance standards apply, is being revised to delete the requirement that such sampling and testing be conducted prior to the gasoline or product leaving the refinery. This change is necessary because this requirement interferes with the ability of refiners and importers to do composite sampling and in-line blending.

2. Controls Applicable to Blendstocks (§ 80.102)

Since gasoline produced for and marketed in California is subject to that State's stringent reformulated gasoline standards, it is not necessary to include such gasoline, or applicable blendstocks used in the production of such gasoline, in EPA's blendstock tracking requirements beginning in 1995. Thus, the definitions of the volume of gasoline, "V_g" and "$V_{g,i}$," in the averaging period blendstock-to-gasoline ratio in § 80.102(d)(1)(i) and the running cumulative compliance period blendstock-to-gasoline ratio in § 80.102(d)(2)(i), respectively, are amended by adding an explicit exclusion for California gasoline. Similarly, an additional subparagraph (v) has been added under § 80.102(d)(3) to exclude applicable blendstocks used to produce California gasoline in the blendstock ratio calculations. These

for exhaust benzene emissions, the refiner or importer must first determine the average value for certain parameters. In addition, and for purposes of clarity, the heading "Simple Model Calculations" is inserted as a new paragraph (i) under § 80.101(g)(1), and the heading "Complex Model Calculations" is inserted as a new paragraph (ii) under § 80.101(g)(1). These changes restructure the compliance calculations in a logical sequence that will make this section clearer for compliance purposes.

The formula definition of "SG_i" in § 80.101(g)(1)(i)(A) is amended to clarify that the specific gravity term only applies to calculations involving sulfur.

The definitions of the factors "BZ" and "AR" under § 80.101(g)(1)(i)(B), pertaining to compliance calculations for exhaust benzene emissions under the simple model, are clarified as to how these are calculated by expanding them to read "calculated per paragraph (g)(1)(i)(A) of this section."

Section 80.101(g)(1)(iii), (g)(1)(iv), and (g)(1)(v), pertaining to complex model calculations, are consolidated and simplified as a new § 80.101(g)(1)(ii).

c. *Sampling and Testing.* Section 80.101(i)(1), which concerns requirements for sampling and testing of conventional gasoline and other products to which the compliance standards apply, is being revised to delete the requirement that such sampling and testing be conducted prior to the gasoline or product leaving the refinery. This change is necessary because this requirement interferes with the ability of refiners and importers to do composite sampling and in-line blending.

2. Controls Applicable to Blendstocks (§ 80.102)

Since gasoline produced for and marketed in California is subject to that State's stringent reformulated gasoline standards, it is not necessary to include such gasoline, or applicable blendstocks used in the production of such gasoline, in EPA's blendstock tracking requirements beginning in 1995. Thus, the definitions of the volume of gasoline, "V_g" and "$V_{g,i}$," in the averaging period blendstock-to-gasoline ratio in § 80.102(d)(1)(i) and the running cumulative compliance period blendstock-to-gasoline ratio in § 80.102(d)(2)(i), respectively, are amended by adding an explicit exclusion for California gasoline. Similarly, an additional subparagraph (v) has been added under § 80.102(d)(3) to exclude applicable blendstocks used to produce California gasoline in the blendstock ratio calculations. These corrections are necessary to make clear that the volumes of California gasoline, and applicable blendstocks used to produce California gasoline are not part of the ratio calculations.[6]

3. Record Keeping Requirements (§ 80.104)

Under § 80.104(a)(2)(ix), refiners and importers are required to retain documents to demonstrate that blendstocks were transferred for other than gasoline blending purposes as a basis for excluding such blendstocks from tracking. There are various other bases specified in § 80.102(d)(3) for excluding blendstocks from tracking (e.g., exported, transferred as a feedstock) for which document support is not required in the final rule. EPA believes that the document support requirement should apply to all excluded blendstocks. Therefore, § 80.104(a)(2)(ix) is expanded to require the retention of documents which demonstrate any of the specified bases for the exclusion of blendstocks from blendstock tracking.

4. Reporting Requirements (§ 80.105)

Section 80.105(a)(2) in the final rule requires refiners and importers to report the overall volume of applicable blendstock produced or imported and transferred to others. This provision is being clarified to require separate reporting for those applicable blendstocks that are, and those that are not, excluded under § 80.102(d)(3).

C. Preamble

The preamble of the February 16, 1994, notice of final rulemaking contains two errors in the sections discussing reformulated gasoline and anti-dumping enforcement provisions. The following corrections should be noted for these sections of the preamble:

- On page 7759, in the second column, in the 12th and 13th lines of the second full paragraph, "(March 1, 1996, through February 29, 1996)" should read "(March 1, 1996, through February 28, 1998)."
- On page 7800, in the second column, in the 4th and 5th lines of the carryover paragraph, "section 211(k)(c) of the Act" should read "section 211(k) and (c) of the Act."

[6] The baseline blendstock-to-gasoline ratio does include both gasoline and blendstock produced for the California market. This baseline ratio nevertheless is a valid basis for comparison with the compliance period blendstock-to-gasoline ratios (that exclude California gasoline and blendstock) because the baseline ratio represents a refiner's or importer's actual 1990 gasoline and blendstock volumes.

V. Summer/Winter Season

Section 80.91 of the Reformulated Gasoline Final Rule (59 FR 7716) defines summer and winter data and sampling requirements as follows: paragraph (d)(1)(i)(A) states that "Data shall have been obtained for at least three months of the refiner's or importer's production of summer gasoline and at least three months of its production of winter gasoline." The regulation goes on to define a summer month as "any month during which the refiner produced any gasoline which met the federal summer gasoline volatility requirements. Winter shall be any month which could not be considered a summer month."

Several comments received by EPA since the rule was published indicate that this present definition severely restricts or eliminates the winter period in some cases, and inappropriately allocates winter data to the summer calculation. Further, the current rule inadvertently precludes the use of actual data in some calculations, even when such per batch actual data is available.

Considering that the goal of the baseline is to most accurately reflect actual 1990 gasoline composition, the rule will be modified to more correctly allocate parameter data. Provision will be made for the use of actual RVP data to define summer and winter gasoline. When such Method 1, per batch actual data is not available, summer and winter months will be redefined to better approximate the seasonal gasoline fuel parameter and emission values.

This modification to the reformulated gasoline regulation will satisfy several comments received since publication in the **Federal Register**. EPA will redefine summer and winter months, for use when Method 1 actual batch data is not available, as follows. A summer month will be redefined as any month during which more than 50 percent (by volume) of the gasoline produced by a refiner met the federal summer gasoline volatility requirements. Winter shall remain defined as any month which could not be considered a summer month. This will correct situations in which small quantities of summer volatility gasoline are produced early in the year. Originally, data from a month in which even small quantities of summer volatility fuel was produced was considered a summer month. With this modification, such months in which the majority of fuel was winter volatility would be correctly allocated as a winter data month.

Further, for any month for which both winter and summer gasoline were

produced, if actual RVP (Method 1) data are available, that data will be accurately divided between the summer and winter calculations, as appropriate. If such per batch data is not available, all data for that month would be considered either summer or winter, based on the production volumes.

When actual per batch data is used, for minimum data requirement purposes, a month is considered equivalent to 4 weeks of seasonal data. Therefore, 12 weeks of data sampling on summer volatility fuel satisfies the minimum three months of data collection required. If a refiner, such as the California refiners, still cannot provide three months of winter data, they may petition for less than minimum data, under the provisions outlined in § 80.91(d)(1)(C).

VI. Baseline Determination Adjustments

A. Work-In-Progress (WIP) Adjustment

The final reformulated gasoline rule provided criteria for allowing work-in-progress baseline adjustments (section 80.91(e)(5)). Work-in-progress (WIP) refers to one or more major capital changes or commitment(s) made by a refiner prior to or in 1990. A WIP adjustment allows a refiner to modify its baseline volume and fuel parameter values (which affect emissions) to account for the WIP. In order to obtain a WIP modification, a refiner must petition EPA and EPA must approve the petition.

As indicated in the preamble to the final rule, EPA believes that the criteria for a WIP adjustment should be fairly stringent, as the adjustment was intended only for those for whom a significant investment had already been made in order to comply with another government mandate. Additionally, a broad program of adjustments could indicate that EPA exceeded its equitable discretion under *Alabama Power*, as discussed in the Regulatory Impact Analysis (RIA) accompanying the final rule.

In the final rule, EPA required that a refiner meet each of three criteria in order to qualify for a WIP baseline adjustment. A fourth criterion was also required to minimize environmental harm due to WIP adjustments, via simple model parameter caps and emissions caps for both the simple and complex models.

Since promulgation of the final rule, EPA has re-evaluated this fourth criterion of the WIP provisions. EPA intended to allow WIP adjustments to relieve severe hardship where the adjustment did not allow emissions to increase significantly relative to the Clean Air Act baseline. The methods EPA chose to constrain WIP adjustments had inconsistent impacts depending on simple model or complex model use. The modification proposed in this Direct Final Rulemaking would ensure that the fuel parameter constraints on WIP adjustments under the simple model would be more consistent with the emissions performance constraints under the complex model. Specifically, WIP adjustments will be permitted to exceed the simple model parameter caps, but only to the extent the baseline still complies with the complex model emission caps. Without this change, a WIP adjustment would be more constrained in 1995 than would be the case in 1998, possibly requiring a refiner to make processing changes in 1995 that would not be necessary in 1998. While the emissions and parameter caps were set to minimize environmental harm due to the WIP (realizing that a WIP adjustment will actually increase baseline emissions relative to 1990) EPA believes this modification will increase compliance flexibility while maintaining the environmental goals of the program.

With regard to the effect of WIP adjustments on reformulated gasoline compliance, the simple model caps stated in the regulations apply to reformulated gasoline as well as to conventional gasoline. As stated in the final reformulated gasoline rule, when the simple model is used for compliance, the WIP-adjusted annual average baseline values for sulfur, olefins and T90 are the actual WIP-adjusted values of those parameters, provided they do not exceed the unadjusted baseline values or the simple model parameter caps given in section 80.91(e)(viii)(B). However, baseline parameters may now exceed these caps if the WIP adjusted baseline does not result in exhaust emissions of VOC, toxics, and NO_x which exceed the emission levels specified in § 80.91(e)(5)(vii)(B), namely 105% of the annual average statutory value.

Based on questions received since promulgation of the final rule, two changes in the language of the Work-In-Progress (WIP) provisions are made to section 80.91(e)(5) to further clarify certain aspects of the WIP adjustment not explicitly addressed in the final rule. The regulatory language dealing with the emissions and parameter caps is unclear as to whether the caps apply to the actual values or to the change in emissions or parameter values. In addition, there appeared to be some confusion over what was meant by "adjusted" baseline. Paragraphs 80.91(e)(5)(vi) and 80.91(e)(5)(vii) have been modified to clarify agency intent.

B. JP–4 Adjustment

In the final rule for reformulated gasoline, EPA allowed adjustments for specific extenuating circumstances. Baseline fuel parameters, volumes and emissions of a refinery can be adjusted due to the occurrence of specific extraordinary or extenuating circumstances which caused its 1990 gasoline production to be different than it would have been had the circumstance not occurred. However, the Agency's objective is not to establish a broad adjustment program. Allowable circumstances include unforeseen, unplanned downtime of at least 30 days of one or more gasoline blendstock producing units due to equipment failure or natural cause beyond the control of the refiner, or for non-annual maintenance (turnaround) downtime which occurred in 1990. These types of adjustments reflect instances where the 1990 baseline truly deviated from the otherwise expected baseline (historic and future), had the incident not occurred. EPA also expects that allowed adjustments will have minimal environmental impact while relieving a large regulatory burden.

In keeping with that policy objective, EPA promulgated provisions to permit baseline adjustments for certain refiners which produced JP–4 jet fuel in 1990, upon petition and approval. As discussed in the RIA for the reformulated gasoline final rule, EPA believes that it has authority to allow such adjustments due to the discretion afforded EPA by Congress. Additionally, *Alabama Power* v. *Costle*[7] gives EPA "case-by-case discretion" to grant variances or even dispensation from a rule where imposition of the requirement would result in minimal environmental benefit but would extremely burden a regulated party. Today's action changes two portions of the provisions for JP–4 adjustment: the multiple refinery requirement and the JP–4 to gasoline production ratio. In the final reformulated gasoline rule, JP–4 baseline adjustments are generally limited to single-refinery refiners because such refiners have no way to aggregate baselines[8] so as to reduce the combined burden of a JP–4 phaseout and the anti-dumping requirements on their operations. In some cases, if no relief were granted in this area, the viability of a refinery could be at stake.

1. Multiple-Refinery Requirement

The final reformulated gasoline rule also promulgated baseline adjustment provisions for multi-refinery refiners where each refinery produced JP–4 in 1990. This adjustment provision assumes that multi-refinery refiners are predominantly in the business of fuel production and thus possess the means to offset the refinery's JP–4 volume and associated fuel parameter increases with fuels volumes at other locations. The adjustment also assumes that refiners with multiple-refineries have process units offering various processing options which support an average (or typical) fuel production operation.

Today's action modifies the JP–4 baseline adjustment multiple refinery requirement. Every refinery of a multiple-refinery is no longer required to have produced JP–4. Such multi-refinery refiners are allowed to average their 1990 JP–4 production to 1990 gasoline production ratio across all of their refineries. However, all refineries of a multi-refiner must still meet the other two criteria specified for the JP–4 baseline adjustment in the reformulated gasoline final regulations. Specifically, only refiners that will not produce reformulated gasoline and that meet the 1990 JP–4 to gasoline production ratio are allowed to make a JP–4 baseline adjustment. The Agency is amending the requirement stipulating that each refinery of multiple-refineries produced JP–4 in 1990 because, essentially, the same environmental impact and economic hardship is expected regardless of whether a single refinery or all refineries of a multiple-refinery produced JP–4.

2. JP–4 Baseline Adjustment Ratio

The final reformulated gasoline rule promulgated baseline adjustment provisions which stipulate that 1990 JP–4 production must have constituted a specified portion of a refiner's 1990 fuel production in order for a significant enough burden to exist to justify permiting baseline adjustments. Additionally, a baseline is neither unrepresentative of 1990, nor incalculable, because of post-1990 changes in crude availability, fuel specifications, fuel markets, etc. EPA is permitting baseline adjustments for certain refiners which produced JP–4 jet fuel in 1990 because, as discussed in the Regulatory Impact Analysis for the reformulated gasoline final rule, EPA believes that it has a limited authority to allow such adjustments in certain extreme cases. The final reformulated

[7] *Alabama Power Company* v. *Costle*, 636 F.2d 323.357 (D.C. Cir 1979).

[8] A refiner with more than one refinery may determine an aggregate baseline, i.e., a conventional gasoline compliance baseline, which consists of the volume-weighted emissions or fuel parameters, as applicable, of two or more refineries.

relief were granted in this area, the viability of a refinery could be at stake.

1. Multiple-Refinery Requirement

The final reformulated gasoline rule also promulgated baseline adjustment provisions for multi-refinery refiners where each refinery produced JP–4 in 1990. This adjustment provision assumes that multi-refinery refiners are predominantly in the business of fuel production and thus possess the means to offset the refinery's JP–4 volume and associated fuel parameter increases with fuels volumes at other locations. The adjustment also assumes that refiners with multiple-refineries have process units offering various processing options which support an average (or typical) fuel production operation.

Today's action modifies the JP–4 baseline adjustment multiple refinery requirement. Every refinery of a multiple-refinery is no longer required to have produced JP–4. Such multi-refinery refiners are allowed to average their 1990 JP–4 production to 1990 gasoline production ratio across all of their refineries. However, all refineries of a multi-refiner must still meet the other two criteria specified for the JP–4 baseline adjustment in the reformulated gasoline final regulations. Specifically, only refiners that will not produce reformulated gasoline and that meet the 1990 JP–4 to gasoline production ratio are allowed to make a JP–4 baseline adjustment. The Agency is amending the requirement stipulating that each refinery of multiple-refineries produced JP–4 in 1990 because, essentially, the same environmental impact and economic hardship is expected regardless of whether a single refinery or all refineries of a multiple-refinery produced JP–4.

2. JP–4 Baseline Adjustment Ratio

The final reformulated gasoline rule promulgated baseline adjustment provisions which stipulate that 1990 JP–4 production must have constituted a specified portion of a refiner's 1990 fuel production in order for a significant enough burden to exist to justify permiting baseline adjustments. Additionally, a baseline is neither unrepresentative of 1990, nor incalculable, because of post-1990 changes in crude availability, fuel specifications, fuel markets, etc. EPA is permitting baseline adjustments for certain refiners which produced JP–4 jet fuel in 1990 because, as discussed in the Regulatory Impact Analysis for the reformulated gasoline final rule, EPA believes that it has a limited authority to allow such adjustments in certain extreme cases. The final reformulated gasoline regulations require that the ratio of the refinery's 1990 JP–4 production to its 1990 gasoline production equal or exceed 0.5.

Upon further evaluation of the baseline adjustment provisions, the Agency has concluded that the JP–4 to gasoline production ratio, as promulgated in the RFG final rule (0.5), is unnecessarily restrictive. Based on responses from affected refiners, under the December 1993 criteria only two refiners in the United States would likely qualify for the adjustment. In other words, very few refiners under contract to produce JP–4 will have the relief intended by the provision. Today's action alters the refiner's 1990 JP–4 production to 1990 gasoline production ratio from 0.5 to 0.2. EPA believes this revised ratio indicates that a significant amount of the refinery feedstock used for JP–4 production would have to be converted in order to produce gasoline. Altering the JP–4 to gasoline production ratio will allow additional small refiners to qualify for the adjustment and not be forced to operate from a drastically less competitive position or be driven out of business. Based on feedback EPA has received, changing the ratio from 0.5 to 0.2 raises the number of affected refiners from 2 to 6. If large refineries had such a ratio also, the regulatory burden would be just as great. Also, it would be more difficult to argue de minimis environmental impact for large refiners. In reality none do, such that the ratio is only an issue for small refiners.

Several different ratio options were suggested by commenters during the reformulated gasoline rulemaking as to what minimum portion of a refinery's 1990 production JP–4 should have constituted for the circumstance to be extenuating, as follows: JP–4 production to total refinery production, 20%; JP–4 production to gasoline production, 5%; JP–4 production to gasoline production, 75%; and, JP–4 production to gasoline plus JP–4 production, 10%. EPA's 0.2 JP–4 to gasoline ratio is in line with some of the commenters suggestions.

At less than a 1990 JP–4 to gasoline production ratio of 0.2, EPA believes the impact on benzene and aromatics may make it more costly for refiners to comply with the regulations, though it is unlikely that such refiners will be forced out of business or experience some similar extreme burden. For example, it is expected that no economic hardship will occur at a JP–4 to gasoline ratio of 0.1. Thus, the Agency discretion recognized in *Alabama*[9] to grant variances or even dispensation from a rule where imposition of the requirement would result in minimal environmental benefit but would extremely burden a regulated party, would not apply.

While the adjusted emission baselines of those approved for both amended JP–4 adjustments are likely to be higher than their actual 1990 baselines (primarily due to increased benzene and aromatics) EPA expects minimal negative environmental affects. First, the number of refineries meeting the criteria is still expected to be quite small. Second, the total production of all such refineries is also small. Thus, not very much additional gasoline will be affected by any baseline adjustments for JP–4 than if the criteria were less stringent or adjustments were not allowed at all. The modification of the multi-refinery requirement and the reduction of the ratio requirement to 0.2 both provide necessary flexibility to refiners and allow additional refiners (that are simultaneously burdened by the JP–4 phaseout and the anti-dumping provisions) regulatory relief.

As stated in the Regulatory Impact Analysis (RIA) for the reformulated gasoline final rule, JP–4 baseline adjustments will be allowed only for those refiners which will not produce reformulated gasoline, which is the most critical factor in assessing environmental impact. While the anti-dumping requirements, in general, apply to all conventional gasoline whether or not reformulated gasoline is also produced, in these specific cases no dumping will occur due to reformulated gasoline production. The intent of Congress with regard to the anti-dumping program will be met while not unduly burdening those that meet the specified criteria. Since both the unadjusted and adjusted baselines must be determined, if a refiner granted such an adjustment subsequently produces reformulated gasoline, its conventional gasoline compliance would immediately be subject to its original unadjusted baseline.

VII. Public Participation and Effective Date

The Agency is publishing this action as a direct final rule because it views the changes contained within as non-controversial and anticipates no adverse or critical comments. This action will be effective September 19, 1994 unless the Agency receives notice by August 19, 1994 that adverse or critical comments will be submitted, or that a party

[9] *Alabama Power Company* vs. *Costle*, 636 F.2d 323.357 (D.C. Cir 1979).

requests the opportunity to submit such oral comments pursuant to section 307(d)(5) of the Clean Air Act, as amended. If such notice is received regarding a change to a particular regulatory provision, the provision in question will be withdrawn before the effective date by publishing a subsequent **Federal Register** notice withdrawing the direct final rule for the identified provision.

Parties that submit adverse or critical comments, notify EPA of intentions to submit such comments, or request a public hearing within the allotted time period should identify the specific provision(s) at issue by specifying the preamble section numbers that discuss the provision(s). For instance, comments on the change to the oxygen valid range limits should include a reference to Section (Item Number) II.A.1 of the preamble. Comments on any of the insubstantial errors in Section I of the preamble should include a reference to the identification code associated with each change in that section. For instance, adverse comments on the paragraph reference change in § 80.41(h)(2)(iii) should include a reference to Item Number I–A.

The EPA will withdraw from final action only those specific provision(s) identified by the commenters or persons who notify EPA of their intent to comment or who request an opportunity to submit oral comments. All provisions in today's action that are not commented upon or for which EPA does not receive notice as described above will become effective September 19, 1994.

VIII. Statutory Authority

The statutory authority for the actions finalized today is granted to EPA by Sections 114, 211 (c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7414, 7545 (c) and (k), and 7601.

IX. Administrative Designation

Pursuant to Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this direct rule is not a "significant regulatory action".

X. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of the renewable oxygenate regulation and to identify significant adverse impacts of federal regulations on a substantial number of small entities. Because the RFA does not provide concrete definitions of "small entity," "significant impact," or "substantial number," EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses.[10] For purposes of the renewable oxygenate requirement for reformulated gasoline, a small entity is any business which is independently owned and operated and not dominant in its field as defined by SBA regulations under section 3 of the Small Business Act.

The Agency believes that the interpretations, clarifications, and corrections published in today's final action are unlikely to have a significant economic impact on a substantial number of small entities. In fact, the revisions contained herein are designed to promote successful implementation of the reformulated gasoline program for all regulated parties.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, and Motor vehicle pollution.

Dated: June 27, 1994.

Carol M. Browner,

Administrator.

40 CFR part 80 is amended as follows:

[10] U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Compliance with the Regulatory Flexibility Act," EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act," Office of Policy, Planning, and Evaluation, 1992.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. In § 80.41, paragraphs (h)(2)(iii), (j)(2), and the introductory text to paragraph (m)(1) are revised to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(h) * * *

(2) * * *

(iii) In the case of a refiner that operates more than one refinery, the standards specified under this paragraph (h)(2) shall be met using the refinery grouping selected by the refiner under § 80.101(h).

* * * * *

(j) * * *

(2) The aromatics value which, together with the values for benzene, RVP, and oxygen determined under paragraph (j)(1) of this section, meets the Simple Model toxics requirement specified in paragraphs (a) or (b) of this section, as applicable;

* * * * *

(m) * * *

(1) On each occasion that a covered area fails a NO_X emissions reduction survey conducted pursuant to § 80.68, except in the case of Phase II complex model NO_X standards for VOC-controlled gasoline, the NO_X emissions reduction requirements for that covered area beginning in the year following the failure shall be adjusted to be more stringent as follows:

* * * * *

3. Section 80.42 is amended by revising definitions "EXHVOCS1" through "REFVOCS2" in paragraph (a) introductory text; by adding a concluding sentence to paragraphs (b)(1)(ii), (b)(2)(ii), and (b)(3)(ii), and adding paragraph (b)(4); and by revising the table in paragraph (c)(1) to read as follows:

§ 80.42 Simple emissions model.

(a) * * *

EXHVOCS1=Exhaust nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period.

EXHVOCS2=Exhaust nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period.

EXHVOCW=Exhaust nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, during the winter period.

EVPVOCS1=Evaporative nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period.

EVPVOCS2=Evaporative nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period.

RLVOCS1=Running loss nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period.

RLVOCS2=Running loss nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period.

REFVOCS1=Refueling nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period.

REFVOCS2=Refueling nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period.

* * * * *

(b) * * *

(1) * * *

(ii) * * * Oxygen in the form of methanol or non-alcohol, non-ether oxygenates shall not be evaluated with the Simple Model, but instead must be evaluated through vehicle testing under the Complex Model per § 80.48.

* * * * *

(2) * * *

TABL

Exhaust pollut

VOC
NO_x
Benzene
Acetaldehyde
Formaldehyde
1,3-Butadiene
POM

* * * * *

(c) * * *

EXHVOCW=Exhaust nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, during the winter period.
EVPVOCS1=Evaporative nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period.
EVPVOCS2=Evaporative nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period.
RLVOCS1=Running loss nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period.
RLVOCS2=Running loss nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period.
REFVOCS1=Refueling nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period.
REFVOCS2=Refueling nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period.

* * * * *

(b) * * *
(1) * * *

(ii) * * * Oxygen in the form of methanol or non-alcohol, non-ether oxygenates shall not be evaluated with the Simple Model, but instead must be evaluated through vehicle testing under the Complex Model per § 80.48.

* * * * *

(2) * * *

(ii) * * * Oxygen in the form of methanol or non-alcohol, non-ether oxygenates shall not be evaluated with the Simple Model, but instead must be evaluated through vehicle testing under the Complex Model per § 80.48.

* * * * *

(3) * * *

(ii) * * * Oxygen in the form of methanol or non-alcohol, non-ether oxygenates shall not be evaluated with the Simple Model, but instead must be evaluated through vehicle testing under the Complex Model per § 80.48.

(4) If the fuel aromatics content of the fuel in question is less than 10 volume percent, then an FAROM value of 10 volume percent shall be used when evaluating the toxics emissions equations given in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(c) * * *
(1) * * *

Fuel parameter	Range
Benzene content	0–4.9 vol %.
RVP	6.4–9.0 psi.
Oxygen content	0–4.0 wt %.
Aromatics content	0–55 vol %.

* * * * *

4. Section 80.45 is amended by:
a. revising Table 3 in paragraph (b)(3);
b. revising Table 6 in (c)(1)(iv)(A);
c. revising the first sentence and the equations for Phase I and II in paragraph (c)(1)(iv)(B), and revising (c)(1)(iv)(C)*(5)*;
d. revising the second sentence in paragraph (c)(1)(iv)(C)*(9)*;
e. revising paragraphs (c)(1)(iv)(C)*(11)* and *(12)*;
f. revising the first sentence in paragraph (c)(1)(iv)(C)*(13)* and revising paragraph (c)(1)(iv)(C)*(14)*;
g. revising paragraph (c)(1)(iv)(D)*(5)*, revising the second sentence in paragraph (c)(1)(iv)(D)*(9)*, and revising paragraphs (c)(1)(iv)(D)*(11)* and *(12)*;
h. revising the first sentence in paragraph (c)(1)(iv)(D)*(13)*, and revising paragraph (c)(1)(iv)(D)*(14)*;
i. revising the equation for VOCRL1 in paragraph (c)(3)(i);
j. revising the equations for VOCHS1 and VOCRF1 in paragraph (c)(3)(ii);
k. revising the equation for VOCRL2 in paragraph (c)(4)(ii), and revising paragraph (c)(8)(ii);
l. revising paragraph (d)(1)(iv)(A) and Table 7, revising the first sentence and the equations for Phase I and II in paragraph (d)(1)(iv)(B), revising paragraph (d)(1)(iv)(C)*(5)*, and revising the second sentence in paragraph (d)(1)(iv)(C)*(9)*;
m. revising the Phase I equation for "Toxics 2%" and the Phase II equation for "Toxics 1%" in paragraph (e)(1)(ii);
n. revising paragraph (e)(3) introductory text and removing paragraphs (e)(3)(i) and (e)(3)(ii);
o. revising the last sentence in paragraph (e)(4)(iii);
p. adding a concluding sentence to paragraphs (e)(5)(iv) and (e)(6)(iv);
q. revising equations "HSBZ1" through "RFBZ1" in paragraph (e)(9) and equations "HSBZ2" through "RFBZ2" in paragraph (e)(10); and
r. revising paragraph (f)(1).

The additions and revisions are set out to read as follows:

§ 80.45 Complex emissions model.

* * * * *

(b) * * *
(3) * * *

TABLE 3.—BASELINE EXHAUST EMISSIONS

Exhaust pollutant	Phase I		Phase II	
	Summer (mg/mile)	Winter (mg/mile)	Summer (mg/mile)	Winter (mg/mile)
VOC	446.0	660.0	907.0	1341.0
NO_x	660.0	750.0	1340.0	1540.0
Benzene	26.10	37.57	53.54	77.62
Acetaldehyde	2.19	3.57	4.44	7.25
Formaldehyde	4.85	7.73	9.70	15.34
1,3-Butadiene	4.31	7.27	8.65	15.84
POM	1.50	2.21	3.04	4.50

* * * * *

(c) * * *

(1) * * *
(iv) * * *

(A) * * *

TABLE 6.—ALLOWABLE RANGES OF E200, E300, AND ARO FOR THE EXHAUST VOC EQUATIONS IN PARAGRAPHS (c)(1)(i) and (ii) OF THIS SECTION

Fuel parameter	Phase I		Phase II	
	Lower limit	Higher limit	Lower limit	Higher limit
E200	33.00	65.83	33.00	65.52
E300	72.00	Variable[1]	72.00	Variable[2]
ARO	18.00	46.00	18.00	46.00

[1] Higher E300 limit=lower of 94.0 or 80.32+[0.390×(ARO)].
[2] Higher E300 limit=lower of 94.0 or 79.75+[0.385×(ARO)].

(B) For fuels with E200, E300, and/or ARO levels outside the ranges defined in Table 6, $Y_{VOC}(t)$ shall be defined as:
For Phase I:

$$Y_{VOC}(t)=100\%\times 0.52\times[\exp(v_1(et))/\exp(v1(b))-1]$$
$$+100\%\times 0.48\times[\exp(v_2(et))/\exp(v_2(b))-1]$$
$$+\{100\%-0.52\times[\exp(v_1(et))/\exp(v_1(b))]\times\{[(0.0002144\times E200_{et})-0.014470]\times\Delta E200\}$$
$$+\{[(0.0008174\times E300_{et})-0.068624-(0.000348\times ARO_{et})]\times\Delta E300\}$$
$$+\{[(-0.000348\times E300_{et})+0.0323712]\times\Delta ARO\}]\}$$
$$+\{100\%\times 0.48\times[\exp(v_2(et))/\exp(v2(b))]\times[\{[(0.000212\times E200_{et})-0.01350]\times\Delta E200\}$$
$$+\{[(0.000816\times E300_{et})-0.06233-(0.00029\times ARO_{et})]\times\Delta E300\}$$
$$+\{[(-0.00029\times E300_{et})+0.028204]\times\Delta ARO\}]\}$$

For Phase II:

$$Y_{VOC}(t)=100\%\times 0.444\times[\exp(v_1(et))/\exp(v_1(b))-1]$$
$$+100\%\times 0.556\times[\exp(v_2(et))/\exp(v_2(b))-1]$$
$$+\{100\%\times 0.444\times[\exp(v_1(et))/\exp(v_1(b))]\times[\{[(0.0002144\times E200_{et})-0.014470]\times\Delta E200\}$$
$$+\{[(0.0008174\times E300_{et})-0.068624-(0.000348\times ARO_{et})]\times\Delta E300\}$$
$$+\{[(-0.000348\times E300_{et})+0.0323712]\times\Delta ARO\}]\}$$
$$+\{100\%\times 0.556\times[\exp(v_2(et))/\exp(v_2(b))]\times[\{[(0.000212\times E200_{et})-0.01350]\times\Delta E200\}$$
$$+\{[(0.000816\times E300_{et})-0.06233-(0.00029\times ARO_{et})]\times\Delta E300\}$$
$$+\{[(-0.00029\times E300_{et})+0.028204]\times\Delta ARO\}]\}$$

* * * * *

(C) * * *

(5) If the E300 level of the target fuel is greater than 95 volume percent, then the E300 value of the target fuel shall be set equal to 95 volume percent for the purposes of calculating VOC emissions with the Phase I equation given in paragraph (c)(1)(iv)(B) of this section.

* * * * *

(9) * * * If the aromatics level of the target fuel is less than 10 volume percent, then ΔARO shall be set equal to −8 volume percent.

* * * * *

(11) If neither of the conditions established in paragraphs (c)(1)(iv)(C)*(9)* and *(10)* of this section are met, then ΔARO shall be set equal to zero.

(12) If the E300 level of the target fuel is less than 72 percent, then ΔE300 shall be set equal to (E300−72 percent).

(13) If the E300 level of the target fuel is greater than 94 volume percent and [80.32+(0.390×ARO)] also is greater than 94, then ΔE300 shall be set equal to (E300−94 volume percent).* * *

(14) If neither of the conditions established in paragraphs (c)(1)(iv)(C)*(12)* and *(13)* of this section are met, then ΔE300 shall be set equal to zero.

(D) * * *

(5) If the E300 level of the target fuel is greater than 95 volume percent, then the E300 value of the target fuel shall be set equal to 95 volume percent for the purposes of calculating VOC emissions with the Phase II equation given in paragraph (c)(1)(iv)(B) of this section.

* * * * *

(9) * * * If the aromatics level of the target fuel is less than 10 volume percent, then ΔARO shall be set equal to −8 volume percent.

* * * * *

(11) If neither of the conditions established in paragraphs (c)(1)(iv)(D)(9) and (10) of this section are met, then ΔARO shall be set equal to zero.

(12) If the E300 level of the target fuel is less than 72 percent, then ΔE300 shall be set equal to (E300)×72 percent).

(13) If the E300 level of the target fuel is greater than 94 volume percent and [80.32+(0.390×ARO)] also is greater than 94, then ΔE300 shall be set equal to (E300 −94 volume percent). * * *

(14) If neither of the conditions established in paragraphs (c)(1)(iv)(D)(12) and (13) of this section are met, then ΔE300 shall be set equal to zero.

* * * * *

(3) * * *
(i) * * *

$$VOCRL1=[0.00279\times(RVP^2)]+[0.1096\times RVP]-0.7340$$

* * * * * *

(ii) * * *

$$VOCHS1=[0.006654\times(RVP^2)]-[0.08094\times RVP]+0.2846$$

* * * * *

$$VOCRF1=[0.004767\times RVP]+0.011859$$

(4) * * *
(ii) * * *

$$VOCRL2=[0.016169\times(RVP^2)]-[0.17206\times RVP]+0.56724$$

* * * * *

(8) * * *

(ii) The total winter VOC emissions performance of the target fuel in percentage terms from baseline levels shall be given by the following equation during Phase II:

$$VOCW\%=[100\%\times(VOC-1.341\ g/mi)]/(1.341\ g/mi)$$

(d) * * *
(1) * * *
(iv) * * *

(A) The equations in paragraphs (d)(1)(i) and (ii) of this section shall be used within the allowable range of SUL, OLE, and ARO for the appropriate Phase, as defined in the following Table 7:

TABLE 7.—ALLOWABLE RANGES OF SUL, OLE, AND ARO FOR THE NO_X EQUATIONS IN PARAGRAPHS/(d)(1)(i) AND (ii) OF THIS SECTION

Fuel parameter	Phase I		Phase II	
	Low end	High end	Low end	High end
SUL	10.0	450.0	10.0	450.0
OLE	3.77	19.0	3.77	19.0
ARO	18.0	36.2	18.0	36.8

(B) For fuels with SUL, OLE, and/or ARO levels outside the ranges defined in Table 7 of paragraph (d)(2)(iv)(A) of this section, $Y_{NOX}(t)$ shall be defined as:
For Phase I:

$$Y_{NOX}(t)=100\%\times 0.82\times[\exp(n_1(et))/\exp(n_1(b))-1]$$
$$+100\%\times 0.18\times[\exp(n_2(et))/\exp(n_2(b))-1]$$

$$+\{100\%\times 0.82\times[\exp(n_1(et))/\exp(n_1(b))]\times[\{[(0.00000133\times SUL_{et})+0.000692]\times\Delta SUL\}$$
$$+\{[(-0.000238\times ARO_{et})+0.0083632]\times\Delta ARO\}$$
$$+\{[(0.000733\times OLE_{et})-0.002774]\times\Delta OLE\}]\}$$
$$+\{100\%\times 0.18\times[\exp(n_2(et))/\exp(n_2(b))]\times[\{0.000252\times\Delta\Sigma\Theta\Lambda\}+$$
$$+\{[(-0.0001599\times ARO\varepsilon\tau)+0.007097]\times\Delta ARO\}$$
$$+\{[(0.000732\times OLE_{et})-0.00276]\times\Delta OLE\}]\}$$

For Phase II:

$$Y_{nox}(t)=100\%\times 0.738\times[\exp(n_1(et))/\exp(n_1(b))-1]$$
$$+100\%\times 0.262\times[\exp(n_2(et))/\exp(n_2(b))-1]$$
$$+\{100\%\times 0.738\times[\exp(n_1(et))/\exp(n_1(b))]\times[\{[(-0.00000133\times SUL_{et})+0.000692]\times\Delta SUL\}$$
$$+\{[(-0.000238\times ARO_{et})+0.0083632]\times\Delta ARO\}$$
$$+\{[(0.000733\times OLE_{et})-0.002774]\times\Delta OLE\}]\}$$
$$+\{100\%\times 0.262\times[\exp(n_2(et))/\exp(n_2(b))]\times[\{0.000252\times\Delta SUL\}+$$
$$+\{[(-0.0001599\times ARO_{et})+0.007097]\times\Delta ARO\}$$
$$+\{[(0.000732\times OLE_{et})-0.00276]\times\Delta OLE\}]\}$$

* * * * *

(C) * * *

(5) If the E300 level of the target fuel is greater than 95 volume percent, then the E300 value of the target fuel shall be set equal to 95 volume percent for the purposes of calculating NO_X emissions with the equations given in paragraph (d)(1)(iv)(B) of this section.

* * * * *

(9) * * * If the aromatics level of the target fuel is less than 10 volume percent, then ΔARO shall be set equal to −8 volume percent.

* * * * *

(e) * * *
(1) * * *
(ii) * * *

Compound
Benzene
Methylbenzene
Ethylbenzene
1,3-Dimethylbenzene
1,4-Dimethylbenzene
1,2-dimethylbenzene
(1-methylethyl)-benzene
Propylbenzene
1-ethyl-2-methylbenzene
1,2,4-trimethylbenzene
1,2,3-trimethylbenzene

$$+\{100\% \times 0.82 \times [\exp(n_1(et))/\exp(n_1(b))] \times [\{[(0.00000133 \times SUL_{et})+0.000692] \times \Delta SUL\} +\{[(-0.000238 \times ARO_{et})+0.0083632] \times \Delta ARO\} +\{[(0.000733 \times OLE_{et}) -0.002774] \times \Delta OLE\}]\}$$

$$+\{100\% \times 0.18 \times [\exp(n_2(et))/\exp(n_2(b))] \times [\{0.000252 \times \Delta\Sigma\Theta\Lambda\} +\{[(-0.0001599 \times ARO\varepsilon\tau)+0.007097] \times \Delta ARO\} +\{[(0.000732 \times OLE_{et}) -0.00276] \times \Delta OLE\}]\}$$

For Phase II:

$$Y_{nox}(t)=100\% \times 0.738 \times [\exp(n_1(et))/\exp(n_1(b)) -1] +100\% \times 0.262 \times [\exp(n_2(et))/\exp(n_2(b)) -1] +\{100\% \times 0.738 \times [\exp(n_1(et))/\exp(n_1(b))] \times [\{[(-0.00000133 \times SUL_{et})+0.000692] \times \Delta SUL\} +\{[(-0.000238 \times ARO_{et})+0.0083632] \times \Delta ARO\} +\{[(0.000733 \times OLE_{et}) -0.002774] \times \Delta OLE\}]\} +\{100\% \times 0.262 \times [\exp(n_2(et))/\exp(n_2(b))] \times [\{0.000252 \times \Delta SUL\}+ +\{[(-0.0001599 \times ARO_{et})+0.007097] \times \Delta ARO\} +\{[(0.000732 \times OLE_{et}) -0.00276] \times \Delta OLE\}]\}$$

* * * * *

(C) * * *

(5) If the E300 level of the target fuel is greater than 95 volume percent, then the E300 value of the target fuel shall be set equal to 95 volume percent for the purposes of calculating NO_X emissions with the equations given in paragraph (d)(1)(iv)(B) of this section.

* * * * *

(9) * * * If the aromatics level of the target fuel is less than 10 volume percent, then ΔARO shall be set equal to −8 volume percent.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

$$TOXICS2\% = [100\% \times (TOXICS2 - 47.58\ mg/mi)] / (47.58\ mg/mi)$$

* * * * *

$$TOXICS1\% = [100\% \times (TOXICS1 - 86.34\ mg/mi)] / (86.34\ mg/mi)$$

* * * * *

(3) The year-round toxics performance in VOC Control Regions 1 and 2 shall be derived from volume-weighted performances of individual batches of fuel as described in § 80.67(g).

(4) * * *

(iii) * * * If the E300 value of the target fuel is greater than 95 volume percent, then an E300 value of 95 volume percent shall be used when evaluating the equations in paragraphs (e)(4)(i) and (ii) of this section.

(5) * * *

(iv) * * * Oxygen in the form of methanol or non-alcohol, non-ether oxygenates shall not be evaluated with the Complex Model, but instead must be evaluated through vehicle testing per § 80.48.

(6) * * *

(iv) * * * Oxygen in the form of methanol or non-alcohol, non-ether oxygenates shall not be evaluated with the Complex Model, but instead must be evaluated through vehicle testing per § 80.48.

* * * * *

(9) * * *

$$HSBZ1 = 10 \times BEN \times VOCHS1 \times [(-0.0342 \times MTB) + (-0.080274 \times RVP) + 1.4448]$$

$$DIBZ1 = 10 \times BEN \times VOCD11 \times [(-0.0290 \times MTB) + (-0.080274 \times RVP) + 1.3758]$$

$$RLBZ1 = 10 \times BEN \times VOCRL1 \times [(-0.0342 \times MTB) + (-0.080274 \times RVP) + 1.4448]$$

$$RFBZ1 = 10 \times BEN \times VOCRF1 \times [(-0.0296 \times MTB) + (-0.081507 \times RVP) + 1.3972]$$

* * * * *

(10) * * *

$$HSBZ2 = 10 \times BEN \times VOCHS2 \times [(-0.0342 \times MTB) + (-0.080274 \times RVP) + 1.4448]$$

$$DIBZ2 = 10 \times BEN \times VOCD12 \times [(-0.0290 \times MTB) + (-0.080274 \times RVP) + 1.3758]$$

$$RLBZ2 = 10 \times BEN \times VOCRL2 \times [(-0.0342 \times MTB) + (-0.080274 \times RVP) + 1.4448]$$

$$RFBZ2 = 10 \times BEN \times VOCRF2 \times [(-0.0296 \times MTB) + (-0.081507 \times RVP) + 1.3972]$$

* * * * *

(f) * * *

(1) The equations described in paragraphs (c), (d), and (e) of this section shall be valid only for fuels with fuel properties that fall in the following ranges for reformulated gasolines and conventional gasolines:

(i) For reformulated gasolines:

Fuel property	Acceptable range
Oxygen	0.0–4.0 weight percent.
Sulfur	0.0–500.0 parts per million by weight.
RVP	6.4–10.0 pounds per square inch.
E200	30.0–70.0 percent evaporated.
E300	70.0–100.0 percent evaporated.
Aromatics	0.0–50.0 volume percent.
Olefins	0.0–25.0 volume percent.
Benzene	0.0–2.0 volume percent.

For conventional gasoline:

Fuel property	Acceptable range
Oxygen	0.0–4.0 weight percent.
Sulfur	0.0–1000.0 parts per million by weight.
RVP	6.4–11.0 pounds per square inch.
E200	30.0–70.9 percent evaporated.
E300	70.0–100.0 percent evaporated.
Aromatics	0.0–550 volume percent.
Olefins	0.0–30.0 volume percent.
Benzene	0.0–4.9 volume percent.

* * * * *

5. Section 80.46 is amended by revising the table in paragraph (f)(1)(ii)(K) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(K) * * *

Compound	Concentration (percent)	CAS No.	AMU	Retention time	Boiling point, °C
Benzene	2.25 vol	71–43–2	78	18.9 min	80.1
Methylbenzene	10.0 vol	108–88–3	91	25.5 min	111
Ethylbenzene	5.0 vol	100–41–4	91	34.1 min	136.2
1,3-Dimethylbenzene	5 vol	108–38–3	91	35.1 min	136–138
1,4-Dimethylbenzene		106–42–3			
1,2-dimethylbenzene	10 vol	95–47–6	91	38.1 min	144
(1-methylethyl)-benzene	2.25 vol	98–82–8	105	42.8 min	
Propylbenzene	2.25 vol	103–65–1	91	48.0 min	159.2
1-ethyl-2-methylbenzene	2.25 vol	611–14–3	105	49.3 min	165
1,2,4-trimethylbenzene	2.25 vol	95–63–6	105	50.9 min	169
1,2,3-trimethylbenzene	2.25 vol	526–73–8	105	53.3 min	

Compound	Concentration (percent)	CAS No.	AMU	Retention time	Boiling point, °C
1,3-diethylbenzene	2.25 vol	141–93–5	119	56.6 min	181
Butylbenzene	2.25 vol	104–51–8	91	60.7 min	183
o-Cymene	2.25 vol	527–84–4	119	63.9 min	
1-ethyl-3-methylbenzene	2.25 vol	620–14–4	105	64.2 min	
m-Cymene	2.25 vol	535–77–3	119	69.0 min	
p-Cymene	2.25 vol	99–87–6	119	73.0 min	
Isobutylbenzene	2.25 vol	538–93–2	91	75.0 min	
Indan	2.25 vol	496–11–7	117	50.0 min	
1-methyl-3-propylbenzene	2.25 vol	1074–43–7	105	78.9 min	
2-ethyl-1,4-dimethylbenzene	2.25 vol	1758–88–9	119	83.2 min	187
1,2,4,5-tetramethylbenzene	2.25 vol	95–93–2	119	83.4 min	
1-ethyl-2,4-dimethylbenzene	2.25 vol	874–41–9	119	85.7 min	
(1,1-dimethylethyl)-3-methylbenzene	2.25 vol	27138–21–2	133	87.3 min	
1-ethyl-2,3-dimethylbenzene	2.25 vol	933–98–2	119	88.7 min	
1-ethyl-1,4-dimethylbenzene	2.25 vol	874–41–9	119	94.9 min	
2-ethyl-1,3-dimethylbenzene	2.25 vol	2870–04–4	119	100.9 min	
1-ethyl-3,5-dimethylbenzene	2.25 vol	934–74–7	119	102.5 min	
1,2,3,5-tetramethylbenzene	2.25 vol	527–53–7	119	115.9 min	
Pentylbenzene	2.25 vol	538–68–1	91	116 min	
Naphthalene	2.25 vol	191–20–3	128	118.4 min	198
3,5-dimethyl-t-butylbenzene	2.25 vol	98–19–1	147	118.5 min	205.3
1-methylnaphthalene	2.25 vol	90–12–0	142	129.0 min	
2-methylnaphthalene	2.25 vol	91–57–6	142	131.0 min	

* * * * *

6. In § 80.48, paragraph (c)(1) introductory text is revised, the last sentence in paragraph (c)(1)(v) is revised, a concluding sentence is added to paragraph (c)(2)(iii), and paragraph (g) is revised to read as follows:

§ 80.48 Augmentation of the complex emission model by vehicle testing.

* * * * *

(c) * * *

(1) The analysis shall fit a regression model to the natural logarithm of emissions measured from addition fuels 1, 2, and 3 only (as specified at § 80.49(a) and adjusted as per paragraph (c)(1)(iv) of this section and § 80.49(d)) that includes the following terms:

* * * * *

(v) * * * If, after dropping the B_i term and re-estimating the model, the A_i term does not satisfy these criteria, then both terms shall be dropped, all test data shall be reported to EPA, and the augmentation request shall be denied.

(2) * * *

(iii) * * * The Administrator shall make available upon request existing complex model terms and coefficients in centered form.

* * * * *

(g) EPA reserves the right to analyze the data generated during vehicle testing, to use such analyses to determine the validity of other augmentation petitions, and to use such data to update the complex model for use in certifying all reformulated gasolines.

* * * * *

7. In § 80.49, the table in paragraph (a)(5)(i) is revised, and paragraph (b)(3)(iii) is revised to read as follows:

§ 80.49 Fuels to be used in augmenting the complex emission model through vehicle testing.

(a) * * *

(5) * * *

(i) * * *

Fuel parameter	Measurement uncertainty
API gravity	± 0.2 °API
Sulfur content	± 10 ppm
Benzene content.	± 0.02 vol %
RVP	± 0.05 psi
Octane	± 0.2 (R+M/2)
E200 level	± 2 %
E300 level	± 2 %
Oxygenate content.	± 0.2 vol %
Aromatics content.	± 0.5 vol %
Olefins content	± 0.3 vol %
Saturates content.	± 1.0 vol %
Detergent control Additives.	± 2% of the level required by EPA's detergents rule.

* * * * *

(b) * * *

(3) * * *

(iii) All other parameters shall be present at the levels specified in paragraph (b)(2)(ii) of this section.

* * * * *

8. In § 80.59, the last sentence in paragraph (a) is revised to read as follows:

§ 80.59 General test fleet requirements for vehicle testing.

(a) * * * To be technologically equivalent vehicles at minimum must have closed-loop systems and possess adaptive learning.

* * * * *

9. Section 80.65 is amended by revising paragraphs (d)(2)(iii), (d)(2)(v)(B), (d)(2)(vi), (d)(3), the third sentence of (e)(1), the table in (e)(2)(i), paragraph (e)(2)(ii)(A), (f)(4) introductory text, and paragraph (h) to read as follows:

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

* * * * *

(d) * * *

(2) * * *

(iii) Reformulated gasoline (but not RBOB) must be designated either as oxygenated fuels program reformulated gasoline, or not oxygenated fuels program reformulated gasoline.

(A) Gasoline must be designated as oxygenated fuels program reformulated gasoline if such gasoline:

(1) Has an oxygen content that is greater than or equal to 2.0 weight percent; and

(2) Arrives at a terminal from which gasoline is dispensed into trucks used to deliver gasoline to an oxygenated fuels control area within five days prior to the beginning of the oxygenated fuels control period for that control area.

(B) Gasoline may be designated as oxygenated fuels program reformulated gasoline if such gasoline has an oxygen content that is greater than or equal to 2.0 weight percent, regardless of whether the gasoline is intended for use in any oxygenated fuels program control area during an oxygenated fuels program control period.

* * * * *

(v) * * *

(B) NO_x emissions performance in the case of gasoline certified using the complex model.

* * * * *

(vi) In the case of RBOB, as RBOB suitable for blending with:

(A) Any oxygenate;

(B) Ether only; or

(C) Other specified oxygenate type(s) and amount(s).

(3) Every batch of reformulated or conventional gasoline or RBOB produced or imported at each refinery or import facility, or each batch of blendstock produced and sold or transferred if blendstock accounting is required under § 80.102(e), shall be assigned a number (the "batch number"), consisting of the EPA-assigned refiner, importer or oxygenate blender registration number, the EPA-assigned facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced or imported each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g., 4321–54321–95–000001, 4321–54321–95–000002, etc.).

* * * * *

(e) * * *

(1) * * * A batch of simple model reformulated gasoline may be released by the refiner or importer prior to the receipt of the refiner's or importer's test results except for test results for oxygen and benzene, and RVP in the case of VOC-controlled gasoline.

(2) * * *

(i) * * *

Fuel property	Range
Sulfur content	25 ppm
Aromatics content	2.7 vol %
Olefins content	2.5 vol %
Benzene content	0.21 vol %
Ethanol content	0.4 vol %
Methanol content	0.2 vol %
MTBE (and other methyl ethers) content.	0.6 vol %
ETBE (and other ethyl ethers) content.	0.6 vol %
TAME	0.6 vol %
t-Butanol content	0.6 vol %
RVP	0.3 psi
50% distillation (T50)	5 °F
90% distillation (T90)	5 °F
E200	2.5 vol %
E300	3.5 vol %
API Gravity	0.3 °API

(ii) * * *

in any oxygenated fuels program control area during an oxygenated fuels program control period.

* * * * *

(v) * * *

(B) NO_x emissions performance in the case of gasoline certified using the complex model.

* * * * *

(vi) In the case of RBOB, as RBOB suitable for blending with:

(A) Any oxygenate;

(B) Ether only; or

(C) Other specified oxygenate type(s) and amount(s).

(3) Every batch of reformulated or conventional gasoline or RBOB produced or imported at each refinery or import facility, or each batch of blendstock produced and sold or transferred if blendstock accounting is required under § 80.102(e), shall be assigned a number (the "batch number"), consisting of the EPA-assigned refiner, importer or oxygenate blender registration number, the EPA-assigned facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced or imported each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g., 4321–54321–95–000001, 4321–54321–95–000002, etc.).

* * * * * *

(e) * * *

(1) * * * A batch of simple model reformulated gasoline may be released by the refiner or importer prior to the receipt of the refiner's or importer's test results except for test results for oxygen and benzene, and RVP in the case of VOC-controlled gasoline.

(2) * * *

(i) * * *

Fuel property	Range
Sulfur content	25 ppm
Aromatics content	2.7 vol %
Olefins content	2.5 vol %
Benzene content	0.21 vol %
Ethanol content	0.4 vol %
Methanol content	0.2 vol %
MTBE (and other methyl ethers) content.	0.6 vol %
ETBE (and other ethyl ethers) content.	0.6 vol %
TAME	0.6 vol %
t-Butanol content	0.6 vol %
RVP	0.3 psi
50% distillation (T50)	5 °F
90% distillation (T90)	5 °F
E200	2.5 vol %
E300	3.5 vol %
API Gravity	0.3 °API

(ii) * * *

(A) The larger of the two values for the property, except the smaller of the two results shall be used for oxygenates; or

* * * * *

(f) * * *

(4) Any refiner that produces reformulated gasoline using computer-controlled in-line blending equipment is exempt from the independent sampling and testing requirements specified in paragraphs (f)(1) through (3) of this section and from the requirement of paragraph (e)(1) of this section to obtain test results for each batch prior to the gasoline leaving the refinery, provided that such refiner:

* * * * *

(h) *Compliance audits.* Any refiner and importer of any reformulated gasoline or RBOB, and any oxygenate blender of any RBOB who meets the oxygen standard on average, shall have the reformulated gasoline and RBOB it produced, imported, or blended during each calendar year audited for compliance with the requirements of this subpart D, in accordance with the requirements of subpart F, at the conclusion of each calendar year.

* * * * *

10. Section 80.66 is amended by revising paragraphs (g)(1) and (g)(2)(ii) to read as follows:

§ 80.66 Calculation of reformulated gasoline properties.

* * * * *

(g)(1) Per gallon values for VOC and NO_x emissions reduction shall be calculated using the methodology specified in § 80.45 that is appropriate for the gasoline.

(2) * * *

(ii) For gasoline subject to the complex model, the methodology specified in § 80.45 that is appropriate for the gasoline.

* * * * *

11. Section 80.68 is amended by:

a. revising paragraphs (c)(8)(ii)(A), (c)(9)(ii)(A), (c)(9)(ii)(B), (c)(10)(i);

b. redesignating paragraph (c)(12) as paragraph (c)(13), and removing the first two sentences in the newly redesignated (c)(13) introductory text;

c. by adding a new paragraph (c)(12); and

d. revising paragraphs (c)(13)(v)(G), (H) and (L).

The additions and revisions are set out to read as follows:

§ 80.68 Compliance surveys.

* * * * *

(c) * * *

(8) * * *

(ii) * * *

(A) For each complex model sample from the survey series, the VOC emissions reduction percentage shall be determined based upon the tested parameter values for that sample and the appropriate methodology for calculating VOC emissions reduction at § 80.45;

* * * * *

(9) * * *

(ii) * * *

(A) For each complex model sample from the survey series, the toxics emissions reduction percentage shall be determined based upon the tested parameter values for that sample and the appropriate methodology for calculating toxics emissions reduction at § 80.45;

(B) The annual average of the toxics emissions reduction percentages for all samples from a survey series shall be calculated according to the formula specified in paragraph (c)(9)(i)(B) of this section; and

* * * * *

(10) * * *

(i) For each sample from the survey and survey series, the NO_x emissions reduction percentage shall be determined based upon the tested parameter values for that sample and the appropriate methodology for calculating NO_x emissions reduction at § 80.45; and

* * * * *

(12) For any oxygen content survey series conducted in any covered area the average oxygen content for all samples from the survey series shall be calculated. If this annual average is less than 2.00 percent by weight, the covered area shall have failed an oxygen survey series.

(13) * * *

(v) * * *

(G) The results of the analyses of simple model samples for oxygenate type and oxygen weight percent, benzene content, aromatic hydrocarbon content, and RVP, the calculated toxics emission reduction percentage, and for each survey conducted during the period June 1 through September 15 the VOC emissions reduction percentage calculated using the methodology specified in paragraph (c)(8)(i) of this section;

(H) The results of the analyses of complex model samples for oxygenate type and oxygen weight percent, benzene, aromatic hydrocarbon, and olefin content, E–200, E–300, and RVP, the calculated NO_x and toxics emissions reduction percentage, and for each survey conducted during the period June 1 through September 15 the calculated VOC emissions reduction percentage, except that beginning on January 1, 2000 NO_x emissions

reduction percentages must be reported only for surveys conducted outside the period June 1 through September 15;

* * * * *

(L) The average toxics emissions reduction percentage for simple model samples and the percentage for complex model samples, the average benzene and oxygen percentages, and for each survey conducted during the period June 1 through September 15, the average VOC emissions reduction percentage for simple model samples and the percentage for complex model samples, the average NO_X emissions reduction percentage for all complex model samples collected prior to January 1, 2000, and the average NO_X emissions reduction percentage for samples collected outside the period June 1 through September 15 beginning on January 1, 2000;

* * * * *

12. Section 80.69 is amended by revising paragraphs (a)(7)(ii) introductory text and (b)(3) to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

* * * * *

(a) * * *

(7) * * *

(ii) In the event the test results for any sample indicate the gasoline does not comply with applicable standards (within the correlation ranges specified in § 80.65(e)(2)(i)), the refiner or importer shall:

* * * * *

(b) * * *

(3) Meet the standard requirements specified in § 80.65(c) and § 80.67(f), the record keeping requirements specified in § 80.74, and the reporting requirements specified in § 80.75; and

* * * * *

13. Section 80.70 is amended by revising paragraphs (d)(3)(viii) and (d)(3)(ix), adding paragraphs (d)(3)(x) and (d)(3)(xi), by revising paragraphs (j)(4)(i), (j)(4)(ii), (j)(10)(iv), (j)(11)(i), and (j)(14)(xvii) and by removing paragraph (j)(15) to read as follows:

§ 80.70 Covered areas.

* * * * *

(d) * * *

(3) * * *

(viii) Suffolk;

(ix) Westchester;

(x) Orange; and

(xi) Putnam.

* * * * *

(j) * * *

(4) * * *

(i) Portion of Bullitt County described as follows:

(A) Beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County Line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County Line;

(B) Proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road);

(C) Proceeding to the south on KY 1116 to the junction with Hebron Lane;

(D) Proceeding to the south on Hebron Lane to Cedar Creek;

(E) Proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery;

(F) Proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits;

(G) Proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane;

(H) Proceeding south along Mooney Lane to the junction of Ky 480;

(I) Proceeding west on Ky 480 to the junction with Ky 2237;

(J) Proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494;

(K) Proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox Military Reservation;

(L) Proceeding north along the military reservation perimeter to Castleman Branch Road;

(M) Proceeding north on Castleman Branch Road to Ky 44;

(N) Proceeding a very short distance west on Ky 44 to a junction with Ky 1020; and

(O) Proceeding north on Ky 1020 to the beginning.

(ii) Portion of Oldham County described as follows:

(A) Beginning at the intersection of the Oldham-Jefferson County Line with the southbound lane of Interstate 71;

(B) Proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of Ky 329 and the southbound lane of Interstate 71;

(C) Proceeding to the northwest on Ky 329 to the intersection of Zaring Road on Ky 329;

(D) Proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road;

(E) Proceeding to the north-northeast on Cedar Point Road to the junction of Ky 393 and Cedar Point Road;

(F) Proceeding to the south-southeast on Ky 393 to the junction of county road 746 (the road on the north side of Reformatory Lake and the Reformatory);

(G) Proceeding to the east-northeast on county road 746 to the junction with Dawkins Lane (also known as Saddlers Mill Road) and county road 746;

(H) Proceeding to follow an electric power line east-northeast across from the junction of county road 746 and Dawkins Lane to the east-northeast across Ky 53 on to the La Grange Water Filtration Plant;

(I) Proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on Ky 146;

(J) Proceeding along the power line south across Ky 146 and the Seaboard System Railroad track to adjoin the incorporated city limits of La Grange;

(K) Then proceeding east then south along the La Grange city limits to a point abutting the north side of Ky 712;

(L) Proceeding east-southeast on Ky 712 to the junction of Massie School Road and Ky 712;

(M) Proceeding to the south-southwest and then north-northwest on Massie School Road to the junction of Ky 53 and Massie School Road;

(N) Proceeding on Ky 53 to the north-northwest to the junction of Moody Lane and Ky 53;

(O) Proceeding on Moody Lane to the south-southwest until meeting the city limits of La Grange;

(P) Then briefly proceeding north following the La Grange city limits to the intersection of the northbound lane of Interstate 71 and the La Grange city limits;

(Q) Proceeding southwest on the northbound lane of Interstate 71 until intersecting with the North Fork of Currys Fork;

(R) Proceeding south-southwest beyond the confluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; and

(S) Proceeding northwest along the Oldham-Jefferson County Line to the beginning.

* * * * *

(10) * * *

(iv) The portion of Essex County that consists of the portion of Whiteface Mountain above 4,500 feet in elevation.

* * * * *

(11) * * *

(i) Allegheny;

* * * * *

(14) * * *

(xvii) Richmond;

* * * * *

14. Section 80.75 is amended by revising paragraphs (b), (f)(2)(ii)(A) (*1*), and (j) to read as follows:

§ 80.75 Reporting requirements.

* * * * *

(b) *Reports for gasoline or RBOB produced or imported under the simple model.*

(1) *RVP averaging reports.*

(i) Any refiner or importer that produced or imported any reformulated gasoline or RBOB under the simple model that was to meet RVP standards on average ("averaged reformulated gasoline") shall submit to the Administrator, with the third quarterly report, a report for each refinery or importer for such averaged reformulated gasoline or RBOB produced or imported during the previous RVP averaging period. This information shall be reported separately for the following categories:

(A) Gasoline or RBOB which is designated as VOC-controlled intended for areas in VOC-Control Region 1; and

(B) Gasoline or RBOB which is designated as VOC-controlled intended for VOC-Control Region 2.

(ii) The following information shall be reported:

(A) The total volume of averaged reformulated gasoline or RBOB in gallons;

(B) The compliance total value for RVP; and

(C) The actual total value for RVP.

(2) *Sulfur, NO_X and T90 averaging reports.*

(i) Any refiner or importer that produced or imported any reformulated gasoline or RBOB under the simple model shall submit to the Administrator, with the fourth quarterly report, a report for such reformulated gasoline or RBOB produced or imported during the previous year:

(A) For each refinery or importer; or

(B) In the case of refiners who operate more than one refinery, for each grouping of refineries as designated by the refiner pursuant to § 80.41(h)(2)(iii).

(ii) The following information shall be reported:

(A) The total volume of reformulated gasoline or RBOB in gallons;

(B) The applicable sulfur content standard under § 80.41(h)(2)(i) in parts per million;

(C) The average sulfur content in parts per million;

(D) The applicable olefin content standard under § 80.41(h)(2)(i) in volume percent;

(E) The average olefin content in volume percent;

(F) The applicable T90 distillation point standard under § 80.41(h)(2)(i) in degrees Fahrenheit; and

(G) The average T90 distillation point in degrees Fahrenheit.

* * * * *

(f) * * *

(b) *Reports for gasoline or RBOB produced or imported under the simple model.*

(1) *RVP averaging reports.*

(i) Any refiner or importer that produced or imported any reformulated gasoline or RBOB under the simple model that was to meet RVP standards on average ("averaged reformulated gasoline") shall submit to the Administrator, with the third quarterly report, a report for each refinery or importer for such averaged reformulated gasoline or RBOB produced or imported during the previous RVP averaging period. This information shall be reported separately for the following categories:

(A) Gasoline or RBOB which is designated as VOC-controlled intended for areas in VOC-Control Region 1; and

(B) Gasoline or RBOB which is designated as VOC-controlled intended for VOC-Control Region 2.

(ii) The following information shall be reported:

(A) The total volume of averaged reformulated gasoline or RBOB in gallons;

(B) The compliance total value for RVP; and

(C) The actual total value for RVP.

(2) *Sulfur, NO_X* and T90 averaging reports.

(i) Any refiner or importer that produced or imported any reformulated gasoline or RBOB under the simple model shall submit to the Administrator, with the fourth quarterly report, a report for such reformulated gasoline or RBOB produced or imported during the previous year:

(A) For each refinery or importer; or

(B) In the case of refiners who operate more than one refinery, for each grouping of refineries as designated by the refiner pursuant to § 80.41(h)(2)(iii).

(ii) The following information shall be reported:

(A) The total volume of reformulated gasoline or RBOB in gallons;

(B) The applicable sulfur content standard under § 80.41(h)(2)(i) in parts per million;

(C) The average sulfur content in parts per million;

(D) The applicable olefin content standard under § 80.41(h)(2)(i) in volume percent;

(E) The average olefin content in volume percent;

(F) The applicable T90 distillation point standard under § 80.41(h)(2)(i) in degrees Fahrenheit; and

(G) The average T90 distillation point in degrees Fahrenheit.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(A) * * *

(*1*) Gasoline which is designated as VOC-controlled and oxygenated fuels program reformulated gasoline (OPRG);

* * * * *

(j) *Additional reporting requirements for certain importers.* In the case of any importer to whom different standards apply for gasoline imported at different facilities by operation of § 80.41(q)(2), such importer shall submit separate reports for gasoline imported into facilities subject to different standards.

* * * * *

15. Section 80.76 is amended by revising paragraphs (c)(2), (c)(3) introductory text, (c)(3)(i), and (c)(3)(ii) to read as follows:

§ 80.76 Registration of refiners, importers or oxygenate blenders.

* * * * *

(c) * * *

(2) For each separate refinery and oxygenate blending facility, the facility name, physical location, contact name, telephone number, and type of facility; and

(3) For each separate refinery and oxygenate blending facility, and for each importer's operations in a single PADD:

(i) Whether records are kept on-site or off-site of the refinery or oxygenate blending facility, or in the case of importers, the registered address;

(ii) If records are kept off-site, the primary off-site storage facility name, physical location, contact name, and telephone number; and

* * * * *

16. Section 80.77 is amended by revising paragraphs (g)(2)(iii), (g)(2)(iv)(A) and (B), adding paragraph (g)(3), and by revising paragraph (h) introductory text to read as follows:

§ 80.77 Product transfer documentation.

* * * * *

(g) * * *

(2) * * *

(iii) In the case of VOC-controlled gasoline subject to the simple model standards, RVP;

(iv) * * *

(A) Prior to January 1, 1998, the NOx emissions performance minimum, and for VOC-controlled gasoline the VOC emissions performance minimum, in milligrams per mile; and

(B) Beginning on January 1, 1998, the NOx emissions performance minimum, and for VOC-controlled gasoline the VOC emissions performance minimum; and

(3) Identification of VOC-controlled reformulated gasoline or RBOB as gasoline or RBOB which contains ethanol, or which does not contain any ethanol.

(h) Prior to January 1, 1998, in the case of reformulated gasoline or RBOB subject to the complex model standards:

* * * * *

17. Section 80.78 is amended by revising paragraphs (a)(1)(v) (B) and (C) to read as follows:

§ 80.78 Controls and prohibitions on reformulated gasoline.

(a) * * *

(1) * * *

(v) * * *

(B) Unless each gallon of such gasoline that is subject to simple model standards has an RVP which is less than or equal to the applicable RVP maximum specified in § 80.41;

(C) Unless each gallon of such gasoline that is subject to complex model standards has a VOC and NOx emissions reduction percentage which is greater than or equal to the applicable minimum specified in § 80.41.

* * * * *

18. Section 80.81 is amended by revising paragraphs (a)(2)(iii), (b)(4), and (h) to read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

(a) * * *

(2) * * *

(iii) Is imported into the State of California from inside the United States and that is manufactured at a refinery that does not produce reformulated gasoline for sale in any covered area outside the State of California.

(b) * * *

(4) The compliance demonstration required by paragraph (b)(3)(ii) of this section shall be submitted no later than May 31, 1996, along with the report for the first quarter of 1996 required to be submitted under § 80.75(a)(1)(i).

* * * * *

(h) For purposes of the batch sampling and analysis requirements contained in § 80.65(e)(1), any refiner, importer or oxygenate blender of California gasoline may, with regard to such gasoline, use a sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.*, in lieu of any applicable methodology specified in § 80.46.

* * * * *

19. In § 80.90, the equation in paragraph (b)(1) is revised, and paragraph (e)(2) is revised to read as follows:

§ 80.90 Conventional gasoline baseline emissions determination.

* * * * *

(b) * * *
(1) * * *

EXHBEN = (1.884 + 0.949xBZ + 0.113x(AR − BZ))

* * * * *

(e) * * *

(2) The annual average baseline NO_x emissions of the facility shall be determined using the emissions values determined in paragraph (e)(1) of this section in the equation specified in paragraph (a) of this section.

* * * * *

20. Section 80.91 is amended by:

a. adding paragraph (c)(5)(iv);

b. adding a sentence to the end of paragraph (d)(1)(i)(A) introductory text;

c. revising paragraph (d)(1)(i)(A)*(1)*. and revising the last sentence in paragraph (d)(1)(i)(B);

d. revising the equation and the definition of T_{js} in paragraph (e)(2)(iv). and revising the definition of T_{js} in paragraph (e)(2)(v)(A);

e. revising the equations in paragraphs (e)(4)(i) (A) and (B), and the equation and definition of UV in paragraph (e)(4)(ii)(A) and the equation in paragraph (e)(4)(ii)(B);

f. revising the second sentence of paragraph (e)(5)(vi);

g. adding paragraphs (e)(5)(vi)(A) and (e)(5)(vi)(B);

h. and i. revising paragraph (e)(5)(vii) introductory text, and revising paragraph (e)(5)(viii);

j. and k. revising paragraph (e)(7)(i)(A);

l. revising paragraphs (e)(7)(i)(C) and (f)(2)(ii); and

m. adding paragraph (e)(7)(i)(D).

The revisions and additions are set out to read as follows:

§ 80.91 Individual baseline determination.

* * * * *

(c) * * *
(5) * * *

(iv) The annual average anti-dumping statutory baseline shall have the following set of emission values:

Exhaust benzene emissions, simple model—6.45
Exhaust benzene emissions, complex model—33.03 mg/mile
Exhaust toxics emissions, Phase I—50.67 mg/mile
Exhaust toxics emissions, Phase II—104.5 mg/mile
NO_x emissions, Phase I—714.4 mg/mile
NO_x emissions, Phase II—1461. mg/mile

(d) * * *
(1) * * *
(i) * * *

(A) * * * When method 1 per batch RVP data is available, a month is considered equivalent to 4 weeks of seasonal data.

(1) Method 1, per batch, actual RVP data will be used to define that batch as either summer fuel or winter fuel. Summer fuel is defined as fuel produced and intended for sale to satisfy federal summer volatility standards. When such per batch actual RVP data is not available, data is allocated per month as follows. A summer month is defined as any month during which more than 50 percent (by volume) of the gasoline produced by a refiner met the federal summer gasoline volatility requirements. Winter shall be any month which could not be considered a summer month under this definition.

* * * * *

(B) * * * In any case, all data collected through the date of collection of the last data point included in the determination of a baseline fuel parameter value must be utilized in the baseline determination of that fuel parameter.

* * * * *

(e) * * *
(2) * * *
(iv) * * *

$$X_{bs}^{m_s} = \sum_{j=1}^{T_{js}} \left\{ \frac{}{N_s} \times \left(\frac{\sum_{i=1}^{n_{js}} X_{ijs}}{n_{js}} + \frac{\sum_{i=1}^{p_{js}} \left(X_{ijs} \times V_{ijs} \times SG_{ijs} \right)}{\sum_{i=1}^{p_{js}} \left(V_{ijs} \times SG_{ijs} \right)} \right) \right\}$$

* * * * *

T_{js} = total 1990 volume of blendstock j used in the refinery's season s gasoline

* * * * *

(v) * * *

(A) * * *

T_{js} = total 1990 volume of blendstock j used in the refinery's season s gasoline

* * * * *

(4) * * *

(i) * * *
(A) * * *

UV = [AV/(100 − OV)] x 100

$$UR = \left[BR - \left\{ \sum_{i=1}^{n} \left(OV_i \times OR_i \right) \right\} / 100 \right] \Big/ \left[\left\{ 100 - \sum_{i=1}^{n} OV_i \right\} / 100 \right]$$

* * * * *

(B) * * *

* * * * *

(ii) * * *

(A) * * *

AV = UV x (100 − OV)/100

* * * * *

UV = non-oxygenated parameter value

* * * * *

(B) * * *

$$BR = \left\{ UR \times \left[100 - \sum_{i=1}^{n} \left(OV_i \right) \right] + \sum_{i=1}^{n} \left(OV_i \times OR_i \right) \right\} / 100$$

* * * * *

(5) * * *

(vi) * * *Such data shall be used in the determination of the baseline value, due to the work-in-progress, of each of the fuel parameters specified in § 80.91(a)(2)(i) and as verification of the effect of the work-in-progress.

(A) The baseline value, due to the work-in-progress, of each of the fuel parameters specified in § 80.91(a)(2)(i) shall be used in the determination of the emissions specified in § 80.90.

(B) The baseline values of sulfur, olefins and E300, due to the work-in-progress, shall be used in the determination of the emissions specified in § 80.41(j)(3).

(vii) The annual average baseline values of exhaust benzene emissions, per § 80.90(b) and § 80.90(c), exhaust toxics emissions, per § 80.90(d), and NO_x emissions, per § 80.90(e), are the values resulting from the work-in-progress baseline adjustment, not to exceed the larger of:

* * * * *

(viii) When compliance is achieved using the simple model, per § 80.41 and/or § 80.101, the baseline values of sulfur, olefins and T90 are the values resulting from the work-in-progress baseline adjustment, not to exceed the larger of:

(A) The unadjusted annual average baseline value of each fuel parameter specified in paragraph (e)(5)(viii) of this section; or

(B) The following values:

(1) Sulfur, 355 ppm;

(2) Olefins, 11.3 volume percent;

(3) T90, 349 °F; or

(C) An adjusted annual average baseline fuel parameter value for sulfur, olefins and T90 such that exhaust emissions of VOC, toxics, and NO_x do not exceed the complex model emission levels specified in paragraph (e)(5)(vii)(B) of this section. In the petition for a work-in-progress adjustment, the refiner shall specify sulfur, olefins and T90 values that meet these emission levels.

* * * * *

(7) * * *
(i) * * *

(A) *(1)* The refinery is the only refinery of a refiner such that it cannot form an aggregate baseline with another refinery (per paragraph (f) of this section) and meets the requirements specified in paragraphs (e)(7)(i) (B) and (C); or

(2) The refiner is a multi-refinery refiner where each of the refineries also meets the requirements specified in paragraphs (e)(7)(i) (B) and (D).

* * * * *

* * * * *

(5) * * *

(vi) * * *Such data shall be used in the determination of the baseline value, due to the work-in-progress, of each of the fuel parameters specified in § 80.91(a)(2)(i) and as verification of the effect of the work-in-progress.

(A) The baseline value, due to the work-in-progress, of each of the fuel parameters specified in § 80.91(a)(2)(i) shall be used in the determination of the emissions specified in § 80.90.

(B) The baseline values of sulfur, olefins and E300, due to the work-in-progress, shall be used in the determination of the emissions specified in § 80.41(j)(3).

(vii) The annual average baseline values of exhaust benzene emissions, per § 80.90(b) and § 80.90(c), exhaust toxics emissions, per § 80.90(d), and NO_X emissions, per § 80.90(e), are the values resulting from the work-in-progress baseline adjustment, not to exceed the larger of:

* * * * *

(viii) When compliance is achieved using the simple model, per § 80.41 and/or § 80.101, the baseline values of sulfur, olefins and T90 are the values resulting from the work-in-progress baseline adjustment, not to exceed the larger of:

(A) The unadjusted annual average baseline value of each fuel parameter specified in paragraph (e)(5)(viii) of this section; or

(B) The following values:

(*1*) Sulfur, 355 ppm;

(*2*) Olefins, 11.3 volume percent;

(*3*) T90, 349 °F; or

(C) An adjusted annual average baseline fuel parameter value for sulfur, olefins and T90 such that exhaust emissions of VOC, toxics, and NO_X do not exceed the complex model emission levels specified in paragraph (e)(5)(vii)(B) of this section. In the petition for a work-in-progress adjustment, the refiner shall specify sulfur, olefins and T90 values that meet these emission levels.

* * * * *

(7) * * *

(i) * * *

(A) (*1*) The refinery is the only refinery of a refiner such that it cannot form an aggregate baseline with another refinery (per paragraph (f) of this section) and meets the requirements specified in paragraphs (e)(7)(i) (B) and (C); or

(*2*) The refiner is a multi-refinery refiner where each of the refineries also meets the requirements specified in paragraphs (e)(7)(i) (B) and (D).

* * * * *

(C) For single refinery refiners, the ratio of a refiner's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.2.

(D) For multi-refinery refiners, the 1990 JP–4 production to 1990 gasoline production ratio must equal or exceed 0.2. The ratio of a multi-refinery refiner must be calculated over all of its refineries (aggregated).

* * * * *

(f) * * *

(2) * * *

(ii) If the baseline fuel value for aromatics, olefins, and/or benzene (determined per paragraph (e) of this section) is higher than the high end of the valid range limits specified in § 80.42(c)(1) if compliance is being determined under the Simple Model, or in § 80.45(f)(1)(ii) if compliance is being determined under the Complex Model, then the valid range limits may be extended for conventional gasoline in the following manner:

(A) The new high end of the valid range for aromatics is determined from the following equation:

NAROLIM = AROBASE + 5.0 volume percent

where

NAROLIM = The new high end of the valid range limit for aromatics, in volume percent

AROBASE = The seasonal baseline fuel value for aromatics, in volume percent

(B) The new high end of the valid range for olefins is determined from the following equation:

NOLELIM = OLEBASE + 3.0 volume percent

where

NOLELIM = The new high end of the valid range limit for olefins, in volume percent

OLEBASE = The seasonal baseline fuel value for olefins, in volume percent

(C) The new high end of the valid range for benzene is determined from the following equation:

NBENLIM = BENBASE + 0.5 volume percent

where

NBENLIM = The new high end of the valid range limit for benzene, in volume percent

BENBASE = The seasonal baseline fuel value for benzene, in volume percent

(D) The extension of the valid range is limited to the applicable summer or winter season in which the baseline fuel values for aromatics, olefins, and/or benzene exceed the high end of the valid range as described in paragraph (f)(2)(ii) of this section. Also, the extension of the valid range is limited to use by the refiner whose baseline value for aromatics, olefins, and/or benzene was higher than the valid range limits as described in paragraph (f)(2)(ii) of this section.

(E) Any extension of the Simple Model valid range limits is applicable only to the Simple Model. Likewise any extension of the Complex Model valid range limits is applicable only to the Complex Model.

(F) The valid range extensions calculated in paragraphs (f)(2)(ii)(A), (B), and (C) of this section are applicable to both the baseline fuel and target fuel for the purposes of determining the compliance status of conventional gasolines. The extended valid range limit represents the maximum value for that parameter above which fuels cannot be evaluated with the applicable compliance model.

(G) Under the Simple Model, baseline and compliance calculations shall subscribe to the following limitations:

(*1*) If the aromatics valid range has been extended per paragraph (f)(2)(ii)(A) of this section, an aromatics value equal to the high end of the valid range specified in § 80.42(c)(1) shall be used for the purposes of calculating the exhaust benzene fraction.

(*2*) If the fuel benzene valid range has been extended per paragraph (f)(2)(ii)(C) of this section, a benzene value equal to the high end of the valid range specified in § 80.42(c)(1) shall be used for the purposes of calculating the exhaust benzene fraction.

(H) Under the Complex Model, baseline and compliance calculations shall subscribe to the following limitations:

(*1*) If the aromatics valid range has been extended per paragraph (f)(2)(ii)(A) of this section, an aromatics value equal to the high end of the valid range specified in § 80.45(f)(1)(ii) shall be used for the purposes of calculating emissions performances.

(*2*) If the olefins valid range has been extended per paragraph (f)(2)(ii)(B) of this section, an olefins value equal to the high end of the valid range specified in § 80.45(f)(1)(ii) shall be used for the target fuel for the purposes of calculating emissions performances.

(*3*) If the benzene valid range has been extended per paragraph (f)(2)(ii)(C) of this section, a benzene value equal to the high end of the valid range specified in § 80.45(f)(1)(ii) shall be used for the target fuel for the purposes of calculating emissions performances.

* * * * *

21. In § 80.93, the first sentence of paragraph (a)(3)(ii) is revised, and

paragraph (a)(3)(iv) is added, and paragraph (c)(9) is revised as follows:

§ 80.93 Individual baseline submission and approval.

(a) * * *

(3) * * *

(ii) Petitions, 'showings,' and other associated proof may be submitted to EPA prior to submittal of the individual baseline (per paragraphs (a)(1) and (a)(2) of this section). * * *

* * * * *

(iv) Petitions submitted prior to the deadline for baseline submittals shall be submitted to the EPA at the following address: Fuels Studies and Standards Branch, Baseline Petition, U.S. EPA, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

* * * * *

(c) * * *

(9) *Other baseline information.* Narrative discussing any aspects of the baseline determination not already indicated per the requirements of paragraph (c)(8) of this section shall be provided.

* * * * *

22. Section 80.101 is amended by revising paragraphs (e)(3), (f)(4)(i), (f)(4)(ii), (g)(1), and (i)(1) introductory text to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(e) * * *

(3) California gasoline as defined in § 80.81(a)(2); and

* * * * *

(f) * * *

(4) * * *

(i) If the total volume of the conventional gasoline, RBOB, reformulated gasoline, and California gasoline as defined in § 80.81(a)(2), produced or imported by any refiner or importer during the averaging period is equal to or less than that refiner's or importer's 1990 baseline volume as determined under § 80.91(f)(1), the compliance baseline for each parameter or emissions performance shall be that refiner's or importer's individual 1990 baseline; or

(ii) If the total volume of the conventional gasoline, RBOB, reformulated gasoline, and California gasoline as defined in § 80.81(a)(2), produced or imported by any refiner or importer during the averaging period is greater than that refiner's or importer's 1990 baseline volume as determined under § 80.91(f)(1), the compliance baseline for each parameter or emissions performance shall be calculated according to the following formula:

$$CB_i = \left(B_i * \left(\frac{V_{1990}}{V_a}\right)\right) + \left(DB_i * \left(1 - \frac{V_{1990}}{V_a}\right)\right)$$

where

CB_i = the compliance baseline value for parameter or emissions performance i

B_i = the refiner's or importer's individual baseline value for parameter or emissions performance i calculated according to the methodology in § 80.91

DB_i = the anti-dumping statutory baseline value for parameter or emissions performance i, as specified at § 80.91(c)(5)(iii) or (c)(5)(iv), respectively

V_{1990} = the 1990 baseline volume as determined under § 80.91(f)(1)

V_a = the total volume of reformulated gasoline, conventional gasoline, RBOB, and California gasoline as defined in § 80.81(a)(2) produced or imported by a refiner or importer during the averaging period

(g) * * *

(1) (i) *Simple model calculations.* In the case of any refiner or importer subject to an individual refinery baseline, the annual average value for each parameter or emissions performance during the averaging period, calculated according to the following methodologies, shall be less than or equal to the refiner's or importer's standard under paragraph (b) of this section for that parameter.

(A) The average value for sulfur, T–90, olefin, benzene, and aromatics for an averaging period shall be calculated as follows:

$$APARM = \left(\frac{\sum_{i=1}^{n}(V_i \times PARM_i \times SG_i)}{\sum_{i=1}^{n} V_i \times SG_i}\right)$$

where

APARM = the average value for the parameter being evaluated

Vi = the volume of conventional gasoline or other products included under paragraph (d) of this section, in batch i

$PARM_i$ = the value of the parameter being evaluated for batch i as determined in accordance with the test methods specified in § 80.46

n = the number of batches of conventional gasoline and other products included under paragraph (d) of this section produced or imported during the averaging period

SG_i = specific gravity of batch i (only applicable for sulfur)

(B) Exhaust benzene emissions under the Simple Model for an averaging period are calculated as follows:

$$EXHBEN = 1.884 + (0.949 \times BZ) + (0.113 \times (AR - BZ))$$

where

EXHBEN = the average exhaust benzene emissions for the averaging period

BZ = the average benzene content for the averaging period, calculated per paragraph (g)(1)(i)(A) of this section

AR = the average aromatics content for the averaging period, calculated per paragraph (g)(1)(i)(A) of this section

(ii) *Complex model calculations.* Exhaust benzene, exhaust toxics, and exhaust NO_X emissions performance for each batch shall be calculated in accordance with the applicable model under § 80.45.

* * * * *

(i) * * *

(1) Any refiner or importer shall for each batch of conventional gasoline, and other products if included in paragraph (d) of this section:

* * * * *

23. Section 80.102 is amended by revising the formula in paragraph (b)(1) and the definition of V_{bs}, the formula in paragraph (d)(1)(i) and the definitions of V_{bs} and V_g, the formula in paragraph (d)(2)(i) and the definition of $V_{g,i}$, paragraph (d)(3)(iv), adding paragraph

(d)(3)(v), and revising paragraphs (e)(2)(i) and (f)(2)(i) to read as follows:

§ 80.102 Controls applicable to blendstocks.

* * * * *

(b)(1) * * *

$$BG_{by} = \frac{V_{bs}}{V_g}$$

* * * * *

V_{bs} = Volume of applicable blendstock produced or imported and transferred to others during the calendar year, and used to produce gasoline

* * * * *

(d) * * *

(1) * * *

(i) * * *

$$BG_a = \frac{V_{bs}}{V_g}$$

* * * * *

V_{bs} = Volume of applicable blendstock produced or imported and subsequently transferred to others during the averaging period

V_g = Volume of conventional gasoline, reformulated gasoline and RBOB produced or imported during the averaging period, excluding California gasoline as defined in § 80.81(a)(2)

* * * * *

(2) * * *

(i) * * *

$$BGC_{comp} = \frac{\sum_{i=1}^{n} V_{bs,i}}{\sum_{i=1}^{n} V_{g,i}}$$

* * * * *

$V_{g,i}$ = Volume of conventional gasoline, reformulated gasoline and RBOB produced or imported during averaging period i, excluding California gasoline as defined in § 80.81(a)(2)

* * * * *

(3) * * *

(iv) Transferred between refineries which have been grouped pursuant to § 80.101(h) by a refiner for the purpose of determining compliance under this subpart; or

(v) Used to produce California gasoline as defined in § 80.81(a)(2).

* * * * *

(e) * * *

(2) * * *

(i) Include all blendstocks produced or imported and transferred to others in

(d)(3)(v), and revising paragraphs (e)(2)(i) and (f)(2)(i) to read as follows:

§ 80.102 Controls applicable to blendstocks.

* * * * *

(b)(1) * * *

$$BG_{by} = \frac{V_{bs}}{V_g}$$

* * * * *

V_{bs} = Volume of applicable blendstock produced or imported and transferred to others during the calendar year, and used to produce gasoline

* * * * *

(d) * * *

(1) * * *

(i) * * *

$$BG_a = \frac{V_{bs}}{V_g}$$

* * * * *

V_{bs} = Volume of applicable blendstock produced or imported and subsequently transferred to others during the averaging period

V_g = Volume of conventional gasoline, reformulated gasoline and RBOB produced or imported during the averaging period, excluding California gasoline as defined in § 80.81(a)(2)

* * * * *

(2) * * *

(i) * * *

$$BGC_{comp} = \frac{\sum_{i=1}^{n} V_{bs,i}}{\sum_{i=1}^{n} V_{g,i}}$$

* * * * *

$V_{g,i}$ = Volume of conventional gasoline, reformulated gasoline and RBOB produced or imported during averaging period i, excluding California gasoline as defined in § 80.81(a)(2)

* * * * *

(3) * * *

(iv) Transferred between refineries which have been grouped pursuant to § 80.101(h) by a refiner for the purpose of determining compliance under this subpart; or

(v) Used to produce California gasoline as defined in § 80.81(a)(2).

* * * * *

(e) * * *

(2) * * *

(i) Include all blendstocks produced or imported and transferred to others in its compliance calculations under § 80.101(g) for two averaging periods beginning on January 1 of the averaging period subsequent to the averaging period when the exceedance occurs;

* * * * *

(f) * * *

(2) * * *

(i) EPA may grant the waiver referred to in paragraph (f)(1)(iii) of this section if the level of blendstock production was the result of extreme or unusual circumstances (e.g., a natural disaster or act of God) which clearly are outside the control of the refiner or importer, and which could not have been avoided by the exercise of prudence, diligence, and due care.

* * * * *

24. Section 80.104 is amended by revising paragraph (a)(2)(ix) to read as follows:

§ 80.104 Recordkeeping requirements.

* * * * *

(a) * * *

(2) * * *

(ix) In the case of any refinery-produced or imported products listed in § 80.102(a) that are excluded under § 80.102(d)(3), documents which demonstrate that basis for exclusion; and

* * * * *

25. Section 80.105 is amended by revising paragraph (a)(2) to read as follows:

§ 80.105 Reporting requirements.

(a) * * *

(2) (i) The total gallons of applicable blendstocks produced or imported and transferred to others that are not excluded under § 80.102(d)(3); and

(ii) The total gallons of applicable blendstocks produced or imported and transferred to others that are excluded under § 80.102(d)(3);

* * * * *

26. Section 80.125 is amended by revising paragraph (a) to read as follows:

§ 80.125 Attest engagements.

(a) Any refiner, importer, and oxygenate blender subject to the requirements of this subpart F shall engage an independent certified public accountant, or firm of such accountants (hereinafter referred to in this subpart F as "CPA"), to perform an agreed-upon procedure attestation engagement of the underlying documentation that forms the basis of the reports required by §§ 80.75 and 80.105.

* * * * *

27. Section 80.128 is amended by revising paragraphs (e)(2), (e)(5), and (g)(3)(iii) to read as follows:

§ 80.128 Agreed upon procedures for refiners and importers.

* * * * *

(e) * * *

(2) Determine that the requisite contract was in place with the downstream blender designating the required blending procedures, or that the refiner or importer accounted for the RBOB using the assumptions in § 80.69(a)(9);

* * * * *

(5) Agree the sampling and testing frequency of the refiner's or importer's downstream oxygenated blender quality assurance program with the sampling and testing rates as required in § 80.69(a)(7).

* * * * *

(g) * * *

(3) * * *

(iii) Obtain a listing from the refiner or importer of the batches of conventional gasoline or conventional sub-octane blendstock, and the compliance calculations which include oxygenate blended by the downstream oxygenate blender, and test the mathematical accuracy of the calculations contained in this listing;

* * * * *

28. Section 80.129 is amended by revising paragraph (e) to read as follows:

§ 80.129 Agreed upon procedures for downstream oxygenate blenders.

* * * * *

(e) Agree the sampling and testing frequency of the blender's quality assurance program with the sampling and testing rates required in § 80.69.

[FR Doc. 94-17131 Filed 7-19-94; 8:45 am]

BILLING CODE 6560-50-P

---

40 CFR Part 85

[AMS-FRL-5011-9]

Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a final rule that sets forth requirements and procedures for EPA authorization of California enforcement of standards and other requirements relating to the control of emissions from new nonroad vehicles or engines under section 209(e) of the Clean Air Act (Act), as amended.

The rule includes definitions of the categories of new nonroad engines and vehicles that the Act specifies as preempted from state regulation. These

definitions of "farm equipment", "construction equipment", and "locomotive" clarify which nonroad engines and vehicles may be subject to state regulation because such regulation is not preempted. The definition of "new" in this rulemaking applies to all new nonroad engines and vehicles with the exception of locomotives and engines used in locomotives. This rule also provides procedures by which EPA may authorize California to enforce standards and provides guidance for states that adopt California standards. Finally, the rule discusses the criteria to be used by EPA in its analysis of California authorization requests. The rule will provide guidance to California, other states, and vehicle and engine manufacturers regarding new nonroad engine and vehicle preemption.

EFFECTIVE DATE: This regulation becomes effective August 19, 1994.

ADDRESSES: Copies of material relevant to this rulemaking have been placed in Docket A–91–18 and are available for public inspection between the working hours of 8 a.m. to 4 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Room M1500, First Floor Waterside Mall, 401 M Street, SW., Washington, DC 20460 (Telephone (202) 260–7548). A reasonable fee will be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney Advisor, Manufacturers Operations Division (6405–J), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone: (202) 233–9256.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory Authority and Background
II. Discussion of Final Rule and Comments Received
A. Changes to Proposed Rule for Final Rule
B. Nonroad Engines and Vehicles
C. Definitions of "new" as used in "new nonroad engine" and "new nonroad vehicle"
D. Definition of "farm equipment"
E. Definition of "construction equipment"
F. Definition of "locomotive"
G. Application of Definitions; Primary Use Test
H. Labeling Requirement
I. Authorization Criteria and Procedures
J. State Adoption of California Standards and Test Procedures
K. Rulemaking Procedure
L. Executive Order 12291
M. Paperwork Reduction Act
N. Regulatory Flexibility Act

I. Statutory Authority and Background

EPA is required under section 209(e) of the Clean Air Act (Act), as amended, 42 U.S.C. 7543, to "issue regulations to implement" subsection (e). Section 209(e) of the Act addresses the state adoption of emission standards for new nonroad vehicles and engines.

Under section 209(e), all states are preempted from adopting emissions standards for "[n]ew engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower" or for "[n]ew locomotives or new engines used in locomotives". In this final rule, EPA defines these preempted categories, except that EPA does not define the term "new" with respect to locomotives and engines used in locomotives. For new nonroad engines and vehicles not included in the preempted categories, EPA is directed to authorize California, after notice and opportunity for public hearing, to enforce such standards and other requirements as California adopts for the regulation of such engines and vehicles, if these regulations meet the criteria set forth in the Act. Several of the criteria to be used for nonroad engine and vehicle authorizations are similar to the requirements applicable to waivers of Federal preemption of emission standards for new motor vehicles under section 209(b). Section 209(a) prohibits state adoption of emission standards for new motor vehicles and engines. Section 209(b) directs EPA to waive this prohibition for California if certain criteria are met. Other states may adopt California nonroad vehicle or engine emission standards under section 209(e) if they comply with several requirements.

This rule was proposed at 56 FR 45866, Sept. 6, 1991. A public hearing was held on September 20, 1991. Many industries presented comments through an association or individually. Represented in the comments presented at the hearing and submitted in writing are the following: engine manufacturers; manufacturers and dealers of various types of equipment including agricultural, construction, mining, utility, and lawn and garden; manufacturers of emission controls; railroads; manufacturers of industrial trucks; the San Diego County Air Pollution Control District; and the State of California.

II. Discussion of Final Rule and Comments Received

A. Changes to Proposed Rule for Final Rule

After reviewing the comments received, EPA has made the following changes to the Notice of Proposed Rulemaking (NPRM) for the final rule. First, the final rule establishes one definition of "new" that applies equally to domestically manufactured and imported vehicles and engines. Second, the definition of "new" applies to all nonroad engines other than locomotives and engines used in locomotives. EPA will define "new" locomotives and "new" engines used in locomotives in its locomotive standards promulgated under section 213 of the Act. Third, in the final rule EPA defines the word "commercial," as used in the definitions of "farm equipment" and "construction equipment." Fourth, EPA makes minor modifications to the definitions of "construction equipment" and "locomotive." Fifth, the proposed federal labeling requirement is deleted. Sixth, EPA changes its interpretation of section 209(e) so that California may adopt, but not enforce, nonroad standards prior to EPA authorization. Seventh, EPA changes the standard of review of California's primary use determination to a preponderance of the evidence standard. Finally, EPA changes its interpretation of "consistent with this section" in section 209(e)(2)(A)(iii) to include section 209(b)(1)(C).

B. Nonroad Engines and Vehicles

In the NPRM, EPA acknowledged that at some point it would be necessary to clarify whether certain internal combustion engines, such as those used in movable pumps, generators, and compressors, are stationary sources and therefore subject to regulations under Title I of the Act or are mobile sources and therefore potentially subject to nonroad regulations under Title II of the Act. The issue is complex. The definitions of "stationary source" in sections 111(3) and 302(z) of the Act and of "nonroad engine" in section 216(10) of the Act do not make clear under which Title certain internal combustion engines belong. The engines in question are those used in equipment for reasons other than propulsion.

Ingersoll-Rand, the Engine Manufacturers Association (EMA), and the Equipment Manufacturers Institute (EMI), among others, commented that EPA should determine in this rulemaking that both self-propelled and transportable equipment are mobile sources. This would clarify to manufacturers that transportable farm and construction equipment are exempted from state regulation for purposes of control of emissions.

EPA agrees that the above issue needs to be addressed and has resolved this issue in a rulemaking implementing

section 213 of the Act.[1] Section 213 requires EPA to "conduct a study of emissions from nonroad engines and nonroad vehicles to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." The section further provides that if the Administrator determines that nonroad emissions are "significant contributors" in more than one ozone or carbon monoxide (CO) nonattainment area, the Administrator shall promulgate standards for such nonroad engines.

EPA studied nonroad emissions and issued a report in November 1991.[2] In the June 17, 1994 rulemaking EPA determined, based on the study data and the docket of the rulemaking (A–91–24), that emissions from nonroad sources are significant contributors to ozone and CO in more than one nonattainment area. EPA's final rule also includes regulations that set forth emission standards for CO, hydrocarbon (HC), oxides of nitrogen (NO_X) and smoke emissions from large new nonroad compression-ignition engines at or above 37 kilowatts in power, with the exclusion for certain types of engines.[3] Within EPA's 37 kilowatt and above nonroad rule a definition of nonroad engine is provided. Section 89.2 of the 37 kilowatt and above rule provides the following definition:

Nonroad engine means:

(1) Except as discussed in (2) below; a nonroad engine is any internal combustion engine:

(i) in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

[1] On June 17, 1994 a final rule was published (59 FR 31306) for nonroad engines 37 kilowatts (50 horsepower) which provides a definition of nonroad engine.

[2] Nonroad Engine and Vehicle Emission Study, EPA publication number 21A–2001, November, 1991. Available in EPA docket A–91–24 or from the National Technical Information Service (NTIS).

[3] 59 FR 31306, June 17, 1994.

section 213 of the Act.[1] Section 213 requires EPA to "conduct a study of emissions from nonroad engines and nonroad vehicles to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." The section further provides that if the Administrator determines that nonroad emissions are "significant contributors" in more than one ozone or carbon monoxide (CO) nonattainment area, the Administrator shall promulgate standards for such nonroad engines.

EPA studied nonroad emissions and issued a report in November 1991.[2] In the June 17, 1994 rulemaking EPA determined, based on the study data and the docket of the rulemaking (A–91–24), that emissions from nonroad sources are significant contributors to ozone and CO in more than one nonattainment area. EPA's final rule also includes regulations that set forth emission standards for CO, hydrocarbon (HC), oxides of nitrogen (NO_X) and smoke emissions from large new nonroad compression-ignition engines at or above 37 kilowatts in power, with the exclusion for certain types of engines.[3] Within EPA's 37 kilowatt and above nonroad rule a definition of nonroad engine is provided. Section 89.2 of the 37 kilowatt and above rule provides the following definition:

Nonroad engine means:

(1) Except as discussed in (2) below; a nonroad engine is any internal combustion engine:

(i) in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) the engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or

(iii) the engine otherwise included in (1)(iii) remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

For purposes of consistency with section 213, and the reasons set forth in the 37 kilowatt and above regulation,[4] EPA has decided to adopt and apply this definition to today's section 209(e) rulemaking.

The California Air Resources Board's (CARB) utility engine regulation (the California Utility Rule) affects only engines smaller than 25 horsepower. EPA believes that equipment that uses such small engines is intended to be mobile. For example, equipment that uses engines smaller than 25 horsepower includes hand-held and portable equipment, which EPA believes are clearly nonroad, mobile sources.

C. Definition of "New" as Used in "New Nonroad Engine," and "New Nonroad Vehicle"

In the NPRM, EPA defined "new nonroad engine" and "new nonroad vehicle" to mean a nonroad engine or a nonroad vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser. Ultimate purchaser was proposed to be defined as the first person who in good faith purchases such a new nonroad vehicle or nonroad engine for purposes other than resale. Additionally, with respect to imported nonroad engines, FPA proposed to define "new" nonroad engine to be a nonroad engine manufactured after the effective date of a regulation issued under section 213 which would be applicable to such engine had it been manufactured for importation into the United States. These definitions also applied to "new locomotives" and "new engines used in locomotives."

Comments on EPA's proposed definition of "new" were several. First, CARB, the San Diego Air Pollution Control Board (SDAPCB), and the Manufacturers of Emissions Controls Association (MECA) supported EPA's definition. CARB asked that EPA clarify which regulatory activities states may perform; for example, whether states may require in-use testing and impose add-on or retrofit requirements. On the other hand, many commenters, including U.S. Representative Terry Bruce, the Equipment Manufacturers Institute (EMI), the Engine Manufacturers Association (EMA), and the Portable Power Equipment Manufacturers Association (PPEMA), opposed EPA's proposed definition and proposed that "new" should mean manufactured after either the effective date of the Clean Air Act Amendments, November 15, 1990, or after federal regulations take effect. These commenters believe that Congress intended an "absolute" preemption. That is, the nonroad engines and vehicles in the preempted categories manufactured after November 15, 1990 would never be subject to any kind of state emission regulation. EMA commented that if EPA does not accept the latter definition, it should expand its proposed definition so that engines remain "new" until they have exceeded their useful life.

Commenters in the railroad industry also supported a definition of "new" as "manufactured after November 1990" and stated further that the railroad industry has traditionally been preempted from state regulation, such as in the area of safety. The same commenters indicated that they believe that state control of locomotive emissions or state enforcement of federal standards would interfere with interstate commerce. Railroad commenters also stated that any standards for rebuilt or remanufactured engines or locomotives should be uniform federal standards—not state standards. Furthermore, if remanufactured engines were rebuilt to comply with such federal standards, they should be considered "new".

[1] On June 17, 1994 a final rule was published (59 FR 31306) for nonroad engines 37 kilowatts (50 horsepower) which provides a definition of nonroad engine.

[2] Nonroad Engine and Vehicle Emission Study, EPA publication number 21A–2001, November, 1991. Available in EPA docket A–91–24 or from the National Technical Information Service (NTIS).

[3] 59 FR 31306, June 17, 1994.

[4] EPA incorporates by reference the 37 kilowatt and above nonroad regulation at 59 FR 31306, June 17, 1994.

Commenters also opposed the proposed definition regarding imported vehicles and engines because the definition of "new" was different depending upon whether the nonroad engine was produced domestically or abroad.

These proposed definitions for "new nonroad vehicles" and "new nonroad engines" parallel the definitions of "new motor vehicles" and "new motor vehicle engines" in section 216 of the Clean Air Act. The definition of "new" proposed for imported nonroad engines was intended to address nonconforming engines which may become subject to federal emission requirements at the time the engine or vehicle is imported into the United States. The Agency has decided to delete this definition of "new" for imported engines. EPA agrees with the commenters that imports and domestic products should generally be treated alike for regulatory purposes. The Agency has addressed the importation of nonroad engines which do not conform to federal emission standards at the time of importation.[5] Today's rule, in any event, treats domestic and imported nonroad engines the same way for purposes of determining whether they are preempted from state regulation.

This final rule establishes a definition for all domestically manufactured and imported "new nonroad engines," "new nonroad vehicles," other than "new locomotives" and "new engines used in a locomotive."[6] New nonroad engines and new nonroad vehicles are defined as engines and vehicles the equitable or legal title to which has not been transferred to an ultimate purchaser. The ultimate purchaser is defined as the first person who in good faith purchases such engine or vehicle for purposes other than resale. For some engines or vehicles the passage of title in the United States may not formally occur or manufacturers may retain title and lease the engines or equipment. In these cases, a domestic or imported nonroad engine or nonroad vehicle will retain its status as "new" until such engine or vehicle is "placed into service." An engine or vehicle is considered "placed into service" when the engine or vehicle is used for its functional purposes. EPA believes that the definition of new should include the "placed into service" addition to the motor vehicle definition of new found in section 216 of the Act because of the nature of the nonroad market. Nonroad engines and nonroad vehicles are often leased and maintained by the manufacturer well into the useful life of the nonroad equipment. A piece of equipment, the title of which has passed to the ultimate purchaser, should not be treated differently than a piece of equipment which is being used but has not yet passed to an ultimate purchaser.

The Agency believes that this definition of "new" comports with the language, intent and structure of the Clean Air Act and the definition of "new" contained in the 37 kilowatt and above regulation and is therefore a permissible construction of the statute. Contrary to the assertion of some commenters, EPA's definition of "new" is consistent with the dictionary definition of the word as "having existed or been made but a short time." Webster's Ninth New Collegiate Dictionary, 1990. Generally speaking, manufactured products are sold soon after they are made and are considered new until they are sold or used. The commenters' definition of new—anything manufactured after the Clean Air Act Amendments' enactment or an applicable regulation's promulgation—would mean, by contrast, that any engine manufactured after a certain date would be new forever. This is certainly not the plain meaning of "new." Congress could have stated that the federal preemption applied to certain equipment manufactured after a certain date, but Congress did not do so. Elsewhere in Title II, Congress specified that a provision only applied to products manufactured after a certain date (*see*, section 218 requiring a ban on engines manufactured after the 1992 model year that require leaded gasoline) or first introduced into commerce after a certain date (*see*, section 211(f) regarding prohibition on fuels that are not substantially similar to fuels used to certify vehicles as meeting emission standards). The lack of such a date here further supports that Congress intended "new" to mean newly manufactured and not yet sold.

The legislative record also shows Congressional intent that "new" should refer to newly manufactured products. In his colloquy with Senator Wilson explaining the final version of section 209(e), Senator Chafee notes that "because the preemption is limited to new engine standards only, States can continue to require existing *and in-use* nonroad engines to reduce emissions . . ." [Emphasis added] 136 Cong. Rec. S17237 (October 26, 1990). This language is echoed by similar language from Senator Baucus in his report to the Senate on the conference bill. 136 Cong. Rec. S16976 (October 27, 1990). If Congress intended the definition of new nonroad engines or equipment, and as a result the preemption, to apply to an engine for its entire life, then it would appear that there would be no distinction between new and in-use nonroad engines, as an engine manufactured after a certain date would always be new. Yet the statements of Senator Chafee and Senator Baucus clearly contemplate such a distinction.

The Agency's definition of new is also consistent with the way the Act approaches motor vehicle emission control. As noted earlier, section 216 defines new in the context of motor vehicles as "a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser." The Act applies federal emissions standards to "new" vehicles. These federal standards are enforced through certification, assembly line, and recall testing. States, on the other hand, have a role in motor vehicle emission control through inspection/maintenance programs and are not restricted from controlling used vehicles. The section 209(a) prohibition of state regulation of motor vehicles addresses only "new" motor vehicles and engines and prohibits state regulation that occurs before sale, titling, or registration of the vehicle.[7]

The Clean Air Act Amendments of 1990 take a parallel approach to nonroad standards and enforcement. Section 213 provides EPA with authority to set standards for "new" engines and provides for federal enforcement of such standards in the same manner as motor vehicle enforcement. Furthermore, nothing on the face of section 209(e) or section 213 indicates that Congress intended "new" to be interpreted differently in the nonroad and motor vehicle contexts. Given that the preemption provisions for new motor vehicles and new nonroad engines appear in the same section of the Clean Air Act, it is reasonable to believe that Congress did not intend for the word "new" to be defined differently within the same section without stating this intent explicitly.[8]

There is not a compelling policy or factual justification for defining new differently in the nonroad and motor vehicle contexts. State regulation of nonroad engines does not generally present any greater degree of disruption of the movement of products, engines or equipment between states than does regulation of motor vehicles. The comments provide little if any justification, in terms of relevant distinctions between motor vehicles and nonroad engines, to justify such a significant departure from EPA's established practice for regulating mobile sources.

The Agency's definition of new is also consistent with case law. *In Allway Taxi, Inc.* v. *City of New York*,[9] the court held that where the exercise of local police power serves the purpose of a federal act—the Clean Air Act in that case—the preemptive effect of the act should be narrowly construed. In keeping with that principle, EPA believes that section 209(e) should be construed narrowly in order to protect states' rights, particularly in an area such as public health in which states traditionally exercise control. California's nonroad regulations will serve the purpose of the federal act by improving air quality.

In *Allway Taxi*, the court discussed the federal preemption of new motor vehicles and interpreted the meaning of new motor vehicle as defined in Section 216 of the Act. The court noted that this definition "reveals a clear congressional intent to preclude states and localities from setting their own exhaust emission control standards only with respect to the manufacture and distribution of new automobiles."[10] The court stated further that the narrow purpose in the definition is reinforced by prohibiting states and localities from setting emission standards before the initial sale or registration of an automobile. Congress specifically declared that section 209 did not preempt states from regulation of the use or movement of motor vehicles after they have reached their ultimate purchasers.[11]

EPA believes that the further a state requirement is removed in time from the

---

[5] *See* 59 FR 31306, June 17, 1994, which sets forth CO, HC, particulate matter, NO_x and smoke opacity standards for 50 hp and above nonroad engines and vehicles. EPA is imposed certain restrictions on the importation of nonconforming nonroad engines based on existing regulations for the importation of nonconforming motor vehicles and motor vehicle engines.

[6] As discussed below, EPA is deferring its definitions of "new" locomotives and "new" engines used in a locomotive for the purpose of this regulation. EPA shall define these terms in a later rulemaking, under section 213 of the Act, specifically regulating locomotives.

[7] Section 209(a) provides, in part, ". . . No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

[8] EPA recognizes that regulation of locomotives presents unique circumstances, including questions regarding interstate commerce, that require special attention. EPA is therefore deferring its definition of "new locomotive" and "new engine used in a locomotive" until a later rulemaking dealing specifically with regulation of locomotives.

[9] *Allway Taxi, Inc.* v. *City of New York*, 340 F. Supp. 1120 (S.D.N.Y.), *aff'd*, 468 F.2d 624 (2d Cir. 1972).

[10] *Id.* at 1124.

[11] *Id.*

section without stating this intent explicitly.[8]

There is not a compelling policy or factual justification for defining new differently in the nonroad and motor vehicle contexts. State regulation of nonroad engines does not generally present any greater degree of disruption of the movement of products, engines or equipment between states than does regulation of motor vehicles. The comments provide little if any justification, in terms of relevant distinctions between motor vehicles and nonroad engines, to justify such a significant departure from EPA's established practice for regulating mobile sources.

The Agency's definition of new is also consistent with case law. *In Allway Taxi, Inc.* v. *City of New York,*[9] the court held that where the exercise of local police power serves the purpose of a federal act—the Clean Air Act in that case—the preemptive effect of the act should be narrowly construed. In keeping with that principle, EPA believes that section 209(e) should be construed narrowly in order to protect states' rights, particularly in an area such as public health in which states traditionally exercise control. California's nonroad regulations will serve the purpose of the federal act by improving air quality.

In *Allway Taxi,* the court discussed the federal preemption of new motor vehicles and interpreted the meaning of new motor vehicle as defined in Section 216 of the Act. The court noted that this definition "reveals a clear congressional intent to preclude states and localities from setting their own exhaust emission control standards only with respect to the manufacture and distribution of new automobiles."[10] The court stated further that the narrow purpose in the definition is reinforced by prohibiting states and localities from setting emission standards before the initial sale or registration of an automobile. Congress specifically declared that section 209 did not preempt states from regulation of the use or movement of motor vehicles after they have reached their ultimate purchasers.[11]

EPA believes that the further a state requirement is removed in time from the manufacture and distribution of new engines, the less interstate commerce is likely to be burdened. Furthermore, the legality of particular regulatory controls that a state may impose on nonroad vehicles or engines that are no longer new will depend upon the burden that such controls place on interstate commerce. In fact, the court in *Allway Taxi* stated that a state or locality is not free to impose its own emission control measures the moment after a new car is bought and registered. "That would be an obvious circumvention of the Clean Air Act and would defeat the congressional purpose of preventing obstruction to interstate commerce."[12] The court further stated that federal preemption does not, however, preclude a state from imposing its own exhaust emission control standards upon the resale or reregistration of the automobile. Furthermore, states are not precluded from setting standards for licensing of vehicles for commercial use. These types of regulations, which are more removed, "would cause only minimal interference with interstate commerce, since they would be directed primarily to intrastate activities and the burden of compliance would be on individual owners and in-state users and not on manufacturers and distributors."[13]

EPA expects that the principles articulated in *Allway Taxi* will be applied by the courts to any State adoption of in-use controls. For example, manufacturers have voiced a concern that California would attempt to impose in-use emission control measures that would apply immediately after a new vehicle or engine were purchased. As the *Allway Taxi* court said, such standards applied to almost-new vehicles would be an attempt to circumvent section 209 preemption and would obstruct interstate commerce.[14]

It should be noted that section 209(e)(2) of the Act does not prevent California or other states from regulating nonroad engines and vehicles in use.[15] EPA believes that the requirements of section 209(e)(2) apply only to new nonroad engines and vehicles. The requirements of section 209(e)(2) are only required for nonroad engines and vehicles the regulation of which has been preempted. The language of section 209(e)(2) does not state any clear preemption, either for new or in use vehicles. The only clear preemption of state regulation of nonroad engines occurs in section 209(e)(1) and section 209(a).[16] Both of these subsections are limited to new engines and vehicles. Given the general legal presumption against reading a preemption more broadly than explicitly required, as discussed in *Allway Taxi,* a preemption of state regulation of nonroad engines and vehicles in use should not be readily implied.

Another indication that section 209(e)(2) was not intended to apply to most in-use regulations of nonroad engines is the fact that neither the Senate nor the House version of the 1990 Act amendments would have preempted state regulation of anything but new nonroad engines. Neither version would have expressly preempted regulation in use. It would be unusual for a bill to come out of conference with a broader preemption than existed in either house and without any mention in the legislative history that such broader preemption had been mandated. In fact, both Senators Chafee and Baucus believed that the scope of the preemption had been narrowed from the House bill, not widened.[17]

In fact, as the legislative history indicates, it appears that Congress

---

[8] EPA recognizes that regulation of locomotives presents unique circumstances, including questions regarding interstate commerce, that require special attention. EPA is therefore deferring its definition of "new locomotive" and "new engine used in a locomotive" until a later rulemaking dealing specifically with regulation of locomotives.

[9] *Allway Taxi, Inc.* v. *City of New York,* 340 F. Supp. 1120 (S.D.N.Y.), *aff'd,* 468 F.2d 624 (2d Cir. 1972).

[10] *Id* at 1124.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* EPA expects the reasoning and policy outlined above in the *Allway Taxi* discussion to apply to locomotives although its implementation is dependent upon the ultimate definition of new locomotive.

[15] In-use testing and recall programs of the type set forth in section 207 ensure compliance with standards required to be met by manufacturers at the time of certification of the engine. Because these in-use standards relate to the original manufacture of the engine and place the burden of compliance upon the manufacturer, they are deemed to be standards affecting a new motor vehicle or a new nonroad engine and thus require a waiver under the criteria of section 209(b) or 209(e)(2) respectively.

[16] Section 209(a) applies to nonroad vehicles because of the language of section 213(d) of the Act, which specifically requires that EPA's standards regulating nonroad engines and vehicles be subject to sections 206, 207, 208 and 209 of the Act, with such modifications of the applicable regulations as the Administrator deems appropriate. Thus, Congress clearly anticipated that all of section 209 would be applicable to nonroad engines. Subsections (a) through (d) of section 209 do not specifically reference nonroad engines, nor do sections 206, 207 or 208. However, the language of section 213(d) clearly is intended to apply such provisions to nonroad engines. Further indication of Congress' intent is the language of the last sentence of section 209(e)(1), which states that subsection 209(b) does not apply for purposes of subsection (e)(1). (Section 209(b) provides the procedure under which California can receive a waiver of section 209(a) preemption for motor vehicles.) This sentence would not have been necessary unless subsection 209(a) through (d) otherwise applied.

[17] Both Senators declare that state preemption is limited to new locomotives and new small farm and construction equipment. Both mention that states may still regulate other new nonroad equipment, presumedly after receiving EPA approval. Finally, each declare that states also fully retain existing authority to regulate emissions from all types of existing or in-use nonroad engines by specifying fuel quality specifications, operational modes or characteristics or measures that limit the use of nonroad engines or equipment.

intended the preemption provisions of section 209, as applied to nonroad engines, to be analogous to the preemption provisions as applied to motor vehicles, except that California cannot request any waiver of the Federal preemption of state regulation of new small farm and construction equipment and locomotives.

Further indication that section 209(e)(2) was not intended to apply to in-use regulations is the fact that, if the subsection were applied to in-use regulations, then California would be the only government (local, state or federal) that could directly set regulations for nonroad engines in use. EPA's mandate under section 213 applies only to new engines. Therefore, EPA will not promulgate standards for in-use regulation of nonroad engines under section 213, beyond in-use regulations normally associated with new certified engines (*e.g.* in-use testing and recall requirements under section 207). States other than California would not be able to regulate nonroad engines in use (*e.g.* operation controls under section 209(d)) until California regulates them and could only regulate them in a manner identical to California's regulations. Nothing in the legislative history indicates such a dramatic departure from the current ability of states and local authorities to regulate emissions of mobile sources in use. Therefore, if section 209(e)(2) is determined to apply to in-use regulations, the entire United States regulatory scheme for regulation of nonroad engines in use would be dependent on the actions of one state, California. Congress could not have meant to grant such plenary power to a single state.

This is especially true given the location-specific nature of in-use regulations. In-use regulations, such as time of use or place of use restrictions (*e.g.* high occupancy vehicle lanes) are typically very site specific. An in-use regulation suitable for California, or in part of California, may have little or no relevance or practicality to the type of in-use regulation suitable for another area. Such regulations which primarily effect local users are more appropriately controlled and implemented by local and state governments.

Moreover, section 209(d) of the Act clearly limits the preemption of state regulation in use. It states that "nothing in this part shall preclude or deny to any other State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation or movement of registered or licensed motor vehicles." As was stated above, section 209 as a whole applies equally to nonroad engines. Thus, section 209(d) should be interpreted to mean that, unless state regulation of use of nonroad engines is specifically preempted, section 209 should not be interpreted to grant any implicit preemption, except within the framework of *Allway Taxi*.

Given the language of section 209 and the lack of any express preemption, the legislative history of these provisions, and the general presumption against providing broad preemption where such preemption is not made explicit, EPA believes that it is clear that section 209(e)(2) does not apply to in use regulation of nonroad engines.

While EPA recognizes the important principle of narrowly construing the preemptive effect of the Act as explained in *Allway Taxi*, EPA also notes that certain state regulations that may be characterized as "in-use" regulations may be preempted because they are effectively regulations on the design of new engines rather than on the use of "in-use" engines. Industry has expressed concern that states might impose retrofit requirements on nonroad engines and vehicles as soon as they are introduced into commerce, or when such engines are being rebuilt, or at a date after which nonroad engines are typically rebuilt.[18] EPA recognizes that CARB does not envision a retrofit requirement and that, because of the nature of the nonroad market, it is unlikely that other states would adopt such a requirement.[19] However, given EPA's definition of new and the scope of the definition within this rulemaking, this issue could arise when other states plan their in-use emission strategy. In such a case, EPA believes that a retrofit requirement mandating a retrofit of a nonroad engine immediately after the engine is no longer new is adverse to the Congressional intent of section 209(e) and the principles laid out in *Allway Taxi*. Therefore, in this scenario, such a retrofit requirement would be deemed an in-use emission standard relating back to the original design of the new engine by the original engine manufacturer (OEM) and would be subject to the waiver criteria of section 209(e)(2). Within this same scenario, only California could adopt such a requirement and other states could only adopt California's requirement if California subsequently was granted a waiver. However, after a reasonable amount of time has passed and the engine is no longer new (most likely when an engine is being rebuilt), modest retrofit requirements would most likely not be deemed to significantly affect the OEM and thus such requirements would not be subject to subsection 209(e)(2). In this second scenario, the modest retrofit requirements would still be subject to challenge in court under the *Allway Taxi* criteria.[20]

Therefore, the Agency has determined that nonroad engines and nonroad vehicles will be "new" for purposes of the Act until the equitable or legal title passes to the ultimate purchaser, or if title passage does not occur, then the engine or vehicle will be new until placed into service.

D. Definition of Farm Equipment

The NPRM defined "farm equipment" to mean any internal combustion engine-powered machine primarily used in the commercial production and/or harvesting of food, fiber, wood, or commercial organic products.

Several manufacturers and trade groups were concerned that the definition was too narrow. These commenters thought it necessary to change the words "primarily used in" to "designed for use in". They asserted that the designer is the only one who knows what tasks a particular machine was meant to perform. They also thought that the definition should include engines used in post-harvest processing and storage that take place on the farm (the U.S. Department of Agriculture had a similar comment) and transportation which takes place on the farm. Caterpillar, Inc., PPEMA, EMI and others were concerned that the word "commercial" might exclude equipment used in the public sector (*e.g.*, state agricultural programs) or on cooperative or communal farms.

CARB, SDAPCB, and MECA, on the other hand, thought the definition was too broad. CARB and SDAPCB believed that the word "commercial" was not only necessary but needed to be defined. Suggestions for the definition were supplied. MECA suggested that the definition should be site and use specific. CARB also thought the wording should be changed to "production *and* harvesting" in place of "*and/or*". CARB provided their characterization of typical farm equipment (self-propelled and operated independent of other equipment) and a partial list of pieces of equipment that should not be included under the definition of farm equipment (utility vehicles used by a farmer to check his crops or portable power units used to generate electricity for another piece of equipment).

EPA does not believe that "designed for use in" should be added to the definition of nonroad engine. While a machine's designer may have designed the machine with certain tasks in mind, EPA believes that the intention of the designer is less important than the actual use to which the equipment is put. A machine may have been designed to assist farmers in some process, but if more than 50 percent of these machines are now used by homeowners, it may fairly be considered other than farm equipment. Requiring that equipment "be designed for use" on a farm would also leave the categorization of farm equipment entirely up to the manufacturers who might, in turn, choose to categorize products as farm equipment merely to avoid state regulation. Additionally, although requested, commenters have not provided examples of where the absence of "designed for" in the definition would make a difference in the preemption of some engines.

EPA also did not agree with CARB's description of farm and non-farm equipment because it did not address the machines which are likely to be used in both situations. Classifying equipment that is uniquely farm or non-farm related is straightforward. The more difficult equipment to characterize is multiple use equipment. Whether and when such equipment is preempted from state regulation is addressed under Section G—the Application of Definitions, Primary Use Test section of this rule.

CARB's further comment, that EPA should require that equipment be involved in both production and harvesting in order to be considered farm equipment, does not account for the specialization of farm machinery. Most farm equipment is used for a specific job: cultivating, planting, harvesting, etc., rather than for tasks involving both production and harvesting. The impetus for CARB's comment is the desire to separate the harvest of tree farms from that of natural forests which might contain no element

[18] *See* Oral Statement of the Engine Manufacturers Association, Docket entry IV–F–7, which states "The ultimate purchaser must have the assurance that the engine . . . she might purchase, and which properly meets EPA requirements—is 'good' until that engine is ready to be rebuilt. No state should be allowed to impose retrofit standards on engines which otherwise conform to EPA requirements."

[19] *See* Letter from Mr. Cackette, CARB to Mr. Mandel, EMA, dated July 20, 1993, Docket entry IV–I–55.

[20] EPA's definition of "new" does not present a problem for engines or equipment that do not sell relatively quickly (*e.g.*, within a year of being made) in California. If California's regulation set standards applicable to "new" engines, *i.e.* as of the date title passed, regardless of when the engine was produced, then an engine manufactured in 1990 but not sold until 1994 would be subject to 1994 emission standards. This problem is avoided since California's Utility Engine Rule ties the date of manufacture to the standard, therefore a 1990 engine would be subject to a 1990 standard and a 1994 engine subject to a 1994 standard.

were supplied. MECA suggested that the definition should be site and use specific. CARB also thought the wording should be changed to "production *and* harvesting" in place of "*and/or*". CARB provided their characterization of typical farm equipment (self-propelled and operated independent of other equipment) and a partial list of pieces of equipment that should not be included under the definition of farm equipment (utility vehicles used by a farmer to check his crops or portable power units used to generate electricity for another piece of equipment).

EPA does not believe that "designed for use in" should be added to the definition of nonroad engine. While a machine's designer may have designed the machine with certain tasks in mind, EPA believes that the intention of the designer is less important than the actual use to which the equipment is put. A machine may have been designed to assist farmers in some process, but if more than 50 percent of these machines are now used by homeowners, it may fairly be considered other than farm equipment. Requiring that equipment "be designed for use" on a farm would also leave the categorization of farm equipment entirely up to the manufacturers who might, in turn, choose to categorize products as farm equipment merely to avoid state regulation. Additionally, although requested, commenters have not provided examples of where the absence of "designed for" in the definition would make a difference in the preemption of some engines.

EPA also did not agree with CARB's description of farm and non-farm equipment because it did not address the machines which are likely to be used in both situations. Classifying equipment that is uniquely farm or non-farm related is straightforward. The more difficult equipment to characterize is multiple use equipment. Whether and when such equipment is preempted from state regulation is addressed under Section G—the Application of Definitions, Primary Use Test section of this rule.

CARB's further comment, that EPA should require that equipment be involved in both production and harvesting in order to be considered farm equipment, does not account for the specialization of farm machinery. Most farm equipment is used for a specific job: cultivating, planting, harvesting, etc., rather than for tasks involving both production and harvesting. The impetus for CARB's comment is the desire to separate the harvest of tree farms from that of natural forests which might contain no element of production and to ensure that landscaping and groundskeeping are not considered farming.

Under EPA's definition, however, harvesting trees from a natural forest is considered farming. Plant nurseries would also be considered farming, as plants are a product that is grown and gathered. The American Association of Nurserymen supported the proposed definition. At the same time, CARB's concern that landscaping and groundskeeping might be considered farming is alleviated. Although cutting and trimming are involved in these operations, production and harvesting are not, so equipment used would not be farm equipment unless used primarily on farms. (See Scope of Preemption section)

MECA suggested that the definition be changed to ". . . used *on a farm* . . ." to require site specificity. While most of the preempted equipment is operated on farms, EPA has not included this suggestion out of concern that it may create ambiguity for some operations, like plant nurseries.

The SDAPCB was also concerned that the phrase "commercial organic products" would allow some chemical and man-made products to be considered farm produce and thus their associated processing equipment to be considered farm equipment. The list of acceptable farm products is broad and may include items not generally considered farm products. However, the equipment used in any processing after the harvest is not considered farm equipment. Thus, equipment used to make chemical or man-made products would not be considered farm equipment.

As noted in the NPRM, EPA intended harvesting to be the last operation in the farming process to be considered "farming" and, therefore, equipment that performed any function later in the process, *i.e.*, processing or storing, would not be preempted. However, the U.S. Department of Agriculture (USDA) commented that all activities associated with planting, harvesting and on-farm processing of agricultural products for use on the farm should be considered farm activities. The Nisei Farmers League had similar comments with respect to on-farm activities although they did not limit the operations to those preparing products for further use on the farm. Therefore, EPA decided that equipment used in certain post-harvesting operations will be accepted within the preemption category when they relate directly to the continued operation of the farm. Those activities include such things as grinding, drying, and storage operations of products usually used in the future on the farm. Examples of crops subject to these activities are hay, silage, and other animal feed. For less traditional agricultural operations such as nurseries, equipment used in similar operations will also be considered farm equipment. Machinery that is used on crops for continued use in that agricultural operation, such as conveyors (hay bale loaders) and ensiles, will be considered farm equipment. Post-harvest processing of crops in preparation for sale will not be considered farm operations.

SDAPCB expressed the concern that the definition is so broad that it could limit the state's ability to regulate stationary equipment used in the refining, handling, cleaning or processing of food products. We believe that the above discussion of what post-harvesting processing may still be considered farming should alleviate that concern.

EMI supplied EPA with a proposed definition which many others supported.[21] EPA's definition is nearly as inclusive as EMI's definition. One of the differences between the two was the inclusion in the EMI definition of storage and processing activities of the harvested product. EPA's resolution of how such activities should be treated is discussed above. Another difference was EMI's inclusion of off-road transportation. We do not believe that such nonroad vehicles should usually be considered farm equipment as they are primarily used to transport persons or property on or off farms and are not unique to farms. EMI's definition also could include vehicles which are frequently used for property maintenance of a sort which is also not unique to farms. EMI noted at the public hearing that under its definition such equipment as lawn mowers would be included.[22] Such a definition of farm equipment is overly broad.

EPA has decided to define "commercial" in the final rule as "an activity engaged in as a vocation."

---

[21] EMI proposed that "farm equipment or vehicle" means any engine-powered machine, device, apparatus, or movable stationary source which is self-propelled or transportable and which is designed by the manufacturer for use, or is used, to supply mechanical, hydraulic, pneumatic or electric power, for: preparation for production, production, harvesting, processing, storage or off-road transportation of food, fiber, animal feed, other organic material or any other agricultural product or commodity, or any product used in an agricultural operation; handling of products or water related to the care of animals; movement of animals; or operation or maintenance of a farmstead, ranch or logging operation.

[22] *See* Transcript of Sept. 20,1991 Public Hearing regarding Authorization of Nonroad Standards in California at page 139, line 5.

Farming does not have to be the sole or primary vocation. If a person engages in vocations in addition to farming, farming would still be a vocation. EPA believes that a dollar threshold would not serve the purpose of distinguishing residential from commercial use. EPA defined farm equipment as equipment used for "commercial" purposes to prevent the inclusion of such activities as backyard gardening in the definition of farming. There is no reason to believe that Congress meant to include equipment used in these operations which are not conventionally considered to be farms. Thus, equipment used on an agricultural school farm would fall under this definition of commercial because it is equipment used to educate students to farm as a vocation. Also, equipment used on farms that grow crops only for livestock would be considered to be farm equipment. Finally, equipment would be farm equipment if found on "subsistence" farms, defined by Webster's New Collegiate Dictionary as farming that provides all or almost all the goods required by the farm family usually without any significant surplus for sale. EMA and PPEMA's suggestion that any piece of equipment that is used on a farm is farm equipment would preclude from potential CARB regulation many types of machines that are incidental to living on a farm and not used in operations normally associated with growing or harvesting agricultural products. An example would be the lawn mowers that EMI said should be deemed farm equipment.

In the final rule, farm equipment is defined as any internal combustion engine-powered machine primarily used in the commercial production and/or harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm.

E. Definition of Construction Equipment

The NPRM stated that "construction equipment" means any internal combustion engine-powered machine primarily used on commercial construction sites.

Many of the comments concerning this definition were similar to those comments provided regarding the definition of farm equipment. Several manufacturers and trade groups were concerned that the definition was too narrow. They thought it necessary to change the words "primarily used in" to "designed for use in." Caterpillar, the Construction Industry Manufacturer's Association (CIMA) and others were concerned that the word "commercial" might exclude equipment used on public works projects or in residential construction. The EPA exclusion of mining equipment from this preempted category drew unfavorable comments from EMA, EMI, CIMA, and the American Mining Congress (AMC). The American Association of Nurserymen (AAN) requested that EPA explicitly recognize that landscape contracting involves earthmoving and is thus construction.

CARB, SDAPCB and MECA, on the other hand, thought the definition was too broad. CARB and SDAPCB recommended that all auxiliary equipment such as compressors and pumps be excluded from preemption. Both believed that the phrase "commercial construction sites" be defined. MECA suggested that the definition should be site and use specific. Both CARB and SDAPCB approved of our mining equipment exclusion.

EPA's response to the comments that the phrase "designed for" should be part of the construction equipment definition is identical to the Agency's response to the same comments under the Definition of "farm equipment" section of this rule. Please refer to that section for further discussion.

The comments on the use of the word "commercial" may be approached in a manner similar to the way they were addressed under the definition of "farm equipment." EPA believes that defining "commercial" in the final rule as "an activity engaged in as a vocation" is as appropriate in the context of construction equipment as it is in the context of farm equipment. "Commercial" in the construction equipment definition is meant to distinguish equipment that homeowners typically use to perform repairs on their own property from equipment typically used by contractors. Construction of public works projects is "commercial" under this definition.

MECA suggested that the definition be changed to ". . . used *in construction and located* on . . ." to specify the activity involved. This is a reasonable suggestion. EPA believes that including these recommended words in the definition will make it clear that the function of machinery is as important as its location on a site on which construction occurs.

EMA, EMI, CIMA, AMC and others pointed out that mining operations (surface mining) share with construction sites the use of many of the same machines. While this may be true, Congress expressed no intent to preempt from state regulation equipment used in mining operations. According to Webster's Third New International Dictionary (1971 unabridged) construction is "the act of putting parts together to form a complete integrated object." Although EPA's definition includes operations such as demolition and painting which take place outside the actual structural fabrication, the definition still would not include mining, which Webster's defines as "getting ore, metals, coal or precious stones out of the earth." These are not construction activities. Additionally, underground mining usually employs uniquely designed equipment unlike equipment found on a construction site. Surface mining, while sharing some equipment, is a separate activity not associated with construction. The regulation of equipment, however, that is used in surface mining and is also primarily used in construction activities, as defined in this rule, would be preempted.

As discussed in the NPRM, a number of diverse activities take place on a construction site. Earthmoving is one such activity, and thus, landscape contracting could use construction equipment as AAN notes. AAN made no mention of the specific earthmoving equipment in question; thus, the primary use test (See Scope of Preemption section) must be applied to such machinery. Groundskeeping is not a construction activity. AAN did state its support of EPA's definition of construction equipment.

Ingersoll-Rand thought that the words "commercial" and "primary use" should be deleted and that the definitions of farm and construction equipment should be broadened to include any machine that includes an engine belonging to an engine family which is used in construction equipment. The issue of commercial is considered above. Ingersoll-Rand's use of the engine family concept is addressed, as is the primary use issue, in the Application of Definitions, Primary Use Test section.

SDAPCB and CARB thought that the definition should exclude ancillary equipment such as electrical generators and air compressors. CARB argued that these machines are not specifically construction machines in that they perform the same functions in other types of applications. While this is true, such equipment may be employed in construction activity; the question then becomes one of primary use, which is discussed in the Application of Definitions, Primary Use Test section.

For the reasons discussed above, construction equipment is defined in the final rule as any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites.

F. Definition of Locomotive

The NPRM defined locomotive as a self-propelled piece of on-track equipment (other than equipment designed for operation both on highways and rails, specialized maintenance equipment, and other similar equipment) designed for moving other equipment or carrying freight or passenger traffic or both.

EMA noted a difference between the NPRM definition and the definition given in the Locomotive Inspection Act (LIA) upon which the EPA definition was based, but did not recommend EPA use the LIA definition in the definition EMA provided. The only difference between the EPA definition and the LIA definition is that the LIA definition of locomotive includes a piece of equipment without propelling motors but with one or more control stands. This item was not included by EPA since if it has no propelling motors it will not be of concern for purposes of engine emissions regulations. It is noted that neither the Association of American Railroads (AAR) nor any railroad companies that commented on the NPRM, such as Union Pacific and Southern Pacific, had any specific comments on the definition of locomotive.

EMA provided definitions for "locomotive" and "locomotive engine."[23] Under this definition, the regulation of any engine mounted on a locomotive (such as an engine driving a crane or winch) would be preempted. The dictionary definition of "locomotive" is a "self-propelled vehicle, usually diesel or electric, that travels on rails and moves railroad cars."[24]

EMA's definition of locomotive engine goes beyond the specific purpose of locomotion to include any other engine that might be placed on a locomotive. EPA believes that the term "locomotive engine" is limited to the engine used to propel the locomotive and other railroad cars. However, EPA does believe that the term "engines used in locomotives," as found in section 209(e)(1)(B), can be defined to include other engines which are mounted on a locomotive regardless of whether they

[23] EMA recommended the following definitions: "Locomotive" means a self-propelled piece of on-track railroad equipment (other than equipment designed for operation both on-highway and on-track) and "Locomotive engine" means an engine included in a locomotive. See Statement of Engine Manufacturers Association, Docket entry IV–G–19.

[24] Websters II, New Riverside University Dictionary, 1988.

in construction and located on commercial construction sites.

F. Definition of Locomotive

The NPRM defined locomotive as a self-propelled piece of on-track equipment (other than equipment designed for operation both on highways and rails, specialized maintenance equipment, and other similar equipment) designed for moving other equipment or carrying freight or passenger traffic or both.

EMA noted a difference between the NPRM definition and the definition given in the Locomotive Inspection Act (LIA) upon which the EPA definition was based, but did not recommend EPA use the LIA definition in the definition EMA provided. The only difference between the EPA definition and the LIA definition is that the LIA definition of locomotive includes a piece of equipment without propelling motors but with one or more control stands. This item was not included by EPA since if it has no propelling motors it will not be of concern for purposes of engine emissions regulations. It is noted that neither the Association of American Railroads (AAR) nor any railroad companies that commented on the NPRM, such as Union Pacific and Southern Pacific, had any specific comments on the definition of locomotive.

EMA provided definitions for "locomotive" and "locomotive engine."[23] Under this definition, the regulation of any engine mounted on a locomotive (such as an engine driving a crane or winch) would be preempted. The dictionary definition of "locomotive" is a "self-propelled vehicle, usually diesel or electric, that travels on rails and moves railroad cars."[24]

EMA's definition of locomotive engine goes beyond the specific purpose of locomotion to include any other engine that might be placed on a locomotive. EPA believes that the term "locomotive engine" is limited to the engine used to propel the locomotive and other railroad cars. However, EPA does believe that the term "engines used in locomotives," as found in section 209(e)(1)(B), can be defined to include other engines which are mounted on a locomotive regardless of whether they are used for purposes of self-propulsion. EPA notes that under this definitional framework the "locomotive" is only that piece of on-track equipment which is self-propelling and is designed for moving other cars containing equipment, freight, or passengers. "Engines used in locomotives" thus includes an engine placed in the locomotive to propel the train and also includes other engines mounted on the locomotive for auxiliary power generation for the train, but does not include engines mounted on the train elsewhere than the locomotive. An engine providing power for a crane or winch, for example, would only be considered preempted from state regulation (if it otherwise met the requirements for "new") as "an engine used in [a] locomotive" if such engine were mounted on the locomotive. EPA believes these definitions reflect the intent of Congress to reduce the burden on interstate commerce for the railroad industry, and address EMA's concerns regarding auxiliary engines.[25]

Regulation of auxiliary engines whose primary function are not for propulsion is addressed by EPA in its final regulation for nonroad engines 37 kilowatt (50 hp) and above under section 213 of the Act.[26]

EPA has stricken the word "carrying" from the definition of locomotive. This was done to avoid implying that any persons or property that were moved by the engine had to be located directly on the locomotive. The word "moving" in the definition is all that is needed to give the correct meaning.

For the final rule, EPA has decided that a "locomotive" means a self-propelled piece of on-track equipment (other than equipment designed for operation both on highways and rails, specialized maintenance equipment, and other similar equipment) designed for moving other equipment, freight or passenger traffic. EPA has also decided that the term "engines used in locomotives" means either an engine placed in the locomotive to move other equipment, freight, or passenger traffic, or an engine mounted on the locomotive to provide auxiliary power.

G. Application of Definitions; Primary Use Test

1. Introduction

EPA is defining farm equipment as any internal combustion engine-powered machine primarily used in the commercial production and/or harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm. EPA is defining construction equipment as any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites. Many types of equipment are used almost exclusively for farming and construction (*e.g.*, tractors and bulldozers). In the case of such equipment, the applicability of EPA's definition is clear: they are farm or construction equipment and thus preempted from state regulation. Other types of equipment, however, are used not only for farming or construction, but for other purposes as well (*e.g.*, pumps used for irrigation and swimming pools). The issue thus arises whether or not such multi-purpose equipment should be considered farm or construction equipment and thus preempted from state regulation.

2. EPA's Proposal

In the NPRM, EPA proposed a "primary use" test to assess whether state regulation of multiple use equipment would be preempted. EPA proposed that in order for state regulation to be preempted, equipment must be "primarily used"—used 51 percent—as farm or construction equipment. Under this test, for example, a compressor used 51 percent in farming or construction applications would be preempted from state regulation. EPA proposed 51 percent as a reasonable use cut-off point because it corresponds to a bare "majority". EPA believed that the preempted category would be unreasonably expanded if state regulation could be preempted simply because a small fraction of such equipment was used in farm or construction applications.

3. Comments on and Alternatives to EPA's Proposal

During the comment period following the hearing EPA received comments from industry and CARB opposing the primary use test. EMI, EMA, PPEMA, Industrial Truck Association (ITA), Construction Industry Air Quality Coalition (CIAQC), and Ingersoll-Rand Company stated that the primary use test is unauthorized and should not be employed. They stated that the plain meaning of the preemption provision does not permit EPA to apply a percentage test to determine if equipment is farm or construction equipment. Congress, they contended, meant to preempt state regulation of all nonroad engines used in farm or construction equipment, even if only a small fraction of the equipment is

[23] EMA recommended the following definitions: "Locomotive" means a self-propelled piece of on-track railroad equipment (other than equipment designed for operation both on-highway and on-track) and "Locomotive engine" means an engine included in a locomotive. *See* Statement of Engine Manufacturers Association, Docket entry IV–G–19.

[24] Websters II, New Riverside University Dictionary, 1988.

[25] *See* Letter from Glenn Keller, EMA to Joanne Goldhand, EPA, Docket entry IV–I–54.

[26] 59 FR 31306, June 17, 1994.

represented in these preempted categories. CIMA commented that the proposed test would be unworkable because the data on which to base a primary use finding are unavailable, and Deere and Company and others similarly stated that accurate data cannot be obtained, in part because of the rental market.

On the other side of the issue, CARB argued that the 51 percent primary use test is contrary to Congressional intent. CARB noted that it is unlikely that Congress intended to so limit California's authority to control emissions from nonroad sources given the broad waiver of federal preemption it provides California in the area of motor vehicle emission control.

CARB initially supported a position that equipment should be defined as farm or construction equipment only if more than 75 percent of the equipment is used in farming or construction. CARB noted, in its comments supporting a 75 percent cutoff, that this would ensure that state regulation would be preempted only for equipment primarily used on farm or construction sites. Commenters submitted alternative proposals.

EMA and the Outdoor Power Equipment Institute (OPEI) proposed that EPA should define the scope of preemption in terms of the primary use of the engine family, not the equipment. EMA proposed that the Agency consider preempting for state regulation any engine line "used in" farm or construction equipment regardless of the extent which the engine line is used in other types of equipment. CARB and MECA both commented that only regulation of the individual engines actually used in farm or construction equipment should be preempted. CARB also proposed that preemption apply only to regulation of engines exclusively designed for and used in the farm and construction industries. Failing that, both CARB and MECA believed that the 51 percent test for determining how equipment was primarily used was too low. CARB recommended that state regulation of multiple-use equipment be preempted only if more than 75 percent of the equipment is used in farming or construction. CARB noted that this would ensure that any preempted equipment was primarily used on farms or at construction sites.

PPEMA proposed that EPA use a different test to determine whether multi-use equipment should be considered farm or construction equipment for purposes of determining the scope of federal preemption. This test would be that federal preemption applies whenever equipment is used in more than *de minimis* amounts for farming or construction, and such equipment is necessary to perform farming and construction activities. PPEMA did not state any criteria to be used in determining such a "*de minimis*" amount or determining what "necessary" is. PPEMA supported this proposal with several arguments.

First, PPEMA argued that a *de minimis* test follows the plain language of the statute. PPEMA argued that the "plain language" of the statute does not include modifiers such as "primarily" or "predominantly" and thus does not in any way imply that Congress intended for EPA to apply a percentage test to determine if equipment was used for farming or construction. PPEMA contended that Congress intended to preempt state regulation of all nonroad engines used in farm and construction equipment.

Second, PPEMA argued that Congress explicitly limited the scope of preemption by specifying that preemption would apply to regulation of engines used in farm and construction equipment smaller than 175 horsepower. Thus, according to PPEMA, there is no need for EPA to clarify the scope of preemption further.

PPEMA's final argument is that a *de minimis* test would not unduly expand the scope of federal preemption. Equipment would be preempted only if it were found in more than *de minimis* amounts and were necessary to the performance of farm and construction operations.

4. Response to Comments

a. *Primary Use Test*

EPA has decided to apply the primary use test to determine which multiple-use equipment will be considered farm or construction equipment and thus preempted from state regulation. As explained in the NPRM, the "primary use" test is the most appropriate method for classifying (as farm or construction, or other) multiple use equipment. Industry commenters who believe EPA must consider multiple-use equipment to be farm or construction equipment beg the question of what is farm and construction equipment. Some industry commenters stated that EPA could not use the primary use test because the language of section 209(e)(1) refers to new engines which are used in construction or farm equipment or vehicles, not to engines which are "primarily" used in construction of farm equipment or vehicles. These comments miss the point of the primary use test. The test is not used to define "used in", but is used to define "construction equipment" and "farm equipment". In order to identify an engine used in farm or construction equipment, EPA must first determine whether a piece of equipment is farm or construction equipment. Equipment used only incidentally (perhaps 10 percent) in farm or construction applications is not fairly considered to be farm or construction equipment. A type of equipment such as a pump, for example, is not farm equipment merely because it is used on a handful of farms and otherwise used exclusively in residential settings. Therefore, the engine used in this type of equipment is not an engine used in farm or construction equipment and, therefore, regulation of that engine type is not preempted.

EPA believes that the terms "farm equipment" and "construction equipment" are best identified by referring to the general use of the equipment. EPA does not believe that the *de minimis* approach suggested by PPEMA is an appropriate approach to defining these terms. EPA does not believe that a piece of equipment primarily used in non-construction or non-farming activities should be defined as construction or farm equipment merely because it is or could be used for some farm or construction applications. Such a definition would inappropriately expand the preempted categories.

Similarly, EPA does not agree with CARB's initial proposal that equipment should be defined as farm and construction equipment only if more than 75 percent of the equipment is used in farm or construction. EPA believes that the 51 percent cutoff is a better measure of whether or not a piece of equipment is farm or construction equipment, especially given Congress's apparent intent to protect new farm and construction equipment from state regulation. If equipment is used more than half the time in farm or construction applications, then it should be considered farm or construction equipment even if it has some applications outside of the farm or construction area. A 75 percent threshold would be inappropriate because equipment that may be used regularly and predominantly in farm and construction applications could still be used enough in other applications to prevent a 75 percent threshold to be met. EPA believes its final decision on this issue will not unduly limit California's authority to control emissions from nonroad sources.

Thus, EPA has decided to retain the 51 percent criterion for the primary use determination. It believes this criterion is in keeping with Congress's implicit goal of striking a balance between the competing interests of national uniformity of regulatory requirements and state control over sources of in-state pollution. This test still permits California to regulate new engines that are installed in machines used in farms or at construction sites if most of such engines are in equipment not used in those situations.

Since the frequency with which multiple use equipment is used on farms or at construction sites ranges from "almost never" to "every day", it is clear that a line must be drawn somewhere along this continuum. Many comments were received addressing the selection of 51 percent as the primary use cut-off point. EPA selected it because it corresponds to a bare "majority".

As noted previously, PPEMA would like to see this limit lowered to *de minimis* amounts. This would mean that equipment used more often than this small amount in preempted categories would be judged farm or construction equipment and thus its regulation would be preempted. Therefore, under such a limit, items such as lawn mowers and hedge trimmers could be judged farm or construction equipment. EPA believes that this result, and such a low threshold by which a lawn mower could be considered a piece of farm or construction equipment, is not consistent with Congressional intent of preempting state regulation of new farm and construction equipment.

No matter what number is chosen as the cutoff there will always be some categories of equipment that fall just above or just below the line. No commenter has made a strong case for why EPA should select a cut-off point other than the 51 percent cut-off. EPA notes CARB's most recent submittal, dated July 20, 1993,[27] (see discussion below) which recognizes the use of a primary use test by EPA.

EPA believes the primary use test is in keeping with Congress' implicit goal of striking a balance between the competing interests of national uniformity of regulatory requirements and state control over sources of in-state pollution. Under this test, equipment used for a majority of the time in farming and construction is preempted from California regulation. Conversely, equipment used primarily by consumers and in consumer settings would more than likely be subject to California

[27] *See* Letter from Tom Cackette, CARB to Richard Wilson, EPA, Docket entry IV-I–52. This letter discusses an agreement between CARB and certain industry representatives regarding whether certain equipment types should or should not be considered farm or construction equipment, subject to EPA's review.

competing interests of national uniformity of regulatory requirements and state control over sources of in-state pollution. This test still permits California to regulate new engines that are installed in machines used in farms or at construction sites if most of such engines are in equipment not used in those situations.

Since the frequency with which multiple use equipment is used on farms or at construction sites ranges from "almost never" to "every day", it is clear that a line must be drawn somewhere along this continuum. Many comments were received addressing the selection of 51 percent as the primary use cut-off point. EPA selected it because it corresponds to a bare "majority".

As noted previously, PPEMA would like to see this limit lowered to *de minimis* amounts. This would mean that equipment used more often than this small amount in preempted categories would be judged farm or construction equipment and thus its regulation would be preempted. Therefore, under such a limit, items such as lawn mowers and hedge trimmers could be judged farm or construction equipment. EPA believes that this result, and such a low threshold by which a lawn mower could be considered a piece of farm or construction equipment, is not consistent with Congressional intent of preempting state regulation of new farm and construction equipment.

No matter what number is chosen as the cutoff there will always be some categories of equipment that fall just above or just below the line. No commenter has made a strong case for why EPA should select a cut-off point other than the 51 percent cut-off. EPA notes CARB's most recent submittal, dated July 20, 1993,[27] (see discussion below) which recognizes the use of a primary use test by EPA.

EPA believes the primary use test is in keeping with Congress' implicit goal of striking a balance between the competing interests of national uniformity of regulatory requirements and state control over sources of in-state pollution. Under this test, equipment used for a majority of the time in farming and construction is preempted from California regulation. Conversely, equipment used primarily by consumers and in consumer settings would more than likely be subject to California regulation since their use in farming or construction would most likely not meet the primary use test. This test, therefore, preempts California from regulating new engines that are installed in any equipment which is primarily used in the commercial production and/or harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm. This test also preempts California from regulating new engines that are installed in equipment which is primarily used in construction and located on commercial construction sites.

EPA's application of the primary use test in this rule is similar to the proposed application of the 51 percent primary use test found in the notice of proposed rulemaking. That is, EPA believes that it is appropriate for CARB to make a preliminary determination of primary use for multiple-use equipment that is in question in a CARB regulation such as the Utility Engine Rule. (EPA's discussion of CARB's role in such determinations is found below in Section K). CARB will be required to come forward with evidence, data, agreements with industry, and analysis to support a finding that a category or subcategory of equipment is primarily not used in farm or construction applications and is thus subject to state regulation.

CARB and the major industry commenters had a series of meetings during which they discussed whether various types of equipment should fall into a preempted category or a non-preempted category should EPA adopt its proposed primary use test based on 51 percent usage. As a result, on July 20, 1993, EPA received a letter from CARB explaining the process by which it and major industry commenters[28] reached agreement on lists of equipment which would or would not be considered as farm or construction equipment based on the primary use test as set out in the Notice of Proposed Rulemaking for this section 209(e) rule.[29] CARB noted that EMI had not reached agreement with the primary use test but apparently was in agreement with the categorized lists of equipment and this seems to be supported by EMI's letter to CARB during this time period.[30]

EPA recognizes the significance of these lists for several reasons. The lists are intended to be exhaustive of all equipment currently in existence, according to CARB, and eliminates uncertainty regarding the categorization, as farm or construction or other, of any equipment currently in production. For any currently existing equipment under 25 horsepower that is not considered on the list, EPA believes manufacturers will have the ability to petition CARB for the appropriate categorization. Further, the lists of equipment are generic such that any modifications to existing equipment types would fall into existing categories, with appropriate review by CARB, and thereby reduce any burden on manufacturers to produce large amounts of new information to support their position that such modified equipment is farm or construction.

For newly developed equipment, which is not a modification of existing equipment or included on the lists, CARB and manufacturers will classify it as preempted or non-preempted based upon, among other things, a description of the equipment, its intended application, and projected sales market. EPA believes the classification process will be clear and predictable and will not require substantial new information. It is anticipated that CARB and the manufacturers will continue to work together to minimize the information gathering burden for the small number of newly developed types of equipment.

The existence of these lists is noted here merely as an example of how CARB and industry foresee the future categorization of nonroad equipment. As CARB noted in its July 20, 1993 letter, EPA maintains its independent authority under section 209(e) to review each separate CARB nonroad authorization request and to determine, by examining data as explained in section II(K) of this preamble, whether such equipment is indeed farm or construction equipment.

b. *Subcategorization*

The USDA commented that some of California's suggested categories might be too inclusive because they were not subcategorized as to professional or non-professional use, particularly chain saws.

As noted in the NPRM, unless there is a very clear delineation of types of equipment within a category, all similar pieces of equipment could remain together in one group rather than being split into multiple sub-groups. Not every product may be susceptible to subcategorization because there may not be clear delineations defining types of equipment. However, in cases when

[27] *See* Letter from Tom Cackette, CARB to Richard Wilson, EPA, Docket entry IV-I-52. This letter discusses an agreement between CARB and certain industry representatives regarding whether certain equipment types should or should not be considered farm or construction equipment, subject to EPA's review.

[28] The major industry groups that met with CARB included the Engine Manufacturers Association, the Portable Power Equipment Manufacturers Association, the Industrial Truck Association, the Outdoor Power Equipment Institute, the Construction Industry Manufacturers Association, and the Equipment Manufacturers Institute (EMI).

[29] *See* Letter from Tom Cackette, CARB to Richard Wilson, EPA, Docket entry IV-I-52.

[30] *See* Letter from Gary Baise, Counsel to EMI to Mike Kenny, CARB, Docket entry IV-I-53.

subcategories of equipment can be identified they should be separately grouped and not subjected to state regulation. It would be inappropriate for California to regulate a subcategory of multiple-use equipment which is primarily used as farm or construction equipment. In preparing its use determination California should look carefully at whether there are subcategories of equipment that are primarily used on farms or construction sites. California should not aggregate a group of equipment that can be subcategorized that is primarily used as farm or construction equipment with subcategories that are not used as farm or construction equipment in order to extend its reach into federally preempted categories. When commenters bring to EPA's attention a product that is primarily used as farm or construction equipment but is also used in other applications, EPA will carefully review California's categorization determination as part of its authorization process.

c. *Data for use determination*

The preamble to the NPRM provided that in determining primary use California would consider national sales data to demonstrate whether CARB's various equipment categories were or were not preempted. PPEMA, ITA and others commented that sales data do not correlate with actual use and that hours-of-use would be a better measure. EMI, CIMA and others were concerned with the year-to-year variability of sales, while OPEI and Caterpillar stated that accurate sales data were not available.

CARB suggested that, if a primary use test were used, it be permitted to apply the best data available in making its determination and requested that national sales data, mentioned in the NPRM, not be mandated. EPA agrees that California should employ the most relevant information and data at hand to make its determination of primary use. The classes of equipment in the Utility Engine Rule regulation and in any potential future California regulations that may employ a usage test are so varied and unique that EPA is not in a position to specify the type of data to be used. Therefore, EPA is not mandating CARB to use any specific type of data, e.g. national sales data; however, California should select the appropriate data base keeping in mind that EPA will review any use determination as part of an authorization request by California under the preponderance of the evidence standard of review. (See discussion in Section K below regarding this standard of proof.)

d. *Equipment versus engine line*

The primary use test described in the NPRM is based upon an assessment of whether multiple use equipment is primarily used as farm or construction equipment. Several commenters suggested that the preemption should be based instead on a primary use test of an engine manufacturer's engine line. (An engine line is all the engines produced by a manufacturer with many common characteristics such as number of cylinders, displacement, calibration, etc.) Two rules would be followed under their suggested system: (1) state regulation of all engines used in farm and construction equipment would be preempted, and (2) state regulation of all engines from an *engine line* which is primarily used in farm and construction equipment (no matter what else they are installed in) would be preempted.

Primary use would mean 51% under the engine line test also. Under this suggested system, in a situation in which 70 percent of an engine line went to farm and construction equipment and 30 percent went to other equipment, regulation of the entire engine line would be preempted. Thus state control of the 30 percent fraction of the engines would be preempted even though they would be installed in equipment that could not be considered farm or construction equipment and that Congress intended the state be allowed to regulate. If the fractions were reversed, state control of the 30 percent fraction would be preempted since it was used in farm and construction equipment while state regulation of the 70 percent fraction would not be preempted and would be subject to state requirements.

The commenters suggest that the engine-line test is preferable because engines are generally designed by engine-line, not by equipment. Under the equipment-based test, engine manufacturers would have to divide their engine lines based on the use of the engines in equipment. Thus, the exact same engines might have to be divided into two families.

In the equipment application method, if an engine manufacturer has an engine line where 70 percent of the engines go to farm and construction equipment (and their regulation would therefore be preempted) and 30 percent go to other equipment (and state regulation would not be preempted), the manufacturer must decide whether to split the engine line and manufacture the 30 percent portion of the engines to meet California's standards (and label them as such) or discontinue the production of those engines for California.[31] If the example is reversed with 70 percent of the engines going into other equipment and 30 percent going into farm and construction, the manufacturer could decide to produce and certify its entire line to meet California's standards or to split its engine line into two separate engine types—one certified for sale in California and one not. Therefore, under the equipment-based test, equipment manufacturers would have to maintain an awareness of their California and non-California markets and specify the number of engines of each type they will need.

However, engine manufacturers may also have to divide their engine lines under their proposed engine-line approach. If 30 percent of an engine line is used in farm and construction equipment and the remainder is used in non-preempted equipment, then under the commenters' plan, the engine line would be split, because 30 percent of the engine line would be preempted but the remainder would be subject to state regulation. Therefore, the problem the commenters sought to avoid would not be avoided.

On the other hand, there are several advantages of an equipment-based determination. The only requirement of an equipment-based determination would be to develop two lists—one of farm and construction equipment and one of other equipment (non-farm and non-construction equipment). With these two lists the equipment manufacturer knows the type of engine it needs in each piece of equipment produced—either a preempted (farm or construction) engine or an engine that complies with California emission requirements if California has such requirements.

Enforcement under the equipment-based method would be relatively simple. An inspector would only have to determine whether a piece of equipment was farm or construction equipment, or an other type of equipment. If it is farm or construction equipment, nothing more need be done, as the piece of equipment would not be subject to state regulation. If it is not farm or construction equipment, the inspector need only look for the required CARB label if there are California standards for that type of equipment. Enforcement would require additional steps if an engine line based system were used: for example, the inspector would have to determine whether a non-preempted piece of equipment contained an engine from a manufacturer who claimed its entire engine line as preempt from state regulation.

If the primary use determination were based on an engine line, EPA would have several concerns. As with the equipment based method, two equipment lists would still be developed, but additionally each engine line for every engine manufacturer must be determined to be preempted or not after gathering data on whether the engines were now installed in farm or construction equipment. This would add another layer of calculations to the process. According to many of those who commented at the public hearing, engine destination data are difficult to obtain. In a case where most engines in an engine line are used in non-preempted equipment, the engine line would be split, causing the same burden as manufacturers stated would occur in the equipment-based method and which they wanted to avoid. Additionally, this method would give a competitive advantage to manufacturers who now make engine lines which are primarily used in farm and construction equipment. Such manufacturers, who have engines for which state regulation is preempted, would enjoy an advantage over a manufacturer whose engines are not preempted and therefore must meet California's emission standards. Ford Motor Company recognized this issue and expressed its concerns and disagreement with EMA on this issue.

EPA is also concerned that the commenters' method would be contrary to section 209 in that it is overinclusive and inconsistent in its definition of farm and construction equipment. Under the commenters' method, if 70 percent of the engines in an engine line were used in farm and construction equipment and 30 percent were used in other equipment, the entire engine line would be preempted. Thus, the regulation of some engines would be preempted even though they are not used in farm or construction equipment. This would create a preemption greater than that contemplated by the statute. Moreover, the method is inconsistent in application: if 70 percent of the engines in an engine line were used in non-preempted equipment but the remainder were used in farm or construction equipment, California could only regulate 70 percent of the engines, not 100 percent. Therefore, the method gives engine manufacturers the benefit of full preemption when the majority of the engines are preempted, but it does not allow full California regulation if the majority of the engines are not preempted. This inconsistency appears

[31] This discussion presumes that California will actually promulgate regulations for the engine line in question.

equipment contained an engine from a manufacturer who claimed its entire engine line as preempt from state regulation.

If the primary use determination were based on an engine line, EPA would have several concerns. As with the equipment based method, two equipment lists would still be developed, but additionally each engine line for every engine manufacturer must be determined to be preempted or not after gathering data on whether the engines were now installed in farm or construction equipment. This would add another layer of calculations to the process. According to many of those who commented at the public hearing, engine destination data are difficult to obtain. In a case where most engines in an engine line are used in non-preempted equipment, the engine line would be split, causing the same burden as manufacturers stated would occur in the equipment-based method and which they wanted to avoid. Additionally, this method would give a competitive advantage to manufacturers who now make engine lines which are primarily used in farm and construction equipment. Such manufacturers, who have engines for which state regulation is preempted, would enjoy an advantage over a manufacturer whose engines are not preempted and therefore must meet California's emission standards. Ford Motor Company recognized this issue and expressed its concerns and disagreement with EMA on this issue.

EPA is also concerned that the commenters' method would be contrary to section 209 in that it is overinclusive and inconsistent in its definition of farm and construction equipment. Under the commenters' method, if 70 percent of the engines in an engine line were used in farm and construction equipment and 30 percent were used in other equipment, the entire engine line would be preempted. Thus, the regulation of some engines would be preempted even though they are not used in farm or construction equipment. This would create a preemption greater than that contemplated by the statute. Moreover, the method is inconsistent in application: if 70 percent of the engines in an engine line were used in non-preempted equipment but the remainder were used in farm or construction equipment, California could only regulate 70 percent of the engines, not 100 percent. Therefore, the method gives engine manufacturers the benefit of full preemption when the majority of the engines are preempted, but it does not allow full California regulation if the majority of the engines are not preempted. This inconsistency appears arbitrary and could result in higher emissions (as noted by Ford Motor Company) because California would be precluded from regulating engines that it would otherwise be able to regulate under a more evenhanded approach.

Furthermore, this approach does not solve the question that is at the heart of the "primary use" issue: *i.e.*, when should a multiple use piece of equipment be defined as farm and/or construction equipment? In order to determine whether an engine line is being used 30 percent in farm and construction equipment or 70 percent in farm or construction equipment, one still must know what is meant by farm and construction equipment. This approach, taken by itself, does not provide an answer. Finally, manufacturers did not explain how a newly developed engine line would be judged (preempted or non-preempted) since there would be no existing data upon which to base a determination.

EMA stated that the equipment-based method would result in higher certification costs than the engine-line method. EPA believes that under both methods, engine manufacturers could face additional costs for any engine they wished to certify for sale in California. These costs would include research and development expenses to develop a cleaner engine, and administrative and testing expenses associated with the state certification process. Those engine manufacturers who chose to compete in the California market would face higher certification costs than those who did not, but there should be little difference in certification costs between the two methods.

In the final rule, rather than use the engine-line method, EPA is requiring a primary use test that preempts California from regulating new engines that are installed in equipment that is primarily used in farming or construction settings.

H. Labeling Requirement

The NPRM would require engine manufacturers to label new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. The label would state to which standard or standards (California, Federal, or both) the engine is certified.

Most commenters opposed the labeling requirement. CARB stated that it intended to require labels on engines that comply with California emission regulations. CARB, EMI, and EMA agreed that a federal labeling requirement was not appropriate until EPA determined under section 213 whether federal standards were necessary. In fact, EMI argued that authority for labeling lies in section 213, not section 209(e).

EPA has decided to not implement a labeling requirement under section 209(e). It should be noted that the regulation setting forth federal nonroad standards under section 213 contains a labeling requirement.[32]

I. Authorization Criteria and Procedures

In the NPRM, EPA noted that sections 209(b) and (e) are in many respects alike and in those respects should be similarly interpreted. One difference between the two provisions that the Agency identified, however, was an apparent difference in the sequence of California and EPA actions. In this regard, EPA focused on the following language of section 209(b):

> (b)(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which *has adopted standards* . . . for the control of emissions from new motor vehicles or new motor vehicle engines *prior to March 30, 1966*. . . . (Emphasis added.)

EPA interpreted the phrase "has adopted" to mean that the Administrator could waive the prohibition of section 209(a) after a state has adopted standards. By contrast, section 209(e)(2) provides that "the Administrator shall . . . authorize California to adopt and enforce motor vehicle emission standards." EPA concluded that the difference in language indicated that California must receive authorization from EPA before it can adopt any nonroad standards or requirements.

CARB took issue with EPA's interpretation of section 209(e)(2) as requiring California to obtain authorization before adopting regulations. It believed that for several reasons, EPA could and should follow the same process under section 209(e) as it follows in granting motor vehicle waivers under section 209(b). First, CARB argued that although section 209(e) states that "the Administrator shall . . . authorize California to adopt and enforce standards . . . ." sections 209(a) and (b) could be similarly construed when read together. Section 209(a) states that "no state . . . shall adopt or attempt to enforce. . . ." The only exception to the prohibition is if the Administrator grants a waiver under section 209(b). Thus, considered together, sections 209(a) and (b) could

[32] See 59 FR 31306, June 17, 1994, specifically 40 CFR Part 89, Subpart B, § 89.110–96.

be construed to preclude prior adoption of a regulation by a state unless a waiver is granted.

CARB noted that despite this language, EPA has consistently interpreted sections 209(a) and (b) to provide that the waiver process commences after state regulatory adoption. EPA's rationale has been that the Administrator should consider a "final" regulation when making a determination to waive federal preemption of state regulations that may differ from federal regulations. Between the time CARB holds a hearing on a proposed regulation and submission of the final regulation to the California Office of Administrative Law (OAL), significant changes could be made to the regulation. Under the California procedures for adopting regulations, CARB releases a "Staff Proposal: Initial Statement of Reasons for Proposed Rulemaking" along with a Notice for Public Comment. The comment period is forty-five days. A Board hearing takes place at the end of this forty-five day period. CARB makes modifications to the regulation after the hearing. These modifications are made available for public comment for fifteen days. CARB then prepares a "Final Statement of Reasons for Rulemaking" in which it addresses changes made to the regulation and summarizes and responds to all comments received during the public comment period. This document is submitted to the Executive Officer, who signs an Executive Order which formally adopts the final version of the regulations. Then CARB is required to submit the final regulation to OAL, which reviews regulations adopted by state agencies. OAL has thirty days to review and either approve or disapprove. It has authority to disapprove if (1) the regulation is inconsistent with California law or (2) improper procedure has been followed. If OAL disapproves, CARB has 120 days to modify the regulation, re-adopt, and re-submit the regulation to OAL.[33]

Thus, significant changes could be made to a regulation between the CARB hearing and adoption as well as after CARB adoption due to the review by OAL. If significant changes were to occur, the waiver California received would be insufficient to cover the regulations as adopted and California would be forced to reapply for a waiver of a now final regulation.

EPA finds California's argument persuasive. As an initial matter, the Agency no longer believes that the difference in language between sections 209(b) and (e) was intended to delineate a difference in the sequence of events surrounding adoption and authorization. The use of the past tense in section 209(b) ("has adopted") was merely intended to identify the states that could obtain a waiver for motor vehicle standards. (In fact, California alone had adopted such standards prior to March 30, 1966, and therefore, all other states have been prohibited from adopting emission control standards for new motor vehicles except as provided under section 177.) EPA also acknowledges that sections 209(a) and (b) could be read to require California to obtain a waiver prior to adopting motor vehicle standards, but the Agency has not so interpreted these provisions. Therefore, sections 209(b) and (e) need not be interpreted as requiring different adoption and authorization processes.

Moreover, EPA believes section 209(e) should be interpreted to allow a process like that established under section 209(b) for the same reasons EPA construed 209(b) to permit California to seek a waiver after it has adopted motor vehicle standards. It is inefficient for EPA to rule on a waiver or authorization request for what amounts to a regulatory recommendation. Until California adopts its program, neither California nor EPA can be sure that the program for which a waiver or authorization is requested is the program that the responsible official will sign into law. If there is a difference between the program submitted to EPA by California and the program California eventually adopts, any waiver or authorization granted may be insufficient to cover the enacted program.

In fact, EPA received comments that illustrate the confusion that would result if California were required to receive EPA authorization before it could adopt final regulations. Several commenters were concerned that CARB had modified its proposed Utility Engine Rule twice since CARB had requested EPA authorization in December 1990. The commenters requested that EPA clarify that it will grant authorization based on the most recent version it has received from CARB and that if any changes are made after an authorization is granted, California must resubmit its authorization request. EPA believes that today's change allowing California to adopt before receiving EPA authorization resolves this confusion and inefficiency.[34]

At the same time, EPA does not believe that section 209(e) may be interpreted to permit California to enforce any nonroad regulations before receiving authorization. Were California to enforce its regulations before it receives authorization, it would defeat the protection section 209(e) was established to provide—that California's nonroad program only go forward if EPA authorizes it in accordance with the provisions of that section. Thus, EPA believes that while California may adopt nonroad regulations before receiving EPA authorization, its adoption must be conditioned upon EPA's authorizing those regulations under 209(e). In short, California may adopt, but not enforce, nonroad standards prior to EPA authorization.

Regarding the authorization criteria, EPA proposed that the first two criteria be interpreted the same as for section 209(b). These criteria are first, that no waiver or authorization shall be granted if EPA finds that California's determination that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious. Second, no waiver or authorization shall be granted if California does not need such standards to meet compelling and extraordinary conditions.

The language of the third criterion, however, was not as clearly similar to section 209(b). Section 209(e)(2)(A)(iii) stated that no authorization shall be granted if "California standards and accompanying enforcement procedures are not consistent with this section." EPA proposed that "this section" be interpreted to mean consistent with sections 209(a) and 209(e)(1).

Commenters disagreed with EPA's proposed interpretation of "consistent with this section," stating that "consistent with section 209" should mean all of section 209, particularly section 209(b). Some commenters also proposed that "consistent with this section" should include section 213.

EPA has determined that, given the plain language of section 209(e), interpreting "consistent with this section" to mean "consistent with section 213" is not a reasonable statutory interpretation. The phrase "consistent with this section" clearly refers to section 209, not section 213. EMA proposed to interpret this phrase to refer to section 222 of the Clean Air Act Amendments of 1990. This would require consistency with both sections 209 and 213 of the Act. Absent any legislative history to explain the intent of "consistent with this section", however, this interpretation would give to the phrase a meaning clearly different than its plain meaning in light of its placement in section 209 alone.

The Agency has decided, however, that it is reasonable and effects Congressional intent to interpret "consistent with this section" to include all of section 209, including section 209(b)(1)(C). Hence, EPA believes that it should review nonroad authorization requests under the same "consistency" criterion that it reviews motor vehicle waiver requests.

Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. EPA has interpreted this criterion in previous motor vehicle waiver decisions. First, California's standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time frame. Second, California's accompanying enforcement procedures would be inconsistent with section 202(a) if the federal and California test procedures were inconsistent, that is, manufacturers would be unable to meet both the state and the federal test requirements with one test vehicle or engine.

EPA's review of nonroad authorization requests will include the following. First, CARB must request EPA authorization of its adopted nonroad standards. Second, EPA shall not grant an authorization if (1) EPA determines that CARB's "in the aggregate" determination is arbitrary and capricious; (2) California does not need such standards to meet compelling and extraordinary conditions; and (3) if California's nonroad standards are not consistent with section 209, *i.e.*, that they not be inconsistent with section 209(a), section 209(e), and section 209(b), as EPA has interpreted that subsection in the context of motor vehicle waivers.

J. State Adoption of California Standards and Test Procedures

EPA received comments on several aspects regarding how other states may adopt California nonroad standards and test procedures. First, both EMA and EMI argued that other states that decide to adopt California standards should be subject to the same process as California. However, the Act neither requires that states obtain EPA authorization to impose California's nonroad engine standards nor

[33] Cal. Admin. Code tit. 2, §§ 11340–11356 (1989).

[34] EPA notes, however, that as with motor vehicle waivers under section 209(b), if CARB substantively amends a rule, EPA would expect CARB to request a new authorization.

to the phrase a meaning clearly different than its plain meaning in light of its placement in section 209 alone.

The Agency has decided, however, that it is reasonable and effects Congressional intent to interpret "consistent with this section" to include all of section 209, including section 209(b)(1)(C). Hence, EPA believes that it should review nonroad authorization requests under the same "consistency" criterion that it reviews motor vehicle waiver requests.

Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. EPA has interpreted this criterion in previous motor vehicle waiver decisions. First, California's standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time frame. Second, California's accompanying enforcement procedures would be inconsistent with section 202(a) if the federal and California test procedures were inconsistent, that is, manufacturers would be unable to meet both the state and the federal test requirements with one test vehicle or engine.

EPA's review of nonroad authorization requests will include the following. First, CARB must request EPA authorization of its adopted nonroad standards. Second, EPA shall not grant an authorization if (1) EPA determines that CARB's "in the aggregate" determination is arbitrary and capricious; (2) California does not need such standards to meet compelling and extraordinary conditions; and (3) if California's nonroad standards are not consistent with section 209, *i.e.*, that they not be inconsistent with section 209(a), section 209(e), and section 209(b), as EPA has interpreted that subsection in the context of motor vehicle waivers.

J. State Adoption of California Standards and Test Procedures

EPA received comments on several aspects regarding how other states may adopt California nonroad standards and test procedures. First, both EMA and EMI argued that other states that decide to adopt California standards should be subject to the same process as California. However, the Act neither requires that states obtain EPA authorization to impose California's nonroad engine standards nor authorizes the Agency to require that states do so. Under section 209(e)(2)(B), any state which has plan provisions approved under part D of Title I of the Act (generally states within ozone nonattainment areas) may adopt and enforce, "after notice to the Administrator," California standards. Language requiring that other states request and receive authorization from EPA is noticeably absent. Indeed, the statutory text reads as *authorizing states* to adopt California standards on their own volition. In contrast, section 209(e)(2)(A) clearly states that California must receive authorization from EPA. Moreover, the language of section 209(e)(2)(B) is nearly identical to section 177 which provides that "any state which has plan provisions approved under this part may adopt and enforce" California motor vehicle emission standards. Under section 177 New York, Massachusetts and Maine have adopted California standards, and other states are considering following suit. These States did not ask for EPA authorization before they adopted the California standards, nor did EPA or the automobile industry suggest that they needed such authorization.[35]

Several commenters stated that section 209(e)(2)(B) required that California be subject to a two-year lead time requirement. EPA does not agree with this interpretation. Section 209(e)(2)(A) requires EPA to authorize California regulation of nonroad engines unless the Administrator makes certain findings, including that California's standards are "not consistent with this section." As discussed earlier, EPA interprets that phrase as requiring that California's standards are technologically feasible in the available lead time. Since California is thus required to provide adequate lead time under section 209(e)(2)(A), it would not make sense to interpret section 209(e)(2)(B) as independently requiring at least two years of lead time. Instead, EPA interprets section 209(e)(2)(B)'s reference to two years of lead time in the same way it interprets the virtually identical provision in section 177: that an adopting state must provide two years of lead time before the California standards take effect in the adopting state and California must have adopted standards two years before commencement of the period for which the standards take effect in the adopting state, but California may adopt standards having less than two years of lead time in California.

[35] Ford Motor Co. v. EPA, 606 F.2d 1293, 1298 (D.C. Cir. 1979).

K. Rulemaking Procedure

In the NPRM, EPA proposed definitions for the new engines used in the preempted categories: farm equipment, construction equipment, and locomotives. For equipment types that are used in a variety of applications, EPA also proposed a primary use test to assess whether such equipment is primarily used as farm or construction equipment. New engines used primarily in this equipment would be preempted from state regulation. EPA proposed that in determining "primary use", CARB would use sales data to show that an equipment type was or was not primarily used in farming or construction. When CARB requested EPA to authorize its proposed regulations, EPA would review California's determination regarding the primary use of particular equipment.

In the Proposed Authorization Decision, 53 FR 45876, September 6, 1991, EPA proposed to review the decision California made regarding the primary use of nonroad equipment under an arbitrary and capricious standard of review, the standard of review that section 209(e)(2) requires that the Administrator use in reviewing California's determination that its standards "will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards."

Several commenters, including EMA, EMI, PPEMA, and the Railway Engineering-Maintenance Suppliers Association, Inc. (REMSA) stated that EPA's proposed approach to determining the primary use of nonroad engines and equipment inappropriately relinquished authority to California. They pointed out that the primary use determination goes to the scope of the federal preemption accorded by section 209(e)(1), and argued that such a threshold determination should be made by EPA, not California. To the extent that California did have a role in determining primary use, they urged that EPA apply a clear and compelling evidence standard of review instead of the less strict arbitrary and capricious test in reviewing California's determinations.

EPA believes these commenters are essentially correct in that the scope of federal preemption is not for California to decide and that EPA should have a greater role in making that determination than the Agency's proposal would have required. At the same time, EPA sees nothing wrong with having California make a preliminary determination as to the use of nonroad engines and equipment.

California's coming forward with the evidence and analysis to support such a determination is in keeping with the role California has with regard to other aspects of the waiver and authorization requests it makes under section 209.

Notably, sections 209(b) and (e) expressly place the burden of coming forward on California only with regard to the determination of the aggregate protectiveness of California's program. Nevertheless, under section 209(b) California has traditionally addressed not only the protectiveness determination but also the other two criteria set forth in section 209(b)(1)(B) and (C). This approach simply reflects the fact that California is the party interested in obtaining the waiver. Similarly, under section 209(e) EPA believes it appropriate for California to make a preliminary use determination (primary use, as discussed above) based on the available evidence and for EPA to review that determination in light of any public comments and additional evidence received.

EPA agrees with the industry commenters that the arbitrary and capricious standard of review is not appropriate for review of California's primary use determination. The arbitrary and capricious standard is generally applied in two types of circumstances: (1) where the decision-maker must apply his expertise to resolve complex issues, or (2) where the decision-maker has been accorded discretion in making the decision under review. Underlying the arbitrary and capricious standard is a recognition that the reviewing authority either does not have as much expertise as the decision-maker or that the judgment of the reviewing authority should not be substituted for that of the decision-maker to whom discretion has been granted. An illustration of this approach to application of the arbitrary and capricious standard of review is Congress' specification of that standard for California's protectiveness determination under section 209. The legislative history of that section makes clear that Congress sought to give California broad leeway to design a program that in California's judgment was best suited to the unique set of circumstances faced by that state.

Neither reason for applying the arbitrary and capricious standard of review applies to California's primary use determinations. California does not have unique expertise in determining the use of nonroad engines and equipment. Nor is there any indication that Congress sought to accord California discretion to determine the scope of federal preemption. Indeed the fact that Congress prohibited *all* state regulation of certain categories of new nonroad equipment and required California to obtain EPA authorization to regulate any other categories suggests a strong congressional interest in limiting state regulation affecting makers of new nonroad engines and equipment. While preemption provisions are generally construed narrowly, congressional intent to prohibit states from regulating in certain areas must also be safeguarded. EPA believes the arbitrary and capricious standard of review would not sufficiently reflect congressional intent to prohibit state regulation of farm and construction equipment.

At the same time, EPA does not believe that the much stricter clear and compelling evidence standard suggested by CIAQC is the appropriate standard of review. CIAQC argued that in *Motor and Equipment Manufacturers Association, Inc.*, 627 F.2d 1095, (D.C. Cir. 1979) (*MEMA I*), the court found that the Administrator's use of a clear and compelling evidence standard to evaluate California's request for a waiver for enforcement procedures was valid. EPA disagrees with CIAQC's application of *MEMA I*.

As an initial matter, *MEMA I* does not deal with the threshold matter of the scope of preemption. On such matters the court is silent as to the appropriate standard of review beyond providing general guiding principles. Instead, the court focuses on the standard of review to be employed by EPA on California's protectiveness determination. In fact, the section of the decision cited by CIAQC focuses on this issue, not on the issue of preemption. There the court not only states that California's determination is presumed to satisfy the waiver requirements, but that the burden of proving otherwise falls on the party attacking the determination. It is in this context that the court notes that the Administrator determined that there must be "clear and compelling evidence" to show that California's proposed procedures *undermine* the protectiveness of California's standards. It is in the context of a party challenging California's protectiveness determination that the clear and compelling standard comes into play. Thus, EPA believes that the clear and compelling standard is neither applicable nor appropriate for its review of CARB's primary use determination.

The Agency considers the preponderance of the evidence standard of review to be appropriate for its review of California's primary use determination. If EPA were to make the determination itself, it would apply such a test in making it. There is no reason to apply a different test simply because California has made an initial determination. Public commenters may supplement the record assembled by California in support of its determination, and the Agency will weigh all the evidence in reviewing California's determination. To the extent California's determination is supported by a preponderance of the evidence in the record, EPA will accept it.

Several commenters stated that EPA was denying interested parties their due process rights by attempting to consider California's request for authorization for its Utility Engine Rule at the same time it is seeking comment on its proposed criteria for authorizing nonroad requests. The commenters argued that a final rule under section 209(e) was necessary to comment meaningfully on the CARB authorization request.

EPA believes parties should be given another opportunity to comment on California's utility engine rule after today's rule implementing section 209(e) has become final. Thus, EPA will publish in the **Federal Register** a Notice of Opportunity for Public Hearing and Request for Comments regarding California's request for authorization of its Utility Engine Rule. Interested parties will have the opportunity to submit written comments, and if requested, EPA will hold a hearing. This will provide interested parties with an opportunity to comment on California's request after today's rule is finalized.

L. Executive Order 12866

In the NPRM, EPA stated it had determined that the proposed rule is not "major" within the criteria set forth in section 1(b) of Executive Order (E.O.) 12291 and was therefore not required to prepare a Regulatory Impact Analysis (RIA). Since the NPRM E.O. 12291 has been replaced by Executive Order 12866.

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Comments were received from EMI which suggested that an RIA be performed under the guidelines set forth in E.O. 12291. EPA will examine these comments in the context of E.O. 12866. In connection with every "significant regulatory action" as defined at section 3(f)(1) (Annual effect on the economy of $100 million * * *), E.O. 12866 requires an RIA be performed. EMI submitted that the second and third independent criteria for a "major rule" under E.O. 12291, were met by both the NPRM and CARB's Utility Engine Rule currently before EPA.

In relation to the second criterion for determining whether a rule is "major", EMI stated that its member manufacturers of farm and construction equipment will incur costs in attempting to comply with EPA's rule and CARB's Utility Engine Rule. EMI also states that both consumers of farm and construction equipment and California's economy will incur costs as a result of geographically diverse emission standards. EMI makes reference to no evidence or cost data in support of its claim.

EMI points to the potential of diverse or multiple emission standards as its support that United States farm and construction equipment manufacturers would be unduly hindered in the international marketplace as evidence that the rule meets the third criterion for a "major rule". Again, EMI makes no reference to any examples of costs or evidence to support its belief.

EPA still believes that an RIA is not needed for the NPRM or the final rule. Today's rule does not itself impose any increase in costs to individual industries or the State of California. Indeed, the rule merely sets out definitions and criteria for nonroad authorization requests. California makes cost determinations as part of its own rulemaking and provides the rulemaking record to EPA as part of an authorization request. At the same time, EPA notes that while its rule does not impose any direct costs on equipment manufacturers, the more narrowly the scope of preemption is drawn, the more opportunities California has to impose costs through regulations.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Comments were received from EMI which suggested that an RIA be performed under the guidelines set forth in E.O. 12291. EPA will examine these comments in the context of E.O. 12866. In connection with every "significant regulatory action" as defined at section 3(f)(1) (Annual effect on the economy of $100 million * * *), E.O. 12866 requires an RIA be performed. EMI submitted that the second and third independent criteria for a "major rule" under E.O. 12291, were met by both the NPRM and CARB's Utility Engine Rule currently before EPA.

In relation to the second criterion for determining whether a rule is "major", EMI stated that its member manufacturers of farm and construction equipment will incur costs in attempting to comply with EPA's rule and CARB's Utility Engine Rule. EMI also states that both consumers of farm and construction equipment and California's economy will incur costs as a result of geographically diverse emission standards. EMI makes reference to no evidence or cost data in support of its claim.

EMI points to the potential of diverse or multiple emission standards as its support that United States farm and construction equipment manufacturers would be unduly hindered in the international marketplace as evidence that the rule meets the third criterion for a "major rule". Again, EMI makes no reference to any examples of costs or evidence to support its belief.

EPA still believes that an RIA is not needed for the NPRM or the final rule. Today's rule does not itself impose any increase in costs to individual industries or the State of California. Indeed, the rule merely sets out definitions and criteria for nonroad authorization requests. California makes cost determinations as part of its own rulemaking and provides the rulemaking record to EPA as part of an authorization request. At the same time, EPA notes that while its rule does not impose any direct costs on equipment manufacturers, the more narrowly the scope of preemption is drawn, the more opportunities California has to impose costs through regulations.

Pursuant to the terms of E.O. 12866, OMB notified EPA that it considered the action a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

M. Paperwork Reduction Act

In the NPRM, EPA stated that the proposed rule did not contain any additional information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (PRA). The purpose of the PRA is "to minimize and control burdens associated with the collection of information by federal agencies from individuals, businesses and other private institutions, and State and local governments." 5 CFR 1320.1.

EPA received comments from two parties claiming that the PRA applied to the proposed rule and that such application would require changes within the proposed rule. North American Equipment Dealers Association (NAEDA) and EMI indicated that the "primary use" test would cause an increase of burdensome paperwork, with manufacturers dependent upon dealers and end users to provide the requisite information to determine primary use. At the same time, EMI noted that EPA did not specify any particular paperwork requirements. In addition, EMI did not indicate that any information need be submitted to EPA. Instead, EMI apparently supposes that under the PRA a greater administrative burden would be created by implementing a primary use information collection system as opposed to a "designed for" test and information collection system, and thus claims the latter should be implemented.

EPA finds these comments are not relevant to the question of whether the Paperwork Reduction Act applies to the proposed and final rule. Although EPA finds the comments helpful in understanding the distinction between the "primary use" versus "designed for" issue, the comments fail to set forth any basis for asserting that the final rule, which adopts the proposed primary use test, contains any additional information collection requirements. Indeed, the comments presuppose the applicability of the PRA and focus on options to make information collection less burdensome without recognizing the significance of the fact that EPA has not required any information collection from manufacturers, dealers, or any private entity. EPA did not propose and has not included in the final rule any paperwork requirements and thus imposes no burden upon manufacturers, dealers or end users of nonroad equipment to submit to EPA any information regarding the use of nonroad equipment. EPA recognizes that in order for California to receive authorization from EPA for non-preempted nonroad equipment, California must present sufficient information that nonroad equipment is not used more than 51 percent as farm or construction equipment. California may thus require submission of relevant information to determine primary use, but EPA has not.

EPA has determined that the Paperwork Reduction Act does not apply towards this rulemaking. EPA has not set forth any specific requirements for these entities to collect or submit any data to EPA.

N. Regulatory Flexibility Act

In the NPRM, EPA stated that the proposed regulation would not have a significant impact on a substantial number of small entities. EPA determined that the proposed rule would affect manufacturers of nonroad equipment, a group without a substantial number of small entities.

EPA received public comments which suggested that the proposed rule would in fact affect small entities. One small business equipment dealer commented that if the proposed rule and CARB's Utility Engine Rule are enacted, and nonroad farm and construction equipment is separately regulated by California, then it would be adversely impacted. This same dealer, along with the Far West Equipment Dealers Association (FWEDA), stated that a scenario would arise where new and used nonroad farm and construction equipment purchased outside California would cost less than that found in California, and would thus adversely affect dealers of such equipment within California. FWEDA provided examples of several pieces of farm or construction equipment, and their projected cost increases in order to meet proposed CARB emission standards, in an effort to present the price differential for California dealers of such equipment. In addition, FWEDA states that the purchasers/users of their farm and construction equipment within California will be at an unfair cost disadvantage in relation to users outside of California's boundary.

For purposes of Regulatory Flexibility Act analysis, the issue is whether the final rule will have a significant impact on a substantial number of small entities. EPA makes no change in its

determination in the NPRM that the final rule will have no significant impact on a substantial number of small entities since the rule imposes no burden on *any* entities. However, EPA reminds the parties which submitted comments on the applicability of the Regulatory Flexibility Act that California is specifically preempted from regulation of farm and construction equipment under 175 horsepower. The pieces of equipment cited by FWEDA as being potentially affected are preempted from regulation by California. Thus, the apprehension that such equipment will cost less outside of California is unfounded, as such equipment will be subject only to the federal regulations.

As a result, EPA has determined, as required under the Regulatory Flexibility Act, that the final rule does not have a significant impact on a substantial number of small entities.

List of Subjects for 40 CFR Part 85

Environmental protection, Administrative practice and procedure, Air pollution control, Federal preemption, Motor vehicle pollution, Nonroad engine and vehicle pollution, Reporting and recordkeeping requirements, and State controls.

Dated: July 1, 1994.

Carol Browner,

Administrator.

Therefore, 40 CFR Part 85 is amended as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

1. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, and 7601(a), unless otherwise noted.

2. Part 85 is amended by adding subpart Q to read as follows:

Subpart Q—Preemption of State Standards and Waiver Procedures for Nonroad Engines and Nonroad Vehicles

85.1601 Applicability.
85.1602 Definitions.
85.1603 Application of definitions; scope of preemption.
85.1604 Procedures for California nonroad authorization requests.
85.1605 Criteria for granting authorization.
85.1606 Adoption of California standards by other states.

Subpart Q—Preemption of State Standards and Waiver Procedures for Nonroad Engines and Nonroad Vehicles

§ 85.1601 Applicability.

The requirements of this subpart are applicable to nonroad engines and nonroad vehicles.

§ 85.1602 Definitions.

As used in this subpart, all terms not defined shall have the meaning given them in the Clean Air Act, as amended.

Commercial means an activity engaged in as a vocation.

Construction equipment or vehicle means any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites.

Engine used in a locomotive means either an engine placed in the locomotive to move other equipment, freight, or passenger traffic, or an engine mounted on the locomotive to provide auxiliary power.

Farm equipment or vehicle means any internal combustion engine-powered machine primarily used in the commercial production and/or commercial harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm.

Locomotive means a self-propelled piece of on-track equipment (other than equipment designed for operation both on highways and rails, specialized maintenance equipment, and other similar equipment) designed for moving other equipment, freight, or passenger traffic.

New means a domestic or imported nonroad vehicle or nonroad engine the equitable or legal title to which has never been transferred to an ultimate purchaser. Where the equitable or legal title to an engine or vehicle is not transferred to an ultimate purchaser until after the engine or vehicle is placed into service, then the engine or vehicle will no longer be new after it is placed into service. A nonroad engine or vehicle is placed into service when it is used for its functional purposes. The term *ultimate purchaser* means, with respect to any new nonroad vehicle or new nonroad engine, the first person who in good faith purchases such *new* nonroad vehicle or new nonroad engine for purposes other than resale. This definition of *new* shall not apply to locomotives or engines used in locomotives.

Nonroad engine means:

(1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) The engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or

(iii) The engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

Primarily used means used 51 percent or more.

§ 85.1603 Application of definitions; scope of preemption.

(a) For equipment that is used in applications in addition to farming or construction activities, if the equipment is primarily used as farm and/or construction equipment or vehicles, as defined in this subpart, it is considered farm or construction equipment or vehicles.

(b) States are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new engines smaller than 175 horsepower, that are primarily used in farm or construction equipment or vehicles, as defined in this subpart.

(c) States are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives or new engines used in locomotives.

(d) No state shall enforce any standards or other requirements relating to the control of emission from new nonroad engines or vehicles except as provided for in this subpart.

§ 85.1604 Procedures for California nonroad authorization requests.

(a) California shall request authorization to enforce its adopted standards and other requirements relating to the control of emissions from new nonroad vehicles or engines that are otherwise not preempted by § 85.1603(b) or 85.1603(c) from the Administrator of EPA and provide the record on which the state rulemaking was based.

(b) After receipt of the authorization request, the Administrator shall provide notice and opportunity for a public hearing regarding such requests.

§ 85.1605 Criteria for granting authorization.

(a) The Administrator shall grant the authorization if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

(3) California standards and accompanying enforcement procedures are not consistent with section 209.

§ 85.1606 Adoption of California standards by other states.

Any state other than California which has plan provisions approved under Part D of Title I of the Clean Air Act may adopt and enforce emission standards, for any period, for new nonroad vehicles or engines subject to the following requirements:

(a) The state must provide notice to the Administrator that it has adopted such standards.

(b) Such standards shall not apply to new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower

requirements relating to the control of emissions from new engines smaller than 175 horsepower, that are primarily used in farm or construction equipment or vehicles, as defined in this subpart.

(c) States are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives or new engines used in locomotives.

(d) No state shall enforce any standards or other requirements relating to the control of emission from new nonroad engines or vehicles except as provided for in this subpart.

§ 85.1604 Procedures for California nonroad authorization requests.

(a) California shall request authorization to enforce its adopted standards and other requirements relating to the control of emissions from new nonroad vehicles or engines that are otherwise not preempted by § 85.1603(b) or 85.1603(c) from the Administrator of EPA and provide the record on which the state rulemaking was based.

(b) After receipt of the authorization request, the Administrator shall provide notice and opportunity for a public hearing regarding such requests.

§ 85.1605 Criteria for granting authorization.

(a) The Administrator shall grant the authorization if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

(3) California standards and accompanying enforcement procedures are not consistent with section 209.

§ 85.1606 Adoption of California standards by other states.

Any state other than California which has plan provisions approved under Part D of Title I of the Clean Air Act may adopt and enforce emission standards, for any period, for new nonroad vehicles or engines subject to the following requirements:

(a) The state must provide notice to the Administrator that it has adopted such standards.

(b) Such standards shall not apply to new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower or to new locomotives or new engines used in locomotives.

(c) Such standards and implementation and enforcement shall be identical, for the period concerned, to the California standards authorized by the Administrator.

(d) The state shall adopt such standards at least two years before commencement of the period for which the standards take effect.

(e) California shall have adopted such standards two years before commencement of the period for which the standards take effect in the state that is adopting under section 209(e)(2)(B).

[FR Doc. 94–17002 Filed 7–19–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–230; RM–8298, RM–8359]

Radio Broadcasting Services; Madison, South Dakota and Slayton, Minnesota

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by Wallace Christensen a *Notice of Proposed Rule Making* was issued requesting the substitution of Channel 276C2 for Channel 276A at Slayton, Minnesota, modification of the construction permit for Station KLOH–FM accordingly, substitution of Channel 288A for Channel 276A at Madison, South Dakota, and modification of the license for Station KJAM–FM to accommodate the upgrade at Slayton. *See* 58 FR 42714, August 11, 1993. In response to a counterproposal filed by Madison Broadcasting Company, we will substitute Channel 291C2 for Channel 276A at Slayton, Minnesota, at coordinates 43–59–43 North Latitude and 95–44–51 West Longitude and modify the construction permit for Station KLOH–FM accordingly. We shall also substitute Channel 276C2 for Channel 276A at Madison, South Dakota, at coordinates 43–59–08 North Latitude and 97–07–42 West Longitude and modify the license for Station KJAM–FM to specify operation on the higher class channel. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 29, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–230, adopted June 30, 1994, and released July 15, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 276A and adding Channel 291C2 at Slayton.

3. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 276A and adding Channel 276C2 at Madison.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17607 Filed 7–19–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–263]

Organization and Delegation of Powers and Duties; Delegation of Authority to the Maritime Administrator

AGENCY: Office of the Secretary, DOT

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority conferred by Section 2927, Title XXIX, of Public Law 103–160, enacted November 30, 1993, to convey surplus real property to public entities for use in the development or operation of a port facility. The Secretary also

revokes a previous delegation of authority to the Maritime Administrator where the Secretary's statutory authority has expired.

EFFECTIVE DATE: This rule becomes effective July 20, 1994.

FOR FURTHER INFORMATION CONTACT: John W. Carnes, Chief, Division of Port and Intermodal Operations, Maritime Administration, MAR–831, Room 7201, 400 Seventh Street SW., Washington, DC, 20590, (202) 366–4357 or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), Department of Transportation, Room 10424, 400 Seventh Street SW., Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION: Section 2927, Title XXIX, of Public Law 103–160, the National Defense Authorization Act for Fiscal Year 1994, amends Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) to authorize the Secretary to convey surplus real property to public entities for development or operation of a port facility. Transfer of such real property by the Secretary is subject to the disapproval of the Administrator of General Services or the Secretary of Defense. The Secretary is hereby amending regulations of the Office of the Secretary of Transportation, at 49 CFR 1.66, to delegate that authority to the Maritime Administrator. Another change is being made to revoke the delegation of authority in § 1.66(x) to carry out the provisions of Section 709 of Public Law 101–595 (the Merchant Mariner Memorial Act of 1990), which authority has expired, and to reserve that paragraph. Corresponding changes are being made to the Department's Organization Manual.

Since this amendment relates to departmental management, organization, procedure, and practice; notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub.L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.66 is amended by removing and reserving paragraph (x), and by adding new paragraph (z), to read as follows:

§ 1.66 Delegations to Maritime Administration.

* * * * *

(z) Carry out the functions vested in the Secretary by Section 2927, Title XXIX of the National Defense Authorization Act of 1994 (Public Law 103–160; November 30, 1993) relating to authority to convey surplus real property to public entities for use in the development or operation of port facilities.

Issued at Washington, DC this 20th day of June 1994.

Federico Peña,

Secretary of Transportation.

[FR Doc. 94–17622 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB85

Endangered and Threatened Wildlife and Plants; Final Rule To List the Rio Grande Silvery Minnow as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Rio Grande silvery minnow (*Hybognathus amarus*) to be an endangered species under the Endangered Species Act of 1973 (Act), as amended. This fish occurs only in the middle Rio Grande from Cochiti Dam downstream to the headwaters of Elephant Butte Reservoir, New Mexico. Threats to the species include dewatering, channelization and regulation of river flow to provide water for irrigation; diminished water quality caused by municipal, industrial, and agricultural discharges; and competition or predation by introduced non-native fish species. Currently, the species occupies about five percent of its known historic range. This action will implement Federal protection provided by the Act for the Rio Grande silvery minnow. The Service further determines that finalization of proposed critical habitat will not occur at this time, as critical habitat is not now determinable because the required economic analysis has not been completed. Pursuant to section 4(b)(6)(C)(ii) of the Act, a final determination on critical habitat may be delayed up to 1 year beyond the normal deadline.

EFFECTIVE DATE: August 19, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, New Mexico Ecological Services State Office, 3530 Pan American Highway NE., Suite D, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, State Supervisor, at the above address (505/883–7877).

SUPPLEMENTARY INFORMATION:

Background

The Rio Grande silvery minnow is one of seven species in the genus *Hybognathus* found in the United States (Pflieger 1980). The species was first described by Girard (1856) from specimens taken from the Rio Grande near Fort Brown, Cameron County, Texas. It is a stout silvery minnow with moderately small eyes and a small, slightly oblique mouth (Pflieger 1975). Adults may reach 90 mm (3.5 in) in total length (Sublette et al. 1990). Its dorsal fin is distinctly pointed with the front located slightly closer to the tip of the snout than to the base of the tail (Pflieger 1975). Life color is silver with emerald reflections. Its belly is silvery white, fins are plain, and barbels are absent (Pflieger 1975, Sublette et al. 1990).

This species was historically one of the most abundant and widespread fishes in the Rio Grande basin, occurring from Espanola, New Mexico, to the Gulf of Mexico (Bestgen and Platania 1991). It was also found in the Pecos River, a major tributary of the Rio Grande, from Santa Rosa, New Mexico, downstream to its confluence with the Rio Grande in south Texas (Pflieger 1980). Collection data indicate the species presently occupies about five percent of its historic range (Platania 1993). It has been completely extirpated from the Pecos River and from the Rio Grande downstream of Elephant Butte Reservoir. Currently, it is found only in a 275 km (170 mi) reach of the middle Rio Grande, New Mexico, from Cochiti Dam, Sandoval County, to the headwaters of Elephant Butte Reservoir, Socorro County (Bestgen and Platania 1991). Throughout much of its historic range, decline of *H. amarus* may be attributed to modification of stream discharge patterns and channel desiccation by impoundments, water diversion for agriculture, and stream channelization (Bestgen and Platania 1991, Cook et al. 1992).

The Rio Grande silvery minnow no longer exists in the Pecos River where it was replaced by a congener, the introduced plains minnow (*H. placitus*) (Hatch et al. 1985, Bestgen et al. 1989, Cook et al. 1992). It is believed that the plains minnow was introduced into the Pecos drainage during 1968, probably the result of the release of "bait minnows" that were collected from the Arkansas River drainage. The replacement that ensued was complete in less than one decade (Cowley 1979). The plains minnow may be more tolerant of modified habitats and therefore able to replace *H. amarus* in the modified reaches of the Pecos River where it was introduced. It is also believed the two species hybridized (Cook et al. 1992). Habitat alteration and resulting flow modification could have also contributed to extirpation of the Rio Grande silvery minnow in the Pecos River.

Decline of the species in the Rio Grande probably began in 1916 when the gates at Elephant Butte Dam were closed. Elephant Butte was the first of five major mainstream dams constructed within the Rio Grande silvery minnow's habitat (Shupe and Williams 1988). These dams allowed the flow of the river to be manipulated and diverted for the benefit of agriculture. Often this manipulation resulted in the desiccation of some river reaches and elimination of all fish. Concurrent with construction of the mainstream dams was an increase in the abundance of non-native and exotic fish species, as these species were stocked into the reservoirs created by the dams (Sublette et al. 1990). Once established, these species often completely replaced the native fish fauna (Propst et al. 1987). Development of agriculture and the growth of cities within the historic range of *H. amarus* resulted in a decrease in the quality of water in the river that may have adversely affected the range and distribution of the species.

Most land bordering the river where the species currently exists is owned by the Middle Rio Grande Conservancy District, which is a quasi-public agency of the State of New Mexico. Other landowners include six Native American Pueblos, the U.S. Bureau of Reclamation, the Service, the U.S. Bureau of Land Management, New Mexico State Parks, New Mexico Department of Game and Fish, New Mexico State Lands Department, and the U.S. Army Corps of Engineers (Corps).

Water flow in the middle Rio Grande is controlled by the Rio Grande Compact Commission. Established in 1929 for the purpose of permanently and equitably apportioning the flows of the Rio

The Rio Grande silvery minnow no longer exists in the Pecos River where it was replaced by a congener, the introduced plains minnow (*H. placitus*) (Hatch et al. 1985, Bestgen et al. 1989, Cook et al. 1992). It is believed that the plains minnow was introduced into the Pecos drainage during 1968, probably the result of the release of "bait minnows" that were collected from the Arkansas River drainage. The replacement that ensued was complete in less than one decade (Cowley 1979). The plains minnow may be more tolerant of modified habitats and therefore able to replace *H. amarus* in the modified reaches of the Pecos River where it was introduced. It is also believed the two species hybridized (Cook et al. 1992). Habitat alteration and resulting flow modification could have also contributed to extirpation of the Rio Grande silvery minnow in the Pecos River.

Decline of the species in the Rio Grande probably began in 1916 when the gates at Elephant Butte Dam were closed. Elephant Butte was the first of five major mainstream dams constructed within the Rio Grande silvery minnow's habitat (Shupe and Williams 1988). These dams allowed the flow of the river to be manipulated and diverted for the benefit of agriculture. Often this manipulation resulted in the desiccation of some river reaches and elimination of all fish. Concurrent with construction of the mainstream dams was an increase in the abundance of non-native and exotic fish species, as these species were stocked into the reservoirs created by the dams (Sublette et al. 1990). Once established, these species often completely replaced the native fish fauna (Propst et al. 1987). Development of agriculture and the growth of cities within the historic range of *H. amarus* resulted in a decrease in the quality of water in the river that may have adversely affected the range and distribution of the species.

Most land bordering the river where the species currently exists is owned by the Middle Rio Grande Conservancy District, which is a quasi-public agency of the State of New Mexico. Other landowners include six Native American Pueblos, the U.S. Bureau of Reclamation, the Service, the U.S. Bureau of Land Management, New Mexico State Parks, New Mexico Department of Game and Fish, New Mexico State Lands Department, and the U.S. Army Corps of Engineers (Corps).

Water flow in the middle Rio Grande is controlled by the Rio Grande Compact Commission. Established in 1929 for the purpose of permanently and equitably apportioning the flows of the Rio Grande, the Commission is composed of a Federal chairperson appointed by the President of the United States and three voting members—a representative designated by the Texas Governor and the State Engineers of New Mexico and Colorado. The Commission meets annually to review compliance with the compact over the preceding year, to hear reports from Federal water management agencies, and to consider water management decisions that have interstate implications. Federal agencies that also determine timing and amount of flow in the river include the International Boundary and Water Commission, the Bureau of Reclamation, and the Corps.

Previous Service Actions

The Rio Grande silvery minnow was listed on the Service's Animal Notice of Review (56 FR 58804; November 21, 1991) as a category 1 species. A category 1 species is one for which the Service has on file substantial information on biological vulnerability and threat(s) to support a proposal to list it as an endangered or threatened species. A proposed rule to list the Rio Grande silvery minnow as endangered with critical habitat was published in the **Federal Register** on March 1, 1993 (58 FR 11821).

Summary of Comments and Recommendations

In the March 1, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period originally scheduled to close on April 30, 1993, was extended until August 25, 1993, (58 FR 19220; April 13, 1993) to conduct public hearings and allow submission of additional comments. Appropriate Tribal governments, State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in New Mexico in the Albuquerque Journal on May 2, 1993; Las Cruces Sun News on April 30, 1993; Socorro Defensor Chieftain on April 28, 1993; Santa Fe New Mexican on April 20, 1993; and in Texas in the El Paso Times on March 20, 1993.

Because of anticipated widespread public interest, the Service held two public hearings that were announced in an April 13, 1993, **Federal Register** notice. Interested parties were contacted and notified of the hearings. Thirty-seven people attended the hearing in Albuquerque, New Mexico, and 58 attended the hearing in Socorro, New Mexico. Oral or written comments were received from 25 parties at the hearings; none directly supported the proposed listing. Transcripts of these hearings are available for inspection (see **ADDRESSES**). Briefing sessions were also held for tribal leaders on May 18, 1993, in Albuquerque, New Mexico; and for a number of northern pueblos at Santo Domingo Pueblo, New Mexico, on September 9, 1993.

A total of 40 written comments were received at the Service's Ecological Services State Office in Albuquerque, New Mexico: 13 supported the proposed listing; 14 opposed the proposed listing; and 13 commented on information in the proposed rule but expressed neither support nor opposition.

Oral or written comments were received from 7 Federal and 5 state agencies, 14 local officials, and 36 private organizations, companies, and individuals. Written comments and oral statements presented at the public hearings and received during the comment periods are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below.

Issue 1: The Service has come to the conclusion that only instream flow will assure the species' existence. Will the Service propose a program for the purchase of water rights in order to provide water for the species?

Response: The Service has not reached this conclusion. Possible instream flow requirements of the species are among several factors that need to be considered in the recovery planning process. If, during the recovery planning process, the Service determines that the purchase of water rights will enhance recovery of the species, the Service would explore with other State and Federal entities the possible purchase of water rights from willing sellers.

Issue 2: The United States, under the terms of the Convention of 1906, has the obligation to deliver 60,000 acre-feet of water annually to the Republic of Mexico. The U.S. International Boundary and Water Commission (IBWC) is responsible for ensuring that the U.S. government meets those obligations. The IBWC is concerned that the listing may interfere with their ability to meet these treaty requirements.

Response: The Service recognizes the treaty obligation of the United States to provide to the Republic of Mexico 60,000 acre-feet of water annually from

the Rio Grande. Measures taken to protect and recover the Rio Grande silvery minnow will take into consideration this treaty obligation and IBWC's ability to meet treaty requirements.

Issue 3: Completion of the dams above Elephant Butte Dam has had the effect of extending stream flow. Flood control and conservation storage operations do not, cannot, and have not been used to create or extend reaches of no flow in the riverbed.

Response: The Service agrees with the statement. Availability of flow is likely not the only factor affecting decline of the silvery minnow. These operations change the natural flow regime of the river and thus may affect survival of the Rio Grande silvery minnow. The final rule recognizes these other factors in the "Summary of Factors Affecting the Species."

Issue 4: Reservoirs do not, as implied, store all spring runoff and summer inflows. Water is normally released during summer, not winter months. Diversion dams and canals have limited capacities to divert flows. They cannot "completely divert all flows . . . into irrigation ditches" under flood conditions.

Response: The Service agrees with the statement that reservoirs do not store all spring runoff and summer inflow. While most water is released during the spring and summer, a fall and winter release does occur in the Middle Rio Grande Valley when conditions permit (Beal and Gold 1988, Borland and Gold 1989). Under flood conditions, the irrigation diversions do not have the capacity to divert all flows. Under non-flood flows they do have the capacity to divert all flows. United States Geological Survey (USGS) records substantiate the occurrence of no-flow periods downstream of the various irrigation diversion dams.

Issue 5: The proposed regulation is unsupported by any hydrological study as to the statements that irrigation uses have depleted the water flow. Not a single source of information is cited for comments regarding hydrology of the river. Depletions of water in the system may be the result of the construction of wildlife watering impoundments by the Forest Service and Bureau of Land Management.

Response: It can be readily documented by examining USGS flow gage records that river flows decrease when the irrigation season starts. In addition, the Service reviewed Bullard and Wells (1992), which provides information on the hydrology of the middle Rio Grande. This reduction in flow is most noticeable in mid-summer after the spring to early summer peak flow has passed. Wildlife impoundments are often very small (less than one acre in size) and are considered to be insignificant in the amount of water they deplete from the drainage.

Issue 6: Economic considerations should be given more weight when communities may be affected.

Response: Section 4(a)(1) of the Act identifies five factors that are considered in making a determination of whether a species should be listed as threatened or endangered. Section 4(b)(1)(A) of the Act requires that listing determinations be based solely on the best available scientific and commercial data, and prohibits the Service from considering economic factors (50 CFR 424.11(b)). However, because economics are considered in the designation of critical habitat, the Service will conduct an economic analysis in the process of evaluating proposed critical habitat for the Rio Grande silvery minnow.

Issue 7: The Service needs to ensure public input before listing the Rio Grande silvery minnow. The Service is required to notify counties and other affected parties to solicit their input prior to listing a species under the Act. The Service failed to meet this obligation.

Response: On February 19, 1991, about 80 pre-proposal letters of inquiry were mailed to various governmental agencies, knowledgeable individuals, and the New Mexico Congressional delegation. On March 20, 1992, the Service held a meeting in Albuquerque, New Mexico, with various interested governmental and private entities to explore existing or potential flexibility in water delivery schedules that might avoid dewatering of the Rio Grande within the range of the Rio Grande silvery minnow. The Service also published notices of the proposal in 5 local newspapers and mailed copies of the proposed rule to 148 different government agencies, private organizations, and interested individuals, including all counties having lands that border the area being proposed for critical habitat designation. Two public hearings were also held. The Service has fully met or surpassed the requirements of the Endangered Species Act for public notification.

Issue 8: The Service held public hearings only to fulfill a legal obligation and will not pay attention to any public comment. The Service should have held public hearings in El Paso and Las Cruces.

Response: The Service disagrees. All comments are carefully evaluated before the Service makes a determination on whether to proceed with a final rule. Numerous notifications of the proposed rule and extension of the comment period were distributed, and Service biologists traveled to several areas, including El Paso and Las Cruces, to present briefings on the proposed rule and accept comments.

Issue 9: The Service should establish a coordinating committee composed of interests below Elephant Butte Reservoir whose task would be to develop a full-scale report on the existing data available on the Rio Grande silvery minnow and how the river could be managed for the benefit of all, including the Rio Grande silvery minnow.

Response: After the species is listed the Service will consider, through the recovery planning process, establishing a coordinating committee to develop a report on the Rio Grande silvery minnow and how the river could be managed for the benefit of all, including the Rio Grande silvery minnow.

Issue 10: During periods of dewatering of the river, the ditches provide habitat for the species. The Service should consider exploring with the Middle Rio Grande Conservancy District, the counties, and other agencies the multiple use of riverside drains for the species and the preservation of bosque habitat.

Response: The Service agrees that during periods of drought, which result in the dewatering of the mainstream Rio Grande, the various irrigation ditches and drains may provide a temporary place of refuge for the Rio Grande silvery minnow. However, these areas do not contain suitable habitat for long-term use by the species. Few Rio Grande silvery minnows are found in the ditches and drains. Those that are found are believed to represent Rio Grande silvery minnows that became entrapped due to the diversion of irrigation water from the mainstream. The Service intends to investigate, with all interests, the potential use of the riverside drains for recovery of the species.

Issue 11: Few data exist on the abundance of the species on Pueblo lands or whether it can survive in the mud and sand when the river bed is dry.

Response: The Service used all available biological information in making the determination to list the Rio Grande silvery minnow as an endangered species. Recent census data from Pueblo lands are reported by Bestgen and Platania (1991), Platania and Bestgen (1988), Platania and Clemmer (1984), and the U.S. Bureau of Reclamation (1992). As additional information becomes available, including information from Pueblo waters, the Service will use that

information in the recovery planning process. The Service hopes that, through initiation of recovery efforts for the species, and in cooperation with the Pueblos, additional information can be obtained on the status of the species on Pueblo lands. The Service has no scientific data indicating that the species survives in the mud and sand during periods when the river is dry.

Issue 12: Competition between *H. amarus* and its congener *H. placitus* could have also contributed to extirpation of the species from the Pecos River. Studies should be conducted to determine if predation or competition by non-native fishes impacts the species. The studies should not just determine if it is a problem, they should also determine where and to what extent it is a problem.

Response: The Service has no data to substantiate any reasons for extirpation of the Rio Grande silvery minnow from the Pecos River and replacement by its congener *H. placitus*. Competition may have been a factor in its extirpation; however, it is more likely that hybridization between the two species was the primary factor. Studies designed to determine if predation or competition by non-native fishes impacts the survival of the Rio Grande silvery minnow will be conducted as part of recovery efforts for the species.

Issue 13: Recent biological studies have been conducted during a period of high flow; therefore, the results of those studies do not accurately reflect the distribution of the species under normal conditions.

Response: It is true that, other than 1989, recent data have been collected during a period of higher than normal flow. However, even these data show that the species is not as abundant as it was during other periods of above-normal flow. This leads to a conclusion that factors other than flow may be impacting the species and its habitat.

Issue 14: It seems a fair conclusion that the Cochiti downstream reach is no longer favorable habitat because of lowered water temperatures and degradation of favored *H. amarus* substrate. This further limits the area in which the species has to survive.

Response: Although the reach immediately downstream of Cochiti Dam may not be favorable habitat for the Rio Grande silvery minnow, it is not known how far downstream these conditions persist. As part of recovery efforts for the species, studies will be conducted on this question, and attempts may be made to correct the unfavorable conditions.

Issue 15: Since little is known of feeding habits or reproduction, the

information in the recovery planning process. The Service hopes that, through initiation of recovery efforts for the species, and in cooperation with the Pueblos, additional information can be obtained on the status of the species on Pueblo lands. The Service has no scientific data indicating that the species survives in the mud and sand during periods when the river is dry.

Issue 12: Competition between *H. amarus* and its congener *H. placitus* could have also contributed to extirpation of the species from the Pecos River. Studies should be conducted to determine if predation or competition by non-native fishes impacts the species. The studies should not just determine if it is a problem, they should also determine where and to what extent it is a problem.

Response: The Service has no data to substantiate any reasons for extirpation of the Rio Grande silvery minnow from the Pecos River and replacement by its congener *H. placitus*. Competition may have been a factor in its extirpation; however, it is more likely that hybridization between the two species was the primary factor. Studies designed to determine if predation or competition by non-native fishes impacts the survival of the Rio Grande silvery minnow will be conducted as part of recovery efforts for the species.

Issue 13: Recent biological studies have been conducted during a period of high flow; therefore, the results of those studies do not accurately reflect the distribution of the species under normal conditions.

Response: It is true that, other than 1989, recent data have been collected during a period of higher than normal flow. However, even these data show that the species is not as abundant as it was during other periods of above-normal flow. This leads to a conclusion that factors other than flow may be impacting the species and its habitat.

Issue 14: It seems a fair conclusion that the Cochiti downstream reach is no longer favorable habitat because of lowered water temperatures and degradation of favored *H. amarus* substrate. This further limits the area in which the species has to survive.

Response: Although the reach immediately downstream of Cochiti Dam may not be favorable habitat for the Rio Grande silvery minnow, it is not known how far downstream these conditions persist. As part of recovery efforts for the species, studies will be conducted on this question, and attempts may be made to correct the unfavorable conditions.

Issue 15: Since little is known of feeding habits or reproduction, the claim that channel modification would adversely affect the Rio Grande silvery minnow is not supported by the best scientific evidence. Changes in food supply, not water supply, may be a factor affecting the species in the Rio Grande. Also, the effects of non-native plants upon the habitat need to be investigated.

Response: Recent data have shown that spawning activity occurs during peak spring and early-summer flows. The fertilized eggs drift with the current for about 24 hours and then hatch. The larval fish continue to drift downstream until they are swept into calm backwater and edge areas where food is abundant and they can continue to grow. Because of this spawning behavior, any modifications to the channel that result in changes that sweep the eggs and larval fish into less favorable habitats would adversely affect the species. There are no data presently available to support the contention that a reason for decline of the species was a decrease in the species' food supply or the invasion of non-native plants. As part of recovery efforts, the impacts of all habitat modifications will be investigated to determine if and how they impact the species.

Issue 16: Very little information was presented at the public hearing or in the **Federal Register** to show a cause-and-effect relationship between water quality and decline of the species.

Response: Limited information exists on the relationship between water quality and the decline of the species. A better understanding of this relationship will be developed as a result of recovery efforts.

Issue 17: The proposed listing of the Rio Grande silvery minnow is just a part of a much larger problem—the modification of the floodplain. Are activities at Bosque del Apache National Wildlife Refuge (NWR) affecting the species?

Response: The Service agrees. Listing the species will invoke protective provisions of the Act, such as those contained in section 7. The Service has no information that indicates activities at Bosque del Apache NWR impact the species. The Service will work with Federal agencies, including Bosque del Apache NWR, to ensure that their actions do not jeopardize the species through adverse effects on the floodplain. In addition, the Service is involved in several cooperative efforts with Federal, State, and private entities to protect the Rio Grande Bosque and associated floodplain.

Issue 18: The facts presented in the status report do not support the conclusion that "anticipated additional modifications" would limit prospects of survival for the species in the middle Rio Grande.

Response: The facts presented in the status report do support the conclusion that "anticipated additional modifications" would limit prospects of survival for the species in the middle Rio Grande. According to the authors of the status report, "Conservation measures are necessary as continued habitat and flow modifications, introductions of non-native species, and lack of refugia threaten survival of *H. amarus*." The present status of the species is such that any activity that could negatively impact the species may limit prospects for its survival.

Issue 19: Only two facts support listing; that the species is presently found in only 5 percent of its historic range, and that other fish native to the middle Rio Grande (Rio Grande bluntnose shiner, phantom shiner, Rio Grande shiner, and speckled chub) have been extirpated from the river. The Service does not have adequate data to support the conclusion that the Rio Grande silvery minnow is endangered and should be listed under the Act.

Response: The Service agrees that the above two facts support listing. However, other facts that support listing include the species' decrease in abundance within the area it presently occupies, and its extirpation from the Pecos River after the introduction of the plains minnow into that system. The Service concludes, as detailed in the "Summary of Factors" section, that there is sufficient evidence to support listing the species as endangered under the Act. The Service reviewed the best scientific and commercial data available to make this determination.

Issue 20: The Rio Grande silvery minnow is not a distinct species. It is just a local population of the Mississippi silvery minnow. The Service should consider conducting studies for two years on the species' taxonomy.

Response: The Service has taxonomic information that verifies the Rio Grande silvery minnow as a distinct species. The Rio Grande silvery minnow is recognized by the American Fisheries Society, which is considered the scientific authority for the names of fishes, as a full species (American Fisheries Society 1991). Cook et al. (1992), using starch gel electrophoretic methods, found that phenetic and phylogenetic analyses corroborated the hypothesis that *H. amarus* is distinct at the species level from *H. nuchalis* and *H. placitus*, with which it was previously grouped.

Issue 21: The Service has not conducted in-depth studies to determine the number of silvery minnows that exist in the Middle Rio Grande Valley and associated drainage ditches. The species may be doing well without protection of the Federal government.

Response: Since 1987, studies have been conducted to document the population of Rio Grande silvery minnows in both the Middle Rio Grande Valley and its associated irrigation and drainage ditches from Velarde to Elephant Butte Reservoir, New Mexico. These studies have shown that very few Rio Grande silvery minnows survive in the drainage ditches. The listing is based, in part, upon the extirpation of the species from about 95 percent of its historic range. The species was once thought to be one of the most numerous fish in the Rio Grande. In 50 fish collections made between Bernalillo and Elephant Butte Reservoir between 1987 and 1988, the Rio Grande silvery minnow was the second most abundant species, comprising 18 percent of the total fish collected. From 1989 to 1992, 56 collections were made in the same area and only 3 Rio Grande silvery minnows were collected. During that period, the Rio Grande silvery minnow went from being the second most abundant native fish species to the least abundant native species (Platania 1993). The Service believes that without the protection afforded through Federal listing, the species is likely to become extinct. Two native Rio Grande fish species have already become extinct.

Issue 22: The fish exist in stretches of the river that have been subject to drying for at least 50 years, but have disappeared from areas where there has been instream flow for the past 50 years.

Response: The Service agrees that the species has persisted in reaches of the river that have experienced seasonal drying during the past 50 years and has been extirpated from reaches where there has been continual flow during the last 50 years. In the past, during periods of extremely low flow, the species survived in areas where irrigation water returned to the river, in seepage and leakage pools located downstream of irrigation diversion dams, and, prior to construction of Cochiti Dam, in the canyon reach of the Rio Grande upstream of Cochiti. Prior to the construction of irrigation and flood control dams in the southwest, it was not unusual for portions of major rivers to become dry during periods of drought. During these drought periods, native fishes would retreat to canyon reaches where permanent water existed. After the drought ended, they would re-inhabit the reaches of river that had formerly been dry. There was a constant expansion and contraction of fish populations. Construction of mainstream dams prevented this movement and may have contributed to the extitirpation of downstream populations of native fishes.

The reasons for the extirpation of the species from continual flow reaches of the river are not known but probably relate to factors other than flow. Changes in species composition, flow regimes, and water quality could all have been causative factors in the decline of the Rio Grande silvery minnow from these areas. Even in those areas where the species presently persists, its abundance has been substantially reduced (Platania 1993).

Issue 23: Listing is not necessary because of existing protection that is afforded the species by the requirements of the Coordination Act, National Environmental Policy Act, and other habitat protection regulations, such as section 404 of the Clean Water Act. Any activity that could affect the habitat of the species would have to undergo these reviews, including the Middle Rio Grande Conservancy District's work on its structures. Such work could not be done with impunity. Protection is also provided to the species because of its listing as endangered by the State of New Mexico.

Response: To date, the species has declined even with these regulations in place. These regulations do not ensure that habitat for the Rio Grande silvery minnow will be protected. Listing of the species by the State of New Mexico only regulates collecting of the species. It does not provide protection for its habitat or for its recovery. The Service believes the protective mechanisms of the Act are necessary to prevent the species' extinction.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Rio Grande silvery minnow should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*), and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Rio Grande silvery minnow (*Hybognathus amarus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The only existing population of *H. amarus* continues to be threatened by annual dewatering of a large percentage of its habitat. This dewatering is primarily the result of diversion of river flow for agriculture within the Middle Rio Grande Valley of New Mexico. During a year when an average or above-average amount of water is available, the impacts of the diversions are not severe. During a below-average water year, the river channel may be dry from Isleta Diversion Dam downstream about 179 km (111 mi) to the headwaters of Elephant Butte Reservoir for two months or more. When two below-average flow years occur consecutively, a short-lived species such as *H. amarus* can be severely affected, if not completely eliminated from the dry reaches of river. During the 94 years for which flow records have been maintained for the middle Rio Grande, it has not been unusual for the 245 km (153 mi) reach of the Rio Grande from the Angostura Diversion Dam downstream to Elephant Butte Reservoir to experience periods of no flow. Even before construction of mainstream dams, the middle Rio Grande frequently experienced periods of no flow. During such periods, it is suspected *H. amarus* survived in areas where irrigation return flows re-entered the river, in the pools formed by water leaking through the gates of the diversion dams, in the irrigation ditches and drains, and in the reaches of stream above the diversions from which their offspring could repopulate downstream reaches when conditions permitted. It is not known why these same factors do not provide sufficient habitat to support *H. amarus* under current conditions. Other factors, such as an increase in non-native and exotic fish species, or an increase in contamination may be exacerbating the stress placed upon the species during low-flow periods.

Mainstream dams permit the artificial regulation of flow, prevent flooding, trap nutrients, alter sediment transport, prolong flows, and create reservoirs that favor non-native fish species. These changes may affect the Rio Grande silvery minnow by reducing its food supply, altering its preferred habitat, preventing dispersal, and providing a continual supply of non-native fishes that may compete with or prey upon the species. Altering flow regimes may also improve conditions for other native fish species that occupy the same habitat as the Rio Grande silvery minnow and may thereby cause their populations to

expand at the expense of the Rio Grande silvery minnow.

Since completion of Elephant Butte Dam in 1916, four additional mainstream dams have been constructed on the middle Rio Grande, and two dams have been constructed on one of its major tributaries, the Rio Chama (Shupe and Williams 1988). Construction and operation of these dams, which are either irrigation diversion dams such as Angostura, Isleta, and San Acacia; or flood control and water storage dams such as Elephant Butte, Cochiti, Abiquiu, and El Vado, have modified the natural flow of the river. The dams make it possible during a low-flow year to completely divert all of the flow from the river channel into irrigation ditches. The species does not persist in the irrigation ditches or the low-flow conveyance channel. Platania (1993) collected fish samples from 11 locations along the low-flow conveyance channel between 1987–1989 and failed to locate any Rio Grande silvery minnows. The dams also store spring runoff and summer inflow, which would normally cause flooding, and release this water back into the river channel over a prolonged period of time. This release is often made during the winter months when low flows would normally occur. Artificially-controlled flows depart significantly from natural conditions. Reduced flows may limit the amount of preferred habitat available to the species and may limit dispersal of the species. Although the mechanisms of how the decline of the species occurred are not fully understood, manipulation of flow may be one of the primary reasons *H. amarus* has been extirpated from portions of its historic range.

Channelization of the middle Rio Grande has resulted primarily from the placement of Kellner jetty fields, or jacks, along the river. They are designed to protect the levees by retarding flood flows, trapping sediment, and promoting the establishment of vegetation. Since 1951, the Bureau of Reclamation and Corps have installed in excess of 100,000 individual jetties occupying more than 2,000 ha (5,000 ac) (Bullard and Wells 1992).

From Elephant Butte Dam downstream about 325 km (200 mi) to its confluence with the Rio Conchos, the Rio Grande is fully controlled by reservoir releases and irrigation return flows. Meanders, oxbows and other components of historic aquatic habitat have been eliminated in order to pass water as efficiently as possible for agricultural irrigation and downstream deliveries. These changes affected the Rio Grande silvery minnow by altering

expand at the expense of the Rio Grande silvery minnow.

Since completion of Elephant Butte Dam in 1916, four additional mainstream dams have been constructed on the middle Rio Grande, and two dams have been constructed on one of its major tributaries, the Rio Chama (Shupe and Williams 1988). Construction and operation of these dams, which are either irrigation diversion dams such as Angostura, Isleta, and San Acacia; or flood control and water storage dams such as Elephant Butte, Cochiti, Abiquiu, and El Vado, have modified the natural flow of the river. The dams make it possible during a low-flow year to completely divert all of the flow from the river channel into irrigation ditches. The species does not persist in the irrigation ditches or the low-flow conveyance channel. Platania (1993) collected fish samples from 11 locations along the low-flow conveyance channel between 1987–1989 and failed to locate any Rio Grande silvery minnows. The dams also store spring runoff and summer inflow, which would normally cause flooding, and release this water back into the river channel over a prolonged period of time. This release is often made during the winter months when low flows would normally occur. Artificially-controlled flows depart significantly from natural conditions. Reduced flows may limit the amount of preferred habitat available to the species and may limit dispersal of the species. Although the mechanisms of how the decline of the species occurred are not fully understood, manipulation of flow may be one of the primary reasons *H. amarus* has been extirpated from portions of its historic range.

Channelization of the middle Rio Grande has resulted primarily from the placement of Kellner jetty fields, or jacks, along the river. They are designed to protect the levees by retarding flood flows, trapping sediment, and promoting the establishment of vegetation. Since 1951, the Bureau of Reclamation and Corps have installed in excess of 100,000 individual jetties occupying more than 2,000 ha (5,000 ac) (Bullard and Wells 1992).

From Elephant Butte Dam downstream about 325 km (200 mi) to its confluence with the Rio Conchos, the Rio Grande is fully controlled by reservoir releases and irrigation return flows. Meanders, oxbows and other components of historic aquatic habitat have been eliminated in order to pass water as efficiently as possible for agricultural irrigation and downstream deliveries. These changes affected the Rio Grande silvery minnow by altering its habitat to the extent that its survival was not possible. The sandy substrate, which it prefers, has been replaced by gravel and cobble, and no backwater areas exist where the young can develop. Winter flows released from Caballo Dam often equal .06 cubic meters per second (2 cubic feet per second), which is not enough flow to maintain habitat for fishes.

In 1958, in an effort to meet Rio Grande Compact water delivery requirements, the Bureau of Reclamation initiated operation of a 97 km (60 mi) long conveyance channel from San Acacia to Elephant Butte Reservoir. The purpose of the conveyance channel is to divert all flow less than 63 cubic meters per second (2000 cubic feet per second) in order to prevent loss of the Rio Grande flow to seepage and evaporation from the aggraded riverbed. Prior to 1985, the conveyance channel had been operated to its full capacity for about 28 years. Since 1985, it has not been operated at full capacity. If, however, the channel were to be operated at full capacity, the natural stream bed downstream of San Acacia would be dry more frequently and for longer periods of time. Both the Corps and the Bureau of Reclamation are drafting plans to rehabilitate and protect the conveyance channel in order to bring it into full operation. Should the conveyance channel be placed in full operation, the portion of the Rio Grande silvery minnow's habitat downstream of San Acacia dam would be desiccated when river flows at the dam became less than 63 cubic meters per second (2000 cubic feet per second), resulting in death or displacement of individuals.

Water diversions also occur above the Middle Rio Grande Valley in both Colorado and New Mexico. These diversions, which provide irrigation for about 248,000 ha (620,000 ac) in Colorado and about 24,400 ha (61,000 ac) in New Mexico, have a significant effect on flows (Cruz et al. 1993). In addition to these upstream diversions, about 94,000 acre-feet of water are diverted annually from the San Juan River basin and transported via a tunnel into the Rio Grande basin. This diversion may benefit the species since it is used to supplement flows during periods of low flow.

Growth of agriculture and cities along the Rio Grande during the last century may have adversely affected the quality of the river's water. During low-flow periods, a large percentage of the river's flow consists of municipal and agricultural discharge and less water is available to dilute pollutants. This degradation of water quality may affect *H. amarus* survival. Poor water quality in the Rio Grande near Albuquerque, especially during low flows, may be a problem, as low numbers of *H. amarus* and an overall reduced fish community are found there (Bestgen and Platania 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

It is not presently known if the species is being overutilized for commercial, recreational, scientific, or educational purposes. New Mexico Department of Game and Fish controls scientific taking of the species through a permit process. Licensed commercial bait dealers may sell bait minnows only within the drainage where they have been collected. They are also restricted from selling any State-listed fish species. However, it has been demonstrated on the Pecos River, New Mexico, that often the dealers and retailers cannot identify listed fish species. Utilization of the species for recreational purposes could occur should an individual unknowingly collect the species while gathering bait minnows for personal use.

C. Disease or Predation

When fish are forced into confined habitats due to low flow, they are more susceptible to both disease and predation. Predation takes place when non-native species, including northern pike (*Esox lucius*), walleye (*Stizostedion vitreum*), white crappie (*Pomoxis annularis*), white bass (*Morone chrysops*), black and brown bullheads (*Ameiurus melas, A. nebulosus*), smallmouth bass (*Micropterus dolomieui*), and largemouth bass (*Micropterus salmoides*) are confined, during low flow or no flow, in limited habitat with *H. amarus* and other native species. These species have been introduced primarily by State and Federal fish and wildlife management agencies in efforts to develop sport fisheries in reservoirs created by the mainstream dams. The species have not remained confined to the reservoirs and have become established in the river both upstream from the impoundments and downstream of the dams where it is suspected they may compete with *H. amarus* for space and food in addition to preying upon them. Native predatory fish species, including the Rio Grande chub (*Gila pandora*) and bluegill (*Lepomis macrochirus*), may also prey upon subadult *H. amarus* under these circumstances. Avian and mammalian predation probably increases when *H. amarus* become confined in small clear-water pools.

Confining fish to pools causes stress that can often result in outbreaks of parasitic disease. Most notable is parasitism by the protozoan *Ichthyophthirius multifilis*, which can be promoted by stress. External parasites, such as the copepod *Lernaea*, are more common among fish in confined conditions. No studies have been conducted on the impact of disease and parasites upon *H. amarus;* therefore, the significance of these threats for existing populations of the species is not known. However, stress-induced outbreaks may be exacerbated when high levels of pollutants or other stresses are present.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of New Mexico lists *H. amarus* as an endangered species, Group 2 (New Mexico Department of Game and Fish 1993), which includes those species ". . . whose prospects of survival or recruitment within the State are likely to be in jeopardy within the foreseeable future." This listing provides the protection of the New Mexico Wildlife Conservation Act (Section 17–2–37 through 17–2–46 NMSA 1978) and prohibits taking of such species except under the issuance of a scientific collecting permit. The protection afforded to the species by the State does not provide protection to the habitat upon which the species depends.

New Mexico water law does not include provisions for acquisition of instream water rights for protection of fish and wildlife and their habitats. This has been a major factor affecting the survival of species dependent upon the presence of instream flow. Agencies responsible for administering water rights have been unable to administer the rights in a manner that protects, maintains, and recovers the Rio Grande silvery minnow. Under the existing water rights administration, two native fish species in the Rio Grande have become extinct, and two others have been extirpated.

State Game and Fish regulations in New Mexico allow the use of live minnows, including those brought into the State from other drainages, for sport fishing. This practice has encouraged the spread of these species, one of which, the plains minnow, has completely replaced and/or hybridized with *H. amarus* in the Pecos River.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

In 1979, Cowley discovered the introduction of plains minnow (*H. placitus*) into the Pecos River drainage, New Mexico, from collections made as early as 1968, and also recognized the disappearance of native *H. amarus*. The last known collections of *H. amarus* from the Pecos River took place in 1968 near Roswell, New Mexico. These same collections verified the first specimens of *H. placitus* from the river. It is suspected, because of the widespread use of *H. placitus* as a commercial bait species, that its introduction into the Pecos River was the result of release of bait fish by anglers.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Rio Grande silvery minnow (*Hybognathus amarus*) as endangered throughout its historic range. A decision to take no action would constitute failure to properly classify this species pursuant to the Endangered Species Act and would exclude it from protection of the Act. The Service believes threatened status is not the proper classification for the species because of the extremely limited habitat the species presently occupies and the threats it faces. Endangered status is appropriate because of the significantly reduced range and declining abundance of the species, and because of the remaining threats to this fish and its habitat. Without Federal protection, the Rio Grande silvery minnow can be expected to become extinct in the foreseeable future.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Section 4(b)(6)(C) states that a concurrent critical habitat designation is not required, and that the final decision on designation may be postponed for 1 year from the date of publication of the final rule to list the species. Section 4(b)(6)(C)(ii) allows the Service to delay critical habitat designation if it is not then determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service is in the process of evaluating the information obtained during the comment period on the economic impacts of designating critical habitat, and has started the process of having an economic analysis prepared on the proposed critical habitat designation. The complexities and extent of the activities that must be assessed preclude completion of the economic analysis within the 1-year deadline for listing the species. The completed draft economic analysis will be made available for public review and comment. The final decision on designation of critical habitat for the Rio Grande silvery minnow must be made by March 1, 1995, pursuant to section 4(b)(6)(C)(ii) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions that are expected to occur that may affect the survival of *H. amarus* include the operation and maintenance of dams and other structures that regulate the flow of water in the Rio Grande. Federal agencies that serve as water managers and decision-makers who determine timing and amount of flow in the river include the International Boundary and Water Commission, which ensures delivery of water to Mexico under international treaties; the Bureau of Reclamation, which has played an important role in water development in the middle Rio Grande and has been actively involved in the major water supply networks of the basin; and the Corps, which is responsible for controlling any dredging or filling within navigable waterways and associated wetlands under section 404 of the Clean Water Act. The Corps also has constructed and operates Abiquiu, Cochiti, Galisteo, and Jemez dams to control flood waters and sediment in the Rio Grande. The Environmental Protection Agency oversees water quality issues that may affect the river. In addition, actions on the northern pueblos that are funded, authorized, or carried out by the Bureau of Indian Affairs may affect the Rio Grande silvery minnow.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any

Species	Common name / Scientific name	
Fishes		
Minnow, Rio Grande silvery.	*Hybognathus amarus*	U.S. M

Dated: June 30, 1994.

Mollie H. Beattie

Director, Fish and Wildlife Service.

[FR Doc. 94–17576 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–55–P

water to Mexico under international treaties; the Bureau of Reclamation, which has played an important role in water development in the middle Rio Grande and has been actively involved in the major water supply networks of the basin; and the Corps, which is responsible for controlling any dredging or filling within navigable waterways and associated wetlands under section 404 of the Clean Water Act. The Corps also has constructed and operates Abiquiu, Cochiti, Galisteo, and Jemez dams to control flood waters and sediment in the Rio Grande. The Environmental Protection Agency oversees water quality issues that may affect the river. In addition, actions on the northern pueblos that are funded, authorized, or carried out by the Bureau of Indian Affairs may affect the Rio Grande silvery minnow.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. This species is not in trade, and such permit requests are not expected.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the State Supervisor, New Mexico Ecological Services State Office (see **ADDRESSES** section).

Author: The primary author of this final rule is Gerald L. Burton (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "FISHES", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species	Common name / Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Fishes							
Minnow, Rio Grande silvery.	*Hybognathus amarus*	U.S.A. (NM, TX), Mexico.	Entire	E	541	NA	NA

Dated: June 30, 1994.

Mollie H. Beattie

Director, Fish and Wildlife Service.

[FR Doc. 94–17576 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 59, No. 138
Wednesday, July 20, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–135–1]

Imported Fire Ant; Addition of Authorized Chemical Treatment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the appendix to the imported fire ant regulations to add the insecticide tefluthrin (FORCE®) to the list of authorized chemicals for the treatment of containerized nursery stock that is to be certified for interstate movement from quarantined areas. We are also proposing to add provisions regarding the proper use of tefluthrin. This action would give nurseries another choice of insecticides with which to meet the certification requirement for interstate movement of containerized nursery stock.

DATES: Consideration will be given only to comments received on or before August 19, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–135–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Brittingham, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

Imported fire ants, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are aggressive, stinging insects that, in large numbers, can seriously injure or even kill livestock, pets, and humans. Imported fire ants feed on crops, and their large, hard mounds damage farm and field machinery.

The restrictions in "Subpart—Imported Fire Ant" (7 CFR §§ 301.81 through 301.81–10, referred to below as "the regulations") prevent the spread of the imported fire ant (IFA) on articles moving interstate by quarantining IFA-infested States or IFA-infested areas within States and imposing restrictions on the interstate movement of certain articles, known as regulated articles, from these quarantined States or areas.

Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment before interstate movement must be treated in accordance with the methods and procedures prescribed in the Appendix to Subpart "Imported Fire Ant"—Portion of "Imported Fire Ant Program Manual" (referred to below as "the Appendix"). The Appendix sets forth the treatment provisions of the "Imported Fire Ant Program Manual."

Research recently conducted by the Animal and Plant Health Inspection Service (APHIS) Imported Fire Ant Methods Development Station in Gulfport, MS, has shown that the insecticide tefluthrin, in granular form, is effective at a dosage rate of 25 parts per million (ppm) in treating soil or potting media to prevent the spread of the imported fire ant. Based on this research, APHIS has determined that containerized nursery stock could be certified for interstate movement after treatment with granular tefluthrin at a dosage rate of 25 ppm.

The insecticide tefluthrin is registered with the United States Environmental Protection Agency (EPA). In May 1993, EPA approved a label, providing for a dosage rate of 25 ppm, for the use of granular tefluthrin in treating soil or potting media for the imported fire ant. We are proposing to revise the Appendix by adding granular tefluthrin to the list of authorized chemicals for the treatment of regulated articles under the regulations.

We are also proposing to: (1) Amend paragraph III.C.3. of the Appendix by adding provisions regarding the material to be treated, the dosage rate, and the exposure period, and by adding a new "Method E—Granular Incorporation (Tefluthrin);" (2) amend paragraph III.C.4., under the "Exclusion" heading, to allow tefluthrin to be used as an alternative to bifenthrin in treating soil or potting media for plants grown on the premises to prevent infestation with or spread of the imported fire ant; and (3) amend paragraph III.C.4., under the "Enforcement" heading, by adding "tefluthrin" to a reference to chemical treatments that are described in paragraph III.C.3. of the Appendix.

We are not proposing that tefluthrin be used as an alternative to bifenthrin for treating plants received from outside sources (under the "Exclusion" heading). Drench applications are used to treat plants received from outside sources, and tefluthrin is only approved for granular incorporation. Drench application is more thorough than topical application or granular incorporation, and is therefore the most effective treatment for plants received from outside sources which may not have already been treated for the imported fire ant.

In addition, we are proposing to make two miscellaneous changes in paragraph III.C.4. The first, under the "Exclusion" heading, would add the word "drench" immediately after the word "bifenthrin" in paragraph (b), to make it clear that only drench applications are to be used in treating plants received from outside sources. The second miscellaneous change, under the "Enforcement" heading, would remove the word "liquid" before the phrase "liquid chlorpyrifos and bifenthrin" to make it clear that the bifenthrin can be in either liquid or granular form.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the Appendix to the imported fire ant regulations to allow the use of the insecticide tefluthrin (FORCE®), in granular form, for the treatment of containerized nursery stock that is to be certified for interstate movement from areas quarantined for imported fire ant.

Approximately 2,645 nurseries move containerized nursery stock interstate from quarantined areas each year. Twelve of these nurseries would be considered large; 2,633 would be considered small, with annual sales below $500,000.

Current regulations allow for the incorporation of granular bifenthrin for the treatment of containerized nursery stock that is to be certified for interstate movement from quarantined areas. A 50-pound bag of granular bifenthrin currently retails for about $38.50. The expected retail price for tefluthrin is not available, but should be comparable to that of bifenthrin. For this reason, APHIS anticipates that the economic impact to nurseries that use these products would not be significant.

The addition of tefluthrin to the list of authorized chemicals would give nurseries another choice of insecticides so they could choose whichever product best suits their needs, and would provide a backup in case one of the insecticides is taken off the market or is unavailable for any reason. The addition of tefluthrin could also stimulate competition for imported fire ant insecticides, which could drive down prices for all chemicals authorized under the IFA program. If this were to happen, nurseries would benefit by lower treatment costs.

We do not anticipate that there would be a noticeable impact on small entities that distribute agricultural chemicals. Distributors of agricultural chemicals are diversified businesses that sell a wide variety of chemicals, fertilizers, and other farm and nursery supplies.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with

insecticide tefluthrin (FORCE®), in granular form, for the treatment of containerized nursery stock that is to be certified for interstate movement from areas quarantined for imported fire ant.

Approximately 2,645 nurseries move containerized nursery stock interstate from quarantined areas each year. Twelve of these nurseries would be considered large; 2,633 would be considered small, with annual sales below $500,000.

Current regulations allow for the incorporation of granular bifenthrin for the treatment of containerized nursery stock that is to be certified for interstate movement from quarantined areas. A 50-pound bag of granular bifenthrin currently retails for about $38.50. The expected retail price for tefluthrin is not available, but should be comparable to that of bifenthrin. For this reason, APHIS anticipates that the economic impact to nurseries that use these products would not be significant.

The addition of tefluthrin to the list of authorized chemicals would give nurseries another choice of insecticides so they could choose whichever product best suits their needs, and would provide a backup in case one of the insecticides is taken off the market or is unavailable for any reason. The addition of tefluthrin could also stimulate competition for imported fire ant insecticides, which could drive down prices for all chemicals authorized under the IFA program. If this were to happen, nurseries would benefit by lower treatment costs.

We do not anticipate that there would be a noticeable impact on small entities that distribute agricultural chemicals. Distributors of agricultural chemicals are diversified businesses that sell a wide variety of chemicals, fertilizers, and other farm and nursery supplies.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this proposed rule. The assessment provides a basis for our conclusion that use of tefluthrin at the dosage rate of 25 ppm would not present a risk of disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 would be amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301, Subpart—Imported Fire Ant, Appendix to the subpart, would be amended as follows:

Appendix to Subpart [Amended]

a. In paragraph III.B., under the "Insecticides" heading, "Tefluthrin (FORCE®)" would be added following "Fenoxycarb (AWARD®)".

b. Paragraph III.C.3.c. would be redesignated as paragraph III.C.3.d., and a new paragraph III.C.3.c. would be added to read as set forth below.

c. In newly redesignated paragraph III.C.3.d., the introductory text, the phrase "chlorpyrifos and bifenthrin" would be removed and the phrase "chlorpyrifos, bifenthrin, or tefluthrin" would be added in its place; and a new "Method E—Granular Incorporation (Tefluthrin)" would be added at the end of the paragraph, to read as set forth below.

d. In paragraph III.C.4., under the "Exclusion" heading, paragraph (b), introductory text, the word "drench" would be added immediately after the word "bifenthrin"; and a new entry, titled "*Tefluthrin*", would be added following paragraph (b)(3) to read as set forth below.

e. In paragraph III.C.4., under the "Enforcement" heading, in the sixth paragraph, the phrase "liquid chlorpyrifos or bifenthrin" would be removed and the phrase "chlorpyrifos, bifenthrin, or tefluthrin" would be added in its place.

Subpart—Imported Fire Ant

* * * * *

Appendix to Subpart "Imported Fire Ant"—Portion of "Imported Fire Ant Program Manual" [8]

III. Regulatory Procedures

* * * * *

C. Approved Treatments.

* * * * *

3. Plants—Balled or in Containers.

* * * * *

c. Tefluthrin: Granular Formulation.

Material: Granular tefluthrin—incorporation into soil or potting media for containerized nursery stock.

Dosage: Dosage rate is 25 ppm. The amount of granular tefluthrin needed to achieve 25 ppm varies with the bulk density of the soil or potting media.

---

[8] A copy of the entire "Imported Fire Ant Program Manual" may be obtained from the Administrator, c/o Domestic and Emergency Operations, PPQ, APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Follow label directions to calculate the amount of granular tefluthrin needed to achieve 25 ppm.

Exposure period: Containerized nursery stock can be certified for interstate movement from quarantined areas immediately upon completion of the treatment.

d. * * *

* * * * *

Method E—Granular Incorporation (Tefluthrin)

Apply tefluthrin according to the label directions for granular incorporation. Mix thoroughly to distribute the granular tefluthrin evenly throughout the soil or potting media. After potting, containers must be watered to the point of saturation.

Precautions: Saturation of the soil or potting media with the tefluthrin is essential. Water that drains from the treatment area, which may contain tefluthrin, must be disposed of in accordance with State and local laws.

4. Imported-Fire-Ant-Free Nursery—Containerized Plants Only

* * * * *

Exclusion

* * * * *

Tefluthrin

For plants grown on the premises: Treatment of soil or potting media with granular tefluthrin prior to planting is permitted as an alternative to treatment with granular or wettable powder formulation of bifenthrin. This treatment reduces the risk of infestation of containers by alate queens flying in from adjacent or nearby infested premises. The dosage rate is 25 ppm.

Apply this treatment according to the label directions.

Mixing must be adequate to blend the required dosage of granular tefluthrin throughout the entire soil or potting media.

* * * * *

Done in Washington, DC, this 14th day of July 1994.

B. Glen Lee,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17632 Filed 7–19–94; 8:45 am]

BILLING CODE 3410–34–P

Rural Electrification Administration

7 CFR Part 1710

Credit Support of Power Supply Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: On June 2, 1994, the Rural Electrification Administration (REA) published an advance notice of proposed rulemaking requesting public comment on REA's policies on credit support required in connection with loans to power supply borrowers (G&T's). In response to requests from members of the public, REA is reopening the comment period on this advance notice.

DATES: Written comments and recommendations must be received by REA by August 17, 1994.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Electrification Administration, room 2234, 14th and Independence Avenue, SW., Washington, DC 20250–1500. REA requires a signed original and three copies of all comments (7 CFR 1700.30(e)). All comments received will be made available for public inspection in room 2234–S (address as above) during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, room 2234–S, at the above address. Telephone: (202) 720–0736.

SUPPLEMENTARY INFORMATION: On June 2, 1994, at 59 FR 28495, the Rural Electrification Administration (REA) published an advance notice of proposed rulemaking on 7 CFR part 1710 on REA's credit support policies for REA power supply borrowers. The advance notice had a 45-day period for public comments which ended on July 18. Because of requests from the public for more time to prepare responses, REA is extending this public comment period by 30 days. The new comment period will expire on August 17, 1994.

Dated: July 14, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–17631 Filed 7–19–94; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–48–AD]

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive that is applicable to certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes. This proposal would require modification of the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment. This proposal is prompted by a report of loss of a propeller and engine gearbox, which resulted in damage to the fuselage. There has also been a report that a modification was implemented in the elevator control cables during manufacture, which reduced the maximum physical separation between the elevator controls and the monitoring equipment. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane in the event that debris from an engine burst or propeller failure were to strike the fuselage and sever the elevator flight controls.

DATES: Comments must be received by September 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–48–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–48–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes. The DGAC advises of a recent incident involving a Model ATR42–300 in which loss of a propeller and engine gearbox damaged the fuselage in the right-hand propeller plane of rotation. The DGAC also advises that a modification was implemented in the elevator control cables during manufacture that reduced the maximum physical separation between the elevator controls and the monitoring equipment. This reduced separation could allow severing of the elevator flight controls in the event that debris from an engine burst or propeller

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–48–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–48–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes. The DGAC advises of a recent incident involving a Model ATR42–300 in which loss of a propeller and engine gearbox damaged the fuselage in the right-hand propeller plane of rotation. The DGAC also advises that a modification was implemented in the elevator control cables during manufacture that reduced the maximum physical separation between the elevator controls and the monitoring equipment. This reduced separation could allow severing of the elevator flight controls in the event that debris from an engine burst or propeller failure were to strike the fuselage. This condition, if not corrected, could result in reduced controllability of the airplane.

Aerospatiale has issued Service Bulletins ATR42–27–0068, and ATR42–27–0069, both dated January 25, 1994, that describe procedures for rerouting the wiring between the normal mechanical pitch controls and the normal electric pitch trim controls, and between the normal mechanical pitch controls and the pitch trim dissymmetry monitoring equipment. Accomplishment of this modification is intended to restore maximum physical separation between the elevator controls and the monitoring equipment. The DGAC has issued French Airworthiness Directive 93–205–052(B), as revised by Erratum, dated February 2, 1994, to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 110 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 49 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $296,450, or $2,695 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 94–NM–48–AD.

Applicability: Model ATR42–200, –300, and –320 series airplanes; as listed in Aerospatiale Service Bulletin ATR42–27–0068 and ATR42–27–0069, both dated January 25, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment, in accordance with

Aerospatiale Service Bulletin ATR42–27–0068 or ATR42–27–0069, both dated January 25, 1994, as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 13, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17591 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AD72

Computing Benefit Amounts, Disposing of Underpayments, Resolving Overpayments, and Payment Restriction

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing to revise our rules on computation of benefits to define the term "first becomes eligible" as it relates to a pension based on noncovered employment. We are also revising the computation rules to provide that we will consider all government service used by a pension-paying agency when we determine whether an individual first became eligible before 1986 for a pension based on noncovered employment. We are also revising our rule on determining fault regarding overpayments to state that benefit deductions because of net earnings from self-employment are not applicable after an individual attains age 70. Additionally, we are revising our rules on underpayments to clarify a misleading cross reference. Finally, we are updating the list of countries to which benefit payments are withheld because of Treasury Department restrictions.

DATES: Your comments will be considered if we receive them no later than September 19, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–0869, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register.** To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471 for information about these rules.

SUPPLEMENTARY INFORMATION: Section 215(a)(7) of the Social Security Act (the Act) requires us to perform a modified computation of the primary insurance amount (the basic benefit amount) of an individual's old-age or disability insurance benefit if the individual first becomes eligible after 1985 for such a benefit and for a monthly periodic payment based on noncovered employment. The modified computation affects individuals who are concurrently entitled to such a monthly periodic payment and to old-age or disability benefits under title II of the Act. It results in a lower primary insurance amount that would have been computed if the monthly periodic payment had been considered. However, neither the Act nor our regulations at 20 CFR 404.213 define the phrase "first becomes eligible."

In defining "first becomes eligible," we have identified two interpretations which pertain to the date creditable service is acquired. One interpretation is that an individual first becomes eligible when he or she has currently acquired enough service to qualify for a pension. The other interpretation is that an individual first becomes eligible when he or she has acquired enough service to qualify for a pension, regardless of when the service was acquired.

We recently became aware that some individuals have purchased credit for prior service, e.g., military service, which could affect their eligibility date and allow them to become eligible before 1986 for a monthly pension based on noncovered employment. Such an individual would thus be excluded from the modified computation because he or she first became eligible for the monthly pension before 1986. There is no restriction in the Act which precludes using purchased credit to establish eligibility before 1986 for a monthly pension based on noncovered employment and we see no reason not to consider purchased credits when deciding whether the modified computation applies.

We have adopted the interpretation that we will consider all applicable service used by the pension-paying agency, regardless of when the service was acquired. Under this interpretation, an individual "first becomes eligible" for a monthly periodic payment for the first month (including a past month) that the individual meets all the requirements for the payment except stopping work or applying for the payment. We, therefore, propose to amend § 404.213(a) to include the definition of "first becomes eligible" and our policy on applicable service.

Regarding underpayments, the current § 404.503(b), which reflects section 204(d) of the Act, provides that if an individual dies before receiving a title II benefit payment, the underpayment so created is payable to a person or persons in an order of priority as specified in that section. Paragraph (3) of § 404.503(b) provides that if there is no one higher in the order of priority, the underpayment may be paid to the "parent or parents of the deceased individual (as defined in § 404.374) entitled to monthly benefit on the basis of the same earnings record as was the deceased individual" in the month of death. Under paragraph (6) of § 404.503(b), if there is no one higher in the order of priority, the underpayment may be paid to the "parent or parents of the deceased individual (as defined in § 404.374) who do not qualify under paragraph (b)(3)."

Section 404.374 defines "parent" as the natural, adoptive, or stepparent of an *insured* person and is based on the statutory requirements for eligibility for benefits as the parent of an insured worker. However, these stringent criteria are not required for purposes of receiving an underpayment. Section 204(d) (3) and (6) of the Act require only that the individual be the parent of the deceased underpaid beneficiary. The cross reference to § 404.374 in § 404.503(b) (3) and (6) results in an unduly restrictive definition of a parent who is eligible for an underpayment. We are, therefore, proposing to revise § 404.503(b) (3) and (6) so that for purposes of eligibility for an underpayment, the definition of "parent" in § 404.374 is extended to a parent of any deceased individual who was entitled to social security benefits.

Regarding overpayments, we are amending § 404.510, which lists the situations where an individual may be considered to be "without fault" for accepting an incorrect benefit payment. Paragraph (*l*) of that section explains that the overpaid individual may be "without fault" in causing the overpayment if he or she reasonably believed that net earnings from self-employment after attaining age 72 in a taxable year would not be cause for deductions from benefits for months in the year of attaining age 72 that are before the month of attainment. For months after 1982, the age at which social security beneficiaries are no longer subject to an earnings test has been reduced from age 72 to age 70. This reduction from age 72 to 70 is based on section 302 of Pub. L. 95–216 (the Social Security Amendments of 1977) which became effective for months after December 1982, as provided in section 2204 of Pub. L. 97–35 (the Omnibus Budget Reconciliation Act of 1981). We are, therefore, revising § 404.510(*l*) to change age 72 to age 70 for months after December 1982.

Our final amendment in these regulations is to delete Albania and the German Democratic Republic from the list in § 404.460 of countries to which the Department of the Treasury will not send benefit checks. On November 7, 1991, The Department of the Treasury removed the German Democratic Republic from the Withheld Check List set out in 31 CFR 211.1 by publishing final rules in the **Federal Register** at 56 FR 56931. On September 30, 1992, the Department removed Albania from the list by publishing final rules in the **Federal Register** at 57 FR 44998.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were not subject to OMB review.

receiving an underpayment. Section 204(d) (3) and (6) of the Act require only that the individual be the parent of the deceased underpaid beneficiary. The cross reference to § 404.374 in § 404.503(b) (3) and (6) results in an unduly restrictive definition of a parent who is eligible for an underpayment. We are, therefore, proposing to revise § 404.503(b) (3) and (6) so that for purposes of eligibility for an underpayment, the definition of "parent" in § 404.374 is extended to a parent of any deceased individual who was entitled to social security benefits.

Regarding overpayments, we are amending § 404.510, which lists the situations where an individual may be considered to be "without fault" for accepting an incorrect benefit payment. Paragraph (*l*) of that section explains that the overpaid individual may be "without fault" in causing the overpayment if he or she reasonably believed that net earnings from self-employment after attaining age 72 in a taxable year would not be cause for deductions from benefits for months in the year of attaining age 72 that are before the month of attainment. For months after 1982, the age at which social security beneficiaries are no longer subject to an earnings test has been reduced from age 72 to age 70. This reduction from age 72 to 70 is based on section 302 of Pub. L. 95–216 (the Social Security Amendments of 1977) which became effective for months after December 1982, as provided in section 2204 of Pub. L. 97–35 (the Omnibus Budget Reconciliation Act of 1981). We are, therefore, revising § 404.510(*l*) to change age 72 to age 70 for months after December 1982.

Our final amendment in these regulations is to delete Albania and the German Democratic Republic from the list in § 404.460 of countries to which the Department of the Treasury will not send benefit checks. On November 7, 1991, The Department of the Treasury removed the German Democratic Republic from the Withheld Check List set out in 31 CFR 211.1 by publishing final rules in the **Federal Register** at 56 FR 56931. On September 30, 1992, the Department removed Albania from the list by publishing final rules in the **Federal Register** at 57 FR 44998.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed rules impose no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.805 Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Blind disability benefits, Old-age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

Dated: May 27, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: July 7, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we are proposing to amend Subparts C, E, and F of Part 404 of 20 CFR Chapter III as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for Subpart C of Part 404 continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 1102 of the Social Security Act; 42 U.S.C. 402(a), 405(a), 415, and 1302.

2. Section 404.213 is amended by adding two sentences after the first sentence of paragraph (a)(3) to read as follows:

§ 404.213 Computation where you are eligible for a pension based on your noncovered employment.

(a) * * *

(3) * * *

We consider you to first become eligible for a monthly pension in the first month for which you met all requirements for the pension except that you were working or had not yet applied. In determining whether you are eligible for a pension before 1986, we consider all applicable service used by the pension-paying agency. * * *

* * * * *

3. The authority citation for Subpart E of Part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a), and (e), 205(a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424, 427, and 1302.

4. Section 404.460 is amended by revising the list of countries in paragraph (c)(3) to read as follows:

§ 404.460 Nonpayment of monthly benefits of aliens outside the United States.

* * * * *

(c) * * *

(3) * * *

Cuba, Democratic Kampuchea (formerly Cambodia), North Korea, Vietnam.

* * * * *

5. The authority citation for Subpart F of Part 404 continues to read as follows:

Authority: Secs. 204(a)–(d), 205(a), and 1102 of the Social Security Act; 31 U.S.C 3720A; 42 U.S.C. 404(a(c)(1)(iv)(C)–(d), 405(a), and 1302.

6. Section 404.503 is amended by revising paragraphs (b)(3) and (b)(6) to read as follows:

§ 404.503 Underpayments.

* * * * *

(b) * * *

(3) The parent or parents of the deceased individual, entitled to a monthly benefit on the basis of the same earnings record as was the deceased individual for the month in which such individual died (if more than one such parent, in equal shares to each such parent). For this purpose, the definition of "parent" in § 404.374 includes the parent(s) of any deceased individual who was entitled to benefits under title II of the Act.

* * * * *

(6) The parent or parents of the deceased individual, who do not qualify under paragraph (b)(3) of this section (of more than one such parent, in equal shares to each such parent). For this purpose, the definition of "parent" in § 404.374 includes the parent(s) of any deceased individual who was entitled to benefits under title II of the Act.

* * * * *

7. Section 404.510 is amended by revising paragraphs (l) to read as follows:

§ 404.510 When an individual is "without fault" in a deduction-overpayment.

* * * * *

(l) Reasonable belief, with respect to earnings activity for months after December 1982, that net earnings from

self-employment after attainment of age 70 (age 72 for months after December 1972 and before January 1983) in the taxable year in which such age was attained would not cause deductions (see § 404.430(a)) with respect to benefits payable for months in that taxable year prior to the attainment of such age.

* * * * *

[FR Doc. 94–17401 Filed 7–19–94, 8:45 am]
BILLING CODE 4190–25–M

20 CFR Part 404

RIN 0960–AD79

Federal Old-Age, Survivors and Disability Insurance; Changes in Evidence Required To Presume a Person Is Dead

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed regulations would provide that, under title II of the Social Security Act (the Act), a presumption of death arises when the claimant established an individual has been absent from his or her residence and not heard from for 7 years. Once the presumption is made, the burden then shifts to us to rebut the presumption either by presenting evidence that the missing individual is still alive or by providing an explanation to account for the individual's absence in a manner consistent with continued life rather than death.

DATES: To be sure your comments are considered, we must receive them no later than September 19, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. 1585, Baltimore, MD 21235. Alternatively, you may fax you comments to the Commissioner of Social Security at (410) 966–0869 or deliver them to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between 8:00 a.n and 4:30 P.M. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1769.

SUPPLEMENTARY INFORMATION:

Background

Under title II of the Act, a lump sum death payment and monthly survivors' benefits may be payable based on the earnings of a deceased insured person. In order to ensure that these benefits are not paid based on mere desertion, any inquiry into entitlement begins with an assumption that a person last known to be alive is still living, and that a person's failure to communicate with a few people and to return to a particular place do not, in themselves, give rise to a presumption of death. To establish eligibility for such benefits, the claimant must establish that the insured person is dead. If proof of death (as described in §§ 404.720(b) and (c)) is unavailable, we will presume an insured person is dead if certain evidence is presented. Under the present § 404.721(b), such evidence includes signed statements by those in a position to know and other records which show that the person has been absent from his or her residence *for no apparent reason*, and has not been heard from for at least 7 years.

This evidentiary requirement has yielded two very different interpretations. It has long been our policy that the claimant must present the evidence necessary to establish that he or she is entitled to benefits. Accordingly, for us to presume that an insured person is dead, the claimant must establish that the insured person not only has not been heard from for at least 7 years, but also that he or she has been absent from his or her residence for no apparent reason. If the insured person's absence can be attributer to known domestic or financial difficulties or to some other rational reason for leaving home, death is not presumed. We are not required to establish that the insured person is still alive to explain the person's absence.

In contrast to our interpretation, a number of United States Courts of Appeals have issued decisions which have presumed the death of a missing person despite the existence of other reasonable explanations for the person's absence. These court decisions have held that a presumption of death arises under our regulations when the claimant shows that a person has been absent from his or her residence and not heard from for 7 years. Once the claimant has made this showing, these decisions state that the Secretary bears the burden of rebutting the presumption of death either by presenting evidence showing that the missing person is alive or by providing an explanation to account for the individual's absence in a manner that is consistent with continued life. As a result of these court decisions, we published Social Security Acquiescence Rulings applicable in the Third, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits which adopt this interpretation of § 404.721.

We published a Notice of Proposed Rulemaking (NPRM) on February 29, 1984, (49 FR 7405–7406), containing proposed revisions of § 404.721 which we hoped would clarify the regulation to avoid the varying interpretations of the regulation made by the courts. Under the previously proposed regulation, we would presume the death of the insured person if signed statements by persons, who were in a position to know, and other evidence showed that all three of the following requirements were met:

(1) The insured person has not had contact of any kind with any relatives, dependents, employers, or friends for at least 7 years.

(2) A diligent search was conducted with the air of the appropriate authorities reasonably soon after the insured person's disappearance, but the search failed to locate or explain the absence of the insured person.

(3) Circumstances surrounding the insured person's disappearance allow no reasonable explanation of that person's absence other than death.

After much deliberation, we have decided that we will not adopt the rule published in the NPRM. This NPRM withdraws the NPRM published at 49 FR 7405–7406 on February 29, 1984.

In light of the Social Security Acquiescence Rulings, we are now administering two different standards with respect to presumption of death for entitlement purposes. One standard is based on our historical interpretation of the regulation; the other on the Social Security Acquiescence Rulings issued for the seven different circuits as the result of appellate court decisions. We have reevaluated our policies and are proposing to revise the existing regulation and establish a national policy based on the interpretation set forth by the courts.

Also, we propose to revise the regulations to include a new section which will contain information on evidence which will rebut a presumption of death. Current regulations do not provide guidance on what constitutes evidence to rebut a presumption of death.

The proposed regulations will provide that the presumption of death arises when the claimant establishes an individual has been absent from his or her residence and not heard from for 7 years. Once the presumption is made, the burden then shifts to us to rebut the presumption either by presenting evidence that the missing individual is still alive or by providing an explanation to account for the individual's absence in a manner consistent with continued life rather than death.

We will remove reference to establishing no apparent reason for the absence from § 404.721(b). We will provide rules concerning the rebuttal of a presumption of death in proposed § 404.722, a new section to the regulations. This section will provide that a presumption of death made based on § 404.721(b) will be rebutted if there is evidence available that the person is still alive or the absence can be explained in a manner consistent with continued life rather than death. We will also make a conforming change to § 404.988 (conditions for reopening) to reflect the proposed change in § 404.721(b).

We will rescind the following Social Security Acquiescence Rulings by publishing a notice in the **Federal Register** when we publish these rules as final in the **Federal Register** AR 86–6(3); AR 86–7(5); AR 86–8(6); AR 86–9(9); AR 86–10(10); AR 86–11(11); and AR 93–6(8).

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant impact on a substantial number of small entities because these rules will only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; and 93.805, Social Security-Survivors Insurance.)

List of Subjects in 20 CFR 404

Administrative practice and procedure; Aged, Blind, Death benefits; Old-age, Survivors, and Disability

presumption either by presenting evidence that the missing individual is still alive or by providing an explanation to account for the individual's absence in a manner consistent with continued life rather than death.

We will remove reference to establishing no apparent reason for the absence from § 404.721(b). We will provide rules concerning the rebuttal of a presumption of death in proposed § 404.722, a new section to the regulations. This section will provide that a presumption of death made based on § 404.721(b) will be rebutted if there is evidence available that the person is still alive or the absence can be explained in a manner consistent with continued life rather than death. We will also make a conforming change to § 404.988 (conditions for reopening) to reflect the proposed change in § 404.721(b).

We will rescind the following Social Security Acquiescence Rulings by publishing a notice in the **Federal Register** when we publish these rules as final in the **Federal Register** AR 86–6(3); AR 86–7(5); AR 86–8(6); AR 86–9(9); AR 86–10(10); AR 86–11(11); and AR 93–6(8).

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant impact on a substantial number of small entities because these rules will only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; and 93.805, Social Security-Survivors Insurance.)

List of Subjects in 20 CFR 404

Administrative practice and procedure; Aged, Blind, Death benefits; Old-age, Survivors, and Disability insurance; Reporting and recordkeeping requirements, Social Security.

Dated: May 17, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: July 7, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we are proposing to amend Subparts H and J of Part 404 of 20 CFR Chapter III as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for Subpart H of Part 404 continues to read as follows:

Authority: Secs. 205(a) and 1102 of the Social Security Act; 42 U.S.C. 405(a) and 1302.

§ 404.721 [Amended]

2. Section 404.721(b) is amended by removing "for no apparent reasons," and by removing the comma between "from" and "for" in the first sentence; and by removing "If there is no evidence available that he or she is still alive" in the second sentence and substituting the words "If the presumption of death is not rebutted pursuant to § 404.722" in its place.

3. New section 404.722 is added to read as follows:

§ 404.722 Rebuttal of a Presumption of Death.

A presumption of death made based on § 404.721(b) can be rebutted by evidence that establishes that the person is still alive or explains the individual's absence in a manner consistent with continued life rather than death.

Example 1: Evidence in a claim for surviving child's benefits showed that the worker had wages posted to his earnings record in the year following the disappearance. It was established that the wages belonged to the worker and were for work done after his "disappearance." In this situation, the presumption of death is rebutted by evidence (wages belonging to the worker) that the person is still alive after the disappearance.

Example 2: Evidence shows that the worker left the family home shortly after woman, whom he had been seeing, also disappeared, and that the worker phoned his wife several days after the disappearance to state he intended to begin a new life in California. In this situation the presumption of death is rebutted because the evidence explains the worker's absence in a manner consistent with continued life.

4. The authority citation for Subpart J of Part 404 continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 40 U.S.C. 401(j), 405(a), (b), and (d)–(h), 421(d), and 1302.

5. Paragraph (c)(4) introductory text and (c)(4)(i) of § 404.988 are revised to read as follows:

§ 404.988 Conditions for reopening.

* * * * *

(c) * * *

(4) Your claim was denied because you did not prove that a person died, and the death is later established—

(i) By a presumption of death under § 404.721(b); or,

(ii) * * *

* * * * *

[FR Doc. 94–17402 Filed 7–19–94; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 80, 82, 84, 87, 88, and 90

[CGD 94–011]

RIN 2115–AE72

Inland Navigation Rules; Lighting Provisions

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend certain technical lighting provisions and interpretive regulations supplementing the Inland Navigation Rules. These proposed changes will bring certain U.S. technical rules into conformity with amendments to the International Regulations for Preventing Collisions at Sea (72 COLREGS) scheduled to become effective in November, 1995. In addition, at the request of the Navigation Safety Advisory Council (NAVSAC), the Coast Guard is proposing several interpretive regulations to clarify ambiguities in the rules.

DATES: Comments must be received on or before September 19, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–011), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through

Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, executive Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Epstein, Navigation Rules and Information Branch, Office of Navigation Safety and Waterway Services, (202) 267–0352 or (202) 267–0357.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 94–011) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Jonathan Epstein, Project Manager, Office of Navigation Safety and Waterway Services, and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

The Inland Navigation Rules and the International Regulations for Preventing Collisions at Sea (72 COLREGS) provide Rules governing all vessels on inland waters and on the high seas, respectively. In order to maintain consistency between the 72 COLREGS and the Inland Navigation Rules, the Coast Guard is proposing to revise certain technical rules to conform with amendments to the 72 COLREGS scheduled to become effective in November 1995. The Coast Guard anticipates that these proposed revisions, if adopted, would also become effective November 1995 to coincide with the effective date of the COLREGS amendments. In no case would the amendments become effective before November, 1995.

In addition, the Navigation Safety Advisory Council (NAVSAC), a congressionally mandated advisory group, has been reviewing the Inland Navigation Rules for consistency with the 72 COLREGS. As part of this ongoing review, NAVSAC has recommended several regulatory changes to clarify ambiguities in practical application of the rules as well as to bring the Inland Navigation Rules into closer conformity with the 72 COLREGS.

Discussion of Proposed Amendments to Conform to 72 COLREGS Changes

In November 1995, eight amendments to the 72 COLREGS will become effective. NAVSAC has endorsed amending the Inland Navigation Rules technical annexes to reflect these changes to the 72 COLREGS. These proposed amendments deal primarily with light placement requirements.

Masthead Lights for Vessels Less Than 20 Meters in Length (§ 84.05)

The Coast Guard is proposing to revise 33 CFR 84.05 to allow vessels less than 20 meters in length to carry their masthead light as far forward as is practicable. This would result in no substantive change for mariners because Inland Navigation Rule 23(a) already provides that vessels less than 20 meters in length may carry their masthead lights as far forward as is practicable. However, this proposed change to § 84.05 would maintain parallel language between the Inland Navigation Rules and the 72 COLREGS. Although the 72 COLREGS amendment was originally based on a U.S. proposal to the International Maritime Organization (IMO) to amend Rule 23(a)(i), the IMO Subcommittee chose to amend technical Annex I rather than Rule 23(a)(i). The proposed revision will ease compliance for mariners who will be able to refer to parallel language in Annex I of the 72 COLREGS and Annex I of the Inland Rules.

Use of Two Lights To Meet Angular Sector Requirements (§ 84.17)

This proposed amendment would allow the pairing of light fixtures to ensure all round visibility of navigation lights. This change would maintain consistency with the corresponding 72 COLREGS amendment. On a vessel with a mast of large diameter, such as a warship or a vessel with a combined smoke stack and mast configuration, it is often structurally impractical to mount a single all around light at a sufficient distance from the mast to meet the 6° angular cutout requirements of the Navigation Rules, which prescribe a maximum 6° blind zone. This problem can be addressed either through the use of two separate lights adequately screened, or two lights close enough together that they appear, for all practical purposes, as one light. This proposed regulation will specifically allow the use of two lights sufficiently screened or placed near enough together that they appear as one light at a distance of one mile. Two unscreened all-around lights that are 1.28 meters (4.2 feet) apart or less will appear as one light to the naked eye at a distance of one mile.

High Speed Craft (§ 84.27)

This proposed amendment would allow modern high speed catamarans and other craft of unusually wide design to carry masthead lights at a lower level than would otherwise be prescribed by the rules. This change will keep the Inland Annex I in conformity with an amendment to the 72 COLREGS Annex I. The proposal would create a new provision for high speed craft. The proposed definition of high speed craft is the same as is used in IMO's "Draft Code of Safety of High Speed Craft". This change recognizes that existing light placement requirements based on traditional ship design are often impractical when dealing with non-traditional designs such as catamarans and SWATH (Small Waterplane Area Twin Hull) craft. The proposed definition of high speed craft includes a formula which captures those vessels, such as hydrofoils and hovercraft, that can exceed conventional craft hull speed through use of dynamically supportable hull designs. The corresponding 72 COLREGS amendment was drafted such that modern catamaran and non-displacement craft that are unusually wide relative to their length and capable of speeds generally in excess of 25 knots, would not be required to carry their masthead light at a heights unreasonable for the size of the vessel. This new provision would apply to vessels that meet the definitional requirements for both high speed craft and have a length to breadth ratio of less than three-to-one. The following example illustrates the calculations for mast height on a vessel meeting the definitional requirements: A high speed catamaran ferry, 59 meters in length with a 20 meter beam, may carry its forward masthead light 5.1 meters above the sidelights, instead of 8 meters above the hull. (Sidelights need only be placed above the hull high enough so as not to be interfered with by deck lights). The definition of "high speed craft" is based on a formula that compares displacement to maximum speed. Generally hydrofoils, surface effect ships, some light monohulls and catamarans will meet this definition, while conventional displacement vessels, tankers, fishing vessels and container ships, will not. Certain high powered displacement vessels such as frigates or destroyers may meet this definition but would not meet the length to breadth ratio requirements. Because compliance with the proposed provision for high speed craft would be required only in lieu of compliance with § 84.03(a)(1), existing vessels need not modify their light configurations.

IMO considered extending the use of the yellow light provided for in Rule 23(b) for air-cushioned vessels to all high speed craft. However, this light is intended to draw to the attention of other vessels the possibility that an air-cushioned vessel may be proceeding at a large yaw angle. Thus, the navigation lights may not give an accurate indication of the track made good. Therefore, the IMO determined that extending the use of the yellow light to all high speed craft would be inappropriate.

Radar Transponders (§ 87.1)

In order to maintain consistency with the 72 COLREGS, this rulemaking proposes to add the use of survival craft radar transponders to the list of distress signals included in 33 CFR 87.1. The 1988 amendments to the Safety of Life at Sea Convention (SOLAS), in Regulation III/26.1.4, require that cargo and passenger ships subject to SOLAS carry Search and Rescue Transponders (SARTS) for use in survival craft. A SART is a radar transponder that responds automatically to most surface navigation radars allowing rescuers to quickly locate a vessel or survival craft. Carriage requirements and specifications for SARTS are codified in Federal Communication Commission regulations at 47 CFR 80.1095, which are referenced in the proposed revision.

apply to vessels that meet the definitional requirements for both high speed craft and have a length to breadth ratio of less than three-to-one. The following example illustrates the calculations for mast height on a vessel meeting the definitional requirements: A high speed catamaran ferry, 59 meters in length with a 20 meter beam, may carry its forward masthead light 5.1 meters above the sidelights, instead of 8 meters above the hull. (Sidelights need only be placed above the hull high enough so as not to be interfered with by deck lights). The definition of "high speed craft" is based on a formula that compares displacement to maximum speed. Generally hydrofoils, surface effect ships, some light monohulls and catamarans will meet this definition, while conventional displacement vessels, tankers, fishing vessels and container ships, will not. Certain high powered displacement vessels such as frigates or destroyers may meet this definition but would not meet the length to breadth ratio requirements. Because compliance with the proposed provision for high speed craft would be required only in lieu of compliance with § 84.03(a)(1), existing vessels need not modify their light configurations.

IMO considered extending the use of the yellow light provided for in Rule 23(b) for air-cushioned vessels to all high speed craft. However, this light is intended to draw to the attention of other vessels the possibility that an air-cushioned vessel may be proceeding at a large yaw angle. Thus, the navigation lights may not give an accurate indication of the track made good. Therefore, the IMO determined that extending the use of the yellow light to all high speed craft would be inappropriate.

Radar Transponders (§ 87.1)

In order to maintain consistency with the 72 COLREGS, this rulemaking proposes to add the use of survival craft radar transponders to the list of distress signals included in 33 CFR 87.1. The 1988 amendments to the Safety of Life at Sea Convention (SOLAS), in Regulation III/26.1.4, require that cargo and passenger ships subject to SOLAS carry Search and Rescue Transponders (SARTS) for use in survival craft. A SART is a radar transponder that responds automatically to most surface navigation radars allowing rescuers to quickly locate a vessel or survival craft. Carriage requirements and specifications for SARTS are codified in Federal Communication Commission regulations at 47 CFR 80.1095, which are referenced in the proposed revision.

Discussion of Other Proposed Regulations

Lights on Moored Barges (§ 82.5, 88.13, 90.5)

These proposed amendments to the Pilot Rules, the interpretive rules of the 72 COLREGS and the interpretive rules of the Inland Rules, will clarify the responsibilities of vessels moored to mooring buoys or other similar devices.

Rule 30 of the 72 COLREGS and Rule 30 of the Inland Navigation Rules provide lighting requirements for vessels at anchor, without specifically mentioning vessels moored to mooring buoys. The Coast Guard proposes interpretive rules to clarify that the term "vessels at anchor" in Rule 30 of the 72 COLREGS and the Inland Rules rules is to be interpreted to include vessels moored to a mooring buoy.

Recognizing the need to specify safe lighting procedures for vessels moored to a mooring buoys, the Coast Guard presented this issue first to the Navigation Safety Advisory Council (NAVSAC), and then, at their request, to the Towing Safety Advisory Council (TSAC) and the National Boating Safety Advisory Council (BSAC). Although reaching different formulations, all three advisory groups agreed that a vessel moored to a mooring buoy or other similar device should be lighted as a vessel at anchor in accordance with Rule 30.

The groups also agreed however, that barges should be lighted on the corners in a scheme to that provided in 33 CFR 88.13 for barges moored to a bank or dock. Information indicates that most barge operators already light barges on the corners. Not only does this lighting scheme provide better definition of the size and dimensions of the barge(s) than a single anchor light, but by placing the lights near the sides, it allows a better vertical visibility of small boats. Additionally, the Coast Guard has determined that it would be appropriate to require such lights on barges to be visible for one nautical mile, and to otherwise meet the technical standards for marine lights as provided in 33 CFR 84.15 (Annex I to the Inland Navigation Rules). Currently, barges moored along banks or docks are required to carry two unobstructed white lights of an intensity to be visible for at least one mile on a clear dark night (33 CFR 88.13(b)). This requirement has led to confusion in the maritime community. In a recent allision between a tug and tow and moored barges, the limited visibility of the lights on the moored barges was a contributing factor in the allision. Barge operators can easily meet the proposed requirement. Marine light fixtures meeting this standard are required for recreational vessels operating at night. Therefore, these fixtures are readily available and inexpensive.

In consideration of the foregoing, the proposed interpretive rules of § 90.5 (Inland) and § 82.5 (COLREGS) provide that a vessel moored to a mooring buoy be lighted as a vessel at anchor, in accordance with Rule 30, except that barges, unless otherwise authorized by the Coast Guard Captain of the Port (COTP), shall be lighted in accordance with § 88.13. However, the exception provided in Inland and COLREGS Rule 30(e) for vessels less than 7 meters in length, and Inland Rule 30(g) for vessels less than 20 meters in length in special anchorage areas would also apply to vessels moored to mooring buoys.

The proposed additions to the Pilot Rules at § 88.13 will prescribe, unless otherwise authorized by the Coast Guard Captain of the Port (COTP), a different lighting scheme for barges (generally, a white light on each corner). This scheme is already customary practice in many parts of the country. However, in particular circumstances the COTP could authorize that a barge be lighted in another manner. For example, the COTP could authorize a barge to be lighted as a vessel at anchor. This could arise where it would be safer for a barge moored in relatively open water to light with fore and aft anchor lights with a visibility of three miles in lieu of four lights with a visibility of only one mile.

The Coast Guard, through proposed § 82.5, intends to require these lighting schemes for barges on all U.S. navigable waters including COLREGS waters, specifically, Alaskan waters, Puget Sound and other heavily trafficked U.S. waters which are COLREGS waters for the purposes of the Rules. This type of special regulation for U.S. navigable waters is within the special rules exception of COLREGS Rule 1(b).

Barge Sidelights (§ 82.7, 90.7)

Improper lighting of barges has been a contributory factor in some accidents involving recreational boaters and has been the subject of periodic Congressional interest. This interpretative regulation will clarify the requirements of Rule 24 of the 72 COLREGS and Rule 24 of the Inland Rules for barge sidelights and thereby help to reduce the incidence of improper lighting of barges.

The U.S. delegation to the IMO raised the issue of sidelights on unmanned barges with the Subcommittee on Safety of Navigation. It was agreed that sidelights powered with existing battery technology could not meet the vertical

sector requirements for larger vessels under the 72 COLREGS. It was further agreed that an unmanned barge, unable to meet the technical lighting requirements, could meet the requirements under COLREGS Rule 24(h). Rule 24(h) allows a vessel or object being towed to exhibit alternative lighting where it is impracticable to light the vessel as prescribed in paragraphs (e) or (g) of Rule 24. A Commandant Instruction to this effect was issued on May 10, 1989. (Commandant Instruction 16672.3A International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS); Lights for Unmanned Barges.). The instruction indicates that those lighting unmanned barges may avail themselves of the Rules 24(h) exception. This exception pertains to the "vertical sector" technical requirements only. This has been the source of some confusion to mariners who have asserted that paragraph (h) exempts them from other provisions of Rule 24 as well. The proposed interpretive rules will make clear that in all other respects, the sidelights must meet all the technical requirements of the Inland Rules for vessels of that size. This would preclude the use of known non-marine light fixtures. Failure to comply with Inland Rule technical requirements, except the vertical sector requirements under Rule 24(h), where appropriate, could subject a mariner to civil penalties. Including this interpretation in §§ 82.7 and 90.7 will help to ensure that mariners are aware of the correct interpretation of Rule 24 and its exception in paragraph (h).

Corrections to COLREGS Demarcation lines (§ 80)

This proposal also includes corrections to several errors in the description of COLREGS demarcation lines in 33 CFR part 80. COLREGS demarcation lines are codified boundaries that delineate the applicability of either the Inland Navigation Rules or COLREGS. These lines are marked on navigational charts. The first correction is to the geographic coordinates in § 80.501 and § 80.520. While these lines are correctly depicted on navigational charts, their description in the Code of Federal Regulations includes inadvertent errors. This rule also proposes to correct several errors in § 80.1495, which misspells Johnston Island; refers to Canton Island, which was returned to the Republic of Kirbati in the late 1970s, as a U.S. Possession; and refers to the Trust Territory of the Pacific Islands which was dissolved in 1987.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The only proposed provision involving potential costs to mariners is the proposed rule that would require moored barges to display lights in accordance with prescribed lighting schemes meeting certain minimum standards. This lighting scheme is consistent with existing industry practice. The Coast Guard estimates that a relatively small proportion of bargetowboat owners are not equipped to light their barges as prescribed by this NPRM. For those persons that do not have lights meeting appropriate standards, the cost is de minimus. An all-round white light fixture costs approximately $12.00. Because most barge lights are placed onboard temporarily by fleeting or towboats when necessary, and barges fleeted together would be lighted as one unit, it is difficult to accurately estimate the number of lights that would be required to be purchased by an individual mariner or maritime company. However, because of the low unit cost, the impact on any one operator will be minimal. The Coast Guard specifically requests comments from the industry regarding the expected costs of the proposed rules.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include (1) small not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The only potential economic impact would be cost of marine type fixtures. As discussed above, that cost is de minimus. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under federal law, authority to issue regulations to implement the Inland Navigational Rules is vested in the Secretary of transportation and delegated to the Coast Guard. Therefore, if this rule become final, the Coast Guard intends it to preempt State action addressing this subject matter.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 80

Navigation (water), Treaties Waterways.

33 CFR Part 82

Navigation (water), Treaties.

33 CFR Part 84

Navigation (water), Waterways.

33 CFR Part 87

Navigation (water), Waterways.

33 CFR Part 88

Navigation (water), Waterways.

33 CFR Part 90

Navigation (water), Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR parts 80, 82, 84, 87, 88 and 90 as follows:

PART 80—COLREGS DEMARCATION LINES

1. The authority citation for part 80 continues to read as follows:

Authority: 14 U.S.C. 2; 14 U.S.C. 633; 33 U.S.C. 151(a); 49 CFR 1.46.

2. In § 80.501, paragraph (d) is revised to read as follows:

§ 80.501 Tom's River, NJ to Cape May, NJ.

* * * * *

(d) A line drawn from the southern most point of Longport at latitude 39°18.2′ N. longitude 74°33.1′ W. to the northeastern-most point of Ocean City at latitude 39°17.6′ N. longitude 74°33.1′ W. across Great Egg Harbor Inlet.

* * * * *

3. In § 80.520, paragraph (a) is revised to read as follows:

§ 80.502 Cape Hatteras, NC to Cape Lookout, NC.

(a) A line drawn from Hatteras Inlet Lookout Tower at latitude 35°11.8′ N. Longitude 75°44.9′ W. 255° true to the eastern end of Ocracoke Island.

* * * * *

4. Section 80.1495 is revised as follows:

§ 80.1495 U.S. Pacific Island Possessions.

The 72 COLREGS shall apply on the bays, harbors, lagoons, and waters surrounding the U.S. Pacific Island Possessions of American Samoa, and Baker, Howland, Jarvis, Johnston, Palmyra, Swains and Wake Islands.

PART 82—72 COLREGS: INTERPRETATIVE RULES

5. The authority citation for part 82 is revised to read as follows:

Authority: 14 U.S.C. 2, 663; 33 U.S.C. 1602; E.O. 11964; 49 CFR 1.46(n).

6. Section 82.5 is added to read as follows:

§ 82.5 - Lights for moored vessels.

For the purposes of Rule 30 of the 72 COLREGS, a "vessel at anchor" includes a vessel made fast to one or more mooring buoys or other similar device attached to the bottom. Such a vessel shall be lighted as a vessel at anchor in accordance with Rule 30, except that a barge, unless otherwise authorized by the cognizant Coast Guard Captain of the Port (COTP), shall meet the applicable requirements of 33 CFR 88.13.

7. Section 82.7 is added to read as follows:

§ 82.7 Sidelights for unmanned barges.

An unmanned barge complies with Rule 24 of the 72 COLREGS even if it is unable to meet the technical vertical sector requirements for sidelights as prescribed in Annex I(10) paragraphs (a) and (c) of the 72 COLREGS, if the sidelights meet all other technical requirements of these rules, such as

2. In § 80.501, paragraph (d) is revised to read as follows:

§ 80.501 Tom's River, NJ to Cape May, NJ.

* * * * *

(d) A line drawn from the southern most point of Longport at latitude 39°18.2′ N. longitude 74°33.1′ W. to the northeastern-most point of Ocean City at latitude 39°17.6′ N. longitude 74°33.1′ W. across Great Egg Harbor Inlet.

* * * * *

3. In § 80.520, paragraph (a) is revised to read as follows:

§ 80.502 Cape Hatteras, NC to Cape Lookout, NC.

(a) A line drawn from Hatteras Inlet Lookout Tower at latitude 35°11.8′ N. Longitude 75°44.9′ W. 255° true to the eastern end of Ocracoke Island.

* * * * *

4. Section 80.1495 is revised as follows:

§ 80.1495 U.S. Pacific Island Possessions.

The 72 COLREGS shall apply on the bays, harbors, lagoons, and waters surrounding the U.S. Pacific Island Possessions of American Samoa, and Baker, Howland, Jarvis, Johnston, Palmyra, Swains and Wake Islands.

PART 82—72 COLREGS: INTERPRETATIVE RULES

5. The authority citation for part 82 is revised to read as follows:

Authority: 14 U.S.C. 2, 663; 33 U.S.C. 1602; E.O. 11964; 49 CFR 1.46(n).

6. Section 82.5 is added to read as follows:

§ 82.5 Lights for moored vessels.

For the purposes of Rule 30 of the 72 COLREGS, a "vessel at anchor" includes a vessel made fast to one or more mooring buoys or other similar device attached to the bottom. Such a vessel shall be lighted as a vessel at anchor in accordance with Rule 30, except that a barge, unless otherwise authorized by the cognizant Coast Guard Captain of the Port (COTP), shall meet the applicable requirements of 33 CFR 88.13.

7. Section 82.7 is added to read as follows:

§ 82.7 Sidelights for unmanned barges.

An unmanned barge complies with Rule 24 of the 72 COLREGS even if it is unable to meet the technical vertical sector requirements for sidelights as prescribed in Annex I(10) paragraphs (a) and (c) of the 72 COLREGS, if the sidelights meet all other technical requirements of these rules, such as requirements for luminous intensity and arc of visibility.

PART 84—ANNEX I: POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

8. The authority citation for part 84 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

9. In § 84.01, redesignate paragraphs (b) through (c) as paragraphs (c) through (d) and add a new paragraph (b) to read as to read as follows:

§ 84.01 Definitions.

* * * * *

(b) The term *high speed craft* means a craft capable of maximum velocity equal to or exceeding: $V=3.7\ D^{0.1667}$; where: V=velocity at displacement (meters/second) and D=maximum permissible displacement (meters^3).

Note: The same formula expressed in knots and pounds is: $V(kts)=1.98D(lbs)D^{0.1667}$; where: V=maximum vessel speed in knots and D=maximum displacement in pounds.

* * * * *

10. In § 84.05, revise paragraph (a), redesignate paragraph (b) as paragraph (e), redesignate paragraph (c) as paragraph (b), redesignate paragraph (d) as paragraph (c) and add a new paragraph (d) to read as follows:

§ 84.05 Horizontal positioning and spacing of lights.

(a) Except as specified in paragraph (e) of this section, when two masthead lights are prescribed for a power-driven vessel, the horizontal distance between them must not be less than one quarter of the length of the vessel but need not be more than 50 meters. The forward light must be placed not more than one half of the length of the vessel from the stem.

* * * * *

(d) When only one masthead light is prescribed for a power-driven vessel, this light must be exhibited forward of amidships; except that a vessel of less than 20 meters in length need not exhibit this light forward of amidships but must exhibit it as far forward as is practicable.

* * * * *

11. In § 84.17, redesignate paragraph (b) as paragraph (b)(1) and add paragraph (b)(2) to read as follows:

§ 84.17 Horizontal sectors.

* * * * *

(b)(1) * * *

(2) If it is impracticable to comply with paragraph (b)(1) of this section by exhibiting only one all-around light, two all-around lights shall be used suitably positioned or screened so that they appear, as far as practicable, as one light at a distance of one mile. Note: Two unscreened all-round lights that are 1.28 meters apart or less will appear as one light to the naked eye at a distance of one mile.

12. Section 84.27 is added to read as follows:

§ 84.27 High speed craft.

(a) The masthead light of high speed craft with a length to breadth ratio of less than 3.0 may be placed at a height related to the breadth lower than that prescribed in § 84.03(a)(1), provided that the base angle of the isosceles triangle formed by the side lights and masthead light when seen in end elevation is not less than 27 degrees as determined by the formula in paragraph (b) of this section.

(b) The minimum height of masthead light above sidelights is to be determined by the following formula: Tan $27°=X/Y$; where Y is ½ the horizontal distance between the sidelights and X is the height of the forward masthead light.

PART 87—ANNEX IV: DISTRESS SIGNALS

13. The authority citation for part 87 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

14. In § 87.1, paragraph (o) is revised as follows:

§ 87.1 Need of assistance.

* * * * *

(o) Signals transmitted by radiocommunication systems, including survival craft radar transponders meeting the requirements of 47 CFR 80.1095.

* * * * *

PART 88—ANNEX V: PILOT RULES

15. The authority citation for part 88 is continued to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

16. In § 88.13, revise the heading, revise paragraph (b) and (c), redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 88.13 Lights on moored barges.

* * * * *

(b) Barges described in paragraph (a) of this section shall carry two unobstructed all-round white lights of an intensity to be visible for at least 1 nautical mile and meeting the technical requirements as prescribed in § 84.15 of this chapter.

(c) A barge or group of barges at anchor or made fast to one or more mooring buoys or other similar device,

unless otherwise authorized by the Coast Guard Captain of the Port (COTP), shall carry unobstructed all-round white lights of an intensity to be visible for at least 1 nautical mile that meet the requirements of § 84.15 of this chapter and shall be arranged as follows:

(1) Any barge that projects from a group formation, shall be lighted on its outboard corners.

(2) On a single barge moored in water where other vessels normally navigate on both sides of the barge, lights shall be placed to mark the corner extremities of the barge.

(3) On barges moored in group formation, moored in water where other vessels normally navigate on both sides of the barge, lights shall be placed to mark the corner extremities of the barge.

(d) The following are exempt from the requirements of this section:

(1) A barge or group of barges moored in a slip or slough used primarily for mooring purposes;

(2) A barge or group of barges moored behind a pierhead; and

(3) A barge less than 20 meters in length when moored in a special anchorage area designated in accordance with § 109.10 of this chapter.

* * * * *

PART 90—INLAND RULES: INTERPRETATIVE RULES

17. The authority citation for part 90 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46(n)(14).

18. Section 90.5 is added to read as follows:

§ 90.5 Lights for moored vessels.

A "vessel at anchor" includes a vessel made fast to one or more mooring buoys or other similar device attached to the bottom. Such vessels shall be lighted as a vessel at anchor, in accordance with Rule 30, except that barges, unless otherwise authorized by the Coast Guard Captain of the Port (COTP), shall show the lights prescribed in 33 CFR 88.13.

19. Section 90.7 is added to read as follows:

§ 90.7 Sidelights for unmanned barges.

An unmanned barge complies with Rule 24 of the Inland Rules even if it is unable to meet the technical vertical sector requirements for sidelights as prescribed in Annex I of the Inland Rules (§ 84.19 (a) and (c) of this chapter), if the sidelights meet all other technical requirements of the Inland Rules, such as requirements for luminous intensity and arc of visibility.

Dated: July 12, 1994.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–17532 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AH01

Expanded Remote Access to Computerized Veterans Claims Records by Accredited Representatives

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to establish policy, procedures and criteria governing when, and under what circumstances, VA will grant authorized claimants' representatives read-only access to the automated claims records of claimants whom they represent from approved office locations away from the VA Regional Offices of jurisdiction for the claimants' records. Access will be granted only for the purpose of representing those claimants before VA on claims-related matters. In order to help safeguard the confidentiality of claimants' automated claims records, the proposed rules also set out responsibilities and restrictions on claimants' representatives in exercising their remote access to VA's automated claims records. These procedures and criteria will provide for better and more timely representation of claimants in claims matters by allowing their representatives to have faster, easier and more efficient access to the claimants' records than they currently have when they have to travel to the Regional Offices. The proposed regulations will also ensure more efficient use of VA resources in meeting the agency mission in that VA employees will have to spend less time providing access to those representatives who do not have their own computers in Regional Offices.

DATES: Comments must be received on or before August 19, 1994. Comments will be available for public inspection until August 29, 1994.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 119 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday except holidays until August 29, 1994.

FOR FURTHER INFORMATION CONTACT: David G. Spivey, Chief, Authorization Procedures Staff (213B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, (202) 273–7258 or Jeffrey C. Corzatt, Staff Attorney (024H2), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420, (202) 273–6381.

SUPPLEMENTARY INFORMATION: VA is proposing to incorporate into its regulations policies, criteria and procedures governing access to certain Veterans Benefits Administration (VBA) computerized claimants' records by individuals and organizations which represent those claimants from locations away from the Regional Offices of jurisdiction for those claimants' records.

Currently, accredited representatives of veterans service organizations who hold a valid, current, VA power of attorney to assist claimants in the presentation of claims for benefits administered by VA may have on-line, remote access to certain information about those claimants contained in VA's automated claims records if the representatives and their computers are located in office space provided within VBA Regional Offices under 38 U.S.C. § 5902(a)(2). Accredited veterans' representatives not located at a VBA Regional Office who do not have such remote, on-line access are expected to go to the Regional Office and arrange with VA employees using VA computers to view a veteran's automated claims records.

VA has decided to provide the same on-line, remote access capability to all individuals and organizations accredited under 38 CFR 14.626–.635 who represent claimants on VA claims for benefits and who request such access. Access will also be provided to attorneys of record for claimants before the Court of Veterans Appeals who request such access.

The proposed rules concern when, and under what circumstances, VA will grant access, the responsibilities of those granted access, and the bases to revoke or suspend access. VA will grant no more than read-only access to authorized claimants' representatives for the purpose of assisting claimants for whom they hold a valid power of attorney (or equivalent designation) in presenting their claims for VA benefits.

Read-only access necessarily includes the ability to print or down-load the information.

Qualified representatives will be granted access by the Regional Office of jurisdiction for the particular claimant's records. In order for VBA to grant access, the Regional Office must first approve the equipment and software the applicant will use to obtain access, as well as the location from which the representative will access the VBA computer system. Approval of the hardware and software is intended to ensure that access can be accomplished while maintaining the necessary security. Approval of the location is intended to ensure that access is only from the representative's customary and usual or primary place of representation, and not from other locations. This avoids the use of unapproved equipment and limits the possibility of unauthorized access to the data by individuals not approved for access by VA. The applicant must also sign a notice that contains the security requirements applicable to the system.

Certain confidentiality statutes, namely, the Privacy Act, 5 U.S.C. § 552a, and 38 U.S.C. §§ 5701 and 7332 generally govern the VA's disclosure of claimants' records, whether paper or automated, to their representatives. Accredited representatives and agents may see the claims folders of those individuals whom they represent for two reasons: the claimant has indicated in advance in writing to the Department that the named individual or organization represents him or her on a claim for benefits, and the claimant has given prior written consent to VA's release of information to the claimant's representative. Attorneys, as officers of the court, need only file documentation that they represent the claimant. A routine use then permits the disclosure.

These requirements also are designed to provide audit and accountability records for those who access the system, as well as ensuring the integrity and confidentiality of the system and data from unauthorized access.

In order to oversee access activities properly which provide for the security of the data and system, VBA may, without notice, inspect the accessor's computer systems, review its security procedures, and monitor its access activities.

VBA may revoke access privileges in two circumstances. The first is based on applicable confidentiality statutes, e.g., the Privacy Act, 5 U.S.C. § 552a, and 38 U.S.C. §§ 5701 and 7332. Whenever an individual or organization is no longer entitled to access a particular claimant's records as a matter of law under the

Read-only access necessarily includes the ability to print or down-load the information.

Qualified representatives will be granted access by the Regional Office of jurisdiction for the particular claimant's records. In order for VBA to grant access, the Regional Office must first approve the equipment and software the applicant will use to obtain access, as well as the location from which the representative will access the VBA computer system. Approval of the hardware and software is intended to ensure that access can be accomplished while maintaining the necessary security. Approval of the location is intended to ensure that access is only from the representative's customary and usual or primary place of representation, and not from other locations. This avoids the use of unapproved equipment and limits the possibility of unauthorized access to the data by individuals not approved for access by VA. The applicant must also sign a notice that contains the security requirements applicable to the system.

Certain confidentiality statutes, namely, the Privacy Act, 5 U.S.C. § 552a, and 38 U.S.C. §§ 5701 and 7332 generally govern the VA's disclosure of claimants' records, whether paper or automated, to their representatives. Accredited representatives and agents may see the claims folders of those individuals whom they represent for two reasons: the claimant has indicated in advance in writing to the Department that the named individual or organization represents him or her on a claim for benefits, and the claimant has given prior written consent to VA's release of information to the claimant's representative. Attorneys, as officers of the court, need only file documentation that they represent the claimant. A routine use then permits the disclosure.

These requirements also are designed to provide audit and accountability records for those who access the system, as well as ensuring the integrity and confidentiality of the system and data from unauthorized access.

In order to oversee access activities properly which provide for the security of the data and system, VBA may, without notice, inspect the accessor's computer systems, review its security procedures, and monitor its access activities.

VBA may revoke access privileges in two circumstances. The first is based on applicable confidentiality statutes, e.g., the Privacy Act, 5 U.S.C. § 552a, and 38 U.S.C. §§ 5701 and 7332. Whenever an individual or organization is no longer entitled to access a particular claimant's records as a matter of law under the applicable confidentiality statutes, VA will terminate that individual's access privileges to that particular claimant's automated claims records. VA may also revoke access privileges based upon failure to comply with the regulations.

Regulatory Flexibility Act

The Secretary of Veterans Affairs has certified that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations facilitate representative access to their claimants' information while imposing little in the way of cost or administrative burden. Further, the rules affect only the small number of entities and individuals which represent claimants in claims before VA.

This regulation is subject to review under Executive Order 12866.

There are no Catalog of federal Domestic Assistance numbers for this program.

List of Subjects in 38 CFR Part 14

Government employees, Lawyers, Legal services, Veterans.

Approved: June 13, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

38 CFR part 14, Legal Services, General Counsel, is proposed to be amended as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL

1. The authority citation for part 14 continues to read as follows:

Authority: 38 U.S.C. 5903.

2. In part 14, §§ 14.640 through 14.643 and an undesignated center heading prior to § 14.640 are added to read as follows:

Expanded Remote Access to Computerized Veterans Claims Records by Accredited Representatives

Sec.

14.640 Purpose.
14.641 Qualifications for access.
14.642 Utilization of access.
14.643 Disqualification.

Expanded Remote Access to Computerized Veterans Claims Records by Accredited Representatives

§ 14.640 Purpose.

(a) Sections 14.640 through 14.643 establish policy, assign responsibilities and prescribe procedures with respect to:

(1) When, and under what circumstances, VA will grant authorized claimants' representatives read-only access to the automated Veterans Benefits Administration (VBA) claims records of those claimants whom they represent;

(2) The exercise of authorized access by claimants' representatives; and

(3) The bases and procedures for disqualification of a representative for violating any of the requirements for access.

(b) VBA will grant access to its automated claimants' claims records from locations outside Regional Offices under the following conditions. Access will be provided:

(1) Only to individuals and organizations granted access to automated claimants' records under §§ 14.460 through 14.643;

(2) Only to the claims records of VA claimants whom the organization or individual represents as reflected in the claims file;

(3) Solely for the purpose of the representative assisting the individual claimant whose records are accessed in a claim for benefits administered by VA; and

(4) On a read-only basis. Individuals authorized access to VBA automated claims records under §§ 14.640 through 14.643 will not be permitted to modify the data.

(c)(1) Access will be authorized only to the inquiry commands of the Benefits Delivery Network which provide access to the following categories of data:

(i) Beneficiary identification data such as name, social security number, sex, date of birth, service number and related service data; and

(ii) Claims history and processing data such as folder location, claim status, claim establishment date, claim processing history, award data, rating data, including service-connected medical conditions, income data, dependency data, deduction data, payment data, educational facility and program data (except chapter 32 benefits), and education program contribution and delimiting data (except chapter 32 benefits).

(2) Access to this information will currently be through the inquiry commands of BINQ (BIRLS (Beneficiaries Identification and

Records Location Subsystem) Inquiry), SINQ (Status Inquiry), MINQ (Master Record Inquiry), PINQ (Pending Issue Inquiry) and TINQ (Payment History Inquiry). The identifying information received from BIRLS to representative inquiries will be limited to file number, veteran's name, date of death, folder location and transfer date of folder, insurance number, insurance type, insurance lapse date and insurance folder jurisdiction.

(d) Sections 14.640 through 14.643 are not intended to, and do not:

(1) Waive the sovereign immunity of the United States; or

(2) Create, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Veterans Affairs.

§ 14.641 Qualifications for access.

(a) An applicant for read-only access to VBA automated claims records from a location other than a VA Regional Office must be:

(1) An organization, representative, attorney or agent approved or accredited by VA under 38 CFR 14.626 through 14.635; or

(2) An attorney of record for a claimant in proceedings before the Court of Veterans Appeals or subsequent proceedings who requests access to the claimant's automated claims records as part of the representation of the claimant.

(b) The hardware, modem and software utilized to obtain access, as well as their location, must be approved in advance by VBA.

(c) Each individual and organization approved for access must sign and return a notice provided by the Regional Office Director (or the Regional Office Director's designee) of the Regional Office of jurisdiction for the claim. The notice will specify the applicable operational and security requirements for access and an acknowledgment that the breach of any of these requirements is grounds for disqualification from access.

§ 14.642 Utilization of access.

(a) Once an individual or organization has been issued the necessary passwords to obtain read-only access to the automated claims records of individuals represented, access will be exercised in accordance with the following requirements:

(1) The individual or organization will obtain access only from equipment and software approved in advance by the Regional Office from the location where the individual or organization primarily conducts its representation activities which also has been approved in advance;

(2) The individual will use only his or her assigned password to obtain access;

(3) The individual will not reveal his or her password to anyone else, or allow anyone else to use his or her password;

(4) The individual will access only the VBA automated claims records of VA claimants who are represented by the person obtaining access or by the organization employing the person obtaining access;

(5) The individual will access a claimant's automated claims record solely for the purpose of representing that claimant in a claim for benefits administered by VA.

(6) Upon receipt of the password, the individual will destroy the hard copy; no written or printed record containing the password will be retained; and

(7) The individual and organization will comply with all security requirements VBA deems necessary to ensure the integrity and confidentiality of the data and VBA's automated computer systems.

(b) An organization granted access shall ensure that all employees provided access in accordance with these regulations will receive regular, adequate training on proper security, including the items listed in § 14.643(a). Where an individual such as an attorney or registered agent is granted access, he or she will regularly review the security requirements for the system as set forth in these regulations and in any additional materials provided by VBA.

(c) VBA may, at any time without notice:

(1) Inspect the computer hardware and software utilized to obtain access and their location;

(2) Review the security practices and training of any individual or organization granted access under these regulations; and

(3) Monitor an individual's or organization's access activities. By applying for, and exercising, the access privileges under §§ 14.640 through 14.643, the applicant expressly consents to VBA monitoring the access activities of the applicant at any time.

§ 14.643 Disqualification.

(a) The Regional Office Director or the Regional Office Director's designee may revoke an individual's or an organization's access privileges to a particular claimant's records because the individual or organization no longer represents the claimant, and, therefore, the beneficiary's consent is no longer in effect. The individual or organization is no longer entitled to access as a matter of law under the Privacy Act, 5 U.S.C. § 552a, and 38 U.S.C. §§ 5701 and 7332. Under these circumstances, the individual or organization is not entitled to any hearing or to present any evidence in opposition to the revocation.

(b) An individual or organization granted access privileges to VBA automated claims benefits systems may have such access privileges revoked either to an individual claimant's records or to all claimants' records if the individual or organization:

(1) Violates any of the provisions of §§ 14.640 through 14.643;

(2) Accesses or attempts to access data for a purpose other than representation of an individual veteran;

(3) Accesses or attempts to access data other than the data specified in these regulations;

(4) Accesses or attempts to access data on a VA beneficiary who is not represented either by the individual who obtains access or by the organization employing the individual who obtains access;

(5) Utilizes unapproved computer hardware or software to obtain or attempt to obtain access to VBA computer systems;

(6) Modifies or attempts to modify data in the VBA computer systems.

(c) If VBA is considering revoking an individual's access, and that individual works for an organization, the Regional Office of jurisdiction will notify the organization of the pendency of the action.

(d) After an individual's access privileges are revoked, if the conduct which resulted in revocation was such that it merits reporting to an appropriate governmental licensing organization such as a State bar, the VBA Regional Office of jurisdiction will immediately inform the licensing organization in writing of the fact that the individual's access privileges were revoked and the reasons why.

(e) The VBA Regional Office of jurisdiction may temporarily suspend access privileges prior to any determination on the merits of the proposed revocation where the Regional Office Director or the Director's designee determines that such immediate suspension is necessary in order to protect the integrity of the system or confidentiality of the data in the system from a reasonably foreseeable compromise. However, in such case, the Regional Office shall offer the individual or organization an opportunity to respond to the charges immediately after the temporary suspension.

[FR Doc. 94–17358 Filed 7–19–94; 8:45 am]
BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Walk-Sequenced Bulk Third-Class Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend the standards for walk-sequence rate mail to require an identifying marking on each piece.

DATES: Comments must be received on or before August 19, 1994.

ADDRESSES: Written comments should be mailed or delivered to Manager, Advertising Mail, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–2412. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 5540 at the above address.

FOR FURTHER INFORMATION CONTACT: Joseph D. Moeller, (202) 268–2660.

SUPPLEMENTARY INFORMATION: The Postal Service uses the In-Office Cost System (IOCS) and the Carrier Cost System (CCS) as tools to develop cost information for each class and subclass of mail, and for special services. This information is used to develop proposals for new postal rates and to assist in management evaluation of new rate structures. The IOCS uses work sampling to provide data for attributing labor cost to each class, subclass, and special service. The CCS is used to collect data regarding the volume of each type of mail on sampled delivery routes. These data are used to assign delivery costs to the pertinent categories of mail.

In order for the IOCS and CCS to be used to examine the costs of distinct groupings of mail, each piece in the grouping must have a distinctive marking. When an individual sample is conducted, information regarding markings on the mailpiece is recorded. To better quantify the value of mailer walk-sequencing, the Postal Service would like to track the cost of third-class pieces claiming the 125-piece and saturation walk-sequence rates using IOCS and CCS. Currently this is not possible because walk-sequenced mail can be identified as such simply by including a facing slip with the phrase "WALK-SEQUENCE CARRIER ROUTE MAIL" on the top of each package. The proposed change would require that each individual piece contain a "WS" marking either on the carrier route identification line or as part of the carrier route presort endorsement.

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Walk-Sequenced Bulk Third-Class Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend the standards for walk-sequence rate mail to require an identifying marking on each piece.

DATES: Comments must be received on or before August 19, 1994.

ADDRESSES: Written comments should be mailed or delivered to Manager, Advertising Mail, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–2412. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 5540 at the above address.

FOR FURTHER INFORMATION CONTACT: Joseph D. Moeller, (202) 268–2660.

SUPPLEMENTARY INFORMATION: The Postal Service uses the In-Office Cost System (IOCS) and the Carrier Cost System (CCS) as tools to develop cost information for each class and subclass of mail, and for special services. This information is used to develop proposals for new postal rates and to assist in management evaluation of new rate structures. The IOCS uses work sampling to provide data for attributing labor cost to each class, subclass, and special service. The CCS is used to collect data regarding the volume of each type of mail on sampled delivery routes. These data are used to assign delivery costs to the pertinent categories of mail.

In order for the IOCS and CCS to be used to examine the costs of distinct groupings of mail, each piece in the grouping must have a distinctive marking. When an individual sample is conducted, information regarding markings on the mailpiece is recorded. To better quantify the value of mailer walk-sequencing, the Postal Service would like to track the cost of third-class pieces claiming the 125-piece and saturation walk-sequence rates using IOCS and CCS. Currently this is not possible because walk-sequenced mail can be identified as such simply by including a facing slip with the phrase "WALK-SEQUENCE CARRIER ROUTE MAIL" on the top of each package. The proposed change would require that each individual piece contain a "WS" marking either on the carrier route identification line or as part of the carrier route presort endorsement. Although facing slips would still be allowed, they would no longer fulfill the requirement for identifying the mail as walk-sequenced.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual M304, Walk-Sequence [Carrier Route Mail Preparation], by adding a new subsection 1.3 and revising subsection 3.2 to read as follows:

M304 Walk-Sequence

1.0 Basic Standards

* * * * *

1.3 Marking

In addition to the markings required by M303, each piece claimed at a walk-sequence rate must be marked "WS" immediately preceding either the carrier route information on the carrier route information line (e.g., **WS CARRIER ROUTE 017) or the carrier route presort marking shown in M303 (e.g., WS CAR-RT SORT). Pieces not claimed at a walk-sequence rate must not bear the "WS" marking.

* * * * *

3.0 Preparation

* * * * *

3.2 Labeling

In addition to the labeling required in M303, a facing slip with a phrase identifying the mail, such as "WALK-SEQUENCED CARRIER ROUTE MAIL," may be placed on the top of each package. A facing slip does not satisfy the marking required on each piece by 1.3.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–17580 Filed 7–19–94; 8:45 am]

BILLING CODE 7710–12–M

39 CFR Part 111

Contents of Second-Class Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would revise the present standards in the Domestic Mail Manual (DMM) on materials eligible for mailing at second-class rates with authorized second-class publications. The proposal would remove the current advertising limitation on loose supplements to bound publications and adopt a more objective test for determining what material can be mailed as a supplement. The proposal would revise the regulations on pages with "novel" characteristics, giving publishers more latitude in page design. The provisions concerning the mailing of products and product samples have been liberalized. A new provision has been added specifying how advertising content of second-class publications is to be measured. A provision has also been added defining public service announcements. Finally, the proposal would reorganize and clarify a number of additional standards for second-class mail concerning addressing, mailpiece construction, rate eligibility, and postage payment. These additional changes are editorial rather than substantive in nature.

DATES: Comments on this proposal must be received on or before September 19, 1994.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Business Mail Acceptance, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, (202) 268–5188, or Alixe Johnson, (312) 765–5487.

SUPPLEMENTARY INFORMATION: In the mid-1980s the Postal Service undertook an extensive review of the regulations governing what could be mailed as part of a periodical publication at second-class postage rates, with a special focus on supplements to second-class publications. Beginning in September 1986, the Postal Service published four proposed rules, culminating in a final rule that was published 2 years later. 53 FR 35813 (September 15, 1988). The final rule explained that then-recent changes in technology—specifically the introduction of equipment making it

practical to insert a publication into a sealed plastic wrapper (polybag)—made it possible for publishers of bound second-class publications to include with their publications additional materials that are separate and distinct from the publication. A number of publishers were in favor of taking advantage of this new technology, but others were concerned that allowing separately prepared material to be enclosed loose in a polybag at second-class rates would cause an undesirable movement of printed advertising materials from third-class mail to second-class mail.

The Postal Service noted the difficulty in reaching an appropriate balance between the conflicting concerns and interests in this area, and was hopeful that the rulemaking would resolve these issues. To counter arguments that second-class mail would be harmed by the inclusion of too much advertising in the form of loose supplements riding along with bound second-class publications, the final rule adopted, among other things, requirements that a loose second-class supplement and its host bound publication must be enclosed in an envelope or wrapper, that the supplement must contain a minimum of 25 percent nonadvertising content, and that the supplement must be marked "Supplement to" followed by the name of the publication or the publisher.

Although that rulemaking was at least partially successful in achieving its goals, experience over the past 6 years indicates that further revisions may be appropriate. Technological advancements, such as selective binding, continue to affect the design of publications, and publishers continue to seek to include materials with second-class publications that were not contemplated at the time the current regulations were adopted. Many publishers consider the 25 percent nonadvertising rule for loose supplements to be burdensome and inappropriate as a means of curbing the influx of advertising in second-class mail. Many publishers also consider the current restrictions on the use of pages with "novel" characteristics and the inclusion of products and product samples to limit unduly their creativity in designing publications that appeal to their readers and advertisers. These publishers also point out that private delivery companies do not impose similar restrictions on their delivery of publications.

The most significant problem with the current regulations from the Postal Service's perspective is the difficulty in applying these standards. This problem is not limited to customers, but exists for postal personnel as well, as is demonstrated by the relatively large number of revenue deficiencies and decisions overturned on administrative appeal that concern the mailing of supplements, novelty pages, and products with second-class publications. This difficulty of application creates additional expense for the Postal Service in training and in mail acceptance, and it compromises the ability of the Postal Service to collect consistently the correct postage on second-class mailings.

Accordingly, the Postal Service undertook a review of the standards that pertain to the content of second-class mail. This included review of the terminology involved (e.g., supplements, enclosures, attachments, novelty pages, independent publications), the substantive rules concerning eligibility of these materials for second-class rates, the clarity of the existing rules, and the organization of these rules in the DMM. The result of this review is the instant proposal for substantive and editorial changes to, and deletion of a number of, existing rules with the renumbering and reorganizing of these rules for clarity and ease of use.

The Postal Service believes that the proposed rules, if adopted, will reduce the costs of mail acceptance and training, and facilitate timely collection of the appropriate postage on second-class mailings. The Postal Service also believes that the proposed elimination of a number of restrictions on publication design will promote publishers' continued use of the Postal Service for delivery of their periodical publications. Moreover, the proposed changes are not expected to have any adverse operational effect on the Postal Service.

To provide clarity and improve the organization of the mailing standards governing the contents and characteristics of second-class mail, Domestic Mail Manual (DMM) C200 has been completely reorganized and renumbered under four main headings: 1.0 Permissible Mailpiece Components, 2.0 Impermissible Components, 3.0 Mailpiece Construction, and 4.0 Printed Features. Within these sections are subsections that specifically identify what may and may not be included in a mailpiece claimed at second-class rates. The following discussion identifies the significant changes being proposed in C200.

The reference to pages of a second-class publication in proposed C200.1.1 is new and describes those printed sheets that form the second-class mailpiece. Rather than addressing advertising and "novelty pages" in separate standards (as is currently done in C200.5.0 and 6.0), this proposed section sets forth a general rule that provides that the pages in a second-class publication, whether they contain advertising or nonadvertising matter or both, may be prepared with novel or unusual characteristics, i.e., different size, shape, or construction. This proposed change would limit the number of these pages to a minor portion of the publication so that the general appearance of the material as a "periodical publication" is maintained. In proposing this greater latitude on the preparation of pages to a publication, the Postal Service is concerned that publishers might create publications whose physical characteristics would encumber efficient postal processing. Therefore, this provision includes a requirement that no page may have dimensions (when folded) that exceed the dimensions of the cover of the publication.

In another change from current standards, this new pages section would allow the use of grommets, string, rubber bands, and similar types of fastening materials in minor amounts in the production of printed sheets. The Postal Service has concluded that allowing the use of minor amounts of these fastening materials in the preparation of pages is consistent with the existing practice of allowing second-class publications to be bound with staples, saddle stitching, or spiral binding.

The mailing standards governing the preparation of parts and sections in proposed C200.1.2 remain unchanged, although current C200.2.0, 2.1, 2.2, and 2.3 have been condensed into one paragraph. The provision governing parts or sections produced by someone other than the publisher has been retained in 1.2 to preserve the distinction between parts and sections of a publication and supplements to a publication.

Nonincidental enclosures at First- and third-class rates are covered in proposed C200.1.3, which is composed of former 8.1, 8.3b, 8.4, 8.6, and 10.2. The wording has been changed for clarity.

Proposed C200.1.4 incorporates current sections (C200.3.2, 3.3, 7.1, 7.2, and 7.3) governing enclosures and attachments mailable at second-class rates. The last sentence of current 3.2f (proposed C200.1.4b) is deleted to remove the single-fold limitation on a printed sheet accompanying a receipt, request, or order for a subscription. The Postal Service does not believe that it is necessary to limit the method used by publishers in producing this material.

The proposal allows all items listed in C200.1.4 as permissible second-class enclosures to be treated as neither advertising nor nonadvertising, but instead to be accounted for in the weight of the host publication when determining postage. This is a change in the interpretation of current rules that distinguish between the subscription order or requester form and any additional material that promotes the publisher's publications. Allowing these permissible enclosures to be accounted for only in the weight of the host publication will simplify the acceptance review process without any significant effect on postal revenues.

The proposed supplements section in C200.1.5 would change the standard concerning loose supplements to bound publications to eliminate the current requirement that such a supplement contain at least 25 percent nonadvertising content. If adopted, this change would allow publishers to include loose supplements with bound publications that could consist of up to 100 percent advertising. This change is being proposed in response to widespread requests from publishers for an elimination of this provision. These publishers argue that this provision is an unnecessary restriction on their ability to choose whether to place advertising matter in the host publication or in an accompanying loose supplement. They argue that competitors of the Postal Service impose no such restrictions on the nonpostal delivery of publications. They also argue that the responses by some publishers to the 25 percent nonadvertising requirement (e.g., the use of such devices as public service announcements that say such things as "Just Say No To Drugs") demonstrate the uselessness of the provision as a means to increase the "editorial" content of second-class publications. These publishers argue that the overall requirement that second-class publications contain a substantial amount of nonadvertising content and the need to provide substantial editorial content to satisfy their subscribers are sufficient safeguards of the integrity and value of second-class mail. These publishers also correctly state that all advertising in supplements will be accounted and paid for at the advertising rates because the determination of a publication's advertising/nonadvertising content is based on the host piece and any supplements. The Postal Service finds that these arguments have merit and has determined to propose the elimination

necessary to limit the method used by publishers in producing this material.

The proposal allows all items listed in C200.1.4 as permissible second-class enclosures to be treated as neither advertising nor nonadvertising, but instead to be accounted for in the weight of the host publication when determining postage. This is a change in the interpretation of current rules that distinguish between the subscription order or requester form and any additional material that promotes the publisher's publications. Allowing these permissible enclosures to be accounted for only in the weight of the host publication will simplify the acceptance review process without any significant effect on postal revenues.

The proposed supplements section in C200.1.5 would change the standard concerning loose supplements to bound publications to eliminate the current requirement that such a supplement contain at least 25 percent nonadvertising content. If adopted, this change would allow publishers to include loose supplements with bound publications that could consist of up to 100 percent advertising. This change is being proposed in response to widespread requests from publishers for an elimination of this provision. These publishers argue that this provision is an unnecessary restriction on their ability to choose whether to place advertising matter in the host publication or in an accompanying loose supplement. They argue that competitors of the Postal Service impose no such restrictions on the nonpostal delivery of publications. They also argue that the responses by some publishers to the 25 percent nonadvertising requirement (e.g., the use of such devices as public service announcements that say such things as "Just Say No To Drugs") demonstrate the uselessness of the provision as a means to increase the "editorial" content of second-class publications. These publishers argue that the overall requirement that second-class publications contain a substantial amount of nonadvertising content and the need to provide substantial editorial content to satisfy their subscribers are sufficient safeguards of the integrity and value of second-class mail. These publishers also correctly state that all advertising in supplements will be accounted and paid for at the advertising rates because the determination of a publication's advertising/nonadvertising content is based on the host piece and any supplements. The Postal Service finds that these arguments have merit and has determined to propose the elimination of the 25 percent nonadvertising content requirement for comment by all interested parties.

The proposed supplements section also includes clarifying provisions, based on current standards and on Postal Service rulings, restricting the inclusion of loose sheets of advertising as a supplement. These provisions describe the permissible preparation of supplements for the four different methods of second-class mailpiece preparation—a bound publication not enclosed in a wrapper, a bound publication enclosed in a wrapper, and an unbound publication not enclosed in a wrapper, an unbound publication enclosed in a wrapper. Bound and unbound publications are defined in C200.3.1. The standards proscribing the use of mailing wrappers are set forth in C200.3.3 and 3.4.

A bound publication that is not enclosed in a wrapper may not have any supplements included loose with it. Only enclosures under C200.1.4 may be included loose in a bound publication. A bound publication with one or more supplements must be enclosed in a wrapper. If a supplement to a bound publication is made up of more than one printed sheet, all sheets making up the supplement must be bound together to form one piece. If not, each loose sheet must separately qualify as a supplement. A supplement to an unbound publication that is not enclosed in a wrapper must be combined with, and inserted within, the publication. A loose supplement may be included with an unbound publication only if the entire mailpiece is enclosed in a wrapper.

The proposed supplements section will retain the requirement that loose supplements to bound publications contain the identification "Supplement to" followed by the name of the publication or the publisher. This requirement to identify a supplement will also apply to any loose supplement mailed with an unbound publication enclosed in a wrapper. The presence of the "Supplement to" statement is an objective demonstration that the publisher designed the material to be included as a supplement to the host publication. The Postal Service believes that the retention of this identification requirement, the retention of the general requirement in C200.4.3 that all advertisements in bound publications must be permanently attached, and the clarification in C200.1.5 that any multisheet supplement to a bound publication must also be bound together will effectively limit the inclusion of miscellaneous loose advertising pieces with second-class publications enclosed in wrappers.

The section on attachments (proposed C200.1.8) consolidates the wording contained in current 4.3 pertaining to the addition of stickers on covers of second-class publications or on mailing wrappers. Additionally, proposed 1.8 includes information currently contained in 10.1 and 10.4, regarding the required markings for nonincidental First- and/or third-class enclosures.

Except for its movement from A200.2.0 to C200.1.10, the provision allowing label carriers remains unaltered. Placement in C200 is more appropriate for these standards because they will be with the sections governing what may be combined loose in a polybag or plastic wrapper and mailed at the second-class rates (a mailing practice that commonly uses a label carrier).

Publishers have also complained about the subjective nature of the current standards concerning what material may not be included as a loose supplement at second-class rates. For example, current rules state that an independent publication may not be sent at second-class rates. Those rules then require the reviewer to determine the independence of material by making a subjective judgment based on a number of factors. Although the specified items (such as independent publications) remain ineligible for mailing at second-class rates (even if bound into publications), the Postal Service has undertaken to respond to publishers' concerns by explaining these restrictions more clearly. For this reason, proposed C200.2.1 sets forth a general standard that all the impermissible components in 2.2 to 2.5 are prohibited from being mailed at second-class rates whether they take the form of a run-of-press page, supplement, bound-in advertisement, or other component of the publication. Proposed C200.2.2 would base the decision on what constitutes impermissible matter on a review of the questionable material against a list of objective criteria, any one of which will automatically make that material ineligible for mailing at second-class rates. These criteria are a separate price or subscription instructions; the word "catalog"; a First-, third-, or fourth-class permit imprint; an International Standard Book Number (ISBN); or an International Standard Serial Number (ISSN). The Postal Service believes that this change will simplify the determination of what constitutes impermissible second-class matter. This change is expected to benefit publishers by reducing the uncertainty and confusion they have

experienced with regard to the current and more subjective standards.

Current standards restrict the inclusion of products and product samples (see C200.1.8) in items mailed at the second-class rates. Proposed C200.2.3 would continue to exclude products, such as stationery, cassettes, and floppy disks, that are not printed sheets, but the proposed section would no longer prohibit product samples that are otherwise formed of printed sheets. The Postal Service believes that applying the general requirement that all second-class matter must be formed of printed sheets is a sufficient standard to limit the inappropriate mailing of products and product samples at second-class rates. Additionally, this section would relax current interpretations on what constitutes a product or merchandise when the item is a printed sheet. For example, under specific conditions, a 12-month calendar or a poster will now be eligible to be mailed at second-class rates if it is not separately distributed or offered for sale. Including the name of the host publication, issue or issue date, and relating such a piece to advertising or nonadvertising within the content of the host publication would provide further proof that the piece is properly prepared as a page of the publication.

To ensure that second-class mail is transported and delivered intact, proposed C200.3.3 specifies what may be included loose within a second-class publication without requiring wrapping. For consistency, proposed C200.3.4 has been added to provide guidance on when wrappers are required.

Proposed C200.3.5 includes all the standards governing protective covers in current C200.4.1. In recognition of the practicalities of publication production, the requirement that a protective cover cover completely a publication is changed to allow the cover to be smaller than the publication if it extends to within ¾ inch of the edge of the publication opposite the fold or binding. No similar allowance has been proposed for the top and bottom edges of a protective cover because the Postal Service has had no indication from publishers that there is any problem with covers matching a publication's top and bottom edges.

The proposed advertising standard in C200.4.3 blends the contents of current C200.6.1 and 6.4 and explains that all advertisements must be prepared as an integral part of the publication and that, except for advertisements prepared as supplements and advertisements on printed matter included as part of a receipt or order for subscriptions (or requests), all advertisements in a bound publication must be permanently attached. The provision in current C200.6.3 concerning the types of material that can comprise printed sheets has been moved to E211.3.0, the eligibility section that includes the printed sheet standard.

Additionally, several new proposed sections have been added to provide clarifying definitions, such as C200.1.6 (covers), 1.7 (mailing wrappers), and 3.1 (bound/unbound). Other sections have been proposed to clarify further what is allowable and what is excluded at second-class rates, e.g., the proscription against combining fourth-class mail with second-class mail.

The proposed rule also contains an expanded definition of public service announcements in E211.11.2, to clarify those announcements that do not have to be treated as advertising matter. An expanded standard explaining procedures to be followed when measuring advertising in second-class publications is proposed in new P070.1.7. This provision, which is based on Postal Service rulings, is designed to ensure uniform treatment of blank space in publications. Section E211.7.3 has been revised to clarify that materials such as annual reports, directories, and lists may be included as supplements to second-class publications. Minor nonsubstantive changes have also been proposed to DMM modules A, E, and P.

Although exempt from the notice and comment provisions of the Administrative Procedures Act (5 U.S.C. 553(b) and (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 remains as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Renumber existing Domestic Mail Manual A200.1.0 (including Exhibit 1.3) as A010.7.0; renumber subsections accordingly and revise as shown below; delete remainder of existing A200.

A010 General Information

* * * * *

7.0 ADDITIONAL STANDARDS FOR SECOND-CLASS MAIL

7.1 Preparation

[Insert text of existing A200.1.1.]

7.2 Address Labels

[Insert text of existing A200.1.2.]

7.3 Address Placement

The delivery address must be clearly visible on or through the outside of the mailpiece, whether placed on a label or directly on the host publication, a component, or the mailing wrapper. If placed on the mailing wrapper, the address must be on a flat side, not on a fold (see Exhibit 7.3). If a polybag is used, the address must not appear on a component that rotates within the bag, and the address must remain visible throughout the addressed component's range of motion.

7.4 Return Address

The return address must appear on any mailing wrapper that is also endorsed "Return Postage Guaranteed."

3. Revise all Domestic Mail Manual C200, Second-Class Mail, to read as follows:

C200 Second-Class Mail

1.0 PERMISSIBLE MAILPIECE COMPONENTS

1.1 Pages

Pages are the printed sheets forming the publication or one of the mailpiece's components, bearing advertising, nonadvertising, or both, including those having textual and graphic matter (see E211.2.4); blank spaces for writing or marking; and material to be completed or used by the reader. A minor portion of the pages in a second-class mailpiece may have unusual characteristics, such as a different size, shape, or construction, or portions that may be wholly or partially separable; and pages prepared for folding out. No page may have dimensions (when folded, if folded) that exceed the dimensions of the cover of the publication. Pages are also subject to these standards:

a. A detachable coupon, application, or order form must relate directly to advertising or nonadvertising matter printed on the page of which it is a part or to which it is attached.

b. Multilayer pages, including those formed by sheets glued together and those that have unusual shapes, such as cutouts, movable flaps, or "pop-ups," may include small amounts of fastening material such as grommets, string, or rubber bands as needed to assemble the page. Multilayer pages may also be formed as pouches or pockets but may contain only permissible loose enclosures (see 1.4) or other securely affixed permissible components.

c. Multiple pages may be held together by staples or other means separate from and in addition to the regular binding of the publication.

d. Oversized pages may be used for illustrations, charts, maps, and other advertising and nonadvertising content.

1.2 Parts and Sections

Parts and sections are pages (subject to 1.1) that are physically separate subdivisions of the publication, as identified by the publisher. Each part or section must show the name of the publication, and the number of parts or sections in the issue must be stated on the cover of the first part or section. Parts or sections produced by someone other than the publisher may not be mailed at second-class rates if these parts or sections are prepared by or for advertisers or if they are provided to the publisher free or at a nominal charge. On request, publishers must submit to the RCSC serving the known office of publication contracts entered into with producers of parts or sections.

1.3 Enclosures at First- or Third-Class Rates

Matter to be paid at the applicable First- or third-class rate may be enclosed in a second-class mailpiece subject to these conditions:

a. The total weight of all enclosed third-class matter must be less than 16 ounces.

b. Postage and fee payment is subject to P070. A permit imprint that may appear on a First- or third-class enclosure must not be visible when the mailpiece is prepared for mailing except as provided under P070.

c. When enclosing nonincidental First- or any third-class mail, combination envelopes or containers with separate parts for the two classes of mail may be used. If both the sender's and addressee's names and addresses are not on both pieces, the sender's name and address must be placed on one and the addressee's name and address on the other. Combination containers with inseparable parts may bear the names and addresses on only one part.

d. The applicable "First-Class Mail Enclosed" or "Third-Class Mail Enclosed" marking must be placed on or in the host publication if it contains a nonincidental First- or third-class enclosure. If placed on the outer wrapper, polybag, envelope, or cover of the host publication, the marking must be set in type no smaller than any used in the required "POSTMASTER: Send

contain only permissible loose enclosures (see 1.4) or other securely affixed permissible components.

c. Multiple pages may be held together by staples or other means separate from and in addition to the regular binding of the publication.

d. Oversized pages may be used for illustrations, charts, maps, and other advertising and nonadvertising content.

1.2 Parts and Sections

Parts and sections are pages (subject to 1.1) that are physically separate subdivisions of the publication, as identified by the publisher. Each part or section must show the name of the publication, and the number of parts or sections in the issue must be stated on the cover of the first part or section. Parts or sections produced by someone other than the publisher may not be mailed at second-class rates if these parts or sections are prepared by or for advertisers or if they are provided to the publisher free or at a nominal charge. On request, publishers must submit to the RCSC serving the known office of publication contracts entered into with producers of parts or sections.

1.3 Enclosures at First- or Third-Class Rates

Matter to be paid at the applicable First- or third-class rate may be enclosed in a second-class mailpiece subject to these conditions:

a. The total weight of all enclosed third-class matter must be less than 16 ounces.

b. Postage and fee payment is subject to P070. A permit imprint that may appear on a First- or third-class enclosure must not be visible when the mailpiece is prepared for mailing except as provided under P070.

c. When enclosing nonincidental First- or any third-class mail, combination envelopes or containers with separate parts for the two classes of mail may be used. If both the sender's and addressee's names and addresses are not on both pieces, the sender's name and address must be placed on one and the addressee's name and address on the other. Combination containers with inseparable parts may bear the names and addresses on only one part.

d. The applicable "First-Class Mail Enclosed" or "Third-Class Mail Enclosed" marking must be placed on or in the host publication if it contains a nonincidental First- or third-class enclosure. If placed on the outer wrapper, polybag, envelope, or cover of the host publication, the marking must be set in type no smaller than any used in the required "POSTMASTER: Send change of address . . ." statement. If placed in the identification statement, the marking must meet the applicable standards. The marking must not be on or in copies not accompanied by a First- or third-class enclosure unless additional information is provided under the applicable postage payment standards in P070.

1.4 Enclosures at Second-Class Rates

Only the following material may be included loose as an enclosure in a second-class mailpiece and be paid at second-class rates, subject to the corresponding conditions:

a. An incidental First-Class piece that must be closely related but secondary to the second-class publication with which it is enclosed, and that consists of matter that, if mailed separately, would require First-Class postage. Examples of an incidental First-Class enclosure are a bill for the publication, a statement of account for past publication purchases, or a personal message or greeting included with the publication.

b. A receipt, request, or order for a subscription that may be printed or written; prepared as a card or envelope, including business reply, or as a combination form for the host and one or more second-class publications issued by the same publisher; arranged to include a coin receptacle; and inserted in an envelope within the publication. The receipt or request may be part of or accompanied by a single sheet of printed matter containing information related exclusively to a receipt or request or order for a subscription to the host second-class publication (or a combination of the host and other second-class publications of the same publisher), if that printed matter does not advertise, promote, or offer for sale other products or services.

c. A card or form for the recipient's use in providing address correction information to the publisher that may be printed or written; prepared as a card or envelope, including business reply, or as a combination form for two or more second-class publications issued by the same publisher; inserted in an envelope that is attached to, bound in, or loose within the publication; or prepared as a detachable part of another permissible enclosure. Enclosures listed in 1.4b and 1.4c are not counted when determining the percentage of advertising in the publication, but they are included in the total weight of the publication reported on the mailing statement. If the publication otherwise consists entirely of nonadvertising matter, an incidental First-Class enclosure as described in 1.4a may be treated as nonadvertising matter. In all other cases, an incidental First-Class enclosure is considered part of the advertising portion of the publication.

1.5 Supplements

A supplement is one or more pages (subject to 1.1) formed by one or more printed sheets that are not bound into a publication. A bound publication with one or more supplements must be enclosed in a wrapper (see 3.3 and 3.4). If a supplement to a bound publication is formed of more than one sheet, all sheets comprising the supplement must be bound together. Except where the mailpiece is enclosed in a wrapper (see 3.4), a supplement to an unbound publication must be combined with, and inserted within, the publication. A loose supplement may be included with an unbound publication only if the mailpiece is enclosed in a wrapper (see 3.4). A supplement may be devoted to a single topic, and may contain material different from that in the host publication. The external dimensions of a supplement (i.e., its length and height) may not exceed those of the host publication. Each supplement to a bound publication and loose supplements included with unbound publications must bear the printed endorsement "Supplement to" followed by the name of the publication or publisher.

1.6 Covers

A cover may be placed on the outside of a second-class publication. A protective cover is an additional cover placed around the outside of a publication; preparation is subject to 3.5. Advertising, nonadvertising, or both may be printed on the cover or protective cover. The cover and protective cover on a publication are included when measuring advertising percentage. Nothing may be attached to the cover or protective cover except as permitted under 1.8.

1.7 Mailing Wrappers

A mailing wrapper is an envelope, sleeve, or polywrap used to enclose the mailpiece. Advertising may be printed on the mailing wrapper and is included when measuring advertising percentage. Nothing may be attached to the mailing wrapper except as permitted under 1.8.

1.8 Attachments

The following may be attached to a page, cover, protective cover, or mailing wrapper of a publication, subject to the corresponding standards:

a. Stickers of any size and shape. If attached to the cover, protective cover, or mailing wrapper, no portion of the publication's name may be obscured.

b. Material that is allowed as a loose enclosure described in 1.3 or 1.4. When nonincidental First- and/or third-class enclosures (see 1.3) are attached, the marking "First-Class" or "Letter Enclosed" must be on a First-Class attachment; "Third-Class," on a third-class attachment.

1.9 Printed Additions

Only the following may be printed on a copy of a second-class publication after it is printed, or placed on its cover, protective cover, or mailing wrapper:

a. The name and address of the intended recipient or of the publisher or sender.

b. The printed title of the publication and its place of publication.

c. The date the subscription ends.

d. Requests for address-correction information from the addressee.

e. The words "Sample Copy" (on a sample), "Marked Copy" (when the copy contains a marked item or article), or "Return Postage Guaranteed" (when the copy is to be returned to the sender if undeliverable as addressed).

f. The number of copies enclosed (on the outside of a package) or a package count (e.g., "2 of 4") (on a package wrapper).

g. Corrections of typographical errors or a mark, except by written or printed words, to call attention to a word or passage.

h. Printed messages not required to be mailed as First-Class or Express Mail.

1.10 Label Carriers

A label carrier is a single unfolded, uncreased sheet of card or paper stock, securely affixed to the cover of the publication or large enough so that it does not rotate inside the wrapper or cover the publication title (if placed over the front cover), that is used to carry the delivery address for the mailpiece, subject to these conditions:

a. It must bear the title of the second-class publication; the second-class imprint or "Second-Class" endorsement in the upper right corner of the address side (unless "Second-Class" is printed on the address side of the polybag); and the address to which the mailpiece can be returned if undeliverable (if endorsed "Return Postage Guaranteed").

b. If the address remains clearly visible, the label carrier may also bear a request for address correction from the addressee; information for requesting or subscribing to the publication; or a subscription or request form.

c. As applicable, the label carrier may show the endorsement "First-Class Mail Enclosed" or "Third-Class Mail Enclosed" or the permit imprint used to pay postage for the First- or third-class enclosure if the imprint is below the second-class imprint or the endorsement "Second-Class."

d. Other printed information, whether advertising or nonadvertising, is permitted only on the back of the label carrier and is subject to measurement and postage payment accordingly. A single line of text calling attention to information on the reverse may be placed on the front of the label carrier. If any information on the reverse of the label carrier is advertising, the line of text on the front is also treated as advertising.

2.0 IMPERMISSIBLE COMPONENTS

2.1 General Standard

Regardless of preparation or characteristics, or whether otherwise meeting the standards in 1.0, the materials described in 2.2 through 2.5 are not eligible for second-class rates and may not form, or be included, in a second-class mailpiece.

2.2 Prohibited Matter

Material that either contains any one of the following printed items, or that is referred to in a component of the second-class mailpiece (by the use of one of these items), is ineligible to be mailed at second-class rates:

a. A separate price or subscription instructions different from the host publication.

b. The word "Catalog."

c. A First-, third-, or fourth-class permit imprint.

d. An ISBN (International Standard Book Number).

e. An ISSN (International Standard Serial Number) different from the ISSN of the host publication.

2.3 Products

Products may not be mailed at second-class rates. Examples include stationery (pads of paper or blank printed forms); cassettes; floppy disks; merchandise; envelopes containing enclosures, other than receipts, orders for subscriptions, and incidental First-Class matter; and wall, desk, and blank calendars. Printed pages, including oversized pages and calendars, are not considered products if they are not separately distributed or offered for sale, bear the name of the host publication and the issue or issue date, and relate to other advertising or nonadvertising content of the host publication.

2.4 Fourth-Class Mail

Fourth-class mail may not be combined with a second-class publication.

2.5 Nonprinted Sheets

Any matter not formed of printed sheets (except as permitted under 1.1b) is not eligible for second-class rates.

3.0 MAILPIECE CONSTRUCTION

3.1 Bound/Unbound

Publications may be prepared in either a bound or unbound form, with or without wrappers unless required by 3.6. A bound publication is a publication whose pages are securely held together by two or more staples, spiral binding, glue, stitching, or other permanent fastening. All other publications are unbound, including folded multisheet and single-sheet publications and those whose pages are loose and collated or "nested," or whose pages are held together by a single staple.

3.2 Physical Size

Standards for size or weight may apply to publications claimed at certain rates. Requester publications must contain at least 24 pages per issue.

3.3 Without Wrapper

When the mailpiece does not have a mailing wrapper, all the components of an unbound publication must be combined with and inserted inside the publication. Only enclosures mailable at second-class rates under 1.4 may be included loose inside a bound unwrapped publication. An enclosure under 1.3 or 1.4 may be securely attached on the outside of an unwrapped publication along the bound edge if it does not exceed any dimension of the cover of the publication.

3.4 With Wrapper

Except as provided in 4.1, when the mailpiece is completely enclosed in a mailing wrapper, there are no restrictions on where the components may be located within that wrapper. When a sleeve or other partial wrapper is used, the components must be secured so that they do not fall out during handling. Bound publications carrying loose supplements or prepared in physically separate parts or sections either must be totally enclosed in an envelope, plastic wrapper (polybag) or paper wrapper, or they must be inserted within a sleeve so that the component parts do not become separated while in the mail.

3.5 Protective Cover

If the mailpiece is not completely enclosed in a mailing wrapper, any protective cover must cover both the front and back of the host publication and extend to within at least ¾ inch of the edge opposite the fold or binding. If the host publication is bound, the protective cover must be permanently attached to the publication.

3.6 APO/FPO Copies

Any single copy of an unbound publication that includes any enclosures, supplements, or more than one part or section and that is mailed to an APO/FPO address must be completely enclosed in a mailing wrapper.

3.7 Sealing

Second-class mail must be prepared so that it can be easily examined. Mailing publications at second-class postage rates represents consent by the sender to USPS inspection of the contents whether loose or inserted in envelopes, wrappers, or other covers. Mailers who want to ensure that publications are not opened for postal inspection must pay First-Class rates and mark such mail accordingly.

4.0 PRINTED FEATURES

4.1 Publication Name; Notices

The publication name must be displayed prominently on the publication, and the name must be visible through or displayed prominently on any protective cover or mailing wrapper. The publication name, followed immediately by the USPS-publication number, and the mailing address to which undeliverable copies or change-of-address notices are to be sent, may be shown in the upper left corner of the address side of a mailing wrapper, or directly on the outside of the host publication if it can be read when the mailing wrapper is in place. The publication number includes an alpha prefix and is to be within parentheses, e.g., THE NATIONAL WEEKLY (ISSN 9876–543X) or THE COMMUNITY (USPS 123–456).

4.2 Endorsements

Mailing wrappers that completely enclose the host publication must bear the words "Second-Class" in the upper right corner of the address area. If a clear plastic wrapper is used, those words may appear anywhere on the address side of the wrapper or the topmost item inside.

4.3 Advertising

Advertising (as defined in E211) may be printed on the pages of any component of a publication, subject to the corresponding standards. Regardless of location, an advertisement must be prepared as an integral part of the publication. Except for advertisements

and extend to within at least ¾ inch of the edge opposite the fold or binding. If the host publication is bound, the protective cover must be permanently attached to the publication.

3.6 APO/FPO Copies

Any single copy of an unbound publication that includes any enclosures, supplements, or more than one part or section and that is mailed to an APO/FPO address must be completely enclosed in a mailing wrapper.

3.7 Sealing

Second-class mail must be prepared so that it can be easily examined. Mailing publications at second-class postage rates represents consent by the sender to USPS inspection of the contents whether loose or inserted in envelopes, wrappers, or other covers. Mailers who want to ensure that publications are not opened for postal inspection must pay First-Class rates and mark such mail accordingly.

4.0 PRINTED FEATURES

4.1 Publication Name; Notices

The publication name must be displayed prominently on the publication, and the name must be visible through or displayed prominently on any protective cover or mailing wrapper. The publication name, followed immediately by the USPS publication number, and the mailing address to which undeliverable copies or change-of-address notices are to be sent, may be shown in the upper left corner of the address side of a mailing wrapper, or directly on the outside of the host publication if it can be read when the mailing wrapper is in place. The publication number includes an alpha prefix and is to be within parentheses, e.g., THE NATIONAL WEEKLY (ISSN 9876–543X) or THE COMMUNITY (USPS 123–456).

4.2 Endorsements

Mailing wrappers that completely enclose the host publication must bear the words "Second-Class" in the upper right corner of the address area. If a clear plastic wrapper is used, those words may appear anywhere on the address side of the wrapper or the topmost item inside.

4.3 Advertising

Advertising (as defined in E211) may be printed on the pages of any component of a publication, subject to the corresponding standards. Regardless of location, an advertisement must be prepared as an integral part of the publication. Except for advertisements in supplements, and on printed matter included as part of a receipt or order for subscriptions (or requests), all advertisements in a bound publication must be permanently attached. Except as provided in C200.1.4d, all advertising must be included in the advertising portion of the issue measured under P200. Different advertising may occupy the same space in different editions of the same issue.

4.4 Marking of Paid Reading Matter (18 USC 1734)

If a valuable consideration is paid, accepted, or promised for the publication or any editorial or other reading matter in a second-class publication, that matter must be plainly marked "advertisement" by the publisher. When a single item of paid editorial or other reading matter occupies more than one page, it need only be marked "advertisement" on the first page. The word "advertisement" may be included in a statement that explains why the material is marked "advertisement." Such a statement must be prominent on the first page of the material and the word "advertisement" in the statement must be in bold or italicized print, or otherwise emphasized so that it can be plainly seen. Editors or publishers who print such matter without plainly marking it "advertisement" are subject to a fine of not more than $500.

4. Revise Domestic Mail Manual E211, Standards Applicable to All Second-Class Mail, to read as follows:

E211 Standards Applicable to All Second-Class Mail

* * * * *

3.0 PRINTED SHEETS

[Insert the following after the first sentence:]

Sheets may be die cut or deckle-edged and may be made of paper, cellophane, foil, or other similar materials.

* * * * *

7.0 ISSUES

* * * * *

7.3 Contents

Issues may include annual reports, directories, lists, and similar material prepared as supplements (see C200).

* * * * *

9.0 BACK NUMBERS AND REPRINTS

Second-class rates may be paid on mailings of back issues (if the publication's second-class entry is in effect); reprint copies of daily publications printed within 1 week of the issue date; and reprint copies of other than daily publications printed before the next issue is printed. Other mailings of reprint or back issues, including permanently bound reprint or back issues, are subject to the applicable First-, third-, or fourth-class rates.

* * * * *

11.0 ADVERTISING STANDARDS

* * * * *

11.2 Public Service

Public service announcements are announcements for which no valuable consideration is received by the publisher, which do not include any matter related to the business interests of the publisher, and which promote programs, activities or services of federal, state, or local governments or of nonprofit organizations, or matters generally regarded as in the public interest. Public service announcements are not treated as advertising.

* * * * *

5. Revise Domestic Mail Manual P070, Mixed Classes, to read as follows:

P070 Mixed Classes

* * * * *

2.0 ENCLOSURES IN SECOND-CLASS PUBLICATIONS

* * * * *

[Delete existing 2.4; renumber succeeding sections accordingly.]

* * * * *

2.8 Computing Permit Imprint Postage

[Renumber as 2.7 and insert the following after the first sentence:]

The enclosure is eligible for the rate for its class of mail that is most comparable to the presort, automation, and destination discounts that apply to the second-class host piece. For example, a third-class enclosure is eligible for the SCF entry discount if the publication is deposited at the destinating SCF. When more than one enclosure of the same class of mail is enclosed with a publication, they are treated as a single enclosure for computing postage.

* * * * *

6. In Domestic Mail Manual P200, Second-Class Mail, renumber existing 1.7 through 1.11 as 1.8 through 1.12, respectively; delete existing 2.3; renumber 2.4 and 2.5 as 2.3 and 2.4, respectively; add new 1.7 to read as follows:

P200 Second-Class Mail

1.0 BASIC INFORMATION

* * * * *

1.7 Measuring Advertising

The total advertising and nonadvertising portions may be determined by column inches, square inches, pages, or by another recognized unit of measure, if the same unit of measure is used for both. One full page of advertising must equal one full page of nonadvertising regardless of the amount of blank space between each advertisement or nonadvertising article on a page. If measured in column inches, nonadvertising inches are determined by subtracting the total measured advertising inches from the total column inches of the publication. A blank page, portion of a page, or blank border or margin is counted as advertising if consideration was received for the whole page, the blank portion, or the blank border or margin. The border of a page is otherwise considered neither advertising nor nonadvertising and is not measured, but it is included in the total weight of the publication for purposes of postage calculation. When measuring nonrectangular sheets, the measurement is based on the smallest rectangle that could contain the irregular sheet; exact measurement is not attempted. When two or more sheets or parts thereof are glued together, the surface area of each sheet (front and back) is included when measuring the advertising or nonadvertising portion.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–17714 Filed 7–18–94; 9:21 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5013–8]

Redesignation of the Yavapai-Apache Reservation to a PSD Class I Area; State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The purpose of this action is to extend the period for public comment on the request by the Yavapai-Apache Tribal Council to redesignate the Yavapai-Apache Reservation ("the Reservation") in the State of Arizona to Class I under EPA's regulations for prevention of significant deterioration of air quality. The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide on the Reservation.

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Written comments should be addressed to: Jessica Gaylord, Air and Toxics Division (A–5–1), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Supporting information used in developing the proposed rule and materials submitted to EPA relevant to the proposed action are available for public inspection and copying at the docket address listed above during normal business hours. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Jessica Gaylord, Air and Toxics Division (A–5–1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1256.

SUPPLEMENTARY INFORMATION: Part C of the Clean Air Act ("the Act") provides for the prevention of significant deterioration (PSD) of air quality. The intent of this part is to prevent deterioration of existing air quality, particularly in areas considered to be pristine. The Act provides for three basic classifications applicable to all lands of the United States. Associated with each classification are increments which represent the maximum allowable increase in ambient air pollutant concentrations above a baseline concentration. A Class I designation is the most protective of the three classifications, with the lowest amount of allowable increases in pollutant concentrations. Class II applies to areas in which pollutant increases accompanying moderate growth would be allowed. Class III applies to those areas in which considerably more air quality deterioration would be considered acceptable.

Section 164 of the Act and the federal regulations set forth at 40 CFR 52.21(g) contain the procedural requirements for redesignation of areas under the PSD program. The Act provides that lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only upon request by the appropriate Indian Governing Body. Under section 164(b)(2) and 40 CFR 52.21(g)(5), EPA may disapprove a request for redesignation only if it finds, after notice and opportunity for hearing, that the redesignation request does not meet the procedural requirements of section 164 and 40 CFR 52.21(g).

On December 17, 1993, the Yavapai-Apache Tribal Council (herein referred to as "the Tribal Council") submitted to EPA a request to redesignate the Yavapai-Apache Reservation from Class II to Class I. EPA reviewed this request and determined that it met the procedural requirements of Section 164 of the Act and 40 CFR 52.21(g). On April 18, 1994, EPA published a notice of proposed rulemaking in the **Federal Register** which proposed to approve the request and solicited public comment regarding whether the Tribal Council had met the procedural requirements. 59 FR 18346. Please refer to this **Federal Register** notice for further information regarding this proposed rulemaking.

EPA held a public hearing on the request for redesignation on June 22, 1994. Following the public hearing, a request to extend the public comment period was made. By this notice, the public comment period is extended to August 22, 1994. The public is invited to comment on whether the Tribal Council has met all the procedural requirements of section 164 of the Act and 40 CFR 52.21(g). Comments should be submitted to the address listed in the **ADDRESSES** section of this document. Public comments received by August 22, 1994 will be considered in the final rulemaking action taken by EPA.

Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000. The proposed action affects only major stationary sources, as defined by 40 CFR 52.21, will not result in any additional requirements for small entities. Therefore, I certify that this action does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and

recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: July 7, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–17690 Filed 7–19–94; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 180

[OPP–3000346; FRL–4868–7]

RIN 2070–AC18

Tetrachlorvinphos, Terbutryn, and Etridiazole; Removals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to remove tolerances for residues of tetrachlorvinphos (2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate), terbutryn (2-tert-butylamino-4-ethylamino-6-methylthio-*s*-triazine), and etridiazole (5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole) in or on certain raw agricultural commodities (RAC's). EPA is initiating this action because there are no current registrations associated with these food uses. The applicable registrations for these pesticide uses have been cancelled for nonpayment of maintenance fees and/or by company request.

DATES: Written comments, identified by the document control number [OPP-300346], must be received on or before September 19, 1994.

ADDRESSES: By mail, submit comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1128, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia adddress given above, from 8 a.m. to 4

recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: July 7, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–17690 Filed 7–19–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–3000346; FRL–4868–7]

RIN 2070–AC18

Tetrachlorvinphos, Terbutryn, and Etridiazole; Removals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to remove tolerances for residues of tetrachlorvinphos (2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate), terbutryn (2-tert-butylamino-4-ethylamino-6-methylthio-*s*-triazine), and etridiazole (5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole) in or on certain raw agricultural commodities (RAC's). EPA is initiating this action because there are no current registrations associated with these food uses. The applicable registrations for these pesticide uses have been cancelled for nonpayment of maintenance fees and/or by company request.

DATES: Written comments, identified by the document control number [OPP-300346], must be received on or before September 19, 1994.

ADDRESSES: By mail, submit comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1128, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia adddress given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Sherada D. Hobgood, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8352.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of certain tolerances established under section 408 of the Federal, Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a) for residues of the insecticide tetrachlorvinphos, the herbicide terbutryn, and the fungicide etridiazole in or on certain RAC's. Since a tolerance is generally not necessary for a pesticide chemical which is not registered for a particular food use, EPA is initiating this action because all registered food uses associated with these tolerances have been cancelled.

I. Discussion of Chemicals

A. Tetrachlorvinphos

EPA proposes to revoke the tolerances established for residues of the insecticide 2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate (tetrachlorvinphos) as listed in 40 CFR 180.252 in or on th following RAC's: (1) 110 parts per million in or on and corn fodder and forage (including field corn, sweet corn, and popcorn); (2) 10 parts per million in or on apples, cherries, corn grain, fresh corn including sweet corn (kernels plus cob with husk removed), cranberries, and pears; (3) 5 parts per million in or on tomatoes; (4) 0.1 part per million in or on peaches.

Registered uses of the parent compound on these commodities were cancelled August 20, 1987.

Action levels to replace revoked tolerances are not necessary based on: (1) the small number of detectable residues that were found during a period of time the tetrachlorvinphos was registered for use; (2) the low levels in the samples that were indicated in the findings; (3) the long period of time that had elapsed since tetrachlorvinphos was last registered for use in the U.S. (over 6 years); and (4) the fact that FDA did not detect any tetrachlorvinphos residues in its monitoring programs in recent years.

B. Terbutryn

EPA proposes to revoke the tolerances established for negligible residues (N) of the herbicide terbutryn (2-tert-butylamino-4-ethylamino-6-methylthio-*s*-triazine) as listed in 40 CFR 180.265 in or on the following RAC's:

Commodity	Parts per million
Barley, fodder	0.1 (N)
Barley, grain	0.1 (N)
Barley, green	0.1 (N)
Barley, straw	0.1 (N)
Sorghum, grain	0.1 (N)
Wheat, fodder	0.1 (N)
Wheat, grain	0.1 (N)
Wheat, green	0.1 (N)
Wheat, straw	0.1 (N)

Action levels to replace revoked tolerances are not required because: (1) Uses of terbutryn on these crops were all cancelled on or prior to October 10, 1989; (2) the tolerances for terbutryn on these commodities all reflect non-detectable residues in or on the treated commodities indicating that residues are minuscule even in the treated crop; and (3) FDA did not detect any terbutryn residues in its monitoring programs in recent years. Therefore, detectable residues are not likely to be found in subsequent crops as a result of past uses of terbutryn.

C. Etridiazole

EPA proposes to amend 40 CFR 180.370 to revoke the tolerance established for residues of the fungicide 5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole (etridiazole) and its monoacid metabolite 3-carboxy-5-ethoxy-1,2,4-thiadiazole as listed in 40 CFR 180.370 in or on the following RAC:

Commodity	Parts per million
Tomatoes	0.15

An action level to replace the revoked tolerance is not required because: (1) Use of etridiazole on the crop was cancelled in the mid-1980's; (2) the tolerance for etridiazole on the commodity reflects very low residues in or on the treated commodity, indicating that residues are low even in the treated crop; and (3) residues have degraded and dissipated from prior use. Therefore, detectable residues are not likely to be found in subsequent crops as a result of past uses of etridiazole.

II. Solicitation of Comments

Any person who has registered or submitted an application for registration of a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, that contains tetrachlorvinphos, terbutryn, and etridiazole may request, within 60 days after the publication of the

document in the Federal Register, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Further, EPA is soliciting comments from anyone adversely affected by revocation of these tolerances. EPA requests that anyone adversely affected by these revocations submit information pertaining to why and provide specific information: (1) Are there any existing stocks of the chemicals?; (2) What amount of existing stocks remains?; (3) When will the stocks be depleted?; (4) How long would the commodities treated with these chemicals be in the channels of trade?; (5) Are any of these three pesticide chemicals used in foreign countries?; (6) Would residues of any of these three pesticide chemicals be present in or on commodities grown in foreign countries and imported into the United States?

Comments must bear a notation indicating the document control number [OPP-300346]. All written comments filed in the Public Response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency has conducted an anaylsis in order to satisfy requirements as specified by Executive Order 12866 and the Regulatory Flexibility Act. This analysis is available for public inspection in Rm. 1128 at the Virginia address given above.

III. Other Regulatory Requirements

A. Executive Order 12866

Executive Order 12866 requires the Agency initially to determine whether a proposed regulatory action being proposed or issued is a "significant" rule and therefore subject to the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget [OMB]). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have an economic impact on small businesses, small organizations, or small governmental jurisdictions.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all domestic registrations associated with these food uses of tetrachlorvinphos, terbutryn, and etridiazole have been cancelled, it is expected that no economic impact would occur at any level of business enterprise if these tolerances were revoked.

Accordingly, I certify that this action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and Pests, Reporting and recordkeeping requirements.

Dated: July 5, 1994

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows::

Authority: 21 U.S.C. 346a and 371.

2. Section 180.252 is revised to read as follows:

§ 180.252 2-Chloro-1-(2,4,5-trichlorphenyl)vinyl dimethyl phosphate; tolerances for residues.

Tolerances are established for residues of the insecticide 2-chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate in or on raw agricultural commodities as follows:

Commodity	Parts per million
Cattle, fat	1.5
Eggs	0.1
Goats, fat	0.5
Hogs, fat	1.5
Horses, fat	0.5
Milk, fat (reflecting negligible residues in whole milk)	0.5
Poultry, fat	0.75
Sheep, fat	0.5

§ 180.265 [Removed]

2. By removing § 180.265 *Terbutryn; tolerances for residues.*

§ 180.370 [Amended]

3. In § 180.370 *5-Ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole; tolerances for residues* by amending the table therein by removing the entry for tomatoes.

[FR Doc. 94-17561 Filed 7-19-94; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-56, RM-8459]

Radio Broadcasting Services; Borger, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Zia Broadcasting Company, proposing the allotment of Channel 294A to Borger, Texas, as the community's second local FM service. Channel 294A can be allotted to Borger in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 294A at Borger are 35-39-24 and 101-23-36.

DATES: Comments must be filed on or before September 6, 1994, and reply comments on or before September 21, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy C. Cutforth, P.E., Vir James P.C., Broadcast Engineering Consultants, 965 S. Irving Street, Denver, Colorado 80219 (Consultant for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94-56, adopted June 7, 1994, and released July 15, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-17608 Filed 7-19-94; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Air Brake Systems; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration, Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking, submitted by the California Highway Patrol, that requests the agency to amend the air pressure warning signal requirements in Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*. After conducting its review, the agency has determined that the petition should not be granted because the situation described by the petition does not raise a significant safety problem. The agency further

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–56, adopted June 7, 1994, and released July 15, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17608 Filed 7–19–94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Air Brake Systems; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration, Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking, submitted by the California Highway Patrol, that requests the agency to amend the air pressure warning signal requirements in Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*. After conducting its review, the agency has determined that the petition should not be granted because the situation described by the petition does not raise a significant safety problem. The agency further notes that establishing an upper limit to the operating range of the low pressure warning signal would not correct the problem of the signal's failure to warn a driver of low pressure in the trailer brake system. Since there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding, the agency is denying the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Tinto, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–5229.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, establishes performance requirements for braking systems on vehicles equipped with air brakes. The purpose of the standard is to ensure safe braking performance under normal and emergency braking conditions.

The standard requires vehicles equipped with air brakes to have certain equipment. Section S5.1.5 requires that each vehicle equipped with an air brake system be equipped with a "signal, other than a pressure gage, that gives a continuous warning to a person in the normal driving position when the ignition is in the "on" or "run" position and the air pressure in the service reservoir system is below 60 p.s.i." The purpose of this requirement is to inform the driver of situations in which there may be low, potentially unsafe levels of air pressure in the service brake system.

On June 7, 1993, the California Highway Patrol (CHP), submitted a petition for rulemaking that requested the agency to amend the low air pressure warning signal requirements in S5.1.5 of Standard No. 121. The petitioner contended that:

> this subsection permits a warning signal that is activated at any pressure above 60 psi as long as it also produces the signal at pressures below 60 psi. This would permit a device that activates a warning in the normal operating range of the system, approximately 85–115 psi. This could result in a false signal where the driver would not be warned of a true low air pressure situation. Though unlikely, a warning device that was activated whenever the ignition key was in the "on" or "run" position would comply with the existing regulation, while fulfilling neither the intent of the regulation nor any useful purpose.

Based on its concern, CHP requested that the agency initiate rulemaking to specify an upper limit to the warning signal operating range, so that it would give a "true warning" of a low air pressure condition. CHP recommended that the upper cutoff be 75 p.s.i.

After reviewing the petition, NHTSA has decided not to establish an upper limit to the low pressure warning signal requirement. The agency disagrees with CHP's claims that establishing such an upper limit would improve safety. The agency notes that under the current requirement, some valves may activate at slightly higher air pressures than 60 p.s.i. since the valves are typically designed with a tolerance of about ± 6 p.s.i. Nevertheless, activation at 65 p.s.i. rather than 60 p.s.i. also indicates a relatively low pressure level about which the driver should be concerned. The agency believes that the modification requested by the petition is not warranted, since the agency is aware of no safety problems related to this requirement which has been in effect since 1971. The agency further notes that setting an upper limit might unreasonably restrict the potential for designing new air brake systems, since the valve manufacturers would be faced with the unnecessary task of redesigning the valves, even though such a modification would not provide any safety benefits.

Based on the above considerations, NHTSA has determined that CHP's petition should not be granted. In accordance with 49 CFR Part 552, the agency has completed its technical review of the petition and determined that there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding. Accordingly, the agency is denying the petition.

Notwithstanding NHTSA's decision to deny the petition, the agency is reviewing the pressure setting requirements for the low pressure warning switch in light of possible problems with a recent amendment to Standard No. 121. On October 8, 1991, NHTSA issued a final rule that eliminated the requirements for a separate protected reservoir capable of releasing the parking brakes. (56 FR 50666) Among other things, that amendment added a requirement for 70 p.s.i. supply line pressure retention and established the air pressure at which automatic application of the parking brakes would commence during loss of air pressure.

In comments on a separate rulemaking on the parking brake requirements applicable to air-applied, mechanically held systems (58 FR 13437, March 11, 1993), the American Trucking Associations (ATA) and Allied Signal contended that the 70 p.s.i. requirement prevents tractor low air pressure warning systems from warning drivers of the loss of service air pressure and thus loss of service brakes on

trailers. Allied requested that the agency raise the governor cut-in pressure to 100 p.s.i., which it believed would enable manufacturers to provide low pressure warnings. It stated that the pressure switch is currently limited by the 85 p.s.i. minimum governor cut-in pressure requirement. In addition, ATA has informed the agency that it is conducting tests to determine whether it should petition the agency to raise the cut-in requirements from the present 85 p.s.i. minimum and the low pressure warning limits from 60 p.s.i. to 75 p.s.i. or 80 p.s.i. Based on these test results, NHTSA may consider initiating rulemaking to raise the lower limit for the low pressure warning signal.

Authority: 49 U.S.C. 30103 and 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 14, 1994.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 94–17589 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–59–P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Trails End Integrated Project; Allegheny National Forest, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: The Allegheny National Forest is cancelling its published notice of intent to prepare an environmental impact statement for the Trails End Integrated Project on the Ridgway Ranger District. (Refer to 59 FR 9276, March 1, 1994.)

Dated: June 24, 1994.

Heather Harvey,

Acting Forest Supervisor.

[FR Doc. 94–17578 Filed 7–18–94; 8:45 am]

BILLING CODE 3410–11–M

Forest Plan Amendment, Ouachita National Forest, Scott and Polk Counties, Arkansas; Renewal of the Shortleaf Pine/Bluestem Grass Ecosystem and Recovery of the Red-cockaded Woodpecker

ACTION: Notice of intent to prepare an environmental impact statement.

Pursuant to 36 CFR 219.10(f), the Forest Supervisor for the Ouachita National forest gives notice of the agency's intent to prepare an environmental impact statement (EIS) for the decision to amend the Land and Resource Management Plan for the Ouachita National Forest. This notice includes a summary of the proposed changes to the Forest Plan, an explanation of the need for these changes, identifies preliminary issues, and a brief description of potential alternatives to these changes. This notice also provides estimated dates for

Notices

Federal Register
Vol. 59, No. 138
Wednesday, July 20, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Trails End Integrated Project; Allegheny National Forest, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: The Allegheny National Forest is cancelling its published notice of intent to prepare an environmental impact statement for the Trails End Integrated Project on the Ridgway Ranger District. (Refer to 59 FR 9276, March 1, 1994.)

Dated: June 24, 1994.

Heather Harvey,

Acting Forest Supervisor.

[FR Doc. 94–17578 Filed 7–18–94; 8:45 am]
BILLING CODE 3410–11–M

Forest Plan Amendment, Ouachita National Forest, Scott and Polk Counties, Arkansas; Renewal of the Shortleaf Pine/Bluestem Grass Ecosystem and Recovery of the Red-cockaded Woodpecker

ACTION: Notice of intent to prepare an environmental impact statement.

Pursuant to 36 CFR 219.10(f), the Forest Supervisor for the Ouachita National forest gives notice of the agency's intent to prepare an environmental impact statement (EIS) for the decision to amend the Land and Resource Management Plan for the Ouachita National Forest. This notice includes a summary of the proposed changes to the Forest Plan, an explanation of the need for these changes, identifies preliminary issues, and a brief description of potential alternatives to these changes. This notice also provides estimated dates for filing the draft and final EIS; information about future public involvement; the name and address of the responsible official; and the name of the person who can provide additional information.

DECISION TO BE MADE: The Forest Service will decide whether or not to amend the existing Forest Plan. Specifically, the Forest Service will decide whether or not to amend the Forest Plan to create a new management area (Management Area 22) that will encompass 155,010 acres of National Forest. Whether or not this will be a significant amendment to the Forest Plan will be part of the analysis and decision. The new management area will provide for the renewal of the Shortleaf Pine/Bluestem Grass ecosystem and implement the Regional EIS for *Management of the Red-cockaded Woodpecker and its habit on National Forest in the South.*

No irreversible or irretrievable commitment of resources (site specific actions) will be made as a result of this decision. Projects to implement the Amended Forest Plan will involve site specific environmental analysis and appropriate documentation.

DATES: The Agency expects to file the draft EIS (DEIS) with the Environmental Protection Agency and make it available for public comment in August, 1994.

The Agency expects to file the final EIS in November, 1994.

MEETINGS AND PUBLIC INVOLVEMENT: The Forest Service invites comments and suggestions from Federal, State, and local agencies, individuals and organizations about issues concerning the effects of this proposal. The Ouachita National Forest has scheduled three public meetings to discuss the proposal. These meetings will be held as follows:

Poteau Ranger District—Waldron, Arkansas. July 11, 1994.
Mena Ranger District—Mena, Arkansas. July 12, 1994.
Cold Springs Ranger District—Booneville, Arkansas. July 14, 1994.

The purpose of these meetings is to discuss the proposed changes to the Forest Plan, to identify issues associated with those changes, and to develop alternatives which respond to the proposed changes. Written comments are encouraged. Additional meetings with individuals or groups may be arranged and can include tours of the Forest area contained in the proposal. Comments will be most useful if received before July 30, 1994.

Refer to the "For Further Information Contact" section of this notice for the contact individual. There is an extensive mailing list that has been developed for this proposal. Those on this list will be contacted to solicit input. Many interested citizens helped with the proposal and will again be contacted during this process. Finally, the Forest has continuing contact with federal, state, and local agencies and congressional offices. These agencies and offices will be involved with this planning effort.

FOR FURTHER INFORMATION CONTACT: George Bukenhofer, Project Coordinator, Ouachita National Forest, Poteau Ranger District, P.O. Box 2255, Waldron, AR 72958.

RESPONSIBLE OFFICIAL: The Forest Supervisor for the Quachita National Forest, located at P.O. Box 1270, Hot Springs, AR 71902, is the Responsible Official and the deciding official for this action. If this becomes a significant amendment to the Forest Plan, the Regional Forester in Atlanta, Georgia will be the Responsible Official and the deciding official for this action.

PROPOSED ACTION: The goal of this proposal is to renew the historic shortleaf pine/bluestem grass ecosystem on a portion of the Ouachita National Forest. Renewal includes recovery of the Red-cockaded Woodpecker (RCW). This EIS will document the analysis of alternatives to the proposed action and disclose the effects of designating a Shortleaf Pine/Bluestem Grass Ecosystem Management Area and implementing the Regional EIS for *Management of the RCW and its Habitat on National Forests in the South.*

Recovery of the RCW includes changing the current Forest Plan goal of 50 breeding groups to a minimum of 250 breeding groups on the Forest. Designation of Management Area 22 affects the management direction for 155,010 acres of National Forest. There will be no change in the amount of land classified as suitable for timber harvest.

Ecosystem management of the proposed area would include a broad variety of forest conditions and management practices. Resource outputs such as timber production would be a product of managing to restore the shortleaf pine/bluestem grass

ecosystem. To feature older stands, regeneration cycles will be lengthened to a minimum of 120 years. Regeneration areas would retain indefinitely a portion of the overstory trees.

Management Area 22 would occur in portions of the Ouachita National Forest in Scott and Polk counties, Arkansas. Included within this management area would be the proposed Habitat Management Area (HMA) for the RCW, containing 84,312 acres of which 66,606 acres is suitable for timber management. A new desired future condition, management area goals and standards and guidelines would be formulated for this new Management Area.

Preliminary Issues

Through our informational meetings and meetings with other citizens, the following issues relating to the effects of the proposal have been identified. These are *preliminary* issues. Additional scoping and public participation will be used to refine and add to this list to develop a complete understanding of the significant issues related to this proposal.

1. People are concerned that this proposal will result in a reduction in the local supply of timber products from the National Forest. This could have a direct and indirect effect on local communities.

2. People are concerned that hardwood trees would be eliminated in the proposed Management Area. Hardwood tree retention and forest diversity in pine-dominated areas of the Forest has been an issue that has been addressed many times in the past. This proposal stresses that current hardwood tree retention guidelines will not be changed.

3. There are concerns that smoke from an increased prescribed burning program could lower air quality and visibility.

4. There is a concern that this proposal will increase costs to taxpayers. Costs, both direct and indirect, would have to be estimated. Timber receipts from projects in the proposed area will help pay expenses through the Knutson-Vandenberg Act of 1930.

6. There is a concern that if the population of Red-cockaded Woodpeckers (RCW) on the Forest increases, the RCW's will move to adjoining private lands. Since they are a federally listed endangered species, this could lead to limitations on the management of that private land under Section 9 of the Endangered Species Act.

7. There is a concern that portions of the Forest might be closed to uses such as hunting, fishing, berry picking or firewood gathering in the future.

8. There is a concern that evenaged timber management techniques will be the only harvest techniques used in this area.

Preliminary Alternatives: The Forest Service will evaluate a wide range of alternatives to the proposal in response to the issues identified in the scoping process. The agency expects to consider at least the following alternatives, which respond to preliminary issues identified to date. As new issues are identified through public participation, new alternatives may be created, and existing alternatives modified. Some of these preliminary alternatives may not be analyzed in detail.

Alternative A (No Action) This alternative would not change the management area allocations, activities or desired future condition of the existing Forest Plan. The rotation age for shortleaf pine would remain at 70 years. The current goal of 50 groups of RCW would remain. There would be no change in fire control or prescribed fire activities. Revenues and expenditures would remain at or near current levels, as would the supply of timber products. Hardwood tree retention rates would not change.

Alternative B. This alternative would respond to the issues related to the supply of timber products from the project area by not including the extended portion of the area. The new management area would be limited to the HMA portion of the proposal, 84,312 acres. Ecosystem management practices such as increased use of prescribed fire, increasing rotation age to a minimum of 120 years, retention and creation of snag trees, and all the requirements specified in the Regional EIS for *Management of the Red-cockaded Woodpecker and its habitat on National Forests in the South* would be featured in this area.

Alternative C. This alternative would respond to the issue of cost to the taxpayer by doing most of the prescribed burning in the growing season and not doing mechanical (chainsaw) midstory reduction. The acreages in this alternative would be the same as the proposed action. Ecosystem management practices would be the same as the proposed action and would implement the direction of the Regional EIS.

Alternative D. This alternative would respond to the issue of dominant forest harvest technique by harvesting 75% of the area that is suitable for timber harvest using an unevenaged management system. Areas needed for RCW nesting, replacement, and recruitment stands would be the only areas using the evenaged management system. These same stands would be the only ones to receive midstory treatments or prescribed burning. The rotation age of the evenaged stands would be 120 years.

Public Comments on the Draft EIS: After the DEIS has been published, the Forest Service will again be actively seeking information, comments, and assistance from Federal, State and local agencies and from individuals and organizations who may be interested in or affected by the proposed action. It is now important that those interested in this proposed action participate at that time. The DEIS should be available for public review in August 1994. After a minimum comment period of 45 days, the Final EIS and Forest Plan Amendment should be completed in September 1994. If in the analysis it is determined that this will be a significant amendment to the Forest Plan, the comment period will be 90 days.

The comment period for the DEIS will commence on the day the Environmental Protection Agency publishes the "Notice of Availability" in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contention. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that are not raised during the draft environmental impact stage but rather after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these rulings, it is very important that those interested in this proposed action participate by the close of the comment period. This will assure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering additional issues and concerns about the proposed action, comments about the draft environmental statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Act at 40 CFR 1503.3 in addressing these points.

Dated: July 1, 1994.

John M. Curran,

Forest Supervisor.

[FR Doc. 94–17635 Filed 7–19–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Trade Fair Certification Application.

Agency Form Number: ITA 4100P.

OMB Approval Number: 0625–0130.

Type of Request: Revision of a currently approved collection.

Burden: 700 hours.

Number of Respondents: 70.

Avg Hours Per Response: 10.

Needs and Uses: The Department of Commerce's Trade Fair Certification Program provides endorsement and support for private–sector recruited and organized foreign trade shows. Certifying a trade show means Commerce endorses a qualified trade show as a proven opportunity to promote exports. Certification also provides endorsement of the U.S. show organizer or agent as a reliable firm capable of effectively organizing and managing a U.S. pavilion or show. The information provided is used by the Department to assess the credentials of the show and applicant.

Affected Public: Businesses or other for–profit and non–profit entities.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Donald Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC

specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Act at 40 CFR 1503.3 in addressing these points.

Dated: July 1, 1994.

John M. Curran,

Forest Supervisor.

[FR Doc. 94–17635 Filed 7–19–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Trade Fair Certification Application.

Agency Form Number: ITA 4100P.

OMB Approval Number: 0625–0130.

Type of Request: Revision of a currently approved collection.

Burden: 700 hours.

Number of Respondents: 70.

Avg Hours Per Response: 10.

Needs and Uses: The Department of Commerce's Trade Fair Certification Program provides endorsement and support for private–sector recruited and organized foreign trade shows. Certifying a trade show means Commerce endorses a qualified trade show as a proven opportunity to promote exports. Certification also provides endorsement of the U.S. show organizer or agent as a reliable firm capable of effectively organizing and managing a U.S. pavilion or show. The information provided is used by the Department to assess the credentials of the show and applicant.

Affected Public: Businesses or other for–profit and non–profit entities.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Donald Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: July 14, 1994.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–17605 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–CW–F

Change in Time for Public Hearing on the International Aspects of the National Information Infrastructure

AGENCY: U.S. Department of Commerce.

ACTION: Notice of change in time for public hearing.

SUMMARY: This notice is to inform the public of a time change to the second day of the international telecommunications hearing first announced June 21, 1994 (59 FR 31979–80). The first day of the hearing on July 27 will continue as scheduled, beginning at 9:00 a.m. However, the hearing will resume on July 28 at 1:00 p.m. Both days of the hearing will continue to be held at the Georgetown University Conference Center, Grand Ballroom.

DATES: July 27, 1994 9 a.m. to 4:30 p.m.; July 28, 1994, 1:00 p.m. to 4:30 p.m.

ADDRESSES: (1) The hearing will be held at Georgetown University Conference Center (Thomas and Dorothy Leavey Center), Grand Ballroom, 3800 Reservoir Road, N.W., Washington D.C.

(2) Those wishing to attend the hearing should contact Nicole Brown or Angie Mitchell by telephone at (202) 482–4772.

FOR FURTHER INFORMATION CONTACT: Randall Cook by telephone at (202) 482–0490, facsimile at (202) 501–4695, electronic mail via the Internet at rcook@doc.gov or by mail at the address listed above.

Dated: July 18, 1994.

Carol C. Darr,

Deputy General Counsel.

[FR Doc. 94–17789 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–60–P

International Trade Administration

[A–357–809; A–351–826; A–428–820; and A–475–814]

Initiation of Antidumping Duty Investigations: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Argentina, Brazil, Germany and Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 20, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0371.

INITIATION OF INVESTIGATIONS:

The Petition

On June 23, 1994, we received four petitions filed in proper form by Gulf States Tube Division of Quanex Corporation (petitioner). In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.12 (1994), the petitioner alleges that small diameter circular seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from Argentina, Brazil, Germany and Italy is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petitions because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigations

For purposes of these investigations, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end,

bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of these investigations, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of these investigations includes all multiple-stenciled seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, whether or not also certified to a non-covered specification. Standard, line and pressure applications are defining characteristics of the scope of these investigations. Therefore, seamless pipes meeting the physical description above, but not produced to the A–106, A–53, or API 5L standards shall be covered if used in an A–106, A–335, A–53 or API 5L application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of these investigations.

Specifically excluded from these investigations are boiler tubing, mechanical tubing and oil country tubular goods except when used in a standard, line or pressure pipe application. Also excluded from these investigations are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Request for Comments From Interested Parties

The scope contained in the petitions, which has been slightly clarified in the above "Scope of Investigations" section, contains the clause that products used in standard, line or pressure pipe applications be included in the scope, regardless of whether they meet A–106, A–335, A–53 or API 5L standards. Implementing this clause would require some type of end-use certification. Given the burden on Customs and the difficulty involved in administering end-use certifications, the Department generally avoids end-use as a scope criterion. *See Final Determination of Sales at Less Than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semifinished Products of Special Bar Quality Engineered Steel from Brazil*, 58 FR 31496 (June 3, 1993). However, because petitioner has alleged that circumvention may occur if end-use is not part of any order resulting from these investigations, we are requesting comments regarding end-use as a criterion for the scope of these investigations. Petitioner has based its allegation on circumstances that occurred in the investigations of *Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, and Mexico*, 59 FR 1929 (January 13, 1994). Petitioner has identified specific possible substitution products for the scope merchandise. Petitioner has also indicated that, while it is not aware at this time of substitution occurring, it may occur in the future should antidumping duties be assessed on seamless standard, line and pressure pipe. Therefore, we are including end-use in the scope for purposes of initiation; however, we intend to consider its appropriateness further and we invite comments from interested parties regarding the scope information presented above under the "Scope of Investigations" section of this notice. Specifically, we will examine comments that address "end-use" as a scope criterion. Interested parties are invited to comment on the following: (1) Whether or not end-use is an appropriate criterion for the merchandise described in the "Scope of Investigations" section of this notice; (2) how the Department would be informed when substitution is occurring, *i.e.*, a trigger mechanism; (3) at what point the Department should implement suspension of liquidation and use of end-use certificates for products meeting the physical parameters described in the scope other than those stenciled A–106, A–335, A–53 and/or API 5L; (4) what specific characteristics or factors the Department should evaluate regarding end-use as a scope criterion; (5) what information should be provided on an end-use certificate; (6) precise details as to how the Department and Customs should administer any antidumping duty orders that result from these investigations given end-use as a scope criterion; and (7) the universe of products that could possibly be substituted for the subject merchandise.

Finally, we invite comments from parties on whether the products within the scope of these investigations constitute more than one class or kind of merchandise. Parties should include an analysis using the following factors: (1) The physical characteristics of the merchandise; (2) the expectations of the ultimate purchaser; (3) the channels of trade; (4) the ultimate use of the product; and (5) the cost.

Parties interested in commenting on the items mentioned above should submit their comments no later than close of business October 21, 1994. Rebuttal comments will be accepted no later than close of business October 31, 1994.

United States Price and Foreign Market Value

For purposes of these initiations, no adjustments were made to petitioner's calculations. If it becomes necessary at a later date to consider these petitions as a source of best information available (BIA), we may review all of the bases for the petitioner's estimated dumping margins in determining BIA.

Argentina

For Argentina, petitioner based United States price (USP) on U.S. price quotes to an end-user. Petitioner made adjustments for transportation and insurance charges, port and handling charges, and U.S. duties paid. Petitioner adjusted USP to account for the tax levied on seamless pipe in the home market. Petitioner also calculated the amount of the tax adjustment that was due solely to the inclusion of price deductions in the original tax base.

Petitioner based foreign market value (FMV) on home market prices to end-users. Petitioner made adjustments for distributor mark-up, transportation, home market taxes, and a tax offset to account for the amount of tax that was

Department should implement suspension of liquidation and use of end-use certificates for products meeting the physical parameters described in the scope other than those stenciled A–106, A–335, A–53 and/or API 5L; (4) what specific characteristics or factors the Department should evaluate regarding end-use as a scope criterion; (5) what information should be provided on an end-use certificate; (6) precise details as to how the Department and Customs should administer any antidumping duty orders that result from these investigations given end-use as a scope criterion; and (7) the universe of products that could possibly be substituted for the subject merchandise.

Finally, we invite comments from parties on whether the products within the scope of these investigations constitute more than one class or kind of merchandise. Parties should include an analysis using the following factors: (1) The physical characteristics of the merchandise; (2) the expectations of the ultimate purchaser; (3) the channels of trade; (4) the ultimate use of the product; and (5) the cost.

Parties interested in commenting on the items mentioned above should submit their comments no later than close of business October 21, 1994. Rebuttal comments will be accepted no later than close of business October 31, 1994.

United States Price and Foreign Market Value

For purposes of these initiations, no adjustments were made to petitioner's calculations. If it becomes necessary at a later date to consider these petitions as a source of best information available (BIA), we may review all of the bases for the petitioner's estimated dumping margins in determining BIA.

Argentina

For Argentina, petitioner based United States price (USP) on U.S. price quotes to an end-user. Petitioner made adjustments for transportation and insurance charges, port and handling charges, and U.S. duties paid. Petitioner adjusted USP to account for the tax levied on seamless pipe in the home market. Petitioner also calculated the amount of the tax adjustment that was due solely to the inclusion of price deductions in the original tax base.

Petitioner based foreign market value (FMV) on home market prices to end-users. Petitioner made adjustments for distributor mark-up, transportation, home market taxes, and a tax offset to account for the amount of tax that was due solely to the inclusion of price deductions in the original tax base.

The range of dumping margins of seamless pipe from Argentina based on a comparison of USP to FMV alleged by petitioner is 66.57 percent to 108.13 percent.

Brazil

For Brazil, petitioner based USP on U.S. price quotes to a distributor. Petitioner made adjustments for freight and insurance, port and handling charges and U.S. duties paid. Petitioner adjusted USP to account for the tax levied on seamless pipe in the home market. Petitioner also calculated the amount of the tax adjustment that was due solely to the inclusion of price deductions in the original tax base. Finally, petitioner adjusted USP to account for the difference in level of trade between the home market and U.S. market.

Petitioner based FMV on home market price quotes to an end-user. Petitioner adjusted the prices for home market taxes not included in the prices. Petitioner made a tax offset for the amount of tax that was due solely to the inclusion of price deductions in the original tax base.

The range of dumping margins of seamless pipe from Brazil based on a comparison of USP to FMV alleged by petitioner is 79.83 percent to 130.08 percent.

Germany

For Germany, petitioner based USP on U.S. price quotes to an end-user. Petitioner made adjustments for distributor mark-up, freight and insurance, port and handling charges and U.S. duties paid.

Petitioner was unable to obtain home market prices. Moreover, petitioner was unable to develop a meaningful constructed value as petitioner claims it operates a substantially different production process than the German manufacturer of the subject merchandise. Therefore, petitioner based FMV on third country prices in Britain, which was the only information reasonably available to it. Petitioner obtained ex-warehouse and delivered prices from three British distributors of subject merchandise from Germany. Petitioner made adjustments for the distributor mark-up, delivery charges, where appropriate, and transportation charges.

The range of dumping margins of seamless pipe from Germany based on a comparison of USP to FMV alleged by petitioner is 11.67 percent to 57.72 percent.

Italy

For Italy, petitioner based USP on U.S. price quotes to an end-user. Petitioner made adjustments for distributor mark-up, transportation and insurance charges, port and handling charges, and U.S. duties paid. Petitioner adjusted the prices for home market taxes. Petitioner made a tax offset for the amount of tax that was due solely to the inclusion of price deductions in the original tax base.

Petitioner based FMV on home market price quotes to an end-user. Petitioner made adjustments for discounts on cash sales, distributor mark-up and freight charges. Petitioner adjusted the prices for home market taxes and made a tax offset for the amount of tax that was due solely to the inclusion of price deductions in the original tax base.

The range of dumping margins of seamless pipe from Italy based on a comparison of USP to FMV alleged by petitioner is 4.57 percent to 11.26 percent.

Initiation of Investigations

We have examined the petitions on seamless pipe from Argentina, Brazil, Germany and Italy, and have found that these petitions meet the requirements of section 732(b) of the Act and 19 C.F.R. 353.12. Therefore, we are initiating antidumping duty investigations to determine whether imports of seamless pipe from Argentina, Brazil, Germany and Italy are being, or are likely to be, sold in the United States at less than fair value.

Preliminary Determination by the International Trade Commission

The International Trade Commission (ITC) will determine by August 8, 1994, whether there is a reasonable indication that imports of seamless pipe from Argentina, Brazil, Germany and Italy are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in the investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 13, 1994.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations.

[FR Doc. 94–17680 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–DS–P

[C-420-812]

Certain Lead and Bismuth Carbon Steel Products From Germany Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review (09/17/92–12/31–93).

SUMMARY: The Department of Commerce (the Department) has terminated the countervailing duty administrative review of the order on certain lead and bismuth carbon steel products from Germany initiated on April 15, 1994 (59 FR 18100).

EFFECTIVE DATE: July 20, 1994.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Rick Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On March 4, 1994, the Department published in the **Federal Register** (59 FR 10368) a notice of "Opportunity to Request Administrative Review" on the countervailing duty order on certain lead and bismuth carbon steel products from Germany (58 FR 15325; March 22, 1993) for the period September 17, 1992, through December 31, 1993. On March 31, 1994, respondent Saarstahl AG, a producer of the subject merchandise, requested that the Department conduct a review of the subject countervailing duty order. No other interested party requested a review.

On April 15, 1994, the Department published a notice of initiation of a review of the order (59 FR 18100). On March 20, 1994, Saarstahl AG withdrew its request for an administrative review. Because the request for withdrawal was timely pursuant to 19 CFR 355.22(a)(3), the Department is terminating this review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: July 13, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 94–17679 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–DS–M

[C-475-815]

Notice of Initiation of Countervailing Duty Investigation: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 20, 1994.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2815.

Initiation

The Petition

On June 23, 1994, Gulf States Tubes, a division of Quanex Corporation, (hereinafter "petitioner") filed with the Department of Commerce ("the Department") a countervailing duty petition on behalf of the United States industry producing small diameter circular seamless carbon and alloy steel standard, line and pressure pipe (hereinafter "seamless pipe"). In accordance with section 701 of the Tariff Act of 1930, as amended ("the Act"), petitioner alleges that manufacturers, producers, or exporters of the subject merchandise in Italy receive countervailable subsidies.

Injury Test

Because Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry.

Standing

Petitioner has stated that it has standing to file the petition because it is an interested party as defined in sections 771(9)(C) and 771(9)(D) of the Act and that it has filed the petition on behalf of the U.S. industry producing the like product. If any interested party, as described in sections 771(9)(C), (D), (E), or (F), wishes to register support for, or opposition to, this petition, such party should file written notification with the Assistant Secretary for Import Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Scope of the Investigation

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications.

The seamless pipes subject to this investigation are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20; and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials ("ASTM") standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all multiple-stenciled seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, whether or not also certified to a non-covered specification. Standard, line and pressure applications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–106, A–53, or API 5L standards shall be covered if used in an A–106, A–335, A–53, or API 5L application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all multiple-stenciled seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, whether or not also certified to a non-covered specification. Standard, line and pressure applications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–106, A–53, or API 5L standards shall be covered if used in an A–106, A–335, A–53, or API 5L application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing, mechanical tubing, and oil country tubular goods except when used in a standard, line or pressure pipe application. Also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Request for Comments From Interested Parties

The scope contained in this investigation, which has been slightly clarified in the above "Scope of the Investigation" section, contains the clause that products used in standard, line or pressure pipe applications be included in the scope, regardless of whether they meet A–106, A–335, A–53 or API 5L standards. Implementing this clause would require some type of end-use certification. Given the burden on Customs and the difficulty involved in administering end-use certifications, the Department generally avoids end-use as a scope criterion. *See Final Determination of Sales at Less Than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semifinished Products of Special Bar Quality Engineered Steel from Brazil*, 58 FR 31496 (June 3, 1993). However, because petitioner has alleged that circumvention may occur if end-use is not part of any order resulting from this investigation, we are requesting comments regarding end-use as a criterion for the scope of this investigation. Petitioner has based its allegation on circumstances that occurred in the investigations of *Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, and Mexico*, 59 FR 1929 (January 13, 1994). Petitioner has identified specific possible substitution products for the scope merchandise. Petitioner has also indicated that, while it is not aware at this time of substitution occurring, it may occur in the future should countervailing duties be assessed on seamless standard, line and pressure pipe. Therefore, we are including end-use in the scope for purposes of initiation; however, we intend to consider its appropriateness further and we invite comments from interested parties regarding the scope information presented above under the "Scope of the Investigation" section of this notice. Specifically, we will examine comments that address "end-use" as a scope criterion. Interested parties are invited to comment on the following: (1) Whether or not end-use is an appropriate criterion for the merchandise described in the "Scope of the Investigation" section of this notice; (2) how the Department would be informed when substitution is occurring, i.e., a trigger mechanism; (3) at what point the Department should implement suspension of liquidation and use of end-use certificates for products meeting the physical parameters described in the scope other than those stenciled A–106, A–335, A–53 and/or API 5L; (4) what specific characteristics or factors the Department should evaluate regarding end-use as a scope criterion; (5) what information should be provided on an end-use certificate; (6) precise details as to how the Department and Customs should administer any countervailing duty orders that result from this investigation given end-use as a scope criterion; and (7) the universe of products that could possibly be substituted for the subject merchandise.

Finally, we invite comments from parties on whether the products within the scope of this investigation constitute more than one class or kind of merchandise. Parties should include an analysis using the following factors: (1) The physical characteristics of the merchandise; (2) the expectations of the ultimate purchaser; (3) the channels of trade; (4) the ultimate use of the product; and (5) the cost.

Parties interested in commenting on the items mentioned above should submit their comments no later than close of business October 21, 1994. Rebuttal comments will be accepted no later than close of business October 31, 1994.

Allegation of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioner supporting the allegations.

Initiation of a Countervailing Duty Investigation

The Department has examined the petition on seamless pipe from Italy and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers,

producers, or exporters of seamless pipe from Italy receive subsidies.

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers of the subject merchandise in Italy:

1. *1988/89 Equity Infusion.*
2. *Subsidized Loans under Law 675/77.*
3. *Grants under Law 193/84.*
4. *Retraining Grants.*
5. *Preferential Export Financing under Law 227/77.*
6. *Exchange Rate Guarantee Program under Law 796/76.*
7. *European Coal and Steel Community ("ECSC") Loans and Interest Rebates.*

We are not including the following programs alleged to be benefitting producers of the subject merchandise in Italy:

1. "Indirect" Equity Infusion

Petitioner has named Dalmine S.p.A. ("Dalmine") as the producer in Italy of the subject merchandise. Until 1989, Dalmine owned 51 percent of a subsidiary, Tubificio Dalmine Italsider S.p.A. ("Tubificio"). The remaining 49 percent was owned by Dalmine's parent company ILVA S.p.A. ("ILVA"), which is a government-owned steel producer. In 1989, Dalmine sold its shares in Tubificio to ILVA. Petitioner alleges that in return, Dalmine received a cash payment from ILVA which should be treated as an "indirect" equity infusion. The reasons cited by petitioner are that (1) Tubificio was essentially a worthless company because it made losses in the three years immediately prior to the sale, and (2) the cash paid by ILVA served as an indirect pass-through of illegal subsidies received by ILVA.

In previous cases involving the Italian steel industry, we have treated capital infusions into unequityworthy companies by government-owned holding companies such as Finsider S.p.A. ("Finsider") and the Istituto per la Ricostruzione Industriale ("IRI") as countervailable equity infusions. However, in those cases, the recipient companies were offering their own shares in exchange for cash. (*See, e.g., Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy,* ("*Electrical Steel*"), 59 FR 18357 (April 18, 1994).)

In the instant case, however, Dalmine sold shares in its subsidiary, Tubificio, to ILVA, Dalmine's parent and the other owner of Tubificio. ILVA's holding in Dalmine did not increase (absolutely or relatively) as a result of this transaction. Therefore, we do not view this as a direct or indirect equity infusion into Dalmine. Moreover, ILVA is not a holding company like IRI or Finsider, but an operating company. While the Department found in *Electrical Steel* and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy,* ("*Certain Steel from Italy*"), 58 FR 37327 (July 9, 1993), that ILVA benefitted from subsidies, those subsidies were allocated to ILVA S.p.A.'s operations and not to its subsidiaries. Beyond its simple claim that the cash paid by ILVA served as an indirect pass-through of illegal subsidies received by ILVA, petitioner has provided no basis for believing that ILVA was channelling government funds to Dalmine.

On this basis, we are not including the "indirect" equity infusion in the investigation.

2. Secured and Unsecured Loans From Italian Banks

Petitioner maintains that Dalmine was uncreditworthy from 1978 through 1992. According to petitioner, all secured and unsecured loans obtained by Dalmine from Italian banks during these years are, therefore, countervailable. Petitioner states that, while it cannot outline the terms of the financing provided, the loans are countervailable because they were provided at interest rates lower than the rates that should have been charged to an uncreditworthy company.

Petitioner has not specified under which laws or programs the secured and unsecured loans are being provided, nor has petitioner provided information as to how this funding is specific to the steel industry (*see* the petition requirements in § 355.12(b)(7) of the Department's regulations). On this basis, we are not including the secured and unsecured loans in our investigation.

3. Debt Forgiveness in Connection With the 1981 and 1988 Restructuring Plans

Petitioner claims that in *Certain Steel from Italy,* the Department found that Finsider (the government-owned holding company for the steel industry until 1989) benefitted from government assumption of debt in connection with the 1981 and 1988 restructurings of the state-owned steel industry. Because Dalmine was a subsidiary of Finsider in those years, petitioner alleges that Dalmine benefitted from the debt forgiveness provided to Finsider in connection with these restructurings.

Regarding the 1981 debt forgiveness, the Department established in *Certain Steel from Italy* that Finsider assumed the debts of its subsidiary Italsider which we treated as a countervailable subsidy to Italsider. In the present case, however, petitioner has not provided any evidence that Dalmine benefitted from this debt forgiveness or that Finsider forgave Dalmine's debts.

With respect to the 1988 debt forgiveness, we found in *Certain Steel from Italy* that a portion of Finsider's liabilities was forgiven in connection with another restructuring of the state-owned steel industry undertaken from 1988–1990. We treated this forgiveness as a countervailable subsidy to ILVA, which was the respondent company in that investigation. However, in *Electrical Steel,* we focused our investigation on subsidies provided directly to the producer of the subject merchandise, rather than subsidies received by its parent company. Therefore, we did not treat the debt forgiveness provided to Finsider as a countervailable benefit in *Electrical Steel.*

In this case, petitioner has not shown that any debt forgiveness was provided directly to Dalmine or that a portion of the debt forgiven to Finsider in 1988 can be attributed to Dalmine. On this basis, we are not including the 1981 or 1988 instances of debt forgiveness provided to Finsider in our investigation.

4. European Investment Bank ("EIB") Loans

Petitioner claims that Dalmine received loans from the EIB in the early 1980s. While petitioner has not alleged that the EIB loan program itself represents a countervailable subsidy, petitioner contends that Dalmine received EIB loans at interest rates below the rates that should have been applied to an uncreditworthy company.

The Department has previously found EIB loans to be not countervailable (*see, e.g., Certain Steel Products from Belgium,* 58 FR 37273 at 37285 (July 9, 1993)). Because petitioner has not provided any new information that would cause us to change our earlier determination, we are not including the EIB loans in our investigation.

5. European Regional Development Fund ("ERDF") Subsidies

Petitioner claims that some loans obtained by Dalmine from the EIB and ECSC may have been subsidized by the ERDF, but has not presented any evidence in support of this allegation.

At verification of the responses submitted by the European Community ("EC") in *Certain Steel from Italy,* we found that ERDF grants are provided to regions whose development is lagging behind and to regions seriously affected by industrial decline. In addition, we found that rural regions with certain development problems are eligible for ERDF aid. In the instant case, however, petitioner has not demonstrated that Dalmine has production facilities in the regions that are eligible for ERDF assistance. Moreover, there is no evidence in the petition or in previous investigations that ERDF grants are used to subsidize ECSC or EIB loans. For these reasons, we are not including the ERDF grants in our investigation.

6. Early Retirement Under Law 193/84

Petitioner alleges that Dalmine has used the early retirement provisions under Law 193/84 and that this program provided a countervailable subsidy to Dalmine. Petitioner requests that the Department treats benefits under Law 193/84 as non-recurring grants.

Dalmine's Annual Reports show that the company used early retirement pursuant to Law 193/84 in 1984 through 1987. In *Certain Steel from Italy,* the Department found early retirement, including the program provided under Law 193/84, to be countervailable. Because early retirement is a program we typically consider to be recurring (*see* the *General Issues Appendix* to *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217 at 37226 (July 9, 1993), we countervailed the program as a recurring grant in *Certain Steel from Italy.*

At verification in *Electrical Steel,* Italian government officials explained that there were two laws providing for early retirement in 1992: Law 223/91 and Law 406/92. We found early retirement under Law 223/91 to be not countervailable in our final determination. We did not make a determination with respect to any other early retirement laws, including Law 193/84, because these laws were not used by the *Electrical Steel* respondent in the period of investigation. Petitioner has requested that, because the Department did not make a determination with respect to Law 193/84 in *Electrical Steel,* we should investigate whether Dalmine used early retirement under Law 193/84. However, information collected in *Electrical Steel* suggests that Law 193/84 has been superseded and petitioner has not presented any evidence to the contrary. There is no evidence in the petition that Dalmine used early retirement under Law 193/84 after 1987. Rather, petitioner apparently believe that we should change our practice and treat early retirement as a non-recurring benefit.

The last year for which we have been able to establish that Dalmine used early retirement is 1991. The Annual Report for that year shows that Dalmine used

ERDF aid. In the instant case, however, petitioner has not demonstrated that Dalmine has production facilities in the regions that are eligible for ERDF assistance. Moreover, there is no evidence in the petition or in previous investigations that ERDF grants are used to subsidize ECSC or EIB loans. For these reasons, we are not including the ERDF grants in our investigation.

6. Early Retirement Under Law 193/84

Petitioner alleges that Dalmine has used the early retirement provisions under Law 193/84 and that this program provided a countervailable subsidy to Dalmine. Petitioner requests that the Department treats benefits under Law 193/84 as non-recurring grants.

Dalmine's Annual Reports show that the company used early retirement pursuant to Law 193/84 in 1984 through 1987. In *Certain Steel from Italy*, the Department found early retirement, including the program provided under Law 193/84, to be countervailable. Because early retirement is a program we typically consider to be recurring (*see* the *General Issues Appendix* to *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217 at 37226 (July 9, 1993), we countervailed the program as a recurring grant in *Certain Steel from Italy*.

At verification in *Electrical Steel*, Italian government officials explained that there were two laws providing for early retirement in 1992: Law 223/91 and Law 406/92. We found early retirement under Law 223/91 to be not countervailable in our final determination. We did not make a determination with respect to any other early retirement laws, including Law 193/84, because these laws were not used by the *Electrical Steel* respondent in the period of investigation. Petitioner has requested that, because the Department did not make a determination with respect to Law 193/84 in *Electrical Steel*, we should investigate whether Dalmine used early retirement under Law 193/84. However, information collected in *Electrical Steel* suggests that Law 193/84 has been superseded and petitioner has not presented any evidence to the contrary. There is no evidence in the petition that Dalmine used early retirement under Law 193/84 after 1987. Rather, petitioner apparently believe that we should change our practice and treat early retirement as a non-recurring benefit.

The last year for which we have been able to establish that Dalmine used early retirement is 1991. The Annual Report for that year shows that Dalmine used the early retirement program under Law 223/91, which we found to be not countervailable in *Electrical Steel*. Moreover, petitioner has not presented any information that would cause us to change our earlier determination that early retirement, if found countervailable, should be treated as a recurring grant. For these reasons, we are not including early retirement in our investigation.

7. Grants From the Cassa per il Mezzogiorno

Petitioner alleges that Dalmine has received grants from the Cassa per il Mezzogiorno ("Cazmez") which are directed to southern Italy. In *Certain Steel*, we found such grants to be countervailable because they were provided on a regional basis. Petitioner is not aware of any Dalmine plants outside of Bergamo, which is in the North, but points to Dalmine's Annual Reports which show that the company received Cazmez grants in the early and mid-1980s. Based on this finding, petitioner states that Dalmine must have a plant located in the South. Therefore, petitioner requests that the Department, in addition to the Cazmez grants, investigate a large number of other subsidy programs directed to the South, should we find that Dalmine maintains production facilities there.

From Dalmine's Annual Reports, we have found that the company formerly had two production facilities in the South, both of which produced welded pipe. Apart from these two plants, which were spun off in 1989, we have not found any other production facilities in the South. Because both the plants in the South produced welded pipe, which is not included in the scope of this investigation, we are not including the Cazmez grants or any other programs directed to the South in our investigation.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of this initiation.

Preliminary Determination by the ITC

The ITC will determine by August 8, 1994, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Italy of seamless pipe. Any ITC determination which is negative will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: July 13, 1994.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations.

[FR Doc. 94–17681 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Monterey Bay National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: The Advisory Council was established in December 1993 to advise and assist the Secretary of Commerce in the implementation of the management plan for the Monterey Bay National Marine Sanctuary.

TIME AND PLACE: July 29, 1994 from 9:00 until 4:30. the meeting location will be at the Naval Postgraduate School in Monterey, California. The morning session will be in Spanagle Hall, Room 101A, and the afternoon session will be in Glasgow Hall, Room 102.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Aaron King at (408) 647–4257 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: July 14, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–17613 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 071194B]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its

advisory entities will hold meetings July 31 through August 5, 1994, at the Red Lion Hotel Columbia River, 1401 North Hayden Island Drive, Portland, OR; telephone: (503) 283–2111.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland OR 97201; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION:

Council Meetings

The Council meetings will begin on August 2, at 8:00 a.m. in a closed session (not open to the public) to discuss personnel matters and litigation. The open session will begin at 8:30 a.m. The Council will reconvene at 8:00 a.m. each day, August 3 through August 5. The meetings may continue each day into the evening hours if necessary to complete business. The following items are on the Council agenda:

A. Call to Order

1. Opening remarks, introductions, roll call
2. Approve proposed agenda
3. Approve March, April and June 1994 minutes

B. Administrative and Other Matters

1. Election of Chair and Vice Chair for fiscal year 1995
2. Budget Committee Report
3. Summary of Council Chairs' Meeting
4. Status of legislation
5. Composition of the Scientific and Statistical Committee (SSC) and Advisory Subpanels for the 1995–96 term and solicitation of nominations
6. Research and data needs for 1994–95
7. Draft agenda for October 1994 meeting

C. Coastal Pelagic Species Management

Anchovy spawning biomass estimate and quotas for 1994–95 season

D. Habitat Issues

Report of the Habitat Steering Group

E. Salmon Management

1. Sequence of events and status of fisheries
2. Plan Amendment 12: Deficit accounting for Klamath River fall chinook

F. Groundfish Management

1. Status of Federal regulations implementing Council actions
2. Final report on industry/scientist workshops
3. Status of fisheries and inseason trip limit adjustments
4. Policy on deviations from harvest guidelines (overages and underages)
5. Preliminary stock assessments, harvest levels and other specifications for 1995
6. Management measures for 1995, including designating open access trip limits as routine measures
7. Associating trip limits with Limited Entry Permits and "Stacking Permits"
8. Individual quotas, trip limit alternatives and season for the Limited Entry Fixed Gear Sablefish Fishery
9. Groundfish Fishery Observer Program

G. Pacific Halibut Management

1. Review of halibut bycatch estimate
2. Review of halibut stock assessment
3. Area 2A halibut allocation for 1995 and beyond

Other Meetings

The Groundfish Subcommittee of the SSC will meet on July 31 from 7:00 until 10:00 p.m. to review groundfish stock assessments.

The SSC will meet August 1 through August 3 (if necessary), beginning at 8:00 a.m. each day, to address scientific issues on the Council agenda.

The Salmon Technical Team will meet on August 1 at 10:00 a.m., and on August 2 at 8:00 a.m. to review hooking mortality estimates for ocean fisheries and the deficit accounting issue for Klamath River fall chinook.

The Groundfish Management Team will convene on August 1 at 8:00 a.m. to address groundfish management items on the Council agenda.

The Groundfish Advisory Subpanel will convene on August 1 at 1:00 p.m. and on August 2 at 8:00 a.m. to address groundfish management items on the Council agenda.

The Habitat Steering Group will meet on August 1 at 1:00 p.m. to consider activities affecting the habitat of fish stocks managed by the Council.

The Budget Committee will convene on August 1 at 3:00 p.m. to review the status of the fiscal year 1994 Council budget and the fiscal year 1995 budget proposal.

The Enforcement Consultants will meet on August 2 at 7:00 p.m. to address enforcement issues related to Council agenda items.

Detailed agendas for the above advisory meetings will be available after July 21, 1994.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 14, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17678 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

July 14, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 362 is being increased for special carryforward. As a result, the limit for Category 362, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 14, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 22, 1994, you are directed to amend further the directive dated January 24, 1994 to increase the limit for Category 362 to 8,845,363 numbers [1], as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17606 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMISSION ON IMMIGRATION REFORM

Commission on Immigration Reform—Lowell Hearing

AGENCY: Commission on Immigration Reform.

ACTION: Announcement of hearing.

This notice announces a public hearing of the U.S. Commission on Immigration Reform. The Commission was established by the Immigration Act of 1990 under section 141. The mandate of the Commission is to review and evaluate the impact of U.S. immigration policy and transmit to the Congress a report of its findings and recommendations. The Commission's first report to Congress is due on September 30, 1994.

The hearing will address the role of immigration in the history and present

[1] The limit has not been adjusted to account for any imports exported after December 31, 1993.

assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 14, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 22, 1994, you are directed to amend further the directive dated January 24, 1994 to increase the limit for Category 362 to 8,845,363 numbers [1], as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17606 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMISSION ON IMMIGRATION REFORM

Commission on Immigration Reform—Lowell Hearing

AGENCY: Commission on Immigration Reform.

ACTION: Announcement of hearing.

This notice announces a public hearing of the U.S. Commission on Immigration Reform. The Commission was established by the Immigration Act of 1990 under section 141. The mandate of the Commission is to review and evaluate the impact of U.S. immigration policy and transmit to the Congress a report of its findings and recommendations. The Commission's first report to Congress is due on September 30, 1994.

The hearing will address the role of immigration in the history and present day circumstances of Lowell, a small town with a manufacturing base and a long tradition of immigration. Testimony will focus on the economic, social, and cultural impacts of immigrants on Lowell, as well as the long term integration and adaptation of the immigrants themselves. Furthermore, the Commission will hear testimony on the role of the community in absorbing immigrants and the support and cooperation of public and private organizations. Panelists will include public officials, representatives of local organizations, researchers, and other experts.

DATES: August 1, 1994.

TIME: 9:00 AM–1:00 PM.

ADDRESSES: Special Events Center, 2nd Floor, Boott Cotton Mills Museum, Lowell National Historical Park, 400 Foot of John Street, Lowell, MA 01852, 508–459–1000.

FOR FURTHER INFORMATION CONTACT: David Howell or Deborah Waller, 202–673–5348.

Dated: July 7, 1994.

Susan Martin,

Executive Director.

[FR Doc. 94–17636 Filed 7–19–94; 8:45 am]

BILLING CODE 6820–97–M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1993.

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Subparts 227.4, Rights in Technical Data; 227.5, Rights in Computer Software and Computer Software Documentation; and related solicitation provisions and contract clauses at 252.227; OMB Control Number 0704–0240.

Type of Request: Revision.

Number of Respondents: 2,330,688.

Responses per Respondent: Variable.

Annual Responses: 11,834,453.

Average Burden per Response: 28 minutes.

Annual Burden Hours (Including Recordkeeping): 6,457,651.

Needs and Uses: This information collection proposal implements the requirements of 10 USC 2320 and 2321, requiring contractors and subcontractors to maintain records and furnish information to justify restrictions on the government's rights to use or disclose technical data.

Affected Public: Businesses or other for-profit; Federal agencies or employees; non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 15, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–17625 Filed 7–19–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP)

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP) will meet in closed session on August 2–3 and August 16–17, 1994 at the Institute for Defense Analyses, Alexandra, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide recommendations for implementing a Joint Advanced Strike Technology Program in the FY 95–05 period.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: July 15, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-17626 Filed 7-19-94; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air Force

Intent To Prepare an Environmental Impact Statement for the Proposed Construction of New Military Family Housing at the Fort MacArthur Upper Reservation, San Pedro, CA

In an effort to meet the current deficit of military family housing (MFH) units, the U.S. Air Force (USAF) is proposing to construct new housing units for military personnel that will be assigned to the Space and Missile Systems Center (SMC) at Los Angeles Air Force Base (LAAFB), California. The USAF is proposing to construct approximately 150 MFH units on a leased parcel of Angels Gate Park in the community of San Pedro within the boundaries of the City of Los Angeles. On 10 October 1993, the USAF, the State of California, and the Unified School District of Los Angeles County (LAUSD) signed a 50-year lease for the use of 23 acres of land on the Fort MacArthur Upper Military Reservation for the development of up to 150 MFH units.

A public scoping meeting is scheduled for 7:00 p.m. on Tuesday, August 2, 1994 at the Doubletree Hotel and Marina, Madeo Ballroom, 2800 Via Cabrillo Marina, San Pedro, California. Notice of the meeting will also be published in the local news media.

Public input is requested to assist in defining the scope of issues to be addressed, concerning the environmental impacts of the proposed action and reasonable alternatives. The Air Force is open to public comments on this EIS throughout the Environmental Impact Analysis Process (EIAP).

The USAF point of contact is Mr. Howard Antelis, Public Affairs Officer, Department of the Air Force, Space and Missile Systems Center, SMC/PA, 2430 E. EL Segundo Blvd., Suite 4049, Los Angeles AFB, CA 90245-4687.

List of Subjects

Environmental Protection; Environmental Impact Statement, US Air Force, Fort MacArthur Upper Reservation, Construction, San Predro, California, and Military Family Housing.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94-17601 Filed 7-19-94; 8:45 am]

BILLING CODE 3910-01-P

Department of the Army

Domestic Personal Property Rate Solicitation—Proposed Changes

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of proposed change.

SUMMARY: The Military Traffic Management Command is proposing changes to the Domestic Personal Property Rate Solicitation. This solicitation is the guidelines for interstate and intrastate household services for Department of Defense sponsored shipments.

DATES: Comments must be received by September 19, 1994.

ADDRESSES: Military Traffic Management Command, Attn: MTOP-T-NP, Room 621, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Nemier, (703) 756-1190.

SUPPLEMENTARY INFORMATION: There have been considerable changes in the geographical operating areas where personal property shipments have been traditionally picked up and delivered. These changes have been caused by a myriad of operational revisions within the DOD infrastructure, to include military base closures and realignments and the growth of suburban areas surrounding military installations which have resulted in DOD personnel relocating to areas which are more distant from military installations. Requirements such as those necessitate change to storage-in-transit (SIT) rules in the delivery of domestic household goods.

The following changes are proposed to section 7. All related items in D-3 impacted by this provision will be changed accordingly.

a. Paragraph 3. Change 30 miles or less to 50 miles or less.

b. Note 1. Change 30 milies or less to 50 miles or less.

c. Note 5. The carrier should use a DOD-approved agent's available storage facility within a 50-mile radius of the location shown in Block 18 on the personal property Government Bill of Lading (PPGBL). If no agent's facility is available within a 50-mile radius, the carrier must obtain authorization from the PPSO to use a more distant facility.

(1) If no authorization is given, the charges will be assessed as if the shipment was placed in SIT at the location shown in Block 18 of the PPGBL.

(2) If an alternate location to Bock 18 on the PPGBL is used for carrier convenience, as shown on the DD Form 619, the Government will pay the lower of the SIT and related service charges.

(3) A DOD-approved facility is defined as follows: An agent's storage facility which has DOD approval and is accepting DOD traffic from a carrier. If the agent refuses to accept a shipment, e.g., because of the carrier's refusal to provide a waiver and/or to the carrier's poor payment history, the agent's facility will be considered "available" for purpose of determining charges irrespective of what destination warehouse the carrier uses.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-17572 Filed 7-19-94; 8:45 am]

BILLING CODE 3710-08-M

Availability of Exclusive Licensing of U.S. Patent of a Hyperproducing Cellulase Microoganism

AGENCY: U.S. Army Aviation and Troop Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1), announcement is made of prospective exclusive licenses of a hyperproducing cellulase microorganism, Patent Number 4,472,504, issued September 19, 1984.

ADDRESSES: U.S. Aviation and Troop Command, ATTN: AMSAT-C-JGP, 4300 Goodfellow Blvd., St. Louis, MO 63120-1798.

DATES: Written objections must be filed on or before September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Lamming, Patent Counsel, telephone: (314) 263-9150.

SUPPLEMENTARY INFORMATION: The hyperproducing cellulase microorganism was invented by Mr. Benedict J. Gallo (U.S. Patent 4,472,504, issued September 19, 1984). Rights to this invention are owned by the U.S. Government as represented by the U.S. Army Natick Research, Development and Engineering Center (Natick RD&E Center). Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 92-502) and section 207 of title 35, U.S. Code, the Department of the Army as represented by Natick RD&E Center intends to grant an exclusive license on the hyperproducing cellulase microorganism to Solvay Enzymes, Inc., P.O. Box 4859, 1003 Industrial Parkway, Elkhart, Indiana 45616.

Pursuant to 37 CFR 404.(a)(1), any interested party may file written objections to this prospective exclusive license arrangements. Written objections should be directed to the above address.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-17575 Filed 7-19-94; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by July 15, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708-9915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

microorganism to Solvay Enzymes, Inc., P.O. Box 4859, 1003 Industrial Parkway, Elkhart, Indiana 45616.

Pursuant to 37 CFR 404.(a)(1), any interested party may file written objections to this prospective exclusive license arrangements. Written objections should be directed to the above address.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–17575 Filed 7–19–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by July 15, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: July 14, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Emergency
Title: Performance Report for the Training Program for Special Program Staff and Leadership Personnel
Abstract: The Department will use the data to evaluate projects, assess technical assistance needs, determine future funding levels for new awards, and assign scores to projects in competition for new grants.
Additional Information: An emergency review is requested from OMB, in order to collect data for the last year of this program's cycle. ED is requesting an OMB approval date of July 15, 1994.
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 15
Burden Hours: 45
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.

[FR Doc. 94–17581 Filed 7–19–94; 8:45 am]

BILLING CODE 4000–1–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Grant to National Urban Coalition

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(D) to National Urban Coalition, Washington, DC under grant number DE–FG01–94MI10319. The DOE intends to make a noncompetitive financial assistance award in establishing the Say Yes to a Youngster's Future Program (Say Yes) in the Oakland, California Public School System. The Say Yes program is an educational and training program for elementary school students, parents, teachers, and school administrators. The period of performance contemplated is for three years. DOE will provide funding in the amount of $120,000 for the first budget period estimated to be August 30, 1994–August 29, 1995. There will be no cost sharing.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rosemarie Marshall, HR–531.11, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to National Urban Coalition (NUC), a nonprofit organization of business, civil rights, religious and government leaders founded in 1967 to seek workable answers to urban problems. The Say Yes program was started in 1985 by the NUC because of the growing realization that, in a world where jobs, higher education and everyday life are increasingly dependent on math, science and technology, the children of minority groups—African Americans, Hispanic American and Native Americans, as well as females of all races—are being left further and further behind. The Say Yes program is reaching out with a national network of school districts, teachers, administrators, families, churches, civic organizations and businesses committed to improving mathematics and science education for minority children. The project to be funded is for the Oakland School district, and will include the six most economically disadvantaged school communities.

The program is meritorious because the program combines student interest development activities with family involvement and teacher training into a program which prepares students early at the Kindergarten to Sixth Grade educational level to be receptive to further study in the technical fields. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the application is highly likely of achieving its objective through the completion of some supporting objectives, including fostering the development of natural student interest in math and science,

enhancing family involvement in the students' learning process and providing more comprehensive teacher training which focuses on math and science. A recent study reported that over 78% of responding student program participants indicated that they like math and science better than before.

Craig S. Frame,

Contracting Officer, Operations Branch A–1, Office of Placement and Administration.

[FR Doc. 94–17652 Filed 7–19–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award: Gentrex-Nevada, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE-FG01–94CE15548 to Gentrex-Nevada, Inc. The proposed grant will provide funding in the estimated amount of $97,351 by the Department of Energy for the purpose of saving energy through development of a foundation insulation system, the "Forms PLUS™" system of Mr. M. Dean Gardner, the inventor.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Gentrex-Nevada, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The inventor, Mr. M. Dean Gardner, who will be principal investigator, will use his skills, experience and equipment to analyze an existing initial prototype, improve the prototype, and test it in a wide range of climactic and construction conditions. For new construction annual savings are estimated to be 119,000 barrels of oil equivalent. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

Issued in Washington, D.C. on July 15, 1994

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration

[FR Doc. 94–17654 Filed 7–19–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Dr. Carl A. MacCarley

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–94CE15583 to Dr. Carl A. MacCarley. The proposed grant will provide funding in the estimated amount of $99,886 by the Department of Energy for the purpose of saving energy through development of an indirect sensing technique for closed-loop diesel fuel quantity control.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Dr. Carl A. MacCarley is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The inventor, Dr. Carl A. MacCarley, who will be principal investigator, will use his existing facilities for electronics development and vehicle system fitting. In addition preliminary testing will be done at California State Polytechnic University by special arrangements. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, D.C. on July 15, 1994.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–17655 Filed 7–19–94; 8:45 am]

BILLING CODE 6450–01–P

Public Meetings on National Energy Policy

AGENCY: Office of Policy, Energy.

ACTION: Notice of public meetings.

SUMMARY: The U.S. Department of Energy is announcing a series of public meetings around the country to solicit public input in the development of the President's National Energy Policy Plan. The Department is also requesting that interested parties submit written input for use in developing the Plan.

DATES AND LOCATIONS: The following are dates and locations that are presently scheduled. Additional information on meetings will be available in future **Federal Register** notices:

Washington, DC. August 2, 1994. Marvin Theater, George Washington University, 800 21st Street NW.

Austin, Texas. August 12, 1994. Lyndon B. Johnson Auditorium, University of Texas at Austin, 2315 Red River Street.

Denver, Colorado. September 29, 1994. Location TBD.

Athens, Georgia. Location and Date TBD.

Boston, Massachusetts. Location and Date TBD.

Chicago, Illinois. Location and Date TBD.

New Orleans, Louisiana. Location and Date TBD.

San Francisco, California. Location and Date TBD.

FOR FURTHER INFORMATION CONTACT: For questions regarding the public meetings, participation or written submissions, please call the National Energy Policy Plan Public Information Hotline: (615) 241–2545. For other information, contact Terri Walters, U.S. Department of Energy, Office of Policy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–5800.

SUPPLEMENTARY INFORMATION: Section 801 of the Department of Energy Organization Act of 1977 requires the President to submit a National Energy Policy Plan to Congress every two years. The 1993 requirement was waived because of the change of Administration, and the next National Energy Policy Plan is required in 1995. In developing this Plan, the Administration will solicit input from the public on all issues involved with energy. In order to gain input from a diverse set of stakeholders, the Department will conduct a series of regional town meetings and roundtable discussions. Information from related outreach efforts of the Administration will also be compiled to expand the record of public input.

The concept of sustainable development will provide a framework for developing a 1995 National Energy Policy Plan. The most common definition of sustainable development is "to meet the needs of the present without compromising the ability of future generations to meet their own needs" (Bruntland Commission—Our Common Future 1987). The Administration intends to use this guiding principle to evaluate energy policy options, recognizing the interdependence of economic growth and environmental progress, and considering how the production, distribution, and consumption of energy affects current and future generations.

In developing the National Energy Policy Plan, the Administration will also consider the recommendations of the Energy and Transportation Task Force of the President's Council on Sustainable Development. The Council is an advisory committee comprised of several cabinet-level Administration officials and senior representatives of industry and interest groups. By charter, the Council shall "advise the President on matters involving sustainable development. In furtherance of the mission, the Council will develop and recommend to the President a national sustainable development action strategy that will foster economic vitality."

A kick-off meeting for the National Energy Policy Plan is scheduled for Washington, DC and will be followed by seven public meetings in cities across the United States. All meetings will be open to the general public. Additionally, written comments on any subject area related to energy are welcome and will be considered valuable input to the formulation of the National Energy Policy Plan.

All stakeholders are invited to participate in the meetings as well as to submit written input. This includes state, local, territorial and tribal governments; industry; interest groups; minority groups and the general public.

An initial meeting in Washington, DC will begin the national outreach effort.

The 1993 requirement was waived because of the change of Administration, and the next National Energy Policy Plan is required in 1995. In developing this Plan, the Administration will solicit input from the public on all issues involved with energy. In order to gain input from a diverse set of stakeholders, the Department will conduct a series of regional town meetings and roundtable discussions. Information from related outreach efforts of the Administration will also be compiled to expand the record of public input.

The concept of sustainable development will provide a framework for developing a 1995 National Energy Policy Plan. The most common definition of sustainable development is "to meet the needs of the present without compromising the ability of future generations to meet their own needs" (Bruntland Commission—Our Common Future 1987). The Administration intends to use this guiding principle to evaluate energy policy options, recognizing the interdependence of economic growth and environmental progress, and considering how the production, distribution, and consumption of energy affects current and future generations.

In developing the National Energy Policy Plan, the Administration will also consider the recommendations of the Energy and Transportation Task Force of the President's Council on Sustainable Development. The Council is an advisory committee comprised of several cabinet-level Administration officials and senior representatives of industry and interest groups. By charter, the Council shall "advise the President on matters involving sustainable development. In furtherance of the mission, the Council will develop and recommend to the President a national sustainable development action strategy that will foster economic vitality."

A kick-off meeting for the National Energy Policy Plan is scheduled for Washington, DC and will be followed by seven public meetings in cities across the United States. All meetings will be open to the general public. Additionally, written comments on any subject area related to energy are welcome and will be considered valuable input to the formulation of the National Energy Policy Plan.

All stakeholders are invited to participate in the meetings as well as to submit written input. This includes state, local, territorial and tribal governments; industry; interest groups; minority groups and the general public.

An initial meeting in Washington, DC will begin the national outreach effort. The Secretary of Energy will host a town meeting on energy with the public and conduct a plenary session on energy policy with representatives of a broad section of stakeholders.

AGENDA: August 2, 1994; 1:30–5:00 p.m.

George Washington University, Marvin Center
1:30 p.m.—Welcome/Introduction
2:00 p.m.—Town Meeting on Energy with Secretary Hazel R. O'Leary
3:15 p.m.—Plenary Discussion: "Energy Policy in a Sustainable Future" (Panel to be announced)
5:00 p.m.—Conclusion

Each of the one-day regional meetings will begin with a town-meeting format discussion on general energy issues followed by roundtable discussion(s) on specific issues of particular interest to the regions. A period for general public comment and short public presentations will generally be available at the end of each meeting.

Sample Agenda—Regional Meeting

9:00 a.m.—Introduction
9:15 a.m.—Town Meeting on Energy
10:30 a.m.—Roundtable Discussion: Topic I
12:30 p.m.—Lunch Break
1:30 p.m.—Roundtable Discussion: Topic II
3:30 p.m.—Public Presentations—General Topics
4:30 p.m.—Closing Remarks

Meeting Sites and Roundtable Topics

The following have been scheduled as topics for roundtable discussions in each of the indicated meeting locations:

Region and Topics

Athens, GA—Energy and Sustainable Rural Economies, Nuclear Power at the Crossroads
Austin, TX—Domestic Energy Production and Sustainable Development, International Trade Issues in Energy Resources and Technology
Boston, MA—Energy and the Environment, Energy and Industrial Competitiveness
Chicago, IL—Energy Issues in Urban Areas, The Future of Coal as an Energy Resource
Denver, CO—Renewable Energy: Progress and Prospects, Competition in Electric Power Sectors
New Orleans, LA—Oil and Gas and the Domestic Economy, Natural Gas
San Francisco, CA—Science and Technology: National Laboratories and Sustainable Development
The Transportation Future: Emerging Challenges and Choices.

Submission of Written Comments

Written comments are requested before October 31, 1994. Mail submission to Oak Ridge Institute for Science and Education, P.O. Box 117, Oak Ridge, Tennessee, 37381–0117, ATTN: Mary Jean Brewer. Please submit a DOS or Macintosh diskette copy (ASCII format preferred) and a typed copy of input. Submissions can also be sent electronically through Internet at NEPP@ORAU.GOV. For all submissions, please include your name, address, and a day-time telephone number.

Susan F. Tierney,

Assistant Secretary of Energy, Office of Policy.

[FR Doc. 94–17653 Filed 7–19–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 19, 1994.

FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202), 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Reporting Requirements Under EPA WasteWise Voluntary Challenge Program (ICR No. 1698.01). This ICR requests approval for a new collection.

Abstract: EPA's Office of Solid Waste (OSW) is requesting approval to collect information from respondents that participate in EPA's voluntary WasteWise program. The program encourages businesses to engage in waste reduction activities and focuses on three waste reduction areas: waste prevention, recycling collection, and purchasing or manufacturing items with recycled content.

To participate in the program, an organization must complete and submit

a registration form to EPA. The registration form provides EPA with general company information and specifies the facilities committed to the WasteWise program: it must be signed by a senior official who has authority to commit the company to the program. In addition, each participant must develop waste reduction goals and complete and submit a one-time Goals Identification Form to EPA; participants must also report annually on the progress made toward achieving those goals in the Annual Reporting Form.

The information collected will be used by EPA to develop and provide targeted technical information to assist organizations' waste reduction programs, identify and exchange waste reduction opportunities, and gauge the program's progress.

Burden Statement: The respondent burden for this collection is estimated to average 16 hours per response for the Registration Form; 48 hours per response for the Goals Identification Form; and 78 hours per response for the Annual Reporting Form: for an estimated annual respondent burden of 142 hours in the first year and 78 hours each subsequent year. These estimates include all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: Businesses and non-governmental organizations.

Estimated Number of Respondents: 200 in Year 1; 300 in year 2; and 400 in year 3.

Estimated Number of Responses per Respondent: 3 during first year of program participation; 1 in subsequent years.

Estimated Total Annual Burden on Respondents: 28,500 hours in Year 1; 29,850 in Year 2; and 37,650 in Year 3.

Frequency of Collection: One-time and annual.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW, Washington, DC 20460.

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW, Washington, DC 20503.

Dates: July 8, 1994.

Jane Stewart,

Regulatory Management Division.

[FR Doc. 94–17559 Filed 7–19–94; 8:45 am]

BILLING CODE 6560-50-M

[OPP–00376; FRL–4769–5]

FIFRA Scientific Advisory Panel; Appointments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is given of the appointment of two new members and the reappointment of one member to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel established pursuant to section 25(d) of FIFRA, as amended (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 et seq.). Public notice of nominees along with a request for public comments appeared in the **Federal Register** of February 24, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 819, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5369.

SUPPLEMENTARY INFORMATION: Congress mandated that the Scientific Advisory Panel would consist of seven members, selected from candidates nominated by the National Science Foundation (NSF) and the National Institutes of Health (NIH). Congress also mandated that the terms of appointment would be staggered. List of nominees, including biographical data, appeared in the **Federal Register** of February 24, 1993 (58 FR 11229). Six comments were received in response to the Notice.

I appoint Dr. Mary S. Thrall and Dr. Charles C. Capen to serve as members of the FIFRA Scientific Advisory Panel. Dr. Thrall is Professor of Pathology at the College of Veterinary at Medicine and Biomedical Sciences at Colorado State University. She will provide the experience and technical background needed in the area of clinical pathology. Dr. Capen is Professor and Chair, Department of Veterinary Pathobiology, Ohio State University and will provide expertise in endocrinology. My decision to appoint Drs. Thrall and Capen is based upon several factors, including comments received, their expertise in many facets of laboratory animal bioassays, particularly interpretation of clinical chemistries, hematology, clinical pathology and endocrinology, the consequences of such effects in relation to potential adverse effects in humans, the need for a disciplinary mix, and the need for broader scientific views.

Furthermore, I reappoint Dr. John T. Wilson to an additional year on the Panel. Dr. Wilson is a pediatrician and pharmacologist with an extensive background in developmental and clinical pharmacology, clinical toxicology, immunology, and endocrinology as they relate to laboratory animals and to human infants and young children. He has provided invaluable scientific counsel to the Agency in addressing the concerns for pesticide residues in food and exposure to infants.

Meetings of the Scientific Advisory Panel are always announced in the **Federal Register** at least 15 days prior to each meeting, in accordance with the directives of the Federal Advisory Committee Act.

List of Subjects

Environmental protection.

Dated: June 29, 1994.

Robert M. Sussman,

Deputy Administrator.

[FR Doc. 94–17562 Filed 7–19–94; 8:45 am]

BILLING CODE 6560-50-F

[OPP–42074A; FRL–4874–8]

State of Nebraska Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval, on a contingent basis, a certification plan.

SUMMARY: In the **Federal Register** of April 21, 1994, notice was published of the intent of the Regional Administrator, EPA Region VII, to approve, on a contingency basis, the State of Nebraska's "A Plan for the Certification of Pesticide Applicators." Copies of the plan were made available to the public. Comments were received on the State of Nebraska plan during the allowed comment period. This notice announces the contingent approval of the Plan. A notice will be published at a later date announcing the full approval of the plan.

DATES: Contingent approval is effective July 20, 1994, and will expire on January 1, 1995, if the outlined terms and conditions are not satisfied.

FOR FURTHER INFORMATION CONTACT: Richard O. Jacobson, Lincoln Field Office, Environmental Protection Agency, 100 Centennial Mall North, Rm. 289, Lincoln, NE 65808, Telephone: 402–437–5080.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and 40 CFR part 171, the Governor of the State of Nebraska, E. Benjamin Nelson, has submitted the State of Nebraska's "A Plan for Certification of Pesticide Applicators" to EPA for approval.

In the **Federal Register** of April 21, 1994 (59 FR 19010), notice was published of the intent of the Regional Administrator, EPA Region VII, to approve, on a contingency basis, the State of Nebraska's "A Plan for the Certification of Pesticide Applicators."

Approval was requested by the State of Nebraska. Contingent approval is being established by EPA pending the promulgation of appropriate regulations, the development of agreements by the State Lead Agency with the Cooperating State Agencies which are involved in the certification process, and the development of certain specific standards of competency for commercial applicators required at 40 CFR 171.4(c)(7).

Copies of the State of Nebraska Plan were made available for public inspection at the Nebraska Department of Agriculture office in Lincoln, Nebraska, the USEPA Region VII Lincoln, Nebraska field office, and the Office of Pesticide Programs, EPA Headquarters, Arlington, Virginia.

Comments were received from the University of Nebraska-Lincoln Cooperative Extension concerning the State of Nebraska Plan during the allowed comment period. The commenter expressed three concerns. Each of those has been discussed between the cooperating parties and the responses indicated here are consistent with those discussed.

The commenter's first concern is that the two new categories (01A—Fumigation of Soil and 12—Aerial Pest Control) will require the development of new training materials for the Nebraska certification and training program. As part of the contingency approval, a Memorandum of Understanding (MOU) is being established with the Nebraska Department of Aeronautics to train applicators in aerial pest control which will alleviate the need for additional resources. States have been identified that have developed training materials for applicators who fumigate soil. The training materials developed by those States will be used with little or no modification. The resources required for this minimal modification will be

Fungicide, and Rodenticide Act (FIFRA), as amended, and 40 CFR part 171, the Governor of the State of Nebraska, E. Benjamin Nelson, has submitted the State of Nebraska's "A Plan for Certification of Pesticide Applicators" to EPA for approval.

In the **Federal Register** of April 21, 1994 (59 FR 19010), notice was published of the intent of the Regional Administrator, EPA Region VII, to approve, on a contingency basis, the State of Nebraska's "A Plan for the Certification of Pesticide Applicators."

Approval was requested by the State of Nebraska. Contingent approval is being established by EPA pending the promulgation of appropriate regulations, the development of agreements by the State Lead Agency with the Cooperating State Agencies which are involved in the certification process, and the development of certain specific standards of competency for commercial applicators required at 40 CFR 171.4(c)(7).

Copies of the State of Nebraska Plan were made available for public inspection at the Nebraska Department of Agriculture office in Lincoln, Nebraska, the USEPA Region VII Lincoln, Nebraska field office, and the Office of Pesticide Programs, EPA Headquarters, Arlington, Virginia.

Comments were received from the University of Nebraska-Lincoln Cooperative Extension concerning the State of Nebraska Plan during the allowed comment period. The commenter expressed three concerns. Each of those has been discussed between the cooperating parties and the responses indicated here are consistent with those discussed.

The commenter's first concern is that the two new categories (01A—Fumigation of Soil and 12—Aerial Pest Control) will require the development of new training materials for the Nebraska certification and training program. As part of the contingency approval, a Memorandum of Understanding (MOU) is being established with the Nebraska Department of Aeronautics to train applicators in aerial pest control which will alleviate the need for additional resources. States have been identified that have developed training materials for applicators who fumigate soil. The training materials developed by those States will be used with little or no modification. The resources required for this minimal modification will be addressed in the MOU between the University of Nebraska Cooperative Extension and the Nebraska Department of Agriculture.

The commenter also was concerned that reconstructed categories will require resources to accomplish substantial revisions to the training program. This concern will be addressed in the MOU that is being developed between the University of Nebraska Cooperative Extension and the Nebraska Department of Agriculture.

Lastly, the commenter was concerned that the restriction allowing a noncertified applicator to work under the direct supervision of a certified applicator for only 60 days before needing to become certified would require additional resources for training to be provided on an ongoing basis. The commenter suggested that self-study be available prior to the certification examination during periods when formal training is not accessible. This suggestion is a present option that will continue to be available to applicators and will not require additional resources.

Therefore, it has been determined that the State of Nebraska Plan will satisfy the requirements of FIFRA and of 40 CFR part 171, if the proposed State of Nebraska pesticide regulations are promulgated, and agreements by the State Lead Agency with the Cooperating State Agencies, and certain specific standards of competency for commercial applicators required at 40 CFR 171.4 are developed.

This contingent approval shall expire January 1, 1995, if these terms and conditions are not satisfied by that time. If the terms and conditions are satisfied, EPA will publish a notice in the **Federal Register** announcing full approval of the plan.

Pursuant to section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the Agency finds that there is good cause for providing that the contingent approval granted herein to the State of Nebraska Plan shall be effective immediately. Neither the State of Nebraska Plan nor this Agency's contingent approval of the Plan create any new obligations on pesticide applicators or other persons in the State of Nebraska. Delays in starting the work necessary to implement the Plan, such as may be occasioned by providing some later effective date for this contingent approval, are inconsistent with the public interest. Accordingly, this contingent approval is effective July 20, 1994.

Dated: July 7, 1994.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 94–17563 Filed 7–19–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66195; FRL 4897–4]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by October 18, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 41 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100 NJ–89–0001	Triumph 4E Insecticide	*O,O*-Dimethyl *O*-(1-isopropyl-5-chloro-1,2,4-triazol-3-yl)phosphorothioate
000150–00035	Anderson's Flyga Kvist	*N*-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		2,2-Dichlorovinyl dimethyl phosphate
000239–02529	Ortho Roach Killer Powder	Boric acid
000475–00142	Sani-Flush Form F. New Blue Bubbling Action	Sodium bisulfate
000475–00177	Sani Flush Blue Bubbling Action for Toilet Bowls	Sodium bisulfate
000475–00191	Sani-Flush Blue Bubbling Action Cleans, Disinfects, Deo	Sodium bisulfate
000475–00195	Sani-Flush Blue Bubbling Action for Toilet Bowls	Sodium bisulfate
000475–00196	Sani-Flush Blue Bubbling Action - Formula 'C'	Sodium bisulfate
001100–00007	Nuodex Copper 8	Copper naphthenate
001100–00030	Nuodex Copper 6%	Copper naphthenate
001258–00890	Olin HTH Brand Plus Sc	Trichloro-*s*-triazinetrione
001270–00181	ZEP Checkmate Detergent Sanitizer	Sodium dichloroisocyanurate dihydrate
001677–00076	Soilax Liquid Pool Sanitizer	Sodium hypochlorite
002217–00761	3M Vistar 2-S Postemergence Soybean Herbicide	*N*-(2,4-Dimethyl-5-(((trifluoromethyl)sulfonyl)amino)phenyl)acetamide, diethanolamine
002217–00762	Destun 3M 50 WP Tobacco Herbicide	1,1,1-Trifluoro-*N*-(2-methyl-4-(phenylsulfonyl)phenyl)methanesulfonamide
003125–00025	Guthion 25% Wettable Powder Crop Insecticide	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
003125–00188	Guthion Fruit Tree and Garden Spray	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
003125–00153	Guthion 25% Wettable Powder Repackaging Only	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
003125–00223	Guthion 22 Concentrate	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
003125–00225	Guthion Garden Spray Insecticide for Repackaging	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
004581–00350	Knox Out Yellowjacket Control	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
004581–00353	Knox-Out Formula One	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
005185–00369	Bio-Guard Lithium Hypochlorite II	Lithium hypochlorite
005185–00384	Bio-Guard Lithium Hypochlorite Shock	Lithium hypochlorite
005185–00385	Bio-Guard Lithium Hypochlorite Concentrate	Lithium hypochlorite
005185–00431	Guardex Super Chlorinator 35	Lithium hypochlorite
005383–00003	Troysan Copper 8	Copper naphthenate
007350–00001	Chlor-12	Sodium hypochlorite
007350–00020	Chlor-12	Sodium hypochlorite
010598–00013	Pool Doctor Liquid Chlor	Sodium hypochlorite
021139–20002	Sodium Hypochlorite 10%	Sodium hypochlorite
021139–20004	Sodium Hypochlorite 5.25%	Sodium hypochlorite
021139–20007	Sodium Hypochlorite 12.5%	Sodium hypochlorite
028293–00117	Unicorn Now Flea & Tick Spray	Butoxypolypropylene glycol
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%

TABLE 1. — REGISTRATION

Registration No.	Product
042177–00024	Olympic Chlor-O-Rings
042177–00036	Olympic Clorinator Stick
042177–00057	York's Roman Springs
046506–00001	Bionox
051790–20004	Clo White Bleach
051793–20203	Elite Roach and Ant Po
062499–00039	Valent Lime Sulfur Solu

Unless a request is withdrawn by the cancelling all of these registrations. Users should contact the applicable registrant dire

The following Table 2 includes the 1, in sequence by EPA Company Number.

TABLE 2. — RE

EPA Company No.	
000100	Ciba-Geigy Corp., Box 18300, Greensbo
000150	Anderson Chemical Co., Box 1041, Litch
000239	Solaris Group, The, A Div of The Agricu
000475	Reckitt & Coleman Household Products,
001100	HULS America, Inc., Box 365, Piscataw
001258	Olin Corp., Box 586, Cheshire, CT 0641
001270	ZEP Mfg. Co., Box 2015, Atlanta, GA 30
001677	Ecolab Inc., 370 Wabasha St., Ecolab C
002217	PBI/Gordon Corp., c/o James Armbruste
003125	Miles Inc., Agriculture Division, 8400 Ha
004581	Elf Atochem North America Inc., Agriche
005185	Bio-Labs Inc., Box 1489, Decatur, GA 3
005383	Troy Chemical Corp., Inc., c/o Pazianos
007350	Chaska Chemical Co., 12502 Xenwood
010598	World Industries International, Inc., 1795
021139	LCP Chemicals, Hanlin Group, Inc., Box
028293	Unicorn Labs & Phaeton Corp., 1000 11
042177	York Chemical Corp., 3309-E. John W.
046506	Bionox Co., Inc., 10270-S. Progress Wa
051790	The Clowhite Co., Box 456, Hampton, G
051793	RSR Laboratories, Inc., 501 Fifth St, Bri
062499	Chevron Chemical Co, c/o Thomas H. P

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before October 18, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Pyrethrins
042177–00024	Olympic Chlor-O-Rings 100	Trichloro-*s*-triazinetrione
042177–00036	Olympic Clorinator Sticks	Trichloro-*s*-triazinetrione
042177–00057	York's Roman Springs	Sodium dichloro-*s*-triazinetrione
046506–00001	Bionox	Sodium hypochlorite
051790–20004	Clo White Bleach	Sodium hypochlorite
051793–20203	Elite Roach and Ant Powder	Boric acid
062499–00039	Valent Lime Sulfur Solution	Calcium polysulfide

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000150	Anderson Chemical Co., Box 1041, Litchfield, MN 55355.
000239	Solaris Group, The, A Div of The Agricultural Group of Monsa, Box 5006, San Ramon, CA 94583.
000475	Reckitt & Coleman Household Products, 1655 Valley Rd, Wayne, NJ 07474.
001100	HULS America, Inc., Box 365, Piscataway, NJ 08855.
001258	Olin Corp., Box 586, Cheshire, CT 06410.
001270	ZEP Mfg. Co., Box 2015, Atlanta, GA 30301.
001677	Ecolab Inc., 370 Wabasha St., Ecolab Center, St Paul, MN 55102.
002217	PBI/Gordon Corp., c/o James Armbruster, Reg. Svcs., PBI/Gordon, Box 014090, Kansas City, MO 64101.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004581	Elf Atochem North America Inc., Agrichemicals Div, 2000 Market St., 21st Floor, Philadelphia, PA 19103.
005185	Bio-Labs Inc., Box 1489, Decatur, GA 30031.
005383	Troy Chemical Corp., Inc., c/o Pazianos Assoc., 1338 G St., SE, Washington, DC 20003.
007350	Chaska Chemical Co., 12502 Xenwood Ave. South, Savage, MN 55378.
010598	World Industries International, Inc., 17955 Arenth Ave., City Of Industry, CA 91748.
021139	LCP Chemicals, Hanlin Group, Inc., Box 484, Linden, NJ 07036.
028293	Unicorn Labs & Phaeton Corp., 1000 118th Ave N, St. Petersburg, FL 33716.
042177	York Chemical Corp., 3309 E. John W. Carpenter Freeway, Irving, TX 75062.
046506	Bionox Co., Inc., 10270 S. Progress Way, Parker, CO 80134.
051790	The Clowhite Co., Box 456, Hampton, GA 30228.
051793	RSR Laboratories, Inc., 501 Fifth St, Bristol, TN 37620.
062499	Chevron Chemical Co, c/o Thomas H. Pickens, Box 5047, San Ramon, CA 94583.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before October 18, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as

prescribed in Federal Register No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: July 1, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–17294 Filed 7–20–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before September 19, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0194.

Title: National Fire Academy Executive Fire Officer Program Application for Admission

Abstract: FEMA Form 95–22, National Fire Academy Executive Fire Officer Program Application for Admission, is used by senior level executive fire officers to apply to the Executive Fire Officer Program. FEMA uses the application form to select the best qualified applicants for admission to the program.

The program is offered by FEMA's United States Fire Administration, National Fire Academy. Applicants selected to the program will complete four senior level courses over a four-year period.

Type of Respondents: Individuals or households, State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 300 hours.

Number of Respondents: 300.

Estimated Average Burden Time per Response: 1 hour.

Frequency of Response: On occasion.

Dated: July 12, 1994.

Linda S. Borror,

Acting Division Director, Administrative Service Division, Operations Support Directorate.

[FR Doc. 94–17629 Filed 7–19–94; 8:45 am]

BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before September 19, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: New collection.

Title: Report to Submit Technical Data to Correct Mapping Deficiencies Unrelated to Community-wide Elevation Determinations for a Single Residential Lot or Structure (Amendments and Revisions to National Flood Insurance Program Maps).

Abstract: The Application Form for Single Residential Lot or Structure will be used by individual property owners to request amendments and revisions to National Flood Insurance Program Maps. Approved requests will be used by FEMA to remove a single residential structure or a legally recorded parcel of land or portions thereof from a designated Special Flood Hazard Area, an area that would be inundated by the 100-year flood. FEMA will issue a Letter of Map Amendment (LOMA) or a Letter of Map Revision Based on Fill (LOMR–F) to effect approved changes.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 7,025 hours.

Number of Respondents: 2,927.

Estimated Average Burden Time per Response: 2.4 hours.

Frequency of Response: On occasion.

Dated: July 12, 1994.

Linda S. Borror,

Acting Division Director, Administrative Services Division, Operations Support Directorate.

[FR Doc. 94–17630 Filed 7–19–94; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1034–DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1034–DR), dated July 8, 1994, and related determinations.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama dated July 8, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 8, 1994:

Conecuh and Russell Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17627 Filed 7–19–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1035–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1035–DR), dated July 10, 1994, and related determinations.

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida dated July 10, 1994; is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 10, 1994:

Bay, Franklin, Gadsden, Liberty, Okaloosa and Santa Rosa Counties for Individual Assistance and Public Assistance.

[FEMA–1034–DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1034–DR), dated July 8, 1994, and related determinations.
EFFECTIVE DATE: July 14, 1994.
FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama dated July 8, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 8, 1994:

Conecuh and Russell Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,
Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17627 Filed 7–19–94; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–1035–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1035–DR), dated July 10, 1994, and related determinations.
EFFECTIVE DATE: July 13, 1994.
FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida dated July 10, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 10, 1994:

Bay, Franklin, Gadsden, Liberty, Okaloosa and Santa Rosa Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Frank Thomas,
Deputy Associate Director, Policy and Planning.

[FR Doc. 94–17628 Filed 7–19–94; 8:45 am]
BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Eritrean Air & Sea Services, Inc., 7524 Old Coaling Road, Harmans, MD 21077, Officers: Tekie G. Meskel, President, Bihon F. Debessai, Secretary, Ajay Gandhi, Treasurer, Andebrhan Biede, Vice President

Excel Forwarders, Inc., 2915 Stockholm Avenue, Cooper City, FL 33026, Officer: Loretta Malins-Smith, President

Elteha International U.S.A., Ltd. dba, LTH International (USA) Ltd., 316 West Florence Avenue, Inglewood, CA 90302, Officer: Philippus Herkata, President

Anthem Express World Transport Inc., St. 1 No. 2, Suite 304, Metro Office Park, Guaynabo, Puerto Rico 00968–1705, Officers: Anthony D. Emposimato, President, Leopoldo Melendez, Vice President, Tracey Emposimato, Secretary

Express Ocean Freight Unlimited, Inc., 182–17 150th Street, Jamaica, NY 11413–4010, Officers: David Marx, President, Ronald Marx, Vice President, Mara Robinson, Vice President

Premier Freight Forwarders, Inc., 9600 N.W. 25th Street, Suite 4E, Miami, FL 33172, Officers: David G. Smith, President, Maria Gavito-Hernandez, Vice President

Dated: July 15, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 94–17684 Filed 7–19–94; 8:45 am]
BILLING CODE 6730–01–M

Performance Review Board

AGENCY: Federal Maritime Commission.
ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.
FOR FURTHER INFORMATION CONTACT: William J. Herron, Jr., Director of Personnel, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573.
SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

William D. Hathaway,
Chairman.

The Members of the Performance Review Board Are:

1. Ming Chen Hsu, Commissioner
2. Francis J. Ivancie, Commissioner
3. Joe Scroggins, Jr., Commissioner
4. Norman D. Kline, Chief Administrative Law Judge
5. Frederick M. Dolan, Jr., Administrative Law Judge
6. Charles E. Morgan, Administrative Law Judge
7. Robert D. Bourgoin, General Counsel
8. Joseph C. Polking, Secretary
9. Edward P. Walsh, Managing Director
10. Bruce A. Dombrowski, Deputy Managing Director
11. Wm. Jarrel Smith, Jr., Director, Bureau of Hearing Counsel
12. Sandra L. Kusumoto, Director, Bureau of Administration
13. Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis
14. Norman W. Littlejohn, Director, Bureau of Investigations
15. Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing

[FR Doc. 94–17685 Filed 7–19–94; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Geoffrey J. Gempeler; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 9, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Geoffrey J. Gempeler, St. Cloud, Minnesota; to acquire an additional 7.28 percent for a total of 30.53 percent, of the voting shares of Chisago Bancorporation, Inc., Chisago City, Minnesota, and thereby indirectly acquire Chisago State Bank, Chisago City, Minnesota.

Board of Governors of the Federal Reserve System, July 14, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17624 Filed 7-19-94; 8:45 am]

BILLING CODE 6210-01-F

SOLO; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 12, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. SOLO, Colorado Springs, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Cheyenne Mountain Bank, Colorado Springs, Colorado.

Board of Governors of the Federal Reserve System, July 14, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17623 Filed 7-19-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3498]

Community Associations Institute; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Virginia-based association, whose members are managers of residential community associations, from interfering in any way with the truthful advertising and solicitation efforts of its members, and requires the respondent to remove from its codes of ethics any provisions inconsistent with the order's prohibition, and to make the changes known by publishing the revised code and the Commission's order in two of the respondent's publications.

DATES: Complaint and Order issued June 6, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Michael McNeely, FTC/S-3308, Washington, DC 20580, (202) 326-2904.

SUPPLEMENTARY INFORMATION: On Monday, March 21, 1994, there was published in the **Federal Register**, 59 FR 13327, a proposed consent agreement with analysis In the Matter of Community Associations Institute, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

Donald S. Clark,

Secretary.

[FR Doc. 94-17619 Filed 7-19-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3499]

El Portal Luggage, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Nevada-based retailer of luggage and other leather goods from misrepresenting the identity of the country of origin of any product it sells, and from removing, altering, obliterating, or concealing any country of origin designation attached to a product that it receives or offers for sale.

DATES: Complaint and Order issued June 20, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Sylvia Kundig, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Monday, April 4, 1994, there was published in the **Federal Register**, 59 FR 15733, a proposed consent agreement with analysis In the Matte of El Portal Luggage, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

Donald S. Clark,

Secretary.

[FR Doc. 94-17616 Filed 7-19-94; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. C-3500]

Martin Marietta Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the respondent's Expendable Launch Vehicle (ELV) division from disclosing to its satellite division any non-public information that its ELV division receives from a satellite manufacturer, and requires the respondent to give a copy of the consent order to U.S. satellite owners or manufacturers before obtaining any non-public information from them.

DATES: Complaint and Order issued June 22, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester, FTC/S-2224, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: On Tuesday, April 12, 1994, there was published in the **Federal Register**, 59 FR 17379, a proposed consent agreement with analysis In the Matter of Martin Marietta Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94-17617 Filed 7-19-94; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Owen's statement are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45).

Donald S. Clark,

Secretary.

[FR Doc. 94–17616 Filed 7–19–94; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3500]

Martin Marietta Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the respondent's Expendable Launch Vehicle (ELV) division from disclosing to its satellite division any non-public information that its ELV division receives from a satellite manufacturer, and requires the respondent to give a copy of the consent order to U.S. satellite owners or manufacturers before obtaining any non-public information from them.

DATES: Complaint and Order issued June 22, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Tuesday, April 12, 1994, there was published in the **Federal Register**, 59 FR 17379, a proposed consent agreement with analysis In the Matter of Martin Marietta Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–17617 Filed 7–19–94; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and Commissioner Owen's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Docket No. 9071]

Service Corporation International; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding and modifies the Commission's 1976 consent order by deleting the administrative provisions that required the respondent to distribute a copy of the 1976 order to its funeral homes and affected employees; provide prior notice to the Commission of certain changes in its corporate organization; and periodically notify the Commission regarding the acquisition or sale of any funeral homes. The Commission concluded that these provisions were no longer warranted or were essentially duplicative of requirements in provisions in more recent Commission orders against the respondent and therefore, warranted reopening and modifying the order.

DATES: Consent Order issued October 12, 1976. Modifying Order issued May 12, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Justin Dingfelder or Robert Frisby, FTC/S–4631, Washington, DC 20580. (202) 326–3017 or 326–2098.

SUPPLEMENTARY INFORMATION: In the Matter of Service Corporation International. The prohibited trade practices and/or corrective actions as set forth at 41 FR 53468, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–17614 Filed 7–19–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt 9252]

Sonic Technology Products, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California company and its officers from representing that any ultrasonic pest control device can eliminate rodent or flea infestations, and from misrepresenting the results of any scientific studies regarding their ultrasonic pest control products.

DATES: Complaint issued February 25, 1992. Order issues June 21, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Matthew Gold or David Newman, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Friday, March 4, 1994, there was published in the **Federal Register**, 59 FR 10394, a proposed consent agreement with analysis In the Matter of Sonic Technology Products, Inc., et al., for the purpose of soliciting public comment Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94–17615 Filed 7–19–94; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. 9258]

W.D.I.A. Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Ohio-based information corporation and two of its officers from furnishing any consumer report for any purposes not permitted under the Fair Credit Reporting Act, and requires the respondents to take certain steps to ensure subscribers have permissible purposes for accessing consumer reports in the future. In addition, the respondents are required to maintain a toll-free telephone number available to

[1] Copies of the Modifying Order and Commissioner Azcuenaga and Starek's statements are available from the Commission's Public Reference Branch, H–130, 6th & Pa. Ave., NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

consumers who have questions regarding the purpose for which a consumer report on them was furnished.

DATES: Complaint issued May 4, 1993. Order issued May 27, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Ronald Isaac or David Grimes, Jr., FTC/S–4429, Washington, DC 20580. (202) 326–3231 or 326–3171.

SUPPLEMENTARY INFORMATION: On Monday, March 21, 1994, there was published in the **Federal Register**, 59 FR 13334, a proposed consent agreement with analysis In the Matter of W.D.I.A. Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128–36; 15 U.S.C. 1681–1681(f))

Donald S. Clark,

Secretary.

[FR Doc. 94–17618 Filed 7–19–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Reallotment of Funds for FY 1993 Low-Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of Determination Concerning Funds Available for Reallotment.

SUMMARY: In accordance with section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 et seq.), as amended, a notice was published in the **Federal Register** on June 6, 1994 announcing the Secretary's preliminary determination that $22,591 in FY 1993 LIHEAP funds may be reallotted. After further evaluation, the Secretary has determined that no funds from FY 1993 would be reallotted. This determination was based on the fact that a large number of grantees would receive grant awards of less than one dollar ($1.00). Other grantees would receive grant awards of less than one hundred dollars ($100.00). It would not be cost effective to reallot these small amounts of funds.

FOR FURTHER INFORMATION CONTACT: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447; telephone (202) 401–9351.

Dated: July 13, 1994.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 94–17667 Filed 7–19–94; 8:45 am]

BILLING CODE 4184–01–M

HEALTH CARE FINANCING ADMINISTRATION

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Procedures for determining whether providers, practitioners, or other suppliers of services are liable for certain noncovered services; *Form No.:* HCF–A–R–77; *Use:* The notification provides providers, practitioners or suppliers with knowledge that Medicare will not pay for items or services mentioned in the notification. After this notification, any future claim for the same or similar services will not be paid. *Frequency:* Semi-annually; *Respondents:* Small business or organizations; *Estimated Number of Responses:* 16,150; *Average Hours Per Response:* 5 minutes; *Total Estimated Burden Hours:* 1,346.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Medical Review of Part B Intermediary Outpatient Therapy claims; *Form No.:* HCFA–700–701; *Use:* Medicare contractors require certain medical information to determine that requirements for Medicare coverage are met. The information is used to determine if billed services are payable in accordance with Medicare law, regulations, and guidelines. These services may be provided by hospitals, SNFs, CORFs, RHC, Hospices, ESRD facilities and Christian Science hospitals; *Frequency:* Annually; *Respondents:* Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations; *Estimated Number of Responses:* 2,190,000; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 547,000.

3. *Type of Request:* New; *Title of Information Collection:* End Stage Renal Disease Network Cost Report Forms; *Form No.:* HCFA–685; *Use:* Submission of quarterly cost reports will enable HCFA to review,, compare and project network costs. The reports will be used as an early warning system to determine if the networks are in danger of exceeding the total cost of the contract. In addition, HCFA will be able to analyze line item costs; *Frequency:* quarterly; *Respondents:* Nonprofit institutions; *Estimated Number of Responses:* 72; *Average Hours Per Response:* 3; *Total Estimated Burden Hours:* 216.

4. *Type of Request:* Revision; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form No.:* HCFA–1514; *Use:* Section 1861 of the Social Security Act requires hospitals to be certified to participate in the Medicare and Medicaid programs. These providers must complete this form which concerns information collection requirements and their uses; *Frequency:* Annually; *Respondents:* State or local governments; *Estimated Number of Responses:* 2,548; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 637.

5. *Type of Request:* New; *Title of Information Collection:* End Stage Renal Disease Network Business Proposal Forms; *Form Nos.:* HCFA–684, 684 A-J; *Use:* Submission of proposal information by current ESRD networks and other bidders according to the business proposal instructions will satisfy HCFA's need for meaningful, consistent and verifiable data with which to evaluate contract proposals; *Frequency:* Once every three years; *Respondents:* Nonprofit institutions; *Estimated Number of Responses:* 36; *Average Hours Per Response:* 30; *Total Estimated Burden Hours:* 1,080.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, D.C. 20503.

Date: July 11, 1994.

Kathleen Larson,

Acting Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–17579 Filed 7–19–94; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 58 FR 64406–9, December 7, 1993), is amended to implement section 404A of the Public Health Service Act, 42 U.S.C. 283c, as amended by the NIH Revitalizaiton Act of 1993 (Pub. L. 103–43), pertaining to the establishment of the Office of Behavioral and Social Sciences Research within the Office of the Director, National Institutes of Health (OD/NIH). This Office will serve as the NIH focal point for coordinating activities undertaken within the framework of behavioral and social sciences research.

Section HN–B Organization and Functions, is amended as follows: (1) After the heading *Office of Research on Women's Health (HNAG),* insert the following:

Office of Behavioral and Social Sciences Research (HNAH). (1) Advises the NIH Director and other key officials on matters relating to research on the role of human behavior in the development of health, prevention of disease, and therapeutic intervention; (2) coordinates research projects in the behavioral and social sciences conducted or supported by the NIH national institutes and centers (IC); (3) identifies research projects that deserve expanded effort and support by the ICs; and (4) develops research projects in cooperation with the ICs.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, D.C. 20503.

Date: July 13, 1994.

Kathleen Larson,

Acting Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–17579 Filed 7–19–94; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 58 FR 64408–9, December 7, 1993), is amended to implement section 404A of the Public Health Service Act, 42 U.S.C. 283c, as amended by the NIH Revitalizaiton Act of 1993 (Pub. L. 103–43), pertaining to the establishment of the Office of Behavioral and Social Sciences Research within the Office of the Director, National Institutes of Health (OD/NIH). This Office will serve as the NIH focal point for coordinating activities undertaken within the framework of behavioral and social sciences research.

Section HN–B Organization and Functions, is amended as follows: (1) After the heading *Office of Research on Women's Health (HNAG),* insert the following:

Office of Behavioral and Social Sciences Research (HNAH). (1) Advises the NIH Director and other key officials on matters relating to research on the role of human behavior in the development of health, prevention of disease, and therapeutic intervention; (2) coordinates research projects in the behavioral and social sciences conducted or supported by the NIH national institutes and centers (IC); (3) identifies research projects that deserve expanded effort and support by the ICs; and (4) develops research projects in cooperation with the ICs.

Delegations of Authority Statement

All delegations and redelegations of authority to offices and employees of the NIH which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganzation.

Dated: July 13, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–17642 Filed 7–19–94; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Gabrielino Tongva Tribal Council, c/o Martin Alcala, P.O. Box 693, San Gabriel, California 91778, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on March 21, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: June 27, 1994

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–17688 Filed 7–19–94; 8:45 am]

BILLING CODE 4310-02-M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that The Langley Band of the Chickamogee Cherokee Indians of the Southeastern United States, c/o Marion Willis, Jr., 2105 Lorna Ridge Lane, Birmingham, Alabama 35216, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 20, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petition and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: June 29, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–17689 Filed 7–19–94; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[OR-088-04-6332-02; GP-4-211]

Boundary Establishment, Descriptions, etc.: Sandy and Salmon Rivers, OR

ACTION: Notice of Corridor Boundaries for Sandy and Salmon Rivers, Components of the National Wild and Scenic Rivers System.

SUMMARY: In compliance with the Wild and Scenic Rivers Act, this notice announces the availability of Final Management Plans and Corridor boundaries for designated segments of the Sandy and Salmon Rivers, components of the National Wild and Scenic Rivers System. The final corridor boundary for the designated segment of the Sandy River lies entirely within the general legal description below:

Willamette Meridian

T. 1 S., R. 4 E.,
Portions of Sections: 3, 4, 5, 6, 8, 9, 10, 11, 14, 15, 22, 23, 24, 25, 26, and 36.
T. 1 S., R. 5 E.,
Portions of Sections: 30 and 31.

The final corridor boundary for the designated segment of the Salmon River lies entirely within the general legal description below:

Willamette Meridian

T. 2 S., R. 6 E.,
Portions of Sections: 23, 24, 25, 26, and 36
T. 2 S., R. 7 E.,
Portions of Sections: 30, 31, and 32.
T. 2½ S., R. 6 E.,
Portions of Sections: 36.
T. 3 S., R. 7 E.,
Portions of Sections: 4, 5, 6, 8, and 9.

More detailed legal descriptions are available upon request.

EFFECTIVE DATE: July 27, 1994.

For further information contact: Bob Ratcliffe, Recreation Planner, Clackamas Resource Area, Salem District Office, Bureau of Land Management, (503) 375-5646.

Dated: July 5, 1994.

Van W. Manning,

District Manager.

[FR Doc. 94-17634 Filed 7-19-94; 8:45 am]

BILLING CODE 4310-33-M

[CA-017-4210-03; CACA 30669]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; California

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following public lands in Mono County, California have been examined and found suitable for classification for lease to the County of Mono, State of California under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The County of Mono proposes to use the lands for a Public Gun Range facility.

Mount Diablo Meridian

T. 5 N., R. 25 E.,
Sec. 10, S½S½NW¼NW¼NW¼, SW¼NW¼NW¼, W½SW¼NW¼, S½SE¼SW¼NW¼, N½NE¼NW¼SW¼ excepting therefrom those public lands south of WSA CA-010-102 boundary shown on the Bureau of Land Management Master Title Plats.

Containing 40 acres more or less.

The lands are not needed for Federal Purposes. The lease is consistent with current BLM land use planning and would be in the public interest. The decision to lease is based on the Finding of No Significant Impact and Decision Record signed July 8, 1994 for Environmental Assessment CA-017-94-20. The Decision Record found Alternative 2 the Modified Proposed Action with mitigation as the acceptable alternative.

The lease, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. A right-of-way for streets, roads, and utilities in accordance with the transportation plan for Mono County.
5. A utility line right-of-way CAS 059135 with width of 15 feet from centerline.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Bishop Resource Area Office, 787 North Main St. Suite P, Bishop, California 93514. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Bureau of Land Management Bakersfield District Office, 3801 Pegasus Drive Bakersfield, California 93308.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a public gun range facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public gun range facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: July 8, 1994.

Richard E. Hafenfield,

Acting Area Manager, Bishop Resource Area.

[FR Doc. 94-17594 Filed 7-19-94; 8:45 am]

BILLING CODE 4310-40-M

[AZ-930-4210-06; A-25613]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation (BOR) proposes to withdraw for a period of 50 years, 1,988.27 acres of public land in Maricopa and Yavapai counties contiguous to existing Lake Pleasant which is an integral part of the Central Arizona Project. The purpose of the withdrawal is to reserve, from all forms of settlement, sale, location, or entry, the lands lying within the normal operating levels of the New Waddell Dam which are/would be prone to periodic inundation and/or water storage regimes. Any form of entry onto these lands, except for temporary uses of extremely short duration, could be hazardous to the health and safety of the public land users. Additionally, the enlarged lake will allow for increased recreational use and the BOR proposes to construct several new recreational developments to meet this demand. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by October 18, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, 602-650-0509.

SUPPLEMENTARY INFORMATION: On June 24, 1994, the petition was approved allowing the BOR to file the application to withdraw the following described public land from settlement, sale, location, and entry under the general land laws and the mining laws, but not the mineral leasing laws. The withdrawal would be issued subject to valid existing rights. Lands proposed for withdrawal are described as follows:

Gila and Salt River Meridian

T. 7 N., R. 1 E.,
Sec. 12, ptn of the N½NW¼ of lot 2.
T. 6 N., R. 1 E.,
Sec. 3, W½ of lot 10;
Sec. 10, S½NW¼;
Sec. 15, SW¼NE¼.
T. 6 N., R. 1 W.,
Sec. 1, lots 1-3 and 5-7, SW¼NE¼, E½W½SE¼;
Sec. 12, lot 1, E½NW¼NE¼;
Sec. 13, E½ and that portion of the W½ lying east of the east right-of-way boundary of the Castle Hot Springs Road.
T. 7 N., R. 1 W.,
Sec. 13, W½SW¼SE¼, SW¼NW¼SE¼;
Sec. 23, E½NE¼, E½W½NE¼, NE¼SE¼, E½NW¼SE¼, SE¼SE¼, SW¼SE¼;
Sec. 24, NW¼, W½W½NE¼;
Sec. 25, W½,NE¼.

The areas described aggregate approximately 1,988.27 acres in Maricopa and Yavapai Counties, Arizona.

The purpose of the withdrawal is to reserve the lands within the normal operating levels of New Waddell Dam which are/will be prone to periodic inundation and/or water storage regimes and to protect the Federal investment in the Lake Pleasant project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

enlarged lake will allow for increased recreational use and the BOR proposes to construct several new recreational developments to meet this demand. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by October 18, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, 602–650–0509.

SUPPLEMENTARY INFORMATION: On June 24, 1994, the petition was approved allowing the BOR to file the application to withdraw the following described public land from settlement, sale, location, and entry under the general land laws and the mining laws, but not the mineral leasing laws. The withdrawal would be issued subject to valid existing rights. Lands proposed for withdrawal are described as follows:

Gila and Salt River Meridian

T. 7 N., R. 1 E.,
  Sec. 12, ptn of the N½NW¼ of lot 2.
T. 6 N., R. 1 E.,
  Sec. 3, W½ of lot 10;
  Sec. 10, S½NW¼;
  Sec. 15, SW¼NE¼.
T. 6 N., R. 1 W.,
  Sec. 1, lots 1–3 and 5–7, SW¼NE¼, E½W½SE¼;
  Sec. 12, lot 1, E½NW¼NE¼;
  Sec. 13, E½ and that portion of the W½ lying east of the east right-of-way boundary of the Castle Hot Springs Road.
T. 7 N., R. 1 W.,
  Sec. 13, W½SW¼SE¼, SW¼NW¼SE¼;
  Sec. 23, E½NE¼, E½W½NE¼, NE¼SE¼, E½NW¼SE¼, SE¼SE¼, SW¼SE¼;
  Sec. 24, NW¼, W½W½NE¼;
  Sec. 25, W½,NE¼.

The areas described aggregate approximately 1,988.27 acres in Maricopa and Yavapai Counties, Arizona.

The purpose of the withdrawal is to reserve the lands within the normal operating levels of New Waddell Dam which are/will be prone to periodic inundation and/or water storage regimes and to protect the Federal investment in the Lake Pleasant project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the subject must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon a determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are only those temporary land uses which are compatible with the proposed use of the land by the BOR.

The temporary segregation of the land in connection with the withdrawal application or proposal shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the BOR.

Dated: July 7, 1994.

Herman L. Kast,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 94–17638 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–32–P

[CO–930–4214–10; COC–57004]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

July 8, 1994.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 14.46 acres of National Forest System land for 20 years. This withdrawal would protect seven constructed huts/lodges which are a part of a chain of overnight ski lodges between Aspen and Vail, Colorado. This notice closes these lands to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing and to such forms of disposition as may by law be made of National Forest System lands.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before October 18, 1994.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On June 28, 1994, the Department of Agriculture, Forest Service, filed an application to withdraw the following described parcels of National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2):

Each parcel of National Forest System land is occupied by a Hut/Lodge of the Tenth Mountain Trail System or the Summit Association System. The geographical position at the center of the Hut/Lodge facility at each site has been determined with a 2-channel, sequencing, code phase Global Positioning System, nonsurvey quality receiver. The position is based on North American Datum-1927 (NAD27). The dimensions and relationship of the boundaries of each parcel to the Hut/Lodge is identical:

Beginning at Corner No. 1, from which the northeast corner of the hut/lodge bears S. 45 °W. 212 feet;
From Corner No. 1, by metes and bounds,
  W. 300 feet to corner No. 2;
  S. 300 feet to corner No. 3;
  E. 300 feet to corner No. 4;
  N. 300 feet to corner No. 1, the place of beginning.

Each parcel as described contains 2.09 acres.

Sixth Principal Meridian
White River National Forest
Betty Bear Hut/Lodge

At approximately Latitude 39°15′22.18″ N. and Longitude 106°31′22.34″ W. Said parcel lies in approximately NE¼NW¼ of section 23, T. 9 S., R. 82 W. (Unsurveyed).

Arapaho National Forest
Francie's Hut/Lodge

At approximately Latitude 39°26′18.79″ N. and Longitude 106°04′21.26″ W. Said parcel lies in approximately SE¼ of section 14, T. 7 S., R. 78 W. (Unsurveyed).

Arapaho National Forest
Janet's Hut/Lodge

At approximately Latitude 39°27′50.63″ N. and Longitude 106°13′46.63″ W. Said parcel lies in approximately SW¼SW¼ of section 4 and NW¼NW¼ if section 9, T. 7 S., R 79 W. (Unsurveyed).

White River National Forest
Margy's Hut/Lodge

At approximately Latitude 39°16′31.198″ N. and Longitude 106°42′46.214″ W. Said

parcel lies in approximately SE¼SE¼SE¼ of section 12, T. 9 S., R. 84 W. (Unsurveyed)

White River National Forest
McNamara Hut/Lodge

At approximately Latitude 39°13'59.10" N. and Longitude 106°44'17.57" W. Said parcel lies in approximately SW¼SE¼ of section 26, T. 9 S., R. 84 W. (Unsurveyed).

San Isabel National Forest
Skinner Hut/Lodge

At approximately Latitude 39°15'58.97" N. and Longitude 106°27'45.97" W. Said parcel lies in approximately NW¼NE¼SW¼ of section 17, T. 9 S., R. 81 W. (Unsurveyed).

San Isabel National Forest
10th Mountain Division Hut/Lodge

At approximately Latitude 39°22'08.53" N. and Longitude 106°23'10.84" W. Said parcel lies in approximately NE¼NE¼ of section 12, T. 8 S., R. 81 W. (Unsurveyed).

The areas described aggregate approximately 14.48 acres of National Forest System lands in White River, Arapaho and San Isabel National Forests in Lake, Pitkin, and Summit Counties.

The purpose of this withdrawal is to protect existing cross-country ski huts/lodges which are a part of a chain of overnight facilities between Aspen and Vail, Colorado.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Doris E. Chelius,

Acting Chief, Branch of Realty Programs.

[FR Doc. 94–17639 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–JB–P

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Oakhill Center for Rare and Endangered Species, Oklahoma City, OK, PRT–791652

The applicant requests a permit to import one female captive born Persian leopard (*Panthera pardus saxicolor*) from the Chester Zoo, Chester, England for the purpose of enhancement of the survival of the species through propagation.

Applicant: Mike Anderson , Kodiak, AK, PRT–791369

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. H.P. Steenkamp at Noortgeclacht, Riebeeckstad, Orange Free State, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Richard D'Angelo, West Orange, NJ, PRT–792240

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. P.J. Louw at Bankfontein, Springfontein, Orange Free State, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: The Golden Lion Tamarin Conservation Program, c/o National Zoological Park, Washington D.C., PRT–792347

The applicant requests a permit to import 19 captive-bred golden lion tamarins (*Leontopithecus rosalia*) from 3 zoos in Germany and 4 zoos in the United Kingdom for the purpose of enhancement of survival of the species through propagation and conditioning of the tamarins for eventual release into the wild.

Applicant: Miami Metrozoo, Miami, FL, PRT–792233

The applicant requests a permit to import one pair of komodo monitors (*Varanus komodensis*) from Taman Safari, Indonesia, for the purpose of the enhancement of the survival of the species through propagation.

Applicant: Minnesota Zoological Garden, PRT–792235

The applicant requests a permit to import one pair of komodo monitors (*Varanus komodensis*) from Taman Safari, Indonesia, for the purpose of the enhancement of the survival of the species through propagation.

Applicant: Ringling Bros. and Barnum and Bailey Circus, Vienna, VA, PRT–791084

The applicant requests a permit to export and reimport 14 Bengal tigers (*Panthera tigris*), 2 Siberian tigers (*Panthera tigris altaica*), and 17 Asian elephants (*Elephas maximus*) to and from Canada for the purpose of enhancement of survival through conservation education.

Applicant: U.S. Fish and Wildlife Service, Division of Law Enforcement, Arlington, VA, PRT–691650

The applicant requests a permit to import and export any Endangered or Threatened species for the purpose of enhancement of the survival of the affected species through enhanced law enforcement capabilities.

Applicant: U.S. Fish and Wildlife Service, Assistant Regional Director, Region 6 Endangered Species, Lakewood, CO, PRT–792540.

The applicant requests a permit for multiple imports of male, female and juvenile black-footed ferrets (*Mustela nigripes*) from the Toronto Metro Zoo, Toronto, Canada, for reintroduction into the wild in Montana and South Dakota for a nonessential experimental population in those two states, if and when such a nonessential experimental population is Federally established.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 15, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–17682 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Underground Railroad Advisory Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. that a meeting of the Underground Railroad Advisory Committee will be held in Washington, DC, at the Channel Inn located at 650 Water Street, SW. on August 17 and 18, 1994. The meeting will begin at 9 a.m. and will adjourn at approximately 4 p.m. both days.

The Underground Railroad Advisory Committee was established by Public Law 101–628 to advise the Secretary of the Interior in preparation of a study of alternatives for commemorating and interpreting the Underground Railroad used by slaves escaping to freedom before the conclusion of the Civil War.

This will be the fourth meeting of the Committee. The matters to be discussed at the meeting include:

—The study's progress by the National Park Service including the National Historic Landmark theme study and the working draft Special Resource Study;
—Committee comment on the expanded concepts for resource protection; interpretation and commemoration of the Underground Railroad;
—Schedule for the coming fiscal year;
—Development of the interpretive handbook.

The meeting will be open to the public. However, space and facilities to accommodate members of the public are limited and people will be accommodated on a first-come, first-served basis. Anyone may file a written statement concerning the matters to be discussed at the committee meetings. For further information about the meeting or submitting statements, contact Mr. John Paige, Underground Railroad Study Team Captain, National Park Service, Denver Service Center-TEA, P.O. Box 25287, Denver, CO 80225–0287, telephone 303/969–2356.

Dated: July 12, 1994.

Denis P. Galvin,

Associate Director, Planning and Development, Washington Office.

[FR Doc. 94–17573 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 9, 1994. Pursuant to § 60.13 of 36 CFR

National Park Service

Underground Railroad Advisory Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. that a meeting of the Underground Railroad Advisory Committee will be held in Washington, DC, at the Channel Inn located at 650 Water Street, SW. on August 17 and 18, 1994. The meeting will begin at 9 a.m. and will adjourn at approximately 4 p.m. both days.

The Underground Railroad Advisory Committee was established by Public Law 101–628 to advise the Secretary of the Interior in preparation of a study of alternatives for commemorating and interpreting the Underground Railroad used by slaves escaping to freedom before the conclusion of the Civil War.

This will be the fourth meeting of the Committee. The matters to be discussed at the meeting include:

—The study's progress by the National Park Service including the National Historic Landmark theme study and the working draft Special Resource Study;
—Committee comment on the expanded concepts for resource protection; interpretation and commemoration of the Underground Railroad;
—Schedule for the coming fiscal year;
—Development of the interpretive handbook.

The meeting will be open to the public. However, space and facilities to accommodate members of the public are limited and people will be accommodated on a first-come, first-served basis. Anyone may file a written statement concerning the matters to be discussed at the committee meetings. For further information about the meeting or submitting statements, contact Mr. John Paige, Underground Railroad Study Team Captain, National Park Service, Denver Service Center-TEA, P.O. Box 25287, Denver, CO 80225–0287, telephone 303/969–2356.

Dated: July 12, 1994.

Denis P. Galvin,

Associate Director, Planning and Development, Washington Office.

[FR Doc. 94–17573 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 9, 1994. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 4, 1994.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ARIZONA

Yavapai County

Prescott Armory Historic District, Roughly bounded by E. Gurley, W. Willis, N. Arizona, E. Sheldon and N. Rush Sts., Prescott, 94000829

ARKANSAS

Clark County

Hoo Hoo Monument, First St., Gurdon, 94000821

Crittenden County

Washington, George Berry, Memorial, AR 149 N. of Earle, Earle vicinity, 94000824

Izard County

Jeffrey, A. C, Farmstead, Co. Rd. 18 N. of Mt. Olive, Mt. Olive vicinity, 94000825

Lee County

Marianna Missouri—Pacific Depot (Historic Railroad Depots of Arkansas MPS), Carolina St. S., Marianna, 94000827

Miller County

Neif, Charles J., House, 1410 Pecan St., Taxarkana, 94000822

Pulaski County

First Baptist Church, Jct. of 12th and Louisana Sts., SW corner, Little Rock, 940008823

Lincoln Building, 1423–1425 S. Main St., Little Rock, 94000826

CALIFORNIA

Orange County

Porter—French House, 248 S. Batavia St., Orange, 94000818

Riverside County

Perris Depot, 120 W. Fourth St., Perris, 94000819

CONNECTICUT

Fairfield County

Rockrimmon Rockshelter, Address Restricted, Stamford vicinity, 94000847

Hartford County

Pinney, David, House and Barn (Boundary Increase), 58 West St., Windsor Locks, 94000846

Middlesex County

James Pharmacy, 2 Pennywise Ln., Old Saybrook, 94000845

KENTUCKY

Anderson County

Lawrenceburg Commercial Historic District, Roughly, Main St. from North Alley to Court St. and Court from Main to the Southern RR tracks, Lawrenceburg vicinity, 94000837

Boyd County

Ashland Commercial Historic District, Roughly bounded by 13th St., Carter Ave., 18th St. and Front St., Ashland, 94000838

Fayette County

Boone Creek Rural Historic District, Roughly bounded by I–75, Cleveland Rd., Athens—Boonesboro Rd. and Grimes Rd., Lexington vicinity, 94000839

Jessamine County

East Main Street Historic District, Roughly, E. Main St. from S. Walnut St. to Rice St., Wilmore vicinity, 94000840

Kenyon Avenue Historic District, 401, 403, 405, 406, 407 and 408 Kenyon Ave., Wilmore vicinity, 94000841

Lexington and Main Historic District, 100, 101, 102, 103 and 105 N. Lexington Ave. and 101 E. Main St., Wilmore vicinity, 94000842

North Lexington Avenue Historic District, Roughly, N. Lexington Ave. from College Ave. to Bauta Ln., Wilmore vicinity, 94000843

Madison County

Battle of Richmond Historic Areas, Two discontiguous areas, one NE of jct. of US 25 and US 421 and one SE of jct. of US 25 and Rose Ln., Richmond vicinity, 94000844

MARYLAND

Carroll County

Union Bridge Historic District, Roughly bounded by Bellevue, E. Locust, Butterburg Alley, Church, Whyte, W. Locust and the Western Maryland RR tracks, Union Bridge, 94000820

MASSACHUSETTS

Dukes County

Arcade, The, 134 Circuit Ave., Oak Bluffs, 94000813

Middlesex County

Pepperell Center Historic District, Roughly, along Park, Main, Elm, Townsend and Heald Sts. Pepperell, 94000812

MINNESOTA

Fillmore County

Wykoff Commercial Historic District, 100 S. Gold–123 N. Gold St., Wykoff, 94000831

Houston County

Caledonia Commercial Historic District, 101–205 E. Main St. and 101–108 S. Kingston St., Caledonia, 94000830

Steele County

Blooming Prairie Commercial Historic District, Main St. E. between Highway Ave. and 2nd Ave. NE., Blooming Prairie, 94000832

NEW JERSEY

Bergen County

Terhune House (Stone Houses of Bergen County TR), 470 Paramus, Rd., Paramus, 82005390

NEW YORK

Monroe County

Windom Hall, 28 Main St., Scottsville, 94000803

Wayne County

Grace Episcopal Church Complex, 7–9 Phelps St. and 12 Lawrence St., Lyons, 94000802

OREGON

Curry County

Blacklock Point Lithic Site, Address Restricted, Port Orford vicinity, 94000805
Blacklock Point Shell Midden, Address Restricted, Port Orford vicinity, 94000804

Jackson County

Root—Banks House, 11 N. Peach St. (1000 W. Main St.), Medford, 94000807

Sherman County

Moore, John and Helen, House, 66432 US 97, Moro vicinity, 94000806

Umatilla County

Adams Odd Fellows Hall, 190 Main St., Adams, 94000810
Reese and Redman General Merchandise Store, 130 S. Main St., Adams, 94000811

Wasco County

Imperial Stock Ranch Headquarters Complex, Hinton Rd. 3 mi. E of jct. with Bakeoven Rd., Shaniko vicinity, 94000808

Yamhill County

Fernwood Pioneer Cemetery, Everest Rd., 0.5 mi. S of jct. with OR 219, Newberg vicinity, 94000809

PENNSYLVANIA

Montour County

Danville Historic District, Roughly bounded by Bloom St., Cedar St., the Susquehanna R. and Chestnut St., Danville, 94000828

SOUTH CAROLINA

Horry County

Conway Downtown Historic District, Roughly bounded by Fourth Ave., Kingston St., Third Ave. and Laurel St., Conway, 94000815

Sumter County

Carnegie Public Library, 219 W. Liberty St., Sumter, 94000814

TEXAS

Jackson County

Archeological Site No. 41JK9, Address Restricted, Lolita vicinity, 94000833

Lubbock county

Holden, William Curry and Olive Price, House, 3109 20th St., Lubbock, 94000834

VERMONT

Washington County

Mad River Valley Rural Historic District, Roughly, along VT 100 and 100B from Waitsfield to Moretown and parts of North and River Rds., Waitsfield, 94000836

WISCONSIN

Ashland County

PRETORIA (schooner—barge) Shipwreck Site, Address Restricted, Bayfield vicinity, 94000835

Vilas County

Archeological Site No. 47VI197, Address Restricted, St. Germain vicinity, 94000816

In order to assist in its preservation, a proposed move is being considered for the following property:

SOUTH CAROLINA

Pickens County

Hanover House, Clemson University campus, Clemson, 70000594

[FR Doc. 94–17571 Filed 7–19–94; 8:45 am]
BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains from Maine in the Possession of the Robert Abbe Museum, Bar Harbor, ME

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of human remains from four sites in Hancock County, ME, in the possession of the Robert Abbe Museum, Bar Harbor, ME.

A detailed inventory and assessment of these human remains has been made by the curatorial staff of the Robert Abbe Museum and contracted specialists in physical anthropology, in consultation with representatives of the Penobscot Nation, Aroostook Bank of Micmac, Houlton Band of Maliseet, and the Passamaquoddy Nation, collectively identified hereafter as the Wabanaki Tribes of Maine.

The partial remains of six individuals were acquired by the Robert Abbe Museum between 1931 and 1945 in archeological excavations of three prehistoric shell middens in Hancock County, ME. Partial remains from three individuals were recovered between 1931 and 1936 from ME Site 44.12A. The partial remains of one individual were recovered in 1939 from ME Site 44.25. Partial remains of two individuals were recovered between 1941 and 1945 from ME Site 44.6. Radiocarbon dates from ME Site 44.6 yielded dates of 955 BP +/- 75 years and 1,120 BP +/- 80 years. The radiocarbon dates and other archeological evidence indicate that all six individuals lived during the Late Prehistoric Period (1000 AD—1500 AD).

A human cranium and maxilla were acquired via donation from H. Lawrence Angel in 1946. Mr. Angel indicated that he had collected the human remains from ME Site 31.31, another prehistoric shell midden in Hancock County, ME. These remains are also judged to be associated with the Late Prehistoric Period occupation of ME Site 31.31.

Inventory of the human remains and review of the accompanying documentation indicates that no funerary objects associated with the above mentioned human remains are part of the collections of the Robert Abbe Museum. No known individuals were identifiable.

The Archaeological Advisory Committee of the Maine Historic Preservation Program has found it reasonable to trace a shared group identity from the Late Prehistoric Period inhabitants of Maine as an undivided whole to the four modern Indian tribes known collectively as the Wabanaki Tribes of Maine on the basis of geographic proximity; survivals of stone, ceramic and perishable material culture skills; and probable linguistic continuity across the Late Prehistoric/Contact Period boundary.

Based on the above mentioned information, officials of the Robert Abbe Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Wabanaki Tribes of Maine.

This notice has been sent to officials of the Wabanaki Tribes of Maine. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains should contact Rebecca Cole-Will, Curator, The Robert Abbe Museum, P.O. Box 286, Bar Harbor, ME 04609, telephone: (207) 288–3519 before August 19, 1994.

Dated: July 14, 1994

Francis P. McManamon, Ph.D.

Departmental Consulting Archeologist, Chief, Archeological Assistance Division

[FR Doc. 94–17582 Filed 7-19-94; 8:45 am]
BILLING CODE 4310–70–F

Notice of Intent to Repatriate a Cultural Item in the Possession of the Denver Art Museum

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate a cultural item in the possession of the Denver Art Museum, Denver, CO, that meets the definition of "sacred object" under section 2 of the act.

The Elk Tongue Beaver Bundle consists of animal bodies or skins, a beaver tail, a buffalo tail, a feather fan, a pipe stem and catlinite bowl, beaded bags, forked sticks, split sticks, and eight rawhide rattles in a corn husk bag, all surrounded by a painted leather wrapping and a red plaid shawl. The original owner was Elk Tongue, a northern Piegan. The bundle was subsequently transferred through a series of bundle keepers—Hairy Belly, Not Good, Scraping White, Wolf Bull, and Little Dog—before being sold to Madge Hardin Walters of San Diego, CA. The Denver Art Museum purchased the bundle from Ms. Walters in 1940.

Evidence provided by the Blackfeet Tribal Business Council, on the behalf of Mr. George G. Kipp, III, and Mrs. Melinda Kipp, confirms that the Elk Tongue Beaver Bundle is needed by traditional Blackfeet religious leaders for the practice of traditional Blackfeet religion by present day adherents. The Pikuni Traditionalist Association, Chief Leonard Bastien of the Piegan Nation, Alberta, Canada, and the Blackfeet Tribal Business Council unanimously support Mr. and Mrs. Kipp as the appropriate bundle keepers. The Denver Art Museum's Collection Committee and Board of Trustees has reviewed the request for repatriation and has no objection. The Elk Tongue Beaver Bundle has been loaned to the Blackfeet Tribal Business Council, on the behalf of Mr. and Mrs. Kipp, pending publication of this notice.

Authorities of the United States Fish and Wildlife Service have been contacted regarding applicability of Federal endangered species statutes to this transfer and have concurred in the conclusion that the object is not covered due to its age.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Dr. Nancy J. Blomberg, Curator of Native Arts, Denver Art Museum, 100 W. 14th Avenue Parkway, Denver, CO 80204, telephone: (303) 839–4806 before August 19, 1994. Repatriation of the object to the Blackfeet Nation, on behalf of George and Melinda Kipp, may begin after that date if no additional claimants come forward.

Dated: July 14, 1994

Dr. Francis P. McManamon,

Departmental Consulting Archeologist Chief, Archeological Assistance Division.

[FR Doc. 94–17583 Filed 7–19–94; 8:45 am]
BILLING CODE 4310–70–F

possession of the Denver Art Museum, Denver, CO, that meets the definition of "sacred object" under section 2 of the act.

The Elk Tongue Beaver Bundle consists of animal bodies or skins, a beaver tail, a buffalo tail, a feather fan, a pipe stem and catlinite bowl, beaded bags, forked sticks, split sticks, and eight rawhide rattles in a corn husk bag, all surrounded by a painted leather wrapping and a red plaid shawl. The original owner was Elk Tongue, a northern Piegan. The bundle was subsequently transferred through a series of bundle keepers—Hairy Belly, Not Good, Scraping White, Wolf Bull, and Little Dog—before being sold to Madge Hardin Walters of San Diego, CA. The Denver Art Museum purchased the bundle from Ms. Walters in 1940.

Evidence provided by the Blackfeet Tribal Business Council, on the behalf of Mr. George G. Kipp, III, and Mrs. Melinda Kipp, confirms that the Elk Tongue Beaver Bundle is needed by traditional Blackfeet religious leaders for the practice of traditional Blackfeet religion by present day adherents. The Pikuni Traditionalist Association, Chief Leonard Bastien of the Piegan Nation, Alberta, Canada, and the Blackfeet Tribal Business Council unanimously support Mr. and Mrs. Kipp as the appropriate bundle keepers. The Denver Art Museum's Collection Committee and Board of Trustees has reviewed the request for repatriation and has no objection. The Elk Tongue Beaver Bundle has been loaned to the Blackfeet Tribal Business Council, on the behalf of Mr. and Mrs. Kipp, pending publication of this notice.

Authorities of the United States Fish and Wildlife Service have been contacted regarding applicability of Federal endangered species statutes to this transfer and have concurred in the conclusion that the object is not covered due to its age.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Dr. Nancy J. Blomberg, Curator of Native Arts, Denver Art Museum, 100 W. 14th Avenue Parkway, Denver, CO 80204, telephone: (303) 839–4806 before August 19, 1994. Repatriation of the object to the Blackfeet Nation, on behalf of George and Melinda Kipp, may begin after that date if no additional claimants come forward.

Dated: July 14, 1994

Dr. Francis P. McManamon,

Departmental Consulting Archeologist Chief, Archeological Assistance Division.

[FR Doc. 94–17583 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0094), Washington, DC 20503, telephone 202–395–7340.

Title: Surface Coal Mining and Reclamation Operation; General—30 CFR 700

OMB Number: 1029–0094

Abstract: Information is used to determine when regulatory jurisdiction ends over a surface coal mining and reclamation operation; to consider the need, costs, and benefits of a petition to conduct rulemaking; and identifies the person and nature of a citizen's suit.

Bureau Form Number: None

Frequency: On Occasion

Description of Respondents: Surface Coal Mining Operators, Members of the Public

Estimated Completion Time: .4 hours.

Annual Responses: 105

Annual Burden Hours: 41

Bureau Clearance officer: John A. Trelease (202) 343–1475.

Dated: May 16, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–17599 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0040), Washington, D.C. 20503, telephone 202–395–7340.

Title: Requirements for Permits for Special Categories of Mining—30 CFR Part 785

OMB approval number: 1029–0040

Abstract: Sections 711 and 515 of Public Law 95–87 require applicants for special types of mining activities to provide description, maps, and plans of the proposed activity. This information is used by the regulatory authority in determining whether the applicant meets the applicable performance and environmental standards for the specific type of mining activity

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Surface coal mine operators

Estimated completion time: 19 hours

Annual Responses: 621

Annual Burden Hours: 11,743.

Bureau clearance officer: John A. Trelease (202) 343–1475.

Dated: May 4, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–17600 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–324]

In the Matter of Certain Acid-Washed Denim Garments and Accessories, Including Jeans, Jackets, Bags, and Skirts; Commission Determination to Rescind a Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant a joint petition to rescind a consent order issued against Bugle Boy Industries, Inc. (Bugle Boy), a respondent in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202–205–3104.

ADDRESSES: Copies of the joint petition, the Commission's order, and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000.

SUPPLEMENTARY INFORMATION: On April 4, 1994, complainants Golden Trade S.r.l. (Golden Trade) and Greater Texas Finishing Corporation (Greater Texas), and respondent Bugle Boy filed a joint petition to rescind a consent order which was previously entered against Bugle Boy. The petition was filed in view of a settlement agreement among the parties that resulted in a license to Bugle Boy to manufacture, have manufactured, use, and sell garments under U.S. Letters Patent 4,740,213, owned by Golden Trade, and the patent's foreign counterparts.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337, 19 U.S.C. § 1335).

Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: July 12, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–17645 Filed 7–19–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 701–TA–360 and 361 (Final)]

Certain Carbon Steel Butt-Weld Pipe Fittings from India and Israel

AGENCY: United States International Trade Commission.

ACTION: Institution of final countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigations Nos. 701–TA–360 and 361 (Final) under section 705(b) of the Tariff Act of 1930, as amended (19 U.S.C. § 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India and Israel of certain carbon steel butt-weld pipe fittings,[1] provided for in subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. § 1671d(a)(1)), Commerce has extended the date for its final determinations to coincide with those to be made in the ongoing antidumping investigations on certain carbon steel butt-weld pipe fittings from France, India, Israel, Malaysia, the Republic of Korea, Thailand, the United Kingdom, and Venezuela. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigations until Commerce makes preliminary determinations in the antidumping investigations (currently scheduled for August 8, 1994).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. § 1671b) are being provided to manufacturers, producers, or exporters in India and Israel of certain carbon steel butt-weld pipe fittings. The investigations were requested in a petition filed on February 28, 1994, by the U.S. Fittings Group, Washington, DC, an ad hoc trade association consisting of five domestic firms: Hackney, Inc., Dallas, TX; Ladish Co., Inc., Cudahy, WS; Mills Iron Works, Inc., Gardena, CA; Steel Forgings, Inc., Shreveport, LA; and Tube Forgings of America, Inc., Portland, OR.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII, as amended. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: July 14, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–17647 Filed 7–19–94; 8:45 am]

BILLING CODE 7020–02–P

---

[1] The imported products covered by the scope of these investigations consist of carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches (355 millimeters), imported in either finished or unfinished condition. Such pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). The subject pipe fittings come in a variety of shapes which include "elbows", "tees", "caps", and "reducers". The edges of the finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe.

[Investigation 332–344]

The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements

AGENCY: United States International Trade Commission.

ACTION: Scheduling of public hearing.

EFFECTIVE DATE: July 11, 1994.

SUMMARY: Following receipt of a letter dated June 9, 1993, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–344, The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) on July 1, 1993 (Fed. Reg., Vol. 58, No. 133, July 14, 1993, pp. 37966–37967). The Commission was requested to submit its report by June 30, 1995.

FOR FURTHER INFORMATION: General information may be obtained from Ms. Arona Butcher (202–205–2230), Office of Operations, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

As requested by USTR, the Commission will investigate the economic effects of such orders and suspension agreements, and the economic effects of the dumping and subsidy practices that such orders and agreements address. The investigation will include a comprehensive empirical analysis of the economic condition of U.S. domestic industries impacted (including upstream and downstream industries) by unfairly traded imports both before and after relief was granted. This analysis will include relevant industry information on employment, wages, production, prices, investment, trade and other factors internal and external to the industry including but not limited to the relevant unfair foreign trade practices affecting the general health and competitiveness of such industries. Also, the USTR has requested that a standard comparative static model be employed to estimate the economic effects of the unfair trade practices and remedies on selected U.S. industries.

The USTR noted that the process of relief from unfair trade practices entails real costs to firms, to individual workers

[Investigation 332-344]

The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements

AGENCY: United States International Trade Commission.

ACTION: Scheduling of public hearing.

EFFECTIVE DATE: July 11, 1994.

SUMMARY: Following receipt of a letter dated June 9, 1993, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332-344, The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) on July 1, 1993 (Fed. Reg., Vol. 58, No. 133, July 14, 1993, pp. 37966-37967). The Commission was requested to submit its report by June 30, 1995.

FOR FURTHER INFORMATION: General information may be obtained from Ms. Arona Butcher (202-205-2230), Office of Operations, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202-205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205-1810.

Background

As requested by USTR, the Commission will investigate the economic effects of such orders and suspension agreements, and the economic effects of the dumping and subsidy practices that such orders and agreements address. The investigation will include a comprehensive empirical analysis of the economic condition of U.S. domestic industries impacted (including upstream and downstream industries) by unfairly traded imports both before and after relief was granted. This analysis will include relevant industry information on employment, wages, production, prices, investment, trade and other factors internal and external to the industry including but not limited to the relevant unfair foreign trade practices affecting the general health and competitiveness of such industries. Also, the USTR has requested that a standard comparative static model be employed to estimate the economic effects of the unfair trade practices and remedies on selected U.S. industries.

The USTR noted that the process of relief from unfair trade practices entails real costs to firms, to individual workers and to taxpayers. The USTR has requested the Commission to complement the empirical analysis above with quantitative and other estimates of the labor and other domestic adjustment costs involved. Also as requested by the USTR, the Commission will seek to provide an assessment of the economy-wide net economic welfare effects of unfair trade practices and the remedies provided.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on September 29, 1994 and September 30, 1994 (if required). All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., September 13, 1994. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., September 13, 1994; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 14, 1994.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on October 14, 1994. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

Issued: July 13, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-17646 Filed 07-19-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-352]

In the Matter of Certain Personal Computers With Memory Management Information Stored in External Memory and Related Materials: Commission Determination Not To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation terminating the investigation because of the collateral estoppel effect of the district court judgment in *Cyrix Corp.* v. *Intel Corp.* v. *Texas Instruments*, No. 4:92cv52 (E.D. Texas, Sherman Division).

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3104.

SUPPLEMENTARY INFORMATION: On April 12, 1994, respondent-intervenor Advanced Micro Devices, Inc. (AMD) and respondents Twinhead Int'l Corp. and Twinhead Corp. (Twinhead) filed a motion for summary determination terminating the investigation in view of a U.S. district judgment which collateral estops complainant Intel Corporation (Intel) from asserting its claims against AMD and Twinhead in the subject investigation. On May 16, 1994, Intel filed an opposition to the motion. The Commission investigative attorney (IA) filed a response supporting the motion on May 16, 1994. On May 24, 1994, AMD and Twinhead filed a motion to file a reply and a reply. The presiding ALJ granted the motion to file a reply.

On June 6, 1994, the ALJ issued an ID (Order No. 25) granting the motion of AMD and Twinhead. Intel filed a petition for review of the ID on June 15, 1994, which was opposed by Twinhead, AMD, and the IA on June 22, 1994. No agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.53(h) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: July 11, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–17644 Filed 7–19–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–675 (Final)]

Saccharin From China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–675 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of saccharin, provided for in subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of saccharin from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on November 18, 1993, by PMC Specialties Group, Cincinnati, OH.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on October 28, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on November 10, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 4, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 8, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is November 4, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is November 21 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 21, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: July 15, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–17648 Filed 7–19–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32545]

Wisconsin & Southern Railroad Co.—Trackage Rights Exemption—Wisconsin Central Ltd.

Wisconsin Central Ltd. has agreed to grant to Wisconsin & Southern Railroad Co. (WSOR) overhead trackage rights over approximately 25.3 miles of rail line, between milepost 122.5, at Slinger, WI, and milepost 97.2, at Waukesha, WI, where the line connects with the main line of WSOR's affiliate, the Wisconsin & Calumet Railroad Company (WICT). The trackage rights will enable WSOR to interchange cars directly with WICT. The trackage rights were to become effective on July 7, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert A. Wimbish, Rea, Cross & Auchincloss, 1920 N Street NW., Suite 420, Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 12, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17670 Filed 7–19–94; 8:45 am]

BILLING CODE 7035–01–P

document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: July 15, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–17648 Filed 7–19–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32545]

Wisconsin & Southern Railroad Co.—Trackage Rights Exemption—Wisconsin Central Ltd.

Wisconsin Central Ltd. has agreed to grant to Wisconsin & Southern Railroad Co. (WSOR) overhead trackage rights over approximately 25.3 miles of rail line, between milepost 122.5, at Slinger, WI, and milepost 97.2, at Waukesha, WI, where the line connects with the main line of WSOR's affiliate, the Wisconsin & Calumet Railroad Company (WICT). The trackage rights will enable WSOR to interchange cars directly with WICT. The trackage rights were to become effective on July 7, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert A. Wimbish, Rea, Cross & Auchincloss, 1920 N Street NW., Suite 420, Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 12, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17670 Filed 7–19–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Waiver of Grounds of Excludability Form I–690.

(2) Form N–426. Immigration and Naturalization Service.

(3) One-Time only.

(4) Individuals or households. The information on the I–690 application is used by the Immigration and Naturalization Service in considering eligibility for legalization under sections 210 and 245A of the Immigration and Naturalization Act, during the processing of both the application for temporary resident status and the application for permanent resident status.

(5) 52,000 annual respondents at .250 hours per response.

(6) −12,000 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comments on this item is encouraged.

Dated: July 15, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–17597 Filed 7–19–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare

such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Employment Authorization (Form I–765)
(2) I–765. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The information will be used by the Immigration and Naturalization Service to determine eligibility for work authorization and for issuance of the employment document.
(5) 1,000,000 annual respondents at 1 hour per response.
(6) 1,000,000 annual burden hours.
(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: July 15, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–17595 Filed 7–19–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

(1) Supplementary Statement for Graduate Medical Trainees. Form I–644
(2) Form I–644. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is used by foreign exchange visitors who are seeking an extension of stay in order to complete a program of graduate education and training.
(5) 3,000 annual respondents at .83 hours per response.
(6) −187 annual burden hours.
(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 15, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–17596 Filed 7–19–94; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–001]

Issuance of Final Design Approval Pursuant to 10 CFR Part 52, Appendix O; U.S. Advanced Boiling Water Reactor Design; GE Nuclear Energy

The U.S. Nuclear Regulatory Commission has issued a final design approval (FDA) to GE Nuclear Energy (GE) pursuant to 10 CFR Part 52, Appendix O. This FDA allows the U.S. advanced boiling water reactor (ABWR) standard design to be referenced in an application for a construction permit or operating license pursuant to 10 CFR Part 50, or in an application for a combined license pursuant to 10 CFR Part 52.

In addition, GE has completed the technical review stage of design certification pursuant to the applicable requirements of Subpart B of 10 CFR Part 52. The staff performed its technical review of the U.S. ABWR standard safety analysis report, certified design material, and technical specifications in accordance with the standards for review of design certification applications set forth in 10 CFR Section 52.48 that are applicable and technically relevant to the U.S. ABWR standard design, including the exemptions and applicable regulations identified in Section 1.6 of the final safety evaluation report (FSER). On the basis of its evaluation and independent analyses, as discussed in the FSER, the staff concludes that, subject to satisfactory completion of the ABWR design control document and certified design material, GE's application for design certification meets those portions of 10 CFR Section 52.47 that are applicable and technically relevant to the U.S. ABWR standard design.

Therefore, the staff and the Advisory Committee on Reactor Safeguards will utilize the U.S. ABWR standard design and will reply on it in the administrative review phase of the design certification process in accordance with 10 CFR 52.51.

A copy of the FDA has been placed in the NRC's Public Docket Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, for review by interested persons.

Dated at Rockville, Maryland, this 13th day of July 1994.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Associate Director for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17609 Filed 7–19–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Company, et al.; Davis-Besse Nuclear Power Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to the Toledo Edison Company, Centerior Service Company, and the Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Indentification of Proposed Action

The proposed action would revise the operating license to reflect the proposed merger of the Toledo Edison Company into the Cleveland Electric Illuminating Company. These companies are currently wholly owned subsidiaries of the Centerior Energy Corporation. As described in the application, the company formed from the merger is intended to be renamed. The name of the combined operating company has yet to be determined (hereinafter referred to as "NEWCO") and the licensees indicate it will be provided by supplemental letter. The proposed amendment would (1) replace the Toledo Edison Company and Cleveland Electric Illuminating Company with NEWCO as a licensee, (2) designate NEWCO as owner of Davis-Besse Nuclear Power Station, Unit 1, and (3) make other associated changes to the license as indicated in the amendment application. Centerior Service Company would be unaffected by the amendment and would remain in a licensee.

The proposed action is in accordance with the licensee's amendment application dated June 6, 1994.

The Need for the Proposed Action

The proposed action in the form of an amendment application is needed to reflect the result of the proposed merger of the Toledo Edison Company into the Cleveland Electric Illuminating Company. This action is also intended to maximize the operating efficiencies of the two affiliated companies.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Associate Director for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17609 Filed 7–19–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Company, et al.; Davis-Besse Nuclear Power Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to the Toledo Edison Company, Centerior Service Company, and the Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Indentification of Proposed Action

The proposed action would revise the operating license to reflect the proposed merger of the Toledo Edison Company into the Cleveland Electric Illuminating Company. These companies are currently wholly owned subsidiaries of the Centerior Energy Corporation. As described in the application, the company formed from the merger is intended to be renamed. The name of the combined operating company has yet to be determined (hereinafter referred to as "NEWCO") and the licensees indicate it will be provided by supplemental letter. The proposed amendment would (1) replace the Toledo Edison Company and Cleveland Electric Illuminating Company with NEWCO as a licensee, (2) designate NEWCO as owner of Davis-Besse Nuclear Power Station, Unit 1, and (3) make other associated changes to the license as indicated in the amendment application. Centerior Service Company would be unaffected by the amendment and would remain in a licensee.

The proposed action is in accordance with the licensee's amendment application dated June 6, 1994.

The Need for the Proposed Action

The proposed action in the form of an amendment application is needed to reflect the result of the proposed merger of the Toledo Edison Company into the Cleveland Electric Illuminating Company. This action is also intended to maximize the operating efficiencies of the two affiliated companies.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no changes to the facility or to the operating, maintenance, engineering or other nuclear-related personnel as a result of the proposed merger and license amendment. The proposed merger would not change the technical qualifications and responsibilities of personnel. All of the Toledo Edision Company personnel in the Davis-Besse organization would be transferred to NEWCO upon completion of the merger. This organization would continue to report to Centerior Service Company. After the merger, NEWCO and Centerior Service Company would be required to continue to operate, manage, and maintain the Davis-Besse Nuclear Power Station in accordance with the conditions and requirements of the NRC. No changes resulting from merger are expected with regard to the following: lines on authority and responsibility, essential nuclear support functions provided to Davis-Besse, effectiveness of the organization, priorities and ongoing plant improvement projects, technical qualifications, and corporate financial resources presently available in support of Davis-Besse operations.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impact associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect the nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not enhance the protection of the environmental and would result in the Facility Operating License No. NPF–3 not appropriately reflecting the effect of the merger.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Davis-Besse Nuclear Power Station, Unit 1, documented in NUREG–75/097 (October 1975).

Agencies and Persons Consulted

The NRC staff consulted with the Ohio State Official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement of the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 6, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 13th day of July 1994.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17611 Filed 7–19–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Materials and Metallurgy; Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on August 3, 1994, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, August 3, 1994—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the NRC staff's proposed generic letter on steam generator tube integrity matters and the advance notice of proposed rulemaking for steam generator

surveillance and maintenance. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, nuclear industry, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel Dudley (telephone 301/415–7000) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 14, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–17612 Filed 7–19–94; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 24, 1994, through July 8, 1994. The last biweekly notice was published on July 6, 1994 (59 FR 34657).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 19, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to *(Project Director)*: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station (PVNGS), Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: June 17, 1994.

Description of amendment requests: The proposed changes would enhance the PVNGS technical specifications (TS) by removing five tables of component lists in accordance with NRC Generic Letter (GL) 91–08, "Removal of Component Lists from Technical Specifications." The affected tables are 3.3–9B, 3.3–9C, 3.6–1, 3.8–2, and 3.8–3. The references to these five tables will also be removed from the text of the TS in accordance with the sample TS change amendment provided by the NRC in GL 91–08. These five removed tables will be incorporated into a new document, which will be administratively controlled according to the change controls provisions of the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1—Involve a significant increase in the probability or consequence of an accident previously evaluated:

The proposed amendment will remove five tables of component lists from the TS and add them to an administratively controlled document which is subject to the change controls provisions of the TS. The new location of the affected component lists is easily retrievable. The existing TS requirements and those components to which they apply are not altered by this TS amendment. There are no changes to the operations, maintenance, surveillance, and/or qualification of any component on the removed lists. Therefore, the probability of occurrence and the consequences of any previously evaluated accident is [sic] not changed.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously evaluated:

The TS requirements and the components to which they apply are not altered by this amendment. The removed component lists are added to a controlled and easily retrievable document. This amendment has no impact on plant operations, maintenance, testing, or component qualification. Therefore, the possibility of a new or different kind of accident is not created by this amendment.

Standard 3—Involve a significant reduction in a margin of safety:

The removal of these five component lists from the TS does not alter existing TS requirements or those components to which they apply. These lists will be added to an administratively controlled document which is subject to the controls provisions of the TS. More specifically, there is no impact on safe plant shutdown, maintenance or hot standby, containment isolation capability, containment leakage rate, and/or the operability of safety related valves. Therefore, removal of these five component lists from the TS will not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: Theodore R. Quay.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: May 27, 1994.

Description of amendments request: The proposed amendment would revise the Technical Specification surveillance test interval from monthly to quarterly for several channel functional tests for the Reactor Protective System and the Engineered Safety Feature Actuation System (ESFAS). In addition, an administrative change to the ESFAS table would remove an out-of-date footnote concerning the emergency diesel generator logic circuit modifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Protective System (RPS) and the Engineered Safety Features Actuation System (ESFAS) provide the actuation signals to safety equipment necessary to mitigate design basis accidents and transients. The proposed change would increase the surveillance test interval from monthly to quarterly for several of the RPS and ESFAS instrumentation channel functional tests. The RPS/ESFAS instruments are not an initiator in any previously evaluated accidents. Therefore, the proposed changed does not involve an increase in the probability of an accident previously evaluated. The required plant-specific setpoint drift analysis for Calvert Cliffs demonstrated that the observed changes in instrument uncertainties for the extended surveillance test interval do not exceed the current 30-day setpoint assumptions. This provides confidence the 90-day test interval will not impact the ability to detect and monitor system degradation. Therefore, the proposed change will not change the ability of the RPS/ESFAS instrumentation to respond to and mitigate the consequences of any previously evaluated accident. In addition, an obsolete footnote is removed from ESFAS Table 4.3–2.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed extended surveillance test interval for the RPS and ESFAS and the removal of the obsolete footnote does not involve any changes in equipment or the function of these instruments. The proposed change does not represent a change in the configuration or operation of the plant. The RPS and ESFAS setpoints will not be changed as the instrument uncertainties resulting from the proposed surveillance test interval (calculated using actual plant data) are less than the instrument uncertainties assumed for the current surveillance interval. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed change will not affect the functions of the RPS or the ESFAS instruments. The CEN–327 and CEN–327, Supplement 1, topical reports quantified the corresponding changes in core melt frequency for the representative fault tree models that were developed for Calvert Cliffs. The proposed change has two principal effects with opposing impacts on core melt frequency. The first impact is a slight increase in core melt frequency that results from the increased unavailability of the instrumentation in question. This assumed unavailability results from less frequent testing. The unavailability of the tested instrumentation components represents the potential for the failure of the reactor to trip, an Anticipated Transient Without Scram, or a failure of the appropriate engineered safety features to actuate when required. The opposing impact on core melt risk is the corresponding reduction in core melt frequency that would result due to the reduced exposure of the plant to test-induced transients. The two changes are nearly equal and the net result is no distinguishable effect on plant safety. The NRC issued a Safety Evaluation Report which found that these evaluations were acceptable for justifying the extensions in the surveillance test intervals for the RPS and ESFAS from 30 days to 90 days.

The RPS and ESFAS setpoints will not be changed since the instrument drift resulting from the proposed surveillance test interval is less than the instrument drift presently assumed for the current surveillance interval. This provides confidence the 90-day test interval will not impact the ability to detect and monitor system degradation. The removal of the ESFAS Table footnote only removes obsolete information from the Technical Specifications. The conclusions of the accident analyses in the Calvert Cliffs Updated Safety Analysis Report remain valid and the safety limits continue to be met. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Michael L. Boyle.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: June 8, 1994.

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (CC1/2), Technical Specifications (TS) 4.6.2.2.b to extend the surveillance interval for the containment fan coolers from 18 months to 24 months. The requested changes have been submitted in accordance with Generic Letter (GL) 91–04, "Guidance on Preparation of a License Amendment Request for Changes in Surveillance Intervals to Accommodate a 24-Month Fuel Cycle." These proposed amendments are part of a series of requests that will eliminate the need for mid-cycle surveillance outages to accommodate the existing 18 month surveillance requirements since CC1–2 is operating on 24-month fuel cycles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the Containment Air Cooling (CAC) System is to cool the containment atmosphere, and thereby limit containment pressure and temperature, following a Loss of Coolant Accident (LOCA) or Main Stream Line Break in containment. Failure of the CAC System is not an initiator for any previously analyzed accident. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated.

Historical CAC System reliability, monthly surveillances and monitoring of CAC-related plant parameters provide assurance that undetected system degradation will not occur between 24-month surveillances, and the system will continue to perform its safety function. Therefore, there will be no significant increase in the consequences of accidents previously evaluated. Therefore, the proposed Technical Specification change does not increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

This requested revision to increase the interval for a CAC surveillance from

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: June 8, 1994.

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (CC1/2), Technical Specifications (TS) 4.6.2.2.b to extend the surveillance interval for the containment fan coolers from 18 months to 24 months. The requested changes have been submitted in accordance with Generic Letter (GL) 91–04, "Guidance on Preparation of a License Amendment Request for Changes in Surveillance Intervals to Accommodate a 24-Month Fuel Cycle." These proposed amendments are part of a series of requests that will eliminate the need for mid-cycle surveillance outages to accommodate the existing 18 month surveillance requirements since CC1–2 is operating on 24-month fuel cycles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the Containment Air Cooling (CAC) System is to cool the containment atmosphere, and thereby limit containment pressure and temperature, following a Loss of Coolant Accident (LOCA) or Main Stream Line Break in containment. Failure of the CAC System is not an initiator for any previously analyzed accident. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated.

Historical CAC System reliability, monthly surveillances and monitoring of CAC-related plant parameters provide assurance that undetected system degradation will not occur between 24-month surveillances, and the system will continue to perform its safety function. Therefore, there will be no significant increase in the consequences of accidents previously evaluated. Therefore, the proposed Technical Specification change does not increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

This requested revision to increase the interval for a CAC surveillance from 18 to 24 months does not involve a significant change in the design or operation of the plant. No hardware is being added to the plant as part of the proposed change. The proposed change will not introduce any new accident initiators. Therefore, the proposed change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety.

The CAC System provides a margin of safety by providing a means by which containment pressure can be limited following a LOCA or Main Steam Line Break. The proposed change does not affect the operation or design of the CAC System. Historical monthly surveillances and Control Room indications give assurance that the reduction in surveillance frequency will not adversely affect our ability to detect degradation in the system. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Michael L. Boyle.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: June 8, 1994.

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Technical Specifications 4.8.1.1.1.b to extend the alternate 69 kV offsite power circuit surveillance frequency from 18 to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the 69 kV Southern Maryland Electric Cooperative (SMECO) power source is to act as an independent energy source for achieving and maintaining safe shutdown of the plant if the 500 kV system is not available. Failure of the 69 kV SMECO system is not an initiator for any existing accident. Therefore, the proposed change does not involve an increase in the probability of an accident.

The 69 kV SMECO system could be used to mitigate the consequences of accidents involving a loss of primary offsite power. However, the accident analyses assume that if the 500 kV circuits were not available, the Emergency Diesel Generators would be used to provide power to maintain the plant in a safe shutdown condition. A historical review of surveillance test results indicates the system has experienced only one significant failure in the last ten years. In addition, the system is routinely used.

However, the SMECO system is not assumed to function in our accident analysis, so this change will result in no significant increase in the consequences of accidents previously evaluated. Therefore, the proposed Technical Specification change does not increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated?

This requested increase in the interval for a 69 kV SMECO surveillance from 18 to 24 months does not involve a significant change in the design or operation of the plant. No hardware is being added to the plant of the proposed change. The proposed change will not introduce any new accident initiators. Therefore, the proposed change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

The 69 kV SMECO system provides a margin of safety by providing an alternate offsite electrical power source. The proposed change does not affect the operation or design of the 69 kV SMECO system. Historical surveillance data and routine use indicates that the reduction in surveillance frequency will not adversely affect our ability to detect degradation in the system. Therefore, the proposed change does not involve a

significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Michael L. Boyle

Baltimore Gas and Electric Company, Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: May 27, 1994.

Description of amendment request: This amendment would revise the existing heatup and cooldown curves and rates to increase their applicability to 30 Effective Full-Power Years (EFPY). The fluence value that was used to determine the heatup and cooldown curves was based on the peak fluence and EFPY at the end of Cycle 9 and the peak predicted fluence for Cycles 10 and beyond. In addition, a variable-setpoint low-temperature overpressure protection (VLTOP) system is being installed to increase the allowable operating pressure band in the Low-Temperature Overpressure Protection (LTOP) region. The VLTOP system uses a variable power-operated relief valve setpoint to take advantage of increased Appendix G pressure limits at increased reactor coolant system (RCS) temperatures. This system will increase the operating window in which the plant may operate during heatup and cooldown.

Specifically, this amendment would revise the Unit No. 2 heatup and cooldown curves and rates for the following Technical Specification (TS) sections. TS Section 3.4.9.1.a would be revised to decrease the maximum heatup rate from a fixed value of 75 °F/hr to a more conservative variable heatup rate of 30 °F to 60 °F/hr which varies with RCS temperature range from 70 °F to greater than 246 °F. TS Section 3.4.9.1.b would be revised to increase the RCS temperatures for the maximum allowable cooldown rates. TS Figures 3.4.9–1 and 3.4.9–2 would be replaced by new RCS pressure Temperature Limits. The revised curves and rates are based on the predicted fluence value for Cycle 10 and beyond.

The following TS sections would be revised to support modifications to the LTOP system. TS sections 3.4.9.3.a.1 and 3.4.9.3.a.2 would be changed to "trip setpoint below the curve in Figure 3.4.9–3*" to account for the VLTOP system. The footnote, "When on shutdown cooling, the PORV trip setpoint shall be less than or equal to 443 psia," has been added for Shutdown Cooling Operation to maintain an extra setpoint that is independent of RCS temperature and is equal to the lowest variable setpoint. The Minimum Pressure and Temperature (MPT) Enable would be changed from 305 °F to 301 °F. This change would effect TS sections 3.1.2.1, 3.1.2.3, Table 3.3–3, 3.4.1.2, 3.4.1.3, 3.4.3, 3.4.9.3, 4.5.2, and 3.5.3. Due to the lower MPT Enable temperature, the transition region at which the high pressure safety injection pumps are placed under manual control on cooldown and restored to automatic status on heatup would be changed from a temperatue range of 305 °F–350 °F, to 301 °F–325 °F. This affects TS 3.5.3 and Table 3.3–3. TS Bases Sections B3/4.4.1, B3/4.4.9, and 3/4.5.2 would change to be consistent with the proposed change and to provide additional clarification of some of the existing bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Low Temperature Overpressure Protection (LTOP) system, including the administrative controls, ensures that the 10 CFR Part 50, Appendix G, Pressure-Temperature (P–T) limits for the reactor pressure vessel will not be violated while operating at low temperatures. The heatup and cooldown curves are conservatively developed in accordance with the fracture toughness requirements of 10 CFR Part 50, Appendix G, as supplemented by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section III, Appendix G. The reactor vessel material Adjusted RT_{NDT} values are based on the conservative methodology provided in Regulatory Guide 1.99, Revision 2.

Analyses show that the proposed use of a variable LTOP system will not result in a significant increase in the probability of an inadvertent opening of a Power-Operated Relief Valve (PORV) causing a small break Loss-of-Coolant-Accident. The proposed heatup and cooldown curves and associated limits continue to provide conservative restrictions on Reactor Coolant System (RCS) pressure to minimize material stresses in the RCS due to normal operating transients, thus minimizing the likelihood of a rapidly propagating fracture due to pressure transients at low temperatures. Because the proposed heatup and cooldown curves and rates are based on conservative Appendix G methods, and because the LTOP controls protect the Appendix G P–T limits, the proposed curves and limits do not involve an increase in the probability of accidents previously evaluated.

The proposed use of a variable PORV trip setpoint and the increase in the allowable fluence at the reactor vessel wall results in the changes to the heatup and cooldown curves and rates, the Minimum Pressure and Temperature (MPT) Enable temperature, and high pressure safety injection pump manual control transition temperature. These proposed changes continue to provide sufficient margin to accommodate postulated pressurization from mass and energy addition transients. Calculations have been performed that predict the response to such transients. Because the results of the analyses remain well within the conservative acceptance limits of Appendix G, these changes do not increase the consequences of accidents previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The new variable LTOP control system along with the proposed changes to the Technical Specifications will ensure that the Appendix G P–T limits will not be violated during low temperature operations. While setpoints and curves have changed, this proposed change does not introduce any operator actions that are significantly different from current operator actions used at the plant. The variable LTOP system will continue to have redundant channels to ensure that no single equipment failure or operator error will result in violation of the P–T limits. The use of a variable LTOP system does not create a new failure mechanism for the PORV. The failure mechanism for the PORV continues to be an inadvertent opening or the failure to open during a pressure transient which has been previously evaluated. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

This change will ensure that the margin of safety is maintained with respect to energy or mass addition events in that none of the events postulated could challenge the Appendix G limits. The proposed use of a variable PORV trip setpoint and the increase in the allowable fluence at the reactor vessel wall necessitate the changes to the heatup and cooldown curves and rates, the MPT Enable temperature, and high pressure safety injection pump manual control transition temperature. These changes ensure that the margin of safety is maintained by protecting the Appendix G limits for all postulated transients. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Michael L. Boyle.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: June 17, 1994.

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) to (1) remove the heatup and cooldown curves from TS 3/4.4.6 and relocate them to a newly created Pressure and Temperature Limits Report, and (2) remove the reactor vessel material surveillance program withdrawal schedule from TS Table 4.4.6.3–1 and relocate it to the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

This change will ensure that the margin of safety is maintained with respect to energy or mass addition events in that none of the events postulated could challenge the Appendix G limits. The proposed use of a variable PORV trip setpoint and the increase in the allowable fluence at the reactor vessel wall necessitate the changes to the heatup and cooldown curves and rates, the MPT Enable temperature, and high pressure safety injection pump manual control transition temperature. These changes ensure that the margin of safety is maintained by protecting the Appendix G limits for all postulated transients. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Michael L. Boyle.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: June 17, 1994.

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) to (1) remove the heatup and cooldown curves from TS 3/4.4.6 and relocate them to a newly created Pressure and Temperature Limits Report, and (2) remove the reactor vessel material surveillance program withdrawal schedule from TS Table 4.4.6.3–1 and relocate it to the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment [sic] does not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes are administrative in nature. These changes do not alter the configuration or operation of the facility. The Limiting Safety Systems Settings and Safety Limits specified in the current Technical Specifications remain unchanged.

2. The proposed amendment [sic] does not create the possibility of a new or different kind of accident from any accident previously evaluated. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected.

3. The proposed amendment [sic] does not involve a significant reduction in the margin of safety because these margins are established through the Limiting Conditions of Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications, and since there are no changes to the physical design or operation of the facility, these margins will not be changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551. Raleigh, North Carolina 27602.

NRC Project Director: William H. Bateman.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: January 19, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications by increasing the minimum reactor coolant system temperature required for criticality from 500 degrees Fahrenheit to 530 degrees Fahrenheit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not result in a significant increase in the probability or consequences of accidents previously evaluated. The probability for an accident is independent of the changes being proposed. Reactor criticality at 530 degrees Fahrenheit instead of the nominal no-load T_{avg} of 547 degrees Fahrenheit does not affect any of the accident initiators in the analyses, but does change one of the initial conditions assumed in the Safety Analysis. However, the change in initial conditions from the nominal no-load temperature of 547 degrees Fahrenheit to 530 degrees Fahrenheit does not increase the probability of any of the events considered in the Safety Analysis. The proposed Minimum Temperature for Criticality specification (530 degrees Fahrenheit) will be more restrictive than the current specification which allows reactor criticality at a temperature as low as 500 degrees Fahrenheit. In addition, the Action Statement will require operator response to place the reactor in a subcritical condition (Mode 3) with 15 minutes should the temperature drop below the limit for greater than a specified amount of time (15 minutes).

Likewise, the proposed change does not significantly increase the consequences of an accident previously evaluated. In the reanalysis of the Zero Power accidents (Rod Withdrawal From Subcritical, Rod Ejection, Main Steamline Break, Boron Dilution During Startup, and Feedwater Malfunction) from an initial condition of 530 degrees Fahrenheit, it was concluded that the results and conclusions in the current Safety Analysis remain valid based on the fact that the current analysis results are conservative and bounding for reactor criticality at 530 degrees Fahrenheit. The LOCA transient analyses are unaffected by the proposed change since they are initiated from the limiting condition of 102 percent. Since the full power T_{avg} value is unchanged by this proposed amendment, the LOCA analyses are unaffected. The proposed change will ensure that plant parameters are within their analyzed ranges prior to reactor criticality and appropriate operator actions are taken should the temperature drop below the temperature limit after reaching criticality.

The proposed administrative changes delete requirements which are no longer

applicable and will have no affect on the probability or consequences of any accident previously evaluated in the analyses.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not involve the addition of any new or different type of equipment, nor does it involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the Final Safety Analysis Report. The proposed change will ensure that plant parameters are within their analyzed ranges prior to reactor criticality. The proposed administrative changes delete requirements which are no longer applicable and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety. The proposed change does not affect any safety related system or component operation or operability, instrument operation, or safety system setpoints, and does not result in increased severity of any of the accidents considered in the analysis. Operator response to a drop in temperature after reaching criticality for a specified period of time (greater than 15 minutes) will place the reactor in a subcritical condition which is inherently more stable than when critical below the Point of Adding Heat. The proposed administrative changes are being made to clarify Technical Specifications with no change of intent. Therefore, the proposed changes do not create a significant reduction in a margin of safety.

In conclusion, based on the previous considerations, Commonwealth Edison Company believes that the activities associated with this Technical Specification amendment request satisfy the Significant Hazards Consideration standards of 10 CFR 50.92(c) and, accordingly, a finding that this Technical Specification amendment does not represent a Significant Hazards Consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: June 24, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications by removing the containment recirculation sump level instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability of occurrence or consequences of any accident previously evaluated.

This change does not affect the initiators or precursors of any accident previously evaluated. This change will not increase the likelihood that a transient initiating event will occur because transients are initiated by equipment malfunction and/or catastrophic system failure. Since the proposed change does not involve the introduction of new or redesigned plant equipment, failure mechanisms are not impacted. As a result, the probability of occurrence of accidents previously evaluated is not increased.

The consequences of accidents previously evaluated are not increased. Removal of [containment recirculation sump level] CRSL instrumentation requirements from Technical Specifications does not affect the ability to mitigate the consequences of any accident previously evaluated. The CRSL instrumentation is used to verify that [residual heat removal] RHR pumps have adequate [net positive suction head] NPSH to operate in the recirculation mode following a Loss of Coolant Accident (LOCA).

As stated in the Zion Updated Final Safety Analysis Report (UFSAR), the changeover from the injection mode to the recirculation mode of emergency core cooling is initiated when the low level alarm on the RWST annunciates. This occurs when the RWST level drops to 13′-7″ (145,600 gallons).

At this point, sufficient water has been delivered to the containment, from the Containment Spray (CS) system and, by Emergency Core Cooling System (ECCS) injection, through the [reactor coolant system] RCS break, to provide at least one foot of water above the containment floor. One foot of water above the containment floor provides sufficient volume to sustain the required NPSH of the RHR pumps in the recirculation mode of operation. The water level in the Containment Building during the recirculation phase will be approximately 5 feet above the floor elevation (568′) based on the volume of the RCS, accumulators, and the minimum required volume of the RWST. Minimum RWST volume of 350,000 gallons is required by Technical Specification 3.8.1.F.

In summary, RWST level instrumentation, which satisfies Regulatory Guide 1.97 qualification requirements for a Type A, Category 1 variable, provides the operator with the primary indication of the appropriate time to initiate switchover to the recirculation mode, as well as indication of adequate NPSH for the RHR pumps. Containment Water Level (wide range) instrumentation which is qualified as a Type B variable provides confirmatory indication of water level in containment.

The proposed change does not affect the procedures controlling operation of equipment, or systems required to mitigate the accidents considered in the UFSAR. As such, there will be no significant increase in the consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not involve the addition of any new or different types of equipment, nor does it involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the UFSAR. No safety related equipment or function will be altered as a result of this proposed change. Because no new failure modes are introduced, the proposed amendment does not create a new or different kind of accident from any previously analyzed in the UFSAR. Also, the methods of recovery from accidents described in the UFSAR are not affected.

Based on the above discussion, the proposed amendment does not create a new or different kind of accident from any previously analyzed in the UFSAR.

3. The proposed changes do not involve a significant reduction in a margin of safety.

No design margins are impacted and the newly chosen primary indicator (RWST level) is both consistent with

plant emergency procedures and appropriately qualified. The proposed change will not adversely impact the peak clad temperature, amount of fuel damage, or offsite dose projected to occur from the design basis accidents. Thus, the margin of safety is not diminished.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Robert A. Capra.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 16, 1994.

Description of amendment request: The proposed amendment will remeve a footnote applicable for Cycle 18 only regarding the surveillance of the automatic bus transfer (ABT) system and add surveillance requirement 4.8.3.1.2, to test the ABT once per refueling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to delete a note from the limiting condition for operation for the MCC–5 ABT scheme and to add the surveillance requirement has no impact on the probability or consequences of an accident previously evaluated. By removing the requirement to test the scheme on-line, the probability of failure to mitigate an accident while the Haddam Neck Plant is operational is incrementally decreased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

plant emergency procedures and appropriately qualified. The proposed change will not adversely impact the peak clad temperature, amount of fuel damage, or offsite dose projected to occur from the design basis accidents. Thus, the margin of safety is not diminished.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Robert A. Capra.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 16, 1994.

Description of amendment request: The proposed amendment will remove a footnote applicable for Cycle 18 only regarding the surveillance of the automatic bus transfer (ABT) system and add surveillance requirement 4.8.3.1.2, to test the ABT once per refueling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to delete a note from the limiting condition for operation for the MCC–5 ABT scheme and to add the surveillance requirement has no impact on the probability or consequences of an accident previously evaluated. By removing the requirement to test the scheme on-line, the probability of failure to mitigate an accident while the Haddam Neck Plant is operational is incrementally decreased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes remove the requirements to disable the subject ABT feature for testing, leaving the scheme undisturbed throughout normal plant operation, and therefore does not create the possibility of a new accident or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed changes require that the MCC–5 ABT feature be tested during a plant shutdown rather than during normal operation. This will place the ABT scheme in a test environment that has no significant reduction in a margin of safety. The plant configuration that is required to perform this test (refueling) would clearly place the Haddam Neck Plant in a state that would be able to accept all possible ABT scheme test outcomes, normal and abnormal. Therefore, these proposed changes do not result in any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: John F. Stolz.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: October 29, 1993, as supplemented on March 28, 1994.

Description of amendment request: This amendment is an additional followup to the amendment request of May 29, 1992, published in the **Federal Register** (57 FR 30242) on July 8, 1992, which changed the Technical Specifications Section 1.0, Definitions, to accommodate a 24-month fuel cycle and which proposed the extension of the test intervals for specific surveillance tests. This amendment proposes extending the surveillance intervals to 24 months for the following additional surveillance tests:

(1) Volume Control Tank Level Transmitter
(2) Containment High Range Area Radiation Monitors, R–25 and R–26
(3) Safety Injection System Electrical Loading
(4) Safety Injection (SI) System
(5) Reactor Coolant System Sub-Cooling Margin Monitor

The changes requested by the licensee are in accordance with Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

The October 29, 1993, submittal included surveillance tests for the Auxiliary Feedwater System which duplicated a previous request which was subsequently approved. The March 28, 1994, submittal withdrew the duplicated request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazard consideration, which is presented below:

(1) Volume Control Tank Transmitter:

The proposed change does not involve a significant hazard consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

It is proposed that the channel calibration frequency for the volume control tank level instrumentation be changed from every 18 months (+25%) to every 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists between the existing Technical Specification limits and the licensing basis Safety Analysis limits to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin between the Technical Specification limit and the Safety Analysis limit provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

The proposed change is operating cycle length from a maximum of 22.5 months to 30 months resulting from an increased surveillance interval will not result in a channel statistical allowance which exceeds the current margin between the existing Technical Specification limits and the Safety Analysis limits. Plant equipment, which

will be set at (or more conservatively than) Technical Specification limits, will therefore provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of any new or different kind of accident from that previously evaluated from occurring.

3. A significant reduction in a margin of safety is not involved.

The change in surveillance interval from a maximum of 22.5 months to 30 months resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds the margin which exists between the current Technical Specification limit and the licensing basis Safety Analysis limit. This margin, which is equivalent to the existing margin, is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded.

(2) Containment High Range Area Radiation Monitors, R–25 and R–26:

The proposed change does not involve a significant hazard consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the calibration frequency for the high-range Containment Radiation Monitors (R–25 and R–26) be revised from every 18 months (+25%) to every 24 months (+25%).

These two monitors are redundant to each other and are used for post accident monitoring purposes. They serve no function during normal plant operation. Furthermore, they serve no purpose in preventing accident initiation or mitigation. They are used for Emergency Planning purposes to indicate a release of radioactivity to containment.

Review of past test results indicates that the devices have proven reliable during past surveillances and there was no indication that they would not remain operable for an extended operating cycle. In addition, the devices are essentially redundant to each other. Each device would respond to a release of radioactivity to Containment.

In consideration that the monitors are redundant, and in view of the past test history of the monitors, there would be no significant increase in the probability or consequences of an accident due to an extended operating cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The role of R–25 and R–26 is in the assessment of radiological releases to Containment. In this function it is important that one of the instruments, being high range, respond to a radiological release. Indications from the devices are not used in a quantitative manner. Rather they are used for qualitative purposes. Due to redundancy and past test history, continued operability is expected. In addition, the instruments serve no function in preventing accident initiation or accident mitigation. Therefore, it is concluded that an extended operating cycle for these monitors would not result in the possibility of a new or different kind of accident from any previously analyzed.

3. There has been no significant reduction in the margin of safety.

Due to the qualitative function served by these two instruments as well as their redundancy and acceptable past test history, no significant reduction in the margin of safety due to an extended operating cycle is expected.

(3) Safety Injection System Electrical Loading

The proposed change does not involve a significant hazard consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The test procedure under consideration is one of the more complicated surveillance procedures accomplished at a refueling interval. Considering the vast number of components that are tested it is highly improbable that some deficiencies will not occur. When such problems are encountered it is important to note whether the failure is time dependent and, in addition, whether the corrective maintenance implemented prevents recurrences in the future. In consideration of the evaluation of past test observations it is important to note that the problems which occurred were not time dependent and that maintenance practices have been effective in precluding future failures of the same type. Equally important is whether the emergency power system would have performed its intended safety function if the situation was not a test but represented an actual demand upon the system. Test acceptance criteria are always more stringent than required by accident scenarios to provide margin. As discussed above the two most significant findings were a failure of a CCW [Component Cooling Water] pump to strip from the bus during the 1989 test and a relay which did not function within its timing sequence. In the first instance, the diesel generator was not overloaded. In the second instance, the relay did function albeit not within the allotted time. In both cases, safety functions would have been performed.

Thus, it is concluded that an extended period between surveillances will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The deficiencies noted in the test data taken during the last several refueling outage surveillances were not substantial in number and would not have impacted the capability of the Safety Injection System and its emergency power supply to perform its intended safety function. The effectiveness of maintenance practices, both preventive and corrective, has been proven in that deficiencies noted in one test are not repeated in subsequent tests. The last refueling surveillance test was completely successful where no new test failures were noted. Because past test deficiencies do not appear to be time dependent, extending the surveillance interval by 7.5 months is not expected to create the possibility of a new or different kind of accident from any accident previously created.

3. There has been no reduction in the margin of safety.

Because previous tests indicate that the engineered safety features power supply would have performed its safety function if called upon over the past several years, it is concluded that extending the operating cycle by several months will not involve a significant reduction in a margin of safety.

(4) Safety Injection System

The proposed change does not involve a significant hazard consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The central safety objective in reactor design and operation is the control of reactor fission products from the fuel. Four methods are used to ensure this objective. Two of these methods are: (1) Retention of fission products in the reactor coolant for whatever leakage occurs; and (2) retention of fission products by the containment for operational and accidental releases beyond the reactor coolant boundary. The engineered safety features are the provisions in the plant that embody these two methods to prevent the occurrence or to ameliorate the effects of serious accidents.

The engineered safety features systems are the containment system, the safety injection system, the containment spray system, the containment air recirculation cooling and filtration system, the isolation valve seal-water system, and the containment penetration and weld channel pressurization system. Each engineered safety feature provides sufficient performance capability to accommodate any single failure of an active component and still function in a manner to avoid undue risk to the health and safety of the public.

A comprehensive program of plant testing is formulated for all equipment, systems, and system control vital to the functioning of engineered safety features. The program consists, in part, of integrated tests of the systems as a whole and periodic tests of the actuation circuitry and mechanical components.

An assessment has been performed of the test results from the last five refueling outages, covering a period in excess of seven years. In reviewing the test results particular attention was directed towards those test anomalies which directly impacted test acceptance criteria and, thus, influence the capability of the safety injection system to perform its intended safety function. Although in each test a problem area was identified, the number of such events were minimal. Furthermore, after corrective action these events were not repeated in subsequent system tests. In all instances the problems were not identified to be time dependent. Furthermore, the consequence from a system safety function perspective was minimal. Thus, it is concluded that extending the surveillance interval by several months will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The number of problem areas in each test have been few and of minimal to nonexistent safety significance. In 1986, a valve failure occurred which would have been detected by alternate means during an extended operating cycle. In another instance, lack of valve movement could not be repeated in a second test, leading to the conclusion that the valve malfunction was not induced by the system but was the result of the test process. In the last problem area, manual SI initiation, no credit is taken within the FSAR [Final Safety Analysis Report] accident analysis for this function. In 1989, a series of containment isolation valves failed to stroke as required. In three instances the valves failed closed, which is the correct position. In the

spray system, the containment air recirculation cooling and filtration system, the isolation valve seal-water system, and the containment penetration and weld channel pressurization system. Each engineered safety feature provides sufficient performance capability to accommodate any single failure of an active component and still function in a manner to avoid undue risk to the health and safety of the public.

A comprehensive program of plant testing is formulated for all equipment, systems, and system control vital to the functioning of engineered safety features. The program consists, in part, of integrated tests of the systems as a whole and periodic tests of the actuation circuitry and mechanical components.

An assessment has been performed of the test results from the last five refueling outages, covering a period in excess of seven years. In reviewing the test results particular attention was directed towards those test anomalies which directly impacted test acceptance criteria and, thus, influence the capability of the safety injection system to perform its intended safety function. Although in each test a problem area was identified, the number of such events were minimal. Furthermore, after corrective action these events were not repeated in subsequent system tests. In all instances the problems were not identified to be time dependent. Furthermore, the consequence from a system safety function perspective was minimal. Thus, it is concluded that extending the surveillance interval by several months will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The number of problem areas in each test have been few and of minimal to nonexistent safety significance. In 1986, a valve failure occurred which would have been detected by alternate means during an extended operating cycle. In another instance, lack of valve movement could not be repeated in a second test, leading to the conclusion that the valve malfunction was not induced by the system but was the result of the test process. In the last problem area, manual SI initiation, no credit is taken within the FSAR [Final Safety Analysis Report] accident analysis for this function. In 1989, a series of containment isolation valves failed to stroke as required. In three instances the valves failed closed, which is the correct position. In the other instances, either the redundant valve did stroke to the correct position or the valve was located in a closed system. In all these events there was minimal impact upon safety. More importantly, after corrective action, these failures were not repeated in the 1991 or 1993 tests. In 1991, one breaker failed to perform within specifications and thus was considered defective. In 1993 there were no major equipment malfunctions, although one containment isolation valve failed to perform as required.

In summary, although there have been anomalies in all of the tests evaluated, none were deemed serious enough to impact the safety function of the safety injection system or to be considered as having a negative affect upon an increased interval of several months between surveillances. Therefore, it has been concluded that an increased operating cycle will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. There has been no reduction in the margin of safety.

The results of the previous five cycles of test data have been evaluated. None of the anomalies observed were sufficiently serious to impact the performance of the Safety Injection System or to weigh against an extended operating cycle. As there are no other changes to the safety analysis parameters which are impacted by an extended interval between surveillances, it is concluded that this change will not involve a significant reduction in the margin of safety.

(5) Reactor Coolant System Sub-Cooling Margin Monitor:

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the possibility or consequences of an accident.

It is proposed that the channel calibration frequency for the volume control tank instrumentation be changed from every 18 months (+25%) to every 24 months (+25%).

The sub-cooling margin monitoring function is not relied upon during normal operation. There is no reference to its use in the Indian Point Unit 2 standard operating procedures. No credit is taken for this monitoring function within the safety analysis for either the prevention or mitigation of an accident. The increase in "normal" operating uncertainty, due to the longer operating cycle, as well as "adverse" uncertainties, is being incorporated in the EOPs [Emergency Operating Procedures]. Therefore, the slight increase in uncertainty associated with a longer operating cycle between surveillances will not cause a significant increase in the probability or consequences of an accident.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The sub-cooling margin serves no purpose during normal operation for prevention of an accident. No credit is taken within the FSAR Safety Analysis for accident mitigation. The sub-cooling margin monitor is relied upon within the Emergency Operating Procedures. Thus, the normal uncertainty due to a 30 month operating cycle, as supplemented by the instrument loop error due to a post-accident harsh environment, is being factored into the Emergency Operation Procedures in accordance with Emergency Response Guidelines. Thus, it is concluded that the possibility of a new or different kind of accident from any previously analyzed has not been created.

3. There has been no reduction in the margin of safety.

Because the sub-cooling margin monitor serves no purpose during normal operation and appropriate measures have been implemented to reflect the additional uncertainty due to a 30 month operating cycle into the EOPs, it is concluded that there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Michael L. Boyle, Acting.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: June 1, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow extended Rod Position Indication (RPI) deviation limits and on-line calibration of the RPI channels. Specifically, Section 3.10.6.1 would be changed to allow extended RPI deviation limits,

and Section 3.10.4.4 would be changed to allow on-line calibration of the RPI channels. The Basis for Section 10 would be changed to reflect the above, and in addition, Section 3.10.6.2 would be changed to clarify the operability requirements during calibration. The proposed changes to Sections 3.10.6.1 and 3.10.4.4 include power limits to be included in the Core Operating Limit Report (COLR). The use of a COLR for cycle specific core operating limits was proposed by the licensee by submittal of October 29, 1993, and is currently under review by the NRC staff.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: Neither the probability nor the consequences of an accident previously analyzed is increased due to the proposed changes. All peaking factors will remain within the limits of the Technical Specifications. Both the shutdown margin and the axial flux difference will be maintained within the limits of the Technical Specifications. There will be no fuel damage due to the changes. All design and safety criteria will be met.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: The changes will not create the possibility of a new or different kind of accident. The calibration will be performed using plant procedures that have been reviewed and approved by Con Edison's Safety Committees. It has been shown that even with the new RPI deviation bands and on-line calibration, all power distribution limits will be met.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: The proposed amendment does not involve a significant reduction in the margin of safety. There will be no change in the power distribution limits used in the design and safety analyses and the required shutdown margin will be maintained. It has been shown that there is no fuel failure as a result of this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Michael L. Boyle.

Detroit Edison Company, Docket No. 50–16, Enrico Fermi Power Plant, Unit 1, Monroe County, Michigan

Date of application for amendment: December 9, 1993 (Reference NRC–93–0143)

Brief description of amendment: This Licensee Amendment Request (LAR) proposes to revise the Enrico Fermi Power Plant, Unit 1, Technical Specifications (TS) to bring the TS into conformance with a revision of 10 CFR Part 20 (56 FR 23360).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes are administrative in nature and do not impact the SAFSTOR status or design of any plant structures, systems or components. As a result, this proposed change cannot increase the probability or the consequences of any accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the plant SAFSTOR status as defined. As a result, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not affect the plant SAFSTOR status. The changes will not increase the amounts or change the types of effluents that may be released offsite. These changes only ensure compliance with revised 10 CFR 20. These changes do not alter any of the requirements or responsibilities for protection of the public against radiation hazards. As a result, these changes do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Branch Chief: John H. Austin.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: September 16, 1992, as superseded February 4, 1994.

Description of amendment request: The proposed amendment would supersede in its entirety a previous proposed amendment which was submitted by letter dated September 16, 1992. A notice of application and proposed no significant hazards consideration determination for the September 16, 1992, submittal was published in the **Federal Register** on January 21, 1993 (58 FR 5429); this notice supersedes the January 21, 1993, notice in its entirety.

The proposed amendment would modify the Technical Specifications (TSs) related to containment air locks to make them as close to the Improved Standard TSs in NUREG–1431 as the plant-specific design will permit. The proposed changes in TS 3.6.1.1 and 3.6.1.3 would modify surveillance requirements and limiting conditions of operation and effect numerous administrative and format changes. The changes relate to air lock operability, leak testing, and door interlocks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of occurrence of a previously evaluated accident is not increased because the containment air locks do not effect the initiation of any design basis accident [DBA]. The consequences of an accident are also not significantly increased because the proposed revisions to the action statements will continue to ensure that at least one door in each air lock is maintained closed. A single door in each air lock is capable of withstanding a pressure in excess of the maximum expected pressure following a DBA. The structural integrity and leak tightness of the containment will not be changed by this proposed revision. For the brief period of time that the operable air lock door is open and the inoperable door is providing the single containment barrier, the consequences of [2an] accident may be increased. However, the probability of an event occurring requiring containment integrity is sufficiently remote to justify limited access when required.

Therefore, based on the continued ability of the containment air locks to provide a barrier to limit leakage from containment during a DBA, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Air lock operation does not interface with the reactor coolant pressure boundary or any other mechanical or electrical controls which could impact the operations of the reactor or its direct support systems.

Containment air locks are designed for the purpose of containment entry and exit. During this operation, the air lock maintains containment integrity by providing at least one door which is capable of providing a leak tight barrier during a DBA.

The proposed changes will continue to ensure that air lock operation is performed as assumed in the original design of the plant. During the period when the operable door is open and the other door inoperable, at least one door is being maintained closed as designed. This condition is ensured due to the subatmospheric conditions that exist during plant operation. The operable air lock door cannot be safely opened unless the inoperable door is closed due to the approximately 5 psi pressure differential that exists. The operable air lock door would only be opened long enough to allow personnel to enter the air lock.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

consequences of an accident are also not significantly increased because the proposed revisions to the action statements will continue to ensure that at least one door in each air lock is maintained closed. A single door in each air lock is capable of withstanding a pressure in excess of the maximum expected pressure following a DBA. The structural integrity and leak tightness of the containment will not be changed by this proposed revision. For the brief period of time that the operable air lock door is open and the inoperable door is providing the single containment barrier, the consequences of [2an] accident may be increased. However, the probability of an event occurring requiring containment integrity is sufficiently remote to justify limited access when required.

Therefore, based on the continued ability of the containment air locks to provide a barrier to limit leakage from containment during a DBA, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Air lock operation does not interface with the reactor coolant pressure boundary or any other mechanical or electrical controls which could impact the operations of the reactor or its direct support systems.

Containment air locks are designed for the purpose of containment entry and exit. During this operation, the air lock maintains containment integrity by providing at least one door which is capable of providing a leak tight barrier during a DBA.

The proposed changes will continue to ensure that air lock operation is performed as assumed in the original design of the plant. During the period when the operable door is open and the other door inoperable, at least one door is being maintained closed as designed. This condition is ensured due to the subatmospheric conditions that exist during plant operation. The operable air lock door cannot be safely opened unless the inoperable door is closed due to the approximately 5 psi pressure differential that exists. The operable air lock door would only be opened long enough to allow personnel to enter the air lock.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The applicable margin of safety consists of maintaining the primary containment leak rates within the assumptions of the DBA analysis. These leak rates are maintained provided at least one operable air lock door remains closed during the event.

The proposed revisions will continue to ensure that at least one air lock door is maintained closed. During the brief period of time that an operable air lock door is open and the inoperable door is providing the single containment barrier, the margin of safety is decreased. The inoperable door may not limit containment leak rates within the assumptions of the DBA analysis. However, the probability of an event requiring the inoperable air lock door to limit containment leakage occurring during this time period is sufficiently low and the overall margin of safety would not be decreased by a significant amount. The proposed increase in allowable door seal leakage will not affect the overall ability of the containment air locks to restrict the release of fission products to the environment. The overall air lock leakage limit of less than or equal to .05 L_a remain unchanged. The amount of leakage which the air lock(s) are permitted to contribute to the combined containment leakage limit of 0.60 L_a remain unchanged. Therefore, the margin of safety due to increasing the door seal leakage limit remains unchanged.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 31, 1994.

Description of amendment request: The proposed amendments would change Technical Specification 3/4.7.1.1 and its Bases regarding maximum allowed reactor thermal power operation with inoperable main steam safety valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The new power range neutron flux high setpoint values will ensure that the secondary side steam pressure will remain below 110 percent of its design value following a loss of load/turbine trip (LOL/TT) when one or more main steam safety valves (MSSVs) are declared inoperable. Therefore, this transient will remain classified as a Condition II probability event (faults of moderate frequency) per ANSI—N18.2, 1973 as discussed in Section 15.0.1 of the VEGP Final Safety Analysis Report (FSAR). Accordingly, since the new power range setpoints will maintain the capability of the MSSVs to perform their pressure relief function associated with a LOL/TT event, there will be no effect on the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment, and no new failure modes have been defined for any plant system or component. The new power range neutron flux high setpoints will maintain the capability of the MSSVs to perform their pressure relief function to ensure the secondary side steam design pressure is not exceeded following a LOL/TT. Therefore, since the function of the MSSVs is unaffected by the proposed changes, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety. The algorithm methodology used to calculate the new power range neutron flux high setpoints is conservative and bounding since it is based on a number of inoperable MSSVs per loop; i.e., if only one MSSV in one loop is out of service, the applicable power range setpoint would be the same as if one MSSV in each loop were out of service. Another conservatism with the algorithm methodology is with the assumed minimum total steam flow rate capability of the operable MSSVs. The assumption is that if one or more MSSVs are inoperable per loop, the inoperable MSSVs are the largest capacity MSSVs, regardless of which capacity MSSVs are actually inoperable. Therefore, since the power range setpoints calculated for the proposed changes using the algorithm methodology are more conservative and ensure the secondary side steam design pressure is not exceeded following a LOL/TT, there will not be a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

NRC Project Director: David B. Matthews.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: May 20, 1994.

Description of amendment request: The proposed amendments would relocate the heat flux hot channel factor penalty of 2 percent in Specification 4.2.2.2.f to the cycle-specific Core Operating Limits Report to allow burnup-dependent values of the penalty in excess of 2 percent. The licensee also proposes to revise the reference in Specification 6.8.1.6 to the Westinghouse $F_Q(Z)$ surveillance methodology in order to reflect Revision 1 of WCAP–10216–P, "Relaxation of Constant Axial Offset Control—F_Q Surveillance Technical Specification," approved by the NRC on November 26, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves only the manner in which the penalty factors for $F_Q(Z)$ would be specified (i. e., a burnup-dependent factor specified in the Core Operating Limits Report (COLR) versus a constant factor specified in the TS [Technical Specification]). This is simply used to account for the fact that $F_Q(Z)$ may increase between surveillance intervals. These penalty factors are not assumed in any of the initiating events for the accident analyses. Therefore, the proposed change will have no effect on the probability of any accidents previously evaluated. The penalty factors specified in the COLR will be calculated using NRC-approved methodology and will therefore continue to provide an equivalent level of protection as the existing TS requirement. Therefore, the proposed change will not affect the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration to the plant (no new or different kind of equipment will be installed) or alter the manner in which the plant would be operated. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will continue to ensure that potential increases in $F_Q(Z)$ over a surveillance interval will be properly accounted for. The penalty factors will be calculated using NRC-approved methodology. Therefore the proposed change will not involve a reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308.

NRC Project Director: David B. Matthews.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 22, 1994.

Description of amendment request: The proposed amendment changes Technical Specification Sections 1.6, 3.2.A, 3.9.F.5, and 4.2.A which specify the Shutdown Margin (SDM) requirements that ensure the reactor can be made subcritical and can be maintained sufficiently subcritical to preclude inadvertent criticality in any core condition. The amendment also proposes a new definition, Shutdown Margin, Section 1.45. The proposed changes address the requirements for SDM demonstration and provide clarification for actions if SDM is not met.

The amendment also proposes administrative changes to Sections 1.7 and 3.2.B.2 (b). The definition, COLD SHUTDOWN CONDITION, was simplified by stating the reactor is in the SHUTDOWN CONDITION which eliminates the need of repeating the requirements for this condition. The note which permitted unlimited reactor startups without the Rod Worth Minimizer during Cycle 11 is no longer applicable. The note and its reference are deleted from the new page 3.2–2. Starting with page 3.2–2 in Section 3.2, the pages were renumbered and repaginated to accommodate the changes in text.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has determined that operation of the Oyster Creek Nuclear Generating Station in accordance with the proposed Technical Specifications does not involve a significant hazard. The changes do not:

1. Involve a significant increase in the probability or the consequence of an accident previously evaluated.

--The proposed SDM Limits are more restrictive and provide adequate shutdown margin for various modes of reactor operation. Since the new SDM limits do not modify any initial conditions for the accidents previously evaluated in the SAR [Safety Analysis Report], the proposed changes do not involve a significant increase in the probability or consequences of these accidents.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed TS changes do not modify the function of any structure, system or component. The new Shutdown Margin requirements will still meet the basic criterion that the core in its maximum reactivity condition be subcritical with the control rod of highest worth fully withdrawn and all operable rods fully inserted. Based on these facts, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not reduce the margin of safety, because the new SDM limits where the highest worth control rod is determined analytically (0.38% delta k) or by measurement (0.28% delta k) are more restrictive than the current Oyster Creek limit (0.25% delta k).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 6, 1994.

Description of amendment request: The licensee proposes to modify the South Texas Project, Units 1 and 2, Technical Specification 3/4.8.1.1, "A.C. Sources," to revise the action statements and surveillance requirements for testing of the standby diesel generators (SDGs). The proposed amendment would eliminate excessive and

limits do not modify any initial conditions for the accidents previously evaluated in the SAR [Safety Analysis Report], the proposed changes do not involve a significant increase in the probability or consequences of these accidents.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed TS changes do not modify the function of any structure, system or component. The new Shutdown Margin requirements will still meet the basic criterion that the core in its maximum reactivity condition be subcritical with the control rod of highest worth fully withdrawn and all operable rods fully inserted. Based on these facts, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not reduce the margin of safety, because the new SDM limits where the highest worth control rod is determined analytically (0.38% delta k) or by measurement (0.28% delta k) are more restrictive than the current Oyster Creek limit (0.25% delta k).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 6, 1994.

Description of amendment request: The licensee proposes to modify the South Texas Project, Units 1 and 2, Technical Specification 3/4.8.1.1, "A.C. Sources," to revise the action statements and surveillance requirements for testing of the standby diesel generators (SDGs). The proposed amendment would eliminate excessive and unnecessary testing of the SDGs consistent with the guidance provided in NUREG–1366, "Improvements to Technical Specifications Surveillance Requirements," NUREG–1431, "Standard Technical Specifications for Westinghouse Plants," Generic Letter 84–15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," and Generic Letter 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation." This request replaces a request for amendment dated November 23, 1993, which was noticed on January 5, 1994 (59 FR 621). This revised amendment request includes elimination of additional identified unnecessary testing discovered since the original submittal. The changes include: (1) eliminating the requirement to demonstrate the operability of an operable SDG whenever an offsite AC power source is determined to be inoperable, or whenever a support system or an independently testable component of another SDG is inoperable, (2) eliminating the requirement to load the diesel in 10 minutes during testing, (3) replacing the minimum required loading for testing with a load band, (4) relocating some surveillance requirements to the Diesel Fuel Oil Testing Program, and (5) eliminating unnecessary loss of offsite power tests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Standby Diesel Generators do not initiate any accidents, therefore these changes do not increase the probability or [of] an accident previously evaluated. The proposed changes will permit the elimination of the unnecessary mechanical stress and wear on the diesel engine and generator while ensuring that the diesel generators will perform their designed function. The elimination of this mechanical stress and wear will improve the reliability and availability of the Standby Diesel Generators which will have a positive effect on the ability of the diesel generators to perform their design function. Therefore, the consequences of an accident previously evaluated are not increased. The proposed changes are consistent with NUREG–1366, NUREG–1431, Generic Letter 93–05, and Generic Letter 84–15.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The elimination of these unnecessary tests does not affect the design bases of the SDGs, or any of the accident evaluations involving the SDGs. The SDGs are designed to provide electrical power to the equipment important for safety during all modes and plant conditions following a loss of offsite power. The test schedule established in accordance with GL 84–15 assures that operable SDGs are capable of performing their intended safety function. The proposed changes to the surveillance requirements are consistent with NUREG–1431, NUREG–1366, Generic Letter 93–05, industry operating experience, and South Texas Project operating experience. These changes are intended to improve plant safety, decrease equipment degradation, and remove unnecessary burden on personnel resources by reducing the amount of testing that the Technical Specification requires during power operation. Relocating the diesel fuel oil testing requirement to the STP Fuel Oil Monitoring Program outside of the Technical Specifications is an administrative change consistent with NUREG–1431 and consequently has no effect on accident probability, consequences, or margin. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes extend testing frequency and eliminate unnecessary mechanical stress and wear on the diesel generator in an effort to improve plant reliability and safety. These changes are consistent with NUREG–1431, NUREG–1366, industry operating experience, and STP operating experience and do not adversely affect the design bases, accident analysis, reliability or capability of the SDGs to perform their intended safety function. Relocating the diesel fuel oil testing requirements to the STP Fuel Oil Monitoring Program outside of the Technical Specifications is an administrative change consistent with NUREG–1431 and consequently has no effect on accident probability, consequences, or margin. Therefore the proposed changes do not involve any reduction in a margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of

10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involve no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: William D. Beckner.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 18, 1993 as supplemented on December 17, 1993 and May 5, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by clarifying TS wording for the Low Pressure Coolant Injection (LPCI) and Containment Spray modes of the Residual Heat Removal (RHR) system to assure consistency with requirements of the DAEC Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The probability or consequences of a previously-analyzed accident will not be increased by these proposed changes to the LPCI and Containment Spray LCOs and BASES because they merely clarify existing TS requirements and are consistent with the DAEC UFSAR accident analysis. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG–1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no opportunity exists to increase the probability or consequences of a previously-analyzed accident.

(2) The possibility of a new or different kind of accident from those previously analyzed will not be created by these changes to the LPCI and Containment Spray LCOs and BASES because they merely clarify existing requirements. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG–1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no possibility exists to introduce a new or different kind of accident.

(3) The margin of safety will not be decreased as a result of these changes because they merely clarify existing TS requirements and are consistent with the UFSAR accident analysis. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG–1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no possibility exists to reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: July 1, 1994.

Description of amendment request: The proposed amendment would revise the drawdown time testing requirement of Technical Specification (TS) 4.6.5.1.c.1 and the secondary containment inleakage testing requirement of TS 4.6.5.1.c.2. These revisions would support a revised design basis radiological analysis which would support an increase in secondary containment drawdown time from 6 to 60 minutes by taking credit for fission product scrubbing and retention in the suppression pool. The current design basis radiological analysis does not take credit for the pressure suppression pool as a fission product cleanup system as permitted in NUREG–0800, Section 6.5.5, "Pressure Suppression Pool as a Fission Product Cleanup System." The proposed amendment would also take credit for additional mixing of primary containment and engineered safety feature systems leakage with 50 percent of the secondary containment free air volume prior to the release of radioactivity to the environment. In the revised analysis, mixing is assumed to occur at the onset of a Design Basis Loss-of-Coolant Accident as the primary containment and the engineered safety feature systems leak into secondary containment. The current analysis takes credit for mixing within secondary containment only after achieving a −0.25 inch water gauge (WG) pressure in secondary containment with respect to the outside surrounding atmosphere. The licensee's radiological evaluation for this accident, which reflects these proposed changes and an assumed drawdown time of 60 minutes, has determined that the radiological doses remain below 10 CFR Part 100 guidelines values and General Design Criterion 19 criteria. The revised radiological doses, as calculated by the licensee, are lower than the doses currently presented in the Updated Safety Analysis Report (USAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of the Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Secondary containment and the SGTS [Standby Gas Treatment System] are not initiators or precursors to an accident. Secondary containment provides a pressure boundary, with limited inleakage, for the purpose of establishing a negative pressure to prevent a ground level unfiltered release of radioactivity. SGTS responds to accidents involving a release of radioactivity to the secondary containment by establishing and maintaining a negative pressure inside secondary containment and by providing an elevated filtered release. Therefore, changes to SECONDARY CONTAINMENT INTEGRITY surveillances cannot affect the probability of a previously evaluated accident.

The suppression pool and secondary containment are largely passive in nature, and the active components are suitably redundant. Therefore, their fission product attenuation functions can be accomplished assuming a single failure.

Currently, using an assumed drawdown time of 6 minutes, the radiological doses for a DBA–LOCA [Design Bases Accident—Loss-of-Coolant Accident] are below the guidelines of 10 CFR Part 100 and GDC [General Design Criterion] 19 criteria. The calculated doses, considering the pressure suppression pool as a fission product cleanup system, additional mixing within secondary containment and an assumed secondary containment drawdown time of 60 minutes, are lower than the previously calculated doses. The new doses are below 10 CFR Part 100 guideline values and GDC 19 criteria. The revised radiological analysis follows the source term assumptions of RG [Regulatory Guide] 1.3, with the exception of regulatory position C.1.f as permitted by SRP [Standard Review Plan] Section 6.5.5, and continues to provide a conservative representation of the timing and the composition of the release of radioactivity from secondary containment during a DBA–LOCA.

The Technical Specification SRs [Surveillance Requirements] will ensure a continued state of readiness for the SGTS, the secondary containment, the suppression pool and the suppression chamber/drywell vacuum breakers. Therefore, the assumptions used in the dose assessment will continue to bound the actual bypass of the suppression pool and the mixing in secondary containment during a DBA–LOCA. The proposed changes to the surveillances provide assurance that the performance of the SGTS and secondary containment supports the radiological analysis. Accordingly, as shown in Table 1, page 14 of 20, [of the July 1, 1994, amendment request] operation with the SGTS and the proposed change to the surveillances for secondary containment will not significantly increase the consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the surveillances ensures that the SGTS and secondary containment will be available to respond to an accident such that the guidelines of 10 CFR Part 100 and the limits of GDC 19 are not exceeded. The proposed change to the surveillances reflect consideration of the pressure suppression pool as a fission product cleanup system and credit for additional mixing in secondary containment. The suppression pool will continue to perform its safety functions as a pressure suppression pool and as a source of water to support emergency

radiological doses for a DBA–LOCA [Design Bases Accident—Loss-of-Coolant Accident] are below the guidelines of 10 CFR Part 100 and GDC [General Design Criterion] 19 criteria. The calculated doses, considering the pressure suppression pool as a fission product cleanup system, additional mixing within secondary containment and an assumed secondary containment drawdown time of 60 minutes, are lower than the previously calculated doses. The new doses are below 10 CFR Part 100 guideline values and GDC 19 criteria. The revised radiological analysis follows the source term assumptions of RG [Regulatory Guide] 1.3, with the exception of regulatory position C.1.f as permitted by SRP [Standard Review Plan] Section 6.5.5, and continues to provide a conservative representation of the timing and the composition of the release of radioactivity from secondary containment during a DBA–LOCA.

The Technical Specification SRs [Surveillance Requirements] will ensure a continued state of readiness for the SGTS, the secondary containment, the suppression pool and the suppression chamber/drywell vacuum breakers. Therefore, the assumptions used in the dose assessment will continue to bound the actual bypass of the suppression pool and the mixing in secondary containment during a DBA–LOCA. The proposed changes to the surveillances provide assurance that the performance of the SGTS and secondary containment supports the radiological analysis. Accordingly, as shown in Table 1, page 14 of 20, [of the July 1, 1994, amendment request] operation with the SGTS and the proposed change to the surveillances for secondary containment will not significantly increase the consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the surveillances ensures that the SGTS and secondary containment will be available to respond to an accident such that the guidelines of 10 CFR Part 100 and the limits of GDC 19 are not exceeded. The proposed change to the surveillances reflect consideration of the pressure suppression pool as a fission product cleanup system and credit for additional mixing in secondary containment. The suppression pool will continue to perform its safety functions as a pressure suppression pool and as a source of water to support emergency core cooling system operation during a DBA–LOCA. In addition, secondary containment will continue to perform its safety function of controlling and minimizing radioactive leakage to the outside atmosphere during a DBA–LOCA. Safety related equipment will continue to be OPERABLE in the radioactive environment of secondary containment to mitigate the consequences of a DBA–LOCA. Accordingly, the proposed Technical Specification change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with proposed amendment, will not involve a significant reduction in a margin of safety.

The SGTS exhausts the secondary containment atmosphere to the environment through the filtration system. To verify the SGTS has not degraded, SR 4.6.5.1.c.1 verifies that each SGTS subsystem will establish and maintain a pressure in the secondary containment that is equal to or more negative than −0.25 inch WG within the required time limit. To verify secondary containment is intact, SR 4.6.5.1.c.2 demonstrates that one SGTS subsystem can maintain a pressure which is equal to or more negative than −0.25 inch WG for 1 hour at a flow rate less than or equal to the maximum allowed inleakage. The 1 hour test period allows secondary containment to be in thermal equilibrium at steady state conditions. Furthermore, as an interim measure, NMPC [Niagara Mohawk Power Corporation] implemented certain compensatory measures through administrative controls to ensure that the radiological consequences of a DBA–LOCA would remain within regulatory criteria. Together, these tests and the compensatory measures assure SGTS performance and secondary containment boundary integrity.

The proposed change to these surveillances incorporate changes to the design basis, i.e., credit for fission product scrubbing and retention by the suppression pool and credit for additional mixing within secondary containment. The new inleakage is 2670 cfm which is loss [less] than one change of the secondary containment free air volume per day. The new drawdown time limit reflects consideration of the proposed change in the secondary containment inleakage limit. Due to the effects of service water temperature, inside and outside temperature, flow measurement inaccuracies and actual test pressures, meeting the current SRs does not by itself assure adequate SGTS performance. Therefore, the surveillances' results are adjusted to account for actual test conditions. Compliance with the proposed surveillances assures that the SGTS can achieve and maintain −0.25 inch WG in less than 60 minutes following a postulated DBA–LOCA. Achieving −0.25 inch WG within 60 minutes assures that radiological doses will remain below regulatory limits (see Table 1 [of the July 1, 1994, amendment request]). Therefore, the proposed surveillances, together with the proposed adjustments, provide adequate assurance of SGTS performance and secondary containment boundary integrity. Accordingly, the proposed Technical Specification change will not involve a significant reduction in a margin of safety.

Therefore, as determined by the analysis above, this proposed amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Project Director: Michael L. Boyle.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: June 8, 1994.

Description of amendment request: The proposed amendment would revise sections 3.7/4.7, which pertain to the Standby Gas Treatment System (SGTS) and Secondary Containment. The proposed amendment would revise the surveillance requirements for both SGTS and secondary containment and revise the performance requirements for the SGTS filters and process stream electric heaters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the SGTS and secondary containment is to mitigate the consequences of a loss of coolant accident and fuel handling accidents. The proposed changes maintain or improve this capability. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated for the Monticello plant.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes to Technical Specifications for the standby gas treatment system and secondary containment do not alter the function of the systems or its interrelationships with other systems. The proposed changes provide requirements to ensure the systems are capable of performing the required functions or that actions are taken to minimize the potential for its function being required consistent with regulatory guidance; therefore, this amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Improvements in the margin of safety are provided via the permanent elimination of a potential single failure which could adversely affect both standby gas treatment systems by deleting the reference to the standby gas system room heaters in the technical specification bases and providing appropriate surveillance requirements to assure system operability. A review of the performance history of the Standby Gas Treatment System and licensing basis assumptions has determined that the proposed changes do not adversely affect plant safety. Changes to the SGTS performance requirements provide greater assurance of SGTS operability. The proposed change for the completion time to place the plant in a cold shutdown condition if limiting conditions for operation can not be satisfied is consistent with the time frame specified in the current specification and is consistent with Standard Technical Specifications. The proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW, Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 12, 1993, as supplemented by letters dated August 20, 1993 and June 6, 1994.

Description of amendment request: This amendment request was previously noticed in the **Federal Register** on April 14, 1993 (58 FR 19485). The June 6, 1994, submittal supplements the February 12, 1993, application for amendment, and includes and incorporates the NRC staff comments. The proposed amendment would modify the Technical Specifications (TS) to implement the reactor coolant system (RCS) leak before break (LBB) methodology detection criteria, in accordance with the recommendations listed in Generic Letter (GL) 84–04.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will require additional leak detection instruments be operable to close Unresolved Safety Issue A–2, "Asymmetrical Blowdown Loads on Reactor Primary Coolant System," for the Fort Calhoun Station. Requiring additional instruments to be operable does not increase the probability or consequences of an accident since the safety function of the instruments is not being altered.

The proposed changes require at least two different types of RCS leak detection instruments, of diverse monitoring principles, be operable or corrective actions be taken to restore the instrumentation to operable status. Currently the Technical Specifications require only one RCS leak detection instrument to be operable.

The probability of leaks occurring due to thermal or normal fatigue is not affected as indicated in the fracture mechanics analysis referenced in Generic Letter 84–04. No changes are proposed to primary RCS piping systems or supports as a result of the proposed revision. The proposed changes will ensure that a potential significant failure does not go undetected within the Regulatory Guide 1.45 criteria as noted in Generic Letter 84–04.

The Loss of Coolant Accident (LOCA) analysis will not be impacted by the proposed change. The results of the current Fort Calhoun LOCA analyses cited in Section 14.15 of the Updated Safety Analysis Report (USAR) will not be impacted as a result of these changes.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

It has been determined that a new or different kind of accident will not be created due to the proposed changes since no new or different modes of operation are created by this change. The existing operating procedures were established to support an enhanced RCS leak detection program. Operation of RCS leak detection instruments will not differ from existing conditions.

(3) Involve a significant reduction in a margin of safety.

The margin of safety as defined in the basis for the Technical Specifications is not changed or reduced by this proposed change. Defining adequate RCS LBB monitoring is required to meet recommendations provided in Generic Letter 84–04.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue NW., Washington, DC 20009–5728.

NRC Project Director: William D. Beckner.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: June 6, 1994.

Description of amendment request: The amendment would remove the controls for a remote shutdown system control valve and delete the isolation signal for certain primary containment isolation valves from TS Tables 3.3.7.4–1 and 3.6.3–1 respectively, as a result of eliminating the steam condensing mode of the Redidual Heat Removal system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The RHR system steam condensing mode is a non-safety related function of the RHR system and has been eliminated at Limerick Generating Station, Unit 1. These proposed changes will not affect any components required to perform the safety-related function of the RHR system.

The ability of the RHR system to respond to an accident will not be degraded by the proposed changes. Valve HV–51–1F011A is locked closed with the electrical power removed. The valve's handswitch which is part of the remote shutdown panel (RSP) controls, does not perform any function and will be physically removed from the RSP. The deletion of the isolation signal for valves HV–C–51–1F103A and HV–C–51–1F104B will not affect the ability of these valves to function as primary containment isolation valves (PCIVs), since they are locked closed already in their safety-related position, providing containment isolation as manual PCIVs. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new failure modes of RHR system are created by the proposed TS changes. All valves associated with the proposed changes are dedicated specifically for the RHR system steam condensing mode, and will not impact the operation of any components or piping required for other modes of operation of the RHR system. These valves are locked-closed in their safety-related position with the electrical power removed. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The steam condensing mode is a non-safety related function of the RHR

signal for certain primary containment isolation valves from TS Tables 3.3.7.4–1 and 3.6.3–1 respectively, as a result of eliminating the steam condensing mode of the Redidual Heat Removal system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The RHR system steam condensing mode is a non-safety related function of the RHR system and has been eliminated at Limerick Generating Station, Unit 1. These proposed changes will not affect any components required to perform the safety-related function of the RHR system.

The ability of the RHR system to respond to an accident will not be degraded by the proposed changes. Valve HV–51–1F011A is locked closed with the electrical power removed. The valve's handswitch which is part of the remote shutdown panel (RSP) controls, does not perform any function and will be physically removed from the RSP. The deletion of the isolation signal for valves HV–C–51–1F103A and HV–C–51–1F104B will not affect the ability of these valves to function as primary containment isolation valves (PCIVs), since they are locked closed already in their safety-related position, providing containment isolation as manual PCIVs. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new failure modes of RHR system are created by the proposed TS changes. All valves associated with the proposed changes are dedicated specifically for the RHR system steam condensing mode, and will not impact the operation of any components or piping required for other modes of operation of the RHR system. These valves are locked-closed in their safety-related position with the electrical power removed. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The steam condensing mode is a non-safety related function of the RHR system and, therefore, is not addressed in the TS. The controls for remote shutdown system control valve HV–51–1F011A are not being used. Presently, the valve is locked closed with the electrical power removed and the valve's handswitch will be removed from the RSP, since it does not perform any function. The proposed changes will not impact the safe operation of LGS Unit 1. The deletion of the isolation signal for valves HV–C–51–1F103A and HV–C–51–1F104B will not affect the ability of these valves to function as primary containment isolation valves (PCIVs), since they are locked closed already in their safety-related position. Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: Charles L. Miller.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: June 10, 1994.

Description of amendment request: The amendment involves a one-time change affecting the Allowed Outage Time (AOT) for the Emergency Service Water (ESW) System, Residual Heat Removal Service Water (RHRSW) System, Suppression Pool Cooling, Suppression Pool Spray, and Low Pressure Coolant Injection modes of the Residual Heat Removal System, and Core Spray System to be extended from 3 and 7 days to 14 days during the Limerick Generating Station (LGS), Unit 2 third refueling outage scheduled to begin in January 1995. This proposed extended AOT would allow adequate time to install isolation valves and cross-ties on the ESW and RHRSW Systems to facilitate future inspections or maintenance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed one-time TS changes will not increase the probability of an accident since it will only extend the time period that the 'B' ESW and RHRSW loops and the affected equipment can be out-of-service. The extension of the time duration that certain equipment is out-of-service has no direct physical impact on the plant. The proposed inoperable systems are normally in a standby mode while the unit is in OPCON 1 or 2 and are not directly supporting plant operation. Therefore, they can have no impact on the plant that would make an accident more likely to occur due to their inoperability.

During transients or events which require these systems to be operating, there is sufficient capacity in the operable loops to support plant operation or shutdown, in-so-much that failures that are accident initiators will not occur more frequently than previously postulated.

In addition, the consequences of an accident previously evaluated in the SAR will not be increased. With the 'B' loops of ESW and RHRSW inoperable, a known quantity of equipment is either inoperable or the equipment is not fully capable of fulfilling its design function under all design conditions due to certain support systems not being operable. Based on the support functions of the ESW and RHRSW systems, a review of the plant was performed to determine the impacts that the inoperable ESW and RHRSW 'B' loops would have on other systems. The impacts were identified for each system, as discussed in the preceding Safety Assessment, and it was determined whether there were any adverse [effects] on the systems. It was then determined how the adverse [effects] would impact each system's design basis and overall plant safety. The consequences of any postulated accidents occurring on Unit 1 during this AOT extension was found to be bounded by the previous analyses as described in the SAR.

The existing AOTs limit the amount of time that the plant can operate with certain equipment inoperable, where single failure criteria is still met. The minimum equipment required to mitigate the consequences of an accident and/or safely shutdown the plant will be operable or the plant will

be shutdown. Therefore, by extending certain AOTs and extending the assumptions concerning the combinations of events and single failures for the longer duration of each extended AOT, we conclude, based on the evaluations above, that at least the minimum equipment required to mitigate the consequences of an accident and/or safely shutdown the plant will still be operable during the extended AOT. Therefore, the consequences of an accident previously evaluated in the SAR will not be increased.

Therefore, these proposed one-time TS changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed one-time TS changes will not create the possibility of a different type of accident since it will only extend the time period that the 'B' ESW and RHRSW loops and the affected equipment can be out-of-service. The extension of the time duration that certain equipment is out-of-service has no direct physical impact on the plant and does not create any new accident initiators. The systems involved are either accident mitigation systems, safe shutdown systems or systems that support plant operation. All of the possible impacts that the inoperable equipment may have on its supported systems were previously analyzed in the SAR and are the basis for the present TS ACTION statements and AOTs. The impact of inoperable support systems for a given time duration was previously evaluated and any accident initiators created by the inoperable systems was evaluated. The lengthening of the time duration does not create any additional accident initiators for the plant.

Therefore, the proposed one-time TS changes will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The ESW and RHRSW systems and their supported systems are designed with sufficient independence and redundancy such that the removal from service of a component/subsystem will not prevent the systems from performing their required safety functions. Since removal of an ESW and a RHRSW loop from service with one unit in operation and the other unit in a refueling outage is allowed by the current Technical Specifications, then the concern is the reduced margin of safety incurred by extending the affected AOTs.

The present ESW and RHRSW AOT limits were set to ensure that sufficient safety-related equipment is available for response to all accident conditions and that sufficient decay heat removal capability is available for a LOCA/LOOP on one unit and simultaneous safe shutdown of the other unit. A slight reduction in the margin of safety is incurred during the proposed extended AOT due to the increased risk that an event could occur in a fourteen day period versus a three or seven day period. This increased risk is judged to be minimal due to the low probability of an event occurring during the extended AOT and based on the following discussion of minimum ECCS/decay heat removal requirements.

The reduction in the margin of safety is not significant since the remaining operable ECCS equipment is adequate to mitigate the consequences of any accident. This conclusion is based on the information contained in documents NEDO–24708A and NEDC–30936–A. These documents described the minimum requirements to successfully terminate a transient or LOCA initiating event (with scram), assuming multiple failures with realistic conditions and were used to justify certain TS AOTs per UFSAR sections 6.3.1.1.2.o and 6.3.3.1. The minimum requirements for short term response to an accident would be either one LPCI pump or one Core Spray loop in conjunction with ADS, which would be adequate to re-flood the vessel and maintain core cooling sufficient to preclude fuel damage. For long term response, the minimum requirements would be one loop of RHR for decay heat removal, along with another low pressure ECCS loop. These minimum requirements will be met since implementation of the proposed TS changes will require the operability of HPCI, ADS, two LPCI subsystems (or one LPCI subsystem and one RHR subsystem during decay heat removal) and one Core Spray subsystem be maintained during the 14 day period.

In addition, measures will be taken prior to or during the proposed extended AOT for those fire regions that rely on one or more safe shutdown methods which would all be unable to safely shutdown the plant with inoperable loops of the ESW and RHRSW systems or the inoperable systems that ESW or RHRSW support. These measures will offset the increased risk of a fire event occurring in the vulnerable areas, during the fourteen day versus three day AOT period. Therefore, the proposed extended AOT does not adversely affect the approved level of fire protection as described in UFSAR Appendix 9A (Fire Protection Evaluation Report).

A special procedure will be written to administratively control the requirement to maintain the operability of specified components and implementation of any appropriate compensatory measures which are deemed necessary during the proposed AOT. In addition, operations personnel are fully qualified by normal periodic training to respond to and mitigate a Design Basis Accident, including the actions needed to ensure decay heat removal while LGS Unit 1 and Unit 2 are in the operational configurations described within this submittal. Accordingly, procedures are already in place that cover safe plant shutdown and decay heat removal for situations applicable to those in the proposed AOTs.

A Probabilistic Safety Assessment (PSA) Study was performed for an ESW and RHRSW loop being out-of-service for 14 days on an operating unit. This analysis includes EDG D12 being aligned to 'A' ESW and HPCI and RCIC not requiring room cooling. No other deviations from the bounding assumptions used in the base PSA model were made. The Core Damage Frequency (CDF) increased by 2.7×10^{-6}, from 5.11×10^{-6}/reactor-year to 7.8×10^{-6}/reactor-year. In absolute terms, this is not a significant increase in risk. In addition, the modifications to be installed during this proposed extended AOT will allow for future maintenance and inspections to be performed on the ESW and RHRSW loops without removing an entire loop from service, which will reduce risk in the future. For example, if the ESW loop unavailability, due to testing or maintenance, is reduced by half, the CDF will decrease by more than four percent. It will also minimize the potential need for future AOT extensions on these systems.

Therefore, the implementation of the proposed one-time TS changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: Charles L. Miller.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 10, 1994.

Description of amendment request: The licensee is proposing to revise the Technical Specifications (TS) requirements governing the minimum low pressure cooling availability when irradiated fuel is in the reactor vessel and the reactor is in the cold condition. Specifically, the proposed changes are: (1) Revise the TS section titles in the Table of Contents to agree with the TS section titles in the body of the TS. (2) Revise TS Section 3.5.A.1 to provide proper reference to the revised TS Section 3.5.F. (3) Revise TS Section 3.5.A.3 to provide proper reference to the revised TS Section 3.5.F. (4) Revise TS Section 3.5.B.1 to delete the reference to TS Section 3.5.F.3. (5) Revise TS Section 3.5.F to require the limiting condition for operation (LCO) governing minimum low pressure cooling availability when irradiated fuel is in the reactor vessel and the reactor is in the cold condition to be identical with the corresponding LCO in NUREG–1433, "Standard Technical Specifications General Electric Plants, BWR/4." (6) Revise TS Section 4.5.F to require the surveillance requirements (SR) governing minimum low pressure cooling availability when irradiated fuel is in the reactor vessel and the reactor is in the cold condition to be identical with the corresponding SR in NUREG–1433. (7) Revise TS BASES 3.5.A to delete the reference to the core spray subsystem as also providing a source for flooding of the core in case of accidental draining because the information is being added to TS BASES 3.5.F. (8) Revise TS BASES 3.5.F to be consistent with the corresponding TS BASES in NUREG–1433. (9) Revise TS BASES 4.5 to be consistent with the corresponding TS BASES in NUREG–1433. (10) Revise TS Section 3.7.A.1 to provide proper reference to the revised TS Section 3.5.F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: Charles L. Miller.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 10, 1994.

Description of amendment request: The licensee is proposing to revise the Technical Specifications (TS) requirements governing the minimum low pressure cooling availability when irradiated fuel is in the reactor vessel and the reactor is in the cold condition. Specifically, the proposed changes are: (1) Revise the TS section titles in the Table of Contents to agree with the TS section titles in the body of the TS. (2) Revise TS Section 3.5.A.1 to provide proper reference to the revised TS Section 3.5.F. (3) Revise TS Section 3.5.A.3 to provide proper reference to the revised TS Section 3.5.F. (4) Revise TS Section 3.5.B.1 to delete the reference to TS Section 3.5.F.3. (5) Revise TS Section 3.5.F to require the limiting condition for operation (LCO) governing minimum low pressure cooling availability when irradiated fuel is in the reactor vessel and the reactor is in the cold condition to be identical with the corresponding LCO in NUREG–1433, "Standard Technical Specifications General Electric Plants, BWR/4." (6) Revise TS Section 4.5.F to require the surveillance requirements (SR) governing minimum low pressure cooling availability when irradiated fuel is in the reactor vessel and the reactor is in the cold condition to be identical with the corresponding SR in NUREG–1433. (7) Revise TS BASES 3.5.A to delete the reference to the core spray subsystem as also providing a source for flooding of the core in case of accidental draining because the information is being added to TS BASES 3.5.F. (8) Revise TS BASES 3.5.F to be consistent with the corresponding TS BASES in NUREG–1433. (9) Revise TS BASES 4.5 to be consistent with the corresponding TS BASES in NUREG–1433. (10) Revise TS Section 3.7.A.1 to provide proper reference to the revised TS Section 3.5.F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed changes 1, 2, 3, 4, 7, 8, 9 and 10 are administrative in nature and involve no technical changes to the TS. These proposed changes do not impact initiators of analyzed events or the assumed mitigation of accidents or transients events. Therefore, these changes do not involve an increase in the probability or consequences of an accident previously evaluated.

Proposed changes 5 and 6 will not increase the probability of initiating an analyzed event or alter assumptions relative to mitigation of an accident or transient event. These changes will not alter the operation of process variables or systems, structures, or components (SSC) as described in the safety analyses. These changes do not involve any physical changes to plant SSC. TS requirements that govern Operability or routine testing and verification of plant components and variables are not assumed to be initiators of any analyzed event. The proposed changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis or licensing basis. The proposed changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analysis. These changes have been confirmed to ensure no previously evaluated accident has been adversely affected. These changes will not allow continuous plant operation with plant conditions during a unit outage such that a single failure will result in a loss of any safety function. Therefore, the changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed or removed) and will not alter the method used by any system to perform its design function. The proposed changes do not allow plant operation in any mode that is not already evaluated. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Proposed changes 1, 2, 3, 4, 7, 8, 9 and 10 are administrative in nature and will not involve any technical changes. These proposed changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Because these changes are administrative in nature, no question of safety is involved. Therefore, these changes do not reduce the margin of safety.

Proposed changes 5 and 6 add some new requirements and make some existing requirements more restrictive. These changes will not impact any safety analysis assumptions. Adding new requirements and making existing ones more restrictive either increases or does not affect the margin of safety. As such, no question of safety is involved. Therefore, these changes will not involve a significant reduction in a margin of safety.

Proposed changes 5 and 6 also make three less restrictive changes. The first change deletes the requirements for the containment cooling system when the reactor is in the Cold Condition. The containment cooling system is necessary to maintain primary containment Operable to mitigate the release of radioactive material following a DBA [design basis accident].

However, primary containment is not required to be Operable with the reactor in the Cold Condition. As a result, the containment cooling system is not needed to maintain the primary containment Operable with the reactor in the Cold Condition. This change does not affect any safety limits, operating limits, or design assumptions. This [change] provides the benefit of allowing maintenance to be performed on the containment cooling systems during a unit outage to ensure their reliability during power operation. Therefore, this change does not involve a significant reduction in a margin of safety.

The current TS requirement that both core spray systems and the LPCI system be Operable during a refueling outage is being relaxed by the second change to require one core spray subsystem and one LPCI subsystem or two core spray subsystems to be Operable. This [change] does not adversely affect any accident or transient analyses because the change ensures adequate vessel inventory makeup is available in the event of an inadvertent vessel draindown. The long term cooling analysis following a design bases LOCA

[loss of coolant accident] demonstrates only one low pressure ECCS [emergency core cooling system] injection/spray subsystem is required, post LOCA, to maintain the peak cladding temperature below the allowable limit. This change will not affect any safety limits, operating limits, or design assumptions. This change provides the benefit of allowing maintenance to be performed on the low pressure ECCS subsystems not required to be operable to ensure their reliability during plant operation. Therefore, this change does not involve a significant reduction in a margin of safety.

The final less restrictive change will allow low pressure injection/spray subsystems to be inoperable during a refueling outage if the spent fuel storage gates are removed and the water level is at the required height over the top of the reactor pressure vessel flange. This is acceptable because the water level requirement provides sufficient coolant inventory to allow operator action to terminate any inventory loss prior to fuel uncovery in the event of an inadvertent draindown. This change will not affect any safety limits, operating limits, or design assumptions. This change provides the benefit of allowing maintenance to be performed on the low pressure ECCS subsystems to ensure their continued reliability during plant operation. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601; Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: June 9, 1994.

Description of amendment request: The licensee proposed the following changes to its Technical Specifications (TS): (1) Revise TS 4.3.C.1 to require that each control rod be scram time tested after each refueling outage or after a reactor shutdown that is greater than 120 days with reactor steam dome pressure greater than or equal to 800 psig prior to exceeding 40% of rated power. Scram time testing is not required for control rods inserted per TS 3.3.B.1. (2) Replace TS 4.3.C.2 with the requirement to perform scram time testing with the reactor steam dome pressure greater than or equal to 800 psig prior to exceeding 40% of rated power for only those control rods associated with the core cells affected by any fuel movement within the reactor pressure vessel. (3) Add TS 4.3.C.3 to perform scram time testing for a representative sample of control rods at least once per 120 days of power operation with the reactor steam dome pressure greater than or equal to 800 psig. (4) Add TS 4.3.C.4 to perform scram time testing at any reactor steam dome pressure for individual control rods prior to declaring them operable after work on the control rod or control rod drive system is performed that could affect scram insertion time. (5) Revise TS Bases 3.3.C and 4.3.C to describe: the rational for performing scram time testing with reactor pressure greater than or equal to 800 psig; the rationale for requiring control rods to be scram time tested once per 120 days; what constitutes a representative sample of control rods; examples of work that could affect scram times; and the rational and methods for performing scram time testing following work that could affect the scram insertion times. (6) Add TS 4.3.C.5 to perform scram time testing with the reactor steam dome pressure greater than or equal to 800 psig prior to exceeding 40% of rated power after work on the control rod or control rod drive system that could affect scram insertion time. (7) Revise TS 4.5.K.2 from performing scram time testing of 19 or more control rods on a rotation basis to performing scram time testing of a representative sample of control rods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not involve any physical changes to plant systems, structures, or components (SSC). These proposed changes will not alter operation of process variables or SSC as described in the safety analysis. The proposed changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analysis. In particular, proposed change 1 is acceptable based on industry experience with control rod scram time testing coupled with the additional requirement in proposed change 4 that scram time testing of any control rod on which work was performed must be satisfactorily completed before that control rod can be declared operable. The proposed changes will not allow continuous plant operation with plant conditions such that a single failure will result in a loss of any safety function. Therefore, the changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed or removed) and will not alter the method used by any system to perform its design function. The proposed changes do not allow plant operation in any mode that is not already evaluated. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

Following a refueling outage, control rod scram time testing for all control rods is currently required to be performed during operational hydrostatic testing or during startup prior to synchronizing the main turbine generator. Any control rods not tested during operational hydrostatic testing must be tested at greater than 30% power but less than 40% power. Proposed change 1 will require that scram time testing for all control rods be completed prior to exceeding 40% Reactor Power. This change is acceptable based on industry experience with control rod scram time testing coupled with the additional requirement in proposed change 4 that scram time testing of any control rod on which work was performed must be satisfactorily completed before that control rod can be declared operable. Proposed changes 2, 3, 4 and 6 add some new requirements and make some existing requirements more restrictive. The margin of safety is not reduced by more restrictive changes. If anything, the margin of safety may increase. Proposed change 5 revises the BASES to provide consistency with the previously discussed SR [surveillance requirements] changes. Proposed change 7 is administrative in nature and does not involve any technical changes. Proposed changes 5 and 7 will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Therefore, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 29, 1994.

Description of amendment request: The proposed changes would alter the Plant Operating Review Committee's (PORC's) membership requirements and would delegate a portion of PORC's procedure review responsibilities for nuclear safety related procedures and

during operational hydrostatic testing must be tested at greater than 30% power but less than 40% power. Proposed change 1 will require that scram time testing for all control rods be completed prior to exceeding 40% Reactor Power. This change is acceptable based on industry experience with control rod scram time testing coupled with the additional requirement in proposed change 4 that scram time testing of any control rod on which work was performed must be satisfactorily completed before that control rod can be declared operable. Proposed changes 2, 3, 4 and 6 add some new requirements and make some existing requirements more restrictive. The margin of safety is not reduced by more restrictive changes. If anything, the margin of safety may increase. Proposed change 5 revises the BASES to provide consistency with the previously discussed SR [surveillance requirements] changes. Proposed change 7 is administrative in nature and does not involve any technical changes. Proposed changes 5 and 7 will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Therefore, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 29, 1994.

Description of amendment request: The proposed changes would alter the Plant Operating Review Committee's (PORC's) membership requirements and would delegate a portion of PORC's procedure review responsibilities for nuclear safety related procedures and procedure changes to the line organizations. Section 6.5, "Review and Audit," of the Technical Specifications (TSs) would be revised to modify the composition of the PORC and delete review and audit responsibilities for the Emergency and Security Plans from the TSs. The review and audit responsibilities would be relocated to the respective Emergency and Security Plans consistent with Generic Letter 93–07, "Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans." The proposed changes would also revise Section 6.5 and Section 6.8, "Procedures," of the TSs to delegate a portion of the PORC's procedure review responsibilities for nuclear safety related procedures to the line organizations. The PORC would continue to perform safety reviews associated with procedures that are of safety significance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated since: (1) PORC will continue to review environmental impact and 10 CFR 50.59 safety evaluations associated with procedures and procedure changes; (2) Only personnel knowledgeable in the affected functional areas will review procedures and procedure changes; (3) Review and approval personnel (designated technical reviewers, qualified safety reviewers and responsible procedure owners) will be identified in the appropriate administrative procedures; (4) Designated technical reviewers shall meet or exceed the qualifications described in Section 4 of ANSI N18.1–1971 [* * *] for applicable positions and are designated by the Department Managers; 5) The designated technical reviewers will be responsible for identifying whether additional cross disciplinary reviews are required; (6) The qualified safety reviewers will be responsible for reviewing the procedure changes from a safety perspective; (7) The responsible procedure owners are designated by the Resident Manager; and (8) The responsible procedure owners will be responsible for verifying that procedure reviews are performed in accordance with the administrative procedure governing the procedure review and approval process.

The proposed changes (1) will add more detailed requirements regarding procedure review and approval to the Technical Specifications which will strengthen the controls over the process, and (2) will free PORC from reviewing items that are outside the charter of a "safety review" committee [* * *] [because non-safety significant items can reduce the time that PORC members can spend on matters that are safety significant. The proposed Technical Specification change establishes a highly structured review and approval program for procedures.]

The proposed change to the PORC membership requirements would not significantly increase the probability or consequences of an accident because it does not adversely affect the level of expertise applied to the PORC review function or its effectiveness. The PORC quorum is currently composed of five members including up to two designated alternates and a Chairman. [* * *] [This composition is not changed by the proposed amendment.]

The miscellaneous administrative changes not related to the procedure review and approval process or the PORC membership requirements cannot affect the probability or consequences of an accident because they do not affect plant operations[,] [* * *] equipment[, or any safety-related activity.]

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: [* * *] [No physical changes to the plant or changes in plant equipment operating procedures are being proposed.] The changes are administrative and will not have any direct effect on equipment important to safety. Changing the process by which procedures are reviewed and approved cannot in itself create the possibility of a new or different kind of accident. Furthermore, a documented safety review, utilizing screening criteria, will be performed for all nuclear safety related procedures and procedure changes. The proposed change establishes detailed controls while allowing PORC to spend more time on safety significant issues.

The proposed change to the PORC membership requirements would not create the possibility of a new or different kind of accident from any

previously evaluated since no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

The miscellaneous administrative changes not related to the procedure review and approval or the PORC Membership requirements cannot create the possibility of an accident because they do not affect plant operations[,] [* * *] equipment [or any safety-related activity.]

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The proposed amendment does not involve a significant reduction in the margin of safety because a program controlled by Administrative Procedures using designated technical reviewers approved by the Department Managers will be in place to review new procedures and procedure changes. A 10 CFR 50.59 screening of each new procedure and permanent procedure change will be performed by a qualified safety reviewer, and PORC will continue to review 10 CFR 50.59 Safety and Environmental Impact Evaluations associated with procedures and procedure changes. Cross disciplinary reviews will be conducted as appropriate. Thus, the margin of safety will be maintained by implementing the new procedure review and approval process.

The proposed change to the PORC membership requirements would not involve a significant reduction in the margin of safety since the level and quality of PORC review will be maintained and there will not be an adverse change to the collective educational background and work experience of PORC. [There will not be an adverse loss of PORC effectiveness as a result of this change.] The PORC quorum is currently composed of five members including up to two designated alternates and a Chairman. [* * *] [This composition is not changed by the proposed changes.]

The miscellaneous administrative changes not related to the procedure review and approval process or PORC membership program cannot reduce any margin of safety because they do not affect any safety related activity or equipment. These changes increase the probability that the Technical Specifications are correctly interpreted by clarifying information.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Michael L. Boyle.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 17, 1994.

Description of amendment request: The proposed changes would revise Section 6.5, "Review and Audit," of the Technical Specifications (TSs) to modify the composition of the Plant Operating Review Committee (PORC) and delete review and audit responsibilities for the Emergency and Security Plans from the TSs. The review and audit responsibilities would be relocated to the respective Emergency and Security Plans consistent with Generic Letter 93–07, "Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans." The proposed changes would also revise Section 6.5 and Section 6.8, "Procedures," of the TSs to delegate a portion of the PORC's procedure review responsibilities for nuclear safety related procedures to the line organizations. The PORC would continue to perform safety reviews associated with procedures that are of safety significance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since the proposed changes would not:

1. involve a significant increase in the probability of an accident or consequence previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated since: 1) PORC will continue to review environmental impact and 10 CFR 50.59 safety evaluations associated with procedures and procedure changes; 2) Only personnel knowledgeable in the affected functional areas will review procedures and procedure changes; 3) Review and approval personnel (designated technical reviewers, and responsible procedure owners) will be identified in the appropriate administrative procedures. Designated technical reviewers shall meet or exceed the qualifications described in section 4 of ANSI N18.1–1971 for applicable positions. Designated technical reviewers are designated by the Department Managers. The responsible procedure owners are designated by the Resident Manager; 4) The designated technical reviewers will be responsible for identifying whether additional cross-disciplinary reviews are required; 5) The qualified safety reviewers will be responsible for reviewing the procedure changes from a safety perspective; and 6) The responsible procedure owners will be responsible for verifying that procedure reviews are performed in accordance with the administrative procedure governing the procedure review and approval process.

The proposed changes (1) will add more detailed requirements regarding procedure review and approval to the Technical Specifications which will strengthen the controls over the process, and (2) will free PORC from reviewing items that are outside the charter of a "safety review" committee because non-safety significant items can reduce the time that PORC members can spend on matters that are safety significant. The proposed Technical Specification change establishes a highly structured review and approval program for procedures.

The proposed change to the PORC Membership requirements would not significantly increase the probability or consequences of an accident because it does not adversely affect the level of expertise applied to the PORC review function. There will not be an adverse loss of PORC effectiveness as a result of this change. The PORC quorum is currently composed of five members including up to two designated alternates and a Chairman. This composition is not changed by the proposed amendment.

The miscellaneous administrative changes not related to the procedure review and approval process or the PORC Membership requirements cannot affect the probability or consequences of an accident because they do not affect operations, equipment, or any safety-related activity.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

No physical changes to the plant or changes in plant equipment operating

procedures are being proposed. The changes are administrative and will not have any direct effect on equipment important to safety. Changing the process by which procedures are reviewed and approved cannot in itself create the possibility of a new or different kind of accident. Furthermore, a documented safety review, utilizing screening criteria, will be performed for all nuclear safety related procedures and procedure changes. The proposed change establishes detailed controls while allowing PORC to spend more time on safety significant issues.

The proposed change to the PORC Membership requirements would not create the possibility of a new or different kind of accident from any previously evaluated since no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

The miscellaneous administrative changes not related to the procedure review and approval or the PORC Membership requirements cannot create the possibility of an accident because they do not affect operations, equipment or any safety-related activity.

3. Involve a significant reduction in the margin of safety.

The proposed amendment does not involve a significant reduction in the margin of safety because a program controlled by Administrative Procedures using designated technical reviewers approved by the Department Managers will be in place to review new procedures and procedure changes. A 10 CFR 50.59 screening of each new procedure and permanent procedure change will be performed by a qualified safety reviewer and PORC will continue to review 10 CFR 50.59 Safety and Environmental Impact Evaluations associated with procedures and procedure changes. Cross-disciplinary reviews will be conducted as appropriate. Thus the margin of safety will be maintained by implementing the new procedure review and approval process.

The proposed change to the PORC Membership requirements would not involve a significant reduction in the margin of safety since the level and quality of PORC review will be maintained and there will not be an adverse change to the collective educational background and work experience of PORC. There will not be an adverse loss of PORC effectiveness as a result of this change. The PORC quorum is currently composed of five members including up to two designated alternates and a Chairman. This composition is not changed by the proposed changes.

procedures are being proposed. The changes are administrative and will not have any direct effect on equipment important to safety. Changing the process by which procedures are reviewed and approved cannot in itself create the possibility of a new or different kind of accident. Furthermore, a documented safety review, utilizing screening criteria, will be performed for all nuclear safety related procedures and procedure changes. The proposed change establishes detailed controls while allowing PORC to spend more time on safety significant issues.

The proposed change to the PORC Membership requirements would not create the possibility of a new or different kind of accident from any previously evaluated since no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

The miscellaneous administrative changes not related to the procedure review and approval or the PORC Membership requirements cannot create the possibility of an accident because they do not affect operations, equipment or any safety-related activity.

3. Involve a significant reduction in the margin of safety.

The proposed amendment does not involve a significant reduction in the margin of safety because a program controlled by Administrative Procedures using designated technical reviewers approved by the Department Managers will be in place to review new procedures and procedure changes. A 10 CFR 50.59 screening of each new procedure and permanent procedure change will be performed by a qualified safety reviewer and PORC will continue to review 10 CFR 50.59 Safety and Environmental Impact Evaluations associated with procedures and procedure changes. Cross-disciplinary reviews will be conducted as appropriate. Thus the margin of safety will be maintained by implementing the new procedure review and approval process.

The proposed change to the PORC Membership requirements would not involve a significant reduction in the margin of safety since the level and quality of PORC review will be maintained and there will not be an adverse change to the collective educational background and work experience of PORC. There will not be an adverse loss of PORC effectiveness as a result of this change. The PORC quorum is currently composed of five members including up to two designated alternates and a Chairman. This composition is not changed by the proposed changes.

The miscellaneous administrative changes not related to the procedure review and approval process or PORC Membership program cannot reduce any margin of safety because they do not affect any safety-related activity or equipment. These changes increase the probability that the Technical Specifications are correctly interpreted by clarifying information.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Michael L. Boyle.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment requests: February 18, 1994, as supplemented by letter dated April 6, 1994 for Salem Unit 1; and March 28, 1994 for Salem Unit 2.

Description of amendment request: The proposed change to Salem Unit 1 Technical Specifications (TS) replaces the main feedwater control and control bypass valves with the main feedwater stop check valves for the Containment Isolation Function. The proposed change to Salem Unit 2 TS adds a footnote to the 21–24 BF22 (main feedwater stop check valves) on Table 3.6–1, "Containment Isolation valves." This note identifies those containment isolation valves that are not subject to 10 CFR 50 Appendix J, Type C leakage testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Do not involve a significant increase in the probability or consequence of an accident previously evaluated.

The Salem Unit 1 main feedwater stop check valves provide the same isolation function presently accomplished by the main feedwater control and control bypass valves, without reliance on an actuation signal. Positive closure is assured during all postulated accident scenarios, through remote-manual controls in the main control room. These valves satisfy the requirements of GDC 57 for Containment Isolation.

A previous amendment request for Salem Unit 2 neglected to designate the main feedwater stop check valves as exempt from Type C leakage testing. That request was subsequently approved as Salem Unit 2 Amendment 128. The amended Technical Specifications are now inconsistent with the Salem Updated Final Safety Analysis Report, which correctly shows that these valves are exempt from Type C leakage testing. Valve functionality and operation are not affected by this change.

Therefore, it may be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Salem Unit 1 main feedwater stop check valves were originally intended to perform the Containment Isolation Function. The only changes to the original plant design were the addition of motor operators and the upgrading of associated controls to safety-related. These changes bring the stop check valves into compliances with GDC 57 requirements, and ensure positive valve closure during all postulated accident scenarios. As stated above, a previous amendment request for Salem Unit 2 neglected to designate the main feedwater stop check valves as exempt from Type C leakage testing. The Salem Updated Final Safety Analysis Report correctly shows that these valves are exempt from Type C leakage testing. Valve functionality and operation are not affected by these changes.

The changes do not involve modifications to plant equipment or operation. Therefore, no new or different accident can be created by these changes.

3. Do not involve a significant reduction in a margin of safety.

Check valves provide inherent isolation from reverse flow conditions. Stop check valves provide increased safety due to the positive closure feature. Motor operators with remote-manual closure capability, allow positive closure from the main control room during all postulated accident scenarios. These features ensure that an adequate margin of safety is maintained.

Additionally, feedwater isolation, utilizing the main feedwater control and control bypass valves, occurs through Reactor Trip and/or Engineered Safety Features actuation. This feature is unaffected by the proposed changes and redundant to the stop check valves for Containment Isolation. There are no modifications to plant equipment or operation involved. Feedwater system operation during normal and accident conditions remains the same.

Therefore, it may be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Charles L. Miller.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: May 13, 1994, as supplemented June 24, 1994.

Description of amendment request: The proposed amendment would revise the Ginna Station Technical Specifications (TSs) Section 6.0 "Administrative Controls," to be consistent with the criteria contained in the NRC Final Policy Statement of Technical Specifications Improvements for Nuclear Power Reactors, and NUREG–1431 "Standard Technical Specifications, Westinghouse Plants," September 1993. The proposed amendment would also relocate to other programs and documents, several TS requirements in accordance with this criteria.

The May 13, 1994, request supersedes the request of March 23, 1992, published in the Federal Register on November 25, 1992 (57 FR 55589).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes are consistent with the Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors and NUREG–1431 and have therefore, been previously evaluated by the NRC. Implementation of these changes is expected to result in a significant human factors improvement and enable RG&E [Rochester Gas & Electric] and the NRC to focus on the most important requirements without any reduction in safety. The changes which do not duplicate NRC guidance in NUREG–1431 are currently addressed by existing technical specifications and regulations, the Ginna Station license, plant procedures, or the QA [Quality Assurance] program.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The Administrative Controls section contains those requirements that are not covered by other technical specifications which are considered necessary to assure safe operation of the facility. The majority of changes are consistent with the Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors and NUREG–1431 and have therefore, been previously evaluated by the NRC. [* * *].

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. All requirements removed from technical specifications are relocated to other programs and documents. These alternative programs and documents are controlled by existing regulations which provide a more appropriate vehicle for addressing changes and compliance. There were no administrative control requirements which were removed from technical specifications and not addressed by other regulations. Therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: Walter R. Butler.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: June 28, 1994 (TS 94–09).

Description of amendment request: The proposed amendment would revise the Sequoyah Nuclear Plant Unit 2 Technical Specifications (TS) surveillance requirements, bases, and a Limiting Condition For Operation to incorporate alternate steam generator tube plugging criteria at tube support plate intersections. The proposed changes would be implemented for Fuel Cycle 7 only and would affect: (1) TS 4.4.5.2.c.2 to address bobbin probe inspections; (2) TS 4.4.5.3.d to address future inspections of tubes where the interim criteria is used; (3) TS 4.4.5.4.a.6 to address application of the interim criteria for indications found within the thickness of the tube support plate; (4) TS 4.4.5.4.a.10 to address application of the tube plugging alternate criteria and evaluation of indications; (5) TS 4.4.5.5.d and 4.4.5.5.e to address reporting requirements and information to be reported to the Commission regarding application of the criteria; (6) TS 3.4.6.2.c to reduce the allowable reactor coolant system total primary-to-secondary leakage through all steam generators from 1 gallon per minute to 600 gallons per day and from any one steam generator from 500 gallons per day to 150 gallons per day; and (7) Bases 3/4.4.5 and 3/4.4.6.2 to reflect the new primary-to-secondary leakage limits and add a reference.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed TS change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free-span tubing (no tube support plate restraint) at room temperature conditions shows burst pressures in excess of 500 pounds per square inch (psi) for indications of outer-diameter stress corrosion cracking with voltage measurements as high as 19 volts. Burst testing performed on intersections pulled from SQN with up to a 1.9-volt indication shows measured burst pressure in excess of 6,600 psi at room temperature. Burst testing performed on pulled tubes from other plants with up to 7.5-volt indications shows burst pressures in excess of 6,300 psi at room temperatures. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the safety-factor requirements of NRC Regulatory Guide (RG) 1.121.

Tube burst criteria are inherently satisfied during normal operating conditions because of the proximity of the tube support plate (TSP). Test data indicates that tube burst cannot occur within the TSP, even for tubes that have 100 percent throughwall electrodischarge machining notches, 0.75-inch long, provided that the TSP is adjacent to the notched area. Since tube-to-tube support plate proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics that maintain a margin of safety of 1.43 times the bounding faulted condition steam line break (SLB) pressure differential. During a postulated SLB, the TSP has the potential to deflect during blowdown following a main SLB, thereby uncovering the TSP intersections.

Based on the existing database, the RG 1.121 criterion requiring maintenance of a safety factor of 1.43 times the SLB pressure differential on tube burst is satisfied by 7/8-inch-diameter tubing with bobbin coil indications with signal amplitudes less than 8.82 volts, regardless of the indicated depth measurement. A 2.0-volt plugging criterion (resulting in a projected end-of-cycle (EOC) voltage) compares favorably with the 8.82-volt structural limit,considering the extremely slow apparent voltage growth rates and few numbers of indications at SQN. Using the established methodology of RG 1.121, the structural limit is reduced by allowances for uncertainty and growth to develop a beginning of cycle (BOC) repair limit that would preclude indications at EOC conditions that exceed the structural limit. The nondestructive examination (NDE) uncertainty component is 20.5 percent, and is based on the Electric Power Research Institute (EPRI) alternate repair criteria (ARC).

Because of the few number of indications at SQN, the EPRI methodology of applying a growth

measurements as high as 19 volts. Burst testing performed on intersections pulled from SQN with up to a 1.9-volt indication shows measured burst pressure in excess of 6,600 psi at room temperature. Burst testing performed on pulled tubes from other plants with up to 7.5-volt indications shows burst pressures in excess of 6,300 psi at room temperatures. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the safety-factor requirements of NRC Regulatory Guide (RG) 1.121.

Tube burst criteria are inherently satisfied during normal operating conditions because of the proximity of the tube support plate (TSP). Test data indicates that tube burst cannot occur within the TSP, even for tubes that have 100 percent throughwall electrodischarge machining notches, 0.75-inch long, provided that the TSP is adjacent to the notched area. Since tube-to-tube support plate proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics that maintain a margin of safety of 1.43 times the bounding faulted condition steam line break (SLB) pressure differential. During a postulated SLB, the TSP has the potential to deflect during blowdown following a main SLB, thereby uncovering the TSP intersections.

Based on the existing database, the RG 1.121 criterion requiring maintenance of a safety factor of 1.43 times the SLB pressure differential on tube burst is satisfied by 7/8-inch-diameter tubing with bobbin coil indications with signal amplitudes less than 8.82 volts, regardless of the indicated depth measurement. A 2.0-volt plugging criterion (resulting in a projected end-of-cycle (EOC) voltage) compares favorably with the 8.82-volt structural limit,considering the extremely slow apparent voltage growth rates and few numbers of indications at SQN. Using the established methodology of RG 1.121, the structural limit is reduced by allowances for uncertainty and growth to develop a beginning of cycle (BOC) repair limit that would preclude indications at EOC conditions that exceed the structural limit. The nondestructive examination (NDE) uncertainty component is 20.5 percent, and is based on the Electric Power Research Institute (EPRI) alternate repair criteria (ARC).

Because of the few number of indications at SQN, the EPRI methodology of applying a growth component of 35 percent per effective full power year (EFPY) will be used. Near-term operating cycles at SQN are expected to be bounded by 1.23 years, therefore, a 43 percent growth component is appropriate. When these allowances are added to the BOC interim plugging criteria of 2.0 volts in a deterministic bounding EOC voltage of approximately 3.26 volts for Cycle 7, operation can be established. A 5.56-volt deterministic safety margin exists (8.82 structural limit—3.26-volt EOC equal 5.56-volt margin).

For the voltage/burst correlation, the EOC structural limit is supported by a voltage of 8.82 volts. Using this structural limit of 8.82 volts, a BOC maximum allowable repair limit can be established using the guidance of RG 1.121. The BOC maximum allowable repair limit should not permit the existence of EOC indications that exceed the 8.82-volt structural limit. By adding NDE uncertainty allowances and an allowance for crack growth to the repair limit, the structural limit can be validated. Therefore, the maximum allowable BOC repair limit (RL) based on the structural limit of 8.82 volts can be represented by the expression:

$RL + (0.205 \times RL) + (0.43 \times RL) = 8.82$ volts, or,

the maximum allowable BOC repair limit can be expressed as,

$RL = 8.82\text{-volt structural limit}/1.64 = 5.4$ volts.

It is reasonable that this RL (5.4 volts) could be applied for interim plugging criteria (IPC) implementation to repair bobbin indications greater than 2.0 volts independent of rotating pancake coil (RPC) confirmation of the indication. Conservatively, an upper limit of 3.6 volts will be used to assess tube integrity for those bobbin indications that are above 2.0 volts but do not have confirming RPC calls. This 3.6-volt upper limit for nonconfirmed RPC calls is consistent with other recently approved IPC programs.

The conservatism of the growth allowance used to develop the repair limit is shown by the most recent SQN eddy current data. Two tubes plugged in Unit 1 during the last outage had less than one volt of growth over the past five operating cycles. Only one tube in Unit 2 required repair because of outer-diameter stress corrosion (ODSCC) at the TSP intersections.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated main SLB outside of containment, but upstream of the main steam isolation valve (MSIV), represents the most limiting radiological condition relative to the IPC. In support of implementation of the IPC, it will determine whether the distribution of cracking indications at the TSP intersections at the end of Cycle 7 for Unit 2 is projected to be such that primary-to-secondary leakage would result in site boundary doses within a small fraction of the 10 CFR 100 guidelines. A separate analysis has determined this allowable SLB leakage limit to be 4.3 gallons per minute (gpm) in the faulted loop. This limit uses the TS reactor coolant system (RCS) Iodine-131 activity level of 1.0 microcuries per gram dose equivalent Iodine-131 and the recommended Iodine-131 transient spiking values consistent with NUREG–0800. The projected SLB leakage rate calculation methodology prescribed in Section 3.3 of draft NUREG–1477 is used to calculate EOC leakage. Because of the relatively low number of indications at SQN, it is expected that the actual leakage values will be far less than this limit. Additionally, the current Iodine-131 levels at SQN range from about 25 to 100 times less than the TS limit of 1.0.

Application of the criteria requires the projection of postulated SLB leakage, based on the projected EOC voltage distribution for Cycle 7. Projected EOC voltage distribution is developed using the most recent EOC eddy current results and a voltage measurement uncertainty. Data indicates that a threshold voltage of 2.8 volts would result in throughwall cracks long enough to leak at SLB condition. Draft NUREG–1477 requires that all indications to which the IPC are applied must be included in the voltage projection. Tube pull results from another plant with 7/8-inch tubing with a substantial voltage growth database have shown that tube wall degradation of greater than 40 percent throughwall was readily detectable either by the bobbin or RPC probe. The tube with the maximum throughwall penetration of 56 percent (42 average) had a voltage of 2.02 volts. This indication also was the largest recorded bobbin voltage from the EOC eddy current data. Based on the SQN pulled tube and industry pulled tube data supporting a lower threshold for SLB leakage of 2.8 volts, inclusion of all IPC intersections in the leakage model is quite conservative. The ODSCC occurring at SQN is in its earliest stages of development. The conservative bounding growth estimations to be applied to the expected small number of indications for the upcoming inspection should result in very small levels of predicted SLB leakage. Historically, SQN has not identified ODSCC as a

contributor to operational leakage. The current leakage level at SQN is less than 1.0 gallon per day (gpd).

In order to assess the sensitivity of an indication's BOC voltage to EOC leakage potential, a Monte Carlo simulation was performed for a 2.0-volt BOC indication. The maximum EOC voltage (at 99.8 percent cumulative probability) was found to be 4.8 volts. Using NUREG–1477 and EPRI leakage models, the leakage component from an indication of this magnitude is 0.12 and 0.028 gpm, respectively.

Therefore, as implementation of the 2.0-volt IPC criterion during Cycle 7 in Unit 2 does not adversely affect steam generator (S/G) tube integrity and implementation will be shown to result in acceptable dose consequences, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Implementation of the proposed S/G tube IPC criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism that could result in an accident outside of the region of the TSP elevations: no ODSCC is occurring outside the thickness of the TSP. Neither a single or multiple tube rupture event would be expected in a S/G in which the plugging criteria have been applied (during all plant conditions).

TVA will implement a maximum leakage rate limit of 150 gpd per S/G to help preclude the potential for excessive leakage during all plant conditions. The SQN TS limits on primary-to-secondary leakage at operating conditions are to be a maximum of 0.42 gpm (600 gpd) for all S/Gs, or, a maximum of 150 gpd for any one S/G. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown is based upon leak-before-break considerations to detect a free-span crack before potential tube rupture during faulted plant conditions. The 150-gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of 1.43 against bursting at faulted conditions maximum pressure differential. A voltage amplitude of 8.82 volts for typical ODSCC corresponds to meeting this tube burst requirement at a lower 95 percent prediction limit on the burst correlation coupled with 95/95 lower tolerance limit material properties. Alternate crack morphologies can correspond to 8.82 volts so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the "longest permissible crack" for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at 1.42 times the SLB pressure differential and the SLB pressure differential alone are approximately 0.57 inch and 0.84 inch, respectively. A leak rate of 150 gpd will provide for detection of 0.4-inch-long cracks at nominal leak rates and 0.6-inch-long cracks at the lower 95 percent confidence level leak rates. Since tube burst is precluded during normal operation because of the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during SLB conditions, the leakage from the maximum permissible crack must preclude tube burst at SLB conditions. Thus, the 150-gpd limit provides for plant shutdown before reaching critical crack lengths for SLB conditions. Additionally, this leak-before-break evaluation assumes that the entire crevice area is uncovered during blowdown. Partial uncover will provide benefit to the burst capacity of the intersection.

As S/G tube integrity upon implementation of the 2.0-volt IPC continues to be maintained through in-service inspection and primary-to-secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety. The use of the voltage based bobbin probe interim TSP elevation plugging criteria at SQN is demonstrated to maintain S/G tube integrity commensurate with the criteria of RG 1.121. RG 1.121 describes a method acceptable to the NRC staff for meeting General Design Criteria (GDC) 14, 15, 31, and 32 by reducing the probability or the consequences of S/G tube rupture. This is accomplished by determining the limiting conditions of degradation of S/G tubing, as established by in-service inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst-case conditions, the occurrence of ODSCC at the TSP elevations is not expected to lead to a S/G tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the TSP elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

In addressing the combined effects of loss-of-coolant accident (LOCA), plus safe shutdown earthquake (SSE) on the S/G component (as required by GDC 2), it has been determined that tube collapse may occur in the S/Gs at some plants. This is the case as the TSP may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate because of the combined effects of the LOCA rarefraction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with S/G tube collapse. First, the collapse of S/G tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA, which in turn, may potentially increase the peak clad temperature (PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Consequently, since the leak-before-break methodology is applicable to the SQN reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes either the accumulator line break or the pressurizer surge line break. LOCA loads for the primary pipe breaks were used to bound the conditions at SQN for smaller breaks. The results of the analysis using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in S/G tube collapse or significant deformation. The LOCA plus SSE tube collapse evaluation performed for another plant with Series 51 S/Gs using bounding input conditions (large-break loadings), is considered applicable to SQN.

Addressing RG 1.83 considerations, implementation of the bobbin probe voltage based interim tube plugging criteria of 2.0 volt is supplemented by: (1) enhanced eddy current inspection guidelines to provide consistency in voltage normalization, (2) a 100 percent eddy current inspection sample size at the TSP elevations, and (3) RPC inspection requirements for the larger indications left in service to characterize the principal degradation as ODSCC.

As noted previously, implementation of the TSP elevation plugging criteria will decrease the number of tubes that must be repaired. The installation of S/G tube plugs reduces the RCS flow margin. Thus, implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: February 14, 1994, as supplemented by letter dated May 17, 1994.

Brief description of amendments: The proposed changes revise the Technical Specifications to allow power ascension above 50% rated thermal power (RTP) with a quadrant power tilt ratio greater than 1.02 provided the assumptions of affected safety analyses are confirmed to be satisfied.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not increase the probability or consequences of a previously evaluated accident.

The proposed changes affect the Action Statements which are to be taken when it is discovered that the Quadrant Power Tilt Ratio (QPTR) is greater than the value specified in the Limiting Condition for Operation. The frequency for determining QPTR has been

eddy current inspection sample size at the TSP elevations, and (3) RPC inspection requirements for the larger indications left in service to characterize the principal degradation as ODSCC.

As noted previously, implementation of the TSP elevation plugging criteria will decrease the number of tubes that must be repaired. The installation of S/G tube plugs reduces the RCS flow margin. Thus, implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: February 14, 1994, as supplemented by letter dated May 17, 1994.

Brief description of amendments: The proposed changes revise the Technical Specifications to allow power ascension above 50% rated thermal power (RTP) with a quadrant power tilt ratio greater than 1.02 provided the assumptions of affected safety analyses are confirmed to be satisfied.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not increase the probability or consequences of a previously evaluated accident.

The proposed changes affect the Action Statements which are to be taken when it is discovered that the Quadrant Power Tilt Ratio (QPTR) is greater than the value specified in the Limiting Condition for Operation. The frequency for determining QPTR has been reduced. The requirements to reduce power to below 50% RTP and to reduce the power range flux trip setpoints based on QPTR have been replaced by similar requirements based on $F_Q(Z)$ and $F^N_{\Delta H}$. The requirement to correct the cause prior to increasing power and verifying QPTR hourly is replaced with specific requirements to verify that $F_Q(Z)$ and $F^N_{\Delta H}$ are within their limits, the safety analyses remain valid, and the excore detectors are re-normalized to indicate zero quadrant power tilt. If the proposed actions are not met, a requirement to reduce power to ≤50% RTP within 4 hours was added.

The only item above that could affect the probability of an accident is the removal of the requirement to reduce the power range neutron flux setpoints. However, because the Protection Cabinets must be entered to make these adjustments, eliminating the requirement to adjust these setpoints actually slightly reduces the probability of an inadvertent plant trip. Thus, the changes do not increase the probability of an accident previously evaluated and may reduce the probability of a plant trip.

The proposed Action Statements, require that accident analyses be re-evaluated to confirm that the results remain valid within 24 hours. Prior to completion of this confirmation, the plant is not permitted to operate at a power level higher than is permitted under the current specification. If the re-evaluation of accident analyses cannot confirm that the plant is within the accident analyses results, the required actions are similar to the requirements of the current specification. Although higher initial power levels generally increase accident consequences, once the accident analyses are confirmed to be valid, the consequences of any accident will be within analyzed acceptable limits. Thus, the higher plant power levels permitted by the proposed changes do not significantly increase the consequences of any accidents previously evaluated.

The proposed specification does not require a reduction in Power Range Neutron Flux—High reactor trip setpoints during the time the appropriate peaking factor surveillances are being performed. The interval during which the proposed specification permits operation without reduced setpoints (and unverified peaking factors) is longer than is permitted under the current specification. However, the consequences of any accident which could occur during this interval are the same as for the conditions prior to resetting the trip setpoints in the current specification. Therefore the change does not increase the consequences of any accident which could occur during this interval. The impact of the extended interval is addressed in response to question (3) below.

Based on the discussions above, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated accident.

The proposed changes do not involve any hardware changes. System operation has not been changed to create any new system configurations which were not previously allowed. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The limits for the parameters of concern (QPTR, $F_Q(Z)$ and $F^N_{\Delta H}$) remain unchanged. The acceptance criteria for analyzed events also remain the same. The margin of safety established by the LCOs [Limiting Conditions for Operation] remains unchanged.

The only impact of the proposed changes is an increase in the allowed duration of operation above 50% RTP without a reduction in the Power Range Neutron Flux—High trip setpoint. This could potentially affect a margin of safety by allowing operation at conditions which are potentially outside the assumptions of the accident analyses for an interval longer than is permitted under the current specification. The impact on safety margin is not considered to be significant, however, because: the allowed interval is still small (24 hours versus the current 6 hours); the likelihood of an accident during the interval is small; and, it is considered unlikely that the peaking factors would be outside their limits without outer indications.

Thus, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at

Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, DC 20036.

NRC Project Director: William D. Beckner.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 28, 1994.

Brief description of amendments: The proposed amendment would revise Section 6 of the Technical Specifications (TS) by deleting a reference to a no longer used loss of coolant accident (LOCA) topical report and adding a reference to a new steamline break methodology topical report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve an increase in the probability or consequences of a previously evaluated accident.

The NRC assures that appropriate core operating limits are established by requiring that they be determined using NRC approved analytical methods. These approved methods are described in the documents listed in TS Section 6.9.1.6b. TU Electric has developed the analysis capability to evaluate the core operating limits. The methodologies used by TU Electric have been documented in a series of TU Electric submittals which were reviewed and approved by the NRC. This TS revision adds the topical report which describes the TU Electric steamline break analysis methodology to TS Section 6.9.1.6b.

Also, the Westinghouse report which describes the methodology previously used in the analysis of Unit 1 large break LOCAs is no longer used and is being deleted. Large break LOCA analyses for Unit 1 are now performed using NRC approved TU Electric methodology.

Because the revisions are administrative only, they cannot directly affect the probability or the consequences of any previously evaluated accident. The steamline break analysis methodology is part of a group [of] methodologies which are authorized by the technical specifications to be used to verify that each reload cycle continues to satisfy the core operating limits. The core operating limits are set to assure that relevant plant parameters are maintained such that potential accidents are within the bounds of the accident analyses. Because the applicable limits of the safety analyses will be verified to be satisfied using authorized methodologies, there is no significant impact on the consequences of an accident previously evaluated. In addition, since the core operating limits do not affect any accident initiators, the change has no impact on the probability of any accident previously analyzed.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve a change in the permissible analysis methodologies for determining core operating limits. As such, the changes play an important role in the analysis of postulated accidents but none of the changes affect plant hardware or the operation of plant systems in a way that could initiate an accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

In reviewing and approving the methods used for safety analyses, the NRC has approved the safety analysis limits which establish the margin of safety to be maintained. Satisfaction of event-specific acceptance criteria ensures that the approved safety analysis limits are met and thus provides the margin of safety. The methodology being added to the TS demonstrates, in a conservative manner, that the event acceptance criteria are satisfied. Therefore, including this method in the TS does not change the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, DC 20036.

NRC Project Director: William D. Beckner.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: June 9, 1994.

Description of amendment request: The proposed change would revise the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA–1&2). Specifically, the proposed change would relocate the TS tables of the response time limits for the Reactor Trip System (RTS) and the Engineered Safety Feature Actuation System (ESFAS) to station-controlled documents.

On December 29, 1993, the NRC issued Generic Letter 93–08 titled "Relocation of Technical Specification Tables of Instrument Response Time Limits." This generic letter provides guidance for preparing a proposed license amendment to relocate the tables of response time limits for the RTS and the Engineered ESFAS instruments from TS to station-controlled documents.

The RTS and the ESFAS provides the signals needed to actuate the safety equipment necessary to mitigate accidents and transients. Consistent with Generic Letter 93–08 the licensee is requesting license amendments for NA–1&2 to relocate the RTS and ESFAS tables of instrument response time limits from TS to station-controlled documents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station in accordance with the proposed Technical Specification[s] changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The Reactor Trip System and the Engineered Safety Features Actuation System provide the signals needed to actuate the safety equipment necessary to mitigate accidents and transients. The proposed changes relocate the RTS and ESFAS instrument response time limits from the Technical Specifications to station controlled documents but will not change the operability or surveillance requirements for these instruments. With these proposed changes, revisions to the response times for these instruments can be made pursuant to 10 CFR 50.59 without Nuclear Regulatory Commission approval unless the revision involves an unreviewed safety question.

The proposed changes will not change any accident initiators or the consequences of any analyzed accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes relocate the RTS and ESFAS instrument response time limits from the Technical Specifications to station controlled documents but will not change the functions of these instruments. The proposed change does not represent a change in the configuration or operation of the plant. No new hardware is being added to the plant as part of the proposed changes. The Technical Specifications will continue to require the same operability and surveillance requirements to be met for these instruments. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not affect the functions of the RTS or the ESFAS instruments. Relocating the response time limits will not alter the operability or the surveillance requirements of these instruments. The administrative change control provisions for plant procedures written pursuant to 10 CFR 50.59 are adequate to control revisions to the response time limits. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

approval unless the revision involves an unreviewed safety question.

The proposed changes will not change any accident initiators or the consequences of any analyzed accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes relocate the RTS and ESFAS instrument response time limits from the Technical Specifications to station controlled documents but will not change the functions of these instruments. The proposed change does not represent a change in the configuration or operation of the plant. No new hardware is being added to the plant as part of the proposed changes. The Technical Specifications will continue to require the same operability and surveillance requirements to be met for these instruments. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not affect the functions of the RTS or the ESFAS instruments. Relocating the response time limits will not alter the operability or the surveillance requirements of these instruments. The administrative change control provisions for plant procedures written pursuant to 10 CFR 50.59 are adequate to control revisions to the response time limits. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: June 9, 1994.

Description of amendment request: The proposed changes to the Technical Specifications include: (1) modification of the high head charging pumps seal cooling subsystem, (2) restructuring of the Chemical and Volume Control System and Safety Injection System Specifications, (3) relocation of certain specification requirements within existing specifications, (4) specification of a minimum boric acid solution temperature in lieu of heat tracing channel operability, and (5) minor wording changes which are administrative in nature for consistency in terminology, capitalization of defined terms and clarification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The modifications to the charging pumps and elimination of the charging pump component cooling subsystem do not increase the probability of occurrence of any accident or malfunction previously evaluated in the safety analysis report. The charging pump modifications utilize a passively designed process flow cooling arrangement to reduce exposure, improve reliability, and improve operability. The charging pump modifications will not decrease the pumps ability or the associated subsystems ability to perform their design function.

The restructuring of the Chemical and Volume Control System and Safety Injection System specifications on a subsystem basis continues to ensure that the reactor can be made subcritical from any operating condition and provide sufficient shutdown margin to preclude inadvertent criticality when in the shutdown condition. The Safety Injection System subsystems continue to maintain sufficient boration capability to mitigate reactivity transients within the design limits associated with postulated accident conditions. The Safety Injection System subsystems ensure that sufficient emergency core cooling capability will be available in the event of a LOCA [loss-of-coolant accident] assuming the loss of one subsystem through any single failure consideration. Either subsystem operating in conjunction with the accumulators remains capable of supplying sufficient core cooling to limit the peak cladding temperatures within acceptable limits in accordance with the loss-of-coolant accident analyses.

The Chemical and Volume Control System remains capable of achieving Cold Shutdown of both units during any operating conditions in accordance with the safety analysis with a minimum specified solution temperature of 112 degrees F. Heat tracing is not required for operability of the Safety Injection System nor does it affect the ability of the Safety Injection System to mitigate the consequences of any postulated accident identified in the safety analysis.

The changes ensure that the refueling water storage tank remains capable of providing a sufficient supply of borated water for injection by the emergency core cooling system in the event of a LOCA. The limits specified for refueling water storage tank volume and boron concentration continue to ensure that sufficient solution is available within containment for recirculation cooling flow to the core, and that the reactor will remain subcritical in Cold Shutdown consistent with the LOCA analyses.

The specified allowed outage time of 72 hours for an inoperable Chemical and Volume Control System subsystem or Safety Injection System subsystem is reasonable for the repair of affected components and is consistent with NRC Memorandum, "Recommended Interim Revisions to LCO's for ECCS Components," dated December 1, 1975, and NUREG–1431, Standard Technical Specifications for Westinghouse Pressurized Water Reactors. A reliability analysis (reference NRC memo above) has shown that the impact of having one subsystem inoperable is sufficiently small to justify continued operation for 72 hours. Engineering evaluation of the proposed changes determined that they are bounded by existing safety analyses. Furthermore, the proposed changes do not increase the allowed outage times to achieve Cold Shutdown presently specified in the Technical Specifications.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The passively designed once-through process flow cooling arrangement for the charging pumps' seals are recommended by the pump manufacturer with the pump seal manufacturer's concurrence and result in no decrease in the pumps ability to perform their safety function. Our Engineering evaluation has determined that the affected systems ability to mitigate the consequences of any accident as described in the safety analyses is not reduced. The restructuring and relocation of specifications has not reduced any limiting condition for operation or surveillance specification requirements. Changes in allowed outage times are consistent with NUREG–0452, NUREG–1431, or Generic Letter 93–05 and our accident analyses. Consequently, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in a margin of safety.

The modifications to the charging pumps result in improved reliability and improved operability of the CVCS [chemical and volume control system] and SI [safety injection] subsystems. Our Engineering evaluation of the manufacturer's proposed modification and the pump seal manufacturer's concurrence with the modification, have determined this modification to be acceptable with no reduction in the pump's safety-related function. The charging pump modification does not reduce the margin of safety in any part of Technical Specifications or the accident analyses.

The restructuring of the Chemical and Volume Control System specifications continue to ensure that the reactor can be made subcritical from any operating condition and provide sufficient shutdown margin to preclude inadvertent criticality when in the shutdown condition. The Chemical Volume and Control System remains capable of achieving Cold Shutdown of both units during any operating conditions in accordance with the safety analysis with a minimum specified solution temperature of 112 degrees F. The revised allowed outage times for the Safety Injection System subsystems do not impact the margin of safety * * * in the Technical Specifications bases or the accident analyses.

The Safety Injection System subsystems continue to maintain sufficient boration capability to mitigate reactivity transients within the design limits associated with postulated accident conditions described within the safety analysis report. The Safety Injection System subsystems ensure that sufficient emergency core cooling capability will be available in the event of a LOCA assuming the loss of one subsystem through any single failure consideration. Either subsystem operating in conjunction with the accumulators remains capable of supplying sufficient core cooling to limit the peak cladding temperatures within acceptable limits in accordance with the loss-of-coolant accident analyses.

The changes ensure that the refueling water storage tank remains capable of providing a sufficient supply of borated water for injection by the emergency core cooling system in the event of a LOCA. The limits specified for refueling water storage tank volume and boron concentration continue to ensure that sufficient solution is available within containment for recirculation cooling flow to the core, and that the reactor will remain subcritical in Cold Shutdown consistent with the LOCA analyses. Consequently, the proposed change to Technical Specifications does not involve a significant reduction [in] the margin of safety within the accident analyses.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 17, 1994.

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 3.3.c by separating the Internal Containment Spray (ICS) and Spray Additive Systems into two distinct specifications. The proposed amendment would also remove the requirement that for a spray train to be operable, a spray pump suction flow path from the additive tank is needed. In addition, the allowable out of service time for the Spray Additive System would be increased from 48 hours to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased nor decreased by these TS changes. These TS changes will not impact the function or method of operation of plant equipment. Thus, there is not a significant increase in the probability of a previously analyzed accident due to these changes. No systems, equipment, or components are affected by the proposed changes. Thus, the consequences of the malfunction of equipment important to safety previously evaluated in the Updated Safety Analysis Report (USAR) are not increased by these changes.

The proposed changes have no impact on accident initiators or plant equipment, and thus, do not affect the probabilities or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations. Since these changes do not contribute to accident initiation, they do not produce a new accident scenario or produce a new type of equipment malfunction. Also, these changes do not alter any existing accident scenarios; they do not affect equipment or its operation, and thus, do not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety.

Operation of the facility in accordance with the proposed TS would not involve a significant reduction in a margin of safety. The proposed changes do not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by these proposed changes. Extending the time the Spray Additive System may be out of service from 48 hours to 72 hours and removing the requirement to have a spray pump suction flow path from the additive tank for a spray train to be operable is consistent with STS. The STS only require that the spray system be capable of taking suction from the refueling water storage tank and the containment sump.

The Containment Spray System would still be available and would remove some iodine from the containment atmosphere in the event of a Design Basis Accident. The 72 hour completion time takes into account the Containment Spray System redundant flow path capabilities and the low probability of the worst case Design Basis Accident occurring during this period.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701–1497.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: March 29, 1994.

Description of amendment request: The proposed amendment would modify Point Beach Nuclear Plant Technical Specification (TS) 15.3.2, "Chemical and Volume Control System," by eliminating the necessity for high concentration boric acid and removing the operability requirements for the associated heat tracing. The basis for Section 15.3.2 and applicable surveillances in Table 15.4.1–2 would also be revised to support the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of this facility under the proposed Technical Specifications change will not create a significant increase in the probability or consequences of an accident previously evaluated.

Reduced boron concentration in the boric acid storage tank (BAST) is offset by increasing the volume of boric acid

STS only require that the spray system be capable of taking suction from the refueling water storage tank and the containment sump.

The Containment Spray System would still be available and would remove some iodine from the containment atmosphere in the event of a Design Basis Accident. The 72 hour completion time takes into account the Containment Spray System redundant flow path capabilities and the low probability of the worst case Design Basis Accident occurring during this period.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701–1497.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: March 29, 1994.

Description of amendment request: The proposed amendment would modify Point Beach Nuclear Plant Technical Specification (TS) 15.3.2, "Chemical and Volume Control System," by eliminating the necessity for high concentration boric acid and removing the operability requirements for the associated heat tracing. The basis for Section 15.3.2 and applicable surveillances in Table 15.4.1–2 would also be revised to support the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of this facility under the proposed Technical Specifications change will not create a significant increase in the probability or consequences of an accident previously evaluated.

Reduced boron concentration in the boric acid storage tank (BAST) is offset by increasing the volume of boric acid solution that must be contained in the tanks. The heat tracing requirements are used to ensure that the dissolved boric acid is maintained in solution and available for injection into the RCS to adjust core reactivity throughout core life and to meet GDC requirements. Chemical analyses of boron concentrations of ≤4.0 weight percent have shown that the boric acid does not crystallize at temperatures above 57 °F. Ambient temperatures in the areas of the primary auxiliary building where these components are located will normally remain above this temperature. Hence, heat tracing will no longer be needed for boric acid concentrations with corresponding solubility temperatures less than ambient temperatures. The proposed Technical Specifications requirements for boron concentration, volume, and temperature of the BASTs and boration paths ensure that the capability to inject boric acid is maintained. Since the components (and their function) necessary to achieve a safe shutdown have not been changed or modified, this change does not significantly increase the probability or consequences of any accident previously evaluated.

The proposed changes to the boric acid system Technical Specifications requirements for the chemical and volume control system (CVCS) do not affect the requirements for the emergency core cooling system (ECCS). The original design of the high head safety injection (SI) system used the BASTs as its initial suction source. Westinghouse WCAP–12602, "Report For The Reduction of SI System Boron Concentration," and a 10 CFR 50.59 Safety Evaluation Report performed by Wisconsin Electric justifies the design change to use the refueling water storage tank (RWST) as the initial suction source of SI fluid rather than the BAST. The affected FSAR Chapter 14 accident analyses include the Loss of Coolant Accident (LOCA) events and the Steamline Break (SLB) events. The LOCA events are affected with respect to the large-break post-LOCA long-term core cooling subcriticality requirement. The SLB events are affected with respect to core integrity. The events were analyzed assuming the elimination of the logic which automatically opened the valves in the flow path from the BASTs to the SI pumps upon the receipt of a safety injection signal. The results show that we remain within the acceptance criteria of the aforementioned FSAR Chapter 14 accident analyses. Therefore, the proposed changes will not create a significant increase in the probability or consequences of a[n] accident previously evaluated.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The reactivity control function of the boron in the CVCS and SI systems is not being changed. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The intent of the proposed Technical Specifications is to ensure that two independent flow paths from the borated water source(s) (BASTs and/or RWST) to the reactor coolant system are maintained whenever a unit is taken critical. This requires that sufficient quantities of boric acid be stored in the tanks, and that this borated water can be delivered to the reactor coolant system when required. Although we presently require diverse sources of borated water (BAST *and* RWST), the proposed reduction in diversity will be offset by the significant increase in reliability of the boric acid system due to operation with lower boric acid concentrations and, hence, a much lower probability of boron precipitation and system "freeze-up." Reducing the boric acid concentration in the BASTs has been compensated for by increasing the required volume of boric acid.

The proposed Technical Specifications requirements for boric acid concentration and volume include the additional specification of minimum temperature that must be maintained to assure boric acid solubility. The minimum temperature requirement is more appropriate than the requirement for heat tracing because it is a more precise means of verifying and assuring solubility. Therefore, the proposed boric acid concentration table, which includes the volume and temperature requirements, is an appropriate substitute for the heat tracing requirements. Although the heat tracing requirement is being eliminated, the boric acid heat tracing system will be available during our transition to the lower boric acid concentration to assist in maintaining boric acid system temperature if necessary. Since our analyses have shown that the existing FSAR Chapter 14 accident analyses remain bounded under the proposed specifications, the margin of safety for the plant is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 26, 1994.

Description of amendment request: Point Beach Nuclear Plant is installing two additional emergency diesel generators and reconfigure portions of the 4160 Volt emergency electrical power system. The proposed amendment would revise the Point Beach Nuclear Plant Technical Specifications (TS) to establish the requirements for the electrical systems at Point Beach such that the TS will provide the appropriate guidence for all interim configurations and the final configuration. The majority of changes are incorporated in TS Section 15.3.7, "Auxiliary Electrical Systems." Other Sections modified are 15.3.0, "General Considerations," 15.3.14, "Fire Protection System," and 15.4.6, "Emergency Power System Periodic Tests."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) Operation of this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated.

The Point Beach Nuclear Plant Final Safety Analysis Report (PBNP FSAR) shows that the original emergency diesel generators and the associated support systems and connections do not cause or affect the probability of any accident evaluated in the PBNP FSAR. The additional emergency diesel generators, the associated support systems and connections, and reconfiguration of the emergency AC power system will not change this. The emergency AC power system does not initiate any accident previously evaluated in the PBNP FSAR.

The limiting conditions for operation and allowable outage times proposed in this license amendment request are consistent with the current requirements in the PBNP Technical Specifications. The proposed change in the required emergency diesel generator (EDG) inspection interval, from annually to the time as recommended by the EDG manufacturer, will continue to maintain the operability and reliability of the EDGs. Therefore, the probability of occurrence of an accident previously evaluated in the FSAR is not increased by the proposed Technical Specifications.

The consequences of the accidents previously evaluated in the PBNP FSAR are determined by the results of analyses that are based on initial conditions of the plant, the type of accident, transient response of the plant, and the operation and failure of equipment and systems. The new emergency diesel generator installation will meet the requirements for emergency power sources for PBNP.

General Design Criterion (GDC) 39 as described in the PBNP FSAR, states, "An emergency power source shall be provided and designed with adequate independency, redundancy, capacity, and testability to permit the functioning of the engineered safety features and protection systems required to avoid undue risk to the health and safety of the public. This power source shall provide this capacity assuming a failure of a single component."

The limiting conditions for operation and allowable outage times proposed in this license amendment request are consistent with the requirements in GDC–39 and the current Technical Specifications for PBNP. Therefore, this proposed license amendment does not affect the consequences of any accident previously evaluated in the PBNP FSAR, because the factors that are used to determine the consequences of accidents are not being changed.

(2) Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The PBNP FSAR shows that the original emergency diesel generators and the associated support systems and connections do not cause any accident evaluated in the PBNP FSAR. The additional emergency diesel generators, the associated support systems and connections, and reconfiguration of the emergency AC power system will not change this, because the new emergency diesel generators will meet the requirements for emergency power sources for PBNP. Additionally, these changes do not introduce any type of system or component malfunction that would create the possibility of a new or different kind of accident from any accident previously evaluated.

The limiting conditions for operation and allowable outage times proposed in this license amendment request are consistent with the requirements in GDC–39 and the current Technical Specifications for PBNP. The proposed change in the required EDG inspection interval, from annually to the time as recommended by the EDG manufacturer, will continue to maintain the operability and reliability of the EDGs.

Therefore, the proposed Technical Specification changes for the addition of two diesel generators and changing the required EDG inspection interval do not create the possibility of an accident of a different type than any previously evaluated in the FSAR.

(3) Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The new diesel generator and emergency AC power system reconfiguration design and installation are being and have been performed to meet or exceed the original system design requirements. The emergency diesel generators provide power to the safety equipment that operates to maintain the margins of safety. The new diesel generators and emergency AC power configuration will continue to satisfy this requirement.

The limiting conditions for operation and allowable outage times proposed in this license amendment request are consistent with the requirements in GDC–39 and the current Technical Specifications for PBNP. The proposed change in the required EDG inspection interval, from annually to the time as recommended by the EDG manufacturer, will continue to maintain the operability and reliability of the EDGs.

Therefore, the proposed Technical Specification changes for the addition of two diesel generators and changing the required EDG inspection interval do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 26, 1994.

Description of amendment request: The proposed amendment would revise the Point Beach Nuclear Plant Technical Specifications (TSs) by extending the operation of both units with the current heatup and cooldown limit curves to 23.6 effective full power years (EFPY). The proposal also would revise the bases for TS Section 15.3.1.B, "Pressure/Temperature Limits," to reflect the methodology for the curve compilation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

We have evaluated these proposed amendments in accordance with the requirements of 10 CFR 50.91(a), against the standards of 10 CFR 50.92, and have determined that these modifications will not result in a significant hazards consideration. A proposed amendment will not involve a significant hazards consideration if it does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed heatup and cooldown curves are identical to the current heatup and cooldown curves except for their projected expiration. The curves were calculated using the most limiting weld and fluence information from either unit as input to the acceptable methodology of Regulatory Guide 1.99, Revision 2. The consequences or probability of a previously evaluated accident will, therefore, not significantly be increased or a margin of safety reduced.

The underlying purpose of these curves is to define an acceptable operating range of pressures and temperatures to protect the reactor vessels against non-ductile failure. Since this purpose remains unchanged,

Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 26, 1994.

Description of amendment request: The proposed amendment would revise the Point Beach Nuclear Plant Technical Specifications (TSs) by extending the operation of both units with the current heatup and cooldown limit curves to 23.6 effective full power years (EFPY). The proposal also would revise the bases for TS Section 15.3.1.B, "Pressure/Temperature Limits," to reflect the methodology for the curve compilation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

We have evaluated these proposed amendments in accordance with the requirements of 10 CFR 50.91(a), against the standards of 10 CFR 50.92, and have determined that these modifications will not result in a significant hazards consideration. A proposed amendment will not involve a significant hazards consideration if it does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed heatup and cooldown curves are identical to the current heatup and cooldown curves except for their projected expiration. The curves were calculated using the most limiting weld and fluence information from either unit as input to the acceptable methodology of Regulatory Guide 1.99, Revision 2. The consequences or probability of a previously evaluated accident will, therefore, not significantly be increased or a margin of safety reduced.

The underlying purpose of these curves is to define an acceptable operating range of pressures and temperatures to protect the reactor vessels against non-ductile failure. Since this purpose remains unchanged, a new or different kind of accident cannot be created.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 20, 1994.

Brief description of amendment request: The proposed amendment would modify Technical Specification 3/4.4.3.1, "Reactor Coolant Leakage—Leakage Detection Systems," to permit continued plant operation with inoperable drywell floor drain sump flow rate monitoring instrumentation. Continued plant operation would be permitted until the first time the plant is required to be brought to COLD SHUTDOWN after July 10, 1994.

Date of publication of individual notice in Federal Register: June 22, 1994 (59 FR 32247).

Expiration date of individual notice: July 22, 1994.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: October 19, 1993.

Brief description of amendment: This amendment removes the scram and Group I isolation valve closure functions associated with the main steamline radiation monitors.

Date of issuance: June 21, 1994.

Effective date: June 21, 1994.

Amendment No.: 154.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 24, 1993 (58 FR 62151).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: March 7, 1994, as superseded by your submittal dated March 24, 1994.

Brief description of amendments: The amendments change Technical Specification (TS) 4.6.1.2, "Containment Leakage," by removing the specific requirement that containment Type A leak testing be performed at 40± 10 month intervals. The revised TS now references Appendix J to 10 CFR 50 as governing the performance of Type A testing.

Date of issuance: June 30, 1994.

Effective date: June 30, 1994.

Amendment Nos.: 62, 62, 52, and 52.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 28, 1994 (59 FR 22002).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 30, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Bock Island County, Illinois

Date of application for amendments: March 11, 1994.

Brief description of amendments: The proposed amendments revise Technical Specification 3/4.7.D, "Primary Containment Isolation Valves" by adding check valves installed in the reference leg instrumentation line to the Limiting Condition for Operation (LCO) statement of the Technical Specifications. The valves have been installed as part of the modifications required to meet NRC Bulletin 93–03, "Resolution of Issues Related to Reactor Vessel Water Level Instrumentation in BWRs," dated May 28, 1993.

Date of issuance: July 6, 1994.

Effective date: For Dresden, Unit 2: the license amendment is effective as of the date of its issuance; to be implemented when the modifications are complete and prior to restart from any cold shutdown after June 30, 1994, or restart from the 14th refuel outage, which ever is first. For Dresden, Unit 3: the license amendment is effective as of the date of its issuance; to be implemented within 30 days. For Quad Cities, Unit 1: the license amendment is effective as of the date of its issuance; to be implemented within 30 days. For Quad Cities, Unit 2: the license amendment is effective as of the date of its issuance; to be implemented prior to restart following the 13th refueling outage.

Amendment Nos.: For Dresden, Unit 2: Amendment No. 128; for Dresden, Unit 3: Amendment No. 122; for Quad Cities, Unit 1: Amendment No. 148; for Quad Cities, Unit 2: Amendment No. 144.

Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 13, 1994 (59 FR 17593).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 6, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Dresden, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: January 28, 1994.

Brief description of amendment: The amendment modifies Surveillance Requirement 4.6.1.2.d, regarding the Appendix J testing requirements for the purge supply and exhaust valves, and removes surveillance requirement 4.6.1.2.f regarding the purge and exhaust valves.

Date of issuance: June 27, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 173.

Facility Operating License No. DPR–61. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 25, 1994 (59 FR 27051).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50–003 and Docket No. 50–247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of application for amendments: September 29, 1993.

Brief description of amendments: The amendments revise the Technical Specifications (TSs) Administrative sections dealing with the administrative control of keys for doors preventing unauthorized access to High Radiation Areas in which the intensity of radiation exceeds 1000 mrem/hr. Specifically, the amendments revise TS Section 4.1.8.1.b for Indian Point Generating Unit No. 1 and TS Section 6.12.1.b for Indian Point Generating Unit No. 2 to add the Radiation Protection Manager as one of the two positions which can administratively control the keys.

Date of issuance: July 7, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 43 and 171.

Facility Operating License Nos. DPR–5 and DRP–26: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 24, 1993 (58 FR 62153).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 29, 1994, as corrected April 26, 1994.

Brief description of amendment: The amendment revises the surveillance requirements for scram discharge volume vent and drain valves and isolation actuation instrumentation and modifies the required actions and surveillance requirements for the emergency diesel generators to reduce testing during power operation. These changes are in accordance with guidance contained in Generic Letter (GL) 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994, with full implementation within 45 days.

Amendment No.: 99.

Facility Operating License No. NPF–43. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 25, 1994 (59 FR 27053).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of application for amendment: April 26, 1994.

Brief description of amendment: The amendment revises the limiting conditions for operation and surveillance requirements in the Technical Specifications (TS) to delete reference to instrument response time limit tables for the reactor protection system, instrument actuation system and emergency core cooling system. These tables are also being moved from the TS to the updated final safety analysis report.

Date of issuance: June 29, 1994.

Effective date: June 29, 1994, with full implementation within 60 days.

Amendment No.: 100.

Facility Operating License No. NPF–43. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 25, 1994 (59 FR 27053).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Brief description of amendment: The amendment revises the surveillance requirements for scram discharge volume vent and drain valves and isolation actuation instrumentation and modifies the required actions and surveillance requirements for the emergency diesel generators to reduce testing during power operation. These changes are in accordance with guidance contained in Generic Letter (GL) 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994, with full implementation within 45 days.

Amendment No.: 99.

Facility Operating License No. NPF–43. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 25, 1994 (59 FR 27053).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of application for amendment: April 26, 1994.

Brief description of amendment: The amendment revises the limiting conditions for operation and surveillance requirements in the Technical Specifications (TS) to delete reference to instrument response time limit tables for the reactor protection system, instrument actuation system and emergency core cooling system. These tables are also being moved from the TS to the updated final safety analysis report.

Date of issuance: June 29, 1994.

Effective date: June 29, 1994, with full implementation within 60 days.

Amendment No.: 100.

Facility Operating License No. NPF–43. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 25, 1994 (59 FR 27053).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 30, 1994.

Brief description of amendments: The amendments revise Technical Specification Table 4.3–3 to allow the analog channel operational test interval for radiation monitoring instrumentation to be increased from monthly to quarterly and are consistent with the guidance in Generic Letter 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation."

Date of issuance: July 5, 1994.

Effective date: July 5, 1994.

Amendment Nos.: 121/115.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 25, 1994 (59 FR 27054).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 5, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: April 19, 1994.

Brief description of amendments: These amendments change the surveillance interval specified for air or smoke flow test through the containment spray header from once per 5 years to once per 10 years.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment Nos. 165 and 159.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 25, 1994 (59 FR 27055).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: November 25, 1992 as supplemented by letter dated March 4, 1994.

Brief description of amendments: These amendments implement Generic Letter 90–06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,' Pursuant to 10 CFR 50.54(f).".

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment Nos. 166 and 160.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 14, 1993 (58 FR 19478).

The licensee's letter of March 4, 1994 did not change the no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: June 12, 1991.

Brief description of amendment: The amendment revises the plant Technical Specifications to clarify the setpoint ranges for the pressurizer power-operated relief valve and provides action statements to be satisfied when setpoint ranges are not met.

Date of issuance: June 30, 1994.

Effective date: As of its date of issuance to be implemented within 60 days.

Amendment No.: 186.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 10, 1991 (56 FR 31435).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania,

Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: June 20, 1994.

Brief description of amendment: The amendment revised the Technical Specifications by modifying a footnote to Technical Specification 3/4.4.3.1, "Reactor Coolant System Leakage—Leakage Detection Systems," to permit continued plant operations with inoperable drywell floor drain sump flow monitoring instrumentation until the first time the plant is required to be brought to cold shutdown after July 10, 1994.

Date of issuance: July 8, 1994.

Effective date: July 8, 1994.

Amendment No.: 90.

Facility Operating License No. NPF–62. The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 32247 dated June 22, 1994). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by July 22, 1994, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 8, 1994.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: February 10, 1992, as supplemented April 14, 1994.

Brief description of amendment: The amendment removes two tables from the Technical Specifications which list reactor trip system instrumentation response times and engineered safety features actuation system instrumentation response times. These tables will be placed in the Millstone 3 Technical Requirements Manual.

Date of issuance: June 28, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 91.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27058).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 23, 1994.

Brief description of amendment: The amendment modifies Technical Specification Table 3.7–6, "Area Temperature Monitoring," by creating two zones for the main steam valve building (MSVB) and increasing the maximum normal excursion temperature limit for this area from 120 °F to 140 °F. Technical Specification Table 3.7–6 currently identifies the entire MSVB with a temperature limit of 120 °F.

Date of issuance: June 29, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 92.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 28, 1994 (59 FR 22009).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: January 4, 1994, as supplemented March 28, 1994.

Brief description of amendment: The amendment modifies Section 3.11, Reactor Fuel Assemblies, by removing information concerning the analytical method to determine average planar linear heat generation rate and adding a reference to the Core Operating Limits Report. In Section 6.7, Reporting Requirements, the listing of approved analytical methods for developing the Core Operating Limits Report is revised and the specific version of the analytical methods used to develop the report is identified. Also, the Bases for Section 3.11 concerning the calculational methodology for minimum critical power ratio was revised.

Date of issuance: June 30, 1994.

Effective date: June 30, 1994.

Amendment No.: 88.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 2, 1994 (59 FR 10011).

The March 28, 1994, letter provided clarifying information that was within the scope of the March 2, 1994, notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: July 7, 1993. (Reference HBL–93–041)

Brief description of amendment: This amendment modified the Technical Specifications incorporated in Facility Operating License No. DPR–7 as Appendix A by revising technical specification VII.H.3, "Semiannual Radioactive Effluent Release Report," to extend the reporting period from semiannually to annually and to change the report submission date from 60 days after January 1 and July 1 of each year to before April 1 of each year.

Date of issuance: June 30, 1994.

Effective date: This license amendment is effective as of the date of its issuance and must be fully implemented no later than 30 days from the date of issuance.

Amendment No.: 26.

Facility Operating License No. DPR–7: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 19, 1994 (59 FR 2869).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Humboldt County Library, 636 F Street, Eureka, California 95501.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: September 1, 1992 and October 15, 1992 as supplemented by letters dated October 30, 1992, March 16, 1993, June 10, 1993, July 28, 1993, September 10, 1993, April 29, 1994, June 2, 1994, June 9, 1994, and June 15, 1994.

Brief description of amendments: The amendments extend the interval for certain Technical Specifications surveillance requirements to 24 months with an additional 25-percent grace period.

Date of issuance: June 28, 1994.

Effective date: As of 30 days after the date of issuance.

Amendment Nos.: 71 and 34.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 16, 1992 (57 FR 42778) and October 28, 1992 (57 FR 48823).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: May 6, 1994, as supplemented by letter dated June 3, 1994.

Brief description of amendment: This amendment revised TS Section 5.5.3, "Capacity," to facilitate an interim increase in the Unit 1 Spent Fuel Pool from 2040 fuel assemblies to 2500 fuel assemblies.

Date of issuance: June 30, 1994.

implemented no later than 30 days from the date of issuance.

Amendment No.: 26.

Facility Operating License No. DPR–7: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 19, 1994 (59 FR 2869).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Humboldt County Library, 636 F Street, Eureka, California 95501.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: September 1, 1992 and October 15, 1992 as supplemented by letters dated October 30, 1992, March 16, 1993, June 10, 1993, July 28, 1993, September 10, 1993, April 29, 1994, June 2, 1994, June 9, 1994, and June 15, 1994.

Brief description of amendments: The amendments extend the interval for certain Technical Specifications surveillance requirements to 24 months with an additional 25-percent grace period.

Date of issuance: June 28, 1994.

Effective date: As of 30 days after the date of issuance.

Amendment Nos.: 71 and 34.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 16, 1992 (57 FR 42778) and October 28, 1992 (57 FR 48823).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: May 6, 1994, as supplemented by letter dated June 3, 1994.

Brief description of amendment: This amendment revised TS Section 5.5.3, "Capacity," to facilitate an interim increase in the Unit 1 Spent Fuel Pool from 2040 fuel assemblies to 2500 fuel assemblies.

Date of issuance: June 30, 1994.

Effective date: June 30, 1994.

Amendment No.: 72.

Facility Operating License No. NPF–39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 25, 1994 (59 FR 27063).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 22, 1993.

Brief description of amendment: The amendment removes the reference to American Society for Testing and Materials (ASTM) Standard D 270–65 from Technical Specification Surveillance Requirement 4.12A.1.i. ASTM D 270–65, which specifies procedures to draw a representative fuel oil sample, has been superseded and is no longer in effect. The amendment will allow ASTM D 4057–88 or subsequent industry standards to be used for the sampling of diesel fire pump fuel oil.

Date of issuance: June 27, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 214.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4944).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: January 31, 1994.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.8, "Miscellaneous Radioactive Materials Sources," to adopt the Limiting Conditions for Operation of Section 3/4.7.6, "Sealed Source Contamination," in NUREG–0123, "Standard Technical Specifications for General Electric Boiling Water Reactors (BWR/5)." The amendment also reformats TSs 3.8 and 4.8 to make them consistent with the remainder of the TSs.

Date of issuance: June 27, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 215.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10014).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Dates of application for amendments: July 19, 1993 (TS–334).

Brief description of amendments: The amendments remove the Technical Specifications (TS) addressing reactor coolant chemistry limits and associated sampling requirements that are applicable when the reactor is defueled. The TS requirements being removed have been conservatively incorporated into the BFN chemistry program as elements of a licensee-controlled procedure. Any future changes to these chemistry requirements must be evaluated in accordance with 10 CFR 50.59 to determine whether the changes involve an unreviewed safety question. A change involving an unreviewed safety question would require a license amendment and NRC review and approval prior to implementation. In addition, changes to the reactor coolant chemistry TS, applicable when fuel is in the reactor, are included in these amendments to provide clarification and to ensure consistency in requirements among units.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment Nos.: 208, 224 and 181.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Technical Specifications.

Dates of initial notice in **Federal Register:** November 10, 1993 (58 FR 59756).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–259 and 50–296, Browns Ferry Nuclear Plant, Units 1 and 3, Limestone County, Alabama

Date of application for amendment: July 2, 1992 (TS 314)

Brief description of amendments: The amendments revise requirements associated with Residual Heat Removal valve pressure switches in the Browns Ferry Units 1 and 3 Technical Specifications.

Date of issuance: June 30, 1994.

Effective date: June 30, 1994.

Amendment Nos.: 209 and 182.

Facility Operating License Nos. DPR–33 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 28, 1992 (57 FR 48826).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: February 28, 1992.

Brief description of amendment: The amendment revises Technical Specification Table 3.3.7.1–1 and Table 4.3.7.1–1 to remove the area criticality monitors for the fuel preparation pool, spent fuel pool, and the upper containment pools and their associated action statements, notes, and surveillance requirements. Editorial changes were made as required in the tables.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment No. 62.

Facility Operating License No. NPF–58 This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 24, 1992 (57 FR 28205).

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated June 13, 1994, and in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: January 31, 1994.

Brief description of amendment: This amendment revises TS 3/4.1.1.2 to permit the reduction of boron concentration of water within the reactor coolant system (RCS), subject to certain restrictions, when the reactor is in Mode 5 and RCS flow is less than 2800 gpm. This amendment is related to Amendment No. 176, which was issued by the NRC on December 8, 1992, and incorporated a similar revision for Mode 6 operation.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment No. 188.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 16, 1994 (59 FR 12369).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: February 14, 1994.

Brief description of amendments: The amendments revise the technical specifications by replacing the requirements for reporting radiological effluents from semiannual to annual, and the report due dates from 60 days after January 1 and July 1 to prior to May 1. The changes are consistent with the requirements for reporting radioactive effluent releases specified in 10 CFR 50.36a.

Date of issuance: June 1, 1994.

Effective date: June 1, 1994, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 25; Unit 2—Amendment No. 11.

Facility Operating License Nos. NPF–87 and NPF–89. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 28, 1994 (59 FR 22016).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 1, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 17, 1994.

Brief description of amendment: The amendment modifies the administrative section of the technical specifications (TS) to reflect management and organizational changes at the Washington Public Power Supply System (the licensee) for operation of the WNP–2 facility. The proposed changes would (1) modify the reporting responsibility of the quality assurance organization from the Managing Director to the Assistant Managing Director, Operations (AMDO), and (2) modify the appointment authority for the Corporate Nuclear Safety Review Board (CNSRB) from the Managing Director to the AMDO. These changes are proposed to reflect the current designation of the AMDO as the licensee's designated official with corporate responsibility for overall plant nuclear safety and as the direct report for the CNSRB.

In addition, the proposed change would (1) delete the specific requirement for health physics/chemistry program procedures, (2) modify the titles of two positions on the Plant Operations Committee (POC) to reflect revised organizational titles, and (3) delete the requirement that the CNSRB Executive Secretary be designated from the CNSRB membership.

The staff denies the licensee's request to change CNSRB membership requirements from nine personnel to a minimum of nine personnel.

Date of issuance: June 28, 1994.

Effective date: 5 days after the date of issuance.

Amendment No.: 126.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 13, 1994 (59 FR 17609).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

Public comments on proposed no significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: May 5, 1994.

Brief description of amendment: The amendment changes equipment numbering on three primary containment isolation valves.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment No.: 127.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 12, 1994 (59 FR 24762).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas.

Date of amendment request: February 24, 1994.

Brief description of amendment: The amendment revises Technical Specification 3.9.4, Containment Building Penetrations, to allow the use of temporary alternate closure methods for the emergency personnel escape lock and containment wall penetrations, during core alterations or movement of irradiated fuel within the containment.

Date of issuance: July 7, 1994.

Effective date: July 7, 1994, to be implemented within 30 days of issuance.

Amendment No.: 74.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 13, 1994 (59 FR 17610).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1994.

Date of initial notice in **Federal Register**: April 13, 1994 (59 FR 17609).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

Public comments on proposed no significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: May 5, 1994.

Brief description of amendment: The amendment changes equipment numbering on three primary containment isolation valves.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment No.: 127.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 12, 1994 (59 FR 24762).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas.

Date of amendment request: February 24, 1994.

Brief description of amendment: The amendment revises Technical Specification 3.9.4, Containment Building Penetrations, to allow the use of temporary alternate closure methods for the emergency personnel escape lock and containment wall penetrations, during core alterations or movement of irradiated fuel within the containment.

Date of issuance: July 7, 1994.

Effective date: July 7, 1994, to be implemented within 30 days of issuance.

Amendment No.: 74.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 13, 1994 (59 FR 17610).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 13th day of July 1994.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17503 Filed 7–19–94; 8:45 am]

BILLING CODE 7590–01–P

Connecticut Yankee Atomic Power Company; Issuance of Amendment to Facility Operating License

[Docket No. 50–213]

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 174 to Facility Operating License No. DPR–61 issued to Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment revises Technical Specification Section 3/4.5.1, "ECCS Subsystems—Tavg Greater Than or Equal to 350°F," by adding a new ACTION Statement "a" which increases the allowed outage time for the centrifugal charging pumps from 72 hours to 7 days. In addition, the ACTION statements are relettered to reflect the addition of the new ACTION statement for the centrifugal charging pumps.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 1, 1993 (58 FR 63405). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (59 FR 34452).

For further details with respect to the action see (1) the application for amendment dated November 2, 1993, as supplemented February 28, and May 31, 1994, (2) Amendment No. 174 to License No. DPR–61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 11th day of July 1994.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17610 Filed 7–19–94; 8:45 am]

BILLING CODE 7590–01–M

PEACE CORPS

Notice of Submission of Public Use Form Review Request to the Office of Management and Budget

Summary: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to approve the use of the Withdrawal Information Card through July 31, 1997. The card's completed voluntarily by those who withdraw their Peace Corps application. The card provides information concerning the reasons for withdrawing from the application process as well as suggestions as to how the Volunteer Delivery System could be improved. This information is necessary for Peace Corps to evaluate the effectiveness of the Volunteer Delivery System. The information provided will not/cannot be used to identify specific individuals who have filled out the card.

Information about the form:

Agency Address: Peace Corps, 1990 K St. N.W., Washington, D.C. 20526

Title: Withdrawal Information Card

Type of Request: Approval of Use

Frequency of Collection: On occasion

General Description of Respondent: Individuals who have withdrawn their Peace Corps Application.

Estimated Number of Responses: 650 annually
Estimated Hours for Respondents To Furnish Information: Ten (10) minutes each.
Respondents Obligation To Reply: Voluntary
Comments: Comments on this form request should be directed to Jeff Hill, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

A copy of the form may be obtained from Paul Davis, Office of Placement, Peace Corps, 1990 K St., N.W., Washington, D.C. 20526. Mr. Davis may be called at 202–606–3112. This is not a request to which 44 U.S.C. 3504(b) applies. This notice is used in Washington, D.C. on July 15, 1994.

Dated: July 15, 1994.

Felice Pelosi,

Director, Research, Reference and Distribution, Office of Administrative Services.

[FR Doc. 94–17666 Filed 7–19–94; 8:45 am]

BILLING CODE 6051–01–M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Home Team Limited Partnership

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from the Home Team Limited Partnership of an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for exemption from the requirement was published on April 26, 1994 (59 FR 21791). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The nonconfidential portions of the request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, at the address below, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Karen L. Morris, Attorney, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; telephone 202–326–4127 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered to result in a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sale rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1). Such questions are to be decided by the plan sponsor in the first instance, and any disputes are to be resolved in arbitration. 29 U.S.C. 1382, 1399, 1401.

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (29 CFR 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. section 552(b)(4) (the Freedom of Information Act).

Under section 2643.3 of the regulation, the PBGC shall approve a request for a variance if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of the ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Decision

On April 26, 1994 (59 FR 21791), the PBGC published a request from The Home Team Limited Partnership ("the Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its October 4, 1993 purchase of The Orioles, Inc. ("the Seller"). No comments were received in response to the notice.

According to the request, the Major League Baseball Players Benefit Plan (the "Plan") was established and is maintained pursuant to a collective bargaining agreement between professional major league baseball teams and the Major League Baseball Players Association. The major league clubs have established the Major Leagues Central Fund (the "Central Fund") pursuant to the "Major League Agreement in re Major Leagues Central Fund." Under this agreement, contributions to the Plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's contribution obligation arising under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games, (ii) radio and television revenues from World Series, League Championships, intradivision play-offs and All-Star games, and (iii) certain other radio and television revenues from regular and exhibition games, including those from foreign broadcasts.

The Buyer and the Seller entered into an Asset Purchase Agreement for the Buyer to purchase substantially all of the assets and assume substantially all of the liabilities of the Seller relating to the business employing the employees covered by the Plan. The final closing of the transaction occurred on October 4, 1993. Under the Asset Purchase Agreement, the Buyer assumed the obligation to contribute to the Plan for substantially the same number of contribution base units as the Seller was obligated to contribute to the Plan. The Seller has agreed to be secondarily liable for any withdrawal liability should the Buyer withdraw from the Plan within five years of the sale.

The amount of the bond/escrow that would be required under section 4204(a)(1)(B) of ERISA beginning as of April 1, 1994, is $1,401,449 (the annual contribution the Seller made for the Plan year preceding the Plan year in which the sale of assets occurred). The estimated amount of the withdrawal liability that the Seller would incur if not for Section 4204 is $7,672,235.

In support of the waiver request the Buyer stated that:

The Plan is funded directly from the Revenues which are paid from the Central Fund directly to the [Plan's] Trust without first passing through the hands of any of the Employers. Therefore, the Plan enjoys a substantial degree of security * * * A change in ownership of an Employer does not affect the obligation * * * to fund the Plan * * *. Nor does a change in ownership in any way create the possibility that there will be difficulty in collecting Plan contributions due from any new Employer.

maintained pursuant to a collective bargaining agreement between professional major league baseball teams and the Major League Baseball Players Association. The major league clubs have established the Major Leagues Central Fund (the "Central Fund") pursuant to the "Major League Agreement in re Major Leagues Central Fund." Under this agreement, contributions to the Plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's contribution obligation arising under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games, (ii) radio and television revenues from World Series, League Championships, intradivision play-offs and All-Star games, and (iii) certain other radio and television revenues from regular and exhibition games, including those from foreign broadcasts.

The Buyer and the Seller entered into an Asset Purchase Agreement for the Buyer to purchase substantially all of the assets and assume substantially all of the liabilities of the Seller relating to the business employing the employees covered by the Plan. The final closing of the transaction occurred on October 4, 1993. Under the Asset Purchase Agreement, the Buyer assumed the obligation to contribute to the Plan for substantially the same number of contribution base units as the Seller was obligated to contribute to the Plan. The Seller has agreed to be secondarily liable for any withdrawal liability should the Buyer withdraw from the Plan within five years of the sale.

The amount of the bond/escrow that would be required under section 4204(a)(1)(B) of ERISA beginning as of April 1, 1994, is $1,401,449 (the annual contribution the Seller made for the Plan year preceding the Plan year in which the sale of assets occurred). The estimated amount of the withdrawal liability that the Seller would incur if not for Section 4204 is $7,672,235.

In support of the waiver request the Buyer stated that:

> The Plan is funded directly from the Revenues which are paid from the Central Fund directly to the [Plan's] Trust without first passing through the hands of any of the Employers. Therefore, the Plan enjoys a substantial degree of security * * * A change in ownership of an Employer does not affect the obligation * * * to fund the Plan * * *. Nor does a change in ownership in any way create the possibility that there will be difficulty in collecting Plan contributions due from any new Employer.

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, D.C., on this 14th day of July 1994.

Martin Slate,

Executive Director.

[FR Doc. 94–17640 Filed 7–19–94; 8:45 am]

BILLING CODE 7708–01–M

Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer That Contributes to a Multiemployer Plan; San Francisco Baseball Associates, L.P.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from the San Francisco Baseball Associates, L.P. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Benefit Plan. A notice of the request of exemption from the requirement was published on April 14, 1994 (59 FR 17803). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The non-confidential portions of the request for an exemption, public comments, and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: D. Bruce Campbell, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; telephone 202–326–4125 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1) (A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute:

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204

indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) (the Freedom of Information Act).

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption. The PBGC received one comment on the request for exemption.

The Decision

On April 14, 1994 (59 FR 17803), the PBGC published a notice of the pendency of a request by the San Francisco Baseball Associates, L.P. (the "Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the San Francisco Giants (the "Seller"). According to the request, the Major League Baseball Players Benefit Plan (the "Plan") was established and is maintained pursuant to a collective bargaining agreement between the professional major league baseball teams (the "Clubs") and the Major League Baseball Players Association (the "Players Association").

The Clubs have established the Major Leagues Central Fund (the "Central Fund") pursuant to the "Major League Agreement in re Major Leagues Central Fund." Under this agreement, contributions to the Plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's pension liability under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games, (ii) radio and television revenues from World Series, League Championships, intradivision play-offs and All-Star games, and (iii) certain other radio and television revenues, including revenues from foreign broadcasts, of regular and exhibition games. During the 1992 Plan year, approximately $34.1 million was paid into the Plan on behalf of all major league clubs. In that year revenues to the Central Fund exceeded expenses, including contribution to the Plan, by approximately $354 million.

Effective November 20, 1992, the Buyer and Seller entered into an Asset Sale and Contribution agreement under which the Buyer agreed to purchase substantially all of the assets and assume substantially all of the liabilities of the seller relating to the business of employing employees under the Plan. The contract of sale provides that the Buyer agrees "to contribute to the Plan substantially the same number of contribution base units which the Seller had an obligation to contribute to the Plan." The contract of sale further provides that "[i]f the Buyer thereafter, but prior to the end of the fifth plan year commencing after the closing, partially or completely withdraws from the Plan, the Seller will be secondarily liable for any withdrawal liability it would have had to the Plan * * *." the final closing of the transaction occurred on January 14, 1993. The amount of the bond/escrow that would be required under section 4204 (a)(1)(B) of ERISA is $1,412,077. The estimated amount of the withdrawal liability that the Seller would incur if not for Section 4204 is $4,796,483.

The Comment received by the PBGC suggested that the request for exemption be denied based on the possibility that revenues payable to the Central Fund may not be sufficient to provide contributions to the Plan in the future. In support, the commenter cited an expected decrease in revenues under the terms of a new network television contract, the primary source of revenue for the Central Fund; the possibility of a work stoppage during negotiations to implement a salary cap as part of a new collective bargaining agreement; and diminished fan loyalty and attendance due to high player salaries, inflated ticket prices, poor management, and other factors.

The PBGC notes that the bond/escrow requirement is intended to assure the payment of the Buyer's withdrawal liability if the Buyer withdraws from the Plan in the five plan years following the sale of assets, and the Buyer is unable to pay withdrawal liability that would otherwise have been paid by the Seller had section 4204 not applied to the transaction. The factors cited by the commenter do not substantially affect the Plan's ability to collect withdrawal liability from the Buyer, as compared with the Plan's ability to collect withdrawal liability from the Seller had section 4204 not applied to the transaction. We also note that the Seller remains secondarily liable under section 4204(a)(2) for withdrawal liability, regardless of whether the Buyer receives an exemption from the bond/escrow requirement.

In addition, the Plan's public filings indicate that the Plan is financially sound. The Plan's most recent annual return/report (Form 5500) states that the Plan had approximately $708 million in assets as of the close of the plan year on March 31, 1993. While the plan incurred approximately $63 million in expenses for that plan year, the Plan's investment earnings were nearly $100 million.

Accordingly, based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, DC, on this 14th day of July, 1994.

Martin Slate,

Executive Director.

[FR Doc. 94–17641 Filed 7–19–94; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34371; File No. S7–24–89]

Joint Industry Plan; Order Approving Amendment No. 1 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the American, Boston, Chicago and Philadelphia Stock Exchanges

July 13, 1994.

On July 12, 1994, the National Association of Securities Dealers, Inc., and the American, Boston, Chicago, and Philadelphia Stock Exchanges (collectively, "Participants")[1] submitted to the Commission Amendment No. 1 to a joint transaction reporting plan ("Plan") for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] The Commission is approving the proposed amendment to the Plan and trading pursuant to the Plan on a temporary basis to expire on January 12, 1995.

I. Introduction

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant to a grant of unlisted trading

[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. ("NASD"), and the American Stock Exchange, Inc. ("Amex"), Chicago Stock Exchange, Inc. ("Chx") (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. ("Phlx"), and the Boston Stock Exchange, Inc. ("BSE"), are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as "Nasdaq/NMS") securities listed on the BSE.

[2] *See* letter from T. Grant Callery, Vice President, NASD, to Jonathan G. Katz, Secretary, Commission, dated July 11, 1994 ("1994 Extension Request"). The 1994 Extension Request also requests the Commission to continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1–2 and 11Aa3–1 under the Securities Exchange Act of 1934 ("Act").

[3] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 ("1990 Plan Approval Order").

Issued at Washington, DC, on this 14th day of July, 1994.

Martin Slate,

Executive Director.

[FR Doc. 94–17641 Filed 7–19–94; 8:45 am]

BILLING CODE 7705-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34371; File No. S7–24–89]

Joint Industry Plan; Order Approving Amendment No. 1 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the American, Boston, Chicago and Philadelphia Stock Exchanges

July 13, 1994.

On July 12, 1994, the National Association of Securities Dealers, Inc., and the American, Boston, Chicago, and Philadelphia Stock Exchanges (collectively, "Participants")[1] submitted to the Commission Amendment No. 1 to a joint transaction reporting plan ("Plan") for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] The Commission is approving the proposed amendment to the Plan and trading pursuant to the Plan on a temporary basis to expire on January 12, 1995.

I. Introduction

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant to a grant of unlisted trading privileges ("UTP").[4] The Commission approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Accordingly, the pilot period commenced on July 12, 1993, and was scheduled to expire on July 12, 1994.[5]

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The Participants, however, have not yet come to an agreement concerning revenue sharing for transactions effected pursuant to the Plan. Proposed Amendment No. 1 to the Plan extends this negotiation period for an additional six months. In conjunction with the Plan, on a temporary basis also scheduled to expire on July 12, 1994, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer ("BBO"), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. At the request of the Participants, this order extends these exemptions through July 12, 1995, provided that the Plan continues in effect through that date pursuant to a Commission order.

II. Background

The Securities Acts Amendments of 1975 ("1975 Amendments") directed the Commission to facilitate the development of a national market system for securities, consistent with certain objectives, including "fair competition * * * between exchange markets and markets other than exchange markets." The legislative history of the 1975 Amendments makes clear that many active OTC stocks were expected to be part of the national market system. The 1975 Amendments also authorized the Commission to grant OTC/UTP to exchanges if certain conditions were met. The Commission generally deferred granting exchanges OTC/UTP pending progress on the development of the national market system.

In 1985, however, the Commission noted that since the enactment of the 1975 Amendments, important developments had occurred in the OTC market; these developments led the Commission to reconsider its position on OTC/UTP.[6] The Commission announced in its 1985 OTC/UTP Release its willingness to grant UTP to national securities exchanges in NMS Securities,[7] conditioned in part on the approval of a plan submitted by interested exchanges and the NASD to consolidate and disseminate exchange and OTC quotation data and transaction data in OTC securities upon which UTP is granted.[8] The exchanges and the NASD have been negotiating the terms of a plan, under the oversight of the Commission staff, since that time.

In its 1985 OTC/UTP Release, the Commission also determined that although it was premature to require any specific type of market linkage prior to the initiation of trading, the exchanges must provide OTC market makers direct telephone access to the exchange specialist in UTP securities to facilitate intermarket trading in those securities. The Commission determined to grant OTC/UTP to an exchange only if the exchange provided Nasdaq market makers access to the exchange market in the subject securities to the same extent that Nasdaq market makers provide specialists access to the Nasdaq market maker trading facilities.

In 1985, the Commission also stated that it expected Nasdaq market makers to provide exchange members with fair and efficient access to the OTC market, and that if the Commission became

---

[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. ("NASD"), and the American Stock Exchange, Inc. ("Amex"), Chicago Stock Exchange, Inc. ("Chx") (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. ("Phlx"), and the Boston Stock Exchange, Inc. ("BSE"), are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as "Nasdaq/NMS") securities listed on the BSE.

[2] *See* letter from T. Grant Callery, Vice President, NASD, to Jonathan G. Katz, Secretary, Commission, dated July 11, 1994 ("1994 Extension Request"). The 1994 Extension Request also requests the Commission to continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1–2 and 11Aa3–1 under the Securities Exchange Act of 1934 ("Act").

[3] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 ("1990 Plan Approval Order").

[4] Section 12(f)(2) of the Act permits the Commission to grant UTP to securities traded over-the-counter ("OTC/UTP"), but requires the Commission, prior to such grant, to consider:

> The public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system and [the Commission] shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

For further background on the statutory history of OTC/UTP, *see* Securities Exchange Act Release No. 21498 (November 16, 1984), 49 FR 46156.

[5] *See* letter from David T. Rusoff, Foley & Lardner, to Betsy Prout, Commission, dated May 9, 1994.

[6] *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 ("1985 OTC/UTP Release").

[7] Congress envisioned that National Market System Securities ("NMS Securities") would include those equity securities whose characteristics of size, earnings history, breadth of ownership, and investor interest made them suitable for auction-market trading. *See* Senate Comm. on Banking, Housing & Urb. Affs., Report to Accompany S. 249: Securities Acts Amendments of 1975, S. Rep. No. 75, 94th Cong., 1st Sess. 16 (1975). NMS Securities are designated pursuant to Rule 11Aa2–1, 17 CFR 240.11Ac1–2, adopted in Securities Exchange Act Release No. 16590 (February 19, 1980), 45 FR 12391.

[8] *See* 1985 OTC/UTP Release, *supra* note 6.

aware of any limitation on such access, it would take prompt remedial action. The Commission further noted that it did not believe that a more sophisticated intermarket linkage need be in place during the initial stages of trading OTC/UTP securities, but encouraged the NASD and the exchanges to forge their own initiatives in facilitating computerized intermarket trading linkages and adopting trade-through rules for these securities. The 1985 OTC/UTP Release also conditioned the grant of OTC/UTP on the exchanges not applying their off-board trading restrictions to those securities.

Finally, the Commission stated that it would evaluate trading under the one-year pilot and at the end of the pilot period would determine what further action to take. Because of the potentially significant market structure implications of this new policy, the Commission decided to proceed cautiously by establishing a one-year pilot program under which each exchange requesting UTP would be permitted to trade, on an unlisted basis, up to 25 OTC securities designated as NMS Securities pursuant to Rule 11Aa2–1 under the Act. The Commission stated that it considered this one-year pilot a first step in granting UTP on NMS Securities and that granting UTP on additional NMS Securities might be appropriate if no adverse consequences resulted from the trading of securities under the pilot program.

In 1986, because of protracted negotiations to develop a joint industry plan, the Chx entered into an interim transaction reporting plan ("Interim Plan") with the NASD that was significantly more limited than the Joint Industry Plan. On April 29, 1987, the Commission approved the Chx's application for UTP in 25 NMS securities quoted on the Nasdaq system (generally, "Nasdaq/National Market securities")[9] and simultaneously approved the Interim Plan submitted by the Chx and the NASD.

As discussed more fully below, in 1990, the Commission approved the Plan and the ability for Participants to effect transactions pursuant to the Plan on a one-year pilot basis, to begin when certain enhancements were made to the Nasdaq system and transaction reporting pursuant to the Plan commenced. The Commission also expanded the maximum number of Nasdaq/National Market securities to which a Participant could extend UTP from 25 to 100.

In 1992, the Phlx, prior to the initiation of the Plan pilot, filed with the Commission a proposed rule change to initiate a pilot program to provide for transactions on the Phlx floor in OTC securities pursuant to UTP. The Commission initially approved this pilot program and the accompanying rules for a temporary period ending on December 31, 1993.[10] Thereafter, the Commission extended the Phlx pilot program and the effectiveness of the accompanying Phlx rules through December 31, 1994.[11]

The Chx Interim Plan continued in effect, subject to the 100 security limitation, through July 12, 1993, when trading pursuant to the Plan commenced, thereby superseding the Interim Plan. The Phlx and the Chx, as Participants to the Plan, continue to be limited to extending UTP to a maximum of 100 Nasdaq/National Market securities. The Phlx currently effects transactions in Nasdaq/National Market securities pursuant to the Plan and the Phlx pilot program (*i.e.*, while using the Plan Processor and pursuant to Phlx rules established under the Phlx pilot program).

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in "eligible securities," *i.e.*, NMS Securities traded on an exchange on a listed or UTP basis. The Plan contains various provisions concerning the operation of the Plan, which include: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available, and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy, and Completeness of Transaction Reports; Terms and Conditions of Acess (including the 1985 OTC/UTP Order requirement to ensure direct telephone access between dealers and specialists); Description of Operation of Facility Contemplated by the Plan; the Method and Frequency of Processor Evaluation (providing that the Processor's performance is subject to review by an Operating Committee during the fifth year of the Processor's operation); Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the BBO; Dispute Resolution; Method of Determination and Imposition, and Amount of, Fees and Charges.

The provisions affected by the present submission to the Commission, including proposed Amendment No. 1 to the Plan, and the Participants' request for extensions of exemptive relief granted by the Commission in our 1990 Plan Approval Order, are discussed in more detail below.

III. Discussion

The Participants have submitted to the Commission proposed Amendment No. 1 to the Plan, and have requested continued exemptive relief under certain provisions under the Act.[12] The Commission's approval of Amendment No. 1 and the requests for continued exemptive relief are discussed below. In the 1990 Plan Approval Order, the Commission stated that it would review several issues related to the Plan after it had been in operation for one year. These issues are also discussed below. Furthermore, in 1985, 1992, and 1993, the Commission discussed the possible need for an intermarket linkage and a trade-through rule for transactions effected pursuant to extensions of OTC/UTP.[13] As discussed below, the Commission continues to believe that such a linkage and/or rule in this context may be appropriate.

A. Proposed Amendment No. 1 of the Plan

Section XIV of the Plan provides that the NASD shall recover from exchange Participants a sum of money to be negotiated. Specifically, Section XIV of the Plan states:

> [I]t is expressly agreed and understood among the Participants that specific provisions governing the issues of cost allocation and revenue-sharing among the Participants will not be included in the Plan at the time of execution thereof, but will be resolved within one year from the commencement of the Plan's operation. The provisions agreed upon by the Participants will be applied on a retroactive basis by means of an amendment to the Plan. There shall be no retroactive application if the Participants are unable to agree upon a cost allocation and revenue-sharing provision or the amount of recapture. * * *

Even through the Plan has been in operation for one year, the Participants have not yet come to an agreement concerning revenue sharing. Proposed Amendment No. 1 to the Plan, which the Commission is approving today, extends the negotiation period for an additional six months. Thus, the Plan will now require the Participants to come to an agreement on these financial matters before January 12, 1995.

To assist the Participants in ensuring compliance with this Plan amendment, the Commission is requesting each Participant (including the BSE) to submit a written report to the Commission on or before September 30, 1994, that describes the status of the negotiations, and the Participant's position with respect to those negotiations.[14]

B. BBO Calculation and Extension of Rule 11Ac2–1 Exemptive Relief

On a temporary basis also scheduled to expire July 12, 1994, the Commission provided an exemption from Rule 11Ac2–1 under the Act regarding the calculated BBO for securities quoted pursuant to the Plan. At the Participants' request, the Commission is extending this exemptive relief through July 12, 1995, provided that the Plan continues in effect through that date pursuant to a Commission order.

The Plan provides that, in calculating the BBO disseminated to vendors, if quotations of more than one Participant are identical in price, then the earliest in time is the best. While the Commission chose not to modify this Plan provision in 1990, the Commission stated in approving both the Chx Interim Plan, and the Plan, that it would continue to reevaluate this BBO calculation. Indeed, the Commission stated that its temporary approval of this BBO calculation would not foreclose a future Commission decision to require size priority pursuant to the Vendor Display Rule,[15] should such a decision be appropriate. The Commission also notes that, in the 1990 Plan Approval Order, the Commission stated that the NASD had represented to the Commission that the Plan Processor would include a "switch" for easy conversion if the Commission determines that the BBO should be calculated using price/size/time priority.[16]

In order to evaluate the effects of this term of the Plan, the Commission is

---

[9] *See* Securities Exchange Act Release No. 24407 (April 29, 1987), 52 FR 17349.

[10] *See* Securities Exchange Act Release No. 31672 (December 30, 1992), 58 FR 3054 ("1992 Phlx Pilot Order").

[11] *See* Securities Exchange Act Release No. 33408 (December 30, 1992), 59 FR 1045 ("1993 Phlx Pilot Extension Order").

[12] *See* 1994 Extension Request, *supra* note 2.

[13] *See* 1985 OTC/UTP Order, *supra* note 6; 1992 Phlx Pilot Order, *supra* note 10; and 1993 Phlx Pilot Extension Order, *supra* note 11.

[14] The Commission notes that, throughout the Plan negotiations prior to the 1990 Plan Approval Order, the Participants agreed that distributions would be made from net operating revenues, rather than net income, as the basis for determining revenues pursuant to the Plan. In 1990, the Commission expressly approved the language "net operating revenues" in this regard. *See* 1990 Plan Approval Order, *supra* note 3. The Commission reiterates this determination in approving the extension of the Plan.

[15] 17 CFR 240.11Ac1–2.

[16] *See* 1990 Plan Approval Order, *supra* note 3.

extends the negotiation period for an additional six months. Thus, the Plan will now require the Participants to come to an agreement on these financial matters before January 12, 1995.

To assist the Participants in ensuring compliance with this Plan amendment, the Commission is requesting each Participant (including the BSE) to submit a written report to the Commission on or before September 30, 1994, that describes the status of the negotiations, and the Participant's position with respect to those negotiations.[14]

B. BBO Calculation and Extension of Rule 11Ac2–1 Exemptive Relief

On a temporary basis also scheduled to expire July 12, 1994, the Commission provided an exemption from Rule 11Ac2–1 under the Act regarding the calculated BBO for securities quoted pursuant to the Plan. At the Participants' request, the Commission is extending this exemptive relief through July 12, 1995, provided that the Plan continues in effect through that date pursuant to a Commission order.

The Plan provides that, in calculating the BBO disseminated to vendors, if quotations of more than one Participant are identical in price, then the earliest in time is the best. While the Commission chose not to modify this Plan provision in 1990, the Commission stated in approving both the Chx Interim Plan, and the Plan, that it would continue to reevaluate this BBO calculation. Indeed, the Commission stated that its temporary approval of this BBO calculation would not foreclose a future Commission decision to require size priority pursuant to the Vendor Display Rule,[15] should such a decision be appropriate. The Commission also notes that, in the 1990 Plan Approval Order, the Commission stated that the NASD had represented to the Commission that the Plan Processor would include a "switch" for easy conversion if the Commission determines that the BBO should be calculated using price/size/time priority.[16]

In order to evaluate the effects of this term of the Plan, the Commission is requesting that the Participants each submit to the Commission a written evaluation of any relevant effects of the BBO calculation based on time on or before September 30, 1994.

C. The Boston Stock Exchange's Request for Exemption

The Plan does not provide for market identifiers for Limited Participant transaction reports or Limited Participant consolidated best bid and offer quotations. Subsection (b)(2)(viii) of Rule 11Aa3–1 under the Act, however, requires any transaction reporting plan submitted to the Commission to provide market identifiers for transaction reports or last sale data made available to vendors. The BSE, as the only Limited Participant under the Plan, requested in 1990 that the Commission exempt it from this requirement.

Prior to 1990, the BSE stated that it had signed the Plan only because it seeks to continue providing trading facilities for dually listed (*i.e.*, listed on the BSE and traded in Nasdaq) stocks that it listed prior to the date the Plan was filed with the Commission and does not wish to apply for OTC/UTP.[17] To accommodate the BSE, the Plan Participants created the category of "Limited Participants," which do not pay any of the development costs of modifying NASDAQ to accommodate OTC/UTP and have limited voting rights under the Plan. Limited Participants are not permitted to expand the number of dually listed issues or to apply for OTC/UTP. The Plan provides that the BSE's quotations and trade reports will not have a BSE market identifier, but will instead be identified by Nasdaq's market symbol.

The Participants have requested that the Commission extend, for an additional year, this exemptive relief to the BSE from Rule 11Aa3–1(b)(2)(viii) under the Act. The Commission is unaware of any negative impact that this exemption has had on the marketplace, and believes that the extension of exemptive relief through July 12, 1995, is appropriate under these limited circumstances.

D. Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan

The pilot program, as originally approved and memorialized in an Undertaking dated April 1, 1989, provides that, for the one-year period following the date on which the UTP Processor commences operations, each initial entry or update of quotation information in Eligible Securities shall be effected by an individual at a computer terminal and shall not be programmed or automated.[18] No Participant has submitted a request to the Commission that this Undertaking be extended. This agreement, therefore, expired July 12, 1994.

E. Intermarket Trading Linkage and Trade-Through Rule

The Commission has stated in several instances that it believes the Participants should work toward developing an intermarket trading linkage and an accompanying trade-through rule with respect to OTC/UTP.[19] The Commission is unaware of any recent efforts made by the Participants in this regard.

While the Commission understands that the Participant meetings concerning the Plan primarily have dealt with financial matters, the Commission believes that efficient executions of securities transactions and customer protection concerns must be considered with respect to the operation of the Plan. Accordingly, the Commission requests each Participant to submit to the Commission, no later than September 30, 1994, a statement concerning the effects that an intermarket trading linkage and/or a trade-through rule would have on market efficiency and/or customer protection.[20] The Commission will be

---

[14] The Commission notes that, throughout the Plan negotiations prior to the 1990 Plan Approval Order, the Participants agreed that distributions would be made from net operating revenues, rather than net income, as the basis for determining revenues pursuant to the Plan. In 1990, the Commission expressly approved the language "net operating revenues" in this regard. *See* 1990 Plan Approval Order, *supra* note 3. The Commission reiterates this determination in approving the extension of the Plan.

[15] 17 CFR 240.11Ac1–2.

[16] *See* 1990 Plan Approval Order, *supra* note 3.

[17] *Id.*

[18] In the 1990 Plan Approval Order, the Commission stated that after the pilot program had been operating for one year, the Commission would review the issues presented by this Undertaking. A copy of the Undertaking is attached to the original filing, S7–24–89, that was approved by the Commission in the 1990 Plan Approval Order. Among other matters, this Undertaking operated to forbid exchange Participants from effecting automated quote updates or tracking of inside quotations (*e.g.* by the use of "autoquote" systems) in the Nasdaq system. The Participants, however, have not requested that the Undertaking be extended and have not supplied the Commission with any data or commentary concerning this issue with respect to the Plan. Thus, the Commission has no new information to review in this area, and finds no cause to extend an undertaking for which no request to extend has been submitted to the Commission.

[19] The Commission's most recent statement in this regard was made in 1993:

The Commission stated in our 1992 Phlx Pilot Order that the Participants should develop an intermarket trading linkage and an accompanying trade-through rule. The Commission believes that the Participants should continue working toward these goals.

1993 Phlx Pilot Extension Order, at n 14, *supra* note 11.

[20] Specifically, the Commission requests that the Participants evaluate the existing pilot and the probable effects that an intermarket linkage and/or trade-through rule would have on the markets with respect to furthering certain Congressional directives, among others, found in Section 11A of the Act: economically efficient execution of

(Continued)

particularly interested in comments concerning the Participants' experience under the pilot program under the Plan and/or the Chx Interim Plan. The Commission also requests each Participant to include in its submission a statement concerning the appropriate course of action to ensure that the Participants routinely evaluate market quality and customer protection matters as transactions continue to be effected pursuant to the Commission's temporary or permanent approval of the Plan.

F. Commission's Previous Directive for Quantitative Assessment of Plan's Effects

In the 1990 Plan Approval Order, the Commission stated:

> Plan Participants are hereby directed, in connection with any request for extension of the pilot or for permanent approval of the Plan, to provide the Commission with a quantitative assessment of the effects, if any, of unlisted trading privileges and the Plan on the width of quotation spreads and on price continuity in trading in OTC/UTP securities.

The Commission has not received any Participant's assessment of these effects. While the Commission believes that a 6-month extension of the pilot program is warranted and appropriate under the Act, the Commission believes that receipt of the above referenced quantitative assessments is essential to the Commission's evaluation of the pilot program. Thus, the Commission directs the Participants to submit to the Commission, on or before September 30, 1994, the quantitative assessments described above. The Commission expects these assessments to be based on statistical studies.[21]

VI. Conclusion

The Commission finds that proposed Amendment No. 1 to the Plan to extend the financial negotiation period for an additional six months is appropriate and in furtherance of Section 11A of the Act. The Commission also finds that one-year extensions of the exemptive relief requested, and described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and to evaluate the effects of the pilot program and report their findings to the Commission. This, in turn, should further the objects of the Act in general, and specifically those set forth in Section 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

It is therefore ordered, pursuant to Section 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 1 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved, and trading pursuant to the Plan is hereby approved on a temporary basis through January 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17663 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34365; International Series Release No. 684; File No. SR–Amex–94–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Warrants on the Nikkei Stock Index 300

July 13, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 17, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to list and trade under Section 106 of the Amex *Company Guide* warrants based on the Nikkei Stock Index 300 ("Index").

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under Section 106 (Currency and Index Warrants) of the Amex *Company Guide,* the Exchange may approve for listing warrants based on established foreign and domestic indexes. The Exchange is proposing to list warrants based on the Nikkei 300 Index.[2] The Nikkei 300 Index is comprised of 300 stocks which are representative of the first section of the Tokyo Stock Exchange ("TSE").

The Index was designed and is maintained by Nihon Keizai Shimbun, Inc. ("NKS"). The Index's component securities were selected for their high market capitalization and high degree of liquidity, and are representaitve of the relative distribution of industries within the broader Japanese equity market.

The median capitalization of the companies in the Nikkei 300 Index on March 31, 1994 was ¥340.1 billion ($3.3 billion at the exchange rate of ¥102.75 per US$1.00 prevailing on March 31, 1994). The average market capitalization of these companies was $7.5 billion on the same date and using the same rate of exchange. The individual market capitalization of these companies ranged from $875 million to $75.5 billion on March 31, 1994. The largest stock accounted for 3.41 percent of the total weighting of the Index, while the smallest accounted for 0.04 percent.

The Index is a capitalization weighted index and is calculated by multiplying the price of each component security (in Japanese yen) by its number of shares outstanding, adding those products, and dividing by the current Index divisor. The Index divisor initially was determined to yield a benchmark value of 100 on October 1, 1982. The divisor is adjusted for certain changes described below. The Index's closing value on July 8, 1994 was 301.48. For valuation purposes, one Nikkei 300 Index unit (1.0) is assigned a fixed value of US$1.00.

The Index will be maintained by NKS. To maintain continuity of the Index, the divisor will be adjusted to reflect certain events relating to the component securities. These events include, but are not limited to, changes in the number of shares outstanding, spin-offs, certain rights issuances, and mergers and acquisitions. The competition of the Index will be reviewed periodically by NKS.

Warrant issues on the Index will conform to the listing guidelines under Amex *Company Guide* Section 106, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements of Section 101(a); (2) the term of warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and a minimum aggregate market value of $4,000,000.

Nikkei 300 Index warrants will be direct obligations of their issuer subject to cash settlement in dollars, and either exercisable throughout their life (*i.e.,* American style) or exercisable only on their expiration date (*i.e.,* European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Nikkei 300 Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call," upon exercise or at expiration, would receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants likely would expire worthless.

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Amex Rule 421, Commentary .02, requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. In addition, the Exchange, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

---

securities transactions; fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and, the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

[21] In the 1990 Plan Approval Order, the Commission also stated that, at the end of the one year pilot period, the Commission would review the bases on which firms decide to which markets to send customer orders for execution. The Commission directs each Participant to submit to the Commission, on or before September 30, 1994, statements describing the bases on which firms decide to which markets to send customer orders for execution.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] The Exchange also has proposed to list and trade options on the Nikkei 300 Index. *See* Securities Exchange Act Release No. 34198 (June 10, 1994), 59 FR 31282 (June 17, 1994).

is adjusted for certain changes described below. The Index's closing value on July 8, 1994 was 301.48. For valuation purposes, one Nikkei 300 Index unit (1.0) is assigned a fixed value of US$1.00.

The Index will be maintained by NKS. To maintain continuity of the Index, the divisor will be adjusted to reflect certain events relating to the component securities. These events include, but are not limited to, changes in the number of shares outstanding, spin-offs, certain rights issuances, and mergers and acquisitions. The competition of the Index will be reviewed periodically by NKS.

Warrant issues on the Index will conform to the listing guidelines under Amex *Company Guide* Section 106, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements of Section 101(a); (2) the term of warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and a minimum aggregate market value of $4,000,000.

Nikkei 300 Index warrants will be direct obligations of their issuer subject to cash settlement in dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Nikkei 300 Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call," upon exercise or at expiration, would receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants likely would expire worthless.

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Amex Rule 421, Commentary .02, requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. In addition, the Exchange, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of change, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–24 and should be submitted by August 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17665 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b) (1988).

[Release No. 34–34366; File No. SR–CBOE–94–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exercise Price Intervals on Interest Rate Options

July 13, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), [1] notice is hereby given that on June 30, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change CBOE Rule 23.5(a) to reduce from $2.50 to $1.00 the fixed interval between strike prices.

The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

[4] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1982).

in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the Exchange's rules concerning interest rate option contracts to reduce from $2.50 to $1.00 the interval between exercise prices on such contracts.

The Exchange believes that this change, which will establish a minimum spread of $100 ($1.00 times the multiplier of 100) between series, will improve the value and utility of interest rate options. In particular, the Exchange believes that this change should enable traders to construct hedges that correlate closely with interest rates and changes in interest rate measures underlying interest rate options. Under current CBOE Rule 23.5(d), the $2.50 minimum strike price interval is wider than the typical increments of change in interest rates, even during periods of high interest rate volatility. For example, during the most volatile week in recent months, the yield on the 30-year U.S. Treasury bond changed by less than 15 basis points (or $150), while strike price intervals were necessarily set at the minimum of $250 apart. The Exchange believes that that "wide" minimum interval made at- or near-the-money positions unavailable,which in turn limited the ability of traders to construct tight hedges or to use combination orders such as straddles effectively. The Exchange believes that reducing the strike price interval accordingly should improve the value and utility of interest rate options to CBOE members and their customers.

The Exchange believes that the proposed rule change will enhance depth and liquidity in interest rate options. The Exchange believes this proposal is consistent with Section 6(b) of the Act in general, and Section 6(b)(5)[2] in particular, by providing rules that perfect the mechanism of a free and open market, while protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

[2] 15 U.S.C. 78f(b)(5) (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–21 and should be submitted by August 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17664 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12) (1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

July 14, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Grupo Iusacell S.A. De C.V. Series L
American Depositary Shares, No Par Value (File No. 7–12660)
Santa Fe Pacific Gold Corp.
Common Stock, $.01 Par Value (File No. 7–12661)
American Re Corporation
Common Stock, $.01 Par Value (File No. 7–12662)
Borg-Warner Automotive, Inc.
Common Stock, $.01 Par Value (File No. 7–12663)
Camco International, Inc.
Common Stock, $.01 Par Value (File No. 7–12664)
Crescent Real Estate Equities, Inc.
Common Stock, $.01 Par Value (File No. 7–12665)
Sun Healthcare Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12666)
Shefield Medical Technologies, Inc.
Common Stock, No Par Value (File No. 7–12667)
USA Waste Services, Inc.
Common Stock, $.01 Par Value (File No. 7–12668)
Blackrock North American Government Income Trust
Common Stock, $.01 Par Value (File No. 7–12669)
CBL & Associates Properties Trust
Common Stock, $.01 Par Value (File No. 7–12670)
G.T. Global Developing Markets Fund
Common Stock, $.001 Par Value (File No. 7–12671)
United Dominion Realty Trust, Inc.
Common Stock, $1.00 Par Value (File No. 7–12672)
Wellpoint Health Networks, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–12673)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17661 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34376; File No. SR–CBOE–94–12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Modification of Fees for Failure To Observe OEX RAES Requirements

July 14, 1994.

On April 1, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend CBOE Rule 24.17, "RAES Eligibility in OEX," to change the eligibility standards under which individuals, member organizations and joint accounts may participate in the CBOE's Retail Automatic Execution System ("RAES") for Standard & Poor's 100 Index ("OEX") options. Among other things, the CBOE proposes to eliminate the automatic disqualification provision from CBOE Rule 24.17 and replace the rule's current $500.00 fee for failures to comply with RAES log-on and log-off requirements with the following fee schedule: a $100.00 fee for each of the first three failures to comply with the log-on or log-off requirements in one calendar year; a $250.00 fee for each of the fourth through sixth such failures in one calendar year; and a $500.00 fee for all subsequent failures to comply with the log-on and log-off requirements in one calendar year.

Notice of the proposed rule change was published for comment in the

[1] 15 U.S.C. 78s(b)(1) (1982).
[2] 17 CFR 240.19b–4 (1993).

written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17661 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34376; File No. SR–CBOE–94–12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Modification of Fees for Failure To Observe OEX RAES Requirements

July 14, 1994.

On April 1, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend CBOE Rule 24.17, "RAES Eligibility in OEX," to change the eligibility standards under which individuals, member organizations and joint accounts may participate in the CBOE's Retail Automatic Execution System ("RAES") for Standard & Poor's 100 Index ("OEX") options. Among other things, the CBOE proposes to eliminate the automatic disqualification provision from CBOE Rule 24.17 and replace the rule's current $500.00 fee for failures to comply with RAES log-on and log-off requirements with the following fee schedule: a $100.00 fee for each of the first three failures to comply with the log-on or log-off requirements in one calendar year; a $250.00 fee for each of the fourth through sixth such failures in one calendar year; and a $500.00 fee for all subsequent failures to comply with the log-on and log-off requirements in one calendar year.

Notice of the proposed rule change was published for comment in the **Federal Register** in Securities Exchange Act Release No. 34128 (May 27, 1994), 59 FR 28907 (June 3, 1994). No comments were received on the proposal.

In May 1993 Exchange Rule 24.17 was amended to establish, among other things, more rigorous log-on and log-off requirements for participants in OEX RAES.[3] For example, group members who previously were logged on automatically by the Exchange must now log on at their own initiative each time they enter the trading crowd. Likewise, members who previously were not required to log off the system each time they left the trading crowd must now do so.

In view of these additional log-on and log-off requirements, the Exchange believes that the $500.00 fees currently due from members who do not log on or log off as required are excessive. The proposed rule change therefore establishes a new graduated fee schedule, under which the fee amount will increase in relation to the number of times within any one calendar year that a member does not log on or log off as required. Specifically, during each calendar year, a $100.00 fee will be due for each of the first three times that a member fails to observe the log-on or log-off requirements; a $250.00 fee will be due for each of the fourth through sixth such times; and a $500.00 fee will be due for all subsequent times. In addition, the CBOE proposes to assess a $500.00 fee on any member participating in a joint account or nominee account held by a member organization if the member logs onto OEX RAES but thereafter terminates participation prior to the next succeeding expiration date without either joining another OEX RAES account or terminating membership on the Exchange.

In addition, the CBOE proposes to eliminate the automatic disqualification provisions in CBOE Rule 24.17. Specifically, the Exchange proposes to delete the provisions which provide that a individuals's, participating nominee's, or joint account member's failure to meet his RAES obligations will disqualify him from signing onto RAES for such time period as the OEX Floor Procedure Committee ("OFPC") determines. The CBOE also proposes to allow an individual required to sign onto RAES immediately prior to expiration to apply to the OFPC for prospective relief from the log-on requirements during a particular expiration cycle. The proposal states that in deciding such applications, the OFPC may limit the grant of relief by imposing time periods during which the applicant will not be eligible to participate in RAES.

Members who fail to observe CBOE Rule 24.17 can be subject to a variety of sanctions.[4] The CBOE states that the fees suggested in the proposed rule change, like the fees imposed currently under CBOE Rule 24.17, do not constitute disciplinary action. Nevertheless, the review procedures in Chapter 19, "Hearings and Review," of the Exchange's rules will be available with respect to the assessment of the proposed fees. Under those procedures, a member may seek verification of fees charged by the Exchange. If the member is not satisfied with the verification of fees, he may request a hearing before a panel of three or more members of the Exchange's Appeals Committee. At the hearing the appellant may be represented by counsel and may cross examine witnesses.[5]

In addition, the decision of the Exchange's Appeals Committee panel is subject to review by the Board of Directors of the Exchange on the Board's own motion, on the written request of the appellant, or at the request of the Exchange's President or the relevant Exchange Committee Chairman. The review must be conducted by the Board or by a Board Committee consisting of at least three Directors (other than Directors who sat on the Appeals Committee in the matter). An appellant has an opportunity to address issues raided specifically by the Board or the Committee, and in addition may submit oral or written arguments if the Board so allows in its discretion.[6]

The Exchange believes that the proposed fee schedule is appropriate and equitable given the additional requirements imposed on participants in OEX RAES in the RAES Approval

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] See Securities Exchange Act Release No. 32248 (April 30, 1993), 58 FR 27596 ("RAES Approval Order").

[4] Under CBOE Rule 24.17(b)(v), the OFPC may bar, restrict, or condition a joint account's participation in RAES if any member fails to meet the OEX market maker requirements. Under CBOE Rule 24.17(c)(vi), the OFPC may bar, restrict, or condition a member organization's participation in RAES if any nominee on RAES in OEX fails to meet the OEX market maker requirements. CBOE Rule 24.17(e)(ii) provides several sanctions for failures to comply with the requirements of CBOE Rule 24.17, including disciplinary action under, among others, CBOE Rule 6.20, "Admission to and Conduct on the Trading Floor," and Chapter XVII, "Discipline," of the CBOE's rules. In addition, the OFPC may take remedial action, including suspension of a member's eligibility for participation on RAES and other remedies appropriate under Chapter VIII, "Market Makers, Trading Crowds, and Modified Trading Systems," of the CBOE's rules.

[5] See CBOE Rules 19.3, "Procedure Following Applications for Hearing," and 19.4, "Hearing."

[6] See CBOE Rule 19.5, "Review."

Order. Furthermore, to ensure that all members are treated alike under the RAES Approval Order, the Exchange will apply the revised fee schedule retroactively from April 30, 1993, the effective date of the RAES Approval Order.[7]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5), in particular, in that it is designed to allocate reasonable dues, fees and charges among CBOE members and to promote the efficiency and effectiveness of the CBOE's automatic execution system.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[8] The Commission believes that the elimination of the automatic disqualification provisions of CBOE Rule 24.17, the introduction of a graduated fee schedule for failures to comply with the RAES log-on and log-off requirements, and the provision allowing individuals to apply to the OFPC for prospective relief from the requirement to log onto RAES on the business day immediately prior to expiration are designed to make the rules applicable to OEX RAES participation fairer and more flexible while maintaining the integrity of the RAES system for OEX options. The proposal is designed to ensure that there is adequate market maker participation at all times in OEX RAES and that market makers are properly logged onto the system. The presence of an adequate number of market makers protects investors and contributes to the maintenance of fair and orderly markets by helping the Exchange to maintain the continued availability to RAES for OEX, thereby contributing to the effective and efficient execution of public investor orders at the best available prices.

The Commission also believes that it is reasonable for the CBOE to eliminate the provisions of CBOE Rule 24.17 allowing for automatic disqualification from RAES for failures to satisfy RAES obligations because the fees imposed for failing to meet participation requirements should provide a sufficient deterrent to ensure adequate market maker participation in OEX RAES.[9] In this regard, the Commission notes that in addition to the graduated fees for failures to comply with the RAES log-on and log-off requirements, the proposal establishes a $500.00 fee for any member organization who logs onto RAES and later terminates participation on RAES prior to the next expiration cycle without participating in another OEX RAES account or terminating membership with the Exchange. The Commission believes that these fees should deter participating OEX RAES market makers from abandoning their commitment to RAES for other than good cause. Nevertheless, the Commission expects the CBOE to monitor OEX RAES participation and to consider altering the requirements should adequate participation not be maintained after these changes are implemented, particularly during periods of high volatility.

In addition, the Commission believes that the proposal to allow a member to apply to the OFPC for prospective relief from the requirement to log onto RAES on the business day prior to expiration is designed to provide flexibility and to accommodate the needs of individual members while continuing to ensure adequate RAES participation. The Commission notes that the proposal allows the OFPC to limit the grant of relief by imposing time periods during which the applicant will not be eligible to participate in RAES.

The Commission believes that the proposal is also consistent with section 6(b)(5) under the Act in that it is designed to facilitate transactions in securities. The CBOE believes that the current $500.00 fee for failures to comply with the OEX RAES log-on and log-off requirements is excessive in light of the log-on and log-off requirements established under the RAES Approval Order. Based upon this determination, the Commission believes that it is reasonable for the Exchange to replace the current $500.00 fee with a graduated fee schedule and allow the Exchange to impose higher fees for repeated failures, which should encourage compliance with the log-on and log-off requirements and may increase the Exchange's ability to deter repeat offenders. The CBOE has distributed an Exchange Bulletin describing the new fee schedule and the application of the fees to April 30, 1993, the effective date for implementation of the original $500.00 fee. The Commission believes that this notification, and the fact that the graduated fees will be lower than the fees that the CBOE can impose currently under the original $500.00 fee, help to ensure that the fees for failures to comply with the log-on and log-off requirements are imposed fairly.

Moreover, the Commission believes that the right to appeal the fees imposed under CBOE Rule 24.17 pursuant to Chapter 19 of the CBOE's rules should help to safeguard the procedural rights of OEX RAES participants. In summary, under these limited and unusual circumstances, the Commission believes that the CBOE may implement these lower fees as of April 30, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–94–12), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17656 Filed 7–19–94: 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34379; File No. SR–CHX–94–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Stock Exchange, Inc., Relating to Corporate Governance Issues

July 14, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 23, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On June 30, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to narrow the scope of the original filing.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to submit the following rule proposal to amend Article III, Sec. 2 and Article IV, Secs. 4, 5 and 7 of the Exchange's Constitution relating to corporate governance issues. The text of the proposed rule change is available at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to amend the Exchange's Constitution relating to corporate governance issues. Specifically, the changes concern (i) the creation of a new category of Governor and the addition of one additional non-member Governor and (ii) providing more flexibility by permitting re-categorizations of Governors.

The primary purpose of these proposed amendments, along with corresponding and conforming amendments to the By-Laws of the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC"),[2] is to achieve a governance structure pursuant to which the Exchange and two of its wholly owned subsidiaries, MCC and MSTC, will be able to operate more as a single, coherently run business. Once all the proposed changes are adopted, approved and implemented, the Board of Governors of the Exchange, the Board of Directors of the MCC and the Board of Directors of MSTC would all consist

---

[7] By an Exchange Bulletin dated May 11, 1994, the CBOE notified its members of the proposed reduction in the fees due for failures to comply with the log-on and log-off requirements of CBOE Rule 24.17 and the retroactive application of the reduced fees.

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] The Commission notes that under CBOE Rule 24.17(e)(i) the chairperson of the OFPC, in consultation with a senior Exchange executive officer, may require members of the trading crowd as defined in CBOE Rule 8.50 to log onto RAES if OEX RAES participation appears to be inadequate. If inadequate, RAES participation continues, then the chairperson of the OFPC, in consultation with a senior Exchange executive officer, may request the participation of all market makers whether or not they are members of the OEX crowd.

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1993).

[1] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Sandra Sciole, Special Counsel, Division of Market Regulation, SEC, dated June 29, 1994 ("Amendment No. 1"). The portions of this filing that were withdrawn in Amendment No. 1 have been resubmitted to the Commission as File No. SR–CHX–94–17.

[2] See File Nos. SR–MCC–94–07 and SR–MSTC–94–09 respectively.

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to submit the following rule proposal to amend Article III, Sec. 2 and Article IV, Secs. 4, 5 and 7 of the Exchange's Constitution relating to corporate governance issues. The text of the proposed rule change is available at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to amend the Exchange's Constitution relating to corporate governance issues. Specifically, the changes concern (i) the creation of a new category of Governor and the addition of one additional non-member Governor and (ii) providing more flexibility by permitting re-categorizations of Governors.

The primary purpose of these proposed amendments, along with corresponding and conforming amendments to the By-Laws of the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC"),[2] is to achieve a governance structure pursuant to which the Exchange and two of its wholly owned subsidiaries, MCC and MSTC, will be able to operate more as a single, coherently run business. Once all the proposed changes are adopted, approved and implemented, the Board of Governors of the Exchange, the Board of Directors of the MCC and the Board of Directors of MSTC would all consist of the same 31 individuals. This would be achieved by, among other things, having the Nominating Committees of MCC and MSTC be the same as the Exchange's Nominating Committee. At the same time, in order to insure fair and meaningful representation of Participants in the governance process of MCC and MSTC, the size of the Board would be increased by four slots to accommodate a new category of Governor that would provide the Board with more expertise on issues affecting MCC and MSTC, as more fully described below.

New Category of Governor/Increased Board Size

The proposed amendment would create a new category of Governor, a Participant Governor. In order to be qualified to be a Participant Governor, a person must be a general partner or officer of a Participant in the MCC or MSTC and must have securities clearance and/or settlement expertise, background or responsibilities. The proposal would call for the addition of four Participant Governors, one each in Class I and Class II and two in Class III. The Exchange does not contemplate that the vacancies in the Participant Governor category would be filled by floor members of the Exchange.[3] The proposed amendment also would add an additional non-member Governor slot, increasing the slots available for non-member Governors from eight to nine. This slot has been added to Class II. This change would maintain the existing balance between the non-member, or "public," Governors and the industry Governors on the Board. In order to accomplish these changes, the amendment would increase the size of the Board of Governors to 31 from its present size of 26. Pursuant to existing Exchange rules, the vacancies created by this amendment (one vacancy in Class I, two vacancies in Class II and two vacancies in Class III) could be filled by the Board, on an interim basis, until the April 1995 annual election. The slots created are as follows:

	Participant governors	Non-member governors
Class I[4]	One slot created.	N/A.
Class II	One slot created.	One slot created.
Class III	Two slots created.	N/A.

[4] Class I expires in April 1995; Class II in April 1996; and Class III in April 1997.

Re-Categorization of Governors

In order to provide increased flexibility in the composition of the new, expanded Board, the proposed amendment also would permit a Participant Governor to be re-categorized (within his or her class) as a Member Governor and permit a Member Governor to be re-categorized as a Participant Governor, if the Governor to be re-categorized otherwise meets the qualifications of his or her new position.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change has been approved by the Exchange's membership.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

---

have been resubmitted to the Commission as File No. SR-CHX-94-17.

[2] See File Nos. SR-MCC-94-07 and SR-MSTC-94-09 respectively.

[3] The CHX has stated that, in order to ensure that floor members are not over-represented on the Board, management of the Exchange will use its best efforts to ensure that the newly created Participant Governor positions will not initially or thereafter be filled by floor members of the Exchange. The CHX also has agreed to notify the Commission if a floor member is elected to fill a Participant Governor position, and to revisit this issue if its best efforts do not succeed. See letter from David T. Rusoff, Attorney, Foley & Lardner, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated July 8, 1994.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–15 and should be submitted by August 9, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17657 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34374; File No. SR–CBOE–94–23]

Self-Regulatory Organizations; The Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Fee Reduction Plan

July 14, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 7, 1994, the Chicago Board Options Exchange, Incorporated (the "CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its fee reduction plan, which has been in effect since July 1, 1992.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the Exchange's fee reduction plan. The plan, which was initially adopted on July 1, 1992 and subsequently amended in July 1993, provides that if Exchange volume levels exceed a pre-determined threshold at the end of any fiscal quarter, specified fees will be reduced the following quarter in accordance with the schedule. The proposed amendments are the product of the Exchange's annual budget review and are structured to accommodate the capital needs of the Exchange for the coming year. The amendments will take effect for the new fiscal year commencing July 1, 1994.

The proposed rule change amends the current fee reduction thresholds and amounts. The minimum threshold for a fee reduction is raised from 525,000 to 550,000 year to date contract volume. The reduction in the market-maker fees has been lowered $.05 to $.10 for five of the eight thresholds. The member dues fee reduction of 25% to 100% is given at higher thresholds. The proposed rule change also replaces the trade match fee reduction schedule with a fee reduction schedule for floor brokerage fees.[2] In all other respects, the fee reduction program remains unchanged.

The proposed rule change is consistent with Section 6(b) of the Act in general, and Section 6(b)(4) in particular, by providing for the equitable allocation among CBOE members of reasonable dues, fees, and charges.[3]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believes that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Securities Exchange Act Rule 19b–4 in that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for

[2] The floor broker fee is reduced $.05 for 600,000 to 625,000 year to date contract volume, and is reduced $.10 for 650,000 to 700,000 year to date contract volume.

[3] 15 U.S.C. 78f(b)(4) (1988).

inspection and copying at the principal office of CBOE. All submissions should refer to file number SR–CBOE–94–23 and should be submitted by August 10, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17662 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

July 14, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Grupo Iusacell S.A. De C.V.
Series L (rep. 10 Series L shares, American Depositary Shares, No Par Value (File No. 7–12674)
Grupo Iusacell S.A. De C.V.
Series D (rep. 10 Series D Shares, American Depositary Shares, No Par Value (File No. 7–12675)
Capston Capital Corporation
Common Stock, $.001 Par Value (File No. 7–12676)
Case Equipment Corporation
Common Stock, $.01 Par Value (File No. 7–12677)
First Industrial Realty Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–12678)
HS Resources, Inc.
Common Stock, $.001 Par Value (File No. 7–12679)
Kaydon Corporation
Common Stock, $.10 Par Value (File No. 7–12680)
Smith Charles E. Residential Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–12681)
United Wisconsin Services, Inc.
Common Stock, No Par Value (File No. 7–12682
Bankamerica
6.5% Cum. Conv. Pfd., No Par Value (File No. 7–12683
Battle Mountain Gold Company
Conv. Pfd., $1.00 Par Value (File No. 7–12684)
Catellus Development Corp.
$3.75 Cum. Conv. Pfd. A, $.01 Par Value (File No. 7–12685)
First Chicago Corp.

inspection and copying at the principal office of CBOE. All submissions should refer to file number SR–CBOE–94–23 and should be submitted by August 10, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17662 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

July 14, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Grupo Iusacell S.A. De C.V.
Series L (rep. 10 Series L shares, American Depositary Shares, No Par Value (File No. 7–12674)
Grupo Iusacell S.A. De C.V.
Series D (rep. 10 Series D Shares, American Depositary Shares, No Par Value (File No. 7–12675)
Capston Capital Corporation
Common Stock, $.001 Par Value (File No. 7–12676)
Case Equipment Corporation
Common Stock, $.01 Par Value (File No. 7–12677)
First Industrial Realty Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–12678)
HS Resources, Inc.
Common Stock, $.001 Par Value (File No. 7–12679)
Kaydon Corporation
Common Stock, $.10 Par Value (File No. 7–12680)
Smith Charles E. Residential Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–12681)
United Wisconsin Services, Inc.
Common Stock, No Par Value (File No. 7–12682
Bankamerica
6.5% Cum. Conv. Pfd., No Par Value (File No. 7–12683
Battle Mountain Gold Company
Conv. Pfd., $1.00 Par Value (File No. 7–12684)
Catellus Development Corp.
$3.75 Cum. Conv. Pfd. A, $.01 Par Value (File No. 7–12685)
First Chicago Corp.
Dep. Shrs. 5.75 Pfd. B, No Par Value (File No. 7–12686)
Hecla Mining Company
Cum. Conv. Pfd. B, $.25 Par Value (File No. 7–12687)
Magma Copper Company
Cum. Conv. Pfd. E, $.01 Par Value (File No. 7–12688)
Maxus Energy
$4.00 Cum. Conv. Pfd., $1.00 Par Value (File No. 7–12689)
Travelers, Inc.
5.50% Conv. Pfd. B, $1.00 Par Value (File No. 7–12690)
Wheeling-Pittsburgh Corporation
Conv. Pfd. A, $.10 Par Value (File No. 7–12691)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17660 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

July 14, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Santa Fe Pacific Gold Corp.
Common Stock, $.01 Par Value (File No.7–12692)
Source One Mortgage Services Corp.
8.42% Cm. Pfd. Ser. A, $.01 Par Value (File No. 7–12693)
Grupo Iusacell, S.A. De C.V.
Ser. D American Depositary Shares (rep. 10 Ser. D Sh. of Common Stock, No Par Value (File No. 7–12694)
Grupo Iusacell, S.A. De C.V.
Ser. L American Depository Shares (rep. 10 Ser. L sh. of Common Stock, No Par Value (File No. 7–12695)
Viking Star Shipping, Inc.
Common Stock, No Par Value (File No. 7–12696)
WCI Steel, Inc.
Common Stock, No Par Value (File No. 7–12697)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17659 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34372; File No. SR–MSRB–94–7]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Recordkeeping and Record Retention Requirements Concerning Gifts and Gratuities

July 13, 1994.

On May 26, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSRB–94–7) pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 ("Act").[1] The MSRB filed the proposed rule change to require brokers, dealers, and municipal securities dealers (hereinafter "municipal securities dealers" or "dealers") to make and keep records relating to MSRB rule G–20. The Commission published notice of the proposal in the **Federal Register** on June 10, 1994.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposal amends MSRB rules G–8 and G–9 concerning the records to be made and kept by municipal securities dealers. The proposal will require a dealer to make and keep records relating to MSRB rule G–20, concerning gifts and gratuities and contracts of employment. The proposal will become effective 30 days after publication of the approval order in the **Federal Register**.

The proposal requires dealers to keep and retain specific records of (i) gifts and gratuities subject to paragraph (a) of rule G–20, and (ii) contracts of employment or agreements for compensation for services, referred to in paragraph (c) of rule G–20, and compensation paid as a result of those agreements.[3] Rule G–20(a) prohibits dealers from, directly or indirectly, giving or permitting to be given any thing or service of value in excess of $100 per year to any person, other than to an employee or partner of the dealer, in relation to municipal securities activities of the person's employer.[4]

The $100 limitation applies to gifts and gratuities by a dealer and its associated persons to customers, individuals associated with issuers, and employees of other dealers. Rule G–20 also prohibits a dealer from indirectly exceeding the $100 limitation. Thus, if a third party (*e.g.*, a consultant hired by a dealer) gives a gift to any such person at the request of the dealer, the value of the gift would be included in the $100 limitation.

Rule G–20(b) exempts certain gifts from the $100 annual limit. These gifts, called "normal business dealings," include occasional gifts of meals or tickets to theatrical, sporting, and other entertainments, as well as the sponsoring of legitimate business functions that are recognized by the IRS as deductible business expenses, and gifts of reminder advertising. The rule, however, also provides that such gifts cannot be so frequent or so expensive as to raise a suggestion of unethical conduct.

Rule G–20(c) provides that contracts of employment with or compensation for services rendered are not considered gifts or gratuities subject to the $100 limitation. Such arrangements, however, must be in writing and must include the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

II. Discussion

The proposed rule change is consistent with the requirements of the Act, and specifically, with Sections 15B(b)(2) (C) and (G) of the Act.[5] Section 15B(b)(2)(C) authorizes the MSRB to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest. Section 15B(b)(2)(G) authorizes the MSRB to adopt rules that prescribe the records to be made and kept by municipal securities dealers and the periods for which such records shall be preserved.

Rule G–20 is intended to prevent fraud and inappropriate influence in the municipal securities market by limiting the amount of gifts or gratuities from municipal securities dealers to persons not employed by the dealers, including issuer officials and employees of other dealers, in relation to municipal securities activities.[6] Concerns have arisen recently that political contributions and gifts, made by municipal securities underwriters to officials of municipal securities issuers, may influence the selection process of an underwriting syndicate.[7] The proposal addresses excessive gifts and gratuities by dealers to persons not employed by the dealer, including officials of municipal securities issuers.

Although rule G–20 prohibits dealers from making certain gifts and gratuities, dealers currently are not required to keep a record of such gifts. Recordkeeping and record retention by dealers of gifts and gratuities will better enable dealers to monitor compliance with rule G–20. The proposal also will assist enforcement agencies in monitoring dealer compliance with the rule. In addition, the proposal will enable the MSRB to determine whether rule G–20 should be amended in the future to impose more stringent requirements to prevent influence of the underwriter selection process and to maintain the integrity of the municipal securities market.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act an the rules and regulations thereunder applicable to the MSRB and, in particular, Sections 15B(b)(2) (C) and (G).

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change as described above be, and hereby is, approved and shall be effective August 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17585 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34360; International Series Release No. 683; File No. SR–OCC–94–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Cross-Rate Foreign Currency Options

July 13, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 6, 1994, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to enable OCC to issue, clear, and settle new flexibly structured cross-rate foreign currency option contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to enable OCC to issue, clear, and settle new flexibly structured cross-rate foreign currency option contracts proposed for trading by the Philadelphia Stock Exchange ("PHLX").[2] In OCC's original cross-rate foreign currency options filing, OCC sought and obtained approval to issue, clear, and settle the following cross-rate option contracts: (1) options on German Deutsche marks with exercise prices in Japanese yen ("DM/JY" options); (2) options on British pounds with exercise prices in Japanese yen ("BP/JY options"); and (3) options on British pounds with exercise prices in German Deutsche marks ("BP/DM options").[3] In that filing, OCC advised the Commission that it anticipated clearing additional cross-rate option contracts in the future, including cross-rate option contracts involving different combinations of currencies. OCC stated that it would submit a rule filing with the Commission before issuing any new cross-rate option products.

---

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34162 (June 6, 1994), 59 FR [illegible].

[3] The proposed rule change also clarifies that dealers complying with Rule 17a–3 of the Act are required to maintain this information.

[4] "Person" has been interpreted by the Board in the context of rule G–20 to apply only to natural persons because the intent of the rule is to discourage dealers from inducing individual employees to act in a manner inconsistent with their obligations to, or contrary to the interests of, their employers. *See* MSRB Interpretations, *MSRB Manual* (CCH) ¶ 3596.10 (March 10, 1980).

[5] Section 15B(b)(2) (C), (G); [15 U.S.C. 78o–4(b)(2) (C), (G)].

[6] Rule G–20, as well as the proposed amendments, are comparable to the National Association of Securities Dealers' ("NASD") rules governing gifts and gratuities by registered broker-dealers. *See* NASD Rules of Fair Practice, Art. III, Sec. 10, *NASD Manual* ¶ 2160.

[7] MSRB rule G–37, approved by the Commission on April 7, 1994, addressed the use of political contributions made by municipal securities dealers to officials of state or local government issuers, where the dealers also are doing business for or seeking business from those issuers. Rule G–37 became effective April 25, 1994. Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621.

[1] 15 U.S.C. 78s (1988).

[2] For a description of the PHLX proposed rule change, refer to Securities Exchange Act Release No. 34308 (July 5, 1994), 59 FR 35551, [File No. SR–PHLX–94–18] (notice of filing of proposed rule change).

[3] Securities Exchange Act Release No. 29920 (November 7, 1991), 56 FR 58105 [File No. SR–OCC–91–04] (order approving proposed rule change establishing cross-rate foreign currency options).

change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to enable OCC to issue, clear, and settle new flexibly structured cross-rate foreign currency option contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to enable OCC to issue, clear, and settle new flexibly structured cross-rate foreign currency option contracts proposed for trading by the Philadelphia Stock Exchange ("PHLX").[2] In OCC's original cross-rate foreign currency options filing, OCC sought and obtained approval to issue, clear, and settle the following cross-rate option contracts: (1) options on German Deutsche marks with exercise prices in Japanese yen ("DM/JY" options); (2) options on British pounds with exercise prices in Japanese yen ("BP/JY options"); and (3) options on British pounds with exercise prices in German Deutsche marks ("BP/DM options").[3] In that filing, OCC advised the Commission that it anticipated clearing additional cross-rate option contracts in the future, including cross-rate option contracts involving different combinations of currencies. OCC stated that it would submit a rule filing with the Commission before issuing any new cross-rate option products.

OCC was recently advised by the PHLX that it is proposing to trade new flexibly structured cross-rate options through the PHLX's customized option facility. Under the PHLX proposal, options may be traded on any combination of currencies underlying existing foreign currency option contracts.[4] For example, options on British pounds with exercise prices in French francs ("BP/FF options") may be traded.

Accordingly, OCC is proposing to issue, clear, and settle these new cross-rate option contracts. OCC has reviewed its By-Laws and Rules and has determined that no changes are necessary to accommodate these new products because they will be margined and settled like the existing cross-rate option contracts.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because it will provide for the prompt and accurate settlement of transactions in new cross-rate foreign currency option contracts and for the safeguarding of related securities and funds. The proposed rule change meets such requirements by establishing a framework in which existing, reliable OCC systems, rules, and procedures will be extended to the processing of such cross-rate foreign currency options.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–OCC–94–07 and should be submitted by August 10, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17584 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 14, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

United Wisconsin Services, Inc.
Common Stock No. Par Value (File No. 7–12636)

Santa Fe Pacific Gold Corporation
Common Stock, $.01 Par Value (File

---

[2] For a description of the PHLX proposed rule change, refer to Securities Exchange Act Release No. 34308 (July 5, 1994), 59 FR 35551, [File No. SR–PHLX–94–18] (notice of filing of proposed rule change).

[3] Securities Exchange Act Release No. 29920 (November 7, 1991), 56 FR 58105 [File No. SR–OCC–91–04] (order approving proposed rule change establishing cross-rate foreign currency options).

[4] The following currencies underlie existing foreign currency options contracts: (1) Australian dollars ("AUD"), (2) British pounds ("BP"), (3) Canadian dollars ("CD"), (4) German Deutsche marks ("DM"), (5) European Economic Community currency units ("ECU"), (6) French francs ("FF"), (7) Japanese yen ("JY") and (8) Swiss francs ("SF").

No. 7–12637)
Cambior, Inc.
Common Stock, $.01 Par Value (File No. 7–12638)
Cambior, Inc.
Warrants, Expiring 6/30/95 (File No. 7–12639)
Cambior, Inc.
Warrants, Expiring 6/28/96 (File No. 7–12640)
First Industrial Realty Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7–12641)
Case Equipment Corp.
Common Stock, $0.01 Par Value (File No. 7–12642)
Storage Equities, Inc.
Adj. Rate Cum. Pfd. Stock Series C, $.01 Par Value (File No. 7–12643)
Morgan Stanley Group, Inc.
Common Stock, Performance Equity-Linked Redemption Quarterly-Pay Securities "PERQS" (File No. 7–12644)
Franklin Electronic Publishers, Inc.
Common Stock, No Par Value (File No. 7–12645)
James River Corporation of Virginia
Dep. Shares Each Representing 1/100 of a share of Ser. P 9% Cum. Conv. Pfd Stock Dividend Enhanced Conv. Stock "DECS", $10 Par Value (File No. 7–12646)
Robert Half International
Common Stock, $.01 Par Value (File No. 7–12647)
Vastar Resources, Inc.
Common Stock, $1.00 Par Value (File No. 7–12648)
PinPoint Retail Solutions, Inc.
Common Stock, $.01 Par Value (File No. 7–12649)
Nokia Corporation
American Depositary Shares each Representing ½ of a Preferred Share (File No. 7–12650)
Istituto Nazionale Assicurazioni SPA
American Depositary Share each Representing 10 Ordinary Shares (File No. 7–12651)
NewsCorp Overseas Limited
Adjustable Rate Cum. Preference Shares Series B, $25 Par Value (File No. 7–12652)
Franchise Finance Corp. of America
Common Stock, $.01 Par Value (File No. 7–12653)
Ferrellgas Partners, L.P.
Common Units Representing Limited Partnership Interest (File No. 7–12654)
Laboratorio Chile S.A.
Common Stock, No Par Value (File No. 7–12655)
Grupo Iusacell S.A. De C.V.
Series L, American Depositary Shares each representing 10 Series L Shares of Common Stock, No Par Value (File No. 7–12656)
Grupo Iusacell S.A. De C.V.
Series D, American Depositary Shares each Representing 10 Series D Shares of Common Stock, No Par Value (File No. 7–12657)
Smith Charles E. Residential Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–12658)
Capstone Capital Corporation
Common Stock, $.001 Par Value (File No. 7–12659)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 94–17658 Filed 7–19–94; 8:45 am]
BILLING CODE 8010–01–M

[Release No. IC–20405; File No. 812–8994]

First North American Life Assurance Company, et al.

July 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First North American Life Assurance Company ("First North American"), FNAL Variable Account ("Variable Account"), NASL Financial Services, Inc. ("NASL Financial") and Wood Logan Associates Inc. ("Wood Logan").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the deduction from the assets of the Variable Account of a mortality and expense risks charge imposed under certain flexible purchase payment individual deferred variable annuity contracts.

FILING DATE: The application was filed on May 19, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on August 8, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of Service. Notification of the date of a hearing may be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington D.C. 20549. Applicants: Kenneth H. Conrad, First North American Life Assurance Company, Corporate Center at Rye, 555 Theodore Fremd Avenue, Rye, New York 10580.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. First North American, a wholly owned subsidiary of North American Security Life Insurance Company ("Security Life"), is a stock life insurance company organized under the laws of New York in 1992. Security Life is a wholly owned subsidiary of North American Life Assurance Company. First North American is the depositor of the Variable Account. The Variable Account is registered under the Act as a unit investment trust and was established under New York law to offer certain variable annuity contracts, including the variable annuity contracts described in the application (the "Contracts"). The Variable Account is divided into sub-accounts which invest in corresponding portfolios of NASL Series Trust (the "Trust").

2. NASL Financial, a wholly owned subsidiary of Security Life, is the principal underwriter of the Contracts. It is a broker-dealer registered under the Securities Exchange Act of 1934 ("1934 Act") and a member of the National Association of Securities Dealers, Inc. NASL Financial also serves as investment adviser to the Trust and is registered as an investment adviser under the Investment Advisers Act of 1940.

3. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, serves as the exclusive promotional agent for the Contracts.

4. The Contracts are flexible purchase payment individual deferred variable annuity contracts which will provide for the accumulation of values and the payment of annuity benefits on a fixed or variable basis. The Contracts are designed for use in connection with retirement plans which may or may not qualify for special income tax treatment under the Internal Revenue Code of 1986, as amended.

5. Prior to the maturity date, First North American will, on the last day of each contract year, deduct from the accumulated value of each Contract an annual administration fee of $30. This annual administration fee will also be deducted when a Contract is surrendered on any date other than a contract anniversary. However, if prior to the maturity date the contract value exceeds $100,000 at the time of the fee's assessment, the fee will be waived. During the annuity period, the fee is deducted on a pro-rata basis from each annuity payment. In addition, First North American will deduct from the sub-accounts each valuation period an administration charge equal to .15% of the sub-account assets on an annualized basis. These fees are intended to compensate First North American for the cost of providing administrative services attributable to the Contracts and the operations of the Variable Account and the Company in connection with the Contracts. The fees are based upon First North American's current estimates of the administrative costs attributable to the Contracts over their lifetime and are not designed or expected to generate a profit. These fees are guaranteed never to be increased. Applicants will rely on Rule 26a–1 under the Act for the necessary exemptive relief to charge such fees.

6. No sales charge will be deducted from purchase payments as they are made. Instead, a withdrawal charge (contingent deferred sales charge) will be assessed in some circumstances when the contract value is completely or partially withdrawn prior to the maturity date. Generally, a withdrawal charge only applies to the withdrawal of purchase payments that have been in the Contract less than seven complete

Act") and a member of the National Association of Securities Dealers, Inc. NASL Financial also serves as investment adviser to the Trust and is registered as an investment adviser under the Investment Advisers Act of 1940.

3. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, serves as the exclusive promotional agent for the Contracts.

4. The Contracts are flexible purchase payment individual deferred variable annuity contracts which will provide for the accumulation of values and the payment of annuity benefits on a fixed or variable basis. The Contracts are designed for use in connection with retirement plans which may or may not qualify for special income tax treatment under the Internal Revenue Code of 1986, as amended.

5. Prior to the maturity date, First North American will, on the last day of each contract year, deduct from the accumulated value of each Contract an annual administration fee of $30. This annual administration fee will also be deducted when a Contract is surrendered on any date other than a contract anniversary. However, if prior to the maturity date the contract value exceeds $100,000 at the time of the fee's assessment, the fee will be waived. During the annuity period, the fee is deducted on a pro-rata basis from each annuity payment. In addition, First North American will deduct from the sub-accounts each valuation period an administration charge equal to .15% of the sub-account assets on an annualized basis. These fees are intended to compensate First North American for the cost of providing administrative services attributable to the Contracts and the operations of the Variable Account and the Company in connection with the Contracts. The fees are based upon First North American's current estimates of the administrative costs attributable to the Contracts over their lifetime and are not designed or expected to generate a profit. These fees are guaranteed never to be increased. Applicants will rely on Rule 26a–1 under the Act for the necessary exemptive relief to charge such fees.

6. No sales charge will be deducted from purchase payments as they are made. Instead, a withdrawal charge (contingent deferred sales charge) will be assessed in some circumstances when the contract value is completely or partially withdrawn prior to the maturity date. Generally, a withdrawal charge only applies to the withdrawal of purchase payments that have been in the Contract less than seven complete years. The withdrawal charge is a percentage of the amount withdrawn which is subject to the charge, which percentage declines 6–6–5–5–4–3–2% over the first seven years that a purchase payment has been in the Contract. Withdrawals are allocated first to earnings and then to purchase payments on a first-in-first-out basis. There is no withdrawal charge with respect to withdrawals of investment earnings and certain other free withdrawal amounts. Under no circumstances will the total of all withdrawal charges exceed 6% of total purchase payments made. The withdrawal charge is intended to reimburse First North American for compensation paid to cover selling concessions to broker-dealers, preparation of sales literature and other expenses relating to sales activity. Applicants will rely on Rule 6c–8 under the Act for the necessary exemptive relief to permit imposition of the withdrawal charge.

7. First North American assumes mortality and expense risks under the Contracts. The mortality risk is the risk that annuitants may live for a longer period of time than estimated. First North American assumes this mortality risk by virtue of annuity rates incorporated into the Contract, which cannot be changed. This assures each annuitant that his longevity will not have an adverse effect on the amount of annuity payments. Also, First North American guarantees that if the owner dies before the maturity date, it will pay a death benefit. The expense risk assumed by First North American is the risk that the administration fees, which fees cannot be increased, may be insufficient to cover actual expenses. To compensate it for assuming these risks, First North American will deduct from each sub-account a charge each valuation period at an effective annual rate of 1.25%, consisting of .80% for mortality risks and .45% for expense risks. The rate of the mortality and expense risk charge cannot be increased. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk undertaking, First North American will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be profit to First North American and will be available for any proper corporate purpose including, among other things, payment of distribution expenses.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities, or transactions from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 27(c)(2) of the 1940 Act prohibits the issuer of a periodic payment plan certificate, and any depositor or underwriter for such issuer, from selling such periodic payment plan certificate unless proceeds of payments on such certificates (other than sales loads) are held under an indenture or agreement containing specified provisions. Section 26(a)(2) and the Rules thereunder do not permit a deduction from the assets of a separate account for mortality and expense risk charges.

3. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. First North American will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

4. Applicants acknowledge that the withdrawal charge will be insufficient to cover all costs relating to the distribution of the Contracts and that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. First North American has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by First North American at its principal office and will be available to the Commission.

5. First North American represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have

such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17586 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20404; File No. 812–8914]

North American Security Life Insurance Company, et al.

July 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: North American Security Life Insurance Company ("Security Life"), NASL Variable Account ("Variable Account"), NASL Financial Services, Inc. ("NASL Financial") and Wood Logan Associates Inc. ("Wood Logan").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Variable Account with respect to certain flexible purchase payment individual and group deferred variable annuity contracts.

FILING DATE: The application was filed on March 29, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on August 8, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Notification of the date of a hearing may be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington D.C. 20549. Applicants: John D. DesPrez, III, Esq., North American Security Life Insurance Company, 116 Huntington Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Security Life, a wholly owned subsidiary of North American Life Assurance Company, is a stock life insurance company organized under the laws of Delaware in 1979. Security Life is the depositor of the Variable Account. The Variable Account is registered under the Act as a unit investment trust and was established, under Delaware law, to offer certain variable annuity contracts, including the variable contracts described in the application (the "Contracts"). The Variable Account is divided into sub-accounts which invest in corresponding portfolios of NASL Series Trust (the "Trust").

2. NASL Financial, a wholly owned subsidiary of Security Life, is the principal underwriter of the Contracts. NASL Financial also serves as investment adviser to the Trust.

3. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, serves as the exclusive promotional agent for the Contracts.

4. The Contracts are flexible purchase payment individual and group deferred variable annuity contracts which will provide for the accumulation of values and the payment of annuity benefits on a fixed or variable basis. The Contracts are designed for use in connection with retirement plans that may or may not qualify for special income tax treatment under the Internal Revenue Code of 1986, as amended.

5. Prior to the maturity date, Security Life will, on the last day of each contract year, deduct from the accumulated value of each Contract an annual administration fee of $30. This annual administration fee will also be deducted when a Contract is surrendered on any date other than a contract anniversary. However, if prior to the maturity date the contract value exceeds $100,000 at the time of the fee's assessment, the fee will be waived. During the annuity period, the fee is deducted on a pro-rata basis from each annuity payment. In addition, Security Life will deduct from the sub-accounts each valuation period an administration charge equal to .15% of the sub-account assets on an annualized basis. These fees are intended to compensate Security Life for the cost of providing administrative services attributable to the Contracts and the operations of the Variable Account and the Company in connection with the Contracts. The fees are based upon Security Life's current estimates of the administrative costs attributable to the Contracts over their lifetime and are not designed or expected to generate a profit. In the case of individual Contracts, these fees are guaranteed never to be increased. For group Contracts, these fees may be modified by Security Life on 60 days notice to the group holder of the Contract, provided that such modification shall apply only to certificates issued under the Contract after the effective date of the modification. Applicants will rely on Rule 26a–1 under the Act for the necessary exemptive relief to charge such fees.

6. No sales charge will be deducted from purchase payments as they are made. Instead, a withdrawal charge (contingent deferred sales charge) will be assessed in some circumstances when the contract value is completely or partially withdrawn prior to the maturity date. Generally, a withdrawal charge only applies to the withdrawal of purchase payments that have been in the Contract less than seven complete years. The withdrawal charge is a percentage of the amount withdrawn which is subject to the charge, which percentage declines 6–6–5–5–4–3–2% over the first seven years that a purchase payment has been in the Contract. Withdrawals are allocated first to earnings and then to purchase payments on a first-in-first-out basis. There is no withdrawal charge with respect to withdrawals of investment earnings and certain other free withdrawal amounts. under no circumstances will the total of all withdrawal charges exceed 6% of total purchase payments made. In the case of group Contracts only, the withdrawal charge may be modified by Security Life on 60 days written notice to the group holder of the Contract, provided that the modification shall apply only to certificates issued under the Contract after the effective date of the modification. The withdrawal charge is intended to reimburse Security Life for compensation paid to cover selling concessions to broker-dealers, preparation of sales literature and other expenses relating to sales activity. Applicants will rely on Rule 6c–8 under the Act for the necessary exemptive relief to permit imposition of the withdrawal charge.

7. Security Life assumes mortality and expense risks under the Contracts. The mortality risk is the risk that annuitants may live for a longer period of time than estimated. Security Life assumes this mortality risk by virtue of annuity rates incorporated into the Contract, which for individual Contracts cannot be changed and in the case of group Contracts, cannot be changed for outstanding certificates. This assures each annuitant that his longevity will not have an adverse effect on the amount of annuity payments. Also, Security Life guarantees that if the owner dies before the maturity date, it will pay a death benefit. The expense risk assumed by Security Life is the risk that the administration fees, which fees cannot be increased for individual Contracts or outstanding certificates, may be insufficient to cover actual expenses. To compensate it for assuming these risks, Security Life will deduct from each sub-account a charge each valuation period at an effective annual rate of 1.25%, consisting of .80% for mortality risks and .45% for expense risks.

8. The rate of the mortality and expense risk charge cannot be increased for individual Contracts. The rate may be increased for group Contracts but only for certificates issued after the effective date of the Contract. Applicants acknowledge that if the mortality and expense charge is increased, further exemptive relief may be necessary. Security Life reserve the right to issue group Contracts and certificates with a lower mortality and expense risk charge where it determines that the risks of the group involved are less than for the persons for whom the Contracts and certificates were originally designed. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk undertaking, Security Life will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be profit to Security Life and will be available for any proper corporate purpose including, among other things, payment of distribution expenses.

the Contract after the effective date of the modification. The withdrawal charge is intended to reimburse Security Life for compensation paid to cover selling concessions to broker-dealers, preparation of sales literature and other expenses relating to sales activity. Applicants will rely on Rule 6c–8 under the Act for the necessary exemptive relief to permit imposition of the withdrawal charge.

7. Security Life assumes mortality and expense risks under the Contracts. The mortality risk is the risk that annuitants may live for a longer period of time than estimated. Security Life assumes this mortality risk by virtue of annuity rates incorporated into the Contract, which for individual Contracts cannot be changed and in the case of group Contracts, cannot be changed for outstanding certificates. This assures each annuitant that his longevity will not have an adverse effect on the amount of annuity payments. Also, Security Life guarantees that if the owner dies before the maturity date, it will pay a death benefit. The expense risk assumed by Security Life is the risk that the administration fees, which fees cannot be increased for individual Contracts or outstanding certificates, may be insufficient to cover actual expenses.To compensate it for assuming these risks, Security Life will deduct from each sub-account a charge each valuation period at an effective annual rate of 1.25%, consisting of .80% for mortality risks and .45% for expense risks.

8. The rate of the mortality and expense risk charge cannot be increased for individual Contracts. The rate may be increased for group Contracts but only for certificates issued after the effective date of the Contract. Applicants acknowledge that if the mortality and expense charge is increased, further exemptive relief may be necessary. Security Life reserve the right to issue group Contracts and certificates with a lower mortality and expense risk charge where it determines that the risks of the group involved are less than for the persons for whom the Contracts and certificates were originally designed. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk undertaking, Security Life will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be profit to Security Life and will be available for any proper corporate purpose including, among other things, payment of distribution expenses.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities, or transactions from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 27(c)(2) of the 1940 Act prohibits the issuer of a periodic payment plan certificate, and any depositor or underwriter for such issuer, from selling such periodic payment plan certificate unless proceeds of payments on such certificates (other than sales loads) are held under an indenture or agreement containing specified provisions. Section 26(a)(2) and the Rules thereunder do not permit a deduction from the assets of a separate account for mortality and expense risk charges.

3. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. Security Life will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

4. Applicants acknowledge that the withdrawal charge will be insufficient to cover all costs relating to the distribution of the Contracts and that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. Notwithstanding the foregoing, Security Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Security Life at its principal office and will be available to the Commission.

5. Security Life represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19) of the Act.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17587 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20406; File No. 812–8948]

North American Security Life Insurance Company, et al.

July 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: North American Security Life Insurance Company ("Security Life"), NASL Variable Account ("Variable Account"), NASL Financial Services, Inc. ("NASL Financial") and Wood Logan Associates Inc. ("Wood Logan").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the deduction of a distribution fee and a mortality and expense risk charge from the assets of the Variable Account with respect to certain flexible purchase payment individual deferred variable annuity contracts.

FILING DATE: The application was filed on April 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing

to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on August 8, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Notification of the date of a hearing may be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington DC 20549. Applicants: John D. DesPrez, III, Esq., North American Security Life Insurance Company, 116 Huntington Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Security Life, a wholly owned subsidiary of North American Life Assurance Company, is a stock life insurance company organized under the laws of Delaware in 1979. Security Life is the depositor of the Variable Account. The Variable Account is registered under the Act as a unit investment trust and was established, under Delaware law, to offer certain variable annuity contracts, including the variable contracts described in the application (the "Contracts"). The Variable Account is divided into sub-accounts which invest in corresponding portfolios of NASL Series Trust (the "Trust").

2. NASL Financial, a wholly owned subsidiary of Security Life, is the principal underwriter of the Contracts. NASL Financial also serves as investment adviser to the Trust.

3. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, serves as the exclusive promotional agent for the Contracts.

4. The Contracts are flexible purchase payment individual deferred variable annuity contracts which will provide for the accumulation of values on a variable basis and the payment of benefits on a fixed or variable basis. The Contracts are designed for use in connection with retirement plans that may or may not qualify for special income tax treatment under the Internal Revenue Code of 1986, as amended. The minimum initial purchase payment for the Contracts will be $25,000.

5. Security Life reserves the right to charge an annual administration fee if the contract value of a Contract drops below $10,000 as the result of a partial withdrawal. In such event, Security Life may, on the last day of each contract year, deduct from the contract value of such Contract an annual administration fee of $30. This annual administration fee may also be deducted under such a Contract if the Contract is surrendered on any date other than a contract anniversary. In addition, Security Life will deduct from the sub-accounts each valuation period an administration charge equal to .25% of the sub-account assets on an annualized basis. These fees are intended to compensate Security Life for the cost of providing administrative services attributable to the Contracts and the operations of the Variable Account and the Company in connection with the Contracts.

Applicants represent that the fees are based upon Security Life's estimates of the administrative costs for such services over the lifetime of the Contracts, are guaranteed never to be increased, and are not designed or expected to generate a profit. Applicants rely on Rule 26a–1 under the Act to assess such fees.

6. No sales charge will be deducted from purchase payments as they are made. Instead, Security Life will deduct from the sub-accounts each valuation period a distribution fee equal to .15% of sub-account assets on an annualized basis, and prior to the maturity date, a 3% withdrawal charge (contingent deferred sales charge) will be assessed in circumstances where complete or partial withdrawals are attributed to purchase payments made within three years prior to the date of the withdrawal. Applicants represent that the distribution fee and the withdrawal charge are intended to reimburse Security Life for compensation paid to cover selling concessions to broker-dealers, preparation of sales literature and other expenses relating to sales activity. Applicants rely on Rule 6c–8 under the Act to impose the withdrawal charge.

7. To compensate it for assuming mortality and expense risks under the Contracts, Security Life deducts from each sub-account a charge each valuation period at an effective annual rate of 1.25%, consisting of .80% for the mortality risks and .45% for the expense risks. The rate of the mortality and expense risk charge cannot be increased.

8. The Mortality risk assumed by Security Life under the Contracts is the risk that annuitants may live for a longer period of time than estimated. Security Life assumes this mortality risk by virtue of annuity rates incorporated into the Contract which cannot be changed. This assures each annuitant that his longevity will not have an adverse effect on the amount of annuity payments. Also, Security Life guarantees that if the owner dies before the maturity date, it will pay a death benefit. The expense risk assumed by Security Life is the risk that the administration fees, which cannot be increased, may be insufficient to cover actual expenses. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk undertakings, Security Life will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be profit to Security Life and will be available for any proper corporate purpose including, among other things, payment of distribution expenses.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities, or transactions from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 27(c)(2) of the 1940 Act prohibits the issuer of a periodic payment plan certificate, and any depositor or underwriter for such issuer, from selling such periodic payment plan certificate unless proceeds of payments on such certificates (other than sales loads) are held under an indenture or agreement containing specified provisions. Section 26(a)(2) and the Rules thereunder do not permit a deduction from the assets of a separate account for mortality and expense risk charges or distribution expense charges.

3. Applicants state that the proposed distribution fee is an appropriate method to help defray Security Life's costs associated with the sale of the Contracts. Applicants represent that Security Life will monitor the performance of the Variable Account to ensure that with respect to any Contract owner the cumulative sum of the distribution fee and the withdrawal charge will not exceed 9% of the total premiums paid. Applicants state that assurance that the sum of such charges will never exceed 9% of premiums paid can be obtained by monitoring the performance of the Variable Account. Applicants represent that if the performance of the Variable Account should be so favorable so that it is possible that the 9% limit may be reached under any outstanding Contract, Security Life will promptly commence monitoring Contracts on an individual basis to make sure that the limit is not exceeded.

4. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. Security Life will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

5. Applicants acknowledge that the distribution fee and the withdrawal charge will be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the distribution fee and the withdrawal charge. Notwithstanding the above, Security Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Security Life at its principal office and will be available to the Commission.

6. Security Life represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19) of the Act.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

possible that the 9% limit may be reached under any outstanding Contract, Security Life will promptly commence monitoring Contracts on an individual basis to make sure that the limit is not exceeded.

4. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. Security Life will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

5. Applicants acknowledge that the distribution fee and the withdrawal charge will be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the distribution fee and the withdrawal charge. Notwithstanding the above, Security Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Security Life at its principal office and will be available to the Commission.

6. Security Life represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19) of the Act.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17588 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted by August 19, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3RD Street, S.W., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: 13 CFR 112.9 and 113.5 of SBA's Non Discrimination Rules and Regulations.

Form No.: SBA Form 793.

Frequency: On Occasion.

Description of Respondents: SBA loan recipients.

Annual Responses: 72,800.

Annual Burden: 6,607.

Dated: July 13, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–17603 Filed 7–19–94; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted by August 19, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Small Business Development Center Counseling Record.

Form No.: SBA Form 1062.

Frequency: Monthly.

Description of Respondents: Small Business Development Center Counselors.

Annual Responses: 1,150,000.

Annual Burden: 115,000.

Dated: July 13, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–17602 Filed 7–19–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2035]

Designation and Determination

Pursuant to the authority vested in me by the Foreign Missions Act, 22 U.S.C. § 4301 *et seq.* ("the Act"), and Department of State Delegation of Authority No. 147 of September 13, 1982, I hereby determine that the Palestine Liberation Organization representation in the United States

("PLO Office") is a "foreign mission" within the meaning of Section 202(a)(3) of the Act (22 U.S.C. 4302(a)(3)) and that the provisions of Section 205 of the Act (22 U.S.C. § 4305) apply to the acquisition or disposition of real property by or on behalf of the PLO Office.

Designation of the PLO Office as a foreign mission is based on the following:

—It is an "agency or entity in the United States."

—It holds itself out as representing the PLO, and is acknowledged in that capacity by the U.S. Government; it is involved in "other activities" on behalf of the PLO.

—It is substantially owned and/or effectively controlled by the PLO.

—The PLO is "an organization * * * representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States [by virtue of its status as an observer to the United Nations] or which engages in some aspect of the conduct of the international affairs of such territory or political entity." (*See Palestine Information Office* v. *Shultz*, 853 F.2d 932, 937 (D.C. Cir. 1988).)

Pursuant to Section 4302(a)(1) of the Act, I hereby designate the acquisition by the PLO Office, or its agents or employees acting on its behalf, of the following goods and services from any person or entity subject to the jurisdiction of the United States, as a benefit for the purposes of the Act:

Goods

(1) Motor vehicles;

(2) Construction equipment and materials;

(3) Equipment and materials for the maintenance of the mission, including typewriters, telephones and other telecommunications equipment, copying machines and related materials;

(4) Computers and automated data processing equipment; and

(5) Furnishings for offices.

Services

(1) Public utilities and services, including telephone, telegraph and other telecommunications services, mail, public transportation and sanitation services; and

(2) Personal services of individuals engaged within the United States for whatever purpose, whether on a temporary or regular basis. Such personal services include:

(a) Services relating to public relations, information, publishing, printing, advertising, distribution of literature, or mailing;

(b) Plumbing, electrical, construction, maintenance, engineering, architectural or related services;

(c) Packing, shipping, cartage and related services, including provision of packing materials; and

(d) Financial services.

In addition, I hereby determine it to be reasonably necessary to accomplish the purposes set forth in section 204(b) of the Act (22 U.S.C. 4304(b)) to require the PLO Office, and its agents or employees acting on its behalf, to comply with the terms and conditions to be specified by the Director of the Office of Foreign Missions as a condition to the execution or performance in the United States of any contract or other agreement, the acquisition, retention, or use of any real property, or the application for or acceptance of any benefit (including any benefit from or authorized by any Federal, State, or municipal governmental authority, or any entity providing public services).

Publication of this notice in the **Federal Register** constitutes notice to persons subject to the jurisdiction of the United States doing business with or providing goods or services to the PLO Office that terms and conditions with respect to benefits as described herein are hereby imposed. Persons wishing clarification as to the applicability of this Designation and Determination may contact the Office of Foreign Missions, U.S. Department of State, Washington, DC 20520 (telephone: (202) 647–5217)).

Dated: June 21, 1994.

Richard M. Moose,

Under Secretary for Management.

[FR Doc. 94–17637 Filed 7–19–94; 8:45 am]

BILLING CODE 4710–44–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATE: July 14, 1994.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on July 14, 1994:

DOT No: 3960
OMB No: New
Administration: National Highway Traffic Safety Administration
Title: Vehicle Rollover Stability Information Collection
Need for Information: Title 15 USC 1392 authorizes the Secretary of Transportation to establish procedures for NHTSA to collect vehicle rollover stability information from manufacturers, to compute measurements and affix labels on vehicles.
Proposed Use of Information: The information will be used to provide consumers with rollover stability information on each make and model of cars and trucks sold in this country.
Frequency: Annually
Burden Estimate: 192 hours
Respondents: Vehicle manufacturers
Form(s): None
Average Burden Hours Per Response: 8 hours reporting
DOT No: 3961
OMB No: 2115–0017
Administration: U.S. Coast Guard
Title: Application for Approval of Marine Event
Need for Information: Title 33 GFR Part 10 establishes regulations to provide effective control over regattas and marine parades conducted on the navigable waters of the United States to ensure the safety of life and property in the regatta or marine parade area.
Proposed Use of Information: The U.S. Coast Guard will use this information to provide effective control over marine parades and regattas and determine what impact these events may have on navigation and the environment.
Frequency: On occasion
Burden Estimate: 4,000 hours
Respondents: Applicants for marine parades and regattas
Form(s): CG–4423
Average Burden Hours Per Response: 1 hour reporting
DOT No: 3962
OMB No: 2138–0016
Administration: Research and Special Programs Administration
Title: Report of Extension of Credit to Political Candidates
Need for Information: Section 401 of the Federal Election Campaign Act of 1971 promulgated regulations with respect to the extension of credit for air transportation furnished to candidates for Federal office, or any persons acting on their behalf, in connection with political campaigns.
Proposed Use of Information: The information will be used to compile a monthly report, identifying unpaid balances due air carriers from political candidates, which is sent to the Federal Election Commission.
Frequency: On occasion
Burden Estimate: 5 hours
Respondents: Air carriers
Form(s): RSPA Form 183
Average Burden Hours Per Response: 1 hour reporting
DOT No: 3963
OMB No: New
Administration: Federal Highway Administration
Title: Commercial Motor Carrier Operator Sleep Apnea
Need for Information: In the Conference Report to the FY 1993 Appropriations Act for DOT, the Secretary of Transportation was directed to award a study to investigate and assess the incidence of sleep apnea among commercial truck drivers.

Form(s): None
Average Burden Hours Per Response: 8 hours reporting
DOT No: 3961
OMB No: 2115–0017
Administration: U.S. Coast Guard
Title: Application for Approval of Marine Event
Need for Information: Title 33 GFR Part 10 establishes regulations to provide effective control over regattas and marine parades conducted on the navigable waters of the United States to ensure the safety of life and property in the regatta or marine parade area.
Proposed Use of Information: The U.S. Coast Guard will use this information to provide effective control over marine parades and regattas and determine what impact these events may have on navigation and the environment.
Frequency: On occasion
Burden Estimate: 4,000 hours
Respondents: Applicants for marine parades and regattas
Form(s): CG–4423
Average Burden Hours Per Response: 1 hour reporting
DOT No: 3962
OMB No: 2138–0016
Administration: Research and Special Programs Administration
Title: Report of Extension of Credit to Political Candidates
Need for Information: Section 401 of the Federal Election Campaign Act of 1971 promulgated regulations with respect to the extension of credit for air transportation furnished to candidates for Federal office, or any persons acting on their behalf, in connection with political campaigns.
Proposed Use of Information: The information will be used to compile a monthly report, identifying unpaid balances due air carriers from political candidates, which is sent to the Federal Election Commission.
Frequency: On occasion
Burden Estimate: 5 hours
Respondents: Air carriers
Form(s): RSPA Form 183
Average Burden Hours Per Response: 1 hour reporting
DOT No: 3963
OMB No: New
Administration: Federal Highway Administration
Title: Commercial Motor Carrier Operator Sleep Apnea
Need for Information: In the Conference Report to the FY 1993 Appropriations Act for DOT, the Secretary of Transportation was directed to award a study to investigate and assess the incidence of sleep apnea among commercial truck drivers.
Proposed Use of Information: The data collected will be used to identify commercial truck drivers that experience the medical condition known as sleep apnea.
Frequency: One time
Burden Estimate: 2,600 hours
Respondents: Commercial truck drivers
Form(s): Survey
Average Burden Hours Per Response: 30 minutes reporting
DOT No: 3964
OMB No: 2133–0033
Administration: Maritime Administration
Title: Exporter/Importer Data
Need for Information: Section 212 of the Merchant Marine Act of 1936, as amended, prescribes requirements to study maritime problems and to devise and implement policies to induce U.S. importers and exporters to give preference to U.S. registered vessels.
Proposed Use of Information: The information will be used to quantify the marketplace, focus on target markets, set marketing goals, and measure total or regional performance.
Frequency: Weekly
Burden Estimate: 840 hours
Respondents: Shippers and other market entities
Form(s): MA–740
Average Burden Hours Per Response: 30 minutes reporting
DOT No: 3965
OMB No: New
Administration: Federal Aviation Administration
Title: Flight Attendant Duty Limitations and Rest Requirements
Need for Information: This is a recordkeeping activity which will enable the Administrator of the FAA to verify that each airline is in compliance with the flight attendant duty/rest regulations.
Proposed Use of Information: The information will be used to ensure that flight attendants receive sufficient rest to perform safety duties on board airplanes.
Frequency: Recordkeeping
Burden Estimate: 103,708 hours
Respondents: Certificate holders operating under 14 CFR Parts 121, 125 and 135
Form(s): None
Average Burden Hours Per Response: 576 hours and 10 minutes recordkeeping
DOT No: 3966
OMB No: 2130–0010
Administration: Federal Railroad Administration
Title: Designation of Qualified Persons (Track) and Records of Results of Track Inspections
Need for Information: The Federal Railroad Safety Act of 1970 authorized the Secretary of Transportation to prescribe rules, regulations, orders and standards for all areas of railroad safety. The Federal Track Safety Standards, 49 CFR 213, define the responsibilities and qualifications of individuals to inspect and prescribe repairs and set forth standards for roadbed, track geometry, track structure, track appliances and track-related devices and inspection.
Proposed Use of Information: The information will be used to verify that inspections are made by qualified persons and that railroads are in compliance with prescribed safety standards.
Frequency: Recordkeeping
Burden Estimate: 1,653,633 hours
Respondents: Railroads
Form(s): None
Average Burden Hours Per Response: 2,667 hours and 9 minutes recordkeeping
DOT No: 3967
OMB No: 2138–0006
Administration: Research and Special Programs Administration
Title: Part 249 Preservation of Air Carrier Records
Need for Information: Title 14 CFR Part 249 prescribes recordkeeping requirements for all carriers holding certificates of public convenience and necessity under Sections 401 and 418 of the Federal Aviation Act of 1958, as amended, public charter operators, and overseas military personnel charter operators.
Proposed Use of Information: The information will be used to audit the records of certificated air carriers and public charter operators.
Frequency: Recordkeeping
Burden Estimate: 678 hours
Respondents: Certificated air carriers and public charter operators
Form(s): None
Average Burden Hours Per Response: 1 hour and 24 minutes recordkeeping
DOT No: 3968
OMB No: New
Administration: National Highway Traffic Safety Administration
Title: Survey of Occupant Protection Attitudes, Knowledge and Behavior
Need for Information: The National Traffic and Motor Vehicle Safety Act of 1966, Title 15 USC 1395, Section 106(b) gives the Secretary of Transportation authorization to conduct research, testing, development and training.
Proposed Use of Information: NHTSA will use the data collected to assess

current public attitudes, knowledge, and behavior related to occupant protection in the areas of safety belts, child safety seats, air bags and helmet use, since these areas have undergone significant technological development. This survey will attempt to obtain the latest information upon which new programmatic decisions will be made.

Frequency: One time

Burden Estimate: 2,636 hours

Respondents: Individuals

Form(s): Questionnaire

Average Burden Hours Per Response: 20 minutes reporting

DOT No: 3969

OMB No: 2105–0510

Administration: Office of the Secretary

Title: Report of Disadvantaged Business Enterprise (DBE) Awards and Commitments

Need for Information: Title 49 CFR Part 23 requires DOT and its operating administrations to develop a recordkeeping system to monitor, assess and identify contract awards and prime contractors' progress in achieving DBE subcontract goals. The Intermodal Surface Transportation and Efficiency Act of 1991 requires that each State shall annually survey and compile a list of small business concerns and submit a written report to the Secretary of Transportation.

Proposed Use of Information: The information will be used to determine the extent to which DOT financially-assisted State and local transportation agencies are achieving their approved disadvantaged business enterprise goals, and for DBE program monitoring and reporting to Congress on DOT's status in meeting its statutory DBE program requirements.

Frequency: Annually, semi-annually, quarterly

Burden Estimate: 20,824 hours

Respondents: DOT financially-assisted State and local transportation agencies

Form(s): DOT F 4830

Average Burden Hours Per Response: 1 hour reporting; 18 hours recordkeeping

DOT No: 3970

OMB No: 2120–0557

Administration: Federal Aviation Administration

Title: Passenger Facility Charge (PFC) Program

Need for Information: The Aviation Safety and Capacity Expansion Act of 1990 (Public Law 101–508) authorizes airports to impose passenger facility charges. FAR Part 158 implements that Act.

Proposed Use of Information: The passenger facility charge program requires agencies and certain members of the aviation industry to prepare and submit applications and reports to the DOT/FAA. This program provides additional funding for the expansion of airport capacity which is needed now and in the future. DOT/FAA will use any information submitted in response to this program to carry out the intent of Section 9113 of the Aviation Safety and Capacity Expansion Act of 1990.

Frequency: Quarterly, annually

Burden Estimate: 50,742 hours

Respondents: Air carriers, public agencies

Form(s): FAA Form 5500–115 Average Burden Hours Per Response: 5 hours to 160 hours reporting (depending on complexity)

DOT No: 3971

OMB No: 2115–0571

Administration: U.S. Coast Guard

Title: Alternative Provisions for Reinspections of Offshore Supply Vessels in Foreign Ports

Need for Information: The information collection is needed to ensure that offshore supply vessels (OSV), based overseas, are inspected before they are put into service. The owners and operators of OSVs should submit certified examination reports and statements to the Coast Guard as an alternative to the Coast Guard reinspecting these vessels.

Proposed Use of Information: The information will be used by the Coast Guard as an alternative to Coast Guard marine inspectors conducting reinspection examinations on offshore OSVs that operate in overseas locations. Marine inspectors will issue vessels certificates of inspection with a letter or endorsement containing specific information concerning the person who performed the examination; and will ensure that these vessels remain fit for the route and service specified in the certificate of inspection.

Frequency: On occasion

Burden Estimate: 780 hours

Respondents: Owners or operators of offshore supply vessels

Form(s): None

Average Burden Hours Per Response: 7 hours and 30 minutes reporting

Issued in Washington, DC on July 14, 1994.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 94–17672 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–62–P

[Docket 48847]

Application of American International Airways, Inc., TCA, Inc., and Trans Continental Airlines, Inc. For Transfer of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 94–7–15).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Trans Continental Airlines, Inc., fit, willing, and able, and award it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of property and mail, subject to conditions, and (2) canceling the certificate authority currently held by TCA, Inc.

DATES: Persons wishing to file objections should do so no later than July 29, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 48847 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: July 14, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–17671 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 94–55; Notice 1]

Receipt of Petition for Determination That Nonconforming 1994 Volkswagen Golf III Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1994 Volkswagen Golf III passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1994 Volkswagen Golf III that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is August 19, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer No. R–90–006) has petitioned NHTSA to determine whether 1994 Volkswagen

Volkswagen Golf III that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is August 19, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer No. R–90–006) has petitioned NHTSA to determine whether 1994 Volkswagen Golf III passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1994 Volkswagen Golf III that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Volkswagenwerke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1994 Volkswagen Golf III to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1994 Volkswagen Golf III, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994 Volkswagen Golf III is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp; (d) replacement of bulb failure modules with U.S.-model components.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a key microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a seat belt warning buzzer, wired to the seatbelt latch; (b) installation of a passive restraint system consisting of door-anchored automatic belts and a knee bolster. The petitioner notes that the non-U.S. certified 1994 Volkswagen Golf III is supplied with mounting points and bolt holes for the installation of this equipment and that no structural changes are necessary.

Additionally, the petitioner states that bumper shocks must be installed on the non-U.S. certified 1994 Volkswagen Golf III to comply with the Bumper Standard found in 49 CFR Part 581. The petitioner further notes that it may be necessary to install a U.S.-model bumper cover on some vehicles to accommodate the marker lights.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 14, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17673 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–32; Notice 2]

Determination That Nonconforming 1992 Mercedes-Benz 190E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1992 Mercedes-Benz 190E passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1992 Mercedes-Benz 190E passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1992 Mercedes-Benz 190E), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective July 20, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHSTA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland (Registered Importer R–90–006) petitioned NHTSA to determine whether 1992 Mercedes-Benz 190E passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 5, 1994 (59 FR 23256) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 71 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1992 Mercedes-Benz 190E (Model ID 201.029) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Mercedes-Benz 190E originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 14, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17674 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–54; Notice 1]

Receipt of Petition for Determination That Nonconforming 1992 Ferrari 348TB Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1992 Ferrari 348TB passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1992 Ferrari 348TB that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is August 19, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4:00 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1992 Ferrari 348TB passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1992 Ferrari 348TB that was manufactured for importation into and sale in the United States and certified by its manufacturer, Ferrari S.p.A., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it carefully compared the non-U.S. certified 1992 Ferrari 348TB to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Ferrari 348TB, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Ferrari 348TB is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * * 103 Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212

manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1992 Ferrari 348TB passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1992 Ferrari 348TB that was manufactured for importation into and sale in the United States and certified by its manufacturer, Ferrari S.p.A., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it carefully compared the non-U.S. certified 1992 Ferrari 348TB to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Ferrari 348TB, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Ferrari 348TB is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * * 103 Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1992 Ferrari 348TB complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the non-U.S. certified 1992 Ferrari 348TB is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of front and rear sidemarker/reflector assemblies; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* installation of a buzzer microswitch and a warning buzzer in the steering lock electrical assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (b) installation of a passive restraint system consisting of driver and passenger side automatic seat belt assemblies, tracks, and a control unit that have part numbers identical to those found on the U.S. certified 1992 Ferrari 348TB. The petitioner claims that the lower dash panel on the non-U.S. certified 1992 Ferrari 348TB is identical to that found on its U.S. certified counterpart, and that a knee bolster is not supplied on the U.S. certified vehicle.

Standard No. 209 *Seat Belt Assemblies:* installation of seat belts labelled in accordance with the standard.

Standard No. 214 *Side Door Strength:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing data indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 14, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17675 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications For Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of

application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 4, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
9781–X	Chlorine Institute, Inc., Washington, DC (See Footnote 1)	9781
10645–X	Essex Cryogenics of Missouri, Inc., St. Louis, MO (See Footnote 2)	10645
10977–X	Federal Industries Corporation, Newport, MN (See Footnote 3)	10977

[1] To modify exemption to provide for cargo vessel as an additional mode of transportation for transporting chlorine cylinders.
[2] To modify exemption to provide for a 1.2 capacity insulated non-DOT Specification cylinder for shipment of oxygen, refrigerated liquid, Division 2.2.
[3] To modify exemption to provide for passenger-aircraft as an additional mode of transportation for transporting various classes of hazardous material in specially designed packaging.

Application No.	Applicant	Parties to exemption
7648–P	Great Western Aviation, Inc., Ogden, UT	7648
8582–P	Gateway Western Railway, Fairview Heights, IL	8582
9275–P	Compar, Inc., Hawthorne, NY	9275
9275–P	Halston Borghese, Inc., Jamesburg, NJ	9275
9275–P	Revlon Consumer Products Corporation, Oxford, NC	9275
9275–P	Estee Lauder, Melville, NY	9275
9628–P	Cometals, Inc., New York, NY	9628
9723–P	Tonawanda Tank Transport Service, Inc., Buffalo, NY	9723
9723–P	General Chemical Corporation, Framingham, MA	9723
9735–P	"K" Line America, Inc., Seattle, WA	9735
9741–P	Sunbelt Services, Seminole, FL	9741
10001–P	Grand Rapids Welding Supply Co., Grand Rapids, MI	10001
10441–P	General Chemical Corporation, Framingham, MA	10441
10933–P	Chemical Waste Management, Inc., Oak Brook, IL	10933
10982–P	Appleton Papers, Inc., Appleton, WI	10982
11119–P	G.H. Brown Automotive, Inc., Perkasie, PA	11119
11119–P	Auto Refinish Distributors, Inc., Tulsa, OK	11119
11135–P	GE Silicones, Waterford, NY	11135
11136–P	International Fireworks Co., Inc., Newton, NJ	11136
11184–P	BP Chemicals, Inc., Cleveland, OH	11184
11249–P	Ashland Chemical Company, Columbus, OH	11249
11253–P	Rhone-Poulenc, Shelton, CT	11253

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on July 14, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–17676 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Applications For Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1-Motor vehicle, 2-Rail freight, 3-Cargo vessel, 4-Cargo aircraft only, 5-Passenger-carrying aircraft.

DATES: Comments must be received on or before August 19, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application	Applicant	
11270–N	B.F. Goodrich Company, Henry, IL.	4
11273–N	Cherry-Air, Inc., Dallas, TX	4
11274–N	U.S. Department of Defense, Falls Church, VA.	4
11275–N	DHE Fabrication and Machining, Vereeniging, RA.	4
11276–N	CP Clare Corporation, Wakefield, MA.	4
11278–N	Regional Hospital Services, Inc., Portsmouth, VA.	4
11281–N	E.I. du Pont de Nemours and Company, Wilmington, DE.	4
11282–N	Idaho Power Company, Boise, ID.	4
11283–N	Zesto Therm, Inc., Cincinnati, OH.	4
11284–N	Webb Chemical Service Corp., Muskegon, MI.	4
11285–N	Akzo Chemicals, Inc., Chicago, IL.	4
11286–N	International Sensor Technology, Irvine, CA.	4
11287–N	DADCO, Detroit, MI	4
11288–N	Intercontinental Packaging Corporation, Tuckahoe, NY.	4
11289–N	Western Industries, Inc., Milwaukee, WI.	4

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53 (e)).

NEW EXEMPTIONS

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
11270–N	B.F. Goodrich Company, Henry, IL.	49 CFR 174.67 (i) & (j)	To authorize chlorine filled tank cars to remain connected without the physical presence of an unloader. (Mode 2.)
11273–N	Cherry-Air, Inc., Dallas, TX	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To authorize the transportation of certain Division 1.1, 1.2, 1.3 and 1.4 explosives that are not permitted for shipment by air, or are in quantities greater than those authorized. (Mode 4.)
11274–N	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.306(c)	To authorize the transportation of personally-owned fire extinguisher bottles in private owned vehicles shipped under military or civilian permanent change of station orders aboard cargo vessel. (Mode 3.)
11275–N	DHE Fabrication and Machining, Vereeniging, RA.	49 CFR 178.245	To authorize the transportation of non-DOT specification portable tanks similar to DOT Specification 51, except they are equipped with openings in various locations on the same end for use in transporting various hazardous materials classed as Division 2.1, 2.2 and 2.3. (Modes 1, 2, 3.)
11276–N	CP Clare Corporation, Wakefield, MA.	49 CFR 171.2, 172.200, 172.202, 172.204, 172.25, 172.300, 172.400, 173.164.	To authorize the transportation of miniature switching devices consisting of two subassemblies joined together in sealed glass tubes with limited quantities of mercury, Class 8, to be shipped without required markings and labelling. (Mode 5.)
11278–N	Regional Hospital Services, Inc., Portsmouth, VA.	49 CFR 171.8	To authorize the transportation of medical waste, classed as Division 6.2, in plastic bags overpacked in polyethylene roll-off type containers equipped with lid hinged with steel bar. (Mode 1.)
11281–N	E.I. du Pont de Nemours and Company, Wilmington, DE.	49 CFR 172.101/SP B–14, B–32 and T–38.	To authorize the transportation of certain Class 8 materials and Division 6.1, PIH material in uninsulated MC 312, 330, 331 and DOT 412 cargo tanks and DOT 51 portable tanks of stainless steel construction. (Mode 1.)
11282–N	Idaho Power Company, Boise, ID.	49 CFR 173.302	To authorize the transportation of air, compressed, Division 2.2 in non-DOT specification cylinders comparable to 3AA and 3AAX equipped with rupture disk pressure relief devices. (Mode 1.)
11283–N	Zesto Therm, Inc., Cincinnati, OH.	49 CFR 171.2, 172.101, 173.1(b), 173.124(c), 173.144.	To authorize the transportation of flameless hearing devices containing small quantities of material classed as Division 4.3 to be transported as consumer commodity, ORM–D. (Modes 1, 2.)
11284–N	Webb Chemical Service Corp., Muskegon, MI.	49 CFR 174.67(i)	To authorize rail cars containing certain hazardous materials, Class 8 and 9 to remain connected without the physical presence of an unloader. (Mode 2.)
11285–N	Akzo Chemicals, Inc., Chicago, IL.	49 CFR 173.225	To authorize the transportation of organic peroxides, classed as Division 5.2, to be transported in non-DOT specification intermediate bulk containers. (Mode 1.)
11286–N	International Sensor Technology, Irvine, CA.	49 CFR 173.4	To authorize the transportation of non-DOT specification permeation devices containing limited quanitites of various hazardous materials classed as Division 1.2, 2.2, 2.3, 6.1 and Class 3 and 9. (Modes 1, 2, 3, 4, 5.)
11287–N	DADCO, Detroit, MI	49 CFR 173.306(f)	To provide for alternative testing criteria for gas spring devices containing small quantities of compressed, nonflammable nitrogen gas pressurized from 250 psi to 2175 psi at 70 degree F. (Modes 1, 2, 3, 4, 5.)
11288–N	Intercontinental Packaging Corporation, Tuckahoe, NY.	49 CFR 173.306	To authorize an alternative testing method for leak detection in specially designed aerosol containers charged with Division 2.2 materials. (Modes 1, 2, 3, 4, 5.)
11289–N	Western Industries, Inc., Milwaukee, WI.	49 CFR 178.65	To authorize an alternative testing method for leak detection of DOT-Specification 39 non-reusable cylinders containing certain compressed gases. (Modes 1, 2, 3, 4.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53 (e)).

Issued in Washington, DC, on July 15, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–17677 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Availability of TCE application packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1995 Tax Counseling for the Elderly (TCE) Program.

DATES: Application packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1995 Tax Counseling for the Elderly (TCE) Program is August 22, 1994.

ADDRESSES: Application Packages may be requested by contacting: Program Manager, Tax Counseling for the Elderly Program, Internal Revenue Service, External Liaison Division (PC:E), 1111 Constitution Ave., NW., Room 7207, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Haag, External Liaison Division (PC:E), Room 1311, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224. The non-toll-free telephone number is: (202) 622–7664.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Pub. L. 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individual age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 1995 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in Section 21.006.

Beverly P. Monaco,

Acting Director, External Liaison Division.

[FR Doc. 94–17568 Filed 7–19–94; 8:45 am]

BILLING CODE 4830–01–U

[Delegation Order No. 11 (Rev. 24)]

Deputy Assistant Commissioner (International), et al.; Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: The authority to accept, reject, or acknowledge withdrawal of offers in compromise is delegated to specific service center, compliance center, and district office officials. Depending on the type of action to be taken and the amount of the liability sought to be compromised, the authority may be redelegated (26 U.S.C. 7122).

EFFECTIVE DATE: June 21, 1994.

FOR FURTHER INFORMATION CONTACT: Linda Kelly, Program Analyst, Office of Operations (CP:CO:O), room 7238, 1111 Constitution Avenue, NW., Washington, DC 20224; telephone (202) 622–6933 (not a toll-free call).

Order No. 11 (Rev. 24).

Effective date: June 21, 1994.

Authority to Accept or Reject Offers in Compromise.

The authority vested in the Commissioner of Internal Revenue by Treasury Order Nos. 150–04 and 150–09, 26 CFR 301.7122–1 and 26 CFR 301.7701–9, and Treasury Order No. 150–13 is hereby delegated as follows:

1. The Deputy Assistant Commissioner (International); regional counsel; regional directors of Appeals, and chiefs, assistant chiefs, associate chiefs, and team chiefs or team managers as to their respective cases, in Appeals offices; are delegated authority under section 7122 of the Internal Revenue Code to accept offers in compromise and to reject and acknowledge withdrawal of offers in compromise for matters under their respective jurisdictions regardless of the amount of the liability sought to be compromised.

2. Chiefs, Compliance Division, in service centers and Chief, Collection Division, in Austin Compliance Center are delegated authority under section 7122 of the Internal Revenue Code to accept offers in compromise and to reject and acknowledge withdrawal of offers in compromise for matters under their respective jurisdictions regardless of the amount of the liability sought to be compromised. Division chiefs may redelegate to service center and Austin Compliance Center Collection Branch chiefs the authority to reject and acknowledge withdrawal of all offers in compromise, regardless of the amount of the liability sought to be compromised, and to accept offers in compromise where the amount of the liability (including interest, penalty, additional amount, or addition to tax) is less than $100,000.

3. Division chiefs in districts are delegated authority under section 7122 of the Internal Revenue Code to accept offers in compromise and to reject and acknowledge withdrawal of offers in compromise for matters under their respective jurisdictions regardless of the amount of the liability sought to be compromised. Chiefs, Collection Division, may redelegate to any Collection Branch chief, including Automated Collection and Collection Support Branch chiefs, the authority to reject and acknowledge withdrawals of all offers in compromise regardless of the amount of the liability sought to be compromised and to accept offers in compromise regardless of the amount of the liability sought to be compromised. Chiefs, Collection Division, may redelegate to Automated Collection assistant branch chiefs the authority to reject and acknowledge withdrawals of all offers in compromise regardless of the amount of the liability sought to be compromised. Chiefs, Collection Division, may redelegate to group managers in the Collection Field function; to Chief, Advisory or Insolvency unit, or equivalent, GS–12 or above, in Special Procedures function; and to Automated Collection assistant branch chiefs the authority to accept offers in compromise where the amount of the liability (including interest, penalty, additional amount, or addition to tax) is less than $100,000.

4. Chief, Field Branch, in Collection, and Chief, Special Procedures or equivalent, in blended districts, are delegated the authority to accept offers in compromise where the amount of the liability (including interest, penalty, additional amount, or addition to tax) is less than $100,000 and to reject and acknowledge withdrawal of all offers in compromise regardless of the amount of the liability sought to be compromised.

5. Group managers in Collection Field function and Chief, Advisory or Insolvency unit or equivalent, GS–12 or above, in Special Procedures function in districts are delegated the authority to reject and acknowledge withdrawals of all offers in compromise for matters under their respective jurisdictions regardless of the amount of the liability sought to be compromised.

6. Chiefs, Examination Division, may redelegate to any Chief, Quality Measurement Staff, or Chief, Planning and Special Programs, the authority to reject and acknowledge withdrawals of all offers in compromise regardless of the amount of the liability sought to be compromised.

7. The authority delegated to division chiefs, branch chiefs, assistant branch chiefs, group managers, and Chief, Advisory or Insolvency unit, GS–12 or above, does not include the authority to reject offers in compromise for public policy reasons. Authority to reject offers in compromise for public policy reasons is restricted to the Deputy Assistant Commissioner (International); associates chief counsel; regional counsel; regional directors of Appeals; chiefs and associate chiefs, Appeals offices; district directors; service center directors; and Director, Austin Compliance Center. This authority may not be redelegated. The authority delegated to regional counsel may not be redelegated, except that the authority to reject offers in compromise for other than public policy reasons may be redelegated, but not lower than to district counsel. Regional directors of Appeals and chiefs and associate chiefs, Appeals offices, may not redelegate this authority.

8. District directors; service center directors; Director, Austin Compliance Center; and regional directors of Appeals are delegated the authority to accept offers in compromise in the event Counsel renders a negative legal opinion, regardless of the amount of the liability sought to be compromised. This applies only to offers in compromise—Doubt as to Collectibility. This authority may not be redelegated.

9. The authority in this delegation order may not be redelegated except as indicated.

10. To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

11. Delegation Order No. 11 (Rev. 23), effective December 7, 1993, is superseded.

Dated: June 21, 1994.

Phil Brand,

Chief Compliance Officer.

[FR Doc. 94–17564 Filed 7–19–94; 8:45 am]

BILLING CODE 4830–01–U

the amount of the liability sought to be compromised.

7. The authority delegated to division chiefs, branch chiefs, assistant branch chiefs, group managers, and Chief, Advisory or Insolvency unit, GS–12 or above, does not include the authority to reject offers in compromise for public policy reasons. Authority to reject offers in compromise for public policy reasons is restricted to the Deputy Assistant Commissioner (International); associates chief counsel; regional counsel; regional directors of Appeals; chiefs and associate chiefs, Appeals offices; district directors; service center directors; and Director, Austin Compliance Center. This authority may not be redelegated. The authority delegated to regional counsel may not be redelegated, except that the authority to reject offers in compromise for other than public policy reasons may be redelegated, but not lower than to district counsel. Regional directors of Appeals and chiefs and associate chiefs, Appeals offices, may not redelegate this authority.

8. District directors; service center directors; Director, Austin Compliance Center; and regional directors of Appeals are delegated the authority to accept offers in compromise in the event Counsel renders a negative legal opinion, regardless of the amount of the liability sought to be compromised. This applies only to offers in compromise—Doubt as to Collectibility. This authority may not be redelegated.

9. The authority in this delegation order may not be redelegated except as indicated.

10. To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

11. Delegation Order No. 11 (Rev. 23), effective December 7, 1993, is superseded.

Dated: June 21, 1994.

Phil Brand,

Chief Compliance Officer.

[FR Doc. 94–17564 Filed 7–19–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances (Monochlorobenzene, et al.); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include monochlorobenzene and ethyl chloride.

EFFECTIVE DATE: This modification is effective April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On July 12, 1994, the Secretary determined that monochlorobenzene and ethyl chloride should be added to the list of taxable substances in section 4672(a)(3), effective April 1, 1994.

The rate of tax prescribed for monochlorobenzene, under section 4671(b)(3), is $4.22 per ton. This is based upon a conversion factor for chlorine of 0.315 and a conversion factor for benzene of 0.6939.

The rate of tax prescribed for ethyl chloride, under section 4671(b)(3), is $2.29 per ton. This is based upon a conversion factor for ethylene of 0.4379 and a conversion factor for hydrochloric acid of 0.5621.

The petitioner is PPG Industries, Inc., a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Monochlorobenzene

HTS number: 2903.61.10.00
CAS number: 108–90–7

Monochlorobenzene is derived from the taxable chemicals chlorine and benzene. Monochlorobenzene is a liquid produced predominantly by the direct chlorination of benzene. The stoichiometric material consumption formula for monochlorobenzene is:

Cl_2 (chlorine)+C_6H_6 (benzene) ——> C_6H_5Cl (monochlorobenzene)+HCl (hydrogen chloride)

Monochlorobenzene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Ethyl chloride

HTS number: 2903.11.00.20
CAS number: 75–00–3

Ethyl chloride is derived from the taxable chemicals ethylene and hydrochloric acid. Ethyl chloride is a gas produced predominantly by the hydrochlorination of ethylene.

The stoichiometric material consumption formula for ethyl chloride is:

C_2H_4 (ethylene)+HCl (hydrochloric acid) ——> C_2H_5Cl (ethyl chloride)

Ethyl chloride has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–17566 Filed 7–19–94; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register
Vol. 59, No. 138
Wednesday, July 20, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Monday, July 25, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–17715 Filed 7–18–94; 8:45 am]
BILLING CODE 6210–01–P

federal register

Wednesday
July 20, 1994

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting and Fishing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AC59

Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing on individual national wildlife refuges. Refuge hunting and fishing programs are reviewed annually to determine whether the individual refuge regulations governing these programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications to ensure the continued compatibility of hunting and fishing with the purposes for which the individual refuges were established. Modifications are designed, to the extent practical, to make refuge hunting and fishing programs consistent with State regulations.

DATES: Comments on this proposed rule will be accepted on or before September 19, 1994.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq. at the above address; Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland game hunting, big game hunting or sport fishing through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60-day comment period is specified in order to facilitate public input. Accordingly, interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES.** All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting and sport fishing plans are developed for each refuge prior to opening it to hunting or fishing. In many cases, refuge-specific hunting and fishing regulations are included in the hunting and sport fishing plans to ensure the compatibility of the hunting and sport fishing programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. Continued compliance is ensured by annual review of hunting and sport fishing programs and regulations.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to the Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. The amendment of refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The B.(5) Service exclusion is employed here as these amendments are considered "[m]inor changes in the amounts or types of public use on FWS or State-managed lands, in accordance with regulations, management plans, and procedures." These proposed refuge-specific hunting and fishing revisions to existing regulations simply qualify or otherwise define an existing hunting or fishing activity for purposes of resource management. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities and maps of the respective areas are retained at refuge headquarters and can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Assistant Regional Director—Refuges and Wildlife U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. The amendment of refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The B.(5) Service exclusion is employed here as these amendments are considered "[m]inor changes in the amounts or types of public use on FWS or State-managed lands, in accordance with regulations, management plans, and procedures." These proposed refuge-specific hunting and fishing revisions to existing regulations simply qualify or otherwise define an existing hunting or fishing activity for purposes of resource management. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities and maps of the respective areas are retained at refuge headquarters and can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Assistant Regional Director—Refuges and Wildlife U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8550.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.7 is amended by adding the alphabetical listings of "Fergus Falls Wetland Management District" and "Morris Wetland Management District" under the State of Minnesota, "North Platte National Wildlife Refuge" under the State of Nebraska, and "Lake Ilo National Wildlife Refuge" under the State of North Dakota.

3. Section 32.20 *Alabama* is amended by revising paragraphs B., D.2., D.3., D.4., D.5., and adding new paragraphs D.6., D.7. and D.8 of Choctaw National Wildlife Refuge; and by revising paragraphs A. and B. of Eufaula National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Choctaw National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Fishing is permitted year-round unless otherwise marked by signs as closed to public entry or fishing.

3. Only fish, according to State regulations, may be taken or possessed. Bowfishing is not permitted.

4. Taking, possessing, or attempting to take frogs and turtles is prohibited.

5. The use of trotlines, snag lines, soap lines, set lines, drops, gigs and jugs is not permitted.

6. Entry and use of airboats, hovercraft, and personalized watercraft such as jet skis, watercycles or waterbikes are prohibited.

7. All gill nets must be actively attended at all times.

8. A refuge permit is required for commercial fishing of all nets, traps, baskets, boxes and seine used in refuge waters. Information on harvest data is required

Eufaula National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

4. Section 32.22 *Arizona* is amended by adding paragraph B.3. to Bill Williams River National Wildlife Refuge; by revising paragraph B. of Buenos Aires National Wildlife Refuge; by adding paragraph B.4. to Cibola National Wildlife Refuge; by revising paragraphs B.2. and C. of Havasu National Wildlife Refuge; by revising introductory language of paragraph B., and by revising paragraphs B.3. and B.5. of Imperial National Wildlife Refuge; and by revising paragraph B. of Kofa National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Bill Williams River National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunting of cottontail rabbits is permitted from September 1 to the close of the State quail season.

* * * * *

Buenos Aires National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of cottontail rabbit, coyote, and skunks is permitted on designated areas of the refuge.

* * * * *

Cibola National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Hunting of cottontail rabbits is permitted from September 1 to the end of the State quail season.

* * * * *

Havasu National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Hunting of cottontail rabbits is permitted from September 1 to the close of the State quail season, except in Pintail Slough where rabbit hunting is permitted only during September.

* * * * *

C. Big Game Hunting. Hunting of desert bighorn sheep is permitted on designated areas of the refuge with a valid State permit.

* * * * *

Imperial National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, cottontail rabbit, coyote, and fox is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

3. Cottontail rabbit hunting is permitted September 1 to the close of the State quail season.

* * * * *

5. Coyote and fox hunting is permitted only during the State quail season, except that it is not permitted during the State general deer season.

* * * * *

Kofa National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, cottontail rabbit, coyote, and fox is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of coyote, fox, and cottontail rabbit is permitted during the State quail season only, except as provided below.

2. Hunting of coyote and fox is not permitted during the deer season except that deer hunters with valid Unit 45A, 45B, and 45C deer permits may take these predators until a deer is taken.

3. Allowed method of take of cottontail rabbits is shotgun only.

* * * * *

5. Section 32.23 *Arkansas* is amended by revising paragraph C. of Big Lake National Wildlife Refuge; by revising paragraphs A., B. and C. of Felsenthal National Wildlife Refuge; by revising paragraphs B. and C. of Holla Bend National Wildlife Refuge; and by revising paragraphs A., B., and C. of Overflow National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Big Lake National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Felsenthal National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permit are required.

* * * * *

Holla Bend National Wildlife Refuge

* * * * *

B. *Upland Game Hunting.* Hunting of raccoon, opossum, squirrel, rabbit, beaver and coyote is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Overflow National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver raccoon, opossum, and nutria is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

6. Section 32.24 *California* is amended by adding paragraphs A.3. and B.3. to Colusa National Wildlife Refuge; by revising paragraphs A.2. and A.4., and adding new paragraph B.4. to Delevan National Wildlife Refuge; by revising paragraph A. of Kesterson National Wildlife Refuge; by revising paragraphs A.2. and A.7. of Lower Klamath National Wildlife Refuge; by adding new paragraphs A.6 and B.4. to Sacramento National Wildlife Refuge; by removing paragraph A.6. and revising paragraph D.1. of San Francisco Bay National Wildlife Refuge; by removing paragraph A.5. from San Pablo Bay National Wildlife Refuge; by adding paragraphs A.3. and B.3. to Sutter National Wildlife Refuge; by revising paragraphs A.2. and A.3. of Tule Lake National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Colusa National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

3. Hunters may not possess more than 25 shells while in the field.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunting is only permitted in the free roam areas.

* * * * *

4. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

* * * * *

Kesterson National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and moorhens is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns legal for refuge hunts are permitted, and shotguns must be unloaded while en route to, or from, parking areas or blinds.

2. Vehicles may stop only at designated parking areas; the dropping off of passengers or equipment, or stopping between designated parking areas is prohibited.

3. Hunters may not possess more than 25 shells while in the field.

4. Within the spaced blind area, hunters are restricted to their originally assigned, spaced blind, except while traveling to or from the parking area, placing decoys, or when shooting to retrieve crippled birds.

5. The Freitas Unit is open to waterfowl, coot, and moorhen hunting only.

6. On the Freitas Unit, only portable or temporary blinds are permitted; construction of permanent blinds is prohibited, and portable blinds must be removed from the refuge following each day's hunt.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Shooting hours end at 1:00 p.m. daily on all California portions of the refuge, except that up to three one-day special youth or disabled hunter hunts per season may be designated by the refuge manager after 1:00 p.m.

* * * * *

7. Only nonmotorized boats and boats with electric motors are permitted in Units 4b and 4c.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

6. Access to the hunt area is by foot traffic only. Bicycle and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

* * * * *

San Francisco Bay National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing from designated shoreline trail fishing areas and from the Dumbarton Pier is permitted during the hours posted at the pier and refuge headquarters.

* * * * *

Sutter National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

3. Hunters may not possess more than 25 shells while in the field.

* * * * *

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Hunting is permitted until 1:00 p.m. each day, except that up to three one-day special youth or disabled hunter hunts per season may be designated by the refuge manager after 1:00 p.m.

3. In the designated spaced blind areas, possession of any loaded firearms more than 200 feet from the established blind stakes is not permitted. Hunters select blind sites by lottery at the beginning of each hunt day. Hunters may shoot only from within their assigned blind sites.

* * * * *

7. Section 32.28 *Florida* is amended by revising paragraph A. of Arthur R. Marshall Loxahatchee National Wildlife Refuge; by revising paragraphs A., B. and C. of Chassahowitzka National Wildlife Refuge; and by revising paragraph C. of Lake Woodruff National Wildlife Refuge to read as follows:

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Shooting hours end at 1:00 p.m. daily on all California portions of the refuge, except that up to three one-day special youth or disabled hunter hunts per season may be designated by the refuge manager after 1:00 p.m.

* * * * *

7. Only nonmotorized boats and boats with electric motors are permitted in Units 4b and 4c.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

6. Access to the hunt area is by foot traffic only. Bicycle and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

* * * * *

San Francisco Bay National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing from designated shoreline trail fishing areas and from the Dumbarton Pier is permitted during the hours posted at the pier and refuge headquarters.

* * * * *

Sutter National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

3. Hunters may not possess more than 25 shells while in the field.

* * * * *

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Hunting is permitted until 1:00 p.m. each day, except that up to three one-day special youth or disabled hunter hunts per season may be designated by the refuge manager after 1:00 p.m.

3. In the designated spaced blind areas, possession of any loaded firearms more than 200 feet from the established blind stakes is not permitted. Hunters select blind sites by lottery at the beginning of each hunt day. Hunters may shoot only from within their assigned blind sites.

* * * * *

7. Section 32.28 *Florida* is amended by revising paragraph A. of Arthur R. Marshall Loxahatchee National Wildlife Refuge; by revising paragraphs A., B. and C. of Chassahowitzka National Wildlife Refuge; and by revising paragraph C. of Lake Woodruff National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

Arthur R. Marshall Loxahatchee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Chassahowitzka National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit and armadillo is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Lake Woodruff National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

8. Section 32.29 *Georgia* is amended by revising paragraph D.1. of Blackbeard Island National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

* * * * *

Blackbeard Island National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Freshwater fishing is permitted from September 1 through February 28 from sunrise to sunset, except during managed deer hunts.

* * * * *

9. Section 32.32 *Illinois* is amended by revising paragraph D.1. of Chautauqua National Wildlife Refuge; by adding a new sentence to the end of paragraph D.1. and revising paragraph D.3, and removing paragraphs D.4. and D.5. and redesignating paragraphs D.6. and D.7. as paragraphs D.4. and D.5, respectively, of Crab Orchard National Wildlife Refuge; by revising paragraph A., the introductory language of paragraph B., and paragraphs B.1. and C. of Cypress Creek National Wildlife Refuge; and by revising paragraph C.2. and adding new paragraph C.3. to Mark Twain National Wildlife Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Chautauqua National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Sport fishing is allowed on all refuge waters during daylight hours from January 15 through October 15. Sport fishing is not allowed in the Waterfowl Hunting Area during waterfowl hunting season.

* * * * *

Crab Orchard National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. * * * It is unlawful to use jug or trot-lines with any flotation device that has previously contained any petroleum based materials or toxic substances.

* * * * *

3. It is unlawful to jug or trot-line fish in Devils Kitchen or Little Grassy Lakes.

Cypress Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Dove hunting on sunflower fields south of Hogue Woods is allowed by permit only.

2. Duck hunting is not permitted on the Brushy Bottoms moist soil unit which is south of Century School, nor on the Frank Bellrose Waterfowl Reserve.

3. Goose hunting is only allowed in the Frank Bellrose Waterfowl Reserve following the closure of the regular duck hunting season. Special goose hunting conditions for this unit are posted and made available by refuge staff.

4. Boats, decoys and blinds must be removed from the refuge at the conclusion of each day's hunt.

B. Upland Game Hunting. Hunting of bob-white quail, rabbit, squirrel, raccoon, opossum, coyote, red fox and grey fox is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must report daily harvests if hunter check-in/check-out post is provided.

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Hunters must report harvest at State deer check station and indicate approximate location of deer killed by shotgun on map provided.

* * * * *

Mark Twain National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Hunting of white-tailed deer on the Delair Division is allowed by permit only. Hunters must check in and out of the refuge each day. Stands must be removed each day; the construction or use of permanent blinds, platforms, or ladders is not permitted. Hunting is permitted from one half hour before sunrise to 3 o'clock p.m.

3. Hunting of white-tailed deer on the Clarence Cannon unit is allowed by permit only.

* * * * *

10. Section 32.33 *Indiana* is amended by revising paragraph D.3. of

Muscatatuck National Wildlife Refuge to read as follows:

§ 32.33 Indiana.

* * * * *

Muscatatuck National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Ice fishing is permitted only when indicated by refuge signs.

* * * * *

11. Section 32.34 *Iowa* is amended by revising paragraph A. of De Soto National Wildlife Refuge; and by revising paragraph D.1 of Union Slough National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

De Soto National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted only as posted.

* * * * *

Union Slough National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from March 1 through November 15.

* * * * *

12. Section 37.37 *Louisiana* is amended by revising paragraphs D.1., D.2., D.3., D.4., D.5., and D.6 of Bayou Sauvage National Wildlife Refuge; by revising paragraph B. of Catahoula National Wildlife Refuge; by revising paragraph C.1. of D'Arbonne National Wildlife Refuge; by revising paragraphs D.1. and D.2. of Delta National Wildlife Refuge; and by revising paragraph C.1. of Upper Ouachita National Wildlife Refuge to read as follows:

§ 37.37 Louisiana.

* * * * *

Bayou Sauvage National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted during daylight hours only.

2. Sport fishing and shellfishing are permitted year round on all refuge lands south of the Intracoastal Waterway; from the banks of U.S. Highway 11; and within the banks of the borrow canal and borrow pits between U.S. Highway 11 and Interstate 10.

3. Only sport fishing with hand-held rod and reel or hand-held rod and line is permitted. Gait shrimp may be taken with cast nets 8 feet in diameter or less. Crawfish and crabs can be taken (up to 100 pounds per person) with wire nets up to 20 inches in diameter. All fishing, crabbing and crawfishing equipment must be attended at all times.

4. The use of trotlines, limblines, slat traps, gar sets, nets or alligator lines is prohibited on the refuge.

5. Only outboard motors 25 horsepower or less are permitted in waterways inside the hurricane protection levee.

6. Airboats, aircraft, motorized pirogues and go-devils are prohibited in refuge waters.

* * * * *

Catahoula National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of raccoon, squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D'Arbonne National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the second either-sex season in Union Parish and two consecutive days beginning with the third either-sex season.

* * * * *

Delta National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Recreational fishing and crabbing are permitted only from sunrise to sunset.

2. The use of trotlines, limblines, slat traps, gar sets, nets or alligator lines is prohibited.

* * * * *

Upper Ouachita National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the second either-sex season in Union Parish and two consecutive days beginning with the third either-sex season.

* * * * *

13. Section 32.40 *Massachusetts* is amended by revising paragraph C. of Parker River National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Parker River National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions: Hunting will be conducted in compliance with a refuge issued permit and State hunting regulations, as applicable.

* * * * *

14. Section 32.42 *Minnesota* is amended by adding the alphabetical listing of Fergus Falls Wetland Management District; by revising paragraph B. of Minnesota Valley National Wildlife Refuge; and by adding the alphabetical listing of the Morris Wetland Management District to read as follows:

§ 32.42 Minnesota.

* * * * *

Fergus Falls Wetland Management District

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted throughout the district except that no hunting is permitted on the Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

B. Upland Game Hunting. Upland game hunting is permitted throughout the district except that no hunting is permitted on the Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

C. Big Game Hunting. Big game hunting is permitted throughout the district except that no hunting is permitted on the Townsend, headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

D. Sport Fishing. Sport fishing is permitted throughout the district except that no fishing is permitted on the Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

Minnesota Valley National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of pheasant, grey and fox squirrel, cottontail rabbit, and turkey is permitted on designated areas of the refuge subject to the following conditions:

1. Permits may be required.

2. Only shotguns and bows and arrows are permitted.

* * * * *

Morris Wetland Management District

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

B. Upland Game Hunting. Upland game hunting is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

C. Big Game Hunting. Big game hunting is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

D. Sport Fishing. Sport fishing is permitted throughout the district except that no fishing is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

* * * * *

15. Section 32.43 *Mississippi* is amended by revising paragraphs A., B., C., D.4., D.5., D.6., and adding paragraph D.7 to Noxubee National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Noxubee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl, coots, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required except for woodcock.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns with shot size no larger than #4 and rifles larger than .22 standard caliber are permitted.

2. Only non-toxic shot is permitted in greentree reservoirs.

3. Squirrel and rabbit dogs are permitted after the last day of the refuge deer hunt.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required except for turkey.

D. Sport Fishing. * * *

* * * * *

4. All trotline material must be cotton twine. Each trotline must have floats attached at each end with the name and address of the owner. One trotline per person and no more than two trotlines per boat. Trotlines must be tended every 24 hours and removed when not in use.

5. Jug fishing is permitted. Each jug must have the name and address of the owner attached and jugs must be removed after 48 hours.

6. The length limit for largemouth bass taken from Bluff and Loakfoma lakes is 14 inches. Largemouth bass less than 14 inches must be immediately released unharmed.

7. Boats are restricted to a no-wake, idle speed only on all refuge waters. Boats are not permitted in spillways.

* * * * *

16. Section 32.46 *Nebraska* is amended by adding the alphabetical listing of North Platte National Wildlife Refuge to read as follows:

§ 32.46 Nebraska.

* * * * *

North Platte National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. [Reserved.]

D. Sport Fishing. Designated areas of the refuge are open to sport fishing in accordance with State fishing regulations.

* * * * *

17. Section 32.49 *New Jersey* is amended by adding paragraph C.5. to Supawna Meadows National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

* * * * *

Sapawna Meadows National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. Single projectile ammunition may only be used when hunting from a stand elevated at least six feet above ground level and only

is permitted on designated areas of the refuge subject to the following condition: Permits are required except for woodcock.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns with shot size no larger than #4 and rifles larger than .22 standard caliber are permitted.

2. Only non-toxic shot is permitted in greentree reservoirs.

3. Squirrel and rabbit dogs are permitted after the last day of the refuge deer hunt.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required except for turkey.

D. Sport Fishing. * * *

* * * * *

4. All trotline material must be cotton twine. Each trotline must have floats attached at each end with the name and address of the owner. One trotline per person and no more than two trotlines per boat. Trotlines must be tended every 24 hours and removed when not in use.

5. Jug fishing is permitted. Each jug must have the name and address of the owner attached and jugs must be removed after 48 hours.

6. The length limit for largemouth bass taken from Bluff and Loakfoma lakes is 14 inches. Largemouth bass less than 14 inches must be immediately released unharmed.

7. Boats are restricted to a no-wake, idle speed only on all refuge waters. Boats are not permitted in spillways.

* * * * *

16. Section 32.46 *Nebraska* is amended by adding the alphabetical listing of North Platte National Wildlife Refuge to read as follows:

§ 32.46 Nebraska.

* * * * *

North Platte National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. [Reserved.]

D. Sport Fishing. Designated areas of the refuge are open to sport fishing in accordance with State fishing regulations.

* * * * *

17. Section 32.49 *New Jersey* is amended by adding paragraph C.5. to Supawna Meadows National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

* * * * *

Sapawna Meadows National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. Single projectile ammunition may only be used when hunting from a stand elevated at least six feet above ground level and only in shotguns equipped with adjustable sights or a scope.

* * * * *

18. Section 32.52 *North Carolina* is amended by revising the introductory language of paragraph A. and adding new paragraph A.4. to Cedar Island National Wildlife Refuge; by revising paragraph D.3. of Mattamuskeet National Wildlife Refuge; and by revising the introductory language of paragraph A. and adding new paragraph A.4. to Swanquarter National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Cedar Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

4. Ducks and coots may be taken only during the State waterfowl seasons occurring during November, December and January.

* * * * *

Mattamuskeet National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Herring (alewife) dipping is permitted from March 1 to May 15 only from ½ hour before sunrise to ½ hour after sunset or as posted.

* * * * *

Swanquarter National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

4. Ducks and coots may be taken only during the State waterfowl seasons occurring during November, December and January.

* * * * *

19. Section 32.53 *North Dakota* is amended by adding the alphabetical listing of Lake Ilo National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Lake Ilo National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. [Reserved.]

D. Sport Fishing. Designated areas of the refuge are open to sport fishing in accordance with State regulations.

* * * * *

20. Section 32.55 *Oklahoma* is amended by revising paragraph C. of Wichita Mountains National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Wichita Mountains National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of elk and white-tailed deer is permitted on designated areas subject to the following condition: Permits and payment of a fee is required.

* * * * *

21. Section 32.56 *Oregon* is amended by revising paragraph D.1. of Upper Klamath National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Upper Klamath National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted in Pelican Bay, Recreation Creek, Crystal Creek, Odessa Creek, Pelican Cut and that portion of Upper Klamath Lake located on the east side of the refuge.

* * * * *

22. Section 32.57 *Pennsylvania* is amended by adding paragraph B.4. to Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Erie National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Pheasant hunting is not permitted on the Sugar Lake Division.

* * * * *

23. Section 32.60 *South Carolina* is amended by revising paragraphs B. and C. of Cape Romain National Wildlife Refuge; and by revising paragraphs A. and D.2. of Santee National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

* * * * *

Cape Romain National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel and raccoon is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Santee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves, ducks, and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Fishing is permitted in Cantey Bay, Black Bottom, Savannah Branch and refuge ponds and impoundments from March 1 through October 31.

* * * * *

24. Section 32.62 *Tennessee* is amended by revising paragraph D. of Lower Hatchee National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

* * * * *

Lower Hatchee National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

25. Section 32.63 *Texas* is amended by revising paragraph C.9. of Aransas National Wildlife Refuge to read as follows:

§ 32.63 Texas.

* * * * *

Aransas National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

9. Firearm hunters must wear a total of 400 square-inches of hunter orange including 144 square-inches visible in front and 144 square-inches visible in rear. Some hunter orange must appear on head gear.

* * * * *

26. Section 32.67 *Washington* is amended by removing paragraph A.1., redesignating paragraphs A.2. and A.3. as A.1. and A.2., respectively, by revising redesignated paragraph A.1, revising introductory language of paragraph B., revising paragraphs B.1. and D.2., removing paragraph D.3. and redesignating paragraph D.4. as paragraph D.3. to Columbia National Wildlife Refuge; by revising paragraph D. of Julia Butler Hansen Refuge for the Columbian White-tailed Deer; by revising paragraphs C. and D. of Little Pend Oreille National Wildlife Refuge; and by revising paragraph A.1. of Toppenish National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Columbia National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. In Marsh Unit 1, hunting is permitted only on Wednesdays, Saturdays and Sundays.

* * * * *

B. Upland Game Hunting. Hunting of pheasant, quail, and partridge is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds is permitted only during State seasons that run concurrently with the State waterfowl season.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Motorized boats and nonmotorized boats are permitted on all other refuge waters open to fishing.

* * * * *

Julia Butler Hansen Refuge for the Columbian White-tailed Deer

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge.

Little Pend Oreille National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of big game is permitted on designated areas of the refuge.

D. Sport Fishing. Sport fishing is permitted on designated areas of the refuge.

* * * * *

Toppenish National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. In the designated blind areas, hunting is permitted only within 50 feet of designated blind sites except when shooting to retrieve crippled birds.

* * * * *

27. Section 32.70 *Wyoming* is amended by revising paragraph B. of Seedskadee National Wildlife Refuge to read as follows:

§ 32.70 Wyoming.

* * * * *

Seedskadee National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Designated areas of the refuge are open to upland game hunting.

* * * * *

28. Section 32.71 *Pacific Islands Territory* is amended by revising the introductory language of paragraph D., revising paragraph D.2., and adding new paragraphs D.4., D.5. and D.6. to Johnston Atoll National Wildlife Refuge to read as follows:

§ 32.71 Pacific Islands Territory.

* * * * *

Johnston Atoll National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing, lobstering, and shell collecting are permitted on designated areas of the refuge subject to the following conditions:

* * * * *

2. The use of traps or nets, except throw nets, is prohibited.

* * * * *

4. The collecting or taking of all forms of live or dead coral is prohibited.

5. The export of coral by any means will be prohibited after September 11, 1994.

6. It is prohibited to export any fish or invertebrates except for the following: members of the tuna fish family known as *Scombridae*, dolphin fish family known as *Coryphaenidae*, and sailfish family known as *Istiophoridae*.

Dated: June 27, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–17345 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday
July 20, 1994

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Tribal/State Gaming Compact Between the Nooksack Indian Tribe and the State of Washington executed on April 26, 1994.

DATES: This action is effective July 20, 1994.

FOR FURTHER INFORMATION CONTACT: Joe B. Walker, Acting Director Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: July 11, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs

[FR Doc. 94–17686 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–02–P

Federal Register

Wednesday
July 20, 1994

Part IV

Department of the Interior

Bureau of Indian Affairs

The Mohegan Tribe of Indians of Connecticut, Final Determination of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination That the Mohegan Tribe of Indians of Connecticut, Does Exist as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to notice.

SUMMARY: In the above mentioned notice published in the **Federal Register** issue of March 15, 1994, pages 12140–12141, the title of the notice reads incorrectly. "Inc." should not be a part of the title, or included in any part of the notice. The title should be corrected to read as follows: Final Determination That The Mohegan Tribe of Indians of Connecticut, Does Exist as an Indian Tribe.

FOR FURTHER INFORMATION CONTACT: Jonni Dreamer, Program Coordinator, (202) 208–3592.

Dated: July 1, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–17687 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
July 20, 1994

Part V

The President

Presidential Determination No. 94–33—Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Presidential Determination No. 94–34—Determination To Authorize the Furnishing of Emergency Military Assistance to the Dominican Republic Under the Foreign Assistance Act of 1961

Notice of July 19—Continuation of Iraqi Emergency

VOL
59
SS
1
3
8
JL
20
994
MI

Pr

Title 3—

The President

Pres

Det
and

Mem

Purs
of 1
refu
that
Unit

You
the
auth

THE
Was

[FR Doc. 94–17853
Filed 7–19–94; 11:29 am]
Billing code 4710–10–M

Federal Register
Vol. 59, No. 138
Wednesday, July 20, 1994

Presidential Documents

Title 3—

The President

Presidential Determination No. 94–33 of July 14, 1994

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby designate Palestinian refugees in the Middle East as qualifying for assistance, and determine that such assistance will contribute to the foreign policy interests of the United States.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 14, 1994.

[FR Doc. 94–17853
Filed 7–19–94; 11:29 am]
Billing code 4710–10–M

VOL
59
ISS
1
38
JL
20
994
MI

Pre

Presi

Dete
Mili
Fore

Mem

Pursu
Assis
hereb

(1)
assist

(2)
Arms

There
articl
and t

The S
to th

THE
Wash

[FR Doc. 94-17854
Filed 7-19-94; 11:30 am]
Billing code 4710-10-M

Presidential Documents

Presidential Determination No. 94–34 of July 15, 1994

Determination To Authorize the Furnishing of Emergency Military Assistance to the Dominican Republic Under the Foreign Assistance Act of 1961

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the "Act"), I hereby determine that:

(1) an unforeseen emergency exists, which requires immediate military assistance to the Dominican Republic; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $15 million in defense articles from the stocks of the Department of Defense, and military education and training to the Dominican Republic.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 15, 1994.

[FR Doc. 94–17854
Filed 7–19–94; 11:30 am]
Billing code 4710–10–M

VOL
59
SS
1
3
8
JL
20
994
MI

Pres

Notice

Cont

On A
a nat
to the
by the
Nos.
Bush
Becau
States
Augus
1990,
2, 199
genci
with

This
to the

THE
July

[FR Doc. 94–17852
Filed 7–19–94; 11:08 am]
Billing code 3195–01–P

Presidential Documents

Notice of July 19, 1994

Continuation of Iraqi Emergency

On August 2, 1990, by Executive Order No. 12722, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders Nos. 12722 of August 2, 1990, and 12724 of August 9, 1990, President Bush imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to United States interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1994. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
July 19, 1994.

[FR Doc. 94–17852
Filed 7–19–94; 11:08 am]
Billing code 3195–01–P

OL
5 9
SS
1
3
8
JL
20
994
MI

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc.)
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public L
numbers, Federal Register finding aids, and list of
documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and
documents on public inspection are available on
National Archives fax-on-demand system. You mu
from a fax machine. There is no charge for the ser
except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11
35461–35606.....12
35607–35846.....13
35847–36016.....14
36017–36350.....15
36351–36690.....18
36691–36892.....19
36893–37152.....20

Reader Aids

Federal Register

Vol. 59, No. 138

Wednesday, July 20, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11
35461–35606.....12
35607–35846.....13
35847–36016.....14
36017–36350.....15
36351–36690.....18
36691–36892.....19
36893–37152.....20

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
No. 94–29 of June 27, 1994.....35211
No. 94–30 of June 30, 1994.....35607
No. 94–31 of July 1, 1994.....35609
No. 94–33 of July 14, 1994.....37147
No. 94–34 of July 15, 1994.....37149
Memorandums:
June 30, 1994.....34341
July 11, 1994.....36017
Notice:
July 19, 1994.....37151
Proclamations:
6641 (See Proc. 6704).....34329
6704.....34329
6705.....34343
6706.....36893
Executive Orders:
1919½ (Revoked in part by PLO 7065).....35054
12002 (See EO 12923).....34551
12214 (See EO 12923).....34551
12722 (Continued by Notice of July 19).....37151
12724 (Continued by Notice of July 19).....37151
12735 (See EO 12923).....34551
12755 (See EO 12923).....34551
12851 (See EO 12923).....34551
12901 (See USTR notice of July 15).....36234
12923.....34551

5 CFR

179.....35213, 35215
532.....36019, 36351
772.....36352
2610.....34755
2634.....34755
2636.....34755
2641.....34755
Proposed Rules:
575.....34393
3201.....35480

7 CFR

1.....36019
2.....36020
272.....34553
275.....34553
283.....34553
301.....35611
319.....35564
354.....35612
406.....35613
916.....33897
917.....33897
928.....33898
929.....36021
947.....33900
981.....35222, 35847
998.....36353
1205.....33901
1421.....34345
1755.....34353, 34899
Proposed Rules:
46.....35487
301.....36996
322.....36373
925.....36091
944.....36091
989.....36093
1030.....36094
1036.....33922
1106.....36095
1710.....36998

8 CFR

103.....33903
212.....35614
245.....33903
245a.....33903
264.....33903
274a.....33903
299.....35978
Proposed Rules:
204.....36729
214.....35866

9 CFR

77.....36691
78.....35615, 36023
92.....34375, 36024
97.....34756
Ch. III.....34375
Proposed Rules:
50.....36374
77.....36374
92.....36374
317.....34396
381.....35639

10 CFR

2.....36026
170.....36895
171.....36895
30.....36026
40.....35618, 36026
50.....35461
70.....36026

72 ..... 35618, 36026
74 35618
75 35618
150 35618
710 35178

Proposed Rules:
Ch. I 36374
1003 34767

11 CFR

102 35785

12 CFR

701 36040
709 36040
745 36040
747 36040
790 36040
791 36040
792 36040
793 36040
794 36040

Proposed Rules:
220 33923
230 35271
336 35480

13 CFR

108 36042
120 36042
123 ..... 36042, 36045

14 CFR

21 34572
23 34572
39 ..... 34574, 34576, 34757, 34758, 34899, 34967, 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247, 36046, 36047, 36930, 36932
71 ..... 34577, 34758, 34759, 34760, 35248, 36050
73 36692
91 34578
97 ..... 35248, 35250
1209 35623
1260 36355

Proposed Rules:
Ch. I 35868
21 34779
23 35196
33 35272
39 ..... 34396, 34584, 35488, 35490, 36096, 36098, 36375, 36376, 36998
71 ..... 34192, 34585, 35492, 35869, 36099, 36100, 36730
93 34192

16 CFR

2 34968
4 34965
305 34014

Proposed Rules:
Chapter II 35657
22 35661
300 34780
301 34780
303 34780
1117 33925
1307 35058
1500 ..... 33928, 33932

17 CFR

1 34376
33 34376
190 34376
228 36258
229 36258
230 36258
232 36262
259 36258

Proposed Rules:
228 36264
229 36264
230 36264
232 36264
239 36264
240 ..... 34781, 36264
249 36264
250 36264
259 36264
260 36264
269 36264
270 36264
274 36264

18 CFR

284 35462

Proposed Rules:
35 35274

19 CFR

174 34970

Proposed Rules:
141 36102
142 36102

20 CFR

416 33906

Proposed Rules:
404 ..... 37000, 37002

21 CFR

5 35848
173 36935
341 36051
510 33908
520 ..... 33908, 35251
558 35251
1220 35252

Proposed Rules:
101 36379
102 36103
203 36107
205 36107
341 34781

22 CFR

60 33909
61 33909
62 33909
63 33909
64 33909
65 33909
514 34760

23 CFR

655 33909
658 36051

Proposed Rules:
637 35493

24 CFR

17 34578
200 36692
583 36886
791 35253
813 36662
880 36616
881 36616
882 ..... 36616, 36662
883 36616
884 36616
885 36616
886 36616
887 36662
889 36616
904 36616
905 36616
906 36616
960 36616
982 36662
3280 34294

Proposed Rules:
43 34300
92 34300
100 34902
203 36846
570 34300
941 35834
982 36846
984 36846

25 CFR

Proposed Rules:
Ch. I 36108
164 35580
165 35580

26 CFR

1 ..... 34971, 35030, 35414, 36256, 36356, 36360
31 35414
40 35414
602 ..... 34971, 35030, 36356, 36360

Proposed Rules:
1 ..... 34398, 35066, 35418, 36114, 36394
31 35418
40 35418

27 CFR

5 35623

28 CFR

551 34742
571 35456

29 CFR

1910 ..... 33910, 34590, 36695
1915 36695
1917 36695
1918 36695
1926 36695
1928 36695
2610 36054
2619 36055
2622 36054
2644 36058
2676 36055

Proposed Rules:
Ch. XXVI 35067
Ch. XL 35067
1915 34586

30 CFR

914 36059
938 36937
944 35255

Proposed Rules:
75 35071
Ch. II 36108
Ch. IV 36108
Ch. VI 36108
Ch. VII 36108
914 36114
920 35289
944 35871

31 CFR

51 35624
52 35624
550 35259

32 CFR

90 ..... 34382, 35463, 36367
91 ..... 34382, 35463, 36367
155 35464
369 35261
383 34382
384 35262
389 34382
552 ..... 34581, 34761
706 ..... 35033, 35849

Proposed Rules:
553 34782

33 CFR

1 36316
4 34210
26 36316
117 36062
130 34210
131 34210
132 34210
137 34210
138 34210
160 36316
161 36316
162 36316
164 36316
165 36316
334 35850

Proposed Rules:
80 37003
82 37003
84 37003
87 37003
88 37003
90 37003
165 ..... 35290, 35661
322 34783
334 33939

34 CFR

74 34722
77 34722
641 34198
668 ..... 34964, 36368
682 ..... 34964, 35624
685 34278
690 34964

Proposed Rules:
Ch. VI 34398

35 CFR

Proposed Rules:
133 36398
135 36398

36 CFR

242 36063
292 36866
704 35034

Proposed Rules:
Ch. I 36108

38 CFR

3 ..... 34382, 35265, 35464,

35851

Proposed Rules:
14 37008

39 CFR

111 33911
233 35851
266 35625

Proposed Rules:
111 ..... 35873, 37011

40 CFR

9 ..... 33912, 34070
35 35852
52 ..... 33914, 34383, 35035, 35036, 35044, 35411, 36700
55 36065
61 36280
80 ..... 35854, 36944
81 35044
85 ..... 33912, 36969
86 ..... 33912, 36368
112 34070
141 34320
142 34320
180 ..... 35627, 35629
185 35629
186 35629
271 35266
300 35852
372 34386
600 33912

Proposed Rules:
Ch. I 33940
51 35292
52 ..... 33941, 34399, 34401, 35072, 35079, 35875, 35883, 36116, 36120, 36123, 36128, 36408, 36731, 37018
60 36130
63 36130
81 35079
141 35891
143 35891
152 35662
174 35662
180 ..... 35663, 37019
185 33941

42 CFR

51a .....
405 .....
412 .....
413 .....
414 .....
417 .....
418 .....
431 .....
434 .....
1003 .....

Proposed Rules:
57 .....
421 .....
440 .....

43 CFR

12 .....

Public Land Ord
7055 .....
7064 .....
7065 .....
7067 .....
7068 .....
7069 .....

Proposed Rules:
Ch. I .....
Ch. II .....
Subtitle A .....
2800 .....
2810 .....
2880 .....

44 CFR

64 .....
322 .....
362 .....

Proposed Rules:
67 .....

45 CFR

5b .....

Proposed Rules:
615 .....

46 CFR

68 .....

47 CFR

Ch. I .....

35851

Proposed Rules:
14.....37008

39 CFR

111.....33911
233.....35851
266.....35625

Proposed Rules:
111.....35873, 37011

40 CFR

9.....33912, 34070
35.....35852
52.....33914, 34383, 35035, 35036, 35044, 35411, 36700
55.....36065
61.....36280
80.....35854, 36944
81.....35044
85.....33912, 36969
86.....33912, 36368
112.....34070
141.....34320
142.....34320
180.....35627, 35629
185.....35629
186.....35629
271.....35266
300.....35852
372.....34386
600.....33912

Proposed Rules:
Ch. I.....33940
51.....35292
52.....33941, 34399, 34401, 35072, 35079, 35875, 35883, 36116, 36120, 36123, 36128, 36408, 36731, 37018
60.....36130
63.....36130
81.....35079
141.....35891
143.....35891
152.....35662
174.....35662
180.....35663, 37019
185.....33941

42 CFR

51a.....36703
405.....36069
412.....36707
413.....36707
414.....36069
417.....36072
418.....36707
431.....36072
434.....36072
1003.....36072

Proposed Rules:
57.....36733
421.....35664, 36415
440.....36419

43 CFR

12.....36713

Public Land Order:
7055.....34899
7064.....34582
7065.....35054
7067.....35859
7068.....35859
7069.....35267

Proposed Rules:
Ch. I.....36108
Ch. II.....36108
Subtitle A.....36108
2800.....35596
2810.....35596
2880.....35596

44 CFR

64.....36370
322.....36087
362.....35630

Proposed Rules:
67.....36421

45 CFR

5b.....36717

Proposed Rules:
615.....35079

46 CFR

68.....36088

47 CFR

Ch. I.....35631
22.....35054
43.....35632
73.....34391, 34766, 35055, 35268, 36987
74.....35635
80.....35268
87.....35268

Proposed Rules:
Chapter I.....35664
61.....33947
64.....33947
69.....33947
73.....34404, 34405, 35081, 35082, 35292, 35293, 35785, 35893, 35894, 36735, 36736, 37020
74.....35665
97.....36157

48 CFR

206.....36088
222.....36088
226.....36088
237.....36088
252.....36088

Proposed Rules:
Ch. XIV.....36108
209.....35895
252.....35895
926.....35294
952.....35294
970.....35294

49 CFR

1.....36987
172.....35411
195.....35465, 36256
392.....34708
393.....34708, 34712
571.....35636
1056.....34392

Proposed Rules:
171.....36488
172.....36488
173.....36488
175.....36488
176.....36488
177.....36488
178.....36488
383.....36338
541.....35308
552.....37021
571.....34405, 35298, 35300, 35670, 35672

50 CFR

14.....36719
17.....35860, 36988
100.....36063
215.....35471
216.....35864
229.....34899
301.....35474, 35475, 36719
625.....36720
630.....36090
650.....36720
651.....35056, 36725
658.....34582
672.....35056
675.....33920, 34392, 34583, 35056, 35057, 35476, 35638, 36727
681.....35270

Proposed Rules:
Ch. I.....36108
Ch. II.....35674
Ch. IV.....36108
17.....34784, 35089, 35303, 35304, 35305, 35307, 35496, 35584, 35674, 35896, 35900, 36737
20.....35566
32.....36342, 36348, 37134
222.....35089
227.....36158
644.....35308
654.....33947

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 11, 1994

New Publication

List of CFR Sections Affected

1973–1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16) $27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27) $25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41) $28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50) $25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code
***6962**

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries–(202) 512–2250

Please Type or Print (Form is aligned for typewriter use.)
Prices include regular domestic postage and handling and are good through 12/92. After this date, please call Order and Information Desk at 202–783–3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog–Bestselling Government Books	**FREE**	**FREE**
			Total for Publications	

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) ***Thank you for your order!***

(Signature)

Rev 6-92

VOL
59
SS
1
38
JL
20
994
MI

VOL
59
SS
139
JUL
21
994
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

7-21-94
Vol. 59 No. 139

Federal Register

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

****
A FR UMI
UMI SERIAL
300 N ZEEB
PO BOX 134
ANN ARBOR

7–21–94
Vol. 59 No. 139

Federal Register

Thursday
July 21, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481

A FR UMISE346U DEC 94 R
UMI SERIALS ACQUISITIONS
300 N ZEEB RD
PO BOX 1346
ANN ARBOR MI 48106

OL
59
SS
1
39
JL
21
994
MI

7-21-94
Vol. 59 No. 139
Pages 37153–37398

7–21–94
Vol. 59 No. 139
Pages 37153–37398

Federal Register

Thursday
July 21, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche — 202–512–1800
Assistance with public subscriptions — 512–1806

Online:

Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions — 202–512–1530

Single copies/back copies:

Paper or fiche — 512–1800
Assistance with public single copies — 512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche — 523–5243
Assistance with Federal agency subscriptions — 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 28 at 9:00 am
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Agency for International Development
NOTICES
Agency information collection activities
review, 37216

Agriculture Department
See Animal and Plant Health Inspection

Animal and Plant Health Inspection Ser
NOTICES
Veterinary biological products:
Production and establishment licenses

Antitrust Division
NOTICES
National cooperative research notificatio
Bell Communications Research, Inc., 3
Network Management Forum, 37266

Arts and Humanities, National Foundati
See National Foundation on the Arts and

Bipartisan Commission on Entitlement
NOTICES
Meetings, 37217

Centers for Disease Control and Preven
NOTICES
Grants and cooperative agreements; avail
Nutrition intervention programs, 37236
Vaccine information materials; simplifica
37238–37239

Children and Families Administration
NOTICES
Grants and cooperative agreements; avail
Native American social and economic
projects, 37342–37357

Commerce Department
See Economic Development Administrati
See International Trade Administration
See National Oceanic and Atmospheric A
NOTICES
Agency information collection activities
review, 37217

Committee for the Implementation of Te
NOTICES
Cotton, wool, and man-made textiles:
China, 37222

Commodity Futures Trading Commissio
PROPOSED RULES
Commodity pool operators and commodi
advisors:
Disclosure framework, 37189
NOTICES
Meetings; Sunshine Act, 37291
National Futures Association:
Break-even analyses in commodity poo
documents; requirements, 37223

Contents

Federal Register
Vol. 59, No. 139
Thursday, July 21, 1994

Agency for International Development
NOTICES
Agency information collection activities under OMB review, 37216

Agriculture Department
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
NOTICES
Veterinary biological products:
Production and establishment licenses, 37216

Antitrust Division
NOTICES
National cooperative research notifications:
Bell Communications Research, Inc., 37266
Network Management Forum, 37266

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Bipartisan Commission on Entitlement and Tax Reform
NOTICES
Meetings, 37217

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Nutrition intervention programs, 37236–37238
Vaccine information materials; simplification; correction, 37238–37239

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Native American social and economic development projects, 37342–37357

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 37217

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 37222

Commodity Futures Trading Commission
PROPOSED RULES
Commodity pool operators and commodity trading advisors:
Disclosure framework, 37189
NOTICES
Meetings; Sunshine Act, 37291
National Futures Association:
Break-even analyses in commodity pool disclosure documents; requirements, 37223
Hypothetical trading results; restrictions on use in promotional materials, 37223

Customs Service
NOTICES
Meetings:
Automated export system development, 37289–37290

Defense Department
See Navy Department

Economic Development Administration
NOTICES
Trade adjustment assistance eligibility determination petitions:
Chicago Weaving Corp. et al., 37217–37219

Education Department
NOTICES
Agency information collection activities under OMB review, 37226–37227
Grants and cooperative agreements; availability, etc.:
Paul Douglas teacher scholarship program, 37228

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Air Conditioning and Refrigeration Technology Institute, 37228
Stone & Webster Engineering Corp., 37228–37229
Meetings:
Environmental Management Site Specific Advisory Board—
Nevada Test Site, 37229

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
North Carolina, 37162
Pennsylvania, 37162–37163
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Michigan, 37190–37200
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 37200–37202
NOTICES
Water pollution control:
Dredged material testing manual; availability, 37234–37235

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Bell, 37155–37156
Class D airspace and Class E airspace, 37156–37157
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 37182–37183
McDonnell Douglas, 37183–37187
Class E airspace, 37187–37188
Restricted areas, 37188–37189
NOTICES
Airport noise compatibility program:
Kent County International Airport, MI, 37281–37282
Meetings:
Informal airspace meetings—
Missouri, 37282–37283
Passenger facility charges; applications, etc.:
Jefferson County, TX, et al., 37283–37289
Pellston Regional Airport, MI, 37289
Yakima Air Terminal, WA, 37283

Federal Bureau of Investigation
NOTICES
Meetings:
National Stolen Auto Part Information System Federal Advisory Committee, 37266–37267

Federal Communications Commission
RULES
Common carrier services:
Competitive bidding; licenses for cellular unserved areas awarded through lotteries, 37163–37164
Personal communications services in 900 MHz band (narrowband PCS); competitive bidding Correction, 37164

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 37291

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 37291

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
FORIA Hydro Corp., 37229–37231
Holliday Historic Restoration Associates, Ltd., 37231–37232
Natural gas certificate filings:
El Paso Natural Gas Co. et al., 37232–37234
Applications, hearings, determinations, etc.:
Gulf Power Co., 37234

Federal Maritime Commission
NOTICES
Agreements filed, etc., 37235–37236

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
United Bancorp of Kentucky, Inc., et al., 37236

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery plans—
Dismal Swamp southeastern shrew, 37260–37261
Masked bobwhite quail, 37261

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Food labeling—
Raw fruit, vegetables, and fish; voluntary nutrition labeling guidelines; correction, 37190
Medical devices:
Class I generic devices; premarket notification exemptions, 37378–37392
NOTICES
Human drugs:
Patent extension; regulatory review period determinations—
Aceon, 37239–37240
Demadex, 37240–37241
Meetings:
Advisory Committees, panels, etc., 37241–37243

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See Social Security Administration

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Privacy Act:
Systems of records, 37243–37251

Housing and Urban Development Department
PROPOSED RULES
Real Estate Settlement Procedures Act; implementation:
Referral payments, computer loan origination services, and controlled business disclosure requirements, 37360–37376
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Family investment center program, 37338–37340
Meetings:
Discrimination in property insurance under Fair Housing Act, 37254–37255
Occupancy Standards in Public and Assisted Housing Task Force; report availability, 37255–37257

Inspector General Office, Health and Human Services Department
PROPOSED RULES
Medicare programs:
Fraud and abuse—
Safe Harbor anti-kickback provisions clarification, 37202–37208

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Federal Register

See Surface Mining Reclamation and En

International Development Cooperation
See Agency for International Developme

International Trade Administration
NOTICES
Antidumping:
Photo albums and filler pages from—
Hong Kong, 37220–37221
Portland cement from—
Dominican Republic, 37221
Spun acrylic yarn from—
Japan, 37221–37222
Export trade certificates of review, 3721

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construc
Indiana Rail Road Co. et al., 37262
Waccamaw Coast Line Railroad Co., I

Justice Department
See Antitrust Division
See Federal Bureau of Investigation
NOTICES
Pollution control; consent judgments:
CDMG Realty Co. et al., 37263
Manville Corp., 37263
New York Trap Rock Corp. et al., 372
Pennsylvania, 37263–37264
Port St. Joe, FL, et al., 37264
Raymark Industries, Inc., et al., 37265
Shaffer Equipment Co. et al., 37265–3
Southwest Louisiana Hospital Associa

Land Management Bureau
NOTICES
Classification of public lands:
California, 37257–37258
Closure of public lands:
Wyoming, 37258
Opening of public lands:
Oregon, 37258–37259
Realty actions; sales, leases, etc.:
Arizona, 37259
North Dakota, 37259–37260
Withdrawal and reservation of lands:
Nevada, 37260

Management and Budget Office
NOTICES
Agency information collection activities review, 37276

National Aeronautics and Space Admin
NOTICES
Patent licenses; non-exclusive, exclusive exclusive:
Zeoponics, Inc., et al., 37267

National Archives and Records Admini
NOTICES
Agency records schedules; availability, 3

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 37291–37292

See Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Photo albums and filler pages from—
Hong Kong, 37220–37221
Portland cement from—
Dominican Republic, 37221
Spun acrylic yarn from—
Japan, 37221–37222
Export trade certificates of review, 37219–37220

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Indiana Rail Road Co. et al., 37262
Waccamaw Coast Line Railroad Co., Inc., 37262–37263

Justice Department
See Antitrust Division
See Federal Bureau of Investigation
NOTICES
Pollution control; consent judgments:
CDMG Realty Co. et al., 37263
Manville Corp., 37263
New York Trap Rock Corp. et al., 37264–37265
Pennsylvania, 37263–37264
Port St. Joe, FL, et al., 37264
Raymark Industries, Inc., et al., 37265
Shaffer Equipment Co. et al., 37265–37266
Southwest Louisiana Hospital Association, Inc., 37264

Land Management Bureau
NOTICES
Classification of public lands:
California, 37257–37258
Closure of public lands:
Wyoming, 37258
Opening of public lands:
Oregon, 37258–37259
Realty actions; sales, leases, etc.:
Arizona, 37259
North Dakota, 37259–37260
Withdrawal and reservation of lands:
Nevada, 37260

Management and Budget Office
NOTICES
Agency information collection activities under OMB review, 37276

National Aeronautics and Space Administration
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Zeoponics, Inc., et al., 37267

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 37267–37268

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 37291–37292

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 37268–37269

National Highway Traffic Safety Administration
RULES
Motor vehicle content labeling; passenger cars and light vehicles; domestic and foreign content information, 37294–37336
Motor vehicle safety standards:
Child restraint systems—
Belt-positioning booster seats manufacture; performance, labeling requirements, and test criteria, 37167–37180
Seating systems; pedestal seats, 37164–37167

National Labor Relations Board
RULES
Conflict of interests, 37157–37159

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 37180–37181
PROPOSED RULES
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements—
Incidental take permits, 37213–37215
NOTICES
National Marine Fisheries Service; organization review, 37222

National Science Foundation
NOTICES
Meetings:
Undergraduate education in science, mathematics, engineering, and technology; workshop, 37269

Navy Department
NOTICES
Meetings:
MARPOL Convention solid waste discharge requirements; special area compliance plan, 37223–37226

Nuclear Regulatory Commission
NOTICES
Agreement State radiation control programs; adequacy and compatibility; policy statement, 37269–37274
Applications, hearings, determinations, etc.:
Georgia Power Co. et al., 37274
University of Missouri-Columbia Curators, 37274–37276

Office of Management and Budget
See Management and Budget Office

Pennsylvania Avenue Development Corporation
NOTICES
Agency information collection activities under OMB review, 37276

Postal Service
RULES
Privacy Act; implementation, 37159–37162
PROPOSED RULES
Domestic Mail Manual:
Physical mailpiece dimensions, addressing, and address placement standards, 37190

NOTICES
Meetings; Sunshine Act, 37292

Presidential Documents
PROCLAMATION
Special observances:
Apollo Anniversary Observance, National (Proc. 6707), 37395–37396
ADMINISTRATIVE ORDERS
Dominican Republic; emergency military assistance (Presidential Determination No. 94–34 of July 15, 1994) [revision], 37397
Wheat reserves in U.S.; release to Caucasus region of the former Soviet Union to relieve hunger and malnutrition (Presidential Determination No. 94–36 of July 19, 1994), 37153

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Delta Government Options Corp., 37276–37278
New York Stock Exchange, Inc., 37278–37279
Philadelphia Stock Exchange, Inc., 37279–37281

Social Security Administration
NOTICES
Privacy Act:
Systems of records, 37251–37254

Surface Mining Reclamation and Enforcement Office
NOTICES
Privacy Act:
Systems of records, 37262

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
PROPOSED RULES
Americans with Disabilities Act; implementation:
Transportation for individuals with disabilities, 37208–37213

Treasury Department
See Customs Service

United States Information Agency
NOTICES
Meetings:
Cuba Broadcasting Advisory Board, 37290

Separate Parts In This Issue

Part II
Department of Transportation, National Highway Traffic Safety Administration, 37294–37336

Part III
Department of Housing and Urban Development, 37338–37340

Part IV
Department of Health and Human Services, Children and Family Administration, 37342–37357

Part V
Department of Housing and Urban Development, 37360–37376

Part VI
Department of Health and Human Services, Food and Drug Administration, 37378–37392

Part VII
The President, 37393–37397

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSU

A cumulative list of the parts affected this month Reader Aids section at the end of this issue

3 CFR
Administrative Orders:
Presidential Determinations:
No. 94–34 of July 15, 1994 (Supersedes publication of July 20) 37397
No. 94–36 of July 19, 1994 37153
Proclamations:
6707 37395

14 CFR
39 37155
71 37156
Proposed Rules:
39 (3 documents) 37182, 37183, 37185
71 37187
73 37188

17 CFR
Proposed Rules:
1 37189

21 CFR
Proposed Rules:
101 37190
862 37378
864 37378
866 37378
868 37378
870 37378
872 37378
874 37378
876 37378
878 37378
880 37378
882 37378
886 37378
888 37378
890 37378
892 37378

24 CFR
Proposed Rules:
3500 37360

29 CFR
100 37157

39 CFR
262 37159
266 37159
Proposed Rules:
111 37190

40 CFR
52 (2 documents) 37162
Proposed Rules:
52 37190
81 37190
300 37200

42 CFR
Proposed Rules:
1001 37202

47 CFR
22 37163
24 37164

49 CFR
571 (2 documents) 37164, 37167
583 37294
Proposed Rules:
37 37208
38 37208

50 CFR
672 (3 do
Proposed
227 .....

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue

3 CFR
Administrative Orders:
Presidential Determinations:
No. 94–34 of July 15, 1994 (Supersedes publication of July 20) 37397
No. 94–36 of July 19, 1994 37153
Proclamations:
6707 37395

14 CFR
39 37155
71 37156
Proposed Rules:
39 (3 documents) 37182, 37183, 37185
71 37187
73 37188

17 CFR
Proposed Rules:
1 37189

21 CFR
Proposed Rules:
101 37190
862 37378
864 37378
866 37378
868 37378
870 37378
872 37378
874 37378
876 37378
878 37378
880 37378
882 37378
886 37378
888 37378
890 37378
892 37378

24 CFR
Proposed Rules:
3500 37360

29 CFR
100 37157

39 CFR
262 37159
266 37159
Proposed Rules:
111 37190

40 CFR
52 (2 documents) 37162
Proposed Rules:
52 37190
81 37190
300 37200

42 CFR
Proposed Rules:
1001 37202

47 CFR
22 37163
24 37164

49 CFR
571 (2 documents) 37164, 37167
583 37294
Proposed Rules:
37 37208
38 37208

50 CFR
672 (3 documents) 37180
Proposed Rules:
227 37213

VOL
59
SS
139
JL
21
994
MI

Federal Register
Vol. 59, No. 139
Thursday, July 21, 1994

Title 3—

The President

[FR Doc. 94–17929
Filed 7–19–94; 2:57 pm]
Billing code 3195–01–M

Federal Register
Vol. 59, No. 139
Thursday, July 21, 1994

Presidential Documents

Title 3—

The President

Presidential Determination No. 94–36 of July 19, 1994

Food Security Wheat Reserve Release

Memorandum for the Secretary of Agriculture

By virtue of the authority vested in me as President by the Food Security Wheat Reserve Act of 1980 (the "Act") (7 U.S.C. 1736f–1), I hereby authorize the release in fiscal year 1994 of up to 200,000 metric tons of wheat from the reserve established under the Act (the "reserve") for use under Title II of the Agricultural Trade Development and Assistance Act of 1954 to meet relief needs that exist in the Caucasus region of the former Soviet Union, which I hereby determine are suffering severe food shortages. The wheat will be used to provide urgent humanitarian relief to the peoples in this region who are suffering widespread hunger and malnutrition.

This action is taken because wheat needed for relief in this region cannot be programmed for such purpose in a timely manner under the normal means of obtaining commodities for food assistance due to circumstances of unanticipated and exceptional need.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 19, 1994.

[FR Doc. 94–17929
Filed 7–19–94; 2:57 pm]
Billing code 3195–01–M

VOL
59
SS
1
3
9
JL
21
994
MI

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–SW–19–AD; Amendment 39–8975; AD 94–15–04]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. Model 214ST helicopters, that requires creation of a component history card and establishes an additional retirement life for the main rotor mast (mast). This amendment is prompted by fatigue analysis and retesting that showed that the mast is sensitive to frequent takeoffs and external load lifts (high-power events) in addition to time-in-service. The actions specified by this AD are intended to prevent fatigue failure of the mast, loss of the main rotor system, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: August 25, 1994.

ADDRESSES: This AD and any related information may be examined in the Rules Docket at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Lance Gant, Aerospace Engineer, Rotorcraft Certification Office, FAA, Southwest Region, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 222–5141, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an

Rules and Regulations

Federal Register
Vol. 59, No. 139
Thursday, July 21, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–SW–19–AD; Amendment 39–8975; AD 94–15–04]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. Model 214ST helicopters, that requires creation of a component history card and establishes an additional retirement life for the main rotor mast (mast). This amendment is prompted by fatigue analysis and retesting that showed that the mast is sensitive to frequent takeoffs and external load lifts (high-power events) in addition to time-in-service. The actions specified by this AD are intended to prevent fatigue failure of the mast, loss of the main rotor system, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: August 25, 1994.

ADDRESSES: This AD and any related information may be examined in the Rules Docket at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Lance Gant, Aerospace Engineer, Rotorcraft Certification Office, FAA, Southwest Region, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 222–5141, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. Model 214ST helicopters was published in the **Federal Register** on November 12, 1993 (58 FR 59967). That action proposed to require creation of a component historical service record and proposed to establish an additional retirement life of 50,000 high-power events for the main rotor mast (mast), part number (P/N) 214–040–090–109. Currently, the mast has a retirement life of 10,000 hours' time-in-service.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with some editorial changes. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

In the notice, the cost estimates associated with this AD were based on replacement of the mast and creation of the component history card for the entire fleet. This rule contains cost estimates for one-sixth of the fleet each year instead of the entire fleet, as in the notice. Additionally, the notice referred to the component history card as a "historical service record or component history card". This rule refers to it as a "component history card or an equivalent record." Also, paragraph (d) of this rule was expanded to specify the details of the new retirement life. These changes will not increase the scope of the AD. However, the FAA has performed a more detailed cost analysis and has determined that, when factoring in the creation and maintenance of the component history card or equivalent record, the anticipated costs are $9,163 higher than the proposed amount for the first year, and $7,879 higher than the proposed amount for each subsequent year. In the proposal, the cost of this AD was estimated to be $53,970 each year ($323,820 for the total fleet).

The FAA estimates that 14 helicopters of U.S. registry will be affected by this AD, that (1) it will take approximately 24 work hours per helicopter to replace the affected part due to the new method of determining the retirement life required by this AD, (2) it will take approximately 2 work hours per helicopter to create the component history card or equivalent record (record), (3) it will take approximately 10 work hours per helicopter to maintain the record each year, and (4) the average labor rate is $55 per work hour. Required parts will cost approximately $21,810 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators for the first year is estimated to be $63,133, and each subsequent year to be $61,849. These costs assume replacement of the mast in one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the records and maintenance of the records for all the fleet each subsequent year.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 94–15–04 Bell Helicopter Textron, Inc.: Amendment 39–8975. Docket Number 93–SW–19–AD.

Applicability: Model 214ST helicopters, with main rotor mast (mast), part number (P/N) 214–040–090–109 installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent fatigue failure of the mast, loss of the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 calendar days after the effective date of this airworthiness directive (AD), accomplish the following:

(1) Create a component history card or an equivalent record for the affected mast.

(2) Determine and record the total time-in-service (TIS) accumulated for the mast as follows:

(i) If the TIS of the mast is unknown, use a TIS of 900 hours' per year. Prorate the hours for a partial year.

(ii) If the TIS is known, use that total TIS.

(3) Determine and record the accumulated takeoffs and external load lifts (high-power events) for the mast as follows:

(i) If the number of high-power events is unknown, assign 11 high-power events for each hour TIS obtained in accordance with paragraph (a)(2).

(ii) If the number of high-power events is known, record that number as total accumulated high-power events.

(b) After compliance with paragraph (a) of this AD, continue to record the TIS and high-power events and add the high-power events to the previously recorded sum.

(c) Remove the mast from further service in accordance with the following:

(1) For each mast with 9,900 hours' or more total TIS on the effective date of this AD, remove and replace the mast within the next 100 hours' TIS.

(2) For each mast with less than 9,900 hours' total TIS on the effective date of this AD, remove and replace the mast before it attains 10,000 hours' TIS.

(3) For each mast with 48,900 or more high-power events on the effective date of this AD, remove and replace the mast on or before the accumulation of an additional 1,100 high-power events.

(4) For each mast with less than 48,900 high-power events on the effective date of this AD, remove and replace the mast before it attains 50,000 high-power events.

(d) This AD revises the Airworthiness Limitations Section of the maintenance manual by establishing a new retirement life for the mast of 10,000 hours' TIS, or 50,000 high-power events, whichever occurs first. However, for masts with 9,900 hours' or more TIS or 48,900 or more high-power events on the effective date of this AD, those masts need not be retired until on or before the accumulation of an additional 100 hours' TIS or 1,100 high-power events, respectively.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective August 25, 1994.

Issued in Fort Worth, Texas, on July 13, 1994.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–17795 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 94–ASO–4]

Establishment of Class D Airspace; Class E4 Airspace and Amendment of Class E2 Airspace; Athens, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and Class E4 airspace at Athens/Ben Epps Airport, Athens, Georgia due to commissioning of a Non-Federal Air Traffic Control Tower, March 14, 1994. This action also amends the Class E2 surface airspace at Athens/Ben Epps Airport to indicate part-time when the control tower is not in operation. The intended effect of this action is to require pilots to establish two-way radio communications prior to entering the airspace during the hours the control tower is in operation.

EFFECTIVE DATES: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Shipp, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5591.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71 to establish Class D and Class E4 airspace at the Athens/Ben Epps airport Athens, Georgia. This proposal also would amend the Class E2 surface airspace at Athens/Ben Epps Airport to indicate part-time. The establishment of this Class D airspace area will require pilots, prior to entering the airspace, to establish two-way radio communications with the newly commissioned air traffic control tower providing air traffic services. (59 FR 22567). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. This amendment is the same as that proposed in the notice. Designations for Class D, Class E2, and Class E4 airspace respectively are published in Paragraphs 5000, 6002, and 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class D and Class E4 airspace areas at Athens/Ben Epps Airport, Athens, Georgia. This amendment also amends Class E2 surface airspace at Athens/Ben Epps Airport, Athens, Georgia, to indicate part-time. The establishment of this Class D airspace area will require pilots, prior to entering the airspace, to establish two-way radio communications with the newly commissioned air traffic control tower providing air traffic service.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.7 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para 5000 Class D Airspace

* * * * *

ASO GA D Athens, Georgia [New]

Athens/Ben Epps Airport, Athens, Georgia
(Lat. 33°56'54" N., long. 83°19'36" W.)

That airspace extending upward from the surface to and including 3300 feet MSL within a 4-mile radius of the Athens/Ben Epps Airport. This Class D airspace area is effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Para 6004 Class E airspace designated as an extension to a Class D surface area

* * * * *

ASO GA E4 Athens, Georgia [New]

Athens/Ben Epps Airport, Athens, Georgia
(Lat. 33°56'54" N., long. 83°19'36" W.)
Athens VORTAC
(Lat. 33°56'51" N., long. 83°19'29" W.)

That airspace extending upward from the surface within 3 miles each side of the Athens VORTAC 195° radial, extending from the 4-mile radius of Athens/Ben Epps Airport to 7 miles south of the VORTAC and within 3 miles each side of the Athens VORTAC 076° radial, extending from the 4-mile radius of Athens/Ben Epps Airport to 7 miles east of the VORTAC.

* * * * *

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.7 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para 5000 Class D Airspace

* * * * *

ASO GA D Athens, Georgia [New]

Athens/Ben Epps Airport, Athens, Georgia
(Lat. 33°56'54" N., long. 83°19'36" W.)

That airspace extending upward from the surface to and including 3300 feet MSL within a 4-mile radius of the Athens/Ben Epps Airport. This Class D airspace area is effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Para 6004 Class E airspace designated as an extension to a Class D surface area

* * * * *

ASO GA E4 Athens, Georgia [New]

Athens/Ben Epps Airport, Athens, Georgia
(Lat. 33°56'54" N., long. 83°19'36" W.)
Athens VORTAC
(Lat. 33°56'51" N., long. 83°19'29" W.)

That airspace extending upward from the surface within 3 miles each side of the Athens VORTAC 195° radial, extending from the 4-mile radius of Athens/Ben Epps Airport to 7 miles south of the VORTAC and within 3 miles each side of the Athens VORTAC 076° radial, extending from the 4-mile radius of Athens/Ben Epps Airport to 7 miles east of the VORTAC.

* * * * *

Para 6002 Class E airspace areas as a surface area for an airport.

* * * * *

ASO GA E2 Athens, Georgia [Amend]

Athens/Ben Epps Airport, Athens, Georgia
(Lat. 33°56'54" N., long. 83°19'36" W.)

That airspace, extending upward from the surface within a 4-mile radius of the Athens/Ben Epps Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on June 9, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–17796 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 100

Administrative Regulations

AGENCY: National Labor Relations Board (NLRB).

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is amending the current administrative regulations governing the standards of conduct and financial disclosure requirements of employees of the Agency. Most of these regulations have been superseded by the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government Ethics (OGE). The NLRB publishes this rule to repeal the superseded provisions and to update cross-references in the current regulations that continue to be applicable, in conformance with the executive branch-wide standards.

Thus, NLRB is not repealing the provisions of the existing administrative regulations requiring approval to engage in outside employment, the prohibition to engage in private practice of law except in family or civic matters, and the requirement to cooperate with the NLRB's Office of Inspector General in audits and investigations.

EFFECTIVE DATE: The removal of §§ 100.202 through 100.209 and § 100.306 became effective October 5, 1992. The redesignation and revision of § 100.201 is effective July 21, 1994. All other amendments became effective February 3, 1993.

FOR FURTHER INFORMATION CONTACT:

Gloria Joseph, Director of Administration, National Labor Relations Board, Room 7108, 1099 Fourteenth Street NW., Washington, DC 20570–0001. (202–273–3890).

SUPPLEMENTARY INFORMATION: In 1967, the NLRB issued 29 CFR Part 100, administrative regulations governing employee responsibilities and conduct (32 FR 13560), primarily pursuant to and in conformance with E.O. 11222 (May 8, 1965) and regulations issued by the U.S. Civil Service Commission (5 CFR 735.104, 33 FR 12487). Executive Order 12674 (April 12, 1990)—as modified by E.O. 12731 (October 17, 1990)—revoked E.O. 11222 and directed OGE to "establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable."

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (57 FR 35006). These uniform standards of conduct, codified at 5 CFR part 2635, became effective on February 3, 1993; and supersede most of the provisions in the NLRB's regulations found in 29 CFR Part 100. Additionally, the new standard authorized executive-branch agencies, with the concurrence of OGE, to issue supplemental agency-specific regulations that are necessary and appropriate to implement their respective ethics programs (5 CFR 2635.105).

Therefore, NLRB is amending Part 100 by removing/repealing certain sections of subparts A, B, and C that have been superseded by the new OGE regulations and by revising or redesignating the remaining provisions.

In subpart A, "Employee Responsibilities and Conduct," § 100.101 has been amended to cross-reference the new executive branch-wide standards. Section 100.102 has been revised to accommodate redesignated § 100.113. Sections 100.103 through 100.105, §§ 100.111 through 100.112, paragraphs (a)(2) through (d) of § 100.113, §§ 100.114 through 100.122 have been removed. Section 100.123 is redesignated as § 100.201 of the renamed subpart B, "Cooperation in Audits and Investigations." Sections 100.301 through 100.305 and § 100.307 of subpart C, "Special Government Employee Conduct and Responsibility," were also superseded as of February 3, 1993, and have been removed.

Section 100.106, with a revised paragraph (a) to show the new street address "1099 Fourteenth Street, NW"

of the NLRB headquarters, is redesignated as § 100.401 of the renamed subpart D.

Paragraphs (a)(1) and (e) of § 100.113 have been redesignated as paragraphs (a) and (b) of § 100.102. NLRB is not removing these paragraphs, because they contain the Agency's requirements for approval to engage in outside employment and activities, and the prohibition to engage in private practice of law except in family or civic matters. Pursuant to the Standards of Ethical Conduct for Employees of the Executive Branch, these requirements will remain in effect until February 4, 1995, or until NLRB publishes new requirements.

Effective October 5, 1992, OGE regulations contained in 5 CFR part 2634, "Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees," superseded the executive branch confidential reporting regulations at 5 CFR part 735, subpart D and § 735.106, as well as the NLRB's implementing regulations. Therefore, the NLRB is further amending part 100 by removing §§ 100.201 through 100.209, along with the heading of subpart B," Employee Statements of Employment and Financial Interest." Section 100.306 and the heading of subpart C, "Special Government Employee Conduct and Responsibilities," and also removed.

Sections 100.120 (gambling, betting, and lotteries) and 100.121 (general conduct prejudicial to the Government) of the NLRB regulations are not superseded by 5 CFR part 2635 nor any other OGE regulation. However, pursuant to E.O. 12674 (as modified by E.O. 12731), OPM issued a final rule on November 30, 1992 (57 FR 56433) to complement 5 CFR part 2635. Enforceable by the employing agency, this OPM rule—which revised part 735 of title 5, Ch. I of the Code of Federal Regulations—became effective on February 3, 1993; and established executive branch-wide standards in these conduct areas. Accordingly, the NLRB is removing §§ 100.120 and 100.121.

Additionally, subpart D, "Employee Personal Loss Claims [Reserved]," is redesignated as subpart C; subpart E, "Claims Under the Federal Tort Claims Act," is redesigned as subpart D; and subpart F, "Enforcement of Nondiscrimination on the Basis of Handicap in Programs and Activities Conducted by the National Labor Relations Board," is redesignated as subpart E of part 100 of title 29, Ch. I of the Code of Federal Regulations. Section 100.570 is amended to show the new street address "1099 Fourteenth Street, NW" of the NLRB headquarters and the Director of Administration.

This rule relates to Agency management and personnel. As such, no notice of proposed rulemaking has been published. For the same reason, the rule is not subject to the review requirements of E.O. 12991.

List of Subjects in 29 CFR Part 100

Administrative regulations, employee responsibilities and conduct, Government employees, cooperation in audits and investigations, employee personal property loss claims, claims under the Federal Tort Claims Act, nondiscrimination on the basis of handicap in NLRB programs.

For the reasons stated in the preamble, part 100 of title 29, Ch. 1 of the Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 is revised to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 141, 146).

Subpart A is also issued under 5 U.S.C. 7301; 5 U.S.C. app. (Ethics in Government Act of 1978); E.O. 12674, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.802(a), 2635.803; 18 U.S.C. 201 et seq.; 18 U.S.C. 208; 57 FR 56433 (codified at 5 CFR 735); the Inspector General Act of 1978, as amended by the Inspector General Act Amendment of 1988, 5 U.S.C. app. 3.

Subpart B is also issued under the Inspector General Act of 1978, as amended by the Inspector General Act Amendment of 1988, 5 U.S.C. app. 3; 18 U.S.C. 201 et seq.; 5 CFR 735; 42 U.S.C. 2000e–16(a); 29 CFR 1613.204(a) and 29 CFR 1613.216.

Subpart D is also issued under 28 U.S.C. 2672; 28 CFR Part 14.

Subpart E is also issued under 29 U.S.C. 794.

Subpart A—[Amended]

2. Section 100.101 is revised to read as follows:

§ 100.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

(a) Employees of the NLRB should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, 5 CFR part 735 which addresses employee responsibilities and conduct executive branch-wide in relation to certain provisions not contained in the Standards of Ethical Conduct, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

3. Section 100.102 is revised to read as follows:

§ 100.102 Outside employment or occupation.

(a) The private practice of law either individually or with another person, is prohibited; however, as an exception, permission of the Board or General Counsel may be requested to engage in such occasional and private legal activities as those involving family or civic matters;

(b) *Requests for authorization and reports of outside employment.* (1) *Legal practice.* Requests directed to the Board or General Counsel, as appropriate, for exception to the prohibition in paragraph (a) of this section, shall at a minimum, include:

(i) Nature of legal activity,

(ii) Relationship of proposed client(s) to employee, if any,

(iii) Expected duration of activity, and

(iv) Compensation involved.

(2) *Other employment.* Before any employee accepts outside employment, he shall obtain permission of his Regional Director, Branch Chief, or the equivalent. Permission shall be granted in accordance with the regulations in this part. Each Regional Director, Branch Chief, or the equivalent shall maintain a record on an individual basis of each request received for outside employment authorization and the official action taken. At least annually, as of June 30, the Division Chief shall require a report from each subordinate authorizing official showing as a minimum:

(i) By named employee, the request and official action taken, and

(ii) A list by employee of the outstanding authorizations for outside employment.

§§ 100.103 through 100.105 [Removed]

4. and 5. Sections 100.103 through 100.105 are removed.

§§ 100.111 through 100.112 [Removed]

6. Sections 100.111 through 100.112 are removed.

§ 100.113 [Redesignated as § 100.102]

7. Section 100.113 is removed.

§§ 100.114 through 100.122 [Removed]

8. Sections 100.114 through 100.122 are removed.

Subpart B—Cooperation in Audits and Investigations

9. The heading for subpart B, "Employee Statements of Employment and Financial Interest," is revised to read as shown above.

§ 100.123 [Redesignated and revised]

10. Section 100.123 is redesignated as § 100.201 of subpart B and revised to read as follows:

§ 100.201 Audits and investigations.

(a) Employees shall cooperate fully with any audit or investigation conducted by the Office of the Inspector General involving matters that fall within the jurisdiction and authority of the Inspector General, as defined in the Inspector General Act of 1978, as amended, or with any audit or investigation conducted by any Agency official or department, including, but not limited to, the Office of Equal Employment Opportunity, involving matters that relate to or have an effect on the official business of the Agency. Such cooperation shall include, among other things, responding to requests for information, providing statements under oath relating to such audits or investigations, and affording access to Agency records and/or any other Agency materials in an employee's possession.

(b) The obstruction of an audit or investigation, concealment of information, intentional furnishing of false or misleading information, refusal to provide information and/or answer questions, or refusal to provide a statement under oath, by an employee to an auditor or investigator pursuant to any audit or investigation as described in paragraph (a) of this section, may result in disciplinary action against an employee. However, nothing herein shall be construed to deny, abridge, or otherwise restrict the rights, privileges, or other entitlements or protections afforded to Agency employees.

§§ 100.202 through 100.209 [Removed]

11. Sections 100.202 through 100.209 are removed.

Subpart C—Employee Personal Property Loss Claims [Reserved]

12. The heading for subpart C, "Special Government Employee Conduct and Responsibility," is revised to read as shown above.

§§ 100.301 through 100.307 [Removed]

13. Sections 100.301 through 100.307 are removed.

Subpart E—[Redesignated as Subpart D]

14. Subpart E, "Claims Under the Federal Tort Claims Act [Reserved]," is redesignated as subpart D, and revised to read as follows:

§ 100.201 Audits and investigations.

(a) Employees shall cooperate fully with any audit or investigation conducted by the Office of the Inspector General involving matters that fall within the jurisdiction and authority of the Inspector General, as defined in the Inspector General Act of 1978, as amended, or with any audit or investigation conducted by any Agency official or department, including, but not limited to, the Office of Equal Employment Opportunity, involving matters that relate to or have an effect on the official business of the Agency. Such cooperation shall include, among other things, responding to requests for information, providing statements under oath relating to such audits or investigations, and affording access to Agency records and/or any other Agency materials in an employee's possession.

(b) The obstruction of an audit or investigation, concealment of information, intentional furnishing of false or misleading information, refusal to provide information and/or answer questions, or refusal to provide a statement under oath, by an employee to an auditor or investigator pursuant to any audit or investigation as described in paragraph (a) of this section, may result in disciplinary action against an employee. However, nothing herein shall be construed to deny, abridge, or otherwise restrict the rights, privileges, or other entitlements or protections afforded to Agency employees.

§§ 100.202 through 100.209 [Removed]

11. Sections 100.202 through 100.209 are removed.

Subpart C—Employee Personal Property Loss Claims [Reserved]

12. The heading for subpart C, "Special Government Employee Conduct and Responsibility," is revised to read as shown above.

§§ 100.301 through 100.307 [Removed]

13. Sections 100.301 through 100.307 are removed.

Subpart E—[Redesignated as Subpart D]

14. Subpart E, "Claims Under the Federal Tort Claims Act [Reserved]," is redesignated as subpart D, and revised to read as follows:

Subpart D—Claims Under the Federal Tort Claims Act

§ 100.401 Claims under the Federal Tort Claims Act for loss of or damage to property or for personal injury or death.

(a) *Filing of claims.* Pursuant to 28 U.S.C. 2672, any claim under the Federal Tort Claims Act for money damages for loss of or injury to property, or for personal injury or death, caused by the negligent or wrongful act or omission of any employee of the National Labor Relations Board while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such loss, injury or death in accordance with the law of the place where the act or omission occurred, may be presented to the Director of Administration, 1099 Fourteenth Street, NW., Washington, DC 20570, or to any regional office of the National Labor Relations Board, at any time within 2 years after such claim has accrued. Such a claim may be presented by a person specified in 28 CFR 14.3, in the manner set out in 28 CFR 14.2 and 14.3, and shall be accompanied by as much of the appropriate information specified in 28 CFR 14.4 as may reasonably be obtained.

(b) *Action on claims.* The Director, Division of Administration, shall have the power to consider, ascertain, adjust, determine, compromise, and settle any claim referred to in, and presented in accordance with paragraph (a) of this section. The Chief, Security Staff, can process and adjust claims under $100 in accordance with delegated authority from the Director. Legal review is required by the General Counsel or designee for all claims in the amount of $5,000 or more, 28 CFR 14.5. Any exercise of such power shall be in accordance with 28 U.S.C. 2672 and 28 CFR Part 14.

(c) *Payment of awards.* Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to this action will be paid by the Director of Administration out of appropriations available to the National Labor Relations Board. Payment of any award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this section will be obtained in accordance with 28 CFR 14.10.

Subpart F—[Redesignated as Subpart E]

15. Subpart F, entitled "Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Labor Relations Board," is redesignated as subpart E.

§§ 100.601 through 100.671–100.699 [Reserved]—[Redesignated as §§ 100.501 through 100.571–100.599 [Reserved]]

16. Sections 100.601 through 100.699 are redesignated as §§ 100.501 through 100.599, respectively.

§ 100.570 [Amended]

17. Newly designated § 100.570 is amended by revising the phrase "171 Pennsylvania Avenue NW.," in paragraph (c) to read "1099 Fourteenth Street NW.,".

Dated: Washington, DC, July 15, 1994.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 94–17758 Filed 7–20–94; 8:45 am]

BILLING CODE 7545–01–M

POSTAL SERVICE

39 CFR Parts 262 and 266

Conforming Postal Regulations to the Computer Matching and Privacy Protection Act of 1988

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its Privacy Act regulations to incorporate changes made by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503). That Act amended the Privacy Act of 1974 to establish procedures affecting agencies' use of Privacy Act records in performing certain types of computerized matching programs. The rules follow the guidelines issued by the Office of Management and Budget (54 FR 25818, June 19, 1989). Because the proposed rule (59 FR 30739, June 15, 1994) generated no comments, the final rule is published unchanged.

EFFECTIVE DATE: August 15, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for inspection and photocopying between 8:15 a.m. and 4:45 p.m., Monday through Friday, at the Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., room 8831, Washington, DC 20260–5240.

FOR FURTHER INFORMATION CONTACT: Sheila Allen, (202) 268–4869.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 requires an agency to meet certain procedural requirements when using one or more of

its Privacy Act systems of records in conducting computer matching programs. Included is the requirement that an agency Data Integrity Board agency. The following changes define computer matching under the Act; incorporate some of the Act's procedural requirements, including **Federal Register** publication, submission of matching proposals to the Postal Service, and execution of matching agreements; and describe the responsibilities and makeup of the USPS Data Integrity Board.

List of Subjects in 39 CFR Parts 262 and 266

Definitions, Privacy, Records and information management.

For the reasons set out in this notice, the Postal Service is amending parts 262 and 266 of title 39 of the Code of Federal Regulations as follows:

PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

1. The authority citation for part 262 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. Paragraphs (c) and (d) are added to § 262.5 as follows:

§ 262.5 Systems (Privacy).

* * * * *

(c) *Computer matching program.* A "matching program," as defined in the Privacy Act, 5 U.S.C. 552a(a)(8), is subject to the matching provisions of the Act, published guidance of the Office of Management and Budget, and these regulations. The term "matching program" includes any computerized comparison of:

(1) A Postal Service automated system of records with an automated system of records of another Federal agency, or with non-Federal records, for the purpose of:

(i) Establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(ii) Recouping payments or delinquent debts under such Federal benefit programs;

(2) A Postal Service automated personnel or payroll system of records with another automated personnel or payroll system of records of the Postal Service or other Federal Agency or with non-Federal records.

(d) *Other computer matching activities.* (1) The following kinds of computer matches are specifically excluded from the term "matching program":

(i) Statistical matches whose purpose is solely to produce aggregate data stripped of personal identifiers.

(ii) Statistical matches whose purpose is in support of any research or statistical project.

(iii) Law enforcement investigative matches whose purpose is to gather evidence against a named person or persons in an existing investigation.

(iv) Tax administration matches.

(v) Routine administrative matches using Federal personnel records, provided that the purpose is not to take any adverse action against an individual.

(vi) Internal matches using only records from Postal Service systems of records, provided that the purpose is not to take any adverse action against any individual.

(vii) Matches performed for security clearance background checks or for foreign counterintelligence.

(2) Although these and other matching activities that fall outside the definition of "matching program" are not subject to the matching provisions of the Privacy Act or OMB guidance, other provisions of the Act and of these regulations may be applicable. No matching program or other matching activity may be conducted without the prior approval of the Records Officer.

PART 266—PRIVACY OF INFORMATION

3. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 266.2 [Amended]

4. Section 266.2 is amended by removing "and" before "(f)" and the period at the end of the paragraph and adding "; and (g) of the establishment or revision of a computer matching program."

5. Paragraph (d) is added to § 266.3 as follows:

§ 266.3 Responsibility.

* * * * *

(d) *Data Integrity Board—(1) Responsibilities.* The Data Integrity Board oversees Postal Service computer matching activities. Its principal function is to review, approve, and maintain all written agreements for use of Postal Service records in matching programs to ensure compliance with the Privacy Act and all relevant statutes, regulations, and guidelines. In addition, the Board annually reviews matching programs and other matching activities in which the Postal Service has participated during the preceding year to determine compliance with applicable laws, regulations, and agreements; compiles a biennial matching report of matching activities; and performs review and advisement functions relating to records accuracy, recordkeeping and disposal practices, and other computer matching activities.

(2) *Composition.* The Privacy Act requires that the senior official responsible for implementation of agency Privacy Act policy and the Inspector General serve on the Board. The Records Officer, as administrator of Postal Service Privacy Act policy, serves as Secretary of the Board and performs the administrative functions of the Board. The Board is composed of these and other members designated by the Postmaster General, as follows:

(i) Vice President/Controller (Chairman).

(ii) Chief Postal Inspector in his or her capacity as Inspector General.

(iii) Vice President, Employee Relations.

(iv) General Counsel.

(v) Records Officer (Secretary).

6. Paragraph (b)(6) is added to § 266.4 as follows:

§ 266.4 Collection and disclosure of information about individuals.

* * * * *

(b) * * *

(6) *Computer matching purposes.* Records from a Postal Service system of records may be disclosed to another agency for the purpose of conducting a computer matching program or other matching activity as defined in paragraphs (c) and (d) of § 262.5, but only after a determination by the Data Integrity Board that the procedural requirements of the Privacy Act, the guidelines issued by the Office of Management and Budget, and these regulations as may be applicable are met. These requirements include:

(i) *Routine use.* Disclosure is made only when permitted as a routine use of the system of records. The USPS Records Officer determines the applicability of a particular routine use and the necessity for adoption of a new routine use.

(ii) *Notice.* Publication of new or revised matching programs in the **Federal Register** and advance notice to Congress and the Office of Management and Budget must be made pursuant to paragraph (f) of § 266.5.

(iii) *Computer matching agreement* The participants in a computer matching program must enter into a written agreement specifying the terms under which the matching program is to be conducted (see § 266.10). The Records Officer may require that other matching activities be conducted in accordance with a written agreement.

(iv) *Data Integrity Board approval.* No record from a Postal Service system of records may be disclosed for use in a computer matching program unless the matching agreement has received approval by the Postal Service Data Integrity Board (see § 266.10). Other matching activities may, at the discretion of the Records Officer, be submitted for Board approval.

* * * * *

7. Paragraph (f) is added to § 266.5 as follows:

§ 266.5 Notification.

* * * * *

(f) *Notification of computer matching program.* The Postal Service publishes in the **Federal Register** and forwards to Congress and the Office of Management and Budget advance notice of its intent to establish, substantially revise, or renew a matching program, unless such notice is published by another participant agency. In those instances in which the Postal Service is the "recipient" agency, as defined in the Act, but another participant agency sponsors and derives the principal benefit from the matching program, the other agency is expected to publish the notice. The notice must be sent to Congress and OMB 40 days, and published at least thirty (30) days, prior to (1) initiation of any matching activity under a new or substantially revised program, or (2) expiration of the existing matching agreement in the case of a renewal of a continuing program.

8. Paragraph (e) is added to § 266.8 as follows:

§ 266.8 Schedule of fees.

* * * * *

(e) The Postal Service may, at its discretion, require reimbursement of its costs as a condition of participation in a computer matching program or activity with another agency. The agency to be charged is notified in writing of the approximate costs before they are incurred. Costs are calculated in accordance with the schedule of fees at § 265.9.

9. Section 266.10 is added as follows:

§ 266.10 Computer matching.

(a) *General.* Any agency or Postal Service component that wishes to use records from a Postal Service automated system of records in a computerized comparison with other postal or non-postal records must submit its proposal

written agreement specifying the terms under which the matching program is to be conducted (see § 266.10). The Records Officer may require that other matching activities be conducted in accordance with a written agreement.

(iv) *Data Integrity Board approval.* No record from a Postal Service system of records may be disclosed for use in a computer matching program unless the matching agreement has received approval by the Postal Service Data Integrity Board (see § 266.10). Other matching activities may, at the discretion of the Records Officer, be submitted for Board approval.

* * * * *

7. Paragraph (f) is added to § 266.5 as follows:

§ 266.5 Notification.

* * * * *

(f) *Notification of computer matching program.* The Postal Service publishes in the **Federal Register** and forwards to Congress and the Office of Management and Budget advance notice of its intent to establish, substantially revise, or renew a matching program, unless such notice is published by another participant agency. In those instances in which the Postal Service is the "recipient" agency, as defined in the Act, but another participant agency sponsors and derives the principal benefit from the matching program, the other agency is expected to publish the notice. The notice must be sent to Congress and OMB 40 days, and published at least thirty (30) days, prior to (1) initiation of any matching activity under a new or substantially revised program, or (2) expiration of the existing matching agreement in the case of a renewal of a continuing program.

8. Paragraph (e) is added to § 266.8 as follows:

§ 266.8 Schedule of fees.

* * * * *

(e) The Postal Service may, at its discretion, require reimbursement of its costs as a condition of participation in a computer matching program or activity with another agency. The agency to be charged is notified in writing of the approximate costs before they are incurred. Costs are calculated in accordance with the schedule of fees at § 265.9.

9. Section 266.10 is added as follows:

§ 266.10 Computer matching.

(a) *General.* Any agency or Postal Service component that wishes to use records from a Postal Service automated system of records in a computerized comparison with other postal or non-postal records must submit its proposal to the USPS Records Officer. Computer matching programs as defined in paragraph (c) of § 262.5 must be conducted in accordance with the Privacy Act, implementing guidance issued by the Office of Management and Budget and these regulations. Records may not be exchanged for a matching program until all procedural requirements of the Act and these regulations have been met. Other matching activities must be conducted in accordance with the Privacy Act and with the approval of the Records Officer. See paragraph (b)(6) of § 266.4.

(b) *Procedure for submission of matching proposals.* A proposal must include information required for the matching agreement discussed in paragraph (d)(1) of this section. The Inspection Service must submit its proposals for matching programs and other matching activities to the USPS Records Officer through: Independent Counsel, Inspection Service, U.S. Postal Service, 475 L'Enfant Plaza SW, Rm 3417, Washington, DC 20260–2181.

All other matching proposals, whether from postal organizations or other government agencies, must be mailed directly to: USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW, Rm 8831, Washington, DC 20260–5240.

(c) *Lead time.* Proposals must be submitted to the USPS Records Officer at least 3 months in advance of the anticipated starting date to allow time to meet Privacy Act publication and review requirements.

(d) *Matching agreements.* The participants in a computer matching program must enter into a written agreement specifying the terms under which the matching program is to be conducted. The Records Officer may require similar written agreements for other matching activities.

(1) *Content.* Agreements must specify:

(i) The purpose and legal authority for conducting the matching program;

(ii) The justification for the program and the anticipated results, including, when appropriate, a specific estimate of any savings in terms of expected costs and benefits, in sufficient detail for the Data Integrity Board to make an informed decision;

(iii) A description of the records that are to be matched, including the data elements to be used, the number of records, and the approximate dates of the matching program;

(iv) Procedures for providing notice to individuals who supply information that the information may be subject to verification through computer matching programs;

(v) Procedures for verifying information produced in a matching program and for providing individuals an opportunity to contest the findings in accordance with the requirement that an agency may not take adverse action against an individual as a result of information produced by a matching program until the agency has independently verified the information and provided the individual with due process;

(vi) Procedures for ensuring the administrative, technical, and physical security of the records matched; for the retention and timely destruction of records created by the matching program; and for the use and return or destruction of records used in the program;

(vii) Prohibitions concerning duplication and redisclosure of records exchanged, except where required by law or essential to the conduct of the matching program;

(viii) Assessments of the accuracy of the records to be used in the matching program; and

(ix) A statement that the Comptroller General may have access to all records of the participant agencies in order to monitor compliance with the agreement.

(2) *Approval.* Before the Postal Service may participate in a computer matching program or other computer matching activity that involves both USPS and non-USPS records, the Data Integrity Board must have evaluated the proposed match and approved the terms of the matching agreement. To be effective, the matching agreement must receive approval by each member of the Board. Votes are collected by the USPS Records Officer. Agreements are signed on behalf of the Board by the Chairman. If a matching agreement is disapproved by the Board, any party may appeal the disapproval in writing to the Director, Office of Management and Budget, Washington, DC 20503–0001, within 30 days following the Board's written disapproval.

(3) *Effective dates.* No matching agreement is effective until 40 days after the date on which a copy is sent to Congress. The agreement remains in effect only as long as necessary to accomplish the specific matching purpose, but no longer than 18 months, at which time the agreement expires unless extended. The Data Integrity Board may extend an agreement for one additional year, without further review, if within 3 months prior to expiration of the 18-month period it finds that the matching program is to be conducted without change, and each party to the agreement certifies that the program has been conducted in compliance with the

matching agreement. Renewal of a continuing matching program that has run for the full 30-month period requires a new agreement that has received Data Integrity Board approval.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94-17780 Filed 7-20-94; 8:45 am]

BILLING CODE 7716-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-5015-7]

Approval and Promulgation of Implementation Plans; North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: This action corrects a typographical error in the **Federal Register** final rule for North Carolina published on June 23, 1994 at 59 FR 32365. This action added paragraph (c)(67) to § 52.1770. The correct paragraph is (c)(69). This action corrects this typographical error.

EFFECTIVE DATE: This action is effective July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this notice can be obtained by contacting Dick Schutt, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides, & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia. The telephone number is (404) 347-2864.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: July 1, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Therefore, 40 CFR part 52 is corrected by making the following correcting amendment as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart II—North Carolina

§ 52.1770 [Amended]

2. Section 52.1770, is amended by redesignating paragraph (c)(67), added June 23, 1994, at 59 FR 32365, as paragraph (c)(69).

[FR Doc. 94-17554 Filed 7-20-94; 8:45 am]

BILLING CODE 6560-50-P

---

40 CFR Part 52

[PA26-1-6221; FRL-5004-3]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the implementation of an oxygenated gasoline program in the Pennsylvania portion of the Philadelphia Consolidated Metropolitan Statistical Area (CMSA). This SIP revision was submitted to satisfy the Clean Air Act Amendments of 1990 (the Act) which requires all carbon monoxide nonattainment areas with a design value of 9.5 part per million (ppm) or greater based generally on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. The intended effect of this action is to approve the oxygenated gasoline program. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on August 22, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Mrs. Kelly L. Bunker, (215) 597-4554.

SUPPLEMENTARY INFORMATION: On November 29, 1993 (58 FR 62563), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of an oxygenated gasoline program. The formal SIP revision was submitted by the Commonwealth of Pennsylvania on November 12, 1992. The revision included revisions to 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions, and the additions of section 126.1 Oxygenate Content of Gasoline to 25 PA Code Chapter 126, Standards for Motor Fuels. These regulatory revisions were adopted by the Commonwealth on June 16, 1992 and became effective on August 29, 1992. On February 16, 1993, an amendment to the November 12, 1992 SIP revision was officially submitted to EPA. The amendment corrected a typographical error in 25 PA Code Chapter 121, section 121.1 in the definition of "oxygenated gasoline". The corrected version of the definition was effective on October 24, 1992. A more detailed analysis of the state submittal was prepared as part of the NPR action and is contained in a Technical Support Document (TSD) dated June 15, 1993, which is available from the Region III office listed in the **ADDRESSES** section of this notice.

Public comments were received from one group on the NPR. The American Institute of Certified Public Accountants (AICPA) submitted comments on December 29, 1993 which related to the attest engagement [1] requirements. A copy of the AICPA's comments can be found in the Pennsylvania oxygenated gasoline program SIP docket file which is available from the Region III office listed in the **ADDRESSES** section of this notice.

The AICPA had four comments on the NPR which are summarized as follows:

(1) The Pennsylvania regulations require the attest engagement report to be submitted within 60 days following the end of the control period and AICPA suggested that the filing deadline be extended to 120 days to be consistent with EPA guidelines;

(2) Pennsylvania regulations require attest engagements for both averaging and per gallon information, AICPA believes this is inconsistent with EPA guidelines;

(3) AICPA believes that Pennsylvania's implementation guidelines requirement that Certified Public Accountants (CPA) meet the general standards prescribed in "Government Auditing Standards, 1988 Revision, published by the Comptroller General of the United States' General Accounting Office" (GAS) should be deleted. AICPA commented that the standards that govern the conduct of the attest engagement are the AICPA Statement of Standards for Attestation Engagements (SSAE) and not the GAS; and

(4) The third column of the EPA NPR, page 62564, contained an error by using the word "account" in connection with "CPA" and the word should be changed to "accountant".

EPA has reviewed AICPA's comments and determined that the State requirements discussed in the first two comments are more stringent than EPA guidelines and can be required at the State's discretion, and therefore do not affect the approvability of this revision.

The third comment deals with the Pennsylvania's implementation guidelines which were not submitted as part of the SIP revision and therefore the comment is not relevant to the approvability of this revision. However, EPA has contacted the Pennsylvania Department of Environmental Resources (PADER) concerning this comment. PADER informed EPA that the section of the Pennsylvania implementation guidelines entitled "Auditor Qualifications" requires each auditor, who performs an attest engagement, to fulfill specific qualifications. One of the qualifications is that the auditor meet the general standards prescribed in the "Government Auditing Standards, 1988 Revision, published by the Comptroller General of the United States' General Accounting Office" (GAS). The subsequent section of the Pennsylvania implementation guideline, entitled "Agreed-upon Procedures", does require that the auditor comply with the AICPA Statement of Standards for Attestation Engagements (SSAE) when performing the attest engagement. This section of the Pennsylvania implementation guideline, entitled "Agreed-upon Procedures", addresses the third comment raised by the AICPA.

With regard to the last comment, EPA acknowledges that it made a typographical error in the NPR, page 62564, and agrees that the word "account" should have read "accountant."

Other specific requirements of the oxygenated gasoline program and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

[1] Attestation engagements are performed by a certified public accountant or firm of certified public accountants. Attestation engagements are a review of the regulated parties records to assure accuracy. It serves as a means of improving compliance with the oxygenated gasoline program by identifying problem areas to the regulated parties.

general standards prescribed in "Government Auditing Standards, 1988 Revision, published by the Comptroller General of the United States' General Accounting Office" (GAS) should be deleted. AICPA commented that the standards that govern the conduct of the attest engagement are the AICPA Statement of Standards for Attestation Engagements (SSAE) and not the GAS; and

(4) The third column of the EPA NPR, page 62564, contained an error by using the word "account" in connection with "CPA" and the word should be changed to "accountant".

EPA has reviewed AICPA's comments and determined that the State requirements discussed in the first two comments are more stringent than EPA guidelines and can be required at the State's discretion, and therefore do not affect the approvability of this revision.

The third comment deals with the Pennsylvania's implementation guidelines which were not submitted as part of the SIP revision and therefore the comment is not relevant to the approvability of this revision. However, EPA has contacted the Pennsylvania Department of Environmental Resources (PADER) concerning this comment. PADER informed EPA that the section of the Pennsylvania implementation guidelines entitled "Auditor Qualifications" requires each auditor, who performs an attest engagement, to fulfill specific qualifications. One of the qualifications is that the auditor meet the general standards prescribed in the "Government Auditing Standards, 1988 Revision, published by the Comptroller General of the United States' General Accounting Office" (GAS). The subsequent section of the Pennsylvania implementation guideline, entitled "Agreed-upon Procedures", does require that the auditor comply with the AICPA Statement of Standards for Attestation Engagements (SSAE) when performing the attest engagement. This section of the Pennsylvania implementation guideline, entitled "Agreed-upon Procedures", addresses the third comment raised by the AICPA.

With regard to the last comment, EPA acknowledges that it made a typographical error in the NPR, page 62564, and agrees that the word "account" should have read "accountant."

Other specific requirements of the oxygenated gasoline program and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

Final Action

EPA is approving the amendments to 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions, the addition of section 126.1 Oxygenate Content of Gasoline to 25 PA Code Chapter 126, Standards for Motor Fuels, and the correction in 25 PA Code Chapter 121, General Provisions, section 121.1 in the definition of "oxygenated gasoline."

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (Insert date 60 days from date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Pennsylvania's oxygenated gasoline regulation may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 28, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart NN of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(88) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(88) Revisions to the Pennsylvania Regulations for an oxygenated gasoline program submitted on November 12, 1992 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Letter of November 12, 1992 from the Pennsylvania Department of Environmental Resources transmitting the oxygenated gasoline regulation as a SIP revision.

(B) Revisions to 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions and the addition of section 126.1 Oxygenate Content of Gasoline to 25 PA Code Chapter 126, Standards for Motor Fuels. These revisions became effective August 29, 1992.

(C) The correction in 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions in the definition of "oxygenated gasoline". This correction became effective October 24, 1992.

(ii) Additional Material.

(A) Remainder of Pennsylvania State submittal.

(B) [Reserved].

[FR Doc. 94–17693 Filed 7–20–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[PP Docket No. 93–253; FCC 94–123]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order states the Commission's intention to use lotteries to award licenses for all cellular unserved areas in which applications were filed prior to July 26, 1993. This action is taken because the Commission indicated in a prior order in this proceeding that it would address in a separate action the

applicability of competitive bidding or lottery procedures to certain radio applications filed before July 26, 1993. The Commission concludes that this action to use random selection instead of competitive bidding to award licenses among these competing applications will serve the public interest.

FOR FURTHER INFORMATION CONTACT: Stephen Markendorff (202) 418–1320 or Geraldine Matise (202) 418–1300 in the Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order (Order) in PP Docket No. 93–253, adopted May 27, 1994 and released July 14, 1994. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M Street, NW., Washington, DC 20037

Synopsis of Order

In this Order, the Commission states its intention to use existing random selection procedures to choose from among mutually exclusive applications filed prior to July 26, 1993, for authorization to provide cellular service to unserved areas. This action is consistent with the Special Rule adopted in Section 6002(e) of the Budget Act. In the near future, the Commission's staff will issue a Public Notice rescheduling the two previously scheduled lotteries. Finally, the Commission stated that it will consider requests for approval of full market settlements and proceed with licensing where such approval is granted.

Ordering Clauses

Accordingly, *it is ordered* that selection from among mutually exclusive applications filed prior to July 26, 1993, to provide cellular service to unserved areas shall be by random selection, in accordance with existing Commission rules.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17699 Filed 7–20–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 24

[PP Docket No. 93–253]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations which were published Tuesday, May 24, 1994 (59 FR 26741). The regulations related to the service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 900 MHz band (narrowband PCS).

EFFECTIVE DATE: July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Toni Simmons, Office of Plans and Policy, (202) 418–2030.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections were adopted in the Third Report and Order, PP Docket No. 93–253, FCC 94–98, adopted April 20, 1994, and released May 10, 1994.

Need for Correction

As published, the final regulations contain minor errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on May 24, 1994 of the final regulations (FCC 94–98), which were the subject of FR Doc. 94–12165, is corrected as follows:

§ 24.425 [Corrected]

Sec. 24.425(a) of the Commission's rules on page 26753, in the third column, is corrected by replacing the reference to "§ 24.5" in the second sentence with "§ 24.405."

Sec. 24.425(b), introductory paragraph, of the Commission's Rules on page 26753, in the third column, is corrected by replacing the reference to "§ 24.27(b)" with a reference to "Sec. 24.427(b)."

Sec. 24.425(b)(1) of the Commission's Rules on page 26753, in the third column, is replaced as follows:

"The authorization is for a period not to exceed 30 days and no application for regular operation is contemplated to be filed."

§ 24.427 [Corrected]

Sec. 24.427 of the Commission's Rules on page 26754, in the second column, is corrected by redesignating paragraph (b)(1) as paragraph (b).

§ 24.429 [Corrected]

Section 24.429(a)(1) of the Commission's Rules on page 26755, in the first column, is corrected by adding a "(c)" after the first reference to "24.423."

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–17700 Filed 7–20–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–16; Notice 03]

RIN 2127–AD09

Federal Motor Vehicle Safety Standards Seating Systems; Pedestal Seats

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Standard 207, *Seating Systems*, to establish a more appropriate test procedure for pedestal seats. Manufacturers of most pedestal seats will have a choice between the current test procedure or the new test procedure. The current test procedure applies a single load through the center of gravity (cg) of the entire seat. The new test procedure applies two separate loads, one through the cg of the portion of the seat above the adjuster and the other through the cg of the pedestal. This rule is a response to manufacturer concerns that the current Standard No. 207 test procedure imposes excessive loads on the adjuster for pedestal seats when the cg of the seat is located above the seat adjuster. (The adjuster is typically located between the pedestal and the seat.) Manufacturers believed that the current test procedure is inappropriate for seats whose cg is located above the adjuster because a portion of the load applied to the seat, and therefore imposed on the adjuster, represents the weight of the pedestal. In a real crash, only the weight of the seat that is above the adjuster would be imposed on the adjuster.

DATES: *Effective Date*: The amendments made in this rule are effective October 19, 1994.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than August 22, 1994.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC., 20590.

FOR FURTHER INFORMATION CONTACT: Dr. William J.J. Liu, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC., 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: On August 14, 1990, NHTSA published a notice of proposed rulemaking (NPRM) to amend Standard 207, *Seating Systems*, establish a more appropriate test procedure for pedestal seats (55 FR 33141): Under the proposed test procedure, the pedestal and the seat portion of a pedestal seat would each be separately, but simultaneously, loaded. The NPRM proposed definitions for a "pedestal seat," and parts thereof, to differentiate such seats from other seating systems.

March 8, 1993, NHTSA published a supplemental notice of proposed rulemaking (SNPRM) for the same rulemaking (58 FR 12921). The SNPRM and the 1990 NPRM differed in two principal respects. The first concerned the definition of "pedestal seat." Instead of attempting to define and differentiate different parts of a pedestal seat from one another, as was done in the NPRM, the SNPRM simply divided pedestal seats into two portions, that above the adjuster and that below the adjuster. The second difference concerned whether the new test procedure would replace the current procedure or become an alternative to it. The new test procedure proposed in the SNPRM was virtually identical to that proposed in the NPRM, except that the SNPRM gave manufacturers the option of using either the current single load procedure or the new dual load test procedure for testing most pedestal seats.

The agency received six comments concerning the March 1993 SNPRM. In general, the commenters supported the SNPRM. All of the comments were considered when formulating this final rule, and the most significant comments are addressed below.

Definitions

The SNPRM proposed a new definition for "seat adjuster" as follows:

"*Seat adjuster*" means the part of the seat that allows the seat bench and back to move

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than August 22, 1994.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC., 20590.

FOR FURTHER INFORMATION CONTACT: Dr. William J.J. Liu, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC., 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: On August 14, 1990, NHTSA published a notice of proposed rulemaking (NPRM) to amend Standard 207, *Seating Systems*, establish a more appropriate test procedure for pedestal seats (55 FR 33141). Under the proposed test procedure, the pedestal and the seat portion of a pedestal seat would each be separately, but simultaneously, loaded. The NPRM proposed definitions for a "pedestal seat," and parts thereof, to differentiate such seats from other seating systems.

March 8, 1993, NHTSA published a supplemental notice of proposed rulemaking (SNPRM) for the same rulemaking (58 FR 12921). The SNPRM and the 1990 NPRM differed in two principal respects. The first concerned the definition of "pedestal seat." Instead of attempting to define and differentiate different parts of a pedestal seat from one another, as was done in the NPRM, the SNPRM simply divided pedestal seats into two portions, that above the adjuster and that below the adjuster. The second difference concerned whether the new test procedure would replace the current procedure or become an alternative to it. The new test procedure proposed in the SNPRM was virtually identical to that proposed in the NPRM, except that the SNPRM gave manufacturers the option of using either the current single load procedure or the new dual load test procedure for testing most pedestal seats.

The agency received six comments concerning the March 1993 SNPRM. In general, the commenters supported the SNPRM. All of the comments were considered when formulating this final rule, and the most significant comments are addressed below.

Definitions

The SNPRM proposed a new definition for "seat adjuster" as follows:

> "*Seat adjuster*" means the part of the seat that allows the seat bench and back to move forward and rearward, and/or to rotate around a vertical axis, including any fixed portion, such as a seat track. The term also means the uppermost seat adjuster in the case of a seat equipped with seat adjusters at different levels.

AM General Corp. (AM General), Chrysler Corp. (Chrysler), and Volvo GM Heavy Truck Corp. (Volvo) commented on the proposed definition. AM General and Chrysler commented that the proposed definition excluded nonadjustable pedestal seats and asked that the proposed test procedure also apply to that type of seat.

NHTSA agrees with AM General and Chrysler that the amendments proposed in the SNPRM apply only to adjustable pedestal seats. The focus of this rulemaking has always been manufacturer concerns that the current Standard No. 207 test procedure imposes excessive loads placed on the adjusters for pedestal seats. The current test procedure requires a single load to be applied through the center of gravity (cg) of the entire seat. If the cg of a pedestal seat lies at or above the adjuster, the test procedure places the load of the entire seat, including the pedestal, on the adjuster. However, in a real-world crash, the adjuster would not have loads imposed on it from the pedestal. NHTSA does not believe the same concerns apply to non-adjustable pedestal seats. In addition, NHTSA notes that extending this rule to non-adjustable pedestal seats would be outside the scope of notice of this rulemaking.

Volvo stated that the:

> (s)uspension seats in heavy trucks also include a fore and aft slide device which allows the seat to "float" and absorb the pitch moment generated by rough roads or uneven loading.

Volvo asked that the definition be changed to clarify that the adjuster is the part of the seat that provides forward and rearward positioning of the seat, rather than a part of the seat which allows the seat to move while the vehicle is in motion. NHTSA agrees that the Volvo change clarifies the definition and has adopted the change as suggested.

Test Procedure

Adjustment Position (S5.1.1(a))

The test procedure proposed in the SNPRM specified that, if the height of the seat were adjustable, the loads were to be applied when the seat was in its highest adjustment position. Volvo stated that, since the seat belts of many heavy trucks are mounted on the seat, the compliance tests for Standard No. 207 and Standard No. 210, *Seat Belt Assembly Anchorages*, are regularly conducted simultaneously. Volvo stated that the requirement that the seat be adjusted to its highest adjustment position conflicted with Standard No. 210, which

> requires some loading conditions to be applied with the seat in the rearmost position and some of the belt anchors in the midpoint of any adjustment range. The Administration has previously interpreted NHTSA TP 210 for suspension seats to be in the vertical mid ride position.

The Recreation Vehicle Industry Association (RVIA), stated that the Standard No. 207 "test procedures have long stated that such a seat is to be tested at its *midpoint* adjustment."

Neither the current Standard No. 207 nor Standard No. 210 have height adjustment requirements for testing adjustable seats. However, the current version of the Laboratory Test Procedure for Standard No. 207 specifies the highest point adjustment (P. 25, Figure 6, "Forward and Aft Loads on Seat Frame with Seat Belts Attached to Seat," TP–207–09, January 18, 1992.) NHTSA would like to emphasize that the Laboratory Test Procedures are provided to contracted laboratories as guidelines for conducting compliance tests, and do not limit the requirements of the applicable Federal motor vehicle safety standards. Since Standard No. 207 does not limit the adjustment position, the seat is required to meet the current requirement in all adjustment positions, and the fact that a test procedure specifies a specific adjustment position does not limit this requirement.

Section S4.3.2 of Standard No. 210 specifies that the seat is to be adjusted "to its full rearward and downward position * * *" However, this section is related to the seat belt angle location requirements, and does not necessarily apply to load testing.

None of the commenters offered a convincing argument as to why NHTSA should not specify the adjustment position. Since NHTSA believes that having to meet Standard No. 207 in the proposed highest adjustment position would necessitate designing a stronger, safer seat than having to meet the standard in another adjustment position, NHTSA has retained the procedure as proposed.

Horizontal Plane (S5.1.1(a)(1))

Chrysler commented that the language of S5.1.1(a)(1), "* * * horizontal plane tangent to the lowest surface of the seat adjuster * * *," did not reflect some of the seat adjuster designs on its vehicles. Chrysler stated that the lowest mounting surface on some designs did not lie in

a horizontal plane, and the forward/rearward motion of some designs was not linear. For this reason, Chrysler suggested that the word "horizontal" be deleted from this section.

NHTSA agrees with Chrysler it is not possible to specify the horizontal plane tangent to the lowest surface of the seat as the tangent to the lowest surface of some seat adjusters will not be horizontal. The purpose of S5.1.1(a)(1) is to define whether the load is in (or above) any part of the seat adjuster, which will allow manufacturers the option of using either test procedure. Since the applied test load is horizontal and the tangent plane to the lowest surface of the adjuster may not be horizontal for all possible cases, the word "tangent" is deleted.

As explained above, NHTSA is amending Standard No. 207 because the application of a single load imposes an unnatural load on the seat adjuster if the cg is at or above the adjuster. Therefore, NHTSA is amending S5.1.1(a)(1) to allow manufacturers the option of applying either one or two loads whenever the horizontal plane containing the cg either contacts any portion of the seat adjuster or is above the seat adjuster. Section S5.1.1(a)(3) has also changed to reflect the change in S5.1.1(a)(1).

Not Physically Possible

NHTSA proposed to allow manufacturers a choice between the current test procedure and the new test procedure whenever the cg of the seat was above the adjuster unless it was "not physically possible" to use the dual load test procedure. Volvo objected to the language in proposed S5.1.1(a)(2) requiring manufacturers to use the single load test procedure when it is "not physically possible" to use the dual load test procedure since this limited a manufacturer's choice.

Based on the testing done by the agency, the pedestal must be approximately 4 inches high for it to be physically possible to use the test device. Since the agency no longer defines a pedestal seat in relation to the height of the pedestal, NHTSA believes that this limitation is necessary. If NHTSA did not include this limitation, the agency might be precluded from conducting a compliance test in the case of a pedestal seat whose pedestal is too short to accommodate the test device.

Specification of Dual Load Procedure for Some Pedestal Seats

The SNPRM proposed S5.1.1(a)(3) specified the use of the new dual load test procedure whenever the cg of the seat "is located below the horizontal plane tangent to the lowest surface of the seat adjuster." Ford Motor Co. (Ford) stated that it believed that this section should specify the use of the single load test procedure instead of the dual load test procedure. It provided no explanation for its belief.

Ford's suggestion is inappropriate. Specifying the use of the dual load test procedure when the cg is below the seat adjuster ensures that test loads will be applied to both the pedestal and the seat. If a single load were applied, only the strength of the attachment of the pedestal to the vehicle, and not the strength of the attachment of the seat to the pedestal, would be tested.

Clarification of S5.1.1(a)

NHTSA has made various minor changes to S5.1.1(a) for the purpose of clarifying and simplifying the language.

Effective Date

The SNPRM proposed that the effective date for the option to use either the single or dual load test procedure be 90 days after publication of the final rule. RVIA urged NHTSA to adopt an effective date at least one year following publication of the final rule. RVIA stated that the proposed effective date "does not provide sufficient lead time for manufacturers to deplete existing stock, conduct additional tests under *either* procedure, and make any necessary design or structural modifications.

NHTSA disagrees with RVIA's reasoning. The only type of seat for which modifications might be necessary are seats whose cg is below their seat adjuster. All other seats either will continue to be required to be certified to the current test procedure or will have the option of certifying to the current test procedure, and therefore, will not require modification. NHTSA is not aware of any current seat designs whose cgs are below their adjusters. Therefore, NHTSA continues to believe the 90 day leadtime is sufficient.

Rulemaking Analyses and Notices

EXECUTIVE ORDER 12866 AND DOT REGULATORY POLICIES AND PROCEDURES: NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

This action will have no economic impacts other than a one-time cost related to the test fixture, for those manufacturers choosing the new procedure. In particular, they would have to add pneumatic or hydraulic rams to their test set-up. It is estimated that there would be a one-time set-up cost of $2,500. The test procedure would not require any design, retooling, or assembly changes.

REGULATORY FLEXIBILITY ACT: NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Vehicle manufacturers typically would not qualify as small entities. While some manufacturers of pedestal seats and seat belt attachments may be small entities, for the reasons stated above, NHTSA believes this final rule would not significantly affect them. The final rule will not affect the costs of pedestal seats, since the new procedure is optional. Because of this, small organizations and governmental units that purchase vehicles with pedestal seats should not be affected by this final rule.

PAPERWORK REDUCTION ACT: In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

NATIONAL ENVIRONMENTAL POLICY ACT: NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

EXECUTIVE ORDER 12612 (FEDERALISM): Finally, NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

CIVIL JUSTICE REFORM: This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.207 [Amended]

2. Section 571.207 is amended by revising the heading of S3 and adding a new definition of "*Seat adjuster*" to S3 in alphabetical order; and by revising S4.2.1, and S5.1.1 to read as follows:

§ 571.207 Standard No. 207, Seating Systems.

* * * * *

S3 *Definitions.*

* * * * *

Seat adjuster means the part of the seat that provides forward and rearward positioning of the seat bench and back, and/or rotation around a vertical axis, including any fixed portion, such as a seat track. In the case of a seat equipped with seat adjusters at different levels, the term means the uppermost seat adjuster.

* * * * *

4.2.1 *Seat adjustment.* Except for vertical movement of nonlocking suspension type occupant seats in trucks or buses, each seat shall remain in its adjusted position when tested in accordance with the test procedures specified in S5.

* * * * *

S5.1.1 *For a seat whose seat back and seat bench are attached to the vehicle by the same attachments.*

(a) For a seat whose seat back and seat bench are attached to the vehicle by the same attachments and whose height is adjustable, the loads are applied when the seat is in its highest adjustment position in accordance with the procedure or procedures specified in S5.1.1(a)(1), S5.1.1(a)(2), or S5.1.1(a)(3), as appropriate.

(1) For a seat whose center of gravity is in a horizontal plane that is above the seat adjuster or that passes through any part of the adjuster, use, at the manufacturer's option, either S5.1.1(b) or, if physically possible, S5.1.1(c).

(2) For a seat specified in S5.1.1(a)(1) for which it is not physically possible to follow the procedure in S5.1.1(c), use S5.1.1(b).

proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.207 [Amended]

2. Section 571.207 is amended by revising the heading of S3 and adding a new definition of "*Seat adjuster*" to S3 in alphabetical order; and by revising S4.2.1, and S5.1.1 to read as follows:

§ 571.207 Standard No. 207, Seating Systems.

* * * * *

S3 *Definitions.*

* * * * *

Seat adjuster means the part of the seat that provides forward and rearward positioning of the seat bench and back, and/or rotation around a vertical axis, including any fixed portion, such as a seat track. In the case of a seat equipped with seat adjusters at different levels, the term means the uppermost seat adjuster.

* * * * *

4.2.1 *Seat adjustment.* Except for vertical movement of nonlocking suspension type occupant seats in trucks or buses, each seat shall remain in its adjusted position when tested in accordance with the test procedures specified in S5.

* * * * *

S5.1.1 *For a seat whose seat back and seat bench are attached to the vehicle by the same attachments.*

(a) For a seat whose seat back and seat bench are attached to the vehicle by the same attachments and whose height is adjustable, the loads are applied when the seat is in its highest adjustment position in accordance with the procedure or procedures specified in S5.1.1(a)(1), S5.1.1(a)(2), or S5.1.1(a)(3), as appropriate.

(1) For a seat whose center of gravity is in a horizontal plane that is above the seat adjuster or that passes through any part of the adjuster, use, at the manufacturer's option, either S5.1.1(b) or, if physically possible, S5.1.1(c).

(2) For a seat specified in S5.1.1(a)(1) for which it is not physically possible to follow the procedure in S5.1.1(c), use S5.1.1(b).

(3) For a seat whose center of gravity is in a horizontal plane that is below the seat adjuster, use S5.1.1(c).

(4) For all other seats whose seat back and seat bench are attached to the vehicle by the same attachments, use S5.1.1(b).

(b) Secure a strut on each side of the seat from a point on the outside of the seat frame in the horizontal plane of the seat's center of gravity to a point on the frame as far forward as possible of the seat anchorages. Between the upper ends of the struts attach a rigid cross-member, in front of the seat back frame for rearward loading and behind the seat back frame for forward loading. Apply the force specified by S4.2(a) or S4.2(b) horizontally through the rigid cross-member as shown in Figure 1.

(c) Find "cg_1," the center of gravity of the portion of the seat that is above the lowest surface of the seat adjuster. On each side of the seat, secure a strut from a point on the outside of the seat frame in the horizontal plane of cg_1 to a point on the frame as far forward as possible of the seat adjusted position. Between the upper ends of the struts attach a rigid cross-member, in front of the seat back frame for rearward loading and behind the seat back frame for forward loading. Find "cg_2," the center of gravity of the portion of the seat that is below the seat adjuster. Apply a force horizontally through cg_1 equal to 20 times the weight of the portion of the seat represented by cg_1, and simultaneously apply a force horizontally through cg_2 equal to 20 times the weight of the portion of the seat represented by cg_2.

* * * * *

Issued on July 15, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–17736 Filed 7–20–94; 8:45 am]

BILLING CODE: 4910–59–P

---

49 CFR Part 571

[Docket No. 74–09; Notice 38]

RIN 2127–AE39

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document amends Standard No. 213, *Child Restraint Systems*, to facilitate the manufacture of "belt-positioning" child seats (i.e., booster seats designed to be used with the vehicle's lap/shoulder belts). The amendment adopts performance and labeling requirements and test criteria for belt-positioning booster seats that are more appropriate than Standard 213's current criteria for these child seats. This document also specifies that child booster seats must be labeled as being suitable for children weighing not less than 30 pounds.

This rule responds to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act ("ISTEA")), which directed the agency to initiate rulemaking on child booster seat safety and other issues.

DATES: This rule is effective on August 22, 1994.

The incorporation by reference of the material listed in this document is approved by the Director of the Federal Register as of August 22, 1994.

Petitions for reconsideration of the rule must be received by August 22, 1994.

ADDRESSES: Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C., 20590 (telephone 202–366–4919).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
- a. Statutory origins of this rulemaking
- b. Booster NPRM
- c. Dummy NPRM
- d. Overview of comments on booster NPRM
- e. Overview comparison of booster NPRM and final rule

II. Amendments for belt-positioning seats
- a. Definition
- b. Test procedures
  1. Type of belt system used to test belt-positioning seats
  2. Standard seat assembly
- c. Performance criteria
- d. Labeling and printed instructions
  1. Appropriate vehicle belt system
  2. Placement of shoulder belt
  3. Aircraft use

III. Labeling boosters for children weighing not less than 30 pounds

IV. Leadtime

V. Rulemaking Analyses and Notices
- a. Executive Order 12866 and DOT Regulatory Policies and Procedures
- b. Regulatory Flexibility Act
- c. Executive Order 12612
- d. National Environmental Policy Act
- e. Executive Order 12778

I. Background

a. Statutory Origins of This Rulemaking

This final rule regarding child booster seats responds to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act ("ISTEA"), Pub. L. 102–240), which directed the agency to initiate rulemaking on child booster seat safety and other issues. This rule was preceded by an advance notice of proposed rulemaking (ANPRM) published on May 29, 1992 (57 FR 22682), and an NPRM published on September 3, 1993 (58 FR 46928).

The ISTEA directive on booster seats originated in S. 1012, a bill reported by the Senate Committee on Commerce, Science, and Transportation and added verbatim to the Senate's surface transportation bill (S. 1204). The Senate Commerce Committee report on S. 1012 expressed concern about suggestions that booster seats, "depending on their design, can be easily misused or are otherwise harmful," and that some child booster seats "may not restrain adequately a child in a crash." The Committee's concerns grew out of a study [1] performed by Calspan Corporation. Calspan found that then-manufactured booster seats could adequately restrain the 3-year-old (33 pound) test dummy that is used to test the seats for compliance with Standard 213. However, Calspan also found that when the booster seats were tested with a 9-month-old and a 6-year-old test dummy, the booster seats could not adequately restrain those dummies. Yet, the booster seats were recommended by their manufacturers as being suitable for children in the 9-month-old and 6-year-old weight ranges.

The Calspan study indicated that booster seat safety could be improved if booster seats were capable of properly restraining the wide range of manufacturers' recommended child sizes. Belt-positioning booster seats are capable of accommodating a wider range of child sizes than currently manufactured shield-type booster seats. Moreover, belt-positioning seats used with vehicle lap/shoulder belts appear to perform better than shield booster seats used with vehicle lap/shoulder belts.

Pursuant to the ISTEA directive, NHTSA issued two notices of proposed rulemaking (NPRM's). The first addressed booster seat performance and labeling requirements; the second, dummies for use in testing booster seats and other child restraint systems.

b. Booster NPRM

NHTSA proposed to amend Standard No. 213, *Child Restraint Systems*, to facilitate the manufacture of "belt-positioning" child seats (boosters designed to be used with the vehicle's lap/shoulder belts). The NPRM would add a definition of "belt-positioning seat" to the standard, and amend the definition of "booster seat" to include belt-positioning booster seats. Standard 213's compliance test procedures would be amended to specify that belt-positioning seats are dynamically tested when restrained to the test apparatus with a lap/shoulder belt. The NPRM described the test apparatus in detail to ensure that the test would be carefully controlled. NHTSA also proposed to amend labeling and informational requirements to decrease the likelihood that belt-positioning booster seats would be misused. The agency believed that the proposed performance and labeling requirements would be more appropriate than Standard 213's current criteria for these boosters.

c. Dummy NPRM

NHTSA also issued an NPRM to add additional child compliance test dummies to Standard 213. (59 FR 12225, March 16, 1994.) The NPRM tentatively selected three new child dummies to add to Standard 213. These dummies are the newborn infant dummy described in subpart K of 49 CFR part 572 (NHTSA's regulation on anthropomorphic test dummies), the 9-month-old dummy in subpart J, and the instrumented 6-year-old dummy in subpart I. Subjecting booster seats and other child restraint systems to more thorough compliance testing with additional dummies better ensures that each child restraint safely restrains the range of children for whom the restraint is recommended. (Readers should note that, if proposals from the March 1994 NPRM are adopted, those amendments could modify some of the requirements adopted today, such as the labeling specified for booster seats.)

d. Overview of Comments on Booster NPRM

The response to the NPRM was very favorable. Commenters included vehicle and child seat manufacturers (Volvo, Ford, Chrysler and Cosco) and child passenger groups and consultants (Tarrant County Child Car Safety Coalition, Solutions Unlimited, the University of Michigan-Child Passenger Protection Program (UM–CPP), Ms. Deborah Davis Stewart, Advocates for Highway and Auto Safety). Commenters also included the American Academy of Pediatrics, the Air Transport Association and the National Transportation Safety Board. All commenters supported permitting the manufacture of belt-positioning booster seats. Many suggested changes about specific proposals, and several had suggestions for or commented on future work on belt-positioning and other booster seats. All comments were fully considered and the significant ones are addressed below.

e. Overview Comparison of Booster NPRM and Final Rule

This rule adopts most of the proposed amendments, with the following changes. The rule makes minor changes to the definition of a booster seat for clarification purposes. The rule corrects errors in the specification of the test apparatus used for belt-positioning booster seats, and does not require metric units on the child seat label.

II. Amendments for Belt-positioning Seats

a. Definitions

To facilitate the manufacture of belt-positioning seats and to distinguish those child seats from other types of seats for testing and labeling purposes, NHTSA amends Standard 213's definitions in three ways. The first amendment is to include belt-positioning booster seats in the present definition of "booster seat." NHTSA defines a belt-positioning seat as a type of booster seat because belt-positioning seats and present booster seats serve similar functions, i.e., both function to bridge the transition of the child from toddler or convertible child restraints to the vehicle belt systems. (A convertible restraint is specially adjustable so that it can be used rear-facing by an infant or a very young child, and forward-facing by a toddler. A "toddler" child restraint positions a child forward-facing only and is not capable of being adjusted to face an infant rearward.) It is also advantageous to place belt-positioning restraints in the same category as present (shield-type) boosters, because both types of child restraint systems appear to pose similar potential misuse problems. That is, both could be inappropriately used by children who are too small to be adequately restrained by a child booster seat. Similar countermeasures, such as labeling and instructional information, can be developed to address those misuse problems.

The second amendment defines a belt-positioning seat. "Belt-positioning seat" is defined as:

> A child restraint system that positions a child on a vehicle seat to improve the fit of a vehicle Type II belt system on the child and that lacks any component, such as a belt system or a structural element, designed to restrain forward movement of the child's torso in a forward impact.

This definition is the same as the one proposed in the NPRM. Commenters were generally supportive of the definition. Volvo asked for clarification that the definition applies to both add-on and built-in belt-positioning seats. The definition so applies. Volvo's uncertainty appears to have resulted from several proposed requirements that were worded in such a way that they were appropriate for add-on seats, but not for built-in ones. (E.g., as proposed, S6.1.2.1.1 stated that a belt-positioning seat "shall be secured to the standard vehicle seat" using a lap/shoulder belt.) NHTSA has reworded those sections to clarify the distinction between add-on and built-in seats to avoid any suggestion that the definition does not apply to built-in belt-positioning seats.

The third amendment slightly revises the definition of "booster seat." Standard 213 defines a booster seat as "a child restraint which consists of only a seating platform that does not extend up to provide a cushion for the child's back or head." (S4 of 49 CFR § 571.213) The NPRM would not have changed that definition except to add "or a belt-positioning seat" to the end of it. Ms. Weber of the University of Michigan Child Protection Program (UM-CPP) said that such a change would be confusing because it implies—contrary to NHTSA's intent—that belt-positioning seats must not have seat backs. She suggested Standard 213 should better distinguish between the traditional shield-type booster, which may not have a back, and a belt-positioning booster which may, by naming the former a "backless child restraint system." "This will help clarify the fact that a Belt positioning seat can have a back."

NHTSA concurs that naming the backless type of booster seat will help distinguish the two types of child seat. As a result of today's amendment, "booster seat" encompasses two types of restraint system for older children who are still too small to sit directly on a vehicle seat and use a vehicle belt system. One type is the traditional shield-type booster used with a Type I belt; the other is the belt-positioning seat used with a Type II belt system.

[1] "Evaluation of the Performance of Child Restraint Systems" (DOT HS 807 297, May 1988). NHTSA's follow-up testing to the Calspan study is discussed in "Evaluation of Booster Seat Suitability for Children of Different Ages and Comparison of Standard and Modified SA103C and SA106C Child Dummies," VRTC–89–0074, February 1990.

developed to address those misuse problems.

The second amendment defines a belt-positioning seat. "Belt-positioning seat" is defined as:

> A child restraint system that positions a child on a vehicle seat to improve the fit of a vehicle Type II belt system on the child and that lacks any component, such as a belt system or a structural element, designed to restrain forward movement of the child's torso in a forward impact.

This definition is the same as the one proposed in the NPRM. Commenters were generally supportive of the definition. Volvo asked for clarification that the definition applies to both add-on and built-in belt-positioning seats. The definition so applies. Volvo's uncertainty appears to have resulted from several proposed requirements that were worded in such a way that they were appropriate for add-on seats, but not for built-in ones. (E.g., as proposed, S6.1.2.1.1 stated that a belt-positioning seat "shall be secured to the standard vehicle seat" using a lap/shoulder belt.) NHTSA has reworded those sections to clarify the distinction between add-on and built-in seats to avoid any suggestion that the definition does not apply to built-in belt-positioning seats.

The third amendment slightly revises the definition of "booster seat." Standard 213 defines a booster seat as "a child restraint which consists of only a seating platform that does not extend up to provide a cushion for the child's back or head." (S4 of 49 CFR § 571.213) The NPRM would not have changed that definition except to add "or a belt-positioning seat" to the end of it. Ms. Weber of the University of Michigan Child Protection Program (UM-CPP) said that such a change would be confusing because it implies—contrary to NHTSA's intent—that belt-positioning seats must not have seat backs. She suggested Standard 213 should better distinguish between the traditional shield-type booster, which may not have a back, and a belt-positioning booster which may, by naming the former a "backless child restraint system." "This will help clarify the fact that a Belt positioning seat can have a back."

NHTSA concurs that naming the backless type of booster seat will help distinguish the two types of child seat. As a result of today's amendment, "booster seat" encompasses two types of restraint system for older children who are still too small to sit directly on a vehicle seat and use a vehicle belt system. One type is the traditional shield-type booster used with a Type I belt; the other is the belt-positioning seat used with a Type II belt system. The commenter's suggestion will help clarify that a belt-positioning seat can have a back, and a child booster other than a belt-positioning seat cannot.

The absence of a seat back for boosters other than belt-positioning seats is one of the main features that distinguishes a booster seat from a convertible child seat. The distinction is important for Standard 213 testing. The standard specifies that most restraints are to be anchored with only a lap belt during agency compliance testing. However, the standard permits a booster seat designed with a top anchorage strap (tether strap) to be tested at 30 mph with the tether attached. NHTSA permitted attachment of a tether for boosters to facilitate the manufacture of boosters that provide a harness system, rather than a short shield, for upper torso restraint. Some child safety researchers believed a harness system was superior to a shield in terms of abdominal loading, head and neck loading, submarining and ejection. (51 FR 5335.)

Cosco raised a concern about NHTSA's proposal to simply add "or a belt-positioning seat" at the end of the present "booster seat" definition. Cosco believed that the change would be inadequate because it would not allow shield-type boosters to have a seat back. (As explained above, under Standard 213's present definitions, a child restraint cannot have a seat back and be considered a "booster seat." This restriction is to limit the numbers and types of child restraints that can be tested in Standard 213's 30-mph dynamic test with their tether attached.) The commenter said that safety data do not show a need to prohibit seat backs on booster seats. Cosco requested that the definition be reworded either to allow both types of boosters to use a seat back or to prohibit both from doing so.

NHTSA declines to adopt the change requested by Cosco. NHTSA agrees with Cosco that data do not indicate a safety need to prohibit seat backs on belt-positioning seats. However, the commenter suggests amending the "booster" definition such that a seat back would be an acceptable feature on a shield booster. That suggestion is beyond the scope of the NPRM and has not been adopted.

In further response to Cosco, the absence or presence of a seat back is the only feature that distinguishes shield-type boosters from toddler or convertible child restraint systems. Distinguishing booster seats from other child restraint systems is important because Standard 213 provides that a tether on a booster seat may be tested in the 30 mph dynamic test, while a tether on a toddler or convertible child restraint system will not be attached. NHTSA does not attach the tether when testing toddler and convertible restraints because many consumers do not properly attach tethers on their child seats. Limiting the use of a tether in the test better ensures that child seats perform satisfactorily as they are typically used in the real world. If boosters were permitted to have seat backs, a new way to distinguish shield booster seats from other types of child restraint systems would have to be developed.

An alternative approach to distinguishing between shield booster seats and other child restraint systems could be to remove the reason for having to distinguish between the restraint systems. That is, NHTSA could amend Standard 213 to specify that all child restraint systems, including shield boosters, would be tested without attaching any tethers. NHTSA believes all booster seats are currently manufactured without a tether. The agency will consider for future rulemaking whether Standard 213 should continue to specify attaching tethers on shield boosters in the standard's 30 mph dynamic test.

b. Test Procedures

1. Type of Belt System Used To Test Belt-Positioning Seats

The agency is amending Standard 213's test procedures to specify the testing of belt-positioning seats using a lap/shoulder belt. Cosco commented that there should be a misuse test in which a belt-positioning booster is tested with a lap belt. The commenter said research has shown that the HIC and head excursions of dummies in belt-positioning seats tested with lap belts were much greater than the limits in Standard 213. Conversely, the NTSB stated that, "Because there is no information on the extent of booster seat misuse * * * it appears premature to require misuse tests."

NHTSA is not requiring testing belt-positioning seats secured by a lap belt only. Standard 213's approach is to require child restraint systems to be tested in configurations they were designed for, absent information showing that misuse of the restraints are resulting in safety problems. The reason for this approach is that child seat manufacturers must design many safety features into their child restraint systems to protect a restrained child. To do this, the manufacturers must anticipate how the restraint will be used and design safety into their system bearing in mind their assumptions about such use. The manufacturer's

assumptions about the expected use of the restraint are reflected in the use instructions to the consumer. Today's rule requires belt-positioning seats to be conspicuously labeled with instructions about the proper use of the seat, including information on the appropriate vehicle belt system to be used. Absent information showing a safety need for a belt misuse test, it is premature to require testing belt-positioning boosters with only a lap belt.

2. Standard Seat Assembly

This rule adopts test specifications appropriate for testing belt-positioning seats. The agency believes that the specifications for the testing procedure should be sufficiently detailed so tests conducted uniformly by various organizations would provide the same results. This presupposes that the test conditions that affect the performance of the dummy/child restraint should be standardized. Accordingly, NHTSA amends the provisions concerning the standard seat assembly used to test child restraint systems to depict added anchorages for the shoulder belt system. This rule specifies a Type II seat belt assembly for use in testing belt-positioning seats. The standard belt system eliminates the variability of these belt parameters. In response to Ford and UM-CPP, this rule also modifies some of the specifications proposed in the NPRM.

Ford and UM-CPP suggested that the rule should specify the type of latch plate, and further suggested "that a locking latch plate is appropriate, given the new rule on lap belt lockability." NHTSA has specified that retractors and reels are not used in the standard seat assembly, which is what was proposed in the NPRM. Since retractors and reels are absent, the latch plate functions as a locking latchplate. The agency agrees with these commenters that this is appropriate given the FMVSS No. 208 lockability requirements that will be effective on September 1, 1995.

The agency's lockability final rule published in the **Federal Register** on October 13, 1993, "requires that lap belts or the lap belt portion of lap/shoulder belts be capable of being used to tightly secure child safety seats, without the necessity of the user's attaching any device to the seat belt webbing, retractor, or any part of the vehicle in order to achieve that purpose." This requirement applies to rear vehicle seating positions that are recommended, in FMVSS No. 213, as the safest positions for placing a child restraint system. The latchplate used for Standard 213 testing will be consistent with the lockability requirement, and will reflect the type and operation of latchplates used in vehicles for attaching child restraint systems.

Ford and UM-CPP said that the buckle assembly length should be specified as measured from the inboard anchor, "such that the length exposed beyond the bight is consistent with the maximum allowed by SAE J1819." NHTSA agrees that the length of the belt exposed beyond the bite (i.e., the intersection of the seat back and seat cushion) needs to be specified and agrees with using the value recommended by the Society of Automotive Engineers (SAE) in its draft recommended practice J1819, "Securing Child Restraint Systems in Motor Vehicles." The J1819 draft recommended practice is a result of a joint effort of manufacturers of motor vehicles and child restraint systems to promote compatibility between child restraints and vehicle seats and seat belts. As stated in the draft recommended practice, "[C]hild restraint systems and vehicle seats and seat belts having features that conform to this document are more likely to be compatible with one another." By using the J1819 value, the agency not only specifies a uniform standard test procedure but also reinforces the guidelines that promote the compatibility between child restraints and vehicle seats and seat belts. Accordingly, NHTSA has revised Figures 1A and 1B and the addendum (addendum A, Seat Base Weldment, dated July 1, 1993) to the Drawing Package SAS–100–1000 to show the length of the buckle assembly. (The materials have also been revised to round off the dimensions to the whole millimeter.)

Ford suggested that tension in the standard belt be set at the 2 to 4 pound (9 to 18 N) force specified in Standard 208, rather than the 12 to 15 pound (53 to 67 N) force specified by Standard 213 for securing add-on child seats. Ford said that the former range is more representative of the tension induced in a typical Type 2 belt by the emergency locking retractor. NHTSA agrees. This rule adopts the proposed requirement in S6.1.1.3 stating that—

> [T]hese seat belt assemblies meet the requirements of Standard No. 209 (§ 571.209) and have webbing with a width of not more than 2 inches, and are attached to the anchorage points without the use of retractors or reels of any kind.

However, the agency has replaced S6.1.2.2 with a new section to specify preloading of the various belts. The new section maintains the current 12 to 15 pounds pretensioning of the lap belt that restrains the add-on child restraint to the test seat assembly, but specifies that the shoulder portion of the Type 2 belt should be pretensioned to a 2-pound force as in FMVSS 208.

UM-CPP suggested that the shoulder belt should not be tightened to 12 to 15 lb prior to the test as is currently required for lap belts. It said that a procedure to determine the tension in the shoulder portion of the belt may be needed. The commenter suggested that a procedure consisting of placing a curved block with a given radius against the dummy's chest, tightening the belt to the usual tension, and removing the block before the test, is a repeatable method of introducing appropriate slack when tightening the belt. NHTSA disagrees that the suggested procedure is necessary. Today's rule adopts a procedure in S6.1.2.2 which specifies that the tension of the shoulder belt is measured by a load cell placed on the webbing portion of the belt system prior to the dynamic test. Thus, there is a procedure for ensuring that the belt has the proper tension. NHTSA believes it is immaterial how the belt is tightened as long as the requisite tensile force is achieved. Moreover, a procedure for tightening the belts can be addressed in the Laboratory Procedures for the Standard 213 dynamic test. Describing the procedure in the laboratory procedures is preferable to describing it in the standard because there might be ways to tighten the belt (e.g., by use of a metallic roller) that might be easier to use than another procedure (e.g., use of a wooden block), that lead to equally uniform and repetitively consistent results.

Ford stated that additional specifications for belt elongation are needed for the seat belt assembly to be used in testing belt-positioning booster seats. Ford said that—

> Standard 209 allows use of webbing having any elongation up to 30 percent in Type 2 belts. Using webbing with 30 percent elongation for the lap/shoulder belt on the standard test seat may result in quite different results than using webbing of 7 percent elongation.

It suggested that S6.1.1.3 be amended to include a close tolerance specification for elongation of the standard belt webbing used in the Standard 213 test for all child restraint systems, based on typical polyester belt webbing, such as the draft ECE 44 Annex 13 standard seat belt webbing specification of 8±1 percent at 11 kN.

NHTSA does not believe there is a need to specify the elongation of the webbing material used for testing belt-positioning seats. Standard 213 does not currently specify the elongation of the webbing used for testing child restraint systems. Further, NHTSA is unaware of information indicating that elongation should be specified. (Under S4.2(c) of Standard 209, the webbing in a Type I seat belt assembly shall not extend to more than 20 percent elongation at 2,500 pounds.) There is no apparent reason why elongation should be specified for the Type 2 assemblies used to test belt-positioning seats, when elongation is not specified for the Type I assemblies used to test all other child restraint systems. Also, not specifying elongation better ensures the dynamic test is representative of real-world crash conditions. NHTSA obtains webbing material from seat belt suppliers for use in Standard 213's dynamic test. These suppliers also furnish vehicle manufacturers with the webbing used in motor vehicles. Under current Standard 213 test procedures, NHTSA tests child restraint systems using webbing that is typical of that installed in vehicles. Any manufacturer that is concerned about the possible effect that elongation might have on the performance of the child restraint can identify and perform a "worst case." A manufacturer may determine that a child restraint meeting Standard 213's performance criteria when tested under worst case conditions will likely meet those criteria when tested under less severe conditions. A manufacturer that tests its restraint for certification purposes could limit its testing by deciding to test only a "worst case" scenario, i.e., testing under the most austere or unfavorable conditions and circumstances specified in the standard.[2]

Ford and UM–CPP pointed out an error in the location of the inboard anchor point. UM stated that the location

> [D]oes not follow the research results reported in DOT–HS–808003, TABLE 9, and has an unintended negative effect on test results. Although the lateral (Y) position relative to the outboard anchor has been used, the X and Z dimensions of the old center anchors have been retained. This inappropriately low anchor creates an especially long inboard belt length which,

[2] Relying on worst case testing as a basis for a manufacturer's certification is commonplace among manufacturers. For example, Standard 208, "Occupant Crash Protection," requires injury criteria to be met with the test vehicle traveling forward at any speed "up to and including 30 mph" into a fixed barrier "that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees in either direction from the perpendicular" S5.1). Manufacturers typically test a vehicle at 30 mph into a perpendicular barrier since that is the worst case test. The manufacturers believe that if the vehicle passes that worst case test, it is reasonable to conclude it will pass less severe tests (e.g., at lower speeds into angled barriers).

currently specify the elongation of the webbing used for testing child restraint systems. Further, NHTSA is unaware of information indicating that elongation should be specified. (Under S4.2(c) of Standard 209, the webbing in a Type I seat belt assembly shall not extend to more than 20 percent elongation at 2,500 pounds.) There is no apparent reason why elongation should be specified for the Type 2 assemblies used to test belt-positioning seats, when elongation is not specified for the Type I assemblies used to test all other child restraint systems. Also, not specifying elongation better ensures the dynamic test is representative of real-world crash conditions. NHTSA obtains webbing material from seat belt suppliers for use in Standard 213's dynamic test. These suppliers also furnish vehicle manufacturers with the webbing used in motor vehicles. Under current Standard 213 test procedures, NHTSA tests child restraint systems using webbing that is typical of that installed in vehicles. Any manufacturer that is concerned about the possible effect that elongation might have on the performance of the child restraint can identify and perform a "worst case." A manufacturer may determine that a child restraint meeting Standard 213's performance criteria when tested under worst case conditions will likely meet those criteria when tested under less severe conditions. A manufacturer that tests its restraint for certification purposes could limit its testing by deciding to test only a "worst case" scenario, i.e., testing under the most austere or unfavorable conditions and circumstances specified in the standard.[2]

Ford and UM–CPP pointed out an error in the location of the inboard anchor point. UM stated that the location

> [D]oes not follow the research results reported in DOT–HS–808003, TABLE 9, and has an unintended negative effect on test results. Although the lateral (Y) position relative to the outboard anchor has been used, the X and Z dimensions of the old center anchors have been retained. This inappropriately low anchor creates an especially long inboard belt length which, when loaded during the test, makes the booster suddenly shift toward the outboard anchor, sometimes shoving the dummy's neck into the shoulder belt and sometimes leaving the upper torso lagging behind at an angle, depending on the initial geometry. This occurs because the effective center of this very asymmetrical belt, when loaded, is not halfway along the Y axis.

UM–CPP recommended that the higher and more forward inboard anchor location, determined by NHTSA's research, be used. Ford also commented that—

> Anchorages for the lap portion of the lap/shoulder belt on the standard test seat assembly are highly asymmetric, with the inboard anchorage about 185 mm lower than and rearward of the outboard anchorage. Such highly asymmetric anchorages are atypical. The outboard anchorage also appears to be unusually high.

Ford suggested that anchorages be located based on the average dimensions of the vehicles surveyed in the agency's research program.

NHTSA agrees with the comments made by Ford and UM. The proposed location for the anchor points was based on the average location of the anchorage points that was determined by the agency's research. However, among the proposed set of coordinates for the inboard anchor point, only the y-coordinate was based on the average location. The x- and z-coordinates of the old anchor were used. NHTSA will define all three coordinates of the inboard anchor point to reflect the location of the "average" condition identified by the NHTSA research.

In January 1994, tests were conducted at the agency's Vehicle Research and Test Center (VRTC), to verify that the change in anchorage point does not negatively affect the quality and consistency of the tests. Those tests were directly comparable to the tests in the earlier study, DOT–HS–808003, using the same booster/dummy configuration, except that the inboard anchorage was at the "old" location in the fore-aft and vertical axes. The tests showed that the corrected anchorage locations had a negligible affect on the performance of the child seats used to restrain 3- and 6-year-old dummies. That is, there was no marked difference in the performance of the child seats using the old anchorage locations as compared to the performance of the seats with the corrected locations. The principal difference observed in the kinematics was that the booster seat did not slide toward the outboard anchorage location when tested with the corrected inboard anchorage, as it tended to do using the old anchorage. This sliding is attributed to the asymmetry of the inboard and outboard anchorages when tested with the old anchorage configuration. A report on these VRTC tests is available in the docket for this rulemaking.

UM–CPP commented on the issue of the flexibility of the seat assembly's seatback for testing booster seats. The commenter believes the specified seatback is too flexible to represent real-world vehicle seats, and that the flexibility unrealistically affects booster test results. In the March 1994 dummy NPRM discussed above, NHTSA announced that its research has shown that rulemaking does not appear warranted on changing the flexibility of the seatback. The research evaluated the performance of booster seats when restrained under both conditions of flexible and rigid seat back test assembly. The research findings indicated that the flexibility of the seatback is not a factor that affects the test dummy's performance during compliance testing of shield-type booster seats. These findings were summarized in a report titled, "Evaluation of Effects of FMVSS 213 Seat Back's Flexibility on Booster Seat Responses," October 1992 (VRTC–82–0236, "Child Restraint Testing (Rulemaking Support)," DOT–HS–808006.

In commenting on this issue, UM said that the research was too limited. The commenter also did not agree with the conclusion not to undertake rulemaking

> A very limited investigation of the issue concluded that shield boosters that had passed compliance tests with the flexible seatback also passed with a rigid seatback. What the report did not acknowledge was the fact that, with the rigid back, knee excursion increases were significant, and rebound in every case saw the dummy rise well above the cushion and its head well above the seatback. The VRTC film footage is more dramatic than the still frames in the report, and it also shows the impacts of the dummy's head with the structure behind the seatback. * * * I recommend that the rigid seatback be adopted now at least for the 3-point belt test procedure.

NHTSA does not dispute that the flexibility of the back of the test seat assembly can affect a dummy's performance during compliance testing of shield-type booster seats. NHTSA also recognizes that there are good reasons to further evaluate the representativeness of the standard's test buck, concerning current vehicle seats. Moreover, NHTSA believes there might be other reasons that may justify changing the Standard 213 seat back, such as possible cost reductions due to not having to change the flexible pin in the seat hinges of the standard seat

[2] Relying on worst case testing as a basis for a manufacturer's certification is commonplace among manufacturers. For example, Standard 208, "Occupant Crash Protection," requires injury criteria to be met with the test vehicle traveling forward at any speed "up to and including 30 mph" into a fixed barrier "that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees in either direction from the perpendicular" S5.1). Manufacturers typically test a vehicle at 30 mph into a perpendicular barrier since that is the worst case test. The manufacturers believe that if the vehicle passes that worst case test, it is reasonable to conclude it will pass less severe tests (e.g., at lower speeds into angled barriers).

assembly after each test. The agency has an on-going feasibility study at VRTC to determine if a need exists to upgrade the current FMVSS 213 test buck with regard to these issues.

However, NHTSA disagrees that the agency's research was too limited. NHTSA evaluated films and test reports for all (seven) available FMVSS 213 compliance tests on child booster seats that were performed in 1990 and 1991. In addition, sled tests were conducted on each of the booster seats that showed forward movement and contact with the dummy during the compliance testing. There were four of these seats. When the seat back was fixed (rigid), the dummy's knee excursion increased. However, the increased values for knee excursions did *not* exceed the 36-inch limit of FMVSS 213. In view of a lack of a safety need to revise the seat back, the agency has decided to complete the VRTC feasibility study before deciding whether to undertake rulemaking on the matter.

UM–CPP is correct that the dummy rose above the seat cushion when tested with the rigid seat back, and did impact its head on the structure located behind the test assembly. However, that finding is inconclusive because the impacted structure was placed on the test buck for the research and evaluation program on belt-positioning booster seats, and will not be part of the seat assembly used in FMVSS 213 compliance testing. Thus, the dummy's head will not impact the structure in an FMVSS 213 compliance test.

c. Performance Criteria

This rule adopts performance requirements for belt-positioning seats. This rule requires belt-positioning seats to meet the structural integrity, excursion, and injury criteria requirements of Standard 213 when dynamically tested. Those requirements include maintaining the structural integrity of the seat, retaining the head and knees of the dummy within specified excursion limits (limits on how far those portions of the body may move forward), and limiting the forces which the head and chest of the dummy may experience during the test. Compliance with these requirements better ensures that a child using the seat will not be injured by the collapse or disintegration of the seat, or by contact with the interior of the vehicle, or by experiencing intolerable forces. Commenters overwhelmingly supported dynamically testing belt-positioning seats.

This rule does not adopt additional performance requirements for belt-positioning seats. The NPRM asked for comments on the merits of additional performance requirements, and commenters disagreed with each other on the issue. UM–CPP and Solutions Unlimited believed that the weight of the booster seat should be limited in order to limit loading the back of a child occupant. Cosco said that it is unaware of any data that indicate a safety problem with the loads that could be generated by booster seat backs. Cosco said excessive back loading would result in either higher HIC's or higher G forces, and possibly greater excursions. The commenter believed it may be unnecessary for the agency to try to measure seat back loading, unless NHTSA has research showing this phenomenon is of potential concern.

Advocates also believed that Standard 213's dynamic test would detect problems relating to booster seat backs. The commenter urged NHTSA to—

> Carefully monitor and investigate defect complaints and manufacturer data related to special design features. These aspects of booster seats can be dealt with through future rulemaking specifically addressing a problem identified by manufacturer testing and consumer use.

NHTSA has decided not to specify limits on seat back loading at this time. There is a lack of data indicating a safety problem. Further, there is no procedure at present for measuring or determining a threshold value for the loads imposed.

d. Labeling and Printed Instructions

This rule adopts requirements for labeling and printed consumer instructions to decrease the likelihood that belt-positioning seats will be misused. The information that needs to be conveyed to the consumer is: (a) That a belt-positioning seat must be used with a vehicle lap/shoulder belt system to perform effectively and must not be used with just a vehicle lap belt; (b) when using a shield booster with a vehicle's lap/shoulder belt system, the consumer must place the shoulder belt portion of the system behind the child's head; and (c) the belt-positioning seat is not certified for aircraft use. Each of these items of information is discussed below. This rule does not adopt the proposal that the manufacturer's height and weight recommendations on the label include the information in metric units. In commenting on the NPRM, Tarrant County Child Car Safety Coalition said that the metric units would be extremely confusing to many parents. Similarly, Ford and Cosco commented that the proposed use of the word "mass" in the label would be confusing. NHTSA concurs that the metric information on the label is unnecessary at this time. (Pursuant to the agency's plan to convert to the metric system pursuant to the Omnibus Trade and Competitiveness Act and E.O. 12770, this rule specifies metric units in the specifications for Standard 213's compliance test procedures, *see e.g.*, figures 1A and 1B. Since these values will not be any part of a labeled child seat, the metric values will not engender confusion on the part of ordinary consumers.)

1. Appropriate Vehicle Belt System

NHTSA adopts a requirement that each add-on and built-in belt-positioning seat be labeled with a warning about using the seat with Type 1 or the lap portion of Type 2 belt systems in a vehicle. No commenter other than Chrysler disputed the need for the labeled warning. (Chrysler's comment is discussed below with respect to "dual purpose" boosters.) In response to Cosco's belief that the warning was proposed to be on a separate label, no such requirement was proposed. The warning can be on the existing installation label. Advocates for Highway and Auto Safety believed that there is need for an installation diagram showing the proper installation of the belt-positioning seat in a vehicle. The American Academy of Pediatrics believed the installation diagram should be placed directly on the child seat, and not on accompanying printed material. Child restraints are already required to be labeled with an installation diagram showing the restraint in the right front seating position in a vehicle, with a lap/shoulder belt (S5.5.2(l)).

NHTSA proposed a labeling requirement for "dual purpose" boosters. These boosters can be used with either a lap or a lap/shoulder belt in the shield mode, but only with a lap/shoulder belt in the belt-positioning mode. These seats also typically require different belt routing for the two modes. To better ensure the boosters are properly used, the agency proposed requiring dual purpose boosters to be labeled with information about the appropriate vehicle belt system (lap-only or lap/shoulder belt system, depending on the design of the booster) to use with the booster, and about how the booster must be used with the particular belt system (e.g., with or without the booster's shield).

Chrysler believed there is no need to label built-in dual purpose boosters that are factory-installed. Chrysler believed these seats are already labeled with too much information, and that the information on the proposed label "will mostly duplicate the information that is already provided in the [vehicle] owner's manual." Conversely, Volvo commented that built-in belt-positioning seats ought to be labeled with information on correct belt usage.

NHTSA disagrees with Chrysler. There is a substantial amount of information that must be labeled on built-in seats. However, it is vitally important that built-in seats be used with the appropriate vehicle belt system. Instructing consumers how to use the belt-positioning booster increases the likelihood of correct usage. Further, the agency believes that consumers are more likely to refer to the information if it is "handy" on the seat rather than in the vehicle owner's manual. However, NHTSA is aware of concerns that there is too much information placed on child seat labels. The agency will evaluate the labeling mandated by Standard 213 in the near future to determine if changes are warranted.

2. Placement of Shoulder Belt

This rule requires manufacturers to label shield boosters with a warning to consumers that if the booster is used with a Type II belt system, the shoulder belt portion of the belt system should be placed behind the child. Comments on the proposed requirement were divided. UM–CPP "strongly support[ed]" the proposal because it found high head accelerations resulting from impact of the dummy's head with the dummy's arm. Cosco disagreed with the proposal, stating that the proposal "ignores the excellent performance of shield booster seats used with the shoulder belt in *front* of the child." (Emphasis in text.)

NHTSA disagrees with Cosco about the effectiveness of shield-type booster seats used with the shoulder belt routed in front of the child. The agency's VRTC Report No. DOT–HS–808–005 titled, "Evaluation of Belt Positioning Booster Seats and Lap/Shoulder Belt Test Procedures," summarized the findings of the agency's test program on different booster seats. The report stated that, for small shield booster seats, "the routing of the shoulder belt (three point belt) in front of the dummy did significantly effect the HIC, 3 msec chest clip [acceleration], and head excursion values, regardless of dummy size." Specifically, the study stated that:

> The 3 year old dummy/three point belt tests had 80% to 90% higher HIC values than the corresponding lap only belt tests, while for the 6 year old dummy, the three point belt tests were 18% to 59% higher. The 3 year old/three point belt tests were the only test conditions that produced HIC values above 1000.

The study also showed that the chest clip acceleration increased for the 3-

owner's manual." Conversely, Volvo commented that built-in belt-positioning seats ought to be labeled with information on correct belt usage.

NHTSA disagrees with Chrysler. There is a substantial amount of information that must be labeled on built-in seats. However, it is vitally important that built-in seats be used with the appropriate vehicle belt system. Instructing consumers how to use the belt-positioning booster increases the likelihood of correct usage. Further, the agency believes that consumers are more likely to refer to the information if it is "handy" on the seat rather than in the vehicle owner's manual. However, NHTSA is aware of concerns that there is too much information placed on child seat labels. The agency will evaluate the labeling mandated by Standard 213 in the near future to determine if changes are warranted.

2. Placement of Shoulder Belt

This rule requires manufacturers to label shield boosters with a warning to consumers that if the booster is used with a Type II belt system, the shoulder belt portion of the belt system should be placed behind the child. Comments on the proposed requirement were divided. UM–CPP "strongly support[ed]" the proposal because it found high head accelerations resulting from impact of the dummy's head with the dummy's arm. Cosco disagreed with the proposal, stating that the proposal "ignores the excellent performance of shield booster seats used with the shoulder belt in *front* of the child." (Emphasis in text.)

NHTSA disagrees with Cosco about the effectiveness of shield-type booster seats used with the shoulder belt routed in front of the child. The agency's VRTC Report No. DOT–HS–808–005 titled, "Evaluation of Belt Positioning Booster Seats and Lap/Shoulder Belt Test Procedures," summarized the findings of the agency's test program on different booster seats. The report stated that, for small shield booster seats, "the routing of the shoulder belt (three point belt) in front of the dummy did significantly effect the HIC, 3 msec chest clip [acceleration], and head excursion values, regardless of dummy size." Specifically, the study stated that:

> The 3 year old dummy/three point belt tests had 80% to 90% higher HIC values than the corresponding lap only belt tests, while for the 6 year old dummy, the three point belt tests were 18% to 59% higher. The 3 year old/three point belt tests were the only test conditions that produced HIC values above 1000.

The study also showed that the chest clip acceleration increased for the 3-year-old dummy tested in two shield booster seats, from 31G to 44G and from 38G to 45G, respectively. The chest acceleration increases for these seats were from about 36G to 52G and 28G to 44G respectively.

In short, NHTSA does not know of any shield-type booster seat that performs well when the booster seat is used with a lap/shoulder belt system and the shoulder portion of the belt system is left in front of the child.

3. Aircraft Use

This rule requires that belt-positioning seats be labeled with a statement that they are not certified for use on aircraft. The Air Transport Association and UM–CPP supported the proposed requirement but also suggested requiring all boosters to be so labeled. That suggestion is outside of the scope of the NPRM and has not been adopted. However, NHTSA and the Federal Aviation Administration are jointly examining this issue and may initiate a separate rulemaking, if warranted.

ATA was concerned that both the statement against aircraft use and the statement certifying to aircraft use are required to be in red. ATA suggested that the former statement be in a color other than red, to distinguish it from the latter. The commenter believed an other-than-red contrasting color will help airline personnel better identify which child seats are suitable for aircraft.

NHTSA does not agree with the suggestion that there is a need to require the use of an other-than-red contrasting highlight color to distinguish the warning against aircraft use from the certification to aircraft use. The red color is sufficient to draw the attention of airline personnel to a warning. NHTSA believes using a color other than red would not necessarily increase the level of awareness of the message contained in the warning. Rather, a message highlighted in red would catch the eye of the reader (in this case, airline personnel), who would then read the message. Further, because belt-positioning boosters lack any component in front of the child, they are readily distinguishable from other types of child restraints (i.e., child restraints suitable for aircraft). The unique appearance of belt-positioning seats should facilitate their identification by airline personnel.

III. Labeling Boosters for Children Weighing Not Less Than 30 Pounds

This rule adopts a labeling requirement to address the problem of booster seats being used for children too small for the restraints. This rule requires that, in labeling booster seats with their recommendations for the maximum and minimum weight and height of children who can safely occupy the seats (S5.5.2(f) and S5.5.5(f)), manufacturers must not recommend the seat for use by a child whose mass is less than 13.6 kilograms (30 pounds). No specific comments were received on the feasibility of developing a booster seat that would safely restrain children weighing less than 30 pounds.

Comments on the proposal were divided. Supporting the proposal were Volvo, Advocates for Highway and Auto Safety, UM–CPP, and the American Academy of Pediatrics (AAP). Advocates believed that if booster seats are permitted to cover a wide range of body weight and size, they become less appropriate at either end of the weight spectrum of recommended use. Further, Advocates said "merely stating a minimum figure of 30 pounds in the manufacturers' recommendations for the weight and height range of the restraint is not sufficient." It said the booster seats should also have a separate affirmative warning statement that the booster seat is not recommended for children who weigh less than 30 pounds.

AAP stated:

> While the Academy encourages NHTSA to be responsive and supportive of innovations in restraint technology, development of new products should be guided by a recognition of a child's requirements for protection at different stages of growth. What would be the low-weight end for such a product? We doubt that it is appropriate to approve a booster seat for children weighing less than 30 pounds, when these children can be more safely transported in standard car safety seats. Ten years ago, it was not uncommon for boosters seats to be available for children who weighed 20 pounds. Gradually, the industry shifted because of concern for protection of the younger children to where the low-weight end for boosters became 30 pounds. To drop below 30 pounds as the minimum weight for boosters, again, means to consider designs that provide for upper-trunk support, designs like the early Strolee booster seat that included a five-point harness and tether. Since it is unlikely that this design would find popular acceptance and use, a more reasonable course might be to explore the potential of integrated booster seats in motor vehicles for children weighing less than 30 pounds. To do this, however, requires attention to developing a lap/shoulder belt that can adjust to varying heights so that the fit is across the child's chest, not the child's face or neck.

Ford and Cosco opposed the proposal. Ford said that the vehicle manufacturer should have the flexibility to recommend use of a belt-positioning

(booster) seat, "even for some children under 30 pounds." Ford said, "A very thin child weighing less than 30 pounds may be too tall for a convertible child restraint, but an ideal candidate for a belt-positioning booster." Ford suggested that rather than base the prohibition on weight (30 pounds), NHTSA base it on height or age. Thus, Ford suggested that Standard 213 specify that no booster can be recommended for children of standing heights less than 900 mm (36 inches) or less than two years of age. Cosco believed that the prohibition against recommending a booster for children less than 13.6 kilograms (kg) is design restrictive:

> Surely it is possible that a booster seat meeting all requirements * * * could be developed either for children under 30 pounds or over 60 pounds in the future. Requiring a product to meet all the dynamic test requirements regardless of what weight is recommended should be sufficient.

NHTSA does not agree with Ford and Cosco that Standard 213 need not specify that boosters must not be recommended for children of less than 13.6 kg. NHTSA generally agrees with Cosco that dynamic test requirements should be *the* criteria in determining whether a given design performs adequately. However, in the case of booster seats, the dynamic test failed to prevent substandard restraining devices, with respect to protecting children at the extremes of the weight ranges recommended for the restraints (e.g., the 20 pound and the 48 pound child). As explained in the ANPRM preceding this rule, heretofore, manufacturers had great leeway in manufacturing booster seats and specifying which size (weight) children were suitable for the seats. That leeway resulted in alarming practices:

> Concerns about shield-type boosters arose from the recommendations by manufacturers about the size of children which could appropriately use a particular booster. Particular designs or models of boosters were typically recommended for a broad range of children. Often, the seats were recommended for use by children weighing from about 20 to 70 pounds. Such recommendations engendered concerns as to whether these boosters could provide adequate protection for children ranging from nine-month-old infants (average weigh 20 pounds) to six-year-old (48 pounds) and older children.
>
> 57 FR 22682, 22683; May 29, 1992.

As explained in the ANPRM, in tests conducted by NHTSA and by Calspan Corporation, it was found that shield boosters could not restrain a test dummy representing a 9-month-old child when dynamically tested using Standard 213's procedures. Yet, the boosters were certified as meeting Standard 213, because only the three-year-old (33 pound) child dummy is used to determine compliance with the standard. So tested, the restraints met Standard 213.

NHTSA agrees with the commenters that children with a mass of less than 13.6 kg are better protected in convertible and toddler seats. These child seats have been performing well when tested with the various sizes of dummies. However, booster seats have not performed adequately in restraining dummies with masses of less than 13.6 kg in tests done over the years at Calspan, the University of Michigan and VRTC. Moreover, the 9-month-old dummy in Part 572 that could be used to evaluate the effectiveness of booster seats in protecting children with masses less than 13.6 kg is not instrumented, and is therefore limited in its ability to provide a full and accurate indication of the safety of booster seats in protecting the very young child. Accordingly, the agency agrees with AAP that the proposed minimum weight limit for use of booster seats should be imposed until, and if, the state of the art of the technology evolves to design and develop a booster seat that would protect children with masses of less than 13.6 kg. However, the agency does not agree with Advocates that an affirmative warning label is appropriate. The label is ladened with warning statements, and adding to the label risks "information overload," which could reduce the effectiveness of each warning.

IV. Effective Date

This rule is effective in 30 days. An effective date of less than 180 days is justified because this rule relieves present requirements in Standard 213 that restrict the manufacture of belt-positioning booster seats. Moreover, the rule facilitates the manufacture of a booster seat that could provide safety benefits.

However, sections of Standard 213 adopted today that affect present labeling of shield booster seats and the printed instructions accompanying these seats are effective September 1, 1994. Those sections are S5.5.2(i)(2) and S5.6.1.9(a). Ford and Cosco pointed out that the NPRM included proposals on those sections that would affect how present booster seats are labeled, and how printed instructions now read. S5.5.2(i)(2) and S5.6.1.9(a) require that a booster seat be labeled with and provided with instructions on a warning to use the booster seat only with the vehicle's lap belt system, or with the shoulder belt portion of a Type II belt behind the child.[3] Ford and Cosco argued for a longer leadtime for these changes. NHTSA agrees that more leadtime is appropriate. The agency agrees with Cosco that more leadtime will help deplete supplies of existing labels (Cosco suggested three months is adequate), and concurs with Ford that more leadtime is warranted to change existing labels and printed instructions. (Ford suggested an effective date of September 1, 1994.) This rule makes the requirements affecting the labeling and printed instructions for shield boosters effective September 1, 1994.

With regard to belt-positioning seats, the labeling requirements adopted today do not change the way these child seats are labeled. Since belt-positioning seats cannot now meet Standard 213, there are no belt-positioning seats manufactured today for children under 50 pounds. The requirements only apply if manufacturers desire to produce such seats for children under 50 pounds.

V. Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. NHTSA has prepared a final regulatory evaluation for this action which discusses its potential costs, benefits and other impacts. A copy of that evaluation has been placed in the docket for this rulemaking action. Interested persons may obtain copies of the evaluation by writing to the docket section at the address provided at the beginning of this document.

To briefly summarize the evaluation, while the agency believes that belt-positioning seats will improve safety, the magnitude of that improvement is not known. Belt-positioning booster seats might be more acceptable to children than shield-type boosters. This could lead to increased usage rates for child restraint systems. Increased usage is important because child restraints are highly effective when used properly. Belt-positioning booster seats raise the child up in the vehicle seat, increasing the chances that the vehicle's shoulder belt would fit properly, and also that the lap belt will fit properly because it will be positioned lower on the child's hips.

NHTSA also concludes that this rule will result in negligible costs for testing labs and manufacturers of belt-positioning booster seats. The costs would result from testing and certifying belt-positioning seats. Manufacturers will be minimally affected by this rulemaking because it simply permits new designs in booster seats and does not require any design change or impose additional costs on manufacturers. Manufacturers that do not want to manufacture a belt-positioning booster seat will not be affected.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The agency knows of 14 manufacturers of child restraints, seven of which NHTSA considers to be small businesses (including Kolcraft, which with an estimated 500 employees, is on the borderline of being a small business).

Regardless of the number of small businesses, this rule will not have a significant economic impact on these entities. The rule would affect manufacturers only if they choose to manufacture a new type of booster seat. The amendment could benefit manufacturers by allowing them to manufacture and sell a new product. However, the agency does not know how interested manufacturers are in belt-positioning child seats, and even if they were interested, the extent to which consumers would purchase the product.

Small organizations and governmental jurisdictions procure child restraint systems for programs such as loaner programs. However, only a small percentage of loaner programs carry booster seats. In any event, NHTSA believes that any small impact on price, either positive or negative, will not have a substantial impact on these loaner programs. Thus, these entities would not be significantly affected by this rule.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency

[3] The commenters were particularly concerned about the proposal that would have required boosters to provide children's height and weight information in metric units of measurement. This rule does not adopt the proposal for metric units on the label. Further, while this rule adopts the proposal that child booster seats must not be recommended for children of masses of less than 13.6 kg (30 pounds), all child booster seats are now not recommended for children of masses less than 13.6 kg.

child restraint systems. Increased usage is important because child restraints are highly effective when used properly. Belt-positioning booster seats raise the child up in the vehicle seat, increasing the chances that the vehicle's shoulder belt would fit properly, and also that the lap belt will fit properly because it will be positioned lower on the child's hips.

NHTSA also concludes that this rule will result in negligible costs for testing labs and manufacturers of belt-positioning booster seats. The costs would result from testing and certifying belt-positioning seats. Manufacturers will be minimally affected by this rulemaking because it simply permits new designs in booster seats and does not require any design change or impose additional costs on manufacturers. Manufacturers that do not want to manufacture a belt-positioning booster seat will not be affected.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The agency knows of 14 manufacturers of child restraints, seven of which NHTSA considers to be small businesses (including Kolcraft, which with an estimated 500 employees, is on the borderline of being a small business).

Regardless of the number of small businesses, this rule will not have a significant economic impact on these entities. The rule would affect manufacturers only if they choose to manufacture a new type of booster seat. The amendment could benefit manufacturers by allowing them to manufacture and sell a new product. However, the agency does not know how interested manufacturers are in belt-positioning child seats, and even if they were interested, the extent to which consumers would purchase the product.

Small organizations and governmental jurisdictions procure child restraint systems for programs such as loaner programs. However, only a small percentage of loaner programs carry booster seats. In any event, NHTSA believes that any small impact on price, either positive or negative, will not have a substantial impact on these loaner programs. Thus, these entities would not be significantly affected by this rule.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Incorporation by reference.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

1. The authority citation for Part 571 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.213 is amended by:

a. Adding to S4, in alphabetical order, definitions of "backless child restraint system" and "belt-positioning seat," and revising in S4 the definition of "booster seat;"

b. Revising—

1. S5.3.2,

2. the introductory paragraph of S5.5.2(f),

3. S5.5.2(n),

4. S5.5.4,

5. the introductory paragraph of S5.5.5, and

6. the introductory paragraph of S5.5.5(f);

c. Adding S5.5.2(i), S5.5.5(l), S5.6.1.9(a), (b) and (c), and S5.6.4; and

d. Revising S6.1.1.3, S6.1.2.1.1(a), S6.1.2.1.2(a), S6.1.2.2, S6.1.2.4, and S7.3(a)(1).

The revised and added paragraphs read as follows:

§ 571.213 Standard No. 213, Child Restraint Systems.

* * * * *

Backless child restraint system means a child restraint, other than a belt-positioning seat, that consists of a seating platform that does not extend up to provide a cushion for the child's back or head and has a structural element designed to restrain forward motion of the child's torso in a forward impact.

Belt-positioning seat means a child restraint system that positions a child on a vehicle seat to improve the fit of a vehicle Type II belt system on the child and that lacks any component, such as a belt system or a structural element, designed to restrain forward movement of the child's torso in a forward impact.

Booster seat means either a backless child restraint system or a belt-positioning seat.

* * * * *

S5.3.2 When installed on a vehicle seat, each add-on child restraint system, other than child harnesses and belt-positioning seats, shall be capable of being restrained against forward movement solely by means of a Type I seat belt assembly (defined in § 571.209) that meets Standard No. 208 (§ 571.208), or by means of a Type I seat belt assembly plus one additional anchorage strap that is supplied with the system and conforms to S5.4. Each belt-positioning seat shall be capable of being restrained against forward movement solely by means of a Type II seat belt assembly (defined in § 571.209) that meets Standard No. 208 (§ 571.208).

* * * * *

S5.5.2 * * *

* * * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum weight and height of children who can safely occupy the system, except that booster seats shall not be recommended for children of masses of less than 13.6 kg:

* * * * *

(i)(1) Except for a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assembly, and except for a backless child restraint system manufactured before September 1, 1994, one of the following statements, as appropriate:

(i) WARNING! USE ONLY THE VEHICLE'S LAP AND SHOULDER

BELT SYSTEM WHEN RESTRAINING THE CHILD IN THIS BOOSTER SEAT; or,

(ii) WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD IN THIS SEAT.

(2) For a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies, the following statement:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE *insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield),* AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE *insert above description.*

* * * * *

(n) Child restraint systems, other than belt-positioning seats, that are certified as complying with the provisions of section S8 shall be labeled with the statement "This Restraint is Certified for Use in Motor Vehicles and Aircraft." Belt-positioning seats shall be labeled with the statement "This Restraint is Not Certified for Use in Aircraft." The statement required by this paragraph shall be in red lettering and shall be placed after the certification statement required by paragraph (e) of this section.

* * * * *

S5.5.4 (a) Each built-in child restraint system other than a factory-installed built-in restraint shall be permanently labeled with the information specified in S5.5.5 (a) through (l). The information specified in S5.5.5(a) through (j) and in S5.5.5(l) shall be visible when the system is activated for use.

(b) Each factory-installed built-in child restraint shall be permanently labeled with the information specified in S5.5.5(f) through (j) and S5.5.5(l), so that the information is visible when the restraint is activated for use. The information shall also be included in the vehicle owner's manual.

S5.5.5 The information specified in paragraphs (a) through (l) of this section that is required by S5.5.4 shall be in English and lettered in letters and numbers that are not smaller than 10-point type and are on a contrasting background.

* * * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum weight and height of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg:

* * * * *

(l) In the case of a built-in belt-positioning seat that uses either the vehicle's Type I or Type II belt systems or both, a statement describing the manufacturer's recommendations for the maximum height and weight of children who can safely occupy the system and how the booster should be used (e.g., with or without shield) with the different vehicle belt systems.

* * * * *

S5.6.1.9

* * * * *

(a) Except for instructions for a booster seat that is recommended for use with both a vehicle's Type I and Type II seat belt assembly, and except for instructions for a backless child restraint system manufactured before September 1, 1994, the instructions shall include one of the following statements, as appropriate, and the reasons for the statement:

(1) WARNING! USE ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN RESTRAINING THE CHILD IN THIS BOOSTER SEAT; or,

(2) WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD IN THIS SEAT.

(b) The instructions for a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies shall include the following statement and the reasons therefor:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE *insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield)*, AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE *insert above description.*

(c) The instructions for belt-positioning seats shall include the statement, "This restraint is not certified for aircraft use," and the reasons for this statement.

* * * * *

S5.6.4 In the case of a built-in belt-positioning seat that uses either the vehicle's Type I or Type II belt systems or both, the instructions shall include a statement describing the manufacturer's recommendations for the maximum height and weight of children who can safely occupy the system and how the booster must be used with the vehicle belt systems appropriate for the booster seat. The instructions shall explain the consequences of not following the directions. The instructions shall specify that, if the booster seat is recommended for use with only the lap-belt part of a Type II assembly, the shoulder belt portion of the assembly must be placed behind the child.

* * * * *

S6.1.1.3 Attached to the seat belt anchorage points provided on the standard seat assembly (illustrated in Figures 1A and 1B) are Type 1 seat belt assemblies in the case of add-on child restraint systems other than belt-positioning seats, or Type 2 seat belt assemblies in the case of belt-positioning seats. These seat belt assemblies meet the requirements of Standard No. 209 (§ 571.209) and have webbing with a width of not more than 2 inches, and are attached to the anchorage points without the use of retractors or reels of any kind.

* * * * *

S6.1.2.1.1 *Test configuration I.*

(a) In the case of each add-on child restraint system other than a belt-positioning seat, a child harness, a backless child restraint system with a top anchorage strap, or a restraint designed for use by physically handicapped children, install the add-on child restraint system at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the add-on restraint shall be secured to the standard vehicle seat using only the standard vehicle lap belt. A child harness, a backless child restraint system with a top anchorage strap, or a restraint designed for use by physically handicapped children shall be installed at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1. An add-on belt-positioning seat shall be installed at either outboard seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the belt-positioning seat shall be secured to the standard vehicle seat using only the standard vehicle lap and shoulder belt.

* * * * *

S6.1.2.1.2 *Test configuration II.*

(a) In the case of each add-on child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, or a backless child restraint system with a top anchorage strap, install the add-on child restraint system at the center seating position of the standard seat assembly using only the standard seat lap belt to secure the system to the standard seat.

* * * * *

S6.1.2.2 Tighten all belts used to restrain the add-on child restraint to the standard test seat assembly and all belts used to directly restrain the dummy to the add-on or built-in child restraint according to the following:

standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the belt-positioning seat shall be secured to the standard vehicle seat using only the standard vehicle lap and shoulder belt.

* * * * *

S6.1.2.1.2 *Test configuration II.*

(a) In the case of each add-on child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, or a backless child restraint system with a top anchorage strap, install the add-on child restraint system at the center seating position of the standard seat assembly using only the standard seat lap belt to secure the system to the standard seat.

* * * * *

S6.1.2.2 Tighten all belts used to restrain the add-on child restraint to the standard test seat assembly and all belts used to directly restrain the dummy to the add-on or built-in child restraint according to the following:

(a) Tighten all Type 1 belt systems and any provided additional anchorage belt (tether), that are used to attach the add-on child restraint to the standard seat assembly to a tension of not less than 53.5 newtons and not more than 67 newtons, as measured by a load cell used on the webbing portion of the belt.

(b) Tighten the lap portion of Type 2 belt systems used to attach the add-on child restraint to the standard seat assembly to a tension of not less than 53.5 newtons and not more than 67 newtons, as measured by a load cell used on the webbing portion of the belt.

(c) Tighten the shoulder portion of Type 2 belt system used to directly restrain the dummy in add-on and built-in child restraint systems as specified in S11.9, *Manual belt adjustment for dynamic testing.*

* * * * *

S6.1.2.4 If provided, shoulder (other than the shoulder portion of a Type 2 vehicle belt system) and pelvic belts that directly restrain the dummy in add-on and built-in child restraint systems shall be adjusted as follows: Tighten the belts until a 9-newton force applied (as illustrated in Figure 5) to the webbing at the top of each dummy shoulder and to the pelvic webbing 50 millimeters on either side of the torso midsagittal plane pulls the webbing 7 millimeters from the dummy.

S7.3 *Standard test devices.*

(a) * * *

(1) For testing for motor vehicle use, a standard seat assembly consisting of a simulated vehicle bench seat, with three seating positions, which is described in NHTSA's Office of Vehicle Safety Standard's Drawing Package SAS–100–1000 (consisting of drawings and a bill of materials) with Addendum A, Seat Base Weldment, dated July 1, 1993 (incorporated by reference; see § 571.5).

* * * * *

3. Figures 1A and 1B at the end of section 571.213 are revised to read as follows:

BILLING CODE 4910–59–P

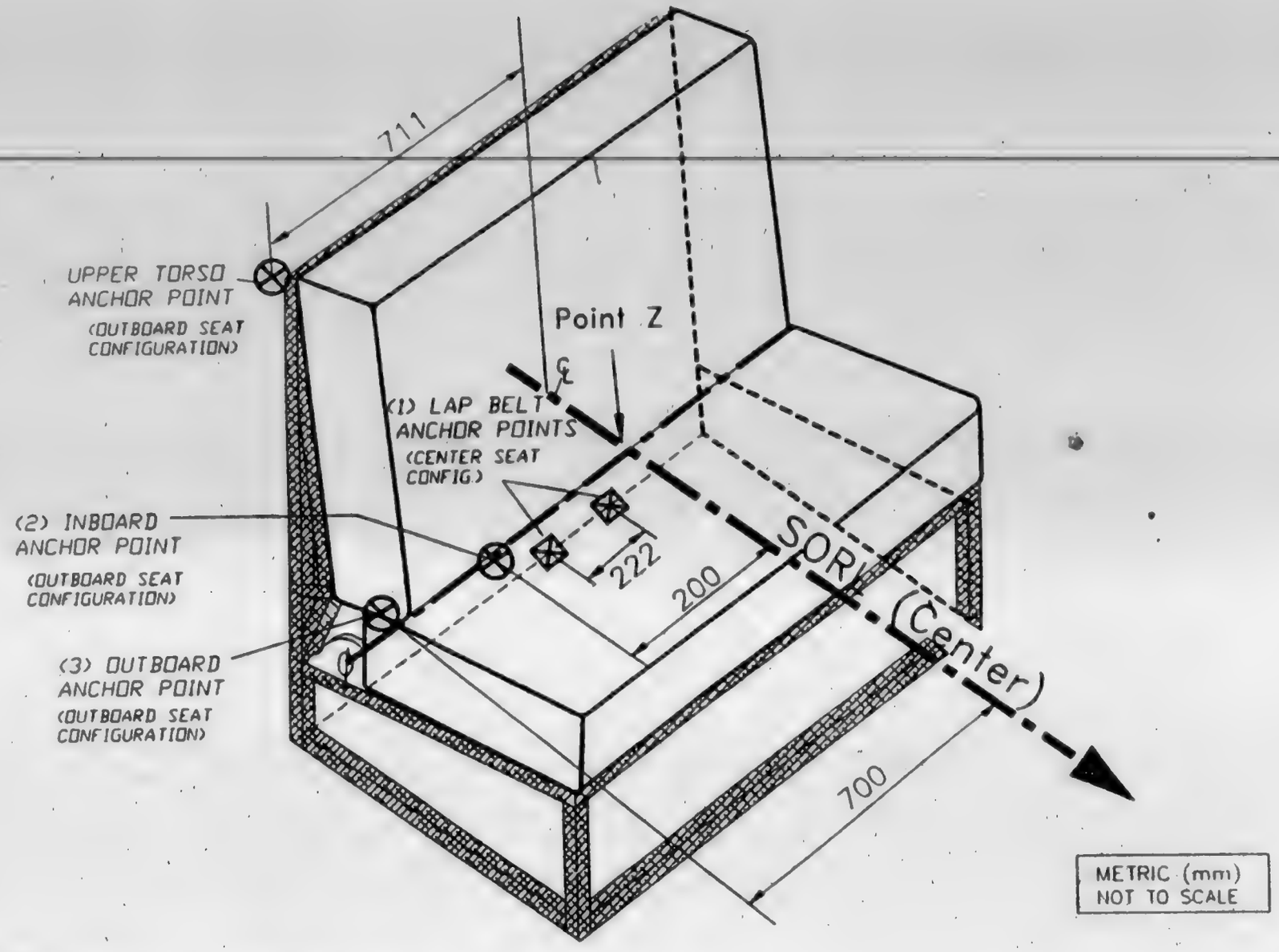

NOTES:
(1) Lap Belt Anchor Points are Symmetrically Located with Respect to the Center SORL
(2) Maximum Distance from the Seat Bight to the end of the Buckle is 175 mm
(3) Outboard Anchor Point Located 700 mm from the Center SORL

SEAT ORIENTATION REFERENCE LINE AND BELT ANCHORAGE POINTS LOCATIONS ON THE STANDARD SEAT ASSEMBLY

Figure 1A

BILLING CODE 4910-59-C

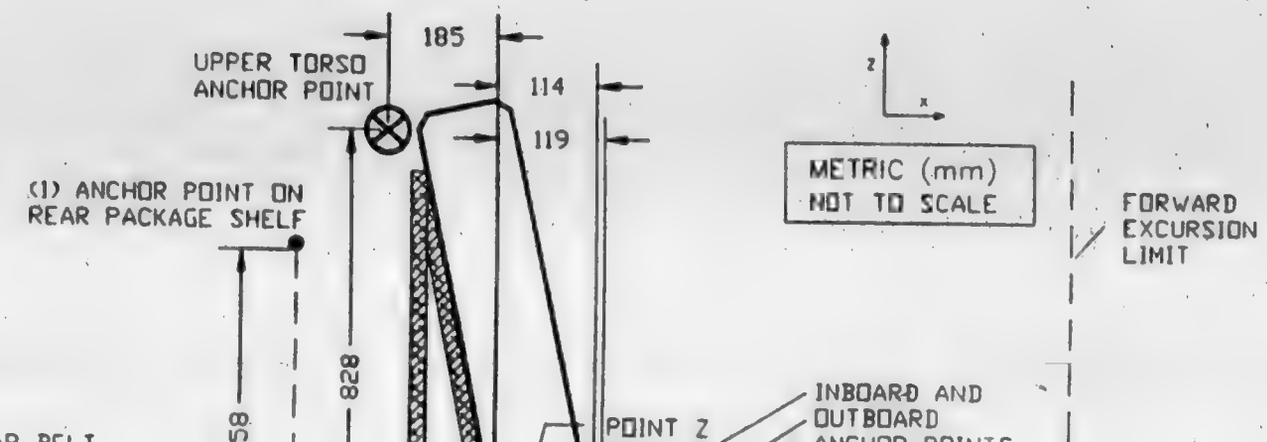

SEAT ORIENTATION REFERENCE LINE AND BELT ANCHORAGE POINTS LOCATIONS
ON THE STANDARD SEAT ASSEMBLY
Figure 1A

BILLING CODE 4910-59-C

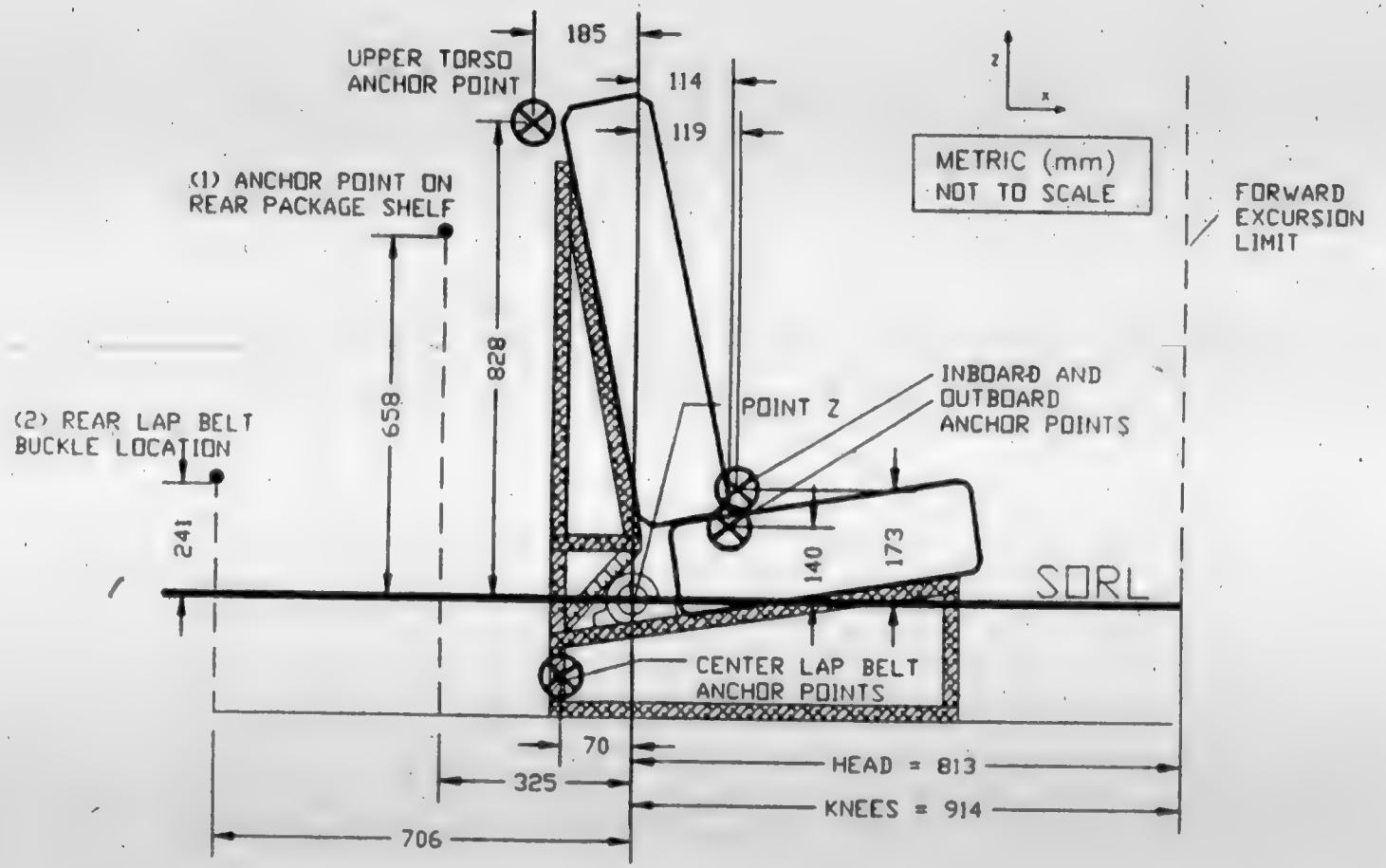

NOTES:
(1) Anchor Point on Rear Package Shelf Located 544 mm Right or Left of the Center SORL as shown in Fig. 1A
(2) Rear Lap Belt Buckle Located 178 mm Right or Left of the Center SORL as shown in Fig. 1A

LOCATIONS OF BELT ANCHORAGE POINTS AND FORWARD EXCURSION LIMIT
ON THE STANDARD SEAT ASSEMBLY
Figure 1B

Issued on July 15, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–17683 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–36–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199–4042; I.D. 071594A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 (between 154° and 159° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 15, 1994, until 12 noon, A.l.t., October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 62 is 7,806 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv). The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that this third quarterly allowance soon will be reached. The Regional Director has established a directed fishing allowance of 7,300 mt, and has set aside the remaining 506 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 62 is prohibited, effective from 12 noon, A.l.t., July 15, 1994, until 12 noon, A.l.t., October 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17707 Filed 7–15–94; 4:31 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 931199–4042; I.D. 071494A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the northern rockfish total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 15, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the northern rockfish TAC for the Central Regulatory Area was established by the final 1994 specifications (59 FR 7647, February 16, 1994) as 4,720 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), established in accordance with § 672.20(c)(2)(ii), a directed fishing allowance for northern rockfish of 4,320 mt, with consideration that 400 mt will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area effective from 12 noon, A.l.t., July 14, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17708 Filed 7–15–94; 4:31 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 931199–4042; I.D. 071594B]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 63 (between 147° and 154° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 15, 1994, until 12 noon, A.l.t., October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 63 is 10,937 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv). The Director, Alaska Region, NMFS

(Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that this third quarterly allowance soon will be reached. The Regional Director has established a directed fishing allowance of 10,200 mt, and has set aside the remaining 737 mt as bycatch to support other anticipated groundfish fisheries.

The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed

(Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that this third quarterly allowance soon will be reached. The Regional Director has established a directed fishing allowance of 10,200 mt, and has set aside the remaining 737 mt as bycatch to support other anticipated groundfish fisheries.

The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 63 is prohibited, effective from 12 noon, A.l.t., July 15, 1994, until 12 noon, A.l.t., October 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–17709 Filed 7–15–94; 4:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 139
Thursday, July 21, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–84–AD]

Airworthiness Directives; Aerospatiale Model ATR42–300 and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42 series airplanes. This proposal would require an inspection to determine the model and orientation of certain flight control rods, and replacement with modified rods, if necessary. This proposal is prompted by reports of corrosion found on the pitch trim and rudder trim rods. The actions specified by the proposed AD are intended to prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items.

DATES: Comments must be received by September 19, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–84–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42 series airplanes. The DGAC advises that corrosion has been detected on the pitch and rudder trim fail-safe rods installed on these airplanes. (This corrosion was found during inspections that were conducted as a part of a sampling program carried out by the manufacturer.) In some cases, corrosion apparently was caused by water accumulating in the lower part of the rods and freezing; the rods in these cases were installed with their open end oriented upwards (rather than downwards), which allowed water to accumulate between the internal and external tubes of the rod. Some cracking was associated with corrosion in these cases. Such corrosion could compromise the required strength of these flight control rods.

Aerospatiale has issued the following service bulletins which address the identified problems:

a. Service Bulletin ATR42–27–0071, dated February 23, 1994, describes procedures for inspecting the elevator trim rod and rudder trim rod to determine the orientation of the open rod end. It also describes procedures for replacing rods having open ends that are oriented upwards with rods on which the open end of the rod is oriented downwards. A downward-oriented rod end will prevent the accumulation of water between the internal and external tubes of the rod. The DGAC classified the material contained in this service bulletin as mandatory and issued French Airworthiness Directive 94–003–053(B), dated January 5, 1994, in order to assure the continued airworthiness of these airplanes in France.

b. Service Bulletin ATR42–27–0048, Revision 2, dated May 16, 1991, describes procedures for reversing the installation of the ends of the elevator tab and rudder tab control rods so that the open end of the rod is oriented downwards. The DGAC has classified this service bulletin as "recommended."

c. Service Bulletin ATR42–27–0049, Revision 2, dated May 16, 1991, describes procedures for replacing the elevator tab and rudder tab control rods with new rods that have been modified by the addition of a drain hole in the non-open end of the rod and the application of a protective treatment. The DGAC has classified this service bulletin as "recommended."

This airplane model is manufactured in France and is type certificated for operation in the United States under the

provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an inspection to determine the orientation of the end of rudder trim and elevator trim fail-safe rods, and replacement of those rods having downwards-oriented ends. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Airplanes on which Aerospatiale Modification 02723 has been installed are not affected by the requirements of this proposed AD. The subject flight control rods on those airplanes have been modified prior to airplane delivery.

The FAA estimates that 128 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hour per airplane to accomplish the proposed inspection action, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $28,160, or $220 per airplane. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should replacement of any of the flight control rods be necessary, the number of work hours and the cost of required parts would vary according to the type of replacement accomplished. In a "worst case scenario" (both subject rods needing replacement), the cost of parts would be approximately $6,000 per airplane. Labor necessary to accomplish replacement of a rod(s) would vary from 54 work hours to 87 work hours, at an average labor rate of $55 per work hour.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an inspection to determine the orientation of the end of rudder trim and elevator trim fail-safe rods, and replacement of those rods having downwards-oriented ends. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Airplanes on which Aerospatiale Modification 02723 has been installed are not affected by the requirements of this proposed AD. The subject flight control rods on those airplanes have been modified prior to airplane delivery.

The FAA estimates that 128 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hour per airplane to accomplish the proposed inspection action, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $28,160, or $220 per airplane. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should replacement of any of the flight control rods be necessary, the number of work hours and the cost of required parts would vary according to the type of replacement accomplished. In a "worst case scenario" (both subject rods needing replacement), the cost of parts would be approximately $6,000 per airplane. Labor necessary to accomplish replacement of a rod(s) would vary from 54 work hours to 87 work hours, at an average labor rate of $55 per work hour.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 94–NM–84–AD.

Applicability: Model ATR42–300 and –320 series airplanes on which Aerospatiale Modification 02723 has not been installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items, accomplish the following:

(a) Within 18 months after the effective date of this AD, visually inspect the elevator trim and rudder trim fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Aerospatiale Service Bulletin ATR42–27–0071, dated February 23, 1994.

(1) If a SARMA-type rod is installed at either of these locations, prior to further flight, replace that rod with a modified rod, in accordance with Aerospatiale Service Bulletin ATR42–27–0049, Revision 2, dated May 16, 1991.

(2) If a TAC-type rod is installed at either of these locations, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, accomplish the reverse installation procedures specified in Aerospatiale Service Bulletin ATR42–27–0048, Revision 2, dated May 16, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17763 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 94–NM–62–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–30 and –30F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–30 and –30F series airplanes. This proposal would require replacement of cargo door latch spool fitting attach bolts fabricated from H–11 steel with Inconel bolts. This proposal is prompted by a report of a broken latch spool fitting attach bolt found on a cargo door on a Model DC–9 series freighter airplane. The actions specified by the proposed AD are intended to prevent inadvertent opening of a cargo door while the airplane is in flight, and subsequent loss of pressurization and reduced controllability of the airplane

DATES: Comments must be received by October 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. LS1, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–62–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 26, 1991, the FAA issued AD 91–10–07, amendment 39–6991 (56 FR 21268), applicable to McDonnell Douglas Model DC–10 series airplanes, manufacturer's fuselage numbers 1 through 379 inclusive. That AD requires inspection of the cargo door latch spool fitting attach bolts fabricated from H–11 steel and replacement of those bolts with Inconel bolts. That action was prompted by a report of a broken latch spool fitting attach bolt found on a cargo door on a Model DC–9 series freighter airplane. Broken bolts could jeopardize the integrity of the door locking capability. The requirements of AD 91–10–07 are intended to prevent loss of pressurization and reduced controllability of the aircraft due to inadvertent opening of a cargo door while the airplane is in flight.

Since the issuance of AD 91–10–07, the manufacturer has informed the FAA that cargo door latch spool fitting attach bolts fabricated from H–11 steel also were installed on 8 additional Model DC–10 production airplanes. Therefore, these 8 airplanes are subject to the same unsafe condition as addressed by that AD.

The FAA has reviewed and approved McDonnell Douglas DC–10 Alert Service Bulletin A52–212, Revision 4, dated November 3, 1993, that describes procedures for replacement of the H–11 cargo door latch spool fitting attach bolts and associated hardware with Inconel bolts and associated hardware. Replacing the existing H–11 material bolts and associated hardware with new bolts made from Inconel material and associated hardware will eliminate the possibility of stress corrosion failures.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of H–11 cargo door latch spool fitting attach bolts with Inconel bolts on 8 Model DC–10–30 and –30F series airplanes. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Note: The FAA's normal policy is that, when an AD requires a substantive change, such as a change in its applicability, the "old" AD is superseded by being removed from the system and a new AD added. In the case of this AD action, the FAA normally would have proposed superseding AD 91–10–07 to expand its applicability to include the 8 additional airplanes. However, in reconsideration of the entire fleet size that would be affected by such a supersedure action, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to the 8 airplanes. This AD does not supersede AD 91–10–07; airplanes listed in the applicability of AD 91–10–07 continue to be required to comply with the requirements of that AD. This proposed AD is a separate AD action, and would be applicable only to eight airplanes listed in the alert service bulletin described above.

There are 8 Model DC–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 86 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $10,682 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $92,472, or $15,412 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: 94–NM–62–AD.

Applicability: Model DC–10–30 and –30F series airplanes having fuselage numbers 409, 412, 416, 419, 422, 433, 434, and 435; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent opening of a cargo door while the airplane is in flight, and subsequent loss of pressurization and reduced controllability of the airplane, accomplish the following:

(a) Within 2 years after the effective date of this AD, replace all H–11 cargo door latch spool fitting attach bolts with Inconel bolts, in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A52–212, Revision 4, dated November 3, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: 94–NM–62–AD.

Applicability: Model DC–10–30 and –30F series airplanes having fuselage numbers 409, 412, 416, 419, 422, 433, 434, and 435; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent opening of a cargo door while the airplane is in flight, and subsequent loss of pressurization and reduced controllability of the airplane, accomplish the following:

(a) Within 2 years after the effective date of this AD, replace all H–11 cargo door latch spool fitting attach bolts with Inconel bolts, in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A52–212, Revision 4, dated November 3, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17765 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 94–SW–05–AD]

Airworthiness Directives: McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369 and OH–6A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369 and OH–6A series helicopters equipped with certain main rotor (M/R) blade assemblies or certain M/R hub lead-lag assemblies, that currently requires repetitive inspections and checks for cracks. This action would require the same inspections as the superseded AD, but would eliminate pilot checks, expand the areas of inspection, and require the application of slippage marks on each M/R blade root fitting lug and related bushings to detect movement. This proposal is prompted by additional reports of cracks in the M/R blade root fittings, lugs, and adjacent blade skin, and movement of the root fitting bushings. The actions specified by the proposed AD are intended to prevent failure of a M/R blade assembly or a M/R hub lead-lag link assembly, loss of a M/R blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received by September 6, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–05–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137–4298. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Helicopter Company, Technical Publications, Bldg 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425, telephone (310) 988–5237, fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–SW–05–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–05–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137–4298.

Discussion

On August 8, 1991, the FAA issued AD 91–17–04, Amendment 39–8003 (56 FR 42230, August 27, 1991), to require initial and repetitive inspections and checks of certain main rotor (M/R) blade assemblies and M/R hub lead-lag link assemblies for fatigue cracks and for

loose bushings in the M/R blade lead-lag link lugs (lead-lag lugs). That action was prompted by two incidents involving a cracked M/R blade root fitting lug (root fitting lug). Bushing movement in the M/R blade lead-lag link lugs may have caused fatigue cracks in the lead lag link assemblies. The lead lag link assembly attaches to the M/R blade. Any cracks in the lead lag link assembly, the M/R blade, the MR blade root fitting, or any movement of the bushing, could create an unsafe condition. That condition, if not corrected, could result in failure of a M/R blade assembly or a M/R hub lead-lag link assembly, loss of a M/R blade, and subsequent loss of control of the helicopter.

Since the issuance of that AD, additional incidents of cracks in the M/R blade root fitting (root fitting), and M/R blade skin have been reported. Additionally, the manufacturer has discovered that in some M/R blade assemblies, the M/R blade root fitting bushing (bushing) can loosen and contribute to fretting-induced fatigue cracking in the root fitting lug. The root fittings and M/R blade skins are parts of the M/R blade assembly. Therefore, McDonnell Douglas Helicopter Company issued a revised Service Information Notice No. HN–211.4, DN–51.6, EN–42.4, and FN–31.4 (SIN), dated January 27, 1993, that requested operators mark each root fitting lug and bushing with a slippage mark and thereafter inspect for slippage on each root fitting lug and bushing. The revised SIN, dated January 27, 1993, includes the M/R blade assembly and M/R hub lead-lag link assembly inspections contained in the preceding versions of the SIN, dated August 5, 1991.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–17–04 to require application of a slippage mark on each root fitting lug and bushing within 25 hours' time-in-service (TIS). In addition, this proposal would require, within 25 hours' TIS after the effective date of this AD and thereafter at intervals not to exceed 100 hours' TIS, that the M/R blade assembly be removed and that the root fittings, root fitting lugs, lead-lag lugs, the M/R blade skin, and the doublers adjacent to the root fitting be inspected for cracks. This AD proposal also requires that the bushings be inspected for looseness and slippage, and that slippage marks be applied if not already present. Visual inspections of the exposed M/R blade skin, root fittings, root fitting lugs, and lead-lag lugs for cracks and inspection of the bushing slippage marks for movement are also required at intervals not to exceed 25 hours' TIS. The FAA no longer allows pilots to perform checks such as those contained in AD 91–17–04, paragraph (b). Therefore, a pilot would not be permitted to perform any of the proposed inspections in this AD.

The FAA estimates that 1,000 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 22 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be § 1,210,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8003 (56 FR 42230, August 27, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Mcdonnell Douglas Helicopter Company and Hughes Helicopters, Inc.: Docket No. 94–SW–05–AD. Supersedes AD 91–17–04, Amendment 39–8003.

Applicability: Model 369 and OH–6A series helicopters, certificated in any category, equipped with any of the following parts: (1) Main rotor blade assembly (blade assembly), part number (P/N) 369A1100–BSC, –501, –503, –505, –601, or –603; 369D21100–BSC, –503, –505, –507, –509, –511, –513, or –515; 369D21102–BSC or –501; or

(2) Main rotor hub lead-lag link assembly (lead-lag link assembly), P/N 369A1203–BSC, –3, or –11; 369H1203–BSC, –11, –21, or –31.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of a main rotor blade assembly or a main rotor hub lead-lag link assembly, loss of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours' time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' TIS from the last inspection, remove each blade assembly from the helicopter and accomplish the following:

(1) Inspect the attachment lugs of the main rotor (M/R) blade root fittings (root fittings) and the M/R lead-lag links (links) for cracks and the lug bushings (bushings) for looseness. Conduct the inspections in accordance with paragraph (b) of Part I of McDonnell Douglas Helicopter Company Service Information Notice HN–211.4, DN–51.6, EN–42.4, FN–31.4 (SIN), dated January 27, 1993.

(2) Visually inspect for cracks—

(i) The root fittings around the blade attachment lugs, and

(ii) The M/R blade doubler and blade skin adjacent to the root fittings.

(3) Mark the root fittings and bushings with slippage marks in accordance with paragraph (e) of Part I of the SIN, dated January 27, 1993, if the slippage marks are degraded or missing.

(4) Replace any M/R blades or links found to be cracked or to have loose bushings with airworthy parts before further flight.

(b) Within 25 hours' TIS after compliance with the requirements of paragraph (a) of this AD, and thereafter at intervals not to exceed 25 hours' TIS from the last inspection, accomplish the following without removing the M/R blade:

(1) Visually inspect the root fittings and links for cracks or loose bushings in accordance with Part II of the SIN, dated January 27, 1993.

(2) Replace any M/R blades or links found to be cracked or to have loose bushings with airworthy parts before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on June 14, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–17797 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 71

[Airspace Docket No. 93–ASW–60]

Proposed Establishment of Class E Airspace; Alta Vista Ranch Airport, Marfa, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Alta Vista Ranch Airport, Marfa, TX. The development of a very high frequency omni-directional range (VOR) standard instrument approach procedure (SIAP) to Runway (RWY) 15 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the VOR RWY 15 SIAP at Alta Vista Ranch Airport, Marfa, TX.

DATES: Comments must be received on or before September 1, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–60, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Forth Worth, TX between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business

Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on June 14, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–17797 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 71

[Airspace Docket No. 93–ASW–60]

Proposed Establishment of Class E Airspace; Alta Vista Ranch Airport, Marfa, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Alta Vista Ranch Airport, Marfa, TX. The development of a very high frequency omni-directional range (VOR) standard instrument approach procedure (SIAP) to Runway (RWY) 15 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the VOR RWY 15 SIAP at Alta Vista Ranch Airport, Marfa, TX.

DATES: Comments must be received on or before September 1, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–60, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Forth Worth, TX between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 222–5595.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–60." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistance Chief Counsel, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet AGL, at Alta Vista Ranch Airport, Marfa, TX. The development of a VOR RWY 15 SIAP has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the VOR RWY 15 SIAP at Alta Vista Ranch Airport, Marfa, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference on 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959

1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW TX E5 Marfa, Alta Vista Ranch Airport, TX [New]

Marfa, Alta Vista Ranch Airport, TX
(Lat. 30°08'54" N., Long. 103°53'35" W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Alta Vista Ranch Airport.

* * * * *

Issued in Fort Worth, TX, on July 5, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–17799 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 73

[Airspace Docket No. 93–AWP–8]

Proposed Modification of Restricted Areas R–2303A and R–2303B, and Establishment of R–2303C, Fort Huachuca, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Restricted Areas R–2303A and R–2303B, and establish R–2303C at Fort Huachuca, AZ. R–2303A would be amended to exclude the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport from the restricted area and provide airspace for visual flight rules (VFR) access to the airport when R–2303A is in use. The proposal would lower the floor and ceiling and revise the lateral dimensions of R–2303B in order to accommodate unmanned aerial vehicle training profiles. R–2303B would be further subdivided by redesignating the southeast corner of the existing area as a separate restricted area, R–2303C. Additionally this notice proposes to reduce the published hours of operation for R–2303A and R–2303B. As proposed, the time of designation for the new area, R–2303C, would be intermittent by a Notice to Airmen (NOTAM). These changes are proposed to accommodate increased training requirements and to return unneeded special use airspace to the National Airspace System (NAS).

DATES: Comments must be received on or before August 26, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500 Docket No. 93–AWP–8, Federal Aviation Administration, P. O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: James R. Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWP–8." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: Commander, U.S. Army Garrison, Attn: Mr. John Murray ATZS-EHB, Fort Huachuca, AZ 85613–6000. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to amend R–2303A to exclude from the restricted area the airspace from the surface to 1,500 feet above ground level (AGL), within a 3-nautical-mile radius of the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport. The airspace from the surface to 1,500 feet AGL within 1-nautical-mile either side of U.S. Highway 90 would also be excluded. This would provide VFR access to the airport when R–2303A is in use. R–2303B would be amended by relocating the northern boundary 3 miles south of its existing position. This would better accommodate hang gliding activity that takes place just outside of the northwest corner of existing R–2303B. R–2303B would also be subdivided to designate the southeastern section as a separate restricted area, R–2303C. This notice also proposes to lower the floor of R–2303B from 15,000 feet MSL to 8,000 feet MSL in order to accommodate unmanned aerial vehicle training profiles. The ceiling of R–2303B would be lowered from FL 450 to FL 300. This new subarea would extend from 8,000 feet mean sea level (MSL) to FL 300. The U.S. Army has determined that there is no longer a requirement for restricted airspace above FL 300, therefore, that airspace would be returned to the NAS. Lastly, the times of designation for R–2303A and R–2303B would be reduced from "Monday-Saturday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance," to "Monday-Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance." Activation of R–2303C would be intermittent by NOTAM at least 24 hours in advance. Designation of R–2303C is proposed to accommodate hang gliding activities that occur just outside of the southeastern corner of existing R–2303B. The coordinates for this airspace docket are based on North American Datum 83. Section 73.23 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

An environmental review of the proposal will be conducted by the U.S. Army and the FAA prior to an FAA final decision on the proposal. The results of the review will be addressed in any subsequent rulemaking action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 73.23 is amended as follows:

§73.23 [Amended]

R–2303A Fort Huachuca, AZ [Revised]

Boundaries. Beginning at lat. 31°40'40" N., long. 110°11'02" W.;
To lat. 31°34'00" N., long. 110°08'32" W.;

NOTAM at least 24 hours in advance." Activation of R–2303C would be intermittent by NOTAM at least 24 hours in advance. Designation of R–2303C is proposed to accommodate hang gliding activities that occur just outside of the southeastern corner of existing R–2303B. The coordinates for this airspace docket are based on North American Datum 83. Section 73.23 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

An environmental review of the proposal will be conducted by the U.S. Army and the FAA prior to an FAA final decision on the proposal. The results of the review will be addressed in any subsequent rulemaking action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 73.23 is amended as follows:

§ 73.23 [Amended]

R–2303A Fort Huachuca, AZ [Revised]

Boundaries. Beginning at lat. 31°40'40" N., long. 110°11'02" W.;
To lat. 31°34'00" N., long. 110°08'32" W.;
To lat. 31°34'00" N., long. 110°22'02" W.;
To lat. 31°33'00" N., long. 110°23'02" W.;
To lat. 31°29'00" N., long. 110°23'02" W.;
To lat. 31°29'00" N., long. 110°41'32" W.;
To lat. 31°34'00" N., long. 110°43'32" W.;
To lat. 31°38'30" N., long. 110°42'02" W.;
To lat. 31°38'30" N., long. 110°39'32" W.;
To lat. 31°41'00" N., long. 110°33'32" W.;
To lat. 31°41'00" N., long. 110°12'02" W.;
To the point of beginning.

Altitudes. Surface to 15,000 feet MSL, excluding the airspace from the surface to 1,500 feet AGL within a 3-nautical-mile radius of the Fort Huachuca/Libby AAF/Sierra Vista Municipal Airport, AZ, and excluding the airspace from the surface to 1,500 feet AGL within 1-nautical-mile either side of U.S. Highway 90.

Time of designation. Monday-Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. U.S. Army Intelligence Center, Fort Huachuca, AZ.

R–2303B Fort Huachuca, AZ [Revised]

Boundaries. Beginning at lat. 31°45'00" N., long. 110°20'02" W.;
To lat. 31°41'00" N., long. 110°12'02" W.;
To lat. 31°40'40" N., long. 110°11'02" W.;
To lat. 31°34'00" N., long. 110°08'32" W.;
To lat. 31°34'00" N., long. 110°22'02" W.;
To lat. 31°33'00" N., long. 110°23'02" W.;
To lat. 31°29'00" N., long. 110°23'02" W.;
To lat. 31°29'00" N., long. 110°25'02" W.;
To lat. 31°24'00" N., long. 110°25'02" W.;
To lat. 31°24'00" N., long. 110°45'02" W.;
To lat. 31°45'00" N., long. 110°45'52" W.;
To the point of beginning.

Altitudes. 8,000 feet MSL to FL 300.

Time of designation. Monday-Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. U.S. Army Intelligence Center, Fort Huachuca, AZ.

R–2303C Fort Huachuca, AZ [New]

Boundaries. Beginning at lat. 31°35'00" N., long. 110°00'02" W.;
To lat. 31°24'00" N., long. 110°00'02" W.;
To lat. 31°24'00" N., long. 110°25'02" W.;
To lat. 31°29'00" N., long. 110°25'02" W.;
To lat. 31°29'00" N., long. 110°23'02" W.;
To lat. 31°33'00" N., long. 110°23'02" W.;
To lat. 31°34'00" N., long. 110°22'02" W.;
To lat. 31°34'00" N., long. 110°08'32" W.;
To lat. 31°40'40" N., long. 110°11'02" W.;
To the point of beginning.

Altitudes. 15,000 feet MSL to FL 300.

Time of designation. Intermittent by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. U.S. Army Intelligence Center, Fort Huachuca, AZ.

Issued in Washington, DC, on July 8, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–17800 Filed 7–20–94, 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Proposed Amendments to Commodity Pool Operator and Commodity Trading Advisor Disclosure Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On May 16, 1994, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on proposed rules to extensively revise the Commission's part 4 disclosure rules applicable to commodity pool operators and commodity trading advisors. The original comment period expires on July 15, 1994. 59 FR 25351 (May 16, 1994). By letter dated July 11, 1994, the Managed Futures Association requested an extension of the comment period to August 17, 1994. In order to ensure that all interested parties have an adequate opportunity to submit meaningful comments, the Commission has determined to extend the comment period as requested.

DATES: Written comments must be received on or before August 17, 1994.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT:

Susan C. Ervin, Deputy Director/Chief Counsel or Barbara Stern Gold, Assistant Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

Issued in Washington, DC, on July 14, 1994, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 94–17696 Filed 7–20–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94N-0155]

RIN 0905-AB88

Food Labeling; Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Guidelines for Voluntary Nutrition Labeling of Raw Fruit, Vegetables, and Fish; Identification of the 20 Most Frequently Consumed Raw Fruit, Vegetables, and Fish; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the Federal Register of July 18, 1994 (59 FR 36379). The document proposed to revise the guidelines for voluntary nutrition labeling of raw fruit, vegetables, and fish; revise the definition for compliance with respect to adherence by retailers to those guidelines; and revise the labeling values for the 20 most frequently consumed raw fruit, vegetables, and fish. Certain portions of section VII. C and section VIII. in the Supplementary Information section were inadvertently omitted from the document. This document corrects that error.

DATES: Submit written comments by September 16, 1994. The agency is proposing that any final rule that may issue based on this proposal became effective 30 days after publication.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jean A. T. Pennington, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5434.

In FR Doc. 94-17287, appearing on page 36379, in the Federal Register of July 18, 1994, the following correction is made:

1. On page 36388, in the 1st column, in section VII.C., in line 16, the following text is added after the word "existing" and before the word "with" to read as follows:

* * * signs normally would have been replaced during the compliance period. However, FDA does not believe that signs normally would have been redesigned during that period. Therefore, the costs of the proposed regulation are administrative and redesign costs. FDA estimates that the average cost of redesigning signs to label raw fruits, vegetables, and fish is $100 per store. There are 31,000 chain stores and 68,000 independent grocery stores that fall under the compliance guidelines. Therefore, if those stores currently complying with the guidelines continue to do so, costs of compliance would be approximately $7.5 million.

VIII. Effective Date

FDA is proposing that final regulations and voluntary guidelines based on this proposal become effective 30 days after publication in the Federal Register. Under the act, FDA is scheduled to do a compliance survey every 2 years. The first survey was conducted in November and December of 1992, and the second is scheduled for the fall of 1994. While FDA would like to have the new values in place by the fall, the agency recognizes that it is unlikely that it will be able to do so. Even if the agency were to complete this rulemaking by that time, FDA recognizes that it will be very difficult for firms to have signs in place that reflect the new values by the time of the survey. Therefore, FDA advises that regardless of whether it completes this rulemaking by the fall or not, it intends to find a store to be in compliance if it is providing nutrition information for raw fruits, vegetables, and fish in accordance * * *.

Dated: July 19, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-17845 Filed 7-19-94; 12:10 pm]

BILLING CODE 4160-01-F

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards Concerning Physical Mailpiece Dimensions, Addressing, and Address Placement

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Postal Service published in the Federal Register (59 FR 31178-31183) on June 17, 1994, a proposal to amend the Domestic Mail Manual concerning standards defining a mailpiece's dimensions and relating them to processing category and other criteria, as well as standards concerning the content and placement of delivery and return addresses; the location of, and the use of a ZIP Code or ZIP+4 code in, the return address on certain mail; terms related to post office boxes and standards for their use in addressing mail; and the prohibition of dual addresses on certain types of mail. The Postal Service requested comments by August 1, 1994. Owing to the needs of the mailing public, from whom several requests for additional time were received, the Postal Service is extending the comment period to September 16, 1994.

DATES: Comments on the proposed rule must be received on or before September 16, 1994.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-2419. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 5610 at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268-5199.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94-17781 Filed 7-20-94; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[M118-01-5767, M121-01-6241; AMS-FRL-5014-8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: State of Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve revisions to the Michigan State Implementation Plan (SIP) for attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for ozone. These revisions pertain to the Detroit-Ann Arbor moderate ozone nonattainment area which includes the following counties: Livingston, Macomb, Monroe, Oakland, Saint Clair, Washtenaw, and Wayne. The revisions being proposed for approval are the 1990 base year emission inventory, basic vehicle inspection and maintenance (I/M), and redesignation of the Detroit-Ann Arbor area to attainment for ozone and corresponding 175A maintenance plan.

DATES: Comments on these proposed actions must be received in writing by August 22, 1994 and will be considered before taking final action on these SIP revisions.

ADDRESSES: Written comments should be sent to Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Copies of these SIP revisions and USEPA's analyses are available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6081. Anyone wishing to come to Region 5 offices should contact Jacqueline Nwia first.

SUPPLEMENTARY INFORMATION: This document contains a number of submittals for which the USEPA is proposing action. For purposes of clarity, the following Table of Contents is provided as a guide for this action.

Table of Contents

A. 1990 Base Year Emission Inventory
I. Background
II. Review of the State Submittal
III. Proposed Action
B. Inspection and Maintenance
I. Background and Review Criteria
II. Finding of USEPA Review
III. Proposed Action
C. Redesignation
I. Background
II. Evaluation Criteria
III. Review of State Submittal
1. Attainment of the Ozone NAAQS
2. Meeting Applicable Requirements of Section 110 and Part D
(A) Section 110 Requirements
(B) Part D Requirements
(B1) Subpart 1 of Part D—Section 172(c) Provisions
(B2) Subpart 1 of Part D—Section 176 Conformity Provisions
(B3) Subpart 2 Requirements
3. Fully Approved SIP Under Section 110(k) of the Act.
4. Improvement in Air Quality Due to Permanent and Enforceable Measures.
5. Fully Approved Maintenance Plan Under Section 175A.
(A) Emissions Inventory—Base Year Inventory
(B) Demonstration of Maintenance—Projected Inventories
(C) Verification of Continued Attainment
(D) Contingency Plan
(E) Subsequent Maintenance Plan Revisions
IV. Proposed Action
D. Procedural Background
E. Regulatory Process

A. Emissions Inventory

The inventory was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area ozone SIP for the Detroit/Ann Arbor area in Michigan.

Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Copies of these SIP revisions and USEPA's analyses are available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6081. Anyone wishing to come to Region 5 offices should contact Jacqueline Nwia first.

SUPPLEMENTARY INFORMATION: This document contains a number of submittals for which the USEPA is proposing action. For purposes of clarity, the following Table of Contents is provided as a guide for this action.

Table of Contents

A. 1990 Base Year Emission Inventory
I. Background
II. Review of the State Submittal
III. Proposed Action
B. Inspection and Maintenance
I. Background and Review Criteria
II. Finding of USEPA Review
III. Proposed Action
C. Redesignation
I. Background
II. Evaluation Criteria
III. Review of State Submittal
1. Attainment of the Ozone NAAQS
2. Meeting Applicable Requirements of Section 110 and Part D
(A) Section 110 Requirements
(B) Part D Requirements
(B1) Subpart 1 of Part D—Section 172(c) Provisions
(B2) Subpart 1 of Part D—Section 176 Conformity Provisions
(B3) Subpart 2 Requirements
3. Fully Approved SIP Under Section 110(k) of the Act.
4. Improvement in Air Quality Due to Permanent and Enforceable Measures.
5. Fully Approved Maintenance Plan Under Section 175A.
(A) Emissions Inventory—Base Year Inventory
(B) Demonstration of Maintenance—Projected Inventories
(C) Verification of Continued Attainment
(D) Contingency Plan
(E) Subsequent Maintenance Plan Revisions
IV. Proposed Action
D. Procedural Background
E. Regulatory Process

A. Emissions Inventory

The inventory was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area ozone SIP for the Detroit/Ann Arbor area in Michigan.

A detailed analysis of Michigan's 1990 Base Year Emission Inventory SIP submittal is contained in the USEPA's technical support document (TSD), dated January 27, 1994 from Jeanette Marrero to the Docket, entitled "TSD for Proposed Revision to Michigan's Ozone SIP for the 1990 Base Year Emissions Inventory for Areas Designated Nonattainment for Ozone" (Emission Inventory TSD), which is available from the Region 5 office listed above.

I. Background

Under the Act, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The Act requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within 3 years of 1990 to reduce volatile organic compounds (VOC) emissions by 15 percent within 6 years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the reasonable further progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone SIP," USEPA, Office of Air Quality Planning and Standards (OAQPS), Research Triangle Park, North Carolina, March 1991. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above outside transport regions.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of title I of the Act. Further, the USEPA has issued a General Preamble describing USEPA's preliminary views on how USEPA intends to review SIP revisions submitted under title I of the Act, including requirements for the preparation of the 1990 base year inventory (57 FR 13502, April 16, 1992 and 57 FR 18070, April 28, 1992). Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Michigan ozone base year emissions inventory, USEPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, USEPA will consider any comments submitted within the comment period before taking final action on this proposal.

Those States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the Act to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compounds (VOC), nitrogen oxides (NO_x), and carbon monoxide (CO). The inventory is to address actual VOC, NO_x, and CO emissions for the area during peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

The inventory was submitted by the State to USEPA on January 5, 1993 as a proposed revision to the SIP. The State of Michigan held a public hearing on August 2, 1993 to receive public comment on the 1990 base year emission inventory for Detroit/Ann Arbor nonattainment areas and certified the hearing to the USEPA in a submittal on November 15, 1993. Supplemental information was also submitted on November 29, 1993.

The emission inventory was reviewed by USEPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 Code of Federal Regulations (CFR) part 51, appendix V, as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete on March 16, 1993 with the exception of evidence of a public hearing. After receiving evidence of the public hearing, a letter from David Kee, Director, Air and Radiation Division, USEPA, Region 5, dated January 7, 1994 was sent to the Governor's designee indicating the completeness of the submittal and the next steps to be taken in the review process.

II. Review of State Submittal

When reviewing the final inventory, USEPA used the Level I, II, and III, ozone nonattainment inventory quality review checklists provided by the OAQPS to determine the acceptance and approvability of the final emission inventory.

Level I is essentially the initial level of broad review that USEPA performs in order to determine if the inventory preparation guidance requirements found in the report "Emission Inventory Requirements for Ozone SIPs" (EPA–450/4–91–011) have been met. The Level II review addresses completeness, procedures and consistency for each of the four general source types in the inventory: stationary point and area sources, highway mobile sources, and non-highway mobile sources. The data quality is also evaluated. Detailed Level I and II review procedures can be found in the following document: "Quality Review Guidelines for 1990 Base Year Emission Inventories," USEPA, OAQPS, Research Triangle Park, NC, July 27, 1992.

Level III review procedures are specified in a memorandum from J. David Mobley, Chief, Emissions Inventory Branch, and G. T. Helms, Chief, Ozone/CO Programs Branch; to Air Branch Chiefs, Region I–X, "1990 Ozone/CO SIP Emission Inventory Level III Acceptance Criteria," October 7, 1992 and revised in a memorandum from John Seitz, Director, OAQPS, to Regional Air Division Directors, Region I–X, "Emission Inventory Issues," June 24, 1993. The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the Quality Assurance program contained in the IPP was performed and its implementation documented.

2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.

3. The point source inventory must be complete.

4. Point source emissions must have been prepared or calculated according to the current USEPA guidance.

5. The area source inventory must be complete.

6. The area source emissions must have been prepared or calculated according to the current USEPA guidance.

7. Biogenic emissions must have been prepared according to current USEPA guidance or another approved technique.

8. The method (e.g., Highway Performance Monitoring System or a network transportation planning model) used to develop Vehicle Miles Traveled (VMT)[1] estimates must follow USEPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, volume IV: Mobile Sources," USEPA, Office of Mobile Sources and OAQPS, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods were adequately described and documented in the inventory report.

9. The MOBILE model was correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions were prepared according to current USEPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process.

The USEPA reviewed the State submittal using the Level I, II and III criteria noted above. These findings are discussed further in the Emission Inventory TSD.

III. Proposed Action

The USEPA is proposing to fully approve the ozone emission inventory SIP submitted to USEPA for the Detroit/Ann Arbor area as meeting the section 182(a)(1) requirements of the Act for emission inventories. The State has submitted a complete inventory containing point, area, biogenic, on-road, and non-road mobile source data, and accompanying documentation. Emissions from these groupings of sources are presented in the following tables:

DAILY VOC EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone nonattainment area	Point source emissions	Area source emissions	On-road mobile source emissions	Non-road mobile source emissions	Biogenic emissions	Total emissions
Detroit/Ann Arbor	167.08	252.27	327.00	531.03	113.90	1391.28

DAILY CO EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone nonattainment area	Point source emissions	Area source emissions	On-road mobile source emissions	Non-road mobile source emissions	Total emissions
Detroit/Ann Arbor	146.28	45.22	3058.00	862.54	4112.04

DAILY NO_X EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone nonattainment area	Point source emissions	Area source emissions	On-road mobile source emissions	Non-road mobile source emissions	Total emissions
Detroit/Ann Arbor	734.62	56.36	437.00	108.22	1336.20

[1] VMT is the number of miles traveled by vehicles of various types, preferably for each link of the highway system. The VMT is estimated using various models and/or methods.

Detailed information on how each of the above source category groupings was determined is included in the Emission Inventory TSD.

B. Inspection and Maintenance

A detailed analysis of the Michigan I/M SIP submittal is contained in the USEPA's TSD, dated February 1, 1994 from Brad Beeson to the Docket, entitled "Technical Review of the Michigan SIP Submittal to Revise the I/M Program in Southeast Michigan" (I/M TSD), which is available from the Region 5 office listed above.

I. Background and Review Criteria

The Act requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B)(i) requires States to submit SIP revisions for any ozone nonattainment area which has been classified as marginal, pursuant to section 181(a) of the Act, with an existing I/M program that was part of a SIP prior to enactment of the Act, or any area that was required by the Clean Air Act, as amended in 1977 (1977 Act) to have an I/M program, to bring the program up to the level required in pre-1990 USEPA guidance, or to what had been committed to previously in the SIP, whichever was more stringent. Areas classified as moderate and worse ozone nonattainment areas were also subject to this requirement to improve programs to this level.

On November 15, 1993 the Michigan Department of Natural Resources (MDNR) submitted to the USEPA a revision to the Michigan SIP which was intended to address the requirements for an I/M program in the Detroit-Ann Arbor area. The revision included legislation which was signed into law by Governor Engler on November 13, 1993.[2]

At the same time as this legislation was being developed, the MDNR was also in the process of developing a redesignation request from nonattainment to attainment for the Detroit-Ann Arbor moderate ozone nonattainment area.

Section 107(d)(3)(E) of the Act states that an area can be redesignated to attainment if certain conditions are met. One of these conditions is that the USEPA has fully approved the applicable implementation plan under

[2] In addition to legislation revising the I/M program in the Detroit-Ann Arbor area, the State also submitted adopted legislation establishing an I/M program on the west side of the State. For reasons of clarity, however, that program will be the subject of a future Federal Register notice. Today's rulemaking only addresses the State's submittal related to the program in the Detroit-Ann Arbor area.

Detailed information on how each of the above source category groupings was determined is included in the Emission Inventory TSD.

B. Inspection and Maintenance

A detailed analysis of the Michigan I/M SIP submittal is contained in the USEPA's TSD, dated February 1, 1994 from Brad Beeson to the Docket, entitled "Technical Review of the Michigan SIP Submittal to Revise the I/M Program in Southeast Michigan" (I/M TSD), which is available from the Region 5 office listed above.

I. Background and Review Criteria

The Act requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B)(i) requires States to submit SIP revisions for any ozone nonattainment area which has been classified as marginal, pursuant to section 181(a) of the Act, with an existing I/M program that was part of a SIP prior to enactment of the Act, or any area that was required by the Clean Air Act, as amended in 1977 (1977 Act) to have an I/M program, to bring the program up to the level required in pre-1990 USEPA guidance, or to what had been committed to previously in the SIP, whichever was more stringent. Areas classified as moderate and worse ozone nonattainment areas were also subject to this requirement to improve programs to this level.

On November 15, 1993 the Michigan Department of Natural Resources (MDNR) submitted to the USEPA a revision to the Michigan SIP which was intended to address the requirements for an I/M program in the Detroit-Ann Arbor area. The revision included legislation which was signed into law by Governor Engler on November 13, 1993.[2]

At the same time as this legislation was being developed, the MDNR was also in the process of developing a redesignation request from nonattainment to attainment for the Detroit-Ann Arbor moderate ozone nonattainment area.

Section 107(d)(3)(E) of the Act states that an area can be redesignated to attainment if certain conditions are met. One of these conditions is that the USEPA has fully approved the applicable implementation plan under section 110(k) and that the State has met all applicable requirements of section 110 and part D. The USEPA's current approvability criteria for I/M in part require fully adopted rules for all aspects of the proposed SIP revision. In addition, all SIPs submitted must be subject to public hearing before they can be approved.

On November 5, 1992 (57 FR 52950), the USEPA published a final rule (I/M Rule) establishing I/M requirements pursuant to section 182. On June 28, 1994 the USEPA published a proposal to amend requirements pertaining to SIP submissions for areas required to implement a basic I/M program that submit, and otherwise qualify for approval of, a redesignation request ("Proposed I/M Redesignation Rule"). The authority for that amendment is discussed in that proposal.

The I/M Redesignation Rule proposes to allow areas that have requested redesignation to attainment, and are otherwise eligible to obtain approval of the request, to defer adoption and implementation of otherwise applicable requirements established in the originally promulgated I/M rule. For such areas, the USEPA does not believe it is necessary to revise or adopt new regulations which are not essential for clean air, and which would not be implemented after redesignation occurred because they are not necessary for maintenance. The proposed rule applies only to areas that by virtue of their air quality classification are required to implement a basic I/M program and that submit and obtain approval of a redesignation request.

For such areas, the I/M Redesignation Rule proposes that the I/M component of the I/M SIP contain the following four criteria:

(1) Legislative authority for basic I/M meeting all the requirements of subpart S such that implementing regulations can be adopted without any further legislative action,

(2) A provision in the SIP providing that basic I/M be placed in the contingency measures portion of the maintenance plan upon redesignation,

(3) a contingency measure consisting of a commitment by the Governor or his/her designee to adopt regulations to implement the I/M program in response to a specified triggering event, and

(4) a commitment that includes an enforceable schedule for the adoption and implementation of a basic I/M program including appropriate milestones in the event the contingency measure is triggered.

In this rulemaking, the USEPA is considering Michigan's I/M submittal based on the proposed I/M requirements for areas otherwise eligible for redesignation. If the State's redesignation request is not otherwise eligible for approval at the time the USEPA takes final action on it, or if the proposed I/M requirements for redesignation are not codified, Michigan's submittal will be judged by the current I/M approvability criteria as detailed in the USEPA's final I/M rule promulgated on November 5, 1992.

As discussed in the Proposed I/M Redesignation Rule, while the USEPA considers the redesignation request, the State continues to be required to meet all the current SIP submission requirements including fully adopted rules and specific implementation deadlines as required under 40 CFR § 51.372 of the I/M Rule. If the State does not comply with these requirements, it could be subject to sanctions pursuant to section 179. If the redesignation request is approved, any sanctions already imposed or any sanctions clock already triggered would be terminated.

II. Finding of USEPA Review

On November 15, 1993 the State submitted a redesignation request including I/M as a contingency measure for the Detroit-Ann Arbor area to the USEPA.

Using the proposed I/M Redesignation Rule criteria for areas redesignating from nonattainment to attainment, Michigan's I/M SIP submittal for the Detroit-Ann Arbor area is acceptable. The State held public hearings on the State's submittal February 14, 1994 in Detroit, Michigan.

With respect to the first element of the four criteria, the proposed I/M Redesignation Rule requires "legislative authority for basic I/M such that implementing regulations can be adopted without any further legislative action." The legislation adopted by Michigan as a whole includes all the essential elements of a satisfactory basic I/M program. The essential elements include:

- Describing the network type ("test and repair").[3]
- Listing of geographic coverage of program (Wayne, Oakland, Macomb, and possibly Washtenaw if redesignated, or Wayne, Oakland, Macomb, Washtenaw, St. Clair, Livingston, and Monroe if not redesignated).
- Specifying the test type and procedure (idle test with BAR 90 equipment).

[2] In addition to legislation revising the I/M program in the Detroit-Ann Arbor area, the State also submitted adopted legislation establishing an I/M program on the west side of the State. For reasons of clarity, however, that program will be the subject of a future **Federal Register** notice. Today's rulemaking only addresses the State's submittal related to the program in the Detroit-Ann Arbor area.

[3] The parenthetical information refers to the specifics in the Detroit-Ann Arbor, Michigan legislation.

- Listing of other applicable testing procedures (visual tampering inspection).
- Defining subject vehicle population (1975 and later).
- Specifying testing frequency (every 12 months).
- Granting authority to a State agency to develop necessary rules (MDNR).
- Establishing the enforceable obligation in the rule (persons shall not drive a motor vehicle without a valid emissions certificate of compliance or waiver).

In addition to defining the elements essential to the definition of an I/M program, the legislation grants the authority to MDNR to develop the rest of the language necessary to make the program complete, including technical and administrative details. No further legislative action is necessary to authorize or implement the program.

In the event of redesignation, the USEPA believes that the States's approach to implement I/M in the counties of Wayne, Oakland, Macomb, and Washtenaw counties is acceptable and meets the population requirements (geographic coverage) specified in the I/M rule (40 CFR 51.350).

Because the State has authorized and provided the essentials of an I/M program in its adopted legislation, the first element of the criteria proposed in the I/M Redesignation Rule is satisfied.

The second element of the I/M Redesignation Rule proposes to require "a provision in the SIP providing that basic I/M be placed in the contingency measures portion of the maintenance plan upon redesignation." This requirement is satisfied by the provision of section 8(2)(a) which requires a basic I/M program to be implemented as a contingency measure.

The third and fourth elements of the proposed I/M Redesignation Rule require an enforceable schedule and commitment by the Governor or his/her designee for the adoption and implementation of a basic I/M program upon a specified, appropriate triggering event. These elements are satisfied based on language submitted to the USEPA on November 15, 1993 under separate cover, within the State's redesignation application. Section 6.8.3 of the State's Southeast Michigan Redesignation TSD states "implementation of the contingency measure[s] will be completed in a time-frame consistent with schedules of implementation required for SIPs under title I of the Act and corresponding regulations." This commitment was submitted to the USEPA on November 15, 1993 under the signature of Roland Harmes, the Governor's designee. The USEPA assumes that the effective date of the basic I/M legislation as a contingency measure is the date that the State determines that a basic I/M program is necessary, as shown by the urban airshed model (UAM), to correct a violation of the ozone NAAQS. The USEPA further assumes that the basic I/M program will be implemented in the Detroit-Ann Arbor area as a contingency measure 1 year from the effective date of the legislation as stipulated in the I/M rule 40 CFR 51.373(b).[4]

While the USEPA is proposing approval of the State's I/M submittal based on the criteria proposed in the I/M Redesignation Rule, if the State's redesignation request is not approved, or if the alternative approval criteria applicable to redesignation is not codified as proposed, the State's submittal must be judged against the current I/M approvability criteria which require fully adopted rules for all aspects of the program, as detailed in USEPA's final I/M rule of promulgated on November 5, 1992. The State's submittal would then not be approvable because the submittal does not include detailed rules, including cut points, test procedures and standards, quality control procedures, waiver provisions, and program compliance and oversight.

III. Proposed Action

Because the State's submittal meets the I/M approvability criteria for areas redesignating from nonattainment to attainment, USEPA is proposing to approve the I/M plan for the Detroit-Ann Arbor area that was submitted as a revision to the Michigan SIP. Alternatively, USEPA is proposing to disapprove the State's I/M SIP for the Detroit-Ann Arbor area if the State's redesignation request is ultimately not approved or if the I/M Redesignation Rule is not codified as proposed in USEPA's I/M rule before the USEPA finalizes its approval of the redesignation.

C. Redesignation

Under the Act, nonattainment areas can be redesignated to attainment if sufficient data are available to warrant such changes and the area satisfies other criteria contained in section 107(d)(3) of the Act. On November 12, 1993 the State submitted a redesignation request and section 175A maintenance plan. If approved, the section 175A maintenance plan would become a federally enforceable part of the SIP for the Detroit-Ann Arbor area.

[4] Title 40 CFR 51.373(b) specifies the implementation of a basic I/M program within 1 year of obtaining legal authority.

A detailed analysis of the Michigan Redesignation Request and section 175A Maintenance Plan SIP submittal for the Detroit-Ann Arbor area is contained in the USEPA's TSD, dated February 24, 1994 from Jacqueline Nwia to the Docket, entitled "TSD for the Request to Redesignate the Detroit/Ann Arbor, Michigan Moderate Nonattainment Area to Attainment for Ozone and the Proposed Revision to the Michigan Ozone SIP for a 175A Maintenance Plan" and "Amendments to the February 24, 1994 TSD for the Request to Redesignate the Detroit/Ann Arbor, Michigan Moderate Nonattainment Area to Attainment for Ozone and the Proposed Revision to the Michigan Ozone SIP for a 175A Maintenance Plan," dated June 21, 1994 (Redesignation/Maintenance Plan TSD), which are available from the Region 5 office listed above.

I. Background

The 1977 Act required areas that were designated nonattainment based on a failure to meet the ozone NAAQS, to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. The Detroit-Ann Arbor area was designated under section 107 of the 1977 Act as nonattainment with respect to the ozone NAAQS (43 FR 8962, March 3, 1978 and 43 FR 45993, October 5, 1978).

After enactment of the amended Act on November 15, 1990 the nonattainment designation of the Detroit-Ann Arbor area continued by operation of law according to section 107(d)(1)(C)(i) of the Act; furthermore, it was classified by operation of law as moderate for ozone pursuant to section 181(a)(1) (56 FR 56694, November 6, 1991 and 57 FR 56762, November 30; 1992), codified at 40 CFR 81.323.

The Detroit-Ann Arbor area more recently has ambient monitoring data that show no violations of the ozone NAAQS, during the period from 1991 through 1993. The area, therefore, became eligible for redesignation from nonattainment to attainment consistent with the amended Act, and to ensure continued attainment of the ozone standard, Michigan also submitted an ozone maintenance SIP for the Detroit-Ann Arbor on November 12, 1993. On November 12, 1993 Michigan requested redesignation of the area to attainment with respect to the ozone NAAQS. On October 22, 1993 Michigan held a public hearing on the maintenance plan component of the redesignation request.

II. Evaluation Criteria

The 1990 Amendments revised section 107(d)(3)(E) to provide five

specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;
2. The area has met all relevant requirements under section 110 and part D of the Act;
3. The area has a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement must be permanent and enforceable;
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

III. Review of State Submittal

The Michigan redesignation request for the Detroit-Ann Arbor area will meet the five requirements of section 107(d)(3)(E), noted above, if the VOC RACT "fix-up,"[5] and "catch-up,"[6] and major non-CTG submittals[7], the 1990 base year emission inventory, basic I/M, and the section 182(f) NO_x exemption petition are also fully approved by the USEPA.[8] Because the maintenance plan is a critical element of the redesignation request, USEPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. USEPA's Redesignation/Maintenance Plan TSD contains a more in-depth analysis of the submittal with respect to certain of these evaluation criteria.

1. Attainment of the ozone NAAQS

The Michigan request is based on an analysis of quality-assured ozone air quality data which is relevant to the maintenance plan and to the redesignation request. Ambient air ozone monitoring data for calendar year 1991 through calendar year 1993[9] show

[5] Section 182(b)(2) of the Act requires that moderate and above ozone nonattainment areas adopt RACT rules for three types of sources or source categories, i.e. RACT for source categories covered by the CTGs and for major sources that are not subject to a CTG, regardless of time of nonattainment designation.

[6] Section 182(a)(2)(A) of the Act requires that ozone nonattainment areas submit rules and corrections to existing VOC rules that were required under the section 172(b)(3) RACT provision of the pre-amended Act (and related guidance).

[7] Rules for major non-CTG sources are a requirement under the Section 182(b)(2) catch-ups.

[8] The emission statement program was fully approved in a final rulemaking action on March 8, 1994 (59 FR 10752).

[9] The redesignation request documentation presents 1990–1992 ambient air quality monitoring data demonstrating that the Detroit-Ann Arbor area attained the ozone NAAQS. In order to submit the redesignation request before November 15, 1993, Michigan prepared most of this documentation during the 1993 ozone season, when the 1993 ozone data was not available. However, the USEPA reviewed the ambient monitoring data for 1993 contained in AIRS which demonstrates that the area continues to attain the ozone NAAQS.

specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;

2. The area has met all relevant requirements under section 110 and part D of the Act;

3. The area has a fully approved SIP under section 110(k) of the Act;

4. The air quality improvement must be permanent and enforceable;

5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

III. Review of State Submittal

The Michigan redesignation request for the Detroit-Ann Arbor area will meet the five requirements of section 107(d)(3)(E), noted above, if the VOC RACT "fix-up,"[5] and "catch-up,"[6] and major non-CTG submittals[7], the 1990 base year emission inventory, basic I/M, and the section 182(f) NO_x exemption petition are also fully approved by the USEPA.[8] Because the maintenance plan is a critical element of the redesignation request, USEPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. USEPA's Redesignation/Maintenance Plan TSD contains a more in-depth analysis of the submittal with respect to certain of these evaluation criteria.

1. Attainment of the ozone NAAQS

The Michigan request is based on an analysis of quality-assured ozone air quality data which is relevant to the maintenance plan and to the redesignation request. Ambient air ozone monitoring data for calendar year 1991 through calendar year 1993[9] show an expected exceedance rate for the ozone standard of less than 1.0 per year of the ozone NAAQS in the Detroit-Ann Arbor area (40 CFR 50.9 and appendix H). Because the Detroit-Ann Arbor area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the Detroit-Ann Arbor area has met the first statutory criterion of attainment of the ozone NAAQS. The State committed to continue monitoring in this area in accordance with 40 CFR part 58. (If, however, complete quality assured data shows violations of the ozone NAAQS before the final USEPA action on this redesignation, the USEPA proposes that it disapprove the redesignation request.)

2. Meeting Applicable Requirements of Section 110 and Part D

On May 6, 1980 (45 FR 29801) and February 7, 1985 (50 FR 5250), USEPA fully approved Michigan's SIP for the Detroit-Ann Arbor area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act with the exception that Michigan must meet the part D RACT requirements for the ozone SIP. The 1990 Act, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to satisfy the requirement that the SIP meet all applicable requirements under the 1990 Act, USEPA has reviewed the SIP to ensure that it contains all measures that were due under the amended 1990 Act prior to or at the time Michigan submitted its redesignation request for the Detroit-Ann Arbor area. The USEPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation request to be approved, the State has met all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the Act that come due subsequently, continue to be applicable to the area at those later dates [see section 175A(c)] and, if the redesignation of the area is disapproved, the State remains obligated to fulfill those requirements.

(A.) *Section 110 Requirements.* Although section 110 was amended by the Act, the Detroit-Ann Arbor area SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, USEPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended (57 FR 27936 and 23939, June 23, 1993) many are duplicative of other requirements of the Act. The USEPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

(B.) *Part D Requirements.* Before the Detroit-Ann Arbor area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble for the Implementation of title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). The Detroit-Ann Arbor area was classified as moderate (56 FR 56694, November 6, 1991), codified at 40 CFR 81.323. Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176 as well as the applicable requirements of subpart 2 of part D.

(B1.) Subpart 1 of Part D—Section 172(c) Provisions. Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years after an area has been designated as nonattainment under the amended Act. The USEPA has not determined that these requirements are applicable to ozone nonattainment areas on or before November 12, 1993—the date the State submitted a complete redesignation request for the Detroit-Ann Arbor area. Therefore, the State was not required to meet these requirements for redesignation purposes. In addition, as discussed below, Michigan has either satisfied the section 172(c) requirements or, as is the case for several of them, they lose their continued force once an area has demonstrated attainment and maintenance of the ozone NAAQS.

(1) RFP is defined as progress that a nonattainment area must make each year toward attainment of the ozone NAAQS. This requirement only has relevance during the time it takes an area to attain the NAAQS. Because the Detroit-Ann Arbor area has attained the ozone NAAQS, its SIP has already achieved the necessary RFP toward that goal.

(2) In addition, because the Detroit-Ann Arbor has attained the ozone NAAQS and is no longer subject to an RFP requirement, the section 172(c)(9)

---

[5] Section 182(b)(2) of the Act requires that moderate and above ozone nonattainment areas adopt RACT rules for three types of sources or source categories, i.e. RACT for source categories covered by the CTGs and for major sources that are not subject to a CTG, regardless of time of nonattainment designation.

[6] Section 182(a)(2)(A) of the Act requires that ozone nonattainment areas submit rules and corrections to existing VOC rules that were required under the section 172(b)(3) RACT provision of the pre-amended Act (and related guidance).

[7] Rules for major non-CTG sources are a requirement under the Section 182(b)(2) catch-ups.

[8] The emission statement program was fully approved in a final rulemaking action on March 8, 1994 (59 FR 10752).

[9] The redesignation request documentation presents 1990–1992 ambient air quality monitoring data demonstrating that the Detroit-Ann Arbor area attained the ozone NAAQS. In order to submit the redesignation request before November 15, 1993, Michigan prepared most of this documentation during the 1993 ozone season, when the 1993 ozone data was not available. However, the USEPA reviewed the ambient monitoring data for 1993 contained in AIRS which demonstrates that the area continues to attain the ozone NAAQS.

contingency measures are not applicable unless the redesignation request and maintenance plan are not finally approved. Such contingency measures must take effect if the area fails to meet an RFP milestone or fails to attain the ozone NAAQS; the Detroit-Ann Arbor area no longer has RFP milestones and has already attained the NAAQS. However, section 175A contingency measures still apply.

(3) Similarly, once an area is redesignated to attainment, nonattainment new source review (NSR) requirements are not generally applicable. The area then becomes subject to prevention of significant deterioration (PSD) requirements instead of the NSR program (57 FR 13564). The State has an acceptable program for review of new sources (45 FR 29790, May 6, 1980 and 47 FR 3765, February 7, 1985). The PSD program was delegated to the State of Michigan on September 10, 1979 and amended on November 7, 1983 and September 26, 1988. Moreover, as discussed with respect to the NSR requirements of part D, the USEPA believes that the applicability of the part C PSD program to maintenance areas makes it unnecessary to require that an area have obtained full approval of the NSR revisions required by part D in order to be redesignated.

(4) The 172(c)(3) requirement for an emissions inventory has been met by submission and proposed approval of the 1990 base year emission inventory required by section 182(a)(1).

(5) No additional Reasonably Available Control Measures (RACM) controls beyond what may already be required in the SIP are necessary upon redesignation to attainment. The General Preamble (57 FR 13560, April 16, 1992) explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the areas attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment.

(6) For purposes of redesignation, the Michigan SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, under the Act were satisfied. Title 40 CFR 52.1172 evidences that the Michigan SIP was approved under section 110 of the Act, and further that it satisfies all part D, title I (as amended in 1977) requirements on May 6, 1980 (45 FR 29801) and February 7, 1985 (50 FR 5250) with the exception that Michigan must meet the part D RACT requirements for the ozone SIP.

(B2.) Subpart 1 of Part D—Section 176 Conformity Provisions. Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required the USEPA to promulgate. Congress provided for the State revisions to be submitted on year after the date for promulgation of the final USEPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the implementation of title I informed States that its conformity regulations would establish a submittal date [see 57 FR 13498, 13557 (April 16, 1992)]. The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of Michigan is required to submit a SIP revisions containing transportation and general conformity criteria and procedures consistent with those established in the Federal rule by November 25 and 30, 1994, respectively. Because the deadline for such submittals has not yet come due, it is not an applicable requirement, under section 107(d)(3)(E)(v), for approval of this redesignation request.

(B3.) Subpart 2 Requirements. Detroit-Ann Arbor is a moderate ozone nonattainment area. Under subpart 2, as of the date the State submitted a complete redesignation request, it is required to have met the requirements of section 182(a)(1), (2), and (3), section 182(b)(2), and (4), and section 182(f). The State has submitted SIP revisions which have not yet been approved by the USEPA but must be in order to find that the State has met all the applicable requirements of the following sections of the Act: Section 182(a)(1) 1990 base year emission inventory, section 182(a)(2)(A) VOC RACT "fix-ups," section 182(a)(2)(B) I/M fix-ups, section 182(b)(2) ("catch-ups") VOC RACT for each VOC source covered by a CTG issued between enactment of the Act and the attainment date (since the due date for these rules is November 15, 1994 which has not come due yet, it is not a requirement for approval of this redesignation request), all VOC sources covered by any CTG issued before the date of enactment of the Act, and all other major stationary sources of VOC located in the area, section 182(b)(4) basic I/M, and section 182(f) NO_x requirements. Section 182(b)(3) Stage II vapor recovery was also an applicable requirement. However, the "onboard rule" [10] was published on April 6, 1994 and section 202(a)(6) of the Act provides that once onboard rules are promulgated, Stage II vapor recovery will no longer be a requirement. In addition, Michigan's emission statement program SIP submitted to satisfy the section 182(a)(3)(B) requirement was fully approved in a final USEPA rulemaking on March 8, 1994 (59 FR 10752). The USEPA is proposing to approve this redesignation request notwithstanding the lack of fully-approved provisions submitted in compliance with the NSR requirements of part D, section 182(b)(5) of the CAA. The USEPA believes, as suggested by the General Preamble at 57 FR 13564 (April 16, 1992), that the applicability of the part C PSD program to maintenance areas makes it unnecessary to require that an area have obtained full approval of NSR revisions required by part D in order to be redesignated. The USEPA believes that this interpretation of the Act is appropriate notwithstanding section 175A(d)'s requirements that the contingency provisions of a maintenance plan include a commitment on the part of the State to implement all measures, to control the relevant air pollutant, that were contained in the SIP prior to redesignation. The term "measure" is not defined in section 175A(d) and it appears that Congress utilized the terms "measure" or "control measure" differently in different provisions of the CAA that concern the PSD and NSR permitting programs.

Compare section 110(a)(2)(A) and (C) with section 161. In light of this ambiguity in the use of the term "measure," the USEPA believes that the term "measure" as used in section 175A(d) may be interpreted so as not to include NSR permitting programs. That this is an appropriate interpretation is further supported by USEPA's historical practice dating back even before the 1990 CAA, of not requiring redesignating areas to demonstrate through modeling or otherwise a justification for replacing the nonattainment NSR program with the PSD program once an area was redesignated. Rather the USEPA has historically allowed the NSR program to be automatically replaced by the PSD program upon redesignation. Michigan has presented an adequate demonstration that the State has met all the requirements applicable to the area under section 110 and part D. The final approval of this redesignation request is contingent on the final approval of the SIP submittals as noted above. These requirements, their applicability and status are discussed in more detail in the USEPA's Redesignation/ Maintenance Plan TSD.

3. Fully Approved SIP Under Section 110(k) of the Act

In other sections of this action, USEPA is proposing approval of the 1990 base year emission inventory and basic I/M (meeting the criteria of the June 28, 1994 proposed I/M Redesignation Rule). The SIP submittals for satisfying the requirements for VOC RACT catch-ups, and fix-ups are being acted upon in a separate action. The 182(f) NO_x exemption petition also is being acted upon in a separate action. Once USEPA fully approves these submittals, the State will have a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended Act, USEPA approved the Michigan SIP control strategy for the Detroit-Ann Arbor nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. Furthermore, numerous Federal measures apply to the Detroit-Ann Arbor area. The State provided a detailed discussion of the development of the emission reductions of ozone precursors (VOC and NO_x) from 1988–

[10] The rule which was published by the USEPA on April 6, 1994 requires a vehicle based (onboard) system for the control of vehicle refueling emissions. Gasoline vapors which are normally vented to the atmosphere, are captured in a carbon canister and stored for later use by the vehicle's engine.

differently in different provisions of the CAA that concern the PSD and NSR permitting programs.

Compare section 110(a)(2)(A) and (C) with section 161. In light of this ambiguity in the use of the term "measure," the USEPA believes that the term "measure" as used in section 175A(d) may be interpreted so as not to include NSR permitting programs. That this is an appropriate interpretation is further supported by USEPA's historical practice dating back even before the 1990 CAA, of not requiring redesignating areas to demonstrate through modeling or otherwise a justification for replacing the nonattainment NSR program with the PSD program once an area was redesignated. Rather the USEPA has historically allowed the NSR program to be automatically replaced by the PSD program upon redesignation. Michigan has presented an adequate demonstration that the State has met all the requirements applicable to the area under section 110 and part D. The final approval of this redesignation request is contingent on the final approval of the SIP submittals as noted above. These requirements, their applicability and status are discussed in more detail in the USEPA's Redesignation/ Maintenance Plan TSD.

3. Fully Approved SIP Under Section 110(k) of the Act

In other sections of this action, USEPA is proposing approval of the 1990 base year emission inventory and basic I/M (meeting the criteria of the June 28, 1994 proposed I/M Redesignation Rule). The SIP submittals for satisfying the requirements for VOC RACT catch-ups, and fix-ups are being acted upon in a separate action. The 182(f) NO_x exemption petition also is being acted upon in a separate action. Once USEPA fully approves these submittals, the State will have a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended Act, USEPA approved the Michigan SIP control strategy for the Detroit-Ann Arbor nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. Furthermore, numerous Federal measures apply to the Detroit-Ann Arbor area. The State provided a detailed discussion of the development of the emission reductions of ozone precursors (VOC and NO_x) from 1988–1993. The State attributed the improvement in air quality that led to attainment of the ozone NAAQS to the federally enforceable Federal Motor Vehicle Control Program (FMVCP) and lower Reid Vapor Pressure (RVP) [1] control measures. The emission reductions achieved from 1988 through 1993 are 226 tons VOC (21 percent) and 45 tons of NO_x (3.4 percent) per day. In association with its emission inventory discussed below, the State demonstrated that point source VOC emissions were not artificially low due to local economic downturn. This was accomplished by setting all growth factors at a minimum value of 1.0 for 1990 and beyond. The USEPA finds that the combination of existing USEPA-approved SIP and Federal measures contribute to the permanence and enforceability of reduction in ambient ozone levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. Section 175A(d) requires that the contingency provisions include a requirement that the State will implement all control measures that were contained in the SIP prior to redesignation as an attainment area. In this action, USEPA is proposing approval of the State of Michigan's maintenance plan for the Detroit-Ann Arbor area because USEPA finds that Michigan's submittal meets the requirements of section 175A provided that the State's contingency measures that were required as SIP revisions prior to the submission of the redesignation request are fully approved. If USEPA determines after notice and comment that it should give final approval to the maintenance plan, the Detroit-Ann Arbor nonattainment area will have a fully approved maintenance plan in accordance with section 175A.

(A) *Emissions Inventory—Base Year Inventory.* The State has adequately developed an attainment emission inventory for 1993 that identifies 790 tons of VOC and 1336 tons of NO_x per day as the level of emissions in the area sufficient to attain the ozone NAAQS. The 1993 attainment inventory was based on the comprehensive inventories of VOC and NO_x emissions from area, stationary, and mobile sources for 1990. Consistent with emission inventory guidance, the 1990 base year emission inventory represents 1990 average summer day actual emissions for the Detroit-Ann Arbor area. Since the projected 1993 emissions are lower than the actual 1990 emissions (providing a more stringent attainment inventory) and 1993 is the attainment year, it is appropriate to utilize projected 1993 emissions for the attainment year inventory. Furthermore, the 1990 base year emission inventory was prepared in accordance with USEPA guidance. USEPA's TSDs prepared for the 1990 base year emission inventory (Emission Inventory TSD) SIP revision and the redesignation request (Redesignation/ Maintenance Plan TSD) contain more in-depth details regarding the emission inventories for the Detroit-Ann Arbor area.

The 1990 base year emission inventory also served as the basis for calculations to demonstrate maintenance by projecting emissions forward to the years 1993, 1996, 2000, and 2005. Projections are based on growth factors extracted from the Southeast Michigan Council of Governments Regional Development Forecast (RDF). Supplemental information used in the development of emission projections include source-specific data for electric utilities, automobile manufacturing, aircraft, and gasoline marketing.

Growth factors are derived from employment forecasts by two-digit Source Industrial Code by county. In addition, product output data was used to develop growth factors for motor vehicle manufacturing, and utilities. The area source growth factors used from RDF were based on population or housing data. Furthermore, all growth factors that were less than 1.0 were set equal to 1.0 for 1990 and beyond to offset any effects of negative growth possibly due to economic downturns.

In developing the mobile source emission estimates, the MOBILE5a model was used. The significant input parameters for the MOBILE5a model are analyzed in detail in the Redesignation/ Maintenance Plan TSD.

[1] VOC emission reductions, in part, resulted from RVP reductions from 11.0 psi in 1988 to 9.0 psi in 1993.

inventories for the Detroit-Ann Arbor area.

The 1990 base year emission inventory also served as the basis for calculations to demonstrate maintenance by projecting emissions forward to the years 1993, 1996, 2000, and 2005. Projections are based on growth factors extracted from the Southeast Michigan Council of Governments Regional Development Forecast (RDF). Supplemental information used in the development of emission projections include source-specific data for electric utilities, automobile manufacturing, aircraft, and gasoline marketing.

Growth factors are derived from employment forecasts by two-digit Source Industrial Code by county. In addition, product output data was used to develop growth factors for motor vehicle manufacturing, and utilities. The area source growth factors used from RDF were based on population or housing data. Furthermore, all growth factors that were less than 1.0 were set equal to 1.0 for 1990 and beyond to offset any effects of negative growth possibly due to economic downturns.

In developing the mobile source emission estimates, the MOBILE5a model was used. The significant input parameters for the MOBILE5a model are analyzed in detail in the Redesignation/Maintenance Plan TSD.

The stationary source emission estimates (point and area) were developed using the geocoded emissions modeling and projections system (GEMAP). This emission projection model and supporting documentation were reviewed by Region 5 and the Emission Inventory Branch of the OAQPS during the developmental stages of the redesignation request and appear to be acceptable since GEMAP employs methodologies equivalent to the applicable USEPA guidance on emission projections (June 21, 1993 letter to John Schroeder and August 3, 1993 Record of Conversation with OAQPS, RADIAN and Region 5).

(B.) *Demonstration of Maintenance—Projected Inventories.* In order to demonstrate continued attainment, the State projected anthropogenic 1990 actual emissions of VOC and NO_x emissions to the years 1993, 1996, 2000, and 2005. These emission estimates are presented in the tables below and demonstrate that the VOC and NO_x emissions will remain below the attainment year emissions (1993). In fact, the emissions projections through the year 2005 show that emissions will be reduced from 1993 levels by 21 tons of VOC and 98 tons of NO_x per day by 2005. These emission reductions are primarily the result of the implementation of FMVCP. It is noted that the emission projections are conservative since they do not account for emission reductions that will result from the anticipated implementation of other control measures and programs during this time period.

VOC Emission Inventory Summary (Tons Per Day)

	1990	1993	1996	2000	2005
Point	153	154	155	156	157
Area	377	382	390	402	416
Mobile	326	254	234	214	196
Total	856	790	779	772	769

NO_x Emission Inventory Summary (Tons Per Day)

	1990	1993	1996	2000	2005
Point	711	735	756	685	725
Area	195	199	203	206	210
Mobile	437	402	362	326	303
Total	1,343	1,336	1,321	1,217	1,238

The emission projection methodologies used for the maintenance demonstration are the same as those used for the attainment inventory and discussed above.

The emission projections show that the emissions are not expected to exceed the level of the base year 1993 inventory during the 10-year maintenance period. Further emission reductions that will occur during this maintenance demonstration that are not accounted for in the emission projections presented in the tables above such as title III maximum achievable control technology for air toxics, and onboard refueling vapor recovery. The projected emission inventories were prepared in accordance with USEPA guidance. Finally, USEPA's Redesignation/Maintenance Plan TSD contains more in-depth details regarding the projected emission inventories for the Detroit-Ann Arbor area.

To demonstrate maintenance out to the year 2005 following redesignation, the State did not rely on certain SIP-approved measures. The State now requests that these measures (discussed below) be moved from the applicable SIP into the maintenance plan as contingency measures.

The State has demonstrated maintenance without basic I/M, Stage I expansion [12], Stage II and NO_x RACT. The Act required a SIP submittal for these control measures prior to the submittal of the redesignation request, and consequently, they are required to be fully adopted and fully approved into the SIP prior to or at the time of full approval of the redesignation request. However, since the State has demonstrated attainment and maintenance without these programs these measures can be incorporated into the area's maintenance plan as contingency measures (see, e.g., September 17, 1993 Shapiro memorandum). The June 28, 1994 Proposed I/M Redesignation Rule proposes to allow basic I/M to be included as a contingency measure in the form of enabling legislation. Stage I must be fully adopted since it is a SIP element that was due prior to the submittal of the redesignation request. Stage II, however, does not have to be fully adopted. In fact, since the "onboard rule" was published on April

[12] The expanded applicability of Stage I to county boundaries of each nonattainment area classified as moderate and above.

period. The tracking plan for the Detroit-Ann Arbor area consists of two components; continued ambient ozone monitoring and inventory updates. To demonstrate ongoing compliance with the NAAQS, Michigan will continue to monitor ozone levels throughout the area. The State will also conduct periodic inventories for the redesignated area every 3 years using the most recent emission factors, models and methodologies. The inventories will begin in 1996 with completion of the 1996 inventory by July 1, 1998. Periodic inventories for 1999, 2002, and 2005 will be completed with submittal to the USEPA on the first of October 2 years after the inventory year. The periodic inventory will consist of reviewing the assumptions of the maintenance demonstration such as VMT, population, employment, etc. If substantial changes are discovered, the State will reproject the emissions for the maintenance period.

The contingency plan contains only one trigger, a monitored air quality violation of the ozone NAAQS, as defined in 40 CFR 50.9. The trigger date will be the date that the State certifies to the USEPA that the air quality data are quality assured and no later than 30 days after an ambient air quality violation is monitored.

D. Contingency Plan

The level of VOC and NO_x emissions in the Detroit-Ann Arbor area will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Despite best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the Act, Michigan has provided contingency measures with a schedule for implementation in the event of a future ozone air quality problem. Contingency measures contained in the plan include basic I/M, NO_x RACT, Stage I expansion, Stage II, RVP reduction to 7.8 psi and intensified RACT for degreasing operations. In instances where the contingency measures must be actually adopted and implemented, the schedules specified for these SIPs in the Act and any corresponding regulations will be observed, with the exception of implementation of 7.8 RVP and intensified degreasing rules which will commence 12 months after the decision to employ these measures. Once the triggering event, a violation of the ozone NAAQS, is confirmed, the State will implement one or more appropriate contingency measure. Selection of the contingency measure(s) will be based on

period. The tracking plan for the Detroit-Ann Arbor area consists of two components; continued ambient ozone monitoring and inventory updates. To demonstrate ongoing compliance with the NAAQS, Michigan will continue to monitor ozone levels throughout the area. The State will also conduct periodic inventories for the redesignated area every 3 years using the most recent emission factors, models and methodologies. The inventories will begin in 1996 with completion of the 1996 inventory by July 1, 1998. Periodic inventories for 1999, 2002, and 2005 will be completed with submittal to the USEPA on the first of October 2 years after the inventory year. The periodic inventory will consist of reviewing the assumptions of the maintenance demonstration such as VMT, population, employment, etc. If substantial changes are discovered, the State will reproject the emissions for the maintenance period.

The contingency plan contains only one trigger, a monitored air quality violation of the ozone NAAQS, as defined in 40 CFR 50.9. The trigger date will be the date that the State certifies to the USEPA that the air quality data are quality assured and no later than 30 days after an ambient air quality violation is monitored.

D. Contingency Plan

The level of VOC and NO_x emissions in the Detroit-Ann Arbor area will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Despite best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the Act, Michigan has provided contingency measures with a schedule for implementation in the event of a future ozone air quality problem. Contingency measures contained in the plan include basic I/M, NO_x RACT, Stage I expansion, Stage II, RVP reduction to 7.8 psi and intensified RACT for degreasing operations. In instances where the contingency measures must be actually adopted and implemented, the schedules specified for these SIPs in the Act and any corresponding regulations will be observed, with the exception of implementation of 7.8 RVP and intensified degreasing rules which will commence 12 months after the decision to employ these measures. Once the triggering event, a violation of the ozone NAAQS, is confirmed, the State will implement one or more appropriate contingency measure. Selection of the contingency measure(s) will be based on a technical analysis using UAM. The Governor will select the contingency measures within 6 months of a triggering event. The adoption and implementation schedules for the selected contingency measure(s) will be submitted to the USEPA with the UAM analysis. The USEPA understands, on the basis of the State's submission, that the adoption and implementation schedules specified in the Act and any corresponding regulations would be observed; therefore, the following schedules will be applicable for the contingency measures specified in the contingency plan:

- Basic I/M would be implemented as a contingency measure 1 year from the effective date of the legislation, which would be the date of the decision to employ a basic I/M program to correct a violation of the ozone NAAQS. Part 40 CFR 51.373(b) stipulates implementation of basic I/M within 1 year of obtaining legal authority.
- NO_x RACT rules would be submitted 2 years from date of the decision to employ NOx RACT as a contingency measure. The NO_x RACT rules would be implemented 30.5 months from the date NOx RACT rules are submitted to the USEPA or 54.5 months from the date of the decision to employ NO_x RACT as a contingency measure. This schedule is consistent with section 182(b)(2)(C) which is the schedule applicable to the adoption and implementation of NO_x RACT as specified by section 182(f).
- Implementation of Stage I expansion to the entire seven county Detroit-Ann Arbor area (currently, Stage I is implemented in Wayne, Oakland and Macomb counties) would be in accordance with the schedule contained in Michigan's Stage I legislation (Senate Bill 726, section 9i). Gasoline dispensing facilities of any size constructed after November 15, 1990 must implement Stage I within 6 months of the decision to employ Stage I as a contingency measure. Existing facilities dispensing 100,000 gallons or more of gasoline a month must implement Stage I within 1 year and facilities dispensing less than 100,000 gallons of gasoline a month must implement Stage I within 2 years of the decision to employ Stage I as a contingency measure.
- Stage II would be implemented according to the same schedule set forth for Stage I, since they are contained in the same legislation (Senate Bill 726), but will only be implemented in the counties of Wayne, Oakland, Macomb and Washtenaw.

Under separate cover, the State has submitted to the USEPA, as SIP revisions, fully adopted legislation allowing implementation of a basic I/M program, Stage I, and Stage II in the Detroit-Ann Arbor area. The legislation provide for implementation of these programs as contingency measures within areas redesignated to attainment for ozone.

The USEPA's Redesignation/Maintenance Plan TSD provides a more detailed discussion of each contingency measure.

The USEPA finds that the five contingency measures provided in the State submittal meet the requirements of section 175A(d) of the Act since they would promptly correct any violation of the ozone NAAQS.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the State has agreed to submit a revised maintenance SIP 8 years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional 10 years.

IV. Proposed Action

The USEPA proposes to approve the Detroit-Ann Arbor ozone maintenance plan as a SIP revision meeting the requirements of section 175A if there is full and final approval of the outstanding VOC RACT requirements previously discussed, 1990 base year emission inventory, basic I/M (meeting the criteria of the June 28, 1994 proposed I/M Redesignation Rule), and the section 182(f) NO_x exemption petition. In addition, the USEPA is proposing approval of the redesignation request for the Detroit-Ann Arbor area, subject to final approval of the maintenance plan, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation pending full approval of the SIP elements listed above. (In the alternative, if ambient air quality violations occur before USEPA takes final action on the proposed redesignation or if the USEPA does not fully approve any of the SIP revisions listed above, the USEPA proposes to disapprove this redesignation request.)

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Ozone SIPs are designed to satisfy the requirements of part D of the Act and to provide for attainment and maintenance of the ozone NAAQS. This proposed

redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_x emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the USEPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by USEPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [section 173(b) of the Act] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

D. Procedural Background

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future action will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of 2 years (54 FR 2222). The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12866 which superseded Executive order 12291 on September 30, 1993.

E. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. section 603 and 604. Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 1994. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements. (section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Hydrocarbons, Intergovernmental relations, Carbon monoxide, Motor vehicle pollution, Particulate matter, Reporting and record keeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 24, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–17556 Filed 7–20–94; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 300

[FRL–5017–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the C&J Disposal site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the C&J Disposal site from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the C&J Disposal site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the C&J Disposal site from the NPL may be submitted on or before August 19, 1994.

ADDRESSES: Comments concerning the deletion of the C&J Disposal site from the NPL may be submitted to: Jack O'Dell, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 29–102, New York, NY 10278.

Comprehensive information on the C&J Disposal site is contained in the EPA Region II public docket, which is located at EPA's Region II office (room 2900), and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact Mr. O'Dell at (212) 264–1263.

Background information from the Regional public docket is also available for viewing at the C&J Disposal site's Administrative Record repository located at: Hamilton Village Public Library, 13 Broad Street, Hamilton, NY 13346.

Supplementary Information

Table of Contents:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region II announces its intent to delete the C&J Disposal site from the NPL and requests public comment on this action. The NPL is Appendix B to the NCP, which EPA promulgated pursuant to Section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (the "Fund"). Pursuant to Section 300.425 (e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such site warrant action.

EPA will accept comments concerning the C&J Disposal site for thirty (30) days after publication of this notice in the **Federal Register** (until August 19, 1994).

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the C&J Disposal site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR Section 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

1. That responsible or other persons have implemented all appropriate response actions required; or
2. All appropriate Fund-financed responses under CERCLA have been implemented, and no further cleanup by responsible parties is appropriate; or
3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist agency management.

The following procedures were used for the intended deletion of the C&J Disposal site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.
2. The State of New York has concurred with the deletion decision.
3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other

may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (the "Fund"). Pursuant to Section 300.425 (e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such site warrant action.

EPA will accept comments concerning the C&J Disposal site for thirty (30) days after publication of this notice in the **Federal Register** (until August 19, 1994).

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the C&J Disposal site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR Section 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

1. That responsible or other persons have implemented all appropriate response actions required; or
2. All appropriate Fund-financed responses under CERCLA have been implemented, and no further cleanup by responsible parties is appropriate; or
3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist agency management.

The following procedures were used for the intended deletion of the C&J Disposal site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.
2. The State of New York has concurred with the deletion decision.
3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on July 20, 1994 and concluding on August 19, 1994.
4. The Region has made all relevant documents available in the regional office and the local site information repository.

EPA Region II will accept and evaluate public comments and prepare a Responsiveness Summary which will address the comments received, before a final decision is made. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions.

If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next update. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA Region II.

IV. Basis for Intended Site Deletion

Site History and Background

The C&J Disposal site, located in the Town of Eaton, Madison County, New York, included a rectangular disposal trench which measured approximately 140 feet by 40 feet. The disposal trench was situated between a former railroad bed and an active agricultural field, and was on property immediately adjacent to residential property owned by C&J Leasing of Paterson, New Jersey. Approximately 100 feet south of where the trench was located is a small pond and adjacent wetlands which drain to Woodman Pond, a back-up water supply for the Village of Hamilton. There are twelve residences in the vicinity and downgradient of the site which use private wells as their source of drinking water.

During the 1970s, the trench area was used for the disposal of industrial wastes, although never licensed or permitted for that purpose. In March 1976, C&J Leasing was observed dumping what appeared to be paint sludges and other liquid industrial waste materials into the trench. An inspection of the site by the New York State Department of Environmental Conservation (NYSDEC) and the Village of Hamilton engineer revealed 75–100 drums lying in a pool of liquid waste. The trench was subsequently covered with fill, reportedly by C&J Leasing, apparently burying the drums observed in March 1976.

Sampling was conducted at the site by NYSDEC in 1985 and by EPA in 1986. Surficial soil samples obtained from the site revealed the presence of phenolic compounds, phthalates, various volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs) and lead. One of the phthalates, bis (2-ethylhexyl) phthalate, and elevated levels of lead were detected in the sediments of the small pond. The sampling of local residential wells in 1986 and later in 1988, by the New York State Department of Health (NYSDOH), did not detect any contaminants from the site.

The site was placed on the NPL in March 1989.

In April 1989, prior to the start of the RI/FS, the site was subject to an unauthorized excavation by the principals of C&J Leasing, leaving two large holes and three stockpiles of soil and waste material. The drums that were believed to have been previously buried may have been removed at this time, or earlier, and taken off-site. An extensive follow-up investigation failed to determine where the drums may have been taken.

In October 1989, EPA initiated the RI/FS. Results from the RI indicated that the contaminants at the site were confined to the waste disposal trench, with the exception of some low levels of contamination in the sediments of the small pond. The total volume of waste material and contaminated soil and debris in the disposal trench was estimated at 1,250 cubic yards (i.e., contained in the area of 140 feet by 40 feet and to a depth of 6 feet). The waste was determined to be non-uniformly distributed and comprised of soil mixed with a light-colored, friable, plastic-like residue and/or a similar synthetic matter, crushed drums and plastic bags (drum liners) contaminated with the same or similar plastic residue, and some wood debris.

The primary contaminants found in the trench area were various phthalates (i.e., bis(2-ethylhexyl) phthalate, di-n-octylphthalate, and di-n-butylphthalate), phenols (i.e., 2,4-dimethyl phenol, and 4-methylphenol) and VOCs (i.e., benzene, ethylbenzene, toluene, xylenes, and 4-methyl-2-pentanone). Lead, which was found at elevated levels during limited testing by EPA in 1986, was detected above background levels in only one sample during extensive RI sampling. Lead was also found at significantly elevated levels during EPA's post-RI sampling in 1991. A wide variety of PAHs were also found in the disposal trench and in surrounding surface soils. Since the PAHs were attributable to the old

railroad bed (due to their association with products used for railroad construction, operation, and maintenance, as well as where the PAHs were located at the site), they were considered to be background.

While some of the waste materials in the trench were in direct contact with the shallow ground water, the contaminants were found to be bound in the waste material and/or adsorbed to the adjacent soils and, therefore, were not migrating to the ground water from the trench. Extensive chemical analysis of the eight local residential wells (serving twelve residences) during the RI confirmed the prior results (i.e., that no contaminants from the site had migrated to these wells). Seven ground-water monitoring wells (four shallow and three deep), including one well in the center of the trench, also indicated no migration of contaminants from the trench to the ground water.

Testing of the water in the small pond indicated no migration of soluble contaminants from the site. The low levels of bis(2-ethylhexyl) phthalate and lead found in the sediments in the pond were attributable to overland soil transport by surface-water runoff.

The RI concluded that the potential for direct human and animal exposure, as well as the potential for future contaminant migration to the ground water and surface water, existed at the site and there were no permanent controls in place to prevent contaminant migration from the trench as a result of any deterioration or disturbance of the waste.

Following completion of the RI/FS, site security was upgraded by EPA. The upgrade included installing two locked gates, additional fencing, and posting of warning signs to restrict access of unauthorized persons. Also at this time, EPA performed additional sampling at the site, in preparation for the off-site disposal/treatment of the contaminated soil and debris.

On March 28, 1991, a Record of Decision was signed, selecting as the remedy for the site the excavation and removal of approximately 1,250 cubic yards of contaminated soil and debris, followed by its transportation to a permitted, Resource Conservation and Recovery Act-compliant waste management facility for treatment/disposal. The selected remedy included backfilling the trench with clean soil, re-vegetating the area, and quarterly monitoring of the ground water and downgradient residential wells for a period of one year. In addition, no remediation of the small pond was necessary because of the insignificant amount of contaminants in the sediments and because of the adverse impact excavation would have on the pond and its ecosystem.

Following the completion of the remedial design (RD) in August 1992, the remedial action (RA) commenced. Over the course of the RA, which was completed in June 1993, over 2,400 cubic yards of contaminated soil and debris (i.e., 173 truckloads containing 3,514 tons of material) were removed from the site. No intact drums were encountered during the excavation. Analysis of samples collected from monitoring wells located downgradient of the disposal trench two weeks after backfilling the trench indicated no contaminants had migrated to the wells as a result of excavation activities. Post-RA sampling by NYSDOH, as well as post-RA quarterly sampling by EPA, also indicated no contamination migration to residential wells.

Summary of Community Relations Activities

Overall, there has been moderate community interest shown with respect to activities at the site. Initially, interest was high due to the unauthorized excavation at the site, reports of neighborhood children playing at the site, the possibility of contaminated wells in the neighborhood, and the potential to pollute Woodman Pond (which, in part, contributed to the Village of Hamilton's decision to install municipal wells instead of continuing to use Woodman Pond for municipal drinking water). Interest in the site declined, however, when the testing and re-testing of local residential wells indicated that no contaminants attributable to the site were present in local wells, visible improvements were made in site security, and on-going contact was maintained with local officials and the community. At a public meeting on February 13, 1991, EPA presented the results of the RI/FS and identified the preferred remedial alternative for the site. The remedy presented for the site was extremely well received since it satisfied the prior requests of local officials and citizens for the complete removal of the chemicals at the site from their community.

Summary of Operation and Maintenance and Five-Year Review Requirements

There are no operation and maintenance requirements since all remediation activities have been completed. Because the implemented remedy does not result in hazardous substances remaining on-site above health-based levels, the five-year review does not apply.

Summary of How the Deletion Criteria Has Been Met

Residential well monitoring since 1986 has consistently indicated no contaminant migration to any of the local residential wells from the site. RI and RD sampling results indicated no site-related contaminants in on- or off-site monitoring wells. One year of post-RA quarterly sampling completed by EPA in January 1994 did not show any contaminants from the site in either the on-site monitoring wells or the local residential wells.

The primary pathways that threatened public health at the C&J Disposal site were direct exposure and possible ingestion of the chemicals at the site, as well as the possible future contamination of the ground water and local wells and the impact to the local environment from deterioration or disturbance of the contaminated waste. The results of the post-RA monitoring confirm that excavation and removal of the contaminants of concern from the C&J Disposal site renders both current and future pathways incomplete.

EPA and the State have determined that the response actions undertaken at the C&J Disposal site are protective of human health and the environment.

In accordance with 40 CFR Section 300.425(e), sites may be deleted from the NPL where no further response is appropriate. EPA, in consultation with the State, has determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Having met the deletion criteria, EPA proposes to delete the C&J Disposal site from the NPL.

Dated: July 1, 1994.

William J. Muzynski,

Acting Regional Administrator.

[FR Doc. 94–17669 Filed 7–20–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0991–AA74

Medicare and State Health Care Programs: Fraud and Abuse; Clarification of the OIG Safe Harbor Anti-Kickback Provisions

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify various aspects of safe harbor provisions originally published in the **Federal Register** on July 29, 1991 as a final rule (56 FR 35952). The safe harbor provisions have been specifically designed to set forth those payment practices and business arrangements that will be protected from criminal prosecution and civil sanctions under the anti-kickback provisions of the statute. This proposed rule would modify the original set of final safe harbor provisions to give greater clarity to the rulemaking's original intent.

DATES: To assure consideration, public comments must be delivered to the address provided below by September 19, 1994. Comments are available for public inspection August 4, 1994.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–35–P, room 5246, 330 Independence Ave., SW., Washington, DC 20201.

If you prefer, you may deliver your comments to room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–35–P. Comments are available for public inspection in room 5551 330 Independence Avenue, SW., Washington, DC, on Monday through Friday each week from 9 a.m. to 5 p.m., (202) 619–3270.

FOR FURTHER INFORMATION CONTACT:

Sandra Sands, Office of the General Counsel, (202) 619–1306

Joel Schaer, Office of Inspector General, (202) 619–3270

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1991, we published in the **Federal Register** a final rule setting forth various safe harbor provisions to the Medicare and Medicaid anti-kickback statute (56 FR 35952). This regulation was authorized under section 14 of Public Law 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987. The final rule specified those payment practices that will not be subject to criminal prosecution under section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)), and that will not provide a basis for exclusion from Medicare or the State health care programs under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since publication of the final rule, we have become aware of a limited number of ambiguities that have created uncertainties for health care providers

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify various aspects of safe harbor provisions originally published in the **Federal Register** on July 29, 1991 as a final rule (56 FR 35952). The safe harbor provisions have been specifically designed to set forth those payment practices and business arrangements that will be protected from criminal prosecution and civil sanctions under the anti-kickback provisions of the statute. This proposed rule would modify the original set of final safe harbor provisions to give greater clarity to the rulemaking's original intent.

DATES: To assure consideration, public comments must be delivered to the address provided below by September 19, 1994. Comments are available for public inspection August 4, 1994.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–35–P, room 5246, 330 Independence Ave., SW., Washington, DC 20201.

If you prefer, you may deliver your comments to room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–35–P. Comments are available for public inspection in room 5551 330 Independence Avenue, SW., Washington, DC, on Monday through Friday each week from 9 a.m. to 5 p.m., (202) 619–3270.

FOR FURTHER INFORMATION CONTACT:

Sandra Sands, Office of the General Counsel, (202) 619–1306
Joel Schaer, Office of Inspector General, (202) 619–3270

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1991, we published in the **Federal Register** a final rule setting forth various safe harbor provisions to the Medicare and Medicaid anti-kickback statute (56 FR 35952). This regulation was authorized under section 14 of Public Law 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987. The final rule specified those payment practices that will not be subject to criminal prosecution under section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)), and that will not provide a basis for exclusion from Medicare or the State health care programs under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since publication of the final rule, we have become aware of a limited number of ambiguities that have created uncertainties for health care providers trying to comply with the safe harbor provisions. We have also become aware of certain instances where our intent, either to protect or preclude protection for particular business arrangements, is not fully reflected in the text of the regulation even though it is reflected in the preamble. This proposed rule would serve to modify the text of the July 29, 1991 final rule to conform to the rulemaking's original intent.

The clarifications contained in this proposed rule do not represent an attempt to reevaluate the wisdom of the original safe-harbor decisions. Instead, the changes set forth in this proposed rule would serve only to protect business practices originally intended to be protected by removing ambiguities in the regulatory language. This clarity should aid the formation of legal business practices without establishing any new significant legal obligations on the parties affected by the regulations.

II. Summary of the Proposed Changes

A. Clarification to the General Comments Section of Preamble

- Several individuals have commented that the following sentence in the preamble has created confusion:

"Because the statute is broad, the payment practices described in these safe harbor provisions would be prohibited by the statute but for their inclusion here." (56 FR 35958)

This sentence was not meant to imply that, *in all instances irrespective of the parties intent*, the government could prosecute conduct described in the regulation, but for its inclusion in the regulation. Whether a particular payment practice violates the statute is a question that can only be resolved by an analysis of the elements of the statute as applied to that set of facts. Generally speaking, however, the original final rule did describe payment practices that would be prohibited, where the unlawful intent exists, but for the safe harbor protection that has been granted.

- In discussing the space and equipment rental and personal services and management contracts, we stated that if a "sham contract is entered into * * * we will look behind the contract" to its substance in evaluating whether the arrangement qualifies for safe-harbor protection (56 FR 35972). We received numerous inquiries as to whether we would similarly look behind the form of other arrangements to determine whether the substance of the arrangement fits within a particular safe harbor.

In some cases, such inquiries have led us to clarify particular safe harbors, as is illustrated by the following discussions of the safe harbors for investment interests, space and equipment rental, and personal services and management contracts. However, because of the broad variety of transactions subject to the Medicare and Medicaid anti-kickback statute and the ability of individuals to manipulate the safe harbors in ways not contemplated, we believe that a general rule preventing sham arrangements from receiving safe harbor protection would be appropriate. Thus, we are proposing adding a new § 1001.954 to the regulations. Such an approach has several precedents. The Federal Trade Commission (FTC) with the concurrence of the Department of Justice promulgated § 801.90 of the FTC's rules implementing the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (16 CFR 801.90), which disregards sham transactions entered into for the purpose of avoiding obligations under the Act. In addition, other Federal agencies (such as the Securities Exchange Commission and the Internal Revenue Service) have promulgated regulations and policies that seek to protect the government from making enforcement decisions based on information that does not accurately reflect the substance of the transaction. (See, for example, 17 CFR 240.12b–20; *Estate of Korman* versus *Comm.*, TC Memo 1987–120; and Rev. Rul. 81–149, 1981–1 CB 77.) Moreover, the courts have historically disregarded sham arrangements when examining the rights and obligations of the parties in tax cases. (See, for example, *Knetsch* versus *United States*, 364 U.S. 361 (1960); and *Thompson* versus *Commissioner of Internal Revenue*, 631 F.2d 642 (9th Cir. 1981), *cert. denied*, 452 U.S. 961 (1981).)

B. Clarifications to Investment Interests Safe Harbor (§ 1001.952(a))

- *Health Care Assets and Revenues*

In qualifying for the "large entity" or "small entity" investment interest safe harbors, the monetary value or amount of certain assets and revenues must be determined. Specifically, the safe harbors include: (1) The $50,000,000 asset threshold in § 1001.952(a)(1); and (2) the gross revenues in the "60–40 revenue rule" in § 1001.952(a)(2)(vi). In these cases, *only the assets or revenues related to the furnishing of health care items or services will be counted for the purposes of qualifying for these safe harbor requirements*. It would be an obvious sham, inconsistent with our original intent, if a joint venture could merge with a non-health care business and have those non-health care assets, and the revenues derived from that non-

health care line of business counted for the purposes of qualifying for safe harbor protection. We are thus proposing to revise these safe harbor provisions to further clarify our original intent that only health care assets and revenues will be counted in determining these values and amounts.

• *Acquisition of Investment Interests*

As set forth in § 1001.952(a)(1)(ii), an "interested" investor (who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity) must obtain his or her investment interest through trading on a registered national securities exchange on terms equally available to the public. This does not mean that an interested investor may acquire his or her interest in any way other than the methods available to the general public to acquire investment interests. We believe that the investor must acquire his or her investment interest in the *same way* as members of the public—directly off of a registered national securities exchange through a broker—and it must be the same type of investment interest that is available to the public. For example, a transaction in which the interested investor receives restricted or "lettered" stock from the entity would not be considered a valid acquisition of investment interests under this requirement.

The discussion above does not represent a change in this standard. Rather, it serves only to emphasize that the investment interest "*must be obtained* on terms equally available to the public through trading on a registered national securities exchange * * *" (§ 1001.952(a)(1)(ii)) (Emphasis added). Moreover, to obtain an investment interest "on terms equally available to the public," there cannot be any side agreements that require stock to be purchased or that restrict in any manner the investor's ability to dispose of the stock. Any such agreement would constitute a sham transaction which would disqualify dividend payments to that investor from safe harbor protection.

• *Loans for the Purchase of the Investment Interest*

One of the standards in the large and small entity investment interest safe harbors prohibits the entity from loaning an investor funds that are used by the investor to purchase his or her investment interest. (See §§ 1001.952(a)(1)(iv) and 1001.952(a)(2)(vii).) We are proposing to change this standard to prohibit other investors, individuals or entities as well as the entity from making such loans.

• *Class of Investment Interests*

In the 60–40 investor rule in the small entity investment interest safe harbor (§ 1001.952(a)(2)(i)), we established two categories of investors: (1) "untainted" or "disinterested" investors are those who do no business with the entity, but hold the investment interest purely as an investment; and (2) "tainted" or "interested" investors are those who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity. For purposes of determining in which category to place an investor, we require "each class of investments" to meet the 60–40 apportionment between the two categories.

We have become aware of the difficulty in applying the 60–40 rule to each class of investors in a joint venture where the general partners hold a separate class of stock or investment interest from the limited partners. In such a situation, that class of investment interest for the general partners consists of 100 percent "tainted" or "interested" investors since the general partners are providing services to the entity. Therefore, we believe that the entire joint venture does not qualify for safe harbor protection.

While it is not always true that an active investor holds a different class of investment interest from a passive investor, we have found that it is unnecessarily restrictive to have this 60–40 investor rule only apply to *each* class of investment interest. Thus, we are proposing to modify this first investment interest standard to allow an alternative to the class-by-class analysis. The new alternative would allow equity investment interests to be combined together or debt investment interests to be combined together (separate from the equity investments) for purposes of apportioning investors into "untainted" and "tainted" pools and meeting the 60–40 test. Only equivalent classes of equity investment interests could be combined, and only equivalent classes of debt investment interests could be combined. That is, the classes of investment interests combined would have to be similar in all material respects. For example, the classes to be combined would have to have equivalent returns in proportion to amounts invested. In addition, if one class is given preferential treatment (e.g., in the case of disposition), such an interest could not be combined with subservient interests for purposes of compliance with the 60–40 investor rule.

If a limited partnership has a general partner who holds 20 percent of the value of the investment interests, referring physicians hold 20 percent, and all the other investors have no business relationship with the partnerships, then the 60–40 investor rule would be met, as long as all other requirements are satisfied.

The 60–40 investor rule would not be met if any of the other disinterested investors in the above example holds a debt instrument instead of an equity instrument. For example, if a joint venture raises one-third of its capital through a debt instrument held by disinterested investors, with the remaining two thirds of its capital derived from equity instruments held equally by interested (physicians and general partners) and disinterested investors, the safe harbor would not be met. In this example, even though interested investors hold only one-third of all the investment interests, they hold one-half of the *equity* investment interests, and thus no safe harbor protection would be available.

We note that other standards in this small entity safe harbor preclude protection for abusive schemes to give referring investors preferential treatment *in any way* by creating different classes of investment. For example, if a joint venture creates two classes of stock, with one of the classes reserved for referring physicians who receive a higher dividend per share than non-referring investors in the other class, such an arrangement would not comply with at least sections 1001.952(a)(2) (ii), (iii) and (viii).

• *Items or Services Furnished by an Investor*

As discussed above, when an investor furnishes items or services to the joint venture, such as management services, he or she is a tainted or interested investor for the purposes of complying with the 60–40 investor rule (§ 1001.952(a)(2)(vi)). It was not our intent to have any revenues that the joint venture derives from this investor's services to be considered tainted for the purpose of qualifying for the 60–40 revenue rule.

Because of the apparent confusion caused by the language "items or services furnished" in this safe harbor standard, we are proposing striking it. The focus of the inquiry in this standard is *where* the business and clients are coming from. In other words, the revenues are tainted, and may not exceed 40 percent of total revenues, if they are derived "from referrals * * * or business otherwise generated from investors." We note that the language we are proposing to strike—"items or services furnished"—is superfluous because, if the revenue is "generated" (i.e., induced *to come to* the joint venture for items or services *by an investor*), it is tainted. Thus, the language we are proposing to delete appears not to have added anything and merely caused confusion.

The following example demonstrates the confusion and our solution. If a radiologist holds an investment interest in an imaging center and reads all the films at the center, his or her reading of the film does not taint all the revenues from the referrals by non-investors. However, we have received a few questions from people who read the 60–40 revenue rule as making such referrals tainted because the investor furnished services at the joint venture.

We emphasize that if a radiologist-investor is reading the film *and* making referrals or otherwise generating business, then the revenues the joint venture derives from that activity would become tainted. For example, revenues would be tainted when a radiologist-investor takes part in a consultation with a non-investor internist, and during that consultation the radiologist recommends a procedure which is performed at the joint venture.

C. Clarifications to Space and Equipment Rental and Personal Services and Management Contracts Safe Harbors (§§ 1001.952 (b), (c) and (d))

• In the preamble discussing the safe harbor provisions for space and equipment rental and personal services and management contracts (56 FR 35971–74), we made clear that one of our concerns was that health care providers in a position to make referrals to each other who engaged in these business arrangements could renegotiate their contracts on a regular basis depending on the volume of business generated. It is for this reason that we require the leases or contracts be for a term of not less than one year. (See §§ 1001.952(b)(4), 1001.952(c)(4), and 1001.952(d)(4).)

It has come to our attention that a small number of health care providers believe they are complying with the literal terms of these safe harbor provisions, but are circumventing our intent not to protect agreements that are renegotiated based on the volume of business generated between the parties. They believe that they are protected if they enter into multiple agreements, each of which is for a period of one year, but when all the agreements are viewed together renegotiations are taking place more frequently (e.g., every month), with the terms of the additional

we are proposing to strike—"items or services furnished"—is superfluous because, if the revenue is "generated" (i.e., induced *to come to* the joint venture for items or services *by an investor*), it is tainted. Thus, the language we are proposing to delete appears not to have added anything and merely caused confusion.

The following example demonstrates the confusion and our solution. If a radiologist holds an investment interest in an imaging center and reads all the films at the center, his or her reading of the film does not taint all the revenues from the referrals by non-investors. However, we have received a few questions from people who read the 60–40 revenue rule as making such referrals tainted because the investor furnished services at the joint venture.

We emphasize that if a radiologist-investor is reading the film *and* making referrals or otherwise generating business, then the revenues the joint venture derives from that activity would become tainted. For example, revenues would be tainted when a radiologist-investor takes part in a consultation with a non-investor internist, and during that consultation the radiologist recommends a procedure which is performed at the joint venture.

C. Clarifications to Space and Equipment Rental and Personal Services and Management Contracts Safe Harbors (§§ 1001.952 (b), (c) and (d))

• In the preamble discussing the safe harbor provisions for space and equipment rental and personal services and management contracts (56 FR 35971–74), we made clear that one of our concerns was that health care providers in a position to make referrals to each other who engaged in these business arrangements could renegotiate their contracts on a regular basis depending on the volume of business generated. It is for this reason that we require the leases or contracts be for a term of not less than one year. (See §§ 1001.952(b)(4), 1001.952(c)(4), and 1001.952(d)(4).)

It has come to our attention that a small number of health care providers believe they are complying with the literal terms of these safe harbor provisions, but are circumventing our intent not to protect agreements that are renegotiated based on the volume of business generated between the parties. They believe that they are protected if they enter into multiple agreements, each of which is for a period of one year, but when all the agreements are viewed together renegotiations are taking place more frequently (e.g., every month), with the terms of the additional agreements based in part on the volume of business being generated between the parties under existing agreements. For example, a one year personal services contract between a hospital and a high-volume referring physician is created for the physician to perform certain services. The next month a *new* one year contract is created for a slightly different service, with the amount of payment influenced by the previous months referrals.

This scenario does not comply with the requirement in each of these safe harbor provisions that the compensation not take "into account the volume or value of any referrals or business otherwise generated between the parties * * * ." (§§ 1001.952(b)(5), 1001.952(c)(5), and 1001.952(d)(5)). However, because the principal problem in this situation is that the parties are creating multiple overlapping agreements, we are proposing to revise these three safe harbor provisions to expressly preclude such schemes.

In addition, it appears that some health care providers are attempting to pay for referrals by renting more space than they actually need from referral sources. Although such an arrangement would not fit within a safe harbor because the aggregate rental charge would be determined in a manner that would account for the volume or value of referrals or business otherwise generated between the parties, we are proposing to revise the safe harbor provisions in §§ 1001.952 (b)(5), (c)(5) and (d)(5) to expressly preclude this practice.

D. Clarifications to Referral Services Safe-Harbor (§ 1001.952(f))

• One of the standards in the referral services safe harbor provision requires that any fee the referral service charges the participant be "based on the cost of operating the referral service, and not on the volume or value of any referrals to or business otherwise generated *by the participants* for the referral service * * * ." (Emphasis added) (§ 1001.952(f)(2)). This language precludes protection where a referral service, such as one operated by a hospital, *lowers* its referral service fee to one of its staff physicians who participates in the service because that physician is a high-volume referrer.

This language creates an ambiguity where the referral service tries to adjust its fee based on the volume of referrals *it makes to the participant*. Thus, we propose clarifying the second prong to preclude safe harbor protection for payments that are based on the volume or value of referrals to or business otherwise generated by either party for the other party.

E. Clarifications To Discount Safe Harbor (§ 1001.952(h))

• Many people requested clarification of the safe harbor for discounts. Because there has been some uncertainty over what obligations individuals or entities have to meet in order to receive protection under this safe harbor, we propose dividing the parties into three groups: buyers, sellers, and offerors of discounts. In describing each party's obligations, we would revise paragraphs (h)(1) and (h)(2), and add a new paragraph (h)(3).

In addition, through a proposed new paragraph (h)(4), we would clarify that, for purposes of this regulation, a "rebate" is any discount which is not given at the time of sale. Consequently, a rebate transaction may be covered within the safe harbor if it involves a buyer under § 1001.952 (h)(1)(i) or (h)(1)(ii), but it is not covered if it involves a buyer under § 1001.952(h)(1)(iii) because, under that provision, *all discounts must be given at the time of sale.*

We also wish to clarify what has to happen for sellers to receive safe harbor protection. In the safe harbor regulation itself, we state that discounts will be safe harbored if both the seller "and" the buyer comply with the applicable standards as described in the rule. Yet in the preamble we state that sellers should not be held liable for the omissions of buyers. If a seller has done everything that it reasonably could under the circumstances to ensure that the buyer understands its obligations to accurately report the discount, the seller is safe harbored irrespective of the omissions of the buyer. To receive such protection, however, the seller must report the discount to the buyer and inform the buyer of its obligation to report the discount. To emphasize that the seller's obligations require more than superficial compliance with the safe harbor, we propose to add to that the seller must inform the buyer "in an effective manner" of its obligations to report the discount. We also propose adding a requirement that the seller "refrain from doing anything that would impede the buyer from meeting its obligations under this paragraph." Thus, if the seller, in good faith, meets its obligations under the safe harbor and the buyer does not meet its obligations due to no fault of the seller, the seller would receive safe harbor protection. However, when the seller submits a claim or request for payment on behalf of the buyer, the seller must fully and accurately report the discount to

Medicare or the State health care program. Likewise, when an offeror of a discount meets its obligations under § 1001.952(h)(3), and the buyer or seller does not meet its obligations due to no fault of the offeror, the offeror would receive safe harbor protection.

In addition, we are proposing to clarify whether any reduction in price offered to a *beneficiary* could be safe harbored under this regulation. Congress protected "a discount or other reduction in price *obtained by a provider of services or other entity*" (emphasis added) and made no provision for such discounts obtained by a beneficiary. In § 1001.952(h)(3)(iv) of the regulation, we removed from safe harbor protection a "reduction in price offered to a beneficiary * * * ." In that section, all we intended to remove from this safe harbor was "routine reduction or waiver of any coinsurance or deductible amount owed by a program beneficiary." Thus, to the extent that a discount is offered to a beneficiary and all other applicable standards in the safe harbor are met, such a discount would receive safe harbor protection.

Many people have expressed confusion regarding the relationship between the safe harbor for discounts and the statutory exception for discounts. (See section 1128B(b)(3)(A) of the Act.) Specifically, we are asked if there are any practices involving discounts which were protected by Congress under the statutory exception which do not fit within the safe harbor for discounts. Our intention is that *all* the discounts or reductions in price that Congress intended to protect under the statutory exception for discounts are protected under the safe harbor for discounts. Moreover, as is illustrated by the discussion above regarding discounts to beneficiaries, we are proposing to expand the safe harbor for discounts to include additional practices that we do not consider abusive.

In the preamble to the final regulation, we stated that when reporting a discount, one only need report the actual purchase price and note that it is a "net discount" (56 FR 35981). However, for purposes of submitting a claim or request for payment, what is necessary is that the value of the discount is accurately reflected in the actual purchase price. It is not necessary to distinguish whether this price is the result of a discount, or to state "net discount." Consequently, buyers who were uncertain about how and where to report on a particular form the fact that the price was due to a discount need not be concerned with reporting that fact, as long as the actual purchase price accurately reflects the discount.

Finally, we are proposing some minor editorial changes that do not affect the substance of the provision, but hopefully make it easier to understand.

F. Technical Correction

- A typographical error at 56 FR 35978 gave a citation to a HCFA rule on payment for intraocular lenses as "55 FR 436." We would correct this citation to the HCFA rule to read as "55 FR 4536."

- We are proposing the deletion of § 1001.953 which calls for the completion of an OIG report on compliance with the investment interest safe harbor at § 1001.952(a)(2)(i) and 1001.952(a)(2)(vi) within a specified period of time after publication of the original safe harbor provisions. While the OIG is continuing its work on evaluating this safe harbor provision, we believe completion of this report to be an internal administrative process that need not be set forth in the regulations.

III. Regulatory Impact Statement

As we indicated in the original safe harbor final rule published on July 29, 1991, consistent with the intent of the statute, the original safe harbor rulemaking and these proposed clarifications are designed to permit individuals and entities to freely engage in business practices and arrangements that encourage competition, innovation and economy. In doing so, the regulations impose no requirements on any party. Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute. We believe that the economic impact of these provisions would be minimal.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612). We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on a substantial number of small business entities, and we have, therefore, not prepared a regulatory flexibility analysis.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

TITLE 42—PUBLIC HEALTH

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR part 1001 would be amended as set forth below:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

1. The authority citation for part 1001 would continue to read as follow:

Authority: 42 U.S.C. 1302, 1320a-7, 1320a-7b, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh, and section 14 of Public Law 100–93.

2. Section 1001.952 would be amended by:

a. republishing the introductory text for this section;

b. republishing the introductory text for paragraph (a)(1), and by revising paragraphs (a)(1)(iv), (a)(2)(i), (a)(2)(vi) and (a)(2)(vii);

c. revising paragraphs (b)(2) and (b)(5);

d. adding a new paragraph (b)(6);

c. revising paragraphs (c)(2) and (c)(5);

f. adding a new paragraph (c)(6);

g. revising paragraphs (d)(2), (d)(5) and (d)(6);

h. adding a new paragraph (d)(7);

i. revising paragraphs (f)(2); and

j. revising paragraph (h), to read as follows—

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

(a) *Investment interests.* * * *

(1) If, within the previous fiscal year or previous 12 month period, the entity possesses more than $50,000,000 in undepreciated net tangible assets (based on the net acquisition cost of purchasing such assets from an unrelated entity) related to the furnishing of health care items and services, all of the following five applicable standards must be met—

* * * * *

(iv) The entity or any investor (or other individual or entity acting on behalf of the entity or any investor in the entity) must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

* * * * *

(2) * * *

(i) No more than 40 percent of the value of the investment interests of each class of investment interests may be held in the previous fiscal year or previous 12 month period by investors who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity. (For purposes of § 1001.952(a)(2)(i), equivalent classes of equity investments may be combined, and equivalent classes of debt instruments may be combined.)

* * * * *

(vi) No more than 40 percent of the entity's gross revenue related to the furnishing of health care items and services in the previous fiscal year or previous 12 month period may come from referrals, or business otherwise generated from investors.

(vii) The entity or any investor must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

* * * * *

(b) *Space rental.* * * *

(2) The lease covers all of the premises leased between the parties for the period of the lease and specifies the premises covered by the lease.

* * * * *

(5) The aggregate space rented does not exceed that which is reasonably necessary to accomplish the legitimate business purpose of the rental.

(6) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

* * * * *

(c) *Equipment rental.*

* * * * *

(2) The lease covers all of the equipment leased between the parties for the period of the lease and specifies the equipment covered by the lease.

* * * * *

(5) The aggregate equipment rental does not exceed that which is reasonably necessary to accomplish the legitimate business purpose of the rental.

(6) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or

class of investment interests may be held in the previous fiscal year or previous 12 month period by investors who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity. (For purposes of § 1001.952(a)(2)(i), equivalent classes of equity investments may be combined, and equivalent classes of debt instruments may be combined.)

* * * * * *

(vi) No more than 40 percent of the entity's gross revenue related to the furnishing of health care items and services in the previous fiscal year or previous 12 month period may come from referrals, or business otherwise generated from investors.

(vii) The entity or any investor must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

* * * * * *

(b) *Space rental.* * * *

(2) The lease covers all of the premises leased between the parties for the period of the lease and specifies the premises covered by the lease.

* * * * * *

(5) The aggregate space rented does not exceed that which is reasonably necessary to accomplish the legitimate business purpose of the rental.

(6) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

* * * * * *

(c) *Equipment rental.*

* * * * * *

(2) The lease covers all of the equipment leased between the parties for the period of the lease and specifies the equipment covered by the lease.

* * * * * *

(5) The aggregate equipment rental does not exceed that which is reasonably necessary to accomplish the legitimate business purpose of the rental.

(6) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

* * * * * *

(d) *Personal services and management contracts.*

* * * * * *

(2) The agency agreement covers all of the services the agent provides to the principal for the period of the agreement and specifies the services to be provided by the agent.

* * * * * *

(5) The aggregate services contracted for do not exceed those which are reasonably necessary to accomplish the legitimate business purpose of the services.

(6) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

(7) The services performed under the agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law.

* * * * * *

(f) *Referral services.* * * *

(2) Any payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service, and not on the volume or value of any referrals to or business otherwise generated by either party for the other party for which payment may be made in whole or in part under Medicare or a State health care program.

* * * * * *

(h) *Discounts.* As used in section 1128B of the Act, "remuneration" does not include a discount, as defined in paragraph (h)(5) of this section, on an item or service for which payment may be made, in whole or in part, under Medicare or a State health care program for a *buyer* as long as the buyer complies with the applicable standards of paragraph (h)(1) of this section; a *seller* as long as the seller complies with the applicable standards of paragraph (h)(2) of this section; and an *offeror* of a discount who is not a seller under paragraph (h)(2) of this section so long as such offeror complies with the applicable standards of paragraph (h)(3) of this section:

(1) With respect to the following three categories of *buyers*, the buyer must comply with all of the applicable standards within one of the three following categories—

(i) If the buyer is an entity which is a health maintenance organization or a competitive medical plan acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, it need not report the discount except as otherwise may be required under the risk contract.

(ii) If the buyer is an entity which reports its costs on a cost report required by the Department or a State health care program, it must comply with all of the following four standards—

(A) the discount must be earned based on purchases of that same good or service bought within a single fiscal year of the buyer.

(B) the buyer must claim the benefit of the discount in the fiscal year in which the discount is earned or the following year.

(C) the buyer must fully and accurately report the discount in the applicable cost report; and

(D) the buyer must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(ii) of this section, or information provided by the offeror as specified in paragraph (h)(3)(ii) of this section.

(iii) If the buyer is an individual or entity in whose name a claim or request for payment is submitted for an item or service for which payment may be made, in whole or in part, under Medicare or a State health care program (not including individuals or entities receiving items or services from entities defined as buyers in paragraph (h)(1)(i) or (h)(1)(ii) of this section), the buyer must comply with all of the following three standards—

(A) the discount must be made at the time of the sale of the good or service (rebates are therefore not allowable);

(B) where an item or service is separately claimed for payment with the Medicare program or a State health care program, the buyer (if submitting the claim) must fully and accurately report the discount on that item or service; and

(C) the buyer (if submitting the claim) must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(iii)(B) of this section, or information provided by the offeror as specified in paragraph (h)(3)(iii)(A) of this section.

(2) The seller is an individual or entity that furnishes an item or service

for which payment may be made, in whole or in part, under Medicare or a State health care program to the buyer and who permits a discount to be taken off the buyer's purchase price. The seller must comply with all of the applicable standards within the following three categories—

(i) If the buyer is an entity which is a health maintenance organization or a competitive medical plan acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, the seller need not report the discount to the buyer for purposes of this provision.

(ii) If the buyer, is an entity that reports its costs on a cost report required by the Department or a State agency, the seller must comply with either of the following two standards—

(A) where a discount is required to be reported to Medicare or a State health care program under paragraph (h)(1) of this section, the seller must fully and accurately report such discount on the invoice, coupon or statement submitted to the buyer, inform the buyer in an effective manner of its obligations to report such discount, and refrain from doing anything which would impede the buyer from meeting its obligations under this paragraph; or

(B) where the value of the discount is not known at the time of sale, the seller must fully and accurately report the existence of a discount program on the invoice, coupon or statement submitted to the buyer, inform the buyer in an effective manner of its obligations to report such discount under paragraph (h)(1) of this section and, when the value of the discount becomes known, provide the buyer with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will be applied, and refrain from doing anything which would impede the buyer from meeting its obligations under this paragraph.

(iii) If the buyer is an individual or entity not included in paragraph (h)(2)(i) or (h)(2)(ii) of this section, the seller must comply with either of the following two standards—

(A) where the seller submits a claim or request for payment on behalf of the buyer and the item or service is separately claimed, the seller must fully and accurately report the discount on the claim or request for payment to Medicare or a State health care program and the seller must provide, upon request by the Secretary or a State agency, information provided by the offeror as specified in paragraph (h)(3)(iii)(A) of this section; or

(B) where the buyer submits a claim, the seller must fully and accurately report such discount on the invoice, coupon or statement submitted to the buyer; inform the buyer in an effective manner of its obligations to report such discount; and refrain from doing anything that would impede the buyer from meeting its obligations under this paragraph.

(3) The offeror of a discount is an individual or entity who is not a seller under paragraph (h)(2) of this section, but promotes the purchase of an item or service by a buyer under paragraph (h)(1) of this section at a reduced price for which payment may be made, in whole or in part, under Medicare or a State health care program. The offeror must comply with all of the applicable standards within the following three categories—

(i) If the buyer is an entity which is a health maintenance organization or a competitive medical plan acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, the offeror need not report the discount to the buyer for purposes of this provision.

(ii) If the buyer is an entity that reports its costs on a cost report required by the Department or a State agency, the offeror must comply with the following two standards—

(A) the offeror must inform the buyer in an effective manner of its obligation to report such a discount; and

(B) the offeror of the discount must refrain from doing anything that would impede the buyer's ability to meet its obligations under this paragraph.

(iii) If the buyer is an individual or entity in whose name a request for payment is submitted for an item or service for which payment may be made, in whole or in part, under Medicare or a State health care program (not including individuals or entities defined as buyers in paragraph (h)(1)(i) or (h)(1)(ii) of this section), the offeror must comply with the following two standards—

(A) the offeror must inform the individual or entity submitting the claim or request for payment in an effective manner of their obligations to report such a discount; and

(B) the offeror of the discount must refrain from doing anything that would impede the buyer's or seller's ability to meet its obligations under this paragraph.

(4) For purposes of this paragraph (a), a *rebate* is any discount which is not given at the time of sale.

(5) For purposes of this paragraph (a), the term *discount* means a reduction in the amount a buyer (who buys either directly or through a wholesaler or a group purchasing organization) is charged for an item or service based on an arms-length transaction. The term *discount* does not include—

(i) Cash payment;

(ii) Furnishing one good or service without charge or at a reduced charge to include the purchase of a different good or service;

(iii) A reduction in price applicable to one payer but not to Medicare or a State health care program;

(iv) A routine reduction or waiver of any coinsurance or deductible amount owned by a program beneficiary;

(v) Warranties;

(vi) Services provided in accordance with a personal or management services contract; or

(vii) Other remuneration, in cash or in kind, not explicitly described in this paragraph (a)(5).

* * * * *

§ 1001.953 [Removed]

3. Section 1001.953 would be removed.

4. Section 1001.954 would be added to read as follows:

§ 1001.954 Sham Transactions or Devices.

Any transaction or other device entered into or employed for the purpose of appearing to fit within a safe harbor when the substance of the transaction or device is not accurately reflected by the form will be disregarded, and whether the arrangement receives the protection of a safe harbor will be determined by the substance of the transaction or device.

Dated: March 14, 1994.

June Gibbs Brown,

Inspector General.

Approved: April 22, 1994.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 94–16873 Filed 7–20–94; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 37 and 38

[Docket 49658; Notice 94–9]

RIN 2105–AC13

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary, Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes two sets of amendments to the Department of Transportation's rules implementing the Americans with Disabilities Act (ADA). The first group of proposals is based on petitions for rulemaking from members of the public. While the Department is publishing proposed amendments based on these petitions, in order to seek public comment on them, the Department is not now taking a position on whether these amendments should be adopted. The petitions would create an exception to the provision requiring transit providers to allow persons with disabilities to use every stop in the system, change the requirements affecting certain private schools that provide fixed route transportation, change the provision of the Department's technical standards concerning gaps for higher-speed people mover vehicles and eliminate the provision that requires paratransit systems to allow reservations to be made 14 days in advance. Second, the Department is proposing a number of minor or technical adjustments to clarify or improve administration of certain portions of the rule.

DATES: Comments are requested on or before October 19, 1994. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 49658, Department of Transportation, 400 7th Street, S.W., Room 4107, Washington, D.C., 20590. Comments will be available for inspection at this address from 9:00 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION:

Petitions for Rulemaking

The Department has received four petitions for rulemaking, each of which requests an amendment to the Department's Americans with Disabilities Act (ADA) rules. The

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes two sets of amendments to the Department of Transportation's rules implementing the Americans with Disabilities Act (ADA). The first group of proposals is based on petitions for rulemaking from members of the public. While the Department is publishing proposed amendments based on these petitions, in order to seek public comment on them, the Department is not now taking a position on whether these amendments should be adopted. The petitions would create an exception to the provision requiring transit providers to allow persons with disabilities to use every stop in the system, change the requirements affecting certain private schools that provide fixed route transportation, change the provision of the Department's technical standards concerning gaps for higher-speed people mover vehicles and eliminate the provision that requires paratransit systems to allow reservations to be made 14 days in advance. Second, the Department is proposing a number of minor or technical adjustments to clarify or improve administration of certain portions of the rule.

DATES: Comments are requested on or before October 19, 1994. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 49658, Department of Transportation, 400 7th Street, S.W., Room 4107, Washington, D.C., 20590. Comments will be available for inspection at this address from 9:00 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION:

Petitions for Rulemaking

The Department has received four petitions for rulemaking, each of which requests an amendment to the Department's Americans with Disabilities Act (ADA) rules. The Department is acting on the petitions by issuing this notice of proposed rulemaking (NPRM). If, based on the comments and the Department's further consideration of the issues involved, the Department believes the proposed changes have merit, it can issue final rules based on this NPRM. At this time, however, the Department is not taking a position on whether the proposed changes should be adopted.

1. Inadequate Bus Stops

Seattle Metro seeks a change in 49 CFR 37.167(g), which provides as follows:

> The entity shall not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.

In the Appendix to Part 37, DOT described the intent of this provision as follows:

> It is inconsistent with this section for a transit provider to refuse to let a passenger use a lift at any designated stop, unless the lift is physically unable to deploy or the lift would be damaged if it did. * * * In addition, if a temporary situation at the stop (construction, an accident, a landslide) made the stop unsafe for anyone to use, the provider could decline to use the lift there (just as it refused to open the door for other passengers at the same point). The provider could not, however, declare a stop "off limits" to persons with disabilities that is used for other persons. If the transit authority has concerns about barriers or safety hazards, that particularly affect individuals with disabilities that would use the stop, it should consider making efforts to move the stop. (56 FR 45755, September 6, 1991).

Seattle Metro urges the Department to change this policy. Metro's petition says that its bus lifts need 4–5 feet to deploy and that persons using mobility aids need another 4 feet in order to maneuver off the lift. The petition asserts that it has 6220 fully accessible bus stops, 1571 that do not meet present ADA standards (i.e., a lift cannot deploy at these stops), and 702 that could be used by standees but do not provide adequate space for wheelchair users. The inaccessibility of stops is due, Metro says, to factors such as topography and terrain, line of sight, traffic speed, and access to shoulder pullout areas, all of which are more or less permanent matters beyond its control. Often, local jurisdictions, rather than Metro, control these factors as well as the locations of the bus stops themselves. This, in Metro's view, often makes it impractical to relocate stops to more accessible locations.

Allowing passengers to choose to disembark at "inaccessible" locations may create safety hazards, Metro asserts. Passengers with disabilities should not be allowed to decide it is safe to use a particular stop, in Metro's view, particularly since the visual or cognitive disabilities of some passengers could impair their ability to make an adequate assessment of the situation and since a visual inspection might not, in any event, reveal the problems of a site. Metro is concerned about tort liability in such situations.

With its petition, Metro provided a brief videotape, which we have made part of the docket. It shows wheelchair users leaving or entering buses in locations where narrowness of the sidewalk (i.e., next to a retaining wall, adjacent to a grassy knoll) or other conditions (e.g., an eroded, broken sidewalk) make it difficult (but not necessarily impossible) to get on or off the bus.

Metro has petitioned the Department to amend § 37.167(g) in two ways. First, Metro would permit transit providers to refuse to allow persons with disabilities to use stops available to other passengers if "the lift, when fully deployed, would leave inadequate space at the stop for the passenger to obtain a secure and maintainable position on the ground." Second, Metro would add a sentence saying that "A stop which does not meet the specifications set forth in § 10.2.1(1) of appendix A to 49 CFR part 37 shall be deemed to provide inadequate space for passengers using common wheelchairs to obtain a secure and maintainable position on the ground." For information of potential commenters, the bus stop standards in Appendix A that Metro references are the following:

> **10.2.1 New Construction**
>
> (1) Where new bus stop pads are constructed at bus stops, bays, or other areas where a lift or ramp is to be deployed, they shall have a firm, stable surface; minimum clear length of 96 inches (measured from the curb or roadway vehicle edge) and a minimum clear width of 60 inches (measured parallel to the vehicle roadway) to the maximum extent allowed by legal or site constraints; and shall be connected to streets, sidewalks, or pedestrian paths by an accessible route complying with 4.3 and 4.4. The slope of the pad parallel to the roadway shall, to the extent practicable, be the same as the roadway. For water drainage, a maximum slope of 1:50 (2%) perpendicular to the roadway is allowed.

It should be noted that Metro's proposal would apply this *new construction* standard to make judgments about allowing wheelchair users to use *existing* bus stops. Also, the standard

refers to "bus stop pads," not to bus stops in general. In addition, the standard's minimum clear width and length requirements are required "to the extent allowed by legal or site constraints." Site constraints would appear to include the kinds of conditions of which Metro's petition speaks.

The effect of its proposed amendment, Metro says, would be to allow transit providers to refuse to serve wheelchair passengers at stops that did not meet Access Board standards. According to Metro, this would place an additional 702 stops (8 percent of the total number of stops in the system) off limits to wheelchair users. However, other passengers with disabilities (e.g., standees) and passengers without disabilities would be served at these stops. While Metro's petition does not specify how service to origins and destinations served by these stops (or the other 19 percent of stops at which lifts will not deploy at all) would be made available to wheelchair users, the Department assumes individuals who need accessible service to those destinations would be eligible for paratransit.

2. Requirements for Private School Transportation

Congress exempted "public school transportation" from the transportation requirements of the ADA, by defining such transportation not to be "designated public transportation." The House Public Works Committee Report on the legislation says that it is the intent of Congress that the same exemption should apply to private elementary and secondary school transportation if the school receives Federal financial assistance, is covered by section 504 of the Rehabilitation Act of 1973, and provides equivalent transportation service to students with disabilities (see H. Rept. 101–485, Pt. 1, at 36). In addition, religiously-affiliated schools are exempt from the ADA altogether, based on the ADA's exemption for religious organizations. Section 37.27 of the Department's ADA regulation implements these exemptions.

As pointed out in the petition of the National Association of Independent Schools (NAIS), schools that are private, not religiously affiliated, and not recipients of Federal funds do not benefit from any of these exemptions. As private entities not primarily in the business of transporting people providing (usually) fixed route transportation with vehicles with a passenger capacity exceeding 16 persons, they are subject to a requirement to purchase all new accessible school buses.

NAIS says "[t]he cost of this requirement is enormous, and in relation to the cost the benefit to disabled students is minimal, because there is no need that every vehicle purchased be accessible; all disabled students may be served as long as a sufficient number of the vehicles are accessible." The NAIS petition seeks a modification of the current regulation to place its members on the same footing as other schools, saying that "independent schools which do not receive federal financial assistance are the only schools who are required to purchase accessible vehicles even when the school already has sufficient such vehicles to provide adequate services to students with disabilities."

The requested modification would amend § 37.27 to apply the same requirement to private schools that do not receive Federal assistance as to other private schools, i.e. a requirement to provide equivalent transportation services to students with disabilities.

3. People Mover Gap Standards

The Special Standards Division of the American Society of Civil Engineers (ASCE) has petitioned the Department to modify its technical standards concerning horizontal and vertical gaps for automated guideway transit (AGT) vehicles and systems, better known as "people movers." 49 CFR § 38.173 requires that the horizontal gap between a stopped AGT vehicle's door and the platform be no greater than one inch, with a vertical gap of plus or minus one half inch. The regulation allows other rail systems (e.g., rapid and light rail) to have horizontal and vertical gaps of 3 inches and plus or minus 5/8 inch, respectively.

ASCE suggests that the regulation should recognize a distinction between AGT systems based on vehicle speed. AGT systems vary in speed from 5 to 80 miles per hour, ASCE says, and it is, in the organization's view, more appropriate for higher-speed AGTs to meet the more flexible standards applicable to rapid and light rail systems than the narrower AGT standard. ASCE cites the Access Board's preamble discussion concerning AGT systems, which refers to "AGT vehicles that travel at slow speed," and subsequent Access Board manuals suggesting that the rapid/light rail gap should apply to faster AGT vehicles.

ASCE surveyed existing AGT systems, determining that most do not comply with the current AGT gap standards. The petition cites engineering reasons (e.g., the need in higher-speed vehicles for larger and more complex suspension systems, which in turn make it more difficult to meet existing gap standards) for this phenomenon. Based on its data and engineering analysis, ASCE recommends that 20 miles per hour be the dividing line: systems that operate below that speed can reasonably meet the current AGT standard; while faster systems should be allowed to meet the rapid/light rail standard. (The Access Board has interpreted its guidelines, as presently worded, to permit the construction urged by ASCE. The Department does not object to this interpretation; nevertheless, for the sake of clarity in the rule text, we are proposing to amend the language. The Department will also work with the Access Board to incorporate changes in the guidelines that may be made with respect to vehicle/platform gaps in AGT systems.)

4. 14-day Advance Reservations

49 CFR § 37.131(b)(4) provides, with respect to complementary paratransit services, that "the entity shall permit advance reservations to be made up to 14 days in advance of an ADA paratransit eligible individual's desired trip." This provision, not a part of the NPRM that led to the Department's final ADA rule, was added in response to comments to the NPRM.

Two separate petitions urge the Department to eliminate this provision. One is from Doug Douglas, Assistant Vice-President, Paratransit Services, of Dallas Area Rapid Transit (DART). Mr. Douglas draws a distinction between advance reservations in a context like the airline industry, where the customer goes to the point of service, and paratransit. In the former, he says, if a passenger cancels a reservation or does not show up for the plane, the airline can simply fill in the reserved spot with a standby passenger. Paratransit does not have this flexibility, since the vehicle must be rerouted in the case of a cancellation or makes a futile trip in case of a no-show. Cancellations and no-shows are a major problem for his system, Mr. Douglas asserts:

> There are a number of arguments to support the repeal of the 14 days advanced reservation requirements as prescribed by § 7.131. The most obvious reason is the waste of precious resources on clients who reserve trips well in advance, forget the trip has been scheduled, and do not call the provider to cancel the trip. Even when the client does remember to cancel the trip, they are only required to do so within an hour prior to the scheduled pick-up time, which does not allow us to effectively utilize the time slot for another client. We are averaging 16,183 canceled trips and 2,936 no-shows per month. Fourteen days advance reservation does not appear to be operationally feasible in a paratransit environment, and should be repealed or revised to make it more palatable for providers of specialized transportation services.

Patrisha Pires, a California transportation consultant and Board member of AC Transit, also petitioned the Department to eliminate this provision. She views this provision as an impediment to the effective implementation of "real-time" scheduling for paratransit services. Her rationale is the following:

> Real-time scheduling provides a dynamic ability for the service provider to respond to the current level of demand from service users. Adjustments in wait time and vehicle trip patterns are based on the current situation "on the street." This is a significant contrast to traditional "advance reservation" systems, where trips are booked several days in advance, creating an artificial picture of actual service, since often users would subsequently cancel or rearrange trips, and the provider would then have to rearrange planned vehicle deployment and assignments.
>
> [In my experience] * * *, often up to one third of trips booked on an advance reservation system are ultimately cancels or no-shows. This further creates a "blocking" mechanism, so that potential users would call farther and farther in advance to ensure a better chance of getting a ride * * *.
>
> *What the 14-day advance provision does is to institutionalize capacity constraints,* with a preference for people who have decided on their trip long in advance. This is counter to other philosophical bases of the regulation, which call for paratransit service to be relatively comparable to fixed-route, including the sense of "spontaneity" without having to pre-plan a trip. The 14-day advance provision also imposes or allows an implicit priority to certain kinds of trips, such as medical or other appointments, where the rider (and often the provider as well!) wants to have the certainty in advance that the trip is available. This, too, is counter to the basic service criteria of the regulations.
>
> The 14-day advance reservation provision should be eliminated (or, at a minimum, be made permissive and subservient to the other criteria) * * * (emphasis in original).

By eliminating the 14-day provision, or making it permissive, the NPRM would permit transit providers to decline to accept reservations farther from the date of travel than the day before. The minimum reservation time requirement—that providers must provide next-day service—would, of course, remain in place.

DOT-Proposed Adjustments to the Rule

1. Reduction of Paperwork for Paratransit Plan Updates

Under the Department's ADA regulation, each fixed route public transit operator was required to submit a paratransit plan to the Federal Transit

does not appear to be operationally feasible in a paratransit environment, and should be repealed or revised to make it more palatable for providers of specialized transportation services.

Patrisha Piras, a California transportation consultant and Board member of AC Transit, also petitioned the Department to eliminate this provision. She views this provision as an impediment to the effective implementation of "real-time" scheduling for paratransit services. Her rationale is the following:

> Real-time scheduling provides a dynamic ability for the service provider to respond to the current level of demand from service users. Adjustments in wait time and vehicle trip patterns are based on the current situation "on the street." This is a significant contrast to traditional "advance reservation" systems, where trips are booked several days in advance, creating an artificial picture of actual service, since often users would subsequently cancel or rearrange trips, and the provider would then have to rearrange planned vehicle deployment and assignments.
>
> [In my experience] * * *, often up to one third of trips booked on an advance reservation system are ultimately cancels or no-shows. This further creates a "blocking" mechanism, so that potential users would call farther and farther in advance to ensure a better chance of getting a ride * * *.
>
> *What the 14-day advance provision does is to institutionalize capacity constraints,* with a preference for people who have decided on their trip long in advance. This is counter to other philosophical bases of the regulation, which call for paratransit service to be relatively comparable to fixed-route, including the sense of "spontaneity" without having to pre-plan a trip. The 14-day advance provision also imposes or allows an implicit priority to certain kinds of trips, such as medical or other appointments, where the rider (and often the provider as well!) wants to have the certainty in advance that the trip is available. This, too, is counter to the basic service criteria of the regulations.
>
> The 14-day advance reservation provision should be eliminated (or, at a minimum, be made permissive and subservient to the other criteria) * * * (emphasis in original).

By eliminating the 14-day provision, or making it permissive, the NPRM would permit transit providers to decline to accept reservations farther from the date of travel than the day before. The minimum reservation time requirement—that providers must provide next-day service—would, of course, remain in place.

DOT-Proposed Adjustments to the Rule

1. Reduction of Paperwork for Paratransit Plan Updates

Under the Department's ADA regulation, each fixed route public transit operator was required to submit a paratransit plan to the Federal Transit Administration (FTA) by January 26, 1992. Section 37.135(c) of the rule requires that "each entity shall submit an update to the plan on January 26 of each succeeding year." Section 37.139(j) requires these updates to include information needed to update the information requirements applying to the original plan, significant changes or revisions to the timetable, whether milestones for progress toward full compliance have been met, explanations of any slippage that has occurred in meeting the timetable for full compliance, and corrective action for any slippage. The same public participation requirements that applied to the original plan (including notice, a public hearing, and consultation with the disability community) apply to updates.

FTA data indicate that about 117 of the 540 fixed route operators required to submit paratransit plans have indicated that they expected to be fully in compliance by the end of 1993. Another 70 providers expected to be fully in compliance by the end of 1994. By full compliance, we mean that the transit property meets all six service criteria spelled out for paratransit systems in the regulation (concerning service area, response time, trip purpose, hours and days of service, fares, and capacity constraints). It appears unnecessary to require transit properties which in fact meet all criteria to do the paperwork for an update every year. If a system is fully in compliance, and no significant changes have occurred, going through this process has no benefit for passengers with disabilities.

For these reasons, the Department is proposing to modify §§ 37.135(c) and 37.139(j) to allow transit properties who fully comply with all service criteria for paratransit service to rely on the assurance of ADA compliance required by § 27.4, rather than submitting an update report. If significant changes occurred that could affect compliance, or if the system fell out of compliance with respect to one or more of the service criteria, it would have to notify FTA of the problem and submit annual updates until it had returned to compliance.

The Department has some concern that, if it adopts this proposal, it may not have an adequate source of data about the compliance status of transit authorities, ridership, or costs. Such data may be useful for program evaluation as well as forming a basis for reports to Congress or the public. The Department seeks comment on whether, if this proposal is adopted, there should be any additional data reporting requirements concerning paratransit compliance, ridership, and costs.

2. Visitor Eligibility

Section 37.127, concerning complimentary paratransit service for visitors, provides that a public entity is not required to provide service to a visitor for more than 21 days from the date of the first paratransit trip used by the visitor. We have been asked whether this means 21 consecutive days or a collection of days over a given period of time adding up to 21. For the sake of simplicity and clarity, we propose to add the words "per year." This means that a visitor could have any 21 days of eligibility in any calendar year.

3. Vehicle Acquisition for "Private Not Primarily Engaged" Providers

Section 37.101 contains the vehicle acquisition requirements for private entities not primarily engaged in the business of transporting people. Because of the way that section 302 of the ADA itself it drafted, there is no specific vehicle acquisition requirement for "private not primarily engaged" entities providing demand responsive service with vehicles having a capacity of 16 or fewer passengers. Rather, entities in this situation must provide equivalent service to passengers with disabilities. This requirement is set forth in § 37.171. To avoid confusion, we propose to add to § 37.101 a new paragraph containing a cross-reference to § 37.171.

4. Personal Care Attendants

Section 37.123(f)(1)(i) permits an eligible individual traveling on ADA paratransit to be accompanied by a "personal care attendant" (PCA) as well as by any other person of the individual's choice. Section 37.131(c)(3) says that the PCA rides without charge, while the other companion must pay the paratransit fare. These provisions have led to questions about who should be regarded as a PCA. Section 37.123(f)(1)(ii) attempted to provide guidance on this issue by saying that a family member or friend traveling with an eligible individual is not regarded as a PCA unless that person is acting in the capacity of a PCA. The Appendix discussion of this section notes that a PCA is someone "designated or employed specifically to help the individual meet his or her personal needs," such as eating, drinking, using the bathroom, communicating etc. The Appendix also notes that the paratransit provider may, as part of the eligibility certification process, require that eligible individuals register as users of PCAs. The companion of someone not

so registering could be charged the paratransit fare.

The Department is aware that there may be definitions of PCA used in other contexts (e.g., human services programs). We seek comment on whether one of these definitions would be appropriate for use in the context of paratransit.

5. Equivalent Facilitation

The current provisions concerning "equivalent facilitation" (§§ 37.7 and 37.9) require, as one condition for obtaining a determination of equivalent facilitation, that an entity demonstrate its "reasons for inability to comply" with the existing regulatory standards. In other words, before the Department can determine that something is an equivalent facilitation, the applicant must show not only that it is proposing a solution providing equal or greater accessibility, but also that it is precluded from using the solution provided for in the Department's standards. The purpose of this provision was to limit departures from established regulatory standards to those situations where they could not be applied and, therefore, to discourage a proliferation of solutions that might undermine the goal of having uniform, predictable standards. This approach has the disadvantage, however, of also discouraging newer technologies or more innovative solutions that might actually provide accessibility gains in some situations. For this reason, the Department is proposing to delete the "inability to comply" language from the equivalent facilitation sections of the rule. We seek comment on whether this is a good idea.

We would point out that the proposed change is not intended to diminish the requirement that any equivalent facilitation provide equal or greater accessibility. For example, it would not permit a rail system to avoid installing detectable warnings meeting the regulatory standards without that system having demonstrated that a substitute design was as detectable or more detectable by persons with impaired vision.

6. Clarification of Appendix Statement on Vehicle Lift Dimensions

Part 38, the Departments standards for accessible vehicles, contains dimensions for wheelchair lifts on vehicles. The reference to these dimensions in the Part 37, Appendix A, discussion of § 37.13 speaks of the "new 30" x 48" lift platform specifications." While the dimensions are 30 x 48 inches at a distance of two inches above the platform, the width of the platform need only be 28.5 inches at the platform itself. This seeming discrepancy has confused some readers. To resolve it, we propose to remove the words "30" by "48" from the Appendix, so that the reference is simply to the lift standards of Part 38.

7. Typographical Errors

In § 37.3, in the definition of "designated public transportation," the word "containing" in the final line should be "continuing." In § 37.11(a), the reference in the last line to "Subpart F" of 49 CFR Part 27 should be "Subpart C" (Part 27 no longer contains any Subpart F). Commenters are encouraged to note other such errors, so that they can also be corrected.

Regulatory Analyses and Notices

This NPRM does not propose a significant rule under Executive Order 12866. It is a significant NPRM under the Department's Regulatory Policies and Procedures, since it would amend the Department's Americans with Disabilities Act rule, which is a significant rule. We expect economic impacts to be minimal, so we have not prepared a regulatory evaluation. There are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment. The Department certifies that the proposals, if adopted, will not have a significant economic impact on a substantial number of small entities.

Issued this 12th day of July, 1994, at Washington, DC.

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 49 CFR Part 37 and 49 CFR Part 38 as follows:

PART 37—[AMENDED]

1. The authority citation for 49 CFR Part 37 is proposed to continue to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

2. The authority citation for 49 CFR Part 38 is proposed to be revised to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

3. In part 37, § 37.27(b) is proposed to be revised to read as follows:

§ 37. 27 Transportation for elementary and secondary education systems.

* * * * *

(b) The requirements of this part do not apply to the transportation of school children to and from a private elementary or secondary school, and its school-related activities, if the school is providing transportation service to students with disabilities equivalent to that provided to students without disabilities. The test of equivalence is the same as that provided in § 37.105. If the school does not meet the requirement of this paragraph for exemption from the requirements of this part, it is subject to the requirements of this part for private entities not primarily engaged in transporting people.

4. In part 37, § 37.135 is proposed to be amended by revising paragraph (c) to read as follows:

§ 37.135 Submission of paratransit plan.

* * * * *

(c) *Annual updates.* Except as provided in this paragraph, each entity shall submit an annual update to its plan on January 26 of each succeeding year.

(1) If an entity has met and is continuing to meet fully all requirements for complementary paratransit in §§ 37.121 through 37.133 of this part, the entity may submit to FTA on January 26 of each succeeding year a certification of compliance in lieu of a plan update. Entities that have submitted a joint plan under § 37.141 may submit a joint certification under this paragraph. The requirements of §§ 37.137 through 37.139 do not apply when a certification is submitted under this paragraph.

(2) In the event of any change in circumstances that results in an entity which has submitted a certification of compliance falling short of full compliance with §§ 37.121 through 37.133 in any respect, the entity shall immediately notify FTA of the problem. In this case, the entity shall file a plan update meeting the requirements of §§ 37.137 through 37.139 of this part on the next following January 26 and in each succeeding year until the entity returns to full compliance.

(3) An entity which has been granted a waiver from any provision of this part on the basis of undue financial burden shall file a plan update meeting the requirements of §§ 37.137 through 37.139 of this part on each January 26 during which the waiver is in effect.

5. In part 37, § 37.167 is proposed to be amended by revising paragraph (g) to read as follows:

§ 37.167 Other service requirements.

* * * * *

(g) (1) The entity shall not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless—

(i) The lift cannot be deployed;

(ii) The lift will be damaged if it is deployed;

(iii) The lift, when fully deployed, would leave an inadequate space at the stop for the passenger to obtain a secure and maintainable position on the ground; or

(iv) Temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.

(2) For purposes of this paragraph, a stop that does not meet the specifications set forth in § 10.2.1(1) of Appendix A to this part shall be deemed to provide inadequate space for passengers using common wheelchairs to obtain a secure and maintainable position on the ground.

6. In part 38, § 38.173(a) is proposed to be amended by adding the words "(i.e., at a speed of no more than 20 miles per hour at any location on their route during normal operation)" after the words "slow speed."

7. In part 38, § 38.173(d) is proposed to be amended by adding the following sentence at the end: "AGT systems whose vehicles travel at a speed of more than 20 miles per hour at any location on their route during normal operation are covered under this paragraph rather than under paragraph (a) of this section."

8. In part 37, § 37.131(b)(4) is proposed to be removed or, in the alternative, to be amended by substituting the word "may" for the word "shall."

9. In Part 37, § 37.127(e) is proposed to be amended by adding the words "per year" after the word "days".

10. In part 37, § 37.101 is proposed to be amended by adding a new paragraph (e), to read as follows:

§ 37.101 Purchase or lease of vehicles by private entities not primarily engaged in the business of transporting people.

* * * * *

(e) *Demand Responsive System, Vehicle Capacity of 16 or Fewer.* Providers of transportation in this category should refer to § 37.171 of this part for requirements pertaining to that service.

11. In part 37, § 37.7 is proposed to be amended by revising paragraph (b)(2) and removing and reserving (b)(3) to read as follows:

§ 37.7 Standards for accessible vehicles.

* * * * *

(b) * * *

(2) Specific provision of part 38 of this title concerning which the entity is

disembark from a vehicle at any designated stop, unless—

(i) The lift cannot be deployed;

(ii) The lift will be damaged if it is deployed;

(iii) The lift, when fully deployed, would leave an inadequate space at the stop for the passenger to obtain a secure and maintainable position on the ground; or

(iv) Temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.

(2) For purposes of this paragraph, a stop that does not meet the specifications set forth in § 10.2.1(1) of Appendix A to this part shall be deemed to provide inadequate space for passengers using common wheelchairs to obtain a secure and maintainable position on the ground.

6. In part 38, § 38.173(a) is proposed to be amended by adding the words "(i.e., at a speed of no more than 20 miles per hour at any location on their route during normal operation)" after the words "slow speed."

7. In part 38, § 38.173(d) is proposed to be amended by adding the following sentence at the end: "AGT systems whose vehicles travel at a speed of more than 20 miles per hour at any location on their route during normal operation are covered under this paragraph rather than under paragraph (a) of this section."

8. In part 37, § 37.131(b)(4) is proposed to be removed or, in the alternative, to be amended by substituting the word "may" for the word "shall."

9. In Part 37, § 37.127(e) is proposed to be amended by adding the words "per year" after the word "days".

10. In part 37, § 37.101 is proposed to be amended by adding a new paragraph (e), to read as follows:

§ 37.101 Purchase or lease of vehicles by private entities not primarily engaged in the business of transporting people.

* * * * *

(e) *Demand Responsive System, Vehicle Capacity of 16 or Fewer.* Providers of transportation in this category should refer to § 37.171 of this part for requirements pertaining to that service.

11. In part 37, § 37.7 is proposed to be amended by revising paragraph (b)(2) and removing and reserving (b)(3) to read as follows:

§ 37.7 Standards for accessible vehicles.

* * * * *

(b) * * *

(2) Specific provision of part 38 of this title concerning which the entity is seeking a determination of equivalent facilitation.

* * * * *

12. In part 37, § 37.9 is proposed to be amended by revising paragraph (d)(2) and removing and reserving (d)(3) to read as follows:

§ 37.9 Standards for accessible facilities.

* * * * *

(d) * * *

(2) Specific provision of Appendix A concerning which the entity is seeking a determination of equivalent facilitation.

* * * * *

13. In part 37, Appendix A, the paragraph entitled *"Section 37.13 Effective Date for Certain Vehicle Lift Specifications"* is proposed to be amended by deleting the words "30" x "48"."

14. In part 37, the definition of the term "Designated public transportation" in § 37.3 is proposed to be amended by revising the word "containing" to read "continuing".

15. In part 37, § 37.11(a) is proposed to be amended by revising the words "subpart F" to read "subpart C."

[FR Doc. 94–17735 Filed 7–20–94; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 940793–4193; I.D. 060994A]

RIN 0648–AG37

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would allow non-Federal entities to apply for, and NMFS to issue, permits for the incidental take of threatened species of sea turtles consistent with section 10(a) of the Endangered Species Act (ESA). Existing regulations provide for the issuance of an incidental take permit for endangered sea turtles.

DATES: Written comments must be received by August 22, 1994.

ADDRESSES: Comments on this proposed rule, and requests for copies of the Environmental Assessment (EA) for this proposed rule, should be addressed to William W. Fox, Jr., Ph.D., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Heather Weiner, Endangered Species Division, (301) 713–2319; Doug Beach, Protected Species Program Coordinator, NMFS Northeast Regional Office, (508) 281–9254; or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, (813) 893–3366.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*) and olive ridley (*Lepidochelys olivacea*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, and the breeding population of olive ridley turtles on the Pacific coast of Mexico, which are listed as endangered.

In 1990, the National Academy of Sciences (NAS) completed a review of the biology of sea turtles and the causes and extent of their decline. The NAS concluded that incidental capture in shrimp trawls without turtle excluder devices (TEDs) is by far the leading cause of human-induced mortality to sea turtles at sea, but that collectively, activities in the non-shrimp fisheries constitute the second largest source of mortality. The study identified finfish trawls, seine nets, pompano gillnets, and various passive fishing gear, such as sink gillnets, weirs, traps and longlines, as potential sources of mortality to sea turtles.

Because threatened sea turtles are often incidentally taken in state coastal fisheries, NMFS established a regulatory framework that requires the use of TEDs on most shrimp trawls and allows NMFS to impose measures with respect to shrimp trawl and other fisheries to protect sea turtles, such as the use of limited tow times, the requirement to carry observers, and the closure of certain areas (57 FR 57348, December 4, 1992). Under this framework, measures are implemented as temporary restrictions, which is a time-consuming, repetitious, and short-term means to accomplish conservation measures for sea turtles. For example, NMFS has implemented many temporary

restrictions allowing the North Carolina shrimp fishery to comply with tow-time limits as an alternative to using TEDs in areas of high algae concentrations (see 58 FR 48975, September 21, 1993).

As an addition to the regulatory framework governing state fisheries in which listed species of sea turtles are incidentally taken, NMFS is proposing a rule that would extend section 10 permit regulations to all threatened species of sea turtles. Section 10(a)(1)(B) of the ESA authorizes the Secretary of Commerce (Secretary) to permit under such terms and conditions as he or she may prescribe, any taking otherwise prohibited by section 9(a)(1)(B) of the ESA, if the taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. NMFS implemented regulations for the application and issuance of incidental take permits, under section 10(a) of the ESA, which appear at 50 CFR parts 220 and 222, and allow the Assistant Administrator for Fisheries, NOAA, (AA) to issue permits to incidentally take endangered marine species during otherwise lawful activities.

While sections 9 and 10 and corresponding regulations apply to species listed as endangered, they may be applied to threatened species as well, pursuant to section 4(d) of the ESA. Section 4(d) provides that the Secretary issue such regulations as deemed necessary and advisable to provide for the conservation of such species. For example, for those threatened species whose taking is prohibited by NMFS (such as salmon (50 CFR 227.21) and Guadalupe fur seal (50 CFR 227.11)), NMFS has promulgated special regulations that allow incidental takings of such species in compliance with a section 10 incidental take permit. Although NMFS has extended the section 9 takings prohibitions to threatened sea turtles (50 CFR 227.71(a)), the exceptions to the prohibitions contained in 50 CFR 227.72 do not provide for the issuance of an incidental take permit. This rule, as proposed, would make it possible to issue such permits for the taking of threatened sea turtles.

The extension of the section 10 incidental take permit exception to threatened sea turtles would allow the same substantive protective measures that can be implemented, and the same fishing activities that can be carried out, as under the current regulatory framework, while eliminating the procedural shortcomings of the regulatory framework, such as the short duration of the rules and the length of time required to issue rules. Incidental take permits are not intended to undermine the TED-use requirement or the taking prohibition in general. Furthermore, the regulatory framework would remain in effect for any entity that has not been issued an incidental take permit. This proposed rule would provide an additional means whereby non-Federal entities can engage in commercial fishing practices while affording adequate protection to both endangered and threatened sea turtles.

Through the implementation of this proposed rule, NMFS would accept and consider incidental take permit applications from non-Federal entities, such as individuals, businesses, municipalities, fishery organizations and state agencies. NMFS anticipates that it would invite state agencies, which are responsible for regulating state fisheries, to apply for general permits that would cover specific fisheries known or believed to incidentally take threatened or endangered sea turtles. This would be more efficient than requiring permits for individual vessels. It would also allow the states to assume management of fisheries through the permits, which are limited to activities within the territorial sea.

The general permit procedures in 50 CFR part 220, as well as the endangered species permit requirements in 50 CFR part 222, would apply to the application, issuance, modification, revocation, suspension and amendment of an incidental take permit for threatened, as well as for endangered sea turtles.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This requirement has been approved previously by the Office of Management and Budget (OMB Control Number 0648–0230). The reporting burden for this collection is estimated to average approximately 80 hours for permit applications, 0.5 hours for certificate of inclusion applications and 0.5 hours for reports. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR), 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: Paperwork Reduction Act Project 0648–0230).

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities because the proposed rule establishes a discretionary permitting procedure that will, by itself, have no economic impact on fisherman. As a result, a regulatory flexibility analysis was not prepared.

The AA prepared an EA for this proposed rule that concludes that the rule would have no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**) and comments on it are requested.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: July 13, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(1) introductory text is revised and paragraph (e)(7) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * * (1) *General.* The prohibitions against taking in § 227.71(a) do not apply to the incidental take of any member of any species of sea turtle listed in § 227.4 (i.e., a take not directed toward such member) during fishing or scientific research activities, to the extent that those involved are in compliance with the requirements of paragraphs (e)(1), (2), (3), and (6) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (e)(7) of this section.

* * * * *

(7) *Incidental take permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited in

§ 227.71(a) of this chapter in accordance with section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to, the provisions of parts 220 and 222 of this chapter. Such permits may be issued for the incidental

§ 227.71(a) of this chapter in accordance with section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to, the provisions of parts 220 and 222 of this chapter. Such permits may be issued for the incidental taking of both endangered and threatened species of sea turtles. This section supersedes restrictions on the scope of parts 220 and 222, including, but not limited to, the restrictions specified in §§ 220.3, 222.2(a) and 222.22(a).

* * * * *

[FR Doc. 94–17512 Filed 7–20–94; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 139
Thursday, July 21, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Poehls, (202) 736–4748, M/AS/ISS/RM, Room 930B, N.S., Washington, DC 20523.

Date Submitted: July 11, 1994
Submitting Agency: Agency for International Development
OMB Number: OMB 412–0520
Ford Number: AID 1420–17
Type of Submission: Renewal
Title: Information Collection Elements in the A.I.D. Acquisition Regulation (AIDAR)
Purpose: A.I.D. is authorized to make contracts with any corporation, international organization, or other body of persons in or out of the United States in furtherance of the purposes and within the limitations of the Foreign Assistance Act (FAA). Information collections and recordkeeping requirements place on the public by the A.I.D. Acquisition Regulation (AIDAR), are published as 48 CFR. The Contractor Employee Biographical Data Sheet, AID form 1420–17 is one of USAID's unique procurement requirements which contains preaward information.
Annual Reporting Burden: Respondents: 900, annual responses: 4500; hours per response: .5; annual burden hours: 2250
Reviewer: Jeffery Hill (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: July 10, 1994.

Elizabeth Baltimore,

Bureau of Management, Administrative Service, Information Support Services Division.

[FR Doc. 94–17717 Filed 7–20–94; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–070–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service during the month of May 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of May 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 15th day of July 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17777 Filed 7–20–94; 8:45 am]

BILLING CODE 3410–34–P

BIPARTISAN COMMISSION ON ENTITLEMENT AND TAX REFORM

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the Bipartisan Commission on Entitlement and Tax Reform will hold a meeting on Monday, August 8, 1994 and 1 p.m. to 4 p.m. in the Cannon House Office Building, room 210, Washington, DC.

The meeting of the Commission shall be open to the public. The proposed agenda includes a discussion and possible adoption of or vote on Commission findings on the magnitude of long-range fiscal problems raised by current trends in federal spending and revenue patterns.

Records shall be kept of all Commission proceedings and shall be available for public inspection in room 825 of the Hart Senate Office Building, 120 Constitution Avenue, NE., Washington, DC 20510.

J. Robert Kerrey,

Chairman.

John C. Danforth,

Vice-Chairman.

[FR Doc. 94–17701 Filed 7–20–94; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Investment Plans Survey (Formerly Plant and Equipment Expenditures Survey).
Form Number(s): IP–1, IP–2.
Agency Approval Number: 0607–0641.
Type of Request: Revision of a currently approved collection.
Burden: 44,000 hours.
Number of Respondents: 30,000.
Avg Hours Per Response: 42 minutes.
Needs and Uses: The Bureau of the Census proposes to replace the Plant and Equipment Expenditures Survey (P&E) with a new economic indicator survey called the Investment Plans Survey (IPS) which will have close connection to the Annual Capital Expenditures Survey (ACES) (OMB approval number 0607–0782). The

BIPARTISAN COMMISSION ON ENTITLEMENT AND TAX REFORM

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the Bipartisan Commission on Entitlement and Tax Reform will hold a meeting on Monday, August 8, 1994 and 1 p.m. to 4 p.m. in the Cannon House Office Building, room 210, Washington, DC.

The meeting of the Commission shall be open to the public. The proposed agenda includes a discussion and possible adoption of or vote on Commission findings on the magnitude of long-range fiscal problems raised by current trends in federal spending and revenue patterns.

Records shall be kept of all Commission proceedings and shall be available for public inspection in room 825 of the Hart Senate Office Building, 120 Constitution Avenue, NE., Washington, DC 20510.

J. Robert Kerrey,
Chairman.
John C. Danforth,
Vice-Chairman.

[FR Doc. 94–17701 Filed 7–20–94; 8:45 am]
BILLING CODE 4151–04–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Investment Plans Survey (Formerly Plant and Equipment Expenditures Survey).
Form Number(s): IP–1, IP–2.
Agency Approval Number: 0607–0641.
Type of Request: Revision of a currently approved collection.
Burden: 44,000 hours.
Number of Respondents: 30,000.
Avg Hours Per Response: 42 minutes.
Needs and Uses: The Bureau of the Census proposes to replace the Plant and Equipment Expenditures Survey (P&E) with a new economic indicator survey called the Investment Plans Survey (IPS) which will have close connection to the Annual Capital Expenditures Survey (ACES) (OMB approval number 0607–0782). The reasons for replacing the P&E are: 1) to improve the quality of the economic indicator of investment plans, 2) to improve consistency and definition of investment data, and 3) to simplify respondent reporting. The IPS will provide an early estimate of investment in structures and equipment for the year ending and an indicator of planned investment for the upcoming year. The Federal Reserve Board, the Council of Economic Advisors, and the Bureau of Economic Analysis are among the principal data users. We plan to replace the P&E with this new survey beginning in November 1994. At that time we will collect actual expenditure data for 1994 and planned spending for 1995.

Affected Public: Businesses or other for–profit organizations and non–profit institutions.
Frequency: Semi–annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1994.
Gerald Taché,
Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–17787 Filed 7–20–94; 8:45 am]
BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Single Audit Questionnaires.
Form Number(s): SAC–1, SAC–2.
Agency Approval Number: 0607–0518.
Type of Request: Revision of a currently approved collection.
Burden: 28,400 hours.
Number of Respondents: 100,000.
Avg Hours Per Response: 17 minutes.
Needs and Uses: The Single Audit Act of 1984 and OMB Circulars A–128 and A–133 require state and local governments and institutions of higher education and other non–profit institutions receiving $100,000 or more in Federal financial aid to have an annual audit of their financial operations. OMB has designated the Census Bureau as the central clearinghouse for these audits. We use the Single Audit Questionnaires to contact those entities that have not sent in their audit reports to request that they forward the report or clarify their reporting status. Information on the reporting status of non–profit institutions was collected on a one–time basis during FY 1991. This activity was not funded during Fiscal Years 1992 and 1993 but will be reinstituted for 1994.

Affected Public: State or local governments and non–profit institutions.
Frequency: Annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1994.
Gerald Taché,
Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–17788 Filed 7–20–94; 8:45 am]
BILLING CODE 3510–07–F

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 06/15/94–07/15/94

Firm Name	Address	Date petition accepted	Products
Chicago Weaving Corporation .	5900 N. Northwest Highway, Chicago IL 60631.	06/16/94	Woven table linens.
Metal Form, Incorporated	19420 Eighty-Fourth Ave. South, Kent, WA 98032.	06/16/94	Aluminum parts.
Hatch & Kirk, Incorporated	5111 Leary Avenue Northwest, Seattle, WA 98107–4820.	06/20/94	Rebuilt diesel engines.
Delta Pet Incorporated dba For the Birds.	140 Lewis Road, #5, San Jose, CA 95111.	06/20/94	Bird toys.
Comstock Castle Stove Company.	119 W. Washington, Quincy, IL 62301.	06/22/94	Commercial gas cooking equipment.
Titan Corporation (The)	3033 Science Park Road, San Diego, CA 92121.	06/22/94	Militarized computers.
Breton Industries, Inc	One Sam Stratton Road, Amsterdam, NY 12010.	06/27/94	Custom vehicle covers, straps, cushions and seat belts.
Omak Wood Products, Inc	729 South Jackson, Omak, WA 98841.	06/27/94	Plywood and dimension lumber.
Applied Microsystems Corporation.	5020 148th Avenue Northeast, Redmond, WA 98052.	07/01/94	In-circuit emulation unit.
Rempac Foam Corporation	61 Kuller Road, Clifton, NJ 07015.	07/01/94	Paint and varnish brushes, pads and rollers and household and toilet articles made of foam.
EPE Corporation	540 North Commercial St., Manchester, NH 03101.	07/01/94	Wire wrapping, surface mount placement, lynx locater machine and feeders and spare parts.
Emanuel Equipment/EE Assembly.	214 Commercial Street, Sunnyvale, CA 94086.	07/01/94	Tooling for semiconductor packaging and semiconductor packages.
Oconee Machine & Tool Company, Inc.	2319 Sandifer Boulevard, Westminster, SC 29693.	07/06/94	Metal products—parts for grinders, metal drilling and reaming machines, etc.
Data I/O Corporation	10525 Willows Road Northeast, Redmond, WA 98073.	07/06/94	Misc.—programming systems, data I/O software & computer software.
Custom Alloy Corporation	3 Washington Avenue, High Bridge, NJ 08829.	07/06/94	Metal products—high pressure butt weld fitting of stainless steel and various alloy steels.
Akko, Inc	300 Canal Street, Lawrence, MA 01840.	07/06/94	Furniture—acrylic accent tables, chairs, TV carts, bath accessories, etc.
Aardvark Corporation	1415 Meridian East, Puyallup, WA 98371–0193.	07/07/94	Misc.—plastic ground water pipe, miscellaneous drill tools and pipe accessories.
American Fuel Cell and Coated Fabric Company.	601 Firestone Drive, Magnolia, AR 71753.	07/07/94	Misc.—rubber coated fabric storage tanks for liquids or dry powders.
Alperin, Inc	1 Maxson Drive, Old Forge, PA 18518.	07/07/94	Apparel—men's & boys' pants.
Standard Steel & Wire Corp	2450 West Hubbard, Chicago, IL 60612.	07/07/94	Metal products—cold-rolled & coated steel coils and cold-rolled and coated steel straight lengths.
Smokaroma, Inc	P.O. Box 25, Boley, OK 74827	07/07/94	Electronics—electric cooling plates/griller, pressurized B-B-Q smokers.
J. Telhos, Inc	126 Shove Street, Fall River, MA 02723.	07/08/94	Apparel—women's blazers of wool, wool blends, cotton, linen, polyester.
Seneca Falls Technology Group.	314 Fall Street, Seneca Falls, NY 13148.	07/08/94	Mach. & equip.—turning machines/horizontal lathes, metal components for machines and small tools.
American Tanning & Leather Co.	312 W. Solomon Street, Griffin, GA 30223.	07/14/94	Tanned reptile skins.
Source Turnkey Assembly & Test, Inc.	22118 20th Ave. SE., Suite 140, Bothell, WA 98021.	07/14/94	Printed circuit assemblies.
L & J Holding Company, LTD ..	6511 Oakton Street Morton Grove, IL 60053.	07/14/94	Level gauges.
Ryeson Corporation	3203 North Wolf Road, Franklin Park, IL 60131.	07/15/94	Torque wrenches, torque limiting screwdrivers and heads for torque wrenches.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 15, 1994.

Daniel F. Harrington,

Director, Trade Adjustment Assistance Division.

[FR Doc. 94–17790 Filed 7–20–94; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 94–0004.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Allegheny Highland Hardwoods, Inc. ("AHH") on July 13, 1994. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

DESCRIPTION OF CERTIFIED CONDUCT:

Export Trade

1. Products

Forest products, including but not limited to, hardwood lumber (SIC 2421); S4S dimension, solid squares, laminated squares, furniture blanks, flooring and dowels (SIC 2426); and molding and panels (SIC 2431); but excluding paper, cardboard, containerboard and similar products.

2. Export Trade Facilitation Services (As They Relate to the Export of Products and Services)

All export trade facilitation services including, but not limited to, professional services in the areas of

Dated: July 15, 1994.

Daniel F. Harrington,

Director, Trade Adjustment Assistance Division.

[FR Doc. 94–17790 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 94–0004.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Allegheny Highland Hardwoods, Inc. ("AHH") on July 13, 1994. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

DESCRIPTION OF CERTIFIED CONDUCT:

Export Trade

1. Products

Forest products, including but not limited to, hardwood lumber (SIC 2421); S4S dimension, solid squares, laminated squares, furniture blanks, flooring and dowels (SIC 2426); and molding and panels (SIC 2431); but excluding paper, cardboard, containerboard and similar products.

2. Export Trade Facilitation Services (As They Relate to the Export of Products and Services)

All export trade facilitation services including, but not limited to, professional services in the areas of government relations, foreign trade and business protocol, marketing, marketing research, negotiations, shipping, export management, documentation, insurance and financing.

Export Markets

The export markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.)

Export Trade Activities and Methods of Operation

To engage in export trade in the export markets, as an export trade intermediary, AHH, Inc. and/or its Members may:

1. Enter into exclusive or non-exclusive agreements wherein AHH agrees to act as the Members' Export Intermediary. Exclusive agreements are those wherein AHH agrees not to represent entities other than the Members in the sale of Products and provision of Export Trade Facilitation Services in any Export Market.

2. Meet to negotiate and agree on the terms of participation in each bid, invitation, or request to bid, or other sales opportunity in any Export Market, including, but not limited to, the price at which a Member will sell its Products for export, and the quantity of Products each Member will commit to the foreign sale or bid opportunity. During the course of such meetings, the following information may be exchanged:

a. Information that is generally available to the trade or public;

b. Information that is specific to a particular Export Market, including but not limited to reports, and forecasts of sales, prices, terms, customer needs, selling strategies, and product specifications;

c. Information on expenses specific to exporting to a particular Export Market, including, but not limited to, ocean freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing;

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market;

e. Information on AHH's activities in the Export Markets, including, but not limited to, customer complaints and quality problems, consultation with prospective foreign customers, and reports by foreign sales representatives;

f. Information on each Member's ability to supply Products in a timely fashion pursuant to a specific export order.

3. AHH may enter into exclusive or non-exclusive agreements with other Export Intermediaries for the sale of Products in the Export Markets. Exclusive agreements are those wherein the Export Intermediary agrees to represent only AHH and/or its Members in the sale of Products and to provide Export Trade Facilitation Services only to AHH and/or its Members.

4. AHH may enter into exclusive agreements with foreign customers of Products offered by AHH whereby the customer agrees not to purchase Products from entities other than AHH.

5. AHH's may discuss and agree with AHH's Members and/or Export Intermediaries with which AHH has entered into agreements pursuant to paragraph 3 above on export prices to be charged by AHH, AHH's Members, or such Export Intermediaries.

6. AHH may limit its membership.

7. AHH may publish and distribute a list of export prices for Products to be charged by AHH, AAH's Members, and Export Intermediaries with which AHH has entered into agreements pursuant to paragraph 3 above.

8. AHH may allocate orders for export sales, and divide profits from such sales among AHH's Members as provided in the membership agreement between AHH and AHH's Members.

9. AHH and/or AHH's Members may forward to the appropriate individual Member requests for information received from a foreign government or the foreign government's agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs); and if such individual Member elects to respond, the Member shall respond directly to the requesting foreign government or the foreign government's agent with respect to such information.

Terms and Conditions of Certificate

1. Except as expressly authorized in paragraph 2(c) of the Export Trade Activities and Methods of Operation, in engaging in such Export Trade Activities and Methods of Operation neither AHH nor any Member shall intentionally disclose, directly or indirectly, to any other Member any information about its or any other Member's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods unless (i) such information is already generally available to the trade or public; or (ii) the information

disclosed is a necessary term or condition (e.g. price, time required to fill an order, etc.) of an actual or potential *bona fide* sale and the disclosure is limited to the prospective purchaser.

2. AHH and its Members will comply with requests made by the Secretary of commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Member* means a person who has a membership in Allegheny Highland Hardwoods, Inc. and who has been certified as a *Member* within the meaning of § 325.2(1) of the Regulations.

Protection Provided by the Certificate

This Certificate protects AHH, its Members, and directors, officers, and employees acting on behalf of AHH and its Members, from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits AHH and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to AHH by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of AHH or its Members or (b) the legality of such business plans of AHH or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)", 50 Fed. Reg. 1786 (January 11, 1985).

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

EFFECTIVE DATE: July 13, 1994.

Dated: July 15, 1994.

W. Dawn Busby,

Director, Office of Trading Company Affairs.

[FR Doc. 94–17725 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–DR–P

Revocation of Antidumping Duty Order on Photo Albums and Photo Album Filler Pages From Hong Kong (A–582–501)

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its revocation of the antidumping duty order on photo albums and photo album filler pages from Hong Kong because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: July 21, 1994.

FOR FURTHER INFORMATION CONTACT: David Levy or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 68391) its notice of intent to revoke the antidumping duty order on photo albums and photo album filler pages from Hong Kong (December 16, 1985).

Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping duty order on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided 30 days to submit their comments.

Scope of the Order

Imports covered by the revocation are shipments of photo albums and photo album filler pages from Hong Kong. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 3920.00.00, 3921.00.00, 3926.90.00, 4819.50.00, 4820.50.00, 4820.90.00, and 4823.90.00. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR § 353.25(d)(4)(iii)).

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order on photo albums and photo album filler pages from Hong Kong is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR § 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of photo albums and photo album filler pages from Hong Kong entered, or withdrawn from warehouse, for consumption on or after December 1, 1993. Entries made during the period December 1, 1992, through November 30, 1993, will be subject to automatic assessment in accordance with 19 CFR § 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 1993, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR § 353.25(d).

Dated: July 14, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–17791 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–247–003]

Revocation of Antidumping Finding on Portland Cement From the Dominican Republic

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its revocation of the antidumping finding on portland cement from the Dominican Republic because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Fargo or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 22822) its notice of intent to revoke the antidumping finding on portland cement from the Dominican Republic (May 4, 1963).

Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

Scope of the Order

Imports covered by the revocation are shipments of portland cement from the Dominican Republic. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 2523.29.00. The HTS number is provided for convenience and

from warehouse, for consumption on or after December 1, 1993, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR § 353.25(d).

Dated: July 14, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–17791 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–247–003]

Revocation of Antidumping Finding on Portland Cement From the Dominican Republic

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its revocation of the antidumping finding on portland cement from the Dominican Republic because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Fargo or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 22822) its notice of intent to revoke the antidumping finding on portland cement from the Dominican Republic (May 4, 1963).

Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

Scope of the Order

Imports covered by the revocation are shipments of portland cement from the Dominican Republic. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 2523.29.00. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR § 353.25(d)(4)(iii)).

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on portland cement from the Dominican Republic is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR § 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of portland cement from the Dominican Republic entered, or withdrawn from warehouse, for consumption on or after May 1, 1994. Entries made during the period May 1, 1993, through April 30, 1994, will be subject to automatic assessment in accordance with 19 CFR § 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after May 1,1994, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR § 353.25(d).

Dated: July 14, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 94–17792 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–086]

Revocation of the Antidumping Duty Order on Spun Acrylic Yarn From Japan

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its revocation of the antidumping duty order on spun acrylic yarn from Japan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: July 21, 1994.

FOR FURTHER INFORMATION CONTACT: Ann Ngo or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 23051) its notice of intent to revoke the antidumping duty order on spun acrylic yarn from Japan (April 8, 1980).

Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping duty order on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided 30 days to submit their comments.

Scope of the Order

Imports covered by the revocation are shipments of spun acrylic yarn from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 5509.32.00. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order on spun acrylic yarn from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR § 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of spun acrylic yarn from Japan entered, or withdrawn

from warehouse, for consumption on or after April 1, 1994. Entries made during the period April 1, 1993, through March 31, 1994, will be subject to automatic assessment in accordance with 19 CFR § 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 1994, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR § 353.25(d).

Dated: July 14, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance,

[FR Doc. 94–17793 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 071394A]

National Marine Fisheries Service Organization Review

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NMFS has undertaken a review of the agency's management and organization. The objective of the review is to improve NMFS's ability to meet the agency's mission most efficiently and effectively. This notice solicits the comments and suggestions of the fishing industry, conservation groups, knowledgeable members of the public, and others who would like to make a contribution to the review based on their knowledge and experience of NMFS and its programs. The intent of the notice is to increase the comprehensiveness and validity of the review by obtaining additional information on a voluntary basis from knowledgeable individuals.

DATES: Comments and suggestions must be received by August 5, 1994.

ADDRESSES: Comments and suggestions should be directed to: Lynne Carbone and Associates, 7013 Fawn Trail Court, Bethesda, MD 20817. Please mark the mailing envelope clearly with "Management Review Comments."

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, (301) 713–2239.

SUPPLEMENTARY INFORMATION: Comments are requested on the following questions:

1. What does NMFS do as an organization that seems to go well? How is NMFS effective as an organization?
2. What does NMFS do as an organization that does not go well? Where/how is NMFS not effective?
3. If you could change anything about the organization and how NMFS operates, what would you change and how?

The review will give priority attention to responses to the above questions, but will also consider other comments that are submitted.

Dated: July 14, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–17706 Filed 7–15–94; 4:31 pm]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber and Silk-blend and other Non-Cotton Vegetable Fiber Textile Products Produced or Manufactured in The People's Republic of China

July 18, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 18, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 18, 1994, you are directed to amend further the directive dated January 24, 1994 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and The People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
334	320,218 dozen.
359–V	846,178 kilograms.
611	5,338,909 square meters.
847	1,294,406 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–17764 Filed 7–20–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

The National Futures Association's Proposed Requirements for Break-Even Analyses In Commodity Pool Disclosure Documents

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On June 15, 1994, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on the National Futures Association's ("NFA's") proposed amendment and Interpretive Notice to its Compliance Rule 2–13. 59 FR 30775 (June 15, 1994). The proposal would establish requirements regarding the use of break-even analyses in commodity pool disclosure documents. The original comment period expires on July 15, 1994.

By letter to the Commission dated July 11, 1994, the Managed Futures Association ("MFA") requested a thirty-three-day extension of the comment period to August 17, 1994. The MFA indicated that it had been meeting with its members frequently to consider the issues presented by the NFA's proposal. The MFA further indicated that that consultative process was continuing and that it believed that significant responsive comments were being developed.

Acting pursuant to the authority delegated by Commission Regulation 140.96(b), the Director of the Division of Trading and Markets ("Division") has determined that an extension of the period for the request for public comments on NFA's proposal is in the public interest and will assist the Commission in considering the view of interested persons. In order to ensure that all interested persons have an adequate opportunity to submit meaningful comments, the Division, on behalf of the Commission, is extending the comment period for an additional thirty-three days.

DATES: The comment period will remain open through August 25, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW.,

COMMODITY FUTURES TRADING COMMISSION

The National Futures Association's Proposed Requirements for Break-Even Analyses in Commodity Pool Disclosure Documents

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On June 15, 1994, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on the National Futures Association's ("NFA's") proposed amendment and Interpretive Notice to its Compliance Rule 2–13. 59 FR 30775 (June 15, 1994). The proposal would establish requirements regarding the use of break-even analyses in commodity pool disclosure documents. The original comment period expires on July 15, 1994.

By letter to the Commission dated July 11, 1994, the Managed Futures Association ("MFA") requested a thirty-three-day extension of the comment period to August 17, 1994. The MFA indicated that it had been meeting with its members frequently to consider the issues presented by the NFA's proposal. The MFA further indicated that that consultative process was continuing and that it believed that significant responsive comments were being developed.

Acting pursuant to the authority delegated by Commission Regulation 140.96(b), the Director of the Division of Trading and Markets ("Division") has determined that an extension of the period for the request for public comments on NFA's proposal is in the public interest and will assist the Commission in considering the view of interested persons. In order to ensure that all interested persons have an adequate opportunity to submit meaningful comments, the Division, on behalf of the Commission, is extending the comment period for an additional thirty-three days.

DATES: The comment period will remain open through August 25, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

Issued in Washington, DC, on July 15th, 1994, by the Commission.

Andrea M. Corcoran,

Director.

[FR Doc. 94–17697 Filed 7–29–94; 8:45 am]

BILLING CODE 6351–01–M

The National Futures Association's Proposed Restriction on the Use of Hypothetical Trading Results in Promotional Materials

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On June 15, 1994, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on the National Futures Association's ("NFA's") proposed amendment and Interpretive Notice to its Compliance Rule 2–29. 59 FR 30776 (June 15, 1994). The proposal would establish restrictions on the use of hypothetical trading results in promotional materials. The original comment period expires on July 15, 1994.

By letter to the Commission dated July 11, 1994, the Managed Futures Association ("MFA") requested a thirty-three-day extension of the comment period to August 17, 1994. The MFA indicated that it had been meeting with its members frequently to consider the issues presented by the NFA's proposal. The MFA further indicated that that consultative process was continuing and that it believed that significant responsive comments were being developed.

Acting pursuant to the authority delegated by Commission Regulation 140.96(b), the Director of the Division of Trading and Markets ("Division") has determined that an extension of the period for the request for public comments on NFA's proposal is in the public interest and will assist the Commission in considering the view of interested persons. In order to ensure that all interested persons have an adequate opportunity to submit meaningful comments, the Division, on behalf of the Commission, is extending the comment period for an additional thirty-three days.

DATES: The comment period will remain open through August 25, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

Issued in Washington, D.C. on July 15th, 1994 by the Commission.

Andrea M. Corcoran,

Director.

[FR Doc. 94–17698 Filed 7–20–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Plan for Compliance With Regulation 5 of Annex V to the MARPOL Convention

AGENCY: Department of the Navy, DOD.

ACTION: Notice

SUMMARY: DON is announcing the preparation of a plan for the compliance of all ships owned or operated by the Navy with the requirements of Regulation 5 of Annex V to the MARPOL Convention. The DON will consult with the Secretary of State, the Secretary of Commerce, the Secretary of Transportation and the Administrator of the Environmental Protection Agency on the special area compliance plan and solicits public participation and comment on the special area compliance plan. In order to obtain and consider public comments on the Navy's compliance with the MARPOL requirements, the Navy will host a public meeting prior to preparing the special area compliance plan.

DATES: The meeting will take place on September 20, 1994, at 9:00 a.m.

ADDRESSES: The meeting will be held in the main auditorium (Building Number 19) at the Naval Surface Warfare Center, Carderock Division, Carderock, MD.

FOR FURTHER INFORMATION CONTACT: For further information on the public meeting, contact Ms. Linda Dulin at (410) 293–3513. For information on the DON special area compliance plan for MARPOL compliance or to submit comments, contact the Officer in Charge, Naval Surface Warfare Center, Carderock Division, Annapolis Detachment, 3A Leggett Circle, Annapolis, MD 21402–6067 (Attn: Code 634A). The meeting will be conducted in English and will include oral briefings and visual displays. Members of the public who need additional assistance to participate should contact.

Ms. Dulin as soon as possible to make arrangements.

SUPPLEMENTARY INFORMATION: The United States Navy has explored ways to comply with restrictions on the discharge into the ocean of solid waste generated aboard its ships. The basis for the restrictions, the Navy's efforts to comply and its strategy for achieving future compliance are set out below.

Restrictions on Discharge of Solid Waste at Sea

The United States is a party to the International Convention on Prevention of Pollution from Ships, 1973, S. Treaty Doc. No. 3, 100th Cong., 1st Sess. (1987). The 1973 Convention was amended by the MARPOL Protocol in 1978, 17 I.L.M. 546 (1978), and the combination is frequently referred to as MARPOL 73/78. MARPOL 73/78 protects the ocean environment by prohibiting some discharges altogether, restricting other discharges to particular distances from land, and establishing "special areas" within which additional discharge limitations apply. MARPOL 73/78 deals with particular types of discharges in five annexes. Annex V addresses discharge of garbage from ships. MARPOL 73/78 was implemented for the United States in the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. 1901 *et seq.* Annex V has been implemented for the U.S. by the Marine Plastic Pollution Research and Control Act (MPPRCA), Pub. L. No. 100–220, 101 Stat. 1460 (1987), *codified at* 33 U.S.C. 1901 *et seq.*, and section 1003 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. No. 103–160, 107 Stat. 1745 (DAA–94).

MARPOL 73/78 provides enhanced protection to particular bodies of water, designated "special areas," because their oceanographic characteristics and ecological significance requires protective measures more strict than other areas of the ocean. The stricter requirements become applicable once the International Maritime Organization declares that the special areas are "in effect" after determining that the littoral countries have sufficient capacity to handle wastes from ships.

The international community has long recognized that the characteristics of warships pose special problems for strict compliance with MARPOL 73/78, which reasonably focuses on civilian vessels which are far more prevalent than warships on the world's oceans. Article 3 of MARPOL 73/78 recognizes the special nature of warships by exempting them from strict compliance with the provisions of the Convention. It provides that the Convention:

> [S]hall not apply to any warship, naval auxiliary or other ship * * *. Each Party shall ensure by the adoption of measures not impairing the operational capabilities of such ships * * * that such ships act in a manner consistent, so far as is reasonable and practicable.

For U.S. public vessels, implementation of MARPOL 73/78 generally preserves the sovereign immunity of warships and public vessels, excluding them from strict application of the standards but requiring the Secretary of Defense to prescribe regulations ensuring "so far as is reasonable and practicable without impairing the operations or operational capabilities" of the ships that they act "in a manner consistent with the MARPOL Protocol." *See* 33 U.S.C. 1902(b) and (d). As required by MARPOL 73/78 and APPS, 33 U.S.C. 1901 *et seq.*, the Navy has prescribed discharge limits and operational practices for Navy ships that are at least as protective as those required under MARPOL 73/78 under most circumstances. Under the MPPRCA, however, Navy ships were required to come into full compliance with the requirements of Annex V of MARPOL 73/78. Under the MPPRCA, the Navy was to come into full compliance with Annex V to MARPOL 73/78 by January 1, 1994 or to notify Congress if it was unable to comply.

Navy Compliance Efforts

Since the early 1980's, the Navy has been developing technological means to eliminate or mitigate discharge of solid waste from its ships. Through a combination of material substitution, source reduction and management practices, for example, the discharge of plastic waste was cut by over 70 percent. The Navy also pursued development of other technology to help manage solid waste at sea. By 1993, the Navy had installed equipment and imposed procedures to fully comply with MARPOL restrictions on non-plastic waste everywhere but in special areas, and had achieved an estimated 70 percent compliance with restrictions on plastic waste. In addition, the Navy developed new technology that, when finally procured and installed, will allow Navy surface ships to come into full compliance with restrictions on discharge of plastic waste.

Concurrent with the technical studies, the Navy engaged numerous stakeholders in a dialogue in which the Keystone Center acted as a facilitator. The stakeholders included Federal and state agencies, Congressional staff, and environmental groups. The dialogue allowed the Navy to provide information to the participants about the special problems it faces in continuing military operations on the world's oceans while still complying with restrictions on the discharge of solid waste. The Navy was also better able to understand the concerns and interests of the representative stakeholders on the subject.

The Navy reported its efforts at managing shipboard solid waste in "U.S. Navy Compliance with the Marine Plastic Pollution Research and Control Act of 1987" (June 1993). Congress responded by extending the original deadlines in the MPPRCA. As required by section 1003(a) of the DAA–94, surface ships must eliminate all discharges of plastics by December 31, 1998 and must comply with limits on discharges of other solid waste in special areas that are "in effect" by December 31, 2000. Submarines must comply with both requirements by December 31, 2008.

Plan for Compliance in Special Areas

The Navy has identified the solution to the problem of plastic discharges from surface ships and is working hard on a solution for submarines. Strict compliance with all requirements for discharges of nonplastic solid waste in special areas, however, presents a larger problem because of the nature of the waste stream and the military mission of warships. Regulation 5 of Annex V pertains to discharges in special areas and prohibits discharges of solid wastes, other than food wastes. Although the Navy has made important strides in studying the shipboard waste stream, in developing management strategies, and in developing equipment that can mitigate the effects of solid waste discharges, the Navy has not identified a final solution that would eliminate all non-food discharges in special areas. Recognizing the difficulty in achieving strict compliance with all requirements of Annex V, in section 1003(b) of the DAA–94, Congress required the Navy to prepare a plan for compliance with the requirements of Regulation 5 under Annex V. The special area compliance plan must be submitted to Congress by November 30, 1996. If the special area compliance plan demonstrates that full compliance with all the requirements of Regulation 5 of Annex V is not technologically feasible in the case of certain ships under certain conditions, it must include the following information:

a. The ships for which full compliance is not technologically feasible;

b. the technical and operational impediments to achieving such compliance as rapidly as is technologically feasible; and

c. such other information as the Secretary of the Navy considers relevant and appropriate.

In accordance with DAA–94 and to ensure the broad public understanding of the problem, the Navy will consult with the Secretary of State, the Secretary of Commerce, the Secretary of Transportation and the Administrator of the Environmental Protection Agency as it prepares the special area compliance plan. The Navy will also provide the opportunity for public participation in preparation of the special area compliance plan, including public review and comment. This notice is provided to inform the public that preparation of the special area compliance plan is beginning and to solicit public comments on the scope of the studies to be planned and the alternatives to be studied.

Navy Mission and Resource Constraints

Any solution to the Navy's solid waste problem in special areas must consider the types of missions that the Navy is directed to carry out in special areas and the constraints and challenges inherent in operating warships at sea. These considerations include the following:

The Navy must be prepared to carry out duties assigned by the President to protect the nation's interests around the world. Most of the designated special areas include locations of great strategic and economic interest, including the Mediterranean Sea, the Red Sea, the Persian Gulf, the Gulf of Mexico, the North Sea and the Baltic. Navy missions in such areas often require that ships remain on station at sea for prolonged periods of time. For example, surveillance and tracking missions for drug interdiction or for enforcement of economic sanctions would be compromised if ships were required to leave station and steam to port to offload waste. For another example, Naval ships maintaining combat air patrol over a crisis area like Bosnia often must remain on station at sea for months at a time to prevent a break in coverage. Navy ships have also often been ordered to remain for weeks or months off the coast of nations in turmoil so that U.S. forces can evacuate U.S. citizens if necessary. In other circumstances, Navy ships may be required to remain offshore to provide access to sophisticated medical care in case of injury or wounding of peacekeeping troops. Some Navy ships, especially submarines, necessarily must operate without underway logistic support from other Navy ships. Thus,

compliance as rapidly as is technologically feasible; and

c. such other information as the Secretary of the Navy considers relevant and appropriate.

In accordance with DAA–94 and to ensure the broad public understanding of the problem, the Navy will consult with the Secretary of State, the Secretary of Commerce, the Secretary of Transportation and the Administrator of the Environmental Protection Agency as it prepares the special area compliance plan. The Navy will also provide the opportunity for public participation in preparation of the special area compliance plan, including public review and comment. This notice is provided to inform the public that preparation of the special area compliance plan is beginning and to solicit public comments on the scope of the studies to be planned and the alternatives to be studied.

Navy Mission and Resource Constraints

Any solution to the Navy's solid waste problem in special areas must consider the types of missions that the Navy is directed to carry out in special areas and the constraints and challenges inherent in operating warships at sea. These considerations include the following:

The Navy must be prepared to carry out duties assigned by the President to protect the nation's interests around the world. Most of the designated special areas include locations of great strategic and economic interest, including the Mediterranean Sea, the Red Sea, the Persian Gulf, the Gulf of Mexico, the North Sea and the Baltic. Navy missions in such areas often require that ships remain on station at sea for prolonged periods of time. For example, surveillance and tracking missions for drug interdiction or for enforcement of economic sanctions would be compromised if ships were required to leave station and steam to port to offload waste. For another example, Naval ships maintaining combat air patrol over a crisis area like Bosnia often must remain on station at sea for months at a time to prevent a break in coverage. Navy ships have also often been ordered to remain for weeks or months off the coast of nations in turmoil so that U.S. forces can evacuate U.S. citizens if necessary. In other circumstances, Navy ships may be required to remain offshore to provide access to sophisticated medical care in case of injury or wounding of peacekeeping troops. Some Navy ships, especially submarines, necessarily must operate without underway logistic support from other Navy ships. Thus, the special area compliance plan must consider any impacts that it may impose on mission effectiveness and operational flexibility.

The special area compliance plan must be compatible with warship design. Navy ships are designed to maximize their ability to perform their missions, especially combat missions. Ships are self-contained units with severe limits on space, weight and power requirements for their equipment. While naval architecture and ship design always require compromise among competing priorities, Navy ships must be equipped, manned and constructed to function effectively and survive in far more rigorous circumstances than commercial ships. Navy ships must devote considerable space and weight to specialized combat systems equipment and damage control features. They have far larger crews than commercial vessels because more systems must be operated, and most routine equipment maintenance must be done by the ship's crew at sea.

Many classes of Navy ships are already classified as "space and weight critical," which means that any equipment added to the ship (for example, to manage solid waste) must be compensated for by removing other equipment already devoted to some other portion of the ship's mission. Many ships also have only modest additional power available to drive additional equipment and would have to turn off other important systems to use a waste control system with high power requirements. Thus the Navy's special area compliance plan must carefully address the size, weight and power requirements of any additional equipment.

The crew size on Navy ships, an important factor in determining the size of the waste stream, varies tremendously. Submarines have crews of approximately 120. Cruisers have crews of approximately 380. Large amphibious ships have crews of approximately 2000. Aircraft carriers have crews approaching 6000. The Navy's special area compliance plan must address solutions that can be adapted successfully to several different capacities.

Because they operate independently in a dynamic, often physically hostile marine environment, Navy ships and the equipment on them must be designed to withstand stresses and operating conditions not encountered on shore. The Navy has experienced difficulty with some "off the shelf" equipment not specifically designed for shipboard use. Shipboard equipment must also be reliable, maintainable by Navy crews, and capable of being logistically supported by the Navy supply system. The Navy's special area compliance plan must address reliability and maintainability of any new equipment in a marine environment.

The Navy faces a fiscal environment where many meritorious programs must compete for a declining total amount of resources, in terms of both funding and personnel. Development, acquisition, installation and operation of new equipment, therefore, must be cost efficient. The Navy's special area compliance plan must address the resources needed to implement it.

For the reasons discussed above, to be feasible for use by the Navy for vessels throughout the fleet, equipment or strategies to implement an alternative must balance operational, design, cost, and environmental considerations in the same manner that equipment designed for propulsion, communications, weapons or other shipboard functions are evaluated. The criteria normally considered by the Navy for shipboard systems include those set out in the Appendix to this notice.

Alternatives To Be Studied

In developing the special area compliance plan, the Navy proposes to analyze three different categories of alternatives. The first two categories would ensure full compliance with Regulation 5 under Annex V. The third alternative would not ensure full compliance with Regulation 5 under Annex V, but may preserve many or all of the environmental values protected by Regulation 5 in the event that full compliance is not feasible. The Navy remains committed to full compliance, but is taking this opportunity to increase the information available on ways to mitigate discharges in special areas. The Navy will also analyze combinations of the technologies from the distinct alternatives. The general categories of alternatives are:

On Board Destruction of Waste Alternative

This category of alternatives focuses on technologies that result in virtually complete destruction of waste aboard the vessel. These might include incineration or more technologically advanced thermal destruction. Study of these technologies would include study of the proper handling of any residue as well any safety concerns and cross media pollution.

Store and Retrograde Waste Alternative

The second category of alternatives focuses on technologies that permit storage and retrograde of waste, either on board the generating ship or by service force ships. These would include study of refrigeration, compaction, odor barrier bags and other means to facilitate storage and retrograde of waste for disposal on shore.

Process Solid Waste Until It Is "Environmentally Benign" and Discharge Alternative

The third category of alternatives focuses on technologies that are designed to process waste to produce an effluent that is environmentally benign if discharged to the sea. The study of this alternative would also include fate and effect studies of the discharge and the relative effect of such discharges in comparison to other discharges from land or sea sources.

Public Participation

The Navy solicits public input to the special area compliance plan. Among other topics, public comments could address the scope of the alternatives to be considered, the studies considered necessary, the measures of merit by which to evaluate the alternatives, and suggested technologies or strategies for compliance. As described above, the Navy will hold a public meeting to obtain and consider public comments on the Navy's compliance with the MARPOL requirements. Members of the public are invited to attend.

Following the public meeting the Navy will analyze the alternatives (including combinations of the alternatives), conduct required research and prepare a draft special area compliance plan. Comments should be submitted in writing to the Officer in Charge, Naval Surface Warfare Center, Carderock Division, Annapolis Detachment, 3A Leggett Circle, Annapolis, MD 21402–6067 (Attn: Code 634A) in time to be received not later than 30 days after the date of the public meeting. The Navy expects to formally consult with the other concerned agencies on the draft special area compliance plan in late 1995 and to make the draft special area compliance plan available for public comment in Spring, 1996. After public review and comment, the Navy will submit the plan to Congress.

Appendix—Equipment Suitability Considerations

1. Installation feasibility
   a. Back fitting existing vessels
   b. Design in new vessels
2. Performance (adapted to waste management equipment)
   a. Throughput or processing capacity
   b. Pitch and roll sensitivities
   c. Flexibility in handling various blends of wastes
   d. Resulting waste products and/or residues
   e. Ability to handle classified documents
3. Space and physical support requirements
   a. Floor space (footprint)
   b. Height
   c. Volume
   d. Requirement for multi-deck installation
   e. Supporting hardware
   f. Staging/stowage area for supplies or raw material
4. Shipboard load/stability factors
   a. Absolute weight
   b. Center of gravity/moment as installed on ship
5. Reliability
   a. Mean time between critical failures (MTBCF)
   b. Types of failures (critical, noncritical, discrepancies, persistent)
   c. Qualitative assessment of impact on crew
   d. Effects of heat, humidity, ocean climate and shipboard vibration
6. Maintainability (at sea)
   a. Preventive maintenance requirements
   b. Mean Time to Repair (MTTR)
   c. Mean Logistics Delay Time (MLDT); average time to get spare parts
   d. Maximum Allowable Time to Make Repairs (Mmax)
7. Staffing
   a. Number of manhours required for operation
   b. Availability of required skills aboard ship
   c. Training requirements
8. Compatibility with military mission
   a. Electromagnetic radiation
   b. Electronic/electrical interference
   c. Acoustic signature
   d. Visible emissions
9. Interoperability with other shipboard systems
10. Survivability in a marine/combat environment
11. Logistics support
    a. Availability or repair parts
    b. Technical data and maintenance requirements
    c. Supply support
    d. Support equipment (e.g., special tools)
    e. Spares and consumables requirement
12. Safety and Health considerations
    a. Noise levels produced
    b. Fire/explosion hazards
    c. Chemical/biological hazards
    d. Odor production
    e. Temperature of equipment/system surfaces and contribution to ship heating/cooling load
    f. Physical hazards, including those associated with moving or rotating parts
13. Costs associated with:
    a. Research, development, test and evaluation (RDT&E)
    b. Procurement
    c. Installation
    e. Operation
    f. Logistic support.

Dated: July 15, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–17711 Filed 7–20–94; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by August 1, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: July 15, 1994.

Mary P. Liggett,

Acting Director, Information, Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Expedited

Title: Drug-Free Schools and Communities Safe Schools Act of 1994 Grants program

Abstract: This form will be used to evaluate the quality and utility of proposed activities in order to select competitively the applicants who will receive awards. The Department will use the information to satisfy regulatory requirements.

Additional Information: Clearance for this information collection is requested for August 1, 1994. An expedited review is necessary so that the program office can complete a schedule which will award grants in December 1994. Grantees will receive a single award to conduct activities for project periods of up to eighteen months. Eighteen month project periods allow grantees time during the present school year to conduct planning and start-up activities (such as hiring personnel) for the subsequent school year. During the 94–95 school year (FY 95) grantees can carry out the remainder of their approved activities as well as evaluate and disseminate project outcomes.

Frequency: Annually

Affected Public: State or local governments

Reporting Burden:

Responses: 500

Burden Hours: 14,000

Recordkeeping Burden:

Recordkeepers: 500

Burden Hours: 10,000.

[FR Doc. 94–17733 Filed 7–20–94; 8:45 am]

BILLING CODE 4000–01–M

The Acting Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: July 15, 1994.

Mary P. Liggett,

Acting Director, Information, Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Expedited

Title: Drug-Free Schools and Communities Safe Schools Act of 1994 Grants program

Abstract: This form will be used to evaluate the quality and utility of proposed activities in order to select competitively the applicants who will receive awards. The Department will use the information to satisfy regulatory requirements.

Additional Information: Clearance for this information collection is requested for August 1, 1994. An expedited review is necessary so that the program office can complete a schedule which will award grants in December 1994. Grantees will receive a single award to conduct activities for project periods of up to eighteen months. Eighteen month project periods allow grantees time during the present school year to conduct planning and start-up activities (such as hiring personnel) for the subsequent school year. During the 94–95 school year (FY 95) grantees can carry out the remainder of their approved activities as well as evaluate and disseminate project outcomes.

Frequency: Annually

Affected Public: State or local governments

Reporting Burden:

Responses: 500

Burden Hours: 14,000

Recordkeeping Burden:

Recordkeepers: 500

Burden Hours: 10,000.

[FR Doc. 94–17733 Filed 7–20–94; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 22, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 15, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: New

Title: Annual Report of Independent Living Services for Older Individuals Who Are Blind

Frequency: Annually

Affected Public: State or local governments

Reporting Burden:

Responses: 33

Burden Hours: 132

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This form will be used to evaluate and monitor independent living services to older individuals who are blind related to the types of services provided and the number of persons receiving each type of service, and the amounts and percentages of funds reported on each type of service provided. The Department will use the information to report to Congress

Office of Postsecondary Education

Type of Review: New

Title: Reporting and Recordkeeping Requirements for Teacher Shortage Cancellation Provisions for the Federal Perkins Loan Program

Frequency: Annually

Affected Public: Individuals or households; State or local governments; Federal agencies or employees; Non-profit institutions

Reporting Burden:

Responses: 57

Burden Hours: 57

Recordkeeping Burden:

Recordkeepers: 8,280

Burden Hours: 2,070

Abstract: The Chief State school officer of each state would be required to provide the Secretary annually with a list of proposed teacher shortage areas for that state unless they do not wish to make the cancellation available to teachers in that state. The Department will use the information as support for a cancellation/reduction in teaching obligations.

[FR Doc. 94–17734 Filed 7–20–94; 8:45 am]

BILLING CODE 4000–01–M

[CFDA NO: 84.176]

Paul Douglas Teacher Scholarship Program; Notice Inviting Applications for New Grants for Fiscal Year (FY) 1994.

Purpose of Program: To provide, through grants to States, scholarships to individuals who are outstanding secondary school graduates and who demonstrate an interest in teaching, in order to enable and encourage those individuals to pursue teaching careers in education at the preschool, elementary or secondary level.

Eligible Applicants: The 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Trust Territory of the Pacific Islands (Palau), and the Virgin Islands are eligible to apply for grants under this program.

Deadline for Transmittal of Applications: August 22, 1994.

Deadline for Intergovernmental Review: September 6, 1994.

Available Funds: $14,681,000.

Estimated Range of Awards: $1,230 to $1,746,057.

Estimated Average Size of Awards: $271,870.

Estimated Number of Awards: 54.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Budget Period: 12 months.

Applicable Regulations: (a) The regulations for this program in 34 CFR Part 653, as published in the **Federal Register** on August 11, 1993 (58 FR 42824); and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60–75.62 and 34 CFR Parts 76, 77, 79, 80, 82, 85, 86.

For Applications or Further Information Contact: Ms. Valerie A. Hurry, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202–5329. Telephone: (202) 260–3392. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone number (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1104 to 1104k.

Dated: July 15, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–17712 Filed 7–20–94; 8:45 am]

BILLING CODE 4000–01–F

DEPARTMENT OF ENERGY

Chicago Operations Office; Financial Assistance Award; Air Conditioning and Refrigeration Technology Institute

AGENCY: Energy.

ACTION: Intent to award based on an unsolicited application.

SUMMARY: The Department of Energy announced that pursuant to the provisions of 10 CFR 600.14, it intends to provide additional funding and extend the budget period for Grant No. DE–FG02–91CE23810 based on an unsolicited application received from Air Conditioning and Refrigeration Technology Institute (ARTI) for Phase IV of the project, Materials Compatibility and Lubricant Research to Accelerate Introduction of CFC—Refrigerant Substitutes. The determination to extend this grant is based on the following information: A technical evaluation of the proposed project was performed pursuant to 10 CFR 600.14 (d) and (e). The proposed project assists DOE in carrying out its mission of seeking alternative refrigerants for Chlorofluorocarbons (CFCs) and Hydrochlorofluorocarbons (HCFCs) in refrigeration and insulation in an effort to reduce the deleterious effects of refrigeration chemicals on stratospheric ozone. ARTI has made available substantial and unique facilities and resources not available elsewhere. This includes considerable amounts of information that are proprietary to the member industries participating in the project. It is determined that the proposed project is meritorious in significantly improving the information data base upon which new refrigerants and lubricants can be selected, and refrigeration equipment can be designed to utilize these chemical compounds. The probability of success is extremely high due to the high level of industry participation and commitment to the effort, particularly cost sharing or in-kind support. The key personnel assigned to the project have capabilities critical to the accelerated development of alternative refrigerants and the refrigeration equipment required to effectively utilize these new chemical compounds. DOE knows of no other entity which is conducting or planning to conduct such an effort. This effort is not considered suitable for competitive financial assistance. The DOE share of funding is estimated at $3,190,000 and ARTI's cost share is estimated at $226,493 for a two-year budget period estimated to be from September 30, 1994 through September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Gaile A. Higashi, U.S. Department of Energy, Chicago Operations Office, Contracts Division, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2383. Tanga R. Baylor, U.S. Department of Energy, Chicago Operations Office, Contracts Division, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2214.

Issued in Chicago, Illinois on July 12, 1994.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–17784 Filed 7–20–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance: Stone & Webster Engineering Corporation

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A) and (D) it plans to negotiate Cooperative Agreement DE–FC07–94ID13303 with Stone & Webster Engineering Corporation, Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Linda A. Hallum, Contract Specialist, (208) 526–5545; U.S. Department of Energy, 850 Energy Drive, MS 1221, Idaho Falls, ID 83401–1563.

SUPPLEMENTARY INFORMATION: The objective of the project is continue tests to evaluate the supercritical water oxidation (SCWO) pilot plant developed under Cooperative Agreement DE–FC07–88ID12711. The pilot plant configuration was developed to treat corrosive wastes and waste with high solids content. DOE has no recent, current, or planned solicitations under which this proposal would be eligible. The activity to be funded is necessary to the satisfactory continuation of an activity funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the project. DOE and commercial implementation of SCWO technology will reduce the volume of hazardous and mixed waste currently stored and generated in the United States. SCWO technology is recognized as a high potential alternative technology to incineration, providing cleaner effluents and with less institutional barriers than incineration. The award will be for one year at a total estimated cost of $700,000. Cost share is anticipated to be 10% of the project costs. Statutory authority for this award is Pub. L. 93–577, Federal Non-Nuclear Energy Research and Development Act of 1974. The Federal Domestic Catalog Number is 81.103.

Dated: July 11, 1994.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 94–17785 Filed 7–20–94; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, August 3, 1994: 7:00 p.m.–10:00 p.m.

ADDRESSES: Holiday Inn Crowne Plaza, 4255 South Paradise Road, Law Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7633.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Wednesday, August 3, 1994

7:00 p.m.
Call to Order
Review Agenda
Minutes Acceptance
Financial Report
Correspondence
Reports from Committees, Delegates

hazardous and mixed waste currently stored and generated in the United States. SCWO technology is recognized as a high potential alternative technology to incineration, providing cleaner effluents and with less institutional barriers than incineration. The award will be for one year at a total estimated cost of $700,000. Cost share is anticipated to be 10% of the project costs. Statutory authority for this award is Pub. L. 93–577, Federal Non-Nuclear Energy Research and Development Act of 1974. The Federal Domestic Catalog Number is 81.103.

Dated: July 11, 1994.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 94–17785 Filed 7–20–94; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, August 3, 1994: 7:00 p.m.–10:00 p.m.

ADDRESSES: Holiday Inn Crowne Plaza, 4255 South Paradise Road, Law Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7633.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Wednesday, August 3, 1994

7:00 p.m.
- Call to Order
- Review Agenda
- Minutes Acceptance
- Financial Report
- Correspondence
- Reports from Committees, Delegates and Representatives
- Unfinished Business
- New Business
- Evaluation of Board and Environmental Restoration and Waste Management Programs
- Announcements

10:00 p.m. Adjournment

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting Wednesday, August 3, 1994.

Public Participation

The meeting is open to the public. Written statements may be filed with the Commission either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the Federal Register notice is being published less than fifteen days before the date of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC on July 18, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–17786 Filed 7–20–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 11346–001, IA]

FORIA Hydro Corp.; Environmental Assessment Scoping

July 15, 1994.

On March 28, 1994, the Federal Energy Regulatory Commission (Commission) issued a notice indicating that staff is ready to conduct an environmental analysis (REA Notice) for the proposed Fort Dodge Mill Dam Project, located on the Des Moines River, in Webster County, Iowa. The REA Notice also requested comments from federal, state, and local resource agencies, licensees and developers, Indian tribes, and any other interested groups (parties). Parties were given until May 28, 1994, to file comments.

The purpose of this notice is to advise all parties as to the scope of our environmental analysis and to seek additional information pertinent to this analysis. The scope as presented herein is based on the information filed with the Commission by FORIA Hydro Corporation (the Applicant), comments received from the parties thus far, and the staff's independent analysis.

Proposed Action

The Applicant proposes to install new generating equipment at an existing dam, reservoir and powerhouse to be called the Fort Dodge Mill Dam Project.

The proposed project would include the following features: (1) an existing dam 372 feet long and 18 feet high; (2) an existing impoundment with a surface area of 90 acres with a normal surface elevation of approximately 990 feet above mean sea level; (3) an existing powerhouse containing two new turbine-generator units at a total installed capacity of 1,260 kilowatts; and (4) a proposed 13.8-kilovolt transmission line.

In addition to the proposed two new turbine-generator units, the Applicant proposes install a new flat trashrack (with 2.75–3.5-inch clear bar spacing) above the project intake.

To enhance public recreation, the Applicant proposes to develop a new boat ramp at the Fort Dodge Park, located adjacent to proposed project.

The Applicant proposes measures relating to project operation to protect environmental resources in the project area. A 24-cubic feet per second minimum flow over the project dam is proposed to protect water quality and fishery resources in the downstream pool area and side channel. The project would be operated in a run-of-river mode, with only minor fluctuations in the headpond elevation to account for natural variations in river flow. In the operational plan for the Fort Dodge Mill Dam Project, the Applicant also proposes to implement a plan to verify run-of-river operation and a seasonal water quality monitoring program for the impoundment.

Project Alternatives

The Commission staff will consider alternatives, including enhancement measures not proposed by the Applicant. The staff will review and consider alternative recommendations for additional resource protection, or enhancement measures that may be appropriate to include in an original license. Modifications could include recommendations by the agencies, the general public, and the staff.

In addition to these alternatives, the staff will evaluate the no-action alternative, which maintains the existing environment or status quo at the project.

Scope of the Environmental Impact Statement

The geographic scope of analysis defines the physical limits or boundaries of the proposed actions' effects on the resources. Since the proposed actions affect each resource differently, the geographic scope for each resource varies. For fishery resources, flow analysis, water quality, flood control, and power, the geographic scope of analysis will encompass the mainstem Des Moines River.

The temporal scope includes a discussion of the past, present, and future actions and their effects on the resources. Based on the license term, the temporal scope will look 30 to 50 years into the future, concentrating on the effect on the resource from reasonably foreseeable future actions (e.g., the effect on water quality from potential future water withdrawals within the basin). The historical discussion will, by necessity, be limited to the amount of available information for each resource.

Environmental Issues

A preliminary list of environmental issues identified by the staff for coverage in an Environmental Assessment (EA) is presented in this section. The list is not intended to be exhaustive or final, but is an initial listing of issues that have been raised and appear to be important. The staff will review all issues raised during the scoping process and make decisions as to the level of analysis needed. If preliminary analysis indicates that any issues presented in this scoping document have little potential for causing significant impacts, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

The following issues apply to the Fort Dodge Mill Dam Project:

- An evaluation of the project's potential effect on dissolved oxygen (DO) downstream of the project and the need for additional studies of DO.
- Effects of project operation and non-project factors on vegetation and wildlife.
- Effects of project operation on any federally listed threatened or endangered species in the project area.
- Probability of eligibility of dam and powerhouse on the National Register of Historic Places.
- Opportunities for recreational facility improvements and public access enhancements.

The EA will assess the project-specific impacts on the above resources and whether these impacts contribute to significant adverse impacts. Both project-specific impacts and cumulative effects will weigh in selecting an action to recommend for the licensing decision on the project.

EIS Preparation Schedule

The preliminary schedule for preparing the EA for the Fort Dodge Mill Dam Project is:

Milestones	Target date
Public Scoping	Summer 1994.
Draft EA	September 30, 1994.
Final EA	November 30, 1994.

Request for Comments

The Commission's scoping objectives are to:

- identify significant environmental issues,
- determine the depth of analysis appropriate to each issue,
- identify the resource issues not requiring detailed analysis, and
- identify reasonable project alternatives.

Federal, state, and local resource agencies, licensees and developers, Indian tribes, other interested groups, and the general public are invited to forward to the Commission any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities on the Des Moines River. The types of information sought include:

- Information, quantified data, or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of and information from any other environmental assessment, environmental impact statement, or similar document or study (previous, on-going, or planned) relevant to the proposed licensing activities in the Des Moines River Basin.
- Existing information and any data that would aid in describing the past and present actions and effects of the projects and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories, historic water quality data and the reasons for improvement or degradation of the quality, any wetland habitat losses or proposals to develop land and water resources within the basin.
- Identification of any federal, state, or local resource plans and future project proposals that encompass the Des Moines River Basin with information on when they will be implemented, if known. For example, proposals to construct or operate water treatment facilities, recreation areas, water diversions, or implement fishery management programs.
- Documentation that would support a conclusion that the actions or a project(s) *does* or *does not* contribute to cumulative adverse or beneficial effects on resources and therefore should be excluded from further study or excluded from further consideration of cumulative effects within the Des Moines River Basin. Documentation should include, but is not limited to: how the projects interact with other projects within the river basin and other developmental activities; results from studies; resource management policies; and reports from federal, state, and local agencies.

To be useful in preparing the draft EA, the requested information must be received by the Commission no later than 30 days past the date of this notice. Address all communications to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All correspondence must clearly show at the top of the first page "Fort Dodge Mill Dam Project, FERC No. 11346".

When filing scoping comments, you should submit an original and 8 copies; this will assure that staff receives your information quickly. Parties to the proceedings (as identified on the official Service List for the Fort Dodge Mill Dam Project) must also send copies of their filings, and all attachments, to the other parties listed on the official service list. The official service list is available from the Commission Secretary at the same address above.

Any questions concerning the scoping process should be directed to Mary Golato (202–219–2804) at the Federal Energy Regulatory Commission, Office of Hydropower Licensing, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 94–17740 Filed 7–20–94; 8:45 am]
BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

Project No. 10867–001, IN; Notice of Environmental Assessment Scoping

Holliday Historic Restoration Associates, Ltd.;

July 15, 1994.

On January 10, 1994, the Federal Energy Regulatory Commission (Commission) issued a notice indicating that staff is ready to conduct an environmental analysis (REA Notice) for the proposed Holliday Hydroelectric Plant, located on the West Fork of the White River in Noblesville Township, Hamilton County, Indiana. The REA Notice also requested comments from Federal, state, and local resource agencies, licensees and developers, and any other interested groups (the parties). Parties were given until March 10, 1994, to file comments.

The purpose of this notice is to advise all parties as to the proposed scope of the staff's environmental analysis and to seek additional information pertinent to this analysis. The proposed scope of analysis as presented herein is based on the information filed with the Commission by Holliday Historic Restoration Associates, Ltd. (the Applicant), comments received from the parties thus far, and the staff's independent analysis.

Proposed Action

The Applicant proposes to rehabilitate a retired hydroelectric facility owned by Public Service Company of Indiana, Inc. (PSI). The facility is located on the West Fork of the White River, a tributary of the Wabash River, in central Indiana, and used as a source of cooling water for an adjacent coal-fired, steam-electric generating plant owned and operated by PSI. (From 1950 to 1965, the hydroelectric facility, then known as the unlicensed Noblesville Project, was operated by PSI to provide energy for use at PSI's adjacent coal-fired, steam-electric generating plant.) The Applicant intends to use revenues from the rehabilitated project to restore the historic powerhouse and open it to the public for historic tours.

The proposed project would include the following features: (1) an existing concrete dam, 350 feet long and 10 feet

Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17740 Filed 7–20–94; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

Project No. 10867–001, IN; Notice of Environmental Assessment Scoping

Holliday Historic Restoration Associates, Ltd.;

July 15, 1994.

On January 10, 1994, the Federal Energy Regulatory Commission (Commission) issued a notice indicating that staff is ready to conduct an environmental analysis (REA Notice) for the proposed Holliday Hydroelectric Plant, located on the West Fork of the White River in Noblesville Township, Hamilton County, Indiana. The REA Notice also requested comments from Federal, state, and local resource agencies, licensees and developers, and any other interested groups (the parties). Parties were given until March 10, 1994, to file comments.

The purpose of this notice is to advise all parties as to the proposed scope of the staff's environmental analysis and to seek additional information pertinent to this analysis. The proposed scope of analysis as presented herein is based on the information filed with the Commission by Holliday Historic Restoration Associates, Ltd. (the Applicant), comments received from the parties thus far, and the staff's independent analysis.

Proposed Action

The Applicant proposes to rehabilitate a retired hydroelectric facility owned by Public Service Company of Indiana, Inc. (PSI). The facility is located on the West Fork of the White River, a tributary of the Wabash River, in central Indiana, and used as a source of cooling water for an adjacent coal-fired, steam-electric generating plant owned and operated by PSI. (From 1950 to 1965, the hydroelectric facility, then known as the unlicensed Noblesville Project, was operated by PSI to provide energy for use at PSI's adjacent coal-fired, steam-electric generating plant.) The Applicant intends to use revenues from the rehabilitated project to restore the historic powerhouse and open it to the public for historic tours.

The proposed project would include the following features: (1) an existing concrete dam, 350 feet long and 10 feet high; (2) an existing 11-acre impoundment, with a normal water surface elevation of 764 feet mean sea level; and (3) an existing 25-foot by 50-foot powerhouse that would contain two new turbine-generator units having a total generating capacity of 450 kilowatts.

In addition to the proposed two new turbine-generator units, the Applicant proposes to renovate an existing upstream fish passage facility (concrete flume) and install two new angled trashracks (with 3/4-inch clear bar spacing) above the project intakes, and provide a downstream fish passage facility.

To enhance public recreation, the Applicant proposes to develop a new parking area and picnic facilities on the west bank upstream from the dam, as well as a footbridge across the PSI inlet area, connecting to an existing canoe portage around the dam. Other improvements to the area would include the construction of safety fencing and other safety measures. As indicated earlier, historical tours of the powerhouse would be conducted on weekends for the public.

The Applicant proposes measures relating to project operation to protect and enhance environmental resources in the project area. A 40-cubic feet per second (cfs) minimum flow over the project dam is proposed to protect water quality and fishery resources in the downstream pool area and side channel. The project would be operated in a run-of-river mode, with only minor fluctuations in the headpond elevation to account for natural variations in river flow. In the operational plan for the Holliday Project, the Applicant also proposes to implement a plan to verify run-of-river operation and a seasonal water quality monitoring program for the impoundment.

Project Alternatives

The staff will consider alternatives, including enhancement measures not proposed by the Applicant. The staff will review and consider alternative recommendations for additional resource protection, or enhancement measures that may be appropriate to include in an original minor license. Modifications could include recommendations by the agencies, the general public, and the staff.

In addition to these alternatives, the staff will evaluate the no-action alternative, which maintains the existing environment or status quo at the facility. Under this alternative the project impoundment would continue to provide cooling water for the adjacent coal-fired, steam-electric generating plant, as at present. We use this alternative to set baseline environmental conditions for comparison with other alternatives.

Scope of the Environmental Assessment

The geographic scope of analysis defines the physical limits or boundaries of the proposed action's effects on the resources. Since the proposed action affects each resource differently, the geographic scope for each resource varies. We have identified no affects of operating the Holliday Project that, when coupled with other activities on the West Fork of the White River, would affect environmental resources in a cumulative manner. Therefore, for water quality, fish and wildlife resources, cultural resources, recreation, and all other resources we will focus our analysis on the project area and the West Fork of the White River, unless persuaded by comments during the scoping process.

The temporal scope includes a discussion of the past, present, and future actions and their effects on water quality, fish and wildlife resources, cultural resources, recreation, and other resources. Based on the license term, the temporal scope will look 30 to 50 years into the future, concentrating on the effect on the resource from reasonably foreseeable future actions. The historical discussion will, by necessity, be limited to the amount of available information for each resource.

Environmental Issues

A preliminary list of environmental issues identified by the staff for coverage in an Environmental Assessment (EA) is presented in this section. The list is not intended to be exhaustive or final, but is an initial listing of issues that have been raised and appear to be important. The staff will review all issues raised during the scoping process and make decisions as to the level of analysis needed. If preliminary analysis indicates that any issues presented in this scoping document have little potential for causing significant adverse effects, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

The following issues apply to the Holliday Project:

- effects of the proposed mode of operation on dissolved oxygen and water temperature in the project impoundment and downstream river reach;
- effects of flow-pattern changes from operating the proposed project, and minimum flow needs for the protection of fishery resources and water quality in

the pool area and side channel immediately downstream of the project dam;

- project effects of entrainment and turbine-induced mortality on resident fishes;
- fish passage needs at the project dam;
- effects on the historical value of the project dam and powerhouse, both determined eligible for inclusion in the National Register of Historic Places; and
- effects on public recreational use at the project.

The EA will assess the project-specific effects on the above resources and whether these effects contribute adversely or beneficially to the affected environment.

EA Preparation Schedule

The preliminary schedule for preparing the EA for the Holliday Project is:

Milestones	Target date
Public Scoping	Summer 1994.
Draft EA	September 30, 1994.
Final EA	November 30, 1994.

Request for Comments

The Commission's scoping objectives are to:

- identify significant environmental issues;
- determine the depth of analysis appropriate to each issue;
- identify the resource issues not requiring detailed analysis; and
- identify reasonable project alternatives.

Federal, state, and local resource agencies, licensees and developers, other interested groups, and the general public are invited to file with the Commission information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the environmental effects of the proposed licensing of the Holliday Project. The types of information sought include:

- information, quantified data, or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues;
- identification of, and information from, any other environmental assessment, environmental impact statement, or similar document or study (previous, on-going, or planned) relevant to the proposed licensing activity on the West Fork of the White River;
- existing information and any data that would assist in describing the past and present actions and effects of the project and other developmental activities on water quality, fish and wildlife resources, cultural resources, and recreation. For example, fish stocking/management histories of the West Fork of the White River, historic water quality data and the reasons for improvement or degradation of the quality, locations of wastewater treatment outfalls or water intakes, or proposals to develop land and water resources within the river;
- identification of any Federal, state, or local resource plans and future project proposals that encompass the West Fork of the White River, with information on when the plans would be implemented, if known. For example, proposals to construct or operate water treatment facilities, recreation areas, water diversions, or implement fishery management programs; and
- documentation that would support a conclusion that the proposed project *does* or *does not* contribute to cumulative adverse or beneficial effects on resources and, therefore, should be excluded from further study or included for further consideration of cumulative effects. Documentation should include, but not be limited to: how the project interacts with other projects on the river and other developmental activities; results from studies; resource management policies; and reports from Federal, state, and local agencies.

To be useful in preparing the draft EA, the requested information must be filed with the Commission no later than 30 days past the date of this notice. Address all communications to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All correspondence must clearly show at the top of the first page "Holliday Project, FERC No. 10867."

When filing scoping comments, you should submit an original and 8 copies; this will assure that the staff receives your information. Parties to the proceedings (as identified on the official Service List for the Holliday Project) must also send copies of their filings, and all attachments, to the other parties listed on the official Service List. The official Service List is available from the Secretary of the Commission at the same address above.

Any questions concerning the scoping process should be directed to Mary Golato (202–219–2804) or Frank Karwoski (202–219–2782) at the Federal Energy Regulatory Commission, Office of Hydropower Licensing, 810 First Street NE., Washington, DC, 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17741 Filed 7–20–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–635–000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

July 14, 1994.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP94–635–000]

Take notice that on June 30, 1994, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94–635–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon the delivery point known as the Anaconda Copper Company Meter Station located in Cibola County, New Mexico under El Paso's blanket certificate issued in Docket No. CP82–435–000 and CP88–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to remove one 2" O.D. tap and valve assembly, with appurtenances, and one 4" O.D. positive displacement meter at approximately milepost 343.41 on El Paso's Permian-San Juan Crossover Line in the NW/4 of Section 18, Township 12 North, Range 10 West, Cibola County, New Mexico. The metering facility will be removed with only minimal ground disturbance with that being limited to existing, previously-disturbed right-of-way.

El Paso states that it provides firm transportation service for Gas Company of New Mexico (GCNM) at the Anaconda Copper Company Meter Station pursuant to the terms and conditions of a Transportation Service Agreement dated November 12, 1990.

El Paso understands that Atlantic Richfield Company (ARCO), successor to Anaconda Copper Company has closed an operating site and terminated its June 19, 1974 gas purchase contract with GCNM. This gas purchase contract covered gas service to ARCO's Bluewater Millsite in Cibola County, New Mexico. El Paso understands further that as part of ARCO's termination request, ARCO also requested that the segment of GCNM's line feeding the Bluewater Millsite be disconnected at El Paso's metering station.

El Paso asserts that as a direct result of the Bluewater Millsite closing, and since GCNM has not requested gas service from this meter station since May 1989, GCNM has requested that El Paso abandon and remove the Anaconda Copper Company Meter Station. This meter station serves no purpose and may obstruct ARCO's clean up of the Bluewater Millsite. Accordingly, El Paso proposes to abandon by removal the Anaconda Copper Company Meter Station.

Comment date: August 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP94–643–000]

Take notice that on July 5, 1994, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah, 84108, filed in Docket No. CP94–643–000 for approval under Sections 157.205, 157.211 and 157.216 to construct and operate delivery facilities on its Shelton Lateral in order to provide enhanced transportation service to Cascade Natural Gas Corporation (Cascade) at the Shelton, Washington delivery point. Applicant proposes the following:

1. construct and operate a new compressor station to consist of one Solar Saturn T–1300 compressor unit, rated at 1,343 horsepower at MP 7.85 on the Shelton Lateral. At a cost of $6,996,700;
2. upgrade the Shelton Meter Station at the terminus of the Shelton Lateral by installing 6-inch turbine meters, a 1,500,000 Btu per hour line heater, 6-inch filter, 4-inch bypass electronic flow measurement, and a 16-foot by 14-foot building. At a cost of $410,700;
3. partially abandon facilities at the Shelton Meter Station, which will be replaced with the new upgraded facilities.

Applicant states that these facilities will increase its capacity to Cascade on the Shelton Lateral by 21,000 MMBtu/d and allow increased delivery pressures to Cascade. The maximum daily design capacity of the upgraded Shelton Meter Station will increase from 12,000 MMBtu/d to 44,270 MMBtu/d.

Firm transportation service through the proposed facilities will be subject to Applicant's Rate Schedules TF–1 and TF–2 in Applicant's FERC Gas Tariff, Third Revised Volume No. 1. The expanded capacity at the Shelton delivery point will also be available under interruptible transportation agreements under Applicant's TI–1 Rate

line feeding the Bluewater Millsite be disconnected at El Paso's metering station.

El Paso asserts that as a direct result of the Bluewater Millsite closing, and since GCNM has not requested gas service from this meter station since May 1989, GCNM has requested that El Paso abandon and remove the Anaconda Copper Company Meter Station. This meter station serves no purpose and may obstruct ARCO's clean up of the Bluewater Millsite. Accordingly, El Paso proposes to abandon by removal the Anaconda Copper Company Meter Station.

Comment date: August 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP94–643–000]

Take notice that on July 5, 1994, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah, 84108, filed in Docket No. CP94–643–000 for approval under Sections 157.205, 157.211 and 157.216 to construct and operate delivery facilities on its Shelton Lateral in order to provide enhanced transportation service to Cascade Natural Gas Corporation (Cascade) at the Shelton, Washington delivery point. Applicant proposes the following:

1. construct and operate a new compressor station to consist of one Solar Saturn T–1300 compressor unit, rated at 1,343 horsepower at MP 7.85 on the Shelton Lateral. At a cost of $6,996,700;

2. upgrade the Shelton Meter Station at the terminus of the Shelton Lateral by installing 6-inch turbine meters, a 1,500,000 Btu per hour line heater, 6-inch filter, 4-inch bypass electronic flow measurement, and a 16-foot by 14-foot building. At a cost of $410,700;

3. partially abandon facilities at the Shelton Meter Station, which will be replaced with the new upgraded facilities.

Applicant states that these facilities will increase its capacity to Cascade on the Shelton Lateral by 21,000 MMBtu/d and allow increased delivery pressures to Cascade. The maximum daily design capacity of the upgraded Shelton Meter Station will increase from 12,000 MMBtu/d to 44,270 MMBtu/d.

Firm transportation service through the proposed facilities will be subject to Applicant's Rate Schedules TF–1 and TF–2 in Applicant's FERC Gas Tariff, Third Revised Volume No. 1. The expanded capacity at the Shelton delivery point will also be available under interruptible transportation agreements under Applicant's TI–1 Rate Schedule. Pursuant to a facilities Agreement and the facilities reimbursement provisions of Applicant's tariff, Cascade will reimburse Applicant for all costs connected with the proposed facilities in a monthly Facility Cost-of-Service Charge. Initially this charge will be $165,265.

Comment date: August 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP94–644–000]

Take notice that on July 5, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–644–000 an abbreviated application, supplemented on July 13, 1994, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission and approval to abandon certain facilities in Erie County, Pennsylvania, and to replace the abandoned facilities with a new metering and regulating station, and construct and operate approximately 4,395 feet of twelve-inch pipeline and appurtenant facilities connecting the new station to its existing facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National states that it proposes to replace an existing metering and regulating station and add a new dehydration facility at National's Summit Storage Field located in Summit Township, Erie County, Pennsylvania. National indicates that to effectuate this construction, it will be necessary to install approximately 4,395 feet of twelve-inch pipeline beginning at an existing valve on National's Line S–52 and ending at National's Line S–57. National further states it will also be required to construct and operate approximately 400 feet of eight-inch inlet and outlet piping to connect the new station to this new pipeline. National estimates the cost of the project at $760,000. National indicates that construction of the facilities will be financed with internally generated funds and/or interim short-term bank loans.

National also seeks authorization to abandon certain facilities at the existing metering and regulating station. The facilities to be abandoned consist of a heater, pipe to by-pass the heater, and a meter run and regulator. National states that the removal of these facilities will not affect service to existing markets.

Comment date: August 4, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP94–653–000]

Take notice that on July 11, 1994, Florida Gas Transmission Company (FTG), 1400 Smith Street, P. O. Box 1188, Houston, Texas 77251–1188 filed in Docket No. CP94–653–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new point of delivery in Iberville Parish, Louisiana under FTG's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FTG states that the new delivery point in Iberville Parish, Louisiana, to be called Lake Chicot delivery point, was requested by Iberville Parish Natural Gas (Iberville), a municipality engaged in the local distribution of natural gas to certain communities in Iberville Parish, Louisiana for the ultimate end-use of commercial, industrial and residential gas consumption.

FTG states that the estimated cost to FTG of the proposed construction is $40,000 which Iberville will reimburse. FTG notes that Iberville will construct approximately 850 feet of 2-inch connecting pipe, the meter station, and related appurtenant facilities and FTG will own and operate the facilities constructed by Iberville.

FTG proposes to transport and deliver on an interruptible basis under its Rate Schedule ITS–1, up to 300 MMBtu per day and up to 109,500 MMBtu annually at the new delivery point. FTG states that since the proposed gas deliveries at the new delivery point will be on an interruptible basis, there will be no impact on FTG's peak day delivery but annual deliveries could be affected, up to 109,500 MMBtu.

Comment date: August 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211)

and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17742 Filed 7–20–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–1239–000]

Gulf Power Co.; Filing

July 15, 1994.

Take notice that on July 5, 1994, Gulf Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 26, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–17743 Filed 7–20–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–5017–5]

Notice of Availability of Dredged Material Testing Manual, Request for Comment, and Announcement of Public Information Sessions

SUMMARY: This notice announces the availability of and requests public comment on the draft testing manual entitled "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)". The manual was prepared by an Environmental Protection Agency (EPA)/Corps of Engineers (CE) workgroup comprised of individuals from headquarters, field offices, and research laboratories of both agencies with scientific and/or programmatic expertise related to dredged material discharge activities. Copies of the draft manual can be requested by writing to Ms. Shirley Walker at the address listed below under **ADDRESSES**. Public information sessions will be held at various locations around the country to discuss the draft manual.

DATES AND LOCATIONS: Written comments must be postmarked or submitted by hand on or before October 19, 1994 to Mike Kravitz at the address listed below under **ADDRESSES**.

Public information sessions will be held at the following locations and dates to discuss the draft testing manual "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)":

Boston—August 2, 1994, Ramada Hotel-Airport, 225 McClellan Hwy., Boston, MA 02128 [phone (617) 569–5250, fax (617) 569–5159]; *Washington, DC*—August 3, 1994, Marriot Crystal City, 1999 Jefferson Davis Hwy., Arlington, VA 22202 [phone (703) 413–5500, fax (703) 413–0192]; *Atlanta*—August 4, 1994, Ramada Hotel-North, 1419 Virginia Avenue, Atlanta, GA 30337 [phone (404) 768–7800, fax (404) 767–5451]; *San Jose*—August 30–31, 1994, San Jose Hilton, 300 Almaden Blvd., San Jose, CA 95110 [phone (408) 287–2100, fax (408) 987–4489]; *Seattle*—September 1–2, 1994, Red Lion Hotel-Airport, 18740 Pacific Hwy., Seattle, WA 98188 [phone (206) 242–8600, fax (206) 242–9727]; *Chicago*—September 13–14, 1994, Holiday Inn O'Hare, 5440 N. River Rd., Rosemont, IL 60018 [phone (708) 671–6350, fax (708) 671–1378]; *St. Louis*—September 14, 1994, St. Louis Airport Hilton, 10330 Natural Bridge Rd., St. Louis, MO 63134 [phone (314) 426–5500, fax (314) 426–3429]; *Houston*—September 15, 1994, Holiday Inn Intercontinental Airport, 15222 John F. Kennedy Blvd., Houston, TX 77032 [phone (713) 449–2311, fax (713) 442–6833].

ADDRESSES: A copy of "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)" can be obtained by calling or writing to Ms. Shirley Walker, U.S. Corps of Engineers, Waterways Experiment Station, IM–MI–R, 3909 Halls Ferry Road, Vicksburg, Mississippi, 39180–6199; telephone: 601–634–2571.

Comments may be mailed or delivered to: Mike Kravitz, Mail Code 4305, Attention: Testing Manual Comments, Office of Science and Technology, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone: 202–260–8085. Commenters are requested to submit an original and 3 copies of their written comments and enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: Mike Kravitz, Mail Code 4305, Office of Science and Technology, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (telephone: 202–260–8085); or Kirk Stark, Regulatory Branch, CECW–OR, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Ave. NW., Washington, DC 20314 (telephone: 202–272–1786).

SUPPLEMENTARY INFORMATION: Proposed discharges of dredged or fill material in fresh, estuarine, and saline (near-coastal) waters, or "waters of the United States," must be evaluated to determine the potential environmental impacts of such activities. Specifically, Section 404 of the Federal Water Pollution Control Act of 1972, Public Law 92–500, as amended by the Clean Water Act (CWA), Public Law 95–217, requires that the discharge of dredged or fill material into waters of the U.S. be permitted by the Corps of Engineers (CE). EPA has the primary role in developing the environmental guidelines—the section 404(b)(1) Guidelines (Guidelines)—in conjunction with CE, by which permit applications must be evaluated. The Guidelines are published at 40 CFR part 230. Fundamental to the Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.

Dredged material testing is part of the larger evaluation of a proposed discharge activity to determine its compliance with the Guidelines. Sections 230.60 and 230.61 of the Guidelines provide the basis for certain contaminant-related factual determinations regarding the potential environmental effects of a proposed discharge. The present draft testing manual, "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)," details the physical, chemical, and biological evaluation procedures outlined in §§ 230.60 and 230.61. The manual includes technical guidance on sampling and analysis, physical and chemical evaluations, bioassays (toxicity and bioaccumulation), quality assurance/quality control, evaluation of discharges from confined disposal facilities, evaluation of mixing, statistical methods, and identification of ammonia toxicity. It uses a tiered testing approach which is scientifically valid and cost-effective. Conclusions reached utilizing this manual will be used to make factual determinations of the potential environmental effects of a proposed discharge of dredged material.

M Street SW., Washington, DC 20460 (telephone: 202–260–8085); or Kirk Stark, Regulatory Branch, CECW–OR, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Ave. NW., Washington, DC 20314 (telephone: 202–272–1786).

SUPPLEMENTARY INFORMATION: Proposed discharges of dredged or fill material in fresh, estuarine, and saline (near-coastal) waters, or "waters of the United States," must be evaluated to determine the potential environmental impacts of such activities. Specifically, Section 404 of the Federal Water Pollution Control Act of 1972, Public Law 92–500, as amended by the Clean Water Act (CWA), Public Law 95–217, requires that the discharge of dredged or fill material into waters of the U.S. be permitted by the Corps of Engineers (CE). EPA has the primary role in developing the environmental guidelines—the section 404(b)(1) Guidelines (Guidelines)—in conjunction with CE, by which permit applications must be evaluated. The Guidelines are published at 40 CFR part 230. Fundamental to the Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.

Dredged material testing is part of the larger evaluation of a proposed discharge activity to determine its compliance with the Guidelines. Sections 230.60 and 230.61 of the Guidelines provide the basis for certain contaminant-related factual determinations regarding the potential environmental effects of a proposed discharge. The present draft testing manual, "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)," details the physical, chemical, and biological evaluation procedures outlined in §§ 230.60 and 230.61. The manual includes technical guidance on sampling and analysis, physical and chemical evaluations, bioassays (toxicity and bioaccumulation), quality assurance/quality control, evaluation of discharges from confined disposal facilities, evaluation of mixing, statistical methods, and identification of ammonia toxicity. It uses a tiered testing approach which is scientifically valid and cost-effective. Conclusions reached utilizing this manual will be used to make factual determinations of the potential environmental effects of a proposed discharge of dredged material.

This manual will replace the May 1976 testing protocol, "Ecological Evaluation of Proposed Discharge of Dredged or Fill Material into Navigable Waters," which will no longer be applicable. Since development of the 1976 guidance, EPA and CE have gained a great deal of experience in testing dredged material for environmental effects. Much of this experience has been used in the development of a 1991 "ocean" testing manual to implement requirements in the Marine Protection Research and Sanctuaries Act for evaluation of potential environmental impacts associated with the discharge of dredged material in waters seaward of the baseline of the territorial sea. Further technical improvements, such as the refinement of bioassay tests, have been incorporated in the present draft testing manual, "Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual (Draft)," which implements dredged material testing requirements under the CWA.

The final testing manual will be published in approximately 6 months after review and consideration of the comments received on this draft.

Dated: July 18, 1994.

Mark Luttner,

Acting Assistant Administrator for Water.

[FR Doc. 94–17772 Filed 7–20–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

The "8900" Lines Agreement, et al.; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–008900–052.

Title: The "8900" Lines Agreement.

Parties:

A.P. Moller-Maersk Line
DSR Senator Joint Service
National Shipping Company of Saudi Arabia
United Arab Shipping Company
Waterman Steamship Corp.
American President Lines, Ltd.
Croatia Line
P&O Containers Limited
Sea-Land Service, Inc.

Synopsis: The proposed amendment permits the Agreement members to "open" tariff rules or regulations. In addition, Agreement members may discuss such "open" rates, rules or regulations, however, adherence to "open" agreement items is voluntary.

Agreement No.: 202–011259–009.

Title: United States/Southern & Eastern Africa Conference.

Parties:

Bank Line East Africa Limited
Empresa de Navegacao International
Lykes Bros. Steamship Co., Inc.
Mediterranean Shipping Company S.A.
Safbank Line Ltd.
Wilhelmsen Lines AS

Synopsis: The proposed amendment revises Article 7 to permit member lines serving Eastern Africa by transshipment via North Europe the option of participating only in the Southern Africa range of the Agreement. The parties have requested a shortened review period.

Agreement No.: 202–011456–001.

Title: South Europe American Conference.

Parties:

Evergreen Marine Corporation (Taiwan) Ltd.
"Italia" di Navigazione, S.p.A.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Nedlloyd Lijnen B.V.
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment adds a new Article 17.7 which provides that the financial guarantee provided by a Member under this Agreement may be used by that Member to satisfy its financial guarantee obligation under both this Agreement and the U.S./Mediterranean Policing Agreement (FMC Agreement No. 203–011447).

Agreement No.: 207–011461.

Title: Project PACOM Joint Service Agreement.

Parties:

American President Lines, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed Agreement would authorize the parties to establish a joint service in the trade between U.S. Pacific Coast ports and inland points via

such ports on the one hand, and ports in Japan, South Korea and other Pacific Basin nations or Guam and inland points via such ports on the other hand. The parties have requested a shortened review period.

Agreement No.: 203–011462.

Title: TAAFLO/ACC Discussion Agreement.

Parties:

Trans-Atlantic American Flag Liner Operators

American Auto Carriers, Inc.

Synopsis: The proposed Agreement authorizes the parties to meet, discuss rates, through rates, volume, time-volume, charges for services and other matters of mutual concern in the trade between U.S. ports and points and ports and points in Europe. Adherence to any agreement reached is voluntary.

Dated: July 18, 1994.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary

[FR Doc. 94–17778 Filed 7–20–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

United Bancorp of Kentucky, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 15, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. United Bancorp of Kentucky, Inc., Lexington, Kentucky; to acquire 78 percent of the voting shares of American Fidelity Bank & Trust Co., Corbin, Kentucky.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Central Bancshares, Inc., Houston, Texas; to acquire 100 percent of the voting shares of Lee County National Bank, Giddings, Texas.

2. Freeman Bancstock Investments, Irving, Texas; to acquire 76.27 percent of the voting shares of Heritage Bankshares, Inc., Dallas, Texas, and thereby indirectly acquire Turtle Creek National Bank, Dallas, Texas. In connection with this application, Freeman Bancstocks subsidiary Inwood Bancshares, Inc., Dallas, Texas; will merge with Heritage Bankshares, Inc., Dallas, Texas.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Community Bancshares, Inc., Joseph Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Wallowa County, Joseph, Oregon.

Board of Governors of the Federal Reserve System, July 15, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–17732 Filed 7–20–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 494]

State Grants to Support Development of Nutrition Intervention Programs

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for grants to support the development of State and community nutrition intervention programs. This announcement addresses two distinct components:

I. "Nutrition Intervention Assistance" for supporting the implementation of nutrition interventions.

II. "5 A Day Evaluation" for supporting the evaluation of 5 A Day for Better Health nutrition intervention programs.

Applicants may apply for either the Nutrition Intervention Assistance component or the 5 A Day Evaluation component or both components.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related specifically to the priority area of nutrition and, generally, to several other priority areas of health promotion and preventive services—including physical activity and fitness, heart disease, cancer, and diabetes. (For ordering a copy of "Healthy People 2000," see the section, "Where to Obtain Additional Information.")

Authority

This program is authorized under sections 301(a), [42 U.S.C. 241 (a)] and 317(k)(2), [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

A. Nutrition Intervention Assistance

Assistance will be provided only to the health departments of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Eligible applicants for nutrition intervention program grants have been restricted to official health departments of States or their bona fide agents or instrumentalities because:

1. The methodology to conduct this program has been structured to support the national goals and objectives of "Healthy People 2000." In many instances, State health departments have already embraced or established their own goals and objectives which match or are synonymous with those outlined in "Healthy People 2000."

2. The conduct of Statewide health promotion, health education, and risk reduction programs directed towards reducing the prevalence of behavioral risks in the population lie solely with State Health Departments.

3. Program evaluation is expected to be useful to State Health Departments in program and intervention development. Because comparable methods are used from State to State and from year to year, States can compare data and intervention methods with other States and monitor the effects of interventions over time.

B. 5 A Day Evaluation

Eligible applicants are restricted to official health departments of States or their bona fide agents or instrumentalities for the reasons listed in (A) above. Eligibility for this component is further restricted to States who have established, clearly defined, evaluable, long range 5 A Day for Better Health projects in a specific community channel.

Availability of Funds

Approximately $740,000 is available in FY 1994 to fund approximately 29 awards. Awards may be made for the Nutrition Intervention Assistance, or 5 A Day Evaluation or both.

A. Nutrition Intervention Assistance

Approximately $450,000 is available to fund approximately 25 awards. It is expected that the average award will be $18,000, ranging from $10,000 to $30,000. States are encouraged to use these funds to expand the community involvement toward the goals of this program.

B. 5 A Day Evaluation

Approximately $290,000 is available to fund approximately 4 awards. It is expected that the average award will be $75,000, ranging from $60,000 to $90,000. Awards will be considered only for applicants who have an established, clearly defined, and evaluable long range 5 A Day for Better Health project in a specific community channel (e.g., supermarkets, schools, churches, food assistance programs, worksites, health clinics, media, etc.).

It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of one year. Funding estimates may vary and are subject to change.

Awards under this announcement will not be sufficient to fully support an

their own goals and objectives which match or are synonymous with those outlined in "Healthy People 2000."

2. The conduct of Statewide health promotion, health education, and risk reduction programs directed towards reducing the prevalence of behavioral risks in the population lie solely with State Health Departments.

3. Program evaluation is expected to be useful to State Health Departments in program and intervention development. Because comparable methods are used from State to State and from year to year, States can compare data and intervention methods with other States and monitor the effects of interventions over time.

B. 5 A Day Evaluation

Eligible applicants are restricted to official health departments of States or their bona fide agents or instrumentalities for the reasons listed in (A) above. Eligibility for this component is further restricted to States who have established, clearly defined, evaluable, long range 5 A Day for Better Health projects in a specific community channel.

Availability of Funds

Approximately $740,000 is available in FY 1994 to fund approximately 29 awards. Awards may be made for the Nutrition Intervention Assistance, or 5 A Day Evaluation or both.

A. Nutrition Intervention Assistance

Approximately $450,000 is available to fund approximately 25 awards. It is expected that the average award will be $18,000, ranging from $10,000 to $30,000. States are encouraged to use these funds to expand the community involvement toward the goals of this program.

B. 5 A Day Evaluation

Approximately $290,000 is available to fund approximately 4 awards. It is expected that the average award will be $75,000, ranging from $60,000 to $90,000. Awards will be considered only for applicants who have an established, clearly defined, and evaluable long range 5 A Day for Better Health project in a specific community channel (e.g., supermarkets, schools, churches, food assistance programs, worksites, health clinics, media, etc.).

It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of one year. Funding estimates may vary and are subject to change.

Awards under this announcement will not be sufficient to fully support an applicant's proposed activities, but are meant to be used in conjunction with other resources—whether direct funding or in-kind contributions—that the applicant may have available.

Purpose

The awards will support State efforts to develop and evaluate nutrition intervention programs. Emphasis will be placed on supporting activities of partnerships to carry out interventions and/or evaluations designed to increase the consumption of fruits and vegetables, to decrease fat intake, and/or to increase physical activity while improving diet.

Program Requirements

A. Nutrition Intervention Assistance

Promote programmatic activities to achieve Healthy People 2000 dietary objectives that relate to increased consumption of fruits and vegetables, reduced intake of fat, and/or improving diet while increasing physical activity. Applicants should propose specific and discrete activities, but applicants are given latitude in deciding which specific activities to propose. Activities proposed by applicants might include but are not limited to the following:

1. Assist a Statewide or community-wide coalition to implement a 5 A Day for Better Health project by using effective public and private partnerships.

2. Implement an intervention to promote physical activity and improved diet among a defined low-income population.

3. Evaluate a health communication campaign. (Such campaigns could be broad-based, could target specific populations, or could support specific programs, such as Project LEAN or 5 A Day for Better Health.)

4. Integrate a nutrition education component into an existing State chronic disease program (e.g., diabetes, cancer, and heart disease prevention programs) or into appropriate services of a managed care provider.

B. 5 A Day Evaluation

An evaluation of a 5 A Day intervention in a specific community channel. Applicants should propose a plan for an evaluation of a clearly defined, long range effort in a specific community channel.

Evaluation Criteria

Applications for the Nutrition Intervention Assistance and the 5 A Day Evaluation components will be allocated 100 points each and will be reviewed and evaluated according to the following criteria:

A. Nutrition Intervention Assistance

1. Background

The degree to which the applicant succinctly describes the problems to be addressed and current activities for resolving them. (10 points)

2. Objectives

The degree to which objectives are realistic, time-phased, measurable, and specific. (20 points)

3. Program Plan

The adequacy of the applicant's plan to carry out the proposed activities and accomplish the stated objectives. (40 points)

4. Program Integration

The adequacy of the applicant's commitment to provide adequate staff and resources necessary to achieve the program objectives. (20 points)

5. Evaluation

The extent to which the applicant presents a reasonable plan to measure progress in meeting objectives and evaluate performance. (10 points)

6. Budget

The extent to which the applicants provides a detailed budget and line item justification that is consistent with the stated objectives, program purpose, and planned activities of the project. (not weighted)

B. 5 A Day Evaluation

1. Background

The degree to which the applicant clearly describes a long range, clearly defined, evaluable 5 A Day for better Health project, including a description of the intervention method and channel. (25 points)

2. Program Plan

The adequacy of the applicant's plan to carry out the evaluation, including the specific objectives and measures in the evaluation. (45 points)

3. Capacity

The capabilities of the personnel (including consultants where appropriate) to carry out the evaluation. (30 points)

4. Budget

The extent to which the applicant provides a detailed budget and line item justification that is consistent with the evaluation plan. (not weighted)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal

Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–18, Atlanta, GA 30305, no later than September 21, 1994. (A waiver for the 60-day requirement has been requested.) The Program Announcement Number and Program Title should be referenced on the document. CDC does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305. This should be done no later than September 21, 1994. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the grant will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The program announcement and application kits were sent to all eligible applicants in July 1994.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mail Stop E–18, Atlanta, GA 30305, telephone (404) 842–6508. Programmatic technical assistance may be obtained from Judy Pruden, M.Ed., R.D., Division of Nutrition, National Center for Chronic Disease Prevention and Health Promotion, Mail Stop K–26, CDC, 4770 Buford Highway, NE., Atlanta, GA, 30341–3724, telephone (404) 488–4260.

Please refer to Announcement Number 494 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 14, 1994.

Martha Katz,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–17768 Filed 7–20–94; 8:45 am]

BILLING CODE 4163–18–P

New Vaccine Information Materials

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, Department of Health and Human Services.

ACTION: Notice; corrections.

SUMMARY: The Public Health Service is making corrections to the notice on New Vaccine Information Materials published Monday, June 20, 1994 (59 FR 31888).

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention (CDC), Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8200.

SUPPLEMENTARY INFORMATION: On June 20, 1994, the Public Health Service published a notice on New Vaccine Information Materials (59 FR 31888), which includes revised information materials for diphtheria, tetanus, pertussis, measles, mumps, rubella, and polio. This notice makes several corrections in the materials.

Dated: July 15, 1994.

Claire V. Broome, M.D.,

Deputy Director, Centers for Disease Control and Prevention (CDC).

The following corrections are made to New Vaccine Information Materials, Notice (59 FR 31888):

1. On page 31888, third column, line 67, change "Tetanus and Diphtheria Vaccine (Td): What you need to know before you get the vaccine." to "Tetanus and Diphtheria Vaccine (Td): What you need to know before you or your child gets the vaccine."

2. On page 31889, second column, line 23, change "Benefits of the Vaccine" to "Benefits of the Vaccines".

3. On page 31889, second column, line 26, change "Because most children get the polio vaccine, there are now very few cases of this disease." to "Because most children get the polio vaccines, there are now very few cases of this disease."

4. On page 31890, first column, line 1, change "The National Vaccine Injury Compensation Program gives compensation (payment) to some persons thought to be injured by vaccines." to "The National Vaccine Injury Compensation Program gives compensation (payment) to persons thought to be injured by vaccines."

5. On page 31890, first column, line 63, change "Benefits of the Vaccine" to "Benefits of the Vaccines".

6. On page 31890, first column, line 67, change "Because most children get the MMR vaccine, there are now many fewer cases of these diseases." to "Because most children get the MMR vaccines, there are now many fewer cases of these diseases."

7. On page 31890, second column, line 57, change "The risk from the vaccine are much smaller than the risks from the diseases if people stopped using vaccine." to "The risks from the vaccine are much smaller than the risks from the diseases if people stopped using vaccine."

8. On page 31890, third column, line 12, change, "Rarely, pain or stiffness lasts a month or longer, or may come and go." to "Rarely, pain or stiffness lasts a month or longer, or may come and go; this is most common in young and adult women."

9. On page 31890, third column, line 41, change "The National Vaccine Injury Compensation Program gives compensation (payment) to some persons thought to be injured by vaccines." to "The National Vaccine Injury Compensation Program gives compensation (payment) to persons thought to be injured by vaccines."

10. On page 31891, first column, line 24, change "Benefits of the Vaccine" to "Benefits of the Vaccines".

11. On page 31891, first column, line 28, change "Because most children get the vaccine, there are now many fewer cases of these diseases." to "Because most children get the vaccines, there are now many fewer cases of these diseases."

12. On page 31891, second column, line 57, change "Shock-collapse (becomes blue or pale, limp, and faints)" to "'Shock-collapse' (becomes pale, limp, and less alert)".

13. On page 31891, second column, line 66, change

"—Decreased consciousness or coma

There is disagreement about whether or not DTP causes lasting brain damage. If it does, it is very rare." to

"—Decreased consciousness or coma

Some of these children may have lasting brain damage. There is disagreement about whether or not DTP causes the lasting brain damage. If it does, it is very rare."

14. On page 31891, third column, line 7, change "The National Vaccine Injury Compensation Program gives compensation (payment) to some persons thought to be injured by vaccines." to "The National Vaccine Injury Compensation Program gives compensation (payment) to persons thought to be injured by vaccines."

15. On page 31891, third column, line 24, change "What you need to know about the vaccine" to "What you need to know before you or your child gets the vaccine".

16. On page 31891, third column, line 45, change "About the Vaccine" to "About the Vaccines".

17. On page 31891, third column, line 47, change "Benefits of the Vaccine" to "Benefits of the Vaccines".

18. On page 31892, first column, line 1, change "Tell your doctor or nurse if

using vaccine." to "The risks from the vaccine are much smaller than the risks from the diseases if people stopped using vaccine."

8. On page 31890, third column, line 12, change, "Rarely, pain or stiffness lasts a month or longer, or may come and go." to "Rarely, pain or stiffness lasts a month or longer, or may come and go; this is most common in young and adult women."

9. On page 31890, third column, line 41, change "The National Vaccine Injury Compensation Program gives compensation (payment) to some persons thought to be injured by vaccines." to "The National Vaccine Injury Compensation Program gives compensation (payment) to persons thought to be injured by vaccines."

10. On page 31891, first column, line 24, change "Benefits of the Vaccine" to "Benefits of the Vaccines".

11. On page 31891, first column, line 28, change "Because most children get the vaccine, there are now many fewer cases of these diseases." to "Because most children get the vaccines, there are now many fewer cases of these diseases."

12. On page 31891, second column, line 57, change "Shock-collapse (becomes blue or pale, limp, and faints)" to "'Shock-collapse' (becomes pale, limp, and less alert)".

13. On page 31891, second column, line 66, change

"—Decreased consciousness or coma

There is disagreement about whether or not DTP causes lasting brain damage. If it does, it is very rare." to

"—Decreased consciousness or coma

Some of these children may have lasting brain damage. There is disagreement about whether or not DTP causes the lasting brain damage. If it does, it is very rare."

14. On page 31891, third column, line 7, change "The National Vaccine Injury Compensation Program gives compensation (payment) to some persons thought to be injured by vaccines." to "The National Vaccine Injury Compensation Program gives compensation (payment) to persons thought to be injured by vaccines."

15. On page 31891, third column, line 24, change "What you need to know about the vaccine" to "What you need to know before you or your child gets the vaccine".

16. On page 31891, third column, line 45, change "About the Vaccine" to "About the Vaccines".

17. On page 31891, third column, line 47, change "Benefits of the Vaccine" to "Benefits of the Vaccines".

18. On page 31892, first column, line 1, change "Tell your doctor or nurse if you:" to "Tell your doctor or nurse if the person getting the vaccine:".

19. On page 31892, first column, line 7, change "now have a moderate or severe illness" to "now has a moderate or severe illness".

20. On page 31892, first column, line 9, change "are pregnant" to "is pregnant".

21. On page 31892, third column, line 7, change "The National Vaccine Injury Compensation Program gives compensation (payment) to some persons thought to be injured by vaccines." to "The National Vaccine Injury Compensation Program gives compensation (payment) to persons thought to be injured by vaccines."

[FR Doc. 94–17770 Filed 7–20–94; 8:45 am]
BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94E–0141]

Determination of Regulatory Review Period for Purposes of Patent Extension; Aceon™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Aceon™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Aceon™. Aceon™ (perindopril erbumine) is indicated for the treatment of patients with essential hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Aceon™ (U.S. Patent No. 4,508,729) from Adir, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated May 10, 1994, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval for Aceon™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Aceon™ is 2,284 days. Of this time, 1,367 days occurred during the testing phase of the regulatory review period, while 917 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: October 1, 1987. The applicant claims October 23, 1987, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 1, 1987, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: June 28, 1991. FDA has verified the applicant's claim that June 28, 1991, was the date the new drug application (NDA) for Aceon™ (NDA 20-184) was initially submitted.

3. *The date the application was approved*: December 30, 1993. FDA has verified the applicant's claim that NDA 20–184 was approved on December 30, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,588 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 19, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 17, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 14, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–17737 Filed 7–20–94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93E–0435]

Determination of Regulatory Review Period for Purposes of Patent Extension; Demadex™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Demadex™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Demadex™. Demadex™ (torsemide) is indicated for the treatment of edema associated with congestive heart failure, renal disease, or hepatic disease. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Demadex™ (U.S. Patent No. Re. 30,633) from A. Christians Societe Anonyme, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated December 9, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Demadex™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Demadex™ is 2,790 days. Of this time, 1,882 days occurred during the testing phase of the regulatory review period, while 908 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: January 4, 1986. FDA has verified the applicant's claim that January 4, 1986, was the date the investigational new drug application (IND) became effective. The applicant claims January 10, 1986, as the date the IND became effective. However, FDA records indicate that the IND effective date was January 4, 1986, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: February 28, 1991. FDA has verified the applicant's claim that February 28, 1991, was the date the new drug application (NDA) for Demadex™ (NDA 20–136) was initially submitted.

3. *The date the application was approved*: August 23, 1993. FDA has verified the applicant's claim that NDA 20–136 was approved on August 23, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 19, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 17, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 14, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–17738 Filed 7–20–94; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. August 5, 1994, 9 a.m., Holiday Inn Crowne Plaza, Regency Room, 1750 Rockville Pike, Rockville, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn Crowne Plaza. Attendees requiring overnight accommodations must contact the hotel at 301–468–1100 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate on availability.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.,

to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 17, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 14, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–17738 Filed 7–20–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. August 5, 1994, 9 a.m., Holiday Inn Crowne Plaza, Regency Room, 1750 Rockville Pike, Rockville, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn Crowne Plaza. Attendees requiring overnight accommodations must contact the hotel at 301–468–1100 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate on availability.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Larry J. Brindza, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 29, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) A points-to-consider document for automated cervical cancer slide readers and automated cervical cancer slide preparation instruments, (2) home use prothrombin time tests, (3) standardization of coagulation assays and reagents, (4) hematology replacement reagents, and (5) a briefing on the FDA Immunohistochemistry Products Workshop held on June 28 and 29, 1994.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding cervical cancer slide preparation devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Immunology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. August 19, 1994, 9 a.m., Parklawn Bldg., Conference rm. E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed committee deliberations, 9 a.m. to 12 m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss draft guidance documents on the following topics: (1) Anti-nuclear antibodies, (2) anti-thyroid antibodies, and (3) alpha-fetoprotein for neural tube defects. In addition, the committee will discuss points-to-consider documents on immunohistochemical antibody products and tumor markers (carcinoembryonic antigen, alpha-fetoprotein, and prostate specific antigen) for monitoring.

Single copies of the draft guidance documents are available from the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800–638–2041, FAX 301–443–8818. The points-to-consider documents will be available the day of the meeting.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding pending or future device applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. August 23, 1994, 12:30 p.m., and August 24, 1994, 8 a.m., Holiday Inn-Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Closed committee deliberations, August 23, 1994, 12:30 p.m to 6 p.m.; open committee discussion, August 24, 1994, 8 a.m. to 8:30 a.m.; open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Nancy Cherry or Stephanie

Milwit, Scientific Advisors and Consultants Staff (HFM–21), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–1054.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 17, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will hear reports from committee members on liaison activities for the committee and consider vaccine safety issues including: (1) Methodological approaches to assessing vaccine safety, (2) general scientific considerations, (3) the Vaccine Adverse Events Reporting System, and (4) recent reports from the Institute of Medicine.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications or product licensing applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C 552b(c)(4)).

Radiological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. August 29, 1994, 1 p.m., Parklawn Bldg., Conference rm. G, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed committee deliberations, 1 p.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5 p.m.; Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1212.

If anyone who is planning to attend the meeting will need any special assistance as defined under the Americans with Disabilities Act, please notify the contact person listed under the *"Date, time, and place"* portion above.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 15, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss recommended classification of picture archiving and communication devices.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding pending and future device applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 15, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–17694 Filed 7–20–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 15, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–17694 Filed 7–20–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Nonprescription Drugs Advisory Committee, which is scheduled for July 27, 1994. This meeting was announced in the **Federal Register** of June 24, 1994 (59 FR 32699). The amendment is being made to reflect a change in the date of the meeting from a 1-day to a 2-day meeting and to announce a closed portion of the meeting, which is scheduled for the second day and which will be held at a location different from that of the open session. The open committee discussion remains the same as originally announced. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger or Mae Brooks, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 1994, FDA announced that a meeting of the Nonprescription Drugs Advisory Committee would be held on June 27, 1994. On page 32699, in the third column, under *"Date, time, and place"* and *"Type of meeting and contact person,"* portions of this meeting are amended, and on page 32700, in the first column, because the committee will now have a closed portion on July 28, 1994, a *"Closed committee deliberations"* paragraph is added to read as follows:

Date, time, and place. July 27, 1994, 2 p.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD, and July 28, 1994, 8:30 a.m., Montrose Room, Ramada Inn, 1775 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 27, 1994, 2 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 6 p.m.; closed committee deliberations, July 28, 1994, 8:30 a.m. to 12 m.; Lee L. Zwanziger or Mae Brooks, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

Closed committee deliberations. On July 28, 1994, the committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dated: July 14, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–17695 Filed 7–20–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Privacy Act of 1974; Systems of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for existing systems of records.

SUMMARY: HCFA is proposing to revise the system notices for the "Carrier Medicare Claims Records" (CMCR), System No. 09–70–0501, and the "Intermediary Medicare Claims Records" (IMCR), System No. 09–70–0503. The Privacy Act permits disclosure of information without the prior written consent of an individual for "routine use" that is; disclosure for purposes compatible with the purpose for which the data is collected. HCFA is proposing to revise the CMCR and IMCR by adding a new routine use for release of intermediary and carrier maintained beneficiary data to servicing Medicare banks and/or provider banks.

The purpose of this new routine use is to allow fiscal intermediaries (FIs) and carriers to send claims payment and beneficiary information to providers or their banks either directly, or through a Value Added Network (VAN) telecommunications service and for provider banks to use this information to perform account management activities on behalf of providers. Under this scenario, the electronic funds transfer (EFT) and the electronic remittance advice (ERA) flow together through the banking system. The consolidation of Medicare beneficiary and payment information will reduce paperwork and administrative costs.

EFFECTIVE DATES: HCFA filed an altered system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on July 18, 1994. To ensure all parties have adequate time in which to comment, the altered systems of records, including routine uses, will become effective 40 days from the publication of this notice or from the date submitted to OMB and the Congress, whichever is later, unless HCFA receives comments which require

alterations to this notice. The proposed new routine use shall take effect without further notice 40 days from the date of publication unless comments received on or before that date would warrant changes.

ADDRESSES: Please address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budgetary Services, Office of Customer Relations and Communications, HCFA, Room 2–H–4 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Joseph Morical, Division of Financial Management, Office of Contracting and Financial Management, Bureau of Program Operations, Health Care Financing Administration, Room 1–B–4, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. His telephone number is (410) 966–7477.

SUPPLEMENTARY INFORMATION: The IMCR and the CMCR exist to assure proper health insurance benefit payments to or on behalf of entitled Medicare Part A and Part B beneficiaries. The Privacy Act permits disclosure of information without the prior written consent of an individual for "routine use" that is; disclosure for purposes compatible with the purpose for which the data is collected.

The IMCR and CMCR systems of records were last published in the **Federal Register** at 55 FR 37549; September 12, 1990. Currently, there are 23 routine uses in the IMCR system and 25 in the CMCR system that permit disclosure of information to individuals and/or organizations for a variety of reasons, the majority of which relate to the timely and accurate processing of Medicare claims, payment safeguards activities, and research. There are safeguards in place, as described in the safeguard section of both systems, to protect the data which have been developed in accordance with part 6 of the HHS Information Resource Management Manual and the National Institute of Standards and Technology Information Process Standards.

We are proposing to add a new routine use (number (24)/(26)) to the Carrier and Intermediary systems of records, for the release of data without an individuals' prior written consent. The new routine use would permit the release of beneficiary data via ERA to servicing Medicare banks and to provider banks. Servicing Medicare banks enter into agreements with the Health Care Financing Administration and with contracted Medicare claims processors to provide check clearing, account maintenance and electronic payment origination services for the Medicare program. The proposed routine use allows release of data from the IMCR and the CMCR to servicing Medicare banks and/or Medicare provider banks for one or more of the following purposes: (1) For servicing Medicare banks to transmit ERAs on behalf of Medicare contractors to Medicare providers directly or through the banking system to either the provider's bank or a VAN; (2) For provider banks to receive ERAs from the servicing Medicare banks and to transmit the remittance information directly to Medicare providers via mail, telefax, or electronic transmission; (3) For provider banks to receive ERAs from the originating Medicare banks in order to perform account maintenance activities at the request of Medicare providers.

Transmitting remittance data electronically to providers or their banks directly from the servicing Medicare bank, and/or electronically transmitting beneficiary and provider data along with payment information from the servicing Medicare bank to providers, their banks or a VAN service, allows for more efficient payment and reconciliation processes for both HCFA and providers. The new routine use number (24), for the IMCR, and (26), for the CMCR, will read as follows:

(24)/(26) Servicing Fiscal Intermediary/Carrier banks, Automated Clearing Houses, VANs and provider banks to the extent necessary to transfer to providers electronic remittance advices of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information.

Technical amendments have been made to routine use number (24)/(26) for consistency with the current notices. The IMCR and CMCR systems maintain information for the purpose of processing and paying Medicare benefits to or on behalf of eligible individuals. The proposed new routine use is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7), since it is compatible with this purpose. In accordance with OMB Guidelines (Circular A–130, 58 FR 36068, 36077 July 2, 1993), this addition of a routine use constitutes a significant change in the system of records. Accordingly, we have prepared a report of an altered system of records under 5 U.S.C. 552a(r). In addition, for the convenience of the reader, we are publishing the notice for both systems in their entirety below.

Dated: July 12, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

09–70–0501

SYSTEM NAME:

Carrier Medicare Claim Records, HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Carriers under contract to the Health Care Financing Administration (HCFA) and the Social Security Administration. Direct any inquiries regarding carrier locations to HCFA, Bureau of Program Operations, Office of Contracting and Financial Management, Division of Acquisition and Contracts, Contractor Operations Branch, Meadows East Building, Room 332, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries who have submitted claims for Supplementary Medical Insurance (Medicare Part B), or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request for Payment: Provider Billing for Patient services by Physician; Prepayment Plan for Group Medicare Practice dealing through a Carrier, Health Insurance Claim Form, Request for Medical Payment, Patient's Request for Medicare Payment, Request for Medicare Payment-Ambulance, Explanation of Benefits, Summary Payment Voucher, Request for Claim Number Verification; Payment Record Transmittal; Statement of Person Regarding Medicare Payment for Medical Services Furnished Deceased Patient; Report of Prior Period of Entitlement; itemized bills and other similar documents from beneficiaries required to support payments to beneficiaries and to physicians and other suppliers of Part B Medicare services; Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1842, 1862(b) and 1874 of title XVIII of the Social Security Act (42 U.S.C. 1395u, 1395y(b) and 1395kk).

PURPOSE(S):

To properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

(1) Claimants, their authorized representative or representative's payees to the extent necessary to pursue claims made under Title XVIII of the Social Security Act (Medicare).

(2) Third-party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following; the individual's eligibility to benefits under the Medicare program;: The amount of reimbursement;: Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency

PURPOSE(S):

To properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

(1) Claimants, their authorized representative or representative's payees to the extent necessary to pursue claims made under Title XVIII of the Social Security Act (Medicare).

(2) Third-party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following; the individual's eligibility to benefits under the Medicare program;: The amount of reimbursement;: Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Peer Review Organizations and Quality Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Boards for review of unethical practices of nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained.

b. Determines that the purpose for which this disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety or any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act, for quality control studies, for determining eligibility of recipients of assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicare eligibility considerations. Disclosures of physicians' customary charge data are made to State audit agencies in order to ascertain the corrections of Title XIX charges and payments.

(15) The Department of Justice to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component therein; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice or HHS, (where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Peer review groups, consisting of members of State, County, or local medical societies or medical care

foundations (physicians), appointed by the medical societies or foundation at the request of the carrier to assist in the resolution of questions of medical necessity, utilization of particular procedures or practices, or other utilization of services with respect to Medicare claims submitted to the carrier.

(17) Physicians and other suppliers of services who are attempting to validate individual items on which the amounts included in the annual Physician-Supplier Payment List or similar publications are based.

(18) Senior citizen volunteers working in intermediaries' and carriers' offices to assist Medicare beneficiaries in response to beneficiaries' requests for assistance.

(19) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(20) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

(21) Insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information the entity must agree to the following conditions:

a. To certify that the individual on whom the information is being provided is one of its insured;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(22) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(23) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the data were provided, collected or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objectives for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization in HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(a) Not to use the data for purposes that are not related to the evaluation of cost, quality and effectiveness of care;

(b) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(c) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(24) to insurers, underwriters, third party administrators, self-insurers, groups health plans, employers, health maintenance organizations, health and welfare benefit funds, Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or the Department of Motor Vehicles), for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 U.S.C. 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name.
- Beneficiary Address.
- Beneficiary Health Insurance Claim Number.
- Beneficiary Social Security Number.
- Beneficiary Sex.
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment
- Provider name and number
- Physician name and number
- Supplier name and number
- Dates of service
- Nature of Service
- Diagnosis.

To administer the Medicare Secondary Payer provisions at 42 U.S.C. 1395y(b)(2), (3), and (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrators (TPAs), self-insured, etc.:

- Subscriber Name and Address.
- Subscriber Date of Birth.
- Subscriber Social Security Number.
- Dependent Name.
- Dependent Date of Birth.
- Dependent Social Security Number.
- Dependent Relationship to Subscriber.
- Insurer/Underwriter/TPA Name and Address.
- Insurer/Underwriter/TPA Group Number.
- Insurer/Underwriter/TPA Group Name.
- Prescription Drug Coverage.
- Policy Number.
- Effective Date of Coverage.
- Employer Name, Employer Identification Number (EIN) and Address.
- Employment Status.
- Amounts of Payment.

To Administer the Medicare Secondary Payer provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address.
- Beneficiary's Date of Birth.
- Beneficiary's Social Security Number.
- Name of Insured.
- Insurer Name and Address.
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement.
- Insured's Policy Number.
- Effective Date of Coverage.
- Date of accident, injury or illness.
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers' compensation settlement.
- Employer Name and Address (Workers' Compensation only).
- Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payers in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment. Examples of prohibited uses would include but are not limited to:

- Dependent Relationship to Subscriber.
- Insurer/Underwriter/TPA Name and Address.
- Insurer/Underwriter/TPA Group Number.
- Insurer/Underwriter/TPA Group Name.
- Prescription Drug Coverage.
- Policy Number.
- Effective Date of Coverage.
- Employer Name, Employer Identification Number (EIN) and Address.
- Employment Status.
- Amounts of Payment.

To Administer the Medicare Secondary Payer provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address.
- Beneficiary's Date of Birth.
- Beneficiary's Social Security Number.
- Name of Insured.
- Insurer Name and Address.
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement.
- Insured's Policy Number.
- Effective Date of Coverage.
- Date of accident, injury or illness.
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers' compensation settlement.
- Employer Name and Address (Workers' Compensation only).
- Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payers in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

—To administer the MSP provisions more effectively, HCFA may receive or disclose the following types of information from or to entities including insurers, underwriters, third party administrators (TPAs), and self-insured plans, concerning potentially affected individuals:

- Subscriber Health Insurance Claim Number.
- Dependent Name.
- Funding arrangements of employer group health plans, for example, contributory or non-contributory plan, self-insured, re-insured, HMO, TPA insurance.
- Claims payment information, for example, the amount paid, the date of payment, the name of the insurer or payer.
- Dates of employment including termination date, if appropriate.
- Number of full and/or part-time employees in the current and preceding calendar years.
- Employment status of subscriber, for example full or part time, self employed.

(25) To the Internal Revenue Service for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plans or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

(26) To servicing Fiscal Intermediary/Carrier banks, Automated Clearing Houses, VANs and provider banks to the extent necessary to transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information. See "Supplementary Information."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper and electronic media.

RETRIEVABILITY:

System is indexed by health insurance claim number. The record is prepared by the physician, supplier or other provider with identifying information received from the beneficiary to establish eligibility for Medicare and document and support payments to physicians, suppliers or other providers by the carrier. The claim data are forwarded to the Health Care Financing Administration, Bureau of Data Management and Strategy, Baltimore, MD, where they are used to update the Central Office Records.

SAFEGUARDS:

Unauthorized personnel are denied access to the records area. Disclosure is limited. Physical safeguards related to the transmission and reception of data between Rockville and Baltimore are those requirements established in accordance with HHS standards and National Institute of Standards and Technology guidelines (e.g., security codes will be used, limiting access to authorized personnel). System securities are established in accordance with HHS Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program, and HCFA's Automated Information Systems (AIS) Guide, Systems Security Policies.

RETENTION AND DISPOSAL:

Records are closed at the end of the calendar year in which paid, held-2 additional years, transferred to Federal Records Center and destroyed after another 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Director, Bureau of Program Operations, 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most convenient social security office, the appropriate carrier, the HCFA Regional Office, or to the system manager named above. The individual should furnish his or her health insurance claim number and the name as shown on social security records. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought. These procedures are in accordance with Department Regulations, 45 CFR 5b.5(a)(2).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification.

These procedures are in accordance with Department regulations, 45 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The data contained in these records is either furnished by the individual or, in the case of some Medicare secondary payer situations, through third party contacts. In most cases, the identifying information is provided to the physician by the individual. The physician then adds the medical information and submits the bill to the carrier for payment.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–70–0503

SYSTEM NAME:

Intermediary Medicare Claims Records, HHS/HCFA/BPO

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Intermediaries under contract to the Health Care Financing Administration and the Social Security Administration. Direct inquiries for intermediary locations to: HCFA, Bureau of Program Operations, Office of Contracting and Financial Management, Division of Acquisition and Contracts, Contractor Operations Branch, Meadows East Building, Room 332, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare parts A and B, or are eligible for Medicare, or individuals whose enrollment in an employer group health benefits plan covers the beneficiary under Medicare.

CATEGORIES OF RECORDS IN THE SYSTEM:

Billing for Medical and Other Health Services: Uniform bill for provider services or equivalent data in electronic format, and Medicare Secondary Payer records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number, address, date of birth, medical record number, prior stay information, provider name and address, physician's name and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission and discharge, other health insurance, diagnosis, surgical procedures, a statement of services rendered for related charges and other data needed to substantiate claims.

The following elements are outpatient data provided to Medicare intermediaries by rehabilitation agencies, skilled nursing facilities, hospital outpatient departments, home intravenous drug providers and home health agencies that provide physical therapy in addition to home health services:

- Outpatient's name.
- HI number.
- Admission data to provider.
- Place treatment rendered.
- Number of visits since start of care.
- Diagnosis.
- Diagnosis requiring treatment.
- Onset of condition for which treatment is being sought.
- Dates of previous therapy for same diagnosis.
- Other therapy outpatient is currently receiving.
- Observations.
- Precautions and medical equipment.
- Functional status immediately prior to this therapy.
- Types of treatment—modalities.
- Frequency of treatment.
- Expected duration of treatment.
- Rehabilitation potential.
- Level of communication potential.
- Average time per visits.
- Goals.
- Statement of problem at beginning of billing period.
- Changes in problem at end of billing period.
- Signature of therapist.
- Certification and recertification by physician that services are to be provided from an established plan of care.
- Tests results.
- Biopsy reports.
- Methods of administration, e.g., pill vs. injection.
- Physician orders.
- Procedure codes.
- Changes.
- Weekly progress notes.
- National Drug Code (NDC).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1816, 1862(b) and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395h, 1395y(b) and 1395kk).

PURPOSE(S):

To process and pay Medicare benefits to or on behalf of eligible individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

(1) Claimants, their authorized representatives or representative payees to the extent necessary to pursue claims made under title XVIII of the Social Security Act (Medicare).

(2) Third-party contacts, without the consent of the individual to whom the information pertains, in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy provide to the individual), or

(b) The data are needed to establish to validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's eligibility to benefits under the Medicare program; the amount of reimbursement of any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of systems activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiations of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecution violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Peer Review Organizations and Quality Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Boards for review of unethical practices or nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained:

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another research project, under these same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or

(8) Peer Review Organizations and Quality Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Boards for review of unethical practices or nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained:

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another research project, under these same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit;

(d) When required by law.

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by the provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determination of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act for quality control studies, for determining eligibility of recipients of assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicaid eligibility considerations.

(15) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee, or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the government party, provided, however, that in such case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Senior citizen volunteers working in the intermediaries' and carriers' offices to assist Medicare beneficiaries in response to beneficiaries requests for assistance.

(17) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(18) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

(19) Insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one of its insured:

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(20) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(21) To any agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;.

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring; and

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Removed or destroy the information that allows the individual

to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except;

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audits; or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(22) To insurers, underwriters, third party administrators (TPAs), self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefit funds. Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurers pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, Or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 U.S.C. implementation of the Medicare Secondary Payer provisions at 42 U.S.C. 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name.
- Beneficiary Address.
- Beneficiary Health Insurance Claim Number.
- Beneficiary Social Security Number.
- Beneficiary Sex.
- Beneficiary Date of Birth.
- Amount of Medicare Conditional Payment.
- Provider Name and Number.
- Physician Name and Number.
- Supplier Name and Number.
- Dates of Service.
- Nature of Service.
- Diagnosis.

The administer the Medicare Secondary Payer provision at 42 USC 1395y(b) (2), (3), and (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrator, self-insurers, etc.:

- Subscriber Name and Address.
- Subscriber Date of Birth.
- Subscriber Social Security Number.
- Dependent Name.
- Dependent Date of Birth.
- Dependent Social Security Number.
- Dependent Relationship to Subscriber.
- Insurer/Underwriter/TPA Name and Address.
- Insurer/Underwriter/TPA Group Number.
- Insurer/Underwriter/Group Name.
- Prescription Drug Coverage.
- Policy Number.
- Effective Date of Coverage.
- Employer Name, Employer Identification Number (EIN) and Address.
- Employment Status.
- Amounts of Payment.

To administer the Medicare Secondary Payer provision at 42 USC 12395(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address.
- Beneficiary's Date of Birth.
- Beneficiary's Social Security Number.
- Name of Insured.
- Insurer Name and Address.
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement.
- Insured's Policy Number.
- Effective Date of Coverage.
- Date of accident, injury or illness.
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers compensation settlements.
- Employer Name and Address (Workers' Compensation only).
- Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payer in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment. Examples of prohibited uses would include but are not limited to; creation of a mailing list, sale or transfer of data.

—To administer the MSP provisions more effectively, HCFA may receive or disclose the following types of information from or to entities including insurers, underwriters, TPAs, and self-insured plans, concerning potentially affected individuals:

- Subscriber Health Insurance Claim Number.
- Dependent Name.
- Funding arrangements of employer group health plans, for example, contributory or non-contributory plan, self-insured, re-insured, HMO, TPA insurance.
- Claims payment information, for example, the amount paid, the date of payment, the name of the insurer or payer.
- Dates of employment including termination date, if appropriate.
- Number of full and/or part-time employees in the current and preceding calendar years.
- Employment status of subscriber, for example full or part time, self employed.

(23) To the Internal Revenue Service for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plans or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

(24) To servicing Fiscal Intermediary/Carrier banks, Automated Clearing Houses, VANs and provider banks to the extent necessary to transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information. See SUPPLEMENTARY INFORMATION.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper forms and/or electronic media.

RETRIEVABILITY:

The system is indexed by health insurance claim number. The record is prepared by the hospital or other provider with identifying information received from the beneficiary to establish eligibility for Medicare and document and support payments to providers by the intermediaries. The bill data are forwarded to the Health Care Financing Administration, Bureau of Data Management and Strategy, Baltimore, MD, where they are used to update the central office records.

SAFEGUARDS:

Disclosure of records is limited. Physical safeguards are established in accordance with Department standards and National Institute of Standards and Technology guidelines (e.g., security codes) will be used, limiting access to authorized personnel. System securities are established in accordance with HHS Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program, and HCFA Automated Information Systems (AIS) Guide, System Security Policies.

RETENTION AND DISPOSAL:

Records are closed out at the end of the calendar year in which paid, held 2 more years, transferred to the Federal Records Center and destroyed after another 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Director, Bureau of

• Employment status of subscriber, for example full or part time, self employed.

(23) To the Internal Revenue Service for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plans or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

(24) To servicing Fiscal Intermediary/Carrier banks, Automated Clearing Houses, VANs and provider banks to the extent necessary to transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information. See SUPPLEMENTARY INFORMATION.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper forms and/or electronic media.

RETRIEVABILITY:

The system is indexed by health insurance claim number. The record is prepared by the hospital or other provider with identifying information received from the beneficiary to establish eligibility for Medicare and document and support payments to providers by the intermediaries. The bill data are forwarded to the Health Care Financing Administration, Bureau of Data Management and Strategy, Baltimore, MD, where they are used to update the central office records.

SAFEGUARDS:

Disclosure of records is limited. Physical safeguards are established in accordance with Department standards and National Institute of Standards and Technology guidelines (e.g., security codes) will be used, limiting access to authorized personnel. System securities are established in accordance with HHS Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program, and HCFA Automated Information Systems (AIS) Guide, System Security Policies.

RETENTION AND DISPOSAL:

Records are closed out at the end of the calendar year in which paid, held 2 more years, transferred to the Federal Records Center and destroyed after another 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Director, Bureau of Program Operations, 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the social security office nearest the requester's residence, the appropriate intermediary, the HCFA Regional Office, or to the system manager named above. The individual should furnish his or her health insurance number and name as shown on social security records. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought. These procedures are in accordance with Department Regulations, 45 CFR 5b.5(a)(2).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. These procedures are in accordance with Department Regulations, 45 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The identifying information contained in these records is obtained by the provider from the individual or, in the case of some Medicare secondary payer situations, through third party contacts. The medical information is entered by the provider of medical services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–17621 Filed 7–20–94; 8:45 am]
BILLING CODE 4120–03–M

Social Security Administration

Privacy Act of 1974; Report of Revised System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Revision to a system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e) (11)), we are issuing public notice of our intent to revise the name and description of a system of records entitled "Master Files of Social Security Number Holders, HHS/SSA/OSR, 09–60–0058" (last published at 58 FR 35025, June 30, 1993).

DATES: The proposed changes will become effective as proposed, without further notice on August 30, 1994, unless we receive comments on or before that date which would warrant our preventing the changes from taking effect.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, room 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Hanna, Social Insurance Specialist, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, telephone (410) 966–7077.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Revision

We are changing the name of the system of records and the description of its purpose to clarify the fact that it includes applications for Social Security numbers (SSNs) submitted with suspicious or fraudulent evidence, as well as the records of individuals who have applied for and been assigned SSNs. The vast majority of SSN applications with complete evidence are soon approved and SSNs are assigned to the applicants in a few days. In some cases, however, an application may be held and a record maintained for up to 120 days while SSA determines whether the evidence of identity, age or citizenship/alien status is proper and authentic. SSA disallows applications which are supported by fraudulent documents, and maintains records of such applications. These records prevent individuals whose applications are supported by fraudulent or suspicious documents from obtaining SSNs by visiting other SSA offices which might unwittingly accept these documents.

Besides changing the name of the system and showing that its purpose includes protecting against SSN applications supported by suspicious or fraudulent evidence, we have changed some of the other language:

• To show that the system covers paper applications for SSNs as well as electronic records, and

• To explain how a record is retrieved when it does not include an SSN.

II. Effect of the Proposed Changes on Individual Rights

The proposed changes will clarify the types of information which SSA maintains about persons who apply for SSNs. They will have no effect on individuals' rights.

Dated: July 12, 1994.

Shirley S. Chater,

Commissioner of Social Security.

09–60–0058

SYSTEM NAME:

Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Social Security Administration, Office of Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235

Social Security Administration, Office of Central Records Operations, Metro West Building, 300 N. Greene Street, Baltimore, MD 21201.

Records may also be maintained at contractor sites (contact the system manager at the address below to obtain contractor addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains a record of each individual who has applied for and obtained a Social Security number (SSN) and of each individual whose application was supported by documents which are suspected to be fraudulent and are being verified with the issuing agency, or have been determined to be fraudulent.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains all of the information received on original applications for SSNs (e.g., name, date and place of birth, sex, both parents' names, and race/ethnic data), and any changes in the information on the applications that are submitted by the SSN holders. It also contains applications supported by evidence suspected or determined to be fraudulent, along with the mailing addresses of the individuals who filed such applications and descriptions of the documentation which they submitted. Cross-references may be noted where multiple numbers have been issued to the same individual and an indication may be shown that a benefit claim has been made under a particular SSN(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act.

PURPOSE(S):

Information in this system is used by the Social Security Administration (SSA) to assign SSNs. The information also is used for a number of administrative purposes, such as:

- By SSA components for various title II, XVI, and XVIII claims purposes including usage of the SSN itself as a case control number and a secondary beneficiary cross- reference control number for enforcement purposes and use of the SSN record data for verification of claimant identity factors and for other claims purposes related to establishing benefit entitlement;
- By SSA as a basic control for retained earnings information;
- By SSA as a basic control and data source to prevent issuance of multiple SSNs;
- As the means to identify reported names or SSNs on earnings reports;
- For resolution of earnings discrepancy cases;
- For statistical studies;
- By the Department of Health and Human Services (HHS), Office of Inspector General, Office of Audit Services, for auditing benefit payments under Social Security programs;
- By the HHS Office of Child Support Enforcement for locating parents who owe child support;
- By the National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Safety and Health Act of 1974;
- By the SSA Office of Refugee Resettlement for administering Cuban refugee assistance payments; and
- By the HHS Health Care Financing Administration for administering Title XVIII claims.

Information in this system is also used by SSA to prevent the processing of an SSN card application for an individual whose application is identified as having been supported by evidence that either:

- Is suspect and being verified, or
- Has been determined to be fraudulent.

With this system in place, clerical investigation and intervention is required. Social Security offices are alerted in case an applicant attempting to obtain an SSN might visit other offices and might attempt to find one which would unwittingly accept fraudulent documentation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Employers are notified of the SSNs of employees in order to complete their records for reporting wages to SSA pursuant to the Federal Insurance Contributions Act and section 218 of the Social Security Act.
2. To State welfare agencies, upon written request, of the SSNs of Aid to Families with Dependent Children applicants or recipients.
3. To the Department of Justice (DOJ), Federal Bureau of Investigation and United States Attorneys, for investigating and prosecuting violations of the Social Security Act.
4. To the DOJ, Immigration and Naturalization Service, for the identification and location of aliens in the United States pursuant to requests received under section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).
5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating or otherwise refining records when SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)
6. To the Railroad Retirement Board for:
   (a) Administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment; and
   (b) Administering the Railroad Unemployment Insurance Act.
7. To the Department of Energy for its study of the long-term effects of low-level radiation exposure.
8. To the Department of the Treasury for:
   (a) Tax administration as defined in section 6103 of the Internal Revenue Code (26 U.S.C. 6103); and
   (b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks.
9. To a congressional office in response to an inquiry from the office made at the request of the subject of a record.
10. To the Department of State for administering the Social Security Act in foreign countries through facilities and services of that agency.
11. To the American Institute of Taiwan for administering the Social Security Act on Taiwan through facilities and services of that agency.
12. To the Department of Veterans Affairs (DVA), Philippines Regional Office, for administering the Social Security Act in the Philippines through facilities and services of that agency.

13. To the Department of the Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through facilities and services of that agency.
14. To the Department of Labor for:
   (a) Administering provisions of the Federal Coal Mine Health and Safety Act; and
   (b) Conducting studies of the effectiveness of training programs to combat poverty.
15. To DVA for the following purposes:
   (a) For the purpose of validating SSNs of compensation recipients/pensioners in order to provide the release of accurate pension/compensation data by DVA to SSA for Social Security program purposes; and
   (b) Upon request, for purposes of determining eligibility for or amount of DVA benefits, or verifying other information with respect thereto.
16. To Federal agencies which use the SSN as a numerical identifier in their recordkeeping systems, for the purpose of validating SSNs.
17. To DOJ, to a court, to another tribunal, or to another party before such tribunal, when:
   (a) SSA, or any component thereof; or
   (b) Any SSA employee in his/her official capacity; or
   (c) Any SSA employee in his/her individual capacity when DOJ (or SSA when it is authorized to do so) has agreed to represent the employee; or
   (d) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the tribunal, or other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were disclosed.

Wage and other information that is subject to disclosure provisions of the Internal Revenue Code (IRC) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

18. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.
19. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Social

13. To the Department of the Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through facilities and services of that agency.

14. To the Department of Labor for:

(a) Administering provisions of the Federal Coal Mine Health and Safety Act; and

(b) Conducting studies of the effectiveness of training programs to combat poverty.

15. To DVA for the following purposes:

(a) For the purpose of validating SSNs of compensation recipients/pensioners in order to provide the release of accurate pension/compensation data by DVA to SSA for Social Security program purposes; and

(b) Upon request, for purposes of determining eligibility for or amount of DVA benefits, or verifying other information with respect thereto.

16. To Federal agencies which use the SSN as a numerical identifier in their recordkeeping systems, for the purpose of validating SSNs.

17. To DOJ, to a court, to another tribunal, or to another party before such tribunal, when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity when DOJ (or SSA when it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the tribunal, or other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were disclosed.

Wage and other information that is subject to disclosure provisions of the Internal Revenue Code (IRC) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

18. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

19. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

20. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs used in administering cash or noncash income maintenance programs or health maintenance programs (including programs under the Social Security Act).

21. To third party contacts when the party to be contacted has, or is expected to have, information which will verify documents when SSA is unable to determine if such documents are authentic.

22. Upon request, information on the identity and location of aliens may be disclosed to the DOJ, Criminal Division, Office of Special Investigations, for the purpose of detecting, investigating, and, when appropriate, taking legal action against suspected Nazi war criminals in the United States.

23. To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Pub. L. 97–86).

24. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine used only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

25. Validated SSN information may be disclosed to organizations or agencies such as prison systems that are required by law to furnish SSA with SSN information.

26. Nontax return information that is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

27. Disclosure of SSNs and dates of birth may be made to the DVA or third parties under contract to that agency for the purpose of conducting DVA medical research and epidemiological studies.

28. SSN information may be disclosed to the Office of Personnel Management (OPM) upon receipt of a request from that agency in accordance with 5 U.S.C. 8347(m)(3), when OPM needs the information in administering its pension program for retired Federal Civil Service employees.

29. Upon request by the Department of Education, SSNs which are provided by students to postsecondary educational institutions may be verified as required by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1091).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in paper form (e.g., paper lists, punch cards, Forms SS–5 (Application for an SSN), and systems generated forms); magnetic media (e.g., magnetic tape and disk with on-line access); and in microfilm and microfiche form.

RETRIEVABILITY:

Records of SSN holders are indexed by both SSN and name. Records of applications that have been denied because the applicant submitted fraudulent evidence, or that are being verified because the evidence is suspected to be fraudulent, are indexed either by the applicant's name plus month and year of birth, or by the applicant's name plus the eleven-digit reference number of the disallowed application.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Automated Data Processing Manual, "Part 6, ADP Systems Security." This includes maintaining the magnetic tapes and disks within a secured enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and Field Office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm, microfiche, and paper files are accessible only by authorized personnel who have a need for the records in the performance of their official duties.

Expansion and improvement of SSA's telecommunications systems has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to

permit the identification of terminal users.

RETENTION AND DISPOSAL:

All paper forms are retained for 5 years after they have been filmed or entered on tape and the accuracy has been verified. They then are destroyed by shredding. All tape, disks, microfilm, and microfiche files are updated periodically. Out-of-date magnetic tapes and disks are erased. Out-of-date microfiches are disposed of by applying heat.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Data Support and Enumeration, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURES:

An individual can determine if this system contains a record pertaining to him/her by providing his/her name, signature, and SSN to the address shown under "System Manager" above. (Furnishing the SSN is voluntary, but it makes searching for an individual's record easier and avoids delay.) If the SSN is unknown or no SSN has been assigned because the evidence presented with the application is being verified or has been determined to be fraudulent, the individual should provide name, signature, date and place of birth, sex, mother's birth name, and father's name, and evidence of identity. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents which they are seeking. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, requesters should reasonably identify the record, specify the information which they are contesting, and state the corrective action sought and the reasons for the correction, with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from SSN applicants (or individuals acting on their behalf). The SSN itself is assigned to the individual as a result of internal processes of this system.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–17771 Filed 7–20–94; 8:45 am]

BILLING CODE 4190-29-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3798; FR–3755–N–01]

Discrimination in Property Insurance Under the Fair Housing Act; Public Meetings

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Public Meetings.

SUMMARY: HUD is charged with the administration and enforcement of the Fair Housing Act, including the promulgation of Fair Housing Act, including the promulgation of Fair Housing Act regulations. Prior to promulgation of a regulation on nondiscrimination in property insurance practices, HUD is seeking public comment on property insurance practices that may or may not be discrimantory, as well as other comments related to subject of property insurance. This notice announces, the dates, and locations of public meetings that will address the subject of discrimination in property insurance under the Fair Housing Act.

DATES: See the Supplementary Information section of this notice for the dates, locations and times of the meetings.

FOR FURTHER INFORMATION AND REQUESTS TO MAKE ORAL PRESENTATION CONTACT: Peter Kaplan, Director, Office of Regulatory Initiatives an Federal Coordination, Office of Fair Housing and Equal Opportunity, HUD, Room 5240, 451 Seventh Street, S.W., Washington DC 20410–0500, telephone (202) 708–2904 (not a toll free number). The toll free TDD number is 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD is committed to initiatives that will provide access to capital and economic empowerment for all Americans. HUD has launched creative programs to stem disinvestment in cities and disadvantaged communities throughout the country, increase the flow of capital into these communities, and create communities of opportunity throughout the nation.

Among HUD's priorities are: (1) Empowerment of local communities by supporting local economic development efforts; (2) expansion of housing opportunities through partnerships with State and local government and private developers and financial institutions; and (3) opening housing markets through vigorous enforcement of the Federal Fair Housing Act (42 U.S.C. 3601–3619). A critical component of these initiatives is assuring access to capital for homeownership and business development. Assuring fair access to property insurance is essential. Insurance is necessary for access to capital.

HUD is charged with the administration and enforcement of the Fair Housing Act, including the promulgation of regulations. Prior to promulgation of a regulation on nondiscrimination in property insurance under the Fair Housing Act, HUD is seeking public comment on: property insurance practices that may or may not be discriminatory; specific provisions within the regulation; disclosure requirements and best practices.

This notice announces four public meetings to be conducted by the Assistant Secretary for Fair Housing and Equal Opportunity of HUD (Assistant Secretary) to hear oral presentations from interested parties on discrimination in property insurance under the Fair Housing Act.

II. Dates, Locations and Times of Public Meetings

First Meeting

The first meeting will be held in Chicago, Illinois, on Thursday, August 18, 1994, in Court Room 2721 of the Everett Dirksen Federal Building, 219 S. Dearborn St. Chicago, Illinois 60604.

Second Meeting

The second meeting will be held in San Francisco, California, on Thursday, September 22, 1994, at the Philip Burton Federal Building and U.S. Court House, 450 Golden Gate Avenue, San Francisco, California 36003. The room will be announced.

Third Meeting

The third meeting will be held in Atlanta, Georgia, on Tuesday, October 18, 1994, in Room 1707 of the Richard B. Russell Federal Building, 75 Spring St. SW, Atlanta, Georgia 30303. The room will be announced.

Fourth Meeting

The fourth meeting will be held in Boston, Massachusetts, on Thursday, October 27, 1994 at the Thomas P. O'Neill, Jr. Federal Building, 10 Causeway St. Boston, Massachusetts 02222. The room will be announced.

The meeting will convene at 9 a.m. and adjourn at 4 p.m. unless otherwise extended by the Assistant Secretary or duly designated presiding officer.

III. Meeting Procedures

Attendance is open to the public but limited space is available. The meetings facilities are accessible to persons with mobility impairments. Sign language interpreters and assistive listeners will be available for individuals with hearing impairments.

Individuals, groups and organizations that wish to make an oral statement at a meeting should make a written request to do so and should forward their oral statement five work days in advance of the meeting to HUD as indicated below.

Opportunity for oral statements at the meetings will include, but not be limited to, those who have submitted written remarks. To the extent that time permits and within the discretion of the Assistant Secretary of the presiding officer, other members of the public who wish to present oral statements will be allowed to do so.

Dated: July 15, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–17716 Filed 7–20–94; 8:45 am]

BILLING CODE 4210–28–M

Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3661; FR–3566–N–05]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Availability of Final Report.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (P.L. 102–550) and the Federal Advisory Committee Act (FACA) (5 U.S.C. App 2). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all

Fourth Meeting

The fourth meeting will be held in Boston, Massachusetts, on Thursday, October 27, 1994 at the Thomas P. O'Neill, Jr. Federal Building, 10 Causeway St. Boston, Massachusetts 02222. The room will be announced.

The meeting will convene at 9 a.m. and adjourn at 4 p.m. unless otherwise extended by the Assistant Secretary or duly designated presiding officer.

III. Meeting Procedures

Attendance is open to the public but limited space is available. The meetings facilities are accessible to persons with mobility impairments. Sign language interpreters and assistive listeners will be available for individuals with hearing impairments.

Individuals, groups and organizations that wish to make an oral statement at a meeting should make a written request to do so and should forward their oral statement five work days in advance of the meeting to HUD as indicated below.

Opportunity for oral statements at the meetings will include, but not be limited to, those who have submitted written remarks. To the extent that time permits and within the discretion of the Assistant Secretary of the presiding officer, other members of the public who wish to present oral statements will be allowed to do so.

Dated: July 15, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94-17716 Filed 7-20-94; 8:45 am]

BILLING CODE 4210-28-M

Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-94-3661; FR-3566-N-05]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Availability of Final Report.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (P.L. 102-550) and the Federal Advisory Committee Act (FACA) (5 U.S.C. App 2). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbooks and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing; and make recommendations in its final report to HUD and Congress for the establishment of reasonable criteria for occupancy, so that HUD could revise its standards, regulations, and guidelines to provide accurate and complete guidance to owners and managers of federally assisted housing.

The preliminary report of the task force was made available by a **Federal Register** Notice published on August 31, 1993, at 58 FR 45905. The public was given 60 days to submit comments on the preliminary report.

This notice is to provide the public with the Executive Summary of the Report and announce the availability of the Task Force's Final Report from the Fair Housing Clearinghouse (1-800-343-3442) or (TDD) (1-800-927-9275), 1600 Research Boulevard, Rockville, Maryland 20850. This Report reflects the opinions of the Task Force and does not necessarily represent Departmental policy or procedures. The Department is presently considering all the recommendations and expects to publish rules and guidance addressing the issues raised in the Report.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Director, Office of Program Standards and Evaluation, Office of Fair Housing and Equal Opportunity, Room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708-0288 (voice) or (TDD) (202) 708-0113 (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Executive Summary of the Report.

Preface—Funding and Finance Issues

Throughout its deliberations and recommendations, one theme about which Occupancy Task Force members agreed was that low-income people should have more housing choices than they do at present. The issue of housing choice, along with many other concerns the Task Force addressed, is complicated by scarcity of resources. The Task Force therefore proposes a number of recommendations aimed specifically at funding and cost issues.

Chapter 1—The Application Process

In preparing its report, the Occupancy Task Force decided that it would be more useful to begin by addressing the sequential tenancy process: the application process, occupancy and eviction. The first stage of this process, during which applicants are screened for eligibility and tenant selection criteria, is an extremely important one in that the applicants who are selected will become members of the resident community and those who are not selected will be denied the opportunity to live in federally assisted housing. Thus, the Task Force spent significant time considering the issues contained in the Application Process Chapter. In doing so, the Task Force balanced the rights of housing providers to choose residents who will fulfill their lease obligations and the rights of applicants to be chosen fairly.

In addition to including the Task Force's specific recommendations, Chapter One describes the application process from start to finish in order to provide a full context for the recommendations. In particular, the application process issues addressed by the Task Force include the following:

- Guiding principles for the application process;
- Accessibility of the application process and the need for plain language forms and documents;
- Marketing;
- Waiting lists;
- Occupancy standards;
- Rent reform;
- Screening applicants, including applicants with non-traditional tenant histories;
- Reasonable accommodations in the application and screening process;
- Disability-related inquiries; and
- Determinations involving alcohol and controlled substances.

Chapter 2—Management

The application process ends when the housing provider makes the decision to admit an applicant. Next, the housing management process begins, encompassing orientation, execution of the lease, move-in, occupancy and lease compliance. The Task Force addressed the following topics within the housing management process;

- Guiding Principles for the housing management process;
- The lease;
- Preventing and addressing lease violations;
- Unit transfers; and
- Retention of housing during hospitalization or residential treatment.

Chapter 3—Evictions

Eviction from public or assisted housing is a very serious sanction; it not only displaces the resident, it also discontinues the subsidy that makes housing affordable to that resident. Eviction is nonetheless occasionally necessary. Experience shows that some

individuals are not willing to meet the essential obligations of tenancy and must be removed in order to preserve the viability of the housing development. Given the shortage of public and assisted housing, and the difficulty of preserving this housing, the Task force also stresses the need to remove those whose conduct is destructive to the development.

An equitable eviction policy will authorize the eviction, in appropriate circumstances, of those residents whose conduct violates essential provisions of the lease, those whose conduct repeatedly violates minor provisions of the lease, and those who allow others to do so. The Task Force reviews the proper use of eviction as focusing generally on whether and how seriously the conduct in question adversely affects the housing community. In addition, the Task Force recommends that except as noted, the status, regulations, handbooks and lease provisions regarding eviction not be changed.

The report addresses the following topics:

- Alternatives to eviction;
- Alternatives after eviction, to prevent homelessness;
- Notices;
- Drug abuse and drug related crime;
- Criminal activity as grounds for eviction;
- Former users of illegal drugs;
- Fraud;
- Minor crimes and off-premises criminal activity;
- Public housing grievance procedure;
- Residents' liability for the actions of others;
- Consideration of all the facts and circumstances;
- Criminal activity prior to admission;
- Subsidy termination—certificate and voucher programs; and
- Subsidy termination—assisted housing.

Chapter 4—Reasonable Accommodations

Reasonable accommodation is a creative, challenging and evolving area of disability law and practice, affecting every aspect of admissions, occupancy and evictions. The Task Force believes that, despite many uncertainties as to what is required by law, it is possible to craft sound, basic, reasonable accommodation policies and procedures which will satisfy the intent of the law without subjecting either persons with disabilities or housing providers to unintended burdens.

This chapter tackles a wide range of reasonable accommodations issues with the intention of providing guidance on the procedural elements essential to achieving compliance. Specifically, the chapter is organized as follows:

- Regulatory and case-law references that provide background on the concept of reasonable accommodation followed by brief discussion of program accessibility requirements (the self-evaluation and transition plan);
- Discussion of a definition of reasonable accommodation;
- Statement of principles applicable to reasonable accommodations, drawn from current law and regulation and describing both affirmative requirements and the regulatory limits placed on the implementation of the concept;
- Examination of the regulatory limits that apply to accommodations (undue burdens and fundamental alterations);
- Recommendations on effective implementation of reasonable accommodations;
- Review of diverse reasonable accommodation issues including disagreements about types of accommodation, accommodations in the occupancy cycle, procedures related to service animals, and the use of interpreters; and
- Recommendations for HUD Technical Assistance.

Chapter 5—Fundamental Alterations

Both Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988 anticipate that, at some level, the compliance action requested or required may exhaust available resources or so alter the housing program that the action becomes infeasible. Housing providers are required to judge the feasibility of compliance actions against two criteria; fundamental alternations in the nature of the program and undue financial and administrative burdens. This chapter frames these issues in the context of program operations and management.

Fundamental alternations in the nature of the program and undue financial and administrative burdens raise issues of resource management, capital planning, and ultimately, program funding. Many compliance actions can be absorbed with existing program funds, but the cost of making some programs accessible and responding to some requests for accommodations will require that Congress recognize the need for increased funding levels. Greater flexibility in HUD's rules governing the use of operating and capital budgets is also required. Specific changes in budget operating procedures and formula calculations are recommended.

The Task Force also makes a general recommendation to increase the level of modernization funds for both public and assisted housing.

This chapter includes:

- Examples of actions that might result in fundamental alternations;
- Suggestions for evaluating fundamental alternations in light of the program purpose and any services delivered on site;
- Treatment of profit at assisted housing properties;
- Principles that explain how the undue burdens test is unique to each reasonable accommodation request and how to judge the impact of compliance actions against available program resources;
- Use of operating and capital budgeting line items for reasonable accommodation and other compliance requirements;
- Program factors to consider when assessing undue burdens;
- Procedural frameworks for evaluating undue financial burdens in public and assisted housing; and
- A plan for identifying unfunded accessibility needs.

Chapter 6—Certificates and Vouchers

During the course of its deliberations, the Task Force generally discussed issues that could be addressed in a unified manner for all federally subsidized housing programs, such as the need for plain language forms and communications. Thus, the Task Force wishes to make clear that all such global recommendations, such as the need for plain language and timely and adequate notice, apply in the Section 8 Certificate and Voucher programs.

However, the Task Force also dealt with issues in the public housing and project-based assistance programs, such as admissions procedures, that could not be so readily carried over into the context of the Certificate and Voucher programs; this posed a particular challenge. In those programs the housing authority does not admit an applicant to housing, is not the resident's landlord and does not evict. Instead, in a delicate balance among the three parties involved, the housing agency provides a rental subsidy to the participant and, as a quid pro quo to the private landlord's receipt of a portion of the market rent, enforces specific regulatory provisions incorporated into the Housing Assistance Payments contract. Between the private landlord and the resident-recipient flow another set of rights and obligations, arising from the lease, the HAP contract, federal law and regulation and state law.

In this chapter, the Task Force has addressed only those issues that were of particular concern to Task Force members or were congruent with issues raised in the project-based context. The Task Force has not attempted a wholesale critique of the Certificate and Voucher programs not wholly rewritten any area of program administration. Nor has the Task Force, in particular, dealt with the proposed regulations to consolidate the Certificate and Voucher programs, which have not yet been implemented and so do not represent current practice. This Chapter includes recommendations concerning:

- Expirations/extensions of time;
- Exemptions to fair market rents;
- Assistance for individuals with disabilities;
- Waiting lists;
- Evictions/terminations of assistance;
- Lease terminations in the first year of the lease;
- Damage and vacancy claims;
- Housing quality standards;
- Reasonable accommodations; and
- Portability/mobility.

Chapter 7—Support Services

This chapter examines the intersection of housing and services and makes recommendations to Congress, HUD and the Department of Health and Human Services (HHS) about improving coordination, access, and delivery of services in an independent housing context. Many people who live in federally subsidized housing need, want and are eligible for services that have some form of federal subsidy or some form of federal mandate or encouragement. Services could help maintain tenancies and independence, promote economic and educations opportunity, and generally enhance the lives and opportunities of those who live in federally subsidized housing. The Task Force believes that one major problem is that the housing and service systems often do not understand one another or work in a coordinated way to help the same individual. Because issues of coordination can be addressed only if HUD and HHS work together, this chapter makes recommendations to HHS even though the Task Force was created to advise Congress about HUD matters.

Part A of this chapter covers general services and housing issues and recommendations to ensure the provision of services to residents. Part B reviews the planning and funding complexities of federal, state and local programs, including recommendations to HUD and HHS. Part C discusses

In this chapter, the Task Force has addressed only those issues that were of particular concern to Task Force members or were congruent with issues raised in the project-based context. The Task Force has not attempted a wholesale critique of the Certificate and Voucher programs not wholly rewritten any area of program administration. Nor has the Task Force, in particular, dealt with the proposed regulations to consolidate the Certificate and Voucher programs, which have not yet been implemented and so do not represent current practice. This Chapter includes recommendations concerning:

- Expirations/extensions of time;
- Exemptions to fair market rents;
- Assistance for individuals with disabilities;
- Waiting lists;
- Evictions/terminations of assistance;
- Lease terminations in the first year of the lease;
- Damage and vacancy claims;
- Housing quality standards;
- Reasonable accommodations; and
- Portability/mobility.

Chapter 7—Support Services

This chapter examines the intersection of housing and services and makes recommendations to Congress, HUD and the Department of Health and Human Services (HHS) about improving coordination, access, and delivery of services in an independent housing context. Many people who live in federally subsidized housing need, want and are eligible for services that have some form of federal subsidy or some form of federal mandate or encouragement. Services could help maintain tenancies and independence, promote economic and educations opportunity, and generally enhance the lives and opportunities of those who live in federally subsidized housing. The Task Force believes that one major problem is that the housing and service systems often do not understand one another or work in a coordinated way to help the same individual. Because issues of coordination can be addressed only if HUD and HHS work together, this chapter makes recommendations to HHS even though the Task Force was created to advise Congress about HUD matters.

Part A of this chapter covers general services and housing issues and recommendations to ensure the provision of services to residents. Part B reviews the planning and funding complexities of federal, state and local programs, including recommendations to HUD and HHS. Part C discusses collaborative agreements between housing and services providers.

Chapter 8—Clearinghouse

In a number of discussions, the Task Force addressed the problems associated with the lack of effective coordination among housing providers, supportive service providers, tenant representatives and advocates. We were also troubled by the general unavailability of adequate, reliable, technical assistance on reasonable accommodation procedures and substance.

The Task Force concluded that one way of addressing both problems was to recommend that Congress require that each state receiving federal housing assistance establish a model clearinghouse program, to be funded by the HOME and CDBG programs. This chapter discusses the scope and purposes of such clearinghouses.

Chapter 9—Confidentiality

Because every housing file contains personal information about applicants and residents, privacy and confidentiality and persistent concerns. The civil rights and housing program laws and regulations all address some aspects of privacy and confidentiality, but they leave many questions unanswered. Thus, the Task Force recommends that HUD research the variety of questions and issues that the chapter lists, consult with interested parties, and issue prompt and responsive guidance. The questions include issues relating to law enforcement, reasonable accommodations, resident screening and eviction committees, state and local laws, and service coordinator and provider responsibilities.

Chapter 10—NIMBY

NIMBY, the Not In My Back Yard syndrome, both contributes to and is a form of housing discrimination. Like all forms of discrimination, NIMBY has ripple effects on subsidized housing providers. When a neighborhood association successfully prevents people with disabilities, people with low incomes, and people with no homes from moving in, it not only exacerbates the pressure on subsidized housing providers to house these groups, but it reinforces the stereotype that subsidized housing exists for the purpose of keeping "the undesirables" out of "decent" neighborhoods.

NIMBY, like the dearth of affordable housing, has permeated the Task Force's deliberations. Thus, the purpose of this chapter is two-fold. It describes how community perceptions and stereotypes can limit housing opportunities for individuals and families with low- and very low-incomes; while emphasizing that every individual and family should have an opportunity to choose from a variety of housing options, including private, public, federally-assisted, scattered site and supportive housing. Second, this chapter offers a number of specific recommendations to Congress and the Executive Agencies with regard to housing discrimination. This chapter is not an enforcement of one type of housing option over others but rather an enforcement of individual choice and empowerment. The Task Force was unanimous in its identification of discrimination as a major problem for everyone involved in the housing industry.

Closing Note on Recommendations to HUD

Most of the Task Force's recommendations for HUD action suggest that HUD develop "guidance" for housing providers. The term "guidance" means examples, models, and samples, of letters, forms, procedures, systems, etc., designed to help housing providers without imposing new requirements on them. The Task Force recommendations for guidance should not be interpreted by HUD as creating new requirements.

Dated: June 23, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–17703 Filed 7–20–94; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–4210–05]

Intent to Amend the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 43 CFR 1610.2(a). notice is hereby given that the Bureau of Land Management proposes to change the Multiple Use Classification from Class L to Class M for the following public lands:

San Bernardino Meridian, Imperial County, California

T. 16S., R. 16 E.,
Sec. 25, SE¼NW¼.

DATES: Written comments on this proposed plan amendment will be accepted until August 22, 1994. Please

address comments to G. Ben Koski, Area Manager, Bureau of Land Management, El Centro Resource Area, 1661 South 4th Street, El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: Linda Friedrich, El Centro Resource Area, 1661 South 4th Street, El Centro, California, 92243, (619) 353–1060.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 20, 1992 (Vol. 57, No. 55, p. 9743), a Notice of Intent was published initiating the 1992 Review of the California Desert Conservation Plan and inviting requests for amendments to the Plan from individuals, public and private organizations, and the Bureau's own observation. Those amendment proposals were included on the agenda at the public meeting of the California Desert District Advisory Council Meeting on June 3–4, 1992. A Notice was published in the **Federal Register** of May 22, 1992 (Vol. 57, No. 100, p. 21820) announcing the meeting.

The proposal to reclassify the above-described land from Multiple Use Class L to Class M was presented at the meeting and no adverse comments were received. This Notice of Intent is being published to re-initiate the public scoping period. The forty-acre parcel described above is being considered for direct sale at fair market value to General Farm Investment Company, owner and operator of the farmland that borders three sides of this land. The subject land extends into the farming operations and is an obstacle to efficient farming and irrigating. Disposal would establish a more manageable ownership boundary benefiting both the Bureau of Land Management and General Farm. The proposed plan amendment and decision on disposal will be determined through environmental analysis in accordance with 43 CFR 1610.5–5.

Dated: July 13, 1994.

Jim Talent,

Acting Area Manager.

[FR Doc. 94–17748 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–40–M

[WY–040–94–4350–08]

Emergency Closure in the Arabis pusilla Habitat Management Area, Green River Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Emergency Closure in the *Arabis pusilla* Habitat Management Area, Green River Resource Area, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice that, effective immediately, all public lands within the *Arabis pusilla* Habitat Management Area (HMA) are closed to all mechanized/non-motorized vehicular use to preserve the habitat of this Candidate plant species. This species, commonly called the small rockcress, is being proposed as Endangered by the U.S. Fish and Wildlife Service. Its single known population is located at Pine Creek, near South Pass, Wyoming, and consists of approximately 1000 individuals. Approximately 500 acres of land within the Habitat Management Area (HMA) exclosure will be closed.

Vehicular use of the existing roads and trails in the area is causing unacceptable levels of damage to these plants and their limited habitat adjacent to the roads and trails. Unauthorized vehicular use off these roads is also impacting the species. Due to the extremely small population number, and the fragile nature of the plant, damage from vehicular activity could be causing irreversible impacts to the species.

The *Arabis pusilla* Habitat Management Plan calls for elimination of all motorized vehicle activity within the HMA exclosure.

EFFECTIVE DATE: The closure will become effective July 21, 1994 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: William LeBarron, Area Manager, Green River Resource Area, 1993 Dewar Drive, Rock Springs, Wyoming 82901. Telephone (307) 362–6422.

SUPPLEMENTARY INFORMATION: Monitoring of the Habitat Management Area has revealed that violations of the "existing road and trail" ORV designation commonly occurs and causes adverse impacts to the species.

The emergency closure applies to all BLM administered public lands within the *Arabis pusilla* Habitat Management Area located approximately 20 miles southwest of the town of South Pass, Wyoming, in T29N, R101W, sections 26, 27 and 35, Sixth Principle Meridian. The closure prohibits use of all mechanized motorized and nonmotorized vehicles within the habitat management area, with the exception of:

(1) Any Federal, State, or local officers engaged in fire, military, emergency, or law enforcement activities.

(2) BLM employees engaged in official duties.

Authority for closure orders is provided under 43 CFR Subpart 8364.1. Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

John S. McKee,

Associate District Manager.

[FR Doc. 94–17718 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–22–M

[OR–943–4210–06; GP4–219; OR–45398]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 80 acres of public lands out of Federal ownership. This action will also open 160 acres of the 200 acres of reconveyed lands, to surface entry, and 40 acres to mining and mineral leasing. Of these lands, 160 acres have been and continue to be open to mining and mineral leasing. The remaining 40 acres fall within the Crooked Wild and Scenic River boundary and will not be open to surface entry.

EFFECTIVE DATE: August 26, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7170.

SUPPLEMENTARY INFORMATION: 1. Under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, a patent has been issued transferring 80 acres in Crook County, Oregon, from Federal to private ownership.

In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 16 S., R. 16 E.,
Sec. 29, N½SE¼ and S½SW¼;
Sec. 31, SW¼SE¼.

The areas described aggregate 200 acres in Crook County.

2. The land lying within one-quarter mile of the river in the land described below falls within the Crook Wild and Scenic River withdrawal boundary and will remain closed to surface entry:

Willamette Meridian

T. 16 S., R. 16 E.,
Sec. 29, NE¼SE¼.

The area described contains 40 acres in Crook County.

3. At 8:30 a.m., on August 26, 1994, the lands described in paragraph 1, except as provided in paragraph 2, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on August 26, 1994, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on August 26, 1994, the land described below will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 16 S., R. 16 E.,
Sec. 31, SW¼SE¼.

The area described contains 40 acres in Crook County.

5. At 8:30 a.m., on August 26, 1994, the land described in paragraph 4 will be opened to applications and offers under the mineral leasing laws.

Dated: July 12, 1994.

William E. Bliesner,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–17747 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–33–P

[AZ–054–04–4210–05; AZA 28563]

Arizona: Realty Action, Classification of Public Lands for Lease or Conveyance for Recreation and Public Purposes; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Arizona.

SUMMARY: The following public lands in Mohave County, Arizona, have been examined and found suitable for classification for lease or conveyance to Topock Elementary School District #12 under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Topock Elementary School District #12 proposes to use the following land for a middle school:

Gila and Salt River Meridian, Arizona

T. 16 N., R. 21 W.,

existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on August 26, 1994, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on August 26, 1994, the land described below will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 16 S., R. 16 E.,
Sec. 31, SW¼SE¼.

The area described contains 40 acres in Crook County.

5. At 8:30 a.m., on August 26, 1994, the land described in paragraph 4 will be opened to applications and offers under the mineral leasing laws.

Dated: July 12, 1994.

William E. Bliesner,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–17747 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–33–P

[AZ–054–04–4210–05; AZA 28563]

Arizona: Realty Action, Classification of Public Lands for Lease or Conveyance for Recreation and Public Purposes; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Arizona.

SUMMARY: The following public lands in Mohave County, Arizona, have been examined and found suitable for classification for lease or conveyance to Topock Elementary School District #12 under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Topock Elementary School District #12 proposes to use the following land for a middle school:

Gila and Salt River Meridian, Arizona

T. 16 N., R. 21 W.,
Sec. 14, lots 4 & 5, NW¼NW¼SE¼.
Containing 36.71 acres, more or less.

The lands are not needed for Federal purposes. Leases or conveyance is consistent with the current BLM land use planning and would be in the public interest.

The lease/patent, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. Those rights for road purposes granted to the Mohave County Board of Supervisors by Right-of-Way AZA 021336.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the pubic land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365.

Classification Comments: Interested parties may submit comments involving the suitability of the lands for a middle school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the applications and plan of developments, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a middle school.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Janice Easley, Bureau of Land Management, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (602) 855–8017.

Dated: July 13, 1994.

Judith I. Reed,

District Manager, Yuma District Office.

[FR Doc. 94–17749 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–32–M

[MT–030–4210–05–P]

Realty Action, Sale of Public Land in North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public land in North Dakota.

SUMMARY: The following lands have been found suitable for sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C., 1713), at not less than the estimated Minimum Bid Price.

DATES: September 22, 1994.

ADDRESSES: 2933 Third Avenue West; Dickinson, North Dakota 58601.

FOR FURTHER INFORMATION CONTACT: William C. Monahan, Dakotas District Office, 701–225–9148.

SUPPLEMENTARY INFORMATION:

Parcel	Legal description
	Fifth Principal Meridian
NDM83153	T. 154 N., R. 75 W., Sec. 19: NWNE, 40.00 acres, McHenry County, Minimum Bid Price $1,400
NDM83154	T. 154 N., R. 76 W., Sec. 24: NENE, 40.0 acres, McHenry County, Minimum Bid Price $1,400.
NDM83155	T. 154 N., R. 76 W., Sec. 26: S2NE, 80.0 acres, McHenry County, Minimum Bid Price $3,600.
NDM83156	T. 155 N., R. 75 W., Sec. 19: Lot 3, 34.52 acres, McHenry County, Minimum Bid Price $1,550.
NDM83157	T. 155 N., R. 75 W., Sec. 31: NWSE, 40.0 acres, McHenry County, Minimum Bid Price $1,800.
NDM83158	T. 155 N., R. 75 W., Sec. 33: NESW, 40.0 acres, McHenry County, Minimum Bid Price $1,800.
NDM83159	T. 156 N., R. 77 W., Sec. 10: NWSW, 40.0 acres, McHenry County, Minimum Bid Price $1,800.

Parcel	Legal description
NDM83169	T. 157 N., R. 75 W., Sec. 15: SWSW, 40.0 acres, McHenry County, Minimum Bid Price $2,400.
NDM83160	T. 152 N., R. 93 W., Sec. 8: Lot 4, 14.95 acres, McKenzie County, Minimum Bid Price $1,600.
NDM83161	T. 153 N., R. 98 W., Sec. 24: SWSE, 40.00 acres, McKenzie County, Minimum Bid Price $2,100.
NDM83170	T. 153 N., R. 100 W., Sec. 18: Lot 3, NESW, 79.85 acres, McKenzie County, Minimum Bid Price $4,200.
NDM83162	T. 153 N., R. 93 W., Sec. 26: NESE, 40.0 acres, Mountrail County, Minimum Bid Price $1,650.
NDM83163	T. 154 N., R. 94 W., Sec. 25: NWSW, 40.0 acres, Mountrail County, Minimum Bid Price $1,650.
NDM83164	T. 155 N., R. 94 W., Sec. 35: SWNW, 40.0 acres, Mountrail County, Minimum Bid Price $1,650.
NDM83228	T. 135 N., R. 86 W., Sec. 34: NWNW, 40.0 acres, Grant County, Minimum Bid Price $2,200.
NDM83241	T. 136 N., R. 69 W., Sec. 8: SWNE, 40.0 acres, Logan County, Minimum Bid Price $50.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale, pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first.

The lands will be offered for sale at public auction beginning at 10 A.M., MDT, on Thursday, September 22, 1994, at 2933 Third Avenue West, Dickinson, North Dakota 58601. The sale will be by modified competitive procedures. Tract lessees or adjoining land owners must submit a bid the day of sale to retain preference rights. The sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Dakotas District Office at 2933 Third Avenue West, Dickinson, North Dakota 58601, no later than 4:30 P.M., MDT, on Wednesday, September 21, 1994. Bid envelopes must be marked on the left front corner with the parcel number and the sale date. Bids must be for not less than the appraised Minimum Bid Price specified in this Notice. Each sealed bid shall be accompanied by a certified check, postal money order, or cashier's check made payable to the United States Department of the Interior, BLM, for not less than 10 percent or more than 30 percent of the amount of the bid. Applicants should submit a Statement of Eligibility form with the bid.

Bids on unsold parcels will be opened each Wednesday after the date of the sale at 10:00 a.m., MDT, until the parcels are sold. The terms and conditions applicable to the sale are:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this office.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890, (26 Stat. 291; 43 U.S.C. 945).

3. The patents will be subject to all valid existing rights including rights-of-way.

Federal law requires that all bidders must be U.S. citizens 18 years old or older, or in the case of corporations, be subject to the laws of any State of the U.S. Proof of these requirements must accompany the bid.

Under modified competitive sale procedures, an apparent high bid will be declared at the public auction. The apparent high bidder, lessees and adjoining land owners will be notified. Lessees and adjoining land owners will have five (5) working days from the date of the sale to exercise the preference consideration given to meet the high bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions. Once the qualified high bidder is determined, the balance of the purchase price shall be paid within 180 days of the date of the sale. Failure to submit the full bid price prior to, but not including the 180th day following the day of sale, shall result in cancellation of the sale of the specific parcel and the deposit shall be forfeited and disposed of as other receipts of sale.

Detailed information concerning the sale, including the reservations, procedures for conditions of sale, and planning and environmental documents, is available at the Dakotas District Office, Bureau of Land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601.

Comments

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Dakotas District, at the above address. In the absence of objections, this proposal will become the final determination of the Department of the Interior.

Dated: July 14, 1994.

Douglas J. Burger,

District Manager.

[FR Doc. 94–17769 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–DN–P

[NV–050–4210–06, N–57922]

Correction of Scoping Period for the Caliente MFP/Nellis Air Force Range Resource Plan Proposed Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of scoping period.

SUMMARY: The Bureau of Land Management's (BLM) Las Vegas District is notifying the public of the change in the scoping period for the proposed amendment to the Caliente Management Framework Plan (MFP) and the Nellis Air Force Range Resource Plan (RP) to analyze a proposed withdrawal by the Nellis Air Force Base (please refer to the BLM's "Notice of Intent and Scoping Period," published in the **Federal Register**, pages 32216–17, Vol. 59, No. 119, Wednesday, June 22, 1994).

DATES: The new scoping period will be from July 27, 1994 to August 26, 1994.

ADDRESSES: All written comments and concerns the public may have with this proposed amendment and environmental assessment must be mailed to: Bureau of Land Management, Attention: District Manager, P.O. Box 26569, Las Vegas, Nevada 89126, or delivered to the Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada by the above ending date.

FOR FURTHER INFORMATION CONTACT: Gary Ryan, Acting District Manager, at the above address or telephone (702) 647–5000.

Dated: July 13, 1994.

Ronald B. Wenker,

Acting State Director, Nevada

[FR Doc. 94–17767 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Dismal Swamp Southeastern Shrew for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the Dismal Swamp southeastern shrew. This species is known to occur in the Dismal Swamp of southeastern Virginia and adjacent North Carolina. The service solicits review and comment from the public on this Draft Plan.

DATES: Comments on the draft Recovery Plan must be received September 6, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Region Five, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, telephone (413) 253–8628.

FOR FURTHER INFORMATION CONTACT: Mary J. Parkin (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Dismal Swamp Southeastern Shrew (*Sorex longirostris fisheri*) Recovery Plan. This new subspecies, listed as threatened in 1986, is known to occur within the Great Dismal Swamp of Virginia and North Carolina. Originally extending over 2200 square miles, the swamp now comprises fewer than 320 square miles. Some 189 square miles of habitat are protected within the Great Dismal Swamp National Wildlife

in the Dismal Swamp of southeastern Virginia and adjacent North Carolina. The service solicits review and comment from the public on this Draft Plan.

DATES: Comments on the draft Recovery Plan must be received September 6, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Region Five, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, telephone (413) 253–8628.

FOR FURTHER INFORMATION CONTACT: Mary J. Parkin (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Dismal Swamp Southeastern Shrew (*Sorex longirostris fisheri*) Recovery Plan. This new subspecies, listed as threatened in 1986, is known to occur within the Great Dismal Swamp of Virginia and North Carolina. Originally extending over 2200 square miles, the swamp now comprises fewer than 320 square miles. Some 189 square miles of habitat are protected within the Great Dismal Swamp National Wildlife Refuge and adjacent North Carolina State Park land.

Known habitat outside Refuge and Park boundaries is being list to agriculture, silviculture, and urbanization. Within the Refuge, changes in the swamp's hydrologic regime are resulting in succession to a more mesic habitat type, possibly allowing invasion by an upland subspecies (*Sorex longirostris longirostris*), which could ultimately result in genetic extinction of *S.1. fisheri* through interbreeding.

New findings indicate that the Dismal Swamp southeastern shrew may be more widespread than previously thought; this possibility is taken into account by defining dual recovery objectives: (1) To confirm that this shrew subspecies is widely distributed throughout the coastal plain of southeastern Virginia and northeastern North Carolina and is relatively free from threats; or (2) to perpetuate self-sustaining Dismal Swamp southeastern shrew populations within more restricted areas in the wild. The attainment of either of these objectives would enable the shrew's removal from the Federal list of endangered and threatened wildlife and plants.

Conditions that must be met to delist the Dismal Swamp southeastern shrew include either (1) confirmation of the shrew's range, and, if studies confirm that it is restricted to areas of the Great Dismal Swamp; (2) maintenance of six "shrew conservation areas" of at least 5,000 acres each; (3) management of hydrological conditions within shrew habitat; (4) effective long-term management of other factors affecting the species; and (5) sufficient data to indicate that "genetic swamping" by *S.1. fisheri* is not occurring.

These conditions will be met through distributional and taxonomic studies, hydrological studies, implementation of management beneficial to the shrew within Refuge and Park boundaries, protection of shrew habitat outside Refuge boundaries, and a public information program.

The draft Recovery Plan is being submitted for agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 12, 1994.

Ralph Pisapia,

Acting Regional Director.

[FR Doc. 94–17744 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–55–M

Opportunity to Review and Comment on Revised Draft Recovery Plan for the Masked Bobwhite Quail Is Reopened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the reopening of a public review and comment period on a revised draft recovery plan for the masked bobwhite quail (*Colinus virginianus ridgwayi*) which the Service listed as an endangered species on March 11, 1967 (32 FR 4001). The Notice of Availability for review and comment was published on May 5, 1994. The 60-day period closed on July 5, 1994. Via this notice, the comment period will reopen on the date of this publication and remain open until September 1, 1994. All comments received during the initial period available for comments and from date of this publication to September 1, 1994, will be considered prior to finalization of the revised recovery plan.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Refuge Manager, Buenos Aires National Wildlife Refuge, P.O. Box 109, Sasabe, Arizona 85633. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. William (Bill) Kuvlesky, Jr., U.S. Fish and Wildlife Service Biologist, telephone (602) 823–4251, or at the above address.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: July 11, 1994.

John G. Rogers,

Regional Director.

[FR Doc. 94–17745 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–55–M

Office of Surface Mining Reclamation and Enforcement

Privacy Act of 1974—Deletion of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting from its inventory of Privacy Act systems of records a notice describing records maintained by the Office of Surface Mining Reclamation and Enforcement. The system of records notice being abolished is entitled "Applicant/Violator System (AVS)—Interior, OSMRE–9" It was previously published in the **Federal Register** on November 16, 1989 (54 FR 47734). A review of the system of records has determined that the records are not subject to the Privacy Act.

The review was prompted by an opinion issued by the General Counsel, Office of Management and Budget (OMB), on August 30, 1988, affirming OMB's 1975 guidelines which interpreted the statutory term "individual" to exclude natural persons acting in an entrepreneurial capacity from the coverage of the Privacy Act. A review of the Applicant/ Violator System conducted by the Office of Surface Mining Reclamation and Enforcement indicated that the records contain information about persons in their entrepreneurial capacity and not in their capacity as individuals. Therefore, the notice is being deleted from the Department's compilation of Privacy Act systems of records notices.

This change shall be effective on publication in the **Federal Register**. Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, 1849 "C" Street NW., Mail Stop 5412 MIB, Washington, DC 20240, telephone (202) 208–6045.

Dated: July 15, 1994.

Albert C. Camacho,

Director, Office of Administrative Services.

[FR Doc. 94–17750 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32548]

The Indiana Rail Road Company and CSX Transportation, Inc.—Joint Relocation Project Exemption—in Bloomington, Monroe County, IN

On July 11, 1994, The Indiana Rail Road Company (INRD) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad. The transaction, which is the subject of ongoing agreements among INRD, CSX Transportation, Inc. (CSXT), and the City of Bloomington, IN, is to be consummated either by July 21, 1994, or at a later date to be agreed upon in writing among the parties.

The project involves INRD's relocating a portion of its Bloomington Southern Branch track and operations in Bloomington, Monroe County, IN, from the present location to a nearby track owned and operated by CSXT. The relocation of operations covers 3.05 miles on the CSXT line. INRD and CSXT propose to consolidate rail traffic over the CSXT line extending from the CSXT–INRD "Uptown Connection" between the CSXT line and INRD's main east-west line to the CSXT McDoel Yard connection to INRD's Southern Branch near Country Club Road. As part of the relocation INRD will remove a 1.2 mile portion of its Southern Branch track extending south from INRD's main line. INRD trains will operate over the CSXT track to reach industry located on the Southern Branch in southwestern Bloomington. INRD states that a trackage agreement is being formalized with CSXT and copies will be filed with the Commission when the agreement is completed.

The line relocation project will eliminate excess and duplicate railroad facilities, remove unnecessary railroad-street crossings, and furnish the City of Bloomington with a needed roadway corridor to be accomplished by the removal of INRD track. INRD asserts that service to shippers will not be affected.

The Commission will exercise jurisdiction over the abandonment component of a relocation project, and require separate approval or exemption, only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN, 4 I.C.C.2d 95 (1987). The Commission has determined that line relocation projects may embrace trackage rights transactions such as the one involved here. See D.T.& I.R.—Trackage Rights, 363 I.C.C. 878 (1981). Under these standards, the embraced incidental trackage rights component requires no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on INRD's counsel: John H. Doeringer, 20180 Governors Highway, Olympia Fields, IL 60461.

Decided: July 14, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17782 Filed 7–20–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32539]

Waccamaw Coast Line Railroad Co., Inc., Clinton Division—Lease and Operation Exemption—Line of Clinton Industrial Switching District, Inc.

Waccamaw Coast Line Railroad Co., Inc., Clinton Division (WCLC), has filed a notice of exemption to lease and operate 3.5 miles of railroad owned by the Clinton Industrial Switching District, Inc. (CISD),[1] extending from milepost 199.0 at Moltonville, NC (where it connects with CSXT), to milepost 202.5 at Clinton, NC.

The transaction was expected to be consummated on or after July 1, 1994. Any comments must be filed with the Commission and served on: Peter A. Greene, 1920 N Street, N.W., Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] CISD is a noncarrier that acquired the line on February 10, 1994 from Sampson Salvage Co. (Sampson), a noncarrier. Sampson purchased the line from CSX Transportation, Inc. (CSXT) on December 16, 1993, after it was abandoned by CSXT pursuant to an exemption granted in CSX Transportation, Inc.—Abandonment Exemption—In Sampson County, NC, Docket No. AB–55 (Sub-No. 456X) (ICC served June 8, 1993).

Decided: July 15, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17783 Filed 7–20–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with section 122(d) of CERCLA, 42 U.S.C. 9622(d), and Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent degree in *United States et al.* v. *CDMG Realty Co. et al.*, Civil Action Nos. 89–4246 and 89–4281, was lodged on July 5th, 1994 with the United States District Court for the District of New Jersey. Under the terms of the proposed decree, thirty-two settling defendants will be required to undertake the remedial design and remedial action at the Sharkey Landfill Superfund Site in Morris County, New Jersey. Twelve additional *de minimis* settling defendants will be allowed to settle under section 122(g) of CERCLA, and they, together with the settling defendants, will reimburse the United States and State of New Jersey $2,050,000 of the total $2,970,000 incurred by the United States and State of New Jersey at the Site. The settling defendants will also be required to reimburse the United States up to $250,000 of the total $1.5 million which the United States is expected to incur in the future in overseeing the implementation of the remedial design and remedial action at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States et al.* v. *CDMG Realty Co. et al.*, D.J. reference #90–11–2–470.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of New Jersey, 90 Broad Street, Newark, New Jersey; the Region II Office of the

may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 15, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17783 Filed 7–20–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with section 122(d) of CERCLA, 42 U.S.C. 9622(d), and Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent degree in *United States et al.* v. *CDMG Realty Co. et al.*, Civil Action Nos. 89–4246 and 89–4281, was lodged on July 5th, 1994 with the United States District Court for the District of New Jersey. Under the terms of the proposed decree, thirty-two settling defendants will be required to undertake the remedial design and remedial action at the Sharkey Landfill Superfund Site in Morris County, New Jersey. Twelve additional *de minimis* settling defendants will be allowed to settle under section 122(g) of CERCLA, and they, together with the settling defendants, will reimburse the United States and State of New Jersey $2,050,000 of the total $2,970,000 incurred by the United States and State of New Jersey at the Site. The settling defendants will also be required to reimburse the United States up to $250,000 of the total $1.5 million which the United States is expected to incur in the future in overseeing the implementation of the remedial design and remedial action at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States et al.* v. *CDMG Realty Co. et al.*, D.J. reference #90–11–2–470.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of New Jersey, 90 Broad Street, Newark, New Jersey; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree and appendices may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC. In requesting a copy with appendices, please enclose a check in the amount of $70.75 or, if you wish a copy without appendices, please enclose a check in the amount of $35.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Section, Environment and Natural Resources Division.

[FR Doc. 94–17719 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environment Response, Compensation, and Liability Act

Notice is hereby given that a proposed Stipulation and Order of Settlement and Dismissal ("Stipulation") in *Manville Corp.* v. *United States*, Civil Action No. 91 Civ. 6683 (RWS), was lodged on June 24, 1994 with the United States District Court for the Southern District of New York. Under the Stipulation, Manville Corp. ("Manville") agrees to make cash payments totalling $1,670,869 to resolve its liability, and those of certain related corporations, for response costs and, as to certain of the sites, natural resource damages, under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C., § 9601 et. seq., at the following sites: the Commercial Oil Site in Oregon, Ohio; the Compass Industries Site in Tulsa, Oklahoma; the Great Lakes Asphalt Site in Zionsville, Indiana; the Lowry Landfill Site in Arapahoe County, Colorado; the Operating Industries Site in Monterey Park, California; the Petrochem/Ecotek Site in Salt Lake City, Utah; the Seymour Recycling Site in Seymour, Indiana; the Yellow Water Road Site in Baldwin, Florida; the Coalinga Site in Fresno County, California; the Union Chemical Site in South Hope, Maine; the Roebling Steel Site in Florence Township, New Jersey; and the Ellis Road Site in Jacksonville, Florida.

The Stipulation also provides that, notwithstanding the discharge that Manville and related corporations received as a result of the confirmation of plans of reorganization on December 22, 1986 in Chapter 11 bankruptcy proceedings, Manville will agree to make certain payments, calculated pursuant to provisions and procedures set forth in the Stipulation, to resolve any liabilities it may have under CERCLA with respect to sites not owned or operated by Manville subsequent to confirmation of the plans of reorganization, arising from certain activities that Manville engaged in prior to the confirmation of the plans of reorganization. In exchange, the United States agrees not to pursue Manville with respect to such liabilities, except pursuant to the procedures set forth in the Stipulation. With respect to sites owned or operated by Manville subsequent to the confirmation of the plans of reorganization, the Stipulation provides that any CERCLA liability of Manville will be unaffected by the Chapter 11 bankruptcy proceedings.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Stipulation and Order of Settlement and Dismissal. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Manville Corp.* v. *United States*, 91 Civ. 6683 (RWS). DOJ Ref. No. 90–11–3–90D.

The proposed Stipulation and Order of Settlement and Dismissal may be examined at the office of the United States Attorney, for the Southern District of New York, 100 Church Street, New York, New York 10007; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Stipulation and Order of Settlement and Dismissal may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $13.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17720 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby

given that a proposed consent decree in *United States* v. *Commonwealth of Pennsylvania*, Civil Action No. 94–1154, was lodged on July 7, 1994, with the United States District Court for the Western District of Pennsylvania. The consent decree addresses violations of Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and of Pennsylvania's State Implementation Plan ("SIP"), which occurred at the Western Center state mental health facility in Canonsburg, Pennsylvania. Specifically, Western Center violated mass emissions and visible emissions standards set forth in the SIP. The violations resulted from the operation of boilers used for heating the facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Commonwealth of Pennsylvania*, DOJ Ref. # 90–5–2–1–1836.

The proposed consent decree may be examined at the office of the United States Attorney, 7th and Grant Streets, Pittsburgh, Pennsylvania 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17721 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *City of Port St. Joe, Florida, et al.*, Civil Action No. 92–50227–LAC, was lodged on July 8, 1994, with the United States District Court for the Northern District of Florida. The Complaint in this civil action alleged that the City of Port St. Joe, Florida, violated effluent limits and other terms and conditions of its NPDES permit for its municipal wastewater treatment plant. The Complaint also alleged that the St. Joe Forest Products Company committed violations of the pass through and interference regulations promulgated under the Clean Water Act by excessive discharges of pollutants and contaminants from its paper mill to the City's wastewater treatment plant. Under the proposed Consent Decree, the Company will pay a civil penalty of $325,000 in settlement of the United States' claims, and the City will pay a civil penalty of $25,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Port St. Joe, Florida, et al.*, DOJ. Ref. 90–5–1–1–3026.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Florida, 114 East Gregory Street, Pensacola, Florida; the Region 4 Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17722 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Southwest Louisiana Hospital Association, Inc.*, Civil Action No. CV 92–1876–LC, was lodged on *July 11, 1994* with the United States District Court for the Western District of Louisiana.

This case arises from alleged violations by Defendants, Southwest Louisiana Hospital Assoc., Inc. and F. Miller & Sons, Inc., of the Clean Air Act and Asbestos National Emission Standards for Hazardous Air Pollutants ("NESHAP") at the Lake Charles Memorial Hospital in Lake Charles, Louisiana from September 1988–January, 1989. The Decree provides that Defendants shall pay a civil penalty of $81,500, comply with the Asbestos NESHAP, and provide notices about asbestos containing materials at their renovation/demolition projects. Defendant Miller also agreed to provide in-house training to all employees who are responsible for demolition/renovation activities.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Southwest Louisiana Hospital Association, Inc.*, DOJ Ref. #90–5–2–1–1600.

The proposed consent decree may be examined at the office of the United States Attorney, 600 Jefferson Street, Suite 1000, Lafayette, LA 70501–7206; the Region VI, Office of the Environmental Protection Agency, 1445 Ross Ave., Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division.

[FR Doc. 94–17723 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

In accordance with Departmental policy, notice is hereby given that a proposed settlement agreement and stipulated order with Lone Star Industries, Inc. ("Lone Star") in *In re New York Trap Rock Corporation, Lone Star Industries, Inc., et al., Debtors, and In re Lone Star Industries, Inc., Debtor*, Chapter 11, Case Nos. 90 B21276 (HS) to 90 B21286(HS), 90 B21334(HS) and 90 B21335(HS) (Jointly Administered) and Case No. 90 B21277(HS), was lodged on July 11, 1994, with the United States Bankruptcy Court for the Southern District of New York. This proposed settlement agreement and stipulated order is a settlement of claims filed by the United States on behalf of the Environmental Protection Agency in the above proceeding pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, for past and future response costs at the Portland Cement Co. (Kiln Dust, #2 & #3) Superfund Site in Salt Lake County, Utah, Kiln Dust sites 1 and 4, also located in Salt Lake County, Utah, and site 5 located in Davis County, Utah (collectively, the "Sites"). The Sites were utilized for the deposit of cement kiln dust, a by-product of cement manufacturing, during the period from 1965 through 1983.

The proposed settlement agreement and stipulated order provides that the United States, on behalf of the Environmental Protection Agency shall be allowed a Class 4 general unsecured claim against Lone Star in the amount of $16,292,490. In addition, the Department of Interior, a natural resource trustee, shall be allowed a class 4 general unsecured claim in the amount of $200,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re New York Trap Rock Corporation, Lone Star Industries, Inc., et al., Debtors, and In re Lone Star Industries, Inc., Debtor*, DOJ Ref. #90–11–2–602A.

The proposed settlement agreement and stipulated order may be examined at the Office of the United States Attorney for the District of Utah, room 476, U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah 84101; the Region VIII Office of the Environmental Protection Agency, 999 185h Street, suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed settlement agreement and stipulated order may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th

Star Industries, Inc., et al., Debtors, and In re Lone Star Industries, Inc., Debtor, Chapter 11, Case Nos. 90 B21276 (HS) to 90 B21286(HS), 90 B21334(HS) and 90 B21335(HS) (Jointly Administered) and Case No. 90 B21277(HS), was lodged on July 11, 1994, with the United States Bankruptcy Court for the Southern District of New York. This proposed settlement agreement and stipulated order is a settlement of claims filed by the United States on behalf of the Environmental Protection Agency in the above proceeding pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, for past and future response costs at the Portland Cement Co. (Kiln Dust, #2 & #3) Superfund Site in Salt Lake County, Utah, Kiln Dust sites 1 and 4, also located in Salt Lake County, Utah, and site 5 located in Davis County, Utah (collectively, the "Sites"). The Sites were utilized for the deposit of cement kiln dust, a by-product of cement manufacturing, during the period from 1965 through 1983.

The proposed settlement agreement and stipulated order provides that the United States, on behalf of the Environmental Protection Agency shall be allowed a Class 4 general unsecured claim against Lone Star in the amount of $16,292,490. In addition, the Department of Interior, a natural resource trustee, shall be allowed a class 4 general unsecured claim in the amount of $200,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re New York Trap Rock Corporation, Lone Star Industries, Inc., et al., Debtors, and In re Lone Star Industries, Inc., Debtor,* DOJ Ref. #90–11–2–602A.

The proposed settlement agreement and stipulated order may be examined at the Office of the United States Attorney for the District of Utah, room 476, U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah 84101; the Region VIII Office of the Environmental Protection Agency, 999 185h Street, suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed settlement agreement and stipulated order may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and the amount of $8.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17751 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Modification Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, notice is hereby given that a proposed Modification to Consent Decree with an Intervening Plaintiff and the Defendants in *United States* v. *Raymark Industries, Inc., et al.*, C.A. No. 85–3073 (E.D. Pa.), was lodged on June 29, 1994, with the United States District Court for the Eastern District of Pennsylvania. This proposed Modification to Consent Decree conforms the remedy for certain groundwater contamination affecting municipal drinking water wells in Hatboro Borough, Pennsylvania to the remedy chosen by the United States Environmental Protection Agency ("EPA") in its Record of Decision ("ROD") to abate groundwater contamination at and under a Site located at Jacksonville Road, Hatboro Borough commonly referred to as the "Raymark Site." The original Consent Decree was entered prior to EPA's publication of the ROD and required the Hatboro Borough Municipal Authority (which had been compensated under the Decree by Defendants' payments of $612,500) to perform pumping and treating of water at a location different than that later set forth in the ROD. Under the proposed Modification to Decree, Hatboro will remain responsible for performing work which ultimately will exhaust the $612,500 it received under the Decree, as well as interest earned on those funds. EPA will perform all other remedial measures, using Superfund money.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree Modification. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Raymark Industries, Inc., et al.*, DOJ Ref. #90–11–2–12.

The proposed Modification to Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, 12th Floor, suite 1200, Philadelphia Life Building, Philadelphia, Pennsylvania 19107; the Region III Office of the Environmental Protection Agency, 801 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202–347–2072. A copy of the proposed Modification to Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy of the proposed Modification and accompanying Amended Work Plan (Appendix A to the Modification), please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs), payable to the Consent Decree Library. Please enclose an additional $19.25 should you wish to order a copy of the ROD (Appendix B).

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division

FR Doc. 94–17752 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on July 8, 1994, proposed consent decrees in *United States* v. *Shaffer Equipment Company, et al.*, Civ. A. No. 92–2024, were lodged with the United States District Court for the Southern District of West Virginia.

The complaint filed by the United States seeks to recover response costs under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, incurred by the United States in connection with response actions taken at the Shaffer Equipment Superfund Site ("Site") located in Mindon, West Virginia. The proposed decree with Anna Shaffer and Shaffer Equipment Company resolves the claims of the United States against those defendants for response costs incurred at the site up to December 22, 1993 for a payment by those defendants of $600,000 to the United States. The consent decree with Berwind Land Company resolves claims against Berwind Land Company for past

and future response costs incurred and to be incurred at the site for a payment by Berwind Land Company of $75,000 to the United States. Shaffer Equipment Company and Berwind Land Company agree in the consent decrees to provide access to the United States to their property at the site for any future response actions. The consent decree with Johns Hopkins University resolves claims against Johns Hopkins University for past and future response costs incurred and to be incurred at the Site for a payment by Johns Hopkins University of $50,000 to the United States.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Shaffer Equipment Company, et al.*, DOJ Reference No. 90–11–2–649.

The proposed consent decrees may be examined: at the Office of the United States Attorney for the Southern District of West Virginia, U.S. Courthouse, 500 Quarrier Street, Charleston, West Virginia; at the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pa.; and at the Consent Decree Library, 1120 "G" Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed decrees may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $6.25 for the Anna Shaffer and Shaffer Equipment Company consent decree, $6.25 for the Berwind Land Company consent decree, and $5.00 for the Johns Hopkins University consent decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–17753 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Bell Communications Research, Inc.

Notice is hereby given that, on May 25, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and GTE Service Corporation ("GTE") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plantiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and GTE, Irving, TX. Bellcore and GTE entered into an agreement effective as of March 1, 1994, under GTE will participate in various Bellcore projects which Bellcore is currently undertaking for its owner companies, all directed to understanding telecommunications network architecture, concepts and/or service capabilities in support of exchange and exchange access telecommunications services. Those projects may comprise such activities as the creation, development or production of new telecommunications network service concepts and related network planning, engineering and software development and production and will include, for example, exploration of innovative billing systems for involving network services.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–17754 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Network Management Forum

Notice is hereby given that, on June 6, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: Unisys Corporation, Amsterdam, The Netherlands is a Corporate Member. Advantis, White Plans, NY; Crosskeys Systems Corporation, Kanata, Ontario, Canada; Data General Corporation, Westboro, MA; EID-Empresa de Investigacao Desenvolvimento, Monte da Caprica, Portugal; ITEC–TELECOM, Santafe de Bogota, Columbia; Kingston Communications PLC, Beverley, Yorkshire, England; KTAS, Copenhagen, Denmark; Norwegian Telecom, Oslo, Norway; NTT Mobile Communications Network, Inc., Tokyo, Japan; Pontis Consulting, Reading, Berkshire, England; and Tellabs Operations, Inc., Lisle, IL are Associate Members. Argos Distributors Ltd., Avebury, England; CCTA, Norwich, Norfolk, England; Data Communications, Maidenhead, Berkshire, England; Gartner Group, Stamford, CT; ITT Hartford, Hartford, CT; KPMG Peat Marwich, Watford, Herts, England; and Versant Object Technologies, Menlo Park, CA are Affiliate Members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notification disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on September 15, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1993 (58 FR 59736).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–17755 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Investigation

National Stolen Auto Part Information System (NSAPIS) Federal Advisory Committee; Meeting

The NSAPIS Federal Advisory Committee will meet on August 16–17, 1994, from 9 a.m. until 5 p.m., at the Arlington Renaissance Hotel, 950 N. Stafford Street, Arlington, Virginia, telephone 703–528–6000, to discuss the design and implementation of the system mandated by Public Law 102–519.

The Committee will address issues concerning the final recommendations of the Committee, the NSAPIS Pilot Program, the establishment of an Oversight Committee and the requirements for the NSAPIS System Administrator.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning NSAPIS or related matters with the Committee, before or after the meeting, by sending same to the Chairman/Designated Federal Officer. Anyone wishing to address this session of the meeting should notify the Designated Federal Officer at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or a hand-delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; a short statement describing the topic to be addressed; and the time needed for presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specially approved by the Chairman.

Inquires may be addressed to the Chairman/Designated Federal Officer, Mr. Virgil L. Young, Jr., Chief, Programs Development Section, CJIS Division, FBI, 10th and Pennsylvania Avenue, Northwest, Washington, DC, 20535 telephone (202) 324–5084.

Dated: July 13, 1994.

Virgil L. Young, Jr.,

Chief, Programs Development Section, Designated Federal Officer.

[FR Doc. 94–17756 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–20–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–046]

Intent To Grant Coexclusive Patent Licenses

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant patent licenses.

SUMMARY: NASA hereby gives notice of intent to grant Zeoponics, Inc., of Austin, Texas, and Zeoponix, Inc., of Boulder, Colorado, royalty-bearing,

1994, from 9 a.m. until 5 p.m., at the Arlington Renaissance Hotel, 950 N. Stafford Street, Arlington, Virginia, telephone 703–528–6000, to discuss the design and implementation of the system mandated by Public Law 102–519.

The Committee will address issues concerning the final recommendations of the Committee, the NSAPIS Pilot Program, the establishment of an Oversight Committee and the requirements for the NSAPIS System Administrator.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning NSAPIS or related matters with the Committee, before or after the meeting, by sending same to the Chairman/Designated Federal Officer. Anyone wishing to address this session of the meeting should notify the Designated Federal Officer at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or a hand-delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; a short statement describing the topic to be addressed; and the time needed for presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specially approved by the Chairman.

Inquires may be addressed to the Chairman/Designated Federal Officer, Mr. Virgil L. Young, Jr., Chief, Programs Development Section, CJIS Division, FBI, 10th and Pennsylvania Avenue, Northwest, Washington, DC, 20535 telephone (202) 324–5084.

Dated: July 13, 1994.

Virgil L. Young, Jr.,

Chief, Programs Development Section, Designated Federal Officer.

[FR Doc. 94–17756 Filed 7–20–94; 8:45 am]

BILLING CODE 4410–20–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–046]

Intent To Grant Coexclusive Patent Licenses

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant patent licenses.

SUMMARY: NASA hereby gives notice of intent to grant Zeoponics, Inc., of Austin, Texas, and Zeoponix, Inc., of Boulder, Colorado, royalty-bearing, revocable, coexclusive licenses to practice the inventions described and claimed in U.S. Patent Application Serial No. 08/243,335 entitled "Slow Release Fertilizer" and U.S. Patent Application Serial No. 08/243,336 entitled "Active Synthetic Soil." The proposed patent licenses will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the licenses, unless within 60 days of the Date of this Notice, NASA receives written objections to the grant, together with any supporting documentation. All written objections to the grant will be reviewed and then a final decision whether to grant the licenses will be made.

DATES: Comments to this notice must be received by September 19, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Lupuloff, (202) 358–2041.

Dated: July 13, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–17773 Filed 7–20–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before September 6, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Agricultural Marketing Service (N1–136–94–1). Administrative records and

raw data from the Pesticide Data Program.

2. Department of Agriculture, Food Safety and Inspection Service N1–462–94–1). Meat and poultry establishment records.

3. Department of Health and Human Service, Agency for Health Care Policy Research (N1–510–94–3). Administrative records relating to the development of Clinical Practice Guidelines and Technical Reports.

4. Department of Justice, Office of Justice Programs (N1–423–92–1). Denial of Federal Benefits Clearinghouse Systems.

5. Department of Justice, Immigration and Naturalization Service (N1–85–93–2). Crewman's Landing Permit forms.

6. Department of State (N1–59–93–17). Routine, facilitative, and duplicative records of the Moscow Embassy Building Control Office.

7. Department of State (N1–59–93–43 and N1–59–93–44). Duplicative records from the Bureau of European Affairs.

8. Bureau of Mines, Division of Budget (N1–70–94–2). Reduction in retention period for budget records.

9. Farm Credit Administration (N1–103–93–2). Data generated by the consolidated reporting, early warning, and projection systems on institutions belonging to the Farm Credit System.

10. Federal Deposit Insurance Corporation, Division of Supervision (N1–34–94–2). Savings and loan association supervisory files.

11. National Security Agency (N1–457–94–3). Personnel security files.

12. Small Business Administration, Office of Administrative Services (N1–309–90–3). The Liquidation/litigation tracking system, prime contractors regional information system, and the procurement career management program data system.

Dated: June 27, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–17724 Filed 7–20–94; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. Date: August 3, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 315
   Program: This meeting will review Fellowships for University Teachers applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
2. Date: August 3, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review Fellowships for College Teachers applications in American History II, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
3. Date: August 4, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 315
   Program: This meeting will review Fellowships for University Teachers applications in American History and Studies II; Communication and Media; and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
4. Date: August 4, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review Fellowships for College Teachers applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
5. Date: August 5, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review Fellowships for College Teachers applications in Rhetoric, Communication, Media, Folklore, and American Studies, submitted to the Division of Fellowships and Seminars, for projects after June 1, 1995.
6. Date: August 8, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 315
   Program: This meeting will review Fellowships for University Teachers applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
7. Date: August 8, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review Fellowships for College Teachers applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
8. Date: August 9, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review Fellowships for College Teachers applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
9. Date: August 10, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 315
   Program: This combined Fellowships for University Teachers and Fellowships for College Teachers meeting will review applications in African, Asian, and Latin American History and Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
10. Date: August 11, 1994
    Time: 8:00 a.m. to 5:30 p.m.
    Room: 415
    Program: This meeting will review Fellowships for College Teachers applications in Political Science and Jurisprudence, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
11. Date: August 12, 1994
    Time: 8:00 a.m. to 5:30 p.m.
    Room: 315
    Program: This meeting will review Fellowships for University Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
12. Date: August 15, 1994
    Time: 8:00 a.m. to 5:30 p.m.
    Room: 315
    Program: This meeting will review Fellowships for University Teachers applications in Romance Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
13. Date: August 16, 1994
    Time: 8:00 a.m. to 5:30 p.m.
    Room: 315
    Program: This meeting will review Fellowships for University Teachers applications in Political Science, Law, and Jurisprudence, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
14. Date: August 16, 1994
    Time: 8:00 a.m. to 5:30 p.m.
    Room: 415
    Program: This meeting will review Fellowships for College Teachers applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
15. Date: August 18, 1994
    Time: 8:00 a.m. to 5:30 p.m.
    Room: 315
    Program: This meeting will review Fellowships for University Teachers applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
16. Date: August 18, 1994
    Time: 8:00 a.m. to 5:30 p.m.
    Room: 415
    Program: This meeting will review Fellowships for College Teachers applications in Classical, and Medieval Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

Program: This meeting will review Fellowships for College Teachers applications in Political Science and Jurisprudence, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

11. Date: August 12, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

12. Date: August 15, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Romance Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

13. Date: August 16, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Political Science, Law, and Jurisprudence, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

14. Date: August 16, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

15. Date: August 18, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

16. Date: August 18, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review Fellowships for College Teachers applications in Classical, and Medieval Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

17. Date: August 19, 1994
Time: 8:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review Fellowships for University Teachers applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

David Fisher,
Advisory Committee Management Officer.
[FR Doc. 94–17691 Filed 7–20–94; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Workshop

The National Science Foundation (NSF) will hold a one day workshop on August 1, 1994. The Workshop will take place at the Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Sessions will be held from 11 a.m. to 3:30 p.m.

The goal of the Workshop is to provide a forum for gathering the views of leaders in the higher education community on the present condition of undergraduate education in science, mathematics, engineering and technology, and obtain advice about how to improve it.

The Workshop will not operate as an advisory committee. It will be open to the public. Participants will include approximately 15 leaders in science, mathematics and engineering education.

For additional information, contact Dr. Robert Watson, Director, Division of Undergraduate Education, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1666.

Dated: July 15, 1994.

Dr. Robert F. Watson,
Division Director, Undergraduate Education.
[FR Doc. 94–17727 Filed 7–20–94; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Adequacy and Compatibility for NRC and Agreement State Radiation Control Programs Necessary to Protect Public Health and Safety; Draft Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft statement of policy.

SUMMARY: The Nuclear Regulatory Commission is revising its general statement of policy regarding the review of Agreement State radiation control programs. This action is necessary to clarify the meaning and use of the terms "adequate" and "compatible" as applied to an Agreement State radiation control program. This draft policy statement would not be intended to have the force and effect of law or binding effect; it is intended as guidance to the Agreement States, NRC staff, and the public to make clear how the Commission intends to evaluate the adequacy and compatibility of NRC and Agreement State programs. Comments are solicited on the draft policy statement and specific questions contained in this notice.

DATES: Comments are due on or before October 19, 1994.

ADDRESSES: Send written comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Cardelia Maupin, State Agreements Program, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2312.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
Results of Discussions with Various Groups
A. States
B. Regulated Community
C. Environmental Group
II. Discussion
A. Adequate
B. Compatibility
C. Compatibility and Adequacy Determination of Agreement States
D. Termination of Agreements
E. Specific Questions for Public Comment
III. Policy Statement
A. Definitions
B. Elements of an Adequate Program
C. Elements of a Compatible Program
D. Compatibility Criteria
E. Implementation
F. Examples for the Compatibility Criteria
G. Examples of More Stringent Requirements
IV. Paperwork Reduction Act Statement

I. Background

The terms "compatible" and "adequate" constitute core concepts in the Commission's Agreement State program under Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, in 1959. Subsection 274d. states that the Commission shall enter into an Agreement under subsection b., discontinuing NRC's regulatory authority over certain materials in a

State, if the State's program is both adequate to protect public health and safety and compatible with the Commission's regulatory program. Subsection 274g. authorizes and directs the Commission to cooperate with the States in the formulation of standards to assure that State and Commission standards will be coordinated and "compatible." Subsection 274(j)(1) requires the Commission to periodically review the Agreements and actions taken by the States under the Agreements to ensure compliance with the provisions of section 274. Although the terms "compatible" and "adequate" are fundamental requirements in the Agreement State program under Section 274 of the AEA, these terms are not defined in the Act. Neither has the Commission provided a formal definition or formal comprehensive guidance on how the terms should be interpreted in implementing Section 274. The guiding concept over the years since the beginning of the Agreement State program in the area of compatibility has been to encourage uniformity to the maximum extent practicable while allowing flexibility, where possible, to accommodate local regulatory concerns. This concept has been implemented in case-by-case decisions by the Commission and in internal procedures developed by the staff to assign designations of degrees of "compatibility" (i.e, uniformity), from "essentially verbatim" to "no degree of uniformity required," to sections of the Commission's regulations. More recently, the Commission has attempted to involve the States earlier in the process of developing new regulations and determining what level of "compatibility" (i.e, uniformity) will be required of the Agreement States.

The Commission's approach to making compatibility determinations has evolved slowly over the life of the Agreement State program. At the same time, since 1962, the Agreement State program has expanded and developed significantly both in the number of Agreement States, as well as depth of experience and expertise of State regulators. To clarify the matter of compatibility, the Commission has directed the staff to develop a comprehensive interpretation and application of compatibility.

On April 2, 1993, the Commission directed the staff to develop a compatibility policy for all program areas other than low level radioactive waste. While developing the policy, the staff participated in discussions with the Agreement States, the non-Agreement States, the regulated community, and the general public. A working group was formed and a draft issues paper was developed. The draft issues paper was discussed with the Agreement States in a public meeting in May 1993 and draft options, SECY-93-290, were discussed in October 1993 at the All Agreement States Meeting. The Agreement and non-Agreement States, the regulated community and the general public participated in a public workshop on the final issues paper in July 1993.

Results of Discussions With Various Groups

A. States

The States would like to see a minimum number of requirements for compatibility determinations. From the comments at the July 1993 public workshop and during the October 1993 All Agreement States Meeting in Tempe, Arizona, the following positions, though not a formal consensus, emerged:

The States are in favor of:

1. uniformity of requirements that are necessary to assure interstate commerce, i.e., labels, signs and symbols.
2. uniformity of radiation standards necessary to protect public health and safety. However, States want the flexibility to set stricter dose limits when local conditions warrant them.
3. early and substantive involvement in the deliberations on the development of regulations.

B. Regulated Community

The regulated community desires strict adherence to uniform national radiation standards so that licensees meet the same standards in all States and will not be subject to different regulations in different States.

C. Environmental Group

An environmental advocacy group indicated that Federal and State regulations should be the minimum requirements with the proviso that communities may have the flexibility to go beyond those regulations.

In the formulation of this draft policy statement, the staff has carefully considered the views of the Agreement States, the regulated community, the environmental group and other members of the public.

II. Discussion

The question posed by the current task to develop a compatibility policy centers on making a determination of what components or elements of a State radiation control program are needed beyond those which establish and maintain an adequate radiation control program. Presently, adequacy of Agreement State programs is only applied to program elements in terms of their direct or indirect bearing on public health and safety and compatibility is only applied to the degree of conformity between State regulations and NRC's regulations. However, staff believes that some regulations should be a matter of adequacy to protect public health and safety and some program elements should be a matter of compatibility. In order to fully understand this concept, the relationship between adequacy and compatibility must be examined.

Section 274 of the Atomic Energy Act requires that Agreement State programs be both "adequate to protect the public health and safety" and "compatible with the Commission's program." Thus, under the proposed compatibility policy, these separate findings must be based on consideration of two different objectives; first, providing for an acceptable level of protection for public health and safety in an Agreement State (the "adequacy" component), and second, providing for the overall national interest in radiation protection (the "compatibility" component). An "adequate" program, including regulations or other legally binding measures (e.g., license conditions) and program elements (e.g., organization and resources) should consist of those attributes considered necessary by the Commission to maintain an acceptable level of protection of the public health and safety within the Agreement State. A "compatible" program, including radiation protection standards and other program elements, should consist of those attributes considered necessary by the Commission to meet a larger national interest in radiation protection. The requirements for adequacy would focus on the protection of public health and safety within a particular State, whereas the requirements for compatibility would focus on the extraterritorial effect of State action or inaction either on other States or on the national program for radiation protection. As a basis for determining what ultimately will be required for compatibility, the Commission must first identify what is necessary for a State program to be "adequate."

A. Adequate

Under the draft policy, "adequate" would focus on those elements of a State program that are necessary to provide a level of protection of the public health and safety within the State that is equivalent to, or greater than, that provided by the NRC regulatory program for its licensees. The requirements for "adequate" would not require that NRC regulations or other program elements be incorporated in an essentially identical manner. Under the adequate provision, States would also be allowed to establish requirements through measures other than regulations, such as license conditions.

B. Compatibility

The "compatibility" requirement would focus on those elements of a State program which would be required to be essentially identical with the NRC regulatory framework in order to achieve a larger national interest beyond that required for adequate protection of the public health and safety within the State. The draft policy establishes four criteria [1] that the NRC would use to determine which elements of the NRC regulatory program, including specific NRC regulations, that the State would be required to incorporate in an essentially identical manner into its regulatory program. The dose limits and radiation-protection related release limits in 10 CFR Part 20 and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto, or other NRC regulations which are required to be essentially identical for compatibility purposes will automatically be required to be identical.[2] States will not have the flexibility to deviate from the program elements that the Commission requires for compatibility.

C. Compatibility and Adequacy Determination of Agreement States

The staff has developed a management directive for the use of common performance indicators in review of the Agreement States and regional materials program. The development of the common performance indicators for the evaluation of Agreement States and the NRC regional offices will be directly related to adequacy requirements for Agreement State programs, and consequently, will need to be closely coordinated with the staff efforts to define the elements of an adequate State program. In January 1994, the staff provided to the Commission a paper further describing the use of common

[1] The compatibility criteria are specified in Section III.D, below.

[2] In issuing this Draft Policy Statement for comment, the Commission is revisiting its earlier decision to review compatibility of Agreement State programs in the low level radioactive waste area on a case-by-case basis. The Commission based its earlier decision on a belief that such case-by-case consideration could best address the special circumstances that confront Agreement States in that area. Using the case-by-case approach, the Commission has determined that the low level radioactive waste regulations of Pennsylvania and Illinois are compatible.

program elements be incorporated in an essentially identical manner. Under the adequate provision, States would also be allowed to establish requirements through measures other than regulations, such as license conditions.

B. Compatibility

The "compatibility" requirement would focus on those elements of a State program which would be required to be essentially identical with the NRC regulatory framework in order to achieve a larger national interest beyond that required for adequate protection of the public health and safety within the State. The draft policy establishes four criteria [1] that the NRC would use to determine which elements of the NRC regulatory program, including specific NRC regulations, that the State would be required to incorporate in an essentially identical manner into its regulatory program. The dose limits and radiation-protection related release limits in 10 CFR Part 20 and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto, or other NRC regulations which are required to be essentially identical for compatibility purposes will automatically be required to be identical.[2] States will not have the flexibility to deviate from the program elements that the Commission requires for compatibility.

C. Compatibility and Adequacy Determination of Agreement States

The staff has developed a management directive for the use of common performance indicators in review of the Agreement States and regional materials program. The development of the common performance indicators for the evaluation of Agreement States and the NRC regional offices will be directly related to adequacy requirements for Agreement State programs, and consequently, will need to be closely coordinated with the staff efforts to define the elements of an adequate State program. In January 1994, the staff provided to the Commission a paper further describing the use of common performance indicators in NRC region and Agreement State reviews. The staff is currently implementing a pilot program on the common performance indicators program. The current proposed common performance indicators program contemplates using a Management Review Board (MRB) to make the decision on the adequacy of existing Agreement State programs. The initial adequacy determination of a proposed new Agreement State program will be made by the Office of State Programs, rather than the MRB, because the adequacy of a proposed new program is not dependent on effectiveness of actual program implementation. The staff plans to follow this same split of responsibilities for the compatibility determination of an Agreement State program, with the MRB making the compatibility determinations for existing Agreement State programs, and the Office of State Programs making the initial compatibility determinations for proposed new programs. The initial adequacy and compatibility determinations for proposed new Agreement State programs are reviewed and approved by the Commission. Indicators of compatibility will also be developed by the staff.

D. Termination of Agreements

Termination of an Agreement can occur when an Agreement State program is either inadequate or incompatible. The proposed MRB, reviewing discrete common performance indicators, would judge the overall adequacy of an Agreement State program. Similarly, the MRB would review discrete "compatibility indicators" and determine the overall compatibility of an Agreement State program. For either of the adequacy or compatibility determination, failure to satisfy an individual indicator may not necessarily result in an overall finding of inadequacy or incompatibility. In some situations, individual indicator weakness(es) could result in a "marginal" finding by the MRB calling for Agreement State improvements and the State program may be placed on probation. In extreme cases, indicator(s) failure could lead to inadequate or incompatible findings resulting in the initiation of program suspension or termination. In terms of the compatibility evaluation, the significance of performance indicator "incompatibility" in an individual State will be judged on the basis of the impact on the national program.

E. Specific Questions for Public Comment

In responding to this notice, the following questions should be specifically addressed along with any additional comments.

1. Under what circumstances should Agreement States be permitted to establish more stringent requirements, for their licensees, than those established by the Commission? Should this also include the ability to establish stricter dose limits for particular classes of licensees?

2. Are the four criteria in the proposed policy statement for determining whether a Commission regulation or other program element should be adopted in a manner essentially identical by the Agreement States sufficient to ensure protection of the national interest in radiation protection? What examples could be used to illustrate how each criterion would be applied?

3. What are some examples of State action to establish stricter requirements than those established by the Commission, or establish requirements where the NRC has not?

4. What limits, if any, should be placed on the power of a State to preclude or, by exceptionally stringent regulations, effectively preclude a particular practice?

5. Are there any other dose or radiation-protection related release limits in the Commission's regulations which should be included under the criterion number 3 of the compatibility criteria? Should the dose limits contained in 10 CFR Part 61 be included under this criterion?

6. Should the draft adequacy and compatibility policy statement be applicable to the regulation of low-level waste disposal instead of continuing to consider questions of compatibility in this area on a case-by-case basis?

7. Are there currently areas or situations in Agreement State regulations or other Agreement State requirements that would not meet the proposed policy statement?

8. Should States be permitted to establish more stringent standards for radiation-protection related release limits?

III. Policy Statement

The purpose of this Policy Statement is to provide a comprehensive interpretation and application of the terms "adequate" and "compatible" as they apply to the NRC Agreement State regulatory programs.

The terms "compatible" and "adequate" constitute core concepts in

[1] The compatibility criteria are specified in Section III.D, below.

[2] In issuing this Draft Policy Statement for comment, the Commission is revisiting its earlier decision to review compatibility of Agreement State programs in the low level radioactive waste area on a case-by-case basis. The Commission based its earlier decision on a belief that such case-by-case consideration could best address the special circumstances that confront Agreement States in that area. Using the case-by-case approach, the Commission has determined that the low level radioactive waste regulations of Pennsylvania and Illinois are compatible.

the Commission's Agreement State program under Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, in 1959. Subsection 274d. states that the Commission shall enter into an Agreement under subsection b., discontinuing NRC's regulatory authority over certain materials in a State, if the State's program is both adequate to protect public health and safety and compatible with the Commission's regulatory program. Subsection 274g. authorizes and directs the Commission to cooperate with the States in the formulation of standards to assure that State and Commission standards will be coordinated and "compatible." Subsection 274j(1) requires the Commission to periodically review the Agreements and actions taken by the States under the Agreements to insure compliance with the provisions of section 274.

A. Definitions

For the purpose of evaluating the adequacy of Agreement State regulatory programs to protect public health and safety, the following terms are defined:

1. Adequate

The acceptable level of protection for the public health and safety from the radiation hazards associated with the use of byproduct, source, and special nuclear materials.

2. An Adequate Agreement State Program

An effectively implemented regulatory program containing elements considered necessary by the Commission to provide an acceptable level of protection for the public health and safety from the radiation hazards associated with the use of byproduct, source, and special nuclear materials.

3. Compatible

The consistency between NRC and Agreement State regulatory programs which is needed for the regulation of byproduct, source and special nuclear material which assures an orderly and effective regulatory pattern in the administration of the national radiation protection program. Compatibility shall be aimed at ensuring that interstate commerce is not impeded, that effective communication in the radiation protection field is maintained, that dose limits and radiation-protection related release limits applicable to all licensees are maintained, and that information needed for the study of trends in radiation protection and other national program needs is obtained.

4. A Compatible Agreement State Program

A regulatory program containing elements considered necessary by the Commission to effectively implement the term "compatible" as defined above.

5. Element

"Element" or "program element" is used to describe any of the essential components and functions of a radiation protection regulatory program. The term includes any aspect of a radiation protection regulatory program that is necessary to implement a program that is adequate to protect public health and safety and is compatible with the NRC regulatory program. The term "element" may include organizational structure, staffing level, inspection frequency, regulations, policies and procedures or any other component or function that the Commission considers necessary.

6. Practice

The term "practice" describes a use, procedure or activity associated with the application, possession, storage or disposal of byproduct, source and special nuclear materials. The term "practice" is very broad and encompassing in nature. For example, the term "practice," as applied in the policy statement, not only applies to very general activities involving radioactive materials such as industrial radiography, low-level waste disposal, nuclear medicine procedures, and well logging, but also includes specific activities conducted within these very broad activities, such as shallow land burial, sanitary sewerage disposal, and incineration of materials.

7. Radiation Protection Standards

As used in this Policy Statement, the term "radiation protection standards" means dose limits and radiation-protection related release limits in 10 CFR Part 20 and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto.

B. Elements of an Adequate Program

1. Protection

The Agreement State program shall be designed and administered to protect the public health and safety of its citizens against radiation hazards.

2. Regulations

Except for dose limits and radiation-protection related release limits in 10 CFR Part 20 and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto, or other regulations which are required to be essentially identical for compatibility purposes, an Agreement State program shall adopt regulations or other legally binding measures, equivalent to, or more stringent than, those designated by the NRC.

3. Inspection

The State regulatory program shall provide for the inspection of the possession and use of radioactive materials by the regulatory authority. The State inspection of licensee facilities, equipment, procedures and use of materials shall provide reasonable assurance that the public health and safety is being protected. Inspection and testing shall be conducted to assist in determining compliance with regulatory requirements. Frequency of inspection shall be related directly to the hazards associated with amount and kind of material and type of operation licensed. The minimum inspection frequency, including initial inspections, shall be no less than the NRC inspection frequency. An adequate inspection program includes: preparation and use of procedures and policy memoranda to assure technical quality in the inspection program and review of inspection actions by senior staff or supervisors. The inspection staff technical expertise should be similar to NRC staff qualifications.

4. Enforcement Program

Licensee noncompliance with requirements necessary for the safe possession and use of radioactive materials shall be subject to enforcement through legal sanctions, and the regulatory authority shall be authorized by law with the necessary powers for prompt enforcement.

5. Staffing and Personnel Qualifications

The regulatory agency shall be sufficiently staffed with an adequate number of qualified personnel to implement the radiation control program effectively. Agreement State staff shall be qualified using criteria no less stringent than criteria used for NRC staff.

6. Administrative Procedures

State practices for assuring the effective administration of the radiation control program, including provisions for public participation where appropriate, shall be incorporated in procedures for:

(a) Formulation of rules of general applicability;

(b) Approving or denying applications for licenses authorizing the possession and use of radioactive materials; and

(c) Taking enforcement actions.

7. Statutes

State statutes and/or duly promulgated regulations shall be established to authorize the State to carry out the requirements under Section 274b of the Atomic Energy Act, as amended and any other statutes as appropriate, such as Public Law 95–604, Uranium Mill Tailings Radiation Control Act (UMTRCA).

8. Laboratory Support

The State shall have available calibrated field and laboratory instrumentation sufficient to independently determine the licensee's control of materials, to validate the licensee's measurements, and to respond to events involving radioactive material.

9. Licensing

The State regulatory program review of license applications for the purpose of evaluating the applicant's qualifications, facilities, equipment, procedures and use of materials shall provide reasonable assurance that the public health and safety are being protected. An adequate licensing program includes: preparation and use of licensing guides and policy memoranda to assure technical quality in the licensing program and review of licensing actions by senior staff or supervisors. In addition, procedures involving the licensing of products containing radioactive material intended for interstate commerce should require a high degree of uniformity with those of the NRC. The review staff technical expertise should be similar to NRC staff qualifications.

10. Investigation (Response to Events)

The State regulatory program shall provide for timely and effective investigation of incidents, reportable events, allegations and any potential wrongdoing.

11. Budget

The State radiation control program (RCP) shall have adequate budgetary support to implement an effective program. The total RCP budget must provide adequate funds for salaries, training, travel costs associated with the compliance program, laboratory and survey instrumentation and other equipment, contract services, and other administrative costs.

C. Elements of a Compatible Program

1. Radiation Labels, Signs, and Symbols

States must have radiation labels, signs and symbols identical to that of the national standard.

7. Statutes

State statutes and/or duly promulgated regulations shall be established to authorize the State to carry out the requirements under Section 274b of the Atomic Energy Act, as amended and any other statutes as appropriate, such as Public Law 95–604, Uranium Mill Tailings Radiation Control Act (UMTRCA).

8. Laboratory Support

The State shall have available calibrated field and laboratory instrumentation sufficient to independently determine the licensee's control of materials, to validate the licensee's measurements, and to respond to events involving radioactive material.

9. Licensing

The State regulatory program review of license applications for the purpose of evaluating the applicant's qualifications, facilities, equipment, procedures and use of materials shall provide reasonable assurance that the public health and safety are being protected. An adequate licensing program includes: preparation and use of licensing guides and policy memoranda to assure technical quality in the licensing program and review of licensing actions by senior staff or supervisors. In addition, procedures involving the licensing of products containing radioactive material intended for interstate commerce should require a high degree of uniformity with those of the NRC. The review staff technical expertise should be similar to NRC staff qualifications.

10. Investigation (Response to Events)

The State regulatory program shall provide for timely and effective investigation of incidents, reportable events, allegations and any potential wrongdoing.

11. Budget

The State radiation control program (RCP) shall have adequate budgetary support to implement an effective program. The total RCP budget must provide adequate funds for salaries, training, travel costs associated with the compliance program, laboratory and survey instrumentation and other equipment, contract services, and other administrative costs.

C. Elements of a Compatible Program

1. Radiation Labels, Signs, and Symbols

States must have radiation labels, signs and symbols identical to that of the national standard.

2. Uniform Manifest

State regulatory programs shall establish a manifest system in accordance with 10 CFR Part 20.

3. Transportation Regulations

State regulations regarding transportation of radioactive materials must be identical or essentially verbatim with those in 10 CFR Part 71.

4. Event Reporting

The State regulatory program shall require licensee reporting in a manner so that information on identical type events is consistent with the reporting established by the NRC. This information shall be provided to the NRC.

5. Reciprocity

The State regulatory program shall have reciprocal recognition of out-of-State licensees and Federal licensees through a process which authorizes the safe conduct of similar operations within the Agreement State.

6. Records and Reports

The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys and disposal of materials, (b) keep records of the receipt and transfer of the material, (c) maintain reports of significant incidents involving radioactive materials.

7. Radiation Protection Terminology

The State regulatory program shall adopt fundamental radiation protection terminology in a manner essentially identical to NRC definition of these terms to ensure clear communication about radiation protection. Some examples of these terms are "byproduct material;" "total effective dose equivalent;" "sievert;" "gray;" and "becquerel."

8. Radiation Protection Standards

The State regulatory program shall adopt dose limits and radiation-protection related release limits in 10 CFR Part 20, and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto.

D. Compatibility Criteria

The following criteria shall be applied to program elements and regulations to determine whether they must be adopted by Agreement States in a manner essentially identical to that of the NRC for the purposes of compatibility:

1. avoids a significant burden on interstate commerce;

2. ensures clear communication on fundamental radiation protection terminology;

3. ensures the establishment of the dose limits and radiation-protection related release limits in 10 CFR Part 20 and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto;

4. assists the Commission in evaluating the effectiveness of the overall national program for radiation protection.

If none of the above criteria is met, the State would have the flexibility to design its own program including incorporating more stringent [3] requirements provided that:

a. the requirements for adequacy are still met; and

b. the more stringent requirements do not preclude or effectively preclude a practice within the national interest without an adequate public health and safety or environmental basis.

E. Implementation

Notwithstanding the provisions above, the Agreement States shall exercise their regulatory authority in a responsible manner and shall not adopt more stringent regulations or requirements as a means to bar or preclude a practice without an adequate safety or environmental basis, or bar a practice needed in the national interest. In order to permit the NRC to provide early coordination and oversight of any proposed more stringent regulations or requirements, NRC will request Agreement States to identify any such regulations or requirements and provide opportunity for NRC review before publication as a draft rule for comment or before the institution of the requirement as a legally binding measure.

F. Examples [4] for the Compatibility Criteria

1. Avoids a Significant Burden on Interstate Commerce

—The adoption of transportation requirements for all Agreement States should be essentially identical to assure that the flow of radioactive materials in or through another

[3] Local governmental entities are not usually authorized by the NRC under Section 274 to regulate radiological safety. Thus, with limited exception, the authority to set more stringent requirements would not extend to localities unless approved by the Commission through a Section 274 Agreement.

[4] The examples are not part of the Policy Statement and are neither exhaustive nor controlling.

jurisdiction is not impeded. For example, if States were allowed to change 10 CFR 71.47, "External Radiation Standards for all Packages" then it would be very difficult to transport radioactive material packages.

2. Ensures Clear Communication on Fundamental Radiation Protection Terminology

—The definition of the terms "sievert" and "gray" (or "rem," "rad") would need to be adopted essentially identically by all Agreement States.

3. Ensures the Establishment of Dose Limits and Radiation-Protection Related Release Limits in 10 CFR Part 20 and 10 CFR Part 61 Applicable to all Licensees, or Any Subsequent Amendments Thereto

—The basic dose limits and radiation-protection related release limits for all classes of licensees set forth in Subpart C, "Occupational Dose Limits," and Subpart D, "Radiation Dose Limits for Individual Members of the Public," of 10 CFR Part 20 would need to be adopted essentially identical by all Agreement States along with any other subsequent amendments to 10 CFR Part 20 that may set forth dose limits. 10 CFR Part 61.41, "Protection of general population from releases of radioactivity" and 10 CFR Part 61.43, "Protection of individuals during operations" would also need to be adopted essentially identically by all Agreement States.

4. Assists the Commission in Evaluating the Effectiveness of the Overall National Program for Radiation Protection

—The adoption of 10 CFR 35.33, "Notifications, reports, and records of misadministrations" would be adopted by the Agreement States in a manner essentially identical to that of the NRC.

G. Examples[5] of More Stringent Requirements

As noted above, if the State program is equivalent to, or more stringent than, NRC's program to assure the protection of the public health and safety, and it incorporates all the elements of the NRC program identified by the Commission as necessary to achieve the national interest in radiation protection, including the requirement to establish regulations which are uniform with the dose limits and radiation-protection related release limits in 10 CFR Part 20 and 10 CFR Part 61 applicable to all licensees, or any subsequent amendments thereto, then a State should generally have the flexibility to tailor its program. More stringent requirements, other than the above mentioned dose limits and radiation-protection release limits could be applicable to all classes of licensees in a State. For example, an Agreement State's recordkeeping provisions for all licenses could be more stringent than NRC's. Other examples of State actions which impose stricter requirements than NRC regulations, and which would be "adequate" under the draft policy statement, are—

1. State of Florida—20.304

Between 1957 and 1981, several State representatives expressed concern to the Commission over the risk from burials of radioactive waste allowed by 10 CFR 20.304, that was in effect at that time. This regulation, "Standards for Protection Against Radiation; Burial of Small Quantities of Radionuclides" provided that licensees could bury small quantities of radionuclides without prior NRC approval. The State of Florida submitted a request to the NRC to be more stringent by precluding this practice within the State because of its high ground water level. The State's exemption request was reviewed and approved by the NRC.

2. Shallow Land Burial

Several States prohibit the practice of shallow land burial of low-level waste. These more stringent regulations would be allowed under the draft policy statement even though a practice is prohibited. There is no overriding national interest in allowing shallow land burial of low-level waste. A different result would likely be obtained if disposal of low-level waste altogether was prohibited, unless the State was able to convince NRC of special public health and safety or environmental basis for this action.

3. Texas Industrial Radiography Certification

Texas has established a program for the certification of industrial radiography that is more rigorous than Commission requirements. This program requires persons to perform 200 hours of on-the-job training, complete 40 hours of classroom instruction and successfully complete an examination before receiving authorization to conduct radiographic services with radioactive materials. (This example is based on the assumption that the training requirements in 10 CFR 34 do not meet any of the four compatible criteria.)

[5] The examples are not part of the Policy Statement and are neither exhaustive nor controlling.

IV. Paperwork Reduction Act Statement

This draft statement of policy does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (434 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0029.

Dated at Rockville, Maryland, this 15th day of July, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–17728 Filed 7–20–94; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–424–OLA–3; 50–425–OLA–3; Re: License Amendment (Transfer to Southern Nuclear) ASLBP No. 96–671–01–OLA–3]

Georgia Power Company, et al. (Vogtle Electric Generating Plant, Units 1 and 2); Notice (Prehearing Conference)

Atomic Safety and Licensing Board: Before Administrative Judges: Peter B. Bloch, Chair, Dr. James H. Carpenter, Thomas D. Murphy.

Pursuant to 10 CFR 2.752, we will hold a public prehearing conference from 10 am until about noon on July 29 at the Hearing Room, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. The purpose of the conference will be to discuss contested motions, if any, and for case management.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair.

[FR Doc. 94–17729 Filed 7–20–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–02278; License No. 24–00513–32 EA 94–113]

The Curators of the University of Missouri-Columbia, Columbia, Missouri; Confirmatory Order Modifying License (Effective Immediately)

I

The Curators of the University of Missouri-Columbia (Licensee) is the holder of NRC License No. 24–00513–32 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes the Licensee to conduct research and development, instrument calibration, student instruction and medical diagnosis and therapy. The license was issued on April 6, 1962, was most recently amended on May 11, 1994, and is due to expire on July 31, 1998.

II

From January 24 through January 28, 1994, the NRC conducted a safety inspection of licensed activities at the University of Missouri-Columbia. Numerous apparent violations were identified during the inspection. The findings of the inspection were documented in Inspection Report No. 030–02278/94001(DRSS) issued to the Licensee on February 23, 1994.

The NRC is concerned that the circumstances surrounding the numerous violations reflect inadequate control over the safe use of licensed material. The Licensee met with the NRC staff during a management meeting on February 24, 1994, and during an open enforcement conference on February 28, 1994, at the NRC Region III office to review the circumstances that led to the violations. During the enforcement conference, the Licensee proposed various corrective actions that could be taken to prevent recurrence of the violations and to ensure compliance with NRC requirements. The Licensee agreed to submit these proposals to the NRC in writing for review and approval.

In a letter dated March 9, 1994, the NRC concluded its assessment of the inspection findings and issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $5,000. The violations identified during the inspection are of significant regulatory concern because they indicated that:

- The radiation safety staff and radioactive material users had insufficient knowledge of license conditions and NRC requirements and an inadequate sense of accountability regarding compliance with radiation safety requirements, and
- Licensee management was ineffective in completing self-assessments that assured safe program implementation.

The Notice required the Licensee to respond to the specific violations. In addition to that response, the NRC requested that the Licensee provide a Safety Performance Improvement Program (SPIP) which would result in: (1) A complete and thorough evaluation of the radiation safety practices and program by qualified persons to determine how the Licensee is currently complying with NRC regulations and the conditions of the license; (2) a compilation of radiation safety

instrument calibration, student instruction and medical diagnosis and therapy. The license was issued on April 6, 1962, was most recently amended on May 11, 1994, and is due to expire on July 31, 1998.

II

From January 24 through January 28, 1994, the NRC conducted a safety inspection of licensed activities at the University of Missouri-Columbia. Numerous apparent violations were identified during the inspection. The findings of the inspection were documented in Inspection Report No. 030–02278/94001(DRSS) issued to the Licensee on February 23, 1994.

The NRC is concerned that the circumstances surrounding the numerous violations reflect inadequate control over the safe use of licensed material. The Licensee met with the NRC staff during a management meeting on February 24, 1994, and during an open enforcement conference on February 28, 1994, at the NRC Region III office to review the circumstances that led to the violations. During the enforcement conference, the Licensee proposed various corrective actions that could be taken to prevent recurrence of the violations and to ensure compliance with NRC requirements. The Licensee agreed to submit these proposals to the NRC in writing for review and approval.

In a letter dated March 9, 1994, the NRC concluded its assessment of the inspection findings and issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $5,000. The violations identified during the inspection are of significant regulatory concern because they indicated that:

- The radiation safety staff and radioactive material users had insufficient knowledge of license conditions and NRC requirements and an inadequate sense of accountability regarding compliance with radiation safety requirements, and
- Licensee management was ineffective in completing self-assessments that assured safe program implementation.

The Notice required the Licensee to respond to the specific violations. In addition to that response, the NRC requested that the Licensee provide a Safety Performance Improvement Program (SPIP) which would result in: (1) A complete and thorough evaluation of the radiation safety practices and program by qualified persons to determine how the Licensee is currently complying with NRC regulations and the conditions of the license; (2) a compilation of radiation safety deficiencies from that effort; (3) a complete root cause analysis of those deficiencies; and (4) a description of corrective actions to accomplish the improvements necessary for lasting correction of the deficiencies.

III

On April 7, 1994, and May 25, 1994, the Licensee provided written responses to the Notice, including payment of the $5,000 proposed civil penalty and a description of the SPIP. After discussion of the SPIP with NRC staff on June 14 and June 17, 1994, the Licensee submitted a revised SPIP to the NRC on June 20, 1994. The Licensee's revised SPIP is divided into four phases. The Licensee has agreed to follow the specific actions and time milestones outlined in the SPIP.

Phase One of the SPIP involves hiring and directing an independent health physics consulting firm to review the Licensee's authorized activities and report the findings to the Licensee's management by July 15, 1994.

Phase Two of the SPIP involves assigning specific Radiation Safety Committee (RSC) members and Health Physics staff members to groups of authorized users to assist users in complying with the licensed program and NRC regulations and to provide a conduit for reporting the status of licensed activities to Licensee management. The Health Physics staff will also be assigned segments of the radiation safety program to review and assure compliance with the license and NRC requirements and, as necessary, draft procedures and associated documentation to implement the program. This phase will also include: (1) Development of an internal enforcement program that addresses compliance with radiation safety requirements and establishes protocols for implementing corrective actions; (2) assessment of personnel training and qualifications; (3) evaluation of laboratory equipment; and (4) development of computerized management systems. The Licensee also has committed to hire one additional health physicist to assist with the radiation safety program improvement. Phase Two will be completed by the end of December 1994.

Phase Three of the SPIP involves an ongoing assessment of the corrective actions taken in response to findings in Phases One and Two, a second independent audit by an outside health physics consultant and annual audits by the RSO and RSC with reports to the Chancellor, Provost, and Vice Chancellor for Administrative Services. Phase Three will be completed by the end of December 1995.

Phase Four involves continuing reassessment of the program.

In light of the violations underlying the March 9, 1994 enforcement action, the public health and safety require improvement of the Licensee's radiation safety program. The NRC staff has reviewed the Licensee's SPIP. I find that the Licensee's commitments as set forth in its letter of June 20, 1994, are acceptable and necessary and conclude that if these commitments are effectively implemented the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments in its June 20, 1994 letter be confirmed by this Order. The Licensee agreed to the issuance of this Order during a telephone call between Mr. John A. Grobe, Chief, Nuclear Materials Inspection Section II, Region III, NRC, and Dr. Susan Langhorst, Radiation Safety Officer, of the Licensee's staff on July 12, 1994. Pursuant to 10 CFR 2.202, I have also determined that, based on the Licensee's consent to this Order and the significance of the necessary program improvements described above, the public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 20, 30 and 35, it is hereby ordered that, effective immediately, license no. 24–00513–32 is modified as follows:

The Licensee shall complete the specific action items within the time limitations stated in the Safety Performance Improvement Program submitted to the NRC in its letter dated June 20, 1994. If additional time is required to meet a step, a written request must be submitted with the reason for the request and the new timeframe for completion. Until approved in writing by the Regional Administrator, Region III, the previously approved schedule must be met.

The Regional Administrator, Region III, may relax or rescind, in writing, any aspect of the above condition upon a showing by the License of good cause.

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC

20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearing and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person other than the Licensee adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 13th day of July 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–17730 Filed 7–20–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cost Accounting Standards Disclosure Statement for Educational Institutions

AGENCY: Office of Management and Budget.

ACTION: Public information collection requirement.

SUMMARY: Form to be used by educational institutions receiving more than $25 million per year in sponsored agreements with the Federal Government. They will be required to disclose their major cost accounting practices.

FOR FURTHER INFORMATION CONTACT: Jack Arthur, 202–395–7250.

SUPPLEMENTARY INFORMATION: Attached to this notice is the material for inclusion in the **Federal Register**.

John B. Arthur,

Assistant Director for Administration.

Public Information Collection Requirements Submitted to OMB for Review

The Office of Management and Budget has submitted for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35):

Title: "Cost Accounting Standards Disclosure Statement for Educational Institutions."
Type of Request: New Collection
OMB Number: New
Form Number: CASB DS–2
Description: Form to be used by educational institutions receiving more than $25 million per year in sponsored agreements with the Federal Government. They will be required to disclose their major cost accounting practices.
Respondents: Educational institutions
Estimated Number of Respondents: 130
Estimated Burden Hours per Respondent: 40 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 5200 hours.

Copies of the submission may be obtained by calling Barbara Diering at (202) 395–3254. Comments regarding this information collection should be addressed either to Edward Springer, OMB Desk Officer, Room 10236 NEOB, Washington, DC 20503 or to Barbara Diering, Office of Management and Budget, Room 9001 NEOB, Washington, DC 20503.

[FR Doc. 94–17757 Filed 7–20–94; 8:45 am]

BILLING CODE 3110–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Public Information Collection Requirements Submitted to OMB for Review

Date: July 21, 1994.

PADC has submitted the following extension of a public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511 (44 U.S.C. Ch. 35). Copies of the submission may be obtained by calling the PADC clearance officer listed. Send comments to the OMB reviewer listed and to the PADC clearance officer.

Pennsylvania Avenue Development Corporation

OMB Number: 3208
Form Number: No form number available; information requested in the Affirmative Action Quarterly Workforce Report for the Federal Triangle Development Project in Washington, DC.
Title: Affirmative Action Quarterly Workforce Report
Description: Under the authority of the Pennsylvania Avenue Development Corporation Act, as amended (Pub. L. 92–578), and PADC's Affirmative Action Policy and Procedure, 36 CFR Part 906, PADC has requested the developer of the Federal Triangle site in Washington, DC to obtain, on a voluntary basis, detailed statistics of racial and ethnic composition of the construction workforce on the project.
Respondents: Construction contractors
Clearance Officer: Talbot J. Nicholas II, Attorney, (202) 724–9055, PADC, Suite 1220 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20004.
OMB Reviewer: Don Arbuckle, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th St., NW., room 10201 Washington, DC 20503.

Dated: July 13, 1994.

Lester M. Hunkele, III,

Executive Director.

[FR Doc. 94–17759 Filed 7–20–94; 8:45 am]

BILLING CODE 7630–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34381; File No. SR–DGOC–93–04]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Approving Proposed Rule Change Modifying Exercise Settlement Date and Buy-In Procedures

July 14, 1994.

On December 27, 1993, Delta Government Options Corp. ("DGOC") filed a proposed rule change (File No. SR–DGOC–94–04) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] On February 16, 1994, and on March 4, 1994, DGOC submitted substantive amendments to the filing.[2] Notice of the proposal was published in the **Federal Register** on May 25, 1994, to solicit comments from interested persons.[3] No comments were received. This order approves the proposal.

[1] 15 U.S.C. 78s(b) (1988).

[2] Amendment No. 2 completely superseded all previous submissions filed in connection with the proposed rule change, File No. SR–DGOC–93–04.

[3] Securities Exchange Act Release No. 34083 (May 18, 1994), 59 FR 27087.

I. Description of the Proposal

The proposed rule change modifies DGOC's exercise settlement procedures. Under current practice, the exercise settlement date, depending on certain factors, occurs from two to five business days following the expiration date or the date on which an exercise notice is tendered. For an option contract on a Treasury bond or a Treasury note exercised on a day preceding the expiration date, the exercise settlement date is the next business day following the day on which the exercise notice is properly assigned to a participant. The proposal makes no change to this provision of DGOC's rules. For an option contract on a Treasury bond or a Treasury note exercised on the expiration date, the exercise settlement date will now be the next business day following the expiration date for those contracts. Currently, the exercise settlement date for such contracts is the third business day following the expiration date. Also, under the proposed rule change, for an option contract on a Treasury bill, the exercise settlement date will be the next business day after an exercise notice is properly tendered. Currently, the exercise settlement date is Thursday of the week in which the exercise notice is properly tendered.

In connection with the modifications to the exercise settlement date, DGOC has amended Section 1005 of its Procedures to provide that DGOC will allocate exercise settlement obligations prior to 8:00 a.m. on the business day prior to the exercise settlement date. Previously, DGOC allocated exercise settlement obligations on the second business day prior to the exercise settlement date.

DGOC also has amended Section 1102 of its Procedures to clarify its buy-in process applicable when a participant fails to make a required delivery of Treasury securities to DGOC. First, upon the request of the participant failing to deliver and with good cause shown, DGOC is now authorized to defer the execution of a buy-in if Delta has reason to believe that the delivery default will be cured on that other arrangement

and on March 4, 1994, DGOC submitted substantive amendments to the filing.[2] Notice of the proposal was published in the **Federal Register** on May 25, 1994, to solicit comments from interested persons.[3] No comments were received. This order approves the proposal.

I. Description of the Proposal

The proposed rule change modifies DGOC's exercise settlement procedures. Under current practice, the exercise settlement date, depending on certain factors, occurs from two to five business days following the expiration date or the date on which an exercise notice is tendered. For an option contract on a Treasury bond or a Treasury note exercised on a day preceding the expiration date, the exercise settlement date is the next business day following the day on which the exercise notice is properly assigned to a participant. The proposal makes no change to this provision of DGOC's rules. For an option contract on a Treasury bond or a Treasury note exercised on the expiration date, the exercise settlement date will now be the next business day following the expiration date for those contracts. Currently, the exercise settlement date for such contracts is the third business day following the expiration date. Also, under the proposed rule change, for an option contract on a Treasury bill, the exercise settlement date will be the next business day after an exercise notice is properly tendered. Currently, the exercise settlement date is Thursday of the week in which the exercise notice is properly tendered.

In connection with the modifications to the exercise settlement date, DGOC has amended Section 1005 of its Procedures to provide that DGOC will allocate exercise settlement obligations prior to 8:00 a.m. on the business day prior to the exercise settlement date. Previously, DGOC allocated exercise settlement obligations on the second business day prior to the exercise settlement date.

DGOC also has amended Section 1102 of its Procedures to clarify its buy-in process applicable when a participant fails to make a required delivery of Treasury securities to DGOC. First, upon the request of the participant failing to deliver and with good cause shown, DGOC is now authorized to defer the execution of a buy-in if Delta has reason to believe that the delivery default will be cured on that other arrangement adequate to protect Delta's interests have been made.[4] Previously, DGOC could defer the execution of a buy-in for no more than twenty-four hours from the time delivery was due. Second, the timing for the execution of a buy-in has been set forth with specificity. Under the more specific procedures, DGOC may transmit a notice of buy-in to the participant which failed to deliver after the elapse of thirty calendar days after the failure to deliver. DGOC must deliver in duplicate a written notice of buy-in no later than 12:00 noon five business days before the proposed execution date of the buy-in. The amended section also sets forth the information DGOC must supply to the participant in the buy-in notice.

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[5] Sections 17A(b)(3) (A) and (F) of the Act[6] require that the rules of clearing agencies be designed to promote the prompt and accurate clearance and to assure the safeguarding of funds which are under the custody or control of a clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

One purpose of the proposal is to respond to participants who have requested that DGOC's settlement procedures more closely follow the practices already established in the over-the-counter ("OTC") marketplace for the settlement of purchases and sales of Treasury securities and for the settlement of exercised options on such securities. by shortening DGOC's settlement periods to conform to the industry standards, DGOC will reduce the amount of time such settlement obligations remain outstanding which in turn will reduce credit exposure to DGOC as well as generally in the settling of options on Government securities. DGOC's use of the same settlement period as is used in settlement of similar OTC options will help to ensure a consistent approach among clearing entities and should serve as a platform for additional coordination among clearing entities clearing identical or complimentary securities.

Because DGOC's current settlement period of two to five business days is longer than the settlement period for similar OTC products cleared outside of DGOC, DGOC-issued options carry a price adjustment for the additional financing costs. As a result, the price of DGOC-issued options does not match exactly those of similar OTC-traded options. Implementation of DGOC's revised settlement procedures will make the relative values of DGOC-issued options comparable to those of OTC-traded options and will eliminate participants' need to make the additional calculations necessary to correlate the price of DGOC-issued options with the price of OTC-traded options. Therefore, this proposal should provide participants greater ease in trading and exercising options issued by DGOC. The proposal also should result in more options on Government securities being cleared and settled through the automated facilities of DGOC, a registered clearing agency which participates in the national system for the clearance and settlement of securities transactions. These are options transactions that otherwise would be cleared through decentralized and labor intensive processes.

In connection with the shorter settlement time frames, the rule change enables DGOC to allocate exercise settlement obligations prior to 8:00 a.m. on the day prior to settlement and, as noted above, permits accelerated settlement time frames that are more consistent with settlement of exercised options and settlement of securities in the cash market. These changes should help DGOC to promote the prompt and accurate clearance and settlement of securities transactions and should foster cooperation and coordination by persons engaged in the clearance and settlement of securities transactions. The proposal also clarifies DGOC's buy-in procedures while providing DGOC with more flexibility concerning buy-ins. The Commission believes that these changes improve DGOC's ability to deal with the risks associated with the failure of a participant to fulfill its delivery obligation. By doing so, the modified buy-in procedures better enables DGOC to fulfill its statutory obligations to safeguard securities and funds within its possession or control for which it is responsible.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly Section 17A of the Act, and the rules and regulations thereunder.

---

[2] Amendment No. 2 completely superseded all previous submissions filed in connection with the proposed rule change, File No. SR–DGOC–93–04.

[3] Securities Exchange Act Release No. 34083 (May 18, 1994), 59 FR 27087.

[4] Section 1102 of DGOC's Procedures authorizes DGOC to buy-in Treasury securities for the account and liability of a participant that fails to fulfill its delivery obligation.

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78–1(b)(3) (A) and (F) (1988).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the above-mentioned proposed rule change (File No. SR–DGOC–93–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17710 Filed 7–20–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34390; File No. SR–NYSE–94–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Approval of Member Organizations in Other Than Partnership or Corporate Form Under Rule 311(f)

July 15, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 22, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to amend Rule 311(f) as follows, with italics representing the language added:

Rule 311

(f) Every member firm shall be a partnership and every member corporation shall be a corporation created or organized under the laws of, and shall maintain its principal place of business in, the United States or any State thereof. *The Exchange may, in its discretion, and on such terms and conditions as the Exchange may prescribe, approve as a member organization entities that have characteristics essentially similar to corporations, partnerships, or both. Such entities, and persons associated therewith, shall, upon approval, be fully, formally and effectively subject to the jurisdiction, and to the Constitution and Rules, of the Exchange to the same extent and degree as are any other member organizations and persons associated therewith.*

[7] 15 U.S.C. 78s(b) (1988).

[8] 17 CFR 200.30–3(a)(12) (1993).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Article 1, Section 3 of the NYSE Constitution states that the term "member organization" includes a "member firm" and "member corporation." A "member firm" is defined as a partnership.

Recently, the Exchange has received requests from several member organizations to permit them to reorganize as business trusts or limited liability companies. Neither of these organizational structures is currently specifically included in the definition of a member organization.

The proposed amendment would enable the Exchange, in its discretion, and on such terms and conditions as the Exchange may prescribe, to approve business trusts,[1] limited liability companies,[2] and other organizational structures as member organizations. However, any such entity would be required to have characteristics essentially similar to corporations or partnerships.

Noncorporate or partnership entities would have to be structured in such a format that would qualify as a broker or dealer registered with the Commission pursuant to the Act, since this is a prerequisite to becoming an Exchange member organization.

The NYSE staff would review each application on a case-by-case basis as it does with all member organization applicants. However, prior to approving any such organization for membership, the staff would have to be satisfied that: (1) the Exchange would legally have appropriate jurisdiction over such an entity; and (2) the permanency of the entity's capital is consistent with that required of other member organizations.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it permits registered brokers or dealers as set forth herein to become member organizations of the Exchange.

The proposed rule change is also consistent with Section 6(b)(5) of the Act in that it broadens the types of entities which the Exchange may approve as a member organization and therefore avoids possible unfair discrimination.

Finally, it is consistent with Section 6(b)(8) of the Act in that it serves to remove possible burdens on competition resulting from organizational structure not necessary or appropriate in furtherance of the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden in competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

[1] The term "business trust" is generally used to describe a trust in which the managers are principals, and the shareholders are cestuis que trust. The essential attribute is that property is placed in the hands of trustees who manage and deal with it for the use and benefit of beneficiaries. *Black's Law Dictionary* 180 (5th ed. 1979).

[2] A limited liability company ("LLC") combines various characteristics of both corporations and partnerships. For example, an LLC is a non-corporate entity under which neither the owners nor those managing the business are personally liable for the entity's obligations, however, the LLC is treated as a pass-through entity for federal income tax purposes. See Robert R. Keating et al., The Limited Liability Company: A Study of the Emerging Entity, 47 Bus. Law. 378 (1992).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–01 and should be submitted by August 11, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17760 Filed 7–20–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34387; File No. SR–PHLX–94–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc., Relating to Listing of Reduced-Value Long-Term Options on the National Over-the-Counter Index

July 15, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 12, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–01 and should be submitted by August 11, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17760 Filed 7–20–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34387; File No. SR–PHLX–94–03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc., Relating to Listing of Reduced-Value Long-Term Options on the National Over-the-Counter Index

July 15, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 12, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its rules to list long-term reduced-value options equal to one-tenth the value of the Exchange's current National Over-the-Counter Index ("Index" or "XOC"). Options on the long-term, reduced-value XOC ("reduced-value XOC") will have expirations of up to 36 months. For aggregation purposes, 10 reduced-value long-term XOC options are the equivalent of one full-value XOC contract.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change

1. Description of the Proposal

Since 1985 the PHLX has been trading options on the XOC, a broad-based, capitalization-weighted index comprised of the 100 largest domestic corporations whose stocks are traded over-the-counter ("OTC") by at least four market makers and are not listed on any exchange.[2] All of the XOC's component stocks are traded through the National Association of Securities Dealers Automated Quotations ("NASDAQ") system and are National Market Securities ("NMS"). On February 26, 1991, the Commission approved a proposed rule change, SR–PHLX–90–38, allowing the Exchange to list long-term options having up to 36 months to expiration on any of the Exchange's broad-based index options.[3]

The PHLX proposes to list long-term options on a reduced-value XOC index that would be computed at one-tenth the value of the Exchange's current XOC index. The proposed options will have expirations of up to 36 months. The PHLX believes that the listing of long-term, reduced-value XOC options will provide retail investors with the opportunity to obtain long term portfolio protection at an affordable price.

2. Composition of the Index

The XOC is a capitalization-weighted index comprised of the 100 most highly capitalized NMS common stock issues traded through the NASDAQ system. The XOC, which was developed by the Exchange and is computed by Bridge Data, is comprised of stocks from approximately thirty industry groups and responds to the general market trends of the OTC market. The Index is updated every 15 seconds during the trading day. Pursuant to PHLX Rule 1100A, "Dissemination of Information," updated Index values are disseminated and displayed by means of the Consolidated Last Sale Reporting System and the facilities of the Options Price Reporting Authority ("OPRA"). The closing Index value is published in The Wall Street Journal and other financial publications.

3. Index Construction and Calculation

In order to keep the XOC current and representative of general market trends in the OTC market, each January and July the Exchange identifies and ranks the 125 most highly capitalized NMS common stock issues. The stocks included in the 125 ranking are compared to the issues in the Index, and issue(s) not ranked within the 100 most highly capitalized issues are deleted from the Index and replaced by the issue(s) which has increased in capitalization since the previous

---

[1] On March 1, 1994, the PHLX amended PHLX Rule 1001A, "Position Limits," to add paragraphs (d)(i) and (ii), which describe the aggregation procedures for quarterly expiring options, reduced-value long-term Value Line Composite Index options, and reduced-value long-term National Over-the-Counter Index options. See Letter from Edith Hallahan, Special Counsel, PHLX, to Sharon Lawson, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 28, 1994 ("Amendment No. 1"). After the provisions proposed in paragraph (d)(i) were approved in Securities Exchange Act Release No. 34234 (June 17, 1994), the PHLX deleted paragraph (d)(i) from the current proposal. See Letter from Edith Hallahan, Special Counsel, PHLX, to Mike Walinskas, Branch Chief, Options Regulation, Division, Commission, dated July 13, 1994 ("Amendment No. 2").

[2] See Securities Exchange Act Release No. 22044 (May 17, 1985), 50 FR 21532 (May 24, 1985).

[3] See Securities Exchange Act Release No. 28910 (February 26, 1991), 56 FR 9032 (March 4, 1991).

ranking. Thus, on a semi-annual basis, the XOC is adjusted to reflect changes in the capitalization ranking of NMS stock issues. In addition, any time a component stock registers on a national securities exchange or is the subject of a merger or acquisition, the stock is deleted from the Index and replaced by the next highest capitalized issue as identified in the most current ranking of the 125 most highly capitalized NMS issues. The Index is adjusted to reflect stock splits and dividends.

In computing the value of the Index, the current market value of each component stock is multiplied by the number of outstanding shares. The resulting market values are added together to determine the current aggregate market value of the issues in the Index. To compute the current Index value, the aggregate market value is divided by the base market value and multiplied by 100. The base value is adjusted periodically to account for changes in capitalization of any of the component stocks resulting from mergers, acquisitions, listings, and substitutions.

4. Contract Specifications

The proposed long-term reduced-value XOC options will trade independently of an in addition to currently listed full-value XOC options and will be subject to the same rules that presently govern the trading of full-value XOC options, including sales practice rules, margin requirements, and floor trading procedures. The strike price intervals for the proposed options will be fixed at no less than $2.50, and the proposed options will be aggregated with full-value XOC options for position and exercise limit purposes.

The PHLX has determined that since positions in the full-value XOC options and those in the proposed reduced-value long-term XOC options are based upon the same underlying stock index, the proposed reduced-value XOC options will be aggregated with full-value XOC options for position and exercise limit purposes. Accordingly, the PHLX proposes to amend PHLX Rule 1001A to state that for aggregation purposes, ten reduced-value long-term XOC options are the equivalent of one full-value XOC contract. Since one full-value XOC contract is equivalent to ten reduced-value XOC contracts, each reduced-value XOC contract will be considered one-tenth of a full-value XOC contract when the contracts are aggregated for position and exercise limit purposes.

Thus, under the current XOC position limit of 10,000 contracts, an option holder with no full-size XOC contracts would be permitted to hold 100,000 reduced-value XOC contracts. Similar to full-value XOC options, the proposed reduced-value options will feature American-style exercise. The PHLX will continuously calculate and disseminate the underlying index value for the proposed reduced-value XOC options in addition to the full-value Index.

As a result of the one-tenth reduced-value feature of the proposed options, the reduced-value XOC may vary slightly from one-tenth of the full-value Index. In this regard, the PHLX intends to adopt the following procedure in rounding the reduced-value Index: the PHLX will divide the calculated value of the XOC by ten and round the resulting quotient to the nearest one-hundredth. The digits one through four will be rounded down to the next number and digits five through nine will be rounded up to the next number.

Upon Commission approval of the proposal, the PHLX intends to list initial long-term option series on the new reduced-value XOC with December 1995 and December 1996 expirations. While the initial series listings would have less than 36 months to expiration, thereafter, the PHLX plans to list options with 36-month expirations at each December expiration, resulting in the introduction of a December 1977 expiration after the December 1994 expiration. Initially, three strike prices for calls and puts will be listed at and surrounding the prevailing reduced-value XOC option. However, the Exchange may list only a put or a call if two strike prices are introduced. The Exchange also proposes to list additional strike prices when the market reaches either the highest or lowest existing strike price. The Exchange believes this procedure will result in the listing of only a limited number of series for any expiration, thereby eliminating confusion that might otherwise be caused by a myriad of strike prices and expirations.

The Exchange expects that its proposed policy of listing strike prices on the reduced-value XOC will permit the offering of options at premiums between $2.00 and $7.00 ($200 to $700 per contract) based upon current market volatility and other pricing considerations. Such premiums appear to be in the desired range of prices that investors have favored in trading index warrants. Such premiums could not be achieved by using full-size XOC options without the listing of strike prices so deeply out of the money and away from the current index value as to offer investors limited ability to participate in the market or protect a portfolio of primarily OTCV stocks.

The PHLX believes that the proposal is consistent with Section 6 of the Act, in general, and in particular, with Section 6(b)(5), in that it is designed to facilitate transactions in securities and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PHLX has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[4] Specifically, the Commission believes that the reduced-value long-term XOC options will benefit investors by providing them with a valuable hedging and investing vehicle that should reflect accurately the overall movement of the OTC market and provide investors with additional means to hedge portfolios against long-term market risk at a reduce cost. The Commission believes that the lower cost of the reduced-value XOC options should allow investors to hedge their portfolios with a smaller outlay of capital and may facilitate investor participation in the market for XOC options, which should, in turn, help to maintain the depth and liquidity of the market for XOC options, thereby protecting investors and the public interest.

The Commission believes that trading in the reduced-value XOC options will not have an adverse market impact or be susceptible to manipulation.[5] The Commission has determined previously that the full-value XOC is a broad-based index[6] and does not believe that dividing the XOC by ten changes this determination. The reduced-value XOC index will contain the same stocks with the same weightings as the XOC and will be calculated in the same manner as the XOC (with the exception of being one-tenth the value of the XOC). Accordingly, the Commission finds that the reduced-value XOC is a broad-based index. Moreover, the Commission believes that any potential manipulation concerns raised by the reduced-value XOC options are minimized by the fact that positions in the reduced-value XOC options and full-value XOC options will be aggregated for position and exercise limit purposes.[7] In addition, the Commission notes that the same Exchange surveillance procedures applied to full-value XOC options will be used for the reduced-value XOC options.[8]

Because the Exchange's existing rules applicable to stock index options, including, among others, sales practice rules, margin requirements, and position and exercise limits, will apply to the reduced-value XOC options, the Commission believes that the market for the reduced-value XOC options should be fair and orderly and does not raise any new customer protection concerns.

The Commission finds good cause for approving the proposal and Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In light of the fact that the Commission has approved proposals by other exchanges to list reduced-value options on existing indexes, and in light of PHLX rule 1101A(b)(iii), which allows the PHLX to list series of long term options on stock indexes, the Commission believes that the proposal to list long term reduced-value XOC options presents no new regulatory issues. In addition, the Commission believes that Amendment Nos. 1 and 2 clarify and strengthen the Exchange's proposal. Accordingly, the Commission believes that if is consistent with the Act to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

---

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] The Commission notes that, prior to listing long-term reduced-value XOC options, the PHLX will be required to provide written representations that both the Exchange and OPRA have the necessary systems capacity to support the new series of long-term reduced-value XOC options.

[6] See Securities Exchange Act Release No. 33634 (February 17, 1994), 59 FR 9283 (February 25, 1994).

[7] In this regard, it is reasonable for the PHLX to count ten reduced-value XOC option contract as equivalent to one full-value XOC contract for position and exercise limit purposes because the underlying value of one XOC contract is equal to the underlying value of ten reduced-value XOC contracts.

[8] Telephone conversation between Edith Hallahan, Attorney, PHLX, and Yvonne Fraticelli, Attorney, Options Branch, Division, on July 6, 1994.

index[6] and does not believe that dividing the XOC by ten changes this determination. The reduced-value XOC index will contain the same stocks with the same weightings as the XOC and will be calculated in the same manner as the XOC (with the exception of being one-tenth the value of the XOC). Accordingly, the Commission finds that the reduced-value XOC is a broad-based index. Moreover, the Commission believes that any potential manipulation concerns raised by the reduced-value XOC options are minimized by the fact that positions in the reduced-value XOC options and full-value XOC options will be aggregated for position and exercise limit purposes.[7] In addition, the Commission notes that the same Exchange surveillance procedures applied to full-value XOC options will be used for the reduced-value XOC options.[8]

Because the Exchange's existing rules applicable to stock index options, including, among others, sales practice rules, margin requirements, and position and exercise limits, will apply to the reduced-value XOC options, the Commission believes that the market for the reduced-value XOC options should be fair and orderly and does not raise any new customer protection concerns.

The Commission finds good cause for approving the proposal and Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In light of the fact that the Commission has approved proposals by other exchanges to list reduced-value options on existing indexes, and in light of PHLX rule 1101A(b)(iii), which allows the PHLX to list series of long term options on stock indexes, the Commission believes that the proposal to list long term reduced-value XOC options presents no new regulatory issues. In addition, the Commission believes that Amendment Nos. 1 and 2 clarify and strengthen the Exchange's proposal. Accordingly, the Commission believes that if is consistent with the Act to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

[6] See Securities Exchange Act Release No. 33634 (February 17, 1994), 59 FR 9263 (February 25, 1994).

[7] In this regard, it is reasonable for the PHLX to count ten reduced-value XOC option contract as equivalent to one full-value XOC contract for position and exercise limit purposes because the underlying value of one XOC contract is equal to the underlying value of ten reduced-value XOC contracts.

[8] Telephone conversation between Edith Hallahan, Attorney, PHLX, and Yvonne Praticelli, Attorney, Options Branch, Division, on July 6, 1994.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may withhold from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–94–03 and should be submitted by [insert date 21 days from date of publication].

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[9] that the proposed rule change (SR–PHLX–94–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17761 Filed 7–20–94; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30–3(a)(12) (1993).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Kent County International Airport Grand Rapids, Michigan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Kent County, Michigan, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On October 29, 1993, the FAA determined that the noise exposure maps submitted by Kent County under Part 150 were in compliance with applicable requirements. On April 26, 1994, the Assistant Administrator for Airports approved the Kent County International Airport noise compatibility program.

A total of ten (10) measures were included in the Kent County International Airport recommended program. Of the ten (10) measures, two (2) are "Program Management," three (3) are "Noise Abatement," and five (5) are "Land Use." The FAA gave outright approval for nine (9) measures; the tenth measure was given partial approval.

EFFECTIVE DATE: The effective date of the FAA's approval of the Kent County International Airport noise compatibility program is April 26, 1994.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 313–487–7280. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Kent County International Airport, effective April 26, 1994.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

Kent County submitted to the FAA on May 4, 1992, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 24, 1987 through May 4, 1992. The Kent County International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on March 4, 1993. Notice of this determination was published in the Federal Register on March 22, 1993.

The Kent County International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on October 29, 1993, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained ten (10) proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective April 26, 1994.

Outright approval was granted for nine (9) of the specific program elements. "Land Use Measure No. 2" was partially approved. The measure included non-noise related zoning (height and safety). For the purpose of Part 150, only the noise zoning was approved. The other approved measures include: Noise Abatement Advisory Committee, Noise Complaint Program, Noise Abatement Departure Procedures, Greater Percent of Stage 3 Aircraft, Portable Noise Monitoring Equipment, Comprehensive Land Use Planning and Zoning, Utilize Disclosure Ordinance, Acoustical Treatment/Aviation Easements, and Purchase Assurance Program.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on April 26, 1994. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to the FAA, are available for review at the following locations.

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

Kent County Department of Aeronautics, Kent County International Airport, 5500 44th Street, SE., Grand Rapids, Michigan 49512

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, July 1, 1994

Dean C. Nitz,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 94–17801 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–M

Proposed Establishment of the Springfield, MO, Class C Airspace Area; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice is announcing a fact-finding informal airspace meeting to solicit information from airspace users and others concerning a proposal to establish Class C airspace at Springfield, MO. The FAA is holding this meeting to provide interested parties the opportunity to present input on the proposal. All comments received during this meeting will be considered prior to any establishment or issuance of a notice of proposed rulemaking.

TIME AND DATE: The informal airspace meeting will be held at 7:00 p.m. on Wednesday, September 7, 1994. Comments must be received on or before November 7, 1994.

DATES: Wednesday, September 7, 1994.

PLACE: Cox North Hospital, (Fountain Plaza Room), 1423 North Jefferson, Springfield, MO 65802.

COMMENTS: Send or deliver comments on the proposal in triplicate to: Manager, Air Traffic Division, ACE–500, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Kathy J. Randolph, FAA, Central Regional Office, ACE–530, telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by a representative of the FAA Central Region. Representatives from the FAA will present a formal briefing on the proposed Class C airspace area establishment. Each participant will be given an opportunity to deliver comments or make a presentation.

(b) The meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meeting will be accepted. Participants wishing to submit handout material should present three *copies* to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) The meeting will not be formally recorded. However, a summary of the comments made at the meeting will be filed in the docket.

Agenda for the Meeting

Opening Remarks and Discussion of Meeting Procedures
Briefing on Background for Proposal
Public Presentations
Closing Comments

Issued in Washington, DC, on July 11, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–17802 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–P

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yakima Air Terminal, Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yakima Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and 14 CFR part 158.

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration,

asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meeting will be accepted. Participants wishing to submit handout material should present three *copies* to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) The meeting will not be formally recorded. However, a summary of the comments made at the meeting will be filed in the docket.

Agenda for the Meeting

Opening Remarks and Discussion of Meeting Procedures
Briefing on Background for Proposal
Public Presentations
Closing Comments

Issued in Washington, DC, on July 11, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–17802 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–P

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yakima Air Terminal, Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yakima Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and 14 CFR part 158.

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW, Suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce Loy, Airport Manager at the following address: Yakima Air Terminal Board, 2400 West Washington Avenue, Yakima, WA 98903.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Yakima Air Terminal Board under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Hall, Federal Aviation Administration, Seattle Airports District Office, 1601 Lind Avenue SW, suite 250, Renton, WA 98055–4056, (206) 227–2662. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Yakima Air Terminal under the provisions of the Aviation Safety and Capacity Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 8, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Yakima Air Terminal Board was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 22, 1994. Although the effective date of the charge proposed by the Yakima Air Terminal Board has passed, the charge will not become effective unless and until it receives FAA approval, and any delay in the timing of the effective date will also extend the proposed charge expiration date by a corresponding period.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1994.

Proposed charge expiration date: September 1, 1994.

Total estimated PFC revenue: $14,745.00.

Brief description of proposed project(s): Snow removal equipment, Ramp plow.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Exempt categories shall be air taxi/commercial operators, other than an air carriers, who conduct operations in air commerce carrying persons for compensation or hire, except, air taxi/commercial operators operating public or private charters in aircraft with a seating capacity of 60 or more shall be construed in this regulation to be an air carrier, unless the public or private charter is exclusively for government use.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Yakima Air Terminal.

Issued in Renton, Washington on July 8, 1994.

Sarah P. Dalton,

Acting Manager, Planning, Programming and Capacity Branch, Airports Division, Northwest Mountain Region.

[FR Doc. 94–17805 Filed 7–20–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 1994, there were four applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IV of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Jefferson, Beaumont, Texas.

Application Number: 94–01–C–00–BPT.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $563,126.

Charge Effective Date: September 1, 1994.

Estimated Charge Expiration Date: November 1, 1996.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Airport planning studies, Taxiway safety improvements, Runway safety improvements, Access road safety improvements.

Brief Description of Project Approved-in-Part for Collection and Use: Land acquisition/easements and perimeter fencing.

Determination: Approved in part. The land acquisition element of this project being disapproved at this time. The FAA has determined that this element of the project does not meet the requirements of § 158.29(b)(iv). The requirement pertaining to the National Environmental Policy Act of 1969 for this element of the project has not been met.

Decision Date: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Burbank-Glendale-Pasadena Airport Authority, Burbank, California.

Application Number: 94–01–C–00–BUR.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $34,989,000.

Earliest Charge Effective Date: September 1, 1994.

Estimated Charge Expiration Date: October 1, 2001.

Class of Air Carriers not Required to Collect PFC's Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Burbank-Glendale-Pasadena Airport.

Brief Description of Projects Approved for Collection and Use: Reconstruct runway 8/26, Reconstruct runway 15/33, Acquire land—Plant C–1.

Brief Description of Projects Approved for Collection Only: Extend taxiway B, Construct aircraft rescue and firefighting station, Acquire land—Plant B–6.

Decision Date: June 17, 1994.

FOR FURTHER INFORMATION CONTACT: John P. Milligan, Western-Pacific Regional Airports Division, (310) 297–1029.

Public Agency: Huntsville-Madison County Airport Authority, Huntsville, Alabama.

Application Number: 94–03–C–00–HSV.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue Collection: $20,831,051.

Total Approved Net PFC for Use in This Decision: $11,249,448.

Charge Effective Date for This Location: June 1, 1992.

Estimated Charge Expiration Date for This Approval: November 1, 2008.

Class of Air Carriers not Required to Collect PFC's No change from previously approved application of March 6, 1992.

Brief Description of Projects Approved for Collection and Use: Runway/taxiway sign upgrade, Disabled passenger lift.

Brief Description of Projects Approved for Use: Land acquisition, Runway protection zone/low level windshear alert system property, Security upgrade—107.14, Airport master plan update, Airport maintenance/snow removal equipment storage facility, Air carrier apron rehabilitation, Fire station expansion.

Decision Date: June 28, 1994.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Jackson Airports District Office, (601) 965–4628.

Public Agency: City of Pocatello, Pocatello, Idaho.

Application Number: 94–01–C–00–PIH.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $400,000.

Earliest Permissible Charge Effective Date: September 1, 1994.

Estimated Charge Expiration Date: March 1, 2002.

Class of Air Carriers not Required to Collect PFC's Air taxi/commercial operators using aircraft with less than 20 seats and a maximum payload capacity of less than 6,000 pounds.

Determination: Approved. Based on the information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Pocatello Regional Airport.

Brief Description of Projects Approved for Collection and Use: Equipment purchase, Terminal building expansion and remodel.

Brief Description of Projects Approved for Collection Only: Pavement rehabilitation.

Decision Date: June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Simmons, Seattle Airports District Office, (206) 227–2656.

Issued in Washington, D.C. on July 8, 1994.

Lowell H. Johnson,

Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama:					
92–01–I–00–HSV., Huntsville Intl—Carl T Jones Field, Huntsville	03/06/1992	$3	$36,472,657	06/01/1992	11/01/2008
93–02–V–00–HSV., Huntsville Intl—Carl T Jones Field, Huntsville	06/03/1993	3	0	09/01/1993	11/01/2008
92–01–C–00–MSL Muscle Shoals Regional, Muscle Shoals.,	02/18/1992	3	100,000	06/01/1992	02/01/1995
94–02–C–00–MSL., Muscle Shoals Regional, Muscle Shoals	05/17/1994	3	60,000	08/01/1994	10/01/1996
Arizona:					
92–01–C–00–FLG., Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
93–01–C–00–YUM., Yuma MCAS/Yuma International, Yuma	09/09/1993	3	1,678,064	12/01/1993	06/01/2003
Arkansas:					
94–01–I–00–FSM., Fort Smith Municipal, Fort Smith	05/18/1994	3	4,040,076	08/01/1994	04/01/2007
California:					
92–01–C–00–ACV., Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
93–01–C–00–CIC., Chico Municipal, Chico	09/29/1993	3	137,043	01/01/1994	06/01/1997
92–01–C–00–IYK., Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995

CUMULATIVE LIST OF

State, application No., airport, city

93–01–C–00–LGB., Long Beach-Daughert
Beach
93–01–C–00–LAX., Los Angeles International,
94–01–C–00–MOD., Modesto City-County
desto
93–01–C–00–MRY., Monterey Peninsula, Mon
92–01–C–00–OAK., Metropolitan Oakland Int
land
94–02–C–00–OAK., Metropolitan Oakland Int
land
93–01–I–00–ONT., Ontario International, Onta
92–01–C–00–PSP., Palm Springs Regional, P
92–01–C–00–SMF., Sacramento Metropolitan,
92–01–C–00–SJC., San Jose International, Sa
93–02–V–00–SJC., San Jose International, Sa
93–03–C–00–SJC., San Jose International, Sa
92–01–C–00–SBP., San Luis Obispo Cou
Field, San Luis Obispo
92–01–C–00–STS., Sonoma County, Santa R
91–01–I–00–TVL., Lake Tahoe, South Lake T
Colorado:
92–01–C–00–COS., Colorado Springs Muni
Springs
92–01–C–00–DVX., Denver International (New
93–01–C–00–EGE., Eagle County Regional, E
93–01–C–00–FNL., Fort Collins-Loveland, For
92–01–C–00–GJT., Walker Field, Grand Junct
93–01–C–00–GUC., Gunnison County, Gunnis
93–01–C–00–HDN., Yampa Valley, Hayden
93–01–C–00–MTJ., Montrose County, Montros
93–01–C–00–PUB., Pueblo Memorial, Pueblo
92–01–C–00–SBS., Steamboat Springs/Bob
Steamboat Springs
92–01–C–00–TEX., Telluride Regional, Telluri
Connecticut:
93–01–C–00–HVN., Tweed-New Haven, New
93–02–I–00–BDL., Bradley International, Wind
94–03–U–00–BDL., Bradley International, Win
Florida:
93–01–C–00–DAB., Daytona Beach Regi
Beach
92–01–C–00–RSW., Southwest Florida Inte
Myers
93–02–U–00–RSW., Southwest Florida Inte
Myers
93–01–C–00–JAX., Jacksonville International,
92–01–C–00–EYW., Key West International, K
92–01–C–00–MTH., Marathon, Marathon
92–01–C–00–MCO., Orlando International, Orl
93–02–C–00–MCO., Orlando International, Orl
93–01–I–00–PFN., Panama City-Bay Count
Panama City
92–01–C–00–PNS., Pensacola Regional, Pens
92–01–I–00–SRG., Sarasota-Brandenton Inte
sota
92–01–I–00–TLH., Tallahassee Regional, Talla
93–02–U–00–TLH., Tallahassee Regional, Tal
93–01–C–00–TPA., Tampa International, Tamp
93–01–C–00–PBI., Palm Beach Internationa
Beach
Georgia:
93–01–C–00–CSG., Columbus Metropolitan, C
91–01–C–00–SAV., Savannah International, Sa
92–01–I–00–VLD., Valdosta Regional, Valdosta
Idaho:
94–01–C–00–BOI., Boise Air Terminal-Gowen
93–01–01–00–SUN., Friedman Memorial, Haile
92–01–C–00–IDA., Idaho Falls Municipal, Idah
94–01–I–00–LWS., Lewiston-Nez Perce Count

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93–01–C–00–LGB., Long Beach-Daugherty Field, Long Beach	12/30/1993	3	3,533,766	03/01/1994	03/01/1998
93–01–C–00–LAX., Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
94–01–C–00–MOD., Modesto City-County Arpi-Sham, Modesto	05/23/1994	3	300,370	08/01/1994	08/01/2001
93–01–C–00–MRY., Monterey Peninsula, Monterey	10/08/1993	3	3,960,855	01/01/1994	06/01/2000
92–01–C–00–OAK., Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
94–02–C–00–OAK., Metropolitan Oakland International, Oakland	02/23/1994	3	8,999,000	05/01/1994	04/01/1995
93–01–I–00–ONT., Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92–01–C–00–PSP., Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92–01–C–00–SMF., Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
92–01–C–00–SJC., San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
93–02–V–00–SJC., San Jose International, San Jose	02/22/1993	3	0	05/01/1993	08/01/1995
93–03–C–00–SJC., San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92–01–C–00–SBP., San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92–01–C–00–STS., Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
91–01–I–00–TVL., Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
92–01–C–00–COS., Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92–01–C–00–DVX., Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93–01–C–00–EGE., Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93–01–C–00–FNL., Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92–01–C–00–GJT., Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
93–01–C–00–GUC., Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93–01–C–00–HDN., Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93–01–C–00–MTJ., Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93–01–C–00–PUB., Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92–01–C–00–SBS., Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92–01–C–00–TEX., Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Connecticut:					
93–01–C–00–HVN., Tweed-New Haven, New Haven	09/10/1993	3	2,490,450	12/01/1993	06/01/1999
93–02–I–00–BDL., Bradley International, Windsor Locks	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
94–03–U–00–BDL., Bradley International, Windsor Locks	02/22/1994	3	0	05/01/1994	09/01/1995
Florida:					
93–01–C–00–DAB., Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
92–01–C–00–RSW., Southwest Florida International, Fort Myers	08/31/1992	3	253,858,512	11/01/1992	06/01/2014
93–02–U–00–RSW., Southwest Florida International, Fort Myers	05/10/1993	3	0	11/01/1992	06/01/2014
93–01–C–00–JAX., Jacksonville International, Jacksonville	01/28/1994	3	12,258,255	05/01/1994	07/01/1997
92–01–C–00–EYW., Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
92–01–C–00–MTH., Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
92–01–C–00–MCO., Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
93–02–C–00–MCO., Orlando International, Orlando	09/24/1993	3	12,957,000	12/01/1993	02/01/1998
93–01–I–00–PFN., Panama City-Bay County International, Panama City	12/01/1993	3	8,238,499	02/01/1994	10/01/2007
92–01–C–00–PNS., Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
92–01–I–00–SRG., Sarasota-Brandenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
92–01–I–00–TLH., Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
93–02–U–00–TLH., Tallahassee Regional, Tallahassee	12/30/1993	3	0	02/01/1993	06/01/1998
93–01–C–00–TPA., Tampa International, Tampa	07/15/1993	3	87,102,000	10/01/1993	09/01/1999
93–01–C–00–PBI., Palm Beach International, West Palm Beach	01/26/1994	3	38,801,096	04/01/1994	04/01/1999
Georgia:					
93–01–C–00–CSG., Columbus Metropolitan, Columbus	10/01/1993	3	534,633	12/01/1993	06/01/1995
91–01–C–00–SAV., Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92–01–I–00–VLD., Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
94–01–C–00–BOI., Boise Air Terminal-Gowen Field, Boise	05/13/1994	3	36,857,774	08/01/1994	10/01/1998
93–01–01–00–SUN., Friedman Memorial, Hailey	06/29/1993	3	188,000	09/01/1993	09/01/1997
92–01–C–00–IDA., Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
94–01–I–00–LWS., Lewiston-Nez Perce County, Lewiston	02/03/1994	3	229,610	05/01/1994	03/01/1997

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92-01-C-00-TWF., Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
93-01-C-00-MDW., Chicago Midway, Chicago	06/28/1993	3	79,920,958	09/01/1993	08/01/2001
93-01-C-00-ORD., Chicago O'Hare International, Chicago	06/28/1993	0	0	09/01/1993	/ /
92-01-I-00-RFD., Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
93-02-U-00-RFD., Greater Rockford, Rockford	09/02/1993	3	0	12/01/1993	10/01/1996
92-01-I-00-SPI., Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93-02-U-00-SPI., Capital, Springfield	04/28/1993	3	0	06/01/1992	02/01/1994
93-03-I-00-SPI., Capital, Springfield	11/24/1993	3	4,585,443	06/01/1992	02/01/2006
Indiana:					
92-01-C-00-FWA., Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
93-01-C-00-IND., Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Iowa:					
93-01-C-00-DSM., Des Moines Municipal, Des Moines	11/29/1993	3	6,446,507	03/01/1994	04/01/1997
92-01-I-00-DBQ., Dubuque Regional, Dubuque	10/06/1992	3	148,500	01/01/1993	05/01/1994
94-02-C-00-DBQ., Dubuque Regional, Dubuque	02/09/1994	3	203,420	05/01/1994	02/01/1996
93-01-C-00-SUX., Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
94-01-C-00-ALO., Waterloo Municipal, Waterloo	03/29/1994	3	637,000	06/01/1994	06/01/1998
Kentucky:					
94-01-C-00-CVG., Cincinnati/Northern Kentucky Interna, Covington	03/30/1994	3	20,737,000	06/01/1994	09/01/1995
93-01-C-00-LEX., Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
93-01-C-00-PAH., Barkley Regional, Paducah	12/02/1993	3	386,550	03/01/1994	12/01/1998
Louisiana:					
92-01-I-00-BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93-02-U-00-BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	0	12/01/1992	12/01/1998
93-01-C-00-MSY., New Orleans International/Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
93-02-U-00-MSY., New Orleans International/Moisant Field, New Orleans	11/16/1993	3	0	06/01/1993	04/01/2000
93-01-I-00-SHV., Shreveport Regional, Shreveport	11/19/1993	3	33,050,278	02/01/1994	02/01/2019
Maine:					
93-01-C-00-PWM., Portland International Jetport, Portland	10/29/1993	3	12,233,751	02/01/1994	05/01/2001
Maryland:					
92-01-I-00-BWI., Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
94-01-I-00-CBE., Greater Cumberland Regional, Cumberland	03/30/1994	3	150,000	07/01/1994	07/01/1999
Massachusetts:					
93-01-C-00-BOS., General Edward L. Logan International, Boston	08/24/1993	3	604,794,000	11/01/1993	10/01/2011
92-01-C-00-ORH., Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
92-01-C-00-DTW., Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92-01-I-00-ESC., Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93-01-C-00-FNT., Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92-01-I-00-GRR., Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92-01-C-00-CMX., Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
93-01-C-00-IWD., Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
93-01-C-00-LAN., Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92-01-I-00-MQT., Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
94-02-U-00-MQT., Marquette County, Marquette	04/06/1994	3	0	07/01/1994	04/01/1996
94-01-C-00-MKG., Muskegon County, Muskegon	02/24/1994	3	5,013,088	05/01/1994	05/01/2019
92-01-C-00-PLN., Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875,000	03/01/1993	06/01/1995
Minnesota:					
93-01-C-00-BRD., Brainerd-Crow Wing County Regioal, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
92-01-C-00-MSP., Minneapolis-St. Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
94-02-C-00-MSP., Minneapolis-St. Paul International, Minneapolis	05/13/1994	3	113,064,000	08/01/1994	06/01/1998
Mississippi:					
91-01-C-00-GTR., Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
92-01-C-00-GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	390,595	07/01/1992	12/01/1993
93-02-C-00-GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	11/02/1993	3	607,817	07/01/1992	12/01/1995

CUMULATIVE LIST O

State, application No., airport, city
92-01-C-00-PIB., Hattiesburg-Laurel Regio Laurel
93-01-C-00-JAN., Jackson International, Ja
92-01-C-00-MEI., Key Field Meridian
93-02-C-00-MEI., Key Field Meridian
Missouri:
93-01-C-00-SGF., Springfield Regional, Sp
92-01-C-00-STL., Lambert-St Louis Internat
Montana:
93-01-C-00-BIL., Billings-Logan Internationa
93-01-C-00-BZN., Gallatin Field, Bozem
94-01-C-00-BTM., Bert Mooney, Butte
92-01-C-00-GTF., Great Falls International,
93-02-U-00-GTF., Great Falls International
92-01-C-00-HLN., Helena Regional, Helena
93-01-C-00-FCA., Glacier Park Internationa
92-01-C-00-MSO., Missoula International, M
Nevada:
91-01-C-00-LAS., McCarran International, L
93-02-C-00-LAS., McCarran International, L
94-03-U-00-LAS., McCarran International, L
93-01-C-00-RNO, Reno Cannon Internation
New Hampshire:
92-01-C-00-MHT., Manchester, Manchester
New Jersey:
92-01-C-00-EWR., Newark International, Ne
New York:
93-01-I-00-ALB., Albany County, Albany
93-01-C-00-BGM., Binghamton Regional/Ed Binghamton
92-01-I-00-BUF., Greater Buffalo Internation
92-01-I-00-ITH., Tompkins County, Ithaca
92-01-C-00-JHW., Chautauqua County/Jam town
92-01-C-00-JFK., John F. Kennedy Internati
92-01-C-00-LGA., LaGuardia, New York
93-01-C-00-PLB., Clinton County, Plattsburg
94-01-C-00-SLK., Adirondack, Saranac Lake
92-01-C-00-HPN., Westchester County, Whi
North Carolina:
93-01-C-00-ILM., New Hanover Internationa
North Dakota:
92-01-C-00-GFK., Grand Forks International
93-01-C-00-MOT., Minot International, Minot
Ohio:
92-01-C-00-CAK., Akron-Canton Regional, A
92-01-C-00-CLE., Cleveland-Hopkins Inter land
94-02-U-00-CLE., Cleveland-Hopkins Inter land
92-01-I-00-CMH., Port Columbus Internation
93-02-I-00-CMH., Port Columbus Internation
93-03-U-00-CMH., Port Columbus Internatio
93-01-C-00-TOL., Toledo Express, Toledo
94-01-C-00-YNG., Youngstown-Warren Reg town
Oklahoma:
92-01-C-00-LAW., Lawton Municipal, Lawton
92-01-I-00-TUL., Tulsa International, Tulsa
93-02-U-00-TUL., Tulsa International, Tulsa
Oregon:
93-01-C-00-EUG., Mahlon Sweet Field, Euge
93-01-C-00-MFR., Medford-Jackson County,
93-01-C-00-OTH., North Bend Municipal, No
92-01-C-00-PDX., Portland International, Por
93-01-C-00-RDM., Roberts Field, Redmond
Pennsylvania:
92-01-I-00-ABE., Allentown-Bethlehem-Easto
92-01-C-00-ADO., Altoona-Blair County, Alto
92-01-C-00-ERI., Erie International, Erie

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92–01–C–00–PIB., Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
93–01–C–00–JAN., Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92–01–C–00–MEI., Key Field Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
93–02–C–00–MEI., Key Field Meridian	10/19/1993	3	155,223	11/01/1992	08/01/1996
Missouri:					
93–01–C–00–SGF., Springfield Regional, Springfield	08/30/1993	3	1,937,090	11/01/1993	10/01/1996
92–01–C–00–STL., Lambert-St Louis International, St Louis	09/30/1992	3	84,607,850	012/01/1992	03/01/1996
Montana:					
93–01–C–00–BIL., Billings-Logan International, Billings	01/26/1994	3	5,672,136	04/01/1994	05/31/2002
93–01–C–00–BZN., Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
94–01–C–00–BTM., Bert Mooney, Butte	04/17/1994	3	410,202	07/01/1994	05/01/2000
92–01–C–00–GTF., Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93–02–U–00–GTF., Great Falls International, Great Falls	05/25/1993	3	0	11/01/1992	07/01/2002
92–01–C–00–HLN., Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
93–01–C–00–FCA., Glacier Park International, Kalispell	09/29/1993	3	1,211,000	12/01/1993	11/01/1999
92–01–C–00–MSO., Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
91–01–C–00–LAS., McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93–02–C–00–LAS., McCarran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
94–03–U–00–LAS., McCarran International, Las Vegas	04/20/1994	0	0	07/01/1994	.....
93–01–C–00–RNO, Reno Cannon International, Reno	10/29/1993	3	34,263,607	01/01/1994	05/01/1999
New Hampshire:					
92–01–C–00–MHT., Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
92–01–C–00–EWR., Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					
93–01–I–00–ALB., Albany County, Albany	12/03/1993	3	40,726,364	03/01/1994	04/01/2005
93–01–C–00–BGM., Binghamton Regional/Edwin A Link Fie, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92–01–I–00–BUF., Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
92–01–I–00–ITH., Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
92–01–C–00–JHW., Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822,	06/01/1993	06/01/1996
92–01–C–00–JFK., John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
92–01–C–00–LGA., LaGuardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
93–01–C–00–PLB., Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
94–01–C–00–SLK., Adirondack, Saranac Lake	05/18/1994	3	121,952	08/01/1994	01/01/2003
92–01–C–00–HPN., Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Carolina:					
93–01–C–00–ILM., New Hanover International, Wilmington	11/02/1993	3	1,505,000	02/01/1994	08/01/1997
North Dakota:					
92–01–C–00–GFK., Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
93–01–C–00–MOT., Minot International, Minot	12/15/1993	3	1,569,483	03/01/1994	03/01/1999
Ohio:					
92–01–C–00–CAK., Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92–01–C–00–CLE., Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
94–02–U–00–CLE., Cleveland-Hopkins International, Cleveland	02/02/1994	3	0	05/01/1994	11/01/1995
92–01–I–00–CMH., Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93–02–I–00–CMH., Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93–03–U–00–CMH., Port Columbus International, Columbus	10/27/1993	3	0	10/01/1992	09/01/1996
93–01–C–00–TOL., Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
94–01–C–00–YNG., Youngstown-Warren Regional, Youngstown	02/22/1994	3	351,180	05/01/1994	07/01/1996
Oklahoma:					
92–01–C–00–LAW., Lawton Municipal, Lawton	05/08/1992	3	482,135	08/01/1992	04/01/1996
92–01–I–00–TUL., Tulsa International, Tulsa	05/11/1992	3	9,717,000	08/01/1992	08/01/1995
93–02–U–00–TUL., Tulsa International, Tulsa	10/18/1993	3	0	02/01/1994	08/01/1995
Oregon:					
93–01–C–00–EUG., Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93–01–C–00–MFR., Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
93–01–C–00–OTH., North Bend Municipal, North Bend	11/24/1993	3	182,044	02/01/1994	01/01/1998
92–01–C–00–PDX., Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
93–01–C–00–RDM., Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
Pennsylvania:					
92–01–I–00–ABE., Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92–01–C–00–ADO., Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
92–01–C–00–ERI., Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93-01-C-00-JST., Johnstown-Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998
92-01-I-00-PHL., Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93-02-U-00-PHL., Philadelphia International, Philadelphia	05/14/1993	3	0	08/01/1993	07/01/1995
92-01-C-00-UNV., University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
93-01-C-00-AVP., Wilkes-Barre/Scranton International, Wilkes-Barre/Scranton	09/24/1993	3	2,369,566	12/01/1993	06/01/1997
Rhode Island:					
93-01-C-00-PVD., Theodore F. Green State, Providence	11/30/1993	3	103,885,286	02/01/1994	08/01/2013
South Carolina:					
93-01-C-00-CAE., Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
93-01-C-00-49J., Hilton Head, Hilton Head Island	11/19/1993	3	1,542,300	02/01/1994	03/01/1999
Tennessee:					
93-01-C-00-CHA., Lovell Field, Chattanooga	04/26/1994	3	7,177,253	07/01/1994	10/01/2002
93-01-C-00-TYS., McGhee Tyson, Knoxville	10/06/1993	3	5,681,615	01/01/1994	01/01/1997
92-01-I-00-MEM., Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
93-02-C-00-MEM., Memphis International, Memphis	01/14/1994	3	24,026,000	04/01/1994	10/01/1999
92-01-C-00-BNA., Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
93-02-C-00-AUS., Robert Mueller Municipal, Austin	06/04/1993	3	6,181,800	11/01/1993	01/01/1995
93-01-C-00-CRP., Corpus Christi International, Corpus Christi	12/29/1993	3	5,540,745	03/01/1994	01/01/1998
94-01-C-00-DFW., Dallas/Fort Worth International, Dallas/Fort Worth	02/17/1994	3	15,000,000	07/01/1994	02/01/1996
92-01-C-00-ILE., Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
93-01-I-00-LRD., Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93-01-C-00-LBB., Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
94-02-U-00-LBB., Lubbock International, Lubbock	02/15/1994	3	0	05/01/1994	02/01/2000
92-01-I-00-MAF., Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
94-02-U-00-MAF., Midland International, Midland	04/14/1994	3	0	07/01/1994	01/01/2013
93-01-C-00-SJT., Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
93-01-C-00-TYR., Tyler Pounds Field, Tyler	12/20/1993	3	819,733	03/01/1994	07/01/1998
Virginia:					
92-01-I-00-CHO., Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
92-02-U-00-CHO., Charlottesville-Albemarle, Charlottesville	12/21/1992	2	0	09/01/1992	11/01/1993
93-03-U-00-CHO., Charlottesville-Albemarle, Charlottesville	10/20/1993	2	0	01/01/1994	11/01/1993
94-01-C-00-RIC., Richmond International (Byrd Field), Richmond	02/04/1994	3	30,976,072	05/01/1994	08/01/2005
93-01-C-00-IAD., Washington Dulles International, Washington, DC	10/18/1993	3	199,752,390	01/01/1994	11/01/2003
93-01-C-00-DCA., Washington National, Washington, DC	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
94-02-U-00-DCA., Washington National, Washington, DC	04/06/1994	3	0	07/01/1994	11/01/2000
Washington:					
93-01-C-00-BLI., Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	01/01/1995
93-01-C-00-PSC., Tri-Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93-01-C-00-CLM., William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
94-01-C-00-PUW., Pullman-Moscow Regional, Pullman	03/22/1994	1	169,288	06/01/1994	01/01/1998
92-01-C-00-SEA., Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93-02-C-00-SEA., Seattle-Tacoma International, Seattle	10/25/1993	3	47,500,500	01/01/1994	01/01/1996
93-01-C-00-GEG., Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93-01-I-00-ALW., Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93-01-C-00-EAT., Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
92-01-C-00-YKM., Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
93-01-C-00-CRW., Yeager, Charleston	05/28/1993	3	3,254,126	08/01/1993	04/01/1998
93-01-C-00-CKB., Benedum, Clarksburg	12/29/1993	3	105,256	04/01/1994	04/01/1996
92-01-C-00-MGW., Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
94-01-C-00-ATW., Outagamie County, Appleton	04/25/1994	3	3,233,645	07/01/1994	09/01/2000
92-01-C-00-GRB., Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
94-01-C-00-LSE., La Crosse Municipal, La Crosse	04/06/1994	3	795,299	08/01/1994	08/01/1997
93-01-C-00-MSN., Dane County Regional-Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93-01-I-00-CWA., Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012
93-01-C-00-RHI., Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming:					
93-01-C-00-CPR., Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93-01-C-00-CYS., Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93-01-I-00-GCC., Gillette-Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999

*The estimated charge expiration date is subject

[FR Doc. 94-17803 Filed 7-20-94; 8:45 am]
BILLING CODE 4910-13-M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Pellston Regional Airport of Emmet County, Pellston, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pellston Regional Airport of Emmet County under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Raymond L. Thompson, Airport Manager, of the County of Emmet, Michigan, at the following address: Pellston Regional Airport of Emmet County, U.S. 31 North, Pellston, Michigan 49769.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Emmet under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dean C. Nitz, Manager, Detroit Airports District Office, Willow Run

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93-01-C-00-JAC., Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					
92-01-C-00-NGM., Agana NAS, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
93-02-C-00-NGM., Agana NAS, Agana	02/25/1994	3	258,408,107	05/01/1994	06/01/2021
Puerto Rico:					
92-01-C-00-BQN., Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92-01-C-00-PSE., Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
93-01-C-00-SJU., Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
93-02-U-00-SJU., Luis Munoz Marin International, San Juan	12/14/1993	3	0	03/01/1994	02/01/1997
Virgin Islands:					
92-01-I-00-STT., Cyril E King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92-01-I-00-STX., Alexander Hamilton, Christiansted St Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 94-17803 Filed 7-20-94; 8:45 am]
BILLING CODE 4910-13-M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Pellston Regional Airport of Emmet County, Pellston, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pellston Regional Airport of Emmet County under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Raymond L. Thompson, Airport Manager, of the County of Emmet, Michigan, at the following address: Pellston Regional Airport of Emmet County, U.S. 31 North, Pellston, Michigan 49769.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Emmet under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dean C. Nitz, Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487-7300. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pellston Regional Airport of Emmet County under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 11, 1994, the FAA determined that the application to use the revenue from a PFC submitted by the County of Emmet was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 21, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: March 1, 1993.

Estimated charge expiration date: June 1, 1998.

Total approved net PFC revenue: $440,875.00.

Brief description of proposed project(s): Rehabilitate and groove Runway 14/32; Construct blast pads (Runway 1/32). Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxis and Charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Emmet, Michigan.

Issued in Des Plaines, Illinois, on July 14, 1994.

Benito DeLeon,

Manager, Planning/Programming Branch, Great Lakes Region.

[FR Doc. 94-17804 Filed 7-20-94; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

United States Customs Service

Public Meetings in Houston and New Orleans on Customs Automated Export System

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meetings.

SUMMARY: This notice announces the location and dates of public meetings to be held in Houston, TX, and New Orleans, LA, on the development of the Automated Export System (AES). Dates and locations of further meetings on this subject will be scheduled and announced in a subsequent notice. These meetings are being held to (1) give Customs managers an opportunity to provide the public with information related to the development of AES and (2) give attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. A notice published by Customs in the **Federal Register** on June 13, 1994 (59 FR 30383) announced that the first of these meetings would be held in Washington, D.C. on July 8, 1994. Customs is now announcing that AES meetings will be held in Houston, Texas, on July 27, 1994 and in New Orleans, Louisiana, on July 28, 1994. Those planning to attend a meeting are requested to so notify Customs in the city where the meeting will be held in advance.

DATES: Houston, TX, July 27, 1994, commencing at 9:00 a.m.; New Orleans, LA, July 28, 1994, commencing at 1:30 p.m.

ADDRESSES: Houston, TX, Marriott Hotel, 18700 John F. Kennedy Boulevard, Houston, TX 77032; Conference Room: Sam Houston Room.

New Orleans, LA, July 28, 1994, commencing at 1:30 p.m.; Westin Canal Place, 100 Rue Iberville, New Orleans, LA 70130; Conference Room: Terrace Room.

FOR FURTHER INFORMATION CONTACT: Houston Meeting: Ms. Jean Bienz, (713) 233–3600; Pre-registration Fax: (713) 233–3620.

New Orleans Meeting: Ms. Veronica Saulney, (504) 589–6430; Pre-registration Fax: (504) 589–4060.

General AES questions: Lorna Finley, AES Development Team, U.S. Customs Service, 1301 Constitution Avenue, N.W., Room 7331, Washington, DC., 20229, (202) 927–0280.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** on June 13, 1994, (59 FR 30383) Customs announced its intention of developing an Automated Export System (AES) and informed the public that a series of meetings would be held around the country regarding the AES. That notice provided information on the first such meeting which was scheduled in Washington, DC. This notice is being issued to inform the public of the date and time of meetings which will be held in Houston, TX, and New Orleans, LA.

Since AES is in the very early design stage, the AES Development Team intends to hold a series of public meetings for the purpose of (1) giving Customs managers an opportunity to provide the public with information related to the development of AES and (2) giving attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. Each meeting will open with a short presentation on AES, past, present and future. After this presentation, the floor will be open to all attendees for general informal discussion of the AES program.

In this document, Customs is announcing the following public meetings on AES:

1. Houston, Texas. July 27, 1994, commencing at 9:00 a.m., Marriott Hotel, 18700 John F. Kennedy Boulevard. Houston, Texas 77032.

Conference Room: Sam Houston Room.

Point of Contact: Ms. Jean Bienz (713) 233–3600. Pre-registration Fax Number (713) 233–3620.

2. New Orleans, Louisiana. July 28, 1994, commencing at 1:30 p.m., Westin Canal Place, 100 Rue Iberville, New Orleans, Louisiana 70130.

Point of Contact: Ms. Veronica Saulney (504) 589–6430 Pre-registration Fax Number (504) 589–4060.

In order to ensure that overcrowding does not result, persons planning to attend a meeting are requested to preregister by contacting the individual identified as the contact person for the city where they plan on attending.

Additional public meetings on AES are planned for the following locations: Seattle, Washington; Los Angeles, California; and Portland, Oregon. Appropriate notice will be published in the **Federal Register** when the dates, times and specific locations for these meetings have been established.

Dated: July 18, 1994.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 94–17821 Filed 7–20–94; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting on July 22, 1994, in Miami, Florida. The intended agenda is listed below.

Agenda

Friday, July 22, 1994

Part One—Closed to the Public

11:00 a.m.

1. Technical Operations Update (Mr. Pallone)
2. TV Martí Policy Update (Mr. Lobo)

Part Two—Open to the Public

1:00 p.m.

1. Approval of Minutes
2. Update on Radio Martí and TV Martí (Dr. Bonachea)
3. Programming (Mr. Lobo)

Items one and two which will be discussed from 11:00 a.m. to 1:00 p.m., will be closed to the public. Discussion of items one and two will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed Agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (202) 401–2178.

Dated: July 15, 1994.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 94–17806 Filed 7–20–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetin

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 F.R. 35409.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Tuesday, July 26, 1994.

CHANGES IN THE AGENDA: The Commodity Futures Trading Commission has added to the agenda the application on the Chicago Mercantile Exchange for designation as a contract market in the Nikkei Stock Index futures contract and options on that futures contract scheduled for 10 a.m. Tuesday, July 26, 1994.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–17870 Filed 7–19–94; 11:56 am]

BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:06 a.m. on Tuesday, July 19, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider an administrative enforcement proceeding and matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Acting Chairman Andrew C. Hove, Jr., seconded by Mr. John F. Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8),

Sunshine Act Meetings

Federal Register
Vol. 59, No. 139
Thursday, July 21, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 F.R. 35409.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Tuesday, July 26, 1994.

CHANGES IN THE AGENDA: The Commodity Futures Trading Commission has added to the agenda the application on the Chicago Mercantile Exchange for designation as a contract market in the Nikkei Stock Index futures contract and options on that futures contract scheduled for 10 a.m. Tuesday, July 26, 1994.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94-17870 Filed 7-19-94; 11:56 am]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:06 a.m. on Tuesday, July 19, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider an administrative enforcement proceeding and matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Acting Chairman Andrew C. Hove, Jr., seconded by Mr. John F. Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 19, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94-17932 Filed 7-19-94; 3:14 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94-17297.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, July 21, 1994, 10 a.m., Meeting Open to the Public.

THE FOLLOWING ITEMS WERE DELETED FROM THE AGENDA:

Advisory Opinion 1994-18: Edward J. Sack on behalf of the International Council of Shopping Centers (ICSC)
Advisory Opinion 1994-21: William M. Hermelin of American Pharmaceutical Association PAC
Personal Use of Campaign Funds; Request for Additional Comments

DATE AND TIME: Tuesday, July 26, 1994 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, July 28, 1994 at 10 a.m.

PLACE: 999 E Street, NW. Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Lenora B. Fulani for President. Repayment to the United States Treasury (LRA #451)
Advisory Opinion 1994-18: Edward J. Sack on behalf of the International Council of Shopping Centers (ICSC)
Advisory Opinion 1994-21: William M. Hermelin of American Pharmaceutical Association PAC
Advisory Opinion 1994-23: Bradley W. Hertz on behalf of the Northrup Grumman Corporation
MCFL Rulemaking: Summary of Comments and Draft Final Rules (continued from meeting of July 21, 1994)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219-4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94-17910 Filed 7-19-94; 2:30 pm]

BILLING CODE 6715-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Tuesday, July 26, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Request by Keys Federal Credit Union (Florida) for a Field of Membership Expansion.
3. Federal Credit Union Loan Interest Rate Ceiling.
4. Proposed Rule: Appendix C to Part 707, NCUA's Rules and Regulations, Truth In Savings.
5. Final Rule: Part 707, NCUA's Rules and Regulations, Truth In Savings Extension of Compliance Date.
6. NCUA's Delegations of Authority.
7. NCUA's Procurement Policy.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Tuesday, July 26, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Appeals under Section 701.14 and Part 747, NCUA's Rules and Regulations. Closed pursuant to exemptions (6) and (8).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–17909 Filed 7–19–94; 2:29 pm]

BILLING CODE 7535–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws [39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, August 2, 1994, in Washington, DC. The meeting is open to the public and will be held at the U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, August 1, 1994, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

August 2–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 11–12, 1994.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon).
3. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate, Vice President).
4. Quarterly Report on Financial Performance. (Michael J. Riley, Chief Financial Officer and Senior Vice President).
5. Follow-up Report on Equal Employment Opportunity. (Charly Amos, Acting Vice President, Diversity Development).
6. Tentative Agenda for the August 29–30, 1994, meeting in St. Louis, Missouri.

David F. Harris,

Secretary.

[FR Doc. 94–17934 Filed 7–19–94; 3:47 pm]

BILLING CODE 7710–12–M

federal register

Thursday
July 21, 1994

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 583

Motor Vehicle Content Labeling; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. 92–64; Notice 05]

RIN 2127–AE63

Motor Vehicle Content Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: The American Automobile Labeling Act provides that, beginning October 1, 1994, passenger cars and other light vehicles must be labeled with information about their domestic and foreign content. The new labels will enable consumers to take country of origin information into account in deciding which new vehicle to purchase.

This final rule establishes a new regulation to implement this statute. The regulation includes requirements which apply to motor vehicle manufacturers, suppliers of passenger motor vehicle equipment, and motor vehicle dealers. For model year 1995 and model year 1996 carlines which are first offered for sale to ultimate purchasers before June 1, 1995, manufacturers and suppliers may, instead of following the detailed calculation procedures set forth in this new regulation, use procedures that they expect, in good faith, to yield similar results.

DATES: This regulation is effective August 22, 1994. Petitions for reconsideration must be received not later than August 22, 1994.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, room 5313, 400 Seventh Street SW., Washington, DC 20590 (202–366–4797).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Statutory Requirements
B. Request for Comments and Public Meeting
C. Notice of Proposed Rulemaking
II. Summary of Comments
III. Overview of Final Rule
A. Manufacturers of Passenger Motor Vehicles
B. Suppliers of Passenger Motor Vehicle Equipment
C. Dealers of Passenger Motor Vehicles
D. First Year Requirements
IV. Agency Rationale and Response to Comments
A. Major Issues Concerning Information on the Label
1. Definitions (§ 583.4)
a. Carline
b. Final assembly/Final assembly point
c. Passenger motor vehicle equipment
2. Items to be Provided on the Label; Wording of the Label (§ 583.5)
a. Use of the term "parts content"
b. Explanatory note
c. Place of final assembly
3. Procedure for Determining U.S./Canadian Parts Content (§ 583.6)
a. Determining the value of items of equipment
b. Determining the U.S./Canadian percentage of the value of items of equipment
c. Determining the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment
4. Procedure for Determining Major Foreign Sources of Passenger Motor Vehicle Equipment (§ 583.7)
5. Procedure for Determining Country of Origin for Engines and Transmissions (§ 583.8)
a. Assembly costs
b. Parts that are produced at engine and transmission plants
c. Other issues concerning determining country of origin for engines and transmissions
B. Format/Location for Label
C. Attachment of Label
D. Requirements for Suppliers and Related Ones for Manufacturers
E. Requirements for Dealers
F. Authority to Exclude Vehicles with Low or High U.S./Canadian Content
G. Multi-Stage Manufacturers and Small Businesses
H. Recordkeeping Requirements; Supplier Certifications
I. Reporting Requirements
J. Leadtime/First Year Requirements
K. Other Issues
1. Supplier definitions
2. Definitions of dealer and ultimate purchaser
3. Joint ventures
4. Currency exchange rate calculations
5. Value added by foreign suppliers
6. International agreements; Mexico
7. Consumer guide
L. May 1994 Congressional Comment
V. Rulemaking Analyses and Notices

I. Background

A. Statutory Requirements

Congress enacted the American Automobile Labeling Act (Labeling Act) as part of the Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1993, Public Law 102–388. The Labeling Act amended Title II of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) by adding a new section 210.

NHTSA notes that on July 5, 1994, the President signed a bill (Pub. L. 103–272) which revised and codified "without substantive change" the Cost Savings Act and two other NHTSA statutes. The content labeling provisions, which formerly existed as section 210 of the Cost Savings Act, are now codified at 49 U.S.C. 32304, Passenger motor vehicle country of origin labeling. Since this final rule was essentially completed before the new bill was signed and since the bill did not contain substantive changes, NHTSA is not revising the preamble of this final rule to delete references to section 210 and cite the new statutory sections. However, the statutory citations in the regulatory text have been updated. If the agency determines that additional conforming changes are appropriate for the regulatory text, it will make them at a later time.

Section 210 requires passenger motor vehicles[1] manufactured on or after October 1, 1994 to be labeled with information about their domestic and foreign content. The purpose of the section is to enable consumers to take country of origin information into account in deciding which vehicle to purchase.

Section 210(b) requires each new passenger motor vehicle to be labeled with the following five items of information:

(1) The percentage U.S./Canadian equipment (parts) content;

(2) The names of any countries[2] other than the U.S. and Canada which individually contribute 15 percent or more of the equipment content, and the percentage content for each such country;

(3) The final assembly point by city, state (where appropriate), and country;

(4) The country of origin of the engine; and

(5) The country of origin of the transmission.[3]

[1] The term "passenger motor vehicle," defined in section 2(1) of the Cost Savings Act as a motor vehicle with motive power, designed for carrying 12 persons or less, is amended for purposes of section 210 to include any "multipurpose passenger vehicle" and "light duty truck" that is rated at 8,500 pounds gross vehicle weight rating or less. Thus, the new motor vehicle content labeling requirements apply to passenger cars, light trucks, multipurpose passenger vehicles, and certain small buses. Motorcycles are excluded.

[2] If there are more than two such countries, only the names of the two countries providing the greatest amount of content need be listed.

[3] As discussed elsewhere in this document, for purposes of items four and five of the label, engine and transmission country of origin determinations exclude assembly costs. Therefore, these items can also be referred to as the country of origin of an engine's or transmission's "parts." This preamble refers to these items in both manners, i.e., country of origin for the engine (or transmission) and country of origin for the engine (or transmission) parts.

Section 210(b) specifies that the first two items of information, the equipment content percentages for the U.S./Canada and foreign countries, are calculated on a "carline" basis rather than for each individual vehicle. The term "carline" refers to a name of a group of vehicles which has a degree of commonality in construction, e.g., body, chassis.

Manufacturers of passenger motor vehicles are required to establish the required information annually for each model year, and are responsible for the affixing of the required label to the vehicle. Dealers are responsible for maintaining the labels.

In order to calculate the information required for the label, the vehicle manufacturer must know certain information about the origin of each item of passenger motor vehicle equipment used to assemble its vehicles. For example, in order to calculate the information for the first item of the label, i.e., the percentage of the value of the motor vehicle equipment installed on passenger motor vehicles within a carline which originated in the U.S./Canada, the manufacturer must know the U.S./Canadian content of each item of motor vehicle equipment.

The statute specifies that suppliers of passenger motor vehicle equipment must provide information about the origin of the equipment they supply. For purposes of determining U.S./Canadian origin for the first item on the label, the statute provides different procedures depending on whether equipment is received from an allied supplier (a supplier wholly owned by the manufacturer) or an outside supplier.

For equipment received from outside suppliers, section 210(f)(5)(A) provides that the equipment is considered U.S./Canadian if it contains at least 70 percent value added in the U.S./Canada. Thus, any equipment that is at least 70 percent U.S./Canadian is valued at 100 percent U.S./Canadian, and any equipment under 70 percent is valued at zero percent. This statutory provision is sometimes referred to as the "roll-up, roll-down" provision. For equipment received from allied suppliers, section 210(f)(5)(B) provides that the actual amount of U.S./Canadian content is used.

The statute requires the Department of Transportation to promulgate regulations implementing the content labeling requirements. Section 210(c) requires the promulgation of regulations

Section 210(b) specifies that the first two items of information, the equipment content percentages for the U.S./Canada and foreign countries, are calculated on a "carline" basis rather than for each individual vehicle. The term "carline" refers to a name of a group of vehicles which has a degree of commonality in construction, e.g., body, chassis.

Manufacturers of passenger motor vehicles are required to establish the required information annually for each model year, and are responsible for the affixing of the required label to the vehicle. Dealers are responsible for maintaining the labels.

In order to calculate the information required for the label, the vehicle manufacturer must know certain information about the origin of each item of passenger motor vehicle equipment used to assemble its vehicles. For example, in order to calculate the information for the first item of the label, i.e., the percentage of the value of the motor vehicle equipment installed on passenger motor vehicles within a carline which originated in the U.S./Canada, the manufacturer must know the U.S./Canadian content of each item of motor vehicle equipment.

The statute specifies that suppliers of passenger motor vehicle equipment must provide information about the origin of the equipment they supply. For purposes of determining U.S./Canadian origin for the first item on the label, the statute provides different procedures depending on whether equipment is received from an allied supplier (a supplier wholly owned by the manufacturer) or an outside supplier.

For equipment received from outside suppliers, section 210(f)(5)(A) provides that the equipment is considered U.S./Canadian if it contains at least 70 percent value added in the U.S./Canada. Thus, any equipment that is at least 70 percent U.S./Canadian is valued at 100 percent U.S./Canadian, and any equipment under 70 percent is valued at zero percent. This statutory provision is sometimes referred to as the "roll-up, roll-down" provision. For equipment received from allied suppliers, section 210(f)(5)(B) provides that the actual amount of U.S./Canadian content is used.

The statute requires the Department of Transportation to promulgate regulations implementing the content labeling requirements. Section 210(c) requires the promulgation of regulations which specify the form and content of the required labels, and the manner and location in which the labels must be affixed. Section 210(d) requires promulgation of such regulations as may be necessary to carry out the labeling requirements, including regulations to establish a procedure to verify the required labeling information. That section also directs that such regulations provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers. Finally, section 210(d) also specifies that the regulations include provisions requiring suppliers to certify whether their equipment is of U.S., U.S./Canadian, or foreign origin.

Section 210 does not specify a specific date for completing the rulemaking. However, section 210(d) does direct that the regulations be promulgated in time to provide adequate compliance leadtime before content labeling becomes mandatory on October 1, 1994.

B. Request for Comments and Public Meeting

On November 18, 1992, NHTSA published in the **Federal Register** (57 FR 54351) a request for comments in order to obtain information which would be of assistance in developing a proposal to implement section 210. To add an additional dimension to the effort to obtain public input, a public meeting was held on December 17, 1992, during which the agency heard nine speakers. More than 20 written comments were subsequently received by the agency, including comments from vehicle manufacturers, and manufacturer and dealer groups.

C. Notice of Proposed Rulemaking

On November 19, 1993, NHTSA published in the **Federal Register** (57 FR 61042) a notice of proposed rulemaking (NPRM) for a new regulation to implement section 210. The NPRM reflected the agency's consideration of the matters raised in the oral and written comments received in response to the request for comments, as well as many other issues. In developing the proposed regulation, the agency necessarily followed the language of section 210 as closely as possible. NHTSA noted in the NPRM that, given the high level of detail set forth in the statute, the agency has little discretion with respect to many aspects of the calculation and labeling scheme. A summary of the proposed regulation follows.

Under the proposed regulation, vehicle manufacturers would be required to affix to all new passenger motor vehicles a label which provides the five items of content information specified by section 210. The agency proposed to require specific language for the label. The NPRM included a sample label, consistent with the proposed requirements, which read as follows:

PARTS CONTENT INFORMATION
For vehicles in this carline:
U.S./Canadian Parts Content: 50%
Major Sources of Foreign Parts Content:
Japan: 20%
Mexico: 15%
For this vehicle:
Final Assembly Point: Flint, Michigan, USA
Country of Origin:
Engine: U.S.
Transmission: Canada

Note: The PARTS CONTENT of a typical vehicle makes up about (a range was to be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

NHTSA proposed to specify the heading "PARTS CONTENT INFORMATION" to draw the attention of consumers to the content information, and indicate the subject of the information. The purpose of the proposed sub-headings "For vehicles in this carline" and "For this vehicle" was to advise consumers which items of information relate to the carline as a whole and which relate to the individual vehicle. The purpose of the proposed explanatory note at the bottom of the label was to inform consumers about the percentage of a typical vehicle's wholesale cost to the dealer that is attributable to parts content, thereby helping consumers avoid confusing the parts content information specified on the label with overall vehicle value (which would include other factors such as final assembly labor).

In order to ensure that vehicle manufacturers have the information necessary to calculate the information for the content labels, NHTSA proposed to require each supplier of passenger motor vehicle equipment to provide specified information about the content of the equipment it supplies. Under the proposal, the information was to be provided directly to the party receiving the equipment, i.e., either a vehicle manufacturer or an allied supplier, in the form of a certification. The agency proposed specific provisions concerning

---

engine's or transmission's "parts." This preamble refers to these items in both manners, i.e., country of origin for the engine (or transmission) and country of origin for the engine (or transmission) parts.

when the information was to be provided.

NHTSA also proposed specific procedures for manufacturers and suppliers to follow in calculating values for the label. One issue of particular note was which costs are to be regarded as costs incurred at the final assembly point and beyond, including the costs of assembly and labor. Section 210 provides that these costs are not to be included in the calculation of parts content. NHTSA noted that manufacturers may conduct some pre-assembly operations, e.g., production of equipment, at the same location as final assembly. The agency tentatively concluded that such operations should be treated in the same fashion as the operations of an allied supplier. The agency proposed to specify a particular phase in the assembly process, for both the body and chassis, that would mark the beginning of final assembly.

Another significant issue which NHTSA addressed in the NPRM was whether "carline" should encompass different countries of assembly. At present, there are a number of vehicle models that include some vehicles assembled in the U.S./Canada and other vehicles assembled in other countries. The agency tentatively concluded that country of final assembly should not be considered in making carline determinations, since section 210 specifies that carline determinations are to be made based on degree of commonality in construction. NHTSA recognized, however, that additional subdivision of carlines by country of assembly would result in labeling information that is more representative of the individually labeled vehicles. The agency requested comments on requiring additional labeling information for carlines assembled in more than one country.

NHTSA also addressed the issue of whether any limited exclusions should be provided from section 210's labeling requirements. The agency stated that it was considering whether manufacturers of vehicles with low U.S./Canadian content should be permitted to identify the amount of such content as "minimal" instead of being required to calculate a specific percentage. The agency also indicated that it was considering excluding multi-stage and low volume manufacturers from the requirement to provide the first two items of information on the label, i.e., the two items which must be calculated on a carline basis. NHTSA stated that, as part of considering whether any limited exclusions should be provided, the agency was in the process of evaluating its authority to provide such exclusions.

NHTSA also proposed to require manufacturers to report certain content information to the agency, and to require manufacturers and suppliers to maintain records of the information underlying the information provided on the content label. The agency proposed to require dealers to maintain the content label on each vehicle until the vehicle is sold to a consumer.

II. Summary of Comments

The agency received about 80 comments on the NPRM, including ones from vehicle manufacturers, suppliers, automotive trade associations, and private citizens. A brief, representative summary of the major comments follows. A more specific discussion of representative comments, and the agency's responses, are set forth later in this preamble.

The American Automobile Manufacturers Association (AAMA), representing General Motors (GM), Ford and Chrysler, expressed concern about the timing of the final regulation. That organization stated that the proposed regulation will require extensive data collection and calculation requirements, and that there are several areas of uncertainty that will not be resolved until a final rule is issued. AAMA stated that it has been working in conjunction with the Automotive Industry Action Group (AIAG) and a number of suppliers to establish processes to comply with the law, but has been unable to complete this activity because of uncertainties about the final rule. AAMA stated that manufacturers and suppliers will not be able to comply with all the data collection and calculation requirements by the October 1994 implementation date. It requested NHTSA to allow manufacturers and suppliers to use procedures that are expected to yield similar results for at least 12 months after the final rule is published.

In addition to expressing its concern about timing, AAMA urged the agency to make numerous changes in the proposed regulation. On the subject of the wording of the label, that organization objected to describing the first item of information as "U.S./Canadian Parts Content." AAMA argued that the statute specifies use of the term "U.S./Canadian Content," and that the inclusion of the word "parts" is contrary to the statute. That commenter also recommended against including an explanatory note concerning the percentage of a typical vehicle's wholesale cost to the dealer that is attributable to parts content. AAMA stated that such a note would be confusing to the consumer and could be misleading because of the broad range of ratios that exist for vehicles.

AAMA also recommended a number of changes with respect to the proposed procedures for calculating the information on the label. One of the recommendations concerned which operations should be considered part of final assembly. That organization stated that under NHTSA's proposal, the painted body and chassis would be considered a substrate to which passenger motor vehicle equipment is attached to produce a finished vehicle. AAMA stated that this approach is contrary to the generally accepted definition of the passenger motor vehicle equipment assembly process. That organization agreed, however, that the production of certain equipment at the final assembly point should not be considered part of final assembly but should instead be included in the valuation of the motor vehicle equipment and content calculations. AAMA recommended that the agency define "final assembly" to include all operations involved in the assembly of the vehicle performed at the final assembly point, including but not limited to assembly of body panels, painting, final chassis assembly, and trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using stamping, machining or molding processes.

AAMA also recommended numerous other changes related to such things as how the value of passenger motor vehicle equipment is determined, how the engine and transmission countries of origin are determined, the responsibilities of suppliers, how values in the currency of one country should be converted into values in the currency of another country, the time when the label must be attached to the vehicle, and what requirements are appropriate with respect to maintenance of records and reporting content information to the agency. On the subject of supplier requirements, AAMA stated that the proposal would require that suppliers report on all parts supplied to a manufacturer or allied supplier regardless of value of the item of equipment or the country of manufacture. That organization recommended that the reporting requirement be limited to providing content data on those items of equipment for which such data was requested by the manufacturer.

On the subject of how vehicle models that are assembled in both the U.S./Canada and other countries should be treated, AAMA stated that the statute contains a sufficient definition of "carline" and that additional information should not be provided on the label to indicate that a carline is produced in more than one country. That organization stated that separate content calculations, one set for each assembly country and the entire carline, would cause unnecessary burdens and confuse the consumer.

On the subject of possible exclusions, AAMA supported a limited exclusion for vehicles with low U.S./Canadian parts content, albeit at a lower content level from that discussed in the NPRM. AAMA also stated that since the agency "has implied" that it has the authority to set a minimal level for the U.S. and Canadian content which removes a recordkeeping burden on the low end of content, it urged that such relief also be provided for the high end of content. That organization recommended that, for carlines with more than 85 percent U.S./Canadian content, manufacturers be permitted to specify the content as "at least" 85 percent instead of stating a specific percentage.

GM, Ford and Chrysler also each submitted individual comments. To a large extent, these comments reiterated arguments made by AAMA. An additional argument made by GM concerned the calculation methodology for determining the percentage U.S./Canadian content for a carline. GM stated that the agency had proposed that the proper method to establish the U.S./Canadian content for a carline would be to reasonably project the installation rates for all equipment options and choice offered on that carline; multiply those rates by the U.S./Canadian content value for each option or choice, and divide the result by the total value for all equipment, domestic or foreign. That company stated that it has found for cost management and planning purposes that the use of a high volume configuration carline model results in better management control of the assembly process than the so-called average equipped carline model. GM stated that such a model has found wide acceptance in calculations made for corporate average fuel economy (CAFE) emission testing configurations and most recently for vehicle configurations under NAFTA. That company recommended that the agency permit manufacturers to use established carline cost management models for establishing the percentage U.S./Canadian content required to be

On the subject of how vehicle models that are assembled in both the U.S./Canada and other countries should be treated, AAMA stated that the statute contains a sufficient definition of "carline" and that additional information should not be provided on the label to indicate that a carline is produced in more than one country. That organization stated that separate content calculations, one set for each assembly country and the entire carline, would cause unnecessary burdens and confuse the consumer.

On the subject of possible exclusions, AAMA supported a limited exclusion for vehicles with low U.S./Canadian parts content, albeit at a lower content level from that discussed in the NPRM. AAMA also stated that since the agency "has implied" that it has the authority to set a minimal level for the U.S. and Canadian content which removes a recordkeeping burden on the low end of content, it urged that such relief also be provided for the high end of content. That organization recommended that, for carlines with more than 85 percent U.S./Canadian content, manufacturers be permitted to specify the content as "at least" 85 percent instead of stating a specific percentage.

GM, Ford and Chrysler also each submitted individual comments. To a large extent, these comments reiterated arguments made by AAMA. An additional argument made by GM concerned the calculation methodology for determining the percentage U.S./Canadian content for a carline. GM stated that the agency had proposed that the proper method to establish the U.S./Canadian content for a carline would be to reasonably project the installation rates for all equipment options and choice offered on that carline; multiply those rates by the U.S./Canadian content value for each option or choice, and divide the result by the total value for all equipment, domestic or foreign. That company stated that it has found for cost management and planning purposes that the use of a high volume configuration carline model results in better management control of the assembly process than the so-called average equipped carline model. GM stated that such a model has found wide acceptance in calculations made for corporate average fuel economy (CAFE) emission testing configurations and most recently for vehicle configurations under NAFTA. That company recommended that the agency permit manufacturers to use established carline cost management models for establishing the percentage U.S./Canadian content required to be included in the AALA domestic content label.

Foreign vehicle manufacturers also recommended numerous changes in the proposed requirements, but often from a very different perspective from that of the domestic vehicle manufacturers. For example, while the domestic manufacturers urged a change in the proposed definition of "final assembly" so that it is considered to begin earlier in the vehicle manufacturing process, the foreign manufacturers generally urged changes in the definition so that it is considered to begin later in the vehicle manufacturing process.

The Association of International Automobile Manufacturers (AIAM) and Toyota stated that the point of final assembly should be considered to be no sooner than the point at which the engine and vehicle body are fastened together. AIAM argued that the Labeling Act defines "final assembly" as the time when "all component parts necessary to the mechanical operation of such automobile are included," and stated that the proposed definition would defy the stated intent of the Act and defy all conventional wisdom with respect to the automotive manufacturing process. Nissan stated that an appropriate point to be identified as the beginning of final assembly is the moment in the production process just before the attachment of the engine and drive train to the chassis. Mitsubishi stated that the point where final assembly begins should be defined as the point at which the engine and body are fastened. According to that company, this would be more consistent with the agency's proposed definition of "final assembly point", where all components and parts necessary to the mechanical operation of such automobile are included.

BMW commented that NHTSA's proposal defined "final assembly" with regard to the body as the point at which the body leaves the paint shop. That company stated that this portion of the definition is very precise and that the costs associated with it will likely be similar between manufacturers regardless of painting process or vehicle design. BMW commented, however, with regard to definition of final assembly of the chassis, that it believes a manufacturer would be able to tailor the assembly process to take advantage of the definition and alter its carline's part content percentages. That company stated that this portion of the definition employs the point at which the engine and transmission are placed on the chassis frame or on the assembly cradle. According to BMW, because this point can be varied, a manufacturer would have the opportunity to install or not install equipment such as the brake system including ABS, wheels and tires, and interior components and trim. BMW commented that a manufacturer could choose to install the engine last, essentially including all labor and overhead in its parts content calculations. BMW recommended that the agency investigate assembly processes and include a more definitive point to stop including costs associated with the chassis assembly.

The foreign vehicle manufacturers also generally had very different views than the domestic manufacturers with respect to the treatment of vehicle models including some vehicles assembled in the U.S./Canada and other vehicles assembled in other countries. AIAM stated that failing to allow manufacturers to distinguish between countries of production within a particular carline directly contradicts the Act's stated purpose of providing consumers with the best and most understandable information possible. That organization stated that it believes that NHTSA has the authority to adopt a country of production split for determining the parts content percentages for carlines, in order to follow the stated intent of the Act. According to AIAM, without carline subdivision, the information presented to the consumer will be at best misleading, and at worst totally inaccurate.

The Japan Automobile Manufacturers Association (JAMA) urged that separate calculations for carlines manufactured in more than one country at least be permitted. That organization stated that the failure to specify such percentages separately would result in an overstated domestic content on imported vehicles and an understated one on domestically produced vehicles. According to JAMA, the U.S. consumer cannot possibly be served by such misleading information.

While numerous foreign vehicle manufacturers objected to the agency's proposal to exclude country of assembly as a factor to consider in making carline determinations, several indicated that, if NHTSA did not change that position, they supported the concept of providing additional information on the label concerning such vehicles. Honda, for example, stated that such additional information would improve the accuracy of the information provided to the consumer.

The foreign vehicle manufacturers differed among themselves on the question of whether an explanatory note should be provided concerning the percentage of a typical vehicle's wholesale cost to the dealer that is attributable to parts content. AIAM, for

example, stated that such additional information would only serve to confuse the consumer, and that a single percentage range to be used by all manufacturers cannot adequately illustrate the many variations involved in the manufacture and distribution of motor vehicles. JAMA, however, argued that it is vital to consumer understanding to clarify the fact that the label calculation does not include vehicle final assembly labor.

The foreign vehicle manufacturers strongly supported a limited exclusion for vehicles with low U.S./Canadian parts content. However, several of them argued that unless the agency also permits a limited exclusion from providing the information required for item two of the label, i.e., the percentage parts content originating from major sources of foreign content, there would be only a minimal benefit from an exclusion from specifying the percentage U.S./Canadian parts content. This is because the foreign manufacturers would have to collect detailed information from most of their suppliers to calculate the information for item two of the label. The foreign manufacturers suggested various alternative approaches, such as requiring them to specify the countries that constitute major sources of foreign content but not the percentages from such countries.

Like the domestic vehicle manufacturers, the foreign manufacturers recommended numerous other changes in the proposed regulation, relating to such things as how the value of passenger motor vehicle equipment is determined, how the engine and transmission countries of origin are determined, the responsibilities of suppliers, how currencies should be converted, the time when the label must be attached to the vehicle, and what requirements are appropriate with respect to maintenance of records and reporting content information to the agency.

NHTSA received comments from several suppliers and one supplier trade association, the Automotive Parts Manufacturers' Association (APMA). That association stated that if the agency does not adopt the AIAG model of content calculation, the regulation should specifically state how outside suppliers should calculate U.S./Canadian content. APMA stated that the proposed rule relies on the definitions of "value added" and "foreign content" in the statute, but that neither the statute nor the regulation give specific regulatory direction concerning how outside suppliers are to calculate "value added in the U.S./Canada."

The agency also received comments from two dealer associations, the National Automobile Dealers Association (NADA) and the American International Automobile Dealers Association (AIADA). These organizations submitted comments which focused on dealer responsibilities and other issues of concern to dealers.

NHTSA also received comments from final stage manufacturers and the National Truck Equipment Association (NTEA), a trade association representing distributors and manufacturers of multi-stage produced work-related trucks, truck bodies and equipment. These comments focused on issues of concern to final stage manufacturers.

III. Overview of Final Rule

Today's final rule establishes a new regulation, 49 CFR Part 583, Automobile Parts Content Labeling, to implement section 210 of the Cost Savings Act. The regulation establishes requirements for (1) Manufacturers of passenger motor vehicles; (2) suppliers of motor vehicle equipment used in the assembly of passenger motor vehicles; and (3) dealers of passenger motor vehicles. A summary of the requirements is set forth below.

A. Manufacturers of Passenger Motor Vehicles

Beginning on October 1, 1994, vehicle manufacturers are required to affix to all new passenger motor vehicles (this category includes passenger cars, certain small buses, and all trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less) a label which provides the following information:

(1) *U.S./Canadian Parts Content*—the overall percentage, by value, U.S./Canadian content of the motor vehicle equipment installed on the carline of which the vehicle is a part;

(2) *Major Sources of Foreign Parts Content*—the names of the two countries, if any, other than the U.S./Canada, which contributed the greatest amount (at least 15 percent), by value, of motor vehicle equipment for the carline, and the percentage, by value, of the equipment originating in each such country;

(3) *Final Assembly Point*—the city, state (where appropriate), and country in which the final assembly of the vehicle occurred;

(4) *Country of Origin for the Engine Parts;*

(5) *Country of Origin for the Transmission Parts.*

The label is also required to include a statement below this information reading as follows:

Note: Parts content does not include final assembly, distribution, or other non-parts costs.

Manufacturers are permitted, but not required, to provide at the end of the note the following additional statement for carlines assembled in the U.S. and/or Canada, and another country:

This carline is assembled in the U.S. and/or Canada, and in [insert name of each other country]. The U.S./Canadian parts content for the portion of the carline assembled in [insert name of country, treating the U.S. and Canada together, i.e., U.S./Canada] is [___]%

The information for items (1) and (2) of the label is calculated, prior to the beginning of the model year, for each carline. The information for items (3), (4) and (5) is determined for each individual vehicle. However, the country of origin for groups of engines and transmissions is determined once a model year.

Vehicle manufacturers are to calculate the information for the label by using information provided to them by suppliers. Under the final rule, manufacturers and allied suppliers are required to request their suppliers to provide the relevant content information specified in Part 583, and the suppliers are required to provide the specified information in response to such requests. The vehicle manufacturers are required to maintain records of the information used to determine the information provided on the labels.

B. Suppliers of Motor Vehicle Equipment

For any equipment that an outside supplier (a supplier not wholly owned by the vehicle manufacturer) supplies to a vehicle manufacturer or to a supplier wholly owned by the vehicle manufacturer (an allied supplier), the outside supplier is required to provide, at the request of that manufacturer or allied supplier, the following information:

(1) The price of the equipment to the manufacturer or allied supplier;

(2) Whether the equipment has, or does not have, at least 70 percent of its value added in the U.S. and Canada;

(3) For any equipment for which the U.S./Canadian content is less than 70 percent, the country of origin of the equipment (treating the U.S. and Canada together);

(4) For equipment that may be used in an engine or transmission, the country of origin of the equipment (separating the U.S. and Canada).

For any equipment that an allied supplier supplies to a vehicle manufacturer, the supplier is required to provide, at the request of the manufacturer, the following information:

(1) The price of the equipment to the manufacturer;

(2) The percentage U.S./Canadian content of the equipment;

(3) The country of origin of the equipment (treating the U.S. and Canada together);

(4) For equipment that may be used in an engine or transmission, the country of origin of the equipment (separating the U.S. and Canada).

A supplier of engines and transmissions is, in addition to the above requirements, required to provide, at the request of the vehicle manufacturer, the country of origin for each engine or transmission it supplies to the manufacturer, determined as follows: The country in which the greatest percentage, by value (using the total cost of *equipment* to the engine or transmission supplier, while excluding the cost of final assembly labor), was added to the engine or transmission.

Both outside and allied suppliers that directly supply equipment to vehicle manufacturers are required to provide the specified information directly to the vehicle manufacturers, in the form of a certification. Outside suppliers that directly supply to allied suppliers are required to provide the specified information and certification directly to the allied suppliers. Suppliers are also required to maintain records of the information used to compile the information provided to the manufacturers and outside suppliers.

The requirements apply only to suppliers which supply directly to the vehicle manufacturer or to an allied supplier. No requirements are imposed on suppliers earlier in the chain, *e.g.*, a company which supplies an item of equipment to an outside supplier which then supplies it to a vehicle manufacturer.

C. Dealers of Passenger Motor Vehicles

Dealers are required to maintain the label on each vehicle until the vehicle is sold to a consumer.

D. First Year Requirements

For model year 1995 vehicles and model year 1996 vehicles which are offered for sale to ultimate purchasers before June 1, 1995, manufacturers and suppliers may, instead of following the detailed calculation procedures set forth in this new regulation, use procedures that they expect, in good faith, to yield similar results.

provide, at the request of the manufacturer, the following information:

(1) The price of the equipment to the manufacturer;

(2) The percentage U.S./Canadian content of the equipment;

(3) The country of origin of the equipment (treating the U.S. and Canada together);

(4) For equipment that may be used in an engine or transmission, the country of origin of the equipment (separating the U.S. and Canada).

A supplier of engines and transmissions is, in addition to the above requirements, required to provide, at the request of the vehicle manufacturer, the country of origin for each engine or transmission it supplies to the manufacturer, determined as follows: The country in which the greatest percentage, by value (using the total cost of *equipment* to the engine or transmission supplier, while excluding the cost of final assembly labor), was added to the engine or transmission.

Both outside and allied suppliers that directly supply equipment to vehicle manufacturers are required to provide the specified information directly to the vehicle manufacturers, in the form of a certification. Outside suppliers that directly supply to allied suppliers are required to provide the specified information and certification directly to the allied suppliers. Suppliers are also required to maintain records of the information used to compile the information provided to the manufacturers and outside suppliers.

The requirements apply only to suppliers which supply directly to the vehicle manufacturer or to an allied supplier. No requirements are imposed on suppliers earlier in the chain, *e.g.*, a company which supplies an item of equipment to an outside supplier which then supplies it to a vehicle manufacturer.

C. Dealers of Passenger Motor Vehicles

Dealers are required to maintain the label on each vehicle until the vehicle is sold to a consumer.

D. First Year Requirements

For model year 1995 vehicles and model year 1996 vehicles which are offered for sale to ultimate purchasers before June 1, 1995, manufacturers and suppliers may, instead of following the detailed calculation procedures set forth in this new regulation, use procedures that they expect, in good faith, to yield similar results.

IV. Agency Rationale and Response to Comments

A. Major Issues Concerning Information on the Label

In this section of the preamble, NHTSA presents its analysis of the major issues and comments concerning the information on the label, including, but not limited to, ones relating to what information is provided on the label and the wording of the label, how manufacturers must calculate the specified information, and how suppliers are to make the necessary determinations concerning the origin of the equipment they supply.

For ease of comparison with the proposed regulation, the discussion of issues is generally organized according to the sections of the proposed regulation to which they relate. The agency notes that in some cases the cited sections are relevant not only to the major issues concerning the information on the label, but also to other issues. The other issues are discussed elsewhere in the preamble.

1. Definitions (Section 583.4)

The definitions section prescribes the meaning of terms and concepts which are used throughout the content labeling regulation. As discussed below, some of the terms and concepts have a significant effect on the information to be provided on the label, and some of the proposed definitions were controversial with many commenters.

a. Carline. Section 210(b) specifies that U.S./Canadian parts content and major sources of foreign parts content (items one and two on the label) are determined on a "carline" basis, instead of for each individual vehicle. Section 210(f) defines *carline* as meaning a name denoting a group of vehicles which has a degree of commonality in construction (e.g., body, chassis), and not considering any level of decor or opulence and not generally distinguished by such characteristics as roof line, number of doors, seats, or windows, except for light duty trucks. That section also provides that light duty trucks are considered to be different carlines than passenger cars.

NHTSA addressed a number of issues in the NPRM concerning whether the meaning of *carline* should be further clarified by regulation. One significant issue was whether *carline* should encompass vehicles assembled in different countries. At present, there are a number of vehicle models that are assembled in the U.S. and/or Canada and in other countries. The agency tentatively concluded that country of final assembly should not be considered in making carline determinations, since section 210 specifies that carline determinations are to be made based on degree of commonality in construction.

The agency noted that determining carlines on the basis of country of assembly appears inconsistent with this statutory definition since *identical* cars, *i.e.*, ones with total commonality in construction, could be placed in different carlines. NHTSA also noted that such a result might result in consumer confusion. For example, if a consumer ordered a car identical to one for which he or she had taken a test drive, the consumer would find it very odd if the car he or she received had a label indicating that it was in a different carline.

NHTSA recognized, however, that additional subdivision of carlines by country of manufacture would result in content labeling information that is more representative of the individually labeled vehicles. The agency requested comments on a possible requirement for manufacturers to include additional information on the label for carlines assembled in more than one country, such as a statement of the U.S./Canadian parts content and major foreign sources of that portion of the carline produced in a given country.

NHTSA also requested comments on the possibility of differentiating carlines by engine type, whether light trucks should be separated into different carlines depending on whether they are 2-wheel drive or 4-wheel drive, and on whether any other distinctions should be specified for making carline determinations.

NHTSA received numerous comments concerning the definition of carline. In the discussion which follows, the agency will first address comments concerning the issue of whether "carline" should encompass vehicles assembled in different countries, and the related issue of a possible requirement for manufacturers to include additional information on the label for carlines assembled in more than one country. The agency will then discuss other issues related to the definition of carline.

Carline and different countries of assembly. AAMA supported NHTSA's tentative conclusion that carline is not distinguished by country of final assembly. That organization noted that the statutory definition is similar to the definition used in other Federal regulations and is also used in industry to establish carlines. AAMA argued that to maintain consistency among Federal regulations and to minimize the administrative burden, the definitions and interpretation of carline used for the

Labeling Act should be the same as those used for CAFE.

AAMA also commented that it disagrees with including additional information on the label for carlines that are assembled in more than one country. That organization argued that separate content carline calculations, one set for each assembly country and the entire carline, would cause unnecessary burden and confuse consumers. According to AAMA, this method would create the same or more confusion than allowing manufacturers to separate carlines based on country of assembly. That organization also commented that vehicles produced in both the U.S. and Canada would have similar content values, and listing information twice would cause confusion.

While the United Auto Workers (UAW) did not submit a comment on the NPRM, it made the following argument in response to the agency's 1992 request for comments:

> (I)n doing the model line calculations, imported vehicles must be combined with vehicles produced in the United States. The automakers do not have the option of splitting the two groups of vehicles. The definition of "carline" in the new statute is based on the definition under the CAFE program. Since those standards do not permit foreign and domestic versions of the same carline to be split, this should not be allowed under the vehicle content labeling statute.

AIAM commented that failing to allow manufacturers to distinguish between countries of production within a particular carline directly contradicts the Act's stated purpose of providing consumers with the best and most understandable information possible. That organization stated that it believes that NHTSA has the authority to adopt a country-of-production split for determining the parts content percentages for carlines, in order to follow this stated intent of the Act. According to AIAM, without carline subdivision, the information presented to the consumer will be at best misleading, and at worst totally inaccurate.

JAMA urged that separate calculations for carlines manufactured in more than one country at least be permitted. That organization stated that the failure to specify such percentages separately would result in an overstated domestic content on imported vehicles and an understated one on domestically produced vehicles. According to JAMA, the U.S. consumer cannot possibly be served by such misleading information.

Toyota stated that it believes the agency's tentative conclusion that country of assembly should not be considered in making carline determinations is incorrect as a matter of statutory construction and Congressional intent. It argued that the statute does not compel NHTSA to require averaging of equipment content information on a worldwide basis for a particular carline.

Toyota stated that since section 210(b)(1)(A) requires disclosure of the percentage of U.S./Canadian-origin equipment "installed on *such* vehicle *within* a carline," the Labeling Act contemplates that the percentage disclosed will have a relationship to both the individual vehicle and the carline to which it belongs. (Emphasis in Toyota's comment.) That company recognized that section 210(b)(2) requires the calculation of the percentage to made "for such carline," but argued that it is incorrect to read section 210(b)(2) out of context and "in disregard of the requirement imposed by the literal language of section 210(b)(1)(A)." Toyota argued that a model carline percentage that fails to approximate the level of content on the particular vehicle would not satisfy this requirement.

Toyota also argued that the lack of a reference in the statutory definition of *carline* to the country or countries where a carline is assembled indicates that the agency may exercise a level of discretion in determining how the (b)(1)(A) calculation is to be performed with respect to carlines manufactured in multiple countries. That company stated that NHTSA's exercise of that discretion should be guided by section 210(d)'s requirement that the ultimate purchaser should be provided "the best and most understandable information possible." Toyota argued that consumers reading the label will expect the equipment content percentages disclosed on the label to apply to a class of vehicles of which the particular vehicle being observed is representative. That company argued that any such disclosure that attempts to average, for example, vehicles manufactured in the United States or Canada with vehicles manufactured in Japan cannot possibly provide the consumer with meaningful information because of dissimilarity with respect to the sourcing of equipment.

Toyota also argued that it believes the treatment of carline under CAFE regulations is irrelevant to the issue of whether Labeling Act equipment content reporting must be averaged for a carline produced in more than one country. That company argued that the two statutes have completely different purposes. Toyota stated that it may be appropriate under CAFE to average fuel economy data, because fuel economy of a carline is determined by vehicle design, an element that vehicles in a carline have in common regardless of where they are produced. That commenter stated that the opposite is the case for sourcing patterns, which typically differ greatly by country of manufacture.

Honda argued that the agency's tentative decision to combine "dual nationality" nameplates into a single carline is fundamentally inconsistent with the stated goal of the sponsor of the legislation—providing consumers sufficient information to "buy American" if they so choose. That company argued that, under the agency's proposal, the domestic content of the equipment on U.S./Canadian built "dual nationality" vehicles will be understated, while the domestic content of the equipment on their foreign-built twins will be overstated.

Honda stated that there is no reason to read the law to require such a result that it believes would frustrate the fundamental purpose of the Labeling Act. It noted the agency's stated concern that determining carlines based on country of origin would permit identical cars to be placed in different carlines, and argued that this result will occur under the agency's proposal. That company cited the Ford Taurus and Mercury Sable as an example. Honda also cited NHTSA's stated concern that consumers might be confused if they took delivery of a vehicle with a label indicating a different "carline" than the vehicle they test drove. That company stated that this potential for confusion is not greater than that which might arise if the delivered vehicle shows a different final assembly point or country of origin of the engine or transmission than those on the label of the test driven model.

BMW also disagreed with the agency's tentative conclusion that country of assembly should not be considered in making carline determinations. First, that company argued that the Labeling Act does not prohibit division of vehicles by country. That company stated that given the fact that Congress defined *carline* as a "name," which is generally assigned by a manufacturer, it believes Congress intended carlines to be established by manufacturers. BMW stated that it believes Congress was attempting to alleviate the burden on manufacturers by giving them the maximum flexibility to group vehicles together, while not allowing completely unrelated vehicles to be incorporated into one set of parts content calculations.

BMW argued that Congress placed the restriction of having "commonality in construction" to define the largest grouping by which a manufacturer is allowed to divide its vehicles. According to that company, this portion of the definition was not intended to force manufacturers to group vehicles together but rather to limit the vehicles that could be forced together into a carline. BMW stated that if the Congress had intended to force such a grouping on manufacturers, it would have explicitly defined *carline* as a "name denoting a group that shall include *all* vehicles which have a degree of commonality in construction." (Emphasis in BMW's comment.)

Second, BMW argued that information based on a vehicle's country of origin would be the most accurate and understandable to the consumer. That company noted the agency's statement in the NPRM that consumers might be confused if identical vehicles are considered to be in different carlines. BMW argued that this should not be a concern because such differences would provide better and more accurate information.

Finally, BMW argued that NHTSA's tentative conclusion directly conflicts with the portion of section 210 that requires the best and most understandable information. That company argued that the latter requirement should take precedence. BMW recommended that, rather than debating such issues as the Congressional intent of the carline definition, the agency should use the definition as worded in the legislation and permit manufacturers to make independent interpretations to achieve this goal.

While numerous foreign vehicle manufacturers, including ones in addition to those mentioned above, objected to the agency's proposal to exclude country of assembly as a factor to consider in making carline determinations, several indicated that, if NHTSA did not change that position, they supported the concept of providing additional information on the label concerning such vehicles. Toyota stated that requiring this additional information (or alternatively, allowing a manufacturer to include it on the label on its own option) is preferable to requiring (or permitting) only disclosure of an average percentage for a carline on a worldwide basis.

Honda stated that such additional information would improve the accuracy of the information provided to the consumer. It suggested the following language:

BMW argued that Congress placed the restriction of having "commonality in construction" to define the largest grouping by which a manufacturer is allowed to divide its vehicles. According to that company, this portion of the definition was not intended to force manufacturers to group vehicles together but rather to limit the vehicles that could be forced together into a carline. BMW stated that if the Congress had intended to force such a grouping on manufacturers, it would have explicitly defined *carline* as a "name denoting a group that shall include *all* vehicles which have a degree of commonality in construction." (Emphasis in BMW's comment.)

Second, BMW argued that information based on a vehicle's country of origin would be the most accurate and understandable to the consumer. That company noted the agency's statement in the NPRM that consumers might be confused if identical vehicles are considered to be in different carlines. BMW argued that this should not be a concern because such differences would provide better and more accurate information.

Finally, BMW argued that NHTSA's tentative conclusion directly conflicts with the portion of section 210 that requires the best and most understandable information. That company argued that the latter requirement should take precedence. BMW recommended that, rather than debating such issues as the Congressional intent of the carline definition, the agency should use the definition as worded in the legislation and permit manufacturers to make independent interpretations to achieve this goal.

While numerous foreign vehicle manufacturers, including ones in addition to those mentioned above, objected to the agency's proposal to exclude country of assembly as a factor to consider in making carline determinations, several indicated that, if NHTSA did not change that position, they supported the concept of providing additional information on the label concerning such vehicles. Toyota stated that requiring this additional information (or alternatively, allowing a manufacturer to include it on the label on its own option) is preferable to requiring (or permitting) only disclosure of an average percentage for a carline on a worldwide basis.

Honda stated that such additional information would improve the accuracy of the information provided to the consumer. It suggested the following language:

> This carline is produced in both the United States [or Canada, as appropriate] and [add name of other country]. The U.S./Canadian parts content for vehicles manufactured in the location noted in line three of this label is [____]%.

Nissan stated that if manufacturers are not permitted to separate parts content percentage calculation by production country origin, then each manufacturer should be permitted the option to determine the most appropriate method to provide additional information or explanation of a label's parts content percentages to a potential vehicle purchaser. That company argued that NHTSA should not prohibit the manufacturer from providing additional explanations or require the manufacturer to include generic wording to clarify the U.S./Canadian parts content percentage calculation to consumers.

After carefully considering all of the comments, NHTSA has decided that carline determinations may not be based on country of assembly, but manufacturers should be permitted to provide specified additional information for carlines assembled in both the U.S./Canada and another country. In reaching this decision, the agency has focused both on the Labeling Act's provisions related to "carline" and on section 210(d)'s requirement that regulations "provide to the ultimate purchaser the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers."

In enacting the Labeling Act, Congress decided that the parts content percentages for the U.S./Canada and foreign countries should be calculated for groups of vehicles rather than for each individual vehicle. It also decided to adopt the concept of "carline" and its definition from the CAFE program, as the basis for determining the relevant groups of vehicles.

Section 210 expressly states that carline determinations are to be made based on degree of commonality in construction. Basing carline determinations on country of assembly would be a very different method for making carline determinations, and one that is inconsistent with the method specified in the statute.

Moreover, NHTSA disagrees with those commenters which argued that carline determinations which exclude considerations of country of assembly are inconsistent with the purpose of the Labeling Act. First, the concept of "carline" is well understood by Congress, given its use in the CAFE program. Since Congress decided to use this well-known concept as the basis for making vehicle groupings under the Labeling Act, it is reasonable to assume that the concept is consistent with the purpose of Congress. The agency observes that while many foreign vehicle manufacturers argued that basing carline determinations solely on commonality of construction is inconsistent with the purpose of Congress, this view was not shared by GM, Ford, Chrysler, or the UAW.

The agency specifically rejects Toyota's argument that the treatment of carline under CAFE is irrelevant to Labeling Act issues. Since Congress decided to adopt the same concept and definition for grouping vehicles as used in CAFE, the treatment under CAFE is highly relevant. The agency notes that Toyota's objection and the objections of many of the foreign vehicle manufacturers are ultimately with the statute rather than the agency's proposed regulations. Toyota suggests that "(i)t may be appropriate under CAFE to average fuel economy data, because fuel economy of a carline is determined by vehicle design," but argues that "(t)he opposite is the case for sourcing patterns, which typically differ greatly by country of manufacture." However, the Labeling Act expressly requires carline determinations to be determined based on "commonality of construction," i.e., vehicle design.

Second, the mere fact that the exclusion of country of assembly from carline determinations can result in overstated domestic content on imported vehicles and an understated one on domestically produced vehicles does not mean that the results are misleading. Any approach in which U.S./Canadian parts content is determined based on groups of vehicles will result in situations where the content is overstated or understated for individual vehicles within the group. However, prospective purchasers will know the U.S./Canadian parts content for the group as a whole.

For example, if a particular make/model is assembled in both the U.S./Canada and another country, consumers will know the average U.S./Canadian content for that make/model. The agency believes that this is relevant information for consumers which wish to buy a vehicle made in the U.S. or Canada. Moreover, the carline information is not the only information that Congress decided to require on the label. Consumers will also know where the individual vehicle is assembled, and

the countries of origin of the engine and transmission for that individual vehicle.

NHTSA disagrees with several of the statutory arguments made by commenters favoring determination of carlines based on country of assembly. As discussed above, Toyota argued that section 210(b)(1)(A)'s requirement that the label indicate the percentage U.S./Canadian equipment "installed on such vehicle within a carline" amounts to a requirement that the carline percentage must "approximate the level of content" on each individual vehicle. However, the quoted language of section 210(b)(1)(A) simply means that the percentage to be provided on the label is for the carline of which the individual vehicle is a part, as is made clear by section 210(b). There is no basis to read section 210(b)(1)(A) as requiring the percentage to apply to *both* the individual vehicle and the carline. If content is determined for a group of vehicles, it necessarily follows that the content of each individual vehicle may vary from that of the group as a whole.

The agency also disagrees with BMW's argument that the statutory definition of carline is merely intended to define the largest grouping by which a manufacturer is permitted to divide its vehicles but not preclude further divisions in making carline determinations. NHTSA notes that in addition to specifying "commonality in construction" as the basis for making carline determinations, the section 210 definition provides that even some attributes that are part of "commonality in construction," e.g., level of decor, are not to be considered in making carline determinations. Moreover, manufacturers are not permitted to make unlimited divisions for purposes of CAFE.

NHTSA also disagrees with BMW's suggestion that the agency should essentially permit manufacturers to interpret the term "carline" in any way they choose. In addition to being concerned that the implementing regulations ensure results that are consistent with the statutory requirements, NHTSA also believes it is important that consumers be provided with information that is consistent among manufacturers. It would be very confusing to consumers if they were provided with content information determined on a carline basis by each manufacturer, but the meaning of "carline" varied substantially among manufacturers.

While NHTSA has concluded, for the reasons stated above, that carline determinations may not be based on country of assembly, it recognizes that additional subdivision of carlines by country of manufacture would result in content labeling information that is more representative of the individually labeled vehicles. NHTSA does not believe it would be appropriate to permit unlimited additional information to be provided on the label, since such additional information could result in an "overload" to consumers and dilute the impact of the required information. However, given the potential significance of the impact that assembly of a carline in both the U.S./Canada and other countries may have on the representativeness of the carline information provided on the label, NHTSA has decided to *permit*, but not require, the following additional statement to be provided on the label:

> This carline is assembled in the U.S. and/or Canada, and in [insert name of each other country]. The U.S./Canadian parts content for the portion of the carline assembled in [insert name of country, treating the U.S. and Canada together, i.e., U.S./Canada] is [___]%.

The agency is specifying specific language for the optional information to ensure that it is both brief and easily understood, as well as to maintain consistency among manufacturers. If a manufacturer chooses to provide this optional information, the information must be provided at the end of the label, as part of the explanatory note. Moreover, if the additional information is provided for some vehicles within a carline, it must be provided for all vehicles within the carline. Otherwise, a manufacturer might provide the additional information only for the portion of the carline which has higher U.S./Canadian parts content.

NHTSA believes that permitting but not requiring manufacturers to provide this additional information is appropriate in light of the statutory requirement that the implementing regulation "provide to the ultimate purchaser the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers." The agency believes that the usefulness of the additional information to consumers is not of a level that justifies requiring it, but is sufficiently useful that manufacturers should be permitted to provide it if they so choose.

Other issues related to the definition of "Carline." NHTSA received a number of comments concerning whether engine types, body styles, and/or drive systems should be considered in making carline determinations. The agency notes that these factors, unlike country of assembly, are related to degree of commonality in construction.

As discussed above, AAMA argued that to maintain consistency among Federal regulations and to minimize the administrative burden, the definitions and interpretation of "carline" used for the Labeling Act should be the same as those used for CAFE. That organization stated that there should be no further segregation of carlines by engine type, and that light trucks should not be divided by type of driveline. According to AAMA, these separations would not provide more meaningful information to the consumer. That commenter stated that items such as 4-wheel drive and engine types are customer options and should not be used to differentiate carlines. AAMA noted that differences in engine sourcing will be reflected on the label under country of origin of the engine. AAMA stated that it supports the agency's proposal not to subdivide the carline definition for sedans and station wagons or fuel economy model types. It argued that adding more characteristics to define carline would increase the compliance costs to the vehicle manufacturer, would not add any value to the label, and would confuse the customer. It stated that the proposed definition should be revised by deleting a sentence stating that 2-wheel and 4-wheel drive versions of light trucks are treated as separate carlines, and by replacing a reference to "utility vehicles" with the term "special purpose vehicles."

Toyota argued that manufacturers should have the option of separating carlines by engines and by drive systems. That manufacturer stated that such separations would further the Act's purpose of providing the consumer information on equipment content, by giving consumers more precise content information for the particular model being considered for purchase. Toyota stated that because this would create an additional burden, it should be at the option of the manufacturer.

Honda stated that it supports differentiating carlines by engine type, because such separation would improve the accuracy of the information on the label. That company stated that sourcing of parts may be different for different engine types. Honda indicated that it strongly supports retaining station wagons within the carline of the same name, consistent with EPA's inclusion of station wagons within the carline of the same name for purposes of computing the carline's domestic content for CAFE.

BMW stated that with respect to differentiating carline by engine type and drive type, it believes the relevant portion of the carline definition is for the purpose of providing relief to manufacturers rather than imposing a requirement on them. It stated that it believes that using the definition verbatim from the legislation and allowing manufacturers discretion to decide which models to include in the carline calculations, in conjunction with clarification from the manufacturer of the models that were used in the calculations, would result in the best and most accurate information to potential consumers.

Nissan stated that it believes carlines should not be separated by engine types, body styles or drive systems. According to that manufacturer, it would take a major change in the foreign content of those parts to result in a significant change in carline content percentages. Nissan stated that additional calculation and the resulting record keeping requirements by engine types, body styles, and drive systems would impose a significant administrative burden on manufacturers, and would not result in an appreciable increase in the accuracy of the content information on the label.

After considering the comments, NHTSA has concluded that engine types and drive systems should not be considered in making carline determinations. These features are typically customer options for particular make/models, similar to options related to level of decor. The agency believes that these features are too insignificant to be considered in making carline determinations, i.e., if vehicles are essentially the same except for the fact that one has a larger engine or 4-wheel drive, there is sufficient commonality of construction that the vehicles should be in the same carline. NHTSA does not believe that a manufacturer option should be provided in this area, because it could confuse consumers if "carline" has a different meaning for different vehicles. Moreover, the agency believes that separation by engine type and drive system would be unlikely to have a significant impact on the content percentages provided on the label.

The agency also generally agrees with AAMA that, to maintain consistency among Federal regulations and to minimize the administrative burden, the definitions and interpretation of "carline" used for the Labeling Act should be the same as those used for CAFE. NHTSA notes that station wagons are included in the same carline as similar sedans, as in CAFE. This follows from section 210's language that carline is not generally distinguished by such characteristics as roof line, except for light duty trucks. Consistent with CAFE, special purpose vehicles, vans

portion of the carline definition is for the purpose of providing relief to manufacturers rather than imposing a requirement on them. It stated that it believes that using the definition verbatim from the legislation and allowing manufacturers discretion to decide which models to include in the carline calculations, in conjunction with clarification from the manufacturer of the models that were used in the calculations, would result in the best and most accurate information to potential consumers.

Nissan stated that it believes carlines should not be separated by engine types, body styles or drive systems. According to that manufacturer, it would take a major change in the foreign content of those parts to result in a significant change in carline content percentages. Nissan stated that additional calculation and the resulting record keeping requirements by engine types, body styles, and drive systems would impose a significant administrative burden on manufacturers, and would not result in an appreciable increase in the accuracy of the content information on the label.

After considering the comments, NHTSA has concluded that engine types and drive systems should not be considered in making carline determinations. These features are typically customer options for particular make/models, similar to options related to level of decor. The agency believes that these features are too insignificant to be considered in making carline determinations, i.e., if vehicles are essentially the same except for the fact that one has a larger engine or 4-wheel drive, there is sufficient commonality of construction that the vehicles should be in the same carline. NHTSA does not believe that a manufacturer option should be provided in this area, because it could confuse consumers if "carline" has a different meaning for different vehicles. Moreover, the agency believes that separation by engine type and drive system would be unlikely to have a significant impact on the content percentages provided on the label.

The agency also generally agrees with AAMA that, to maintain consistency among Federal regulations and to minimize the administrative burden, the definitions and interpretation of "carline" used for the Labeling Act should be the same as those used for CAFE. NHTSA notes that station wagons are included in the same carline as similar sedans, as in CAFE. This follows from section 210's language that carline is not generally distinguished by such characteristics as roof line, except for light duty trucks. Consistent with CAFE, special purpose vehicles, vans and pickup trucks are considered to be in different carlines.

b. Final assembly/final assembly point. Section 210 provides that costs incurred at the final assembly point and beyond, including the costs of assembly and labor, are not included in the calculation of parts content. NHTSA noted in the NPRM that manufacturers may conduct some pre-assembly operations, e.g., production of equipment, at the same location as final assembly. The agency tentatively concluded that such operations should be treated the same as the operations of an allied supplier. The agency proposed to specify a particular phase in the assembly process, for both the body and chassis, that would mark the beginning of final assembly. This was reflected in specific proposed definitions for "final assembly" and "final assembly point."

AAMA stated that under NHTSA's proposal, the painted body and chassis would be considered a substrate to which passenger motor vehicle equipment is attached to produce a finished vehicle. AAMA stated that this approach is contrary to the generally accepted definition of the passenger motor vehicle equipment assembly process. That organization agreed, however, that the production of certain equipment at the final assembly point should not be considered part of final assembly but should instead be included in the valuation of the motor vehicle equipment and content calculations.

AAMA recommended that the agency define "final assembly" to include all operations involved in the assembly of the vehicle performed at the final assembly point, including but not limited to assembly of body panels, painting, final chassis assembly, and trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using stamping, machining or molding processes. AAMA stated that its definition is consistent with the statute and an improvement over the proposal in that it (1) eliminates the conflict between regulations and normal business practice, (2) eliminates the ability of a manufacturer to generate a considerable amount of U.S./Canadian value added for the assembly operation that the proposed regulations would allow prior to the "final assembly," (3) eliminates ability of a manufacturer to shift value added simply by establishing "transfer" prices for all of the passenger motor vehicle equipment that is produced prior to "final assembly," and (4) eliminates the burden on a manufacturer associated with changing systems simply to meet NHTSA's proposed definition.

AAMA also recommended that the agency change the proposed definition of *final assembly point*, in a manner consistent with its recommendation concerning the definition of *final assembly*. That commenter also stated that the proposed definition creates ambiguity by introducing the term "pre-final assembly," and that the proposed regulation does not state how this equipment is to be treated for determining origin. AAMA recommended a specific definition for "final assembly point."

Ford stated that it agrees that in-plant pre-assembly and manufacturing should be included in the domestic and foreign content of the vehicle and the value treated as operations of an allied supplier. It argued, however, that the proposed definition of "final assembly" goes beyond the point that most manufacturers track parts cost. Ford stated that operations performed at the final assembly point, including body assembly and painting, are usually not contained in the manufacturer's final assembly bill of material. Ford argued that in-plant pre-assembly should include only machining, stamping, molding operations, and engine or transmission assembly.

AIAM stated that the point of final assembly should be considered to be no sooner than the point at which the engine and vehicle body are fastened together. That organization argued that the Labeling Act defines final assembly as the time when "all component parts necessary to the mechanical operation of such automobile are included." AIAM stated that the proposed definition would defy the stated intent of the Act and defy all conventional wisdom with respect to the automotive manufacturing process.

Toyota also argued that the point of final assembly should be considered to be no sooner than the point at which the engine and vehicle body are fastened together. It stated that for any vehicle, regardless of the sequence of assembly operations, there is always a point where the engine is united with the body. According to Toyota, section 210(f)(14) defines *point of final assembly* in terms of completeness. That commenter argued that the proposed final assembly points for the body and chassis are inconsistent with the Act because all component parts necessary to the mechanical operation of the vehicle are not yet present and included with the vehicle at those points.

Toyota also stated that the point of final assembly must serve as the point

before which assembly labor is included in the calculation and after which it is not. That manufacturer stated that the proposed regulation is not clear with respect to whether labor used in manufacturing the body after the point at which it emerges from painting but before it is attached to the chassis or cradle is included or excluded. Toyota stated that only by specifying a single point of final assembly can this technical problem be solved.

Several other foreign vehicle manufacturers made similar comments. Nissan stated that an appropriate point to be identified as the beginning of final assembly is the moment in the production process just before the attachment of the engine and drive train to the chassis. Mitsubishi stated that the point where final assembly begins should be defined as the point at which the engine and body are fastened. According to that company, this would be more consistent with the agency's proposed definition of "final assembly point," where all components and parts necessary to the mechanical operation of such automobile are included.

Honda took a different position in its comment. That manufacturer stated that it strongly supports the agency's proposal to treat in-house production of parts and components as if the equipment were produced by an allied supplier. Honda stated that this is necessary for consistency among manufacturers. Noting that the agency proposed to define *final assembly point* as a particular phase in the assembly process, Honda stated that the proposed treatment of this issue is sensible. According to that manufacturer, defining "final assembly point" as the moment in the process at which the body leaves the paint shop is generally appropriate. However, Honda requested clarification of this definition with respect to the substantial additional "pre-final assembly" work that remains to be performed on its vehicles' doors after the body leaves the paint shop. Honda argued that door subassembly labor should be included within computation of U.S./Canadian value added, and stated that it assumes this subassembly labor would be included under the proposed regulation because the work is performed off the main assembly line.

BMW stated that NHTSA's proposal defined "final assembly" with regard to the body as the point at which the body leaves the paint shop. That company commented that this portion of the definition is very precise and that the costs associated with it will likely be similar between manufacturers regardless of painting process or vehicle design. BMW commented, however, with regard to definition of final assembly of the chassis, that it believes a manufacturer would be able to tailor the assembly process to take advantage of the definition and alter its carline's part content percentages. That company stated that this portion of the definition employs the point at which the engine and transmission are placed on the chassis frame or on the assembly cradle. According to BMW, because this point can be varied, a manufacturer would have the opportunity to install or not install equipment such as the brake system including ABS, wheels and tires, and interior components and trim. BMW commented that a manufacturer could choose to install the engine last, essentially including all labor and overhead in its parts content calculations. BMW recommended that the agency investigate assembly processes and include a more definitive point to stop including costs associated with the chassis assembly.

NHTSA believes that the comments concerning the proposed definitions for "final assembly" and "final assembly point" raise two important, related issues: (1) What operations should be considered to be part of "final assembly" and therefore excluded from parts content calculations, and (2) Whether the proposed regulation distinguishes such operations in a manner that is appropriate for all manufacturers. As discussed below, after considering the comments in light of these two issues, the agency has concluded that definitions along the lines of those recommended by AAMA should be adopted.

The starting place for resolving the question of what operations should be considered to be part of "final assembly" and therefore excluded from parts content calculations is the language of the Labeling Act. The Act includes several relevant sections. First, section 210(b)(1)(A) provides that the label must indicate "the percentage (by value) of passenger motor vehicle equipment installed in such vehicle within a carline which originated in the United States and Canada * * *." Second, section 210(f)(10) provides that "(c)osts incurred or profits made *at the final vehicle assembly point* and beyond (i.e., advertising, assembly, labor, interest payments, profits, etc.) shall not be included in [the calculation of value added in the United States and Canada]." Third, section 210(f)(14) defines "final assembly point" as "the plant, factory, or other *place* at which a new passenger motor vehicle is produced or assembled by a manufacturer and *from* which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle * * *." (Emphasis added.)

While final assembly point can be considered as either a physical place or a phase in the assembly process, it is significant that section 210 defines it as a place, i.e., the plant, factory, or other place at which a new vehicle is produced or assembled. Thus, looking at the plain language of section 210, assembly and labor costs "at" the plant, factory or other place at which a new vehicle is assembled are excluded from parts content calculations.

It is also significant that the language in section 210(f)(14) about the vehicle being in such a condition that "all component parts necessary to the mechanical operation of such automobile are included with such vehicle" refers to the vehicle when it leaves the final assembly point for delivery to a dealer or importer. In citing this language for the proposition that "final assembly" is defined in terms of completeness, AIAM and Toyota confuse the completion of final assembly with the final assembly process. Section 210(f)(14) defines "final assembly point" as the plant, factory, or other place at which a vehicle is "produced or assembled" by a manufacturer. All of the operations that make up the production or assembly process are part of final assembly. There is no basis to interpret section 210(f)(10)'s requirement that assembly and labor costs incurred "at the plant, factory or other place" at which a new vehicle is assembled only applies to the costs associated with the last step in completing the vehicle.

Since section 210 expressly provides that assembly and labor costs at the plant, factory or other place at which a new vehicle is assembled are excluded from parts content calculations, NHTSA believes that all assembly and labor costs that are ordinarily associated with final assembly must be excluded. However, the agency believes that the costs associated with parts production that may occur at a final assembly plant should not be excluded from parts content calculations. The agency notes the following argument made by the UAW in commenting on the request for comments:

> The definition of *passenger motor vehicle equipment* in section 210(f)(4) of the statute refers to components "received at the final vehicle assembly point." Section 210(f)(14) then goes on to define "final assembly point" as meaning "the plant, factory, *or other place* at which a new passenger motor vehicle is produced or assembled * * *." (Emphasis in UAW comment.) We believe these definitions can and should be interpreted liberally to include parts and components which are built "in-house" within the scope of "passenger motor vehicle equipment." Even though such parts and components may be built in the same manufacturing facility, they are still built in a different "place" than where the vehicles are actually assembled (i.e., in a different department or operation within the plant) * * *. (T)he underlying purpose of the statute is to distinguish between labor performed in the final assembly of a vehicle and the value of the parts which go into the vehicle. Including "in-house" parts does not do violence to this distinction.

NHTSA agrees with this comment of the UAW. A failure to consider parts produced at the final assembly plant as "passenger motor vehicle equipment" would result in significant differences among manufacturers. Further, if a plant were very highly integrated, it could result in a situation where the parts content percentages do not reflect the greater number of a vehicle's parts.

At the same time, however, NHTSA must give full effect to the Congressional intent to exclude the costs of final assembly from parts content calculations. The agency believes that the best way to accomplish this is the method suggested by AAMA: define *final assembly* to include all operations involved in the assembly of the vehicle performed at the final assembly point (the final assembly plant), including but not limited to assembly of body panels, painting, final chassis assembly, and trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using stamping, machining or molding processes.

Under this approach, all costs incurred at the final assembly plant are excluded except for those that are incurred in producing either engines/transmissions or in producing parts using forming processes such as stamping, machining or molding. In addition to ensuring that final assembly costs are excluded as required by section 210, the agency also believes that a definition along these lines is much clearer than the proposed definition. For example, this type of definition will not raise issues concerning whether a part is assembled on the main assembly line or off of it.

NHTSA cannot accept the recommendation of foreign vehicle manufacturers to define final assembly as starting at the time when the engine and body are fastened together. Under such a definition, manufacturers could

produced or assembled * * *." (Emphasis in UAW comment.) We believe these definitions can and should be interpreted liberally to include parts and components which are built "in-house" within the scope of "passenger motor vehicle equipment." Even though such parts and components may be built in the same manufacturing facility, they are still built in a different "place" than where the vehicles are actually assembled (i.e., in a different department or operation within the plant) * * *. (T)he underlying purpose of the statute is to distinguish between labor performed in the final assembly of a vehicle and the value of the parts which go into the vehicle. Including "in-house" parts does not do violence to this distinction.

NHTSA agrees with this comment of the UAW. A failure to consider parts produced at the final assembly plant as "passenger motor vehicle equipment" would result in significant differences among manufacturers. Further, if a plant were very highly integrated, it could result in a situation where the parts content percentages do not reflect the greater number of a vehicle's parts.

At the same time, however, NHTSA must give full effect to the Congressional intent to exclude the costs of final assembly from parts content calculations. The agency believes that the best way to accomplish this is the method suggested by AAMA: define *final assembly* to include all operations involved in the assembly of the vehicle performed at the final assembly point (the final assembly plant), including but not limited to assembly of body panels, painting, final chassis assembly, and trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using stamping, machining or molding processes.

Under this approach, all costs incurred at the final assembly plant are excluded except for those that are incurred in producing either engines/transmissions or in producing parts using forming processes such as stamping, machining or molding. In addition to ensuring that final assembly costs are excluded as required by section 210, the agency also believes that a definition along these lines is much clearer than the proposed definition. For example, this type of definition will not raise issues concerning whether a part is assembled on the main assembly line or off of it.

NHTSA cannot accept the recommendation of foreign vehicle manufacturers to define final assembly as starting at the time when the engine and body are fastened together. Under such a definition, manufacturers could add the engine to the body as the last step in assembling the vehicle, thereby reducing final assembly costs to a nullity. Such an approach would be inconsistent with the statutory requirement to exclude assembly and labor costs at the final assembly plant from parts content calculations.

The agency believes that a similar problem could occur under the proposed definitions for *final assembly* and *final assembly point*. As suggested by BMW's comment, manufacturers could tailor the assembly process to take advantage of the definition. This could also reduce the costs of final assembly to a value close to a nullity.

NHTSA notes that the cost of painting the vehicle body is considered to be part of the cost of final assembly under the definitions being adopted for the final rule, assuming that it occurs at the final assembly plant. While this is a different result than under the proposed definitions, the agency believes it is appropriate since painting is an operation that occurs at essentially all final assembly plants.

The agency also notes that the fact that final assembly labor and other costs are not included in parts content percentages does not mean that they are not reflected on the label. The origin of these costs is reflected in the portion of the label which states the final assembly point by city, state and country.

c. Passenger motor vehicle equipment. Section 210(f)(4) provides that the term *passenger motor vehicle equipment* means "any system, subassembly, or component received at the final vehicle assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser." That section also provides that the term does not include "minor parts, such as attachment hardware (nuts, bolts, clips, screws, pins, braces, etc.) and such other similar items" as may be prescribed by rule.

Dealer- and port-installed equipment. NHTSA tentatively concluded in the NPRM that dealer- or port-installed optional equipment should be excluded from content calculations. The agency noted that the definition of *passenger motor vehicle equipment* in section 210(f)(4) is limited to equipment delivered to the manufacturer's final assembly point for installation on, or attachment to, a vehicle at the time of its initial shipment by the manufacturer to a dealer. NHTSA noted further that equipment sent directly to dealers or ports is never sent to the manufacturer's final assembly point.

Ford stated that it agrees that dealer- and port-installed items of equipment should be excluded from content calculations since they do not come within the statutory definition of passenger motor vehicle equipment. That company added, however, that the agency should reserve the option to address this issue if it appears that any manufacturer is, to a significant degree, installing options beyond the final assembly point.

AIADA stated that it strongly supports the tentative conclusion that dealer- or port-installed optional equipment should be excluded from content calculations. That organization stated, however, that the definition of *passenger motor vehicle equipment* should be clarified. AIADA argued that while the authors of the Labeling Act may have attempted to exclude port-installed and dealer-installed parts such as air conditioners, wheels and stereo systems, the words "for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer" may not be interpreted to exclude these parts. AIADA suggested adding the words "and installed on" to the definition, i.e., components received at final assembly point for installation on, or attachment to, *and installed on* such vehicle.

After considering the comments, NHTSA continues to believe that dealer- or port-installed optional equipment should generally be excluded from content calculations since such equipment is ordinarily not received at the final assembly point. However, the agency does not agree with AIADA's suggested clarification. That organization appears to be referring to equipment which is received at the final assembly point and travels with the vehicle to the dealer, where the final installation is made. NHTSA believes that such equipment does fall within the definition of *motor vehicle equipment*, i.e., it is received at the final vehicle assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser. The agency views the fact that the equipment travels with the vehicle as a form of attachment to the vehicle.

Exclusion of minor parts. The agency tentatively concluded in the NPRM that all parts received at the final assembly point, including paint, sealers and solvents, are to be included as "equipment" for purposes of the Labeling Act, with the exception of the minor parts specified in the statute. However, NHTSA encouraged commenters to suggest other specific minor parts that should be excluded, and to comment on whether paint,

sealers and solvents should be included as equipment.

AAMA argued that the exclusions should be broadened. That organization stated that it would prefer the agency to exclude all items not covered under NAFTA Annex 403.1. AAMA stated that since the agency had elected not to parallel that aspect of NAFTA, it recommended the following additional exclusions: lubricants, grease, gasoline, oil, blackout, phosphate rinse, sealers, windshield washer fluid, auto transmission fluid, anti-freeze, tape, straps, hinge covers, valve stems, labels, owners manuals, hinges, bulbs, power steering fluid, knobs, bushings, fasteners, decals, isolators, tire assembly fluid, spacers, clamps, rivets, retainers, deadeners, adhesives, links, springs (except springs for suspension systems), grommets, wheel weights, fuses, plugs, paint, clear coat, and primer.

AAMA stated that the listed components represent less than three percent of material value, but 30–35 percent of the number of part numbers in a passenger motor vehicle. That organization argued that the recommended list would exclude a minimal value from the definition of passenger motor vehicle equipment, while significantly reducing the number of parts and suppliers that have to be solicited for content information. AAMA also recommended that outside and allied suppliers be permitted to default the values of these components to the country of origin of the passenger motor vehicle equipment in which they are incorporated.

Ford stated that items such as paints, sealers and solvents should not be included in the definition of passenger motor vehicle equipment. That company stated that both bulk parts and raw materials should be excluded from the vehicle content calculations.

Ford noted that the Labeling Act defines *passenger motor vehicle equipment* as "a system, sub-assembly or component" received at the final vehicle assembly point for installation on, or attachment to, the vehicle. Ford argued that if Congress had intended to add bulk items or items such as paint and solvents or bulk parts, such as wheel weights and rivets, to the calculation, it would not have used the terms "system, sub-assembly or component." That company stated that in other sections of the Act, where Congress intended raw and bulk materials to be included, it used the terms "foreign content" or "material." Ford stated that paint, solvents, and sealers should not be considered systems, sub-assemblies, or components because, among other reasons, these items only have part numbers when ordered in bulk quantities. That company supported the list of additional exclusions set forth in AAMA's comment.

A number of manufacturers, including Toyota, Honda, and Nissan supported treating paint, sealers and solvent as equipment. Honda stated that it believes that NHTSA appropriately defined minor parts to be excluded from the calculation in the NPRM. Nissan, however, stated that it is not sure whether everything other than attachment hardware can be properly considered passenger motor vehicle equipment and suggested that NHTSA consider how other regulatory and/or legislative schemes may determine whether a particular item is an auto part.

Isuzu stated that it believes attachment hardware such as nuts, bolts, clips, screws, pins and braces must be included in, rather than excluded from, the definition of "passenger motor vehicle equipment." That company stated that the vehicle manufacturer specifies part numbers for these parts. It is not easy to identify these parts on the carline parts list and then separate them from other parts.

BMW stated that it supports including items that become a permanent part of the vehicle such as adhesives, sealers, and paint. However, that manufacturer recommended that consumable items such as windshield washer and gasoline not be included.

APMA stated that it supports the exclusion of paint, sealers and solvents on the grounds that they are almost invariably of local origin, and their exclusion will reduce the regulatory burden to manufacturers and paint suppliers.

The UAW stated in its comment on the request for comments that, to avoid undermining the intent of the Labeling Act, the exclusion for minor parts should be narrowly construed. The UAW stated that it does not believe the definition should be interpreted to exclude paint or sealer, or raw materials, fasteners, or general purpose hardware. The UAW stated that many of these items have substantial value, and that excluding them would only serve to provide consumers with a misleading impression of the domestic versus foreign content of motor vehicles.

After considering the comments, the agency has decided to exclude some additional items from the definition of "motor vehicle equipment," but not the entire list suggested by AAMA. With respect to AAMA's comment that it would prefer that all items not covered under NAFTA Annex 403.1 be excluded, the agency notes some major items of motor vehicle equipment are not covered by that annex, including air bags. Therefore, it would not be appropriate to use NAFTA Annex 403.1 as the basis for determining what additional "minor parts" should be excluded. NHTSA also notes that it cannot adopt Isuzu's suggestion to include attachment hardware such as nuts, bolts, clips, screws, pins and braces within the definition of "passenger motor vehicle equipment," since those items are expressly excluded by the statutory definition.

The agency has decided to exclude the following additional items from the definition of *passenger motor vehicle equipment:* phosphate rinse, tire assembly fluid, gasoline, oil, windshield washer fluid, fasteners, rivets, grommets, and wheel weights. The first five items are consumable items which are either consumed in the assembly of the vehicle or are replaced within the first few days or months of vehicle ownership. Therefore, the agency believes that those items should not be considered part of the vehicle. The last four items are either forms of attachment hardware similar to the other ones listed in the statutory definition, or types of items whose collective value for a particular motor vehicle will always be negligible.

The agency is not adopting the other exclusions suggested by AAMA because the items are not similar to the ones listed in the statutory definition and because the collective value of the items for a particular motor vehicle can be substantial. With respect to Ford's comment concerning the meaning of "system, subassembly, or component," the agency believes that the term "component" is sufficiently broad to include such things as paint.

For the minor items which are excluded from the definition of *passenger motor vehicle equipment,* the agency is permitting allied and outside suppliers to treat the cost of the minor items as value added in the country of assembly of the equipment. NHTSA notes that this treatment is only necessary to the extent that such minor items are part of other equipment supplied by a supplier. To the extent that such minor items are supplied directly to a manufacturer, or are used by a manufacturer in assembly of a vehicle, they are not considered passenger motor vehicle equipment.

2. Items To Be Provided on the Label; Wording of the Label (Section 583.5)

NHTSA proposed to require manufacturers to affix to all new passenger motor vehicles a label which provides the following five items of information:

(1) *U.S./Canadian Parts Content*—the overall percentage, by value, U.S./Canadian content of the motor vehicle equipment installed on the carline of which the vehicle is a part;

(2) *Major Sources of Foreign Parts Content*—the names of the two countries, if any, other than the U.S./Canada, which contributed the greatest amount (at least 15 percent), by value, of motor vehicle equipment for the carline, and the percentage, by value, of the equipment originating in each such country;

(3) *Final Assembly Point*—the city, state (where appropriate), and country in which the final assembly of the vehicle occurred;

(4) *Country of Origin for the Engine;*

(5) *Country of Origin for the Transmission.*

The agency proposed to require specific language for the label, including a heading, two subheadings, and an explanatory note concerning the meaning of parts content. The NPRM included a sample label, consistent with the proposed requirements, which read as follows:

PARTS CONTENT INFORMATION
For vehicles in this carline:
U.S./Canadian Parts Content: 50%
Major Sources of Foreign Parts Content:
Japan: 20%
Mexico: 15%
For this vehicle:
Final Assembly Point: Flint, Michigan, USA
Country of Origin:
Engine: U.S.
Transmission: Canada

Note: The Parts Content of a typical vehicle makes up about (a range was to be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

The agency stated in the NPRM that it believed the proposed explanatory note would clarify the meaning of "parts content" to consumers, and help them understand the significance of the content information provided on the label. NHTSA noted that since the percentage of a vehicle's total wholesale cost which is made up of parts content varies for different vehicles, it believed that it would be appropriate to state the information in a range, e.g., 60 to 70 percent, 70 to 80 percent, etc. Since the agency did not have this information, it requested manufacturers to provide the information for several specific vehicles, as well as their recommendation for a range to include in a final rule.

a. Use of the term "parts content." AAMA objected to the term "U.S./

provides the following five items of information:

(1) *U.S./Canadian Parts Content*—the overall percentage, by value, U.S./Canadian content of the motor vehicle equipment installed on the carline of which the vehicle is a part;

(2) *Major Sources of Foreign Parts Content*—the names of the two countries, if any, other than the U.S./Canada, which contributed the greatest amount (at least 15 percent), by value, of motor vehicle equipment for the carline, and the percentage, by value, of the equipment originating in each such country;

(3) *Final Assembly Point*—the city, state (where appropriate), and country in which the final assembly of the vehicle occurred;

(4) *Country of Origin for the Engine;*

(5) *Country of Origin for the Transmission.*

The agency proposed to require specific language for the label, including a heading, two subheadings, and an explanatory note concerning the meaning of parts content. The NPRM included a sample label, consistent with the proposed requirements, which read as follows:

PARTS CONTENT INFORMATION
For vehicles in this carline:
U.S./Canadian Parts Content: 50%
Major Sources of Foreign Parts Content:
Japan: 20%
Mexico: 15%
For this vehicle:
Final Assembly Point: Flint, Michigan, USA
Country of Origin:
Engine: U.S.
Transmission: Canada

Note: The Parts Content of a typical vehicle makes up about (a range was to be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

The agency stated in the NPRM that it believed the proposed explanatory note would clarify the meaning of "parts content" to consumers, and help them understand the significance of the content information provided on the label. NHTSA noted that since the percentage of a vehicle's total wholesale cost which is made up of parts content varies for different vehicles, it believed that it would be appropriate to state the information in a range, e.g., 60 to 70 percent, 70 to 80 percent, etc. Since the agency did not have this information, it requested manufacturers to provide the information for several specific vehicles, as well as their recommendation for a range to include in a final rule.

a. Use of the term "parts content." AAMA objected to the term "U.S./Canadian Parts Content" for describing the first item of information on the label. It argued that the statute specifies use of the term "U.S./Canadian Content," and that the inclusion of the word "parts" is contrary to the statute.

NHTSA acknowledges that section 210(b)(1)(A) specifies that the information "be identified with the words 'U.S./Canadian content.'" However, the agency believes the term U.S./Canadian Parts Content is consistent with this statutory requirement. The statutory language "U.S./Canadian content" is included within the term "U.S./Canadian Parts Content." Consistent with its authority to specify the form and content of the required label, the agency added the word "parts" to indicate to prospective purchasers that the identified U.S./Canadian content is for a vehicle's parts (within a carline) rather than for the vehicle as a whole. To the extent that AAMA objects to the agency breaking up the phrase "U.S./Canadian content," NHTSA could instead specify a parenthetical at the end of the term U.S./Canadian content, such as (parts). However, the agency believes that the term U.S./Canadian Parts Content is preferable since it is easier to read.

NHTSA notes that AAMA also objected to use of the term "parts" instead of "equipment" in the purpose section of Part 583. That objection would presumably also apply to the wording on the label. AAMA contended that the calculations required by the statute are based on the value and content of passenger motor vehicle equipment and not "parts." Since the term "passenger motor vehicle equipment" includes all parts except minor parts such as attachment hardware, NHTSA believes that the terms "equipment" and "parts" are interchangeable. For purposes of the label, the agency believes that the term "parts" is preferable to "equipment." The former term is shorter and therefore takes less space. Moreover, the agency believes that consumers are more likely to understand the term "parts." While it is common to refer to a vehicle being made up of parts, one does not ordinarily refer to a vehicle being made up of equipment. Also, the term "equipment" may have the connotation of optional accessories to consumers.

b. Explanatory note. The agency received numerous comments on its proposal to require an explanatory note concerning the meaning of parts content. As discussed below, some commenters argued that no note should be permitted or required; others agreed that a note should be provided but argued that it should be worded differently. No commenters supported the proposed wording. Numerous manufacturers argued that the ratio of parts content value to wholesale dealer cost varies so widely among vehicles that there is no such thing as a "typical vehicle" in this context.

AAMA argued against including the explanatory note. It stated that the note is not required by statute and adds a measure of confusion to the consumer because of the broad range of ratios that exist for vehicles. GM argued that there is no authority under the Labeling Act for such a note. It stated that the proposed note does not clarify the information on the label, is an approximation, and includes elemental costs not considered by the Act. Ford stated that if NHTSA believes that clarification is necessary, it should consider an explanatory brochure.

AIAM stated that it is opposed to requiring information on the label concerning a parts content percentage range as it relates to the total wholesale cost to the dealer, as this additional information would only serve to confuse the consumer.

JAMA, however, argued that it is vital to consumer understanding to clarify the fact that the label calculation does not include vehicle final assembly labor. That organization stated that the proposed note would clarify this to some degree, but does not go far enough. It suggested adding the following words to the note: "and does not include vehicle final assembly labor." JAMA also argued that the note should include an additional statement about assembly labor for engines and transmissions not being included in country of origin label calculations for those items.

Toyota stated that the proposed note would not be helpful because of the necessary broadness of the range and the potential for additional consumer confusion. That manufacturer also stated that it does not believe a required, industry-wide explanatory statement is necessary. Toyota indicated, however, that if the agency does require an explanatory statement, it believes the statement should be one that consumers readily would understand and that would avoid confusion. It suggested the following statement: "The U.S./Canada parts content on this label does not include final assembly or distribution costs for this vehicle."

Honda supported the idea of an explanatory note, since it believes that consumers are likely to be misled by the label without it. That company did not support the proposed wording, however, since the language does not clearly tell consumers that certain specific costs are excluded. Honda also

stated that it believes the inclusion of a range of the percentage of parts costs would be confusing to consumers. Honda suggested the following explanatory note: "U.S./Canadian parts content on this label does not include final assembly or distribution costs for this vehicle."

Nissan suggested that each manufacturer be allowed, at its discretion, to include or not include additional information or explanation relevant to that manufacturer or particular carline. It stated that introducing a new percentage on the label that is calculated from a different base will only add to the consumer's confusion. Nissan stated that if the agency decides to require a statement, it suggests the following language: "The parts content percentages identified here do not value similar parts equally nor reflect the value of final assembly labor or parts or distribution expenses, all necessary aspects of determining the ultimate value of a vehicle."

AIADA stated that it supports the proposal to include a statement on the label to indicate that parts content of a vehicle does not represent the total value of the vehicle. That organization stated that it believes the statement should include a mention of what is not included, specifically labor and distribution costs. That organization also argued that the agency should go further than providing a simple note. It argued that the label should explain such things as roll-up, roll-down for outside suppliers (roll-up, roll-down is discussed later in this preamble), and whether or not the vehicle is domestic or import for CAFE purposes.

After considering all of the comments, and noting that none of the commenters provided information concerning the range of parts content as a percentage of wholesale cost, NHTSA has decided to require a brief explanatory note to explain the meaning of parts content. Since consumers are not likely to be familiar with the concept of parts content, the agency is concerned that they are likely to confuse parts content with overall vehicle content without such a note.

NHTSA is persuaded by the comments, however, that the note should not provide a range for the ratio of parts content value to wholesale dealer cost for a typical vehicle. The agency agrees that such a statement might confuse consumers.

The agency has decided to require the following explanatory note at the end of the label: "Parts content does not include final assembly, distribution, or other non-parts costs." NHTSA believes that the same note should be provided for all vehicles, to ensure brevity and clarity. With respect to GM's comment concerning authority, the agency notes that section 210(c) provides the agency with authority to prescribe the form and content of the required label. The agency also notes that manufacturers choosing the option, discussed earlier in this preamble, of providing additional information for carlines assembled in both the U.S./Canada and other countries, would be required to include it at the end of this explanatory note.

c. Place of final assembly. Toyota stated that the city of assembly should only be required for vehicles assembled in the U.S. That manufacturer argued that vehicles assembled in other countries should be labeled only with the country, not city, of final assembly, since the names of many cities in foreign countries in which automobiles are assembled are likely to be unfamiliar to many if not most consumers.

NHTSA notes that section 210(b)(1)(B) expressly states that the label must indicate "the final assembly point by city, State (where appropriate), and country of such automobile." Therefore, the agency does not have the discretion to permit the names of foreign cities to be excluded.

3. Procedure for Determining U.S./Canadian Parts Content (Section 583.6)

As discussed in the NPRM, in order to calculate the percentage U.S./Canadian parts content (the first item of information on the label), the vehicle manufacturer must know:

(1) the U.S./Canadian content (by value) of each item of motor vehicle equipment used to assemble the vehicles within the carline;

(2) the total value of each such item of equipment, i.e., the price it will pay for each such item of equipment; and

(3) the unit volume of each such item of equipment for each carline.

The agency stated in the NPRM that, in calculating the U.S./Canadian parts content for each carline, the manufacturer must reasonably project the installation rates for all equipment offered on that carline. For example, if a carline with a standard manual transmission is offered with an optional automatic transmission, the manufacturer must project the sales of each transmission in advance of the model year. This also applies to all other equipment options or choices for the vehicle.

Much of the information that manufacturers use to calculate the first item on the label must come from parts suppliers. These calculations are made once for each model year, prior to the model year. As discussed later in this preamble, the agency is requiring suppliers to provide information to manufacturers concerning the content of the parts they supply.

NHTSA proposed a specific procedure in § 583.6 of the proposed regulation for determining U.S./Canadian parts content. Section 583.6(b) set forth a procedure for determining the value of items of equipment. It provided that the value of an item of equipment is generally the price paid by the manufacturer for the equipment as delivered to the final assembly point, and that the value of an item of equipment produced at the final assembly plant is the fair market price that a manufacturer of similar size and location would pay a supplier for such equipment.

Section 583.6(c) set forth a procedure for determining the U.S./Canadian percentage of the value of equipment. It set forth different procedures for outside and allied suppliers, to reflect the fact that the statutory "roll-up, roll-down" provision applies to outside suppliers, but not allied suppliers.

Section 583.6(d) set forth a procedure for determining the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment. This procedure involved adding up the total value of all of the equipment to be installed in that carline during the next model year, dividing the value of the U.S./Canadian content of such equipment by the total value of the equipment, and multiplying the resulting number by 100.

a. Determining the value of items of equipment. AAMA commented that 583.6(b) puts the valuation emphasis on where material is received as opposed to from whom it is purchased. That organization stated that for equipment purchased from outside suppliers by either a vehicle manufacturer or allied supplier, valuation should be based on the price that exists in the financial records at the time the content is calculated. AAMA stated that for equipment purchased from allied suppliers, valuation should be based on the established practices of the manufacturer, which could include a transfer cost or transfer price methodology. That organization stated that if a transfer price is used, the price should be consistent with customs valuation or that used for internal management. AAMA also noted that § 583.6 does not address determination of value for items of equipment delivered to allied suppliers.

NHTSA notes that valuation is based on where material is received because section 210(f)(13) provides, with respect to passenger motor vehicle equipment which is of U.S./Canadian origin, that "(f)or both outside suppliers and allied suppliers the value used shall be the purchase price of the passenger motor vehicle equipment as paid at the final assembly point." The agency also notes that section 210(f)(10)(A) provides, with respect to the term "value added in the United States and Canada," that costs incurred or profits made *at the final vehicle assembly point and beyond* * * * shall not be considered in such calculation." This implies that all costs up to delivery of the equipment to the final assembly point are included. NHTSA therefore believes, with respect to motor vehicle equipment that is delivered to the final assembly point, that the value of the equipment should be the price paid by the manufacturer for the equipment as delivered to the final assembly point.

The agency believes that a specification that valuation be based on the price that exists in the financial records at the time the content is calculated would be too vague. It would be unclear, for example, whether the price in question was for the equipment as delivered to the final assembly point. Similarly, a specification that valuation be based on the established practices of the manufacturer would also be vague.

To the extent that it is not possible to value equipment based on the price paid by the manufacturer for the equipment as delivered to the final assembly point, e.g., because the equipment is produced at the final assembly point or a transfer price methodology is used, the agency believes, for purposes of consistency among manufacturers, that value should be based on the price that the manufacturer would have paid for the equipment as delivered to the final assembly point. The final rule therefore provides that the value of each such item of equipment is the fair market price that a manufacturer of similar size and location would pay a supplier for such equipment. NHTSA is also setting forth essentially the same valuation procedures for equipment delivered to an allied supplier, except that valuation is based on the price paid for the equipment as delivered to the allied supplier.

b. Determining the U.S./Canadian percentage of the value of items of equipment. APMA stated that if NHTSA does not adopt the AIAG model of content calculation, the regulation should specifically state how outside suppliers should calculate U.S./Canadian content. That organization stated that, in the NPRM, the agency relied on the definitions of *value added* and *foreign content* in the statute.

which is of U.S./Canadian origin, that "(f)or both outside suppliers and allied suppliers the value used shall be the purchase price of the passenger motor vehicle equipment as paid at the final assembly point." The agency also notes that section 210(f)(10)(A) provides, with respect to the term "value added in the United States and Canada," that costs incurred or profits made *at the final vehicle assembly point and beyond* * * * shall not be considered in such calculation." This implies that all costs up to delivery of the equipment to the final assembly point are included. NHTSA therefore believes, with respect to motor vehicle equipment that is delivered to the final assembly point, that the value of the equipment should be the price paid by the manufacturer for the equipment as delivered to the final assembly point.

The agency believes that a specification that valuation be based on the price that exists in the financial records at the time the content is calculated would be too vague. It would be unclear, for example, whether the price in question was for the equipment as delivered to the final assembly point. Similarly, a specification that valuation be based on the established practices of the manufacturer would also be vague.

To the extent that it is not possible to value equipment based on the price paid by the manufacturer for the equipment as delivered to the final assembly point, e.g., because the equipment is produced at the final assembly point or a transfer price methodology is used, the agency believes, for purposes of consistency among manufacturers, that value should be based on the price that the manufacturer would have paid for the equipment as delivered to the final assembly point. The final rule therefore provides that the value of each such item of equipment is the fair market price that a manufacturer of similar size and location would pay a supplier for such equipment. NHTSA is also setting forth essentially the same valuation procedures for equipment delivered to an allied supplier, except that valuation is based on the price paid for the equipment as delivered to the allied supplier.

b. Determining the U.S./Canadian percentage of the value of items of equipment. APMA stated that if NHTSA does not adopt the AIAG model of content calculation, the regulation should specifically state how outside suppliers should calculate U.S./Canadian content. That organization stated that, in the NPRM, the agency relied on the definitions of *value added* and *foreign content* in the statute. APMA stated that *value added* is defined as the total purchase price (presumably paid by the customer) less the total purchase price (presumably paid by the supplier) of foreign content. APMA stated that *foreign content* is simply defined as equipment which is "not determined to be U.S./Canadian origin." That organization stated that the statute and regulation give no direction as to how this determination is to be made. APMA also stated that while the agency noted that suppliers "may need in some cases to arrange to obtain information from their supplier," it did not explain what that information is and how it is to be obtained.

APMA stated that the absence of any specific regulatory direction on the way in which outside suppliers are to calculate "valued added in the U.S./Canada" is likely to lead to numerous interpretations and challenges. For example, can suppliers count all costs and profit or are some costs and profits excluded? How will a supplier know with certainty that an input qualifies as U.S./Canadian content? APMA stated that it believes that adoption of the AIAG content calculation is the best approach and would have minimal regulatory cost burden. That organization stated that if the agency does not follow that approach, it suggests adding the following additional definition:

> Value is added in the United States or Canada by an allied supplier or outside supplier to the extent that the supplier produces or assembles passenger motor vehicle equipment at a plant or factory located within the territorial boundaries of the United States or Canada.
>
> All costs incurred (other than the purchase price of foreign material received at such plant) and all profits made at such plant shall form part of the value added in the United States and Canada. Foreign material shall be limited to materials which have been produced or assembled outside of the territorial boundaries of the United States or Canada and which have not undergone any further production or other operation within the territorial boundaries of the United States or Canada before being received by such supplier or an affiliate of such supplier.

Nippondenso America stated that the specified method for calculating U.S./Canadian content should state that value added in the U.S. and Canada includes profit and processing costs such as labor, depreciation, expenses, etc. (originating in the U.S. or Canada), to avoid any misunderstandings or confusion regarding determinations of the U.S./Canadian content.

Nissan stated that the proposed regulation does not address how suppliers should treat duty. Nissan recommended that suppliers treat duty paid as domestic. It stated that this would be consistent with the treatment of duty under CAFE.

NHTSA agrees with the commenters that it is appropriate to provide additional clarification in the regulation concerning how suppliers are to calculate value added in the U.S./Canada. The agency notes that only allied suppliers typically need to calculate actual value added in the U.S./Canada of their equipment. As a result of the roll-up, roll-down provision, outside suppliers only need to determine whether the value added in the U.S./Canada is at least 70 percent or not. In order to make this determination, of course, outside suppliers need to understand how value added in the U.S./Canada is calculated. Moreover, if the value added in the U.S./Canada of their equipment is close to 70 percent, outside suppliers will need to calculate actual value added.

NHTSA believes that APMA's recommendation that the agency adopt the AIAG content calculation procedure as the best approach for calculating value added in the U.S./Canada is unclear. The AIAG, as an organization, represents an industry effort to, among other things, help suppliers comply with the Labeling Act. As pointed out by AAMA, however, "due to the lack of regulatory guidance, complete process definition has not been established." The agency assumes that AIAG will continue its efforts to help suppliers once today's final rule is issued. Since the AIAG has not completed the process of establishing a content calculation procedure, NHTSA does not know what APMA means in recommending that the AIAG procedure be adopted.

After considering the comments, the agency has decided to add the following clarifying language to § 583.6(c):

> (4)(i) Value is added in the United States or Canada by an allied supplier or outside supplier to the extent that the supplier produces or assembles passenger motor vehicle equipment at a plant or factory located within the territorial boundaries of the United States or Canada.
>
> (ii) In determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada, the cost of all foreign materials is subtracted from the total value (e.g., the price paid at the final assembly plant) of the equipment. Except as provided in (c)(3), material is considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials. For any material which is imported into the United States or Canada from a third country, the

value added in the United States or Canada is zero, even if part of the material originated in the United States or Canada. Neither suppliers nor anyone else is required to trace the value added in the United States or Canada backwards; however, any portion of the cost of a material which is not traced to value added in the United States or Canada is considered foreign. *Example:* A supplier located in the United States or Canada uses sheet steel to produce exterior panels which are shipped to a final assembly plant. In determining the valued added in the United States or Canada of the exterior panels, the supplier must subtract the price it paid for the sheet steel except to the extent that the supplier determines that the price paid represents value added in the United States or Canada.

(iii) For the minor items listed in the § 583.4 definition of "passenger motor vehicle equipment" as being excluded from that term, outside and allied suppliers may, to the extent that they incorporate such items into their equipment, treat the cost of the minor items as value added in the country of assembly.

(iv) For passenger motor vehicle equipment which is imported into the territorial boundaries of the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of its material originated in the United States or Canada.

(v) The payment of duty does not result in value added in the United States or Canada.

In clarifying how suppliers are to calculate value added in the U.S./Canada, NHTSA believes it is important to keep in mind the statutory requirement that it adopt regulations that provide the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers. In order to make perfect determinations of the value added in the U.S./Canada of all passenger motor vehicle equipment, it would be necessary to trace all costs involved in producing such equipment, including the costs of all component parts, all the way back to raw materials. Even if such an effort were possible, it would be extremely costly.

In light of submissions from GM, Ford, Chrysler, Mitsubishi and AIAM in response to its request for comments, NHTSA explained in the NPRM that it agreed with the general premise that tracking and reporting requirements should be limited to "first tier" suppliers (including both suppliers which deliver equipment to the manufacturer itself and ones which deliver equipment to an allied supplier). The agency stated that no requirements would be imposed on suppliers earlier in the chain, but noted that suppliers which are subject to the proposed information requirements may need in some cases to arrange to obtain information from their suppliers.

A basic issue raised by APMA's comment is how, in the absence of extensive tracking requirements, "first tier" suppliers will know enough about the content of the materials they purchase from other sources, for incorporation into their equipment, to make the required determinations about U.S./Canadian content. In fact, the suppliers may not know, or be able to find out, the amount of the cost of such materials that represents value added in the U.S./Canada. APMA's comment also raises the issue of how suppliers are to treat such things as costs and profits.

The agency believes that the best way to resolve this potential problem is to specify simple procedures concerning the determination of value added in the U.S./Canada. NHTSA notes that the total value of an item of passenger motor vehicle equipment is determined under § 583.6(b). The relevant issue, therefore, is what part of that total value represents value added in the U.S./Canada.

NHTSA agrees with APMA that the basic way suppliers add value in the U.S./Canada is by producing or assembling passenger motor vehicle equipment within the territorial boundaries of the United States or Canada. The simplest method of determining the value added in the U.S./Canada for equipment produced or assembled within the territorial boundaries of the United States or Canada is to subtract from the total value of the equipment the value of any foreign materials used in such production or assembly.

The clarifying procedures therefore specify that, in determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada, the cost of all foreign materials is subtracted from the total value (e.g., the price paid at the final assembly plant) of the equipment. The procedures also specify that material is considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials.

Under this approach, neither suppliers nor anyone else is required to trace the value added in the United States or Canada back to raw materials; however, any portion of the cost of a material which is not traced to value added in the United States or Canada is considered foreign. NHTSA believes that this approach is consistent with section 210(f)(16), which specifies that "foreign" or "foreign content" mean "passenger motor vehicle equipment not determined to be U.S./Canadian origin."

The clarifying procedures also provide that for any material which is imported into the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of the material originated in the United States or Canada. For purposes of simplicity and consistency, NHTSA believes it is appropriate to deem any materials which are imported in the United States or Canada from a third country as foreign. The agency believes that any attempt to separate out the possible portion of such materials that may have originated in the United States or Canada would involve extremely complex issues concerning how various costs are attributed to different countries. This would not provide significantly more useful information to the consumer, but would require a much more complicated regulatory scheme.

NHTSA notes that APMA recommended a somewhat different approach with respect to the treatment of foreign material. Under its suggested provision, foreign material would be limited to materials which have been produced or assembled outside of the territorial boundaries of the United States or Canada and which have not undergone any further production or other operation within the territorial boundaries of the United States or Canada before being received by such supplier or an affiliate of such supplier. The problem with this recommended provision is that the entire value of foreign material which has undergone further production or other operation within the U.S./Canada would be transformed into value added in the U.S./Canada. This would create a giant loophole by which foreign material could be transformed into U.S./Canadian content.

The above discussion has primarily concerned determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada. For equipment which is imported into the United States or Canada from a third country, the clarifying regulations specify that the value added in the United States or Canada is zero. The agency is taking this approach for the same reasons discussed above with respect to imported material that is used to produce or assemble passenger motor vehicle within the United States or Canada.

The clarifying regulations also specify that the payment of duty does not result in value added in the United States or Canada. While it may be necessary to pay duty as a condition of an item crossing a national border, such payment does not add any value to the item in the country to which duty is paid.

NHTSA is also including a provision which specifies that if a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. While the agency does not believe that this situation will occur very often, the provision ensures that U.S./Canadian content is not overstated as a result of the manufacturer or allied supplier simply assuming that equipment is of U.S./Canadian origin in the absence of information from the supplier. The provision does not affect the obligation of manufacturers and allied suppliers to request this information from their suppliers or the obligation of the suppliers to provide the information.

c. Determining the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment. GM stated that the agency had proposed that the proper method to establish the U.S./Canadian content for a carline is to estimate the installation rates for all equipment options and choices offered on that carline multiplied by the U.S./Canadian content value for each option or choice divided by the total value for all equipment, domestic or foreign. That company stated that it has found for cost management and planning purposes that the use of a high volume configuration carline model results in better management control of the assembly process than the so called average equipped carline model. GM stated that such a model has found wide acceptance in calculations made for corporate average fuel economy (CAFE) emission testing configurations, and most recently, for vehicle configurations under NAFTA. That company recommended that the agency permit manufacturers to use established carline cost management models for establishing the percentage U.S./Canadian content required to be included in the AALA domestic content label.

JAMA stated that it understands that it is NHTSA's intention that manufacturers project the sales mix of all of the potentially many models within a carline, including differences in series, engine type, transmission

The clarifying regulations also specify that the payment of duty does not result in value added in the United States or Canada. While it may be necessary to pay duty as a condition of an item crossing a national border, such payment does not add any value to the item in the country to which duty is paid.

NHTSA is also including a provision which specifies that if a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. While the agency does not believe that this situation will occur very often, the provision ensures that U.S./Canadian content is not overstated as a result of the manufacturer or allied supplier simply assuming that equipment is of U.S./Canadian origin in the absence of information from the supplier. The provision does not affect the obligation of manufacturers and allied suppliers to request this information from their suppliers or the obligation of the suppliers to provide the information.

c. Determining the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment. GM stated that the agency had proposed that the proper method to establish the U.S./Canadian content for a carline is to estimate the installation rates for all equipment options and choices offered on that carline multiplied by the U.S./Canadian content value for each option or choice divided by the total value for all equipment, domestic or foreign. That company stated that it has found for cost management and planning purposes that the use of a high volume configuration carline model results in better management control of the assembly process than the so called average equipped carline model. GM stated that such a model has found wide acceptance in calculations made for corporate average fuel economy (CAFE) emission testing configurations, and most recently, for vehicle configurations under NAFTA. That company recommended that the agency permit manufacturers to use established carline cost management models for establishing the percentage U.S./Canadian content required to be included in the AALA domestic content label.

JAMA stated that it understands that it is NHTSA's intention that manufacturers project the sales mix of all of the potentially many models within a carline, including differences in series, engine type, transmission type, and other optional equipment, and to perform the weighted average carline calculation based on this model and equipment mix. That organization stated that it believes this calculation method would impose an unnecessarily great burden on manufacturers without a significant increase in the accuracy of the computed percentage. It recommended that agency permit a manufacturer, at its option, to use the U.S./Canadian parts content of a specific model, e.g., the best selling model of a carline, on a projected sales basis, which is considered to reasonably represent the entire carline.

Mazda stated that it believes proposed calculation method would impose too much burden on manufacturers, and recommended that NHTSA permit manufacturers to use U.S./Canadian parts content of a specific representative model within a carline, e.g., best selling model, as the parts content of the carline.

NHTSA does not disagree with the concept of permitting simplified procedures for estimating U.S./Canadian content, if such procedures would always ensure reliable results. However, the procedures suggested by the commenters, which are based on either a high volume configuration or best selling model, would not appear to always ensure meaningful results.

For example, as discussed above, vehicles within a carline may be assembled in both the U.S./Canada and a foreign country. If the high volume configuration or best selling model was produced in the U.S./Canada and the rest of the carline was produced in a foreign country, content calculations based on the portion of the carline assembled in the U.S./Canada would not be representative of the carline as a whole.

The agency believes it would inappropriate to permit simplified procedures that could produce unreliable results.

4. Procedure for Determining Major Foreign Sources of Passenger Motor Vehicle Equipment (Section 583.7)

As discussed in the NPRM, item two on the label, listing the main foreign sources of a carline's equipment, is necessary only if one or more foreign countries (i.e., countries other than the U.S./Canada) individually contribute at least 15 percent of the value of the carline's equipment. If there is one such country, the manufacturer must list that country and the percentage by value that originated in that country for the carline. If there are two such countries, the manufacturer must list those countries and the percentage by value that originated in those countries for the carline, in descending order of percentage. Manufacturers need not list more than two such countries. As with the first item on the label, much of the information that manufacturers need to calculate the information for the second item must come from parts suppliers.

NHTSA proposed a specific procedure in § 583.7 of the proposed regulation for determining major foreign sources of passenger motor vehicle equipment. The section specified the same procedure for determining the value of items of equipment as § 583.7, and also specified procedures for determining the country of origin of items of equipment and for determining the percentage of the total value of a carline's passenger motor vehicle equipment which is attributable to individual countries other than the U.S. and Canada.

NHTSA noted in the NPRM that the statute does not specify how country of origin is determined for purposes of item two on the label. The agency tentatively concluded that the simplest method would be to specify one country of origin for each item of equipment, using the country from which the greatest share of value originated for the item of equipment. The agency noted that this is the method that Congress prescribed for the only other country of origin calculation in section 210, i.e., country of origin for engines and transmissions in section 210(f)(12).

Ford commented that due to differences in calculation methods for U.S./Canadian and foreign content, it would be possible for the sum of the domestic and foreign label values of a vehicle to be either over 100 percent or zero percent, thereby causing confusion to consumers. That company suggested an alternative method for determining country of origin which, among other things, would attribute the total value of outside supplied equipment that contains less than 70 percent value added in the U.S./Canada to the country other than the U.S./Canada which contributed the greatest amount of value to that item. Ford stated that if the agency did not adopt its recommendation, it should clarify that the sum of U.S./Canadian content is considered one country, to preclude the classification of an item of equipment that is more than 50 percent U.S./Canadian to be classified as a foreign item of equipment.

Chrysler argued that the proposed regulation could result in an anomaly. It stated, among other things, that under the proposed method for determining country of origin, the country of origin could be the U.S. or Canada in

situations where U.S./Canadian content is less than 70 percent. Chrysler recommended an alternative method for determining foreign country of origin. The method would only consider passenger motor vehicle equipment that contains less than 70 percent valued added in the U.S./Canada, and would consider the foreign value of the equipment to be its value multiplied by the percent of content that originated outside of the U.S. and Canada.

Toyota stated that a "greatest share of value originated" test for purposes of item two on the label would represent a new and different test that is inconsistent with all other origin tests in use. Toyota stated that it believes that imposing this test would result in more work for suppliers with no benefit to the consumer. That company stated that if this test is used at all, it should be confined to instances in which the country of origin of passenger motor vehicle equipment, as determined for Customs purposes, is unknown and cannot be determined.

BMW commented that with regard to foreign parts content calculations and country of origin certification, NHTSA should incorporate an alternative means to allow manufacturers with existing, substantial business records to use these records as proof of foreign content to comply with the requirements. That company argued that without such an alternative, NHTSA would be imposing an unnecessary burden which would be increased further due to language barriers. BMW stated that it already has a system in place to handle customs duties and preferential treatment of goods with Germany and the EC jurisdiction which provides information on more than 400,000 active BMW parts. That manufacturer stated that by using the parts database and by inputting the appropriate parameters for a given group of vehicles, it can receive information that could be utilized to complete the calculations for the foreign parts content of Item Two on the label. BMW stated that while the wording of the definition of country of origin for customs purposes does not match the language in the NPRM verbatim, the practical use of either definition essentially would be the same for calculating the foreign content of Item Two. BMW acknowledged that circumstances would not be precluded where the country of origin would be different given the two definitions, but argued that these exceptions will not influence the accuracy of the calculated percentages.

After considering the comments, the agency has decided to make changes in § 583.7 to prevent the possibility that the specified U.S./Canadian content and major sources of foreign content for a carline will together exceed 100 percent and to provide greater flexibility concerning determination of country of origin for purposes of item two of the label.

As discussed above, the first two items on the label provide parts content percentages for the U.S./Canada and for up to two major sources of foreign parts content. For example, a label might indicate the following parts content percentages: U.S./Canada, 50%; Japan, 20%; and Mexico, 15%. Since the label does not purport to indicate all sources of content, the percentages are not expected to add up to 100%. However, the agency agrees that consumers would be confused if the numbers added up to more than 100 percent.

One way to prevent the numbers from adding up to more than 100 percent would be to specify a procedure for determining country of origin for item two of the label that is more closely tied to the statutory method for determining U.S./Canadian content. However, such a procedure would necessarily be very complicated, given certain aspects of the procedure for determining U.S./Canadian content, e.g., the roll-up, roll-down provision for outside suppliers.

The agency has therefore decided to simply specify that if the U.S./Canada and major foreign source percentages add up to more than 100 percent, the foreign source percentages are proportionately reduced to the extent necessary to bring the percentages down to 100 percent. The U.S./Canada percentage is not changed. The agency believes that this is the more important of the two items of information for consumers, and the method for determining the U.S./Canada percentage, unlike the methodology for major foreign source percentages, is explicitly set forth in the statute.

Since section 210 provides a specific methodology for determining the U.S./Canada percentage, the § 583.7 procedures have the limited purpose of providing a method for calculating the extent to which the *remaining* percentage is attributable to foreign countries which individually contribute at least 15 percent of the parts content, and the specific percentage attributable to each such foreign country.

Given that the U.S. and Canada are treated together in determining the U.S./Canada content, the agency agrees with Ford that they should also be treated together in making determinations under § 583.7. Beyond that, however, NHTSA believes that since the statute does not specify a particular method for making the country of origin determinations for item two of the label, and given the limited purpose of these determinations, manufacturers should be permitted greater flexibility. The agency is therefore specifying that, in making country of origin determinations for item two of the label only, manufacturers may use the greatest share of value approach or any other approach that is used for customs (U.S. or foreign) purposes, so long as a consistent methodology is employed for all parts and so long as the U.S. and Canada are treated together.

NHTSA notes that regardless of what approach a manufacturer selects for making country of origin determinations for item two of the label, it will have no effect on the specified U.S./Canadian content of a carline. Assume, for example, that an outside supplier provides equipment with 65 percent U.S./Canadian content. Under the roll-up, roll-down provision, the equipment is considered 0 percent U.S./Canadian for item one of the label. Under the greatest share of value approach and possibly under other approaches, the equipment would be considered U.S./Canadian for item two of the label. However, this would merely mean that the equipment does not show up in the percentages attributable to Japan, Germany or some other foreign country in the item two calculations; it would never be reflected as U.S./Canadian on the label.

NHTSA does not agree with the specific approaches recommended by Ford and Chrysler. The agency believes that both approaches are unnecessarily complicated. The agency also notes that the Ford approach would result in country of origin determinations being made on a very small percentage of value for items with substantial, but less than 70 percent, U.S./Canadian content.

5. Procedure for Determining Country of Origin for Engines and Transmissions (Section 583.8)

As discussed in the NPRM, the fourth and fifth items on the label, the countries of origin for the engine and transmission, are also determined separately for each vehicle, instead of on a carline basis. The information needed to make these determinations also needs to come from suppliers.

Section 210(f)(12) states that the "country of origin" of an engine or transmission is the country that contributed the greatest percentage of dollar value to the engine or transmission, based upon the purchase price of direct materials received at the individual engine or transmission plant. It also states that the U.S. and Canada are to be treated separately for determining the country of origin. Thus, the country of origin might be the U.S. or Canada, but could not be U.S./Canada.

NHTSA explained in the NPRM that the term "direct materials" is not defined in section 210 of the Cost Savings Act. The agency referred to similar terms in the CFTA to assist it in defining the term, and tentatively concluded that the term "direct materials" refers to the items (i.e., the materials) that make up the final good (either an engine or a transmission), but does not include the "costs" (i.e., items such as labor) that go into assembling the final good. Those "costs" are not "materials." Further, they are not "received at the individual engine or transmission plants." (Emphasis added.)

NHTSA therefore concluded that, in calculating the country of origin for engines and transmissions, the country to which the engine or transmission is attributed is that country in which the greatest percentage by value was added, based on the purchase price of all equipment that makes up the completed engine or transmission. In addition, the country of origin calculation is based on the purchase price an engine or transmission supplier pays for all equipment it receives at the plant at which the engine or transmission is assembled into a completed unit. Based on the language in section 210(f)(12), costs incurred once the engine or transmission supplier has received the equipment at its engine or transmission assembly plants (e.g., labor costs, depreciation of equipment, insurance, etc.) are not permitted to be taken into account for purposes of determining the country of origin of an engine or transmission.

The agency recognized that some engine/transmission suppliers may produce their own equipment that is integrated into the fully-assembled engine/transmission. NHTSA requested comments on whether such "on-site" production should be treated similarly to on-site production at a manufacturer's final assembly point, i.e., by including all costs related to the production of such components, including labor.

The agency stated that under such an approach, for engine suppliers, production that occurs on-site prior to the point at which the engine parts are assembled to the engine block would not be considered "engine assembly," and non-parts costs would be taken into account in determining the value of the engine in order to determine its country of origin. After that point in the process, assembly and other non-parts costs would be disallowed. For transmission

determining the country of origin. Thus, the country of origin might be the U.S. or Canada, but could not be U.S./Canada.

NHTSA explained in the NPRM that the term "direct materials" is not defined in section 210 of the Cost Savings Act. The agency referred to similar terms in the CFTA to assist it in defining the term, and tentatively concluded that the term "direct materials" refers to the items (i.e., the materials) that make up the final good (either an engine or a transmission), but does not include the "costs" (i.e., items such as labor) that go into assembling the final good. Those "costs" are not "materials." Further, they are not "received at the individual engine or transmission plants." (Emphasis added.)

NHTSA therefore concluded that, in calculating the country of origin for engines and transmissions, the country to which the engine or transmission is attributed is that country in which the greatest percentage by value was added, based on the purchase price of all equipment that makes up the completed engine or transmission. In addition, the country of origin calculation is based on the purchase price an engine or transmission supplier pays for all equipment it receives at the plant at which the engine or transmission is assembled into a completed unit. Based on the language in section 210(f)(12), costs incurred once the engine or transmission supplier has received the equipment at its engine or transmission assembly plants (e.g., labor costs, depreciation of equipment, insurance, etc.) are not permitted to be taken into account for purposes of determining the country of origin of an engine or transmission.

The agency recognized that some engine/transmission suppliers may produce their own equipment that is integrated into the fully-assembled engine/transmission. NHTSA requested comments on whether such "on-site" production should be treated similarly to on-site production at a manufacturer's final assembly point, i.e., by including all costs related to the production of such components, including labor.

The agency stated that under such an approach, for engine suppliers, production that occurs on-site prior to the point at which the engine parts are assembled to the engine block would not be considered "engine assembly," and non-parts costs would be taken into account in determining the value of the engine in order to determine its country of origin. After that point in the process, assembly and other non-parts costs would be disallowed. For transmission suppliers, production that occurs on-site prior to the point at which the transmission parts are assembled in the transmission casing (or transmission housing) would not be considered "transmission assembly," and non-parts costs would be taken into account in determining the value of the transmission in order to determine its country of origin. Again, after that point in the process, assembly and other non-parts costs would be disallowed.

NHTSA proposed a specific procedure in § 583.6 of the proposed regulation for determining country of origin for engines and transmissions. NHTSA noted in the NPRM that while the proposed regulatory text did not reflect taking parts production costs at the engine or transmission plant into account in determining country of origin for the engine or transmission, the agency might, depending on the comments, adopt such an approach in the final rule.

a. Assembly costs. AAMA stated that it agrees that the statute provides that determination of country of origin for engine and transmission does not include the cost of assembling and fabricating the engine or transmission.

Toyota, however, stated that it disagrees with this conclusion. That manufacturer argued that the statute does not expressly require such exclusion, and the Act's use of the words "dollar value added" in the first sentence of section 210(f)(12) connotes that the cost of assembling the engine or transmission is to be included. Toyota stated that it recognizes that the third sentence in (f)(12) provides that the estimate of value is based on the purchase price of direct materials, but argued that the sentence does not require that the estimate be based solely on the value of direct materials. Toyota urged the agency to interpret this section based on what it considers to be the plain meaning of both of these sentences, under which materials are a component of the value added calculation but not the sole component.

Mitsubishi argued that exclusion of the cost of labor required to build or assemble engines and transmission is not consistent with other provisions of the regulations, and the value of labor should therefore be included. That manufacturer stated that since the term "direct materials" is not defined in the AALA, the agency should use its discretion to interpret the undefined and vague language in a manner that is consistent with the rest of the Act.

JAMA also argued that assembly labor for engines and transmission should be included in the country of origin label calculations. That organization stated that if NHTSA believes that the statute precludes such inclusion, the agency should provide in the final regulations a clear disclaimer statement to that effect. JAMA stated that this could be accomplished by adding a sentence to the explanatory note or a parenthetical to the label following the words country of origin.

After considering the comments, NHTSA concludes, based on the language in section 210(f)(12), that determination of country of origin for engine and transmission does not include the cost of assembling and fabricating the engine or transmission. The agency does not accept Toyota's argument about the first and third sentences of (f)(12). Since the third sentence expressly provides that "(t)he estimate of the percentage of dollar value shall be based upon the purchase price of direct materials as received at the individual engine or transmissions plants of engines of the same displacement and transmission of the same transmission type," it limits the meaning of the term "value added" in the first sentence.

The agency also does not agree that significance should be accorded the fact that (f)(12) does not expressly provide that the estimate must be based solely on the value of direct materials. A basic rule of statutory construction provides that where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are designated, there is an inference that all omissions should be understood as exclusions. See Sutherland Stat Const § 47.23 (5th Ed). Since (f)(12) provides that the estimate is to be based on the value of direct materials received at the individual engine or transmission plant, other items such as assembly costs are excluded in making estimates.

NHTSA disagrees with Mitsubishi's argument that exclusion of the cost of labor is inconsistent with the rest of the regulation. The agency notes that § 583.8 applies *only* to the determination of country of origin for engines/transmissions for purposes of items four and five on the label; the cost of labor in assembling engines and transmissions is not excluded for purposes of determining U.S./Canadian parts content and major foreign sources of foreign content (items one and two of the label). NHTSA also notes that the exclusion of labor and assembly costs in determining the country of origin for engines/transmissions is directly analogous to the exclusion of final assembly costs in determining U.S./Canadian parts content and major foreign sources of content. The agency

also disagrees that the term "direct materials" is so vague that it can be interpreted to include labor in assembling the equipment received at engine/transmission plants into engines/transmissions.

NHTSA has, however, decided to specify the addition of the word "parts" after "engine" and "transmission" on the label. The agency believes that this will make it clear to consumers that these country of origin determinations exclude assembly costs. Because this change involves adding only two words to the label, it will not result in an information overload for consumers or an unnecessarily long label. NHTSA believes that this change is consistent with the statutory directive that the regulations provide to the ultimate purchaser of new passenger motor vehicles the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on manufacturers.

b. Parts that are produced at engine and transmission plants. AAMA recommended that the regulation provide that "(a)ll value added at the transmission and engine plant is excluded from the calculation of origin." APMA stated that the agency asked whether it should include non-parts costs of on-site production prior to the point at which engine parts are assembled to engine block or transmission parts are assembled in the transmission casing. APMA stated that it supports the regulation as drafted, which does not include non-parts costs for on-site production, as being the only approach consistent with the statutory language.

A number of other commenters, however, urged that "on-site" production of parts at an engine/transmission plant should be treated similarly to on-site production at a manufacturer's final assembly point, i.e., by including all costs related to the production of such components, including labor. Honda stated that it strongly supports inclusion of costs of in-house production of parts and subcomponents that are subsequently integrated into the engine or transmission during final assembly. It also stated that the agency's proposed definition of *final assembly point* for the engine (the point at which the engine parts are assembled to the engine block) and the transmission (the point at which the transmission part are assembled in the transmission casing or housing) seems appropriate.

Nissan stated that it agrees that in-house parts and components production should be included as parts content in determining country of origin for engines and transmissions. It also stated that, as proposed, final engine assembly should be designated to begin at the point in the production process when the block and head are joined, and that for transmissions, final assembly should be designated to begin at the point in the production process at which transmission parts are assembled in the transmission casing.

Toyota stated that because an assembled engine block is not equivalent to an engine (for any piston engine, gasoline or diesel, there must also be a cylinder head), it recommends that the point of engine assembly should occur no sooner than the point at which the block and head are attached to one another. That commenter stated that assembly labor prior to the attachment of the head to the block should not be excluded, as such labor constitutes, by definition, part of the value of the individual engine block and cylinder head, neither of which by itself constitutes an engine.

BMW stated that it supports treating on-site production of engine and transmission parts in a similar manner to on-site production of parts at a manufacturer's final assembly plant. BMW added, however, that it believes the definitions for the starting points of final assembly for the engine and transmission need to be precise so that substantial variances cannot be achieved by modifying the assembly sequence.

After considering the comments, NHTSA has concluded that production of parts at an engine or transmission plant should be treated in a similar manner with respect to determining country of origin of the engine or transmission as the production of parts at a final assembly plant is treated with respect to determination of a vehicle's parts content. The agency notes that the basic value of an engine or transmission is not primarily related to either the costs of assembly or the costs of the raw materials, but is instead related to the costs of producing parts. If an engine or transmission plant was highly integrated and all parts were produced at the plant, a determination of country of origin that did not reflect the costs of producing parts would be based entirely on the costs of raw materials. The agency believes that such a determination would be of little meaning.

At the same time, however, the agency must give full effect to the congressional intent to exclude the costs of assembling engines and transmissions. NHTSA believes that the best way to accomplish this is to specify that all value added at the transmission and engine plant is excluded from the calculation of origin, with the exception of the costs of producing individual parts of the transmission/engine. Individual parts refers to the most basic level of parts used to assemble an engine or transmission and not subassemblies.

In addition to ensuring that engine and transmission assembly costs are excluded as required by section 210, the agency also believes that this approach is much clearer than the specific one discussed in the NPRM preamble. The agency believes it could be difficult or impossible to define the starting points of final assembly for the engine and transmission in ways that are appropriate for all manufacturers. NHTSA is particularly concerned that, under such an approach, manufacturers might be able to modify the assembly process in ways that would reduce the costs of assembling the engine/transmission to a nullity. This would be possible, for example, under the approach suggested by Toyota. Such a result would be inconsistent with the statutory requirement that engine and transmission origin determinations be made based on the costs of direct materials.

c. Other issues concerning determining country of origin for engines and transmissions. AAMA stated that § 583.8 refers to determining country of origin for each individual engine and transmission. That organization stated that this is inconsistent with section 210(f)(10)(B) of the statute, which specifies that the following groupings are used in determining the origin and value added of engines/transmissions: engines of the same displacement produced at the same plant and transmissions of the same type produced at the same plant. AAMA noted that neither the statute nor proposed regulation defines "type" of transmission. It suggested that transmission type be defined as follows: In determining the origin of transmissions produced in the same plant, a type should have the same characteristics: driveline, number of forward gears, controls, and layout.

AAMA also commented that the regulation should specify that country of origin is determined once a model year using same methodology as vehicles, except United States and Canada are treated separately. That organization also stated that the regulation should make it clear that calculation of origin of engine/transmission is different for determining overall U.S./Canadian content.

Honda stated that the proposed regulation does not address the appropriate groupings of engines and transmissions for purposes of calculating country of origin. It also noted that the proposed regulatory text refers to a separate country of origin determination for each individual engine and transmission, and argued that this is not contemplated by the Labeling Act and would be extremely burdensome.

Honda stated that it believes the statutory groupings in some cases may be broader than appropriate to give meaningful information to consumers. It cited the example of an engine that is available in two types, both of same displacement and both manufactured at same plant, one of which is supercharged and the other standard. Honda stated that the two engines may have very different parts sources. Honda suggested that final rule provide manufacturers discretion to make country of origin determinations for engine and transmission subgroupings within the statutory grouping framework.

NHTSA agrees with the commenters that section 210 requires country of origin determinations for engines and transmissions, for items four and five of the label, to be based on groups of engines. The agency also agrees with AAMA's suggested definition for transmission type. For purposes of consistency and clarity, the agency believes it is more appropriate to provide a definition than simply leave subgroupings to the discretion of the manufacturer. The final rule reflects these changes. The agency does not agree that it is appropriate to permit subgroupings of engines below the level specified in section 210, since the statute specifies the groups to be used.

As part of the procedure for determining country of origin for engines and transmissions (for purposes of items four and five of the label only), the agency is specifying a similar procedure for determining country of origin of the components that comprise the engine/transmission as for making country of origin determinations for item two of the label, i.e., manufacturers may use the greatest share of value approach or any other approach that is used for customs (U.S. or foreign) purposes, so long as a consistent methodology is employed for all parts. The U.S. and Canada, however, are treated separately for making these determinations.

Since the statute does not specify a particular method for making country of origin determinations for the components comprising an engine/

Honda stated that the proposed regulation does not address the appropriate groupings of engines and transmissions for purposes of calculating country of origin. It also noted that the proposed regulatory text refers to a separate country of origin determination for each individual engine and transmission, and argued that this is not contemplated by the Labeling Act and would be extremely burdensome.

Honda stated that it believes the statutory groupings in some cases may be broader than appropriate to give meaningful information to consumers. It cited the example of an engine that is available in two types, both of same displacement and both manufactured at same plant, one of which is supercharged and the other standard. Honda stated that the two engines may have very different parts sources. Honda suggested that final rule provide manufacturers discretion to make country of origin determinations for engine and transmission subgroupings within the statutory grouping framework.

NHTSA agrees with the commenters that section 210 requires country of origin determinations for engines and transmissions, for items four and five of the label, to be based on groups of engines. The agency also agrees with AAMA's suggested definition for transmission type. For purposes of consistency and clarity, the agency believes it is more appropriate to provide a definition than simply leave subgroupings to the discretion of the manufacturer. The final rule reflects these changes. The agency does not agree that it is appropriate to permit subgroupings of engines below the level specified in section 210, since the statute specifies the groups to be used.

As part of the procedure for determining country of origin for engines and transmissions (for purposes of items four and five of the label only), the agency is specifying a similar procedure for determining country of origin of the components that comprise the engine/transmission as for making country of origin determinations for item two of the label, i.e., manufacturers may use the greatest share of value approach or any other approach that is used for customs (U.S. or foreign) purposes, so long as a consistent methodology is employed for all parts. The U.S. and Canada, however, are treated separately for making these determinations.

Since the statute does not specify a particular method for making country of origin determinations for the components comprising an engine/transmission, NHTSA believes that this approach will provide appropriate flexibility. The agency notes that after country of origin determinations are made for each component comprising an engine/transmission, the "greatest share of value added" approach is used to determine the origin of the engine/transmission. The agency also notes that this approach will not have any effect on item one of the label.

B. Format/Location for Label

NHTSA proposed to require that the label be placed in a prominent location on each vehicle where it can be read from the exterior of the vehicle. The agency proposed three options for the format of the label: (1) A stand-alone label that is at least 5 inches wide by 3 inches long, (2) an addition at the end of the Monroney pricing label (15 U.S.C. 1232), or (3) an addition at the end of the fuel economy label (15 U.S.C. 2006). Under all three options, the label would be required to read as follows:

For vehicles in this carline:
U.S./Canadian Parts Content: ____%
Major Source of Foreign Parts Content: [fill in country/countries]: ____%
For this vehicle:
Final Assembly Point: _____
Country of Origin:
Engine: _____
Transmission: _____

In addition, the label would include the heading "PARTS CONTENT INFORMATION" at the top, and an explanatory note at the bottom. The second item of the label (i.e., "Major Source of Foreign parts Content") would be omitted if no individual country other than the U.S./Canada contributed a minimum of 15 percent of the value of a vehicle's equipment.

NHTSA stated in the NPRM that to ease comparisons among various carlines and to make the information available to consumers in as clear and consistent a manner as possible, it believed it was appropriate to specify minimum requirements for label and letter size. The agency noted that the label, whether separate or attached to the price or fuel economy labels, must be large enough for all the content information to be easily read, yet small enough to avoid cluttering the limited window space on the vehicle. The agency proposed to require a separate label to be rectangular with a minimum dimension of 5.0 inches (125 mm) in width and 3.0 inches (75 mm) in length. The characters for items one through five of the parts content label would be required to be printed at a minimum height of 12 points (one-sixth of an inch) in boldface type. The required explanatory note at the bottom of the label would be required to be printed in characters two points smaller than the information for items one through five.

If the information required by section 210 is attached to the price or fuel economy labels, the information would be required to be separated from the information required to be on those labels by a line that is a minimum of 3 points wide. The words "PARTS CONTENT INFORMATION" would be required to be printed in bold, uppercase letters, centered, and in not less than 12 point type.

AAMA stated that the agency should permit the label information on any prominently displayed window label. That organization stated that as various government agencies add more labeling requirements, many companies have been developing consumer labels containing information on several different issues. On the issue of format, AAMA stated that because of increasing labeling requirements such as bumper standards and CFC content, deviations should be permitted with the prior approval of the agency.

GM stated that label space is at a premium, especially for labels which are required to be left in place until delivery. That manufacturer stated that the information required on the label is specifically set out in the legislation, and additional information should not be required. GM also argued that the label location, format, size, appearance and type style should be discretionary with the manufacturer to give the manufacturer the greatest flexibility. GM indicated that it intends to include this label information in a consumer information label combining several consumer notices on one label, including such things as bumper system performance information. GM stated that the regulation should allow consolidation of this label with other consumer notices as part of another window label displayed for consumer review at time of sale.

GM stated that in its combined consumer information label format, a title size of 12 points with the label information printed in characters two points smaller would make the label consistent with the other information. That manufacturer argued that in no case should the type size be larger than 12 points. GM stated that type size changes and bolding are more practical for implementing emphasis than underlining. According to GM, to maximize use of label space, the format should be discretionary, not mandated. That company stated, for example, that various information should be allowed

on the same line if width permits to save label space. GM also argued that the title line should be "Content Information" to comply with the disclosure intent of the Labeling Act.

Toyota stated that a separate Labeling Act label should not be required to be placed on the same window as the Monroney label. That company stated that section 210(b) does not require such placement and provides only that the label appear in a prominent place. Toyota also stated that the proposed 3 x 5 inch minimum size requirement for a separate label would pose problems concerning placement on some vehicles for which available space is limited. It noted that a manufacturer choosing to place the information on the Monroney label will be able to devote less space to Labeling Act disclosures than the 15 square inches of a 3 x 5 inch label. Toyota stated that for the sake of consistency, a separate label should not have to be substantially larger than the available space on the Monroney label.

NADA urged the agency to allow manufacturers to set out parts content information in the certification label required by 49 CFR part 567. That organization argued that a vehicle's right door frame is a prominent place and that nothing in the Act requires parts content labels to be affixed to vehicle exteriors. NADA also stated permanent attachment would provide information to subsequent purchasers.

NADA stated that the agency should prohibit the affixing of any separate parts content labels on the vehicle window. That organization stated that new vehicle windows are already cluttered with the Monroney and fuel economy labels. It also stated that vehicles in demonstrator service must also have used car rule warranty labels affixed. NADA stated that, by law, only used car rule labels may be removed during test drives. It noted that many state laws regulate vehicle window obstruction, but Federal law requires Monroney and fuel economy labels to be maintained. NADA stated that the agency, consistent with its primary mission to ensure vehicle safety, must not exacerbate this concern by allowing the potential for an additional window label.

After considering the comments, NHTSA has decided to require the label to be placed in a prominent location on each vehicle where it can be read from the exterior of the vehicle with the doors closed. NHTSA does not accept NADA's recommendation to permit the label to be included as part of the certification label on the door frame. The agency disagrees that the door frame would be a prominent location for a consumer information label, since prospective purchasers would need to open the door of a vehicle, and probably have to stoop down as well, to read the label.

NHTSA does not believe that it would be appropriate to prohibit stand-alone labels from being affixed to vehicle windows. Section 210 expressly provides that the agency must permit manufacturers to use, among other options, a readily visible separate label. A window location is the most practicable location for consumer information labels since a label installed on the inside of the glass can be read from outside the vehicle, yet is also protected from the elements. In addition, affixing labels to exterior painted surfaces could damage the paint. While NHTSA recognizes the importance of driver visibility, it observes that since a stand-alone label would be very small, such a label could be placed in an area where it would have little or no impact on visibility. The agency notes, in response to Toyota's comment, that stand-alone labels are not required to be on the same window as the Monroney label.

The agency is adopting format requirements that are similar to those in the NPRM, but with some minor changes. The agency is requiring the heading "PARTS CONTENT INFORMATION" for all labels. The agency notes that the NPRM preamble suggested that the heading would only be required for content labels included as part of other labels. However, the agency believes that a heading is useful for all labels, since it draws attention to the information and identifies its purpose. The agency believes the word "parts" is appropriate for reasons discussed earlier in this preamble. NHTSA also notes that the wording of the explanatory note has also been changed and the word "parts" has been added after "engine" and "transmission," for reasons discussed earlier in the preamble.

NHTSA agrees that manufacturers should be permitted to include the content label as part of any larger labels meeting the specified location requirements, since this increases manufacturer flexibility without lessening the usefulness or visibility of the content information. The agency disagrees, however, that it should drop all of the proposed format and size requirements. Without such requirements, manufacturers might use fine print that is not easily read. Similarly, the agency believes that the label would be harder to read if multiple items of information were placed on the same line. NHTSA is not adopting the proposed requirement that certain information be underlined, since it agrees that the use of capital letters and bold type provides sufficient emphasis. The agency is adopting minimum type size requirements. The agency is not adopting any overall size requirement for a separate label, since it believes that the minimum type size requirements are sufficient to ensure that the content label will be visible and easily read.

C. Attachment of Label

NHTSA proposed to require manufacturers to affix the content label to each new vehicle before the vehicle is shipped from the final assembly point to the dealer, shipping agent, or importer.

Virtually all of the vehicle manufacturers requested more flexibility as to when the label must be affixed to the vehicle, and relied on the same basic arguments. They noted that section 210(b) does not expressly require manufacturers to attach the label but instead specifies that each manufacturer shall "cause to be affixed" the required label. The manufacturers also noted that section 210(c) specifies that manufacturers must be permitted the option of including the content information as part of the Monroney or fuel economy label, and indicated that, for imported vehicles, these labels are ordinarily affixed at the port of entry, a distribution center or the dealership.

Some of the manufacturers requested that the label be required to be affixed prior to the delivery of a vehicle to the dealership. AAMA requested that the label be required to be affixed prior to a motor vehicle being "offered for sale to an ultimate purchaser." Ford commented that some vehicles which are shipped to dealers prior to introduction dates are only consigned to the dealer, and the dealer does not take possession until the vehicle is invoiced.

In response to an inquiry from NHTSA concerning when Monroney labels are affixed, the Justice Department noted that manufacturers are required by statute, "prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date" to affix the Monroney label. That Department noted that the language requiring the Monroney label be affixed "prior to the delivery" is straightforward and places the responsibility squarely on the manufacturer. With respect to the "introduction date" exception, however, the Justice Department indicated that models are introduced at varying times and vehicles may sometimes arrive at a dealership several months ahead of the

"introduction date" minus the Monroney labels. The Department stated that this makes compliance problematic at times and raises enforcement issues that NHTSA may wish to consider.

After considering the comments, NHTSA has decided to generally require labels to be affixed prior to the delivery of a vehicle to the dealer, but to provide an exception for vehicles delivered to dealerships prior to introduction dates. The agency believes it is desirable for labels to be present on vehicles when they are delivered to the dealership, since consumers may see such vehicles at any time after such delivery. There is no reason to require the labels to be affixed any earlier, such as at the final assembly plant, since consumers will not see the vehicles prior to their arrival at the dealership. Since the Labeling Act provides that manufacturers may include the content information as part of the Monroney label, the agency believes it is appropriate to provide the same "introduction date" exception as is provided for Monroney labels.

D. Requirements for Suppliers and Related Ones for Manufacturers

As discussed above, much of the information that manufacturers need to calculate the required items for the label must come from suppliers. Section 210(d) specifies that the agency must issue regulations which include provisions applicable to outside and allied suppliers to require such suppliers to certify whether equipment provided by such suppliers is United States, U.S./Canadian or foreign and to provide such other information as may be necessary to enable the manufacturer to reasonably comply with the provisions of section 210 and to rely on such certification and information.

NHTSA proposed specific requirements for suppliers. In order to enable manufacturers to calculate the information required for items one and two of the label, i.e., the percentage U.S./Canadian content and major foreign sources of equipment, NHTSA proposed (§ 583.10) to require outside suppliers to provide the following information for any equipment they supply to a vehicle manufacturer or to an allied supplier:

(1) The price of the equipment to the manufacturer or allied supplier;

(2) Whether the equipment has, or does not have, at least 70 percent of its value added in the U.S. and Canada;

(3) For any equipment for which the U.S./Canadian content is less than 70 percent, the country of origin for the equipment.

The agency proposed (§ 583.11) to require allied suppliers to provide the

"introduction date" minus the Monroney labels. The Department stated that this makes compliance problematic at times and raises enforcement issues that NHTSA may wish to consider.

After considering the comments, NHTSA has decided to generally require labels to be affixed prior to the delivery of a vehicle to the dealer, but to provide an exception for vehicles delivered to dealerships prior to introduction dates. The agency believes it is desirable for labels to be present on vehicles when they are delivered to the dealership, since consumers may see such vehicles at any time after such delivery. There is no reason to require the labels to be affixed any earlier, such as at the final assembly plant, since consumers will not see the vehicles prior to their arrival at the dealership. Since the Labeling Act provides that manufacturers may include the content information as part of the Monroney label, the agency believes it is appropriate to provide the same "introduction date" exception as is provided for Monroney labels.

D. Requirements for Suppliers and Related Ones for Manufacturers

As discussed above, much of the information that manufacturers need to calculate the required items for the label must come from suppliers. Section 210(d) specifies that the agency must issue regulations which include provisions applicable to outside and allied suppliers to require such suppliers to certify whether equipment provided by such suppliers is United States, U.S./Canadian or foreign and to provide such other information as may be necessary to enable the manufacturer to reasonably comply with the provisions of section 210 and to rely on such certification and information.

NHTSA proposed specific requirements for suppliers. In order to enable manufacturers to calculate the information required for items one and two of the label, i.e., the percentage U.S./Canadian content and major foreign sources of equipment, NHTSA proposed (§ 583.10) to require outside suppliers to provide the following information for any equipment they supply to a vehicle manufacturer or to an allied supplier:

(1) The price of the equipment to the manufacturer or allied supplier;

(2) Whether the equipment has, or does not have, at least 70 percent of its value added in the U.S. and Canada;

(3) For any equipment for which the U.S./Canadian content is less than 70 percent, the country of origin for the equipment.

The agency proposed (§ 583.11) to require allied suppliers to provide the following information for any equipment they supply to a vehicle manufacturer:

(1) The price of the equipment to the manufacturer;

(2) The percentage U.S./Canadian content of the equipment;

(3) The country of origin of the equipment, i.e., the country in which the greatest percentage, by value (using purchase price), of value was added to the equipment.

Under the proposal, both outside and allied suppliers that directly supply vehicle manufacturers would be required to provide the specified information directly to the vehicle manufacturer, accompanied by a certification of the information's accuracy. Outside suppliers that directly supply allied suppliers would be required to provide the specified information and certification directly to the allied supplier. Suppliers would also be required to maintain records of the information used to determine the information provided to the manufacturers or allied suppliers.

The agency noted in the NPRM that since the information required for items one and two of the label must be calculated before the beginning of the model year, it is important that manufacturers and outside suppliers receive the required information in a timely manner. NHTSA proposed to require suppliers to provide the information by specified dates, based on typical model year production periods. The agency also proposed to require suppliers to base the information they provide on what they expect to supply during specified production periods. However, recognizing that manufacturers may establish different model year production periods for particular carlines, the agency proposed to permit manufacturers and suppliers to conclude agreements specifying alternative production periods and alternative times for providing the information to the manufacturer.

As discussed above, the information for items four and five of the label, i.e., countries of origin for the engine and transmission, is calculated for individual vehicles rather than on a carline basis. Under the agency's proposal (§ 583.12), suppliers of engines and transmissions would be required to provide the vehicle manufacturer with the country of origin for each engine or transmission it supplies to the manufacturer, i.e., the country in which the greatest percentage, by value (using the total cost of equipment to the engine or transmission supplier), was added to the engine or transmission. The agency proposed to require this information to be provided no later than the time the engine or transmission is delivered to the manufacturer.

NHTSA received numerous comments concerning the proposed requirements for suppliers. AAMA noted that the proposed regulation would require outside suppliers to provide a manufacturer or allied supplier content information for each unique type of equipment. It stated that the requirement should be limited to providing content data on those items of equipment requested by a manufacturer.

AAMA also noted that the proposed regulation would require suppliers' best estimates of price, content and origin for unique type of equipment expected to be supplied during a 12-month period. That organization stated that it believes it is highly unlikely that suppliers would be willing or able to release estimates "for future model year costs," as this information is confidential business information and suppliers may not be able anticipate changes that may be required to contract price during the year due to unforeseen design changes. AAMA suggested that to ease this potential point of friction between suppliers and manufacturers, it recommends that suppliers' best estimates of price, content and origin be based on the price which exists in the financial records of the manufacturer at the time when the content is calculated. That organization stated that if this information does not yet exist because the part is new, suppliers should be required to provide their best estimates of what the price, content or country of origin will be at start of production.

AAMA also stated that the proposed requirements would not provide manufacturers the data necessary to determine engine and transmission country of origin because they do not specify separate (as well as combined) U.S. and Canadian content for transmission and engine items of equipment. Information on a combined basis is needed for items one and two of the label; information on a separate basis is needed for items four and five of the label. Ford stated that since it is not always known if an item of equipment is going to be installed on an engine or transmission, and to reduce complexity, the separate and combined U.S. and Canadian content data should be obtained for all items of equipment. That manufacturer stated that this would also permit the basic information collected from suppliers to support Labeling Act requirements to be used for other reporting and analysis purposes.

A number of manufacturers argued that because carlines are not introduced on a rigid schedule, it would be difficult

or impossible for suppliers to adhere to the proposed timing schedule. AAMA stated that suppliers and manufacturers should be allowed flexibility to establish their own internal guidelines.

Nissan stated that since vehicle model changeovers may occur at varying times throughout the year, it urges NHTSA to specify that supplier content reporting requirement dates be negotiated by contract among suppliers and manufacturers rather than a date prescribed by regulations. BMW stated that it believes exact dates for suppliers should be left to agreements between the manufacturers and suppliers and, therefore, not included in the regulation. That company noted that the manufacturer has ultimate responsibility to provide a label on the vehicle. BMW stated that the manufacturer will require from its suppliers that information is received in a timely manner because without the information the vehicle cannot be sold.

Other vehicle manufacturers, including Toyota and Honda, also emphasized the need for manufacturer flexibility but stated that the agency's proposal to permit manufacturers and suppliers to conclude agreements specifying alternative production periods and alternative times for providing the information to the manufacturer would provide the needed flexibility.

APMA stated that if NHTSA adopts the AIAG format, requisite reporting would be jointly submitted by the outside supplier to the allied supplier or manufacturer. That organization stated that if the AIAG format is not adopted, it recommends (1) that a common reporting date be used for reporting to both allied suppliers and manufacturers, and (2) that an outside supplier's obligation to report be conditioned on the receipt of at least 90 days advance written notice from an allied supplier or manufacturer.

On the issue of supplier certifications, AAMA stated that since allied suppliers are wholly owned by the manufacturer, the manufacturer has control over the information as well as the timing required from suppliers. It stated that the information required of allied suppliers should be the same as for outside suppliers, but the certificate should be optional.

Toyota stated that it believes that "blanket certifications" should be authorized for use where a supplier's parts contain no U.S./Canadian content and where the country of origin of the equipment is indicated in ordinary business records.

After considering the comments concerning requirements for suppliers, NHTSA has decided to specify specific requirements concerning the information suppliers must provide manufacturers and allied suppliers, but with some changes from the proposal. First, the agency is persuaded by AAMA's comment that suppliers should only be required to provide content data on those items of equipment requested by a manufacturer or its allied supplier. NHTSA is therefore specifying that manufacturers must request the specified information from their suppliers for relevant motor vehicle equipment, and that the suppliers must provide the specified information in response to such request (or a request from an allied supplier). The agency believes that this approach offers two primary advantages: (1) Suppliers will not be required to provide unnecessary information, i.e., information that would not be used for parts content calculations, and (2) suppliers are less likely to have compliance problems from not knowing about the requirements of 49 CFR part 583 than in a situation where they did not receive a specific request for the required information. NHTSA also believes that, as a practical matter, manufacturers would in any event need to be contacting suppliers concerning such things as where to send the required information.

NHTSA is also persuaded that it is unnecessary to specify any specific calendar dates for suppliers to provide the information. The agency is simply specifying that manufacturers must request the information in time to enable them to calculate the information required on the label.

While the agency believes that it is generally appropriate to permit manufacturers and suppliers to work out timing and other details among themselves, it believes that a few simple requirements are necessary for the benefit of outside suppliers. Specifically, the agency is specifying the following requirements with respect to manufacturer and allied supplier requests for content information from outside suppliers: (1) The requester must indicate that the request is being made pursuant to 49 CFR part 583, and that the regulation is administered by the National Highway Traffic Safety Administration, (2) the requester must indicate that 49 CFR part 583 requires outside suppliers to provide specified information upon the request of a manufacturer or allied supplier to which it supplies passenger motor vehicle equipment and that, to the best of the requester's knowledge, the outside supplier is required to provide the requested information, (3) if any information other than that required by 49 CFR part 583 is requested, the requester must indicate which information is required by 49 CFR part 583 and which is not, and (4) the requester must indicate that 49 CFR part 583 specifies that while information may be requested by an earlier date, the outside supplier is not required to provide the information until the date specified by the requester or the date 45 days after receipt of the request, whichever is later. The agency is not specifying the specific language by which requesters must provide this information.

Since compliance by an outside supplier with 49 CFR part 583 is based upon providing information in response to a request from a manufacturer or allied supplier, the agency believes these requirements are necessary to protect outside suppliers. The requirements ensure that an outside supplier is aware that it is required by Federal regulation to provide the requested information, and that it knows the citation for the regulation and the agency which administers it. The requirements also ensure that outside suppliers will, in the event they receive requests for more information than that required by 49 CFR part 583, know which information is required by the regulation and which is not. Finally, the requirements ensure that outside suppliers will have adequate time to respond to the request. NHTSA notes that APMA recommended that the regulation specify notice of at least 90 days. However, that organization did not justify that amount of time. The agency believes that 45 days provides ample time, since today's final rule puts outside suppliers on notice that, from now on, they must provide the specified content information in response to requests from manufacturers and allied suppliers.

NHTSA believes that similar requirements are unnecessary to protect allied suppliers, given that allied suppliers are wholly owned by vehicle manufacturers. Also, any specific timing requirements as to when allied suppliers must provide requested information would be more complicated, since allied suppliers may need to request information of outside suppliers in order to provide the requested information.

With respect to AAMA's comment that certifications should be optional for allied suppliers, NHTSA notes that section 210(d) specifies that regulations "shall include provisions applicable to outside and allied suppliers to require such suppliers to certify whether a component provided by such suppliers

is United States, U.S./Canadian or foreign * * *." Therefore, the agency does not have the discretion to make certifications optional. NHTSA also observes that while allied suppliers are owned by manufacturers, they are nonetheless separate entities with independent legal obligations.

Given this statutory provision, the agency also cannot permit the use of ordinary business records instead of specific certifications from suppliers, as recommended by Toyota. The agency notes, however, that a certification can cover multiple items of equipment and can be part of documents containing other information. Suppliers may be able to incorporate the certification into other business records that they provide manufacturers.

The agency does not accept AAMA's suggestion that supplier estimates of price, content and origin for unique type of equipment not be based on a period of time generally corresponding to the model year for which content calculations are to be made. Estimates that are based on current production or on the start of production might be very different from what the supplier anticipates for the model year as a whole. For example, a supplier might plan to manufacture a part in both the United States and overseas, and to begin production in one place slightly before the other place. In such an instance, an estimate based on start of production would not be meaningful. In order to ensure meaningful label information, NHTSA believes that estimates must be for an overall production period that corresponds to the relevant model year. The agency emphasizes, however, that suppliers are only required to provide good faith estimates and are not prevented from making subsequent changes in price, content and origin for their equipment.

The final rule clarifies that suppliers are required to provide both separate and combined information concerning the U.S. and Canadian content of parts that may be used in engines or transmissions. With respect to Ford's suggestion that separate U.S. and Canadian content information be required for all equipment, NHTSA notes that it would be inappropriate for the regulation to require suppliers to provide information that is not relevant to Labeling Act requirements. However, manufacturers are free to request suppliers to provide such information outside the context of 49 CFR part 583.

The agency notes that additional issues related to supplier certifications are discussed below in the section entitled "Recordkeeping Requirements; Supplier Certifications."

is United States, U.S./Canadian or foreign * * *." Therefore, the agency does not have the discretion to make certifications optional. NHTSA also observes that while allied suppliers are owned by manufacturers, they are nonetheless separate entities with independent legal obligations.

Given this statutory provision, the agency also cannot permit the use of ordinary business records instead of specific certifications from suppliers, as recommended by Toyota. The agency notes, however, that a certification can cover multiple items of equipment and can be part of documents containing other information. Suppliers may be able to incorporate the certification into other business records that they provide manufacturers.

The agency does not accept AAMA's suggestion that supplier estimates of price, content and origin for unique type of equipment not be based on a period of time generally corresponding to the model year for which content calculations are to be made. Estimates that are based on current production or on the start of production might be very different from what the supplier anticipates for the model year as a whole. For example, a supplier might plan to manufacture a part in both the United States and overseas, and to begin production in one place slightly before the other place. In such an instance, an estimate based on start of production would not be meaningful. In order to ensure meaningful label information, NHTSA believes that estimates must be for an overall production period that corresponds to the relevant model year. The agency emphasizes, however, that suppliers are only required to provide good faith estimates and are not prevented from making subsequent changes in price, content and origin for their equipment.

The final rule clarifies that suppliers are required to provide both separate and combined information concerning the U.S. and Canadian content of parts that may be used in engines or transmissions. With respect to Ford's suggestion that separate U.S. and Canadian content information be required for all equipment, NHTSA notes that it would be inappropriate for the regulation to require suppliers to provide information that is not relevant to Labeling Act requirements. However, manufacturers are free to request suppliers to provide such information outside the context of 49 CFR part 583.

The agency notes that additional issues related to supplier certifications are discussed below in the section entitled "Recordkeeping Requirements; Supplier Certifications."

E. Requirements for Dealers

NHTSA proposed to require dealers to maintain the label on each vehicle until the vehicle is sold to a consumer. The agency noted in the NPRM that AIADA had submitted a comment on the request for comments arguing that dealers should be permitted to remove the label from a vehicle if state law requires it, such as when dealers are operating demonstrator vehicles, or when dealers move cars in an intra-dealer exchange. AIADA had also recommended that dealers be permitted to affix duplicate labels in the event that the manufacturer-supplied label becomes torn or otherwise mutilated.

NHTSA addressed this issue as follows in the NPRM:

> NHTSA has tentatively concluded that dealers should not be permitted to remove the label for any reason before sale to a consumer. The agency believes that it is appropriate to treat this label in same manner as Monroney and fuel economy labels, since all three labels are intended to provide information to aid consumers in making their purchase decision. Neither the EPA or Department of Justice permit dealers to remove fuel economy or Monroney labels, even temporarily, prior to sale to a consumer. The Department of Justice has advised that neither the Monroney nor fuel economy labeling statutes contain exceptions for situations in which labels purportedly constitute safety hazards in demonstrator cars (i.e., those cars that dealers allow potential customers to test drive), and went on to state that it was unaware of any judicial interpretations that would create such exceptions. Section 210 is similar to the other two labeling statutes in that it does not grant NHTSA the authority to permit dealers to remove the label. Indeed, section 210(b)(1) states explicitly that each dealer shall cause the label required by this Act to be maintained on the vehicle.
>
> NHTSA is also concerned that, if dealers were permitted to remove labels for demonstrator vehicles, consumers would not have the labeling information available to them at a crucial time in their purchasing decision, i.e., the time they were evaluating a vehicle for purchase. In addition, the labels might be re-attached inadvertently to the wrong vehicle or not re-attached at all.
>
> The Department of Justice has advised that most manufacturers have been applying Monroney and fuel economy labels to the rear left windows of vehicles, and affixing the vehicles with labels that do not easily tear or loosen from the windows to which they are attached. Such placement does not ordinarily interfere with the driver's vision in the event of a test drive or other similar purpose. Additionally, the dealer could not easily remove the label, even for temporary purposes, without tearing or destroying it.
>
> NHTSA will not, therefore, propose to permit dealers to remove labels for any reason prior to a first sale to a consumer, with one exception: the agency agrees with the AIADA that it is necessary for dealers to replace any label that becomes mutilated or otherwise damaged prior to sale to a consumer so that the information is no longer legible. 58 FR 61053.

As discussed earlier in this preamble, NADA argued that existing labels including the Monroney and fuel economy labels create safety concerns for vehicles which are test driven prior to their delivery to first purchasers, because the labels obstruct visibility. Noting that the agency indicated in the NPRM that dealers would not be allowed to remove a parts content label except in the event that it becomes mutilated or damaged, that organization urged the agency to prohibit the placement of separate parts content labels on vehicle windows. NADA stated that the final rule should specify that dealers may remove labels prior to sale when instructed by a manufacturer to replace them with substitutes containing updated or corrected information. AIADA repeated its earlier argument that dealers should be permitted to remove the label from a vehicle if state law requires it, such as when dealers are operating demonstrator vehicles, or when dealers move cars in an intra-dealer exchange.

After considering the comments, NHTSA has concluded that there is no basis to change its view, discussed in the NPRM, that section 210 prohibits temporary removal of labels for test drives. The Justice Department concurs in this view. Section 210 specifically requires each dealer to "cause to be maintained, *on each such vehicle*," the required label. (Emphasis added.) Therefore, the required label must be maintained by dealers "on each * * * vehicle." Moreover, the similarity of the language in section 210 for the content label with that for the Monroney and fuel economy labels indicates that the same result should be obtained. The commenters did not present any legal analysis challenging the legal analysis presented in the NPRM or suggesting that the Justice Department analysis is incorrect.

The final rule does clarify that dealers may replace labels with substitutes containing corrected information when instructed to do so by a manufacturer. It is unnecessary to specify that labels may be replaced for updated information, since the information specified on the label is not subject to change (except for purposes of correction).

F. Authority To Exclude Vehicles With Low or High U.S./Canadian Content

NHTSA stated in the NPRM that, for vehicles with less than 35 percent U.S./Canadian content, it was considering

providing manufacturers with the option of simply stating that the percentage U.S./Canadian content is "minimal" instead of determining and providing the precise amount of such content. The agency addressed this issue as follows in the NPRM:

> Several manufacturers requested more limited labeling requirements for manufacturers of new passenger motor vehicles that contain minimal U.S./Canadian content. In effect, the label would state that the vehicle contained less than a certain percentage of U.S./Canadian content. It would also state the final assembly point, and the country of origin of the engine and transmission.
>
> Volvo suggested the simplified procedure be implemented for imported vehicles containing under 15 percent U.S./Canadian content. The AAMA agreed with the 15 percent level, stating that Congress appeared to indicate that higher percentages of U.S./Canadian content were significant for purposes of labeling. Volkswagen and the AIAM, however, suggested a level of 35 percent, stating that lower levels would not affect enough vehicles to make implementation of the special provisions worthwhile. Lamborghini, in its testimony at the public meeting in December 1992, suggested a cutoff of 20 percent.
>
> As a practical matter, NHTSA agrees that once the domestic content gets below a certain point, the precise amount of that content becomes immaterial, *i.e.*, the vehicle is foreign and small differences in domestic content are not likely to be relevant to consumer purchasing decisions.
>
> Therefore, for vehicles with less than 35 percent U.S./Canadian content, the agency is considering providing manufacturers with the option of simply stating that the percentage U.S./Canadian content is "minimal" instead of determining and providing the precise amount of such content.
>
> The primary benefit of this option would be to eliminate manufacturer costs associated with keeping precise records and making precise calculations about the U.S./Canadian content of a vehicle, when the manufacturer knows such content is very low. Under this option, manufacturers would still be required to provide items 2, 3, 4, and 5 of the label, *i.e.*, major foreign sources of vehicle equipment, place of final assembly and countries of origin of the engine/transmission. 58 FR 61053–54.

However, NHTSA also noted that such an option would represent a limited exclusion from one of section 210's labeling requirements. The agency stated that as part of considering this option, as well as possible special requirements discussed below for multi-stage and low volume manufacturers, it was in the process of determining whether it had authority to provide limited exclusions from section 210's labeling requirements. NHTSA stated that it would complete its evaluation before reaching a final decision about possible exclusions. 58 FR 61054.

In commenting on the NPRM, AAMA stated that it supported a limited exclusion for vehicles with low U.S./Canadian parts content, although at a 15 percent content level rather than 35 percent. AAMA also stated that since the agency "has implied that it has the authority to set a minimal level for the U.S. and Canadian content which removes a recordkeeping burden on the low end of content, it urged that such relief also be provided for the high end of content. That organization recommended that, for carlines with more than 85 percent U.S./Canadian content, manufacturers be permitted to specify the content as "at least" 85 percent instead of specifying a percentage.

The foreign vehicle manufacturers strongly supported a limited exclusion for vehicles with low U.S./Canadian parts content. However, several of them argued that unless the agency also permits a limited exclusion from providing the information required for item two of the label, i.e., the percentage parts content originating from major sources of foreign content, there would be only a minimal benefit from an exclusion from specifying the percentage U.S./Canadian parts content. This is because the foreign manufacturers would have to collect detailed information from most of their suppliers to calculate the information for item two of the label. The foreign manufacturers suggested various alternative approaches, such as requiring them to specify the countries that constitute major sources of foreign content but not the percentages from such countries.

Since publishing the NPRM, the agency has completed the analysis of its authority to provide exclusions from the Labeling Act requirements. For reasons which are summarized below, NHTSA has concluded that it does not have the authority to provide exclusions from the express statutory labeling requirements for either vehicles with low U.S./Canadian content or vehicles with high U.S./Canadian content. As discussed in the next section of this preamble, however, the agency may provide limited exclusions for multi-stage manufacturers and low volume manufacturers, based on the *de minimis* doctrine.

As discussed above, the Labeling Act expressly requires manufacturers to label each vehicle with five items of information: (1) The "*percentage*" U.S./Canadian parts content; (2) the names of foreign countries providing at least 15 percent of the parts content and the "*percentage*" for each such country; (3) final assembly point; and (4) and (5) countries of origin for the engine and transmission. Items (1) and (2) are calculated on a "carline" basis. See section 210(b)(1).

There is a limit to the degree of precision in the percentages required by the Labeling Act. Section 210(b)(2) provides that "[t]he percentages required to be indicated by this section may be rounded to the nearest 5 percent by the manufacturers."

To implement these and other requirements, section 210(d) requires the Secretary to:

> Promulgate such regulations as may be necessary to carry out this section * * * Such regulations shall provide to the ultimate purchaser of a new passenger motor vehicle the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers.

The Labeling Act does not provide any express authority to create exclusions from the statutory requirements which apply to vehicle manufacturers. NHTSA notes that while section 210(d) provides that the regulations must not impose costly and unnecessary burdens on manufacturers, this is not an invitation for the agency to second-guess Congress about the requirements it has established regarding the specific content information which must be provided to consumers. As a matter of statutory construction, the agency notes that general provisions cannot be construed as overriding specific ones. Since all of the exclusions identified above are inconsistent with the statutory language, the relevant legal question is whether NHTSA has implied authority to create the exclusions notwithstanding such language.

Where a statute does not provide express authority to create exclusions, there are only two circumstances recognized by the courts in which an agency has implied authority to create exclusions. The first is administrative need, related to an agency's inability to carry out a mandate fully, and the second is *de minimis* circumstances, where following the plain meaning of a statute would lead to "absurd or futile results" or to "a gain of trivial or no value." The courts indicate that both bases for exclusions from the clear command of a statute are disfavored and that agencies bear a strong burden of proof in attempting to show that adhering to a statute would have the effects described above.

Since exclusions are not necessary for the agency to carry out its mandate, the only relevant issue is whether the exclusions can be justified on the *de minimis* theory. The exclusions cannot be justified if non-trivial benefits are provided by a regulation in those circumstances.

NHTSA has concluded that it does not have authority to provide the above-discussed exclusions from the express statutory labeling requirements for either vehicles with low U.S./Canadian content or vehicles with high U.S./Canadian content because the exclusions would permit the labels on a substantial portion of the vehicles sold to provide the consumer with significantly less information than Congress intended, thereby eliminating much of the benefit that the Labeling Act was intended to provide.

For example, a "low-end" exclusion would permit a large percentage of foreign vehicles to be labeled with the words "minimal" or less than 35 percent (or some other specified percentage) U.S./Canadian content, instead of being labeled with a specific percentage. Consumers would not know whether vehicles bearing such labels contained (on a carline basis) 0 percent, about 15 percent, or possibly even nearly 35 percent U.S./Canadian content. A consumer wishing to make a purchase decision among vehicles bearing such labels would not be able to compare their U.S./Canadian content. Similarly, a "high-end" exclusion would permit most domestic vehicles to be labeled with the words "greater than 85% U.S./Canadian content." A consumer wishing to make a purchase decision among vehicles bearing such labels would not be able to compare their U.S./Canadian content.

NHTSA notes that section 210(b)(2) allows rounding of the percentages, but limits the rounding "to the nearest five percent." This indicates that specific percentages must be listed (since general percentages aren't amenable to rounding) and that any rounding to a greater degree is prohibited. In this regard, it is particularly important to note that the degree of permissible rounding permitted by the enacted version of section 210 is significantly less than the degree that would have been permitted in the introduced version. In the introduced version, rounding would have been permitted to the nearest 10 percent. The enacted version permits rounding only to the nearest 5 percent. Thus, Congress focused particular attention on the issue of rounding and decided to adopt strict limits. Moreover, implicit in the enacted rounding provision is a judgment by Congress that differences in content of as little as five percentage points are

only relevant issue is whether the exclusions can be justified on the *de minimis* theory. The exclusions cannot be justified if non-trivial benefits are provided by a regulation in those circumstances.

NHTSA has concluded that it does not have authority to provide the above-discussed exclusions from the express statutory labeling requirements for either vehicles with low U.S./Canadian content or vehicles with high U.S./Canadian content because the exclusions would permit the labels on a substantial portion of the vehicles sold to provide the consumer with significantly less information than Congress intended, thereby eliminating much of the benefit that the Labeling Act was intended to provide.

For example, a "low-end" exclusion would permit a large percentage of foreign vehicles to be labeled with the words "minimal" or less than 35 percent (or some other specified percentage) U.S./Canadian content, instead of being labeled with a specific percentage. Consumers would not know whether vehicles bearing such labels contained (on a carline basis) 0 percent, about 15 percent, or possibly even nearly 35 percent U.S./Canadian content. A consumer wishing to make a purchase decision among vehicles bearing such labels would not be able to compare their U.S./Canadian content. Similarly, a "high-end" exclusion would permit most domestic vehicles to be labeled with the words "greater than 85% U.S./Canadian content." A consumer wishing to make a purchase decision among vehicles bearing such labels would not be able to compare their U.S./Canadian content.

NHTSA notes that section 210(b)(2) allows rounding of the percentages, but limits the rounding "to the nearest five percent." This indicates that specific percentages must be listed (since general percentages aren't amenable to rounding) and that any rounding to a greater degree is prohibited. In this regard, it is particularly important to note that the degree of permissible rounding permitted by the enacted version of section 210 is significantly less than the degree that would have been permitted in the introduced version. In the introduced version, rounding would have been permitted to the nearest 10 percent. The enacted version permits rounding only to the nearest 5 percent. Thus, Congress focused particular attention on the issue of rounding and decided to adopt strict limits. Moreover, implicit in the enacted rounding provision is a judgment by Congress that differences in content of as little as five percentage points are significant enough to be considered by the consumer.

As discussed above, several foreign vehicle manufacturers requested an exclusion from the statutory requirement to specify the percentage parts content originating from major sources of foreign content. Volkswagen stated that its recommendation for such an exclusion is "consistent with the intent of the original bill," but recognized that the statutory requirement to list the percentage parts content originating from major sources of foreign content was added by the House/Senate Conference Committee. Volkswagen argued that "the Committee did not appear to have assigned great importance to the inclusion of foreign sourced parts percentages."

NHTSA notes that it must implement a statute as finally passed by the Congress, and not an earlier version that was not passed. Moreover, the agency must follow the plain meaning of a statute and cannot ignore express statutory requirements based on a belief that a Congressional committee may not have assigned great importance to a particular requirement. The committee, and ultimately the Congress, thought the requirement at issue was important enough to pass into law. Congress decided that prospective purchasers should know the percentage parts content that originated from major sources of foreign content. This particular requirement primarily applies to foreign vehicles, since domestic vehicles are less likely to have major sources of foreign content. Yet, the exclusions recommended by the foreign manufacturers would permit a large percentage of foreign vehicles to labeled without this information. Such exclusions cannot be considered *de minimis*. The agency does observe that the additional flexibility it is providing with respect to how country of origin is determined for purposes of item 2 of the label should help reduce manufacturer costs in this area.

G. Multi-Stage Manufacturers and Small Businesses

NHTSA proposed to exclude multi-stage manufacturers of "carlines" of fewer than 1,000 vehicles from providing items 1 and 2 of the label (the two items that are determined on a carline basis). However, these manufacturers would be required to provide items 3, 4 and 5 of the label. Similarly, the agency proposed to apply the same limited requirements to businesses that produce a total of fewer than 1,000 passenger motor vehicles for sale in the United States annually.

The agency explained that the concept of carline is largely meaningless for many multi-stage manufacturers. Many of the vehicles made in the multi-stage process are highly specialized, and are often built to order. A "carline" in this instance could consist of only several vehicles. The agency stated that it did not believe that Congress had this situation in mind when it defined carline. Moreover, to the extent that vehicles are built to order, prospective purchasers may not be able to inspect a content label prior to making a purchase decision. NHTSA also stated in the NPRM that it believes that the same arguments made concerning multi-stage manufacturers, regarding carlines with a minimal number a vehicles produced annually, can be made in a discussion of small businesses.

In its discussion of multi-stage vehicles, the agency noted that alterers are not covered by section 210 for reasons similar to those discussed above concerning dealer and port-installed options. Alterers modify completed vehicles, after they have left the manufacturer's final assembly point. The parts they use are not considered equipment by section 210 of the Cost Savings Act, because they are never shipped to the final assembly point. Their modifications cannot affect carline-basis calculations made before the start of the model year, and cannot be known in advance of the model year by the manufacturer.

NTEA stated that it agrees with agency's tentative determination that the label on vehicles produced in multiple stages should differ from the label on mass produced vehicles. It also stated that it is confident the agency has authority under the Labeling Act to promulgate different rules, and believes the Act could be interpreted to allow even a full exclusion for multi-stage vehicles. NTEA stated that requiring small business multi-stage manufacturers to calculate U.S./Canadian versus foreign percentages would be extremely burdensome in both an economic and practical sense as they would need to do so on a per vehicle basis. That organization added that any ancillary reporting or recordkeeping requirements would also need to be done on a per vehicle basis. NTEA noted that the proposed multi-stage rules would require information on final assembly point and place of manufacture of the engine and transmission. That commenter stated that this would allow a consumer to know where the vehicle was built and whether the most valuable individual mechanical components, the engine and transmission, are of foreign or domestic

origin. NTEA also stated that the burden on small business multi-stage manufacturers would be minimal.

AIAM stated that it applauds NHTSA's recognition of providing some regulatory relief to small automotive manufacturers. It suggested that the agency expand the proposed exclusion for small manufacturers from fewer than 1,000 vehicles to fewer than 2,500 vehicles. That organization stated that this would provide relief from the costly burdens the Act imposes on additional small manufacturers without depriving consumers of information deemed necessary by the Act.

Coachmen stated that the "concessions" made in the NPRM fall far short of what was requested by RVIA in commenting on the request for comments. Coachmen argued that the proposed requirements would impose an undue and costly and unnecessary burden on Coachmen. It recommended that the final rule should exclude carlines of less than 20,000 per year, exclude recreation vehicle manufacturers and van converters, or, as a less desirable alternative, provide simplified and less costly compliance recordkeeping and reporting requirements based on using the information provided solely by the original vehicle manufacturer on a pass through basis. Coachmen stated that it has several divisions, some of which are final stage manufacturers and others van converters. It stated that the process of documenting and re-computing percentage of domestic content of vehicles would require large amounts of paperwork, additional labor and possible delays in shipments, but result in a minuscule change in the original vehicle manufacturer's domestic content.

Coachmen stated that the motor vehicles it receives for further manufacture are supplied by the Big Three, which Coachmen assumed would have a domestic content label affixed to the incomplete vehicle. That company argued that individual per unit costs of implementation would be significantly higher than for the Big Three, creating a competitive disadvantage. Coachmen argued that the intent of the legislation relates to large volume producers, and that regulations should not be extended to multi-stage manufacturers, final stage manufacturers or van converters. That company stated that in addition to the interpretation as to the types of vehicles to be included, the issue of what constitutes a carline should be redefined. Coachmen stated that by using the figure of 1,000 vehicles per year as the upper limit of applicability, NHTSA has not considered the intent of the legislation. Coachmen noted that it has a van conversion division whose annual production is a small fraction of the total market but does exceed the 1,000 unit limit by a considerable amount.

After considering the comments, NHTSA has decided to exclude all final stage manufacturers, as well as all businesses that produce a total of fewer than 1,000 passenger motor vehicles for sale in the United States annually, from providing items 1 and 2 of the label (the two items that are determined on a carline basis). However, these manufacturers are required to provide items 3, 4 and 5 of the label.

The agency believes that these exclusions are justified on the *de minimis* theory, i.e., only trivial additional benefits would be provided by not adopting the exclusions. First, NHTSA believes that the total number of vehicles affected by the exclusions is less than one percent of the vehicles covered by the statutory requirements. This is very different than the "low end" and "high end" exclusions considered above, which would each affect a large percentage of total vehicles. Second, these exclusions largely affect vehicles which are likely to be made to order and for which consumers would often not be able to inspect a label prior to making a purchase decision. Thus, even if full labeling information was provided for these vehicles, it often could not be used by consumers in making purchase decisions.

NHTSA disagrees with AIAM's suggestion that the exclusion for small manufacturers be changed to apply to manufacturers which produce fewer than 1,000 vehicles to ones which produce fewer than 2,500 vehicles. As discussed above, the agency's implied authority to provide exclusions from express statutory requirements is very limited. It is the agency's judgment that the proposed limit is sufficient to cover small manufacturers which are likely to only produce vehicles to order and for which consumers are unlikely to be able to inspect a vehicle label (e.g., on a demonstrator vehicle) prior to making a purchase decision. Moreover, the concerns about carline determinations being made for only a few vehicles are not likely to be relevant. In short, the agency believes that AIAM's recommended exclusion cannot be justified on the *de minimis* theory. Extending the scope of the exclusion would unnecessarily deny prospective vehicle purchasers relevant content information that Congress decided they should have.

For the same reasons, NHTSA is not adopting Coachmen's recommendation that the final rule exclude carlines of less than 20,000 per year and exclude recreation vehicle manufacturers, i.e., the exclusions would unnecessarily deny prospective vehicle purchasers relevant content information that Congress decided they should have. With respect to that company's recommendation that the final rule exclude van converters, NHTSA notes that many van converters are excluded as a result of being alterers.

However, NHTSA has decided to exclude all final stage manufacturers from the requirements to provide items 1 and 2 on the label, rather than limiting the exclusion to multi-stage manufacturers of "carlines" of fewer than 1,000 vehicles. The reason for this relates both to the relatively small number of multi-stage vehicles subject to the Labeling Act requirements and the fact that key statutory definitions relevant to parts content calculations do not appear to contemplate vehicles manufactured in more than one stage.

As discussed above, section 210 defines "final assembly point" as "the plant, factory, or other place at which a new passenger motor vehicle is produced or assembled by a manufacturer and from which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle * * *." Moreover, section 210 provides that costs incurred at or beyond the final assembly point are not included in parts content calculations.

For multi-stage vehicles, it is not clear from the statutory definition whether "final assembly point" refers to the place where an incomplete vehicle is assembled or to the place of final stage manufacture. Regardless of which location is considered to be the point of final assembly, problems can occur in applying the statutory requirements.

Assume, for example, the possibility of considering the place where the incomplete vehicle is assembled as the final assembly point. An incomplete vehicle includes, as a minimum, a frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be part of the completed vehicle. See 49 CFR Part 568. It might have all component parts necessary for mechanical operation. However, the vehicle is not delivered to a dealer or importer from the plant where the incomplete vehicle is assembled. Moreover, a large number of the vehicle's parts may not be included at this time.

Assume instead the possibility of considering the place of final stage manufacture as the final assembly point. It might be argued that the incomplete vehicle manufacturer should be considered an outside supplier of passenger motor vehicle equipment. However, section 210 defines passenger motor vehicle equipment as "any system, subassembly, or component received at the final vehicle assembly point for installation on, or attachment to, such vehicle * * *." An incomplete vehicle does not fit this definition. Moreover, if the incomplete vehicle manufacturer were considered an outside supplier of equipment, the bulk of final assembly costs (of the incomplete vehicle) would be included in parts content calculations, a result that is clearly inconsistent with Congressional intent.

It might be possible for NHTSA to develop an alternative approach to solve these problems, such as considering the place where the incomplete vehicle is manufactured and the place of final stage manufacture to both be final assembly points. However, any such approach would be complicated and itself require a departure from the express statutory language. Given that the total number of multi-stage vehicles subject to the Labeling Act is relatively small and the fact that the statutory definitions do not appear to contemplate vehicles manufactured in more than one stage, the agency believes it is appropriate to simply exclude all such vehicles from the requirements related to items 1 and 2 of the label.

Final stage manufacturers are required to provide items 3, 4 and 5 of the label. The agency is specifying, for purposes of item 3 of the label, that the final assembly point for multi-stage vehicles is the location where the incomplete vehicle is assembled. The agency is specifying this location because, unlike the location of final manufacture, it will always involve significant final assembly operations.

H. Recordkeeping Requirements; Supplier Certifications

Section 210(d) provides that the agency must promulgate such regulations as may be necessary to carry out section 210, including regulations to establish a procedure to verify the required labeling information, and regulations applicable to outside and allied suppliers to require such suppliers to certify whether a component provided by such suppliers is United States, U.S./Canadian or foreign. As discussed in the NPRM, in

vehicle's parts may not be included at this time.

Assume instead the possibility of considering the place of final stage manufacture as the final assembly point. It might be argued that the incomplete vehicle manufacturer should be considered an outside supplier of passenger motor vehicle equipment. However, section 210 defines passenger motor vehicle equipment as "any system, subassembly, or component received at the final vehicle assembly point for installation on, or attachment to, such vehicle * * *." An incomplete vehicle does not fit this definition. Moreover, if the incomplete vehicle manufacturer were considered an outside supplier of equipment, the bulk of final assembly costs (of the incomplete vehicle) would be included in parts content calculations, a result that is clearly inconsistent with Congressional intent.

It might be possible for NHTSA to develop an alternative approach to solve these problems, such as considering the place where the incomplete vehicle is manufactured and the place of final stage manufacture to both be final assembly points. However, any such approach would be complicated and itself require a departure from the express statutory language. Given that the total number of multi-stage vehicles subject to the Labeling Act is relatively small and the fact that the statutory definitions do not appear to contemplate vehicles manufactured in more than one stage, the agency believes it is appropriate to simply exclude all such vehicles from the requirements related to items 1 and 2 of the label.

Final stage manufacturers are required to provide items 3, 4 and 5 of the label. The agency is specifying, for purposes of item 3 of the label, that the final assembly point for multi-stage vehicles is the location where the incomplete vehicle is assembled. The agency is specifying this location because, unlike the location of final manufacture, it will always involve significant final assembly operations.

H. Recordkeeping Requirements; Supplier Certifications

Section 210(d) provides that the agency must promulgate such regulations as may be necessary to carry out section 210, including regulations to establish a procedure to verify the required labeling information, and regulations applicable to outside and allied suppliers to require such suppliers to certify whether a component provided by such suppliers is United States, U.S./Canadian or foreign. As discussed in the NPRM, in order to verify the information provided on labels, NHTSA contemplates that it would conduct, on an occasional basis, an audit of the information provided on a label. Such an audit would involve requiring the vehicle manufacturer to provide the agency with the manufacturer's basis for the information it provided on the label, e.g., all relevant certifications from suppliers, a listing of parts, cost information, and all calculations used by the manufacturer to derive the information provided on the label. NHTSA would check whether the manufacturer's methodology was consistent with agency regulations. The agency would similarly require individual suppliers to provide the basis for the information and certification that they provided manufacturers or allied suppliers.

In order to ensure that the agency can conduct such an audit, as well as otherwise enforce the labeling requirements, NHTSA proposed to require manufacturers to maintain all records which provide a basis for the information they provide on labels, and to similarly require suppliers to maintain records providing the basis for the information and certification they provide to manufacturers or allied suppliers. Noting that EPA requires fuel economy records to be retained for five years after the model year to which they relate, NHTSA proposed to require manufacturers to maintain records for five years after December 31 of the model year to which the records relate, and to require suppliers to maintain records, which form a basis for the information they provide to manufacturers or allied suppliers, for six years after December 31 of the calendar year set forth in their submissions to manufacturers/allied suppliers.

NHTSA also addressed the issue of whether manufacturers should have the option of maintaining records electronically. The agency stated that it believes manufacturers and allied suppliers should retain the original copies of information provided by suppliers, but sought comment on whether to allow them to retain the certifications and other information obtained from suppliers electronically, specifically in the form of electronic images. NHTSA proposed to permit manufacturers and suppliers to maintain all other records in either paper or electronic form for purposes of data storage, provided that in every case all of the information contained in the record is retained.

Numerous commenters argued that certifications and other information should be permitted to be submitted to manufacturers/allied suppliers electronically, as well as stored electronically. AAMA stated that it objects to manufacturers receiving and maintaining original copies of certificates. That organization stated that with the enactment of the Customs Modernization Act, GM, Ford and Chrysler are developing process to collect all content and customs data electronically. Ford argued that electronic storage is more efficient and cost effective and is consistent with the recently signed Customs Automation Act.

Toyota also recommended against any requirement to obtain or retain actual paper certificates. It stated that the rules should allow all required records to be retained electronically. APMA stated that the proposed requirements to require suppliers to generate paper originals for certificates would be burdensome and impede the spread of EDI. That organization stated that the adoption of the AIAG/EDI package into the content reporting requirements under NAFTA is expected to begin in 1995. It recommended that all records be allowed to be kept in any medium.

Honda stated that it supports the proposal to require written certifications by suppliers to manufacturers.

Nissan stated that it believes that a five to six year retention period is excessive. It suggested a retention period for manufacturers of three years after December 31 of the model year to which records relate, and, for suppliers, a retention period of four years after December 31 of the calendar year set forth in the certificate.

After considering the comments, NHTSA has decided to permit certifications and other records to be submitted and retained electronically. The agency believes that this is consistent with the approach being taken by the Federal government in related areas, and with section 210's requirement to establish regulations that avoid imposing unnecessary and costly burdens on the manufacturers.

NHTSA has also decided to require records to be maintained for the periods proposed in the NPRM. As discussed above, these requirements ensure that records are maintained for five years after the end of the model year to which they relate. The agency disagrees with Nissan that the retention period is excessive. A possible audit of the information provided on a label could take substantial time, particularly given the need to trace the information back to suppliers. NHTSA also notes that the cost of maintaining records is substantially reduced to the extent that manufacturers use electronic means.

I. Reporting Requirements

NHTSA proposed to require vehicle manufacturers to submit to the agency three copies of the information that will appear on each carline's label. The agency proposed to require submittal of this information for each carline not later than the date the first vehicle of the carline is delivered to dealers for that model year.

The agency stated that it believes this reporting requirement is necessary for several reasons. It would provide one central location from which information can be gathered concerning the labels. Inquiries could come from within the agency, or from interested members of the public. In addition, such reporting would aid the agency in deciding whether to initiate any investigations or audits.

The agency received several comments on the proposed reporting requirements. AAMA stated that the proposed requirements should be modified to require submittal of information not later than the date the first vehicle of the carline is offered for sale to the ultimate purchaser. Isuzu suggested that flexibility be introduced to permit manufacturers to submit a report whenever a major specification change has been made in the middle of a model year or whenever the manufacturer opts to change the model year at a timing different from normally accepted model year changes. NTEA stated that it understands that small multi-stage businesses are not subject to the reporting requirements unless they produce carlines of over 1,000 vehicles.

After considering the comments, the agency has decided to adopt reporting requirements along the line of the proposal, but to require submittal of information not later than the date the first vehicle of the carline is offered for sale to the ultimate purchaser. This date will be adequate for the agency's purposes in monitoring the information on the labels. Moreover, this date is consistent with the agency's decision, discussed above, not to require labels to be placed on vehicles prior to the introduction date.

The agency cannot provide flexibility to permit manufacturers to update labels during a model year, since section 210(b) provides that content percentages are "established at the beginning of each model year for such carline and shall be applicable to that carline for the entire model year." There is therefore no reason to provide flexibility with respect to reporting updated information. However, if a manufacturer discovers an error in the information reported to the agency, it should send information to the agency correcting that error.

NHTSA agrees with NTEA that any manufacturer that is not required to provide information on a carline basis, i.e., items one and two on the label, is not subject to the reporting requirements.

J. Leadtime/First Year Requirements

A number of manufacturers and suppliers argued that they cannot comply with all the data collection and calculation requirements by the October 1994 implementation date. AAMA stated that the proposed regulation will require extensive data collection and calculation requirements, and that there are several areas of uncertainty that will not be resolved until a final rule is issued. It stated that it has been working in conjunction with the AIAG and a number of suppliers to establish processes to comply with the law, but has been unable to complete this activity because of uncertainties about the final rule. AAMA stated that manufacturers and suppliers will not be able to comply with all the data collection and calculation requirements by October 1994. It requested NHTSA to allow manufacturers and suppliers to use procedures that are expected to yield similar results for at least 12 months after the final rule is published.

GM stated that because of the scope of the effort to comply with the new requirements, at least one year is required between the publication of the final rule and the effective date of the rule. That manufacturer stated that it supports the interim AAMA proposal of making a best efforts determination of domestic and foreign content for the AALA required label using presently available CAFE cost and origin data for the first year after publication of the final rule.

Ford submitted a comment along the lines of that of AAMA. It also provided NHTSA with a copy of an EPA final rule, published in February 1993, which established labeling requirements for products manufactured with certain ozone-depleting substances. EPA stated in the preamble for that final rule that it recognized the practical problems the regulated community would have in meeting a May 15, 1993 statutory deadline for labeling, "given the late publication of this rule." 58 FR 8136, February 11, 1993. EPA stated that "(a)s a result of the concerns, it is the Agency's policy to take no enforcement action for matters occurring during the first nine months following the publication of these regulations."

BMW stated that if NHTSA does not permit manufacturers a permanent alternative of using existing, substantial business records to make parts content calculations, it should allow such an alternative on an interim basis in lieu of granting additional leadtime.

Calsonic stated that the proposed leadtime for suppliers was extremely short and requested postponement of at least a year. Nippondenso also stated that the proposed leadtime for suppliers was short, and requested that the effective date of the regulations be postponed for at least six months.

After considering the comments, NHTSA agrees, given the complexity of the data collection and calculation requirements, that it is impossible for manufacturers and suppliers to fully comply with all of the requirements by October 1, 1994. The agency notes that this conclusion is partly based on the fact that manufacturers cannot complete their calculations until they receive specified information from suppliers, and allied suppliers cannot complete their calculations until they receive specified information from outside suppliers. The conclusion is also partly based on the fact that many of the requirements are in the regulation as opposed to section 210, i.e., manufacturers and suppliers could not comply with the data collection and calculation requirements absent a final rule.

NHTSA is nonetheless faced with the section 210(b) requirement that labels be provided on each vehicle manufactured on or after October 1, 1994. The agency agrees with AAMA that the most appropriate means for resolving this problem is to permit manufacturers and suppliers to use procedures that are expected to yield similar results, for about a year. The agency believes that this temporary alternative will ensure that consumers receive the best information possible about the foreign and U.S./Canada origin of vehicles they are considering purchasing during this period, given that full compliance by manufacturers and suppliers is not possible. NHTSA has decided to adopt the following specific requirement:

> For model year 1995 and model year 1996 carlines which are first offered for sale to ultimate purchasers before June 1, 1995, manufacturers and suppliers may, instead of following the calculation procedures set forth in this part, use procedures that they expect, in good faith, to yield similar results.

NHTSA notes several things about this temporary alternative approach. First, it is available for all model year 1995 vehicles and for any model year 1996 vehicles which are introduced before June 1, 1995. The agency selected the June 1, 1995 date because it ensures manufacturers additional flexibility for about a one-year period. NHTSA notes that since most model year 1996 vehicles will be introduced in the fall of 1995, manufacturers will have additional flexibility for early introductions (a model year 1996 vehicle could be introduced as early as January 1995, for which full compliance might not be possible), but will need to meet the full requirements for the vast majority of model year 1996 vehicles.

Second, manufacturers may use any procedures that they expect, in good faith, to yield "similar results." For example, the manufacturers could use the CAFE procedures for making content determinations so long as they made adjustments to attempt to account for differences between the CAFE content requirements and Labeling Act requirements, e.g., CAFE does not exclude assembly, sales, and marketing costs.

Third, manufacturers may choose to rely entirely on information they already have in their possession or, at their option, obtain additional information from some suppliers to help them make the necessary calculations. To the extent that manufacturers are following this alternative approach, their suppliers may as well.

NHTSA notes that Nissan asked, in a telephone call to NHTSA's Office of Chief Counsel, how the Labeling Act requirements apply to MY 1994 vehicles that are manufactured on or after October 1, 1994. As discussed below, it is the agency's opinion that the Act's requirements do not apply to any MY 1994 vehicles.

The first sentence of section 210(b)(1) reads as follows: "Each manufacturer of a new passenger motor vehicle distributed for commerce for sale in the United States *shall annually establish for each model year* and cause to be affixed * * * on each vehicle manufactured on or after October 1, 1994, in a prominent place, one or more labels * * *." Section 210(b)(2) provides that the percentages required for the label "shall be established at the beginning of the model year * * *." With respect to the issue of how the Labeling Act requirements apply to MY 1994 vehicles, NHTSA believes it is significant that: (1) The requirement to label vehicles takes effect on the date traditionally considered to be the beginning of MY 1995 (October 1, 1994), and (2) the percentages required to be included on the label are to be established at the *beginning* of the model year. Reading these provisions together, the agency believes that the statute requires the labeling requirements to begin with MY 1995 vehicles, since the time when the

about a one-year period. NHTSA notes that since most model year 1996 vehicles will be introduced in the fall of 1995, manufacturers will have additional flexibility for early introductions (a model year 1996 vehicle could be introduced as early as January 1995, for which full compliance might not be possible), but will need to meet the full requirements for the vast majority of model year 1996 vehicles.

Second, manufacturers may use any procedures that they expect, in good faith, to yield "similar results." For example, the manufacturers could use the CAFE procedures for making content determinations so long as they made adjustments to attempt to account for differences between the CAFE content requirements and Labeling Act requirements, e.g., CAFE does not exclude assembly, sales, and marketing costs.

Third, manufacturers may choose to rely entirely on information they already have in their possession or, at their option, obtain additional information from some suppliers to help them make the necessary calculations. To the extent that manufacturers are following this alternative approach, their suppliers may as well.

NHTSA notes that Nissan asked, in a telephone call to NHTSA's Office of Chief Counsel, how the Labeling Act requirements apply to MY 1994 vehicles that are manufactured on or after October 1, 1994. As discussed below, it is the agency's opinion that the Act's requirements do not apply to any MY 1994 vehicles.

The first sentence of section 210(b)(1) reads as follows: "Each manufacturer of a new passenger motor vehicle distributed for commerce for sale in the United States *shall annually establish for each model year* and cause to be affixed * * * on each vehicle manufactured on or after October 1, 1994, in a prominent place, one or more labels * * *." Section 210(b)(2) provides that the percentages required for the label "shall be established at the beginning of the model year * * *." With respect to the issue of how the Labeling Act requirements apply to MY 1994 vehicles, NHTSA believes it is significant that: (1) The requirement to label vehicles takes effect on the date traditionally considered to be the beginning of MY 1995 (October 1, 1994), and (2) the percentages required to be included on the label are to be established at the *beginning* of the model year. Reading these provisions together, the agency believes that the statute requires the labeling requirements to begin with MY 1995 vehicles, since the time when the percentages are to be established for that model year corresponds to the effective date of the requirements. NHTSA notes that very few MY 1994 vehicles are likely to be manufactured on or after October 1, 1994.

K. Other Issues

1. Supplier Definitions

Section 210(f)(15) defines *allied supplier* to mean "a supplier of passenger motor vehicle equipment that is wholly owned by the manufacturer, or in the case of a joint venture vehicle assembly arrangement, any supplier that is wholly owned by one member of the joint venture arrangement." Section 210(17) defines *outside supplier* to mean "a supplier of passenger motor vehicle equipment to a manufacturer's allied supplier or anyone other than an allied supplier who ships directly to the manufacturer's final assembly point."

NHTSA addressed several issues concerning the supplier definitions in the NPRM. In commenting on the request for comments, Ford had asked that NHTSA consider a supplier owned jointly by more than one parent company as an allied supplier of both parents, especially in situations such as those in Canada, in which the Canadian government has laws requiring partial Canadian ownership of share. NHTSA stated that it believes that such a situation is akin to the joint venture agreement mentioned in section 210(f)(15) of the Cost Savings Act. The agency tentatively decided to treat the supplier in such a case as being wholly owned by one of the manufacturers in the joint venture agreement, and therefore an allied supplier for purposes of any carline jointly manufactured.

After further consideration, however, NHTSA has decided that it cannot fully accommodate this suggestion by Ford. The agency notes that Ford made the following statement in its comment on the request for comments:

> We believe that suppliers and plants owned, operated, or controlled by the parent company (i.e., a consolidated subsidiary of the parent company or "joint venture" of partners in which the parent holds a majority interest) should be treated as allied suppliers.

Thus, Ford appears to have been asking that the agency replace the specification in the statute that suppliers be "wholly owned" with a specification that they merely have to be "controlled." NHTSA does not believe there is any justification for such a departure from the statute. Moreover, the agency believes that the statement in the NPRM that the situation is "akin" to the joint venture agreement mentioned in section 210(f)(15) was incorrect, i.e., there is no analogy between the two situations.

As discussed below, the agency is clarifying the definition of *allied supplier* to encompass varying corporate structures where ownership is complete. However, a mere control relationship is not sufficient to make a supplier "allied."

In the NPRM, the agency specifically addressed the issue of a supplier owned by the parent company of the manufacturer. NHTSA stated that it recognizes that a supplier owned by the parent company of a manufacturer is not strictly wholly owned by the manufacturer. The agency noted, however, that if the parent is a holding company that wholly owns both the manufacturer and the supplier, there is no meaningful difference in this situation from that in which the strict definition of *wholly owned* occurs. In other words, there are no outside interests represented (as occurs if there are outside shareholders). Therefore, the agency tentatively decided to treat a supplier wholly owned by the parent holding company of a manufacturer as an allied supplier, provided that the parent holding company also wholly owns the manufacturer.

Finally, NHTSA indicated that it read section 210(f)(17) as requiring wholly owned suppliers to allied suppliers to be treated as outside suppliers.

The agency received a number of comments on the supplier definitions. Ford stated that to clarify the difference between suppliers and distributors, a definition of supplier should be incorporated into the definition section. It recommended the following definition, which it indicated is consistent with NAFTA—The term supplier means a person or an enterprise that manufactures or assembles passenger motor vehicle equipment.

The agency does not agree that distributors should be eliminated from the definition of supplier. NHTSA observes that a distributor may supply passenger motor vehicle equipment to a manufacturer. Moreover, a manufacturer might have a relationship with a distributor to obtain certain equipment but not with the company which manufacturers or assembles the equipment.

Ford also stated that the outside supplier definition requires clarification. It argued that the definition in the statute was not intended to include, in any way, allied suppliers. It stated that the regulation should clearly eliminate allied suppliers from the definition. Ford noted that an interpretation that an allied supplier

becomes an outside supplier to the extent that it supplies equipment to another allied supplier could result in an allied supplied part having two sets of content values: the actual U.S./Canadian content when the component is supplied to the final assembly plant, and a rolled-up or down U.S./Canadian content when the component is sent to another allied manufacturing facility.

After considering Ford's comment, NHTSA has reconsidered its view that section 210(f)(17) requires wholly owned suppliers to allied suppliers to be treated as outside suppliers. The basis for that view was that a wholly owned supplier to an allied supplier falls within the section 210(f)(17) definition of outside supplier. However, such a supplier also falls within the section 210(f)(15) definition of allied supplier. The agency agrees that it is appropriate to resolve this ambiguity in the regulation.

The only significant difference between the statutory treatment of allied and outside suppliers is that allied suppliers must provide actual U.S./Canadian content information, while the roll-up, roll-down provision applies to outside suppliers. Thus, Congress decided that suppliers which are wholly owned by manufacturers should generally be held to a higher standard concerning the specificity of the U.S./Canadian content information that they provide. Given this difference, the agency agrees with Ford that an allied supplier should not be considered an outside supplier simply because it supplies equipment to an allied supplier. NHTSA also notes that if an allied supplier were to be treated as an outside supplier in such a context, manufacturers could obtain the benefits of the roll-up, roll-down provision for their allied suppliers, simply by having them ship their equipment through another allied supplier. This position is reflected in the definition of *allied supplier* set forth in the final rule.

Toyota stated that the proposed regulation does not address the scope of the statutory term *allied supplier*. That manufacturer stated that because some issues have arisen concerning the statutory definition, it recommends that the regulation provide certain clarifications. Toyota stated that the determination of whether the allied supplier relationship exists within the statutory meaning does not depend on the number of levels of ownership but on the nature of ownership, i.e., whether it is complete ownership. That manufacturer stated that it should not matter whether ownership is direct or indirect.

Honda stated that NHTSA proposed to treat as *allied* a supplier wholly owned by the same parent company that wholly owns the manufacturer. That company stated that NHTSA's analysis does not extend quite far enough to encompass Honda's corporate structure. According to that manufacturer, two parent companies within the Honda group together wholly own both the manufacturer and the supplier. No outside interests are represented. Honda requested clarification in the final rule.

NHTSA agrees with these comments of Honda and Toyota, which the agency believes are consistent with the approach taken in the NPRM for suppliers owned by the parent company of the manufacturer. The definition of *allied supplier* in the final rule clarifies the meaning of that term with respect to the corporate relationships discussed by those commenters.

2. Definitions of Dealer and Ultimate Purchaser

Section 210(f)(7) defines *dealer* to mean "any person or resident located in the United States, including any territory of the United States, or the District of Columbia, engaged in the sale or the distribution of new automobiles to the ultimate purchaser." Section 210(f)(6) defines *new passenger motor vehicle* to mean "a passenger motor vehicle the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser."

AIADA stated that in the case where a state or local jurisdiction has chosen to regulate the automobile industry and the conduct of the industry through franchise laws, it believes the definition of dealer in the state or local franchise law should apply to this Act. That organization stated that in promulgating regulations without clarifying the term dealer, NHTSA could inadvertently undermine state and local franchise laws.

NHTSA notes that since the Labeling Act includes an express definition of the meaning of *dealer*, the agency cannot delegate to states or local jurisdictions the right to change the definition for purposes of the Labeling Act. The agency notes, however, that the Labeling Act and implementing regulation merely require persons engaged in the sale or distribution of new automobiles to the ultimate purchaser to maintain the content label. Neither the Act nor the regulation specifies any requirements concerning who is permitted to be a dealer.

AIADA also stated that clarification is needed with respect to the meaning of *ultimate purchaser*. That organization stated that without such clarification, there could be confusion and unnecessary liability for dealers. AIADA stated that for vehicles in rental service, demonstrator service and executive service, the law is unclear as to who is the ultimate purchaser. That organization asked the agency to specify what transaction results in an individual or entity being an ultimate purchaser.

NHTSA has decided to add the following definition of *ultimate purchaser* to the regulation: The term *ultimate purchaser* means with respect to any new passenger motor vehicle, the first person, other than a dealer purchasing in its capacity as a dealer, who in good faith purchases such new passenger motor vehicle for purposes other than resale. This definition is based on one used in the Automobile Information Disclosure Act (AIDA), 15 U.S.C. 1231–1233, the Act which requires the Monroney label. NHTSA believes that it is appropriate to adopt this definition given that the Labeling Act's definitions of *dealer* and *new passenger motor vehicle*, which use the term *ultimate purchaser*, are also based on definitions included in the AIDA.

Except to the extent otherwise provided in the regulation established by today's final rule, e.g., with respect to temporary removal of separate content labels for test drives, NHTSA plans to treat vehicles in rental service, demonstrator service and executive service the same for Labeling Act purposes as the Justice Department treats these vehicles for purposes of Monroney labels. NHTSA believes that this is appropriate, given the same general purposes of the labels, and the similarity of the relevant definitions in the statutes and, in the case of the Labeling Act, the implementing regulation. The agency is including in the docket a copy of a February 24, 1994 letter from the Justice Department which provides additional guidance in these areas.

3. Joint Ventures

NHTSA stated in the NPRM that several commenters on the request for comments had noted that there are carlines manufactured jointly by two manufacturers, and requested that the agency permit the manufacturers to determine between themselves which would be responsible for tracking, record keeping and labeling. The agency tentatively agreed that this would be an appropriate approach and proposed requirements to permit multiple manufacturers to determine among themselves which of them is to be considered the vehicle manufacturer for purposes of the labeling requirements. The agency also proposed to specify that, in the absence of such an agreement, the carline "shall be attributed to the single manufacturer that markets the carline."

Nissan stated that it would not like to see language that specifies a procedure to determine the manufacturer of record. It stated that the selection of the manufacturer of record should be determined in accordance with the statutory language and agreement between the partners involved.

Isuzu stated that it believes the final rule must specify that if no written article exists in a joint-venture agreement regarding manufacturer responsibility, carline responsibility is attributed to the manufacturer mentioned in certification label with respect to the safety standards.

In a telephone call to NHTSA's Office of Chief Counsel, an attorney representing Toyota asked whether the Geo and the Corolla, are in one or two carlines. These are very similar vehicles, produced on the same assembly line, one of which is marketed by GM and the other by Toyota. NUMMI stated that the Corolla is manufactured in Japan, at NUMMI in California, and in Canada. That company stated that the NPRM, in discussing joint ownership/joint production relationships, attributed carline to the manufacturer that markets the carline, subject to certain conditions. NUMMI argued that the use of the word "manufacturer" in this case implies each production location.

After considering the comments, the agency has decided that multiple manufacturers should generally be permitted to determine among themselves which of them is considered the vehicle manufacturer for purposes of the labeling requirements. NHTSA also believes it is appropriate to specify that, in the absence of such an agreement, a vehicle is attributed to the manufacturer which markets the vehicle. This approach provides maximum manufacturer flexibility, while also specifying who is responsible for labeling in the absence of an agreement among the joint venturers.

NHTSA believes, however, that additional clarification is needed concerning the meaning of "carline" in the joint venture context. While manufacturers may determine between themselves who is responsible for tracking, recordkeeping and labeling, they must follow the specified requirements for making carline determinations. As discussed earlier in this notice, section 210 specifies that the term "carline" means a name denoting a group of vehicles which has a degree

purposes of the labeling requirements. The agency also proposed to specify that, in the absence of such an agreement, the carline "shall be attributed to the single manufacturer that markets the carline."

Nissan stated that it would not like to see language that specifies a procedure to determine the manufacturer of record. It stated that the selection of the manufacturer of record should be determined in accordance with the statutory language and agreement between the partners involved.

Isuzu stated that it believes the final rule must specify that if no written article exists in a joint-venture agreement regarding manufacturer responsibility, carline responsibility is attributed to the manufacturer mentioned in certification label with respect to the safety standards.

In a telephone call to NHTSA's Office of Chief Counsel, an attorney representing Toyota asked whether the Geo and the Corolla, are in one or two carlines. These are very similar vehicles, produced on the same assembly line, one of which is marketed by GM and the other by Toyota. NUMMI stated that the Corolla is manufactured in Japan, at NUMMI in California, and in Canada. That company stated that the NPRM, in discussing joint ownership/joint production relationships, attributed carline to the manufacturer that markets the carline, subject to certain conditions. NUMMI argued that the use of the word "manufacturer" in this case implies each production location.

After considering the comments, the agency has decided that multiple manufacturers should generally be permitted to determine among themselves which of them is considered the vehicle manufacturer for purposes of the labeling requirements. NHTSA also believes it is appropriate to specify that, in the absence of such an agreement, a vehicle is attributed to the manufacturer which markets the vehicle. This approach provides maximum manufacturer flexibility, while also specifying who is responsible for labeling in the absence of an agreement among the joint venturers.

NHTSA believes, however, that additional clarification is needed concerning the meaning of "carline" in the joint venture context. While manufacturers may determine between themselves who is responsible for tracking, recordkeeping and labeling, they must follow the specified requirements for making carline determinations. As discussed earlier in this notice, section 210 specifies that the term "carline" means a name denoting a group of vehicles which has a degree of commonality in construction. It is the agency's opinion that the Geo and Corolla are in different carlines, because they have different names. Moreover, to the extent that NUMMI produced Corollas in California and Toyota produced similar or identical Corollas in Japan, all of the Corollas must be placed in the same carline, given the statutory definition.

4. Currency Exchange Rate Calculations

Since currency exchange rates may fluctuate on a day-to-day basis, thereby affecting domestic content valuations, NHTSA proposed a methodology for determining the exchange rate to be used. The agency stated in the NPRM that it believes that, in the interest of consistency, the percentages printed on the labels required by section 210 should be determined using the same basis. The agency proposed a specific procedure for calculating currency exchange rates, similar to that set forth in EPA's CAFE regulation. Manufacturers would be required to take the mean of the exchange rates in effect at the end of each quarter set by the Federal Reserve Bank of New York for twelve calendar quarters prior to and including the calendar ending one year prior to the date that the manufacturer submits information to the agency for a carline. The agency proposed essentially the same procedure for suppliers, replacing the date the manufacturer submits information to the agency with the date of the information the supplier provides to a manufacturer or allied supplier.

NHTSA noted that EPA had suggested that NHTSA allow exchange rate calculations based on Purchasing Power Parity Rates (PPP), provided that a manufacturer was already using an approved PPP calculation for EPA purposes. EPA allows an exemption from the normally required exchange rate calculations, based on a petition. EPA stated that it believes that, by coordinating the fuel economy and content labeling decisions, consistency between the two agencies will be maintained. NHTSA stated that it was considering adopting the EPA suggestion, particularly by requiring a manufacturer to use the same conversion method for content label purposes as was approved by the EPA for fuel economy purposes. The agency sought suggestions on this proposal.

AAMA stated that manufacturers and suppliers should have the option to convert foreign currency utilizing the exchange rates used in the financial records at the time the content calculations are made. It stated that under this option, all financial data used to calculate content will be internally consistent and tie directly with the financial records. That organization also stated that this option would avoid the major systems revisions that may be required under the proposed average exchange rate methodology. AAMA also stated that the option maintains consistency between the treatment of the prices of many commodities, where the prices fluctuate dramatically, and currency prices in that none of these prices are smoothed by averaging. Finally, AAMA stated that the option facilitates the same base cost data that is required to calculate origin under NAFTA, which will reduce the burden on manufacturers and suppliers.

Toyota urged the agency to adopt a rule under which all manufacturers must use the same method for converting currency. That manufacturer argued that EPA's suggested approach would depart from this principle by requiring a manufacturer to use the same method as approved by EPA for fuel economy purposes. Toyota stated that the EPA approach is legally unsound and will produce inconsistent information for consumers comparing vehicles for possible purchase. Toyota argued that, from a legal standpoint, the fuel economy calculation is made pursuant to a different statute with a different purpose. That manufacturer stated further that, with respect to the currency exchange method that should be used, it believes that PPP is the most appropriate method for currency conversion and that use of this method by all manufacturers will result in consistency of calculation and avoid difficulties caused by rapid fluctuations in exchange rates. Toyota stated that if NHTSA does not require PPP, the agency should require currency conversion to be conducted according to Generally Accepted Accounting Principles (GAAP). Toyota stated that it believes that GAAP is preferable for Labeling Act purposes to the proposed method.

Mitsubishi stated that manufacturers should have the option of using PPP. It stated that this would be consistent with the EPA domestic content calculation for CAFE purposes. That company added that, in the interests of fairness, the same restrictions should apply as under the CAFE regulations—manufacturers should have the option of using PPP, but first they must get approval, and then cannot switch back and forth merely to get the optimal rate.

After considering the comments, NHTSA has decided to adopt the proposed method for determining exchange rates, including requiring a

manufacturer to use the same conversion method for content label purposes as was approved by the EPA for fuel economy purposes. The agency believes that this approach provides flexibility to manufacturers, while ensuring that they use appropriate methods for determining exchange rates.

The agency believes that AAMA's recommendation to permit manufacturers and suppliers to use the currency rates that are used in their financial records at the time the content calculations are made is so broad as not to amount to any specification for determining exchange rates. A manufacturer could use any method it chose and could switch back and forth between methods to obtain the rates it desired. By contrast, EPA permits a degree of flexibility, but ensures that an appropriate method is used and that it is not changed back and forth between years. The agency notes that if a manufacturer obtains EPA approval for whatever method is reflected in its financial records, it can use that method for both EPA and Labeling Act purposes.

While Toyota is correct that different manufacturers can use different methods for determining exchange rates, it has not shown that this will result in significant differences in label values. Moreover, it has not shown why differences in the purposes of the CAFE and Labeling statutes should result in different approaches for determining exchange rates. Since both statutes require making determinations about the content of passenger motor vehicles, NHTSA believes it is appropriate for EPA and NHTSA to follow the same approach for determining exchange rates.

5. Value Added by Foreign Suppliers

NHTSA noted in the NPRM that section 210(f)(5)(B) provides a specific formula for determining the U.S./Canadian content of equipment received by manufacturers from allied suppliers. The formula provides first that the foreign content is determined by adding up the purchase price of all foreign material purchased from outside suppliers that comprise the individual passenger motor vehicle equipment, and then subtracting such purchase price from the total purchase price of such equipment. The remainder is the U.S./Canadian content of the equipment.

The agency noted that this formula does not appear to take into account the possibility that an allied supplier may be foreign, since it assumes that everything, except for the foreign value passed through from outside suppliers, is U.S./Canadian. Based on a reading of the statute as a whole, NHTSA stated that it does not believe Congress intended to convert the entire value added by allied suppliers located outside the U.S./Canada into domestic content. Therefore, the proposed regulation treated the value added by allied suppliers located outside the U.S./Canada as non-U.S./Canadian. NHTSA specifically requested comments on this issue.

AAMA stated that it agrees with NHTSA that value added by allied suppliers located in a foreign country should be treated as foreign. Nissan stated that it agrees that it may not have been the intent of the law to treat parts obtained from allied suppliers outside the U.S./Canada as U.S./Canadian parts content. APMA stated that it supports this part of the proposal on the ground that it is responsive to Congress' intent.

BMW stated that it agrees with NHTSA that the intent of the legislation was not to include value added outside U.S./Canada from foreign allied suppliers as domestic content and that, accordingly, it supports the language NHTSA has proposed. BMW expressed concern, however, that in many instances throughout the NPRM preamble, NHTSA referred to the explicit language of the legislation and stated that deviation from this language is not allowed. BMW stated that if NHTSA is able to deviate from the explicit language of the legislation in this case, the reasoning for refusing to modify other wording seems inconsistent.

After considering the comments, NHTSA has decided to follow the approach discussed in the NPRM. The agency notes that no commenters disagreed with the agency's view that Congress did not intend to convert the entire value added by allied suppliers located outside the U.S./Canada into domestic content.

With respect to BMW's comment, the agency notes that its interpretation is based on principles of statutory construction related to "whole statute" interpretation and limits of literalism. See Sutherland Stat Const §§ 46.05 and 46.07 (5th Ed). Basically, a statute should not be read literally where such a reading is contrary to its purposes. NHTSA does not believe that anyone could reasonably argue that Congress intended to convert the entire value added by allied suppliers located outside the U.S./Canada into domestic content; that result flies in the face of the statute as a whole and its purpose. The agency does not believe that any of the other situations referred by BMW are similar.

6. International Agreements; Mexico

AIAM stated that before promulgating a final rule, NHTSA should consult with USTR to determine whether the rule is consistent with NAFTA and particularly Article 300 providing for national treatment of goods produced in the territories of the signatory parties. AIAM also stated that USTR should be asked whether the rule is consistent with those U.S. treaties of Friendship, Commerce and Navigation that convey most favored national treatment and national treatment for investors and goods, particularly in light of the special treatment afforded to Canadian production. Nippondenso stated that Mexico should be treated on the same basis and Canada under the Labeling Act.

The European Community (EC) stated that it considers the proposal to be more trade restrictive than necessary to fulfil the aim of consumer information. More specifically, the EC stated the following:

> The proposed labelling system would indeed not give any useful information about the product as such or its characteristics. The only information contained on the label would be whether, and to what extent, the individual parts of the product are of American or Canadian origin. In the opinion of the EC, the U.S. measure can only have the objective to influence consumers to buy American or Canadian motor vehicles.

The EC believes that the U.S. proposal constitutes an unjustifiable discrimination, contrary to article 2.1 of the GATT Code on Technical Barriers to trade:

- the U.S. proposed obligation to indicate the origin of the engine and gearbox could discourage U.S. constructors to import them from their European subsidiaries or from European component manufacturers.
- within the European Community, the assembly of vehicles is quite flexible regarding the origin of car components, due to the internal market. For a single model of motor vehicle, a specific part may originate from one of several countries. The U.S. proposal will therefore have greater administrative costs on European importers than other importers.

The EC is seriously concerned that such a proposal will create unnecessary trade barriers. Should the U.S. rules be adopted as proposed, this would put an excessive financial burden on importers to access the U.S. market.

The U.S. proposal may involve the disclosure of confidential data from manufacturers other than U.S. manufacturers.

In consequence, since the U.S. authorities, in accordance with Article 2.1 of the GATT Agreement on Technical Barriers to Trade, have an obligation to ensure that technical regulations are not prepared with a view to creating unnecessary obstacles to international trade, the European Community requests the U.S. authorities to take the above comments into account and adapt their proposal accordingly.

As discussed in the NPRM, NHTSA does not believe that section 210 contravenes the spirit or letter of GATT for the simple reason that it is informational in nature, and has no other effect. Violations of GATT occur when barriers to trade are established by raising tariffs on selected countries, or by granting preferences to local goods over foreign goods. Under section 210, no tariffs are levied and no preferences are given to vehicles based on the U.S./Canadian content. No quotas are established, and no vehicle is forbidden to be sold in the U.S. The only effect of section 210 is to provide consumers information about the origin of the equipment in vehicles they are considering purchasing. If a consumer is not concerned with the country of origin of a vehicle's equipment, the label will have no bearing on the purchasing decision whatsoever. If, on the other hand, a purchaser wishes to buy a vehicle that is comprised of equipment from the U.S./Canada, Germany, England, Japan, Korea, or some other country, the label will give that consumer information needed to help make such a decision.

With respect to the EC's concern about administrative costs for European manufacturers, NHTSA notes that since the requirements imposed by the rule are strictly informational and do not require any product changes other than the addition of a label, the costs for all manufacturers are small. The agency also observes that, as discussed above, it made some changes in the final rule to provide greater flexibility, and hence reduced costs, for manufacturers.

NHTSA notes that the Conference Report includes the following explanation concerning combined treatment of U.S. and Canadian content:

> The conferees also note the reasons that the percentage of USA and Canadian content value required to be listed in this bill is combined. The conferees believe it is appropriate to make this new labeling requirement as consistent as possible with existing laws and regulations. The conferees also do not want this legislation to increase the cost of automobiles to consumers.
>
> The conferees also recognize that the USA and Canada have a longstanding and specific automobile free trade pact (the US and Canada Automotive Parts Agreement), one that predates the USA-Canada Free Trade Agreement by over 20 years. This special relationship in automotive trade, and other factors, justify listing both US and Canadian automobile value as a combined percentage. The conferees do not intend that any other country is to be combined with the USA and Canada in the percentage of total automotive value required to be listed by this legislation.

As discussed in the NPRM, NHTSA does not believe that section 210 contravenes the spirit or letter of GATT for the simple reason that it is informational in nature, and has no other effect. Violations of GATT occur when barriers to trade are established by raising tariffs on selected countries, or by granting preferences to local goods over foreign goods. Under section 210, no tariffs are levied and no preferences are given to vehicles based on the U.S./Canadian content. No quotas are established, and no vehicle is forbidden to be sold in the U.S. The only effect of section 210 is to provide consumers information about the origin of the equipment in vehicles they are considering purchasing. If a consumer is not concerned with the country of origin of a vehicle's equipment, the label will have no bearing on the purchasing decision whatsoever. If, on the other hand, a purchaser wishes to buy a vehicle that is comprised of equipment from the U.S./Canada, Germany, England, Japan, Korea, or some other country, the label will give that consumer information needed to help make such a decision.

With respect to the EC's concern about administrative costs for European manufacturers, NHTSA notes that since the requirements imposed by the rule are strictly informational and do not require any product changes other than the addition of a label, the costs for all manufacturers are small. The agency also observes that, as discussed above, it made some changes in the final rule to provide greater flexibility, and hence reduced costs, for manufacturers.

NHTSA notes that the Conference Report includes the following explanation concerning combined treatment of U.S. and Canadian content:

> The conferees also note the reasons that the percentage of USA and Canadian content value required to be listed in this bill is combined. The conferees believe it is appropriate to make this new labeling requirement as consistent as possible with existing laws and regulations. The conferees also do not want this legislation to increase the cost of automobiles to consumers.
>
> The conferees also recognize that the USA and Canada have a longstanding and specific automobile free trade pact (the US and Canada Automotive Parts Agreement), one that predates the USA-Canada Free Trade Agreement by over 20 years. This special relationship in automotive trade, and other factors, justify listing both US and Canadian automobile value as a combined percentage. The conferees do not intend that any other country is to be combined with the USA and Canada in the percentage of total automotive value required to be listed by this legislation.

7. Consumer Guide

AIADA stated that it believes the labeling law will be misleading and confusing for consumers, and that the dealer will ultimately bear the burden and be in the difficult position of explaining what it believes to be illogical content information. That organization stated that to aid dealers and consumers, it believes NHTSA should publish and make publicly available a consumer guide that explains just what the content figures represent and do not represent. It stated, for example, that the guide should explain the distinction between allied and outside suppliers and how that affects the value of motor vehicle content.

NHTSA believes that a consumer guide that attempted to explain the details of the content calculation procedures, such as the distinction between allied and outside suppliers, would not be helpful to consumers but would instead cause unnecessary confusion. NHTSA believes that the vehicle labels required by this final rule will be readily understood by consumers and help those that wish to do so to take content information into account in making a purchase decision.

L. May 1994 Congressional Comment

In May 1994, NHTSA received a letter concerning this rulemaking signed by Senator Carl Levin and Representatives Sander Levin, Marcy Kaptur and Nancy Johnson. The agency was also advised by phone that Representative Ralph Regula supported the letter. The letter reads as follows:

> We are writing to urge you to draft American Automobile Labeling Act implementing regulations that reflect the legislation's intent to provide an accurate means of measuring the parts value content of a vehicle.
>
> The trend has been for Japanese transplants to purchase parts assembled in the U.S. by Japanese affiliated parts makers, a high percentage of which are merely assembled here using subcomponents and materials imported from Japan. Nonetheless, they are erroneously counted as U.S. parts for the purposes of calculating U.S. content levels. The Labeling Act was an attempt by Congress to establish a tool to more accurately measure the "actual" U.S. and Canadian content of vehicles sold in the U.S. based on the origin of where the parts are made, not where the parts are purchased or assembled. It is our hope that the Labeling Act will achieve this objective by imposing a stringent definition of what is an "American or Canadian made" auto part.
>
> Currently, Japanese transplant auto makers claim high levels of U.S. content in their U.S. made vehicles. But they will not provide the necessary data to measure accurately the U.S. content levels of the auto parts used in these vehicles, and thus, it is impossible to verify their claims. After tracing the actual source of parts, a 1992 Economic Strategy Institute study found that the U.S. auto part used in a 1991 Honda accord contained ⅔ Japanese content and only ⅓ "actual" U.S. content. Even with these low levels of U.S. content, Honda took credit for these parts being totally U.S.-made.
>
> In order to adequately distinguish between parts assembled in the U.S. using imported materials and parts made in the U.S. using U.S. materials, the Labeling Act must include tracing requirements similar to the tracing requirements in the NAFTA rule of origin, with the exception that Mexican parts would not be included as U.S. or Canadian. Tracing should be used to determine if suppliers can be designated as North America (U.S. or Canadian)—if they achieve the 70% North American content value—as well as to determine the country of origin for the engine and transmission. For example, if tracing were required, an engine or transmission that contains 75% Japanese content but is assembled in the U.S. would be correctly found to be primarily of Japanese origin, not of U.S. origin.
>
> Finally, the Labeling Act requires that the names of all countries supplying 15% or more total parts value be listed. To be meaningful, this requirement should not only include the name of the country, but also the approximate percentages those countries contribute * * *.

NHTSA notes that it is addressing this comment here in this separate section instead of addressing it in each of the several relevant sections earlier in this preamble, since this approach is simpler and since the comment was received near the end of the preparation of the preamble.

The agency believes that today's final rule adequately distinguishes between parts assembled in the U.S. using imported materials and parts made in the U.S. using U.S. materials. For purposes of calculating item one of the label, the percentage U.S./Canadian parts content for vehicles within the carline, tracing is required to the extent that a supplier claims that an item of equipment is U.S./Canadian. An outside supplier cannot designate a part as U.S./Canadian unless it determines, on the basis of tracing the part's materials back to the raw material stage, that at least 70 percent of the cost of the part represents value added in the U.S. or Canada. This is true for all items of equipment, including engines and transmissions.

The procedures for making country of origin determinations for purposes of items four and five of the label, countries of origin for the engine and transmission, do not require tracing back to raw materials. However, country of origin determinations must be made for each component delivered to the engine or transmission assembly plant (or produced at such plant), and the cost

of assembling the engine or transmission is not considered in making such determinations. Therefore, engines and transmissions that are assembled in the U.S. largely of imported materials will not be determined to be of U.S. origin under the procedures. As discussed above, the label will indicate that these country of origin determinations are for "engine parts" and "transmission parts," to make it clear to consumers that these country of origin determinations exclude assembly costs. NHTSA does not believe that it would be appropriate to impose additional tracing requirements, since such requirements could be very burdensome.

As to the foreign countries which contribute 15 percent or more parts content for vehicle within a carline, manufacturers are required to list not only the names of those countries, but also the specific percentage originating in each such country. If there are more than two such countries, the manufacturer need only provide the information for the two countries with the highest percentages.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under Executive Order 12866. This action has been determined to be "significant" under the Department's regulatory policies and procedures, given the degree of public interest and the relationship to other Federal programs and agencies, particularly those related to international trade.

NHTSA has estimated the costs associated with the rule in a Final Regulatory Evaluation which is being placed in the docket for this rulemaking. That document analyzes the comments concerning costs. The requirements imposed by the rule are strictly informational and do not require any product changes other than the addition of a label. NHTSA estimates the cost of a separate label to be $0.06 to $0.11, and the cost of expanding a Monroney or fuel economy label to be less than $0.01. The total cost for labels for the estimated 14 million vehicles sold in the U.S. annually that are affected by the rule would therefore range from $140,000 to $1,540,000.

Based on manufacturers' comments, NHTSA estimates that a one-time cost to implement a system to collect and store the necessary information for the labels is about $1 million apiece for the three large domestic manufacturers, and $500,000 apiece for 20 other large vehicle manufacturers. Ford estimated annual maintenance costs of $150,000. The agency assumes that this figure is reasonable for the three large domestic manufacturers, and that the other large manufacturers will experience annual costs of about $75,000.

The above cost estimates do not include the compliance costs for suppliers. NHTSA has limited information concerning the costs that will be experienced by the approximately 15,000 parts suppliers to the vehicle manufacturing industry. Some large suppliers (e.g., Rockwell, Dana Corp., or TRW) make hundreds of parts and could experience costs similar to those of a large vehicle manufacturer. Many small suppliers procure all of their inputs from the same country and will experience negligible costs. NHTSA notes that APMA estimated that parts manufacturers will experience costs ranging from $40,000 to $80,000 in the first year, with a reduction in successive years.

Final stage manufacturers will experience only minor costs, since they only need to provide labels showing the final assembly point and the country of origin for the engine and transmission.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Although certain small businesses, such as parts suppliers and some vehicle manufacturers, are affected by the regulation, the effect on them is minor since the requirements are informational.

C. National Environmental Policy Act

The agency has analyzed the environmental impacts of the regulation in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and has concluded that it will not have a significant effect on the quality of the human environment.

D. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this final rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

F. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. States are preempted from promulgating laws and regulations contrary to the provisions of the rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 583

Motor vehicles, Imports, Labeling, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA amends chapter V of title 49 of the Code of Federal Regulations as follows:

1. Part 583 is added to read as follows:

PART 583—AUTOMOBILE PARTS CONTENT LABELING

Sec.

583.1 Scope.
583.2 Purpose.
583.3 Applicability.
583.4 Definitions.
583.5 Label requirements.
583.6 Procedure for determining U.S./Canadian parts content.
583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.
583.8 Procedure for determining country of origin for engines and transmissions (for purposes of determining the information specified by §§ 583.5(a)(4) and 583.5(a)(5) only).
583.9 Attachment and maintenance of label.
583.10 Outside suppliers of passenger motor vehicle equipment.
583.11 Allied suppliers of passenger motor vehicle equipment.
583.12 Suppliers of engines and transmissions.
583.13 Supplier certification and certificates.
583.14 Currency conversion rate.
583.15 Joint ownership.
583.16 Maintenance of records.
583.17 Reporting.

Authority: 49 U.S.C. 32304, 49 CFR 1.50, 501.2(f).

§ 583.1 Scope.

This part establishes requirements for the disclosure of information relating to the countries of origin of the equipment of new passenger motor vehicles.

§ 583.2 Purpose.

The purpose of this part is to aid potential purchasers in the selection of new passenger motor vehicles by providing them with information about the value of the U.S./Canadian and foreign parts content of each vehicle, the countries of origin of the engine and transmission, and the site of the vehicle's final assembly.

§ 583.3 Applicability.

This part applies to manufacturers of new passenger motor vehicles manufactured or imported for sale in the United States, suppliers of passenger motor vehicle equipment, and dealers of new passenger motor vehicles.

§ 583.4 Definitions.

(a) *Statutory terms.* The terms *allied supplier, carline, country of origin, dealer, foreign content, manufacturer, new passenger motor vehicle, of U.S./Canadian origin, outside supplier, passenger motor vehicle, passenger motor vehicle equipment, percentage (by value), State,* and *value added in the United States and Canada,* defined in 49 U.S.C. 32304(a), are used in accordance with their statutory meanings except as further defined in paragraph (b) of this section.

(b) *Other terms and further definitions.*

(1) *Administrator* means the Administrator of the National Highway Traffic Safety Administration.

(2) *Allied supplier* means a supplier of passenger motor vehicle equipment that is wholly owned by the manufacturer, or in the case of a joint venture vehicle assembly arrangement, any supplier that is wholly owned by one member of the joint venture arrangement. A supplier is considered to be wholly owned by the manufacturer if a common parent company owns both the manufacturer and the supplier, or if a group of related companies own both the manufacturer and the supplier and no outside interests (interests other than the manufacturer itself or companies which own the manufacturer) own the supplier.

(3) *Carline* means a name denoting a group of vehicles which has a degree of commonality in construction (*e.g.*, body, chassis). Carline does not consider any level of decor or opulence and is not generally distinguished by such characteristics as roof line, number of doors, seats, or windows, except for light duty trucks. Carline is not distinguished by country of manufacture, final assembly point, engine type, or driveline. Light duty trucks are considered to be different carlines than passenger cars. A carline includes all motor vehicles of a given nameplate. Special purpose vehicles,

new passenger motor vehicles by providing them with information about the value of the U.S./Canadian and foreign parts content of each vehicle, the countries of origin of the engine and transmission, and the site of the vehicle's final assembly.

§ 583.3 Applicability.

This part applies to manufacturers of new passenger motor vehicles manufactured or imported for sale in the United States, suppliers of passenger motor vehicle equipment, and dealers of new passenger motor vehicles.

§ 583.4 Definitions.

(a) *Statutory terms.* The terms *allied supplier, carline, country of origin, dealer, foreign content, manufacturer, new passenger motor vehicle, of U.S./Canadian origin, outside supplier, passenger motor vehicle, passenger motor vehicle equipment, percentage (by value), State,* and *value added in the United States and Canada,* defined in 49 U.S.C. 32304(a), are used in accordance with their statutory meanings except as further defined in paragraph (b) of this section.

(b) *Other terms and further definitions.*

(1) *Administrator* means the Administrator of the National Highway Traffic Safety Administration.

(2) *Allied supplier* means a supplier of passenger motor vehicle equipment that is wholly owned by the manufacturer, or in the case of a joint venture vehicle assembly arrangement, any supplier that is wholly owned by one member of the joint venture arrangement. A supplier is considered to be wholly owned by the manufacturer if a common parent company owns both the manufacturer and the supplier, or if a group of related companies own both the manufacturer and the supplier and no outside interests (interests other than the manufacturer itself or companies which own the manufacturer) own the supplier.

(3) *Carline* means a name denoting a group of vehicles which has a degree of commonality in construction (*e.g.*, body, chassis). Carline does not consider any level of decor or opulence and is not generally distinguished by such characteristics as roof line, number of doors, seats, or windows, except for light duty trucks. Carline is not distinguished by country of manufacture, final assembly point, engine type, or driveline. Light duty trucks are considered to be different carlines than passenger cars. A carline includes all motor vehicles of a given nameplate. Special purpose vehicles, vans, and pickup trucks are classified as separate carlines.

(4) *Final assembly* means all operations involved in the assembly of a vehicle, performed at the final assembly point including but not limited to assembly of body panels, painting, final chassis assembly, trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using forming processes such as stamping, machining or molding processes.

(5) *Final assembly point* means the plant, factory, or other place, which is a building or series of buildings in close proximity, where a new passenger motor vehicle is produced or assembled from passenger motor vehicle equipment and from which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle whether or not such component parts are permanently installed in or on such vehicle. For multi-stage vehicles, the final assembly point is the location where the first stage vehicle is assembled.

(6) *Outside supplier* means:

(i) A non-allied supplier of passenger motor vehicle equipment to a manufacturer's allied supplier and

(ii) Anyone other than an allied supplier who ships directly to the manufacturer's final assembly point.

(7) *Passenger motor vehicle equipment* means any system, subassembly, or component received at the final assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser except: Nuts, bolts, clips, screws, pins, braces, gasoline, oil, blackout, phosphate rinse, windshield washer fluid, fasteners, tire assembly fluid, rivets, adhesives, grommets, and wheel weights. Passenger motor vehicle equipment also includes any system, subassembly, or component received by an allied supplier from an outside supplier for incorporation into equipment supplied by the allied supplier to the manufacturer with which it is allied.

(8) *Person* means an individual, partnership, corporation, business trust, or any organized group of persons.

(9) *Ultimate purchaser* means with respect to any new passenger motor vehicle, the first person, other than a dealer purchasing in its capacity as a dealer, who in good faith purchases such new passenger motor vehicle for purposes other than resale.

§ 583.5 Label requirements.

(a) Except as provided in paragraphs (f) and (g) of this section, each manufacturer of new passenger motor vehicles shall cause to be affixed to each passenger motor vehicle manufactured on or after October 1, 1994, a label that provides the following information:

(1) *U.S./Canadian parts content.* The overall percentage, by value, of the passenger motor vehicle equipment that was installed on vehicles within the carline of which the vehicle is part, and that originated in the United States and/or Canada (the procedure for determining U.S./Canadian Parts Content is set forth in § 583.6);

(2) *Major sources of foreign parts content.* The names of any countries other than the United States and Canada which contributed at least 15 percent of the average overall percentage, by value, of the passenger motor vehicle equipment installed on vehicles within the carline of which the vehicle is part, and the percentages attributable to each such country (if there are more than two such countries, the manufacturer need only provide the information for the two countries with the highest percentages; the procedure for determining major foreign sources of passenger motor vehicle equipment is set forth in § 583.7);

(3) *Final assembly point.* The city, state (in the case of vehicles assembled in the United States), and country of the final assembly point of the passenger motor vehicle;

(4) *Country of origin for the engine.* The country of origin of the passenger motor vehicle's engine (this is referred to as the country of origin of the "engine parts" on the label; the procedure for making this country of origin determination is set forth in § 583.8);

(5) *Country of origin for the transmission.* The country of origin of the passenger motor vehicle's transmission (this is referred to as the country of origin of the "transmission parts" on the label; the procedure for making this country of origin determination is set forth in § 583.8);

(6) *Explanatory note.* A statement which explains that parts content does not include final assembly, distribution, or other non-parts costs.

(b) Except as provided in paragraphs (e), (f) and (g) of this section, the label required under paragraph (a) of this section shall read as follows, with the specified information inserted in the places indicated (except that if there are no major sources of foreign parts

content, omit the section "Major Sources of Foreign Parts Content"):

PARTS CONTENT INFORMATION

For vehicles in this carline:

U.S./Canadian Parts Content: (insert number) %

Major Sources of Foreign Parts Content:

(name of country with highest percentage): (insert number) %

(name of country with second highest percentage): (insert number) %

For this vehicle:

Final Assembly Point: (city, state, country)

Country of Origin:

Engine Parts: (name of country)

Transmission Parts: (name of country)

Note: Parts content does not include final assembly, distribution, or other non-parts costs.

(c) The percentages required to be provided under paragraph (a) of this section may be rounded by the manufacturer to the nearest 5 percent.

(d) The label required by paragraph (a) of this section shall:

(1) Be placed in a prominent location on each vehicle where it can be read from the exterior of the vehicle with the doors closed, and may be either part of the Monroney price information label required by 15 U.S.C. 1232, part of the fuel economy label required by 15 U.S.C. 2006, or a separate label. A separate label may include other consumer information.

(2)(i) Be printed in letters that have a color that contrasts with the background of the label; and

(ii) Have the information required by paragraphs (a)(1) through (5) of this section vertically centered on the label in boldface capital letters and numerals of 12 point size or larger; and

(iii) Have the information required by paragraph (a)(6) of this section in type that is two points smaller than the information required by paragraphs (a)(1) through (5) of this section.

(3) In the case of a label that is included as part of the Monroney price information label or fuel economy label, or a separate label that includes other consumer information, be separated from all other information on those labels by a solid line that is a minimum of three points in width.

(4) The information required by paragraphs (a)(1) through (6) of this section shall be immediately preceded by the words, "PARTS CONTENT INFORMATION," in boldface, capital letters that are 12 point size or larger.

(e) *Carlines assembled in the U.S./Canada and in one or more other countries.*

(1) If a carline is assembled in the U.S. and/or Canada, and in one or more other countries, the manufacturer may, at its option, add the following additional information at the end of the explanatory note specified in (a)(6), with the specified information inserted in the places indicated:

This carline is assembled in the U.S. and/or Canada, and in [insert name of each other country]. The U.S./Canadian parts content for the portion of the carline assembled in [insert name of country, treating the U.S. and Canada together, i.e., U.S./Canada] is [___]%.

(2) A manufacturer selecting this option shall divide the carline for purposes of this additional information into the following portions: the portion assembled in the U.S./Canada and the portions assembled in each other country.

(3) A manufacturer selecting this option for a particular carline shall provide the specified additional information on the labels of all vehicles within the carline.

(f) A final stage manufacturer of vehicles assembled in multiple stages need not provide the U.S./Canadian Parts Content or Major Foreign Sources items of the label otherwise required under paragraphs (a)(1) and (2) of this section.

(g) A manufacturer that produces a total of fewer than 1000 passenger motor vehicles in a model year need not provide the U.S./Canadian Parts Content or Major Foreign Sources items of the label otherwise required under paragraphs (a)(1) and (2) of this section.

(h) *Requests for information and certifications relevant to information on the label.*

(1) Each manufacturer and allied supplier shall request its suppliers to provide directly to it the information and certifications specified by this part which are necessary for the manufacturer/allied supplier to carry out its responsibilities under this part. The information shall be requested sufficiently early to enable the manufacturer to meet the timing requirements specified by this part.

(2) For requests made by manufacturers or allied suppliers to outside suppliers:

(i) The requester shall indicate that the request is being made pursuant to 49 CFR part 583, and that the regulation is administered by the National Highway Traffic Safety Administration;

(ii) The requester shall indicate that 49 CFR part 583 requires outside suppliers to provide specified information upon the request of a manufacturer or allied supplier to which it supplies passenger motor vehicle equipment and that, to the best of the requester's knowledge, the outside supplier is required to provide the requested information;

(iii) If any information other than that required by 49 CFR Part 583 is requested, the requester shall indicate which information is required by 49 CFR part 583 and which is not;

(iv) The requester shall indicate that 49 CFR part 583 specifies that while information may be requested by an earlier date, the outside supplier is not required to provide the information until the date specified by the requester or the date 45 days after receipt of the request, whichever is later.

(i) Manufacturers need not provide any of the information specified in this part for model year 1994 vehicles. For model year 1995 and model year 1996 carlines which are first offered for sale to ultimate purchasers before June 1, 1995, manufacturers and suppliers may, instead of following the calculation procedures set forth in this part, use procedures that they expect, in good faith, to yield similar results.

§ 583.6 Procedure for determining U.S./Canadian parts content.

(a) Each manufacturer, except as specified in § 583.5 (f) and (g), shall determine the percentage U.S./Canadian Parts Content for each carline on a model year basis, before the beginning of each model year. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. All value otherwise added at the final assembly point and beyond, including all final assembly costs, are excluded from the calculation of U.S./Canadian parts content.

(b) *Determining the value of items of equipment.*

(1) For items of equipment received at the final assembly point, the value is the price paid by the manufacturer for the equipment as delivered to the final assembly point.

(2) For items of equipment produced at the final assembly point (but not as part of final assembly), the value is the fair market price that a manufacturer of similar size and location would pay a supplier for such equipment.

(3) For items of equipment received at the factory or plant of an allied supplier, the value is the price paid by the allied supplier for the equipment as delivered to its factory or plant.

(c) *Determining the U.S./Canadian percentage of the value of items of equipment.*

(1) Equipment supplied by an outside supplier to a manufacturer or allied supplier is considered:

(i) 100 percent U.S./Canadian, if 70 percent or more of its value is added in the United States or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States or Canada.

(2) The extent to which an item of equipment supplied by an allied supplier is considered U.S./Canadian is determined by dividing the value added in the United States and Canada by the total value of the equipment. The resulting number is multiplied by 100 to determine the percentage U.S./Canadian content of the equipment.

(3) In determining the value added in the United States and Canada of equipment supplied by an allied supplier, any equipment that is delivered to the allied supplier by an outside supplier and is incorporated into the allied supplier's equipment, is considered:

(i) 100 percent U.S./Canadian, if at least 70 percent of its value is added in the United States or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States or Canada.

(4)(i) Value is added in the United States or Canada by an allied supplier or outside supplier to the extent that the supplier produces or assembles passenger motor vehicle equipment at a plant or factory located within the territorial boundaries of the United States or Canada.

(ii) In determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada, the cost of all foreign materials is subtracted from the total value (e.g., the price paid at the final assembly plant) of the equipment. Except as provided in (c)(3), material is considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials. For any material which is imported into the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of the material originated in the United States or Canada. Neither suppliers nor anyone else is required to trace the value added in the United States or Canada backwards; however, any portion of the cost of a material which is not traced to value added in the United States or Canada is considered foreign. *Example:* A supplier located in the United States or Canada uses sheet steel to produce

(1) Equipment supplied by an outside supplier to a manufacturer or allied supplier is considered:

(i) 100 percent U.S./Canadian, if 70 percent or more of its value is added in the United States or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States or Canada.

(2) The extent to which an item of equipment supplied by an allied supplier is considered U.S./Canadian is determined by dividing the value added in the United States and Canada by the total value of the equipment. The resulting number is multiplied by 100 to determine the percentage U.S./Canadian content of the equipment.

(3) In determining the value added in the United States and Canada of equipment supplied by an allied supplier, any equipment that is delivered to the allied supplier by an outside supplier and is incorporated into the allied supplier's equipment, is considered:

(i) 100 percent U.S./Canadian, if at least 70 percent of its value is added in the United States or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States or Canada.

(4)(i) Value is added in the United States or Canada by an allied supplier or outside supplier to the extent that the supplier produces or assembles passenger motor vehicle equipment at a plant or factory located within the territorial boundaries of the United States or Canada.

(ii) In determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada, the cost of all foreign materials is subtracted from the total value (e.g., the price paid at the final assembly plant) of the equipment. Except as provided in (c)(3), material is considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials. For any material which is imported into the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of the material originated in the United States or Canada. Neither suppliers nor anyone else is required to trace the value added in the United States or Canada backwards; however, any portion of the cost of a material which is not traced to value added in the United States or Canada is considered foreign. *Example:* A supplier located in the United States or Canada uses sheet steel to produce exterior panels which are shipped to a final assembly plant. In determining the value added in the United States or Canada of the exterior panels, the supplier must subtract the price it paid for the sheet steel except to the extent that the supplier determines that the price paid represents value added in the United States or Canada.

(iii) For the minor items listed in the § 583.4 definition of "passenger motor vehicle equipment" as being excluded from that term, outside and allied suppliers may, to the extent that they incorporate such items into their equipment, treat the cost of the minor items as value added in the country of assembly.

(iv) For passenger motor vehicle equipment which is imported into the territorial boundaries of the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of its material originated in the United States or Canada.

(v) The payment of duty does not result in value added in the United States or Canada.

(5) If a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. This provision does not affect the obligation of manufacturers and allied suppliers to request this information from their suppliers or the obligation of the suppliers to provide the information.

(d) *Determination of the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment.* The percentage of the value of a carline's passenger motor vehicle equipment that is U.S./Canadian is determined by—

(1) Adding the total value of all of the equipment (regardless of country of origin) expected to be installed in that carline during the next model year;

(2) Dividing the value of the U.S./Canadian content of such equipment by the amount calculated in paragraph (d)(1) of this section, and

(3) Multiplying the resulting number by 100.

§ 583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.

(a) Each manufacturer, except as specified in § 583.5 (f) and (g), shall determine the countries, if any, which are major foreign sources of passenger motor vehicle equipment and the percentages attributable to each such country for each carline on a model year basis, before the beginning of each model year. The manufacturer need only determine this information for the two such countries with the highest percentages. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. In making determinations under this section, the U.S. and Canada are treated together as if they were one (non-foreign) country.

(b) *Determining the value of items of equipment.* The value of each item of equipment is determined in the manner specified in § 583.6(b).

(c) *Determining the country of origin of items of equipment.*

(1) Except as provided in (c)(2), the country of origin of each item of equipment is the country which contributes the greatest amount of value added to that item.

(2) Instead of making country of origin determinations in the manner specified in (c)(1), a manufacturer may, at its option, use any other methodology that is used for customs purposes (U.S. or foreign), so long as a consistent methodology is employed for all items of equipment, and the U.S. and Canada are treated together.

(d) *Determination of the percentage of the total value of a carline's passenger motor vehicle equipment which is attributable to individual countries other than the U.S. and Canada.* The percentage of the value of a carline's passenger motor vehicle equipment that is attributable to each country other than the U.S. and Canada is determined on a model year basis by—

(1) Adding up the total value of all of the passenger motor vehicle equipment (regardless of country of origin) expected to be installed in that carline during the next model year;

(2) Adding up the value of such equipment which originated in each country other than the U.S. or Canada;

(3) Dividing the amount calculated in paragraph (d)(2) of this section for each country by the amount calculated in paragraph (d)(1) of this section, and multiplying each result by 100.

(e) A country is a major foreign source of passenger motor vehicle equipment for a carline only if the country is one other than the U.S. or Canada and if 15 or more percent of the total value of the carline's passenger motor vehicle equipment is attributable to the country

(f) If the sum of the percentage U.S./Canadian parts content (determined under § 583.6) and the percentages of the two largest major foreign sources of content exceeds 100%, the major foreign source percentages are proportionately

reduced to the extent necessary to bring the sum down to 100%.

§ 583.8 Procedure for determining country of origin for engines and transmissions (for purposes of determining the information specified by §§ 583.5(a)(4) and 583.5(a)(5) only).

(a) Each supplier of an engine or transmission shall determine the country of origin once a year for each engine and transmission. The origin of engines shall be calculated for engines of the same displacement produced at the same plant. The origin for transmissions shall be calculated for transmissions of the same type produced at the same plant. Transmissions are of the same type if they have the same attributes including: Drive line application, number of forward gears, controls, and layout. The U.S. and Canada are treated separately in making such determination.

(b) The value of an engine or transmission is determined by adding up the prices paid by the manufacturer of the engine/transmission for each component comprising the engine/transmission, as delivered to the assembly plant of the engine/transmission, and the fair market value of each individual part produced at the plant. All value added at the engine/transmission plant is otherwise excluded from the calculation of origin. Individual parts refers to the most basic level of parts used to assemble an engine or transmission and not subassemblies.

(c) *Determining the country of origin of components.*

(1) Except as provided in (c)(2), the country of origin of each component is the country which contributes the greatest amount of value added to that item.

(2) Instead of making country of origin determinations in the manner specified in (c)(1), a manufacturer may, at its option, use any other methodology that is used for customs purposes (U.S. or foreign), so long as a consistent methodology is employed for all components.

(d) *Determination of the total value of an engine/transmission which is attributable to individual countries.* The value of an engine/transmission that is attributable to each country is determined by adding up the total value of all of the components installed in that engine/transmission which originated in that country.

(e) The country of origin of each engine and the country of origin of each transmission is the country which contributes the greatest amount of value added to that item of equipment.

§ 583.9 Attachment and maintenance of label.

(a) *Attachment of the label.*

(1) Except as provided in (a)(2), each manufacturer shall cause the label required by § 583.5 to be affixed to each new passenger motor vehicle before the vehicle is delivered to a dealer.

(2) For vehicles which are delivered to a dealer prior to the introduction date for the model in question, each manufacturer shall cause the label required by § 583.5 to be affixed to the vehicle prior to such introduction date.

(b) *Maintenance of the label.*

(1) Each dealer shall cause to be maintained each label on the new passenger motor vehicles it receives until after such time as a vehicle has been sold to a consumer for purposes other than resale.

(2) If the manufacturer of a passenger motor vehicle provides a substitute label containing corrected information, the dealer shall replace the original label with the substitute label.

(3) If a label becomes damaged so that the information it contains is not legible, the dealer shall replace it with an identical, undamaged label.

§ 583.10 Outside suppliers of passenger motor vehicle equipment.

(a) For each unique type of passenger motor vehicle equipment for which a manufacturer or allied supplier requests information, the outside supplier shall provide the manufacturer/allied supplier with a certificate providing the following information:

(1) The name and address of the supplier;

(2) A description of the unique type of equipment;

(3) The price of the equipment to the manufacturer or allied supplier;

(4) A statement that the equipment has, or does not have, at least 70 percent of its value added in the United States and Canada, determined under § 583.6(c);

(5) For equipment which has less than 70 percent of its value added in the United States and Canada, the country of origin of the equipment, determined under § 583.7(c);

(6) For equipment that may be used in an engine or transmission, the country of origin of the equipment, determined under § 583.8(c);

(7) A certification for the information, pursuant to § 583.13, and the date (at least giving the month and year) of the certification.

(8) A single certificate may cover multiple items of equipment.

(b) The information and certification required by paragraph (a) of this section shall be provided to the manufacturer or allied supplier no later than 45 days after receipt of the request, or the date specified by the manufacturer/allied supplier, whichever is later. (A manufacturer or allied supplier may request that the outside supplier voluntarily provide the information and certification at an earlier date.)

(c)(1) Except as provided in paragraph (c)(2) of this section, the information provided in the certificate shall be the supplier's best estimates of price, content, and country of origin for the unique type of equipment expected to be supplied during the 12 month period beginning on the first July 1 after receipt of the request. If the unique type of equipment supplied by the supplier is expected to vary with respect to price, content, and country of origin during that period, the supplier shall base its estimates on expected averages for these factors.

(2) The 12 month period specified in (c)(1) may be varied in time and length by the manufacturer or allied supplier if it determines that the alteration is not likely to result in less accurate information being provided to consumers on the label required by this part.

(d) For outside suppliers of engines and transmissions, the information and certification required by this section is in addition to that required by § 583.12.

§ 583.11 Allied suppliers of passenger motor vehicle equipment.

(a) For each unique type of passenger motor vehicle equipment which an allied supplier supplies to the manufacturer with which it is allied, the allied supplier shall provide the manufacturer with a certificate providing the following information:

(1) The name and address of the supplier;

(2) A description of the unique type of equipment;

(3) The price of the equipment to the manufacturer;

(4) The percentage U.S./Canadian content of the equipment, determined under § 583.6(c);

(5) The country of origin of the equipment, determined under § 583.7(c);

(6) For equipment that may be used in an engine or transmission, the country of origin of the equipment, determined under § 583.8(c);

(7) A certification for the information, pursuant to § 583.13, and the date (at least giving the month and year) of the certification.

(8) A single certificate may cover multiple items of equipment.

(b)(1) Except as provided in paragraph (b)(2) of this section, the information

provided in the certificate shall be the supplier's best estimates of price, content, and country of origin for the unique type of equipment expected to be supplied during the 12 month period beginning on the first July 1 after receipt of the request. If the unique type of equipment supplied by the supplier is expected to vary with respect to price, content, and country of origin during that period, the supplier shall base its estimates on expected averages for these factors.

(2) The 12 month period specified in (b)(1) may be varied in time and length by the manufacturer if it determines that the alteration is not likely to result in less accurate information being provided to consumers on the label required by this part.

(d) For allied suppliers of engines and transmissions, the information and certification required by this section is in addition to that required by § 583.12.

§ 583.12 Suppliers of engines and transmissions.

(a) For each engine or transmission for which a manufacturer or allied supplier requests information, the supplier of such engine or transmission shall provide the manufacturer or allied supplier with a certificate providing the following information:

(1) The name and address of the supplier;

(2) A description of the engine or transmission;

(3) The country of origin of the engine or transmission, determined under § 583.8;

(4) A certification for the information, pursuant to § 583.13, and the date (at least giving the month and year) of the certification.

(b) The information provided in the certificate shall be the supplier's best estimate of country of origin for the unique type of engine or transmission. If the unique type of equipment used in the engine or transmission is expected to vary with respect to price, content, and country of origin during that period, the supplier shall base its country of origin determination on expected averages for these factors.

(c) The information and certification required by paragraph (a) of this section shall be provided by outside suppliers to the manufacturer or allied supplier no later than 45 days after receipt of the request, or the date specified by the manufacturer/allied supplier, whichever is later. (A manufacturer or allied supplier may request that the outside supplier voluntarily provide the information and certification at an earlier date.)

provided in the certificate shall be the supplier's best estimates of price, content, and country of origin for the unique type of equipment expected to be supplied during the 12 month period beginning on the first July 1 after receipt of the request. If the unique type of equipment supplied by the supplier is expected to vary with respect to price, content, and country of origin during that period, the supplier shall base its estimates on expected averages for these factors.

(2) The 12 month period specified in (b)(1) may be varied in time and length by the manufacturer if it determines that the alteration is not likely to result in less accurate information being provided to consumers on the label required by this part.

(d) For allied suppliers of engines and transmissions, the information and certification required by this section is in addition to that required by § 583.12.

§ 583.12 Suppliers of engines and transmissions.

(a) For each engine or transmission for which a manufacturer or allied supplier requests information, the supplier of such engine or transmission shall provide the manufacturer or allied supplier with a certificate providing the following information:

(1) The name and address of the supplier;

(2) A description of the engine or transmission;

(3) The country of origin of the engine or transmission, determined under § 583.8;

(4) A certification for the information, pursuant to § 583.13, and the date (at least giving the month and year) of the certification.

(b) The information provided in the certificate shall be the supplier's best estimate of country of origin for the unique type of engine or transmission. If the unique type of equipment used in the engine or transmission is expected to vary with respect to price, content, and country of origin during that period, the supplier shall base its country of origin determination on expected averages for these factors.

(c) The information and certification required by paragraph (a) of this section shall be provided by outside suppliers to the manufacturer or allied supplier no later than 45 days after receipt of the request, or the date specified by the manufacturer/allied supplier, whichever is later. (A manufacturer or allied supplier may request that the outside supplier voluntarily provide the information and certification at an earlier date.)

(d) In the event that, during a model year, a supplier of engines or transmissions produces an engine of a new displacement or transmission of a new type or produces the same engine displacement or transmission in a different plant, the supplier shall notify the manufacturer of the origin of the new engine or transmission prior to shipment of the first engine or transmission that will be installed in a passenger motor vehicle intended for public sale.

(e) A single certificate may cover multiple engines or transmissions. If a certificate provided in advance of the delivery of an engine or transmission becomes inaccurate because of changed circumstances, a corrected certificate shall be provided no later than the time of delivery of the engine or transmission.

(f) For suppliers of engines and transmissions, the information and certification required by this section is in addition to that required by §§ 583.10 and 583.11.

§ 583.13 Supplier certification and certificates.

Each supplier shall certify the information on each certificate provided under §§ 583.10, 583.11, and 583.12 by including the following phrase on the certificate: "This information is certified in accordance with DOT regulations." The phrase shall immediately precede the other information on the certificate. The certificate may be submitted to a manufacturer or allied supplier in any mode (e.g., paper, electronic) provided the mode contains all information in the certificate.

§ 583.14 Currency conversion rate.

For purposes of calculations of content value under this part, manufacturers and suppliers shall calculate exchange rates using the methodology set forth in this section.

(a) *Manufacturers.* (1) Unless a manufacturer has had a petition approved by the Environmental Protection Agency under 40 CFR 600.511–80(b)(1), for all calculations made by the manufacturer as a basis for the information provided on the label required by § 583.5, manufacturers shall take the mean of the exchange rates in effect at the end of each quarter set by the Federal Reserve Bank of New York for twelve calendar quarters prior to and including the calendar quarter ending one year prior to the date that the manufacturer submits information for a carline under § 583.17.

(2) A manufacturer that has had a petition approved by the Environmental Protection Agency under 40 CFR 600.511–80(b)(1), which provides for a different method of determining exchange rates, shall use the same method as a basis for the information provided on the label required by § 583.5, and shall inform the Administrator of the exchange rate method it is using at the time the information required by § 583.5 is submitted.

(b) *Suppliers.* For all calculations underlying the information provided on each certificate required by §§ 583.10, 583.11, and 583.12, suppliers shall take the mean of the exchange rates in effect at the end of each quarter set by the Federal Reserve Bank of New York for twelve calendar quarters prior to and including the calendar quarter ending one year prior to the date of such certificate.

§ 583.15 Joint ownership.

(a) A carline jointly owned and/or produced by more than one manufacturer shall be attributed to the single manufacturer that markets the carline, subject to paragraph (b) of this section.

(b)(1) The joint owners of a carline may designate, by written agreement, the manufacturer of record of that carline.

(2) The manufacturer of record is responsible for compliance with all the manufacturer requirements in this part with respect to the jointly owned carline. However, carline determinations must be consistent with § 583.4(3).

(3) A designation under this section of a manufacturer of record is effective beginning with the first model year beginning after the conclusion of the written agreement, or, if the joint owners so agree in writing, with a specified later model year.

(4) Each manufacturer of record shall send to the Administrator written notification of its designation as such not later than 30 days after the conclusion of the written agreement, and state the carline of which it is considered the manufacturer, the names of the other persons which jointly own the carline, and the name of the person, if any, formerly considered to be the manufacturer of record.

(5) The joint owners of a carline may change the manufacturer of record for a future model year by concluding a written agreement before the beginning of that model year.

(6) The allied suppliers for the jointly owned carline are the suppliers that are wholly owned by any of the manufacturers of the jointly owned carline.

§ 583.16 Maintenance of records.

(a) *General.* Each manufacturer of new passenger motor vehicles and each supplier of passenger motor vehicle equipment subject to this part shall establish, maintain, and retain in organized and indexed form, records as specified in this section. All records, including the certificates provided by suppliers, may be stored in any mode provided the mode contains all information in the records and certificates.

(b) *Manufacturers.* Each manufacturer shall maintain all records which provide a basis for the information it provides on the labels required by § 583.5, including, but not limited to, certificates from suppliers, parts lists, calculations of content, and relevant contracts with suppliers. The records shall be maintained for five years after December 31 of the model year to which the records relate.

(c) *Suppliers.* Each supplier shall maintain all records which form a basis for the information it provides on the certificates required by §§ 583.10, 583.11, and 583.12, including, but not limited to, calculations of content, certificates from suppliers, and relevant contracts with manufacturers and suppliers. The records shall be maintained for six years after December 31 of the calendar year set forth in the date of each certificate.

§ 583.17 Reporting.

For each model year, manufacturers shall submit to the Administrator 3 copies of the information required by § 583.5(a) to be placed on a label for each carline. The information for each carline shall be submitted not later than the date the first vehicle of the carline is offered for sale to the ultimate purchaser.

Issued on: July 14, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–17574 Filed 7–18–94; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

Thursday
July 21, 1994

Part III

Department of Housing and Urban Development

NOFA for Public and Indian Housing Family Investment Centers; Notice of Demonstration

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3714; FR–3397–N–06]

NOFA for Public and Indian Housing Family Investment Centers: Notice of Demonstration

AGENCY: Office of the Assistant Secretary for Public and Indian Housing; Office of Policy Development and Research; and Special Actions Office, HUD.

ACTION: Notice of demonstration program.

SUMMARY: This Notice announces the Department's intention to contribute up to $1 million from the Family Investment Center (FIC) program to assist in developing a center to anchor an integrated family support network in the Sandtown-Winchester neighborhood of Baltimore, Maryland. The system of services and outreach to which the demonstration will contribute will increase the intensity and variety of educational and supportive services available to eligible residents. The Department had indicated in a Notice of Funding Availability published earlier (59 FR 9592, 9592; February 28, 1994) that it would be publishing notice of such a demonstration. This notice provides guidelines for the use of these funds and invites comments on the proposed demonstration.

DATES: Comment due date: September 6, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Valerie Piper, Special Projects Officer, Special Actions Office, Room 10232, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1547 (TDD users may call the Federal Information Relay Service at (202) 708–9300 or 1–800–877–8339). (Other than the "800" number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements that would be applicable through this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0189.

Authority

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) provides for the establishment of Family Investment Centers (FICs). On February 28, 1994, the Department published a Notice of Funding Availability announcing the first competition for grant funds under the program (59 FR 9592; amended at 59 FR 18570 (April 19, 1994) and 59 FR 29816 (June 9, 1994)). In the February 28 notice, the Department also indicated that it:

> * * * intends to use $1 million for purposes of demonstrating ways for families living in public and Indian housing in a neighborhood undergoing a concentrated effort of local revitalization to gain access to education and employment activities to achieve self-sufficiency and independence, by enabling housing authorities to develop training and support services. These funds will be used to mobilize public and private resources to expand and improve delivery of services, to provide funding for essential training and support services that cannot otherwise be funded, to improve the capacity of management to assess the training and services needs of eligible families, to coordinate the provision of training and services that meet such needs and to ensure the long-term provision of such training and services. The Department expects that this funding will demonstrate the importance of comprehensive support services in contributing to the local neighborhood revitalization.
>
> 59 FR 9592 (February 28, 1994)

In accordance with the requirements of section 470(a) of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 3542), this notice describes the proposed demonstration and invites public comment. Any changes made in this demonstration as a result of the Department's consideration of public comments, and any extension of time for the commitment of funds necessary because of these changes, also will be published in the **Federal Register**. The Department will not commit funds for the proposed demonstration until after the latest of: (1) the date the Department has considered any comments received in response to this notice; (2) September 19, 1994, which is 60 days after today's publication date; and (3) the date the Department has received and approved an application that meets the requirements imposed in this notice and any subsequent notice announcing changes in the demonstration. If funds are committed for this demonstration, the Department also will publish in the **Federal Register** a notice announcing this fact.

Background of Demonstration

Community Building in Partnership (CBP) is a long-term partnership between the residents of the Sandtown-Winchester neighborhood, the City of Baltimore (Maryland), and The Enterprise Foundation. CBP acts as a focal point for coordinated planning and action to achieve objectives set by the residents of Sandtown-Winchester, as supported by planning professionals and City staff, over a two-year planning and program design period. The Housing Authority of Baltimore City (HABC) also is integrally involved in the effort to transform the neighborhood, which contains over 850 units of public housing.

For purposes of this demonstration, the Department will make up to $1 million available to the HABC for use in establishing a FIC in the Sandtown-Winchester neighborhood. The funding will be used in accordance with the statutory requirements of the FIC program to contribute to an integrated network of supportive services for public housing and other neighborhood residents.

The system of services and outreach planned by the community, CBP, the City, and the HABC will not only increase the intensity and variety of educational and supportive services available to neighborhood residents, it will also establish a delivery system involving residents who will work with neighbors to ensure progression towards self-sufficiency. Residents involved as "Family Advocates" will work with trained social workers to manage the most complex cases. Together with service providers, the advocates and case workers will form "Family Support Teams" and will create a new system to integrate, at the community level, the multiple supportive service programs that affect most Sandtown-Winchester residents.

The focal point of this service provision and outreach activity will be a Family Resource Center located in a City-owned facility on Mount Street in Sandtown-Winchester. Most of the funding provided under this demonstration will be used to renovate and expand the Mount Street facility. Remaining funds will be used for service coordination by the Family Support Teams and for core support services. Core support services will help families and individuals to overcome personal difficulties that inhibit their readiness to work, and will include such services as literacy and G.E.D. training and drop-in day care.

In addition to the FIC funding proposed under this demonstration, public and private organizations will support the Family Resource Center, its core services, and the Family Support Teams. This network will deliver necessary services to public housing residents as part of the larger community, through the community-wide system developed by HABC, the City, and CBP. The Department believes that the institutional integration—of which this demonstration will be one part—will enhance the quality, continuity, and impact of support provided to public housing residents. HABC will be a particularly active partner in this endeavor, drawing upon its experience with the Family Development Center at Lafayette Courts, which provided one of the models for the national FIC program.

Core support services and Family Support Team activities supported by FIC funding provided under this demonstration will be targeted to ensure that a proportionate number of public housing families are served. Funding from other sources will support the provision of services to other neighborhood residents. Private foundations and the City of Baltimore have both committed funding and in-kind donations to the project. The Department expects that this demonstration will leverage more public and private funding as the project progresses.

The Department will allocate up to $1 million to HABC to carry out its part of the project, pending receipt and approval of an application that is consistent with program and submission requirements as established in this notice and any subsequent notice issued after the comment period has closed.

Sandtown-Winchester

Throughout the nation, collaborations between community-based organizations and private foundations are establishing partnerships to address the full range of human needs in disadvantaged communities—public safety, education, job training and placement, health and human services, housing and open space development, and others. These comprehensive community development and revitalization efforts seek not only to accomplish specific projects, but also to build community-based institutions that will continue to provide for residents'

services. Core support services will help families and individuals to overcome personal difficulties that inhibit their readiness to work, and will include such services as literacy and G.E.D. training and drop-in day care.

In addition to the FIC funding proposed under this demonstration, public and private organizations will support the Family Resource Center, its core services, and the Family Support Teams. This network will deliver necessary services to public housing residents as part of the larger community, through the community-wide system developed by HABC, the City, and CBP. The Department believes that the institutional integration—of which this demonstration will be one part—will enhance the quality, continuity, and impact of support provided to public housing residents. HABC will be a particularly active partner in this endeavor, drawing upon its experience with the Family Development Center at Lafayette Courts, which provided one of the models for the national FIC program.

Core support services and Family Support Team activities supported by FIC funding provided under this demonstration will be targeted to ensure that a proportionate number of public housing families are served. Funding from other sources will support the provision of services to other neighborhood residents. Private foundations and the City of Baltimore have both committed funding and in-kind donations to the project. The Department expects that this demonstration will leverage more public and private funding as the project progresses.

The Department will allocate up to $1 million to HABC to carry out its part of the project, pending receipt and approval of an application that is consistent with program and submission requirements as established in this notice and any subsequent notice issued after the comment period has closed.

Sandtown-Winchester

Throughout the nation, collaborations between community-based organizations and private foundations are establishing partnerships to address the full range of human needs in disadvantaged communities—public safety, education, job training and placement, health and human services, housing and open space development, and others. These comprehensive community development and revitalization efforts seek not only to accomplish specific projects, but also to build community-based institutions that will continue to provide for residents' needs over the long term. Government at the local, State and Federal levels, as well as corporate partners and intermediary development organizations, have become involved in these projects to varying degrees.

In Baltimore, the CBP comprehensive community-based strategy is especially well-advanced. Working with the CBP, the City of Baltimore and its Housing Authority have made the transformation of the Sandtown-Winchester neighborhood one of their highest priorities. The CBP partnership aims to "transform all of the dysfunctional conditions and systems in Sandtown to enable all residents to achieve their highest potential." The dysfunctional systems the partnership addresses cross the full range of typical public and human services.

Additional Federal, State, and private participants in the transformation of the neighborhood include: the United States Departments of Housing and Urban Development, Transportation, and Health and Human Services; the Maryland State Housing Finance Agency and Community Development Agency; the National Community Development Initiative; the Kellogg Foundation; the Abell Foundation; the Mott Foundation; the Goldseker Foundation; the Strauss Foundation; Baltimore Gas & Electric Company; NationsBank; Habitat for Humanity; local churches; and many local community development groups, including Baltimoreans United in Leadership Development.

The community of Sandtown-Winchester contains the 571-unit Gilmor Homes public housing development, as well as over 300 scattered-site public housing units. Nearly half of Sandtown-Winchester residents able to work are unemployed; one-third of the residents have no health insurance. The rate of death from influenza and pneumonia is 2.5 times that of the City of Baltimore. The rate of HIV infection is double that of the City, and is sixth in the State of Maryland. Students in local public schools consistently perform far below state standards on reading, writing, and math tests, and absenteeism is a major problem. Forty-nine percent of all residents live in poverty, and five of six poor children live in single-parent households headed by women. The Sandtown-Winchester crime rate is one of the highest in the City. Typical systems for delivering basic public services of employment, human services, health, education, housing, and public safety have not met the complex and interrelated needs of the residents in Sandtown-Winchester, who have needs typical of residents in many disadvantaged neighborhoods throughout the nation.

Large amounts of resources have flowed into the neighborhood from various public and private sources, particularly from government programs meant to address only distinct elements of the many interrelated problems, which have persisted from generation to generation, that are faced by Sandtown-Winchester's residents. CBP is working to change the delivery systems for these programs and resources, to make these services and housing opportunities more accessible to and effective for neighborhood residents. Through the Family Support Teams that will work with clients and their changing needs, the Family Resource Center will transform the delivery system for supportive services from a fragmented maze into a highly responsive personal- and neighborhood-based system.

In addition to the core services planned to be available at the Family Resource Center, public housing and other residents of the Sandtown-Winchester neighborhood will be able to access other CBP and partner activities and programs. The Family Resource Center, with its outreach and case management capabilities, will identify residents' needs, connect them to neighborhood-based and City-wide service providers, and monitor their clients' progress.

Programs available to residents will include community-based job training, job placement and small business technical assistance, and health care that is focused on preventative measures and primary health care needs. A new Neighborhood Development Center has begun to coordinate the efforts of several community development corporations and other housing providers to construct or renovate housing in the area and to offer counselling and referrals for rental, special needs, and ownership opportunities. Plans to treat substance abuse in the neighborhood include residential, outpatient, support group, and in-home counselling. Youth education and activities programs will include targeted outreach to children from birth to five years of age, to ensure school readiness through a variety of support strategies. Extensive school to work programs and expanded summer recreation and after-school activities involving parents are also planned.

Because of the initiative already taken at the local level and the working partnership forged there, the Sandtown-Winchester neighborhood transformation project is an ideal demonstration environment for service delivery integrated across existing

Federal program lines. Too often, the requirements of Federal programs have dictated institutional structures at the local level that stand in the way of comprehensive delivery of housing and services to those who need these services to achieve self-sufficiency. The City of Baltimore, HABC, and the community have all come together, supported by The Enterprise Foundation and many private contributors, to implement the Sandtown-Winchester neighborhood transformation. This coordination creates a rare opportunity for the Department to test the capacity of its existing programs to serve in the context of a truly integrated and comprehensive transformation effort.

Applicable Requirements

Through this demonstration, the Department will explore ways to encourage neighborhood transformation partnerships by, for example, meshing its programs to the needs of the local agencies to coordinate the delivery of programs and services. The strategy to which the demonstration will contribute will integrate public housing residents fully into the services and activities available to the rest of the community, in order to reduce the isolation often imposed by different institutional delivery systems acting within small geographical areas.

In order to receive the funding proposed in this notice, the HABC will be required to meet the applicable programmatic and application requirements set out in the NOFA for Public and Indian Housing Family Investment Centers (published at 59 FR 9592 (February 28, 1994), and amended at 59 FR 18570 (April 19, 1994) and 59 FR 29816 (June 9, 1994)) and any subsequent notice that is published after the comment period has closed.

When applicable, the certifications, findings, determinations, and requirements listed by the Department under the "Other Matters" section of that NOFA also apply to this notice.

Authority: 42 U.S.C. 1437t, 3535(d), and 3542.

Dated: June 28, 1994.

MaryAnn M. Russ,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–17704 Filed 7–20–94; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Thursday
July 21, 1994

Part IV

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans: Availability of Financial Assistance; Notice

VOL 59 SS 139 JL 21 1994 MI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–951]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families (ACF), DHHS.

ACTION: Announcement of availability of competitive financial assistance for projects in competitive areas administered by the Administration for Native Americans for American Indians, Native Hawaiian, Alaska Natives and Native American Pacific Islanders.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1995 funds in four competitive areas: (1) governance and social and economic development; (2) governance and social and economic development for Alaska Native entities; (3) environmental regulatory enhancement; and (4) Native American languages preservation and enhancement.

Financial assistance provided by ANA promotes the goal of self-sufficiency for Native Americans through support of projects in these four areas.

APPLICATION KIT: Application kits, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201–0001, Attention: 93612–951, Telephone: (202) 401–7260.

SUPPLEMENTARY INFORMATION:

Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1995 funds, authorized under the Native American Programs Act (Act), as amended, to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders in four competitive areas.

In order to streamline the application process for eligible Native American applicants, ANA is issuing one program announcement announcing fiscal year 1995 funds. Therefore, information regarding ANA's mission, policy, goals, application requirements, review criteria and closing dates for each competitive area is now in one comprehensive announcement.

In previous years, the Administration for Native Americans promoted the goal of self-sufficiency in Native American communities primarily through Social and Economic Development Strategies (SEDS) projects. Amendments to the Native American Programs Act have expanded ANA's granting authority to establish two additional programs for (1) environmental regulatory enhancement, and (2) Native American languages preservation and enhancement.

Projects are awarded funds under sections 803(a), 803(d) and 803C of the Native American Programs Act of 1974, as amended (Public Law 93–644, 88 Stat. 2324, 42 U.S.C. 2991b).

The Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) authorizes financial assistance for projects to address environmental regulatory concerns (Section 803(d) of the Native American Programs Act of 1974, as amended).

The Native American Languages Act of 1992 (Public Law 102–524) authorizes financial assistance for projects to promote the survival and continuing vitality of Native American languages (Section 803C of the Native American Programs Act of 1974, as amended).

This program announcement is being issued in anticipation of the appropriation of funds for fiscal year 1995, and the availability of funds for the four competitive areas is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the evaluation criteria under each respective competitive area in this announcement.

Eligible applicants may compete for and receive a grant award in each of the three competitive areas. However, ANA continues its policy that an applicant may only submit one application per competitive area.

This program announcement consists of three parts.

PART I—ANA POLICY AND GOALS

Provides general information about ANA's policies and goals for the four competitive areas.

PART II—ANA COMPETITIVE AREAS

Describes the four competitive areas under which ANA is requesting applications:

- Governance, Social and Economic Development (SEDS);
- Governance, Social and Economic Development (SEDS) for Alaska Native entities;
- Environmental Regulatory Enhancement; and
- Native American Languages Preservation and Enhancement.

Each competitive area includes the following sections which provide area-specific information to be used in developing a funding application:

A Purpose and Availability of Funds;
B Background;
C Proposed Projects to be Funded;
D Eligible Applicants;
E Grantee Share of the Project;
F Review Criteria;
G Application Due Date(s); and
H Contacts to Obtain Further Information

PART III—GENERAL APPLICATION INFORMATION AND GUIDANCE

Provides information and guidance that applies to all four competitive areas and that must be taken into account in developing an application in any of the four areas.

PART I—ANA POLICY AND GOALS

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders.

The Administration for Native Americans believes that a Native American community is self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

The Administration for Native Americans also believes that the responsibility for achieving self-sufficiency resides with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner which is consistent with its established long-range goals.

The Administration for Native Americans' policy is based on three interrelated goals:

1. *Governance:* To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.
2. *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well-being.
3. *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health, well-being and culture of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

The Administration for Native Americans assists eligible applicants in the four competitive areas to undertake one to three year development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency. For each type of project, applicants must describe a concrete locally-determined strategy to carry out a proposed project with fundable objectives and activities.

Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

PART II—ANA COMPETITIVE AREAS

The four competitive areas under this Part describe ANA's funding authorities, priorities, special initiatives, requirements, and review criteria. However, most of the requirements are standard for all applications to be submitted under this program announcement. The standard requirements necessary for each application, as well as standard ANA program guidance and technical guidance are described in Part III of this announcement.

An applicant may submit a separate application under any of the competitive areas described in this Part, as long as the applicant meets the eligibility requirements that are listed separately under each area. Applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2. An Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the same closing date.

the four competitive areas to undertake one to three year development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency. For each type of project, applicants must describe a concrete locally-determined strategy to carry out a proposed project with fundable objectives and activities.

Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

PART II—ANA COMPETITIVE AREAS

The four competitive areas under this Part describe ANA's funding authorities, priorities, special initiatives, requirements, and review criteria. However, most of the requirements are standard for all applications to be submitted under this program announcement. The standard requirements necessary for each application, as well as standard ANA program guidance and technical guidance are described in Part III of this announcement.

An applicant may submit a separate application under any of the competitive areas described in this Part, as long as the applicant meets the eligibility requirements that are listed separately under each area. Applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2. An Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the same closing date.

ANA Competitive Area 1. Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1995 financial assistance to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through locally developed social and economic development strategies (SEDS).

Approximately $14 million of financial assistance is anticipated to be available under this priority area for governance, social and economic development projects. In fiscal year 1995, ANA anticipates awarding approximately 120 competitive grants ranging from $30,000 to $1,000,000 under this competitive area.

B. Background

To achieve its goals, ANA supports tribal and village governments, and Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The SEDS approach is based on ANA's program goals and incorporates two fundamental principles:

1. The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

2. Governance and social and economic development are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

ANA's SEDS policy is based on the use of the following definitions:

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Social infrastructure" includes those components through which health, economic well-being and culture are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local social and economic development strategy is developed as part of a grant application.

A community's movement toward self-sufficiency could be jeopardized if a careful balance between governmental, economic and social development is not maintained. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services.

Conversely, inadequate support services and training could seriously impede productivity and local economic development. Additionally, the necessary infrastructures must be developed or expanded at the community level to support social and economic development and growth. In designing their social and economic development strategies, ANA encourages an applicant to use or leverage all available human, natural, financial, and physical resources.

In discussing their community-based, long-range goals, and the objectives for the proposed projects, ANA recommends that non-Federally recognized and off-reservation groups include a description of what constitutes their specific community.

ANA encourages the development and maintenance of comprehensive strategic plans which are an integral part of attaining and supporting the balance necessary for successful activities that lead to self-sufficiency.

C. Proposed Projects To Be Funded

This section provides descriptions of activities which are consistent with the SEDS philosophy. Proposed activities should be tailored to reflect the governance, social and economic development needs of the local community and should be consistent and supportive of the proposed project objectives.

The types of projects which ANA may fund include, but are not limited to, the following:

Governance

- Improvements in the governmental, judicial and/or administrative infrastructures of tribal and village governments (such as strengthening or streamlining management procedures or

the development of tribal court systems);

• Increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency (including strategic planning);

• Increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, by either treaties, the Federal trust relationship, legislative authority, or as citizens of a particular state, or of the United States.

• Status clarification activities for Native groups seeking Federal or State tribal recognition, such as performing research or any other function necessary to submit a petition for Federal acknowledgement or in response to any obvious deficiencies cited by the Bureau of Acknowledgement and Research (BAR), Department of Interior, in a petition from a Native group seeking Federal recognition; and

• Amendments to tribal constitutions, court procedures and functions, by-laws or codes, and council or executive branch duties and functions.

Economic Development

• Establishment or expansion of businesses and jobs in areas such as tourism, specialty agriculture, light and/or heavy manufacturing, construction, housing and fisheries or aquaculture;

• Stabilizing and diversifying a Native community's economic base through business development ventures;

• Creation of microenterprises or private sector development; and

• Establishment or expansion of businesses and jobs that utilize Indian tax incentives passed in the Omnibus Budget Reconciliation Act of 1993.

Social Development

• Enhancing tribal capabilities to design or administer programs aimed at strengthening the social environment desired by the local community;

• Developing local and intertribal models related to comprehensive planning and delivery of services;

• Developing programs or activities to preserve and enhance tribal heritage and culture; and

• Establishing programs which involve extended families or tribal societies in activities that strengthen cultural identity and promote community development or self-esteem.

D. Eligible Applicants

Current ANA SEDS grantees whose project period terminates in fiscal year 1995 (October 1, 1994–September 30, 1995) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA SEDS grantees, the following organizations are eligible to apply under this competitive area:

• Federally recognized Indian Tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364(1993));

• Consortia of Indian Tribes;

• Incorporated non-Federally recognized Tribes;

• Incorporated nonprofit multi-purpose community-based Indian organizations;

• Urban Indian Centers;

• National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;

• Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

• Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

• Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

• Nonprofit Native organizations in Alaska with village specific projects;

• Public and nonprofit private agencies in Hawaii serving Native Hawaiians;

• Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (These agencies may be located on these islands or in the United States); and

• Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% total project cost).

While we encourage applicants to secure non-Federal funds for their match, the non-Federal share may be satisfied through other Federal funding sources, provided the other Federal program source relates to the proposed ANA project, as follows:

• Indian Child Welfare funds, through the Department of Interior;

• Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and

• Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions).

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in the Background section of this competitive area), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *Long-range goals and available resources.* (15 points) (a) The application explains how specific social, governance and economic long-range community goals relate to the proposed project and strategy. It explains how the community intends to achieve these goals. It documents the type of involvement and support of the community in the planning process and implementation of the proposed project. The goals are described within the context of the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary). The application has a clearly delineated social and economic development strategy (SEDS).

Note: Applications from National Indian and Native organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA monies. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources is *not* considered a binding commitment of outside resources.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *Long-range goals and available resources.* (15 points) (a) The application explains how specific social, governance and economic long-range community goals relate to the proposed project and strategy. It explains how the community intends to achieve these goals. It documents the type of involvement and support of the community in the planning process and implementation of the proposed project. The goals are described within the context of the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary). The application has a clearly delineated social and economic development strategy (SEDS).

Note: Applications from National Indian and Native organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA monies. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources is *not* considered a binding commitment of outside resources.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all ANA applicants.

(2) *Organizational capabilities and qualifications.* (10 points). (a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions or résumés of key personnel, including those of consultants, are presented. The position descriptions and résumés relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Résumés demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the résumés contain the qualifications and/or specialized skills necessary for overall quality management of the project.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) *Project objectives, approach and activities.* (45 points). The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or benefits expected.* (20 points). Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points). There is a detailed, and fully explained, budget provided for each budget period requested. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. (Applicants from the Native American Pacific Islands are exempt from the non-Federal share requirement). Sufficient cost and other necessary details are included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project. For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

G. Application Due Date

The closing dates for submission of applications under this competitive area are: October 21, 1994, February 10, 1995, and May 19, 1995.

H. For Further Information Contact

Lucille Dawson (202) 690–6306, Hank Aguirre (202) 690–6439, or Sharon McCully (202) 690–5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., Room 348–F, Washington, DC 20201–0001.

Competitive Area 2. Alaska-Specific Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1995 funds for Alaska Native social and economic development projects. Approximately $1.5 million of financial assistance is anticipated to be available under this competitive area for Alaska Native governance, social and economic development projects.

ANA plans to award approximately 15–18 grants under this competitive

area. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period of 12 months will be up to $150,000, commensurate with approved multi-village objectives.

B. Background

Based on the three ANA goals described in Part I, ANA implemented a special Alaska social and economic development initiative in fiscal year 1984. This special effort was designed to provide financial assistance at the village level or for village-specific projects aimed at improving a village's governance capabilities and for social and economic development.

This competitive area continues to implement this special initiative. ANA believes both the nonprofit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. However, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

C. Proposed Projects To Be Funded

Examples of the types of projects that ANA may fund include, but are not limited to, projects that will:

Governance

- Initiate demonstration programs at the regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base;
- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management and protection, resource assessment and conducting environmental impact studies;
- Assist village consortia in the development of tribal constitutions, ordinances, codes and tribal court systems;
- Develop agreements between the State and villages that transfer programs jurisdictions, and/or control to Native entities;
- Strengthen village government control of land management, including land protection, through coordination of land use planning with village corporations and cities, if appropriate;
- Assist in status clarification activities;
- Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health, well being and culture of a community and its people;
- Strengthen local governance capabilities through the development of village consortia and regional IRAs (Indian Reorganization Act councils organized under the Indian Reorganization Act, 25 U.S.C. 473a);
- Assist villages in preparing and coordinating plans for the development and/or improvement of water and sewer systems within the village boundaries;
- Assist villages in establishing initiatives through which youth may participate in the governance of the community and be trained to assume leadership roles in village governments; and
- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills or earthquakes.

Economic Development

- Assist villages in developing businesses and industries which: (1) use local materials; (2) create jobs for Alaska Natives; (3) are capable of high productivity at a small scale of operation; and (4) complement traditional and necessary seasonal activities;
- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system;
- Assist villages, or consortia of villages, in developing subsistence compatible industries that will retain local dollars in villages;
- Assist in the establishment or expansion of new native-owned businesses; and
- Assist villages in labor export; i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development

- Assist in developing training and education programs for local jobs in education, government, and health-related fields; and work with these agencies to encourage job replacement of non-Natives by trained Natives;
- Develop local models related to comprehensive planning and delivery of social services;
- Develop new service programs, initially established with ANA funds, which will be funded for continued operation (after the ANA grant terminates) by local communities or the private sector;
- Develop or coordinate with State-funded projects, activities designed to decrease the incidence of child abuse and neglect, fetal alcohol syndrome, and/or suicides;
- Assist in obtaining licenses to provide housing or related services from State or local governments; and
- Develop businesses to provide relief for caretakers needing respite from human service-related care work.

D. Eligible Applicants

Current ANA SEDS grantees in Alaska whose project period terminates in fiscal year 1995 (October 1, 1994–September 30, 1995) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA SEDS grantees, the following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes in Alaska (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364(1993));
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and
- Nonprofit Native organizations in Alaska with village specific projects.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% total project cost).

While we encourage applicants to secure non-Federal funds for their match, the non-Federal share may be satisfied through other Federal funding sources, provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and goals (described in the Background section of this competitive area and in the Background section of Competitive Area (1), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% total project cost).

While we encourage applicants to secure non-Federal funds for their match, the non-Federal share may be satisfied through other Federal funding sources, provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and goals (described in the Background section of this competitive area and in the Background section of Competitive Area (1), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *Long-range goals and available resources.* (15 points). (a) The application explains how specific social, governance and economic long-range community goals relate to the proposed project and strategy. It explains how the community intends to achieve these goals. It documents the type of involvement and support of the community in the planning process and implementation of the proposed project. The goals are described within the context of the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary). The application has a clearly delineated social and economic development strategy (SEDS).

Note: Applications from National Indian and Native organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.

(b) Available resources (other than ANA and the non-Federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA monies. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources is *not* considered a binding commitment of outside resources.

(2) *Organizational capabilities and qualifications.* (10 points). (a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project objectives, approach and activities. (45 points). The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that *each* of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;

Can be accomplished with the available or expected resources during the proposed project period;

Indicates when the objective, and major activities under each objective, will be accomplished;

Specifies who will conduct the activities under each objective; and

Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or Benefits Expected.* (20 points). Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided

in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points). There is a detailed, and fully explained, budget provided for each budget period requested. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other necessary details are included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

G. Application Due Date

The closing date for submission of applications under this competitive area is: May 19, 1995.

H. For Further Information Contact:

Hank Aguirre (202) 690–6439, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, S.W., Room 348–F, Washington, D.C. 20201–0001.

Competitive Area 3. Indian Environmental Regulatory Enhancement Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1995 funds for environmental regulatory enhancement projects. Approximately $3 million of financial assistance is anticipated to be available under this announcement for environmental regulatory enhancement projects. ANA expects to award approximately 35 grants under this competitive area. The funding level for a budget period of 12 months will be up to $250,000.

B. Background

Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, this lack of resources has resulted in a delay in action on the part of the tribes.

Some of the critical issues identified by tribes before Congressional committees include:

- The need for assistance to train professional staff to monitor and enforce tribal environmental programs;
- The lack of adequate data for tribes to develop environmental statutes and establish environmental quality standards; and
- The lack of resources to conduct studies to identify sources of pollution and the ability to determine the impact on existing environmental quality.

As a result, Congress enacted the Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) to strengthen tribal governments through building capacity within the tribes in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. ANA is to support these activities on a government-to-government basis in a way that recognizes tribal sovereignty and is consistent with tribal culture.

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups.

Progress toward the goal of environmental regulatory enhancement would include the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring compliance with and enforcement of these laws, and the development of programs to conduct compliance and enforcement functions.

Other functions leading toward enhancing local regulatory capacity include, but are not limited to:

- Environmental assessments;
- Development and use of environmental laboratories; and
- Development of court systems for enforcement of tribal and Federal environmental laws.

Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

C. Proposed Projects To Be Funded

Financial assistance provided by ANA is available for developmental projects designed to assist tribes in advancing their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate and enforce environmental activities on Indian lands pursuant to Federal and Indian law;
- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote environmental training and education of tribal employees;
- Develop technical and program capability to meet tribal and Federal regulatory requirements;
- Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
- Ensure the tribal court system enforcement requirements are developed in concert with and support the tribe's comprehensive environmental program.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364 (1993));
- Incorporated non-Federally recognized Indian tribes;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaska Native Regional Corporations/Associations with village specific projects; and
- Other tribal or village organizations or consortia of Indian tribes.

The following organizations are not eligible to apply:

- Urban Indian Centers;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, Palau, or the Commonwealth of Northern Mariana Islands;
- Incorporated nonprofit Alaska Native multi-purpose community based organizations; and
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirement through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% of total project cost).

The non-Federal share may be met by cash or through the provision of in-kind property or services, but only to the extent that cash or property is from any source (including any Federal agency where legislation or regulation authorizes using specific types of funds for a match) other than a program, contract or grant authorized under the Native American Programs Act of 1974, as amended. An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the environmental regulatory purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *Long-range goals and available resources.* (15 points). (a) The application explains how the specific environmental regulatory enhancement goal(s) relates to the proposed project. The description includes local objectives related to the program

Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirement through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% of total project cost).

The non-Federal share may be met by cash or through the provision of in-kind property or services, but only to the extent that cash or property is from any source (including any Federal agency where legislation or regulation authorizes using specific types of funds for a match) other than a program, contract or grant authorized under the Native American Programs Act of 1974, as amended. An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the environmental regulatory purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *Long-range goals and available resources.* (15 points). (a) The application explains how the specific environmental regulatory enhancement goal(s) relates to the proposed project. The description includes local objectives related to the program purpose of this competitive area. The discussion should highlight specific environmental regulatory needs and explain how the community intends to achieve the goal. It documents the type of involvement and support of the community in the planning and implementation of the project. The application has a clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

(b) Available resources (other than ANA and the non-Federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA money. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources is not considered a binding commitment of outside resources.

(2) *Organizational capabilities and qualifications.* (15 points). (a) The management and administrative structure of the applicant is described and explained. Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement but the proposed staff and consultants should have the required qualifications and experience. The application should clearly describe any previous or current activities of the applicant organization or proposed staff and/or consultants in support of environmental regulatory enhancement.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) *Project objectives, approach and activities.* (40 points). The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's strategy for environmental regulatory enhancement;
- Clearly relates to the community's long-range environmental goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or benefits expected.* (20 points). Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range environmental goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points). There is a detailed, and fully explained, budget with comprehensive narrative provided for each budget period requested. It

justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other necessary details are included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

G. Application Due Date

The closing date for submission of applications under this competitive area is March 3, 1995.

H. For Further Information Contact

Sharon McCully (202) 690–5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Ave., SW., room 348–F, Washington, DC 20201–0001.

Competitive Area 4. Native American Languages Preservation and Enhancement Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1995 funds for projects which assist Native Americans to assure the survival and continuing vitality of their languages.

Approximately $1 million of financial assistance is anticipated to be available under this announcement for projects to promote the survival and continuing vitality of Native American languages.

For Category I, Planning Grants, the funding level for a budget period of 12 months will be up to $50,000. For Category II, Design and/or Implementation Grants, the funding level for a budget period of 12 months will be up to $125,000.

B. Background

The Congress has recognized that the history of past policies of the United States toward Indian and other Native American languages has resulted in a dramatic decrease in the number of Native American languages that have survived over the past five hundred years. Consequently, the Native American Languages Act was enacted (Title I, Public Law 101–477) to address this decline.

This legislation invested the United States government with the responsibility to work together with Native Americans to ensure the survival of cultures and languages unique to Native America. This law declared that it is the policy of the United States to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages." While the Congress made a significant first step in passing this legislation in 1990, it served only as a declaration of policy. No program initiatives were proposed, nor any funds authorized to enact any significant programs in furtherance of this policy.

In 1992, Congressional testimony provided estimates that of the several hundred languages that once existed, only about one hundred and fifty-five (155) languages are still spoken or remembered today. However, only 20 are spoken by persons of all ages, 30 are spoken by adults of all ages, about 60 are spoken by middle-aged adults, and 45 are spoken only by the most elderly.

In response to this testimony, the Congress passed the Native American Languages Act of 1992 (Public Law 102–524) to assist Native Americans in assuring the survival and continuing vitality of their languages. Passage of this law is an important second step in attempting to ensure the survival and continuation of Native American languages, as it provides the basic foundation upon which the Tribal nations can rebuild their economic strength and rich cultural diversity.

While the Federal government recognizes that substantial loss of Native American languages has occurred over the past several hundred years, the nature and magnitude of the status of Native American languages will be better defined when eligible applicants have completed language assessments.

The Administration for Native Americans (ANA) believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. This belief supports the ANA principle that the local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs which support the community's long range goals.

Therefore, since preserving a language and ensuring its continuation is generally one of the first steps taken toward strengthening a group's identity, activities proposed under this program announcement will contribute to the social development of a native community and significantly contribute to its path toward self-sufficiency.

The Administration for Native Americans recognizes that eligible applicants must have the opportunity to develop their own language plans, technical capabilities and access to the necessary financial and technical resources in order to assess, plan, develop and implement programs to assure the survival and continuing vitality of their languages. ANA also recognizes that potential applicants may have specialized knowledge and capabilities to address specific language concerns at various levels. This competitive area reflects these special needs and circumstances.

C. Proposed Projects To Be Funded

Applicants may apply for 12-month Planning Grants, under Category I, or for projects of up to 36 months duration under Category II, Design and/or Implementation Grants.

Category I—Planning grants. The purpose of the planning grants is to conduct the assessment and planning needed to identify the current status of the Native American language(s) to be addressed and to establish community long-range language goal(s).

These activities may include, but are not limited to, the following:

- Data collection, compilation and analysis to ascertain current language status through "formal" (e.g., work performed by a linguist, and/or a language survey conducted by community members) or "informal" (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members) methods;
- Establishment of the community's long-range language goals; and
- Acquisition of the necessary training and technical assistance to assure the achievement of the project goal(s).

Category II—Design and/or implementation grants. The purpose of design and/or implementation grants is to allow communities to design and/or implement, as appropriate to the applicant, a language program or programs that will contribute to the achievement of the community's long-range language goal(s). Applicants under Category II must be able to document that: (a) language statistics have been collected and analyzed, and that these statistics are current (compiled within thirty-six months prior to the grant application); (b) that the community has established long-range language goals; and (c) that community representatives are adequately trained to achieve the proposed project goals.

Under Category II grants, applicants may include the purchase of specialized equipment (including audio and video recording equipment, computers, and software) which is necessary to accomplish project objectives. The applicant must fully justify the need for this equipment and explain how it will assist them in achieving their project objectives.

The types of activities ANA is seeking to fund under Category II grants include, but are not limited to, the following:

- Establishment and support of community Native American language projects to bring older and younger Native Americans together to facilitate and encourage the transfer of Native American language skills from one generation to another;
- Establishment of projects to train Native Americans to teach Native American languages to others or to enable them to serve as interpreters or translators of such languages;
- Development, printing, and dissemination of materials to be used for the teaching and enhancement of Native American languages;
- Establishment or support of projects to train Native Americans to produce or participate in television or radio programs to be broadcast in Native American languages; and
- Compilation, transcription, and analysis of oral testimony to record and preserve Native American languages.

The Institute of American Indian and Alaska Native Culture and Arts Development is established by the Act as the repository for copies of products from Native American languages grants funded under this program announcement. Products of Native American languages grants funded by this program announcement must be transmitted to this designated repository. Federally recognized Indian Tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364 (1993)) are not required to comply with this provision.

D. Eligible Applicants

The following organizations are eligible to apply for funding under this competitive area:

- Federally recognized Indian Tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364 (1993));
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

this equipment and explain how it will assist them in achieving their project objectives.

The types of activities ANA is seeking to fund under Category II grants include, but are not limited to, the following:

- Establishment and support of community Native American language projects to bring older and younger Native Americans together to facilitate and encourage the transfer of Native American language skills from one generation to another;
- Establishment of projects to train Native Americans to teach Native American languages to others or to enable them to serve as interpreters or translators of such languages;
- Development, printing, and dissemination of materials to be used for the teaching and enhancement of Native American languages;
- Establishment or support of projects to train Native Americans to produce or participate in television or radio programs to be broadcast in Native American languages; and
- Compilation, transcription, and analysis of oral testimony to record and preserve Native American languages.

The Institute of American Indian and Alaska Native Culture and Arts Development is established by the Act as the repository for copies of products from Native American languages grants funded under this program announcement. Products of Native American languages grants funded by this program announcement must be transmitted to this designated repository. Federally recognized Indian Tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364 (1993)) are not required to comply with this provision.

D. Eligible Applicants

The following organizations are eligible to apply for funding under this competitive area:

- Federally recognized Indian Tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364 (1993));
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies in Hawaii serving Native Hawaiians;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (These agencies may be located on these islands or in the United States); and
- Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

Participating organizations. If a tribal organization, or other eligible applicant, decides that the objectives of its proposed Native American language project would be accomplished more effectively through a partnership arrangement with a tribal school, college, or university, the applicant shall identify such school, college, or university as a participating organization in its application. Under a partnership agreement, the applicant will be responsible for the fiscal, administrative and programmatic management of the grant.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% total project cost).

The non-Federal share may include funds distributed to a tribe, including interest, by the Federal government:

- Pursuant to the satisfaction of a claim made under Federal law;
- From funds collected and administered on behalf of such tribe or its constituent members; or
- For general tribal administration or tribal development under a formula or subject to a tribal budgeting priority system, such as, but not limited to, funds involved in the settlement of land or other judgment claims, severance or other royalty payments, or payments under the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or tribal budget priority system.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Applications submitted as a partnership arrangement with a school, college, or university, may use contributions from the "partner" organization(s) to meet the non-Federal share, as appropriate. Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions).

F. Review Criteria

A proposed project should reflect the Native American languages purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *Current status of Native American language(s) addressed and description(s) of existing programs/projects (if any) which support the*

language(s) addressed. (10 points). (a) The application fully describes the current status of the Native American language(s) to be addressed; current status is defined as data compiled within the previous thirty-six (36) months. The description of the current status minimally includes the following information: (1) number of speakers; (2) age of speakers; (3) gender of speakers; (4) level(s) of fluency; (5) number of first language speakers (the Native language is the first language acquired); (6) number of second language speakers (the Native language is the second language acquired); (7) where the language is used (specific uses such as: home, court system, religious ceremonies, church, multimedia, school, governance activities and other, as appropriate to applicant); (8) source of data; (formal and/or informal); and (9) rate of language loss or gain. The application has clearly delineated the current status of the Native American language(s) to be addressed by the project.

(b) The application fully describes existing community language or language training programs and projects, if any, in support of the Native American language to be addressed by the proposed project. Existing programs and projects may be formal (e.g., work performed by a linguist, and/or a language survey conducted by community members) or informal (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members). The description should address the following: (1) Has applicant had a community language or language training program within the last thirty-six (36) months? (2) Has applicant had a community language or language training program within the last ten (10) years? Applicants that answer "no" to either question (1) or (2) should provide a detailed explanation of what barriers or circumstances prevented the establishment or implementation of a community language program. Applicants that answer "yes" to either questions (1) or (2) should describe recent language program, including: (1) program goal(s); (2) number of program participants; (3) number of speakers; (4) age range of participants (e.g., 0–5; 6–10; 11–18;, etc.); (5) number of language teachers; (6) criteria used to acknowledge competency of language teachers; (7) resources available to applicant (e.g., valid grammars, dictionaries, and/or orthographics. If there are other suitable resources, please describe); and (8) other outcomes.

(2) *Long-range goals and available resources.* (25 points). (a) The application explains how specific Native American(s) long range community goals relate to the project. Goals are described within the context of the applicant's current language status. The strategies described will assist in assuring the survival and continued vitality of the Native American language(s) addressed.

(b) The application explains how the community and existing tribal government (where one exists) intends to achieve these goals. It clearly documents the involvement and support of the community members in the planning process and implementation of the proposed project as appropriate (e.g., tribal resolutions, minutes of Community meetings, etc.).

(c) Available resources (other than ANA and the non-Federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA monies. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources is *not* considered a binding commitment of outside resources.

If the applicant proposes to enter into a partnership arrangement with a school, college, or university, documentation of this commitment must be included in the application.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all ANA applicants.

(3) *Project objectives, approach and activities.* (25 points). The application proposes specific project objective work plans with activities related to the goal to ensure the survival and continuing vitality of the Native American language(s). The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Clearly indicate Tribal Government, as appropriate, and the community's active involvement demonstrating continuing participation of Native American speakers;
- Are measurable and/or quantifiable in terms of results and outcomes;
- Clearly relate to the community's long-range language goals which the project addresses;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective, and major activities under each objective will be accomplished;
- Specify who will conduct the activities under each objective; and
- Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Evaluation plan.* (15 points). The proposed objectives will result in specific, measurable outcomes to be achieved that will clearly contribute to the completion of the overall project and will help the applicant meet its goal to ensure the survival and continuing vitality of the Native American language(s) addressed. A detailed evaluation plan is provided to measure project outcomes, including, but not limited to, a demonstration of effective language growth (e.g., increase of "language use").

(5) *Replication plan and product preservation plan.* (10 points). (a) Identify opportunities for the replication of the project or the modification of the project for use by other Native Americans, if appropriate. If replication is not appropriate, applicant must provide reasons why replication is inappropriate.

(b) Describe the plan for the preservation of the products of the Native American languages project for the benefit of future generations of Native Americans and other interested persons.

(6) *Organizational capabilities/ qualifications and budget.* (15 points). (a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of projects of similar scope by the organization and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions clearly describe the position and its duties and clearly relate to the personnel staffing required for implementation of the project activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(c) There is detailed budget provided for each budget period requested which is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. (Applicants from the Native American Pacific Islands are exempt from the non-Federal share requirement.) Sufficient cost and other necessary details are included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

G. Application Due Date.

The closing date for submission of applications under this competitive area is March 17, 1995.

H. For Further Information Contact

Dr. Gerald Gipp (202) 690–6662 or Ginny Gorman (202) 401–7260, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Ave., S.W., Room 348–F, Washington, D.C. 20201–0001.

PART III—GENERAL APPLICATION INFORMATION AND GUIDANCE

A. Definitions

Funding areas in this program announcement are based on the following definitions:

- A *multi-purpose community-based Native American organization* is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but

specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions clearly describe the position and its duties and clearly relate to the personnel staffing required for implementation of the project activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(c) There is detailed budget provided for each budget period requested which is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. (Applicants from the Native American Pacific Islands are exempt from the non-Federal share requirement.) Sufficient cost and other necessary details are included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

G. Application Due Date.

The closing date for submission of applications under this competitive area is March 17, 1995.

H. For Further Information Contact

Dr. Gerald Gipp (202) 690–6662 or Ginny Gorman (202) 401–7260, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Ave., S.W., Room 348–F, Washington, D.C. 20201–0001.

PART III—GENERAL APPLICATION INFORMATION AND GUIDANCE

A. Definitions

Funding areas in this program announcement are based on the following definitions:

- A *multi-purpose community-based Native American organization* is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.
- A *multi-year project* is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.
- *Core administration* is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.
- *Environmental regulatory enhancement* encompasses (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.
- *Language preservation* is the maintenance of a language so that it will not decline to non-use. "Language vitality" is the active use of a language in a wide range of domains of human life.
- *Language replication* is defined as the application of a language program model developed in one community to other linguistically similar communities.
- Language survival is defined as the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.

B. General Considerations

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

C. Activities That Cannot Be Funded By ANA

The Administration for Native Americans does not fund projects that operate indefinitely or require ANA funding on a recurring basis. The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. Under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section H, General Guidance to Applicants, below.

D. Multi-Year Projects

Applicants may apply for projects of up to three years. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an

opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

E. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

F. The Application Process

1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201–0001, Attention: 93612–951, Telephone: (202) 401–7260.

2. Application Submission

One signed original, and two copies, of the grant application, including all attachments, may be mailed by the specific closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447, Attention: William J. McCarron, ANA No. 93612–951.

Hand delivered applications are accepted during the normal working hours or 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447.

The application must be signed by an individual authorized (1) to act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Each tribe, Native American organization, or other eligible applicant may compete and receive a grant award in each of the three competitive areas under this announcement. The Administration for Native Americans will accept only one application per competitive area from any one applicant. Alaska Native entities may submit a SEDS application under either competitive area 1 or 2, but not under both.

If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

3. Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with (1) American Indian Tribes and Native American communities and organizations, (2) environmental issues, and (3) Native American languages, as appropriate, evaluates each application using the published criteria in each funding competitive area. As a result of the review, a numerical score will be assigned to each application.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

G. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

3. Determination of Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. Section 810(b) of the Native American Programs Act, as amended, 42 U.S.C. 2991h, specifies the appeals process when ANA determines that an organization or activities are ineligible for assistance. When an applicant or the activities proposed by the applicant are rejected as ineligible, the applicant will be advised of the appropriate appeal process.

H. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservations groups are encouraged to include a description of what constitutes their specific "community." In addition, applicants should document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project.
- Applications from National Indian and Native organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and the community's long-range goals or plan.
- The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.
- Supporting documentation, if available, or other testimonies from concerned interests other than the applicant should be included to

the Native American Programs Act, as amended, 42 U.S.C. 2991h, specifies the appeals process when ANA determines that an organization or activities are ineligible for assistance. When an applicant or the activities proposed by the applicant are rejected as ineligible, the applicant will be advised of the appropriate appeal process.

H. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservations groups are encouraged to include a description of what constitutes their specific "community." In addition, applicants should document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project.
- Applications from National Indian and Native organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and the community's long-range goals or plan.
- The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.
- Supporting documentation, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.
- In the ANA Project Narrative, Section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.
- Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or a new business, if the applicant includes a business plan that clearly describes its feasibility and the approach for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these materials as guides in developing a proposal for an economic development project or business that is part of the application.

2. Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for social and economic development projects.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.
- In Competitive Area 1 there is no maximum or minimum amount of Federal funds that may be requested.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.
- If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.
- Applicants are strongly encouraged to submit proposals addressing environmental regulatory enhancement and Native American languages preservation and enhancement under the issue-specific competitive areas described in this announcement.
- For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of federally recognized Indian Tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils).
- The Administration for Native Americans will accept only one application, per competitive area, from any one applicant. If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- Under each competitive area, ANA will only accept one application which serves or impacts a reservation. If a Tribe chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation. In this case, the applicant must include a tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.
- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.
- Two copies of the application plus the original are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a

monthly staff guide for project responsibilities if the applicant is funded.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.

• Line 15a of the 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92.)

• Applicants may propose a 17 month project period. However, the project period for the first year of a multi-year project may only be 12 months.

• Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

• The Administration for Native Americans will critically evaluate applications in which the acquisition of major capital equipment (i.e., oil rigs, agricultural equipment, etc.) is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

3. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. In addition, T/TA is an allowable activity for environmental regulatory enhancement projects submitted under Competitive Area 3, and Native American languages projects submitted under Competitive Area 4.

• Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. However, ANA is not interested in funding "wish lists" of business possibilities. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.

• The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

• Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. However, under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

• Project goals which are not responsive to one or more of the funding competitive areas.

• Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. In situations where both a consortia of tribes and the tribes who belong to the consortia receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member tribes.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

• The purchase of real estate (see 45 CFR 1336.50 (e)) or construction (see ACF Grants Administration Manual Ch. 3, Section E).

• Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

I. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

J. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section F, The Application Process: Application Submission. The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

1. Deadlines

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

• Received on or before the deadline date at the address specified in Section F2, Application Submission; or

• Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Children and Families shall notify each late applicant that its application will not be considered in the current competition.

2. Late Applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Children and Families shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadlines

The Administration for Children and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs).

Dated: July 12, 1994.

Dominic Mastrapasqua,

(Acting) Commissioner, Administration for Native Americans.

[FR Doc. 94–17668 Filed 7–20–94; 8:45 am]

BILLING CODE 4184–01–P

VOL
5 9
ISS
1
3
9
JL
21
994
MI

federalism

federal register

Thursday
July 21, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 3500

Real Estate Settlement Procedures Act; Amendments to Regulation X; Proposed Rule

VOL 59 ISS 139 JL 21 1994 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-94-1725; FR-3638-P-01]

RIN 2502-AG26

Amendments to Regulation X, the Real Estate Settlement Procedures Act Regulation (1994 Revisions)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development is proposing to revise Regulation X, the regulation implementing the Real Estate Settlement Procedures Act (RESPA), as amended to extend its coverage to subordinate liens and for other purposes and to make technical corrections. This proposed rule addresses referral payments, computer loan origination services, and controlled business disclosure requirements, and is intended to protect consumer interests while recognizing the potential benefits of technological and business arrangement innovations relating to these areas.

DATES: Comment due date: September 19, 1994.

During this comment period owners and operators of computerized loan origination systems (CLOs) are also invited to participate in a Technology Demonstration of Computerized Loan Origination Systems, to be sponsored by the Department and held in Washington, DC, on September 26, 1994, beginning at 9:30 a.m. (EST), as discussed more fully in the preamble under **SUPPLEMENTARY INFORMATION**. (Requests for participation must be received on or before August 11, 1994, as provided under the **ADDRESSES** section.)

ADDRESSES: Interested persons are invited to submit written comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m weekdays at the above address.

To participate in the Technology Demonstration, contact David Williamson, Director, RESPA Enforcement, at (202) 708-4560, *or* in writing at room 5241, Department of Housing and Urban Development, 7th and D, SW., Washington, DC 20410, *or* on E-Mail through Internet at drwilliamson@hud.gov, on or before August 11, 1994. The TDD number for persons who are hearing- or speech-impaired is (202) 708-4594. (The telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: William Reid, Senior Economist, Office of Policy Development and Research, room 8212, telephone (202) 708-0421. The TDD number for persons who are hearing- or speech-impaired is (202) 708-0770. For legal questions, Grant E. Mitchell, Senior Attorney for RESPA, room 10252, telephone (202) 708-1552; or Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, room 10252, telephone (202) 708-3137. The address for all the above-listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (The telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act Statement

The information collection requirements regarding controlled business disclosures and the CLO disclosures (appendices D and E of this rule) have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0265.

I. Technology Demonstration

The purpose of the Technology Demonstration (see additional information under the headings **DATES** and **ADDRESSES**, above) is to provide owners and operators of computer loan origination systems (CLOs) with an opportunity to demonstrate or discuss the operation and benefits of their systems and the impact of the proposed rule on their systems, and to provide consumer groups, industry organizations, and members of the public with an opportunity to witness such presentations or demonstrations.

As discussed more fully below, this rule proposes to modify the application of the current Regulation X to CLOs. Information gained by the Department from the Technology Demonstration may be used in developing a final rule. Owners and operators are invited to notify the Department of their interest in participating in this Technology Demonstration. Participants will be free to make visual or conceptual presentations without including actual use of computer loan origination systems. Based upon the number of interested parties and other practical considerations, the Department will determine the format, timing, and logistical arrangements for the Technology Demonstration. To the extent feasible, the Department will provide electrical and telephonic hook-ups for participants. The Department reserves the option of limiting the length of presentations, or setting any other guidelines for participation, in accordance with the number of participants.

II. Background

On November 2, 1992, HUD published a revised Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) (RESPA) rule (hereinafter "final rule" or "1992 final rule"), which became effective on December 2, 1992, and was amended on February 10, 1994 (59 FR 6505). Technical corrections were published on March 30, 1994 (59 FR 14748). The final rule contained long-awaited provisions implementing amendments to RESPA regarding controlled businesses. These amendments were originally enacted in 1983 as section 461 of the Housing and Urban-Rural Recovery Act (HURRA), Pub. L. 98-181. The final rule also updated the original RESPA rule, which had not been amended since 1976.

On October 28, 1992, a few days before publication of the final rule in the **Federal Register**, then-President Bush signed the Housing and Community Development Act of 1992 (Pub. L. 202-550) (1992 Act), which amended RESPA to state specifically that the making of a mortgage loan was a covered transaction (a Federal court case had created uncertainty) and that refinancing transactions were transactions covered by RESPA. The 1992 Act also extended RESPA's coverage to all subordinate liens involving 1- to 4-family residential property. Implementing provisions, along with revisions of the final rule, are set forth in the **Federal Register** of February 10, 1994, and are effective on August 9, 1994. The effect of the statutory and regulatory changes was to expand substantially the coverage of this criminal and civil statute.

Following issuance of the final rule, two lawsuits were filed: one by the Mortgage Bankers Association and one by a group of independent service providers, called CRISIS. Both suits objected to provisions of the final rule

and alleged that HUD had not complied with the Administrative Procedure Act (5 U.S.C. 551 et seq.) in promulgating the November 2, 1992, rule. The cases have been dismissed, but are subject to being reinstituted at any time.

Upon assuming office, HUD officials in the new Administration were inundated with comments—mostly complaints—about the final rule issued in the last days of the previous Administration. Notably absent from the interests contacting HUD about the final rule were any representatives of consumer interests. Instead, comments came almost entirely from the affected industries. Some industry representatives argued that the provisions of the final rule benefited consumers, while others argued that the provisions, sometimes the same provisions, were harmful to consumers.

The Department also received allegations that the final rule created uncertainty about whether referral fees were in fact prohibited by RESPA. Specifically, some commenters claimed that the introduction in the final rule of an employer-employee exemption from the prohibition on referral fees prompted some persons to set up sham employer-employee relationships to shield prohibited referral fees, and prompted others to "extort" referral fees from other settlement service providers on the premise that HUD now allowed such compensation. The final rule did not authorize such practices; however, some commenters argued that the existence of confusion about whether it did suggested that the final rule failed to establish a bright line, comprehensible to industry participants, between permissible and impermissible activities.

Given the controversy over the final rule, the Secretary determined that a review of the previous policies was needed, particularly focusing on the final rule's impact on consumers. The Secretary also articulated three principles to guide that review:

(1) HUD's responsibility is to protect the consumer—not to mediate among industry interests.

(2) HUD should regulate multibillion dollar industries responsibly—principally by acting quickly to end uncertainty.

(3) Technological and business arrangement innovations have the potential to provide significant consumer benefits, and HUD does not serve consumers well if its regulations unduly stifle such advancements.

On July 6, 1993, in an effort to ensure that the new Administration heard the views of all interested parties, the Department published a "notice of written comment period and informal public hearing" (58 FR 36176), inviting testimony and written comments on the impact on consumers of the following four provisions of the final rule:

Issue 1

Section 3500.14(g)(2)(ii), which provides that RESPA Section 8 does not prohibit "an employer's payment to its own employees for any referral activities * * *." (Hereafter, this issue is referred to as the "employer-employee exemption" or "Issue 1".)

Issue 2

Section 3500.14(g)(2)(iii), which provides that Section 8 of RESPA does not prohibit "any payment by a borrower for computer loan origination services, as long as the disclosure set forth in Appendix E of [the final rule] is provided the borrower." (Hereafter, this issue is referred to as the "computer loan origination (CLO) exemption" or "Issue 2".)

Issue 3

Section 3500.13(b)(2), which provides that "in determining whether provisions of State law or regulations concerning controlled business arrangements are inconsistent with RESPA or this part, the Secretary may not construe those provisions that impose more stringent limitations on controlled business arrangements as inconsistent with RESPA, as long as they give more protection to consumers and/or competition." (Hereafter, this issue is referred to as "preemption policy" or "Issue 3".)

Issue 4

Section 3500.15(b)(1), which provides for a "written disclosure in controlled business situations, in the format of the Controlled Business Arrangement Disclosure Statement set forth in appendix D of this part" of certain information regarding the ownership and financial relationships between referring and referred-to parties, and for certain timing and other methods for disclosure. (Hereafter, this issue is referred to as "controlled business disclosure policy" or "Issue 4".)

At a public hearing held on August 6, 1993, at the General Services Administration (GSA) Auditorium in Washington, DC, all 36 parties who had requested to testify did so. Twenty-two witnesses opposed provisions of the rule and 14 witnesses supported provisions of the rule. The Department also received 1,553 written comments.[1] Of the 1,526 comments reviewed, 1,148 comments opposing provisions of the final rule were received from mortgage lenders, or State or regional organizations representing mortgage lending professionals; consumer organizations; 3 Federal agencies; and, in both combined comments and separately, several State Attorneys General. An additional 325 critical comments were received from law firms and title insurance companies. Twenty-four comments were wholly or generally supportive of the final rule, including comments from individuals and organizations in real estate-related industries, lenders or title insurance providers, real estate brokers, a builder, and the Federal Reserve Board. The remainder of the comments were not characterized.

III. The Secretary's Position: A Brief Summary

Based on a complete review of the substantive arguments in support of and in opposition to the final rule provided in the testimony at the August 6, 1993, hearing; the written comments received; and a review of the RESPA statute, its purpose, and its history, the Department reached certain conclusions about its policy objectives on Issues 1–4, set forth above. The Department therefore proposes to amend the final rule as described below. Recognizing the rapid evolution of technology and business practices, the Department believes that development of the final rule will require additional collateral information about how certain details of this proposal will work in practice and whether these details will further the Department's policy objectives. Therefore, the Department has developed a series of questions about specific aspects of the proposal and asks commenters to offer any information they may have about how the rules would work. These questions are detailed throughout this preamble.

The following are the Department's policy objectives in addressing each issue and the Department's conclusions as set forth in the proposed rule:

A. Issue 1: The Employer-Employee Exemption

(1) *HUD's objective.* Controlled business arrangements and so-called "one-stop shopping" *may* offer consumers significant benefits including reducing time, complexity, and costs associated with settlements. If they do, the market should produce incentives for the creation of controlled business

[1] A total of 1,553 comments were officially logged in by the Department's Rules Docket Clerk. More than two dozen were duplicates, leaving 1,526 unduplicated comments.

arrangements without HUD authorizing incentive payments (otherwise impermissible under RESPA) to encourage these arrangements. However, HUD cannot scrutinize every aspect of the financial relationship between interrelated companies. Therefore, HUD's objective is primarily to prohibit compensation for business development for related entities at a point when that compensation has the greatest potential for overwhelming the other considerations that go into business referrals, *e.g.*, long-term customer satisfaction.

(2) *HUD Proposal.* (a) The exemption under the final rule permitting employers to pay their own employees referral fees is proposed to be withdrawn. Under this proposal, no employee of a company may be paid referral fees, even for referrals to an affiliate company. This proposal is based on the Department's view that the exemption under the final rule was too expansive and compromised the statute's purpose of protecting the consumer from being referred for settlement services based on financial gain to the referrer, rather than on the highest quality and best price of the services.

(b) In the interest of avoiding undue interference with the internal operations of controlled businesses, which Congress has concluded are permitted business arrangements under RESPA, the proposed rule would allow the payment of bonuses and compensation to managerial employees in controlled businesses for such purposes as the generation of business among affiliates; provided, however, that the compensation: (i) Is not tied on a one-to-one basis or calculated as a multiple of the number or value of any referrals; and (ii) these employees do not routinely deal with the public.

B. Issue 2. Computerized Loan Origination Systems

(1) *HUD's Objective.* The comments and witnesses at the public hearing demonstrated that there is some confusion concerning the scope of the Department's authority under RESPA to regulate CLOs. Thus, the Department's first objective in this area is to clarify what the RESPA rules can and cannot do. (See section below describing the legal framework for analysis of payments for CLO services.) In addition, the Secretary wishes to encourage the exploration and use of new technology, especially when the new technology may provide information and services to better inform consumers about one of the largest and most complex financial transactions in their lives, thus allowing the consumers to be more effective shoppers. However, the use of that technology does not justify increasing the cost of mortgage loan originations when the technology does not provide meaningful information otherwise available without charge, or when there is no additional convenience, clarity, or other benefit.

(2) *HUD Proposal.* The final rule would be amended to define a CLO and to provide that payments made by borrowers to CLO operators for use of a *qualified* CLO are exempt from RESPA scrutiny. The definition would set forth reasonable requirements for qualified CLO systems for access, lender-neutrality, and disclosure to consumers. Systems that fall outside the exemption would have to meet the basic test of Section 8 of RESPA that the borrower's payments be for goods or facilities actually furnished or for services actually performed.

C. Issue 3: Preemption

There are no proposed changes to the preemption provisions. The Secretary has concluded that change to these provisions is not warranted at this time.

D. Issue 4: Controlled Business Disclosure Form

The rule would be amended to add an acknowledgement provision on the controlled business disclosure form and to make other small revisions.

IV. Discussion of Comments

A. Commenters Opposing the 1992 Revised RESPA Rule

The following summarizes the nature of the commenters and comments opposing and supporting provisions on which HUD invited comment in its July 6, 1993, notice (58 FR 38176), as well as the positions taken in this proposed rule. In general, commenters were responsive to the notice's invitation and focused their remarks on the four identified provisions of the rule. A few comments raised other issues concerning the final rule, but the focus of the hearing and request for comments was the four specific areas listed. This proposed rule deals only with the four issues on which comment was invited.

Eleven hundred forty-eight commenters opposed provisions of the final rule. Commenters included mortgage lenders, realtors, and State or regional organizations representing mortgage lending professionals. The Department received an additional 325 comments critical of the rule from law firms and title insurance providers. Opposition was also expressed by six national organizations representing elements of the mortgage finance or title insurance industries, two national consumer organizations, an economist, a legal aid society, a real estate consultant, a law student, and four commenters whose professional interest could not be ascertained. A few national or regional computer service providers also commented on the rule.

Finally, 3 Federal agencies—the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision—submitted comments on the final rule, and 4 opposition comments were received from State Attorneys General, including 1 comment representing the unified position of the Attorneys General of 16 States.

B. Commenters in Support of the Revised RESPA Rule

Comments wholly or generally supportive of the final rule were received from 24 individuals and organizations engaged in real estate-related industries, including 15 lenders or title insurance providers; 6 real estate brokers or agents; an organization composed of controlled businesses, including realtors, which was formed in part to support the final rule (RESPRO); a builder; and the Federal Reserve.[2]

C. Summary of the Comments

In the ensuing discussion, arguments presented by the commenters related to these four issues will be summarized under the four issue headings. When commenters have asserted related arguments affecting the disposition of two or more of these issues, those comments will be mentioned in the course of discussing the issue that HUD perceives to be the core argument made by the particular commenter.

(1) Issue 1: The Employer-Employee Exception

The employer-employee exception provision in § 3500.14(g)(2)(ii) of the final rule—allowing "an employer's payment to its own employees for any referral activities * * *"—was the subject of more adverse comment than any other issue raised by the July 6, 1993, notice.

Hundreds of lenders, attorneys, and settlement agents objected to the rule's provision permitting employer payments to employees for "referral activities". Objections were focused, in large part, on what commenters perceived as the anticompetitive effect of permitting referral-based payments. Additionally, the Mortgage Bankers Association, sixteen State attorneys general, and a large number of other institutional and individual commenters saw the referral payment provision as being directly contrary to the RESPA statute, or, at a minimum, as contravening statutory intent.

The supporting commenters cited the desirability of vertical integration and the difficulty in enforcing employer-employee arrangements when the employer controlled all of the relevant documentation.

(a) *"Anticompetitive" Arguments Against Referral Payments.* The central argument raised by numerous commenters, including the combined comments of attorneys general of several States, was that referral payments were a breach of the trust of prospective home purchasers, particularly in transactions involving real estate agents and affiliated companies:

> Consumers expect to be treated fairly by their real estate agents and therefore trust that a referral to a settlement service provider is based solely on their agent's knowledge of comparative prices and service features. When there was no financial incentive for the [real estate agent], consumers were justified in thinking that they were referred to a settlement service provider because that provider offered good service at a reasonable price, not because the agent received a payment in exchange for the referral. This is no longer the case.

Comments of State Attorneys General

Referral payments, commenters repeatedly pointed out, permit vertically integrated real estate companies to provide financial incentives to their employees to make all settlement service referrals to affiliated companies. As a result, settlement service providers tied to a real estate company are "insulated from competition on prices and services."

RESPA was adopted, one commenter observed, because of Congress' recognition that the very nature of the real estate transaction is arcane and cumbersome, and that the typical consumer lacks any comparable economic experiences. The Consumers Federation of America (CFA) noted that the consumer has traditionally relied for assistance on the real estate broker (who ordinarily is an agent of the seller)—a person in "a highly privileged position of influence over the consumer * * *." CFA concluded that RESPA evidences congressional recognition that this influence can be easily abused for

[2] Support for portions of the final rule was also expressed in scattered comments received from individuals and businesses writing to criticize other specific features. The only issue receiving an appreciable amount of positive comment from critics of the rule's other features was Issue number 4 of the July 6 notice—the controlled business disclosure form.

activities". Objections were focused, in large part, on what commenters perceived as the anticompetitive effect of permitting referral-based payments. Additionally, the Mortgage Bankers Association, sixteen State attorneys general, and a large number of other institutional and individual commenters saw the referral payment provision as being directly contrary to the RESPA statute, or, at a minimum, as contravening statutory intent.

The supporting commenters cited the desirability of vertical integration and the difficulty in enforcing employer-employee arrangements when the employer controlled all of the relevant documentation.

(a) *"Anticompetitive" Arguments Against Referral Payments.* The central argument raised by numerous commenters, including the combined comments of attorneys general of several States, was that referral payments were a breach of the trust of prospective home purchasers, particularly in transactions involving real estate agents and affiliated companies:

> Consumers expect to be treated fairly by their real estate agents and therefore trust that a referral to a settlement service provider is based solely on their agent's knowledge of comparative prices and service features. When there was no financial incentive for the [real estate agent], consumers were justified in thinking that they were referred to a settlement service provider because that provider offered good service at a reasonable price, not because the agent received a payment in exchange for the referral. This is no longer the case.

Comments of State Attorneys General

Referral payments, commenters repeatedly pointed out, permit vertically integrated real estate companies to provide financial incentives to their employees to make all settlement service referrals to affiliated companies. As a result, settlement service providers tied to a real estate company are "insulated from competition on prices and services."

RESPA was adopted, one commenter observed, because of Congress' recognition that the very nature of the real estate transaction is arcane and cumbersome, and that the typical consumer lacks any comparable economic experiences. The Consumers Federation of America (CFA) noted that the consumer has traditionally relied for assistance on the real estate broker (who ordinarily is an agent of the seller)—a person in "a highly privileged position of influence over the consumer * * *." CFA concluded that RESPA evidences congressional recognition that this influence can be easily abused for broker self-gain at the material expense of consumers.

The Mortgage Bankers Association (MBA) and other commenters remarked that in the absence of referral fees, real estate agents may be expected to afford good advice to home buyers. The real estate agent has an incentive (the prospect of a sales commission, as well as potential business referrals and repeat business) to send a buyer to a lender offering the best combination of service and price. However, when the person making the referral has another motive—a direct financial interest—it becomes less clear that the agent or broker's referral will be made with the best interests of the home buyer uppermost, the MBA asserted.

According to its opponents, the principal consequences of the employer-employee exemption were:

(i) Failure to refer home buyers to lenders and other settlement service providers that provide the best service and prices; and

(ii) Ultimate reduction or elimination of competition in the industry, brought about by "unfair competition" driving out small, independent settlement service providers.

CFA echoed the arguments of lenders, attorneys, and title insurance providers who repeatedly asserted that home buyers lacked the experience to be sophisticated consumers:

> For better or worse, consumers are simply not effective financial services shoppers * * *. Since there is no possibility of one-stop shopping because the consumer is not shopping, the core claim of consumer benefit offered by controlled business arrangement advocates—consumer choice—crumbles under the weight of economic reality * * *.
>
> Although shopping may not be occurring, there is, nonetheless, the profound opportunity for 'reverse competition' created by a captive market willing to pay higher-than-market prices. What this rule champions is not one-stop shopping, but, rather, one-stop pick-pocketing of the consumer through the multi-layers of a diversified financial services holding company.[3]

Commenters opposed to referral payments were not persuaded by arguments in the 1992 final rule in support of permitting employer-employee referrals. "What matters," one commenter said, "is not that the payment is going from employer to employee * * * [but] that there is payment for a raw referral, creating the very anti-competitive and anti-consumer financial incentive Section 8 [of RESPA] was intended to eliminate."

(b) *Legal Arguments Against Referral Payments.* Many of the same commenters who opposed referral payments on policy or economic grounds also argued that permitting employer-employee payments for referrals directly violated the RESPA statute. CFA, after characterizing the events that led to the Congress' 1983 controlled business arrangement amendments to RESPA, asserted that the Congress' clear intent was to permit controlled business arrangements "only under certain specific conditions." The final rule, CFA claimed, "grossly exceeds any reasonable interpretation of statutory authority, and * * * has returned the settlement service marketplace—or at least the controlled business arrangement market—to the pre-RESPA era of anti-consumer and anti-competitive brokerage steering."

MBA and other commenters observed that Section 8(c)(4)(C) of RESPA states that controlled business arrangements are permissible as long as "the *only thing of value* that is received from the arrangement, other than payments permitted under this subsection, is a return on the ownership interest or franchise relationship." MBA argued that because the final rule permits employees to receive a "bonus" when they refer settlement business to affiliates, the rule "fails to give effect to the plain language of the statute."

(c) *Arguments in Support of the Employer-Employee Exception.* Several institutional commenters, along with real estate brokers, lenders, insurance companies, and vertically integrated real estate service providers, expressed support for the employer-employee exception provided for in § 3500.14(g)(2)(ii) of the final rule.

The Director of the Consumer and Community Affairs Division of the Federal Reserve System supported the rule's exemption for employer payments to its own employees for referral services, saying that it is a "legitimate expectation" that an employee would make referrals for the employer and be compensated for the referrals. Prohibiting payment for referrals, the Federal Reserve spokesperson said, would prove difficult from an enforcement standpoint, since examiners would then be required to review employer bonus and salary policies to determine whether compensation was based on general performance, or whether it included payments for referrals.

The Federal Reserve spokesperson also expressed a concern related to the Community Reinvestment Act of 1977

---

[3] CFA cited and characterized a report commissioned by HUD from Peat Marwick in 1980 as finding that two-thirds of home buyers included in that sample did no "shopping" at all for a lender, and that more than 80 percent failed to "shop" for settlement services.

(12 U.S.C. 2901 et seq.) and to the Federal Reserve's efforts to encourage banks to refer business to community-based lenders:

> * * * A bank may support these efforts by rewarding employees for referring potential applicants who have not previously considered the [Community Reinvestment target] bank an accessible community lender. An adverse interpretation by HUD of this provision could be detrimental to future innovations and developments in community lending.

The Real Estate Services Providers Council (RESPRO) pointed out that the November 2, 1992, rule makes clear that employer payments to employees cannot be reimbursed by the party receiving the referral, or that employer payments cannot be made to nonemployees.

The Consumer Bankers Association (CBA), although generally supportive of the final rule, urged HUD to go further by expanding the exemption to the referral fee prohibition to allow payment for referrals to employees of *affiliated* businesses. In the absence of such an expansion, CBA argued, the structure of the institution could determine whether an employee could receive a payment for referrals. CBA urged that the difference in the legal treatment of a referral payment based on the internal structure of a banking organization lacks any policy justification.

Other commenters asked for expansion of the employer payments principle to allow entities with common ownership to pay referral fees to affiliated companies.

(d) *The Proposed Rule's Position on the Employer-Employee Exception.* The Department reviewed the extensive history relating to this issue, including the history of the controlled business arrangements amendment to RESPA. In enacting Section 8 of RESPA in 1974, Congress prohibited all fees, kickbacks, or things of value for the referral of settlement service business. The statute, as originally enacted, did not address referrals of business to affiliated companies.

In 1980, the case of *Coldwell Banker* v. *Department of Insurance* (102 Cal.App.3d 381 (2d. Dist. 1980)) reached the courts. In that case the California Insurance Commissioner refused to grant a license to a wholly owned subsidiary of a real estate company to act as a title insurer. The denial was based on a concept of restriction of trade. This case drew HUD and congressional attention to whether this or similar controlled business arrangements might violate Federal law. On July 24, 1980, HUD issued an Interpretive Rule (subsequently withdrawn) that stated that "controlled business arrangements may be a violation of Section 8." (49 FR 49360; withdrawn on May 18, 1982, 47 FR 21304.). Two days of congressional hearings were held on September 15 and 16, 1981, and, in 1983, Congress enacted the "controlled business arrangement" amendment to RESPA.

The 1983 controlled business arrangement amendment represented a compromise between those who wanted no restrictions on the ability of real estate settlement service professionals to refer settlement service business to entities with which they had an ownership interest and those who wanted a blanket prohibition against such referrals. The compromise (see H.R. Report 97–532, at page 52) made clear that controlled business arrangements do not violate RESPA—allowing affiliated entities, such as real estate professionals, to refer settlement business to related entities—provided that specified disclosure requirements and safeguards are satisfied, including: (1) A requirement that the relationship between the provider of settlement services and the person making the referral be disclosed, along with the estimated charges of the provider; (2) a bar against the required use of a particular provider, except under certain specified exceptions under Section 8; and (3) a bar against anything of value being received by the referring party, beyond a return on ownership interest or franchise relationship or payments otherwise permissible under Section 8(c) of RESPA.

Between the enactment of the 1983 amendments to RESPA and the issuance of the 1992 final rule, HUD had issued several informal legal opinions concerning the extent to which employers could pay referral fees to employees. The opinions made clear that bona fide full-time employees could be compensated for generating business for their own employers, as this would be within the scope of their employment. These opinions also made clear that uncompensated referrals to affiliated companies were not prohibited. These opinions did *not*, however, broadly approve compensation to all employees for referrals to affiliated companies. In the circumstances addressed by HUD informal opinions prior to the final rule, the permissibility of compensation of employees for referral related activities depended upon the structure of the affiliated companies or on whether the employees were acting within the scope of their employment.

The 1992 final rule went beyond any of these previous positions and created an exemption for any and all employer payments to its own employees for referrals of business, including referrals to affiliated companies. The final rule only retained the stricture that the company receiving the settlement business could not directly or indirectly compensate anyone for such business. Although the rule did not limit this exemption to controlled businesses, the exemption has little utility for entities other than affiliated companies, since it is unlikely that an employer would pay its own employees for making referrals to unrelated individuals or companies. The preamble of the final rule set forth the position that payments from an employer for referrals were exempt from Section 8 because a business entity acts through its employees; the action of the employees is not sufficiently distinct from the action of the employer to provide the requisite plurality of actors needed to violate Section 8. Although the rule permitted an employer to compensate its own employees for referrals, it indicated that if the company receiving the referral reimbursed the employer or the referring employees, Section 8 of RESPA would be violated.

Entities critical of the 1992 final rule have characterized the provision permitting employers' payments to their own employees for referrals as broadly sanctioning referral payments. Trade and business press have frequently restated this position without examination. Also, the Department's attention has been drawn to a number of advertisements and mailings in which various companies have cited RESPA as authority for bogus or sham programs under which fees may be paid to individuals who will become "employees." While the final rule did not permit sham arrangements, neither did it adequately clarify the extent of the exemption.

Following a full consideration of the testimony and comments, the Secretary has concluded that the 1992 final rule's employer-employee exemption was too broad. Accordingly, the Secretary proposes to amend the final rule by withdrawing the exemption set forth in § 3500.14(g)(2)(ii) of that rule. This amendment will have the effect of providing that, while an employer may compensate its own bona fide employees for the generation of its own business, all compensation for referrals to outside entities, including affiliates, will be prohibited under RESPA.

In addition to withdrawing the exemption, the proposal clarifies specifically when compensation to employees runs afoul of the requirements of RESPA. The rule provides that:

(i) No employee or agent may receive compensation from his or her employer or any other source when the compensation is tied on a one-to-one basis to, or is calculated as a multiple of the number or value of, referrals of business to an affiliated entity; and

(ii) The compensation of agents or employees who routinely are in direct contact with the consumer may not be based in whole or in part on the value or number of referrals made to affiliated entities.

These two clarifications are designed to minimize any incentive that a person in a position to make or influence a referral might have to make a referral based on his or her own financial interests. Clearly, compensation calculated as a multiple of the number or value of referrals creates a powerful incentive to make referrals that maximize one's own compensation. Similarly, agents or employees who ordinarily are in direct contact with the consumer may be influenced in making referrals if their overall performance is measured and compensation is set, even in part, based on the number or value of referrals to affiliated entities. The proposal makes clear that RESPA prohibits such compensation. By withdrawing the broad exemption, the potential for conflict of interest by those persons making referrals is reduced, increasing the possibility of true competition among settlement service providers based on the cost and quality of the services provided.

Most facets of the settlement services business are very competitive, and the Secretary wants to assure that the rule does nothing to harm this competitiveness. The provisions set forth above that would clarify how RESPA affects employee compensation can be enforced and will not require HUD to interfere unduly with the internal operations of controlled business arrangements. Because Congress has clearly ruled on the acceptability, with conditions, of controlled business arrangements, the role of the Department is not to encourage or discourage controlled business arrangements, but to clarify what activities between interrelated companies are permissible or not permissible under RESPA.

With the withdrawal of the exemption, employees of controlled business arrangements could continue to send consumers to affiliated companies, but they may be more likely to exercise independent judgment reflecting the interests of the consumer

employees runs afoul of the requirements of RESPA. The rule provides that:

(i) No employee or agent may receive compensation from his or her employer or any other source when the compensation is tied on a one-to-one basis to, or is calculated as a multiple of the number or value of, referrals of business to an affiliated entity; and

(ii) The compensation of agents or employees who routinely are in direct contact with the consumer may not be based in whole or in part on the value or number of referrals made to affiliated entities.

These two clarifications are designed to minimize any incentive that a person in a position to make or influence a referral might have to make a referral based on his or her own financial interests. Clearly, compensation calculated as a multiple of the number or value of referrals creates a powerful incentive to make referrals that maximize one's own compensation. Similarly, agents or employees who ordinarily are in direct contact with the consumer may be influenced in making referrals if their overall performance is measured and compensation is set, even in part, based on the number or value of referrals to affiliated entities. The proposal makes clear that RESPA prohibits such compensation. By withdrawing the broad exemption, the potential for conflict of interest by those persons making referrals is reduced, increasing the possibility of true competition among settlement service providers based on the cost and quality of the services provided.

Most facets of the settlement services business are very competitive, and the Secretary wants to assure that the rule does nothing to harm this competitiveness. The provisions set forth above that would clarify how RESPA affects employee compensation can be enforced and will not require HUD to interfere unduly with the internal operations of controlled business arrangements. Because Congress has clearly ruled on the acceptability, with conditions, of controlled business arrangements, the role of the Department is not to encourage or discourage controlled business arrangements, but to clarify what activities between interrelated companies are permissible or not permissible under RESPA.

With the withdrawal of the exemption, employees of controlled business arrangements could continue to send consumers to affiliated companies, but they may be more likely to exercise independent judgment reflecting the interests of the consumer if the inducement of referral-specific compensation is not present.

The proposal to withdraw the exemption would obviate the need for a full examination of the question raised by some commenters about whether the exemption in the proposed rule is contrary to the statute, particularly since the Department has decided not to withdraw the employer-employee exemption without notice-and-comment rulemaking. In any event, the Department believes the exemption in the final rule would be legally sustainable, because of the broad exemption authority of the Secretary under Section 19 of RESPA.

Pending this proposed rule becoming final, the existing employer-employee exemption remains operational and employer payments made in accordance with the existing RESPA regulation will *not* be treated by the Department as conduct violative of the RESPA statute. However, the exemption in the existing rule is only available for employees, not independent contractors, a class that, under the Internal Revenue Code, includes most real estate agents and many others in the settlement services business. Those persons engaging in sham practices in an attempt to avoid the strictures of RESPA are not protected under the 1992 final rule during the pendency of these revisions.

(e) *Questions and comments on this proposal.* The Secretary's proposal on the employer-employee issue seeks to clarify RESPA's consumer protections while avoiding unnecessary intrusion into controlled businesses. The Secretary intends to be flexible in finalizing this proposal in pursuit of these objectives. To assist in this rulemaking, the Secretary is particularly interested in comments containing responses to the following questions:

(i) To what extent do you believe the Secretary's proposal will accomplish the objectives of eliminating compensated referrals and other payments that pose the greatest dangers to consumers without overwhelming other legitimate considerations for referrals, such as long-term customer satisfaction?

(ii) What effect will the proposal have on the ability of firms to provide high-quality and well-priced services to consumers?

(iii) To what extent do you believe the proposal will unduly interfere with the operations of controlled businesses?

(iv) What would be the effect of any such interference (with the operations of controlled businesses) on consumers?

(v) To what extent do you believe this proposal will interfere with legitimate business development programs of affiliated companies?

(vi) To what extent do you believe that the proposal will result in increased competition in the settlement services industry?

(vii) If you disagree with the approach embodied in the proposal, what alternative approaches would increase competition?

(viii) Do you believe that the proposal will adequately protect consumers from steering?

(ix) If you do not believe the proposals will provide adequate protection from steering, what alternatives would provide such protection?

(x) To what extent do you believe the proposal will lead to cost savings through increased efficiencies in the settlement services industry?

(xi) If you disagree that the proposal will lead to cost savings, what alternatives would you suggest to facilitate efficiencies?

In promulgating a final rule, the Secretary invites, and will consider, economic and other data submitted on the effect on the settlement services industry and consumers of the Secretary's and other proposals.

(2) Issue 2: Computer Loan Origination Services ("CLOs")

(a) *Comments Critical of the CLO Provision.* The final rule's revision of the RESPA regulations indicated that payment by a borrower for computer loan origination services was *not* prohibited by RESPA or Regulation X. This provision also drew hundreds of adverse comments, as well as support from several commenters responding to the Department's July 6, 1993, notice.

Many commenters treated the CLO issue and the issue of referral payments as closely related concerns. Computer loan origination services, these commenters claimed, often are nothing more than thinly disguised arrangements for the referral of settlement services. The commenters argued that both referral payments and superficial or nominal CLO services involve the "steering" of homebuyers to a limited choice of service providers. A number of these commenters indicated their belief that simple disclosure of the fact that a fee is being charged affords inadequate protection against these dangers.

The Consumer Federation of America (CFA) entered vigorous objections to the borrower fee authorized by the final rule. "If there is economic value to the adoption of electronic loan origination technology, CFA believes that the marketplace will, on its own, adopt it. There is no reason why the consumer should foot the bill for the industry's

capital investment." The CFA asserted that the RESPA statute was "suspicious" of fees for services of unknown or questionable value, and it objected to any "sanctioned levy against consumers for CLO services."

Several commenters expressed their confusion concerning a CLO-related question posed to the public in the July 6, 1993, notice. The question presented was whether further clarifications or additional conditions regarding CLOs are needed or would be desirable to protect consumers, *particularly if any payment for the CLO service comes directly or indirectly from a lender.* (Emphasis supplied.)

Some commenters addressing this issue said they had assumed that the final rule only permitted "customer-pay" systems. If lender-pay systems are permissible, these commenters claimed, a major new problem is presented. Lender-pay systems are especially dangerous the commenters declared, because the broker's financial gain and incentive to steer may be totally hidden.

A significant minority of the commenters (including many who otherwise opposed features of the final rule) believe that CLO services are the wave of the future and that computer-based systems promise real benefit to prospective homebuyers. These commenters, however, joined with other critics of the CLO provision in questioning the legitimacy of linking CLO systems to referral fee arrangements. Others commenters objected to the final rule's failure to assure universal access to CLOs by lenders doing business in a particular location. Hundreds of comments—predominantly from lenders and related settlement service providers—urged that a comprehensive, limiting definition of CLO services be added to the rule.

A commenter representing an automated service provider expressed his fear that CLOs operated by real estate brokers and agents could be used to "display financial information [about other lenders] inferior to what [the broker's affiliate] is offering, and charge the borrower for doing it; then use the CLO fee collected for payment of 'employee compensation' to guide the buyer to the broker-owned title company, closing service, insurance agency, home warranty company, and pest control company. The referral fee will not come from the normal real estate commission, but instead each service generates sufficient income to pay a referral fee to capture the next service, commencing with the CLO fee." The commenter further stated:

> Information provided through technology is not only valuable, but vital given today's complex and sophisticated lending; but, to allow a real estate broker to charge a purchaser for providing this information without having adequate guidelines in place assuring that the consumer will, in fact, receive information that is in the best interest of the consumer * * * is a terrible disservice to the consumer * * *.

Commenters on the CLO issue had an array of suggestions for revising the RESPA regulations to limit, expand, or otherwise control the use of homebuyer- or lender-compensated CLO services, and to add suitable definitions of the term "CLO". Among these suggestions were:

(i) Creating an (unspecified) "market mechanism" to keep CLO fees reasonable and closely related to the true value of the service being performed;

(ii) Requiring the borrower to pay for CLO services *at the time the service is being provided* (a number of commenters believed that such a requirement would help assure that the homebuyer would insist on receipt of a "real" service, "rather than unknowingly subsidize a disguised referral fee that is buried at the end of escrow");

(iii) Mandating that a substantial number of lender participants be included in any CLO system, and defining the term "computer loan origination service" in such a way as to exclude CLO providers that afford the borrower only limited information;

(iv) Requiring CLOs operated by real estate brokers or agents to make special disclosures concerning use of CLO systems, in greater detail than the disclosures set out in Appendix E to 24 CFR part 3500. (A large number of lender-commenters asserted that special disclosure was unnecessary when CLOs are used by lenders, arguing that real estate brokers, "who may be receiving another fee in the transaction," were the only parties for whom CLO-related disclosures should be required.);

(v) Cautioning HUD *not* to permit *lenders* to pay for CLO services (arguing that any payment coming directly or indirectly from a lender should be subject to the anti-kickback provisions of Section 8 of RESPA). While the 1992 final rule addressed only the issue of fees paid by borrowers, commenters also discussed the issue of fees paid by lenders for inclusion on CLO systems, in response to the invitation for such comments in the July 6, 1993, notice. Most commenters referred to such payments as thinly disguised referral fees.

(vi) Requiring disclosure that particular CLO listings provide only partial information about available loans. (A few commenters urged that the CLO fee disclosure form include "bold print" disclosing that the same information could be acquired by the prospective homebuyer "for free" by shopping on their own.);

(vii) Recognizing that CLO services, if performed by a real estate broker or agent for a homebuyer, create a conflict of interest and a "potentiality for fraud" for the broker or agent, whose fiduciary duty is to the *seller*. Unified comments from 16 State Attorneys General asserted that the use of CLOs by real estate agents is analogous to the situation once prevalent in the travel industry:

> * * * where independent travel agents using computer reservation services steered travelers to whichever airline happened to own the computer system used by the travel agent. Those flights were not always the most convenient or cheapest for the consumer. Private antitrust enforcement actions were required to rein in these practices.

The Attorneys General declared that the economic costs of these airline-industry practices are "trivial compared to the costs to consumers if CLOs are used to steer consumers in large numbers to more expensive mortgages than are readily available [elsewhere] in the market."

(viii) Suggesting that (in defining a CLO system) HUD require equal access to the system by any lender requesting access;

(ix) Urging that fees for CLO services be proscribed because access to lender information has, before, been a free service performed by real estate agents or brokers; thus CLO charges would "create a new fee for no real [new] value or service provided;"

(x) Arguing that borrower information achieved through the CLO process was near-worthless, because lenders will have to reverify any information provided before underwriting loan applications; and

(xi) Requiring that the CLO disclosure (and acknowledgement) occur before the borrower agrees to use computer loan origination services.

In addition to these recommendations from multiple commenters, the Mortgage Bankers Association (MBA) recommended specific modifications to § 3500.14(g)(2)(iii):

(one) Prohibiting the receipt of compensation for operating a CLO by any person who already receives compensation for the same transaction in another capacity;

(two) Defining "computer loan origination services" in a manner that would require interactive communication with the computer systems and the listing of multiple lenders upon request and for no charge; and

(three) If the first two recommendations are not accepted by HUD, requiring that the CLO fee be both disclosed and paid for before the CLO is accessed.

The MBA also urged that the rule set out the principle that the mere performance of "clerical loan origination activities, most or all of which will have to be repeated by the lender" does not constitute a service justifying the collection of a fee.

(b) *Comments Supportive of the CLO Provision.* Comments in support of the CLO provision of the rule were varied. In general, these comments urged retention of the final rule's disclosure-based authorization of CLOs and CLO charges to borrowers. However, supporters of the CLO provision and other commenters on the provision expressed considerable sentiment that substantial clarification of the rule was necessary in this area.

Several commenters observed that the rule was silent on the question of what disclosure (if any) would be required if the *borrower* was not charged a fee for access to a CLO service.

One commenter ventured that, evidently, the rule's silence on the issue would indicate that no disclosure would be required when, for example, the *lender* paid CLO-connected fees. While the commenter approved this result, he added that "further clarification would be welcome." The comment recommended that no separate disclosure be required for lender-pay or for "no charge" CLO services—even where it was clear that no-fee CLO systems were being paid for out of loan origination fees or lump-sum fees that are charged to lenders and mortgage brokers to process and underwrite mortgage loan applications. In these instances, the commenter maintained, the CLO services were less like traditional settlement services and more like services purchased by a settlement service provider to help it perform its normal functions—"back office" loan origination services.

In general remarks, the same commenter argued that overregulation of CLO services would stifle innovation and competitiveness. It was pointed out that one of the major advantages of CLO services was the expansion of housing opportunity "into sectors of the U.S. economy not now adequately served by the mortgage lending industry."

Several commenters suggested that, with the very recent revision of § 3500.14(g)(2)(iii), the Department should not make immediate changes,

systems and the listing of multiple lenders upon request and for no charge; and

(three) If the first two recommendations are not accepted by HUD, requiring that the CLO fee be both disclosed and paid for before the CLO is accessed.

The MBA also urged that the rule set out the principle that the mere performance of "clerical loan origination activities, most or all of which will have to be repeated by the lender" does not constitute a service justifying the collection of a fee.

(b) *Comments Supportive of the CLO Provision.* Comments in support of the CLO provision of the rule were varied. In general, these comments urged retention of the final rule's disclosure-based authorization of CLOs and CLO charges to borrowers. However, supporters of the CLO provision and other commenters on the provision expressed considerable sentiment that substantial clarification of the rule was necessary in this area.

Several commenters observed that the rule was silent on the question of what disclosure (if any) would be required if the *borrower* was not charged a fee for access to a CLO service.

One commenter ventured that, evidently, the rule's silence on the issue would indicate that no disclosure would be required when, for example, the *lender* paid CLO-connected fees. While the commenter approved this result, he added that "further clarification would be welcome." The comment recommended that no separate disclosure be required for lender-pay or for "no charge" CLO services—even where it was clear that no-fee CLO systems were being paid for out of loan origination fees or lump-sum fees that are charged to lenders and mortgage brokers to process and underwrite mortgage loan applications. In these instances, the commenter maintained, the CLO services were less like traditional settlement services and more like services purchased by a settlement service provider to help it perform its normal functions—"back office" loan origination services.

In general remarks, the same commenter argued that overregulation of CLO services would stifle innovation and competitiveness. It was pointed out that one of the major advantages of CLO services was the expansion of housing opportunity "into sectors of the U.S. economy not now adequately served by the mortgage lending industry."

Several commenters suggested that, with the very recent revision of § 3500.14(g)(2)(iii), the Department should not make immediate changes, but should allow the marketplace to develop and experiment with CLOs without additional regulation. However, in a number of instances commenters supportive of the final rule's treatment of CLO services joined opponents in requesting that HUD provide clarifications of the rule that would:

(i) Define the term "computer loan origination services";

(ii) Indicate whether payment for CLO services must come solely from borrowers, or whether lender-paid services are permitted; and

(iii) Advise whether there exists an "implicit limitation" on the fees that can be paid to CLO providers (such as a reasonable relationship to the market value of the services performed).

Other pro-rule commenters joined commenters that had objections to the CLO services provision in supporting an explicit requirement that the CLO fee disclosure statement be given to the borrower *before* the fee is imposed, and that the fee be paid to the CLO operator *before* services are performed. "By requiring upfront disclosure and payment," one commenter observed, "the borrower will be aware that a separate fee is being imposed for services not required by the mortgage lender and will be able to determine whether the services provided by the CLO operator merit such a fee."

On the subordinate issue of the number of lenders included on CLOs, commenters supporting the CLO provision generally differed with opponents, many of whom urged much closer regulation of this aspect. The pro-CLO services commenters generally advocated "leaving to the marketplace" the determination of how many lenders were appropriate for a CLO service. One commenter argued that dictating how many lenders must appear on the CLO system "is another example of well-intentioned regulation which could ultimately hurt consumers." The commenter pointed out that individual lenders may want to develop competing CLO products, each marketing its own software products, with the CLO operator then having access to several single-lender CLOs. The commenter concluded, as did several other supporters of the final rule's CLO services provision, that a consumer provided with full disclosure can determine the services for which the consumer is willing to pay.

A few commenters anticipated adverse comment on the CLO systems issue and urged the Department not to bend to those commenters who would impose limitations on fees for CLO services or would require that fees be collected up-front.

One commenter whose overall position strongly supported the final rule took a position comparable to many anti-CLO commenters in several respects. To protect consumers this commenter supported the imposition of additional conditions relating to CLO systems, such as:

(i) Up-front disclosure of the CLO fee, and payment in advance of the performance of services; and

(ii) A regulatory requirement that real estate brokers be required to perform services "beyond electronically providing a menu of lenders' interest rates and products." The same commenter, however, joined other CLO services proponents in urging that HUD should not attempt to regulate the number of lenders to be included in CLOs.

One commenter, evidently the operator of a large, independent computer loan origination system, made several points from that perspective:

(i) The commenter's independent CLO system avoided "steering" abuses because steering arises when lenders offer commissioned loan officers or mortgage brokers a larger commission on some products than on others, thus encouraging lenders to sell a particular type of loan. The commenter's system required uniform charges across loan products and lenders, which are established by contract among participants and monitored by the CLO service provider;

(ii) The system encourages competitive loan pricing, by including a wide variety of information affecting the overall cost of a loan to a consumer and making it simple for a loan counselor to find the "best deal";

(iii) The system increases competition in rural areas, by expanding the number of lenders offering loans;

(iv) The system helps to avoid racial and other forms of discrimination against borrowers by making the loan-decision process "demonstrably race-blind";

(v) The system avoids the criticism that CLO systems are mere "kickback schemes," because the loan counselors working with the system perform full loan-origination functions.

This commenter recommended that RESPA be revised to stipulate that real estate brokers may not charge for origination services (implicitly, CLO services) unless they actually register a loan commitment with the lender. "This assures that the [broker] has at least qualified the borrower, and made a loan selection with the borrower's concurrence. These are non-trivial functions for which a payment is justified," the commenter said. The

commenter favored this "functional" test, as opposed to a regulatory limitation on the number of CLO services provided or a ban on single-lender CLOs.

Several comments from real estate brokers stated their support for the CLO services provision of the final rule. Among these, at least two real estate broker commenters assumed that CLO services would involve multiple lenders:

> [I assume that] all CLOs will offer the rates and costs of many lenders. When lenders realize that they are in competition with other lenders, they will be forced to deliver the best rates at the lowest cost * * *. I can assure you that if a home buyer walks into a lender's office to obtain a loan, there is little chance that lender would send the buyer to a competitor even though the rates and costs may be lower.

A second real estate broker described his company's CLO service as having access to an affiliate and 20 competitors, indicating that this variety and choice afforded borrowers with distinct advantages over borrower-initiated loan shopping.

(c) *Description of the Legal Framework for Analysis of Payments for CLO Services.* HUD has found that the use of the term "CLO exemption" in the preamble of the 1992 final rule may have created certain misperceptions. To ensure that there is no confusion about the scope of the regulatory exemption proposed below, the Department believes that it will be helpful to set out the legal framework for its analysis of payments for CLO services.

In general, the provision of CLO services may be financed by the operator of a CLO system in several ways:

(i) The operator could charge lenders to have information about their products displayed on the CLO system;

(ii) The operator could charge borrowers to use the CLO system;

(iii) The operator could charge both lenders and borrowers; and

(iv) The operator could provide the service free of charge to both lenders and borrowers in the belief that providing the service will attract more customers for the operator's related settlement service business.

Section 8(a) of RESPA prohibits a lender from paying a CLO operator a referral fee. Section 8(b) of RESPA prohibits a CLO operator from accepting a payment from a borrower "other than for services actually performed." Therefore, in the absence of any regulatory exemption, under RESPA:

(one) Payments by a lender to a CLO operator are subject to scrutiny to determine whether the payment is a referral fee or is bona fide compensation for goods or facilities actually furnished or for services actually performed;

(two) Payments by a borrower to a CLO operator are subject to scrutiny to determine whether the payment is a sham or duplicative charge, rather than a payment for goods or facilities actually furnished or services actually performed; and

(three) When neither borrowers nor lenders pay a fee for the CLO services, only certain disclosures are required.

The 1992 final rule created an exemption from Section 8 for "any payment by a *borrower* for computer loan origination services," as long as certain disclosures were provided (emphasis added). This rule did not address payments made by lenders, thus leaving such payments subject to Section 8 scrutiny. Although the term "CLO exemption" is frequently used, including in the preamble of the 1992 final rule, the exemption was not for the CLO itself, but only for payments made for CLO services by borrowers.

Many commenters were concerned about whether any system that merely claimed to be a CLO deserved to be given an exemption from RESPA's requirements. As noted in the above statement of HUD's objective, the Department seeks to encourage the use of new technology in ways that provide meaningful information and services to consumers. Uncertainty about how RESPA applies to CLOs may inhibit their development. Therefore, the Department has determined that continuation of such an exemption is justified; however, the Department seeks to limit the exemption only to payments for access to CLO systems that provide meaningful information and services to consumers. Payments for access to systems that provide such benefits will not be subject to scrutiny under Section 8.

Accordingly, the Department proposes to amend the 1992 final rule to limit the exemption to payments made by borrowers for services from "qualified CLOs" only, and to define qualified CLOs to be those systems that the Department believes provide meaningful information and services to consumers. Payments by borrowers for services of systems other than "qualified" CLOs are not prohibited; rather those payments are subject to scrutiny under the Section 8 test articulated above.

Similarly, the 1992 final rule did not mention payments made by lenders to CLO operators. However, having proposed to limit the scope of the exemption for borrower payments and certain lender payments, the Department asks commenters to address whether a parallel exemption for payments made by lenders to operators of "qualified CLOs" would be in the best interest of consumers.

(d) *Position of the Proposed Rule on CLOs.* Based upon a review of the comments and testimony on this issue, the Secretary concluded that the potential of CLOs to be convenient and provide consumers with meaningful information about their choices justified the encouragement of certain CLOs and the continuation of an exemption for borrower payments for certain CLOs. The Secretary also determined that it is necessary to amend the rule to define the type of CLO for which borrower payments are permitted without further RESPA scrutiny, in order to maximize the potential consumer benefits from this developing technology and protect consumers. Accordingly, the Secretary proposes to amend the rule to provide that payments made by borrowers for qualified CLO services only are exempt, and to define qualified CLOs as those systems meeting the following requirements:

(i) Qualified CLOs must be responsive to information about the borrower and provide information regarding loan options for that borrower. (This provision is responsive to commenters who feared that without definition, a system using FAX-transmitted data or even telephone calls might qualify as a CLO system.)

(ii) Qualified CLOs must meet certain fair participation and display requirements, including that participation and display of loan products from numerous lenders offering various loan products must be allowed, factors for selecting lenders to participate on the CLO system be fair and legitimate; and information on individual loan products must be displayed in a lender-neutral manner. While the Department recognizes that there are practical limits on the number of lenders that can be included usefully on a system, because of technological and other limitations, the proposed rule contemplates that a minimum of 20 lenders will participate on a qualified CLO system. (The Department asks for comments on whether this number is appropriate or another number would better ensure competition while providing a meaningful level of information to the consumer.) The exemption is still available when less than 20 lenders choose to participate, as long as the CLO system remains open to and accepts additional lenders. Selection of lenders for participation must be done as a result of the fair application of impartial criteria, which may include, but are not limited to, the date of the lender's application for participation on the CLO system (*e.g.*, first-come, first-served), the quality of services and capabilities a lender provides to consumers, the types of loan products offered by a lender and its pricing practices, and the extent to which a lender's participation will increase the variety of loan products offered to consumers by the system. (The application of factors may not be used to avoid the 20 lender requirement.) CLO system operators must have a reasonable justification supported by documentation for selection decisions. No lender may be favored or disfavored by the *manner* in which information regarding the lender or its products is presented to the borrower or is utilized on the system, or by the scope of information that a particular lender is permitted to include as compared to another lender.

(iii) Qualified CLOs must provide borrowers with a CLO disclosure form that states that use of the system is not required, space on the system is limited, the full range of products meeting the borrowers' needs may not be listed on the system, and other lenders not listed on the system may offer better terms and conditions including lower rates. A disclosure format for this and other information is set forth in the proposed rule as Appendix E.

(iv) Qualified CLOs must charge borrowers the same fee for the same CLO service or the same components of service. The exemption does not attempt to fix a price for CLO services; market forces and market experiences should continue to shape the evolution and development of qualified CLO systems. Rather, where fees are charged, all borrowers must be treated equally. If fees are waived by a CLO provider, they must be waived fairly and not because of the choice of a particular lender. If the fee is contingent on use of a loan product on the system, the contingency must apply equally to all loan products and lenders on the system.

(v) An operator of a qualified CLO may also charge lenders for access to the system and for a portion of maintenance and operation costs of the system. However, the schedule of charges for each lender on the system must be identical. Furthermore, qualified CLOs must disclose to the borrower, on the form prescribed in Appendix E and on the HUD–1 or the HUD–1A, the amount of any anticipated payments by a lender.

(vi) Fees and disclosures about the CLO system must also be prominently displayed and visible to the potential borrower on the premises near where the CLO terminal is located. The

may include, but are not limited to, the date of the lender's application for participation on the CLO system (*e.g.*, first-come, first-served), the quality of services and capabilities a lender provides to consumers, the types of loan products offered by a lender and its pricing practices, and the extent to which a lender's participation will increase the variety of loan products offered to consumers by the system. (The application of factors may not be used to avoid the 20 lender requirement.) CLO system operators must have a reasonable justification supported by documentation for selection decisions. No lender may be favored or disfavored by the *manner* in which information regarding the lender or its products is presented to the borrower or is utilized on the system, or by the scope of information that a particular lender is permitted to include as compared to another lender.

(iii) Qualified CLOs must provide borrowers with a CLO disclosure form that states that use of the system is not required, space on the system is limited, the full range of products meeting the borrowers' needs may not be listed on the system, and other lenders not listed on the system may offer better terms and conditions including lower rates. A disclosure format for this and other information is set forth in the proposed rule as Appendix E.

(iv) Qualified CLOs must charge borrowers the same fee for the same CLO service or the same components of service. The exemption does not attempt to fix a price for CLO services; market forces and market experiences should continue to shape the evolution and development of qualified CLO systems. Rather, where fees are charged, all borrowers must be treated equally. If fees are waived by a CLO provider, they must be waived fairly and not because of the choice of a particular lender. If the fee is contingent on use of a loan product on the system, the contingency must apply equally to all loan products and lenders on the system.

(v) An operator of a qualified CLO may also charge lenders for access to the system and for a portion of maintenance and operation costs of the system. However, the schedule of charges for each lender on the system must be identical. Furthermore, qualified CLOs must disclose to the borrower, on the form prescribed in Appendix E and on the HUD–1 or the HUD–1A, the amount of any anticipated payments by a lender.

(vi) Fees and disclosures about the CLO system must also be prominently displayed and visible to the potential borrower on the premises near where the CLO terminal is located. The information that more advantageous loan alternatives may exist that are not displayed on the system must be similarly disclosed.

(vii) Any borrower payment to a CLO operator for use of a qualified CLO must be paid outside of and before closing. A borrower must receive full disclosure of the amount of the fee before the CLO services are performed.

In this proposed rule, the Department is establishing the minimum requirements that must be met by a qualified CLO system if payments by a borrower to the operator of the system are to enjoy an exemption from RESPA. The Department believes that these requirements are responsive to the many comments on CLOs, and that compliance with the requirements will assure that: CLO systems receiving the benefit of the exemption are operated fairly; these systems will not be used as disguised means of steering borrowers to particular lenders on a basis other than the quality of services provided; and lenders wishing to participate in qualified CLO systems will be permitted to do so on a fair and equitable basis.

In addition, this proposed rule would continue and augment certain requirements for all providers of CLO services, whether or not the CLO is a qualified CLO. In all circumstances where a CLO is utilized, the CLO disclosure set forth in Appendix E must be provided to borrowers before the CLO services are performed. The existence of any controlled business arrangement involving the operator of a CLO and any participating lender must be disclosed to the borrower before the system is utilized. Similarly, lender payments to other settlement service providers for CLO services must continue to be disclosed on the Good Faith Estimate and on the HUD–1 or HUD–1A, in accordance with the February 10, 1994 (59 FR 6505) revision of the regulations, and the possibility of such payments must be noted on the CLO disclosure.

(e) *Questions and comments on this proposal.* In formulating the final rule, the Department may modify the requirements for the exemption, based on comments from the public. The Department seeks public comment on all aspects of its proposal to limit the exemption for borrower payments to payments made for qualified CLOs, including:

(i) Does the approach embodied in this proposal—establishing a safe harbor for borrower payments for qualified systems, continuing to scrutinize borrower payments for nonqualified systems under RESPA, and mandating certain disclosures for all systems—the best approach to encourage the use of technology to benefit consumers and, at the same time, protect consumers from unfair practices? Instead, should the Department provide that any payment for a CLO system that does not qualify for the safe harbor is presumed to violate RESPA? (Commenters who believe that there should be broader prohibitions should detail the legal and other justifications for this belief.)

(ii) Would establishment of a parallel exemption for payments made by lenders to operators of qualified CLOs be in the best interest of consumers? If so, should the requirements for a lender payment CLO exemption be the same as the requirements for the borrower payment exemption? Those commenters who believe the requirements should be different should specify what differences they recommend.

(iii) Are most CLO systems likely to be financed using borrower payments, lender payments, or a combination of both? Will any CLO system provide access to the system to lenders and borrowers free of charge?

(iv) Are the benefits of having borrower payments exempt from RESPA scrutiny sufficient to encourage CLO operators to develop qualified CLOs? Will CLO operators prefer to be subject to the general test under RESPA that borrower payments must be in exchange for services actually performed or to meet the requirements for qualified CLOs?

(v) Will the requirements for qualified CLOs in the proposal result in cost-effective CLOs offering meaningful services to consumers?

(vi) Is the requirement for CLO disclosure to consumers in this proposal reasonable and does it serve the consumers' best interests?

(vii) Is the definition of a qualified CLO sufficiently flexible, considering the nature of this emerging industry and the Secretary's consumer protection objectives?

(viii) Are the requirements concerning lender-neutrality and the selection of lenders on a qualified CLO reasonable?

(ix) Is the minimum number of lenders on a qualified CLO (i.e., 20) practical from an operational perspective? Is it sufficient to ensure competition? (If another number is suggested, please explain why this number would be superior in promoting competition and the consumers' interests?)

(x) Is the requirement that all disclosures be made before performance of CLO services reasonable?

(xi) What will be the impact of the requirement that any borrower

payments must be made outside of and before closing?

(xii) Does the requirement that qualified CLOs must provide the borrower with certain information about loans generally available; collect information about the borrower, the property, and the loan sought; and provide the borrower with information about loan products available to that borrower accomplish the intended objective of ensuring that a meaningful service is provided?

The Department anticipates that the Technology Demonstration that it plans to conduct (see Section I of this preamble) will also be a useful vehicle for developing answers to some of these questions.

(3) Issue 3: Preemption of State Laws or Regulations

In § 3500.13(b)(2), the November 2, 1992, final rule provided that "in determining whether provisions of State law or regulations concerning controlled business arrangements are inconsistent with RESPA or this part, the Secretary may not construe those provisions that impose more stringent limitations on controlled business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition." In connection with the preemption issue, the Department's July 6, 1993, notice requested comments on establishing standards to be used in evaluating whether provisions in State laws provide greater protection to consumers. The Department also invited any other comment relative to the preemption provision of the 1992 final rule.

(a) *Positions Taken by Commenters Critical of the Rule's Preemption Policy.* While the Department received hundreds of comments addressing the preemption question, this issue attracted fewer expressions of opinion than did the other three issues raised in the July 6, 1993, notice. Most of the commenters addressing the issue (excluding identical-form responses) were attorneys or major institutional commenters. However, even among the comments from organizations representing institutional interests or segments of the real estate and real estate finance industries, preemption was the least-frequently addressed of the four issues.

Commenters who were critical of other aspects of the rule had a mixed approach to the preemption issue and reflected suspicion of the Department's motives. These comments assumed that, despite the benign phrasing of § 3500.13(b)(2), HUD would (in light of the other features of the 1992 final rule) use preemption in the future to weaken State-initiated regulation of controlled business arrangements. Those commenters who shared this suspicion varied in their recommendations for improvement of the rule's preemption feature. Several commenters advised HUD to provide "greater clarity" regarding a State's right to *ban* or closely regulate controlled business arrangements. Other commenters referenced particular existing State laws that require controlled business entities to seek a substantial portion of their business from sources other than their affiliated entities. These commenters urged that HUD provide explicitly that State laws and regulations of this type would not be subject to preemption.

The tone of these comments suggested that the standard set out in the final rule—i.e., no preemption, so long as a State law affords "more protection to consumers and/or competition"— was insufficient assurance against Federal preemption. Apparently the final rule was perceived by the commenters as being "anti-consumer" in the guise of a consumer protection regulation. The commenters believed it was clear that State laws forcing controlled businesses to draw business from nonaffiliates should *never* be preempted under RESPA authority. The commenters were not persuaded that the Department intended to apply § 3500.13(b)(2) in a manner that would treat these State laws as "pro-consumer".

Concerned commenters made diverse recommendations: several asked the Department to clarify in the rule that preemption would not be applied; other commenters, clearly equally averse to preemption of State laws, recommended case-by-case judgments regarding preemption, using the existing standard set out in § 3500.13(b)(2). These latter commenters often combined their *status quo* recommendation with an urging that HUD modify or reverse positions taken on the employer-employee exception or CLO issues. Their thrust was that HUD's preemption policy would *not* be objectionable if the RESPA rule were modified to cure the specific problems being addressed by commenters in their accompanying remarks.

The combined comment of the 16 State Attorneys General stated the belief that it would be too difficult to "define criteria for preemption in the abstract." The comment recommended a case-by-case approach. (Again, this comment was made in the context of a strong statement of opposition to the final rule's employer-employee fee policy and CLO exemption.)

The predominant position of institutional commenters addressing the preemption issue was that it is unnecessary for HUD to set out strict standards to evaluate whether State law provisions provide greater protection to the consumer. However, there was considerable sentiment in favor of regulatory "clarifications" to serve, in essence, as guarantees that the Department would *not* preempt State laws in any instance where its goal was to limit controlled business arrangements. Consumers Union believed that HUD's own rules should be changed to afford consumers stronger protections, but, if this was not to be, "at the very least States should be free to protect their own consumers". Accordingly, Consumers Union favored the enunciation of standards for determining whether State law provisions provide greater protection:

> * * * These standards are necessary since the final rule is anti-consumer, but was presented as if it were pro-consumer. To eliminate any resulting ambiguity, HUD should clarify that [State-originated] rules totally eliminating any incentive to steer business to an affiliate would be viewed as stronger consumer protection.

A large number of comments received from individuals and small businesses (mainly lenders) *favored* the establishment of written standards for the evaluation of State laws. However, these comments offered no specific advice concerning the content of the favored written standards.

Comments submitted by the American Land Title Association (ALTA) claimed that the November 1992 rule on preemption had "frightened" State legislators and regulators "into believing that the RESPA disclosure provisions [would be read by HUD to] preempt more stringent state legislation or regulations." The ALTA expressed the belief that the new regulations were "perverting" congressional policy regarding the circumstances warranting preemption. The ALTA further claimed that the preemption provision suggests that "only *if the Secretary of HUD* determines that a state controlled business provisions gives more protection to consumers and competition would the state provisions *not* be preempted." (Emphasis in original.)

The ALTA also complained that the final rule was deterring State governments from considering more stringent regulation of controlled business, and suggested that the Department support legislative revisions to RESPA to replace "ineffective" consumer disclosure requirements with Federal "public business" requirements

(i.e., requirements that controlled businesses derive a significant proportion of their business from nonaffiliates).

One of the Federal agencies commenting on the rule, the Office of Thrift Supervision (OTS), suggested that separate review standards for preemption determinations were unnecessary and that HUD could employ a case-by-case analysis, using the review method outlined in § 3500.13(c) of the final rule. (OTS submitted comments critical of the final rule on the referral fee and CLO issues.)

(b) *Positions Taken by Supporters of the Preemption Provisions.* As in the case of commenters critical of the final rule, supporters of the rule commented less frequently on the preemption issue than any of the other questions raised in the July 6, 1993, notice. However, there was perhaps a greater gulf between supporters of the 1992 final rule and its opponents on this issue than on any other. As indicated earlier in this preamble, opponents of the rule expressed widespread fear that the Department would use its preemption power to nullify what the opponents perceived as salutary State regulation of controlled business. Proponents of the final rule *also* read § 3500.13(b)(2) of the rule as promising extensive HUD employment of preemption; however, these commenters welcomed it.

The commenters regarded RESPA as sufficient to provide consumers with protection against unfair pricing by settlement service providers. Often, the commenters claimed, State laws that purport to be protective of consumers are actually designed to benefit local settlement service providers, by hindering the entry of larger, broad-based providers into local markets.

Commenters appeared to assume that the chief intended target of preemption would be State laws directly or indirectly preventing real estate brokers from owning affiliated title businesses, prohibiting mortgage lenders from affiliating with title agencies, or restricting the percentage of business that can be derived from referrals from affiliated businesses.

A lender with nationwide business objected strongly to the inefficiencies it said resulted from multiple and inconsistent State law requirements. While these varying requirements are justified if they provide identifiable consumer benefits, the commenter said, they frequently represent attempts to limit competition among lenders, and actually increase the costs paid by consumers.

The experience in Kansas is instructive. After the state enacted a law limiting referrals

(i.e., requirements that controlled businesses derive a significant proportion of their business from nonaffiliates).

One of the Federal agencies commenting on the rule, the Office of Thrift Supervision (OTS), suggested that separate review standards for preemption determinations were unnecessary and that HUD could employ a case-by-case analysis, using the review method outlined in § 3500.13(c) of the final rule. (OTS submitted comments critical of the final rule on the referral fee and CLO issues.)

(b) *Positions Taken by Supporters of the Preemption Provisions.* As in the case of commenters critical of the final rule, supporters of the rule commented less frequently on the preemption issue than any of the other questions raised in the July 6, 1993, notice. However, there was perhaps a greater gulf between supporters of the 1992 final rule and its opponents on this issue than on any other. As indicated earlier in this preamble, opponents of the rule expressed widespread fear that the Department would use its preemption power to nullify what the opponents perceived as salutary State regulation of controlled business. Proponents of the final rule *also* read § 3500.13(b)(2) of the rule as promising extensive HUD employment of preemption; however, these commenters welcomed it.

The commenters regarded RESPA as sufficient to provide consumers with protection against unfair pricing by settlement service providers. Often, the commenters claimed, State laws that purport to be protective of consumers are actually designed to benefit local settlement service providers, by hindering the entry of larger, broad-based providers into local markets.

Commenters appeared to assume that the chief intended target of preemption would be State laws directly or indirectly preventing real estate brokers from owning affiliated title businesses, prohibiting mortgage lenders from affiliating with title agencies, or restricting the percentage of business that can be derived from referrals from affiliated businesses.

A lender with nationwide business objected strongly to the inefficiencies it said resulted from multiple and inconsistent State law requirements. While these varying requirements are justified if they provide identifiable consumer benefits, the commenter said, they frequently represent attempts to limit competition among lenders, and actually increase the costs paid by consumers.

The experience in Kansas is instructive. After the state enacted a law limiting referrals to affiliated entities, many title agent affiliates of real estate brokers and mortgage companies were forced out of business. Freed from the need to compete with such providers, we understand that independent title agents increased their rates by approximately 60%. The Department need look no further than this example to recognize that protection of "turf," rather than protection of consumers, is normally at the heart of such limitations.

The commenter went on to urge that HUD make clear that State limitations affecting controlled business arrangements are preempted by RESPA.

One commenter said that RESPA regulations encourage nationwide service providers to diversify their product offerings and enter new geographic markets. Accordingly, Federal preemption of adverse State laws would result in increased competition.

While a few commenters appeared to be recommending summary preemption of the array of State laws affecting controlled business, other commenters, responding to the Department's direct question, urged the establishment of standards for the case-by-case determination of whether State laws or regulations are inconsistent with RESPA in the controlled business area, i.e., whether a particular law "give(s) more protection to consumers and/or competition" than does RESPA.

One commenter suggested that the final rule's treatment of preemption should be fundamentally changed because it is "unclear and vaguely worded": "What is meant by 'stringent limitations' and 'give more protection to * * * competition?'"

Another commenter cited the legislative history of the 1983 RESPA amendments as indicating Congress' expectation that, if necessary to protect consumers or encourage competition, HUD would recommend further legislation to place a percentage limitation on the amount of controlled business that could be transacted. The commenter observed that in the ten years since the controlled business exemption became law, HUD has not recommended further legislation in this area. Additionally, the commenter claimed, many State governments have not seen the necessity of enacting restrictions on the percentage of business that can be derived from affiliated entities. The commenter concluded that State "percentage of business" laws were inconsistent with RESPA and should be preempted as anticompetitive.

(c) *Position on Preemption in the Proposed Rule.* Based upon the comments and testimony, the Secretary has determined that it is unnecessary at this time to set out specific written standards for preemption of State laws. As numerous commenters, including the State Attorneys General, observed, setting out comprehensive and informative preemption standards presents an almost insurmountable task, in the absence of a wide array of specific fact situations that are raising preemption issues. If it becomes necessary to consider this issue further, the Secretary may reopen the issue by rulemaking or deal with specific preemption issues by means of interpretive rules. No amendments are proposed on this subject in this rule.

(4) Issue 4: Adequacy of the Controlled Business Disclosure Statement

In § 3500.15(b)(1) of the 1992 final rule, provision was made for "written disclosure, in the format of the Controlled Business Arrangement Disclosure Statement set forth in appendix D of this part." This disclosure referred to certain information regarding the ownership and financial relationships between referring and referred-to parties, as well as information regarding the timing of the disclosure and other methods for disclosure.

HUD solicited the views of commenters in its July 6, 1993, Federal Register notice concerning whether the controlled business disclosures outlined in appendix D "are adequate to protect the consumer, and, if not, how they might be improved."

(a) *Comments Critical of the Disclosure Statement.* A majority of the commenters expressing dissatisfaction with one or more features of the 1992 final rule's employer payments provisions also objected to the Controlled Business Arrangement Disclosure Statement set out in Appendix D to part 3500.

Generally, these objections were twofold. First, commenters argued that even the best and most complete form of disclosure imaginable was not an effective means of coping with what the commenters perceived as anticonsumer aspects of controlled business arrangements. Second, opposition commenters urged that if, against their advice, HUD continued to sanction referral payments by employers to employees, the form of disclosure required should be strengthened substantially, and the timing of the required disclosure should be pinpointed for maximum effect in affording consumers a realistic opportunity to choose alternative settlement service providers.

More than 800 comments from lenders and settlement attorneys urged expansion of the controlled business disclosure to assure that borrowers understand that the referral "will provide a financial benefit to the related parties."[4]

Perhaps the most comprehensive criticism of the disclosure policy was expressed by the 16 State Attorneys General in their comments. After criticizing both the referral payments provision and the CLO exemption, the Attorneys General said that they were skeptical that disclosures can remedy the inherent dangers to consumers when there are financial incentives for referrals of business. Conceding that the 1983 RESPA amendments expressly permitted controlled business arrangements, the Attorneys General urged that the disclosure contemplated by the regulatory amendment "be as clear and explicit as possible to alert consumers to the potential for harm." The comment advocated that the disclosure form state with greater clarity the purpose for which a disclosure is made and the harm against which it is aimed.

Specifically, the State Attorneys General criticized as vague the form's reference to a "business relationship" and advocated the inclusion of a statement that, in making the referral to the controlled business, the referring company or agent (to be identified by name) would benefit "financially or otherwise." The State Attorneys General wanted the form to indicate that, in addition to lower rates, consumers might receive "better services" by shopping around. "Indeed, consumers must be affirmatively encouraged to shop around * * * consumers should be warned in clear, unambiguous language of the pitfalls of relying on a controlled business referral and encouraged to make intelligent choices among settlement service providers." Consumers should also be told in explicit terms, the comment continued, that they are "free to choose [their] own settlement service provider and will not be denied any services or loan for exercising this choice."

Finally, the State Attorneys General favored disclosure of the "existence of and amounts of" any fees or kickbacks paid, directly or indirectly, to the real estate broker or another referring party, or to an affiliated provider, for the performance of settlement services. A large number of individual commenters and the Coalition to Retain Independent Services in Settlements (CRISIS) echoed this position.

The CFA disparaged disclosure, by itself, as being an "inadequate remedy for the market risks that consumers are exposed to in the purchase of real estate":

> The Department's rule has placed before the consumer a new array of fees for which the delivery of the equivalent of a tollgate ticket is hardly ample protection.
>
> One of the central problems of controlled business arrangements is that the underlying purchase is carried out under conditions of urgency and stress that will always overwhelm a captive consumer. The ability to distinguish between what must be done—and purchased—and what is optional, is limited.

The MBA advocated elimination of the employer-employee referral fee exception, but urged that, at least, the disclosure form should be expanded to include the existence and amount of the referral fee. Similar advice was received from Consumers Union and from individual commenters.

The FDIC also expressed some doubt about the efficacy of written disclosure, calling the disclosure form "just one of dozens of confusing papers handed to [consumers] over the course of a real estate transaction." FDIC nevertheless advocated strengthening the form by requiring the disclosing entity to meet specific content guidelines and to use layman's language, "* * * so less opportunity [is] given for 'creative writing'." The FDIC also advocated the use of an acknowledgement line or box on the form, to show that the consumer had read and understood the controlled business arrangement disclosure.

The Office of Thrift Supervision (OTS), while expressing concern about employer-employee referral fees and the efficacy of CLO disclosures, commented that the content and timing requirements for controlled business disclosures, as set out in the final rule, seemed adequate to protect consumers.

Departing from the recommendations of other commenters to the effect that the disclosure form should be expanded to highlight the presence of referral fees and other relationships between the referrer and the service provider, ALTA's spokesman called the disclosure process "worthless as a consumer protection measure in the settlement services arena." The ALTA claimed that the consumer is likely to rely upon the recommendation of a trusted professional, "even where a personal financial inducement is disclosed." ALTA's spokesman advocated legislative solutions, including amendment of RESPA to permit a competitor's right of action and the institution of blanket prohibitions on controlled businesses.

(b) *Comments from Supporters of the Final Rule's Disclosure Statement.* The Department received detailed comments on controlled business disclosure policy from more than a dozen commenters who supported the final rule in most of its particulars. Typically, these commenters believed that the form and level of detail of disclosure of controlled business arrangements that were in the final rule were "more than adequate" to permit informed choice by consumers concerning settlement service providers.

Several commenters pointed out that the required form of disclosure appeared to exceed the statutory disclosure requirements in several respects. One, the commenters urged that the statute required only that the "existence" of a financial interest be disclosed, while the regulation required that the disclosure outline the "ownership and financial interest." Two, the regulation requires that all disclosures, not just those related to costs, be made in writing. Three, the regulations require *separate* disclosure of controlled business relationships. Finally, the "suggested format" for the disclosure (although not the regulation itself) includes the caution: "You may be able to get these services at a lower rate by shopping with other settlement service providers."

Most commenters who raised these points did not address them as objections to, or criticisms of, the 1992 final rule. Instead, these observations were cited as indications that, in the commenters' views, the rule already was suitably attentive to consumer protection concerns, in that it went beyond bare-bones statutory disclosure requirements. Several of these comments went on to urge that the Department continue to limit its RESPA regulations to disclosure-related concerns, and *not* bend to the will of advocates of other methods of regulating or curbing controlled business arrangements:

> RESPA is predicated on the belief that consumers, when provided with appropriate disclosures, are capable of making informed decisions. Those who argue otherwise frequently do so only to protect their competitive position, not to advance the interests of consumers. * * * [T]he information contained in the existing controlled business arrangement disclosures is sufficient and the requirements should not be disturbed.

The Federal Reserve Board's comment agreed that the controlled business disclosure policy set out in the rule and the format were "more than adequate" as disclosures. "* * * [I]f anything, it may be over-disclosing given the quantity of information that a consumer receives when applying for a mortgage loan." A few lender-commenters expressed a similar view. The Federal Reserve suggested that the consumer needs to know that the two parties involved in the referral are related, but may not need further details. While the Federal Reserve agreed it is important that the consumer know that use of the provider is not required, it suggested that including the estimated charges for the service was "redundant," since such costs would have been disclosed on the Good Faith Estimate.

One lender argued that controlled business arrangements arise in a variety of situations, and that it is "impossible" to mandate the use of a form that is suitable for all providers in all situations. The commenter asked the Department to provide for flexibility concerning format, "as long as consumers are informed of the referral and the relationship between the parties."[5]

Another comment urged that the controlled business disclosure form *not* be required for disclosure of the specific providers of "lender required services such as credit reports, appraisals, [or] flood plain searches." The commenter suggested that early disclosure of the identity of these providers was impractical and provided "absolutely no benefit to the consumer." The information, the commenter concluded, would appear on the HUD–1 Settlement Statement.

The most frequent criticism of the rule's controlled business disclosure requirements from commenters supportive of the rule was that, in some instances, it was unclear when a controlled business arrangement was required to be disclosed. Several commenters asked whether the disclosure was required when a bank has a wholly-owned subsidiary mortgage company or when a mortgage company is a wholly-owned subsidiary of the same holding company as the bank.

[4] HUD notes that the Appendix D disclosure format already requires: (1) Disclosure of the nature of the relationship between the referring party and the prospective provider of the service, including ownership or other financial interests; (2) estimates of the charges for the service or services; and (3) a statement that the consumer "may be able to get these services at a lower rate by shopping with other settlement service providers." (57 FR 49600, 49622; November 2, 1992.)

[5] The same commenter, a lender, asked for more flexibility in the *timing* of the controlled business disclosure. Many referrals do not occur at face-to-face meetings between the consumer and the referring party, the commenter suggested, and asked that the rule clarify that the service provider be required to furnish a disclosure "at the time of the initial contact between the consumer and the provider."

The Federal Reserve Board's comment agreed that the controlled business disclosure policy set out in the rule and the format were "more than adequate" as disclosures. "* * * [I]f anything, it may be over-disclosing given the quantity of information that a consumer receives when applying for a mortgage loan." A few lender-commenters expressed a similar view. The Federal Reserve suggested that the consumer needs to know that the two parties involved in the referral are related, but may not need further details. While the Federal Reserve agreed it is important that the consumer know that use of the provider is not required, it suggested that including the estimated charges for the service was "redundant," since such costs would have been disclosed on the Good Faith Estimate.

One lender argued that controlled business arrangements arise in a variety of situations, and that it is "impossible" to mandate the use of a form that is suitable for all providers in all situations. The commenter asked the Department to provide for flexibility concerning format, "as long as consumers are informed of the referral and the relationship between the parties."[5]

Another comment urged that the controlled business disclosure form *not* be required for disclosure of the specific providers of "lender required services such as credit reports, appraisals, [or] flood plain searches." The commenter suggested that early disclosure of the identity of these providers was impractical and provided "absolutely no benefit to the consumer." The information, the commenter concluded, would appear on the HUD–1 Settlement Statement.

The most frequent criticism of the rule's controlled business disclosure requirements from commenters supportive of the rule was that, in some instances, it was unclear when a controlled business arrangement was required to be disclosed. Several commenters asked whether the disclosure was required when a bank has a wholly-owned subsidiary mortgage company or when a mortgage company is a wholly-owned subsidiary of the same holding company as the bank.

[5] The same commenter, a lender, asked for more flexibility in the *timing* of the controlled business disclosure. Many referrals do not occur at face-to-face meetings between the consumer and the referring party, the commenter suggested, and asked that the rule clarify that the service provider be required to furnish a disclosure "at the time of the initial contact between the consumer and the provider."

The situations in which related businesses were required to make disclosure also were questioned. One commenter asked whether, if a bank is affiliated with a mortgage company by common ownership, the bank has to make disclosures to consumers in the following circumstances:

- When a consumer is directly referred to the mortgage company for a mortgage loan;
- When the consumer is simply informed of the availability of loans from the mortgage company; and
- When the bank includes references to the mortgage company in its advertising or its brochures.

One commenter, stating that the entire category of "referrals" was not intended to fall within the coverage of the controlled business arrangement rules, recommended creation of an exemption to the controlled business arrangement rules for "'referrals' between bank holding companies' wholly-owned subsidiaries." Two commenters asserted that failing to provide this exemption would be placing mortgage companies within bank holding companies at a competitive disadvantage when compared to bank mortgage departments. "The purpose of RESPA is not to dictate the form in which a bank structures its lending business."

(c) *Position Taken in the Proposed Rule on the Controlled Business Disclosure Statement.* The Secretary concluded that the elimination of the employer-employee exception would, in turn, eliminate a number of the strongest concerns regarding the information in the controlled business disclosure. However, the Secretary has accepted some suggestions for modifications to the disclosure as useful and beneficial to the consumer. Accordingly, certain of these suggestions have been included in the proposed rule and in the format of Appendix D.

The suggested borrower-acknowledgement box has been added to the controlled business disclosure format. Additional plain language has been added to the format. Section 3500.15(b) proposes a requirement that disclosure be given at a time to be relevant to the consumer: either (i) at the time of referral or no earlier than 3 days before; or (ii) if the lender requires the use of a particular provider, the time of the loan application. The preamble of revisions that extended RESPA coverage to subordinate lien transactions (59 FR 6505, 6510, February 10, 1994) also discussed the appropriateness of disclosures, stating that "incidental and uncompensated referrals, such as brochures in a bank lobby or street directions given by a bank employee, are not perceived as rising to the level necessary to require a controlled business disclosure."

More sweeping modification of the controlled business disclosure form is not considered necessary. While many commenters disparaged the use of written disclosure as a means of coping with perceived controlled business-related problems, the Department continues to believe that full disclosure is useful as a means of informing consumers. Disclosure is also a preeminent principle of the RESPA statute.

V. Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities, other than those impacts specifically required to be applied universally by the RESPA statute.

Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The finding is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection at the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. A Regulatory Impact Analysis (RIA) performed on this proposed rule is also available for review at the same address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or

their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Promulgation of this rule expands coverage of the applicable regulatory requirements pursuant to statutory direction.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as Item 1586 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20447), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 3500

Consumer protection, Housing, Mortgages, Real property acquisition, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 3500 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for part 3500 would continue to read as follows:

Authority: 12 U.S.C 2601 *et seq.*

2. Section 3500.2, effective on August 9, 1994 (February 10, 1994 at 59 FR 6505, 6511), is amended by adding, in alphabetical order, definitions for "CLO", "CLO access fee", "CLO operator", "CLO services", "CLO system", "managerial employee", and "qualified CLO system", and by removing the word "and" at the end of paragraph (14), redesignating paragraph (15) as paragraph (16), and adding a new paragraph (15) to the definition of "settlement service", to read as follows:

§ 3500.2 Definitions.

* * * * *

CLO means computer loan origination.

CLO access fee means a fee paid by a borrower to a CLO operator for CLO services.

CLO operator means a provider of settlement services who operates a CLO system for a borrower.

CLO services means services provided to a borrower by a CLO operator using a CLO system.

CLO system means a computer system that:

(1) Provides to prospective borrowers information regarding the rates and terms of federally related mortgage loans;

(2) Collects, assembles, and transmits information concerning the borrower, the property, and other information on a potential mortgage loan for evaluation by a lender(s); and

(3) Based on the data transmitted, responds to the borrower with detailed information, including, without limitation, loan terms, rates, and payment schedules for various loan products that would be available to the borrower from such lender(s).

* * * * *

Managerial employee means an employee of a settlement service provider who does not routinely deal directly with the public, and who either hires, directs, assigns, promotes, and rewards other employees or is in a position to formulate, determine, or influence the policies of their employer. Neither the term "managerial employee" nor the term "employee" includes real estate agents or other independent contractors.

* * * * *

Qualified CLO system means a CLO system that meets the requirements of § 3500.14(g)(3).

* * * * *

Settlement service * * *

(15) Provision of CLO services; and

* * * * *

3. Section 3500.14 is amended by revising paragraph (g)(2); by redesignating paragraphs (g) (3) and (4) as paragraphs (g) (5) and (6), respectively; and by adding new paragraphs (g) (3) and (4), to read as follows:

§ 3500.14 Prohibition against kickbacks and unearned fees.

* * * * *

(g) * * *

(2) Section 8 of RESPA does not prohibit normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or other related business.

(3) Section 8 of RESPA does not prohibit any payment by a borrower for CLO services provided by a qualified CLO system that provides CLO services and meets the following requirements:

(i) *Multiple Products and Lenders.* The qualified CLO system shall provide openings for 20 or more lenders offering various loan products. The factors for selecting the lenders to be included on a qualified CLO system (see paragraph (g)(3)(ii) of this section) may not be designed to limit or have the effect of limiting eligibility to less than 20 lenders. When the qualified CLO system has less than 20 lenders, the system shall remain open to and accept additional lenders until at least 20 lenders participate.

(ii) *Selection Factors.* To determine eligibility for inclusion in the system, the qualified CLO system shall utilize selection factors that are fair and impartial and are designed to contribute to the efficiency and quality of the system. These factors may include, but are not limited to, the date of the lender's application for participation on the qualified CLO system, the quality of services and capabilities the lender provides to consumers, the types of loan products offered by the lender and its pricing practices, and the extent to which the lender's participation will increase the variety of loan products offered to consumers by the system. Qualified CLO system owners shall have a reasonable justification for selection decisions, supported by documentation which they must maintain.

(iii) *Neutrality.* The CLO operator of a qualified CLO system and the qualified CLO system shall provide borrowers with information in a neutral manner. No lender shall be favored or disfavored by the manner in which information regarding the lender or its products is utilized or is presented to the borrower, is used on the system, or is presented by the CLO operators, or by the scope of information that one lender is permitted to include as compared to another lender. No payments, disincentives, or penalties may be provided directly or indirectly to CLO operators of qualified CLO systems by any person, including the CLO operator's employer, to influence the CLO operator to favor any lender on the qualified CLO system.

(iv) *Disclosure Statement.* The CLO operator of a qualified CLO system shall provide a CLO disclosure form to the borrower before CLO services are performed. The CLO operator shall require the borrower to sign on the CLO disclosure form an acknowledgment that the borrower has received the disclosure. An enlarged, completed copy of the CLO disclosure form (no smaller than 16" by 20"), including any applicable fee, shall be displayed prominently within 5 feet of the CLO terminal. The CLO disclosure form shall:

(A) Be in the format established in Appendix E of this part;

(B) Specify the fee and services being provided; and

(C) Include statements that use of the system is not required; space on the system is limited; the full range of products meeting the borrower's needs may not be listed on the system; and other lenders not listed on the system may offer better terms and conditions, including lower rates.

(v) *CLO Access Fee.* The CLO operator of a qualified CLO system shall charge all borrowers using the qualified CLO system the same CLO access fee(s) for the same service or the same components of service. The CLO operator of a qualified CLO system shall require the borrower to pay any CLO access fee outside of and before the closing of any loan that may be obtained through use of this system. The CLO operator of a qualified CLO system may only waive the CLO access fee based on business considerations of the operator and not on any action of a lender. If the payment of the CLO access fee is contingent on use of a loan product on the qualified CLO system, the contingency shall apply equally to all loan products and lenders on the qualified CLO system.

(vi) *Lender Charges for Access.* The CLO operator of a qualified CLO system may charge lenders for access to the qualified CLO system if:

(A) Charges are set forth in a written schedule of charges;

(B) Charges for the same services and components of services are the same for all lenders on the system; and

(C) The charges are reasonably related to the costs of maintenance and operation of the qualified CLO system (*i.e.*, the facilities furnished or the services actually performed).

(4) Any payment by a borrower to a CLO operator for services from a nonqualified CLO system, and any payments by a third party settlement service provider to a CLO operator for access to any CLO system in relation to a federally related mortgage loan, will be subject to examination under Section 8 of the Act and this part. The disclosure format set forth in Appendix E of this part and Box 2 of Appendix E of this part shall be utilized by all CLO operators for all CLO systems and shall be completed before any CLO services are performed.

* * * * *

smaller than 16" by 20"), including any applicable fee, shall be displayed prominently within 5 feet of the CLO terminal. The CLO disclosure form shall:

(A) Be in the format established in Appendix E of this part;

(B) Specify the fee and services being provided; and

(C) Include statements that use of the system is not required; space on the system is limited; the full range of products meeting the borrower's needs may not be listed on the system; and other lenders not listed on the system may offer better terms and conditions, including lower rates.

(v) *CLO Access Fee.* The CLO operator of a qualified CLO system shall charge all borrowers using the qualified CLO system the same CLO access fee(s) for the same service or the same components of service. The CLO operator of a qualified CLO system shall require the borrower to pay any CLO access fee outside of and before the closing of any loan that may be obtained through use of this system. The CLO operator of a qualified CLO system may only waive the CLO access fee based on business considerations of the operator and not on any action of a lender. If the payment of the CLO access fee is contingent on use of a loan product on the qualified CLO system, the contingency shall apply equally to all loan products and lenders on the qualified CLO system.

(vi) *Lender Charges for Access.* The CLO operator of a qualified CLO system may charge lenders for access to the qualified CLO system if:

(A) Charges are set forth in a written schedule of charges;

(B) Charges for the same services and components of services are the same for all lenders on the system; and

(C) The charges are reasonably related to the costs of maintenance and operation of the qualified CLO system (*i.e.*, the facilities furnished or the services actually performed).

(4) Any payment by a borrower to a CLO operator for services from a nonqualified CLO system, and any payments by a third party settlement service provider to a CLO operator for access to any CLO system in relation to a federally related mortgage loan, will be subject to examination under Section 8 of the Act and this part. The disclosure format set forth in Appendix E of this part and Box 2 of Appendix E of this part shall be utilized by all CLO operators for all CLO systems and shall be completed before any CLO services are performed.

* * * * *

4. Section 3500.15 is amended by revising paragraph (b)(1); by removing the word "and" at the end of paragraph (b)(3)(i)(A); by removing the period at the end of paragraph (b)(3)(i)(B) and replacing it with "; and"; and by adding paragraph (b)(3)(i)(C), to read as follows:

§ 3500.15 Controlled business arrangements.

(b) * * *

(1) The person making a referral has furnished to each person whose business is referred a written disclosure, in the format of the Controlled Business Arrangement Disclosure Statement set forth in Appendix D of this part. This disclosure shall specify the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral, and shall describe the estimated charge or range of charges (using the same terminology, as far as practical, as Section L of the HUD–1 or HUD–1A settlement statement) generally made by the provider of settlement services. The disclosure must be provided on a separate piece of paper at or no earlier than 3 business days before each referral, or, if the lender requires the use of a particular provider, the time of loan application, except that:

* * * * *

(3) * * *

(i) * * *

(C) No agent or employee may accept any payment from his or her principal or employer or any other source when that payment is correlated on a one-to-one basis or calculated as a multiple of the number or value of any referrals of business from his or her employer or principal to an affiliated entity. For example, no person shall pay any managerial employee or any employee or agent who is in direct contact with the public a bonus or other compensation correlated on a one-to-one basis or calculated as a multiple of the number or value of any referral of settlement service business by the employee or the employee's organizational unit to an entity affiliated with the employer or principal. In addition, no compensation of an employee or agent who is routinely in direct contact with the public may be based in whole or in part on the number or value of referrals that the employee or agent makes to affiliated entities.

5. Appendix B to part 3500 is amended by revising Illustration 11 to read as follows:

Appendix B to Part 3500—Illustration of Requirements of RESPA

* * * * *

11. *Facts:* A, a mortgage lender, is affiliated with B, a title company, and C, an escrow company, and offers consumers a package of mortgage title and escrow services at a discount from the prices at which such services would be sold if purchased separately. Neither A, B, or C, requires consumers to purchase the services of their sister companies, and each company sells such services separately and as part of the package. A also pays its employees (i.e., loan officers, secretaries, etc.) a bonus for each loan, title insurance, or closing that A's employees generate for A, B, or C. A pays such employees bonuses out of its own funds and receives no bonuses or reimbursements for these bonuses from B or C. At or before the time that customers are told by A or its employees about the services offered by B and C and about the package of services that is available, the customers are provided with a controlled business arrangement disclosure form.

Comments: Selling a package of settlement services at a discount is not prohibited by RESPA. Also, A may compensate its own employees for business generated for A's company, but A may not directly or indirectly compensate A's employees who are routinely in contact with consumers for business generated for B or C. Nor may B or C directly or indirectly compensate A or A's employees for business referred to B or C by A's employees. Sections 3500.15(b)(3)(i) (A) and (B) set forth the permissible exchanges of funds between controlled business entities. No employee or agent may receive compensation correlated on a one-to-one basis or calculated as a multiple of the number or value of referrals of business to an affiliated entity. Nothing in the RESPA rule prohibits bonuses or other compensation based, in part, on the generation of business by A to B and C being paid to managerial employees who are not routinely in contact with consumers.

6. Appendix D to Part 3500 is revised to read as follows:

Appendix D to Part 3500

Controlled Business Arrangement Disclosure Statement Format Notice

To: _____

From: _____
(Entity Making Statement)

Property: _____

Date: _____

This is to give you notice that [referring party] has a business relationship with [provider receiving referral] . [Describe the nature of the relationship between the referring party and the provider, including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [referring party] a financial or other benefit.

Set forth below is the estimated charge or range of charges by [provider] for the following settlement services:

_____: $_____

_____: $_____

_____: $_____
_____: $_____
_____: $_____

You are NOT required to use [provider] as a condition for [settlement of your loan on] [or] [purchase, sale, or refinance of] the subject property. YOU MAY BE ABLE TO GET THESE SERVICES OR BETTER SERVICES AT A LOWER RATE BY SHOPPING WITH OTHER SETTLEMENT SERVICE PROVIDERS, AND THIS IS SOMETHING YOU SHOULD CONSIDER DOING.[1]

A lender is allowed to require the use of an attorney, credit reporting agency, or real estate appraiser chosen to represent the lender's interest.[2]

Acknowledgment

[I/we have read this disclosure form and understand its contents, as evidenced by my/our signature(s) below.][2]

[I/we have read this disclosure form, and understand that [referring party] is referring me/us to purchase the above-described settlement services from [provider receiving referrals], and may receive income as the result of this referral.]

_____
[Applicant's signature]

_____
[Co-applicant's signature]

_____

_____

[1] Where the lender is requiring an attorney, credit reporting agency, or real estate appraiser to represent its interests, this paragraph and the corresponding acknowledgment should be omitted.

[2] Use this paragraph and acknowledgment for disclosures involving required attorneys, credit reporting agencies, or real estate appraisers and omit the second acknowledgment. For all other disclosures, use the second acknowledgment.

[Specific timing rules for delivery of the controlled business disclosure are set forth in 24 CFR 3500.5(b)(1)(i) (Regulation X).]

7. Appendix E to part 3500 is revised to read as follows:

Appendix E to Part 3500

CLO Fee Disclosure

To: _____
[Potential Borrower]
From: _____
[Person Making Disclosure]

NOTICE: I have available a Computer Loan Origination System (CLO), a computer system that can access a variety of mortgage loans and rates. The CLO is available to you under the following conditions:

1. [ ] You are obligating yourself today to pay $_____, outside of and before the settlement of any loan that may be obtained through use of this system by _____ check, _____ credit card, _____ cash, _____ other _____. (specify)

2. [ ] You will not be charged a direct fee, but the lender who funds your loan will pay us a fee related to your loan estimated to be $_____, which will likely be recovered by the lender in the cost of your loan.

3. [ ] I am providing you access to the CLO without a separate charge.

USE OF THIS SYSTEM IS NOT REQUIRED. SPACE ON THE SYSTEM IS LIMITED, THE FULL RANGE OF PRODUCTS MEETING YOUR NEEDS MAY NOT BE LISTED, AND BETTER TERMS AND CONDITIONS, INCLUDING LOWER RATES, MAY BE AVAILABLE FROM OTHERS NOT LISTED ON THE SYSTEM.

[INSTRUCTIONS: Include the following text, when applicable. Instructions in square brackets, including these instructions, should be omitted, as appropriate.] [(Name of operator of the system) has an affiliated business relationship with (name(s) of lender(s) on the system under which this overall organization gains financially if you enter into a mortgage loan with them. A further explanation of this business relationship is set forth in the controlled business arrangement disclosure form that is also being given to you at this time.]

The following services will be provided:

[ ] Displaying a variety of mortgage loans and rates that may be available to you.

[ ] Counseling you regarding the different types of loans available and the relative rates in a fair and equitable manner.

[ ] Relating your financial needs with available mortgage loan programs; and assisting you in deciding which, if any, meet your needs.

[ ] Entering information regarding you into the Computer Loan Origination System.

[ ] Reviewing responses to submitted information.

[ ] Other _____

Acknowledgment

I/we have read this disclosure form, and understand its contents, as evidenced by my/our signature(s) below.

_____
Applicant's signatures

_____
Co-Applicant's signature

Date: July 14, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–17598 Filed 7–20–94; 8:45 am]
BILLING CODE 4210–27–P

Thursday
July 21, 1994

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 862, et al.

Medical Devices; Proposed Exemptions From Premarket Notification for Certain Classified Devices; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 886, 888, 890, and 892

[Docket No. 94M-0260]

Medical Devices; Proposed Exemptions From Premarket Notification for Certain Classified Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to exempt 164 generic types of class I devices from the requirement of premarket notification, with limitations. For the exempted devices, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission. Granting the exemptions will allow the agency to make better use of its resources and thus better serve the public.

DATES: Submit written comments by October 19, 1994. FDA is proposing that any final rule that may issue based on this proposed rule become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-4765.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (Pub. L. 94-295, hereinafter called the amendments) and the Safe Medical Devices Act of 1990 (the SMDA), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) establishes three classes of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: Class I, general controls; class II, special controls; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from, among other things, the requirement of premarket notification in section 510(k) of the act (21 U.S.C. 360(k)). Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA. When FDA issued proposed regulations classifying preamendments devices, the agency focused on granting exemptions from the requirement of premarket notification principally when the advisory panels included them in their recommendations to the agency. Subsequently, FDA decided to exempt certain additional class I devices from the requirement of premarket notification in order to reduce the number of unnecessary premarket notifications. This action helped to free agency resources for the review of more complex notifications to FDA.

Previously, FDA exempted 293 generic types of class I devices from the requirement of premarket notification, with limitations. Some of these devices were exempted from the requirement of premarket notification when the devices were initially classified into class I. However, the majority of these devices were exempted from the requirement of premarket notification after being classified into class I. These subsequent exemptions from the requirement of premarket notification appear in the following **Federal Register** publications (see Table 1).

TABLE 1

Date	Federal Register citation	Type of device	No. of devices
Aug. 25, 1987	52 FR 32110	Ear, Nose and Throat	4
June 8, 1988	53 FR 21447	Clinical Chemistry and Toxicology	21
Sept. 14, 1988	53 FR 35602	Ophthalmic	55
Dec. 29, 1988	53 FR 52952	Orthopedic	7
Apr. 5, 1989	54 FR 13826	General and Plastic Surgery	8
Apr. 5, 1989	54 FR 13828	Dental	22
Apr. 5, 1989	54 FR 13831	Radiology	4
June 12, 1989	54 FR 25042	Hematology and Pathology	24
		Immunology and Microbiology	37
		Anesthesiology	13
		Cardiovascular	3
		Gastroenterology and Urology	9
		General Hospital and Personal Use	6
		Neurological	7
		Obstetrical and Gynecological	3
		Physical Medicine	2

II. Description of Proposed Exemptions

In considering whether to exempt additional class I devices from premarket notification, FDA focused on whether notification for the type of device is unnecessary for the protection of the public health. For the devices proposed in this document to be exempted from premarket notification, FDA has concluded that notification is unnecessary primarily for the following reasons:

(1) The device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device, such as device design or materials. When making these determinations, FDA generally has considered the frequency, persistence, cause, or seriousness of such claims or risks, as well as other factors deemed relevant.

(2) In general, the following factors apply: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that could affect safety and effectiveness will either: (i) Be readily detectable by users by visual examination or other means, such as routine testing, before causing harm, e.g., testing of a clinical laboratory reagent with positive and negative controls; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) any changes in the device would not be likely to result in a change in the device's classification.

FDA has made the determinations described above based on its knowledge of the device, including past experience and relevant reports or studies on device performance. If FDA has concerns only about certain types of changes to a particular class I device, the agency may grant a limited exemption from premarket notification for that generic type of device. A limited exemption will specify the types of changes to the device for which manufacturers are required to submit a premarket notification. For example, FDA may exempt a device from the requirement of premarket notification except when a manufacturer intends to use a different material.

FDA advises manufacturers that an exemption from the requirement of premarket notification is not an exemption from any of the other general controls, including current good manufacturing practices (CGMP's), unless explicitly stated. Indeed, FDA's decision to propose 510(k) exemptions for these devices is based, in part, on the fact that compliance with CGMP's will help insure product quality.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device will be based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change or modification of a class

CFR part	
862	Clinical Chemistry and Clinical T
864	Hematology and Pathology Devi
866	Immunology and Microbiology De
868	Anesthesiology Devices; July 16,
870	Cardiovascular Devices; Februar
872	Dental Devices; August 12, 1987
874	Ear, Nose and Throat Devices; N
876	Gastroenterology-Urology Device
878	General and Plastic Surgery Dev
880	General Hospital and Personal U
882	Neurological Devices; Septembe
886	Ophthalmic Devices; September
888	Orthopedic Devices; September
890	Physical Medicine Devices; Nove

could affect safety and effectiveness will either: (i) Be readily detectable by users by visual examination or other means, such as routine testing, before causing harm, e.g., testing of a clinical laboratory reagent with positive and negative controls; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) any changes in the device would not be likely to result in a change in the device's classification.

FDA has made the determinations described above based on its knowledge of the device, including past experience and relevant reports or studies on device performance. If FDA has concerns only about certain types of changes to a particular class I device, the agency may grant a limited exemption from premarket notification for that generic type of device. A limited exemption will specify the types of changes to the device for which manufacturers are required to submit a premarket notification. For example, FDA may exempt a device from the requirement of premarket notification except when a manufacturer intends to use a different material.

FDA advises manufacturers that an exemption from the requirement of premarket notification is not an exemption from any of the other general controls, including current good manufacturing practices (CGMP's), unless explicitly stated. Indeed, FDA's decision to propose 510(k) exemptions for these devices is based, in part, on the fact that compliance with CGMP's will help insure product quality.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device will be based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change or modification of a class I device exempt from premarket notification requirements that could significantly affect the safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification are still required to submit a premarket notification to FDA before introducing a device or delivering it for introduction into interstate commerce for commercial distribution when:

(1) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of the preamendments device to which it has been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use instead of use by health care professionals; or

(2) The modified device operates using a different fundamental scientific technology than used by the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Such changes or modifications to class I devices that are exempt from premarket notification would mean the exemption would no longer apply. Changes or modifications to devices that are not exempt from premarket notification requirements under any regulation must undergo a more comprehensive assessment to determine the impact of the change or modification on the device's safety and effectiveness. FDA intends to develop guidance clarifying when a change or modification to a device requires submission of a premarket notification as defined in 21 CFR 807.81(a)(3).

On the dates listed, FDA published final regulations classifying, among others, the devices listed below. When FDA classified these devices, the agency did not propose exempting them from the requirement of premarket notification. Based on the analysis described above, FDA has now determined that premarket notification with respect to the devices listed below is unnecessary for the protection of the public health and will not advance FDA's public health mission. This approach is consistent with the recommendation in the May 1993 report of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, entitled "Less Than the Sum of its Parts Reforms Needed in the Organization, Management, and Resources of The Food and Drug Administration's Center for Devices and Radiological Health."

Earlier this year, the Office of Device Evaluation undertook a risk assessment of all devices in order to ensure the proper allocation of resources in the review process. All of the class I devices listed below were placed in Tier I, the category of devices which have a minimal inherent risk and whose review focuses upon intended use. A number of class II devices were also included in the Tier I evaluation process. FDA intends to consider proposing exemptions from the requirement of premarket notification for these devices. In the near future, FDA believes that exempting these devices from premarket notification will allow the agency to better use its available resources to protect the public health.

FDA is proposing to exempt from the requirement of premarket notification, with limitations, the 164 generic type of class I devices listed in Table 2 below:

TABLE 2

CFR part	Title	No. of devices proposed to be exempt
862	Clinical Chemistry and Clinical Toxicology Devices; May 1, 1987 (52 FR 16102)	7
864	Hematology and Pathology Devices; September 12, 1980 (45 FR 60576)	6
866	Immunology and Microbiology Devices; November 9, 1982 (47 FR 50814)	8
868	Anesthesiology Devices; July 16, 1982 (47 FR 33130)	5
870	Cardiovascular Devices; February 5, 1980 (45 FR 7904)	1
872	Dental Devices; August 12, 1987 (52 FR 30092); November 20, 1990 (55 FR 48436)	38
874	Ear, Nose and Throat Devices; November 6, 1986 (51 FR 40378)	4
876	Gastroenterology-Urology Devices; November 23, 1983 (48 FR 53012)	1
878	General and Plastic Surgery Devices; June 24, 1988 (53 FR 23856)	16
880	General Hospital and Personal Use Devices; October 21, 1980 (45 FR 69678)	13
882	Neurological Devices; September 4, 1979 (44 FR 51726)	14
886	Ophthalmic Devices; September 2, 1987 (52 FR 33346)	36
888	Orthopedic Devices; September 4, 1987 (52 FR 33686)	5
890	Physical Medicine Devices; November 23, 1983 (48 FR 53032)	8

TABLE 2—Continued

CFR part	Title	No. of devices proposed to be exempt
892	Radiology Devices; January 20, 1988 (53 FR 1554)	4
Total		164

TABLE 3.—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

Section	Device
862.2270 ..	Thin-layer chromatography system for clinical use.
862.2310 ..	Clinical sample concentrator.
862.2320 ..	Beta or gamma counter for clinical use.
862.2485 ..	Electrophoresis apparatus for clinical use.
862.2720 ..	Plasma oncometer for clinical use.
862.2800 ..	Refractometer for clinical use.
862.2920 ..	Plasma viscometer for clinical use.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 3 above. However, the proposed exemptions for the clinical sample concentrator (§ 862.2310), the beta or gamma counter for clinical use (§ 862.2320), the electrophoresis apparatus for clinical use (§ 862.2485), the plasma oncometer for clinical use (§ 862.2720), the refractometer for clinical use (§ 862.2800), and the plasma viscometer for clinical use (§ 862.2920) are limited and would apply only to those products intended for general use, which make no specific claims, and which include submissions containing a certified statement that the requirements for labeling of in vitro diagnostic products contained in 21 CFR 809.10 will be followed.

TABLE 4.—HEMATOLOGY AND PATHOLOGY DEVICES

Section	Device
864.2280 ..	Cultured animal and human cells.
864.5350 ..	Microsedimentation centrifuge.
864.7660 ..	Leukocyte alkaline phosphate test.
864.7675 ..	Leukocyte peroxidase test.
864.7900 ..	Thromboplastin generation test.
864.8500 ..	Lymphocyte separation medium.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 4 above.

TABLE 5.—IMMUNOLOGY AND MICROBIOLOGY DEVICES

Section	Device
866.5170 ..	Breast milk immunological test system.
866.5220 ..	Cohn fraction II immunological test system.
866.5230 ..	Colostrum immunological test system.
866.5360 ..	Cohn fraction IV immunological test system.
866.5370 ..	Cohn fraction V immunological test system.
866.5540 ..	Immunoglobulin G (Fd fragment specific) immunological test system.
866.5570 ..	Lactoferrin immunological test system.
866.5700 ..	Whole human plasma of serum immunological test system.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 5 above.

TABLE 6.—ANESTHESIOLOGY DEVICES

Section	Device
868.5340 ..	Nasal oxygen cannula.
868.5350 ..	Nasal oxygen catheter.
868.5620 ..	Breathing mouthpiece.
868.5675 ..	Rebreathing device.
868.5700 ..	Nonpowered oxygen tent.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 6 above.

TABLE 7.—CARDIOVASCULAR DEVICES

Section	Device
870.1875 ..	Stethoscope.

FDA is proposing to grant an exemption from the requirement of premarket notification for the device in Table 7 above. However, this proposed exemption is limited and would apply only to the mechanical stethoscope, the manual stethoscope, and the direct (acoustic) stethoscope.

TABLE 8.—DENTAL DEVICES

Section	Device
872.1500 ..	Gingival fluid measurer.
872.1820 ..	Dental X-Ray exposure alignment device.
872.3100 ..	Dental amalgamator.
872.3130 ..	Preformed anchor.
872.3165 ..	Precision attachment.
872.3240 ..	Dental burr.
872.3285 ..	Preformed clasp.
872.3330 ..	Preformed crown.
872.3350 ..	Gold or stainless steel cusp.
872.3360 ..	Preformed cusp.
872.3410 ..	Ethylene oxide homopolymer and/or carboxymethylcellulose sodium denture adhesive.
872.3450 ..	Ethylene oxide homopolymer and/or karaya adhesive.
872.3490 ..	Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.
872.3520 ..	OTC denture cleanser.
872.3530 ..	Mechanical dental cleaner.
872.3580 ..	Preformed gold denture tooth.
872.3670 ..	Resin impression tray material.
872.3740 ..	Retentive and splinting pin.
872.3810 ..	Root canal post.
872.3900 ..	Posterior artificial tooth with a metal insert.
872.3910 ..	Backing and facing for an artificial tooth.
872.4130 ..	Intraoral dental drill.
872.4535 ..	Dental diamond instrument.
872.4620 ..	Fiber optic dental light.
872.4730 ..	Dental injecting needle.
872.5410 ..	Orthodontic appliances and accessories.
872.5525 ..	Preformed tooth positioner.
872.5550 ..	Solid teething ring (CPSC regulates if no medical claims).
872.6030 ..	Oral cavity abrasive polishing agent.
872.6100 ..	Anesthetic warmer.
872.6140 ..	Articulation paper.
872.6250 ..	Dental chair and accessories.
872.6300 ..	Rubber dam and accessories.
872.6475 ..	Heat source for bleaching teeth.
872.6510 ..	Oral irrigation unit.
872.6640 ..	Dental operative unit and accessories.
872.6865 ..	Powered toothbrush.
872.6890 ..	Intraoral dental wax.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 8 above. The proposed exemption for the dental chair and accessories (§ 872.6250) is limited and would apply only to products not containing an operative unit. The proposed exemption for the rubber dam and accessories (§ 872.6300) is also limited and would apply only to the accessories, i.e., the rubber dam clamp, the rubber dam frame and forceps for the clamp. Finally, the proposed exemption for the dental operative unit and accessories (§ 872.6640) is limited and would apply only to the accessories tray to the dental operative unit.

TABLE 9.—EAR, NOSE, AND THROAT DEVICES

Section	Device
874.3375 ..	Battery-powered artificial larynx.
874.4750 ..	Laryngostroboscope.
874.5220 ..	Ear, nose, and throat drug administration device.
874.5800 ..	External nasal splint.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 9 above.

TABLE 10.—GASTROENTEROLOGY-UROLOGY DEVICES

Section	Device
876.5970 ..	Hernia support.

FDA is proposing to grant an exemption from the requirement of premarket notification for the device in Table 10 above.

TABLE 11.—GENERAL AND PLASTIC SURGERY DEVICES

Section	Device
878.1800 ..	Speculum and accessories.
878.3750 ..	External prosthesis adhesive.
878.3800 ..	External aesthetic restoration prosthesis.
878.3900 ..	Inflatable extremity splint.
878.4100 ..	Organ bag.
878.4380 ..	Drape adhesive.
878.4440 ..	Eye pad.
878.4470 ..	Surgeon's gloving cream.
878.4635 ..	Ultraviolet lamp for tanning.
878.4660 ..	Skin marker.
878.4700 ..	Surgical microscope and accessories.
878.4730 ..	Surgical skin degreaser/adhesive solvent.
878.4800 ..	Manual surgical instrument for general use.
878.4930 ..	Suture retention device.
878.4950 ..	Manual operating table and accessories and manual operating chair and accessories.
878.5900 ..	Non-pneumatic tourniquet.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 11 above. However, the proposed exemption for the organ bag

and accessories (§ 872.6300) is also limited and would apply only to the accessories, i.e., the rubber dam clamp, the rubber dam frame and forceps for the clamp. Finally, the proposed exemption for the dental operative unit and accessories (§ 872.6640) is limited and would apply only to the accessories tray to the dental operative unit.

TABLE 9.—EAR, NOSE, AND THROAT DEVICES

Section	Device
874.3375 ..	Battery-powered artificial larynx.
874.4750 ..	Laryngostroboscope.
874.5220 ..	Ear, nose, and throat drug administration device.
874.5800 ..	External nasal splint.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 9 above.

TABLE 10.—GASTROENTEROLOGY-UROLOGY DEVICES

Section	Device
876.5970 ..	Hernia support.

FDA is proposing to grant an exemption from the requirement of premarket notification for the device in Table 10 above.

TABLE 11.—GENERAL AND PLASTIC SURGERY DEVICES

Section	Device
878.1800 ..	Speculum and accessories.
878.3750 ..	External prosthesis adhesive.
878.3800 ..	External aesthetic restoration prosthesis.
878.3900 ..	Inflatable extremity splint.
878.4100 ..	Organ bag.
878.4380 ..	Drape adhesive.
878.4440 ..	Eye pad.
878.4470 ..	Surgeon's gloving cream.
878.4635 ..	Ultraviolet lamp for tanning.
878.4660 ..	Skin marker.
878.4700 ..	Surgical microscope and accessories.
878.4730 ..	Surgical skin degreaser/adhesive solvent.
878.4800 ..	Manual surgical instrument for general use.
878.4930 ..	Suture retention device.
878.4950 ..	Manual operating table and accessories and manual operating chair and accessories.
878.5900 ..	Non-pneumatic tourniquet.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 11 above. However, the proposed exemption for the organ bag (§ 878.4100) is limited and would apply only to intestinal organ bags.

TABLE 12.—GENERAL HOSPITAL AND PERSONAL USE DEVICES

Section	Device
880.2400 ..	Bed patient monitor.
880.2720 ..	Patient scale.
880.5180 ..	Burn sheet.
880.5210 ..	Intravascular catheter securement device.
880.5240 ..	Medical adhesive tape and adhesive bandage.
880.5630 ..	Nipple shield.
880.5740 ..	Suction snakebite kit.
880.5780 ..	Medical support stocking
880.5950 ..	Umbilical occlusion device.
880.6060 ..	Medical disposable bedding.
880.6150 ..	Ultrasonic cleaner for medical instruments.
880.6190 ..	Mattress cover for medical purposes.
880.6900 ..	Hand-carried stretcher.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 12 above.

TABLE 13.—NEUROLOGICAL DEVICES

Section	Device
882.1430 ..	Electroencephalograph test signal generator.
882.1700 ..	Percussor.
882.1925 ..	Ultrasonic scanner calibration test block.
882.4030 ..	Skull plate anvil.
882.4125 ..	Neurosurgical chair.
882.4190 ..	Clip forming/cutting instrument.
882.4200 ..	Clip removal instrument.
882.4215 ..	Clip rack.
882.4440 ..	Neurosurgical headrest.
882.4500 ..	Cranioplasty material forming instrument.
882.4525 ..	Microsurgical instrument.
882.4535 ..	Nonpowered neurosurgical instrument.
882.4600 ..	Leukotome.
882.4900 ..	Skullplate screwdriver.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 13 above.

TABLE 14.—Ophthalmic Devices

Section	Device
886.1040 ..	Ocular esthesiometer.
886.1050 ..	Adaptometer (biophotometer).
886.1070 ..	Anomaloscope.
886.1090 ..	Haidlinger brush.
886.1140 ..	Ophthalmic chair.
886.1160 ..	Color vision plate illuminator.
886.1250 ..	Euthyscope.
886.1290 ..	Fixation device.
886.1340 ..	Haploscope.
886.1350 ..	Keratoscope.
886.1425 ..	Lens measuring instrument.

TABLE 14.—Ophthalmic Devices—Continued

Section	Device
886.1430 ..	Ophthalmic contact lens radius measuring device.
886.1435 ..	Maxwell spot.
886.1450 ..	Corneal radius measuring device.
886.1660 ..	Gonioscopic prism.
886.1680 ..	Ophthalmic projector.
886.1690 ..	Pupillograph.
886.1700 ..	Pupillometer.
886.1810 ..	Tangent screen (campimeter).
886.1860 ..	Ophthalmic instrument stand.
886.1870 ..	Stereoscope.
886.1910 ..	Spectacle dissociation test system.
886.1945 ..	Transilluminator.
886.4250 ..	Ophthalmic electrolysis unit.
886.4350 ..	Manual ophthalmic surgical instrument.
886.4360 ..	Ocular surgery irrigation device.
886.4570 ..	Ophthalmic surgical marker.
886.4750 ..	Ophthalmic eye shield.
886.4855 ..	Ophthalmic instrument table.
886.5820 ..	Closed-circuit television reading system.
886.5840 ..	Magnifying spectacles.
886.5842 ..	Spectacle frame.
886.5844 ..	Prescription spectacle lens.
886.5850 ..	Sunglasses (nonprescription).
886.5900 ..	Electronic vision aid.
886.5915 ..	Optical vision aid.

FDA is proposing to grant exemption from the requirement of premarket notification for each of the devices in Table 14 above. The proposed exemption for the keratoscope (§ 886.1350) and for the corneal radius measuring device (§ 886.1450) is limited and does not include topographers. Additionally, the proposed exemption for the ophthalmic chair (§ 886.1140), keratoscope (§ 886.1350), pupillometer (§ 886.1700), tangent screen (§ 886.1810), ophthalmic instrument stand (§ 886.1860), stereoscope (§ 886.1870), spectacle dissociation test system (§ 886.1910), ophthalmic instrument table (§ 886.4855), and optical vision aid (§ 886.5915) would apply to alternating current (AC)-powered devices. The proposed exemption for nonprescription sunglasses (§ 886.5850) is limited and applies only to sunglasses which: (1) Transmit less than 1.0 percent UV–B radiation, (2) transmit less than 5.0 percent UV–A radiation, (3) meet impact resistance (21 CFR 801.410), (4) are made with nonflammable materials, and (5) limit claims to reduction of the risk of age-related cataracts, and/or photokeratitis. The proposed exemption for the euthyscope (§ 886.1250), transilluminator (§ 886.1945) and ophthalmic electrolysis unit (§ 886.4250) is limited and would apply

only to battery-powered devices (AC-powered devices are class II devices).

TABLE 15.—ORTHOPEDIC DEVICES

Section	Device
888.4200 ..	Cement dispenser.
888.4210 ..	Cement mixer for clinical use.
888.4230 ..	Cement ventilation tube.
888.4540 ..	Orthopedic manual surgical instrument.
888.5940 ..	Cast components.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 15 above.

TABLE 16.—PHYSICAL MEDICINE DEVICES

Section	Device
890.1175 ..	Electrode cable.
890.3100 ..	Mechanical chair.
890.3750 ..	Mechanical table.
890.3920 ..	Wheelchair component.
890.3940 ..	Wheelchair platform scale.
890.5765 ..	Pressure-applying device.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 16 above.

TABLE 17.—RADIOLOGY DEVICES

Section	Device
892.1130 ..	Nuclear whole body counter.
892.1350 ..	Nuclear scanning bed.
892.1640 ..	Radiographic film marking system.
892.5740 ..	Radionuclide teletherapy source.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 17 above. The proposed exemption for the nuclear scanning bed (§ 892.1350) is limited and would apply only if the device is labeled with weight limit, is used with planar scanning only, and is not for diagnostic X-ray use.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a proposal on small entities. Because this proposal would reduce a regulatory burden by exempting manufacturers of devices subject to the rule from the requirements of premarket notification, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Request for Comments

Interested persons may, on or before October 19, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Parts 862, 868, 870, 872, 874, 876, 878, 880, 882, 888, and 890

Medical devices.

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 886, 888, 890, and 892 be amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 862.2270 is amended by revising paragraph (b) to read as follows:

§ 862.2270 Thin-layer chromatography system for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. Particular components of TLC systems, i.e., the thin-layer chromatography apparatus, TLC atomizer, TLC developing tanks, and TLC ultraviolet light, are also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

3. Section 862.2310 is amended by revising paragraph (b) to read as follows:

§ 862.2310 Clinical sample concentrator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

4. Section 862.2320 is amended by revising paragraph (b) to read as follows:

§ 862.2320 Beta and gamma counter for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

5. Section 862.2485 is amended by revising paragraph (b) to read as follows:

§ 862.2485 Electrophoresis apparatus for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

6. Section 862.2720 is amended by revising paragraph (b) to read as follows:

§ 862.2720 Plasma oncometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

7. Section 862.2800 is amended by revising paragraph (b) to read as follows:

§ 862.2800 Refractometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

8. Section 862.2920 is amended by revising paragraph (b) to read as follows:

§ 862.2920 Plasma viscometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

9. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

10. Section 864.2280 is amended by revising paragraph (b) to read as follows:

§ 864.2280 Cultured animal and human cells.

* * * * *

(b) *Classification.* Class I. The devices are exempt from the premarket

§ 862.2485 Electrophoresis apparatus for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

6. Section 862.2720 is amended by revising paragraph (b) to read as follows:

§ 862.2720 Plasma oncometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

7. Section 862.2800 is amended by revising paragraph (b) to read as follows:

§ 862.2800 Refractometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

8. Section 862.2920 is amended by revising paragraph (b) to read as follows:

§ 862.2920 Plasma viscometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the products are intended for general use, make no specific claims, and only if labeling follows the format in § 809.10 of this chapter.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

9. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

10. Section 864.2280 is amended by revising paragraph (b) to read as follows:

§ 864.2280 Cultured animal and human cells.

* * * * *

(b) *Classification.* Class I. The devices are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

11. Section 864.5350 is amended by revising paragraph (b) to read as follows:

§ 864.5350 Microsedimentation centrifuge.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

12. Section 864.7660 is amended by revising paragraph (b) to read as follows:

§ 864.7660 Leukocyte alkaline phosphatase test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

13. Section 864.7675 is amended by revising paragraph (b) to read as follows:

§ 864.7675 Leukocyte peroxidase test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

14. Section 864.7900 is amended by revising paragraph (b) to read as follows:

§ 864.7900 Thromboplastin generation test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

15. Section 864.8500 is amended by revising paragraph (b) to read as follows:

§ 864.8500 Lymphocyte separation medium.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

16. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

17. Section 866.5170 is amended by revising paragraph (b) to read as follows:

§ 866.5170 Breast milk immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

18. Section 866.5220 is amended by revising paragraph (b) to read as follows:

§ 866.5220 Cohn fraction II immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

19. Section 866.5230 is amended by revising paragraph (b) to read as follows:

§ 866.5230 Colostrum immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

20. Section 866.5360 is amended by revising paragraph (b) to read as follows:

§ 866.5360 Cohn fraction IV immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

21. Section 866.5370 is amended by revising paragraph (b) to read as follows:

§ 866.5370 Cohn fraction V immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

22. Section 866.5540 is amended by revising paragraph (b) to read as follows:

§ 866.5540 Immunoglobin G (Fd fragment specific) immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

23. Section 866.5570 is amended by revising paragraph (b) to read as follows:

§ 866.5570 Lactoferrin immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

24. Section 866.5700 is amended by revising paragraph (b) to read as follows:

§ 866.5700 Whole human plasma of serum immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 868—ANESTHESIOLOGY DEVICES

25. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

26. Section 868.5340 is amended by revising paragraph (b) to read as follows:

§ 868.5340 Nasal oxygen cannula.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

27. Section 868.5350 is amended by revising paragraph (b) to read as follows:

§ 868.5350 Nasal oxygen catheter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

28. Section 868.5620 is amended by revising paragraph (b) to read as follows:

§ 868.5620 Breathing mouthpiece.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

29. Section 868.5675 is amended by revising paragraph (b) to read as follows:

§ 868.5675 Rebreathing device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

30. Section 868.5700 is amended by revising paragraph (b) to read as follows:

§ 868.5700 Nonpowered oxygen tent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 870—CARDIOVASCULAR DEVICES

31. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

32. Section 870.1875 is amended by revising paragraph (a)(2) to read as follows:

§ 870.1875 Stethoscope.

(a) * * *

(2) *Classification.* Class I. The mechanical stethoscope, the manual stethoscope and the direct (acoustic) stethoscope are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

* * * * *

PART 872—DENTAL DEVICES

33. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

34. Section 872.1500 is amended by revising paragraph (b) to read as follows:

§ 872.1500 Gingival fluid measurer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

35. Section 872.1820 is amended by revising paragraph (b) to read as follows:

§ 872.1820 Dental X-ray exposure alignment device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

36. Section 872.3100 is amended by revising paragraph (b) to read as follows:

§ 872.3100 Dental amalgamator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

37. Section 872.3130 is amended by revising paragraph (b) to read as follows:

§ 872.3130 Preformed anchor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

38. Section 872.3165 is amended by revising paragraph (b) to read as follows:

§ 872.3165 Precision attachment.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

39. Section 872.3240 is amended by revising paragraph (b) to read as follows:

§ 872.3240 Dental bur.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807.

40. Section 872.3285 is amended by revising paragraph (b) to read as follows:

§ 872.3285 Preformed clasp.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

41. Section 872.3330 is amended by revising paragraph (b) to read as follows:

§ 872.3330 Preformed crown.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

42. Section 872.3350 is amended by revising paragraph (b) to read as follows:

§ 872.3350 Gold or stainless steel cusp.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

43. Section 872.3360 is amended by revising paragraph (b) to read as follows:

§ 872.3360 Preformed cusp.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

44. Section 872.3410 is amended by revising paragraph (b) to read as follows:

§ 872.3410 Ethylene oxide homopolymer and/or carboxymethylcellulose sodium denture adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

45. Section 872.3450 is amended by revising paragraph (b) to read as follows:

§ 872.3450 Ethylene oxide homopolymer and/or karaya adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

46. Section 872.3490 is amended by revising paragraph (b) to read as follows:

§ 872.3490 Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

47. Section 872.3520 is amended by revising paragraph (b) to read as follows:

§ 872.3520 OTC denture cleanser.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

48. Section 872.3530 is amended by revising paragraph (b) to read as follows:

§ 872.3530 Mechanical dental cleaner.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

49. Section 872.3580 is amended by revising paragraph (b) to read as follows:

§ 872.3580 Preformed gold denture tooth.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

50. Section 872.3670 is amended by revising paragraph (b) to read as follows:

§ 872.3670 Resin impression tray material.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

51. Section 872.3740 is amended by revising paragraph (b) to read as follows:

§ 872.3740 Retentive and splinting pin.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

52. Section 872.3810 is amended by revising paragraph (b) to read as follows:

§ 872.3810 Root canal post.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

§ 872.3490 Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

47. Section 872.3520 is amended by revising paragraph (b) to read as follows:

§ 872.3520 OTC denture cleanser.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

48. Section 872.3530 is amended by revising paragraph (b) to read as follows:

§ 872.3530 Mechanical dental cleaner.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

49. Section 872.3580 is amended by revising paragraph (b) to read as follows:

§ 872.3580 Preformed gold denture tooth.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

50. Section 872.3670 is amended by revising paragraph (b) to read as follows:

§ 872.3670 Resin impression tray material.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

51. Section 872.3740 is amended by revising paragraph (b) to read as follows:

§ 872.3740 Retentive and splinting pin.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

52. Section 872.3810 is amended by revising paragraph (b) to read as follows:

§ 872.3810 Root canal post.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

53. Section 872.3900 is amended by revising paragraph (b) to read as follows:

§ 872.3900 Posterior artificial tooth with a metal insert.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

54. Section 872.3910 is amended by revising paragraph (b) to read as follows:

§ 872.3910 Backing and facing for an artificial tooth.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

55. Section 872.4130 is amended by revising paragraph (b) to read as follows:

§ 872.4130 Intraoral dental drill.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

56. Section 872.4535 is amended by revising paragraph (b) to read as follows:

§ 872.4535 Dental diamond instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

57. Section 872.4620 is amended by revising paragraph (b) to read as follows:

§ 872.4620 Fiber optic dental light.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

58. Section 872.4730 is amended by revising paragraph (b) to read as follows:

§ 872.4730 Dental injecting needle.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

59. Section 872.5410 is amended by revising paragraph (b) to read as follows:

§ 872.5410 Orthodontic appliance and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

60. Section 872.5525 is amended by revising paragraph (b) to read as follows:

§ 872.5525 Preformed tooth positioner.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

61. Section 872.5550 is amended by revising paragraph (b)(1) to read as follows:

§ 872.5550 Teething ring.

* * * * *

(b)(1) *Classification.* Class I if the teething ring does not contain a fluid, such as water. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

* * * * *

62. Section 872.6030 is amended by revising paragraph (b) to read as follows:

§ 872.6030 Oral cavity abrasive polishing agent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

63. Section 872.6100 is amended by revising paragraph (b) to read as follows:

§ 872.6100 Anesthetic warmer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

64. Section 872.6140 is amended by revising paragraph (b) to read as follows:

§ 872.6140 Articulation paper.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

65. Section 872.6250 is amended by revising paragraph (b) to read as follows:

§ 872.6250 Dental chair and accessories.

* * * * *

(b) *Classification.* Class I. The dental chair without the operative unit device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

66. Section 872.6300 is amended by revising paragraph (b) to read as follows:

§ 872.6300 Rubber dam and accessories.

* * * * *

(b) *Classification.* Class I. The accessories to the device, i.e., rubber

dam clamp, rubber dam frame and forceps for a rubber dam clamp, are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

67. Section 872.6475 is amended by revising paragraph (b) to read as follows:

§ 872.6475 Heat source for bleaching teeth.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

68. Section 872.6510 is amended by revising paragraph (b) to read as follows:

§ 872.6510 Oral irrigation unit.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

69. Section 872.6640 is amended by revising paragraph (b) to read as follows:

§ 872.6640 Dental operative unit and accessories.

* * * * *

(b) *Classification.* Class I. The accessories tray to the dental operative unit is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

70. Section 872.6865 is amended by revising paragraph (b) to read as follows:

§ 872.6865 Powered toothbrush.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

71. Section 872.6890 is amended by revising paragraph (b) to read as follows:

§ 872.6890 Intraoral dental wax.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 874—EAR, NOSE, AND THROAT DEVICES

72. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

73. Section 874.3375 is amended by revising paragraph (b) to read as follows:

§ 874.3375 Battery-powered artificial larynx.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

74. Section 874.4750 is amended by revising paragraph (b) to read as follows:

§ 874.4750 Laryngostroboscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

75. Section 874.5220 is amended by revising paragraph (b) to read as follows:

§ 874.5220 Ear, nose, and throat drug administration device.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

76. Section 874.5800 is amended by revising paragraph (b) to read as follows:

§ 874.5800 External nasal splint.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

77. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

78. Section 876.5970 is amended by revising paragraph (b) to read as follows:

§ 876.5970 Hernia support.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

79. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 3601, 371).

80. Section 878.1800 is amended by revising paragraph (b) to read as follows:

§ 878.1800 Speculum and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

81. Section 878.3750 is amended by revising paragraph (b) to read as follows:

§ 878.3750 External prosthesis adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

82. Section 878.3800 is amended by revising paragraph (b) to read as follows:

§ 878.3800 External aesthetic restoration prosthesis.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is intended for use without an external prosthesis adhesive to fasten it to the body, the device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

83. Section 878.3900 is amended by revising paragraph (b) to read as follows:

§ 878.3900 Inflatable extremity splint.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

84. Section 878.4100 is amended by revising paragraph (b) to read as follows:

§ 878.4100 Organ bag.

* * * * *

(b) *Classification.* Class I. The intestinal organ bag device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

85. Section 878.4380 is amended by revising paragraph (b) to read as follows:

§ 878.4380 Drape adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

86. Section 878.4440 is amended by revising paragraph (b) to read as follows:

§ 878.4440 Eye pad.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

87. Section 878.4470 is amended by revising paragraph (b) to read as follows:

§ 878.4470 Surgeon's gloving cream.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

88. Section 878.4635 is amended by revising paragraph (b) to read as follows:

§ 878.4635 Ultraviolet lamp for tanning.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

89. Section 878.4660 is amended by revising paragraph (b) to read as follows:

§ 878.4660 Skin marker.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

90. Section 878.4700 is amended by revising paragraph (b) to read as follows:

§ 878.4700 Surgical microscope and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

91. Section 878.4730 is amended by revising paragraph (b) to read as follows:

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

84. Section 878.4100 is amended by revising paragraph (b) to read as follows:

§ 878.4100 Organ bag.

* * * * *

(b) *Classification.* Class I. The intestinal organ bag device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

85. Section 878.4380 is amended by revising paragraph (b) to read as follows:

§ 878.4380 Drape adhesive.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

86. Section 878.4440 is amended by revising paragraph (b) to read as follows:

§ 878.4440 Eye pad.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

87. Section 878.4470 is amended by revising paragraph (b) to read as follows:

§ 878.4470 Surgeon's gloving cream.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

88. Section 878.4635 is amended by revising paragraph (b) to read as follows:

§ 878.4635 Ultraviolet lamp for tanning.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

89. Section 878.4660 is amended by revising paragraph (b) to read as follows:

§ 878.4660 Skin marker.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

90. Section 878.4700 is amended by revising paragraph (b) to read as follows:

§ 878.4700 Surgical microscope and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

91. Section 878.4730 is amended by revising paragraph (b) to read as follows:

§ 878.4730 Surgical skin degreaser or adhesive tape solvent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

92. Section 878.4800 is amended by revising paragraph (b) to read as follows:

§ 878.4800 Manual surgical instrument for general use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

93. Section 878.4930 is amended by revising paragraph (b) to read as follows:

§ 878.4930 Suture retention device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

94. Section 878.4950 is amended by revising paragraph (b) to read as follows:

§ 878.4950 Manual operating table and accessories and manual operating chair and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

95. Section 878.5900 is amended by revising paragraph (b) to read as follows:

§ 878.5900 Nonpneumatic tourniquet.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

96. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

97. Section 880.2400 is amended by revising paragraph (b) to read as follows:

§ 880.2400 Bed-patient monitor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

98. Section 880.2720 is amended by revising paragraph (b)(1) to read as follows:

§ 880.2720 Patient scale.

* * * * *

(b) *Classification.* (1) Class I for a mechanical or battery powered patient scale. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

99. Section 880.5180 is amended by revising paragraph (b) to read as follows:

§ 880.5180 Burn sheet.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

100. Section 880.5210 is amended by revising paragraph (b) to read as follows:

§ 880.5210 Intravascular catheter securement device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

101. Section 880.5240 is amended by revising paragraph (b) to read as follows:

§ 880.5240 Medical adhesive tape and adhesive bandage.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

102. Section 880.5630 is amended by revising paragraph (b) to read as follows:

§ 880.5630 Nipple shield.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

103. Section 880.5740 is amended by revising paragraph (b) to read as follows:

§ 880.5740 Suction anabobite kit.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

104. Section 880.5780 is amended by revising paragraph (b)(2) to read as follows:

§ 880.5780 Medical support stocking.

* * * * *

(b) * * *

(2) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

105. Section 880.5950 is amended by revising paragraph (b) to read as follows:

§ 880.5950 Umbilical occlusion device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

106. Section 880.6060 is amended by revising paragraph (b) to read as follows:

§ 880.6060 Medical disposable bedding.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

107. Section 880.6150 is amended by revising paragraph (b) to read as follows:

§ 880.6150 Ultrasonic cleaner for medical instruments.

* * * * *

(b) *Classification.* Class I. The device, including any solutions intended for use with the device for cleaning and sanitizing the instruments, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

108. Section 880.6190 is amended by revising paragraph (b) to read as follows:

§ 880.6190 Mattress cover for medical purposes.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

109. Section 880.6900 is amended by revising paragraph (b) to read as follows:

§ 880.6900 Hand-carried stretcher.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 882—NEUROLOGICAL DEVICES

110. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

111. Section 882.1430 is amended by revising paragraph (b) to read as follows:

§ 882.1430 Electroencephalograph test signal generator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

112. Section 882.1700 is amended by revising paragraph (b) to read as follows:

§ 882.1700 Percussor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

113. Section 882.1925 is amended by revising paragraph (b) to read as follows:

§ 882.1925 Ultrasonic scanner calibration test block.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

114. Section 882.4030 is amended by revising paragraph (b) to read as follows:

§ 882.4030 Skull plate anvil.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

115. Section 882.4125 is amended by revising paragraph (b) to read as follows:

§ 882.4125 Neurosurgical chair.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

116. Section 882.4190 is amended by revising paragraph (b) to read as follows:

§ 882.4190 Clip forming/cutting instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

117. Section 882.4200 is amended by revising paragraph (b) to read as follows:

§ 882.4200 Clip removal instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

118. Section 882.4215 is amended by revising paragraph (b) to read as follows:

§ 882.4215 Clip rack.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

119. Section 882.4440 is amended by revising paragraph (b) to read as follows:

§ 882.4440 Neurosurgical headrest.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

120. Section 882.4500 is amended by revising paragraph (b) to read as follows:

§ 882.4500 Cranioplasty material forming instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

121. Section 882.4525 is amended by revising paragraph (b) to read as follows:

§ 882.4525 Microsurgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

122. Section 882.4535 is amended by revising paragraph (b) to read as follows:

§ 882.4535 Nonpowered neurosurgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

123. Section 882.4600 is amended by revising paragraph (b) to read as follows:

§ 882.4600 Leukotome.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

124. Section 882.4900 is amended by revising paragraph (b) to read as follows:

§ 882.4900 Skullplate screwdriver.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 886—OPHTHALMIC DEVICES

125. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

126. Section 886.1040 is amended by revising paragraph (b) to read as follows:

§ 886.1040 Ocular esthesiometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

127. Section 886.1050 is amended by revising paragraph (b) to read as follows:

§ 886.1050 Adaptometer (biophotometer).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

128. Section 886.1070 is amended by revising paragraph (b) to read as follows:

§ 886.1070 Anomaloscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

129. Section 886.1090 is amended by revising paragraph (b) to read as follows:

§ 886.1090 Haidlinger brush.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

130. Section 886.1140 is amended by revising paragraph (b) to read as follows:

§ 886.1140 Ophthalmic chair.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the manual device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The manual device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to

notification procedures in subpart E of part 807 of this chapter.

124. Section 882.4900 is amended by revising paragraph (b) to read as follows:

§ 882.4900 Skullplate screwdriver.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 886—OPHTHALMIC DEVICES

125. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

126. Section 886.1040 is amended by revising paragraph (b) to read as follows:

§ 886.1040 Ocular esthesiometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

127. Section 886.1050 is amended by revising paragraph (b) to read as follows:

§ 886.1050 Adaptometer (biophotometer).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

128. Section 886.1070 is amended by revising paragraph (b) to read as follows:

§ 886.1070 Anomaloscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

129. Section 886.1090 is amended by revising paragraph (b) to read as follows:

§ 886.1090 Haidlinger brush.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

130. Section 886.1140 is amended by revising paragraph (b) to read as follows:

§ 886.1140 Ophthalmic chair.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the manual device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The manual device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

131. Section 886.1160 is amended by revising paragraph (b) to read as follows:

§ 886.1160 Color vision plate illuminator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

132. Section 886.1250 is amended by revising paragraph (b) to read as follows:

§ 886.1250 Euthyscope.

* * * * *

(b) *Classification.* Class I for the battery powered device. The battery powered device is exempt from premarket notification procedures in subpart E of part 807 of this chapter. Class II for the AC-powered device.

133. Section 886.1290 is amended by revising paragraph (b) to read as follows:

§ 886.1290 Fixation device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

134. Section 886.1340 is amended by revising paragraph (b) to read as follows:

§ 886.1340 Haploscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

135. Section 886.1350 is amended by revising paragraph (b) to read as follows:

§ 886.1350 Keratoscope.

* * * * *

(b) *Classification.* Class I. The AC-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device does not include computer software in the unit or topographers. The battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

136. Section 886.1425 is amended by revising paragraph (b) to read as follows:

§ 886.1425 Lens measuring instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

137. Section 886.1430 is amended by revising paragraph (b) to read as follows:

§ 886.1430 Ophthalmic contact lens radius measuring device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

138. Section 886.1435 is amended by revising paragraph (b) to read as follows:

§ 886.1435 Maxwell spot.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

139. Section 886.1450 is amended by revising paragraph (b) to read as follows:

§ 886.1450 Corneal radius measuring device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device does not include computer software in the unit or topographers.

140. Section 886.1660 is amended by revising paragraph (b) to read as follows:

§ 886.1660 Gonioscopic prism.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

141. Section 886.1680 is amended by revising paragraph (b) to read as follows:

§ 886.1680 Ophthalmic projector.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

142. Section 886.1690 is amended by revising paragraph (b) to read as follows:

§ 886.1690 Pupillograph.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

143. Section 886.1700 is amended by revising paragraph (b) to read as follows:

§ 886.1700 Pupillometer.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the manual device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The manual

device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

144. Section 886.1810 is amended by revising paragraph (b) to read as follows:

§ 886.1810 Tangent screen (campimeter).

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

145. Section 886.1860 is amended by revising paragraph (b) to read as follows:

§ 886.1860 Ophthalmic instrument stand.

(b) *Classification.* Class I. The AC-powered device and the battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

146. Section 886.1870 is amended by revising paragraph (b) to read as follows:

§ 886.1870 Stereoscope.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

147. Section 886.1910 is amended by revising paragraph (b) to read as follows:

§ 886.1910 Spectacle dissociation test system.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

148. Section 886.1945 is amended by revising paragraph (b) to read as follows:

§ 886.1945 Transilluminator.

* * * * *

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device. The battery-powered Class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

149. Section 886.4250 is amended by revising paragraph (b) to read as follows:

§ 886.4250 Ophthalmic electrolysis unit.

* * * * *

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device. The battery-powered Class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

150. Section 886.4350 is amended by revising paragraph (b) to read as follows:

§ 886.4350 Manual ophthalmic surgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

151. Section 886.4360 is amended by revising paragraph (b) to read as follows:

§ 886.4360 Ocular surgery irrigation device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

152. Section 886.4570 is amended by revising paragraph (b) to read as follows:

§ 886.4570 Ophthalmic surgical marker.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

153. Section 886.4750 is amended by revising paragraph (b) to read as follows:

§ 886.4750 Ophthalmic eye shield.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device also is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

154. Section 886.4855 is amended by revising paragraph (b) to read as follows:

§ 886.4855 Ophthalmic instrument table.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the manual device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The manual device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

155. Section 886.5820 is amended by revising paragraph (b) to read as follows:

§ 886.5820 Closed-circuit television reading system.

* * * * *

(b) *Classification.* Class I. The AC-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

156. Section 886.5840 is amended by revising paragraph (b) to read as follows:

§ 886.5840 Magnifying spectacles.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

157. Section 886.5842 is amended by revising paragraph (b) to read as follows:

§ 886.5842 Spectacle frame.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

158. Section 886.5844 is amended by revising paragraph (b) to read as follows:

§ 886.5844 Prescription spectacle lens.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

159. Section 886.5850 is amended by revising paragraph (b) to read as follows:

§ 886.5850 Sunglasses (nonprescription).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter and the exemption applies only to sunglasses which:

(1) Transmit less than 1.0 percent UV-B radiation;

(2) Transmit less than 5.0 percent UV-A radiation;

(3) Meet impact resistance (21 CFR 801.410);

(4) Use nonflammable materials; and

(5) Limit claims to reduction of the risk age-related cataracts and/or photokeratitis.

160. Section 886.5900 is amended by revising paragraph (b) to read as follows:

§ 886.5900 Electronic vision aid.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

161. Section 886.5915 is amended by revising paragraph (b) to read as follows:

§ 886.5915 Optical vision aid.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 888—ORTHOPEDIC DEVICES

162. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

163. Section 888.4200 is amended by revising paragraph (b) to read as follows:

§ 888.4200 Cement dispenser.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

164. Section 888.4210 is amended by revising paragraph (b) to read as follows:

§ 888.4210 Cement mixer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

165. Section 888.4230 is amended by revising paragraph (b) to read as follows:

§ 888.4230 Cement ventilation tube.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket

(1) Transmit less than 1.0 percent UV-B radiation;

(2) Transmit less than 5.0 percent UV-A radiation;

(3) Meet impact resistance (21 CFR 801.410);

(4) Use nonflammable materials; and

(5) Limit claims to reduction of the risk age-related cataracts and/or photokeratitis.

160. Section 886.5900 is amended by revising paragraph (b) to read as follows:

§ 886.5900 Electronic vision aid.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

161. Section 886.5915 is amended by revising paragraph (b) to read as follows:

§ 886.5915 Optical vision aid.

* * * * *

(b) *Classification.* Class I. The AC-powered device and the battery-powered device are exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The battery-powered device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 888—ORTHOPEDIC DEVICES

162. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

163. Section 888.4200 is amended by revising paragraph (b) to read as follows:

§ 888.4200 Cement dispenser.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

164. Section 888.4210 is amended by revising paragraph (b) to read as follows:

§ 888.4210 Cement mixer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

165. Section 888.4230 is amended by revising paragraph (b) to read as follows:

§ 888.4230 Cement ventilation tube.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

166. Section 888.4540 is amended by revising paragraph (b) to read as follows:

§ 888.4540 Orthopedic manual surgical instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

167. Section 888.5940 is amended by revising paragraph (b) to read as follows:

§ 888.5940 Cast component.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

PART 890—PHYSICAL MEDICINE DEVICES

168. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

169. Section 890.1175 is amended by revising paragraph (b) to read as follows:

§ 890.1175 Electrode cable.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The devices are also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

170. Section 890.3100 is amended by revising paragraph (b) to read as follows:

§ 890.3100 Mechanical chair.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

171. Section 890.3750 is amended by revising paragraph (b) to read as follows:

§ 890.3750 Mechanical table.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

172. Section 890.3920 is amended by revising paragraph (b) to read as follows:

§ 890.3920 Wheelchair component.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

173. Section 890.3940 is amended by revising paragraph (b) to read as follows.

§ 890.3940 Wheelchair platform scale.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

174. Section 890.5765 is amended by revising paragraph (b) to read as follows:

§ 890.5765 Pressure-applying device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 892—RADIOLOGY DEVICES

175. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

176. Section 892.1130 is amended by revising paragraph (b) to read as follows:

§ 892.1130 Nuclear whole body counter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

177. Section 892.1350 is amended by revising paragraph (b) to read as follows:

§ 892.1350 Nuclear scanning bed.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device is labeled with weight limit, is used with planar scanning only, and is not for diagnostic X-ray use.

178. Section 892.1640 is amended by revising paragraph (b) to read as follows:

§ 882.1640 Radiographic film marking system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

179. Section 892.5740 is amended by revising paragraph (b) to read as follows:

§ 892.5740 Radionuclide teletherapy source.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: July 15, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17705 Filed 7–18–94; 11:43 am]

BILLING CODE 4160–01–P

federal register

Thursday
July 21, 1994

Part VII

The President

Presidential Determination No. 94–34—Determination To Authorize the Furnishing of Emergency Military Assistance to the Dominican Republic Under the Foreign Assistance Act of 1961

Proclamation 6707—National Apollo Anniversary Observance

VOL
59
SS
139
JL
21
994
UMI

Federal Register
Vol. 59, No. 139
Thursday, July 21, 1994

Pr

Title 3—

The President

Bro

Nat

By

A P

Whe
to t
Prop
the
Apo
As
to
the

Tod
ca's
an
and

On
trad
the
that
com
still

By
spac
sola
to
the
opm
in s
post
have
the
insig
keep
blue

For
spac
and
your
mus
mati
expl
chil
as N
and
use
arou

Federal Register
Vol. 59, No. 139
Thursday, July 21, 1994

Presidential Documents

Title 3—

The President

Proclamation 6707 of July 19, 1994

National Apollo Anniversary Observance

By the President of the United States of America

A Proclamation

When John F. Kennedy called upon our Nation to join him in a journey to the unknown frontier of space, Americans eagerly accepted the challenge. Propelled by the fire that President Kennedy sparked in our imaginations, the pioneering scientists of our country's emerging space program sent the Apollo 11 astronauts on the greatest adventure humankind has ever known. As the first extraordinary images of the moon's surface were transmitted to Earth for all to see, we began to recognize, as never before, how far the human race had traveled—and how far we have yet to go.

Today, more than 30 years after President Kennedy's historic vision, America's gaze remains drawn to the heavens. Space exploration has become an integral part of our national character, capturing the spirit of optimism and adventure that has defined this country from its beginnings.

On this 25th anniversary of the historic Apollo mission to the moon, our tradition of bold discovery compels us to embrace the opportunities of the dawning 21st century. Although ours is a very different world than that of the 1960s—one of tightening resources and expanding international competition—our determination to meet the future with courage guides us still.

By advancing a program in robotic exploration using smaller, less costly spacecraft, we can further expand our understanding of the origins of our solar system and of the universe beyond it. By renewing our commitment to human space flight in concert with other nations, we can strengthen the bonds of international friendship, while fostering the technological development that holds the key to long-term economic growth. By investing in space transportation, we will ensure affordable access to space for our posterity. By supporting the communications and navigational systems that have maintained our Nation's security, we help to promote stability around the globe. By completing our "Mission to Planet Earth," we will gain unique insight into our planet's dynamic environment. We have one chance to keep our covenant with the generations to come—safeguarding the thin blue shield that sustains all of Earth's inhabitants.

For when our children see tomorrow's satellite image of our world from space, these are the visions we want them to see—visions of communication and cooperation, visions of permanence and peace. We must empower our young people to venture farther into the limitless frontier of space. We must encourage them to recognize the vast possibilities of science and mathematics, instilling in their generation the same faith in self that enabled explorers of our generation to stand on the soil of another world. Today's children do not, of course, remember the way the world held its breath as Neil Armstrong took his "one small step." But they do see the magic and enjoy the benefits of that journey every day, from the computers they use in schools to the electronic highways that connect them to friends around the world.

As we celebrate this important anniversary, our eyes again turn to the horizon. We look to the future of new technologies that we may better provide for our people. We look to the atmospheres of distant worlds that we may better protect the life's breath of our own fragile planet. We aim toward the farthest reaches of our universe that we may better understand ourselves. These are the challenges that await us. Today, let us chart a course to meet them.

In recognition of our achievements, the Congress, by Senate Joint Resolution 187, has designated July 16 through July 24, 1994, as "National Apollo Anniversary Observance," and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 16 through July 24, 1994, as National Apollo Anniversary Observance to be celebrated with appropriate ceremonies and activities. I also call upon the people of the United States to observe this occasion by honoring the Apollo 11 mission and all of the men and women who have served in our Nation's space program.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of July, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-17988
Filed 7-20-94; 10:29 am]
Billing code 3195-01-P

Editorial note: For the President's remarks commemorating the twenty-fifth anniversary of the Apollo 11 mission, see issue 29 of the *Weekly Compilation of Presidential Documents.*

Pre

Pres

Dete
Mili
Fore

Mem

Purs
Assis
herel

(1)
assis

(2)
Arms

There
articl
of th
Dom

The
to th

THE
Wash

[FR Doc. 94-17995
Filed 7-20-94; 11:14 am]
Billing code 4710-10-M

Editori
of Pres
supers
FR 371

Presidential Documents

Presidential Determination No. 94–34 of July 15, 1994

Determination To Authorize the Furnishing of Emergency Military Assistance to the Dominican Republic Under the Foreign Assistance Act of 1961

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the "Act"), I hereby determine that:

(1) an unforeseen emergency exists, which requires immediate military assistance to the Dominican Republic; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $15 million in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training to the Dominican Republic.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 15, 1994.

[FR Doc. 94–17995
Filed 7–20–94; 11:14 am]
Billing code 4710–10–M

Editorial note: The White House sent to the Office of the Federal Register a corrected version of Presidential Determination 94–34 of July 15, 1994. Publication of this corrected version supersedes the earlier version published in the **Federal Register** on July 20, 1994, at 59 FR 37149.

VOL
59
SS
1
39
JL
21
994
UMI

Reader Aids

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information
Public inspection announcement line
Corrections to published documents
Document drafting information
Machine readable documents

Code of Federal Regulations

Index, finding aids & general information
Printing schedules

Laws

Public Laws Update Service (numbers, dates, etc
Additional information

Presidential Documents

Executive orders and proclamations
Public Papers of the Presidents
Weekly Compilation of Presidential Documents

The United States Government Manual

General information

Other Services

Data base and machine readable specifications
Guide to Record Retention Requirements
Legal staff
Privacy Act Compilation
Public Laws Update Service (PLUS)
TDD for the hearing impaired

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public
numbers, **Federal Register** finding aids, and list o
documents on public inspection.

FAX-ON-DEMAND

The daily Federal Register Table of Contents and
documents on public inspection are available on
National Archives fax-on-demand system. You m
from a fax machine. There is no charge for the se
except for long distance telephone charges.

FEDERAL REGISTER PAGES AND DATES,

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11
35461–35606.....12
35607–35846.....13
35847–36016.....14
36017–36350.....15
36351–36690.....18
36691–36892.....19
36893–37152.....20
37153–37398.....21

Reader Aids

Federal Register

Vol. 59, No. 139

Thursday, July 21, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33897–34342.....1
34343–34552.....5
34553–34754.....6
34755–34966.....7
34967–35210.....8
35211–35460.....11
35461–35606.....12
35607–35846.....13
35847–36016.....14
36017–36350.....15
36351–36690.....18
36691–36892.....19
36893–37152.....20
37153–37398.....21

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
No. 94–29 of June 27, 1994.....35211
No. 94–30 of June 30, 1994.....35607
No. 94–31 of July 1, 1994.....35609
No. 94–33 of July 14, 1994.....37147
No. 94–34 of July 15, 1994 (Superseded by publication of July 21).....37149
No. 94–34 of July 15, 1994 (Supersedes publication of July 20).....37397
No. 94–36 of July 19, 1994.....37153
Memorandums.
June 30, 1994.....34341
July 11, 1994.....36017
Notice:
July 19, 1994.....37151
Proclamations:
6641 (See Proc. 6704).....34329
6704.....34329
6705.....34343
6706.....36893
6707.....37395
Executive Orders:
1919½ (Revoked in part by PLO 7065).....35054
12002 (See EO 12923).....34551
12214 (See EO 12923).....34551
12722 (Continued by Notice of July 19).....37151
12724 (Continued by Notice of July 19).....37151
12735 (See EO 12923).....34551
12755 (See EO 12923).....34551
12851 (See EO 12923).....34551
12901 (See USTR notice of July 15).....36234
12923.....34551

5 CFR

179.....35213, 35215
532.....36019, 36351
772.....36352
2610.....34755
2634.....34755
2636.....34755
2641.....34755
Proposed Rules:
575.....34393
3201.....35480

7 CFR

1.....36019
2.....36020
272.....34553
275.....34553
283.....34553
301.....35611
319.....35564
354.....35612
406.....35613
916.....33897
917.....33897
928.....33898
929.....36021
947.....33900
981.....35222, 35847
998.....36353
1205.....33901
1421.....34345
1755.....34353, 34899
Proposed Rules:
46.....35487
301.....36996
322.....36373
925.....36091
944.....36091
989.....36093
1030.....36094
1036.....33922
1106.....36095
1710.....36998

8 CFR

103.....33903
212.....35614
245.....33903
245a.....33903
264.....33903
274a.....33903
299.....35973
Proposed Rules:
204.....36729
214.....35866

9 CFR

77.....36691
78.....35615, 36023
92.....34375, 36021
97.....34756
Ch. III.....34375
Proposed Rules:
50.....36374
77.....36374
92.....36374
317.....34376
381.....35630

10 CFR

2 36026
170 36895
171 36895
30 36026
40 ..... 35618, 36026
50 35461
70 36026
72 ..... 35618, 36025
74 35618
75 35618
150 35618
710 35178

Proposed Rules:

Ch. I 36374
1003 34767

11 CFR

102 35785

12 CFR

701 36040
709 36040
745 36040
747 36040
790 36040
791 36040
792 36040
793 36040
794 36040

Proposed Rules:

220 33923
230 35271
336 35480

13 CFR

108 36042
120 36042
123 ..... 36042, 36045

14 CFR

21 34572
23 34572
39 ..... 34574, 34576, 34757, 34758, 34899, 34967, 35234, 35236, 35237, 35238, 35240, 35242, 35244, 35246, 35247, 36046, 36047, 36930, 36932, 37155
71 ..... 34577, 34758, 34759, 34760, 35248, 36050, 37156
73 36692
91 34578
97 ..... 35248, 35250
1209 35623
1260 36355

Proposed Rules:

Ch. I 35868
21 34779
23 35196
33 35272
39 ..... 34396, 34584, 35488, 35490, 36096, 36098, 36375, 36376, 36998, 37182, 37183, 37185
71 ..... 34192, 34585, 35492, 35869, 36099, 36100, 36730, 37187
73 37188
93 34192

16 CFR

2 34968
4 34968
305 34014

Proposed Rules:

Chapter II 35657

22 35661
300 34780
301 34780
303 34780
1117 33825
1307 35058
1500 ..... 33928, 33932

17 CFR

1 34376
33 34376
190 34376
228 36258
229 36258
230 36258
232 36262
259 36258

Proposed Rules:

1 37189
228 36264
229 36264
230 36264
232 36264
239 36264
240 ..... 34781, 36264
249 36264
250 36264
258 36264
260 36264
269 36264
270 36264
274 36264

18 CFR

284 35462

Proposed Rules:

35 35274

19 CFR

174 34970

Proposed Rules:

141 36102
142 36102

20 CFR

416 33906

Proposed Rules:

404 ..... 37000, 37002

21 CFR

5 35848
173 36935
341 36051
510 33908
520 ..... 33908, 35251
558 35251
1220 35252

Proposed Rules:

101 ..... 36379, 37190
102 36103
203 36107
205 36107
341 34781
862 37378
864 37378
866 37378
868 37378
870 37378
872 37378
874 37378
876 37378
878 37378
880 37378
882 37378
886 37378
888 37378
890 37378
892 37378

22 CFR

60 33909
61 33909
62 33909
63 33909
64 33909
65 33909
514 34760

23 CFR

655 33909
658 36051

Proposed Rules:

637 35493

24 CFR

17 34578
200 36692
583 36886
791 35253
813 36662
880 36616
881 36616
882 ..... 36616, 36662
883 36616
884 36616
885 36616
886 36616
887 36662
889 36616
904 36616
905 36616
906 36616
960 36616
982 36662
3280 34294

Proposed Rules:

43 34300
92 34300
100 34902
203 36846
570 34300
941 35834
982 36846
984 36846
3500 37360

25 CFR

Proposed Rules:

Ch. II 36108
164 35580
165 35580

26 CFR

1 ..... 34971, 35030, 35414, 36256, 36356, 36360
31 35414
40 35414
602 ..... 34971, 35030, 36356, 36360

Proposed Rules:

1 ..... 34398, 35066, 35418, 36114, 36394
31 35418
40 35418

27 CFR

5 35623

28 CFR

551 34742
571 35460

29 CFR

100 37157
1910 ..... 33910, 34580, 36695
1915 36695
1917 36695
1918 36695
1926 36695
1928 36695
2610 36054
2619 36055
2622 36054
2644 36055
2676 36055

Proposed Rules:

Ch. XXVII 35067
Ch. XL 35067
1915 34586

30 CFR

914 36059
938 36937
944 35255

Proposed Rules:

75 35071
Ch. II 36108
Ch. IV 36108
Ch. VI 36108
Ch. VII 36108
914 36114
920 35289
944 35871

31 CFR

51 35624
52 35624
550 35259

32 CFR

90 ..... 34382, 35463, 36367
91 ..... 34382, 35463, 36367
155 35464
369 35261
383 34382
384 35262
389 34382
552 ..... 34581, 34761
706 ..... 35033, 35849

Proposed Rules:

553 34782

33 CFR

1 36316
4 34210
26 36316
117 36062
130 34210
131 34210
132 34210
137 34210
138 34210
160 36316
161 36316
162 36316
164 36316
165 36316
334 35850

Proposed Rules:

80 37003
82 37003
84 37003
87 37003
88 37003
90 37003

165 ..... 35290, 35661
322 34783
334 33939

34 CFR

74 34722
77 34722
641 34198
668 ..... 34964, 36368
682 ..... 34964, 35624
685 34278
690 34964

Proposed Rules:

Ch. VI 34398

35 CFR

Proposed Rules:

133 36398
135 36398

36 CFR

242 36063
292 36866
704 35034

Proposed Rules:

Ch. I 36108

38 CFR

3 ..... 34382, 35265, 35464, 35851

Proposed Rules:

14 37008

39 CFR

111 33911
233 35851
262 37159
266 ..... 35825, 37199

Proposed Rules:

111 ..... 35873, 37011, 37190

40 CFR

9 ..... 33912, 34070
35 35852
52 ..... 33914, 34383, 35035, 35036, 35044, 35411, 36700, 37162
55 36065
61 36280
80 ..... 35854, 36944
81 35044
85 ..... 33912, 36969
86 ..... 33912, 36368
112 34070
141 34320
142 34320
180 ..... 35627, 35629
185 35629
186 35629

271 .....
300 .....
372 .....
600 .....

Proposed Rules:

Ch. 1 .....
51 .....
52 3394
35072, 350
36116, 361
36408, 367
60 .....
63 .....
81 .....
141 .....
143 .....
152 .....
174 .....
180 .....
185 .....
300 .....

42 CFR

51a .....
405 .....
412 .....
413 .....
414 .....
417 .....
418 .....
431 .....
434 .....
1003 .....

Proposed Rules:

57 .....
421 .....
440 .....
1001 .....

43 CFR

12 .....

Public Land Ord

7055 .....
7064 .....
7065 .....
7067 .....
7068 .....
7069 .....

Proposed Rules:

Ch. I .....
Ch. II .....
Subtitle A .....
2800 .....
2810 .....
2880 .....

44 CFR

64 .....
322 .....

165 ..... 35290, 35661
322 34783
334 33939

34 CFR

74 34722
77 34722
641 34198
668 ..... 34964, 36368
682 ..... 34964, 35624
685 34278
690 34964

Proposed Rules:

Ch. VI 34398

35 CFR

Proposed Rules:

133 36398
135 36398

36 CFR

242 36063
292 36866
704 35034

Proposed Rules:

Ch. I 36108

38 CFR

3 ..... 34382, 35265, 35464, 35851

Proposed Rules:

14 37008

39 CFR

111 33911
233 35851
262 37159
266 ..... 35625, 37199

Proposed Rules:

111 ..... 35873, 37011, 37190

40 CFR

9 ..... 33912, 34070
35 35852
52 ..... 33914, 34383, 35035, 35036, 35044, 35411, 36700, 37162
55 36065
61 36260
80 ..... 35854, 36944
81 35044
85 ..... 33912, 36969
86 ..... 33912, 36368
112 34070
141 34320
142 34320
180 ..... 35627, 35629
185 35629
186 35629
271 35266
300 35852
372 34396
600 33912

Proposed Rules:

Ch. I 33940
51 35292
52 ..... 33941, 34399, 34401, 35072, 35079, 35875, 35883, 36116, 36120, 36123, 36126, 36408, 36731, 37018, 37190
60 36130
63 36130
81 ..... 35079, 37190
141 35891
143 35891
152 35662
174 35662
180 ..... 35663, 37019
185 33941
300 37200

42 CFR

51a 36703
405 36069
412 36707
413 36707
414 36069
417 36072
418 36707
431 36072
434 36072
1003 36072

Proposed Rules:

57 36733
421 ..... 35664, 36415
440 36419
1001 37202

43 CFR

12 36713

Public Land Order:

7055 34899
7064 34582
7065 35054
7067 35859
7068 35859
7069 35267

Proposed Rules:

Ch. I 36108
Ch. II 36108
Subtitle A 36108
2800 35596
2810 35596
2880 35596

44 CFR

64 36370
322 36087
352 35630

Proposed Rules:

67 36421

45 CFR

5b 36717

Proposed Rules:

615 35079

46 CFR

68 36088

47 CFR

Ch. I 35681
22 ..... 35054, 37163
24 37164
43 35632
73 ..... 34391, 34766, 35055, 35268, 35987
74 35635
80 35268
87 35268

Proposed Rules:

Chapter I 35664
61 33947
64 33947
69 33947
73 ..... 34404, 34405, 35081, 35082, 35292, 35293, 35785, 35893, 35894, 36735, 36736, 37020
74 35665
97 36157

48 CFR

206 36088
222 36088
226 36088
237 36088
252 36088

Proposed Rules:

Ch. XIV 36108
209 35895
252 35895
926 35294
952 35294
970 35294

49 CFR

1 36987
172 35411
195 ..... 35465, 36256
392 34708
393 ..... 34708, 34712
571 ..... 35636, 37164, 37167
583 37294
1056 34392

Proposed Rules:

37 37208
38 37208
171 36488
172 36488
173 36488
175 36488
176 36488
177 36488
178 36488
383 36338
541 3508
552 37021
571 ..... 34405, 35298, 35300, 35670, 35672

50 CFR

14 36719
17 ..... 35860, 36988
100 36063
215 35471
216 35864
229 34899
301 ..... 35474, 35475, 36719
625 36720
630 36090
650 36720
651 ..... 35056, 36725
658 34582
672 ..... 35056, 37180
675 ..... 33920, 34392, 34583, 35056, 35057, 35476, 35638, 36727
681 35270

Proposed Rules:

Ch. I 36108
Ch. II 35674
Ch. IV 36108
17 ..... 34784, 35089, 35303, 35304, 35305, 35307, 35496, 35584, 35674, 35896, 35900, 36737
20 35566
32 ..... 36342, 36348, 37134
222 35089
227 ..... 36158, 37213
644 35308
654 33947

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 12, 1994

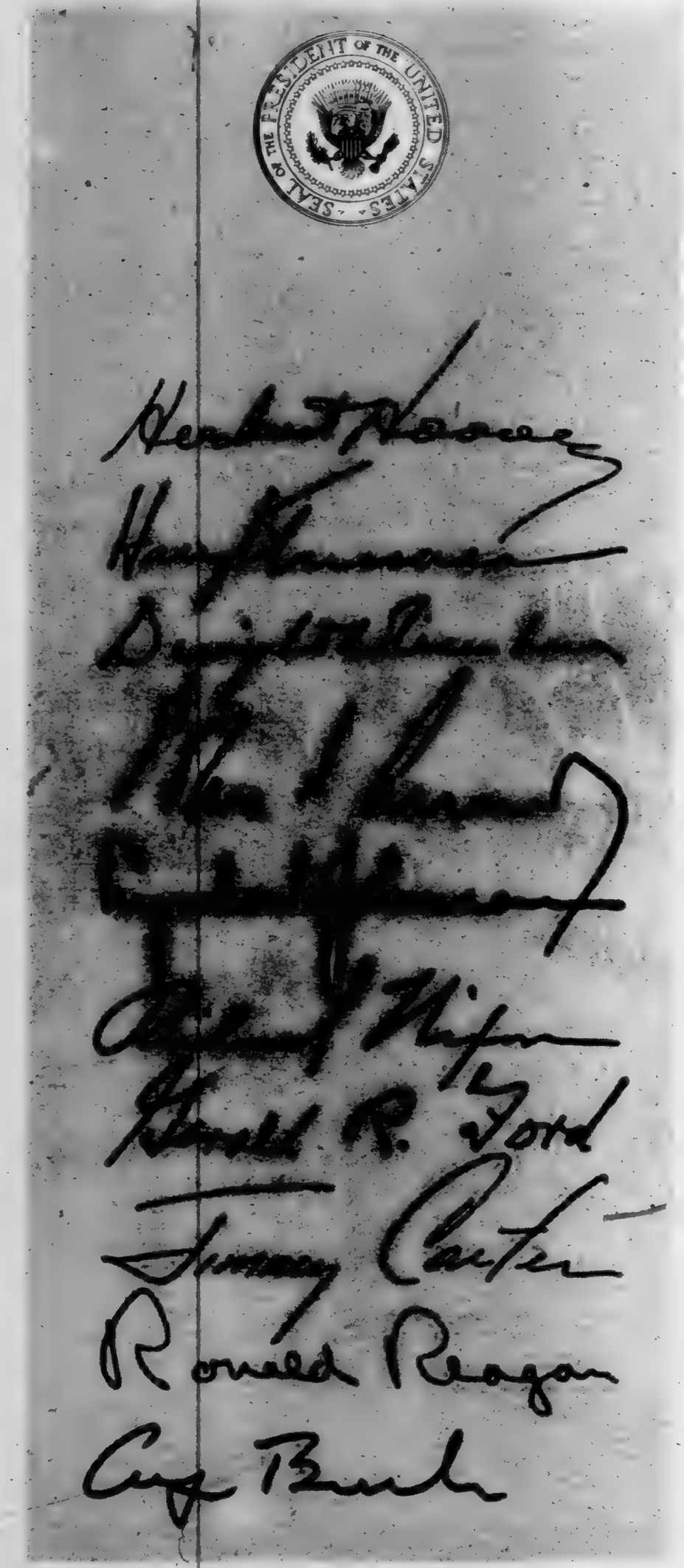

Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House

Volumes for the following years are available; other volumes not listed are out of print

Ronald Reagan

1984 (Book II)	$36.00
1986 (Book I)	$34.00
1985 (Book II)	$30.00
1986 (Book I)	$37.00
1986 (Book II)	$35.00
1987 (Book I)	$33.00
1987 (Book II)	$35.00
1988 (Book I)	$39.00
1988–89 (Book II)	$38.00

George Bush

1989 (Book I)	$38.00
1989 (Book II)	$40.00
1990 (Book I)	$41.00
1990 (Book II)	$41.00
1991 (Book I)	$41.00
1991 (Book II)	$44.00
1992 (Book I)	$47.00
1992–93 (Book II)	$49.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Pu

Pamphlet prints of public law
laws upon enactment and
Legislative history reference
issued irregularly upon enac

(Individual laws also may be
20402–9328. Prices vary. Se
newly enacted laws.)

Superintende

Order Processing Code:
* 6216

☐ **YES**, enter my subscription(s) as fol

_____ subscriptions to **PUBLIC LAWS** for

The total cost of my order is $_____
postage and handling and are subject to cha

(Company or Personal Name) (Pl

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other

Public Laws

103d Congress, 2d Session, 1994

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 2d Session, 1994.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws.)

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512-2233

___ subscriptions to **PUBLIC LAWS** for the 103d Congress, 2d Session, 1994 for $156 per subscription.

The **total cost of my order is $**_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (1 93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

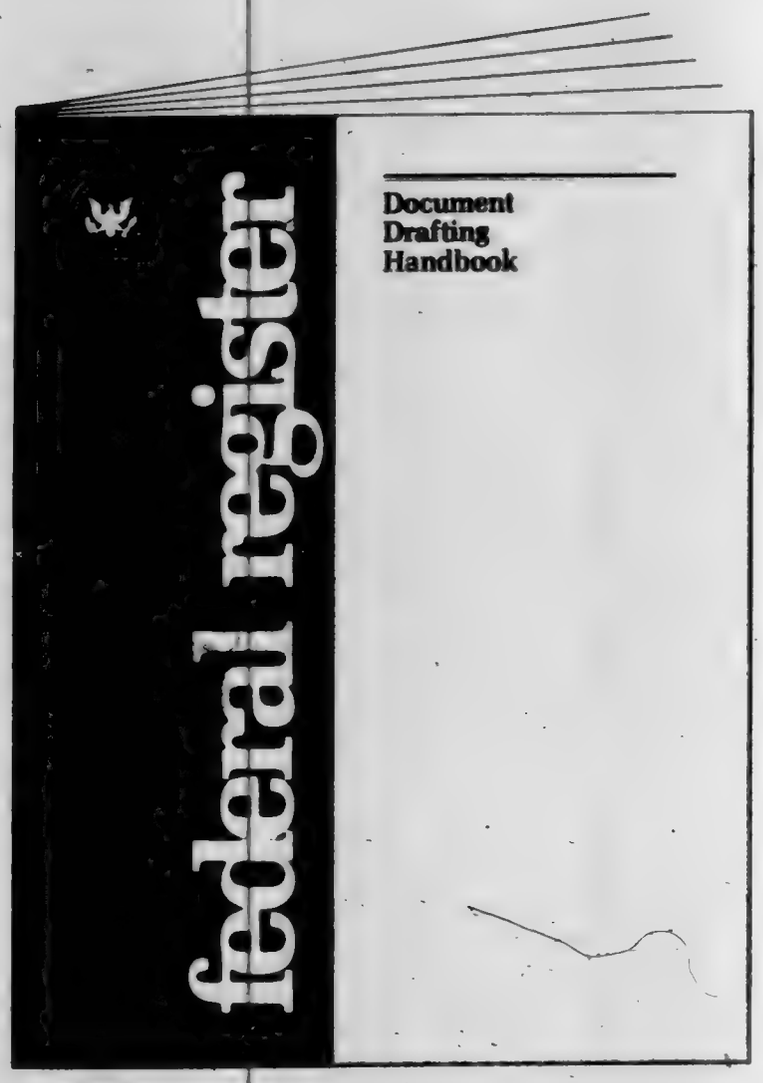

Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy!

To fax your orders and inquiries—(202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069-000-00037-1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%. All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev 12/91)

4. **Mail To:** New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954

Superintender

Order Processing Code:
*6962

Please Type or Print (Form is aligned for typ
Prices include regular domestic postage and
Information Desk at 202-783-3238 to verify

Qty.	Stock Number	
1	021-602-00001-9	Catalog–B

_____
(Company or personal name) (Please t

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

New Publication

List of CFR Sections Affected

1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16) $27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27) $25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41) $28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50) $25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code:
***6962**

Charge your order. It's easy!

MasterCard VISA

To fax your orders and inquiries–(202) 512-2250

Please Type or Print (Form is aligned for typewriter use.)

Prices include regular domestic postage and handling and are good through 12/92. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog–Bestselling Government Books	**FREE**	**FREE**
			Total for Publications	

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail order to:
New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) ***Thank you for your order!***

(Signature)

Rev. 6-92

Order Now!

The United States Government Manual 1993/94

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$30.00 per copy

Superintendent of Documents **Publications** Order Form

Order Processing Code
* 6395

Charge your order. It's easy!

To fax your orders (202) 512–2250

☐ **YES,** please send me _____ copies of the **The United States Government Manual, 1993/94** S/N 069–000–00053–3 at $30.00 ($37.50 foreign) each.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

Please choose method of payment:

❑ Check payable to the Superintendent of Documents

❑ GPO Deposit Account ☐☐☐☐☐☐ – ☐

❑ VISA ❑ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing signature) (Rev 9/93)

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE S

Know when to expect your renew
prices down, the Government Print
learn when you will get your renew
the top line of your label *as shown*

A re
rent
befo

AFR SMITH212J
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747

To be sure that your service continu
If your subscription service is disco
Superintendent of Documents, Was
will be reinstated.

To change your address: Please S
Superintendent of Documents, Attn
DC 20402–9373.

To inquire about your subscriptio
your correspondence, to the Superi
Stop: SSOM, Washington, DC 204

To order a new subscription: Ple

Order Processing Code:
* 5468

Superintendent of D

☐**YES,** please enter my subscriptio

____ subscriptions to **Federal Regi**
of Code of Federal Regulation

____ subscriptions to **Federal Regi**

The total cost of my order is $____
regular shipping and handling.) Price subj

Company or personal name (Plea

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before this date.

```
AFR  SMITH212J                DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before this date.

```
AFRDO  SMITH212J              DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code:
* 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐**YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and LSA List of Code of Federal Regulations Sections Affected, at $490 ($612.50 foreign) each per year.

____ subscriptions to **Federal Register,** *daily only* (FRDO), at $444 ($555 foreign) each per year.

The total cost of my order is $_____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/94

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

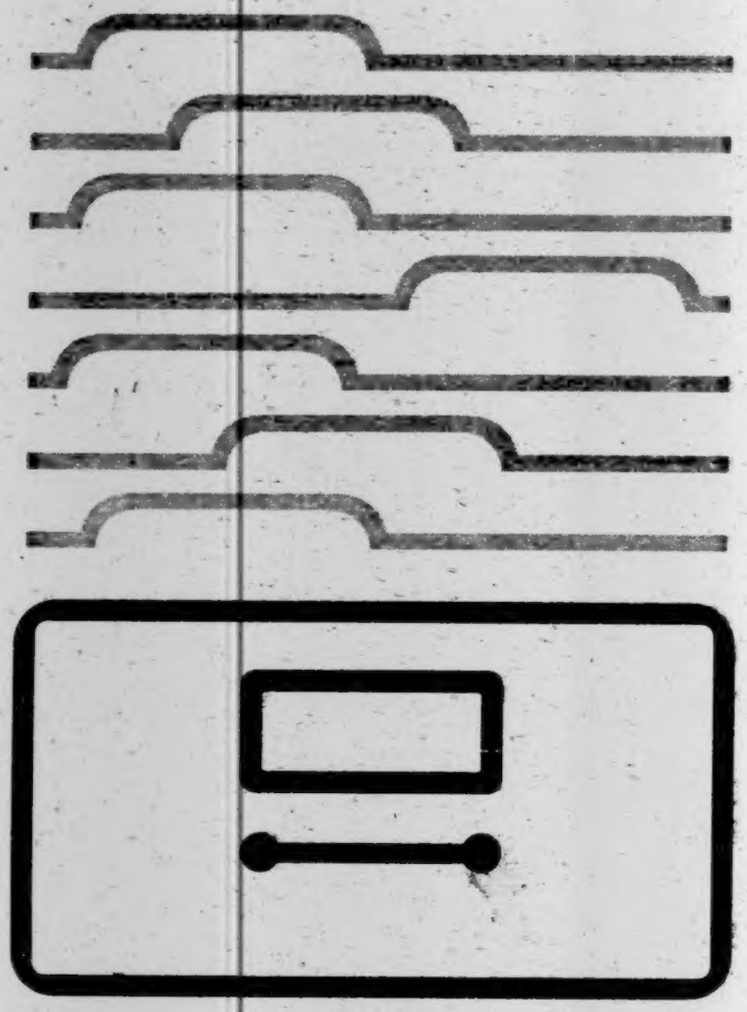

NEW EDITION

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1994

The GUIDE is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Order Form

Charge your order. It's easy! MasterCard VISA

Order Processing Code:
*** 7296**

To fax your orders (202) 512–2250

❑ **YES,** send me ____ subscriptions to **1994 Guide to Record Retention Requirements in the CFR,** S/N 069–000–00056–8, at $20.00 ($25.00 foreign) each.

The total cost of my order is $ _____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

Check method of payment:

❑ Check payable to Superintendent of Documents

❑ GPO Deposit Account _____–_____

❑ VISA ❑ MasterCard _____ (expiration date)

_____

Thank you for your order!

Authorizing signature 4/94

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper